

ORIGINAL

SCANNED

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

MAR 13 2013

BY Ebony Shaw
EBONY SHAW, DEPUTY

10 Attorneys for Plaintiffs,
11 COURTNEY CHEEK, an incompetent adult, by
12 and through her guardian ad litem, Daniel
13 O'Donnell and DANIEL O'DONNELL

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SAN BERNARDINO

16 COURTNEY CHEEK, an incompetent adult, by
17 and through her guardian ad litem, Daniel
18 O'Donnell and DANIEL O'DONNELL,

Case No. CIVDS1302543

19 Plaintiffs,

COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL

20 vs.

21 KAISER FOUNDATION HOSPITALS;
22 KAISER FOUNDATION HEALTH PLAN,
23 INC.; SOUTHERN CALIFORNIA
24 PERMANENTE MEDICAL GROUP and DOES
25 1 through 300, inclusive,

26 Defendants.

27 I.

GENERAL ALLEGATIONS

28 1. The true names, identities or capacities, whether individual, associate, corporate or otherwise of Defendants DOES 1 through 300, inclusive, are unknown to Plaintiffs who, therefore, sue said Defendants by such fictitious names. When the true names, identities or capacities of such fictitiously-designated Defendants are ascertained, Plaintiffs will ask leave of Court to amend the Complaint to insert said true names, identities and capacities, together with the proper charging allegations.

2. Plaintiffs are informed and believe and thereon allege that each of the Defendants sued herein as a DOE is responsible in some manner for the events and happenings herein referred to, thereby legally causing the injuries and damages to the Plaintiffs as herein alleged.

3. All of the facts, acts, events and circumstances herein mentioned and described occurred in the County of San Bernardino, State of California, and all Defendants are residents of the County of San Bernardino, State of California, and/or doing business in said County, State of California.

4. At all times herein mentioned, Defendants DOES 1 through 100 inclusive, were, and now are, physicians and/or surgeons; holding themselves out as duly licensed to practice their profession under and by virtue of the laws of the State of California and were, and now are, engaged in the practice of their profession in the State of California. At all times herein mentioned Defendants, and DOES 1 through 100 inclusive, acted as agents, ostensible agents, employees and/or servants of some or all of the other Defendants, acting within the course and scope of their agency and/or employment.

5. At all times herein mentioned, Defendants DOES 101 through 150, inclusive, were, and now are, registered nurses, licensed vocational nurses, practical nurses, aids, technicians, attendants, students or other paramedical personnel, holding themselves out as duly able to practice their profession under and by virtue of the laws of the State of California and were, and now are, engaged in the practice of their profession in the State of California and acting as agents, ostensible agents, employees and servants of some or all of the other Defendants within the course and scope of said agency or employment. At all times herein mentioned Defendant DOES 101 through 150 inclusive, acted as agents, ostensible agents, employees and/or servants of some or all of the other Defendants, acting within the course and scope of their agency and/or employment.

6. At all times herein mentioned, Defendant DOES 151 through 200, inclusive, were corporations, partnerships, joint ventures, or other entities organized and existing under the laws of the State of California, with their principal place of business situated in the State of California. All of the acts complained of herein by Plaintiffs against said Defendants were done and performed by said Defendants by and through their duly authorized agents, ostensible agents, servants and

1 employees, each of whom and all of whom were at all times mentioned herein acting within the
2 course, purpose, and scope of their said agency, service and employment, and whose conduct was
3 ratified by all Defendants, and each of them. Further, each Defendant ratified and affirmed the
4 conduct of each other Defendant. Each of the Defendants was the agent, ostensible agent, servant,
5 and/or employee of the other Defendants.

6 7. At all times herein mentioned Defendants KAISER FOUNDATION HOSPITALS; KAISER
7 FOUNDATION HEALTH PLAN, INC.; SOUTHERN CALIFORNIA PERMANENTE MEDICAL
8 GROUP and DOES 201 through 250, inclusive, were at all times herein mentioned duly organized
9 California corporations, medical groups, clinics, hospitals or other medical facility existing under
10 and by virtue of the laws of the State of California; that said Defendant corporations, medical
11 groups, clinics, hospitals or other medical facility and the remaining Defendants, and each of them,
12 owned, operated, managed and controlled a general hospital facility, medical group, clinic or other
13 medical facility within the County of San Bernardino, State of California, held out to the public at
14 large and to the Plaintiffs herein; as properly equipped, fully accredited, competently staffed by
15 qualified and prudent personnel and operating in compliance with the standard of due care
16 maintained in other properly equipped, efficiently operated and administered, accredited hospital
17 facility, medical group, clinic or other medical facility in said community. All of the acts complained
18 of herein by Plaintiffs against said Defendants were done and performed by said Defendants by and
19 through their duly authorized agents, ostensible agents, servants and employees, each of whom and
20 all of whom were at all times mentioned herein acting within the course, purpose, and scope of their
21 said agency, service and employment, and whose conduct was ratified by all Defendants, and each of
22 them. Further, each Defendant ratified and affirmed the conduct of each other Defendant. Each of
23 the Defendants was the agent, ostensible agent, servant, and/or employee of the other Defendants.

24 8. Defendants KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION
25 HEALTH PLAN, INC.; SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP and
26 DOES 201 through 300, inclusive, at all times herein mentioned were institutions or controlled
27 institutions, duly accredited by the Joint Commission on Hospital Accreditation, and assumed and
28 held themselves out to the public as in compliance with the minimum standards required by said

1 Joint Commission for such accreditation.

2 9. Plaintiffs are informed and believe, and upon such information and belief allege that
3 at all times herein mentioned, Defendants and other Defendants named fictitiously, were the agents,
4 ostensible agents, servants, employees, joint-venture, and co-partners of their said co-Defendants
5 and, as such, were acting within the course and scope of such agency, service, partnership, venture,
6 and employment at all times herein mentioned; that each and every Defendant, as aforesaid, when
7 acting as a principal, was negligent in the selection and hiring of each and every other Defendant, as
8 its agent, ostensible agent, servant, employee, joint-venture and partner. Further, each and every
9 Defendant ratified the conduct of the other Defendants.

10 10. Plaintiffs are informed and believe that at the time of judgment they will be entitled to
11 prejudgment interest because the Defendants will have rejected an offer pursuant to the terms of
12 Code of Civil Procedure section 998 and will have failed to obtain a more favorable judgment.

13 11. On or about December 6, 2012, Notices prepared pursuant to Code of Civil Procedure
14 §364 were timely served on Defendants KAISER FOUNDATION HOSPITALS; KAISER
15 FOUNDATION HEALTH PLAN, INC.; SOUTHERN CALIFORNIA PERMANENTE MEDICAL
16 GROUP thereby extending by ninety (90) days the time in which to timely file this instant action.

17 12. Plaintiffs are informed and believe, and upon such information and belief allege that
18 at all times herein mentioned, that due to the negligent care and treatment rendered by Defendants
19 KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.;
20 SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP and DOES 1 THROUGH 300,
21 Plaintiffs, COURTNEY CHEEK, an incompetent adult, by and through her guardian ad litem,
22 Daniel O'Donnell and DANIEL O'DONNELL, sustained damages caused by said Defendants', and
23 each of them, by their the failure to diagnose and treat COURTNEY CHEEK's signs and symptoms,
24 including but not limited to, vasculitis and other conditions, leading to a stroke, causing Plaintiff
25 COURTNEY CHEEK to undergo unnecessary medical procedures, further unnecessary testing and
26 sustain significant damage to both Plaintiffs. Plaintiffs first learned of Defendants' and each of their
27 negligence, on or after December 14, 2011.

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II.

PLAINTIFF, COURTNEY CHEEK, an incompetent adult, by and through her guardian ad litem, Daniel O'Donnell, ALLEGES A CAUSE OF ACTION FOR MEDICAL NEGLIGENCE AGAINST DEFENDANTS KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.; SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP AND DOES 1 THROUGH 300, INCLUSIVE

13. Plaintiffs repeat and replead each and every allegation contained in all prior paragraphs and incorporate the same herein by reference as to Defendants KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.; SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP and DOES 1 through 300 and each of them as follows.

14. Prior to December 14, 2011, COURTNEY CHEEK, employed Defendants, and each of them, to diagnose and treat her conditions including, but not limited to diagnosis and treatment of vasculitis and other conditions, leading to a stroke, and to do all things necessary for her care.

15. Prior to December 14, 2011, and at all times mentioned herein, COURTNEY CHEEK was placed in and remained under the sole and exclusive care and control of Defendants, and each of them, for the purpose of receiving medical, surgical, hospital, diagnostic, nursing and other care.

16. While Plaintiff COURTNEY CHEEK was under the sole and exclusive care and control of the Defendants, and each of them, Defendants, and each of them, negligently failed to possess and exercise that degree of skill and knowledge ordinarily possessed and exercised by other physicians and surgeons, hospitals, nurses, technicians, attendants and the like engaged in said professions in the same locality as Defendants, and each of them, and Defendants, and each of them, negligently, carelessly and unskillfully delivered, examined, treated, cared for, diagnosed, operated upon, attended and otherwise handled and controlled the Plaintiff, COURTNEY CHEEK herein, thereby proximately causing injuries and damages to Plaintiff by failing to timely diagnose and treat vasculitis and other conditions, leading to a stroke. Plaintiffs did not discover this negligence until on or about December 14, 2011.

17. Defendants neglected to adequately select a competent medical staff and to periodically review the competency of its medical staff and failed to adequately monitor its staff

1 such that the Plaintiff was caused to, and did suffer damages.

2 18. At all times herein mentioned when the Plaintiff was in the exclusive control of the
3 Defendants, and each of them, at no time prior to the events, conduct, activities, care and treatment
4 herein complained of did the Defendants herein, any of them, obtain knowledge, informed consent
5 for said care, treatment or conduct. Prior to the initiation of or performance of said care, treatment,
6 procedure or conduct no opportunity was afforded the Plaintiff or any authorized agent of the
7 Plaintiff to exercise voluntary, knowledgeable and informed consent to said care, treatment,
8 procedure or conduct.

9 19. As a legal result of the negligence of the Defendants, and each of them, Plaintiff was
10 injured in health, strength and activity, sustaining severe shock, disfigurement and injury to the
11 body, all of which said injuries have caused and continue to cause Plaintiff great physical, emotional,
12 and nervous pain and suffering, and which said injuries Plaintiff is informed and believe, and
13 thereon allege, will result in loss of earnings, permanent disability, loss of enjoyment of life, and
14 impairment of earning capacity all to Plaintiff's damage in a sum in excess of the jurisdiction of the
15 Municipal Court.

16 20. As a further legal result of the negligence of the Defendants, and each of them, and
17 the resulting injuries to the Plaintiff, said Plaintiff was compelled to, and did, incur expenses for
18 medical and surgical attention, hospitalization, nursing, medication and incidentals for said Plaintiff
19 in an amount unknown to Plaintiffs at present.

20 21. As a further legal result of the negligence of the Defendants, and each of them, and of
21 the resulting injuries, Plaintiff COURTNEY CHEEK will be obliged to incur expenses for medical
22 care and hospitalization for an indefinite period in the future and to pay for these expenses in the
23 treatment and relief of injuries for medical and surgical attention, hospitalization, nursing,
24 medication, and incidentals for said Plaintiff in an amount unknown to Plaintiffs at present.

25 22. As a further legal result of the negligence of the Defendants, and each of them,
26 Plaintiffs will suffer a decreased earning capacity in the future and future earnings to Plaintiffs'
27 further damage in a sum unknown at present.

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III.

**PLAINTIFF, DANIEL O'DONNELL, ALLEGES A CAUSE OF ACTION FOR LOSS OF
CONSORTIUM AGAINST DEFENDANTS KAISER FOUNDATION HOSPITALS; KAISER
FOUNDATION HEALTH PLAN, INC.; SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP AND DOES 1 THROUGH 300, INCLUSIVE**

23. Plaintiffs plead each and every allegation contained in all prior paragraphs and incorporate the same herein by reference as to Defendants and each of them as follows.

24. At all times herein mentioned, COURTNEY CHEEK and DANIEL O'DONNELL are married and are husband and wife.

25. As a direct and proximate result of the aforesaid conduct of Defendants, and each of them, and the resultant injuries to Plaintiff, COURTNEY CHEEK, Plaintiff, DANIEL O'DONNELL, suffered and is reasonably certain to suffer in the future the loss of love, companionship, comfort, affection, society, solace, moral support, enjoyment of sexual relations, enjoyment of life, and physical assistance in the operation and maintenance of the home, loss of financial support all to their damage in a sum in excess of the jurisdiction of the Municipal Court.

WHEREFORE, Plaintiffs pray for damages against the Defendants, and each of them, as follows:

FOR THE FIRST CAUSE OF ACTION FOR MEDICAL NEGLIGENCE FOR COURTNEY CHEEK:

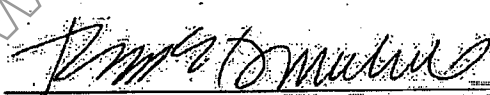
1. General damages, according to proof;
2. Past and future medical expenses, according to proof;
3. For loss of past and future earning and future earning capacity, according to proof;
4. Prejudgment interest;
5. Costs of suit incurred herein, and
6. For such other and further relief as to the Court appears just and proper.

1 FOR THE SECOND CAUSE OF ACTION FOR LOSS OF CONSORTIUM FOR
2 PLAINTIFF DANIEL O'DONNELL:

- 3 1. General damages, according to proof;
4 2. Past and future medical expenses, according to proof;
5 3. For loss of financial support and home services, according to proof;
6 4. Prejudgment interest;
7 5. Costs of suit incurred herein, and
8 6. For such other and further relief as to the Court appears just and proper.
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10 DATED: March 12, 2013

DONAHUE & HORROW, LLP

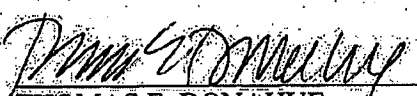
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12 
13 THOMAS E. DONAHUE
14 NICHOLE D. PODGURSKI
15 Attorneys for Plaintiffs, COURTNEY CHEEK,
16 an incompetent adult, by and through her
17 guardian ad litem, Daniel O'Donnell and
18 DANIEL O'DONNELL

19 JURY DEMAND

20 Plaintiffs, COURTNEY CHEEK, an incompetent adult, by and through her guardian ad
21 litem, Daniel O'Donnell and DANIEL O'DONNELL, hereby demand a jury trial in this action.

22 DATED: March 12, 2013

DONAHUE & HORROW, LLP

23
24 
25 THOMAS E. DONAHUE
26 NICHOLE D. PODGURSKI
27 Attorneys for Plaintiffs, COURTNEY CHEEK,
28 an incompetent adult, by and through her
guardian ad litem, Daniel O'Donnell and
DANIEL O'DONNELL