



CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
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 ATTORNEY FOR (Name): Defendant FREDERICK S. ROSEN, M.D.

FOR COURT USE ONLY

FILED  
 ALameda County  
 DEC - 5 2017  
 CLERK OF THE SUPERIOR COURT  
 By DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda  
 STREET ADDRESS: 1225 Fallon Street  
 MAILING ADDRESS: 1225 Fallon Street  
 CITY AND ZIP CODE: Oakland, CA 94612  
 BRANCH NAME: Rene C. Davidson Courthouse

PLAINTIFF/PETITIONER: LATASHA NAILAH SPEARS, et al.  
 DEFENDANT/RESPONDENT: FREDERICK S. ROSEN, M.D., et al.

**CASE MANAGEMENT STATEMENT**  
 (Check one):  UNLIMITED CASE (Amount demanded exceeds \$25,000)  LIMITED CASE (Amount demanded is \$25,000 or less)

CASE NUMBER:  
 RG 15760730

A CASE MANAGEMENT CONFERENCE is scheduled as follows:  
 Date: December 19, 2017 Time: 3:00 p.m. Dept.: 517 Div.: Room:  
 Address of court (if different from the address above):  
 Hayward Hall of Justice, 3rd Floor  
 24405 Amador, Street, Hayward, CA  
 Notice of Intent to Appear by Telephone, by (name):

**INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.**

1. Party or parties (answer one):
  - a.  This statement is submitted by party (name): FREDERICK S. ROSEN, M.D.
  - b.  This statement is submitted jointly by parties (names):
2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
  - a. The complaint was filed on (date): March 6, 2015
  - b.  The cross-complaint, if any, was filed on (date):
3. Service (to be answered by plaintiffs and cross-complainants only)
  - a.  All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
  - b.  The following parties named in the complaint or cross-complaint
    - (1)  have not been served (specify names and explain why not):
    - (2)  have been served but have not appeared and have not been dismissed (specify names):
    - (3)  have had a default entered against them (specify names):
  - c.  The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):
4. Description of case
  - a. Type of case in  complaint  cross-complaint (Describe, including causes of action):  
 Alleged medical negligence

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4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

Alleged negligent surgical treatment of severe obstructive apnea. Defendant denies any wrongdoing. Defendant met the standard of care at all times.

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request  a jury trial  a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial): (1) Nonjury trial: J. McMath's standing/brain death/death  
(2) Jury trial: Defendant's liability for medical malpractice

6. Trial date

a.  The trial has been set for (date):

b.  No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain): The allegation that J. McMath no longer fulfills the criteria for death requires extensive discovery, deposition and a brain death exam

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):  
SEE ATTACHMENT

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

a.  days (specify number): Jury trial on liability for medical malpractice: 25 days

b.  hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial  by the attorney or party listed in the caption  by the following:

a. Attorney: Thomas E. Still, Esq.

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

Additional representation is described in Attachment 8.

9. Preference

This case is entitled to preference (specify code section):

10. Alternative dispute resolution (ADR)

a. ADR information package: Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel  has  has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party  has  has not reviewed the ADR information package identified in rule 3.221.

b. Referral to judicial arbitration or civil action mediation (if available):

(1)  This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2)  Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3)  This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

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10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (check all that apply and provide the specified information):

	The party or parties completing this form are willing to participate in the following ADR processes (check all that apply):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (attach a copy of the parties' ADR stipulation):
(1) Mediation	<input checked="" type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input checked="" type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (specify):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

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11. Insurance

- a.  Insurance carrier, if any, for party filing this statement (name): Cooperative of American Physicians
- b. Reservation of rights:  Yes  No
- c.  Coverage issues will significantly affect resolution of this case (explain):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

- Bankruptcy  Other (specify):

Status:

13. Related cases, consolidation, and coordination

- a.  There are companion, underlying, or related cases.
  - (1) Name of case:
  - (2) Name of court:
  - (3) Case number:
  - (4) Status:
- Additional cases are described in Attachment 13a.
- b.  A motion to  consolidate  coordinate will be filed by (name party):

14. Bifurcation

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons): Defendant will seek an order bifurcating for a court trial the issue of brain death, from a jury trial on liability for alleged medical negligence.

15. Other motions

- The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):
  - (1) Defendants' Motion to Bifurcate; (2) Motion to Compel Production of Video Recordings; (3) Demand/Motion for Order Compelling Brain Death Examination; (4) Defendants' MSJ.

16. Discovery

- a.  The party or parties have completed all discovery.
- b.  The following discovery will be completed by the date specified (describe all anticipated discovery):

Party	Description	Date
Frederick S. Rosen, M.D.	Depositions of brain death witnesses and experts IME on brain death	
	Depositions of parties and witnesses on liability	

- c.  The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (specify):
  - (1) Order compelling production of the 49 video recordings reviewed by Dr. Shewmon and identifying information; (2) Order compelling IME of J. McMath.

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## 17. Economic litigation

- a.  This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b.  This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

## 18. Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (specify): IME demand given challenges due to J. McMath's residence in New Jersey; timing of submission and hearing on defendant's detailed Case Management Plan; timing of discovery on bifurcated issue of brain death for court trial.

## 19. Meet and confer

- a.  The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain): On September 22, 2017, the undersigned and plaintiffs' counsel met and conferred by telephone regarding Defendants' proposed case management plans.
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): 1

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: December 1, 2017

JENNIFER STILL

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.

## ATTACHMENT 6.C.

### UNAVAILABLE DATES FOR COUNSEL

2017

2018

January 8 - 19	Medina v. Pham	Monterey Superior Court
January 23-24	Kapoor, M.D. / MBC	OAH-Oakland
February 9 - March 2	White v. Sodeifi, MD	Contra Costa Superior Court
February 12-14	Shah MD / MBC	OAH-Oakland
February 26, 27	Walter, RN / BRN	OAH-Oakland
March 12-14	Chen MD / MBC	OAH-Oakland
March 26-April 2	Vacation	
April 10-11	Ramirez, RN / BRN	OAH-Oakland
April 30 - May 26	Knight v. County	Santa Clara Superior Court
May 29 - June 22	Guillermo v. Longacre, MD	Orange Superior Court
July 10 - July 27	Orellana v. Petrossian, MD	Merced Superior Court

1 **PROOF OF SERVICE**  
2 (C.C.P. §§ 1013a, 2015.5)

3 I, the undersigned, say:

4 I am now and at all times herein mentioned have been over the age of 18 years, a resident of the  
5 State of California and employed in Santa Clara County, California, and not a party to the within  
6 action or cause; my business address is 12901 Saratoga Avenue, Saratoga, California 95070. My  
7 electronic service address is: ngriffie@hinshaw-law.com.

8 I am readily familiar with this firm's business practice for collection and processing of  
9 correspondence for mailing with the U.S. Postal Service, mailing via Federal Express, hand delivery  
10 via messenger service, electronic service and transmission by facsimile machine. I served a copy of  
11 each of the documents listed below by placing said copies for processing as indicated herein.

12 **CASE MANAGEMENT CONFERENCE STATEMENT.**

13 \_\_\_\_\_ If MAILED VIA U.S. MAIL, said copies were placed in envelopes which were then sealed  
14 and, with postage fully prepaid thereon, on this date placed for collection and mailing at my  
15 place of business following ordinary business practices. Said envelopes will be deposited  
16 with the U.S. Postal Service at Saratoga, California on this date in the ordinary course of  
17 business; and there is delivery service by U.S. Postal Service at the place so addressed.

18 \_\_\_\_\_ If MAILED VIA FEDERAL EXPRESS, said copies were placed in Federal Express  
19 envelopes which were then sealed and, with Federal Express charges to be paid by this firm,  
20 on this same date placed for collection and mailing at my place of business following ordinary  
21 business practices. Said envelopes will be deposited with the Federal Express Corp. on this  
22 date following ordinary business practices; and there is delivery service by Federal Express at  
23 the place so addressed.

24 \_\_\_\_\_ If HAND DELIVERED, said copies were provided to \_\_\_\_\_  
25 a delivery service, whose employee, following ordinary business practices, did hand deliver  
26 the copies provided to the person or firm indicated herein.

27 \_\_\_\_\_ If VIA FACSIMILE TRANSMISSION, said copies were placed for transmission by this  
28 firm's facsimile machine, transmitting from (408) 257-6645 at Saratoga, California, and were  
transmitted following ordinary business practices; and there is a facsimile machine receiving  
via the number designated herein, and the transmission was reported as complete and without  
error. The record of the transmission was properly issued by the transmitting fax machine.

XX If ELECTRONIC SERVICE, I electronically served the documents listed above as follows:

RECIPIENTS:

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I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on December 1, 2017.

  
\_\_\_\_\_  
Natalyn Griffie

Court: Alameda County Superior Court  
Action No: RG15760730  
Case Name: *Spears/Winkfield, et al. v. Rosen, M.D., et al.*