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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BRIANNE DRESSEN,

Plaintiff,

v.

ASTRAZENECA AB; ASTRAZENECA
PHARMACEUTICALS LP; and VELOCITY
CLINICAL RESEARCH, INC.,

Defendants.

**PLAINTIFF'S OPPOSITION TO
ASTRAZENECA'S MOTION TO
DISMISS**

Oral Argument Requested

Case No: 2:24-cv-00337-RJS-CMR

Judge Robert J. Shelby

Magistrate Judge Cecilia M. Romero

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INTRODUCTION

AstraZeneca asks this Court to do what no court has ever done: grant “complete immunity” for *contractual violations* so long as the violations relate to the administration of covered countermeasures under the PREP Act. While immunity under the PREP Act is expansive, it has its limits. Each court that has addressed claims of immunity for state *contract* claims has rightfully held that the PREP Act does not apply. Ignoring this case law, AstraZeneca cites inapposite cases dealing with state *tort* claims.

The “complete immunity” theory which AstraZeneca asks this Court to adopt is not found in the express language of the statute and would undermine the purpose of the PREP Act, not advance it. Complete immunity would create an anarchic business environment, disincentivizing honest companies from entering into contracts related to covered countermeasures and disincentivizing would-be participants like Brianne Dressen from volunteering for the clinical trials that are essential to the development of vaccines. Such staggering costs would come with no corresponding benefit, other than allowing companies to lie and defraud others without consequence; but no reasonable company needs that incentive to help this country. The “complete immunity” rule would lead to absurd and unreasonable results, and thus should be rejected accordingly.

Even if PREP Act immunity did apply to contract claims (it does not), AstraZeneca waived its immunity by clearly and unmistakably promising to pay the cost of research injuries. It is immaterial that AstraZeneca did not “explicitly” describe its promise as a waiver, as the U.S. Supreme Court and Utah Supreme Court have long made clear that waivers of statutory rights need not be explicit.

AstraZeneca’s contention that Plaintiff’s case is time-barred is similarly meritless. Its motion relies on the *wrong* statute of limitations as well as inapposite case law concerning breaches of warranty. Plaintiff’s claims are timely, and undeniably so, when considered against Utah’s statute of limitations for breaches of *written* contract and the Utah Supreme Court’s precedential standard for applying this statute. Remarkably, AstraZeneca’s motion mentions neither.

AstraZeneca’s other arguments on the implied duty of good faith and damages are equally unavailing for the reasons discussed herein. The Court should deny the motion.

ARGUMENT

I. THE PREP ACT DOES NOT IMMUNIZE ASTRAZENECA FROM VIOLATIONS OF CONTRACTUAL OBLIGATIONS IT VOLUNTARILY ENTERED

A. Courts Have Recognized that the PREP Act Does Not Apply to Contract Claims

In its motion, AstraZeneca claims that the PREP Act provides “complete immunity” for any claim of loss causally related to the administration¹ of a covered countermeasure, including losses arising from contractual violations. Dkt. 24 at 9. To support its argument, AstraZeneca states that “courts across the country have routinely dismissed all manner of claims against covered persons.” *Id.* at 11-12. All of the cases AstraZeneca cites, however, involve state *tort* claims, *id.* at 11-12, which courts have held are covered by the PREP Act, *Parker v. St. Lawrence Cty. Pub. Health Dep’t*, 102 A.D.3d 140, 143-44 (N.Y. App. Div. 2012). Notably, AstraZeneca fails to cite any case involving a state *contract* claim.

¹ Under the PREP Act, claims that are causally related to the “administration” of covered countermeasures include, *inter alia*, claims that are causally related to the design, development, clinical testing, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, and sale of said countermeasures. *See* 42 U.S.C. § 247d-6d(a)(2)(B).

While most companies facing contract claims related to the administration of covered countermeasures have *not* asserted immunity under the PREP Act,² courts have rejected claims of immunity from the few companies who have. *See Fusion Diagnostic Labs., LLC v. Atila Biosystems, Inc.*, No. 2:24-cv-00184, 2024 U.S. Dist. LEXIS 106927, at *5 (D.N.J. June 16, 2024) (“Defendant is not immune under the PREP Act from Plaintiff’s state law breach of contract claims.”); *WorkCare, Inc. v. Plymouth Med., LLC*, No. 8:21-cv-00864, 2021 U.S. Dist. LEXIS 168341, at *12 (C.D. Cal. Aug. 20, 2021) (“The PREP Act does not on its face provide immunity for state contract claims.”). Similarly, a district court rejected an assertion of PREP Act immunity from a company that refused to pay its employees for time spent participating in a covered countermeasure (e.g., a COVID-19 screening process). *Haro v. Kaiser Found. Hosps.*, No. CV 20-6006, 2020 U.S. Dist. LEXIS 162522, at *6-7 (C.D. Cal. Sep. 3, 2020).

In short, while courts have held that the PREP Act confers broad immunity against tort claims, courts have refused to extend this immunity to contractual violations.

B. Extending PREP Act Immunity to Cover Contractual Violations Would Undermine the Act’s Purpose

As the *WorkCare* court noted, “[t]he PREP Act does not on its face provide immunity for state contract claims.” 2021 U.S. Dist. LEXIS 168341, at *12. Given this, the Court must look to the *purpose* behind the immunity to delineate its proper scope and whether it extends to contractual violations. *See, e.g., Forrester v. White*, 484 U.S. 219, 224 (1988) (“[T]he Court has been careful

² *See, e.g., Quality Diagnostics Int’l, LLC v. Azure Biotech, Inc.*, No. 4:23-CV-3886, 2024 U.S. Dist. LEXIS 9058 (S.D. Tex. Jan. 18, 2024); *Heaton Contract Mfg., LLC v. Noble.Com, Inc.*, No. 20-CV-1875, 2023 U.S. Dist. LEXIS 162261 (E.D. Wis. Apr. 20, 2023); *Viza Elecs., LLC v. Paradigm Clinical Research. Inst., Inc.*, No. 3:22-cv-49, 2022 U.S. Dist. LEXIS 172193 (W.D.N.C. Sept. 23, 2022).

not to extend the scope of [legislative immunity] further than its purposes require.”); *Texas v. United States*, 292 U.S. 522, 534 (1934) (“The scope of the immunity must be measured by the purpose which Congress had in view”); *Leonard v. Ala. State Bd. of Pharmacy*, 61 F.4th 902, 914 (11th Cir. 2023) (using the purpose of the PREP Act as the “touchstone” for construing the scope of preemption); *Fusion Diagnostic*, 2024 U.S. Dist. LEXIS 106927, at *6-7 (concluding that PREP Act immunity does not extend to contract claims based, in part, on the purpose of Act).

Here, AstraZeneca correctly identifies the purpose of the PREP Act: “To encourage the expeditious development and deployment of medical countermeasures during a public health emergency.” Dkt. 24 at 9 (citation omitted). But AstraZeneca fails to explain how immunizing contractual violations will advance this purpose. Under AstraZeneca’s interpretation of the statute, the following conduct would be immunized:

- A covered hospital refusing to honor its contractual obligation to pay a supplier for the costs of covered goods (e.g., testing kits, masks, vaccines, antivirals, etc.);
- A covered manufacturer violating its contractual obligation to pay a research company for the cost of conducting a clinical trial, including the cost of labor and supplies;
- AstraZeneca refusing to reimburse clinical trial participants in Salt Lake County for their time, despite contractually promising to pay \$125 for each completed study visit and \$30 for each completed phone call. Informed Consent Form (“ICF”) at 12 (Dkt. 1-1 at 13);
- AstraZeneca willfully violating its numerous contractual obligations to maintain the privacy of trial participants’ medical history, medical conditions, and biodata. *Id.* at 15-20; and
- AstraZeneca *fraudulently inducing* clinical trial participants to enter the study by making contractual promises that it believed were illusory and meaningless.

Immunizing this type of conduct would not advance the PREP Act’s purpose of encouraging the expeditious development and deployment of medical countermeasures. To the

contrary, such unscrupulous conduct would undermine the Act's purpose by eliminating the certainty that contracts provide—a certainty that provides the bedrock for a healthy business environment. *See generally NL Indus. v. Commercial Union Ins. Co.*, 65 F.3d 314, 327 (3d Cir. 1995) (“By enforcing the parties’ expectations, courts interpreting contracts assure the consistency and predictability necessary to a healthy business environment.”); *Sonic Indus. LLC v. Olympia Cascade Drive Ins LLC*, No. CIV-22-449, 2022 U.S. Dist. LEXIS 152033, at *17 (W.D. Okla. Aug. 24, 2022) (“[T]he public interest is served when contractual obligations are enforced and disserved when contractual obligations are not enforced. That is because the enforcement of contracts promotes predictability and stability in the national economy.”).

AstraZeneca’s “complete immunity” theory would eliminate centuries of contract law from the economy of covered countermeasures, leaving companies and persons who dare get involved to fend for themselves in an anarchic world where people can be cheated at will with no recourse to the law. Surely this absurd and unreasonable result was not what Congress intended when it enacted the PREP Act. *See State by Div. of Consumer Prot. v. GAF Corp.*, 760 P.2d 310, 313 (Utah 1988) (“It is axiomatic that a statute should be given a reasonable and sensible construction, and that the legislature did not intend an absurd or unreasonable result.” (citation omitted)).³

³ The canon of constitutional avoidance counsels in further support of this conclusion. Under this canon, “when a particular construction would raise serious constitutional problems, the court will avoid that construction unless doing so would plainly conflict with Congress’s intent.” *Olmos v. Holder*, 780 F.3d 1313, 1320-21 (10th Cir. 2015); *see also Warger v. Shauers*, 574 U.S. 40, 50 (2014) (“The canon ‘is a tool for choosing between competing plausible interpretations’ of a provision.” (citation omitted)). Here, an interpretation of the PREP Act that immunizes contractual violations would raise constitutional concerns because it would permit the taking of vested contract rights, which are property rights under the Fifth Amendment’s Takings Clause. *See United States Tr. Co. v. New Jersey*, 431 U.S. 1, 19 n.16 (1977) (“Contract rights are a form of property and as such may be taken for a public purpose provided that just compensation is paid.”); *Lynch v. United States*, 292 U.S. 571, 579 (1934) (stating that “[v]alid contracts are property” for purposes of the

II. EVEN IF THE PREP ACT APPLIES TO CONTRACT CLAIMS, ASTRAZENECA CLEARLY AND UNMISTAKABLY WAIVED ITS IMMUNITY

A. AstraZeneca's Unequivocal, Express Promise to Pay the Costs of Research Injuries Constitutes a Waiver Under Utah Law

AstraZeneca's unequivocal and express promise to pay the costs of research injuries, including medical expenses, easily satisfies Utah's standard for waiver of a statutory right. Under Utah law, the following elements are necessary for a waiver to occur: (1) "an existing right," (2) "knowledge of its existence," and (3) "an intention to relinquish it." *Pioneer Builders Co. of Nev. v. K D A Corp.*, 2018 UT App 206, ¶ 14, 437 P.3d 539. With respect to the last element, the intention to relinquish must be unequivocal or "must be inconsistent with any other intent." *Id.* (citing *Medley v. Medley*, 2004 UT App 179, ¶ 7, 93 P.3d 847). "More succinctly," the intention to waive "must be clear and unmistakable." *Larsen Beverage v. Labor Comm'n*, 2011 UT App 69, ¶ 11, 250 P.3d 82.

Here, the first two elements of waiver are indisputably satisfied: (1) AstraZeneca had an existing right to immunity under the PREP Act; and (2) AstraZeneca had knowledge of the existence of this right, as evident by the contract's implicit reference to PREP Act immunity.⁴

The third element is also readily satisfied because the contract's plain meaning evinces an unequivocal intent to relinquish immunity with respect to the costs of research injuries. First, AstraZeneca's contract states that, "[t]he Sponsor has an insurance policy to cover the costs of

Takings Clause "whether the obligor be a private individual, a municipality, a state, or the United States").

⁴ The contract does not reference the PREP Act by name or citation, but for *sophisticated* parties, such as AstraZeneca, the contract is "plainly" alluding to the PREP Act. Dkt. 24 at 15. The same cannot be said for *unsophisticated* parties, including Plaintiff and other trial participants, who would have little basis to know what law was being referenced, or how to learn more about it.

research injuries as long as you have followed your study doctor's instructions." Dkt. 1-1 at 14. This provision provides one, and only one, ground for relieving AstraZeneca of this obligation: i.e., if Plaintiff did not follow the instructions of the study doctor. Thus, "as long as" Plaintiff followed the study doctor's instructions, which she did, AstraZeneca was responsible for covering her costs. This promise is clear, unequivocal, and inconsistent with an intent to retain immunity.

Second, AstraZeneca's contract states that "Sponsor *will* pay the costs of medical treatment for research injuries, provided that the costs are reasonable and you did not cause the injury yourself." *Id.* (emphasis added). The word "will," like the word "shall," has "an unmistakably mandatory character" and thereby denotes a non-discretionary obligation. *Hewitt v. Helms*, 459 U.S. 460, 471 (1983). Thus, so long as Plaintiff's costs are reasonable, and Plaintiff did not cause her injury, AstraZeneca is mandated under the contract to "pay the costs of medical treatment." This promise is clear, unequivocal, and inconsistent with an intent to retain immunity.

Third, the contract repeatedly states that Plaintiff is "entitled" to the benefits listed in the contract. Dkt. 1-1 at 5, 21. For example, the contract assures Plaintiff that if she decides to withdraw from the trial, it "will not result in any penalty or loss of benefits to which you are otherwise *entitled*." *Id.* at 5 (emphasis added). Thus, the contract expressly conferred a *right* to these benefits.⁵ As rights, these benefits were not subject to AstraZeneca's whim or discretion. This further evinces the unequivocal nature of AstraZeneca's intention to waive its immunity.

⁵ See *In re Cloward*, 608 B.R. 759, 764 (Bankr. D. Utah 2019) ("In legal usage, the phrase 'is entitled to' means 'has a right to.' This is consistent with its common usage, as Webster's defines 'entitle' as 'to give a title to' and defines 'entitled' as 'having a right to certain benefits or privileges.' The term 'entitlement' is defined as an 'absolute right to a . . . benefit . . . granted immediately upon meeting a legal requirement.'" (citations omitted) (ellipses in original)).

Finally, the contract's discussion of PREP Act immunity does not save AstraZeneca from its obligation to pay the costs of research injuries. First, the contract states that the PREP Act “*may* limit your right to sue,” not that it “*will*” limit the right to sue. *Id.* at 14 (emphasis added). The use of the word “*may*” is entirely consistent with AstraZeneca waiving its immunity for *some* (i.e., contract), but not *all* (i.e., tort), claims. Second, the contract states that “[*i*]f the order applies, it limits your right to sue.” *Id.* (emphasis added). The use of the word “*if*” is, again, consistent with AstraZeneca waiving immunity for *some*, but not *all*, claims. In short, the contract's discussion of PREP Act immunity is readily harmonized with AstraZeneca's binding contractual obligation to pay the costs of research injuries.

B. AstraZeneca's Interpretation of the Contract Violates Black Letter Principles by Ignoring and Rendering Meaningless the Promise to Pay the Costs of Injuries

It is a black letter principle that *all* provisions of a contract should be given effect, and none should be ignored or rendered meaningless. *See Terry v. Hinds*, 47 F. Supp. 3d 1265, 1271-72 (D. Utah 2014) (“In interpreting a contract, the court looks to the writing itself to ascertain the parties’ intentions, and [considers] each contract provision in relation to all of the others, with a view toward giving effect to all and ignoring none.” (citation and internal quotation marks omitted)); *Thatcher v. Lang*, 2020 UT App 38, ¶ 31, 462 P.3d 397 (“When interpreting the plain language, we look for a reading that harmonizes the provisions and avoids rendering any provision meaningless.”). This rule applies equally to analyses of waiver, as evident by the case law that AstraZeneca relies upon. *E.g., Pioneer Builders Co. of Nev. v. K D A Corp.*, 2018 UT App 206, ¶ 21, 437 P.3d 539 (interpreting the contract in a way that avoids rendering any of its provisions “superfluous”).

Although AstraZeneca acknowledges that a contract should be “read as a whole,” Dkt. 24 at 14, it violates this cardinal rule by failing to give effect to the promise-to-pay clauses in the contract. For example, AstraZeneca *does not even mention*—let alone give any effect to—the “costs of research injuries” provision. *See id.* at 13-16. AstraZeneca also omits, and fails to give any effect to, the “entitled” provisions. *Id.*

The only promise-to-pay provision that AstraZeneca acknowledges in its analysis is the provision that “[s]ponsor will pay the costs of medical treatment for research injuries.” *Id.* at 13. But acknowledging a provision is not enough; the provision needs to be *given effect*. AstraZeneca makes no attempt to do so. Instead, AstraZeneca dismisses the provision because it “does not reference the PREP Act at all, let alone explicitly.” *Id.* Under AstraZeneca’s construction, the promise-to-pay provision is thus superfluous which is incompatible with black letter law on contract interpretation.⁶

C. AstraZeneca Is Incorrect that Waivers of Statutory Rights Need to Be Explicitly Stated

Another flaw with AstraZeneca’s waiver analysis is that it uses a legally incorrect premise to discard the promise-to-pay clause. Contrary to AstraZeneca’s motion, waivers of statutory rights do not need to be “explicitly stated.” Indeed, Utah courts have long recognized that waivers “may be express or implied.” *Am. Sav. & Loan Ass’n v. Blomquist*, 445 P.2d 1, 2 (Utah 1968); *Webb v. R.O.A. Gen., Inc.*, 773 P.2d 834, 839 (Utah Ct. App. 1989).

⁶ If this is how AstraZeneca understood this term when it drafted the contract (i.e., superfluous and meaningless), then AstraZeneca also engaged in fraudulent inducement. *Daines v. Vincent*, 2008 UT 51, ¶ 38, 190 P.3d 1269 (setting forth the elements of fraudulent inducement). Plaintiff reserves the right, therefore, to amend her Complaint to add a fraudulent inducement claim.

The case that AstraZeneca cites to sidestep this rule does not actually do so. Dkt. 24 at 13 (citing *Larsen Beverage*, 250 P.3d at 85). In *Larsen Beverage*, the Utah Court of Appeals cited a U.S. Supreme Court decision for the rule that a waiver requires the “undertaking” to be “explicitly stated.” *Larsen Beverage*, 250 P.3d at 85 (quoting *Metro. Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983)). As an initial point, the term “undertaking” is not clear on its face, as it can just as readily be interpreted as the conduct being promised (e.g., “we hereby promise to pay the medical expenses”), as opposed to a specific reference to the statutory right being waived (e.g., “we hereby waive our immunity under the PREP Act”). Under the former conception of undertaking, the waiver would be *implied*, whereas under the latter conception, the waiver would be *express*.

More importantly, the Supreme Court in *Metropolitan Edison* (cited to in *Larsen Beverage*) specifically endorsed the viability of implied waivers. The Court stated that “there does not have to be an express waiver of statutory rights.” *Metropolitan Edison*, 460 U.S. at 708 n.12. The Court supported this with a citation to *Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962), where the Court held that a collective bargaining agreement implicitly waived the right to strike by committing to resolve disputes through arbitration. Although the collective bargaining agreement did not specifically waive the statutory right to strike, the Court held it would “*do violence to accepted principles of traditional contract law*” to not find waiver since the plain meaning of the contract was inconsistent with any other interpretation. *Lucas Flour*, 369 U.S. at 105 (emphasis added). That is precisely the situation present with AstraZeneca’s contract here.

The analysis in *Larsen Beverage* accords with the rule set forth by the Supreme Court. First, the Utah Court of Appeals determined that the contract at issue was not “inconsistent” with the statutory right. *Larsen Beverage*, 250 P.3d at 85 (“[W]e do not see that Larsen’s responsibility

to pay medical expenses is necessarily inconsistent with its right to seek reimbursement for those expenses thereafter.”). Here, by contrast, the contract is indisputably inconsistent with the right to immunity because, absent the contract, AstraZeneca would have no responsibility to pay the “costs of research injuries.” Second, while *Larsen Beverage* considered whether the contract explicitly referenced the statute that provided the right (i.e., the right to reimbursement), it did not stop there. It alternatively looked to see if there was “a reference to the general concept” of reimbursement. *Id.* Because there was no reference to the general concept the court held there was no waiver. *Id.* Here, by contrast, the contract specifically addresses the concept that is the subject of the statutory right (i.e., compensation for injuries). Thus, assuming *arguendo* that the PREP Act even applies to contract claims (it does not), the analytical framework in *Larsen Beverage*⁷ supports a finding of waiver under the circumstances here.

III. PLAINTIFF’S CASE IS NOT TIME-BARRED UNDER THE *RELEVANT* STATUTE OF LIMITATIONS (UTAH CODE § 78B-2-309(1)(b))

A. Under the Relevant Statute of Limitations, Plaintiff Had Six Years to File Her Claim

In Utah, the statute of limitations that governs breach of *written* contract actions is Utah Code § 78B-2-309(1)(b). Under this statute, “[a]n action may be brought within six years: . . . upon any contract, obligation, or liability founded upon an instrument in writing.” Utah Code § 78B-2-309(1)(b) (formerly Utah Code § 78-12-23(2)). The Utah Supreme Court has “set forth the test for determining whether the six-year period of section [78B-2-309(1)(B)] applies to a particular case.”

⁷ *Accord Medley*, 93 P.3d at 848-49 (finding that a divorce stipulation did not waive the right to future alimony because the terms of the stipulation were not inconsistent with the right, and there was neither an explicit reference to the statute nor “a clear reference to the concept of future alimony”).

Brigham Young Univ. v. Paulsen Constr. Co., 744 P.2d 1370, 1372 (Utah 1987) (citing *Bracklein v. Realty Insurance Co.*, 80 P.2d 471, 476 (1938)). The six-year statute of limitations applies “[i]f the fact of liability arises or is assumed or imposed from the instrument itself, or its recitals.” *Id.* (citation omitted) (alteration in original). As the *Brigham Young* court explained, if a defendant owes no duty to the plaintiff “[a]bsent the contractual obligations,” then the six-year statute of limitations applies. *Id.* at 1372; *see also Records v. Briggs*, 887 P.2d 864, 869 (Utah Ct. App. 1994) (“[I]f the cause of action arises from a breach of a *promise set forth in the contract*, the action is *ex contractu*” (citation omitted)).

Here, the six-year statute of limitations applies to Plaintiff’s claims because “absent the contractual obligations” Plaintiff would have had no cause of action. Because of the PREP Act, Plaintiff’s claim against AstraZeneca could *only* arise from AstraZeneca’s breaches of its contractual promises, and not from socially imposed duties of tort law. *See DCR, Inc. v. Peak Alarm Co.*, 663 P.2d 433, 435 (Utah 1983) (explaining that “[c]ontract actions are created to protect the interest in having promises performed,” whereas tort actions are created to uphold duties of conduct that “are imposed by law, and are based primarily upon social policy” (citation omitted)).

Finally, even if AstraZeneca did owe Plaintiff a duty under tort law, it is a “blackletter principle” that Plaintiff can “elect” to sue under the contract. *Ward v. Intermountain Farmers Ass’n*, 907 P.2d 264, 267 & n.2 (Utah 1995). In other words, if Plaintiff had an untimely tort claim, she would still have the right to sue for breach of contract within the six-year statute of limitations. *Id.* (“An act and its consequences may be both a tort and a breach of contract When this is so, the injured person, although barred by a statute from maintaining an action of tort may not be

barred from enforcing his contractual . . . right or vice versa.” (quoting Restatement (Second) of Torts § 899, cmt. b (1979) (ellipses in original)).

B. AstraZeneca Fails to Cite or Acknowledge the Controlling Statute and Case Law, and Relies on Case Law Regarding Inapposite Breach of Warranty Claims

In its motion, AstraZeneca does not cite, or acknowledge, Utah’s statute of limitations for breaches of written contracts. AstraZeneca also does not cite the binding precedent from the Utah Supreme Court regarding this statute. Instead, AstraZeneca relies exclusively on the Utah Product Liability Act’s statute of limitations (Utah Code § 78B-6-706), and the case law interpreting it.⁸ Critically, none of the cases that AstraZeneca cites deal with breaches of *written contracts*. Rather, the cases it cites all deal with inapposite *breach of warranty* claims.

To appreciate the irrelevance of the case law that AstraZeneca cites, it is helpful to consider the Utah Supreme Court’s discussion of the “slippery” and “blurred” distinction between breach of warranty claims and *tort* claims. *Davidson Lumber Sales, Inc. v. Bonneville Inv., Inc.*, 794 P.2d 11, 14 (Utah 1990); *see also Wheeler Mach. Co.*, 2008 UT 84 ¶ 27. Unlike traditional breach of contract claims, breach of warranty claims (1) were specifically developed in the product liability context, (2) inherently involve the sale of defective goods, and (3) do not require a written contract—let alone privity—between the parties. *Davidson*, 794 P.2d at 14-15; *Wheeler Mach. Co.*, 2008 UT 84 ¶¶ 25-27. Thus, whether characterized as a “contract” or a “tort,” a breach of warranty claim is a natural and obvious fit for the product liability statute of limitations. This is

⁸ *Utah Local Gov’t Tr. v. Wheeler Mach. Co.*, 2008 UT 84, 199 P.3d 949 (Utah 2008); *Mecham v. C.R. Bard, Inc.*, No. 2:19-cv-00750-JNP, 2020 U.S. Dist. LEXIS 93671 (D. Utah May 27, 2020); *Strickland v. Gen. Motors Corp.*, 852 F. Supp. 956 (D. Utah 1994).

not the case, however, with traditional breach of contract claims (such as the one here), which is why written contracts are governed by an entirely separate statute of limitations. *See Brigham Young*, 744 P.2d at 1372.

C. The Types of Damages that Plaintiff Seeks Have No Bearing on Whether the Cause of Action Sounds in Contract or Tort

AstraZeneca’s contention that Plaintiff’s cause of action sounds in tort because of the damages she is seeking is meritless. The cause of action must be judged according to the *elements of the claim*, not the damages being sought.⁹ The one case that AstraZeneca cites to support its position does not actually do so. Dkt. 24 at 18 (citing *Records*, 887 P.2d at 868). The *Records* court noted in passing that the characterization of an action should consider “the true nature of the wrong and the injury.” *Records*, 887 P.2d at 868. Injury and damages are not synonymous terms: the latter flows from the former, but not vice versa. In any event, neither *Records* nor any other case that AstraZeneca cites, modifies or abrogates the Utah Supreme Court’s precedential standard for determining if the six-year statute of limitations for written contracts applies to a given case. *Brigham Young*, 744 P.2d at 1372. AstraZeneca’s argument that Plaintiff’s case is time-barred fails accordingly.

IV. PLAINTIFF HAS PLEADED A PLAUSIBLE CLAIM FOR BREACHES OF THE IMPLIED DUTY OF GOOD FAITH

Plaintiff has pleaded a plausible claim for breach of the implied duty of good faith, notwithstanding AstraZeneca’s arguments to the contrary. Dkt. 24 at 15-16, 23-24. AstraZeneca’s three arguments contradict longstanding law and are devoid of judicial precedent.

⁹ Doctrinally, the determination as to which damages are permissible in a given case is properly done *after* the claim is characterized, not before. Plaintiff will thus separately address AstraZeneca’s factual contentions regarding damages in the section on damages below.

A. The Waiver Analysis Has No Bearing on the Implied Duty of Good Faith

First, AstraZeneca argues that it is implausible for an implied duty of good faith to be read into a contractual obligation which waives statutory immunity. Dkt. 24 at 15-16. AstraZeneca offers no legal support for this proposition. Nor does AstraZeneca explain how this purported rule can square with Utah’s longstanding rule that “every contract is subject to an implied covenant of good faith.” *Brehany v. Nordstro, Inc.*, 812 P.2d 49, 55 (Utah 1991); *accord Vander Veur v. Groove Entm’t Techs.*, 2019 UT 64, ¶ 9, 452 P.3d 1173 (“[A]ll contracts contain a covenant of good faith and fair dealing”). Instead, AstraZeneca argues that a company cannot plausibly waive immunity to an implied duty since a waiver requires an express intention, whereas an implied duty is, by definition, inferred. Dkt. 24 at 15-16. But this argument puts the cart before the horse. So long as the contractual obligation waives the immunity to an existing right, the ordinary rules of contract govern, including the implied duty of good faith. To throw out this cardinal rule would “do violence to accepted principles of traditional contract law,” *Lucas Flour*, 369 U.S. at 105, with the only apparent “benefit” being that companies would be allowed to operate in bad faith. The Court should reject this misguided request.

B. Plaintiff Has Alleged Breaches of Duties That Come Squarely Within the Implied Covenant of Good Faith and Fair Dealing

Second, AstraZeneca summarily asserts that Plaintiff is claiming “an amorphous, unbounded right to recovery.” Dkt. 24 at 24. This is not so. The Utah Supreme Court has explained that, in every contract, “each party impliedly promises that he will not intentionally or purposely do anything which will destroy or injure the other party’s right to receive the fruits of the contract.” *Vander Veur*, 2019 UT 64 ¶ 9 (citation omitted). In the context of insurance contracts, the Utah Supreme Court has held that “the implied obligation of good faith performance contemplates, at

the very least, that the insurer will diligently investigate the facts to enable it to determine whether a claim is valid, will *fairly evaluate* the claim, and will thereafter *act promptly and reasonably* in rejecting or settling the claim.” *Beck v. Farmers Ins. Exch.*, 701 P.2d 795, 801 (Utah 1985) (emphases added). The Utah Court of Appeals has imported this implied duty of insurers into contracts that, while not called insurance contracts or regulated as such, satisfy the definition of insurance.¹⁰ *Pugh v. N. Am. Warranty Servs.*, 2000 UT App 121, ¶ 23, 1 P.3d 570 (applying the insurer’s duty of good faith to a vehicle service contract and concluding “Defendant delayed unreasonably in both investigating the loss and in authorizing and paying for covered repairs when the need was established”).

Here, whether one uses the general standard, *Vander Veur*, 452 P.3d at 1177, or the insurer standard, *Beck*, 701 P.2d at 801, Plaintiff has alleged conduct that plausibly shows breaches of the implied duty. This conduct includes AstraZeneca’s “unconscionable delay” in responding to Plaintiff’s numerous requests for coverage, and AstraZeneca’s “paltry” offer of compensation which it conditioned on Plaintiff agreeing to waive her *right* to future recovery. *See* Dkt. 1 at ¶¶ 20-22, 138-140, 145-159, 188. This conduct destroyed, or at least injured, Plaintiff’s right to receive the fruits of the contract because a right to coverage means little if the insuring party has no obligation to respond in a timely manner. The right means even less if the insuring party can condition its contractual *obligation* to pay for past expenses on the covered party foregoing its contractual *right* to recover for future expenses. Plaintiff has pleaded a plausible claim.

¹⁰ As discussed below, AstraZeneca’s contract qualifies as an insurance contract under the standard set forth in *Pugh*.

C. Plaintiff's Express and Implied Breach Claims Are Not Redundant

Lastly, AstraZeneca argues that Plaintiff's implied duty claim should be dismissed on the grounds that it is "redundant" to the express breach claim. Dkt. 24 at 24. The only grounds that AstraZeneca cites for this contention is that Plaintiff purportedly "pleads the same economic and non-economic damages" for the two claims. *Id.* This is not so. While the Complaint does not allocate specific damages to specific breaches, the Complaint does not claim that the damages are identical across the two claims. Instead, the Complaint appropriately pleads that the damages for each claim will "be determined at trial." Dkt. 1 at ¶¶ 185, 190. Moreover, as a matter of law, there are some types of damages (e.g., attorney fees) that are only available for implied breaches, not express breaches. *Saleh v. Farmers Ins. Exch.*, 2006 UT 20, ¶ 25 & n.4, 133 P.3d 428. Thus, the damages for the two claims are not identical. But, even if they were, this is not a proper basis for *dismissing* a claim. Indeed, even if Plaintiff had not alleged *any* actual damages from the implied breach claim, dismissal would not be warranted because Plaintiff would still be entitled to nominal damages. *Terry*, 47 F. Supp. 3d at 1275.

V. THE GENERAL AND CONSEQUENTIAL DAMAGES PLAINTIFF SEEKS ARE ALL PROPERLY RECOVERABLE IN CONTRACT UNDER THE SPECIFIC CIRCUMSTANCES OF THIS CASE

AstraZeneca asks this Court to strike all of Plaintiff's damages except for "out-of-pocket medical" expenses. Dkt. 24 at 19-23. AstraZeneca bases this request on a selective reading of the contract, and a misapplication of the law.

A. Plaintiff Is Entitled to Attorney Fees if She Prevails

AstraZeneca argues that Plaintiff cannot be entitled to attorneys' fees because "[t]his is not an insurance case," but it makes no attempt to reconcile this conclusion with the holding in *Pugh*.

Dkt. 24 at 23. In *Pugh*, the Utah Court of Appeals held that a contract need *not* be called an insurance contract, nor be regulated as such, to permit recovery for attorneys' fees. 2001 UT App 121 ¶¶ 17, 21. Instead, a contract qualifies as an "insurance contract" if it meets the definition of insurance. *Id.* The two definitions of insurance that the *Pugh* court cited are: (A) "an arrangement, contract, or plan for the transfer of a risk or risks from one or more persons to one or more other persons"; and (B) "an agreement by which one party for a consideration promises to pay money or its equivalent or to do an act valuable to other party upon destruction, loss, or injury of something in which other party has an interest." *Id.* ¶ 15 (citing Utah Code Ann. § 31A-1-301(48)(a)(i) and Black's Law Dictionary 721 (5th ed. 1979)).

Under this standard, the Utah Court of Appeals held that a *vehicle service contract* qualified as an insurance contract because it met both definitions of insurance and "served the exact same purpose as an insurance contract." *Id.* ¶ 16. The court also observed that "[t]he policy concerns that led the Utah Supreme Court to allow for recovery of attorney fees applie[d] with equal vigor" to the vehicle service contract because "Pugh's vehicle was stranded in Cedar City for an entire year due to [defendant]'s refusal to pay for the necessary repairs. [Defendant]'s actions resulted in foreseeable and provable consequential damages to Pugh, including the attorney fees he had to incur in an ultimately successful effort to recover his due." *Id.* ¶ 21.

The same result attaches here. As with the contract in *Pugh*, AstraZeneca's promise to "cover the costs of research injuries" served "the exact same purpose as an insurance contract." Indeed, AstraZeneca even used the term "insurance policy" in the contract when discussing its promise to pay, stating that "Sponsor has an insurance policy to cover the costs of research injuries." Dkt. 1 at ¶ 9. Moreover, like the *Pugh* plaintiff's car being stranded for a year due to the

defendant's refusal to pay, Plaintiff here was in limbo for *years* waiting for a response to her requests, *id.* ¶¶ 107-59, and had to refinance her home in order to make ends meet in the interim, *id.* ¶ 110. As in *Pugh*, it was entirely foreseeable to AstraZeneca that the Plaintiff would need to incur attorneys' fees in order to recover her due under the contract.

Finally, as the *Pugh* court explained, the fact that an insurance contract is not regulated by the state "might *strengthen*, rather than weaken, the case for allowing attorney fees to be awarded as consequential damages." *Pugh*, 2001 UT App 121 ¶ 19 n.6 (emphasis added). This is because "[t]he Insurance Department has at its disposal a variety of measures for promoting good behavior by regulated insurers." *Id.* Accordingly, "[a]warding attorney fees as consequential damages for breach of an unregulated insurer's duties may be one of the few ways to get its attention and promote its good behavior." *Id.* Thus, as in *Pugh*, the fact that AstraZeneca's contract is not regulated by the Insurance Department weighs in favor, not against, permitting attorneys' fees for bad faith conduct.

B. The Plain Meaning of "Costs of Research Injuries" Is Expansive and Not Limited to Medical Expenses

AstraZeneca dubiously contends that the contract "cannot plausibly be read to include or provide for any economic damages beyond" medical treatment costs. Dkt. 24 at 20. According to AstraZeneca, "[n]othing in the contract contemplates AstraZeneca paying study participants compensation for lost income, loss of household services, costs of transportation, or childcare expenses." *Id.* AstraZeneca reaches this conclusion by limiting its evaluation to the provision where AstraZeneca promised to pay "the costs of medical treatment for research injuries." *Id.* This, however, is not the only provision in the contract where AstraZeneca promised to pay costs.

In a separate provision of the contract, *which AstraZeneca conspicuously fails to acknowledge*, AstraZeneca promised to “cover the costs of research injuries.” Dkt. 1 at ¶ 56 (citing Dkt. 1-1 at 14). The plain meaning of the words “costs of research injuries” is very broad in scope and readily encompasses lost income, loss of household services, costs of transportation, and childcare expenses. Nor is there anything in the provision on medical expenses that abrogates or limits this broader promise to pay the “costs of research injuries.”¹¹

At a minimum, it is reasonable (i.e., plausible) to construe the term “costs of research injuries” as covering all costs, not just medical expenses, since that is the plain meaning. Even if this clause could also be reasonably read as being limited to medical expenses, an ambiguity would exist. *Brady v. Park*, 2019 UT 16, ¶ 54 n.40, 445 P.3d 395 (“A contract provision is ambiguous if it is capable of more than one reasonable interpretation because of uncertain meanings of terms, missing terms, or other facial deficiencies.” (citation and internal quotation marks omitted)). It is a longstanding rule in Utah that ambiguities in insurance contracts are construed against the insurer and in favor of broader coverage for the insured. *Alf v. State Farm Fire & Casualty Co.*, 850 P.2d 1272, 1274 (Utah 1993) (“If a policy is ambiguous, doubt is resolved against the insurer.”); *Poulsen v. Farmers Ins. Exch.*, 2016 UT App 170, ¶ 9, 382 P.3d 1058 (“Utah has a longstanding

¹¹ See *NOAA Md., LLC v. Adm’r of the GSA*, 997 F.3d 1159, 1166 (Fed. Cir. 2021) (“[T]he second sentence contains no ‘notwithstanding the foregoing,’ ‘provided, however, that,’ or similar language indicating that it is making an exception to, operating in even partial derogation of, or narrowing the coverage expressly specified in the immediately preceding sentence.”); cf. *Morrison v. Lindsey Lawn & Garden, Inc.*, No. 13-1467, 2014 U.S. Dist. LEXIS 27146, at *16 (E.D. Pa. Mar. 4, 2014) (“The fact that the sentence immediately following focuses on a narrower set of current known or threatened liabilities . . . does not narrow the scope of the broad disclaimer in the preceding sentence.”).

commitment to the principle that insurance policies should be construed liberally in favor of the insured and their beneficiaries so as to promote and not defeat the purposes of insurance.” (cleaned up)). Accordingly, since AstraZeneca’s contract qualifies as an insurance contract under *Pugh*, Plaintiff’s plain language interpretation of “costs of research injuries” prevails as a matter of law.¹²

C. The Contract Does Not Limit Medical Expenses to “Out of Pocket” Costs

AstraZeneca summarily asserts that the promise to “pay the costs of medical treatment” was only a promise to pay “out-of-pocket costs.” Dkt. 24 at 20. However, the contract—drafted by a sophisticated company—does *not* use the term “out-of-pocket costs.” Nor does AstraZeneca explain why the Court must re-write the contract to add in this post-hoc limitation. *Monaco Apartment Homes v. Figueroa*, 2021 UT App 50, ¶ 10, 489 P.3d 1132 (“The court will not rewrite a contract to supply terms which the parties omitted.” (cleaned up)). Other insurers have made this same request, and courts across the country have routinely rejected it, as this Court should do as well. *See, e.g., Auto Club Prop. Cas. Ins. Co. v. Moser*, 874 S.E.2d 295, 303-05 (W. Va. 2022) (collecting cases).

Like AstraZeneca does here, insurers have argued that the promise to pay for “incurred” medical expenses must necessarily be interpreted as excluding expenses that have been paid under other insurance policies. But courts have soundly rejected this argument, holding that “an insurer

¹² Even if this were not an insurance contract under *Pugh* and the meaning of the term “costs of research injuries” was considered ambiguous (despite its plain meaning), the ambiguity would be for the jury, not the Court, to resolve, after due consideration of extrinsic evidence. *Brady*, 2019 UT 16 ¶ 56 & n.47. If the extrinsic evidence at trial fails to clarify the intent of the parties, the ambiguity would then be construed against the drafter (AstraZeneca) as a matter of law. *Home Sav. & Loan v. Aetna Cas. & Sur. Co.*, 817 P.2d 341, 347 (Utah Ct. App. 1991) (“Generally, ambiguous provisions will be construed against the drafter of the contract only if extrinsic evidence fails to clarify the intent of the parties.”).

is liable to the insured for the entire expense under the medical payments provision, regardless of whether or how the medical expense was ultimately paid.”¹³ *Id.* at 303.

In so holding, courts have stressed that the insurer, as the drafter of the contract, had the ability to add in this limitation. If insurers choose not to do so, courts will not do so for them. *E.g.*, *Golchin v. Liberty Mut. Ins. Co.*, 993 N.E.2d 684, 689-90 (Mass. 2013) (“What is *not* present here is an exclusion from or limitation on MedPay coverage for medical expenses that are also covered under a separate health insurance policy. We interpret the absence of such a provision to mean, by implication, that the policy does not bar MedPay benefits in such a situation.”); *Samsel v. Allstate Ins. Co.*, 59 P.3d 281, 290 (Ariz. 2002) (“Allstate could have, but did not, specifically provide for reduction of medical payments benefits by a coordination of benefits or other clause limiting medical payments coverage to expenses actually paid by an insured.”); *Moorman v. Nationwide Mut. Inc. Co.*, 148 S.E.2d 874, 876 (Va. 1966) (“Had [the insurer] intended to limit or reduce the amount of its liability for medical payments . . . if other medical payments were available . . . from another source, it could easily have so provided. It cannot ask us to make a contract for the parties, which they did not make themselves.”).

The case of *Guerrier v. Mid-Century Ins. Co.*, 663 N.W.2d 131 (Neb. 2003) is instructive. Similar to the contract here, the insurer promised that “[w]e will pay reasonable expenses for necessary medical services.” *Guerrier*, 663 N.W.2d at 133. Based on this language, the insurer argued it had no obligation to pay for the plaintiff’s medical expenses since they had already been

¹³ While this rule may result in double recovery for the insured, this does not justify re-writing the contract as written. 6 J.E. Thomas & C.J. Robinette, *New Appleman on Insurance Law* § 64.04[2], at 64-57 (2012) (“Where the policy does not contain a nonduplication provision or set-off provision, courts and commentators conclude that a double recovery is permissible.”).

covered by workers' compensation. The Nebraska Supreme Court disagreed. The court held that the provision was *unambiguous* in showing that the insurer was "obligated to pay the reasonable expenses of Guerrier, *regardless of whether those expenses have already been paid by another.*" *Id.* at 135–36 (emphasis added). The same conclusion applies here.

AstraZeneca's fleeting argument on standing does not change this result. Dkt. 24 at 20. Indeed, courts have routinely allowed plaintiffs to recover for expenses paid by third party insurers, irrespective of whether said third party was in the case. *See e.g., Samsel*, 59 P.3d 281; *Guerrier*, 663 N.W.2d 131. Thus, Plaintiff's right to medical expenses does not depend on subrogation.

D. Plaintiff Has Pleaded Plausible Grounds for Emotional Damages

Emotional damages are recoverable in "unusual" breach of contract cases such as the one at bar. *See Beck*, 701 P.2d at 802. The Utah Supreme Court has explained that where, as here, "the primary nature of the contractual obligations involves peculiarly personal interests, as opposed to pecuniary interests, emotional distress damages stemming from a breach of that contract may be warranted." *Gregory & Swapp, PLLC v. Kranendonk*, 2018 UT 36, ¶ 33, 424 P.3d 897. There are two factors that must be present for emotional damages to be recoverable. First, the contract must be of a "nature" where emotional damages were foreseeable. *Cabaness v. Thomas*, 2010 UT 23, ¶ 75, 232 P.3d 486. Second, the contract must have "specific language" that contemplates the availability of emotional damages. *Gregory*, 2018 UT 36 ¶ 29.

Here, the first factor is readily satisfied because the Utah Supreme Court has recognized that the purpose of insurance is "not only to provide funds in case of loss, but to provide *peace of mind* for the insured." *Cabaness*, 232 P.3d at 507 (emphasis added); *see also Gregory*, 2018 UT 36 ¶ 35 n.42 (same) (citation omitted). Moreover, the contract here is not merely insurance for

commercial real estate, but insurance for Plaintiff’s well-being, including ensuring the privacy of her medical history, and ensuring compensation, in addition to medical treatment and/or a referral, if she suffers serious harm. Dkt. 1-1 at 10-20. The contract is thus deeply personal in nature, with a focus on protecting non-monetary interests. It was foreseeable that breaches of this contract could cause emotional harm, and thus the first factor is satisfied.

The second factor is also satisfied because the contract *explicitly* contemplates *damages* for “mental” and “emotional injury.” Dkt. 1 at ¶ 173 (quoting Dkt. 1-1 at 14). This express contemplation of emotional damages makes the instant contract a more obvious fit for emotional damages than was the case in *Cabaness*. See *Gregory*, 2018 UT 36 ¶ 31 n.35 (discussing the lack of explicit contemplation of emotional *damages* in the *Cabaness* contract). The contract here is also distinguishable from the one in *Gregory*, as there the contract “[was] void of *any* language related to mental or emotional harm.” *Id.* ¶ 35 (emphasis added). It is also distinguishable from the contract in *Ward v. McGarry*, 2022 UT App 62, ¶¶ 3, 10, 12, 511 P.3d 1213, where the court was confronted with *no written contract at all*.

Moreover, contrary to AstraZeneca’s motion, the contract does not state that damages for mental and emotional damages are barred. Instead, the contract states that such damages “may” be barred, which, by implication, means that the claims may not be barred. See Dkt. 1-1 at 14. Further, the contract implies that the claim will only be barred “[i]f the order applies.” *Id.* Thus, under the contract, such claims are not barred if the PREP Act does not apply.¹⁴ This language is more than

¹⁴ The contract’s discussion of damages for emotional injury does *not* condition this recovery on physical harm resulting from the vaccine itself. Instead, the contract states that emotional damages “*may*” not be recoverable if the injury has a causal relationship with the vaccine. See Dkt. 1-1 at 13.

sufficient to satisfy the second factor, which only requires that emotional damages be “contemplated,” not that they be guaranteed. *Gregory*, 2018 UT 36 ¶ 30.

Alternatively, if the Court were to find that the contract is ambiguous regarding emotional damages, dismissal would still be error. This is because the ambiguity would need to be construed against AstraZeneca as the insurer, *Poulsen*, 2016 UT App 170 ¶ 9, or, at a minimum, would present a question of fact for the jury to decide,¹⁵ *Brady*, 2019 UT 16, ¶¶ 53, 56.

CONCLUSION

AstraZeneca’s motion asks for a sweeping suite of new and troubling law to relieve the company of contractual obligations that it voluntarily entered into. First, AstraZeneca asks for a grant of “complete immunity” for contractual violations under the PREP Act. Second, AstraZeneca asks that its clear and unmistakable promise to pay the costs of research injuries be written out of the contract by holding that waivers must be explicitly stated, notwithstanding U.S. and Utah Supreme Court precedent to the contrary. Third, AstraZeneca asks this Court to apply the Utah Product Liability Act’s statute of limitations to a breach of *written* contract, notwithstanding additional precedent from the Utah Supreme Court to the contrary. Finally, AstraZeneca asks the Court to carve out an exception to the implied duty of good faith so that companies can operate in *bad faith* where, as here, they have waived a statutory right. The Court should deny each of these misguided requests and deny AstraZeneca’s motion in its entirety.

Plaintiff requests oral argument on the motion.

¹⁵ The jury would be able to consider extrinsic evidence, notwithstanding AstraZeneca’s argument to the contrary. Dkt. 24 at 22 (citing *Gregory*, 2018 UT 36 ¶ 32). *Gregory* held that the trial court erred by considering extrinsic evidence because the contract in that case was *unambiguous*. 2018 UT 36 ¶ 35 n.43.

Dated this 26th day of July, 2024.

SIRI & GLIMSTAD LLP

By: /s/ Michael Connett

Aaron Siri

Elizabeth A. Brehm

Michael Connett

MARSHALL OLSON & HULL, PC

Jason R. Hull

Anikka T. Hoidal

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of July, 2024, I caused the foregoing **PLAINTIFF'S OPPOSITION TO ASTRAZENECA'S MOTION TO DISMISS** to be filed via the court's CM/ECF system, which transmitted notice of such filing to all counsel of record.

/s/ Michael Connett

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BRIANNE DRESSEN,

Plaintiff,

v.

ASTRAZENECA AB; ASTRAZENECA
PHARMACEUTICALS LP; and VELOCITY
CLINICAL RESEARCH, INC.,

Defendants.

**ORDER DENYING
ASTRAZENECA'S MOTION TO
DISMISS**

Case No: 2:24-cv-00337-RJS-CMR

Judge Robert J. Shelby

Magistrate Judge Cecilia M. Romero

On June 28, 2024, Defendants AstraZeneca AB and AstraZeneca Pharmaceuticals LP (collectively "**AstraZeneca**") filed a Motion to Dismiss Plaintiff's Complaint (Dkt. 24). On July 26, 2024, Plaintiff Brianne Dressen filed her Response in Opposition to AstraZeneca's Motion to Dismiss (Dkt. 26). Having considered the parties' respective submissions, and the applicable law, the Court **DENIES** AstraZeneca's Motion to Dismiss.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that AstraZeneca's Motion to Dismiss Plaintiff's Complaint is hereby DENIED.

SO ORDERED this _____ day of _____ 2024.

BY THE COURT:

ROBERT J. SHELBY
United States District Judge