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11 UNITED STATES DISTRICT COURT  
 12 CENTRAL DISTRICT OF CALIFORNIA

14 ZEDDRICK F. WHITE  
 15 Plaintiff,  
 16 v.  
 17 UNITED STATES OF AMERICA,  
 18 Defendant.

Case No. CV 16-06348 R (KSx)  
**POST-TRIAL FINDINGS OF FACT  
 AND CONCLUSIONS OF LAW**  
 Trial: August 8, 2017 at 10:00 a.m.  
 Location: Roybal Federal Building and  
 U.S. Courthouse  
 255 East Temple Street  
 Courtroom 880  
 Los Angeles, CA 90012  
 Honorable Manuel L. Real  
 United States District Judge

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1 The Court conducted the trial of the above-captioned action on August 8, 2017;  
2 heard the entirety of Plaintiff's evidence; admitted into evidence Defendant's trial  
3 exhibits 1-26; heard Defendant's motion for judgment on partial findings pursuant to  
4 Rule 52(c) of the Federal Rules of Civil Procedure; Plaintiff's opposition thereto; and  
5 granted such motion. As instructed by the Court, Defendant United States hereby  
6 submits the following Proposed Post-Trial Findings of Fact and Conclusions of Law.  
7 A proposed Judgment has been submitted under separate cover.

8 **I. FINDINGS OF FACT**

9 1. On January 20, 2015, Plaintiff visited the West Los Angeles facility of the Veterans Affairs Greater  
10 Los Angeles Health Care System ("West LA VA") to receive treatment for urinary frequency. Plaintiff saw a VA  
11 primary care physician, who conducted a clinical examination and routine laboratory  
12 testing.

13 2. Later that same day, Plaintiff's primary care physician informed him  
14 about his abnormal laboratory results and requested that Plaintiff visit the Emergency  
15 Department at the West LA VA for follow up testing and treatment.

16 3. Plaintiff's initial laboratory results revealed that he had high levels of  
17 creatinine (measurements of toxins in the blood), which indicates poor kidney  
18 function.

19 4. At the Emergency Department, Plaintiff underwent additional clinical  
20 evaluation, laboratory testing, and a kidney ultrasound to determine the etiology of his  
21 kidney problems. This workup indicated that Plaintiff had Vitamin D toxicity  
22 (extremely high levels of Vitamin D in blood) and hypercalcemia (excessive amount  
23 of calcium in blood). Plaintiff was diagnosed with acute renal failure and acute  
24 kidney injury. He was admitted to the West LA VA hospital as an inpatient.

25 5. Plaintiff revealed to VA healthcare providers that he consumed a Vitamin  
26 D supplement, multivitamin, workout supplement, and various herbal supplements in  
27 the months prior to the Emergency Department visit.  
28

1           6.     Taking excessive amounts of supplements containing Vitamin D can  
2 raise calcium levels and cause hypercalcemia. When hypercalcemia is present, a  
3 person's kidneys must work harder to filter the blood, which can cause excessive thirst  
4 and frequent urination. Hypercalcemia can damage the kidneys and limit their ability  
5 to cleanse blood and eliminate fluid.

6           7.     Physicians from the Nephrology Department of West LA VA consulted  
7 with the VA medical staff regarding Plaintiff's renal issues.

8           8.     During his hospital admission, Plaintiff received an intravenous saline  
9 solution and calcitonin medication to address his hypercalcemia.

10          9.     On January 21, 2015, Plaintiff was also subject to a full renal workup to  
11 determine the cause of his acute kidney injury.

12          10.    As part of the full renal workup, Plaintiff underwent a chest x-ray and  
13 was tested for a number of conditions that are known to have a damaging effect on  
14 kidney function, including Hepatitis B, Hepatitis C, Syphilis, and HIV.

15          11.    Patients with acute kidney injuries are routinely tested for HIV because  
16 the virus itself can damage the kidneys.

17          12.    A VA healthcare provider explained the nature of the full renal workup  
18 and obtained Plaintiff's consent to complete the workup.

19          13.    On January 22, 2015, VA healthcare providers conducted a renal biopsy  
20 to obtain more information regarding Plaintiff's acute kidney injury. Plaintiff  
21 consented to the renal biopsy.

22          14.    The renal biopsy did not show evidence of chronic kidney disease.

23          15.    Following the biopsy, VA healthcare providers continued to provide  
24 intravenous fluids to improve Plaintiff's creatinine levels and medication for his  
25 hypercalcemia.

26          16.    On January 24, 2015, Plaintiff was informed by VA healthcare providers that he tested  
27 HIV positive.

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1           17.    The same day, following the disclosure of Plaintiff’s HIV status, Plaintiff  
2 left the hospital against medical advice.

3           18.    Although VA healthcare providers strongly encouraged him to stay in the  
4 hospital, knowing that Plaintiff was determined to leave, they advised him to drink  
5 ample amounts of fluid, eat a low calcium diet, and take the prescription steroid  
6 Prednisone for his hypercalcemia.

7           19.    Before leaving the hospital Mr. White was “informed of the risk involved  
8 and released the attending physician and the hospital from all responsibility and any ill  
9 effect which may result [*sic*] from their action.”

10          20.    Upon leaving the hospital, Mr. White “was not angry” and “felt he had  
11 been provided overall good care, but had many personal things going on that he could  
12 not explain.”

13          21.    Prior to his departure from the hospital, Plaintiff’s creatinine levels were  
14 substantially lower.

15          22.    VA healthcare providers instructed Plaintiff to follow-up with the VA  
16 Nephrology Department and the VA HIV clinic at the West LA VA.

17          23.    At all times during his hospital admission from January 20 – 24, 2015,  
18 Plaintiff was appropriately treated by VA healthcare providers for his acute kidney  
19 injury.

20          24.    Between January 26 to March 5, 2015, VA healthcare providers called  
21 Plaintiff and left voicemail messages asking him to schedule an appointment.

22          25.    On January 30, 2015, Plaintiff’s primary care physician sent him a letter  
23 reminding him of a nephrology appointment on February 4, 2015, informing him that  
24 she made a request to an infectious diseases HIV specialist for a consultation, and  
25 asking him to make a primary care appointment.

26          26.    After leaving against medical advice on January 24, 2015, Plaintiff never  
27 returned to the West LA VA for any medical treatment at all, including any follow up  
28 for his acute kidney injury or for his HIV condition.

1           27. Each VA healthcare provider was acting within the course and scope of  
2 his or her employment when treating Plaintiff.

3           28. On or about March 4, 2015, Plaintiff filed an administrative tort claim  
4 (Standard Form-95) against the Department of Veterans Affairs in the amount of  
5 Fifty-Thousand Dollars (\$50,000) claiming he was tested for HIV without his consent  
6 and for misdiagnosing kidney failure.

7           29. Defendant's retained expert in internal medicine and nephrology, Dr.  
8 Stuart Friedman, opined that VA healthcare providers at all times met the applicable  
9 standard of care and provided appropriate treatment. He also opined that VA  
10 healthcare providers did not breach the standard of care in diagnosing and treating  
11 Plaintiff for kidney injury. See Trial Ex. 26.

12           30. The Court finds that Dr. Friedman is appropriately credentialed and  
13 qualified to provide expert medical opinion. The Court further finds that his expert  
14 opinions as set forth in his report are credible.

15           31. Plaintiff presented no expert witness testimony in support of his claims.

16           32. The Court further finds that Plaintiff's testimony was inadequate to set  
17 forth a prima facie case of medical negligence or to establish any of the claims made  
18 in his complaint.

19           33. Any finding of fact deemed to be a conclusion of law is hereby  
20 incorporated into Conclusions of Law.

## 21 **II. CONCLUSIONS OF LAW**

22           1. In an action brought pursuant to the Federal Tort Claims Act ("FTCA"),  
23 28 U.S.C. § 2671 et seq., the law of the place where the allegedly negligent act  
24 occurred governs the substantive law applied. See 28 U.S.C. §§ 1346(b).

25           2. To have a cognizable claim under the FTCA, the claim must arise from  
26 the negligent or wrongful act of a government employee acting within the scope of his  
27 or her employment "under circumstances where the United States, if a private person,  
28 would be liable to the claimant in accordance with the law of the place where the act

1 or omission occurred.” 28 U.S.C. § 1346(b); Dalehite v. United States, 346 U.S. 15,  
2 73 S.Ct. 936, 97 L.Ed. 1427 (1953).

3 3. California law applies to the instant suit because the acts or omissions at  
4 issue in this suit occurred at the West LA VA in Los Angeles, California.

5 4. Under the FTCA, the United States is liable for money damages in the  
6 same manner and to the same extent as a private individual under like circumstances,  
7 but shall not be liable for interest prior to judgment or for punitive damages. 28  
8 U.S.C. § 2674.

9 5. Under the FTCA, Plaintiff’s damages, if any, are limited to the amount  
10 claimed administratively. See 28 U.S.C. §2675(b).

11 6. To prove medical malpractice under California law, Plaintiff must  
12 establish: (1) the duty of VA healthcare providers to use such skill, prudence, and  
13 diligence as other members of their profession commonly possess and exercise; (2)  
14 that VA healthcare providers breached that duty; (3) a proximate causal connection  
15 between the negligent conduct and the resulting injury; and (4) actual loss or damage  
16 resulting from the VA healthcare providers’ negligence. See, e.g., Hanson v. Grode,  
17 76 Cal. App. 4th 601, 606 (1999); Gami v. Mullikin Med. Ctr., 18 Cal. App. 4th 870,  
18 877 (1993) (reciting elements of medical negligence claim).

19 7. As a general rule, the testimony of an expert witness is required in every  
20 professional negligence case to establish (i) the applicable standard of care, (ii)  
21 whether that standard was met or breached by defendant, and (iii) whether any breach  
22 of the standard of care by defendant caused the plaintiff’s damages. See Scott v.  
23 Raybrer, 185 Cal. App. 4th 1535, 1542 (Cal. App. 2d Dist. 2010) (citing Flowers v.  
24 Torrance Memorial Hospital Medical Center, 8 Cal. 4th 992, 1001 (1994)).

25 8. “The standard of care in a medical malpractice case requires that medical  
26 service providers exercise . . . that degree of skill, knowledge and care ordinarily  
27 possessed and exercised by members of their profession under similar circumstances.”  
28 Barris v. County of Los Angeles, 20 Cal. 4th 101, 108 n.1 (1999).

1           9.       Thus, a physician breaches the standard of care only if the physician’s  
2 action is “[a] deviation from the standard of care that his peers consider appropriate in  
3 the situation.” Burgess v. Superior Ct., 2 Cal. 4th 1064, 1081 (1992).

4           10.       The burden of proof with respect to all elements of his claims rests with  
5 Plaintiff who must demonstrate to a reasonable degree of medical probability that the  
6 VA healthcare providers breached the applicable standard of care and thereby caused  
7 injury based upon competent expert testimony. See Vasquez v. Residential  
8 Investments, Inc., 118 Cal. App. 4th 269, 288 (2004); Bromme v. Pavitt, 5 Cal. App.  
9 4th 1487, 1489 (1992) (citing Jones v. Ortho Pharmaceutical Corp., 163 Cal. App. 3d  
10 396, 402-403 (1985)).

11           11.       “A tort is a legal cause of injury only when it is a substantial factor in  
12 producing the injury.” Soule v. GM Corp., (1994) 8 Cal. 4th 548, 572.

13           12.       Under California Civil Jury Instruction (“CACI”) 430: A substantial  
14 factor in causing harm is a factor that a reasonable person would consider to have  
15 contributed to the harm. It must be more than a remote or trivial factor. It does not  
16 have to be the only cause of the harm. [Conduct is not a substantial factor in causing  
17 harm if the same harm would have occurred without that conduct.] CACI 430 (2010).

18           13.       Plaintiff did not meet his burden of proof on any element of any claim  
19 presented in his complaint.

20           14.       West LA VA staff provided appropriate medical care for Plaintiff’s acute  
21 kidney injury and ordered appropriate testing to determine the cause of such injury.  
22 Their conduct met the applicable standard of care at all times relevant to this case.

23           15.       Plaintiff consented to the care and treatment given to him at the West LA  
24 VA.

25           16.       Dr. Friedman, Defendant’s expert nephrologist, provided credible  
26 testimony that VA healthcare providers acted within the standard of care in diagnosing  
27 or treating Plaintiff for his kidney injury.

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1           17. Plaintiff did not present any opinion by a treating physician or expert  
2 witness that any VA healthcare provider breached the standard of care in diagnosing  
3 or treating Plaintiff for his kidney injury.

4           18. Plaintiff did not present any opinion by a treating physician or expert  
5 witness that Plaintiff acquired HIV during his VA hospital admission.

6           19. To a reasonable degree of medical probability, Plaintiff could not have  
7 contracted HIV during his inpatient care at the West LA VA.

8           20. No act or omission by any VA healthcare provider breached the  
9 applicable standard of care. No act or omission by any VA healthcare provider was  
10 the legal cause of any injury to Plaintiff.

11           21. The United States did not breach any duty owed to Plaintiff.

12           22. The United States did not cause any of the injuries alleged by Plaintiff.

13           23. Under Rule 52(c) of the Federal Rules of Civil Procedure, Defendant is  
14 entitled to judgment on partial findings because Plaintiff was fully heard during a  
15 nonjury trial and did not establish that VA healthcare providers breached any duty or  
16 caused any of the injuries alleged by Plaintiff.

17           24. Any conclusion of law deemed to be a finding of fact is hereby  
18 incorporated into Findings of Fact.

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20 Dated: August 14, 2017.

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23 \_\_\_\_\_  
24 HONORABLE MANUEL L. REAL  
25 UNITED STATES DISTRICT COURT JUDGE  
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