

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

RANDALL N. THURMAN, PERSONAL  
REPRESENTATIVE FOR THE ESTATE OF  
LOUISE GAIL THURMAN,

Plaintiff

v.

NORTHWEST PERMANENTE, P.C., an  
Oregon corporation; KAISER  
FOUNDATION HOSPITALS, INC., a  
California corporation; KAISER  
FOUNDATION HEALTH PLAN OF THE  
NORTHWEST; BRIGITTE K. NIXON,  
M.D.,

Defendants.

Case No.

COMPLAINT AND DEMAND FOR  
JURY TRIAL  
(Medical Negligence)

Prayer: \$2,350,000.00  
Filing Fee \$793.00 per  
ORS 21.160(1)(d)

NOT SUBJECT TO MANDATORY  
ARBITRATION

COMES NOW Plaintiff, Randall Thurman, Personal Representative for the Estate  
of Louise Gail Thurman, and for his claim against Defendants, hereby alleges as follows:

1.

At all times material herein, Plaintiff Randall N. Thurman was the duly-appointed  
Personal Representative of the Estate of Louise Gail Thurman, Plaintiff's wife and mother  
of their surviving daughter. Plaintiff brings this case on behalf of the Estate, himself, and  
his daughter.

2.

At all times material herein, Defendant Northwest Permanente, PC, was a  
professional corporation licensed in the State of Oregon and engaged in the business of  
providing medical care to patients through the work of physician and non-physician  
individuals employed by or otherwise acting as agents of Northwest Permanente, PC.

1 3.

2 At all times material herein, Defendant Kaiser Foundation Hospitals, Inc. was  
3 California corporation licensed to do business in the State of Oregon and engaged in the  
4 business of owning and operating inpatient and outpatient medical centers where  
5 patients received medical care by Northwest Permanente physicians and non-physicians.  
6 In addition, Defendant Kaiser Foundation Hospitals, Inc. employed or otherwise engaged  
7 as agents individuals either practicing medicine or providing ancillary services to  
8 facilitate the practice of medicine.

9 4.

10 At all times material herein, Defendant Kaiser Foundation Health Plan of the  
11 Northwest was an Oregon corporation engaged in the business of owning and operating  
12 inpatient and outpatient medical centers where patients received medical care by  
13 Northwest Permanente physicians and non-physicians. In addition, Defendant Kaiser  
14 Foundation Hospitals, Inc. employed or otherwise engaged as agents individuals either  
15 practicing medicine or providing ancillary services to facilitate the practice of medicine.  
16 Defendant Kaiser Health Plan of the Northwest owned and operated Kaiser Permanente  
17 Northwest Laboratories.

18 5.

19 Defendants Kaiser Foundation Hospitals, Inc., Northwest Permanente, PC and  
20 Kaiser Foundation Health Plan of the Northwest were, at all times material herein,  
21 engaged in a joint enterprise to provide medical care and services to patients enrolled in  
22 the Kaiser Foundation Health Plan, including Plaintiff's decedent. Each of these  
23 defendants acted as the agent of the other. Hereinafter, Defendants Northwest  
24 Permanente, PC, Kaiser Foundation Hospitals, Inc. and Kaiser Foundation Health Plan of  
25 the Northwest will be collectively referred to as "Defendant Kaiser."

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6.

At all times material herein, Defendant Brigitte K. Nixon (hereinafter referred to as "Defendant Nixon") was a medical doctor, licensed by the State of Oregon and practicing the medical specialty of anatomic pathology. Defendant Nixon was at all times material herein either employed by or otherwise engaged by Defendant Kaiser as its agent.

7.

On or about March 19, 2013, Louise Thurman was diagnosed by Defendant Kaiser as having breast cancer within her right breast. Pathology testing and consultation with physicians at Defendant Kaiser led Louise Thurman to undergo surgical removal of the cancerous lump in her breast, or a lumpectomy, on April 11, 2013.

8.

The lumpectomy specimen was delivered to Defendant Kaiser's laboratory for analysis. Defendant Nixon and other agents of Defendant Kaiser reviewed the lumpectomy specimen, and adjacent tissues and lymph nodes, and issued a report of that review, which diagnosed Louise Thurman as suffering from invasive ductal carcinoma of the right breast. Because of that diagnosis, the physicians directing the care of Louise Thurman recommended that she undergo adjuvant chemotherapy and adjuvant radiation therapy. Louise Thurman underwent such treatment beginning in May of 2013.

9.

On or about September 23, 2013, physicians caring for Louise Thurman recommended that the original pathology specimen taken from Mrs. Thurman's breast be re-examined under the microscope. That re-examination led physicians caring for Louise Thurman to believe her original pathological diagnosis made by Defendant Nixon and other agents of Kaiser was incorrect, and that Louise Thurman suffered from invasive neuroendocrine carcinoma, not invasive ductal carcinoma.

10.

Thereafter Louise Thurman's cancer spread and she died on January 28, 2014.

11.

Defendants, and each of them, individually and through the actions of their employees and/or agents, were negligent in one or more of the following respects:

- (a) In failing to correctly diagnose Louise Thurman's breast cancer as invasive neuroendocrine carcinoma at or around the time of her lumpectomy in April of 2013;
- (b) In failing to perform special staining studies on Louise Thurman's breast tissue obtained at the time of the lumpectomy in order to better diagnose and stage her disease;
- (c) In reporting that Louise Thurman's breast cancer was invasive ductal carcinoma;
- (d) In failing to perform special staining studies on Louise Thurman's breast tissue removed at lumpectomy before September 23, 2013;
- (e) In failing to advise Louise Thurman and her family that the pathological diagnosis of April, 2013 was confused, showing mixed tissue types, and needed a second review or opinion; and
- (f) In failing to obtain a second review of the lumpectomy specimen by a pathologist or lab specially trained in interpreting breast cancers.

12.

As a result of Defendants' negligence, Louise Thurman's breast cancer spread to other parts of her body and caused her death. Had the pathological diagnosis of Mrs. Thurman's breast tissue removed at the time of her lumpectomy been correct, Mrs. Thurman's surgical and medical treatment of her breast cancer would have been different and, to a reasonable degree of medical probability, she would not have died on

1 January 28, 2014.

2 13.

3 Plaintiff and those entitled to recover damages arising from Louise Thurman's  
4 death, have lost her society and companionship for the rest of their lives. Defendants'  
5 negligence also caused Louise Thurman to suffer tremendous pain, suffering and  
6 emotional distress arising from both the incorrect treatment she received, and learning  
7 that her original pathological diagnosis was incorrect, all to Plaintiff's non-economic  
8 damages in the amount of \$2,000,000.00. Plaintiff has also incurred medical expenses,  
9 funeral/burial expenses, and related expenses in the approximate sum of \$100,000.00,  
10 and the Estate has suffered pecuniary loss in the approximate sum of \$250,000.00, as  
11 additional economic damages.

12 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them,  
13 as follows:

- 14 (a) For non-economic damages in the amount of \$2,000,000.00;  
15 (b) For economic damages in the amount of \$100,000.00; and  
16 (c) For his costs and disbursements incurred herein.

17 DATED this 22<sup>nd</sup> day of September, 2016.

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5 PLAINTIFF HEREBY DEMANDS  
6 A JURY TRIAL

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