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10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES

13 JEANNE M. CAREY, an individual, by and
14 through her Guardian ad Litem, David Carey,

15 Plaintiff,

16 vs.

17 REGENTS OF THE UNIVERSITY OF
18 CALIFORNIA; STEVEN Y. CHANG, M.D.;
19 NADA QADIR, M.D.; RAJAN SAGGAR,
20 M.D.; RAMIN SALEHIRAD, M.D.;
21 KATHRYN H. MELAMED; TISHA S.
22 WANG, M.D.; NEAL WENGER, M.D.; and
23 DOES 1-100,

24 Defendants.

) Case No. 22STCV36750

) **EX PARTE APPLICATION OF**
) **PLAINTIFF FOR TEMPORARY**
) **RESTRAINING ORDER AND ORDER**
) **TO SHOW CAUSE RE PRELIMINARY**
) **INJUNCTION; MEMORANDUM OF**
) **POINTS AND AUTHORITIES**

) Date: November 23, 2022
) Time: 8:30 a.m.
) Dept: 68

) Complaint Filed: November 21, 2022

25 Plaintiff Jeanne Carey (“Plaintiff” or “Ms. Carey”) hereby applies ex parte to this Court
26 for a temporary restraining order and order to show cause re issuance of preliminary injunction
27 against defendants Regents of the University of California (collectively “Defendants”) and their
28 officers, directors, employees and agents, that will prohibit Defendants from disconnecting life

1 support instruments and/or impeding in any way the medical care being provided to Ms. Carey,
2 which is necessary for Ms. Carey to survive.

3 This Application is based upon the following grounds:

4 1. Defendants have engaged in wrongful conduct regarding the treatments
5 being provided to Ms. Carey.

6 2. Ms. Carey requires life support therapy to survive;

7 3. Ms. Carey is not brain dead by any definition of such term;

8 4. Ms. Carey will suffer irreparable harm if the injunction is not granted.

9 5. Ms. Carey is likely to prevail on the merits of her claims.

10 This Application is based upon the attached Memorandum of Points and Authorities, the
11 accompanying Declarations filed in support hereof, the pleadings and papers on file herein, and
12 such other and further evidence and argument as the Court may consider.

13 Notice of this Application pursuant to California Rule of Court 3.1203 has been given as
14 set forth in the Declaration of Bradley Kramer, M.D., Esq. Ms. Carey is informed and believes
15 that counsel for Defendants will oppose the Application.

16
17 DATED: November 22, 2022

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18
19
20 By: 
21 BRADLEY I. KRAMER, M.D., ESQ.
Attorneys for Plaintiff JEANNE CAREY

1 **I. INTRODUCTION**

2 Plaintiff Jeanne Carey seeks immediate issuance of a Temporary Restraining Order to
3 enjoin and restrain Defendants from removing or restricting care to Ms. Carey, which is
4 necessary for her survival.

5 By way of background, on or about on or about October 3, 2016, a California General
6 Durable Power of Attorney was executed by Ms. Carey, granting her son, David Carey, Power of
7 Attorney over all of Ms. Carey’s health care decisions, including but not limited to end of life
8 care.

9 On or about October 27, 2020, Mr. Carey, on behalf of his mother (Ms. Carey), and in his
10 capacity as Power of Attorney, executed a Physician Orders for Life-Sustaining Treatment
11 (POLST) on Ms. Carey’s behalf, indicating that Ms. Carey was to be provided with Full
12 Treatment by all medically effective means under any situation, including Cardiopulmonary
13 Resuscitation (CPR) and full respiratory support, including intubation.

14 On or about October 13, 2022, Ms. Carey arrived at UCLA Medical Center after being
15 driven to UCLA directly from Cedars Sinai Medical Center by her son, David. Upon arrival to
16 UCLA, Ms. Carey was intubated and remains such as of the present date.

17 On or about November 15, 2022, a determination was made by, among other physicians,
18 Neil Wenger, M.D., chairman of the Ethics Department, that “comfort measures” would be
19 implemented for Ms. Carey as soon as November 25, 2022, rather than “full code” treatment. By
20 doing so, UCLA would not attempt to resuscitate Ms. Carey if the need were to arise, would not
21 re-intubate her if the need were to arise, and would stop all supportive measures such as
22 suctioning, giving feeds, medications, and water, all of which is in contravention of the above-
23 referenced POLST.

24 As of November 18, 2020, UCLA has ceased taking lab tests to monitor Ms. Carey’s
25 condition.

26 In or around the end of October, 2022 or early November, 2022, a brain MRI was
27 performed which demonstrated that Ms. Carey was not brain dead. Conversely, while Ms. Carey
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1 is currently intubated and breathes with the assistance of a ventilator, she is able to follow
2 commands and is responsive to her son.

3 Within the past week, Dr. Neil Wenger (chairman of the Ethics Committee), Dr. Tisha
4 Wang, M.D., Dr. Nada Qadir, and/or Dr. Steven Chang have indicated to Ms. Carey's son (and
5 POA) that they will not agree to re-intubate Ms. Carey if she fails a breathing trial, nor are they
6 willing to maintain her Full Code status. Rather, one or more of the above physicians has
7 indicated UCLA's intent to change her POLST to Comfort Measures only, in violation of Cal.
8 Probate Code §4735.

9 On or about November 21, 2022, UCLA personnel indicated to Ms. Carey's son that a Do
10 Not Resuscitate (DNR) order is in place and that no further efforts to monitor her medical
11 condition will be made, including but not limited to laboratory testing. Moreover, Ms. Carey's
12 son was told on November 21, 2022 by his mother's nurse that on November 25, 2022 (10 days
13 after the Ethics Committee's meeting on November 15, 2022), Ms. Carey will be extubated and
14 placed on oxygen via high flow nasal canula, and will be monitored thereafter, however, if such
15 extubation fails or she experiences respiratory distress, she will not be reintubated. Dr. Chang
16 and Dr. Wang have also indicated that they will not place a tracheostomy before or after
17 November 25, 2022, nor are they willing to perform any trial extubations, as previously
18 discussed between Ms. Carey's son and Drs. Qadir and Wang.

19 As of the date of this filing, it is Plaintiff's understanding and opinion that UCLA is
20 imminently planning to disconnect mechanical ventilation, withhold vasopressor medications,
21 withhold dialysis if necessary, and withhold laboratory testing or other investigatory testing, and
22 instead will be transitioning Ms. Carey to strictly "comfort care" measures in the coming week.
23 Should UCLA be allowed to withhold such medical treatment, Ms. Carey will almost certainly
24 die. Instead, Ms. Carey and/or her family should be given sufficient time to find another hospital
25 to provide for her life-sustaining medical needs (such as Barlow Respiratory Hospital), and
26 should be given an opportunity for a trial extubation and/or tracheostomy placement if
27 unsuccessful.

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1 There is no dispute that Ms. Carey’s POLST is in effect, and legally binding.

2 Pursuant to California Probate Code Section 4735, “[A] health care provider or health
3 care institution may decline to comply with an individual health care instruction or health care
4 decision that requires medically ineffective health care or health care contrary to generally
5 accepted health care standards applicable to the health care provider or institution. However,
6 Pursuant to California Probate Code Section 4736, a health care provider or health care
7 institution that declines to comply with an individual health care instruction or health care
8 decision shall do all of the following:

9 (a) Promptly so inform the patient, if possible, and any person then authorized to make
10 health care decisions for the patient.

11 (b) Unless the patient or person then authorized to make health care decisions for the
12 patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the
13 patient to another health care provider or institution that is willing to comply with the instruction
14 or decision.

15 (c) Provide continuing care to the patient until a transfer can be accomplished or until it
16 appears that a transfer cannot be accomplished. In all cases, appropriate pain relief and other
17 palliative care shall be continued.

18 **Regents has failed to comply with the above restrictions.**

19 Accordingly, and to avoid a continuing and irreparable harm, Ms. Carey respectfully
20 requests that this Court issue a temporary restraining order and order to show cause re
21 preliminary injunction that will enjoin Defendants from restricting or removing any life
22 sustaining treatments being provided to Ms. Carey.

23 **II. STATEMENT OF FACTS**

24 **A. THE IRREPARABLE HARM TO MS. CAREY AND NEED FOR**
25 **IMMEDIATE RELIEF.**

26 As of the date of this filing, Regents/UCLA is imminently planning to disconnect
27 mechanical ventilation, withhold vasopressor medications, withhold dialysis if necessary, and
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1 withhold laboratory testing or other investigatory testing, and instead will be transitioning Ms.
2 Carey to strictly “comfort care” measures in the coming week. Should UCLA be allowed to
3 withhold such medical treatment, Ms. Carey will almost certainly die, possibly due to over-
4 sedation and/or suffocation. Instead, Jeanne Carey and/or her family should be given sufficient
5 time to find another hospital to provide for her life-sustaining medical needs (such as Barlow
6 Respiratory Hospital), and should be given an opportunity for a trial extubation and/or
7 tracheostomy placement if unsuccessful.

8 For all of the reasons described herein, Jeanne Carey is entitled to temporary,
9 preliminary, and permanent injunctive relief, to prohibit and enjoin Defendants from: (1)
10 disconnecting mechanical ventilation, (2) withholding vasopressor medications, (3) withholding
11 dialysis if necessary, (4) withholding laboratory testing or other investigatory testing, or (5)
12 transitioning Ms. Carey to only “comfort care” measures in the coming week. Carey Decl, ¶1-
13 10.

14 **III. A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**
15 **IS APPROPRIATE IN THIS MATTER**

16 Code of Civil Procedure Section 526 provides in pertinent part:

17 (a) An injunction may be granted in the following cases:

18 (1) When it appears by the complaint that the plaintiff is entitled to the
19 relief demanded, and the relief, or any part thereof, consists in restraining
20 the commission or continuance of the act complained of, either for a
21 limited period or perpetually.

22 (2) When it appears by the complaint or affidavits that the commission or
23 continuance of some act during the litigation would produce waste, or
24 great or irreparable injury, to a party to the action.

25 (3) When it appears, during the litigation, that a party to the action is
26 doing, or threatens, or is about to do, or is procuring or suffering to be
27 done, some act in violation of the rights of another party to the action
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1 respecting the subject of the action, and tending to render the judgment
2 ineffectual.

3 (4) When pecuniary compensation would not afford adequate relief.

4 (5) Where it would be extremely difficult to ascertain the amount of
5 compensation which would afford adequate relief....

6 As set forth above, and in more detail in the supporting declarations filed herewith, Ms.
7 Carey has established that this is an appropriate matter for an injunction.

8 The California Supreme Court in Robbins v Superior Court (1985) 38 Cal. 3d 199 stated:

9 “The trial courts consider two interrelated questions in deciding whether to
10 issue a preliminary injunction: 1) are the plaintiffs likely to suffer a greater
11 injury from a denial of the injunction than the defendants are likely to
12 suffer from its grant; and 2) is there a reasonable probability that the
13 plaintiffs will prevail on the merits. [Citations omitted] ‘[By] balancing
14 the respective equities of the parties, [the court] concludes that, pending a
15 trial on the merits, the defendant should or that he should not be restrained
16 from exercising the right claimed by him.’” [Citations omitted.] Id., 38
17 Cal. 3d at 206.

18 In deciding whether to issue a preliminary injunction the court weighs two interrelated
19 factors: the likelihood the moving party ultimately will prevail on the merits, and the relative
20 interim harm to the parties from the issuance or nonissuance of the injunction. ReadyLink
21 Healthcare v. Cotton (2005) 126 Cal. App. 4th 1006.

22 An *ex parte* hearing concerning a TRO, however, “is no more than a review of the
23 conflicting contentions to determine whether there is a sufficiency of evidence to support the
24 issuance of an interlocutory order to keep the subject of litigation in *status quo* pending a full
25 hearing to determine whether the applicant is entitled to a preliminary injunction. The issuance
26 of a TRO is not a determination of the merits of the controversy. All that is determined is
27 whether the TRO is necessary to maintain the status quo pending the noticed hearing on the
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1 application for preliminary injunction.” Landmark Holding Group, Inc. v. Superior Court (1987)
2 193 Cal. App. 3d 525.

3 In this case, for the reasons set forth above and in the supporting declarations Ms. Carey
4 has established that, this court should maintain the *status quo* pending a hearing on the
5 preliminary injunction and that it is entitled to a preliminary injunction.

6 **A. Ms. Carey Will Suffer Irreparable Injury If The Injunction Is Denied**

7 **Whereas Defendants Will Suffer No Harm If The Injunction Is Granted.**

8 Ms. Carey will suffer significant irreparable harm if the requested TRO is denied. Should
9 Regents be allowed to restrict care to Ms. Carey, Ms. Carey will die.

10 The concept of “irreparable injury” was discussed in Wind v. Herbert (1960) 186 Cal.
11 App. 2d 276:

12 “The concept of ‘irreparable injury’ which authorized the interposition of
13 a court of equity by way of injunction does not concern itself entirely with
14 injury beyond the possibility of repair or beyond possible compensation
15 and damages.... ‘The term “irreparable injury” ... means that species of
16 damage whether great or small, that ought not to be submitted to on the
17 one hand or inflicted on the other.” Id., 186 Cal. App. 2d at 285
18 (emphasis in original).

19 There is no reason that Ms. Carey’s life should be placed in jeopardy before this Court
20 has an opportunity to rule on the requested preliminary injunction. It is clearly a “species of
21 damage..._that ought not to be submitted to on the one hand or inflicted on the other.”

22 On the other hand, Defendants will not suffer any harm if the TRO is granted and the
23 *status quo* is maintained, they will simply continue to supply the necessary services for Ms.
24 Carey to survive, as they have been doing for some time, and for which they will be paid in full.

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B. Ms. Carey Has A Strong Likelihood Of Success On The Merits Of Her Claims.

Based on the medical records, it is clear that Ms. Carey has requested full treatment. Should Defendants restrict her care, they will be in violation of Ms. Carey’s end of life directive.

Based on the above, it is clear that Ms. Carey not only has a likelihood of prevailing on the merits of its claims, but has a strong likelihood of prevailing.

Accordingly, this Court should issue the concurrently lodged proposed Temporary Restraining Order enjoining Defendants from restricting or removing in any way the medical care and treatment being provided to Ms. Carey, including but not limited to mechanical ventilation, vasopressor medications, dialysis if necessary, and laboratory testing or other investigatory testing.

IV. CONCLUSION

For each of the foregoing reasons, Ms. Carey respectfully requests that this Court immediately issue a Temporary Restraining Order and Order to Show Cause re Preliminary Injunction in the form lodged concurrently herewith.

DATED: November 22, 2022

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By: 
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