

1 indifference in conducting a liver biopsy; violation of rights by threats, intimidation, or
2 coercion in violation of Cal. Civ. Code § 52.1; inadequate post-biopsy recovery; and
3 wrongful death and loss of companionship arising out of Decedent's passing.

4 Presently before the Court are Plaintiffs' Motion for Partial Summary Judgment,
5 ECF No. 188, and Defendants' Motion for Summary Judgment, ECF No. 182.¹ For the
6 reasons that follow, Plaintiffs' Motion is GRANTED and Defendants' Motion is
7 GRANTED with respect to the sixth cause of action, and otherwise DENIED.²

8 9 **BACKGROUND**³

10
11 Decedent Robert Staggs began his prison term at SCC on January 8, 2004. He
12 was diagnosed with Hepatitis C virus ("HCV") in 1980 and began to experience
13 worsening symptoms associated with his HCV diagnosis in May 2009, during his prison
14 term. These worsening symptoms included pruritus, darkened urine, and open sores.
15 Plaintiffs allege that these symptoms were so extreme that they gave Decedent insomnia
16 and interfered with his ability to participate in regular daily activities. According to
17 Plaintiffs, Decedent's symptoms clearly pointed to acute liver failure, but Defendants only
18 gave him pain medication and other treatments intended to mask the symptoms instead
19 of properly diagnosing and addressing the underlying problems. In June 2009,
20 Defendant Bangi, one of the SCC doctors, administered a blood test to Decedent that
21 showed an increase in Decedent's alpha-feta protein ("AFP") level from 11 to 35, while a
22 normal value is between zero and eight. Following this result, Defendants continued to

23
24 ¹ Plaintiffs also filed a Motion to Strike Defendants' Joint Reply to Separate Statement of
25 Undisputed Facts, or in the alternative, a proposed Surreply. ECF No. 200. Plaintiffs' Motion to Strike is
26 DENIED, and the Court has instead considered Plaintiffs' filed Surreply.

27 ² Because oral argument would not be of material assistance, the Court ordered this matter
28 submitted on the briefs. E.D. Cal. Local Rule 230.

³ The following facts are derived from the parties' respective briefing, statements of disputed and
undisputed facts, and Plaintiffs' Complaint. They are construed in Plaintiffs' favor as the party opposing
summary judgment.

1 give Decedent only painkillers and did not repeat the AFP test or give him further
2 treatment at that time. In July 2009, Defendant Bangi ordered an MRI of Decedent's
3 liver, and the test was administered on August 30 of that year, showing a possible lesion
4 in his liver.

5 On December 8, 2009, Decedent submitted a 602 inmate appeal form to the SCC
6 Healthcare Appeals Office requesting medical attention for his symptoms. He received a
7 denial of his request on December 21, 2009, which he appealed two days later. On
8 December 26, 2009, Decedent went "man-down" in his cell, and was taken to the Sonora
9 Regional Medical Center hospital where he received an ultrasound and a CT scan. Both
10 tests indicated cirrhosis and several lesions in Decedent's liver, including one five-
11 centimeter lesion. In January 2010, Defendants St. Clair and Allen scheduled a biopsy
12 of Decedent's liver that Defendant Bangi had originally ordered in October 2009. After
13 two hospitals refused to perform the biopsy on Decedent because of the high risks
14 involved in biopsying a liver like Decedent's with ascites fluid in the peritoneal cavity,
15 DHM agreed to administer the procedure. Plaintiffs assert that Decedent was at a higher
16 risk for acute liver bleeding because of his condition.

17 Decedent's liver biopsy was performed at DHM on January 22, 2010. Plaintiffs'
18 expert opined that the "universal protocol" for liver biopsies requires the patient to
19 "remain immobile in a supine position" for "three to four hours immediately following the
20 procedure" to help stop internal bleeding, even if the liver is otherwise healthy. However,
21 it is undisputed that Defendants forced Decedent to leave his hospital bed less than an
22 hour after the biopsy so he could be transported back to SCC. The next day, Decedent
23 was unable to urinate, his abdomen became swollen and distended, and he soon began
24 to vomit. No prison personnel came to Decedent's aid until the afternoon of the following
25 day, January 24, 2010. At that point, Decedent was transferred to the Operating
26 Housing Unit at SCC, and on January 25, 2010, he was taken to the San Joaquin
27 Medical Center for emergency treatment. His biopsy results were returned the next day
28 and confirmed hepatocellular carcinoma. Decedent was transferred to the California

1 Medical Facility in Vacaville on February 4, 2010, where he died on February 12, 2010.
2 Plaintiffs' expert opined that the immediate cause of Decedent's death was "blood loss
3 into his peritoneum" resulting from the liver biopsy performed on January 22, 2010. His
4 official causes of death on his death certificate were hepatocellular carcinoma and end
5 stage liver disease.

6 With regard to the facts described above, Plaintiffs allege the following action or
7 inaction by each named Defendant:

- 8 • Dr. St. Clair: screened out Decedent's 602 inmate appeal for "abuse of the
9 appeal procedure"; approved Decedent's liver biopsy despite knowing
10 about Decedent's high risk for complications; failed to cause Decedent to
11 be included in the HCV screening program and failed to cause him to be
12 referred to a specialist despite HCV treatment protocols.
- 13 • Dr. Bangi: prescribed Decedent painkillers to mask his symptoms instead
14 of treating his liver disease; scheduled Decedent's liver biopsy despite
15 knowing about Decedent's high risk for complications.
- 16 • Dr. Allen: approved Decedent's liver biopsy despite knowing about
17 Decedent's high risk for complications; failed to cause Decedent to be
18 referred to a specialist.
- 19 • Dr. Russin: administered Decedent's October 2009 MRI scan and failed to
20 diagnose a tumor based on that test; failed to administer a multiphase MRI
21 that would have revealed Decedent's hepatocellular carcinoma.
- 22 • Dr. Krpan: prescribed Decedent painkillers to mask his symptoms instead
23 of treating his liver disease; ordered Decedent's liver biopsy despite
24 knowledge of Decedent's heightened risk for complications.
- 25 • Dr. Sattah: administered Decedent's liver biopsy despite knowledge of
26 Decedent's heightened risk for complications; performed the biopsy in a
27 way that further increased risk to Decedent.

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1 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); see also Celotex Corp. v.
2 Catrett, 477 U.S. 317, 322 (1986). One of the principal purposes of Rule 56 is to
3 dispose of factually unsupported claims or defenses. Celotex, 477 U.S. at 325.

4 Rule 56 also allows a court to grant summary judgment on part of a claim or
5 defense, known as partial summary judgment. See Fed. R. Civ. P. 56(a) (“A party may
6 move for summary judgment, identifying each claim or defense—or the part of each
7 claim or defense—on which summary judgment is sought.”); see also Allstate Ins. Co. v.
8 Madan, 889 F. Supp. 374, 378-79 (C.D. Cal. 1995). The standard that applies to a
9 motion for partial summary judgment is the same as that which applies to a motion for
10 summary judgment. See Fed. R. Civ. P. 56(a); State of Cal. ex rel. Cal. Dep’t of Toxic
11 Substances Control v. Campbell, 138 F.3d 772, 780 (9th Cir. 1998) (applying summary
12 judgment standard to motion for summary adjudication).

13 In a summary judgment motion, the moving party always bears the initial
14 responsibility of informing the court of the basis for the motion and identifying the
15 portions in the record “which it believes demonstrate the absence of a genuine issue of
16 material fact.” Celotex, 477 U.S. at 323. If the moving party meets its initial
17 responsibility, the burden then shifts to the opposing party to establish that a genuine
18 issue as to any material fact actually does exist. Matsushita Elec. Indus. Co. v. Zenith
19 Radio Corp., 475 U.S. 574, 586-87 (1986); First Nat’l Bank v. Cities Serv. Co., 391 U.S.
20 253, 288-89 (1968).

21 In attempting to establish the existence or non-existence of a genuine factual
22 dispute, the party must support its assertion by “citing to particular parts of materials in
23 the record, including depositions, documents, electronically stored information,
24 affidavits[,] or declarations . . . or other materials; or showing that the materials cited do
25 not establish the absence or presence of a genuine dispute, or that an adverse party
26 cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). The
27 opposing party must demonstrate that the fact in contention is material, i.e., a fact that
28 might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby,

1 Inc., 477 U.S. 242, 248, 251-52 (1986); Owens v. Local No. 169, Assoc. of W. Pulp and
2 Paper Workers, 971 F.2d 347, 355 (9th Cir. 1987). The opposing party must also
3 demonstrate that the dispute about a material fact “is ‘genuine,’ that is, if the evidence is
4 such that a reasonable jury could return a verdict for the nonmoving party.” Anderson,
5 477 U.S. at 248. In other words, the judge needs to answer the preliminary question
6 before the evidence is left to the jury of “not whether there is literally no evidence, but
7 whether there is any upon which a jury could properly proceed to find a verdict for the
8 party producing it, upon whom the onus of proof is imposed.” Anderson, 477 U.S. at 251
9 (quoting Improvement Co. v. Munson, 81 U.S. 442, 448 (1871)) (emphasis in original).
10 As the Supreme Court explained, “[w]hen the moving party has carried its burden under
11 Rule [56(a)], its opponent must do more than simply show that there is some
12 metaphysical doubt as to the material facts.” Matsushita, 475 U.S. at 586. Therefore,
13 “[w]here the record taken as a whole could not lead a rational trier of fact to find for the
14 nonmoving party, there is no ‘genuine issue for trial.’” Id. 587.

15 In resolving a summary judgment motion, the evidence of the opposing party is to
16 be believed, and all reasonable inferences that may be drawn from the facts placed
17 before the court must be drawn in favor of the opposing party. Anderson, 477 U.S. at
18 255. Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s
19 obligation to produce a factual predicate from which the inference may be drawn.
20 Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d,
21 810 F.2d 898 (9th Cir. 1987).

22 23 ANALYSIS

24 25 A. Plaintiffs’ Motion for Partial Summary Judgment

26 Plaintiffs move for partial summary judgment with regard to Defendants’
27 affirmative defense that Plaintiffs did not exhaust administrative remedies prior to filing
28 the present suit, as required under the Prison Litigation Reform Act (“PLRA”). Plaintiffs

1 argue that the exhaustion requirement does not apply to them because they are not
2 prisoners themselves but rather are family members of a deceased prisoner. ECF
3 No. 188. Defendants filed a Notice of Non-Opposition to Plaintiffs' Motion. ECF No.
4 195.

5 The PLRA requires that a prisoner exhaust his or her administrative remedies
6 before bringing a claim under § 1983. 42 U.S.C.A. § 1997e(a). However, the PLRA
7 does not require family members or a deceased prisoner's estate to exhaust these
8 administrative remedies before bringing a § 1983 action on behalf of the deceased
9 prisoner. Rather, it only places that requirement on an action brought "by a prisoner
10 confined in any jail, prison, or other correctional facility." Id. Other courts interpreting the
11 statute have reached the same conclusion, finding that, for example, the PLRA's
12 exhaustion requirement does not apply to the mother or the estate of a prisoner. Torres
13 Rios v. Pereira Castillo, 545 F. Supp. 2d 204 (D. Puerto Rico, Aug. 28, 2007). Moreover,
14 a deceased prisoner's failure to exhaust administrative remedies before his death does
15 not preclude others from filing a § 1983 action on his behalf. Anderson v. County of
16 Salem, 2010 WL 3081070, at *2 (D. New Jersey Aug. 5, 2010) ("Defendants' argument
17 that Plaintiff's federal claims cannot proceed because [decedent] failed to exhaust his
18 administrative remedies...lacks merit....His death prevented him from doing so.").
19 Plaintiffs in this case are the deceased prisoner's mother, sister, and estate. In light of
20 the clear case law and Defendants' statement of non-opposition, Plaintiffs' Motion for
21 Partial Summary Judgment is GRANTED.

22 **B. Defendants' Motion for Summary Judgment**

23 In their Corrected Fourth Amended Complaint, Plaintiffs allege various violations
24 against fifteen separate defendants, eight of whom are specifically named, and seven of
25 whom consist of groups of Doe Defendants. Defendants' present Motion for Summary
26 Judgment addresses summary judgment by party, rather than by claim, and the Court
27 takes the same approach here, after first addressing Defendants' qualified immunity
28 arguments.

1 **1. Qualified Immunity⁴**

2 To bring a § 1983 action, a plaintiff must show that the defendant was acting
3 “under color of any [law]” at the time of the alleged civil rights violation. 42 U.S.C.
4 § 1983. This generally requires that the plaintiff show the defendant has committed the
5 alleged violation “while acting in his official capacity or while exercising his
6 responsibilities pursuant to state law.” West v. Atkins, 487 U.S. 42, 50 (1988). However,
7 “[g]overnmental officials performing discretionary functions generally are shielded from
8 liability in their individual capacities if the challenged conduct did not violate clearly
9 established statutory or constitutional rights of which a reasonable person would have
10 known.” Romo v. Cate, Case No. 2:11-cv-2898 DAD P, 2014 WL 4276071, at *6.

11 When determining whether a finding of qualified immunity is appropriate at the
12 summary judgment stage, a court must consider “whether a constitutional right would be
13 violated if all facts are viewed in favor of the party opposing summary judgment
14 [I]f a violation could be made out on a favorable view of the parties’ submissions, the
15 next, sequential step is to ask whether the right was clearly established.” Jeffers v.
16 Gomez, 267 F.3d 895, 909 (9th Cir. 2001) (quoting Saucier v. Katz, 533 U.S. 194, 200
17 (2001)). This is “a two-part inquiry: (1) Was the law governing the state official’s conduct
18 clearly established? (2) Under that law could a reasonable state official have believed
19 his conduct was lawful?” Id. at 910 (internal citation omitted). At bottom, “the relevant,
20 dispositive inquiry is whether it would be clear to a reasonable official that his conduct
21 was unlawful in the situation he confronted.” Saucier, 533 U.S. at 202. In the context of
22 summary judgment of an Eighth Amendment deliberate indifference claim, Plaintiffs must
23 show that a reasonable officer—knowing what each officer here is alleged to have
24 known—would “have perceived an excessive risk of serious harm” such that his actions
25 were constitutionally impermissible. Jennings v. Moreland, Case No. 2:08-cv-01305 LKK

26 ⁴ Plaintiffs make no § 1983 claim against Defendant Russin, so he is not included in this analysis.
27 Further, the Ninth Circuit has provided that corporations and other such entities are not entitled to qualified
28 immunity from § 1983 actions, see Sellers v. Regents of University of Cal., 432 F.2d 493, 500 (9th Cir.
1970) (“[A] corporation...is not a ‘person’ within the meaning of 42 U.S.C. § 1983.”), so Defendant DHM is
also excluded from this analysis.

1 CKD P, 2013 WL 4049532, at *5 (internal citation omitted); Estate of Ford v. Ramirez-
2 Palmer, 301 F. 3d 1043, 1051-53.

3 First, construing the facts presented in the light most favorable to Plaintiffs,
4 Defendants' conduct would violate a constitutional right. Specifically, Defendants
5 St. Clair, Allen, and Krpan were all somehow involved in approving Decedent's liver
6 biopsy, despite allegedly knowing of Decedent's heightened risk for complications and
7 the fact that two hospitals had already refused to perform the procedure because of that
8 heightened risk. According to Plaintiffs, Defendants Bangi and Krpan both prescribed
9 Decedent painkillers to mask his symptoms instead of actually treating Decedent's liver
10 disease, and Defendant Bangi originally ordered Decedent's liver biopsy. Defendant
11 Sattah personally administered Decedent's liver biopsy; according to Plaintiffs, this was
12 despite the fact that he had to have known—based on his experience and education—of
13 Decedent's special risk for complications. He apparently also released Decedent from
14 the hospital prior to the standard recovery time. And for their part, Plaintiffs complain,
15 Defendants St. Clair and Allen each could have referred Decedent to the appropriate
16 specialist but failed to do so despite protocols in place requiring referrals under
17 applicable circumstances. If a jury believes Plaintiffs, these actions amount to deliberate
18 indifference to Decedent's medical needs, as alleged in Plaintiffs' claims one, four, and
19 six.

20 Next, the Court considers whether the right supposedly violated was clearly
21 established. “[D]eliberate indifference to serious medical needs of prisoners constitutes
22 the ‘unnecessary and wanton infliction of pain’...proscribed by the Eighth Amendment.
23 This is true whether the indifference is manifested by prison doctors in their response to
24 the prisoner's needs or by prison guards in intentionally denying or delaying access to
25 medical care” Estelle v. Gamble, 429 U.S. 97, 104-05 (1976) (quoting Gregg v.
26 Georgia, 428 U.S. 153, 173 (1976)). The law concerning deliberate indifference was
27 clearly defined at the time of the actions and inactions described above.

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1 Finally, whether a reasonable official in each of Defendants' shoes could have
2 believed their conduct to be lawful is analyzed below for each group of defendants. For
3 the following reasons, and taking all facts alleged as true at this point in the analysis, the
4 Court finds that no Defendant is entitled to qualified immunity, and summary judgment of
5 Plaintiffs' deliberate indifference claims based on qualified immunity is not appropriate.

6 **a. Sierra Conservation Center Defendants**

7 As set forth above, interpreting the facts in the light most favorable to Plaintiffs,
8 the Court finds that a reasonable official knowing what the SCC Defendants (i.e.,
9 St. Clair, Allen, Bangi, and Krpan) are alleged to have known could not have believed
10 their actions and inactions were lawful under the circumstances. Indeed, each of these
11 Defendants was involved in scheduling Decedent's liver biopsy, despite all of them
12 allegedly knowing that Decedent had liver complications making the procedure too
13 dangerous to perform, as evidenced by the fact that two other hospitals refused to
14 perform the test. Further, Defendants Bangi and Krpan both treated Decedent while at
15 SCC, and both of them prescribed Decedent painkillers to mask his symptoms, rather
16 than to treat his underlying liver disease. Defendants St. Clair and Allen each could
17 have referred Decedent to the appropriate specialist but failed to do so despite protocols
18 in place requiring referrals under applicable circumstances. If all facts are taken as true,
19 a reasonable officer would not believe those actions were lawful, and the SCC
20 Defendants are therefore not entitled to qualified immunity. Knowing what they
21 purportedly knew, a reasonable officer in Defendants' shoes would have perceived the
22 risk of death to the Decedent and would have known that risk was both excessive and
23 serious. To the extent the SCC Defendants move for summary judgment based on
24 qualified immunity, their motion is DENIED.

25 **b. Defendant Sattah**

26 Plaintiffs apparently assert a separate Eighth Amendment deliberate indifference
27 claim against Sattah under § 1983, alleging that he was deliberately indifferent to
28 Decedent's medical needs via his performance of the liver biopsy and premature release

1 of Decedent after the biopsy, in violation of Decedent's constitutional rights. Defendants
2 contend first that Sattah was not a state actor subject to liability under § 1983 and,
3 second, that even if he were, he is entitled to qualified immunity.

4 Sattah was employed by Central Valley Imaging ("CVI"), which contracted with
5 DHM for his performance of Decedent's liver biopsy on January 22, 2010. Defendants
6 argue that as a contracted employee, Sattah was not a state actor and therefore cannot
7 be held liable under § 1983. But a "private doctor who provides medical services to
8 inmates pursuant to a contract with the prison may be held liable in a civil rights suit."
9 Hetzel v. Swartz, 909 F. Supp. 261, 264 (M.D. Pa. Dec. 18, 1995). Whether a private
10 physician who contracted with the state to treat inmates is acting under color of state law
11 is a fact-intensive inquiry. "[T]he fact that [a doctor's] employment contract did not
12 require him to work exclusively for the prison [does not] make him any less a state actor
13 than if he performed those duties as a full-time, permanent member of the state prison
14 medical staff." Atkins, 487 U.S. at 56. Rather, it is "the physician's function while
15 working for the State, not the amount of time he spends in performance of those duties
16 or the fact that he may be employed by others to perform similar duties, that determines
17 whether he is acting under color of state law." Id. There are several tests for
18 determining whether an individual is a state actor, including the joint action and
19 governmental nexus tests. Johnson v. Knowles, 113 F.3d 1114, 1118 (9th Cir. 1997).

20 The joint action test is met if "private persons are willful participants in joint activity
21 with the State or its agents that effects a constitutional deprivation." Id. at 1119. "An
22 agreement between government and a private party can create state action." Id.
23 Depending on the details of CVI's contract and the extent of Sattah's relationship with
24 the State of California, he may satisfy this test and be considered a state actor. The
25 nexus test, on the other hand, is satisfied if there is a "sufficiently close nexus between
26 the State and the challenged action . . . so that the action . . . may be fairly treated as
27 that of the State itself." Id. at 1119. Defendant Sattah may satisfy either the joint action
28 test, the nexus test, or both, making him a state actor for purposes of § 1983.

1 Under the joint action test, a jury could find that Sattah was a “willful participant”
2 with the State in the activity that violated Decedent’s civil rights—the liver biopsy—
3 because he was aware that Decedent was an inmate and that the California Department
4 of Corrections and Rehabilitation had contracted with CVI for Defendant Sattah to
5 administer the biopsy. Similarly, under the nexus test, the relationship between
6 Defendant Sattah and the State, wherein Defendant Sattah agreed to perform a medical
7 procedure on an inmate, could be sufficient to warrant treating his performing the biopsy
8 as an action of the State itself. In any case, this determination is very fact-specific, and
9 because questions of fact remain disputed, it is not appropriate for the Court to
10 determine on a motion for summary judgment.

11 Assuming Defendant Sattah was a state actor, summary judgment on qualified
12 immunity would also be inappropriate because—for the reasons described above in
13 relation to the SCC Defendants—taking all facts alleged in the light most favorable to
14 Plaintiffs, Sattah’s actions in performing the risky liver biopsy violated Decedent’s clearly
15 established constitutional right. Therefore, to the extent Defendant Sattah moves for
16 summary judgment based on qualified immunity, the motion is DENIED.

17 **2. Defendants’ Substantive MSJ Arguments**

18 With one exception as to Plaintiffs’ Sixth Cause of Action, a host of factual issues
19 preclude the Court from granting Defendants’ Motion based on the substance of
20 Plaintiffs’ arguments as well.

21 **a. Defendant Jack St. Clair, M.D.**

22 Plaintiffs assert their first and fourth claims for relief against Jack St. Clair, M.D.,
23 the Chief Medical Officer at SCC from 2009-2010. According to Plaintiffs, St. Clair’s
24 treatment of Decedent fell far below the medical professional standard of care such that
25 it constituted cruel and unusual punishment in violation of the Eighth Amendment. More
26 specifically, Plaintiffs base this argument on the fact that St. Clair personally signed the
27 December 21, 2009, document from the SCC Healthcare Appeals Office, wherein he
28 rejected Decedent’s appeal for “abuse of the appeal procedure.” Further, St. Clair was

1 involved in approving the risky liver biopsy that is alleged to have ultimately caused
2 Decedent's premature death. Plaintiffs contend that St. Clair had knowledge of the
3 special risk that Decedent's diseased liver presented, particularly given that two
4 hospitals had already refused to perform the procedure for that reason.

5 The parties dispute whether St. Clair had knowledge of the increased risk of life
6 threatening complications that the biopsy presented, given the state of Decedent's liver
7 at the time, and whether his treatment of Decedent fell below the standard of care.
8 Whether the standard of care was met in a medical malpractice case is a question of fact
9 that is not properly resolved by the Court on summary judgment. See Morales,
10 723 F. Supp. 2d at 423. Indeed, here there are questions of fact surrounding the extent
11 of St. Claire's knowledge and whether his conduct fell so far below the standard of care
12 that it constitutes a constitutional violation. Therefore, summary judgment with respect
13 to this Defendant is not appropriate, and Defendants' motion is DENIED with respect to
14 Plaintiffs' deliberate indifference claims (One and Four) against St. Clair.

15 **b. Defendant Curtis Allen, M.D.**

16 Plaintiffs also assert their first and fourth causes of action against Curtis Allen,
17 M.D., claiming that he acted with deliberate indifference to Decedent's medical needs,
18 and that his treatment of Decedent fell far below the medical professional standard of
19 care such that it constituted cruel and unusual punishment in violation of the Eighth
20 Amendment. Allen was the Chief Physician and Surgeon at SCC from 2009-2010, and
21 he had supervisory duties over the prison medical staff during the time of the underlying
22 events in this case. According to Plaintiff, Allen was also involved in approving
23 Decedent's biopsy, despite his alleged knowledge of Decedent's heightened risk for
24 complications and knowledge that two other hospitals refused to perform the biopsy.
25 Allen contends to the contrary, that his involvement with Decedent's medical care was
26 limited to supervising other SCC doctors, and that at this level of involvement his
27 conduct did not fall below the standard of care. ECF No. 182-1, ¶¶ 62, 63.

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1 treatment of Decedent. Whether the standard of care was met in a medical malpractice
2 case is a question of fact that is not properly resolved on summary judgment. See
3 Morales, 723 F. Supp. 2d at 423. Similarly, whether his actions rise to the level of
4 deliberate indifference is a fact intensive inquiry under the circumstances. Because
5 these issues are material to Plaintiffs' allegations against Bangi, summary judgment with
6 respect to Defendant Bangi is not appropriate, and Defendants' motion is DENIED with
7 respect to Plaintiffs' deliberate indifference and negligence claims against Bangi.

8 **e. Defendant Lincoln Russin, M.D.**

9 Plaintiffs assert their third claim for relief against Defendant Lincoln Russin, M.D.
10 Russin was employed at the Mark Twain St. Joseph's Hospital in the Diagnostic Imaging
11 Department at all times relevant to this case, and he administered Defendant's October
12 2009 MRI scan. Plaintiffs claim Russin was negligent when he reported "no evidence of
13 tumor" based on the MRI results that they allege revealed the presence of a tumor.
14 Plaintiffs' expert states that "any conventional reading of the MRI would have discovered
15 a tumor," because tests given before and after Russin's MRI both indicated a tumor on
16 Decedent's liver.

17 Russin raises a causation argument in his motion for summary judgment. He
18 argues that Decedent already had "incurable liver disease" when the MRI was
19 administered, and that "no medical intervention at that time would have changed his
20 outcome." ECF No. 182-1, ¶¶ 66, 67. Therefore, according to Russin, Plaintiffs cannot
21 meet the causation requirement for their negligence claim against him.

22 Even accepting Russin's assertion that Decedent's outcome was the same
23 regardless of his actions, he has not established an absence of a material factual
24 dispute such that summary judgment in his favor would be appropriate. Rather,
25 Defendants merely conclude in their Motion that Decedent had "incurable liver disease,"
26 "no medical intervention at that time would have changed his outcome," and that
27 Decedent had a "life expectancy of 6 months to a year and his prognosis would not have
28 been altered with an earlier diagnosis or medical intervention." ECF No. 182-1, ¶¶ 66,

1 67. But these conclusions, even if supported, do not preclude Plaintiffs from meeting the
2 causation element of their negligence claim. Indeed, Russin has not disproved the
3 possibility that his failure to properly read Decedent's MRI scan was a proximate cause
4 in shortening Decedent's life, even if within the shortened life expectancy he already
5 had. If Russin's failure to identify the tumor shortened Decedent's life, Plaintiffs could
6 establish causation and thus an actionable claim of negligence. Summary judgment is
7 therefore DENIED.

8 **f. Defendant Mario P. Sattah, M.D.**

9 Plaintiffs assert their third and fourth claims for relief against Defendant Mario P.
10 Sattah, M.D., a radiologist employed by CVI. As discussed above, CVI contracts with
11 hospitals to provide imaging services, and on January 22, 2010, Sattah was assigned or
12 selected to administer Decedent's liver biopsy at DHM. Plaintiffs allege that Sattah was
13 negligent in his care of Decedent and that he acted with deliberate indifference towards
14 Decedent's medical needs in administering Decedent's liver biopsy. It is undisputed that
15 Sattah personally performed the biopsy, and Plaintiffs claim he did so despite his
16 knowledge of the riskiness of the procedure as administered on Decedent's liver. Sattah
17 argues that he did not have knowledge of Decedent's special risks, and that he was not
18 aware that two hospitals had previously refused to perform the procedure. ECF No. 182-
19 1, ¶¶ 79-82. These disputed questions of fact prevent summary judgment.

20 Defendant Sattah also raises a causation/ "lost chance" argument, stating in his
21 Motion that at the time of the liver biopsy, Decedent's life expectancy was no more than
22 three months, there were no "curative therapies" for Decedent's liver cancer, and
23 Decedent was not a liver transplant candidate. ECF No. 182-1, ¶¶ 95, 96. However, as
24 discussed above regarding Defendant Russin's similar argument, Sattah's assertions
25 here do not establish that his performance of the liver biopsy did not shorten Decedent's
26 life within his life expectancy. In fact, Decedent died three weeks after Sattah performed
27 the biopsy, which is significantly shorter than his three-month life expectancy. Sattah

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1 has thus not shown that Decedent would have died at that earlier date whether or not he
2 had performed the biopsy and his causation argument similarly fails.

3 These questions of fact prevent a determination at this stage of whether
4 Defendant Sattah was negligent and/or deliberately indifferent. Again, as discussed
5 above, whether Sattah's treatment constituted deliberate indifference is a question to be
6 resolved by the jury and not by the Court at summary judgment. See Morales,
7 723 F. Supp. 2d at 423. Because the parties dispute whether Sattah had knowledge of
8 the heightened risk involved with Decedent's liver biopsy, and whether Sattah was
9 deliberately indifferent, or at least negligent, towards Decedent's medical needs,
10 summary judgment with respect to Defendant Sattah is not appropriate. Defendants'
11 Motion is DENIED.⁵

12 **g. Defendant Doctors Hospital of Manteca**

13 Plaintiffs assert their third and fourth claims for relief against Doctors Hospital of
14 Manteca ("DHM"). Plaintiffs allege that DHM acted negligently and with deliberate
15 indifference to Decedent's medical needs by (1) performing Decedent's liver biopsy and
16 (2) discharging him less than one hour after the procedure, when the medical
17 professional standard of care requires that a patient remain supine for three to four
18 hours after the biopsy. DHM argues that it did not have knowledge that two other
19 hospitals had refused to perform the procedure, and that in any case it was Sattah's
20 independent decision to administer the biopsy, not the decision of DHM. ECF No. 182-1,
21 ¶¶ 98-99. As above, these disputed questions of fact prevent summary judgment.

22 DHM also raises a causation argument similar to Russin and Sattah. DHM
23 argues that there were no "curative therapies" available for Decedent's liver cancer, and
24 that Decedent had "a short life expectancy and no real treatment options that would

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26 ⁵ Sattah and DHM additionally move for summary judgment of Plaintiffs' sixth claim for relief,
27 asserting Defendants were deliberately indifferent to Decedent's medical needs when they did not allow
28 for post-biopsy recovery time in accordance with the standard of care. Plaintiffs' expert concedes,
however, that additional recovery time would have made no difference. ECF No. 196-1, at §§ 87, 108.
Because there are no disputed facts and Plaintiffs' claim is unsupported, summary judgment of the sixth
claim is GRANTED.

1 have altered his outcome.” ECF No. 182-1, ¶¶ 111, 112. However, as discussed in
2 regard to Russin and Sattah, this argument fails. Therefore, DHM’s causation argument
3 fails. For those reasons, summary judgment with respect to DHM is not appropriate, and
4 the Motion is DENIED.

5 3. Plaintiffs’ Damages Claim

6 Plaintiffs include damages claims for wrongful death. The California wrongful
7 death statute provides for damages measured by “the financial benefits the heirs were
8 receiving at the time of death, those reasonably to be expected in the future, and the
9 monetary equivalent of loss of comfort, society, and protection.” Boeken v. Philip Morris
10 USA Inc., 217 Cal. App. 4th 992 (2013) (internal citations omitted). In their wrongful
11 death claim, Plaintiffs assert that Melissa Staggs, Decedent’s daughter, “kept regular
12 correspondence” and relied on Decedent “for his love, companionship, comfort,
13 affection, solace, and moral support.” ECF No. 117, ¶¶ 111. Plaintiffs further assert that
14 Linnie Staggs, Decedent’s mother, kept regular correspondence with him and also relied
15 on him for his “love, companionship, comfort, affection, solace, and moral support.” ECF
16 No. 117, ¶¶ 115. In support of these claims, Plaintiffs state that Decedent was a “faithful
17 and dutiful” father to Melissa Staggs, as well as a “faithful and dutiful son” to Linnie
18 Staggs. ECF No. 117, ¶¶ 107, 115.

19 Defendants attempt to disprove, or at least minimize, Plaintiffs’ wrongful death
20 damages by asserting that Decedent “did not provide any financial support to plaintiffs
21 after he was incarcerated,” that Melissa Staggs visited Decedent in prison a total of five
22 times, and that Linnie Staggs visited him once a month while he was incarcerated. ECF
23 No. 182-1, ¶¶ 116-18. Defendants’ statements at this point are insufficient to dispose of
24 Plaintiffs’ wrongful death claims. Determining the measure of damages for wrongful
25 death “depends to a great extent upon the sound judgment of the jurors as to what
26 would be just, reasonable, and proper under all the circumstances.” In re California Nav.
27 & Imp. Co., 110 F. 670 (N.D. Cal. Sept. 3, 1901). “[T]he amount of damages awarded
28 here in wrongful death cases decided under California law properly includes amounts

1 designed to compensate the plaintiffs for loss of the decedent's society, comfort,
2 protection, love, companionship, [and] affection." In re Pago Pago Aircrash of Jan. 30,
3 1974, 525 F. Supp. 1007, 1019 (C.D. Cal. Oct. 9, 1981). Importantly, wrongful death
4 damages are "inherently nonpecuniary, unliquidated and not readily subject to precise
5 calculation," but rather are left "to the subjective discretion of the trier of fact." Id.
6 (quoting Greater Westchester Homeowners Assn. v. City of Los Angeles, 26 Cal. 3d 86,
7 103 (1979)).

8 Defendants have therefore failed to establish that summary judgment is
9 appropriate on Plaintiffs' claims for wrongful death damages. To the extent Defendants
10 move for summary judgment with regard to Plaintiffs' wrongful death claim, that motion is
11 consequently DENIED.

12 13 CONCLUSION

14
15 For the reasons set forth above, Plaintiffs' Motion for Partial Summary Judgment,
16 ECF No. 188, is GRANTED. Defendants' Motion for Summary Judgment, ECF No. 182,
17 is GRANTED with respect to the sixth cause of action, and otherwise DENIED. Plaintiffs'
18 Motion to Strike, ECF No. 200, is DENIED.⁶

19 IT IS SO ORDERED.

20 Dated: March 20, 2018

21
22 
23 MORRISON C. ENGLAND, JR.
24 UNITED STATES DISTRICT JUDGE
25
26
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⁶ Plaintiffs' Objections, ECF No. 196-4, are overruled.