

Superior Court of California

County of Orange



Case Number : 30-2014-00700375-CU-MM-CJC

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Superior Court of California,
County of Orange

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Clerk of the Superior Court
By Diana Cuevas, Deputy Clerk

Attorney for Plaintiff Terri Patton

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

TERRI PATTON,

Plaintiff,

vs.

KAISER FOUNDATION HEALTH PLAN,
INC.; SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP;
STEVEN MANMANG MA, EDWARD HAN-
TIN YIAN, DAVID SZU-HONG LIU, JAMES
PATRICK MURPHY, and Does 1 – 50,
inclusive

Defendants.

) Case No.:

30-2014-00700375-CU-MM-CJC

) Judge Frederick P. Aguime

) **COMPLAINT FOR DAMAGES**

-) 1. Willful Misconduct
) 2. Negligence
) 3. Fraudulent Concealment
) 4. Constructive Fraud
) 5. Breach of Fiduciary Duty
) 6. Medical Battery
) 7. Lack of Informed Consent

) **DEMAND FOR JURY TRIAL**

For causes of Action, Plaintiff states as follows:

I. INTRODUCTORY ALLEGATIONS

1. Plaintiff Terri Patton is and at all times herein was a resident of the County of Orange, State of California.

2. Defendant Kaiser Foundation Health Plan, Inc. is a corporation or other business entity of unknown form, doing business at 3440 East La Palma Avenue, Anaheim, County of Orange, State of California.

1 3. Defendant Southern California Permanente Group is a corporation or other
2 business entity doing business at 3440 East La Palma Avenue, Anaheim, County of Orange,
3 State of California.

4 4. Defendants Kaiser Foundation Health Plan, Inc., and Southern California
5 Permanente Medical Group, and Does 1 – 10 are herein collectively referred to as “KAISER”.

6 5. Defendant Steven Manmang Ma is an individual who upon information and belief
7 is licensed as a physician in the State of California and does business in the County of Orange,
8 State of California.

9 6. Defendant Edward Han-Tin Yian is an individual who upon information and
10 belief is licensed as a physician in the State of California and does business in the County of
11 Orange, State of California.

12 7. Defendant David Szu-hong Liu is an individual who upon information and belief
13 is licensed as a physician in the State of California and does business in the County of Orange,
14 State of California.

15 8. Defendant James Patrick Murphy is an individual who upon information and
16 belief is licensed as a physician in the State of California and does business in the County of
17 Orange, State of California.

18 9. Plaintiff is ignorant of the names and capacities of DOES 1 thru 50 and
19 accordingly sues them as DOES 1 – 50 inclusive. Plaintiff will amend this action to allege these
20 Doe Defendants’ names and capacities as soon as ascertained. Each of the defendants herein is
21 responsible in some manner for the occurrences, injuries, and damages herein, and said damages
22 were directly and proximately caused by the acts and omissions of said defendants. Each
23 defendant herein was the agent of each of the remaining defendants, and in doing the things
24 alleged herein were acting within the course and scope of their agency.

25 **II. STATEMENT OF FACTS**

26 10. On August 23, 2011, Plaintiff suffered an injury at her workplace to her left knee,
27 left upper arm, right shoulder, right side of neck, left lower back, and right wrist. Thereafter,
28

1 Plaintiff was referred to Dr. H. William Winter, psychologist for treatment due to workplace
2 stress on March 10, 2012.

3 11. As a result of said injury, in or about September, 2011, Plaintiff was referred to
4 defendant JAMES PATRICK MURPHY of the Anaheim facility on Lakeview Avenue of
5 KAISER.

6 12. In or about January 2012, after prescribed physical therapy failed to improve
7 Plaintiff's condition, defendant MURPHY referred Plaintiff to magnetic resonance imaging
8 ("MRI") for her right shoulder, which had been requested in September of 2011. After the MRI,
9 Plaintiff was told that she had "degenerative problems" in her right shoulder, and a cortisone
10 injection was recommended.

11 13. In February of 2012 and again on March 8, 2012, Plaintiff received cortisone
12 injections to her right shoulder. Defendant Edward Han-Tin Yian monitored the procedure on
13 ultrasound while Doe Defendant No. 1 manipulated the injection needle. On instructions
14 defendant Yian, Doe Defendant No. 1, pushed and pulled abruptly and roughly in and out of
15 Plaintiff's right shoulder, even at one point moving the needle up sharply when defendant Yian
16 complained that the needle infection was not placed appropriately, and hitting Plaintiff's bone.
17 All these actions by defendant Yian and Doe Defendant No. 1 unnecessarily increased the risk of
18 infection.

19 14. As a result of the second cortisone injection into her right shoulder on March 8,
20 2012 as administered by Doe Defendant No. 1 and supervised by defendant Yian, Plaintiff
21 initially developed bruising and swelling in the area of the injection that lasted for about two
22 weeks, and pain in her right shoulder that has lasted until the present. Although the defendants'
23 notes falsely stated that Plaintiff "tolerated" the injection "well", in reality Plaintiff experienced
24 dizziness from the injection and had to lie down for half an hour after the procedure. Three days
25 after the second injection on March 11, 2012, Plaintiff returned to KAISER at the Anaheim
26 facility on La Palma Avenue and told the treating doctor, David Szu-hong Liu that she was
27 concerned that the injection site had become infected. However, defendant Liu told her that
28 there was no problem, to put ice on the site and to "monitor" the site. Defendant Liu then

1 discharged her, without taking measures to determine if the complaints were due to an infection.

2 15. Approximately one week after the second injection on March 15, 2012, Plaintiff,
3 again concerned over bruising, swelling and pain at the injection site and swollen glands in her
4 neck, consulted with her primary treating physician, defendant Murphy at KAISER's Lakeview
5 Avenue facilities. Defendant Murphy dismissed plaintiff's concerns, telling her there was no
6 way the glands swollen in her neck were related to the second cortisone injection.

7 16. In or about March 2012, Plaintiff designated defendant Steven Manmang Ma as
8 her primary treating physician in lieu of defendant Murphy. After examining Plaintiff's right
9 shoulder, defendant Ma informed Plaintiff that she had bone deterioration in her right shoulder,
10 but did not express any opinion or diagnosis as to the etiology of the condition.

11 17. In or about July 2012, defendant Ma performed surgery on Plaintiff's right
12 shoulder. Defendant Ma told Plaintiff before the surgery that the procedure's object was to
13 "clean up" the bone deterioration that he had found. However, after Plaintiff came out of the
14 surgery, she was informed that defendant Ma had in fact removed part of her acromioclavicular
15 joint as well as part of her clavicle (collar bone).

16 18. Plaintiff repeatedly asked defendant Ma for medical reports on the surgery he
17 performed but her requests were rebuffed. In addition, defendant Ma refused to address
18 Plaintiff's concerns despite requests to do so by Plaintiff and did not treat all body parts to which
19 injury was claimed. Instead, Dr. Ma dismissed Plaintiff's concerns repeating Dr. Murphy's
20 assertion that her swollen glands had nothing to do with the second cortisone injection.

21 19. As a further result of loss of bone from the July 2012 surgery by defendant Ma,
22 in turn caused by infection caused by the March 8, 2012 injection by KAISER defendants,
23 Plaintiff suffered a detached biceps muscle, for which she underwent surgery January 29, 2013 to
24 shorten the biceps tendon.

25 **FIRST CAUSE OF ACTION**

26 (For Willful Misconduct against All Defendants)

27 20. Plaintiff restates and reincorporates Paragraphs 1 – 19, inclusive hereof as though
28 fully set forth herein.

1 21. In providing medical care for Plaintiff, defendants and each of them, knew or
2 should have known the perils, dangers, damage and harm posed to Plaintiff by their failure to
3 comply with standards of care of reasonably prudent physicians, technicians, or other health care
4 providers.

5 22. In providing medical care for Plaintiff, defendants and each of them knew or
6 should have known that the perils, dangers, damage and harm posed to Plaintiff by their failure
7 to comply with standards of care of reasonably prudent physicians, technicians, or other health
8 care providers exposed Plaintiff to the high probability of disease, infection, injury and
9 disfigurement.

10 23. In providing medical care for Plaintiff, defendants and each of them knowingly
11 disregarded the aforesaid perils and high probability of injury to Plaintiff and thus failed to
12 comply with applicable standards of care.

13 24. By virtue of their provision of medical care to Plaintiff, defendants acted in
14 conscious disregard of the probability of causing disease, infection, injury and disfigurement to
15 Plaintiff, causing damages to Plaintiff in an amount within the jurisdictional limit of this court.
16 Also by virtue of the aforesaid, defendants and each of them acted with recklessness, oppression
17 and malice, and in despicable disregard of their duties to Plaintiff and Plaintiff's rights. By
18 virtue of same, Plaintiff is entitled to assessment by the trier of facts of damages pursuant to
19 Civil Code sec. 3294 against defendants.

20 **SECOND CAUSE OF ACTION**
21 (Negligence against all defendants)

22 25. Plaintiff restates and reincorporates Paragraphs 1 through 24 hereof as though
23 fully set forth herein.

24 26. Plaintiff was a patient of defendants from approximately September of 2011 to
25 the present and under their care as her "primary treating physicians".

26 27. By virtue of the foregoing facts, defendants owed a duty of care in provision of
27 care to Plaintiff to use the degree of care and skill that a reasonably prudent health care
28 professional would use given his or her knowledge, training, expertise and skill, as set forth.

28. Defendants in doing the acts and omissions hereinbefore stated, breached said duties of care.

29. As a direct and proximate result of said breaches, Plaintiff suffered damages in an amount within the jurisdictional limits of this court.

THIRD CAUSE OF ACTION
(Fraudulent Concealment Against All Defendants)

30. Plaintiff reinstates and reincorporates Paragraphs 1 through 29 hereof as though fully set forth herein.

31. Defendants and each of them as health care providers to Plaintiff owed Plaintiff as their patient the fiduciary duty to disclose the following facts to Plaintiff, without which Plaintiff could not give the necessary informed consent to the care and procedures given to her:

- a. That the injections involved the risk of subsequent infection in the injection site;
- b. That Plaintiff bone deterioration in her right shoulder may be due to infection caused by the injection;
- c. That the surgery to resolve the bone deterioration may require removal of Plaintiff's bone tissue;
- d. That the surgery to resolve the bone deterioration may require further surgery;
- e. That the surgery to resolve the bone deterioration could result in disfigurement, including unsightly detachment of Plaintiff's right biceps.

32. None of the above facts were disclosed to Plaintiff, and they remained concealed from Plaintiff even after the surgery on Plaintiff's right shoulder January 29, 2013.

33. As a direct and proximate result of her reliance and defendant's breach of their duty to disclose, Plaintiff was damaged by failure to receive proper medical care and treatment, in an amount within the jurisdictional limits of this court.

1 43. As a direct and proximate result of said breach, Plaintiff suffered damages within
2 the jurisdictional limits of this court.

3 44. By virtue of said breach, defendants acted recklessly, fraudulently and
4 maliciously, in conscious disregard of their duties and Plaintiff's rights, warranting an award of
5 damages under Civil Code sec. 3294.

6 **SIXTH CAUSE OF ACTION**
7 (Medical Battery Against All Defendants)

8 45. Plaintiff restates and reincorporates Paragraph 1 through 44 hereof as though fully
9 set forth herein.

10 46. By intentionally failing to disclose the facts herein before set forth which they
11 were under a duty to disclose, defendants failed to obtain the informed consent of Plaintiff to
12 perform the care and procedures herein before described.

13 47. As a direct result of such intentional failure to obtain Plaintiff's informed consent,
14 Plaintiff's right to direct her own medical treatment was intentionally violated, resulting in
15 unauthorized touching, contact and handling of the Plaintiff by defendants.

16 48. As a direct and proximate result of said violations, Plaintiff has suffered damages
17 in an amount within the jurisdiction of this court.

18 **SEVENTH CAUSE OF ACTION**
19 (Lack of Informed Consent Against All Defendants)

20 49. Plaintiff restates and reincorporates Paragraph 1 through 48 hereof as though fully
21 set forth herein.

22 50. In performing the care, examinations and procedures hereinabove described,
23 defendants failed to first obtain Plaintiff's informed consent to said care, examinations and
24 procedures.

25 51. By reason of the foregoing, a reasonable and adequately informed person in the
26 position of Plaintiff would not have agreed to the care, examinations and procedures as
27 administered and conducted by defendants.
28

1 52. As a result of said lack on informed consent on the part of the Plaintiff to the
2 hereinbefore referenced care, examinations and procedures, Plaintiff suffered damages in an
3 amount within the jurisdiction of this court.

4 **WHEREFORE PLAINTIFF PRAYS:**

- 5 1. For damages according to proof on all causes of action;
6 2. For damages under Civil Code §3294 on the First, Third, Fourth and Fifth Causes of
7 Action;
8 3. For an award under Welfare and Institutions Code sec. 15657 on the Third and Fourth
9 Causes of Action;
10 4. For an award for loss of consortium;
11 5. For attorney's fees;
12 6. For costs of suit herein;
13 7. For such other and further relief as the court deems proper in the premises.

14
15 Dated: January 24, 2014

DIAL & ASSOCIATES

16
17
18 By: 

19 Stephen F. Dial
20 Attorney for Plaintiff Terri Patton

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2 **DEMAND FOR JURY TRIAL**

3 Plaintiff demands a trial by jury on all claims as provided by California law.

4 Dated: January 24, 2014

5 DIAL & ASSOCIATES

6
7
8 By: 

9 Stephen F. Dial

10 Attorney for Plaintiff Terri Patton

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