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ALAMEDA COUNTY

AUG 25 2014

CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

Edward Plummer
1658 Club Drive
Pomona CA 91768
(909) 623-3756
edwplu@yahoo.com

Christian Morgan Plummer
1562 6th Street
Livermore, CA 94550

Plaintiffs In Pro Per

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

EDWARD PLUMMER, JR., an individual;
CHRISTIAN MORGAN PLUMMER, an
individual,

Plaintiffs,

vs.

KAISER FOUNDATION HOSPITALS, a
California corporation; KAISER
FOUNDATION HEALTH PLAN, INC.;
DOES 1 through 15, inclusive,

Defendants.

CASE NO.

RG14738005

COMPLAINT

COMES NOW, Plaintiffs EDWARD PLUMMER, JR. and CHRISTIAN MORGAN PLUMMER, who alleges as follows for their Complaint against Defendants and each of them:

PARTIES

1. Plaintiff Christian Morgan Plummer ("Plaintiff") brings this action on behalf of the deceased, Gavin Plummer ("Decedent"). Christian Morgan Plummer is Decedent's father.

2. Plaintiff Edward Plummer, Jr. ("Grandfather") brings this action on behalf of Decedent. Edward Plummer, Jr. is Decedent's grandfather.

3. Defendant Kaiser Foundation Hospitals is a California corporation doing business at 280 W. MacArthur Blvd. Oakland, CA 94611. Defendant's principal place of business in California is at One Kaiser Plaza, Oakland, CA 94612.

4. Defendant Kaiser Foundation Health Plan, Inc. is a California corporation with its principal place of business at One Kaiser Plaza, Oakland, CA 94612.

5. Plaintiffs are ignorant of the names and capacities of DOES 1 through 15 and sues them as DOES 1 through 15, inclusive. Plaintiffs will amend this action to allege these DOE defendants' names and capacities when ascertained. Each of the defendants herein is responsible in some manner for the occurrences, injuries, and damages herein, and that the damages were directly and proximately caused by these defendants' acts and omissions. Each defendant herein was the agent of each of the remaining defendants, and in doing the things alleged herein were acting within the course and scope of their agency.

FACTUAL ALLEGATIONS

6. Gavin Plummer, the Decedent, was born on October 27, 2008.

7. Decedent was covered under Kaiser Foundation Health Plan through his mother's employer.

8. In or about July of 2010 Decedent was diagnosed at the Kaiser hospital at 280 W. MacArthur Blvd. Oakland, CA 94611 as having Wilms' tumor, a cancer affecting the kidney(s). Prior to the diagnosis, Decedent was believed to be in good health.

9. Following exploratory laparotomy and a nephrectomy (surgical removal of all or part of kidney), defendants informed Decedent's parents that the cancer was in remission.

10. However, a few months later, Decedent's parents were told that the cancer had returned.

11. Decedent's parents requested a second opinion. The request was denied.

12. Decedent was in and out of treatment from August 2011 through August 2012.

13. Plaintiffs also requested a referral to St. Jude's Children's Research Center in Tennessee. This request was denied.

14. Instead of making a referral or continuing to treat Decedent, defendants encouraged Decedent's parents to take Decedent home for hospice care.

15. On May 30, 2013, Decedent passed away.

16. On or about May 17, 2014, Plaintiff Edward Plummer mailed a Notice of Intent to Sue to Defendants.

FIRST CAUSE OF ACTION

(Wrongful Death against all Defendants)

17. Plaintiffs hereby re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 16.

18. Decedent's death was caused, in whole or in part, by the negligent or intentional conduct of Defendants.

9. As a direct and proximate result of the foresaid, Decedent died and Plaintiffs have been deprived of Decedent's love, care, comfort, and society to their general damages according to proof at trial.

SECOND CAUSE OF ACTION

(Medical Negligence against all Defendants)

20. Plaintiffs hereby re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 16.

21. A physician is negligent if he or she fails to use the level of skill, knowledge, and

1 care in diagnosis and treatment that other reasonably careful physicians would use in the same or
2 similar circumstances. This level of skill, knowledge, and care is sometimes referred to as “the
3 standard of care.”

4 22. Furthermore, if a reasonably careful physician in the same situation would have
5 referred Decedent to a medical specialist, then Defendants were negligent if they did not do so.

6 23. Defendants were medically negligent.

7 24. Plaintiffs were harmed.

8 25. Defendants’ medical negligence was a substantial factor in causing Plaintiffs’
9 harm.

10 **THIRD CAUSE OF ACTION**

11 **(Abandonment of Patient against all Defendants)**

12 26. Plaintiffs hereby re-allege and incorporate by reference the allegations contained in
13 Paragraphs 1 through 16.

14 27. Defendants withdrew from Decedent’s care and treatment.

15 28. Defendants did not provide sufficient notice for Decedent or his parents to obtain
16 another medical practitioner.

17 **FOURTH CAUSE OF ACTION**

18 **(Breach of Contract – Third Party Beneficiary against all Defendants)**

19 29. Plaintiffs hereby re-allege and incorporate by reference the allegations contained in
20 Paragraphs 1 through 16.

21 30. Decedent’s mother and Defendants entered into a contract to provide health care for
22 Decedent. Plaintiffs were the third party beneficiaries of this contract.

23 31. Decedent’s mother did all, or substantially all, of the significant things that the
24 contract required her to do.

25 32. All conditions required by the contract for Defendants’ performance had occurred.

26 33. Defendant failed to do something that the contract required it to do.

27 34. Plaintiffs were harmed by that failure.

1 **PRAYER**

2 WHEREFORE, Plaintiffs pray for relief against Defendants, and each of them as
3 follows:

- 4 1. For general and special damages according to proof;
5 2. For the loss of the care, comfort, and society of Decedent;
6 3. For attorneys fees and costs;
7 4. For such other and further relief as the court deems just and proper.
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9 **TRIAL BY JURY**

10 Trial by jury is demanded on all such issues so triable.
11

12 DATED: August 21, 2014

13 By: 

14 Edward Plummer, Jr., Plaintiff In Pro Per
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16
17 DATED: August 22, 2014

18 By: 

19 Christian Morgan Plummer, Plaintiff In Pro Per
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