12723855

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
Thomas E. Still, Esq. / SBN 127065 Jennifer Still, Esq. / SBN 138347 HINSHAW, MARSH, STILL & HINSHAW, LLP 12901 Saratoga Avenue Saratoga, CA 95070 TELEPHONE NO.: (408) 861-6500 FAX NO. (Optional): (408) 257-6645 E-MAIL ADDRESS (Optional): tstill@hinshaw-law.com ATTORNEY FOR (Name): Defendant FREDERICK S. ROSEN, M.D.	FILED ALAMEDA COUNTY MAR - 1 2018 CLERK OF THE SUPERIOR COURT By Michelle R Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1221 Oak Street MAILING ADDRESS: 1221 Oak Street CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Administration Building	
PLAINTIFF/PETITIONER: LATASHA NAILAH SPEARS, et al. DEFENDANT/RESPONDENT: FREDERICK S. ROSEN, M.D., et al.	
CASE MANAGEMENT STATEMENT (Check one): [X] 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: March 16, 2018 Time: 2:30 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)*:
   b. [X] This statement is submitted **jointly** by parties *(names)*: All Defendants.

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date)*: March 3, 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 [X] complaint [ ] cross-complaint *(Describe, including causes of action)*:
   Medical Malpractice.

PLAINTIFF/PETITIONER: LATASHA NAILAH SPEARS, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: FREDERICK S. ROSEN, M.D., et al.	RG 15760730

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.)*
Medical Malpractice.

☐ *(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 [X] a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*
On issue of liability for Medical Malpractice.

6. **Trial date**
a. ☐ The trial has been set for *(date):*
b. [X] 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):* See attachment.

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*
See attachment 6. c.

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. ☐ days *(specify number):*
b. ☐ hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial [X] 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 [X] 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):*

PLAINTIFF/PETITIONER: LATASHA NAILAH SPEARS, et al. DEFENDANT/RESPONDENT: FREDERICK S. ROSEN, M.D., et al.	CASE NUMBER: RG 15760730

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	☐	☐ Mediation session not yet scheduled ☐ Mediation session scheduled for (*date*): ☐ Agreed to complete mediation by (*date*): ☐ Mediation completed on (*date*):
(2) Settlement conference	☐	☐ Settlement conference not yet scheduled ☐ Settlement conference scheduled for (*date*): ☐ Agreed to complete settlement conference by (*date*): ☐ Settlement conference completed on (*date*):
(3) Neutral evaluation	☐	☐ Neutral evaluation not yet scheduled ☐ Neutral evaluation scheduled for (*date*): ☐ Agreed to complete neutral evaluation by (*date*): ☐ Neutral evaluation completed on (*date*):
(4) Nonbinding judicial arbitration	☐	☐ Judicial arbitration not yet scheduled ☐ Judicial arbitration scheduled for (*date*): ☐ Agreed to complete judicial arbitration by (*date*): ☐ Judicial arbitration completed on (*date*):
(5) Binding private arbitration	☐	☐ Private arbitration not yet scheduled ☐ Private arbitration scheduled for (*date*): ☐ Agreed to complete private arbitration by (*date*): ☐ Private arbitration completed on (*date*):
(6) Other (*specify*):	☐	☐ ADR session not yet scheduled ☐ ADR session scheduled for (*date*): ☐ Agreed to complete ADR session by (*date*): ☐ ADR completed on (*date*):

PLAINTIFF/PETITIONER: LATASHA NAILAH SPEARS, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: FREDERICK S. ROSEN, M.D., et al.	RG 15760730

11. **Insurance**
    a. [x] Insurance carrier, if any, for party filing this statement *(name)*: Cooperative of American Physicians
    b. Reservation of rights: [ ] Yes [x] 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**
    [X] 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)*:

    See attached Defendant's Joint Case Management Plan.

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

    See attached Defendant's Joint Case Management Plan.

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
	See attached Defendant's Joint Case Management Plan.	

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

    See attached Defendant's Joint Case Management Plan.

PLAINTIFF/PETITIONER: LATASHA NAILAH SPEARS, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: FREDERICK S. ROSEN, M.D., et al.	RG 15760730

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**
    [X] The party or parties request that the following additional matters be considered or determined at the case management conference *(specify)*:

    See attached Defendant's Joint Case Management Plan.

19. **Meet and confer**
    a. [X] 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)*:

    Meet & Confer is ongoing.

    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)*: 43

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: March 1, 2018

THOMAS E. 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. b.

THOMAS E. STILL, ESQ. (SBN 127065)
JENNIFER STILL, ESQ. (SBN 138347)
HINSHAW, MARSH, STILL & HINSHAW, LLP
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Fax: (408) 257-6645
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Attorneys for Defendant
FREDERICK S. ROSEN, M.D.

(Additional Counsel Listed After Caption)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

LATASHA NAILAH SPEARS WINKFIELD; MARVIN WINKFIELD; SANDRA CHATMAN; AND JAHI MCMATH, A MINOR, BY AND THROUGH HER GUARDIAN AD LITEM, LATASHA NAILAH SPEARS WINKFIELD,

Plaintiff,

v.

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

Defendants.

No.: RG15760730

ASSIGNED FOR ALL PURPOSES TO: JUDGE STEVEN PULIDO-DEPT 517

DEFENDANTS' JOINT CASE MANAGEMENT PLAN

Date: March 16, 2018
Time: 2:30 p.m.
Dept: 517

Complaint Filed: March 3, 2015
Date of Trial: None set

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Attorneys for Defendant
ROBERT M. WESMAN, M.D.

At the Case Management Conference on December 19, 2017, the Court scheduled a special status conference for March 16, 2018, for the purpose of addressing the case management issues arising from plaintiffs' claim that Jahi McMath may recover personal injury damages because she no longer fulfills the standard brain death criteria.

In anticipation of the special status conference, counsel for the five defendants met and conferred on a Case Management Plan. To facilitate the discussion and the potential narrowing of issues, defendants jointly prepared and submit the attached "Defendants' Joint Case Management Plan."

Meet and confer efforts are ongoing with plaintiffs' counsel.

Dated: March 1, 2018

HINSHAW, MARSH, STILL & HINSHAW, LLP

By: _____
THOMAS E. STILL
JENNIFER STILL
Attorneys for Defendant
FREDERICK S. ROSEN, M.D.

Dated: March 1, 2018

CARROL, KELLY, TROTTER, FRANZEN, MCBRIDE & PEABODY

By: _____
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DAVID PRUETT
Attorneys for Defendant
UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND

Dated: March 1, 2018

SCHUERING ZIMMERMAN & DOYLE, LLP

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Dated: March 1, 2018

DONNELLY NELSON DEPOLO & MURRAY

By: _____
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SONJA DAHL
Attorneys for Defendant
JAMES PATRICK HOWARD, M.D.

Dated: March 1, 2018

MCNAMARA NEY BEATTY SLATTERY BORGES & AMBACHER, LLP

By: _____
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DEFENDANTS' JOINT CASE MANAGEMENT PLAN

I. SUMMARY OF CASE

A. The Death Determinations and The Probate Proceedings (Case No. RP13-707598)

A total of three brain death examinations have been performed on Jahi McMath since her cardiac arrest on December 10, 2013. All three brain death examinations were performed in accord with accepted medical standards set forth in the Guidelines for the Determination of Brain Death in Infants and Children. All three examinations found her to be brain dead.

Plaintiffs invoked the jurisdiction of the Superior Court to challenge the brain death determination, pursuant to *Dority v. Superior Court* (1983) 145 Cal.App.3d 273, 280. Judge Grillo's order explains that per *Dority*, the jurisdiction of the Court can be invoked to (1) establish a mistake was made in the brain death determination, or (2) the diagnosis was not made in accord with accepted medical standards. (See Ex. A, Judge Grillo's Amended Order Denying the Petition, p. 9, citing *Dority v. Superior Court* (1983) 145 Cal.App.3d 273, 280.) To provide the Court assistance in evaluating the claims and evidence, Judge Grillo engaged by a court-appointed expert, Paul Fisher, M.D., the Chief of Child Neurology at Stanford University and Lucile Packard Children's Hospital.

On December 23, 2013, Dr. Fisher performed a brain death examination of McMath. Dr. Fisher found that McMath met the accepted neurologic criteria for brain death. Mrs. Winkfield's attorney, Chris Dolan, stipulated that Dr. Fisher conducted his brain death examination and made his brain death diagnosis in accord with the accepted medical standards in the Guidelines for the Determination of Brain Death in Infants and Children. (See Ex A, Grillo's Amended Order, pp. 6-7.) On Decernber 24, 2013, Judge Grillo ruled that there was clear and convincing evidence that Jahi McMath had suffered brain death and was deceased as defined by Health and Safety Code sections 7180 and 7181. A death certificate was issued.

In September 2014 plaintiffs emailed the Court concerning a potential challenge to the previous brain death determination. On October 1, 2014 plaintiffs filed a petition contending they had 'new evidence' that showed McMath was not brain dead. Judge Grillo re-appointed Dr. Fisher as the Court's independent expert. On October 6, 2014, Dr. Fisher reported that McMath was brain dead and the materials presented by plaintiffs failed to meet the accepted neurologic criteria for evaluating brain death. Thereafter, plaintiffs dismissed their petition. (See Ex. B, 10/8/14 Case Management Order from Judge Grillo.)

B. The Personal Injury and Wrongful Death Action

On March 3, 2015, plaintiffs filed a medical malpractice action arising out of the medical care and treatment provided to Jahi McMath at Children's Hospital of Oakland. Plaintiffs' complaint alleges two inconsistent cause of action: a claim for wrongful death brought by the alleged heirs of a *deceased* Jahi McMath, and a claim for personal injury brought by an *alive* Jahi McMath.

In support of the personal injury cause of action, plaintiffs allege in their First Amended Complaint that there has been "changed circumstances" since Jahi McMath's declaration of death. Plaintiffs alleged that, based on evaluation of a pediatric neurologist (Dr. Shewmon), Jahi McMath "***no longer fulfills the standard brain death criteria*** on account of her ability to specifically respond to stimuli."

1. Defendants' Demurrer to the Personal Injury Claim

Defendants demurred to the claim for personal injuries on the grounds that Jahi McMath is legally deceased, and the doctrines of *res judicata* and collaterally estoppel prevent plaintiffs from re-litigating the issue of Jahi McMath's death. On March 14, 2016, the court overruled the demurrer on the grounds that plaintiffs have alleged they have discovered new facts sufficient to trigger the change of circumstances exception to application of collateral estoppel. The court determined that although collateral estoppel may ultimately bar plaintiffs from re-litigating the issue of whether McMath is dead, the court found that a "***more developed factual record***" may be necessary to determine whether the changed circumstances exception precludes application of the doctrine of collateral estoppel. (See Ex. C, 3/14/16 Order: Demurrer and Motion to Strike Complaint, p. 2.)

Thereafter, defendants petitioned the First Appellate District to issue a writ of mandate. The appellate court denied the petition stating: "Because the trial court found the record at the pleading stage was inadequate for a collateral-estoppel determination and 'may require a more developed factual record,' we conclude, under the circumstances, that this matter should not be resolved at the pleading stage." (See Ex. D, 7/12/16 Order from the Court of Appeal Summarily Denying the Petition for Writ of Mandate.)

2. Defendants' Motion for Summary Adjudication of the Personal Injury Claim

On March 23, 2017, defendants filed a motion for summary adjudication of the cause of action for personal injuries on the grounds that Jahi McMath lacks standing because she was declared deceased in accord with California law. Defendants submitted the declarations of two brain death experts who attested that the only accepted neurological criteria for assessing Jahi McMath's brain function is an examination performed in accordance with the accepted medical standards that are set forth in the Guidelines. Although plaintiffs admitted in a sworn response to a request for admission that the Guidelines are the applicable criteria for the determination of brain death in a child such as Jahi McMath, no such brain death exam has been performed on Jahi McMath since Judge Grillo ruled she was brain dead and deceased.

On September 5, 2017, the court issued its ruling denying the motion for summary adjudication. The court agreed that defendants established that the determination of brain death was made in accord with accepted medical standards. However, the court found that "there is a triable issue of fact as to whether McMath **currently** satisfies the statutory definition of "dead" under Health & Safety Code§ 7180(a), or at least as to whether a **subsequent examination in accordance with accepted medical standards** is warranted under the circumstances." "[A]t the very least a triable issue exists as to whether there are changed circumstances pertaining to McMath's

condition so **as to warrant a subsequent determination in accordance with accepted medical standards**." (Emphasis added.)

3. Plaintiffs' Position After Defeating the Motion for Summary Adjudication

Since the court's ruling on the MSA, plaintiffs have changed tactics. They are no longer contending that McMath no longer fulfils the accepted medical standards. On December 22, 2017, plaintiffs filed a motion to bifurcate wherein it was represented that "it is more likely than not that" Jahi would fail a brain death examination performed in accord with the Guidelines. Plaintiffs' new theory is that the neurologic criteria for brain death in the Guidelines are flawed.[1]

In addition, plaintiffs refuse to consent to a brain death re-examination. In January 2018, plaintiffs' attorney represented to defense counsel that he will object to a brain death examination "given the grave risk that disconnecting Jahi from the respirator will cause metabolic acidosis and cardiac arrhythmia or arrest. ... The test is, in my opinion, violative of CCP 2032.220(a)(1)."

Defendants are unable to obtain verifiable, competent and objective evidence of McMath's **current** brain function. The most recent medical testing of McMath was performed at University Hospital on September 26, 2014. This testing demonstrated that she has no electrical brain activity, no blood flow to her brain, and no cerebral mechanism to hear sound. All of the materials relied on by plaintiffs are very old. The most recent video recording was taken nearly two years ago. The only medical record of vaginal bleeding was in August 2014 and September 2014 – over three years ago. What evidence, if any, do plaintiffs have that demonstrates Jahi McMath's brain function today?

II. CASE MANAGEMENT ISSUES AND CASE MANAGEMENT PLAN

This case presents a number of issues requiring resolution in advance of trial of a purported personal injury claim or a wrongful death claim:

1. Does Jahi McMath have standing to assert a claim for personal injury?
2. Does this Court have jurisdiction to hear a challenge to the previous brain death determination?
3. Is Jahi McMath collaterally estopped from challenging the judicial determination of brain death made by Judge Grillo in December 2014, resulting in a final judgment in January 2014?
4. If plaintiff is relying upon changed circumstances as an exception to collateral estoppel, what do they need to prove?
5. Will this Court be conducting pre-trial Evidence Code section 402 hearings regarding the anticipated expert testimony concerning brain death?

---

[1] In overruling the demurrer Judge Freedman noted in his Order: "The court is not persuaded by CHO's argument that Plaintiffs are 'improperly asking this court or a jury to reject the accepted medical standards used to determine irreversible brain death.'" (3/14/16 Order: Demurrer and Motion to Strike Complaint, p. 3, Ex. C)

Since Judge Freedman, The Court of Appeal, and this Court have indicated that evidence may be required to evaluate the numerous issues presented in this case related to the issue of whether plaintiff is brain dead, defendants propose the following schedule for discovery related solely to the brain death issue (most of which will be taken outside of California).

Discovery	Current Status	Proposed Timelines
Written Discovery/Motions to Compel	Ongoing. Meeting and conferring with counsel	July 1, 2018
Depositions of Brain Death Examining Doctors: -Paul Fisher, M.D. -Robin Shanahan, M.D. -Robert Heidersbach, M.D.	Coordinating available dates with the doctors	July-August 2018
PMK Depositions re: Video Recordings taken of Jahi McMath	Will meet and confer with counsel prior to serving notice	August-September 2018
Deposition of Latasha Winkfield	To be noticed	September 2018
Deposition of Sandra Chatman	To be noticed	September 2018
Deposition of Marvin Winkfield	Will coordinate with counsel	September 2018
Deposition of Dr. Shewmon	Noticed. Meeting and conferring with counsel to coordinate date	October 2018
Depositions of Doctors in New Jersey: -Siva P. Jonna, M.D, -Christoph Ohgemach, M.D. -Tiong The, M.D. - Bhavani Chalikonda -Laurie Sanchez, M.D. -Jayoung Pak, M.D. -Alieta Eck, M.D.	Coordinating available dates with the doctors	October-November 2018
Brain Death Exam of Jahi McMath	Meeting and conferring with counsel	TBD
Designation of Brain Death Experts		December 2018
Depositions of Designated Brain Death Experts		January-February 2019
Filing of Motions re: Brain Death Issues		April 2019
Hearing re: Brain Death Issues		May 2019

Defendants recommend this Case Management Plan as a means to focus the discovery upon the brain death issue. Thereafter, the parties will be in a position to address the many outstanding legal issues. It is also anticipated that after this discovery is completed the parties will be in a better position to recommend a comprehensive trial management plan to this Court, including the potential for bifurcation of issues that will help to streamline the case to insure the parties know well in advance of trial whether they are preparing for a personal injury or wrongful death claim, and the standards applicable to the claims.

EXHIBIT A

FILED
ALAMEDA COUNTY

JAN 02 2014

CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

LATASHA WINKFIELD, the Mother of Jahi McMath, a minor Petitioner, v. CHILDREN'S HOSPITAL OAKLAND, Dr. David Durand M.D. and DOES 1 through 100, inclusive Respondents	Case No. RP13-707598 AMENDED* ORDER (1) DENYING PETITION FOR MEDICAL TREATMENT AND (2) GRANTING IN PART APPLICATION TO SEAL PORTIONS OF RECORD. Date: December 23, 2013 Time: 9:30 am Dept: 31

The Petition of Latasha Winkfield as mother of Jahi McMath, a minor, and the motion of petitioner to seal came on for hearing on December 23 and 24, 2013, in Department 31 of this Court, the Honorable Evelio Grillo presiding. After consideration of the briefing and the argument, IT IS ORDERED: (1) the Petition of Latasha Winkfield as mother of Jahi McMath, a minor, is DENIED and (2) the motion of petitioner to seal is GRANTED IN PART.

*The court amends the Order of 12/26/13 to correct typographical errors and address several factual corrections requested by counsel. There are no substantive changes from the prior order.

PROCEDURAL AND FACTUAL BACKGROUND[1]

On December 9, 2013, Jahi McMath, a thirteen year old child, had a tonsillectomy performed at Children's Hospital of Oakland ("CHO"). Following the tonsillectomy Jahi began to bleed profusely from her mouth and nose, and within a matter of minutes, went into cardiac arrest and lapsed into a coma. As of December 26, 2013, Jahi is currently being maintained on a ventilator at CHO.

On December 20, 2013, Latasha Winkfield, the mother of Jahi McMath, filed a verified petition and ex parte application with the court pursuant to Probate Code section 3200 et seq. and 4600 et seq., seeking an order (1) authorizing the petitioner (Jahi's mother) to make medical care decisions for Jahi; and (2) for an injunction under to prohibit respondent CHO from withholding life support from Jahi. (Probate Code sections 3201, 4766, 4770.) The court set the application for hearing at 1:30 p.m. on December 20, 2013, in Department 31, and requested respondent CHO to submit written opposition to petitioner's ex parte application.

On December 20, 2013, the court heard Petitioner's application in Department 31. Christopher B. Dolan appeared for the petitioner and Douglas C. Straus appeared for respondent CHO. At the hearing, respondent CHO submitted its opposition papers and argued that respondent CHO had no duty to continue mechanical ventilation or any other medical intervention for Jahi, because she was deceased as the result of an irreversible cessation of all functions of her entire brain, including her brain stem. (Health & Safety Code section 7180.) In support of its position, respondent submitted the physician declarations of Robert Heidersbach,

[1] Due to the confluence of facts concerning the medical records of a minor and the publicity that accompanied this case, the parties presented many of their arguments to the court in chambers and supported those arguments with offers of proof. The court has attempted in this order to reflect and address all the issues raised in the case even if they were not formally presented and preserved in court filings and transcribed hearings.

MD, Sharon Williams, MD, and Robin Shanahan, MD. Dr. Heidersbach and Dr. Shanahan were the examining physicians who determined Jahi's medical status, *i.e.*, brain dead. The physician declarations, read together, unequivocally stated that Jahi was considered brain dead in accordance with accepted medical standards, and that there was no medical possibility that Jahi's medical condition was reversible, or that she would recover from her present condition, and that there was no medical justification to provide further medical intervention. Stated more plainly, CHO argued that Jahi was legally dead, as defined by Health and Safety Code section 7180 and 7181, and that neither Probate Code sections 3200 or 4600 et seq. authorized medical treatment of legally dead persons.[2] Petitioner responded with anecdotal evidence regarding Jahi's condition, and stated that Jahi was responsive to her mother's verbal stimulation, and to physical touching of her feet.

During oral argument on December 20, 2013, the court asked respondent's counsel whether the two examining physicians were affiliated with CHO.[3] Respondent's counsel responded that Drs. Heidersbach, and Shanahan did not work for CHO, that each satisfied the criteria for independence under Health and Safety Code section 7181, and thus intervention by the court was neither warranted, nor authorized by law. In effect, respondent's counsel argued that the court did not have jurisdiction to review the physicians' diagnosis of brain death because

[2] It would appear to be self evident that where legal death has occurred, one cannot invoke the provisions of Probate Code sections 3200 and 4600 to appoint a guardian to make health care decisions on behalf of a deceased person, *i.e.*, a person for whom additional medical treatment would be futile. There are specific statutory requirements for dealing with the remains of deceased persons. (Health and Safety Code section 7000 et seq.) The issue presented by the petitioner in the instant matter was more complex: whether the petitioner's daughter was entitled to medical treatment in the form of life support (nutrition, intravenous fluids, ventilator breathing support, etc.) because her daughter was not legally dead. The issues in this case as presented by the petitioner necessarily required the court to reach the threshold issue of whether petitioner's daughter was legally dead.

[3] Health and Safety Code section 7181 states that a diagnosis of brain death requires confirmation by a second, independent physician.

two independent physicians had made the determination in compliance with Health and Safety Code section 7180 and 7181. On further questioning by the court, however, respondent's counsel conceded that both Drs. Heidersbach and Shanahan maintained hospital privileges with CHO. The declarations submitted by Drs. Heidersbach, and Shanahan both self-describe their status as "a member in good standing of the medical staff of Children's Hospital & Research Center at Oakland." (Heidersbach Dec., Para 1; Shanahan Dec., para 1.)

Because Health and Safety Code section 7181 requires confirmation of brain death by an independent physician (but does not define or otherwise set a standard for determining independence), the court determined that, on the unique facts of this case,[4] the independent second opinion required by section 7181 should be provided by a physician who had no affiliation with CHO. The court ordered the parties to meet and confer to select a physician unaffiliated with CHO to provide the second independent opinion required by Health and Safety Code sections 7180 and 7181. The parties met and conferred during a break in the hearing and CHO presented the court with the names of five physicians affiliated with the University of California San Francisco Medical School. Petitioner did not provide the names of any licensed California physicians as proposed independent experts. Counsel for Jahi stated he could not consent to the process because he stated that consent could be interpreted that the independent physician then could make a pronouncement of brain death that would authorize termination of support.

[4] The unique facts of this case include the fact of both affiant physicians being members of the CHO medical staff, the complete absence from the record of any information from which the court could determine whether the physician providing the second opinion was an "independent physician" within the meaning of Health and Safety Code section 7181, and the facts and circumstances surrounding Jahi's treatment while under the care of CHO, *i.e.*, immediate and dramatic death following a routine surgical procedure (a tonsillectomy), with virtually no information surrounding the circumstances of her treatment and death provided by CHO other than publically describing the outcome of the surgery as "catastrophic."

By order dated December 20, 2013, the court temporarily restrained CHO from changing Jahi's level of medial support. The order stated in part: "Respondent CHO, its agents, employees, servants and independent contractors are ordered to continue to provide Jahi McMath with the treatment and support which is currently being provided as per the current medications and physicians orders until further order of the court." The order also continued the hearing to Monday, December 23, 2013, and directed CHO to contact the UCSF physicians to determine whether any of them was available to examine Jahi and to provide the second independent opinion required by section 7181.

On Monday December 23, 2013, the court reconvened the hearing. At the hearing, respondent's counsel advised the court that the UCSF physicians had declined to provide a second section 7181 opinion on the advice of counsel, as pending merger discussions between UCSF and CHO could raise concerns regarding the independence of the UCSF physicians. In place of the UCSF physicians, CHO's counsel offered the appointment of Paul Fisher, MD, the Chief of Child Neurology for the Stanford University School of Medicine, as the physician to provide the second, independent physician's opinion pursuant to Health and Safety Code section 7181. Petitioner opposed the process but conceded that if the process would go forward that Dr. Fisher was qualified. During the December 23 hearing, petitioner's counsel also requested that Paul A. Byrne, MD be allowed to examine Jahi and provide a second section 7181 opinion, or alternatively, to provide expert testimony at the hearing.

By order dated December 23, 2013, the court appointed Dr. Fisher as the independent 7181 physician. Pursuant to that order, Dr. Fisher examined Jahi the afternoon of December 23, 2013. The court also continued the hearing to December 24, 2013, to receive Dr. Fisher's report and testimony from a CHO physician (Dr. Shanahan) who first determined that Jahi was brain

dead, as of December 11, 2013. By separate order dated December 23, 2013, the court extended the restraining order through December 30, 2013, or such other date as the court might later determine.

On December 24, 2013, this court, during closed and public sessions, received testimony from Dr. Shanahan and Dr. Fisher. During the course of the hearings, the court was presented with and entered into evidence Dr. Shanahan's and Dr. Fisher's examination notes, as well as documents setting forth the standards for determining brain death in infants and children. (See, e.g., Exhibit 1 (Dr. Fisher's examination notes); Exhibit 2 (Guidelines for Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force Recommendation. Court); Exhibit 3 (Pediatrics, Official Journal of the American Academy of Pediatrics, August 28, 2011, Guidelines for Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force Recommendation); Exhibit 4 (Table 3 of Exhibit 3); Exhibit 5 (Checklist, Brain Death Examination for Infants and Children); Exhibit 6 (Shanahan Declaration filed 12/20/13); and Exhibit 7 (Consultation and Examination notes of Robin Shanahan MD dated 12/11/2013).[5] The court provided Petitioner's counsel the opportunity to cross examine both Dr. Fisher and Dr. Shanahan.

Dr. Fisher initially testified in a closed session. Dr. Fisher's written report served as his opening statement and counsel for petitioner in cross-examination questioned Dr. Fisher about the accepted medical standards for determining brain death in minors, his physical examination of Jahi, and his analysis. At the conclusion of Dr. Fisher's cross-examination, petitioner's counsel stipulated that Dr. Fisher conducted the brain death examination and made his brain

[5] The court also received and considered the vita curricula of Dr. Fisher and Dr. Byrne. To provide a complete record, the court on its own motion augments the record to include those two documents as Exhibits 8 and 9.

death diagnosis in accord with accepted medical standards. In the open session immediately following, Dr. Fisher opined that Jahi was brain dead under accepted medical standards.

Dr. Shanahan then testified in a closed session. Dr. Shanahan testified as to the accepted medical standards for determining brain death in minors, the examination of Jahi that she conducted on December 11, 2013, and her conclusion on December 11, 2013, that Jahi was brain dead as of that date. Petitioner's counsel was then provided with the opportunity to cross examine Dr. Shanahan.

At the conclusion of Dr. Shanahan's cross-examination in closed session, petitioner's counsel objected to Dr. Shanahan's testimony. The court overruled the objection. Petitioner's counsel then requested a continuance to review additional medical records more carefully, to have time to consult an expert regarding Dr. Shanahan's examination of Jahi, and, if appropriate, to conduct further cross-examination of Dr. Shanahan. The court denied the request for a continuance. The court reasoned that the issue before the court was limited to whether the attesting physicians had conducted the 7180 and 7181 examinations in accord with accepted medical standards. The court determined, based on the testimony and medical records provided in the closed session (Exhibits 1 [Fisher notes] and 7 [Shanahan notes]), that although Jahi's complete medical records were relevant to the cause of her death they were not relevant to whether she had suffered brain death as defined under section 7181. Dr. Shanahan was then sworn in open court, and testified that Jahi was brain dead on December 11, 2013, under accepted medical standards.

The Court then took the matter under submission. The court returned to the bench after a brief recess and then denied the petition and dissolved the TRO effective 5:00 p.m. December 30, 2013.

ANALYSIS:

JURISDICTION OF THE COURT

During the initial and subsequent hearings, respondent's counsel argued that after two attesting physicians have determined a person to be brain dead pursuant to Health and Safety Code sections 7180 and 7181, that the court had no jurisdiction to review the issue. Or stated another way, counsel argued that the determination of brain death was a matter for physicians, and not judges to decide, and the court lacked jurisdiction to review the physicians' determination of brain death.

It is true that physicians, and not courts, are uniquely qualified (and authorized by statute) to make the determination of brain death, but it does not follow that such determinations are insulated from all judicial review. (*Dority v. Superior Court* (1983) 145 Cal. App.3d 273, 278.) In *Dority* the trial court appointed a guardian for an infant who had been determined by physicians to be brain dead under Health & Saf. Code, section 7189(a)[6], and after hearing unrefuted medical testimony concluding that the infant was brain dead, the trial court ordered the temporary guardian to give the appropriate consent to the health care provider to withdraw life support. (*Dority*, 145 Cal.App.3d at 276.) The child's parents and counsel for the minor petitioned for a writ of prohibition against removing the life support device. The Court of Appeal denied the writs and held that the trial court's order for withdrawal of the life support system, after hearing the medical evidence and taking into consideration the rights of all the parties

[6] It appears that the reference to Health & Saf. Code section 7189(a) might be a typographical error. Former section 7189, as operative during 1983, was added by Stats.1976, c. 1439, § 1, related to the revocation of health care directives, and was repealed by Stats.1991, c. 895 (S.B.980), § 1. Health & Saf. Code section 7180, the operative section for determining death as of 1983 (the year in which the events underlying *Dority* occurred) was added by Stats.1982, c. 810, p. 3098, § 2, and would have been the operative statute for determining death at that time.

involved, and after finding that the infant was dead in accordance with applicable statutes, was proper and appropriate. (*Dority*, 145 Cal.App.3d at 279.)

Dority acknowledged "the moral and religious implications inherently arising when the right to continued life is at issue," but concluded that the court has jurisdiction to resolve the issue. *Dority* recognized "the difficulty of anticipating the factual circumstances under which a decision to remove life-support devices may be made, [and] determined that it would be "unwise" to deny courts the authority to make such a determination when circumstances warranted." (*Dority*, 145 Cal.App.3d at 275.)

Dority states "[t]he jurisdiction of the court can be invoked upon a sufficient showing that [1] it is reasonably probable that a mistake has been made in the diagnosis of brain death or [2] where the diagnosis was not made in accord with accepted medical standards." (*Dority*, 145 Cal.App.3d at 280.) *Dority* is silent on what showing is necessary to establish "reasonable probability of a mistake." *Dority* and the statutes, sections 7180 and 7181, are silent as to when a diagnosis is made "in accord with accepted medical standards." *Dority* does not state that the two identified bases for jurisdiction are exclusive and the statute does not state they are exclusive. The court interprets the statute and holds that application of the statute permits an inquiry into whether the second physician was independent. The court's jurisdiction can be invoked on a showing that the second physician required by section 7181 was not "independent."

In this case there is clearly was a conflict between the party representing Jahi and the health care providers as to whether brain death had occurred and whether further medical intervention was warranted. Petitioner presented evidence that her daughter, Jahi, was responsive (reacted to) her touch (Winkfield Decl. at para. 9), arguably suggesting that it was possible that a mistake has been made in the diagnosis of brain death. Petitioner presented

evidence that CHO denied petitioner's request to have an independent physician examine Jahi and her studies and records (Winkfield Decl., para. 19) and that CHO repeatedly refused to provide petitioner with Jahi's medical records under the rationale that the hospital does not provide medical records of patients that they are still treating (Winkfield Decl. at paras. 20, 21).[7] These facts cast doubt on the neutrality of CHO and therefore also on the independence of the physicians who were "member[s] in good standing of the medical staff of Children's" who had examined Jahi and made findings of brain death. These facts are sufficient to invoke the jurisdiction of the court to review whether the diagnosis was made by an independent physician in accord with acceptable medical standards.[8]

NATURE OF THE HEARING AND RELATED DUE PROCESS CONCERNS.

Counsel for petitioner objected that petitioner was not provided a full and fair opportunity to present evidence regarding whether Jahi had suffered brain death. Specifically, counsel for petitioner asserted that petitioner was not provided timely access to Jahi's complete medical files, that he needed additional time in which to prepare for cross-examination, and that he had the right to present a competing physician to provide testimony on the issue of brain death.

Health and Safety Code sections 7180 and 7181 do not provide any guidance regarding the nature of a proceeding to address brain death under those sections. *Dority*, supra, 145

[7] As of the hearing on Friday December 20, 2013, petitioner and petitioner's counsel had not yet received copies of Jahi's medical records.

[8] There was some conflict in the argument at the December 20 hearing as to whether petitioner had been allowed to have a physician examine Jahi and/or review the records of Drs. Shanahan and Heidersbach, the physicians who declared Jahi to be brain dead. CHO's counsel (Mr. Strauss) contended that petitioner had consulted with three physicians of her choosing, each of whom confirmed the diagnosis of brain death. Petitioner's counsel denied Mr. Strauss' representation and further alleged that Jahi's medical records had not been provided to petitioner or petitioner's designated physicians, thereby precluding any meaningful review of Drs. Shanahan's and Heidersbach's diagnoses of brain death.

Cal.App.3d 273, 276, did not address the nature of a proceeding under section 7181. The Uniform Determination of Death Act prepared by the Uniform Law Commission does not address the nature of a proceeding. The court can discern three options for categorizing the nature of the proceeding: (1) a summary judicial review of physician reports; (2) a focused proceeding that permits limited discovery and presentation of evidence; and (3) a civil proceeding with challenges to the pleadings under CCP sections 430.10 and 435, discovery rights under CCP section 2016 et seq, motions for summary judgment under CCP section 437c, and a full trial on the merits.

The court rejects the first option as failing to provide appropriate due process to the interested parties. If the determination were so simple that the court could resolve it on the basis of declarations, then the court would not need to be involved at all in the process. (*Dority*, 145 Cal.App.3d at 278 [If the family and physicians agree, then "we find it completely unnecessary to require a judicial "rubber stamp" on this medical determination"].) If the determination is not simple, then the interested parties are entitled to cross-examine the physicians and to present their own evidence.

The court finds the second option consistent with the apparent intent of the legislature, California case law, and due process. Health and Safety Code sections 7180 and 7181 concern a single factual issue that is medical in nature. Physicians should be able to make the required examination and complete the required analysis in a relatively short time period. The legislature in Health and Safety Code section 1254.4 states that after a finding of brain death under section 7180, a hospital must continue previously ordered cardiopulmonary support for a "reasonably brief period" to afforded family or next of kin the opportunity to gather at the patient's bedside before removal of the support and that "in determining what is reasonable, a hospital shall

consider the needs of other patients and prospective patients in urgent need of care." This suggests that following a finding of brain death under section 7180, any challenge to the finding also be completed in relatively brief period.

California case law indicates that trial courts have conducted hearings under section 7180 expeditiously. In *Dority*, the physicians found no brain activity on November 22 and again about about one month later (mid-December), and the trial court held a hearing on January 17 and 21. The testimony at the *Dority* trial court hearing was unrefuted. Although *Dority* did not address the nature of the proceeding or hearing, if also did not criticize the conduct of the trial court. (*Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 680 [An opinion is not authority for propositions not considered].)

Regarding due process, the Court has considered the following general principles as stated in *Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal. 4th 371, 390-391:

> Under the California Constitution, the extent to which procedural due process is available depends on a weighing of private and governmental interests involved. The required procedural safeguards are those that will, without unduly burdening the government, maximize the accuracy of the resulting decision and respect the dignity of the individual subjected to the decision making process. Specifically, determination of the dictates of due process generally requires consideration of four factors: [1] the private interest that will be affected by the individual action; [2] the risk of an erroneous deprivation of this interest through the procedures used and the probable value, if any, of additional or substitute safeguards; [3] the dignitary interest of informing individuals of the nature, grounds and consequences of the action and of enabling them to present their side of the story before a responsible governmental official; and [4] the government interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

The first three considerations, the private interest, the risk involved, and the dignitary interest of the proceeding, all suggest that the due process rights of the party affected by a physician's determination of death are substantial. The fourth factor, the government interest in the form of administrative burden, is addressed by the focused nature of the inquiry under Health and Safety Code sections 7180 and 7181.

The court finds the third option to be inconsistent with the apparent purpose of the statute and the related statutes. The inquiry is focused and Health and Safety Code section 1254.4 suggests that the proceedings be commenced and concluded in a "reasonably brief period."

The court finds that the nature of the proceedings is that of a regular civil proceeding, but that the trial court has the discretion to focus the case on the limited issues presented and to expedite and narrow the proceedings accordingly. Paraphrasing *Dority*, 145 Cal.App.3d at 275, "Considering the difficulty of anticipating the factual circumstances under which a decision to remove life-support devices may be made, [limiting the discretion of the court to fashion the proceedings to the circumstances] may ... be unwise." The trial court may issue orders shortening time to ensure that the case is not unduly prolonged, the trial court may expedite and limit discovery under CCP section 2019.020(a) and 2019.030, and the court may limit the scope of the evidence presented at the hearing under Evidence Code section 352.

This court endeavored to provide petitioner with due process while completing the proceeding in a "reasonably brief period." CHO provided some medical records to petitioner late on Friday December 20 and provided more complete records to petitioner's counsel on Monday December 23, 2013. The court appointed its own independent physician to examine Jahi on Monday December 23, and counsel for petitioner was present during that examination.

On Tuesday December 24, counsel for petitioner had the opportunity to cross-examine both Dr. Fisher and Dr. Shanahan.

During the proceedings, counsel for petitioner at various times requested that Paul A. Byrne, MD be allowed to examine Jahi and provide a second section 7181 opinion, or provide expert testimony at the hearing, or to review Jahi's records to assist in the cross-examination of Dr. Shanahan. Petitioner withdrew the request that Dr. Byrne be allowed to examine Jahi and provide an opinion based on his own examination. Petitioner did not pursue his request that Dr. Byrne provide expert testimony. During the discussions between the court and counsel it became apparent through a review of Dr. Byrne's publications that were the court to hold an Evidence Code 402 hearing to determine whether Dr. Byrne was qualified as an expert under Evidence Code 720 and *Sargon Enterprises, Inc. v. University of Southern Cal.* (2012) 55 Cal.4th 747, that Dr. Byrne might not qualify as an expert based on his religious and philosophical approach to the definition of death and the possibility that he would not be able to apply accepted medical standards. In addition, it became apparent that testimony and documents regarding the cause of death, as opposed to the fact of death, were not relevant to the court's inquiry. The court exercised its discretion in not continuing the hearing to permit petitioner to review Jahi's records to assist in the cross-examination of Dr. Shanahan. The court reasoned that the examinations were both under the accepted medical standards, the medical determinations were consistent, and that the detriment of a prolonged proceeding would materially outweigh any probable benefit to the court in making the limited finding required by section 7181.

The court acted consistent with the trial court in *Alvarado by Alvarado v. New York City Health & Hospitals Corp.* (N.Y.Sup.,1989) 145 Misc.2d 687, 698, 547 N.Y.S.2d 190, *order vacated and appeal dismissed as moot,* 157 A.D.2d 604, 550 N.Y.S.2d 353 (1st Dep't 1990),

where the court addressed a similar situation and stated, "In the instant case, the Alvarados were notified before a determination was made, were given an opportunity to obtain an independent medical evaluation, and were offered a chance to have the matter discussed with religious leaders and friends. Therefore, it cannot be said that the family was deprived of its due process rights to participate in the medical care of the child."

FINDING OF BRAIN DEATH UNDER HEALTH AND SAFETY SECTIONS 7180 AND 7181.

A trial court may "hear testimony and decide whether the determination of brain death was in accord with accepted medical standards." (*Dority*, 145 Cal.App.3d at 279.) The law is unclear whether the court's determination is under the preponderance of the evidence standard, the clear and convincing evidence standard, or some other standard. This court applies the clear and convincing evidence standard.

The court is guided by *In re Christopher I* (2003) 106 Cal.App.4th 533, 552, where the court addressed the standard to be applied when removing life support from a minor who was in a persistent vegetative condition. In *Christopher*, the Court of Appeal noted that the Welfare and Institutions Code requires either proof by a preponderance of the evidence or clear and convincing evidence, depending on the rights being adjudicated, and then stated, "Given the impact of this decision on Christopher, imposition of the highest standard within the Welfare and Institutions Code - the clear and convincing standard of proof - is appropriate." The court went on to review the law in different states and concluded "The evidentiary standards employed by other courts considering withholding or withdrawal of life-sustaining treatment from

incompetent patients reinforce our belief that the clear and convincing standard is the correct one."

The court notes that although *Christopher* concerned a minor in a persistent vegetative condition, and, although there are medical differences between a coma, a persistent vegetative state, and brain death, those differences pale in comparison to the difference between being legally alive and being legally dead. When a court is called on to determine whether a person has suffered brain death and is now dead under the law or can have support withdrawn and will become dead under the law, the court must make that finding by clear and convincing evidence.

The court heard the testimony of Dr. Fisher and Dr. Shanahan. Both doctors presented consistent testimony that established the accepted medical standards for determining brain death in minors. Dr. Shanahan conducted a physical examination of Jahi on December 11, 2013, and Dr. Fisher conducted an examination on December 23, 2013. Both doctors conducted their examinations consistent with the accepted medical standards and both doctors reached independent conclusions of brain death based on their application of the standards to Jahi's condition. In addition, Dr. Shanahan reviewed an EEG taken on or about December 11, 2013, and Dr. Fisher reviewed a different EEG taken on December 23, 2013, and those tests reinforced their conclusions. Dr. Fisher conducted an additional test, a cerebral profusion test, and that test was also consistent with the conclusion of brain death. This clear and convincing evidence was the basis of the court's conclusion on December 24, 2013, that Jahi had suffered brain death and was deceased as defined under Health and Safety Code sections 7180 and 7181.

The court is mindful of the language in *Dority* that states the fact of brain death "does not mean the hospital or the doctors are given the green light to disconnect a life-support device from a brain-dead individual without consultation with the parent or guardian. Parents do not lose all

control once their child is determined brain dead," and that a parent should be fully informed of a child's condition and have the right to participate in a decision of removing the life-support devices. (*Dority*, 145 Cal.App.3d at 279-280.) (See also, Health & Safety Code section 1254.4 [requiring reasonable amount of time to accommodate family in event of declaration of brain death].) The court expressly does not address whether that consultation and opportunity for participation required by Health & Safety Code section 1254.4 occurred in this case.

APPLICABILITY OF PROBATE CODE SECTIONS 4735 AND 4736.

Petitioner's initial memorandum argued that if under Probate Code section 4735 CHO made a determination to decline to comply petitioner's instructions on the basis that it would be "medically ineffective health care or health care contrary to generally accepted health care standards," then under Probate Code section 4736 CHO had the obligation "to make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision" and had the obligation to "[p]rovide continuing care to the patient until a transfer can be accomplished or until it appears that a transfer cannot be accomplished."

Probate Code section 4736 appears to apply only when is it arguable whether the proposed health care would be medically effective. The court finds that Probate Code 4736 does not apply after a determination of death. The court notes that Probate Code section 4736 provides for some time to move a patient and Health and Safety Code section 1254.4 provides a "reasonably brief period" for family to gather at the bedside. Therefore, both statutes provide for a brief period following a determination of brain death before a hospital can remove all support. The court makes no findings and issues no orders under Probate Code sections 4735 and 4736.

MOTION TO SEAL

The Order of December 23, 2013, stated, "The court anticipates that the hearing will be closed to the public under CRC 2.550 et seq. because it involves the medical records of a minor." On December 23 and 24, 2013, petitioner moved to close the hearing in part and to seal and/or redact certain exhibits.

The court CLOSED the courtroom and SEALS the record on the oral testimony provided by Dr. Fisher and Dr. Shanahan in which they detailed their examinations of Jahi. This testimony was provided in chambers with a court reporter present.

The court REDACTS Exhibit 1 (Dr. Fisher's examination notes) in part because the redacted portion is not pertinent to the issues before the court and Jahi's family has an overriding privacy interest in the material that outweighs the public interest in the information. The court permits disclosure of the remainder of Exhibit 1. Although the exhibit reflects Dr. Fisher's examination of Jahi, Dr. Fisher was acting as a court appointed expert on a matter that petitioner had placed at issue in this case.

The court DOES NOT SEAL Exhibits 2-5. These are documents that reflect the accepted medical standards.

The court DOES NOT SEAL Exhibit 6 (Shanahan Declaration filed 12/20/13). This is already in the public file. In addition, although it concerns the medical information of a minor it is conclusory and does not disclose private information.

The court SEALS Exhibit 7. This exhibit reflects Dr. Shanahan's and Dr. Heidersbach's pre-litigation examinations of Jahi. These doctors were acting as agents of CHO and their notes reflect the medical information of a minor.

EXTENSION OF RESTRAINING ORDER, STAY OF THIS ORDER, AND PREPARATION OF JUDGMENT.

The court ORDERS that the Temporary Restraining Order is extended through Monday, December 30, 2013, at 5:00 pm. Until that time, Respondent CHO, its agents, employees, servants and independent contractors are ordered to continue to provide Jahi McMath with the treatment and support which is currently being provided as per the current medications and physicians orders until further order of the court.

In the event that before Monday, December 30, 2013, at 5:00 pm there is a change in Jahi's physiological condition despite CHO provision of the current level of treatment and support and petitioner wants an increased level of treatment and support that CHO is unwilling to provide, then the parties may seek the assistance of the court at any time. The court has provided its contact information to counsel.

The court STAYS the effect of this order until Monday, December 30, 2013, at 5:00 pm to permit petitioner or CHO to file a petition for relief with the Court of Appeal and to seek further relief from that court.

CHO is to submit a proposed final judgment consistent with this order on or before January 9, 2014. (C.R.C. 3.1312.)

The court sets a further case management conference for 1:30 pm on January 16, 2014, in Dept 31. If the case has been resolved or all further near term proceedings will be in the Court of Appeal, then counsel may so inform the court and the court will continue the case management conference to a later date.

IT IS SO ORDERED.

Dated: January 2, 2014

Evelio Grillo
Judge of the Superior Court

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

LATASHA WINKFIELD, the Mother of Jahi McMath, a minor Petitioner, v. CHILDREN'S HOSPITAL OAKLAND, Dr. David Durand M.D. and DOES 1 through 100, inclusive Respondents	Case No. RP13-707598 CASE MANAGEMENT ORDER (1) CONFIRMING PETITIONER'S WITHDRAWAL OF PETITION FOR WRIT OF ERROR CORAM NOBIS AND (2) STATING THERE WILL BE NO CMC ON 10/9/14.

BACKGROUND.

On December 9, 2013, Jahi McMath, a thirteen year old child, had a tonsillectomy performed at Children's Hospital of Oakland ("CHO"). On December 11 and 12, 2013, Dr. Robert Heidersbach, and Dr. Robin Shanahan examined Jahi and concluded that she had suffered brain death under accepted medical standards.

On December 20, 2013, Petitioner filed this action seeking to compel Children's Hospital to provide medical treatment to Jahi. The parties agreed to an examination of Jahi by Paul Fisher MD, the Chief of Child Neurology for the Stanford University School of Medicine to provide an independent opinion pursuant to Health and Safety Code section 7181. Dr. Fisher

examined Jahi the afternoon of December 23, 2013. Dr. Fisher opined that Jahi was brain dead under accepted medical standards. On December 24, 2014, the court held a hearing and then announced from the bench that the court's order was to deny the petition for medical treatment.

On December 26, 2014, the court issued a written order that denied the petition for medical treatment. In the course of addressing the claims in the petition, the court found that Jahi had suffered brain death as defined by Health and Safety Codes 7180 and 7181.

On January 3, 2014, the court held a hearing and issued an order that denied Petitioner's motion for a court order ordering either that Respondent insert a feeding tube and a tracheal tube into the person of Jahi McMath or that Respondent permit Petitioner to have a physician insert a feeding tube and a tracheal tube into the person of Jahi McMath at the hospital. In explaining that decision, the court stated, "Jahi McMath has been found to be brain dead pursuant to Health and Safety Code sections 7180-7181."

On January 17, 2014, the court entered a "Final Judgment" in this case. The judgment states, in part, "the Petition of Latasha Winkfield as mother of Jahi McMath, a minor, is DENIED" and "the motions of petitioner that respondent perform or permit surgical procedures was DENIED as stated in the order dated January 17, 2014."

On Wednesday September 24, 2014, counsel for petitioner sent an email to the court that stated, in part, "From preliminary information I have received, to be soon verified, I believe that I will be asking the court to reverse its ruling on brain death."

On Tuesday, September 30, 2014, the court held a case management conference to discuss procedural matters. On Wednesday, October 1, 2014, the court entered a written order that set a briefing schedule for any motion or application that petitioner might bring and outlined the court's procedural concerns.

On Friday, October 3, 2014, Petitioner filed a petition for a writ or error coram nobis. The hearing was scheduled for Thursday, October 9, 2014.

On Monday, October 6, 2014, the court entered an order appointing Paul Fisher MD as the court's independent expert under Evidence Code 730. This order attached a letter from Dr. Fisher explaining his concerns with the evidence presented in support of the petition for a writ of error coram nobis.

On Wednesday, October 8, 2014, Petitioner filed an objection to the court's order appointing Paul Fisher MD as the court's independent expert and separately filed a notice of motion to continue the hearing set for Thursday, October 9, 2014.

On Wednesday, October 8, 2014, Petitioner sent an email to the court at 9:57 am stating:

> Counsel;
>
> It is my intention to try and take the hearing on the Writ off calendar for tomorrow and re-file it, requesting a hearing date of November 14. This will give every party ample time to brief the very complex issues in this matter.

On Wednesday, October 8, 2014, court staff sent an email to counsel at 10:21 am stating:

> Counsel,
>
> Regarding Mr. Dolan's recent email, I have conferred with Judge Grillo. He states:
>
> 1. Petitioner may unilaterally DROP the pending petition/motion. This will take the matter off the court's calendar.
> 2. Petitioner may seek to CONTINUE the pending petition/motion. This will require consent of the parties or an order of the court. If the parties agree to a continuance the court will continue the pending petition/motion. If the parties do not agree to a continuance then the pending petition/motion will remain on calendar for 10/9/14 and the court will hear petitioner's request for a continuance that that time.
> 3. Petitioner must inform the parties and the court as soon as possible whether petitioner wants to DROP or to CONTINUE the pending petition/motion. The other parties do not need to filed their briefs (scheduled to be due today at 12:00 noon) until after petitioner makes that decision.

On Wednesday, October 8, 2014, Petitioner sent an email to the court at 11:04 am stating:

> Although Petitioner is withdrawing its petition/motion, we request that the Court convene with the parties at the scheduled time tomorrow for the limited purpose of discussing if the various medial experts can communicate with Dr. Fisher to discuss his findings and concerns.
>
> Given that Dr. Fisher is the Court appointed expert, Petitioner requests permission from the Court to allow the various experts to contact Dr. Fisher.

On Wednesday, October 8, 2014, court staff sent an email to counsel at 12:10 pm stating:

> Counsel,
>
> I have conferred with Judge Grillo.
> The court will, at petitioner's request, drop petitioner's motion set for 10/9/14.
> The court will not hold a CMC in this case on 10/9/14.
> If petitioner elects to seek relief in this case, then petitioner may request a CMC at a later date in this case. At any such CMC the court will decide whether to set the matter for further hearing and set any briefing schedule.
> If petitioner elects to file a different case, then any CMC regarding proceedings in that case should be held in that case.
> The court notes that if petitioner elects to file a different case, then petitioner must file a notice of related case informing the court of this case. CRC 3.300.

All of the above emails were copied to all counsel in this case, including counsel for interested non-parties the Alameda County Coroner or the California Department of Public Health.

ORDER.

The court issues this order to confirm the decisions made in the above email communications with counsel.

Petitioner withdrew the petition set for 10/9/14. The court will, at petitioner's request, drop that hearing.

The court will not hold a CMC in this case on 10/9/14. If petitioner elects to seek relief in this case, then petitioner may request a CMC at a later date in this case. At any such CMC the court will decide whether to set the matter for further hearing and set any briefing schedule.

If petitioner elects to file a different case, then any CMC regarding proceedings in that case should be held in that case.

If petitioner elects to file a different case, then petitioner must file a notice of related case informing the court of this case. (CRC 3.300.)

Dated: October 8, 2014

Evelio Grillo
Judge of the Superior Court

EXHIBIT C

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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Spears Plaintiff/Petitioner(s) VS. Rosen Defendant/Respondent(s) (Abbreviated Title)	No. RG15760730 Order Demurrer and Motion to Strike Complaint Denied

The Demurrer to First Cause of Action and Motion to Strike Portion of First Amended Complaint ("FAC"), filed by Defendant UCSF Benioff Children's Hospital Oakland ("CHO") on November 23, 2015, was set for hearing on 01/29/2016 at 02:00 PM in Department 20 before the Honorable Robert B. Freedman. A tentative ruling was published directing counsel to appear.

The matter was argued and submitted, and good cause appearing therefor, IT IS HEREBY ORDERED as follows:

The demurrer to the First Cause of Action for personal injuries on behalf of Jahi McMath ("Jahi") is OVERRULED on the grounds asserted.

CHO's demurrer is based on the argument that Jahi has been declared dead under California law and thus has no standing to sue for personal injury. (Demurrer, p. 2.) The argument is based on: (1) allegations in the FAC itself; (2) the death certificate issued on January 3, 2014; and (3) Judge Grillo's amended order and judgment in Case No. RP13-707598, denying the petition for medical treatment, which included a determination that Jahi "suffered brain death and was deceased as defined under Health and Safety Code sections 7180 and 7181." (See Request for Judicial Notice, Exhs. A and B, including Exh. A at 16:20-22.) The court addresses each argument in turn.

(1) The court is not persuaded that the cited allegations in the FAC contain admissions that Jahi is brain-dead. (See FAC, ¶¶ 18, 19, 23 and 24.)

(2) As to the death certificate, while the court can and will take judicial notice of it, the court cannot take judicial notice of the truth of factual conclusions in it. (See, e.g., Bohrer v. County of San Diego (1980) 104 Cal.App.3d 155, 164.) By statute, a death certificate is prima facie evidence of the facts stated therein but is subject to rebuttal and explanation. (See Health & Safety Code § 103550; In re Estate of Lensch (2009) 177 Cal.App.4th 667, 677 n. 3.)

The FAC includes new allegations to the effect that the death certificate is invalid and has been the subject of requests or petitions to rescind, cancel, void or amend it, but that such efforts have been unsuccessful. (FAC, ¶¶ 27-29.) Further, it appears that, Jahi and her mother Latasha Nailah Spears Winkfield ("Winkfield") filed a complaint in federal court seeking declaratory and injunctive relief, including a determination that the death certificate is invalid. (Reply Decl. of G. Patrick Galloway, Exh. A.)

The court is not persuaded that the death certificate itself - which is subject to rebuttal and explanation

and is the subject of a pending challenge in federal court - establishes the fact of Jahi's death as a matter of law (at the pleading stage) so as to preclude her from bringing the first cause of action.

(3) As to the amended order and judgment in Case No. RP13-707598, there are essentially two aspects to CHO's argument: (a) the asserted collateral estoppel effect; and (b) the asserted finality of a determination of death under Health and Safety Code sections 7180 and 7181.

As to the asserted collateral estoppel effect, CHO has sound arguments that the court's amended order of January 2, 2014 and judgment in Case No. RP13-707598 - denying Winkfield's petition for medical treatment for Jahi after a hearing at which the court considered declarations of Jahi's examining physicians and a physician (Paul Fisher, MD) appointed by the court to provide a second, independent opinion pursuant to Health and Safety Code section 7181 - may ultimately be entitled to collateral estoppel effect as to the determination "that Jahi had suffered brain death and was deceased as defined under Health and Safety Code sections 7180 and 7181." (See Decl. of Joseph E. Finkel, Exh. A, p. 16; see also id., Exh. B; Request for Judicial Notice, items 1(a) and 1(b).) As the court noted at the hearing on this demurrer, Judge Grillo's amended order is detailed as to the court's analysis and consideration of the medical evidence, as well as the procedural posture of the hearing and the parties' opportunity to present evidence and argument as to the "brain death" issue.

Nevertheless, the court is not persuaded that it would be appropriate to determine the collateral estoppel effect of the amended order and judgment in Case No. RP13-707598 at the pleading stage, based solely on the allegations in the FAC and the matters of which judicial notice is taken. Collateral estoppel is an affirmative defense as to which the defendants bear a "heavy" burden of proof. (Kemp Bros. Const., Inc. v. Titan Elec. Corp. (2007) 146 Cal.App.4th 1474, 1482.) There are at least some aspects of the collateral estoppel determination that may require a more developed factual record. The court has concerns, for example, about whether the factual determinations in the context of the expedited probate petition - which was filed for the purpose of determining whether CHO should be ordered to continue providing medical care to Jahi - should necessarily be binding on Jahi in a civil lawsuit for damages brought on her own behalf. There are circumstances in which "[a] new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them." (Rest.2d Judgments § 28(3).) Here, the prior expedited petition did not involve the same type of discovery and presentation of evidence as is involved in a civil action.

In addition, even where the traditional elements of collateral estoppel (privity, finality and necessary determination of identical issue in prior adjudication) are met, there is also an "equitable nature of collateral estoppel" such that the doctrine is to be applied "only where such application comports with fairness and sound public policy." (Smith v. Exxon Mobil Oil Corp. (2007) 153 Cal.App.4th 1407, 1414.) The court believes it would be premature to determine and apply such considerations based solely on the allegations and matters of judicial notice before it, without a more fully developed factual record.

Further, as both sides recognize (and as Judge Grillo noted in his Order Following Case Management Conference issued on October 1, 2014), California law on issue preclusion permits "reexamination of the same questions between the same parties where in the interim the facts have changed or new facts have occurred which may alter the legal rights of the parties." (City of Oakland v. Oakland Police and Fire Retirement System (2014) 224 Cal.App.4th 210, 230.) Jahi has included new allegations in the FAC as to such changed circumstances. (See, e.g., FAC, ¶¶ 30-36.) Such allegations are to be taken as true on demurrer. (See, e.g., Aubry v. Tri-City Hospital Dist. (1992) 2 Cal.4th 962, 966-967.) The court is hesitant to determine that, at the pleading stage, there is no factual issue as to whether the facts have changed or new facts have occurred.

As to the asserted finality of a determination of death under Health and Safety Code sections 7180 and 7181, the court does not find the authority cited by CHO sufficient for the court to determine, at the pleading stage, that the determination made in the context of Winkfield's probate petition is to be accorded finality for any and all other purposes, independent of considerations of collateral estoppel discussed above. CHO contends that a determination of brain death in the context of a probate petition initiated by the guardian of an individual as to whom there is doubt as to her life or death status, based on the procedures set forth in Health and Safety Code sections 7180 and 7181, is a determination that (at least unless set aside) must be accorded finality to serve the purposes of the Uniform Determination of Death Act (UDDA). As CHO observes, such statutes serve the purpose of allowing the family,

physicians and others to take actions based on such a determination, including cessation of life support, removal of organs for transplant, probate of the decedent's estate, and the like. (See, e.g., H&S Code § 7151.40.)

Nevertheless, despite the court's continuance of the hearing so the parties could submit further authority in this regard, the only authority cited by CHO in its supplemental memorandum in this regard (aside from a case to the effect that statutes should be construed in a manner consistent with the ordinary meaning of the words used) is Dority v. Superior Court (1983) 145 Cal.App.3d 273. In that case, the court recognized that, while Health and Safety Code sections 7180 and 7181 provide physicians and the guardian of an individual asserted to have suffered brain death with standards for making such a determination, "[w]e find no authority mandating that a court must make a determination brain death has occurred." (Id., p. 278.) Instead, "[n]o judicial action is necessary where the health care provider and the party having standing to represent the person allegedly declared to be brain dead are in accord brain death has occurred." (Id., p. 280.) However, "[t]he jurisdiction of the court can be invoked upon a sufficient showing that it is reasonably probable that a mistake has been made in the diagnosis of brain death or where the diagnosis was not made in accord with accepted medical standards." (Id.) In Dority, for example, "the parents became unavailable by their actions, requiring the court to appoint a temporary guardian. The guardian, faced with a diagnosis of brain death, correctly sought guidance from the court. The court, after hearing the medical evidence and taking into consideration the rights of all the parties involved, found [the individual] was dead in accordance with the California statutes and ordered withdrawal of the life-support device." (Id., p. 280.) The Court of Appeal held that the "court's order was proper and appropriate." (Id.)

While Dority supports the appropriateness of the judicial proceeding in Case No. RP13-707598, in which Winkfield sought the court's intervention because of uncertainty as to the treating physicians' diagnosis of brain death and Winkfield's assertion that CHO should continue providing life support to Jahi, it does not directly address CHO's assertion that a court's determination in the context of a such a dispute is to be accorded finality in any and all other proceedings or disputes that may arise subsequent to the life-support dispute in which the court's intervention was sought. In the absence of other authority addressing this assertion, the court declines to make a final determination in this regard at the pleading stage.

The court is not persuaded by CHO's argument that Plaintiffs are "improperly asking this court or a jury to reject the accepted medical standards used to determine irreversible brain death." Plaintiffs are not, by way of this action, expressly seeking any redetermination or reversal of the matters in the prior probate proceeding or seeking to apply standards other than those set forth in the UDDA. Instead, they have brought a civil action independent of the prior proceeding, which includes a cause of action asserted on Jahi's behalf. CHO, as the party moving for dismissal of that cause of action, bears the burden of showing that it is insufficient or barred as a matter of law, and the court determines that CHO has not met this burden at the pleading stage, based solely on the allegations and matters of which the court takes judicial notice.

CHO's motion to strike the language in paragraph 54 that "[i]n the event that it is determined Jahi McMath succumbed to the injuries" is DENIED. At the pleading stage, Plaintiffs are entitled to use such language to preserve their right to plead in the alternative, regardless of what determinations may subsequently be made herein.

CHO's Request for Judicial Notice, at pages 2-3 of its moving memorandum and accompanied by the Declaration of Joseph E. Finkel in Support of the request, is GRANTED, but the court does not take judicial notice of the truth of matters asserted, or the binding nature of any determinations made, in the accompanying exhibits.

Plaintiffs' Request for Judicial Notice, filed on January 5, 2016, is GRANTED, but the court does not take judicial notice of the truth of the allegations in the attached exhibit and makes no determination that the exhibit is material to the court's determination of this demurrer and motion to strike.

CHO shall have 14 days after the date reflected in the clerk's declaration of service of this order in which to file and serve an answer to the First Amended Complaint.

CHO's Request for Question Certification Under Code of Civil Procedure section 166.1, filed on January 27, 2016, is GRANTED IN PART. The court has issued a separate order setting forth its

belief that there are controlling questions of law involved in the instant order as to which there are substantial grounds for difference of opinion, appellate resolution of which may materially advance the conclusion of the litigation. (See C.C.P. § 166.1.)

Dated: 03/14/2016

facs mte

Judge Robert B. Freedman

Order

EXHIBIT D

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND ET AL.,

Petitioners,

v.

THE SUPERIOR COURT OF ALAMEDA COUNTY,

Respondent;

LATASHA NAILAH SPEARS WINKFIELD ET AL.,

Real Parties in Interest.

A147989

(Alameda County
Super. Ct. No. RG15760730)

BY THE COURT:[1]

In the underlying case, plaintiffs and real parties in interest Latasha Nailah Spears Winkfield, Marvin Winkfield, Sandra Chatman, Milton McMath and Jahi McMath (Jahi), by and through her Guardian Ad Litum, Latasha Nailah Spears Winkfield, brought suit against defendants and petitioners UCSF Children's Hospital Oakland (UCSF) and Dr. Frederick Rosen for personal injury, and, in the alternative, wrongful death.

Petitioners ask this court to issue a writ of mandate directing the trial court to sustain demurrers by UCSF and Dr. Rosen to Jahi's first cause of action for personal injury, asserting that it is precluded by the collateral estoppel effect of the probate court's earlier finding that Jahi had suffered brain death. Because the trial court found the record at the pleading stage was inadequate for a collateral-estoppel determination and "may require a more developed factual record," we conclude, under these circumstances, that

[1] Before Humes, P.J., Margulies, J., and Banke, J.

this matter should not be resolved at the pleading stage. (See *Babb v. Superior Court* (1971) 3 Cal.3d 841, 851 [writ relief at pleading stage generally disfavored].)

The petition for writ of mandate or other appropriate relief is denied.

Date: JUL 12 2016

HUMES, P.J.

P.J.

ATTACHMENT 6.C.

UNAVAILABLE DATES FOR COUNSEL

2018

January 23-24	Kapoor, M.D. / MBC	OAH-Oakland
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 19-20	Huang, Regina/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
June 21-July 1	Vacation	
July 10 - July 27	Orellana v. Petrossian, MD	Merced Superior Court
Oct 29 – Nov 2	Wittpenn v. Hosohama, MD	Monterey County Superior Court
December 10 – 19	Simon v. Helenius, MD	Monterey County Superior Court

2019

February 4-14	Dodge v. Ochia, MD	San Francisco Superior Court
April 15-25	Whiteley v. Dharan, MD	Alameda County Superior Court
June 10-20	Farrell v. Hongo, MD	San Francisco Superior Court

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.

CASE MANAGEMENT STATEMENT.

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.

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

____ If FACSIMILE TRANSMISSION, said copies were placed for transmission by this 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 E-MAIL OR ELECTRONIC TRANSMISSION. I caused the documents to be sent to each party at their e-mail addresses of record (listed herein). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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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 March 1, 2018.

Natalyn Griffie

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

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