

Kevin T. Snider, State Bar No. 170988  
*Counsel of record*  
Michael J. Pepper, State Bar. No. 192265  
Matthew B. McReynolds, State Bar No. 234797  
PACIFIC JUSTICE INSTITUTE  
P.O. Box 276600  
Sacramento, CA 95827  
Tel. (916) 857-6900  
Fax (916) 857-6902  
Email: ksnider@pji.org

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

Jonee Fonseca, an individual parent ) Case No.: 2:16-00496  
and guardian of Israel Stinson, a minor, )  
Plaintiff, ) **EX PARTE APPLICATION FOR A**  
 ) **TEMPORARY RESTRAINING**  
Plaintiffs, ) **ORDER TO ENJOIN DEFENDANTS**  
 ) **FROM ENDING LIFE SUPPORT;**  
v. ) **MEMORANDUM IN SUPPORT**  
 )  
Kaiser Permanente Medical Center )  
Roseville, Dr. Michael Myette M.D. and )  
Does 1 through 10, inclusive, )  
 )  
Defendants. )

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD IN THIS ACTION

2  
3 YOU ARE HEREBY NOTIFIED that on April \_\_\_\_\_, 2016 , at \_\_\_\_\_, or as soon  
4 thereafter as this matter may be heard in Courtroom \_\_\_\_\_ of the United States  
5 District Court, Eastern District of California, located at 501 I Street, Sacramento,  
6 CA , Plaintiff JONEE FONSECA will hereby move this Court ex parte for a  
7 temporary restraining order restraining Defendant KAISER PERMANENTE  
8 ROSEVILLE MEDICAL CENTER—WOMEN AND CHILDREN’S CENTER and  
9 DR. MICHAEL MYETTE from removing life support for the minor Israel Stinson  
10 and request for provision of nutrition and other medical treatment to optimize his  
11 physical condition, while the Court makes its ruling. Plaintiff also seeks an order  
12 compelling placement of a tracheostomy tube and gastric feeding tube into Israel  
13 Stinson so that he can be provided proper respiratory support and nutrition and so  
14 that he can meet the conditions required for transfer to another facility.

15 This application is made pursuant to Federal Rules of Civil Procedure Rule  
16 65(b) and U.S. Dist. Court, Northern District of California, Local Rule 65-1. The ex  
17 parte relief requested is appropriate because, absent an injunction prohibiting  
18 Defendants from proceeding with ending life support measures, Defendants are  
19 going to terminate Israel Stinson’s ventilator support at on April 28, 2016, thereby  
20 leading to the inevitable, and immediate, cessation of the beating of Israel’s heart.  
21 Plaintiff will likely suffer irreparable harm in that her son will die, whereas the only  
22 harm to Defendants will be the resulting continuation of the status quo of allowing  
23 the minor to remain on life support.

24 Further, Plaintiff has a likelihood of succeeding on the merits of her case  
25 because, inter alia, Defendants proposed action, i.e., removal of cardio pulmonary  
26 support, over the objection of Jonee Fonseca, the health care decision maker for her  
27 minor child Israel based upon the classification of Israel as brain dead pursuant to

1 California Health and Safety Code 7180 &7821 and against her religious principals,  
2 is unconstitutional in so far as it interferes with Plaintiff s exercise of her rights to  
3 freedom of religion under the first amendment and interference with her privacy  
4 rights under the Fourth and Fourteenth Amendments recognized rights to privacy in  
5 health care decisions and determination over ones medical treatment. The Plaintiff is  
6 actively seeking alternate arrangements for her daughter and failure to institute a  
7 TRO and Injunction will make the matter moot as Israel Stinson will cease to have a  
8 heart beat and will have expired. Also, the public interest will be served, as granting  
9 this Temporary Restraining Order will allow the public to have a clear  
10 understanding as o the rights of a parent to continue mechanical support of the life  
11 of a loved one as defined by their religious beliefs.

12 Counsel for Plaintiff properly provided Defendant KAISER PERMANENTE  
13 ROSEVILLE MEDICAL CENTER—WOMEN AND CHILDREN’S CENTER,  
14 and DR. MYETTE with ex parte notice pursuant to Federal Rules of Civil Procedure  
15 Rule 65(b)(1) .

16 This ex parte application is made pursuant to Federal Rules of Civil  
17 Procedure Rule 65(b) and U.S. Dist. Court, Northern District of California, Local  
18 Rule 65-1, and is based upon this notice, the attached memorandum of points and  
19 authorities, the attached Declaration of Christopher Dolan, the complete records,  
20 pleadings, documents and papers on file, and upon such other matters which may  
21 properly come before this Court at the hearing of this application.

22  
23 Dated: April 28, 2016

24 /S/ Kevin Snider \_\_\_\_\_  
25 Kevin T. Snider  
26 Attorney for Plaintiffs  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

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**I. INTRODUCTION**

On April 1, 2016, two-year old Israel Stinson was taken to the emergency room for symptoms of asthma. The following day, while in the hospital, Israel had another asthma attack, followed by cardiac arrest. He is now on life support at Defendant’s hospital.

Initially, a TRO was obtained in the Superior Court of the State of California for the County of Placer. The honorable Michael Jones issued and extended a temporary restraining order requiring that the Defendant continue to provide ventilator support and maintain the status quo of medical treatment through April 29, 2015. After such time the Hospital is free to remove the ventilator support from Israel Stinson and, without such support, his heart will cease beating.

Prior to the filing of this action Plaintiff’s Counsel informed Defendant that the family is undertaking efforts to locate an alternate placement for Israel so that he can be removed from the facility. Plaintiff is currently awaiting response from several facilities. Plaintiff has asked her son’s health care providers to provide continued ventilator support, nutritional support, a gastric feeding tube, tracheostomy tube, and other medical support to optimize Israel’s chances for survival. Those health care providers have refused to do so and have indicated an intent to withdraw said

1 support at the expiration of the State issued TRO on Friday, April 29, 2016 after  
2 9:00 a.m.

3 **II. LEGAL DISCUSSION**

4 **A. Federal Law Authorizes the Relief Requested.**

5  
6 “The purpose of a temporary restraining order is to preserve an existing situation  
7 in status quo until the court has an opportunity to pass upon the merits of the  
8 demand for a preliminary  
9 injunction.” (*Pan American World Airways, Inc. v. Flight Engineers' Int'l Assoc.*  
10 (2nd Cir.1962) 306 F.2d 840. 842.) Federal Rules of Civil Procedure Rule 65(b)(1)  
11 permits a temporary restraining order to be granted ex parte if:  
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14 (A) Specific facts in an affidavit or a verified complaint clearly show that  
15 immediate and irreparable injury, loss, or damage will result to the movant  
16 before the adverse party can be heard in opposition; and  
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18 (B) The movant's attorney certifies in writing any efforts made to give notice  
19 and the reasons why it should not be required.  
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21 A temporary restraining order is appropriate if there is proof of: (1) a  
22 likelihood of success on the merits; (2) a substantial threat that plaintiff will suffer  
23 irreparable injury if the injunction is denied; (3) the threat of injury outweighs any  
24 damage the injunction might cause defendant, and (4) the injunction will not  
25 disserve the public interest. ( See *Sugar Busters. LLC v. Brennan* ( 5<sup>th</sup> Cir.1999) 177  
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1 F.3d. 258. 265; CityFed Fin'l Corp. v Office of Thrift Supervision (DC Cir. 1995)  
2 588 F.3d. 738. 746.)

3 **B. Plaintiff Will Suffer a Great Or Irreparable Injury Before This Matter**  
4 **Can Be Heard On Notice Motion.**

5 Absent an injunction, 2-year old Israel Stinson will be taken off life-support  
6 immediately by the Defendants. There can be no greater irreparable harm than  
7 death.  
8

9 This is even more troublesome when Plaintiff is exploring viable options to  
10 continue life support outside Defendants' facility. Plaintiff has reserved a life flight  
11 to transport her son to a suitable hospital anywhere in the country. She has also  
12 made arrangements for a home care treatment plan with a neurologist and  
13 pediatrician. Efforts to transfer Israel have been complicated because the hospital  
14 refuses to perform the procedures (tracheostomy and gastrostomy) that would  
15 facilitate a transfer to either home care or a "step down" hospital placement.  
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19 **C. Plaintiff Will Succeed On the Merits of Her Case**

20 The Ninth Circuit Court of Appeals provides that only a reasonable  
21 probability of success is required to support a preliminary injunction. (*Gilder v.*  
22 *PGA Tour, Inc.* 936 F2d 417, 422 (9th Cir. 21 1991).) In fact, a "fair chance on the  
23 merits" is sufficient for preliminary injunction purposes. (*See Johnson v. Cal State*  
24 *Fort of Accounting*, 72 F. 3d 1427, 1429 (9th Cir. 1995).) The trial court may give  
25 even inadmissible evidence some weight, when doing so serves the purpose of  
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1 preventing irreparable harm before trial. ( *See Flynt Distributing Co. Inc. v. Harvey.*  
2 734 F.2d 1389, 1394 (9<sup>th</sup> Cir. 1984).)

3 At the very least, the Plaintiff enjoys a "fair chance" of success on the merits,  
4 if not a  
5 reasonable possibility of prevailing.

6 Further, "Though it is not apparent from the face of 28 U.S.C. § 2284(b)(3),  
7 some courts have emphasized that a temporary restraining order will issue only  
8 when the party seeking it is likely to succeed on the merits. . . . This court thinks that  
9 the better-reasoned view, however, is that the likelihood of success on the merits  
10 should be a minor factor, especially where the potential injury is great." (*Palmigiano*  
11 *v. Travisono*, 317 F. Supp. 776, 787 (D.R.I. 1970). Here, the hospital seeks to  
12 proceed unilaterally with ending his life without an opportunity for the only Court  
13 with Jurisdiction considering whether or not the Constitution has been violated in a  
14 situation where a little boy has been rendered gravely injured.

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20 **D. The Threatened Injury Outweighs any Damage That the Injunction**  
21 **Might Cause to Defendants.**

22 A balancing of the relative hardships on the parties favors granting the requested  
23 temporary restraining order. There is absolutely no damage that the Defendants can  
24 claim that would override improperly ending life-support measures on 2-year old  
25 Israel. Further, because Plaintiff seeks to discharge her son to an alternate  
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1 environment there is absolutely no legitimate argument Defendants can make  
2 regarding damages they will suffer.

3 **E. The Public Interest is Served by Allowing Plaintiff's Claims to be Fully**  
4 **Heard.**

5 The issues raised in Plaintiff s Complaint and in this restraining order are matters  
6 of great public concern as indicated by the amount of media coverage which has  
7 been generated by this case. This is an issue of first impression; does a parent, once  
8 a legal determination of brain death is made, lose all rights concerning the care to be  
9 provided to their child whose heart still beats assisted by a ventilator. Does a parent  
10 of such a child have a right to object and resist a hospital's decision to withdraw life  
11 support over and against her objections and religious beliefs? Does the proposed  
12 conduct of the Defendant's violate the rehabilitation act and/or the ADA? How  
13 much time should a family be provided to locate alternate arrangements that are  
14 consistent with their religious beliefs?  
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19 **F. Plaintiff Should Not Be Required to Post a Security Bond as Defendant**  
20 **Would Suffer No or Little Injury as a Result of the Institution of the**  
21 **Temporary Restraining Order**

22 Though Federal Rules of Civil Procedure Rule 65(c) asks courts to require a  
23 security bond in conjunction with a temporary restraining order, courts are given  
24 wide discretion in the form the  
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1 bond may take. (*Continental Oil Co. v. Frontier Refining Co.*, (10th Cir. 1964) 338  
2 F.2d 780. 783.)

3 In fact, in situations where the likelihood of harm to defendant is small, courts  
4 are not obliged to require a bond to be issued at all. (Id.) Presently, the only harm  
5 that would come to Defendants should the temporary restraining order be granted  
6 would be the minimal cost continuing life-support measures.  
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9 **III. CONCLUSION**

10 Based on the foregoing, Plaintiff respectfully requests that this Court issue a  
11 temporary restraining order and an order to show cause why a preliminary  
12 injunction should not be issued against Defendants as detailed herein.  
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16 Dated: April 28, 2016


17 /S/ Kevin Snider  
18 Kevin T. Snider  
19 Attorney for Plaintiffs  
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**FILED**  
Superior Court of California  
County of Placer

APR 14 2016

Jake Chatters  
Executive Officer & Clerk  
By K. Zaragoza, Deputy



SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF PLACER

ISRAEL STINSON by and through  
JONEE FONSECA, his other  
Petitioner;  
v.

UC DAVIS CHILDREN'S HOSPITAL;  
KAISER PERMANENTE ROSEVILLE  
MEDICAL CENTER-WOMEN AND  
CHILDREN'S CENTER,  
Defendants

Case No.: S-CV-0037673

ORDER ON EX PARTE APPLICATION  
FOR TEMPORARY RESTRAINING  
ORDER

**NEXT HEARING:**  
**April 15, 2016**  
**9:00 a.m.**  
**Department 43**

Petitioner and applicant Jonee Fonseca has applied for a temporary restraining order directed to Kaiser Permanent Roseville Medical Center— Women and Children's Center concerning medical care and intervention provided to her son Israel Stinson. The court convened a hearing on the application at which Ms. Fonseca and her counsel, Alexandra Snyder, Esq., appeared. Various representatives from Kaiser including Katherine Saral, Esq., and Madeline Buty, Esq., appeared by phone.

The court orders as follows:

(1) The application for temporary restraining order is set for hearing

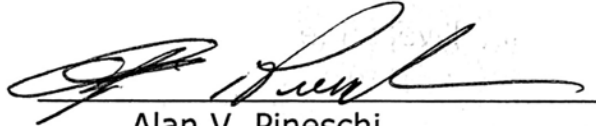
1 April 15, 2016, 9:00 a.m., in Department 43 of this court, the Hon. Michael  
2 W. Jones, presiding. Department 43 is located at the Hon. Howard G.  
3 Gibson Courthouse, 10820 Justice Center Drive, Roseville, in the Santucci  
4 Justice Center.

5 (2) Pending further order of the court, respondent Kaiser is ordered  
6 to continue to provide cardio-pulmonary support to Israel Stinson as is  
7 currently being provided.

8 (3) Pending further order of the court, respondent Kaiser is ordered  
9 to continue to provide medications currently administered to Israel;  
10 however, physicians or attending staff may adjust medications to the extent  
11 possible to maintain Israel's stability, given his present condition.

12 IT IS SO ORDERED.

13 DATED: April 14, 2016



14 Alan V. Pineschi  
15 Judge of the Superior Court  
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**FILED**  
Superior Court of California  
County of Placer

APR 15 2016

Jake Chatters  
Executive Officer & Clerk  
By: J. Tisdale, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF PLACER

ISRAEL STINSON by and through  
JONEE FONSECA, his mother  
Petitioner;  
v.  
UC DAVIS CHILDREN'S HOSPITAL;  
KAISER PERMANENTE ROSEVILLE  
MEDICAL CENTER-WOMEN AND  
CHILDREN'S CENTER,  
Defendants

Case No.: S-CV-0037673

ORDER ON EX PARTE APPLICATION  
FOR TEMPORARY RESTRAINING  
ORDER

**NEXT HEARING:**  
**April 22, 2016**  
**9:00 a.m.**  
**Department 43**

Petitioner and applicant Jonee Fonseca has applied for a temporary restraining order directed to Kaiser Permanent Roseville Medical Center— Women and Children's Center concerning medical care and intervention provided to her son Israel Stinson. An initial TRO was granted April 14, 2016, and further proceedings were set for April 15, 2016, 9:00 a.m., in Department 43, the Hon. Michael W. Jones, presiding.

The April 15 hearing was conducted as scheduled. Ms. Fonseca and Nathaniel Stinson, minor's father, appeared with Alexandra Snyder, Esq. Drexwell M. Jones, Esq., appeared for Kaiser along with Dr. Michael Myette.

1 After consideration of the information and argument presented, the  
2 court orders as follows:

3 (1) The temporary restraining order issued previously is extended to  
4 April 22, 2016, 9:00 a.m., or further order of this court, with additional  
5 orders as follows:

6 (a) Respondent Kaiser is ordered to continue to provide cardio-  
7 pulmonary support to Israel Stinson as is currently being provided.

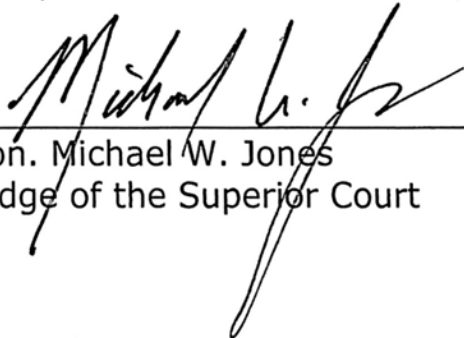
8 (b) Respondent Kaiser is ordered to continue to provide  
9 medications currently administered to Israel; however, physicians or  
10 attending staff may adjust medications to the extent possible to  
11 maintain Israel's stability, given his present condition.

12 (c) Respondent Kaiser is ordered to continue provision of  
13 nutrition to Israel in the manner currently provided to the extent  
14 possible to maintain Israel's stability, given his present condition.

15 (2) The application for temporary restraining order is set for further  
16 hearing April 22, 2016, 9:00 a.m., in Department 43 of this court,

17 IT IS SO ORDERED.

18 DATED: April 15, 2016

  
\_\_\_\_\_  
19 Hon. Michael W. Jones  
20 Judge of the Superior Court  
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**FILED**  
Superior Court of California  
County of Placer

APR 22 2016

Jake Chatters  
Executive Officer & Clerk  
By: K. Harding, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF PLACER

ISRAEL STINSON by and through  
JONEE FONSECA, his mother  
Petitioner;

v.

UC DAVIS CHILDREN'S HOSPITAL;  
KAISER PERMANENTE ROSEVILLE  
MEDICAL CENTER-WOMEN AND  
CHILDREN'S CENTER,  
Respondent

Case No.: S-CV-0037673

ORDER AFTER HEARING

**NEXT HEARING:**

**April 27, 2016**  
**9:00 a.m.**  
**Department 43**

Petitioner and applicant Jonee Fonseca has applied for a temporary restraining order directed to Kaiser Permanente Roseville Medical Center—Women and Children's Center concerning medical care and intervention provided to her son Israel Stinson. TRO proceedings were heard April 14 and 15, 2016, and further proceedings were set for April 22, 2016, 9:00 a.m., in Department 43, the Hon. Michael W. Jones, presiding.

At the April 22 hearing, Ms. Fonseca and Nathaniel Stinson, minor's father, appeared with Alexandra Snyder, Esq. Jason J. Curliano, Esq., and Drexwell M. Jones, Esq., appeared for Kaiser Foundation Hospitals. At the

1 court's request Roger Coffman, Esq., Senior Deputy County Counsel for  
2 Placer County was also present, representing the Placer County Public  
3 Guardian.

4 Petitioner and respondent have reached a stipulation concerning the  
5 present circumstances and the TRO. The parties' written stipulation,  
6 executed by counsel, has been filed.

7 Adopting the agreement of the parties, the court orders as follows:

8 (1) Jonee Fonseca and Nathaniel Stinson shall transfer Israel Stinson  
9 to Sacred Heart Medical Center, 101 West 8th Avenue, Spokane,  
10 Washington, which has agreed to admit Israel;

11 (2) Transportation of Israel to Sacred Heart shall be by Air Care 1;

12 (3) Kaiser will cooperate with and facilitate Israel's transfer and will  
13 take necessary steps, in the ordinary course, to prepare Israel for transport,  
14 and will transfer care and support of Israel to Air Care 1;

15 (4) Israel's attending physician at Kaiser Roseville will communicate  
16 with Air Care 1 to assure they have proper staffing and equipment to  
17 transfer Israel;

18 (5) Israel's attending physician at Kaiser Roseville will communicate  
19 with the admitting physician at Sacred Heart to facilitate continuous care  
20 and to assure Sacred Heart is prepared to receive Israel;

21 (6) The restraining order currently in place, which requires that

22 (a) Kaiser shall continue to provide cardio-pulmonary support  
23 to Israel Stinson as is currently being provided;

24 (b) Kaiser shall provide medications currently administered to  
25 Israel; however, physicians or attending staff may adjust medications  
26 to the extent possible to maintain Israel's stability, given his present  
27 condition;

28 (c) Kaiser shall continue to provide nutrition to Israel in the  
29 manner currently provided to the extent possible to maintain Israel's

1 stability, given his present condition;

2 shall continue in effect until and shall automatically dissolve upon the earlier  
3 of:

4 (a) Israel's discharge from Kaiser Permanente Hospital in  
5 Roseville; for this purpose, *discharge* means Israel's physical exit  
6 from the hospital; or

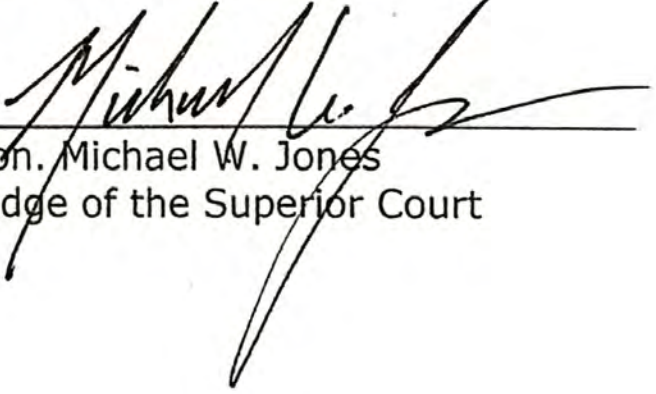
7 (b) Wednesday, April 27, 2016, 9:00 a.m.

8 Kaiser's legal responsibility for Israel's care and treatment will cease when  
9 the restraining order dissolves.

10 (7) This matter is set for further proceedings April 27, 2016, 9:00  
11 a.m., in Department 43. If the restraining order has dissolved pursuant to  
12 paragraph (6), *supra*, the court intends to dismiss this action. The parties  
13 have stipulated that the court will thereafter have no jurisdiction over  
14 minor, petitioner or respondents under this proceeding.

15 IT IS SO ORDERED.

16 DATED: April 22, 2016

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18 \_\_\_\_\_  
19 Hon. Michael W. Jones  
20 Judge of the Superior Court  
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**FILED**  
Superior Court of California  
County of Placer

APR 27 2016 1049

Jake Chatters  
Executive Officer & Clerk  
By: K. Harding, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF PLACER

ISRAEL STINSON by and through  
JONEE FONSECA, his mother  
Petitioner;  
v.  
UC DAVIS CHILDREN'S HOSPITAL;  
KAISER PERMANENTE ROSEVILLE  
MEDICAL CENTER-WOMEN AND  
CHILDREN'S CENTER,  
Respondent

Case No.: S-CV-0037673

ORDER AFTER HEARING

**NEXT HEARING:**

**April 29, 2016**  
**9:00 a.m.**  
**Department 43**

Petitioner and applicant Jonee Fonseca has applied for a temporary restraining order directed to Kaiser Permanent Roseville Medical Center— Women and Children's Center concerning medical care and intervention provided to her son Israel Stinson. TRO proceedings were previously heard April 14, 15 and 22, 2016.

A continued hearing was held April 27, 2016, in Department 43, the Hon. Michael W. Jones, presiding. Ms. Fonseca and Nathaniel Stinson, minor's father, appeared with Alexandra Snyder, Esq. Jason J. Curliano, Esq., and Drexwell M. Jones, Esq., appeared for Kaiser Foundation

1 Hospitals. At the court's request Roger Coffman, Esq., Senior Deputy  
2 County Counsel for Placer County was also present, representing the Placer  
3 County Public Guardian. Richard Robinson and Laura Moreno,  
4 representatives of Kaiser, were also present.

5 Having considered the argument of and information provided through  
6 counsel, including declarations and other writings offered by Ms. Fonseca  
7 and Mr. Stinson, the court makes the orders which follow. These orders are  
8 made to implement the Health and Safety Code section 1254.4 reasonably  
9 brief period of accommodation for Israel's family.

10 It is ordered that:

11 (1) Jonee Fonseca and Nathaniel Stinson shall be afforded an  
12 additional brief opportunity to transfer Israel Stinson to a medical facility  
13 agreeable to the parties, which facility has agreed to admit Israel;

14 (2) Transportation of Israel to the facility referred to in preceding  
15 paragraph (1) shall be by Air Care 1 or another transportation service  
16 agreeable to the parties;

17 (3) Kaiser will cooperate with and facilitate Israel's transfer and will  
18 take necessary steps, in the ordinary course, to prepare Israel for transport,  
19 and will transfer care and support of Israel to Air Care 1 or another  
20 transportation service agreeable to the parties;

21 (4) Israel's attending physician at Kaiser Roseville will communicate  
22 with Air Care 1 or another transportation service agreeable to the parties to  
23 assure they have proper staffing and equipment to transfer Israel;

24 (5) Israel's attending physician at Kaiser Roseville will communicate  
25 with the admitting physician at the facility referred to above in paragraph  
26 (1) to facilitate continuous care and to assure the admitting facility is  
27 prepared to receive Israel;

28 (6) The restraining order currently in place, which requires that

29 (a) Kaiser shall continue to provide cardio-pulmonary support

1 to Israel Stinson as is currently being provided;

2 (b) Kaiser shall provide medications currently administered to  
3 Israel; however, physicians or attending staff may adjust medications  
4 to the extent possible to maintain Israel's stability, given his present  
5 condition;

6 (c) Kaiser shall continue to provide nutrition to Israel in the  
7 manner currently provided to the extent possible to maintain Israel's  
8 stability, given his present condition;

9 shall continue in effect until and shall automatically dissolve upon the earlier  
10 of:

11 (a) Israel's discharge from Kaiser Permanente Hospital in  
12 Roseville; for this purpose, *discharge* means Israel's physical exit  
13 from the hospital; or

14 (b) Friday, April 29, 2016, 9:00 a.m.

15 Kaiser's legal responsibility for Israel's care and treatment will cease when  
16 the restraining order dissolves.

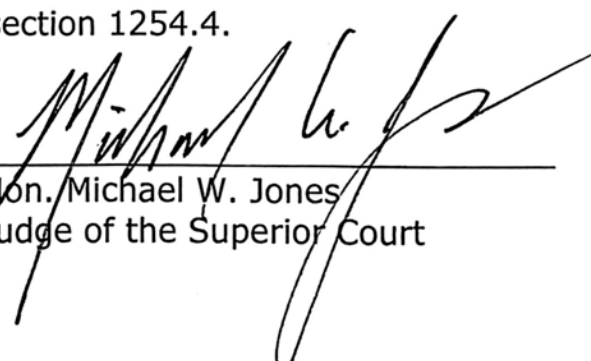
17 (7) This matter is set for further proceedings April 29, 2016, 9:00  
18 a.m., in Department 43.

19 If the restraining order has dissolved pursuant to paragraph (6),  
20 *supra*, the court intends to dismiss this action. The parties have stipulated  
21 that the court will thereafter have no jurisdiction over minor, petitioner or  
22 respondents under this proceeding.

23 The court finds that this order provides the reasonably brief period of  
24 time under Health and Safety Code section 1254.4.

25 IT IS SO ORDERED.

26 DATED: April 27, 2016

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28 \_\_\_\_\_  
29 Hon. Michael W. Jones  
Judge of the Superior Court

1 Jonee Fonseca  
2 Mother of Israel Stinson  
3 Address

4 Telephone withheld for privacy but  
5 provided to Court and Respondent

6 **IN THE SUPERIOR COURT OF CALIFORNIA**  
7 **IN AND FOR THE COUNTY OF PLACER**  
8 **UNLIMITED CIVIL JURISDICTION**  
9

10  
11 Israel Stinson, a minor, by Jonee Fonseca his  
12 mother.

13 Petitioner,

14 v.

15 UC Davis Children's Hospital; Kaiser  
16 Permanente Roseville Medical Center –  
17 Women and Children's Center.

18 Respondent.

Case No.

VERIFIED EX-PARTE PETITION FOR  
TEMPORARY RESTRAINING  
ORDER/INJUNCTION: REQUEST FOR  
ORDER OF INDENDENT  
NEUROLOGICAL EXAM; REQUEST FOR  
ORDER TO MAINTIN LEVEL OF  
MEDICAL CARE

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22 I Jonee Fonseca am the mother of Israel Stinson who, on April 1, 2016 went to Mercy  
23 Hospital with symptoms of an asthma attack. The Emergency room examined him, placed him  
24 on a breathing machine, and he underwent x-rays. Shortly thereafter he began shivering, his lips  
25 turned purple, eyes rolled back and lost csoncswiu0osness,. He had an intubation performe don  
26 him. Doctor told me they had to transcer Israel to UC Davis because they did not have a pediatric  
27 unit. HE was then taken to UC Davis via ambulance and admitted to the pediatric intensive care  
28

1 unit. The next day, the tube was removed from Israel. The respiratory therapist said that Israel  
2 was stable and that they could possibly discharge him the following day, Sunday April 3. They  
3 put him on albuterol for one hour, and then wanted to take him off albuterol for an hour. About  
4 30 minutes in, I noticed that he began to wheeze and have issues breathing. The nurse came back  
5 in and put him on the albuterol machine. Within a few minutes the monitor started beeping. The  
6 nurse came in and repositioned the mask on Israel, then left the room.  
7

8 Within minutes, he started to shiver and went limp in her arms. I pressed the nurses' button, and  
9 screamed for help, but no one came to the room. A different nurse came in, and I asked to see a  
10 doctor. The doctor, Dr. Meteev came to the room and said she did not want to intubate Israel to  
11 see if he could breathe on his own without the tube.  
12

13 Israel was not breathing on his own. I had to leave the room to compose myself. When I  
14 came back five minutes later, the doctors were performing CPR. The doctors dismissed me from  
15 the room again while they performed CPR for the next forty (40) minutes.  
16

17 Dr. Meteev told me that Israel was going to make it and that he would be put on an ECMO to  
18 support his heath and lungs. Dr. Meteev also told me that Israel might have a blockage in his  
19 right lung because he was not able to receive any oxygen. A pulmonologist checked Israel's right  
20 lung, and he did not have any blockage.  
21

22 Dr. Meteev then indicated that there was a possibility Israel will have brain damage. HE  
23 was sedated twice due to this blood pressure being high, and was placed on an ECMO machine  
24 and ventilator machine.  
25

26 On Sunday April 3, 2016, A brain test was conducted on Israel to determine possibility of  
27 brain damage while he was hooked up to the ECMO machine. The test involved poking his eye  
28 with a Q-tip, banging on his knee, flashing a light in his eye, flushing water down his ear, and

1 putting a stick down his throat to check his gag reflexes. On April 4, 2016, the same tests were  
2 performed when he was taken of the ECMO machine. On April 6, 2016 he was taken off the  
3 ECMO machine because his hearth and lungs were functioning on their own. However, the next  
4 day, a radioactive test was performed to determine blood flow to the brain.

5 I begged for an MRI and CT scan to be done on Israel before the third and final doctor  
6 performed the test. This was done on April 10, 2016. These results still have not been given to  
7 me, and I've been told that the results are only "preliminary."

8 On April 11, 2016, Israel was transferred via ambulance to Kaiser Hospital in Rosville. That  
9 night, another reflex test was done, in addition to an apnea test. Then, on April 14, 2016, an  
10 additional reflex test was done.  
11

12 I am a Christian and believe in the healing power of God. I do not want him pulled off  
13 life support. Kaiser has said that they have the right to remove Israel from life support on.  
14

15 I am hereby asking that Kaiser Permanente Roseville Medical Center be prevented from  
16 removing my son, Israel Stinson, from his ventilator.  
17

18 If Kaiser removes Israel from a respirator and he stops breathing then they will have  
19 ended his life as well as their responsibility to provide his future care for the harm their  
20 negligence caused. For this reason we hereby request that an independent examination be  
21 performed, including the use of an EEG and a cerebral blood flow study. I also request that  
22 Kaiser Permanente Roseville Medical Center be ordered to continue to provide such care and  
23 treatment to Israel that is necessary to maintain his physical health and promote any opportunity  
24 for healing and recovery of his brain and body. Failure to issue the Restraining Order will result  
25 in irreversible and irreparable harm so a basis in both law and fact exists for this court's  
26 intervention.  
27  
28

**LEGAL ARGUMENT**

1  
2 California Health and Safety Code Section 7180 (a) (The Uniform Determination of  
3 Death Act) provides for a legal determination of brain death as follows; “(a) An individual who  
4 has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2)  
5 irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A  
6 determination of death must be made in accordance with accepted medical standards.”  
7

8 Health and Safety Code Section 7181 provides for an “independent” verification of any  
9 such determination stating; “When an individual is pronounced dead by determining that the  
10 individual has sustained an irreversible cessation of all functions of the entire brain, including the  
11 brain stem, there shall be *independent confirmation* by another physician.”  
12

13 As established by the Court in *Dority v Superior Court* (1983) 145 Cal.App.3d 273, 278,  
14 this Court has jurisdiction over the issue of whether a person is “brain dead” or not pursuant to  
15 Health and Safety Code Sections 7180 & 7181. Acknowledging the moral and religious  
16 implications of such a diagnosis and conclusion, the *Dority* court determined that it would be  
17 “unwise” to deny courts the authority to make such a determination when circumstances  
18 warranted.  
19

20 Here only doctors from Anaheim Regional Medical Center have examined Lisa. As  
21 stated above, I do not trust them to be independent given how they are responsible for her current  
22 condition and they have a conflict of interest in determining her condition: if she is disconnected  
23 and dead, they no longer have to pay for any of her care, if she is severely brain damaged, but  
24 not brain dead, they may be legally liable to provide her ongoing care and treatment at Anaheim  
25 Regional or elsewhere.  
26  
27  
28

1 Only one other case of this type is on record in California namely the case of Jahi  
2 McMath which was heard in Alameda County in December of 2013. That case, one of first  
3 impression, where Nailah Winkfield challenged Children's Hospital Oakland's determination of  
4 brain death after they negligently treated her daughter, Jahi, led to an Order, issued by Hon E.  
5 Grillo, holding that an independent determination is one which is performed by a physician with  
6 no affiliation with the hospital facility (in that case Children's Hospital Oakland) which was  
7 believed to have committed the malpractice which led to the debilitating brain injuries Jahi  
8 suffered. A true and correct copy of Judge Grillo's Order is attached to this Petition. In the  
9 *McMath* case, the Trial Court rejected the Hospital's position that the Court had no jurisdiction  
10 over the determination of whether not Jahi McMath was "brain dead" or not.  
11

12  
13 In *McMath*, Judge Grillo stated that the Section 7180's language regarding "accepted  
14 medical standards" permitted an inquiry into whether the second physician (also affiliated with  
15 Children's Hospital Oakland) was "independent" as that term was defined under Section 7181.  
16 Judge Grillo determined that the petitioner's due process rights would be protected by a focused  
17 proceeding providing limited discovery and the right to the presentation of evidence.  
18 The Court determined that, under circumstances which are strikingly similar to those which  
19 present themselves here, the conflict presented was such that the court found that the Petitioner  
20 was entitled to have an independent physician, unaffiliated with Children's Hospital Oakland,  
21 preform neurological testing, an EEG and a cerebral blood flow study. Indeed, the Court  
22 Ordered Children's Hospital Oakland to permit the Court's own court appointed expert to be  
23 given temporary privileges and access to the Hospital's facilities, diagnostic equipment, and  
24 technicians necessary to perform an "independent" exam.  
25  
26  
27  
28



1 As in *Dority* and *McMath*, the unique circumstances of this case invoke the Court's  
2 jurisdiction and due process considerations require that this Court grant Petitioner's Petition for a  
3 Temporary Restraining Order and order that Anaheim Regional Medical Center permit Petitioner  
4 to obtain an independent medical examination at Anaheim Regional Medical Center with the  
5 assistance of The Medical Center's diagnostic equipment and technicians necessary to carry out  
6 the standard neurologic brain death examination with a repeat EEG and a Cerebral Blood Flow  
7 Study.  
8

9 In order to provide the requisite physical conditions for a reliable set of tests to be  
10 performed, Lisa Avila should continue to be treated so as to provide her optimum physical health  
11 and in such a manner so as to not interfere with the neurological testing (such as the use of  
12 sedatives or paralytics).  
13

14 WHEREFORE, petitioner prays:

- 15 1) That a Temporary Restraining Order precluding Respondents from removing  
16 Israel Stinson from respiratory support, or removing or withholding medical treatment be issued;  
17
- 18 2) That an Order be issued that Respondents are to continue to provide Israel  
19 Stinson treatment to maintain his optimum physical health and in such a manner so as to not  
20 interfere with the neurological testing (such as the use of sedatives or paralytics in such a manner  
21 and/or at such time that they may interfere with the accuracy of the results).  
22
- 23 3) That an Order be issued that Petitioner is entitled to an independent  
24 neurological examination, with the assistance of Kaiser Permanente Roseville Medical Center's  
25 diagnostic equipment and technicians necessary to carry out the standard neurologic brain death  
26 examination with a repeat EEG and a Cerebral Blood Flow Study.  
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1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct. Executed on April , 2016, at Sacramento, California.  
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6 Jonee Fonseca  
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