

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

XBN v. Kaweah Health

XBN · No. 1:23-cv-01453 JLT HBK (consolidated with No. 1:24-cv-00431-JLT-HBK) · Decided March 3, 2025

SUMMARY

This document is a proposed order in a consolidated Eastern District of California action arising from alleged birth-related injuries and negligence claims under the Federal Tort Claims Act. It grants the United States’ motion for summary judgment based on Plaintiffs’ notice of non-opposition and orders Plaintiffs to show cause within 21 days why the Court should exercise supplemental jurisdiction over the remaining state-law claims.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
DECIDED	March 3, 2025
DOCKET	1:23-cv-01453 JLT HBK (consolidated with No. 1:24-cv-00431-JLT-HBK)
DISPOSITION	other
PROCEDURAL POSTURE	The United States moved for summary judgment on Plaintiffs' Federal Tort Claims Act negligence claim. Plaintiffs filed a notice of non-opposition. The court granted the motion and ordered Plaintiffs to show cause why the court should exercise supplemental jurisdiction over the remaining state-law claims.
STANDARD OF REVIEW	Summary judgment is proper when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Once a defendant identifies an absence of evidence supporting the plaintiff's claim, the plaintiff must produce evidence sufficient to support a verdict on every element for which the plaintiff bears the burden of proof.
PRECEDENTIAL VALUE	Unknown

TOPICS

- summary judgment
- negligence
- medical malpractice
- civil procedure
- health law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the United States was entitled to summary judgment on Plaintiffs' Federal Tort Claims Act negligence claim based on the absence of evidence supporting the claim.
2. Whether the court should exercise supplemental jurisdiction over the remaining state-law claims.

HOLDINGS

1. The United States was entitled to summary judgment because Plaintiffs failed to adduce evidence supporting their negligence claim and did not oppose the motion.
2. The court did not decide whether to exercise supplemental jurisdiction; instead, it ordered Plaintiffs to show cause within 21 days why supplemental jurisdiction should be exercised.

KEY QUOTATIONS

“Summary judgment is proper where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”” (at 1)

“To survive summary judgment, a plaintiff must then submit evidence “sufficient to support a verdict... on every element of [a] claim for which [he or she] will carry the burden of proof.”” (at 1)

FACTUAL BACKGROUND

Alondra Nunez and her son, XBN, alleged that they sustained injuries during XBN's birth on September 1, 2021. They asserted a negligence claim against the United States under the Federal Tort Claims Act, but did not adduce evidence supporting the claim and filed a notice of non-opposition to the United States' motion for summary judgment.

PROCEDURAL HISTORY

The action against Kaweah Health and others was originally filed in Tulare County Superior Court and removed to the Eastern District of California. A related action against the United States was filed in federal court, and the matters were consolidated. The United States moved for summary judgment, which the Plaintiffs did not oppose.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. Plaintiffs were ordered to show cause in writing within 21 days of the order why the court should exercise supplemental jurisdiction over the remaining state-law claims; any other party may respond within 14 days after Plaintiffs' filing, and no replies were authorized at that time.

CASES CITED

- Devereaux v. Abbey, 263 F.3d 1070, 1076 (9th Cir. 2001) (en banc)
- Fairbank v. Wunderman Cato Johnson, 212 F.3d 528, 532 (9th Cir. 2000)
- In re Apple Computer Securities Litigation, 886 F.2d 1109, 1113 (9th Cir. 1989)
- River City Markets, Inc. v. Fleming Foods West, Inc., 960 F.2d 1458, 1462 (9th Cir. 1992)

OPINION

XBN v. Kaweah Health

PER CURIAM.

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UNITED STATES OF AMERICA

7 8

9 UNITED STATES DISTRICT COURT

10 EASTERN DISTRICT OF CALIFORNIA

11 XBN, et al., Case No. 1:23-cv-01453 JLT HBK (Consolidated with No. 1:24-cv-00431-JLT-
HBK) 12 Plaintiffs,

PROPOSED ORDER GRANTING DEFENDANT

13 v. UNITED STATES OF AMERICA'S MOTION

FOR SUMMARY JUDGMENT (Doc. 34)

14 KAWEAH HEALTH, et al.,

ORDER TO SHOW CAUSE RE

15 Defendants. SUPPLEMENTAL JURISDICTION 16 21 Day Response Deadline 17 18 In this
consolidated action,1 Plaintiffs Alondra Nunez and her son, XBN, allege one claim of 19
negligence against the United States under the Federal Tort Claims Act arising from injuries they
20 allegedly sustained during the birth of XBN on September 1, 2021. See XBN v. United States,
E.D. Cal.

21 No. 1:24-cv-00431-JLT-HBK, Doc. 1 (Complaint). The United States moves for summary
judgment,

22 contending that Plaintiffs cannot adduce evidence in support of their claim, asserting generally
that the 23 sole deemed federal employee defendant took no actions that injured Plaintiffs. See
XBN v. Kaweah 24 Health, et al., E.D. Cal. No. 1:23-cv-01453-JLT-HBK, Doc. 34. 25 26 27 1
XBN v. Kaweah Health, et al., E.D. Cal. No. 1:23-cv-01453-JLT-HBK, filed originally in Tulare
County Superior Court and removed to this Court, and XBN v. United States, E.D. Cal. No. 1:24-
28 cv-00431-JLT-HBK, filed originally in this Court. 1 Summary judgment is proper where “there
is no genuine dispute as to any material fact and the 2 || movant is entitled to judgment as a matter

of law.” Fed. R. Civ. P. 56(a). “When the nonmoving party 3 || has the burden of proof at trial, the moving party need only point out ‘that there is an absence of 4 || evidence to support the nonmoving party’s case.’” *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 5 || 2001) (en banc); *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 532 (9th Cir. 2000) (“[A] 6 || moving defendant may shift the burden of producing evidence to the nonmoving plaintiff merely by 7 || ‘showing’—that is, pointing out through argument—the absence of evidence to support plaintiff’s 8 || claim.”). To survive summary judgment, a plaintiff must then submit evidence “sufficient to support a 9 || verdict... on every element of [a] claim for which [he or she] will carry the burden of proof.” In *Re 10 || Apple Computer Sec. Litig.*, 886 F.2d 1109, 1113 (9th Cir. 1989). “Summary judgment must be granted 11 || where there is not ‘sufficient evidence favoring the nonmoving party for a jury to return a verdict for 12 || that party.’” *River City Markets, Inc. v. Fleming Foods W., Inc.*, 960 F.2d 1458, 1462 (9th Cir. 1992). 13 Here, Plaintiffs have not adduced evidence in support of their negligence claim against the 14 || United States. Rather, they filed a Notice of Non-Opposition to the United States’ Motion for Summary 15 || Judgment. See *XBN v. Kaweah Health, et al.*, E.D. Cal. No. 1:23-cv-01453-JLT-HBK, Doc. 35. 16 Accordingly, IT IS ORDERED that Defendant United States of America’s Motion for 17 || Summary Judgment (Doc. 34) is GRANTED. 18 Given the above, it is FURTHER ORDERED that Plaintiffs show cause in writing within 21 19 || days of the date of this order why this Court should exercise supplemental jurisdiction over the 20 || remaining state law claims in this case. Within 14 days of Plaintiffs’ filing, any other party may file a 21 || response. No replies are authorized at this time. Unless the Court indicates otherwise, the order to show 22 || cause will be resolved on the papers. 23 IT IS SO ORDERED. Dated: _ March 3, 2025 Charis [Tourn

TED STATES DISTRICT JUDGE

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