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TAMARA ALSBURG, ALLISON PERRINS,
MEGAN BUNNING

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

BERNARD BUNNING, TAMARA)
ALSBURG, ALLISON PERRINS,)
MEGAN BUNNING,)
Plaintiffs,)

v.)

KAISER PERMANENTE, KAISER)
FOUNDATION HOSPITALS, THE)
PERMANENTE MEDICAL GROUP, INC.)
KAISER FOUNDATION HEALTH PLAN,)
INC., and DOES 1 through 100,)
Defendants.)

CASE NO.: SCV0037169

1. COMPLAINT FOR WRONGFUL DEATH (MEDICAL MALPRACTICE)
2. PROMISSORY FRAUD (CONCEALMENT)
3. UNFAIR BUSINESS PRACTICES ACT VIOLATIONS, BUSINESS AND PROFESSIONS CODE 17200, ET SEQ.

FILED
Superior Court of California
County of Placer

DEC 16 2015

Jake Chatters
Executive Officer & Clerk
By: D. Bradley, Deputy

Courthouse News Service

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2 Plaintiffs, BERNARD BUNNING, TAMARA ALSBURG, ALLISON PERRINS and
3 MEGAN BUNNING maintain causes of action against defendants, and each of the, and Does 1
4 through 100, inclusive and complain and allege as follows:

5 **PRELIMINARY ALLEGATIONS**

6 1. Plaintiff BERNARD BUNNING is the surviving spouse of Lesley Bunning, deceased.
7 Plaintiffs TAMARA ALSBURG, ALLISON PERRINS and MEGAN BUNNING are, and all
8 times mentioned herein were the adult children of Lesley Bunning, deceased.

9 2. KAISER PERMANENTE is an integrated managed care consortium based in Oakland,
10 California. KAISER PERMANENTE is made up of three entities, KAISER FOUNDATION
11 HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS, and PERMANENTE
12 MEDICAL GROUP, INC.

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14 3. Plaintiffs' claim arises from the negligent care at the Kaiser Hospital in Roseville,
15 California resulting in Lesley Bunning's untimely death on December 17, 2014. Plaintiffs' allege
16 that the negligent care provided was due to the negligence of employees of the entity commonly
17 known as "KAISER" and which includes the aforesaid entities, KAISER FOUNDATION
18 HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS and PERMANENTE
19 MEDICAL GROUP, INC., hereinafter referred to as "KAISER" as set forth in the Complaint and
20 is intended to include employees, agents, servants and entities employed by or otherwise working
21 within their employment and/or agency relationship with KAISER FOUNDATION HEALTH
22 PLAN, INC., KAISER FOUNDATION HOSPITALS and PERMANENTE MEDICAL GROUP,
23 INC.

24 4. Plaintiffs are informed and believe thereon and allege that DOES 1 through 90 were
25 employees of the aforesaid KAISER, namely employees of defendants. Plaintiffs will amend this
26 Complaint to set forth the true legal capacities of the healthcare providers at KAISER who
27 supplied negligent care to Lesley Bunning as herein-below described.
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1 5. At all times herein mentioned defendant DOES 1 through 90, inclusive, and each of them
2 were healthcare facilities, corporations, entities, physicians, technicians, pharmacists, nurses,
3 medical providers and other health professionals licensed to provide medical services and/or to
4 practice medicine under the laws of the State of California and were engaged in such services
5 and/or practices in the State of California at KAISER Roseville.

6 6. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as
7 DOES 1 through 90 and therefore, sue these defendants by such fictitious names. Plaintiffs will
8 amend this Complaint to allege their true names and capacities when ascertained. Plaintiffs are
9 informed and believe, and thereon allege, that each of the fictitiously named defendants is
10 responsible in some manner for the occurrences herein alleged, and that the injuries, damages and
11 losses sustained by plaintiffs were legally caused by the negligence of these defendants.

12
13 7. At all times relevant hereto, each of the defendants, including the defendants sued under
14 fictitious names, were the agents, principals, servants, masters, partners, joinders, employees
15 and/or employer of each of the other defendants and in doing the things herein mentioned, were
16 acting within the course and scope of the authority of said agency, employment service,
17 partnership, joint venture with the permission and consent of co-defendants.

18
19 **FIRST CAUSE OF ACTION**

20 **WRONGFUL DEATH (MEDICAL NEGLIGENCE)**

21 8. Plaintiffs hereby incorporate each and every allegation set forth hereinabove.

22
23 9. On or about December 16, 2014, Lesley Bunning, deceased, was taken by Plaintiff
24 BERNARD BUNNING, her husband, and by Plaintiff ALLISON PERRINS, her daughter, to the
25 KAISER Roseville facility owned and operated by KAISER PERMANENTE. Upon arriving at
26 KAISER, Lesley Bunning, a 61 year old female, presented to the Emergency Department with an
27 excruciating head pain and nausea. She described it as an "explosion in my head" and was
28 hurting the right side of her head. She remarked multiple times "this is not a headache". She
29

1 indicated that she had not had this before and is now taking the drug Coumadin, a blood thinner,
2 and acetaminophen prescribed by her KAISER physicians.

3
4 10. Plaintiffs allege that the employees of defendant KAISER so negligently provided
5 medical care that they failed to provide appropriate urgent treatment for her medical condition,
6 which included in part an inter-cerebral hemorrhage . Lesley Bunning described her headache as
7 pressure and not a head ache. A neurologist at KAISER was not consulted on her condition on
8 December 16, 2014. She was discharged from Kaiser after six hours in the hospital at
9 approximately 3:00 p.m.

10 11. Lesley Bunning was brought in by ambulance on December 17, 2014 because she had
11 difficulty in moving her extremities and had increased head discomfort.

12
13 12. A CT scan of Lesley Bunning was obtained on December 17, 2014 which showed a large
14 subarachnoid hemorrhage with brain compression which ultimately ended in her premature death
15 that day.

16
17 13. As a direct and legal result of the negligence by defendants, and each of them, in failing
18 to provide appropriate care, Lesley Bunning suffered a painful and untimely death at the age of
19 61, leaving her husband BERNARD BUNNING and her three adult children, TAMARA
20 ALSBURG, ALLISON PERRINS and MEGAN BUNNING. If proper procedures had been
21 followed to diagnose and treat Lesley Bunning's symptoms, she would be alive and well today.

22
23 14. As a direct and legal result of the negligence of defendants, and each of them, Lesley
24 Bunning, who was an owner in a Certified Public Accounting firm, and had management duties
25 and was in charge of a nationwide tax appeals division of the CPA firm, owned with her husband
26 Plaintiff BERNARD BUNNING, Plaintiffs seek past and future income loss in an amount
27 according to proof.
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15. As a direct and legal result of the negligence by defendants, and each of them, in failing to provide care as required by the standard of care, Plaintiffs suffered a loss of financial support having been deprived of the support and contribution from past and future earnings, accumulations, and loss of services, love, comfort, affect, companionship, guidance, society, care, solace, grief and sorrow and moral support by a kind and loving wife and mother, all to their general damages in a sum well in excess of the jurisdictional minimum of this court.

WHEREFORE, Plaintiffs BERNARD BUNNING, TAMARA ALSBURG, ALLISON PERRINS and MEGAN BUNNING pray for judgment against defendants, and each of them as follows for this Cause of Action:

1. For general damages for the death of Lesley Bunning, the loss of her support and contributions from future earnings, accumulations, inheritance, for the loss of the love, affection, services, comfort, protection, care, society, advice, counsel, grief and sorrow and mental anguish, psychological and physical effects of the psychic shock and guidance in an amount well in excess of the jurisdictional minimum of this court;

2. For damages for the wrongful death of Lesley Bunning, as alleged herein in accordance with the evidence, proof and the law;

3. For all funeral and burial expenses according to proof;

4. For other damages that may be proper and allowed under the law;

5. For costs of suit incurred and pre-judgment interest;

6. For such other and further relief as the Court may deem just and proper.

SECOND CAUSE OF ACTION

PROMISSORY FRAUD (CONCEALMENT)

[AS AGAINST KAISER FOUNDATION HEALTH PLAN, KAISER FOUNDATION HOSPITALS, THE PERMANENT MEDICAL GROUP, INC., and DOES 1 THROUGH 100]

16. On or about **December 27, 2013**, PLAINTIFF BERNARD W. BUNNING was solicited by agents of the defendants into agreeing to enter into various health care agreement or agreements with KAISER FOUNDATION HEALTH PLAN, KAISER FOUNDATION

1 HOSPITALS, THE PERMANENT MEDICAL GROUP, INC., hereinafter referred to as
2 "KAISER";

3
4 17. The Agreement or Agreements entered into by BERNARD W. BUNNING included an
5 AGREEMENT attached hereto as EXHIBIT A and incorporated fully herein, which
6 AGREEMENT purports to have the PLAINTIFFS consent to binding arbitration regards claims
7 against KAISER. PLAINTIFF BERNARD W. BUNNING only signed EXHIBIT A and signed
8 no other AGREEMENTS;. The referenced materials in EXHIBIT A were not provided
9 concurrently to BERNARD W. BUNNING or his agents and were not forwarded to BERNARD
10 W. BINNING or his agents or the other named plaintiffs. BERNARD W. BUNNING was not
11 apprised of the KAISER "arbitration" plan or KAISER arbitration procedures;

12 18. In truth the Agreement (EXHIBIT A) was not accompanied or followed up with any
13 writings or documents or communications that set forth any terms and conditions of KAISER
14 arbitration and the Agreement (EXHIBIT A) was not in compliance with California law and
15 therefore defective and rendered null and void, thus making it where there is no legal right to
16 force ARBITRATION upon any of the named PLAINTIFFS in this action;

17
18 19. Moreover, KAISER at all times mentioned herein was aware and knew that the
19 Agreement (EXHIBIT A) was deceitful, in violation of California law, oppressive, fraudulent,
20 ambiguous, and drafted to conceal the truth about ARBITRATION clauses as well as designed to
21 trick, misrepresent, and conceal the truth to PLAINTIFFS regards ARBITRATION laws in
22 California. KAISER's design was to make it where the persons that signed agreements such as
23 EXHIBIT A were unknowingly subjecting themselves to possible binding arbitration with
24 KAISER if any dispute arose (including any claim for damages);

25
26 20. KAISER was also aware at all times mentioned herein that California law promulgated
27 by the State Legislature is to make all arbitration clauses (including those with KAISER) void
28 and null unless the clauses contain clear and concise in clear and concise language and signed by
29 the customers, which arbitration agreements must comport to a flurry of California laws

1 regarding agreeing to binding arbitration and waiving rights to a jury trial before they are deemed
2 valid and binding upon the KAISER customers;

3 21. The process of providing to BUNNING and PLAINTIFFS EXHIBIT A was a well planned
4 scheme and fraud designed to make PLAINTIFFS and all other similar situated persons in
5 California sign the same or similar documents such as EXHIBIT A, and done so with the plan
6 and scheme to make patients and participants of KAISER unknowing agree to binding
7 ARBITRATION when there legally was no binding and valid ARBITRATION clause;

8
9 22. In detrimental reliance upon defendants' promises, plaintiff BERNARD W. BUNNING
10 signed EXHIBIT A. However, EXHIBIT A legally does not bind any of the PLAINTIFFS to
11 arbitration;

12
13 23. In truth, defendants at all times mentioned herein intended to take advantage of the
14 plaintiffs and have illegal and voidable arbitration agreements thrust upon plaintiffs and other
15 citizens in California (who use KAISER as their health care provider) in a like position ;

16
17 24. Plaintiff BUNNING did rely to his detriment as he signed the Agreement (EXHIBIT A)
18 without being communicated as to the consequence. Further, plaintiff was unable to comprehend
19 what he signed and this was known by the defendants and each of them;

20
21 25. Due to the despicable acts of the defendants and the fraud, concealment, oppression, and
22 malice, plaintiffs incurred damages that exceed \$500,000 and according to proof. Plaintiffs also
23 entitled to exemplary and punitive damages as against defendants and each of them;

24
25 **THIRD CAUSE OF ACTION**

26 **UNFAIR BUSINESS PRACTICES ACT VIOLATIONS, B & P CODE 17200 ET**
27 **SEQ.,**

28 **[AS KAISER FOUNDATION HEALTH PLAN, KAISER FOUNDATION HOSPITALS,**
29 **THE PERMANENT MEDICAL GROUP, INC. AND DOES 91 THROUGH 100]**

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26. Complainants restates and realleges the paragraphs in the SECOND CAUSE OF ACTION as though fully set forth herein and all allegations in the SECOND CAUSE OF ACTION, in this THIRD CAUSE OF ACTION as though fully set forth below;

27. Defendants instigated a plan and scheme to prey upon the clients and customers of KAISER so as to have the customer base of KAISER sign one-sided, voidable, deceptive, and unfair contracts for arbitration (which contracts for arbitration have reference to some other Agreement which Agreement KAISER never produces to the customers or if production is made it is made weeks and / or months after the customer signs an Agreement that is similar to EXHIBIT A). KAISER makes these agreements (that appear to be like EXHIBIT A) with the intent to trick, deceive, and misrepresent Arbitration clauses;

28. KAISER's plan and scheme was always to have customers sign agreements similar to EXHIBIT A, with the design to later assert that the customers were bound to agree to binding arbitration should a claim ever be made against KAISER for damages. KAISER was aware that a jury would likely render an award and would likely render an award that was greater than any arbitration proceeding and KAISER was aware that juries would tend to be more fair in making decisions that were in favor of plaintiffs as opposed to KAISER. KAISER intended however, to "stack the deck" by cleverly avoiding the California requirements to have arbitration provisions clear and concise by having customers sign agreements similar to EXHIBIT A and then later (when a dispute arose or a claim made) refer the customer to KAISER arbitration policy and demand arbitration thus placing the customers at a dilemma and thrusting arbitration upon the customers;

29. KAISER at all times has been aware that their acts rose to the level of a form of fraud (concealment) as well as KAISER intended that customers sign the fraudulent Agreements to make it where any dispute would be subject to Arbitration or a claim of arbitration such that KAISER could force and did force arbitration upon these customers when in truth KAISER was

1 always aware that their deceptive and unfair practices in having customers sign agreements such
2 as EXHIBIT A were illegal, unethical, fraudulent, and deceptive;

3 30. The acts complained of herein were State wide in all of California and are unfair and
4 violate Business & Professions Code 17200, et seq;

5
6 31. The Court is empowered under the Unfair Business Practices Act to issue an order that
7 defendants disgorge themselves of all profits made from their violation of the Unfair Business
8 Practices Act which profits should be paid back to the victims, and that the Court should and
9 must disgorge the defendants of all profits made from their violation of the Unfair Business
10 Practices Act, so as to punish them and make an example of others to stop the illegal and
11 shameful actions of engaging in the Unfair Business Practices that are complained of herein;

12
13 32. The Court should and must issue an order that the defendants pursuant to the Unfair
14 Business Practices Act, must cease and desists their unfair practices of preying upon KAISER's
15 customer base using falsehoods, lies, and strong arm tactics to have customers sign unfair and
16 one-side contracts and agreements calling for arbitration which agreements are illegal, void,
17 unethical, deceptive, a product of a fraud, and offensive to the law as promulgated in California;

18
19 **WHEREFORE PLAINTIFFS PRAY JUDGMENT AGAINST ALL NAMED AND DOE**
20 **DEFENDANTS FOR THE SECOND AND THIRD CAUSES OF ACTION AS**
21 **FOLLOWS:**

22 1. **DISGORGEMENT OF ALL PROFITS MADE BY THE DEFENDANTS AS**
23 **PERTAINING TO THEIR VIOLATION OF THE CALIFORNIA UNFAIR BUSINESS**
24 **PRACTICES ACT, B & P CODE 17200, ET SEQ, AND AN ORDER THAT**
25 **DEFENDANTS STOP THEIR ILLEGAL AND UNFAIR PRACTICES OF**
26 **MISREPRESENTATIONS MADE AGAINST THE CUSTOMER BASE OF KAISER**
27 **INCLUDING ACTS OF MAKING THE CUSTOMERS SIGN AGREEMENTS SUCH AS**
28 **EXHIBIT A ATTACHED TO THE COMPLAINT;**

1 **2. SUCH OTHER AND FURTHER RELIEF AS THE COURT MAY DEEM**
2 **PROPER;**

3 Dated: December 16, 2015

JAMES ELMER LAW CORPORATION
LAW OFFICE PAUL L. CASS, LL.M.

7 By: 
8 JAMES E. ELMER

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