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GROUNDS FOR OBJECTION: EVIDENCE 1 **RULING ON OBJECTED TO: OBJECTION:** 2 3 A. OBJECTIONS TO DECLARATION OF D. ALAN SHEWMON, M.D. 4 The declaration of D. Alan Shewmon, 1. Declaration of D. Sustained: M.D., and opinions stated therein are 5 Alan Shewmon, M.D., Overruled: inadmissible. Dr. Shewmon's opinion $\P 1-71$ 6 that McMath does not fulfill the accepted medical standards for 7 pediatric brain death is based on 8 speculation and matters that reputable experts in his field would not 9 normally rely upon in making a determination of brain death. The 10 declaration should be excluded in its 11 entirety for the following reasons: 12 Improper legal conclusion. Dr. Shewmon failed to apply the 13 appropriate legal and medical 14 standards for determining brain death under California's Uniform -15 Determination of Death Act 16 ("CUDDA"). There is no substitute to the accepted medical standards for 17 determining brain death that are set forth in the Guidelines. Video 18 recordings, the onset of puberty, 19 observation and select imaging studies are not a substitute for the 20 accepted medical standards for 21 determining brain death. The matters relied upon by Dr. Shewmon are not 22 the proper basis for forming an opinion on brain death under the 23 CUDDA. A determination of brain 24 death can only be made by physicians who are familiar with the patient's 25 complete medical history, and have performed the requisite neurological 26 examination and apnea testing in 27 accordance with the specific parameters set forth per the 28 Guidelines. Clinical determinations

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1 of brain death require two examinations by two different 2 physicians and two apnea tests. (Health and Safety Code § 7180 (a); 3 Evid. Code §§ 801-803; Declarations 4 of Thomas A. Nakagawa, M.D., and Sanford Schneider, M.D., filed in 5 support of Defendants' Motion for 6 Summary Adjudication; Supplemental Declaration of Sanford Schneider, 7 M.D.) 8 Opinion conflicts with California 9 law. Dr. Shewmon's opinion that McMath is not dead is contrary to 10 California law which requires that brain death be determined by the 11 accepted medical standards set forth 12 in the Guidelines. McMath has not undergone a brain death evaluation 13 pursuant to the accepted medical 14 standards in the Guidelines since December 2013. (Health and Safety 15 Code § 7180(a); Declarations of Thomas A. Nakagawa, M.D., and 16 Sanford Schneider, M.D., filed in 17 support of Defendants' Motion for Summary Adjudication; Supplemental 18 Declaration of Sanford Schneider, 19 M.D.) 20 Improper basis of opinion. The opinion that McMath is not dead is (1) 21 not based on a matter of a type on 22 which an expert may reasonably rely. (2) is based on reasons unsupported 23 by the material on which the expert relies, and (3) is speculative. (Sargon 24 Enterprises, Inc. v. University of 25 Southern California (2012) 55 Cal.4th 747, 771-772; Evid. Code §§ 720, 26 800-803; Declarations of Thomas A. Nakagawa, M.D., and Sanford 27 Schneider, M.D., filed in support of 28 Defendants' Motion for Summary Adjudication; Supplemental

1 Declaration of Sanford Schneider, M.D; Supplemental Decl. of Jennier 2 Still, Esq.) 3 Lack of qualification. Dr. 4 Shewmon's theories on brain death, i.e., that brain death is a "legal 5 fiction" and should not be a legal criteria for death, render him 6 unreliable, unqualified and unable to 7 provide impartial and unbiased opinions as to whether McMath is 8 dead. Dr. Shewmon's lack of 9 qualification and impartiality is evidenced by the fact that he opines 10 that McMath is no longer brain dead even though the accepted medical 11 standards for assessing brain death 12 have not been applied to McMath since December 2013. Dr. Shewmon 13 is incapable of providing an opinion 14 that conforms with California law. (Sargon Enterprises, Inc. v. 15 University of Southern California (2012) 55 Cal.4th 747; Health and 16 Safety Code § 7180 (a); Evid. Code 17 §§ 801-803; Declarations of Thomas A. Nakagawa, M.D., and Sanford 18 Schneider, M.D., filed in support of Defendants' Motion for Summary 19 Adjudication; Supplemental 20 Declaration of Sanford Schneider, M.D; Still Decl., ¶¶ 13-15, and Ex. I, 21 J, and K.) 22 Unreliable and unaccepted 23 methodology. Dr. Shewmon's proposition in this case, i.e., that brain 24 death can be assessed without 25 application of the accepted medical standards set forth in the Guidelines, 26 is not accepted by reputable specialists in pediatric brain death. 27 Dr. Shewmon's methodology for 28 assessing McMath's brain function, i.e., review of unauthenticated video

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recordings, the alleged onset of puberty, and select medical imaging studies, fails the test for proper expert evidence. Such matters are not a substitute for the accepted medical standards for assessing brain death per the CUDDA and the Guidelines. A determination of brain death can only be made by physicians who are familiar with the patient's complete medical history, have performed the requisite brain death examination and performed an apnea test. Clinical determinations of brain death require two examinations by two different physicians and two apnea tests. (Sargon Enterprises, Inc. v. University of Southern California (2012) 55 Cal.4th 747; Health and Safety Code § 7180 (a); Evid. Code §§ 801-803; Declarations of Thomas A. Nakagawa, M.D., and Sanford Schneider, M.D., filed in support of Defendants' Motion for Summary Adjudication; Supplemental Declaration of Sanford Schneider, M.D.

Failure to comport with the generally accepted professional standards. No reputable and qualified physician in pediatric or adult brain death would reasonably rely on the matters that Dr. Shewmon relied upon in opining that McMath is not dead. (*Id*)

Speculative matters Video recordings, the alleged onset of puberty, observation, and select imaging studies, are not a proper basis for an expert's opinion in determining brain death in accordance with the CUDDA. Accordingly, any opinion based on such irrelevant and speculative matters is invalid. (Sargon

1 Enterprises, Inc. v. University of Southern California (2012) 55 Cal.4th 2 747, 771-772; Evid. Code §§801 802; Declarations of Thomas A. 3 Nakagawa, M.D., and Sanford 4 Schneider, M.D., filed in support of Defendants' Motion for Summary 5 Adjudication: Supplemental 6 Declaration of Sanford Schneider, M.D.) 7 Lack of authentication. Dr. 8 Shewmon's opinion that McMath is 9 not dead is based materials that are not properly authenticated. (Evid. 10 Code §§ 250, 1400, 1401.) Plaintiffs failed to authenticate the video 11 recordings or any other matters relied 12 on them in support of the contention that McMath is not dead. Plaintiffs 13 failed to identify the individuals who 14 took the video recordings, the dates of the recordings, the location of the 15 recordings, and who else was present in the room. No one with personal 16 knowledge of the recordings has 17 attested that the recordings are not altered, fraudulent, etc. (Supplemental 18 Decl. of Jennifer Still, Esq.) 19 Hearsay. Dr. Shewmon's opinion 20 that McMath is not dead is based on hearsay rather than the accepted 21 medical standards for determining 22 brain death. The video recordings and statements therein are hearsay because 23 they were made by someone other than Dr. Shewmon. (Evid. Code §§ 24 1200, et seq.; Supplemental 25 Declaration of Jennifer Still, Esq.) 26 Opinion lacks reasoned explanation. Dr. Shewmon failed to 27 explain how his opinion that McMath 28 is not brain dead comports with the CUDDA's requirement that brain

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1		death be determined solely by the	
2		accepted medical standards in the Guidelines. (See Jennings v. Palomar	
, 3		Pomerado Health Systems, Inc.	
4	† ·	(2003) 114 Cal.App.4 th 1108, 1117; Supplemental Declaration of Sanford	
5		Schneider, M.D.)	
6		Irrelevant. Given the complete	
7		absence of any showing that McMath has undergone a brain death	
. 8	·	evaluation pursuant to the accepted	
9		medical standards in the <u>Guidelines</u> as required by the CUDDA, Dr.	
10		Shewmon's opinion that McMath is	
11		not dead is lacks relevance. (Evid. Code § 350.)	
12		The purported 49 different video	
13		recordings that Dr. Shewmon relied upon are not in evidence. (See	
14	:	Shewmon Decl., ¶ 13.) Plaintiffs did	
15		not produce 49 different video recordings to defendants. There is no	
16		where near 49 different video	
17		recordings on file with the court. (See Still Decl., ¶ 17 and Ex. M;	
18		Supplemental Declaration of Jennifer Still.)	
19			
20		Lack of personal knowledge. Dr. Shewmon was not present when the	
21		video recordings were made. Dr. Shewmon admits that McMath	
22		demonstrated no intermittent	
23		responsive movements during his 8 hour observation of her on December	,
24		2, 2014 (Evid. §§ 403 and 702(a).)	
25		-	
26	2. Dr. Shewmon's opinion that McMath no	Each of the objections set forth in No. 1, above, are fully incorporated	Sustained:
27	longer fulfills the	herein.	Overruled:
_{LP} 28	accepted medical standards for determining		
16 TL	211111111111111111111111111111111111111		,

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1 2	brain death, at ¶¶ 6, 25, 29, 38, 55, 56, and 57.	·	
3 4 5	3. Dr. Shewmon's opinion that McMath is intermittently responsive at ¶¶ 6, 18, 19, 20, 21, 22, 23, 24, 25, 38, 40, and 56	Each of the objections set forth in No. 1, above, are fully incorporated herein.	Sustained: Overruled:
6 7 8 9 10	4. Dr. Shewmon's reliance on McMath's family members' impressions of McMath's responsiveness, at ¶¶ 7, 8, and 9.	Each of the objections set forth in No. 1, above, are fully incorporated herein.	Sustained:
11 12 13	5. Dr. Shewmon's reliance on 49 video recordings of McMath, at ¶¶ 10-27.	Each of the objections set forth in No. 1, above, are fully incorporated herein.	Sustained:
14 15 16 17 18	6. Dr. Shewmon's reliance on the imaging studies and other testing performed on McMath at University Hospital on September 26, 2014, at \$\\$\\$30-37.\$	Each of the objections set forth in No. 1, above, are fully incorporated herein.	Sustained:
19 20 21	7. Dr. Shewmon's reliance on McMath's alleged onset of puberty, at ¶ 50.	Each of the objections set forth in No. 1, above, are fully incorporated herein.	Sustained:
22232425	8. Dr. Shewmon's reliance on McMath's continued biological functions, at ¶¶ 51-54.	Each of the objections set forth in No. 1, above, are fully incorporated herein.	Sustained:
26 27 28	9. Dr. Shewmon's opinion that the video evidence of responsiveness and puberty warrents "giving	Each of the objections set forth in No. 1, above, are fully incorporated herein.	Sustained:

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1 life the benefit of the doubt", at ¶ 57. 2 10. Dr. Shewmon's Improper basis of opinion. The Sustained: 3 opinion that McMath is not dead is (1) disagreement with the Overruled: 4 accepted medical not based on a matter of a type on which an expert may reasonably rely, standards for determining 5 brain death and his (2) is based on reasons unsupported by the material on which the expert opinion that the 6 relies, and (3) is speculative. (Sargon Guidelines are fallible, at ¶42, 46, and 47. Enterprises, Inc. v. University of Southern California (2012) 55 Cal.4th 8 747, 771-772; Evid. Code §§ 720, 9 800-803; Declarations of Thomas A. Nakagawa, M.D., and Sanford 10 Schneider, M.D., filed in support of Defendants' Motion for Summary 11 Adjudication; Supplemental 12 Declaration of Sanford Schneider, M.D.) 13 **Opinion conflicts with California** 14 law. Dr. Shewmon's opinion that 15 McMath is not dead is contrary to California law which requires that 16 brain death be determined by the 17 accepted medical standards set forth in the Guidelines. McMath has not 18 undergone a brain death evaluation pursuant to the accepted medical 19 standards in the Guidelines since 20 December 2013. (Health and Safety Code § 7180(a); Declarations of 21 Thomas A. Nakagawa, M.D., and 22 Sanford Schneider, M.D., filed in support of Defendants' Motion for 23 Summary Adjudication; Supplemental Declaration of Sanford Schneider. 24 M.D.) 25 Unreliable and unaccepted 26 methodology. Dr. Shewmon's proposition in this case, i.e., that brain 27 death can be assessed without 28 application of the accepted medical standards set forth in the Guidelines,

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1 is not accepted by reputable specialists in pediatric brain death. 2 Dr. Shewmon's methodology for assessing McMath's brain function, 3 i.e., review of unauthenticated video 4 recordings, the alleged onset of puberty, and select medical imaging 5 studies, fails the test for proper expert 6 evidence. Such matters are not a substitute for the accepted medical 7 standards for assessing brain death per the CUDDA and the Guidelines. A 8 determination of brain death can only 9 be made by physicians who are familiar with the patient's complete 10 medical history, have performed the 11 requisite brain death examination and performed an apnea test. Clinical 12 determinations of brain death require two examinations by two different 13 physicians and two apnea tests. 14 (Sargon Enterprises, Inc. v. University of Southern California 15 (2012) 55 Cal.4th 747; Health and Safety Code § 7180 (a); Evid. Code 16 §§ 801-803; Declarations of Thomas 17 A. Nakagawa, M.D., and Sanford Schneider, M.D., filed in support of 18 Defendants' Motion for Summary 19 Adjudication; Supplemental Declaration of Sanford Schneider, 20 M.D.) 21 Failure to comport with the 22 generally accepted professional standards. No reputable and 23 qualified physician in pediatric or 24 adult brain death would reasonably rely on the matters that Dr. Shewmon 25 relied upon in opining that McMath is not dead. (Id) 26 Speculative matters. Video 27 recordings, the alleged onset of 28 puberty, observation, and select imaging studies, are not a proper basis

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for an expert's opinion in determining brain death in accordance with the CUDDA. Accordingly, any opinion based on such irrelevant and speculative matters is invalid. (Sargon Enterprises, Inc. v. University of Southern California (2012) 55 Cal.4th 747, 771-772; Evid. Code §§801 802; Declarations of Thomas A. Nakagawa, M.D., and Sanford Schneider, M.D., filed in support of Defendants' Motion for Summary Adjudication; Supplemental Declaration of Sanford Schneider, M.D.)

Lack of authentication. Dr.

Shewmon's opinion that McMath is not dead is based materials that are not properly authenticated. (Evid. Code §§ 250, 1400, 1401.) Plaintiffs failed to authenticate the video recordings or any other matters relied on them in support of the contention that McMath is not dead. Plaintiffs failed to identify the individuals who took the video recordings, the dates of the recordings, the location of the recordings, and who else was present in the room. No one with personal knowledge of the recordings has attested that the recordings are not altered, fraudulent, etc. (Supp. Decl. of Jennifer Still, Esq.)

Lack of personal knowledge. Dr.

Shewmon was not present when the video recordings were made. Dr. Shewmon admits that McMath demonstrated no intermittent responsive movements during his 8 hour observation of her on December 2, 2014 (Evid. §§ 403 and 702(a).)

1	·	Hearsay. Dr. Shewmon's opinion	
2		that McMath is not dead is based on	
3		hearsay rather than the accepted	
		medical standards for determining brain death. The video recordings and	
4		statements therein are hearsay because	
5		they were made by someone other	
6		than Dr. Shewmon. (Evid. Code §§	
7		1200, et seq.)	
		Opinion lacks reasoned	
8		explanation. Dr. Shewmon failed to	
9		explain how his opinion that McMath is not brain dead comports with the	
10		CUDDA's requirement that brain	
11		death be determined solely by the	
		accepted medical standards in the Guidelines. (See Jennings v. Palomar	
12	1	Pomerado Health Systems, Inc.	
13		(2003) 114 Cal.App.4 th 1108, 1117;	
14		Supplemental Declaration of Sanford Schneider, M.D.)	
15		· ,	
16		Irrelevant. Given the complete	· ·
		absence of any showing that McMath has undergone a brain death	
17		evaluation pursuant to the accepted	
18		medical standards in the <u>Guidelines</u> as	
19		required by the CUDDA, Dr. Shewmon's opinion that McMath is	
20	· ·	not dead is lacks relevance. (Evid.	
		Code § 350.)	
21	11. Dr. Shewmon's	Lack of authentication and proper	Sustained:
22	reliance on peer review	foundation. The dozens of articles	Or compile de
23	articles and other materials that have not	that Dr. Shewmon cites have not been authentication or properly submitted	Overruled:
24	been authenticated or	to this court as part of the records in	
25	submitted to the court, at	support of plaintiffs' opposition.	
26	¶¶43-49, and 60-71.	Irrelevant	
27		Reliance on speculative matters	
28		<u>Hearsay</u>	
ue			

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1 Materials not in evidence 2 12. Dr. Shewmon's Sustained: **Opinion lacks reasoned** 3 defense of his minority explanation. Dr. Shewmon failed to Overruled: explain how his opinion that McMath perspective on brain death 4 and why his views on is not brain dead comports with the brain death should CUDDA's requirement that brain 5 supplant the medical death be determined solely by the 6 consensus that a accepted medical standards in the determination of brain Guidelines. (See Jennings v. Palomar 7 Pomerado Health Systems, Inc. death under the accepted 8 (2003) 114 Cal.App.4th 1108, 1117; medical standards is the death of that individual, at Supplemental Declaration of Sanford 9 Schneider, M.D.) ¶¶58-71 10 Unreliable and unaccepted 11 methodology. Dr. Shewmon's proposition in this case, i.e., that brain 12 death can be assessed without application of the accepted medical 13 standards set forth in the Guidelines, 14 is not accepted by reputable specialists in pediatric brain death. 15 Dr. Shewmon's methodology for 16 assessing McMath's brain function, i.e., review of unauthenticated video 17 recordings, the alleged onset of puberty, and select medical imaging 18 studies, fails the test for proper expert 19 evidence. Such matters are not a substitute for the accepted medical 20 standards for assessing brain death per 21 the CUDDA and the Guidelines. A determination of brain death can only 22 be made by physicians who are familiar with the patient's complete 23 medical history, have performed the 24 requisite brain death examination and performed an apnea test. Clinical 25 determinations of brain death require two examinations by two different 26 physicians and two apnea tests. 27 (Sargon Enterprises, Inc. v. University of Southern California 28 (2012) 55 Cal.4th 747; Health and

1 Safety Code § 7180 (a); Evid. Code §§ 801-803; Declarations of Thomas 2 A. Nakagawa, M.D., and Sanford Schneider, M.D., filed in support of 3 Defendants' Motion for Summary 4 Adjudication; Supplemental Declaration of Sanford Schneider, 5 M.D.) 6 Failure to comport with the 7 generally accepted professional standards. No reputable and 8 qualified physician in pediatric or 9 adult brain death would reasonably rely on the matters that Dr. Shewmon 10 relied upon in opining that McMath is not dead. (Id) 11 12 Speculative matters. Dr. Shewmon's opinions on brain death are 13 inconsistent with the mainstream consensus. Opinion based on such 14 irrelevant and speculative matters is 15 invalid. (Sargon Enterprises, Inc. v. University of Southern California 16 (2012) 55 Cal.4th 747, 771-772; Evid. 17 Code §§801 802; Declarations of Thomas A. Nakagawa, M.D., and 18 Sanford Schneider, M.D., filed in support of Defendants' Motion for 19 Summary Adjudication; Supplemental 20 Declaration of Sanford Schneider, M.D.21 Lack of authentication and 22 foundation. Dr. Shewmon has not 23 established that his opinions on brain death should supplant California law 24 and the accepted medical standards. 25 OBJECTIONS TO DECLARATION OF ALIETA ECK, M.D. B. 26 The declaration of Alieta Eck, M.D., Sustained: 13. Declaration of Alieta 27 and opinions stated therein are Eck, M.D., ¶¶ 1-8. Overruled: inadmissible. The declaration should 28

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1 be excluded in its entirety for the following reasons: 2 Lack of Expert Qualification. Dr. 3 Eck's declaration does not set forth 4 the requisite showing that she has the specialized knowledge, skill, 5 experience, training, or education sufficient to qualify her as an expert 6 on the subject to which her testimony 7 relates. (Evid. Code §§ 720, 801-803.) Defendants have established, through 8 the expert declarations of Dr. 9 Nakagawa and Dr. Schneider that, under the CUDDA, a determination of 10 brain death can only be made by physicians with special education, 11 training, knowledge and expertise in 12 the legal and medical requirements for determining brain death in the state of 13 California. Brain death is a clinical 14 assessment made by a qualified physician in a standardized approach 15 that relies on a clinical examination and apnea testing with a known cause 16 of coma. Dr. Eck has no education, 17 training or expertise in assessing brain death. She failed to demonstrate that 18 she has any knowledge as to how 19 brain death is declared in California, e.g., the CUDDA, the accepted 20 medical standards, the Guidelines, etc. Dr. Eck failed to provide a curriculum 21 vitae that demonstrates her education, 22 training, and experience in any matters pertaining to brain death/brain 23 function. (Declarations of Thomas A. Nakagawa, M.D., and Sanford 24 Schneider, M.D., filed in support of 25 Defendants' Motion for Summary Adjudication; Supplemental 26 Declaration of Sanford Schneider, 27 M.D.) 28 Lack of foundation. Dr. Eck failed to demonstrate that she has reviewed and

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1		is familiar with McMath's medical
2		history, the CUDDA, and the
	,	accepted medical standards for
3		determining brain death, i.e, the
4	:	Guidelines. In addition, Dr. Eck
		failed to provide any medical records that support her opinion that McMath
5	. •	demonstrates brain function. Dr. Eck
6		failed to demonstrate that she is
		licensed to practice medicine in the
7		State of California. Dr. Eck failed to
8		demonstrate that she has the
		knowledge, training, or experience
9		needed to form the impression that
10		McMath's movements are volitional
11		or in response to commands. (Evid.
11		Code §§ 720, 801-803.) Defendants
12		have established that McMath has
12		exhibited purposeless spinal reflexive movements, with and without tactile
13		stimulation, since she was pronounced
14		deceased in December 2013.
15		Defendants have further established
13		that spinal reflexes are a known and
16		recognized phenomenon in brain dead
17		patients maintained on mechanical
		support. (Declaration of Sanford
18		Schneider, M.D., filed in support of
19		Defendants' Motion for Summary Adjudication, ¶18.) The <u>Guidelines</u>
		state that the clinical differentiation of
20		spinal responses from retained motor
21		responses associated with brain
22		activity requires expertise.
22		(Declarations of Thomas A.
23		Nakagawa, M.D., ¶ 11(D).) Ms. Eck
24		has no expertise in distinguishing
24		spinal reflexive movement from
25		activity associated with brain
26		function. (Supplemental Declaration of Sanford Schneider, M.D.)
20		of Sufficial Sciniciaer, 141.15.)
27		Improper legal conclusion. Dr. Eck
28		did not apply the appropriate legal
LP e		and medical standards for determining
	1	

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1 brain death under California's Uniform Determination of Death Act 2 ("CUDDA"). There is no substitute to the accepted medical standards for 3 determining brain death that are set 4 forth in the Guidelines. Puberty and observation are not a substitute for the accepted medical standards 6 determining brain death and are not a proper basis for forming an opinion on of brain death under the CUDDA. A determination of brain death can 8 only be made by physicians who are 9 familiar with the patient's complete medical history, have performed the 10 requisite neurological examination 11 and performed an apnea test. Clinical determinations of brain death require 12 two examinations by two different physicians and two apnea tests. 13 (Health and Safety Code § 7180 (a); 14 Evid. Code §§ 801-803; Declarations of Thomas A. Nakagawa, M.D., and 15 Sanford Schneider, M.D., filed in 16 support of Defendants' Motion for Summary Adjudication; Supplemental 17 Declaration of Sanford Schneider, M.D.) 18 19 **Opinion conflicts with California** law. Dr. Eck's opinion that McMath 20 is not dead is contrary to California law which requires that brain death be 21 determined by the accepted medical 22 standards set forth in the Guidelines. (Health and Safety Code § 7180(a).) 23 McMath has not undergone a brain death evaluation pursuant to the 24 accepted medical standards since 25 December 2013. (Declarations of Thomas A. Nakagawa, M.D., and 26 Sanford Schneider, M.D., filed in 27 support of Defendants' Motion for Summary Adjudication; Supplemental 28

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1 Declaration of Sanford Schneider, M.D.2 Improper basis of opinion. The 3 opinion that McMath is not dead is (1) 4 not based on a matter of a type on which an expert may reasonably rely, 5 (2) is based on reasons unsupported by the material on which the expert 6 relies, and (3) is speculative. (Sargon 7 Enterprises, Inc. v. University of Southern California (2012) 55 Cal.4th 8 747, 771-772; Evid. Code §§ 720, 9 800-803; Declarations of Thomas A. Nakagawa, M.D., and Sanford 10 Schneider, M.D., filed in support of Defendants' Motion for Summary 11 Adjudication; Supplemental 12 Declaration of Sanford Schneider, M.D.13 Failure to comport with the 14 generally accepted professional 15 standards. No reputable and qualified physician would reasonably 16 rely on the matters that Dr. Eck relied 17 upon in opining that McMath is not dead. (Id) 18 Opinion lacks reasoned 19 explanation. Dr. Eck failed to explain 20 how her opinion that McMath is not brain dead comports with the 21 CUDDA's requirement that brain death be determined solely by the 22 accepted medical standards in the 23 Guidelines. (See Jennings v. Palomar Pomerado Health Systems, Inc. 24 (2003) 114 Cal.App.4th 1108, 1117.) 25 Irrelevant. Given the complete 26 absence of any showing that McMath has undergone a brain death 27 evaluation pursuant to the accepted medical standards in the Guidelines as 28 required by the CUDDA, Dr. Eck's

1 opinion that McMath is not dead is lacks relevance. (Evid. Code § 350.) 2 Unreliable and unaccepted 3 methodology. Dr. Eck's proposition that brain death can be assessed without application of the accepted medical standards set forth in the Guidelines is not accepted by reputable specialists in pediatric brain death. Dr. Ecks's methodology for assessing McMath's brain function, 8 i.e., observation and the alleged onset 9 of puberty, fails the test for proper expert evidence. Such matters are not 10 part of the accepted medical criteria for assessing brain death. A 11 determination of brain death can only 12 be made by physicians who are familiar with the patient's complete 13 medical history, have performed the 14 requisite brain death examination and performed an apnea test. Clinical 15 determinations of brain death require two examinations by two different 16 physicians and two apnea tests. 17 (Sargon Enterprises, Inc. v. University of Southern California 18 (2012) 55 Cal.4th 747; Health and 19 Safety Code § 7180 (a); Evid. Code §§ 801-803; Declarations of Thomas 20 A. Nakagawa, M.D., and Sanford Schneider, M.D., filed in support of 21 Defendants' Motion for Summary 22 Adjudication; Supplemental Declaration of Sanford Schneider, 23 M.D.) 24 C. OBJECTIONS TO DECLARATION OF SHARLEEN BANGURA, R.N. 25 14. Declaration of The declaration of Sharleen Bangura, Sustained: 26 R.N., and matters stated therein are Sharleen Bangura, R.N., Overruled: 27 inadmissible. The declaration should ¶¶1-4. be excluded in its entirety for the 28 following reasons:

Lack of Expert Qualification. Ms. Bangura is a registered nurse. She lacks the specialized knowledge, skill, experience, training, or education sufficient to qualify her as an expert on the subject to which his testimony relates. (Evid. Code §§ 720, 800-803.) Defendants have established, through the expert declarations of Dr. Nakagawa and Dr. Schneider that, under the CUDDA, a determination of brain death can only be made by physicians with special education, training, knowledge and expertise in the accepted medical standards for assessing brain death. Brain death is a clinical assessment made by a qualified physician in a standardized approach that relies on a clinical examination and apnea testing with a known cause of coma. Ms. Bangura is a nurse, not a physician. Furthermore, she has no education, training or expertise in assessing brain death. She failed to demonstrate that she has any knowledge how brain death is declared in California, e.g., the CUDDA, the accepted medical standards, the Guidelines, etc.

Lack of foundation. Ms. Bangura failed to demonstrate that she has reviewed and is familiar with McMath's medical history, the CUDDA, and the accepted medical standards for determining brain death. Ms. Bangura failed to demonstrate that she has the knowledge, training, or experience needed to form the impression that McMath's movements are volitional or in response to commands. (Evid. Code §§ 720, 801-803.) Defendants have established that McMath has exhibited purposeless spinal reflexive

1 movements, with and without tactile stimulation, since she was pronounced 2 deceased in December 2013. Defendants have further established 3 that spinal reflexes are a known and 4 recognized phenomenon in brain dead patients maintained on mechanical 5 support. (Declaration of Sanford 6 Schneider, M.D., filed in support of Defendants' Motion for Summary 7 Adjudication, ¶18.) The Guidelines state that the clinical differentiation of 8 spinal responses from retained motor 9 responses associated with brain activity requires expertise. 10 (Declarations of Thomas A. 11 Nakagawa, M.D., ¶ 11(D).) Ms. Bangura has no expertise in 12 distinguishing spinal reflexive movements from activity associated 13 with brain function. 14 Improper basis of opinion. Ms. 15 Bangura's statement that McMath is is "alert" and responsive to command 16 (and by implication not brain dead) is 17 (1) not based on a matter of a type on which an expert may reasonably rely, 18 (2) is based on reasons unsupported 19 by the material on which the expert relies, and (3) is speculative. (Sargon 20 Enterprises, Inc. v. University of Southern California (2012) 55 Cal.4th 21 747, 771-772; Evid. Code §§ 720, 22 800-803; Declarations of Thomas A. Nakagawa, M.D., and Sanford 23 Schneider, M.D., filed in support of Defendants' Motion for Summary 24 Adjudication; Supplemental 25 Declaration of Sanford Schneider, M.D.) 26 Irrelevant. Given the complete 27 absence of any showing that McMath 28 has undergone a brain death evaluation pursuant to the accepted

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1		medical standards in the Guidelines as
2		required by the CUDDA, Ms.
3		Bangura's impression that McMath is "alert" and responsive lacks
		relevance. (Evid. Code § 350.)
4		
5	i	Unreliable and unaccepted methodology. Ms. Bangura's
6	•	methodology for assessing McMath's
	!	brain function, i.e., observation, is not
7		part of the accepted medical criteria
8		for assessing brain death. A
9	,	determination of brain death can only be made by physicians who are
	'	familiar with the patient's complete
10	·	medical history, have performed the
11	ı	requisite brain death examination and
12		performed an apnea test. Clinical determinations of brain death require
13		two examinations by two different
		physicians and two apnea tests.
14		(Sargon Enterprises, Inc. v.
15		University of Southern California (2012) 55 Cal.4th 747; Health and
16		Safety Code § 7180 (a); Evid. Code
		§§ 801-803; Declarations of Thomas
17		A. Nakagawa, M.D., and Sanford
18		Schneider, M.D., filed in support of
19		Defendants' Motion for Summary Adjudication; Supplemental
		Declaration of Sanford Schneider,
20		M.D.)
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22		
23	DATED: July 6, 2017	HINSHAW, MARSH, STILL AND HINSHAW, LLP
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24		By /emiler Still
25	,	PHOMAS E. STILL
26		JENNIFER STILL Attorneys for Defendant
27		FREDERICK S. ROSEN, M.D.
21	·	

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PROOF OF SERVICE (C.C.P. §§ 1013a, 2015.5)

I, the undersigned, say:

I am now and at all times herein mentioned have been over the age of 18 years, a resident of the State of California and employed in Santa Clara County, California, and not a party to the within action or cause; my business address is 12901 Saratoga Avenue, Saratoga, California 95070.

I am readily familiar with this firm's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, mailing via Federal Express, hand delivery via messenger service, and transmission by facsimile machine. I served a copy of each of the documents listed below by placing said copies for processing as indicated herein.

DEFENDANTS' OBJECTIONS AND [PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO PLAINTIFFS' EVIDENCE

If MAILED VIA U.S. MAIL, said copies were placed in envelopes which were then sealed
and, with postage fully prepaid thereon, on this date placed for collection and mailing at my
place of business following ordinary business practices. Said envelopes will be deposited with
the U.S. Postal Service at Saratoga, California on this date in the ordinary course of business;
and there is delivery service by U.S. Postal Service at the place so addressed.

XX If MAILED VIA FEDERAL EXPRESS, said copies were placed in Federal Express envelopes which were then sealed and, with Federal Express charges to be paid by this firm, on this same date placed for collection and mailing at my place of business following ordinary business practices. Said envelopes will be deposited with the Federal Express Corp. on this date following ordinary business practices; and there is delivery service by Federal Express at the place so addressed.

If HAND DELIVERED, said copies were provided to _______, a delivery service, whose employee, following ordinary business practices, did hand deliver the copies provided to the person or firm indicated herein.

If VIA FACSIMILE TRANSMISSION, said copies were placed for transmission by this firm's facsimile machine, transmitting from (408) 257-6645 at Saratoga, California, and were transmitted following ordinary business practices; and there is a facsimile machine receiving via the number designated herein, and the transmission was reported as complete and without error. The record of the transmission was properly issued by the transmitting fax machine.

RECIPIENTS:

Bruce M. Brusavich, Esq. Puneet K. Toor, Esq. AGNEW & BRUSAVICH 20355 Hawthorne Blvd., 2nd Floor Torrance, CA 90503

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Andrew N. Chang, Esq. ESNER, CHANG & BOYER 234 East Colorado Blvd., Suite 975 Pasadena, CA 91101 I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on July 6, 2017. Obssica Picone Court: Alameda County Superior Court Action No: RG15760730 Case Name: Spears/Winkfield, et al. v. Rosen, M.D., et al.

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PROOF OF SERVICE (C.C.P. §§ 1013a, 2015.5)

I, the undersigned, say:

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I am now and at all times herein mentioned have been over the age of 18 years, a resident of the State of California and employed in Santa Clara County, California, and not a party to the within action or cause; my business address is 12901 Saratoga Avenue, Saratoga, California 95070. My electronic service address is: jpicone@hinshaw-law.com.

I am readily familiar with this firm's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, mailing via Federal Express, hand delivery via messenger service, electronic service and transmission by facsimile machine. I served a copy of each of the documents listed below by placing said copies for processing as indicated herein.

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If MAILED VIA FEDERAL EXPRESS, said copies were placed in Federal Express envelopes which were then sealed and, with Federal Express charges to be paid by this firm, on this same date placed for collection and mailing at my place of business following ordinary business practices. Said envelopes will be deposited with the Federal Express Corp. on this date following ordinary business practices; and there is delivery service by Federal Express at the place so addressed.

If HAND DELIVERED, said copies were provided to a delivery service, whose employee, following ordinary business practices, did hand deliver the copies provided to the person or firm indicated herein.

If VIA FACSIMILE TRANSMISSION, said copies were placed for transmission by this firm's facsimile machine, transmitting from (408) 257-6645 at Saratoga, California, and were transmitted following ordinary business practices; and there is a facsimile machine receiving via the number designated herein, and the transmission was reported as complete and without error. The record of the transmission was properly issued by the transmitting fax machine.

XX If ELECTRONIC SERVICE, I electronically served the documents listed above as follows:

| RECIPIENTS:

|| Robert Hodges

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12	DONNELLY NELSON DEPOLO & MURRAY
13	201 North Civic Drive, Suite 239 Walnut Creek, CA 94596
14	Email: smurray@dndmlawyers.com
15	I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on July (0, 2017.
15 16	foregoing is true and correct and that this Declaration was executed on July <u>6</u> , 2017.
16	foregoing is true and correct and that this Declaration was executed on July <u>(o</u> , 2017.
16 17	foregoing is true and correct and that this Declaration was executed on July <u>(o</u> , 2017.
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16 17 18 19 20 21 22 23 24 25	foregoing is true and correct and that this Declaration was executed on July <u>(o</u> , 2017.
16 17 18 19 20 21 22 23 24 25 26	foregoing is true and correct and that this Declaration was executed on July 6, 2017. Jonica Picone Jessica Picone
16 17 18 19 20 21 22 23 24 25	foregoing is true and correct and that this Declaration was executed on July <u>(o</u> , 2017.

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