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FILED
 COUNTY
 JUN 22 2018
Steph Pulido

9 Attorneys for Defendant
 10 JAMES PATRICK HOWARD, M.D. Ph.D. (sued herein as Doe 1)

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA - NORTHERN

DONNELLY NELSON DEPOLO MURRAY & EFREMSKY
 A Professional Corporation

13 LATASHA NAILAH SPEARS WINKFIELD;
 14 MARVIN WINKFIELD; SANDRA CHATMAN;
 15 and JAHI McMATH, a minor, by and through
 16 her Guardian Ad Litem, LATASHA NAILAH
 17 SPEARS WINKFIELD,

Case No. RG15760730

**EX PARTE APPLICATION OF
 DEFENDANT JAMES PATRICK
 HOWARD, M.D., PH.D. FOR
 CLARIFICATION OF COURT'S ORDER
 FOR TRIAL; SUPPORTING
 DECLARATION OF SONJA M. DAHL,
 ESQ.; EXHIBITS**

18 Plaintiffs,

19 vs.

20 FREDERICK S. ROSEN, M.D.; UCSF
 21 BENIOFF CHILDREN'S HOSPITAL OAKLAND
 22 (formerly Children's Hospital & Research
 23 Center at Oakland); MILTON McMATH, a
 24 nominal defendant, and DOES 1 THROUGH
 25 100,

Date: June 25, 2018
Time: 2:30 p.m.
Dept.: 517

RESERVATION NO: R-1976094

26 Defendants.

Complaint Filed: March 3, 2015
Trial: February 11, 2019

ASSIGNED FOR ALL PURPOSES TO:
 THE HON. STEPHEN PULIDO, DEPT. 517

27 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

28 PLEASE TAKE NOTICE that on June 25, 2018 at 2:30 p.m., or as soon thereafter as the
 matter may be heard, in Dept 517 of the above-entitled court, located at 24405 Amador Street,
 Hayward, California, Defendant JAMES PATRICK HOWARD, M.D. Ph.D. will and hereby does apply
 pursuant to California Rules of Court for an order clarifying this court's previously issued trial order
 dated 4/19/18 on the grounds that the written order is ambiguous based upon the court's tentative
 ruling and discussion during the hearing on Plaintiff's motion to bifurcate held on 4/19/18.

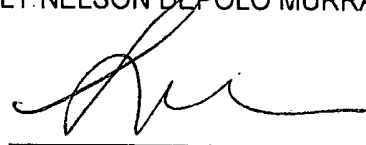
BY FAX

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The application will be based upon this Notice, the attached Declaration of Sonja M. Dahl, Esq., and Exhibits, the court's file, and such other matter that the court deems proper to consider.

Dated: 6/22/2018

DONNELLY NELSON DEPOLO MURRAY & EFREMSKY

By: 

SONJA M. DAHL
Attorneys for Defendant
James Patrick Howard, M.D., Ph.D.

1 DECLARATION OF SONJA M. DAHL, ESQ. IN SUPPORT OF APPLICATION

2 I, Sonja M. Dahl, declare:

3 1. I am an attorney at law duly licensed to practice before the courts of the State of
4 California, and am employed by the law firm of Donnelly Nelson Depolo Murray & Efremsky, a
5 professional corporation, counsel of record for Defendant James Patrick Howard, M.D. Pd.D.,
6 herein. I make this declaration based upon my own personal knowledge, and if called as a witness
7 could testify competently to the following:

8 2. On April 19, 2018, I appeared with counsel for all parties at the hearing on Plaintiff's
9 motion to bifurcate issues for trial, which hearing was transcribed by a court reporter.

10 3. Prior to the hearing on the motion, the court issued a tentative ruling, a true and
11 correct copy of which is attached hereto as Exhibit A. The tentative ruling refers to the court's
12 tentative "intention to issue a Trial Setting Order that sets a separate trial on the issue of whether
13 Plaintiff Jahi McMath is a person with the capacity and /or standing to prosecute the First Cause of
14 Action of the First Amended Complaint for Professional Negligence."

15 4. A true and correct copy of the transcript of the hearing is attached hereto as Exhibit
16 B. The transcript refers to the court's decision on the motion to order a "trial for the bifurcated issues
17 that are in my tentative ruling." [Transcript, Exhibit B, at 11:8-11].

18 5. The court issued a written order for trial dated 4/19/18, a true and correct copy of
19 which is attached as Exhibit C, which lacked any reference to the court's tentative ruling or the
20 court's decision to order a bifurcated trial. The order just said that "This matter is set for trial" on the
21 date assigned. Consequently, the written order that issued after the hearing contradicted the court's
22 stated intention to order a trial of the bifurcated issue set forth in the court's tentative ruling, and read
23 literally, the order states that the entire case is currently set for trial on the assigned date.

24 6. I am informed and believe that counsel for all parties agree that a request should be
25 made to the court that the written order reflect counsel's common understanding that the upcoming
26 trial will be limited to the bifurcated issue contained within the court's tentative ruling and affirmed as
27 the court's decision by the court during the hearing.

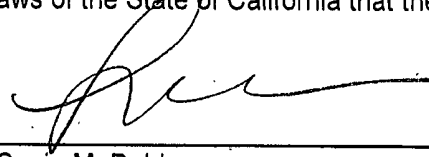
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7. My assistant, Allison Cook, notified all counsel in this matter by telephone during the afternoon of Thursday June 21 and the morning of Friday June 22, and all parties have been notified of the date, time location and purpose of this ex parte application. I believe there is no opposition to this application.

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

Dated: 6-22-18



Sonja M. Dahl

EXHIBIT A

THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

Case Details

Case Number: RG15760730 Title: Spears VS Rosen

- [Case Summary](#)
- [Register of Action](#)
- [Participants](#)
- [Tentative Rulings](#)
- [Future Hearings](#)
- [Minutes](#)

Date	Action
4/11/2016	<p>This Tentative Ruling is made by Judge Stephen Pulido The Parties are ordered to appear on the Motion of Plaintiffs Latasha Nallah 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.</p>
4/16/2018	<p>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 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 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</p>

EXHIBIT A

Date

Action

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.

Allison R. Cook

Legal Assistant to Erin R. Sabey and Marla N. Stayduhar

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EXHIBIT B

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SUPERIOR COURT IN THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

DEPARTMENT NO. 517

HON. STEPHEN PULIDO

LATASHA NAILAH SPEARS)
WINKFIELD, ET AL.,)

PLAINTIFFS,)

VS.)

CASE NO. RG15760730

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

DEFENDANTS.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

CASE MANAGEMENT CONFERENCE

THURSDAY, APRIL 19, 2018

APPEARANCES:

(SEE NEXT PAGE)

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

CENTEXTLEGAL.COM - 855.CENTEXT

EXHIBIT 1B

1 APPEARANCES OF COUNSEL:

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12 DOLAN LAW FIRM
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16 FOR THE DEFENDANT CHILDREN'S HOSPITAL OAKLAND:

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1 APPEARANCES OF COUNSEL (CONTINUED):

2
3 FOR THE DEFENDANT FREDERICK ROSEN, M.D. AND UCSF BENIOFF
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FOR THE DEFENDANT ROBERT WESMAN, M.D.:

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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 DCN'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. SC
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)

4

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

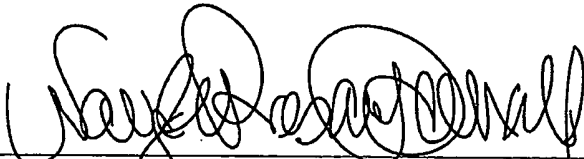
21 DATED THIS 27TH DAY OF APRIL, 2018.

22

23

24

25



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

EXHIBIT C

Cal ✓

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Superior Court of California, County of Alameda
Hayward Hall of Justice

Spears <p style="text-align: center;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">vs.</p>	No. <u>RG15760730</u> Order Motion to Bifurcate/Sever Complaint Denied
Rosen <p style="text-align: center;">Defendant/Respondent(s) (Abbreviated Title)</p>	

The Motion to Bifurcate/Sever Complaint was set for hearing on 04/19/2018 at 03:00 PM in Department 517 before the Honorable Stephen Pulido. The Tentative Ruling was published and was contested.

Moving Party Latasha Nailah Spears Winkfield represented by Brusavich, Bruce M. via conference call; Andrew Chang and Christopher Dolan. Moving Party Marvin Winkfield represented by Brusavich, Bruce M. via conference call; Andrew Chang and Christopher Dolan. Moving Party Sandra Chatman represented by Brusavich, Bruce M. via conference call; Andrew Chang and Christopher Dolan. Moving Party Jahi McMath represented by Brusavich, Bruce M. via conference call; Andrew Chang and Christopher Dolan. Opposing Party Frederick S. Rosen, M.D. appeared by counsel Still, Jennifer and Kenneth Pedroza. Opposing Party UCSF Benioff Children's Hospital Oakland appeared by counsel Richard Carroll and David Pruett. James Patrick Howard, M.D., PhD. appeared by counsel Dahl, Sonja M. Alicia Herrera MD appeared by counsel Doyle, Thomas J. and Sarah Gosling via conference call. Robert M. Wesman MD appeared by counsel Hodges, Robert W..

Court Reporter, Nancy Presant-McDonald, CSR#9906 (510-757-8550) present.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The motion is denied.

TRIAL SETTING ORDER

Please read the entire order carefully and comply with each of its requirements.

- **TRIAL DATE**
This matter is set for trial on Monday February 11, 2019 at 8:30 am in Department 517 of the Hayward Hall of Justice, 24405 Amador Street, Hayward, California. The date set forth above has been set with the input and consent of all parties and their counsel. Requests for trial continuances are strongly disfavored and seldom granted except under extraordinary circumstances.

- **JURY FEES**
In cases in which a jury is demanded, the party making the demand is required to post initial jury fees timely. At the beginning of the second day and each subsequent day of jury service, the demanding

Order

EXHIBIT C

party is to post jury fees with the Department 517 clerk. If more than one party has demanded a jury, the parties will share equally in the payment of jury fees unless otherwise ordered by the Court. Failure to do so will result in a waiver of the right to a jury.

MANDATORY SETTLEMENT CONFERENCE

- ✓ The parties are ordered to comply with Rule 3.1380 of the California Rules of Court, and shall appear in Department 303 on January 10, 2019 at 2:30 pm for a Mandatory Settlement Conference (MSC). California Rules of Court, Rule 3.1380.

Settlement Conference Statement

By close of business on January 3, 2019 (five court days before the MSC), each party must submit (email nor fax copies are permitted) with Department 303 and serve each party with a mandatory settlement conference statement containing:

- A good faith settlement demand by plaintiff(s);
- An itemization of economic and non-economic damages by each plaintiff;
- A good faith offer of settlement by each defendant; and
- A statement identifying and discussing in detail all facts and law pertinent to the issues of liability and damages involved in the case as to that party. California Rules of Court, Rule 3.1380(c).

Persons Attending

Trial counsel, parties, and persons with full authority to settle the case must personally attend the conference unless, after a timely, written request to appear by telephone served on all parties, and for good cause shown, the Court permits telephonic appearance. If any consent to settle is required for any reason, the party with that authority must be personally present at the conference. California Rules of Court, Rule 3.1380(b).

PRE-TRIAL CONFERENCE

- ✓ The parties are ordered to comply with Rule 3.35 (a) - (n) of the Local Rules of the Alameda County Superior Court, and shall appear in Department 517 on February 1, 2019 at 8:30 am for a Pre-Trial Conference. Alameda County Superior Court Local Rule 3.35(a) - (n).

Meet and Confer Obligation

The parties shall meet and confer sufficiently in advance of the Pre-Trial Conference to allow each party to prepare fully for the hearing and submit with the Courtroom Clerk in Department 517 the below-described documents in timely fashion. (email nor fax copies are permitted)

Attendance

The personal appearance of the lead trial attorney for each party is required at the Pre-Trial Conference. No telephone appearances are permitted.

Trial Brief and Other Documents

On or before January 25, 2019 each party must file and deliver a courtesy copy of the same to Department 517 a trial brief not to exceed ten (10) pages succinctly setting forth undisputed facts, disputed facts, and the law upon which that party will rely. In addition, having met and conferred to avoid duplication, each party shall submit with the Courtroom Clerk on or before the above date all documents referred to in Alameda County Superior Court Local Rule 3.35 (b) - (m) including:

- An index of exhibits to be offered at trial. (Rule 3.35 (b)).
- Excerpts of depositions and/or other discovery responses. (Rule 3.35 (c) (1) and (2)).
- Transcripts of any audio or video presentations. (Rule 3.35(d)).
- Witness lists consisting of the name of each witness proposed to be called and a succinct statement of that witness' admissible, non-cumulative testimony. (Rule 3.35(f)). Failure to comply with this requirement could result in the disallowance of witness testimony.
- Redacted exhibits, if redaction is necessary. (Rule 3.35(g)).
- A proposed neutral statement of the case. (Rule 3.35(h)).
- Proposed jury instructions. (Rule 3.35(i)).
- Proposed jury verdict forms. (Rule 3.35(j)).
- Supplemental voir dire questions and/or any proposed jury questionnaire. (Rule 3.35(k)).
- A glossary of unusual terms, if necessary. (Rule 3.35(l)).
- Electronic copies of proposed juror questionnaires, jury instructions and/or verdict forms. (Rule 3.35(m)).

• **MOTIONS IN LIMINE**

Motions in limine are governed by the law governing motions, including CRC 3.1112-3.1116 and Local Rule 3.35(e) as amended effective July 1, 2014. Each motion in limine must be filed separately from any other motion in limine and may not be aggregated or consolidated into a single paper or "motion." Each motion in limine must be separately numbered (e.g. plaintiff's motion in limine No. 1, plaintiff's motion in limine No. 2, etc.) Each motion in limine must be accompanied by a separate memorandum as defined in CRC 3.113(b.) A motion in limine need not be accompanied by a notice of hearing. No motion reservation number is required. Motions in limine will be heard by the court at the pretrial conference or on such later date as set by the trial judge. The following in limine motions shall not be filed but will be deemed to have been ORDERED:

- exclude all witnesses until testimony completed;
- no reference to or evidence of settlement discussions or mediation;
- no reference to or evidence of insurance;
- no reference to or evidence of other claims/suits/actions against a party; and
- no reference to or evidence of wealth or lack thereof of any party except in a punitive damage phase of a case.

Exceptions to the foregoing must be raised at the Pre-Trial Conference. Any party wishing to respond in writing to a motion in limine must do so no later than close of business the Wednesday before the Friday Pre-Trial Conference.

Courtesy Copies

Unless otherwise ordered by the trial judge, courtesy copies of any moving papers, as well as any opposition and reply papers, shall be delivered to the trial department on the date of filing (email nor fax copies are permitted).

• **DOCUMENTS TO BE LODGED AT TRIAL; OTHER TRIAL OBLIGATIONS**

At the beginning of the trial, unless otherwise ordered, each party is to comply with the following:

-Exhibit Binders

Counsel for each party is to provide to all opposing counsel an exhibit binder with all exhibits, pre-marked in numerical order, with two binders to be lodged with the court (one for the judge and one for witnesses). Physical exhibits (objects) are to be photographed with the image placed in the binder in lieu of the physical item. For exhibits in excess of fifteen (15) pages, counsel are to meet and confer, in advance of the Pre-Trial Conference, so as to be able to limit the exhibit to only those pages relevant to the case and to which counsel intends to refer during the trial. For audio/CD/DVD exhibits, a summary of the lengthy document/audio/CD/DVD shall be placed in the binder in lieu of the exhibit identifying each page/portion/segment to which counsel intends refer during trial.

-Court Reporters

This department no longer provides certified shorthand reporters for civil trials. Parties wishing a certified record of the proceedings in civil trials must arrange for their own reporter. The Court Clerk can provide the names and contact information of reporters familiar with the proceedings in this department, but litigants in civil trials are free to hire any reporter they wish as long as that person is able to provide appropriate certified real-time shorthand reporter services. Arrangements to compensate reporters for civil trials should be made ahead of time among the parties. Any reporter retained must be available for the entirety of each court session from the commencement of the trial through verdict and for any and all post-trial proceedings in the case in which a record is required.

• **TRIAL SCHEDULE**

The trial schedule in Department 517 is Monday through Thursday, 8:30 am to 1:30 pm with appropriate breaks. Counsel will be expected to be ready to start trial promptly each day and to have witnesses ready to take the stand at the start of the trial day and at the conclusion of each recess. When the testimony of a witness has been completed, the next witness must be immediately available to testify. Failure to abide by this requirement could result in an order deeming a party to have rested its case.

• **TRIAL DECORUM**

Counsel, parties and witnesses are expected to conduct themselves at all times - on or off the record and whether or not in the presence of a jury - in a professional and courteous manner during trial.

• **FAILURE TO COMPLY**
FAILURE TO COMPLY WITH THE OBLIGATIONS SET FORTH IN THIS ORDER MAY
RESULT IN SANCTIONS APPROPRIATE TO THE GRAVITY OF THE FAILURE - INCLUDING
BUT NOT LIMITED TO MONETARY FINES AND/OR TERMINATING SANCTIONS.

Dated: 04/19/2018

facsimile



Judge Stephen Pulido

Order

Superior Court of California, County of Alameda
Hayward Hall of Justice

Case Number: RG15760730
Order After Hearing Re: of 04/19/2018

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 24405 Amador Street, Hayward, California.

Executed on 04/23/2018.

Chad Finke Executive Officer / Clerk of the Superior Court

By *Chad Finke*^{digital}
Deputy Clerk

SHORT TITLE:

Spears VS Rosen

CASE NUMBER:

RG15760730

ADDITIONAL ADDRESSEES

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1211 Newell Ave.
Walnut Creek, CA 94596_____

Cole Pedroza LLP
Attn: Pedroza, Kenneth
2670 Mission Street
Suite 200
San Marino, CA 91108_____

Order

PROOF OF SERVICE

I declare under penalty of perjury that:

I am a citizen of the United States, and am a resident or employed in the County of Contra Costa. I am over the age of eighteen years and not a party to the within action. My business address is 201 North Civic Drive, Suite 239, Walnut Creek, CA 94596. My email address is acook@dndmlawyers.com

On the date set forth below, I caused the attached EX PARTE APPLICATION OF DEFENDANT JAMES PATRICK HOWARD, M.D., PH.D. FOR CLARIFICATION OF COURT'S ORDER FOR TRIAL; SUPPORTING DECLARATION OF SONJA M. DAHL, ESQ.; EXHIBITS to be served on the parties to this action as follows:

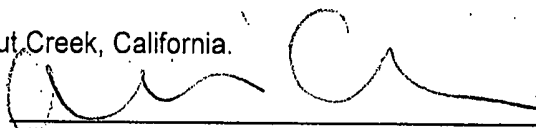
BY MAIL.

I placed the envelope for collection and mailing, following our ordinary business practices at Walnut Creek, California. I am readily familiar with this business' practices 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, in a sealed envelope with postage fully prepaid. C.C.P. §§1013(a), 2015.5.

BY EMAIL TRANSMISSION.

Based on a court order or an agreement of the parties to accept service by email or electronic transmission, I caused such document(s) described herein to be sent to the person(s) at the email address(es) listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. C.C.P. §1010.6(a)(6)

Executed on June 22, 2018 at Walnut Creek, California.


Allison Cook

1 WINKFIELD (MCMATH, JAH) V. HOWARD

2 ALAMEDA - NORTHERN COUNTY SUPERIOR COURT CASE NO. RG15760730

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