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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

KRISTINA GARDNER,

Plaintiff,

v.

ALAN INOCENTES, M.D., RUSSELL

ENOCH, D.O., SAHANA HUQ, M.D.

KAISER FOUNDATION HEALTH PLAN,

INC., KAISER FOUNDATION

HOSPITALS, SOUTHERN CALIFORNIA

PERMANENTE MEDICAL GROUP, INC.,

and JOHN DOES 1-100,

Defendants,

) Case No.: **RG13665205**

) **PLAINTIFF'S COMPLAINT**

) **FOR DAMAGES**

) **1. Medical Negligence/Wrongful Death**

COMES NOW Plaintiff Kristina Gardner ("Plaintiff"), wrongful death heir of Georgia

Ann DeRosa ("Decedent"), and files this Original Complaint for Damages complaining of

Defendants Alan Inocentes, M.D., Russell Enoch, D.O., Sahana Huq, M.D., Kaiser Foundation

BY FAX

1 Health Plan, Inc., Kaiser Foundation Hospitals, Southern California Permanente Medical
2 Group, Inc., and John Does 1-100 (collectively, the "Defendants"), and for cause of action
3 would show:

4 **PARTIES**

5 1. Plaintiff Kristina Gardner is a citizen of California and is the daughter of
6 Decedent. She brings this suit as a wrongful death heir of Decedent.

7 2. Defendant Alan Inocentes, M.D. is an individual and a citizen of California. He
8 may be served with process at 3733 San Dimas Street, Bakersfield, California 93301.

9 3. Defendant Russell Enoch, D.O. is an individual and a citizen of California. He
10 may be served with process at 4801 Coffee Road, Bakersfield, California 93308.

11 4. Defendant Sahana Huq, M.D. is an individual and a citizen of California. She
12 may be served with process at 5121 Stockdale Highway, Suite 275, Bakersfield, California
13 93309.

14 5. Kaiser Foundation Health Plan, Inc. is a corporation organized and existing
15 under the laws of California. Its principal place of business is in Alameda County, California.
16 It may be served with process by serving its registered agent, CSS – Lawyers Incorporating
17 Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California 95833.

18 6. Kaiser Foundation Hospitals is a corporation organized and existing under the
19 laws of California. Its principal place of business is in Alameda County, California. It may be
20 served with process by serving its registered agent, CSS – Lawyers Incorporating Service, 2710
21 Gateway Oaks Drive, Suite 150N, Sacramento, California 95833.

22 7. Southern California Permanente Medical Group, Inc. is a corporation organized
23 and existing under the laws of California. Its principal place of business is in Los Angeles
24 County, California. It may be served with process by serving its registered agent, Zane Gordon,
25 at 393 E. Walnut, Pasadena, California 91188.

26 8. The true names or capacities, whether individual, corporate, or otherwise, of
27 Defendants Does 1-100, inclusive, are unknown to Plaintiffs who therefore sues said
28 Defendants by such fictitious names. Plaintiff believes and alleges that each of the Defendants

1 designated herein by fictitious names is in some manner legally responsible for the events and
2 happenings herein referred to and caused damages proximately and foreseeably to Plaintiff as
3 alleged herein.

4 VENUE

5 9. Under California Code of Civil Procedure § 395, venue is proper in Alameda
6 County because one or more of the Defendants reside in Alameda County.

7 FACTS

8 10. This suit arises out of the wrongful death of Decedent, due to the wrongful
9 conduct of the Defendants.

10 11. Defendant Alan Inocentes, M.D. is a physical medicine and rehabilitation doctor.
11 He prescribed multiple medications to treat Decedent's pain including two potent, extremely
12 dangerous long-acting pain medications (a) 100 mcg fentanyl patches and (b) 60 mg/day of
13 methadone. He was aware that Decedent had multiple conditions that predisposed her to
14 hypoventilation, including, without limitation, respiratory problems and smoking. He was also
15 aware that Decedent was prescribed numerous medications that depress the central nervous
16 system and can cause respiratory depression. Dr. Inocentes was aware of these facts, but he
17 failed to take any action to reduce the number CNS depressing medications that Decedent was
18 taking even though Decedent was particularly vulnerable to hypoventilation. -

19 12. Fentanyl patches comes in various sizes such as 25, 50, 75 and 100 mcg. As
20 referenced herein, the "Patch" shall refer to fentanyl transdermal system patches. The Patch
21 contains the drug fentanyl. Fentanyl is an extremely dangerous narcotic pain medication that is
22 at least 80 times stronger than morphine. Fentanyl is central nervous system ("CNS")
23 depressant. When prescribed inappropriately—alone or in combination with other
24 medication—fentanyl can cause fatal respiratory depression.

25 13. Methadone is a long-acting narcotic medication used to treat pain. It is a CNS
26 depressant.

27 14. Defendant Russell Enoch, D.O. is an internal medicine doctor. He prescribed
28 numerous medications for Decedent, including, without limitation: (a) 50 mg/day of

1 topiramate; (b) 200 to 300 mg/day of trazodone; (c) butalbital; (d) acyclovir; (e) ibuprofen; (f)
2 lidocaine patch; (g) and lactulose. He was aware that Decedent had multiple conditions that
3 predisposed her to hypoventilation, including, without limitation, respiratory problems and
4 smoking. He was also aware that Decedent was prescribed numerous medications that depress
5 the central nervous system and can cause respiratory depression. Dr. Enoch was aware of these
6 facts, but he failed to take any action to reduce the number CNS depressing medications that
7 Decedent was taking even though Decedent was particularly vulnerable to hypoventilation.

8 15. Topiramate is an anti-convulsant, anti-epileptic medication. It is a CNS
9 depressant.

10 16. Trazodone is an antidepressant medication used to treat anxiety and induce sleep.
11 It is a CNS depressant.

12 17. Butalbital is a barbiturate used to treat pain and headaches. It is a CNS
13 depressant.

14 18. Defendant Sahana Huq, M.D. is a psychiatrist. She prescribed numerous
15 medications for Decedent, including, without limitation: (a) temazepam; (b) clonazepam; (c)
16 quetiapine (Seroquel); and (d) escitalopram (Lexapro). She was aware that Decedent had
17 multiple conditions that predisposed her to hypoventilation, including, without limitation,
18 respiratory problems and smoking. She was also aware that Decedent was prescribed numerous
19 medications that depress the central nervous system and can cause respiratory depression. Dr.
20 Huq was aware of these facts, but she failed to take any action to reduce the number CNS
21 depressing medications that Decedent was taking even though Decedent was particularly
22 vulnerable to hypoventilation.

23 19. Temazepam is a benzodiazepine medication used to treat insomnia and as a
24 skeletal muscle relaxer. It is a CNS depressant.

25 20. Clonazepam is a benzodiazepine medication used as sedative, as a skeletal
26 muscle relaxer, and to treat anxiety. It is a CNS depressant.

27 21. Quetiapine is a medication used to treat depression. It is a CNS depressant.

28 22. Escitalopram is a medication used to treat depression. It is a CNS depressant.

1 23. The companies that make the Patch prepare an FDA-approved "Package Insert"
2 that contains warning and instructions to doctors who prescribe the Patch.

3 24. The Package Insert for the Patch contains a warning to doctors stating that the
4 Patch should be used with caution in patients who are predisposed to hypoventilation. Without
5 limitation, Decedent was predisposed to hypoventilation because: (a) she was a smoker and (b)
6 she had a documented history of respiratory problems. Despite the fact that Defendants knew or
7 should have known that Decedent had these conditions and that the conditions increased
8 Decedent's risk of hypoventilation, they collectively prescribed a high dose of fentanyl,
9 methadone, and other CNS-depressing medications for Decedent.

10 25. The Package Insert for the Patch warns doctors that prescribing fentanyl patches
11 with other central nervous system ("CNS") depressants such as other narcotics and
12 benzodiazepines can cause potentially fatal respiratory depression. Despite this warning,
13 Defendants collectively prescribed a high dose of fentanyl with another narcotic (methadone),
14 two benzodiazepines (temazepam and clonazepam), and numerous other medications (listed
15 above) that depress the central nervous system.

16 26. Each of the Defendants was affiliated with the Kaiser system. Each of the
17 Defendants had access to Decedent's medical records, which included a list of the medications
18 prescribed to Decedent by other Kaiser doctors. Therefore, each of the Defendants knew or
19 should have known that Decedent had been prescribed a dangerous combination of potent CNS
20 depressants.

21 27. Decedent died on November 16, 2011, Decedent died of a mixed drug overdose,
22 which was caused by the combination of the fentanyl and the numerous other CNS depressing
23 medications that were prescribed to Decedent.

24 28. Plaintiff pleads the discovery rule as a defense to the applicable statute of
25 limitations. Plaintiff had no reason to know or suspect that Defendants' negligence caused
26 Decedent's death until less than one year before Plaintiff notified Defendants of Plaintiff's
27 intention to commence this lawsuit. Prior to that time, Plaintiff had no reason to know or
28 suspect that his injury had been wrongfully caused or that they might have a cause of action.

1 Prior to that time, Plaintiff did not have notice or information of circumstances to put a
2 reasonable person on inquiry.

3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION: NEGLIGENCE**

5 **(By Plaintiff against Alan Inocentes, M.D., Kaiser Foundation Health Plan, Inc., Kaiser**
6 **Foundation Hospitals, Southern California Permanente Medical Group, Inc.)**

7 29. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs
8 1 through 28 and makes such allegations a part hereof by reference.

9 30. Defendant Alan Inocentes, M.D. treated Decedent for pain.

10 31. Defendant Alan Inocentes, M.D. was negligent in one or more of the
11 following particulars:

- 12 a. In prescribing fentanyl and methadone for Decedent (with the knowledge
13 that numerous additional CNS depressants had been prescribed for
14 Decedent by other Kaiser doctors) despite Decedent's history of smoking
15 and chronic breathing problems that increased the risk that the
16 combination of drugs would cause respiratory depression and death;
- 17 b. In prescribing Decedent fentanyl and methadone, two long-acting
18 opioids, concominantly;
- 19 c. In prescribing Decedent fentanyl and methadone concominantly with the
20 knowledge that numerous other medications had been prescribed for
21 Decedent that depress the central nervous system and increased the risk
22 that the medications would cause respiratory depression and death;
- 23 d. In using a combination of strong medicines in excessive doses to cause
24 respiratory depression and death;
- 25 e. In failing to eliminate or reduce the number of CNS depressants that
26 Decedent was prescribed even though the combination of respiratory
27 depressants increased Decedent's risk of fatal respiratory depression;
28

- 1 f. In failing to eliminate or reduce the number of CNS depressants that
2 Decedent was prescribed even though he knew that Decedent had
3 multiple conditions (e.g., history of smoking and respiratory problems)
4 that predisposed Decedent to hypoventilation while taking this
5 combination of medications.
- 6 g. In not properly monitoring Decedent;
7 h. In not properly warning and instructing Decedent; and
8 i. In prescribing fentanyl and methadone for Decedent without adequate
9 knowledge of the drugs.

10 32. Defendant Alan Inocententes, M.D. was an employee, agent, and/or principal of
11 Defendants Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, and/or Southern
12 California Permanente Medical Group, Inc. (the "Kaiser Defendants") and was acting as such
13 when he failed to provide reasonable care to Decedent. Therefore, the Kaiser Defendants are
14 liable for the actions of Defendant Alan Inocententes, M.D. under theories of agency, vicarious
15 liability, respondeat superior, and corporate liability.

16 33. The Kaiser Defendants employ the services of physicians and hold them out and
17 warrant them to the public to be competent, careful, and experienced in the care and treatment
18 of patients.

19 34. The Kaiser Defendants had a non-delegable duty to provide proper care and
20 treatment to patients. The Kaiser Defendants breached that duty in the care they provided to
21 Decedent.

22 35. Each of the foregoing acts or omissions, singularly or in combination with others,
23 constituted negligence, and was a legal cause of Decedent's wrongful death and Plaintiff's
24 damages.

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1 **SECOND CAUSE OF ACTION: NEGLIGENCE**

2 **(By Plaintiff against Russell Enoch, D.O., Kaiser Foundation Health Plan, Inc., Kaiser**
3 **Foundation Hospitals, Southern California Permanente Medical Group, Inc.)**

4 36. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs
5 1 through 33 and makes such allegations a part hereof by reference.

6 37. Defendant Russell Enoch, D.O. was Decedent's primary care doctor.

7 38. Defendant Russell Enoch, D.O. was negligent in one or more of the following
8 particulars:

- 9 a. In prescribing topiramate, trazodone, and butalbital for Decedent (with
10 the knowledge that numerous additional CNS depressants had been
11 prescribed for Decedent by other Kaiser doctors) despite Decedent's
12 history of smoking and chronic breathing problems that increased the risk
13 that the combination of drugs would cause respiratory depression and
14 death;
- 15 b. In prescribing Decedent topiramate, trazodone, and butalbital
16 concominantly with the knowledge that numerous other medications had
17 been prescribed for Decedent that depress the central nervous system and
18 increased the risk that the medications would cause respiratory depression
19 and death;
- 20 c. In using a combination of strong medicines in excessive doses to cause
21 respiratory depression and death;
- 22 d. In failing to eliminate or reduce the number of CNS depressants that
23 Decedent was prescribed even though the combination of respiratory
24 depressants increased Decedent's risk of fatal respiratory depression;
- 25 e. In failing to eliminate or reduce the number of CNS depressants that
26 Decedent was prescribed even though he knew that Decedent had
27 multiple conditions (e.g., history of smoking and respiratory problems)
28

1 that predisposed Decedent to hypoventilation while taking this
2 combination of medications.

- 3 f. In not properly monitoring Decedent;
4 g. In not properly warning and instructing Decedent; and
5 h. In prescribing topiramate, trazodone, and butalbital for Decedent without
6 adequate knowledge of the drugs.

7 39. Defendant Russell Enoch, D.O. was an employee, agent, and/or principal of the
8 Kaiser Defendants and was acting as such when he failed to provide reasonable care to
9 Decedent. Therefore, the Kaiser Defendants are liable for the actions of Defendant Russell
10 Enoch, D.O. under theories of agency, vicarious liability, respondeat superior, and corporate
11 liability.

12 40. The Kaiser Defendants employ the services of physicians and hold them out and
13 warrant them to the public to be competent, careful, and experienced in the care and treatment
14 of patients.

15 41. The Kaiser Defendants had a non-delegable duty to provide proper care and
16 treatment to patients. The Kaiser Defendants breached that duty in the care they provided to
17 Decedent.

18 42. Each of the foregoing acts or omissions, singularly or in combination with others,
19 constituted negligence, and was a legal cause of Decedent's wrongful death and Plaintiffs'
20 damages.

21 **THIRD CAUSE OF ACTION: NEGLIGENCE**

22 **(By Plaintiff against Sahana Huq, M.D., Kaiser Foundation Health Plan, Inc., Kaiser**
23 **Foundation Hospitals, Southern California Permanente Medical Group, Inc.)**

24 43. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs
25 1 through 37 and makes such allegations a part hereof by reference.

26 44. Defendant Sahana Huq, M.D. is a psychiatrist who treated Decedent:

27 45. Defendant Sahana Huq, M.D. was negligent in one or more of the following
28 particulars:

- a. In prescribing temazepam, clonazepam, quetiapine, and escitalopram for Decedent (with the knowledge that numerous additional CNS depressants had been prescribed for Decedent by other Kaiser doctors) despite Decedent's history of smoking and chronic breathing problems that increased the risk that the combination of drugs would cause respiratory depression and death;
- b. In prescribing Decedent temazepam, clonazepam, quetiapine, and escitalopram concominantly with the knowledge that numerous other medications had been prescribed for Decedent that depress the central nervous system and increased the risk that the medications would cause respiratory depression and death;
- c. In using a combination of strong medicines in excessive doses to cause respiratory depression and death;
- d. In failing to eliminate or reduce the number of CNS depressants that Decedent was prescribed even though the combination of respiratory depressants increased Decedent's risk of fatal respiratory depression;
- e. In failing to eliminate or reduce the number of CNS depressants that Decedent was prescribed even though he knew that Decedent had multiple conditions (e.g., history of smoking and respiratory problems) that predisposed Decedent to hypoventilation while taking this combination of medications.
- f. In not properly monitoring Decedent;
- g. In not properly warning and instructing Decedent; and
- h. In prescribing temazepam, clonazepam, quetiapine, and escitalopram for Decedent without adequate knowledge of the drugs.

46. Defendant Sahana Huq, M.D. was an employee, agent, and/or principal of the Kaiser Defendants and was acting as such when she failed to provide reasonable care to Decedent. Therefore, Defendant the Kaiser Defendants are liable for the actions of Defendant

1 Sahana Huq, M.D. under theories of agency, vicarious liability, respondeat superior, and
2 corporate liability.

3 47. The Kaiser Defendants employ the services of physicians and hold them out and
4 warrant them to the public to be competent, careful, and experienced in the care and treatment
5 of patients.

6 48. The Kaiser Defendants had a non-delegable duty to provide proper care and
7 treatment to patients. The Kaiser Defendants breached that duty in the care they provided to
8 Decedent.

9 49. Each of the foregoing acts or omissions, singularly or in combination with others,
10 constituted negligence, and was a legal cause of Decedent's wrongful death and Plaintiffs'
11 damages.

12 DAMAGES

13 50. The unlawful acts and practices described above are and were a legal cause of
14 Decedent's injuries and death. Plaintiff is Decedent's wrongful death heir at law. The
15 following damages are sought, past and future where applicable: loss of love; affection; society;
16 companionship; economic loss; support; right of support; expectation of future support;
17 counseling; solace; and moral support in a general amount that will be stated according to proof.
18 In addition, Plaintiff is seeking all actual damages allowed by law caused by the Defendants'
19 negligence and their wrongful acts and/or omissions alleged herein.

20 WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them:

- 21 1. General damages in an amount in excess of the minimum jurisdictional limits of
22 this court;
- 23 2. For funeral, burial, and memorial expenses according to proof at the time of trial,
24 together with interest on all such amounts;
- 25 3. For loss of support, according to proof;
- 26 4. For prejudgment interest and post-judgment interest until paid;
- 27 5. For costs of suit incurred herein; and
- 28 6. For such other and further relief as this Court may deem just and proper.

CHARLES W. MILLER,

By: 

CHARLES W. MILLER

Attorneys for Plaintiff

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DATED: 1-28-13

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury.

DATED: 1-28-13

HEYGOOD ORR & PEARSON

By: 

CHARLES W. MILLER