

82

1 Michael McCarthy  
Susan McCarthy  
1123 Shelburn Lane  
2 Ventura, California 93001  
TEL: (805) 797-2280

VENTURA  
SUPERIOR COURT  
**FILED**

JUL 11 2013

4  
5 Plaintiffs in Pro Per

MICHAEL D. PLANET  
Executive Officer and Clerk  
BY *Leslie Carlin* Deputy  
**LESLIE CARLIN**

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF VENTURA

10 MICHAEL C. MCCARTHY and SUSAN L.  
11 MCCARTHY,

CASE NO 56-2013-00439148-CU-MM-VTA

12 Plaintiffs,

COMPLAINT FOR DAMAGES:

13 vs.

- (1) Medical Malpractice;
- (2) Loss of Consortium.

14 KAISER FOUNDATION HEALTH PLAN,  
15 INC.; KAISER FOUNDATION HOSPITALS;  
16 SOUTHERN CALIFORNIA PERMANENTE  
17 MEDICAL GROUP; G. DENNIS HORVATH,  
D.O.; COMMUNITY MEMORIAL HOSPITAL;  
COMMUNITY MEMORIAL HEALTH

18 SYSTEM and DOES 1 through 100, Inclusive,  
Defendants.

19 Plaintiffs MICHAEL C. MCCARTHY and SUSAN L. MCCARTHY allege as follows:

20 FIRST CAUSE OF ACTION, FOR MEDICAL MALPRACTICE,  
21 BY PLAINTIFF MICHAEL MCCARTHY AGAINST ALL DEFENDANTS

- 22 1. Plaintiffs are residents of the County of Ventura, State of California.
- 23 2. The true names and capacities, whether individual, associate, corporate or otherwise,
- 24 of defendants DOES 1 through 100, inclusive, are unknown to plaintiffs who therefore sue them by
- 25 such fictitious names. Plaintiffs are informed and believe and thereon allege that each of the
- 26

1 fictitiously named defendants are responsible in some manner for the occurrences herein alleged, and  
2 that the acts and omissions of the fictitiously named defendants were a proximate cause of plaintiffs'  
3 injuries and damages as hereinafter alleged. Plaintiffs therefore sue the fictitiously named defendants  
4 by such fictitious names and will amend this complaint to show their true names and capacities when  
5 same have been ascertained.

6 3. That all of the facts, acts, events and circumstances herein mentioned and described  
7 occurred in the County of Ventura, State of California.

8 4. That at all times herein mentioned, defendants G. DENNIS HORVATH, D.O. and  
9 DOES 1 through 20, inclusive, were and now are physicians and surgeons holding themselves out as  
10 duly licensed to practice their profession under and by virtue of the laws of the State of California, and  
11 were and are now engaged in the practice of their profession in the State of California.

12 5. At all times mentioned herein, defendants G. DENNIS HORVATH, D.O. and DOES 1  
13 through 20, inclusive, held themselves out to the public at large and to plaintiffs herein as qualified  
14 physicians and surgeons duly licensed to practice their professions by virtue and under the laws of the  
15 State of California, with expertise, specialized knowledge, training, education, learning skill,  
16 techniques and expertise in certain specialties of medicine.

17 6. That holding themselves out as experts and specialists in specialized fields of surgery and  
18 medicine, possessing skills, learning and experience in said specialties, defendants herein, at all times  
19 mentioned herein, represented to plaintiffs that they would, at all times, exercise and use skill,  
20 prudence, learning and experience in said specialties. Defendants herein, at all times mentioned  
21 herein, represented to plaintiffs that they would at all times exercise and use the skill, prudence,  
22 learning, knowledge and expertise in the care and treatment of plaintiff in accordance with the  
23 standard of practice among competent, reputable and prudent physicians practicing their specialties in  
24 the State of California.

25 7. At all times herein mentioned, defendants KAISER FOUNDATION HEALTH PLAN,  
26 INC.; KAISER FOUNDATION HOSPITALS; SOUTHERN CALIFORNIA PERMANENTE

27  
28

1 MEDICAL GROUP; COMMUNITY MEMORIAL HOSPITAL; COMMUNITY MEMORIAL  
2 HEALTH SYSTEM and DOES 21 through 40, inclusive, were business organizations, form unknown,  
3 organized and existing under the laws of the State of California.

4 8. At all times herein mentioned, defendants SOUTHERN CALIFORNIA PERMANENTE  
5 MEDICAL GROUP and DOES 41 through 50, inclusive, were and at all times herein mentioned are, a  
6 partnership. Defendants G. DENNIS HORVATH, D.O. and DOES 1 through 20, inclusive, are, and  
7 at all times herein mentioned were, members of the foregoing named partnership and are sued herein  
8 individually and by said common name pursuant to the provisions C.C.P. Section 369.5.

9 9. At all times herein mentioned, defendants DOES 51 through 60, inclusive, were and are  
10 registered nurses, nurse practitioners, licensed vocational nurses, practical nurses, registered  
11 technicians and other paramedical personnel, holding themselves out as duly licensed to practice their  
12 profession under and by virtue of the law of the State of California, and were and now are engaged in  
13 the practice of their profession under and by virtue of the laws of the State of California.

14 10. At all times herein mentioned, defendants DOES 61 through 70, inclusive, were aides,  
15 attendants, technicians, nursing or medical students, acting as agents, employees or servants of some  
16 or all of the other defendants, within the course and scope of said agency or employment.

17 11. Defendants KAISER FOUNDATION HEALTH PLAN, INC.; KAISER FOUNDATION  
18 HOSPITALS; SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP; COMMUNITY  
19 MEMORIAL HOSPITAL; COMMUNITY MEMORIAL HEALTH SYSTEM and DOES 71 through  
20 80, inclusive, were at all times herein mentioned, duly organized California corporations and  
21 partnerships existing under and by virtue of the laws of the State of California. Said defendants, and  
22 each of them, owned, operated, managed, controlled and administered a general medical facility,  
23 hospital or 24-hour care facility within said County, State of California, and held themselves out to the  
24 public at large and to plaintiffs herein as properly equipped, fully accredited, competently staffed by  
25 qualified and prudent personnel and operating in compliance with the standard of care maintained in  
26 other properly equipped and efficiently operated and administered accredited general medical

27

28

1 facilities, hospitals and outpatient clinics in said community, offering full, competent and efficient  
2 hospital, emergency, clinical, medical, surgical, laboratory, x-ray, anesthesia, paramedical services and  
3 outpatient clinics to the general public and to plaintiff herein. Plaintiffs are informed and believe and  
4 thereon allege that said defendants, and each of them, administered, governed, controlled, managed  
5 and directed all the necessary functions, activities and operations of said general medical facility,  
6 hospital or 24-hour care facility, including its nursing care, intern, resident and house staff,  
7 physicians and surgeons, medical staff, x-ray, intensive care, recovery room and emergency room  
8 departments and clinics, including but not limited to personnel, staff and supplies of said facilities and  
9 clinics.

10 12. Plaintiffs are informed and believe and upon such information and belief allege that at  
11 all times herein mentioned, defendants, and each of them, were the agents, servants, employees and  
12 copartners of their said codefendants, and as such, were acting within the course and scope of such  
13 agency, partnership, and employment at all times herein mentioned; that each and every defendant, as  
14 aforesaid, when acting as a principal, was negligent in the selecting, hiring and maintaining of each  
15 and every other defendant, as its agents, servants, partners and employees.

16 13. At all times herein mentioned, plaintiff MICHAEL C. MCCARTHY was in the  
17 exclusive custody and control of defendants, and each of them, and at no time prior to the events,  
18 conduct, activities, care and treatment herein complained of, did the defendants herein, or any of them,  
19 obtain a knowledgeable, informed consent for said care, treatment of conduct. Prior to the initiation  
20 of or performance of said care, treatment, procedure or conduct, no opportunity was afforded the  
21 plaintiff herein or any authorized agent of plaintiff to exercise voluntary, knowledgeable and informed  
22 consent to said care, treatment, procedure or conduct.

23 14. In the treatment and diagnosis performed by the defendants and their employees, and  
24 each of them, upon plaintiff MICHAEL C. MCCARTHY, defendants and their employees, and each of  
25 them, wrongfully failed to warn the plaintiff of the risks and hazards and of the harmful consequences  
26 that might follow from the care, treatment, diagnosis or surgery.

27  
28

1           15.     Plaintiffs named the defendants herein, and each of them, because plaintiffs are in  
2 doubt and do not know exactly from which of the defendants plaintiffs are entitled to redress and  
3 whether the injuries and damages to the plaintiffs herein alleged were caused by the combined  
4 wrongdoing of all of the defendants or by the concurrent or successive and separate wrongdoing of the  
5 defendants, or one or more of them. For that reason, plaintiffs name all of said defendants and ask  
6 that the trier of fact determine the liability of each and all of the said defendants in this action and to  
7 what extent and what responsibility falls upon each of said defendants, and that the Court award  
8 judgment to the plaintiffs as against some or all of the defendants, either jointly or severally, as they  
9 may be found liable.

10           16.     At all times herein mentioned, plaintiff MICHAEL C. MCCARTHY was in the  
11 exclusive control of the defendants, and each of them, and that at no time prior to the events, conduct,  
12 activities, care, and treatment herein complained of did the defendants herein or any of them, obtain  
13 knowledgeable informed consent for said care, treatment or conduct; that prior to the initiation of or  
14 performance of said care, treatment, procedure, or conduct, no opportunity was afforded to plaintiff or  
15 any authorized agent of plaintiff to exercise voluntary, knowledgeable and informed consent to said  
16 care, treatment, procedure or conduct.

17           17.     That prior to the filing of the within Complaint, three years had not elapsed from the  
18 date of the injury, and a period of less than one calendar year had elapsed after plaintiffs first learned,  
19 or had a reasonable opportunity to learn, of the fact that the injuries suffered and complained of herein  
20 were a proximate result of the wrongful acts or omissions to act on the part of the defendants; and each  
21 of them, knew, or should have known, of their own wrongdoing and the relationship between the  
22 wrongdoing and plaintiffs' injuries and damages and wrongfully failed to disclose these facts and  
23 circumstances to plaintiffs thereby depriving plaintiffs of having a reasonable opportunity to learn of  
24 said wrongful conduct and acts.

25           18.     That as a proximate result of the wrongdoing of defendants and each of them, plaintiff  
26 MICHAEL C. MCCARTHY sustained serious bodily injuries, a portion of which, or all of which, are

27  
28

1 permanent. As a result of said injuries, plaintiff MICHAEL C. MCCARTHY has had, and in the  
2 future will have, pain, suffering, worry, anxiety and incapacitation. By reason of said injuries and  
3 consequences, plaintiff MICHAEL C. MCCARTHY has sustained general damages in a sum to be  
4 determined according to proof at the time of trial.

5 19. By reason of said injuries, plaintiff MICHAEL C. MCCARTHY has incurred medical  
6 and related expenses and in the future will have medical, surgical, hospital, nursing, pharmaceutical  
7 and related expenses, the exact amounts of which at this time cannot be ascertained, all to plaintiff  
8 MICHAEL C. MCCARTHY's further damage. After said amounts of past medical, hospital, surgical  
9 and related expenses are ascertained, plaintiff MICHAEL C. MCCARTHY will ask leave of Court to  
10 amend this complaint and insert amounts herein or according to proof at the time of trial.

11 20. By reason of said injuries, plaintiff MICHAEL C. MCCARTHY will incur future loss  
12 of earnings and earning capacity, all to this plaintiff's further damages. Plaintiff MICHAEL C.  
13 MCCARTHY at this time cannot ascertain the exact amount of plaintiff's future loss of earnings and  
14 earning capacities which resulted from said inability to do said work. After said amounts can be  
15 ascertained, plaintiff MICHAEL C. MCCARTHY will ask leave of Court to amend this complaint and  
16 insert said amounts herein or according to proof at the time of trial.

17 22. That as a direct and proximate result of the wrongful conduct by the defendants, and  
18 each of them, plaintiff MICHAEL C. MCCARTHY was caused to retain the services, and incur the  
19 reasonable expenses of further hospitalization, medical, surgical, nursing and technical care and  
20 treatment for the said injuries sustained, and did thereby incur additional expenses for drugs,  
21 pharmaceuticals, and medications, all in an amount presently unknown to plaintiff and plaintiff  
22 MICHAEL C. MCCARTHY will ask leave of Court to amend this complaint when said sum has been  
23 ascertained or according to proof at the time of trial.

24 23. At all times herein mentioned, and prior and subsequent thereto DOES 71 through 80,  
25 inclusive, and each of them, so negligently and carelessly failed to properly ensure the character,  
26 quality, ability and competence of individuals treating patients in said centers, hospitals and clinics,  
27

1 that plaintiffs were caused to suffer and did suffer, the injuries and damages hereinafter alleged.

2           24. That on or before July 16, 2012, and subsequent thereto, plaintiff MICHAEL C.  
3 MCCARTHY came under the care and treatment of defendants, and each of them, for medical care  
4 and treatment, nursing care and treatment, hospital care and treatment, pre-surgical care and treatment,  
5 surgery, post-surgical care and evaluation, as well as other care and treatment. The wrongful conduct  
6 of the defendants, which was not then discovered by plaintiff includes, but is not limited to: failure to  
7 properly position plaintiff; failure to properly perform surgery; use of excessive traction; failure to  
8 properly and timely diagnose and treat plaintiff's condition, among other acts and/or omissions.

9           25. That on or before July 16, 2012, and prior and subsequent thereto, during the course of  
10 the care, treatment, evaluation, and other care and treatment, the defendants, and each of them, so  
11 wrongfully diagnosed and treated plaintiff MICHAEL C. MCCARTHY and failed to treat plaintiff  
12 such that plaintiff suffered profound and serious injuries and damages including, but not limited to:  
13 foot drop, as well as other injuries and damages.

14                           SECOND CAUSE OF ACTION FOR LOSS OF CONSORTIUM

15                           BY PLAINTIFF SUSAN L. MCCARTHY AGAINST ALL DEFENDANTS

16           26. Plaintiff repeats and realleges all of the allegations contained in the first cause of  
17 action as though each were set forth and incorporated herein in full.

18           27. At all times herein mentioned, plaintiff SUSAN L. MCCARTHY was and now is the  
19 lawfully wedded wife of plaintiff MICHAEL C. MCCARTHY.

20           28. As a further, direct and proximate result of the negligence of defendants, and each of  
21 them herein in causing plaintiff MICHAEL C. MCCARTHY to suffer injuries and damages, plaintiff  
22 SUSAN L. MCCARTHY has suffered and is reasonably certain in the future to suffer, a loss of her  
23 husband's love, comfort, companionship, affections, society, solace, moral support, physical assistance  
24 in the operation and maintenance of the family home, and a loss of enjoyment of sexual relations.

25

26

27

28

1 WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as follows:


2 ON ALL CAUSES OF ACTION:

- 3 1. General damages according to proof at the time of trial.  
4 2. Medical expenses according to proof at the time of trial.  
5 3. Future loss of wages according to proof at the time of trial.  
6 4. Special damages according to proof at the time of trial.  
7 5. For a declaration by this Court as to the liability of the defendants for the damages and  
8 injuries sustained by plaintiffs, and to what extent and what responsibility falls upon each of said  
9 defendants, and that the Court award judgment to the plaintiffs as against some or all of the  
10 defendants, either jointly or severally as they may be found liable to plaintiffs.  
11 6. Pre-judgment interest according to proof.  
12 7. For all costs of suit herein incurred.  
13 8. For such other and further relief as this Court may deem just and proper.

14 DATED: July 10, 2013

15 BY:   
16 MICHAEL C. MCCARTHY

17 DATED: July 10, 2013

18 BY:   
19 SUSAN L. MCCARTHY

20  
21  
22  
23  
24  
25  
26  
27  
28