SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

In Re the Matter of JUAN FERNANDO ROMERO, Patient.	Case No. 16STPB06815 **STATEMENT OF DECISION**

This matter came on regularly for trial on January 3, 2017. Allison Aranda and Brooke Miller represented Lillian Romero, sister of Juan Fernando Romero, on her ex parte petition. John Hranek represented Lillian on her petition to be her brother's conservator. (16STPB07123) Mark Drew, Jennifer Brockett, and Jon Eisenberg represented Ana Romero, the respondent and wife of Juan Fernando Romero. Rebecca Loo was appointed by this court to represent Juan Fernando Romero.[1]

[1] Because of the same last name for many of the witnesses, they will be referred to by their first names. Juan Fernando Romero will be referred to as "Juan Fernando" as it appears his parents and sisters call him "Juan" and his wife and family friends referred to him as "Fernando." No disrespect is intended; such references are for ease of clarity.

I. BRIEF SUMMARY OF THE PROCEEDINGS IN THIS CASE

An ex parte application pursuant to Probate Code §§ 3201, 4766 and 4779 was filed by petitioner Lillian Romero, then a self-represented litigant, on December 9, 2016. No additional pleading was filed, so the ex parte application remained the operative pleading for the trial of this matter

Lillian Romero sought to be the sole medical decision maker and health care surrogate for her brother, Juan Fernando Romero, who had suffered an anoxic brain injury on May 3, 2015. With the exception of 10 days spent in his parents' home, Juan Fernando had been hospitalized or in an institutional setting such as a rehabilitation center or subacute care location.

This application advised this court that Juan Fernando Romero, up until two weeks prior, was in good and stable condition and though unable to speak, could communicate by moving his hands and blinking his eyes in response to voices. The following paragraphs set forth the immediate need of petitioner's request:

> *7. Approximately two weeks ago, my sister in law, Ana Romero, directed Baldwin Park Congregate Home to remove his feeding tube and informed them that she planned to bring my brother home and put him on hospice. My brother has been without food for more than two weeks now.*
>
> *8. During the past months, my sister in law has seemed frustrated with caring for my brother. She is overwhelmed caring for my two small nieces, ages 3 and 1 year/4 months. She also is frustrated dealing with the insurance issues that come up in caring for my brother.*
>
> *10. I do not believe that my brother wants to die. When my sister in law told me that she planned to remove his feed tube and take him home on hospice, she told me while we were sitting in his room with him. My brother looked scared and nervous and would not blink his eyes. Based on everything I know of my brother's health history and personal values and beliefs, I believe my brother would want to continue to receive all health care necessary to preserve his life, which includes nutrition and hydration and any other therapies indicated.*

In addition to setting forth the basis for the need for the issuance of an ex parte order, these three paragraphs provided the basis for the necessary evidence to be presented to support this application. Pending a hearing on this matter, on December 9, 2016, this court issued a very narrow temporary restraining order as follows:

1. The requested medical treatment, specifically continued administration of nutrition and hydration by means of a feeding tube, if surgery is not required to administer nutrition and presents no health risk as determined by Mr. Romero's treating physician such is authorized.

The court specifically crossed out paragraph 2: ~~Lilian Romero is authorized to give consent to the requested treatment on behalf of Juan Fernando Romero.~~ As clarified then and later and throughout hearings on this matter, it was this court's intention only to restore nutrition and hydration, and to grant no sole powers of decision-making to Lilian pending hearing on this matter.

After the hearing commenced on January 3, 2017, Ana Romero advised the court that the health care personnel needed clarity regarding the December 9, 2016 order.[2] The December 9 order was subsequently superseded by the issuance of the below January 26, 2017 order, which is set forth in relevant part:

> **WHEREAS** certain caregivers have expressed confusion regarding this Court's Order of December 13, 2016;
> ***AND WHEREAS*** *as Mr. Romero's (hereafter referred to as "Patient") spouse, Ana Romero is patient's next of kin;*
> **AND** *WHEREAS it was not this Court's intent, in issuing the December 13, 2016 Order, to supersede or withdraw Ana Romero's authority to make medical decisions on behalf of Patient except with respect to the provision of hydration and nutrition;*
> **FOR GOOD CAUSE SHOWN, THE COURT ORDERS AS FOLLOWS**:
> 1. Nutrition and hydration by means of a feeding tube, intravenous fluid drip, or other appropriate means shall be maintained pending a final determination of the Petition in this Action, provided that: (a) surgery is not required to administer nutrition and hydration and (b) that the administration of hydration and nutrition presents no health risk as determined by Patient's treating physician(s);
> 2. If nutrition cannot be safely administered, hydration shall be maintained independently from nutrition, on the same terms and conditions as set forth in Paragraph 1;
> 3. Ana Romero, her agents, employees and the attending health care team, as well as the attending physician, are ordered to administer medical care in accordance with this Order;

[2] Ana Romero also requested, in the alternative, for appointment of herself as interim decision maker. See Supplement to Clarification of December 13, 2016 Order, filed January 26, 2017.

4. Ana Romero is directed to promptly provide notice of this Order to each facility and physician providing treatment or medical care to Patient;
5. That each facility and physician providing treatment or medical care to Patient including the attending health care team, as well as the attending physician, and all medical providers with notice of this Order shall administer treatment in accordance with this Order;
6. Lillian Romero, and all relatives of Patient shall be permitted to visit Patient as desired, subject to restrictions of medical staff or facility;
7. Ana Romero will execute a waiver of HIPPA medical privacy rights in favor of Patients' parents and siblings, namely, Arturo Romero, Maria Sandra Romero, Lilian Romero, Adriana Ramirez, Sandra Villegas, Diana Romero, and their counsel. Each facility and physician providing treatment to Patient shall freely share information with such named individuals;
8. Patient shall be provided with continued antibiotics to treat his pneumonia and other infectious diseases, if such treatment is recommended by Patient's treating physician(s);
9. The existing DNR and POLST orders remain in full force and effect except as provided herein; no CPR, intubation, resuscitation, ventilation or heroic measures shall be performed;
10. This Order does not supersede or circumvent Ana Romero's decision-making authority as Patient's next of kin, except as expressly set forth in paragraphs 1 through 9 above;
11. This Order supersedes and replaces the Court's Orders of December 9, 2016 and December 13, 2016.

[Emphasis added.]

Trial commenced on January 3, 2017. Testimony was taken and various hearings were held sporadically in February, March, April, and May until the parties rested on May 19, 2017. There were 16 days of trial and 21 witnesses testified. The witnesses included family members (8), treating physicians (2), hospital personnel (3), medical/legal ethicists (3), experts in Catholic Doctrines regarding the propriety of withholding artificial food and hydration (2), family friend (1), and two doctors (Ph.Ds.) specializing in Disorders of the Consciousness and Related Conditions.

On June 3, 2017, Juan Romero died.

II. RELIEF REQUESTED

At the hearing on November 7, 2017, of this matter, the following relief was requested:

1. Court appointed counsel on behalf of Juan Fernando Romero requests that this court's order of June 19, 2017 survive Mr. Romero's death and stay in place enjoining parties and individuals from publishing the pictures and videos produced as evidence in this case;
2. Court appointed counsel on behalf of Juan Fernando Romero requests that the pictures and videos produced as evidence in this matter be deemed health care information, subject to protection by an assigned surrogate as set forth in Probate Code §4678;
3. Court appointed counsel on behalf of Juan Fernando Romero would accept any surrogate assigned in conformity with the facts that were presented, the evidence, and the testimony that were received in the trial;
4. Petitioner Lilian Romero seeks a dismissal of this action as it should be deemed moot due to the death of Juan Fernando Romero, or in the alternative, grant her request to dismiss the petition, or in the alternative, grant the demurrer and motion to strike respondent's first amended complaint and dismiss the action in its entirety, or in the alternative, petitioner requests that the court issue a ruling that the court would have granted petitioner's requested relief for recommended health care absent the tragic and untimely death of Juan Fernando Romero.
5. Respondent Ana Romero requests this court determine that Ana Romero's decisions with respect to Juan Fernando Romero to withhold non-palliative medical treatment and to prevent release of his images is fully consistent with California common law that holds an incapacitated person's spouse has priority as that person's presumptive surrogate for health care decision making.

III. THE RULING OF THIS COURT

1. The determination of the merits of the petition filed on December 9, 2016 by Lillian Romero is not moot due to the death of Juan Fernando Romero.
2. The petition of Lillian Romero filed on December 9, 2013 under the auspices of Probate Code sections §§ 3201, 4766 and 4779 is DENIED.
3. Pending hearing on Ana Romero's petition pursuant to Probate Code section 4766(e), the Court, on its own motion, appoints her interim health care surrogate for Juan Fernando Romero.
4. The court's June 19, 2017 sealing order remains in full force and effect.

IV. DISCUSSION RE MOOTNESS

Juan Fernando Romero died on June 3, 2017. His death occurred after all the evidence had been received, the parties had rested, but before any post-trial briefs were filed. Lilian argues that with the death of her brother, no further action can be taken on her petition. Ana requests a ruling on the merits and further requests that she be given official status as Juan Fernando's health care surrogate.

This court acknowledges that it is only on rare occasions, appellate courts and trial courts will proceed to decide moot cases presenting an issue of broad public interest that is likely to recur. (*In re William M.* (1970) 3 Cal.3d 16, 23) It should be noted that there are differences in the phrasing by courts to describe this and a related exception to mootness, with varying degrees of emphasis on the importance of the issue presented in the likelihood that it will recur.

Some decisions state an appellate court has discretion to resolve an issue of broad public interest that is likely to recur. (*In re William M., supra*, 3 Cal.3d at 23; *In re N.S.* (2016) 245 Cal.App.4th 53, 59; In re David (2017) 12 Cal.App.5th 633) Other state an appellate court may decide "otherwise moot cases presenting important issues that

are capable of repetition yet tend to evade review." (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 524; *Thompson v. Department of Corrections* (2001) 25 Cal.4th 117,122)

Another version of the rule may be found in decisions focusing primarily on the importance of the issue presented. In this instance a court may decline to dismiss a case that has become moot where the appeal raises issues of continuing public importance, and still others refer only to the likelihood the issue will recur. (See *In re Marriage of LaMusga* (2004) 32 Cal.4th 1072, 1086; *Conservatorship of Susan T.* (1994) 8 Cal.4th 1005)

Finally, some decisions state that, apart from the mootness exception for issues of public importance, there is what appears to be a narrower exception where "there is a likelihood of recurrence of the controversy *between the same parties or others*." (In re N.S., supra, 245 Cal.App.4th at 59; Grier v. Alameda-Contra Costa Transit Dist. (1976) 55 Cal.App.3d 325, 330) Yet, other decisions limit this exception to a scenario where there is a likelihood of recurrence of the controversy between the same parties. (See, *Los Angeles International Charter High School v. LAUSD* (2012) (209 Cal.App.4th 1348, 1354)

In this matter, all nuanced categories are applicable. First, Ana has contended that as Juan Fernando's spouse, she is the presumptive surrogate for health care decision making based upon decisional law in the absence of a statutory priority. This presents a broad public interest that is likely to recur as there appears to be a gap in statutory law and decisional law. Second, future litigation will recur between Lilian and Ana, as Lilian objects to Ana's claim that her surrogacy survives Juan Fernando's death to the extent that she retains authority to consent or not consent to the disclosure of

medical or any other health care information concerning her husband.[3] (Probate Code §§4766(e), 4678, 4650) Third, due to the nature of the dire health conditions of persons that are the subject of a petition of the nature herein, this is the classic situation wherein moot cases presenting important issue that are capable of repetition, tend to evade review. Finally, Ana properly notes that if Lilian's petition was left unresolved – after receipt of all the evidence and all parties had rested – this court remains obligated to decide the issues presented by Lilian.

V. SUMMARY OF EVENTS THROUGHOUT THE TRIAL

The trial of this matter was not conventional in any sense. Due to the nature of the request made, there existed a priority to have the matter heard. Thus, discovery was not conducted in any formal sense. The parties did establish an electronic drop box for the sharing of records and potential trial exhibits. During the course of time that this matter was heard, events happening outside of the courtroom with respect to Juan Fernando's care were brought to the court's attention and thereby made part of the record.

The court finds it important to describe three of these events. The first concerns Trial Exhibit 21. This is a March 2, 2017 letter addressed to Citrus Valley Health Partners, Queen of the Valley Hospital, with attention to Dr. Sethi and all attending Physicians and Staff. It was also addressed to the Baldwin Park Congregate Home, and attention to staff there as well. The "Re" line was as follows: ***"RE: Contempt of court order issued in In Re Juan F. Romero, Case No. 16STPB06815."*** [Bold in the original] The letter asserted that Ana Romero violated this court's December 9, 2016 order. It also alleged that Ana Romero violated the January 26, 2017 order by

[3] Lilian's attorneys have requested the ability to have their demurrer and motion to strike the cross-petition filed in this matter be heard.

instructing that no insertion of a PICC line was permitted. Throughout the 10 paragraph letter, reference is made six times to a violation of this court's orders as if the court had ruled such. The letter concluded with the following:

> "Therefore, we are requesting that you coordinate and facilitate Mr. Romero to receive **TOTAL** (not partial) nutrition in the safest and most effective way possible, which appears to be a PICC line. We trust that your facility will give Mr. Romero the necessary care that is required under the law and that he is entitled to pursuant to the Court's January 26, 2017 Order. If you refuse to do so, please be advised that we will seek any and all legal action against any facility entrusted with the care of Juan Romero to ensure that Judge Houses's Orders are followed, including an Order to Show Cause Re Contempt for failure to do so." [Bold in the original]

Exhibits 17 and 18 show this letter posted on the headboard of Juan Fernando's hospital bed right above his head. Lilian Romero testified that she placed it there.

Because of the inaccuracies in the letter itself, i.e. that this court had held Ana Romero in contempt or made adjudications regarding violations of this court's order, counsel for Lilian Romero was ordered to remove immediately the letter from Juan Fernando's room and to take immediate steps to have the letter excluded from Juan Fernando's medical records. The court also explained that judges are required to provide due process of law, including strict adherence to the procedural requirements and threats of contempt violate the California Code of Judicial Ethics. (See, also, *Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 533) [4]

The second event occurred on or about April 25, 2017. Juan Fernando had been admitted to Queen of Valley Hospital in serious condition. The attending physician was Dr. Sethi. Juan Fernando's blood pressure had fallen and he had been given some blood pressure medication to boost it. Ana Romero directed that no further blood

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[4] It should be noted that as testimony was taken and related to these events, it was determined that Juan Fernando's doctors determined that the insertion of a PICC line at the time requested by Lilian would not have been medically advisable. Juan Fernando had sepsis and insertion of the PICC line risked a total body infection. The majority of medical witnesses testified that a G-Tube is preferable to a PICC line because it involves the use of the digestive tract and increases a patient's immunity.

pressure medication be administered. The hospital's risk manager, Christine Rendl recounted a conversation with Ms. Aranda and Mr. Hranek in which she was advised that the hospital would be liable or held in contempt if Ana Romero's decision to withdraw the blood pressure medication was honored by hospital personnel and further, that police would be called to the ICU to investigate a dependent person abuse situation. Police did arrive and left without making an arrest.

Both Dr. Sethi and Ana Romero's attorney requested convening of the hospital's bioethics committee. This committee heard testimony from Lilian, but determined that Ana's wishes should be honored.

The third event concerns the response of medical facilities to this tense situation. Specifically, on May 2, 2017, Juan Fernando was ready to be discharged from Queen of the Valley hospital. There was a bed available at Baldwin Park Congregate Home where Juan Fernando had been an intermittent residential patient. Ana Romero wanted Juan Fernando to be there because it was conveniently located to all family members and she had been pleased with his care at the facility. Ana Romero was advised by the administrator there that Juan Fernando would only be accepted if Lilian, Arturo and Sandra Romero agreed to follow several rules. Also, they wanted assurances that Ana Romero remained the decision maker for Juan Fernando excluding the power to withdraw artificial food and hydration.[5]

In her declaration filed with the court, Ana described receiving a phone call advising her of an emergency family meeting at the home. Lilian attended along with lawyers in this case. Eileen Chan, CEO for the home, wanted to advise that they were

[5] Ana had been advised that the only other open beds were in facilities in Beverly Hills or North Hollywood.

considering a transfer of Juan Fernando due to the disruptions caused by Lilian and her parents. (Declaration of Eileen Chan, filed May 18, 2017, ¶ 5) She stated as follows:

> "I am advised that there are pending court hearings that may impact the disruptive and harassing conduce that lead to our decision that JFR could no longer stay a BPCH. Accordingly, we are open to reconsidering our decision to transfer JFR, which would allow him to remain at BPCJ as Ana Romero requests. However, if the course of disruptive incidents and harassing conduct continue, we would have no choice but to insist that JRF be transferred to another appropriate facility." Declaration of Eileen Chan, filed May 18, 2017, ¶ 6)

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **As his spouse, Ana is the presumptive health care surrogate for Juan Fernando in light of his incapacitation.**

Petitioner has argued throughout this litigation that there is no statutory priority that places a wife as the presumptive health care surrogate for an incapacitated spouse. It is accurate that the Health Care Decisions Law (HCDL) does not grant a priority or establish a hierarchical scheme among family members for surrogate decision-making. Petitioner argues that because the legislative history shows that it was the desire of the Legislature to have consensus amongst family members, they refrained from enacting a statutory scheme. Respondents argue that the Legislature deferred such specification "for further study and recommendations." (Sen. Judiciary Committee, Committee Analysis of AB891 (July 13, 1999, page 9.) And, no further study or recommendations have occurred.

This court is persuaded that a judicially created presumption already exists. This presumption is found in *Barber v. Superior Court* (1983) 147 Cal.App.3d 1006. *Barber* recognized the right of a spouse to make surrogate health care decisions on behalf of an incapacitated patient without a need for a court order appointing her/her as a surrogate. The facts in *Barber* were similar to this matter; the husband had suffered irreversible brain damage. He was taken off a respirator and then food and hydration

were withdrawn with the consent of his wife. The court dismissed in a footnote that the patient's sister-in-law needed to be consulted. Simply, *Barber* stands for the position that a spouse is the obvious and more appropriate surrogate, as they would be most affected by the decision and were in the best position to know their loved one's wishes. (*Barber*, supra, at 1021)

If it is unclear whether *Barber* creates this presumption, then, this court wishes to make it clear that decisional law, societal, historical, and religious treatment of marriage as the most intimate of all human relationships provides overwhelming support of this court's finding that a presumption exists. It should be noted, as well, that throughout this litigation, this court has been consistent in its rulings, that with the exception of continuing nutrition and hydration, Ana was the health care decision maker for Juan Fernando.

Finally, Professor Lysaught's opinion regarding the presumption of the spouse, per Catholic doctrine, would be in the best position to know about a spouse's feelings and desires, was undisputed.

2. **Ana and Juan Fernando Romero were a close and loving couple, having become best friends first and then married during a course of time between 2000 and until 2015, when Juan Fernando suffered anoxic, irreversible brain damage**.

The evidence is basically undisputed that Ana and Juan Fernando began their relationship in 2000. They worked together, went to school together, lived together before and after marriage, and such closeness was continuous from the time they met. Their relationship was developing at a time when both of them were beginning the period in one's life where children detach from their parents and set out to form their

own lives. That Fernando began to develop new perspectives on Catholic doctrine as testified to by Michelle, Justin, and Ana is credible.

Juan Fernando's parents believed that their son loved Ana. Justin, Michelle, and Rosura testified that such was the case. Their testimony was credible and basically, not disputed. Ana's testimony was poignant and truthful.

3. **Not one member of Juan Fernando's immediate family (mother, father, sisters) ever discussed with him what his wishes were if he was in a permanent vegetative state, bedridden, and unable to recover or communicate. In fact, it was testified that such discussions were not permitted in the Romero household.**
4. **Ana Romero was in the best position to know what her husband's wishes would be in the event he would suffer irreversible brain damage.**
5. **It was undisputed that Juan Fernando Romero was a reserved, shy, and private person; therefore, his existence in a permanent vegetative state, dependent upon others for his basic needs would not be how he would want to live.**

The discussions between Michelle, Justin, and Ana regarding the movie *My Left Foot* and his grandmother's situation were had and their testimony was credible. It is logical that Ana could conclude that he would not want to exist in a permanent vegetative state based upon these statements. It was also not disputed that Juan Fernando was a reserved, shy, and intensely private person. That Ana and Justin could conclude that his dependence upon others to would be antithetical to his wishes is credible.

6. **Lilian Romero's beliefs that her brother would not want the actions proposed by his wife because they were not reflective of his religious**

beliefs is not supported by even a preponderance of the evidence, much less clear and convincing evidence.

The witnesses on behalf of Lilian Romero that cessation of artificial nutrition and hydration were not in keeping with Catholic doctrine and therefore, against the beliefs of her brother, presented only one opinion amongst many as to current Catholic doctrine. This court finds that the testimony regarding current Catholic doctrine as to when it was suitable (or not) to withhold artificial food and hydration reflected a range of acceptable circumstances, including those present here.

As PVP counsel argued, based upon the evidence that Juan Fernando had moved to a new phase in his life with his relationship and marriage to Ana, the contact between Juan Fernando and his family was only a couple of times per month, increasing with the birth of Sophie. Further, the contact that was had did not include discussions regarding religion or quality/end of life desires. Thus, with respect to discussions about his *current* religious views, the testimony that Juan Fernando had departed from some Catholic doctrines such as a supporter of gay rights, pro-choice, birth control and the death penalty is credible.

7. It is undisputed that Juan Fernando Romero was in a permanent vegetative state and incapable of communicating, as his brain function was limited to the sub-cortical.

Dr. Fortanasce and all of the rest of the experts confirmed that Juan Fernando Romero is in a permanent vegetative state. He will not recover from his brain injury. The experts all agreed that a person in a permanent vegetative state could not respond to commands, blink as a form of communication, or otherwise respond *consciously* to stimuli.

This court was greatly persuaded by the testimony of Dr. Martin and Dr. Schnakers. Their explanation regarding a person in a permanent vegetative state responding to nociceptive stimuli clarified and provided an explanation as to why Juan Fernando moves, blinks, and opens/closes his mouth and why a voice would engender a response. It is a primal response, not a conscious one. Even Dr. Fortanasce agreed that these responses of Juan Fernando were reflexive.

As a result of the overwhelming evidence that Juan Fernando is incapable of any kind of conscious response, Lilian's beliefs that her brother is aware of her and communicating with her are mistaken.

8. **The weight of the evidence supports a conclusion that Juan Fernando would not experience pain due to the withdrawal of artificial nutrition and hydration.**

The majority of the medical personnel that testified in this case confirmed that patients in a permanent vegetative state do not feel pain. Furthermore, there was undisputed testimony that palliative care could be provided that would alleviate any pain or perceived pain resulting from a withdrawal of artificial nutrition and hydration.

9. **Juan Fernando's repeated hospitalizations for complications relating to the administration of artificial nutrition and hydration support Ana's decision to have them withdrawn and to refrain from surgical procedures that presented risks of infection.**

10. **It is undisputed that Juan Fernando was hospitalized for pneumonia (10 times) and suffered from sepsis, respiratory failure, tachycardia, urinary tract infections, hypernatremia and super bug infections.**

This court was persuaded by the expert witness testimony that raised the issue regarding a seriously ill person and the weighing of the benefits and burdens of

providing artificial nutrition and hydration. (Professor Lysaught and Dr. Wenger) Juan Fernando was suffering from conditions that more than suggested that providing artificial food and hydration was having no beneficial effect. He had lost around 100 pounds in addition to the repeated infections at his G-tube site and hypernatremia. He suffered from hypernatremia – a salt imbalance -- from February through April of this trial.

There was significant discussion about whether or not a PICC should be inserted for the administration of nutrition and hydration. Lilian advocated for this, but the testimony did not support her position. Dr. Feng and Dr. Rambhatla advised Ana about the risks of a PICC line infection and they were significant. There was also a benefit to a G-tube or Foley catheter, as that supported the digestive tract and immune system.

11. Principles of bioethics and Catholic moral theology allow a surrogate to withdraw artificial nutrition and hydration for a patient in Juan Fernando's condition.

12. Regardless, Ana proved by clear and convincing evidence what Juan Fernando's held beliefs were. Her conclusion that he would not have felt compelled to honor Catholic teachings against withdrawal of nutrition and hydration was logical and credible.

Lilian did not present evidence as to the *strength* of Juan Fernando's Catholic religious beliefs in the last decade of his life. She pointed out that he got married in the Catholic church, became a godparent through the Catholic church, and bought a crucifix the day before his injury. She testified that he carried a saint with him at all times and did not eat meat during Lent. These facts do not support what his beliefs actually were.

The credible testimony regarding his positions (and actions) regarding pre-marital relations, pro-choice, abortion, gay marriage, and pro-death penalty reflect a departure

from standard Catholic doctrine. Therefore, whatever weight is to be given to Lilian's facts that point to her beliefs about her brother's religious value system, they are weakened by his actions and stated beliefs.

13. Ana Romero's decision making approach where Juan Fernando was concerned was contemplative, objective, well-reasoned, and in keeping with his wishes.

14. Her decision making as Fernando's surrogate was in full compliance with the HCDL.

Exhibit 37 that charts Juan Fernando's timeline of hospitalizations also reflects the deliberative approach to Ana's decision making. It also charts Ana's process from shock, anger, and acceptance of her husband's inability to recover. She testified that she experienced the end of hope in September, 2015. She then spent the rest of 2016 attempting to convince Juan Fernando's family that it was necessary to let him go. She waited a whole year after losing hope before the DNR and POLST were put in place.

Ana Romero testified that at a certain point, she had to think only about what Juan Fernando would have wanted. She had direction from him and knew him well. Of particular persuasion to this court was her testimony that the easier route would have been to let Lilian become the health care decision-maker. However, she made her decisions regarding Juan Fernando's care based upon what he would have wanted and out of love for him.

15. Lilian Romero was not persuasive when she testified that she had only Juan Fernando's best interests in mind.

16. Lilian Romero's temperament throughout this trial and her actions towards Juan Fernando's health care providers was troubling and cast doubt on her ability to be a health care surrogate for her brother.

During cross examination by Mr. Drew, Lilian agreed that she should make health care decisions that her brother would want. She agreed that she would have to have a reasonable assessment of his health care based upon the reality of his condition and not someone else's wishful thinking. She agreed it would be important to have the right temperament. She knows that she has to deal with those that are providing health care and would need to be patient with them. This court believes that Lilian Romero believes that she needed to advocate for her brother. This court does not doubt the sincerity and passion of her position. However, her actions and words reflect an incomplete consideration of her brother's needs by the very standards that she agreed were necessary to be his health care surrogate.

There were some poignant highlights in Lilian's testimony that support this finding of fact. The first is where she testified that "husbands can be replaced. He's **my** only brother." The second is when she testified that "she told him that he gives **her** the strength to do what **she** has to do, he teaches **her** a lesson to never give up, to keep trying and trying and she told him that even in his condition, he was teaching **her.**" Finally, she began her testimony by indicating that her brother was the most important person to **her**, and to **her**, he is everything. [Emphasis added] She further testified that **she** believes her brother's life has value. This court is not a licensed psychologist, but this testimony reflects a perspective of what her needs are; not Juan Fernando's.

Lilian denied having ever yelled at hospital staff; however, the evidence was overwhelming that she had on at least three occasions displayed intemperate behavior: the light incident, the slapping of her hand down on a table during a family meeting at Kindred Brea, and her anger at the infectious disease doctor when isolation of Juan Fernando because of MRSA infection was suggested. That Baldwin Park Congregate

Home required Lilian to abide by rules as a condition of Juan Fernando's readmission supports this conclusion and undermines her denial of ever having a problem with staff.

Her demeanor and manner while testifying was also telling. While she testified, this court noticed that her legs were constantly moving. She was understandably tearful. However, she was also clearly angry, deeply angry about her brother's situation and Ana's response to it.

17. Ana and Fernando's daughters, Sophia and Chloe, would suffer emotional distress if images of their gravely ill father used in this trial concerning evidence of his medical condition were published in any digital or print format. This would not conform to Juan Fernando's uncontroverted personality trait of being shy, reserved, and a private person.

The pictures and videos placed into evidence in this trial were records of a health condition. As a health condition, Ana would have the right to control their dissemination upon being appointed Juan Fernando's health care surrogate. Pending resolution of her petition, this court appoints her the interim surrogate.

18. In the three allegations made in Lilian's ex parte petition, not one was supported by the evidence.

Lilian was required to prove the below allegations in her petition:

7. Approximately two weeks ago, my sister in law, Ana Romero, directed Baldwin Park Congregate Home to remove his feeding tube and informed them that she planned to bring my brother home and put him on hospice. My brother has been without food for more than two weeks now.
8. During the past months, my sister in law has seemed frustrated with caring for my brother. She is overwhelmed caring for my two small nieces, ages 3 and 1 year/4 months. She also is frustrated dealing with the insurance issues that come up in caring for my brother.
10. I do not believe that my brother wants to die. When my sister in law told me that she planned to remove his feed tube and take him home on hospice, she told me while we were sitting in his room with him. My brother looked scared and nervous and would not blink his eyes. Based on everything I know of my brother's health history and personal values and beliefs, I believe my brother

would want to continue to receive all health care necessary to preserve his life, which includes nutrition and hydration and any other therapies indicated.

In the trial of this matter, this court learned that Juan Fernando's feeling tube was removed at the direction of his doctors, not by Ana. This was due to one of the many infections he was experiencing. Ana's aunt testified and Ana's actions reveal that she was not frustrated with caring for Juan Fernando. Michelle testified to a support system for taking care of her nieces. There was no evidence whatsoever that Ana was frustrated by dealing with insurance issues. Finally, it was concluded by overwhelming evidence that Juan Fernando's brain damage would prevent him from communicating or understanding anything that was said to him.

VII. SUMMARY OF THE TRIAL TESTIMONY

This court submits the below lengthy summary of the trial testimony in this matter. It is important that this ruling be supported by the evidence this court heard and evaluated. However, it is not a substitute for the actual transcript.

LILIAN ROMERO

Lilian Romero is the sister of Juan Fernando Romero. Lilian testified that she and her brother were close and that he was the most important person in her life. To her, he is everything. Lilian knows that her brother would want her to never give up. Such was always his encouragement; therefore, she does not believe that her brother would want to die this way – by a withdrawal of artificial nutrition and hydration.

Her brother is older. He was always a fighter. He suffered this injury in May 2015 and it was devastating to their entire family. Their family was broken, dealing with it daily, and wanting to take care of him. Lilian sees her brother every day and her parents are there as well. At the point in time of this beginning testimony, Juan Fernando Romero's parents were present at his bedside 24 hours a day taking turns.

The Romero family is deeply religious, having practiced the Catholic faith throughout their lifetimes. Her brother attended mass at St. John's in Baldwin Park and also attended St. Andrews in Pasadena. It is Lilian's belief that Catholic doctrine requires a belief that life is sacred and no one should die from starvation. To her, Juan Fernando never expressed that he would not want to be kept alive if in an accident.

When she visits with him for one hour to an hour and a half every day she is been able to observe him. She has seen expressions on his face when she talks about his daughters. He has given her a kiss. He opens and closes his mouth. When she tells him to move a part of his body, he does so. She believes that he responds to certain songs that he likes. She talks to him, plays music, sings to him, reads to him, and tells him what is going on with the family. She believes that he responds when she does that. She believes the Juan Fernando wants to live. She is willing and able to care for him throughout his life. During this part of her testimony, Lilian produced Exhibit 1 and Exhibit 2 which are recordings of a December 18, 2016 kiss by her brother to her on her cheek. Exhibit 2 depicts Juan Fernando moving part of his body when asked. This was on December 22, 2016.

Lilian testified that she is not aware of any neurological exams since Juan Fernando was at Baldwin Park, which was April 2016, when he was last there. There is a certified nurse's assistant that does range of motion for him for about 10 minutes. When he was at other facilities, he was getting physical therapy, speech therapy, and occupational therapy. This facility was called the Kindred facility. Since he has been at Baldwin Park Congregate Home, he hasn't moved a lot. He makes facial expressions like he is going to cry, or wants to tell her something. She stated that he blinks his eyes when she asks him to blink.

At the start of this tragedy, Ana and the Romero family were in accord regarding Juan Fernando's care. Shortly after the incident, there was a meeting with health care personnel at Kaiser Hospital. They were asked if Juan Fernando had ever expressed his wishes about what he would want in this situation. They asked about movies involving end life decisions and/or quality of life decisions. No mention of any such movie or wishes were discussed. They continued to be on the same page until Ana decided to put Juan Fernando in hospice. She wasn't aware that the decision was approved by his doctors.

Artificial nutrition and hydration were removed towards the end of November, 2016. In the 3 weeks since that occurred, he has lost 11 pounds. It is also during the time period that he gave her a kiss. Now because he's back on nutrition pursuant to this court's order, he had started to move more. She reiterated her willingness to make medical decisions and to do what is in his best interest based upon what medical experts tell her.

In cross-examination, Lilian testified that she is 7 years younger than her brother. They were under the same roof until he was 18. He was going to college and prior to the time when he got married, he moved back home in 2011 to save money. She lived there during that time period as well, as she has always lived with her parents. She testified that this placed her interactions with her brother under the same roof around 20 years. They use to have discussions regarding religion. Lilian knows that Juan Fernando carried a saint with him. For lent, he would not eat meat for 40 days.

She testified that Juan Fernando encouraged their sister Sandra -- diagnosed with lupus and on dialysis for 6 months -- to fight for her life. Sandra eventually got a kidney from another sister, but Juan Fernando would have given up one of his for her. She testified that they never specifically talked about end of life decisions. The also

never discussed quality of life issues. Lilian testified that her brother is a fighter, loves his daughters, and he would sacrifice anything to see them and hear them. She does not know that if her brother knew he wouldn't survive his illness whether he would want this quality of life and that for his family.

Lilian continued to testify on February 2, 2017 and she reported that Juan Fernando was stable, in a regular room, breathing better, with his pneumonia condition improving. He was no longer experiencing fever and was still receiving antibiotics Lilian testified they were unsure as to where her brother would go upon discharge from the hospital. Lilian testified that if she were to be the decision maker she would agree with the current orders. The family is also agreeable to having Juan Fernando be readmitted to the Baldwin Park facility. She would want anxiety medication, pain medications, and antibiotics to be given to her brother and to replace his feeding tube.

During cross-examination by Ana's counsel, Lilian agreed that she should make health care decisions that her brother would want. She agreed that she would have to have a reasonable assessment of his health care based upon the reality of his condition and not someone else's wishful thinking. She agreed it would be important to have the right temperament. She knows that she has to deal with those that are providing health care and would need to be patient with them. She also was aware that she would need to interface with her brother's insurance company.

Even though she has never had a conversation with her brother about this type of situation, she agrees that if she knew what he wanted, she couldn't ignore medical information. However, she has come to the conclusion that Juan Fernando wouldn't want to have his food and hydration taken away, despite the fact she's never had a conversation with him about this. When cross-examined further, she modified her

testimony that she would defer to a doctor's recommendation, if she believed "it was in her brother's best interest."

Lilian continued to contend that her brother was a devoutly Catholic. She pointed to the fact that the day before he got sick, he bought a crucifix. She understands that there can be differences within the church, but nevertheless, she is sure that he would not want his food and hydration removed. They never had a discussion about what he believed and didn't believe. She also confirmed that she never discussed with her brother the movie, *My Left Foot*, or his views on abortion or his views on his grandmother's conditions at the end of her life. The fact that her brother and Ana practice birth control was responded with," he didn't use birth control, she did."

Lilian testified as to times in which she has questioned the care her brother was receiving at Baldwin Park. In response to the testimony of a nurse, Charee Allen, she believes Allen got upset because she was taking a picture of the nutrition bag. She thought that the nutrition seemed different and seemed thick. She has advised the staff at Baldwin Park that she will be keeping track of everything related to her brother's care at the request of the lawyers in her brother's case. She testified that she posted instructions for caregivers for her brother over his bed. (Exhibits17 and 19) She also posted a letter over his bed with a **"Re" line as follows: "Contempt of court order issued in In Re Juan F. Romero, Case No. 16STPB 06815**." (Exhibit 21; bold in original)

A significant section of her testimony, both on cross and direct, focused upon what she believed needed to be done medically for her brother. This centered upon procedures that would assist in transferring food and hydration without complications. She also admitted that she wasn't really in nursing school, she was attending community college and doing prerequisites for nursing school. She was also on

disability from work due to the mental strain of this situation. She passionately maintained throughout the giving of her testimony that her brother wouldn't want to be put down like a dog, like an animal. She also testified that "husbands can be replaced. He is my only brother."

In rebuttal, Lilian denied that she has been argumentative with staff and doctors. Her position is that she just advocates for her brother. She asks questions and that may bother the staff. She testified she's never yelled at a nurse or doctor or any medical providers. She has never issued an order to perform medical procedure. She does visit him every day and she talks with the nurse and asks about her brother's vital signs and medications.

In the past 6 months, March, April and May, she has visited every day and she observes that Juan Fernando has been acting differently. Since February 2017, he has been, and does not need any anxiety medications. It was on Saturday, April 15, when she noticed that Juan Fernando was distressed. He was crying and he was grimacing. He doesn't cry every day so this was unusual. The only other time he cried was when she played a song for him in February. He was grimacing and then he would swallow. She asked him to open his mouth and ask him if that's where he hurt and that she could see some blood he sores. She took a photograph. She asked a nurse to look at it and they didn't do anything. She went and got some Orajel for him. At one point she noticed that the sores did not heal, that there was still blood in his mouth on the Monday after. She was touching him and he was really warm. His breathing didn't look normal. It appeared as if no one was listening to her, and no one had even bothered to check his temperature or to measure his heart rate or his oxygen. When she was finally able to get a nurse to take his temperature, it was 103.5. He was transferred to the hospital the day after that.

With respect to her interactions with staff at other hospitals, she acknowledged that Kindred Brea was the best care that her brother had gotten, and as a result, she had no disagreements with staff there. She testified that she has no personal interest in keeping her brother alive. It does take time and effort and emotional sacrifice as he could be in this condition for years. She is prepared to take on this responsibility.

She believes he would not want to die this way and he would not want to stop fighting. She believes he's fighting for his life. She has known the reality of his prognosis, knows he has brain damage. They were told he was never going to recover. She testified that no one can take hope and faith from him or her hope and faith away. She doesn't expect him to get up and be the Juan Fernando he used to be, but she loves and respects him in the same way.

She testified that he gives her the strength to do what she has to do, he teaches her a lesson to never give up, to keep trying and trying and she told him that even in his condition, he was teaching her. She believes he was listening to her. She knows he has a poor prognosis, but maintained that his life has a value. She understands that he is profoundly disabled but "his life has value to us." She believes that her brother would want to decide when his death would be.

ARTURO ROMERO

Arturo Romero is Juan Fernando Romero's father. He testified that he had a good relationship with his son and believes that when there was time, they had a close relationship. He raised Juan Fernando in the Catholic church, and confirmed that their family is 100% religious. Juan Romero attended mass as a family while he was living with them. He got married in the Catholic church. He has become a godparent to his nieces and nephews, receiving instruction from the Catholic church. Prior to Ana and Juan Fernando getting married, they attended premarital counseling at the church.

Arturo testified that his son's brain injury was devastating. He visits every single day and is typically their 12 or more hours per day. He loves his son. It is his desire to care for his son and to take care of him 100%.

Arturo believes that his son knows when he is about to grab him. He also closes his eyes and turns a little bit. Arturo talks with his son, prays with him, reads to him and when Arturo says that he is going to pray, Juan Fernando opens his eyes. Like Lilian, he and his son never talked about how he would want to be cared for in this type of circumstance. Juan Romero never said one way or the other that he would want to be kept alive. For Arturo, in our family "we all fought to live." Arturo testified that discussions regarding "no one should live like this" were not allowed in his house. When asked whether he believed Juan Fernando experienced pain, he didn't directly answer. He stated that the medicine calms him.

Arturo discussed the fact that in previous residential facilities, Juan Fernando got more therapy than his current one. They would be moving his feet, sitting him in a chair, and moving his hands. When receiving this therapy, he would move his legs more than his hands. At one point Arturo observed the device on his son and when he made a sound, it wasn't something that Arturo could comprehend, but he made the sound in response to a to a question by the therapist. There is no such mechanical device at the Baldwin Park home.

Arturo believes that Juan Romero sleeps better when he is there with him. When Arturo sees him during the day, he believes his son is usually awake and when he is awake, he does blink his eyes. He believes that his son feels really good when he swabs him. He relaxes a lot in his face and his muscles. Arturo hasn't seen Juan Fernando lift his legs personally, but he has seen him respond to his sister and that he turns a little. Arturo believes that Juan Fernando desires to live because he has two

daughters and the love of a parent is stronger than pain. So he knows he has two daughters and he would want to live. As Arturo is a devout Catholic, he believes that the Catholic church does not support withdrawal of food or water in the circumstance of which one finds his son.

It was confirmed on cross-examination that when Arturo said there were no discussions, that meant there were no discussions. Arturo believes that Juan Fernando's blinking is an attempt to communicate and Arturo believes this because he is with his son every day and he knows him well. He further reiterated that having two daughters are worth any kind of pain. It's unclear whether Arturo believed that Juan Fernando was in pain or if he was merely agitated. He would see this agitation 2 to 3 times a week. The medication did appear to calm him down. He believes that Juan Fernando would want a family member there with him every minute.

Arturo Romero was wearing a UCLA sweatshirt that was a gift from Juan Fernando. Arturo testified that he is very proud of his son, loves him, he believes he is a young man worthy of pride, and is a strong provider for his family. Prior to this brain injury, Juan Romero was able to buy his own home, he was a strong, strapping young man who was 6'4" tall. He was someone who managed to build a strong family home. Arturo confirmed that Juan Fernando loved Ana very much.

Arturo confirmed that Juan Fernando now cannot care for himself. He has a tracheostomy in his throat, can't eat or drink by himself, he can't bathe himself, and he is diapered. The day prior to Arturo's testimony, it was learned that Juan Fernando had bitten off the tip of his tongue. However, this information was not relayed to him or other family members, since this litigation started.

Arturo believes the Catholic church would not allow someone to end their life like this. The Church doesn't allow and Arturo personally doesn't as well allow the removal

of artificial nutrition and hydration. For Arturo, as long as there is life, there is hope. Arturo testified that they had gone to talk with several priests and they have never recommended that artificial food and hydration be removed.

Arturo believes that the last time Juan Fernando lived with him was in 2011. He had moved out and was living with a cousin prior to his marriage to Ana in January, 2012. Since his marriage to Ana, Juan Romero has not gone to Mass with him except for certain occasions. Arturo believes that Juan Fernando agreed with the Church on everything and therefore did not believe in pro-choice or abortion.

Arturo confirmed that his mother had dementia at the end of her life. She had a tracheotomy in her throat, couldn't talk, and shortly before she died, she was nonresponsive to family members. He confirmed that when Juan Fernando's grandmother was in the hospital in this condition, Juan Fernando would have been 32 years old at that time. Arturo confirmed that Juan Fernando's willingness to give Sandra one of his kidneys and acknowledged the Sandra had not experienced any brain damage like his son.

SANDRA ROMERO

Sandra Romero is Juan Fernando's mother. She described him as a beautiful young man, generous, humble, and a very good person. She called him her angel. He lived with them until he was 24 years old. She loves her son very much. She believes that her son lived a worthy life in that he built a good life for himself and his family. He went to a good school, had a good job, was supporting his family, and had bought a house for them. From the time he moved out to this incident, he was a strong, independent man.

After his injury in May, 2015, he has been in different places. She spends every day with him, up to 12 hours per day. She is there during the day and her husband

spends the night. She wants to care for him as long as God gives her life. In the time that she spends with her son, she talks to him, sings to him, reads the Bible a little, and also says prayers. They prayed a rosary every day together. She testified that when she talks about his girls, he shows more emotion and his eyes open. She also believes that he is not in pain. On the contrary, she believes he feels comfortable when she arrives.

She testified that her family is religious and attend Catholic church in Baldwin Park. Juan Fernando attended church with her and used to go when he was younger and stopped around age 14 or 15. He was baptized in the Church, confirmed in the Church, and held his first communion. Prior to his marriage to Ana, they intended marriage classes and were married in the Catholic church. She recalls a conversation with Ana that she was worried that Juan Fernando wasn't going to church. Ana told her that he does go. Juan Fernando was a godparent for his nieces and nephews and he went to classes before their baptisms. She testified that she believed her son was still devoutly Catholic and didn't waiver when she was asked. She confirmed that Ana would spend the night at their house before they were married and slept in the same room.

When her daughter Sandra was ill and awaiting a kidney transplant, she was in a coma. Juan Fernando wanted Sandra to fight for her life. With respect to his grandmother, Juan Fernando never told her that he would not want to live in the condition that his grandmother was in. He never asked her why they were keeping his grandmother alive. Even though she has never spoken with Juan Fernando about end of life decisions, she firmly believes that her son would want to live in his current condition indefinitely. No one has told her that Juan Romero is at the end of his life she wants her son to be comfortable, to get food and water, until God takes his life.

With respect to her daughter-in-law, Ana, she has never said that Ana needed to spend more time with Juan Fernando. They have tried to be considerate with her. She has not argued with Ana about the care because she believes the care that Juan Fernando is getting is good.

ADRIANA ROMERO

Adriana Romero is Juan Fernando's sister. She testified that while they were growing up, he was just a regular older brother giving his sisters a hard time. She knows that he loved them very much. He was always there for his sisters and he gave them a good example. He lived a good life and was obedient to his parents. He was also a hard worker growing up, didn't give up on tasks easily, and he was a fighter. He had a fighting spirit. She recalls that Juan Fernando went to church every Sunday with his family prior to him turning 18.

She picked Juan Fernando to be her child's godparent because one couldn't pick a better role model and believed he was committed to raising her children in the Catholic faith if he became responsible for them. She recounted that the day before his tragic injury, he wanted to go to the church where he got married to buy a crucifix to have in their room.

Since May, 2015, when he suffered his brain injury, the entire family has been affected. It's been hard to see her brother this way and to know what he suffered. They love him even more because he's fighting for his life. She tries to visit him as much as she can but with two small children that is difficult. She has taken her 3-year-old son to visit Juan Fernando. She recalls one visit where she believed Juan Fernando thought his daughter was there. He made eye contact with her and he followed her around the room. She thinks he likes hearing the kids make noise.

When he gets nervous, he opens his mouth and they would tell him to close his mouth because her son was getting scared and then he would quit opening his mouth. She stated when she hugs and kisses Juan Fernando, it relaxes him so much and whenever they are there, he is calmed down. She also testified that when doctors and Ana talked about hospice care, he kept his eyes open and was scared.

During the time their sister Sandra was ill, Juan Fernando never once stated that she should quit fighting. She also recalls that when their grandmother got ill, Juan Fernando would visit, but he never expressed that he would not want to be living that way. She believes he didn't think of them letting her go.

She believes that her brother wants to live. She stated they all agreed to let him fight because that is what he would have wanted. However, she has never really discussed end of life or quality of life decisions with Juan Fernando. She also has never discussed with Ana what Juan Romero would have wanted. She has not talked with Ana in a very long time. She does not think, however, that Ana would ever hurt her husband. She realizes that he is not going to be the brother she had, but it doesn't matter because they love him no matter what and he is a human being. She testified that the day her brother is ready to stop fighting, they would be comfortable that he fought and didn't die any other way.

She testified that she was aware that he's had pneumonia a number of times and other illnesses. She admitted to texting Ana that she believed Juan Fernando was tired of fighting. All she wanted for him at the time of her testimony is that he be given food, water, and medicine. As long as all those things would continue, Ana could be the decision-maker.

DR. MICHAEL ACCAD

Dr. Accad has a medical degree from the University of Houston and an undergraduate degree from the University of Texas at Austin. In San Francisco, he was part of a cardiology fellowship and has a specialty in internal medicine and cardiology. He has been practicing since 2002.

Dr. Accad testified that he reviewed medical records, opposition papers, and videos of Juan Fernando. He testified that he is familiar with head injuries that involved a cardiac arrest and subsequent lack of oxygen. He testified that the functions of the brain then become diminished. Sometimes it is possible for a person to recover from the diminished functions. Typically, there is an acute phase, where there may be a lot of instability, then a healing face, and then recovery.

With respect to the acute phase, it depends upon what a person needs. The records involving Juan Fernando were a bit scant, but it would appear that during the acute phase, there was cooling therapy and application of a breathing machine. Dr. Accad testified that it would appear that Juan Fernando hasn't seen a palliative physician or neurologist for some time. He believes seeing a neurologist would be helpful to clarify the current situation and a palliative doctor could mitigate the suffering.

It wasn't clear to Dr. Accad from the records what the source of the alleged pain was --Juan Fernando's pain is not a typical injury seen this late due to an oxygen deprived injury.

Permanent vegetative state means a syndrome where the patient goes to sleep in cycles, opens eyes, but does not seem to be conscious or aware of what is going on around him or her. He believes it's a fluid concept, science is evolving how truly unaware the patient is unaware. If a patient is in a persistent vegetative state, he could

not lift his leg on demand. Blinking to indicate a yes or no response to a question is also inconsistent with persistent vegetative state patients.

Dr. Accad testified that Juan Romero is severely disabled. There is the possibility that he is in what they call a minimal cognitive state. Both persistent vegetative state and minimal cognitive state are disabilities. If someone is in a minimal cognitive state they appear to have some awareness of their surroundings, can respond to some commands, and it is a state from which a person might recover. Minimal cognitive state is not considered a terminal illness and there is no identification of a terminal illness diagnosis in Juan Fernando's records.

Dr. Accad is not familiar with the rate of misdiagnoses between permanent vegetative state and minimal cognitive state. He testified there could have been cases of ambiguity. It is important to have an accurate diagnosis, but both states entail the same treatment: hydration, nutrition, proper nursing care, and physical therapies. These are provided regardless of the degree of disability.

When ascertaining someone's wishes, there is a presumption that they would want life sustaining treatment. The absence of nutrition and hydration artificially provided might cause discomfort. He bases this on the belief that thirst and hunger are primitive drives that we respond to strongly. To have someone die of hunger and dehydration, it causes the tissues of the body to shrink, if taken to the point it leads to death. Dr. Accad so saw no evidence that Juan Fernando was rejecting the food or the water. It is his belief that if a person is assimilating food, one must assume there's a will to live. He opined that food and water is medically necessary. He has viewed the video offered by Ana Romero's counsel and agrees that this video shows facial grimacing by Juan Fernando. He can't tell if the grimacing was due to pain as he cannot identify the source of pain from watching the video.

Dr. Accad is being compensated for testifying. He has a certification in bioethics. He gives opinions to the bioethics committee regarding end of life decisions. This situation is not uncommon, an anoxic brain injury from cardiac arrest. He confirmed that he has not spoken to any of Juan Fernando's medical doctors and that it would be helpful to have more recent medical records relating to Juan Fernando. He can't give a formal diagnosis of permanent vegetative state v. minimal cognitive state. With permanent vegetative state, a person can move spontaneously, but not on command. Sensation is preserved in permanent vegetative state patients, however it is a moving target as to the degree of consciousness and interpretation of events. If a person is in a minimal cognitive state, they can move their legs on command.

Being in a permanent vegetative state is not a condition that leads to death. However, it can lead to conditions like pneumonia, rashes, and metabolic problems. The range of survival varies widely. Survival on average is lower than the general population. There is nothing in the medical records that indicate that Juan Fernando's dying or that death is foreseeable, only that he is at an increased risk.

During cross-examination by Ana's counsel, Dr. Accad was asked about Juan Fernando's prognosis for regaining consciousness and mobility. Dr. Accad testified that the prognosis was not very good. There's not much functional improvement and he believes eventually talking would be surprising. Dr. Accad thinks Juan Fernando was going to remain disabled. He also testified that if Juan Fernando was in a minimal cognitive state, he was more likely to feel pain as opposed to a permanent vegetative state. In terms of quality of life, this is entirely subjective as Dr. Accad has seen people be happier after disability. When asked if Juan Romero had expressed an opinion that he would want the plug pulled, Dr. Accad testified that that is a difficult inference to make because a person might change their mind later. He also testified that artificial

food and hydration as life support is a matter of controversy. He believes it is more life – maintenance.

Dr. Accad has a Catholic bioethics certification and deals with and of life and quality of life decision-making from that perspective. He testified that removing food and water is inconsistent with Catholic doctrine. He testified that this is not an end of life case, because Juan Fernando does not have a terminal illness. Providing artificial food and hydration for his care would never harmful and is not burdensome and removing such artificial hydration and nutrition would kill.

GLEN DYSINGER, M.D.

Glenn Dysinger is a professor of moral theology and church history at St. John's seminary. He attended the University of Oxford in the 1980s to get an equivalent of a masters in theology. He went back to Oxford in the 90s and completed a doctorate in theology, but was also hired by seminary because of his medical background. He graduated from the University of Southern California school of medicine in 1978, did his internship in internal medicine in 1979 at UCLA, completed a residency in family practice that lasted another 2 years, and was board certified in family practice. He continues to work in the medical field, but he is not actively involved in full-time practice. Essentially, he has not seen patients on a regular basis since 1985, even though his license is current.

He is a member of the ethics committee at the Antelope Valley Medical Center and has been chairman of that committee for 20 years. He is the bioethics consultant at St. Vincent's Hospital in Los Angeles and St. Francis Hospital in Lynwood up until about 2 years ago. In the past, he has been part of the bioethics committee at the University of Southern California, but has not been a part of that since the mid-1990s. He has written in the area bioethics but they primarily concerned beginning of life and what might be

called obstetrics and gynecological issues. He has not authored any published articles on the subject of end of life, although he has written on the history of medicine and issues concerning the development of end of life issues in early Christianity.

He does currently teach other priests or consults with hospitals regarding the Catholic church's teachings on end of life issues. He most recently gave a presentation to the priests of the diocese of Orange on end of life issues and is giving similar presentations to Bishops of the San Francisco region on end of life issues and in particular, the question of physician – assisted suicide.

On fairly regular occasions, he will give talks on advance directives and the Catholic understanding of end of life issues in parishes. These are more geared towards ordinary Catholics. He is familiar with the Church's teaching on the administration of artificial nutrition and hydration. He gains this knowledge from a general statement before the year 2000 about providing care in a document that was published by the Congregation for the Doctrine of the Faith. He indicated, however more specifically, in the early 2000s, Pope John Paul II published a letter on the provision of nutrition and hydration in the persistent vegetative state.

He testified that several years later in 2004, the Congregation for the Doctrine of the Faith, which is the official branch or organ of the church which is established to answer difficult questions, reiterated the teaching that John Paul had made. It specifically addressed the question of nutrition and hydration in the persistent vegetative state based upon a question that have been asked by the North American Bishops.

So subsequently, that statement was incorporated into the ethical and religious directives of the North American Bishops. He testified that the documents he has mentioned reiterate, originally state, and state again that nutrition and hydration is morally obligatory to be provided to a person in the persistent vegetative state. It should

be regarded as ordinary care and not as extraordinary medical treatment. It should be regarded as part of ordinary care that is due to a disabled person. He noted that the document published originally by John Paul the II specifically uses the term "disabled" to describe people in the persistent vegetative state.

Dr. Dysinger has never been a primary physician responsible for the care of a person in a permanent vegetative state. However, he has been consulted in cases involving the permanent vegetative state at various times over the last 10 years. Others are primarily responsible, but he was part of the training invited to examine or consult. He acknowledged that it is always difficult to determine if persons in a permanent vegetative state are capable of experiencing pain. He would normally consult with the primary care physician and seek consultation from a neurologist and to note carefully whether the neurologist had before him an extensive and complete neurological exam including spending time with the patient. Dr. Dysinger believes consciousness waxes and wanes in the minimally conscious state patient. There are a subgroup of patients who are in the permanent vegetative state, but in which there has been some documented awareness of their environment. He believes that this is not consistent, so examinations would have to be performed at various intervals to determine whether or not the individual was in pain. As far as the group of patients he was familiar with, it was not determined that they were able to experience pain. They presumed they were not.

Dr. Dysinger testified that he spent approximately 20 minutes with Juan Fernando on Saturday prior to his testimony. He did not perform a physical examination. Also present was Juan Fernando's father and an attorney representing Lilian in the conservatorship matter, Mr. Hranek. Mr. Hranek or Mr. Romero asked Juan Fernando is to perform a task such as 'close mouth and lift leg.' After a period of time, perhaps 30 seconds to a minute, Juan Fernando did close his mouth. Dr. Dysinger however did

note that Juan Fernando opened and closed his mouth at other times during the visit, so it would be impossible to say that he was actually responding to that command. He would not opine whether Juan Fernando was in a minimally conscious state or a permanent vegetative state.

Dr. Dysinger testified that he is familiar with the effects of the body of withdrawing nutrition and hydration. He is familiar because he has cared for patients who were unable to be offered nutrition and hydration and patients in whom nutrition and hydration was not being offered because they were in the last stages of dying. The effect upon the patient's body after withdrawing nutrition depends upon the patient's condition. Dr. Dysinger testified that if a person is in the last days or perhaps weeks of life, withdrawing nutrition and hydration will not be experienced by the individual's as painful or uncomfortable for reasons that are not fully understood. It is probable that this has to do with the shutdown of various organ systems and the release into the bloodstream of toxins of compounds that might not otherwise be present. He observed that if a person's dying and you attempt to force them to take food or water, they will very often consciously resist. They simply are not experiencing thirst or hunger as a well person would experience if nutrition or hydration were withdrawn.

Dr. Dysinger testified that supplying artificial nutrition and hydration is morally obligatory unless the circumstances under which they were provided would create great discomfort to the individual. At one time, nutrition and hydration was considered medical treatment. There has been some variance from this position. However, Dr. Dysinger opined that after the statements by Pope John Paul II and by the Congregation of the Doctrine of the Faith, it was clarified that any form of nutrition and hydration however administered, ought to be considered ordinary care and not necessarily a medical treatment.

In Catholic teaching, the permanent vegetative state is considered a disability, that is to say, the patient is regarded as disabled and not dying. It is looked upon as a syndrome, not a disease. When asked whether there was a uniform physical response to the withdrawal of hydration, Dr. Dysinger testified that it would depend on the physical condition of the patient. If the patient is not dying and the patient has the capacity to sense pain, then their experience to be exactly the same as anyone else who stopped drinking water.

During cross-examination, Dr. Dysinger acknowledged that when he was in medical school, a diagnosis of the minimally conscious state was not recognized. He has received no additional training than reading most of the medical journals he is sure most of his colleagues have read. He testified that he has never been involved in a case when nutrition and hydration was being withdrawn from someone who is not dying and did not have a disease that would likely cause their death within a short period of time. He acknowledged that in hospice and palliative care, pain can be managed such as the pain that might result from a withdrawal of nutrition and hydration.

During his testimony that he had authored an article on artificial nutrition and hydration, he acknowledged that this article was a blog posting or perhaps a response to an inquiry from a paper where he had provided his opinions with respect to artificial nutrition and hydration. He was shown Exhibit 8, regarding a writing with the title of "Do End of Life Guidelines in Los Angeles Differ from Catholic Teachings?" He indicated he recognized a paragraph in the citation from the catechism of the Catholic Church. He testified that portions of this document were his work, but this was the first time he's ever seen Exhibit 8. In reviewing the document, he was asked if he adopted the following quote and he indicated that he did. That quote is "here one does not will to cause death. One's inability to impede it should merely be accepted." The article also

stated that if food and water were simply withdrawn, it could cost some patients great pain. He acknowledged that is true and that it depends upon whether the person's dying and in what part of the last stages of life. Again upon questioning, he agreed that palliative care would mitigate that pain.

He also agreed with the following statement from the article: "true compassion, on the contrary, encourages every reasonable effort for the patient's recovery at the same time it helps draw the line when it is clear that no further treatment will serve this purpose." When asked what recovery meant in the context of permanent vegetative state, he determined that it means "maintenance of the individual state without further deterioration."

Dr. Dysinger was shown Exhibit 9, a 43-page document entitled, "Ethical and Religious Directives for Catholic Health Care Services, 5th Edition." This was something that Dr. Dysinger indicated he relied upon in forming his opinions. He was referred to part 5, page 29 and acknowledged that this comprises the directives with respect to the provision of artificial nutrition and hydration for patients in a permanent vegetative state. He acknowledged that it is one of the 3 important documents. He explained that these directives are intended for institutions which call themselves Catholic and provide health care such as hospitals and nursing homes and so forth. To him, it represents a condensation, an attempt to apply the 2 documents he already mentioned, that being, Pope Paul John II and the document he already mentioned from the Congregation of Doctrine of Faith. In reference to paragraph 58 of Exhibit 10, he agreed that there is a specification of at least 3 circumstances when medically assisted nutrition and hydration become morally optional. He agreed with all three circumstances reflected in this directive with regards to the withdrawal of artificial nutrition and hydration.

This court asked Dr. Dysinger the following hypothetical: if you have someone who is either in a permanent or minimally conscious state who is unable to express their wishes, what do you do? He responded that you try to interpret what you can interpret. He acknowledged that even if a person appeared to be in pain, that would be guess work and you would need to rely on people who could provide information as to what they believe the patient would want in this circumstance.

He was further asked in redirect regarding the option of medically assisted nutrition and hydration and when it becomes optional. There exists always the distinction between the kind of care that would be appropriate for someone who can reasonably be expected to recover and someone who is not going to recover.

MARIA L. MALDONADO

Ms. Maldonado knows Arturo and Sandra Romero, having met them through the Baldwin Congregate facility where her nephew is a patient. She first met the Romero family approximately 10 months ago. She goes into Juan Fernando's room at least once a week. The regular day of the week that she visits him is on Wednesdays. Sandra Romero had asked her to visit him. As an estimate, she believes she has visited Juan Fernando at least 40 times in the last 10 months and when she visits, generally one of his parents are present in the room. There have been times that she has visited Juan Fernando and no family members have been present in the room. She speaks to Juan Fernando. She asks him how he is doing, how is he feeling, and she tells him that he's going to be all right, and that his mother and father will be there afterward. She believes that he replies as he moves from side to side.

She demonstrated for the court that Juan Romero opens his mouth, does an intake of breath, and moves his head from left to right. She demonstrated that his hands are in like a fist. She has seen Juan Romero lift his leg once when asked to do so and

that was last week. She has also seen Juan Romero blink his eyes when asked to do so. He blinks his eyes every time she tells him that his mother is coming. There are facial expressions he has seen she has seen him make when she tells him that his mother is coming. At that time, he was crying. It is her belief that the sounds he makes are sighs and when he tries to move, he is trying to move his hands down. She believes this is a form of relaxation.

On cross-examination, it was revealed that Ms. Maldonado has a nephew at Baldwin Park Congregate Home and who has been there for 2 years. Her nephew suffered a heart attack and is unable to speak. When she goes into Juan Fernando's room every 8 days she stays approximately 10 minutes. She stays longer when his mother is there. The longest she has ever stayed with him at one time was about 30 minutes. She has never seen Juan Fernando open and close his mouth when nobody's been speaking to him. When she goes to see him for the average time of 10 minutes each visit, she immediately starts talking to him and talks with him throughout the time that she is with him. She believes talking to him is like therapy. She has seen him blink his eyes when nobody's been speaking. She's never spoken with any of Juan Fernando's doctors. She does not even know what he suffers from. She has no medical background training or experience.

VINCENT FORTANASCE, M.D.

Dr. Fortanasce is a board certified neurologist. In order to become a board certified neurologist, Dr. Fortanasce first went to medical school, then did an internship at Cornell University, then did a full psychiatric residency at Yale, and from there went to U.S.C. to do a full neurology residency. He took his boards and passed them the first time and has been recertified ever since. He has been practicing actively, both teaching at U.S.C. and in private practice in Arcadia and Pasadena, California, for the past 40

years. He has certifications in Neurology and Psychiatry, Board of Psychiatry and Neurology and forensic medicine. He belongs to the American Medical Association.

He has been a bioethics Chairman for different hospitals. He started the bioethics committee in 1977 and Arcadia Methodist Hospital. He has been a member of the National Catholic Bioethics Center Board of Directors for 10 years. He has done extensive writing. His latest two books are called *Modern Eugenics* and *The Twin Legacy*. *Modern Eugenics* is a study of eugenics throughout the ages from Greek times to the German occupation and the Nazi Third Reich. He testified that with what is occurring right now the United States and elsewhere in the world, he believes we are essentially back to what Hitler was doing if we don't watch out. The *Twin Legacy* is his first novel in which a cautionary tale is written regarding what happens when man plays God. The only difference between this and other books that have been written about cautionary tales is that what occurs in this book can occur right now.

Dr. Fortanasce is currently in private practice. He specializes in Alzheimer's detection. He wrote a book entitled the *Anti-Alzheimer's Prescription* which was a best seller and he has one of the only active treating programs for people who have mild Alzheimer's disease and mild cognitive impairment. He has testified as an expert witness in the past, both in court, in depositions, and before administrative bodies approximately 300 to 400 times. He has testified in cases involving persons who have been diagnosed with permanent vegetative state as it relates to a legal issue and in relationship to his work in the hospital and bioethics committees. He has only testified in court two times, including his testimony in this matter. The other time involved the *Wentland* case.

Dr. Fortanasce has personally examined Juan Fernando Romero. He visited him on January 10, 2017, at the Baldwin Park Congregate Home. Other than his brain

injury, he found Juan Fernando to be in good health. He was not on a ventilator or respirator. He was receiving nutrition and hydration artificially. At the time he evaluated Juan Fernando, he had not been diagnosed with any sort of terminal illness. He cannot give an estimate of Juan Fernando's life expectancy. Dr. Fortanasce has experience treating patients who have suffered from an anoxic brain injury and that numbers in the many hundreds.

The medical care and treatment for someone in Juan Fernando's condition is that health care providers will keep the dignity of the individual by including hydration and feeding, a catheter for elimination of urine, changing diapers, and keeping the patient turned. To keep Juan Fernando's current level of brain function, it is necessary that he have adequate hydration and nutrition and by checking his electrolytes and chemicals of the body to make sure that the nutrition is being given and that the hydration that is being given is adequate.

Dr. Fortanasce testified that one of the first and foremost important principles regarding treatment is to "first do no harm." The second principle would be non-malfeasance and the prevention of suffering. So on the basis of these two principles, one would try to intervene on behalf of any individual who might have or who you might consider to be in pain.

His examination of Juan Fernando took approximately an hour. He did not conduct any sort of coma recovery scale examination. The examination consisted primarily of talking to the nurses, evaluating a chart, vital signs, electrolytes, blood counts, and various chemistries to make sure they were all in order. He went to the bedside. He talked to the nurses in person that were there as to what their experience was with him and what they had noticed. He also performed a full neurological evaluation which included looking at the ears, eyes, throat, listing to the lungs, and the

heart. He essentially evaluated Juan Fernando's medical status, his motor function, his sensory function and his reflex function.

When asked to define and describe minimally conscious state, Dr. Fortanasce testified that it was best to describe 3 different states in order to understand what minimal conscious state means. The first state would be when a person is brain dead. That would be a person who has no cerebral brain stem function whatsoever and responds to nothing. He also has a completely flat EEG. The second state would be persistent vegetative state. This is an individual who retains functioning in the mid-brain stem and the hypothalamic area. The cortex itself is not functioning, but the lower level of the brain is functioning very well. This individual has no awareness of himself or his environment.

The minimal conscious state indicates that a person does have an awareness, though minimal, of himself and his environment. A person in a minimal conscious state responds to certain types of stimuli. For example, if an individual came towards them, they would back away. If they wish something like water, their hand would reach out and grab and bring it towards their mouth, very much like an infant would less than 3 months of age.

If a person came into the room and started speaking to the patient and asked them to turn their head toward their voice and the patient turned their head, that would be consistent with someone in a minimal conscious state. They are responding to an external stimulus. If a person were to lift their leg up on command, that would also be consistent in the minimally conscious state. If a person appeared to be in pain and asked where something hurts and open her mouth and attempted to point to their mouth, that would also be consistent with the minimally conscious state. If a person is in a minimally conscious state, they are capable of feeling pain.

A person who is in a persistent vegetative state would not respond to any stimulus that was given from the outside. If a person is in a persistent vegetative state, that person can experience pain but it's a different type of experience. There is the cortical level of pain which is the conscious level. And then there's the sub-cortical level. One is a reflexive expression of pain, and the other is a cognitive expression of pain. In this regard, Juan Fernando did not experience conscious pain, just reflexive pain.

In Dr. Fortanasce's opinion, nutrition and hydration is essential to someone in Juan Fernando's condition. It would definitely be part of comfort care. With respect to the interplay between comfort care and a DNR, Dr. Fortanasce was asked whether the administering of blood pressure medication to increase the blood pressure would be violating a DNR. Dr. Fortanasce testified it's all according to how it is administered. If it were through regular IV or by mouth, that is not considered extraordinary means, and it's not part of a DNR. However, if there was an injection to the heart to stimulate it to raise the blood pressure and to augment the rate of the rhythm of the heart, then that would be considered extraordinary means with respect to the DNR. To administer it in the ordinary way is natural and to do and to not do so would be below the standard of care because it would be doing harm.

Dr. Fortanasce has treated at least 100 individuals who have been deprived of nutrition and hydration. These individuals often have spasms because of electrolyte abnormalities and they are in very serious pain. When a body is deprived of nutrition and hydration, the individual starts to get confused because of low glucose levels. And then after confusion, there are seizures and seizures are extremely painful. After seizures because of a decrease in potassium and sodium, the muscles start to spasm. Finally, people usually experience some severe cardiac event -- either chest pain or

respiratory problems and shortness of breath. The symptoms that he just described would be experienced by Juan Romero if he was deprived of nutrition and hydration.

As a chairman on many bioethics committees at various hospitals and medical associations, it would not be his opinion that it would be permissible to withdraw artificial nutrition and hydration for a person in Mr. Romero's condition. Nutrition and hydration are considered ordinary comfort care that should be issued to all individuals.

On cross-examination, Dr. Fortanasce was referred to his letter that he wrote regarding this case, identified as Exhibit 32. It was admitted into evidence. He testified that he did not do a coma recovery scale evaluation because he was only asked to come and evaluate Juan Fernando neurologically. He acknowledged that there is a gold standard recognized for testing neurological activity and consciousness and that is the Glasgow Coma Recovery Scale. Dr. Fortanasce doesn't recall reading any medical records where Juan Romero's Glasgow Coma scores were listed. Dr. Fortanasce also acknowledged that there exists a JFK coma scale, but basically the Glasgow and the JFK are the two that he uses.

When questioned about his examination, he confirmed that when he examined Juan Fernando, he was nonverbal and unable to follow a command. He acknowledged that persons in a permanent vegetative state sometimes move their heads, blink, open and close their mouth, and lift their legs. He agreed it is possible that a person could ask a person in a persistent vegetative state to move their head and that person would move their head, but it would simply be a random movement and completely inconsistent with the diagnosis of permanent vegetative state.

Dr. Fortanasce was asked about his participation in the Wentland case. He agreed that in Wentland matter, there was testimony that the patient could catch a ball

on occasion, he could respond to commands, and that was inconsistent with a permanent vegetative state diagnosis.

In Dr. Fortanasce's report he mentioned that Juan Fernando had "doll's eyes." "Doll's eyes" have to do with the part of the brain called the mesencephalon. It is part of the brain stem, the highest part of the brain stem and this condition is reflective that it is intact.

Patients with the diagnosis of permanent vegetative state do have the possibility of a functional recovery. It is rare and is usually within the first 6 months. Dr. Fortanasce is never seen a patient who has had a permanent vegetative state diagnosis for going on 2 years, recover. Simply, the possibility of recovering any brain function is highly unlikely. In the few reports in which the patient was reported as recovering, most of those generally involved trauma not anoxic brain injury or some other cause. He knows of no patient in a persistent vegetative state condition for going on 2 years due to an anoxic brain injury who has ever recovered.

Dr. Fortanasce testified that he was familiar with the complications that can arise from long-term provision of artificial nutrition and hydration. Not infrequently those complications are pulmonary, urinary, and electrolyte. Electrolyte problems are hypernatremia, which involves too much of the wrong type of salt in a person's body. There can also be infections at the site of the feeding apparatus. This is true with the use of a PIC line as well as a G-tube.

When asked whether there were ever conditions when it would be appropriate for a patient to decline artificial nutrition and hydration even when it's their only means of receiving sustenance, Dr. Fortanasce wanted it clarified as to whether that person was cognitive. With the cognitive person, yes, they could decline but only in the circumstances of them suffering from a terminal illness. If a patient is unable to consent,

then certain conditions need to be explored. From a medical ethical standpoint, the decision-making always involves the patient, the surrogate, and the physician who are making a decision. So if the surrogate's acting in the best interests of the patient, then withdrawal of artificial nutrition and hydration would be appropriate. However, if the person was not acting in the best interest of the patient, then the physician can countermand that order. If there is a difficulty arising from this, then they bring in the ethics committee.

Dr. Fortanasce testified that it's easier to answer the question concerning who determines whether the withdrawal of nutrition and hydration is in the best interest of the patient when that patient is unable to make that decision for him or herself. It's easier because one falls back on one's ethical' s principles and first, do no harm and second, do good. By withdrawing food and fluids, definitely, harm is being done. By giving food and fluid, a good is being done. So food and fluid is always regarded as a good, and if not, to do so would be doing a harm.

When questioned about hospice, Dr. Fortanasce agreed that a physician referral is required. He stated it would be unethical if a patient referred to hospice by their physician deemed it appropriate to withdraw nutrition, artificial nutrition and hydration. Dr. Fortanasce believes that the only time that is appropriate to withdraw artificial nutrition and hydration would be if the person has an unequivocal terminal illness.

Dr. Fortanasce explained the differences and the attitudes of physicians toward DNR and POLST orders. He advised that many of his patients have DNR orders that were authorized by a surrogate decision maker rather than the patient himself. When asked if he would honor such an order, he responded, "if we felt it was in the best interests of the patient."

Dr. Fortanasce was showed Juan Romero's POLST. He was referred to the section that states, "comfort measures only." He testified that it would not be appropriate to withdraw blood pressure medications. He actually testified it would be malpractice not to treat the blood pressure issue. Dr. Fortanasce was given a series of hypothetical's. One involved the need to use a ventilator in order for a person to breathe. One involved whether or not Juan Fernando's kidneys would fail and he needed dialysis. This discussion involved the potential struggle between the wife as a decision maker and what is perceived by the physician as being in the best interests of the patient.

He agreed that unduly burdensome treatment could be where the line is drawn. Dr. Fortanasce acknowledged that different physicians might come to a different conclusion regarding withdrawal of blood pressure medication and/or antibiotics. Dr. Fortanasce again stressed that the judicious thing to do is to always do no harm. He testified if you hold to that principle, you will always lead towards treating infections, giving fluids and taking care of things could be taken care of very easily.

KAMALAKAR RAMBHATLA, M.D.

Dr. Rambhatla Is a medical doctor. He went to medical school in India, Osmania College. He graduated in 1973, and came to the United States in 1975. He did advanced training in internal medicine and a pulmonary fellowship. Thereafter, he has been in private practice in the pulmonary area since 1982. His areas of specialty are pulmonary critical care and internal medicine. He is affiliated with several hospitals: greater El Monte community Hospital, Beverly Hospital in Montebello, Methodist Hospital Southern California in Arcadia, Alhambra Hospital Medical Center, St. Gabriel Valley Medical Center in San Gabriel, and Garfield Hospital in Monterey Park. He is also on staff at long-term acute care hospitals such as Kindred hospitals, one in Baldwin Park and one in West Covina. He is also affiliated with a number of other subacute units

in nursing homes and a congregate home in Baldwin Park. He is on staff at the congregate home in Baldwin Park.

The Baldwin Park congregate home has 12 beds. Sometimes they are completely full, sometimes they are not. It's the equivalent to a subacute unit where chronically ill, long-term patients are required to be taken care of. He oversees the care of all 12 patients at the home. He knows Juan Fernando Romero, who has been a patient at the congregate home during the past 2 years. Dr. Rambhatla testified that he first started treating Juan Fernando after a period of time when he was under the care of a different physician, who was in charge at the home.

It was a few months ago that he was requested to take over as the primary care physician. He had been seeing him in the capacity of a pulmonary specialist in the hospital before that. When he began his care of Juan Fernando as a pulmonary patient, he conducted an evaluation to determine what his medical needs were at the time. In describing Juan Fernando's condition at the time he first began treating him as a pulmonary expert, the doctor testified that Juan Fernando had a tracheostomy with a tube in the neck area to help him breathe. His eyes were open, but he did not respond appropriately to any questions. Even though not a neurologist, Dr. Rambhatla testified that Juan Romero was not interactive and was not verbal. He had a tracheostomy and he needed total body support. His recollection is that Juan Romero was not on any sort of a ventilator. When the doctor first evaluated him, Juan Fernando was not on dialysis, had liver function, and his blood tests were within normal limits. When asked whether he observed him to have periods of wakefulness and sleep during the initial evaluation, he could not remember any such findings. He also did not remember whether Juan Fernando was receiving artificial nutrition and hydration. He does know that Juan

Fernando was receiving some form of nutrition. At the time of this initial evaluation, Juan Fernando was not diagnosed with any sort of terminal illness.

Dr. Rambhatla, is unaware of any terminal illness diagnosis and/or respiratory problems other than he is aware that Juan Fernando had been transferred out on more than one occasion from the Congregate Home to the hospital because of certain conditions that could not be treated at the home. He did return to the Congregate Home for further care once his illness since her issues subsided.

His procedure is to have a nurse practitioner who makes visits and reports 'to him and periodically he would go and visit Juan Fernando. He visited him perhaps two weeks ago from the date of his testimony but on the date of his testimony, Juan Fernando was back in the acute hospital. Dr. Rambhatla was requested by Dr. Mehta, Juan Fernando's prior physician, to take over as a primary care physician, as Dr. Mehta was very busy.

A few weeks before his testimony, Dr. Rambhatla made rounds with his nurse practitioner and saw Juan Fernando. He reported that his eyes were open and his sister was at his bedside. All the vital signs were within the normal parameters and his lungs sounded clear. His tracheostomy site was clear. The doctor was never very sure whether there was a G-tube or not, but Juan Fernando didn't appear to be dehydrated. He appeared to be quite stable. He was awake but was in no condition to respond to any questions. That is in the nature of his underlying baseline since the doctor has taken care of him.

Dr. Rambhatla is familiar with the various forms of administering nutrition. Like other doctors in this case, he mentioned the G-tube and a PICC line. The majority of patients like Juan Fernando have a G-tube. The advantages of a G-tube are that it is a natural way of providing the food. The doctor was familiar with complications that arise

from a deep PICC insertion. Insertion of a G-tube and/or replacement of a G-tube is considered a surgical procedure, so replacing and removal of the G-tube are both operative procedures. Dr. Rambhatla vacillated about whether insertion of a G-tube is a surgical procedure. He testified that is commonly done in nursing homes, but in the hospitals, it is done by a gastroenterologist. There they are taken to a G.I. procedure room and they may do it, but either way it can be done.

He testified that based on his most recent evaluation of Juan Fernando two weeks ago, replacement of his G-tube would not present any harm to him. When asked about the insertion of a PICC line, Dr. Rambhatla testified that a PIC line is usually inserted in a temporary fashion for very short brief period of time, while they allow the G-tube site, if infected, to heal. The insertion of a PICC line is a specialized procedure where the line goes all the way from the arm almost to the heart. Dr. Rambhatla opined that two weeks prior, insertion of a PICC line into Juan Fernando would not have been harmful to him. He confirmed Dr. Feng's view that insertion of a PICC line with an infection can be very serious.

Dr. Rambhatla declined to give an estimate of Juan Fernando's life expectancy. He indicated that he has had patients live as long as 22 years in this chronic state and bed bound while being provided nutrition and care of their daily needs. If Juan Fernando was deprived of nutrition and hydration, again it would be difficult to predict how long he would live. The doctor did have experience with a family who wanted everything to be withdrawn and it took 21 to 30 days before that person passed away.

When asked whether he had ever seen Juan Fernando exhibit any signs of pain, Dr. Rambhatla indicated that his examinations can typically consist of 10 minutes at best. His examination observations did not reveal that Juan Fernando was in any significant pain. He personally does not recall ever seeing Juan Fernando in gross pain

of any kind. He has never recommended to Ana Romero to stop providing nutrition and hydration. In his experience, he has never observed somebody experiencing pain due to the withdrawal of hydration and nutrition.

On cross-examination, Dr. Rambhatla revealed that over the last 5 years or so and currently, he is responsible for at least 50 patients in a similar situation to Juan Fernando. He has observed in those patients that they can sometimes move their bodies. They sometimes have reflexive responses to stimulus. He has never seen Juan Fernando respond to voices. He has never seen Juan Fernando follow directions.

When asked whether or not he has ever recommended to Ana Romero that Juan Fernando be referred to hospice and/or palliative care he responded as follows:

> "I have generally recommended in such condition where there is no hope for meaningful recovery to the previous state of health and activity, there is what is called for code and no code. Do not resuscitate. They do not resuscitate with no transfer to the acute hospital and manage whatever symptoms that come by and take care of them at the unit. Typically, most patient's families went off for do not resuscitate, and some say no transfer to the hospital. Every patient in -- every individual is different, and based him what I know and recall from what the intent was that there was his condition is being in a very last 8 years, 2 years or so, he has not been his usual self. So palliative care is only recommended one step before the hospice palliative care will palliate any symptoms management which we were doing any how certain to answer your question, did I recommend palliative care, I'm not certain."

Dr. Rambhatla opined that Juan Fernando would not be at any risk if taken to his parents' home, as he is had a few patients still at home being cared for by their family members and they are doing well. He also confirms that Juan Fernando is not suffering from a terminal illness.

YONGQING FENG, M.D.

Dr. Feng is a medical doctor who was treating Juan Fernando Romero at Queen of the Valley Medical Center at the time of his testimony on March, 8, 2017. Dr. Feng obtained his medical degree in China and retrained here at the Medical College of Ohio,

including all of his residencies and attending time periods. He has been a medical doctor for about 30 years. His specialty is hospital medicine. He works in the hospital as a hospitalist and also in his own office. He is an independent contractor, not an employee of the hospital. He had been treating Juan Fernando at Queen of Valley Hospital since his admission on March 2, 2017.

He testified that Juan Fernando was admitted to the hospital because he had a fever, coughing, and congestion. They found sepsis due to a lung infection which caused pneumonia and a urinary tract infection. The family had noticed there was a leaking from the feeding tube, the G-tube. The treatment he recommended was an antibiotic for the common bacteria which was causing the pneumonia and to treat in the urinary tract infection. They withheld tube feeding, and put the patient on, nutrition by the IV. He then consulted with a gastroenterologist to be prepared to replace the G-tube.

When asked whether Juan Fernando suffered from a terminal illness, Dr. Feng opined that the underlying issue was encephalopathy and there is nothing terminal about that condition. He noted he does not suffer from cancer, heart disease, liver disease, or end-stage kidney disease. Dr. Feng would not characterize Juan Fernando as in the active process of dying. He noted that when Juan Fernando was admitted to the hospital one week ago, he was sick. He was very sick. He was in sepsis because of the infection. He is stable now, therefore he was not actively dying. He noted that his body responds properly to antibiotics. With the application of those antibiotics, the infections that one Fernando suffered with at the time of his admission have all been resolved. Dr. Feng had only seen Juan Fernando for the first time at this time, however he reviewed his medical records. He would not speculate that on past occasions Juan Fernando would always recover, as he did not read the records for that purpose.

Dr. Feng testified that there were 3 different ways for Juan Fernando to receive nutrition and hydration -- the first would be the peripheral IV. The second would be a G-tube. The third would be called internal feeding just by the feeding tube. Each method has their own pros and cons when it comes to receiving nutrition on a long-term basis. A PICC line might be one form of administering TPN. Dr. Feng advised that TPN is a very thick liquid and that's why a central line is preferred. It is possible to insert a PICC line if a person has contractures even though it might be a little bit more difficult. Dr. Feng established that at this time, insertion of a PICC line would not be harmful to Juan Romero. He testified that it is a procedure, not a surgery. The physician basically just inserts a catheter into the vein and it goes deep to the heart. It goes very deep, but it's a common procedure in the hospital. This is likewise for a G-tube.

In cross-examination, Dr. Feng was questioned about his statement that insertion of a PICC line was not called surgery. He was asked if he was familiar was something called CPT codes and Dr. Feng responded that he uses these codes every day. He did acknowledge there are about 40,000 CPT codes and he is familiar with the ones that are commonly used. He is not familiar with the CPT code for the insertion of a PICC line. Dr. Feng was approached with Exhibit 22, a printout of the CPT code for peripherally inserted central venous catheter. He stated he was unfamiliar with this particular code and its classification. He was then asked how to define surgery. Even though surgeons typically are responsible for placing lines and veins, insertion of a PICC line is normally done by the nurse. He said "I don't think we call it a surgery." There are risks to the insertion of a PICC line which include infection and that can be very serious because the line goes almost to the heart. If it got infected, it would not only be a skin infection, but a bloodstream infection which could be catastrophic.

He testified that he has spoken face-to-face with Ana Romero. They discussed whether or not Juan Fernando should have a blood transfusion. She authorized that to occur. They were also able to have a discussion with the stomach doctor that day to confirm the use of the Foley catheter as a feeding tube.

He testified that the importance of administering nutrition and hydration to someone Juan Fernando's condition is to assist him to live. He testified that Juan Fernando would die if he were deprived of nutrition and hydration. He testified that patients who are on long-term tube feeding rarely come to a point where they are no longer absorbing the nutrition from the feeding tube even though there are adequate levels of calories and nutrition. They could tell if this were happening because the patient with tube feeding would have a non-functioning G.I. tract. There could be an obstruction. There could be an infection.

In speaking with Ana, he recommended a G-tube over the PICC line and the administration of TPN. The reason he recommended the G-tube over a PICC line is because the G-tube is still natural to keep the G.I. function. The risk of infection is low and if there is an infection it's easier to treat. If you have a PICC line and there is an infection after the long-term, it will be very difficult to treat and if you have a bloodstream infection, sometimes it's life threatening. He also acknowledged that a PICC line would not be appropriate if the person was suffering from sepsis like Mr. Romero.

THERESE LYSAUGHT

Professor Lysaught is a Catholic Moral Theologian. She is an associate and tenured professor at the Institute of Pastoral Studies at Loyola University, Chicago. She has a secondary appointment as a professor in the Neiswanger Institute for Bioethics and Health Policy at Loyola's Stritch School of Medicine. Professor Lysaught has authority from the Catholic Church itself to teach in the theological disciplines.

Professor Laysaught described her authority from the Catholic Church as a mandatum from a bishop and the United States that authorizes her to teach in the theological disciplines at a Catholic University. She acknowledged that if her testimony today was inconsistent with Catholic doctrine, then that mandatum would be revoked. She defined a mandatum as the following: in 1990, Pope John Paul II issued an encyclical entitled "Ex Corde Ecclesiae," which helped to clarify the relationship between Catholic Universities and the magisterium of the Catholic Church. As a part of that classification, all professors teaching in theological disciplines at Catholic universities are required to have a mandate our mandatum from the local bishop.

Dr. Lysaught has a bachelor's of science in chemistry from University College. She has a master's in theology from the University of Notre Dame, and a PhD in theological ethics from Duke University. She began her career as an associate at a medical ethics research Center -- the Park Ridge Center for Health, Faith, and Ethics located in Chicago. She spent a year at the University of Iowa on a fellowship working in a human genome project lab. It was a program for ethicists to learn about genetics. From there, she took her first academic position at the University of Dayton in Dayton, Ohio which is a Catholic University where she taught in the Department of Religious Studies for 12 years. She then moved to Marquette University in Milwaukee and taught in the theology department for 6 years. She then spent a year as a visiting scholar with the Catholic Health Association, and from their move to her current position at Loyola.

She's authored 3 textbooks that are related to Catholic medical experts. Her first textbook is a text textbook of Catholic moral theology entitled, *Gathered For The Journey*. Her second book as an anthology of works on the intersection of theology and medical ethics. It is entitled, *On Moral Medicine*. It is considered the definitive anthology at the intersection of theology and medical ethics. Her third book was as a result of her

year working with the Catholic Health Association. It is entitled *The Theology and Ethics of Catholic Doctrine*. She's authored over roughly 60 articles, 20 of which center on Catholic health care decision-making ethics. Her articles include a spectrum of topics on Catholic health care: health care genetics, stem cell research, and of life decisions. Currently, she generally teaches one course a year on Catholic Health Care Ethics for something relating to that topic and one course a year on Catholic Moral Theology.

She testified that there are texts that she considers authoritative within Catholic teaching that address the medical care to be provided to seriously ill patients. She brought to court with her the following, *The Ethical and Religious Directives For Catholic Health Care Services*. This is in its 5th edition. It is commonly referred to as E.R.D. and referred to as ERDS. One of the other major texts would be the *1980 Declaration of Euthanasia; Congregation For The Doctrine Of The Faith,* which is a Vatican office. She would also rely upon the catechism of the Catholic Church and various opinions by reputable Catholic moral theologians on well – defined questions or controversial questions. To round it out, she would rely upon Tyus 7th's address to anesthesiologists from 1957. She reviewed these texts in order to prepare for her testimony today.

In terms of dealing with specific decisions relating to patients who are in a permanent vegetative state or minimally conscious, and otherwise seriously ill and unable to make decisions on their own, she considers the most important text to be *The Ethical And Religious Directives For Catholic Health Care Services* printed by the United States Conference on Catholic Bishops. She reviewed this text as well to prepare for her testimony. In addition to all of these texts, she reviewed a statement by Dr.Fortanasce. She also reviewed some medical records from Citrus Valley, may be two sets of medical records. She reviewed the testimony of a short section of Dr. Accad's testimony and a statement from Dr. Mehta. When asked if there were other documents

related to the support of her testimony today, she pointed out John Paul II's 2004 allocution on nutrition and hydration, and a response from the Congregation For The Doctrine Of The Faith in 2007 on the same topic.

She confirmed that Catholic doctrine does provide a framework for making decisions with respect to patients who are seriously ill. In general, it is a multi-part framework. The first step in addressing any moral questions within the Catholic religion is the foundational principle of the dignity of the human person. At all times, all persons regardless of their state of being, their state of ability or disability, are to be honored as persons. They are to be loved and nurtured and cared for; that's premise number one.

With regard to end of life decision-making, a second premise would be that death is a reality. The Catholic Church affirms that we all die. Death is not a good nor is it something to be sought, but it is certainly something to be excepted. Third, life is good, but as the Bishops make very clear more than once in the ethical and religious directives, life is not to be considered an absolute, to be pursued at all costs. Fourth, for the patient, decision-making is the centerpiece of a moral medical decision. Patients have the right to form their consciousness and to make decisions that accord with their values that take into account teachings of the Catholic Church. It doesn't determine their decisions, but they should be taken into account. Equally, the Church affirms the importance and centrality of surrogate decision-making for patients who have lost capacity to make their own decisions.

The fifth component would be the long-standing framework developed by the Catholic tradition and then later adopted by the secular bioethics tradition and that is the distinction between ordinary treatment and extraordinary treatment. She testified that this is all outlined in the ethical and religious directives. A final component would be some specific reflections on artificial nutrition and hydration, particularly with regard to

patients who are in chronic and non-curable situations such as permanent vegetative state.

Professor Lysaught also testified regarding the judgment of a patient, or then by extension, the patient surrogate, with respect to whether treatment offers a reasonable hope or benefit and does not entail an excessive burden on the family or the community. There is always this kind of balancing a burden and benefit in decision-making around any treatment. And if the balance tips toward benefit, significant benefit with low burden, it's considered ordinary treatment. It is, therefore, morally obligatory. The decision as to whether a particular treatment would be considered ordinary treatment or extraordinary treatment rests first with the patient. If the patient cannot make the decision, then the patient surrogate must. In defining the term morally obligatory, she testified that this means it if you can do it, you should do it. There is a category called morally optional. This means that you have a choice. From the perspective of the church, it means that you are not morally required to pursue it, but you can. If something were morally wrong that means you ought not to do it.

She testified that within the framework she has articulated, there are circumstances when a decision maker, a surrogate, can ethically and consistently with Catholic doctrine decide that a patient should be given a certain type of treatment. An example of this is a DNR order. The framework for making that decision would be to make sure that the decision is consistent with the patient's own wishes. As to other scenarios, it would be in the framework of determining a patient's desire in analyzing the benefit and burden to make a decision to decide to withhold or withdraw medical treatment such as antibiotics, and in this scenario, to withdraw artificial hydration and nutrition from a patient's treatment plan and instead choose to do strictly palliative care -- pain relief care.

The framework for making a decision such as withdrawal of antibiotics and/or artificial nutrition and hydration is articulated in directive 58 of the Ethical and Religious Directives. Directive 58 starts with the premise that persons in permanent vegetative states should be continued on medically assisted nutrition and hydration. It becomes morally optional under 3 specific conditions. The first condition as when artificial nutrition and hydration failed to work. This is when they cannot reasonably be expected to prolong life. She noted there are situations in which medically assisted nutrition and hydration stop having a biological effect, and if it has no effect, you have no obligation to use it. The 2nd condition as when they would become excessively burdensome for the patient. She noted there are instances where the treatment itself begins to impose such a burden on the patient that it offsets the benefit; therefore those means then become extraordinary.

The 3rd criterion would be when they cause significant physical discomfort, for example, resulting from complications in the use of the means employed. One complication introduced by Professor Lysaught was that often terminally ill patients, as they die, their biology shuts down. They are no longer hungry, and to feed them is actually quite burdensome to them. It creates toxicities in their bodies. One of those toxicities would be hypernatremia. She went on to detail that there are a lot of complications that can attend the administration of artificial nutrition and hydration through a variety of ways of delivering it. There can be infections and other sorts of complications at the site of administration. There are also significant evidentiary signs that no matter the form of delivery, medically assisted nutrition and hydration increases the incidence of aspiration pneumonia. Infections from the site of delivery can also go systemic. There can be urinary tract infections. There can be diarrhea. Simply, there is a whole host of complications.

When asked whether a patient who suffers one bout pneumonia related to the delivery of artificial nutrition and hydration, should result in the withdrawal of artificial nutrition and hydration, Professor Lysaught testified that the bar would be a little bit higher for those patients who can't make their own decisions. Thus in her opinion, one bout of pneumonia would probably not be enough to justify the decision to withdraw artificial nutrition and hydration. When asked why this would be the case, she testified, "because one wants to make good faith efforts; right? Life is good. And so there's this presumption, this moral obligation to use treatments that have some burden, but not too high a burden in order to get this benefit. So for her first round, you would have a presumption in favor of treatment."

When asked hypothetically if a patient was repeatedly hospitalized over the course of a year and a half -- 7, 8, or 9 times for complication such as pneumonia, sepsis, or other infection -- would that point a decision-maker, consistent with Catholic doctrine, to determine that the continued provision of medically assisted hydration and nutrition were unduly burdensome, Professor Lysaught testified that this would invoke the weighing process. There would be a weighing between the burdens and the benefits. For example, if the burdens are beginning to increase due to an increase in frequency. This determines that it would be likely that those complications are as a result of the treatment itself. Then it becomes morally optional whether or not to continue with the treatment.

Professor Lysaught was asked a number of questions concerning Dr. Accard's testimony. She disagreed with Dr. Accard that nutrition and hydration are ordinary care. She referred to directive 58 that specifically states that hydration and nutrition can become unduly burdensome and therefore morally optional. Professor Lysaught further disagree with Dr. Accad in his position that withholding nutrition would always be with

the intention of terminating the person's life and that would be to intentionally kill the person, thus contrary to Catholic doctrine. Her reasons for disagreeing with Dr. Accad is that nutrition and hydration could be withheld because the burden of the treatment itself has become too much for the patient. The literature itself speaks of overzealous treatment as a problem. She testified, "it is acceptable within the Catholic church after trying obligatory means after a presumption in favor of treatment, after caring for patients, it is acceptable to say death is coming. I am no longer going to impede it; right? This is again the language of the catechism. We do not have an obligation to impede death at all costs."

Dr. Accad testified that essentially the only time removing hydration and nutrition is consistent with Catholic doctrine is if a patient is actively, actually dying. Professor Lysaught disagreed that that is a concept found within Catholic doctrine. She testified that the phrase "actively dying" is nowhere in the ERDS. It is also not found in any of the other texts that she has consulted.

Professor Lysaught was given a few hypothetical situations. The first one involved a permanent vegetative state patient receiving hydration and nutrition through a feeding tube for 18 months and suffering no other complications. She opined that Catholic doctrine would not allow for the withdrawal or withholding of artificial nutrition and hydration in this circumstance. The hypothetical was changed to add that the patient suffered repeated instances of hypernatremia. She testified that if this was an indication that the nutrition given to the patient is not able to be absorbed or properly processed, then it would become morally optional.

Professor Lysaught was then asked to opine on the actual facts of this case. The hypothetical presented to her were that between the time that Juan Fernando Romero became nonresponsive and now, he has lost a significant amount of weight. If a

physician were to opine that he was not properly processing nutrition as evidenced by his weight loss, Professor Lysaught said considering other factors as well, it could be determined that the provision of hydration and nutrition artificially was morally optional.

When asked specifically whether it was against Catholic doctrine for Juan Fernando Romero's wife, Ana Romero, to direct that Juan Fernando Romero should have a DNR at this time, Professor Lysaught said based upon the medical records with the multiple instances of pneumonia, respiratory distress, tachycardia, and multiple hospitalizations, it would not be against Catholic doctrine for such a decision to be made. She further opined that in her opinion that it is proper based upon her understanding of Catholic doctrine for Ana Romero to direct that he receive no further surgeries.

She further opined based upon Juan Fernando's current condition that withholding of antibiotics would not be inconsistent with Catholic doctrine. She concluded that per directive 58, it seems that it is morally optional due to excessive burden. In short, due to the probable significant physical discomfort suffered by Juan Fernando based upon these infections and conditions, it would not be inconsistent with Catholic doctrine to withhold artificial food and hydration, antibiotics, and surgical treatment.

On cross-examination, Professor Lysaught was asked whether or not she had an opinion that Juan Fernando was suffering from a terminal illness. She replied in the affirmative. The terminal illness would be based upon the repeated bouts of pneumonia, sepsis, chronic respiratory failure, and tachycardia. She believes in his case that these repeated instances suggest that he is entering a phase of permanent vegetative state that could be considered a terminal illness. When asked whether it took one, two, or three instances of these conditions to be determined to be repeated, Dr. to Lysaught

considers someone who gets pneumonia 9 times in 18 months to be 'repeated.' She rephrased that 9 times is considered terminal with the following language "maybe he's not terminal. But in terms of Catholic doctrine, he has repeatedly now come into a place where he has been given a grave prognosis, and it would be acceptable to allow him to die."

Professor Lysaught indicated that directive 58 does not apply in instances where the patient is drawing close to inevitable death. She further defined excessively burdensome as simply when the burden outweighs the benefit. She acknowledged that in receiving artificial nutrition and hydration, Juan Fernando has incurred a benefit from his life being prolonged. However, it looked to her as if the administration of the nutrition and hydration itself has had complications. Therefore, because there are complications with the treatment itself, the literature makes it clear that the calculation of benefit and burden must be made within the Catholic moral tradition. Professor Lysaught acknowledged that the complications experienced by Juan Fernando are common, but she distinguished between "uncommon and burdensome" as not being the same thing: "Just because something's common does not mean it's not extraordinary. Antibiotics can be considered an extraordinary treatment within the Catholic tradition, and they are very common." When asked whether any analysis would depend upon how well the patient response to the treatment, Professor Lysaught answered in the negative. She testified that it goes back to the question of whether or not it is time to allow death to come.

Professor Lysaught agreed that in the circumstance of Juan Fernando who is not able to make his own decisions, it is one of those cases where you look at decisions with more caution. However, she did not agree that it would be morally obligatory to try

different means of artificial nutrition and hydration delivery if there have been complications with the current form of delivery.

Professor Lysaught also indicated that one does not have to be imminently close to death in the Catholic tradition to use categories of ordinary and extraordinary treatment in order to make decisions about treatment. She referred to the title of part 5 which states these rules apply to those who are seriously ill and dying, which are 2 different categories.

Professor Lysaught was directed to the language of a speech in 2004 by Pope John Paul II wherein he argues for the provision of nutrition and hydration in patients in a permanent vegetative state. The question involved is—in his exact words -- that a sick person in a vegetative state awaiting recovery or natural death still has the right to basic health care: nutrition, hydration, cleanliness, warmth. Professor Lysaught agreed that those were the correct words of Pope John Paul. On redirect, she was questioned about this circumstance and expounded that as a result of this statement, there was significant discussion amongst those that provided directives from the church. She advised that an important development in the time from 2004 to 2009 when John Paul II referred to artificial nutrition and hydration as ordinary treatment, the ERDS in 2009 dropped that language. It is very significant to leave out the naming of artificial nutrition and hydration as ordinary treatment.

Professor Lysaught vehemently disagreed with a scenario in which there is no designated surrogate so that it requires all family members to consult together and make this decision together. She testified "there is nothing in the ethical and religious directives in the Catholic tradition that says that someone must consult with all those members of all those Catholic families before you can make a decision. We would never make any medical decisions if we had to do that. There's nothing in the literature that

says that." She acknowledged that in terms of decision-making in this circumstance, the Catholic church does not have a sort of hierarchy or an order who gets to make the decision who makes the final call.

However, on redirect when asked whether or not special consideration is given to a spouse, she affirmed that there is. "But there is consideration, special consideration given to a spouse; right? Because in a marriage, the two become one. There is a presumption in favor of a spouse. This is not written down. This is in practice. That generally a spouse is going to have the patient's best interest at heart, is going to know the patient the best and is going to be able to do this weighing procedures"

Professor Lysaught testified that there is a wide range of orthodoxy in the Catholic church. When asked about certain testified to beliefs held by Juan Fernando that would appear to be in opposition to basic Catholic doctrine, she testified that there are sizable number of Catholics who spanned their spectrum of religious practice from weekly mass "to people we call Chreasters – Christmas and Easter – who adhere to a variety of positions that are in and out of line with the Catholic hierarchy. They are still members in good standing with the Church."

NEIL WENGER, M.D.

Dr. Wenger is a medical doctor and the chair of the UCLA ethics committee and has been so since 1982. He belongs to many organizations, has worked in medical ethics for about 20 years, published a lot of papers and he specializes in mainly focusing on treatment toward the end of life. Dr. Wenger talked about frameworks for patients that lacked capacity. He stressed it was important to understand what medicine can accomplish and what a patient would want to have carried out for them. Given that, it would be the physician's responsibility to best match what a patient would want. When a patient can't speak for themselves, there is guidance in various ethics manuals as to

how the physician should proceed. The interview of family members would be important. It is something that a physician would definitely rely upon. After doing their evaluation, the next step would be what is called a substituted judgment. This uses what is known about the patient's wishes. The standard of "what is in the patient's best interest" is the least good approach. Dr. Wenger opined that if you use the best interest test, you are substituting's one's value system for the patient's system.

With respect to a patient who is in a permanent vegetative state, it is important to determine whether or not a patient would receive a benefit from the care provided. It is the obligation of the hospital to provide treatment that is appropriate for the patient even if the family disagrees. He gives the example of Do Not Resuscitate orders. Resuscitation should not be performed if it can't achieve a goal of the patient or as a condition from which the patient can receive a benefit. There is very extensive medical literature were experts throughout the world agree that life-sustaining treatments for a person in a coma should not be given. Simply, patients in a permanent vegetative state do not warrant the receipt of life sustaining treatment.

Dr. Wenger addressed the issue of artificial nutrition and hydration for patients in a permanent vegetative state. He testified that it is not a grueling process for patients to involuntarily stop food and fluids, as it is not a process that causes suffering. If the person is in a permanent vegetative state, Dr. Wenger believes there is no consciousness as a permanent vegetative state reflects severe destruction of the cortex. He opined there is no evidence that artificial nutrition and hydration provide any sort of comfort to someone who is neurologically devastated. With respect to those opinions expressed by Dr. Fortanasce, Dr. Wenger is not aware of any professional organizations that adopt his view. In fact, all professional organizations have adopted his view expressed in his testimony.

In discussions about comfort care, Dr. Wenger referred to the POLST where it says one should never include life-sustaining treatment unless that treatment is to provide comfort. Blood pressure medications never provide comfort care. When a patient is in a persistent vegetative state, or even a minimally conscious state, the goal is beneficence. That is, to keep the patient clean, see that he or she remains in a dignified state, and treatments are not used that would cause discomfort or prolong a condition that a patient would not want. In this regard, Dr. Wenger draws no distinction between the provision of blood pressure medication and artificial nutrition and hydration.

Dr. Wenger discussed the various aspects of hospice care and palliative care. Hospice usually focuses not on longevity, but is particular to patients with 6 months or less to live. Hospice doesn't require medical treatment even though it would prolong life. The prognosis of 6 months takes into account the patient's willingness to receive treatment. With palliative care, the goal is to provide comfort and to avoid suffering.

The availability of palliative care factors into whether to withdraw artificial nutrition and hydration. This is not a factor with permanent vegetative state patients. He discussed the concept of futile interventions. For example, with respect to Juan Fernando, CPR would be one form of intervention, giving epinephrine, and/or the use of a defibrillator – these would all be medical interventions with a futile outcome. When a person is facing some of these issues and are verbal, there are standards to gauge what is beneficial and what is futile. This is not the case with permanent vegetative state patients. Neurologists believe that persons in a permanent vegetative state are not conscious and cannot perceive benefits. They believe there is no consciousness, there is no pain felt, and if there is no benefit of any medical treatment, then that treatment is not warranted.

When questioned about patients in a minimally conscious state, Dr. Wenger agreed that the lifting of a leg could be an awareness of the outside world. The tracking of a person's voice could be perceived as a perception of the outside world. Opening one's mouth to show sores when asked where he hurt, could be a perception of the outside world. However, facial grimacing can occur in permanent vegetative state patients and are not a circumstance of perception of pain. There are several studies of people who didn't eat or drink and experienced no pain. When asked why one would treat bedsores if a person in a permanent vegetative state was not in pain, Dr. Wenger testified that doing so is all part of providing dignified care.

Dr. Wenger, during cross-examination, opined that low blood pressure does not cause pain or suffering and raising the blood pressure with blood pressure medications prolong his life. He believes that Juan Fernando has a terminal illness. Juan Fernando is suffering from severe cortical destruction from an anoxic brain injury. This is a terminal illness. He's not sure if Juan Fernando was actively dying, but this is still a terminal illness. There are a lot of studies and most people questioned would not want to be in a permanent vegetative state and most people consider this condition to be a state worse than death. He would go with that commonly held view. You would go in with a presumption of that and then look for strong indicators otherwise. If this matter was presented to him at UCLA, he would want to have a series of in-depth family meetings and he would use that to guide the family to move toward how Juan Fernando would want to live out the rest of his life. Dr. Wenger made it clear that patients can live in permanent vegetative states for up to 15 to 20 years, but only because they are getting life-sustaining treatments.

He has reviewed some medical records of Juan Fernando, some testimony from this case, and has interviewed Ana Romero and her sister, Michelle. He did not talk with

Lillie and or Juan Fernando's parents. He has not had clinical contact Juan Fernando, either. His review of the medical records reveal that Juan Fernando is not suffering from kidney failure, liver failure, and did have pulmonary failure at one time but that is now adequate. He agreed that at times physicians do consider a patient's religious preferences. He defines end of life is making decisions for persons relatively close to death. They have some illness or set of illnesses or in a clinical condition that will lead to their death. Persons with pneumonia could be facing end of life decisions.

Dr. Wenger was not being compensated for his testimony at this time.

DR. CAROLINE SCHNAKERS

Dr. Schnakers testified that she has a PhD concerning brain injury patients. She is educated in psychology and neuropsychology. She works at UCLA in the Brain Injury Division. She's worked in this field for 15 years and is one of a handful of experts in the world, along with her husband, Dr. Martin Monti. She's authored over 80 articles. She is chair of a special interest group that focuses on consciousness and any disorders of the consciousness. Most of her articles and research focus on the diagnosis of a disorder of the consciousness, and more exactly, on the detection of signs of consciousness.

When she talked about disorder of consciousness, there are a lot of clinical examples. She gave the example of a coma where the patient does not open his eyes. He's reactive to some stimuli, but it is just reflexive activities. After a few weeks, the patient will start to open his eyes, but continue to be in a vegetative state with reflexive responses only. She testified that afterwards, if you are lucky, the patient will start showing some signs of consciousness. Examples of this would be visual tracking, answer to a command such as move your hand or head.

To prepare for her testimony, Dr. Schnakers reviewed Juan Fernando's EEG, MRI summary, the reports, the cat scans, and the Glasgow Coma Scales. Glasgow

Coma Scale is one of the first scales to be developed to assess consciousness in patients with severe brain injuries. She opined that while the Glasgow scale was groundbreaking at the time, subsequent studies have shown that 50 percent of patients are misdiagnosed. There are now other scales, like the Coma Recovery Revised, which is referred to as the JFK Coma Recovery Scale. It is also referred to as C.R.S.R.

Persons in a minimally conscious state are patients who are able to show different signs of consciousness. She has conducted studies using these scales and found that a significant number of patients diagnosed with being in a permanent vegetative state were wrongly diagnosed. They had signs of minimal consciousness. The difference between the behavior of a patient who is in a minimally conscious state versus a permanent vegetative state is whether or not purposeful and oriented behavior exists.

Dr. Schnakers went through the different criteria of the tests she has been trained to perform which involve some response to stimuli that is repeatable. A person in a permanent vegetative state does not respond to stimuli. He might open his eyes suddenly, open his mouth wide, or move his legs. He might also respond to sound by moving his head towards it. Dr. Schnakers testified that such actions involve the primal part of the brain. These are not recognized as complex and purposeful.

Permanent vegetative state patients do respond to nociceptive stimuli. She explained that it is like when a person touches a hot pan and immediately withdraws as a reaction. That stimulus tracks to the brain, but it will not go to the cortex. It simply isn't processed anywhere in a high level way. Permanent vegetative state patients, when pinched will react, but the reaction is not indicative of consciousness.

Dr. Schnakers tested Juan Fernando using the JFK Coma Recovery Scale. She visited him two times. Each visit was one hour. She visited twice because she did not

want to miss anything and she wanted to make sure that the assessment was long enough to determine if he was oriented or non-oriented. Juan Fernando scored a 6. She was accompanied by Dr. Martin Monti, her husband, on the second visit. He is also a trained expert in this field. She inquired of Juan Fernando's family present regarding what they have observed and spoke mainly with Lilian. She even asked for Lilian's assistance during the testing period. She performed visual, object recognition, and auditory function tests. She viewed the videos taken by Lilian as well. Her opinion is that all of the actions present in the videos were reflexive actions. Her opinion was that Juan Fernando is not in a minimally conscience state, but rather regretfully, a permanent vegetative state.

During cross-examination, Dr. Schnakers was asked about whether or not pain is experienced by persons in either a permanent vegetative/minimally conscious state. She testified that pain is a complex emotion and reaction. They try to observe the patient during treatment of a painful condition to assess if there are reactions that rise above reflexive. It is her opinion that patients in a permanent vegetative state do not feel pain or anxiety. She also was not aware of Juan Fernando's medications or state of nutrition/hydration and that might affect his performance on the tests. His health conditions could also impact the test results and Dr. Schnakers recalls that she was delayed in seeing him because of a hospitalization and a desire that he be in more stable medical condition.

The use of a new test, an FMRI, was discussed and what is purports to demonstrate, but this test was not performed on Juan Fernando. Dr. Schnakers testified that in one of her studies, she came to the conclusion that 89 percent of people are misdiagnosed and that where it showed that it was not clear as to whether the patient

was conscious or not, the patient was actually most likely conscious. These misdiagnoses occur about the same in traumatic and anoxic brain injury categories.

Dr. Schnakers confirmed that when she pinched Juan Fernando, she voiced an, "I'm sorry." She explained this was the ethical thing to do. She also confirmed that he kicked his leg during this test, but opined that it was, again, reflexive.

This is the first time she has testified in court and is doing it pro bono.

DR. MARTIN MONTI

Dr. Monti has a master's degree from Princeton University in psychology and neurosciences. He has a Ph.D. from Princeton in psychology and neurosciences. He went to Cambridge University in the United Kingdom to work for the Medical Research Council for about three and one-half years where he finished his specialization in his current research, that of Disorders of the Consciousness and Related Conditions.

Since early 2011, he has been a professor at UCLA in the psychology and neurosurgery departments. His research is particularly focused on understanding brain processes and understanding the relationship between behavior and the brain processes underlying that behavior. His work is different from Dr. Schnakers because she has a more clinical approach to her work whereas his work is more scientific in nature. He has published numerous articles in his field.

He is familiar with the JFK Coma Recovery Scale Revised and has been trained to administer it. To prepare for his testimony, he reviewed the grid of the JFK Coma Recovery Scale Revised concerning Juan Fernando prepared by him and Dr. Schnakers. He reviewed the MRI and EEG results. He explained the differences between permanent vegetative state, minimally conscious state, brain death, and patients who are "locked in."

Whether a patient is vegetative or minimally conscious, there is no difference in their course of treatment. He testified, first, that there is no real treatment for these patients. Second, in most rehabilitation institutes, any treatment administered is passive. There is a difference in prognosis. Minimally conscience state patients have a better chance of better outcomes.

Dr. Monti testified that Juan Fernando's MRIs and EEGs results are consistent with a severe brain injury. The amount of atrophy shown on the second MRI correlates to a person being in a vegetative state. He examined Juan Fernando one time with Dr. Schnakers. They performed the JFK Coma Recovery Scale Revised, scoring it independently. He concluded that Juan Fernando was in a vegetative state. He concludes such with a reasonable degree of scientific certainty.

Dr. Monti is testing FMRI applications which he believes has provided remarkable scientific insights, but he does not believe they are usable in these circumstances as per current guidelines. He is also familiar with BCI, Brain Computer Interfaces. This has been used, with some success, with patients who have the locked-in syndrome. This test has not been accepted in the scientific community and would not apply at all to a patient in a vegetative state.

His understanding of the ability of patients in a vegetative state to feel pain is that they cannot. These are based on guidelines printed in 1994 in the New England Journal of Medicine that have been confirmed in recent new guidelines by the American Association of Neurologists. You need to be conscious to experience pain. All that is experienced is nociceptive responses. Dr. Monti disagrees with Dr. Fortanasce that a person who's in a persistent vegetative state is capable of experiencing pain. He bases his disagreement on the guidelines and general consensus that it is not possible. All a person in a vegetative state has is the process of nociception. It described it as the

difference between hearing and listening. Auditory-orienting reflexes like the turning of the head and eyes toward peripheral sounds or movements is just hearing. No active conscious mind is responding.

Dr. Monti advised that patients with anoxic brain injuries have much poorer outcomes than patients with traumatic brain injuries. Post mortem studies of anoxic brain injuries have brain atrophy and cellular death inside the thalamus, which is important for the brain to generate or experience consciousness. Dr. Monti further advised that once a patient has passed the boundary of three months after an anoxic brain injury and his condition is unchanged, by guidelines he is referred to as being in a chronic vegetative state. This is one of the poorer prognosis.

Like Dr. Schnakers, when Dr. Monti examined Juan Fernando, he was not familiar with medications being given to him, whether he had other medical and/or physical conditions that could have impacted the test results. He confirmed that guidelines in the testing make sure that some of these conditions are taken into account, which is why multiple examinations are recommended. He agreed that some of these conditions would impact the test results.

JUSTIN PEREZ

Justin Perez was a good friend with Juan Fernando. He calls him Fernando, not Juan. He is a community advocate and works with autistic kids and adults. He first met Fernando at Sam's Club in 2002. He worked with him. He and some other coworkers would work out together and play basketball. They watched a lot of movies together and a lot of Laker games. They quickly became close friends within a few months. Justin saw Fernando at least 5 times per week.

He had conversations with Fernando about religion. He had occasions to speak with Fernando about abortion and whether he was pro-choice. He voiced strong

opinions during these conversations. Fernando mentioned he believed in a woman's right to choose. That having been said, Justin believes that Fernando was definitely Catholic having been raised a Catholic, but he was not particularly religious. He recalls that Fernando took a lot of history classes at UCLA and that he talked about a Marxism class. They discussed what Marx said about religion being "the opiate of the masses."

Justin met Ana after he first met Fernando. Justin told Fernando, "she doesn't know you exist." Justin admitted he was wrong because they started dating. Justin was at the wedding and was a groomsman. When he and his friends would play basketball together, Justin would smack Fernando on his rear and Fernando would be upset as he didn't like to be touched too much. Justin testified he has tried to hug Fernando more than once and he would and he would say, "please, don't touch."

After the incident in May 2015 and Fernando was in a coma, Justin would visit him quite often. He was worried about them all the time and he wanted to make sure Ana was okay. He testified it was rough to see Fernando in his condition; he wished he could do more, and so instead he's been trying to help the family.

The nurse always asked them to leave when they had to change Fernando's diapers or turn him. Justin believes that Fernando would be very upset with the situation as he was shy and never wanted people to touch him. At some point, Justin quit seeing Juan Fernando because it's not comfortable for Justin to see him. Justin also thinks that Juan Fernando would not want to be like that and would not want his friend to watch him in his everyday struggles.

During the times that he visited, he came to believe that Fernando did not recognize him. Justin would talk to Fernando and he was unresponsive. He wouldn't look at Justin. Justin believes he wasn't getting any better as he had lost a lot of weight and his hands were fisted together.

During the course of their friendship they would discuss topics such as abortion and gay marriage. This is usually around election time. He was in favor of gay marriage and a woman's right to choose. He recalls the time period in which Fernando's grandmother was at the end of her life. Fernando told him that his grandmother, "shouldn't have to live like this." He believes based upon the time he spent with Ana and Fernando, that Fernando would want and trust Ana to make quality of life and end of life decisions on his behalf.

ROSURA RAMIREZ

Rosura Ramirez knows Ana Romero because she is her niece, a daughter of her brother. The majority of her career has been working with Alzheimer's patients. She knows Juan Fernando, and knows him as Fernando not Juan. She knows Fernando's parents and Lilian.

Her relationship with Ana is close. Her brother (Ana's father) had passed away when she and Michelle were young and following that tragedy, they lived with her. Prior to her brother's death, she would go on family vacations, camping trips and went to many family parties. She continued to see Ana and Fernando at family gatherings, holidays, bridal showers, and the wedding, and she was present at the birth of Chloe. She believed that Ana and Fernando appeared very happy together, and Sophie would always be with her daddy.

On the day of the incident, she received a call and went to the hospital. She was waiting in the hallway to talk with Ana and Michelle when the doctor told them that Fernando had experienced brain damage and it didn't look good. Ana was in a state of shock. The family was still learning about what the doctor had said when she spoke directly to Fernando's parents. She spoke to them in Spanish. They were shocked, too. She also participated in the meeting at Kaiser. This took place maybe 3 weeks later.

Ana, herself, Lilian, Mr. Mrs. Romero, Michelle one or 2 doctors, a social worker, and Mark Drew were present.

The purpose of that meeting was to be updated as to what his status was and inquire about his care. They were told his prognosis was poor. There would be no meaningful recovery. And the EEGs show no improvement. To her, Ana seemed numb.. Lilian was tearful and upset. Once it was explained to Mr. and Mrs. Romero what was happening, it appeared to her as everyone was very numb. She had asked Ana if there were any advance directive spelled out in the past and Ana advised them that there had not. There was some discussion about what Fernando would want.

They were told not to have an expectation of a meaningful recovery, but no permanent vegetative state diagnosis was indicated at that time. Mrs. Romero said she was hopeful that he would recover and would be praying for a miracle. She does not recall anyone being asked about movies regarding end of life decisions.

Rosura doesn't have a memory of what facilities Fernando has been sent to; however, at the 2nd facility where he was, she would visit him from time to time. There were more meetings regarding his prognosis, at least 2 or 3 at that facility. She has a recollection of 2 distinct ones. She recalls that the staff at these meetings would discuss Fernando's care, what they were able to do for him, and one of the things they specifically directed was physical therapy or speech therapy. She believes the doctor ordered the physical therapy because of concern over contractures.

At some point however, they said they were going to rescind that order because of its futile effect. During this meeting, Ana was quiet. Lilian expressed a lot of anger. She told the staff that her brother deserves to get the best care he can. The doctor said just because physical therapy wasn't being given, the nurses can continue to do those exercises. Lilian slapped her hand on the table and said her brother deserves better.

The 2nd meeting she recalls being at was one in which she was attempting to conference call into. She understood the purpose was to discuss concerns of the facility had about the family being disruptive to the facility. Unfortunately, it was very difficult to hear and the call had to be terminated. When she has visited Fernando, there always other people in the room – mom, Lilian, dad, – always a family member there. Mrs. Romero believed that he was getting better, that he was responding to her and she expected him to go home soon and that he would be okay. Rosura did not observe Fernando getting better.

As a social worker, she has dealt with families who have a family member with brain impairment. Ana has consulted with her regarding her circumstances and Fernando's circumstances. She has advised her to ask a lot of questions, encouraged her to ask doctors to explain things simply, encouraged her not to make any rash decisions, and to take time to sort out the information that she has been provided. She has observed Ana following that advice. Ana told her that she was considering putting in a DNR order. Rosura asked Ana about how she came to that decision. She said she wanted to honor Fernando's wishes.

Rosura has not observed any stress with respect to Ana in making her decisions other than what would normally be expected. Ana has mentioned nothing about insurance issues and she has observed that Ana has never put her interests before Fernando's. She has sought information, consulted with many people, and she did not make decisions when she was upset. She is observed Ana to be very thoughtful, deliberate, and informed about what options were. Early on, she sought 2nd opinions, has done a lot of reading on her own, and has gone through deliberate decision-making processes and has been guided by what Fernando would want.

She acknowledges from the initial onset to today, the goals regarding Fernando's care have changed. The initial goal was to wait and see if there would be some improvement. Her current goal is for Fernando to come home. Ana wants him to come home.

Rosura testified that in the times that she has visited with Fernando, it has been a duration of 15 minutes to an hour where she would sit with Ana at the bedside. She has seen him maybe 10 times since he was hospitalized the first time. She believes Ana wanted to bring him home so he would be free of suffering. Ana didn't tell her that she wanted to remove artificial nutrition and hydration. While she is no longer having direct involvement with patients in crisis, she did so previously. Her role was to facilitate understanding of treatment plans for families. She has used that experience in counseling Ana. She hasn't told Ana that it is okay for her to bring Fernando home and deny artificial food and hydration. However, she said she would support Ana in what she decided. She has observed her niece moving into a state of acceptance. She believes that Ana's acting with Fernando's best interest at heart.

MICHELLE RAMIREZ

Michelle Ramirez is Ana Romero's sister. She is a children's social worker at the Department of children and family services. She and her sister are extremely close. Not only are they sisters, but they are friends. She described a challenging childhood. When she was 6 and Ana was 15, their father was killed. To Michelle, Ana was like a mother figure. With the exception of 4 years when she was away at college, she has lived with her sister in their family home together and then later with Ana and Fernando. When she refers to Fernando, she is referring to Juan Fernando Romero. She calls him Fernando. Her sister calls him Fernando. His friends use Fernando. He goes by Fernando. She has never really heard anyone who is his friend call him Juan.

She has no memory of when she first met Fernando, as she was 10 or 11 at the time. She knows he and Ana went to school together as he was always at their house doing homework. He tutored Ana in math as well as herself. She remembers that he was at their house a lot. She knows he was going first to Rio Hondo, and then transfer to UCLA. She knows he went to UCLA because she would go to classes with him. She remembers parking at the Baldwin Park Metrolink Station, training into Union Station, and then getting on the Red Line to the Big Blue bus. She would go to history classes with him. Ana would take her to classes to when she was in college. Fernando always took her to classes because she had an interest to go to college.

During this time, she had a chance to observe Ana and Fernando. She testified that they were really, really close friends. She believes they were best friends. They hung out all the time, they went to school together, they worked together, and they would go out together to the movies. It was sometime during her time in high school that their friendship became a romantic relationship. She was very happy about Fernando and Ana becoming closer. She felt as if Fernando was her brother, so this was a good thing. So, the transition from a friend, dating, and then being part of a family has made Michelle believe that they were living together even when they weren't living together. She does recall that Ana would go and spend the night at his family's house. They started living together while Michelle was still in college. When she graduated she moved back home, he was there. Her mother was living there as well. Ana called her the night that Fernando proposed. She remembers that they were still on the beach. Ana called and said he had just proposed and Ana wanted to let her know right away. For Michelle, it was exciting and awesome.

At some point, Michelle developed an independent relationship with Fernando wherein she was not just the 3rd wheel. They would go to movies together, museums,

and just hang out when Ana was working late. Then Ana would come home, and the 3 of them would just hang out. It was like this from when she was a child until all through high school and college.

When he got his first grown up job for the County, he picked her up after school and they went to Banana Republic. He was really excited because he was going to buy his first work outfit. He told her to pick up something for herself and he got something for Ana. Michelle described Fernando as shy and reserved. He was friendly but didn't strike up big conversations with people he had just met. With his own friends, he would make crass jokes and open up more with them.

She graduated from University of California at Santa Barbara in 2012 and was still close friends with Fernando at that point. They had the same nice comfortable relationship that they had always had and there was additional excitement because Ana and Fernando were getting married. She would go with them when they were looking for a wedding venues. She went to help pick out the flowers and the disc jockey. They just did different things instead of going bowling, adult grown up things. They got married in January 2012 while she was in her last couple of quarters before graduation.

She and Fernando would talk about politics and the subject of gay rights would come up. There was also a proposition about teenage girls who were required to tell their parents if they were going to have an abortion before they can have one. She didn't think that was appropriate and he also thought the same. He thought it jeopardized the safety of the girls. Based upon this conversation, she believed he was pro-choice. He thought it was a woman's right to choose what she wanted to do. This was just not a singular conversation, because when she started to work for different agencies that assisted women with children, she would talk about her cases. He and Ana and she would talk about how important it was for people to have birth control, and

access to birth control, and birth control education. He also made statements to her regarding his attitude and beliefs with respect to gay rights. He thought that people should just be left to do what they wanted to do. If a man wanted to be with the man, he felt they should be allowed to be together.

In terms of religion, she believes that Fernando was Catholic. She thought this because he got married in the Catholic church. Whenever he did go to church, it was a Catholic church. He never went to any other churches. She and her sister as well as Fernando are Catholic. He didn't really go to church much. They went holidays like Easter or weddings and baptisms, but he didn't go to church very often. They never prayed before dinners. She believes he believed in God, but he really didn't mention it much. She never saw him read a Bible or refer to it. When she would go to him for advice, he would never quote a Bible verse or talk about any religious anecdotes.

After Michelle came home from college, she lived with Ana and Fernando on a continuous basis. She saw him every day. She never saw him carry any type of religious item. He would make the intention of not eating meat during Lent, but then he'd have a burger. She would say something to him like, "I thought you weren't going to eat meat." He would then say, "tomorrow I won't eat meat." Her conclusion is that he was not a devoted Catholic practitioner, but he was still Catholic.

When Fernando was taken ill, she was out with her boyfriend and Ana sent her text. She said, "something is wrong with Fernando. I need to take him to the ER." So she came home right away and was at home with her mother and Sophie. She waited to find out what was happening and then they found out that he had stopped breathing and that there was possible brain damage. She then went to the hospital. Her understanding of his condition at that time was that he was in a coma. They had said he had stopped breathing.

She remembers going with her sister a few days later to speak with a Doctor Luna, a neurologist. She advised them that Fernando was in a medically induced coma, and when they stopped inducing it, they would have to wait to see what would happen. They were all waiting for him to wake up and be fine, but he wasn't. She remembers being with Fernando and her sister in his room in the hospital. Dr. Luna and another male doctor said that he most likely was never going to recover. They said at most, he would be able to smile at us and that was it. And then she said she was really sorry. This was about a week after Fernando was taken to the ER.

She was not accepting that he would never recover. She wanted to go find an expert, other than Kaiser. At that time, she didn't realize the difference between a coma and brain damage. This it all happened so fast. She felt like the doctors had quit too soon. She felt like they had not given him enough time or enough attention or that he had not been seen by the right person. She started reading case studies on the Internet involving similar situations. She networked her way to some neurosurgeon at Harvard and she called him and asked, "what should I be advocating for? What should I demand they do? What test should they run? I'm not informed. Tell me what I need to do." And he told me, "there isn't anything you can do. He has brain damage."

In speaking with her sister during the first 6 weeks following Fernando's admission to the hospital, her sister thought there was a chance that he might recover. She shared that opinion. She was doubtful, but nevertheless shared the opinion that he might recover. She remembers the meeting that took place were various members of the medical staff met with her, her sister, her aunt, Lilian and other members of both sides of the family. This meeting took place within the first week or two and Fernando was in the step down unit.

At this meeting she recalls that it was asked whether he had an advanced directive. She recalls it being asked whether he would want to continue on fighting. She did not tell them at that point that he would want to give up. She didn't think he had had enough time to recover. She thought that if there was a chance of recovery, Fernando would want to take more time to see if he could have recovered. At that point in time, she didn't realize how severe his brain damage was. She doesn't remember anybody at the meeting asking about whether there were any movies that anybody saw about end of life or quality of life decisions that Fernando had seen and commented upon.

At some point during her relationship with Fernando, she, Fernando, and her sister watched a movie called my left foot. They watched it together. The movie was about a boy who has cerebral palsy. He has some sort of disability where he can't communicate. He learns how to use his left foot. And he's able to communicate, and he learns how to paint. But he is completely disabled otherwise. The actor was Daniel Day-Lewis and Fernando loved Daniel-Day Lewis. When the movie was over, Fernando said, "I'd never want to live like that." She believes Fernando would not want to live in his current state and by that she means bedridden, unable to communicate, unable to care for himself, unable to do anything. She no longer holds out any hope that he might make a recovery this is based upon how he has deteriorated. She believes he is suffering and she does not think that he would want to suffer.

In the context of the allegations made by Lilian that her sister was overwhelmed caring for her children and frustrated with insurance issues, she agreed that it is a frustrating and stressful situation. But she believes her sister was not so stressed that she can't do it or that she doesn't want to. Ana does have a support system and that support system includes her and her mother. Everyone helps with the babysitting. They

have a babysitter, they have a backup babysitter, they have friends, and they actually have a lot of help.

She has watched her sister seek guidance and take care with what decisions that have to be made. She does not believe that Ana's decisions are being impacted by stress or frustration. She believes that her sister wants Fernando to rest in peace. None of this has been due to stress or frustration over child care. She believes that Ana has made this decision because it's in the best interest of Fernando. She believed it would be so much easier, because they grew up without a dad. She believes that Ana loves Fernando and she doesn't want him to be in pain anymore. She doesn't want him to suffer. She's made this decision out of love. She believes she's been very patient in this entire process to figure out and to come to this decision. She, herself, is very confident that Fernando would want Ana to take the steps to end his suffering as she has decided to do.

She was visiting Fernando on a regular basis, every Sunday for six hours. She would sing to him. She would watch a Laker game with him. She would put different scents under his nose. This was all because she believes that this would help him recover. She had yet to understand that his injury was permanent. She stopped seeing him on a regular basis in mid to late 2016. She has seen him several times since then, but doesn't stay with him for six hours. She has mostly seen his parents there and did see Lilian sometime in February.

When she visits, she talks to him and tells him about his girls. She cries a lot. She holds his hand and touches his hair. A lot of the time, she simply sits there. It is very hard for her to see him now. When asked why she talks to Fernando, she stated that Fernando was still someone she loved and like her father and visits to his grave,

there is still a connection. She has never seen Fernando look at her or his parents when they talk.

In March, 2016, she had a disagreement with Maria. She told Maria that she was tired of Mrs. Romero criticizing her sister all the time. She testified that, "Like no matter how much time my sister spent with Fernando, no matter what she did, she was – Mrs. Romero -- would criticize my sister and put her down and make her feel bad. And I was tired of that. So I might have said, "I'm tired of this," but I meant "I'm tired of your behavior."

She remembers having a discussion with a doctor when she was visiting Fernando at Kindred Brea. This doctor told her that there was no chance of Fernando recovering and that his prognosis was worse. He was harsh with her. He said, "I don't know why—he needs to go into palliative care. He's never going to recover. Your family member's gone. He's gone. And he needs to – you guys need to let him go." She immediately called Ana and told her. She was crying because he was so harsh. Even though he was harsh, what the doctor had said sounded correct to her.

She was shown exhibit 4, which depicts Juan Fernando in two photographs – a wedding picture and then in a hospital bed. Upon viewing the pictures, she began to cry. She testified that he looks worse now, as he has lost a significant amount of weight and his arms are now constricted. During the times she would visit for a lengthy period of time, she observed him grimacing and making haunting sounds. She believes he was in pain.

ELICE PAGUYO

Ms. Paguyo works for the Baldwin Park Congregate Home and was working there as a certified nursing assistant on April 15, 2017. She knows Juan Fernando Romero as a patient there and Lilian as his sister. Her duties are to assist the nurses

take care of the patients which can involve changing them, bathing them, and feeding them.

On April 15, 2017 around 5:50 p.m., Ms. Paguyo responded to a call light in Juan Fernando's room. She knocked on the door and asked if anything was needed. Lilian then yelled at her and asked her why the light was turned off. She responded, "Why you're yelling at me and I'm not the one who turned off the light?" She was yelling, upset, and mad. Lilian responded by continuing to yell at her. Lilian told her that she needed to put up a sign not to turn off the light so that Ms. Paguyo could understand. Ms. Paguyo told Lilian, "Stop yelling at me because I'm not the one who turned off the light. Your aunt was here a while ago, and then the nurse was here not even 30 minutes." Lilian said she was going to call Ms. Paguyo's boss, Eileen. She perceived it as a threat that she was going to lose her job, which she needs. Ms. Paguyo, in a raised voice, told Lilian to go ahead and call her boss.

A few days later, Lilian approached her and apologized by saying she was sorry and that it was her aunt who had turned off the light. She did write up an incident report at the request of the Home staff. She typed it on her phone and later printed it out on her computer. She denied that Lilian first mentioned that Juan Fernando was dirty and needed to be cleaned up.

CHRISTINE RENDL

Ms. Rendl is a risk manager for Citrus Valley Health Partners. She doesn't do direct care; 65% of her duties involve operational issues that come up in the course of treating patients. The Queen of the Valley Hospital is one of the hospitals under her jurisdiction. She prepared a declaration and sent it to counsel for Ana and Lilian, Jon Eisenberg and Mr. Hranek, respectively.

Ms. Rendl confirmed that the declaration was signed by her and accurately reflects the events in the ICU on April 25, 2017. There are two court orders regarding Juan Fernando's care and she was aware of them. She participated in a call with Mr. Hranek and Ms. Aranda. At that point in time, Ana had told Juan Fernando's doctor to discontinue a blood pressure support medication that had been ordered earlier in the day. She recalls Ms. Aranda advising her that Ana Romero was not the court-appointed decision maker on behalf of Juan Romero and that, as next of kin, Lilian Romero was required to participate in this decision. Ms. Aranda advised her that there was no hierarchical order of next of kin to provide Ana Romero, as a wife, more authority as the next of kin to make this decision over other family.

She disagreed with that because she had reviewed the previous court orders very carefully and determined that medication and treatment for blood pressure was not a limitation on Ana's decision-making authority. This was done after she looked at the order along with a multidisciplinary team of the physician, the nursing supervisor, and other staff who were seeking counsel to make sure that the order was within the guidelines addressed by this court.

Ms. Rendl advised Ms. Aranda of the hospital's decision and described Ms. Aranda's reaction as "aggressive and contentious" in arguing against the hospital's position. She told them that there were additional next of kin that the hospital was required to recognize. While Ms. Aranda was not raising her voice, Ms. Rendl perceived her comments as somewhat vitriolic, argumentative, and condescending.

Ms. Aranda advised her that if they continued to honor the medication order, they would be held liable and would be in contempt of the court's orders. She specifically recalls the words "contempt" and "liable," being used by Ms. Aranda. It was Ms. Rendl's

understanding that Ana Romero had had a conversation with the physician about ceasing the blood pressure support medication.

They were further advised by Ms. Aranda that if they proceeded to honor Ana as the decision-maker regarding the blood pressure medication, they would be contacting the police. Ms. Rendl advised them that this was not a police matter. Ms. Rendl indicated that this was a medical decision, not a crime. The police do not have the power to change a medical order.

Ms. Rendl testified that she felt intimidated by Ms. Aranda and was concerned about the threat to call the police might result in disruption in the critical care unit and its patients. She did receive a page from the security safety manager who was in the ICU and advised her that the police were there for Mr. Romero and asked her if she was on her way. She was advised by Mr. Hranek that the police came in and then they left. She never learned of any disruption or drama as a result of their presence. None of the theatrics she was concerned about occurred.

Ms. Rendl advised that the Ethics Committee meeting had been convened by the treating physician, Dr. Sethi and made a recommendation. This was also requested by Mr. Eisenberg. She herself participated in this ethics committee meeting and deliberations. Lilian Romero and her parents were present and an interpreter was provided.

Lilian spoked at the meeting before the multidisciplinary team that had been gathered. She advised them about Ana's prior decision to withdraw artificial nutrition and hydration and take Juan Fernando home to die. She was tearful and worried that the decision to withhold the blood pressure medication would result in her brother's death. Ms. Rendl indicated that family was assured that at no time would Ana Romero be allowed to demand a treatment or be offered a plan of care that was medically

inappropriate. Dr. Sethi advised the committee that he had received phone calls from family members and would no longer be Mr. Romero's physician, once another physician is in place.

Ms. Rendl acknowledged receipt of the March 2, 2017 letter, exhibit 21. To her knowledge, no retraction of the information therein has been received. However, during cross examination, she acknowledged that a fax number on a letter was related to the hospital admitting department. It is the first time she has seen this letter.

She recalls a conversation with PVP counsel Rebecca Loo in which the decision regarding cessation of the blood pressure medication could be deemed a "gray" area in terms of the court's orders. It is out of her purview, however, to decide whether the blood pressure medication and its withdrawal would be deemed comfort measure or medical treatment vis-à-vis the POLST and DNR. Ms. Rendl has received phone calls from the attorneys in this matter, less from Ana Romero's counsel Mark Drew than others. This is unusual.

ANA ROMERO

On the date Ana Romero testified, Juan Fernando had recently been admitted to the Queen of the Valley Hospital. Before that he was at Baldwin Park Congregate Home. His condition on the date she testified was that he had a fever of 101, aspirational pneumonia, an infection where his g-tube had been inserted, bacteria in his sputum, MRSA and another super bug. She had authorized antibiotics, a higher level of oxygen, and medications for blood pressure. She had authorized his transfer to the hospital because of his fever and because the doctor recommended his hospitalization.

Currently, Ana works for the Los Angeles County Department of Health Services as a human resources investigator. She is a Catholic and has been her whole life. She first met Juan Fernando in 2000, around June. She met him at work where they worked

together at Sam's Club. He was very shy. She had to initiate the conversation with him. A few months later, they were both attending Mount Sac Junior College. They formed a study group and he tutored her. They became good friends, started dating in 2002 and they eventually became more to each other. They both had the same friends. They both had a goal to finish junior college and transfer to a four-year school for a degree. Juan Fernando's dream was to transfer to UCLA and she encouraged him. She read his application essay. He did get in in 2002. She was the first person he told about his admission to UCLA. She recalls a conversation in 2015 with Lilian who indicated that they didn't even know that he was going to UCLA until they got the graduation invitation.

Their relationship began to get serious around this time, as they were working together, going to school together, and seeing each other 5 to 6 times a week. He graduated from UCLA in 2004. After he graduated from UCLA, he was living with his parents and he then moved out and lived with two roommates. They purchased a condominium together. She went to Cal Poly Pomona and graduated in 2007. Prior to their marriage, they were having pre-marital relations. They had a conversation about birth control. They discussed it and wanted to wait to have children after marriage. Both agreed that birth control pills were the best method; Juan Fernando would often pick up her prescription.

He initiated the conversation about getting married. He said he wanted to finish school and save money. He proposed to her in Long Beach. He tricked her into saying there was a Halloween maze at the Queen Mary, but when they got there, he appeared chagrinned because it was scheduled for the next week. They went to Parker's Lighthouse for dinner instead. Later, they took a walk. He dropped down on one knee

and proposed. He said he wanted to spend the rest of his life with her. She was in shock and took a moment to respond with a "Yes."

They both agreed upon a December wedding, but ultimately, they were married on January 28, 2012 at St. Andrews Church in Pasadena. They took the required classes prior to their marriage and went on a required couples retreat. Even after discussions about the church not encouraging birth control other than the rhythm method, they did not change their view of their own use of the birth control pill.

Ana testified that he had moved back home, but lived there less than 8 months at most. She was living at home with her mother. During this time, he lived with his parents, she would still see Juan Fernando about 5 times a week and would spend the night in his room about once a week. They were intimate there. She didn't feel comfortable about it at first, but Juan Fernando told her not to worry, that his parents liked her and they were going to be fine with it. She remembers that neither his mother or his father expressed disapproval. No one made her feel unwelcome. She would offer to make breakfast.

Before they were married, Juan Fernando moved in with her and her mother. During that time, they would go to visit his parents about once a month. Her wedding day was the happiest day of her life because she was marrying her best friend. They were very happy their first year and talked about having a baby. She eventually got pregnant after their first anniversary. During that first year, they continued to see his parents about once a month.

Sofia Bella Romero was born September 25, 2013. After she was born, they spent more time with his parents, because he wanted his family to be a part of Sofia's life. He would take Sophie to his parents at least once a week. They were very happy and started family traditions that included writing cards to one another on special

anniversaries, birthdays, and certain holidays. A number of those were admitted into evidence. These cards reflected how they felt about one another. She testified that they were soul mates. They looked forward to growing old together. They also started a tradition of taking family photos during holidays.

Juan Fernando and Ana eventually both started working for the County of Los Angeles in social services. They were about to start to work together in the same office on the Monday following his collapse. She recalls that he went to work on Saturday morning and came home early because he wasn't feeling well and had a slight temperature. He asked for some ibuprofen. She kept telling him that he needed to go to the doctor. Later, when he developed shortness of breath, she drove him to Kaiser in Baldwin Park. They got there around 9:00 p.m. and when they arrived, he couldn't talk. They took him into a room right away and gave him oxygen. He kept coughing and she could hear phlegm.

While waiting for an ear, nose and throat doctor, he started coughing, gasping for air, so she called for a nurse. He couldn't breath and she was trying to calm him down. She started freaking out and was taken out of the room. A doctor came out and said he had stopped breathing and they had to perform a tracheostomy. He was taken into surgery. While waiting, she called both families. The first time she saw him was around 4:00 a.m. when she was advised that he was in a coma, having convulsions, and seizure medications were not controlling them. She remembers being told that he "might" have brain damage. She was in shock. Just the day before, they had ordered a cake and went to a church store because he wanted a cross for their home.

A couple of days later, a cat scan was done and his doctors explained how serious his condition was; he had bi-lateral damage of the basel ganglia. She didn't know what that was then, but knows now. She asked about his chances for recovery

and she wanted to hear something positive. She was told that, at best, he would open his eyes and may be able to smile.

In terms of Juan Fernando's religious beliefs, Ana testified that she and her husband shared the same religion, that being the Catholic religion. Juan Fernando continued to be Catholic after their marriage. She acknowledged that her husband's mother, father, and sister all testified that Juan Fernando was devoutly Catholic. She believes that he was Catholic, but not very religious. He wouldn't even go once a month to church and she believes that her husband would not want to follow all doctrines of the Catholic church, even though he is Catholic. She bases this as assessment because in contravention to the doctrines of the Catholic Church, he believed in birth control, was pro-choice, pro-gay rights, and pro-death penalty.

Ana testified that she set out to get additional information from other doctors and the Internet. She was doing a lot of research and she found similar cases. She purchased books about people who are able to overcome what her husband had experienced. She was hopeful. She was hopeful despite the fact upon being told that the length of time that he had stopped breathing resulted in a severe injury. Ten days after the injury, there was a family meeting at Kaiser. She wanted to know what happened to him and why it had happened. She testified that the tone of the meeting was that everyone was upset, everyone wanted to find out what happened, and no one had really explained what had happened in the emergency room.

From her perspective, this was the primary purpose of the meeting, not what Juan Fernando's wishes would be in terms of end of life or quality of life decisions. They had asked before and again asked whether there were any advance directives. She had told them there were no written instructions and she was unaware of any written instructions. After hospital personnel knew there was no advance directive, the family

had a consensus that Juan Fernando would want to fight, that he would want to fight for recovery.

At that point, she was hopeful and was looking for a 2nd opinion. She was always hopeful during that time and that it would be possible that Juan Fernando would recover. When he was at other facilities, she did get contradictory information from other health care personnel. She remembers speaking with a doctor at Kindred Brea. During another family meeting this doctor advised that if Juan Fernando was going to show any recovery, the first 3 months would be crucial. Therefore, they started physical therapy, speech therapy and they did things to see if he would have a reaction, such as creating a box of scents to put under his nose.

Their goal was to get Juan Fernando to speak and she hopeful when they removed his throat tube and put in a speaking valve. Her understanding of this bundle of therapies was to give him time to improve and to see if there was a chance of recovery. This treatment in the hope of him being able to speak was inconsistent with what Dr. Luna at Kaiser had told her. These bundle of therapies lasted for weeks, approximately October to December. Hospital personnel had another meeting with family and advised them there was no improvement so they were going to stop the therapies. They further advise that they could not proceed with it because there would be no insurance. It is at this point in time, she started to realize the reality of things and that her husband was not going to recover. Essentially, December 2015 marks the end of her having any hope.

Ana and began thinking about hospice care in September 2015. She then contemplated goals and strategies with Juan Fernando's family in order to deal with them. She insisted that an MRI be done and she asked for that because she wanted to see the difference between the previous MRI. She wanted the doctors to explain to the

family what was going on then and there. She wanted Juan Fernando's family to see the reality that he would never recover. They were not accepting it. Lilian was particularly upset about the results.

At one point, Ana thought that Lilian was finally seeing things as they really were. She was upset, tearful, and expressed that she could not believe what was going on. At some point after this when Juan Fernando was at Kindred West Covina, Lilian told Ana that she was seeing a psychiatrist and the psychiatrist's told her that she should accept the reality of her brother's condition. But she simply could not accept it.

Since January, 2016 to September, Ana had been trying to get Juan Fernando's family to accept the reality of his condition and that he would not be recovering. During this time period, Juan Fernando was in and out of hospitals with various complications. At one point, Juan Fernando had gone to his family's home for approximately 10 days, but he experienced pneumonia, sepsis, and stopped breathing. He had to be put back on a ventilator, and then transferred to another hospital to wean off the ventilator again. This was a pattern that happened throughout 2016. He had hospitalizations: 10 bouts of pneumonia, infections, sepsis, and super bugs. At the end of September, Ana realize that Juan Fernando's family would never accept reality. He had been hospitalized multiple times, seen by multiple doctors, but they were not convinced. At this point he was biting himself, and had bitten the end of tongue off, and they contemplated extracting his teeth. They couldn't extract the teeth because it was too risky because he would have to undergo anesthesia. All this occurred around July, August 2016.

At this point, Ana realized that she needed to focus on what was in Juan Fernando's best interest and not that of his family or even herself. She testified that Juan Fernando would not want any of what was occurring to him now. This is based upon conversations they had and her knowing him as well as she did. In September,

2016, she decided she was going to do what was best for him and in that vein, filled out a POLST that essentially said no further hospitalizations, comfort measures, and a DNR order. She did consult with doctors and her family, her sister, and her aunt. She did not discuss this with Lilian. She knew what the family's point of view was and they would want every single measure for their brother to be used in case he stopped breathing. In discussions with Dr. Mehta, she was asked whether Juan Fernando would want to live in his current condition. She believed firmly that he would not, so, in November 2016, she made the decision to place him on hospice care and to bring him home.

Contrary to what was reported in the original petition, Ana never ordered that food and hydration to be stopped. She got a call from a nurse that his G-tube was leaking, the one in his stomach. The doctor had ordered for the food to be stopped. Ana said she tried to explain this to Lilian, but they did not believe her. It was at this point in time that discussions were had regarding whether or not there was to be a new feeding tube or a PICC line inserted. She was told that insertion of a PICC line was dangerous. The main concern was infection which could include pneumonia, sepsis, and super bugs. Essentially, it would be life threatening. She was told that insertion of a PICC line is an invasive procedure and after learning this information, she declined to give consent. This was also part of the court order issued in December 2016 that ordered there was to be no surgical procedures.

This development regarding artificial food and hydration set up a struggle between Lilian, Ana, and health care professionals. Because of the manner and fashion that could only be used to give Juan Fernando nutrition and hydration after his G-tube was removed, a certain type of nutrition was then required. This nutrition approximately cost $600 per bag. Ana asked Baldwin Park kindred to get the right nutrition for her husband and put pressure on them to comply with the court order. Ultimately they did.

Ana testified that the easiest thing for her would be to let Lilian make the decisions. However, she does not think the Lilian will make choices in her husband's best interest. Ana has witnessed Lilian being demanding, yelling at staff, yelling at doctors, and mistreating staff. Ana got a letter from Baldwin Park concerning how Lilian spoke to an employee there. It was an incident in which the light in her husband's room was turned off and she yelled at this employee for having the light off. She has received messages from the facility saying that certain employees were having problems with Juan Fernando's family and asked her to please tell her in-laws not to engage in certain behaviors. Regarding the incident in which Lilian Romero testified that her brother was suffering from mouth sores, she had spent time with Juan Fernando during this time period and didn't see any mouth sores.

Ana has spent time with her husband. He commonly opens his mouth a lot. He frequently moves his feet. He will cross his left leg and they have to put a wage between his legs. Arturo Romero had tied Juan Fernando's leg to the bed, and the facility advised them that no restraints were permitted. He does move his mouth up and down as if chewing something. He blinks normally, although sometimes he blinks more rapidly. He does turn his head and Ana sees his head move all the time. No doctor has told her that Juan Fernando is trying to communicate, or kiss on command.

One doctor advised her it would take a miracle for any type of improvement if he was in a permanent vegetative state. In his condition, he has no ability to understand anything that is being told to him. If he has a minimal cognitive state, he might have some ability to understand. None of the doctors have told her that Juan Fernando has a minimal conscious state condition. She believes he would be mortified and devastated to watch his family around him suffer and that if he knew what was going on with his

surroundings, she feels it would be again another reason to proceed as she has desired and that is to take her husband home and give him palliative care.

In terms of what Juan Fernando would want in the circumstances, Ana believes she has a familiarity with what he would desire. They were all watching this movie, *My Left Foot,* with her sister which was about a disabled man who learns how to use his left foot and can only use that. Nothing affecting his mind was in that movie. Fernando commented, "I wouldn't want to live like that." Ana also has an understanding regarding Juan Fernando's grandmother who suffered from dementia. She had many complications, feeding tube, a tracheostomy, and she was unable to communicate. Ana went with Juan Fernando to visit at the hospital sometime in 2002. He told her it was hard for him to see her in that condition. They talked about it. He expressed it was hard for him to see her suffering and he would not want to live like that. She believes that if he could say something, he would say that he doesn't want to be maintained in his condition or to see his family suffered. Finally, in listening to Justin's testimony, it made her realize how much Fernando would not want to live like this.

On cross-examination, Ana testified that the events of the night of May 3, 2015 came as quite a shock. She had no way to foresee that Juan Fernando's airway would close. It had happened once with a food allergy but not to that extreme. Juan Fernando also had been diagnosed with an autoimmune disease. He was taking steroids, but she cannot remember the specific names. He was taking those medications on May 3. He was being monitored with this condition that had been diagnosed a couple of years prior. She acknowledged that in the family meeting 10 days after the incident, there was no discussion about the movie *My Left Foot* or his grandmother. She also acknowledged she did not discuss Juan Fernando's observations after watching *My Left Foot* or about his grandmother's condition with Lilian.

Ana has been in counseling since the summer of 2016 which is individual therapy. In 2015, after she had her 2nd daughter, she participated in a Kaiser group therapy program for about 3 months. As it turned out, it wasn't really designed for the issues that she was dealing with. After she had her 2nd child, she was prescribed medication but she did not take any because she was breast feeding.

When talking about the evening in which Juan Fernando stopped breathing, she confirmed that he wasn't confused, he was seen within 5 minutes of when they got there, and she felt rushed filling out intake forms so it is possible that one of his family members filled out a form. She has filled out every intake form since that time. Juan Fernando's medical benefits are still in effect due to his job at the Los Angeles County Department of Public health. She believes there is life insurance but she's not sure and does not know the amount of it and who the beneficiaries are. Ana has been working with the insurance companies and the different benefits afforded to Juan Fernando. She did ask Dr. Mehta for the referral to hospice. Because of insurance regulations, after 100 days in the hospital, then her insurance would support him. He has never managed that between going to residential care and back and forth in the hospital, a full 100-day stay.

She believes that Lilian and her parents love Juan Fernando. However, they are unable to take care of him at their home. This was what occurred in a 10-day time frame and there were confusions about medications, there were complications, and he needed to be removed from their home because of the need for a ventilator.

Upon questioning by Juan Fernando's attorney, Ana testified that she met Juan Fernando in 2000. She has known him for all of her adult life. When she requested that 2nd MRI, it was her understanding that this 2nd one showed atrophy. In essence, his

brain had shrunk and the damaged cells were now scar tissue. She was advised when there is scar tissue, there is no way for the patient to recover.

She testified that she has observed Lilian interact with hospital personnel. When Juan Fernando was diagnosed with MRSA, hospital personnel wanted to place him in isolation. The family objected to this. Lilian raised her voice at the infectious disease doctor, who in turn got out of his chair and said to her, "you need to stop."

At the conclusion of her testimony, her attorney asked her to tell the court what she wanted to do and why. She turned to this court and stated: "I want you [to] please allow me to take my husband home one last time. I want him home with us, with his family, with his children. I am want him to spend the rest of his days there with us. Because this is what my husband would want. Knowing my husband and all the time that we spent together, this is what he would want. He wouldn't want to be bedridden in the condition he's in. He wouldn't want to live like that. That's not him."

This court found Ana's testimony truthful and compelling.

VIII. CONCLUSION

Objections to this proposed statement of decision were made by Lillian Romero. The ruling requested in the objections is premature and not the subject of this statement of decision. Therefore, they are overruled. This constitutes the decision of this court.

Dated: March 2, 2018

By: _____
HON. MARY THORNTON HOUSE
Superior Court Judge