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FILED
AUG 05 2014

STEPHEN H. NASH CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
By M. Merino, Deputy Clerk

Attorney for Plaintiff

JOHN BAILEY

M. Merino

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA**

LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
DEPT 31

JOHN BAILEY, an individual,

Plaintiff

Case No. **C14 - 01494**

vs.

**JOHN MUIR HEALTH, a California
corporation,
KAISER PERMANENTE INSURANCE
COMPANY, aka KAISER
PERMANENTE INTERNATIONAL, a
California corporation,
MEDICAL ANESTHESIA
CONSULTANTS MEDICAL GROUP,
INC., a California corporation,
EAST BAY CARDIOVASCULAR AND
THORACIC ASSOCIATES, INC., a
California corporation,
DIABLO NEPHROLOGY MEDICAL
GROUP, INC., a California
corporation,
DR. KEVIN G. KAISER, an
individual,
ROBERT W. DAVIES, MD, an
individual,
DR. JATINDER S. DHILLON, an
individual,
AND
DOES 1 through 50**

COMPLAINT FOR DAMAGES;

- 1) MEDICAL NEGLIGENCE;**
- 2) NEGLIGENCE;**
- 3) MEDICAL MALPRACTICE: RES IPSA
LOQUITUR;**
- 4) NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS;**
- 5) FAILURE TO ADEQUATELY WARN;**
- 6) BATTERY**
- PERSONAL INJURY**

PUNITIVE DAMAGES DEMANDED

JURY TRIAL DEMANDED

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Plaintiff JOHN BAILEY (hereafter "BAILEY" or the "Plaintiff"), alleges against Defendants JOHN MUIR HEALTH, (hereafter "Defendant John Muir"), KAISER PERMANENTE INSURANCE COMPANY, also known as KAISER PERMANENTE INTERNATIONAL, (hereafter "Defendant Kaiser Permanente"), MEDICAL ANESTHESIA CONSULTANTS MEDICAL GROUP, INC., (hereafter "Defendant Anesthesia"), and EAST BAY CARDIOVASCULAR AND THORACIC ASSOCIATES, INC., (hereafter "Defendant East Bay"), DIABLO NEPHROLOGY MEDICAL GROUP, INC. (hereafter "Defendant Diablo"), DR. KEVIN G. KAISER (hereafter "Defendant Kaiser"), ROBERT W. DAVIES, MD, (hereafter "Defendant Davies"), DR. JATINDER S. DHILLON, (hereafter "Defendant Dhillon"), (hereafter collectively as "Defendants") as follows:

VENUE and PARTIES

1. This action is brought pursuant to *California Code of Civil Procedure* § 3333 and 1714 et seq..
2. The claims alleged herein arose in the County of Contra Costa, California.
3. Plaintiff JOHN BAILEY is a resident of Contra Costa County.
4. Defendant JOHN MUIR HEALTH, is a California corporation located in Contra Costa County, is, and at all times herein mentioned, was and still is a medical facility registered to do business in the State of California with its principal place of business located at 1400 Treat Boulevard, Walnut Creek, CA 94597.
5. Defendant KAISER PERMANENTE INSURANCE COMPANY, also known as KAISER PERMANENTE INTERNATIONAL, is a California corporation located in Contra Costa County, is, and at all times herein mentioned, was and still is a

1 medical facility registered to do business in the State of California with its
2 principal place of business located at 300 Lakeside Drive, Oakland, CA 94612.
3 (KAISER PERMANENTE INTERNATIONAL'S principal place of business located
4 at One Kaiser Plaza, Oakland, CA 94612.)

- 5
- 6 6. Defendant MEDICAL ANESTHESIA CONSULTANTS MEDICAL GROUP, INC.,
7 is a California corporation located in Contra Costa County, is, and at all times
8 herein mentioned, was and still is a medical facility registered to do business in
9 the State of California with its principal place of business located at 1613 N.
10 HARRISON PARKWAY, SUITE 200, SUNRISE FL 33323. The medical facility
11 provides service in 2420 CAMINO RAMON, SUITE 270, SAN RAMON CA
12 94583.
- 13 7. Defendant EAST BAY CARDIOVASCULAR AND THORACIC ASSOCIATES,
14 INC., is a California corporation located in Contra Costa County, is, and at all
15 times herein mentioned, was and still is a medical facility registered to do
16 business in the State of California with its principal place of business located at
17 1320 EL CAPITAN DRIVE, STE. 120, DANVILLE, CA 94526.
- 18 8. Defendant DIABLO NEPHROLOGY MEDICAL GROUP, INC., is a California
19 corporation located in Contra Costa County, is, and at all times herein
20 mentioned, was and still is a medical facility registered to do business in the
21 State of California with its principal place of business located at 2222 EAST
22 STREET, STE 305, CONCORD CA 94520.
- 23 9. Defendant DR. KEVIN G. KAISER is, and at all times herein mentioned, was and
24 still is licensed to practice Anesthesiology and administer anesthesia by the
25 State of California with his principal place of business in Contra Costa County.
26

10. Defendant ROBERT W. DAVIES, MD, is, and at all times herein mentioned, was and still is licensed to practice Nephrology by the State of California with his principal place of business in Contra Costa County.

11. Defendant DR. JATINDER S. DHILLON, is, and at all times herein mentioned, was and still is physician licensed to practice General Cardiac/Thoracic Surgery by the State of California with his principal place of business in Contra Costa County.

12. PLAINTIFF is ignorant of the names and capacities of DOES 1 through 50 and sues them as DOES 1 through 50, inclusive. Defendants Doe 1 through Doe 50, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to plaintiff. When their true names and capacities are ascertained, plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that plaintiff's damages as herein alleged were proximately caused by those defendants.

13. Each reference in this complaint to "defendant," "defendants," or a specifically named defendant refers also to all defendants, including those sued under fictitious names.

14. At all times herein mentioned, each of the Defendants was the agent, servant, partner, aider and abettor, co-conspirator and/or joint venturer of each of the remaining Defendants herein and were at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy and/or joint venture and rendered substantial assistance and

encouragement to the other Defendants, knowing that their conduct constituted a breach of duty.

15. Plaintiff further alleges that this is the proper court because the injury to person occurred in its jurisdictional area, and the relief sought is within the jurisdiction of this Court.

16. Therefore, venue lies in the County of Contra Costa and venue is proper in this Court.

FACTS COMMON TO ALL COUNTS

17. This is an action for damages based upon the conduct by the Defendants against Plaintiff.

18. Plaintiff was and continues to be a patient under the care of Defendant Kaiser Permanente.

19. On or about May 7, 2013, Plaintiff was admitted to Kaiser Permanente for the purpose undergoing of a Coronary Angiography.

20. Defendants performed a Coronary Angiography upon Plaintiff without advising him of the known risks including hypotension, hypoxia and multi system organ failure.

21. Defendants performed a Coronary Angiography upon Plaintiff without adequately assessing the specific high risk to Plaintiff because of his preexisting conditions.

22. On or about May 7, 2013, Plaintiff was transferred by Defendant Kaiser Permanente to Defendant John Muir to have quadruple bypass surgery.

23. Plaintiff remained a patient at Defendant John Muir from on or about May 7, 2013 through on or about June 17, 2013.

24. Plaintiff alleges that the Doctors, Nurses and hospital staff and administrators at both Defendant John Muir and Defendant Kaiser Permanente failed to design a safe and effective treatment plan, failed to assess and evaluate the totality of Plaintiff's care and treatment, failed to give due regard to the complexity of Plaintiff's medical conditions, symptoms and prior treatments and procedures, failed to provide Plaintiff sufficient dialysis treatment during while in the care of Defendants, failed to provide Plaintiff modified ultra filtration immediately after cardiopulmonary bypass surgery, and failed to provide Plaintiff continuous hemodialysis and filtration while in Intensive Care.

25. Plaintiff has been a patient of Defendant Kaiser Permanente since 2006.

26. Plaintiff has been a dialysis patient since 2008.

27. On or about May 7, 2013, Plaintiff was scheduled to have surgery to insert a shunt.

28. Plaintiff was advised that his blockages were too severe to have a shunt inserted and instead he needed quadruple bypass heart surgery.

29. On or about May 7, 2013, Plaintiff was transferred to Defendant John Muir.

30. On or about May 8, 2013 Plaintiff was at Defendant John Muir being prepared for the quadruple bypass surgery.

31. Defendant Davies is employed by Defendant Diablo.

32. On or about May 9, 2013, Defendant Dhillon performed the quadruple bypass surgery despite the fact that Plaintiff's last dialysis procedure had been five days earlier.

33. Defendant Dhillon is employed by Defendant East Bay.

34. On May 9, 2013, Defendant Kaiser administered anesthesia for the surgery without first fully investigating his patient's history and needs and requirements.
35. Defendant Kaiser is employed by Defendant Anesthesia.
36. The medical entities and providers failed to provide Plaintiff with sufficient dialysis procedures in light of the combination of anesthesia, contrast agents and surgical procedures.
37. Plaintiff submits that this failure to provide sufficient dialysis and failed to evaluate Plaintiff's ability to withstand, tolerate and survive repeated surgical procedures constituted negligence and committed medical malpractice by failing to provide him the necessary medical procedures which caused him to have all four of his limbs amputated.
38. Both Plaintiff's right and left arm were amputated below the elbow resulting in the loss of both hands. Both Plaintiff's right and left leg were both amputated below the knee resulting in the loss of both feet.
39. Defendants breached their duty to Plaintiff by failing to insure that Plaintiff receive adequate and proper pre operative and post operative care and treatment.
40. Had DEFENDANTS simply reviewed medical records, they would have discovered the truth of Plaintiff's health conditions and determined the special care and precautions required to protect and preserve Plaintiff's health and safety.
41. During the period of their care of Plaintiff, each of the DEFENDANTS knew or should have known the perils posed to Plaintiff for their failures to comply with their duties of care to provide care which a reasonably prudent hospital operator,

1 physician, social worker, ethicist, bioethics director, or other health care provider
2 or administrator would use.

3 42. During the period of their care of Plaintiff, each of the Defendants knew or should
4 have known that the perils posed by their failure to comply with their standards of
5 care to provide care which a reasonably prudent hospital operator, physician,
6 social worker, ethicist, bioethics director, or other health care provider or
7 administrator would use, exposed Plaintiff to the high probability of his injuries.

8 43. During the period of their care of Plaintiff, each of the DEFENDANTS knowingly
9 disregarded the aforesaid perils and high probability of injury and death to
10 Plaintiff, and in doing so failed to comply with their duties under the standards of
11 care as set forth above.
12

13 44. DEFENDANTS' failure and refusal to communicate with PLAINTIFF, seek his
14 consent regarding Plaintiff's health care, and failure to obtain his authorization
15 before purposefully and intentionally performing high risk surgeries and
16 procedures, was despicable and it subjected Plaintiff to cruel and unjust hardship
17 in conscious disregard of his rights and safety.
18

19 45. By virtue of the foresaid, DEFENDANTS have each acted with recklessness,
20 oppression, and malice, and their acts and omissions were despicable.

21 46. By virtue of the foresaid, punitive damages should be assessed against
22 DEFENDANTS and each of them, in a sum according to proof at trial.
23
24
25
26

47. Plaintiff hereby realleges all the factual matters of all paragraphs in this complaint, as though fully set forth here.

48. The acts and conduct and omissions of Defendants as alleged in this complaint constitutes medical negligence.

49. Bailey claims that he was harmed by Defendants' medical negligence. To establish this claim, Bailey submits that:

50. Defendants' were medically negligent;

51. That Bailey was harmed; and

52. That Defendants' negligence was a substantial factor in causing Bailey's harm.

SECOND CAUSE OF ACTION - NEGLIGENCE

(against all Defendants on behalf of Plaintiff)

53. Plaintiff hereby realleges the factual matters of all paragraphs in this complaint, as though fully set forth here.

54. The acts and conduct of Defendants as alleged in this complaint constituted negligence.

55. Bailey claims that he was harmed by Defendants' negligence. Bailey submits
that:

56. Defendants' were negligent;

57. That Bailey was harmed; and

58. That Defendants' negligence was a substantial factor in causing Bailey's harm.

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

Plaintiff, to use the degree of care and skill that a reasonable prudent person
would use.

60. In the case of the physician DEFENDANTS, they are required to use that
degree of care that a reasonably prudent physician would owe given his or her
knowledge, training, expertise, and skill.

61. As a further result of Defendants' negligence herein alleged, Plaintiff has been
damaged in that he has been required to expend money and incur obligations,
for medical services and related expenses, drugs, and sundries reasonably
required in the treatment and relief of the injuries herein alleged.

62. As a further result of the negligence of Defendants', Plaintiff was hurt and injured
in his health, strength, and activity, sustaining injury to her person, all of which
injuries have caused, and continues to cause Plaintiff great mental and physical
pain and suffering.

63. Plaintiff has missed significant amounts of work as a result of these injuries.

64. Plaintiff continues to experience permanent injury and abnormalities. Plaintiff's
injuries are a direct result of injuries caused by the actions and omissions of
Defendants.

65. The injuries which Plaintiff has suffered are the type of injuries that normally do not occur in the absence of negligence.

66. The injuries which Plaintiff suffered were caused by instrumentalities or actions within the exclusive control of Defendants.

67. The injuries are in no way due to any voluntary conduct on the part of the Plaintiff.

68. Plaintiff has complied with the relevant provisions of CCP § 364.

THIRD CAUSE OF ACTION- MEDICAL MALPRACTICE: RES IPSA LOQUITUR

(against all Defendants' on behalf of Plaintiff)

69. Plaintiff hereby realleges the factual matters of all paragraphs in this complaint as though fully set forth here.

70. The acts and conduct of Defendant alleged in the above stated cause of action constituted Medical Malpractice.

71. By virtue of the foresaid, DEFENDANTS have acted in conscious disregard of the probability of Plaintiff's undesired and unauthorized injuries. DEFENDANTS' acts and omissions were despicable and it subjected Plaintiff to cruel and unjust hardship in conscious disregard of his rights and safety.

72. Plaintiff submits that Defendants' negligence caused his harm as follows:

73. That Plaintiff's harm ordinarily would not have occurred unless someone was negligent;

74. That the harm occurred while Bailey was under the care and control of Defendants; and

75. That Bailey's voluntary actions did not cause or contribute to the event[s] that harmed him.

FOURTH CAUSE OF ACTION-- Negligent Infliction of Emotional Distress

(against all Defendants on behalf of Plaintiff)

76. Bailey claims that Defendants' conduct caused him to suffer serious emotional distress. Plaintiff submits that Defendants were negligent;

77. That Plaintiff suffered serious emotional distress; and

78. That Defendants' negligence was a substantial factor in causing Bailey's serious emotional distress.

79. Emotional distress includes suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame. Serious emotional distress exists if an ordinary, reasonable person would be unable to cope with it.

FIFTH CAUSE OF ACTION-- FAILURE TO ADEQUATELY WARN

(against all Defendants on behalf of Plaintiff)

80. Plaintiff hereby realleges the factual matters of all paragraphs in this complaint as though fully set forth here.

81. The acts and conduct of Defendants alleged in this Complaint constitutes Failure to Adequately Warn.

82. At this time and place, Defendants' failed to adequately disclose the inherent risks of the tests, procedures, surgeries, and services to be rendered and administered to patient.

83. Defendants failed to warn of the risks including the risks of amputation of all both hands and both feet.

84. Further, Defendants negligently failed to obtain Plaintiff's informed consent in light of the undisclosed risks.

85. Because Plaintiff was not adequately informed of the inherent risks of severe injury and disability, any consent she gave to the procedure was invalid.

SIXTH CAUSE OF ACTION -- BATTERY

(against all Defendants on behalf of Plaintiff)

89. Plaintiff hereby realleges the factual matters of all paragraphs in this complaint as though fully set forth here.

90. The acts and conduct of Defendants alleged in this Complaint constitutes Battery.

91. At this time and place, Defendants' failed to adequately disclose the inherent risks of the tests, procedures, surgeries, and services to be rendered and administered to patient.

92. Defendants failed to warn of the risks including the risks of amputation of both hands and both feet.

93. Further, Defendants negligently failed to obtain Plaintiff's informed consent in light of the undisclosed risks.

94. Further, Defendants failed to obtain Plaintiff's informed consent in light of the undisclosed risks.

95. Because Plaintiff was not adequately informed of the inherent risks of amputation and of serious injury and disability, any consent given was invalid.

PUNITIVE DAMAGES

(Against all Defendants on behalf of Plaintiff)

Defendants actions as set forth in the Complaint were carried out with a conscious disregard of Plaintiff's rights and with the intent to vex, injure, or annoy Plaintiff; such as to constitute oppression, fraud, or malice under California Civil Code § 3294; entitling Plaintiff to exemplary or punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

- ♦ **For General Damages According To Proof;**
- ♦ **For Special Damages;**
- ♦ **For Medical And Related Expenses According To Proof;**
- ♦ **For Loss Of Earnings According To Proof;**
- ♦ **For Attorney Fees;**
- ♦ **For Interest Allowed By Law**
- ♦ **For Exemplary Or Punative Damages;**
- ♦ **For Costs Of Suit Herein Incurred;**
- ♦ **FOR COMPENSATORY AND PUNITIVE DAMAGES FROM DEFENDANTS FOR THE TORTIOUS ACTIONS,**
- ♦ **COMPENSATORY DAMAGES AGAINST DEFENDANTS IN AN AMOUNT ACCORDING TO PROOF FOR DAMAGES RESULTING FROM DEFENDANT'S NEGLIGENCE;**
- ♦ **FOR EACH OTHER SUCH AND FURTHER RELIEF AS THE COURT MAY DEEM JUST AND PROPER.**

Respectfully submitted,

Date: 8-5, 2014

James J. Fishel, Attorney for PLAINTIFF

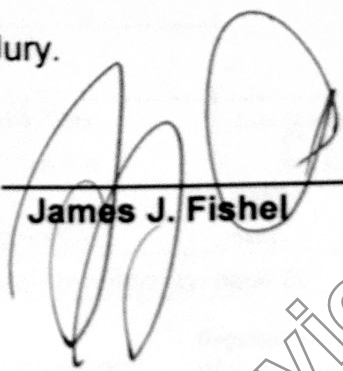
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JURY DEMAND

Plaintiff hereby demands trial by Jury.

Date: 8-5, 2014


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Courthouse News Service

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