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**LOS ANGELES
SUPERIOR COURT**

CITATION ISSUED

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

13 In re the Matter of the Estate of

14 VICKIE LYNN MARSHALL, also
15 known as VICKIE LYNN SMITH,
16 also known as VICKIE LYNN
17 HOGAN, also known as ANNA
18 NICOLE SMITH,

19 Deceased.

20 HOWARD K. STERN, as Executor under the
21 Will of Vickie Lynn Marshall,

22 Petitioner,

23 v.

24 THOMAS RICCIO, an individual;
25 UNIVERSAL RARITIES LLC, a California
26 Limited Liability Company; GERALD
27 WAYNE JOHNSON, M.D., an individual; and
28 DOES 1 through 100, inclusive,

Respondents.

Case No. BP 104575

PETITION FOR:

- (1) **WRONGFUL TAKING OF ESTATE PROPERTY AND FOR IMPOSITION OF DOUBLE DAMAGES UNDER CALIFORNIA PROBATE CODE SECTION 850 ET SEQ.;**
- (2) **CONVERSION;**
- (3) **VIOLATIONS OF CALIFORNIA CIVIL CODE SECTION 3344.1;**
- (4) **VIOLATIONS OF THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT;**
- (5) **VIOLATIONS OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200 ET SEQ.;**
- (6) **VIOLATIONS OF TEXAS PROPERTY CODE SECTION 26 ET SEQ.; AND**
- (7) **VIOLATIONS OF TEXAS OCCUPATIONAL CODE SECTION 159 ET SEQ.**

Date: 8-15-07

Time: 8:30 a.m.

Dept: 5; Hon. Mitchell L. Beckloff

1 Petitioner Howard K. Stern ("Mr. Stern"), as Executor under the Will of Vickie Lynn
2 Marshall, also known as Vickie Lynn Smith, also known as Vickie Lynn Hogan, also known as
3 Anna Nicole Smith, respectfully presents his Petition for: (1) Wrongful Taking of Estate Property
4 and for Imposition of Double Damages Under California Probate Code section 850 *et seq.*;
5 (2) Conversion; (3) Violations of California Civil Code section 3344.1; (4) Violations of the
6 Federal Health Insurance Portability and Accountability Act; (5) Violations of California Business
7 and Professions Code section 17200 *et seq.*; (6) Violations of Texas Property Code section 26 *et*
8 *seq.*; and (7) Violations of Texas Occupational Code section 159 *et seq.* (the "Petition"), as
9 follows:

10 PRELIMINARY ALLEGATIONS

11 1. Vickie Lynn Marshall, also known as Vickie Lynn Smith, also known as Vickie
12 Lynn Hogan, also known as Anna Nicole Smith (the "Decedent") died on February 8, 2007.

13 2. Mr. Stern was appointed Special Administrator of the Estate of Vickie Lynn
14 Marshall on May 14, 2007 and Letters of Special Administration were subsequently issued to him.

15 3. The Decedent's Will was admitted to probate on June 19, 2007, and Mr. Stern was
16 appointed Executor under the Decedent's Will the same day. Letters Testamentary were issued to
17 Mr. Stern on June 19, 2007.

18 4. Mr. Stern is informed and believes that Decedent had one or more surgical
19 procedures performed on her by Gerald Wayne Johnson, M.D. ("Dr. Johnson") in Houston, Texas
20 in or about 1994.

21 5. Mr. Stern is informed and believes that Dr. Johnson videotaped the surgical
22 procedures without Decedent's consent and authorization.

23 6. Mr. Stern is informed and believes that Dr. Johnson contacted Thomas Riccio
24 and/or Universal Rarities and provided him with a copy of one or more of the videotapes.

25 7. Mr. Stern is informed and believes that Thomas Riccio, an individual, and/or
26 Universal Rarities LLC, a California limited liability company, are in possession of one or more
27 videotapes depicting the aforementioned surgical procedures.

28 8. Mr. Stern is informed and believes that Thomas Riccio and/or Universal Rarities

1 intend to imminently sell, distribute, or disseminate the videotapes or edited portions of them to
2 various media outlets including but not limited to "Entertainment Tonight" and "Geraldo
3 Rivera/FOX News." Thomas Riccio has in fact stated his intention to this effect.

4 9. Mr. Stern is informed and believes that the videotapes were made pursuant to a
5 confidential physician-patient relationship and therefore are protected under federal law, Texas
6 state law, and California state law.

7 10. Mr. Stern is informed and believes that Decedent never executed a waiver nor
8 consented to the release of the videotapes. Certainly, Mr. Stern has never consented to the release
9 of the videotapes. Thomas Riccio has admitted that no such authorization exists.

10 11. The videotapes, as well as any and all copies, excerpts, or other media depicting the
11 videotapes or any portion thereof, belong solely to the Estate of Vickie Lynn Marshall.

12 12. On or about June 26, 2007, Thomas Riccio showed Larry Birkhead ("Larry") an
13 edited version of one of the videotapes, approximately five minutes in length, depicting a surgical
14 procedure performed on her by Dr. Johnson. Mr. Stern is informed and believes that the edited
15 version shown to Larry was truly distasteful and disgusting. Larry indicated to Thomas Riccio
16 after viewing the tape that it was distasteful and disgusting.

17 13. On June 28, 2007, Mr. Stern spoke by telephone with Thomas Riccio who
18 confirmed that he was in possession of a videotape depicting one of Decedent's surgical
19 procedures performed by Dr. Johnson. Thomas Riccio further confirmed that he had obtained the
20 videotape directly from Dr. Johnson and that he intended to imminently sell, distribute, or
21 disseminate the videotape and share a portion of the profits with Dr. Johnson. Thomas Riccio
22 stated however that he would deliver the videotape to Mr. Stern "if [the Estate] agreed to do
23 business" with him.

24 14. Mr. Stern is informed and believes that Dr. Johnson is in possession of at least one
25 more videotape of a surgical procedure he performed on Decedent.

26 15. On July 3, 2007, Mr. Stern through his attorneys provided notice by facsimile and
27 U.S. mail (standard and return receipt requested) to Thomas Riccio, Universal Rarities, and Dr.
28 Johnson that both the possession of the videotapes and any disclosure of any of the videotapes are

1 unlawful. In the same notice, Mr. Stern requested the immediate return of the videotapes
2 (including all copies) and the halting of any efforts to sell, distribute, or otherwise disseminate the
3 videotapes or their contents.

4 16. Thomas Riccio, Universal Rarities, and Dr. Johnson have not responded to Mr.
5 Stern's demand letter.

6 17. Mr. Stern is also informed and believes that sometime after the Decedent's death,
7 Thomas Riccio and/or Universal Rarities obtained and had in their possession the private diaries
8 of the Decedent. Mr. Stern is further informed and believes that Thomas Riccio and/or Universal
9 Rarities LLC subsequently sold the Decedent's diaries and are currently in possession of the sales
10 proceeds of approximately \$500,000. Mr. Stern is informed and believes that Decedent never
11 consented to the release of diaries or the sales thereof. Certainly, Mr. Stern has never consented to
12 the release or sales of the diaries.

13 18. The diaries, as well as any and all copies, and the sales proceeds thereto, belong
14 solely to the Estate of Vickie Lynn Marshall.

15 19. Mr. Stern is ignorant of the true names and capacities of the Respondents sued
16 herein as DOES 1 through 100, inclusive, and therefore sues these Respondents by such fictitious
17 names pursuant to section 474 of the Code of Civil Procedure. Mr. Stern will amend this Petition
18 to add the true names and capacities of these Respondents when those true names and capacities
19 are determined.

20 **FIRST CAUSE OF ACTION**

21 **(Wrongful Taking of Estate Property, Prob. Code, § 850 *et seq.*)**

22 **[By Petitioner against All Respondents]**

23 20. Mr. Stern realleges paragraphs 1 through 19 set forth above and incorporates them
24 by reference as if fully set forth.

25 21. As previously alleged, Mr. Stern is informed and believes that Dr. Johnson
26 videotaped at least two surgical procedures that he performed on Decedent in Houston, Texas in or
27 about 1994.

28 22. Mr. Stern is informed and believes that the videotapes were made pursuant to a

1 confidential physician-patient relationship.

2 23. Mr. Stern is informed and believes that Dr. Johnson videotaped the surgical
3 procedures without Decedent's consent and authorization.

4 24. Mr. Stern is informed and believes that Thomas Riccio and/or Universal Rarities
5 are in unlawful possession of one or more videotapes depicting surgical procedures of the
6 Decedent.

7 25. Mr. Stern is informed and believes that Dr. Johnson is in unlawful possession of at
8 least one more videotape depicting a surgical procedure performed on Decedent.

9 26. Mr. Stern is informed and believes that Decedent never executed a waiver nor
10 consented to the release of any of the videotapes. Mr. Stern is further informed and believes that
11 Dr. Johnson does not have any such documents allowing the release of the videotapes.

12 27. Therefore, the videotapes, as well as any and all copies, excerpts, or other media
13 depicting the videotapes or any portion thereof, belong solely to the Estate of Vickie Lynn
14 Marshall.

15 28. Mr. Stern is also informed and believes that sometime after the Decedent's death,
16 Thomas Riccio and/or Universal Rarities obtained and had in their possession the private diaries
17 of the Decedent. Mr. Stern is further informed and believes that Thomas Riccio and/or Universal
18 Rarities LLC subsequently sold the Decedent's diaries and are currently in possession of the sales
19 proceeds of approximately \$500,000. Mr. Stern is informed and believes that Decedent never
20 consented to the release of diaries or the sales thereof. Certainly, Mr. Stern has never consented to
21 the release or sale of the diaries.

22 29. The diaries, as well as any and all copies, and the sales proceeds thereto, belong
23 solely to the Estate of Vickie Lynn Marshall.

24 30. Since Decedent's death, the videotapes have been in the unlawful possession of
25 Thomas Riccio, Universal Rarities, Dr. Johnson, and DOES 1 through 100, inclusive, and remain
26 in their possession despite requests by Mr. Stern for the property to be immediately returned.

27 31. Since the Decedent's death, the diaries and the sales proceeds have been in the
28 unlawful possession of Thomas Riccio, Universal Rarities, and DOES 1 through 100, inclusive,

1 and remain in their possession.

2 32. Thomas Riccio, Universal Rarities, Dr. Johnson, and DOES 1 through 100,
3 inclusive, have in bad faith wrongfully taken property belonging to the Estate of Vickie Lynn
4 Marshall.

5 33. Mr. Stern seeks an order requiring the immediate return of all wrongfully taken
6 property of the Estate, and in particular the personal property set forth in the Petition, to Mr. Stern.

7 34. Mr. Stern further seeks double damages pursuant to Probate Code section 859.

8 **SECOND CAUSE OF ACTION**

9 **(Conversion)**

10 **[By Petitioner against All Respondents]**

11 35. Mr. Stern realleges paragraphs 1 through 34 set forth above and incorporates them
12 by reference as if fully set forth.

13 36. Respondents, as set forth above, are in possession of, and exercising dominion and
14 control over one or more videotapes depicting Decedent's surgical procedures. Respondents have
15 knowingly and intentionally possessed these videotapes. Respondent Thomas Riccio and
16 Universal Rarities have admitted to possessing at least one of the tapes, with the intent to profit
17 therefrom.

18 37. At no time has Mr. Stern, Decedent, or anyone else authorized to act on Decedent's
19 behalf or on behalf of Decedent's Estate, provided consent or authorization for Respondents to
20 transfer, distribute, sell or attempt to sell the videotapes. Respondents are in possession of the
21 videotapes only through their own wrongful conduct and displacement of the Estate's property
22 rights to the videotapes.

23 38. The videotapes in Respondents' possession rightfully belong to the Estate of Vickie
24 Lynn Marshall, and Mr. Stern, as its Executor.

25 39. Respondents, as set forth above, are also in possession of, and exercising dominion
26 and control over the Decedent's private diaries and the sales proceeds thereof. Respondents have
27 knowingly and intentionally possessed these diaries and sales proceeds. Mr. Stern is informed and
28 believes that Thomas Riccio and Universal Rarities had in their possession and control sometime

1 after the Decedent's death, the private diaries of the Decedent, that Thomas Riccio and Universal
2 Rarities subsequently sold the diaries, and currently have in their possession the sales proceeds
3 from the diaries of approximately \$500,000.

4 40. At no time has Mr. Stern, Decedent, or anyone else authorized to act on Decedent's
5 behalf or on behalf of the Decedent's Estate, provided consent or authorization for Respondents to
6 transfer, distribute, or sell the diaries. Respondents were in possession of the diaries and then the
7 sales proceeds thereof through their own wrongful conduct and displacement of the Estate's
8 property rights to the diaries.

9 41. The videotapes, diaries, and sales proceeds thereof in Respondents' possession
10 rightfully belong to the Estate of Vickie Lynn Marshall, and Mr. Stern, as its Executor.

11 42. As a direct and proximate result of Respondents' conversion, the Estate of Vickie
12 Lynn Marshall has been damaged in an amount to be proven at time of trial, but in excess of the
13 jurisdictional limits of this Court.

14 43. In doing the things herein alleged, Respondents acted willfully, with malice, in
15 conscious disregard of the rights of Decedent, and with intent to cause injury to Decedent. Mr.
16 Stern is therefore entitled to punitive or exemplary damages in an amount appropriate to punish
17 Respondents and to deter others from engaging in similar misconduct.

18 **THIRD CAUSE OF ACTION**

19 **(California Civil Code section 3344.1)**

20 **[By Petitioner against All Respondents]**

21 44. Mr. Stern realleges paragraphs 1 through 43 set forth above and incorporates them
22 by reference as if fully set forth.

23 45. The Astaire Celebrity Image Protection Act (California Civil Code section 3344.1)
24 prohibits any person from using a deceased personality's name, voice, signature, photograph, or
25 likeness, in any manner, on or in products, merchandise, or goods, without prior consent from the
26 person authorized to act on behalf of the deceased personality.

27 46. Respondent's conduct, in using, displaying, transferring and selling or attempting
28 to sell videotapes of Decedent's surgery, as set forth above, constitutes "use" of Decedent's

1 likeness and video photograph within the meaning of Civil Code section 3344.1.

2 47. Mr. Stern, as Executor under the Will of the Decedent, is the person authorized
3 under the Astaire Celebrity Image Protection Act to provide such consent for the use of
4 Decedent's video photograph and likeness.

5 48. At no time has Mr. Stern or, on information and belief, anybody else so authorized
6 to act, provided Respondents with consent to use Decedent's video photograph and likeness.

7 49. Pursuant to California law and the Astaire Celebrity Image Protection Act, Mr.
8 Stern is entitled to his actual damages, or \$750, whichever is greater, punitive damages, and his
9 attorney's fees, according to proof at trial.

10 **FOURTH CAUSE OF ACTION**

11 **(Health Insurance Portability and Accountability Act)**

12 **[By Petitioner against all Respondents]**

13 50. Mr. Stern realleges paragraphs 1 through 49 set forth above and incorporates them
14 by reference as if fully set forth.

15 51. In passing the federal Health Insurance Portability and Accountability Act
16 ("HIPAA"), "Congress expressed its concern for protecting the integrity and confidentiality of
17 personal medical records, and for preventing the unauthorized use or disclosure of such records."
18 *Bugarin v. Chartone, Inc.*, 135 Cal.App.4th 1558, 1561-62 (2006) (*citing* 42 U.S.C. § 1320d-
19 2(d)(2)).

20 52. HIPAA, and in particular, 42 U.S.C. § 1320d-6, prevents any person from
21 knowingly *obtaining or disclosing* to another person "individually identifiable health
22 information."

23 53. Under HIPAA, the term "individually identifiable health information" means any
24 information, that is created or received by a health care provider and relates to the past, present, or
25 future physical or mental health or condition of an individual, the provision of health care to an
26 individual, or the past, present, or future payment for the provision of health care to an individual,
27 and which identifies the individual or creates a reasonable basis to identify the person. *See* 42
28 U.S.C. 1320d(6).

1 **SEVENTH CAUSE OF ACTION**

2 **(Texas Occupational Code, § 159 *et seq.*)**

3 **[By Petitioner against Gerald Wayne Johnson]**

4 69. Mr. Stern realleges paragraphs 1 through 69 set forth above and incorporates them
5 by reference as if fully set forth.

6 70. Texas Occupational Code section 159 *et seq.*, and in particular, section 159.002,
7 prohibit the disclosure of medical records indicating the identity or treatment of a patient.

8 71. Respondent Gerald Johnson's conduct set forth above, and in using and
9 disseminating the videotapes of Decedent's surgery, gained when he was in a trusted position as
10 Decedent's health care provider, constitute a violation of section 159.002. Pursuant to Texas
11 Occupational Code section 159.009, Mr. Stern is therefore entitled to damages and injunctive
12 relief.

13 72. As a direct and proximate result of Respondent Gerald Johnson's breach of Texas
14 Occupational Code section 26 *et seq.*, Mr. Stern has been damaged in an amount to be proven at
15 time of trial, but in excess of the jurisdictional limits of this Court.

16 **JURISDICTION AND VENUE**

17 73. Decedent died leaving an estate in Los Angeles County. Mr. Stern administers the
18 Estate of Vickie Lynn Marshall in Los Angeles County. Thus, jurisdiction and venue of this case
19 lie here in Los Angeles County.

20 **PERSONS ENTITLED TO NOTICE**

21 74. The persons entitled to notice of this hearing are:

22 Dannielyn Hope Marshall 23 Birkhead	Address on file with Court	Beneficiary (minor); Daughter
24 Larry Birkhead 25	Address on file with Court 26	Guardian of the Estate of Dannielynn Hope Marshall Birkhead; Father of Dannielynn Hope Marshall Birkhead;

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WHEREFORE, Petitioner Howard K. Stern prays for judgment as follows:

- 1. For an order imposing a constructive trust over all wrongfully taken property of the Estate;
- 2. For an order requiring the immediate return of all wrongfully taken property of the Estate, and in particular the personal property set forth in the Petition, to Howard K. Stern, as Executor under the Will of Vickie Lynn Marshall;
- 3. For an order charging Thomas Riccio, Universal Rarities LLC, Gerald Johnson, and DOES 1 through 100, inclusive, with all losses caused to the Estate while the property of the Estate, and specifically the personal property set forth in the Petition, was in their possession or under their control;
- 4. For an order that Thomas Riccio, Universal Rarities LLC, Gerald Johnson, and DOES 1 through 100, inclusive, be liable for twice the value of all property recovered by this proceeding pursuant to Probate Code section 859;
- 5. For compensatory damages, in an amount to be proven at trial;
- 6. For punitive and exemplary damages;
- 7. For injunctive relief, including a temporary restraining order, preliminary injunction, and permanent injunction;
- 8. For disgorgement of Gerald Johnson's profits pursuant to Texas Property Code sections 26 *et seq*;
- 9. For costs of suit herein, including reasonable attorney's fees; and
- 10. For such other and further relief as the Court deems just and proper.

DATED: July 6, 2007

Respectfully submitted,

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By: 
Bruce S. Ross
Attorneys for Howard K. Stern, Executor

1 VERIFICATION

2 I, Howard K. Stern, declare as follows:

3 I am the Petitioner in this action. I have read the foregoing **PETITION FOR:**

4 **(1) WRONGFUL TAKING OF ESTATE PROPERTY AND FOR IMPOSITION OF**
5 **DOUBLE DAMAGES UNDER CALIFORNIA PROBATE CODE SECTION 850 ET SEQ.;**
6 **(2) CONVERSION; (3) VIOLATIONS OF CALIFORNIA CIVIL CODE SECTION 3344.1;**
7 **(4) VIOLATIONS OF THE FEDERAL HEALTH INSURANCE PORTABILITY AND**
8 **ACCOUNTABILITY ACT; (5) VIOLATIONS OF CALIFORNIA BUSINESS AND**
9 **PROFESSIONS CODE SECTION 17200 ET SEQ.; (6) VIOLATIONS OF TEXAS**
10 **PROPERTY CODE SECTION 26 ET SEQ.; AND (7) VIOLATIONS OF TEXAS**
11 **OCCUPATIONAL CODE SECTION 159 ET SEQ.** and know its contents. The matters stated
12 in the foregoing document are true of my own knowledge, except as to those matters that are
13 stated on information and belief, and as to those matters, I believe them to be true.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct. Executed at Nassau, Bahamas on this 6th day of July 2007.

16 
17 _____
18 Howard K. Stern

19 201002602.2