October Term, 2018

IN THE SUPREME COURT OF THE UNITED STATES

JUSTIN RINGGOLD-LOCKHART as Trustee of the Eddye Melaragno Trust and Executor of the Estate of Eddye Melaragno, and NINA RINGGOLD, In Her Capacity As Named Agent Under Advance Health Care Directive And In Her Individual Capacity,
***Petitioners*,**

v.

PROVIDENCE HEALTH & SERVICES,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE PETITION FOR WRIT OF CERTIORARI

NINA RINGGOLD
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PARTIES TO THE PROCEEDINGS

The petitioners include: (1) petitioner Justin Ringgold-Lockhart as trustee of the Eddye Melaragno Trust. Justin Ringgold-Lockhart is also the executor of the Estate of Eddye Melaragno. There is a pending motion in the United States Court of Appeal for substitution of party under Federal Rules of Appellate Procedure, Rule 43; and (2) petitioner Nina Ringgold in her capacity as named agent under the Advance Care Directive of Eddye Melaragno (now deceased) and in her individual capacity. ("Applicants").

The respondent is Providence Health & Services.

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STATE STATUTES

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to Title 28, United States Code, Section 2101 (c) and Rules 13 (5), 22, and 30 (3) of the Rules of the Supreme Court of the United States, Applicant requests an extension of thirty (30) days to file a petition for writ of certiorari. Absent an extension of time, the petition would be due on January 17, 2019. Petitioners are filing this application at least ten days before that date. The court has jurisdiction under 28 U.S.C. § 1254 (1). The judgment sought to be reviewed is that of the United States Court of Appeals for the Ninth Circuit dated October 19, 2018. (See Decl. of Ringgold, Ex 3**)**.

The United States Court of Appeals has not made a determination on the petition for panel rehearing and petition for rehearing en banc as to the October 19, 2018 order. (See Decl. Ex 2 BS 51-85, Ex 3). On November 1, 2018 petitioners timely filed a motion for extension of time to file a petition for panel rehearing and petition for rehearing en banc. (Decl. Ex 2 BS 45-50). When there was no ruling from the Court of Appeal, at the direction of the clerk's office on November 28, 2018, petitioners filed a motion for leave to file their petition for panel rehearing and petition for rehearing en banc and their proposed petition for panel rehearing and rehearing en banc. (Decl. Ex 2 BS 42-85, Ex 2 BS 51-85). On November 29, 2018 petitioners filed a motion to stay mandate pending the filing and determination of a petition for writ of certiorari in the United States Supreme Court; and

renewed motions for substitution of party after death (Federal Rules of Appellate Procedure, Rule 43) and for determination of discrepancies in corporate disclosure filings proper to filing petition for writ of certiorari in the United States Supreme Court. (Decl. Ex 1 BS 1-41).

Petitioners have been advised by the United States Court of Appeals for the Ninth Circuit that their petition for panel rehearing and rehearing en banc is currently under review by the assigned panel including the request for extension of time. However with no formal disposition of the motion and petition for rehearing filed or written order, procedurally petitioners must operate under the condition that their petition for petition for a writ of certiorari is due on January 17, 2019. Given that there may be further review of the petition for rehearing in the United States Court of Appeals for the Ninth Circuit, which at this juncture seems to be the case, the filing of a petition in this court would be premature. Therefore, until disposition of the pending motion and the petition for rehearing, the time to file a petition for a writ of certiorari could be January 17, 2019 or ninety days from disposition by the United States Court of Appeals for the Ninth Circuit. Petitioners file this extension in this court to avoid any risk associated with the possibility that the Ninth Circuit determines, after January 17, 2019, not to grant the timely November 1, 2018 motion to extended time to file a petition for rehearing or does grant or rule on the petition for rehearing.

There is also a need for an extension to allow the Ninth Circuit to rule on the pending matters pertaining to substitution of parties under Federal Rules of Appellate Procedure, Rule 43 (due to the death of appellant Eddye Melaragno) and pertaining to corporate disclosures that have been filed in the underlying case. (See Ex 2 BS 1-41).

GENERAL BACKGROUND

In August 2017 Eddye Melaragno ("Melaragno") was taken to the emergency room of one of the hospitals owned by Providence Health & Services. Melaragno had a portable ventilator and a current order from her doctor for a speaking valve. Because she had a cuffed tracheostomy tube she could only speak by safely deflating the balloon within the tracheostomy tube, or engaging in non-verbal means of communication. Melaragno had a long standing 24 hour care partner team and resided in her own home.

There was no notice posted at the hospital that indicated that the would refuse disability accommodation for patients. There was no provision to transfer patients with clearly obvious need for accommodation to a different hospital. None of the physicians at Providence were the primary physicians of Melaragno and Melaragno had never been to any hospital associated with Providence.

In the Providence emergency room Melaragno designated health care surrogates under California Probate Code § 4711. The designated health care surrogates were her only child and grandson, who lived with her and

handled all of her medical affairs, and came to the hospital with her. Melaragno's designation of health care surrogacy under California Probate Code § 4711 had a sixty-day limitation period. The statutory designation expressly supercedes any advance care directive. After arrival in the emergency room Providence (1) refused reasonable accommodation, (2) refused access to medical records, (3) refused to deflate the balloon in Melaragno's cuffed tracheostomy so she could speak, (4) excluded Melaragno designated health care surrogates and immediate family, and (5) engaged in unauthorized procedures and medications.

Providence was required to ensure that Melaragno and her representatives were not denied services, excluded, segregated or otherwise treated differently because of the absence of auxiliary aids and services. (28 CRF § 36.303 (a)). It was required furnish appropriate auxiliary aids and services necessary to ensure effective communication with persons with disabilities including through their chosen statutory health care surrogates and other means. (28 CFR § 36.303 (c)). In its pattern of refusing disability accommodation Providence attempts to abusively hold persons with communication related disabilities hostage and to engage in outrageous and unnecessary Medicare billing. Its intent is to involuntarily funnel patients into its long-term care facility located on the grounds of the hospital for patients that use ventilators.

After refusals to accommodate and engage in effective communication, Melaragno and her statutory designated health care surrogates and a named agent in her health care directive immediately filed an action in the district court, in part, seeking injunctive relief. Melaragno's daughter was not only a statutory designated health care surrogate but also a professional disability advocate. (Decl. Ex 2 BS 70). No opposition was filed by Providence to the requested injunctive relief. Instead, within less than an hour after injunctive relief was sought in the district court, Providence took Melaragno to a location which was not disclosed to her immediate family, designated surrogates, 24-hour care partner team, representatives, and others. This created a manhunt to find Melaragno. Eventually she was found in a substandard nursing home in total distress with Providence doctors still purporting to administer her care. Then instead of filing opposition the motion for injunction, Providence attempted to argue that the request for injunctive relief was moot because it had "dumped" Melaragno at an unknown location.

Subsequently, and as the issue of injunctive relief was still pending, Providence maliciously caused Melaragno to be transferred 5 times after the motion filed, only for Melaragno to be returned to the original hospital she had been taken from. At each transfer Providence caused immediate family, designated surrogates, and the 24-hour care partner team to be harassed and/or excluded. Every single potential representative and

advocate of Melaragno joined together to file a Medicare appeal. After engaging in harmful conduct directly impairing the physical condition of Melaragno, Providence prohibited physical access to the hospital so that Melaragno's only child and grandchild, designated health care surrogates, and persons named in her advance care directive could not be with her when she was dying. This was done to ensure that Melaragno would die and eliminate any possibility that any person identified in Melaragno's advance health care directive could be present. All along Providence was submitting over $1,000,000 to Medicare for unauthorized services and payment for its discriminatory conduct. It still seeks payment from Medicare and contribution against Melaragno's successors.

The injunctive relief and protective order sought by petitioners in the district court, in part, requested:

> " 1. That defendant, its employees, administrators, agents, affiliates, contractors, physicians (including those employed, authorized to use, or to have privileges at your medical facilities), risk management personnel, and attorneys and those in active concert or participation with defendants:
>
> a. Shall be enjoined from refusing to accommodate persons with communication related disabilities from designating surrogates in the delivery of services and especially emergency room services.
>
> b. Shall be enjoined from blocking effective communication and thereby refusing to accommodate ventilator patients with cuffed tracheostomy tubes by safely deflating the balloon within the tracheostomy tube, or engaging in non-verbal means of communication, or engaging in other suitable requested and reasonable accommodation.

c. Shall be enjoined from barring access to medical records and information by persons with disabilities that cannot physically reach the medical records department and/or have communication impairments when proper accommodation can easily be provided through use of their agents under a durable power of attorney and/or their surrogates.

d. Shall be enjoined from attempting to claim that a communication disability is a lack of capacity and to do so through a physician that has not been specifically identified by the disabled patient as that person's primary care physician.

e. Shall be enjoined from conduct that attempts to give effect to an advance health care directive that is not yet effective and when there is a designation of surrogate by non-verbal means by a person with a communication related disability.

f. Shall be enjoined from continuing to administer medication and medical procedures against persons with communication disabilities and racial minorities with communication with disabilities, while disregarding designation of surrogates and refusing legitimate requests for medical records, so as to allow their bodies to be used to submit unwarranted claims for federal financial assistance in the form of Medicare and Medicaid.

g. Shall be enjoined from acts to undermine the goal of independent living of persons with disabilities, including but not limited to by failing to engage in effective communication by reasonable accommodation and by disregarding a designation of surrogates and instead attempting involuntary facility placement, particularly when the surrogates and other persons with personal knowledge of the wishes and capabilities of the person with the disability are present and are actively engaged in the day-to day needs, care, and life of the person with a disability and have superior information.

h. Shall be enjoined from continuing to administer medication and procedures on a person with a communication disability without providing reasonable

> accommodation necessary for effective communication and in disregard of non-verbal designation of surrogates by the person with a communication disability.
>
> i. Shall be enjoined from discriminatory retaliation, surveillance, intimidation, and racial stereotyping as a means to frustrate the equal rights of persons with disabilities and racial minorities to public accommodations and to interfere with privacy, dignity, comfort, and care of persons with disabilities. "
> (Excerpts of Record Vol. 4, Bates Stamp Nos. 616-618).

Melaragno died on November 9, 2017. An appeal was filed on November 16, 2017 in the Court of Appeal for the Ninth Circuit. A request was filed under Federal Rule of Appellate Procedure, Rule 43 for party substitution. The October 19, 2018 order dismisses the appeal in part as moot. (Decl. Ex 3). The order disregards that Melaragno was not the only appellant involved in the case and there was an existing and live controversy as to injunctive relief.

LEGAL DISCUSSION

A. Petitioners Have Shown Good Cause To Extend The Time To File A Petition For A Writ Of Certiorari

There are extraordinary circumstances to grant the extension because based on information received from the Court of Appeals for the Ninth Circuit there may be disposition of the appeal by the petition for rehearing which was filed with the court. The thirty-day extension would avoid filing a premature petition for a writ of certiorari. Additionally, there needs to be disposition of the motion for substitution of party due to the

death of appellant Eddye Melaragno prior to filing the petition and disposition of the matters pertaining to corporate disclosures of the respondent. These matters are pending in the Court of Appeal currently. Applicants have demonstrated good cause for the limited extension requested. There is also good cause because the issues that will be addressed in the petition warrant review by this court.

B. There Is Substantial Merit To The Petition For Writ of Certiorari

The decision of the Court of Appeal is in direct conflict with established authority of this court. Matters are not moot when the are capable of repetition and evade review. Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167, 189 (2002). Here, the matters are capable of repetition and evade review and present the only avenue to abate the discriminatory practices in the delivery of emergency room services for persons with communication disabilities that designate statutory health care surrogates. Providence Health & Services' continuing violation of the Americans with Disabilities Act ("ADA")(42 U.S.C. § 12101 et. seq.) and 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794)("Rehabilitation Act") and its impact on persons associated with Melaragno, combined with the shortened limitation period of sixty days for designating health care surrogates, and the improper benefit of federal financial assistance demonstrates that Eddye Melaragno's death alone did

not render the appeal moot. Moreover, the determination of mootness completely ignores that Eddye Melaragno was not the only party to the appeal and there exist associational standing of the designated health care surrogates and successors to seek injunctive relief. (See BS 63-70). There presently is a real world effect and a live controversy that both the ADA and Rehabilitation Act are expressly designed to remedy and the relief sought is not impossible. More importantly, the Court of Appeal disregarded that there was live controversy involving the statutory designated health care surrogate and professional disability advocate and hence a right to injunctive relief. Also it disregarded that there was a live controversy involving Eddye Melaragno's trust and personal representatives who were objecting to Providence Health & Services pursuit of federal financial assistance and contributions for unauthorized medical services.

Generally the Courts of Appeal agree that under the Rehabilitation Act non-disabled persons have standing to bring claims when they are injured because of their association with the disabled person. McCullum v. Orlando Reg'l Healthcare Sys, Inc., 768 F.3d 1135, 1142 (11th Cir. 2014). However, the Second Circuit and Eleventh Circuit have come to different conclusions about the type of injury a non-disabled person must experience. See McCullum at 1143-44; Loeffler v. Staten Island Univ. Hosp., 582 F.3d 268, 279 (2nd Cir. 2009). The Ninth Circuit has not directly addressed this split of authority. Instead, it has gone out of bounds, essentially

determining that under both the ADA and the Rehabilitation Act a non-disabled person independently injured through an association with a person with a disability has no standing to bring any claim for injunctive relief if the disabled person dies. It applies this standard even if the non-disabled person is directly impacted and involved, excluded from services and facilities, denied services and privileges, abd/or harmed by the discriminatory act or failure to act.

Associational standing is recognized under both the ADA and the Rehabilitation Act. The ADA provides: "It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association" 42 U.S.C. § 12182 (b)(1)(E). Thus the ADA provision requires that an associated person be actually excluded or denied due to their association. The Rehabilitation Act's provisions on associational standing are less specific. It makes a remedy "available to any person aggrieved by any act or failure to act by any entity subject to the Rehabilitation Act". See 29 U.S.C. § 794a (a)(2). A plaintiff aggrieved by violation of the Rehabilitation Act may seek all remedies available under Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), including injunctive relief.

Loeffler held that a non-disabled plaintiff need only establish "an injury casually related to, but separate and distinct from, a disabled person's injury under the [Rehabilitation Act]." Loeffler at 280. McCullum held that non-disabled persons have standing to seek relief under either the ADA or the Rehabilitation Act if they were personally excluded, personally denied benefits, or personally discriminated against because of their association with the disabled person. McCullum at 1143. The Ninth Circuit's determination is based on the view that irrespective of the nature of the injury that associational standing does not exist if the person with a disability dies. This view is inconsistent with the ADA, the Rehabilitation Act, and this court's decisions as to Article III standing to seek injunctive relief.

CONCLUSION

For the foregoing reasons, it is respectfully requested that this court grant this application for extension of time.

Dated: January 7, 2019

Respectfully Submitted,

By: s/ Nina R. Ringgold
NINA R. RINGGOLD, Esq.
Attorney For Petitioners

DECLARATION OF NINA RINGGOLD

I, Nina Ringgold, declare:

1. The facts alleged herein are within my personal knowledge and I know these facts to be true. If called as a witness I could and would testify competently to the matters stated herein.

2. The United States Court of Appeals has not made a determination on the petition for panel rehearing and petition for rehearing en banc as to the October 19, 2018 order. (See Ex 2 BS 51-85, Ex 3). On November 1, 2018 petitioners timely filed a motion for extension of time to file a petition for panel rehearing and petition for rehearing en banc. (Ex 2 BS 45-50). When there was no ruling from the Court of Appeal, at the direction of the clerk's office on November 28, 2018, petitioners filed a motion for leave to file their petition for panel rehearing and petition for rehearing en banc and their proposed petition for panel rehearing and rehearing en banc. (Ex 2 BS 42-85, Ex 2 BS 51-85). On November 29, 2018 petitioners filed a motion to stay mandate pending the filing and determination of a petition for writ of certiorari in the United States Supreme Court; and renewed motions for substitution of party after death (FRAP 43) and for determination of discrepancies in corporate disclosure filings proper to filing petition for writ of certiorari in the United States Supreme Court. (Ex 1 BS 1-41).

3. Petitioners have been advised by the United States Court of Appeals for the Ninth Circuit that their petition for panel rehearing and rehearing en banc is currently under review by the assigned panel including

the request for extension of time. However with no formal disposition of the motion and petition for rehearing filed or written order, procedurally petitioners must operate under the condition that their petition for petition for a writ of certiorari is due on January 17, 2019. Given that there may be further review of the petition for rehearing in the United States Court of Appeals for the Ninth Circuit, which at this juncture seems to be the case, the filing of a petition in this court would be premature. Therefore, until disposition of the pending motion and the petition for rehearing, the time to file a petition for a writ of certiorari could be January 17, 2019 or ninety days from disposition by the United States Court of Appeals for the Ninth Circuit. Petitioners file this extension in this court to avoid any risk associated with the possibility that the Ninth Circuit determines, after January 17, 2019, not to grant the timely November 1, 2018 motion to extended time to file a petition for rehearing or does grant or rule on the petition for rehearing.

4. There is also a need for an extension to allow the Ninth Circuit to rule on the pending matters pertaining to substitution of parties under Federal Rules of Appellate Procedure, Rule 43 (due to the death of appellant Eddye Melaragno) and pertaining to corporate disclosures that have been filed in the underlying case. (See Ex 2 BS 1-41).

5. Attached hereto are true and correct copies of the following exhibits which I authenticate:

Exhibit 1- November 29, 2018. Motion for Stay Mandate Pending The Filing and Determination of A Petition For Writ of Certiorari in the United States Supreme Court; and Renewed Motion for Substitution of Party After

Death (FRAP 43) and for Determination of Discrepancies In Corporate Disclosure Filings Prior to Filing Petition For Writ of Certiorari in the United States Supreme Court in Appeal No. 17-56742. (Bates Stamp Nos. 1-41).

Exhibit 2- November 28, 2018. Motion for Leave To File Petition For Panel Rehearing and Petition For Rehearing En Banc (BS 42-50); and Petition for Panel Rehearing and Petition For Rehearing En Banc in Appeal No. 17-56742. (BS 51-85)(total Exhibit 2, BS 42-85).

Exhibit 3- October 19, 2018 Order of the United States Court of Appeals for the Ninth Circuit (O'Scannlain, Berzon, and Ikuta) in Appeal No. 17-56742. (BS 86-88).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in Los Angeles, California on January 7, 2019.

s/ Nina R. Ringgold

EXHIBIT 1

9th Cir. Civ. Case No. 17-56742
USDC Case No. CV17-06296 SJO (SK)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDDYE MELARAGNO; By And Through Her Agent Under Durable Power of Attorney, and NINA RINGGOLD, in the Capacity As Named Agent Under Advance Health Care Directive And In Her Individual Capacity,
Plaintiffs-Appellants,

v.

PROVIDENCE HEALTH & SERVICES AND DOES 1-10,
Defendant-Appellee.

From the United States District Court for the Central District of California
The Honorable S. James Otero

MOTION TO STAY MANDATE PENDING THE FILING AND DETERMINATION OF A PETITION FOR WRIT OF CERTIORARI IN THE UNITED STATES SUPREME COURT; AND RENEWED MOTIONS FOR SUBSTITUTION OF PARTY AFTER DEATH (FRAP 43) AND FOR DETERMINATION OF DISCREPANCIES IN CORPORATE DISCLOSURE FILINGS PRIOR TO FILING PETITION FOR WRIT OF CERTIORARI IN THE UNITED STATES SUPREME COURT

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I. INTRODUCTION

Appellants request that this court stay issuance of the mandate in this appeal pending determination of a petition for a writ of certiorari in the United States Supreme Court and reconsider certain matters.

On November 20, 2017, following the death of Eddye Melaragno ("Melaragno"), appellants timely and properly filed a motion for substitution of party in this court under FRAP 43 and motion for modification of the caption of the case on appeal. The motion was not opposed.

On March 31, 2018 appellants filed a motion to strike the corporate disclosure statement filed by David P. Pruett of the Law Office of Carroll, Kelly, Trotter, Franzen, McBride & Peabody. The motion requested that this court strike the corporate disclosure filed on appeal that directly conflicted with the corporate disclosure filed in the District Court *and* to require counsel for respondent Providence Health & Services to submit written reasons for the discrepancies.[1] The motion was not opposed.

[1] As explained in the motion, the conflict and discrepancies directly relate to the legal issues on appeal.

On October 19, 2018 this court entered an order dismissing the appeal in part based on mootness and in part based on lack of jurisdiction. In that order the court specified that the unopposed motions were denied. It appears the court may have denied appellants' motion for party substitution and as to corporate disclosure statements based on the indication of lack of jurisdiction.

Appellants request that this court reconsider and grant the motion for party substitution in advance of filing a petition for a writ of certiorari so that the proper parties and caption will be present at the time of filing the petition in the Supreme Court. Alternatively, appellants' request that the mandate be stayed, with leave to file a motion for party substitution in the district court. The latter option does not seem appropriate because appellants have a right to obtain party substitution on appeal under FRAP 43 (based on death). Appellants also request that prior to filing the petition in the Supreme Court that the court resolve the issue concerning the direct conflicting corporate disclosure statements filed in the district court and in the Ninth Circuit. This matter also should be properly resolved in the Court of Appeal proper to filing a petition for a writ of certiorari.

On November 1, 2018 appellants filed a motion for extension to file a petition for panel rehearing and rehearing en banc. This court has not yet ruled on this matter. Because the court had not ruled on the motion, appellants filed a motion for leave to file their petition for panel rehearing and rehearing en banc and filed a copy of this petition. There is no rule of court that prohibits the filing of a petition for panel rehearing and rehearing en banc on the October 19, 2018 order. Appellants timely filed a request for extension and anticipated the court would rule on the motion.

Pending the filing and determination of the petition for writ of certiorari, appellants seek the following relief:

(1) An order staying the mandate in Appeal No. 17-56742;

(2) An order granting the timely and properly filed motion for party substitution under FRAP 43. (This motion was filed within 90 days after the death of Eddye Melaragno and in accord with the rules of court. The unopposed motion for party substitution and modification of the caption should be granted prior to filing the petition for writ of certiorari);

(3) An order granting the motion to strike the conflicting corporate disclosure with instruction to appellee's counsel to explain the discrepancies.

II. STANDARD

A motion to stay mandate must show that the certiorari petition would present a substantial question and that there is good cause for a stay. (FRAP 41). In addition to this standard, under the All Writs Act federal courts are provided power to "issue all writs necessary or appropriate to aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651.

III. LEGAL DISCUSSION

A. The Petition For Writ Of Certiorari Will Present Substantial Questions And There Is Good Cause For A Stay Of Issuance Of The Mandate

The petition will present substantial questions demonstrating good cause for the requested stay.

Appellants were not given an opportunity to address the question of mootness prior to entry of the October 19, 2018 order. The matters on

appeal are not moot under the Supreme Court's decision in Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167 (2000). Here, the matters are capable of repetition and evade review and present the only avenue to abate the discriminatory practices in the delivery of emergency room practices of Providence Hospital. Providence cannot continue and persist in its discriminatory policies and systemic discriminatory pattern of conduct by (1) refusing to allow emergency room patients with an obvious need for disability accommodation to designate statutory health care surrogates, (2) refusing to provide disability accommodation, (3) engaging in retaliation, (4) attempting to involuntarily place patients in its long-term care facilities, and (5) continuing improper billing to Medicare for services are not authorized and harmful.

There does not and could not exist a claim of mootness because (1) Melaragno is not the only party in the case, (2) the successor of Melaragno is required to be substituted into the case and has a continued surviving legal right as to the relief sought on appeal, and (3) there exists present controversies and valid claims for relief on appeal.

The appeal is not moot because there is an active controversy and claim for injunctive relief by appellant Nina Ringgold ("Ringgold") as a family member, designated statutory health care surrogate, an agent designated in the advance care directive, and a professional disability service provider.[2] There is a conflict in authorities among Courts of Appeal concerning associational standing. See Loeffler v. Staten Island University Hosp., 582 F.3d 268, 279 (2nd Cir. 2009) (children of a disabled person had standing under the Rehabilitation Act to bring associational discrimination claims against hospital) versus McCullum v. Orlando Reg'l Healthcare Sys. Inc., 768 F.3d 1135, 1142 (11th Cir.)(narrower definition). Under the October 19, 2018 order the Ninth Circuit takes the position that there can be no associational standing whatsoever. The district courts in this Circuit have not taken such a drastic view and have generally required a specific, direct, and separate injury as a result of an association with persons with a disability.[3]

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[2] Petitioner Ringgold was formerly the director of the Disability Mediation Center at Loyola Law School. (App. 4.757 ¶6).

[3] See Moore v. Equity Residential Management, L.L.C. 2017 WL 2670257 at *4-5 (N.D. Cal. June 21, 2017), Nevarez v. Forty Niners Football Company, LLC, 2017 WL 3288634 at *5-8 (N.D. Cal. August 1, 2017), Prescott v. Rady Children's Hospital-San Diego, 2018 WL 2193649 at *3-4 (S.D. Cal. May 11, 2018). See also Barker v. Riverside County Office of Education, 584 F.3d

The petition for a writ of certiorari will present substantial issues upon which there are conflicting authorities from different courts of appeal. Additionally, on the question of this court's jurisdiction, the petition will present substantial issues as to the uniformity of application of decisions of the Supreme Court.[4]

B. There Is Good Cause For The Request As to Party Substitution and the Corporate Disclosure

FRAP 43 expressly allows for party substitution on appeal. The court has jurisdiction to determine its own jurisdiction and within that proceeding and jurisdiction substitution of a party is proper. Moreover, the district court lacks jurisdiction due to the appeal. Appellants have a right to party substitution on appeal and prior to filing a petition for a writ of certiorari. Additionally, because a proper filing of a corporate disclosure

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821, 825-826 (9th Cir. 2016)(the anti-retaliation provisions of the Rehabilitation Act and the ADA grant standing to non-disabled people who are retaliated against for attempting to protect the rights of the disabled).

[4] See Petition for Rehearing En Banc and Petition for Panel Rehearing. (Dkt 19); Gillespie v. United States Steel Corp, 379 U.S. 148 (1964); Carson v. American Brands, Inc., 450 U.S. 79 (1981); Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949).

is mandatory and directly relevant to the issues on appeal, prior to filing a petition for a writ of certiorari this court should grant the relief which allows for explanation of the blatant discrepancies in appellee's filings in the district court and Court of Appeal and to have this matter resolved before any further proceeding.

III. CONCLUSION

For the foregoing reasons appellants request that this court grant the relief sought herein.

Dated: November 29, 2018 LAW OFFICE OF NINA R. RINGGOLD

By: s/ Nina R. Ringgold_____
Nina R. Ringgold, Esq.
Attorney for the Appellants

DECLARATION OF NINA RINGGOLD

I, Nina Ringgold, declare as follows:

1. If called as a witness I could and would truthfully testify as to the matters asserted herein.

2. Attached hereto are copies of the motion for party substitution (and correction of caption) and motion concerning the corporate disclosure statement. (Exhibit 1 & 2). The motions were not opposed.

3. Justin Ringgold-Lockhart is the executor of the estate of Eddye Melaragno and the trustee of the Melaragno Family Trust and is the proper person for party substitution following the death of Eddye Melaragno.

I declare under penalty of perjury that the matters stated herein are true and correct and that this declaration was executed in the County of Los Angeles, State of California.

Date: November 29, 2018

s/ Nina R. Ringgold

EXHIBIT 1

9th Cir. Civ. Case No. 17-56742
USDC Case No. CV17-06296 SJO (SK)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDDYE MELARAGNO; NINA RINGGOLD,
Appellants,

v.

PROVIDENCE HEALTH & SERVICES AND DOES 1-10,
Respondents.

From the United States District Court for the Central District of California
The Honorable S. James Otero

MOTION FOR SUBSTITUTION OF PARTY (FRAP 43); AND FOR MODIFICATION OF CAPTION

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TO THE HONORABLE JUSTICES OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Appellants hereby move for an order to substitute as a party the Eddye Melaragno Family Trust in lieu of Eddye Melaragno.

On November 9, 2017 Eddye Melaragno died. At her death all pending and/or future claims of Eddye Melaragno became property of the Eddye Melaragno Family Trust. Decedent's grandson, Justin Ringgold-Lockhart is the trustee of the Trust. (See Certification of Trust, a true and correct copy which is attached hereto). The trustee has no objection to the substitution of party.

Under FRAP 43 the decedent's representative may be substituted as a party on motion.

Upon granting substitution of a party, appellants request that the caption of the case be modified to *Eddye Melaragno Family Trust, Nina Ringgold v. Providence Health & Services*.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 20, 2017

Respectfully submitted,

LAW OFFICE OF NINA R. RINGGOLD

By: s/ Nina R. Ringgold, Esq.
Nina R. Ringgold, Esq.
Attorney for the Appellants

EDDYE MELARAGNO FAMILY TRUST *Northridge, California*	)	**CERTIFICATION OF TRUST**

The, undersigned, declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

1. The Trust is known as the Eddye Melaragno Family Living.

2. The name of the settlor of the Trust is Eddye Melaragno.

3. The name of the current trustee is Justin Ringgold-Lockhart.

4. The trust is the owner of all pending or future claims of Eddye Melaragno. This includes claims that are potential, unliquidated, or contingent.

5. The trustee, in part, has following powers:

A. To commence or defend any litigation with respect to the Trust or any property of the Trust Estate as the Trustee may deem advisable, at the expense of the Trust.

B. To compromise or otherwise adjust any claims or litigation against or in favor of the Trust.

6. The trust is irrevocable.

7. The number of trustees who must sign document in order to exercise powers of the Trust is one (1), whose name is Justin Ringgold-Lockhart. Title to trust assets is to be taken as

Justin Ringgold-Lockhart, Trustee or the Eddye Melaragno Family Trust.

Dated: November ~~16~~ 18 JRRL, 2017

11/18/17

JUSTIN RINGGOLD-LOCKHART, TRUSTEE

QAMAR ZAMAN
NOTARY PUBLIC

8822 Reseda Blvd, Northridge, California 91324
Tel: (818) 407-0572, Fax: (818) 407-0573
Email multiplex004@gmail.com

Disclaimer: A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document. (Civil Code section 1189 and 1195, and Government Code section 8202, as amended)

JURAT WITH AFFIANT STATEMENT

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 18th day of November, 2017, by:

1) Justin Ringgold-Lockhart
2) _____
3) _____

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature _____

QAMAR ZAMAN
COMM. # 2140093
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
MY COMM. EXP. FEB. 10, 2020

(seal)

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

FURTHER DESCRIPTION OF ANY ATTACHED DOCUMENT

Title or Type of Document: Certification of Trust

Document Date: 11/18/17 Number of Pages 2 (two)

Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT OF SIGNER #1 Top of thumb here	RIGHT THUMBPRINT OF SIGNER #2 Top of thumb here

Certificate of Service

I hereby certify that on November 20, 2017, I electronically filed the following documents with the Clerk of Court by using CM/ECF system:

MOTION FOR SUBSTITUTION OF PARTY (FRAP 43)

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

The following additional service was on this motion.

Hand Delivery
Justin Ringgold-Lockhart, Trustee
Eddye Melaragno Family Trust
17901 Malden St.
Northridge, CA 91325

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration was executed on November 20, 2017 Los Angeles, California.

s/ Matthew Melaragno

EXHIBIT 2

9th Cir. Civ. Case No. 17-56742
USDC Case No. CV17-06296 SJO (SK)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDDYE MELARAGNO; NINA RINGGOLD,
Appellants,

v.

PROVIDENCE HEALTH & SERVICES AND DOES 1-10,
Respondents.

From the United States District Court for the Central District of California
The Honorable S. James Otero

APPELLANTS' MOTION TO STRIKE APPELLEE'S

CORPORATE DISCLOSURE STATEMENT

NINA RINGGOLD, Esq. (SBN #133735)
Attorney for Appellants
Law Offices of Nina R. Ringgold
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TO JUSTICES OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Appellants Melaragno Family Trust[1]("Melaragno") and Nina Ringgold ("Ringgold") hereby file this motion to strike appellee's corporate disclosure statement filed on March 30, 2018 in this court which is in conflict with the corporate disclosure statement filed in the district court. (See Exhibits 1 & 2 attached hereto)(DE 13 vs. DE 9-3 433-436)[2].

I. INTRODUCTION

The corporate disclosure statement filed in the district court specified that "[p]ursuant to Rule 7.1 (a) of the Federal Rules of Civil Procedure, defendant PROVIDENCE HEALTH & SERVICES and the undersigned counsel [David P. Pruett, Esq.] for PROVIDENCE HEALTH & SERVICES certify that Providence St. Joseph Health is the parent corporation of PROVIDENCE HEALTH & SERVICES."

The corporate disclosure statement filed in the Ninth Circuit states that "[p]ursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, there are no parent corporations and no publically held corporations that

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[1] See Motion for Substitution of Party (FRAP 43); and Motion for Modification of Caption. (Dkt 2).

[2] Appellants have filed a preliminary excerpts of record and the citations herein are to that record. See DE 9-3 to DE 9-6, & DE 11. (Volumes 1-5 of Appellants' Preliminary Excerpts of Record.)

own 10% or more of stock of defendant/appellee Providence Health & Services".

Appellants request that this court order appellee and its counsel to explain the discrepancy and change. The issue is not insignificant.

Appellants claim that the recent filing furthers and amplifies the arguments made in response to this court's order indicating that it may lack jurisdiction over this appeal. (See DE 10 Appellants' Response November 28, 2017 order at p. 17-21). *In part,* appellants argue that this court has jurisdiction over this appeal under the collateral order doctrine. See Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (194). The orders concerning the withdrawal, substitution of counsel, and erroneous appearances of counsel for a corporate entity that is not a party to the case conclusively determined disputed questions, resolved important questions completely separate from the merits of the action, and the matters are effectively unreviewable on appeal from a final judgment in the case. See Osband v. Woodford, 290 F.3d 1036, 1039-1040 (9th Cir. 2002). More importantly, the challenged orders directly impacted the inability of Eddye Melaragno to obtain a protective order and effective injunctive relief prior to her death on November 9, 2017. The question of whether an order of withdrawal and/or substitution in a case is required before a new appearance is made is a critical issue for all parties and counsel *authorized to appear in a proceeding*. Moreover, the tactical delay and attempt to cause

involuntary waiver of HIPAA rights by unauthorized attorneys appearing in a case, adversely impacts the ability of persons with disabilities to achieve the injunctive relief required when there is a refusal to accommodation under 504 of the Rehabilitation Act or under the Americans with Disabilities Act.

II. PERTINENT FACTS AND ARGUMENT THAT RELATE TO ATTORNEY APPEARANCES AND CORPORATE DISCLOSURE

Appellants filed this complaint on August 25, 2017 alleging claims for (1) injunctive, equitable, and declaratory relief; (2) Violation of 504 of the Rehabilitation Act of 1973; (3) Violation of the Title III of the American with Disabilities Act; (4)Violation of the Civil Rights Act of 1964; (5) Violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981, 1982, 1983, 1985, 1986; (6) Violation of various state civil rights laws; and (7) for intentional and negligent infliction of emotional distress. The complaint stressed that there was a medical emergency existing at the time the complaint was filed. The complaint alleged that appellant Melaragno had designated surrogates in a hospital emergency room and that the hospital was refusing reasonable accommodation for Melaragno's communication disabilities and refusing Melaragno's access to her own medical records. Melaragno had a portable ventilator and a cuffed tracheostomy. She could communicate when the cuff was deflated and by non-verbal means. (DE9-6 775-801).

On August 29, 2017 appellants filed an ex parte application for temporary restraining order and protective order and for issuance of an order to show cause for preliminary injunction and protective order. The application provided extensive evidence from Melaragno's designated surrogates, her agent under her durable power of attorney, family members, and members of her long standing Care Partner Team. (DE 9-5 447-452, 464-33.478, 506-39.571, DE 9-6 594-748). The following events took place with respect to appearances of counsel:

1. **Elsberry Declaration And Appearance Without A Corporate Disclosure Statement.**

On September 1, 2017 Michael J. Elsberry filed a declaration that did not oppose the relief sought by appellants but rather claimed that Melaragno had been transferred to a new facility. His declaration expressly stated: "I am a member of Susson Parett and Odell, counsel for **Providence Health & Services**….". (DE 9-6 585:Lines 21-22). However, the caption without verification claimed to represent an entity which appellants did not sue. ("Providence Health System-Southern California dba Providence Holy Cross Medical Center") (DE 9-6 585:Lines:5-7). Prior to case filing counsel for the appellants had already been in contact with the legal department of the entity actually sued. (Providence Health & Services). (See DE 9-5 457:Line 24 to 458:Line 7).

The Elsberry declaration also injected an erroneous issue about Melaragno's Advance Care Directive. (See DE 9-586:Lines9-12) compare to DE 10 p. 4-6, 18-19). After the TRO was filed, without consent, Melaragno was transferred and dumped at a severely substandard nursing home and her immediate family and designated surrogates were not told where she had been taken. Objections were filed to the Elsberry Declaration. (DE 9-5 473-484, 560-571, 573-581, DE 9-6 582-583).

2. **First Motion For Approval Of Substitution Or Withdrawal Of Counsel ("In Reality An Attempt To Substitute A Non-Party In The Case Using A Risk Manager That Did Not Represent The Party In The Case")**

On September 13, 2017 Michael Elsberry, Esq. David Pruett, Esq., and Randy Haynes (Of Providence St. Joseph Risk Management) participated in filing, what on its face appeared as a motion for approval of substitution or withdrawal, but in fact was an effort to have the district court sign an order that would substitute in an entirely different party. (DE 9-5 464-470). David Pruett, Esq. filed a motion for approval of substitution or withdrawal of counsel. The motion contained a caption that did not specify who he represented and he was not associated with the law office of Michael Elsberry. He claimed that Elsberry represented a non-party and that he would substitute in the case for the same non-party. Randy Haynes claimed he was the regional claims manager for Providence St. Joseph Health Risk (a claims manager for a non-party). (Id.) Haynes claimed: ("I am currently represented by, or am an authorized representative of a party

currently represented, by the Withdrawing Attorney listed above. I consent to the withdrawal of my current counsel, and to substitution of counsel as specified above." (DE 9-5 462). The proposed order submitted by David Pruett, Esq. ask the court to order as follows: "The Court hereby orders that the request of: Providence Health Systems-Southern California dba Providence Holy Cross Medical Center defendant to substitute David P. Pruett, CARROLL, KELLY, TROTTER, FRANZEN, McKENNA, & PEABODY who is retained counsel…as attorney of record instead of Michael J. Elsberry". (DE 9-5 463). The order was in fact attempting to substitute a new party in the case. Appellants filed an objection and motion to strike the request for approval of substitution or withdrawal of counsel as an improper attempt to substitute a non-party in the action. The motion stressed that Pruett's motion was improper on its face and an improper effort to substitute a non-party in the case, that no opposition had been filed to the relief filed by plaintiffs, and that approval of the baseless motion would cause delay without a showing of good cause under the rules of court. Plaintiffs argued that the tactics were being used to refuse to meet and confer regarding a protective order, to refuse commit to the Rule 26 (f) meeting among counsel, and to engage in tactics to cause Melaragno to suffer and be without the assistance of her designated surrogates and immediate family members that lived with her. (DE 9-5 453-459).

3. **After Refusal of The District Court To Allow A Motion For Approval Of Substitution Or Withdrawal Of Counsel To Function As A Substitution Of A Party, David Pruett, Esq. Filed A Unilateral Notice of Appearance Or Withdrawal of Counsel. He Also Filed A Corporate Disclosure Statement "Claiming" Providence St. Joseph Health Was The Parent Corporation of Providence Health & Services. However, In This Court, Pruett Claims That Providence Health & Services Has No Parent Corporation.**

After David Pruett put himself out on a limb to file the first motion for substitution or withdrawal (as a tactic to obtain an order of party substitution), on September 18, 2017 he then filed unilateral notice of appearance when there had been no withdrawal of Elsberry from the case. He filed a corporate disclosure claiming and certifying, on behalf of both himself and Providence Health & Services, that St. Joseph was the parent company of Providence Health & Services. (DE 9-5 435).

Irrespective of the conflicting corporate disclosures, given that Elsberry had expressly declared under penalty or perjury that he represented Providence Health & Services on September 1, 2017 an order of withdrawal or substitution was required. ("I am a member of Susson Parett and Odell, counsel for **Providence Health & Services**….". (September 1, 2017 Declaration DE 9-6 585:Lines 21-22).

Counsel in the case were directed by Elsberry's office to Pruett's office as to any matter pertaining to the case even though he was identified as the attorney of record. Or, each attorney claimed they were not

authorized to appear. Elsberry took the position that he was not the attorney of record ignoring his own declaration. Therefore as to presenting confidential or medical records the local rules of court required service on persons who claimed not to be counsel of record in the case. There was a refusal to meet and confer regarding a protective order or a Rule 26 (f) meeting among counsel based on the claim each attorney was not counsel of record.

After filing a unilateral appearance without an order of substitution or withdrawal, Pruett filed an answer with his unauthorized and unilateral notice of appearance. (DE 9-5 424-432)[3]. Appellant filed a motion to strike this appearance and the answer and for entry of default. (See DE 9-4 119-254). While recognizing that an order refusing to enter a default is not appealable the issue in this appeal concerns the orders refusing to bar the

[3] The district court form used by Pruett did not authorize use of the form. (See DE9-5 Instructions for G-123 (9/17). Pruett had the dilemma of explaining why he had used a St. Joseph Medical Center risk manager in his prior motion for substitution. He could have easily filed a motion for substitution having the proper corporate defendant, Providence Health & Services, sign the motion giving consent. Appellants acknowledge that there was a combination of Providence Health & Services and Providence St. Joseph Health. However the corporate entity sued and served *in this case* involves the corporate entity-Providence Health & Services. The use of the term St. Joseph Health can be efforts to refer to number of entities e.g.: Providence St. Joseph Health, St. Joseph Health Systems, St. Joseph Health Ministry, Providence Saint Joseph Medical Center, St. Joseph's Hospital Etc.

unauthorized appearances and participation of counsel who were not properly appearing in the case. This directly impacted processing of the case. (i.e. the entire time Melaragno was isolated and harmed there was essentially no properly authorized counsel on the other side to meet and confer yet there were filings by these attorneys.) See E.E.O.C. v. Sunfire, 2009 WL 2450472 (D.Ariz 2009)(rejecting unilateral filing of notices of appearance when there is still an attorney of record appearing in the case). Attorneys who did not have proper appearances made filings of confidential medical information of Melaragno in the public record and filed manufactured medical information (while Melaragno was being terrorized and transferred to 5 different medical facilities). (i.e. DE 9-4 363-423).

The challenged orders regarding the appearances and representation conclusively determined disputed questions, they resolved important questions separate from the merits of the action and to the safety and welfare of Melaragno before her death, and these matters cannot be effectively reviewed on appeal from a final judgment.

4. **Second Motion For Approval Of Substitution Or Withdrawal Of Counsel ("Claiming to Be "CM/ECF Counsel of Record for Providence Health & Services").**

On October 17, 2017 Michael Elsberry, Esq. filed a motion for approval of substitution or withdrawal of counsel. (DE 9-4 99-102). This time Elsberry claimed, disregarding ***again*** his own declaration under

penalty of perjury, that he was the "**CM/ECF counsel of record for Providence Health & Services."** (DE 9-4 100). Randy Haynes signed claiming he was the risk manager for "Providence Health & Services, ***related entities".*** (Emphasis added). Haynes in a misleading manner does not specify what entity he claims to be signing for. All in all Elsberry's motion attempts to claim that his appearance in the case was a result of some CM/ECF error – disregarding the declaration he filed and signed.

Appellants filed an objection and motion to strike the second request for approval of substitution or withdrawal of counsel. They expressly requested a hearing on the matter of the appearances for defendant and gave notice of their request for cross-examination pursuant to L.R. 7-8 on the multiple submissions for substitution or withdrawal. The motion requested to cross-examine Elsberry, Pruett, and Haynes. The motion specified, that at that point, Melaragno was at risk of dying. (DE 9-4 94-98).

5. **The Corporate Disclosure Filed In The Ninth Circuit.**

Pruett's unilateral notice of appearance was not proper and required a motion for substitution or withdrawal signed by Providence Health & Services. This entity never signed such motion. The corporate disclosure filed in the district court was to give the inference that Haynes would have been proper signator had a proper motion been filed. However, it is evident by the second motion for substitution or withdrawal filed by Elsberry that this was not the case. The corporate disclosure filed in the

district court erroneously attempts to project that Haynes *would or could* have signed a motion for substitution. But the relevant issue is that no such motion was filed.

III. CONCLUSION

This court should grant the relief sought by this motion to strike and order purported counsel for Providence Health & Services to submit written reasons to this court for the discrepancies in the corporate disclosure filings in the district court and in this court.

Dated: March 31, 2018

LAW OFFICE OF NINA RINGGOLD

By: /s/ Nina Ringgold_____

Nina Ringgold, Esq.
Attorney for the Appellants

EXHIBIT 1

Case No. 17-56742

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDDYE MELARAGNO, ET AL.
PLAINTIFFS/APPELLANTS

VS.

PROVIDENCE HEALTH & SERVICES,
DEFENDANT/APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES
D.C. NO. 2:17-CV-06296-SJO-SK
HON. S. JAMES OTERO, DISTRICT JUDGE

APPELLEE'S CORPPORATE DISCLOSURE STATEMENT

DAVID P. PRUETT, NO. 155849*
CARROLL, KELLY, TROTTER, FRANZEN, MCBRIDE & PEABODY
Post Office Box 22636
Long Beach, CA 90801-5636
Tel. (562) 432-5855 / Fax. (562) 432-8785

Attorneys for Defendant/Appellee
PROVIDENCE HEALTH & SERVICES

*Certified Specialist, Appellate Law, State Bar of California, Board of Legal Specialization

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, there are no parent corporations and no publicly held corporations that own 10% or more of stock of defendant/appellee Providence Health & Services.

Respectfully submitted,

Dated: March 30, 2018

CARROLL, KELLY, TROTTER,
FRANZEN, McBRIDE & PEABODY

By: */s/ David P. Pruett*
DAVID P. PRUETT
Attorneys for Defendant/Appellee
PROVIDENCE HEALTH &
SERVICES

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2018, I electronically filed the foregoing **APPELLEE'S CORPPORATE DISCLOSURE STATEMENT** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing **APPELLEE'S CORPPORATE DISCLOSURE STATEMENT** by First-Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days, to the following non-CM/ECF participants:

[*NONE*]

Dated: March 30, 2018 By: */s/ Laurie Baker*
LAURIE BAKER

EXHIBIT 2

CARROLL, KELLY, TROTTER, FRANZEN, MCKENNA & PEABODY
DAVID P. PRUETT (SBN 155849)
dpruett@cktfmlaw.com
JENNIFER A. COONEY (SBN 218815)
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111 West Ocean Boulevard, 14th Floor
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Telephone No. (562) 432-5855 / Facsimile No. (562) 432-8785
Attorneys for Defendant, PROVIDENCE HEALTH & SERVICES

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

EDDYE MELARAGNO *by and through her agent under durable power of attorney*; NINA RINGGOLD *in the capacity as a named agent under Advance Health Care Directive and in her individual capacity* Plaintiffs, vs. PROVIDENCE HEALTH & SERVICES and DOES 1-10 Defendants.	CASE NO.: 2:17-cv-06296-SJO-SK **DEFENDANT'S FRCP RULE 7.1 DISCLOSURE STATEMENT AND CIVIL LOCAL RULE 7.1-1 NOTICE OF INTERESTED PARTIES** Hon. S. James Otero, Judge Courtroom 10C Complaint Filed: August 25, 2017 Trial Date: *Not Yet Set*

Defendant PROVIDENCE HEALTH & SERVICES hereby submits the following Disclosure Statement pursuant to Federal Rules of Civil Procedure, Rule 7.1(a), and Notice of Interested Parties pursuant to Civil Local Rule 7.1-1.

///

DISCLOSURE STATEMENT

Pursuant to Rule 7.1(a) of the Federal Rules of Civil Procedure, defendant PROVIDENCE HEALTH & SERVICES and the undersigned counsel for PROVIDENCE HEALTH & SERVICES certify that Providence St. Joseph Health is the parent corporation of PROVIDENCE HEALTH & SERVICES.

NOTICE OF INTERESTED PARTIES

Pursuant to Civil Local Rule 7.1-1, the undersigned, counsel of record for PROVIDENCE HEALTH & SERVICES, certifies that as of this date, other parties with any pecuniary interest in the outcome of this case would include Providence Health & Services Self-Insured Trust. These representations are made to enable the Court to evaluate possible disqualification or recusal.

DATED: September 18, 2017

CARROLL, KELLY, TROTTER, FRANZEN, McKENNA & PEABODY

By: */s/ David P. Pruett*
DAVID P. PRUETT
JENNIFER A. COONEY
NATASHA L. MOSLEY
Attorneys for Defendant, PROVIDENCE HEALTH & SERVICES

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I hereby certify that on September 18, 2017, I electronically filed the foregoing **DEFENDANT'S FRCP RULE 7.1 DISCLOSURE STATEMENT AND CIVIL LOCAL RULE 7.1-1 NOTICE OF INTERESTED PARTIES** with the clerk of the United States District Court – Central District of California, Western Division, by using the Central District CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the Central District of California CM/ECF system.

I further certify that some of the participants in the case may not be registered CM/ECF users. I have mailed the foregoing **DEFENDANT'S FRCP RULE 7.1 DISCLOSURE STATEMENT AND CIVIL LOCAL RULE 7.1-1 NOTICE OF INTERESTED PARTIES** by First-Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days, to the following non-CM/ECF participants:

[*NONE*]

Dated: September 18, 2017

By: */s/ Laurie Baker*
LAURIE BAKER

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2018 I electronically filed the following documents with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

APPELLANTS' MOTION TO STRIKE APPELLEE'S CORPORATE DISCLOSURE STATEMENT

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration was executed on March 31, 2018 at Los Angeles, California.

s/ Matthew Melaragno_____

Certificate of Service

I hereby certify that on November 29, 2018 I electronically filed the following documents with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

MOTION TO STAY MANDATE PENDING THE FILING AND DETERMINATION OF A PETITION FOR WRIT OF CERTIORARI IN THE UNITED STATES SUPREME COURT; AND RENEWED MOTIONS FOR SUBSTITUTION OF PARTY AFTER DEATH (FRAP 43) AND FOR DETERMINATION OF DISCREPANCIES IN CORPORATE DISCLOSURE FILINGS PRIOR TO FILING PETITION FOR WRIT OF CERTIORARI IN THE UNITED STATES SUPREME COURT

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration was executed on November 29, 2018 at Los Angeles, California.

s/ Matthew Melaragno_____

EXHIBIT 2

9th Cir. Civ. Case No. 17-56742
USDC Case No. CV17-06296 SJO (SK)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDDYE MELARAGNO; By And Through Her Agent Under Durable Power of Attorney, and NINA RINGGOLD, in the Capacity As Named Agent Under Advance Health Care Directive And In Her Individual Capacity,
Plaintiffs-Appellants,

v.

PROVIDENCE HEALTH & SERVICES AND DOES 1-10,
Defendant-Appellee.

From the United States District Court for the Central District of California
The Honorable S. James Otero

MOTION FOR LEAVE TO FILE PETITION FOR PANEL REHEAING AND PETITION FOR REHEARING EN BANC

NINA R. RINGGOLD, ESQ. (SBN (CA) 133735)
LAW OFFICE OF NINA R. RINGGOLD
17901 Malden St., Northridge, CA 91325
Telephone: (818) 773-2409
Facsimile: (866) 340-4312

I. INTRODUCTION

On November 1, 2018 appellants filed a motion for extension of time to file a petition for panel rehearing and petition for rehearing en banc. (Dkt 17). The motion requested an extension to November 26, 2018. The motion is attached hereto. The court did not rule on the motion and counsel for the appellants was unclear whether the petition could be filed or whether to wait for a court ruling. After communication with the clerk's office, counsel was advised to request leave to file the petition.

This application requests leave to file the prepared petition for panel rehearing and petition for rehearing en banc and request that the court grant the extension to this date – November 28, 2018.

II. LEGAL DISCUSSION

A. There is Good Cause to Grant The Requested Application For Leave and Extended Date For Filing

It appears that there was an oversight in disposition of the motion filed by petitioners for the requested extensions. Appellants request that this court grant leave to filed the intended petition and grant the extension to this date.

III. CONCLUSION

For the foregoing reasons appellants request that this court grant the relief sought herein.

Dated: November 28, 2018 LAW OFFICE OF NINA R. RINGGOLD

By: s/ Nina R. Ringgold_____
Nina R. Ringgold, Esq.
Attorney for the Appellants

9th Cir. Civ. Case No. 17-56742
USDC Case No. CV17-06296 SJO (SK)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDDYE MELARAGNO; NINA RINGGOLD,
Appellants,

v.

PROVIDENCE HEALTH & SERVICES AND DOES 1-10,
Respondents.

From the United States District Court for the Central District of California
The Honorable S. James Otero

MOTION FOR EXTENSION OF TIME TO FILE A PETITION FOR PANEL REHEARING AND PETITION FOR REHEARING EN BANC

NINA R. RINGGOLD, ESQ. (SBN (CA) 133735)
LAW OFFICE OF NINA R. RINGGOLD
9420 Reseda Blvd. #361, Northridge, CA 91324
Telephone: (818) 773-2409
Facsimile: (866) 340-4312

COMES NOW petitioners, by and through their counsel of record, and respectfully moves this court for a 21 day extension of time to file a petition for panel rehearing and petition rehearing en banc as to this court 's memorandum dated October 19, 2018. The current due date is November 5, 2018. (the 15th day falls on a Saturday) . Under this extension request the new date would be November 26, 2018. This continuance is sought in good faith and not for the purpose of delay.

This extended date is reasonable and would allow appellant petitioners sufficient time for submission of briefing in order to demonstrate that the appeal is not moot and that this court has jurisdiction over the appeal. Additionally, the extension is needed due to the fact that the present deadline directly conflicts with briefing deadlines in the California Court of Appeal for the Second Appellate District and trial proceedings in the Los Angeles Superior Court for the County of Los Angeles.

The order to show cause issued by the court did not request argument on the argument of mootness and neither the appellant nor the respondent addressed this issue. (See Dkt Entries 3, 10, 15) . The October 19, 2018 order completely disregards the fact that the appeal is not and could not be rendered moot as to appellant Ringgold ("Ringgold") one of the designated statutory surrogates and ADA advocate for Eddye Melaragno ("Melaragno") and that Ringgold has

independent claims for declaration, injunctive, and equitable relief that are live and active controversies. (See Complaint at Vol 4, Ex 53, BS 754-801 ¶6, fn 6, ¶ 41 (3) & (4).[1] Additionally there is an ongoing violation of federal law at issue which places persons with communication at serious risk because a statutory health designation of surrogacy under California Probate Code § 4711 (b) expires within 60 days and it is nearly impossible to obtain effective injunctive relief to challenge the discriminatory policies and procedures systemically operating through Providence Health & Services. (See Proposed order Vol 4, Ex 44, BS 615-630).

In addition to the issue of mootness first raised in the order and the fact that the order does not encompass the issues as to all appellants, additional time is required to file the petition to demonstrate that under the United States Supreme Court standard in Gillespie v. United States Steel Corp, 379 U.S. 148 (1964) and subsequent law and 28 U.S.C. § 1291 that the orders are appealable.

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[1] As former Director of the Disability Mediation Center at Loyola Law School Ringgold continues to act as statutorily designated health care surrogate for persons with communication disabilities. A plaintiff can establish an exception to the mootness doctrine if he shows " '(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again.'" Ind. v. Colo. Dep't of Corrections, 801 F.3d. 1209, 1215 (10th Cir. 2015).

Also they are appealable under 28 U.S.C. 1292 (b) and the collateral order doctrine.

Petitioners intend to file a petition for a writ of certiorari and wish to address the referenced issues in this court. The legal representative filed a request for substitution under Federal Rule of Appellate Procedure 43 on November 20, 2017.

WHEREFORE, petitioners request that this court grant the 21-day extension.

Dated: November 1, 2018

Respectfully submitted,

LAW OFFICE OF NINA RINGGOLD
By: s/ Nina R. Ringgold, Esq.
Attorney for Appellant Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2018 I electronically filed the following documents with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

MOTION FOR EXTENSION OF TIME TO FILE A PETITION FOR PANEL REHEARING AND PETITION FOR REHEARING EN BANC

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration was executed on November 1, 2018 at Los Angeles, California.

s/ Matthew Melaragno_____

Certificate of Service

I hereby certify that on November 28, 2018 I electronically filed the following documents with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

MOTION FOR LEAVE TO FILE PETITION FOR PANEL REHEAING AND PETITION FOR REHEARING EN BANC

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration was executed on November 28, 2018 at Los Angeles, California.

s/ Matthew Melaragno_____

9th Cir. Civ. Case No. 17-56742
USDC Case No. CV17-06296 SJO (SK)

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDDYE MELARAGNO; By And Through Her Agent Under Durable Power of Attorney, and NINA RINGGOLD, in the Capacity As Named Agent Under Advance Health Care Directive And In Her Individual Capacity,

Plaintiffs-Appellants,

v.

PROVIDENCE HEALTH & SERVICES AND DOES 1-10,

Defendant-Appellee.

From the United States District Court for the Central District of California
The Honorable S. James Otero

PETITION FOR PANEL REHEARING AND REHEARING EN BANC

NINA R. RINGGOLD, ESQ. (SBN (CA) 133735)
LAW OFFICE OF NINA R. RINGGOLD
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I. INTRODUCTION

Petitioners, Eddye Melaragno ("Melaragno")[1] and Nina Ringgold ("Ringgold"), seek panel rehearing and rehearing en banc of the October 19, 2018 Order attached hereto. (O'Scannlain, Berzon, and Ikuta).[2] This appeal concerns the orders of the district court dated September 14, 2017, September 22, 2017, October 17, 2017, and November 14, 2017. (Excerpts of Record "App." 0.001-0.006, 1.7-17, 1.18-22, 1.23-29).[3]

504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) expressly finds that it is the policy of the United States that all activities receiving federal financial assistance are to be carried out in a manner consistent with "individual dignity", "self-determination", "equal access" to persons with disabilities. Additionally, it mandates "support for the involvement of an individual's representative if an individual with a disability requests, desires,

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[1] On November 20, 2017 petitioners filed a timely unopposed motion to substitute the Melaragno Family Trust as a party under FRAP 43.

[2] On November 1, 2018 petitioners filed a motion for extension of time to file a petition for panel rehearing and petition for rehearing en banc. (Dkt 17). The motion has not been ruled on by the court.

[3] Citation Method: Volume.Bates Stamp Nos.

or needs such support". (29 U.S.C. § 701 (c)). Enforcement of the Act applies to "*any person aggrieved* by any act or failure to act by any recipient of Federal assistance" (29 U.S.C. § 794a (a)(2), See also Americans with Disabilities Act 42 U.S.C. § 12182 (b)(E)). This case concerns orders of the District Court denying motions for injunction, protective order, and other relief in the clear face of policies and activities of Providence Health & Services ("Providence") that are intentionally discriminatory and have a tremendous adverse impact persons with communication related disabilities that seek services in hospital emergency rooms and have a right to designate statutory health care surrogates under California Probate Code § 4711.

Providence was required to ensure that Melaragno and her representatives were not denied services, excluded, segregated or otherwise treated differently because of the absence of auxiliary aids and services. (28 CRF § 36.303 (a)). It was required furnish appropriate auxiliary aids and services necessary to ensure effective communication with persons with disabilities including through their chosen statutory health care surrogates and other means. (28 CFR § 36.303 (c)).

In order to abusively hold persons with communication related disabilities hostage and to engage in outrageous and unnecessary Medicare billing and retaliation; Providence refuses access medical records or to make reasonable accommodation to allow effective communication. Providence attempts to involuntarily funnel patients into its long-term care facility located on the grounds of the hospital.

The record for this case demonstrates that there does not exist material conflicting evidence because the motion for injunctive relief filed in the district court was not opposed. Instead of filing opposition to injunctive relief, after the case was filed and injunctive relief was sought, Providence intentionally and maliciously caused the death of Melaragno. Within less than an hour a motion for injunctive relief was filed in the district court, Providence took Melaragno to an undisclosed location to the horror and distress of her immediate family, 24 hour care partner team, representatives, and others; thereby creating a manhunt to find her. Eventually Melaragno was found in a substandard nursing home in total distress with Providence doctors still purporting to administer her care. Then Providence caused

Melaragno to be transferred 5 times after the case was filed only to be returned to the original hospital she had been taken from. Every single potential representative and advocate of Melaragno joined together to file a Medicare appeal. To amplify the mounting malicious and retaliatory conduct, Providence prohibited physical access to the hospital so that Melaragno's only child and grandchild and designated health care surrogates could not be with her when she was dying. This was done to ensure that Melaragno would die and eliminate any possibility and any person identified in her advance health care directive could be present. All along Providence was submitting over $1,000,000 to Medicare for unauthorized services and payment for its discriminatory conduct. It still seeks payment from Medicare and contribution against Melaragno's successors.

The injunctive relief and protective order by petitioners sought the following:

> " 1. That defendant, its employees, administrators, agents, affiliates, contractors, physicians (including those employed, authorized to use, or to have privileges at your medical facilities), risk management personnel, and attorneys and those in active concert or participation with defendants:

a. Shall be enjoined from refusing to accommodate persons with communication related disabilities from designating surrogates in the delivery of services and especially emergency room services.

b. Shall be enjoined from blocking effective communication and thereby refusing to accommodate ventilator patients with cuffed tracheostomy tubes by safely deflating the balloon within the tracheostomy tube, or engaging in non-verbal means of communication, or engaging in other suitable requested and reasonable accommodation.

c. Shall be enjoined from barring access to medical records and information by persons with disabilities that cannot physically reach the medical records department and/or have communication impairments when proper accommodation can easily be provided through use of their agents under a durable power of attorney and/or their surrogates.

d. Shall be enjoined from attempting to claim that a communication disability is a lack of capacity and to do so through a physician that has not been specifically identified by the disabled patient as that person's primary care physician.

e. Shall be enjoined from conduct that attempts to give effect to an advance health care directive that is not yet effective and when there is a designation of surrogate by non-verbal means by a person with a communication related disability.

f. Shall be enjoined from continuing to administer medication and medical procedures against persons with communication disabilities and racial minorities with communication with disabilities, while disregarding designation

of surrogates and refusing legitimate requests for medical records, so as to allow their bodies to be used to submit unwarranted claims for federal financial assistance in the form of Medicare and Medicaid.

g. Shall be enjoined from acts to undermine the goal of independent living of persons with disabilities, including but not limited to by failing to engage in effective communication by reasonable accommodation and by disregarding a designation of surrogates and instead attempting involuntary facility placement, particularly when the surrogates and other persons with personal knowledge of the wishes and capabilities of the person with the disability are present and are actively engaged in the day-to day needs, care, and life of the person with a disability and have superior information.

h. Shall be enjoined from continuing to administer medication and procedures on a person with a communication disability without providing reasonable accommodation necessary for effective communication and in disregard of non-verbal designation of surrogates by the person with a communication disability.

i. Shall be enjoined from discriminatory retaliation, surveillance, intimidation, and racial stereotyping as a means to frustrate the equal rights of persons with disabilities and racial minorities to public accommodations and to interfere with privacy, dignity, comfort, and care of persons with disabilities. " (App. 4.616-618).

Eddye Melaragno died on November 9, 2017. This appeal was filed on November 16, 2017. The October 19, 2018 order dismisses the appeal in part as moot and in part for lack of jurisdiction.

The appeal is not moot and could not be considered due to the independent and associational claims of petitioner Ringgold. Additionally, the claims of Melaragno (including as to injunctive relief) survive Melaragno's death (in light of the relief sought) and substitution of Melaragno's successor is all that is necessary. There is a live controversy and given the short duration of a statutory designation of health care surrogacy the issues are not moot because they are capable of repetition yet evade review. Under well-established authority of the Supreme Court, this court does not lack jurisdiction because the challenged orders are appealable under 28 U.S.C. § 1291, 28 U.S.C. § 1292 (a), and the collateral order doctrine.

II. PETITION FOR REHEARING EN BANC

The October 19, 2018 order on the questions on mootness and jurisdiction presents exceptional questions of law. The order conflicts with

well-established decisions of the Supreme Court, other courts of appeals, and this circuit.

A. The Appeal Is Not Moot

Petitioners were not given an opportunity to address or brief the propriety of application of the principle of mootness. There does not and could not exist a claim of mootness because (1) Melaragno is not the only party in the case, (2) the successor of Melaragno is required to be substituted into the case and has a continued surviving legal right as to the relief sought on appeal, and (3) there exists present controversies and valid claims for relief on appeal.

1. The October 19, 2018 Order Is Not Consistent With The Supreme Court's Decision in *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*

In Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167 (2000) the Supreme Court held that that citizen groups did not lack of standing to bring a suit seeking both injunctive relief and civil penalties under the Clean Water Act; and that the action was not rendered moot by compliance with permit limits on discharge of pollutants in a waterway or by shutdown of the business after litigation had commenced,

absent a showing that violations could not reasonably be expected to reoccur. Although clearly Providence did not comply with the applicable law or shutdown its business after litigation had commenced, under the same theory of Friends of the Earth, Providence cannot intentionally cause the death of disabled people as a ploy to render their claims moot and as part of its intended discriminatory pattern to benefit from federal financial assistance. Additionally, Providence cannot continue and persist in its discriminatory policies and systemic discriminatory pattern of conduct by (1) refusing to allow emergency room patients with an obvious need for disability accommodation to designate statutory health care surrogates, (2) refusing to provide disability accommodation, (3) engaging in retaliation, (4) attempting to involuntarily place patients in its long-term care facilities, and (5) continuing improper billing to Medicare for services are not authorized and harmful.

There is no dispute that Melaragno and Ringgold had standing at the commencement of the case. Both had suffered injuries in fact fairly traceable to the challenged conduct of Providence. Additionally each petitioner, jointly

and independently, demonstrated injuries that could be redressed by a decision in their favor. Ringgold as a family member, statutorily designated health care surrogate and named agent under an advance health care directive and representative has independent and associational standing. The injunctive relief sought in the district court addressed the claims of both Melaragno and Ringgold. The claims of Melaragno survive her death and are claims that must properly be assumed and continued by her successor. Although the plaintiffs in Friends of the Earth did not appeal the denial of injunctive relief, the Supreme Court made it clear that there existed standing as to remedies for ongoing violations that existed at the time the complaint was filed and that could continue into the future.

The Supreme Court held that it was improper to conflate case law on initial standing to bring suit with case law on postcommencement mootness. Id at 173. It held that the Constitution's case-or-controversy limitation on federal authority underpins both the issue of standing and mootness jurisprudence but that the two inquiries were different in critical respects. On mootness the Supreme Court held that a defendant's claim of voluntary

cessation of a challenged practice does not deprive a court of the power to determine the legality because otherwise this would leave "[t]he defendant…free to return to his old ways". Id. 189. Although here there was no voluntary cessation by Providence, the failure to enjoin the continuing violation hastens the potential death of persons with communication disabilities who are left without the legal right of access to their medical records or statutorily required health care surrogates. The principle guiding the Supreme Court's decision was stated as follows: "the standard we have announced for determining whether a case has been mooted by the defendant's voluntary conduct is stringent: ' A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" And, this heavy burden rests with the defendant. Id.

The Supreme Court rejected descriptions of mootness as "standing set in a time frame", because "the exception to mootness that arises when the defendant's allegedly unlawful activity is 'capable of repetition, yet evading review,' could not exist." Id. at 190-91. Melaragno's successor has surviving

claims on appeal and there is no basis to completely disregard the claims of Ringgold (including as to injunctive relief) that are not moot.

Providence's continuing violation of the ADA and 504 of the Rehabilitation Act and retaliation, combined with shortened limitation period for designating heath care surrogates and the improper benefit of federal financial assistance amplifies that Melaragno's death does not render the appeal moot. Instead it demonstrates that the Article III case and controversy requirement has been met. There is (1) an injury in fact, (2) a causal connection between the injury and the challenged actions, and (3) a favorable decision is absolutely the only way for a disabled person with a communication related disability in similar circumstances and those assisting in protecting their rights can obtain effective redress to enjoin and prevent a serious and irreparable injury (death). If the federal court does not timely rule on injunctive relief claims, the successor and designative health care surrogates and advocates, continue to have a personal stake in the outcome and the continuing policies and violation of federal law. "In deciding whether a case is moot, the crucial question is whether granting a present

determination of the issues offered will have some effect in the real world." Ind. v. Colorado Dept. of Corrections, 801 F.3d 1209, 1213 (10th Cir. 2015). Here, there is a real world effect and a live controversy that both the ADA and 504 of the Rehabilitation Act are expressly designed to remedy and the relief allowed is not impossible. The wrong complained of is capable of repetition yet evades review. The October 19, 2018 order allows Providence to persist with further violations, exclude advocates such as Ringgold, so that it will be free to further profit from federal financial assistance. The five malicious transfers of Melaragno was a transparent ploy to attempt to deprive the court of jurisdiction.

Melaragno's death does not render prospective injunctive relief impossible including barring Providence's access to federal financial assistance and contribution from Melaragno's successor. Therefore there is an imminent threat of further injury. The capable of repetition yet evade review standard applies even if person is no longer affected by the action. See Turner v. Rogers, 131 S.Ct. 2507, 2514 (2011). Here the challenged action was in its duration too short to be fully litigated in light of the short statutory

expiration period for designation of health care surrogates. Since Melaragno's successor holds the surviving claims of Melaragno, in practical effect, the same complaining party would be subject to the same action again (i.e. the demands for federal financial assistance for unauthorized services and services in violation of federal law). See Lawrence v. Blackwell, 430 F.3d 368, 370-71 (6th Cir. 2005).

2. The Appeal Is Not Moot Because Petitioner Ringgold Has Always Had An Continues To Have Standing Including As To The Injunctive Relief Under The Decisions Of This Court And Other Courts Of Appeal

There is no legal basis for any inference of mootness as to the appeal of Ringgold. Ringgold is a family member, designated statutory health care surrogate, an agent designated in the advance care directive, and a professional disability service provider.[4] The Rehabilitation Act extends its remedies to "any person aggrieved" by discrimination of a person on the basis of his or her disability. 29 U.S.C. § 794a (a)(2). The use of this broad language evinces a congressional intent to define standing to bring a private

[4] Petitioner Ringgold was formerly the director of the Disability Mediation Center at Loyola Law School. (App. 4.757 ¶6).

action under 504 and Title III as broadly as permitted under Article III of the Constitution. See Innovative Health Systems, Inc., 117 F.3d 37, 46 (2nd Cir. 1997)(standing of non-disabled persons to preliminary injunction under ADA and Rehabilitation Act); Addiction Specialist, Inc. v. Township Of Hampton, 411 F.3d 399 (3rd Cir. 2005) (ADA and Rehabilitation Act allows non-disabled individuals to bring claims based on their association with disabled individuals)[5]; Loeffler v. Staten Island University Hosp., 582 F.3d 268, 279 (2nd Cir. 2009) (children of a disabled person had standing under the Rehabilitation Act to bring associational discrimination claims against hospital).

It is without question, that there was substantial evidence documenting the claim that Ringgold was subject to retaliation. This Circuit has directly held that there is standing in such cases. See Barker v. Riverside County Office of Education, 584 F.3d 821, 825-826 (9th Cir. 2016)(the anti-retaliation provisions of the Rehabilitation Act and the ADA grant standing to non-

[5] Discrimination and retaliation against persons providing professional or advocacy services to persons with disabilities is prohibited under the ADA and The Rehabilitation Act. Id at 47 n. 14.

disabled people who are retaliated against for attempting to protect the rights of the disabled).

Ringgold has standing independently based on her claims of retaliation, exclusion and discrimination but also based on injuries sustained through her association with her disabled parent.[6] She also has standing because she continues as a designated health care surrogate and advocate for persons with disabilities in her profession. The district courts in this circuit have generally required a specific, direct, and separate injury as a result of an association with persons with a disability and Ringgold has met this requirement.[7]

B. This Court Does Not Lack Jurisdiction As To Any Aspect Of The Appeal

This court does not lack jurisdiction over this appeal in accord with well-established precedent of the Supreme Court.

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[6] Ringgold meets standing requirements under both Loeffler *supra* and McCullum v. Orlando Reg'l Healthcare Sys. Inc., 768 F.3d 1135, 1142 (11th Cir.)(narrower definition)

[7] See Moore v. Equity Residential Management, L.L.C. 2017 WL 2670257 at *4-5 (N.D. Cal. June 21, 2017), Nevarez v. Forty Niners Football Company, LLC, 2017 WL 3288634 at *5-8 (N.D. Cal. August 1, 2017), Prescott v. Rady Children's Hospital-San Diego, 2018 WL 2193649 at *3-4 (S.D. Cal. May 11, 2018).

1. Gillespie v. United States Steel

In determining the issue of finality under 28 U.S.C. § 1291 the Supreme Court in Gillespie v. United States Steel Corp., 379 U.S. 148 (1964) focused on whether there was a danger of denying justice by delay. The District Court failed to rule on appellants' request for tolling of the expiration of the statutory period for designation of surrogacy and without timely and effective relief within the short period specified in Probate Code § 4711 (b) persons with communication disabilities cannot effectuate mandatory disability accommodations or reach effective assistance by their chosen surrogates to act on their behalf. In a prejudicial manner District Court engendered further delay be causing motions to be filed rather than order a hearing on the proposed order to show cause.[8] It raised defenses, which were not pled by the defendant or raised in opposition to the motions. (i.e. that there was an effective advance health care directive in effect).[9] Under the

[8] See Rutter Practice Guide: Federal Civil Procedure Before Trial § 13:124 (2017).

[9] This issue was irrelevant because: (1) California Probate Code § 4711 expressly states that a statutory designation of surrogacy supercedes and advance care directive, and (2) as a matter of law Melaragno's advance health care directive

Gillespie factors (1) the inconvenience and costs of piecemeal review, and (2) the danger of denying justice, it is clear that the challenged orders in practical effect are decision on the merits. Without the requested injunctive relief Melaragno would die and did die, in the face of undisputed evidence concerning Melaragno's designation of surrogates in the emergency room. The continuing policies of defendant in refusing to accommodate persons with disabilities, its intent to keep ventilator and tracheostomy patients abusively hostage in their facility and related facility for billing purposes, cannot be abated to avoid serious harm.

2. Carson v. American Brands

Under 28 U.S.C. § 1292 (a) there is jurisdiction because this appeal furthers the statutory purpose of permitting the parties to effectually

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was not in effect). No doctor at Providence was Melaragno's primary physician and Melaragno had expressly designated a physician to determine when her advance care directive was in effect. See Goldman v. SunBridge Health Care, LLC, 220 Cal.App.4th 1160, 1167-1168 (Cal. 2013)(when a defendant fails to demonstrate the patient's designated primary care physician made a determination to render an ACD to be in effect the actions taken based on that instrument are void). The answer purportedly filed by an attorney for the defendant does not actually assert an affirmative defense that the advance care directive was in effect. (See App. 19.119-254).

challenge interlocutory orders of serious and irreparable consequences under Carson v. American Brands, Inc. 450 U.S. 79, 84 (1981). In Carson the Supreme Court construed an order declining to enter a proposed consent decree as an appealable order refusing to grant an injunction because delay in reviewing the order would cause irreparable harm. In the instant case, the Carson standard has been satisfied. Whether considering the initial request for an immediate temporary restraining order, or the later outright request for an immediate injunction, the denial of all relief and the statutory protection authorized under federal law is implied. See Miller v. Lehman, 736 F.2d 1268, 1269 (9th Cir. 1983), See also Build of Buffalo, Inc. v. Sedita, 441 F.2d 284, 286 (2nd Cir. 1971) (the order contracted the scope of injunctive relief originally sought or affected the quality of the relief prayed for by the plaintiffs).

3. Cohen v. Beneficial Industrial Loan Corp.

The challenged orders of the district court conclusively determined disputed questions, resolved important questions completely separate from the merits of the action, and the matters are effectively unreviewable on

appeal from a final judgment in the case. Therefore there exists a collateral order exception to the final judgment rule. See Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 545-547 (1949). The issues set forth by the petitioners are "too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." Id at 546. The October 19, 2018 order neither mentions the challenged orders of exceptional importance nor mentions the collateral order exception.

a. California Probate Code § 4711 (d) Supercedes And An Advance Care Directive As A Matter Of Law.

The September 14 and 22, 2017 and October 17, 2017 orders essentially ordered that plaintiffs had to prove that Melaragno's advance care directive ("ACD") was in effect when (1) this was not an issue in the case, (2) there was no evidence or opposition presented by the defendant in response to the requested injunction, (3) defendant's answer ultimately filed never asserted that the ACD was a defense to any cause of action, (4) by its plain terms California Probate Code § 4711 (d) specifies that a health care surrogate designation supercedes an ACD, and (5) no ACD was in effect because there

was no such determination by the physician designated in the ACD by Melaragno. By disregard of plain language of Probate Code § 4711 and Melaragno's ACD, the court conclusively determined that there was an ACD in effect and inferred this was related to Melaragno's statutory designated surrogates. The court's order caused unreasonable delay and resolved an important question completely separate from the merits. The orders are unreviewable on appeal because the designation of surrogacy had a 60 expiration period.

b. The Requirement Of Authority To Appear In The Case As Counsel Of Record And Proper Disclosure of The Client The Attorney Purports To Represent

The District Court made orders concerning the appearances of attorneys in the case that claimed to represent a non-party corporate defendant. These orders are appealable orders under the collateral order doctrine. The October 19, 2018 order infers that the appeal is from an order denying a motion for default when this is not the case. Motions for substitution and withdrawal of attorneys were submitted to the court but not approved. In part, the proposed orders were not approved because there was an effort to use these proceedings as a method to substitute a different

corporate defendant into the case. Despite the lack of court approval or a required order the unauthorized attorneys continued to make filings in the case and act in the case as if they were attorneys of record. In this appeal, the corporate disclosure statement filed is in contradiction to the corporate disclosure statement filed in the district court. The orders of the District Court resolved important questions of law about the authority of the acting attorneys and disclosures and authorizations filed by these attorneys. The orders are effectively unreviewable on appeal, and are directly related to delays that hampered the ability to obtain relief for Melaragno prior to her death.

c. The District Court Sealing Orders And Local Rules That Conflict With the Requirements Of HIPAA

Petitioners requested that the District Court enter a HIPAA protective order and other protective order as to confidential documents. It did not enter the requested protective order and instead simply ordered the documents could be sealed. However, such order did not prevent the disclosure and further circulation that would be allowed by the court local rules. The local rules of court require service of sealed documents on opposing counsel, the

opposing counsel in the case had not obtained a substitution order and did not actually represent the named defendant, and he was refusing to meet and confer about a protective order.

HIPAA and other law provides for a protective order as to patient medical records (i.e. 45 CFR 164.512 (e)) and other confidential material. The local rules of the district court (Rule 79-5.3) (service of documents filed under seal) causes of gap in protection against disclosure afforded under HIPAA and other applicable law by allowing the circulation of confidential information prior to a court's ruling on a request for protective order. Here there was a genuine question regarding who was claiming to be counsel of record for the defendant. Petitioners submitted confidential material under seal for *in camera* review with a simultaneous request for a qualified HIPAA protective order. This approach was required in order to prevent involuntary or coerced waivers of confidentiality. The ruling of the district court conclusively determined a disputed question and it resolved an important question separate from the merits of the case. Parties and their counsel should not be coerced to abandon valid protections afforded by HIPAA and

the constitutional right of privacy. These matters would be effectively unreviewable on appeal from a final judgment.

III. PETITION FOR PANEL REHEARING

Appellants incorporate by reference the arguments above in their petition for panel rehearing. In addition, petitioners submit that there is error in the denial of the timely and unopposed motion for substitution under FRAP 43 and motion to strike appellee's corporate disclosure statement. The motion for substitution should not have been denied. In the event the petitions for rehearing are denied, petitioners intend to file a petition for a writ of certiorari and there is no reason to prevent filing in the Supreme Court with the proper parties. At minimum the motion should have been denied without prejudice and leave granted (prior to issuance of mandate) to obtain substitution in the district court. Additionally, there is good cause to require appellee to explain the contradictions in the corporate disclosure statements in the district court versus in the Ninth Circuit and to have this matter resolved before any further proceeding.

IV. CONCLUSION

For the foregoing reasons petitioners requests that this court grant the relief sought herein.

Dated: November 26, 2018

LAW OFFICE OF NINA R. RINGGOLD

By: s/ Nina R. Ringgold
Nina R. Ringgold, Esq.
Attorney for the Petitioners

CERTIFICATION OF COMPLIANCE WITH CIRCUIT RULE 40-1 (a)

The undersigned certifies that the body of this petition is within the word count (4,192 words) for petitions under 9th Cir. R. 40-1 (a).

Dated: November 26, 2018 LAW OFFICE OF NINA R. RINGGOLD

By: s/ Nina R. Ringgold
Nina R. Ringgold, Esq.
Attorney for the Petitioner

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 19 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

EDDYE MELARAGNO, By And Through Her Agent Under Durable Power Of Attorney, and NINA RINGGOLD, In the Capacity As A Named Agent Under Advance Health Care Directive And In Her Individual Capacity,

Plaintiffs-Appellants,

v.

PROVIDENCE HEALTH & SERVICES,

Defendant-Appellee,

and

DOES, 1-10,

Defendant.

No. 17-56742

D.C. No. 2:17-cv-06296-SJO-SK
Central District of California, Los Angeles

ORDER

Before: O'SCANNLAIN, BERZON, and IKUTA, Circuit Judges.

A review of the record demonstrates that the appeal from the denials of appellants' motions for a temporary restraining order is moot. *See People of Village of Gambell v. Babbitt*, 999 F.2d 403, 406 (9th Cir. 1993) (claim is moot if there no longer exists a present controversy for which relief can be granted).

A review of the record and the parties' responses to this court's November 28, 2017 order to show cause demonstrates that this court lacks jurisdiction over

the remaining orders challenged in this appeal because they are not final or appealable. *See* 28 U.S.C. § 1291; *see also Green v. Occidental Petroleum Corp.*, 541 F.2d 1335, 1338 (9th Cir. 1976) (district court must be "of the opinion" that the criteria of section 1292(b) are met; court of appeals is without authority to assume an appeal unilaterally); *Bird v. Reese*, 875 F.2d 256 (9th Cir. 1989) (order) (order denying a motion for default judgment is not a final appealable order).

Accordingly, this appeal is dismissed as moot, in part, and for lack of jurisdiction, in part.

All pending motions are denied.

DISMISSED.

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2018 I electronically filed the following documents with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration was executed on November 28, 2018 at Los Angeles, California.

s/ Matthew Melaragno_____

EXHIBIT 3

FILED

OCT 19 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDDYE MELARAGNO, By And Through Her Agent Under Durable Power Of Attorney, and NINA RINGGOLD, In the Capacity As A Named Agent Under Advance Health Care Directive And In Her Individual Capacity, Plaintiffs-Appellants, v. PROVIDENCE HEALTH & SERVICES, Defendant-Appellee, and DOES, 1-10, Defendant.	No. 17-56742 D.C. No. 2:17-cv-06296-SJO-SK Central District of California, Los Angeles ORDER

Before: O'SCANNLAIN, BERZON, and IKUTA, Circuit Judges.

A review of the record demonstrates that the appeal from the denials of appellants' motions for a temporary restraining order is moot. *See People of Village of Gambell v. Babbitt*, 999 F.2d 403, 406 (9th Cir. 1993) (claim is moot if there no longer exists a present controversy for which relief can be granted).

A review of the record and the parties' responses to this court's November 28, 2017 order to show cause demonstrates that this court lacks jurisdiction over

the remaining orders challenged in this appeal because they are not final or appealable. *See* 28 U.S.C. § 1291; *see also Green v. Occidental Petroleum Corp.*, 541 F.2d 1335, 1338 (9th Cir. 1976) (district court must be "of the opinion" that the criteria of section 1292(b) are met; court of appeals is without authority to assume an appeal unilaterally); *Bird v. Reese*, 875 F.2d 256 (9th Cir. 1989) (order) (order denying a motion for default judgment is not a final appealable order).

Accordingly, this appeal is dismissed as moot, in part, and for lack of jurisdiction, in part.

All pending motions are denied.

DISMISSED.