



July 16, 2024

Honorable Justices of the Court of Appeal  
Third Appellate District  
914 Capitol Mall, 4th Floor  
Sacramento, CA 95814

Re: Request for Publication in *Hearden v. Windsor* (Case Number C098736)

Dear Honorable Justices:

On behalf of Consumer Attorneys of California (“CAOC”), pursuant to California Rule of Court, rule 8.1120, we are writing to respectfully request publication of the above-titled case that was filed on June 28, 2024.

If published, this opinion would apply an existing rule of law to a set of facts significantly different than those stated in published opinions. (See Cal. Rule of Court, rules 8.1105(c)(2).) It would also be the first case to hold that the trial court has discretion to deny a motion to compel arbitration under Code of Civil Procedure section 1281.2 based on risks of conflicting rulings of fact and law against a healthcare provider when the gravamen of the case is Elder Abuse. (See Cal. Rule of Court, rules 8.1105(c)(1), (c)(3).)

While not unusual, the fact pattern in this case differs from any case before it in relation to a motion to compel arbitration. As to the Riggs family, the husband signed the arbitration agreement binding his wife’s survivorship claim under Code of Civil Procedure section 377.32 to arbitration. However, the husband did not agree to arbitrate his own claims for wrongful death. Likewise, the Riggs’ three sons also did not sign any agreement.

This decision aptly holds that the Fourth District’s opinion in *Avila v. Southern California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835, 843 was instructive. Since the husband and the kids did not waive the right to a jury trial as to their own claims for wrongful death, the motion was properly denied as those claims.

However, this holding goes one step further than *Avila*, holding that notwithstanding Code of Civil Procedure section 1295, that a trial court has discretion to deny the entire motion (including the elder’s own survivorship claims) due to the possibility of inconsistent rulings on common issues of law or fact. This is because the “primary basis for the wrongful death cause of action was not medical malpractice or professional negligence.” Therefore, *Ruiz v. Podolsky*



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(2010) 50 Cal.4th 838, 847 does not apply. While *Avila* also involved section 1281.2, this Court went into far more detail as to the applicability of that section.

If published, the second part of the opinion would also be very helpful in providing guidance as to when a child signing an arbitration agreement on behalf of a resident or patient can bind a survivorship claim to arbitration. It is the first opinion that assessed the doctrine of equitable estoppel to an heir signing an arbitration that states that they have the capacity as the legal representative or agent. Instead, as this Court explained, there must be some evidence that caused the facility to reasonably believe decedents consented to having a family signature bind their claims to arbitration.

In short, this entire opinion, if published, would provide strong guidance to trial courts and litigants as to arbitration agreements when they are signed by heirs.

**Statement of Interest:** CAOC, founded in 1962, is a voluntary non-profit membership organization representing over 6,000 consumer attorneys practicing in California. Its members predominantly represent individuals subjected to consumer fraud, unlawful employment practices, personal injuries and insurance bad faith. CAOC has taken a leading role in advancing and protecting the rights of consumers, employees and injured victims in both the courts and the Legislature.

Very truly yours,

IKUTA HEMESATH, LLP



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BENJAMIN T. IKUTA

BTI/bti

cc: All counsel in the underlying action through Truefiling

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Document received by the CA 3rd District Court of Appeal.