

Superior Court of California

County of Orange



Case Number : 30-2012-00581824-CU-MM-CJC

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Attorneys for Plaintiff, BRANDI HEWITT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

BRANDI HEWITT, an individual,
Plaintiff,

v.

KAISER PERMANENTE; KAISER
FOUNDATION HEALTH PLAN, INC.,
CALIFORNIA DIVISION-SOUTH;
KAISER PERMANENTE SOUTHERN
CALIFORNIA PERMANENTE MEDICAL
GROUP; DAVID MICHAEL MOSS, MD;
TIMOTHY OGAWA, MD; LUBAVIN
BORIS VLADIMIR, MD; BRUCE
MICHAEL LIPTON, MD; VICKI
MCADAMS, PA; STEVEN GIORDANO,
NP; JOANNE RUSSO; and DOES 1 through
100, Inclusive,

Defendants.

CASE NO: 30-2012-00581824-CU-MM-CJC

COMPLAINT FOR:

- 1. MEDICAL NEGLIGENCE;**
- 2. FRAUD & DECEIT
(INTENTIONAL
CONCEALMENT)**
- 3. FRAUD & DECEIT
(NEGLIGENT
MISREPRESENTATION)**

Judge William M. Monroe

Plaintiff, **BRANDI HEWITT, an individual**, hereby complains and alleges as follows:

PRELIMINARY ALLEGATIONS

1. Plaintiff, **BRANDI HEWITT, an individual** ("Plaintiff"), was at all times relevant, a resident of the County of Orange, State of California.

2. Plaintiff is informed and believes, and thereon alleges that Defendant, **KAISER PERMANENTE**, is now, and at all times relevant herein was, a business entity form unknown, authorized to do business in the State of California.

1 3. Plaintiff is informed and believes, and thereon alleges that Defendant, **KAISER**
2 **PERMANENTE FOUNDATION HEALTH PLAN INC., CALIFORNIA DIVISION**
3 **SOUTH**, is now, and at all times relevant herein was, a business entity form unknown,
4 authorized to do business in the State of California.

5 4. Plaintiff is informed and believes, and thereon alleges that Defendant, **KAISER**
6 **PERMANENTE SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP**, is
7 now, and at all times relevant herein was, a business entity form unknown, authorized to do
8 business in the State of California.

9 5. Plaintiff is informed and believes, and thereon alleges that Defendant, **DAVID**
10 **MICHAEL MOSS, MD**, is now, and at all times relevant herein was, a resident of the
11 County of Orange, State of California.

12 6. Plaintiff is informed and believes, and thereon alleges that Defendant,
13 **TIMOTHY OGAWA, MD**, is now, and at all times relevant herein was, a resident of the
14 County of Orange, State of California.

15 7. Plaintiff is informed and believes, and thereon alleges that Defendant,
16 **LUBAVIN BORIS VLADIMIR, MD**, is now, and at all times relevant herein was, a resident
17 of the County of Orange, State of California.

18 8. Plaintiff is informed and believes, and thereon alleges that Defendant,
19 **MICHAEL LIPTON, MD**, is now, and at all times relevant herein was, a resident of the
20 County of Orange, State of California.

21 9. Plaintiff is informed and believes, and thereon alleges that Defendant, **VICKI**
22 **MCADAMS, PA**, is now, and at all times relevant herein was, a resident of the County of
23 Orange, State of California.

24 10. Plaintiff is informed and believes, and thereon alleges that Defendant,
25 **STEVEN GIORDANO, NP**, is now, and at all times relevant herein was, a resident of the
26 County of Orange, State of California.

1 11. Plaintiff is informed and believes, and thereon alleges that Defendant,
2 **JOANNE RUSSO**, is now, and at all times relevant herein was, a resident of the County of
3 Orange, State of California.

4 12. The true names and capacities, whether individual, corporate, partners, sole
5 proprietors, business entities, and associates, representative or otherwise, of Defendants
6 named herein as **DOES 1 through 100, Inclusive**, are unknown to Plaintiff, who therefore
7 sues such Defendants by such fictitious names. Plaintiff will ask for leave of court to amend
8 this complaint to show such true names and capacities when the same has been ascertained,
9 in accordance with *Code of Civil Procedure* section 474.

10 9. The tortious conduct giving rise to this action occurred in the County of
11 Orange, State of California.

12 10. Plaintiff is informed and believes and on such information and belief herein
13 alleges that at all times herein mentioned, **KAISER PERMANENTE; KAISER**
14 **FOUNDATION HEALTH PLAN, INC., CALIFORNIA DIVISION-SOUTH; KAISER**
15 **PERMANENTE SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP;**
16 **DAVID MICHAEL MOSS, MD; TIMOTHY OGAWA, MD; LUBAVIN BORIS**
17 **VLADIMIR, MD; BRUCE MICHAEL LIPTON, MD; VICKI MCADAMS, PA; STEVEN**
18 **GIORDANO, NP**, and **DOES 1 through 100, Inclusive**, intentionally, negligently,
19 consciously, recklessly, tortiously, or otherwise legally caused the injuries and damages to
20 Plaintiff as is hereinafter more specifically alleged, either through said Defendants' own
21 conduct, or through the conduct of their agents, servants or employees, and each of them.

22 11. At all times mentioned herein, Defendants were and now are physicians,
23 surgeons, medical doctors, registered nurses, licensed practical nurses, nursing assistants,
24 nurses aids, attendants, technicians, or other health care professionals duly licensed by the
25 State of California to practice medicine, and to render health care services in the County of
26 Orange, State of California, to members of the general public, including Plaintiff. At all
27 times mentioned herein, said Defendants held themselves out and represented themselves to
28 Plaintiff, and to the general public, as possessing the necessary and proper degree of skill,

1 training, experience and ability required to competently render appropriate health care
2 services to members of the general public in the County of Orange, State of California, in
3 conformity with the standard of care for professionals rendering similar health care services
4 under similar circumstances within said County and State.

5 12. Plaintiff is informed and believes and thereon alleges that at all times relevant
6 hereto, each of the Defendants named herein, and ***DOES 1 through 100, Inclusive***, were the
7 agents and employees of the remaining Defendants, and were at all times acting within the
8 course and scope of such agency and employment, and with the supervision, consent and
9 permission of the remaining Defendants. As a result of this agency, each Defendant is
10 vicariously liable for the acts and/or omissions of each of the remaining Defendants.

11 13. Plaintiff alleges, based on information and belief, and in good faith thereon,
12 that Defendants, ***DAVID MICHAEL MOSS, MD; TIMOTHY OGAWA, MD; LUBAVIN***
13 ***BORIS VLADIMIR, MD; BRUCE MICHAEL LIPTON, MD; VICKI MCADAMS, PA;***
14 ***STEVEN GIORDANO, NP, JOANNE RUSSO, and DOES 1 through 50, Inclusive***, were
15 employees or agents of Defendants, ***KAISER PERMANENTE; KAISER FOUNDATION***
16 ***HEALTH PLAN, INC., CALIFORNIA DIVISION-SOUTH; KAISER PERMANENTE***
17 ***SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, and DOES 51 through***
18 ***100, Inclusive*** and were acting on behalf of said entities, and said entities are vicariously
19 liable for the negligent acts and omissions of Defendants, ***DAVID MICHAEL MOSS, MD;***
20 ***TIMOTHY OGAWA, MD; LUBAVIN BORIS VLADIMIR, MD; BRUCE MICHAEL***
21 ***LIPTON, MD; VICKI MCADAMS, PA; STEVEN GIORDANO, NP., JOANNE RUSSO;***
22 ***and DOES 1 through 50, Inclusive*** as set forth herein.

23 COMMON FACTUAL ALLEGATIONS

24 14. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 13 of
25 this Complaint as if fully set forth herein.

26 15. On or about December 1, 2010, MS. HEWITT visited the Department of
27 Emergency Medicine at Kaiser Anaheim. MS. HEWITT went to the Emergency Room
28 because she was having difficulty breathing and a sore throat. MICHAEL MOSS, MD, and

1 VICKI MCADAMS, PA, examined and/or treated MS. HEWITT on this date. MS. HEWITT
2 was proscribed an inhaler, amoxicillin, cough syrup and anti-inflammatory medication.
3 MS. HEWITT then began experiencing perseverant itching and severe back pain
4 approximately in January 2011, and MS. HEWITT continued to have difficulty breathing as
5 well.

6 16. On or about January 19, 2011, MS. HEWITT again visited the Emergency
7 Room at KAISER PERMANENTE due to her continued difficulty in breathing and shortness
8 of breath, as well as due to her itching and back pain. TIMOTHY OGAWA, MD and
9 LUBAVIN BORIS VLADIMIR, MD, examined and/or treated MS. HEWITT on this date. A
10 CT Pulmonary Angiogram was performed on this date. MS. HEWITT
11 was never advised of the actual results of the CT scan by KAISER PERMANENTE or any
12 of its medical personnel. Instead, MS. HEWITT was told that there was a "slight shadow"
13 that she should "watch."

14 17. MS. HEWITT was diagnosed as having chicken pox and was again given the
15 same medications that she received from her December 1, 2010 visit.
16 MS. HEWITT returned home and took the medications as prescribed, however, the itching
17 persisted as well as the difficulty breathing and shortness of breath, and the back pain also
18 continued in its severity.

19 18. On or about February 25, 2011, MS. HEWITT again returned to the
20 Emergency Room at KAISER PERMANENTE in Anaheim due to the foregoing continued
21 ailments. MICHAEL LIPTON, MD, and STEVEN GIORDANO, Nurse Practitioner ("NP")
22 examined and/or treated MS. HEWITT on this date. MS. HEWITT was again diagnosed with
23 chicken pox and was given medication to alleviate the pain.

24 19. On or about April 3, 2011, MS. HEWITT went to the Emergency Room at St.
25 Joseph's hospital. St. Joseph's eventually obtained MS. HEWITT'S medical records from
26 KAISER PERMANENTE and then informed MS. HEWITT of the 12 x 16 cm mass that was
27 located in her chest on the CT scan from KAISER PERMANENTE and advised her to
28 recheck with her new doctor in 1-2 days and then to arrange for further evaluation of the

1 mass. This was the first time that MS. HEWITT was provided with the actual results of the
2 CT scan from KAISER PERMANENTE and the actual size of the 12x16 cm mass located in
3 her chest.

4 21. MS. HEWITT was subsequently referred to Garden Grove Hospital and
5 received treatment initially at this location on or about April 11, 2011. MS. HEWITT
6 returned to Garden Grove Hospital on or about April 13, 2011 wherein a biopsy was taken of
7 the 12 x 16 cm mass at this time.

8 22. Upon return of the biopsy results, on or about April 20, 2011, MS. HEWITT
9 was informed that she had Hodgkin Lymphoma. Thus, it was on this approximate date of
10 April 20, 2011, that MS. HEWITT discovered that she had been negligently examined,
11 diagnosed, cared for and treated by KAISER PERMANENTE and its medical personnel.

12 As the employer of, and/or facility in charge of, overseeing DAVID MICHAEL MOSS, MD;
13 TIMOTHY OGAWA, MD; LUBAVIN BORIS VLADIMIR., MD; BRUCE MICHAEL
14 LIPTON, MD; VICKI MCADAMS, PA; and STEVEN GIORDANO, NP, KAISER
15 PERMANENTE is responsible for failing to adequately train, evaluate the credentials and
16 experience of, and adequately supervise DAVID MICHAEL MOSS, MD; TIMOTHY
17 OGAWA, MD; LUBAVIN BORIS VLADIMIR, MD; BRUCE MICHAEL LIPTON, MD;
18 VICKI MCADAMS, PA; and STEVEN GIORDANO, NP.

19 23. MS. HEWITT had to undergo extensive chemotherapy which resulted in
20 continuous and significant pain and discomfort to Ms. HEWITT, MS. HEWITT has
21 completed chemotherapy at this time, but she is still experiencing significant pain and
22 discomfort, and is scheduled to begin radiation on or about April 16, 2012. For which, she
23 would not have had to endure, or to such extent, had KAISER PERMANENTE and its
24 medical personnel properly examined and treated MS. HEWITT instead of negligently:
25 doing so for the duration of approximately three months. Additionally, She has been unable
26 to return to work and remains disabled. In short, her life has changed dramatically as a result
27 of this negligent diagnosis and treatment.

24. On April 3, 2012, Plaintiff served a “Notice of Intent to Sue” letter pursuant to the Code of Civil Procedure on Defendant, *Steven Giordano*.

25. On April 3, 2012, Plaintiff served a “Notice of Intent to Sue” letter pursuant to the Code of Civil Procedure on Defendant, *Lubavin Vladimir, MD*.

26. On April 3, 2012, Plaintiff served a “Notice of Intent to Sue” letter pursuant to the Code of Civil Procedure on Defendant, ***Vicki McAdams, PA.***

27. On April 3, 2012, Plaintiff served a “Notice of Intent to Sue” letter pursuant to the Code of Civil Procedure on Defendant, ***Steven Giordano***.

28. On April 3, 2012, Plaintiff served a “Notice of Intent to Sue” letter pursuant to the Code of Civil Procedure on Defendant, *David Moss, MD*.

29. On April 3, 2012, Plaintiff served a “Notice of Intent to Sue” letter pursuant to the Code of Civil Procedure on Defendant, ***Timothy Ogawa, MD.***

30. On April 3, 2012, Plaintiff served a “Notice of Intent to Sue” letter pursuant to the Code of Civil Procedure on Defendant, ***Bruce Lipton, MD.***

31. On April 3, 2012, Plaintiff served a “Notice of Intent to Sue” letter pursuant to the Code of Civil Procedure on Defendant, ***Kaiser Permanente***, and also upon its legal department.

32. As a proximate and legal result of the negligence of Defendants and each of them, Plaintiff suffered and continues to suffer from severe bodily injuries. Further, Plaintiff has incurred and continues to incur expenses and damages including, but not limited to, medical bills, past and future loss of earnings, and damages for past and future pain and suffering.

FIRST CAUSE OF ACTION

MEDICAL NEGLIGENCE

(As Against Defendants and *DOES 1 to 100, INCLUSIVE*)

41. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 32 of this Complaint as if fully set forth herein.

42. Defendants and each of them had a duty to provide proper medical treatment, services, and care to Plaintiff.

43. Defendants, **DAVID MICHAEL MOSS, MD; TIMOTHY OGAWA, MD; LUBAVIN BORIS VLADIMIR, MD; BRUCE MICHAEL LIPTON, MD; VICKI MCADAMS, PA; STEVEN GIORDANO, NP, JOANNE RUSSO, and DOES 1 through 50, Inclusive**, were employees or agents of Defendants, **KAISER PERMANENTE; KAISER FOUNDATION HEALTH PLAN, INC., CALIFORNIA DIVISION-SOUTH; KAISER PERMANENTE SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, and DOES 51 through 100, Inclusive**, and each of them, breached their duty of care by failing to exercise reasonable care and falling below the acceptable standard of care when providing medical treatment to Plaintiff and failure to perform the appropriate procedures, medical testing, and referrals to specialists thereafter. But for the consistent misdiagnoses that Plaintiff received from Defendants, Plaintiff would have been able to seek proper care timely, and potentially would have been able to reduce the damage done by Defendants.

44. As a direct and proximate result of Defendants' negligence, Plaintiff has sustained monetary damages and has suffered severe pain, discomfort, anxiety, physical damage, and emotional distress, and other miscellaneous damages and costs to be proven at the time of trial or other evidentiary hearing.

SECOND CAUSE OF ACTION

FRAUD & DECEIT (INTENTIONAL CONCEALMENT)

(As Against Defendants and DOES 1 through 100, Inclusive)

45. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 44 of this Complaint as if fully set forth herein.

46. Plaintiff specifically alleges that Defendants were fraudulent.

47. At all relevant times herein, a physician-patient relationship existed between the patient, Plaintiff, Brandi Hewitt, and Defendants, **DAVID MICHAEL MOSS, MD; TIMOTHY OGAWA, MD; LUBAVIN BORIS VLADIMIR, MD; BRUCE MICHAEL**

1 ***LIPTON, MD; VICKI MCADAMS, PA; STEVEN GIORDANO, NP, JOANNE RUSSO,***
2 ***and DOES 1 through 50, Inclusive,*** were employees or agents of Defendants, ***KAISER***
3 ***PERMANENTE; KAISER FOUNDATION HEALTH PLAN, INC., CALIFORNIA***
4 ***DIVISION-SOUTH; KAISER PERMANENTE SOUTHERN CALIFORNIA***
5 ***PERMANENTE MEDICAL GROUP, and DOES 51 through 100, Inclusive.***

6 48. Defendants, and each of them, knew of Plaintiff's medical condition when they
7 advised her that she had chicken pox. Defendants, and each of them, knew that such
8 representations were untrue.

9 49. Defendants, and each of them, intentionally failed to disclose important facts to
10 Plaintiff in that Defendants failed to inform Plaintiff of her medical condition. Instead,
11 Defendants informed Plaintiff she had chicken pox versus informing Plaintiff of her
12 condition. A reasonable person would expect that Defendant, being a licensed physician,
13 would have informed Plaintiff of the fact that she had a 12x16 cm mass versus false and
14 fraudulently stating that it was a "small shadow."

15 50. Defendants, and each of them, intended to conceal the truth from Plaintiff.
16 Plaintiff alleges, based on information and good faith belief thereon, that Defendants
17 knowingly concealed the true nature of Plaintiff's condition from her with the hope that
18 Plaintiff would never suspect Defendants of wrongdoing.

19 51. Plaintiff reasonably relied upon Defendants' deceptions, and as a result, was
20 subjected to ineffective and improper medical treatment rendered in an untimely fashion, that
21 yielded little or no results, and further stagnated Plaintiff's receiving proper care and causing
22 further injury and suffering. As a direct and proximate result of Defendants' negligence,
23 Plaintiff has sustained monetary damages and has suffered severe pain, discomfort, anxiety,
24 physical damage, and emotional distress.

25 52. Defendants' concealment was a substantial factor in causing Plaintiff's harm,
26 as Plaintiff was subjected to ineffective and improper medical procedures and treatment
27 rendered in an untimely fashion, that yielded little or no results, and further stagnated
28

1 Plaintiff's receiving proper care, and resulting in the increasing severity and prolonging of
2 her injuries, pain, and suffering.

3 **THIRD CAUSE OF ACTION**

4 **FRAUD & DECEIT (NEGLIGENT MISREPRESENTATION)**

5 **(As Against Defendants and DOES 1 through 100, Inclusive)**

6 53. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 52 of
7 this Second Amended Complaint as if fully set forth herein.

8 54. Plaintiff specifically alleges that Defendants, and each of them, made assertions
9 and intended to induce Plaintiff's reliance regarding these assertions.

10 55. Defendants and each of them misrepresented the true facts of Plaintiffs medical
11 condition to her. Defendants, **LANCE H. BETSON, D.O., and DOES 1 through 100,**
12 **INCLUSIVE**, specifically represented to Plaintiff that she had chicken pox, such that
13 Plaintiff was reasonably led to believe her medical condition was not serious. A reasonable
14 person would expect that Defendant, being a licensed physician, would have informed
15 Plaintiff of the fact that that she had a 12x16 cm mass versus false and fraudulently stating
16 that it was a "small shadow."

17 56. Defendants had no reasonable basis to believe that the false representations
18 made by them to Plaintiff were true, based on Plaintiff's symptoms and Defendants'
19 knowledge of Plaintiff's medical history.

20 57. Defendants intended for Plaintiff to rely upon these representations. Plaintiff
21 alleges, based on information and good faith belief thereon, that Defendants concealed the
22 true nature of Plaintiff's condition to induce reliance from her with the hope that Plaintiff
23 would never suspect Defendants of wrongdoing.

24 58. Plaintiff reasonably relied upon Defendants' representations as to her
25 condition, and as a result, was subjected to ineffective and improper medical procedures and
26 treatment rendered in an untimely fashion, that yielded little or no results, and further
27 stagnated Plaintiff's receiving proper care and causing further injury and suffering.
28

1 59. As a direct and proximate result of Defendants' negligence, Plaintiff has
2 sustained monetary damages and has suffered severe pain, discomfort, anxiety, physical
3 damage, and emotional distress.

4 60. Plaintiff's reliance on Defendant's representations was a substantial factor in
5 causing Plaintiff's harm, as Plaintiff was subjected to ineffective and improper medical
6 procedures and treatment rendered in an untimely fashion that yielded little or no results, and
7 further stagnated Plaintiff's attempts to receive proper care, and resulting in the increasing
8 severity and prolonging of her injuries, pain, and suffering.

9 **WHEREFORE**, Plaintiff, **BRANDI HEWITT, an individual**, prays for judgment
10 against Defendants, **DAVID MICHAEL MOSS, MD; TIMOTHY OGAWA, MD;**
11 **LUBAVIN BORIS VLADIMIR, MD; BRUCE MICHAEL LIPTON, MD; VICKI**
12 **MCADAMS, PA; STEVEN GIORDANO, NP; JOANNE RUSSO, and DOES 1 through**
13 **50, Inclusive**, were employees or agents of Defendants, **KAISER PERMANENTE;**
14 **KAISER FOUNDATION HEALTH PLAN, INC., CALIFORNIA DIVISION-SOUTH;**
15 **KAISER PERMANENTE SOUTHERN CALIFORNIA PERMANENTE MEDICAL**
16 **GROUP, and DOES 51 through 100, Inclusive**, as follows:

- 17 1. For general damages according to proof;
18 2. For all medical and related expenses according to proof;
19 3. For all loss of earnings and loss of earning capacity according to proof;
20 4. For costs of suit incurred herein and pre-and post-judgment interest at the legal
21 rate; and
22 5. For such other and further relief as the Court may deem just and proper.

23 DATED: July 2, 2012

TELEP LAW

24
25 By: _____
26 DESIREE ANITA TELEP
27 TINA DAO
28 Attorneys for Plaintiff, BRANDI HEWITT

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