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**FILED**  
ALAMEDA COUNTY

**JUN 24 2013**

CLERK OF THE SUPERIOR COURT

By *Relpino Sungen*

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF ALAMEDA, UNLIMITED JURISDICTION**

DAWN GARIBAY, an individual,,

Plaintiff,

vs.

KAISER FOUNDATION HEALTH PLAN,  
INC.; KAISER FOUNDATION HOSPITALS;  
NORTHERN CALIFORNIA PERMANENTE  
MEDICAL GROUP; and DOES 1 through  
50, inclusive,

Defendants.

Case No. **RG13684946**

COMPLAINT FOR:

1. NEGLIGENCE
2. BREACH OF FIDUCIARY DUTY
3. FRAUDULENT CONCEALMENT
4. CONSTRUCTIVE FRAUD
5. MEDICAL BATTERY
6. NEGLIGENT INFLICTION OF  
EMOTIONAL DISTRESS

DEMAND FOR JURY TRIAL

In this complaint the term "DEFENDANTS" includes all Defendants, including DOES.

INTRODUCTION

PLAINTIFF DAWN GARIBAY underwent multiple operations and medical procedures at, by and through DEFENDANTS Kaiser Foundation Hospitals, Northern California Permanente Medical Group, and under the control of Kaiser Foundation Health Plan Inc., from June through September 2012 and beyond all of which caused or contributed to PLAINTIFF 's being left in pain and without control of her urinary functions.

DEFENDANTS' actions require that DEFENDANTS compensate PLAINTIFF for her injuries, and also require that exemplary damages be assessed against DEFENDANTS.

PARTIES

1. PLAINTIFF DAWN GARIBAY ("PLAINTIFF ") is an individual residing in the city of Antioch, California.

2. PLAINTIFF is informed and believes and thereupon alleges that DEFENDANT Kaiser Foundation Health Plan, Inc. is a corporation or business entity of unknown form, doing business in the County of Alameda, California, which is the location wher the injuries, and damages occurred.

3. DEFENDANT Kaiser Foundation Hospitals is a corporation or business entity of unknown form, doing business in the County of Alameda, California.

4. DEFENDANTS Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, Northern California Permanente Medical Group, and DOES 1 through 5 are herein collectively referred to as "KAISER."

5. Defendant unknown treaters are individuals who upon information and belief are licensed as physicians and other health care professionals in the State of California and do business in the County

1 of Alameda at the facility owned and operated by KAISER at Antioch, Pleasanton and other  
2 facilities in California

3 6. PLAINTIFF is ignorant of the names and capacities of DOES 1 through 50 and sues them as  
4 DOES 1 through 50, inclusive. PLAINTIFF will amend this action to allege these DOE  
5 DEFENDANTS' names and capacities when ascertained. Each of the DEFENDANTS herein is  
6 responsible in some manner for the occurrences, injuries, and damages herein, and that the damages  
7 were directly and proximately caused by these DEFENDANTS' acts and omissions. Each  
8 DEFENDANT herein was the agent of each of the remaining DEFENDANTS, and in doing the  
9 things alleged herein were acting within the course and scope of their agency.  
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### 13 FACTS

14 7. In the months of June, July, August and September and thereafter in 2012 PLAINTIFF  
15 was a Kaiser Hospital patient who sought treatment at Kaiser Hospital and from that treatment  
16 suffered a series of injuries at Kaiser Hospital because of the improper medical treatment that  
17 she received. This improper treatment included procedures and medical steps that caused the  
18 loss of control of her urinary functions to the extent that PLAINTIFF was unable to hold her  
19 urine and had urine leaking out through her vagina. These problems included improper surgical  
20 treatment of fibroids and the disruption of the urinary tract and the damage to the bladder and  
21 interference with the proper functioning of the bladder resulting from multiple treatments of the  
22 urinary issues in such a substandard fashion that the PLAINTIFF experienced pain and  
23 bleeding from her urethra and in the course of voiding urine. The PLAINTIFF was mistreated  
24 and misdiagnosed, and was not informed of the correct diagnosis; was not given the correct  
25 treatment; was handed off to multiple treaters at DEFENDANTS Kaiser and suffered repeated  
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1 mistreatments and missteps thereafter, including the incorrect insertion of catheters such that  
2 they fell out and including the insertion of a catheter in such a fashion as to cause days of  
3 severe pain, bleeding and discharge. As a Kaiser patient PLAINTIFF was provided with her  
4 primary care physicians and specialty care physician as and other health care providers through  
5 the DEFENDANTS and each of them at Kaiser.  
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7 FIRST CAUSE OF ACTION

8 (Negligence v. all DEFENDANTS)  
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10 8. PLAINTIFF re-alleges and incorporates by reference all previous allegations.  
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12 9. By virtue of the foresaid, DEFENDANTS owed a duty of ordinary care to PLAINTIFF, to use  
13 the degree of care and skill that a reasonable prudent person would use.

14 10. In the case of unknown physicians and unknown Kaiser health care treaters, as well as the known  
15 DEFENDANTS Kaiser, DEFENDANTS are required to use that degree of care that a reasonably prudent  
16 physician or health care treater would owe given his or her knowledge, training, expertise, and skill.  
17 DEFENDANTS breached the aforesaid duties of care.  
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19 11. As a direct and legal result of the foresaid, PLAINTIFF sustained injuries.

20 12. As a further direct and legal result of the foresaid, PLAINTIFF sustained lost income and other  
21 damages in a sum according to proof at trial.  
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23 SECOND CAUSE OF ACTION

24 (Breach of Fiduciary Duty v. all DEFENDANTS)  
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26 13. PLAINTIFF re-alleges and incorporates by reference all previous allegations.

27 14. By virtue of their "healthcare provider-patient" relationship, DEFENDANTS had a fiduciary  
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1 duty to PLAINTIFF to act with the utmost good faith and in his best interests.

2 15. DEFENDANTS breached their fiduciary duty to PLAINTIFF in the ways set forth above.

3 16. By virtue of the aforesaid, DEFENDANTS acted recklessly, oppressively, and  
4 intentionally in breach of their duties as healthcare providers.

5 17. As a direct and legal result of the aforesaid, PLAINTIFF was injured.

6 18. By virtue of the aforesaid, DEFENDANTS acted despicably and with recklessness,  
7 oppression, and malice, and punitive damages should be assessed for that reason.  
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9 THIRD CAUSE OF ACTION

10 (Fraudulent Concealment v. all DEFENDANTS)  
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13 19. PLAINTIFF re-alleges and incorporates by reference all previous allegations.

14 20. DEFENDANTS and each of them had the duty to disclose to Plaintiff the nature and extent of  
15 her injuries and the nature and extent of the medical conditions and maladies caused by the missteps of the  
16 treaters at Kaiser and to do so to assist PLAINTIFF in getting the proper care needed to cure her of the  
17 injuries and maladies that DEFENDANTS had caused. DEFENDANTS, by virtue of their fiduciary  
18 relationship to PLAINTIFF as a healthcare provider to a patient, had a duty to reveal to plaintiff that she  
19 had been damaged by the invasive procedures and that the substandard care given to PLAINTIFF and  
20 further damaged by the failure to disclose the injuries to the urinary system and the bladder such that  
21 without disclosure PLAINTIFF'S condition deteriorated and that each successive operation and procedure  
22 exacerbated her injuries  
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25 21. None of these facts were disclosed to PLAINTIFF, and they remained concealed from  
26 PLAINTIFF until approximately July 14, 2013 or later.

27 22. All DEFENDANTS, and each of them individually and collectively, had the duty to disclose  
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1 these facts to PLAINTIFF; Each had the opportunity to do so. All DEFENDANTS, and each of them, but  
2 failed to do so.

3 23. The failure to make these said disclosures was the result of reckless, inexcusable, and dereliction  
4 of duty on the part of DEFENDANTS in harming the urinary tract and bladder of PLAINTIFF and in  
5 concealing the true nature and extent of the harm such that PLAINTIFF would not pursue a claim for  
6 damages.  
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8 24. PLAINTIFF built a level of trust with the DEFENDANTS and believed DEFENDANTS.

9 25. PLAINTIFF relied on the assumed good faith of DEFENDANTS, and as a direct and proximate  
10 result of said reliance, PLAINTIFF failed to receive proper care and treatment.  
11

12 26. DEFENDANTS also, by and through PLAINTIFF, failed to provide informed consent to the  
13 purpose of said operations, which was to conceal DEFENDANTS' liability.

14 27. As a direct and legal result PLAINTIFF suffered injuries.

15 28. By virtue of the foresaid, DEFENDANTS and each of them have acted with fraud and an award of  
16 general damages for PLAINTIFF'S pain and suffering under the provisions of Welf. & Inst Code §15657,  
17 and as assessment of punitive damages in a sum according to proof at trial, is justified and appropriate.  
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19 29. In addition, DEFENDANTS acted despicably and with recklessness, oppression, and malice,  
20 and punitive damages should be assessed for that reason.  
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#### 22 FOURTH CAUSE OF ACTION

23 (Constructive Fraud v. all DEFENDANTS)

24 30. PLAINTIFF re-alleges and incorporates by reference all previous allegations.

25 31. By virtue of their "healthcare provider/patient relationship" with PLAINTIFF, DEFENDANTS  
26 and each of them owed a fiduciary duty to PLAINTIFF to disclose the facts set forth as above.  
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1 32. DEFENDANTS intentionally breached the aforesaid fiduciary duty to disclose the following  
2 information to PLAINTIFF.

3 33. Said breaches were financially motivated and intentional, and directly and legally resulted in  
4 PLAINTIFF'S injuries.

5 34. By virtue of the foresaid, DEFENDANTS and each of them have acted with fraud and an award of  
6 general damages for PLAINTIFF'S pain and suffering under the provisions of Welf. & Inst Code  
7 §15657, and as assessment of punitive damages in a sum according to proof at trial, is justified  
8 and appropriate. In addition, DEFENDANTS acted despicably and with recklessness,  
9 oppression, and malice, and punitive damages should be assessed for that reason.  
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13 FIFTH CAUSE OF ACTION

14 (Medical Battery v. all DEFENDANTS )

15 35. PLAINTIFF re-alleges and incorporates by reference all previous allegations.

16 36. DEFENDANTS and the unknown health care providers at Kaiser committed medical battery by  
17 operating and performing procedures on PLAINTIFF without her informed consent to the purpose of the  
18 procedure, which was to conceal continuing injuries to PLAINTIFF arising out of KAISERS'S negligent  
19 and wrongful actions.  
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21 37. As a direct and legal result of the foregoing, PLAINTIFF suffered injuries.  
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24 SIXTH CAUSE OF ACTION

25 (Negligent Infliction Of Emotional Distress v. all DEFENDANTS)

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27 38. PLAINTIFF re-alleges and incorporates by reference all previous allegations.  
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1 39. DEFENDANTS, and each of them engaged in negligent conduct causing serious  
2 emotional distress to PLAINTIFF.

3 40. DEFENDANTS acted negligently without regard for the probability of causing emotion  
4 distress to PLAINTIFF.

5 41. PLAINTIFF suffered physical damage and serious emotional distress arising from the  
6 physical damage caused by DEFENDANTS.

7 42. Defendants' negligence was a substantial factor in causing and the proximate cause of  
8 PLAINTIFF 's serious emotional distress.

9 43. DEFENDANTS and DOES 1-50 and each of them are liable under law for the damages  
10 arising from the acts of DEFENDANTS.

11 44. Wherefore PLAINTIFF prays for relief as set forth below.

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15 DEMAND FOR JURY TRIAL

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17 PLAINTIFF requests that this matter be tried before a jury.

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20 PRAYER

21 THEREFORE, PLAINTIFF prays for judgment against DEFENDANTS, and each of them, as  
22 follows:

23 a) For general and special damages according to proof.

24 b) For punitive damages according to proof.

25 c) For attorneys fees, unilaterally to PLAINTIFF.

26 d) For costs of suit, including expert costs.



e) For such other and further relief as the court deems just and proper.

DATE: June 22, 2013



ROBERT C. CHEASTY

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