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FILED
ALAMEDA COUNTY

JAN 27 2016

CLERK OF THE SUPERIOR COURT
 By [Signature] Deputy

9 Attorneys for Defendant
 10 UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND

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

13 LATASHA NAILAH SPEARS
 14 WINKFIELD, *et al.*

Case No. RG15760730
 Dept. 20
 [Hon. Robert R. Freedman]

15 Plaintiffs,

16 v.

DEFENDANT UCSF BENIOFF
 CHILDREN'S HOSPITAL
 OAKLAND'S REQUEST FOR
 QUESTION CERTIFICATION UNDER
 CODE OF CIVIL PROCEDURE
 SECTION 166.1

17 FREDERICK S. ROSEN, M.D.; UCSF
 18 BENIOFF CHILDREN'S HOSPITAL
 19 OAKLAND, *et al.*

20 Defendant.

Date: January 29, 2016
 Time: 2:00 P.M.
 Dept.: 20

Action filed: 3/3/15
 First Amended Complaint Filed: 11/4/15

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 27 PLEASE TAKE NOTICE that Defendant UCSF Benioff Children's Hospital
 28 Oakland ("CHO") and will and hereby does make this request to certify questions for immediate
 appellate review under Code of Civil Procedure section 166.1.

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REQUEST FOR CERTIFICATION

At the January 8, 2016 hearing on Defendants' demurrers to the First Amended Complaint, this honorable Court recognized there is a "little used provision of the Code of Civil Procedure, 166.1, that allows the Court at the request of a party to indicate to the Court of Appeal that a decision might be writ worthy..." (Reporter's Transcript of Proceedings, January 8, 2016, at 14:19 – 14:22.) CHO agrees with the Court's proposal. Accordingly, CHO asks the Court to certify questions for immediate appellate review at the pleading stage and understands that defendant Frederick S. Rosen, M.D. is making the same request.

In the event this Court overrules CHO's demurrer to the First Amended Complaint, CHO respectfully requests the Court simultaneously specify in its Order that "there is a controlling question of law as to which there are substantial grounds for difference of opinion, appellate resolution of which may materially advance the conclusion of this litigation." (Code Civ. Proc., § 166.1.) In conjunction with making this specification, CHO asks the Court to certify following questions for immediate appellate review:

- (1) "Whether a judicial determination in a probate proceeding that an individual satisfies the criteria for brain death pursuant to Health and Safety Code section 7180 must be afforded collateral estoppel effect in subsequent proceedings?"
- (2) "Where a court has determined an individual has met the criteria for brain death pursuant to Health and Safety Code section 7180, and no challenge was made to that court's determination through the established appellate procedure, does a second court have jurisdiction to reconsider the first court's determination of brain death of the same individual?"

Though section 166.1 "does not change existing writ procedures or create a new level of appellate review," an order under this provision of the Code of Civil Procedure "may encourage the appellate court to hear and decide the question." (*Bank of Am. Corp. v. Super. Ct.* (2011) 198 Cal.App.4th 862, 869, n. 6.) In short, an Order certifying these questions for immediate appellate review may limit the possibility "of a potentially erroneous interpretation" of the law

1 or miscarriage of justice. (*Farmers Ins. Exch. v. Super. Ct.* (2013) 218 Cal.App.4th 96, 108.)
2 Given the unique factual and legal issues presented by this case, certification of the foregoing
3 questions for immediate appellate review is therefore appropriate.

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5 DATED: 1/26/16

GALLOWAY LUCHESE, EVERSON
& PICCHI

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7
8 By: 

G. Patrick Galloway
Joseph E. Finkel
Attorneys for Defendant
UCSF BENIOFF CHILDREN'S
HOSPITAL OAKLAND



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ALAMEDA COUNTY

JAN 27 2016

By Johnson

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

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

11 LATASHA NAILAH SPEARS WINKFIELD,
12 *et al.*

Case No. RG15760730
Dept. 20
The Honorable Robert B.
Freeman

13 Plaintiffs,

14 vs.

15 FREDERICK S. ROSEN, M.D.; UCSF
16 BENIOFF CHILDREN'S HOSPITAL
OAKLAND, *et al.*

[PROPOSED] ORDER ON DEFENDANT
UCSF BENIOFF CHILDREN'S HOSPITAL
OAKLAND'S REQUEST FOR
QUEDSTION CERTIFICATION UNDER
CODE OF CIVIL PROCEDURE SECTION
166.1

17 Defendants.

Date: January 29, 2016
Time: 2:00 p.m.
Dept: 20

Action Filed: 3/3/15
First Amended Complaint Filed: 11/4/15

24 Having read and considered Defendant UCSF Benioff Children's Hospital
25 Oakland's Request for Question Certification under Code of Civil Procedure section
26 166.1, reviewing the papers submitted in connection with the parties' demurrers to the
27 First Amended Complaint and hearing oral argument, the Court rules as follows:
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[PROPOSED] ORDER

The Court finds that even though the case has not advanced beyond the initial pleading stage "there is a controlling question of law as to which there are substantial grounds for difference of opinion, appellate resolution of which may materially advance the conclusion of this litigation." (Code Civ. Proc., § 166.1.) Based upon this finding, the court certifies the following questions for immediate appellate review:

- (1) "Whether a judicial determination in a probate proceeding that an individual satisfies the criteria for brain death pursuant to Health and Safety Code section 7180 must be afforded collateral estoppel effect in subsequent proceedings?"
- (2) "Where a court has determined an individual has met the criteria for brain death pursuant to Health and Safety Code section 7180, and no challenge was made to that court's determination through the established appellate procedure, does a second court have jurisdiction to reconsider the first court's determination of brain death of the same individual?"

IT IS SO ORDERED.

DATED: _____