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FILED
ALAMEDA COUNTY

NOV 25 2015

CLERK OF THE SUPERIOR COURT
By *[Signature]* Deputy

Attorneys for Defendant
UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA - NORTHERN DIVISION

11 LATASHA NAILAH SPEARS WINKFIELD; Case No. RG15760730
 12 MARVIN WINKFIELD; SANDRA
 13 CHATMAN and JAHl McMATH, a minor, **AMENDED NOTICE OF DEMURRER,**
 14 by and through her Guardian Ad Litem, **MOTION TO STRIKE REQUEST FOR**
 15 LATASHA NAILAH SPEARS WINKFIELD, **JUDICIAL NOTICE**

Plaintiff,

vs.

Date: January 8, 2016
Time: 11:00 a.m.
Dept: 20
Complaint Filed: March 3, 2015
Trial: N/A

16 FREDERICK S. ROSEN, M.D.; UCSF
 17 BENIOFF CHILDREN'S HOSPITAL
 18 OAKLAND (formerly Children's Hospital &
 19 Research Center at Oakland); MILTON
 20 McMATH, a nominal defendant, and DOES **Reservation No. R-1686975**
 21 1 THROUGH 100,

Defendants.

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that on the 8th day of January, 2016 at 11:00 a.m. in
 23 Department 20 of the above entitled court, defendant UCSF Benioff Children's Hospital
 24 Oakland will demur to the first cause of action of plaintiffs' First Amended Complaint
 25 pursuant to C.C.P. § 430.10 (e) for failure to state facts sufficient to constitute a cause
 26 of action, and will move to strike improper portions of said Complaint pursuant to C.C.P.
 27 § 435-§ 436 as set forth below.
 28

GALLOWAY, LUCCHESI,
 EVERSON & PICCHI
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 Suite 350
 Pleasant Hill, CA 94523
 (925) 930-9090

RG15760730: NOTICE OF DEMURRER, MOTION TO STRIKE, REQUEST FOR JUDICIAL NOTICE

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DEMURRER

First Cause of Action

1. The first cause of action fails to state facts sufficient to constitute a cause of action for Personal Injury on behalf of Jahi McMath in Jahi has been declared dead under California law, and she has no standing to sue for personal injury. C.C.P. § 430.10 (e)

MOTION TO STRIKE


Conditional Language – Wrongful Death Action

1. *"In the event that it is determined that"* [Jahi succumbed to the injuries causes by the negligence of the defendants]. First Amended Complaint for Damages at 13:27-28.

This demurrer and motion will be based on this Notice/ Demurrer/ Motion to Strike, the accompanying Memorandum of Points and Authorities and Request for Judicial Notice therein, Exhibits A-G, the Declaration of Joseph E. Finkel, all pleadings and papers on file herein as well argument and authority that may be presented in Reply or at the time of the hearing of this matter.

Dated: November 25, 2015

GALLOWAY, LUCCHESI, EVERSON
& PICCHI

By: 
JOSEPH E. FINKEL, ESQ.
Attorneys for Defendant
UCSF BENIOFF CHILDREN'S
HOSPITAL OAKLAND

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PROOF OF SERVICE

I declare under penalty of perjury that:

I am a citizen of the United States and am employed in the County of Contra Costa. I am over the age of eighteen years and not a party to the within action. My business address is 2300 Contra Costa Boulevard, Suite 350, Pleasant Hill, CA 94523-2398.

On the date set forth below, I caused the attached **NOTICE OF DEMURRER, MOTION TO STRIKE REQUEST FOR JUDICIAL NOTICE** to be served on the parties to this action as follows:

BY MAIL.

I placed a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Pleasant Hill, California, addressed to the parties as set forth on the attached service list. C.C.P. §§1013(a), 2015.5.

BY COURIER SERVICE.

I retained CCX Couriers, Inc. of Pleasant Hill, California, to personally serve a true copy thereof on the parties as set forth on the attached service list. C.C.P. §§1011, 2015.5.


BY UNITED PARCEL SERVICE.

I retained **UNITED PARCEL SERVICE** to serve by overnight delivery a true copy thereof on the parties as set forth on the attached service list. C.C.P. §§1013(c), 2015.5.

BY FACSIMILE TRANSMISSION.

I am readily familiar with this law firm's business practices for collection and processing of documents by way of facsimile. I telefaxed a true copy thereof at said facsimile number(s) as set forth on the attached service list. C.C.P. §§1013(e), 2015.5 and C.R.C. §2008.

Executed on November 25, 2015 at Pleasant Hill, California.


Janet Keough

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MCMATH (WINKFIELD) V. CHILDREN'S HOSPITAL
ALAMEDA - NORTHERN DIVISION COUNTY SUPERIOR COURT CASE NO.
RG15760730

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