



**FILED**  
**ALAMEDA COUNTY**

APR 04 2016

CLERK OF THE SUPERIOR COURT

By: [Signature] Deputy

1 Bruce M. Brusavich, State Bar No. 93578  
Terry S. Schneier, State Bar No. 118322  
2 **AGNEWBRUSAVICH**  
A Professional Corporation  
3 20355 Hawthorne Boulevard  
Second Floor  
4 Torrance, California 90503  
(310) 793-1400

5 Andrew N. Chang  
6 ESNER, CHANG & BOYER  
Southern California Office  
7 234 East Colorado Boulevard  
Suite 750  
8 Pasadena, CA 91101  
(626) 535-9860121

10 Attorneys for Plaintiff

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF ALAMEDA

AGNEW BRUSAVICH  
LAWYERS  
20355 HAWTHORNE BOULEVARD · TORRANCE, CALIFORNIA 90503-2401  
TELEPHONE: (310) 793-1400 FACSIMILE: (310) 793-1499 E-MAIL: ab@agnewbrusavich.com

15 LATASHA NAILAH SPEARS WINKFIELD;  
16 MARVIN WINKFIELD; SANDRA CHATMAN;  
17 and JAHl McMATH, a minor, by and  
through her Guardian ad Litem, LATASHA  
18 NAILAH SPEARS WINKFIELD,

19 Plaintiffs,

20 vs.

21 FREDERICK S. ROSEN, M.D.; UCSF BENIOFF  
CHILDREN'S HOSPITAL OAKLAND  
(formerly Children's Hospital & Research  
22 Center at Oakland); MILTON McMATH, a  
nominal defendant; and DOES 1  
23 THROUGH 100,

24 Defendants.

CASE NO. RG 15760730

ASSIGNED FOR ALL PURPOSES TO:  
JUDGE ROBERT B. FREEDMAN - DEPT.  
"20"

**JOINT CASE MANAGEMENT STATEMENT**

DATE: April 8, 2016  
TIME: 11:00 a.m.  
Dept.: "20"

Date Action Filed: 03/03/15

25 TO THE COURT AND ALL PARTIES HEREIN:

26 Pursuant to the January 29, 2016 Case Management Order of this  
27 court, the parties hereby submit the following Joint Case Management Statement.  
28

**FAX FILING**

AGNEW BRUSAVICH  
LAWYERS  
20355 HAWTHORNE BOULEVARD · TORRANCE, CALIFORNIA 90503-2401  
TELEPHONE: (310) 783-1400 FACSIMILE: (310) 793-1499 E-MAIL: ab@agnewbrusavich.com

1 This Joint Statement is being filed by the following parties:

2

3 Plaintiffs LATASHA NAILAH SPEARS Represented by Bruce M. Brusavich of  
4 WINKFIELD; MARVIN WINKFIELD; AgnewBrusavich and Andrew N. Chang  
5 SANDRA CHATMAN; and JAHI of Esner, Chang & Boyer  
6 McMATH, a minor, by and through  
7 her Guardian ad Litem, LATASHA  
8 NAILAH SPEARS WINKFIELD

9

10 Defendant Frederick S. Rosen, M.D. Represented by Thomas E. Still of  
11 Hinshaw, Marsh, Still & Hinshaw  
12

13

14 Defendant Frederick S Rosen, M.D. is the ENT surgeon who performed  
15 the sleep apnea surgery on Jahi McMath on December 9, 2013

16

17 Defendant UCSF Benoiff Children's Represented by G. Patrick Galloway  
18 Hospital (previously Children's Hospital and Joseph E. Finkel of Galloway,  
19 Oakland) Lucchese, Everson & Picchi

20

21

22 It should be noted that three Doe defendants have not yet appeared  
23 in this matter. These defendants are:

24

25 1. Doe 1 - John Patrick Howard, M.D., PhD, being represented by  
26 Scott E. Murray and Vanessa L. Efremsky of Donnelly Nelson Depolo & Murray. Dr.  
27 Howard was the attending physician at UCSF Benoiff hospital after the surgery while  
28 Jahi was bleeding;

29

30 2. Doe 2 - Alicia Herrera, M.D. who is being represented by Thomas  
31 J. Doyle and Chad Couchet of Schuering Zimmerman & Doyle, LLP. Dr. Herrera was

1 the Physician Fellow at the hospital after Jahi's surgery while she was bleeding ; and  
2 3. Doe 3 - Robert M. Wesman, M.D. who is being represented by  
3 Robert Hodges of McNamara Ney Beatty Slattery Borges & Ambacker, LLP. Dr.  
4 Wesman was the ENT specialist who was on call for his partner/colleague and  
5 defendant Frederick S Rosen, M.D. on the evening of December 9, 2013.  
6

7 **PLAINTIFF'S POSITION WITH RESPECT TO DISCOVERY AND TRIAL:**

8  
9 As set forth in plaintiffs' Case Management Statements and the Motion  
10 for Bifurcation which is currently set for hearing on April 15, 2016, plaintiffs believe  
11 that it would be appropriate for the court to bifurcate the issue of professional  
12 negligence and causation of any brain injury from the issues of whether or not Jahi  
13 McMath currently meets the definition of brain death as well as the issue of  
14 damages.

15 According to case management statements filed by defendants  
16 Rosen and UCSF Benoiff, the defendants met the standard of care on the issue of  
17 liability and will prevail at trial, if not summary judgment motions they intend to  
18 bring. If plaintiffs lose on either the issues of liability or causation, the case is of  
19 course over.

20 On the issue of whether or not Jahi McMath currently meets the  
21 generally accepted definition of brain death, at a minimum, the following  
22 physicians and medical experts who have been involved in the evaluation and/or  
23 treatment of Jahi will be providing expert testimony:

- 24 1. Phillip DeFina, PhD  
25 Chief Scientific Officer for the International Brain Research Foundation  
Flanders, NJ  
Research Assistant Professor, NYU
- 26 2. Elena Labkowsky, PhD  
27 Certified EEG Technician  
International Brain Research Foundation  
Flanders, NY
- 28 3. Charles Prestigiacomo, MD

1 Professor in the Department of Neurological Surgery and Radiology, New Jersey  
2 Medical School  
3 Director of the Neurosurgical residency Program at New Jersey Medical School  
4 Research Professor in the Department of Biomedical Engineering at the New  
5 Jersey Institute of Technology

6 4. Ivan Mikolaenko, M.D.  
7 Clinical Fellow and Neurology Instructor, Department of Neurology and  
8 Neurosurgery  
9 University of Virginia, Charlottesville, VA  
10 Neurointensivist, New York and New Jersey

11 5. Alan Shewmon, MD  
12 Former Chief of Neurology, Olive-View UCLA Medical Center  
13 Los Angeles, CA

14 6. Calixto Machado, MD, PhD, FAAN  
15 Neurologist and expert in brain death  
16 Senior Professor and Researcher in Neurology and Clinical Neurophysiology at  
17 the Institute of Neurology and Neurosurgery  
18 Havana, Cuba

19 Plaintiffs also anticipate that a number of nurses who have been providing care  
20 for Jahi McMath will be percipient witnesses with respect to her maturation  
21 including her onset of puberty and menstruation as well as her ability to respond  
22 to specific commands.

23 The bifurcation of liability and causation from the other issues of whether or not  
24 Jahi currently meets the definition of brain death will allow for the orderly  
25 discovery of these issues in the event plaintiffs prevail in phase 1 of the trial.  
26 Furthermore, developments in the federal court action to have the death  
27 certificate declared void or modified may make the issue of whether or not Jahi  
28 McMath currently meets the definition of brain death irrelevant or preempted.  
The plaintiff anticipates the first phase of trial will take approximately 10 court  
days and the second phase will take at least 30, and possibly as many as 60.

**DEFENDANTS POSITION:**

**DEFENDANT UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND'S POSITION**

CHO will be submitting written opposition to Plaintiff's motion to have the issue of  
liability bifurcated. It would be premature to rule on this issue at the time of the  
CMC because, while plaintiff has submitted points and authorities in support of

1 the motion to bifurcate, CHO has not had an opportunity to prepare a  
2 responsive opposition. It would also be premature to rule on a motion to  
3 bifurcate because there are three defendants who have now been named and  
4 served, but have not yet appeared.

5 Similarly, it would be inappropriate to select a trial date for this matter at the  
6 CMC before the case is at issue. The newly named defendants should be given  
7 an opportunity to provide their input as to an appropriate trial date.

8  
9 Finally, it is unclear whether Milton McMath will attempt to join this action as a  
10 plaintiff. It would seem most appropriate to await a determination of that issue  
11 before either setting a trial date or deciding the bifurcation issue.

12  
13 CHO has submitted a separate issue conference statement which should  
14 address any remaining issues not identified by CHO in this joint statement.

15  
16 DEFENDANT ROSEN, MD'S POSITION

17  
18 Defendant Rosen MD objects to the proposal to bifurcate, and will be submitting  
19 separate written opposition to the Plaintiff's pending motion. Contrary to plaintiff  
20 counsel's assertions, whether Jahi McMath meets the definition of brain death is  
21 directly relevant to case management decisions, including whether bifurcation  
22 would serve any legitimate purpose. It is anticipated that the Federal Court will  
23 abstain, and the effort to void the death certificate will fail. Counsel's 10 day  
24 time estimate to try liability is unrealistic; it will take far longer to try liability alone.  
25 When the medical and judicial determination of brain death previously made  
26 are upheld and given appropriate preclusive effect, any theoretical reason to  
27 bifurcate will be eliminated. More importantly, this case is not at issue. Three new  
28 defendants, each with separate counsel, will be appearing in the near future.



AGNEW BRUSAVICH  
LAWYERS  
20355 HAWTHORNE BOULEVARD · TORRANCE, CALIFORNIA 90503-2401  
TELEPHONE: (310) 793-1400 FACSIMILE: (310) 793-1488 E-MAIL: ab@agnewbrusavich.com

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Any decision on bifurcation, a discovery schedule and/or trial setting should only be made after all parties have appeared and the case is at issue. Please see the CMC Statement submitted separately by Dr. Rosen.


DATED: March \_\_\_\_, 2016

**AGNEWBRUSAVICH**  
A Professional Corporation

By: \_\_\_\_\_  
BRUCE M. BRUSAVICH  
Attorneys for Plaintiffs

DATED: March 29, 2016

HINSHAW MARSH STILL & HINSHAW

By:   
THOMAS E. STILL  
Attorneys for Defendant  
FREDERICK S. ROSEN, M.D.

DATED: March \_\_\_\_, 2016

GALLOWAY, LUCCHESI, EVERSON &  
PICCHI

By: \_\_\_\_\_  
G. PATRICK GALLOWAY  
JOSEPH E. FINKEL  
Attorneys for Defendant  
UCSF BENOIFF CHILDREN'S  
HOSPITAL

AGNEW BRUSAVICH  
LAWYERS

20355 HAWTHORNE BOULEVARD · TORRANCE, CALIFORNIA 90503-2401  
TELEPHONE: (310) 798-1400 FACSIMILE: (310) 798-1488 E-MAIL: abr@agnewbrusavich.com

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Any decision on bifurcation, a discovery schedule and/or trial setting should only be made after all parties have appeared and the case is at issue. Please see the CMC Statement submitted separately by Dr. Rosen.

DATED: March \_\_\_\_\_, 2016

**AGNEWBRUSAVICH**  
A Professional Corporation

By: \_\_\_\_\_  
BRUCE M. BRUSAVICH  
Attorneys for Plaintiffs


DATED: March \_\_\_\_, 2016

HINSHAW MARSH STILL & HINSHAW

By: \_\_\_\_\_  
THOMAS E. STILL  
Attorneys for Defendant  
FREDERICK S. ROSEN, M.D.

DATED: March 26, 2016

GALLOWAY, LUCCHESI, EVERSON &  
PICCHI

By:   
G. PATRICK GALLOWAY  
JOSEPH E. FINKEL  
Attorneys for Defendant  
UCSF BENOIFF CHILDREN'S  
HOSPITAL



**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is **AGNEWBRUSAVICH**, 20355 Hawthorne Blvd., 2<sup>nd</sup> Floor, Torrance, California. On April 4, 2016, I served the within document **JOINT CASE MANAGEMENT STATEMENT**

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Torrance, California, addressed as set forth below:

by placing a true copy thereof enclosed in a sealed envelope(s), and caused such envelope(s) to be delivered by hand delivery addressed pursuant to the document(s) listed above to the person(s) at the address(es) set forth below.

by electronic service. Based on a court order or an agreement of the parties to accept service by electronic transmission. I caused the documents to be sent to the persons at the electronic notification addresses as set forth below:

<p>Andrew N. Chang ESNER, CHANG &amp; BOYER Southern California Office 234 East Colorado Boulevard Suite 750 Pasadena, CA 91101 <a href="mailto:achang@ecbappeal.com">achang@ecbappeal.com</a></p>	<p>ASSOCIATE ATTORNEY FOR PLAINTIFFS LATASHA NAILAH SPEARS WINKFIELD; MARVIN WINKFIELD; SANDREA CHATMANH; and JAHl McMATH, a minor, by and through her Guardian ad Litem, LATASHA NAILAH SPEARS WINKFIELD</p> <p>(626) 535-9860 FAX (626) 535-9859</p>
<p>Thomas E. Still HINSHAW, MARSH, STILL &amp; HINSHAW 12901 Saratoga Avenue Saratoga, CA 95070-9998 <a href="mailto:tstill@hinshaw-law.com">tstill@hinshaw-law.com</a></p>	<p>ATTORNEYS FOR FREDERICK S. ROSEN, M.D.</p> <p>(408) 861-6500 FAX (408) 257-6645</p>
<p>G. Patrick Galloway GALLOWAY, LUCCHESI, EVERSON &amp; PICCHI 2300 Contra Costa Boulevard Suite 350 Pleasant Hill, CA 94523-2398 <a href="mailto:pgalloway@glattys.com">pgalloway@glattys.com</a></p>	<p>ATTORNEYS FOR DEFENDANT UCSF BENOIFF CHILDREN'S HOSPITAL</p> <p>(925) 930-9090 FAX (925) 930-9035</p>
<p>Scott E. Murray Vanessa L. Efremsky DONNELLY NELSON DEPOLO &amp; MURRAY A Professional Corporation 201 North Civic Drive, Suite 239</p>	<p>ATTORNEYS FOR DEFENDANT JAMES PATRICK HOWARD, M.D., Ph.D.</p>

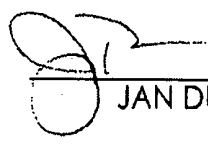
AGNEW BRUSAVICH  
LAWYERS  
20355 HAWTHORNE BOULEVARD · TORRANCE, CALIFORNIA 90503-2401  
TELEPHONE: (310) 793-1400 FACSIMILE: (310) 793-1499 E-MAIL: ob@agnewbrusavich.com

1 2	Walnut Creek, CA 94596-3879 <u>Smurray@dndmlawyers.com</u> <u>vefremsky@dndmlawyers.com</u>	(925) 287-8181 FAX (925) 287-8188
3 4 5 6	Robert Hodges McNAMARA NEY BEATTY SLATTERY BORGES & AMBACKER, LLP 1211 Newell Avenue #2 Walnut Creek, CA 94596-5238 <u>robert.hodges@mcnamaralaw.com</u>	ATTORNEY FOR ROBERT M. WESMAN, M.D.  (925) 939-5330 FAX (925) 939-0203
7 8 9 10 11	Thomas J. Doyle Chad Couchet SCHUERING ZIMMERMAN & DOYLE, LLP 400 University Avenue Sacramento, CA 95825-6502 <u>tjd@szs.com</u> <u>ccc@szs.com</u>	ATTORNEY FOR DEFENDANT ALICIA HERRERA, M.D.  (916) 567-0400 FAX (916) 568-0400

12  
13 I am readily familiar with the firm's practices of collection and processing  
14 correspondence for mailing. Under that practice, it would be deposited with the  
15 U.S. Postal Service on that same day with postage thereon fully prepaid in the  
16 ordinary course of business. I am aware that on motion of the party served,  
17 service is presumed invalid if post cancellation date or postage meter date is  
18 more than one day after date of deposit for mailing in affidavit.

- 19  (State) I declare under penalty of perjury under the laws of the State of  
20 California that the above is true and correct.
- 21  (Federal) I declare that I am employed in the office of a member of the  
22 bar of this court at which direction the service was made.

23 Executed this 4th day of April, 2016 at Torrance, California.

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JAN DUNN