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UNITED STATES DISTRICT COURT
For the Northern District of California

UNITED STATES DISTRICT COURT
Northern District of California
San Francisco Division

JESUS LOPEZ, for himself and as the
Guardian ad Litem for EDGAR LOPEZ,
ALEXANDRA LOPEZ, and GRETSANDY
LOPEZ, his minor children,

No. C 12-03726 LB

Plaintiff,

**ORDER DENYING PLAINTIFFS’
MOTION FOR SUMMARY
JUDGMENT**

v.

[ECF No. 73]

CONTRA COSTA REGIONAL MEDICAL
CENTER and COUNTY OF CONTRA
COSTA

Defendants.

_____ /

INTRODUCTION

Plaintiff Jesus Lopez in his individual capacity and as the guardian ad litem for his three minor children Edgar, Alexandra, and Gretsandy Lopez, sued Defendants Contra Costa Regional Medical Center and County of Contra Costa (together, “CCRMC”) for medical malpractice and for violating the Emergency Medical Treatment and Active Labor Act (“EMTALA”), 42 U.S.C. § 1395dd, following the death of Mr. Lopez’s wife from complications after she gave birth at Contra Costa Regional Medical Center. ECF No. 21.¹ On February 28, 2014, the court granted CCMRC’s motion

¹ Citations are to the Electronic Case File (“ECF”) with pin cites to the electronically-generated page numbers at the top of the document.

1 for partial summary judgment on the EMTALA claim but exercised supplemental jurisdiction over
2 the remaining medical malpractice claim. *See* Order, ECF No. 59. Now, Plaintiffs move for partial
3 summary judgment, arguing that the non-economic damages cap in California’s Medical Injury
4 Compensation Reform Act (“MICRA”), California Civil Code section 3333.2, expired prior to
5 Plaintiffs’ claim accruing. *See* Motion for Partial Summary Judgment (“Motion”), ECF No. 73. The
6 court finds this matter suitable for determination without a hearing under Civil Local Rule 7-1(b).
7 For the reasons discussed below the court **DENIES** Plaintiffs’ motion.

8 **STATEMENT**

9 **I. BACKGROUND**

10 The court’s previous order granting CCRMC’s motion for partial summary judgment set out the
11 underlying facts in detail. *See* Order, ECF No. 58 at 2-10. In summary, Plaintiffs are the surviving
12 spouse and minor children of decedent Sandra Lopez. On September 29, 2011, Mrs. Lopez went to
13 Contra Costa County Medical Center’s Labor and Delivery Department and gave birth to a baby
14 girl. *See id.* at 3-4. Mrs. Lopez showed signs of severe preeclampsia with elevated liver enzymes.
15 *Id.* After giving birth, she was transferred to a postpartum unit. *Id.* Mrs. Lopez’s symptoms
16 appeared to improve, but worsened the next morning. *Id.* at 4-6. Doctors ordered her to be
17 transferred to CCRMC’s Intermediate Care Unit. *Id.* at 6. She suffered a tonic-clonic seizure while
18 she was being transferred to the ICU. *Id.* Mrs. Lopez died from the seizure and related intracranial
19 hemorrhage. *Id.* at 7.

20 **II. PROCEDURAL HISTORY**

21 Mr. Lopez filed his lawsuit suit in July 2012, alleging EMTALA and medical malpractice
22 claims, and the court appointed him guardian ad litem for his three minor children. *See* Compl.,
23 ECF No. 1; Order, ECF No. 7. The court dismissed Plaintiffs’ first two complaints for failure to
24 state an EMTALA claim. *See* Orders, ECF Nos. 14, 20. The court thereafter denied CCRMC’s
25 motion to dismiss the Second Amended Complaint, holding that it plausibly pleaded that an
26 EMTALA violation. Order, ECF No. 26 at 9.

27 On May 15, 2013, CCRMC answered the Second Amended Complaint. *See* Answer, ECF No.
28 27. It asserted nine affirmative defenses, including the following:

1 The answering defendant may elect to claim the benefits of the provisions of California Civil
2 Code sections 3333.1, 3333.2, 1431.2, 1714.8, California Code of Civil Procedure section
3 667.7, and California Business and Professions Code section 6146 and offer evidence
relating thereto.

4 Answer, ECF No. 27 at 3.

5 CCRMC filed a motion for summary judgment on September 24, 2013. *See* CCRMC's
6 Summary Judgment Motion, ECF No. 33. After an extended briefing schedule, the court held a
7 hearing on the motion on February 20, 2014. *See* ECF Nos. 33-36, 38, 53-55 (summary judgment
8 briefing); 2/20/2014 Minute Entry, ECF No. 57. On February 28, 2014, the court granted CCRMC's
9 motion for summary judgment but retained supplemental jurisdiction over Plaintiffs' medical
10 malpractice claim. Order, ECF No. 58 at 29.

11 On July 30, 2014, Plaintiffs filed the pending summary judgment motion ("Motion"), ECF No.
12 73. The motion is fully briefed. *See* Opp'n, ECF No. 74; Reply, ECF No. 75.

13 ANALYSIS

14 Plaintiffs move for partial summary judgment on the ground that MICRA's cap of \$250,000 on
15 noneconomic damages for claims based on the professional negligence of health care providers is
16 invalid. *See* Motion, ECF No. 73 at 1. Plaintiffs contend that the phrase "now and into the
17 foreseeable future" in the preamble to the statute (1) indicates that the provision expired before this
18 action accrued or (2) is unconstitutionally vague.

19 I. STANDARDS

20 A. Summary Judgment

21 A court should grant a motion for summary judgment if there is no genuine issue of material
22 fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a);
23 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Material facts are those that may
24 affect the case's outcome. *Anderson*, 477 U.S. at 248. A dispute about a material fact is genuine if
25 there is sufficient evidence for a reasonable jury to return a verdict for the non-moving party. *Id.* at
26 248-49.

27 The party moving for summary judgment has the initial burden of informing the court of the
28 basis for the motion and identifying those portions of the pleadings, depositions, answers to

1 interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material
2 fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To meet its burden, “the moving party
3 must either produce evidence negating an essential element of the nonmoving party’s claim or
4 defense or show that the nonmoving party does not have enough evidence of an essential element to
5 carry its ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz*
6 *Companies, Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000); see *Devereaux v. Abbey*, 263 F.3d 1070, 1076
7 (9th Cir. 2001) (“When the nonmoving party has the burden of proof at trial, the moving party need
8 only point out ‘that there is an absence of evidence to support the nonmoving party’s case.’”) (quoting *Celotex*, 477 U.S. at 325).

10 If the moving party meets its initial burden, the burden shifts to the non-moving party, which
11 must go beyond the pleadings and submit admissible evidence supporting its claims or defenses and
12 showing a genuine issue for trial. See Fed. R. Civ. P. 56(e); *Celotex*, 477 U.S. at 324; *Nissan Fire*,
13 210 F.3d at 1103; *Devereaux*, 263 F.3d at 1076. If the non-moving party does not produce evidence
14 to show a genuine issue of material fact, the moving party is entitled to summary judgment. See
15 *Celotex*, 477 U.S. at 323. In ruling on a motion for summary judgment, inferences drawn from the
16 underlying facts are viewed in the light most favorable to the non-moving party. *Matsushita Elec.*
17 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

18 B. MICRA

19 California enacted the Medical Injury Compensation Reform Act in 1975, “in response to a
20 medical malpractice insurance ‘crisis,’ which it perceived threatened the quality of the state’s health
21 care.” *Western Steamship Lines, Inc. v. San Pedro Peninsula Hospital*, 8 Cal. 4th 100, 111 (1994)).
22 The statute “reflects a strong public policy to contain the costs of malpractice insurance by
23 controlling or redistributing liability for damages, thereby maximizing the availability of medical
24 services to meet the state’s health care needs.” *Id.* at 112. The preamble to MICRA states, in part:

25 The Legislature finds and declares that there is a major health care crisis in the State of
26 California attributable to skyrocketing malpractice premium costs and resulting in a potential
27 breakdown of the health delivery system, severe hardships for the medically indigent, a
28 denial of access for the economically marginal, and depletion of physicians such as to
substantially worsen the quality of health care available to citizens of this state. The
Legislature, acting within the scope of its police powers, finds the statutory remedy herein
provided is intended to provide an adequate and reasonable remedy within the limits of what

1 the foregoing public health and safety considerations permit now and into the foreseeable
2 future.

3 1975 Cal. Stat. 4007.

4 California Civil Code section 3333.2 was enacted in 1975 as part of MICRA. It caps the
5 noneconomic damages available in medical malpractice actions at \$250,000, as follows:

6 (a) In any action for injury against a health care provider based on professional negligence,
7 the injured plaintiff shall be entitled to recover noneconomic losses to compensate for pain,
8 suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary
9 damage.

(b) In no action shall the amount of damages for noneconomic losses exceed two hundred
fifty thousand dollars (\$250,000).

(c) For the purposes of this section:

(1) "Health care provider" means any person licensed or certified pursuant to
Division 2 (commencing with Section 500) of the Business and Professions Code, or
licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act,
or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of
the Health and Safety Code; and any clinic, health dispensary, or health facility,
licensed pursuant to Division 2 (commencing with Section 1200) of the Health and
Safety Code. "Health care provider" includes the legal representatives of a health care
provider;

(2) "Professional negligence" means a negligent act or omission to act by a health
care provider in the rendering of professional services, which act or omission is the
proximate cause of a personal injury or wrongful death, provided that such services
are within the scope of services for which the provider is licensed and which are not
within any restriction imposed by the licensing agency or licensed hospital.

19 Cal. Civil Code § 3333.2.

20 **II. WHETHER MICRA'S DAMAGES CAP EXPIRED**

21 Plaintiffs' motion for summary judgment seeks a judicial determination that MICRA's cap on
22 noneconomic damages expired of its own accord at the end of "the foreseeable future," as measured
23 from MICRA's 1975 enactment. Motion, *passim*. Plaintiffs do not ask the court to determine
24 precisely when "the foreseeable future" ended, just that it did before their cause of action accrued.
25 *Id.* at 3. Plaintiffs rely on the phrase "the foreseeable future" in MICRA's uncodified statutory
26 preamble. *See* 1975 Cal. Stat. 4007 (quoted above).

27 In construing California statutes, the court's "fundamental task is to ascertain the intent of the
28 lawmakers so as to effectuate the purpose of the statute." *People v. Gutierrez*, 58 Cal. 4th 1354,

1 1369 (2014) (internal quotation marks and citation omitted). The court must “begin by examining
2 the statutory language because it generally is the most reliable indicator of legislative intent.” *Id.*
3 The court gives “the language its usual and ordinary meaning, and if there is no ambiguity, then [the
4 court] presume[s] the lawmakers meant what they said, and the plain meaning of the language
5 governs.” *Id.* (alterations and quotation marks omitted). Only if the statute is ambiguous may the
6 court “resort to extrinsic sources, including the ostensible objects to be achieved and the legislative
7 history.” *Id.*

8 The court first considers the plain language of the statute. On its face, section 3333.2 contains
9 no expiration date. Plaintiffs do not dispute this or argue that the statute is ambiguous on this point.
10 Moreover, California courts continue to apply section 3333.2 and uphold its constitutionality. *See,*
11 *e.g., Stinnett v. Tam*, 198 Cal. App. 4th 1412, 1432-33 (2011) (affirming that § 3333.2 did not
12 violate equal protection and discussing other cases interpreting the statute). Accordingly, Plaintiffs
13 have not met their burden of demonstrating that section 3333.2 has expired.

14 Instead of relying on the language of the statute, Plaintiffs argue that a sentence in the uncodified
15 statutory preamble demonstrates legislative intent to limit MICRA’s duration. *See* Motion at 3. The
16 California Court of Appeals has explained the precedential value of a statutory preamble. *See*
17 *Yeager v. Blue Cross of California*, 175 Cal. App. 4th 1098 (2009). “Legislative findings and
18 statements of purpose in a statute’s preamble can be illuminating if a statute is ambiguous. But a
19 preamble is not binding in the interpretation of the statute. Moreover, the preamble may not
20 overturn the statute’s language.” *Id.* at 1103 (citing *Briggs v. Eden Council for Hope &*
21 *Opportunity*, 19 Cal. 4th 1106, 1118 (1999)). Similarly, “broad and vague statements of purpose
22 cannot overcome the plain language of express statutory provisions.” *In re Abigail A.*, 226 Cal.
23 App. 4th 1450, 1458 (2014), review filed (July 28, 2014).

24 Because the plain language of section 3333.2 is unambiguous, its meaning controls and the court
25 does not consider the preamble. Plaintiffs nonetheless contend that the court should consider the
26 preamble “if the statute is silent as to an expiration date when the statute is enacted pursuant to the
27 police power addressing a specific problem that cannot foreseeably last forever.” Motion at 3. The
28 court disagrees. First, Plaintiffs provide no authority for this position. Second, the Legislature’s

1 refusal to provide an expiration date “is not ambiguity – it is silence. [The court] may not make a
2 silent statute speak by inserting language the Legislature did not put in the legislation.” *Yeager*, 175
3 Cal. App. 4th at 1103 (refusing to construe statute that required health plan to “offer coverage” as
4 requiring a certain amount of coverage because the statute was silent as to the amount of coverage
5 required). Accordingly, the plain language of the statute controls.

6 Even if the statute were ambiguous, the preamble would not support Plaintiffs’ interpretation. In
7 relevant part, the preamble states: “The Legislature, acting within the scope of its police powers,
8 finds the statutory remedy herein provided is intended to provide an adequate and reasonable
9 remedy within the limits of what the foregoing public health and safety considerations permit now
10 and into the foreseeable future.” 1975 Cal. Stat. 4007. This sentence does not mean that the
11 Legislature intended for the noneconomic damages cap to last “for a period of time determined by
12 the ‘foreseeable future,’” as Plaintiffs suggest. *See* Motion at 4. Rather, it says that the Legislature
13 intended for MICRA to provide an appropriate remedy, given the current and foreseeable public
14 health and safety considerations. At most, the sentence indicates: (1) legislative intent to limit
15 MICRA’s duration only if the public health and safety considerations diminish to the point they no
16 longer justify the remedy and (2) a finding that this would not occur in the foreseeable future. Thus,
17 even if the preamble were binding in the interpretation of the statute, it would not support Plaintiffs’
18 position.

19 Finally, even if the court accepted Plaintiffs’ interpretation of the preamble and gave the
20 preamble controlling weight in interpreting the statute, it would deny Plaintiffs’ motion. Plaintiffs
21 argue that section 3333.7 has expired because it was enacted in 1975 and “[i]t is possible to forecast
22 several years into the future but it is not possible to forecast 36 years into the future.” Motion at 3.
23 Plaintiffs do not cite any authority in support of their position and, thus, fail to meet their burden on
24 summary judgment. Nor is the court inclined to upend California’s medical malpractice regime
25 based solely on *ipse dixit*.

26 Alternatively, Plaintiffs argue “that MICRA is unconstitutionally vague because its duration is
27 ambiguous.” Motion at 4. “If the court is not able to determine what ‘foreseeable future’ means in
28 the context of the legislature’s exercise of its police power, then MICRA is impermissibly vague.”

1 *Id.* Plaintiffs fail to provide any legal authority for this position. As discussed above, the language
2 to which Plaintiffs object is from the uncodified preamble, not the operative statute, and does not
3 support Plaintiffs' interpretation. Accordingly, the cited language does not render section 3333.2
4 impermissibly vague.

5 **CONCLUSION**

6 The court **DENIES** Plaintiffs' motion for summary judgment. This disposes of ECF No. 73.

7 **IT IS SO ORDERED.**

8 Dated: September 2, 2014

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LAUREL BEELER
United States Magistrate Judge

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