



CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Bruce M. Brusavich, SBN 93578/Terry S. Schneier, SBN 118322 AGNEWBRUSAVICH, 20355 Hawthorne Blvd., 2nd Fl. Torrance, CA 90503 TELEPHONE NO.: (310) 793-1400 FAX NO. (Optional): (310) 793-1499 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiffs LATASHA NAILAH SPEARS WINKFIELD; et al.		FOR COURT USE ONLY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 24405 Amador Street, 3rd Floor MAILING ADDRESS: 24405 Amador Street, 3rd Floor CITY AND ZIP CODE: Hayward, CA 94544 BRANCH NAME: Hayward Hall of Justice		FILED ALAMEDA COUNTY FEB 28 2018 CLERK OF THE SUPERIOR COURT By <u>Michelle P.</u> Deputy	
PLAINTIFF/PETITIONER: Latasha Nailah Spears Winkfield; et al. DEFENDANT/RESPONDENT: Frederick S. Rosen, M.D.; et al.		CASE NUMBER: RG 15760730	
<p><b>CASE MANAGEMENT STATEMENT</b></p> <p>(Check one): <input checked="" type="checkbox"/> <b>UNLIMITED CASE</b> (Amount demanded exceeds \$25,000)      <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded is \$25,000 or less)</p> <p>A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: March 16, 2018      Time: 2:30 p.m.      Dept.: "517"      Div.:      Room: Address of court (if different from the address above): <input checked="" type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): Bruce M. Brusavich and/or Terry S. Schneier</p>			

FAX FILE

FEB 28 2018

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

- Party or parties (answer one):
  - This statement is submitted by party (name): Plaintiffs LATASHA NAILAH SPEARS WINKFIELD; et al.
  - This statement is submitted jointly by parties (names):
- Complaint and cross-complaint. (to be answered by plaintiffs and cross-complainants only)
  - The complaint was filed on (date): February 2, 2015
  - The cross-complaint, if any, was filed on (date):
- Service (to be answered by plaintiffs and cross-complainants only)
  - All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
  - The following parties named in the complaint or cross-complaint
    - have not been served (specify names and explain why not):
    - have been served but have not appeared and have not been dismissed (specify names):
    - have had a default entered against them (specify names):
  - The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):  
Unknown at this time. They may not be dismissed or severed pursuant to Government Code Section 68616(h).
- Description of case
  - Type of case in  complaint       cross-complaint      (Describe, including causes of action):  
Medical Malpractice

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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.)  
After surgery Jahi bled for several hours while her mother and grandmother (a nurse) watched and repeatedly asked for a doctor. Jahi finally coded and her heart stopped. Defendants contend she was pronounced clinically brain dead. Plaintiffs contend Jahi suffered severe brain damage but does not currently meet the statutory definition of clinical brain death.
- (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):
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):  
This case is complex.
- c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):  
Trial: 3/26/18; 4/19/18; 4/23/18; 5/30/18; 6/1/18; 6/4/18; 6/12/18; 6/14/18; 8/2/18; 11/16/18; 11/26/18; 12/17/18; 12/31/18; 2/4/19
7. **Estimated length of trial**  
The party or parties estimate that the trial will take (check one):
- a.  days (specify number): 45 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:
- b. Firm:
- c. Address:
- d. Telephone number:
- e. E-mail address:
- f. Fax number:
- 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 <b>are willing</b> to participate in the following ADR processes (check all that apply):	If the party or parties completing this form in the case <b>have agreed</b> 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 checked="" 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 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*):
- 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: Jahi McMath, a minor; et al. v. State of California; et al.
  - (2) Name of court: United States District Court for the Northern District of California
  - (3) Case number: 4:15-cv-06042
  - (4) Status: Pending
- 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*):  
 Plaintiffs had filed a motion to bifurcate the issue of whether the determination of death guidelines meet the statutory definition of death. The Court took the motion off calendar in response to Ex Parte Application by def. See Attachment 14. a) for more.

**15. Other motions**

- The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

**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*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Plaintiffs	All discovery allowed pursuant to the Code of Civil Procedure, including depositions, interrogatories, request for production, request for admissions and document subpoenas	Per Code
Plaintiffs	Expert Discovery	Per Code

- c.  The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

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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):

**19. Meet and confer**

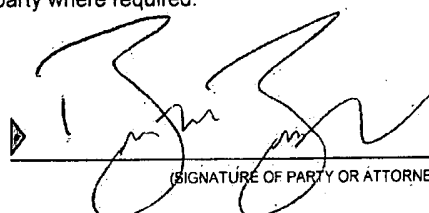
- a.  The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):  
There have been meet and confers for prior CMC hearings and nothing has changed.
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): 2

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: February 27, 2018

BRUCE M. BRUSAVICH  
\_\_\_\_\_  
(TYPE OR PRINT NAME)

  
\_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.

SHORT TITLE: McMath v. Rosen, et al.	CASE NUMBER: RG 15760730
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ATTACHMENT (Number): 14a

*(This Attachment may be used with any Judicial Council form.)*

When this Court issued its ruling on September 5, 2017 denying the summary judgment motion, it noted that "a triable issue of fact exists as to whether McMath currently satisfies the statutory definition of 'dead' under the Uniform Determination of Death Act," Public Safety Code section 7180(a). Given that finding, plaintiff began working on a Motion to Bifurcate the issue of whether or not the guidelines utilized to determine Jahi dead, the ANN and AAP Guidelines, meet the statutory definition of "dead" under the Uniform Determination of Death Act. A hearing date of March 8, 2018 was reserved on December 13, 2017 and the motion itself was served by mail on December 18, 2017.

The Court held a Case Management Conference the following day on December 19, 2017. The Court noted that someone had reserved a hearing date for a motion on March 8, 2018 and inquired about it. Plaintiffs' counsel advised the Court that they had filed a Motion to Bifurcate the issue of whether or not the Determination of Death Guidelines meet the statutory definition of death. After further discussion, the Court set a further Case Management Conference for March 16, 2018, noting that at that time the Court intended work on developing a discovery and trial plan. Plaintiffs' counsel was not ordered, nor even requested, to take the March 8, 2018 motion off calendar or to continue it.

Plaintiffs' counsel believed that the Motion to Bifurcate would provide the appropriate preparation for the major Case Management Conference on March 16, 2018, in that it would focus the course of this litigation on what plaintiffs believe to be the next, logical step. However, there was an ex parte application to continue the March 8, 2018 hearing, many of the papers incorrectly claiming that plaintiff had filed the motion and obtained the March 8, 2018 hearing date until after the December 19, 2017 CMC, which was not correct. The Court took the motion off calendar to be set later.

Plaintiffs' counsel has been advised that some of the defense lawyers would like to see the Court Order another determination of death using the guidelines, which would have to be done at a hospital in New Jersey. Such testing would be inappropriate for at least two reasons.

First, such an examination of Jahi would violate California Code of Civil Procedure section 2032.220(a)(1) in that the test would subject Jahi to grave injury or death. The guidelines call for the subject person's respirator to be disconnected for 10 minutes. During this period of time, disconnecting Jahi's oxygen supply would increase the carbon dioxide in her blood and could lead to respiratory acidosis and then metabolic acidosis which could cause serious heart arrhythmias or complete arrest. It would therefore be inappropriate for the Court to order such a test.

Secondly, the defense would be asking for a determinative death evaluation utilizing the guidelines before this Court would rule as to whether or not the guidelines meet the statutory definition of death or, in the alternative, if Jahi does not meet the statutory definition of death, regardless of what the guidelines say.

The notion that the current guidelines for the determination of death may not be appropriate after more than 30 years of use is not novel. The New Yorker Magazine just published on February 5, 2018, a thorough discussion on the subject based upon the McMath case, entitled, "The Death Debate" by Rachel Aviv, which documents the Jahi

*(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)*

Page \_\_\_\_\_ of \_\_\_\_\_

*(Add pages as required)*

SHORT TITLE: McMath v. Rosen, et al.	CASE NUMBER: RG 15760730
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ATTACHMENT (Number): 14a

(This Attachment may be used with any Judicial Council form.)

Continuation.

McMath matter.

Harvard Medical School, where the guidelines all began, is holding its annual Bioethics Conference from April 11-13, 2018 at its Boston campus. The entire symposium will begin with a segment entitled, "Brain Death and the Controversial Case of Jahi McMath." Invited to speak at that session, as well as another session, is plaintiffs' consultant, Alan Shewmon, M.D.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page \_\_\_\_\_ of \_\_\_\_\_  
 (Add pages as required)

**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 AGNEW BRUSAVICH, 20355 Hawthorne Blvd., 2<sup>nd</sup> Floor, Torrance, California. On February 28, 2018, I served the within document **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:

AGNEW BRUSAVICH  
SERIOUS INJURY LAWYERS  
20355 HAWTHORNE BLVD. TORRANCE, CA 90503  
T: (310) 793-1400 F: (310) 793-1499

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16 17 18 19 20	Kenneth R. Pedroza Dana L. Stenvick COLE PEDROZA LLP 2670 Mission Street Suite 200 San Marino, CA 91108 <a href="mailto:kpedroza@colepedroza.com">kpedroza@colepedroza.com</a> <a href="mailto:dstenvick@colepedroza.com">dstenvick@colepedroza.com</a>	ASSOCIATE COUNSEL FOR FREDERICK S. ROSEN, M.D. and UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND  (626) 431-2787 FAX (626) 431-2788

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

25  (State) I declare under penalty of perjury under the laws of the State of  
California that the above is true and correct.

26  (Federal) I declare that I am employed in the office of a member of the  
27 bar of this court at which direction the service was made.

28 Executed this 28th day of February, 2018, at Torrance, California.

  
DEBBIE NAWA