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B. Facts Relating to Lack of Consent Jurisdiction.

Perhaps recognizing the lack of long arm jurisdiction over the Aruban residents for conduct alleged to have occurred on the island of Aruba, plaintiffs attempt to bootstrap jurisdiction by alleging DEEPAK and SATISH "consented" to jurisdiction in California through the filing of an unrelated defamation lawsuit. The defamation lawsuit styled *Kalpos v. Phillip C. McGraw et al.*, Case Number BC363201, is unrelated to this wrongful death action. (A copy of the defamation lawsuit is attached as Exhibit "C".) As discussed in Section III B below, the filing by a non-resident of a lawsuit in California does not constitute consent by that non-resident to the jurisdiction of the California courts for purposes of a subsequent, unrelated lawsuit. Even

1 a cursory comparison of the wrongful death lawsuit, and the defamation lawsuit demonstrates the
2 two are unrelated for myriad reasons.

3 First, there is no common identity of the parties in the two lawsuits. The plaintiffs in the
4 instant wrongful death case are not parties in the defamation case. Similarly, the defendants in
5 the defamation case are not parties in this action seeking damages for wrongful death.

6 Second, the two lawsuits pertain to wholly different transactions and occurrences. The
7 defamation lawsuit alleges tortious conduct by individuals and corporations associated with the
8 "Dr. Phil" television show, wherein it is alleged *inter alia*, that the defendants in the defamation
9 case improperly manipulated certain statements of DEEPAK and broadcast these false
10 statements to the world on an episode of the television show. Thus, the subject matter of the
11 defamation case is improper manipulation of these recordings so as to create false statements
12 attributed to DEEPAK, and the subsequent publication of these false statements. Conversely, the
13 subject matter of the instant wrongful death lawsuit is the claim by plaintiffs that the wrongful
14 conduct of DEEPAK and SATISH was the proximate cause of fatal injuries sustained by Natalee
15 Holloway.

16 Third, the respective lawsuits allege wrongful conduct in separate and distinct countries.
17 The defamation lawsuit alleges improper conduct alleged to have occurred in California.
18 Conversely, the wrongful death lawsuit alleges wrongful conduct on the island of Aruba.

19 Fourth, the conduct described in the two lawsuits is alleged to have occurred at two
20 distinct periods of time. While the wrongful death lawsuit complains of conduct alleged to have
21 occurred on May 29, 2005, the defamation case describes wrongful conduct that occurred
22 months later.

23 Finally, and perhaps most importantly, Judge Ferns of this Court has already determined
24 that the defamation lawsuit and wrongful death lawsuit do not arise from the same or
25 substantially identical transactions, happenings or events. In an Order dated January 29, 2007,
26 Judge Ferns ruled on the question of whether the two cases were related and held:

27 **"The court finds that cases BC363201 [Dr. Phil Defamation Lawsuit] and**
28 **BC363407 [Holloway Wrongful Death Lawsuit] are not related cases within**

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the meaning of Los Angeles Superior Court Rules, rule 7.3(f). Case BC363201 (Kalpoe v. McGraw) is an action for defamation based upon the alleged editing of tapes of interviews and conversations. Case BC363407 (Twitty v. Kalpoe) is an action for damages for wrongful death of Natalee Holloway on the island of Aruba. *These actions do not arise from the same or substantially identical transactions, happenings or events; nor do they require a determination of the same or substantially identical questions of law or fact.* See January 24, 2007 Order, attached hereby as Exhibit "D" (emphasis added).

Thus, the wrongful death action and the defamation action clearly do not arise from the same or substantially identical events. DEEPAK and SATISH did not consent to the jurisdiction of this court for the purposes of this wrongful action through the filing of an unrelated action for defamation. For all these reasons discussed in greater detail below, DEEPAK and SATISH have not consented to the jurisdiction of this Court, and the wrongful death complaint should be dismissed for lack of personal jurisdiction.