

May 28, 2012

Hon. John E. Martin, Superior Court Judge
Calaveras County Superior Court
Government Center
891 Mountain Ranch Road
San Andreas, CA 95249

**Re: Response of the Mark Twain Health Care District to
Grand Jury Report of March 27, 2012**

Dear Judge Martin:

The Mark Twain Health Care District (“District”) hereby submits its response to the Calaveras County Grand Jury report dated March 27, 2012 (“the Grand Jury Report”).

While specific responses to the various Findings and Recommendations as required by the Penal Code are provided below, the District wishes to take this opportunity to respond in a more general fashion to the Grand Jury Report.

As the Grand Jury notes, the Mark Twain Hospital (“the Hospital”) owned by the District is not operated by the District itself, but has been leased to, and is operated by, the Mark Twain St. Joseph Healthcare Corporation, a California not for profit corporation (“the Corporation”). The Corporation in turn has entered into a management agreement with Dignity Health (previously known as Catholic Healthcare West), which operates many hospitals in the Western United States on a not for profit basis. This lease arrangement is expressly authorized and contemplated by State law in the Local Health Care District Law (Health & Safety Code Section 32000 *et seq.*), the statute that governs the District’s operations and under which the District is organized.

What the Grand Jury failed to emphasize in the Grand Jury Report is that:

- Stand-alone, District hospitals are not financially viable, particularly in rural areas. Indeed, rural hospitals are severely challenged to maintain their financial viability even as a part of a hospital system. It is only by entering into the lease arrangement that the Hospital’s operations remain viable. It is not at all clear that a hospital could be maintained in Calaveras County were the lease arrangement to be discarded. The maintenance of the strong cooperative working partnership with the Corporation and Dignity Health is therefore seen by the District as being of critical concern to its ability to

deliver quality health care to the citizens of Calaveras County even in the face of the great stresses to the national health care system.

- The degree of control over Hospital operations by the District under the lease arrangement with the Corporation is actually greater than that contemplated by State law, as a consequence of the District having the ability to appoint several members to the Corporations board of directors. While the Grand Jury naturally focuses on what it perceives are the short-comings of the arrangement, in all fairness one must simultaneously acknowledge that the District has contracted for great improvements in what the Legislature has authorized.
- The quality of health care provided in the Hospital is excellent and not in question. The District notes that beyond any other concern, this is the paramount goal of District, and the fact that the Grand Jury appears to not recognize this, but rather concentrates on ancillary matters is startling. In particular:

The results from the latest Hospital Consumer Assessment of Healthcare Providers Systems (“HCAHPS”) patient satisfaction survey indicate that patient satisfaction scores at the Hospital exceed the California average in all surveyed customer and quality related activities.

The accreditation and certification of the Hospital was recently renewed by the Joint Commission. That accreditation is the national standard for quality hospital care.

The latest report of “hospital acquired conditions” data for the Centers for Medicare and Medicaid Services, which is required to identify conditions that could reasonably have been prevented thorough the application of evidence based guidelines, had no reported hospital acquired conditions reported in the last 11 months. This ranks the Hospital in the top 5th percentile of all California hospitals.

The following are the formal responses of the Mark Twain Heath Care District to the Grand Jury Report:

Finding 1: *The Mark Twain Healthcare¹ District Board has had a limited turnover in its elected members. Since there are no term limits it is possible for a District Board member to serve for decades if reelected.*

Response to Finding 1: The District concurs in the Finding.

The District also notes, however, that during the District's history, there have been a number of occasions on which current Board members ran for re-election because of the apparent inability to find anyone wishing to stand for election, and that the seats are often not contested. The District encourages anyone eligible for the office to run for District Board member.

Recommendation 1: *The Grand Jury recommends that the District Board incorporate term limits within their bylaws to bring new and fresh perspectives to the board at regular intervals.*

Response to Recommendation 1: The District will not implement this Recommendation.

The Recommendation is beyond the authority of the District and is preempted by State law. The Local Health Care District Law (Health & Safety Code Section 32000 *et seq.*) sets forth the qualifications for serving on the Board of Directors of a hospital district, and also sets forth the terms of office. It provides that the elective officers of a hospital district shall consist of five (5) officers, each of whom shall be a registered voter residing in the district and whose term shall be four (4) years. (Health & Safety Code Section 32100.) Because the qualifications for officers are expressly set by State Law, the District does not have the authority to add additional qualifications for or limitations on the qualifications for office. The Health and Safety Code further provides specifics as to when a vacancy for office occurs and when the elections shall be conducted, further demonstrating that any qualifications set by the District would be preempted by State law. Consequently, a registered voter is eligible to serve for as many terms as he/she is elected, and the District is without the authority to adopt term limits.

The Grand Jury should contrast, on the other hand, general law cities which have received specific statutory authorization from the legislature to enact term limits if approved by the voters. (Govt. Code 36502.) The Grand Jury's recommendation should be addressed to the State legislature.

Finding 2: *The Mark Twain Healthcare District's office (CEO, CFO, secretarial help, financial committee), website and telephone number are identical to that of the Mark Twain Healthcare Corporation.²*

¹ The Grand Jury has consistently referred to the District as a "Healthcare" district. The District notes that it exists pursuant to "The Local Health Care District Law" (California Health & Safety Code section 32000 *et seq.*) and therefore refers to itself as a "Heath Care" district in conformity with that act.

² The Grand Jury has sometimes referred to the "Mark Twain Healthcare Corporation" and sometimes to the "Mark Twain St. Joseph's Healthcare Corporation." The District notes that there is only one corporation, which is a non-profit incorporated as the "Mark Twain St. Joseph's Healthcare Corporation." All references to "Corporation" or to the "Corporate Board" in this response letter refer to the Mark Twain St. Joseph's Healthcare Corporation, unless otherwise noted.

Even the District Board's files are archived within the Corporate offices. This has allowed the Corporation to control access to the elected District Board and its records.

Response to Finding 2: The District concurs in the Finding, except that the District Board disagrees with the Finding with respect to the District's website. The District does not maintain a website, either commingled with the Corporation or otherwise.

More critically, the District disagrees with the implication that the Corporation has at any time attempted "to control access" to the elected District Board and its records. The District is not aware of any occasion in the more than 20 years that the lease has been in effect that the Corporation has denied access by the District to its records or by the public to the District Board, and the Grand Jury Report does not cite any such instance. Likewise, the District is not aware of any instance in which the public's access to public/District documents has been restricted or any instances of the failure of the District to comply with the California Public Records Act, and the Grand Jury Report does not cite to any such instance.

Recommendation 2: *The Grand Jury recommends separating the District Board's offices, staff, telephone number, document storage facilities, and website from that of the Mark Twain St. Joseph's Healthcare Corporation and Senior Management (CHW)³ of the hospital.*

Response to Recommendation 2: The District will implement this Recommendation during Fiscal year 2012-2013.

The District concurs with the Grand Jury that the perception of control by the Corporation should be addressed. It notes that its Board had begun discussing this same issue during the fall of 2011, prior to the receipt of the Grand Jury Report, including within its discussion not only the items mentioned by the Grand Jury but also the potential for separate meeting locations outside of the Hospital facilities leased by the Corporation.

The District further notes, however, that the provision of services by the Corporation to the District is contemplated in the lease agreement between the two entities. Nonetheless the District concurs that the arrangement is confusing to the public and that alternate arrangements should be made despite the potential for increased cost to the public.⁴

Finding 3: *Information from the private Corporate Board was either incomplete or not communicated to the full District Board until it was too late for the District Board to have any influence even though two elected District Board members sit on the Corporate Board. Since elected District Board members are the*

³ "CHW" was defined in an earlier part of the Grand Jury report (prior to the Findings and Recommendations) as referring to "Catholic Healthcare West", a non-profit corporation which has now changed its name to "Dignity Health". Dignity Health provides management services to the Corporation pursuant to a management services contract between those two entities and to which the District is not a party.

⁴ It is not clear that the Grand Jury ever contemplated the potential for increased cost to the public in implementing its proposal. The failure to at least acknowledge that there is a cost inherent in the recommendation is a disservice to the public.

legal liaison between the District Board and the Corporate Board, they are responsible for all communication pertaining to public issues on healthcare within the county.

Response to Finding 3. The District agrees in part and disagrees in part with the Finding.

It is not clear from the Grand Jury Report to which information the Grand Jury is referring, or whether, if there was any such information which was incomplete or not communicated, it was information regarding which the District could have had influence, or if such influence would have even been appropriate.

The District is aware of only three specific instances in which communication between it and the Corporation has been criticized in some way.

Approximately two years ago, in August 2010 when the District's State designation was changed from that of an "acute care hospital" to that of a "critical access hospital" the manner in which the information received by the District, and in which the District made the information available to the public, was less than completely satisfactory. This change in the hospital management resulted in the number of available beds being changed from 48 to 25 to the Hospital's patient census. This management change was appropriately undertaken by the Corporation in order to enhance reimbursements received by the Hospital, and it was timely orally reported to the District Board by the Corporation CEO. However, the District Board failed to adequately report the matter to the public, leading some to erroneously conclude that the Hospital's ability to serve the public was being eroded. Such an important change to Medicare reimbursement status should have been better communicated to the public, but it is not clear that the Corporation is at fault or that additional comments from the District's representatives on the Corporation Board would have changed this. It is more appropriate to label this a failure of the District Board to respond to communications that it did receive.

Second, the decline in physician affiliation with the Hospital is noted by the Grand Jury Report. Again, this was discussed by the District's appointees to the Corporation Board with the District Board. Since the District has little role or influence in attracting or retaining physicians to the Hospital, that being a function of the Corporation as the manager of the Hospital, it is difficult to understand what change the Grand Jury would wish to see, although once more the District agrees that the District Board should have taken better care to adequately report the matter to the public.

Finally, the last area in which the communication has been criticized is in the area of the recent changes in management of the Corporation. The CEO is an employee of Dignity Health, not the District, and therefore any changes are of necessity kept as a confidential personnel matter until

after they have occurred. The District's appointees to the Corporation Board are required to act in accordance with the fiduciary duty they owe to the Corporation, and cannot communicate such personnel matters to anyone. The District disagrees that the elected District Board members "are the legal liaison between the District Board and the Corporate Board." The term "legal liaison" has no meaning in law that the District is aware of. The District Board members are, in accordance with the District's bylaws, "an official avenue of communication" between the boards.

The District's authority to appoint two (2) members to the Corporate Board exists solely by reason of the Corporation's bylaws, which are subject to change by the Corporation at any time without District consent. Contrary to the Grand Jury's finding, the two (2) District appointees are not limited to District Board members in the Corporation's bylaws. However, the District's own bylaws (as amended on December 21, 2011) do provide that the two appointees shall be the District Board President and one other member of the District Board. (see, District Bylaws Article V, section 6(A).)

The duties of the District's appointees is likewise set forth in the District's bylaws which provide,

B. Duties of the Appointees to the Mark Twain St. Joseph's Healthcare Corporation Board of Trustees

The two (2) persons appointed by the District Board to the Corporation Board of Trustees shall serve as an official avenue of communication between the District Board and the Corporation Board of Trustees. Such duty of communication shall not be delegated and is not optional. The appointees shall communicate to the Corporation Board of Trustees and facilitate the District's business interests, commitment to public health, and public policy as such are adopted by the District Board, and will advocate the District Board's opinion and decisions. The appointees shall relay the District Board's questions and comments to the Corporation Board as well as the responses or comments of the Corporation Board to the District Board. The appointees shall provide regular written and verbal reports to the District Board with respect to the activity of the Corporation Board of Trustees to the extent lawful to do so." (District Bylaws, Article V, section 6(B).)

While not mentioned by the Grand Jury, the District notes that, while sitting as members of the Corporate Board, the District appointees may have fiduciary duties to the Corporation that prevent them from making some corporate information known to the District. This is particularly likely to be the case in the sensitive areas of medical staff issues or other personnel issues, corporate financial data, future business plans and patient information.

The District further notes that the District appointees are only "...responsible for all communication pertaining to public issues on healthcare within the county" to the extent such matters come before the Corporate Board, and then only to the extent of communicating such information to the District Board in accordance with the District bylaws.

Recommendation 3: *The Grand Jury recommends information move freely and readily in both directions between the District Board and the Corporate Board. Some mechanism should be devised by the boards to assure that this happens, such as, but not limited to, Corporate Board meeting minutes being shared with the full District Board.*

Response to Recommendation 3: The District has partially implemented this Recommendation.

The District is committed to working with the Corporation to maximize the collaboration between the two entities in the provision of health care in Calaveras County. The District began working on this prior to the Grand Jury Report, and does agree to continue to work in this area to make such improvements as it appropriately can.

For example, the District amended its Bylaws (prior to the receipt of the Grand Jury Report) to mandate additional sharing of information with the District Board by its appointees to the Corporate Board. (see Response to Finding 3.)

However, there is no available "forcing function" to compel the private Corporation to share fully information available to it with the District, and the District's appointees to the Corporate Board are limited to some degree in what they can share with the remainder of the District Board because of the fiduciary duty they owe to the Corporation. Hence, detailed financial information regarding the Corporation, personnel and medical staff information, and corporate planning are likely to remain subject to confidentiality rules for so long as the hospital facilities are leased to the Corporation.

The Grand Jury's attention is respectfully called to that portion of the Brown Act (the State's opening meeting law) which indicates that it applies to,

“(d) The lessee of any hospital the whole or part of which is first leased to pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994...” (Govt. Code section 54952(d).)

The lease between the Corporation and the District was first entered into in 1990. Hence it appears that the Legislature was aware that at least some degree of lessened meeting openness was the trade-off for being able to maintain district hospitals in rural areas.

Finding 4: *The Mark Twain Healthcare District has three seats on the Corporate Board only as long as the Corporate Board's bylaws read they way they currently do. If the bylaws were rewritten to exclude the*

District Board's representation on the Corporate Board, the electorate would lose its voice concerning healthcare in this county.

Response to Finding 4: The District concurs in part, and disagrees in part, with the Finding.

While there are three (3) "community representatives" on the Corporate Board, the District has only two (2) direct appointments to the Corporate Board, not three (3). The two (2) District direct appointees are authorized to appoint one other trustee. The bylaws of the Corporation provide that,

...two (2) trustees shall be selected and appointed by the District and shall be residents of Calaveras County, one (1) trustee, who shall be a resident of Calaveras County, shall be selected and appointed by the by the two (2) trustees selected by the District... (Corporation Bylaws, Article VI section 2.)

Recommendation 4: *The Grand Jury urges both Boards to create a structure that guarantees the District Board a place on the Corporate Board regardless of changes in power or personalities.*

Response to Recommendation 4: The District will attempt to implement this recommendation in Fiscal year 2012-2013, but notes that there is no forcing function to compel the private Corporation to concur and it therefore cannot represent that such changes will occur.

The District further notes that the current structure (a lease of all hospital and health care facilities to a private organization) is expressly contemplated in The Local Health Care District Law (see California Health & Safety Code sections 32121 and 32126), and that the lack of public participation in management of hospital facilities leased to private corporations prior to 1994 appears specifically contemplated by the Brown Act. (Govt. Code section 54952(d).) The State law thus does not require that the private corporation provide any representation at all to the health care district on its private board or access by the public to its meetings. Hence it is important to recognize that the current arrangement in the Corporation's bylaws provides more public representation than is required by law.

Finding 5: *The District Board's Financial Committee or their CFO submitted incomplete information to the independent auditors for the annual audit. The Management's Discussion and Analysis (MD&A) as required by law was never prepared.*

Response to Finding 5: The District disagrees with the Finding.

The District notes that neither the auditors nor the Grand Jury have found that there was any impropriety in the handling of the public's monies, nor any inaccuracies in the audits themselves. The District therefore strongly disagrees with the implication of the Grand Jury Report that the public funds have not been appropriately handled or accounted for.

There is no statement in the Grand Jury Report regarding the manner in which the information provided by the District to its auditors was “incomplete.” Hence, the District is at a loss as to what the Grand Jury is referring to.

The Grand Jury Report indicates (on page 1, item 5 under the heading “Procedures”) that there were no MD&As reviewed for 2009 and 2010 because,

...[t]he Chief Financial Officer said they were unavailable because they were not done for those years even though the inclusion of MD&A is accepted practice for annual audits.

Contrary to the statement of the Grand Jury Report, the inclusion of a MD&A in an audit is not “required by law.” The District is required to have an annual, independent audit conducted by the county auditor or a certified public accountant. (Govt. Code Section 26909.) This information must be filed with the State Controller’s Office and the County Auditor Controller. The California State Controller’s Office (“SCO”) has promulgated guidelines for Special District Audits. (SCO Guidelines, last update 1991, copy attached.) Those reporting guidelines, provide that “[a] management letter is optional and is intended to help the district operate more effectively....If a management letter is issued, it must be submitted with the audit to the State Controller’s Office and to the county auditor in which the district is located.” (SCO p. 7, emphasis added.) Therefore, the District is not required to prepare a management letter, although the State Controller recommends that one be prepared.

As a matter of clarification, the District presumes that the “Chief Financial Officer” referred to in the Grand Jury Report is actually the Chief Financial Officer of the Corporation. The District has not appointed any officer by that title. The District notes that this is an example of the issues raised by Finding and Recommendation 2, above, with which the District has concurred.

Recommendation 5: *All pertinent and legal financial requirements should be followed by agencies handling public funds.*

Response to Recommendation 5: The District will implement this Recommendation.

The District will require MD&A for future audits even though doing so is optional, beginning with the next annual audit. It notes that one was prepared for the fiscal year 2010-2011 audit.

Again, the District strongly rejects the implication that any legal or financial requirements were not followed in the past, and notes that no improprieties were found by either the auditors or the Grand Jury.

The District notes that the Grand Jury Report requested responses to this Recommendation from not only the District Board, but also from “The Financial Committee of the District

Board”⁵ and from “the CFO of the District Board.” The District declines to provide responses by either the Financial Committee or the CFO, for the following reasons:

First, because the jurisdiction of the Grand Jury is exceeded in this request. California Penal Code section 933(a) permits a Grand Jury to demand responses from “responsible officers, agencies or departments” of counties. The same is not true for special districts, such as the District. That is, while the Grand Jury may require responses from the District, it cannot require responses from committees of the District (which have no independent legal existence in any event) or from individual officers of the District. Instead, the “governing body of the agency” (in this case the District Board) is responsible for responding. In any event, a majority of the Finance Committee of the District (two of its three members) sits on the District Board, and therefore a response from the District Board is in practical effect also a response from the Finance Committee.

Second, because in the case of the Chief Financial Officer of the District Board, no such person exists. As noted above, the person identified as CFO in the Grand Jury Report is the CFO of the Corporation, over whom the District exercises no control.

Finding 6: *The public has lost confidence in the healthcare provided in the county.*

Response to Finding 6: The District agrees in part and disagrees in part with this Finding.

The District understands “health care” to mean the quality of services being provided. While the Grand Jury Report indicates several perceived shortcomings in management of the District and particularly in its relationship with the Corporation, including difficulty on the part of the Corporation in maintaining medical staff at the hospital, the Grand Jury Report contains no comments or facts that would lead one to believe that the public has “lost confidence in the healthcare” being provided at the hospital.

To the contrary, the health care being delivered by the Hospital to County residents is excellent. The results from the latest Hospital Consumer Assessment of Healthcare Providers Systems (“HCAHPS”) patient satisfaction survey indicate the Hospital’s patient satisfaction scores exceed the California hospital average in all surveyed customer and quality related activities. HCAHPS is a national, standardized, publicly reported survey of patients’ perspectives of hospital care. HSAHPS surveys must be conducted by all Medicare hospitals in the nation, and the survey measures nine customer related services and quality related activities within a hospital.

The Hospital also recently received the renewal of its accreditation and certification from The Joint Commission. The Joint Commission is an independent organization that accredits and certifies more than 19,000 health care organizations and programs in the United States.

⁵ The Bylaws of the District provide for a "Finance Committee" (Bylaws, Article VI section 3) rather than a "Financial Committee." The District presumes that the Grand Jury intended to refer to the Finance Committee of the District.

Joint Commission accreditation and certification is recognized nationwide as a symbol of quality that reflects an organization's commitment to meeting certain performance standards developed by The Joint Commission. The Hospital's accreditation by The Joint Commission, in addition to reflecting the Hospital's commitment to quality, also serves to establish that the Hospital has met all of the conditions required for participation in the Medicare program.

The Hospital's commitment to quality is also reflected in its latest "hospital acquired conditions" data reported by all hospitals to the Centers for Medicare and Medicaid Services. The United States Congress established the hospital acquired conditions reporting requirements to identify conditions that could reasonably have been prevented through the application of evidence-based guidelines. The Hospital had no hospital acquired conditions during the last eleven months, which ranks it in the top 5th percentile of California hospitals.

The District agrees, however, that the perceived exodus of physicians from the Hospital has left a perception that they must be leaving for a reason, and that this could in turn lead to a loss of confidence in the ability of the Hospital to deliver quality health care. The District and the Corporation have cooperated in the last six (6) months, beginning well prior to the receipt of the Grand Jury Report, to address this perception. New physicians have been added to the medical staff by the Corporation, which has also replaced the CEO with an interim CEO who has been well received by the medical staff. Additionally, the Corporation Board has changed its leadership, appointing a new chairperson who is himself a physician. Indeed, four (4) of the current members of the Corporation Board are now doctors, indicating the Corporation itself clearly recognizes the need to have better relations with its medical staff.

Recommendation 6: *The Grand Jury recommends that the Calaveras County Board of Supervisors receive an annual report from the District Board on the state of healthcare in the county and the hospital. The Management's Discussion and Analysis (MD&A) portion of the annual independent audit is an overview of the Healthcare District's financial health and should be included in this annual report. This report should be made public.*

Response to Recommendation 6: The District will implement this Recommendation, beginning at the end of the current fiscal year, by providing a formal report to the public which will be provided to the County Board of Supervisors.

The District has previously provided such reports to the County Board of Supervisors, and it is not clear why these reports stopped being prepared. That said, the District notes that the provision of the report is voluntary and is not intended to imply that the District is in any way subject to the supervision of the County. The District is not a subordinate district of Calaveras County. Rather, pursuant to The Local Health Care District Law, it is an fully independent special district. Hence, the Calaveras County Board of Supervisors has no supervisory role with respect to the District. The District is supervised directly by the electorate.

The District notes that the Grand Jury Report requested responses from the “Financial Committee of the Healthcare District Board.” The District declines to provide a response from its Finance Committee for the reasons noted above in response to recommendation 5. The Grand Jury also requested a response from the Calaveras County Board of Supervisors, which should be provided independently by that body.

Finding 7: *The Grand Jury finds that the required public notices of District Board meetings and agendas were only posted on the bulletin board in the administrative areas of the hospital. Although this minimally meets the requirements of the Brown Act, it limits public access to those notices.*

Response to Finding 7: The District concurs with this Finding.

Recommendation 7: *The Grand Jury recommends that the Mark Twain Healthcare District post the date, time and agenda of the District Board meetings in the newspaper and in public places such as the Post Office or Library.*

Response to Recommendation 7: The District has implemented this recommendation in part, and will not implement this Recommendation in part.

Publication in newspapers is expensive, and not particularly effective in providing public notice. The District does not agree that the taxpayer’s money would be well spent in such publication. Notice of District meetings (not the full agenda) is published in the newspaper.

The District does concur that posting solely within the administrative section of the hospital building, while legally adequate, does not provide adequate notice. It has previously (prior to the receipt of the Grand Jury’s report) implemented posting in other more highly trafficked public areas of the hospital (outside the emergency room which is open 24 hours each day) as well as at the library in San Andreas.

There is no current legal requirement that public agencies maintain a website, and the District does not currently do so. However, the Ralph M. Brown Act provides (effective January 1, 2012) that if a public agency has a website, it will post its public meeting agendas on the website. The District will evaluate whether or not to implement a District web site during the Fiscal year 2012-2013 time frame, and if implemented will thereafter maintain agendas on that website. The District has also requested the Corporation to make announcements of District Board meetings on the electronic message or reader board outside the Hospital, and has requested the Corporation to advise the Hospital staff of such meetings so that phone operators and others providing directions to the public are aware of the meetings and able to provide directions on attendance to those interested in doing so.

If the Grand Jury has any further questions regarding the operations of the Mark Twain Health Care District, we invite its members to contact the Board at any time.

Hon. John E. Martin, Superior Court Judge

May 28, 2012

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Thank you for considering the District's responses.

Very truly yours,

Lin Reed

Board President, Mark Twain Health Care District

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cc. Members of the District Board
District General Counsel
Chairman, Mark Twain St. Joseph's Healthcare Corporation Board of Trustees
Mark Twain St. Joseph's Healthcare Corporation Interim CEO
Chairman and Members of the Calaveras County Board of Supervisors

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