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FILED
ALAMEDA COUNTY
FEB 15 2018
CLERK OF THE SUPERIOR COURT
By *[Signature]* Deputy

6 Attorneys for Defendant
7 FREDERICK S. ROSEN, M.D.

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

10 LATASHA NAILAH SPEARS WINKFIELD;
11 MARVIN WINKFIELD; SANDRA
12 CHATMAN; AND JAH MCMATH, A
13 MINOR, BY AND THROUGH HER
14 GUARDIAN AD LITEM, LATASHA NAILAH
15 SPEARS WINKFIELD,

14 Plaintiff,

15 v.

16 FREDERICK S. ROSEN, M.D.; UCSF
17 BENIOFF CHILDREN'S HOSPITAL
18 OAKLAND (FORMERLY CHILDREN'S
19 HOSPITAL & RESEARCH CENTER OF
20 OAKLAND); MILTON MCMATH, A
21 NOMINAL DEFENDANT, AND DOES 1
22 THROUGH 100,

20 Defendants.

No.: RG15760730
**ASSIGNED FOR ALL PURPOSES TO:
JUDGE STEPHEN PULIDO-DEPT. "517"**

**JOINDER BY DEFENDANT
FREDERICK S. ROSEN, M.D., IN EX
PARTE APPLICATION OF UCSF
BENIOFF CHILDREN'S HOSPITAL
OAKLAND FOR AN ORDER
CONTINUING PLAINTIFF'S MOTION
TO BIFURCATE**

DATE: February 15, 2018
TIME: 2:30 p.m.
DEPT.: 517
Reservation No.: R-1935569

Complaint Filed: March 3, 2015
Trial Date: None Set

23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

24 Defendant Frederick S. Rosen, M.D., hereby joins the Ex Parte Application For Order
25 Continuing Plaintiff's Motion to Bifurcate of defendant UCSF Benioff Children's Hospital Oakland
26 to be presented on February 15, 2018, at 2:30 p.m., in Department 517 of the above-entitled court.
27 Plaintiffs' motion to bifurcate requests a court trial for the purpose of determining whether the AAN
28 and AAP Guidelines are considered the "accepted medical standards" that satisfy California's

FILE BY FAX

1 statutory definition of neurologic death.

2 Dr. Rosen agrees that it is in the interests of case management to have the timing of plaintiffs'
3 motion to bifurcate considered at the Case Management Conference scheduled for March 16, 2018.
4 When the parties were last before the court on December 19, 2017, and selecting dates to schedule a
5 special Case Management Conference, plaintiffs' counsel did not disclose that he had noticed
6 plaintiffs' motion to bifurcate for the week prior to the agreed upon Case Management Conference
7 scheduled for March 16, 2018. Had that information been disclosed at the hearing on December 19,
8 2017, Dr. Rosen would have requested the court set an earlier Case Management Conference or that
9 the motion to bifurcate be continued.

10 There are compelling reasons to continue the motion to bifurcate. In support of plaintiffs'
11 theory that there has been "changed circumstances" since Jahi McMath's declaration of death,
12 plaintiffs allege in their First Amended Complaint that, based on Dr. Shewmon's evaluation, Jahi "no
13 longer fulfills the standard brain death criteria on account of her ability to specifically respond to
14 stimuli." (FAC, ¶ 35.) Yet, contrary to the allegations in the First Amended Complaint, plaintiffs
15 now represent in their motion to bifurcate that "it is more likely than not" that Jahi would fail a brain
16 death examination performed in accord in the AAP guidelines. (Motion to Bifurcate, 3:6-8.) In
17 addition, it appears that plaintiffs will not consent to the requisite apnea test to assess brain function.

18 Having conceded that, in all likelihood, Jahi continues to fulfil the standard brain death
19 criteria, plaintiffs have changed tactics and now seek to challenge the validity of the accepted medical
20 standards, i.e., the AAP Guidelines. Plaintiffs theorize that the AAP Guidelines must be wrong
21 because Jahi allegedly underwent breast development since her death, now allegedly has a menstrual
22 cycle, and a selection of video recordings taken by her family suggest she can respond to voice
23 commands.

24 Plaintiffs' latest tactic is to position this case so that defendants cannot obtain verifiable,
25 objective evidence of Jahi's brain function. In essence, plaintiffs are asking defendants (and the
26 court) to rely on the veracity of plaintiffs, that is, to accept the family's belief that Jahi did not have
27 breast development prior to her death (which is inconsistent with pre-death photographs), that she has
28 a menstrual cycle (which is inconsistent with the medical records) and that she is responding to voice

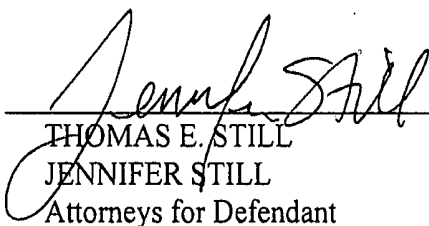
1 commands (even though the medical evidence confirms that she has no cerebral mechanism to hear
2 sound).

3 Given that plaintiffs will apparently not permit Jahi McMath to be subjected to a fourth brain
4 death examination by a qualified medical specialist, the validity of the evidence that plaintiffs are
5 relying is of critical importance. Thus far, plaintiffs have failed to provide the requisite foundational
6 and authenticating information for the evidence that supports their novel hypothesis that Jahi McMath
7 is not dead even though she fulfils the accepted medical criteria for brain death.

8 Before we waste valuable court time and resources arguing about the validity of the AAN and
9 AAP Guidelines, significant discovery must be conducted, in particular requiring plaintiffs to provide
10 the foundational and authenticating information for the "evidence" relied on by plaintiffs' expert Dr.
11 Shewmon.

12
13 Dated: February 14, 2018

HINSHAW, MARSH, STILL & HINSHAW, LLP

14
15 By: 
16 THOMAS E. STILL
17 JENNIFER STILL
18 Attorneys for Defendant
19 FREDERICK S. ROSEN, M.D.

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

I, the undersigned, say:

I am now and at all times herein mentioned have been over the age of 18 years, a resident of the State of California and employed in Santa Clara County, California, and not a party to the within action or cause; my business address is 12901 Saratoga Avenue, Saratoga, California 95070.

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

**JOINDER BY DEFENDANT FREDERICK S. ROSEN, M.D. IN EX PARTE APPLICATION
OF UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND FOR AN ORDER
CONTINUING PLAINTIFF'S MOTION TO BIFURCATE.**

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

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

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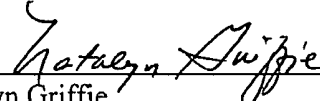
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15 I certify (or declare) under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct and that this Declaration was executed on February 14, 2018.

17 
18 _____
19 Natalyn Griffie

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