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7 KATHLEEN MENDEZ and FRANK MENDEZ

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN DIEGO

10 KATHLEEN MENDEZ and
11 FRANK MENDEZ,

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13
14 Plaintiffs,

15 vs.

16
17 KAISER FOUNDATION HEALTH
18 PLAN, INC., KAISER PERMANENTE,
19 and DOES 1 through 50,
20 Inclusive,

21 Defendants.

CASE NUMBER:

37-2018-00038708-CU-MM-NC

COMPLAINT FOR
DAMAGES:

[(1). Professional Negligence
(2). Negligence]

[Amount of Complaint = \$25,000+]

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23 Plaintiffs, KATHLEEN MENDEZ and FRANK MENDEZ, for causes of action
24 against the Defendants, and each of them, complains and alleges as follows:

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26 1. Plaintiffs are informed and believe, and thereon allege, that at all times herein
27 mentioned Defendants, KAISER FOUNDATION HEALTH PLAN, INC., KAISER
28 PERMANENTE and DOES 1 - 25, Inclusive, were state-licensed hospitals and medical

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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

1 facilities and/or operational entities operating in the County of San Diego, and in the State of
2 California. Plaintiffs further allege, according to his information and belief, that said
3 Defendants, were and are California Corporations and further that these Defendants, along
4 with their doctor, nurse and medical provider employees, DOES 26-50, Inclusive are now,
5 and at all times herein mentioned were, individuals, corporations, partnerships and/or other
6 manner of business entities duly organized, licensed and qualified to conduct business in the
7 State of California, and within the jurisdiction of the above-referenced Court.
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10 2. Defendants, KAISER FOUNDATION HEALTH PLAN, INC., KAISER
11 PERMANENTE, and DOES 1 through 25, Inclusive, are vicariously liable for the licensed
12 medical doctors, nurses and other medical professionals whom they employed at all pertinent
13 times hereto, and who either acted individually, or were employees, agents, servants and/or
14 owners or joint venturers of such defendants. At all times pertinent hereto, the events
15 and circumstances giving rise to this action occurred in the County of San Diego, and within
16 the jurisdiction of the above-captioned Court.
17

18 3. Defendants, DOES 50-75 were and are manufacturers, assemblers, producers,
19 distributors, suppliers, sellers and/or advertisers of certain drugs, products, medical devices,
20 diagnostics, tools or implements utilized by the doctor and hospital defendants in this case to
21 treat, evaluate and perform treatment on Plaintiff, KATHLEEN MENDEZ, as more
22 particularly described hereinafter. Plaintiff is currently unaware of the facts or circumstances
23 giving rise to liability to Defendants, DOES 50-75, and is also unaware of the names,
24 identities or capacities of any such Defendants, but Plaintiff will amend this complaint to set
25 forth such facts, circumstances, and the identities and capacities of such defendants, once
26 ascertained.
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1 4. Plaintiff is presently uncertain of the true statuses and capacities of the medical
2 doctors, providers and facilities referred to, whether individual, corporate, partnership or
3 otherwise. Plaintiff will seek to amend this complaint to state the true capacities and
4 statuses, when ascertained.
5

6 5. That the true names and capacities of DOES 1 through 100, inclusive, whether
7 individual, corporate, associate or otherwise are unknown to Plaintiff at this time, and/or
8 the circumstances giving rise to liability of DOES 1 through 100 are not known at this time,
9 and when Plaintiff ascertains the true names and capacities and or the circumstances giving
10 rise to liability of said Defendants, and each of them, Plaintiff will ask leave of Court to
11 amend this complaint by setting forth same. Plaintiff is informed and believes, and thereon
12 alleges, that each of the fictitiously named Defendants is negligently responsible in some
13 manner for the occurrences herein alleged, and that Plaintiff's injuries as herein referred-to
14 were proximately caused by the negligence hereinafter alleged.
15

16 6. That at all times herein mentioned the Defendants, and each of them, were agents,
17 servants, and employees of each of the other, acting within the course and scope of said
18 agency and employment.
19

20 7. At all times pertinent hereto, Plaintiffs, KATHLEEN MENDEZ and FRANK
21 MENDEZ, were residents of the City of Vista, County of San Diego, State of California.
22

23 8. Beginning prior to including up to about May, 2015 and continuing to the
24 present, Plaintiff, KATHLEEN MENDEZ, consulted and employed and thereafter
25 continued to consult and employ Defendants, KAISER FOUNDATION HEALTH PLAN,
26 INC., KAISER PERMANENTE, and DOES 1-50, for medical consultation and treatment.
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1 At that time Defendants, and each of them, undertook to provide Plaintiff, KATHLEEN
2 MENDEZ, with such care and attendance as Plaintiff might require. Pursuant to this
3 employment, which Defendants and each of them accepted, Defendants rendered
4 professional services in the diagnosis, treatment, surgery and care of Plaintiff's body, health
5 and condition.
6

7 9. Beginning on or around May, 2015, and continuing thereafter to the present,
8 while Plaintiff, KATHLEEN MENDEZ was a patient of Defendants, KAISER
9 FOUNDATION HEALTH PLAN, INC., KAISER PERMANENTE, and DOES 1-50;
10 Defendants, and each of them, negligently and carelessly diagnosed, treated, maintained,
11 cared for, supervised and attended to Plaintiff, KATHLEEN MENDEZ, during the course of
12 her treatment, evaluation and care with Defendants, by including, but not limited to, the
13 following acts:
14

15 (a) misdiagnosing, mistreating and mismanaging Plaintiffs' medical care and
16 treatment with Defendants; negligently evaluating, diagnosing, treating and attending to
17 Plaintiff relative to her medical condition and illness including but not limited to
18 management of her renal cancer condition ultimately characterized at the ultimate time of
19 surgery on or about 05/09/2017 as "8.3 x 7.5 x 7.0 clear cell renal carcinoma, grade III, with
20 tumor necrosis, Grade IV, positive for metastatic renal cell carcinoma, and the effects and
21 consequences pertaining thereto."
22

23 (b) despite Plaintiff, KATHLEEN MENDEZ, having been a member of Kaiser
24 Foundation Health Plan, Inc., and Kaiser Permanente, who treated as a patient at the
25 Local Kaiser Hospital and Clinic Facilities for many years, and continuously so until the
26 present time; Plaintiff did not receive a definitive diagnosis of her aforementioned renal
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1 cancer until on or about the date of 05/09/17 at which time she underwent surgery for
2 removal of the malignant tumor, and to her affected kidney; however,

3 (c) it was not until shortly before the time of the surgery, i.e., on or about 02/22/17,
4 that Plaintiff, KATHLEEN MENDEZ, first learned that a CT SCAN had been performed by
5 Kaiser doctors and/or radiologists nearly two years earlier-- on 05/29/15—which CT SCAN
6 demonstrated a 4-5 cm right renal mass, described as “concerning for malignancy”;
7

8 (d) the definitive diagnosis of the malignant tumor, i.e., clear cell renal carcinoma, grade
9 III—which had by this time had significantly metastasized, was not rendered and
10 communicated to Plaintiff until the date of surgery, on 05/09/2017.
11

12 (e) beginning from the time that the CT SCAN was performed on 05/29/2015—[which
13 was ordered by Plaintiff’s Kaiser doctors in the first instance in order to assess a bowel
14 obstruction condition]; Defendants, KAISER FOUNDATION HEALTH PLAN, INC.,
15 KAISER PERMANENTE, and DOES 1 through 50, and each of them, through their
16 doctors and employees; knew, or should have known, that the renal mass represented a
17 potentially dangerous medical condition, which should have been assessed, evaluated,
18 treated, and the fact of which should have been (but was not) promptly communicated to
19 Plaintiff, KATHLEEN MENDEZ, as the patient;
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22 (f) had the renal tumor been treated and eradicated within the first 6 months post-
23 2015 CT-SCAN, Plaintiff is informed and believes that her chance of remission and for a
24 cure would have, to a substantial likelihood, been greater than 90%. Conversely, the fact of
25 the significant enlargement and metastasis of the renal tumor to 8.3 x 7.5 x 7.0 as of the
26 time of its excision, has consequently resulted in Kathleen Mendez’s post-surgical prognosis
27 as being having less than 1 year of survival;
28

1 (f) subsequent to Plaintiff's surgery in May, 2017; Plaintiff was administered a
2 regime of chemotherapy treatment by Defendants. However, as a result of such
3 chemotherapy treatment, Plaintiff was further injured in her body, health and strength, and
4 she suffered from complications from the chemotherapy treatment, which continue to the
5 present time, and for which treatment continues. Such further medical care provided by
6 Defendants resulted in Plaintiff, KATHLEEN MENDEZ, being hospitalized for protracted
7 treatment and care, which continues to the present.
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10 10. From and after the time of their employment, Defendants, KAISER
11 FOUNDATION HEALTH PLAN, INC., KAISER PERMANENTE, and DOES 1 through
12 50, and each of them, so negligently failed to exercise the proper degree of knowledge and
13 skill in examining, diagnosing, treating, and caring for Plaintiff, KATHLEEN MENDEZ,
14 that Plaintiff was caused to suffer thereby sustained the injuries and damages herein alleged.
15

16 11. As a proximate result of the negligence of Defendants, and each of them,
17 Plaintiff, KATHLEEN MENDEZ, was hurt and injured in her health, strength and
18 activity, sustaining injury to her body and shock to her nervous system and person, all of
19 which injuries have caused, and continue to cause, Plaintiff great mental, physical and
20 nervous pain and suffering. Plaintiff, KATHLEEN MENDEZ, is informed and believes
21 and thereon alleges that such injuries will result in some permanent disability to her. As a
22 result of such injuries, Plaintiff has suffered general damages.
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25 12. As a further proximate result of the negligence of Defendants, and each of them,
26 Plaintiff has been required to expend money and incur obligations, and will continue to
27 expend money and incur obligations, for medical services, x-rays, drugs, and sundries
28 reasonably required in the treatment and relief of the injuries herein alleged.

1 13. As a further proximate result of the negligence of Defendants, and each of them,
2
3 Plaintiff was prevented from attending to her usual occupation and was damaged in an
4 amount not yet ascertained. Plaintiff will seek to amend this complaint at such time as the
5 precise amount of his loss of income is ascertained.

6 14. Plaintiff has remained under the care of her physicians and medical providers,
7
8 until the present time; and Plaintiff did not reasonably discover the specific nature and extent
9 of the acts constituting Defendants' and each of their negligence, or the cause of his injury
10 until the time of her surgery on or about 05/09/17, and thereafter, upon receiving
11 chemotherapy treatment in March 2018, for which Plaintiff underwent a protracted
12 hospitalization for injuries to her body and infection, that her condition was sufficiently
13 assessed and deemed to be irremediable, and after she had continued to suffer pain and
14 debilitating after-effects notwithstanding her surgery and revision procedures, and the
15 representations of the Defendants, or their omissions, as her treating doctors and health care
16 providers, that the measures and treatment she was being afforded in the meantime were
17 sufficient to address her renal condition and would be efficacious to address her medical
18 issues and state of health.

19 15. Prior to filing the above-captioned complaint, and from on or about 04/16/2018
20 to 05/08/18; Plaintiffs presented to Defendants Notices of Intent to Commence Action for
21 the injuries, disability, losses and damages suffered and incurred by them in compliance with
22 the requirements of Section 364 of the Code of Civil Procedure.

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26 **SECOND CAUSE OF ACTION:**

27 **(General Negligence - Against All Defendants)**
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1 16. Plaintiff realleges and incorporates by reference paragraphs 1 through 15, above
2 as though fully set forth hereat.

3 17. That at all pertinent times, Defendants owned, operated, controlled and/or
4 utilized certain business property and premises known and referred to as Kaiser Zion
5 Medical Center, and Kaiser Outpatient Medical facility, located in San Diego County,
6 California. At all pertinent times, Plaintiff, KATHLEEN MENDEZ, was and has been
7 lawfully present as a member patient to undergo treatment and surgeries previously agreed
8 to between the parties at the aforementioned location. On the aforementioned dates and time
9 period, at Defendants, and each of them, did so negligently, willfully, wantonly and
10 unlawfully own, operate, manufacture, distribute, maintain, control, supervise, and entrust
11 their property, equipment, products, instrumentalities, employees, contractors and associates,
12 and/or recommend and utilize the defective products and instrumentalities sold, distributed
13 and/or provided by certain third parties whose identities, capacities and culpabilities are
14 currently unknown and subject to further discovery, so that as a proximate result thereof
15 Plaintiff's health, body and person were injured and compromised due to the failure of
16 Defendants to properly and competently perform services and discharge each of their duties
17 of care to Plaintiff relative to their contracted for services, products, equipment and
18 instrumentalities, thereby causing Plaintiff's injuries and damages as set forth hereat.
19

20 18. As a direct result of Defendants failure to perform Plaintiff, KATHLEEN
21 MENDEZ, has sustained actual damages, as aforementioned, as a direct consequence of
22 Defendant's breach.
23

24 19. As a further proximate result of the negligence of the Defendants, and each of
25 them, Plaintiff, FRANK MENDEZ, has sustained damages in that he has suffered and
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1 incurred the loss of support and services, love, companionship, society, affection, sexual
2 relations and solace of his wife and spouse, KATHLEEN MENDEZ.

3 WHEREFORE, Plaintiffs pray judgment as follows:

- 4 1. For general damages for pain, suffering, mental anguish, emotional distress and
5 loss of consortium according to proof;
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7 2. For the reasonable value of Plaintiff's medical and hospital care and attention
8 required and which will be required in the future;
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10 3. For the reasonable value of loss of earnings and diminished earning capacity;
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12 4. For prejudgment interest as prescribed by law;
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14 5. For costs of suit and for such other and further relief as the Court may deem just
15 and proper;
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17 6. For such other and further relief as the Court may deem proper.

18 DATED: JULY 31, 2018

LAW OFFICES OF CRAIG F. CASTLE

19 By: _____

CRAIG F. CASTLE, ESQ., Attorneys for
Plaintiffs, KATHLEEN MENDEZ and
FRANK MENDEZ

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