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SUPERIOR COURT OF CALIFORNIA – UNLIMITED CIVIL JURISDICTION

IN AND FOR THE COUNTY OF SAN MATEO

RG12643707

ADELLE DEMASI (in her own capacity and
as successor in interest to the Estate of
Decedent Joseph DeMasi) and DENISE
SWANSON (in her own capacity and as
successor in interest to the Estate of Decedent
Joseph DeMasi)

Plaintiffs,

vs.

PALO ALTO SUBACUTE AND
REHABILITATION CENTER; COVENANT
CARE CALIFORNIA, LLC; CARLMONT
GARDENS NURSING CENTER;
PENINSULA CONVALESCENT
ASSOCIATES, LLC; PARIMALA SELVAN,
M.D.; TRUDY KELTZ, P.A.; BARBARA
DEMAS, M.D.; PERMANENTE MEDICAL
GROUP, INC.; KAISER FOUNDATION
HEALTH PLAN, INC.; KAISER
FOUNDATION HOSPITALS and DOES 1-
100

Defendants

COMPLAINT FOR DAMAGES

1. Negligence (by Each Plaintiff Against
All Defendants)

2. Elder and Dependant Adult Abuse (by
Each Plaintiff Against all Defendants)

**[Welfare and Institutions Code §
15657 et seq.]**

3. Denial and Delay of Health Care
Services Provider to Provide Health
Care Services Recommended to
Decedent (By Each Plaintiff Against
Each Defendant Except PARIMALA
SELVAN, M.D.; TRUDY KELTZ,
P.A.; BARBARA DEMAS, M.D.)

[Civil Code section 3428(a)]

4. Wrongful Death (By Each Plaintiff
Against All Defendants)

5. Negligent Infliction of Emotional
Distress (by All Plaintiffs Against
All Defendants Except CARLMONT
GARDENS NURSING CENTER;
PENINSULA CONVALESCENT
ASSOCIATES, LLC)

)
)
) Jury Trial Requested
) Amount in Controversy Exceeds \$25,000.00
)
)

PARTIES AND JURISDICTION

1. For each of the allegations pled herein based on information and belief, plaintiffs are likely to have evidentiary support for each such allegation after a reasonable opportunity for further investigation or discovery is had.

2. Plaintiff ADELLE DEMASI (also referred to herein as "MS. DEMASI") is and was a natural person who resided and does reside in Butte County, California. MS. DEMASI is the legal daughter of Joseph DeMasi (also referred to herein as "Mr. DeMasi" and "Decedent"), now deceased. Consistent with the DECLARATION OF ADELLE DEMASI RE SUCCESSOR IN INTEREST TO THE ESTATE OF DECEDENT JOSEPH A. DEMASI filed herewith pursuant to Code of Civil Procedure section 355.32 *et seq.*, at all relevant times, MS. DEMASI was and is a Trustee, Executor, and beneficiary of the Joseph A. DeMasi and Juanita M. DeMasi Revocable Living Trust that bequeathed all of Decedent's personal and real property to MS. DEMASI and her sister, plaintiff DENISE SWANSON. As such, MS. DEMASI succeeds to the First through Fourth Causes of action plead herein, inclusive, and to the personal and real property of Decedent that are the subjects of such Causes of Action. For these reasons, MS. DEMASI is a Beneficiary of the Estate of Decedent under Code of Civil Procedure section 377.10, and is Decedent's Successor in Interest as that term is defined by Code of Civil Procedure section 377.11.

3. Plaintiff DENISE SWANSON (also referred to herein as "MS. SWANSON") is and was a natural person who resided and does reside in Butte County, California. MS. SWANSON is the legal daughter of Joseph A. DeMasi, the Decedent. Consistent with the DECLARATION OF DENISE SWANSON RE SUCCESSOR IN INTEREST TO THE ESTATE OF DECEDENT JOSEPH A. DEMASI filed herewith pursuant to Code of Civil

1 Procedure section 355.32 *et seq.*, at all relevant times, MS. SWENSON was and is a Trustee
2 and beneficiary of the Joseph A. DeMasi and Juanita M. DeMasi Revocable Living Trust that
3 bequeathed all of Decedent's personal and real property to MS. SWANSON and her sister,
4 plaintiff ADELLE DEMASI. As such, MS. SWENSON succeeds to the First through Fourth
5 Causes of action plead herein, inclusive, and to the personal and real property of Decedent that
6 are the subjects of such Causes of Action. For these reasons, MS. SWENSON is a Beneficiary
7 of the Estate of Decedent under Code of Civil Procedure section 377.10, and is Decedent's
8 Successor in Interest as that term is defined by Code of Civil Procedure section 377.11.

9 4. At all times mentioned herein, PERMANENTE MEDICAL GROUP, INC. (a
10 corporation with its principal place of business in Oakland, California, which is located in
11 Alameda County), KAISER FOUNDATION HEALTH PLAN, INC. (a corporation with its
12 principal place of business in Oakland California); and/or KAISER FOUNDATION
13 HOSPITALS (an entity of unknown type with its principal place of business in Oakland,
14 California) (collectively referred to hereinafter as "The Kaiser Defendants" and "Kaiser")
15 employed the physicians, nurses, medical staff, and all other individuals who provided medical
16 care or services to Decedent at the Kaiser Redwood City Medical Center (hereinafter "Kaiser
17 Redwood City") at all times mentioned herein, and whose failure to exercise due care or other
18 wrongful acts are the proximate cause of the damages alleged herein. Further, such defendants
19 employed the Doe defendants named below who were other health care providers, including
20 medical staff, nurses, physicians assistants, and the like, who provided services to Decedent at
21 Kaiser Redwood City whose negligence was responsible for plaintiffs' damages as alleged
22 herein. One or more of such defendant owned and operated Kaiser Redwood City in which all
23 acts which fell below the standard of care causal of Plaintiff's injuries took place.

24 5. Defendant PARIMALA SELVAN, M.D, also referred to herein as "DR.
25 SELVAN", is a natural person and a duly licensed physician who at all relevant times was
26 practicing medicine out of Kaiser Redwood City.
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1 6. Defendant TRUDY KELTZ, N.P., is a natural person and a duly licensed nurse
2 practitioner who was employed by the Kaiser Defendants at the time she rendered care to the
3 Decedent.

4 7. Defendant PALO ALTO SUBACUTE AND REHABILITATION CENTER
5 (hereinafter, PASRC), is, on information and belief, a duly licensed skilled nursing facility
6 under the laws of the state of California, located at 911 Bryant Street, Palo Alto, California, in
7 Santa Clara County that provided care to Decedent as alleged herein.

8 8. Defendant COVENANT CARE CALIFORNIA, LLC, is a California
9 Corporation whose principal place of business is in Aliso Viejo, California, was at all relevant
10 time the owner and operator of PASRC.

11 9. Defendant CARLMONT GARDENS NURSING CENTER (hereinafter,
12 CARLMONT GARDENS), is, on information and belief, a duly licensed skilled nursing
13 facility under the laws of the state of California, located at 2140 Carlmont Drive, Belmont, CA
14 94002, in San Mateo County that provided care to Decedent as alleged herein.

15 10. Defendant PENINSULA CONVALESCENT ASSOCIATES, LLC, is a
16 California Corporation whose principal place of business is, on information and belief, in San
17 Mateo County, California, was at all relevant time the owner and operator of CARLMONT
18 GARDENS.

19 11. Plaintiffs are ignorant of the true names and capacities of defendants identified
20 as DOES 1-100. DOES 1-100 are the physicians, nurses, medical assistants, and/or other
21 agents, employees, staff members or persons who were employed by, or acting as the agent of,
22 any of the Defendants named in this action whose negligent acts were the proximate cause of
23 plaintiffs' damages. Plaintiffs are informed and believe that DOES 1-100 were in some manner
24 the proximate and legal cause of the injuries and damages suffered by plaintiffs as alleged
25 herein.

26 12. In committing the acts alleged in this Complaint, each defendant, including each
27 Doe Defendant, was the agent and employee of the other, and was acting within the course and
28 scope of that agency and capacity. The conduct of each such defendant was ratified by his or

1 her employer, and each such employer had knowledge of the unfitness of the employee and
2 employed him or her with a conscious disregard of the rights or safety of others.

3 4 COMMON FACTUAL ALLEGATIONS

5 13. Decedent Joseph A. DeMasi was born on January 7, 1921. At all relevant times,
6 he was 91 years old. On March 5, 2011 Ms. DeMasi was admitted to the Emergency Room at
7 Kaiser Redwood City to have a dental abscess that was infected drained. He was placed on
8 antibiotics including the Augmentin for the infection and discharged.

9 14. On March 26, 2011 Mr. DeMasi suffered a fall; he presented to the Kaiser
10 Redwood City ER complaining of generalized neck and back pain since the fall. X-rays were
11 taken of his cervical and thoracic spine which were normal except for osteopenia and
12 degenerative disk disease typical for his age. He was discharged.

13 15. On April 2, 2011, Mr. DeMasi again presented to the Kaiser Redwood City
14 Emergency Room, this time with complaint of excessive diarrhea that had persisted for about
15 the last two weeks and continued neck pain that he related to his prior fall. A CT scan was
16 ordered which results were as follows: "CT of the cervical spine shows DISH with ossification
17 of the anterior longitudinal ligament, bony bridging across the disc spaces at C3-4 through C6-
18 7, and bony bridging between laminae on the left side at C2-3 through C4-5 and the right-sided
19 C2-3 and C3-4. The posterior longitudinal ligament is ossified at C5-6." Ms. DeMasi was
20 admitted to Kaiser Redwood City for suspected C. Difficile Colitis possibly secondary to
21 antibiotic use, and continued neck pain associated with his fall. However, the Kaiser
22 physicians treating him, including radiologist Barbara Demas, M.D., believed the CT scan
23 taken on April 2, 2011 did not show any instability of the neck and his Kaiser physicians did
24 not suspect any other structural defect or other deformity to the spine to be causing his pain
25 other than muscle strain in the neck. A cervical soft collar only was recommended for his neck
26 pain.

27 16. On April 6, 2011, Mr. DeMasi's Kaiser physicians discharged him to be cared
28 for at CARLMONT GARDENS, a skilled nursing facility. Testing for C. Diff colitis and stool

1 culture conducted during his stay was said to be negative. He was treated empirically with
2 metronidazole for 3 days, and his diarrhea was said to have resolved. However, labs taken on
3 April 8 showed a WBC of 12,800. He was discharged to a skilled nursing facility for short
4 term rehabilitation, although Kaiser documents are not specific as to what condition exactly he
5 was to be rehabilitating from. It may have been to monitor and improve dehydration from his
6 diarrhea and/or to strengthen his neck post mechanical fall.

7 17. By April 11, 2011, Mr. DeMasi's diarrhea had returned and he was diagnosed
8 by his physician at CARLMONT GARDENS with C. Difficile Colitis and was put on Flagyl
9 for ten days to treat that condition. On that date his white blood cell count was elevated to
10 23,800. He also complained of increased neck pain. However, on April 26, 2011, Mr. DeMasi
11 was ordered by either his Kaiser physicians, his physician at CARLMONT GARDENS, or
12 both, to be discharged from CARLMONT GARDENS to an assisted living facility. However,
13 the file does not show any labs being taken after April 15, 2011 to determine his WBC and
14 there was no stood essay to determine whether his C. Difficile Colitis has resolved. There was
15 also no assessment or plan to treat his continued and increasing neck pain other than to
16 continue in a soft collar at the ALF. Mr. DeMasi moved to San Carlos Arms ALF on April 26.

17 18. On May 3, 2011 Mr. DeMasi again fell at home trying to walk around his
18 apartment at San Carlos Elms and reported to the Kaiser Redwood City ER with continued
19 dizziness, fatigue and neck pain likely caused by his undiagnosed cervical spine infection.
20 Another CT scan of the cervical spine was ordered. The Kaiser radiologists reading this study
21 concluded that the kyphotic abnormalities first noted in April 2 had become worse and
22 therefore now Dr. Demas concluded that the findings could be consistent with osteomyelitis of
23 the cervical spine. Mr. DeMasi's Kaiser physicians concluded that Mr. DeMasi was in fact
24 suffering from a severe case of cervical osteomyelitis that they chose to treat with empirical
25 antibiotics because taking a culture of the area was deemed too risky given how unstable it was.
26 The choice to treat an infection of this type empirically may be acceptable under the standard of
27 care in this instance, but if that choice is made, the physician must then monitor the patient
28 carefully to determine if the infection is responded to the empiric treatment.

1 19. On May 9, Decedent's Kaiser physicians transferred him to defendant PASRC
2 SNF for continued care and monitoring while his neck infection was being treated with empiric
3 antibiotics. According to his Kaiser physicians, he was discharged in stable condition. The
4 first three days at PASRC Decedent reported minimal to no pain. However, he was not eating
5 or drinking the majority of his meals or liquids given to him. In fact, he was reported at
6 PASRC to be eating less than 25% of all his meals and he was taking in less than a third of the
7 recommended liquid as required by the standard of care in the community. Yet these facts
8 were never communicated by PASRC nursing or dietary staff by Decedent's physicians. In
9 fact, in the seven days he was there, Decedent never even received a nutritional assessment
10 from PASRC staff.

11 20. Further, on May 11 Decedent complained to defendant TRUDY KELTZ, N.P.,
12 of pain that was 1000 out of 10 and unbearable. PASRC nursing staff also recorded his pain,
13 that had been a zero out of ten, as 8, 9 and 10 out of ten starting on May 11 and again on May
14 12. Further, labs were ordered on May 11 by MS. KELTZ which showed his WBC, which had
15 only been slightly elevated, had soared back up to 23,5000. An elevated WBC, a sudden, sharp
16 increase in pain, and depressed diet and failure to eat or drink in a patient being treated for
17 osteomyelitis are all hallmark symptoms that the patient's infection was substantially
18 worsening and that empiric treatment with antibiotics was not being successful. Yet neither
19 any of the reportedly 14 different PASRC nursing staff who cared for Mr. DeMasi during this
20 period, or MS. KELTZ, ever reported any of these substantial changes in Mr. DeMasi's
21 medical condition to any of his physicians. Instead, MS. KELTZ simply prescribed Norco and
22 later Morphine to treat the increase in the patient's pain.

23 21. On May 14, Decedent's children arrived at PASRC and were told that their
24 father had not been eating for three days and had been screaming in pain for the last three days.
25 He was found to be minimally responsive that morning and was transported by ambulance to
26 Kaiser Redwood City. There he was found to be suffering from severe sepsis from an
27 uncontrolled cervical spine infection, malnutrition and dehydration. He was pronounced dead
28 later that same day with the principal cause of death being listed as sepsis.

1
2 **DAMAGES**

3 22. As a direct and proximate result of the negligence of defendants, Decedent
4 suffered mental pain and suffering, economic loss to his estate in the form of medical and
5 funeral expenses, and death. Plaintiffs have suffered pain, suffering, sadness, and anxiety,
6 along with loss of financial support, due to the death of their father, and have lost the cost of
7 medical care, funeral expenses and the decrease value of his pension and other benefits that
8 accrued to the estate while he was alive due to the wrongful acts of defendants, and each of
9 them.

10 23. The amount of plaintiffs' total damages caused by defendant's wrongful acts is
11 well in excess of \$25,000.00, the exact amount of which will be proven at trial.

12
13 **FIRST CAUSE OF ACTION**

14 **Professional Negligence**

15 **(By Each Plaintiff Against All Defendants)**

16 24. Plaintiff incorporates by reference each allegation set forth above as if fully set
17 forth herein.

18 25. At all times herein, the physicians and licensed nurses who provided medical
19 services to Decedent at all times mentioned herein, were duly licensed to practice medicine
20 and/or nursing in the State of California and held themselves out to possess that degree of skill,
21 expertise and ability and learning of similar physicians in the San Francisco Bay Area.

22 26. On information and believe, plaintiffs allege that the treatment and care
23 Decedent received from each such defendant fell below the standard of care required of
24 physicians and other health care providers in the relevant community for at least, and without
25 limitation, the reasons articulated herein. Plaintiffs allege that that each such breach was a
26 substantial factor in causing Plaintiff's injuries as alleged, and that such would not have
27 occurred but for defendants' negligence.
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1 27. Without limitation, such actions include, but are not limited to the following acts
2 and omissions: Kaiser physicians failing to note findings consistent with osteomyelitis on the
3 April 2, 2011 CT scan taken and following with a appropriate treatment or care; Kaiser
4 physicians discharging Decedent to CARLMONT GARDENS even though his C. Difficile
5 symptoms and other infection symptoms were not fully resolved; KAISER and/or
6 CARLMONT GARDENS staff or physicians discharging Decedent to an ALF when his
7 infection symptoms and medical condition was not sufficiently stabilized on April 26, 2011;
8 KAISER physicians discharging Decedent to PASRC on May 9, 2011 even though such facility
9 was known to have had a below average rating from rating agencies and that it was not a
10 suitably managed and well run facility to accommodate the medical needs of Decedent;
11 PASRC staff, TRUDY KELTZ, and possibly other Kaiser physicians and staff failing to report
12 Decedent's significant changes in his medical condition illustrated by his increase in pain, his
13 increased WBC and his failure to eat or drink, that started to occur on or about May 11 or 12
14 that, if adequately treated with due care at that time, could have prevented Decedent's death
15 from sepsis that occurred on May 14; PASRC'S failure to provide a dietary evaluation of
16 Decedent and to insure that he was receiving adequate nutrition and fluids that were also a
17 proximate cause of his May 14 death.

18 28. At no time prior to the subject procedure did any physician employed by the
19 Kaiser Defendants, or any other defendant or person, advise Plaintiffs or any of their friends or
20 family members, that any error or omission on their part played any role in contributing to
21 Plaintiffs' injuries and harms as alleged herein.

22 29. As a direct and proximate result of the negligence of the Defendants, and each
23 of them, as aforesaid, Plaintiffs have suffered physical and emotional injuries as described
24 herein, and was caused to suffer general and special damages as alleged herein, in an amount to
25 be proved at trial.

26 30. As a direct and proximate result of the negligence of defendants, and each of
27 them, Decedent was required to and did employ physicians, physical therapists and other
28

1 medical professionals to provide medical services to treat him, which would not have occurred
2 but for the negligence of such defendants, in amounts to be proved at trial.

3 31. Each defendant was also negligent in failing to adequately hire, train, and/or
4 supervise its medical staff or other employees or agents who provided medical care to Decedent
5 resulting in the negligent acts and omissions described herein.

6 **SECOND CAUSE OF ACTION**

7
8 **Elder and Dependant Adult Abuse Under Welfare and Institutions Code §§ 15657**
9 **and 15657.5 et seq.**

10 **(By Each Plaintiff Against All Defendants)**

11 32. Plaintiff incorporates by reference each allegation set forth above as if fully set
12 forth herein.

13 33. The acts and omissions of all defendants named herein constituted neglect, as
14 defined in Welfare and Institutions Code § 15610.57, done with malice, oppression, fraud, and
15 recklessness within the meaning of Welfare and Institutions Code § 15657, which sections
16 constitute portions of the Elder and Dependant Adult Civil Protection Act, Welfare Institutions
17 Code section 15600 et seq. (hereinafter "EDACPA").

18 34. At the time he sought treatment from the Defendants, Decedent was a
19 "Dependant Adult" under the meaning of Welfare and institutions Code section 15610.23 and
20 an Elder as defined under the Act. As a result of his physical and mental condition at that time,
21 Plaintiff was unable to carry out his normal activities or to protect his rights due to his physical
22 impairments created by his medical condition, and the emotional impairments that followed
23 soon thereafter due to the fear he had over his worsening medical condition.

24 35. The acts and omissions of the physicians employed by Defendants described
25 herein constituted "neglect" under Welfare and Institutions Code section 15610.57.
26 Specifically, and without limitation, Defendants had a duty to provide the following care to
27 Decedent: Monitor and record Decedent's condition and report meaningful changes to the
28 attending physician; monitor and record Decedent's intake of fluids and output, including urine

1 an report any changes or intakes below orders to the attending physician; properly react to
2 emergent conditions and timely transfer Decedent to an acute care facility or otherwise act
3 when conditions so indicated; establish and implement a patient care plan for Decedent based
4 on and including without limitation an ongoing process of identifying his care needs; attend and
5 maintain Decedent' physical hygiene; maintain accurate records of Decedent' condition and
6 activity; and maintain nursing and staffing levels adequate to meet the needs of Decedent.

7 36. Specifically, and without limitation, Defendants breached such duties by the
8 following acts, at a minimum: KAISER and/or CARLMONT GARDENS staff or physicians
9 discharging Decedent to an ALF when his infection symptoms and medical condition was not
10 sufficiently stabilized on April 26, 2011; KAISER physicians discharging Decedent to PASRC
11 on May 9, 2011 even though such facility was known to have had a below average rating from
12 rating agencies and that it was not a suitably managed and well run facility to accommodate the
13 medical needs of Decedent; PASRC staff, TRUDY KELTZ, and possibly other Kaiser
14 physicians and staff failing to report Decedent's significant changes in his medical condition
15 illustrated by his increase in pain, his increased WBC and his failure to eat or drink, that started
16 to occur on or about May 11 or 12 that, if adequately treated with due care at that time, could
17 have prevented Decedent's death from sepsis that occurred on May 14; PASRC'S failure to
18 provide a dietary evaluation of Decedent and to insure that he was receiving adequate nutrition
19 and fluids that were also a proximate cause of his May 14 death; and systematic failure to
20 adequately staff PASRC and CARLMONT GARDENS according to what due care and state
21 regulations and law require to insure that Decedent would receive proper care.

22 37. Such failures and omissions were conducted with recklessness under section
23 15657 of the Act Further, such neglect was recklessness under section 15657 of the Act, insofar
24 as, Plaintiff's Kaiser physicians demonstrated a deliberate disregard for the high degree of
25 probability that Plaintiff would suffer serious injury and impairment by consciously and
26 knowingly failing to offer the medical evaluation necessary to diagnose his Fournier's
27 Gangrene condition, and based on their conscious failure to treat such condition when they
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1 knew, or consciously ignored the high probability, that this was the medical condition with
2 which he was presenting.

3 38. The conduct of defendants was further despicable conduct which was carried
4 on by such physicians and other medical providers with a willful and conscious disregard for
5 the rights and safety of the plaintiff, and specifically with a conscious disregard as to the
6 consequences for failing to offer the Decedent the medical evaluation and treatment that his
7 symptoms clearly indicated he required to said medical providers.

8 39. The conduct of such physicians and other medical providers was also fraudulent
9 insofar as such providers failed to inform Decedent or plaintiffs that they stood to advance
10 professionally and financially in their employment by putting the financial interests of their
11 employers ahead of those of Plaintiff by denying care and medical services that Plaintiff
12 required but that would cost their employers money and resources that could be allocated to
13 other, more profitable uses. Such physicians and providers consciously and intentionally failed
14 to inform Decedent and Plaintiffs of the material fact of this conflict of financial interest that
15 caused such physicians to consciously put the interests of their employers and their own
16 financial and professional advancement ahead of the medical needs of Decedent. Such
17 conscious and intentional conduct acted to deprive Decedent of his rights to appropriate
18 medical care caused him physical and mental injury as described herein.

19 40. Due to such acts violating EDACPA, Plaintiff is entitled to an award of
20 attorneys fees under Welfare and Institutions Code sections 15657 and 15657.5 EDACPA.

21 41. Such acts constitute malice pursuant to Civil Code section 3294, insofar as
22 Defendants engaged in conduct with a willful and conscious disregard of the rights of Mr.
23 Gudiel, and such conduct was despicable within the meaning of section 3294.

24 42. Such conduct by Defendants also constituted Oppression under section 3294
25 insofar as such conduct was despicable and subjected Mr. Gudiel to cruel and unjust hardship
26 in the form of inducing him to forfeit his rights of redress for the serious injuries he suffered at
27 Kaiser's hands, and Mr. Clause understood such conduct with a conscious disregard of Mr.
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1 Gudiel's rights to obtain legal counsel from an attorney dedicated representing his interests, not
2 those of Kaiser and the parties that caused him injury.

3 43. Such conduct constituted Fraud under section 3294 insofar as it was
4 intentionally conducted to induce Plaintiffs and Decedent to select the services of defendants,
5 and plaintiffs and Decedent reasonably relied on such assurances to their detriment, as alleged
6 herein.

7 **THIRD CAUSE OF ACTION**

8 **Denial and Delay of Health Care Services Provider to Provide Health Care Services**
9 **Recommended to Decedent**

10 **(By Each Plaintiff Against Each Defendant**
11 **Except PARIMALA SELVAN, M.D.;**
12 **TRUDY KELTZ, P.A.; BARBARA DEMAS, M.D.)**

13 44. Plaintiff incorporates by reference each allegation set forth above as if fully set
14 forth herein.

15 45. PALO ALTO SUBACUTE AND REHABILITATION CENTER; COVENANT
16 CARE CALIFORNIA, LLC; CARLMONT GARDENS NURSING CENTER; PENINSULA
17 CONVALESCENT ASSOCIATES, LLC; PERMANENTE MEDICAL GROUP, INC.;
18 KAISER FOUNDATION HEALTH PLAN, INC.; KAISER FOUNDATION HOSPITALS
19 were persons and entities that undertook to arrange for the provision of health care services to
20 Decedent in return for a prepaid or periodic charge paid by or on behalf of the subscribers or
21 enrollees, and were a "health care service plan", as that term is defined by Civil Code section
22 3428(a).

23 46. By the acts described herein, including but without limitation, Kaiser physicians
24 failing to note findings consistent with osteomyelitis on the April 2, 2011 CT scan taken and
25 following with a appropriate treatment or care; Kaiser physicians discharging Decedent to
26 CARLMONT GARDENS even though his C. Difficile symptoms and other infection
27 symptoms were not fully resolved; KAISER and/or CARLMONT GARDENS staff or
28 physicians discharging Decedent to an ALF when his infection symptoms and medical
condition was not sufficiently stabilized on April 26, 2011; KAISER physicians discharging

1 Decedent to PASRC on May 9, 2011 even though such facility was known to have had a below
2 average rating from rating agencies and that it was not a suitably managed and well run facility
3 to accommodate the medical needs of Decedent; PASRC staff, TRUDY KELTZ, and possibly
4 other Kaiser physicians and staff failing to report Decedent's significant changes in his medical
5 condition illustrated by his increase in pain, his increased WBC and his failure to eat or drink,
6 that started to occur on or about May 11 or 12 that, if adequately treated with due care at that
7 time, could have prevented Decedent's death from sepsis that occurred on May 14; PASRC'S
8 failure to provide a dietary evaluation of Decedent and to insure that he was receiving adequate
9 nutrition and fluids that were also a proximate cause of his May 14 death, each defendant
10 named to this cause of action failed to exercise due care in their care of Decedent. Such failure
11 proximately resulted in such defendants delaying and denying health care services that had
12 been recommended to Decedent by his physicians. As a result of this delay and denial,
13 Decedent suffered significant impairment of bodily function, and eventually, loss of life.

14 47. For these reasons, Plaintiffs, and each of them, in their Capacities as Successors
15 in Interest to the Estate of Decedent, are entitled to any and all general and special damages that
16 would have been due Decedent without the limitations imposed by Civil Code section 3333.

17 **FOURTH CAUSE OF ACTION**

18 **Wrongful Death**

19 **(By Each Plaintiff Against All Defendants)**

20 48. Plaintiffs incorporate by reference each allegation set forth above as if
21 completely set forth herein.

22 49. As a legal result of the defendants' conduct, and each of them, plaintiffs, and
23 each of them, suffered the wrongful death of their father, Decedent.

24 50. As a result, plaintiffs sustained damages due to the wrongful death of Decedent,
25 which includes loss of support, services, advice, training, love, companionship, comfort,
26 affection, society, solace, and moral support, and also funeral and burial expenses.
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51. As a legal result of the conduct of each and every defendant, plaintiffs also incurred hospital and medical expenses and general damages.

FIFTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

**(By All Plaintiffs Against All Defendants Except,
CARLMONT GARDENS NURSING CENTER and
PENINSULA CONVALESCENT ASSOCIATES, LLC)**

52. Plaintiffs incorporate by reference each allegation set forth above as if completely set forth herein.

53. When DENISE SWANSON arrived at PASRC at approximately 2 p.m. on May 13, 2011, she immediately heard her father uttering what she called a “primal scream” that continued without interruption due to the pain he was in. She was in his direct and immediate physical presence at PASRC and then later at Kaiser Redwood City from that point forward until his death on May 14. At all times from 2 p.m. until their father’s death, plaintiffs knew that their father was in inexorable pain and that his health care providers, including PASRC and Kaiser staff and physicians, should have been reporting and taking appropriate action to address. It was plainly clear to anyone present at that time, including plaintiffs, that Decedent’s medical care providers at that time had failed, and were continuing to fail, to provide Decedent with the care he required. Further, plaintiffs knew at the time that such failure was causing Decedent immediate, physical harm at the time his caregivers failed to provide the care he needed, and to report his obviously dire medical condition appropriately.

54. During each day of this period, plaintiffs, and each of them, suffered substantial, severe, and debilitating emotional pain, anguish, despair and injury as a direct and proximate result of witnessing first-hand Decedent's anguish. Such emotional anguish and pain persists to this day in substantial form as each such plaintiff.

1 WHEREFORE, plaintiffs pray for judgment as follows against all defendants unless
2 otherwise noted:

- 3 1. For general compensatory damages as stated above, in an amount to be proven
4 at trial.
- 5 2. For special compensatory damages as stated above, according to proof at trial.
- 6 3. For punitive damages.
- 7 4. For treble damages.
- 8 5. For attorneys fees.
- 9 6. For costs of suit.
- 10 7. For such other relief as the Court deems just and proper.

11
12 Dated: August 13, 2012

By:

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15 Carter M. Zinn
16 THE ZINN LAW FIRM
17 Attorneys for Plaintiffs
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