

**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.

OPINION

1 MAcItCinHgE ULnEi tBedE CStKatWesI ATHtto rney 2 JOSEPH B. FRUEH Assistant United States Attorney 3 501 I Street, Suite 10-100 Sacramento, CA 95814 4 E-mail: joseph.frueh@usdoj.gov Telephone: (916) 554-2702 5 Facsimile: (916) 554-2900 6 Attorneys for Defendant 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 26 27 28 Dpapacen Opener Ce antic Deceunawr Tarren 2