

FILED BY FAX**ALAMEDA COUNTY****September 04, 2014****CLERK OF
THE SUPERIOR COURT
By Burt Moskaira, Deputy****CASE NUMBER:
RG14739407**

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THE SUPERIOR COURT

OF THE STATE OF CALIFORNIA

IN THE COUNTY OF ALAMEDA

MARIA DEL CARMEN TAPIA,

Plaintiff,

vs.

KAISER PERMANENTE, KAISER
FOUNDATION HEALTH PLAN, KAISER
FOUNDATION HOSPITALS, HEALTH
CARE RECOVERIES, TROVER
SOLUTIONS, INC., HEALTH CARE
RECOVERIES, INC. Does 1 through 100,
inclusive.

Defendants.

Case No.

COMPLAINT FOR RESCISSION AND
CONSTRUCTIVE TRUST

Comes now Maria Del Carmen Tapia, hereafter Plaintiff, who alleges as follows herein:

1. Plaintiff is a resident of the State of California, Oakland, California and was a health plan member of Defendants KAISER PERMANENTE, KAISER FOUNDATION HEALTH PLAN and KAISER FOUNDATION HOSPITALS, and Does 1 through 10, from 2011 through 2012.

2. KAISER PERMANENTE, KAISER FOUNDATION HEALTH PLAN, KAISER FOUNDATION HOSPITALS, and Does 1 through 10, hereafter referred to as Health Care Plan

1 Defendants, are business entities of unknown form who were in the business of providing
2 managed health care and did provide managed health care to Plaintiff during the years 2010
3 through 2011 in the State of California and providing that managed health care in Alameda
4 County.
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6 3. HEALTH CARE RECOVERIES, TROVER SOLUTIONS, INC., HEALTH CARE
7 RECOVERIES, INC. and Does 11 through 20, hereafter Health Care Recovery Defendants, are
8 business entities of unknown form, and were in the business of recovering monies owed to
9 KAISER PERMANENTE, KAISER FOUNDATION HEALTH PLAN, KAISER
10 FOUNDATION HOSPITALS, and Does 1 through 10 during the years 2010 and 2011.
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12 3. Plaintiff is unaware of the true names and identities of Does 1 through 100 and so sues
13 these entities under such fictitious names. Plaintiff will allege the true identity of such entities
14 when they are learned. Plaintiff alleges that each Defendant herein, including Does
15 through 100 was the agent or representative of each of the other named Defendants and other
16 Doe Defendants, and in doing the things alleged herein was acting within the scope of their
17 agency.
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19 4. On April 18, 2011, Plaintiff's husband, Napoleon Quintero Medina, suffered fatal
20 injuries in the course of an accident whereby an automobile he was operating overturned on
21 Interstate 80 in Alameda County, California on April 18, 2011.
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23 5. Plaintiff's husband was a member of Defendant KAISER PERMANENTE, KAISER
24 FOUNDATION HEALTH PLAN, KAISER FOUNDATION HOSPITALS, and Does 1 through
25 10, Health Care Plan and so was Plaintiff at the time during all relevant times.
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1 5. Plaintiff suffered personal injuries in the automobile Accident of April 18, 2011 and
2 received medical treatment from Health Care Plan Defendants, which treatment was paid for by
3 Health Care Plan Defendants' Health Care Plan.
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5 6. On April 20, 2011, Plaintiff retained the legal services of Michael A. Pohl, a lawyer in
6 the State of Texas, to represent her in a wrongful death claim arising from the death of her
7 husband, Napoleon Quintero Medina. Plaintiff did not retain Michael A. Pohl to represent her
8 against in any claim against any third party for personal injuries she suffered in the accident of
9 April 18, 2012 which caused her husband, Napoleon Quintero Medina to die.
10

11 7. On May 30, 2011, Plaintiff retained the legal services of Guy Watts, an individual and
12 attorney in the State of Texas, and Watts, Guerra and Craft, LLP, a Texas law firm, as associated
13 counsel with Michael A. Pohl to represent her in a wrongful death claim arising from the death
14 of her husband, Napoleon Quintero Medina. Plaintiff did not retain Guy Watts or Watts, Guerra
15 and Craft, LLP to represent her in any claim against any third party for personal injuries she
16 suffered in the accident of April 18, 2011, which caused her husband, Napoleon Quintero
17 Medina, to die.
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19 8. On or about May 2011, Plaintiff's Texas attorneys, hereinabove described, caused to be
20 filed a civil action against Ford Motor Company in Cause No. 2012 CI 03804, in the 37th
21 Judicial District Court of Bexar County, Texas (hereinafter "Lawsuit") seeking damages under
22 theories of strict liability, warranty, misrepresentation fraud and negligence, among other causes
23 of action for the wrongful death of Napoleon Quintero Medina. The Lawsuit did not allege and
24 did not seek any personal injury damages for Plaintiff who happened to be in the same vehicle
25 that Napoleon Quintero Medina was operating, thereby suffering her own personal injuries when
26 the same vehicle overturned.
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1 9. In response to the Lawsuit, defendants therein denied all liability.

2 10. On or about July 2012, the Lawsuit was settled, and Plaintiff executed a Release and
3 Discharge Agreement and accepted payment of monies for herself and other members of
4 Plaintiff's family who had also joined in as co-plaintiffs in the Lawsuit.
5

6 11. In settlement of the Lawsuit, Plaintiff received no moneys for her own personal injury
7 damages she suffered, nor did she receive costs for payment towards any medical treatment she
8 received from Health Care Plan Defendants.

9 12. By the terms of the Health Care Plan Defendants' Health Care Plan agreement with
10 Plaintiff, Plaintiff was required to pay charges for covered medical services received if she
11 obtained a judgment or settlement from or on behalf of a third party who allegedly caused her
12 injury or illness for which she received health care plan covered medical services. Plaintiff never
13 obtained a judgment or settlement from or on behalf of any third party who allegedly caused her
14 injury or illness for which she received covered medical services provided by her Health Care
15 Plan Defendants' agreement with Plaintiff. Plaintiff never made any claim or sought any
16 recovery from any third party who caused her injury or illness relative to the motor vehicle
17 accident that caused the death of her husband, Napoleon Quintero Medina and injury to her.
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19 13. On September 4, 2012, the Lawsuit was settled, by the terms of which, Plaintiff's
20 attorney's negotiated a settlement to compensate Plaintiff and other family members in the
21 Lawsuit. However, in the course of distributing the settlement proceeds, Plaintiff's attorneys
22 paid to Defendants the sum of approximately \$107,129.00 to Health Care Recovery Defendants
23 in satisfaction of a medical lien for covered medical services rendered to Plaintiff by Health Care
24 Plan Defendants.
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1 14. No part of the \$107,129.00 (hereafter "Lien Settlement Sum") paid to Health Care
2 Recovery Defendants was either necessary or required or owed because Plaintiff had not alleged
3 any recovery from any third party who caused her injury or illness relative to the motor vehicle
4 accident that caused the death of her husband, Napoleon Quintero Medina.

5
6 15. Plaintiff was actually precluded from any settlement or judgment against any third parties
7 named as defendants in the Lawsuit for which reimbursement was paid to Health Care Plan
8 Defendants and Health Care Recovery Defendants because Plaintiff was not injured by any
9 mechanism or conduct of the Lawsuit defendants upon which liability could exist.

10
11 **FIRST CAUSE OF ACTION**
12 **MUTUAL MISTAKE & RESCISSION**

13 16. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 15 as though
14 fully set out herein.

15 17. The Lien Settlement Sum paid to Health Care Recovery Defendants was not to due
16 Defendants or any of them and was paid out by Plaintiff's attorneys and collected by Defendants
17 in error. The error was the mutual belief of the existence of an obligation which did not exist,
18 per Civil Code section 1577, that being the obligation of Plaintiff, pursuant to her health care
19 plan agreement with Health Care Plan Defendants to reimburse Health Care Plan Defendants for
20 covered medical services caused by third parties against whom Plaintiff had alleged a claim for
21 injury.

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23 18. As a result of the mutual mistake in the belief of both Plaintiff's attorneys and
24 Defendants that an obligation was owed by Plaintiff, the Lien Settlement Sum paid to Health
25 Care Recovery Defendants should now be rescinded and the Lien Settlement Sum should be paid
26 back to Plaintiff.
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SECOND CAUSE OF ACTION
CONSTRUCTIVE TRUST

19. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 18, as though fully set out herein.

20. By reason of the fraudulent and otherwise wrongful manner in which the Defendants, or any of them, obtained the Settlement Sum, Defendants, and each of them, have no legal or equitable right, claim or interest therein, but, instead, Defendants, and each of them are involuntary trustees holding said Lien Settlement Sum and profits therefrom in constructive trust for Plaintiff, with the duty to convey the same to Plaintiff, forthwith.

WHEREFORE, Plaintiff prays for judgment against all Defendants and each of them, as follows:

For the First Cause of Action:

1. For rescission and return of the Lien Settlement Sum of \$107,129.00.

For the Second Cause of Action:

1. For a declaration that Defendants hold the Lien Settlement Sum of \$107,129.00 as constructive trustees for the benefit of the Plaintiff;

2. For an order for the return of the Lien Settlement Sum of \$107,129.00 to Plaintiff.

For All Causes of Action

1. For interest at the legal rate on all sums owed Plaintiff
2. For costs of suit incurred herein; and
3. For such other and further relief as the court may deem proper.

Respectfully submitted,

Dated Sept 4, 2014

Joseph K. Bravo
Attorney for Plaintiff