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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAROL THOMAS & GINA
ANTONELLI, as the health care
proxies on behalf of patient SHARON
LUCY FREDERICK,

Plaintiffs,

v.

MOHAWK VALLEY HEALTH
SYSTEM, ST. ELIZABETH
HOSPITAL, and DOES 1 through 10,
inclusive,

Defendants.

Case No.:

**EX PARTE APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER TO ENJOIN DEFENDANTS
FROM ENDING LIFE SUPPORT;
MEMORANDUM IN SUPPORT**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD IN THIS ACTION
2 YOU ARE HEREBY NOTIFIED that on _____, 20__ , at _____, or as soon
3 thereafter as this matter may be heard in Courtroom of the United States District Court,
4 _____, located at _____, _____, Plaintiffs
5
6 CAROL THOMAS and GINA ANTONELLI on behalf of SHARON LUCY
7 FREDERICK as her healthcare proxies will hereby move this Court ex parte for a
8 temporary restraining order restraining Defendants MOHAWK VALLEY HEALTH
9 SYSTEM and ST. ELIZABETH HOSPITAL from removing life support for SHARON
10 LUCY FREDERICK and request for provision of nutrition and other medical treatment to
11 optimize her physical condition, while the Court makes its ruling. Plaintiffs also seek an
12 order compelling placement of a tracheostomy tube and gastric feeding tube into
13 SHARON LUCY FREDERICK so that she can be provided proper respiratory support
14 and nutrition and so that she can meet the conditions required for transfer to another
15 facility.
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18 This application is made pursuant to Federal Rules of Civil Procedure Rule 65(b).
19
20 The ex parte relief requested is appropriate because, absent an injunction prohibiting
21 Defendants from proceeding with ending life support measures, Defendants are going to
22 terminate SHARON LUCY FREDERICK's ventilator support at 4:00 PM on Friday,
23 October 30, 2020, thereby leading to the inevitable, and immediate, cessation of the
24 beating of SHARON LUCY FREDERICK's heart.
25

26 Plaintiffs will likely suffer irreparable harm in that SHARON LUCY FREDERICK
27 will die, whereas the only harm to Defendants will be the resulting continuation of the
28

1 status quo of allowing SHARON LUCY FREDERICK to remain on life support.

2 Further, Plaintiffs have a likelihood of succeeding on the merits of their case
3 because, inter alia, Defendants' proposed action, i.e., removal of cardiopulmonary
4 support, over the objection of CAROL THOMAS and GINA ANTONELLI, the
5 healthcare proxies for SHARON LUCY FREDERICK, based upon the classification of
6 SHARON LUCY FREDERICK as brain dead pursuant to 10 N.Y.C.R.R. § 400.16 and
7 against her religious principals, is unconstitutional in so far as it interferes with SHARON
8 LUCY FREDERICK's exercise of her rights to freedom of religion under the First
9 Amendment and interference with her privacy rights under the Fourth and Fourteenth
10 Amendments recognized rights to privacy in health care decisions and determination over
11 one's medical treatment.

12 The Plaintiffs are actively seeking alternate arrangements for SHARON LUCY
13 FREDERICK and failure to institute a TRO and Injunction will make the matter moot as
14 SHARON LUCY FREDERICK will cease to have a heartbeat and will have expired.

15 Also, the public interest will be served, as granting this Temporary Restraining
16 Order will allow the public to have a clear understanding as to the rights of a healthcare
17 proxy to continue mechanical support of the life of a patient as defined by their religious
18 beliefs.

19 Counsel for Plaintiffs properly provided Defendants MOHAWK VALLEY
20 HEALTH SYSTEM and ST. ELIZABETH HOSPITAL with ex parte notice pursuant to
21 Federal Rules of Civil Procedure Rule 65(b)(1).

22 This ex parte application is made pursuant to Federal Rules of Civil Procedure
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1 Rule 65(b) and is based upon this notice, the attached memorandum of points and
2 authorities, the attached Declaration of Drs. Paul Byrne and Cicero Coimbra, the complete
3 records, pleadings, documents, and papers on file, and upon such other matters which may
4 properly come before this Court at the hearing of this application.
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8 Dated: October 30, 2020
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12 _____
13 Gina Antonelli

14 Attorney for Plaintiffs
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On September 17, 2020, at about 7:20 PM, SHARON LUCY FREDRICK, a devout Roman Catholic, was praying the Rosary over the telephone with her close friend Jennifer Nolan. At this time, Sharon began slurring her words and apparently experienced a stroke, causing her to become mentally and physically incapacitated. Sharon was taken by ambulance that night and was admitted to St. Elizabeth Hospital in Utica, NY.

Initially, a TRO was obtained in the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department. The Honorable Brian F. DeJoseph issued and extended a temporary restraining order requiring that the Defendant continue to provide ventilator support and maintain the status quo of medical treatment through 4:00 PM Friday, October 30, 200. After such time the Hospital is free to remove the ventilator support from SHARON LUCY FREDRICK and, without such support, her heart will cease beating, resulting in her death.

Prior to filing this action Plaintiff's Counsel informed Defendant Plaintiffs are undertaking efforts to locate an alternate placement for SHARON LUCY FREDRICK so that she can be removed from the facility. Plaintiffs have asked SHARON LUCY FREDRICK's health care providers to provide continued ventilator support, nutritional support, a gastric feeding tube, tracheostomy tube, and other medical support to optimize SHARON LUCY FREDRICK's chances for survival and to allow her to be transferred to another health care facility.

Those health care providers have refused to do so and have indicated an intent to

1 withdraw said support at the expiration of the State issued TRO on Friday, October 30,
2 2020 after 4:00 PM.

3
4 **II. LEGAL DISCUSSION**

5 A. Federal Law Authorizes the Relief Requested.

6 “The purpose of a temporary restraining order is to preserve an existing situation in
7 status quo until the court has an opportunity to pass upon the merits of the demand for a
8 preliminary injunction.” (*Pan American World Airways, Inc. v. Flight Engineers' Int'l*
9 *Assoc.* (2nd Cir.1962) 306 F.2d 840. 842.) Federal Rules of Civil Procedure Rule 65(b)(1)
10 permits a temporary restraining order to be granted ex parte if:
11

12 (A) Specific facts in an affidavit or a verified complaint clearly show that
13 immediate and irreparable injury, loss, or damage will result to the movant before the
14 adverse party can be heard in opposition; and
15

16 (B) The movant's attorney certifies in writing any efforts made to give notice and
17 the reasons why it should not be required.
18

19 A temporary restraining order is appropriate if there is: (1) a sufficient serious
20 question going to the merits; (2) a substantial threat that plaintiff will suffer irreparable
21 injury if the injunction is denied; (3) the threat of injury outweighs any damage the
22 injunction might cause defendant, and (4) the injunction will not disserve the public
23 interest. (See *Sugar Busters. LLC v. Brennan* (5th Cir.1999) 177 F.3d. 258. 265; *CityFed*
24 *Fin'l Corp. v Office of Thrift Supervision* (DC Cir. 1995) 588 F.3d. 738. 746; *Citigroup*
25 *Global Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 36–38
26 (2d Cir. 2010))
27
28

1 **B. Plaintiff Will Suffer a Great or Irreparable Injury Before This Matter Can**
2 **Be Heard On Notice Motion.**

3 Absent an injunction, SHARON LUCY FREDRICK will be taken off life-support
4 immediately by the Defendants. There can be no greater irreparable harm than death.

5 This is even more troublesome when Plaintiffs have found a long-term care facility
6 that will provide care and treatment for Sharon and are exploring other viable options to
7 continue life support outside Defendants' facility.

8 Efforts to transfer SHARON LUCY FREDRICK have been complicated because
9 the hospital refuses to perform the procedures (tracheostomy and gastrostomy) that would
10 facilitate a transfer to either home care or a "step down" hospital placement.

11 **C. Plaintiff Has Demonstrated a Sufficiently Serious Question Going to the**
12 **Merits**

13 The Second Circuit Court of Appeals provides that a sufficiently serious question
14 going to the merits is required to support a preliminary injunction. (*Citigroup Global*
15 *Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 36–38 (2d
16 Cir. 2010). It is difficult to imagine a more serious question than whether a person has
17 been denied her most fundamental constitutional rights because a hospital has improperly
18 determined her to be "brain dead."

19 In this case, Defendants assert that SHARON LUCY FREDERICK is "dead," even
20 though it admittedly tried to perform a brain death exam when she did not meet the
21 criteria for brain death. Moreover, Sharon's vital signs remain stable, her heart continues
22 to beat, and she is able to maintain her own body temperature—all without medication.

1 Although Sharon is on a ventilator, she does not require medication to regulate her
2 heartbeat or blood pressure and she is able to assimilate nutrition and hydration.

3 The hospital seeks to proceed unilaterally with ending Sharon's life without an
4 opportunity for the only Court with Jurisdiction to consider whether or not the
5 Constitution has been violated in a situation where a woman has been rendered gravely
6 injured.
7

8 **D. The Threatened Injury Outweighs any Damage That the Injunction Might**
9 **Cause to Defendants.**
10

11 A balancing of the relative hardships on the parties favors granting the requested
12 temporary restraining order. There is absolutely no damage that the Defendants can claim
13 that would override improperly removing SHARON LUCY FREDERICK'S ventilator.
14 Further, because Plaintiffs seek to transfer Sharon to an alternate environment there is
15 absolutely no legitimate argument Defendants can make regarding damages they will
16 suffer.
17

18 **E. The Public Interest is Served by Allowing Plaintiff's Claims to be Fully**
19 **Heard.**
20

21 The issues raised in Plaintiffs' Complaint and in this restraining order are matters
22 of great public concern. This is an issue of first impression; does a healthcare proxy, once
23 a hospital makes a declaration of brain death without any independent verification, lose all
24 rights concerning the care to be provided to their principal whose heart still beats? Does a
25 healthcare proxy of such a principal have a right to object and resist a hospital's decision
26 to withdraw life support over and against a patient's known wishes and religious beliefs?
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1 Does the proposed conduct of the Defendants' violate the Rehabilitation Act and/or the
2 ADA? How much time should a healthcare proxy be provided to locate alternate
3 arrangements that are consistent with a principal's religious beliefs?
4

5 **F. Plaintiff Should Not Be Required to Post a Security Bond as Defendant**
6 **Would Suffer No or Little Injury as a Result of the Institution of the Temporary**
7 **Restraining Order**

8 Though Federal Rules of Civil Procedure Rule 65(c) asks courts to require a
9 security bond in conjunction with a temporary restraining order, courts are given wide
10 discretion in the form the bond may take. (*Continental Oil Co. v. Frontier Refining Co.*,
11 (10th Cir. 1964) 338 F.2d 780. 783.)
12

13 In fact, in situations where the likelihood of harm to defendant is small, courts are
14 not obliged to require a bond to be issued at all. (*Id.*) Presently, the only harm that would
15 come to Defendants should the temporary restraining order be granted would be the
16 minimal cost continuing life-support measures.
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20 **III. CONCLUSION**

21 Based on the foregoing, Plaintiffs respectfully request that this Court issue a
22 temporary restraining order and an order to show cause why a preliminary
23 injunction should not be issued against Defendants as detailed herein.
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1 Dated: October 30, 2020

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3 *Gina Antonelli*

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5 Gina Antonelli

6 Attorney for Plaintiffs
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