

CAUSE NO. \_\_\_\_\_

MARIO TORRES and ANA  
PATRICIA TORRES, individually and  
A/N/F of N.T., a minor,  
Plaintiffs,

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v.

CIVIL ACTION NO. \_\_\_\_\_

TEXAS CHILDREN'S HOSPITAL,  
and DR. JOHN DOE and DR. JANE  
DOE,

JURY DEMANDED

Defendants.

**PLAINTIFF'S ORIGINAL COMPLAINT  
AND APPLICATION FOR TEMPORARY RESTRAINING ORDER,  
TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

NOW COME the Plaintiffs, MARIO TORRES and ANA PATRICIA TORRES, individually and A/N/F of N.T., ("Plaintiffs"), and files this Original Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction against Defendant TEXAS CHILDREN'S HOSPITAL ("Defendants"), and would respectfully show unto the Court the following:

**I. DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rule of Civil Procedure 190.1 and affirmatively pleads that this suit is not governed by the expedited actions-process in Texas Rule of Civil Procedure 169 because Plaintiff requests injunctive relief.

**II. CLAIM FOR RELIEF**

2. Plaintiff seeks monetary relief over \$1,000,000. TEX. R. CIV. P. 47(c)(5).

### III. PARTIES

3. Plaintiff, MARIO TORRES (hereinafter “Mr. Torres” or Plaintiff”), is an individual residing within Harris County, Texas, and is the biological parent of the minor, N.T. (DOB 11/15/2019).

4. Defendant ANA PATRICIA TORRES (hereinafter “Mrs. Torres” or “Plaintiff”), is an individual residing within Harris County, Texas, and is the biological parent of the minor, N.T. (DOB 11/15/2019).

5. Defendant TEXAS CHILDREN’S HOSPITAL (henceforth “TCH”), the Defendant, is a business that is being sued in its business capacity and as employer for various medical doctors working for the defendant. TCH is a business that is register with the Texas Secretary of State and is located in Harris County, Texas, whom can be served by and through its register agent Lance A. Lightfoot at 6651 Main Street, Suite E520, Houston, TX 77030.

6. DR. JOHN DOE is a doctor working at TCH and is primarily in charge of the medical decisions concerning the minor N.T., but because the true name and identity are not yet known we hereby designate him by this name.

7. DR. JANE DOE is a doctor working at TCH and is primarily in charge of the medical decisions concerning the minor N.T., but because the true name and identity are not yet known we hereby designate her by this name.

### IV. JURISDICTION AND VENUE

8. This Court has jurisdiction to hear this matter and venue arises in Harris County, Texas, pursuant to Chapter 15.002 (a)(1) of the Texas Civil Practice & Remedies Code.

9. The amount in controversy is over \$1,000,000.

10. This Court has jurisdiction over the parties because all parties are either domiciled in Texas or satisfy the minimum contacts test.

11. Venue is proper in Harris County, Texas, pursuant to section 15.002(a)(1) and (2) of the Texas Civil Practice and Remedies Code because all of the events or omissions giving rise to the claim occurred in Harris County, Texas and it is the county of Defendants' residence.

## V. FACTUAL BACKGROUND

12. On or about September 24, 2020, the minor N.T. was found unconscious in a bathroom tub, laying in water and unresponsive. He is 10-months old.

13. The minor was rushed to the Texas Children Hospital in The Woodlands, where he was placed in the Intensive Care Unit.

14. The minor was then transferred to the Texas Children's Hospital in the Texas Medical Center, in Houston, Texas.

15. The hospital and medical staff has informed parents that there is nothing else that can be done, and that they must disconnect the baby from any and all life-support system, even though the baby has been in the hospital only 6 days.

16. The Plaintiffs believe the baby has a chance to survive this emergency, and see encouraging signs, and hold hope that a miracle will happen and simply need time.

17. The minor's heart is beating on its own and stable.

18. The lungs are cleared from any fluid, but he is still on a ventilator.

19. The baby is not showing any active brain activity, and so doctors believe that is sufficient to make the decision to declare the baby "deceased" and disconnect the minor from life support systems; but the Plaintiffs disagree, and believe it is too soon.

20. The Plaintiffs believe that the TCH and medical staff are rushing to make a decision without giving the Plaintiffs due process of law and a real opportunity to recover, especially since it has been only 5 days since the accident.

21. The undersigned attorney, Kevin Acevedo, spoke to a medical doctor at approximately 9:15pm and was informed that the TCH is either going to transfer the minor to a hospital in San Antonio, or a final brain wave test will be performed in order to determine if the minor is deceased.

22. The doctor indicated that TCH believes they have the authority to perform the final brain wave test, EVEN OVER THE PARENTS WISHES OR CONSENT.

23. The parents have not consented to any additional brain wave tests, and have informed hospital staff.

24. If the TCH and or the medical staff goes forward with the final brain wave test, and it determines the baby is clinically "deceased," then the Plaintiffs fear the minor will be immediately disconnected from life support, causing the baby's heart to stop beating and the other vital organs to slowly stop functioning, effectively euthanizing the minor, causing irreparable harm to them.

25. The TCH medical staff has not submitted the case to an independent body, such as an ethical committee, for final evaluation and determination.

26. The TCH medical staff has not given the parents proper due process, including reasonable notice, of when the minor will be disconnected from life-supporting systems.

27. The Plaintiffs are convinced that the Defendants are simply rushing to make a decision, without following the proper legal safeguards and procedures required under the law.

28. The TCH medical doctors have informed the Plaintiffs that they believe there is no duty to submit the final decision to an ethical committee or any other independent oversight body, before the minor is declared deceased or disconnected from life support systems.

29. If the Defendants are incorrect in their appreciation of the proper procedure, and move ahead with their intentions, then the minor's life is in danger and no independent body can pass judgment over their decision AS TO WHETHER THE PROCESS IS CORRECT; to be clear, not as to their medical criteria, but as the PROPER and DUE PROCESS that may required or they may be ignoring in this particular circumstances.

30. The Court should intervene, and issue an emergency order, to stop the TCH medical doctors from proceeding further and disconnecting the minor, until it can be determined that the proper procedure is being followed. Or else, true irreparable harm could befall on the child and parents.

## VI. CONDITIONS PRECEDENT

31. All conditions precedent to the filing of this lawsuit have been satisfied, waived, or otherwise performed.

### **FIRST CAUSE OF ACTION: VIOLATION OF DUE PROCESS, 42 U.S.C. §1983**

32. Plaintiffs incorporate all of the allegations in the proceeding paragraphs as set forth here in full.

33. The Court of Appeals has recently held that the decision to withdraw life-sustaining medical care from a desperately ill child is one that should rarely involve the courts, but "courts should be available to assist in decision making when an impasse is reached." *T.L. v. Cook Children's Med. Ctr.*, No. 02-20-00002-CV, 2020 WL 4260417 (Tex. App. July 24, 2020).

34. The Court of Appeals has further ruled that when a parent invokes Section 166.046 of the Texas Advanced Directives Act (TADA), Tex. Health & Safety Code Ann., §166.046, and the committee review process for an independent determination of whether a child should be disconnected from life-supporting systems, over the parents' objections, then due process can be violated under 42 U.S.C. §1983. *Id.*

35. The TCH has informed the undersigned that they believe the committee review process is not applicable in this case, and if that is not correct, as the Plaintiffs believe, then the Defendants have violated Plaintiffs' due process of law.

36. Plaintiffs believe that the TCH has taken it upon themselves to follow the process that they want, not the process that allows for truly independent evaluation and analysis.

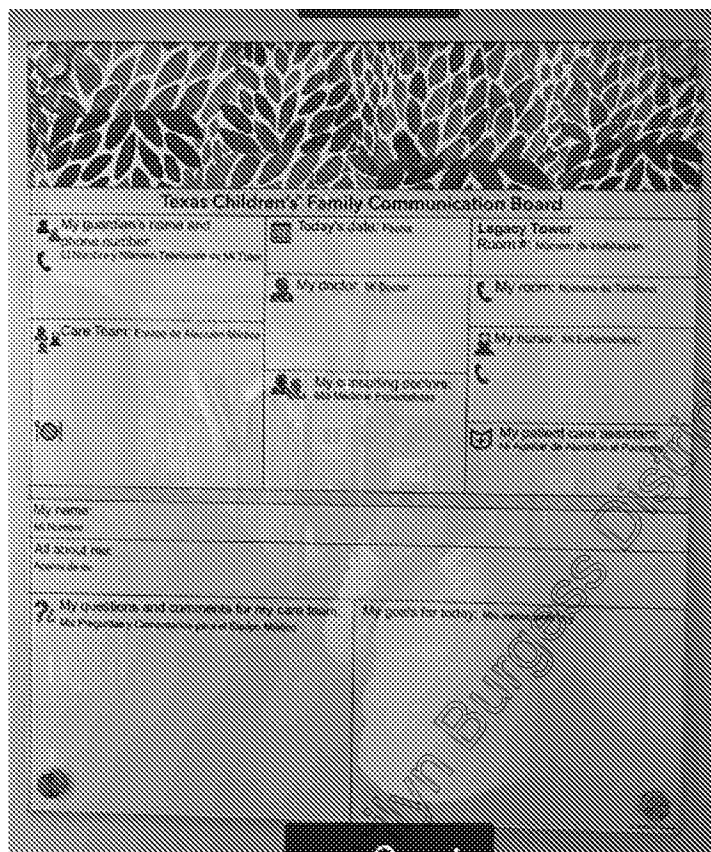
37. The TCH staff has not even informed the parents the names of the medical doctors who are treating their child, or the who are the decision-makers in this life-or-death matter.

38. The TCH has also decided it will not correct vital information in the child's medical record, including the minor's last name, which it has written with a "z" at the end, instead of an "s" and, moreover, the Date of Birth of the child is incorrect in the medical records as it incorrectly states 02/19/2020, instead of the child's correct date of birth which is 11/15/2019.

39. The TCH has refused to give parents any medical records or show them copies of the medical records, even though they have requested them.

40. Even the white board in the child's hospital room known as the "communication board" has purposefully been left in blank so as to keep them in the dark about the details of the treatment to their child, and to avoid transparency in the determinations that they are making.

Below is a picture of that chart, showing it in blank:



41. How can the Plaintiffs trust the Defendants when the lack of transparency by the hospital and staff is so grossly deficient and inept? The Plaintiffs do not trust the Defendants are following the law or the proper procedures, yet are rushing to make a life-or-death determination that will affect them irreparably and forever.

**SECOND CAUSE OF ACTION: INJUNCTIVE AND OTHER EQUITABLE RELIEF**

42. Plaintiff incorporates all other preceding paragraphs herein, for purposes of brevity and efficiency.

43. As part of the remedies sought, Plaintiffs hereby request injunctive and equitable relief against Defendants.

44. Plaintiffs have probable right to relief based on the egregious conduct of Defendants, of violation of due process of law and lack of transparency. As a result of

Defendants' acts, Plaintiffs are experiencing imminent harm. Plaintiffs' damages are permanent and irreparable in every way, as can be surmised from the facts stated above. Also, Plaintiffs have no other adequate remedy at law to prevent harm done to their family and their child, which is why injunctive and equitable relief is necessary in this case.

45. Plaintiffs are likely to succeed at a trial because the conduct of Defendants is so egregious and a blatant violation of law.

46. Plaintiffs request that a temporary injunction be entered, after holding evidentiary hearing, and after trial of this case, enter permanent injunction.

47. In addition, and out of an abundance of caution, Plaintiff requests the following equitable relief, among others:

A. Temporary Injunction

B. Permanent Injunction

### **THIRD CAUSE OF ACTION: DECLARATORY JUDGEMENT**

48. Plaintiffs incorporate all other preceding paragraphs herein, for purposes of brevity and efficiency.

49. Plaintiffs are entitled to declaratory judgment against Defendants.

50. Pursuant to the Texas Declaratory Judgement Act, Plaintiffs request that the Court issue a Declaratory Judgement regarding the rights of Plaintiffs, including:

A. That Defendants are violating Plaintiffs' due process under the law;

B. And that Defendants are relying on laws and procedures that are unconstitutional, as applied or on the laws face.



51. Relief is sought pursuant to sections 37.003, 37.004, and 37.005, as applicable, of Texas Civil Practice and Remedies Code. A declaratory judgement is needed to settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.

### **VII. ATTORNEY'S FEES**

52. Request is made for all costs and reasonable and necessary attorney's fees incurred by or on behalf of Plaintiff herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just, as provided by Chapter 38 of the Texas Civil Practice and Remedies Code.

### **XIII. JURY DEMAND**

53. Plaintiff hereby demands a trial by jury pursuant to Rule 213 of the Texas Rules of Civil Procedure.

### **IX. PRAYER**

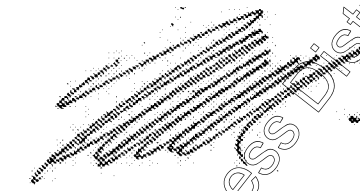
**WHEREFORE PREMISES CONSIDERED**, Plaintiffs respectfully pray that Defendants TEXAS CHILDREN'S HOSPITAL and doctors JOHN DOE and JANE DOE, be cited to appear and answer herein, and that upon final trial that Plaintiff be awarded a judgment against the Defendants for the following:

- a. Temporary Injunction
- b. Permanent Injunction
- c. Actual Damages
- d. Special Damages
- e. Exemplary Damages
- f. Other equitable relief, as pled above

- g. Prejudgment and post judgment interest at the maximum rate
- h. Attorney's Fees and Court Costs
- i. All other relief to which Plaintiff may be entitled at law or in equity, whether  
pled or unpled.

Respectfully submitted,

THE GONZALEZ LAW GROUP, PLLC



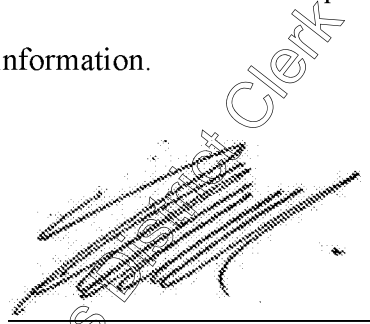
By: \_\_\_\_\_  
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ATTORNEYS FOR PLAINTIFFS

Unofficial Copy Office of Travis T. Egges District Clerk

**CERTIFICATE OF SERVICE**

I, Kevin Acevedo, hereby certify that today, September 30, 2020, a copy of the foregoing was served via email, fax, telephone and any other available and reasonable means upon the Defendant parties, at their best known address and contact information.

A handwritten signature in black ink, appearing to read 'Kevin Acevedo', is written over a horizontal line. The signature is somewhat stylized and overlaps with a diagonal watermark.

Kevin Acevedo  
Attorney for Plaintiff

Unofficial Copy Office of Marilyn Burgess Esq. Clerk