

By Fax

Lloyd Douglas Dix, SBN 110489
Dix and Associates, APLC
22287 Mulholland Highway, PMB 414
Calabasas, California 91303
Telephone: (818) 876-3000

Jeffrey A. Millman, SBN 99072
Hodes, Millman, Liebeck, LLP
9210 Irvine Center Drive
Irvine, CA 92618

Attorneys for Plaintiffs, Vicky Georgia Kennedy,
John Martin Kennedy, Charlette Madeline
Armstrong, Betsy Ann Crabtree

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SOLANO

Vicky Georgia Kennedy, Betsy Ann
Crabtree, Charlette Madeline Armstrong,
John Martin Kennedy,

Plaintiffs,

vs.

THE PERMANENTE MEDICAL GROUP;
KAISER FOUNDATION HEALTHPLAN,
INC., KAISER FOUNDATION HOSPITALS,
VACAVILLE CONVALESCENT AND
REHAB CENTER, JAU DEAN LEE, M.D.,
an individual; MICHAEL L. EARWOOD,
an individual; RONALD VICTOR
STRADOTTO, an individual; KYAW
AUNG, an individual; JOHN SCUDDER
MILLAR, an individual; JUDITH EILEEN
PECK, an individual; WILLARD LEE
FREDRICKSON, II, an individual; KULLADA
OYL RICHAKRON, an individual;
MANUEL AYSON BALLESCA, an
individual; RUBY SALIHA ALI, an
individual; THEODORE CRAIG YEE, an
individual; KELVIN NOLAN KAY, an
individual; AND DOES 1 THROUGH 50.

Defendant(s).

FILED

Clerk of the Superior Court

SEP 05 2014

By 
DEPUTY CLERK

Case No.

FC0044135

\$435.00 CMF262190

COMPLAINT FOR
DAMAGES FOR:

1. NEGLIGENCE;
2. ELDER ABUSE;
3. WRONGFUL DEATH.

AND DEMAND FOR JURY
TRIAL

**I.
PARTIES**

1. PLAINTIFFS, Vicky Georgia Kennedy, the surviving spouse of the DECEDENT, and DECEDENT'S children, Betsy Ann Crabtree, Charlette Madeline Armstrong and John Martin Kennedy, bring this action on behalf of DECEDENT, Charles William Kennedy. they bring this action under the provisions of Code of Civil Procedure Section 377.60, which provides that the PLAINTIFF may bring this action on behalf of DECEDENT'S heirs: "A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by any one of the following persons.....(a) The decedent's surviving spouse..., children...." There are approximately four heirs of the DECEDENT: his surviving spouse, Vicky Georgia Kennedy, and his three children: Betsy Ann Crabtree, Charlette Madeline Armstrong and John Martin Kennedy. PLAINTIFF is one of them. As an heir of DECEDENT, PLAINTIFF also has standing to bring this action pursuant to Welfare and Institutions Code Section 15657, et seq. In addition, concurrently with or immediately following the filing of this action, PLAINTIFF Vicky Georgia Kennedy will file a Petition for Probate in the Solano County Superior Court, as a person entitled to Letters of Administration.

2. Defendant The Permanente Medical Group, is a corporation or business plan of unknown form, doing business in Oakland, California, at 1950 Franklin St., 17th Floor, Oakland, CA 94612.

3. Defendant Kaiser Foundation Health Plan, Inc. is a corporation or business plan of unknown form, doing business in County of Solano, California, at 1 Quality Drive, Vacaville, CA 95688-9494, which is the location wherein the injuries, death, and damages occurred.

1 4. Defendant Kaiser Foundation Hospitals is a corporation or business plan of
2 unknown form, doing business in the County of Solano, California at 1 Quality Drive,
3 Vacaville, CA 95688-9494, which is the location wherein the injuries, death, and damages
4 occurred.
5

6 5. Defendant Vacaville Convalescent and Rehab Center is a corporation or business
7 plan of unknown form, doing business in the County of Solano, California at 585 Nut Tree
8 Ct., Vacaville, CA 95688, which is a location wherein injuries and damages occurred.
9

10 6. Defendant Jau Dean Lee, is an individual who, upon information and belief, is
11 licensed as a physician in the State of California and does business in the County of Solano
12 at the facility owned and operated by KAISER at 1 Quality Drive, Vacaville, CA 95688-
13 9494.

14 7. Defendant Michael L. Earwood, is an individual who, upon information and
15 belief, is licensed as a physician in the State of California and does business in the County
16 of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494.
17

18 8. Defendant Kyaw Aung, is an individual who, upon information and belief, is
19 licensed as a physician in the State of California and does business in the County of Solano,
20 at 1 Quality Drive, Vacaville, CA 95688-9494
21

22 9. Defendant Ronald Victor Stradiotto, is an individual who, upon information and
23 belief, is licensed as a physician in the State of California and does business in the County
24 of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494
25

26 10. Defendant John Scudder Millar, is an individual who, upon information and
27 belief, is licensed as a physician in the State of California and does business in the County
28 of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494

1 11. Defendant Judith Eileen Peck, is an individual who, upon information and
2 belief, is licensed as a physician in the State of California and does business in the County
3 of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494.
4

5 12. Defendant Willard Lee Fredrickson, II, is an individual who, upon information
6 and belief, is licensed as a physician in the State of California and does business in the
7 County of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494.

8 13. Defendant Kullada Oyl Richakron, is an individual who, upon information and
9 belief, is licensed as a physician in the State of California and does business in the County
10 of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494.
11

12 14. Defendant Manuel Ayson Balleca, is an individual who, upon information and
13 belief, is licensed as a physician in the State of California and does business in the County
14 of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494.

15 15. Defendant Ruby Saliha Ali, is an individual who, upon information and belief,
16 is licensed as a physician in the State of California and does business in the County of
17 Solano, at 1 Quality Drive, Vacaville, CA 95688-9494.
18

19 16. Defendant Theodore Craig Yee, is an individual who, upon information and
20 belief, is licensed as a physician in the State of California and does business in the County
21 of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494.

22 17. Defendant Kelvin Nolan Kay, is an individual who, upon information and
23 belief, is licensed as a physician in the State of California and does business in the County
24 of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494.
25

26 18. PLAINTIFF is ignorant of the names and capacities of DOES 1 through 50 and
27 sues them as DOES 1 through 50, inclusive. PLAINTIFF will amend this action to allege
28

1 these DOE defendants' names and capacities when ascertained. Each of the Defendants
2 herein is responsible in some manner for the occurrences, injuries, and damages herein,
3 and that the damages were directly and proximately caused by these defendants' acts and
4 omissions. Each defendant herein was the agent of each of the remaining defendants, and
5 in doing the things alleged herein were acting within the course and scope of their agency.
6

7 19. All defendants collectively, including Kaiser Foundation Health Plan, Kaiser
8 Foundation Hospitals, Vacaville Convalescent and Rehab Center, Dr.s Lee, Yee, Kay,
9 Earwood, Ballesca and all other physicians named herein, and DOES 1 through 50, are
10 referred to herein as "DEFENDANTS".
11

12 II.

13 STATEMENT OF FACTS

14 20. On August 19, 2013, DECEDENT Charles William Kennedy was admitted to
15 DEFENDANT KAISER HOSPITAL in Vacaville, located at 1 Quality Drive, Vacaville,
16 CA 95688-9494, for the purpose of having an elective surgery, specifically, a left total
17 knee replacement, to be performed by and under the care of DEFENDANT physicians
18 and surgeons, including Dr.s Yee, Aung and others, as named hereinabove.
19

20 21. Prior to and on August 19, 2013, DECEDENT was seen and examined by
21 said DEFENDANT physicians and surgeons prior to said surgery and determined to be in
22 a condition to have the surgery safely.

23 22. The surgery, for left total knee replacement, took place on August 19, 2013, at
24 DEFENDANT KAISER HOSPITAL, located in Vacaville, California. Thereafter,
25 DECEDENT was an inpatient at DEFENDANT KAISER HOSPITAL, located in
26 Vacaville, until on or about August 21, 2013.
27
28

1 23. At all times after the said surgery, DECEDENT experienced and complained
2 to the staff and to his family of a lack of appetite and associated symptoms indicating that
3 his digestive tract and other organs were not functioning appropriately after surgery.
4 DECEDENT'S family reported those symptoms and complaints to the hospital and
5 Convalescent employees and to DECEDENT'S physicians on many occasions.
6

7 24. Despite said reports and DECEDENT'S continuing symptoms,
8 DEFENDANTS and each of them failed to take appropriate action to care for
9 DECEDENT, which failure ultimately led to his death.
10

11 25. Despite the fact that DECEDENT had no appetite or appropriate bowel
12 sounds or movement, DEFENDANTS, KAISER HOSPITAL and the DEFENDANT
13 KAISER physicians responsible for his care post-operatively, determined to and did
14 transfer DECEDENT to DEFENDANT VACAVILLE CONVALESCENT AND
15 REHAB CENTER on or about August 21, 2013.
16

17 26. While DECEDENT was a patient at DEFENDANT VACAVILLE
18 CONVALESCENT AND REHAB CENTER, from August 21, 2013 up to and including
19 August 27, 2013, DECEDENT continued to suffer from lack of appetite and associated
20 signs and symptoms indicating that he was not recovering appropriately from the surgery.
21 Said signs and symptoms were reported by DECEDENT and his family visitors to
22 DEFENDANTS and their employees. Even without said reports to DEFENDANTS,
23 those abnormal signs and symptoms should have been noted and acted upon
24 appropriately by DEFENDANTS as part of their duty to care for him post-operatively.
25 Nevertheless, DEFENDANTS failed and refused to take appropriate actions to care for
26 DECEDENT in his condition, which failure caused his condition to deteriorate and
27
28

1 ultimately led to his death.

2 27. On or about August 27, 2013, DEFENDANTS VACAVILLE
3 CONVALESCENT AND REHAB CENTER finally noted that DECEDENT was in
4 significant distress, as a result of his deteriorated condition, including significant
5 abdominal distension, difficulty in breathing and deteriorating vital signs. Thus, on that
6 morning of August 27, 2013, DEFENDANTS finally determined to transfer DECEDENT
7 back to DEFENDANT KAISER HOSPITAL, for Emergency medical care.

8 28. Had DEFENDANTS taken appropriate action prior to August 27, 2013, to
9 care for DECEDENT and his signs and symptoms, his condition would not have
10 deteriorated to the extent it did on that date, resulting in his death.

11 29. DECEDENT was transferred by DEFENDANT VACAVILLE
12 CONVALESCENT AND REHAB CENTER in this greatly deteriorated and unstable
13 condition on or about August 27, 2013, where he was received by the Emergency Room
14 staff and physicians of DEFENDANT KAISER HOSPITAL at Vacaville, who took on
15 the obligation to care for him appropriately at that time and place.

16 30. Despite their duty to provide DECEDENT with appropriate emergency room
17 care, DEFENDANTS KAISER HOSPITAL and the DEFENDANT Kaiser physicians,
18 including but not limited to Dr.s Peck, Fredrickson, Millar and other DEFENDANTS,
19 failed to care for DECEDENT appropriately, causing him to aspirate and suffer
20 respiratory arrest, among other things, ultimately contributing to his death.

21 31. Despite their duty to provide DECEDENT with appropriate post-operative
22 care at all times, DEFENDANTS so negligently cared for DECEDENT throughout his
23 post-operative period that he ultimately suffered respiratory arrest, acute renal failure
24

1 and blood culture negative septic shock, cardiac arrest and anoxic brain injury. Finally,
2 due to his devastating neurologic injuries as a result of DEFENDANTS' failure to care
3 for him appropriately, DECEDENT ultimately died on September 8, 2013.
4

5
6 **III.**

7 **FIRST CAUSE OF ACTION**

8 **(Negligence, v. all DEFENDANTS)**

9 32. PLAINTIFF re-alleges and incorporates by reference the allegations
10 contained in Paragraphs 1 through 31.
11

12 33. DECEDENT was a patient of DEFENDANTS from August 19, 2013 until his
13 death on September 8, 2013. During this period, DECEDENT was under the care of the
14 DEFENDANTS who acted as his "primary care physicians" and other care physicians,
15 including Emergency Room physicians, as described hereinabove.
16

17 34. By virtue of the aforesaid, DEFENDANTS owed a duty of ordinary care to
18 DECEDENT, to use the degree of care and skill that a reasonably prudent person would
19 use. In the case of LEE, EARWOOD, YEE and the other physician DEFENDANTS, to
20 use that degree of care that a reasonably prudent physician would owe, given his or her
21 knowledge, training, expertise and skill.
22

23 35. DEFENDANTS breached the aforesaid duties of care.

24 36. As a direct and legal result of the aforesaid, DECEDENT sustained injuries
25 and death. As a further direct and legal result of the aforesaid, DECEDENT sustained
26 lost income and other damages in a sum according to proof at trial.
27
28

IV.

SECOND CAUSE OF ACTION

(Elder Abuse v. all DEFENDANTS)

37. PLAINTIFF re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 36.

38. DECEDENT was at all times herein over 65 years of age and a dependant adult within the meaning of Welfare & Institutions Code Section 15610.23, owing to the fact that he resided in California and had temporary physical or mental limitations that restricted his ability to carry out normal activities or protect his rights, given the sedative medication and the treatments he was treated with.

39. At all times herein, each of the DEFENDANTS had care or custody of the DECEDENT.

40. By virtue of the foregoing, DEFENDANTS and each of them have committed neglect as defined at Welfare & Institutions Code Section 15610.57.

41. During the aforesaid periods during which DEFENDANTS and each of them had care or custody of the DECEDENT, he was deprived of oxygen and appropriate nutrition for extended periods of time, among other things, and accordingly, suffered "physical abuse" as defined at Welfare & Institutions Code Section 15610.63.

42. By virtue of the aforesaid, DEFENDANTS have acted in conscious disregard of the probability of DECEDENT'S undesired and unauthorized injury and death. DEFENDANTS' acts and omissions were despicable and it subjected DECEDENT to cruel and unjust hardship in conscious disregard of his rights and safety. By virtue of the aforesaid, DEFENDANTS have each acted with recklessness, oppression and malice, and

1 according to proof at trial.

2 43. By virtue of the aforesaid, DECEDENT is entitled to pre-death pain and
3 suffering damages under Welfare & Inst. Code Section 15657 and PLAINTIFF is entitled
4 to attorneys' fees unilaterally to them under the same provision of law.
5

6 **III.**

7 **THIRD CAUSE OF ACTION**

8 **(Wrongful Death v. all DEFENDANTS)**

9 44. PLAINTIFF hereby re-alleges and incorporates by reference the allegations
10 contained in Paragraphs 1 through 43.
11

12 45. As a direct and proximate result of the aforesaid, DECEDENT died and his
13 heirs (represented by PLAINTIFF under Code of Civil Procedure Section 377.60, as
14 alleged above), have been deprived of DECEDENT'S love, care, comfort, and society to
15 their general damages according to proof at trial.
16

17 **WHEREFORE, PLAINTIFFS pray for judgment against DEFENDANTS as**
18 **follows:**

- 19 1. For general and special damages as according to proof;
20 2. For the loss of the care, comfort, and society of DECEDENT.
21 3. For attorneys fees, unilaterally to PLAINTIFF.
22 4. For costs of suit, including expert costs.
23 5. For such other and further relief as the court deems just and proper.
24

25
26 Dated: 9/5/14

DIX AND ASSOCIATES, APLC

27 By: [Signature]
Lloyd Douglas Dix, Esq.
Attorneys for Plaintiffs
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