

Douglas C. Fladseth (Bar No. 083420)
LAW OFFICE OF DOUGLAS C. FLADSETH
1160 North Dutton Avenue, Suite 180
Santa Rosa, California 95401
Telephone: (707) 545-2600
Fax: (707) 545-0552
fladseth@aol.com

FILED

FEB - 9 2015

Clerk of the Superior Court of California
County of Sonoma
By JP
Deputy Clerk

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA
UNLIMITED CIVIL JURISDICTION

SINDA DINAN and JASON DUENAS,
individually and as Successors-in-Interest to
and Personal Representatives of the Estate of
Deloris Merkel,

Case No. **SCV-256703**

COMPLAINT FOR DAMAGES

Plaintiff,

vs.

KAISER FOUNDATION HEALTH PLAN,
INC., THE PERMANENTE MEDICAL
GROUP, INC., KAISER FOUNDATION
HOSPITALS, KAISER PERMANENTE
HOME HEALTH AGENCY, PARKVIEW
GARDENS, ENSIGN MONTGOMERY and
and DOES 1-100, inclusive,

Defendants.

- (1) Negligence;
- (2) Elder Abuse;
- (3) Wrongful Death;
- (4) Survivorship; and
- (5) Negligent Infliction of Emotional Distress

Plaintiffs allege:

1. Decedent **DELORIS MERKEL**, was at all pertinent times a resident of Santa Rosa, California residing at **PARKVIEW GARDENS** in the County of Sonoma, State of California. All acts and omissions alleged herein took place in the County of Sonoma, State of California.

2. Plaintiffs **SINDA DINAN** and **JASON DUENAS** are at all times herein mentioned residents of the County of Sonoma, in the State of California. Plaintiff **SINDA DINAN** is the only child of **DELORIS MERKEL**. She and **JASON DUENAS** are the surviving

1 issue and successors-in-interest to the Estate of DELORIS MERKEL pursuant to California Code
2 of Civil Procedure §§377.11 and 377.32. JASON DUENAS was dependent on DELORIS
3 MERKEL for economic support including but not limited to housing, room and board and other
4 benefits.

5 3. Defendants KAISER FOUNDATION HEALTH PLAN, INC., THE
6 PERMANENTE MEDICAL GROUP, INC., KAISER FOUNDATION HOSPITALS, KAISER
7 PERMANENTE HOME HEALTH AGENCY and PARKVIEW GARDENS are located and
8 doing business in the County of Sonoma, State of California. Defendants PARKVIEW
9 GARDENS and ENSIGN MONTGOMERY own and operate PARKVIEW GARDENS, a
10 licensed Skilled Nursing Facility as subject to California Health and Safety Code Section 1250-
11 1339.70 and Title 22 of the California Code of Regulations §72001-72713 as well as Federal
12 Nursing Home Reform Act Regulations codified in Title 42 of the United States Code §483, et
13 seq. Decedent DELORIS MERKEL was a resident of PARKVIEW GARDENS and KAISER
14 SANTA ROSA in December 2013 and January and February 2014, in pertinent parts.

15 4. DELORIS MERKEL was an elderly and dependent adult per Welfare &
16 Institutions Code section 15610.27, age 81, who was substantially more vulnerable than other
17 members of the public.

18 5. Defendant KAISER FOUNDATION HEALTH PLAN, INC., is a non-profit
19 California public benefit corporation in the practice of healthcare insurance and is organized
20 under the laws of the State of California with its principal place of business in Oakland,
21 California, County of Alameda.

22 6. Defendant THE PERMANENTE MEDICAL GROUP, INC. is a professional
23 corporation in the practice of providing health care services and organized under the laws of the
24 State of California, with its principal place of business in Oakland, California, County of
25 Alameda.

26 7. Defendant KAISER FOUNDATION HOSPITALS is a professional corporation in
27 the practice of providing health care services and organized under the laws of the State of
28 California, with its principal place of business in Oakland, California, County of Alameda.

8. Defendant KAISER PERMANENTE HOME HEALTH AGENCY is an entity, form unknown, which provides skilled nursing care, physical therapy and other services including, without limitation, at home, and which operates, without limitation, in California, County of Sonoma.

9. Hereinafter, all the Defendants referred to in paragraphs 5 through 8 will be referred to as “KAISER” or “the KAISER Defendants.”

10. Defendants, and each of them, are the actual and ostensible agents of each other.

11. The true names and capacities, whether individual, corporate, associate or otherwise and the true involvement of Defendants sued herein as DOES 1 through 100, inclusive, are unknown to Plaintiffs who therefore sue said Defendants by such fictitious names and will amend this Complaint to show the true names, capacities, and involvement when ascertained. Plaintiffs are informed and believe, and thereon allege, that each of the Defendants designated as a DOE is responsible in some manner for the events and happenings herein referred to and thereby legally caused the injuries and damages herein alleged.

12. Plaintiffs are informed and believe, and accordingly allege, that at all times relevant each of the Defendants was the employer, employee, agent, servant, principal or subsidiary of the Defendants and at all times acted within the course and scope of such employment or agency and with the knowledge and approval of said Co-Defendants. In particular, at all time material hereto, Defendants individually and through their officers, directors and/or management agents, (1) had advance knowledge of the unfitness of their employees and employed said employees with a conscious disregard of the rights and safety of others, (ii) authorized the wrongful conduct alleged in this Complaint and/or (iii) were personally guilty of oppression, fraud, malice and/or recklessness.

FIRST CAUSE OF ACTION

(Negligence Against All Defendants)

13. Plaintiffs refer to paragraphs 1-12 and incorporate them into this First Cause of Action as though fully set forth herein.

///

1 14. DELORIS MERKEL was at various times a resident of KAISER SANTA ROSA_

2 and PARKVIEW GARDENS from approximately December 2013 to February 2014.

3 Throughout her time at KAISER SANTA ROSA and PARKVIEW GARDENS, Defendants

4 failed to obtain her fully informed consent and failed to provide necessary care and protection to

5 DELORIS MERKEL, failed to report changes in her condition to her physicians and family and

6 retained and provided care to her after such care was allowed by statute. The pattern of

7 substandard care and neglect to DELORIS MERKEL put her at extremely high risk for the

8 development of a severe wound and pneumonia and resulting complications, including her

9 ultimate death.

10 15. As a result of the neglect by the Defendants, DELORIS MERKEL died on

11 February 9, 2014.

12 16. Defendants, and each of them, negligently and recklessly failed to use ordinary

13 care, and such other care as is prescribed by law, regarding the care and protection of DELORIS

14 MERKEL. As discussed in detail, above, in particular, and without limiting the generality of the

15 foregoing, on or about early December 2013 DELORIS MERKEL fell. She was treated by

16 KAISER PT Home Care. On or about December 29, 2013, DELORIS MERKEL fell again and

17 injured her shoulder. She presented to KAISER Santa Rosa. Defendants eventually determined

18 shoulder surgery was indicated. Shoulder surgery was performed at KAISER Santa Rosa on or

19 about January 15, 2014. Thereafter, DELORIS MERKEL developed pneumonia and sepsis and

20 died, all while under the care and custody and treatment of Defendants, and each of them.

21 17. At all times herein mentioned, employees and/or agents of the PARKVIEW

22 GARDENS/ENSIGN MONTGOMERY Defendants and DOES 31-40 inclusive staffed the

23 skilled nursing facility and had care and custody of DELORIS MERKEL while she was a

24 resident. In committing the acts, errors and omissions alleged herein, such employees and/or

25 agents acted within the course and scope of employment or agency with said Defendants, and

26 each of them.

27 18. At all times herein mentioned, the skilled nursing facility was managed by a

28 Director of Nursing DOE 16 who was an employee of the PARKVIEW GARDENS/ENSIGN

1 MONTGOMERY Defendants with administrative authority, responsibility and accountability for
2 the nursing services provided to DELORIS MERKEL and other residents. See CCR Title 22,
3 §72327. All actions taken by DOE 16 were within the course and scope of her employment with
4 said Defendants and/or ratified by said Defendants.

5 19. The PARKVIEW GARDENS/ENSIGN MONTGOMERY Defendants also
6 employed managing agents, who will be referred to as “DOES 17-30 inclusive.” DOES 17-30
7 inclusive had broad discretionary powers and exercised substantial discretionary authority with
8 respect to formulating and implementing the PARKVIEW GARDENS/ENSIGN
9 MONTGOMERY Defendants’ policies at the skilled nursing facility. Said managing agents also
10 had the authority to hire, fire, evaluate and reprimand staff, and to determine the number and
11 competency of staff needed to meet the needs of vulnerable residents, including DELORIS
12 MERKE.

13 20. At all times herein mentioned, the skilled nursing facility was staffed by agents
14 and employees of the PARKVIEW GARDENS/ENSIGN MONTGOMERY Defendants, and of
15 DOES 31-40 inclusive, including nurses who practice under the Nursing Practice Act (Business
16 & Professions Code Section 1402. et seq.)

17 21. At all times herein mentioned, Defendants KAISER FOUNDATION HEALTH
18 PLAN, INC., KAISER FOUNDATION HOSPITALS, THE PERMANENTE MEDICAL
19 GROUP and DOES 41-45 (“the KAISER Defendants”) were business entities with their
20 principal place of business and corporate headquarters located in the city of Oakland and Santa
21 Rosa, in the County of Alameda and Sonoma respectively. At all times herein mentioned the
22 KAISER Defendants owned, operated, managed and maintained KAISER PERMANENTE Santa
23 Rosa Medical Center (“KAISER SANTA ROSA”).

24 22. At all times herein mentioned, while DELORIS MERKEL was a patient at
25 KAISER SANTA ROSA she was in the care and custody of employees of the KAISER
26 Defendants and of DOES 46-60 inclusive, including case managers, physicians and others. In
27 committing the acts, errors and omissions alleged herein, such employees and/or agents acted
28 within the course and scope of employment or agency with said Defendants, and each of them.

23. At all times mentioned, the KAISER Defendants, the PARKVIEW GARDENS/ENSIGN MONTGOMERY Defendants and DOES 31-40 inclusive were jointly and severally responsible for DELORIS MERKEL's care and custody at the skilled nursing facility.

24. At all times herein mentioned, Defendants and each of them and Defendant DOES 61-70 inclusive were entities or individuals who had care or custody of DELORIS MERKEL during the time period December 2013 through February 2014.

25. The true names and capacities, whether individual, corporate, associate or otherwise and the true involvement of Defendants sued herein as DOES 1 through 70, inclusive, are unknown to Plaintiffs who therefore sues said Defendants by such fictitious names and will amend this Complaint to show the true names, capacities and involvement when ascertained. Plaintiffs are informed and believe, and thereon allege, that each of the Defendants designated as a DOE is responsible in some manner for the events and happenings herein referred to and thereby legally caused the injuries and damages herein alleged.

26. Plaintiffs are informed and believe and accordingly allege that at all relevant times each of the Defendants was the alter ego, employer, employee, agent, servant, principal or subsidiary of the other Defendants and at all times acted within the course and scope of such employment or agency and with the knowledge and approval of said Co-Defendants.

27. Defendants, and each of them, are jointly and separately responsible for the conduct alleged herein and the injuries to Plaintiffs.

28. At all times herein mentioned, KAISER Defendants did negligently care for and neglected DELORIS MERKEL in the manner herein alleged. KAISER Defendants failed to exercise that degree of skill and care commonly required of home health agencies in accordance with Customary Community Standards ordinarily employed by reputable health care providers practicing under the same or similar circumstances.

29. As a legal result of the negligence and carelessness of Defendants, and each of them, DELORIS MERKEL was severely injured and thereafter died.

WHEREFORE, Plaintiff's pray judgment as hereinafter set forth.

///

1 **SECOND CAUSE OF ACTION**

2 **(Elder and Dependent Abuse Under CACI 3103 and CACI 3105)**

3 30. Plaintiffs refer to paragraphs 1-29 and incorporate them into this cause of action
4 as though fully set forth herein.

5 31. At all times mentioned herein, the Defendants, and each of them, were providing
6 for the care and custody of decedent DELORIS MERKEL and were all "care custodians" within
7 the meaning of Welfare & Institutions Code section 15610.17.

8 32. The above mentioned acts of Defendants, and each of them, constituted "abuse,"
9 "neglect" and/or "abandonment" within the meaning of Welfare & Institutions Code section
10 15610 et seq. and caused physical pain and/or mental suffering and/or deprived DELORIS
11 MERKEL of the services that were necessary to avoid physical harm or mental suffering.

12 33. As a direct result of the abuse, neglect and/or abandonment of decedent DELORIS
13 MERKEL by Defendants, and each of them, DELORIS MERKEL'S estate was caused to incur
14 the expensive of acute hospitalization and burial and funeral costs, all to her special damage in a
15 sum to be established according to proof.

16 34. By the conduct, acts and omissions of said Defendants, as alleged above, they are
17 guilty of recklessness, oppression and/or malice. The specific facts set forth above show a
18 disregard of the high probability that decedent DELORIS MERKEL would be injured. In
19 addition to special damages, Plaintiffs are therefore entitled to an award against said Defendants,
20 and each of them, of the reasonable attorney's fees and costs incurred in prosecuting this case as
21 well as decedent DELORIS MERKEL'S pre-death pain and suffering pursuant to Welfare &
22 Institutions Code section 15657. As a direct result of the above, neglect and/or abandonment of
23 decedent DELORIS MERKEL by Defendants, and each of them, decedent DELORIS MERKEL
24 suffered fear, anxiety, humiliation, physical pain and discomfort and emotional distress, all to her
25 general damage in a sum to be established according to proof.

26 WHEREFORE, Plaintiffs pray judgment as hereinafter set forth.

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **(Wrongful Death Against All Defendants)**

3 35. Plaintiffs refer to paragraphs 1-34 and incorporate them into this cause of action
4 as though fully set forth herein.

5 36. Plaintiffs SINDA DINAN and JASON DUENAS are heirs and economic
6 dependents respectively of decedent DELORIS MERKEL. As a result of the Defendants' acts as
7 alleged above, decedent DELORIS MERKEL died.

8 WHEREFORE, Plaintiffs pray judgment as hereinafter set forth.

9 **FOURTH CAUSE OF ACTION**

10 **(Survivorship)**

11 37. Plaintiffs refer to paragraphs 1-36 and incorporate them into this cause of action
12 as though fully set forth herein.

13 38. Decedent DELORIS MERKEL suffered pain prior to her death as a result of the
14 Defendants' actions and incurred damages pursuant to California Civil Code section 377.

15 WHEREFORE, Plaintiffs pray judgment as hereinafter set forth.

16 **FIFTH CAUSE OF ACTION**

17 **(Negligent Infliction of Emotional Distress)**

18 39. Plaintiffs refer to paragraphs 1-38 and incorporate them into this cause of action
19 as though fully set forth herein.

20 40. Plaintiffs witnessed the Defendants' negligence and would repeatedly plead with
21 Defendants' employees, agents and managing agents to give DELORIS MERKEL proper care,
22 and said Defendants ignored the pleas. Plaintiffs contemporaneously witnessed Defendants'
23 negligence and neglect and callous misbehavior and saw DELORIS MERKEL'S condition
24 decline, all without adequate intervention by the Defendants.

25 41. As a result of the above-mentioned, Plaintiffs experienced extreme emotional
26 distress and were so injured.

27 WHEREFORE, Plaintiffs pray judgment as hereinafter set forth.

28 ///

1 **PRAYER**

2 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
3 follows:

- 4 (1) For general damages in a sum according to proof at trial;
5 (2) Special damages in a sum according to proof at trial;
6 (3) For punitive damages pursuant to Civil Code §3294;
7 (4) For an award of attorney's fees pursuant to, without limitation, California
8 Code of Civil Procedure §1021.5 and/or California Welfare & Institutions
9 Code §15657;
10 (5) For pre-death pain and suffering pursuant to Welfare & Institutions Code
11 §15657;
12 (6) For costs of suit;
13 (7) For pre-judgment interest according to law; and
14 (8) For such other relief as the Court may deem proper.

15 DATED: February 9, 2015

LAW OFFICES OF DOUGLAS C. FLADSETH

16
17 
18 _____
19 DOUGLAS C. FLADSETH
20 Attorney for Plaintiffs
21
22
23
24
25
26
27
28