

Alvin Simmons, in pro per
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Case: 1-12-CV-231638

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

112CV231638

ROSELLA P. SIMMONS, by and through her
Successor-in-Interest, ALVIN SIMMONS, and
ALVIN SIMMONS, individually,

Plaintiffs,

vs.

Case No.:
Complaint Filed:
Assigned to
Hon.

COMPLAINT FOR DAMAGES:

GOLDEN OAKS HOLDINGS, LLC dba Vasona
Creek Healthcare Center;
PLUM HEALTHCARE GROUP, LLC;
COVENANT CARE MORGAN HILL, LLC dba
Pacific Hills Manor;
COVENANT CARE CALIFORNIA, LLC;
KAISER FOUNDATION HOSPITALS dba
Kaiser Foundation Hospital-San Jose;
ALICE J. LIVELY, D.O.;
TIMOTHY LOCKYER, M.D.
and Does 1 through 200, inclusive,

Defendants.

1. Negligence/Willful Misconduct
2. Wrongful Death

For a complaint, Plaintiffs allege as follows:

PRELIMINARY ALLEGATIONS

1. Plaintiff ROSELLA P. SIMMONS (hereinafter "ROSE" or "DECEDENT")
brings her case by and through her Successor-in-Interest, Alvin Simmons, whose declaration

1 establishing his capacity and standing under *C.C.P. § 377.32* and *Welf. & Inst. Code §15657.3* is
2 filed concurrently herewith. ROSE was born on June 17, 1936. At all times relevant to this
3 action, she was over the age of 65 years and was an "elder" within the meaning of *Welf. & Inst.*
4 *Code § 15610.27*.

5 2. Plaintiff ALVIN SIMMONS (hereinafter, "AL") was at all times material to
6 this action the husband of Decedent. AL is a resident of the County of Santa Clara, California,
7 and in addition to bringing this action in his capacity as Decedent's Successor-in-Interest, also
8 brings this action individually, asserting his own claim for the Wrongful Death of Decedent.

9 3. At all times material to this action, Defendants GOLDEN OAKS HOLDINGS,
10 LLC dba Vasona Creek Healthcare Center, PLUM HEALTHCARE GROUP, LLC and DOES 1-
11 50, inclusive, (hereinafter, collectively, "GOLDEN OAKS") were in the business of owning,
12 operating or managing a skilled nursing facility located at 16412 Los Gatos Boulevard, in Los
13 Gatos, California (hereinafter, "Vasona Creek").

14 4. At all times material to this action, Defendants COVENANT CARE
15 MORGAN HILL, LLC dba Pacific Hills Manor, COVENANT CARE CALIFORNIA, LLC and
16 DOES 51-100, inclusive (hereinafter, collectively, "COVENANT CARE") were in the business
17 of owning, operating or managing a skilled nursing facility located at 370 Noble Court, in Morgan
18 Hill, California (hereinafter, "Pacific Hills").

19 5. At all times material to this action, Defendants KAISER FOUNDATION
20 HOSPITALS dba Kaiser Permanente San Jose Medical Center and DOES 101-150, inclusive,
21 (hereinafter, collectively, "KAISER") were in the business of owning, operating or managing an
22 acute care hospital located at 250 Hospital Parkway, in San Jose, California (hereinafter, "Kaiser
23 San Jose Hospital").

24 6. At all times mentioned herein, Defendant ALICE J. LIVELY, D.O. was a
25 physician licensed to practice osteopathic medicine in the State of California, residing in and
26 doing business in the County of Riverside, California. DR. LIVELY and DOES 151-160,
27 inclusive (hereinafter, collectively, "LIVELY") was Decedent's primary care physician while she
28 was a resident at Vasona Creek.

1 7. At all times mentioned herein, Defendant TIMOTHY LOCKYER, M.D. was a
2 physician licensed to practice medicine in the State of California, residing in and doing business
3 in the County of Santa Clara, California. DR. LOCKYER and DOES 161-170, inclusive
4 (hereinafter, LOCKYER”) was Decedent’s primary care physician while she was a resident at
5 Pacific Hills.

6 8. Plaintiffs are informed and believe and therefore allege that at all times
7 relevant to this complaint, defendants Does 171-200, inclusive, (hereinafter “DOES”) were and
8 are licensed and unlicensed healthcare or other care providers, which rendered care to ROSE as
9 acute care hospitals, skilled nursing facilities, residential care facilities for the elderly,
10 laboratories, medical groups, management groups, physicians, physicians’ assistants,
11 administrators, nurses, or nurses’ aides, or other care providers.

12 9. Plaintiffs are ignorant of the names of those defendants sued herein as Does 1
13 – 300, inclusive, and has for that reason sued such defendants by such fictitious names. Plaintiffs
14 will seek leave of court to amend this complaint to identify such defendants when their identities
15 are ascertained.

16
17 **FIRST CAUSE OF ACTION**
18 **NEGLIGENCE/WILFUL MISCONDUCT**
19 (vs. all defendants)

20 10. Plaintiff repeats and incorporates the allegations at paragraphs 1-9, inclusive.

21 11. DECEDENT was admitted to Kaiser San Jose Hospital as an in-patient
22 numerous times, including from approximately June 22, 2011 through June 24, 2011,
23 approximately July 25, 2011 through August 5, 2011, approximately August 6, 2011 through
24 August 11, 2011, and on September 22, 2011. By virtue of such admissions, Decedent was in the
25 care and custody of Defendant KAISER.

26 12. Decedent was admitted as a resident at Vasona Creek from approximately
27 August 5, 2011 through August 6, 2011 and again from approximately August 12, 2011 through
28 September 7, 2011. By virtue of such residency, DECEDENT was in the care and custody

1 Defendants GOLDEN OAKS. While a resident at Vasona Creek Defendants LIVELY were
2 acting as DECEDENT's attending physician, or otherwise providing medical or other professional
3 services to DECEDENT, and assumed responsibility for the care and custody of DECEDENT.

4 13. Decedent was admitted as a resident at Pacific Hills from approximately June
5 24, 2011 through July 23, 2011 and again from approximately September 7, 2011 through
6 September 22, 2011. By virtue of such residency, DECEDENT was in the care and custody
7 Defendants COVENANT CARE. While a resident at Pacific Hills Defendants LOCKYER were
8 acting as DECEDENT's attending physician, or otherwise providing medical or other professional
9 services to DECEDENT, and assumed responsibility for the care and custody of DECEDENT.

10 14. Defendants KAISER, GOLDEN OAKS, COVENANT CARE, LIVELY,
11 LOCKYER and DOES, and each of them, had a duty of ordinary care, in accord with their
12 responsibilities, undertakings, education, expertise, background, training and their advertising
13 statements as they held themselves out to the public as possessing specialized competence in the
14 care of elders.

15 15. Defendants KAISER, GOLDEN OAKS, COVENANT CARE, LIVELY,
16 LOCKYER and DOES, and each of them, negligently, recklessly and intentionally breached their
17 aforesaid duty of care, causing DECEDENT to suffer severe physical, mental and emotional
18 injuries, including but not limited to the development of severe pressure sores on her
19 coccyx/sacrum, severe weight loss, malnutrition and dehydration. As a result, DECEDENT
20 suffered damages in an amount according to proof at trial.

21 16. At all times mentioned, Defendants KAISER, GOLDEN OAKS, COVENANT
22 CARE, LIVELY, LOCKYER and DOES, and each of them, knew that if they did not comply
23 with their aforesaid duty of care, and if they did not provide adequate care, supervision, evaluation
24 and monitoring of DECEDENT to meet her needs, DECEDENT would probably sustain serious
25 injury. In particular, and without limiting the generality of the foregoing, Defendants KAISER,
26 GOLDEN OAKS, COVENANT CARE, LIVELY, LOCKYER and DOES, and each of them,
27 knew that because DECEDENT was elderly and frail, she was in need assistance with activities of
28 daily living, including mobility and repositioning, and in need of custodial services to monitor and

1 assess her condition and changes in her condition, and to promptly report such changes to her
2 family and physician, that their failure to provide such care at appropriate times, would pose the
3 peril that DECEDENT's functional abilities would decline, that she would become malnourished,
4 dehydrated, that she would develop pressure sores, or otherwise suffer illness and become subject
5 to opportunistic infection and other diseases and disabilities.

6 17. Notwithstanding such knowledge, including knowledge concerning the
7 probability of injury, Defendants KAISER, GOLDEN OAKS, COVENANT CARE, LIVELY,
8 LOCKYER and DOES, and each of them, failed to provide such care, assistance and supervision
9 as was necessary to meet DECEDENT's needs, and did so intentionally and in conscious
10 disregard of the peril to DECEDENT posed by such failures. In fact, Decedent was *routinely* and
11 as a practice of the defendants' business operations, not provided with adequate care, assistance
12 and supervision from defendants and the staff they selected, trained and supervised, and was
13 subjected to "neglect" and "physical abuse" as those terms are defined at Welfare & Inst. Code
14 §§15610.57, 15610.63.

15 18. By virtue of the foregoing, Defendants KAISER, GOLDEN OAKS,
16 COVENANT CARE, LIVELY, LOCKYER and DOES, and each of them, have acted with
17 malice, fraud, oppression and recklessness, and an award of punitive damages should be assessed
18 against Defendants and each of them in a sum according to proof.

19
20 **SECOND CAUSE OF ACTION**

21 **WRONGFUL DEATH**

22 (vs. all Defendants)

23 19. Plaintiff repeats the allegations at paragraphs 1 - 9 and 11-18, inclusive.

24 20. Plaintiff ALVIN SIMMONS is the sole surviving heir and the loving husband
25 (widower) of decedent ROSELLA SIMMONS.

26 21. As a proximate result of the conduct of Defendants KAISER, GOLDEN
27 OAKS, COVENANT CARE, LIVELY, LOCKYER and DOES, and each of them, as alleged
28 above, ROSE died on September 22, 2011.

22. Prior to the death of ROSE, Plaintiff ALVIN SIMMONS enjoyed the love, society, comfort and attention of his wife, ROSE.

23. As a proximate result of the neglect of Defendants, KAISER, GOLDEN OAKS, COVENANT CARE, LIVELY, LOCKYER and DOES, and each of them, as alleged herein, which caused the death of ROSE, Plaintiff ALVIN SIMMONS sustained pecuniary loss of the society, comfort, attention, and love of DECEDENT in a sum according to proof at trial.

WHEREFORE, Plaintiffs pray judgment against the defendants as follows:

1. On the first cause of action:

- A. For general damages suffered by Decedent in an amount according to proof.
- B. For special damages incurred in an amount according to proof.
- C. For punitive damages in an amount according to proof.
- D. For attorneys fees under the provisions of Welfare & Inst. Code § 15657, in an amount according to proof.

2. On the second cause of action:

- A. For general damages suffered by Plaintiff AL SIMMONS for the loss of the care, comfort and society of Decedent in an amount according to proof.
- B. For special damages incurred by Plaintiff including funeral and burial expenses in an amount according to proof.

3. On all causes of action:

For such other and further relief as the court deems just and proper.

Dated: September 5, 2012

By:


ALVIN SIMMONS, in pro per