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SOLANO SUPERIOR COURT

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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SOLANO

10 REBECCA KELLOGG

Case No.:

CS044334

11 Plaintiff,

COMPLAINT FOR MEDICAL
MALPRACTICE

12 v.

13 KAISER PERMANENTE; KAISER VALLEJO
14 HOSPITAL; PAUL MARTIN, M.D.; STEVEN
15 TORNABENE, M.D. and DOES 1 THROUGH
16 50, inclusive.

ASSIGNED TO

JUDGE DAVID EDWIN POWER
FOR ALL PURPOSES

17 Defendants.

18 COMES NOW Plaintiff, REBECCA KELLOGG who alleges the following cause of
19 action against Defendants, KAISER PERMANENTE; KAISER VALLEJO HOSPITAL; PAUL
20 MARTIN, M.D.; STEVEN TORNABENE, M.D. and DOES 1 THROUGH 50, and each of them, as
21 follows:

22 **FIRST CAUSE OF ACTION**

23 **MEDICAL NEGLIGENCE**

24 1. At all times material herein, defendants, PAUL MARTIN, M.D.; STEVEN
25 TORNABENE, M.D. and DOES 1 through 25, and each of them, were physicians, surgeons,
26 nurses, and other medical practitioners, duly licensed to practice medicine, perform
27 surgery, practice nursing and provide other medical services in the State of California,
28 County of SOLANO, and held themselves out to possess that degree of skill, ability and

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1 learning, common to physicians, surgeons, nurses and/or other medical practitioners in
2 said community.

3 2. At all times material herein, defendants KAISER PERMENENTE; KAISER
4 VALLEJO HOSPITAL, and DOES 26 through 50, and each of them, were medical facilities
5 and health care providers, organized and existing under the laws of the State of California,
6 with their principal place of business in the County of Solano, State of California, and are
7 now, and at all times herein mentioned were, engaged in operating and managing a
8 general hospital, clinic and/or medical care facility in the County of Solano, State of
9 California.

10 3. Pursuant to Code of Civil Procedure § 364(a), Plaintiff gave notice of her
11 intent to file suit to Defendants KAISER PERMANENTE; KAISER VALLEJO HOSPITAL; PAUL
12 MARTIN, M.D.; STEVEN TORNABENE, M.D on or about July 18, 2014.

13 4. The true names and capacities of Defendants, and each of them, sued herein
14 as DOES 1 through 50, inclusive, are presently unknown to Plaintiff who therefore sues
15 said Defendants by such fictitious names, pursuant to Code of Civil Procedure §474.
16 Plaintiff is informed and believes and thereon alleges that the fictitiously named
17 Defendants, and each of them, are negligently or in some manner legally responsible to
18 Plaintiff for the events and happenings herein referred to and proximately caused
19 damages to Plaintiff as set forth herein. Plaintiff will seek leave of court to amend this
20 complaint to insert the true names and capacities of said fictitiously named Defendants,
21 and each of them, when the same have been ascertained.

22 5. Plaintiff is informed and believes and thereon alleges that each of the
23 Defendants was the actual agent, and/or ostensible agent, and/or apparent agent, partner,
24 joint venturer, co-conspirator, and/or employer/employee of each of the remaining
25 Defendants, and others named herein as DOE Defendants, and in doing the acts or things
26 alleged herein was acting within the course and scope of such agency, employment and/or
27 other relationship stated herein.

28 6. On or about July 30, 2013, Plaintiff REBECCA KELLOGG employed

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1 Defendants KAISER PERMANENTE; KAISER VALLEJO HOSPITAL; PAUL MARTIN, M.D.;
2 STEVEN TORNABENE, M.D and DOES 1 through 50, for medical needs and/or necessities.
3 Said Defendants, and each of them, at said time and place, undertook said employment
4 and/or undertook and agreed to diagnose, care and treat Plaintiff REBECCA KELLOGG and
5 to do all things necessary and proper in connection therewith, and said Defendants, and
6 each of them, thereby entered into a patient/physician employment relationship
7 individually, and by and through their actual or ostensible agents and employees. Said
8 Defendants, and each of them, agreed to provide such medical attention to Plaintiff
9 REBECCA KELLOGG for compensation for which Plaintiff REBECCA KELLOGG agreed to
10 pay.

11 7. In the course of providing medical and surgical services, attention, treatment
12 and/or care to Plaintiff REBECCA KELLOGG, Defendants KAISER PERMANENTE; KAISER
13 VALLEJO HOSPITAL; PAUL MARTIN, M.D.; STEVEN TORNABENE, M.D, and DOES 1 through
14 50, individually and/or while acting by and through their actual or ostensible agents,
15 employees, joint venturers, partners, and/or co-conspirators, named or unnamed as
16 Defendants herein, while acting within the course of their employment, actual or
17 ostensible agency or other relationship, failed to exercise that degree of due care and/or
18 skill common to medical practitioners and/or health care providers in said community,
19 including, but not limited to negligently evaluating, diagnosing and surgically treating
20 Plaintiff REBECCA KELLOGG. As a consequence of said negligent medical treatment
21 Plaintiff REBECCA KELLOGG was caused to and did experience injuries, including, but not
22 limited to, unnecessary surgery, nerve injury resulting in pain and tingling while chewing,
23 and permanent numbness in her lower lip, cheeks and gums.

24 8. As a direct and legal result of the negligence and/or wrongdoing of
25 Defendants, and each of them, Plaintiff REBECCA KELLOGG suffered severe injuries to her
26 body and/or psyche, and other injuries which are not fully known at the time, causing
27 damages to Plaintiffs herein.

28 9. As a legal result of the negligence, carelessness and wrongdoing of

1 Defendants, and each of them, Plaintiff REBECCA KELLOGG has been injured in her health,
2 strength and activity, and has sustained grievous injury to her body and profound shock
3 and injury to her person, which resulted in great mental, physical and nervous pain and
4 suffering, all to her general damage in a sum as yet uncertain, in excess of the minimum
5 jurisdiction of this Court. Plaintiff will seek leave of court to plead and prove the nature
6 and extent of her general damages, according to proof at time of trial, together with
7 interest and/or pre-judgment interest thereon at the legal lawful rate.

8 10. As a further direct and legal result of the negligence, carelessness and
9 wrongdoing of Defendants, and each of them, Plaintiff REBECCA KELLOGG has in the past
10 and in the future will be required to employ physicians and surgeons to examine, treat and
11 care for Plaintiff. The exact amount of such medical expenses is unknown, and Plaintiff
12 will seek leave of court to plead and prove the exact amount of said expenses at the time of
13 trial, together with interest and/or pre-judgment interest thereon at the legal lawful rate.

14 11. Plaintiff will further seek pre-judgment interest on all items of damages
15 including economic and non-economic damages. These will include, but are not limited to,
16 past and future medical expenses, any lost wages, any and all incidental expenses and
17 compensatory damages, as permitted by law. See CCP §685.010(a) and CCP §3291.

18 **WHEREFORE**, Plaintiff REBECCA KELLOGG prays for judgment against Defendants,
19 and each of them, as follows:

- 20 1. General damages in excess of the minimum jurisdiction of the court,
21 according to proof at trial;
- 22 2. Medical and incidental expenses, according to proof;
- 23 3. Incidental expenses incurred as a result of the above incident;
- 24 4. For interest and/or prejudgment interest on all damages sought and/or
25 incurred herein, at the legal, lawful rate;
- 26 5. Past and future wage loss;
- 27 6. For costs of suit incurred herein; and
- 28 7. For such other and further relief as may be proper.

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1 Dated: September 26, 2014

WILCOXEN CALLAHAM, LLP

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3 By: E. S. Deacon
4 E. S. DEACON

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