

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT SSC 6 HON. ELIHU M. BERLE, JUDGE
4
5 KANA LIU, ET AL.,)
6)
7) PLAINTIFF,)
8)
9) VS.) CASE NO. 19STCV21296
10)
11) DIGNITY HEALTH, ET AL.,)
12)
13) DEFENDANTS.)
14)
15)

10 REPORTER'S TRANSCRIPT OF PROCEEDINGS
11 SEPTEMBER 22, 2025

14 APPEARANCES:

15 FOR PLAINTIFF: SUSMAN GODFREY LLP
16 BY: JORDAN RUX, ESQ.
17 1900 AVENUE OF THE STARS
18 SUITE 1400
19 LOS ANGELES, CALIFORNIA 90067

SUSMAN GODFREY LLP
BY: RACHEL BLACK, ESQ.
401 UNION STREET
SUITE 3000
SEATTLE, WASHINGTON 98101

22 FOR DEFENDANT
23 DIGNITY HEALTH: POLSINELLI LLP
24 BY: ELIZABETH J. TUCKER, ESQ.
25 BY: JONATHON E. COHN
26 2049 CENTURY PARK EAST
27 SUITE 2900
28 LOS ANGELES, CALIFORNIA 90067

REPORTED BY: VIENNA NGUYEN, CSR NO. 13137
OFFICIAL REPORTER PRO TEMPORE
(SEE FOLLOWING PAGE FOR ADDITIONAL APPEARANCES.)

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APPEARANCES (CONTINUED):

FOR DEFENDANTS	BUCHALTER APC
VEP HEALTHCARE,	BY: ANDREW H. SELESNICK, ESQ.
INC., AND RIDGELINE	BY: TRICIA A. PHAM, ESQ.
EMERGENCY PHYSICIANS	1000 WILSHIRE BOULEVARD
MEDICAL GROUP, INC.:	SUITE 1500
	LOS ANGELES, CALIFORNIA 90017

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I N D E X
(NO WITNESSES CALLED.)

E X H I B I T S
(NO EXHIBITS OFFERED.)

1 CASE NUMBER: 19STCV21296
2 CASE NAME: LIU V. DIGNITY HEALTH
3 LOS ANGELES, CALIFORNIA SEPTEMBER 22, 2025
4 DEPARTMENT SSC 6 HON. ELIHU M. BERLE
5 REPORTER: VIENNA NGUYEN, CSR NO. 13137
6 TIME: 11:15 A.M.
7 APPEARANCES: (AS HERETOFORE NOTED.)
8
9

10 THE COURT: CALLING THE CASE OF LIU VERSUS DIGNITY
11 HEALTH.

12 COUNSEL, YOUR APPEARANCES, PLEASE.

13 MR. RUX: GOOD MORNING, YOUR HONOR. JORDAN RUX
14 AND RACHEL BLACK, FROM SUSMAN GODFREY, FOR THE
15 PLAINTIFFS.

16 THE COURT: GOOD MORNING.

17 MS. TUCKER: GOOD MORNING, YOUR HONOR. ELIZABETH
18 TUCKER AND JOHN COHN, ON BEHALF OF DEFENDANT DIGNITY
19 HEALTH.

20 THE COURT: GOOD MORNING.

21 MR. SELESNICK: GOOD MORNING, YOUR HONOR. ANDREW
22 SELESNICK AND TRICIA PHAM, ON BEHALF OF DEFENDANTS VEP
23 HEALTHCARE AND RIDGELINE EMERGENCY.

24 THE COURT: GOOD MORNING. ANY OTHER APPEARANCES?

25 I HAVE RECEIVED THE PROPOSED ORDER FOR THE
26 APPOINTMENT OF VIENNA NGUYEN AS COURT REPORTER PRO TEM.

27 ANY OBJECTIONS?

28 MR. SELESNICK: NO OBJECTIONS, YOUR HONOR.

1 THE COURT: NOT HEARING ANY OBJECTIONS, VIENNA
2 NGUYEN IS HEREBY APPOINTED COURT REPORTER PRO TEM AND IS
3 AUTHORIZED TO REPORT REMOTELY.

4 VIENNA NGUYEN, ARE YOU THERE ONLINE?

5 THE REPORTER: YES, YOUR HONOR. VIENNA NGUYEN,
6 CSR 13137.

7 THE COURT: GOOD MORNING.

8 THE REPORTER: GOOD MORNING, YOUR HONOR.

9 THE COURT: THE MATTER ON CALENDAR IS A MOTION BY
10 DEFENDANTS TO DISMISS FOR FAILURE TO BRING THE CASE TO
11 TRIAL WITHIN FIVE YEARS.

12 ANYONE WISH TO BE HEARD ON THIS?

13 MS. TUCKER: YES, YOUR HONOR. MS. TUCKER, ON
14 BEHALF OF DEFENDANT DIGNITY HEALTH. I WOULD LIKE TO SAY
15 SOME WORDS.

16 THE COURT: OKAY. PLEASE PROCEED.

17 MS. TUCKER: YOUR HONOR, THE FIVE-YEAR RULE SERVES
18 A SPECIFIC PURPOSE, TO NOT LET CASES LANGUISH
19 UNNECESSARILY.

20 THIS CASE HAS LANGUISHED UNNECESSARILY AND
21 IS EXACTLY THE CIRCUMSTANCE THE FIVE-YEAR RULE IS MEANT
22 TO ADDRESS.

23 BECAUSE OF THIS, THE FIVE-YEAR RULE IS
24 CLEAR AND IT IS MANDATORY, NOT PERMISSIVE. PLAINTIFF
25 HAD A DUTY TO KEEP TRACK OF THE FIVE-YEAR DEADLINE AND
26 TO TAKE ACTION COMMENSURATE WITH THAT DEADLINE, BUT THAT
27 DATE CAME AND WENT WITHOUT PLAINTIFF EVER MENTIONING IT.

28 NOW, WHEN FACING DISMISSAL, PLAINTIFF HAS

1 TRIED TO THROW ANY ARGUMENT AT THE DARTBOARD TO SEE WHAT
2 STICKS.

3 THIS STRATEGY, IN AND OF ITSELF, UNDERMINES
4 PLAINTIFF'S CREDIBILITY HERE BECAUSE IT SHOWS PLAINTIFF
5 ISN'T EVEN CERTAIN THAT THERE IS A CLEAR PATH TO
6 EXTENDING THE FIVE-YEAR DEADLINE.

7 INDEED, IN HER PAPERS, PLAINTIFF ALSO
8 DOESN'T EVEN OFFER A CLEAR CALCULATION OF WHEN SHE
9 BELIEVES THE FIVE-YEAR DEADLINE WAS STAYED OR TOLLED,
10 BECAUSE EACH OF HER ARGUMENTS RESULT IN DIFFERENT
11 OUTCOMES.

12 FIRST, PLAINTIFF ASSERTS THE DEATH KNELL
13 APPEAL IS EITHER AUTOMATICALLY STAYED -- EITHER
14 AUTOMATICALLY STAYS THE CASE OR THE DEATH KNELL APPEAL
15 MADE IT, QUOTE, IMPOSSIBLE OR IMPRACTICABLE TO PROSECUTE
16 HER CASE, THEREBY CITING THE SAME RATIONALE THAT PERMITS
17 AN APPEAL OF AN INTERLOCUTORY DEATH KNELL APPEAL ORDER.

18 BUT THE REL CASE EXPRESSLY REJECTS THESE
19 EXCUSES TO EXTEND THE FIVE-YEAR DEADLINE.

20 FURTHER, IN THE TANGUILIG CASE CITED BY
21 DEFENDANTS TO ESTABLISH THE STANDARD OF IMPOSSIBILITY
22 AND IMPRACTICABILITY OR FUTILITY FOR FIVE-YEAR RULE
23 PURPOSES, ONE OF THE KEY ELEMENTS IS TO SHOW THAT
24 PLAINTIFF WAS REASONABLY DILIGENT IN PROSECUTING HER
25 CASE AT ALL STAGES IN THE PROCEEDINGS.

26 AS I'LL DISCUSS IN A MINUTE, PLAINTIFF
27 EXERCISED NO DILIGENCE, LET ALONE REASONABLE DILIGENCE,
28 AT ALL STAGES HERE.

1 PLAINIFF'S SECOND ARGUMENT THROWN AT THE
2 DARTBOARD IS THAT THE COURT STAYED THE CASE, BUT AS THE
3 WARNER BROS. CASE MAKES CLEAR, THE ORDER NEEDED TO STAY
4 THE CASE MUST BE FOR THE ENTIRE CASE, AND ANYTHING LESS
5 IS INSUFFICIENT.

6 THERE IS NO ORDER HERE WHEREBY THIS COURT
7 UNEQUIVOCALLY ORDERED THE ENTIRE CASE TO BE STAYED TO
8 SATISFY THE WARNER BROS. STANDARD. IT DOESN'T EXIST.

9 THERE'S THE JANUARY 2023 MINUTE ORDER, BUT
10 IT DOESN'T ORDER A STAY. IT SAYS THE MATTER IS ON
11 APPEAL. THE CASE REMAINS STAYED.

12 THIS WAS NOT AN ORDER FOR A STAY. IT WAS
13 AN ASSUMPTION THAT THE CASE WAS AUTOMATICALLY STAYED DUE
14 TO THE APPEAL, BUT AS WE'VE ALL SEEN WITH THE REL CASE,
15 THAT DOESN'T WORK.

16 THERE'S ALSO AN OCTOBER 2019 ORDER THAT
17 PLAINTIFF OFFERS IN THEIR OPPOSITION WHEREBY DISCOVERY
18 WAS STAYED. HOWEVER, THAT WAS ALSO NOT A COMPLETE STAY
19 OF THE ENTIRE CASE BECAUSE DEMURRERS AND MEDIATION WERE
20 ONGOING.

21 IN FACT, THIS WAS BEFORE ANY DEFENDANT
22 COULD EVEN ANSWER IN THIS CASE. THEN, ONLY FIVE MONTHS
23 LATER, THE COURT REOPENED DISCOVERY FOR CLASS
24 CERTIFICATION ISSUES.

25 THESE CIRCUMSTANCES ARE ALSO INSUFFICIENT
26 TO SUPPORT THAT THE CASE WAS COMPLETELY STAYED UNDER THE
27 WARNER BROS. STANDARD.

28 FURTHER, IN THE CASE OF BACKUS, CITED BY

1 DEFENDANT IN REPLY, THE COURT NOTED A PLAINTIFF MAY NOT
2 RELY ON A DELAY CAUSED EARLY IN THE PROCEEDINGS WHICH
3 HARDLY COULD HAVE MISLED THEM AS TO THE NEED TO ACT
4 DILIGENTLY AS THE FIVE-YEAR DEADLINE APPROACHED. THIS
5 DIRECTLY APPLIES TO PLAINTIFF'S ARGUMENT HERE.

6 PLAINTIFF'S THIRD DART THAT THEY TRY TO
7 THROW AT THE DARTBOARD IS TO ARGUE THAT THERE WAS SOME
8 SORT OF STIPULATION TO EXTEND THE FIVE-YEAR DEADLINE,
9 RELYING MOSTLY ON CONDUCT REGARDING EXTENSIONS OF THE
10 STATUS CONFERENCES.

11 BUT, AGAIN, THE FIVE-YEAR RULE IS CLEAR ON
12 THIS. THERE MUST BE A WRITTEN STIPULATION OR AN
13 AGREEMENT ON THE RECORD IN OPEN COURT.

14 FOR THE WRITTEN STIPULATION, AS DISCUSSED
15 IN GAINES, THERE MUST BE, QUOTE, CLEAR AND
16 UNCONTROVERTIBLE EVIDENCE THE STATUTORY TIME WAS
17 DELIBERATELY INTENDED TO BE EXTENDED BY BOTH PARTIES.

18 THIS MEANS THAT ANY STIPULATION HAS TO
19 EXPRESSLY INDICATE THAT THE PARTIES' INTENT WAS TO
20 EXTEND THAT FIVE-YEAR DEADLINE. THERE'S NOTHING EVEN
21 CLOSE TO THAT HERE IN THE RECORD.

22 IN ANY EVENT, PLAINTIFF CANNOT RELY ON
23 DEFENDANT -- ON DEFENDANTS' STATEMENTS. MISTAKE,
24 CONFUSION, OR RELIANCE ON DEFENDANTS ARE NOT EXCUSES
25 THAT WILL EXTEND THE FIVE-YEAR DEADLINE.

26 AND, LASTLY, REGARDLESS OF WHICHEVER
27 ARGUMENT PLAINTIFF WANTS TO GO WITH, UNDERLYING EACH AND
28 EVERY IS THE GLARING ISSUE THAT PLAINTIFF FAILED TO ACT

1 WITH ANY REASONABLE DILIGENCE AT ALL STAGES OF THIS
2 CASE, WHICH IS THE STANDARD HERE, AND IT'S TELLING.

3 PLAINTIFF COULD HAVE SOUGHT CLARIFICATION
4 ON THE COURT'S PRIOR ORDERS AS TO WHETHER THERE WAS A
5 COMPLETE STAY OF THE CASE OR NOT. SHE DIDN'T.

6 PLAINTIFF COULD HAVE ASKED DEFENDANT TO
7 STIPULATE TO TOLL THE FIVE YEARS BASED ON THE FIVE-YEAR
8 DEADLINE APPROACHING, BUT SHE DIDN'T.

9 PLAINTIFF COULD HAVE DILIGENTLY FILED HER
10 APPELLATE BRIEF INSTEAD OF SEEKING MULTIPLE EXTENSIONS.
11 SHE DIDN'T.

12 PLAINTIFF COULD HAVE ATTENDED THE STATUS
13 CONFERENCES SET BY THE COURT DURING THE APPEAL RATHER
14 THAN CONTINUE THEM. SHE DIDN'T DO THAT EITHER.

15 PLAINTIFF COULD HAVE ISSUED DISCOVERY
16 DURING THE PENDENCY OF THE APPEAL ON HER INDIVIDUAL
17 CLAIMS, BUT SHE DIDN'T.

18 AND PLAINTIFF COULD HAVE CALCULATED THE
19 DEADLINE FOR HER OPPOSITION BRIEF IN THIS CASE
20 DISPOSITIVE MOTION CORRECTLY SO HER FILING ON THAT WOULD
21 BE TIMELY, BUT SHE DIDN'T.

22 THIS IS PLAINTIFF'S CASE TO PROSECUTE AND
23 PLAINTIFF'S RESPONSIBILITY TO KNOW THE LAW, KNOW THE
24 PROCEDURAL POSTURE OF THE CASE, AND, IMPORTANTLY, TO
25 KEEP TRACK OF THE FIVE-YEAR DEADLINE, AND TO TRY TO
26 ADVANCE THE CASE TO TRIAL IN THAT TIME FRAME. THERE'S
27 NOTHING CLOSE TO THAT HERE.

28 DEFENDANTS' MOTION SHOULD BE GRANTED, AND

1 THIS CASE SHOULD BE DISMISSED. OUR CLIENT HAS -- YOU
2 KNOW, HAD TO HOLD ON TO THIS CASE FOR LONG ENOUGH, AND
3 THIS IS EXACTLY WHAT THE FIVE-YEAR RULE IS MEANT TO
4 ACCOMPLISH.

5 I'LL NOW TURN IT OVER TO COUNSEL FOR
6 CODEFENDANTS VEP AND RIDGELINE TO ADD ANYTHING, IF THEY
7 WOULD HAVE ANYTHING TO ADD. THANK YOU, YOUR HONOR.

8 THE COURT: ALL RIGHT. THANK YOU. ANYTHING
9 FURTHER?

10 MR. SELESNICK: BRIEFLY, YOUR HONOR. WE JOIN IN
11 COUNSEL'S ARGUMENT AND NOTE THIS, THAT THE FIVE-YEAR
12 RULE IS A BRIGHT-LINE RULE.

13 THE FACT THAT A PLAINTIFF IS UNABLE TO
14 ARTICULATE THE TIME PERIODS WHICH WOULD QUALIFY FOR
15 EXCEPTIONS UNDER THE STATUTES, YOU KNOW, SAYS PRETTY
16 MUCH EVERYTHING WE NEED TO KNOW.

17 THE REL CASE SAYS THAT APPEALS SUCH AS THE
18 ONE THAT PLAINTIFFS UNDERTOOK SPECIFICALLY DO NOT -- DO
19 NOT QUALIFY AS AN EXCEPTION UNDER THE FIVE-YEAR RULE.

20 WHAT PLAINTIFF ASKED THIS COURT TO DO IS TO
21 VIEW THE RULE AS GRAY WHEN IT IS BRIGHT. AND WE JOIN IN
22 DIGNITY HEALTH CARE'S -- DIGNITY HEALTH'S MOTION AND ASK
23 THAT THIS CASE BE DISMISSED. THANK YOU.

24 THE COURT: THANK YOU. COUNSEL FOR PLAINTIFF.

25 MR. RUX: GOOD MORNING, YOUR HONOR. MAY IT PLEASE
26 THE COURT, JORDAN RUX, FROM SUSMAN GODFREY, FOR THE
27 PLAINTIFF.

28 THIS COURT SHOULD DENY DEFENDANTS' MOTION

1 TO DISMISS BASED ON THE FIVE-YEAR STATUTE. SECTION
2 583.340 OF CALIFORNIA'S FIVE-YEAR STATUTE MAKES CLEAR
3 THAT THREE TIME PERIODS ARE EXCLUDED FROM THE FIVE-YEAR
4 DEADLINE FOR A PLAINTIFF TO BRING A CASE TO TRIAL.

5 NUMBER ONE, TIME PERIODS WHEN THE ACTION IS
6 STAYED. NUMBER TWO, TIME PERIODS WHEN IT IS IMPOSSIBLE,
7 IMPRACTICABLE, OR FUTILE FOR A PLAINTIFF TO BRING A CASE
8 TO TRIAL. NUMBER THREE, TIME PERIODS WHEN THE TRIAL
9 COURT LACKS JURISDICTION.

10 ALL THREE INDEPENDENT EXCEPTIONS APPLY
11 HERE. FIRST, YOUR HONOR, THIS COURT STAYED THIS CASE ON
12 JANUARY 5TH, 2023, PENDING RESOLUTION OF THE APPEAL OF
13 THIS COURT'S DENIAL OF CLASS CERTIFICATION. DEFENDANTS
14 ACKNOWLEDGED THIS IN MULTIPLE FILINGS IN THIS COURT.

15 SECOND, YOUR HONOR, PROCEEDING TO TRIAL WAS
16 IMPRACTICABLE AND FUTILE. IT MADE NO SENSE FOR THE
17 PARTIES OR THE COURT TO USE RESOURCES LITIGATING
18 PLAINTIFF'S INDIVIDUAL CLAIMS WHEN CLASS CERTIFICATION
19 DENIAL WAS ON APPEAL.

20 AND, THIRD, YOUR HONOR, THIS COURT LACKED
21 JURISDICTION OVER PLAINTIFF'S CLAIMS. DEFENDANTS
22 THEMSELVES ACKNOWLEDGED THIS IN A FILING WITH THIS
23 COURT.

24 YOUR HONOR, THE TIME PERIOD FROM
25 JANUARY 5TH, 2023, UNTIL MAY 7TH, 2025, SHOULD BE
26 EXCLUDED UNDER THE PLAIN LANGUAGE OF SECTION 583.340 FOR
27 THESE THREE INDEPENDENT REASONS.

28 BEFORE TURNING TO THOSE THREE EXCEPTIONS,

1 YOUR HONOR, I'LL BRIEFLY SUMMARIZE A FEW IMPORTANT FACTS
2 BECAUSE, IN CONTEXT, IT'S CLEAR THAT THE COURT STAYED
3 THIS CASE, AND A STAY MADE PERFECT SENSE IN LIGHT OF THE
4 CIRCUMSTANCES.

5 YOUR HONOR, ON OCTOBER 7TH, 2022, THIS
6 COURT DENIED PLAINTIFF'S MOTION FOR CLASS CERTIFICATION.
7 PLAINTIFF TIMELY FILED HER NOTICE OF APPEAL ON
8 DECEMBER 2ND, 2022.

9 AND ON JANUARY 5TH, 2023, THIS COURT HELD A
10 STATUS CONFERENCE. IN THE LEAD-UP TO THE STATUS
11 CONFERENCE, THE PARTIES FILED A JOINT STATUS REPORT ON
12 DECEMBER 29TH, 2022, ADVISING THE COURT ON FURTHER
13 PROCEEDINGS.

14 THE PARTIES DID NOT MENTION ANY ADDITIONAL
15 PROCEEDINGS AND, INSTEAD, REQUESTED THAT THE COURT
16 CONTINUE THE STATUS CONFERENCE PENDING THE APPEAL. NO
17 OTHER EVENTS OR PROCEEDINGS WERE ON THE SCHEDULE.

18 FOLLOWING THE STATUS CONFERENCE, THE COURT
19 ISSUED A MINUTE ORDER STATING, QUOTE, THE MATTER IS ON
20 APPEAL. THIS CASE REMAINS STAYED.

21 THE COURT OF APPEAL EVENTUALLY REVERSED THE
22 DENIAL OF CLASS CERTIFICATION. AND ON FEBRUARY 6TH,
23 2025, ROUGHLY TWO YEARS AFTER THIS COURT ENTERED A STAY
24 IN THIS CASE, THE COURT OF APPEAL ISSUED ITS REMITTITUR.

25 ON MAY 7TH, 2025, THIS COURT THEN HELD A
26 SCHEDULING CONFERENCE SETTING VARIOUS DEADLINES,
27 INCLUDING DISCOVERY DEADLINES AND A DATE FOR TRIAL.

28 IMPORTANTLY, YOUR HONOR, BETWEEN

1 JANUARY 5TH, 2023, AND MAY 7TH, 2025, THE PARTIES
2 SUBMITTED FOUR JOINT STATUS UPDATES, ALL OF WHICH WERE
3 SIGNED BY DEFENDANTS. IN EVERY ONE OF THOSE JOINT
4 STATUS UPDATES, THE PARTIES, INCLUDING DEFENDANTS, WROTE
5 THE FOLLOWING.

6 JUNE 2ND, 2023, THEY WROTE, "ON
7 JANUARY 5TH, 2023, THE COURT HELD A STATUS CONFERENCE,
8 SET A STATUS CONFERENCE FOR JUNE 1ST, 2023, AND ORDERED
9 THIS CASE STAYED PENDING RESOLUTION OF THE APPEAL."

10 NOVEMBER 16TH, 2023, SAME EXACT WORDS.

11 JANUARY 18TH, 2024, SAME EXACT WORDS.

12 JUNE 4TH, 2024, SAME THING AGAIN. "ON
13 JANUARY 5TH, 2023, THIS COURT ORDERED THIS CASE STAYED
14 PENDING RESOLUTION OF THE APPEAL."

15 ON OCTOBER 7TH, 2024, AGAIN, THE PARTIES
16 MENTIONED THIS COURT'S STAY AND STARTED THE SENTENCE
17 WITH, "BECAUSE THIS CASE IS CURRENTLY STAYED."

18 BESIDES THESE JOINT STATUS UPDATES, ON
19 DECEMBER 4TH, 2024, DEFENDANTS REQUESTED BY THEMSELVES
20 THAT, QUOTE, THIS STATUS CONFERENCE BE CONTINUED UNTIL
21 AFTER THE COURT OF APPEAL ISSUES ITS REMITTITUR AND THE
22 SUPERIOR COURT HAS JURISDICTION RETURNED TO IT OVER THIS
23 CASE.

24 YOUR HONOR, DEFENDANTS' MOTION TO DISMISS
25 IS A COMPLETE ABOUT-FACE. AFTER TWO YEARS OF
26 REPRESENTING TO THIS COURT THAT THE CASE WAS FULLY
27 STAYED, DEFENDANT FILED A GOTCHA MOTION, ARGUING FOR THE
28 FIRST TIME THAT THIS CASE WAS NOT STAYED AFTER ALL, AND

1 PLAINTIFF SHOULD HAVE BEEN PURSUING HER CLAIMS THE WHOLE
2 TIME THE APPEAL WAS PENDING.

3 THAT IS WRONG. ALL THE PARTIES AND THE
4 COURT CLEARLY UNDERSTOOD THE CASE WAS FULLY STAYED, IT
5 WAS INEFFICIENT AND WASTEFUL TO PROCEED, AND THE COURT
6 HAD NO JURISDICTION OVER PLAINTIFF'S CLAIMS.

7 UNDER EACH EXCEPTION TO THE FIVE-YEAR
8 STATUTE, DEFENDANTS' MOTION SHOULD BE DENIED.

9 BEGINNING WITH THE ISSUE OF THE STAY, YOUR
10 HONOR, DEFENDANTS DO NOT CONTEST THE TIME PERIODS WHEN
11 THIS CASE WAS STAYED SHOULD BE EXCLUDED FROM THE
12 FIVE-YEAR CALCULATION.

13 DEFENDANTS' MAIN ARGUMENT IS THAT THIS CASE
14 WAS NOT STAYED BECAUSE THE PHRASE "REMAINS STAYED" IN
15 THE COURT'S JANUARY 5TH, 2023, MINUTE ORDER WAS NOT AN
16 EFFECTIVE STAY ORDER.

17 AS AN INITIAL MATTER, IT'S SETTLED LAW THAT
18 MINUTE ORDERS ARE FINAL DECISIONS OF THE COURT. NO
19 SEPARATE SIGNED ORDER IS REQUIRED. IT ALSO MAKES NO
20 SENSE TO ARGUE THE PHRASE "REMAINS STAYED" MEANS THAT
21 THERE WAS NO STAY.

22 THE PHRASE "REMAINS STAYED" SHOWS THAT THE
23 CASE WAS STAYED FROM AT LEAST JANUARY 5TH, 2023, IF NOT
24 EARLIER. THE COURT DID NOT STATE THE CASE WOULD BE
25 STAYED OR IT WILL BE STAYED, IT MIGHT BE STAYED, OR A
26 PORTION OF THE CASE IS STAYED. THE COURT STATED THE
27 CASE REMAINS STAYED.

28 THAT LANGUAGE SHOWED THE COURT'S

1 UNMISTAKABLE INTENT AND WAS EFFECTIVE TO STAY THE CASE.

2 IT'S CRYSTAL CLEAR THAT ALL THE PARTIES
3 KNEW THAT THIS CASE WAS STAYED AFTER THE JANUARY 5TH
4 STATUS CONFERENCE. DEFENDANTS REPEATEDLY REPRESENTED TO
5 THE COURT THAT THE CASE WAS STAYED.

6 DEFENDANT SIGNED FOUR SEPARATE STATUS
7 REPORTS, STATING THAT ON JANUARY 5TH, 2023, THIS COURT
8 HELD A STATUS CONFERENCE AND ORDERED THIS CASE STAYED
9 PENDING RESOLUTION OF THE APPEAL.

10 THOSE STATEMENTS WEREN'T MENTIONED ONCE IN
11 THE PRESENTATION TODAY.

12 THESE STATEMENTS MADE QUITE CLEAR THAT ALL
13 THE PARTIES HAD THE EXACT SAME UNDERSTANDING.

14 THE ENTIRE CASE WAS STAYED PENDING
15 RESOLUTION OF THE CLASS CERTIFICATION APPEAL.

16 YOUR HONOR, THE JANUARY 5TH STAY BY THIS
17 COURT WAS PERFECTLY LOGICAL. THE MERITS OF PLAINTIFF'S
18 CLAIMS PRESENTED PRECISELY THE SAME ISSUE THAT WAS
19 PRESENTED IN THE CLASS CERTIFICATION APPEAL.

20 NAMELY, THE CORRECT MEASURE OF RECOVERY AND
21 WHAT MUST BE PROVED TO ESTABLISH PLAINTIFF'S CLAIMS AND
22 THE CLAIMS OF THE CLASS.

23 PLAINTIFF'S CLAIM WAS THAT DEFENDANTS HAD
24 NO RIGHT TO CHARGE MORE THAN THE REASONABLE VALUE OF
25 THEIR SERVICES, AND DEFENDANTS ARGUE THAT THEY HAD A
26 RIGHT TO CHARGE UP TO THE ALLOWED AMOUNT DETERMINED BY
27 EACH HEALTH INSURANCE PROVIDER, EVEN IF THAT AMOUNT
28 EXCEEDED THE REASONABLE VALUE.

1 ON PAGES 44 TO 46 OF ITS CLASS
2 CERTIFICATION DECISION, THIS COURT AGREED WITH THE
3 DEFENDANTS. ON APPEAL, PLAINTIFF ARGUED THAT THE
4 ALLOWED AMOUNT HAD NO BEARING ON HER THEORY OF RECOVERY
5 AND WAS NOT REQUIRED TO ESTABLISH LIABILITY, HARM, OR
6 DAMAGES.

7 THE COURT OF APPEAL AGREED WITH PLAINTIFF
8 AND EXPLICITLY OFFERED AN OPINION ON THE MERITS OF
9 PLAINTIFF'S CLAIMS.

10 ON PAGE 18 OF THE COURT OF APPEAL'S
11 DECISION, THE COURT STATED, QUOTE, ALTHOUGH THE TRIAL
12 COURT APPROPRIATELY REACHED THE MERITS OF LIU'S THEORY
13 OF RECOVERY, WE FIND THE COURT'S LEGAL CONCLUSION WAS,
14 NONETHELESS, ERRONEOUS UNDER QUANTUM MERUIT PRINCIPLES
15 THAT GOVERN THE RATE CLAIMS.

16 THE CLASS CERTIFICATION APPEAL WENT
17 DIRECTLY TO THE MERITS OF PLAINTIFF'S CLAIMS. IT MADE
18 PERFECT SENSE FOR THE COURT TO STAY THIS ACTION,
19 INCLUDING PLAINTIFF'S INDIVIDUAL CLAIMS BECAUSE, IF IT
20 DIDN'T AND THE COURT OF APPEAL REVERSED, WHICH IS
21 EXACTLY WHAT HAPPENED, THE PARTIES AND THIS COURT WOULD
22 HAVE TO LITIGATE PLAINTIFF'S CLAIMS ALL OVER AGAIN. IT
23 WOULD HAVE BEEN A WASTE OF TWO YEARS OF LITIGATION.

24 DENIAL OF DEFENDANTS' MOTION IS SUPPORTED
25 BY THE AUTHORITY THAT DEFENDANTS CITE. DEFENDANTS RELY
26 PRIMARILY ON THE REL CASE, BUT REL DOES NOT HELP THEIR
27 ARGUMENT. IT'S THE EXACT OPPOSITE.

28 IN REL, WHEN DISCUSSING SECTION 583.340,

1 THE COURT MADE CLEAR THAT THE TIME THE CASE WAS ON
2 APPEAL WAS EXCLUDED FROM THE FIVE-YEAR CALCULATION.

3 THERE ARE THREE OTHER REASONS REL DOESN'T
4 SUPPORT DEFENDANTS' MOTION. NUMBER ONE, REL WAS PENDING
5 FOR 15 YEARS, AND THE DEADLINE WAS TOLLED FOR OVER 3,000
6 DAYS.

7 NUMBER TWO, THE PLAINTIFFS WERE ARGUING
8 THAT THE COURT'S DISMISSAL OF THE PLAINTIFF'S CLASS
9 CLAIMS CONSTITUTED A TRIAL UNDER SECTION 583.310.

10 THE PLAINTIFF ALSO ARGUED THAT DENIAL OF
11 CLASS CERTIFICATION WOULD AUTOMATICALLY SATISFY THE
12 FIVE-YEAR STATUTE. THAT IS NOT WHAT PLAINTIFF IS
13 ARGUING HERE.

14 FINALLY, THE PLAINTIFF IN REL DID NOT ARGUE
15 THAT HE QUALIFIED FOR ANY OF THE EXCEPTIONS UNDER
16 SECTION 583.340.

17 DEFENDANTS ALSO CITE THE WARNER BROS. CASE,
18 BUT THAT CASE DID NOT INVOLVE A COMPLETE AND TOTAL STAY
19 WHILE THE MERITS OF PLAINTIFF'S CLAIMS WERE ON APPEAL.
20 IT INVOLVED A PARTIAL STAY FOR 43 DAYS AT THE OUTSET OF
21 THE CASE WHILE THE PARTIES AUTHORED A 28-PAGE REPORT AND
22 PROPOSED SCHEDULE AND PLAN FOR THE LITIGATION SO IT
23 WOULD PROCEED EFFICIENTLY.

24 THERE WERE SPECIFIC CARVE-OUTS OF THE STAY
25 IN THAT CASE THAT OUTLINED ACTIONS THAT THE PARTIES
26 NEEDED TO TAKE. THAT IS NOT THE CASE HERE. THERE WERE
27 NO ACTIONS FOR THE PARTY TO TAKE -- PARTIES TO TAKE.

28 YOUR HONOR, THE COURT'S STAY HERE WAS A

1 COMPLETE STAY. THERE'S NO INDICATION THAT THE STAY WAS
2 ANYTHING LESS THAN ALL-ENCOMPASSING. THE STAY ALSO MADE
3 PERFECT SENSE AND PREVENTED DUPLICATIVE WORK BY THE
4 PARTIES AND THE COURT.

5 THE REASONS THE STAY MADE PERFECT SENSE ARE
6 ALSO THE EXACT SAME REASONS WHY IT WOULD HAVE BEEN
7 IMPRACTICABLE AND FUTILE FOR PLAINTIFF TO LITIGATE HER
8 INDIVIDUAL CLAIMS WHILE THE APPEAL WAS PENDING.

9 THERE ARE FOUR REASONS WHY PLAINTIFF
10 QUALIFIES FOR THE IMPRACTICABLE AND FUTILE EXCEPTION TO
11 SECTION 583.340.

12 FIRST, AS I JUST NOTED, THE CRITICAL ISSUE
13 ON APPEAL WAS THE PROPER MEASURE OF RECOVERY, AN ISSUE
14 THAT APPLIED EQUALLY TO THE PLAINTIFF AND THE CLASS.

15 THE COURT OF APPEAL EXPLICITLY STATED ON
16 PAGES 17 THROUGH 18 OF ITS OPINION THAT ITS HOLDING WENT
17 TO THE MERITS OF LIU'S THEORY OF RECOVERY. IT WOULD
18 MAKE NO SENSE TO LITIGATE THOSE CORE MERITS ISSUES IN
19 THE TRIAL COURT WHILE THE COURT OF APPEAL WAS WEIGHING
20 IN ON THE EXACT SAME ISSUES.

21 SECOND, YOUR HONOR, PROCEEDING WITH BOTH
22 THE INDIVIDUAL AND CLASS CLAIMS WOULD HAVE REQUIRED
23 PLAINTIFF TO LITIGATE A VARIETY OF ISSUES THAT WOULD
24 IMMEDIATELY HAVE TO BE LITIGATED AGAIN ON A CLASSWIDE
25 BASIS.

26 THOSE ISSUES INCLUDE THE LEGALITY OF
27 DEFENDANTS' CONDUCT, THE REASONABLE RATE FOR THE FIVE
28 CPT CODES AT ISSUE, AND THE PROPER MEASURE OF DAMAGES.

1 NUMEROUS CASES HOLD THAT THIS KIND OF
2 DUPLICATIVE LITIGATION IS IMPRACTICABLE, INCLUDING THE
3 KRISTEN CASE, THE KAY CASE, AND THE HOLLAND CASE, ALL OF
4 WHICH WE CITE ON PAGES 10 THROUGH 12 OF OUR BRIEF.

5 USING THE HOLLAND CASE AS AN EXAMPLE, THE
6 PLAINTIFF THERE HAD FILED A LAWSUIT AGAINST SEVERAL
7 DEFENDANTS, AND THE PLAINTIFF APPEALED A RULING QUASHING
8 SERVICE ON ONE OF THE FOREIGN DEFENDANTS.

9 THE DEFENDANTS NOT INVOLVED IN THE APPEAL
10 ARGUED THAT THE PLAINTIFF SHOULD HAVE SIMPLY SEVERED THE
11 FOREIGN DEFENDANT AND PROCEEDED WITH DEFENDANTS WHO WERE
12 NOT ON APPEAL.

13 THE COURT REJECTED THAT ARGUMENT AS
14 IMPRACTICABLE UNDER SECTION 583.340.

15 IN PARTICULAR, THE COURT HELD THAT FORCING
16 THE PLAINTIFF TO LITIGATE WHILE THE APPEAL WAS PENDING
17 CREATED A RISK OF DUPLICATIVE PROCEEDINGS WHICH WOULD
18 WASTE RESOURCES OF BOTH THE PARTIES AND THE COURT.

19 THE SAME IS TRUE HERE FOR THE EXACT SAME
20 MERITS ISSUES. IT WOULD HAVE TO BE LITIGATED AT LEAST
21 TWICE, ONCE INDIVIDUALLY, AND ANOTHER TIME CLASSWIDE.

22 THIRD, YOUR HONOR, DEFENDANTS' ARGUMENT
23 IGNORES THE PRACTICAL REALITY OF THIS LITIGATION. THE
24 BILL THAT PLAINTIFF RECEIVED WAS \$620.84. IN A COMPLEX
25 CASE THAT WILL INVOLVE EXPERT ECONOMISTS AND DISPUTES
26 ABOUT THE REASONABLE VALUE OF EMERGENCY SERVICES, THE
27 LITIGATION COSTS WILL FAR EXCEED THE VALUE OF
28 PLAINTIFF'S BILL.

1 IT GOES ENTIRELY AGAINST COMMON SENSE TO
2 SAY THAT LITIGATING THIS CLAIM ON AN INDIVIDUAL BASIS
3 WAS NOT IMPRACTICABLE OR FUTILE.

4 AND, FINALLY, YOUR HONOR, THE COURT HAD, IN
5 NO CERTAIN TERMS, STAYED THIS CASE, MAKING ANY
6 ADDITIONAL PROGRESS IMPOSSIBLE. IT WAS IMPRACTICABLE
7 AND FUTILE FOR PLAINTIFF TO PROCEED INDIVIDUALLY ON HER
8 CLAIMS WHILE THE APPEAL WAS PENDING.

9 FINALLY, YOUR HONOR, ON THE JURISDICTIONAL
10 EXCEPTIONS, DEFENDANTS PREVIOUSLY ACKNOWLEDGED TO THIS
11 COURT THAT IT LACKED JURISDICTION PENDING THE APPEAL,
12 WHICH MAKES SENSE BECAUSE PLAINTIFF'S CLAIMS WERE, AS I
13 DISCUSSED, EMBRACED AND AFFECTED BY THE MERITS OF THE
14 ISSUES ON APPEAL.

15 THAT SHOULD BE THE END OF THE MATTER.

16 DEFENDANT SHOULD ALSO BE ESTOPPED FROM NOW
17 ARGUING THAT THIS COURT HAD JURISDICTION DURING THE
18 APPEAL.

19 IN THEIR DECEMBER 4TH, 2024, STATUS UPDATE,
20 DEFENDANTS REQUESTED THAT A STATUS CONFERENCE BE
21 CONTINUED, QUOTE, UNTIL AFTER THE COURT OF APPEAL ISSUES
22 ITS REMITTITUR AND THE SUPERIOR COURT HAS JURISDICTION
23 RETURNED TO IT OVER THIS CASE.

24 NOTABLY, THE COURT ACCEPTED THIS
25 REPRESENTATION FROM DEFENDANTS IN ITS DECEMBER 6TH,
26 2024, MINUTE ORDER. THE COURT STATED THAT THE PARTIES
27 REPRESENTED THAT THE COURT OF APPEAL, QUOTE, HAS YET TO
28 ISSUE ITS REMITTITUR.

1 THE COURT THEN ORDERED THE PARTIES TO FILE
2 A JOINT STATUS REPORT IN FEBRUARY 2025 ADVISING THE
3 COURT ON THE STATUS OF THE REMITTITUR AND WHETHER,
4 QUOTE, THE MATTER IS TO BE RETURNED TO THE DEPARTMENT.

5 AGAIN, ON FEBRUARY 4TH, 2025, DEFENDANT
6 SIGNED A JOINT STATUS REPORT, AGAIN STATING THAT THIS
7 COURT LACKED JURISDICTION UNTIL THE REMITTITUR WAS
8 ISSUED.

9 DEFENDANTS NOW CLAIM THAT THIS COURT HAD
10 JURISDICTION THE ENTIRE TIME THIS CASE WAS ON APPEAL.
11 DEFENDANTS, HOWEVER, DO NOT DEFEND THEIR STATEMENTS TO
12 THIS COURT AT ALL. THEY DO NOT EXPLAIN WHY THEY TOLD
13 THIS COURT THERE WAS NO JURISDICTION. THEY DO NOT
14 EXPLAIN WHY THE PARTIES NEEDED TO WAIT FOR A REMITTITUR
15 IF THIS COURT ALREADY HAD JURISDICTION.

16 DEFENDANTS' ONLY ARGUMENT IS THAT THEIR
17 REPRESENTATIONS TO THIS COURT CAN'T BE USED AGAINST THEM
18 BECAUSE THEY CLAIM ESTOPPEL IS NOT A PROPER GROUND FOR
19 MAKING AN EXCEPTION TO THE FIVE-YEAR DISMISSAL STATUTE.

20 DEFENDANTS' OWN CASES DISPROVE THEIR
21 ARGUMENT. TAKE THE WILCOX CASE, WHICH DEFENDANTS CITE
22 ON PAGE 7 OF THEIR REPLY BRIEF.

23 THE COURT EXPLICITLY HELD, AND I QUOTE,
24 APPELLANT ALSO OPPOSED THE MOTION TO DISMISS BASED ON
25 PRINCIPLES OF WAIVER AND ESTOPPEL. THESE ARE
26 PERMISSIBLE GROUNDS FOR OPPOSING SUCH MOTIONS.

27 IN THE GAINES VERSUS FIDELITY CASE, WHICH
28 THE DEFENDANTS CITE EXTENSIVELY, THE COURT CITED TO THE

1 WOLEY VERSUS TURKUS CASE. IN THAT CASE, THE COURT
2 APPLIED ESTOPPEL PRINCIPLES BECAUSE DEFENDANT CHANGED
3 POSITIONS ON A SCHEDULING UPDATE. AND ESTOPPEL WAS
4 APPLIED BY THE COURT THERE.

5 THE COURT DENIED DEFENDANTS' FIVE-YEAR
6 MOTION THERE BASED ON ESTOPPEL GROUNDS. WE WOULD ALSO
7 POINT THE COURT TO FLAMER VERSUS SUPERIOR COURT. THAT'S
8 266 CALIFORNIA APPELLATE 2D, AT PAGE 917.

9 THERE, THE COURT ADDRESSED ANOTHER ONE OF
10 DEFENDANTS' CASES, THE BANK OF AMERICA CASE, AND HELD
11 THAT NEITHER CALIFORNIA CASE LAW NOR SECTION 583, QUOTE,
12 PRECLUDES A COURT FROM REFUSING TO DISMISS AN ACTION
13 UPON THE GROUND OF A CLAIM OF ESTOPPEL IN AN APPROPRIATE
14 CASE.

15 CALIFORNIA COURTS SIMPLY DO NOT HOLD THAT
16 DEFENDANTS CAN CATEGORICALLY ESCAPE THE REPRESENTATIONS
17 TO A COURT IN A FIVE-YEAR STATUTE CONTEXT.

18 HERE, YOUR HONOR, ESTOPPEL IS APPROPRIATE.
19 DEFENDANTS REPRESENTED TO THE COURT AND PLAINTIFF THAT
20 THIS COURT LACKS JURISDICTION UNTIL THE REMITTITUR
21 ISSUED. THAT DELAYED THE PROGRESS OF THIS CASE.

22 DEFENDANTS SHOULD BE ESTOPPED FROM ARGUING
23 THIS COURT HAD JURISDICTION.

24 YOUR HONOR, WE REQUEST THAT DEFENDANTS --
25 OR THAT THE COURT DENY DEFENDANTS' MOTION TO DISMISS,
26 AND THE TIME PERIOD FROM JANUARY 5TH, 2023, UNTIL
27 MAY 7TH, 2025, BE EXCLUDED FROM THE FIVE-YEAR
28 CALCULATION.

1 THE COURT: ALL RIGHT. THANK YOU. ANY FINAL WORD
2 FROM THE DEFENSE?

3 MS. TUCKER: YES, YOUR HONOR. ELIZABETH TUCKER,
4 ON BEHALF OF --

5 THE COURT: VERY BRIEFLY.

6 MS. TUCKER: YES. I'LL JUST NOTE BRIEFLY, IN ALL
7 OF PLAINTIFF'S ARGUMENTS, PLAINTIFF, YOU KNOW, IS
8 ATTEMPTING TO PUT THE BURDEN ON DEFENDANTS AS TO WHAT
9 DEFENDANTS DID OR DIDN'T DO IN THIS CASE.

10 BUT, YOU KNOW, AS IT'S CLEAR, IT'S
11 PLAINTIFF'S CASE TO PROSECUTE, AND PLAINTIFF STILL HAS
12 FAILED TO OFFER ANY SORT OF EVIDENCE THAT THEY EXERCISED
13 ANY SORT OF REASONABLE DILIGENCE.

14 THE CASE LAW IS CLEAR THAT THAT IS, KIND
15 OF, THE UNDERLYING THREAD, UNDERLYING ELEMENT THAT IS
16 NECESSARY TO TOLL OR EXTEND THE FIVE YEARS.

17 THE CASE LAW FURTHER EXPLAINS EXACTLY WHAT
18 PLAINTIFF IS TRYING TO ARGUE HERE. PLAINTIFF IS TRYING
19 TO ARGUE THAT THE -- YOU KNOW, THE SAME RATIONALE FOR
20 APPEALING AN INTERLOCUTORY DEATH KNELL APPEAL ALSO
21 APPLIES TO THE FIVE-YEAR IMPOSSIBLE OR IMPRACTICABILITY
22 STANDARD, BUT THE CASE OF REL IS VERY CLEAR AND THAT
23 THAT DOES NOT APPLY.

24 THE FIVE YEARS IS A LENGTHY TIME, AND IT
25 HAS BEEN DEVELOPED TO ACCOUNT FOR THINGS SUCH AS
26 INTERLOCUTORY APPEALS, NORMAL PROCESSES AND PROCEDURES
27 THAT CAN TAKE TIME IN PROSECUTING A CASE.

28 THAT'S WHY THE FIVE-YEAR RULE IS SO

1 BRIGHT-LINE AND MANDATORY, BECAUSE PLAINTIFF SHOULD
2 STILL HAVE TAKEN SOME SORT OF EFFORT TO EITHER CLARIFY
3 THE RECORD OR, YOU KNOW, MAKE SOME SORT OF ATTEMPT AT
4 TRYING TO PROSECUTE THEIR CASE, RATHER THAN SITTING
5 BACK, MAKING -- PUSHING THINGS OUT AND DELAYING THEIR
6 APPEAL FOR MULTIPLE YEARS.

7 THE COURT: ALL RIGHT. THANK YOU.

8 MR. SELESNICK: YOUR HONOR, IF I MAY. TWO POINTS,
9 BRIEFLY.

10 THE COURT: YES.

11 MR. SELESNICK: THE FIRST POINT IS I THINK THAT
12 PLAINTIFF SPENT QUITE A BIT OF TIME TALKING ABOUT THE
13 MERITS WERE THE SAME AND, THEREFORE, IT WAS SOMEHOW
14 IMPRACTICABLE.

15 I THINK THAT'S A NEW ARGUMENT NOT RAISED IN
16 THE BRIEFING, AND SO WE'D OBJECT TO THAT AND SOME OF THE
17 OTHERS THAT THEY RAISED FOR THE FIRST TIME IN ORAL
18 ARGUMENT.

19 THE SECOND THING I THINK IS IMPORTANT TO
20 NOTE IS THAT THERE'S A MISCHARACTERIZATION BY
21 PLAINTIFF'S COUNSEL IN TERMS OF WHAT THE STATUS REPORTS
22 SAY OR DON'T SAY.

23 NONE OF THE STATUS REPORTS IN 2025 MENTION
24 THE FIVE-YEAR AT ALL. AND TO ARGUE THAT -- TO TRY TO
25 ARGUE THAT DEFENDANTS' COUNSEL SOMEHOW AGREED THAT THE
26 ENTIRE CASE WAS STAYED FOR PURPOSES OF THE FIVE-YEAR OR
27 OTHERWISE IS SIMPLY INACCURATE.

28 THE FIVE-YEAR APPEARS NOWHERE. AND THAT'S

1 REALLY THEIR BURDEN. WHAT I DIDN'T HEAR -- WHAT I HEARD
2 WAS THE CASE WAS STAYED AT LEAST AS OF JANUARY 5TH, IF
3 NOT BEFORE.

4 WELL, WHAT DATE WAS IT STAYED? THAT'S
5 THEIR BURDEN THAT THEY HAVE TO SHOW. IT SHOULD NOT
6 BE -- WE SHOULD NOT BE SITTING HERE QUESTIONING IT.

7 THE COURT -- THE COURTS HAVE SAID
8 SPECIFICALLY, STIPULATIONS ARE REALLY THE BEST WAY TO
9 GO. YOU CAN'T JUST MAKE A STIPULATION FROM BASIC STATUS
10 REPORTS. IT'S NOT THE SAME THING.

11 THANK YOU, YOUR HONOR.

12 THE COURT: ALL RIGHT. THANK YOU.

13 IN THIS CASE, ON DECEMBER 10TH, 2021,
14 PLAINTIFF FILED HER MOTION FOR CLASS CERTIFICATION.
15 PLAINTIFF SOUGHT TO BE APPOINTED THE REPRESENTATIVE OF
16 THE CLASS AND THREE SUBCLASSES.

17 THE COURT DENIED THE MOTION FOR CLASS
18 CERTIFICATION ON OCTOBER 7TH, 2022, INCLUDING THAT
19 PLAINTIFF FAILED TO ESTABLISH NECESSARY COMMUNITY OF
20 INTEREST. PLAINTIFF THEN APPEALED.

21 WITH RESPECT TO THE FIRST STATUS CONFERENCE
22 THAT WAS HELD AFTER THE APPEAL WAS TAKEN, THE COURT
23 ENTERED ITS MINUTE ORDER STATING THAT, QUOTE, THE MATTER
24 IS ON APPEAL. THE CASE REMAINS STAYED.

25 BETWEEN JUNE 2023 AND OCTOBER 2024, THE
26 PARTIES SUBMITTED JOINT STIPULATIONS FOUR TIMES,
27 STATING, AMONG OTHER THINGS, THAT THE COURT ORDERED THE
28 CASE STAYED PENDING RESOLUTION OF THE APPEAL.

1 THE COURT OF APPEAL AFFIRMED THE COURT'S
2 RULING WITH RESPECT TO THE CLRA CLAIM, BUT REVERSED THE
3 COURT'S RULING AND REMANDED WITH INSTRUCTIONS TO CERTIFY
4 OTHER CLAIMS.

5 ON JUNE 23, 2025, DEFENDANT DIGNITY FILED
6 THE MOTION TO DISMISS FOR FAILURE TO BRING TO TRIAL
7 WITHIN FIVE YEARS. DEFENDANT RIDGELINE AND VEP JOINED
8 DIGNITY IN BRINGING THE MOTION.

9 DEFENDANTS CONTEND THAT PLAINTIFF'S CASE
10 MUST BE DISMISSED WITH PREJUDICE BECAUSE MORE THAN FIVE
11 YEARS HAVE PASSED SINCE THE COMPLAINT WAS FILED ON
12 JUNE 18TH, 2019. AND NO STATUTORY EXCEPTIONS APPLY TO
13 TOLL THIS MANDATORY DEADLINE.

14 ACCORDING TO DEFENDANTS, AN APPEAL UNDER
15 THE DEATH KNELL DOCTRINE DOES NOT AUTOMATICALLY STAY THE
16 PROCEEDINGS OR SUSPEND THE TRIAL COURT'S JURISDICTION
17 OVER PLAINTIFF'S INDIVIDUAL CLAIMS.

18 DEFENDANTS FURTHER CONTEND THAT BRINGING
19 THE CASE TO TRIAL WAS NOT OTHERWISE IMPOSSIBLE,
20 IMPRACTICABLE, OR FUTILE, CHARACTERIZING PLAINTIFF'S
21 LACK OF ACTION DURING THE APPEAL AS A FAILURE TO
22 EXERCISE THE REQUIRED REASONABLE DILIGENCE IN
23 PROSECUTING HER CASE.

24 FINALLY, DEFENDANTS ASSERT THAT THE
25 FIVE-YEAR DEADLINE WAS NOT EXTENDED BY AGREEMENT, AS
26 THERE WAS NO EXPRESS WRITTEN OR ORAL STIPULATION BETWEEN
27 THE PARTIES TO WAIVE THE DEADLINE.

28 AND NOW PLAINTIFF CONTENDS THAT THE

1 FIVE-YEAR DEADLINE WAS TOLLED FOR THE ENTIRE PERIOD OF
2 HER CLASS CERTIFICATION APPEAL WAS PENDING, AND SEVERAL
3 INDEPENDENT STATUTORY EXCEPTIONS APPLY.

4 FIRST, PLAINTIFF ARGUES THAT THE CASE WAS
5 STAYED BY THE COURT'S JANUARY 5, 2023, ORDER. SECONDLY,
6 PLAINTIFF CONTENDS THAT THE COURT'S JURISDICTION WAS
7 SUSPENDED, POINTING TO DEFENDANTS' OWN PRIOR ADMISSION
8 AND FILING THAT THE COURT LACKED JURISDICTION UNTIL THE
9 APPELLATE REMITTITUR WAS ISSUED.

10 THIRD, PLAINTIFF CONTENDS THAT IN ANY
11 EVENT, IT WAS IMPOSSIBLE, IMPRACTICABLE, AND FUTILE TO
12 PROCEED TO TRIAL ON HER INDIVIDUAL CLAIMS.

13 ACCORDING TO PLAINTIFF, THE PRIOR STAY ON
14 THE MERITS DISCOVERY WAS NEVER LIFTED, AND THE DEATH
15 KNELL DOCTRINE ITSELF RECOGNIZED THE ECONOMIC
16 IMPRACTICALITY OF PROCEEDING ON THE INDIVIDUAL CLAIM.

17 FINALLY, PLAINTIFF ASSERTS THAT MULTIPLE
18 JOINT STIPULATIONS FILED BY THE PARTIES WHICH STATED THE
19 CASE IS CURRENTLY STAYED SERVED AS WRITTEN STIPULATIONS
20 SUFFICIENT TO TOLL THE DEADLINE.

21 UNDER CCP SECTION 583.310, AN ACTION MUST
22 BE BROUGHT TO TRIAL WITHIN FIVE YEARS AFTER IT IS
23 COMMENCED AGAINST THE DEFENDANT.

24 PURSUANT TO CODE OF CIVIL PROCEDURE SECTION
25 583.340, WHEN COMPUTING THE FIVE-YEAR PERIOD, IT HAS
26 EXCLUDED THE TIME DURING WHICH ANY OF THE FOLLOWING
27 CONDITIONS EXISTS: A, THE JURISDICTION OF THE COURT TO
28 TRY THE ACTION WAS SUSPENDED; B, PROSECUTION OR TRIAL OF

1 THE ACTION WAS STAYED OR ENJOINED; AND, C, BRINGING THE
2 ACTION TO TRIAL FOR ANY OTHER REASON WAS IMPOSSIBLE,
3 IMPRACTICABLE, OR FUTILE.

4 IF AN ACTION IS NOT BROUGHT TO TRIAL WITHIN
5 THE PRESCRIBED TIME, DISMISSAL IS MANDATORY BY MOTION OF
6 THE DEFENDANT OR ON THE COURT'S OWN MOTION.

7 DEFENDANTS' MOTION TO DISMISS IS PREDICATED
8 ON THEIR ARGUMENT THAT PLAINTIFF FAILED TO BRING THEIR
9 ACTION TO TRIAL WITHIN FIVE YEARS OF THE COMMENCE -- OF
10 ITS COMMENCEMENT ON JUNE 18TH, 2019.

11 WHILE MORE THAN FIVE YEARS HAS ELAPSED
12 SINCE THE FILING DATE, THE DISPOSITIVE ISSUE IS WHETHER
13 ANY PERIOD WAS TOLLED UNDER ANY OF THE EXCEPTIONS
14 PROVIDED IN CODE OF CIVIL PROCEDURE SECTION 583.340.

15 REGARDING THE ISSUE OF WHETHER THE COURT'S
16 JURISDICTION WAS SUSPENDED DURING THE PLAINTIFF'S
17 APPEAL, PLAINTIFF'S POSITION THAT THE APPEAL DIVESTED
18 THE COURT OF JURISDICTION HAS SOME MERIT.

19 THE LOGIC OF THE DEATH KNELL DOCTRINE WHICH
20 ALLOWS AN IMMEDIATE APPEAL OF A CLASS CERTIFICATION
21 DENIAL IS THAT THE ORDER IS THE PRACTICAL EQUIVALENT OF
22 FINAL JUDGMENT BECAUSE IT OFTEN MAKES IT ECONOMICALLY
23 IMPRUDENT FOR A PLAINTIFF WITH A SMALL INDIVIDUAL CLAIM
24 TO PROCEED.

25 THIS FRAMING WOULD GENERALLY SUPPORT THE
26 ARGUMENT THAT THE ENTIRE ACTION IS EFFECTIVELY PAUSED,
27 SUSPENDING THE TRIAL COURT'S JURISDICTION.

28 CONVERSELY, DEFENDANTS ARGUE THAT A DEATH

1 KNELL APPEAL DOES NOT SOMEHOW AUTOMATICALLY DIVEST THE
2 TRIAL COURT OF FUNDAMENTAL JURISDICTION OVER THE
3 PLAINTIFF'S SURVIVING INDIVIDUAL CLAIMS TO THE COURT.

4 THIS POSITION FINDS SUPPORT IN THE CASE OF
5 REL VERSUS PACIFIC BELL MOBILE, (2019) 33 CAL.APP.5TH
6 882. IN REL, A SIMILAR ARGUMENT TO PLAINTIFF WAS
7 REJECTED.

8 THE COURT REASONED THAT TO EXTEND THE
9 EXCEPTION IN SUCH A WAY WOULD EFFECTIVELY CREATE A FREE
10 PASS ON THE DISMISSAL STATUTE WHENEVER A TRIAL COURT
11 ISSUES A DEATH KNELL ORDER, REGARDLESS OF WHETHER
12 PLAINTIFF HAS BEEN DILIGENT.

13 THE COURT NOTES, HOWEVER, DEFENDANTS'
14 RELIANCE ON THIS LEGAL ARGUMENT IN THIS PARTICULAR
15 INSTANCE -- EXCUSE ME -- IN THIS PARTICULAR INSTANCE IS
16 SOMEWHAT UNDERMINED BY DEFENDANTS' CONDUCT AND PRIOR
17 REPRESENTATIONS TO THE COURT.

18 IN THE JOINT STATUS CONFERENCE REPORT FILED
19 ON AUGUST 4TH, 2024, DEFENDANTS EXPRESSLY REQUESTED THAT
20 A STATUS CONFERENCE BE CONTINUED UNTIL AFTER THE COURT
21 OF APPEAL ISSUES ITS REMITTITUR AND THE SUPERIOR COURT
22 HAS JURISDICTION RETURNED TO IT OVER THIS CASE.

23 DEFENDANTS CITED LAW TO SUPPORT THIS
24 EXPRESS REQUEST, QUOTING GALLENKAMP VERSUS SUPERIOR
25 COURT OF KERN COUNTY, (1990) 221 CAL.APP.3RD 1, WHICH
26 STATES, QUOTE, REMITTITUR TRANSFERS JURISDICTION BACK TO
27 THE SUPERIOR COURT SO THAT IT MAY ACT UPON THE CASE
28 AGAIN, CONSISTENT WITH THE JUDGMENT OF THE REVIEWING

1 COURT, CLOSED QUOTE.

2 DEFENDANTS NOW EFFECTIVELY ADOPT THE
3 OPPOSITE POSITION IN A CASE DISPOSITIVE MOTION. THE
4 COURT FINDS A REVERSAL OF THIS POSITION CONCERNING.
5 NEVERTHELESS, THE FIVE-YEAR PERIOD WAS TOLLED BECAUSE
6 THE PROSECUTION OF THE ACTION WAS STAYED UNDER CCP
7 ACTION 583.340, SUBDIVISION (B).

8 ON JANUARY 5, 2023, THE COURT ISSUED A
9 MINUTE ORDER DIRECTLY STATING, "THE MATTER IS ON APPEAL,
10 CASE REMAINS STAYED." THE PARTIES THEREAFTER REPEATEDLY
11 ACKNOWLEDGED THIS STAY IN NO LESS THAN FOUR SEPARATE
12 JOINT STIPULATIONS FILED WITH THE COURT, EACH AFFIRMING
13 THAT THE COURT HAD ORDERED THIS CASE STAYED PENDING
14 RESOLUTION OF THE APPEAL.

15 THE APPEAL WAS PENDING FROM THE FILING OF
16 THE NOTICE OF APPEAL ON DECEMBER 2, 2022, UNTIL THE
17 REMITTITUR WAS ISSUED ON FEBRUARY 6TH, 2025, A PERIOD OF
18 797 DAYS.

19 EVEN IF CALCULATIONS WERE MADE FROM
20 JANUARY 5, 2023, THE DATE OF THE COURT'S ORDER, THAT
21 BRINGS THE TOTAL TO 763 DAYS.

22 EXCLUDING THIS PERIOD OF THE STAY, THE
23 ACTION IS WELL WITHIN THE FIVE-YEAR DEADLINE FOR
24 BRINGING THE CASE TO TRIAL.

25 I DO NOTE THAT IF THE STAY PERIOD IS
26 EXCLUDED, THE CASE WOULD BE APPROXIMATELY FOUR YEARS AND
27 60 DAYS OLD AS OF SEPTEMBER 17TH.

28 MOREOVER, BRINGING THE ACTION TO TRIAL

1 DURING THE PENDENCY OF THE APPEAL WAS IMPOSSIBLE,
2 IMPRACTICABLE, OR FUTILE UNDER SECTION 583.340,
3 SUBDIVISION (C).

4 ALTHOUGH, SIGNIFICANTLY, A PRIOR ORDER OF
5 THE COURT STAYING DISCOVERY ON THE MERITS OF PLAINTIFF'S
6 INDIVIDUAL CLAIMS WAS NEVER LIFTED DURING THE APPEAL,
7 THE COURT'S ORDER OF MARCH 4, 2020, SPECIFIED THAT
8 DISCOVERY WAS OPEN BUT LIMITED TO CLASS ACTION ISSUES
9 ONLY.

10 PLAINTIFF WAS, THEREAFTER, EFFECTIVELY
11 BARRED FROM CONDUCTING NECESSARY DISCOVERY TO PREPARE
12 HER INDIVIDUAL CLAIM FOR TRIAL, RENDERING PROSECUTION
13 IMPOSSIBLE.

14 FURTHERMORE, THE VERY PURPOSE OF THE DEATH
15 NELL DOCTRINE IS A JUDICIAL RECOGNITION. AND IT IS
16 ECONOMICALLY IMPRACTICABLE AND FUTILE TO EXPECT A
17 PLAINTIFF WITH A SMALL INDIVIDUAL CLAIM -- IN THIS CASE,
18 \$620.84 -- TO PROCEED TO TRIAL WHILE THE FATE OF THE FAR
19 MORE SIGNIFICANT CLASS ACTION REMAINS UNRESOLVED ON
20 APPEAL.

21 HAD THEY PROCEEDED ON THE INDIVIDUAL CLAIM
22 ALONE, IT WOULD HAVE BEEN AN INEFFICIENT USE OF PARTY
23 AND JUDICIAL RESOURCES.

24 FOR THIS REASON, THE TIME DURING WHICH THE
25 APPEAL WAS PENDING MUST BE EXCLUDED FROM THE FIVE-YEAR
26 CALCULATION.

27 SO BASED UPON ALL THE FOREGOING, THE COURT
28 WILL DENY THE MOTION TO DISMISS FOR FAILURE TO BRING THE

1 CASE TO TRIAL WITHIN FIVE YEARS.

2 I'M GOING TO ORDER THE PARTIES TO MEET AND
3 CONFER IN PREPARATION FOR THE NEXT STATUS CONFERENCE.
4 AND WE'LL SET A DATE -- SET OUR NEXT STATUS CONFERENCE
5 FOR OCTOBER 6TH, AT 10:00 A.M.

6 AND I ORDER THE PARTIES TO MEET AND CONFER
7 AND SUBMIT A JOINT REPORT NO LATER THAN SEPTEMBER 29TH,
8 WHICH WILL SET FORTH A SCHEDULE FOR PROCEEDING FORWARD.

9 I WOULD ASK THE PARTIES TO MEET AND CONFER
10 WITH RESPECT TO SEE IF YOU CAN AGREE ON A TRIAL DATE AND
11 A FINAL STATUS CONFERENCE DATE, ALSO TO AGREE UPON --
12 SEE IF YOU CAN AGREE UPON AN EXACT DATE WHEN THE
13 FIVE-YEAR STATUTE WOULD RUN, ASSUMING THE STAY PERIOD.

14 I KNOW DEFENDANTS ARE NOT GOING TO AGREE TO
15 STIPULATE, BUT SEE IF YOU CAN AGREE, BASED UPON THE
16 COURT'S RULING, AS TO THE EXACT DATE WHEN THE FIVE-YEAR
17 STATUTE WOULD RUN.

18 ALSO, ASK THE PARTIES TO SEE IF YOU CAN
19 AGREE ON A SCHEDULE OF ALL THE OTHER PRETRIAL
20 PROCEDURES, AND THAT IS THE DEADLINE DATE FOR COMPLETION
21 OF ALL DISCOVERY, COMPLETION OF EXPERT DISCOVERY,
22 DEADLINE FOR THE SUBMISSION OF THE TRIAL PAPERS.

23 AND WE'LL DISCUSS ALL THOSE DATES AT THE
24 NEXT HEARING ON OCTOBER 6TH. I ORDER PLAINTIFF TO GIVE
25 NOTICE AND POST IT ON THE WEBSITE.

26 THANK YOU, COUNSEL. HAVE A GOOD WEEK.

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28 (THE PROCEEDINGS ARE CONCLUDED AT 11:57 A.M.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT SSC 6 HON. ELIHU M. BERLE, JUDGE
KANA LIU, ET AL.,)
)
PLAINTIFF,)
)
VS.) CASE NO. 19STCV21296
)
DIGNITY HEALTH, ET AL.,)
)
DEFENDANTS.) REPORTER'S CERTIFICATE
_____)

I, VIENNA NGUYEN, OFFICIAL REPORTER PRO
TEMPORE OF THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY
CERTIFY THAT THE FOREGOING PAGES, 4 THROUGH 32, COMPRISE
A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS
AND TESTIMONY TAKEN IN THE ABOVE-ENTITLED CAUSE ON
SEPTEMBER 22, 2025.

DATED THIS 29TH DAY OF SEPTEMBER, 2025.

VIENNA NGUYEN, CSR NO. 13137
OFFICIAL REPORTER PRO TEMPORE

[1 - action]

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