

FILED

2014 FEB 28 A 9:23

STEPHEN L. NASH
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA

BY:

D. WEBER
DEPUTY CLERK

BRADLEY R. BOWLES (# 202722)
NATHANIEL B. DUNCAN (# 254639)
Bowles & Verna LLP
2121 N. California Blvd., Suite 875
Walnut Creek, California 94596
Telephone: (925) 935-3300
Facsimile: (925) 935-0371
Email: bbowles@bowlesverna.com
nduncan@bowlesverna.com

Attorneys for Plaintiffs
CYNTHIA BLACK AND ALYSSA MCCARTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
DEPT 31

CYNTHIA BLACK AND ALYSSA MCCARTY

Case No.

C14-00363

Plaintiffs,

COMPLAINT

v.

KAISER PERMANENTE INTERNATIONAL,
PRESCILLA M. MANGLINONG, RN; WILLIAM
PAO CHUENG KU, MD AND DOES 1-20,
inclusive

Defendants.

SUMMONS ISSUED

Plaintiffs Cynthia Black and Alyssa McCarty, complaint of Defendants Kaiser Foundation Hospital; Prescilla M. Manglinong, RN; William Pao Chueng Ku, MD and Does 1-20, as follows.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Cynthia Black is an individual residing in Maui County, Hawaii.
2. Plaintiff Alyssa McCarty is an individual residing in Maui County, Hawaii.
3. Plaintiffs' decedent, Delores Burke, was a resident of Contra Costa County, California.
4. Ms. Black is Ms. Burke's daughter and Ms. McCarty is Ms. Burke's step-granddaughter, who was dependent on Ms. Burke from age 3.
5. Plaintiffs are informed and believe, and on that basis allege, that defendant Kaiser Permanente International (Kaiser) is, and at all times relevant hereto was, a corporation duly organized

1 and existing under the laws of the State of California with its principal place of business in Oakland,
2 California, which owns and operates hospitals and other medical facilities throughout California.

3 6. At all times relevant herein, Defendant Prescilla M. Manglinong, RN was a licensed
4 nurse practicing in Contra Costa County, California.

5 7. At all times relevant herein, Defendant William Pao Chueng Ku, MD was a licensed
6 medical doctor practicing in Contra Costa County, California.

7 8. Dr. Ku and Nurse Manglinong were employed by defendant Kaiser.

8 9. The true names and capacities, whether individual, corporate, governmental, associate,
9 or otherwise, of Defendants, DOES 1 through 20, inclusive, are unknown to Plaintiffs at this time, and
10 as such, Plaintiffs therefore sue said Defendants by such fictitious names. Plaintiffs are informed and
11 believe, and upon such information and belief allege: that each of the Doe Defendants is responsible in
12 some manner for the events and happenings herein alleged, either as manufacturers, suppliers, sellers,
13 distributors, physicians, surgeons, anesthetists, nurses, other medical practitioners, pharmacists,
14 hospitals or hospital attendants, or otherwise, and that said Defendants negligently acted or failed to act
15 in one or more of said occupations or businesses and that such negligence proximately caused the
16 injuries and damages hereinafter set forth. Plaintiffs are informed and believe, and on that basis allege,
17 that each of those Defendants was in some manner legally responsible for the events and happenings
18 alleged in this Complaint and for damages suffered by Plaintiffs. When they ascertain the true names
19 and capacities of the fictitiously named Defendants, they will amend this Complaint by inserting the
20 same herein.

21 10. Plaintiffs are informed and believe, and thereupon allege that at all times herein
22 mentioned, each of the Defendants sued herein was the agent and/or employee of each of the
23 remaining Defendants and was, at all times, acting within the purpose and scope of such agency and
24 employment.

25 11. Venue is proper in Contra Costa County in the State of California because it is where
26 the subject torts took place, and where at least some of the Defendants reside.

27 12. An award of compensatory and statutory damages is sought in an amount exceeding the
28 minimum jurisdiction of this court and to be proven at trial.

GENERAL ALLEGATIONS

13. Plaintiffs reallege and hereby incorporate by reference the allegations of the above paragraphs.

14. Ms. Burke was originally admitted to Kaiser's Antioch Hospital on or about December 3, 2012.

15. Ms. Burke had surgery to repair a hernia, which was performed on or about December 3, 2012.

16. This surgery was negligently performed by the hospital and its employees, doctors and nursing staff, including Dr. William Pao Chueng Ku and Nurse Prescilla M. Manglinong.

17. During the surgery, by Dr. Ku, Ms. Burke's bowel and small intestine were negligently perforated.

18. After the surgery, Ms. Burke had internal bleeding and/or fluid loss, as well as an elevated white blood cell (WBC) count that indicated infection. However, no health care professional adequately assessed and treated the resulting infection and blood loss. In fact, her chart wrongly indicated that she was "free of signs of infection."

19. This failure to assess and treat her blood loss and infection occurred despite a number of warning signs.

20. Ms. Burke's WBC increased from a pre-operative count of 11.1 to a post-operative count of 35.2 by 5:25 a.m. the day after her surgery. By 3:06 p.m. that day, her WCB count was 52.1. This was a clear sign of a potentially fatal infection, but no one at the hospital provided any treatment.

21. Her post-operative intake of fluids was significantly higher than her output, which should have resulted in a nurse or doctor evaluating her for internal bleeding and responding appropriately. This did not occur.

22. Later that day, Ms. Burke complained of what Nurse Manglinong described as "unanticipated" pain. However, Nurse Manglinong told Ms. Burke that both her surgeon and another doctor in the hospital were busy. As a result, her complaints were not addressed, and she was merely told to take two pain pills.

23. Finally, Ms. Burke was taken in for a second surgery to address her clear internal bleeding and infection. Unfortunately, it was far too late. She had slipped into a comatose state and never regained consciousness.

24. As a result of the actions and/or inactions of Kaiser, Dr. Ku, Nurse Manglinong, and Does 1-20, Ms. Burke eventually died from her injuries.

FIRST CAUSE OF ACTION

(Wrongful death – All Defendants)

25. Plaintiffs restate and hereby incorporate by reference the allegations of each of the above paragraphs.

26. Defendants owed duties of care to Plaintiffs' decedent, and breached those duties as aforesaid. Said breaches of duties were substantial factor(s) in causing the death of Plaintiffs' decedent, Delores Burke. Plaintiffs have, therefore, lost the care, companionship, and support of their beloved relative.

27. On December 2, 2013, Plaintiffs notified the Defendants by mail of their intent to seek compensation for their injuries pursuant to California Code of Civil Procedure 364. A copy of this letter is attached hereto as Exhibit A. The Defendants failed to settle Plaintiffs' claims within 90 days after this letter was sent. Accordingly, Plaintiffs now file this action against said Defendants.

PRAYER

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set forth below:

1. For judgment in favor of Plaintiffs and against Defendants, and each of them;
2. For an award of actual, general, special and compensatory damages in an amount to be proven at trial;
3. For Plaintiffs' loss of care, comfort, society, solace, moral support, companionship, guidance, and services of decedent;
4. For Plaintiffs' loss of financial and economic support due to decedent's death;
5. For prejudgment interest; and
6. For any other damages supported by the proof.

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury.

Dated: February 27, 2014

Bowles & Verna LLP

By. 

Bradley R. Bowles

Nathaniel B. Duncan

Attorneys for Plaintiffs

CYNTHIA BLACK AND ALYSSA

MCCARTY

Courthouse News Service