

Superior Court of California

County of Orange



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County of Orange
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12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF ORANGE**

14 DEMETRE ECONOMIDES, an individual,
15 Plaintiff,
16 v.
17 KAISER FOUNDATION HEALTH PLAN
18 INC.; KAISER FOUNDATION
19 HOSPITALS; SOUTHERN CALIFORNIA
20 PERMANENTE MEDICAL GROUP; JEFF
21 DAVID TRACY, M.D.; ALFONSO PHAM,
22 M.D.; PETER ABDEL-SAYED, M.D.;
23 MICHAEL KABIRI, M.D.; WEI-CHAO
24 CHANG, M.D.; ANNIE HARRINGTON,
25 M.D.; THE REGENTS OF THE
26 UNIVERSITY OF CALIFORNIA;
27 UNIVERSITY OF CALIFORNIA –
28 IRVINE MEDICAL CENTER; MOHSEN
DAVOUDI, M.D.; HEBA ISMAIL, M.D.;
and DOES 1 through 100, inclusive,
Defendants.

CASE NO. 30-2016-00848634-CU-MM-CJC

COMPLAINT FOR DAMAGES

- 1. **MEDICAL MALPRACTICE – WRONGFUL DEATH**
- 2. **MEDICAL MALPRACTICE – SURVIVAL ACTION**
- 3. **LOSS OF CONSORTIUM**
- 4. **ELDER ABUSE**
- 5. **MEDICAL BATTERY**
- 6. **LACK OF INFORMED CONSENT**

Judge Gregory H. Lewis

JURY TRIAL DEMANDED

COMES NOW, Plaintiff DEMETRE ECONOMIDES, who hereby complains and alleges against Defendants, and each of them, as hereinafter described. This Complaint is for a personal injury action and for damages brought by DEMETRE ECONOMIDES, by and through his attorneys Layfield & Barrett, APC, who allege upon information and belief as follows:

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JURISDICTION AND VENUE

1
2 1. This Court has jurisdiction over this action pursuant to California Code of Civil
3 Procedure § 410.10.

4 2. Venue is proper in this Court pursuant to California Code of Civil Procedure § 395
5 and § 395.5 because the injuries to Plaintiff alleged herein occurred within the County of Orange,
6 State of California.

7 3. Due to the nature and extent of Plaintiff's injuries in this matter, the amount in
8 controversy exceeds \$25,000 and, thus, exceeds the minimum jurisdictional limits of the Superior
9 Court and will be established according to proof at trial.

10 **PARTIES**

11 4. Plaintiff DEMETRE ECONOMIDES ("PLAINTIFF") is, and was, at all relevant
12 times mentioned herein:

13 a. An individual residing in the County of Orange, State of California.

14 b. The surviving husband of Stephanie Economides, who at the time of her
15 death was a resident of the County of Orange, State of California.

16 c. A person who was acting as his wife's power of attorney or as her authorized
17 KAISER health-care representative or as a person who was expressly authorized by his wife to act
18 on her behalf and to make decisions for her.

19 5. PLAINTIFF is informed and believes, and thereon alleges, that Defendant KAISER
20 FOUNDATION HEALTH PLAN, INC. is a corporation or business organization of unknown
21 form, doing business in the County of Orange, California, which is the county in which the injuries,
22 damages, and death occurred.

23 6. PLAINTIFF is informed and believes, and thereon alleges, that Defendant KAISER
24 FOUNDATION HOSPITALS is a corporation or business organization of unknown form, doing
25 business in the County of Orange, California, which is the county in which the injuries, damages,
26 and death occurred.

27 7. PLAINTIFF is informed and believes, and thereon alleges, that Defendant
28 SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP is a corporation or business

1 organization of unknown form, doing business in the County of Orange, California, which is the
2 county in which the injuries, damages, and death occurred.

3 8. Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER
4 FOUNDATION HOSPITALS, and SOUTHERN CALIFORNIA PERMANENTE MEDICAL
5 GROUP, and DOES 1 through 60, are herein collectively referred to as “KAISER.” As more fully
6 described below, the KAISER entities, separately and collectively, are responsible for the conduct
7 of their facilities, physicians, and staff.

8 9. PLAINTIFF is informed and believes, and thereon alleges, that Defendant JEFF
9 DAVID TRACY, M.D. (“DR. TRACY”) is an individual who, upon information and belief, is
10 licensed as a physician in the State of California (holding license number 66551 with license type
11 Physician and Surgeon G) and does business and practices medicine in the County of Orange at a
12 facility owned and operated by KAISER in San Juan Capistrano, California.

13 10. PLAINTIFF is informed and believes, and thereon alleges, that Defendant
14 ALFONSO PHAM, M.D. (“DR. PHAM”) is an individual who, upon information and belief, is
15 licensed as a physician in the State of California (holding license number 69597 with license type
16 Physician and Surgeon A) and does business and practices medicine in the County of Orange at a
17 facility owned and operated by KAISER.

18 11. PLAINTIFF is informed and believes, and thereon alleges, that Defendant PETER
19 ABDEL-SAYED, M.D. (“DR. ABDEL-SAYED”) is an individual who, upon information and
20 belief, is licensed as a physician in the State of California (holding license number 67734 with
21 license type Physician and Surgeon A) and does business and practices medicine in the County of
22 Orange at a facility owned and operated by KAISER.

23 12. PLAINTIFF is informed and believes, and thereon alleges, that Defendant
24 MICHAEL KABIRI, M.D. (“DR. KABIRI”) is an individual who, upon information and belief, is
25 licensed as a physician in the State of California (with license number 70150 with license type
26 Physician and Surgeon A) and does business and practices medicine in the County of Orange at a
27 facility owned and operated by KAISER.

28 13. PLAINTIFF is informed and believes, and thereon alleges, that Defendant WEI-

1 CHAO, CHANG, M.D. (“DR. CHANG”) is an individual who, upon information and belief, is
2 licensed as a physician in the State of California (with license number 70077 with license type
3 Physician and Surgeon A) and does business and practices medicine in the County of Orange at a
4 facility owned and operated by KAISER.

5 14. PLAINTIFF is informed and believes, and thereon alleges, that Defendant ANNIE
6 HARRINGTON, M.D. (“DR. HARRINGTON”) is an individual who, upon information and belief,
7 is licensed as a physician in the State of California (with license number 100767 with license type
8 Physician and Surgeon A) and does business and practices medicine in the County of Orange at a
9 facility owned and operated by KAISER.

10 15. PLAINTIFF is informed and believes, and thereon alleges, that Defendant THE
11 REGENTS OF THE UNIVERSITY OF CALIFORNIA (“REGENTS”) is a corporation or business
12 organization or public entity of unknown form, doing business in the County of Orange, California,
13 which is the county in which the injuries, damages, and death occurred, by and through its
14 subsumed entity, Defendant UNIVERSITY OF CALIFORNIA – IRVINE MEDICAL CENTER,
15 and by and through its physicians Defendants MOHSEN DAVOUDI, M.D., HEBA ISMAIL, M.D.,
16 and other persons or entities associated or affiliated with it, named as DOES 61 through 100.

17 16. PLAINTIFF is informed and believes, and thereon alleges, that Defendant
18 UNIVERSITY OF CALIFORNIA – IRVINE MEDICAL CENTER (including, more generally,
19 “University of California – Irvine Health” and its related entities, including “UC Irvine Health
20 Chao Family Comprehensive Cancer Center”) (“UNIVERSITY OF CALIFORNIA – IRVINE
21 MEDICAL CENTER” or “UC IRVINE”) is a corporation or business organization or public entity
22 of unknown form, doing business in the County of Orange, California, which is the county in which
23 the injuries, damages, and death occurred.

24 17. PLAINTIFF is informed and believes, and thereon alleges, that Defendant
25 MOHSEN DAVOUDI, M.D. (“DR. DAVOUDI”) is an individual who, upon information and
26 belief, is licensed as a physician in the State of California (with license number 86885 with license
27 type Physician and Surgeon A) and does business and practices medicine in the County of Orange
28 at a facility owned and operated by Defendants REGENTS and UC IRVINE.

1 18. PLAINTIFF is informed and believes, and thereon alleges, that Defendant HEBA
2 ISMAIL, M.D. (“DR. ISMAIL”) is an individual who, upon information and belief, is licensed as a
3 physician in the State of California (with license number 102593 with license type Physician and
4 Surgeon A) and at the time of these events conducted business and practiced medicine in the
5 County of Orange at a facility owned and operated by Defendants REGENTS and UC IRVINE.

6 19. All Defendants associated with KAISER, including KAISER FOUNDATION
7 HEALTH PLAN INC., KAISER FOUNDATION HOSPITALS, SOUTHERN CALIFORNIA
8 PERMANENTE MEDICAL GROUP, JEFF DAVID TRACY, M.D., ALFONSO PHAM, M.D.,
9 PETER ABDEL-SAYED, M.D., MICHAEL KABIRI, M.D., WEI-CHAO, CHANG, M.D.,
10 ANNIE HARRINGTON, M.D., and DOES 1 through 60, inclusive, are referred to herein as
11 “KAISER DEFENDANTS.”

12 20. All Defendants associated with THE REGENTS OF THE UNIVERSITY OF
13 CALIFORNIA and its affiliated entities and persons, including UNIVERSITY OF CALIFORNIA
14 – IRVINE MEDICAL CENTER, MOHSEN DAVOUDI, M.D., HEBA ISMAIL, M.D., and DOES
15 61 through 100, inclusive, are referred to herein as “UC DEFENDANTS.”

16 21. All KAISER DEFENDANTS and UC DEFENDANTS, collectively, when
17 appropriate, are referred to herein as “DEFENDANTS.”

18 22. PLAINTIFF is ignorant of the true names and capacities of defendant DOES 1
19 through 100, inclusive, and, therefore, PLAINTIFF sues DOES 1 through 100, and each of them,
20 by such fictitious names pursuant to Code of Civil Procedure §474. PLAINTIFF is informed and
21 believes and on this basis alleges that DOES 1 through 100, and each of them, is responsible in
22 some manner for and proximately caused the occurrences and damages that PLAINTIFF alleges in
23 this Complaint. PLAINTIFF will amend this Complaint to allege the true names and capacities of
24 DOES 1 through 100, and each of them, when they have been determined.

25 23. PLAINTIFF is also informed and believes, and thereon alleges, that at all times
26 mentioned herein, the KAISER DEFENDANTS, and each of them, including DOES 1 through 60,
27 inclusive, is, and at all times mentioned herein was, the employer, partner, agent, servant,
28 employee, successor in interest, and/or joint venturer of each of the other KAISER

1 DEFENDANTS, and that each of the KAISER DEFENDANTS was acting within the course and
2 scope of his, her, or its authority as the employer, partner, agent, servant, employee, successor in
3 interest, and/or joint venturer of each of the other KAISER DEFENDANTS. Consequently, each of
4 the KAISER DEFENDANTS named in this Complaint, including DOES 1 through 60, inclusive, is
5 jointly and severally liable to PLAINTIFF for the damages sustained as a proximate result of their
6 conduct.

7 24. PLAINTIFF is also informed and believes, and thereon alleges, that at all times
8 mentioned herein, the UC DEFENDANTS, and each of them, including DOES 61 through 100,
9 inclusive, is, and at all times mentioned herein was, the employer, partner, agent, servant,
10 employee, successor in interest, and/or joint venturer of each of the other UC DEFENDANTS, and
11 that each of the UC DEFENDANTS was acting within the course and scope of his, her, or its
12 authority as the employer, partner, agent, servant, employee, successor in interest, and/or joint
13 venturer of each of the other UC DEFENDANTS. Consequently, each of the UC DEFENDANTS
14 named in this Complaint, including DOES 61 through 100, inclusive, is jointly and severally liable
15 to PLAINTIFF for the damages sustained as a proximate result of their conduct.

16 **STATEMENT OF FACTS**

17 25. PLAINTIFF re-alleges and incorporates herein by reference all preceding
18 paragraphs of this Complaint, as though fully set forth herein.

19 26. On or about January 27, 2015, Stephanie Economides (age 70) (“DECEDENT”)
20 died from stage-four lung cancer and its complications as a result of the KAISER DEFENDANTS’
21 and the UC DEFENDANTS’ failures to properly diagnose and treat DECEDENT for lung cancer
22 and its related complications, as more fully described in this Complaint.

23 27. In or about 2010, and thereafter, DECEDENT began and continued exhibiting
24 disturbing symptoms, including but not limited to constant cough, chest pain, difficulty breathing,
25 wheezing, difficulty swallowing, fatigue, and lymph node swelling.

26 28. DECEDENT was a member of KAISER, and sought the advice and treatment of
27 KAISER physicians for a substantial period of time preceding the events described herein,
28 including a period that dates back to at least 2007 or longer.

1 29. During 2010, DECEDENT's Kaiser Permanente primary care physician, DR.
2 TRACY, examined DECEDENT on several occasions, including on or about November 8, 2010.

3 30. On or about November 8, 2010, in spite of a request for a CT scan by DECEDENT
4 due to her concerns about her symptoms, DR. TRACY ordered a chest x-ray. After this x-ray,
5 which was read by DR. PHAM, DR. TRACY unreasonably failed over time to adopt medically-
6 appropriate actions or precautions with respect to DECEDENT's initial condition and her
7 continuing symptoms.

8 31. Over the next year and a half, as DECEDENT continued to see DR. TRACY and
9 other KAISER physicians, DECEDENT's symptoms and physical condition continued to worsen.

10 32. On or about February 16, 2012, after these prior consultations, DECEDENT again
11 consulted with DR. TRACY for the purposes of treating her condition and symptoms. DR. TRACY
12 formally diagnosed DECEDENT with pneumonia and with a cough. At a physical examination on
13 this date, DR. TRACY noted and acknowledged as part of the Pulmonary/Chest section of his
14 report the presence of "wheezes" and "rales." DR. TRACY also noted the presence of "Diffuse
15 rhonci, with minimal wheezing. Few rales left base."

16 33. In a chest x-ray dated February 16, 2012, which was ordered by DR. TRACY for the
17 purpose of a "cough illness" and "possible pneumonia left base," the radiologist report by DR.
18 PHAM notes a finding of "focal nodular density is seen in the left base 1.4 x 2 cm." DR. PHAM's
19 report only requests "follow-up x-ray exams" and to "please correlate clinically."

20 34. On or about February 20, 2012, DECEDENT saw DR. TRACY, who compared the
21 February 16, 2012 and January 8, 2010 x-ray reports, and inaccurately and unreasonably opined in
22 his medical report, "Chest xray no real change." DR. TRACY also stated "suspect more an atypical
23 pneumonia." These opinions by a non-specialist, HMO primary care physician set in motion a
24 continued course of events that led to DECEDENT's death.

25 35. Over the following two years from February 20, 2012 to February 28, 2014,
26 DECEDENT's condition continued to deteriorate. In follow-up visits, DR. TRACY continued to
27 treat DECEDENT's condition as a case of pneumonia, in spite of no real improvement in
28 DECEDENT's condition over this period from a course of treatment for pneumonia.

1 36. During this two year period, DR. TRACY was indifferent to DECEDENT's and
2 PLAINTIFF's repeated requests for a CT scan of the chest for a clearer identification of the
3 potential cause or causes of DECEDENT's symptoms. DECEDENT continued to complain to DR.
4 TRACY about her symptoms.

5 37. Over this two-year period, DR. TRACY continued to order chest x-rays, rather than
6 a CT scan, and continued to rely upon a course of treatment for pneumonia, including apparently
7 prescribing medications for the purposes of treating pneumonia and potentially increasing the
8 dosages of these medications. This course of treatment remained grossly ineffective, and
9 DECEDENT's medical condition continued to decline. DECEDENT and PLAINTIFF continued to
10 request a CT scan rather than x-rays. During this period, DR. TRACY also failed to refer
11 DECEDENT to a pulmonologist or relevant specialist for further assessment by a qualified
12 specialist.

13 38. On or about February 28, 2014, after a continuing course of ineffective and
14 inappropriate treatment for "pneumonia" and after numerous prior consultations with DR. TRACY
15 during the preceding three or more years, DECEDENT again saw DR. TRACY.

16 39. In the Kaiser Permanente medical record for the February 28, 2014 visit, DR.
17 TRACY notes that DECEDENT is "here for follow up on recently diagnosed pneumonia." DR.
18 TRACY's use of "recently diagnosed" is bizarre in light of his original diagnosis of pneumonia
19 dating back to at least February 2012. In spite of repeated prior x-rays, he orders yet another x-ray
20 rather than a CT scan at this consultation. DR. TRACY's continued reliance on a diagnosis of
21 "pneumonia," after an extended period of time in which the putative treatments for pneumonia
22 consistently failed to work, is deeply troubling.

23 40. At the February 28, 2014 consultation and after more than three long years since
24 DECEDENT originally presented with symptoms, DR. TRACY finally (apparently) consults with a
25 specialist. In the medical record on this date, DR. TRACY states: "Discussed with Dr. Arnaiz,
26 pulmonary on call, who recommends evaluation in ER for stat CT chest and echo to rule out
27 obstructive problem, effusion, or pericardial problem respectively." DECEDENT is notified and
28 "advised to go to Sand Canyon ER."

1 41. Even as DECEDENT’s long-requested (and desperately needed) CT scan was
2 apparently in the works, though only at the urging of a specialist who should have been consulted
3 long before this date, the radiologist report written by DR. CHANG for the February 28, 2014 x-ray
4 states the following: “Persistent left perihilar consolidation, which may reflect pneumonia. There is
5 no interval difference. Community-acquired pneumonias can take a few weeks to clear after
6 appropriate treatment. Recommend follow-up x-ray in two weeks time. If the finding does not
7 significantly improved/resolve at that time, further evaluation with CT scan of the chest may be
8 needed. No pleural effusions are seen. The cardiomediastinal silhouette is normal.”

9 42. The absolutely bizarre nature of this HMO calamity of errors is that this February
10 28, 2014 x-ray report once again refers to “pneumonia” and appears to assume that DECEDENT’s
11 “community-acquired pneumonia” was only recently acquired within the past “few weeks” and
12 recommends “appropriate treatment” and yet another x-ray “in two weeks time” (after a series of
13 prior x-rays and after a two-plus year course of ineffective and inappropriate treatment that should
14 have called for the pursuit of alternative diagnostic imaging and treatment remedies). The reference
15 to a CT scan in this February 28, 2014 x-ray report is too little and, unfortunately, too late.

16 43. In x-rays performed from approximately November 8, 2010 to February 28, 2014,
17 with radiologist readings and comparisons by Defendants DR. PHAM, DR. ABDEL-SAYED, DR.
18 KABIRI, DR. CHANG, including DOES 1 through 60, or some of them, combined with post-x-ray
19 opinions by DR. TRACY, all of which and whom DECEDENT relied upon for her care and
20 treatment, KAISER and its physicians and staff, including DOES 1 through 60, failed to properly
21 and reasonably detect DECEDENT’s cancer over a three-plus year period, failed to properly
22 interpret DECEDENT’s x-ray images, failed to refer DECEDENT to a specialist for her symptoms,
23 and/or failed to recommend appropriate follow-up diagnostic imaging or procedures in light of
24 DECEDENT’s ongoing condition and clinical presentation.

25 44. On February 28, 2014, after being told to present herself to the KAISER Irvine
26 Medical Center Emergency Department and upon finally receiving a much-needed CT scan of the
27 chest, DECEDENT is admitted to the hospital. DECEDENT obtains her first pulmonology
28 consultation from Kaiser Permanente since first reporting her symptoms in or about November

1 2010.

2 45. The results of this February 28, 2014 CT scan revealed that DECEDENT suffered
3 from lung cancer, which had already progressed to stage four.

4 46. Upon information and belief, as a result of her cancer diagnosis, in or about early
5 May 2014, DECEDENT met with DR. DAVOUDI and his team at UC IRVINE for the purpose of
6 draining DECEDENT's lung cavity of pleural effusion fluid. Upon information and belief, the
7 method used by DR. DAVOUDI or at DR. DAVOUDI's direction was medically deficient in terms
8 of preventing infections, and it allowed the loosening of the liquid flow tube penetrating
9 DECEDENT's body wall.

10 47. Upon information and belief, following the pleural effusion procedure, DECEDENT
11 and PLAINTIFF discovered an infection at the point of tube penetration through DECEDENT's
12 body wall. DECEDENT and PLAINTIFF met urgently with DR. DAVOUDI. In subsequent
13 treatments, including at KAISER for this or other infections, it was discovered that the infections
14 acquired at UC IRVINE included a serious staph infection component.

15 48. Upon information and belief, in the following weeks, DECEDENT continued to
16 experience complications related to the infection. DECEDENT acquired an additional infection
17 after subsequent follow-up treatments with DR. DAVOUDI and/or his team.

18 49. Upon information and belief, in or about October 2014, after a biopsy of
19 DECEDENT's largest tumor was scheduled, DECEDENT received a call from DR. ISMAIL, who
20 served on DR. DAVOUDI's team or who was otherwise acting as a physician at the time at UC
21 IRVINE.

22 50. Upon information and belief, DR. ISMAIL informed DECEDENT that the planned
23 biopsy procedure scheduled for the following day was "very risky." DR. ISMAIL recommended an
24 alternative procedure to drain DECEDENT's lung cavity and to send the fluid to a UC IRVINE
25 laboratory to assess the molecular nature of the cancer.

26 51. Upon information and belief, PLAINTIFF informed DR. ISMAIL that, based on the
27 same or similar procedure conducted at KAISER, the procedure recommended by DR. ISMAIL
28 would likely not produce the results described by DR. ISMAIL and would not be a productive use

1 of time. PLAINTIFF asked DR. ISMAIL to consult with the KAISER physician responsible for the
2 same type of procedure previously conducted.

3 52. Upon information and belief, no such consultation or communication by DR.
4 ISMAIL with the KAISER physician occurred. DR. ISMAIL proceeded with the procedure even as
5 DECEDENT and/or PLAINTIFF expressed reservations and requests for further evaluation that
6 would have assisted in the assessment of the procedure's efficacy.

7 53. Upon information and belief, in the procedure performed by DR. ISMAIL or at her
8 direction, the tube penetration of DECEDENT's body wall again became loose and another serious
9 infection resulted.

10 54. Upon information and belief, this was the third major infection received by
11 DECEDENT at the hands of UC IRVINE physicians. The fluid withdrawn from DECEDENT's
12 lung cavity also failed to produce the information promised by DR. ISMAIL that later resulted from
13 the biopsy that was originally scheduled to be performed.

14 55. Upon information and belief, as a result of the infection caused by the subsequent
15 procedure performed by DR. ISMAIL, DECEDENT was admitted to UC IRVINE from
16 approximately November 6, 2014 to November 17, 2014 for complications related, in whole or in
17 part, to her care and treatment at UC IRVINE.

18 56. Upon information and belief, DECEDENT was thereafter discharged from UC
19 IRVINE before the treatment for her infection was complete and before it was medically
20 appropriate to be discharged, which resulted in further significant complications as DECEDENT
21 sought suitable forms of treatment for her condition or, in the alternative, forms of treatment that
22 would have extended her life span so that DECEDENT could continue to receive and enjoy the care
23 and affection of her family and friends for a prolonged period of time.

24 57. Upon information and belief, on or about November 28, 2014, DECEDENT again
25 met with her physicians at UC IRVINE. During her consultation, DECEDENT's severe and
26 persistent infection caused DECEDENT to be transferred to the UC IRVINE Emergency
27 Department.

28 58. Upon information and belief, from on or about November 28 to November 29, 2014,

1 DECEDENT was admitted to UC IRVINE for treatment related to her infection and related
2 concerns.

3 59. Upon information and belief, on or about November 29, 2014, DECEDENT was
4 discharged from UC IRVINE with an active infection and transferred to a KAISER facility in
5 Irvine, California, where DECEDENT remained until her death on January 27, 2015.

6 60. Upon information and belief, prior to her discharge from UC IRVINE on or about
7 November 29, 2014, a tumor biopsy procedure was finally performed. By this time, however,
8 DECEDENT's medical condition had deteriorated so much, from her cancer and from the
9 complications related to the infections from subsequent treatment and from the lack of promised
10 results from the procedures at UC IRVINE, that DECEDENT was never well enough to benefit
11 from a new therapy that would have prolonged her life. Moreover, the information DECEDENT
12 would have obtained from a tumor biopsy, had it been performed when it was originally scheduled
13 at UC IRVINE in October 2014, would have opened up DECEDENT's treatment options at a time
14 when they were still feasible or appropriate.

15 61. On January 27, 2015, DECEDENT died at a KAISER facility in Irvine, California
16 from "Adenocarcinoma of Lung, Stage 4" and from complications related to her subsequent
17 treatment, including but not limited to septic shock, and upon information and belief, as a result of a
18 terminal extubation conducted without the consent of DECEDENT and PLAINTIFF.

19 62. Upon information and belief, DECEDENT was terminally extubated by or at the
20 direction of KAISER and DR. HARRINGTON, including DOES 1 through 60, without
21 DECEDENT'S consent, as modified, and without PLAINTIFF's consent as DECEDENT's power
22 of attorney or authorized KAISER health-care representative or as a person who was expressly
23 authorized by DECEDENT to act on her behalf and to make decisions for her, as previously
24 acknowledged by KAISER representatives.

25 63. Upon information and belief, PLAINTIFF had previously and repeatedly informed
26 KAISER physicians and staff, including on the date of the extubation, that as DECEDENT's power
27 of attorney or health-care representative or as the person authorized by DECEDENT to speak on
28 her behalf, PLAINTIFF was directing them not to end DECEDENT's life using terminal extubation

1 because he was locating a suitable facility to which to transfer DECEDENT for further care and
2 treatment.

3 64. Upon information and belief, KAISER physicians and staff, including DR.
4 HARRINGTON and DOES 1 through 60, were aware of PLAINTIFF's efforts to locate an
5 alternate facility.

6 65. Upon information and belief, on the date of DECEDENT's death, PLAINTIFF
7 located a suitable facility willing to accept DECEDENT for care and treatment and informed a
8 KAISER ombudsman who was in communication with DR. HARRINGTON of this acceptance.
9 This proposed discharge and transfer were entirely consistent with the express wishes of
10 DECEDENT and PLAINTIFF.

11 66. Upon information and belief, PLAINTIFF had also previously expressly
12 communicated to KAISER physicians and staff, including DR. HARRINGTON, and DOES 1
13 through 60, or some of them, that if an extubation were to occur, it should be accompanied by
14 procedures designed to preserve DECEDENT's life, not to take it, including through the use of a
15 breathing mask. This request by PLAINTIFF would have been consistent with DECEDENT's and
16 PLAINTIFF's intention or objective of a discharge and transfer. KAISER physicians and staff,
17 including DR. HARRINGTON and DOES 1 through 60, or some of them, were, instead, dead set
18 on proceeding with a terminal extubation at their facility.

19 67. Upon information and belief, KAISER physicians and staff, including specifically
20 DR. HARRINGTON or those persons acting directly on her behalf or at her direction, including
21 DOES 1 through 60, or some of them, extubated DECEDENT, including specifically in a terminal
22 manner, without DECEDENT'S and PLAINTIFF's consent and without PLAINTIFF's presence at
23 DECEDENT's bedside at the time of the terminal extubation and time of death.

24 68. Upon information and belief, DR. HARRINGTON informed DECEDENT's
25 daughter, who was not DECEDENT's authorized power of attorney or health care representative, at
26 some point prior to the extubation, "Whether or not you or your dad are here, we're doing this."
27 This cruel culmination to this entire sequence of events is perhaps the worst imaginable outcome
28 for a husband who was trying desperately to save his wife's life or to extend it, or at a minimum, to

1 at least be present when his wife eventually passed away.

2 **FIRST CAUSE OF ACTION**

3 **(Medical Malpractice – Wrongful Death – CCP § 377.60)**

4 **(Against All Defendants)**

5 69. PLAINTIFF re-alleges and incorporates herein by reference all preceding
6 paragraphs of this Complaint, as though fully set forth herein.

7 70. On January 19, 2016, PLAINTIFF timely served notice, pursuant to California Code
8 of Civil Procedure section 364, on Defendants KAISER FOUNDATION HEALTH PLAN, INC.,
9 KAISER FOUNDATION HOSPITALS, AND SOUTHERN CALIFORNIA PERMANENTE
10 MEDICAL GROUP (including DOES 1 through 60, and each of them) of PLAINTIFF’s intention
11 to file a legal complaint against said Defendants, alleging damages based upon negligence in
12 providing medical care to DECEDENT. Through principles of vicarious liability or otherwise, these
13 KAISER Defendants are liable for the medical negligence of KAISER physicians, medical
14 practitioners, and staff, and therefore have standing to accept a C.C.P. 364 notice served on those
15 named KAISER entities on behalf of any and all of these individuals, including but not limited to
16 Defendants JEFF DAVID TRACY, M.D., ALFONSO PHAM, M.D., PETER ABDEL-SAYED,
17 M.D., MICHAEL KABIRI, M.D., WEI-CHAO, CHANG, M.D., ANNIE HARRINGTON, M.D.,
18 and DOES 1 through 60, and each of them.

19 71. On January 21, 2016, PLAINTIFF timely served notice, pursuant to California Code
20 of Civil Procedure section 364, on Defendants THE REGENTS OF THE UNIVERSITY OF
21 CALIFORNIA, UNIVERSITY OF CALIFORNIA, IRVINE MEDICAL CENTER, MOHSEN
22 DAVOUDI, M.D., and HEBA ISMAIL, M.D. (including DOES 61 through 100, and each of them)
23 of PLAINTIFF’s intention to file a legal complaint against said Defendants, alleging damages
24 based upon negligence in providing medical care to DECEDENT. University of California
25 campuses and medical centers are subsumed entities of THE REGENTS OF THE UNIVERSITY
26 OF CALIFORNIA and are not independent legal entities. As such, through principles of vicarious
27 liability or otherwise, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA is liable for the
28 medical negligence of its medical centers, physicians, and staff, and therefore has standing to

1 accept a C.C.P. 364 notice on behalf of any and all of these individuals, including but not limited to
2 UNIVERSITY OF CALIFORNIA – IRVINE MEDICAL CENTER, MOHSEN DAVOUDI, M.D.,
3 and HEBA ISMAIL, M.D., and DOES 61 through 100, and each of them.

4 72. At all relevant times hereto, the KAISER physicians and other staff were employers,
5 partners, supervisors, employees, contractors, and/or agents of KAISER and were acting within the
6 course and scope of their duties at KAISER. Accordingly, KAISER is vicariously liable through
7 principles of vicarious liability or otherwise for the negligence committed by its physicians and
8 other staff, including but not limited to JEFF DAVID TRACY, M.D., ALFONSO PHAM, M.D.,
9 PETER ABDEL-SAYED, M.D., MICHAEL KABIRI, M.D., WEI-CHAO, CHANG, M.D.,
10 ANNIE HARRINGTON, M.D., and DOES 1 through 60, and each of them. KAISER is also
11 independently liable for the negligent actions of its physicians and other staff in their treatment and
12 care of patients, including in their treatment and care of DECEDENT.

13 73. At all relevant times hereto, THE REGENTS OF THE UNIVERSITY OF
14 CALIFORNIA physicians and other staff were employers, partners, supervisors, employees,
15 contractors, and/or agents of THE REGENTS OF THE UNIVERSITY OF CALIFORNIA and were
16 acting within the course and scope of their duties at THE REGENTS OF THE UNIVERSITY OF
17 CALIFORNIA. Accordingly, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA is
18 vicariously liable through principles of vicarious liability or otherwise for the negligence committed
19 by its physicians and other staff, including but not limited to DR. DAVOUDI, DR. ISMAIL, and
20 DOES 61 through 100, and each of them. THE REGENTS OF THE UNIVERSITY OF
21 CALIFORNIA is also independently liable for the negligent actions of its physicians and other staff
22 in their treatment and care of patients, including in their treatment and care of DECEDENT.

23 74. At all relevant times hereto, DEFENDANTS, and each of them, owed a duty of care
24 to DECEDENT to provide a level of skill, knowledge, and care in the diagnosis and treatment of
25 DECEDENT that other reasonably careful similarly-situated medical practitioners would use in the
26 same or similar circumstances.

27 75. DEFENDANTS, and each of them, breached their duty and standard of care to
28 DECEDENT because the diagnosis, care, and treatment they rendered to DECEDENT was

1 inadequate, improper, and failed to comply with acceptable professional medical standards.

2 76. DEFENDANTS, and each of them, were negligent as a result of their failure to use
3 reasonable care to prevent DECEDENT's harms and death. This negligence included actions that
4 DEFENDANTS should have taken, and other actions that DEFENDANTS should not have taken,
5 when judged by the standards of similarly-situated medical professionals in the same or similar
6 circumstances.

7 77. Due to DEFENDANTS' negligence and actions falling below the acceptable
8 standard of care, DECEDENT died from "Adenocarcinoma of Lung, Stage 4" and from
9 complications related to her subsequent treatment, including but not limited to septic shock.

10 78. KAISER DEFENDANTS, whom DECEDENT relied upon for her care and
11 treatment at the approximate dates and in the approximate periods mentioned herein, failed to
12 properly and reasonably detect DECEDENT's cancer over a several year period, failed to order and
13 conduct the proper tests and diagnostic exams to detect and properly treat her actual condition,
14 failed to properly read and interpret DECEDENT's x-ray images over a several year period, failed
15 to recommend and order the appropriate follow-up diagnostic imaging or procedures in light of
16 DECEDENT's ongoing condition and clinical presentation, failed to timely and properly refer
17 DECEDENT to a specialist physician for further evaluation as DECEDENT's symptoms first
18 manifested and thereafter deteriorated, and – throughout all of the above – failed to follow a course
19 of treatment that was acceptable by professional medical standards to detect and treat
20 DECEDENT's condition despite its deteriorating nature.

21 79. UC DEFENDANTS, whom DECEDENT relied upon for her care and treatment at
22 the approximate dates and in the approximate periods mentioned herein, failed to order and conduct
23 the proper tests and diagnostic exams, failed to perform biopsies and related tests at appropriate
24 intervals or at appropriate times that would have saved or prolonged DECEDENT's life, failed to
25 consult with DECEDENT's existing KAISER physicians in order to avoid the unreasonable and
26 unnecessary duplication of tests or procedures that squandered precious life-saving or life-
27 continuing time, ordered and conducted tests or exams that failed to provide the promised results,
28 conducted procedures using improper or questionable methods or utilized defective equipment that

1 led to at least three or more major infections that substantially disrupted DECEDENT's recovery
2 (or any potential for recovery), conducted procedures or tests in spite of directly stated concerns by
3 DECEDENT and PLAINTIFF about the probative value of the procedures or tests, and – through
4 all relevant periods herein as to UC DEFENDANTS – as a result of the above conduct, wasted
5 critical time that could – and should – have been used to save or prolong DECEDENT's life.

6 80. The breach by DEFENDANTS, and each of them, of their duty of care to
7 DECEDENT was the proximate and legal cause, and the substantial factor in causing,
8 DECEDENT's harms and death.

9 81. PLAINTIFF is DECEDENT's surviving spouse, and therefore may assert a cause of
10 action under Code of Civil Procedure section 377.60, seeking damages for the wrongful death of
11 DECEDENT caused by the negligent and wrongful acts of DEFENDANTS.

12 82. PLAINTIFF was damaged as a proximate result of the aforesaid acts and omissions
13 in an amount and manner to be shown according to proof at trial. As a direct and proximate cause
14 of the acts alleged herein, PLAINTIFF has been deprived of the love, affection, care, society,
15 service, comfort, support, right to support, consortium, companionship, solace, or moral support, as
16 well as other benefits and assistance of DECEDENT in an amount or value to be proven at trial.
17 PLAINTIFF has suffered a pecuniary loss, in an amount to be proven at trial. PLAINTIFF has
18 suffered economic and non-economic losses, in amounts to be proven at trial. PLAINTIFF has also
19 incurred burial and funeral expenses and other related charges. PLAINTIFF has also suffered from
20 the present value of the loss of DECEDENT's future financial support or economic contribution to
21 the family unit.

22 **SECOND CAUSE OF ACTION**

23 **(Medical Malpractice – Survival Action)**

24 **(Against All Defendants)**

25 83. PLAINTIFF re-alleges and incorporates herein by reference all preceding
26 paragraphs of this Complaint, as though fully set forth herein.

27 84. PLAINTIFF, as DECEDENT's spouse and successor in interest, paid medical
28 expenses incurred on behalf of DECEDENT before she died. Moreover, DECEDENT sustained

1 loss of earnings as a result of the negligence of DEFENDANTS, and DOES 1 through 100, and
2 each of them. Such expenses and losses are recoverable pursuant to Code of Civil Procedure section
3 377.30 et seq. PLAINTIFF is therefore entitled, as spouse and successor in interest, to recover for
4 the medical expenses incurred by the DECEASED before her death and for the lost earnings
5 incurred by DECEDENT before death, pursuant to Code of Civil Procedure section 377.60 et seq.

6 **THIRD CAUSE OF ACTION**

7 **(LOSS OF CONSORTIUM)**

8 **(Against All Defendants)**

9 85. PLAINTIFF re-alleges and incorporates herein by reference all preceding
10 paragraphs of this Complaint, as though fully set forth herein.

11 86. PLAINTIFF and DECEDENT were at the times mentioned herein prior to
12 DECEDENT's death, husband and wife.

13 87. As a direct and proximate result of the acts and omissions alleged herein by
14 DEFENDANTS, and each of them, in causing the injuries and harms to DECEDENT, PLAINTIFF
15 was denied during the final year or years of DECEDENT's lifetime of the conjugal society,
16 comfort, affection, companionship, love, and intimate relations of DECEDENT in a value or
17 amount to be proven at trial.

18 **FOURTH CAUSE OF ACTION**

19 **(Elder Abuse – Welfare & Institutions Code § 15600 et seq.)**

20 **(Against All Defendants)**

21 88. PLAINTIFF re-alleges and incorporates herein by reference all preceding
22 paragraphs of this Complaint, as though fully set forth herein.

23 89. At all relevant times mentioned herein, including specifically from November 2010
24 to January 2015, DECEDENT was over the age of 65 and thus defined as an "Elder" by Welfare
25 and Institutions Code section 15610.27.

26 90. PLAINTIFF is a person entitled to succeed to the DECEDENT's estate within the
27 meaning of Welfare & Institutions Code section 15657.3(d) and is, therefore, entitled to assert all
28 the rights and remedies arising under the Elder Abuse and Dependent Adult Civil Protection Act,

1 Welfare and Institutions Code sections 15600 et seq.

2 91. At various and relevant times described herein while DECEDENT was 65 years of
3 age or older, DEFENDANTS had care or custody over DECEDENT, including during several
4 hospital admissions at both KAISER and UC IRVINE facilities.

5 92. During these and other hospitalizations, DEFENDANTS failed to use the degree of
6 care that a reasonable person or entity in the same situation would have used providing medical
7 care for the physical and health-care needs of DECEDENT, and for failing to provide the proper
8 care and treatment of DECEDENT, as fully set forth within this Complaint, with a level of skill,
9 knowledge, and care in the diagnosis and treatment of DECEDENT that other reasonably careful
10 similarly-situated medical practitioners would use in the same or similar circumstances.

11 93. As a result, this neglect by DEFENDANTS, and each of them, of an elder
12 DECEDENT was the proximate and legal cause, and the substantial factor in causing,
13 DECEDENT's harms and death.

14 94. As a direct and proximate result of the acts and omissions alleged herein,
15 DECEDENT suffered damages including pre-death pain and suffering. PLAINTIFF is entitled to
16 recover damages for DECEDENT's pain and suffering pursuant to Welfare & Institutions Code
17 section 15657. PLAINTIFF is also entitled to attorneys' fees unilaterally under the same provision
18 of the law.

19 95. As a direct and proximate result of the acts and omissions alleged herein,
20 PLAINTIFF is also entitled to special and general damages and to an award of exemplary and
21 punitive damages.

22 **FIFTH CAUSE OF ACTION**

23 **(Medical Battery)**

24 **(Against KAISER FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION**
25 **HOSPITALS, SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, ANNIE**
26 **HARRINGTON, M.D., and DOES 1 through 60, inclusive)**

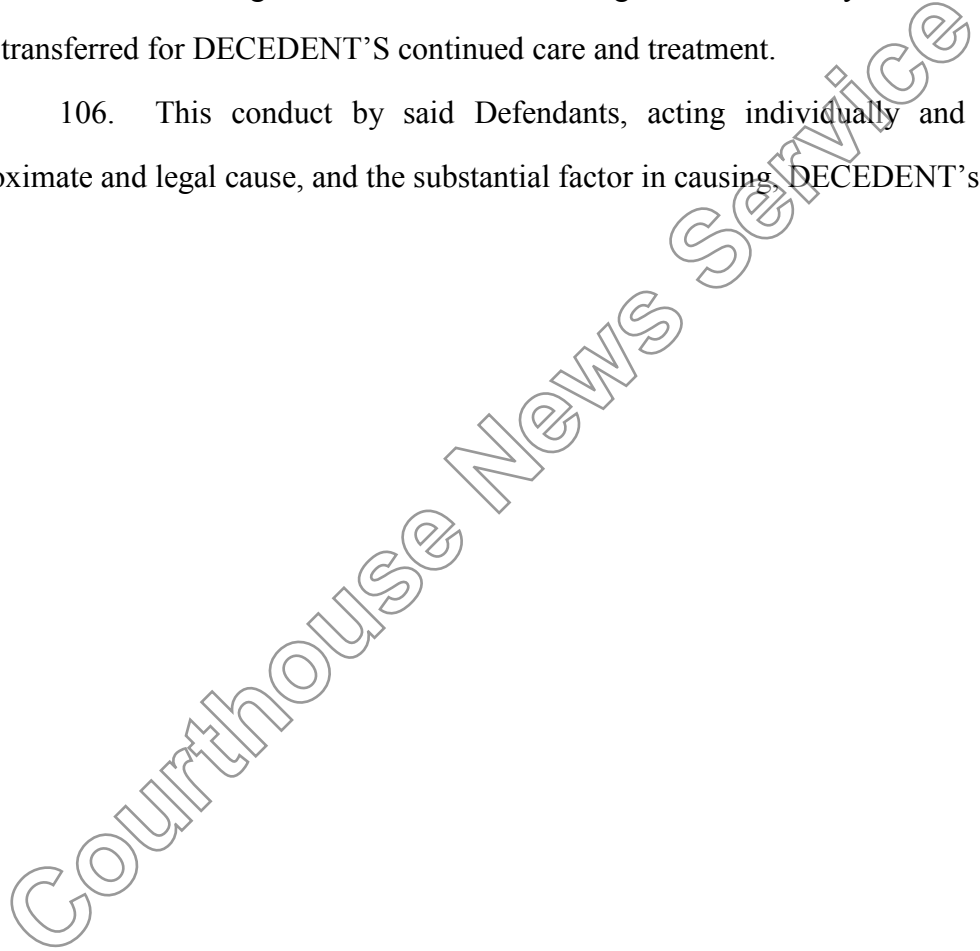
27 96. PLAINTIFF re-alleges and incorporates herein by reference all preceding
28 paragraphs of this Complaint, as though fully set forth herein.

1 104. PLAINTIFF had expressly communicated to said Defendants that if an extubation
2 were to occur, it should be accompanied by procedures designed to preserve DECEDENT's life,
3 not to take it, including through the use of a breathing mask.

4 105. A reasonable person in DECEDENT's position, and of course in PLAINTIFF's
5 position, would not have agreed to a terminal extubation because of the material change in
6 circumstances resulting from PLAINTIFF's having located a facility to which DECEDENT could
7 be transferred for DECEDENT'S continued care and treatment.

8 106. This conduct by said Defendants, acting individually and collectively, was a
9 proximate and legal cause, and the substantial factor in causing DECEDENT's injuries and death.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against Defendants as follows:

- (1) For general damages in an amount according to proof;
- (2) For special damages in an amount according to proof;
- (3) For compensatory damages in an amount according to proof;
- (4) For medical expenses, funeral expenses, and other related expenses in an amount according to proof;
- (5) For all loss of earnings and capacity of future earnings of DECEDENT;
- (6) For the loss of the care, comfort, consortium, and society of DECEDENT;
- (7) For exemplary or punitive damages according to proof;
- (8) For attorneys fees, unilaterally to PLAINTIFF;
- (9) For costs of suit incurred herein;
- (10) For pre-judgment and post-judgment interest at the maximum rate allowed by law;
- (11) For pre-trial interest according to proof; and
- (12) For such other and further relief as this Court may deem just and proper.

Dated: April 26, 2016

LAYFIELD & BARRETT, APC

By: 

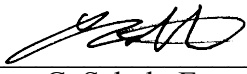
Andrew C. Schuh, Esq.
Clayton T. Robertson, Esq.
Attorneys for PLAINTIFF,
DEMETRE ECONOMIDES, an individual

DEMAND FOR JURY TRIAL

PLAINTIFF DEMETRE ECONOMIDES hereby demands a trial by jury.

Dated: April 26, 2016

LAYFIELD & BARRETT, APC

By: 

Andrew C. Schuh, Esq.
Clayton T. Robertson, Esq.
Attorneys for PLAINTIFF,
DEMETRE ECONOMIDES, an individual

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