

1 Allison G. Jackson, State Bar No. 157078
John S. Lopez, State Bar No. 149291
2 Tamara C. Falor State Bar No. 126716
HARLAND LAW FIRM LLP
3 212 G Street. Ste. 201
Eureka, California 95501
4 (707) 444-9281 Telephone
(707) 445-2961 Facsimile
5 ajackson@harlandlaw.com

6 Attorneys for Plaintiff Judith Magney

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 JUDITH C. MAGNEY, individually and as
personal representative/successor in interest of
Dick R. Magney,

11 Plaintiffs,

12 v.

13 COUNTY OF HUMBOLDT; HUMBOLDT
COUNTY BOARD OF SUPERVISORS;
JEFFREY S. BLANK, as Humboldt County
14 Counsel; CAROLYN J. RUTH, individually
and as Acting Humboldt County Counsel;
BLAIR ANGUS, individually, as a Humboldt
15 County Deputy County Counsel, and as
Humboldt County Assistant County Counsel;
16 NATALIE A. DUKE, individually and as a
Humboldt County Deputy County Counsel;
17 PHILLIP CRANDALL, former Director
Humboldt County Health and Human
18 Services; HEATHER F. RINGWALD,
individually and as a Public Health Nurse with
19 the Humboldt County Department of Health
and Human Services, Social Services Branch,
20 APS; SHIRLEY HILLMAN, individually and
as a Supervising Public Health Nurse with the
21 Humboldt County Department of Health and
Human Services, Social Services Branch,
22 APS; ROSY PROVINO, individually and as a
Social Worker Supervisor for the Humboldt
23 County Department of Health and Human
Services, Social Services Branch; AMANDA
24 WINSTEAD, individually and as a Program
Manager, Humboldt County Department of
25 Health and Human Services, Social Services
Branch; KELLI L. SCHWARTZ, individually
26 and as the Humboldt County Public Guardian,
Humboldt County Department of Health and
27 Human Services; and DOES 1 - 50.

28 Defendants.

Case No. 4:17-cv-02389-HSG

FIRST AMENDED COMPLAINT FOR
VIOLATION OF CIVIL RIGHTS AND
CONSPIRACY TO VIOLATE CIVIL
RIGHTS

(42 U.S.C. §§1983, 1988)

DEMAND FOR JURY TRIAL

1 NOW COMES Plaintiff Judith Magney, individually and as personal
2 representative/successor in interest of Dick R. Magney, by and through her attorney, Allison G.
3 Jackson, Harland Law Firm LLP, and for her Complaint against Defendants: County of
4 Humboldt; Humboldt County Board of Supervisors; Carolyn J. Ruth; Blair Angus; Natalie A.
5 Duke; Phillip Crandall; Heather Ringwald; Shirley Hillman; Rosy Provino; Amanda Winstead;
6 and Kelli L. Schwartz, with Jeffrey S. Blank; Carolyn J. Ruth; Blair Angus; Natalie A. Duke;
7 Heather Ringwald; Shirley Hillman; Rosy Provino; Amanda Winstead; and Kelli L Schwartz
8 also being named as Defendants in their individual capacity (Hereinafter, all Defendants are
9 referred to as “ Defendants,” and the specific subset of those Defendants named in their
10 individual capacity are herein referred to collectively as “Individually Named Defendants.”)
11 hereby states as follows:

12 I. INTRODUCTION.

13 1. This complaint seeks relief for Defendants’ state actions, under color of law,
14 which violated the constitutional rights of Dick Magney (“Mr. Magney”) and Judith Magney
15 (“Mrs. Magney”), via Defendants deliberately abridging Mr. Magney’s Advance Health Care
16 Directive (“AHCD”) and his express end-of-life decisions as expressed to his treating physicians,
17 his surrogate, and his alternate surrogate and family. These actions of Defendants were pursuant
18 to Defendants’ admitted policies and custom to disregard the express terms of a legally executed
19 AHCD if Defendants disagreed with such directives or medical choices contained in these
20 directives, and to seize control over medical decision making authority to impose what
21 Defendants determine to be in the “best interests” of the patient, and involved the failure by the
22 County to adequately train its employees as to the legal significance of an AHCD and the
23 constitutional rights of holders of AHCDs, in deliberate indifference to the fact that the continued
24 challenge of legally executed AHCDs by the County will obviously result in the violation of
25 constitutional rights of the persons who execute AHCDs.

26 2. This complaint seeks relief on the basis that the individual defendants (named
27 below) and Defendant County of Humboldt (Department and Agency Defendants named below)
28 violated Mr. Magney’s fundamental rights of liberty, privacy, against unlawful searches and

1 seizures, and his right to choose his medical care and pass away on his own terms - the terms as
2 expressed to his doctors, as set forth in his AHCD, and to his surrogates and family. Defendants
3 unlawfully violated and denied Mr. Magney's liberty interest in his medical choices, medical
4 treatment and in his end-of-life decisions set forth in his AHCD and this conduct also violated
5 his religious beliefs regarding treatment, including committing under color of law daily medical
6 batteries on the person of Dick Magney, from March 13, 2015, through May 6, 2015, when
7 Plaintiff was successful in obtaining a superior court order stopping further forced medications.
8 Additionally, the below named Defendants violated Mr. Magney's liberty interests from April 6,
9 2015, to May 22, 2015, by pleadings that did not in anyway comport with the state's Competency
10 Determination statutes and by restraining Mr. Magney in a medical facility not of his choosing
11 and refusing to let him leave on those dates. Not only was he unlawfully kept in a facility not of
12 his choosing, but the physician orders for April and May of 2015, while describing the types of
13 medications that he was being forced on those days to take, also described Mr. Magney as
14 constantly in "inconsolable anguish and yelling out" stemming from the violations of his
15 religious beliefs, his expressed AHCD, and from his rights against unlawful searches and
16 seizures by being forcibly medicated against his will, and denying him his right to be released
17 from the nursing home in which he was forcibly kept by Defendants.

18 3. Each and every day from March 13, 2015, through May 6, 2015, Defendants
19 caused Mr. Magney to be forcibly medicated both intravenously and orally with a cocktail of
20 drugs including, without limitation, drugs such as Prozac, Methodone, Norco, Atavan and other
21 strong narcotics, all without his consent and despite his attempts to resist these medications. On
22 March 13, 2015, by Defendants' exercise of the temporary powers wrongfully obtained by
23 Defendants, Mr. Magney was intravenously force fed heart medications against his will that only
24 prolonged his terminal suffering. Each and every day from March 13, 2015, through May 6,
25 2015, Mr. Magney was forced to submit to medical batteries for an array of procedures not of his
26 choosing but of Defendants' choosing. In fact, Mr. Magney was forced to submit to the
27 placement of a Foley catheter put in place solely due to the convenience of Defendants and over
28 his objections.

1 4. From March 13, 2015, through May 22, 2015, Plaintiff Dick Magney was legally
2 incapacitated. Pursuant to state tolling statutes including, without limitation, California Code of
3 Civil Procedure section 352, his legal incapacity on March 13, 2015, and lasting until May 22,
4 2015, tolled any statute of limitations for that time period for the filing of his claims.

5 5. Defendants' actions are not protected by qualified immunity. No reasonable
6 person nor government agency would have taken the course chosen by Defendants in
7 disregarding the Health Care Directive statutes, misleading the lower courts as to the facts and
8 law, and omitting material facts and law from the court in order to obtain powers to impose daily
9 medical batteries upon Mr. Magney, all of which violated Mr. Magney's fundamental rights.

10 6. On October 24, 2016, in a harshly worded opinion the First District Court of
11 Appeal decision dealing solely with a first petition and temporary orders (CV150159 - AHCD
12 Petition) the justices determined that the Defendants' actions in the first ex parte application
13 made to obtain their first temporary powers over Plaintiff Dick Magney was a result of a
14 purposeful and deliberate fraudulent evidentiary showing which both misrepresented the facts to
15 the court, omitted other material facts to the court, and also omitted and misled the court as to the
16 applicable law. After a review of the complete record in Health Care Directive Petition and after
17 oral argument wherein the justices queried Defendant Angus regarding her actions and the
18 actions of her office and the APS Defendants, her response was that the involved county agencies
19 (Defendant County, Department of Health and Human Services, Adult Protective Services, and
20 County Counsel) and the county employees (Individual Defendants Ruth, Angus, Duke,
21 Ringwald, Winstead, Provino and Hillman) took their chosen course of action to ensure that they
22 obtained their wanted powers from the court. The Justices wrote that "no reasonable person nor
23 government agency" would have taken such a course of action. The court also remarked in
24 footnote 15, that the County of Humboldt's stated position was that they could be as duplicitous
25 as they wanted to obtain their chosen result.

26 7. Defendants used the same misrepresented facts, material omissions, and
27 misleading of the court as to the applicable law in their Conservatorship Petition and Request for
28 Temporary Powers obtaining total control over Mr. Magney in the order issued on April 6, 2015,

1 and in each subsequent petition which includes the First Amended Request for Temporary Orders
2 and the First Amended Conservatorship Petition. The Attorney Defendants, County Defendants,
3 and APS Defendants went to Defendant Schwartz who used the same purposeful and deliberately
4 false evidentiary showing to obtain temporary powers over Mr. Magney, using the same
5 misrepresentations and omissions of the same material facts that were made by the APS
6 Defendants in the request for temporary powers in the conservatorship matter, thereby making a
7 *second* fraudulent evidentiary showing. Defendant Schwartz, the Attorney Defendants, and the
8 County Defendants in addition again deliberately misled the court as to the applicable law in
9 order to obtain temporary powers over Mr. Magney, to repeat their unlawful constitutional
10 violations of his Advanced Health Care Directive.

11 8. These same Defendants also as violated Mr. Magney's his rights under the Due
12 Process Clause by their numerous conservatorship petitions and requests for temporary powers
13 and by obtaining the grant of temporary powers over the person and finances of Mr. Magney,
14 including, among other things, by failing to base these petitions on admissible evidence; by
15 failing to produce witnesses at trial whose allegations formed the basis of the allegations of
16 Defendants' prosecutions; by failing to allege how the actions and behaviors of Dick R. Magney
17 correlated to alleged mental disorders, as required by law including, without limitation,
18 California Probate Code section 811(a), and, as required by law including, without limitation,
19 California Probate Code section 811(c) by failing to provide the Humboldt County Superior
20 Court with an analysis of the frequency, severity, and duration of Mr. Magney's periods of
21 impairment.

22 9. Defendant Kelli Schwartz, by obtaining powers over the estate of Dick R. Magney
23 via deficient probate petitions and supporting documents, violated the Fifth Amendment Right as
24 applied through the Fourteenth Amendment Right of Dick R. Magney to not be deprived of
25 property without due process of law or fair procedures.

26 10. By obtaining powers over the estate of Dick R. Magney via deficient probate
27 petitions and supporting documents which were bereft of any discussion of the community
28 property rights of Judith Magney in Dick R. Magney's estate, Defendant Kelli Schwartz violated

1 the Fifth Amendment Rights as applied through the Fourteenth Amendment right of Judith
2 Magney to not be deprived of property without due process of law or fair procedures.

3 11. Defendant Kelli Schwartz, in obtaining powers over the estate of Dick R. Magney,
4 but failing to exercise these conferred powers to the benefit of Dick R. Magney, during a time
5 when Judith Magney was prohibited from acting on behalf of the estate of Dick R. Magney to
6 seek benefits to pay for the skilled nursing facility in which Defendant Kelli Schwartz had placed
7 Dick R. Magney, Dick R. Magney and Judith Magney suffered direct economic harm.

8 12. These subsequent orders in the Conservatorship matter were obtained by the
9 series of purposeful and deliberate fraudulent acts. Defendants' purposeful and deliberate
10 fraudulent evidentiary showing in obtaining the April 6, 2015, powers are the reason why the
11 below-named Defendants lack qualified immunity for their actions from April 6, 2015, onward.

12 13. Defendants violated Plaintiff's right to liberty, privacy, and the exercise of his
13 religion by denying those rights each day from March 13, 2015, through May 6, 2015, and from
14 April 3, 2015, through May 22, 2015. On numerous occasions Plaintiff Dick Magney and his
15 surrogate Plaintiff Judith Magney demanded that the below named Defendants stop violating Mr.
16 Magney's liberty, privacy and religious rights. Repeatedly, the below named Defendants denied
17 each of these requests as set forth more fully below.

18 14. Defendants' unlawful conduct violated Mr. Magney's rights to comport the
19 treatment he was to receive in the end stages of his life which he had chosen to be consistent with
20 his religious beliefs. Mr. Magney's express desire to "go be with the Lord" when called,
21 consistent with his religious believes, was deliberately forestalled by the daily actions of the
22 Defendants in forcing unwanted medications to extend his suffering when he was terminally ill
23 and had no chance at any meaningful recovery. Avoiding this scenario was the reason he
24 obtained an Advanced Health Care Directive, informed his surrogates of his choices, informed
25 his doctors of his choices, and refused medical treatments and procedures which were prolonging
26 his suffering.

27 15. Defendants violated Mr. Magney's right to liberty, privacy, and the exercise of his
28 religion by denying and by failing to give effect to his decisions and the decisions of his

1 designated surrogate decision maker beginning on March 13, 2015, through May 6, 2015, which
2 is further described below.

3 16. Additionally, this complaint seeks relief on the basis that the Individual
4 Defendants and Defendant County of Humboldt (department and agency defendants) took part in
5 a conspiracy to violate Mr. Magney's fundamental rights to liberty, privacy, and against unlawful
6 searches and seizures and his right to choose his medical care and pass away on his own terms -
7 the terms, as expressed to his doctors, as set forth in his AHCD, and as expressed to his
8 surrogates and family. As part of this conspiracy, the below-named Defendants met, phoned, and
9 emailed on a daily basis, to keep Mr. Magney drugged and subject to their daily control and to
10 also ensure that fraudulent acts remained covered up. These acts commenced on March 13, 2015,
11 when Plaintiff Magney was legally incapacitated and continued through May 22, 2015.

12 17. Finally, this complaint seeks relief on the basis that the Defendant County of
13 Humboldt and named agencies (Department Health and Human Services, Adult Protective
14 Services, Public Guardian and Office of County Counsel) have failed to properly train the named
15 individual defendants and that they have a policy for the above stated fundamental rights
16 violations. As set forth below, the their lack of training and policy violations have continued past
17 these violations and Mr. Magney's death, as reflected in oral and written statements to the state
18 courts in briefs, in letters and in statements made to the press and public.

19 II. JURISDICTION AND VENUE.

20 18. This is a civil action under 42 U.S.C § 1983 ("Section 1983") seeking damages
21 against Defendants for interjecting themselves into the end-of-life health care decisions of a
22 patient and his agent under his AHCD, lawfully executed under the laws of the State of
23 California, thereby committing acts, under color of law, with the intent and for the purpose of
24 depriving Plaintiffs of rights secured under the Constitution and laws of the United States, and
25 for refusing or neglecting to prevent such deprivations and denials to Plaintiffs.

26 19. This case arises under the United States Constitution and 42 U.S.C. Sections 1983
27 and 1988, as amended.

28 20. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C.

1 Sections 1331, which gives district courts jurisdiction over all civil actions arising under the
2 Constitution, laws and treaties of the United States, as well as, pursuant to 28 U.S.C. § 1343,
3 which give district courts original jurisdiction over (a) any civil action authorized by law to be
4 brought by any person to redress the deprivation, under color of any state law, statute, ordinance,
5 regulation, custom or usage, of any right privilege or immunity secured by the Constitution of the
6 United States or by any Act of Congress providing for equal rights of citizens for of all persons
7 within the jurisdiction of the United States; and (b) any civil action to recover damages or to
8 secure equitable relief under any Act of Congress providing for the protection of rights..

9 21. This is an action to redress the deprivation of Plaintiffs' constitutional rights
10 under the Fourteenth Amendment of the United States Constitution pursuant to 42 U.S.C. §
11 1983, specifically the 14th Amendment Due Process Clause, U.S. Const. amend. XIV, § 1, the
12 right to liberty, U.S. Const. amend. XIV, §1, the right to privacy, U.S. Const. amend. XIV, and
13 the right against unreasonable search and seizure, U.S. Const. amend. IV.

14 22. This Court is an appropriate venue for this action pursuant to 28 U.S.C. § 1391(b)
15 because the sources of the violations are located within this District. Venue is also proper
16 because all Defendants reside in this District and all of the events or omissions giving rise to
17 Plaintiff's claims occurred in this District. Intra district venue is proper in San Francisco,
18 California, because the sources of the violations are located within Humboldt County, California.

19 III. PARTIES.

20 23. Plaintiff JUDITH MAGNEY ("Mrs. Magney") is and at all times relevant was a
21 citizen of the United States and a resident of Humboldt County, California. Mrs. Magney is
22 asserting the violation of constitutional rights under color of state law on behalf of her deceased
23 husband, Dick R. Magney ("Mr. Magney"), who was, prior to his death, a citizen of the United
24 States and a resident of the County of Humboldt, California; and on violation of constitutional
25 rights under color of state law on behalf of herself, as Mr. Magney's duly appointed and
26 designated surrogate under California's Advance Health Care Directive Law.

27 24. Under Federal Rule of Civil Procedure 17(g), Mrs. Magney is endowed with
28 standing by California Code of Civil Procedure sections 377.11 and 377.30 to bring Mr.

1 Magney's claims. In evidence of this standing, pursuant to California Code of Civil Procedure
2 section 337.32, Mrs. Magney's declaration as her late husband's successor in interest has been
3 filed concurrently with this Complaint.

4 25. Defendant COUNTY OF HUMBOLDT ("County") is a legal subdivision of the
5 State of California. California Constitution, Article XI, section 1; California Government Code
6 sections 23002 and 23003.

7 26. At all material times, Defendant HUMBOLDT COUNTY BOARD OF
8 SUPERVISORS ("Board") is the duly constituted governing body for the County. *Harris v.*
9 *Gibbins*, 114 Cal. 418 (1896). As such, the Board is ultimately responsible for seeing that the
10 county's mandated duties and compliance with applicable law are carried out including, without
11 limitation, all laws and regulations applicable to the provision of health and human services to
12 those residing within the County of Humboldt, California, including, without limitation, the
13 provision of protective services to elders 65 and older who are unable to protect their own
14 interests or to care for themselves, and the provision of the services of a conservator for people
15 with "various types of impairments."

16 27. HUMBOLDT COUNTY DEPARTMENT OF HEALTH AND HUMAN
17 SERVICES ("DHHS") is a department of the County. The Social Services Branch of DHHS
18 manages both the Adult Protective Services program ("APS"), and the Humboldt County Public
19 Guardian ("Public Guardian"). The Department of Health and Human Services, Adult Protective
20 Services and the Public Guardian were at all times represented by the same counsel, Defendants
21 ANGUS, DUKE, and RUTH.

22 28. At all material times, the Board is the appointing authority for the Director of
23 Health and Human Services ("the Director"), and endows the Director with all legal and other
24 authority possessed by the Director. "Under general direction of the County Board of
25 Supervisors, and within state and federal laws, regulations and rules, collaboratively leads the
26 department; plans, administers and guides the mission and vision of the integrated services of
27 health, mental health, substance abuse and social services programs, and other departmental
28 programs in service to the most vulnerable members of our community; and performs related

1 work as required,” “has department head level responsibility for overall departmental mission
 2 and vision, policy development, organizational structure, program planning, fiscal management,
 3 administration and operation of the Department of Health and Human Services,” and “is
 4 responsible for the leadership, organization, management, implementation and administrative
 5 direction of all programs of the department within applicable laws, rules and regulations and for
 6 furthering County goals and objectives in collaboration with the County Board of Supervisors.”¹

7 At all material times, PHILLIP CRANDALL was the Director.

8 29. At all material times, the Director was the appointing authority for the staff of
 9 DHHS who perform the work coming before the subdepartments of DHHS, including the Public
 10 Guardian and APS.

11 30. At all material times, Defendant HEATHER F. RINGWALD (“Nurse Ringwald”)
 12 in her official and individual capacities, worked as a nurse within DHHS, Social Services
 13 Branch, APS program. Nurse Ringwald’s position, per the County’s job classification for a
 14 Public Health Nurse, “[u]nder general supervision, provid[ed] a full range of Public Health
 15 nursing services including teaching, health assessment, and counseling services in homes, clinics,
 16 schools, community centers and similar locations in relations to the prevention and control of
 17 diseases and adverse health conditions; performs related work as assigned,” and “is fully
 18 competent to perform a wide range of duties requiring independence and professional judgment
 19 in fulfilling nursing skills to prevent disease, promote healthful behavior and alleviate conditions
 20 adversely affecting the health and safety of individuals, families and the community. . .”²

21 31. At all material times, Defendant SHIRLEY HILLMAN (“Supervising Nurse
 22 Hillman”) in her official and individual capacities, worked as a supervising public health nurse
 23 within DHHS, Social Services Branch, APS program. Supervising Nurse Hillman’s described job
 24 duties include: “[u]nder direction, supervises public health nursing and support staff in the
 25 provision of health provision of health prevention and promotion services to community
 26

27 ¹ <http://humboldt.gov/DocumentCenter/View/53737>

28 ² <http://humboldt.gov/DocumentCenter/View/53939>

1 residents; performs public health nursing program development and supervision; performs
 2 related work as assigned,” and “is the first full supervisory level of the professional public health
 3 nursing series” wherein “[i]ncumbents assume an active leadership role in program planning,
 4 development, implementation, supervision and evaluation and are responsible for assigned public
 5 health care team that provides health services in a variety of settings,” but “is distinguished from
 6 the Director of Public Health Nursing in that the latter has overall management responsibility for
 7 all public health nursing programs and activities.”³

8 32. At all material times, Defendant ROSY PROVINO (“Supervising Social Worker
 9 Provino”) in her official and individual capacities, worked as a Social Worker Supervisor II
 10 within DHHS, Social Services Branch. The job description for the position held by Supervising
 11 Social Worker Provino states: “Under general direction, the Social Worker Supervisor II plans,
 12 organizes, and directs the work of social services staff providing the most advanced social
 13 services; and performs other related work as assigned,” and “supervise a unit of caseworkers in
 14 specific programs identified as having a high proportion of complex and sensitive casework
 15 needs and are usually assigned to programs or staff positions that require extensive casework
 16 knowledge. . .” “Social Worker Supervisor II receives direction from a Program Manager or
 17 other management level classification. Social Worker II incumbents provide direct supervision to
 18 lower level Social workers including Social Worker IVs.”⁴

19 33. At all material times, Defendant AMANDA WINSTEAD (“Program Manager
 20 Winstead”) in her official and individual capacities, worked as a Program Manager II within
 21 DHHS, Social Services Branch. As described by the County, Program Manager Winstead’s
 22 duties are as follows: “Under limited direction, the Program Manager II is responsible for the
 23 total employment, total eligibility, or total social services program; or one of these programs and
 24 one or more smaller department programs. Positions are in departments where the organizational
 25 structure requires two or more subordinate levels of supervision. . .A Program Manager II differs
 26

27 ³ <http://humboldt.gov/DocumentCenter/View/54297>

28 ⁴ <http://humboldt.gov/DocumentCenter/View/54041>

1 from a Program Manager I in that the former typically has responsibility for the total eligibility,
 2 total employment or total social services program in a department where the organizational
 3 structure requires two levels of supervision. . .”⁵

4 34. At all material times, Defendant KELLI L. SCHWARTZ (“Public Guardian”), in
 5 her official and individual capacities, worked within the Department of Health and Human
 6 Services as the Humboldt County Public Guardian. The duties of the Public Guardian are
 7 described by the County as: “Under direction, plans, organizes, manages programs for the public
 8 guardian, conservator and veteran’s services within the Department of Health and Human
 9 Services; provides expert professional assistance to the County and the public in areas of
 10 responsibility; performs related work as assigned,” and “is a management class within the Social
 11 Services Branch of the Department of Health and Human Services with responsibility for
 12 managing the day to day activities of the public guardian, conservator and veteran’s services
 13 including accomplishing goals and objectives, supervising staff, and participating in managing
 14 the annual budget and contract providers. This position is distinguished from Program Manager
 15 II in that the latter has overall responsibility for the adult services component within the Social
 16 Services Branch of the Department of Health and Human Services.” In the examples of duties
 17 (“Illustrative only”), the job description indicates that the Public Guardian “[r]eviews and
 18 interprets federal, state and local laws and regulations applicable to public guardian, conservator
 19 and veteran’s services programs and activities, analyzes requirements and recommends and
 20 develops procedures, practices and alternatives. . .”⁶

21 35. At all material times, the Office of the County Counsel is, and was, the legal
 22 advisor to the County of Humboldt, providing legal advice and representation to the Humboldt
 23 County Board of Supervisors, as well as to county departments. “The Office provides legal
 24 guidance and support, crafts legal strategies, gives training, drafts and reviews legal documents,
 25 analyzes legislation and represents the County in litigation.” See

27 ⁵ <http://humboldt.gov/DocumentCenter/View/54297>

28 ⁶ <http://humboldt.gov/DocumentCenter/View/53932>

1 <https://humboldt.gov.org/135/County-Counsel>.

2 36. Defendant CAROLYN J. RUTH (“Counsel Ruth”) was acting as Humboldt
3 County Counsel at the time Plaintiffs were subjected to the deprivation of Dick R. Magney’s
4 constitutional right to decide his medical care by the County. At all relevant times, she was the
5 responsible person for the actions by her, by her subordinate attorneys (Angus and Duke), and by
6 her clients (Defendant County of Humboldt, Department of Health and Human Services, APS
7 and Public Guardian), and directed their actions. The “Definition” for County Counsel
8 contained in the job description of this position states: “Under general policy direction of the
9 Board of Supervisors and as set forth in the California Government Code, provides expert legal
10 counsel to the Board and County management; plans, organizes, coordinates and directs the
11 program activities of the County Counsel office; formulates departmental policies, goals and
12 directions; performs related work as assigned,” and “. . . acts as chief legal counsel for all County
13 departments. . . the Board of Supervisors. . . Responsibilities include personally handling sensitive
14 and complex legal matters and involvement in litigation, negotiation and settlement agreements
15 in all California and federal trial and appellate courts.” In the “Examples of Duties (Illustrative
16 Only)” are included: “Serves as legal representative for the County, advising management on
17 legal matters and providing instruction in preventative law strategies. . . and meets with
18 management staff to advise on legal issues and problems. . . Conduct litigation, including
19 preparation of legal pleading and memoranda of law, negotiation and settlement of legal
20 proceedings, conduct of trials, legal argument on motions and writs and prosecution and defense
21 of appeals in all California and federal trial and appellate courts. . . Monitors proposed legislation
22 and court decisions related to County and/or public sector law and activities; evaluates their
23 impact on County operations and recommends appropriate action.” Recommended skill is listed
24 as, among other things: “Performing complex legal research, analyzing complex problems,
25 evaluating alternatives and making sound recommendations. . . Analyzing and applying legal
26 principles and precedents to specific local government problems. . .” The position of Deputy
27 County Counsel lists as “qualifications” “*Knowledge of . . . State and federal laws and*
28 *constitutional provisions affecting County agencies’ operation . . .*” [Emphasis added], as well as

1 skill in “Analyzing and applying legal principles and precedents to specific local government
 2 problems. . .” and skill in “Performing complex legal research, analyzing complex problems,
 3 evaluating alternatives and making sound recommendations”; as well as “Analyzing and applying
 4 legal principles and precedents to specific local governmental problems.”⁷

5 37. Defendant BLAIR ANGUS (“Counsel Angus”) was employed first as a Humboldt
 6 County Deputy County Counsel, and then as Humboldt County Assistant County Counsel during
 7 all material times herein. She acknowledged that she was directly overseeing and responsible for
 8 all of the pleadings and the County’s actions. The “Distinguishing Characteristics” for a Deputy
 9 County Counsel include: “[u]nder general supervision, performs legal work of a routine to
 10 complex nature in representing the County and providing advice and counsel to the Board of
 11 Supervisors and County management. . .” The “Distinguishing Characteristics” include that:
 12 “work may be related to any of a number of legal specialty areas and normally includes providing
 13 legal services to one or more County departments and their associated elected officials and
 14 appointed board and commissions,” involvement “in formal litigation, discretionary powers. . .”
 15 and “may assist with legal matters in any area of county agency law.” A Deputy County Counsel
 16 is distinguished from the “Assistant County Counsel in that the latter is a full supervisory class
 17 with responsibility for a major area of County legal matters and may act as the County Counsel
 18 on a relief basis.” “Example of Duties (Illustrative Only)” includes: “Advises County
 19 departmental management concerning their respective duties, powers, functions and obligations”;
 20 “Performs a wide range of legal work in such areas as . . . public guardian. . . and mental health”
 21 Researches legal problems and prepares opinions, ordinances, resolutions, contract, leases,
 22 permits and other legal documents”; Prepares and tries routine to difficult cases, often involving
 23 a specialized body of law;” Assists other attorneys in all phases of legal work”; Reviews
 24 ordinances, resolutions, contracts and other documents for legal sufficiency; recommends
 25 modifications as required”; “Monitors legal developments, including proposed legislation and
 26 court decisions; evaluates their impact on County operations and recommends appropriate action.
 27

28 ⁷ <http://humboldt.gov/DocumentCenter/View/53682>

1 The position of Deputy County Counsel lists as “qualifications” “*Knowledge of . . . State and*
 2 *federal laws and constitutional provisions affecting County agencies’ operation . . .*” [Emphasis
 3 added], and skill in “[defining issues, performing legal research, analyzing problems, evaluating
 4 alternatives and making appropriate recommendations”]; Presenting statements of fact, law and
 5 arugment clearly and logically”; Exercising sound, independent judgment within the general
 6 policy guidelines and legal parameters”; *Interpreting state and federal law and constitutional*
 7 *provisions affecting County operations. . .*” [Emphasis added].⁸ When Counsel Angus as
 8 promoted to Assistant County Counsel the “Definition of her position reads: “Under direction,
 9 assists in administering and coordinating all phases of County legal work; performs specialized
 10 and complex legal work in connection with the more significant legal problems or in a critical
 11 specialty area; performs related work as assigned.” “Distinguishing Characteristics” of the
 12 position are states as: “This single position class has responsibility for assisting the County
 13 Counsel with departmental administrative matters for acting as senior counsel in the handling of
 14 serious, controversial and complex legal matters. In addition, the Assistant County Counsel
 15 provides advice and counsel to the Board oaf Supervisor and County Management in areas of
 16 legal speciality. This class is distinguished from the County Counsel in that the latter has overall
 17 administrative responsibility for all legal matter related to Couthy operations.” The “Examples of
 18 Duties (Illustrative Only)” include: Provides technical advice to attorneys in the office; handles
 19 the more complex and difficult litigation and situations”; Confers with and advises County
 20 departments and prepares legal opinions concerning their respective duties, powers, functions
 21 and obligations. . .”; Represents the County in Court cases encompassing a wide variety of
 22 complex legal issues including all phases of pretrial, trial and appellate work in state and/or
 23 federal courts”; “Monitors legal developments including legislation and court decisions related to
 24 public agency law and activities and evaluates their impact upon County operations”; “Renders
 25 legal opinions for the Board of Supervisors, County Administrative Officer and other
 26 departments and officials”; “Prepares pleadings, motions, ordinances, resolutions, contracts,

27 ⁸ <http://humboldt.gov/DocumentCenter/View/53719> and
 28 <http://humboldt.gov/DocumentCenter/View/53598>

1 leases, permits and other legal documents. . .”; “Acts as the County Counsel on a relief basis.”
 2 For the position of Assistant County Counsel the job description list “qualifications” as
 3 “knowledge of” “Principles and procedures of the law, especially related to County government
 4 and activities, including civil, criminal and administrative procedure”; Principles, methods and
 5 practice of legal research and investigation”; “Judicial procedures and rules of evidence”; and
 6 “Pleading and practices and effective techniques in the presentation of court cases”; “*State and*
 7 *federal laws and constitutional provisions affecting County operations.*” [Emphasis added]. Skill
 8 listed as qualifications includes: “Performing complex legal research, analyzing multi-faceted
 9 problems, evaluating alternatives and making sound recommendations”; “Exercising independent
 10 judgment within general policy guidelines and legal parameters”; Analyzing and applying legal
 11 principles and precedents and making effective court and hearing presentations”; “Preparing
 12 clear, concise and complete legal documentation and reports, correspondence with other written
 13 materials. . .”⁹

14 38. At all material times herein, Defendant NATALIE DUKE was employed as a
 15 Humboldt County Deputy County Counsel. See paragraph 25 for the description of the
 16 “Definition,” “Distinguishing Characteristics,” and “Examples of Duties (Illustrative Only)” for
 17 the position of Deputy County Counsel. At all material times, Ms. Duke was responsible for and
 18 was named counsel on pleadings in Defendants’ Petition regarding Mr. Magney’s Advance
 19 Health Care Directive (CV150159) and acknowledged responsibility for and was present in court
 20 overseeing his prosecution in the conservatorship matter PR150089.

21 39. On April 8, 2015, Defendant JEFFREY S. BLANCK was appointed as Humboldt
 22 County Counsel at the approximate time that Counsel Ruth separated from employment with the
 23 County of Humboldt. As appointed counsel for the county, Defendant Blanck is currently
 24 responsible for the enforcement of the policies and procedures of his office. See Paragraph 24
 25 above for a description of the duties of Humboldt County Counsel.

26 40. At all material times, each of the Defendants (Angus, Ruth, Duke, County of
 27

28 ⁹ <http://humboldt.gov/DocumentCenter/View/54297>

1 Humboldt, Winstead, Ringwald, Provino, Hillman and Schwartz) herein was the agent for each
2 other and were agents and/or employees of Defendant County of Humboldt, acting or failing to
3 act within the scope, course and authority of his or her employment and his or her employer.

4 41. During all material times, each of the above named Defendants, while employed
5 for the County, herein worked within the County of Humboldt.

6 IV. LEGAL BACKGROUND.

7 42. The right of competent individuals to direct their own health care, and even to
8 refuse treatment, has been recognized as a right arising not only from the common law doctrine
9 of informed consent, but also from the constitutional dimension. *Cruzan v. Mo. Dep't of Health,*
10 497 U.S. 261, 262, 269 (1990).

11 43. Each individual has a fundamental right under the federal constitution to direct his
12 or her own health care. The Supreme Court has recognized that "[n]o right is held more sacred,
13 or is more carefully guarded by the common law, than the right of every individual to the
14 possession and control of his own person, free from all restraint or interference of others, unless
15 by clear and unquestionable authority of law." *Union Pacific Ry. Co. v. Botsford*, 141 U.S. 250,
16 251 (1891).

17 44. This right arises out of the Due Process Clause of the Fourteenth Amendment,
18 which provides that "[n]o State shall... deprive any person of life, liberty, or property, without
19 due process of law." U.S. Const., amend. XIV, § 1.

20 45. This liberty interest guarantees that "[e]very human being of adult years and sound
21 mind has a right to determine what shall be done with his own body. *Schloendorff v. Soc'y of N.Y.*
22 *Hosp.*, 105 N.E. 92, 93 (N.Y. 1914); cited with approval in *Cruzan*, 497 U.S. at 269.

23 46. The Due Process Clause of the Fourteenth Amendment includes the right to refuse
24 unwanted medical treatment.'- The right to direct one's own health care also arises in the
25 constitutional guarantee of personal privacy. The U.S. Constitution does not expressly mention a
26 right of privacy, however "the [Supreme] Court has recognized that a right of personal privacy, or
27 a guarantee of certain areas or zones of privacy, does exist under the Constitution." *Roe v. Wade*,
28 410 U.S. 113, 152 (1973).

1 47. This right to privacy emanates from the penumbra of specific guarantees of
2 particular amendments to the Constitution. *Roe v. Wade*, 410 U.S. 113, 152 (1973).

3 48. Personal rights found in this guarantee of personal privacy are those which are
4 'fundamental' or 'implicit in the concept of ordered liberty'" *Paul v. Davis*, 424 U.S. 693, 713
5 (1976).

6 49. These fundamental rights are not lost when an individual becomes incompetent or
7 incapacitated. "[T]he constitutional right of privacy would be an empty right if one who is
8 incompetent were not granted the right of a competent counterpart to exercise his rights." *In re*
9 *Guardianship of Barry*, 445 So. 2d 365, 370 (Fla. Dist. Ct. App.1984). See also, *Cruzan*, 497
10 U.S. at 281 (incompetent patients enjoy "constitutionally protected interests" under the Due
11 Process Clause); *In re Welfare of Colyer*, 660 P.2d 738, 744 (Wash. 1983); *Youngberg v. Romeo*,
12 457 U.S. 307, 315 (1982) (holding that a severely retarded man enjoyed liberty interests in safety
13 and bodily restraint); ; *In re Quinlan*, 355 A.2d 647 (N.J. 1976), cert. denied sub nom. *Garger v.*
14 *N.J.*, 429 U.S. 922 (1976) ("If a putative decision by Karen to permit this non-cognitive,
15 vegetative existence to terminate by natural forces is regarded as a valuable incident of her right
16 to privacy ... then it should not be discarded solely on the basis that her condition prevents her
17 conscious exercise of the choice.)

18 50. An incompetent person maintains the same rights as a competent individual when
19 his or her decisions are memorialized in an Advance Health Care Directive: an incompetent
20 person is not able to make an informed and voluntary choice to exercise a hypothetical right to
21 refuse treatment or any other right. Such a 'right' must be exercised for her, if at all, by some sort
22 of surrogate." *Cruzan*, 497 U.S. at 280.

23 51. When a competent person exercises the right to direct his or her health care
24 through execution of an advance directive, the action encompassed by fundamental constitutional
25 rights is the execution of the document itself. This right is not lost by incompetence or
26 incapacity.

27 52. Where a governmental agency or governmental actor seeks to regulate these
28 "fundamental rights," the Court has held that regulation limiting these rights may be justified

1 only by a "compelling state interest." *Kramer v. Union Free Sch. Dist.*, 395 U.S. 621, 627 (1969).
2 See also *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969); *Sherbert v. Verner*, 374 U.S. 398, 406
3 (1963).

4 V. STATEMENT OF FACTS.

5 53. Plaintiff alleges the following facts:

6 54. Dick Magney is now deceased and Judith Magney is his surviving spouse. They
7 have no issue. Judith Magney is Dick Magney's successor in interest (as defined in Section
8 377.11 of the California Code of Civil Procedure) and succeeds to her husband's interest in the
9 action or proceeding.

10 55. At the times set forth in this complaint, that Mr. and Mrs. Magney were in their
11 seventies and had been married for years at the time of the violations by all of the Defendants,
12 including but not limited to the County Defendants (County of Humboldt, Department of Health
13 and Human Services, Humboldt County Adult Protective Services ("APS"), the Public Guardian,
14 the Defendants employed by the Office of the Humboldt County Counsel ("Attorney
15 Defendants") as set forth below.

16 56. That before the involvement of Defendants in his life, Mr. Magney had, for more
17 than twenty-three (23) years, suffered with many debilitating, painful, and chronic illnesses. With
18 full knowledge that he was terminally ill, Mr. Magney obtained an Advance Health Care
19 Directive ("AHCD"), setting forth his health directives for the remainder of his life. He sought to
20 avoid dying in a nursing home with his life prolonged by medications and procedures. He based
21 his decisions on his religion, his quality of life, and his right to self determination.

22 57. That by this AHCD, Mr. Magney made clear to all of his family, friends, and
23 doctors that he no longer wanted any life extending treatments due to his chronic and debilitating
24 pain. To this end, and consistent with his rights under the California state law and constitution, as
25 well as the Federal Constitution, Mr. Magney had directed that he was to pass away with dignity,
26 that his life was not to be extended by treatments that would not benefit him, and that he intended
27 to "be with the Lord" when it was his time.

28 58. That Dick Magney named his wife, Judith Magney, to be his surrogate, and

1 designated his sister Anita Reed to be his alternate surrogate.

2 59. That the constitutional violations inflicted on Plaintiffs by the below-named
3 Defendants were on a day-to-day basis starting on March 13, 2015, until May 22, 2015, but that
4 emanate from several separate and discreet actions.

5 60. That none of the named Defendants are entitled to qualified immunity for their
6 actions against Plaintiffs occurring starting on March 13, 2015, and occurring daily until May 6,
7 2015, because these actions were based upon purposeful and deliberate fraudulent evidentiary ex
8 parte showings, and that at each of these ex parte proceedings, since no reasonable person nor
9 government entity would have engaged in such conduct, and that Defendants were aware that
10 their actions each day constituted separate violations of Plaintiffs' constitutional rights.

11 61. Mr. Magney was hospitalized at St. Joseph Hospital on or about February 21,
12 2015. He was suffering from numerous long term ailments. He was being treated by a team of
13 physicians and specialists. One of his treating physicians was Dr. Stephanie Phan.

14 62. On or about March 7, 2015, after consultation with his other treating physicians
15 and specialists and after a review of his medical history, Dr. Phan informed Mr. Magney that he
16 had no hope of any meaningful recovery and was terminal due to his many concomitant ailments
17 including endocarditis, hepatitis C, and a failing liver. Mr. Magney's endocarditis was a heart
18 infection. Treatment required that he be kept on a long term intravenous drip of antibiotics and
19 success only fair at best and only if he had none of the other concomitant ailments. In addition to
20 the above-stated ailments, he was also suffering from Clostridium difficile, often called C.
21 difficile or C. diff, which is a bacterium that can cause symptoms of life-threatening
22 inflammation of the colon and uncontrollable diarrhea. Mr. Magney had been hospitalized for
23 these conditions for two weeks, and, consistent with his long expressed wishes, his health care
24 directive, his surrogates' knowledge of his long expressed wishes, and the recommendations of
25 his treating physicians and specialists, Mr. Magney chose palliative care and to pass away
26 consistent with his strongly held religious beliefs as expressed in his AHCD, and his discussions
27 with his surrogates and his doctors.

28 63. On or about March 11, 2015, Dr. Phan was contacted by Defendant Ringwald

1 regarding Mr. Magney's treatment. As part of Ringwald's and Dr. Phan's discussion, Ringwald
2 asked why Mr. Magney was no longer receiving antibiotic treatment for endocarditis. Dr. Phan
3 informed Defendant Ringwald that Mr. Magney was terminal, had no chance of any meaningful
4 recovery, and that the antibiotic treatment for the heart infection was stopped at the direction of
5 his treating physician and specialists at St. Joseph Hospital, and was also at the request of Mr.
6 Magney, and that this was consistent with Mr. Magney's AHCD and with his surrogate's
7 understanding of Mr. Magney's long held expressed wish to pass away on his own terms with his
8 pain being treated and nothing more, consistent with his deeply held religious beliefs.

9 64. On March 13, 2015, Defendant Ringwald, at the direction of Defendants Angus,
10 Duke, Ruth, Winstead, Provino, Hillman, and County of Humboldt/Department of Health
11 Human Services and APS went to interview Dick Magney as he was close to death in his hospital
12 room. Defendant Ringwald brought another employee from APS and also brought with her a
13 clinical psychologist named Dr. Tonya Tom. Defendant Ringwald also brought Humboldt
14 County Sheriff Deputy Masaro, who identified himself by business card as being with the Drug
15 Task Force. Ringwald, Dr. Tom, and Deputy Massaro interviewed Mr. Magney as he lay dying
16 in his bed and did so without the consent of Mrs. Magney, Mr. Magney's doctors, or Mr.
17 Magney. Dr. Tom conducted a competency evaluation of Mr. Magney without his surrogate's
18 consent and concluded that he was legally incompetent/incapacitated. Dr. Tom prepared a
19 Competency Declaration stating that Mr. Magney lacked legal capacity on March 13, 2015.

20 65. Defendant Ringwald at the direction of Defendants Angus, Duke, Ruth, Winstead,
21 Provino, Hillman, and County of Humboldt/Department of Health Human Services and APS
22 went to Dr. Francisco with the Eureka Department of Veterans Affairs VA Clinic. Plaintiff
23 alleges that this VA doctor only saw Mr. Magney twice a year for pain management and was not
24 Mr. Magney's treating physician. Plaintiff alleges these named Defendants then purposefully
25 obtained a letter from Dr. Francisco written to mislead a court into believing that Dr. Francisco
26 was Mr. Magney's treating physician and that failure to treat the endocarditis was fatal, but that
27 he would survive with antibiotic treatment.

28 66. At the express direction of Defendants Angus, Duke, Ruth, Winstead, Provino,

1 Hillman, and Defendants County of Humboldt/Office of County Counsel, Department of Health
2 Human Services and APS, Defendant Ringwald prepared a false and misleading Declaration in
3 support of a Request for Temporary Orders (“Temporary Orders”) in conjunction with the
4 preparation of a verified Petition pursuant to the California Health Care Decisions Law (‘HCDL
5 petition”) to be filed by these named Defendants, by Defendant County of Humboldt/DHHS/APS
6 empowering Defendants to compel intravenous endocarditis treatment of Mr. Magney.

7 67. The Request and the verified Petition purposefully and deliberately misled the
8 Honorable Timothy Cissna, Judge of the Superior Court, to sign the Temporary Orders by
9 misleading the Humboldt County Superior Court of California as to true facts and the law by:

10 a. By intentionally misrepresenting that a Dr. Francisco was treating Mr. Magney
11 when he was not, when Defendants knew that he was not the treating physician;

12 b. By intentionally withholding the actual reports and testimony of Mr. Magney’s
13 actual treating physicians (Dr. Phan and specialists) who had removed Mr. Magney from futile
14 courses of care which would only prolong his suffering; and

15 c. By filing a sworn declaration regarding facts which were not known to be true to
16 the affiant and which were based upon multiple layers of hearsay or entirely made up, including,
17 but not limited to, asserting that the treating physicians wanted Mr. Magney to have this
18 endocarditis treatment but that Mrs. Magney was stopping the physicians from supplying the
19 lifesaving treatment to him because she was trying to hasten his death over his wishes.

20 d. In addition, these named Defendants intentionally misled the court regarding the
21 California Health Care Decisions Law; the HCDL Petition was filed even though, under the
22 HCDL law, APS is not even a listed party with standing to file such a petition. The Attorney
23 Defendants (Angus, Duke and ruth), APS Defendants (Ringwald, Winstead, Provino and
24 Hillman) or Defendant County (APS and County Counsel) ignored provisions of the law which
25 listed the few parties that could file such petition and knew they were not a listed party who
26 could file the petition. The above-named Defendants intentionally kept this fact and this law from
27 the Superior Court when they obtained the Temporary Orders empowering these Defendants to
28 force Mr. Magney’s doctors to provide a futile and life-prolonging treatment extending his

1 suffering and against the treating doctors course of care and Mr. Magney's AHCD.

2 e. Defendants Angus, Duke, Ruth, Ringwald, Winstead, Provino, Hillman, and
3 County of Humboldt (DHHS and APS) were responsible for drafting and submitting the initial
4 fraudulent pleadings to the court. Both Defendant Ruth and Defendant Duke's names were given
5 as attorneys of record. The matter was filed under the Petitioner name of Humboldt County
6 Adult Protective Services; the petition was signed by Defendant Duke, and the verification was
7 made by Defendant Ringwald.

8 68. At no time in these named Defendants' attack on Mr. Magney's AHCD did
9 Defendants ever assert which of the directives in Mr. Magney's AHCD it alleged to have been
10 violated.

11 69. These named Defendants (Defendants Angus, Duke, Ruth, Ringwald, Winstead,
12 Provino, Hillman, and County of Humboldt - County Counsel, DHHS and APS) purposefully
13 and deliberately misled the Superior Court Judge Timothy Cissna in the ex parte proceedings as
14 to the applicable law and true facts and made purposeful omissions regarding Mr. Magney's
15 AHCD and that the HCDL prevented them from obtaining control over Mr. Magney's end-of-life
16 decisions as expressed by him in his AHCD and to his treating physicians, surrogate, and
17 alternate surrogate. Plaintiff alleges these named Defendants did so with either a subjective
18 intent to harm Mr. Magney's fundamental rights and Mrs. Magney's rights as his surrogate, or
19 did so with a subjective belief that harm was substantially certain. Plaintiff further alleges that
20 this was a purposeful and deliberate fraudulent evidentiary showing, ex parte, made to
21 deliberately and intentionally violate Mr. Magney's fundamental rights and those of his
22 surrogate.

23 70. Defendants Angus, Duke, Ruth, Ringwald, Winstead, Provino, Hillman, and
24 County of Humboldt -(DHHS and APS), purposefully and deliberately withheld from the
25 Superior Court Judge Cissna that Mr. Magney's actual treating physicians at St. Joseph Hospital
26 had removed Mr. Magney from the exact futile treatment that Defendants were requesting be
27 court-ordered by the Superior Court because he was terminal and had no chance at any
28 meaningful recovery.

1 71. Defendants Angus, Duke, Ruth, Ringwald, Winstead, Provino, Hillman, and
 2 County of Humboldt (-DHHS and APS) deliberately withheld from the Superior Court Judge
 3 Cissna that Mr. Magney and his surrogate (Mrs. Magney) had concurred with decisions of his
 4 treating physicians at St. Joseph Hospital, and Mr. Magney's current treating physician, Dr.
 5 Stephanie Phan, had determined Mr. Magney had the medical capacity¹⁰ to make his own health
 6 care decisions at the time Mr. Magney had confirmed to the Doctor his wishes on March 7th,
 7 when he was placed in palliative care. These named Defendants were informed by Dr. Phan that
 8 Mr. Magney's expressed medical choices were made directly by Mr. Magney to her (his actual
 9 treating physician), and it was Dr. Phan (as well as his hospitalists and specialists at St. Joseph
 10 Hospital) who had determined:

11 a. Mr. Magney's expressed choices were consistent and clear;

12 b. Mr. Magney's expressed choices were all consistent with what his surrogate knew
 13 his choices to be; and

14 c. Mr. Magney's expressed choices were consistent with his AHCD.

15 72. Mr. Magney's basic fundamental right to choose his medical treatment, especially
 16 his end-of-life decisions and the manner in which he wished to pass away (consistent with his
 17 devout religious beliefs) were treated as irrelevant by all of the Defendants. *Without legal or*
 18 *ethical justification*, all of the Defendants took great effort to *purposefully and deliberately* omit
 19 this vital and pertinent information from the court record in order for them to unconstitutionally
 20 hijack medical control over Mr. Magney away from Mr. Magney, his treating physicians, his
 21 surrogate, and his alternate surrogate.

22 73. Defendants Angus, Duke, Ruth, Ringwald, Winstead, Provino, Hillman, and
 23 County of Humboldt (DHHS and APS) and each of them, purposefully misled Superior Court
 24 Judge Cissna by including in their filed declaration made under penalty of perjury a *fraudulent*
 25 *assertion* that Mrs. Magney was preventing Mr. Magney from receiving medical care that his
 26 treating physicians wanted to administer. Defendants knew full well that Mr. Magney's actual
 27

28 ¹⁰ As opposed to legal capacity.

1 treating physicians were hospitalists with St. Joseph Hospital, which included Dr. Stephanie
2 Phan, and that his treating physicians had removed Mr. Magney from this course of treatment and
3 that the opinion of these hospitalists was controlling under the law.¹¹ In order to overcome this
4 legal impediment and to impose what Defendants unlawfully considered to be in the best interest
5 of Mr. Magney, Defendants purposefully made these fraudulent assertions to the Superior Court.

6 74. Defendant Duke was contacted on or about Tuesday, March 17, 2015, and
7 informed that the petition that she, Defendant Ruth, and Defendant Angus (“Attorney
8 Defendants”) filed at the direction of Defendants County of Humboldt, and Defendants
9 Winstead, Provino, Ringwald and Hillman (APS Defendants) was unlawful under the applicable
10 HCDL because APS was not a listed party and that the declaration/verified petition signed by
11 Defendant Ringwald and approved by the other named APS Defendants not only misled the court
12 as to the HCDL, but was fraudulent as to the facts, and omitted material information vital to the
13 court. Plaintiff alleges that Defendant Duke was requested to stop violating Mr. Magney’s
14 fundamental rights on this date. Plaintiff further alleges that Defendant Duke denied this request.

15 75. On the above-stated date (March 17, 2015) Defendant Duke and Defendants
16 County of Humboldt, Ruth, and Angus did not apprise Judge Cissna of this fraud, nor did they
17 dismiss the unlawful orders which were violating Mr. Magney’s liberty interests in practicing his
18 religion and choosing how he was going to pass away by forcing daily unwanted medications on
19 Mr. Magney and restraining him.

21 ¹¹ See Exhibit 1: In *Humboldt County Adult Protective Services v. Superior Court*
22 (2016) 4 Cal. App. 5th 548, 208 Cal. Rptr. 3d 666, the Appellate Court in stated at Fn 15.: “At
23 oral argument, Humboldt’s attorney first attempted to minimize this omission, claiming,
24 incorrectly, that Humboldt had, in its petition and supporting papers, told the trial court “a
25 doctor” had approved “withholding the antibiotic therapy.” In fact, however, it told the court
26 Mrs. Magney made the decision. As we have recited, neither Humboldt’s treatment request nor
27 its removal petition so much as hinted at Dr. Phan’s existence, or her medical conclusions.
28 Humboldt’s attorney also suggested that, had the removal petition and treatment request apprised
the trial court of Dr. Phan’s clinical assessment and medical opinions, Humboldt would not have
succeeded in obtaining the order compelling treatment without providing further detail from the
medical records that supposedly supported its position and, *Humboldt’s counsel queried*, “*When
do we stop?*” *This explanation is every bit as troubling as Ringwald’s; basically, counsel’s view
seems to be that if Humboldt needed to be duplicitous to get an order compelling treatment, so
be it. That a statutorily recognized fundamental right was involved appears to have been of no
moment to Humboldt or its attorney.*” (Emphasis added.)

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76. On or about Wednesday, March 18, 2015, Mr. Magney was again medicated against his will, against his AHCD, and against his legal surrogate's will.

77. On or about Wednesday, March 18, 2015, Defendant Angus was contacted and admitted that she was directly responsible for the Magney matter and that the HCDL Petition was filed under her direction. Plaintiff alleges that Defendant Angus was advised that the petition that she, Defendant Duke, and Defendant Ruth ("Attorney Defendants") filed at the direction of Defendants County of Humboldt, and Defendants Winstead, Provino, Ringwald and Hillman (APS Defendants) was based upon fraudulent statements and material omissions and that the court had been misled as to the appropriate law. Plaintiff alleges that Defendant Angus was told to immediately dismiss the unlawful matter, apprise the court of the fraud and stop medicating Mr. Magney against his AHCD and his legal surrogate's will.

78. On March 18, 2015, Defendant Angus did not apprise Judge Cissna of the fraud regarding the facts and law nor dismiss the unlawful orders, nor did Defendant County of Humboldt, nor Defendants Duke and Ruth.

79. Defendants Angus, Ruth, Duke and Defendants Ringwald, Winstead, Provino and Hillman, and Defendant County of Humboldt (DHHS/APS), refused to comply with Plaintiff's March 18, 2015, demand. On March 18, 2015, Defendants forcibly medicated Mr. Magney, and made Mr. Magney's medical decisions.

80. On March 19, 2015, Mr. Magney's medical surrogate demanded that Defendants not make Mr. Magney's medical decisions and force medications upon Mr. Magney in the future in violation of Mr. Magney's fundamental rights and those of his legally designated medical surrogate. Defendants ignored this demand and forced medical treatment and drugs on Mr. Magney over his objection, over that in his AHCD and against the direction of his legally designated medical surrogate.

81. On March 26, 2015, Plaintiff Judith Magney filed her Response to Defendants' unlawful HCDL Petition and filed an Objection to Proffered Evidence and Motion to Strike Improper Evidence and Portions of the Petition Based Upon Improper Evidence, giving

1 Defendants notice of constitutional authority, background of the HCDL, relevant definitions
2 under the HCDL, legal requirements under the HCDL (including due process, lack of standing by
3 APS Defendants, material omissions, inadmissible hearsay, lack of statements from treating
4 physician). Plaintiff further alleges that these named Defendants (Ruth, Angus, Duke, Ringwald,
5 Winstead, Provino, Hillman, County of Humboldt) ignored this formal notice by Plaintiff of the
6 applicable law and true facts and of their purposeful and deliberate fraudulent evidentiary ex
7 parte showing. Said Defendants did not dismiss the Temporary Orders and violated Mr.
8 Magney's fundamental rights by forcibly medicating him, ignoring his AHCD and the
9 designation of his medical surrogate.

10 82. These same named Defendants then intentionally violated Mr. Magney's
11 fundamental rights and those of his legal surrogate on March 27, 2015, by disregarding the
12 March 26th demand and continuing to force medical treatment and medications upon him and
13 disregarding his designation of his medical surrogate.

14 83. On March 29, 2015, Defendants Angus, Ruth and Duke, together with Defendant
15 Ringwald, Winstead, Provino and Hillman, sent Dr. Robert Soper, M.D., who was a psychiatrist
16 they employed, to interview Mr. Magney as he lay dying. Neither the above-named Defendants
17 nor Dr. Soper ever obtained Mr. Magney's consent for the interview. Nor did they obtain the
18 consent of Mrs. Magney, who was Mr. Magney's medical surrogate. Dr. Soper concluded that
19 Mr. Magney remained "legally incapacitated" on that date and issued the Defendant his report.
20 Plaintiff further alleges that this interview was conducted in violation of Mr. Magney's
21 fundamental rights and those of his legally designated medical surrogate.

22 84. On March 31, 2015, Defendants Angus, signed a pleading on behalf of Defendant
23 County of Humboldt (DHHS/APS) entitled "Notice of Intent to Withdraw" the HCDL petition.
24 The named Defendants did not dismiss the HCDL petition on that date.

25 85. On April 1, 2015, the above-named Defendants (Ruth, Angus, Duke, Ringwald,
26 Winstead, Provino, Hillman and County of Humboldt) disregarded Mr. Magney's AHCD and
27 made medical decisions for him and forced medications upon him in violation of his fundamental
28 rights and those of his legally designated medical surrogate.

1 86. On April 2, 2015, Defendant Angus appeared in court on the HCDL Petition
2 matter. Defendant Angus announced she was withdrawing the petition but wanted the
3 Temporary Orders to remain in effect. Plaintiffs' attorney advised the court that if the Temporary
4 Orders were not immediately vacated, a writ would be sought. After argument on the issue,
5 Defendant Angus, individually and on behalf of the APS Defendants and Defendant County of
6 Humboldt, ultimately agreed to the Court vacating the Temporary Orders, and the court
7 dismissed the petition.

8 87. On April, 2, 2015, after the Petition was dismissed and the Temporary Orders
9 were vacated, neither the Attorney Defendants (Ruth, Duke, Angus), nor the APS Defendants
10 (Ringwald, Winstead, Provino, Hillman), nor Defendant County of Humboldt
11 (DHHS/APS/County Counsel) *ever told any of the doctors and/or hospitalists that the initial*
12 *temporary powers had been vacated.* Instead, on this same date, the above-named Attorney
13 Defendants, APS Defendants, and County Defendant violated Mr. Magney's fundamental rights
14 and those of his legally designated medical surrogate by forcibly medicating Mr. Magney and
15 making his medical decisions over his objections, against that of his legally designated medical
16 surrogate, and against his AHCD, by forcing Mr. Magney to endure intravenous heart
17 medications extending his pain and suffering and by the use of other drugs.

18 88. On April, 3, 2015, Defendants Ruth, Duke, Angus, together with Defendant
19 County of Humboldt (DHHS/APS and Public Guardian), Defendant Kelli Schwartz, and APS
20 Defendants (Ringwald, Winstead, Provino and Hillman) caused to be filed a Conservatorship
21 Petition requesting control over Mr. Magney's person and finances on the basis of Dr. Tonya
22 Tom's March 13, 2015, Capacity Declaration and due to the March 29, 2015, Soper findings that
23 Mr. Magney still lacked "legal capacity." The Petition was in the name of the Defendant County
24 Public Guardian, and Defendant Schwartz. The facts for the Conservatorship Petition was a
25 letter from Defendant County of Humboldt DHHS/APS and Defendant Ringwald asserting the
26 same fraudulent facts as in her earlier HCDL Verified Petition and Declaration. This was
27 submitted to the Honorable Dale Reinholtsen, Judge of the Superior Court .

28 89. This Conservatorship petition was based upon the identical fraudulent facts from

1 the HCDL Petition and was filed by the Attorney Defendants, at the direction of the APS
2 Defendants (Ringwald, Winstead, Provino and Hillman), Defendant County of Humboldt,
3 (DHHS/APS) now in conjunction with Defendant Schwartz, who was the named Public
4 Guardian. The Public Guardian's office is the sister agency of Defendant APS. Plaintiff also
5 alleges that this April 3, 2015, Conservatorship Petition and Request for Temporary Orders did
6 not mention medical decision making.

7 90. On April 3, 2015, despite lack of any authority to do so, Defendants violated Mr.
8 Magney's fundamental rights and those of his legally designated medical surrogate by making
9 medical decisions for him and medicating him against his consent, and against the consent of his
10 medical surrogate.

11 91. Neither the Attorney Defendants, Defendant Schwartz, APS Defendants, nor
12 Defendant County of Humboldt ever apprised Judge Reinholtsen that they were submitting the
13 same fraudulent statements used from the HCDL petition in their April 3, 2015, Request for
14 Temporary Orders and Conservatorship Petition.

15 92. On April 6, 2015, Judge Reinholtsen signed the second order re: the
16 Conservatorship Petition and Request for Temporary Orders, giving Defendant Schwartz
17 temporary control over Mr. Magney's person and finances with a hearing date on April 30, 2015,
18 on the basis that Mr. Magney lacked legal capacity. These temporary orders did not address
19 medical decision making.

20 93. Nonetheless, from April 3, 2015, to April 12, 2015, Defendant Schwartz and
21 Defendant County of Humboldt exercised medical decision making authority over Mr. Magney
22 in violation of his fundamental rights and those of his legally designated medical surrogate,
23 including, without limitation, decisions to place him in a nursing facility of their choice, forcibly
24 placing him with a foley catheter, and by forcing him to ingest drugs such as prozac, norco and
25 lorazepam.

26 94. On April 8, 2015, (two days after the court, Ex Parte, signed the Temporary
27 Orders in the Conservatorship matter) Mr. Magney was interviewed by Court Investigator Jim
28 Dawson, who was designated to provide comment to the court regarding Defendant Schwartz

1 and Defendant County of Humboldt's request for permanent orders in the Conservatorship
2 matter.

3 95. On April 9, 2015, Defendant Schwartz, Defendant County of Humboldt
4 (DHHS/Public Guardian) and Attorney Defendants (Duke, Ruth and Angus) who were aided and
5 abetted by Defendants Ringwald, Winstead, Provino and Hillman, requested First Amended
6 Temporary Orders over Mr. Magney to now include medical decision making power. Plaintiff
7 further alleges that, at the time Defendants requested medical decision making authority, they
8 intentionally kept from the Court the applicable law regarding the HCDL in California and that
9 their request for medical decision making authority was in contravention of the HCDL.

10 96. On both April 10, 2015, and April 11, 2015, there was a reasonable cause hearing
11 on the dismissed HCDL Petition. Defendant Angus represented Defendant APS. Defendant
12 Ringwald was the sole witness for Defendant County and Defendant APS. Plaintiff alleges that
13 Defendants Winstead, Provino and Hillman were present in the court during testimony.

14 97. At the hearing set forth in Paragraph 96, Defendant Ringwald testified under oath
15 that the decision to challenge Mr. Magney's health care directive was made by her and
16 Defendants Winstead, Provino and Hillman, and that decision was made because they disagreed
17 with Mr. Magney's choices and those of his treating physicians regarding his medical treatment.
18 Defendant Ringwald testified that she had spoken with Dr. Phan, who was Mr. Magney's treating
19 physician, but that Dr. Phan was not relevant, so it was not included in the information submitted
20 Ex Parte to the court. Ringwald testified in response to the following:

21 Question: "[I]s it safe to say APS believes it has an obligation to countermand a treating
22 physicians recommendation if APS disagrees with that recommendation?"

23 Answer: "[I]f it gets in the way of – if we are unable to complete our investigation and
24 make sure that this is this clients wishes..."

25 98. At this same hearing on April 10, 2015, Dr. Phan testified and that she had
26 personally spoken to Defendant Ringwald and Ringwald told her "that there were a couple of
27 other instances with patients that –whose case they had been involved with in the past who–
28 again had gone through similar situations in which they said that APS had reversed the medical

1 decisions that were made for those particular patients and that they had, like, won those cases....”

2 99. On April 13, 2015, the court issued an order in the First Amended Request for
3 Temporary Orders in the conservatorship matters, giving Defendant County and Defendant
4 Schwartz exclusive medical authority over Mr. Magney based upon the facts attested to under
5 penalty of perjury in the Ex Parte application for First Amended Request for Temporary Orders.
6 Plaintiff further alleges that Judith Magney was not served “notice” of this First Amended
7 Request for Temporary Orders.

8 100. Plaintiff further alleges that Attorney Defendants, APS Defendants, County of
9 Humboldt and Public Guardian purposefully deprived both Mrs. Magney and her legal counsel of
10 “notice” of their Request for Temporary Orders and their First Amended Request for Temporary
11 Orders in order to continue their unlawful conduct and forcibly medicate Mr. Magney. Plaintiff
12 alleges that Defendants did not serve her personally, nor her counsel, and instead mailed notice to
13 an address where Mrs. Magney *did not receive mail* in order to delay her notice to intentionally
14 thwart Mrs. Magney from challenging their purposeful and deliberate fraudulent evidentiary
15 showing made Ex Parte to obtain both the initial Temporary Orders and the First Amended
16 Temporary Orders signed on both April 6, 2015, and April 13, 2015.

17 101. On April 14, 2015, the clerk issued the First Amended Letters, and Defendant
18 Schwartz had Mr. Magney placed into a nursing facility against his wishes and in violation of his
19 fundamental rights and those of his legally designated medical surrogate. On this date, Mr.
20 Magney was forced to endure forcible medications against his wishes, his religion, and his
21 treating physicians wishes. Said medications included, but are not limited to, Prozac,
22 Methadone, Norco, and Lorazepam which were administered to Mr. Magney to control what the
23 nursing home physician described as “inconsolable anguish and yelling out” against his treatment
24 and the violations of his fundamental rights.

25 102. On April 14, 2015, Mrs. Magney discovered that the third fraudulent verified filing
26 by the said named Individual Defendants (Ruth, Angus, Duke, APS Defendants and Defendant
27 Schwartz) and the County Defendants (DHHS, Public Guardian, APS and County Counsel) in
28 the First Amended Request for Temporary Orders had been signed by Judge Reinholtsen.

1 Plaintiff Judith Magney further alleges that she discovered this when she was denied medical
2 information concerning her husband at the time of his transfer from the hospital to the nursing
3 home. Plaintiff Judith Magney further alleges that nursing home staff told her they were directed
4 to withhold all information from her by Defendant Schwartz and Defendant County, and that Mr.
5 Magney could not leave the facility. After being denied medical status information about her
6 husband, Plaintiff Judith Magney sought a copy of the First Amended Petition from the Superior
7 Court Clerk's Office because she was not provided notice via personal service, or through her
8 attorney, nor had she received it by mail at her mailing address.

9 103. Upon being transferred to a nursing home and continuing through May 2015, the
10 written Physician Orders from the nursing home for both the months of April and May described
11 Mr. Magney as having "inconsolable anguish" and "yelling out" against what was being done to
12 him.

13 104. From at least April 14, 2015, through May 6, 2015, Mr. Magney was forced to
14 take a cocktail of narcotics several times each and every day including Lorazepam, Prozac,
15 Norco, Methodone and APAP to control Mr. Magney's "inconsolable anguish" and "yelling out"
16 against his daily forced medications, the ongoing restraint of his physical liberty, and violations
17 of his religious beliefs.

18 105. Plaintiff alleges that Defendant Schwartz and the Defendant County of Humboldt
19 told the nursing home that Mr. Magney lacked legal capacity and that only Defendant Schwartz
20 could give her consent for disclosure of his medical status and treatment. Plaintiff further alleges
21 that Defendant Schwartz told the nursing home that Mrs. Magney was not to be provided medical
22 status information concerning Mr. Magney's treatment and care. Defendant Schwartz and
23 Defendant County of Humboldt ordered that from at least April 14, 2015, to May 22, 2015, Mr.
24 Magney could not get a therapeutic pass to leave the facility and that Mr. Magney was to be
25 forcibly inserted with a "foley catheter" for the convenience of the facility.

26 106. On April 16, 2015, Mrs. Magney (with her counsel) met with Defendant Schwartz
27 at the nursing facility where Defendant Schwartz and Defendant County of Humboldt, together
28 with the APS Defendants and Attorney Defendants, had her husband transferred to. Plaintiff

1 further alleges that on that date, Defendant Schwartz, in the presence of Mrs. Magney, Mrs.
2 Magney's counsel, and nursing home staff, informed Mrs. Magney that, while she could visit her
3 husband, she would not be provided medical information concerning his medical status because
4 she had an attorney. Plaintiff further alleges that Defendant Schwartz stated that she had been
5 directed by the County Counsel (Attorney Defendants) to withhold this medical information from
6 her and from Mrs. Magney's counsel. On this date, Mrs. Magney demanded that the Defendants
7 honor her husband's wishes and medical designations in his AHCD. On this date, Defendants
8 refused this demand, and Defendant Schwartz, APS Defendants, Defendant County of Humboldt
9 and Attorney Defendants forced Mr. Magney to endure forcible medications against his wishes
10 and his religion. He was also forbidden to leave the facility, which was communicated to
11 Plaintiff Judith Magney.

12 107. Plaintiff alleges that on or about April 14, 2015, the Court Investigator, James
13 Dawson penned his formal report to the court regarding Mr. Magney and Defendants' requests
14 for permanent orders. (*See* Exhibit 2 attached to this First Amended Complaint and incorporated
15 by reference herein.) The investigator informed the Attorney Defendants, Defendant Schwartz,
16 and Defendant County of Humboldt that the Defendants' actions of ignoring Mr. Magney's valid
17 AHCD and forcing treatments on Mr. Magney that he did not want was "inhumane" and that
18 what they were doing to his wife while she was at his side as he was dying and having to be in
19 court defending his fundamental rights "was appalling" and recommended to the court that the
20 matter be immediately dismissed.

21 108. Plaintiff is informed and believes that Mr. Dawson personally spoke with
22 Defendant Schwartz who refused to dismiss her petition and denied his recommendation for her
23 to honor Mr. Magney's AHCD .

24 109. On April 20, 2015, Mrs. Magney filed a petition to remove the Public Guardian as
25 temporary conservator of the person and estate of her husband and to enforce his AHCD. In this
26 petition, Plaintiff Judith Magney asked the court to vacate the temporary orders and remove the
27 Public Guardian from any authority regarding Mr. Magney's person or estate so that Mrs.
28 Magney could enforce her dying husbands wishes expressed in his AHCD and to her as his

1 legally designated medical surrogate and to his legally designated alternate medical surrogate.

2 110. On April 22, 2015, Attorney Defendants (Ruth, Duke and Angus) filed on behalf
3 of Defendant Schwartz at the request of the Defendant County of Humboldt (DHHS/APS/County
4 Counsel) and all the individually named APS Defendants a “ First Amended Petition for
5 Appointment of Probate Conservator of the Person and Estate”. On this date, the named
6 Defendants again asked the court to again adjudge that Mr. Magney lacked legal capacity and
7 also lacked the medical capacity (as opposed to legal capacity) to give informed consent for
8 medical treatment or healing prayer. Plaintiff Judith Magney and Mr. Magney again demanded
9 that Defendants stop future forced medical treatments and drugs. On this date, Defendant
10 Schwartz, APS Defendants, Defendant County of Humboldt and Attorney Defendants refused
11 this demand, and Mr. Magney was forced to endure forcible medications against his wishes, his
12 religion, and his treating physicians wishes. He was not allowed to leave the facility.

13 111. On April 22, 2015, the named Defendants filed an Opposition to Mrs. Magney’s
14 removal petition. In the Opposition, the Defendants objected to Mrs. Magney’s disclosure of the
15 the facts concerning the Defendants’ violations of her husband’s fundamental rights to members
16 of the Board of Supervisors in her defense of her husbands rights under his duly executed
17 AHCD. These named Defendants demanded a protective order preventing further disclosure of
18 any information concerning the matter to anyone including members of the Board of Supervisors,
19 who are the ultimate appointing authority for the department head of DHHS, who is, in turn, the
20 appointing authority for APS and the Public Guardian. The Board is also the appointing authority
21 for County Counsel.

22 112. After the demand to remove the Public Guardian was made on April 20th , the
23 Attorney Defendants, the Public Guardian (Defendant Schwartz), Defendant County of
24 Humboldt (DHHS, Public Guardian, APS) and the named APS Defendants forced unwanted
25 medical treatment and medications on Mr. Magney on April 21, 2015, in violation of his
26 fundamental rights and those of his legally designated medical surrogate.

27 113. On or about April 24, 2015, Attorney Defendants and Defendant Schwartz
28 appeared before the court on the April 20, 2015, Removal Petition filed by Plaintiff Judith

1 Magney. On this date Defendant Attorneys and Defendant Schwartz requested that the court
2 order Mrs. Magney not disclose the facts of the proceedings to members of the Board of
3 Supervisors, nor the Court Investigator findings to the Defendant Board of Supervisors. Plaintiff
4 requested the court remove Defendant Schwartz since she was not a listed surrogate on Mr.
5 Magney's AHCD and demanded that Defendant Schwartz stop future medical decision making
6 and future forcible medications of Mr. Magney.

7 114. Plaintiff further alleges that the court put the matter over until the April 30, 2015,
8 hearing date on the Defendants' Conservatorship Petition.

9 115. On April 25, 2015, the named Defendants had Mr. Magney forcibly medicated
10 and did not allow either Mr. Magney or his legally designated medical surrogate their
11 fundamental rights regarding Mr. Magney's medical choices as expressed in his legally executed
12 AHCD, to his physicians from St. Joseph Hospital, and to his legally designed medical surrogate
13 and alternate surrogate.

14 116. On April 30, 2015, the court took up the Conservatorship matter. Plaintiff further
15 alleges that she demanded the court immediately vacate the unlawful Temporary Orders (First
16 Amended Request for Temporary Orders) and to order Defendants not to violate her dying
17 husbands AHCD. Plaintiff informed the court that it issued an unlawful order and that Attorney
18 Defendants and Defendant Schwartz failed to apprise the court that it had no power to interfere
19 with Mr. Magney's AHCD and force unwanted medications on him or disregard his surrogate's
20 choices via a conservatorship process, and that the AHCD was controlled exclusively by the
21 HCDL statutes previously provided to the court and to Defendants. Plaintiff again provided the
22 appropriate and controlling statutes regarding AHCDs. The court took the matter under
23 submission.

24 117. On April 30, 2015, after Plaintiff demanded in court that Defendants cease their
25 actions, Defendants denied her demand made in court. On this date, Defendants forced Mr.
26 Magney to endure forcible medications against his AHCD, his wishes, his religious beliefs, and
27 the authority of his legal surrogates.

28 118. Plaintiff further alleges that the named Defendants continued to violate Mr.

1 Magney’s fundamental rights each day from April 30, 2015, and that each and every day
2 Plaintiffs demanded that Defendants not violate Mr. Magney’s AHCD. Each and every demand
3 was met with a denial.

4 119. Plaintiff alleges that on May 6, 2015, Court Investigator Dawson visited Mr.
5 Magney for 40 minutes. Mr. Magney was still adjudged “legally incapacitated.” Mr. Dawson
6 visited Mr. Magney solely due to the fact that he felt sorry for what Mr. Magney and his wife
7 were going through. Mr. Dawson wrote some of Mr. Magney’s statements to him verbatim.

8 Plaintiff further alleges that the statements included:

9 “Look all I want to do is go home and be with the lord.”

10 “This is no way to live, being here by myself. No company. You don’t have
11 anyone to talk to.”

12 “The pain is horrible. When I try to move, its very painful. Nothing to do but look
13 out this window.”

14 “The diarrhea went away for awhile, but it came back.”

15 “What’s for me to live for? Either life in bed, can’t even sit up. Its just not much
16 of a life.”

17 Plaintiff further alleges that Mr. Magney told Mr. Dawson in response to his question, “Do you
18 still want to die?” Mr. Magney responded:

19 “[T]hat’s what I want.”

20 “Leave me here, bring me my pain medications, and let me die.”

21 “I certainly don’t like what they are doing to my wife. She’s a good person...and
22 she has taken care of me.”

23 When asked, “Do you really feel that you are ready to die?” Mr. Magney responded:

24 “Yes. I have been ready to die for awhile.”

25 “I am ready to die and be with the Lord.”

26 120. On May 6, 2015, the court issued a written ruling in the Conservatorship matter
27 regarding the HCDL and Mr. Magney’s AHCD. After the court’s examination of the HCDL
28 statutes, the temporary conservatorship powers, which were requested Ex Parte by Defendants

1 Ruth, Angus, Duke, Schwartz and Defendant County of Humboldt, and which were given by the
2 Court ex parte, it was found that the temporary powers did not at all comport with the HCDL
3 statute. The Court vacated the temporary orders obtained on April 13, 2015, citing that the law
4 did not allow the Defendants to exercise medical decision making authority over Mr. Magney or
5 his legally designated medical surrogate and alternate surrogate under his AHCD.

6 121. Each and every day, from March 13, 2015, until May 6, 2015, Mrs. Magney
7 demanded Defendants and Defendants' agents to stop violating her husband's AHCD and her
8 rights as his legally designated medical surrogate. Each day Defendants rejected her separate
9 demands and violated Mr. Magney's fundamental rights and her rights as his legally designated
10 medical surrogate. This violated his liberty interests in his medical choices, liberty interests in his
11 religion, liberty interests in his freedom of movement, and his liberty interests in privacy, and this
12 was all done at a time when he was most vulnerable: at the end of his life, as he lay dying.

13 122. Plaintiff alleges that from March 13, 2015, through May 6, 2015, Mr. Magney was
14 forced on a daily basis to endure unwanted medications and treatments against his will, against
15 his AHCD, and that his legally designated medical surrogate was prevented from exercising his
16 delegated rights.

17 123. Plaintiff alleges that each and every day, from March 13, 2015, through May 6,
18 2015, when the above-named Defendants denied his daily demands and the demands from his
19 legally designated medical surrogate, constitutes a separate and individual continuous violation
20 of his constitutional right to make his protected choices as to his medical treatment and his end-
21 of-life health care, his freedom of movement, freedom of religion, and right to privacy.

22 124. Each and every day, from March 13, 2015, through May 6, 2015, when the
23 Individually Named Defendants listed in the First - Ninth Causes of Action below, denied Mrs.
24 Magney's daily demands, Plaintiffs allege that each denial constitutes a separate and individual
25 continuous violation of her rights as Mr. Magney's legal surrogate and her right to defend his
26 constitutionally protected choices.

27 125. On May 18, 19, 20, 21, and 22, 2015, a trial commenced regarding the First
28 Amended Conservatorship Petition. On May 19, 2015, Defendant County of Humboldt did not

1 call Dr. Tonya Tom who submitted the Capacity Declaration attested to under penalty of perjury
2 with all of the conservatorship filings. Defendants did call as witness Dr. Robert Soper, who
3 testified that Mr. Magney was legally incapacitated based upon his March 29, 2015, interview of
4 Mr. Magney as he lay dying in his hospital bed at St. Joseph Hospital. Soper also testified that,
5 based upon his expertise as a psychiatrist, Mr. Magney was still “legally incapacitated” and
6 would never regain legal capacity.

7 126. On May 19, 2015, Defendant Schwartz testified that she had only seen Mr.
8 Magney one time since her appointment on April 6, 2015, through to the date of her testimony on
9 May 19th. She described her one meeting with him as being for only about 20 minutes. She
10 testified that she did not feel any need to have seen him more than once in the seven plus weeks
11 since she was appointed his temporary conservator in charge of his medical choices, his person
12 and his finances, because she described herself and her powers as being like a “general
13 contractor” so it was unnecessary to meet and speak with him about anything.

14 127. On May 20, 2015, both James Dawson and Anita Reed testified for Mrs. Magney.
15 Anita Reed was Mr. Magney’s sister and his legally designated medical alternate surrogate. Reed
16 testified that she had just that week met with her brother at the nursing home and described him
17 as coherent and oriented and that he wanted the Judge to hear from him regarding what the
18 Defendants were doing to him and his wife.

19 128. Mr. Dawson testified that he continued to be concerned about Mr. Magney
20 because of what the Defendants were doing to him and that he felt sorry for him so he stopped by
21 to see him on May 18, 2015, to see if there were any changes in his situation. He testified that on
22 May 18, 2015, Mr. Magney showed vast improvement, was cognizant, coherent and oriented as
23 to time, place, and manner. Dawson also testified that he never interviewed Defendant Ringwald
24 because of the inadequacies in her report, which had left out very important information
25 including, but not limited to, the omission of the treating physicians and specialists at St. Joseph
26 Hospital.

27 129. Plaintiff further alleges that, based upon the Reed and Dawson testimony, the
28 court went to the nursing home and took testimony from Mr. Magney on May 21, 2015.

1 130. On May 22, 2015, the trial court stated that, even though Mr. Magney was clearly
2 legally incapacitated earlier based upon the Soper testimony, the court found that after hearing
3 from Mr. Magney on May 21, 2015, Mr. Magney had legal capacity and dismissed the
4 conservatorship on May 22, 2015.

5 131. An appeal ensued regarding the HCDL petition reasonable cause hearing. (*See*
6 Exhibit 1, incorporated by reference herein.) Defendant Angus (individual and official capacity)
7 and Defendant Blanck (official capacity) represented Defendant County of Humboldt and APS
8 by affixing their names on the pleadings and by Angus' appearance at oral argument..

9 132. Plaintiff alleges that, in their Respondent's Brief (County of Humboldt)
10 Defendants alleged that the Elder Abuse Act gave the County "full authority to take *any* action
11 they deemed necessary...." in support of what they did in the HCDL Petition. This brief was filed
12 by both Defendant Angus and Defendant Blanck for Defendants County of Humboldt.

13 133. On September 1, 2016, Defendant Angus, on behalf of Defendant County of
14 Humboldt (DHHS/APS/County Counsel), and the APS Defendants argued the HCDL petition
15 reasonable cause hearing before the First District Court of Appeal. Defendant Angus admitted
16 that "we" made the decision to keep all information regarding Dr. Phan from the lower court in
17 order to obtain the orders that she and the County wanted. (*See* Exhibit 1, fn. 15, incorporated by
18 reference herein)

19 134. The California First District Court of Appeal ('Appellate Court'), in Humboldt
20 County Adult Protective Services v. Superior Court, 4 Cal. App, 5th 548 (2016), 208 Cal. Rptr.
21 3d 666 filed and published its opinion dated October 24, 2016, with a remittitur finally issued on
22 February 27, 2017, and found Defendants' actions in obtaining the first powers over Mr. Magney
23 to be "profoundly disturbing" and in violation of his fundamental rights recognized both under
24 the state constitution but also recognized as his fundamental right under the United States
25 Constitution. (*See* Exhibit 1 incorporated by reference herein.)

26 135. The Appellate Court found that Defendants/County Staff's actions purposefully
27 and deliberately misled a California Superior Court about the applicable law and true facts by
28 which it had obtained medical control over Mr. Magney in contravention of his AHCD and that it

1 did so because it disagreed with Mr. Magney's decisions made to his doctors, because they
2 disagreed with Mr. Magney's AHCD, and because they disagreed with Mr. Magney's doctors.

3 136. Plaintiff alleges, as set forth above, the fraudulent assertions found by the
4 California First District Court of Appeal are the same fraudulent assertions submitted in the
5 Conservatorship Petition and First Amended Petition and the numerous requests for temporary
6 powers and before the Court on April 3, 6, 12, 13, 14, 22, 24, and 30, 2015, and on May 20, 21
7 and 22, 2015.

8 137. On December 15, 2016, after the First District Court of Appeal Decision was
9 rendered as set forth above, Defendant Blanck requested the Supreme Court to de-publish the
10 opinion on the HCDL on the basis that, if it remained published it would inhibit the County from
11 doing to others what they had done to Mr. Magney in future HCDL matters.

12 138. Each and every day, from March 13, 2015, to May 6, 2015, each of the above-
13 named Individual Defendants aided and abetted each other in violating Mr. Magney's
14 fundamental rights by ignoring his fundamental rights as set forth in his AHCD, by denying his
15 surrogate the right to enforce his AHCD when he was incapacitated, by subjecting Mr. Magney
16 to daily barrages of Medical Batteries, Assaults, and by subjecting him to their unwanted medical
17 procedures and cocktails of medications that he was forced to take and which were made against
18 his expressed wishes to his physicians and surrogates. Plaintiff alleges this was done as a custom
19 and policy of Defendant County of Humboldt. These actions were all in violation of Mr.
20 Magney's AHCD, as well as the directions from his legally designated medical surrogate and his
21 alternate surrogate's instructions

22 VI. GENERAL ALLEGATIONS.

23 139. Plaintiff refers to and incorporates, as though fully set forth herein, Paragraphs 1
24 through 138 above, respectively, and further alleges that:

25 140. The applicable statute of limitations in this matter is controlled by the State of
26 California personal injury statute, which is two years from the accrual date.

27 141. This limitation period is also controlled by the State of California tolling
28 provisions set forth under Cal. Code Civ. Proc. §352. Section 352 (a) tolls the limitations period

1 if, at the time of the accrual of the action, the individual is legally incapacitated. Section 352(a)
2 tolls the time from the accrual until such time as the person regains legal capacity.

3 142. Mr. Magney was legally incapacitated on March 13, 2015, and did not regain
4 legal capacity until May 22, 2015, thereby extending the accrual date from March 13, 2015 to the
5 date of May 22, 2015.

6 143. Mr. Magney's "legal incapacity" is set forth in Dr. Tonya Tom's capacity
7 declaration prepared on March 13, 2015, at the request of Defendants, and which was also
8 submitted to the Court in Defendant APS's HCDL Verified Petition, dated March 13, 2015.

9 144. Mr. Magney's "legal incapacity" is also established by Dr. Soper's March 29,
10 2015, interview and report, which found Mr. Magney was legally incapacitated on that date and
11 by his in court testimony at trial which occurred on or about May 18, 2015.

12 145. Mr. Magney's "legal incapacity" is conclusively established by Court Orders
13 dated March 13, 2015; April 6, 2015; April 8, 2015; April 13, 2015; and April 14, 2015.

14 146. Mr. Magney regained legal capacity by court order dated May 22, 2015.

15 147. Mr. Magney suffered severe emotional distress and significant psychological
16 damage as a direct and proximate result of Defendants' deliberate indifference to Plaintiffs'
17 constitutional rights to control Mr. Magney's medical decisions, especially his end-of-life
18 decisions. Mr. Magney also suffered severe emotional distress and significant psychological
19 damage as a direct and proximate result of Defendants' attack on his surrogate's power to make
20 his decisions as set forth in his AHCD.

21 148. Mrs. Magney has suffered emotional distress and psychological damage, and her
22 character and standing in her community have suffered from the harassment fostered as a direct
23 and proximate result of Defendants' deliberate indifference to Plaintiffs' constitutional rights and
24 by Defendants depriving her of her rights as a surrogate to ensure her husband's medical choices
25 were complied with.

26 149. All of the named Defendants are clothed with the authority of the State by virtue
27 of their employment with the County of Humboldt, a political subdivision of the State of
28 California. Defendants Carolyn J. Ruth, Blair Angus, Natalie A. Duke, Jeffrey Blanck (official

1 capacity only) Phillip Crandall (official capacity only), Heather F. Ringwald, Shirley Hillman,
2 Rosy Provino, Amanda Winstead, and Kelli L. Schwartz were all persons acting under color of
3 state law by virtue of their official capacities as employees with the County, and their use of
4 County equipment in their conspiracy.

5 150. Defendants misused the power given to them under color of state law by
6 participating in each violation of Plaintiffs' fundamental rights and by their participation in a
7 conspiracy to violate Plaintiffs' fundamental rights, which occurred all within the geographic
8 areas covered by the Defendants and all within the course of their employment with the County.

9 151. Defendant Ringwald, identifying herself as a nurse with Defendant APS, imbued
10 herself with even more authority than her position as a public health nurse with APS, by bringing
11 a law enforcement officer who identified himself as belonging the County Drug Task Force to
12 interrogate Mr. Magney about Ringwald's misplaced suspicion that Mr. Magney was a drug
13 abuser. On or about March 13, 2015, Defendant Ringwald brought this law enforcement officer
14 into Mr. Magney's room and to Mr. Magney's death bed at the hospital. This terrified and
15 caused severe anxiety to both Mr. and Mrs. Magney, at a time when they were at their most
16 vulnerable.

17 152. Plaintiffs allege that each of the Individually Named Defendants (Ruth, Angus,
18 Duke, Ringwald, Winstead, Provino and Hillmant) acted with either a subjective intent to harm
19 Plaintiffs, or a subjective belief that harm was substantially certain to occur in their violation of
20 Plaintiffs' constitutional rights. Plaintiff alleges that the violation of Plaintiffs' fundamental
21 rights was deliberate and intentional. After these Individually Named Defendants were informed
22 of the impropriety of their policy as to the challenging of AHCD, via numerous pleadings filed in
23 the Humboldt County Superior Court, oral notifications to the County by counsel for Mrs.
24 Magney, and a published California Appellate Court Opinion, the County's insistence that its
25 policy was legally justifiable and the Appellate Court Opinion was in error shows the
26 Individually Named Defendants' and Defendant County of Humboldt's deliberate indifference to
27 the fact that a violation of Plaintiffs' federal constitutional rights had occurred and/or was
28 continuing to occur.

1 153. In persisting to implement and justify the County's illegal policy, these
2 Individually Named Defendants showed a malicious, conscious desire to injure Plaintiffs in a
3 manner known to be unlawful. The actions of these Individually Named Defendants was wanton
4 in that these Individually Named Defendants committed the violations of Plaintiffs'
5 constitutional rights with reckless or callous disregard to the Plaintiffs' constitutional rights.

6 154. Due Process requires that the challenged law, policy, or goal not be unreasonable,
7 arbitrary, or capricious, and that the means selected shall have a real and substantial relation to
8 the object sought to be obtained.

9 155. None of the above-named defendants are entitled to Qualified Immunity for their
10 action because of their actions in the filing and prosecution of the HCDL Petition and the
11 prosecution of all of the conservatorship petitions and requests for temporary orders (march 13,
12 2015, April 3, 2015, April 6, 2015, April 9, 2015, April 13, 2015, April 22, 2015). The
13 execution of the First Amended Permanent Conservatorship Petition, and the execution of the
14 First Amended Requests for Temporary Orders, were based upon the making of a purposeful and
15 deliberate fraudulent evidentiary showing in support of their initial Permanent Conservatorship
16 Petition and Request for Temporary Orders; that said Defendants misrepresented the facts,
17 omitted material facts and/or failed to apprise the court as to the state of the law as occurred in
18 the HCDL petition matter, which went before the state court of appeal.

19 156. Plaintiff alleges that individual defendants employed by the Office of the
20 Humboldt County Counsel actively took part in this violation of Dick R. Magney's civil rights, in
21 the filing and prosecution and execution of the HCDL Petition, the Conservatorship Petition, the
22 Request for Temporary Powers, the First Amended Request for Temporary Powers, the First
23 Amended Permanent Conservatorship Petition and all the declarations and supplemental
24 pleadings associated with those filings. Said Defendants abandoned the role of independent
25 advisor to the County, and misused their authority by taking an aggressive "win at all costs"
26 position to justify the desires of the Individual Defendants, Defendant APS, Defendant Public
27 Guardian, and Defendant County regardless of the fact that they were purposefully and
28 deliberately violating Dick R. Magney's fundamental and Constitutional Rights. This course of

1 action was inconsistent with their ethical and legal obligations.

2 157. Plaintiff alleges that individual defendants employed by Defendant County of
3 Humboldt and the Office of Adult Protective Services actively took part in this violation of Dick
4 R. Magney's civil rights, in the filing and prosecution and execution of the HCDL Petition, the
5 Conservatorship Petition, the Request for Temporary Powers, the First Amended Request for
6 Temporary Powers, the First Amended Permanent Conservatorship Petition and all the
7 declarations and supplemental pleadings associated with those filings. Said Defendants
8 abandoned the role and misused their authority, taking an aggressive "win at all costs" position to
9 justify the desires of the Individual Defendants, Defendant APS, Defendant Public Guardian, and
10 Defendant County regardless of the fact that they were purposefully and deliberately violating
11 Dick R. Magney's fundamental and Constitutional Rights. This course of action was inconsistent
12 with their ethical and legal obligations.

13 158. Defendant Public Guardian Schwartz failed to comply with the Due Process in
14 Competence Determination Act (Probate Code §§810-813, "the Act") in failing to focus on the
15 actions and behaviors of Mr. Magney and their correlation to alleged mental disorders (Prob. C.
16 §811(a)), as well as failing to provide the court an analysis of "the frequency, severity, and
17 durations of periods of impairment." Prob. C. §811(c). Instead, Defendant Schwartz's conclusory
18 statements were paired with very limited detail from the medical records, the selected details
19 supporting only Defendant Schwartz's idea of what she considered to be proper medical
20 treatment.

21 a. The conclusions of Defendant Public Guardian Schwartz associated with the
22 limited detail contained in the allegations of her Petition required the court to
23 assume Mr. Magney had capacity during the time Mr. Magney made these
24 statements, in order for the court to find that "[t]here has been some conflict
25 between the proposed conservatee's stated wishes and statement of the attorney-
26 in-fact . . ."

27 b. The only basis upon which a conservatorship of the estate was alleged, was
28 insufficient as a conclusory statement ("Client is confused found not to be

1 competent”), bereft of supporting detail as required by the Act.

- 2 c. Conservatorship of the estate was requested by Defendant Public Guardian
3 Schwartz without reference to the community property interests of the Magneys,
4 over which Mr. Magney’s wife, Judith Magney, had the exclusive right of
5 management and control.
- 6 d. Defendant Public Guardian Schwartz failed to state Mr. Magney’s preferences
7 regarding appointment of a conservator and/or why it was not feasible to ascertain
8 his preferences. Instead, Defendant Public Guardian Schwartz requested that both
9 of the individuals Mr. Magney nominated in his Advance Health Care Directive
10 be stripped of all power. As to Mr. Magney’s sister, Anita Reed, the request
11 lacked a sufficiently articulated basis for her exclusion.
- 12 e. Despite the Petitioner (Defendant Public Guardian Schwartz) being required to
13 have direct knowledge of all facts alleged, or that Defendant Public Guardian
14 Schwartz provide the court with affidavits by other persons to substantiate claims
15 for which she possessed no direct knowledge, and in violation of the Act, the
16 Petition and supporting documents, including the Confidential Supplemental
17 Information, contained hearsay, a lack of detail, and/or selective detail as the basis
18 for the need for conservatorship; e.g.:
- 19 i. In violation of the Act, the allegation that “[h]is attorney in fact is the
20 subject of an ongoing investigation . . .” was not articulated with details,
21 let alone details relevant to the mental health issues and behaviors of Mr.
22 Magney.
- 23 ii. In violation of the Act, sworn-to allegations by Defendant Public Guardian
24 Schwartz merely stated conclusions without any detailed basis that: “1)
25 The temporary conservatee lacks capacity to make medical decisions. [and
26 that] 2) His attorney-in-fact is the subject of an ongoing investigation into
27 credible allegations of caretaker neglect and abuse . . .”
- 28 iii. Defendant Public Guardian Schwartz’s conclusory allegation regarding

1 “an ongoing investigation” was based upon unsworn statements by
2 Defendant Heather Ringwald of Adult Protective Services, a person that
3 was not listed among Defendant Public Guardian Schwartz’s trial
4 witnesses.

5 iv. Defendant Public Guardian Schwartz offered, as a basis for the
6 conservatorship, unsworn statements of Defendant Ringwald, which had,
7 in a sister proceeding (requested to be judicially noticed), been offered
8 only for Defendant Ringwald’s state of mind and not to prove the truth of
9 the matter asserted.

10 v. Limited information provided with regards to the alternatives to
11 conservatorship of Mr. Magney was provided by Defendant Ringwald in
12 an unsworn-to document. Defendant Ringwald was not listed among
13 Defendant Public Guardian Schwartz’s trial witnesses.

14 vi. Information as to services which were provided to Mr. Magney was not
15 sworn to by Defendant Public Guardian Schwartz, but instead, was
16 referenced in an unsworn-to document authored by Defendant Ringwald
17 entitled “Additional Information.” Defendant Ringwald was not listed
18 among Defendant Public Guardian Schwartz’s trial witnesses.

19 f. The tests upon which the Capacity Declaration of Tanya L. Tom were based, were
20 performed at St. Joseph Hospital by a practioner employed by the Veterans
21 Administration (“V.A.”), not familiar to Mr. Magney, and not licensed to practice
22 in the State of California outside of the V.A. These tests were obtained in
23 violation of the Health Insurance Portability and Accountability Act
24 (“H.I.P.P.A.”) and the Federal Privacy Act, being obtained and submitted to the
25 court without the consent of Mr. Magney or his surrogate/wife, Judith C. Magney.
26 Ms. Tom was not listed among Defendant Public Guardian Schwartz’s trial
27 witnesses.

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1 VII. FIRST CLAIM FOR RELIEF: VIOLATION OF MR. MAGNEY'S
2 CONSTITUTIONAL AND CIVIL RIGHTS PURSUANT TO 42
3 U.S.C. §§ 1983, 1988 - Dick Magney's AHCD and the HCDL
4 Petition: (Individual Defendants, Angus, Duke, Ruth, Ringwald,
5 Winstead, Provino and Hillman and Doe Defendants).

6 159. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1-
7 158, inclusive.

8 160. Mr. Magney's constitutional rights to liberty, free exercise of religion, and privacy
9 were each daily violated by Defendants Ruth, Angus, and Duke; Defendant County of Humboldt;
10 and Defendants Winstead, Provino, Ringwald and Hillman's actions in taking control of all of
11 his end-of-life medical care decisions each and every day from at least March 13, 2015, through
12 April 2, 2015, while each of the above named Defendants unlawfully interfered with Mr.
13 Magney's AHCD and the course of treatment prescribed by his treating physicians. Mr. Magney
14 not only faced forced daily medical procedures, including being forced to ingest medications, but
15 he was daily denied his own end-of-life choices.

16 161. Mr. Magney's constitutional right to be protected against unlawful searches and
17 seizures was daily violated by the actions of Defendants Ruth, Angus, and Duke; Defendant
18 County of Humboldt; and Defendants Winstead, Provino, Ringwald and Hillman, in their taking
19 control of all of his end-of-life medical care decisions, as well as their denying him of the right to
20 be free from being forcibly treated and forcibly medicated, against his will on each and every day
21 from at least March 13, 2015, through April 2, 2015. On each and every day, Plaintiff Dick
22 Magney and/or his medical surrogate, Plaintiff Judith Magney, demanded that Defendants and/or
23 their agents honor his AHCD and his choices expressed in that directive. After each demand,
24 Defendants refused each request and denied Mr. Magney his own end-of-life choices as
25 expressed by him when competent in his legally executed AHCD and as communicated by him
26 to his treating physicians and his surrogates when he was determined, by his primary physician,
27 to have medical competency (as opposed to legal competency).

28 162. Plaintiff alleges that Defendants Ruth, Angus, Duke, and Defendant County of

1 Humboldt, together with Defendants Winstead, Provino, Ringwald and Hillman, violated
2 Plaintiff's right to privacy and his right to freely exercise his religion by denying to Mr. Magney,
3 each and every day from March 13, 2015, through April 2, 2015, the treatment and directions Mr.
4 Magney chose regarding his daily medical decisions in the end stages of his life, and which were
5 made according to his religious beliefs. Mr. Magney's express desire to "go be with the Lord"
6 when called, consistent with his religious beliefs, was deliberately forestalled by Defendants'
7 actions.

8 163. Plaintiff alleges that neither Defendants Ruth, Angus, or Duke, nor Defendants
9 Ringwald, Winstead, Provino or Hillman, are designated legal medical surrogates for Mr.
10 Magney under his executed AHCD.

11 164. As described herein, Defendants acted under the color of state law when
12 Defendants deprived Plaintiffs of their fundamental federal constitutional rights regarding Mr.
13 Magney's legally executed AHCD.

14 165. Plaintiff alleges that none of the above-named Defendants are entitled to Qualified
15 Immunity for their actions. Pursuant to the holding of the First District Court of Appeal, there
16 was no reasonable cause for the HCDL Petition and "no reasonable person nor government
17 agency" would have taken such actions. (*See* Exhibit 1 to First Amended Complaint.)

18 166. Plaintiff further alleges that the named Defendants are not entitled to Qualified
19 Immunity for their actions because their actions were based upon their making a purposeful and
20 deliberate fraudulent evidentiary showing in the Ex Parte application for Temporary Orders; that
21 said Defendants misrepresented the facts, omitted material facts, and failed to apprise the court in
22 the ex parte application for Temporary Orders of the applicable HCDL law.

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1 VIII. SECOND CLAIM FOR RELIEF: VIOLATION OF MR.
2 MAGNEY’S CONSTITUTIONAL AND CIVIL RIGHTS
3 PURSUANT TO 42 U.S.C. §§ 1983, 1988 - Dick Magney
4 Conservatorship Petition and Denial of his Medical Choices per his
5 Advanced Health Care Directive: (Individual Defendants Schwartz,
6 Angus, Duke, Ruth, Ringwald, Winstead, Provino and Hillman and
7 Doe Defendants.

8 167. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1-
9 166, inclusive, and adds:

10 168. Plaintiff alleges that Defendants Schwartz, Ruth, Angus, and Duke violated Mr.
11 Magney’s rights to liberty and privacy each and every day that he was unlawfully forced to
12 endure medical procedures and forced to ingest medications. Further, on each of these days,
13 from April 3, 2015, to May 6, 2015, Mr. Magney was denied his own end-of-life choices and
14 held in a facility not of his choice, all in violation of his liberty, due to his being daily confined to
15 a nursing facility by the unlawful acts of all of the Defendants.

16 169. Plaintiff alleges that each day while under the Temporary Powers in the
17 Conservatorship Petition, Plaintiff Dick Magney and/or his legal medical surrogate, Plaintiff
18 Judith Magney, demanded that Defendants and/or their agents honor his AHCD and allow both
19 of them to control the types of medical procedures and medications Mr. Magney received to be
20 consistent with his wishes, religious beliefs and his ACHD. Plaintiffs further alleges that on each
21 date, the Individually Named Defendants denied his daily demands and forced procedures and
22 medications upon him against his wishes, his religious beliefs, his AHCD and that which was
23 demanded by his legal medical surrogate, Plaintiff Judith Magney. Each action on each day after
24 each demand was perpetrated by the Individually Named Defendants, and these actions
25 contradicted Mr. Magney’s expressed wishes, and his AHCD and such constituted a separate and
26 distinct violation of his liberty.

27 170. Plaintiff further alleges that said Individually Named Defendants aided and
28 abetted each other and were also aided and abetting by Defendants Ringwald, Winstead, Provino

1 and Hillman, who took part in violating Mr. Magney's fundamental rights by participating in
2 Defendant Schwartz's petition via official etters attached to the various petitions and requests for
3 temporary powers, which were then unlawfully granted by the lower state court in Ex Parte
4 proceedings.

5 171. Plaintiff alleges that neither Defendants Ruth, Angus, or Duke; nor Defendants
6 Schwartz, Ringwald, Winstead, Provino, or Hillman, are or were designated legal medical
7 surrogates for Mr. Magney under his executed Advance Health Care Directive.

8 172. As described herein, Defendants acted under the color of state law when
9 Defendants deprived Plaintiffs of their fundamental federal constitutional rights regarding Mr.
10 Magney's legally executed AHCD.

11 173. Plaintiff alleges that none of the above-named Defendants are entitled to Qualified
12 Immunity for their actions. The facts presented to the lower court in the Conservatorship Petition
13 and the Request for Temporary Orders , the First Amended Request for Temporary Orders, and
14 the First Amended Conservatorship Petition on dates April 3 and 6, 2015; April 12 and 13, 2015;
15 and April 22, 2015, were based upon the same misrepresented facts, same material omissions and
16 same lack of disclosure as to the applicable law as is alleged in the First Cause of Action.

17 174. Plaintiff further alleges that pursuant to the holding of the First District Court of
18 Appeal, that there was no reasonable cause for the HCDL Petition and that "no reasonable person
19 nor government agency" would have acted so in the HCDL Petition, that no reasonable person
20 nor government agency would have acted thus the Conservatorship Petitions (Original and First
21 Amended) and Requests for Temporary Orders (Original and First Amended) regarding Mr.
22 Magney's medical decision making and control. (*See* Exhibit 1 to First Amended Complaint.)

23 175. Plaintiff further alleges that the named Defendants are not entitled to qualified
24 immunity for their actions because their actions were based upon their making purposeful and
25 deliberate fraudulent evidentiary showings in the Ex Parte Request for Temporary Orders, the
26 First Amended Request for Temporary Orders, the Conservatorship Petition and First Amended
27 Conservatorship Petition, in which Defendants misrepresented the facts, omitted material facts,
28 and failed to apprise the court of the applicable HCDL law.

1 IX. THIRD CLAIM FOR RELIEF: VIOLATION OF LIBERTY AND
2 DUE PROCESS RIGHTS PURSUANT TO THE EX PARTE
3 APPLICATION FOR GOOD CAUSE EXCEPTION TO NOTICE
4 HEARING ON PETITION FOR APPOINTMENT OF
5 TEMPORARY CONSERVATORSHIP (Defendant Schwartz,
6 Duke, and Ruth).

7 176. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1-
8 175, inclusive, and adds:

9 177. Plaintiff alleges that on April 3, 2015, the three above-named Defendants violated
10 Plaintiff Dick Magney's rights to Due Process of law secured to him under the 5th as applied
11 through the 14th Amendment to the United States Constitution by the filing of the Ex Parte
12 Application for Good Cause Exception to Notice Hearing on Petition for Appointment of
13 Temporary Conservator.

14 178. Plaintiff alleges that the Ex Parte Application for Good Cause Exception to Notice
15 of Hearing on Petition for Appointment of Temporary Conservator ("Request for Exception to
16 Notice"), was filed in absence of the applicable law and good cause. Plaintiff further alleges that
17 the Request for Exception to Notice was based on information which, although sworn to be true,
18 was based upon inadmissible hearsay and included inflammatory statements and purposeful and
19 deliberate material omissions of facts.

20 179. Plaintiff further alleges that Defendants, Deputy County Counsel Natalie Duke
21 (the signatory on the Request for Exception to Notice), and Assistant County Counsel (as senior
22 counsel listed on the caption of the Request for Exception to Notice), under color of law, in
23 absence of a compelling state interest, maliciously and/or wantonly, and repeatedly violated the
24 Constitutional Rights of Dick R. Magney under the Due Process Clause of the 14th Amendment,
25 the effects of which continued every day upon which Public Guardian Kelly Schwartz held and
26 exercised powers over Dick R. Magney's person and estate, this power terminating after Dick R.
27 Magney was found by the Humboldt County Superior Court to *not* be in need of a
28 conservatorship for his person and/or estate on May 22, 2015.

1 180. Plaintiff alleges that, based upon this false and misleading pleadings filed by
2 Defendants, on April 6, 2015, three days after receiving the Request for Exception to Notice, the
3 Superior Court signed an Order appointing Defendant Public Guardian Kelli Schwartz as
4 conservator, with power over the estate of Dick R. Magney, and the power to place Dick R.
5 Magney in a licensed skilled nursing facility or adult residential care facility .

6 181. Plaintiff further alleges that Defendant Schwartz retained and exercised powers on
7 a daily basis keeping Dick R. Magney placed in a skill nursing facility. Defendant Public
8 Guardian Kelli Schwartz exercised these powers until May 22, 2015, when Dick R. Magney was
9 found by the Superior Court to *not* be in need of a conservatorship.

10 182. Plaintiff alleges that on April 8, 2015, the Humboldt County Superior Court
11 Clerk's Office ("Clerk's Office") issued Letters of Temporary Conservatorship, with Defendant
12 Kelli Schwartz as the Conservator of the Person and Estate of Dick R. Magney with the
13 specifically stated power to place Dick R. Magney in a licensed skilled nursing facility or adult
14 residential care facility.

15 183. Defendant Public Guardian Kelli Schwartz exercised these powers until May 22,
16 2015, when Dick R. Magney was found by the Superior Court to *not* be in need of a
17 conservatorship.

18 X. FOURTH CLAIM FOR RELIEF: VIOLATIONS OF LIBERTY
19 AND DUE PROCESS RIGHTS, PURSUANT TO THE
20 PETITION FOR THE TEMPORARY CONSERVATOR OF THE
21 PERSON AND ESTATE OF DICK R. MAGNEY (Defendants
22 Schwartz, Duke, Ruth, and Ringwald).

23 184. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1-
24 183, inclusive, and adds:

25 185. Plaintiff alleges that the Defendants involved with this violation of Plaintiff Dick
26 Magney's constitutional rights are Public Guardian Kelli Schwartz as the Petitioner of the
27 Petition for Temporary for Conservatorship, Deputy County Counsel Natalie Duke as signatory
28 of the Temporary Petition for Conservatorship, (also the attorney associated with the filling of

1 the Supplemental Information and the Capacity Declaration - Conservatorship), Assistant County
2 Counsel Carolyn Ruth the attorney filing of the Petition for Temporary Conservatorship (also the
3 attorney associated with the filling of the Confidential Information and Capacity Declaration -
4 Conservatorship), and Heather Ringwald as signatory of Attachment 2 of the Supplemental
5 Information.

6 186. Plaintiff alleges that the Petition and filings referred to in Paragraph 185 were
7 verified as to the facts that were cited therein in support for the Petition.

8 187. Plaintiff alleges that the “verified facts” referred to in Paragraphs 185 and 186
9 were actually hearsay and not known to be true by the affiant.

10 188. Plaintiff further alleges that the verified facts referred to in Paragraphs 185 and
11 186 purposefully and deliberately misrepresented the true facts and made purposeful omissions to
12 the court.

13 189. Plaintiff alleges that beginning April 3, 2015, at the filing of the Petition for
14 Appointment of Temporary Conservator for the person and estate of Dick R. Magney
15 (“Temporary Conservatorship Petition”) and the Confidential Supplemental Information
16 (“Supplemental Information”), and continuing with each subsequent act in the prosecution of the
17 Temporary Conservatorship Petition and/or each subsequent act taken under the powers
18 conferred by the Superior Court pursuant to this Temporary Conservatorship Petition (including,
19 as augmented by the Superior Court on April 13, 2015, to increase the powers of the Public
20 Guardian powers) continued until May 22, 2015.

21 190. Plaintiff further alleges that on May 22, 2015, Dick R. Magney was found *not* to
22 be in need of a conservatorship of either his person or estate.

23 191. Plaintiff further alleges that these named Defendants were acting under color of
24 law, in absence of a compelling state interest and that they maliciously and/or wantonly violated
25 the Constitutional Rights of Dick R. Magney: 1) to liberty; 2) under the Due Process Clause; 3)
26 to the free exercise of religion; against unlawful searches and seizures; and 4) his rights to have
27 his medical choices honored as expressed in his AHCD .

28 192. Plaintiff alleges that this Temporary Conservatorship Petition resulted in the

1 Superior Court, on April 6, 2015, signing an Order Appointing Temporary Conservator,
2 appointing Kelli Swartz, Public Guardian, as conservator, and the Court Clerk issuing Letters of
3 Temporary Conservatorship based upon this Order, the powers pursuant to which Defendant
4 Kelli Schwartz exercised until May 22, 2015, when Dick R Magney was found *not* to be in need
5 of a conservatorship.

6 XI. FIFTH CLAIM FOR RELIEF: VIOLATION OF LIBERTY AND
7 DUE PROCESS RIGHTS PURSUANT TO THE *FIRST*
8 *AMENDED* PETITION FOR APPOINTMENT OF PROBATE
9 CONSERVATOR OF THE PERSON AND ESTATE OF DICK R.
10 MAGNEY: (Defendant Schwartz, Duke, Ruth, and Ringwald).

11 193. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1-
12 192, inclusive, and adds:

13 194. Plaintiff alleges that the Defendants involved with these violations of
14 constitutional rights are Public Guardian Kelli Schwartz (as the Petitioner of the Verified *First*
15 *Amended* Petition for Conservatorship); Deputy County Counsel Natalie Duke (as signatory of
16 the *First Amended* Petition for Conservatorship, and attorney the filing of the Supplemental
17 Information and the Capacity Declaration - Conservatorship); Assistant County Counsel Carolyn
18 Ruth (the attorney filing the *First Amended* Petition for Conservatorship, as well the attorney
19 filing the Confidential Information and Capacity Declaration - Conservatorship), and Heather
20 Ringwald (as signatory of Attachment 2 of the Supplemental Information which stated as “facts”
21 allegedly supporting the proceedings to conserve Mr. Magney contained in the Confidential
22 Information, as well as the person who testified that she procured the Capacity Declaration -
23 Conservatorship).

24 195. Plaintiff alleges that beginning April 9, 2015, at the filing of the *First Amended*
25 Petition for Appointment of Temporary Conservator for the person and estate of Dick R. Magney
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1 (“First Amended Temporary Conservatorship Petition”),¹² which was supported by the
 2 Supplemental Information, and continuing with the subsequent prosecution of this First
 3 Amended Petition for Temporary Conservatorship, as well as, by each act in execution of this
 4 First Amended Temporary Conservatorship Petition (including acting pursuant to increased
 5 Public Guardian powers granted by the Superior Court on April 13, 2015) until Dick R. Magney
 6 was found on May 22, 2015, *not* to be in need of a conservatorship of either his person or estate),
 7 the Defendants violated Plaintiff Dick Magney’s rights to Due Process of law.

8 196. Plaintiff alleges that said named defendants acted under color of law, in absence
 9 of a compelling state interest, and maliciously and/or wantonly violated the Constitutional Rights
 10 of Dick R. Magney: 1) to liberty as applied through 14th Amendment; 2) to exercise of religion
 11 as applied through 14th Amendment; 3) against unlawful searches and seizures as applied
 12 through 14th Amendment; and 4) right to choose his medical care protected by 14th Amendment.

13 197. Plaintiff alleges that this verified First Amended Temporary Conservatorship
 14 Petition was based upon inadmissible hearsay, was based upon misrepresentations and material
 15 omissions, intentionally withheld the applicable law from the court and resulted in the Superior
 16 Court, on April 13, 2015, granting to Defendant Kelli Swartz, Public Guardian increased powers,
 17 and the Superior Court Clerk issuing Letters of Temporary Conservatorship based upon this
 18 Superior Court Orders. Plaintiff further alleges Defendant Schwartz exercised these powers
 19 pursuant the April 13, 2015, Temporary Orders until May 22, 2015, when Dick R Magney was
 20 found *not* to be in need of a conservatorship of his person and/or estate.

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26 ¹² Although the pleading filed by the Office of the County Counsel was captioned
 27 “Petition for Appointment of Temporary Conservator of the Person and Estate,” the Superior
 28 Court treated this pleading as the *First Amended* Petition for Appointment of Temporary
 Conservator of the Person and Estate.

1 XII. SIXTH CLAIM FOR RELIEF: DUE PROCESS AND LIBERTY
2 VIOLATIONS PURSUANT TO THE PETITION FOR
3 APPOINTMENT OF PROBATE CONSERVATOR OF THE
4 PERSON AND ESTATE OF DICK MAGNEY: (Defendants
5 Schwartz, Ruth, Duke, and Ringwald).

6 198. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1-
7 197, inclusive, and adds:

8 199. Plaintiff alleges that Defendants involved with these violations of constitutional
9 rights are Public Guardian Kelli Schwartz (as the Petitioner of the Petition for Appointment of
10 the Permanent Conservatorship); Deputy County Counsel Natalie Duke (as signatory of the
11 Petition for Appointment of the Permanent Conservatorship and the attorney filing the
12 Supplemental Information and the Capacity Declaration - Conservatorship); Assistant County
13 Counsel Carolyn Ruth (the attorney filing of the Petition for Appointment of the Permanent
14 Conservatorship the attorney filing of the Confidential Information and Capacity Declaration -
15 Conservatorship); and Heather Ringwald (signatory of Attachment 2 of the Supplemental
16 Information which contained purposeful and deliberate material omissions and
17 misrepresentations and stated as true facts inadmissible hearsay supporting the proceedings to
18 conserve Mr. Magney contained in the Confidential Information, and who was the person who
19 testified that she procured the Capacity Declaration - Conservatorship).

20 200. Plaintiff alleges that beginning April 3, 2015, at the filing of the Petition for
21 Appointment of Probate Conservator for the person and estate of Dick R. Magney (“Permanent
22 Conservatorship Petition”) and Supplemental Information, and continuing with each subsequent
23 acts in the prosecution and each act in execution of the powers issued pursuant to this Permanent
24 Conservatorship Petition (including acts pursuant to increased Public Guardian powers granted
25 by the Superior Court on April 13, 2015) and continued until Dick R. Magney was found on May
26 22, 2015, *not* to be in need of a conservatorship).

27 201. Plaintiff further alleges that the Defendants, were acting under color of law, in
28 absence of a compelling state interest, and that their actions maliciously and/or wantonly violated

1 the Constitutional Rights of Dick R. Magney: 1) to liberty; 2) under the Due Process Clause; 3)
 2 to exercise of religion; against unlawful searches and seizures; and right to choose his medical
 3 care.

4 202. Plaintiff alleges that, as part of the Due Process Clause violation, that Defendants
 5 filed deficient probate petitions and supporting documents, which, among other things: failed to
 6 base these petitions on admissible evidence; failed to produce witnesses at trial whose allegations
 7 formed the basis of the allegations of Defendant's prosecution and executions; failed to allege, as
 8 required by law, how the actions and behaviors of Dick R. Magney correlated to alleged mental
 9 disorders (Prob. C. 811(a)),¹³ and, as required by law, failed to provide the Superior Court with
 10 an analysis of the frequency, severity, and duration of periods of impairment (Prob. C 811(c)).¹⁴

11 XIII. SEVENTH CLAIM FOR RELIEF: DUE PROCESS AND
 12 LIBERTY VIOLATIONS PURSUANT TO THE FIRST
 13 AMENDED PETITION FOR APPOINTMENT OF PROBATE
 14 CONSERVATOR OF THE PERSON AND ESTATE (Defendant
 15 Schwartz, Duke, Ruth, Ringwald)

16 203. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1-
 17 202, inclusive, and adds:

18 204. Plaintiff alleges that Defendants involved with this violation of constitutional
 19 rights are Public Guardian Kelli Schwartz (as the Petitioner of the verified First Amended
 20 Petition for Appointment of the Permanent Conservatorship); Deputy County Counsel Natalie
 21 Duke (as signatory of the First Amended Petition for Appointment of the Permanent
 22 Conservatorship and the attorney filing of the Supplemental Information and the Capacity
 23 Declaration - Conservatorship); Assistant County Counsel Carolyn Ruth (as the attorney filing
 24 the First Amended Petition for Appointment of the Permanent Conservatorship the attorney filing
 25 of the Confidential Information and Capacity Declaration - Conservatorship); and Heather
 26

27 ¹³ Due Process in Competence Determination Act (Prob. C. §§810-813).

28 ¹⁴ Due Process in Competence Determination Act (Prob. C. §§810-813).

1 Ringwald (as signatory of Attachment 2 of the Supplemental Information which stated as “facts”
2 the hearsay “facts” allegedly supporting the proceedings to conserve Mr. Magney contained in
3 the Confidential Information and the person who testified that she procured the Capacity
4 Declaration - Conservatorship).

5 205. Plaintiff alleges that beginning April 22, 2015, at the filing of the First Amended
6 Petition for Appointment of Probate Conservator for the person and estate of Dick R. Magney
7 (“First Amended Permanent Conservatorship Petition”), which was supported by Supplemental
8 Information previous filed on April 3, 2015, and continuing with the subsequent prosecution and
9 execution of powers conferred based upon this Petition, continued until Dick R. Magney was
10 found on May 22, 2015, when Plaintiff Dick Magney was found *not* to be in need of a
11 conservatorship.

12 206. Plaintiff alleges that this action by the named Defendants was under color of law,
13 in absence of a compelling state interest, and that said actions were done maliciously and/or
14 wantonly in violation the Constitutional Rights of Dick R. Magney: 1) to liberty; 2) under the
15 Due Process Clause; 3) to exercise of religion; against unlawful searches and seizures; and right
16 to choose his medical care.

17 207. Plaintiff further alleges that Defendants as part of this violation did so by their
18 filing of deficient probate petitions and supporting documents, which, among other things: failed
19 to base these petitions on admissible evidence; failed to produce witnesses at trial, whose
20 allegations formed the basis of the allegations of Defendant's prosecution and executions; failed
21 to allege, as required by law, how the actions and behaviors of Dick R. Magney correlated to
22 alleged mental disorders (Prob. C. 811(a)), and, as required by law, failing to provide the
23 Superior Court with an analysis of the frequency, severity, and duration of periods of impairment
24 (Prob. C 811(c)).

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1 XIV. EIGHTH CLAIM FOR RELIEF:DUE PROCESS, LIBERTY and
2 PRIVACY VIOLATIONS RE: THE CAPACITY
3 DECLARATION- CONSERVATORSHIP PETITION:
4 (Defendants Swartz Duke, Ruth, and Ringwald).

5 208. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1-
6 207, inclusive, and adds:

7 209. Plaintiff alleges that Defendants involved with these violations of constitutional
8 rights are Public Guardian Kelli Schwartz (as the Petitioner of the various petitions for
9 conservatorship, for which the Capacity Declaration was offered as support); Deputy County
10 Counsel Natalie Duke (as signatory of the various petitions for conservatorship for which the
11 Capacity Declaration was offered as support and the attorney filing of the Capacity Declaration -
12 Conservatorship); Assistant County Counsel Carolyn Ruth (the attorney associated with the
13 various filed petitions for conservatorship, for which the Capacity Declaration was offered as
14 support and the attorney filing the Capacity Declaration - Conservatorship); and Heather
15 Ringwald (as the person who testified that she procured the Capacity Declaration -
16 Conservatorship).

17 210. Plaintiff alleges that the named Defendants acted under color of law, in absence
18 of a compelling state interest, and that they maliciously and/or wantonly violated the
19 Constitutional Rights of Dick R. Magney to privacy, as follows: The Capacity Declaration-
20 Conservatorship (form GC-335) (“Capacity Declaration”) which is required by California Law to
21 accompany conservatorship petitions, including the tests upon which the Capacity Declaration of
22 Tanya L. Tom were based, were performed at St. Joseph Hospital by a practitioner employed by
23 the Veterans Administration (“V.A.”), not familiar to Mr. Magney, and not licensed to practice in
24 the State of California outside of the V.A. These tests were obtained in violation of the Health
25 Insurance Portability and Accountability Act (“H.I.P.P.A.”) and the Federal Privacy Act, being
26 obtained and submitted without consent of Mr. Magney, or his surrogate/wife, Judith C.
27 Magney. Plaintiff is informed and believes, and thereupon alleges that Defendants relied on this
28 Capacity Declaration in obtaining powers over the person and estate of Dick R. Magney until

1 May 22, 2015 when Dick R Magney was found *not* to be in need of a conservatorship of his
2 person and/or estate.

3 211. Plaintiff alleges a further violation of Dick R. Magney's rights in that Defendants,
4 under color of law, in absence of a compelling state interest, maliciously and/or wantonly
5 violated the Constitutional Rights of Dick R. Magney under the Due Process Clause, because the
6 basis and validity of the statements made in the Capacity Declaration could not be questioned at
7 trial on May 20 - May 22, 2015 , because the Defendants purposefully did not include Dr. Tanya
8 L. Tom among trial witnesses for trial of the First Amended Conservatorship Petition.

9 212. Plaintiff is informed and believes, and there upon alleges, that Defendants relied
10 on this Capacity Declaration in obtaining powers over the person and estate of Dick R. Magney
11 until May 22, 2015, when Dick R Magney was found *not* to be in need of a conservatorship of
12 his person and/or estate.

13 XV. NINTH CLAIM FOR RELIEF: DUE PROCESS AND LIBERTY
14 VIOLATION BASED IN OBTAINING CONSERVATORSHIP
15 OF THE ESTATE OF DICK R. MAGNEY: (Defendants
16 Schwartz, Duke, Ruth, and Ringwald).

17 213. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1-
18 212, inclusive, and adds:

19 214. Plaintiff alleges that Defendants involved with these violations of Dick
20 Magney's constitutional rights were: 1) Public Guardian Kelli Schwartz (as Petitioner of the
21 various conservatorship petitions of the estate and as outlined below); 2) Deputy County Counsel
22 Natalie Duke (as signatory of the various petitions for the conservatorship of the estate and the
23 attorney captioned on the Supplemental Information); 3) Assistant County Counsel Carolyn Ruth
24 (the senior attorney listed on the caption of the various petitions for the conservatorship of the
25 estate and Supplemental information); and 4) Heather Ringwald as signatory of Attachment 2 of
26 the Supplemental Information which stated as "facts" allegedly supporting the proceedings to
27 conserve Mr. Magney, including as to his estate information that was not first hand and was
28 inadmissible hearsay.

1 215. Plaintiff alleges that Defendant Public Guardian, Kelli Schwartz, by obtaining
2 powers over the estate of Dick R. Magney via deficient due process in a manner that did not
3 comport with the California Competency Determination Law (Prob. C. §§810-813, “the Act”),
4 including among other things: 1) the filing of deficient probate petitions and supporting
5 documents; failing to base these petitions on admissible evidence; failing to produce witnesses at
6 trial, whose allegations formed the basis of the allegations of Defendant's prosecution and
7 executions; failing to allege Mr. Magney’s preferences regarding appointment of a conservator
8 and/or why it is not feasible to ascertain his preferences; failing to provide adequate information
9 with regards to the alternatives to conservatorship of Mr. Magney; 2) failing to provide adequate
10 information with regards to the alternatives to conservatorship of Mr. Magney; 3) failing to
11 allege, as required by law, how the actions and behaviors of Dick R. Magney correlated to
12 alleged mental disorders (Prob. C. 811(a)), and, 4) as required by law, failing to provide the
13 Superior Court with an analysis of the frequency, severity, and duration of periods of impairment
14 (Prob. C 811(c)), violated the Constitutional Rights of **Dick R. Magney and Judith Magney** to
15 not be deprived of property without due process of law or fair procedures.

16 216. Plaintiff is informed and believes and thereupon alleges, that Defendants relied on
17 their own chosen selective provision of information (facts and law) in order to secure court
18 orders giving them powers over the person and estate of Dick R. Magney until May 22, 2015
19 when the Dick R Magney was found *not* to be in need of a conservatorship of his person and/or
20 estate.

21 217. Plaintiff alleges that Defendants, in failing to exercise these unlawfully conferred
22 powers failed to act to the benefit of Dick R. Magney, during a time when Judith Magney was
23 prohibited from acting on behalf of the estate of Dick R. Magney. Said Defendants failed to
24 seek benefits to pay for the skilled nursing facility in which Defendant Kelli Schwartz had placed
25 Dick R. Magney, while Plaintiff Judith Magney was legally precluded from seeking these same
26 benefits due to Defendant Schwartz having legal control over Plaintiff Dick Magney. Dick R.
27 Magney and Judith Magney suffered direct economic harm in the amount of lost benefits.

28 //

1 XVI. TENTH CLAIM FOR RELIEF: CONSPIRACY TO VIOLATE
2 MR. MAGNEY’S CONSTITUTIONAL AND CIVIL RIGHTS
3 PURSUANT TO 42 U.S.C. §§ 1983, 1988 (Individual Defendants
4 Schwartz, Angus, Duke, Ruth, Ringwald, Winstead, Provino and
5 Hillman and Doe Defendants).

6 218. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1-
7 217, inclusive, and adds:

8 219. Plaintiff alleges that Defendants, using their official government positions to
9 violate Plaintiffs’ fundamental and Constitutional rights, acted under color of state law and each
10 conspired to deprive Plaintiffs of a federally protected right under the United States Constitution,
11 as described herein. This conspiracy to violate Mr. Magney’s Civil Rights commenced March 13,
12 2015, and continued on a day to day basis through May 22, 2015.

13 220. Plaintiff alleges that all of the above Named Individual Defendants (APS
14 Defendants Ringwald, Defendants Winstead, Provino, Hillman, Public Guardian Defendant
15 Schwartz, and Attorney Defendants Duke, Angus, and Ruth) conspired to use their state
16 authority, pursuant to Defendant DHHS and Defendant Office of County Counsel’s stated
17 policies and/or courses of action, to alter the manner in which Mr. and Mrs. Magney were
18 informed of, engaged, consulted, and/or included in medical decisions at Saint Joseph Hospital
19 and the skilled nursing facility Mr. Magney was forced into by Defendants. These actions
20 deprived Plaintiffs of the rights guaranteed them by the United States Constitution. The
21 Individually Named Defendants consistently identified themselves as employees of the County,
22 and the actions taken by them were perpetrated while in the scope of their employment with the
23 County (via court pleadings and/or orally).

24 221. These named Individually Named Defendants employed by the Office of the
25 Humboldt County Counsel, employed by the Office of DHHS (APS/Public Guardian) actively
26 took part in the violations of Plaintiffs’ fundamental rights. Each Defendant took part in the
27 conspiracy to violate Plaintiffs’ civil rights; the Attorney Defendants by abandoning the role of
28 independent advisor to the County, and all of the Individually Named Defendants by abusing

1 their authority. Defendants abused their authority by taking an aggressive, win-at-all-costs
2 position to justify the desires of the Individual Defendants, Defendant DHHS, Defendant APS
3 and Defendant Public Guardian, regardless of the fact that they were purposefully and
4 deliberately manipulating facts, misrepresenting facts, making material omissions and misleading
5 the court in Ex Parte proceedings to obtain powers which allowed them to violate Plaintiffs'
6 fundamental Constitutional Rights. This course of action was also inconsistent with their ethical
7 obligations.

8 222. Plaintiff alleges that these named defendants in a joint action and/or action in
9 concert, holding themselves out as persons with authority to countermand Mr. Magney's legally
10 executed Advanced Health Care Directive, all Defendants (using the same gross manipulation
11 and purposeful omission of essential facts in two separated court proceedings) misused their
12 power and state authority to intervene in the natural course of Mr. Magney's end-of-life
13 decisions, stripping Mr. Magney, Mrs. Magney (his wife and designated surrogate), and Mr.
14 Magney's actual treating physicians of all power to make any decisions related to Mr. Magney's
15 medical treatment. Instead, Defendants joined together in their conspiracy, in their common
16 purpose and/or intent, to substitute Defendants' own "best interests" determination as to the
17 proper course of medical treatment in place of that of Mr. Magney's in contravention of his
18 wishes as expressed in his AHCD, to his treating physicians, and to his legal medical surrogate
19 and alternate legal medical surrogate.

20 223. Plaintiff alleges that Defendant County agencies, under color of state law, acted
21 jointly with the Individually Named Defendants by overtly and/or covertly providing significant
22 encouragement in furtherance of the conspiracy. Further, Defendants failed to cease and/or
23 forestall violations of Plaintiffs' constitutional rights, after their fraudulent evidentiary showing
24 and misleading the court in Ex Parte proceedings had been made known to the Defendants via
25 court pleadings and private phone conversations with County Defendants Angus and Duke.

26 224. Each overt act in furtherance of this conspiracy is set forth in the previously
27 incorporated paragraphs set forth above, but are identified again as the actions in Paragraphs 46
28 through 128. More specifically, Plaintiff alleges that:

1 a. On March 13, 2015, Defendants Ringwald, Winstead, Provino, and Hillman
2 agreed to countermand Mr. Magney's fundamental rights regarding his end-of-life decisions
3 made in his AHCD, and as expressed to his legal surrogates and his treating physicians.

4 b. On March 13, 2015, in furtherance of this conspiracy, these Defendants went to
5 the Attorney Defendants (Ruth, Angus and Duke) to assist them in the violation of Mr. Magney's
6 fundamental rights.

7 c. On March 13, 2015, these seven named defendants purposefully and deliberately
8 made a fraudulent evidentiary showing in an Ex Parte HCDL Petition proceeding in furtherance
9 of their conspiracy. They purposefully and deliberately made factual misrepresentations to the
10 court, withheld from the court material facts that were crucial and withheld the applicable law
11 from the court in order to acquire powers over Mr. Magney in violation of his fundamental rights.

12 d. On March 13, 2015, these Defendants violated Mr. Magney's fundamental rights
13 by forcing unwanted medications and treatments on his person in contravention of his rights, as
14 well as those of his legal surrogates and treating physicians.

15 e. After notification to these Defendants of their fraud and the applicable law,
16 Plaintiff alleges that these named Defendants plotted and schemed as to how to continue
17 violating Mr. Magney's fundamental rights. Defendants agreed to bring Defendant Schwartz into
18 the conspiracy by her filing of a different petition (Conservatorship Petition), and Defendants
19 further agreed that they would not dismiss their unlawful HCDL Petition; the goal being to buy
20 them time to further their continuing conspiracy.

21 f. That on March 29, 2015, with full knowledge and awareness of their unlawful
22 HCDL Petition and Temporary Orders, these now eight Defendants engaged the services of Dr.
23 Soper, who interviewed Mr. Magney without the consent of Mr. Magney or his legal surrogate.

24 g. That on April 2, 2015, the Attorney Defendants did not inform the court of their
25 fraud nor the applicable law and that after the Temporary Orders were vacated, did not
26 communicate this to the physicians at St. Joseph Hospital.

27 h. That on April 3, 2015, these eight defendants went Ex Parte to another Judge,
28 submitting the same fraudulent information to the court that had previously been submitted, on

1 March 13, 2015, and that they did not inform the court of the applicable HCDL law and violated
2 due process by their inadequate pleadings (discussed above in Paragraphs 167-217 and
3 incorporated herein) in order to obtain the same temporary powers over Mr. Magney. This event
4 resulted in unlawful government control over Mr. Magney's person and finances.

5 i. That on April 12, 2015, after discovering that they did not have temporary powers
6 over Mr. Magney to continue their violations of his fundamental rights, these eight Defendants
7 resubmitted, Ex Parte, the same information as in the HCDL fraudulent evidentiary showing and,
8 again, misled the court Ex Parte as to the applicable HCDL in order to obtain further powers.
9 That they did so to continue to violate Mr. Magney's fundamental rights.

10 j. On April 13, 2015, upon being granted temporary powers based on their
11 fraudulent ex parte request for temporary orders, Defendants forced unwanted treatments and
12 medications upon Plaintiff Dick Magney.

13 k. On April 14, 2015, Defendants had Plaintiff Dick Magney moved to a nursing
14 home of Defendants' choice and forced unwanted treatments and medications upon Plaintiff
15 Dick Magney.

16 l. On April 16, 2015, Defendant Schwartz told Plaintiff Judith Magney that she was
17 to receive no medical information regarding her dying husband because she had an attorney.

18 m. Between April 16, and April 30, 2015, Defendants and/or their agents forced
19 treatments and medications on Plaintiff Dick Magney against his will, his AHCD and that of his
20 legal medical surrogate.

21 n. On April 22, 2015, Defendants filed an First Amended Petition to get permanent
22 powers to control Plaintiff Dick Magney's health choices although not authorized to do so via a
23 Conservatorship Petition under the HCDL.

24 o. On April 30, 2015, Plaintiff Judith Magney, as her husband's legal medical
25 surrogate, again demanded that Defendants stop future violations of her husbands fundamental
26 rights.

27 p. On April 30, 2015, Defendants and/or their agents denied Plaintiff Judith
28 Magney's April 30th demand and forced medical treatment on Plaintiff Dick Magney.

1 q. From May 1, 2015, through May 6, 2015, each and every day Defendants and/or
2 their agents forced medical treatment and medications on Plaintiff Dick Magney.

3 225. Plaintiff alleges that none of the above named Defendants are entitled to Qualified
4 Immunity for their actions. The facts presented to the lower court in the HCDL Petition and
5 Temporary Orders of March 13, 2015, as well as the Conservatorship Petition and the Request
6 for Temporary Orders, the First Amended Request for Temporary Orders, and the First Amended
7 Conservatorship Petition on April 3 and 6, 2015, April 12 and 13, 2015, and April 22, 2015, were
8 based upon the same misrepresentation of facts and material omissions and failures regarding
9 informing the court of the applicable law as is set forth above in the First Cause of Action.

10 226. Plaintiff further alleges that, pursuant to the holding of the First District Court of
11 Appeal, there was no reasonable cause for the HCDL Petition, that “no reasonable person nor
12 government agency” would have acted so in the Conservatorship Petitions (Original and
13 Amended) and Requests for Temporary Orders (Original and Amended) regarding Mr. Magney’s
14 medical decision making. (*See* Exhibit 1 to First Amended Complaint.)

15 227. Plaintiff further alleges that the named Defendants are not entitled to qualified
16 immunity for their actions because their actions were based upon the making the same
17 purposeful and deliberate fraudulent evidentiary showings previously found in the HCDL
18 Petition, now in the Ex Parte Request for Temporary Orders, and the First Amended Request for
19 Temporary Orders in the Conservatorship Petition, as well as the Conservatorship Petition and
20 First Amended Conservatorship Petition; that Defendants misrepresented the facts, omitted
21 material facts, and failed to apprise the court of the applicable HCDL law.

22 228. Plaintiff alleges that, from March 13, 2015, through May 22, 2015, the above-
23 named Defendants, each and every one of them, met, spoke, and emailed one another to devise
24 different schemes, to use in different proceedings and pleadings, in order to maintain their
25 violations of Mr. Magney’s fundamental rights.

26 229. As a result of the conspiracy of Defendants, Plaintiff Dick Magney was deprived
27 of his fundamental rights to Liberty, Privacy and of Religion in the exercise of his duly executed
28 Advanced Health Care Directive and his rights under the Fourth Amendment to be free from

1 searches and seizure, secured to him under the Fourteenth Amendment of the United States
2 Constitution.

3 XVII. ELEVENTH CLAIM FOR RELIEF: VIOLATION OF MRS.
4 MAGNEY'S CONSTITUTIONAL AND CIVIL RIGHTS
5 PURSUANT TO 42 U.S.C. §§ 1983, 1988 (All Defendants).

6 230. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1-
7 229, inclusive, and adds:

8 231. Plaintiff alleges that on April 30, 2015, in a hearing regarding Mrs. Magney's
9 request that Defendant Schwartz be removed as temporary conservator of Mr. Magney, Plaintiff
10 demanded that Defendant Schwartz and Defendant County of Humboldt not medicate her
11 husband nor intervene with his AHCD. Plaintiff further alleges that with this demand, Plaintiff
12 provided the relevant HCDL law stating that Defendants could not lawfully medicate or exercise
13 medical control over her husband.

14 232. Plaintiff alleges that Defendants denied the April 30, 2015, demand to stop forced
15 treatment and medications against her demands.

16 233. Plaintiff alleges that each and every day she demanded that Defendants and/or
17 their agents stop forcibly treating and medicating her husband against his AHCD and that
18 expressed to her as his legal medical surrogate and that of his alternate legal medical surrogate,
19 and that beginning on May 1, 2015, and continuing daily through May 6, 2015, Defendants
20 and/or their agents daily denied these demands and proceeded to medicate Mr. Magney and
21 control his medical decisions in contravention of his AHCD and Mrs. Magney's legal rights as
22 his surrogate.

23 234. Plaintiff alleges that Mrs. Magney's constitutional rights to liberty and privacy
24 were violated, each and every day from April 30, 2015, through May 6, 2015, with each demand
25 made and each denial made and that each denial violated both her husband's rights and her rights
26 as the legally designated medical surrogate under Mr. Magney's AHCD; specifically by
27 Defendants taking control of all of Mr. Magney's end-of-life medical care decisions. Mr.
28 Magney faced forced medical procedures and was denied his own end-of-life choices during this

1 period of time and that, per Mr. Magney's direction, Mrs. Magney would not have allowed.

2 235. Mrs Magney's constitutional right as her husband's legal medical surrogate to
3 protect Mr. Magney against unlawful searches and seizures was violated on these dates by
4 Defendants' actions in taking control of all of all Mr. Magney's end-of-life medical care
5 decisions in contravention of Mrs. Magney's duties under Mr. Magney's AHCD. Because of
6 Defendants' violations of Mrs. Magney's constitutional rights, Mrs. Magney could not prevent
7 Mr. Magney from facing forced medical procedures and a denial of his own end of life choices
8 by the unlawful acts of all of the Defendants.

9 236. Defendants violated Mrs. Magney's constitutional right, as Mr. Magney's legal
10 surrogate under his AHCD, to uphold Mr. Magney's right to freely exercise his religion by
11 denying Mr. Magney the right to comport the treatment he was to receive in the end stages of his
12 life with his religious beliefs. Mr. Magney's express desire to "go be with the Lord" when
13 called, consistent with his religious beliefs, was deliberately forestalled by Defendants' actions.
14 Mrs. Magney, as Mr. Magney's agent under his AHCD, was unable to prevent this violation of
15 Mr. Magney's right to freely exercise his religion under the most crucial of circumstances.

16 237. As described herein, Defendants acted under the color of state law when they
17 deprived Plaintiffs of their federal constitutional rights.

18 238. Defendants violated Plaintiff Judith Magney's procedural due process rights as
19 her husband's legal surrogate by their acts of May 1, 2015, through May 6, 2015, forcing Mrs.
20 Magney to suffer the emotional pain of watching her husband suffer unwanted medical
21 treatment; knowing that, contrary to his wishes, his life, which had become too painful to endure,
22 might be needlessly prolonged, forcing him to endure even more pain and suffering. In turn, this
23 forced Judith Magney to suffer the embarrassment and indignity of having, at the end of her
24 husband's life, the ability to carry out her husband's end-of-life directives wrested away from her
25 by Defendants, without justification and based upon false and deliberately misleading
26 information, with the express intent by Defendants to disregard in their entirety the California
27 Advanced Healthcare Directive statutes.

28 239. As a direct and proximate result of the Defendants' violations of Mrs. Magney's

1 constitutional rights, Mrs. Magney has suffered severe and substantial damages, including
 2 without limitation, litigation expenses, including attorney fees, humiliation, embarrassment,
 3 inconvenience, mental and emotional anguish and distress, and other compensatory damages, in
 4 an amount to be determined by a jury and the Court.

5 XVIII. TWELFTH CLAIM FOR RELIEF: VIOLATION OF MR.
 6 MAGNEY’S CONSTITUTIONAL AND CIVIL RIGHTS
 7 PURSUANT TO 42 U.S.C. §§ 1983, 1988 (Defendant County of
 8 Humboldt, Board of Supervisors; Defendants Jeffrey Blanck, Ruth
 9 and Angus, official capacity as County Counsel and Assistant
 10 County Counsel; Defendant Director Department of Health and
 11 Human Services, Phil Crandall and Doe Defendant; Defendant
 12 Schwartz, official capacity as public guardian; Defendants
 13 Winstead, Hillman official capacity).

14 240. Plaintiff refers to and incorporates, as though fully set forth herein, paragraphs 1-
 15 239, inclusive, and adds:

16 241. Plaintiff alleges that at all material times, Defendant County (Defendant County of
 17 Humboldt and Defendant agencies DHHS, APS, Public Guardian) were receiving federal funding
 18 as contemplated by the Elder Justice Act of 2009, Title VI, Section H of the Patient Protection
 19 and Affordable Care Act (Public Law 111-148-2010) (“Elder Justice Act”) and 42 U.S. Code §
 20 3058i. The Elder Justice Act was signed into law on March 23, 2010, to “prevent, detect, treat,
 21 understand, intervene in and, where appropriate, prosecute elder abuse, neglect and exploitation.”

22 242. Plaintiff alleges that when federal grant monies associated with the prevention of
 23 elder abuse, neglect, and exploitation are accepted by Defendant County, Defendant County is
 24 responsible for ensuring that the requirements of such federal grants are complied with, including
 25 compliance with all applicable federal laws.

26 243. Plaintiff alleges that the violations of Plaintiffs’ constitutional rights by County
 27 Defendants (DHHS/APS/Public Guardian), the agency envisioned by Federal law to protect
 28 citizens from elder abuse, does not comply with the goals of grants issued pursuant to the Elder

1 Justice Act.

2 244. Plaintiff alleges that at all material times, Defendant County implemented and
3 executed policies and customs in regard to the events alleged herein that resulted in the
4 deprivation of Plaintiffs’ constitutional, statutory, and common-law rights.

5 245. Plaintiff alleges that the County’s official policy or custom of countermanding
6 AHCDs that the County disagrees with, was a policy statement or decision that was officially
7 made and/or supported:

8 a. By Shirley Hillman, a Humboldt County Supervising Public Health Nurse, the
9 examples of whose duties include “assist[ing] in the development and implementation of goals,
10 objectives, policies, procedures and standards for the public health nursing division,”¹⁵ and

11 b. By Amanda Winstead, Humboldt County Program Manager II, whose example of
12 duties includes “develop[ing] policies and procedures for the administration of the department.”¹⁶
13 The identification of management County employees associated with this County policy was
14 made by Nurse Ringwald, while testifying under oath.

15 c. By Defendant County of Humboldt (DHHS, APS and Public Guardian) Defendant
16 Phillip Crandall (official capacity), Defendant Kelly Schwartz (official capacity) and Doe
17 Defendants.

18 d. By Defendant County of Humboldt, (Defendant County Counsels Office,
19 Defendant Jeffrey Blanck (official capacity), Defendant Angus and Defendant Ruth (official
20 capacity).

21 e. The deprivation of Plaintiffs’ constitutional rights resulted directly from the
22 County’s official policies or customs. But for the County’s policies, Mr. Magney’s AHCD would
23 not have been challenged, let alone usurped, and Mrs. Magney, separately or together with Mr.
24 Magney’s treating physicians, would have been allowed to make medical decisions that
25 comported with Mr. Magney’s AHCD and his religion.

26
27 ¹⁵ <http://humboldt.gov/DocumentCenter/View/54072>

28 ¹⁶ <http://humboldt.gov/DocumentCenter/View/53920>

1 246. Plaintiff alleges that the County's policy or custom of challenging AHCDs that
2 Defendants do not agree with is a widespread, well-settled practice that constitutes a standard
3 operating procedure of the County. As Nurse Ringwald testified to under oath, Mr. Magney's
4 AHCD was not the first the County challenged; as set forth in Defendant County of Humboldt's
5 Respondent's Brief, at Oral Argument in A145981, and as discussed in Exhibit 1; and the
6 December 15, 2016, letter by Defendant Jeffrey Blanck wherein he requests de-publication in
7 order for Defendant County to continue their conduct as alleged above as publication would chill
8 that power to act in the future.

9 247. Plaintiff alleges that Defendant County is responsible for ensuring that all its
10 employees are properly trained and supervised to perform their jobs.

11 248. Plaintiff alleges that Defendant County violated Plaintiffs' constitutional rights by
12 failing to properly train and supervise employees as mandated.

13 249. Plaintiff alleges that the persistent nature of the disregard of Mr. Magney's
14 fundamental rights regarding his AHCD by the County evidences another policy or custom of the
15 County: the failure to adequately train its employees as to the legal significance of AHCDs and
16 individuals' constitutional rights. Plaintiff further alleges that after Defendant County was
17 informed of the legal impropriety of their policy of challenging legally executed AHCDs - via
18 pleadings filed in the Superior Court, oral notifications to the County by counsel for Mrs.
19 Magney, and a published California Appellate Court Opinion they have continued in their
20 insistence that they can be as duplicitous as they want to obtain orders that they deem they need.
21 Defendant County's insistence that their policy is lawful and its claim that the Appellate Court
22 Opinion is in error, shows the Defendant County's deliberate indifference to the fact that a
23 violation of federal constitutional rights is a highly predictable consequence of the inadequate
24 training and/or supervision of employees of the County, and that the County will, in all
25 likelihood, challenge AHCDs in the future. This policy continues now as is evidenced by
26 Defendant Blancks December 18, 2016, letter to the state Supreme Court asking for
27 depublication on the basis that failing to depublish will chill the county's ability to continue with
28 this policy and custom.

1 250. Plaintiff alleges that the fact that upper levels of County management and/or the
2 Board of Supervisors have not taken steps to amend this policy has defacto authorized and/or
3 encouraged the use of this policy and/or has endorsed the County employees' decisions to engage
4 in the violation of Plaintiffs' constitutional rights.

5 251. Plaintiff alleges that the continuing persistent nature of the County's challenge of
6 Advanced Health Care Directives evidences that the County's training programs and/or
7 supervision of its employees are inadequate to train County employees to avoid the violation of
8 the constitutional rights of persons who interface with County services, programs and
9 enforcement efforts. The County's failures in this regard amount to deliberate indifference to the
10 fact that the policy of obtaining medical decision authority of persons who have legally executed
11 AHCDs will obviously result in the violation of constitutional rights of the person; and in the
12 case of Mr. and Mrs. Magney, did directly cause their constitutional rights to be violated as
13 described herein.

14 252. On information and belief, Plaintiff alleges that Defendant County has followed
15 these unconstitutional customs, policies, and practices, not only with regard to Plaintiffs but also
16 with regard to other holders of legally executed advanced health care directives. Defendant
17 Ringwald testified at the HCDL reasonable cause hearing set forth above, that Defendant County
18 had a history of "successfully" challenging AHCDs. In the case of the Plaintiffs, this
19 reprehensible choice by Defendant employees of the County, to implement and continue to carry
20 out this policy of usurping medical authority in contravention to a person holding an AHCD,
21 resulted in the deprivation of Plaintiffs' constitutional rights as describe herein.

22 253. Plaintiff alleges that at all material times, all Defendants engaged in a pattern of
23 unconstitutional behavior designed to impose their wishes as to the health care directives, in total
24 disregard for patients' individual, legally executed Advance Health Care Directives, in violation
25 of patients' constitutional rights and at a time when these patients were at their most vulnerable.

26 254. Plaintiff alleges that the Defendant County is responsible for the acts and
27 omissions of its employees.

28 255. Plaintiff alleges that Defendant County was informed in numerous conversations,

1 as well as via briefings submitted to the Humboldt County Superior Court and the opinion of
2 California Appellate Courts regarding the constitutional ramifications of their conduct. Yet,
3 Defendants persisted in perpetrating the violation of Plaintiffs' constitutional rights, and or
4 defending their perpetration of the violation of Plaintiffs' at further expense of Plaintiffs'
5 constitutional rights.

6 256. Plaintiff alleges that Defendants should have known that their response to Mr.
7 Magney's health care situation must comply with federal law and they should have known that
8 their conduct would violate his fundamental rights.

9 257. Plaintiff alleges that Defendants failed to take immediate, effective remedial steps
10 to prevent further violations of Plaintiffs' constitutional rights.

11 258. Defendants persisted in their actions and inactions even after Defendants had
12 actual knowledge of the harm suffered by Plaintiffs.

13 259. Defendant County of Humboldt violated Plaintiffs' constitutional rights via
14 actions of Defendants that resulted from a failure to properly train County employees as to the
15 responsibilities of Adult Protective Services and the seeking to conserve people who possess
16 legally valid advanced health care directives. Said violations occurred daily from March 13,
17 2015, through May 6, 2015, and said failure to train continues to exist at the time of filing of this
18 complaint. Each and every day constituted a separate and distinct violation of Mr. Magney's
19 rights to religious freedom and liberty.

20 260. The actions taken by Defendants that resulted in the violations of Plaintiffs'
21 constitutional rights were done so by Defendant County of Humboldt, Department of Health and
22 Human Services, Adult Productive Services, and Public Guardian, at times when these agencies
23 were recipients of Federal grant moneys.

24 XIX. PRAYER FOR RELIEF.

25 Wherefore, Plaintiff prays for,

- 26 1. Appropriate compensatory damages in an amount to be determined at trial;
27 2. Compensatory damages for Mr. Magney's psychological and emotional distress
28 and damages, and un-reimbursed out of pocket expenses incurred in response to these

1 circumstances, in an amount of at least \$1,440,000;

2 3. Compensatory damages for Mrs. Magney's psychological and emotional distress
3 and damages, loss of her standing in the community, damage to her reputation, and her un-
4 reimbursed out of pocket expenses incurred in response to these circumstances in an amount of at
5 least \$1,440,000;

6 4. Punitive damages as to the conduct of Defendants named in their individual in the
7 amount of at least \$1,000,000; and

8 5. An award of reasonable attorney's fees and costs, expended as to such Defendants
9 pursuant to the Civil Rights Act of 1871, 42 U.S.C. Section 1988;

10 6. For such other and further relief as the court may deem proper.

11 XX. DEMAND FOR JURY TRIAL.

12 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by
13 jury in this action of all issues so triable.

14 DATED: March 27, 2018

Respectfully submitted,

HARLAND LAW FIRM LLP

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18 /s/ Allison G. Jackson
Allison G. Jackson

19 Attorneys for Plaintiff JUDITH C. MAGNEY
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