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“To negate the court’s discretion to dismiss based solely on section 36, subdivision (b) would only invite abuse of the trial preference status, enabling an attorney for a young plaintiff to let the plaintiff’s case languish and then demand trial priority when the five-year mandatory dismissal deadline is imminent. The legislature could not have anticipated such an incongruous result when it determined that litigants under 14 years of age deserved to have their cases heard before other civil actions.” (Emphasis added.) (*Landry, supra*, 39 Cal.App.4th 691.)

On its face *Landry* is addressing the five year deadline. To the contrary, plaintiffs already have a priority trial set for May 20, 2005. The plaintiffs’ diligence is no longer in issue (*Eliceche, supra*, 103 Cal.App.4th at p. 1364.)

III PLANNED PARENTHOOD FACES SERIOUS LIABILITY WHICH WAS REVEALED THROUGH THE DISCOVERY ALREADY COMPLETED

As noted above, Plaintiffs have retained twelve (12) experts. These experts have shown serious liability on the part of PLANNED PARENTHOOD. The moving parties are not concerned about the timeliness of the prosecution of this action. They are concerned because the Plaintiffs diligently prosecuted and found that the moving party has serious liability for the injuries. Plaintiffs need only show the negligence by PLANNED PARENTHOOD by their own documents.

The minor, Ayana Rawls, was born on July 26, 1999, and suffers from spastic cerebral palsy, a seizure disorder, and feeding difficulties as a result of the negligence of Planned Parenthood. AYANA’s mother, SHALIETTA THOMPSON, is Rh negative, which required that after each pregnancy, whether terminated by delivery of abortion, that MS. THOMPSON be given Rhogam to prevent Rh sensitization of the fetus in the subsequent pregnancy.

On September 3, 1992, Ms. Thompson had an abortion performed by Planned Parenthood. Planned Parenthood negligently documented that Ms. Thompson was Rh +, but has

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1 no laboratory results confirming the erroneous entry. Planned Parenthood failed to give Ms.
 2 Thompson as Rhogam injection after the abortion. Accordingly, Ms. Thompson became
 3 sensitized. Because of Planned Parenthood's failure, when Ms. Thompson became pregnant with
 4 Ayana, several years later, Ayana sustained the devastating results of Rh sensitization. Ayana
 5 had to be delivered prematurely at 30 weeks gestation and suffered a Grade III intra ventricular
 6 hemorrhage, hydrops fetalis, and erythroblastosis.

7 Ayana has had multiple brain surgeries, and brain shunts placed. Past damages are in
 8 excess of \$200,000. Future damages are in excess of \$4,000,000 for life-long medical and 24
 9 hour per day nursing care.

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 11 **IV THE DISCRETIONARY DISMISSAL STATUTE TODAY SERVES NOTICE ON**
 12 **THE PLAINTIFF TO PROCEED WITH REASONABLE DILIGENCE - WHICH**
 13 **PLAINTIFFS AND PLAINTIFFS' COUNSEL HAVE DONE**

14 The discretionary dismissal statute today serves notice on the plaintiff to proceed with
 15 "reasonable diligence" - which Plaintiffs and Plaintiffs' counsel have done. The Plaintiff's
 16 "reasonable diligence" has unearthed the facts enumerated in the previous section. PLANNED
 17 PARENTHOOD cannot complain that they have been harmed by "lack of prosecution":

18
 19 "Today, with congested court calendars, and increasingly complex
 20 litigation, the discretionary dismissal statute serves a different purpose: It simply
 21 requires plaintiff to proceed with "reasonable diligence in prosecution of the
 22 action. Other things being equal, the policy favoring trial on the merits is
 23 favored over the policy requiring dismissal for delay in prosecution." (Emphasis
 24 in original.) (R. Weil, I. Brown, California Practice Guide, Civil Procedure
 25 Before Trial (TRG) at p. 11-70, ¶ 11:126.)

26 And the above statement is consistent with the Courts of Appeal:
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