ORIGINAL

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FILED
SUPERIOR COURT, METROPOLITAN DIVISION
COUNTY OF KERN

JAN 26 2015

TERRY McNALLY, CLERK
BY _____ DEPUTY

CASE MANAGEMENT CONFERENCE:
Hearing Date: 2/11/15
Time: 8:30 AM
Department: 24
See CRC Rule 3.720 Et. Seq.

Attorneys for Plaintiffs, Donna Shamrell and W.A. Shamrell

SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN

METROPOLITAN DIVISION

DONNA SHAMRELL; W.A. SHAMRELL,

Plaintiffs,

vs.

GORDON MITTS MD, INC.; GORDON MITTS, MD; KAISER PERMANENTE; and DOES 1 to 30, inclusive,

Defendants.

Case No.: S-1500-CV- 283969 SPC

COMPLAINT FOR DAMAGES

1. Plaintiffs, DONNA SHAMRELL and W.A. SHAMRELL are, and at all times relevant hereto were, husband and wife and residents of Kern County in the State of California.

2. Defendants, GORDON MITTS, MD, INC., and GORDON MITTS, MD, (hereinafter "MITTS"); is a physician licensed to practice medicine in the State of California having his principle place of business in Bakersfield, California, practicing plastic surgery and related health care provider services.

3. Defendant KAISER PERMANENTE is a health care provider and health care provider plan that provided health care services to plaintiffs and has offices in Bakersfield, Kern County, California. Among other things KAISER PERMANENTE referred plaintiffs to MITTS for the purpose

of providing surgical and health care services to plaintiffs. More particularly, KAISER PERMANENTE referred and caused plaintiffs to see and treat with MITTS and for plaintiff Donna Shamrell to receive negligent medical care from MITTS at times relevant herein.

3. At all times mentioned herein, each of the defendants, including the fictitiously named defendants, was the servant, agent, partner, assistant, or employee of each of the remaining defendants in doing the things herein alleged was acting within the course and scope of such relationship.

4. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as DOES 1 through 30, inclusive, and therefore sue these defendants by such fictitious names. DOES 1 through 10 are treating physicians and their partners and employers. DOES 11 through 16 are non-physician healthcare providers who treated Plaintiff, YVONNE, during the times set forth herein. Does 17 through 20 are administrative staff responsible for administering staff privileges to practice within the hospital. Plaintiffs will amend this complaint to allege the true names and capacities when such have been ascertained.

FIRST CAUSE OF ACTION

(Medical Malpractice – Donna Shamrell Against All Defendants)

5. On or about 2011 and continuing through November 2013, Donna Shamrell treated with MITTS for a breast surgery procedures which would, among other things, permit Donna Shamrell to have surgical procedures on Donna Shamrell's breasts and related structures to which Donna Shamrell consented. After a long series of continuous and frustrating and negligently performed surgeries, Donna Shamrell was caused to, among other things wear a prosthesis as opposed to having implants – all to Donna Shamrell's harm. MITTS performed procedures negligently and cause plaintiff Donna Shamrell harm, including infection and negligently performed procedures and failed breast reconstruction. Sonnna Shamrell claims other procedures were negligently performed and caused Donna Shamrell harm, according to proof.

6. Up until November 21, 2013, Donna Shamrell was the patient of MITTS and defendants. On or about November 21, 2013 Donna Shamrell had the following operation done by other health care providers: debridement of right chest wall sinus; removal foreign suture material; partial debridement of latissimus dorsi flap. Among other thing, Donna Shamrell further alleges that Donna Shamrell suffered

through a series of one or more needless procedures between 2011 and November 1, 2013 as a result of the negligence of MITTS.

7. The conduct and negligent care and other tortious acts of MITTS caused plaintiff Donna Shamrell pain, emotional distress, and the requirement that Donna Shamrell wear and use a prosthesis as opposed to having a breast implant. Breast implants as opposed to a cumbersome and emotionally jolting prosthesis would have been the normal result of the procedures for which Donna Shamrell presented when placed under the care of MITTS and defendants.

8. Defendants, and each of them, but particularly MITTS, and or their agents and/or representatives and/or employees, failed to exercise the degree of learning, skill and care ordinarily possessed by medical providers practicing in the same or similar locality and under similar circumstances, so as to negligently and carelessly diagnose, treat, evaluate, care, assist, perform surgery to Donna Shamrell. Said acts or omissions are below the standard of care commonly exercised by health care providers and medical practitioners in this community.

9. As a direct and proximate result of plaintiffs' injuries and damages negligently caused, Plaintiffs have incurred, and will in the future incur, expenses for medical and surgical care, nursing care, hospitalization, medication and incidentals, in addition to great physical and emotional pain and suffering, loss of earnings, impaired earning capacity, and loss of enjoyment of life, all in a sum according to proof at time of trial.

SECOND CAUSE OF ACTION

(Loss of Consortium, plaintiff, W. A. Shamrell, against all defendants)

10. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-9, and each and every part thereof with the same force and effect as though set out at length herein.

11. Due to defendants' negligent care and treatment, as set forth above, Donna Shamrell has suffered a severely painful and traumatic experience, leaving her physically and mentally injured, angry, and distressed. She continues to endure substantial pain and suffering, and interference with marital relations. Due to Donna Shamrell's injuries, W. A. Shamrell has suffered a loss of conjugal fellowship, moral support, love, companionship, affection, society and comfort, and the reduction of the physical assistance of cooking and maintaining the household.

WHEREFORE, Plaintiffs pray as follows:

1. For special damages according to proof at time of trial;

2. For general damages according to proof at time of trial;

3. For prejudgment interest;

4. For costs of suit incurred herein; and

5. For such other and further relief as the court may deem just and proper.

DATED: January 26, 2015

By:_____
Frederick C. Kumpel, Esq.
Attorney for Plaintiffs, DONNA SHAMREL
And W. A. SHAMRELL