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FILED
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By *Monica R. Pharis*

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA
CIVIL UNLIMITED JURISDICTION

BERNARD GARCIA-KEEGAN,

Plaintiffs,

vs.

KAISER PERMANENTE; and DOES 1
through 25, inclusive,

Defendants.

Case No.:

HG13666779

COMPLAINT FOR DAMAGES FOR:

1. Medical/Professional Negligence;
2. Negligence;
3. Intentional Infliction of Emotional Distress;
4. Negligent Infliction of Emotional Distress

COMES NOW, the Plaintiff alleges as follows:

1. Plaintiff, Bernard Garcia-Keegan (hereinafter referred to as "Plaintiff") is, and at all times herein mentioned, was a male resident of the City of Hayward, County of Alameda, State of California.

2. The acts and omissions as hereinafter set forth took place within the County of Alameda, State of California.

3. Upon information and belief, Kaiser Permanente (hereinafter referred to as “Defendant Kaiser”) is a company licensed to do business in the State of California.

4. Upon information and belief, the Defendant sued herein as DOE 1 is a male nurse employee of Defendant Kaiser with the first name of Russell, last name currently unknown (hereinafter referred to as “Russell”),, who was working in the surgical recovery room at Defendant Kaiser’s Hayward medical facility on November 14, 2011.

5. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein as DOE 2 through DOE 25, inclusive, and therefore said Defendants are sued by such fictitious names herein under the provisions of the Code of Civil Procedure § 474, of the State of California, and upon the ascertainment of said Defendants' true identity, Plaintiff will amend to state their true names.

6. Plaintiff is informed and believes and thereon alleges that, at all times mentioned herein, each of the named and fictitiously named Defendants was the principal, agent, servant, employee, joint venturer, and/or partner of each of the other named and fictitiously named Defendants, and acting either as such principal, or within the course and scope of such agency, service, employment, joint venture, or partnership.

GENERAL ALLEGATIONS

7. On or about November 14, 2011, Plaintiff underwent a surgical procedure at Defendant Kaiser's Hayward medical facility because of a tumor in his thyroid area. Said surgery required general anesthesia.

8. Before the surgery began, Plaintiff's doctor informed Plaintiff that if the surgery took more than one and a half hours, it would be a result of the initial test results on the thyroid cross-section coming back positive for cancer.

9. After the surgery, Plaintiff awoke in a recovery room. A female nurse was there taking his vital signs.

1 10. Plaintiff asked the female nurse what time it was and learned that it was
2 approximately four hours after the surgery began. Plaintiff was immediately concerned that this
3 meant the test results had come back positive for cancer.

4 11. Plaintiff, who is a gay man legally married in California, asked the female nurse
5 to find his husband, however, she left soon thereafter and asked a male nurse named Russell to
6 take over.

7 12. Plaintiff then asked Russell if someone had gone to find his husband. Russell
8 responded "I think you mean your wife."

9 13. Plaintiff informed Russell that he indeed meant his husband and that he was
10 married to a man.

11 14. Russell then proceeded, in the presence of other patients and hospital personal, to
12 berate, disparage, insult, and verbally abuse Plaintiff, including, but not limited to, stating in a
13 loud voice that Plaintiff's relationship with his husband was "fucking disgusting" and
14 "unnatural." Russell then abandoned Plaintiff and left the recovery room.

15 15. Russell's conduct caused Plaintiff to be shocked, mortified, and injured in his
16 physical and emotional health. Plaintiff became extremely agitated, upset, and fearful for his
17 safety and well-being, and experienced acute anxiety and distress, as well as physical symptoms,
18 including, crying, accelerated breathing, nausea and vomiting, and nightmares.

19 16. Plaintiff immediately informed Defendant Kaiser's personnel of the incident and
20 later attempted to report it by telephone, but never received a return call after leaving a message
21 about the incident.

22 17. Prior to the commencement of this action, Plaintiff served notice upon named
23 Defendants, excluding any DOE defendants, pursuant to California Code of Civil Procedure
24 §364, advising of his intent to sue.
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FIRST CAUSE OF ACTION
(Medical/Professional Negligence against all Defendants)

18. Plaintiff incorporates and realleges by reference all previous paragraphs of this Complaint not inconsistent with this Cause of Action, as if fully set forth herein.

19. At all times herein mentioned, Defendant Kaiser was and is a company engaged in the practice of providing healthcare and medical services to patients in the State of California, including the city of Hayward and county of Alameda.

20. At all times herein mentioned, Defendants, and each of them, held themselves out as possessing that degree of skill, expertise, learning, training, and ability, as that of similar medical practitioners and facilities in the same area of expertise, specialty, and/or practice, in providing services to persons, including Plaintiff, for compensation.

21. Under California law, Defendants, and each of them, as a licensed California private hospital and licensed medical employees owed a duty of protection and care to patients, such as Plaintiff, as his condition may require.

22. Defendants, and each of them, breached this duty and failed this duty of protection and care, and the general standards of the medical industry by their actions as alleged hereinabove.

23. On November 14, 2011, and thereafter, Defendants, and each of them, negligently examined, diagnosed, informed, advised, monitored, treated, and cared for Plaintiff, including, but not limited to, negligently failing to provide proper hiring, training, supervision, treatment, and monitoring with regard to the post-surgical care of Plaintiff.

24. As a direct and proximate result of the negligence of defendants, and each of them, Plaintiff was hurt and injured in his health, sustaining injury to his nervous system and emotional health, all of which injuries have caused and continue to cause Plaintiff great mental, emotional, and nervous pain and suffering. As a result of said injuries, Plaintiff has suffered general damages in an amount in excess of the minimum jurisdictional limit of this Court.

1 25. As a further direct and proximate result of the negligence of Defendants, and each
2 of them, Plaintiff was required to and did and continues to employ, and will in the future be
3 required to employ, psychologists and other medical practitioners to examine, treat, and care for
4 him, and has incurred and will continue to incur medical and related expenses in an amount to be
5 shown according to proof.

6 WHEREFORE, Plaintiff prays for judgment as set forth below.

7 **SECOND CAUSE OF ACTION**
8 (Negligence against all Defendants)

9 26. Plaintiff incorporates and realleges by reference all previous paragraphs of this
10 Complaint not inconsistent with this Cause of Action, as if fully set forth herein.

11 27. Under California law, Defendants, and each of them, as a licensed California
12 private hospital and licensed medical employees owed a duty of protection and care to patients,
13 such as Plaintiff, as his condition may require.

14 28. Defendants, and each of them, breached this duty and failed this duty of
15 protection and care, and the general standards of the medical industry by their actions as alleged
16 hereinabove.

17 29. The negligent acts alleged hereinabove were the proximate cause of damages
18 suffered by Plaintiff.

19 30. As a direct, legal, and proximate result of the negligence of Defendants, and each
20 of them, Plaintiff has suffered substantial and extensive damages entitling him to recover the
21 following in amounts according to proof at trial:

- 22 a. actual damages in excess of the limited jurisdictional amount of the Court
23 and according to proof;
- 24 b. general damages according to proof;

25 WHEREFORE, Plaintiff prays for judgment as set forth below.

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1 distress, including, but not limited to, worry, grief, humiliation, embarrassment, fear, terror,
2 apprehension, and indignity. This emotional distress caused Plaintiff real and severe mental
3 suffering entitling Plaintiff to recover the following amounts according to proof at trial.

- 4 a. actual damages in excess of the limited jurisdictional amount of the Court
5 and according to proof;
6 b. general damages according to proof

7 39. The conduct of Defendants, and each of them, described herein, constituted a
8 willful and wanton disregard for the rights of Plaintiff and was intended to cause injury to
9 Plaintiff or was despicable conduct with a willful and conscious disregard of the rights or safety
10 of Plaintiff. Plaintiff is therefore entitled to an award of exemplary or punitive damages.

11 WHEREFORE, Plaintiff prays for judgment as set forth below.

12 **FOURTH CAUSE OF ACTION**

13 (Negligent Infliction of Emotion Distress against all Defendants)

14 40. Plaintiff incorporates and realleges by reference all previous paragraphs of this
15 Complaint not inconsistent with this Cause of Action, as if fully set forth herein.

16 41. Russell was engaged as a nurse in a surgical recovery room at Defendant Kaiser's
17 Hayward medical facility in which Plaintiff was a patient and thereby Defendants, and each of
18 them, had a duty to exercise due care toward Plaintiff.

19 42. Defendants, and each of them, should have known that their failure to exercise
20 due care in the performance of their duties would cause Plaintiff severe emotional distress.

21 43. While engaged in his professional duties of care as a nurse in a surgical recovery
22 room, Russell engaged in a pattern of conduct that he knew or should have known would vex,
23 annoy, harass, and cause emotional distress to Plaintiff, who was in an extremely vulnerable
24 position following a serious surgical procedure. This included, but was not limited to, verbal
25 harassment and abuse which caused Plaintiff to fear for his physical safety.

44. Defendant Kaiser, having a position of authority over Russell and responsible for the care and safety of Plaintiff, knew or should have known that its failure to properly hire, train, supervise, and monitor Russell would cause extreme damage to patients of its medical facility.

45. The conduct of Defendants, and each of them, was in reckless disregard to Plaintiff's emotional well-being and caused Plaintiff to suffer humiliation, mental anguish, and emotional and physical distress.

46. Defendants, and each of them, knew of Plaintiff's particular susceptibility to emotional distress arising out of the fact that Plaintiff was in a particularly vulnerable state in a surgical recovery room after a surgery to remove a possibly cancerous tumor.

47. As a direct, legal, and proximate result of the conduct of Defendants, and each of them, as hereinabove alleged, Plaintiff has and continues to suffer from severe emotional distress, including, but not limited to, worry, grief, humiliation, embarrassment, fear, terror, apprehension, and indignity. This emotional distress caused Plaintiff real and severe mental suffering entitling Plaintiff to recover the following amounts according to proof at trial.

a. actual damages in excess of the limited jurisdictional amount of the Court and according to proof;

b. general damages according to proof.

WHEREFORE, Plaintiff prays for judgment as set forth below.

PRAYERS FOR RELIEF

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

1. First Cause of Action:

A. Actual damages in excess of the limited jurisdictional amount of the Court and according to proof;

B. General damages according to proof;

2. Second Cause of Action:

A. Actual damages in excess of the limited jurisdictional amount of the Court and according to proof;

B. General damages according to proof;

3. Third Cause of Action:

A. Actual damages in excess of the limited jurisdictional amount of the Court and according to proof;

B. General damages according to proof;

C. Punitive and exemplary damages.

4. Fourth Cause of Action:

A. Actual damages in excess of the limited jurisdictional amount of the Court and according to proof;

B. General damages according to proof.

Dated this 7 day of February, 2013.

WILLIAM DENKERS, S.B. #60958
ARNOLD M. WOODS, S.B. #183638
Attorneys for Plaintiff