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TO THE HONORABLE JUSTICES OF THE COURT OF APPEAL,  
SECOND APPELLATE DISTRICT:

Michelle Hoffman (at times “Michelle”), as Real Party in Interest, respectfully opposes the Petition for Writ of Mandate and/or Prohibition (“Petition for Writ”) of Robert Rauchhaus (“Petitioner”) directed to the Respondent Superior Court of Los Angeles County, directing it to rescind its Order denying Petitioner’s request for authority to consent to treatment of Conservatee and Real Party in Interest with psychotropic medications *against her will* and by this verified Preliminary Opposition alleges:

### INTRODUCTION

Counsel for Petitioner, a well-known crusader for elders and conservatees, and Petitioner, have orchestrated this matter so as to obtain by judicial fiat that which the Legislature has refused to do.

The Petition for Writ seeks to expand the boundaries of a Probate Conservator’s medication administration powers far beyond the carefully legislated limits, and, more ominously, would create a conservator with greater powers than previously allowed by the Legislature. Petitioner’s claim that Probate Code sections 2356, 2356.5, and 2357, as amended in 1990, were trimmed and tailored intentionally to silently permit the administration of involuntary mental health treatment is fundamentally flawed. The assertions of a dire constitutional crisis are more than overblown, they are nearly

hysterical. Furthermore, the current situation of Michelle Hoffman simply does not rise to the level of risk that is depicted in the Petition for Writ. For these reasons, and the others as set forth below, the Petition for Writ should be denied.

Michelle acknowledges the good intentions of Petitioner in this action, but in his zeal to do good, he is attempting to deprive her of her rights without cause and is using her to improperly expand existing law far beyond its legislated boundaries.

### **OPPOSITION TO PETITION FOR WRIT**

Respondent opposes the Petition for Writ on the following grounds:

1. The administration of involuntary psychotropic medications is only available to conservators for persons diagnosed with dementia under Probate Code section 2356.5. Michelle does not suffer from dementia.
2. Only the Mental Health Court in a Lanterman-Petris-Short (“LPS”) proceeding has the authority, under Welfare and Institutions Code sections 5000 *et seq.*, to compel adults who are not clinically demented to take psychotropic medications against their will. There is no authority in the Probate Code for the involuntary administration of psychotropic medications to persons who have not been diagnosed with dementia.
3. Involuntary medication power, even if recognized in the Probate

Code, would be unworkable and unenforceable. Such a power is meaningless without a corresponding involuntary placement power, since the conservatee will always have the right to leave before the administration of the medication. Probate Code section 2356(a) specifically prohibits involuntary placement.

4. Petitioner's reliance on LRC Memorandum 1989-097 and related papers is misleading. Nowhere in Probate Code section 2357 is there authority to administer involuntary mental health treatment. There is no such power in the Probate Code, except as carved out for those conservatees diagnosed with dementia.
5. Unlike the Probate Court, the Mental Health Court has extensive procedural protections in place to safeguard the rights of conservatees who are subject to the involuntary administration of psychotropic medications.
6. The massive leap in application envisioned by the Petition for Writ is a matter for the Legislature, not the courts, to enact. If the Petition for Writ is granted, enormous changes will be wrought on the Probate Court system, and on the rights of its conservatees.
7. The Court cannot allow the creation of a new type of Probate Conservator, one who will actually have more power than even an

LPS Conservator. This new type of Probate Conservator will be able to involuntarily administer psychotropic medications without any of the LPS safeguards and without any further court order.

8. Michelle was under an LPS Conservatorship in Orange County from September 20, 2007 through January 12, 2009. The Orange County Superior Court terminated the LPS Conservatorship proceeding on January 12, 2009, finding that it was no longer required. It is no coincidence that the very next day, January 13, 2009, Petitioner's counsel Marc B. Hankin filed declarations in support of adding involuntary medication authority to Michelle's preexisting Probate Conservatorship. See Petitioner's **Exhibit 19**. Obviously, Petitioner was trying to make an end run around the fact that Michelle had been released from her LPS Conservatorship, and attempting to artificially and wrongfully expand the Probate Code to include the power to involuntarily medicate conservatees who have not been diagnosed with dementia. This is the very power that had been lost with the termination of Michelle's LPS Conservatorship.
9. Michelle is not in danger of permanent and irreparable harm. She is not gravely disabled, nor is she a danger to herself or to others. Allegations to that effect are in part based on inadequate and/or

inadmissible allegations and hearsay. The transcripts Petitioner provides in his exhibits clearly show that Michelle is NOT a risk to herself or others, and that she can provide for herself.

10. Due Process is fully satisfied under current laws. The Probate Code does not work an absolute prohibition on a purported fundamental right to be involuntarily medicated.
11. Petitioner's Equal Protection argument fails because it is nonsensical to argue that Michelle and LPS Conservatees are similarly situated, and that by not rising to the level of LPS Conservation Michelle, or those like her, is denied equal protection.
12. Michelle Hoffman consented to the appointment of Petitioner as her Conservator with the express directive that he would consult her insofar as all Medical Decision making was concerned. This Petition for Writ violates that agreement as it was apparently made without consultation, and is against her stated wishes. It is therefore, in violation the Order of the Court which memorialized said agreement, and appointed the Conservator in the first place.
13. Petitioner does in fact have a "plain, speedy and adequate remedy" open to him. He need merely reactivate the mental health court process by contacting the Department of Mental Health's Psychiatric

Mobile Response Team (PMRT) or the Psychiatric Emergency Team (PET) and seeking to have Michelle taken into custody on a Welfare and Institutions Code section 5150 three day assessment hold. Both these teams are fully empowered under Welfare and Institutions Code sections 5150 and 5585 to take that step. If further assistance is required, the County Sheriff's Mental Evaluation Team (MET) can be summoned. Petitioner has all these options.

14. Petitioner's admittedly good faith attempt to protect Michelle by forcing her to take psychotropic medications against her will under the aegis of the Probate Code will open the flood gates to the Probate Court. Should the law be twisted to meet Petitioner's ends, tens of thousands of homeless individuals will be brought into the Probate Courts, which are designed to administer incapacity and dementia conservatorships, not complex mental health litigation under the LPS Act or to order involuntary medication.

#### **STATEMENT OF ADDITIONAL FACTS**

Michelle Hoffman is a forty three year old woman who lives on the streets of, at the present time, Torrance. She is homeless. She is filthy. She smells bad. She eats from garbage cans. She hears voices. She talks to herself. And she believes she is personally directed in all of this by God.

However, Michelle has *chosen* this existence.

In California, unless persons present a danger to themselves, to the public or are gravely disabled, as defined under Welfare and Institutions Code section 5008(h), people like Michelle have a right to be eccentric, to live in risky situations, to eschew traditional existence for the transience of the open road, to eat unhealthily, and to sacrifice their own hygiene.

Should a person like Michelle's exhibit behavior indicative of grave disability, or self or public endangerment, then the mental health system has the power to intervene under Welfare and Institutions Code sections 5000, *et seq*, with all the procedural protections which the Legislature in its wisdom has enacted to protect such persons.

In Michelle's case, that happened in September of 2007 in Orange County, *see In the Matter of the Conservatorship of the Person and Estate of Michelle Hoffman*, A-245136 LPS. She was taken into custody on what is known as a Welfare and Institutions Section 5150 three day hold. This was ultimately converted into an LPS Conservatorship under Section 5350. However, after a year, the Orange County Superior Court found that she was ready to reenter society. On January 12, 2009, by specific order of the Court, the conservatorship was terminated. See page 1 of the January 12, 2009 Order of the Orange County Superior Court, attached hereto as **Exhibit 1**.

After the termination of the LPS Conservatorship, Michelle drifted northward to her old haunt Alpine Village, a German food and entertainment complex in Torrance.

Here she set up camp, sleeping outdoors, scrounging for food in waste cans, loitering, talking to herself. Here she lives today.

Most, if not all, of us would find this sort of existence both repulsive and frightening. Yet, again, it is Michelle's choice.

**The Mental Health Court found that Michelle does not present a current danger to herself or to others. That same court also found that she is not gravely disabled.**

Petitioner's assertions of suicidal or recklessly self-endangering behavior are both stale and unsubstantiated. He cites an incident where Michelle purportedly imbibed laundry detergent (see Petitioner's **Exhibit 3**, specifically Dr. David Trader's Report), but no admissible, competent evidence was submitted to support that claim. Discussion was also had as to an episode in 2005 where Michelle is alleged to have swam out to sea and been picked up by the Coast Guard (see Petitioner's **Exhibit 1**, specifically Dr. Robert Neshkes's Report). However, when it happened, and the actual report of this incident were never introduced. No testimony was taken from a percipient witness.

The Probate Court denied Petitioner's petition for Exclusive Authority under Probate Code section 2357 to administer psychotropic medications in January of this year. Thus, four months have passed, without apparent incident. Furthermore, there have been no such endangering incidents for over three years.

It is obvious that Michelle simply does not present a present danger to herself or

others, and is not gravely disabled. See pages 7 and 8 of Petitioner's **Exhibit 7**, a Court Transcript dated January 8, 2007, predating the successful LPS action on September 20, 2007. In his testimony, Mr. Borden repeatedly underscored Michelle's rational, albeit eccentric, behavior, and stated that "[s]he made sense."

WHEREFORE, Real Party in Interest prays that the Court:

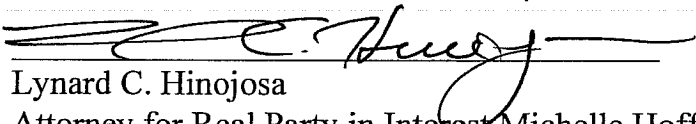
1. Deny the Petition for Peremptory Writ of Mandate and/or Prohibition of Petitioner Robert Rauchhaus;
3. Grant Real Party in Interest such other and further relief the Court may deem just and proper.

RESPECTFULLY SUBMITTED,

Dated: May 8, 2009

HINOJOSA & WALLET

By:

  
Lynard C. Hinojosa

Attorney for Real Party in Interest Michelle Hoffman

VERIFICATION OF COUNSEL

I, Lynard C. Hinojosa, declare:

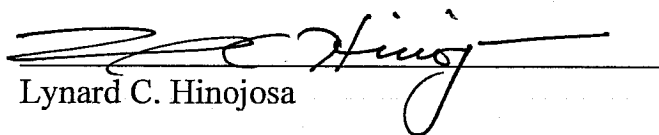
I am an attorney at law licensed to practice in the State of California, and I am counsel for Real Party in Interest and Opponent Michelle Hoffman.

I make this verification as attorney for Petitioner because I am more familiar with the proceedings in this action and the facts alleged herein than is Real Party in Interest and Opponent. The facts set forth herein are within my personal knowledge.

I have read the foregoing Preliminary Opposition and know the contents thereof. The allegations thereof are true and correct to my knowledge.

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

Verification was executed on this 8 th day of May 2009 at Los Angeles, California

  
Lynard C. Hinojosa

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### Introduction

Despite the length of Petitioner's Petition for Writ, and the massive number of authorities he cites, the issues in this dispute are straightforward. This memorandum shall examine those issues each in turn.

### II.

#### The Authority to Administer Involuntary Psychotropic Medication is only Available to Probate Conservators when the Conservatee has been Diagnosed with Dementia

Probate Code section 2356.5 provides the *only* method for the involuntary administration of psychotropic medications available in a Probate Conservatorship. It clearly and unequivocally requires that such psychotropic medications are available only for conservatees diagnosed with Dementia. In short, the Legislature has determined that with such powerful psychotropic drugs, the Probate Court is limited in its ability to force such medications upon a conservatee.

Section 2356.5(3) reads as follows “. . . it is the intent of the Legislature to recognize that the administration of psychotropic medications has been, and can be, abused by caregivers and, therefore, granting powers to a conservator to authorize these medications for the treatment of dementia requires the protections specified in this

section.”

One possible interpretation of this statute is that psychotropic medications authority may be invested in any conservator, but if the conservatee has dementia special safeguards are required. In this view, a standard conservator, with basic section 2355 powers, would have the authority to administer psychotropic medications without further empowerment so as long as the conservatee did not have dementia. This view presumes that it is the victimization of the demented by their caregivers that is the basis for section 2356.5. It relies heavily on section 2356.5(k), which reads “[n]othing in this section shall affect current law regarding the power of the Probate Court to fix the residence of a conservatee or to authorize medical treatment for any conservatee who has not been determined to have dementia.”

However, this interpretation is clearly erroneous. Section 2356.5(a)(2) reads “. . . by *adding* powers to the Probate Conservatorship for people with dementia, their unique and special needs can be met. This will reduce costs to the conservatee and the family of the conservatee, reduce costly administration by state and county government, and safeguard the basic dignity and rights of the conservatee.” [emphasis added]

Thus, section 2356.5 *adds* powers to the standard section 2355 authorities. It *adds* the power to administer psychotropic medications for those conservatees diagnosed with dementia. Subsection (a)(2) makes it clear that by adding this power, the conservator, the conservatee, the conservatee’s family, and the state could avoid the costs of an LPS

Conservatorship.

Clearly, section 2356.5 is the only venue for the authorization of administration of psychotropic medications in the Probate Code and it is available only for those conservatees with dementia, as defined in the last published edition of the Diagnostic and Statistical Manual of Mental Disorders, per section 2356.5(b)(1).

### III.

#### Only the Mental Health Court has Authority to Order the Involuntary Administration of Psychotropic Medications to Adults Who Are Not Clinically Demented

The Legislature has enacted the Lanterman-Petris-Short Act as the only vehicle for the involuntary administration of psychotropic medications for adults who do not suffer from Dementia. These individuals must be under an LPS Conservatorship for that to occur. Section 5358(b) specifically endows an LPS Conservator of the person with the authority to administer *any medication necessary* to prevent the recurrence of the conservatee's grave disability. Even that significant authority is restricted, which shall be shown further in this Memorandum's discussion of *Riese* petitions.

### IV.

#### Involuntary Medication Power is Meaningless without a Corresponding Power to Involuntarily Place

Petitioner fails to grasp the practical reality that, in Ms. Hoffman's case, without involuntary placement power, which is strictly forbidden in Probate Conservatorships

under Probate Code section 2356(a), an order to administer involuntary psychotropic medications is meaningless and unenforceable. There is no reasonable and legal scenario where it could be effective because the Probate Court lacks the authority to involuntarily place a non-demented conservatee. Ms. Hoffman will simply leave before any medications are administered. The Probate Conservator will be powerless to stop her from going..

Judge Aviva K. Bobb references this inescapable reality on page 20 of Petitioner's **Exhibit 7**. She concludes that what Petitioner is really looking for is restricted placement, to which Petitioner's counsel agrees. Petitioner recognized the inherent flaw to his reasoning, and attempted to avoid it by asking for involuntary placement, which is prohibited under Probate Code section 2356(a).

V.

Petitioner's Reliance on LRC Memorandum 1989-097 and Related Papers is Misplaced.

Probate Code section 2357 Does Not Provide Probate Conservators with Involuntary  
Mental Health Treatment Authority

Petitioner makes much of an exchange between Ms. Tam, Deputy County Counsel, Alameda County, and the Law Revisions Commission. In a letter to the LRC, Ms. Tam indicates that it is her belief that a restriction on the application of section 2357, the section of the Probate Code which authorizes additional medical administration powers, making involuntary mental health treatment impermissible, would result in an anomaly

whereby “wards and conservatees who do not meet the stringent LPS standards would not be treatable.” See page 22 of Petition for Writ.

Yet the subsequent cover letter to the Legislature and the Governor from the Law Revision Commission (page 23 of the Petition for Writ) makes no mention whatsoever of any authority to administer involuntary mental health treatment, and no such language exists in Probate Code sections 2356 or 2357.

In actuality, had the Legislature wanted Probate Conservators to have the power to administer involuntary mental health treatment to Conservatees, they would have stated that power clearly in the text of the Code. The idea that by operation of an omission, the Legislature wanted to grant Probate Conservators the power to involuntarily medicate conservatees is ludicrous. Authority of that magnitude would wildly increase the power of the conservator, and require far greater scrutiny on the part of the Probate Court. New protocols would have had to be put in place. Probate judges would have had to be educated on *Riese* Petitions, and on the intricacies of mental health law.

It is simply beyond belief that such an interpretation of the removal of that language was intended by the Legislature.

## VI.

### LPS Conservatorships are Subject to Extensive Procedural Protections

LPS Conservatorships are subject to an extensive array of procedural safeguards. They are subject to a mandatory one year renewal period (Welfare and Institutions Code

section. 5361). They must be established using a *beyond a reasonable doubt* burden of proof (Conservatorship of Roulet (1979) 23 Cal.3d 219). Proposed LPS Conservatees are defended by the County's Public Defender. Most importantly, in respect to the involuntary administration of psychotropic medications, they are subject to an added layer of judicial oversight in the form of a *Riese* petition (Riese v. St. Mary's Hosp. & Med. Ctr (1987) 209 Cal.3d 1303). The *Riese* case held that in the event an LPS Conservatee refuses the administration of any medication, including psychotropic drugs, he has a right to an additional evidentiary hearing to determine if he has the capacity to refuse treatment.

Despite what Petitioner has argued, the LPS Conservatorship process is designed not to *deny* access to needy people, but to *ensure* their protection.

## VII.

### The Issue Presented by the Petition for Writ is a Matter for the Legislature, not the Courts

The Petition for Writ asks that this Court read into the law two specific Probate Conservatorship powers that are not authorized by the Probate Code: 1) that Probate Conservators have the authority to administer psychotropic medications to conservatees who have not been diagnosed with dementia and 2) that Probate Conservators have the authority to forcibly administer mental health treatment, including psychotropic medications, on an unwilling conservatee. It is up to the Legislature to decide whether to amend the law; it is not the role of the courts to re-write it. (Venegas v. County of Los

Angeles, 153 Cal.App.4th 1230).

Judge Aviva K. Bobb emphasizes this point on page 18 of Petitioner's **Exhibit 7**. She states (to Petitioner's counsel) "You need to go to the Legislature. And if they want to fill this gap, you need to get them to fill this gap."

## VIII.

### Court Cannot Allow the Creation of Probate Conservators with More Powers than LPS Conservators

The Court cannot allow the Petition for Writ to create a Probate Conservator who has more power than even an LPS Conservator. As stated above, an LPS Conservator cannot compel a noncompliant conservatee to accept the administration of psychotropic medications. He or she must first obtain a *Riese* order. The Petition for Writ asks that this Court create Probate Conservator who would be subject to no such restrictions and would, in essence, be a law unto himself. The only real restriction that would apply to Writ-mandated Probate Conservator would be the prohibition on experimental drugs (see Probate Code section 2356(b)).

## IX.

### Petitioner's Legal Remedies Not Exhausted

Michelle Hoffman was under LPS Conservatorship from September 20, 2007 through January 12, 2009. See Orange County LPS Conservatorship case A-245136. The LPS Conservatorship was terminated by order of the Court. Ms. Hoffman was present at

the hearing on the termination. She did not flee the jurisdiction or otherwise evade the court's process.

The LPS Conservatorship system worked as it was intended. However, the Petitioner was not satisfied. His Petition for Writ is merely an attempt to undo that decision. The Probate Court cannot act in the Mental Health Court's place. The order made by Judge Aviva K. Bobb on January 27, 2009 does not exhaust Petitioner's remedies. Petitioner had no chance of having the desired involuntary medication power awarded to him by the Probate Court. The Probate Court simply does not have the authority. Petitioner has not, therefore, exhausted his legal remedies. His existing legal remedy is to attempt to have Ms Hoffman taken into custody on a Welfare and Institutions sec. 5150 three day psychiatric hold, and then try again to establish an LPS Conservatorship.

X.

Michelle Hoffman's Situation Does Not Warrant Involuntary Mental Health Intervention

Michelle Hoffman's condition is not life-endangering or nor does it result in a serious threat to her physical or mental health. Proper and legally adequate proof was not made to the trial court of the allegations of attempted suicide, or life-endangering conduct (swimming out to sea, drinking detergent). Evidence was not admitted. Testimony as to the facts was not taken. Moreover, even if those events did happen, they were at least three years ago. In the interim, Ms. Hoffman has been released by Court Order from an

LPS Conservatorship. That Court found Michelle was not gravely disabled, a danger to herself, or a danger to others.

## XI.

### Due Process is Fully Satisfied under Current Laws

It is ironic for Petitioner to argue that by Michelle being forced to take psychotropic medications against her will, her due process rights are upheld.

Petitioner states at page 38 of his Petition for Writ that “[t]he blanket prohibition on the conservator’s authority to even seek psychotropic medication is in itself the denial of a fundamental right to medical care inhering in the incompetent conservator.” This is a fundamental mischaracterization of current California law as it applies to Michelle and to the general populace. Petitioner, as Conservator, does indeed have the authority to seek psychotropic medications. He may do so by triggering the LPS Conservatorship process. (Welfare and Institutions Code sections 5150, et seq.). Petitioner argues that because the higher evidentiary standard in LPS Conservatorships makes it more difficult to prove the need for involuntary medication and/or placement, that avenue unavailable to him. This is simply not so. The Department of Mental Health’s Psychiatric Mobile Response Team (PMRT) or the Psychiatric Emergency Team (PET) may be contacted by private parties, such as Petitioner, at any time. They will immediately interview the endangered individual and determine whether protective intervention is required. The higher burden of proof required in LPS Conservatorships is fully in keeping with the notion that to

forcibly restrain an individual, and, if necessary, administer medications to him or her against his or her will, requires proof to the highest degree. To allow it with laxer standards, especially by private, albeit court-supervised Probate Conservators, presents a slippery slope and opens the door to abuse.

Thus, it cannot be seriously contended that there is an absolute prohibition of Petitioner's right to seek the administration of involuntary psychotropic medications. There *is* such a right. It may be exerted at any time. Petitioner's problem is that he did in fact assert it, and the Mental Health Court did not find a sufficiency of evidence to continue enforced treatment. That is the heart of Petitioner's dilemma. It has nothing to do with due process.

It follows, therefore, that there is no restriction imposed on Michelle's fundamental right of access to medical care by the current Probate Code. The Probate Code, by not providing authority to her Conservator to medicate her against her will, does not impose an absolute prohibition on her fundamental right. That right, the right to be overruled and compelled to take drugs against her will, is readily available in an LPS Conservatorship.

In fact, Michelle's due process would be violated by the type of order being sought by the Petitioner.

## XII.

### Equal Protection Argument Fails Since Michelle and LPS Conservatees are not Similarly Situated

As Petitioner states on page 47 of his Petition for Writ “The threshold inquiry in evaluating an equal protection claim is . . . ‘to determine whether a person is similarly situated to those persons who allegedly received favorable treatment.’” (Women Prisoners of District of Columbia v. District of Columbia (D.C. Cir. 1996) 93 F.3d 910, 924.)

Here, Petitioner alleges, ironically, that those receiving favorable treatment are those individuals lucky enough to be under LPS Conservatorship. Thus, Michelle, not so lucky, but, in Petitioner’s opinion *similarly situated*, is not afforded equal protection.

This position suffers from one central misapprehension: Michelle is not similarly situated to those individuals under LPS Conservatorship. It is true that she has been deemed to lack medical consent capacity (see page 2 of Petitioner’s **Exhibit 10**). It is true that allegations have been made about the propriety and riskiness of her lifestyle. But, again, the mental health court released her from its LPS Conservatorship less than four months ago. Michelle does have significant mental issues. But no admissible proof has been entered into the Probate Court’s record about any current self-endangering actions on her part, or an inability to provide for herself. The truth is Michelle can provide for herself. She has survived for almost four months since her release from the LPS Conservatorship.

On page 47 of his Petition for Writ, Petitioner asserts that “[i]f clear and convincing evidence indicates that the welfare of the individual requires mental treatment, then why should that care be denied to a Probate Conservatee but not to an LPS Conservatee simply because of an “illusory” refusal by a probate patient having no more competence than an LPS Conservatee?”

There are several major misstatements in this passage. First, Michelle’s refusal is not illusory. On page 2 of Petitioner’s **Exhibit 15**, Michelle states “Well, I would like to have as much say over my body as possible. I believe that I know what it feels like to be in my body, and I wouldn’t like to give that up.” This statement indicates awareness and a level of self-comprehension.

On that same page, Mr. Hankin (Petitioner’s counsel) states “Yes, your Honor. My client would be amenable to an inclusion of the order saying that he is directed to do, which he would do anyway, which is to honor her wishes, except to the extent that his fiduciary duties direct him to do otherwise.”

Finally, on the same page, the Court states “I think that is a good idea. So what I’m really going to indicate is that, I’m going to make a finding that Ms. Hoffman lacks capacity; however, I’m also going to make the order that he make no decisions without consultation with Ms. Hoffman and that he follow her wishes to the total extent possible that he can.”

This exchange amply illustrates the reality of Michelle’s condition, She is by no

means incapable of understanding the gravity of her situation. She knowingly agreed to the Probate Conservatorship, so long as the Conservator consulted her about his decisions.

Michelle is not similarly situated to LPS Conservatees because she is not gravely disabled, nor is she a danger to herself or others. She *is* similar to them in that she suffers from some form of mental illness. But that does mean that she is denied equal protection by the fact that they are fortunate enough to be involuntarily confined or medicated against their wills, and she is not. It simply means, despite Petitioner's contentions to the contrary, that her conditions do not rise to that level.

Thus, the cases Petitioner cites about justifying unequal treatment for similarly situated individuals do not apply.

Petitioner cites Brown v. Merlo (1973) 8 Cal.3d 855, 861. in respect to the fact that a legislative classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstances shall be treated alike." Here, this would presumably apply to the differential in treatment between Probate Conservatees and LPS Conservatees. There is nothing unequal in this treatment. The distinction between Probate and LPS Conservatorships is one of degree. It is not accurate to say that the conservatees are the same, simply subject to different rules of evidence and levels of medical authority. That profoundly misstates the situation. Probate Conservatorships, as defined in Probate

Code sections 1800, et seq., are in place for individuals “who cannot provide for [their] own needs for physical health, food and shelter” (section 1821(a)(1)) and “who cannot manage [their] own financial resources or [are unable] to resist fraud or undue influence” (section 1821(a)(5)). LPS Conservatorships are in place for individuals who present a danger to themselves, to the public or are gravely disabled (Welfare and Institutions Code section. 5008(h)).

### XIII.

#### Petition for Writ Violates Probate Order

Michelle Hoffman consented to the appointment of Petitioner as her Conservator with the express directive that he would consult her insofar as all medical decision making was concerned (see page 2 of Petitioner’s **Exhibit 15**). This Petition for Writ violates that Order as it is made without consultation and is against her stated wishes.

### XIV.

#### Issuance of Writ Will Open Flood Gates

Petitioner’s admittedly good faith attempt to protect Michelle by forcing her to take psychotropic medications against her will under the aegis of the Probate Code will open the flood gates on the Probate Court. This is not hyperbole. Every day, dozens of mental health patients are released from LPS Conservatorships. It is not unreasonable to assume that, should the Petition for Writ be granted, many of these individuals will appear in the Probate Court. They will be hauled in by family members, with the best

intentions, hoping to obtain involuntary medication authority using the Probate Court's more relaxed evidentiary standards. The Probate Court is not designed for a) that sort of volume, and b) that sort of clientele. The result could be the paralysis of the entire system. At the very least, should the State of California wish to enact a sweeping change like that envisioned by the Petition for Writ, said change should be, as argued above, made by the Legislature, not imposed by judicial fiat.

XV.

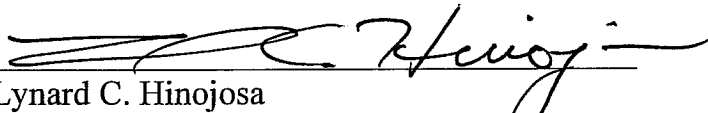
CONCLUSION

For the foregoing reasons, Real Party in Interest Michelle Hoffman submits that this Court should deny Petitioner's Petition for Writ of Mandate and/or Prohibition.

RESPECTFULLY SUBMITTED,

Dated: May 8, 2009 HINOJOSA & WALLET

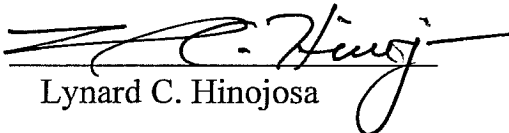
By:

  
Lynard C. Hinojosa  
Attorney for Real Party in Interest Michelle Hoffman

CERTIFICATE OF COMPLIANCE

Counsel hereby certifies that pursuant to Rule 8.204 of the California Rules of Court, the enclosed Preliminary Opposition is produced in 13 point Roman type and contains approximately 5292 words, which is less than the 14,000 words permitted by the Rule. Counsel relies on the word count of the program used to prepare this Preliminary Opposition.

Dated: May 8, 2009

  
Lynard C. Hinojosa