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7 IN THE MATTER OF THE ARBITRATION OF

9	and	)	ARBITRATION NO.: 12223
10	, individually and	)	
10	collectively, for themselves and	)	ORDER RE MOTION FOR SUMMARY
11	on behalf of decedent	)	JUDGMENT AND DISCOVERY SANCTIONS
11	, and her heirs,	)	
12	Claimants,	)	DATE : April 7, 2014
13	vs.	)	TIME : 10:00 a.m.
14		)	LOCATION: Telephonic argument
15	AND	)	
16		)	
17	Respondents.	)	

18

19 Upon the motion filed by Respondents in this matter and based upon  
20 the evidence presented by each of the parties and upon the oral  
21 arguments of counsel and Claimants, in pro per, in the above-captioned  
22 hearing:

23 IT IS HEREBY ORDERED AS FOLLOWS:

24 1. AS TO THE SUMMARY JUDGMENT MOTION-

25 Summary judgment is a drastic measure to be used with caution by a  
26 court or arbitrator so that it does not become a substitute for a full  
27

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28 ORDER RE MOTION FOR SUMMARY JUDGMENT AND DISCOVERY SANCTIONS

1 trial. Any doubt as to the propriety of granting the motion is to be  
2 resolved in favor of the party opposing the motion. See, Stationers  
3 Corp. v Dun & Bradstreet, Inc. (1965) 62 Cal.2d 412, 417; Sprecher v.  
4 Adamson Companies (1981) 30 Cal.3d 358, 372.

5 It is the burden of a defendant (or respondent) filing a motion  
6 for summary judgment to show that no cause of action can be established  
7 or that there is a complete defense to all possible causes of action.  
8 California Code of Civil Procedure, Section 437c(o)(2). The moving  
9 party must identify the specific elements or issues on which it claims  
10 that the plaintiff (or claimant) has no supporting evidence. Russ v.  
11 International Paper Co., 943 Fed.2d 589, 592 (9th Cir. 1991). Upon,  
12 identification, plaintiff (or claimant) must prove that a triable issue  
13 of fact exists with regard to that issue and then, if plaintiff does  
14 so, the motion must fail. See California Code of Civil Procedure,  
15 437c(o)(1)-(2).

16 As previously stated, a defendant [respondent] moving for summary  
17 judgment bears the burden of showing that a cause of action has no  
18 merit because plaintiff (claimant) cannot establish an element of the  
19 claim or because defendant [respondent] has a complete defense. If the  
20 defendant [respondent] makes this showing, the burden then shifts to  
21 the plaintiff [claimant] opposing the summary judgment motion to  
22 establish that a triable issue of fact exists as to these issues.  
23 Saelzer v. Advanced Group 400 (2001) 25 Cal.4th 763, 768. The party  
24 moving for summary judgment bears an initial burden of production to  
25 make a prima facie showing of the nonexistence of any triable issue of  
26 material fact..." Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th

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1 826, 850. The burden of production involves the presentation of  
2 evidence (Evidence Code § 110). "A prima facie showing is one that is  
3 sufficient to support the position of the party in question." Aguilar  
4 v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 851.

5 To meet the burden of production, the party moving for summary  
6 judgment must support that motion "by affidavits, admissions, answers  
7 to interrogatories, depositions, and matters of which judicial notice  
8 shall or may be taken." Code of Civil Procedure §437c(b)(1).

9 Supporting affidavits or declarations "shall be made by any person on  
10 personal knowledge, shall set forth admissible evidence, and shall show  
11 affirmatively that the affiant is competent to testify to the matters  
12 stated in the affidavits or declarations." Code of Civil Procedure  
13 §437c(d). "In professional malpractice cases, expert opinion testimony  
14 is required to prove or disprove that the defendant performed in  
15 accordance with the prevailing standard of care, except in cases where  
16 the negligence is obvious to laymen." Kelley v. Trunk (1998) 66  
17 Cal.App.4th 519, 523.

18 Initially, Claimants have named  
19 and as Respondents in this matter,  
20 which seeks damages for medical negligence in failing to timely  
21 diagnose cancer in and thereby causing her  
22 premature death. is a healthcare  
23 service plan governed by the Knox-Keene Healthcare Service Plan Act of  
24 1975 found in Health & Safety Code § 1340, et seq. Pursuant to Health  
25 & Safety Code § 1371.25, "A plan, any entity contracting with a plan,  
26 and providers are each responsible for their own acts or omissions, and  
27

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1 are not liable for the acts or omissions of, or the costs of defending,  
2 others." Pursuant to Watanabe v. California Physicians' Service (2008)  
3 169 Cal.App.4th 56, 64-65, "the text of section 1371.25 is unmistakably  
4 clear in precluding the imposition of vicarious liability." There are  
5 no allegations nor evidence sufficient to hold

6 responsible for the alleged failure to timely diagnose or  
7 treat the renal cancer suffered by  
8 operates hospital facilities under the  
9 plan. There are no located in  
10 and there is no evidence that the failure to diagnose the renal  
11 cancer occurred at any facility. Therefore,  
12 there is no action that was involved with  
13 regarding and cannot be held liable, as such.

14 **A. LIABILITY COULD ONLY EXIST, WITH REGARD TO**  
15 **RESPECTING HER TREATMENT BY**

16  
17 (" ") supplied  
18 the physicians and facilities that treated and that  
19 subsequently diagnosed (or failed to have timely diagnosed) her with  
20 renal cancer and then cared for her after her cancer was diagnosed.  
21 Only that Respondent could have liability here.

22 Said Respondent has, in support of its motion, submitted the  
23 declarations of M.D. and M.D.  
24 The declarations contain sufficient information to qualify Drs. and  
25 as experts with regard to the care provided to  
26 Claimants' mother, by said Respondent. Claimants

1 have supplied no conflicting expert evidence.

2 The question that must first be reached is whether the said  
3 Respondent, on the face of its own pleadings, has presented sufficient  
4 facts to support summary judgment against the Claimants. In order to  
5 grant a motion for summary judgment in favor of said Respondent, the  
6 arbitrator must conclude that, based on the claims set forth in the  
7 initial complaint or claim, said Respondent has set forth sufficient  
8 evidence to prove the "non-existence of **any** triable issue of material  
9 fact." In Kelley v Trunk (1998) 66 Cal.App.4th 519, the court was  
10 faced with a motion for summary judgment in a medical negligence  
11 action. The motion was supported by an expert declaration which stated  
12 the opinion that no malpractice had occurred but which did not explain  
13 the basis for the opinion. "An expert's opinion, even if  
14 uncontradicted, may be rejected if the reasons given for it are  
15 unsound. Kastner v. Los Angeles Metropolitan Transit Authority (1965)  
16 63 Cal.2d 52, 58. "Expert opinions, though uncontradicted, are worth  
17 no more than the reasons and factual data upon which they are based."  
18 Kelley v. Trunk (1998) 66 Cal.App.4th 519, 524.

19 In that case, the expert opinion presented simply concluded that  
20 injury was not the result of his physician's failure to meet  
21 the applicable standard of care. The court stated, at 66 Cal.App.4th  
22 524:

23 Here, the crucial issues were: What was the nature  
24 of the disease or condition that required  
25 surgery? Was it brought on by the laceration? What  
26 symptoms of this condition reasonably might have been

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1                    observable at the time                    complained to Dr.  
2                    of continuing intense pain unmediated by  
3 medication? Should a reasonable doctor at this  
4 point in time have recognized the possibility of  
5 severe complications? If so, why? If not, why  
6 not? Would complications of the kind  
7 eventually suffered have become evidence any  
8 earlier than the three or four days after the  
9 laceration? Would earlier intervention have  
10 mitigated                    injury?                    declaration  
11 addressed none of these issues. Without illuminating  
12 explanation, it was insufficient to carry  
13 Dr.                    burden in moving for summary judgment.

14                    The declarations of the doctors supplied by Respondent do simply  
15 make some conclusions but they also do set forth facts and the medical  
16 records themselves do supply facts upon which a summary judgment motion  
17 could be considered.

18                    Here, Claimants set forth the following basis for liability with  
19 regard to the failure to diagnose their mother's renal cancer, by  
20 stating that: "Well before her death, decedent had presented complaints  
21 to her treating physicians at the                    Entities, including but not  
22 limited to Dr                    of, among other things, low back pain,  
23 fatigue, abnormal weight loss, and cramping of the fingers and/or upper  
24 extremities. Decedent's complaints, which she presented in early to  
25 mid 2011, should have placed the                    Entities on notice, as well as  
26 those medical practitioners they enlisted to care and treat decedent,

1 that decedent was demonstrating early signs of renal cancer. The  
2 Entities, and their treating physicians, did fail to properly  
3 diagnose, treat and care for decedent and, in so doing, it was not  
4 until the end of December 2011 that decedent was finally diagnosed as  
5 suffering from renal cancer. But for the negligence of the  
6 Entities and their treating physicians, decedent would have been alive  
7 today. As a result of the negligence of the Entities, decedent  
8 suffered unnecessary pain and discomfort, loss of enjoyment of life,  
9 and premature death."

10 The claim for decedent's suffering of unnecessary pain and  
11 discomfort and the loss of the enjoyment of her life, are not  
12 recoverable. Code of Civil Procedure §377.34 provides:

13 In an action or proceeding by a decedent's personal  
14 representative or successor in interest on the  
15 decedent's cause of action, the damages recoverable are  
16 limited to the loss or damage that the decedent  
17 sustained or incurred before death, including any  
18 penalties or punitive or exemplary damages that the  
19 decedent would have been entitled to recover had the  
20 decedent lived, and do not include damages for pain,  
21 suffering, or disfigurement.

22 Only if there is a claim of elder abuse can the personal  
23 representatives of a decedent pursue a cause of action for the pain,  
24 suffering or loss of enjoyment of life of a decedent. See  
25 Conservatorship of Kayle (2005) 134 Cal.App.4th 1. None exists here.

26 There is a possibility of a claim for wrongful death. It is  
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1 stated in the case of Quiroz v. Seventh Ave. Center (2006) 140  
2 Cal.App.4th 1256, 1263-1264:

3 A cause of action for wrongful death is thus a statutory  
4 claim. (Code Civ. Proc., §§ 377.60-377.62.) Its purpose  
5 is to compensate specified persons - heirs - for the  
6 loss of companionship and for other losses suffered as a  
7 result of a decedent's death. (Jackson v. Fitzgibbons  
8 (2005) 127 Cal.App.4th 329, 335 [25 Cal.Rptr.3d 478].)  
9 Persons with standing to bring a wrongful death claim  
10 are enumerated at Code of Civil Procedure section  
11 377.60, which provides in pertinent part: "A cause of  
12 action for the death of a person caused by the wrongful  
13 act or neglect of another may be asserted by any of the  
14 following persons or by the decedent's personal  
15 representative on their behalf: (a) The decedent's  
16 surviving spouse, domestic partner, children, and issue  
17 of deceased children, or, if there is no surviving issue  
18 of the decedent, the persons, including the surviving  
19 spouse or domestic partner, who would be entitled to the  
20 property of the decedent by intestate succession."

21  
22 "The elements of the cause of action for wrongful death  
23 are the tort (negligence or other wrongful act), the  
24 resulting death, and the damages, consisting of the  
25 pecuniary loss suffered by the heirs. [Citations.]" (5  
26 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 891,  
27



1 p. 350.) The wrongful death statute "limits the right of  
2 recovery to a class of persons who, because of their  
3 relation to the deceased, are presumed to be injured by  
4 his [or her] death [citation] and bars claims by persons  
5 who are not in the chain of intestate succession.  
6 [Citations.]" (Nelson v. County of Los Angeles (2003)  
7 113 Cal.App.4th 783, 789, fn. 6 [6 Cal.Rptr.3d 650].)

8  
9 Damages awarded to an heir in a wrongful death action  
10 are in the nature of compensation for personal injury to  
11 the heir. (McKinney v. California Portland Cement Co.  
12 (2002) 96 Cal.App.4th 1214, 1231-1232 [117 Cal.Rptr.2d  
13 849].) "A plaintiff in a wrongful death action is  
14 entitled to recover damages for his own pecuniary loss,  
15 which may include (1) the loss of the decedent's  
16 financial support, services, training and advice, and  
17 (2) the pecuniary value of the decedent's society and  
18 companionship - but he may not recover for such things  
19 as the grief or sorrow attendant upon the death of a  
20 loved one, or for his sad emotions, or for the  
21 sentimental value of the loss. [Citations.]" [2] (Nelson  
22 v. County of Los Angeles, supra, 113 Cal.App.4th at p.  
23 793; Code Civ. Proc., § 377.61.) "The damages  
24 recoverable in [wrongful death] are expressly limited to  
25 those not recoverable in a survival action under Code of  
26 Civil Procedure section 377.34. [Citations.]" (Wilson v.

1                   John Crane, Inc., supra, 81 Cal.App.4th at p. 861; Code  
2                   Civ. Proc., § 377.61.)

3           While the pleading may be somewhat inartful, it appears to set  
4 forth a cause of action for professional negligence resulting in the  
5 wrongful death of                   . It states, in pertinent part:  
6 "Decedent's complaints, which she presented in early to mid 2011,  
7 should have placed the                   Entities on notice...that decedent was  
8 demonstrating early signs of renal cancer. The                   Entities...did  
9 fail to properly diagnose, treat and care for decedent and, in so  
10 doing, it was not until the end of December 2011 that decedent was  
11 finally diagnosed as suffering from renal cancer. But for the  
12 negligence of the                   Entities..., decedent would have been alive  
13 today. As a result of the negligence of the                   Entities, decedent  
14 suffered...premature death.

15       Respondent has provided evidence from competent physicians that the  
16 the physicians at                   diagnosed and treated  
17 within the applicable standard of care and that, even if the  
18                   had been diagnosed in mid-2011, her condition, treatment and  
19 ultimate death would not have changed. The first question is whether  
20 the details supplied by the declarations of Drs.                   and  
21                   give sufficient factual support for the arbitrator to conclude  
22 that Respondent's declarations meet the burden of production. If this  
23 were found, then the next question would be whether Claimants have  
24 provided proper evidence, pursuant to Code of Civil Procedure,  
25 § 437C(b)(1)), to meet Claimant's burden or proof with regard to  
26 opposing this motion for summary judgment.

27 **ORDER RE MOTION FOR SUMMARY JUDGMENT AND DISCOVERY SANCTIONS**

1 The first question to face is whether met the standard of  
2 care with regard to its actions to diagnose or, by its inaction, failed  
3 to diagnose her renal cancer before December of 2011. Relying on the  
4 declaration of Dr. and the records themselves, there appears to be  
5 a visit by on May 24, 2011 where she first  
6 complained of symptoms that may have led the doctors to suspect  
7 that she had renal cancer. Mrs. complained of leg cramps,  
8 weight loss, despite normal eating and appetite, some nausea and  
9 abdominal pain off-and-on in the lower abdomen. She expressed that she  
10 was depressed and was working too hard. The leg cramps were felt to be  
11 related to her working too hard, the weight loss was felt to be related  
12 to her depression. She was referred for a gastrointestinal consultation  
13 and an x-ray. The x-ray came back with her lungs clear but she did not  
14 follow through with the gastrointestinal referral. She was also non-  
15 compliant with a glucose tolerance test. Dr. concludes that the  
16 doctor did an appropriate work-up on this visit. That appears to  
17 be a factually appropriate conclusion. Leg cramps and out-of-the-  
18 ordinary weight loss could be the result of over-work and depression.  
19 She did complain of abdominal pain but Mrs. did not follow  
20 through with the gastrointestinal referral. She showed high levels of  
21 glucose but the doctor did follow through by suggesting that she  
22 undergo a glucose tolerance test. She did not, however, follow through  
23 by taking a glucose tolerance test. It would difficult to find that,  
24 based on this visit, did not meet the standard of care. The  
25 doctor did suggest that Mrs. get a gastrointestinal and  
26 glucose tolerance referral, but she failed to do so.

27  
28 **ORDER RE MOTION FOR SUMMARY JUDGMENT AND DISCOVERY SANCTIONS**

1 She was next seen by Dr. on October 4, 2011, complaining of  
2 abdominal cramps and mild constipation, with nausea vomiting and low  
3 back pain. Dr. diagnosed her with viral gastroenteritis. She  
4 came back in to urgent care complaining of abdominal pain, diarrhea and  
5 vomiting on October 7, 2011. She was diagnosed with uncontrolled  
6 diabetes Type II and given a gastrointestinal cocktail which  
7 significantly improved her abdominal pain as well as a urinary tract  
8 infection. Mrs. did not follow through with obtaining the  
9 antibiotic prescribed by the doctor. It is arguable that the  
10 persistence of the gastrointestinal pains and problems should have  
11 caused the doctors to take additional tests that may have shown the  
12 doctors that Mrs. had cancer.

13 However, she did appear again at on  
14 November 11, 2011, at which time she had further abdominal pain and  
15 blood from her rectum. She was sent for a CT scan, showing a large  
16 left renal cell carcinoma with adrenal and lung metastasis and a  
17 prominent retroperitoneal adenopathy. Even if the doctors at had  
18 sent Mrs. for a CAT scan in October of 2011, which in the  
19 arbitrator's opinion was the earliest reasonable time that  
20 doctors may have been under a duty to do further testing that may have  
21 uncovered the cancer, there are two problems determining that there is  
22 an actionable claim for medical negligence. First, because Mrs.  
23 showed that there was an improvement from her abdominal pain  
24 upon receiving the gastrointestinal cocktail and showed no signs of  
25 rectal bleeding, Dr. concluded that it was not beyond the standard  
26 of care for not to have taken the necessary tests which may have  
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1 uncovered the cancer up to November 11, 2011, at which time her cancer  
2 was diagnosed.

3 Even if the arbitrator was to conclude that Dr. was incorrect  
4 on this point, the ultimate question was whether the failure to  
5 diagnose the cancer by October of 2011, would have allowed Mrs.  
6 to survive the cancer. Dr. concludes that,  
7 "even if the renal cancer had been diagnosed on May 24, 2011, the  
8 outcome in this case would not have been any different." He states  
9 that "[c]onsidering the extent of metastasis found in November of  
10 2011, the renal cell cancer had to have metastasized more than six  
11 months earlier. Therefore, even if the diagnosis of cancer had been  
12 made in May of 2011, it would not have had any impact on the prognosis  
13 in this case."

14 While this statement is conclusory and not supported by sufficient  
15 facts for the arbitrator to make such a conclusion, it is clear, since  
16 the arbitrator concludes that there was no likely deviance from the  
17 standard of care until at least October, 2011, that, by the time of  
18 diagnosis a month later, the extent of metastasis was such that there  
19 would not have been a possibly different outcome to this case by that  
20 point. While, perhaps, diagnosis in October, 2011 may have caused Mrs.

21 to live slightly longer, given the extent of metastasis  
22 found in her system on November 11, 2011, there is no way to conclude  
23 that diagnosis one month prior to that date would have had any effect  
24 on her dying or not dying of cancer. As Dr. concludes,  
25 there "is no evidence which would demonstrate any causal connection  
26 between any professional action or inaction which would have

1 contributed to the claimants' injuries or damages." Claimants injuries  
2 and damages can only be for the negligent causing of the wrongful death  
3 of their mother. There has been no evidence presented indicating that  
4 failure to diagnose Mrs. with renal cancer in October, 2011  
5 would have saved or significantly extended her life. The claimants  
6 failed to present any evidence to conclude the opposite of Respondents  
7 assertions in this regard. As a result, there is insufficient evidence  
8 for the arbitrator to conclude that there is a triable issue of fact as  
9 to professional negligence or causation of the alleged injuries or  
10 damages to Claimants.

11 As a result, the motion is granted.

12 **2. DISCOVERY SANCTIONS:**

13 Claimants were served with Form Interrogatories, Special  
14 Interrogatories and a Request for Production of Documents. A hearing  
15 was held on February 24, 2014. The attorney for the claimants had been  
16 relieved of continued representation, effectively on December 20, 2013.  
17 No responses to the discovery were provided by claimants prior to  
18 February 24, 2014. The arbitrator order claimants to provide responses  
19 no later than the hearing date set for the summary judgment motion,  
20 April 7, 2014, or terminating sanctions would be considered. No  
21 responses were provided by that date. Claimant,  
22 indicated that he had not been able to find new counsel to represent  
23 claimants in the interim and did not understand how to comply with the  
24 responding to the propounded discovery on his own. While this is  
25 understandable, it is no less harmful to Respondents' ability to  
26 prepare their case in defense of .

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27 **ORDER RE MOTION FOR SUMMARY JUDGMENT AND DISCOVERY SANCTIONS**

1 Pursuant to Code of Civil Procedure §§ 2030.290 and 2031.290,

2 If a party to whom interrogatories [or a request for  
3 production of documents] are directed fails to serve a  
4 timely response, the following rules apply:

5 (c) The court shall impose a monetary sanction under  
6 Chapter 7 (commencing with Section 2023.010) against any  
7 party, person, or attorney who unsuccessfully makes or  
8 opposes a motion to compel a response to  
9 interrogatories, unless it finds that the one subject to  
10 the sanction acted with substantial justification or  
11 that other circumstances make the imposition of the  
12 sanction unjust. If a party then fails to obey an order  
13 compelling answers, the court may make  
14 those orders that are just, including...a terminating  
15 sanction under Chapter 7 (commencing with Section  
16 2023.010).

17 Given the failure to respond by claimants, given the precarious  
18 nature of the issue of representation of the Claimants and their  
19 understanding and ability to comply with the discovery process, the  
20 arbitrator concludes that imposition of the requested monetary  
21 sanctions against the claimants would be unjust. However, since the  
22 Claimants were ordered to submit proper responses no later than April  
23 7, 2014, failed to do so and indicated that there was little likelihood  
24 that they would comply at any time in the near future, this creates an  
25 untenable situation for Respondents to be able to determine the true  
26 nature of claimants' claims, if other than set forth in the pleadings.

27 **ORDER RE MOTION FOR SUMMARY JUDGMENT AND DISCOVERY SANCTIONS**

1 As a result, pursuant to his authority under the California Code of  
2 Civil Procedure, §§ 2030.290(c) and 2031.290(c), the arbitrator grants  
3 terminating sanctions.

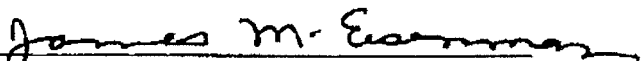
4 Accordingly, the arbitrator must grant the motion for summary  
5 judgment in favor of Respondents,

6 and

7 and each of them, and against Claimants, and  
8 individually and collectively, for themselves  
9 and on behalf of decedent and her heirs. The  
10 arbitrator finds that there are no material issues of triable fact  
11 remaining to support the cause of action encompassed by Claimants'  
12 claim in this matter and gives judgment to Respondents. Further, as an  
13 alternative basis for this ruling, the arbitrator grants terminating  
14 sanctions, pursuant to his authority under the California Code of Civil  
15 Procedure, §§ 2030.290(c) and 2031.290(c), orders the dismissal of the  
16 claim in this action and gives judgment to Respondents.

17 **Nothing in this arbitration decision prohibits or restricts the**  
18 **enrollees from discussing or reporting the underlying facts, results,**  
19 **terms and conditions of this decision to the Department of Managed**  
20 **Health Care.**

21 DATED: April 14, 2014

22  
23   
24 JAMES M. EISENMAN, Arbitrator

25  
26  
27 

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**ORDER RE MOTION FOR SUMMARY JUDGMENT AND DISCOVERY SANCTIONS**



## Arbitration Award

**Instructions:** Use of this form is optional. Within fifteen business days of the date of the closing of most arbitration hearings, the Neutral Arbitrator must serve the Arbitration Award on the Parties and the \_\_\_\_\_ If there were three arbitrators, this Award must be signed by at least two of them. See Arbitration Rules 37 - 39. Return to:

Arbitration Name: \_\_\_\_\_

Arbitration Number: 12223

James M. Eisenman, the Arbitrator(s) selected to determine the dispute between the Parties in the above referenced action, find(s):

An arbitration hearing was held on <sup>Summary judgment and discovery sanctions</sup> April 7, 2014.

It is the decision of the Arbitrator(s) that the prevailing Party in this Arbitration is **Check one:**

The Claimant(s) is entitled to \_\_\_\_\_.

Or:

The Respondent(s) is entitled to judgment.

**The reasons for this decision are attached.**

(Arbitration Rule 38 requires that the Award provide findings of fact and conclusions of law, consistent with California Code of Civil Procedure Section 437c(g) or Section 632.)

**Nothing in this arbitration decision prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and conditions of this decision to the Department of Managed Health Care.**

James M. Eisenman  
Signature of Neutral Arbitrator

4/14/14  
Date

\_\_\_\_\_  
Signature of Party Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Party Arbitrator

\_\_\_\_\_  
Date

1  
2  
3  
4  
5 Attorneys for Respondent,  
6 Kaiser Foundation Health Plan  
7

8 **IN THE MATTER OF THE ARBITRATION BETWEEN**  
9

10 OIA No.: 13193

11 Claimant,

ORDER

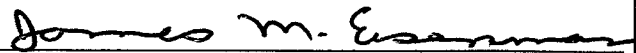
12 vs.

13 KAISER FOUNDATION HEALTH PLAN,  
14 INC.,

15 Respondent.  
16

17 Claimant had been ordered to provide all discovery responses to counsel for Kaiser Foundation  
18 Health Plan by no later than July 22, 2015 at 5:00 p.m. The discovery responses were not provided by  
19 that time. Therefore, as set forth in the prior order on this case, this case is now dismissed.

20 Dated: ~~July~~ <sup>August</sup> 4, 2015

21   
22 James M. Eisenman, Arbitrator

23 AJM:ce  
24  
25  
26  
27  
28

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7 IN THE MATTER OF THE ARBITRATION OF

9 ) ARB.NO. : 13193  
10 )  
11 ) ORDER RE DISCOVERY INCLUDING  
12 ) MONETARY AND TERMINATING SANCTIONS  
13 )  
14 ) DATE : July 8, 2015  
15 ) TIME : 1:00 p.m.  
16 ) LOCATION: Telephonic hearing  
17 )

11 ARBITRATION OF

15 Respondent propounded discovery upon Claimants in the form of  
16 various forms of written discovery, presented pursuant to the  
17 California Code of Civil Procedure, including Form Interrogatories and  
18 two sets of Special Interrogatories. Prior to the expiration of the  
19 statutory period for response, Claimants requested additional  
20 extensions of time to respond to said discovery, which was granted by  
21 Respondent. Claimants still failed and refused to reply to said duly  
22 propounded discovery. As a result, Respondent requested a telephonic  
23 hearing re discovery which was held at 11:00 a.m. on April 24, 2015  
24 with the parties and the arbitrator. At the time of the hearing,  
25 counsel for Claimants indicated that he would provide proper responses  
26 within a fixed period of additional time. The arbitrator indicated

1 that, should proper discovery responses not be provided to Respondent  
2 in that time frame, the arbitrator would consider the imposition of  
3 sanctions upon Claimants.

4 The arbitrator is informed and believes that no discovery  
5 responses were served timely nor have been served since that date by  
6 Claimants. Given the multiple extensions and the additional time  
7 granted by the arbitrator for responding to the discovery, the  
8 arbitrator found that a formal motion to compel further discovery is  
9 not necessary. Counsel for Claimants was fully aware of the deadline  
10 imposed by the arbitrator.

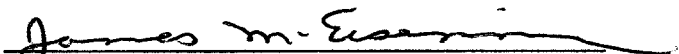
11 **WHEREBY, IT IS HEREBY ORDERED AS FOLLOWS:**

12 1. Claimants must prepare and serve proper responses to all  
13 outstanding discovery so that the responses are physically in the  
14 possession of Respondent's counsel no later than 5:00 p.m., July 22,  
15 2015.

16 2. Should Claimants provide such responses in compliance with the  
17 above order, any further sanctions will not be entertained by the  
18 arbitrator and the matter may proceed, as Respondent's counsel has  
19 waived any claim that he might have to obtain an award of monetary  
20 sanctions offered by the arbitrator, due to the delays.

21 3. Should Claimants not provide such responses in compliance with  
22 the above order, the arbitrator hereby orders terminating sanctions,  
23 for failure to reasonably comply with the statutory duty to  
24 meaningfully participate in discovery and orders the Claim herein  
25 dismissed, with prejudice as of July 22, 2015 at 5:01 p.m.

26 DATED: July 9, 2015

  
JAMES M. EISENMAN, Arbitrator

27 hedrick/disc2.ord

## Arbitration Award

**Instructions:** Use of this form is optional. Within fifteen business days of the date of the closing of most arbitration hearings, the Neutral Arbitrator must serve the Arbitration Award on the Parties and the Independent Administrator. If there were three arbitrators, this Award must be signed by at least two of them. See Rules 37 - 39. Return to:

Office of the Independent Administrator  
3580 Wilshire Boulevard, Suite 2020  
Los Angeles, California 90010  
Fax: 213-637-8658

**Arbitration Name:**

**Arbitration Number: 13193**

James M. Eisenman, the Arbitrator(s) selected to determine the dispute between the Parties in the above referenced action, find(s):

An arbitration hearing was held on July 8, 2015.

It is the decision of the Arbitrator(s) that the prevailing Party in this Arbitration is **Check one:**

The Claimant(s) is entitled to \_\_\_\_\_.

**Or:**

The Respondent(s) is entitled to Dismissal of this Action against Claimant.

**The reasons for this decision are attached.**

(Rule 38 requires that the Award provide findings of fact and conclusions of law, consistent with California Code of Civil Procedure Section 437c(g) or Section 632.)

**Nothing in this arbitration decision prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and conditions of this decision to the Department of Managed Health Care.**

James M. Eisenman  
Signature of Neutral Arbitrator

8/4/15  
Date

\_\_\_\_\_  
Signature of Party Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Party Arbitrator

\_\_\_\_\_  
Date