

FILED

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Clerk of the Superior Court of California,
County of Sonoma

By JP

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SONOMA

DAIRA CARLO, individually, as
a successor and heir of
Artemio Zaragoza and as
Personal Representative of the
Estate of Artemio Zaragoza and
personal representative of
Plaintiffs, jointly;

Plaintiff,

vs.

KAISER FOUNDATION HEALTH PLAN,
INC.; KAISER FOUNDATION
HOSPITALS, INC.; NORTHERN
CALIFORNIA PERMANENTE
MEDICAL GROUP, INC.; ADAKARI
VARAPRASSAD REDDY, MD; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 307-255834

COMPLAINT OF DAMAGES FOR:

- 1. **SURVIVAL ACTION**
[CCP § 377.30]
- 2. **WRONGFUL DEATH**
[CCP § 377.60]
- 2. **NEGLIGENCE and**
- 3. **BREACH OF FIDUCIARY DUTY.**

DEMAND FOR JURY TRIAL

1 **I. PARTIES**

2 1. Plaintiff Daira Cario ("PLAINTIFF") brings this action
3 on behalf of DECEASED Artemio Zaragoza ("DECEDENT"). PLAINTIFF
4 is DECEDENT's daughter and she brings this action under the
5 provisions of Code of Civil Procedure § 377.60 which provides
6 that PLAINTIFF may bring this action on behalf of DECEDENT's
7 heirs: "A cause of action for the death of a person caused by
8 the wrongful act or neglect of another may be asserted by ... the
9 decedent's children... ". There are approximately six heirs of
10 the DECEDENT. PLAINTIFF is one of them at the age of 25 years
11 on the day of DECEDENT's death. Ages and capacities of
12 DECEDENT's immediate relatives and County of Residence who also
13 comprise Party PLAINTIFFS in this action pursuant to the
14 Personal Representative Agreement are as follows:

- 15 a. Daira Carlos, Age 25, Daughter, Resident of Sonoma County;
16 b. Carolina Sanchez, Age 40, Wife, Resident of Sonoma County;
17 c. Nereyda Carlos, Age 22, Daughter, Resident of Sonoma County;
18 d. Emayrani Carlo, Age 16, Resident of Sonoma County;
19 e. Elidy Carlos, Age 14, Daughter, Resident of Sonoma County;
20 f. Artemio Carlos, Age 12, Son, Resident of Sonoma County;

21 2. PLAINTIFF hereby attaches Statement under Penalty of
22 Perjury pursuant to CCP § 377.32 [incorporated hereto by
23 reference] as DECEDENT's Successor in Interest for purposes of
24 the Survival Cause of Action set forth in this Complaint.

25 3. Defendant Kaiser Foundation Health Plan, Inc. is a
26 corporation or business entity of unknown form, doing business in
27 the County of Sonoma, at 401 Bicentennial Way, Santa Rosa, CA
28

1 95403 where DECEDENT was an active Kaiser member for all of his
2 primary care medical treatment.

3 4. Defendant Kaiser Foundation Hospitals is a corporation
4 or business entity of unknown form, doing business in the County
5 of Sonoma, at 401 Bicentennial Way, Santa Rosa, CA 95403

6 5. Defendant Northern California Permanente Medical Group
7 is a corporation or business entity of unknown form, doing
8 business in the County of Sonoma, California at 401 Bicentennial
9 Way, Santa Rosa, CA 95403.

10 6. Defendant Kaiser Foundation Health Plan, Inc., Kaiser
11 Foundation Hospitals, Northern California Permanente Medical
12 Group, and DOES 1 through 10 are herein collectively referred to
13 as "KAISER".

14 7. Defendant Adakari Varapassad Reddy, M.D. is an
15 individual who upon information and belief is licensed as a
16 physician in the State of California and does business in the
17 County of San Mateo at the facility owned and operated by KAISER
18 at 1400 Veterans Boulevard, Redwood City, CA 94063, which is the
19 location of DECEDENT's death.

20 8. PLAINTIFF is ignorant of the names and capacities of
21 DOES 1 through 10 and sues them as DOES 1 through 10, inclusive.
22 PLAINTIFF will amend this action to allege these DOE Defendants'
23 names and capacities when ascertained. Each of the defendants
24 herein is responsible in some manner for the occurrences,
25 injuries, and damages herein, and that the damages were directly
26 and proximately caused by these defendants' acts and omissions.
27 Each defendant herein was the agent of each of the remaining
28

1 defendants, and in doing the things alleged herein were acting
2 within the course and scope of their agency.

3 9. All defendants collectively, including KAISER, REDDY,
4 and DOES 1 through 10 are referred to herein as "DEFENDANTS".
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6 II. STATEMENT OF FACTS

7 10. DECEDENT was experiencing eye pain in or about August
8 2011 for which he sought medical treatment by DEFENDANT at their
9 facility located at 401 Bicentennial Way, Santa Rosa, CA 95403.
10 After preliminary testing and Magnetic Resonance Imaging,
11 DECEDENT was diagnosed with Pituitary Macroadenoma and
12 underwent Craniotomy Transsphenoidal Tumor Excision on December
13 26, 2012 under the care of Neurosurgeon Reddy M.D. to remove a
14 non malignant tumor that was pressing on a nerve, causing
15 DECEDENT's partial loss of vision. DECEDENT's pain level and
16 eyesight improved after first surgery. Dr. Reddy informed
17 DECEDENT that he still required a second surgery, but that he
18 would need at least a year to recover from the first surgery in
19 order for the wound to properly heal.

20 11. On or about June 17, 2013 DECEDENT was called back to
21 Kaiser Hospital Redwood City for a follow up appointment. At
22 that appointment DECEDENT was scheduled for surgery set for July
23 31, 2013. Second surgery began at approximately 10:00 am on
24 July 31, 2013.

25 12. At or about 3:00 pm on July 31, 2013, DECEDENT was
26 transferred from surgery into Redwood City Kaiser Intensive
27 Care. DECEDENT never regained consciousness. At or about 7:00
28 pm on July 31, 2013, PLAINTIFF was permitted to see DECEDENT,

1 but at this point in time DECEDENT was non-responsive and barely
2 alert. DECEDENT died the following morning at or around 10:00
3 am on August 1, 2013, one full day after the start of undergoing
4 his second surgery.

5
6 **III. FIRST CAUSE OF ACTION**

7 **(For Wrongful Death and Survival**

8 **Damages Against all Defendants)**

9 13. Plaintiff re-alleges and incorporated herein by
10 reference each and every allegation and statement contained in
11 paragraphs 1 through 14, inclusive, of the Statement of Facts
12 above as if fully set forth herein.

13 14. During the period of care of DECEDENT, each of the
14 DEFENDANTS knew or should have know that the perils posed by
15 their failure to comply with their standard of care to provide
16 care which a reasonably prudent hospital operator, physician,
17 director, or other health care provider would use, exposed
18 DECEDENT to the high probability of his injuries and death.

19 15. During the period of their care of DECEDENT, each of
20 the DEFENDANTS knowingly disregarded the aforesaid perils and
21 high probability of injury and death to DECEDENT, and in doing
22 so failed to comply with their duties under the standards of
23 care as set forth above. Certain of their willful misconduct
24 and failures include:

25 (i) failure to conduct adequate and proper post operation
26 examination and testing of DECEDENT after his first surgery and
27 prior to his second surgery;

1 (ii) failure to conduct adequate and proper pre operation
2 preparation and safeguards for DECEDENT's second surgery;
3 (iii) failure to conduct adequate examination and testing of
4 DECEDENT prior to his second surgery;
5 (iv) failure to perform adequate and proper procedures and
6 safeguards during DECEDENT's second surgery, including but not
7 limited to, failure to timely administer blood transfusion to
8 DECEDENT in order to prevent his death;
9 (v) failure to safely, reasonably, under a reasonable standard
10 or care perform said surgery of DECEDENT;
11 (vi) failure to perform adequate and reasonable follow up care
12 of DECEDENT immediately after DECEDENT's second surgery,
13 including, but not limited to DEFENDANT's failure to timely
14 administer blood transfusion to DECEDENT in order to prevent his
15 death.

16 16. As a direct and proximately result of the foresaid,
17 DECEDENT dies and his heirs (represented by PLAINTIFF under code
18 of Civil Procedure S 377.60, as alleged above), have been
19 deprived of DECEDENT's love, care, and society to their general
20 damages according to proof at trial.

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22 **IV. SECOND CAUSE OF ACTION**

23 (Negligence v. all DEFENDANTS)

24 17. PLAINTIFF re-alleges and incorporates by reference the
25 allegations contained in Paragraphs 1 through 17.

26 18. DECEDENT was a patient of KAISER for right eye pain
27 from August 23, 2011 to August 1, 2013. During this period,
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1 DECEDENT was under the care of DEFENDANTS and each of them and
2 who acted as his "primary care physicians".

3 19. By virtue of the aforesaid, DEFENDANTS owed a duty of
4 ordinary care to DECEDENT, to use the degree of care and skill
5 that a reasonable prudent person would use. In the case of
6 DEFENDANT Adakari Varaprasad Reddy, to use that degree of care
7 that a reasonably prudent physician would owe, given his or her
8 knowledge, training, expertise, and skill.

9 20. DEFENDANTS breached the aforesaid duties of care.

10 21. As a direct and legal result of the aforesaid, DECEDENT
11 sustained injuries and death. As a further direct and legal
12 result of the aforesaid, DECEDENT sustained lost income and other
13 damages in a sum according to proof at trial.

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15 **V. THIRD CAUSE OF ACTION**

16 (Breach of Fiduciary Duty v. all DEFENDANTS)

17 22. PLAINTIFF hereby re-alleges and incorporates by
18 reference the allegation contained in Paragraphs 1 through 22.

19 23. By virtue of their "healthcare provider / patient"
20 relationship, DEFENDANTS had a fiduciary duty to DECEDENT to act
21 with the utmost of good faith and in his best interests.

22 24. DEFENDANTS breached their fiduciary duty to DECEDENT
23 in the ways set forth, but not limited to, in items (i) through
24 (v) in paragraph 15 (fifteen) of this Complaint.

25 25. By virtue of the aforesaid, DEFENDANTS acted recklessly
26 and intentionally in breach of their duties healthcare
27 providers.

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1 26. As a direct and legal result of the foresaid, DECEDENT
2 was injured and died.

3 27. By virtue of the foresaid, DEFENDANTS acted recklessly
4 and intentionally and punitive damages should be assessed for
5 that reason.

6 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as
7 follows:

- 8 1. For general and special damages according to proof;
- 9 2. For punitive damages according to proof;
- 10 3. For loss of the care comfort and society of DECEDENT;
- 11 4. For Pain and Suffering Damages of DECEDENT;
- 12 5. For attorneys fees, unilaterally to PLAINTIFF;
- 13 5. For costs of suit, including expert costs;
- 14 6. For such other and further relief as the Court deems
15 just and proper.

16
17 DATED: July 28, 2014

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19 By: Patrick J. Doherty
20 Patrick J. Doherty, Esq.
21 Attorney for Plaintiff Dyra Carlo
22 Personal Representative of
23 the Estate of Artemio Zaragoza
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