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VENTURA SUPERIOR COURT

NOV 17 2017

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AFTER 4:00 P.M.

5 Attorney for Plaintiff, John D. Tullis, an individual

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF VENTURA
10

11 JOHN D. TULLIS, an individual,

CASE NO.:

12
13 Plaintiff,

COMPLAINT FOR:

14 v.

- 1. PROFESSIONAL NEGLIGENCE
- 2. WILLFUL MISCONDUCT
- 3. DEPENDENT ADULT ABUSE/NEGLECT
- 4. ASSAULT & BATTERY

15 KAISER PERMANENTE, INC.; KAISER
16 FOUNDATION HEALTH PLAN, INC.;
17 KAISER FOUNDATION HOSPITALS;
18 SOUTHERN CALIFORNIA PERMANENTE
19 MEDICAL GROUP; VITO D. IMBASCIANI,
20 M.D.; and DOES 1 through 20, inclusive,

Defendants.

21 The Plaintiff, JOHN D. TULLIS, alleges as follows:

22 JURISDICTIONAL ALLEGATIONS

23 1. The Plaintiff was an individual and was at all times mentioned in this Complaint a
24 resident of the County of Ventura, California, residing at 4531 Via Presidio, Camarillo, CA 93012.

25 2. Plaintiff is informed and believes that Defendant, KAISER PERMANENTE, INC.,
26 is a business entity with its principal place of business located at One Kaiser Plaza, Oakland, CA,
27 94612.

28 3. Plaintiff is informed and believes that Defendant KAISER FOUNDATION

Remed

1 HEALTH PLAN, INC., is a California business entity with its principal place of business located
2 at One Kaiser Plaza, Oakland, CA, 94612.

3 4. Plaintiff is informed and believes that KAISER FOUNDATION HOSPITALS is a
4 California business entity with its principal place of business located at One Kaiser Plaza,
5 Oakland, CA, 94612.

6 5. Plaintiff is informed and believes that Defendant SOUTHERN CALIFORNIA
7 PERMANENTE MEDICAL GROUP is a California business entity with its principal place of
8 business located at 393 E. Walnut Street, Pasadena, CA 91188.

9 6. Plaintiff is informed and believes that VITO D. IMBASCIANI, M.D., is a medical
10 doctor licensed in the state of California.

11 7. At all times mentioned herein, defendants KAISER PERMANENTE, INC.,
12 KAISER FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS,
13 SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, and VITO D. IMBASCIANI,
14 M.D. (hereinafter, jointly, the "KAISER DEFENDANTS") were the parent company, subsidiary,
15 principal, agent, partner, employer, and/or employee for each other, and each participated in,
16 authorized, ratified, and/or directed the conduct as hereinafter described, and are therefore jointly
17 or vicariously liable for the acts and omissions of VITO D. IMBASCIANI, M.D. (hereinafter,
18 individually, as DR. IMBASCIANI).

19 8. All acts alleged in this Complaint occurred at a facility owned and operated by the
20 KAISER DEFENDANTS, located in Ventura County, at 2103 E. Gonzales Road,
21 Oxnard, CA 93036.

22 9. At all times mentioned herein, DOE Defendants 1-20, inclusive, are those persons
23 or entities whose conduct caused the injuries and damages alleged herein.

24 10. The Plaintiff is ignorant of the identities of the true names of Defendants DOES 1
25 through 20, inclusive. The Plaintiff sues those Defendants by such fictitious names pursuant to
26 *California Code of Civil Procedure* § 474. The Plaintiff will seek leave of Court to amend this
27 Complaint to identify said Defendants when their identities are ascertained. The Plaintiff is
28 informed and believes, and on that basis, alleges that each of the fictitiously named Defendants

1 were in some fashion or manner liable and legally responsible for the damages and injuries set
2 forth herein.

3 **GENERAL ALLEGATIONS**

4 11. On August 19, 2016, Mr. TULLIS underwent a surgical vasectomy at the KAISER
5 FACILITY.

6 12. Prior to starting the surgery, DR. IMBASCIANI warned Mr. TULLIS to not touch
7 the surgical area during the surgery, as it might cause an infection.

8 13. During the surgery, DR. IMBASCIANI placed his surgical tools on Mr. TULLIS'
9 leg, instead of an instrument table.

10 14. While performing the surgery, a sharp instrument that DR. IMBASCIANI had
11 placed on Mr. TULLIS' leg slid down his leg, and stabbed him on the left side of the surgical site.
12 Mr. TULLIS instinctually reached for the area out of pain and to remove the tool; however, before
13 he could reach the tool, he was reminded by DR. IMBASCIANI not to touch the surgical area.
14 Mr. TULLIS explained that a sharp tool was stabbing him in the surgical site, and Dr.
15 IMBASCIANI first stated it was possibly just pain related to the procedure. Mr. Tullis insisted
16 that he was being stabbed in the surgical site by a tool, and DR. IMBASCIANI finally retrieved
17 the tool, then said something along the lines of that being "the danger of using the patient as the
18 work bench."

19 15. After the surgery, DR. IMBASCIANI was counting his instruments, and mentioned
20 out loud that something was missing, but that it would turn up. Mr. TULLIS did not know at the
21 time what it was that could have been missing.

22 16. After the vasectomy DR. IMBASCIANI showed Mr. TULLIS two wound/suture
23 sites from the surgery, and he instructed Mr. TULLIS on how to clean the area. Later, as the pain
24 medications DR. IMBASCIANI used in the surgery wore off, Mr. TULLIS felt unanticipated pain
25 near the surgical site, but in a location that was not the site of the two suture sites shown to him by
26 DR. IMBASCIANI. When Mr. TULLIS looked at the location of the pain, he found a third
27 wound site that had not been identified by DR. IMBASCIANI. Over the next few days, the pain
28 in the two suture sites lessened, but it increased in the third unidentified wound site. The third

1 wound site also continued to get bigger and appear more infected.

2 17. On Wednesday, August 24, 2016, at 1:00a.m., Mr. TULLIS' wife removed a piece
3 of metal from the third unidentified wound site. Mr. TULLIS called the Kaiser after-hours line,
4 and was instructed to go to the emergency room. Mr. TULLIS went to the emergency room, and
5 was informed the piece of metal was a clamp used in vasectomies. Mr. TULLIS was given
6 medications in the emergency room due to the infection at the undisclosed third wound site.

7 18. Due to the KAISER DEFENDANTS' wrongful acts, Mr. TULLIS has developed
8 ongoing pain and discomfort at the site of the undisclosed third wound.

9 19. Additionally, in July, 2017, Mr. TULLIS was advised that the vasectomy was
10 unsuccessful, and a second vasectomy may be needed to correct the failed surgery.

11 20. As a result of such negligent, reckless, grossly negligent, neglectful, and abusive
12 conduct, Mr. TULLIS sustained injuries, damages and losses, to the extent presently known, as
13 follows: physical injuries; medical and related expenses; pain and suffering, emotional distress,
14 and impairment of enjoyment of life.

15 **FIRST CAUSE OF ACTION**

16 **Professional Negligence**

17 21. Plaintiff refers to and incorporates all previous paragraphs as though fully set forth
18 herein.

19 22. At all relevant times herein mentioned, the KAISER DEFENDANTS, and DOES
20 1-20, and each of them, were Plaintiff's treating medical providers, surgeons, physicians, and
21 nurses for purposes of his care and post-operative care, in August, 2016.

22 23. At all relevant times herein mentioned, each of the Defendants agreed to provide
23 medical care and treatment for Plaintiff, including, without limitation, to diagnose, examine, care,
24 observe, warn, evaluate, inform, treat, attend, prescribe medication, advise, supervise other
25 physicians, nurses and staff, and to do any and all other things necessary to properly care for and
26 treat Plaintiff in respect to his vasectomy. Based thereon, Bukata and DOES 1-30, and each of
27 them, had a special (physician/patient) relationship with Plaintiff giving rise to a duty and
28 obligation to exercise reasonable care in providing medical services, supervision and treatment to

1 him.

2 24. At all relevant times herein mentioned, the KAISER DEFENDANTS, and DOES
3 1-20, and each of them, represented and warranted that he, she, or it, possessed that degree of skill,
4 care, ability, training and learning as other physicians in the community engaged in the practice of
5 plastic surgery in his or her specialty or subspecialty.

6 25. During the course of Plaintiff's treatment, the KAISER DEFENDANTS, and DOES 1-
7 20, and each of them, negligently and carelessly diagnosed, examined, cared for, observed, warned, failed
8 to warn, failed to inform, failed to treat, attend, furnish equipment, prescribe medication, advise, supervise,
9 entrust, and control the treatment provided to Plaintiff, and thereby failed to meet his, her or its warranties,
10 representations and duties of care to Plaintiff.

11 26. As a direct and proximate result of the negligence, carelessness, and other misconduct of
12 the KAISER DEFENDANTS, and DOES 1-20, and each of them, as herein alleged, Plaintiff suffered,
13 by way of example and not by way of limitation, injury to his health, strength, and activity, both in body,
14 and mind. Further, Plaintiff will require additional medical care in the future. These injuries have
15 generally damaged Plaintiff in a sum above the jurisdictional minimum of this Court, according to proof at
16 trial.

17 **SECOND CAUSE OF ACTION**

18 **Willful Misconduct**

19 27. Plaintiff refers to and incorporates all previous paragraphs as though fully set forth
20 herein.

21 28. Because Mr. TULLIS was in the KAISER DEFENDANTS, and DOES 1-20, care and
22 custody as alleged above, Defendants, and each of them, had a duty to provide for Mr. TULLIS' care,
23 comfort, and safety.

24 29. At all times mentioned, the KAISER DEFENDANTS, and DOES 1-20, and each of
25 them, knew that their failure to provide care and treatment within the standard of care would pose the
26 probability that he would sustain serious physical and mental injuries.

27 30. Notwithstanding the aforesaid knowledge, the KAISER DEFENDANTS, and DOES 1-
28 20, and each of them, consciously disregarded their duty to provide the degree of care sufficient to meet

1 legal standards established for such care, and failed to provide such care thereby subjecting Mr. TULLIS to
2 the probability of serious injury. In particular, and without limiting the generality of the foregoing, said
3 Defendants failed to provide adequate monitoring, assessment and re-assessment of Plaintiff's physical
4 condition and well-being during the surgery; failed to perform the surgery within the standard of care;
5 failed to adequately train and supervise medical personnel in performance of the provision of medical
6 services, including basic custodial care, and; maintain adequate medical support staff to properly perform
7 the medical procedure at issue.

8 31. Further, the KAISER DEFENDANTS, and DOES 1-20, and each of them, willfully
9 caused Mr. TULLIS to suffer unjustifiable physical pain and mental suffering by subjecting him to
10 circumstances and conditions likely to produce great bodily harm.

11 32. In committing the wrongful and neglectful acts alleged above, each Defendant
12 breached the foregoing duties to Mr. TULLIS. These breaches were intentional and in reckless
13 disregard of the probability that severe injury would result from the failure to conscientiously
14 adhere to such duties. Defendants, and each of them, knew that there was a high probability that
15 injury would result from the failure to adhere to such duties.

16 33. At all relevant times, the KAISER DEFENDANTS, and DOES 1-20, and each of
17 them, knew of the existence of their duties, and knew that the lives and health of their patients,
18 including Mr. TULLIS, were at risk whenever they failed to meet such duties, and knew that the
19 failure to comply with such duties would result in injuries to their patients, including Mr. TULLIS.
20 In breaching these duties Defendants, and each of them, acted intentionally.

21 34. These wrongful acts were committed with recklessness, oppression, fraud, and
22 malice, and Plaintiff requests an appropriate award of punitive damages against each of the
23 KAISER DEFENDANTS, and DOES 1-20.

24 **THIRD CAUSE OF ACTION**

25 **Dependent Adult Abuse/Neglect**

26 35. Plaintiff refers to and incorporates all previous paragraphs as though fully set forth
27 herein.

28 36. At all relevant times, Mr. TULLIS was a dependent adult, as the term is defined by

1 *Welfare and Institutions Code* § 15610.23, in that he was restricted in his ability to carry out
2 normal activities or to protect his rights during the events described herein.

3 37. At all times relevant to this action, the KAISER DEFENDANTS, as the owners,
4 operators, managers, and physician of the facility located at 2103 E. Gonzales Road,
5 Oxnard, CA 93036 (the "KAISER FACILITY"), were acting at the time of the wrongful and
6 neglectful acts hereinafter alleged, as "care custodians," as defined in California *Welfare and*
7 *Institutions Code* § 15610.17. Mr. TULLIS depended on the KAISER DEFENDANTS for the
8 performance of custodial services.

9 38. *Welfare and Institutions Code* § 15610.07 specifically defines "abuse of an elder
10 and dependent adult" to mean either (a) physical abuse, neglect, financial abuse, abandonment,
11 isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering, or
12 (b) the deprivation by a care custodian of goods or services that are necessary to avoid physical
13 harm or mental suffering.

14 39. Defendant's acts and omissions as alleged herein constitute neglect as defined in
15 *Welfare and Institutions Code* § 15610.57, and were done with malice and recklessness within the
16 meaning of *Welfare and Institutions Code* § 15657.

17 40. *Welfare and Institutions Code* § 15610.57(a) specifically defines "neglect" as (1)
18 negligent failure of any person having the care or custody of an elder or a dependent adult to
19 exercise that degree of care that a reasonable person in a like position would exercise, or (2) the
20 negligent failure of an elder or dependent adult to exercise that degree of self-care that a
21 reasonable person in a like position would exercise.

22 41. *Welfare and Institutions Code* § 15657 further provides that Mr. TULLIS may
23 recover enhanced damages for dependent adult abuse where it is proven by clear and convincing
24 evidence that a defendant is liable for neglect as defined in section 15610.57 and that the
25 Defendants, and each of them, acted recklessly in the commission of this abuse, in addition to all
26 other remedies otherwise provided by law.

27 **CORPORATE MANAGING AGENT RATIFICATION**

28 42. At all relevant times, the reference to "managing agent", for purposes of managing

1 agent ratification, is used as that term is defined in *California Approved Jury Instructions (CACI)*
2 3102B. Pursuant to *CACI* 3102B, "an employee is a 'managing agent' if he or she exercises
3 substantial independent authority and judgment in his or her corporate decision making so that his
4 or her decisions ultimately determine corporate policy." The managing agents of the KAISER
5 DEFENDANTS and DOES 1-20, and each of them, failed to provide trained medical staff, and in
6 sufficient number, which resulted in the custodial neglect and/ or abuse that caused Mr. TULLIS'
7 injuries.

8 43. Mr. TULLIS' injuries were entirely preventable had the KAISER DEFENDANTS,
9 and DOES 1-20, and each of them, provided enough adequately trained medical staff in number
10 and quality to provide Mr. TULLIS with the type of care required by their obligations and duties
11 under the law. However, the Defendants knew that the medical staff performing and assisting in
12 Mr. TULLIS' surgery were not adequately trained, and were not sufficient in number.

13 44. Therefore, the KAISER DEFENDANTS, and DOES 1-20, and each of them, were
14 personally guilty of recklessness, malice, and oppression, and these acts were ratified by managing agents.

15 **FOURTH CAUSE OF ACTION**

16 **Assault & Battery**

17 1. Plaintiff refers to and incorporates all previous paragraphs as though fully set forth
18 herein.

19 2. The actions of the KAISER DEFENDANTS, and DOES 1-20, and each of them,
20 including allowing the sharp instrument to slide from Mr. TULLIS' leg into the surgical area, and
21 leaving unaccounted for surgical equipment in Mr. TULLIS' body, and otherwise causing the third
22 unidentified wound, amounted to a touching caused by the willful disregard of the KAISER
23 DEFENDANTS, and DOES 1-20, and each them, of Mr. TULLIS' rights.

24 3. Plaintiff did not consent to the touching as described above.

25 4. Plaintiff was harmed by the touching as described above.

26 5. A reasonable person would have been offended by the touching as described above.

27 6. Defendant acted herein alleged oppressively and maliciously, and therefore,
28 Plaintiff is entitled to punitive or exemplary damages.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff prays for the following against the KAISER DEFENDANTS,
3 and DOES 1-20, and each of them:

4 **On the First Cause of Action**

- 5 1. For general damages according to proof.
6 2. For special damages according to proof.

7 **On the Second Cause of Action**

- 8 3. For general damages according to proof.
9 4. For special damages according to proof.
10 5. For punitive damages according to proof.

11 **On the Third Cause of Action**

12 6. For general damages according to proof.
13 7. For special damages according to proof.
14 8. For punitive/exemplary damages pursuant to California *Welfare and Institutions*
15 *Code* § 15657, et. seq. and *Covenant Care v. Superior Court* (2004) 32 Cal.4th 771. Pursuant to
16 statute and the California Supreme Court case of *Covenant Care*, supra, Plaintiff is entitled to set
17 forth and plead punitive damages as enhanced and heightened remedies pursuant to *Welfare &*
18 *Institutions Code* § 15657 and is not required, pursuant to C.C.P. § 425.13, to seek judicial relief
19 to seek punitive damages.

20 9. For reasonable attorney's fees and costs of suit which must be awarded pursuant to
21 *Welfare and Institutions Code* § 15657(a), should the Plaintiff meet and sustain his burden of
22 proof as to cause of action No. 3.

23 **On the Fourth Cause of Action**

- 24 10. For general damages according to proof.
25 11. For special damages according to proof.
26 12. For punitive damages according to proof.

27 **On All Causes of Action**

- 28 13. For costs and interest in an amount to be proven at trial, and;

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14. For such other and further relief as the court may deem just and proper

Dated: November 17, 2017

By: John D. Tullis
John D. Tullis
Attorney for Plaintiff, JOHN D. TULLIS

Courthouse News Service