

**TENTATIVE RULINGS  
LAW & MOTION CALENDAR  
Friday, April 4, 2025 3:00 p.m.  
Courtroom 17 – Hon. Jane Gaskell  
3035 Cleveland Avenue, Santa Rosa**

**PLEASE NOTE:** In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

**CourtCall is not permitted for this calendar.**

**If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.**

**TO JOIN ZOOM ONLINE:**

**D17 – Law & Motion**

Meeting ID: 161 126 4123

Passcode: 062178

<https://sonomacourt-org.zoomgov.com/j/1611264123>

**TO JOIN ZOOM BY PHONE:**

By Phone (same meeting ID and password as listed for each calendar):

+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge Gaskell’s Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by **4:00 p.m. the court day immediately preceding the day of the hearing.**

**1. 24CV06305, Eden Housing, Inc. v. ATI Restoration, LLC**

Plaintiffs Eden Housing, Inc., Eden Housing Management, Inc., and Santa Rosa Quail Run LP’s unopposed application for an order of this Court permitting counsel Kenneth T. Levine, Esq., to appear as counsel *pro hac vice* is **GRANTED** pursuant to California Rules of Court, Rule 9.40. Unless oral argument is requested, the Court will sign the proposed orders lodged with the application.

**2. 24CV07016, Felty v. Petalumaidence Opco LLC**

Defendant Petalumaidence Opco LLC, doing business as Vineyard Post Acute, (“Defendant”) petitions to compel arbitration on all of Plaintiff Michael Felty’s (“Plaintiff”) claims brought individually and as representative of the Estate of Jacklin Felty (“Decedent”). The petition is based on an Arbitration

Agreement (“Agreement”) executed by Decedent, the Federal Arbitration Act (“FAA”), and California Code of Civil Procedure (“C.C.P.”) section 1281.2.

The petition is **GRANTED**, for the reasons stated below. The action is stayed pending completion of the arbitration.

## I. PROCEDURAL HISTORY

Decedent was a resident at Defendant’s acute nursing facility. (Memorandum of Points and Authorities [“MPA”], 1:20-21.) Decedent entered into the Agreement on September 1, 2022, while she was a resident at the facility. (*Id.* at 2:3-4.) Defendant claims that the Agreement was voluntary, and that Decedent had 30 days to revoke her acceptance. (*Id.* at 2:4-6.) Per the Agreement, any disputes as to medical malpractice and any other dispute relating to services provided to Decedent by Defendant’s facility are submitted to Arbitration under the FAA. (MPA, 2:8-28, 3:1-5.)

Plaintiff’s Complaint alleges wrongful death of Decedent by medical negligence, elder abuse, negligent hiring, retention, and supervision, and survival action. (See Complaint, ¶¶ 32-53.) Plaintiff alleges that Decedent suffered from various illnesses and had a history of falling and was at risk for brain bleeds, which Defendant had knowledge of because they received her medical history upon admission to their facility. (*Id.* at ¶¶ 11-15.) Plaintiff claims that, due to Defendant’s negligence, Decedent fell on multiple occasions while she was a resident at Defendant’s facility and eventually was found dead on December 13, 2022, after falling and suffering a brain bleed. (*Id.* at ¶¶ 16-31.)

Defendant petitions now to submit all of Plaintiff’s claims to arbitration per the Agreement, the FAA, and California law, and submits as evidence the Agreement executed by Decedent. (MPA, 3:10-15.) Plaintiff opposes the motion. Defendant submitted a reply to the opposition.

## II. ANALYSIS

### Legal Standard

#### *III. Federal Arbitration Act (9 U.S.C. § 1 et seq.)*

The FAA applies to any “contract evidencing a transaction involving commerce” which contains an arbitration clause. (9 U.S.C. § 2.) The FAA favors the enforcement of arbitration agreements affecting interstate commerce. (*Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 380.) When it applies, the FAA preempts state laws that purport to create alternative grounds for confirming or vacating arbitration awards. (*C.T. Shipping, Ltd. v. DMI (USA) Ltd.* (S.D.N.Y. 1991) 774 F.Supp. 146, 148-149.)

#### *IV. Arbitration in California*

Generally, California has a strong public policy in favor of arbitration; any doubts regarding the arbitrability of a dispute are resolved in favor of arbitration. (*Howard v. Goldbloom* (2018) 30 Cal.App.5th 659, 663.) C.C.P. section 1280 et seq. governs arbitration in California. Sections 1281.2 and

1281.4 allow a party to move to compel arbitration per an arbitration agreement, and to stay legal proceedings pending the arbitration's conclusion.

A party seeking to compel arbitration pursuant to C.C.P. section 1281.2 must “plead and prove a prior demand for arbitration under the parties’ arbitration agreement and a refusal to arbitrate under the agreement.” (*Mansouri v. Sup. Ct.* (2010) 181 Cal.App.4th 633, 640-641.) The petitioner must also prove by a preponderance of evidence that the arbitration agreement exists and that the dispute is covered by the agreement. (*Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 396-397, 399-400.) The petitioner can satisfy this burden by alleging the existence of an arbitration agreement and setting it forth verbatim or attaching a signed copy of it even if the signing party does not recall the agreement. (*Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 218–19.) If the petitioner satisfies this burden, the opposing party must prove a defense to its enforceability, such as unconscionability or waiver. (*Ibid.*)

#### V. *Authenticity of Signature*

As a rule, the validity of the signature in an arbitration agreement is a foundational fact when compelling arbitration and the petitioner bears the burden of proving the authenticity. (*Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836, 842-843, 836.) Per Civil Code section 1633.9(a), “an electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.” The Court of Appeal has held that it was not sufficient evidence to show that a plaintiff was the same individual who completed the on-boarding forms based on witnesses that said they saw plaintiff complete the forms, but did not have a unique username and password assigned the plaintiff to complete the forms. (*Bannister v. Marinidence Opco, LLC* (2021) 64 Cal.App.5th 541, 546.)

#### VI. *Assent*

Generally, “one who signs an instrument which on its face is a contract is deemed to assent to all its terms...a party cannot avoid the terms of a contract on the ground that he or she failed to read it before signing.” (*Marin Storage & Trucking, Inc. v. Benco Contracting & Eng'g, Inc.* (2001) 89 Cal.App.4th 1042, 1049.)

#### VII. *Unconscionability*

Whether an arbitration agreement is unconscionable depends on circumstances. (*Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 655. [“Abramson”]) Both procedural and substantive unconscionability must be present for a court to refuse to enforce an arbitration provision based on unconscionability, but the more substantively oppressive the agreement is, the less evidence is required of procedural unconscionability. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal. 4th 83, 114.)

The relevant factors of procedural unconscionability are oppression and surprise, but where an agreement is suppressive, surprise does not need to be shown. (*Abramson*, *supra*, at 656.) Oppression arises from an inequality of bargaining power between the parties and an absence of real negotiation or a

meaningful choice on the part of the weaker party. (*Ibid.*) Surprise arises when the challenged terms are hidden by the parties seeking to enforce them. (*Ibid.*)

Substantive unconscionability focuses on whether the terms are so one-sided as to shock the conscience. (*Abramson, supra, at 657.*) There is a lack of required mutuality for an enforceable agreement when only the weaker party's claims are subject to arbitration without any reasonable justification for it. (*Ibid.*)

### Petition and Opposition

Defendant brings the petition pursuant to C.C.P. sections 1281.2 and 1281.4, the Federal Arbitration Act, 9 U.S.C. §§ 1-16, and the Agreement. (Notice of Petition to Compel Arbitration, 1:21-28, 2:1-2.) Defendant argues that Decedent agreed to submit all claims to arbitration by way of the Agreement, which is valid and enforceable and which Decedent failed to opt out of within the 30-day deadline. (*Id.* at 2:3-5.) Defendant petitions that the Court compel the entire action to arbitration and to stay the action pending the completion of arbitration. On December 30, 2024, Defendant requested Plaintiff to stipulate to arbitration and notified Plaintiff that otherwise Defendant would petition to compel arbitration per the Agreement. (Scharg Declaration, Exhibit B.) Plaintiff did not stipulate to arbitration and opposes the petition. (*Ibid.*)

#### *The FAA*

The Agreement expressly mentions the FAA and states that it evidences a transaction involving interstate commerce, which is a prerequisite of enforcing an arbitration agreement under the FAA. The Agreement is subject to the FAA.

#### *VIII. Arbitration in California*

Defendant petitions to compel arbitration pursuant C.C.P. section 1281.2. Defendant submitted a copy of the signed Agreement, and a copy of the correspondence sent to Plaintiff requesting her to stipulate to arbitration per the Agreement. Plaintiff's claims brought on behalf of Decedent's estate are covered by the express terms of the Agreement.

As Defendant has satisfied the burden of producing a signed copy of the Agreement, Plaintiff has the burden of proving a defense to the enforceability of the Agreement.

#### *IX. Authenticity of Signature*

Per C.C.P. section 1295, a patient who signs an arbitration agreement with a healthcare provider can bind heirs to arbitrate a wrongful death claim where the primary basis of the claim is professional negligence. Plaintiff argues that Decedent did not sign the Agreement because Defendant did not comply with the strict requirements of C.C.P. section 1295 to allow a statutory waiver of the right to a jury trial available in medical malpractice cases because it is uncertain whether the Agreement had specific language before the signature line in 10-point bold red type. Plaintiff also argues that the causes of action in the Complaint are based on elder abuse rather than professional negligence.

Defendant met its initial burden by producing the signed Agreement. Defendant argues that Plaintiff failed to present any evidence otherwise or present argument that invalidates the Agreement. Defendant points to the Agreement produced with the Petition which has the relevant required language in bold-face type right before the signature line. Defendant notes that when a person with the capacity of reading and understanding an instrument signs it, that person may not in the absence of fraud, coercion, or excusable neglect avoid its terms on the ground that they failed to read it before signing it, per *Bolanos v. Khlatian* (1991) 231 Cal.App.3d 1586, 1590. Defendant contends that, as there was no evidence that Decedent did not understand the instrument when she signed it, that she and her heirs are bound to the Agreement.

#### *X. Assent to Arbitration*

Plaintiff argues that Defendant cannot meet the burden of showing there is a valid and enforceable contract for arbitration because Defendant has not shown that there was mutual consent or that Decedent was sufficiently aware of the nature of the Agreement. Plaintiff argues that Ms. Johnson's declaration fails to state whether or not she gave the Agreement to Decedent and whether Decedent was given an opportunity to review and ask questions about the Agreement. Plaintiff argues that Decedent was in an altered mental state at the time the Agreement was allegedly signed.

Defendant again argues that it met its burden by producing the signed Agreement and that Decedent's heirs are bound by the signed Agreement.

#### *XI. Unconscionability*

Plaintiff finally argues that the Agreement is unconscionable because it did not comply with C.C.P. section 1295, because its terms created ambiguity between the rights and rules of the California Arbitration Act and the FAA by altering the language under section 1295. Plaintiff also argues that the Agreement is a contract of adhesion that should not be enforced because Decedent was not free of the choice and there was a lack of mutuality.

Defendant establishes that the Agreement contained a term that allowed the person signing it to revoke their acceptance within 30 days after signing it. The Agreement also contained a term that stated that, "the execution of this Arbitration Agreement is not a precondition to receiving medical treatment for admission to the Facility." Defendant finally argues that Plaintiff provided no evidence that Decedent was forced to sign the Agreement or was prevented from asking questions about what the terms of the Agreement meant. Decedent also never revoked her acceptance of the Agreement.

#### Application

Defendant produced a copy of the valid and enforceable signed Agreement. Though Plaintiff claims Decedent had an altered mental state at the time the Agreement was allegedly signed, Plaintiff did not provide any evidence of such altered mental state. The express terms of the Agreement stated that signing it was not a precondition for treatment and that the person signing it had 30 days to revoke acceptance. Plaintiff did not sufficiently show that Defendant forced Decedent to sign the Agreement in

order for her to receive treatment or that Decedent was not given the opportunity to ask any questions about the terms of the Agreement.

As such, Defendant produced a valid and enforceable arbitration agreement and Plaintiff failed to sufficiently prove a defense to its enforceability. The Court will grant the petition and compel arbitration as to all of Plaintiff's claims and stay the action pending completion of the arbitration.

## **XII. CONCLUSION**

The Petition is **GRANTED** to compel arbitration of Plaintiff's claims and to stay proceedings pending the arbitration. Defendant shall submit a proposed order on these motions consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

### **3. MCV-262405, Wells Fargo Bank, N.A. v. Vannuci**

Plaintiff Wells Fargo Bank, N.A.'s ("Plaintiff" or "Wells Fargo") unopposed motion to vacate the dismissal and enter judgment pursuant to Code of Civil Procedure ("C.C.P.") section 664.6 is **GRANTED**. Judgment shall be entered in the amount of **\$5,914.62** against Defendant Gene A. Vannucci ("Vannucci") for the outstanding debt plus costs.

#### **I. PROCEDURAL HISTORY**

Wells Fargo brought this action against Vannucci to collect payment on credit card debt owed. The parties entered into a Stipulation for Entry of Judgment and Settlement and Release & Dismissal of Action with Consent to Court Retaining Jurisdiction Pursuant to C.C.P. § 664.6 (the "Stipulation"), according to which Vannucci agreed to pay Wells Fargo to satisfy the debt owed. (Mulhorn Declaration, Exhibit 1, ¶ 1.) Vannucci agreed to make the following payments: (1) \$2,308.00 on or before September 16, 2023; (2) \$2,308.00 on or before October 16, 2023; and (3) \$2,307.13 on or before November 16, 2023. (*Id.* at ¶ 4.) The total settlement amount was \$6,923.13. (*Ibid.*) If Vannucci defaulted on the payments, then Wells Fargo could file the Stipulation with this Court to request the full amount of the debt remaining, less payments made under the Stipulation and plus costs incurred pursuant to written declaration submitted by Wells Fargo. (Mulhorn Declaration, Exhibit 1, ¶¶ 8-11.) Vannucci made payments totaling \$2,533.00 then failed to make further payments after that date. (Motion, 3:11-12.) Wells Fargo sent a notice on or about February 14, 2024, of default allowing a week to cure the default, but Vannucci did not cure the default. (*Id.* at 3:13-15.)

#### **II. ANALYSIS**

If parties to a pending litigation agree to sign a written stipulation for settlement of the case, then the court may upon noticed motion enter judgment pursuant to the terms of the settlement. (C.C.P. § 664.6(a).) The court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement if the parties request it. (*Ibid.*) "Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit." (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809, 71 Cal.Rptr.2d 265.)

Wells Fargo requests to vacate the dismissal and moves for entry of judgment per the Stipulation and section 664.6. (Motion, 4:8-21.) Wells Fargo has properly served notice of this motion on Vannucci, who has not opposed. Plaintiff moves the Court to enter judgment in the amount of \$5,914.62 against Vannucci, which includes the \$5,649.62 balance remaining on the debt and \$265.00 for filing and service of process costs. (*Ibid.*)

Wells Fargo sufficiently demonstrated that the parties entered into a valid written and signed settlement agreement, under which Vannucci continues to be in debt after defaulting on payment obligations. Per the motion, the parties' Stipulation, and C.C.P. section 664.6, the Court finds it reasonable to enter judgment in the amount of \$5,914.62 against Vannucci, for the remaining debt owed and Wells Fargo's court costs in bringing this motion.

### **III. CONCLUSION**

Accordingly, the motion is **GRANTED**. Judgment shall be entered in the amount of **\$5,914.62** against Vannucci for the outstanding debt plus costs. Unless the parties request and appear for oral argument, the Court will sign the proposed order and proposed judgment.

#### **4. SCV-271485, Sturm v. Zetzer**

Plaintiffs Jamie and Tory Sturm and Shari Castro's ("Plaintiffs") motion for sanctions on the grounds of perjury against Counsel Tsai is **CONTINUED** to **May 14, 2025**, at 3:00 P.M. in Department 17.

Plaintiffs' proof of service attached to the motion indicates that Plaintiffs served the moving papers on February 9, 2025, on Defendants and Counsel Tsai. However, the notice of motion filing stamp indicates that the motion was filed with the Clerk's Office in person the next day on February 10, 2025. As the hearing date was not assigned until after Plaintiffs already served the moving papers on Defendants, it is uncertain to the Court whether Plaintiffs later gave Defendants sufficient notice of the hearing date assigned on February 10, 2025, so that Defendant could timely oppose the motion. The hearing is continued to allow Plaintiffs to do so and to file an updated proof of service with the Court showing proper service of notice. If Plaintiffs fail to do so before the next hearing date, the Court will deny the motion as procedurally deficient.

#### **5. SCV-272279, Wescott v. DEMA Consulting & Management, LLC**

Counsel Scott A. Lewis's unopposed motion to be relieved as counsel for Defendant DEMA Consulting & Management, LLC ("DEMA") is **GRANTED**, per Code of Civil Procedure section 284(2).

Counsel Lewis declares that client DEMA has stopped all communication. (Counsel's Declaration, ¶ 2.) Counsel served all parties, including DEMA, with notice by mail and email on January 24, 2025, per the proof of service filed with the motion. He served DEMA at the last known address. (*Id.* at ¶ 3(a)(2).) He was unable to confirm the address is still valid, but mailed the moving papers with return receipt

requested, called DEMA’s last known telephone number, and conducted an internet search. (*Id.* at ¶ 3(b)(2).) The next hearing set in this matter is trial on August 1, 2025. Counsel Lewis shall submit a corrected Proposed Order showing the correct next hearing date for the Court’s review and signature.

## **6. SCV-273458, Hall v. Koster**

Defendant Donald Wheeler, M.D.’s (“Dr. Wheeler”) unopposed motion for summary judgment against Plaintiffs Brenda, Robert, and Ashlynn Hall’s (“Plaintiffs”) Complaint is **GRANTED** per Code of Civil Procedure (“C.C.P.”) section 437c.

### **I. PROCEDURAL HISTORY**

Plaintiffs alleged that Brett Hall (“Decedent”) died on June 12, 2022, of irreversible lung toxicity due to the acts and omissions of named Defendants who were Decedent’s medical providers. (Complaint, ¶ 1.) Defendants treated Decedent for complaints of shortness of breath and inability to take a deep breath on April 28, 2022. (Memorandum of Points and Authorities [“MSJ”], 3:14-16.) Dr. Wheeler’s involvement was to review a study order and x-ray sent to him by the emergency department where Decedent was treated indicating Decedent had “shortness of breath.” (*Id.* at 3:17-18.) Dr. Wheeler reviewed the study order and compared it to Decedent’s prior chest x-ray from February 7, 2022. (*Id.* at 3:18-19.) Dr. Wheeler noted his impressions of the x-ray, including a hyperinflation of Decedent’s lungs that he noticed was similar to the hyperinflation that could be seen on the chest x-ray from February 7, 2022. (*Id.* at 3:21-23.)

Plaintiff Brenda is Decedent’s mother and Plaintiffs Robert and Ashlynn are Decedent’s children. (Complaint, ¶¶ 12-14.) Plaintiffs filed this action against named Defendants alleging medical negligence/wrongful death and a survival action on behalf of Decedent’s estate. (*Id.* at ¶¶ 1-28.) Plaintiffs claim that all Defendants were negligent in their care and caused Decedent’s death due to their carelessness. (*Id.* at ¶¶ 1-28.)

Dr. Wheeler moves for summary judgment on the grounds that his care and treatment of Decedent complied with the applicable standard of care as a matter of law and that Plaintiffs’ alleged injuries were not the result of any negligent act or omission on the part of Dr. Wheeler. (Amended Notice of Motion, 1:25-28, 2:1-3.) Dr. Wheeler’s counsel’s declaration filed on March 25, 2025, states that he met and conferred with Plaintiffs’ counsel regarding the motion for summary judgment on February 7, 2025, and counsel indicated they would not oppose.

Per the Proof of Service attached to the motion, all parties were served via email to their counsels and by FedEx Express Overnight service on December 31, 2024. The Amended Notice of Motion giving notice of the hearing date set on April 4, 2025, was also served on all parties via email to their counsels on January 8, 2025. No party has opposed. Defendant filed a notice of non-opposition to notify the Court that he received no opposition from Plaintiffs or any of the other Defendants to the Motion for Summary Judgment.

### **II. ANALYSIS**



## A. Legal Standard

### 1. *Motion for Summary Judgment*

Per Code of Civil Procedure (“C.C.P.”) section 437c(a), any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. Summary judgment “shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (C.C.P. § 437c(c).)

A party moving for summary judgment bears the burden of persuasion that “each element of” the “cause of action” in question has been “proved,” such that there is no defense. (*Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1195.) If a party meets this initial burden, the burden shifts to the opposing party to provide sufficient evidence to raise a triable issue of fact. (C.C.P. § 437c(p)(1).) An issue of fact exists if “the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 845.) A moving party does not meet the initial burden if some “reasonable inference” can be drawn from the moving party’s own evidence which creates a triable issue of material fact. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 840.) If the moving defendant cannot meet the initial burden, the plaintiff has no evidentiary burden. (C.C.P. § 437c(p)(2).)

### 2. *Medical Negligence – Wrongful Death*

Professional negligence for a health care provided is defined in C.C.P. section 340.5 as “a negligent act or omission by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed, and which are not within any restriction imposed by the licensing agency or licensed hospital.” (*Arroyo v. Plosay* (2014) 225 Cal.App.4th 279, 297.)

To claim medical malpractice, a plaintiff must allege the following: (1) a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) a breach of the duty; (3) a proximate causal connection between the negligent conduct and the injury; and (4) resulting loss or damage.” (*Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 968.) A cause of action for wrongful death is purely statutory and requires a tortious act to be alleged that caused the resulting death and damages, which include pecuniary loss suffered by plaintiff’s decedent heirs. (*Ibid.*) If a wrongful death claim is based on the tort of negligence, then the plaintiff must allege all the elements of a negligence claim in the complaint. (*Novak v. Continental Tire North America* (2018) 22 Cal.App.5th 189, 195.)

### 3. *Survivor Damages*

In a survival action by the deceased plaintiff’s estate, the damages recoverable expressly exclude “damages for pain, suffering, or disfigurement,” but they do include “loss or damage that the decedent

sustained or incurred before death, including any penalties or punitive or exemplary damages.” (*County of Los Angeles v. Superior Court* (1999) 21 Cal.4th 292, 303–304.) Under California’s survival law, an estate can recover the deceased plaintiff’s lost wages, medical expenses, any other pecuniary losses incurred before death, and also punitive or exemplary damages. (*Ibid.*)

#### B. Dr. Wheeler’s Motion for Summary Judgment

Dr. Wheeler argues that his treatment of Decedent, by way of reviewing the study order and physician’s history provided to him by the emergency department, in all respects met the standard of care applicable to the treatment. (MSJ, 3:25-28, 4:1-12.) Defendant states that the date of the study was during the height of the COVID-19 pandemic, which made it reasonable to read the x-ray film as consistent with an infectious process. (*Id.* at 3:25-27.) He also states that acute shortness of breath is not a typical representation for a Bleomycin toxicity; per Dr. Wheeler, a chemotherapy-induced lung disease is also very rare. (*Id.* at 3:28, 4:1.) He claims that for these reasons, it was reasonable for him not to include the Bleomycin drug reaction in his differential diagnosis because it was a not a typical presentation of such a drug reaction. (*Id.* at 4:4-8.) In support of the motion, Dr. Wheeler submitted the declaration of Jason B. Wiesner, M.D., who is a doctor licensed to practice in California with extensive education and experience. (Wiesner Declaration, ¶ 2.) Dr. Wiesner states that Dr. Wheeler met the standard of care in all respects for the reasons that were stated in the motion. (*Id.* at ¶¶ 8-10.)

Plaintiffs did not oppose the motion.

#### C. Application

Dr. Wheeler presented sufficient information in the motion to argue that, because he met the applicable standard of care for his treatment of Decedent, that Plaintiffs cannot establish against him all of the required elements of a medical negligence claim as a matter of law. The burden has shifted to Plaintiffs to present argument that Dr. Wheeler did not meet the standard of care and that there remains a triable issue of fact on their claims as to Dr. Wheeler’s treatment of Decedent.

However, Plaintiffs did not oppose to argue that there remains any triable issue of fact as to Dr. Wheeler’s treatment. As a result, the Court will grant the unopposed motion for summary judgment as to only Dr. Wheeler against the entire Complaint.

### III. CONCLUSION

Based on the foregoing, Dr. Wheeler’s unopposed motion for summary judgment is **GRANTED** in its entirety. Unless oral argument is requested, the Court will sign the proposed order lodged with the Court regarding the motion.