1

3

4

5

6

7

8

9

10

11

12

13

14

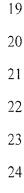
15

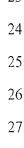
16

17

18

v.





28



G. Patrick Galloway (SBN 49442) Joseph E. Finkel (SBN 167397) GALLOWAY, LUCCHESE, EVERSON & PICCHI A Professional Corporation 2300 Contra Costa Blvd., Suite 350 Pleasant Hill, California 94523-2398

Tel: (925) 930-9090 Fax: (925) 930-9035 **ALAMEDA COUNTY**

JAN 27 2016

CLERK OF THE SUPERIOR COURT

Attorneys for Defendant UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND

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

LATASHA NAILAH SPEARS WINKFIELD, et al.

Plaintiffs,

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

Defendant.

Case No. RG15760730

Dept. 20

[Hon. Robert R. Freedman]

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

Date:

January 29, 2016

Time:

2:00 P.M.

Dept.:

20

Action filed: 3/3/15

First Amended Complaint Filed: 11/4/15

PLEASE TAKE NOTICE that Defendant UCSF Benioff Children's Hospital

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.

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.	
4	./ /	
5	DATED: 1/26/16 GALLOWAY/LUCCHESE, EVERSON	
6	& PICCHI	
7	By: \./aku by kelloway	
8	G. Patrick Galloway	
9	Joseph E. Finkel Attorneys for Defendant	
10	UCSF BENIOFF CHALDIEN'S HOSPITAL OAKLAND	
11	HOSI ITAL OAKLAND	
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22 23		
24		
25		
26		
27		
28		
-		
	3	



4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

G. PATRICK GALLOWAY, ESQ. (State Bar No. 49442)
JOSEPH E. FINKEL, ESQ. (State Bar No. 167397)
GALLOWAY, LUCCHESE, EVERSON & PICCHI
A Professional Corporation

A Professional Corporation 2300 Contra Costa Blvd., Suite 350 Pleasant Hill, CA 94523-2398 Tel. No. (925) 930-9090

Fax No. (925) 930-9035 E-mail: pgalloway@glattys.com

Attorneys for Defendant
UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND



JAN 27 2016

By Johnson

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

LATASHA NAILAH SPEARS WINKFIELD, Case No. RG15760730 et al. Dept. 20 The Honorable Robert B.

Plaintiffs,

VS.

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

Defendants.

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

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

Freeman

Dept: 20

Action Filed: 3/3/15

First Amended Complaint Filed: 11/4/15

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

1

GALLOWAY, LUCCHESE, EVERSON & PICCHI 2300 Contra Costa Blvd., Suite 350 Pieasant Hill, CA 94523 (925) 930-9090

RG15760730: [PROPOSED] ORDER ON DEFENDANT UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND'S REQUEST FOR QUEDSTION CERTIFICATION UNDER CODE OF CIVIL PROCEDURE SECTION 166.1

200-9734/GPG/832852.docx

1

3 4 5

6 7

9

8

11

12 13

14

15

16

17

18

19

20 21

22

23

24

2526

27

28

GALLOWAY, LUCCHESE, EVERSON & PICCHI 2300 Contra Costa Blvd., Suite 350 Pleasant Hill, CA 94523

(925) 930-9090

[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:	

2