Thomas E. Still (SBN 127065)
Jennifer Still (SBN 138347)
HINSHAW, MARSH, STILL & HINSHAW LLP
12901 Saratoga Avenue
Saratoga, California 95070
Tel: (408) 861-6500
Fax: (408) 257-6645

Attorneys for Defendant
FREDERICK S. ROSEN, M.D.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

LATASHA NAILAH SPEARS WINKFIELD, *et al.* Plaintiffs, v. FREDERICK S. ROSEN, M.D.; UCSF BENIOFF CHILDREN'S HOSPITAL OAKLAND, *et al.* Defendant.	Case No. RG15760730 Dept. 20 [Hon. Robert R. Freedman] DEFENDANT FREDERICK S. ROSEN'S REQUEST FOR QUESTION 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 Frederick S. Rosen, M.D. ("Dr. Rosen") will and hereby does make a request for this Court to certify questions for immediate appellate review under Code of Civil Procedure section 166.1.

BY FAX

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.) Dr. Rosen agrees with the Court's proposal. Accordingly, Dr. Rosen asks the Court to certify questions for immediate appellate review at the pleading stage and understands that defendant UCSF Benioff Children's Hospital Oakland is making the same request.

In the event this Court overrules Dr. Rosen's demurrer to the First Amended Complaint, Dr. Rosen 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, Dr. Rosen 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 or miscarriage of justice. (*Farmers Ins. Exch. v. Super. Ct.* (2013) 218 Cal.App.4th 96, 108.) Given the unique factual and legal issues presented by this case, certification of the foregoing questions for immediate appellate review is therefore appropriate.

DATED: January 26, 2016

HINSHAW, MARSH, STILL & HINSHAW LLP

By: _____
Thomas E. Still
Jennifer Still
Attorneys for Defendant
FREDERICK S. ROSEN, M.D.

PROOF OF SERVICE
(C.C.P. §§ 1013a, 2015.5)

I, the undersigned, say:

I am now and at all times herein mentioned have been over the age of 18 years, a resident of the State of California and employed in Santa Clara County, California, and not a party to the within action or cause; my business address is 12901 Saratoga Avenue, Saratoga, California 95070.

I am readily familiar with this firm's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, mailing via Federal Express, hand delivery via messenger service, and transmission by facsimile machine. I served a copy of each of the documents listed below by placing said copies for processing as indicated herein.

DEFENDANT FREDERICK S. ROSEN'S REQUEST FOR QUESTION CERTIFICATION UNDER CODE OF CIVIL PROCEDURE SECTION 166.1

XX If MAILED VIA U.S. MAIL, said copies were placed in envelopes which were then sealed and, with postage fully prepaid thereon, on this date placed for collection and mailing at my place of business following ordinary business practices. Said envelopes will be deposited with the U.S. Postal Service at Saratoga, California on this date in the ordinary course of business; and there is delivery service by U.S. Postal Service at the place so addressed.

____ If MAILED VIA FEDERAL EXPRESS, said copies were placed in Federal Express envelopes which were then sealed and, with Federal Express charges to be paid by this firm, on this same date placed for collection and mailing at my place of business following ordinary business practices. Said envelopes will be deposited with the Federal Express Corp. on this date following ordinary business practices; and there is delivery service by Federal Express at the place so addressed.

____ If HAND DELIVERED, said copies were provided to_____, a delivery service, whose employee, following ordinary business practices, did hand deliver the copies provided to the person or firm indicated herein.

XX If VIA FACSIMILE TRANSMISSION, said copies were placed for transmission by this firm's facsimile machine, transmitting from (408) 257-6645 at Saratoga, California, and were transmitted following ordinary business practices; and there is a facsimile machine receiving via the number designated herein, and the transmission was reported as complete and without error. The record of the transmission was properly issued by the transmitting fax machine.

RECIPIENTS:

Bruce M. Brusavich, Esq.
Puneet K. Toor, Esq.
AGNEW & BRUSAVICH
20355 Hawthorne Blvd., 2nd Floor
Torrance, CA 90503
Facsimile #: (310) 793-1499

Andrew N. Chang, Esq.
ESNER, CHANG & BOYER
234 East Colorado Blvd., Suite 750
Pasadena, CA 91101
Facsimile #: (626) 535-9859

G. Patrick Galloway, Esq.
Karen Sparks, Esq.
Galloway, Lucchese, Everson & Picchi
2300 Contra Costa Blvd., Suite 30
Facsimile #: (925) 930-9035

Pleasant Hill, CA 94523-2398

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on January 27, 2016.

Ursula M. Walters

Ursula M. Walters

Court: Alameda County Superior Court
Action No: RG 15760730
Case Name: Spears (McMath) v. Rosen, M.D., et al.