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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ORANGE – FULLERTON
11

12 WAYNE WOLFF, Individually, and LISA
WOLFF, Individually,

13 Plaintiffs,
14

15 vs.

16 REGENTS OF THE UNIVERSITY OF
17 CALIFORNIA, a California Entity; DEAN
WANG, MD (originally named as Defendant
18 DOE 1), and DOES 2 through 100, Inclusive,

19 Defendants.
20
21
22
23
24

Case No. 30-2025-01459654-CU-MM-NJC

Assigned to: Judge: Scott A. Steiner, Dept. N-18

**PLAINTIFFS' MOTION FOR TERMINATING,
ISSUE, EVIDENTIARY, AND MONETARY
SANCTIONS FOR INTENTIONAL
SPOILIATION/ DESTRUCTION OF
EVIDENCE, DISCOVERY ABUSE, AND
CONCEALMENT, BY DEFENDANT
REGENTS OF THE UNIVERSITY OF
CALIFORNIA; DECLARATION OF PATRICK
B. EMBREY**

Complaint Filed: February 11, 2025
1st Amended Complaint

Filed: August 20, 2025

Trial Date: June 29, 2026

Hearing

Date: April 22, 2026

(unless earlier date is available)

Time: 10:00 a.m.

Dept.: N18

25 TO THE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD,
26 PLEASE TAKE NOTICE that on April 22, 2026 at 10:00 a.m., in Department N18 of the above entitled
27 court (unless earlier date is otherwise obtained), located at 1275 North Berkeley Avenue, Fullerton,
28 California 92832, Plaintiffs will and hereby do move the Court for terminating, issue, evidentiary,

1 monetary, and additional appropriate sanctions against Defendant Regents of the University of
2 California (hereinafter “REGENTS”), for **spoliation and destruction of key evidence after litigation**
3 **was reasonably foreseeable**, and for further discovery abuse, by REGENTS’ personnel (including those
4 at the University of California, Irvine, Medical Center (hereinafter referred to as “UCIMC”)).
5 Defendant UCIMC/REGENTS engaged in a campaign of discovery abuse, which continues, denying
6 Plaintiffs of discoverable documentary and other evidence, and denying Plaintiffs a reasonable
7 opportunity to depose key witnesses employed by Defendant. Defendant UCIMC/REGENTS’ abusive,
8 improper, harassing, and sanctionable tactics were without any legitimate justification and were done
9 with the intention of improperly delaying, and/or refusing production of relevant and discoverable
10 information, documents, and depositions of persons with knowledge of such information.
11 UCIMC/REGENTS engaged in egregious discovery and other abuses of the process in this case, despite
12 suffering terminating sanctions in a prior case of similar discovery abuse and obfuscation back in 1998.
13 Sanctions sought include the following:

- 14 1. **Terminating sanctions:** Striking the Answer of Defendant REGENTS and entering
15 default against said Defendant.
- 16 2. **Issue sanctions:** The Court deem the following established:
 - 17 a. Defendant UCIMC/REGENTS and its employee, Dr. Wang, did assume a robust
18 or substantial caretaking or custodial relationship with WAYNE WOLFF
19 beginning from the time that WOLFF was admitted for observation and
20 monitoring, as mandated by Dr. Wang, continuing until WOLFF was discharged;
 - 21 b. Defendant UCIMC/REGENTS engaged in “**neglect**” of Plaintiff WAYNE
22 WOLFF, within the meaning of Welfare & Institutions Code sections 15610.57
23 and as used in 15657; or alternatively, that there be a **presumption** that
24 REGENTS engaged in such “**neglect**” of Plaintiff WAYNE WOLFF; and
 - 25 c. Defendant UCIMC/REGENTS’ employee Dr. Wang, intentionally concealed his
26 surgical errors and that such conduct was “**reckless, oppressive, and/or**
27 **malicious**”, within the meaning of those terms as used in Welfare & Institutions
28 Code section 15657, and as defined in Welfare & Institutions Code section 15610

1 et seq.

2 3. **Evidentiary sanctions:** That the Court:

- 3 a. Order a **shifting of the burden of proof to Defendant REGENTS** to disprove
4 the elements of **dependent adult neglect** and **negligence** to which the evidence
5 pertains, specifically: In regard to dependent adult neglect, shift the burden to
6 REGENTS as to the elements of substantial caretaking or custodial relationship,
7 breach of caretaking and custodial duties to provide basic needs, causation, as
8 well as recklessness, oppression, or malice; In regard to the elements of
9 negligence, shift the burden as to the elements of duty, breach, and causation;
10 b. Instruct the jury that Defendant REGENTS/UCIMC intentionally destroyed
11 evidence it was required to preserve and that the jury may infer that the evidence
12 would have been unfavorable to said Defendant;
13 c. Preclude Defendant from offering testimony, evidence, or expert opinions
14 contradicting the deemed issues or speculating about the content of the destroyed
15 materials; and
16 d. Exclude any evidence offered to replace the lost recordings and communications.

- 17 4. **Monetary sanctions** are requested to compensate Plaintiffs for the attorney time,
18 expenses, and expert costs in attempting to determine the extent of UCIMC/REGENTS'
19 discovery and other abuses and to obtain the documents and information requested,
20 denied by said Defendant; in an amount according to proof in the attached declaration.

21 Plaintiffs' motion is based on this Notice, the accompanying Memorandum of Points and
22 Authorities, the Declaration of Patrick B. Embrey and exhibits attached thereto, the pleadings and
23 records on file, and such further evidence and argument as may be presented at the hearing.

24 Date: December 29, 2025

ROBINSON CALCAGNIE, INC.,
Attorneys for Plaintiffs

25 By: Patrick B. Embrey
26 Patrick B. Embrey

27 Jeffrey L. Robinson
28 Jeffrey L. Robinson
Attorneys for Plaintiffs

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 **Summary of the Case**

4 This is an extreme case of **dependent adult neglect** by employees of the Regents of the
5 University of California (“REGENTS”). On April 3, 2024, WAYNE WOLFF *walked into* UCI Medical
6 Center (“UCIMC”), on two legs, to have **outpatient knee surgery**, including meniscus repair and high
7 tibial osteotomy, on his left leg. However, due to surgical errors and concealment of the errors, including
8 while WAYNE WOLFF was in the caretaking and custody of Defendants and admitted to the hospital
9 for observation, WAYNE WOLFF’s lower left leg became ischemic. Due to denial of medical care over
10 at least three days, WAYNE WOLFF’s lower left leg literally died from lack of blood flow. The denial
11 of care was primarily due to concealment, obstruction, interference, obfuscation, abandonment, and
12 other acts of the surgeon/Attending physician in charge of WAYNE WOLFF, REGENTS’ employee
13 DEAN WANG, MD. WANG did this to allow him to engage in a promotional opportunity with a
14 medical device manufacturer in Florida. Because of Defendants’ callous, reckless, oppressive, malicious
15 and intentional acts, WAYNE WOLFF **rolled out of the hospital two weeks later**, on April 18, 2024, in
16 a wheelchair, having undergone a through-the-knee amputation of the lower left leg.

17 **Destruction of Evidence and Discovery Abuse**

18 After litigation was *well beyond* reasonably foreseeable, Defendant REGENTS/UCIMC
19 destroyed highly probative and incriminating evidence, attempting to prevent Plaintiffs from
20 substantiating their claims of neglect and reckless conduct. Defendant destroyed core electronically
21 stored information and records (“ESI”), including the **surgery video and audio**,¹ **intra-team secure**
22 **messages**,² and **Handoff Data**.³ (Embrey decl. ¶¶7-8, see also ¶5(a)-(e), Exhs. 4-8.) These materials
23 *were* uniquely probative of intraoperative events, post-operative recognition of vascular compromise,
24 concealment efforts, and post-operative care. This evidence is similarly probative of the Defendants’
25 assumption (and breach) of custodial and caretaking obligations, denial of care, Plaintiff WOLFF’s

26 _____
27 ¹ Surgery video and audio, while claimed to be kept for “educational purposes,” is, per UCI, purged after 30 days.

28 ² UCI’s secure messaging system, called “Epic Secure Chat,” similar to text messages, but HIPPA compliant, is accessed through providers’ electronic devices, including cell phones and laptops. UCI has a 60-day purge policy for such chats.

³ Handoff Data is information provided by one provider when handing off a patient to another provider. UCI purges this data seven days after a patient is discharged.

1 dependence upon Defendants, and the recklessness, oppression, malice, fraud, and intentionality of
2 Defendant’s conduct. The destruction of this evidence has irreparably prejudiced Plaintiffs.

3 In addition to evidence destruction, UCIMC/REGENTS has engaged in a systematic pattern of
4 discovery abuse in this case. This has included the refusal to provide dates for the depositions of
5 REGENTS-employed witnesses, denial of *complete* medical records, and the denial of the existence of
6 evidence, later confirmed to be untrue.

7 REGENTS/UCIMC engaged in such reprehensible conduct, despite being caught engaging in
8 similar discovery obfuscation in a noteworthy prior case in 1998, *DeSoto v. Regents of the Univ. of Cal.*,
9 Super. Ct. Orange County, Case No. 731046, which resulted in UCIMC/REGENTS’ answer being
10 stricken and default entered, as a result of discovery abuse by UCIMC/REGENTS. (See Embrey decl.
11 ¶¶3-4, Exhs. 2 & 3 (LA Times and Clinician articles concerning same).)

12 **II. SUMMARY OF FACTS**

13 **A. Timeline and Causes**

14 The operative facts from which this case arises occurred primarily from April 3 through April 6,
15 2024, and continued until Mr. Wolff’s amputation on April 14, 2024 and discharge on April 18, 2024.
16 Plaintiffs filed suit on February 11, 2025. The primary cause of action is Dependent Adult Neglect
17 against REGENTS and Dean Wang, M.D. (Embrey decl. ¶2, Exh. 1.)

18 **B. Notice of Foreseeable Litigation**

19 Defendants had notice that litigation was reasonably foreseeable by April 7, 2024, when an
20 angiogram verified that Dr. Wang’s April 3, 2024 surgery on WAYNE WOLFF resulted in a complete
21 transection of the popliteal artery. (Embrey decl. ¶9, Exh. 10(c).) At the same time, Defendants knew
22 that amputation was reasonably likely. Just two days later, on April 9, 2024, exploratory surgery
23 confirmed widespread necrosis, from which it was determined that amputation was indicated. The lower
24 leg was amputated on April 14, 2024. (Embrey decl. ¶9, Exhs. 10(d) & 10(e).) The following day, April
25 15, 2024, Plaintiffs sent a formal grievance letter to the UCIMC/Regents, which essentially served as
26 notice of intent to commence action. (Embrey decl. ¶10, Exh. 11; *see* C.C.P. §364.) Furthermore,
27 **REGENTS appears to have begun investigating the circumstances here even prior to the**
28 **amputation. There should be NO doubt that by April 15, 2024, litigation was reasonably**

1 **foreseeable, and more likely, imminent.** (Embrey decl. ¶¶13-15, 17.) Yet REGENTS’ destruction of
2 evidence all occurred **after that time.** (Embrey decl. ¶¶7-8, see also ¶5(a) – (e), Exhs. 4-8.)

3 **C. Destruction of Evidence After Litigation was Reasonably Foreseeable**

4 After April 15, 2024, when litigation was undoubtedly foreseeable, the Regents destroyed
5 multiple categories of critical evidence in their possession: (a) **video and audio⁴ recordings of Dr.**
6 **Wang’s surgery upon Wayne Wolff’s left knee;** (b) Epic Secure Chats—**secure text messages among**
7 **treating clinicians regarding Mr. Wolff’s care,** treatment, and condition, including while Dr. Wang
8 was in Florida; and (c) **“Handoff Data”**—notes provided when a patient is handed off to another
9 provider, conveying patient condition and needs. (Embrey decl. ¶6-8.)

10 The **surgical video** would definitively demonstrate how badly Wolff was cut, and the amount of
11 bleeding. Likewise, it would demonstrate the nature of the bleed, which would appear to be an arterial
12 bleed, and would demonstrate that Dr. Wang knew at the end of the surgery that he had severely
13 compromised WAYNE WOLFF’s vascular system. However, WANG’s concealment and obfuscation
14 began during the surgery. To destroy such, is unfathomable, since UCI knew that this surgery would be
15 the foundation of any claim. To fail to preserve that very video was clearly intentional. Likewise,
16 destruction of the very **secure chats** between Wang and the healthcare workers, including while Dr.
17 Wang was in Florida, was clearly an attempt to prevent the potential claimants from discovering the
18 very incriminating chats, that would evidence Wang’s attempts to cover his tracks. This evidence was
19 the bare, unedited, uncoached, real-time back and forth communications between providers, second only
20 to the video in providing an accurate picture of what was happening, especially post-surgical events.

21 Coincidentally, at least two of the three items of evidence, the video and secure chats, were the
22 only concrete, unmanipulable items of evidence available to Plaintiffs. Since testimony can be
23 manipulated, the video and secure messages contradicting that testimony could be used to impeach.
24 Furthermore, this is the type of evidence that would show, contemporaneously with the care and events
25 occurring, WAYNE WOLFF’s true condition, as well as what the medical personnel were doing and
26 saying to each other, including while Dr. Wang was in Florida. They are in effect, a snapshot of those
27 points in the timeline. Furthermore, unlike phone texts, they are tracked, identifiable, inventoried, and

28 _____
⁴ Hereinafter, references to the video and audio recordings are simply referred to as “video recording.”

1 thus cannot simply be omitted without Plaintiffs being aware of the omission. (Embrey decl. ¶6(b).)

2 **D. The Evidence was Destroyed After Litigation was Reasonably Foreseeable**

3 Despite the fact that **litigation was unquestionably foreseeable by April 15, 2024**, all
4 information provided by REGENTS/UCIMC places purging after that time. According to that
5 information, the video of the surgery was purged on or after May 3, 2024 (30 day purge policy); secure
6 messages (Epic Secure chats) would have been destroyed no earlier than June 2, 2024 (60 days retention
7 and purge policy); the Handoff Data would have been purged on or after April 25, 2024 (purge policy of
8 seven days following discharge of patient). (Embrey decl. ¶8.)

9 Ironically UCIMC claims that the video recording was made for “educational purposes.”
10 (Embrey decl. ¶5(d), Exh. 8, Nos. 81-82.) Yet a retention policy of a mere 30 days is highly inconsistent
11 with that purpose and is thus highly suspect. The bottom line is that the evidence was available when
12 litigation was foreseeable and could (and should) therefore have been preserved.

13 **E. Other Discovery Abuse**

14 Destruction of evidence was not the only abuse of discovery by Defendant UCIMC/REGENTS.
15 Defendant REGENTS disregarded its discovery obligations, including misrepresenting the existence of
16 information. For example, **Defendants initially denied that video of WAYNE WOLFF ever existed.**
17 Three months passed before Defendant disclosed that the surgical video had existed but was destroyed.
18 (Embrey decl. ¶16(a).) Similarly, with the “Epic Secure Chats” between care team members, their
19 existence was initially denied. Only after Plaintiffs went through multiple iterations of wording to
20 overcome Defendant’s gamesmanship did Defendants finally disclose that the evidence had been
21 destroyed. (Embrey decl. ¶16.)

22 Likewise, Defendant repeatedly **denied providing depositions**. With several REGENTS-
23 employed witnesses, Defendant either denied allowing the depositions to go forward or offered to
24 produce deponents only upon limited scope, limited time, and only at their unilaterally imposed location
25 (contrary to Plaintiffs deposition notices). (Embrey decl. ¶19(c).) With a number of other key employee
26 witnesses, REGENTS has never provided dates for the depositions to go forward, even after multiple
27 requests, notices served, and promises by REGENTS/UCIMC to provide dates. **This includes Dr.**
28 **DEAN WANG, MD, likely the most important defense witness.** (Embrey decl. ¶19(c).) Note,

1 however, as explained in the attached declaration, a number of ‘contingency depositions’ have been
2 scheduled at agreed upon dates in early 2026, to occur if the Board of Regents disapproves of a pending
3 settlement agreement at the Board’s meeting in January 2026. (Embrey decl. ¶21 (contingency
4 deposition dates agreed upon by the parties as a condition of Plaintiffs agreeing to REGENTS’ request
5 to stay discovery during pendency of settlement agreement).)

6 The **production of documents** and other information has similarly been less than forthcoming.
7 UCIMC/REGENTS has played hide-the-ball with discovery of plainly discoverable documents, such as
8 **complete sets of medical records**. An example of this gamesmanship is the REGENTS responses, the
9 evasiveness, and ridiculous objections, in order to deny discovery, can be seen in Exh. 4, e.g., Nos. 46
10 (denying production of emails), 47 (text message regarding Plaintiff).

11 Furthermore, the first request for medical records for WAYNE WOLFF resulted in production
12 just short of 3,000 pages (2,993). (Embrey decl. ¶19(a)(i).) Notably absent were revisions, authorship,
13 and dates and times for many notes and other entries. (Embrey decl. ¶19(a)(ii)-(iv).) Plaintiffs were then
14 forced to spend **over \$7,000** for analysis by an electronic medical record expert to review the
15 production, much like an interpreter. Upon suspicion by said expert that additional documentation
16 should exist, additional discovery was drafted. (Embrey decl. ¶19(a)(iii).) Only then, after alternatively
17 worded requests for documents and information, and **only after a discovery referee was appointed,⁵ at**
18 **Plaintiffs’ urging**, were Plaintiffs able to obtain additional records and get at least a couple of
19 depositions taken. And only then, were Plaintiffs informed that “Handoff Data” had existed but had been
20 destroyed. (Embrey decl. ¶19(a)(iii) & (iv).) WOLFF’s medical record currently totals **nearly 6,000**
21 **pages** (5,754). (Embrey decl. ¶19(a)(iv).) Yet it is still questionable whether Plaintiffs have received all
22 records to which they are entitled.

23 The pattern of REGENTS’ conduct in this case is akin to that in the 1998 *DeSoto* case mentioned
24 above, which, ironically, REGENTS’ defense counsel herein (Kelly, Trotter & Franzen (then named
25 Carroll, Kelly, Trotter and Franzen)), were involved and therefore aware. There REGENTS/UCIMC had
26 an \$18.7 million default judgment entered against it after its answer was stricken, due to discovery

27 _____
28 ⁵ Plaintiffs sought appointment of a discovery referee in part due to the Court’s impacted calendar. At the time, it was
Plaintiffs’ understanding that discovery motions were calendared at least five months after filing. Defendant was no doubt
aware of the backlog when it delayed and hindered discovery efforts.

1 abuse. (See Embrey decl. ¶3, Exh. 2 pp. 1-2, ¶4, Exh. 3.) There, REGENTS (UCI) were found in willful
2 disregard of court orders and obstructing discovery. The conduct included hiding a doctor's identity and
3 involvement for over two-years; producing only half of the complete medical record until a discovery
4 referee was appointed; denying the existence of other documents despite contrary testimony, and false
5 testimony by at least two REGENTS/UCIMC employees, one of which indicated he was manipulated
6 and threatened by defense counsel. (Embrey decl. ¶3, Exh. 2, pp. 2-4 (Clinician article), ¶4, Exh. 3, p. 2
7 (LA Times article); *see also Med. Mut. of Ohio v. DeSoto* (2000) 245 F.3d 561, 565.) That conduct is so
8 similar to REGENTS/UCIMC's conduct in this case that it cannot be overlooked. Further, for
9 REGENTS/UCIMC to repeat this type of conduct is reprehensible.

10 **F. Pre-Litigation Gamesmanship**

11 In addition to the conduct described above, REGENTS/UCIMC engaged in gamesmanship since
12 the very beginning of this dispute. Concealment and obstruction began with the surgery, continued
13 during WOLFF's care after the surgery, and culminated with the destruction of evidence after WAYNE
14 WOLFF was discharged from the hospital. Defendant had attempted to sweep the worst of the worst
15 under the rug. But the obfuscation continued.

16 Within weeks after WOLFF was discharged, REGENTS sent a letter to Plaintiffs on May 20,
17 2024, encouraging settlement, possibly without the use of attorneys. REGENTS also promised that
18 Plaintiffs would not see any bills from UCIMC. (See Embrey decl., Exh. 12.) However, by that time,
19 REGENTS had already billed Plaintiffs' insurance for the surgery, hospital stay, and the amputation, in
20 excess of \$800,000. In fact, REGENTS/UCIMC **was paid** for a significant amount of it at the time the
21 promise was made and a majority of it paid the day after the promise. Furthermore, REGENTS knew, or
22 should have known, at the time that Plaintiffs had already retained legal counsel.

23 Thereafter, and shortly after Plaintiffs' served a notice of intent to file suit upon REGENTS/
24 UCIMC, Defendant reached out to Plaintiffs' counsel, urging pre-litigation mediation. Despite
25 reluctance and with great reservations, Plaintiffs agreed and fully briefed the matter, providing key
26 expert opinions, including damages and liability, key documents, and Plaintiffs' theories. REGENTS did
27 not reciprocate, in fact, only providing incomplete medical records for WAYNE WOLFF. Furthermore,
28 REGENTS/UCIMC delayed pre-litigation mediation, continuing the mediation several times, ultimately

1 for a period of nearly six months. When mediation did finally occur on February 3, 2025, it only resulted
2 in offensive and insulting low-ball offers by REGENTS. As such, the mediation was a complete and
3 utter failure. Plaintiffs filed suit shortly thereafter, on February 11, 2025. From thereon, the discovery
4 abuse, as discussed above, just created further delay, and continued the obfuscation, concealment, and
5 gamesmanship. (As discussed above; however, see Embrey decl. ¶21.)

6 **III. SUMMARY OF PERTINENT LAW**

7 **A. A Duty to Preserve Evidence Arises When Litigation is Reasonably Foreseeable**

8 California courts have broad and substantial authority for imposing sanctions on parties that
9 destroy *or allow the destruction* of evidence, even when a purge policy exists, after litigation becomes
10 *reasonably foreseeable*. In *Victor Valley Union High School Dist. v. Superior Court* (2023) 91
11 Cal.App.5th 1121, the Court of Appeal established:

12 “**[A] duty to preserve evidence arises when the party to be sanctioned was **objectively****
13 **aware that **future litigation was reasonably foreseeable**, meaning the litigation was**
probable or likely to arise from an incident.” (*Id.* at 1143 (emphasis added).)

14 In doing so, the Court of Appeals adopted the federal circuit standard. (*Id.* at 1149.) Further, in so
15 concluding, the Court of Appeals held that the safe-harbor provision of C.C.P. §2023.030(f),⁶ does not
16 shield a party for the destruction of electronically stored information (“ESI”), where a party is under the
17 obligation to preserve the information, e.g., where litigation is pending or reasonably foreseeable.
18 (*Victor Valley Union* at 1142-1143.) Furthermore, the Court recognized the legislative intent that,
19 “**[w]hen a party is under a duty to preserve information because of pending or reasonably**
20 **anticipated litigation, a party would still be required to modify or suspend features of the routine**
21 **operation of a computer system to prevent loss of information.**” (*Id.* at 1142.) Thus, the Court of
22 Appeals concluded that **the duty to preserve evidence includes a duty to suspend routine deletion,**
23 **including interruption of any purge policy.** (*Ibid.*)

24 **B. “Reasonably Foreseeable”**

25 Either an incident itself, by its very circumstances, or an incident plus other circumstances, may

26 _____
27 ⁶ C.C.P. §2030.030(f) provides:

28 (1) ...absent exceptional circumstances, **the court shall not impose sanctions** on a party or any attorney of a party for failure to provide **electronically stored information** that has been **lost, damaged, altered, or overwritten** as the result of the **routine, good faith operation of an electronic information system**.

(2) This subdivision **shall not be construed to alter any obligation to preserve discoverable information.**

1 make litigation reasonably foreseeable and trigger the duty to preserve. (*Id.* at 1153.) In those respects,
2 the Court of Appeal in *Victor Valley Union* stated:

3 Certain types of incidents, such as slip-and-fall accidents or prison assaults,
4 predictably result in litigation. “That is *not to say* that the mere fact of a slip-and-fall
5 or a prison assault is *always* enough to put defendants on notice of potential litigation
6 and trigger a duty to preserve. But such an event combined with other circumstances
7 may often be enough that defendants should reasonably anticipate litigation beginning
8 soon after the incident itself.”
9 (*Victor Valley Union* at 1153–1154 (emphasis added).)

7 There, the Court of Appeals reasoned that a school district’s heightened duty to protect its students,
8 along with notice of a sexual assault in a school restroom, was one of several independent grounds
9 making litigation reasonably foreseeable. (*Id.* at 1153-1154.) Other circumstances may also show that
10 litigation was foreseeable. For example, again in *Victor Valley Union*, another independent ground from
11 which **litigation was shown to be reasonably foreseeable was where the district prepared for**
12 **litigation by obtaining confidential statements and reports immediately after the incident, as**
13 **UCIMC did in the case here.** (*Id.* at 1155-1156.) In other words, **litigation was deemed foreseeable**
14 **because the defendant did indeed prepare for litigation.** (*Ibid.*)

15 **C. Relief Available for Another Party’s Destruction of Evidence**

16 Evidence Code section 413 provides for evidentiary inferences that may be made by the trier of
17 fact in the absence of, or after destruction of, evidence. The California Supreme Court explained in
18 *Williamson v. Superior Court* (1978) 21 Cal.3d 829, 835 fn. 2, explained the rationale for the evidentiary
19 rule:

20 ““The rule of (present Evidence Code section 413) . . . is **predicated on common**
21 **sense, and public policy.** The **purpose of a trial is to arrive at the true facts.** A
22 **trial is not a game** where one counsel safely may sit back and refuse to produce
23 evidence **where in the nature of things his client is the only source from which**
24 **that evidence may be secured.** A defendant . . . [that] fails to produce **evidence** that
25 would naturally have been produced . . . must take the risk that the trier of fact will
26 infer, and properly so, that the evidence, had it been produced, would have been
27 adverse.””
28 (quoting *Breland v. Traylor* (1942) 52 Cal.App.2d 415, 426 (emphasis added).)

25 In addition, the California Supreme Court in *Cedars-Sinai Med. Ctr. v. Super. Ct.* (1998) 18 Cal.4th 1,
26 confirmed that **trial courts possess “a broad range of sanctions”** to address evidence destruction,
27 **including evidentiary, issue, and terminating sanctions,** adverse inferences, and discovery sanctions
28 to protect the truth-finding function. (*Id.* at 4–5, 12–13.) The Court of Appeals in *Victor Valley Union*

1 *High School District v. Superior Court, supra*, concluded that **where a party breaches its duty to**
2 **preserve evidence, courts may impose sanctions tailored to the prejudice and culpability, up to**
3 **terminating sanctions for willful or egregious spoliation.** (91 Cal.App.5th at 1137, 1147.)

4 Furthermore, *Williamson, supra*, underscored that courts have inherent powers to impose sanctions *to*
5 *prevent abuse and ensure fairness* when a party's conduct undermines a fair adjudication on the merits.

6 **IV. ANALYSIS**

7 **A. Defendants' Duty to Preserve Arose Between April 7th and 15th, 2024**

8 This litigation was reasonably foreseeable by April 7, 2024, and certainly, even giving Defendant
9 UCIMC/REGENTS the benefit of any reasonable doubt, it was reasonably foreseeable no later than
10 April 15, 2024. (Embrey decl. ¶13.) Either way, it was still well before any evidence was destroyed.

11 The April 6/7, 2024 angiogram confirmed a complete transection of the popliteal artery at the
12 prior surgery site, WAYNE WOLFF's left knee. At the same time, necrotic leg tissue and a lack of
13 blood flow to the lower left leg were confirmed. (Embrey decl. ¶9, Exh. 10(b)-(c) (Med. Rcrds.).)
14 Moreover, at that time, the surgeons involved discussed that an amputation was probable. (*Id.*, Exh. 9,
15 Exhs. 10(b) & 10(c).) Taking into account that this was supposed to be an outpatient surgery, with
16 WOLFF returning home the same day, the circumstances alone would have put a reasonable person on
17 notice that litigation was likely and probable, and thus reasonably foreseeable. (*Victor Valley Union,*
18 *supra*, 91 Cal.App.5th at 1142, 1153.) However, if there were any doubt, exploratory surgery on April
19 10, 2024, led to the conclusion that the leg was not viable. Then, on April 14, 2024, Plaintiffs' left leg
20 was amputated. (Embrey decl. ¶9, Exhibit 10(e).) The very next day, April 15, 2024 Plaintiffs sent a
21 formal grievance letter to the Regents, in effect, a notice of intent to commence action. (Embrey decl.
22 ¶10, Exh. 11; *see* C.C.P. §364.) These facts combined *confirmed* that litigation was ***not just reasonably***
23 ***foreseeable, but imminent***, well exceeding the standard for triggering the duty to preserve. (*See Valley*
24 *Union, supra*, at 1147, 1149.) **These triggers required immediate suspension of any routine deletion**
25 **of relevant evidence** and implementation of litigation holds. (*Victor Valley Union High Sch. Dist.*, 91
26 Cal.App.5th at 1137–1142.) No reasonable person looking at these facts would deny that litigation was
27 likely or probable and thus reasonably foreseeable. (*See Victor Valley Union* at 1153 (giving examples
28 of slip and fall or prison assault as predictably resulting in litigation; and that injurious events combined

1 with other circumstances are often enough to put a defendant on notice).) Moreover, given the
2 doctor/patient relationship at the time of the surgery, and caretaker-custodian/patient relationship at the
3 time of the angiogram (confirming lack of bloodflow), a “heightened duty,” even greater than that
4 discussed above, likely applied, similar to that in the *Victor Valley Union* case. (*Id.* at 1140-1142.) Here,
5 Plaintiff WAYNE WOLFF was a “dependent adult,” with Defendants entrusted with his care and
6 custody. Given these facts, the duty to preserve unquestionably arose by April 15, 2024.

7 **B. Defendants Destroyed Uniquely Probative Evidence After the Duty to Preserve**
8 **Attached**

9 Despite the foreseeability of litigation, Defendant UCIMC/REGENTS allowed the destruction of
10 the surgery video. (Embrey decl. ¶¶7-8, 16(a), Exhs. 4-8 (affirming video existed at one time, but was
11 destroyed 30 days after surgery).) They also permitted automatic purging of Epic Secure Chats,
12 presumably between June 3 and June 18, 2024, but in any event, after the duty had attached, and
13 discarded Handoff Data seven days after the April 18, 2024 date of discharge. (*Id.* ¶¶7-8, 16(c).) These
14 items are virtually irreplaceable, and *were* probative to key issues. (*Id.* ¶6.)

15 Under *Victor Valley Union*, parties must suspend routine purges once litigation is foreseeable;
16 failure to do so supports evidentiary and issue sanctions because the lost evidence is central and
17 irreplaceable. (*Victor Valley Union* at 1142-1143.) Defendants have admitted that the evidence was
18 destroyed, and this is because UCIMC/REGENTS’ failed to suspend routine destruction. (Embrey decl.
19 ¶¶16(a)(ii), 16(b)(vi), 16(c)(i).) In fact, Defendant UCIMC/REGENTS appears to have begun
20 investigating the circumstances here even prior to the amputation, which is certainly evidence that
21 UCIMC/REGENTS thought litigation was foreseeable. (Embrey decl. ¶¶13-15 and Exh. 12; *Victor*
22 *Valley Union* at 1155-1156 (party investigating incident shows they foresaw litigation).)

23 **C. Prejudice is Extreme and Cannot be Cured Short of Issue or Terminating Sanctions**

24 The destroyed evidence goes the heart of what occurred intraoperatively, contemporaneous
25 recognition of vascular compromise, and post-operative decision-making relevant to concealment and
26 denial of diagnostics. In fact, this evidence goes right to the very issue of concealment by the
27 Defendants. (See FAC ¶¶79-80, 114, 120-123.) The concealment by Defendants is probative to
28 Plaintiffs’ allegations that Defendants caused the delay in care of WOLFF’s leg, which caused

1 amputation of the leg to be necessary. Moreover, the evidence is probative in showing that Defendants’
2 conduct was reckless, oppressive, and malicious—even intentional in many respects. (See *ibid.*)

3 The surgery video was the best direct and contemporaneous evidence of what Dr. Wang saw,
4 did, and said as the transection occurred, including whether he recognized arterial injury. The video is
5 the closest thing to a “**black box**” regarding the surgical events. The Epic Secure Chats and Handoff
6 Data would evidence real-time awareness of compromised perfusion, denial of imaging and diagnostics,
7 potential concealment directives, and, among other things, WANG’s awareness of WOLFF’s condition
8 at the time he decided to board a jet to Florida. Specifically, the Handoff Data is probative to the issue of
9 WOLFF’s true condition and is likely to be more candid because medical personnel know that it does
10 not get permanently saved. Furthermore, it is not just “checking boxes” on a form like much of the
11 nurses’ notes. The destruction of these items prevents Plaintiffs from proving, with direct and
12 contemporaneous evidence, intent, knowledge, and concealment, and greatly hinders Plaintiffs ability to
13 show recklessness, oppression, and malice, causing irreparable prejudice. (See *Cedars-Sinai*, 18 Cal.4th
14 at 12–13, 17 (approving evidentiary sanctions and adverse inferences to remedy prejudice from
15 spoliation); *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545-1546, discussed *infra.*)

16 **D. REGENTS’ Culpability is Intentional or, at a Minimum, Malicious**

17 Defendants knew or reasonably should have known at the latest, April 15, 2024, that litigation
18 was likely and probable—perhaps imminent, yet they neither preserved nor halted routine purges,
19 despite plenty of time to do so (the earliest destruction is believed to have occurred on or about April 25,
20 2024 (Handoff Data—seven days after WOLFF’s discharge date of April 18, 2024)). Allowing
21 automatic deletion to proceed and/or purposely destroying after foreseeability attaches, constitutes
22 willful spoliation, warranting severe sanctions, particularly where the evidence is uniquely probative.
23 (*Victor Valley Union High Sch. Dist.*, 91 Cal.App.5th at 1144–1147; *Williamson*, 21 Cal.3d at 834–836.)
24 Furthermore, considering that Defendant **REGENTS appears to have begun investigating the**
25 **circumstances here even prior to the amputation**, that a key piece of evidence in such an
26 investigation would be the surgical video, yet that video is now unavailable, strongly shows this was
27 intentional destruction rather than any lesser level of culpability. (See Embrey decl. ¶16, *see also* ¶¶14-
28 15.) Moreover, the video would have been preserved if it was complimentary to Dr. Wang (and the

1 REGENTS/UCIMC), the destruction makes clear that it could only have been intentional destruction.

2 **E. Appropriate sanctions**

3 **1. Terminating Sanctions: Striking Defendant's Answer & Entering Default**

4 Given the centrality of the destroyed evidence, the proximity of foreseeability to the purge
5 events, and the resulting irreparable prejudice, terminating sanctions are appropriate. The only
6 sanction sufficient to restore fairness and deter future misconduct is **striking Defendants' Answer and**
7 **entering default**, especially in light of the similarity of behavior to the DeSoto case against UCI,
8 wherein their answer was stricken. (*Victor Valley Union High Sch. Dist.*, 91 Cal.App.5th at 1146–1147;
9 *Williamson*, 21 Cal.3d at 834–836; *Cedars-Sinai*, 18 Cal.4th at 12–13, 17–18.)

10 **2. Issue Sanctions**

11 Should the Court determine that terminating sanctions are not appropriate, the Plaintiffs request,
12 on the same basis, that the Court deem established that: (a) Defendant UCIMC/REGENTS and its
13 employee, Dr. Wang, did assume a robust or substantial caretaking or custodial relationship with
14 WAYNE WOLFF beginning from the time that WOLFF was admitted for observation and monitoring,
15 as mandated by Dr. Wang, continuing until WOLFF was discharged; (b) Defendant UCIMC/REGENTS
16 engaged in “**neglect**” of Plaintiff WAYNE WOLFF, within the meaning of Welfare & Institutions Code
17 sections 15610.57 and as used in 15657; or alternatively, that there be a **presumption** that REGENTS
18 engaged in such “**neglect**” of Plaintiff WAYNE WOLFF; and (c) Defendant UCIMC/REGENTS’
19 employee Dr. Wang, intentionally concealed his surgical errors and that such conduct was “**reckless,**
20 **oppressive, and/or malicious**”, as used in Welfare & Institutions Code section 15657, and as defined in
21 Welfare & Institutions Code section 15610 et seq.

22 These findings track the evidentiary gaps created by the destruction of this critical evidence,
23 which would have provided direct proof of intraoperative knowledge and post-operative concealment
24 and other matters as discussed above. (*See Victor Valley Union*, 91 Cal.App.5th at 1142–1147; *cf.*
25 *Ventura v. ABM Industries Inc.* (2012) 212 Cal.App.4th 258, 266–269.)

26 **3. Evidentiary Sanctions**

27 Plaintiffs further request that the Court: (a) **Shift the burden of proof** to Defendant REGENTS
28 to disprove the elements of neglect of: substantial caretaking or custodial relationship; breach of

1 caretaking and custodial duties to provide basic needs; causation; as well as recklessness, oppression, or
2 malice; [See *Haft v. Lone Palm Hotel* (1970) 3 Cal.3d 756, 774 (shifting burden to defendant to disprove
3 his negligence was not the cause of injury, when there is a substantial probability defendant's negligence
4 was a cause, and defendant's negligence makes it practically impossible for plaintiff to prove proximate
5 causation), as discussed in *Thor v. Boska* (1974) 38 Cal.App.3d 558, 567-568 (instructing the trial court
6 on remand, on the rule in *Haft* where medical records destroyed in med-mal action)]; (b) **Instruct the**
7 **jury** that Defendant destroyed evidence it was required to preserve and that the jury may infer the
8 evidence would have been unfavorable to Defendant; (c) **Preclude Defendant** from offering testimony
9 or expert opinions contradicting the deemed issues or speculating about the content of the destroyed
10 materials; and (d) **Exclude** any evidence offered to replace the lost recordings and communications.
11 (*Cedars-Sinai*, 18 Cal.4th at 12–13; *see also Ventura*, 212 Cal.App.4th at 266–269.)

12 **4. Monetary and Additional Sanctions**

13 The Court should award Plaintiffs their reasonable attorneys' fees and costs incurred in
14 investigating the spoliation and bringing this motion, according to proof, as set forth in the attached
15 declaration of Patrick B. Embrey. Monetary sanctions are justified by Defendant's untruthfulness,
16 concealment, destruction, and the work required by Plaintiffs to attempt to obtain the information.
17 (Embrey decl. ¶7-8, 16; *see Williamson*, 21 Cal.3d at 834–836; *Victor Valley Union* at 1146–1147.)

18 **F. Lesser Sanctions Are Inadequate**

19 Because the destroyed evidence is irreplaceable and central to the issues, lesser sanctions cannot
20 cure the prejudice. Defendants allowed purges to proceed *well after* clearly foreseeable. reflecting a high
21 degree of culpability. Where spoliation deprives the opposing party of critical proof, terminating and
22 issue sanctions are warranted to level the field and protect the court's truth-finding role. (*Victor Valley*
23 *Union High Sch. Dist.*, 91 Cal.App.5th at 1144–1147; *see Cedars-Sinai*, 18 Cal.4th at 11–13.)

24 **G. Seeking Prior Discovery Orders Would Have Been Futile, Given Defendant's Prior** 25 **Destruction, Delays, and Misleading and False Responses**

26 Defendant REGENTS may argue that Plaintiffs cannot seek the requested sanctions without the
27 violation of prior discovery orders. This ignores apt law and the factual circumstances here. First, the
28 destruction cannot be undone. Furthermore, under apt caselaw, where it would have been futile to seek

1 prior discovery orders, it is not an abuse of discretion to impose sanctions. (*Vallbona v. Springer* (1996)
2 43 Cal.App.4th 1525, 1545-1546.) Here, Defendant’s evasive and false responses, destruction of
3 evidence prior to discovery, and delays in the proceeding prevented Plaintiffs from seeking prior
4 discovery orders on these matters. A clear example is the following (emphasis added):

5 Request No. 42: “Provide **any and all videos reflecting PLAINTIFF** in your possession,
custody, or control.”

6 Response to No. 42: “Responding party is **unable to comply** with this request as **no such**
responsive documents exist and never existed.”

7 (Exh. 4, Def. REGENTS’ Resp. to Pltfs.’ Req. for Prod. Set One, No. 42, April 7, 2025.)

8 Request No. 137: “All **video recordings of Plaintiff Wayne Wolff’s April 3, 2024 surgery** at the
HOSPITAL.”

9 Response to No. 137: “Despite diligent search and reasonable inquiry, Responding party is **unable**
to comply with this request as the responsive document **no longer exists** in Responding party’s
10 possession, custody, or control. Video and audio records taken in the operating room are **for**
educational purposes and are not retained after 30 days.”

11 (Exh. 7, Def. REGENTS’ Resp. to Pltfs.’ Req. for Prod. Set Four, No. 137, July 29, 2025; see
also Exh. 8, REGENTS’ Resp. to Pltfs.’ Spec. Interrogs., Set Two, No. 82, July 29, 2025.)

12 The responses are not reconcilable and show the falsity of the earlier response. One has to wonder
13 whether the video was destroyed between the time of the responses. (See Embrey decl. ¶16(a).) The
14 same pattern was followed regarding secure messages and Handoff Data. (Embrey decl. ¶16(b)-(c).)

15 In *Vallbona v. Springer*, the Court of Appeals held that where it would have been futile to seek
16 prior discovery orders, it is not an abuse of discretion to impose sanctions for withholding discovery if
17 the sanction is tailored to the harm caused and is not *designed* to be punitive. (*Vallbona v. Springer*
18 (1996) 43 Cal.App.4th 1525, 1545.) There, the Court of Appeals concluded:

19 “Requiring plaintiffs here to seek a formal order to compel defendants to comply with
20 discovery **would have been similarly futile since [defendant] Dr. Springer had**
claimed the requested documents were stolen.” (*Id.* at 1546.)

21 The Court of Appeals further stated that the only absolute prerequisites to imposing sanctions are two
22 facts: “**a failure to comply**” and “**the failure must be wilful.**” (*Villbona* at 1545 (emphasis added).)

23 In this case, REGENTS’ initial verified discovery responses denied the existence of the relevant
24 category of items. Defendant later responded that the specific items had existed but were destroyed.
25 (Embrey decl. ¶¶7-8, 16(a), 16(b), 16(c).) **At that point, no discovery order could bring the**
26 **documents back and thus, seeking a prior discovery order would have been futile.**

27 The circumstances here are similar to those in *Vallbona*. There, the evidence had at one time
28

1 been in defendant’s possession, but defendant claimed that it had been stolen. (*Vallbona* at 1542-1543,
2 1545.) There was evidence showing willful withholding—the defendant attempted to use some of the
3 purportedly stolen documents at trial. (*Id.* at 1543.) Here, REGENTS destroyed the evidence when it
4 *knew* litigation was extremely likely (very foreseeable). REGENTS’ May 20, 2024 letter to the Plaintiffs
5 admitted it had investigated the incident, and also discussed financial compensation, avoiding
6 “protracted litigation.” (Embrey decl. ¶¶12, 13(f)(iv), Exh. 12.) Evidence also tends to show that
7 REGENTS began investigating even before the amputation of April 14, 2024, collecting evidence of
8 communications. (*Id.* ¶¶13(f), 14-15.) This was still two weeks before any of the mentioned evidence
9 would have been destroyed. (*Id.* ¶¶15, 16(c).)

10 The Court of Appeals in *Vallbona* affirmed the imposition of issue and evidentiary sanctions,
11 rejecting defendant’s argument that they constituted a terminating sanction. The Court of Appeals
12 explained that **the sanctions were limited to the matters the denied discovery was aimed at proving,**
13 **and doing otherwise would only benefit the withholding party.** (*Id.* at 1546, 1548.) Here, similarly,
14 the sanctions requested are not designed to be punitive, only to address the holes that Defendant *created*
15 in evidence by *its destruction* of same, that would otherwise benefit Defendant.

16 The futility of seeking prior discovery orders is also demonstrated by the fact that, at the time,
17 there was an approximate five-month wait between motion filing and hearing dates. The fact that the
18 appointment of the discovery referee almost immediately prompted REGENTS to supply a couple of its
19 employees for deposition, in a feigned attempt to show cooperation confirms Defendants took advantage
20 of that delay. Nevertheless, the evidence had already been destroyed.

21 **V. CONCLUSION**

22 Defendants had a clear duty to preserve once litigation was reasonably foreseeable,
23 unquestionably by April 15, 2024 at the latest. Nevertheless, Defendants destroyed the surgery video
24 weeks later, the intra-team secure messages a month and one-half later, and the Handoff Data a week
25 and one-half later. This conduct has severely prejudiced Plaintiffs’ ability to prove multiple critical
26 issues. Together with the other discovery abuses discussed, the imposition of severe sanctions is justified
27 and necessary.

1 Date: December 29, 2025

ROBINSON CALCAGNIE, INC.

2
3 By: Patrick B. Embrey
Patrick B. Embrey

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5 Jeffrey L. Robinson
Jeffrey L. Robinson
Attorneys for Plaintiffs

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1 5. Relevant Discovery Responses are attached as follows:

- 2 a. Attached hereto and labeled as **Exhibit 4** are true and correct copies of the pertinent
3 pages of Defendants REGENTS’ Responses to Plaintiffs Request for Production of
4 Documents, Set One (“Resp. to RFP Set One”), served by Defendant upon Plaintiffs’
5 counsel on April 7, 2025.
- 6 b. Attached hereto and labeled as **Exhibit 5** are true and correct copies of the pertinent
7 pages of Defendants REGENTS’ Further Responses to Plaintiffs Request for
8 Production of Documents, Set Two (“Furth. Resp. to RFP Set Two”), served by
9 Defendant upon Plaintiffs’ counsel on June 3, 2025.
- 10 c. Attached hereto and labeled as **Exhibit 6** are true and correct copies of the pertinent
11 pages of Defendants REGENTS’ Responses to Plaintiffs Request for Production of
12 Documents, Set Three (“Resp. to RFP Set Three”), served by Defendant upon
13 Plaintiffs’ counsel on June 23, 2025.
- 14 d. Attached hereto and labeled as **Exhibit 7** are true and correct copies of the pertinent
15 pages of Defendants REGENTS’ Responses to Plaintiffs Request for Production of
16 Documents, Set Four (“Resp. to RFP Set Four”), served by Defendant upon
17 Plaintiffs’ counsel on July 29, 2025.
- 18 e. Attached hereto and labeled as **Exhibit 8** are true and correct copies of the pertinent
19 pages of Defendants REGENTS’ Responses to Special Interrogatories, Set Two
20 (“Resp. to Spec. Rogs. Set Two”), served by Defendant upon Plaintiffs’ counsel on
21 July 29, 2025.
- 22 f. Attached hereto and labeled as **Exhibit 9** is a true and correct copy of Defendant
23 REGENTS’ Response to Plaintiffs’ Request for Initial Disclosures, served by
24 REGENTS on or about May 6, 2025. The initial disclosures contain no reference to
25 video or audio recordings, secure messages (or “secure chats” as they are also
26 referred to), or the Handoff Data.

27 6. This motion pertains to conduct by Defendant REGENTS, as well as Defendant WANG,
28 that occurred both prior to and after the filing of the Plaintiffs’ original Complaint. It primarily deals

1 with the willful destruction of evidence by Defendants. The items of evidence that were destroyed are
2 relevant to the issues of this case and the fact of their destruction has severely prejudiced Plaintiffs, for
3 the reasons stated in the memorandum of points and authorities. (See e.g. Memorandum § I at pp. 1:20-
4 2:5, II(C) at p. 3:14-28, § IV(C), pp. 10:14-11:5.) The items of evidence willfully destroyed by
5 Defendant REGENTS include the following:

- 6 a. Video recording of the initial surgery upon Plaintiff WAYNE WOLFF on April 3,
7 2024; (see Exhibit 4, No. 42; Exhibit 7, Nos. 137-138; Exhibit 8, Nos. 81-84)
- 8 b. Secure messages, referred to as “Epic Secure Chats,” which are encrypted text
9 communications between medical care providers employed by REGENTS, using the
10 Epic system used by Defendant REGENTS at UCIMC; At issue are secure messages
11 containing communications pertaining to WAYNE WOLFF’s care at the time of the
12 events alleged in Plaintiffs’ Complaint and FAC; The secure messages are referred to
13 as Epic Secure Chats/Messages, and logs are kept of messages sent, identifying each
14 message by a unique identifier; (see Exhibit 5, Nos. 99-102, Exhibit 6, Nos. 103-106,
15 Exhibit 7, Nos. 134-136, 164, 172) and
- 16 c. “Handoff Data,” which is information provided to on-going medical providers from
17 off-going medical providers pertaining to the condition, necessities, care, and
18 treatment of patients (for example, at a shift change or when patient care is
19 transferred from one provider to another). (See Exhibit 7, No. 144 (and see No. 139);
20 see also Exhibit 15 (Regent’s Hand Off Communication Policy).)

21 7. **Initial discovery responses of Defendant REGENTS denied that such relevant items**
22 **ever existed.** (See Exhibit 4, No. 42 (requesting videos of WAYNE WOLFF); Exhibit 5, Nos. 99-102
23 (requesting all “clinical messaging systems” (CTS) messages, giving examples like that actually later
24 admitted to be used by UCIMC).)

25 8. **Defendant REGENTS later admitted that the documents/evidence had existed, but**
26 **was destroyed/purged.** (See Exh. 7, Nos. 137-138 (video and audio of WOLFF’s surgery, destroyed 30
27 days after 4/3/24 surgery)); Exh. 8, Nos. 81-84 (same); Exh. 6, Nos. 103-106 (“Epic” Secure Chat
28 Messages purged 60 days after messages sent); Exh. 7, Nos. 134-136, 164 (same); Exh. 7, No. 172

1 (response directly contrary to Exh. 5, Nos. 99-102 which denied use of or existence of any CTS
2 messages); Exh. 8, No. 109 (same); Exh. 8, Nos. 96-106 (Epic Secure Chat purge policy); Exh. 7, No.
3 144 (Handoff Data destroyed/purged seven days after discharge).)

4 9. Attached hereto and labeled as **Exhibit 10** are true and correct copies of pertinent
5 medical records of WAYNE WOLFF as follows:

- 6 a. Labeled as **Exhibit 10(a)**: Report of April 3, 2024 knee surgery by Dr. DEAN
7 WANG, produced (eventually) by Defendant REGENTS in discovery in this action;
- 8 b. Labeled as **Exhibit 10(b)**: Report of April 6, 2024 fasciotomy surgery by Dr. DEAN
9 WANG, produced by Defendant REGENTS in discovery in this action.
- 10 c. Labeled as **Exhibit 10(c)**: Report of April 6/7, 2024 surgery by Dr. Samuel Chen,
11 produced by Defendant REGENTS in discovery in this action. (The dates of 4/6/24
12 and 4/7/24 are both referred to as it appears it may have started on 4/6/24 and
13 concluded on 4/7/24—but that is not entirely clear from the record).
- 14 d. Labeled as **Exhibit 10(d)**: Report of April 9, 2024 surgery by Dr. Wang, produced by
15 Defendant REGENTS in discovery in this action.
- 16 e. Labeled as **Exhibit 10(e)**: Report of April 14, 2024 surgery by Dr. Stitzlein,
17 amputating the lower left leg at the knee, produced by Defendant REGENTS in
18 discovery in this action.

19 10. Attached hereto and labeled as **Exhibit 11** is a true and correct copy of the formal
20 grievance letter sent by Plaintiffs to Defendant REGENTS/UCIMC on or about April 15, 2024.

21 11. Attached hereto and labeled as **Exhibit 12** is a true and correct copy of Defendant
22 REGENTS' May 20, 2024, 'response' to Plaintiffs' formal grievance letter (Exhibit 11), sent by
23 Defendant REGENTS/UCIMC.

24 12. Attached hereto and labeled as **Exhibit 13** are true and correct copies of the relevant
25 purge policies of UCIMC, produced by Defendant REGENTS in this case. In that regard, the
26 retention/purge policies of the items of evidence listed are as follows: (1) surgery video—30 days after
27 surgery (see also Exh. 7, Nos. 137-138); (2) intra-team secure messages—60 days after each message
28 was sent (see also Exh. 7, No. 134); and (3) Handoff Data—seven days after discharge of the patient

1 (see also Exh. 7, No. 144).

2 13. Plaintiffs’ motion is based on, among other things, the fact that Defendants destroyed or
3 “purged” the above evidence when litigation was reasonably foreseeable. UCIMC/ REGENTS claims
4 that it destroyed or purged the evidence according to its own purge policies (Exhibit 13). However,
5 litigation was reasonably foreseeable (i.e. likely or probable) even prior to any destruction that would
6 have been pursuant to the purge policies, as outlined below. (Nonetheless however, Plaintiffs have a
7 suspicion that certain evidence claimed to have been destroyed or purged according to UCIMC policies
8 may have still been in existence after the filing of this case—a suspicion that is fanned by REGENTS
9 initial complete denials that any such documents or evidence *ever* existed, and further fueled by
10 REGENTS completely inconsistent and directly contrary responses later, of which REGENTS offers no
11 explanation or apology.)

12 Litigation was made reasonably foreseeable by the following (among other circumstances and
13 facts discussed in the memorandum):

- 14 a. The fact of the severed blood vessel during the April 3, 2024 knee surgery upon
15 Plaintiff WAYNE WOLFF; (see Exhibit 10(a));
- 16 b. Confirmation that the severed blood vessel was a complete transection of the popliteal
17 artery (primary blood supply to the lower leg) during the April 6-7, 2024 surgical
18 procedures by Drs. WANG and Samuel Chen, with an angiogram confirming lack of
19 blood flow to the lower left leg, with evidence of massive tissue necrosis, and with
20 acknowledgement at that time by Drs. WANG and S. Chen that the lower left leg
21 would likely need to be amputated; (see Exhibits 10(b) & 10(c));
- 22 c. Acknowledgement in the amputation surgical report (Ex. 10(e) below) that the April
23 9, 2024, exploratory surgery and debridement (Ex. 10(d)) revealed a nonviable left
24 lower extremity and consult indicated need of amputation.
- 25 d. Actual amputation of the lower left leg, on April 14, 2024; (Exhibit 10(e)) and
- 26 e. Plaintiffs’ formal grievance letter that spelled out Plaintiffs’ complaints, sent on May
27 15, 2024 to the REGENTS (Exhibit 11).
- 28 f. Furthermore, evidence shows that REGENTS began investigating the incident even

1 prior to the amputation. This is indicated by several things, including the following:

- 2 i. Acknowledgement in REGENTS letter of May 20, 2024 (Exhibit 12),
3 purportedly written in response to Plaintiffs’ formal grievance letter, which
4 acknowledges that REGENTS performed a “comprehensive review” of
5 WAYNE WOLFF’s care prior to that time and had determined that “delays in
6 care” had caused amputation to be necessary, for which REGENTS was
7 responsible. (Exhibit 12.)
- 8 ii. The dates and context of iPhone messages (or Apple Messages) sent between
9 providers during WOLFF’s care, showing that screenshots of the messages
10 were taken prior to the amputation; this is indicative of REGENTS collecting
11 evidence to conduct its “comprehensive review” (Exhibit 12) prior to or
12 immediately after the amputation; (see Exhibit 14 and paragraphs 14, 15, & 17
13 herein)
- 14 iii. The fact of the comprehensive review beginning prior to the amputation tends
15 to indicate that REGENTS believed there was something to investigate, and
16 together with the other facts above, would indicate that REGENTS knew
17 litigation was reasonably foreseeable, i.e., likely or probable.
- 18 iv. REGENTS May 20, 2024 letter (Exhibit 12) confirms that REGENTS not
19 only knew that litigation was reasonably foreseeable, but likely enough that
20 REGENTS (1) discussed “financial compensation”; (2) hoped to avoid
21 “protracted litigation”; and (3) warned of the “statute of limitations.” (Exhibit
22 12.)

23 14. Attached hereto and labeled as **Exhibit 14** is a true and correct copy of a screenshot of an
24 iPhone (or Apple Messages) text message conversation between Drs. Sharma and WANG, with a
25 date/timestamp stating “Tuesday 8:48 AM” at mid-page of the screenshot and the last dated message
26 dated “Yesterday 7:45 PM.” The text message was produced by Defendant REGENTS during discovery
27 in this matter (although Plaintiffs believe that the production was not complete and that portions of
28 messages produced were omitted). Under the time entry of “Tuesday 8:48 AM,” Dr. Sharma texted to

1 Dr. Wang, “Family is very upset with the communication and nursing care postop, ... Wife is much
2 happier with nursing in icu though. ...” Then the next entry, under a timestamp of “Yesterday 7:45 PM,”
3 from Dr. Wang reads, “Can you contact hanger to send a prosthetist to talk to Wayne Wolff? Plan is a
4 through knee.” The latter entry is telling about when the screenshot of the text message was sent—it was
5 obviously before the “through knee” amputation (which occurred on April 14, 2024); but it was after
6 “Tuesday 8:48 AM.” Since 4/3/24 (the date of the initial surgery) was a Wednesday, the next two
7 following Tuesdays are 4/9/24 and 4/16/24. The date of Tuesday, 4/16/24 falls after the amputation
8 surgery. Therefore, the Tuesday 8:48 AM entry can only refer to Tuesday, 4/9/24. Therefore, it can be
9 safely concluded that **the screenshot was taken, at the earliest, 4/10/24, and at the latest, 4/15/24.**

10 15. Based upon the screenshot of Exhibit 14 being taken prior to the date following the
11 amputation of April 14, 2024, this tends to show that the screenshots had been requested by
12 UCIMC/REGENTS at or prior to that time; which indicates that REGENTS began investigating the
13 incident involved herein on or prior to that date. Exhibit 12 confirms that REGENTS had completed its
14 investigation of the incident prior to the date of the Exhibit (May 20, 2024), which also supports the
15 above conclusion. If this is correct, the investigation began two weeks prior to the earliest purge
16 scheduled (the Handoff Data), and well before any other destruction occurred based on the purge
17 schedules.

18 16. REGENTS’ discovery responses that indicate the willful destruction of evidence include:

19 a. Those pertaining to **video** of WAYNE WOLFF:

20 i. On April 7, 2025, Defendant REGENTS provided the following response:

21 REQUEST FOR PRODUCTION #42: Provide any and **all videos** reflecting
22 PLAINTIFF in your possession, custody, or control.

23 RESPONSE TO REQUEST OF PRODUCTION #42: Responding party is unable to
24 comply with this request as **no such responsive documents exist and never existed.**

25 (Exh. 4, Def.’s Resp. to Pltfs.’ Req. for Prod. Set One, No. 42, dated **April 7, 2025**
26 (“PLAINTIFF” was defined as follows: “ ‘PLAINTIFF’ shall refer to Plaintiff Wayne
27 Wolff”) (all emphasis in quotes is added hereabove and below).)

28 ii. However, thereafter, on August 15, 2025, in response to more specific
requests, Defendant Regents finally admitted destruction of video and audio
recordings:

REQUEST FOR PRODUCTION NO. 137: All **video recordings of Plaintiff Wayne**

1 **Wolff's April 3, 2024** surgery at the HOSPITAL.
2 RESPONSE TO REQUEST FOR PRODUCTION NO. 137: Despite diligent search
3 and reasonable inquiry, Responding party is unable to comply with this request as **the**
4 **responsive document no longer exists** in Responding party's possession, custody, or
5 control. **Video and audio records taken in the operating room are for educational**
6 **purposes and are not retained after 30 days.**
7 (Exh. 7, Def.'s Resp. to Pltfs.' Req. for Prod. Set Four Nos. 137 (see also 138 (audio),
8 dated August 15, 2025.)

9 b. Those pertaining to **Secure messages:**

10 i. On April 22, 2025, Defendant Regents provided the following response:

11 REQUEST FOR PRODUCTION NO. 99: Produce any and all messages sent by Dean
12 Wang, MD, via Clinical Texting Systems (CTS), including, but not limited to,
13 PatientCalls, TigerConnect, OhMD, and/or Textline, between April 3, 2024, and April
14 6, 2024, that in any way relate to Plaintiff Wayne Wolff.

15 RESPONSE TO REQUEST FOR PRODUCTION NO. 99: Objection. This request is
16 vague, ambiguous, and overbroad, rendering it unduly burdensome, harassing, and
17 oppressive. It also seeks documents which are not relevant, and which are not
18 reasonably calculated to lead to the discovery of admissible evidence. This request
19 violates the privacy rights of non-parties, and HIPAA. Subject to the foregoing
20 objections, see Exhibit 44.

21 (Exh. 5, Def.'s Resp. to Pltfs.' Req. for Prod. Set Two No. 99, dated April 22, 2025;
22 see also Nos. 100-102.)

23 ii. The reference to Exhibit 44 was absolutely unresponsive to the request
24 regarding Clinical Texting Systems (CTS), producing only a pager log (with
25 no entries even remotely related to Plaintiffs), phone call logs (again, with no
26 entries even remotely related to Plaintiffs), and a text message log (showing
27 only date, time, and phone number for texts, none of which had any apparent
28 logical connection to Plaintiffs, and no messages were included). No
information regarding any Clinical Texting System (CTS), including secure
messages, was included in any manner.

iii. A further response was provided on June 3, 2025, as follows:

24 FURTHER RESPONSE TO REQUEST FOR PRODUCTION NO. 99: Objection.
25 This request is vague, ambiguous, and overbroad, rendering it unduly burdensome,
26 harassing, and oppressive. It also seeks documents which are not relevant, and which
27 are not reasonably calculated to lead to the discovery of admissible evidence. This
28 request violates the privacy rights of non-parties, and HIPAA. Without waiving said
objections, and subject to them, **Responding party does not utilize any of the**
Clinical Texting Systems requested, however, all MyChart messages are contained
in Plaintiff Wayne Wolff's UCI Medical Center records, previously produced as
Exhibit 19.

(Exh. 5, Def.'s Further Resp. to Pltfs.' Req. for Prod. Set Two No. 99, dated June 3,
2025; see also Nos. 100-102 (note that the MyChart reference was non-responsive).)

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- iv. Similar requests, responses, and further responses were given as to numbers 100-102, which were basically the same as number 99, except 100 asked for those “received” by Dean Wang (whereas number 99 regarded those “sent” by Dean Wang); and 101-102 were as to Lisa Wolff, rather than Wayne Wolff, but otherwise the same as 99 and 100, respectively.
- v. Again, no Clinical texting system messages were produced, and in fact it was denied they existed or were used. It should be pointed out that the request included *examples* of systems, not an exclusive list. It would be clear later that this response was both evasive and false, given under penalty of perjury.
- vi. On June 23, 2025, Defendant Regents responded to requests as follows:

12 REQUEST FOR PRODUCTION NO. 103: Any and all messages sent by Defendant Regents of the University of California’s employees, via Epic Secure Chat, Epic Haiku, Epic Canto, and/or Epic Rover, between April 3, 2024, and April 18, 2024, that in any way relate to Plaintiff Wayne Wolff.

13 RESPONSE TO REQUEST NO. 103: Objection. This request is overly broad, thus rendering it unduly burdensome, oppressive and harassing. It also seeks documents which are not relevant, and which are not reasonably calculated to lead to the discovery of admissible evidence. The documents are also protected by the attorney-client privilege, the attorney work product doctrine, and the provisions of Evidence Code, section 1157, et seq. Subject to and without waiving the foregoing objections, despite diligent search and reasonable inquiry, **Responding party is unable to comply with the request in whole as such responsive documents are no longer in Responding party’s possession, custody, and control. Please see Exhibit 47, UCI Health Policy and procedure regarding Epic Secure Chat.**

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(Exh. 6, Def.’s Resp. to Pltfs.’ Req. for Prod. Set Three No. 103, dated June 23, 2025; see also Nos. 104 (“received” rather than “sent”), and 105-106 (same as 104-105, respectively, except pertaining to Lisa Wolff rather than Wayne Wolff.)

- vii. Epic Secure Chats, which is a clinical texting system (CTS), as requested months earlier in RFP Set Two by non-exhaustive list (see above), had therefore existed all along and had been willfully destroyed by Defendant. It is only because Plaintiffs were able to find, through other sources, that UCI may have used another CTS named “Epic” and then specifically requested those messages that Defendant REGENTS was forced to admit its willful destruction of evidence. The gamesmanship and evasiveness is obscenely egregious discovery abuse.

1 viii. To be sure, other responses by Defendant REGENTS indicate that Defendant
2 knew Epic was a clinical texting (or messaging) system, that it used, and that
3 it should have revealed. Furthermore, to top it off, REGENTS also admitted
4 that it had actually used one of the named CTS systems in the prior requests,
5 confirming that REGENTS lied under oath when it responded that it used
6 none of the CTS systems. The indicated response stated as follows:

7 REQUEST FOR PRODUCTION NO. 172: All WRITINGS identifying **any and all**
8 **Secure Messaging applications** and/or systems used by the HOSPITAL and
9 HOSPITAL staff in 2024.

10 RESPONSE TO REQUEST FOR PRODUCTION NO 172: Despite diligent search
11 and reasonable inquiry, Responding party is unable to comply with this request as no
12 such responsive document exists in its possession, custody, or control. **The Secure**
13 **messaging systems used in 2024 were TigerText/TigerConnect and Epic Secure**
14 **Chats.**

15 (Exh. 7, Def.'s Resp. to Req. for Prod. Set Four, No. 172, dated July 29, 2025.)

16 ix. Compared to the response to Request no. 42, discussed above, they cannot be
17 reconciled or defended.

18 x. Furthermore, it must be noted that **REGENTS has in no way offered any**
19 **explanation for the clearly false responses given.**

20 c. Those pertaining to "Handoff Data":

21 i. On July 29, 2025, Defendant REGENTS provided the following response:

22 REQUEST FOR PRODUCTION NO. 144: Any and all WRITINGS containing all
23 **Handoff Data**, as evidenced in the Audit Trail, relating to Plaintiff Wayne Wolff.
24 Data pertaining to third parties may be redacted. RESPONSE TO REQUEST FOR
25 PRODUCTION NO. 144: Despite diligent search and reasonable inquiry, Responding
26 party is unable to comply with this request as no responsive documents exist in
27 Responding party's possession, custody, or control. Handoff Data is automatically
28 purged after 168 hours (7 days) from discharge such that Responding party has no
29 access to or means of producing this data. Responding party also refers to Exhibit 54,
30 the Handoff Communication Policy.

31 (Exh. 7, Def.'s Resp. to Req. for Prod. Set Four, No. 144, dated July 29, 2025.)

32 ii. As such, REGENTS admitted to having purged "Handoff Data" presumably 7
33 days after WAYNE WOLFF was discharged (April 18, 2024), or
34 approximately April 25, 2024.

35 iii. As the exhibit that REGENTS refers to in the response explains:

36 "The primary objective of a hand off is to provide complete and accurate
37 information about a patient's clinical status, including current conditions and
38 recent and anticipated treatment." UCIMC's policy explains that handoffs are

1 an interactive process, but, “Hand off communication can be verbal exchange
2 or in written form and also should include, among other things, “Pertinent
3 medical history including: Diagnosis[,] Current condition[,] Anticipated
4 change in condition or treatment[, and] What to watch for in the next interval
5 of care.” In addition, the policy states that documents used in the handoff are
6 “not part of the permanent medical record.” (Exh. 15, pp. 1-2.)

7 17. Attached hereto and labeled as **Exhibit 15** is a true and correct copy of UCIMC’s “Hand
8 Off Communication” policy, active at the time of the events relevant herein, and produced during
9 discovery in this case by Defendant REGENTS.

10 18. Since shortly after this case was filed, Plaintiffs have been attempting to obtain
11 depositions of several employees of the REGENTS working at UCIMC and numerous electronic records
12 kept by the REGENTS, including portions of the medical records that have not thus far been produced
13 by Defendants.

14 19. The evasiveness, delay, and other abuses of discovery by REGENTS are evidenced by
15 the following:

16 a. Defendants delayed producing substantial portions of Plaintiff WAYNE WOLFF’s
17 medical records until August 15, 2025:

18 i. Plaintiffs requested all medical records in Request to Produce Set One, request
19 nos. 23 (for 8/15/23), 25 (for 11/30/23), 27 (for 4/3/24 - 4/6/24), 29 (for 4/7/24
20 – discharge on 4/18/24), 31 (medical records with handwritten notes), 33
21 (hospital’s electronic medical record), 34 (medical records showing nursing
22 care and treatment), 35 (all “DOCUMENTS” referring, referencing, or
23 pertaining to Wayne Wolff), and 39 (handwritten medical records). (Exhibit
24 4.) Defendants responded on April 7, 2025. All responses referred to a
25 document produced by Defendant REGENTS as exhibit 19 (with the
26 exception of the response to no. 35, which also referenced billing data as a
27 separate exhibit). The document produced as REGENTS’ exhibit 19
28 (hereinafter referred to as the “initial medical records produced”) was
produced around the same date, and contained at total of 2,993 pages.

ii. After receipt of the initial medical records produced by REGENTS, Plaintiffs

1 believed there were gaps of information (and still believe even now that there
2 are gaps), and communicated those concerns to counsel for Defendant
3 REGENTS. An example is the records from the first PACU in which
4 WAYNE WOLFF was placed immediately after being mandated admitted
5 after the initial knee surgery. To date, Plaintiffs still have not received such
6 records. (And of note, REGENTS offers no explanation for their absence, nor
7 have Plaintiffs been afforded the opportunity to take depositions of those
8 believed to have knowledge of such facts. The question goes unanswered as
9 long as REGENTS is allowed to abuse discovery in this matter.)

- 10 iii. Plaintiffs were then forced to spend **over \$7,000** (\$7,218.75) and nearly 30
11 hours (27.25 hrs.) of expert time for analysis by an electronic medical record
12 expert to determine what was missing and to assist with drafting discovery
13 that would force REGENTS to produce the documents and other evidence.
14 (Redacted invoices of Plaintiffs' said expert can be produced if ordered by the
15 Court (or alternatively, unredacted invoices for *in camera* review by the
16 Court.) Said expert time includes only time spent by said expert *after* it was
17 clear that REGENTS was not being forthcoming, and after several sets of
18 requests for production had been sent to REGENTS. Only then, after very
19 specific requests for documents and information, and, coincidentally, **only**
20 **after a discovery referee was appointed** (or pending issuance of the
21 appointment order), were Plaintiffs able to obtain additional records. (The
22 Court issued the order appointing the Hon. Lon Hurwitz, Retired, as discovery
23 referee, on August 20, 2025.)
- 24 iv. On or about August 15, 2025, Defendant REGENTS produced a new
25 set/version of medical records in response to Plaintiffs' Request for
26 Production of Documents, Set Four, Nos. 153 & 155. The **new set included a**
27 **total of 5,754 pages** of medical records. **This was nearly 3,000 additional**
28 **pages** than that produced four months earlier and attested to by REGENTS

1 under penalty of perjury to include all responsive documents. (Exh. 4.) The
2 only substantive difference between the latter requests and the former (from
3 RFP Set One) was that the latter requests specifically requested the inclusion
4 of authorship and the full textual versions of notes. The former version had
5 omitted both (curiously leaving out who authored which notes in the records,
6 as well as what revisions had been made to records). However, the first
7 responses should have included this information by the inclusive language
8 used, and the definition of “DOCUMENTS” used in several of the Plaintiffs’
9 requests (e.g. numbers 35 & 39 of Exh. 4), which definition included revisions
10 and versions differing from the original. Specifically, Plaintiffs RFP Set One
11 used the following defined term:

12 “**WRITINGS/DOCUMENTS**’ shall mean the **original (and any copies which**
13 **differ** in any way from the original) of any written, printed, typed, recorded, or
14 graphic material of every type, form or description, however, any by whomever,
15 prepared, produced, disseminated, or made including, but not limited to, letters,
16 correspondence, notes of oral communication, telegrams, telexes, memoranda,
17 **records**, minutes, contracts, agreements, microfilms, microfiches, bulletins, circulars,
pamphlets, studies, **reports**, charts, graphs, notices, diaries, summaries, **notes**,
messages, instructions, work assignments, personal notes, notebooks, **drafts**, data
sheets, data complications, statistics, maps, speeches, tapes, **tape recordings**, and
transcripts of such tapes and recordings, and all **writings: defined in Evidence Code**
§250.” (Emphasis added.)

18 Obviously, REGENTS had a much more restrictive interpretation of the definition
19 than was intended (or reasonable).

- 20 b. Furthermore, Defendant caused great delay as a result of the deceptive and false
21 responses provided in discovery, as described in paragraph 16, *supra*, describing
22 Defendant’s deceptiveness and willful destruction. These include, for example, the
23 false response to RFP Set One, No. 42 (stating no video of plaintiff Wayne Wolff
24 existed and never existed), compared to those responses provided almost four months
25 later, indicating that video (and audio) of Wayne Wolff’s surgery had existed, but was
26 purged (RFP Set Four, Nos. 137-138).
- 27 c. Moreover, Defendant REGENTS has continually attempted to delay the taking of
28 depositions in this matter. Defendant repeatedly **denied providing depositions**. With

1 several REGENTS-employed witnesses, Defendant either denied allowing the
2 depositions to go forward or offered to produce deponents only upon limited scope,
3 limited time, and only at their unilaterally imposed location (contrary to Plaintiffs
4 deposition notices). With a number of other key employee witnesses, REGENTS has
5 never provided dates for the depositions to go forward, even after multiple requests,
6 notices served, and promises by REGENTS/UCIMC to provide dates. **This includes**
7 **Dr. DEAN WANG, MD, likely the most important defense witness.** (But note ¶21
8 below.)

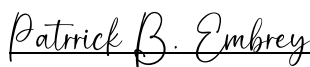
9 20. Monetary sanctions are appropriate in this action based on the conduct and destruction by
10 Defendant REGENTS. The monetary sanctions are not intended, in any way, to diminish the
11 request for terminating, issue, and evidentiary sanctions. The amount of such sanctions
12 sought, is based on, and includes, the following:

- 13 a. Plaintiffs were required to hire and pay for the services of an electronic medical
14 records expert as discussed in ¶19(a)(iii), above. The total amount of expense paid to
15 the expert to date specifically due to the Defendant's discovery abuse is \$7,218.75,
16 which amount Plaintiffs request as part of the monetary sanctions requested.
- 17 b. Plaintiffs' counsel Jeffrey L. Robinson has spent approximately, at a minimum, 29
18 hours reviewing responses, drafting additional discovery to mitigate Defendant's
19 obfuscation and denials, working with the expert discussed in subparagraph (a)
20 above, meeting and conferring, and otherwise attempting to obtain documents denied
21 by Defendant REGENTS. The law firm of Robinson Calcagnie, Inc. currently bills
22 for Mr. Robinson's time, for the type of work described herein, in the amount of \$850
23 per hour. The monetary amount sought for Mr. Robinson's time is therefore \$24,650.
- 24 c. Plaintiffs' counsel Patrick Embrey has spent approximately, at a minimum, 48 hours
25 reviewing responses, drafting additional discovery to mitigate Defendant's
26 obfuscation and denials, working with the expert discussed in subparagraph (a)
27 above, meeting and conferring, and otherwise attempting to obtain documents denied
28 by Defendant REGENTS. The firm bills for Mr. Embrey's time, for the type of work

1 described herein, in the amount of \$600 per hour. The monetary amount sought for
2 Mr. Embrey's time is therefore \$28,800.

3 21. As was stated in the motion, Plaintiffs allege that Defendant REGENTS were
4 uncooperative with Plaintiffs' attempts to set depositions and receive requested discovery. With that
5 said, as previously shared with the Court, REGENTS reached out to Plaintiffs in an attempt to allegedly
6 resolve the case by settlement. Although reluctant, and after much back and forth, Plaintiffs ultimately
7 agreed to resolve the case for a specific amount. Defendant then asked to "stay" discovery until the
8 REGENTS meeting, which takes place January 20-22, 2026. Despite Plaintiffs' reluctance, Plaintiffs
9 agreed as long as a guarantee of several deposition dates was provided by REGENTS, to go forward in
10 the case that the potential resolution was not approved by REGENTS at their meeting. This was
11 requested in order to we could keep the June trial date on track if it did not settle. Plaintiffs also
12 informed REGENTS, through their counsel that Plaintiffs would still be filing the sanction motion but
13 would request a hearing after the January REGENTS meeting. If the settlement was approved, the
14 sanction motion would be taken off calendar.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing is
16 true and correct. Executed this 29th day of December 2025, at Newport Beach, California.

17
18 
19 Patrick B. Embrey

1 Jeffrey L. Robinson, SBN 97852
Patrick B. Embrey, SBN 224308
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5 Attorneys for Plaintiffs
WAYNE and LISA WOLFF
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7
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ORANGE – FULLERTON
11

12 WAYNE WOLFF, Individually, and LISA
WOLFF, Individually,

13 Plaintiffs,
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15 vs.
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17 REGENTS OF THE UNIVERSITY OF
CALIFORNIA, a California Entity; DEAN
WANG, MD (originally named as Defendant
18 DOE 1), and DOES 2 through 100, Inclusive,

19 Defendants.
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Case No. 30-2025-01459654-CU-MM-NJC

Assigned to: Judge: Scott A. Steiner, Dept. N-18

**[PROPOSED] ORDER ON PLAINTIFFS’
MOTION FOR TERMINATING, ISSUE,
EVIDENTIARY, AND MONETARY
SANCTIONS FOR INTENTIONAL
SPOILIATION/ DESTRUCTION OF
EVIDENCE, DISCOVERY ABUSE, AND
CONCEALMENT, BY DEFENDANT
REGENTS OF THE UNIVERSITY OF
CALIFORNIA**

Complaint Filed: February 11, 2025
1st Amended Complaint

Filed: August 20, 2025

Trial Date: June 29, 2026

Hearing

Date: April 22, 2026

(unless earlier date is available)

Time: 10:00 a.m.

Dept.: N18

25 **ORDER OF THE COURT**

26 On the Plaintiffs’ Motion for Terminating, Issue, Evidentiary, and Monetary Sanctions for
27 Intentional Spoliation/Destruction Of Evidence, Discovery Abuse, and Concealment by Defendant
28 Regents of the University of California, the Court has considered all of the papers submitted and the

1 arguments of counsel. After such consideration the Court hereby ORDERS AS FOLLOWS:

2 Plaintiffs' Motion is hereby [GRANTED] [GRANTED IN PART] [Denied].

3 The Court thus imposes sanction upon Defendant Regents of the University of California
4 ("Regents") as follows:

5 Terminating Sanctions:

- 6 1. The Answer of Defendant Regents to Plaintiffs' First Amended Complaint is ordered
7 stricken.
- 8 2. Default is ordered entered against Defendant Regents.

9 ISSUES SANCTIONS:

10 The Court orders that the following issues are established:

- 11 3. Defendant UCIMC/REGENTS and its employee, Dr. Wang, did assume a robust or
12 substantial caretaking or custodial relationship with WAYNE WOLFF beginning from the
13 time that WOLFF was admitted for observation and monitoring, as mandated by Dr. Wang,
14 continuing until WOLFF was discharged;
- 15 4. Defendant UCIMC/REGENTS engaged in "neglect" of Plaintiff WAYNE WOLFF, within
16 the meaning of Welfare & Institutions Code sections 15610.57 and as used in 15657; or
17 alternatively, that there be a presumption that REGENTS engaged in such "neglect" of
18 Plaintiff WAYNE WOLFF; and
- 19 5. Defendant UCIMC/REGENTS' employee Dr. Wang, intentionally concealed his surgical
20 errors and that such conduct was "reckless, oppressive, and/or malicious," within the
21 meaning of those terms as used in Welfare & Institutions Code §15657, and as defined in
22 Welfare & Institutions Code §15610 et seq.

23 EVIDENTIARY SANCTIONS:

- 24 6. The burden of proof is shifted to Defendant REGENTS to disprove the following elements of
25 dependent adult neglect: In regard to dependent adult neglect, shift the burden to REGENTS
26 as to the elements of substantial caretaking or custodial relationship, breach of caretaking and
27 custodial duties to provide basic needs, causation, as well as recklessness, oppression, or
28 malice;

- 1 7. The burden of proof is shifted to Defendant REGENTS to disprove the following elements of
2 negligence: duty, breach, and causation;
- 3 8. The jury will be instructed that Defendant REGENTS/UCIMC intentionally destroyed
4 evidence it was required to preserve and that the jury may infer that the evidence would have
5 been unfavorable to said Defendant;
- 6 9. Preclude Defendant is ordered not to offer and testimony, evidence, or expert opinions
7 contradicting the deemed issues or speculating about the content of the destroyed materials;
8 and
- 9 10. Defendant is precluded from offering any evidence at trial to replace the lost recordings and
10 communications and video recording.

11 **MONETARY SANCTIONS:**

- 12 11. Defendant Regents is ordered to pay monetary sanctions to Plaintiffs' counsel, in the amount
13 of \$_____, as payment for attorney time, and reimbursement for expenses and
14 expert costs, as reasonable to compensate Plaintiffs for seeking the relief requested.
- 15 12. Defendant is ordered to pay the amount of sanctions to Plaintiffs' counsel within 15 days of
16 the entrance of this Order.

17 **IT IS SO ORDERED.**

18 **DATED:** _____

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20 _____
21 **JUDGE OF THE SUPERIOR COURT**
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SERVICE LIST

Wayne Wolff, et al. vs. The Regents of the University of California, et al.
Orange County Superior Court Case No. 30-2025-01459654-CU-MM-NJC

| | |
|--|---|
| <p>Steven J. Wysocky (State Bar No. 271257) Kristina A. Hoban (State Bar No. 280023) KELLY, TROTTER & FRANZEN 111 W. Ocean Boulevard, 14th Floor Long Beach, California 90801-5636 Phone: 562.432.5855 ♦ Fax: 562.432.8785 swysocky@kellytrotter.com kahoban@kellytrotter.com kmaguire@kellytrotter.com amlight@kellytrotter.com mrotico@kellytrotter.com</p> | <p><i>Attorneys for Defendant</i> <i>Regents of The University of California</i></p> <p>Via Electronic Transmission</p> |
| <p>Clark Hudson, (State Bar No. 149329) Amanda L. Montgomery (State Bar No. 359442) NEIL DYMOTT HUDSON A Professional Corporation 110 West A Street, Suite 1200 San Diego, CA 92101 chudson@neildymott.com amontgomery@neildymott.com hdubois@neildymott.com</p> | <p><i>Attorneys for Defendant</i> <i>Dean Wang, MD</i></p> |