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3 **THE DOLAN LAW FIRM, PC**
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5 San Francisco, California 94102
6 Telephone: (415) 421-2800
7 Facsimile: (415) 421-2830

8 Attorneys for PLAINTIFF
9 JAHl MCMATH, a minor
10 and NAILAH WINKFIELD

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 JAHl MCMATH, a minor; NAILAH
14 WINKFIELD, an individual, as parent, as
15 guardian, and as next friend of JAHl McMath,
16 a minor

17 Plaintiffs,

18 v.

19 STATE OF CALIFORNIA;
20 COUNTY OF ALAMEDA, et al

21 Defendants.
22
23

Case No. 4:15-cv-06042-HSG

**JOINT STATUS CONFERENCE
STATEMENT**

Judge: The Honorable Haywood S. Gilliam,
Jr.

Action filed: December 23, 2015

24 On June 22, 2018, the State of New Jersey issued a death certificate for Jahi McMath.
25 (Exh. A.) On September 7, 2018, plaintiffs dismissed with prejudice their State Court Action
26 (*Spears v. Rosen*, Alameda County Superior Court, Case No. RG15760730.) (Exh. B.) This
27 dismissal took off calendar the jury trial regarding whether plaintiff “Jahi McMath meets the
28 ////

1 legal definition of ‘brain death’ pursuant to the criteria set for by the [California] Legislature in
2 [Health and Safety] Code § 7180.” (Exh. C.)

3 Plaintiffs contend that the State Court Action did not adjudicate the issue in the current
4 matter and that the two separate death certificates create an issue regarding Jahi McMath’s
5 correct date of death.

6 Defendants contend that as Jahi McMath presently satisfies the criteria for brain death
7 under California Health and Safety Code section 7180, this case is now moot. Defendants
8 further contend that the voluntary dismissal with prejudice of the State Court Action requires the
9 remaining portion of this Federal Court Action, which is stayed under the *Pullman* abstention, to
10 be dismissed because “[i]f a court abstains under *Pullman*, the ‘federal plaintiff must then seek[]
11 a definitive ruling in the state courts on the state law questions before returning to the federal
12 forum.’” (Order Granting in Part and Denying in Part Motion to Dismiss and Staying Case,
13 9:24-28.) Moreover, intervenors will seek to withdraw from the case if dismissal is not entered.

14 Dated: Oct. 30, 2018

DOLAN LAW FIRM, PC

15
16 By /s/ Aimee Kirby
17 Christopher Dolan, Esq.
18 Aimee E. Kirby, Esq.
Attorney for Plaintiffs

19 Dated: Oct. 30, 2018

SEVERSON & WERSON

20
21 By /s/ John Kortum
22 John L. Kortum, Esq.
Attorney for County Defendants

23 Dated: Oct. 30, 2018

**OFFICE OF THE ATTORNEY GENERAL,
STATE OF CALIFORNIA**

24
25 By /s/ Charles J. Antonen
26 Charles J. Antonen, Esq.
27 Attorney for the State of California Defendants
28

1 Dated: Oct. 30, 2018

COLE PEDROZA LLP

2 By /s/ Kenneth Pedroza
3 Kenneth Pedroza, Esq.
4 Dana Stenvick, Esq.
5 Attorney for Fredrick Rosen, MD and UCSF
6 Benioff Children's Hospital Oakland

7 Dated: Oct. 30, 2018

**DONNELLY, NESLON DEPOLO
MURRAY AND EFREMSKY**

8 By /s/ Scott Murray
9 Scott E. Murray, Esq.
10 Sonja M. Dahl, Esq.
11 Attorney for JAMES PATRICK HOWARD, MD

12 Dated: Oct. 30, 2018

**MCNAMARA, NEY, BEATTY, SLATTERY,
BORGES AND AMBACHER**

13 By /s/ Robert Hodges
14 Robert Hodges, Esq.
15 Attorney for ROBERT WESMAN, MD
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Exhibit A

A0013872813

STATE FILE NUMBER
20180037090

CERTIFICATE OF DEATH

DECEASED NAME

JAHI KELIS MCMATH

DATE OF BIRTH

[REDACTED]

SEX

FEMALE

DATE OF DEATH

06/22/2018

PLACE OF DEATH

NEW BRUNSWICK CITY

COUNTY OF DEATH

MIDDLESEX

RESIDENCE ADDRESS

[REDACTED]

SOCIAL SECURITY NUMBER

[REDACTED]

MUNICIPALITY OF RESIDENCE

FRANKLIN TOWNSHIP

COUNTY OF RESIDENCE

SOMERSET

DOMESTIC STATUS

SINGLE/NEVER MARRIED

MANNER OF DEATH: **NATURAL**

CAUSE OF DEATH:

**BLEEDING
HYPOVOLEMIC SHOCK
HEPATIC FAILURE
ANOXIC BRAIN INJURY**

DATE ISSUED: **JUNE 29, 2018**

DATE FILED WITH REGISTRAR: **06/29/2018**

AMENDED DATE:

ISSUED BY:

New Brunswick City

Jenny Sanders, Deputy Registrar

This is to certify that the above is correctly copied from a record on file in my office.

Certified copy not valid unless the raised Great Seal of the State of New Jersey or the seal of the issuing municipality or county, is affixed hereon.



Vincent T. Arrisi

Vincent T. Arrisi
State Registrar
Office of Vital Statistics and Registry



REG-42A
JUN 14



THIS DOCUMENT CONTAINS A UNIQUE STATE OF NJ WATERMARK HOLD AT LIGHT TO VERIFY

THIS DOCUMENT CONTAINS A UNIQUE STATE OF NJ WATERMARK HOLD AT LIGHT TO VERIFY

Exhibit B



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) SBN 93578
Bruce M. Brusavich
AgnewBrusavich, 20355 Hawthorne Boulevard, 2nd Fl., Torrance, CA 90503
TELEPHONE NO.: (310) 793-1400 FAX NO. (Optional): (310) 793-1499
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): Plaintiffs LATASHA NAILAH SPEARS; et al.

FOR COURT USE ONLY
FILED
ALAMEDA COUNTY
SEP 07 2018
CLERK OF THE SUPERIOR COURT
By Sue Pecko Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
STREET ADDRESS: 24405 Amador Street
MAILING ADDRESS: 24405 Amador Street
CITY AND ZIP CODE: Hayward, CA 94544
BRANCH NAME: Hayward Hall of Justice

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

REQUEST FOR DISMISSAL

CASE NUMBER: RG 15760730

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. TO THE CLERK: Please **dismiss** this action as follows:
- a. (1) With prejudice (2) Without prejudice
 - b. (1) Complaint (2) Petition
 - (3) Cross-complaint filed by (name):
 - (4) Cross-complaint filed by (name):
 - (5) Entire action of all parties and all causes of action
 - (6) Other (specify):*

on (date):
on (date):

2. (Complete in all cases except family law cases.)
The court did did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed.)

Date: September , 2018

BRUCE M. BRUSAVICH
(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

[Signature]
(SIGNATURE)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**
Date:

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

[Signature]
(SIGNATURE)

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

(To be completed by clerk)

4. Dismissal entered as requested on (date): **SEP 07 2018**

5. Dismissal entered on (date): as to only (name):

6. Dismissal not entered as requested for the following reasons (specify):

- 7. a. Attorney or party without attorney notified on (date):
- b. Attorney or party without attorney not notified. Filing party failed to provide a copy to be conformed means to return conformed copy

Date: **SEP 07 2018** Clerk, by [Signature] Deputy

PLAINTIFF/PETITIONER: LATASHA NAILAH SPEARS WINKFIELD; et al. DEFENDANT/RESPONDENT: FREDERICK S. ROSEN, M.D.; et al.	CASE NUMBER: RG 15760730
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COURT'S RECOVERY OF WAIVED COURT FEES AND COSTS

If a party whose court fees and costs were initially waived has recovered or will recover \$10,000 or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other means, the court has a statutory lien on that recovery. The court may refuse to dismiss the case until the lien is satisfied. (Gov. Code, § 68637.)

Declaration Concerning Waived Court Fees

1. The court waived court fees and costs in this action for *(name)*:
2. The person named in item 1 is *(check one below)*:
 - a. not recovering anything of value by this action.
 - b. recovering less than \$10,000 in value by this action.
 - c. recovering \$10,000 or more in value by this action. *(If item 2c is checked, item 3 must be completed.)*
3. All court fees and court costs that were waived in this action have been paid to the court *(check one)*: Yes No

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

Date: _____

(TYPE OR PRINT NAME OF ATTORNEY PARTY MAKING DECLARATION)

▲

(SIGNATURE)

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is AGNEW BRUSAVICH, 20355 Hawthorne Blvd., 2nd Floor, Torrance, California. On September 4, 2018, I served the within document **REQUEST FOR DISMISSAL**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Torrance, California, addressed as set forth below:
- by placing a true copy thereof enclosed in a sealed envelope(s), and caused such envelope(s) to be delivered by hand delivery addressed pursuant to the document(s) listed above to the person(s) at the address(es) set forth below.
- by electronic service. Based on a court order or an agreement of the parties to accept service by electronic transmission. I caused the documents to be sent to the persons at the electronic notification addresses as set forth below:

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

Andrew N. Chang ESNER, CHANG & BOYER Southern California Office 234 East Colorado Boulevard Suite 975 Pasadena, CA 91101 achang@ecbappeal.com	ASSOCIATE ATTORNEY FOR PLAINTIFFS LATASHA NAILAH SPEARS WINKFIELD; MARVIN WINIKFIELD; SANDREA CHATMANH; and JAHl McMATH, a minor, by and through her Guardian ad Litem, LATASHA NAILAH SPEARS WINKFIELD (626) 535-9860 FAX (626) 535-9859
Thomas E. Still Jennifer Still HINSHAW, MARSH, STILL & HINSHAW 12901 Saratoga Avenue Saratoga, CA 95070-9998 tstill@hinshaw-law.com jstill@hinshaw-law.com	ATTORNEYS FOR FREDERICK S. ROSEN, M.D. (408) 861-6500 FAX (408) 257-6645
Richard Carroll CARROLL KELLY TROTTER FRANZEN McBRIDE & PEABODY 111 West Ocean Boulevard 14 th Floor Long Beach, CA 90802 rdcarroll@cktfm.com	ATTORNEYS FOR DEFENDANT UCSF BENOIFF CHILDREN'S HOSPITAL (562) 432-5855 FAX (562) 432-8785
Scott E. Murray Vanessa L. Efremsky DONNELLY NELSON DEPOLO MURRAY & EFREMSKY, A Professional Corporation 201 North Civic Drive, Suite 239 Walnut Creek, CA 94596-3879 Smurray@dndmlawyers.com vefremsky@dndmlawyers.com	ATTORNEYS FOR DEFENDANT JAMES PATRICK HOWARD, M.D., Ph.D. (925) 287-8181 FAX (925) 287-8188
(Empty)	(Empty)

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1 Robert W. Hodges 2 McNAMARA NEY BEATTY SLATTERY BORGES 3 & AMBACKER, LLP 4 3480 Buskirk Avenue 5 Suite 250 6 Pleasant Hill, CA 94523 7 <u>robert.hodges@mcnamaralaw.com</u> 8 <u>karen.merick@mcnamaralaw.com</u>	ATTORNEY FOR ROBERT M. WESMAN, M.D. (925) 939-5330 FAX (925) 939-0203
6 Thomas J. Doyle 7 Sarah Gosling 8 SCHUERING ZIMMERMAN & DOYLE, LLP 9 400 University Avenue 10 Sacramento, CA 95825-6502 11 <u>tjd@szs.com</u> 12 <u>scg@szs.com</u>	ATTORNEY FOR DEFENDANT ALICIA HERRERA, M.D. (916) 567-0400 FAX (916) 568-0400
10 Kenneth R. Pedroza 11 Dana L. Stenvick 12 COLE PEDROZA LLP 13 2670 Mission Street 14 Suite 200 15 San Marino, CA 91108 16 <u>kpedroza@colepedroza.com</u> 17 <u>dstenvick@colepedroza.com</u>	ASSOCIATE COUNSEL FOR FREDERICK S. ROSEN, M.D. and UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND (626) 431-2787 FAX (626) 431-2788
15 Dennis K. Ames 16 LaFollette, Johnson, DeHaas, Fesler & Ames 17 2677 North Main Street 18 #901 19 Santa Ana, CA 92705-6631 20 <u>dames@ljdfa.com</u>	ASSOCIATE COUNSEL FOR JAMES PATRICK HOWARD, M.D., Ph.D. (714) 558-7008 FAX (714) 972-0379

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

- 22 (State) I declare under penalty of perjury under the laws of the State of California
 23 that the above is true and correct.
- 24 (Federal) I declare that I am employed in the office of a member of the bar of
 25 this court at which direction the service was made.

26 Executed this 4th day of September, 2018, at Torrance, California.

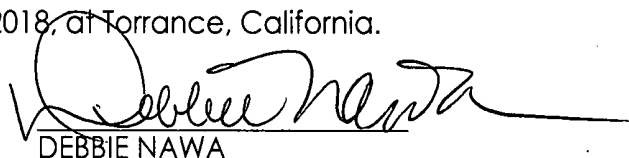
26 
 27 DEBBIE NAWA

Exhibit C



FILED
ALAMEDA COUNTY

JUN 25 2018

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

HAYWARD HALL OF JUSTICE

CLERK OF THE SUPERIOR COURT

By *Robert Clark*
Deputy

LATASHA NAILAH SPEARS
WINKFIELD, et al.,

Plaintiffs,

vs.

FREDERICK S. ROSEN, M.D., et al.,

Defendants.

Case No. RG15760730

ORDER BIFURCATING ISSUES FOR
TRIAL (CCP § 1048(b))

On April 19, 2018, counsel for Plaintiffs and Defendants appeared in Department 517, 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 § 7180 (Uniform Determination of Death Act). See CCP § 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). On April 17, 2018, the Court published its Tentative Ruling denying Plaintiffs' Motion to Bifurcate

and issuing an Alternative Bifurcation Order pursuant to CCP § 1048(b). No party expressed any concerns regarding the Court's proposed bifurcation order.

Therefore, FOR GOOD CAUSE shown, the Court declines to enter the bifurcation order proposed by Plaintiffs' counsel. Instead, the Court HEREBY ORDERS that counsel for Plaintiffs and Defendants appear on February 11, 2019, at 8:30 a.m., in Department 517 for 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 § 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 § 17(b)(6). In 1992, the Legislature enacted a provision to add unborn fetuses to the definition of a "person" under the law.

The Court will determine at the trial whether Plaintiff Jahi McMath meets the legal definition of "brain death" pursuant to the criteria set forth by the Legislature in H&S Code § 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 made by a jury. *See People v. Superior Court* (2002) 103 Cal.App.4th 409, 433 (jury makes credibility determinations and resolves underlying disputed factual issues regarding standing).

The Court's formal Trial Setting Order is HEREBY AMENDED to clarify that the Court has made the foregoing bifurcation order and that only the above-described issues will be tried during the first phase commencing on February 11, 2019. The remainder of the Court's Trial Setting Order issued on April 19, 2018 is binding on the parties and their attorneys of record.

Counsel for Defendant James Patrick Howard, M.D., Ph. D., shall file and serve the Notice of Entry of Order no later than July 3, 2018.

IT IS SO ORDERED.

Dated 6-25-2018



Stephen M. Pulido
Judge of the Superior Court

**CLERK'S CERTIFICATE OF MAILING
(CCP 1013a)**

I certify that the following is true and correct:

I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is **24405 Amador Street Hayward, California 94544**. I served this **ORDER** by placing copies in envelope(s) addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail in **Hayward**, California, following standard court practices.

- ▀ Sparks Esq, Karen A.
Galloway, Lucchese & Everson
2300 Contra Costa Blvd.
#350
Pleasant Hill, CA 945232398

- ▀ Brusavich, Bruce M.
AGNEWBRUSAVICH
20355 Hawthorne Blvd.
2nd Fl.
Torrance, CA 90503

- ▀ Dahl, Sonja M
Donnelly Nelson Depolo Murray & Efremsky
201 North Civic Drive
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Walnut Creek, CA 94596_____

- ▀ Chang, Andrew N.
ESNER, CHANG & ELLIS
35 Quail Ct. #303
Walnut Creek, CA 94596

- ▀ Doyle, Thomas J.
Schuering Zimmerman & Doyle, LLP
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- ▀ Chang, Andrew N.
Esner, Chang & Boyer
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▪ Hodges, Robert W.
McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP
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▪ Pedroza, Kenneth
Cole Pedroza LLP
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Suite 200
San Marino, CA 91108

▪ Still, Thomas E.
Hinshaw, Draa, Marsh, Still & Hinshaw
12901 Saratoga Ave
Saratoga, CA 95070

Date: 6/26/18

Executive Officer/Clerk of the Superior Court

By 

Kasha Clarke, Deputy Clerk