

FILED

DEC 30 2014

Clerk of the Napa Superior Court

By: [Signature]
Deputy

Rebecca J. Freeman (SBN 123960)
Matthew C. Freeman (SBN 128530)
Law Offices of Freeman & Freeman
2255 Challenger Way, Suite 119
Santa Rosa, California 95407
Telephone (707) 575-7141

Attorneys for Plaintiff,

CASE MANAGEMENT CONFERENCE

DATE: 6/9/15

TIME: 8:30am

PLACE: Courtroom 6

825 Brown Street, Napa CA 94559

1111 J. J. ...

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

RUPERT COLLINS,

CASE NO: 26 - 65598 -

Plaintiff,

UNLIMITED CIVIL
COMPLAINT FOR DAMAGES

vs.

Violation of the Elder Abuse Act,
Negligence and Negligence Per Se,
and Unfair Business Practices Act

KAISER FOUNDATION HEALTH PLAN, Inc.,
and DOES 1-10, Inclusive,

DELAY REDUCTION CASE

Defendants.

Plaintiff alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff RUPERT COLLINS (hereinafter Rupert) was, at all times herein mentioned, a resident of Napa County, California.

2. At all times herein mentioned, Defendant KAISER FOUNDATION HEALTH PLAN, hereinafter KAISER), was and is now a Corporation doing business in Napa, California.

3. KAISER was the employer of the nurses and doctors and other employees providing

RECEIVED

DEC 29 2014

Unlimited Civil Complaint for Damages

Page 1 of 7

1 (or in Rupert's case- not providing) health care at KAISER's facilities.

2 4. Rupert was at all pertinent times mentioned herein, a paying member of KAISER who
3 paid premiums in exchange for a promise by KAISER to provide physician services to Rupert.

4 5. Rupert is ignorant of the true names and capacities of the Defendants sued herein as
5 DOES 1 through 10 inclusive, and therefore sues said Defendants by such fictitious names.
6 Rupert will seek leave of this Court to amend this complaint to allege their true names and
7 capacities when they have been ascertained. Rupert alleges that DOES 1 through 10 provided
8 negligent and abusive care, or failed to provide required care to Rupert, or otherwise contributed
9 to the wrongful acts alleged herein.

10 6. In doing the things hereinafter alleged, Defendants and each of them acted as the
11 agents, servants and employees of their Co-Defendants, acting within the course and scope as
12 such agency and employment and with the knowledge, consent and approval of their Co-
13 Defendants; and their conduct was ratified by their Co-Defendants.

14 7. All of the acts alleged in this complaint occurred in Napa County, California.

15 **FIRST CAUSE OF ACTION**

16 (Violation of the Elder Abuse Act)

17 8. Rupert incorporates the allegations of paragraph 1 through 7 above as though set
18 forth in full.

19 9. At all times mentioned Rupert was over the age of sixty five and entitled to the
20 protections provided in California Welfare and Institutions Code Section 15600.

21 10. At all times mentioned Defendants and each of them were responsible for providing
22 physician care and services to Rupert and at all times mentioned Defendants, and each of them,
23 stood in a position of trust relative to Rupert.

24 11. By virtue of the relationship between Rupert and Defendants, and each of them, a

1 duty, including a fiduciary duty, existed relating to the care, comfort, safety, and physical and
2 mental health of Rupert. Pursuant to said duty, Defendants, and each of them, owed the utmost
3 good faith to Rupert in all matters pertaining to his health, care, comfort and safety.

4 12. In particular, but without limiting the generality of the following, Defendants and
5 each of them, recklessly neglected Rupert's medical, mental, and physical health needs.
6 While Rupert was a resident at Napa Valley Care Center, (hereinafter NVCC), Kaiser was
7 contractually obligated to provide all necessary physician care services that Rupert needed.
8 On July 21, 2013, Monica Kyle, an LVN from NVCC sent a fax to Kaiser requesting physician
9 orders for Rupert. The fax stated that Rupert's penis was red and swollen with what was
10 described as a cut. Rupert had a foley catheter inserted into his penis. Monica's fax said:
11 "May we have a trial of no foley to give the area a rest." Despite this request, Kaiser denied
12 the request to remove the foley. Despite the fact that Kaiser was notified that Rupert's penis
13 was red and swollen and cut, there is no documentation to show that any physician from
14 Kaiser ever bothered to personally examine Rupert's penis.

15 13. As a direct result of this reckless neglect by Kaiser, the foley was left in Rupert's red
16 and swollen and cut penis, and his penis began to erode further and further each day.

17 14. On July 23, 2013, there was a care conference held with respect to Rupert's needs
18 and no one from Kaiser showed up in person or even by phone in order to participate in
19 assessing and planning for Rupert's care in any way. As a direct result of Kaiser's failure to
20 participate, there was no meaningful communication or ongoing assessment and the dire
21 need to remove the catheter from Rupert's eroding penis continued to be ignored.

22 15. On July 30, 2013, another LVN from NVCC sent an additional fax to Kaiser, stating
23 that: "pt has large erosison on penis area...foley catheter probably needs to be removed to
24 let the area heal properly."

1 16. Kaiser again, without ever bothering to have a physician examine Rupert's penis,
2 summarily denied the second request to remove the foley catheter. The response from
3 Kaiser was: "f/u with urology, keep clean."

4 17. Diana Sousa is Rupert's daughter who first examined his penis on July 31, 2013
5 when an LVN from NVCC informed her there was a problem. When Diana examined Rupert's
6 penis, she was horrified at what she saw. Rupert's penis was split completely in half from the
7 tip of his penis all the way down to the scrotum sac.

8 18. At Diana Sousa's request, NVCC LVN Harpreet Sall called Kaiser to request an
9 emergency urology consult and was told by Kaiser that "the penis erosion is normal and will heal
10 on it's own." Although Kaiser denied Diana's request for an urology consult, Diana Sousa
11 remained persistent and on August 2, 2013, Rupert was finally evaluated by Kaiser Urologist Dr.
12 Knopnick. Dr. Knopnick stated that if Rupert had been treated earlier, the penis could have been
13 saved but that the penile erosion was now complete, Rupert's penis would never heal and that
14 reconstructive surgery was not a viable option. Rupert's penis and urethra is permanently
15 eroded away and Rupert has suffered permanent genital mutilation.

16 19. As a direct result of the penile mutilation, Rupert suffered from nearly constant urinary
17 tract infections and resultant pain. In order to control the urinary tract infections and resultant
18 pain, it was determined that Rupert would need to undergo surgical intervention for the insertion
19 of a suprapubic catheter and this was done on January 9, 2014.

20 20. The conduct of Defendants, and each of them, described in this Complaint was
21 reckless, oppressive, fraudulent, and/or malicious, as defined in the Elder Abuse and Dependent
22 Adult Civil Protection Act, Welfare & Institutions Code §§15600 et seq. ("Elder Abuse Act"), and
23 specifically constituted "elder abuse," as defined in §15610.07, and "neglect," as defined in
24 §15610.35 (a) and (d) and (e).

1 21. Defendants' conduct caused Rupert to suffer all damages recoverable under the Elder
2 Abuse Act, including, without limitation, economic damages, general damages, including pain,
3 suffering, and emotional distress, punitive damages, treble damages and attorney fees, and
4 costs of suit.

5 **SECOND CAUSE OF ACTION**

6 (Negligence and Negligence Per Se)

7 22. Rupert herein re-alleges paragraphs 1-21, as fully set forth above.

8 24. Defendants, and each of them were negligent and violated numerous regulations and
9 ordinances and such violations were the proximate cause of the injury which the codes and
10 regulations were designed to prevent. Plaintiff specifically requests leave to amend this
11 Complaint to state all such regulatory violations as may be discovered after our discovery and
12 investigation is complete.

13 **THIRD CAUSE OF ACTION**

14 (Unfair Business Practices)

15 25. Plaintiff's re-allege all above paragraphs as though fully set forth herein.

16 26. The conduct of Defendants is part of a general business practice at Kaiser conceived
17 and implemented by Kaiser and DOES 1-10, inclusive. This practice exists in part because
18 Defendants unreasonably expect few adverse consequences will flow from their mistreatment of
19 their elderly, demented, disabled and vulnerable clientele, and said Defendants made a
20 considered decision to promote profit at the expense of their moral, legal and ethical obligations
21 to their resident-patients.

22 27. It has been expressly acknowledged by the California State legislature that elder
23 adults are a disadvantaged class of citizens and that it serves an important and vital State
24 interest to protect these people from injury and death as a result of neglect and abuse as defined

1 in California law.

2 28. That in their care and treatment of Rupert and others similarly situated, defendants,
3 and each of them, violated, without limitation, California Regulations, as well as California
4 Welfare and Institutions Code Section 15610.57 and abused Rupert in violation of the provisions
5 of the "EADACPA" in their dealings with, and relating to, Rupert, as well as their dealing with,
6 and relating to, other citizens of the state of California similarly situated.

7 29. In addition, Defendants took Rupert's money and promised to provide physician care
8 and services that he needed. Although Kaiser took Rupert's money, they failed to provide the
9 physician care and services that Rupert required and as a result, he suffered severe pain and
10 permanent mutilation. This practice constitutes an unfair and fraudulent business practice within
11 the meaning of Business and Profession Code Section 17200.

12 30. Plaintiff is entitled to restitution of all funds paid to Kaiser on behalf of Rupert Collins.

13 31. Plaintiff is also entitled to an injunction prohibiting Kaiser and each other care facility
14 operated by or at the direction of Kaiser from violating any provision of federal or state law
15 setting the standards for the care of their members, and for the financing and administration of
16 said facilities.

17 32. Plaintiff is entitled to attorneys' fees under the provisions of C.C.P. Section 1021.5 as
18 well as under Welfare and Institutions Code Section 15657(a).

19
20 WHEREFORE, Plaintiff prays for judgment as follows:

21
22 **On the First Cause of Action:**

23 1. For general and specific damages according to proof at the time of trial, including, but
24 not limited to treble damages, recovery of damages pursuant to Welfare & Institutions Code

1 §15657(b);

- 2 2. For attorneys' fees and costs pursuant to Welfare & Institutions Code §15657 (a).

3 **On the Second Cause of Action:**

- 4 1. For general and special damages according to proof at the time of trial.

5 **On the Third Cause of Action:**

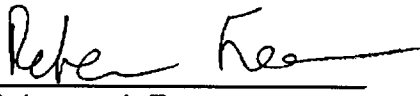
- 6 1. For restitution of all funds paid to Kaiser on behalf of Rupert Collins;
7 2. For attorney fees and costs;
8 3. For an injunction;

9 **On All Causes of Action:**

- 10 1. For costs of suit.
11 2. For such other and further relief as the Court may deem just and proper.

12
13 Dated: December 22, 2014

Law Offices of
Freeman & Freeman

14
15 By: 
16 Rebecca J. Freeman
17 Attorney for Plaintiff
18
19
20
21
22
23
24