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STEVEN H. NASH
CLERK OF SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY **A.J. GAMBOL**

JAMES A. MCCOY
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HAYWARD, CALIFORNIA 94517
(510) 290-9567

PLAINTIFF IN PROPRIA PERSONA (PRO PER/SE)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
UNLIMITED JURISDICTION

JAMES A. MCCOY

Case No.

C14-00287

Plaintiff,

COMPLAINT FOR DAMAGES FOR:

v.

KAISER PERMANENTE WALNUT
CREEK MEDICAL CENTER INC;
DAVID SAM GEE, MD;
CHARLES WALTER BOUCH, MD;
CHRISTOPHER JOHN FORREST, MD;
JAMIE A. JACKSON, MD;
LYNNETTE ANNE WULLEMAN,
NURSE PRACTITIONER; AND DOES 1
THROUGH 100, INCLUSIVE,

MEDICAL MALPRACTICE;
WILLFUL MISCONDUCT;
NEGLIGENCE;
FRAUDULENT CONCEALMENT;
CONSTRUCTIVE FRAUD;
BREACH OF FIDUCIARY DUTY; and
FRAUD - FALSE PROMISE.

Defendants.

PER LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
DEPT 33

DEMAND FOR JURY TRIAL

COMPLAINT FOR DAMAGES

1 Plaintiff, James McCoy ("McCoy"), complains against defendants, and each of
2 them, demands a trial by jury of all issues, and for causes of action alleges as
3 follows:
4

5 **PARTIES**

6 Plaintiff James A. McCoy ("PLAINTIFF") is a natural person resident of the State
7 of California and at all times herein mentioned was a patient under the care of
8 all the named Defendants herein.
9

10
11 2. Defendant Kaiser Permanente Walnut Creek Medical Center, Inc. is a
12 corporation or business entity of unknown form, doing business in the County of
13 Contra Costa, California, at 1425 South Main Street, Walnut Creek, California
14 94596, which is the location wherein the injuries, and damages occurred.
15

16 3. Defendant DAVID SAM GEE is an individual who upon information and
17 belief is licensed as a physician in the State of California and does business in the
18 County of Contra Costa at the facility owned and operated by KAISER at 1425
19 South Main Street, Walnut Creek, California 94596. Defendant DAVID SAM GEE is
20 referred to herein as "GEE".
21

22 4. Defendant CHARLES WALTER BOUCH is an individual who upon information
23 and belief is licensed as a physician in the State of California and does business in
24 the County of Contra Costa at the facility owned and operated by KAISER at 1425
25 South Main Street, Walnut Creek, California 94596. Defendant CHARLES WALTER
26 BOUCH is referred to herein as "BOUCH".
27

1 5. Defendant CHRISTOPHER JOHN FORREST is an individual who upon
2 information and belief is licensed as a physician in the State of California and does
3 business in the County of Contra Costa at the facility owned and operated by
4 KAISER at 1425 South Main Street, Walnut Creek, California 94596. Defendant
5 CHRISTOPHER JOHN FORREST is referred to herein as "FORREST".
6

7 6. Defendant JAMIE A. JACKSON is an individual who upon information and belief
8 is licensed as a physician in the State of California and does business in the County
9 of Contra Costa at the facility owned and operated by KAISER at 1425 South Main
10 Street, Walnut Creek, California 94596. Defendant JAMIE A. JACKSON is referred
11 to herein as "JACKSON".
12

13 7. Defendant LYNNETTE ANNE WULLEMAIN is an individual who upon
14 information and belief is a nurse practitioner employed by Defendant KAISER at
15 the facility owned and operated by KAISER at 1425 South Main Street, Walnut
16 Creek, California 94596. Defendant LYNNETTE ANNE WULLEMAIN is referred to
17 herein as "WULLEMAIN".
18

19
20 8. Plaintiff is ignorant of the true identities of DOES 1 to 100 but he is informed
21 and believes and thereon alleges that defendant KAISER and DOES 1 to 100 at all
22 times herein mentioned, directed and ratified the acts of their employees and
23 agents GEE; BOUCH; FORREST; JACKSON and WULLEMAIN in committing the
24 course of conduct herein alleged; that defendant KAISER knew that said
25 employees were unfit and yet recklessly employed or contracted with them; that
26 said employees were acting in a professional capacity and within the course and
27

1 scope of their employment in committing the acts herein alleged; and that
2 defendant KAISER and its management approved and ratified the actions of said
3 employees in committing the acts herein alleged.
4

5 9. All defendants collectively, including GEE; BOUCH; FORREST; JACKSON;
6 WULLEMAIN; and DOES 1-100 are referred to herein as "DEFENDANTS".
7

8 **JURISDICTION AND VENUE**

9

10 10. This Honorable Court has jurisdiction by the virtue that all Defendants
11 conduct business in the State of California, County of Contra Costa and the injuries
12 that were sustained and complained of herein by the Plaintiff occurred in the
13 State of California, County of Contra Costa.
14
15

16 **FACTS COMMON TO ALL CAUSES OF ACTION**

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18 11. On or about February 10th, 2013 Plaintiff was admitted to KAISER's
19 Emergency Room unit. He was treated for "chest pain" and He was sedated for
20 comfort. Before hospitalization, he lived at his own home, drove his own vehicle,
21 and performed his own activities of daily living and functioned independent of
22 others. Upon hospitalization, he was misdiagnosed and released on or about
23 February 14th, 2013.
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1 12. On or about February 18th, 2013 Plaintiff returned back to KAISER
2 complaining of more severe chest pain as well as severe pain in his right leg.
3
4 Again, Plaintiff was hospitalized for one day and released. Plaintiff was advised to
5 relax and not apply pressure to his right leg. Once again, Plaintiff was
6 misdiagnosed.
7

8 13. During the period between February 10th, 2013 and November 2013 Plaintiff
9 made several visits to KAISER and regularly complained of Leg pain in right leg;
10 Leg tenderness in right leg; Swelling (edema) of right leg; Increased warmth in
11 right leg; and Changes in skin color (redness) in right leg.
12

13 14. During the period between February 10th, 2013 and November 2013 Plaintiff
14 was under the care and control of said Defendants.
15

16 15. On or about November 2013, Plaintiff became disabled and unable to perform
17 his daily activities and work duties. Defendants advised Plaintiff that he maybe
18 required to undergo amputation procedure of his right leg.
19

20 16. On or about November 20th, 2013, Plaintiff got admitted to Bay Area Surgical
21 Specialists seeking second opinion. Upon medical examination and evaluation,
22 Plaintiff was diagnosed of having Blood Clot in his right leg and that the delay in
23 diagnosis is the direct cause to his current disability.
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26 17. On or about November 20th, 2013, Bay Area Surgical Specialists operated on
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1 Plaintiff to save the amputation of his right leg and they successfully done so,
2 however, it was to late to reverse the disability the Plaintiff has suffered and
3 continue to suffer as result to his late diagnosis.
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5 **FIRST CAUSE OF ACTION**
6 **MEDICAL MALPRACTICE**
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8 18. PLAINTIFF re-alleges and incorporates by reference the allegations contained
9 in Paragraphs I through 17.

10 19. Defendants, KAISER PERMANENTE WALNUT CREEK MEDICAL CENTER INC;
11 DAVID SAM GEE, MD; CHARLES WALTER BOUCH, MD; CHRISTOPHER JOHN
12 FORREST, MD; JAMIE A. JACKSON, MD; LYNNETTE ANNE WULLEMAIN, NURSE
13 PRACTITIONER; AND DOES 1 THROUGH 100, and each of them, undertook the
14 care and treatment of the Plaintiff and rendered professional services in the
15 diagnosis, care and treatment of the Plaintiff beginning in or about February 10th,
16 2013, and continuing thereafter.
17

18 20. At the date and time aforesaid, the Defendants, and each of them, failed to
19 exercise the proper degree of knowledge and skill and so negligently, carelessly,
20 recklessly, wantonly, and unlawfully treated, provided care, monitoring,
21 examination, and other professional services in that, among other things, they
22 failed to adequately and properly diagnose and treat Plaintiff, causing Plaintiff to
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suffer major physical injuries to his right leg and disability. Notices pursuant to California Code of Civil Procedure Section 364 were served on Defendants.

21. By reason of the foregoing, Plaintiff has been required to employ the services of hospitals, physicians, surgeons, nurses and other professional services, and Plaintiff has been compelled to incur expenses and ambulance service, medicines, x-rays, and other medical supplies and services. Plaintiff is informed and believes, and thereon alleges, that further services of said nature will be required by Plaintiff in an amount to be shown according to proof.

22. At the time of the injury, as aforesaid, Plaintiff was regularly and gainfully employed. By reason of the foregoing Plaintiff has been unable to engage in his employment for a time subsequent to said incident, and Plaintiff is informed and believes, and upon such information and belief, alleges that he will be unable to work in his said employment for an indefinite period in the future, all to Plaintiff's damage in an amount to be shown according to proof.

SECOND CAUSE OF ACTION WILLFUL MISCONDUCT

23. PLAINTIFF re-alleges and incorporates by reference the allegations contained in Paragraphs I through 22 herein above as fully set forth.

24. During the period of their care of Plaintiff, each of the DEFENDANTS knew

1 or should have known the perils posed to Plaintiff for their failures to comply
2 with their duties of care to provide care which a reasonably prudent hospital
3 operator, physician, social worker, ethicist, bioethics director, or other health care
4 provider or administrator would use.
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6
7 25. During the period of their care of Plaintiff, each of the DEFENDANTS knew
8 or should have known that the perils posed by their failure to comply with their
9 standards of care to provide care which a reasonably prudent hospital operator,
10 physician, social worker, ethicist, bioethics director, or other health care provider
11 or administrator would use, exposed Plaintiff to the high probability of his
12 injuries and causing him disability.
13

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15 26. During the period of their care of Plaintiff, each of the DEFENDANTS
16 knowingly disregarded the aforesaid perils and high probability of injury and
17 causing disability to Plaintiff, and in doing so failed to comply with their duties
18 under the standards of care as set forth above. Certain of their willful misconduct
19 and failures include:
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22 a) Failure to implement or apply more advanced procedure in the diagnosis
23 and care of the Plaintiff. Plaintiff is informed and believes and thereon
24 alleges that Defendants, and each of them, wrongly believed that Plaintiff's
25 insurance policy would not cover part or all of the cost, therefore, refused to
26 provide Plaintiff adequate care.

27 b) Defendant, nurse LYNNETTE ANNE WULLEMAIN engaged in a conduct that
28

Amounted to making disparaging remarks about the Plaintiff and her conduct was ratified' approved and excused by all other Defendants.

27. By virtue of the foresaid, DEFENDANTS have acted in conscious disregard of the probability of Plaintiff's undesired and unauthorized injury and disability, and because Plaintiff was helpless to safeguard himself due to Defendants' concealment of information, DEFENDANTS' failure and refusal to communicate with PLAINTIFF, seek his consult into his health care, was despicable and it subjected Plaintiff to cruel and unjust hardship in conscious disregard of his rights and safety. By virtue of the foresaid, DEFENDANTS have each acted with recklessness, oppression, and malice, and their acts and omissions were despicable. By virtue of the foresaid, punitive damages should be assessed against DEFENDANTS and each of them, in a sum according to proof at trial.

THIRD CAUSE OF ACTION NEGLIGENCE

28. Plaintiff re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 27 herein above.

29. Plaintiff was a patient of KAISER from February 10, 2013 until his November 2013. During this period, Plaintiff was under the care of DEFENDANTS who acted as his "primary care physicians."

30. By virtue of the foresaid, DEFENDANTS owed a duty of ordinary care to

1 Plaintiff, to use the degree of care and skill that a reasonable prudent person
2 would use. In this case physician DEFENDANTS failed to use that degree of care
3 that a reasonably prudent physician would owe given his or her knowledge,
4 training, expertise, and skill.
5

6 31. DEFENDANTS breached the aforesaid duties of care as outlined herein above.
7

8 32. As a direct and legal result of the foresaid, Plaintiff sustained injuries and a
9 disability. As a further direct and legal result of the foresaid, Plaintiff sustained
10 lost income and other damages in a sum according to proof at trial.
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12 **THIRD CAUSE OF ACTION**
13 **FRAUDULENT CONCEALMENT**
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15 33. Plaintiff re-alleges and incorporates by reference the allegations contained
16 in Paragraphs 1 through 32 herein above as if fully set forth herein.
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18 34. DEFENDANTS and each of them had the duty to disclose all facts to Plaintiff
19 by virtue of their fiduciary relationship to Plaintiff as a healthcare
20 provider/patient, and by virtue of the fact that without disclosure all the facts to
21 PLAINTIFF, DEFENDANTS could not obtain the necessary informed consent from
22 the Plaintiff for his treatment, and thus were not legally authorized to mislead
23 Plaintiff with his diagnosis and treatment.
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26 35. None of the facts were disclosed to PLAINTIFF, and they remained concealed
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1 from the PLAINTIFF until approximately November 20, 2013, when PLAINTIFF
2 discovered it through Bay Area Surgical Specialists, who subsequently obtained
3 the medical records for his treatment.
4

5 36. All DEFENDANTS, and each of them individually and collectively, had the duty
6 to disclose these facts to PLAINTIFF as Plaintiff's joint agent for health care. Each
7 had the opportunity to do so. All DEFENDANTS, and each of them, failed to do so.
8

9 37. The failure to make the said disclosures was the direct cause to Plaintiff
10 injuries and disability. Had Defendants released the facts in timely fashion, would
11 have prevented Plaintiff's injuries and disability. But DEFENDANTS failed to do
12 even that and it was the result of a business practice by DEFENDANTS established
13 as part of a larger pattern to end costly treatment of patients as soon as possible
14 and ensure maximum profits for KAISER and its employees who share in the
15 profits. To DEFENDANTS, the sooner PLAINTIFF'S treatment was complete, the
16 sooner they could end his costly medical treatment, move him out from KAISER
17 and replace him with a more profitable patient. As a result, DEFENDANTS
18 disregarded PLAINTIFF'S demands and PLAINTIFF'S rights for further treatment
19 because it was, personally, more profitable for them to do so. This profit-motive
20 cannot be understated in this matter.
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22 38. PLAINTIFF relied on the assumed good faith of DEFENDANTS, and as a direct
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1 and proximate result of said reliance, PLAINTIFF failed to receive proper care and
2 treatment. He also, failed to provide informed consent to to make his health
3 care decisions. As a direct and legal result, DECEDENT suffered injuries and
4 disability.

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6 39. By virtue of the foresaid, DEFENDANTS and each of them have acted with
7 fraud and an award of general damages for PLAINTIFF'S pain and suffering under
8 the provisions of Welf. & Inst. Code §15657, and as assessment of punitive
9 damages in a sum according to proof at trial, is justified and appropriate. In
10 addition, DEFENDANTS acted despicably and with recklessness, oppression, and
11 malice, and punitive damages should be assessed for that reason.
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15 16 **FOURTH CAUSE OF ACTION** 17 **CONSTRUCTIVE FRAUD**

18 40. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth
19 herein and further alleges:
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21 41. By virtue of their "healthcare provider/patient relationship" with PLAINTIFF,
22 DEFENDANTS and each of them owed a fiduciary duty to PLAINTIFF to disclose
23 the facts set forth herein above.
24

25 42. DEFENDANTS intentionally breached the aforesaid fiduciary duty to disclose
26 the information to PLAINTIFF. Said breaches were financially motivated and
27

1 intentional, and directly and legally resulted in PLAINTIFF'S severe injuries and
2 current disability.

3
4 43. By virtue of the foresaid, DEFENDANTS and each of them have acted with
5 fraud and an award of general damages for PLAINTIFF'S pain and suffering under
6 the provisions of Welf. & Inst. Code § 15657, and as assessment of punitive
7 damages in a sum according to proof at trial, is justified and appropriate. In
8 addition, DEFENDANTS acted despicably and with recklessness, oppression, and
9 malice, and punitive damages should be assessed for that reason.
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13 **FIFTH CAUSE OF ACTION**
14 **BREACH OF FIDUCIARY DUTY**
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16 44. PLAINTIFF hereby re-alleges and incorporates by reference the allegations
17 contained in Paragraphs 1 through 43 herein above as if fully set forth
18 .

19 45. By virtue of their "healthcare provider/patient" relationship, DEFENDANTS
20 had a fiduciary duty to PLAINTIFF to act with the utmost good faith and in his
21 best interests.
22

23 46. DEFENDANTS breached their fiduciary duty to PLAINTIFF in the ways set
24 forth herein above.
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26 47. By virtue of the foresaid, DEFENDANTS acted recklessly, oppressively, and
27

1 intentionally in breach of their duties as healthcare providers.

2
3 48. As a direct and legal result of the foresaid, PLAINTIFF was injured and
4 sustained disability.

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6 49. By virtue of the foresaid, DEFENDANTS acted despicably and with
7 recklessness, oppression, and malice, and punitive damages should be assessed
8 for that reason.
9

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11 **SIXTH CAUSE OF ACTION**
12 **FRAUD-FALSE PROMISE**

13 50. PLAINTIFF hereby re-alleges and incorporates by reference the allegations
14 contained in Paragraphs 1 through 43 herein above as if fully set forth.

15
16 51. KAISER and all other DEFENDANTS made the fraudulent false promise to
17 PLAINTIFF that the pain in his right leg is due to exhaustion and that his recovery
18 is at sight with simple relaxation.
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20 52. This promise was material to PLAINTIFF in handling his health care decisions
21 and treatment. KAISER and all other DEFENDANTS never intended that the
22 promise they communicated with PLAINTIFF to be real before he suffered severe
23 injuries and disability. PLAINTIFF was never made aware of the extent of the true
24 nature of his health treatment options or given the opportunity to discuss his
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27

1 treatment as he was expressly promised he would be by KAISER and other
2
3 DEFENDANTS.

4 53. KAISER and all other DEFENDANTS never intended to perform their promised
5
6 act when they made it. They intended instead that PLAINTIFF rely on the
7
8 promise, leave KAISER, and not question any treatment plan over or
9
10 otherwise communicate with DEFENDANTS. PLAINTIFF relied on their promise
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12 to his detriment until he was diagnosed subsequently by the Bay Area Surgical
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14 Specialists, who succeeded in saving his leg from amputation.

15 54. As a direct and legal result of the foregoing, PLAINTIFF suffered injuries and
16
17 disability.

18 55. By virtue of the foresaid, KAISER and all other DEFENDANTS acted with fraud
19
20 and an award of general damages for PLAINTIFF'S pain and suffering under the
21
22 provisions of Welf. & Inst. Code §15657, and as assessment of punitive damages
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24 in a sum according to proof at trial, is justified and appropriate. In addition,
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26 KAISER and all other DEFENDANTS acted despicably and with recklessness,
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28 oppression, and malice, and punitive damages should be assessed for that reason.

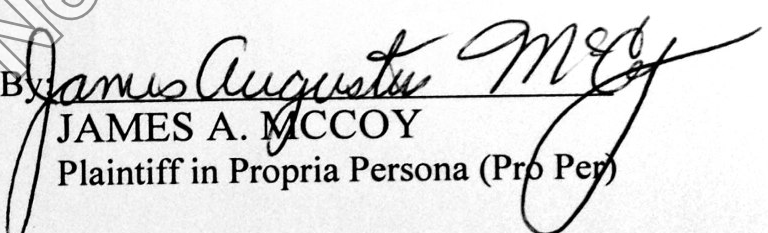
PRAYER

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

1. For general and special damages according to proof.
2. For punitive damages according to proof.
3. For the loss of the care, comfort, and society of PLAINTIFF.
4. For attorneys fees, unilaterally to PLAINTIFF.
5. For costs of suit, including expert costs.
6. For such other and further relief as the court deems just and proper.

DATED: February 5, 2014

By


JAMES A. MCCOY

Plaintiff in Propria Persona (Pro Per)

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VERIFICATION

I, JAMES A. MCCOY, am the Plaintiff in the above-entitled action. I have drafted and read the foregoing *Complaint* and know the contents thereof. The same is true of my own knowledge, except as to those matters, which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Hayward, California.

DATED: February 5th, 2013


JAMES A. MCCOY

Courthouse News Service