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17 behalf of KYLER PRESCOTT, a deceased minor

18 **UNITED STATES DISTRICT COURT**  
19 **SOUTHERN DISTRICT OF CALIFORNIA**

20 KATHARINE PRESCOTT, AN  
INDIVIDUAL, AND KATHARINE  
21 PRESCOTT, ON BEHALF OF KYLER  
PRESCOTT, A DECEASED MINOR,

22  
23 Plaintiffs,

24 vs.

25 RADY CHILDREN’S HOSPITAL–SAN  
DIEGO,

26 Defendant.  
27

Case No. 16-CV-02408 BTM (JMA)

**PLAINTIFFS’ OPPOSITION TO  
DEFENDANT’S SECOND MOTION  
TO DISMISS**

Date: December 8, 2017

Time: 11:00 a.m.

Place: Courtroom 15B

Judge: Hon. Barry Ted Moskowitz

Action Filed: October 26, 2017

Trial Date: None Set

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1 **I. INTRODUCTION**

2 Plaintiffs Katharine Prescott, an individual, and Katharine Prescott, on behalf of  
 3 her deceased minor son Kyler Prescott (collectively, “Plaintiffs”) filed the instant action  
 4 to remedy discrimination that Kyler, a transgender child, suffered while admitted for  
 5 inpatient care at Defendant Rady Children’s Hospital–San Diego (“Defendant” or  
 6 “RCHSD”). On September 27, 2017, this Court granted in part and denied in part  
 7 Defendant’s Motion to Dismiss and denied Defendant’s Motion to Stay. [Order Granting  
 8 in Part and Denying in Part Def.’s Mot. to Dismiss (“Order”), ECF No. 22.] The Court  
 9 denied Defendant’s Motion to Dismiss as to Plaintiffs’ Affordable Care Act Section 1557  
 10 claims, California Unruh Civil Rights Act claims, California Business and Professions  
 11 Code Section 17200 (“UCL”) claims, and Ms. Prescott’s California Business and  
 12 Professions Code Section 17500 (“FAL”) claims. [*Id.*] The Court granted Defendant’s  
 13 Motion to Dismiss as to: (1) the prayer for injunctive and declaratory relief under the  
 14 ACA, UCL, and FAL claims; (2) the California Government Code Section 11135 claims;  
 15 and (3) Kyler’s FAL claim. [*Id.*] The Court granted leave to amend the Section 11135  
 16 claims to seek forms of equitable relief apart from injunctive or declaratory relief, and  
 17 Kyler’s FAL claim to allege Kyler’s actual reliance on Defendant’s false advertising.  
 18 [*Id.*]

19 On October 12, 2017, Plaintiffs filed a First Amended Complaint (“FAC”) seeking  
 20 restitution for the Section 11135 claims, and stating a FAL claim only on behalf of Ms.  
 21 Prescott. [FAC ¶¶ 89, 100, 117, ECF No. 24.] In response, Defendant filed a second  
 22 Motion to Dismiss (the “Motion”), seeking to dismiss Plaintiffs’ Section 11135 claims,  
 23 and a purported FAL claim on behalf of Kyler. As set forth in detail below, this Court  
 24 should deny Defendant’s motion to dismiss in its entirety. Should this Court grant the  
 25 Motion to dismiss in any part, Plaintiffs request that the Court, consistent with the well-  
 26 settled law of liberal pleading, grant them leave to amend.

27 **II. BRIEF FACTUAL BACKGROUND**

28 Kyler Prescott was a 14-year-old transgender boy who was admitted to RCHSD in

1 April 2015 due to his suicidal ideation related to gender dysphoria. [FAC ¶ 1.] In  
 2 choosing to take Kyler to RCHSD, his mother Katharine Prescott relied on the fact that  
 3 RCHSD held itself out to the public as a “medical home” for transgender children. [*Id.* ¶  
 4 21.] Instead of finding a home, Kyler faced blatant discrimination at the hands of  
 5 RCHSD when its staff refused, despite Kyler’s and his mother’s repeated requests, to  
 6 refer to Kyler as a boy and to respect Kyler’s sex and gender identity. [*Id.* ¶ 1.] RCHSD  
 7 staff even blocked Katharine Prescott from contacting the unit Kyler was held in to keep  
 8 her from advocating for a stop to the discrimination Kyler faced. [*Id.* ¶ 45.] This  
 9 discrimination caused Kyler increasingly severe distress, which ultimately necessitated  
 10 his early discharge from the hospital. [*Id.* ¶¶ 1, 47, 51.] Likewise, Katharine Prescott  
 11 was, and continues to be, traumatized by the experience. [*Id.* ¶ 47.] On May 18, 2015,  
 12 Kyler died by suicide. [*Id.* ¶ 52.] All of Kyler’s and Katharine Prescott’s claims in the  
 13 instant action arise from the aforementioned events.

### 14 **III. ARGUMENT**

#### 15 **A. STANDARD OF REVIEW**

16 A Federal Rule of Civil Procedure 12(b)(6) motion tests the legal sufficiency of a  
 17 plaintiff’s claims. A complaint that gives the defendant “fair notice of what the . . . claim  
 18 is and the grounds upon which it rests” is legally sufficient. *Bell Atl. Corp. v. Twombly*,  
 19 550 U.S. 544, 555 (2007) (internal quotation marks and citation omitted). In determining  
 20 the sufficiency of a complaint, courts must take all allegations of material fact as true and  
 21 must construe those allegations in the light most favorable to the plaintiff. FED. R. CIV. P.  
 22 12(b)(6); *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *Cahill v. Liberty Mut. Ins. Co.*, 80  
 23 F.3d 336, 337–38 (9th Cir. 1996). If a court determines that a claim is insufficiently pled,  
 24 the court must “freely give” leave to amend “when justice so requires.” FED. R. CIV. P.  
 25 15(a)(2). Accordingly, dismissal should not be granted unless “it appears beyond doubt  
 26 that the plaintiff can prove no set of facts in support of his claim which would entitle him  
 27 to relief.” *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957).

28 ///

1           **B.     PLAINTIFFS STATE CLAIMS UNDER CALIFORNIA**  
2           **GOVERNMENT CODE SECTION 11135**

3           Defendant argues that Plaintiffs’ California Government Code Section 11135  
4 claims must be dismissed because: (1) Plaintiffs must exhaust administrative remedies  
5 before filing a Section 11135 claim; (2) Ms. Prescott lacks standing to bring a Section  
6 11135 claim on her own behalf; and (3) Kyler’s Section 11135 claim fails because he is  
7 not entitled to restitution. These arguments are meritless.

8           **1.     Plaintiffs Were Not Required To Exhaust Administrative**  
9           **Remedies Before Bringing Section 11135 Claims**

10          Defendant contends that Plaintiffs must exhaust their administrative remedies  
11 before filing a Section 11135 claim. This argument fails because there is no exhaustion  
12 requirement for filing a Section 11135 claim against a private entity receiving state funds  
13 like Defendant. Defendant cites California Code of Regulations section 11143, an  
14 implementing regulation of Title 2, Division 3 of the California Government Code, in  
15 support of its position that Plaintiffs must exhaust administrative remedies before filing  
16 suit. [Mot. 8:1-14.] This regulation states:

17                   Exhaustion of administrative remedies available under this  
18                   Division or implementing regulations shall not be a prerequisite  
19                   to the bringing of actions for judicial enforcement of violations  
20                   of Chapters 2 and 3 or regulations implementing such Chapters  
21                   if a showing is made that the state agency involved has not  
22                   adhered to the time limit set forth in Section 98346 of this  
23                   Division.

24          Cal. Code Regs. tit. 2, § 11143.

25          On its face, this regulation does not impose any exhaustion requirement where a  
26 plaintiff brings a Section 11135 claim against a private entity receiving state funds.  
27 Instead, it states that a showing must be made regarding the actions of the “state agency  
28 involved” where actions are brought pursuant to Chapters 2 and 3 of Title 2, Division 3  
of the California Government Code. These Chapters apply to the actions of “State  
Departments” and “Interagency Services and Transactions.” By contrast, Section 11135,

1 which also applies to private entities that receive state funds, is part of Chapter 1—a  
 2 different Chapter of the same Division which is explicitly excluded from the ambit of  
 3 section 11143. Defendant points to no statute or regulation that imposes an  
 4 administrative exhaustion requirement for all Section 11135 claims.

5 This interpretation is in accord with guidance issued by the Department of Fair  
 6 Employment and Housing (“DFEH”), the state department tasked with enforcing Section  
 7 11135 and its implementing regulations. Section 11143 falls under the “Administration”  
 8 title of the Regulations regarding the DFEH, which is “responsible for enforcing state  
 9 laws that make it illegal for recipients of state funding to discriminate in their activities or  
 10 programs . . . .”<sup>1</sup> With respect to exhaustion in particular, the DFEH states on its website:  
 11 “If you believe you have been discriminated against by a recipient of state funding, you  
 12 *can* file a complaint with the DFEH . . . It is not necessary to file a complaint with the  
 13 DFEH before filing a lawsuit, nor is it necessary to get a ‘right-to-sue’ letter.” *Id.* The  
 14 DFEH’s guidance is also consistent with the legislative history of Section 11135, which  
 15 was amended in 2001 to expressly remove a preexisting exhaustion requirement. *See* Bill  
 16 Analysis of 2001 Cal. Stat. c. 708 (AB-677) 3 (Aug. 30, 2001) (specifying “that a victim  
 17 of unlawful discrimination in programs or activities funded by the state *need not pursue*  
 18 *administrative or any other remedies* prior to, or instead of, bringing an action for  
 19 equitable relief, nor would any victim be required to elect one remedy” (emphasis  
 20 added)), *available at* <http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml>; *see*  
 21 *also Blumhorst v. Jewish Family Servs. of Los Angeles*, 24 Cal. Rptr. 3d 474, 480 (Cal.  
 22 Ct. App. 2005) (recognizing that the amendment was made to “clarify the legislative  
 23 intent that ‘a victim of unlawful discrimination’ could enforce the prohibition against  
 24 discrimination in section 11135 through an action for equitable relief without pursuing  
 25

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26  
 27 <sup>1</sup> Cal. Dep’t of Fair Emp’t & Hous., *State Contractors or Subcontractors or Recipients of*  
 28 *State Funding Must Not Discriminate*, DFEH.CA.GOV, <http://www.dfeh.ca.gov/state-contractors-or-subcontractors-or-recipients-of-state-funding-must-not-discriminate/> (last visited Nov. 8, 2017).



1 administrative remedies first”).

2 Defendant’s cited cases are inapposite because they involve Section 11135 claims  
3 brought against public entities. *See J.E.L. v. San Francisco Unified Sch. Dist.*, 185 F.  
4 Supp. 3d 1196 (N.D. Cal. 2016); *Santos v. Merritt Coll.*, No. C-07-5227 EMC, 2008 WL  
5 2622792 (N.D. Cal. July 1, 2008).<sup>2</sup> Defendant’s reliance on *Aikins v. St. Helena Hosp.*,  
6 843 F. Supp. 1329, 1341 (N.D. Cal. 1994) is similarly misplaced since, as noted above,  
7 the exhaustion requirement was amended out in 2001, seven years after *Aikins*.  
8 Accordingly, Plaintiffs were not required to exhaust any administrative remedies before  
9 alleging Section 11135 claims against Defendant.

10 **2. Katherine Prescott Has Standing to Pursue Section 11135 Claims**  
11 **On Her Own Behalf**

12 Defendant contends that Ms. Prescott lacks standing to pursue Section 11135  
13 claims on her own behalf because she “was not the subject of the alleged discrimination.”  
14 [Mot. 7:24–25]. This argument fails because, as a result of her association with Kyler,  
15 Ms. Prescott suffered discrimination independent from the discrimination Kyler himself  
16 suffered.

17 Section 11135 mandates that “[n]o person in the State of California shall, on the  
18 basis of . . . sex [or] disability . . . be unlawfully denied full and equal access to the  
19 benefits of, or be unlawfully subjected to discrimination under, any program or activity  
20 that . . . is funded directly by the state, or receives any financial assistance from the  
21 state.” Cal. Gov’t Code § 11135(a). Associational claims are explicitly permitted by  
22 subsection (d) of Section 11135, which states: “The protected bases used in this section  
23 include a perception that a person has any of those characteristics *or that the person is*  
24 *associated with a person who has, or is perceived to have, any of those characteristics.*”  
25

26  
27 <sup>2</sup> In addition, *Santos* never analyzed the exhaustion issue. Rather, defendant raised it, and  
28 plaintiff “ha[d] not opposed this argument in her opposition,” which resulted in dismissal  
of the claim. *See Santos*, 2008 WL 2622792, at \*3. The *Santos* court thus dismissed the  
claim due to plaintiff’s waiver, *not* because exhaustion is required. *Id.*

1 *Id.* § 11135(d) (emphasis added).

2       Accordingly, Defendant’s contention that Ms. Prescott can only recover if she  
3 “was denied full and equal access to services, programs, and activities that qualify under  
4 section 11135(a)” is an inaccurate statement of the law. [Mot. 7:11–12.] Instead, Ms.  
5 Prescott can recover *either* if she was “denied full and equal access to the benefits  
6 of...any program or activity,” *or* “subjected to discrimination” by the Defendant as a  
7 result of her association with Kyler.

8       That is precisely what the FAC alleges. RCHSD discriminated against Ms.  
9 Prescott as a result of her association with Kyler by, among other things, blocking her  
10 from calling the CAPS unit and leaving her unable to access her son, advocate on his  
11 behalf, or receive timely updates about his well-being. [See, e.g., FAC ¶¶ 45, 84, 87, 94,  
12 98.] These discriminatory acts arose from Ms. Prescott’s association with Kyler: her  
13 calls were blocked after she repeatedly attempted to contact the CAPS unit to correct  
14 their misgendering of and discrimination against Kyler. That discrimination is separate  
15 and distinct from the discrimination Kyler himself suffered, because it denied Katharine  
16 the same ability to communicate with her son, to advocate on his behalf, and to receive  
17 updates about his acute mental health issues that were available to other parents or  
18 caretakers. These allegations are sufficient to establish that Ms. Prescott was personally  
19 injured for the purposes of establishing standing for her Section 11135 claim. *See*  
20 *Blumhorst*, 24 Cal. Rptr. 3d at 482 (noting that for Section 11135 claims, the usual  
21 standing requirement that a plaintiff must allege that she was personally damaged  
22 applies).

23       Defendant’s reliance on *D.K. ex rel. G.M. v. Solana Cty. Office of Educ.*, 667 F.  
24 Supp. 2d. 1184 (N.D. Cal. 2009), a decision concerning the availability of associational  
25 claims under the Americans with Disabilities Act (“ADA”), is misplaced. Section  
26 11135(d) provides greater protections than the ADA’s associational discrimination  
27 provision. The ADA only prohibits being “exclude[d] or otherwise den[ied] [programs,  
28 services, or activities] because of the known disability of an individual with whom the

1 individual . . . is known to have a relationship or association,” while Section 11135(d)  
 2 also prohibits being “subjected to discrimination” as a result of that association.  
 3 *Compare* 42 U.S.C. § 12182(b)(1)(E), *with* Cal. Gov’t Code § 11135(d). ADA precedent  
 4 does not restrict the scope of a state law disability claim where “the statutory language is  
 5 *not* parallel” to the ADA. *See Castro-Ramirez v. Dependable Highway Express, Inc.*, 207  
 6 Cal. Rptr. 3d 120, 130 (Cal. Ct. App. 2016) (concluding that the scope of the Fair  
 7 Employment and Housing Act’s (“FEHA”) associational discrimination provision, which  
 8 is virtually identical to Section 11135(d),<sup>3</sup> is more expansive than the ADA’s); *see also*  
 9 Cal. Gov’t Code § 12926.1 (noting the California legislature’s declaration that “[t]he law  
 10 of this state in the area of disabilities provides protections independent from those in the  
 11 federal [ADA]. Although the federal act provides a floor of protection, this state’s law  
 12 has always, even prior to passage of the federal act, afforded additional protections.”).  
 13 Since the *D.K.* court was only considering the federal claims, it had no occasion to  
 14 consider whether the parents were also “subjected to discrimination” under Section  
 15 11135. 667 F. Supp. 2d. at 1193.<sup>4</sup> By contrast, the question of whether Ms. Prescott was  
 16 “subjected to discrimination” under Section 11135(d) as a result of her association with  
 17 Kyler is squarely presented here.

18 In the alternative, the complaint alleges sufficient facts showing that Defendant  
 19 also denied Ms. Prescott access to a benefit or service when it blocked her calls and  
 20 thereby treated her differently than other parents or caretakers because of her association  
 21

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22  
 23 <sup>3</sup> FEHA makes it unlawful for an employer, “because of the . . . disability [or] sex . . . of  
 24 any person . . . to discharge the person from employment . . . or to discriminate against  
 25 the person . . . in terms, conditions, or privileges of employment.” *Id.* § 12940(a). Using  
 26 identical language as Section 11135, FEHA defines sex and disability to include “a  
 perception that the person that the person has any of those characteristics or that the  
 person is associated with a person who has, or is perceived to have, any of those  
 characteristics.” *Id.* § 12926(o).

27 <sup>4</sup> Defendant also cites *D.K. v. Solano County Office of Educ.* (“*Solano I*”), No. 2:08-cv-  
 28 00534, 2008 U.S. Dist. LEXIS 101169, at \*17 (E.D. Cal. Dec. 15, 2008), an earlier  
 decision in the same case. There, the Section 11135 associational discrimination claims  
 were dismissed based on a prior complaint that did not allege the parent was barred from  
 her son’s classroom or experienced any other form of independent discrimination. *See id.*

1 with Kyler. Notably, Defendant’s cited authority on this point, *D.K.*, implicitly  
2 recognizes that a parent can state an associational claim for denial of access to or  
3 participation in protected programs or activities when their child is in the care of a state-  
4 funded entity and they are treated differently than other parents. The court assumed that  
5 a parent of a child with a disability who was barred from visiting his classroom unless she  
6 provided notice and received permission from a supervisor stated a claim for denial of  
7 access to or participation in protected programs or activities for the purposes of the  
8 Americans with Disabilities Act (“ADA”) and the Rehabilitation Act. *See* 667 F. Supp.  
9 2d. at 1194. The court dismissed the associational claims on a separate ground: it found  
10 that the denial of access occurred because the parent informed the school that she had  
11 retained an attorney, not because of her association with her child. *See id.* By contrast,  
12 here, the denial of access directly resulted from Ms. Prescott’s association with her son  
13 based on his transgender status and gender dysphoria—and in particular, her repeated  
14 attempts to correct staff members’ misgendering of and discrimination against Kyler.  
15 [FAC ¶¶ 44–45.]<sup>5</sup>

16 Similarly, in *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 279 (2d Cir.  
17 2009), the Second Circuit found standing for associational discrimination claims under  
18 the Rehabilitation Act of 1973 by the children of a deaf father, who were compelled to  
19 provide sign language interpretation for their father while he was hospitalized, and  
20 experienced “forced truancy from school” and “involuntary exposure to their father’s  
21 suffering” as a result. The Second Circuit found that because the hospital failed to  
22  
23

24  
25 <sup>5</sup> The court also made this distinction clear in *Glass v. Hillsboro Sch. Dist. IJ*, 142 F.  
26 Supp. 2d 1286, 1292 (D. Or. 2001). There, the court rejected the parents’ associational  
27 discrimination claim because it was indistinguishable from the child’s own claim of  
28 discrimination. As the court explained, however, an associational claim would be proper,  
for instance, if a parent “ask[s] to observe regular classrooms but [is] denied, because of  
their association with disabled individuals, the same access as any other parents.” *Id.*  
That is precisely what happened when the CAPS unit discriminated against Ms. Prescott.

1 provide adequate sign language services, the children were “denied the benefits of . . .  
2 services the Hospital was required to provide.” *Id.* Here too, Defendant denied Ms.  
3 Prescott the same access to her son and to the hospital itself that was available to other  
4 parents and caretakers.

5 **3. Kyler Prescott Is Entitled to Restitution Under Section 11135**

6 Defendant argues that Kyler is not entitled to restitution under Section 11135  
7 because he lacks an “‘ownership interest’ in any money sought to be recovered from  
8 RCHSD.” [Mot. 8:23–25.] This focus on “ownership interest” is misplaced. As an  
9 equitable remedy, restitution focuses on the extent to which the defendant was unjustly  
10 enriched, not the cost incurred by the claimant. *See* Restatement (Third) of Restitution  
11 and Unjust Enrichment § 49 (Am. Law Inst. 2011). Thus, where “a third person makes a  
12 payment to the defendant to which (as between claimant and defendant) the claimant has  
13 a better legal or equitable right, the claimant is entitled to restitution from the defendant  
14 as necessary to prevent unjust enrichment.” *Id.* § 48. Accordingly, the California  
15 Supreme Court has made clear that restitution is available to “persons who had an  
16 ownership interest in the property” as well as “*those claiming through that*  
17 *person.*” *Kraus v. Trinity Mgmt. Servs., Inc.*, 23 Cal. 4th 116, 127 (2000) (emphasis  
18 added), *superseded by statute on other grounds as recognized by Arias v. Superior Court*,  
19 46 Cal. 4th 969 (2009). Put another way, courts can “make orders necessary to restore  
20 real or personal property and money ‘to any person in interest.’” *Id.* at 127 n.11 (internal  
21 citations omitted).

22 Defendant’s authority is not to the contrary. *Korea Supply Co. v. Lockheed Martin*  
23 *Corp.*, 63 P.3d 937, 944 (2003), quotes *Kraus* for the proposition that restitution can  
24 extend to “persons who had an ownership interest in the property” as well as “those  
25 claiming through that person.” *See id.* at 944 (quoting *Kraus*, 23 Cal. 4th at 127). And  
26 *Rizzo v. Ins. Co. of State of Penn.*, 969 F. Supp. 2d 1180, 1195–96 (C.D. Cal. 2013),  
27 concerned the question whether certain forms of restitution could be considered legal  
28 damages, not which persons are entitled to restitution. Here, Kyler is entitled to

1 restitution because Kyler is undoubtedly a “person in interest” in the litigation, and has a  
2 better equitable right to the costs the Prescott family incurred than Defendant does.  
3 Restitution is thus available to Ms. Prescott, but it is also available to Kyler as a person  
4 “claiming through” Ms. Prescott. *Kraus*, 23 Cal. 4th at 127.

5 **C. KATHARINE PRESCOTT ASSERTS A FALSE ADVERTISING**  
6 **LAW CLAIM ON BEHALF OF HERSELF ONLY**

7 Defendant misconstrues the FAL claim asserted in the FAC. With respect to the  
8 FAL claim, the FAC asserts that claim as to Katharine Prescott only, and does not assert  
9 such a claim as to Kyler. [FAC ¶ 117.] This is consistent with the Court’s September 27,  
10 2017 Order preserving Katharine Prescott’s FAL claim and dismissing Kyler’s FAL  
11 claim. Accordingly, there is no basis for a motion to dismiss on this issue.

12 **IV. CONCLUSION**

13 For the foregoing reasons, Plaintiffs respectfully request that this Court deny  
14 Defendant’s Motion in its entirety. Should this Court grant the Motion in any part,  
15 Plaintiffs request that the Court grant Plaintiffs leave to amend the Complaint.

16 DATED: November 22, 2017

**FOLEY & LARDNER LLP**  
Eileen R. Ridley  
Alan R. Ouellette  
Kathryn A. Shoemaker

21 /s/ Eileen R. Ridley  
Eileen R. Ridley  
22 Attorneys for Plaintiffs KATHARINE  
23 PRESCOTT, INDIVIDUALLY AND ON  
24 BEHALF OF DECEASED MINOR CHILD,  
KYLER PRESCOTT

**PROOF OF SERVICE**

I am employed in the **County of San Francisco, State of California**. I am over the age of 18 and not a party to this action. My current business address is 555 California Street, Suite 1700, San Francisco, CA 94104-1520. I am employed in the office of a member of the bar of this court at whose direction the service was made.

On November 22, 2017, I served the foregoing document described as:

**PLAINTIFFS’ OPPOSITION TO DEFENDANT’S SECOND MOTION TO DISMISS**

on the interested parties in this action as follows:

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Marilyn.moriarty@lewisbrisbois.com  
Julie Renee Dann  
...Julie.Dann@lewisbrisbois.com  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
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*Attorneys for Defendant*  
**RADY CHILDREN’S HOSPITAL–SAN DIEGO**

  X   **BY COURT’S CM/ECF SYSTEM**  
Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF system, which sent notification of that filing to the person listed above.

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*Attorneys for Plaintiffs*  
**KATHARINE PRESCOTT, AN  
INDIVIDUAL, AND KATHARINE  
PRESCOTT, ON BEHALF OF KYLER  
PRESCOTT, A DECEASED MINOR**

*Attorneys for Plaintiffs*  
**KATHARINE PRESCOTT, AN  
INDIVIDUAL, AND KATHARINE  
PRESCOTT, ON BEHALF OF KYLER  
PRESCOTT, A DECEASED MINOR**

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**BY E-MAIL**

Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

X

Executed on November 22, 2017, at San Francisco, **California**.

X

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

  
Wendy A. DelValle