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FILED
Superior Court Of California,
Sacramento
08/27/2013
jimora
By _____, Deputy
Case Number:
34-2013-00150522

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

SHIRLEY KAY LEE,

Case No:

Plaintiff,

COMPLAINT FOR DAMAGES FOR
MEDICAL NEGLIGENCE

v.

(UNLIMITED JURISDICTION)

KAISER PERMANENTE;
KAISER FOUNDATION HEALTH PLAN,
INC.;
KAISER PERMANENTE SOUTH
SACRAMENTO;
DAVID J. MANSKE, M.D.;
RAJ S. KULLAR, M.D.;
AND DOES 1 THROUGH 100,
INCLUSIVE,

Defendants.

FIRST CAUSE OF ACTION

(Medical Negligence)

COMES NOW plaintiff, SHIRLEY KAY LEE, and as and for a first cause of action allege
against defendants, and each of them, as follows:

1. At all times herein mentioned, plaintiff, SHIRLEY KAY LEE was a resident of the
County of Sacramento, State of California.

2. At all times material herein, defendants, KAISER PERMANENTE;

KAISER FOUNDATION HEALTH PLAN, INC.; KAISER PERMANENTE SOUTH SACRAMENTO; hereinafter collective "KAISER" and Does 1 through 25, and each of them, were hospitals, physicians, surgeons, nurses, and/or other health care providers, duly licensed to practice medicine, perform surgery, practice nursing and/or provide other health care services, in the County of Sacramento, State of California, and held themselves out to possess that degree of skill, ability and learning common to medical practitioners and providers in said community.

3. At all times relevant herein, based upon information and belief, DAVID J. MANSKE, M.D. resided in the County of Sacramento, California and was employed by KAISER as a physician.

4. At all times relevant herein, based upon information and belief, RAJ S. KULLAR, M.D. resided in the County of Sacramento, California and was employed by KAISER as a physician

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate or otherwise, of defendants sued herein as Does 1 through 100, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants are negligently or otherwise responsible for the occurrences alleged herein, and that the injuries and damages alleged were proximately caused by their negligence.

6. Plaintiff is informed and believes and thereon alleges that each of the defendants was the agent, partner, shareholder, joint venturer, co-conspirator, lessor, lessee and/or employee of each of the remaining defendants, and others named herein as Doe defendants, and in doing the acts or things alleged herein, were acting within the course and scope of said agency, employment and/or other relationship herein.

7. Plaintiff complied with the requirements of California Code of Civil Procedure Section 364 on or about May 15, 2013 by placing in the United States Mail for delivery to KAISER herein notice of her intent to file this complaint.

1 8. On or about October 17, 2011, after undergoing a surgical procedure, Plaintiff,
2 SHIRLEY KAY LEE, was in continuing pain due to the negligence of the Defendants. On June 12,
3 2012 it was discovered that the surgery of October 17, 2011 was done improperly by
4 defendants DAVID J. MANSKE, M.D, AND RAJ S. KULLAR, M.D. at Kaiser Permanente South
5 Sacramento during the course and scope of their respective employment with KAISER. Through
6 and including the date of the incident Plaintiff, SHIRLEY KAY LEE employed defendants, and
7 each of them, to provide care and treatment with respect to her medical needs and/or
8 necessities. Said defendants, and each of them, undertook the employment and undertook and
9 agreed to care for Plaintiff, SHIRLEY KAY LEE and do all things necessary and proper in
10 connection therewith, and said defendants, and each of them, thereafter entered into a
11 patient/health care provider relationship, individually and by and through their employees and
12 agents. Said defendants, and each of them, agreed to provide such medical attention to Plaintiff,
13 SHIRLEY KAY LEE for compensation which Plaintiff agreed to pay.

14 9. In the course of providing medical services, attention, treatment and care for
15 Plaintiff, SHIRLEY KAY LEE, defendants, and each of them, failed to exercise that degree of due
16 care and/or skill common to medical practitioners and/or health care providers in said
17 community and/or geographical area, including but not limited to negligently performing
18 orthopaedic surgery on Plaintiff's left tibia resulting in other things, corrective surgery. Further,
19 said defendants, and each of them, so negligently treated, cared for, diagnosed, obtained
20 informed consent, failed to obtain informed consent, failed to provide treatment, failed to
21 prescribe medication, prescribed medication and/or treatment, advised, examined, performed
22 surgery upon, battered and/or otherwise acted negligently toward Plaintiff, SHIRLEY KAY LEE
23 so that she was caused to and did experience pain, suffering and further medical care as a
24 proximate result of said negligence and wrongful conduct of the defendants, and each of them.

25 10. As a further direct and proximate result of the negligence, carelessness and
26 wrongdoing of defendants, and each of them, plaintiff, SHIRLEY KAY LEE has been in the past
27 and will be required in the future to employ physicians and surgeons to examine, treat and care
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1 for her, all to her damage in an amount presently unknown. Plaintiff will seek leave of court to
2 plead and prove the exact amount of medical and incidental expenses at time of trial, together
3 with interest and/or prejudgment interest thereon at the legal lawful rate.

4 11. As a direct and proximate result of the negligence and other wrongdoing of
5 defendants, and each of them Plaintiff, SHIRLEY KAY LEE has sustained loss of earnings in an
6 amount in excess of the minimum jurisdiction of this Court. Plaintiff will seek leave of court to
7 amend this complaint to set forth the amount of said damages, according to proof at time of trial,
8 together with interest and/or prejudgment interest thereon at the legal lawful rate.

9 12. As a further direct and proximate result of the negligence and/or other
10 wrongdoing of defendants, and each of them, and the injury of the Plaintiff, SHIRLEY KAY LEE,
11 plaintiff herein has also sustained damages for reasonable expenses in an amount presently
12 unknown. Plaintiff will seek leave of court to amend this complaint to set forth the amount of
13 said damages, according to proof at trial, together with interest and/or prejudgment interest
14 thereon at the legal lawful rate.

15 13. As a further direct and proximate result of the negligence and/or other
16 wrongdoing of defendants, and each of them, and the injury of the Plaintiff, SHIRLEY KAY LEE,
17 Plaintiff has also sustained incidental and/or consequential damages, in an amount presently
18 unknown. Plaintiff will seek leave of court to amend this complaint to set forth the amount of
19 said damages, according to proof at trial, together with interest and/or prejudgment interest
20 thereon at the legal lawful rate.

21 14. Plaintiff will further seek prejudgment interest on all items of damages including
22 economic and non-economic damages. These will include, but are not limited to, past and future
23 medical expenses, any lost wages, any and all incidental expenses and compensatory damages,
24 as permitted by law. See Code of Civ. Proc. §685.010(a) and Civil Code §3291.

25 **WHEREFORE**, plaintiff prays for judgment against defendants, and each of them, as
26 hereinafter set forth.

27 1. For non-economic damages in excess of the minimum jurisdiction of this court,
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1 according to proof at trial;

2 2. For economic damages for loss of earnings, past, present and future, according
3 to proof at trial;

4 3. Damages for past, present and future medical expenses, according to proof at
5 trial;

6 4. Incidental expenses incurred as a result of the above incident, according to
7 proof at trial;

8 5. Interest and/or prejudgment interest on all damages sought and/or incurred
9 herein, at the legal, lawful rate;

10 6. Costs of suit incurred herein; and

11 7. Such other and further relief as may be just and proper.

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13 DATED: August 27, 2013

WILCOXEN CALLAHAM, LLP

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16 By: 

E. S. DEACON

Attorney for Plaintiff
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