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FILED
ALAMEDA COUNTY

JAN 27 2016

CLERK OF THE SUPERIOR COURT
Maria Lopez Deputy

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10 Attorneys for Plaintiff

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 12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 FOR THE COUNTY OF ALAMEDA
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15 LATASHA NAILAH SPEARS WINKFIELD;
 16 MARVIN WINKFIELD; SANDRA CHATMAN;
 17 and JAHl McMATH, a minor, by and
 through her Guardian ad Litem, LATASHA
 18 NAILAH SPEARS WINKFIELD,

19 Plaintiffs,

20 vs.

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

24 Defendants.

CASE NO. RG 15760730

ASSIGNED FOR ALL PURPOSES TO:
JUDGE ROBERT B. FREEDMAN - DEPT.
"20"

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS REQUEST FOR
CERTIFICATION UNDER CCP §166.1**

DATE: January 29, 2016
TIME: 2:00 p.m.
DEPT.: "20"

Date Action Filed: 03/03/15

25 TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD HEREIN:

26 Plaintiffs oppose Defendants' Request for Certification under CCP
 27 §166.1. As Defendants acknowledge, the intent of §166.1 "is evidently to
 28

PLAINTIFFS' OPPOSITION TO DEFENDANTS REQUEST FOR CERTIFICATION UNDER CCP §166.1

FAX FILE

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1 encourage the appellate court to review the issue on the merits if the losing party
 2 files a petition for extraordinary relief." (*Lauermann v. Superior Court* (2005) 127
 3 Cal.App.4th 1327, 1330.) The Court of Appeal is unlikely to review the issues raised
 4 by a writ petition challenging an order overruling a demurrer, as that is an
 5 "unusual path" of review. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730,
 6 746-747; see also *San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th
 7 893, 912-913; *Curry v. Superior Court* (1993) 20 Cal.App.4th 180, 183.) Courts of
 8 Appeal "do not routinely afford plenary review to rulings on demurrers. 'Appellate
 9 courts simply do not have the time or resources to police law and motion rulings on
 10 the pleadings through the mandamus power and, absent unusual circumstances,
 11 decline to do so.' [Citations.]" (*Curry, supra*, at p. 183, fn. omitted.) An order
 12 overruling a demurrer "may be reviewed on appeal from the final judgment.
 13 [Citation.] Appeal is presumed to be an adequate remedy, and writ review is rarely
 14 granted unless a significant issue of law is raised or resolution of the issue would
 15 result in a final disposition as to the petitioner." (*Cryolife, Inc. v. Superior Court* (2003)
 16 110 Cal.App.4th 1145, 1151; see also *Casterson v. Superior Court* (2002) 101
 17 Cal.App.4th 177, 182.)

18 First, it is clear that resolution of the issues would NOT result in a final disposition
 19 as to defendants, as the subject matter of their demurrers is limited to the claim for
 20 personal injury damages.

21 Second, the issues raised by Defendants' demurrers are not significant issues
 22 of law at this early, pleading stage of the action. If the trial court's tentative
 23 becomes the ruling of the court, the Court's decision merely allows the parties to
 24 proceed beyond the pleading stage and marshal evidence to prove their claims.
 25 Undoubtedly, as discovery ensues, the parties and the Court will likely test their
 26 claims on a more complete factual record. Perhaps at that point, the issues
 27 Defendants now seek to have certified may be ripe for extraordinary writ review by
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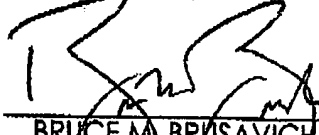
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1 the Court of Appeal. That certification on this extremely limited record is premature
 2 and inappropriate is particularly true where a primary issue is the applicability of
 3 collateral estoppel in the context of changed facts and circumstances, and that
 4 issue in turn hinges on a thorough examination (including expert testimony) of what
 5 those changed facts and circumstances are.

6 Plaintiffs believe the court should not send a message encouraging writ
 7 review at this early stage of the proceedings, before the parties have a chance to
 8 develop the factual basis for their claims, including the issue whether collateral
 9 estoppel is not properly applied because of changed facts and circumstances or
 10 otherwise. Plaintiffs therefore oppose Defendants' request for certification.

11 DATED: January 27, 2016

AGNEWBRUSAVICH
A Professional Corporation

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 13
 14 By: 
 15 BRUCE M. BRUSAVICH
 16 Attorney for Plaintiffs

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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 **AGNEWBRUSAVICH, 20355 Hawthorne Blvd., 2nd Floor, Torrance, California.** On January 27, 2016, I served the within document **PLAINTIFFS' OPPOSITION TO DEFENDANTS REQUEST FOR CERTIFICATION UNDER CCP §166.1**

- 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:

Thomas E. Still HINSHAW, MARSH, STILL & HINSHAW 12901 Saratoga Avenue Saratoga, CA 95070-9998 tstill@hinshaw-law.com	ATTORNEYS FOR FREDERICK S. ROSEN, M.D. (408) 861-6500 FAX (408) 257-6645
G. Patrick Galloway GALLOWAY, LUCCHESI, EVERSON & PICCHI 2300 Contra Costa Boulevard Suite 350 Pleasant Hill, CA 94523-2398 pgalloway@glattys.com	ATTORNEYS FOR DEFENDANT UCSF BENOIFF CHILDREN'S HOSPITAL (925) 930-9090 FAX (925) 930-9035
Andrew N. Chang ESNER, CHANG & BOYER Southern California Office 234 East Colorado Boulevard Suite 750 Pasadena, CA 91101 aechang@echappeal.com	ASSOCIATE ATTORNEY FOR PLAINTIFFS LATASHA NAILAH SPEARS WINKFIELD; MARVIN WINKFIELD; SANDRA CHATMAN; and JAHl McMATH, a minor, by and through her Guardian ad Litem, LATASHA NAILAH SPEARS WINKFIELD (626) 535-9860 FAX (626) 535-9859

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

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

(Federal) I declare that I am employed in the office of a member of the bar of this court at which direction the service was made.

Executed this 27TH day of January, 2016 at Torrance, California.



JAN DUNN