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**FILED**  
**ALAMEDA COUNTY**

FEB 15 2018

CLERK OF THE SUPERIOR COURT  
 By *Ante Del* Deputy

6 Attorneys for Defendant, UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND

7  
 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 FOR THE COUNTY OF ALAMEDA

11 LATASHA NAILAH SPEARS WINKFIELD;  
 12 MARVIN WINKFIELD; SANDRA  
 13 CHATMAN; and JAHl McMATH, a minor, by  
 and through her Guardian Ad Litem LATASHA  
 14 NAILAH SPEARS WINKFIELD

CASE NO.: RG15760730

**EX PARTE APPLICATION FOR ORDER  
 CONTINUING PLAINTIFF'S MOTION  
 TO BIFURCATE; MEMORANDUM OF  
 POINTS AND AUTHORITIES;  
 DECLARATION OF RICHARD D.  
 CARROLL**

Plaintiffs,

vs.

16 FREDERICK S. ROSEN, M.D.; UCSF  
 17 BENIOFF CHILDREN'S HOSPITAL  
 18 OAKLAND (formerly Children's Hospital &  
 Research Center at Oakland); MILTON  
 19 McMATH, a nominal defendant, and DOES 1  
 THROUGH 100

**DATE: February 15, 2018**  
**TIME: 2:30 p.m.**  
**DEPT.: 517**  
**RES #: R-1935569**

ASSIGNED FOR ALL PURPOSES TO:  
 JUDGE STEPHEN PULIDO  
 DEPARTMENT: 517

Defendants.

Complaint Filed: 03/03/2015  
 Trial Date: None

22 TO ALL PARTIES AND THEIR ATTORNEYS:

23 PLEASE TAKE NOTICE that on February 15, 2018, at 2:30 p.m., or as soon thereafter  
 24 as the matter may be heard in Department 517 of the above-entitled Court, located at 24405  
 25 Amador Street, Hayward, California, defendant UCSF Benioff Children's Hospital Oakland  
 26 ("CHO") will be heard on its ex parte application for an order rescheduling plaintiffs' motion set  
 27 for hearing on March 8, 2018, entitled "Motion to Bifurcate the Issue of Whether AAN and AAP  
 28 [American Association of Neurology and American Academy of Pediatrics] Guidelines Meet the

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1 Statutory Definition of "Dead" Under the Uniform Determination Of Death Act (Health & Safety  
2 Code, §7180)."

3 This ex parte application is brought pursuant to Rule 3.1200, et seq. of the California  
4 Rules of Court, based upon statutory bases for the Court to control the scheduling of motions on  
5 matters before it and to prevent irreparable harm or immediate injury from holding proceedings  
6 prior to an adequate opportunity to conduct discovery on the matters presented.

7 This motion is supported by the attached memorandum of points and authorities and the  
8 declaration of Richard D. Carroll.

9  
10 DATED: February 14, 2018

CARROLL, KELLY, TROTTER, FRANZEN,  
McBRIDE & PEABODY

11  
12  
13 By: 

RICHARD D. CARROLL  
DAVID P. PRUETT  
TOBIN J. TROBOUGH  
Attorneys for Defendant,  
UCSF BENIOFF CHILDREN'S HOSPITAL  
OAKLAND

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiffs' attorneys have filed a motion entitled, "Motion to Bifurcate the Issue of  
4 Whether AAN and AAP [American Association of Neurology and American Academy of  
5 Pediatrics] Guidelines Meet the Statutory Definition of 'Dead' Under the Uniform Determination  
6 Of Death Act (Health & Safety Code, §7180)." Plaintiffs have set the hearing date on that  
7 motion for March 8, 2018. That hearing date is prior to the Case Management Conference set by  
8 the Court for March 16, 2018. Defendants assert that the motion was improvidently filed prior to  
9 that Conference. Defendants request the plaintiffs' motion be rescheduled, subject to the Court's  
10 Case Management Order, to be made on March 16, 2018.

11 As this Court knows, complications of a routine medical procedure led to Jahi McMath  
12 being determined to be dead, a determination that has been made by at least three highly  
13 qualified physicians. That determination was certified with the State of California, in  
14 compliance with various statutes requiring the certification and recordation of death. According  
15 to the medical doctors and the certification to the State of California, Jahi McMath has died.

16 In an extraordinary turn of events, Jahi's family has initiated a series of legal proceedings  
17 meant to challenge the determination of death. Having failed to change that determination in  
18 prior proceedings specifically initiated for the purpose of determining death, pursuant to *Dority*  
19 *v. Superior Court* (1983) 145 Cal.App.3d 273, this action was filed purporting to present  
20 alternative theories of liability. The first alternative theory is that Jahi is suing for personal  
21 injuries, based upon the catastrophic complications she suffered from the medical procedures.  
22 Secondly, Jahi's statutory heirs alternatively assert a theory of wrongful death.

23 The theories of liability asserted on behalf of Jahi and her heirs fail to take into account  
24 the government's interest in the certification and recordation of death in the State of California.  
25 Instead, in this action the theories presented attempt to avoid the legal status of death of record  
26 with the State of California.

27 In doing so, the personage of Jahi is being artificially supported in the State of New  
28 Jersey. Hence, the absence of Jahi's person from the State of California appears to prevent the

1 courts of this state from exercising jurisdiction to enforce orders to have the person of Jahi  
2 examined or to be subject to any determination that Jahi is dead that might *again* be made in  
3 accordance with the laws of the State of California.

4 Defendants seek ex parte relief to reschedule, continue, plaintiff's motion to bifurcate.  
5 Defendants make this motion because of the need to conduct further discovery, starting with the  
6 deposition of plaintiff's expert, D. Alan Shewmon, M.D., to challenge the foundation of the  
7 opinions he has asserted in this matter, particularly those asserted in opposition to the  
8 defendants' motion for summary adjudication. The need for that deposition takes on further  
9 prominence considering a declaration of Dr. Shewmon is now presented in support of plaintiff's  
10 motion to bifurcate.

11 Additionally, prior to the deposition of Dr. Shewmon, defendants need to obtain copies of  
12 documentation or other materials, and whatever authentication of such documentation or  
13 materials that plaintiffs claim to exist, that Dr. Shewmon have been given that pertain to this  
14 matter.

15 After completion of such discovery, the parties and the Court should reassess the  
16 propriety of any further examination of Jahi and whether such an examination, or the  
17 implications of a further finding of death in the California court system can be avoided by Jahi's  
18 presence in the State of New Jersey. Considering the extraordinary circumstances of this case,  
19 further case management is required. That was apparently contemplated by the Court when, on  
20 December 19, 2017, it set a Case Management Conference for March 16, 2018. Plaintiff's  
21 motion to bifurcate distorts the case management process by setting a date for hearing of March  
22 8, prior to a date designated by the Court to make case management orders.

23 For these reasons, as supported by the following authorities and the declaration of  
24 Richard D. Carroll, the hearing on plaintiff's motion to bifurcate should be postponed, and  
25 should be scheduled subject to the Court's case management orders, to be made on March 16,  
26 2018.

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1 **II. THE COURT SHOULD GRANT EX PARTE RELIEF, AS THERE ARE**  
2 **APPROPRIATE GROUNDS FOR SUCH RELIEF**

3 **A. Statutory Bases For Ex Parte Relief**

4 Pursuant to “the ex parte rules,” set forth in California Rules of Court, Rule 3.1200, et  
5 seq., ex parte relief may be granted when there is a “statutory basis” for the relief requested.  
6 (Cal. Rules of Court, Rule 3.1202(c).) Here, the statutory bases for relief include the following  
7 provisions authorizing the Court to regulate matters assigned to the Court.

8 Code of Civil Procedure section 128(a), provides, “Every court shall have the power to  
9 do all of the following,” to regulate the timing of motions and discovery, as provided in  
10 subdivisions, as follows: (2) “To enforce order in the proceedings before it”; (3) “To provide for  
11 the orderly conduct of proceedings before it”; (4) “To compel obedience to its ... orders, and  
12 process”; (6) “To compel the attendance of persons to testify in an action or proceeding pending  
13 therein”; and (8) “To amend and control its process and orders so as to make them conform to  
14 law and justice.”

15 In the plaintiffs’ motion to bifurcate itself, reference is made to Code of Civil Procedure  
16 section 598, which provides for a court to make orders, “*at any time*,” empowering the Court to  
17 regulate the timing of the presentation of a motion that would decide “that the trial of any issue  
18 or any part thereof shall precede the trial of any other issue or any part thereof in the case.”

19 Also, plaintiffs’ motion referred to Code Civil Procedure section 1048(b), which includes  
20 the authority of the Court to make orders “in furtherance of convenience or to avoid prejudice,”  
21 including orders relative to whether “separate trials will be conducive to expedition and  
22 economy.”

23 “The case management rules” of the California Rules of Court, Rule 3.720, et seq.,  
24 authorize the Court to make orders relative to case management. The Court’s case management  
25 authority extends to concerns identified by Rule 3.724, in subdivisions (4), “Identifying the facts  
26 and issues in the case that are in dispute,” and (5), “Determining whether the issues in the case  
27 can be narrowed by eliminating any claims or defenses by means of a motion or otherwise.”  
28 Rule 3.727 provides for consideration of matters including those described in the following

1 subdivisions: (8), “Whether discovery has been completed and, if not, the date by which it will  
2 be completed”; (9), “What discovery issues are anticipated”; (10), “Whether the case should be  
3 bifurcated or a hearing should be set for a motion to bifurcate under Code of Civil Procedure  
4 section 598”; and (16), taking into account, “The nature of the injuries.” Moreover, Rule 3.729,  
5 subdivision (24), provides for orders promoting: “The achievement of a fair, timely, and efficient  
6 disposition of the case.”

7 **B. Ex Parte Relief Should Be Granted To Avoid “Irreparable Harm” or**  
8 **“Immediate Danger”**

9 Additionally, ex parte relief would be appropriate on the basis of “irreparable harm” or  
10 “immediate danger.” (Cal. Rules of Court, Rule 3.1202(c).) Plaintiffs’ motion to bifurcate  
11 should be continued, with scheduling to be determined at the Case Management Conference,  
12 because a hearing on March 8, 2018 would subject defendants to irreparable harm or immediate  
13 danger as defendants will not have the ability to complete discovery pertinent to the issues  
14 presented by plaintiffs motion in time to include in defendants’ opposition to that motion.  
15 Defendants have been unable to conduct discovery that is necessary and relevant to the issues  
16 presented by the plaintiffs’ motion, including the taking the deposition to challenge the  
17 foundational bases of the opinions asserted by plaintiffs’ expert D. Alan Shewmon, M.D.  
18 Defendants diligently brought this discovery issue up at the last case management conference, of  
19 December 19, 2017. At that time, the attorney for CHO asked to take that deposition, pursuant  
20 *St. Mary Medical Center v. Superior Court* (1996) 50 Cal.App.4th 1531, wherein the Court of  
21 Appeal held that “the court should allow a party to a summary proceeding the opportunity to take  
22 limited discovery which may effectively dispose of the proceeding,” such as a deposition to  
23 challenge the “the foundational basis” of the declaration of Dr. Shewmon submitted in  
24 opposition to the defendants’ motion for summary adjudication. (*Id.* at 1538-1539, 1541.) The  
25 importance of the foundations for Dr. Shewmon’s opinions now takes on additional significance  
26 because a declaration from him is now submitted with plaintiffs’ motion to bifurcate, with the  
27 assertions made in that declaration constituting the primary basis for plaintiffs’ motion. At that  
28 last case management conference, plaintiffs’ attorney stated a willingness to allow that

1 deposition. Since then, however, plaintiffs' attorney has imposed conditions on allowing it,  
2 including that such a deposition of Dr. Shewmon would be the parties' only deposition of that  
3 witness, with no contemplation of a deposition after designation of experts. Under these  
4 circumstances, with the parties at an impasse on the issue, defendants will be unable to complete  
5 the deposition of Dr. Shewmon prior to the date that papers in opposition to plaintiffs' motion  
6 will be due, February 23, 2018. That presents "irreparable harm" or "immediate danger" as the  
7 issue of the foundation of Dr. Shewmon's opinions will not be available for assessment prior to  
8 the filing of opposition papers or hearing on the motion.

9           Additionally, prior to the deposition of Dr. Shewmon, defendants need to obtain  
10 copies of documentation or other materials, and whatever authentication of such documentation  
11 or materials that plaintiffs claim to exist, that Dr. Shewmon have been given that pertain to this  
12 matter.

13           **C. Case Management Should Take Into Account the Role of the State of**  
14           **California in Certifying and Recording Determinations of Death**

15           Health & Safety Code section 102345(a) provides: "The local registrar of births and  
16 deaths shall transmit each week to the State Registrar all original certificates accepted for  
17 registration by him or her during the preceding week." Relative to that obligation, Health &  
18 Safety Code section 102295 provides: "Each local registrar is hereby charged with the  
19 enforcement of this part in his or her registration district under the supervision and direction of  
20 the State Registrar and shall make an immediate report to the State Registrar of any violation of  
21 this law coming to his or her knowledge." Moreover, regarding the authority for making the  
22 State's records of death, generally, Health & Saf. Code, § 102275 provides: "The health officer  
23 of any approved local health department ... is the local registrar in and for all registration  
24 districts within that health jurisdiction and shall perform all the duties of local registrar of births  
25 and deaths." Otherwise, Health & Safety Code section 102280 provides: "the State Registrar  
26 shall appoint a local registrar of births and deaths for each registration district, whose term of  
27 office shall be four years." Additionally, in Health & Saf. Code § 102305, the court stated: "The  
28 local registrar of births and deaths shall carefully examine each certificate before acceptance for

1 registration and, if any are not completed in a manner consistent with the policies established by  
2 the State Registrar, he or she shall require further information to be furnished as may be  
3 necessary to make the record consistent with those policies before acceptance for registration.”

4 In *Spear v. Board of Medical Examiners* (1956) 146 Cal.App.2d 207, the Court instructed  
5 that a death “certificate, being a public record, was presumed to be true. The presumption was  
6 evidence.” (*Id.* at 211.) Further, *Spear* observed that hospital records “contained entries made  
7 by the attending doctor, an interne, three consulting doctors, and special nurses,” “laboratory  
8 reports,” and other evidence supporting the diagnosis of death due to cancer. (*Id.* at 211-212.)  
9 Citing *Spear*, in *Godshalk v. City of San Diego* (1971) 16 Cal.App.3d 459, the Court stated: “A  
10 public record is presumed to be true.” (*Id.* at 469.)

11 Jahi’s absence from the State of California is being used as a sword and a shield. Courts  
12 have determined that a party “cannot use federal subject matter jurisdiction as both a sword and a  
13 shield, arguing it exists when it serves his interest and arguing it does not when its existence may  
14 result in consequences adverse to him.” (*Blackbird Techs., Inc. v. Joshi* (N.D.Cal. Oct. 6, 2015,  
15 No. 5:15-cv-04272-EJD) 2015 U.S. Dist. LEXIS 136505, at \*1, fn. 1.)

16 This principal has been applied in other contexts to prevent abuses. In *Machado v. State*  
17 *Water Resources Control Board* (2001) 90 Cal.App.4th 720, the Court of Appeal indicated that a  
18 privilege cannot be used to abuse the laws and the orderly administration of justice, stating:  
19 “There is a difference between using the privilege [against self-incrimination] as a shield against  
20 inquisitorial and unfair government practices and using it as a sword to carve a path through the  
21 laws of the land.” (*Id.* at 729; quoting *United States v. Flores* (9<sup>th</sup> Cir. 1985) 750 F2d 1499,  
22 1503.)

23 In *Dwyer v. Crocker National Bank* (1987) 194 Cal.App.3d 1418, the Court of Appeal  
24 observed: “The self-incrimination privilege [of Fifth Amendment] has been extended to civil  
25 trials and administrative hearings, as well as traditionally being applied in criminal cases  
26 [citations]. However, the courts have never allowed a plaintiff to use, in the words of the trial  
27 judge in this case, Carlos E. Velarde, the self-incrimination privilege as a ‘shield and as a sword.’  
28 The courts have prevented the plaintiff in such situation from ‘[blowing] hot and cold.’ Also, the



1 courts have been quick to find a waiver of the privilege when a plaintiff seeks damages on the  
2 one hand and then attempts to inconvenience or hinder or delay the defense and the prosecution  
3 of its case by imposition of a privilege.” (*Id.* at 1432.) In *Dwyer*, the plaintiff was properly  
4 prohibited from “introducing evidence at trial or by motion to support or oppose designated  
5 claims or defenses to which [Dwyer’s] refusal to answer questions or produce documents  
6 whether by invoking [the] Fifth Amendment privilege or otherwise [related].” (*Id.* at 1431.) The  
7 plaintiff in *Dwyer* was prohibited from presenting claim upon which privileged testimony would  
8 pertain.

9 Similarly, in *Dalitz v. Penthouse International* (1985) 168 Cal.App.3d 468, the publisher  
10 of a magazine attempted to assert the First Amendment privilege to protect sources of an  
11 allegedly defamatory story. However, at the same time, Penthouse attempted to assert a claim of  
12 defamation by cross-complaint against the plaintiff. The Court of Appeal again confirmed that a  
13 party cannot rely upon a privilege in that fashion, stating: “Under some circumstances, the First  
14 Amendment privilege protection must give way to other societal interests. For example, the fair  
15 administration of justice here compels disclosure. It is the news publisher who cross-complained  
16 in a matter which arose because of the reports by its own agents and news sources. The shield of  
17 privilege cannot be used as a sword.” (*Id.* at 477.)

18 **III. THE DECLARATION OF RICHARD D. CARROLL SUPPORTS EX PARTE**  
19 **RELIEF**

20 As indicated above, and as set forth in the attached declaration of Richard D. Carroll,  
21 defendants have been unable to conduct discovery that is necessary and relevant to the issues  
22 presented by the plaintiffs’ motion, including taking the deposition to challenge the foundational  
23 bases of the opinions asserted by plaintiffs’ expert D. Alan Shewmon, M.D. Defendants  
24 diligently brought this discovery issue up at the last Case Management Conference, of December  
25 19, 2017. At that time, counsel for CHO asked to take the deposition of Dr. Shewmon, pursuant  
26 *St. Mary Medical Center, supra*, (1996) 50 Cal.App.4th 1531. At that time, plaintiffs’ attorney  
27 stated a willingness to allow that deposition. Since then, however, plaintiffs’ attorney has  
28 imposed conditions on allowing it, including that such a deposition of Dr. Shewmon would be

1 the parties' only deposition of that witness, with no contemplation of a deposition after  
2 designation of experts.

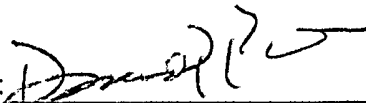
3 Under these circumstances, with the parties at an impasse on the issue, defendants will be  
4 unable to complete the deposition of Dr. Shewmon prior to the date that papers in opposition to  
5 plaintiffs' motion will be due, February 23, 2018, and ex parte relief is appropriate and should be  
6 granted.

7 **IV. CONCLUSION**

8 For the foregoing reasons, defendants respectfully request the Court grant the instant ex  
9 parte application, and that the Court order the hearing date for plaintiff's motion be decided at  
10 the Case Management Conference set for March 16, 2018, 2:30 p.m., with a schedule to then be  
11 set for related discovery, filing of opposing papers, and coordination of hearing of other related  
12 motions to be filed on behalf of the defendants.

13  
14 DATED: February 14, 2018

CARROLL, KELLY, TROTTER, FRANZEN,  
McBRIDE & PEABODY

15  
16  
17 By:   
18 RICHARD D. CARROLL  
19 DAVID P. PRUETT  
20 TOBIN J. TROBOUGH  
Attorneys for Defendant,  
UCSF BENIOFF CHILDREN'S HOSPITAL  
OAKLAND

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1 **DECLARATION OF RICHARD D. CARROLL**

2 I, Richard D. Carroll, hereby declare:

3 1. I am an attorney duly licensed to practice law in the State of California. I am a  
4 partner with the law firm Carroll, Kelly, Trotter, Franzen, McBride and Peabody, attorneys of  
5 record for defendant UCSF Benioff Children’s Hospital Oakland. If called as a witness, I could  
6 and would testify competently to the following.

7 2. On December 19, 2017 I appeared before this Court at the scheduled Case  
8 Management Conference in this matter. At that time I brought up the issue of discovery,  
9 specifically the deposition of plaintiffs’ expert D. Alan Shewmon, M.D. and a request to take  
10 that deposition, pursuant *St. Mary Medical Center v. Superior Court* (1996) 50 Cal.App.4th  
11 1531.

12 3. At that last CMC, plaintiffs’ attorney stated a willingness to allow the deposition  
13 of Dr. Shewmon.

14 4. Therefore, notice of taking the deposition of Dr. Shewmon was served, with the  
15 expectation that arrangements would be made forthwith. Notice of deposition attached as  
16 Exhibit A.

17 5. Since then, however, plaintiffs’ attorney has imposed conditions on allowing it,  
18 including that such a deposition of Dr. Shewmon would be the parties’ only deposition of that  
19 witness, with no contemplation of a deposition after designation of experts. See plaintiffs’  
20 January 23, 2018 correspondence, a true and correct copy of which is attached hereto as  
21 Exhibit B.

22 6. Under these circumstances, with the parties at an impasse on the issue, defendants  
23 have been unable to arrange and complete the deposition of Dr. Shewmon. This presents  
24 “irreparable harm” or “immediate danger” as the issue of the foundation of Dr. Shewmon’s  
25 opinions will not be available for assessment prior to the filing of opposition papers or hearing  
26 on plaintiffs’ motion.

27 ///

28 ///

1           7.       On February 14, 2018, my office faxed to counsel for plaintiffs, and counsel for  
2 defendants, notice of the instant ex parte application. Attached hereto as Exhibit C is a true and  
3 correct copy of that notice and facsimile confirmation pages.

4           8.       Additionally, on February 14, 2018, at 9:49 a.m. and 9:54 a.m., my office  
5 provided verbal notice of defendant's ex parte application to counsel for plaintiffs, Mr.  
6 Brusavich (Jan) and Mr. Chang (Marina) respectively.

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

9           Executed this 14<sup>th</sup> day of February 2018, in Long Beach, California.

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RICHARD D. CARROLL

EXHIBIT A

1 CARROLL, KELLY, TROTTER, FRANZEN, McBRIDE & PEABODY  
2 RICHARD D. CARROLL (SBN 116913)  
3 TOBIN J. TROBOUGH (SBN 140556)  
4 DAVID P. PRUETT (SBN 155849)  
5 111 West Ocean Boulevard, 14th Floor  
6 Post Office Box 22636  
7 Long Beach, California 90801-5636  
8 Telephone No. (562) 432-5855 / Facsimile No. (562) 432-8785  
9 Attorneys for Defendant, UCSF Benioff Children's Hospital Oakland

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ALAMEDA

11 LATASHA NAILAH SPEARS WINKFIELD;  
12 MARVIN WINKFIELD; SANDRA  
13 CHATMAN; and JAHl McMATH, a minor, by  
14 and through her Guardian Ad Litem LATASHA  
15 NAILAH SPEARS WINKFIELD

14 Plaintiffs,

15 vs.

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

21 Defendants.

CASE NO.: RG15760730

NOTICE OF TAKING DEPOSITION OF  
PLAINTIFFS EXPERT D. ALAN  
SHEWMON, M.D. AND FOR  
PRODUCTION OF DOCUMENTS AND  
THINGS, PURSUANT TO THE COURT'S  
12/19/17 ORDER

[Code Civ. Proc. §2034.010, et seq.]

DATE: January 26, 2018  
TIME: 10:00 a.m.  
PLACE: Carroll, Kelly, Trotter, Franzen,  
McBride & Peabody  
111 W. Ocean Blvd., 14<sup>th</sup> Floor  
Long Beach, CA 90802

ASSIGNED FOR ALL PURPOSES TO:  
JUDGE STEPHEN PULIDO  
DEPARTMENT: 16

Complaint Filed: 03/03/2015  
Trial Date: None

25 TO: ALL PARTIES AND TO THEIR ATTORNEY(S) OF RECORD:

26 PLEASE TAKE NOTICE that pursuant to the Court's Order of December 19, 2017,  
27 made during the Case Management Conference, Defendant UCSF BENIOFF CHILDREN'S  
28 HOSPITAL OAKLAND, will take the deposition of Plaintiff's expert D. ALAN SHEWMON,

1 M.D. at the law offices of Carroll, Kelly, Trotter, Franzen, McBride & Peabody located at 111  
2 W. Ocean Boulevard, 14th Floor, in Long Beach, California, as indicated below, before any  
3 certified shorthand reporter by stenographic means, and may utilize instant visual display of the  
4 testimony, of deponent. Notice of the possible use of instant visual display of the testimony is  
5 being provided pursuant to Code of Civil Procedure section 2025.010, et seq.

6 Said deposition will continue from day to day thereafter, excluding Sundays and holidays  
7 until completed. Said deposition may be videotaped and defendant reserves the right to use said  
8 videotaped deposition at trial of the within action pursuant to California Code of Civil Procedure  
9 sections 2025.010, et seq.

10 **The deposition will not go forward and no money will be paid without production of**  
11 **all billing documents.**

12 **NOTICE IS FURTHER GIVEN** that pursuant Code of Civil Procedure section  
13 2034.415, defendant requests that Plaintiff(s) and/or their designated expert witness(es) produce  
14 the following requested information and documents called for in this deposition notice no later  
15 than three (3) business days before the deposition:

16 1. Any and all materials and documents which were reviewed in anticipation of, or  
17 in preparation for, said expert's deposition;

18 2. Any and all materials and documents which were used, either directly or  
19 indirectly to form the basis of any of the assumptions, opinions and/or conclusions of said expert  
20 concerning any of the issues in this case;

21 3. **Any and all documents which reflect the billings for services, time slips, or**  
22 **work logs rendered by the expert in connection with this action;**

23 4. Any and all documents which reflect the qualifications, experience, education  
24 and/or training which the expert possesses, and on which he intends to rely, in qualifying as an  
25 expert with respect to his opinions in the action which is the subject matter of this lawsuit;

26 5. Any and all billing sheets, notes, memoranda, written reports, and other  
27 documents, tangible evidence or writings which they have prepared or relied on in connection  
28 with the expert's involvement in this lawsuit;

- 1           6.     A current Curriculum Vitae and/or resume;
- 2           7.     A complete list of any and all articles, books, or literature authored, edited or  
3 contributed to by you;
- 4           8.     All records, documents and writings, reviewed or to be reviewed by you in this  
5 case;
- 6           9.     All reports, notes and other writings prepared by you or at your request  
7 concerning this case;
- 8           10.    A complete list of articles, books, literature, scientific texts, treatises, journals or  
9 similar publications considered, referred to or relied upon by you in forming your opinions with  
10 regard to this case;
- 11          11.    If the items listed in No. 10 above are unavailable, then a list authored by the  
12 deponent, or someone with his authority, of the title, author, publisher, date and chapter or page  
13 information concerning any such written materials relied upon directly or indirectly;
- 14          12.    Any and all medical records, hospital records, physician reports and other  
15 documentation reviewed by the deponent as part of his or her review of the medical care and  
16 treatment provided to the decedent/plaintiff herein or used in the formation of any opinions as to  
17 said care, treatment, disability or future expenses or maintenance;
- 18          13.    Any and all depositions, testimony transcripts, statements (written, recorded or  
19 otherwise), newspaper articles, journal articles, or any other documents reviewed by the  
20 deponent as part of his review of the case herein used in any way, directly or indirectly, in the  
21 formation by the deponent of any opinions said deponent has as to the present case, or any of the  
22 issues in the present case;
- 23          14.    Each, every and all files, charts, records and/or other documents regarding any  
24 medical condition, care and/or treatment of decedent/plaintiff described in the complaint herein;
- 25          15.    Any and all written or otherwise recorded reports reflecting any medical review  
26 and/or opinion by the deponent relating to the care rendered to the decedent/plaintiff, as  
27 identified in the complaint herein, by one or more of the parties-defendant in this matter, or any  
28 topic concerning the decedent's/plaintiff's past medical condition;



1           16. Any and all photographs, motion pictures, videotapes, radiographs, still  
2 photographs, diagrams and/or other pictorial representations of the decedent/plaintiff, as  
3 identified in the present complaint, or any part thereof;

4           17. Any and all models and diagrams of the human body or bodily parts made by or  
5 for the deponent which have been used in, or have otherwise been connected with, the  
6 deponent's review of said decedent's/plaintiff's care, treatment or medical condition at any time;

7           18. Any and all telephone messages to the deponent, or generated by the deponent,  
8 regarding the deponent's review of materials pertaining to, or the deponent's examination of, the  
9 decedent/plaintiff mentioned in the complaint;

10          19. Any and all billings, invoices, ledger sheets, statements for services and other  
11 records regarding the deponent's compensation for review of the decedent's/plaintiff's care and  
12 treatment and/or the deponent's examination and/or care and treatment of the decedent/plaintiff  
13 described in the Complaint;

14          20. Any other tangible or documentary item or evidence used, relief upon, reviewed,  
15 referred to and/or in any way connected with the deponent's review of the care and treatment  
16 rendered to the decedent/plaintiff by any of the defendants in this action;

17          21. Copies of any notices, announcements, advertising materials or any other form of  
18 printed materials whatsoever pertaining to the availability of the deponent's services as an expert  
19 consultant, including, but not limited to, any such documents the deponent has mailed or  
20 otherwise distributed to anyone within the last four years;

21          22. All notes, tape recordings, highlighted or underlined medical reports, copies of  
22 depositions and other materials made during, or as a part or result of, the deponent's review of  
23 the care and treatment rendered to the decedent/plaintiff, as identified in the present Complaint,  
24 by one or more of the defendants herein;

25          23. All correspondence authored by you or made available to you relative to any  
26 aspect of the subject matter of this case;

27          24. A list of all medical literature which you feel is authoritative on the subject matter  
28 of this litigation;

1 25. If any of the above-items, as described in Nos. 1 - 24, are unavailable at the time  
2 and place of this deposition, the deponent is requested to identify where such items are located,  
3 who has possession of them, and how they may be obtained through the formal processes of the  
4 Court;

5 26. All consent forms utilized by this expert, over the past five years, for the type of  
6 procedure at issue in this action;

7 27. All literature used by this expert, over the past five years, to describe to patients  
8 the nature and manner of performance of the procedure, and risks associated with the type of  
9 procedure at issue in this action;

10 28. All lists that have accompanied any reports, you have created, submitted or have  
11 had submitted or created on your behalf pursuant to Federal Rule of Civil Procedure, Rule 26(a)  
12 in the last 5 years, including but not limited to a list of publications authored by you and a list of  
13 all cases that you testified as an expert at trial or by deposition;

14 29. A list of all cases which you have testified at deposition, arbitration or trial in the  
15 last 4 years, at the request of an attorney, including (a) the full name of the case; (b) the case  
16 number; (c) the name and address of the attorney who retained you and (d) the name and address  
17 of the attorney for all other parties;

18 30. All documents pertaining to the basis for an assessment of whether Jahi McMath  
19 has ever been brain dead;

20 31. All documents reviewed or considered relative to Jahi McMath; and

21 32. All documents relative to declarations made regarding Jahi McMath.

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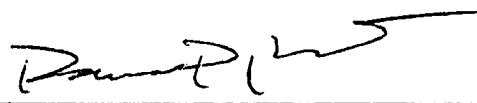
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A list of all parties or attorneys for parties on whom this Notice of Taking Deposition and for Production of Documents is being served is shown on the accompanying proof of service.

DATED: January 11, 2018

CARROLL, KELLY, TROTTER, FRANZEN,  
McBRIDE & PEABODY

By:   
RICHARD D. CARROLL  
TOBIN J. TROBOUGH  
DAVID P. PRUETT  
Attorneys for Defendant,  
UCSF Benioff Children's Hospital Oakland

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
4 and not a party to the within action. My business address is Post Office Box 22636, Long Beach,  
5 CA 90801-5636. On January 11, 2018, I served a true and correct copy of the following  
6 document **NOTICE OF TAKING DEPOSITION OF PLAINTIFFS EXPERT D. ALAN SHEWMON, M.D. AND FOR PRODUCTION OF DOCUMENTS AND THINGS,**  
7 **PURSUANT TO COURT'S 12/19/17 CMC ORDER** on the list of interested parties below:

- 8  **By United States Mail (CCP §§1013a, et seq.):** I enclosed said document(s) in a sealed  
9 envelope or package to each addressee. I placed the envelope for collection and mailing,  
10 following our ordinary business practices. I am readily familiar with the firm's practice  
11 for collecting and processing correspondence for mailing. On the same day that  
12 correspondence is placed for collection and mailing, it is deposited in the ordinary course  
13 of business with the United States Postal Service, with postage fully prepaid.
- 14  **By Overnight Delivery/Express Mail (CCP §§1013(c)(d), et seq.):** I enclosed said  
15 document(s) in a sealed envelope or package provided by an overnight delivery carrier to  
16 each addressee. I placed the envelope or package, delivery fees paid for, for collection  
17 and overnight delivery at an office or at a regularly utilized drop box maintained by the  
18 express service carrier at 111 West Ocean Boulevard, Long Beach, California.
- 19  **By Fax Transmission (CRC 2.306):** Based on a written agreement of the parties to  
20 accept service by fax transmission, I faxed said document(s) to each addressee's fax  
21 number. The facsimile machine that I utilized, (562) 432-8785, complied with California  
22 Rules of Court, Rule 2.301(3), and no error was reported by the machine. Pursuant to  
23 Rule 2.306(h)(4), I caused the machine to print a record of the transmission, a copy of  
24 which is attached to the original of this proof of service.
- 25  **By Messenger Service:** I enclosed said document(s) in a sealed envelope or package to  
26 each addressee. I provided them to a professional messenger service (Signal Attorney  
27 Service) for service. An original proof of service by messenger will be filed pursuant to  
28 California *Rules of Court*, Rule 3.1300(c).
- 29  **Electronic Mail.** Via e-mail to the address shown above.

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

32 Executed on January 11, 2018, at Long Beach, California.

33   
34 \_\_\_\_\_  
35 LAURIE BAKER

1 Service List  
2 *Winkfield v. Rosen*; Case No.: RG15760730

3 Bruce M. Brusavich, Esq.  
4 Terry S. Schneier, Esq.  
5 Agnew Brusavich  
6 A Professional Corporation  
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10 **Attorneys for Plaintiffs**

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14 **Rosen, M.D.**

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13 Donnelly Nelson Depolo & Murray  
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17 F: (925) 287-8188  
18 **Attorneys for Defendant, James Patrick**  
19 **Howard, M.D.**

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**Attorneys for Defendant Robert M.**  
**Wesman, M.D.**

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28

EXHIBIT B

**AGNEW BRUSAVICH**  
SERIOUS INJURY LAWYERS

---

Gerald E. Agnew, Jr.  
Bruce M. Brusavich  
Stephen C. Rasak  
Terry S. Schneier  
Alexander B. Boris

Robert N. Stone  
*Of Counsel*

Daniel V. Favero  
*Administrator*

Kevin P. Culpepper  
*Paralegal*

January 23, 2018

**VIA U.S. MAIL & EMAIL:**

Richard D. Carroll  
Tobin J. Trobough  
David P. Pruet  
CARROLL KELLY TROTTER FRANZEN McBRIDE & PEABODY  
111 West Ocean Boulevard, 14<sup>th</sup> Floor  
Long Beach, CA 90802

SEE ATTACHED LIST FOR ALL OTHER COUNSEL

Re: Jahi McMath; et al. v. Frederick S. Rosen, M.D.; et al.  
Deposition of plaintiff's expert D. Alan Shewmon, M.D.

Dear Counsel:

I write concerning the unilaterally noticed deposition of Dr. Shewmon by the Carroll Kelly office for January 26, 2018. I am unavailable on that date and the deposition will have to be rescheduled.

Furthermore, before the deposition proceeds we will need an agreement concerning the taking of this deposition. I write to seek everyone's agreement in that regard.

As everyone knows, Dr. Shewmon is one of plaintiffs' consulting expert witnesses who has never been a treating physician of Jahi McMath. Given the fact that we have not yet been assigned a trial, there has been no formal designation of experts and as such, Dr. Shewmon remains a consultant. If I agree to allow Dr. Shewmon to be deposed at this time, all counsel must agree that this would constitute the expert witness deposition of Dr. Shewmon. In the event Dr. Shewmon's opinions change or if he has new or different opinions with the passage of time, I would allow Dr. Shewmon to be re-deposed on those new or different opinions. Absent that, there would be no right to re-depose him absent a Court Order.

Main Office: 20355 Hawthorne Blvd | Torrance, CA 90503 | T: 310.793.1400 | F: 310.793.1499  
Orange County: 2171 Campus Dr #240 | Irvine, CA 92612 | T: 949.229.7060 | F: 949.229.7960  
E: ab@agnewbrusavich.com | www.agnewbrusavich.com

January 23, 2018

Page 2

Next, while I believe that all of you are excellent and professional attorneys and that there would be no attempt to harass Dr. Shewmon, I would expect the deposition to proceed with the noticing attorney taking the lead. There should be no need for the same questions to be asked by every lawyer. I would certainly not object to additional questions by other counsel, provided they are not redundant.

I assume that when the time comes for me to depose your experts, there are going to be requests that I accommodate the expert by taking the deposition in the retaining lawyer's office or a location more convenient to the doctor here in California. It would be my intention to honor such requests as opposed to compelling the doctor to appear at a location of my choice near the courthouse, which would likely be the Oakland office of the Law Offices of Christopher Dolan. Consistent with this offer of professionalism and courtesy, I would expect Dr. Shewmon's deposition to be taken at my office.

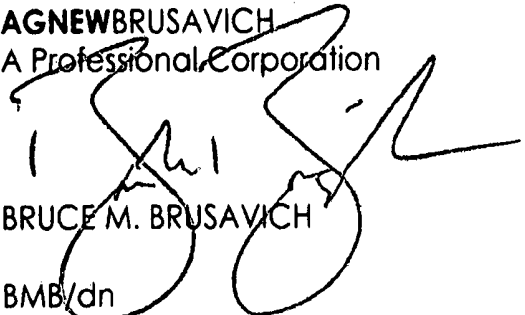
Finally, I assume that Dr. Shewmon would be paid a professional fee for his time which is \$450 per hour.

Hopefully, we can all reach an agreement concerning Dr. Shewmon's deposition. If not, I suggest we take it up with Judge Pulido at the Case Management Conference currently set for March 16, 2018.

Assuming we can reach an agreement, pursuant to David's January 19, 2018 correspondence, I have reached out to Dr. Shewmon for deposition dates between now and February 16, 2018.

Very truly yours,

**AGNEW BRUSAVICH**  
A Professional Corporation



BRUCE M. BRUSAVICH

BMB/dn



<p>Andrew N. Chang  ESNER, CHANG &amp; BOYER  Southern California Office  234 East Colorado Boulevard  Suite 975  Pasadena, CA 91101  <a href="mailto:achang@ecbappeal.com">achang@ecbappeal.com</a></p>	<p>ASSOCIATE ATTORNEY FOR  PLAINTIFFS LATASHA NAILAH SPEARS  WINKFIELD; MARVIN WINKFIELD;  SANDREA CHATMANH; and JAHI  McMATH, a minor, by and through her  Guardian ad Litem, LATASHA NAILAH  SPEARS WINKFIELD</p> <p>(626) 535-9860  FAX (626) 535-9859</p>
<p>Thomas E. Still  Jennifer Still  HINSHAW, MARSH, STILL &amp; HINSHAW  12901 Saratoga Avenue  Saratoga, CA 95070-9998  <a href="mailto:tstill@hinshaw-law.com">tstill@hinshaw-law.com</a>  <a href="mailto:jstill@hinshaw-law.com">jstill@hinshaw-law.com</a></p>	<p>ATTORNEYS FOR FREDERICK S.  ROSEN, M.D.</p> <p>(408) 861-6500  FAX (408) 257-6645</p>
<p>Scott E. Murray  Vanessa L. Efremsky  DONNELLY NELSON DEPOLO MURRAY  &amp; EFREMSKY  A Professional Corporation  201 North Civic Drive, Suite 239  Walnut Creek, CA 94596-3879  <a href="mailto:Smurray@dndmlawyers.com">Smurray@dndmlawyers.com</a>  <a href="mailto:vefremsky@dndmlawyers.com">vefremsky@dndmlawyers.com</a></p>	<p>ATTORNEYS FOR DEFENDANT JAMES  PATRICK HOWARD, M.D., Ph.D.</p> <p>(925) 287-8181  FAX (925) 287-8188</p>
<p>Robert W. Hodges  McNAMARA NEY BEATTY SLATTERY  BORGES &amp; AMBACKER, LLP  3480 Buskirk Avenue  Suite 250  Pleasant Hill, CA 94523  <a href="mailto:robert.hodges@mcnamaralaw.com">robert.hodges@mcnamaralaw.com</a>  <a href="mailto:karen.merick@mcnamaralaw.com">karen.merick@mcnamaralaw.com</a></p>	<p>ATTORNEY FOR ROBERT M. WESMAN,  M.D.</p> <p>(925) 939-5330  FAX (925) 939-0203</p>
<p>///  ///  ///</p>	

<p>Thomas J. Doyle Chad Couchet SCHUERING ZIMMERMAN &amp; DOYLE, LLP 400 University Avenue Sacramento, CA 95825-6502 <a href="mailto:tjd@szs.com">tjd@szs.com</a> <a href="mailto:ccc@szs.com">ccc@szs.com</a></p>	<p>ATTORNEY FOR DEFENDANT ALICIA HERRERA, M.D.  (916) 567-0400 FAX (916) 568-0400</p>
<p>Kenneth R. Pedroza Dana L. Stenvick COLE PEDROZA LLP 2670 Mission Street Suite 200 San Marino, CA 91108 <a href="mailto:kpdroza@colepedroza.com">kpdroza@colepedroza.com</a> <a href="mailto:dstenvick@colepedroza.com">dstenvick@colepedroza.com</a></p>	<p>ASSOCIATE COUNSEL FOR FREDERICK S. ROSEN, M.D. and UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND  (626) 431-2787 FAX (626) 431-2788</p>

EXHIBIT C

CARROLL, KELLY, TROTTER,  
FRANZEN, McBRIDE & PEABODY

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REPLY TO  
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February 14, 2018

VIA FACSIMILE AND U.S. MAIL

Bruce M Brusavich, Esq.  
Terry S. Schneier, Esq.  
AGNEW BRUSAVICH, APC  
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Southern California Office  
234 E. Colorado Blvd., Ste. 975  
Pasadena, CA 91101  
(626) 535-9859 - Facsimile

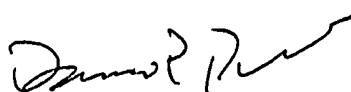
Re: *Winkfield/McMath v. Rosen, et al.*  
File No.: 31-5591-01

Dear Counsel:

Please be advised that on February 15, 2018 at 2:30 p.m. in Department 517 of the Hayward Hall of Justice, located at 24405 Amador Street, Hayward, California, defendants will seek an ex parte order to continue the plaintiffs' motion, set for March 8, 2018, entitled: "Plaintiffs' Notice Of Motion And Motion To Bifurcate The Issue Of Whether AAN and AAP Guidelines Meet The Statutory Definition Of 'Dead' Under The Uniform Determination of Death Act (Health & Safety Code, §7180)."

Defendants will request that the hearing date for that motion be decided at the Case Management Conference set for March 16, 2018, 2:30 p.m., with a schedule to then be set for related discovery, filing of opposing papers, and coordination of hearing of other related motions to be filed on behalf of the defendants.

Very truly yours,

  
DAVID P. PRUETT

DPP:lmb  
cc: ALL COUNSEL – per attached

1 Service List  
2 *Winkfield v. Rosen. et al.*; Case No.: RG15760730

3 Thomas E. Still, Esq.  
4 Jennifer Still, Esq.  
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11 **Attorneys for Defendant, Frederick S.  
12 Rosen, M.D.**

13 Scott E. Murray, Esq.  
14 Donnelly Nelson Depolo & Murray  
15 A Professional Corporation  
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17 Walnut Creek, CA 94596-3879.  
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20 **Attorneys for Defendant, James Patrick  
21 Howard, M.D.**

22 Kenneth R. Pedroza, Esq.  
23 Dana L. Stenvick, Esq.  
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**Associate Attorneys for Defendants,  
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**Attorneys for Defendant Robert M.  
Wesman, M.D.**

## Fax Header Information

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2018-Feb-14 09:39 AM

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**CARROLL, KELLY, TROTTER,  
FRANZEN, MCBRIDE & PEABODY**

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February 14, 2018

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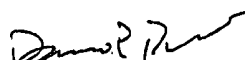
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File No.: 31-5591-01

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Very truly yours,



DAVID P. PRUETT

DPP:lmb  
cc: ALL COUNSEL - per attached

**Fax Header Information**

ckt fmp  
5624328785  
2018-Feb-14 09:43 AM

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826	2018-Feb-14 09:42 AM	Send	519165680400	1:23	2	Success

**CARROLL, KELLY, TROTTER,  
FRANZEN, McBRIDE & PEABODY**

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February 14, 2018

**VIA FACSIMILE AND U.S. MAIL**

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Terry S. Schneider, Esq.  
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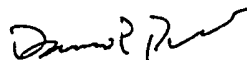
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File No.: 31-5591-01

Dear Counsel:

Please be advised that on February 15, 2018 at 2:30 p.m. in Department 517 of the Hayward Hall of Justice, located at 24405 Amador Street, Hayward, California, defendants will seek an ex parte order to continue the plaintiffs' motion, set for March 8, 2018, entitled: "Plaintiffs' Notice Of Motion And Motion To Bifurcate The Issue Of Whether AAN and AAP Guidelines Meet The Statutory Definition Of 'Dead' Under The Uniform Determination of Death Act (Health & Safety Code, §7180)."

Defendants will request that the hearing date for that motion be decided at the Case Management Conference set for March 16, 2018, 2:30 p.m., with a schedule to then be set for related discovery, filing of opposing papers, and coordination of hearing of other related motions to be filed on behalf of the defendants.

Very truly yours,

  
DAVID P. PRUETT

DPP:lmb  
cc: ALL COUNSEL - per attached

**Fax Header Information**

ckt fmp  
5624328785  
2018-Feb-14 09:45 AM

Job	Date/Time	Type	Identification	Duration	Pages	Result
827	2018-Feb-14 09:43 AM	Send	514082576645	1:17	2	Success

**CARROLL, KELLY, TROTTER,  
FRANZEN, McBRIDE & PEABODY**

LAWYERS  
A PROFESSIONAL CORPORATION  
111 WEST OCEAN BOULEVARD, 14<sup>TH</sup> FLOOR, LONG BEACH, CALIFORNIA 90802  
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SAN DIEGO, CALIFORNIA 92101  
TELEPHONE (619) 514-9900  
FACSIMILE (619) 514-9999

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P.O. BOX 22006  
LONG BEACH, CALIFORNIA 90801-9600  
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8229 WEST SUNSET ROAD, SUITE 200  
LAS VEGAS, NEVADA 89113  
TELEPHONE (702) 792-5855  
FACSIMILE (702) 792-5855

February 14, 2018

**VIA FACSIMILE AND U.S. MAIL**

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AGNEW BRUSAVICH, APC  
20355 Hawthorne Blvd., 2nd Floor  
Torrance, CA 90503  
(310) 793-1499 - Facsimile

Andrew N. Chang  
ESNER, CHANG & BOYER  
Southern California Office  
234 E. Colorado Blvd., Ste. 975  
Pasadena, CA 91101  
(626) 535-9859 - Facsimile

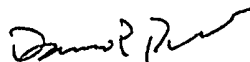
Re: *Winkfield/McMath v. Rosen, et al.*  
File No.: 31-5591-01

Dear Counsel:

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Very truly yours,

  
DAVID P. PRUETT

DPP:lmb  
cc: ALL COUNSEL - per attached



**Fax Header Information**

ckt:mp  
5624328785  
2018-Feb-14 09:47 AM

Job	Date/Time	Type	Identification	Duration	Pages	Result
828	2018-Feb-14 09:45 AM	Send	516265359859	1:18	2	Success

**CARROLL, KELLY, TROTTER,  
FRANZEN, McBRIDE & PEABODY**

LAWYERS

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FACSIMILE (619) 814-8909

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LONG BEACH, CALIFORNIA 90801-9828  
TELEPHONE (562) 432-8058  
FACSIMILE (562) 432-8708

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5329 WEST SUNSET ROAD, SUITE 200  
LAS VEGAS, NEVADA 89113  
TELEPHONE (702) 796-8855  
FACSIMILE (702) 796-8855

February 14, 2018

VIA FACSIMILE AND U.S. MAIL

Bruce M Brusavich, Esq.  
Terry S. Schmeier, Esq.  
AGNEW BRUSAVICH, APC  
20355 Hawthorne Blvd., 2nd Floor  
Torrance, CA 90503  
(310) 793-1499 - Facsimile

Andrew N. Chang  
ESNER, CHANG & BOYER  
Southern California Office  
234 E. Colorado Blvd., Ste. 975  
Pasadena, CA 91101  
(626) 535-9859 - Facsimile

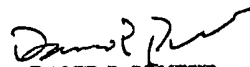
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Very truly yours,

  
DAVID P. PRUETT

DPP:imb  
cc: ALL COUNSEL - per attached

## Fax Header Information

ckt fmp  
5624328785  
2018-Feb-14 09:49 AM

Job	Date/Time	Type	Identification	Duration	Pages	Result
829	2018-Feb-14 09:47 AM	Send	513107931499	1:06	2	Success

CARROLL, KELLY, TROTTER,  
FRANZEN, McBRIDE & PEABODY

LAWYERS

A PROFESSIONAL CORPORATION

111 WEST OCEAN BOULEVARD, 14<sup>TH</sup> FLOOR, LONG BEACH, CALIFORNIA 90802  
WWW.KTYHLAW.COM

SAN DIEGO OFFICE  
225 BROADWAY, SUITE 1875  
SAN DIEGO, CALIFORNIA 92101  
TELEPHONE (619) 814-5900  
FACSIMILE (619) 814-5999

REPLY TO  
MAILING ADDRESS  
P.O. BOX 32636  
LONG BEACH, CALIFORNIA 90801-5636  
TELEPHONE (562) 432-5855  
FACSIMILE (562) 432-8705

NEVADA OFFICE  
8329 WEST SUNSET ROAD, SUITE 800  
LAS VEGAS, NEVADA 89112  
TELEPHONE (702) 796-9858  
FACSIMILE (702) 796-9858

February 14, 2018

VIA FACSIMILE AND U.S. MAIL

Bruce M Brusavich, Esq.  
Terry S. Schneier, Esq.  
AGNEW BRUSAVICH, APC  
20355 Hawthorne Blvd., 2nd Floor  
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ESNER, CHANG & BOYER  
Southern California Office  
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Pasadena, CA 91101  
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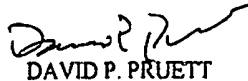
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Very truly yours,



DAVID P. PRUETT

DPP:lmb  
cc: ALL COUNSEL - per attached

## Fax Header Information

cktfnip  
5624328785  
2018-Feb-14 09:51 AM

Job	Date/Time	Type	Identification	Duration	Pages	Result
830	2018-Feb-14 09:49 AM	Send	516264312788	1:20	2	Success

**CARROLL, KELLY, TROTTER,  
FRANZEN, McBRIDE & PEABODY**

LAWYERS

A PROFESSIONAL CORPORATION

111 WEST OCEAN BOULEVARD, 14<sup>TH</sup> FLOOR, LONG BEACH, CALIFORNIA 90802

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**SAN DIEGO OFFICE**  
338 BROADWAY, SUITE 1375  
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**IRVINE TO  
MAILING ADDRESS**  
P.O. BOX 32636  
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FACSIMILE (562) 432-8705

**NEVADA OFFICE**  
6329 WEST SUNSET ROAD, SUITE 200  
LAS VEGAS, NEVADA 89115  
TELEPHONE (702) 793-5855  
FACSIMILE (702) 793-5855

February 14, 2018

VIA FACSIMILE AND U.S. MAIL

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Terry S. Schneier, Esq.  
AGNEW BRUSAVICH, APC  
20355 Hawthorne Blvd., 2nd Floor  
Torrance, CA 90503  
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Southern California Office  
234 E. Colorado Blvd., Ste. 975  
Pasadena, CA 91101  
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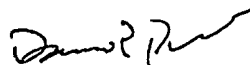
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DAVID P. PRUETT

DPP:lmb  
cc: ALL COUNSEL - per attached

## Fax Header Information

ckt fmp  
5624328785  
2018-Feb-14 09:53 AM

Job	Date/Time	Type	Identification	Duration	Pages	Result
831	2018-Feb-14 09:52 AM	Send	519252878188	1:32	2	Success

CARROLL, KELLY, TROTTER,  
FRANZEN, McBRIDE & PEABODY

LAWYERS

A PROFESSIONAL CORPORATION

111 WEST OCEAN BOULEVARD, 14<sup>TH</sup> FLOOR, LONG BEACH, CALIFORNIA 90802

WWW.KCTFLAW.COM

## SAN DIEGO OFFICE

335 BROADWAY, SUITE 1878  
SAN DIEGO, CALIFORNIA 92101  
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FACSIMILE (619) 514-5000

## REPLY TO

MAILING ADDRESS  
P.O. BOX 28526  
LONG BEACH, CALIFORNIA 90801-5826  
TELEPHONE (562) 432-8850  
FACSIMILE (562) 432-8700

## NEVADA OFFICE

8329 WEST SUNSET ROAD, SUITE 280  
LAS VEGAS, NEVADA 89113  
TELEPHONE (702) 792-8888  
FACSIMILE (702) 792-8888

February 14, 2018

VIA FACSIMILE AND U.S. MAIL

Bruce M Brusavich, Esq.  
Terry S. Schneier, Esq.  
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20355 Hawthorne Blvd., 2nd Floor  
Torrance, CA 90503  
(310) 793-1499 - Facsimile

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Pasadena, CA 91101  
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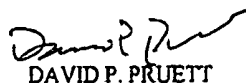
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Very truly yours,



DAVID P. PRUETT

DPP:lmb  
cc: ALL COUNSEL - per attached

1 PROOF OF SERVICE

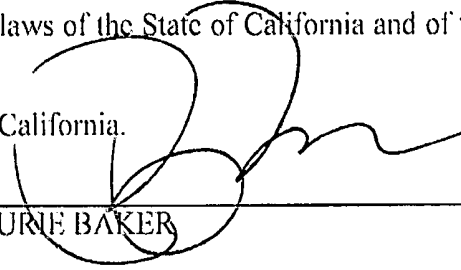
2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
4 and not a party to the within action. My business address is Post Office Box 22636, Long Beach,  
5 CA 90801-5636. On February 14, 2018, I served a true and correct copy of the following  
6 document **EX PARTE APPLICATION FOR ORDER CONTINUING PLAINTIFF'S  
7 MOTION TO BIFURCATE; MEMORANDUM OF POINTS AND AUTHORITIES;  
8 DECLARATION OF RICHARD D. CARROLL** on the list of interested parties attached:

- 9  **By United States Mail (CCP §§1013a, et seq.):** I enclosed said document(s) in a sealed  
10 envelope or package to each addressee. I placed the envelope for collection and mailing,  
11 following our ordinary business practices. I am readily familiar with the firm's practice  
12 for collecting and processing correspondence for mailing. On the same day that  
13 correspondence is placed for collection and mailing, it is deposited in the ordinary course  
14 of business with the United States Postal Service, with postage fully prepaid.
- 15  **By Overnight Delivery/Express Mail (CCP §§1013(e)(d), et seq.):** I enclosed said  
16 document(s) in a sealed envelope or package provided by an overnight delivery carrier to  
17 each addressee. I placed the envelope or package, delivery fees paid for, for collection  
18 and overnight delivery at an office or at a regularly utilized drop box maintained by the  
19 express service carrier at 111 West Ocean Boulevard, Long Beach, California.
- 20  **By Fax Transmission (CRC 2.306):** Based on a written agreement of the parties to  
21 accept service by fax transmission, I faxed said document(s) to each addressee's fax  
22 number. The facsimile machine that I utilized, (562) 432-8785, complied with California  
23 Rules of Court, Rule 2.301(3), and no error was reported by the machine. Pursuant to  
24 Rule 2.306(h)(4), I caused the machine to print a record of the transmission, a copy of  
25 which is attached to the original of this proof of service.
- 26  **By Messenger Service:** I enclosed said document(s) in a sealed envelope or package to  
27 each addressee. I provided them to a professional messenger service (Signal Attorney  
28 Service) for service. An original proof of service by messenger will be filed pursuant to  
California *Rules of Court*, Rule 3.1300(c).
- By Electronic Transmission:** I caused the document(s) to be sent from e-mail address  
lbaker@cktfmlaw.com to each addressee's email address as set forth on the above service  
list. I did not receive, within a reasonable time after the transmission, any electronic  
message or other indication that the transmission was unsuccessful.

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

Executed on February 14, 2018, at Long Beach, California.

  
LAURIE BAKER

1 Service List  
*Winkfield v. Rosen, et al.*; Case No.: RG15760730

2  
3 Bruce M. Brusavich, Esq.  
Terry S. Schneier, Esq.  
4 Agnew Brusavich  
A Professional Corporation  
5 20355 Hawthorne Boulevard, 2<sup>nd</sup> Fl  
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[brusavich@agnewbrusavich.com](mailto:brusavich@agnewbrusavich.com)  
7 **Attorneys for Plaintiffs**

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[achang@ecbappeal.com](mailto:achang@ecbappeal.com)  
**Associate Attorneys for Plaintiffs**

8 Thomas E. Still, Esq.  
Jennifer Still, Esq.  
9 Hinshaw, Marsh, Still & Hinshaw, LLP  
12901 Saratoga Ave.  
10 Saratoga, CA 95070  
F: (408) 257-6645  
11 [tstill@hinshaw-law.com](mailto:tstill@hinshaw-law.com)  
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12 **Attorneys for Defendant, Frederick S.  
Rosen, M.D.**

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F: (916) 568-0400  
[TJD@szs.com](mailto:TJD@szs.com)  
[SCG@szs.com](mailto:SCG@szs.com)  
**Attorneys for Defendant, Alicia Herrera**

13 Scott E. Murray, Esq.  
14 Donnelly Nelson Depolo & Murray  
A Professional Corporation  
15 201 North Civic Drive, Suite 239  
Walnut Creek, CA 94596-3879  
16 F: (925) 287-8188  
[smurray@dndmlawyers.com](mailto:smurray@dndmlawyers.com)  
17 **Attorneys for Defendant, James Patrick  
Howard, M.D.**

Robert Hodges, Esq.  
McNamara, Ney, Beatty, Slattery,  
Borges & Ambacher, LLP  
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Pleasant Hill, CA 94523  
F: (925) 939-0203  
[robert.hodges@mcnamaralaw.com](mailto:robert.hodges@mcnamaralaw.com)  
**Attorneys for Defendant Robert M.  
Wesman, M.D.**

18 Kenneth R. Pedroza, Esq.  
19 Dana L. Stenvick, Esq.  
Cole Pedroza LLP  
20 2670 Mission Street, Ste. 200  
San Marino, CA 91108  
21 F: (626) 431-2788  
[kpdroza@colepedroza.com](mailto:kpdroza@colepedroza.com)  
22 [dstenvick@colepedroza.com](mailto:dstenvick@colepedroza.com)  
23 **Associate Attorneys for Defendants,  
Frederick S. Rosen, M.D. and UCSF Benioff  
Children's Hospital Oakland**



Roni Gill  
FEB 15 2018

EX-111

1 CARROLL, KELLY, TROTTER, FRANZEN, McBRIDE & PEABODY  
2 RICHARD D. CARROLL (SBN 116913)  
3 DAVID P. PRUETT (SBN 155849)  
4 TOBIN J. TROBOUGH (SBN 140556)  
5 111 West Ocean Boulevard, 14th Floor  
6 Post Office Box 22636  
7 Long Beach, California 90801-5636  
8 Telephone No. (562) 432-5855 / Facsimile No. (562) 432-8785  
9 Attorneys for Defendant, UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF ALAMEDA

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

18 Plaintiffs,

19 vs.

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

26 Defendants.

CASE NO.: RG15760730

**ORDER GRANTING EX PARTE  
APPLICATION TO CONTINUE  
PLAINTIFF'S MOTION TO BIFURCATE  
[PROPOSED]**

**DATE: February 15, 2018**  
**TIME: 2:30 p.m.**  
**DEPT.: 517**  
**RES #: R-1935569**

ASSIGNED FOR ALL PURPOSES TO:  
JUDGE STEPHEN PULIDO  
DEPARTMENT: 517

Complaint Filed: 03/03/2015  
Trial Date: None

27 THE COURT, hereby grants the ex parte application of defendant UCSF Benioff  
28 Children's Hospital Oakland ("CHO"), and joinders of other defendants, and

ORDERS that plaintiffs' motion set for hearing on March 8, 2018, entitled "Motion to  
Bifurcate the Issue of Whether AAN and AAP [American Association of Neurology and  
American Academy of Pediatrics] Guidelines Meet the Statutory Definition of 'Dead' Under the  
Uniform Determination Of Death Act (Health & Safety Code, §7180)," shall be rescheduled to a

1 date to be determined during the Case Management Conference to be held on March 16, 2018.

2 IT IS SO ORDERED.

3  
4 Date: February \_\_\_\_\_, 2018

\_\_\_\_\_  
5 HON. STEPHEN PULIDO  
6 Judge of the Superior Court  
7  
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21  
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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
4 and not a party to the within action. My business address is Post Office Box 22636, Long Beach,  
5 CA 90801-5636. On February 14, 2018, I served a true and correct copy of the following  
6 document **ORDER GRANTING EX PARTE APPLICATION TO CONTINUE  
7 PLAINTIFF'S MOTION TO BIFURCATE [PROPOSED]** on the list of interested parties  
8 attached:

- 9  **By United States Mail (CCP §§1013a, et seq.):** I enclosed said document(s) in a sealed  
10 envelope or package to each addressee. I placed the envelope for collection and mailing,  
11 following our ordinary business practices. I am readily familiar with the firm's practice  
12 for collecting and processing correspondence for mailing. On the same day that  
13 correspondence is placed for collection and mailing, it is deposited in the ordinary course  
14 of business with the United States Postal Service, with postage fully prepaid.
- 15  **By Overnight Delivery/Express Mail (CCP §§1013(c)(d), et seq.):** I enclosed said  
16 document(s) in a sealed envelope or package provided by an overnight delivery carrier to  
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23 Rules of Court, Rule 2.301(3), and no error was reported by the machine. Pursuant to  
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30 lbaker@cktfmlaw.com to each addressee's email address as set forth on the above service  
31 list. I did not receive, within a reasonable time after the transmission, any electronic  
32 message or other indication that the transmission was unsuccessful.

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

35 Executed on February 14, 2018, at Long Beach, California.

36   
37 \_\_\_\_\_  
38 LAURIE BAKER

1 Service List  
2 *Winkfield v. Rosen, et al.*; Case No.: RG15760730

3 Bruce M. Brusavich, Esq.  
4 Terry S. Schneier, Esq.  
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