



FILED

JUN 15 2018

CLERK OF THE SUPERIOR COURT

By Cecilia Amador Deputy

1 CARROLL, KELLY, TROTTER, FRANZEN, McBRIDE & PEABODY
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6 Attorneys for Defendant, UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ALAMEDA – HAYWARD HALL OF JUSTICE
10

11 LATASHA NAILAH SPEARS WINKFIELD;
12 MARVIN WINKFIELD; SANDRA
13 CHATMAN; and JAHl McMATH, a minor, by
and through her Guardian Ad Litem LATASHA
NAILAH SPEARS WINKFIELD

14 Plaintiffs,

15 vs.

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

20 Defendants.
21

CASE NO.: RG15760730

NOTICE OF RULING

ASSIGNED FOR ALL PURPOSES TO:
JUDGE STEPHEN PULIDO
DEPARTMENT: 517

Complaint Filed: 03/03/2015
Trial Date: 02/11/2019

22 PLEASE TAKE NOTICE:

23 On April 19, 2018, this matter was called for hearing as to: (1) plaintiffs' motion to
24 bifurcate the issue of whether the American Association of Neurology and American Academy
25 of Pediatrics Criteria for establishing brain death in adults and children comport with the
26 statutory requirements of the Uniform Determination of Death Act as set forth in Health and
27 Safety Code section 7180; and (2) Case Management Conference.

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A reporter's transcript of the proceedings is attached to this notice as Exhibit A.

The reporter's transcript reflects the identity of counsel appearing on behalf of the parties.
(Exhibit A, pp. 2-6.)

Prior to that hearing, the Court issued a tentative ruling, attached as Exhibit B hereto. The parties submitted to the Court's tentative ruling. (Exhibit A, p. 6.) The Court ordered that the matter was set "for trial for the bifurcated issues that are in my tentative ruling for jury trial on February 11, 2019, at 8:30 a.m." (Exhibit A, p. 11, see also p. 13.)

Recounting, the Court ordered the following dates: **TRIAL:** February 11, 2019, 8:30 a.m.; **PRE-TRIAL CONFERENCE:** February 1, 2019, 8:30 a.m.; **MANDATORY SETTLEMENT CONFERENCE:** January 10, 2019, 2:30 p.m., before Judge Noel Wise, Department 303, in the Court located in the city of Alameda.

Other details regarding the Court's order are specified in the tentative ruling affirmed by the Court and the Court's statements recorded in the reporter's transcript.

DATED: June ¹³7, 2018

CARROLL, KELLY, TROTTER, FRANZEN,
McBRIDE & PEABODY

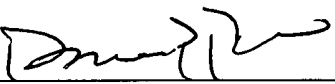
By: 
RICHARD D. CARROLL
DAVID P. PRUETT
TOBIN J. TROBOUGH
Attorneys for Defendant,
UCSF BENIOFF CHILDREN'S HOSPITAL
OAKLAND

Exhibit A

1 SUPERIOR COURT IN THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF ALAMEDA

3 DEPARTMENT NO. 517

HON. STEPHEN PULIDO

4
5 LATASHA NAILAH SPEARS)
WINKFIELD, ET AL.,)

6)
7 PLAINTIFFS,)

8 VS.)

CASE NO. RG15760730

9 FREDERICK S. ROSEN, M.D.,)
ET AL.,)

10 DEFENDANTS.)
11)
12)
13)

14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 CASE MANAGEMENT CONFERENCE

16 THURSDAY, APRIL 19, 2018

17
18 APPEARANCES:

19 (SEE NEXT PAGE)
20
21

22 REPORTED BY NANCY E. PRESANT-MCDONALD, CSR NO. 9906
23 CLS JOB NO. 81809

24 CENTEXTLEGAL.COM - 855.CENTEXT
25

1 APPEARANCES OF COUNSEL:

2 FOR THE PLAINTIFFS:

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7 - AND -

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16 FOR THE DEFENDANT CHILDREN'S HOSPITAL OAKLAND:

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1 APPEARANCES OF COUNSEL (CONTINUED):

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1 THURSDAY, APRIL 19, 2018, 3:24 P.M.

2 PROCEEDINGS

3 --000--

4 THE COURT: ALL RIGHT. SPEARS VERSUS ROSEN.

5 THIS IS ON THE COURT'S CALENDAR FOR THE MOTION
6 OF THE PLAINTIFFS FOR AN ORDER BIFURCATING ISSUES FOR
7 TRIAL. THE COURT DID ISSUE A TENTATIVE RULING IN THIS
8 CASE WHICH ORDERED COUNSEL FOR ALL PARTIES TO APPEAR HERE
9 TODAY ON THE MOTION OF THE PLAINTIFFS FOR A BIFURCATED
10 BENCH TRIAL TO DETERMINE WHETHER THE AMERICAN ASSOCIATION
11 OF NEUROLOGY AND AMERICAN ACADEMY OF PEDIATRICS
12 GUIDELINES SHOULD BE APPLIED TO THE FACTS OF THIS CASE TO
13 DETERMINE WHETHER PLAINTIFF, JAHl MC MATH, APPEARING
14 THROUGH HER GUARDIAN AD LITEM, MEETS THE DEFINITION OF
15 BRAIN DEATH UNDER HEALTH AND SAFETY CODE SECTION 7180.

16 THE COURT DID ISSUE A RULING, AND BASED ON THE
17 COURT'S REVIEW OF THE PAPERS FILED BY THE PLAINTIFFS AND
18 THE DEFENDANTS AND ITS FAMILIARITY WITH THE PROCEDURAL
19 HISTORY OF THIS MATTER, THE COURT INDICATED IT IS NOT
20 INCLINED TO MAKE THE BIFURCATION ORDER REQUESTED BY THE
21 PLAINTIFFS' COUNSEL. INSTEAD THE COURT INTENDS TO ISSUE
22 A TRIAL SETTING ORDER THAT SETS A SEPARATE TRIAL ON THE
23 ISSUE OF WHETHER PLAINTIFF, JAHl MC MATH, IS A PERSON
24 WITH THE CAPACITY AND/OR STANDING TO PROSECUTE THE FIRST
25 CAUSE OF ACTION OF THE FIRST AMENDED COMPLAINT FOR

1 PROFESSIONAL NEGLIGENCE, AND THERE IS MORE TO THE
2 DECISION, BUT THAT'S THE GIST OF IT.

3 SO WHY DOESN'T EVERYBODY HAVE A SEAT, PLEASE,
4 SOMEWHERE? DID WE GET THE COURTCALL APPEARANCES?

5 THE CLERK: WE HAVEN'T GOTTEN ANY APPEARANCES,
6 YOUR HONOR.

7 THE COURT: COULD WE HAVE APPEARANCES ON
8 COURTCALL, PLEASE?

9 MR. BRUSAVICH: YES. GOOD AFTERNOON, YOUR
10 HONOR. BRUCE BRUSAVICH APPEARING FOR THE PLAINTIFFS.

11 THE COURT: GOOD AFTERNOON.

12 MS. GOSLING: SARAH GOSLING APPEARING FOR
13 DEFENDANT, DR. HERRERA.

14 THE COURT: ALL RIGHT. STARTING WITH THE
15 PLAINTIFFS, ANYTHING THAT YOU WANT TO SAY ABOUT THE
16 COURT'S TENTATIVE RULING?

17 MR. CHANG: WELL, WE HAVE NOTHING TO ADD --

18 THE CLERK: I'M SORRY. CAN WE GET EVERYONE'S
19 APPEARANCE, PLEASE?

20 THE COURT: CAN YOU ALL GIVE YOUR APPEARANCES,
21 PLEASE?

22 MS. STILL: JENNIFER STILL FOR DEFENDANT,
23 FREDERICK ROSEN, M.D.

24 MR. CARROLL: RICHARD CARROLL FOR CHILDREN'S
25 HOSPITAL OF OAKLAND.

1 MR. PEDROZA: KENNETH PEDROZA FOR CHILDREN'S
2 HOSPITAL OF OAKLAND AND DR. ROSEN.

3 MS. DAHL: SONJA DAHL ON BEHALF OF JAMES HOWARD,
4 M.D.

5 MR. HODGES: GOOD AFTERNOON, YOUR HONOR. ROBERT
6 HODGES ON BEHALF OF DR. ROBERT WESMAN.

7 MR. PRUETT: DAVID PRUETT ON BEHALF OF
8 CHILDREN'S HOSPITAL OAKLAND.

9 MR. CHANG: ANDREW CHANG FOR PLAINTIFFS.

10 MR. DOLAN: CHRISTOPHER DOLAN, PLAINTIFFS.

11 THE COURT: GOOD AFTERNOON.

12 ALL RIGHT. NOW, PLAINTIFFS, ANYTHING THAT YOU
13 WANT TO COMMENT UPON?

14 MR. CHANG: AS I WAS GOING TO SAY, WE DON'T HAVE
15 ANYTHING TO ADD TO OUR PAPERS SO WE'LL SUBMIT ON THE
16 TENTATIVE.

17 THE COURT: OKAY. AND DEFENDANTS' COUNSELS?

18 MR. PEDROZA: NO, YOUR HONOR. JUST ONE
19 QUESTION, IF YOUR HONOR HAS ANY SENSE OF THE TRIAL
20 SETTING ORDER YOU HAVE IN MIND, IF THAT'S SOMETHING THAT
21 YOU WANT US TO ADDRESS TODAY, WE ARE CERTAINLY HAPPY TO
22 ADDRESS THAT, BUT IT DOESN'T SOUND LIKE --

23 THE COURT: NO. IT'S A PRETTY STANDARD PRETRIAL
24 ORDER THAT I'LL SEND OUT. IT INCLUDES THE DATES.
25 NORMALLY, I GIVE YOU A MANDATORY SETTLEMENT CONFERENCE.

1 I GIVE YOU A PRETRIAL CONFERENCE. I GIVE YOU THE TRIAL
2 DATE. ALONG WITH THAT IS ALL OF YOUR RESPONSIBILITIES
3 UNDER CALIFORNIA RULES OF COURT AND LOCAL RULES AS FAR AS
4 THE TRIAL, PRETRIAL CONFERENCE, SO IT'S PRETTY LENGTHY.
5 THAT'S THE ORDER THAT I PLAN ON ISSUING IN THIS CASE AS
6 IN MOST CASES. IT WILL BE ON THE BIFURCATED HEARING.

7 I GUESS THE ISSUE TO ME RIGHT NOW AND WHY YOU
8 ARE REALLY HERE IN MY OPINION IS TO MAKE SURE THAT WE
9 PICK A TRIAL DATE THAT EVERYONE CAN SHOW UP AT. SO I
10 KNOW THE LAST TIME WE WERE HERE, I THINK -- CORRECT ME IF
11 I'M WRONG -- THE DEFENDANTS WERE LOOKING AT A YEAR OR SO,
12 AND I THINK PLAINTIFFS SAID SIX MONTHS. I SAID SOMETHING
13 ABOUT IT IS REALLY PROBABLY IN BETWEEN SOMEWHERE. LET'S
14 SEE WHERE YOU ARE ALL AT RIGHT NOW.

15 MS. STILL: I'M STILL WAITING FOR WRITTEN
16 DISCOVERY RESPONSES. I PROPOUNDED SECOND SETS, THIRD
17 SETS IN FEBRUARY AND MARCH, AND I'VE SO FAR GIVEN THREE
18 EXTENSIONS AND RIGHT NOW, THEY ARE DUE AT THE END OF
19 APRIL, AND UNTIL I GET THOSE RESPONSES, IT'S REALLY GOING
20 TO BE DIFFICULT TO DETERMINE WHETHER I'M GOING TO NEED
21 MOTIONS TO COMPEL, AND THOSE RESPONSES WILL IN LARGE PART
22 GUIDE US ON THE SORT OF DEPOSITIONS THAT NEED TO BE
23 TAKEN. RIGHT NOW WE'RE ANTICIPATING MORE THAN A DOZEN
24 DEPOSITIONS IN NEW JERSEY, FAMILY MEMBERS, SOME TAKEN
25 HERE. SO IT IS EXTENSIVE, BUT UNTIL WE GET THOSE WRITTEN

1 DISCOVERY RESPONSES, IT'S REALLY HARD TO ANTICIPATE THE
2 TIMELINE. SO I WOULD SAY A YEAR IS MORE ACCURATE THAN
3 SIX MONTHS AT THIS POINT.

4 THE COURT: YOU JUST SAID THESE WRITTEN
5 DISCOVERY RESPONSES ARE DUE AT THE END OF THIS MONTH,
6 CURRENTLY?

7 MS. STILL: YES.

8 THE COURT: DO YOU WANT TO RESPOND TO THAT ISSUE
9 ON THE WRITTEN DISCOVERY RESPONSES?

10 MR. CHANG: I THINK MR. BRUSAVICH CAN RESPOND TO
11 THAT.

12 THE COURT: MR. BRUSAVICH?

13 MR. BRUSAVICH: YES, YOUR HONOR. MS. STILL IS
14 CORRECT. SHE IS GOING TO GET DISCOVERY RESPONSES ANY DAY
15 NOW.

16 THE COURT: PLAINTIFFS ON YOUR ESTIMATE FOR
17 WHEN -- WHEN DO YOU WANT ME TO SET THE TRIAL? I'M
18 HEARING ABOUT A YEAR OR SO FROM THE DEFENDANT.

19 MR. CHANG: WELL, I THINK THAT YOUR HONOR HAD
20 INDICATED SOMEWHERE IN BETWEEN --

21 THE COURT: I DID.

22 MR. CHANG: -- WE THINK YOU'RE RIGHT ON THAT.
23 WE THINK IT'S MORE LIKE NINE MONTHS.

24 THE COURT: NINE MONTHS BRINGS US TO JANUARY OF
25 2019. AM I COUNTING CORRECTLY? HOW LONG -- WE'LL GET

1 THE DATE -- BUT HOW LONG -- I KNOW IT IS HARD, BUT HOW
2 LONG DO YOU THINK THIS TRIAL WILL TAKE ON THIS ASPECT?
3 LET'S START WITH PLAINTIFFS. WHAT DO YOU THINK?

4 MR. CHANG: THREE WEEKS.

5 THE COURT: THREE WEEKS? DEFENDANTS?

6 MR. CARROLL: THAT SOUNDS RIGHT.

7 MR. HODGES: YOUR HONOR, IF I MAY, I LITERALLY
8 HAVE SIX TRIALS SCHEDULED BETWEEN JANUARY AND MARCH. ALL
9 OF WHICH I THINK WILL GO FORWARD, AT LEAST THIS POINT,
10 AND I HAVE THREE MEDICAL BOARD HEARINGS WHICH ARE SET
11 JANUARY, FEBRUARY, AND MARCH EACH OF WHICH IS ABOUT TEN
12 DAYS. SO I WOULD PROPOSE THAT WE LOOK FURTHER INTO THE
13 SPRINGTIME INTO THE -- PERHAPS EVEN INTO THE SUMMER TO
14 ALLOW ALL DISCOVERY THAT I ANTICIPATE THAT IS ACTUALLY
15 GOING TO HAVE TO HAPPEN IN THIS CASE.

16 MR. DOLAN: YOUR HONOR, IF I MAY?

17 MR. BRUSAVICH: YOUR HONOR, THIS IS BRUCE
18 BRUSAVICH. YOU'VE INDICATED THAT YOU ARE GOING TO TRY
19 THIS ONE ISSUE, AND IT SHOULDN'T TAKE A YEAR AND A HALF
20 TO GET THIS ONE ISSUE TEED UP FOR TRIAL. YOU ARE ALWAYS
21 GOING TO HEAR THESE CONFLICTS WITH MEDICAL MALPRACTICE
22 LAWYERS, AND IF YOU SET IT AROUND THEIR CALENDARS, YOU
23 WOULD NEVER GET A CASE SET FOR TRIAL.

24 MR. DOLAN: IF I MAY, YOUR HONOR?

25 THE COURT: WELL, I'M LOOKING IT THE COURT'S

1 CALENDAR BECAUSE I HAVE 723 CASES. I AM JUST TRYING TO
2 LOOK BECAUSE I KNOW WE'VE ALREADY SET A LOT IN JANUARY ON
3 MY CALENDAR, AND I CERTAINLY DON'T WANT THAT TO BECOME
4 THE PROBLEM. SO JUST GIVE ME ONE MOMENT.

5 JANUARY IS NOT A MONTH I'M GOING TO SELECT. I
6 REALIZE A LOT OF CASES WILL SETTLE, BUT RIGHT NOW IT
7 SEEMS LIKE EVERY MONDAY I HAVE THREE TRIALS. SO LET'S
8 TAKE A LOOK --

9 MR. BRUSAVICH: DECEMBER WOULD BE A DIFFICULT
10 TIME TO GET ALL OF THESE EXPERTS DEPOSED.

11 THE COURT: LET ME LOOK AT FEBRUARY, NOW. I'M
12 GOING TO GIVE THE DATES IN FEBRUARY WHERE I CAN DO THIS
13 WHICH I AM INCLINED TO DO AROUND FEBRUARY OR EARLY MARCH.
14 FEBRUARY 11TH WHICH IS A MONDAY -- ACTUALLY,
15 FEBRUARY 12TH IS A HOLIDAY.

16 THE CLERK: THE 12TH IS A HOLIDAY.

17 THE COURT: I'VE GOT FEBRUARY 11TH. THEN I HAVE
18 GOT FEBRUARY 19TH WHICH IS A TUESDAY BECAUSE THE 18TH IS
19 PRESIDENT'S DAY. THAT WE -- FORGET THAT ONE. SO
20 FEBRUARY 11TH FOR SURE. AFTER THAT, I'M PRETTY CLEAR.
21 IT'S EITHER FEBRUARY 11TH OR SHORTLY AFTER THAT. WHAT
22 ABOUT FEBRUARY 11TH?

23 MR. DOLAN: FEBRUARY 11TH I BELIEVE WORKS FOR
24 THE PLAINTIFFS, YOUR HONOR.

25 MR. CHANG: YES.

1 THE COURT: ALL RIGHT.

2 MR. CARROLL: MAY I HAVE ONE SECOND, YOUR HONOR?

3 THE COURT: SURE.

4 MR. CARROLL: I'M GOOD WITH THAT IF THE COURT'S
5 INCLINATION IS THAT TIME FRAME.

6 THE COURT: YEAH. IT'S A GOOD TIME FRAME
7 BECAUSE JANUARY IS HORRIBLE THAT WOULD NOT BE GOOD.

8 ALL RIGHT. SO I'M GOING TO SET THIS MATTER FOR
9 TRIAL FOR THE BIFURCATED ISSUES THAT ARE IN MY TENTATIVE
10 RULING FOR JURY TRIAL ON FEBRUARY 11, 2019, AT 8:30 A.M..
11 IN THIS DEPARTMENT.

12 MR. CARROLL: JURY TRIAL OR IS THIS THE
13 BIFURCATED ISSUE?

14 THE COURT: LET ME BE CLEAR. IT'S A JURY TRIAL
15 ON THE CONFLICTING -- CONFLICTUAL FACTS. I AM GOING TO
16 BE USING THE JURY -- THE JURY IS GOING TO MAKE THE
17 FINDINGS OF FACT IN THIS CASE. I'LL MAKE A DECISION ON
18 STANDING, BUT THE CASE THAT I CITED TO YOU, WHICH IS VERY
19 MUCH ON POINT INDICATES THAT THE COURT'S DETERMINATION
20 REGARDING -- FIRST OF ALL, I SAY THAT ALTHOUGH THE ISSUE
21 OF WHETHER PLAINTIFF HAS THE CAPACITY OR STANDING TO
22 PURSUE HER CLAIM IS ORDINARILY A LEGAL ISSUE, THE COURT
23 MAY NOT MAKE THE REQUIRED DETERMINATION AS A MATTER OF
24 LAW IF THE PARTIES PRESENT CONFLICTING EVIDENCE REGARDING
25 PLAINTIFF'S CONDITION -- WHICH WE CERTAINLY HAVE IN THIS

1 CASE -- THE COURT'S DETERMINATION REGARDING PLAINTIFF'S
2 LEGAL CAPACITY OR STANDING TO PURSUE HER MEDICAL
3 MALPRACTICE CLAIM AGAINST THE DEFENDANTS WILL BE BASED ON
4 FINDINGS OF FACT THAT WILL BE MADE BY THE JURY UNDERLYING
5 THE ISSUE OF LAW SO THAT'S THE PEOPLE VERSUS SUPERIOR
6 COURT CASE WHICH I HAVE RIGHT HERE WHERE THE JURY MAKES
7 CREDIBILITY DETERMINATIONS AND RESOLVES UNDERLYING
8 DISPUTED FACTUAL ISSUES REGARDING STANDING. SO IT WILL
9 BE A JURY TRIAL. JUST LIKE EVERY OTHER JURY TRIAL AS FAR
10 AS THE LAW IS CONCERNED, I MAKE THE LEGAL FINDINGS. I
11 INSTRUCT THE JURY ON THE LAW. I'M SURE THERE WILL BE A
12 LOT OF LEGAL ARGUMENTS IN THIS TRIAL AND THAT'S FINE. SO
13 IT WILL BE FEBRUARY 11, 2019, 8:30 A.M., IN THIS
14 DEPARTMENT.

15 MR. PEDROZA: YOUR HONOR?

16 THE COURT: YES.

17 MR. PEDROZA: MAY I BE HEARD JUST BRIEFLY ON
18 THIS JURY TRIAL VERSUS BENCH TRIAL? CAN WE RESERVE OUR
19 RIGHT TO AT LEAST BRIEF THAT ISSUE? I KNOW YOUR HONOR'S
20 INCLINATION RIGHT NOW, BUT WE CERTAINLY DIDN'T COME
21 PREPARED TODAY TO ADDRESS THAT ISSUE, AND I WOULD
22 CERTAINLY LIKE TO HAVE AN OPPORTUNITY TO.

23 THE COURT: I'M NOT GOING TO FOREGO MOTIONS
24 BEING MADE.

25 MR. PEDROZA: I APPRECIATE THAT. THANK YOU,

1 YOUR HONOR.

2 THE COURT: OKAY. SO RIGHT NOW THIS TENTATIVE
3 RULING IS AFFIRMED, THAT'S NUMBER ONE, AND WE WILL SET IT
4 FOR A JURY TRIAL AT LEAST AT THIS POINT ON FEBRUARY 11,
5 2019, AT 8:30 A.M. WE WILL NEED A PRETRIAL CONFERENCE AT
6 LEAST 10 DAYS BEFORE THAT ON A FRIDAY.

7 THE CLERK: FEBRUARY 1ST AT 8:30.

8 THE COURT: FEBRUARY 1ST AT 8:30 A.M. IN THIS
9 DEPARTMENT WILL BE THE PRETRIAL CONFERENCE.

10 SO, COUNSEL, DO YOU WANT A SETTLEMENT CONFERENCE
11 WITH ONE OF THE SETTLEMENT JUDGES IN ALAMEDA? I NORMALLY
12 GIVE ONE. I DON'T WHAT PROCESSES THEY ARE INTO ON
13 MEDIATION OR IN THIS CASE IT WOULD BE A SETTLEMENT
14 CONFERENCE WITH A JUDGE, ONE OF THE THREE SETTLEMENT
15 JUDGES IN ALAMEDA. I'LL DO IT. SO LET'S GO AT LEAST A
16 MONTH BEFORE THAT PRETRIAL CONFERENCE. I WOULD LIKE
17 DEPARTMENT 303, PLEASE, WHICH IS JUDGE NOEL WISE.

18 THE CLERK: SHE ONLY DOES THEM AT 2:30.

19 THE COURT: SHE ONLY DOES IT AT 2:30. THAT'S
20 FINE. FIND A DAY THAT SHE HAS NOTHING ELSE ON, AND I'LL
21 TALK WITH HER ABOUT IT.

22 THE CLERK: LET'S DO JANUARY 10TH AT 2:30.

23 THE COURT: THE MANDATORY SETTLEMENT CONFERENCE
'24 IN THIS MATTER WILL BE JANUARY 10, 2019, AT 2:30 P.M.,
25 AND THAT'S IN DEPARTMENT 303 AT THE ALAMEDA COURT; NOT

1 COUNTY, BUT CITY OF, AND IT WILL BE DEPARTMENT 303, AND
2 AS I INDICATED AT LEAST NOW, JUDGE NOEL WISE SITS IN THAT
3 DEPARTMENT.

4 MR. PEDROZA: YOUR HONOR, MAY I ASK ONE
5 CLARIFICATION? AS FAR AS THE BIFURCATED FIRST PHASE OF
6 THE TRIAL, THAT WILL BE JUST ON THE DEATH ISSUE; IS THAT
7 CORRECT?

8 THE COURT: FOR LACK OF A DIFFERENT TERM, YES.

9 MR. PEDROZA: AND THEN --

10 THE COURT: IT'S NOT WHAT I DEFINED IN MY
11 TENTATIVE RULING WHICH COULD BE PHRASED THAT WAY.

12 MR. PEDROZA: AND I'M SORRY FOR THE SHORT HAND,
13 YOUR HONOR.

14 AND THEN FOR PURPOSES OF DISCOVERY, THE
15 DISCOVERY IS GOING TO BE CUT OFF AFTER THE FIRST PHASE.
16 ARE YOU ANTICIPATING ALL PURPOSE DISCOVERY RIGHT NOW OR
17 JUST ON A LIMITED BASIS?

18 THE COURT: JUST ON THAT CASE.

19 MR. PEDROZA: SO WE HAVE FURTHER DISCOVERY LATER
20 ON.

21 THE COURT: YEAH. I'M NOT GOING TO CUT YOU OFF
22 ON EVERYTHING ELSE.

23 MR. PEDROZA: I APPRECIATE THAT, YOUR HONOR.

24 MR. BRUSAVICH: YOUR HONOR, THIS IS MR.
25 BRUSAVICH. EXPERT DESIGNATION THEN WOULD BE CONFINED TO

1 THE FIRST PHASE?

2 THE COURT: I WOULD SAY YES. ALL RIGHT. ANY
3 OTHER QUESTIONS, CLARIFICATIONS, COMMENTS?

4 MR. CHANG: NO.

5 THE COURT: ALL RIGHT. WE WILL ISSUE A PRETRIAL
6 ORDER. IT WILL INCLUDE ALL THE DATES AND TIMES THAT I
7 GAVE YOU AND ALL OF YOUR RIGHTS AND RESPONSIBILITIES
8 UNDER CALIFORNIA RULES OF COURT AND LOCAL RULES.

9 ALL RIGHT. COUNSEL, THANK YOU ALL VERY MUCH.
10 GOOD LUCK TO EVERYBODY. WE APPRECIATE YOU ALL COMING IN.

11 MR. CHANG: THANK YOU, YOUR HONOR.

12 THE COURT: YOU ARE CERTAINLY WELCOME.

13 (PROCEEDINGS CONCLUDED AT 3:40 P.M.)
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1 STATE OF CALIFORNIA)

2) SS.

3 COUNTY OF SAN FRANCISCO)

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5 I, NANCY E. PRESANT-MCDONALD, CSR 9906,
6 CERTIFIED SHORTHAND REPORTER, DO HEREBY CERTIFY:

7 THAT THE FOREGOING PROCEEDINGS WERE TAKEN BEFORE
8 ME AT THE TIME AND PLACE THEREIN SET FORTH;

9 THAT ALL STATEMENTS MADE AT THE TIME OF THE
10 PROCEEDINGS WERE RECORDED STENOGRAPHICALLY BY ME AND WERE
11 THEREAFTER TRANSCRIBED;

12 THAT THE FOREGOING IS A TRUE AND CORRECT
13 TRANSCRIPT OF MY SHORTHAND NOTES SO TAKEN.

14 I FURTHER CERTIFY THAT I AM NOT A RELATIVE OR
15 EMPLOYEE OF ANY ATTORNEY OF THE PARTIES, NOR FINANCIALLY
16 INTERESTED IN THE ACTION.

17 I DECLARE UNDER PENALTY OF PERJURY, UNDER THE
18 LAWS OF CALIFORNIA THAT THE FOREGOING IS TRUE AND
19 CORRECT.

20

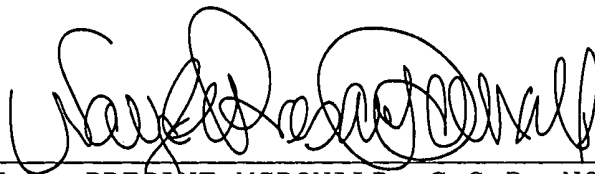
21 DATED THIS 27TH DAY OF APRIL, 2018.

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NANCY E. PRESANT-MCDONALD, C.S.R. NO. 9906

Phubitz



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Case Number: RG15760730

Title: Spears VS Rosen

Case Summary	Register of Action	Participants	Tentative Rulings
Future Hearings	Minutes	Date	Action
		4/11/2016	This Tentative Ruling is made by Judge Stephen Pulido The Parties are ordered to appear on the Motion of Plaintiffs Latasha Nailah Spears Winkfield, Marvin Winkfield, Sandra Chatman, and Jahi McMath, a minor, by and through her Guardian Ad Litem, Latasha Nailah Spears to Bifurcate the Issues of Liability and Damages for Trial pursuant to CCP Â§ 1048(b). NOTICE: Effective June 4, 2012, the Court will not provide a court reporter for civil law and motion hearings, any other hearing or trial in civil departments, or any afternoon hearing in Department 201 (probate). See amended Local Rule 3.95.
		4/16/2018	This Tentative Ruling is made by Judge Stephen Pulido Counsel for Plaintiffs and Defendants are ORDERED TO APPEAR in Department 517, on April 19, 2018, at 3:00 p.m., on the Motion of Plaintiffs for a Bifurcated Bench Trial to Determine whether the American Association of Neurology and American Academy of Pediatrics Guidelines should be applied to the facts of this case to determine whether Plaintiff Jahi McMath, appearing through her Guardian Ad Litem, Latasha Nailah Spears, meets the definition of "brain death" under H&S Code Â§ 7180 (Uniform Determination of Death Act). See CCP Â§ 1048(b) (court has discretionary authority to order separate trials if to do so will further the interests of

Date	Action
	<p>convenience, expedition and/or to avoid prejudice). Based on the Court's review of the papers filed by Plaintiffs and Defendants and its familiarity with the procedural history of this matter, the Court is not inclined to make the bifurcation order requested by Plaintiffs' counsel. Instead, the Court intends to issue a Trial Setting Order that sets a separate trial on the issue of whether Plaintiff Jahi McMath is a person with the capacity and/or standing to prosecute the First Cause of Action of the First Amended Complaint for Professional Negligence. See CCP Â§ 367; and Gantman v. United Pacific Ins. Co. (1991) 232 Cal.App.3d 1560, 1566 (real party in interest is the person who has the legally conferred right to pursue the claim); and Blumhorst v. Jewish Family Services of Los Angeles (2005) 126 Cal.App.4th 993, 1001 (real party in interest is the person with a real interest in the outcome of the adjudication). "Person," as used in the Code of Civil Procedure, is defined by the Legislature in CCP Â§ 17(b)(6). In 1992, the Legislature enacted a provision to add unborn fetuses to the definition of a "person" under the law. In the contemplated trial, the Court will determine whether Plaintiff Jahi McMath meets the legal definition of "brain death" pursuant to the criteria set forth by the Legislature in H&S Code Â§ 7180. If the Court determines that Plaintiff meets that definition, she will not be entitled to pursue the First Cause of Action for Professional Negligence. Although the issue of whether Plaintiff has the capacity or standing to pursue her claim is ordinarily a legal</p>

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Action

issue, the Court may not make the required determination as a matter of law if the parties present conflicting evidence regarding Plaintiff's condition. The Court's determination regarding Plaintiff's legal capacity or standing to pursue her medical malpractice claim against Defendants will be based on findings of fact underlying the issue of law. See People v. Superior Court (2002) 103 Cal.App.4th 409, 433 (jury makes credibility determinations and resolves underlying disputed factual issues regarding standing). NOTICE: Effective June 4, 2012, the Court will not provide a court reporter for civil law and motion hearings, any other hearing or trial in civil departments, or any afternoon hearing in Department 201.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Post Office Box 22636, Long Beach, CA 90801-5636. On June 13, 2018, I served a true and correct copy of the following document **NOTICE OF RULING** on the list of interested parties attached:

By United States Mail (CCP §§1013a, et seq.): I enclosed said document(s) in a sealed envelope or package to each addressee. I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, with postage fully prepaid.

By Overnight Delivery/Express Mail (CCP §§1013(c)(d), et seq.): I enclosed said document(s) in a sealed envelope or package provided by an overnight delivery carrier to each addressee. I placed the envelope or package, delivery fees paid for, for collection and overnight delivery at an office or at a regularly utilized drop box maintained by the express service carrier at 111 West Ocean Boulevard, Long Beach, California.

By Fax Transmission (CRC 2.306): Based on a written agreement of the parties to accept service by fax transmission, I faxed said document(s) to each addressee's fax number. The facsimile machine that I utilized, (562) 432-8785, complied with California Rules of Court, Rule 2.301(3), and no error was reported by the machine. Pursuant to Rule 2.306(h)(4), I caused the machine to print a record of the transmission, a copy of which is attached to the original of this proof of service.

By Messenger Service: I enclosed said document(s) in a sealed envelope or package to each addressee. I provided them to a professional messenger service (Signal Attorney Service) for service. An original proof of service by messenger will be filed pursuant to California *Rules of Court*, Rule 3.1300(c).

By Electronic Transmission: I caused the document(s) to be sent from e-mail address lbaker@cktfmlaw.com to each addressee's email address as set forth on the above service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under the penalty of perjury under the laws of the State of California and of the United States that the foregoing is true and correct.

Executed on June 13, 2018, at Long Beach, California.



George Estevez

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