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Attorney for Plaintiff, RICK PEDRO, an individual

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO

RICK PEDRO, an individual,

Plaintiff,

vs.

Case No.:

FC 047310

Judge:

Department:

COMPLAINT FOR DAMAGES FOR
NEGLIGENCE

MEDTRONIC, INC., a business entity,
form unknown, SEAN SHERIDAN, an
individual, ERMIS NIKAS, D.O., an
individual, KAISER FOUNDATION
HEALTH PLAN, INC., a business entity,
form unknown, THE PERMANENTE
MEDICAL GROUP, INC, a business
entity, form unknown, KAISER
PERMANENTE INSURANCE
CORPORATION, a business entity, form
unknown, and DOES 1 to 100, inclusive,

Defendants.

ASSIGNED TO
JUDGE SCOTT L. KAYS
FOR ALL PURPOSES

COMES NOW Plaintiff, RICK PEDRO, an individual (hereinafter "Plaintiff") and
alleges, avers, and claims against Defendants MEDTRONIC, INC., a business entity, form
unknown, SEAN SHERIDAN, an individual, ERMIS NIKAS, D.O., an individual, KAISER
FOUNDATION HEALTH PLAN, INC., a business entity, form unknown, THE
PERMANENTE MEDICAL GROUP, INC, a business entity, form unknown, KAISER
PERMANENTE INSURANCE CORPORATION, a business entity, form unknown, and DOES

1 to 100, inclusive (hereinafter "Defendants") and each of them, as follows:

I.

PARTIES & JURISDICTION

1. Plaintiff is an individual over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint a resident of the State of California.
2. Plaintiff is informed and believes and thereby alleges that Defendant ERMIS NIKAS, D.O. ("Defendant Dr. Nikas") is an individual, at all material times a resident of, and doing business in, the State of California.
3. Plaintiff is informed and believes and thereby alleges that Defendant KAISER FOUNDATION HEALTH PLAN, INC. ("Defendant Kaiser Foundation") is a business entity, form unknown, at all material times doing business in the State of California.
4. Plaintiff is informed and believes and thereby alleges that Defendant THE PERMANENTE MEDICAL GROUP, INC. ("Defendant Permanente Medical Group") is a business entity, form unknown, at all material times doing business in the State of California.
5. Plaintiff is informed and believes and thereby alleges that Defendant KAISER PERMANENTE INSURANCE CORPORATION ("Defendant Kaiser Permanente") is a business entity, form unknown, at all material times doing business in the State of California.
6. Defendants Kaiser Foundation, Permanente Medical Group and Kaiser Permanente shall collectively be referred to as "Defendant Kaiser".
7. Plaintiff is informed and believes and thereby alleges that Defendant MEDTRONIC, INC. ("Defendant Medtronic") is a business entity, form unknown, at all material times doing business in the State of California.
8. Plaintiff is informed and believes and thereby alleges that Defendant SEAN SHERIDAN ("Defendant Sheridan") is an individual over the age of eighteen, and at all material times a resident of, or practicing within, the State of California.
9. The true names and capacities of the defendants named herein as does 1 through 100, inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who therefore sues such defendants by fictitious names pursuant to *California Code of Civil*

1 *Procedure* ("CCP") §474. Plaintiff is informed and believes that doe defendants are
2 California residents and/or do business in California. Plaintiff will amend this Complaint to
3 show such true names and capacities when they have been determined.

4 10. Defendants, and each of them, are now, and/or at all times mentioned in this Complaint were
5 in some manner legally responsible for the events, happenings and circumstances alleged in
6 this Complaint.

7 11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs,
8 complaints, injuries and/or damages alleged in this Complaint.

9 12. Defendants, and each of them, at all times mentioned in this Complaint aided and abetted the
10 acts and omissions of each and every one of the other defendants thereby proximately
11 causing the damages alleged in this Complaint.

12 13. The damages alleged in this Complaint are within the jurisdiction of this Court.

13 14. This Court is the proper venue because the events and occurrences alleged in this Complaint
14 occurred within the jurisdiction of this Court.

15 15. Plaintiff is further informed and believes that each defendant, and doe defendants, reside, do
16 business, or have sufficient minimum contacts in the State of California to justify personal
17 jurisdiction over said defendants.

18 II.

19 GENERAL ALLEGATIONS

20 COMMON TO ALL CAUSES OF ACTION

21 16. Plaintiff incorporates by reference and alleges each and every one of the allegations
22 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth
23 herein.

24 17. In 2013, Plaintiff had an electronic stimulator (the "Old Device") implanted in his right
25 buttock to aid in urination.

26 18. The Old Device was manufactured and distributed by Defendant Medtronic, Inc.

27 19. In or about January 7, 2016, Plaintiff went to Kaiser Permanente in Vacaville, CA due to a
28 urinary problem.

- 1 20. Plaintiff was unsatisfied with the results of the Old Device and desired to have it removed
2 from his right buttock.
- 3 21. Plaintiff informed Kaiser employees, including Defendant Dr. Nikas, of his desire to have the
4 Old Device removed from his right buttock.
- 5 22. Defendant Sheridan, a representative of Defendant Medtronic, was called in by Defendants to
6 speak with Plaintiff.
- 7 23. Defendant Sheridan spoke with Plaintiff while he was at the hospital.
- 8 24. Plaintiff informed Defendant Sheridan that he wished to have the Old Device removed from
9 his right buttock.
- 10 25. Defendant Sheridan then told Plaintiff that, instead of removing the Old Device, the leads
11 going into the nerves from the Old Device could be re-located to get a better result.
12 Defendant Sheridan referred to this procedure as a 'revision' of the Old Device.
- 13 26. As a result of the statements made by Defendant Sheridan, Plaintiff agreed to undergo a
14 revision procedure on the Old Device on the right side only.
- 15 27. Plaintiff expected to have the locations where the leads connected to his nerves from the
16 existing Old Device revised, but when he awoke from surgery, he discovered that a second
17 electronic stimulator had been implanted in his left buttock (the "New Device").
- 18 28. Plaintiff never consented to the implantation of the New Device.
- 19 29. As a result of the wrongful acts of Defendants, Plaintiff suffered injury, damage and loss.

20 **III.**

21 **CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 **BATTERY**

24 **(as against Defendants Dr. Nikas and Kaiser)**

- 25 30. Plaintiff incorporates by reference and alleges each and every one of the allegations
26 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth
27 herein.

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1 31. Defendant Dr. Nikas touched Plaintiff with the intent to harm or offend him by performing a
2 medical procedure on Plaintiff.

3 32. Plaintiff did not consent to the medical procedure performed or the touching.

4 33. Plaintiff was harmed by Defendant Dr. Nikas' conduct.

5 34. Defendant Kaiser is liable for the negligent acts of Defendant Dr. Nikas, committed during
6 the course and scope of his employment, under the principle of *respondeat superior*.

7 35. As a result of the wrongful actions of Defendants, Plaintiff suffered injury, damage and loss.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO OBTAIN CONSENT**

10 **(as against Defendants Dr. Nikas and Kaiser)**

11 36. Plaintiff incorporates by reference and alleges each and every one of the allegations
12 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth
13 herein.

14 37. Defendant Dr. Nikas had a duty to obtain Plaintiff's informed consent prior to performing
15 any procedure.

16 38. Defendant Dr. Nikas had a duty to fully explain the proposed procedure to Plaintiff in order
17 for Plaintiff to give informed consent.

18 39. Defendant Dr. Nikas failed to fully explain the proposed procedure to Plaintiff prior to
19 implanting the New Device, in particular, Defendant Dr. Nikas referred to the procedure as a
20 revision of the Old Device.

21 40. Defendant Dr. Nikas failed to obtain Plaintiff's informed consent prior to implanting the New
22 Device in Plaintiff's left buttock.

23 41. Plaintiff did not desire to have the New Device implanted in his left buttock.

24 42. Defendant Kaiser is liable for the negligent acts of Defendant Dr. Nikas, committed during
25 the course and scope of his employment, under the principle of *respondeat superior*.

26 43. As a result of the wrongful actions of Defendants, Plaintiff suffered injury, damage and loss.

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THIRD CAUSE OF ACTION
PROFESSIONAL NEGLIGENCE

(as against Defendants Dr. Nikas and Kaiser)

44. Plaintiff incorporates by reference and alleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

45. Defendant Dr. Nikas had a duty to Plaintiff:

- a. To have the degree of learning and skill ordinarily possessed by practitioners of the medical profession in the same or a similar locality, under similar circumstances;
- b. To use the same degree of skill and care usually exercised by practitioners for the medical profession in the same or a similar locality, under similar circumstances; and
- c. To use reasonable diligence in the application of the physician's learning and skill.

46. Defendant Dr. Nikas breached his duty to Plaintiff when he:

- a. Failed to meet with Plaintiff prior to surgery;
- b. Failed to participate in, or conduct, a pre-surgical 'time-out';
- c. Failed to properly or adequately explain the procedure to Plaintiff;
- d. Referred to the procedure to be performed as a "revision" of the Old Device when he did not intend to revise the Old Device;
- e. Failed to inform Plaintiff that he intended to implant the New Device into his left buttock;
- f. Operated on the wrong side/site;
- g. Performed the wrong procedure;
- h. Implanted an electronic stimulator in Plaintiff's left buttock without first obtaining Plaintiff's consent; and
- i. Such further or other particulars as Plaintiff will advise prior to trial.

47. Defendant Kaiser had a duty to Plaintiff:

- a. To use reasonable care in caring for Plaintiff, taking into account the mental and physical condition of the patient,

b. To use reasonable care in the selection and maintenance of its staff; and

c. To use reasonable care to ensure the competency of its staff.

48. Defendant Kaiser breached its duty to Plaintiff by failing to use reasonable care in caring for Plaintiff, failing to use reasonable care in the selection and maintenance of its staff, including Defendant Dr. Nikas, and failing to ensure the competency of its staff, including Defendant Dr. Nikas, thereby causing or contributing to the Incident.

49. Defendant Kaiser is liable for the negligent acts of Defendant Dr. Nikas, committed during the course and scope of his employment, under the principle of *respondeat superior*.

50. As a direct and proximate result of the wrongful actions of defendants, Plaintiff has suffered injury, damage and loss.

FOURTH CAUSE OF ACTION

FRAUDULENT INDUCEMENT

(as against Defendants Sheridan and Medtronic)

51. Plaintiff incorporates by reference and alleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

52. Defendant Sheridan was authorized, or held himself out as being authorized, to speak on behalf of Defendant Medtronic.

53. Defendant Sheridan represented to Plaintiff that his Old Device could be revised by relocating the leads in the nerves and that Plaintiff could undergo a 'revision' procedure of the Old Device, wherein the leads would be relocated to get a better result (the "Representations").

54. Defendant Sheridan knew, or in the circumstances ought to have known, that the Representations were false.

55. Defendant Sheridan made the Representations to induce Plaintiff to change his mind about having the Old Device removed and to further induce Plaintiff to undergo a new surgical procedure where the New Device could be implanted without his consent.

1 56. Defendant Sheridan made the Representations with the intent to deceive Plaintiff or to induce
2 Plaintiff to rely on the Representations.

3 57. Plaintiff did rely on the Representations and his reliance was reasonable and justified in the
4 circumstances.

5 58. Defendant Medtronic is liable for the wrongful acts of its representative, Defendant Sheridan,
6 committed during the course and scope of his employment, under the principle of *respondeat*
7 *superior*.

8 59. As a direct and proximate result of the wrongful actions of defendants, Plaintiff has suffered
9 injury, damage and loss.

10 **FIFTH CAUSE OF ACTION**

11 **CIVIL CONSPIRACY**

12 **(as against all Defendants)**

13 60. Plaintiff incorporates by reference and alleges each and every one of the allegations
14 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth
15 herein.

16 61. Once Plaintiff indicated his desire to have the Old Device removed, Defendants Sheridan and
17 Dr. Nikas conspired together to ensure Plaintiff received a second electronic stimulation
18 device implanted, despite Plaintiff's stated desire to have the Old Device removed.

19 62. Defendant Dr. Nikas brought in Defendant Sheridan to convince Plaintiff not to have the Old
20 Device removed, but to undergo a revision procedure.

21 63. Defendant Sheridan made the Representations.

22 64. Defendant Sheridan knew, or in the circumstances ought to have known, that the
23 Representations were false.

24 65. Defendant Sheridan made the Representations to induce Plaintiff to change his mind about
25 having the Old Device removed and to further induce Plaintiff to undergo a new surgical
26 procedure where the New Device could be implanted.

27 66. Defendant Sheridan made the Representations with the intent to deceive Plaintiff or to induce
28 Plaintiff to rely on the Representations.

1 67. Plaintiff did rely on the Representations and his reliance was reasonable and justified in the
2 circumstances.

3 68. During the procedure, Defendant Sheridan provided to Defendant Dr. Nikas a left-sided
4 device for implantation in Plaintiff's left buttock without his consent.

5 69. Defendant Dr. Nikas implanted the device in Plaintiff's left buttock without his consent.

6 70. Defendant Kaiser is liable for the negligent acts of Defendant Dr. Nikas under the principle
7 of *respondeat superior*.

8 71. Defendant Medtronic is liable for the negligent acts of its representative, Defendant Sheridan,
9 under the principle of *respondeat superior*.

10 72. As a direct and proximate result of the conspiracy of defendants and their wrongful actions,
11 Plaintiff has suffered injury, damage and loss.

12 IV.

13 DAMAGES

14 73. As a direct and proximate result of the wrongful conduct of Defendants, Plaintiff sustained
15 severe and serious injury to his person, all to Plaintiff's damage in a sum within the
16 jurisdiction of this court and to be shown according to proof.

17 74. By reason of the foregoing, Plaintiff has been required to employ the services of hospitals,
18 physicians, surgeons, nurses and other professional services, and Plaintiff has been
19 compelled to incur expenses for medications and other medical supplies and services.

20 Plaintiff is informed and thereon alleges that further services of a similar nature will be
21 required in an amount to be shown according to proof.

22 75. At the time of the injury, as aforesaid, Plaintiff was regularly and gainfully employed or able
23 to be employed. By reason of the foregoing, Plaintiff has been unable to engage in
24 employment for a time subsequent to said incident, and Plaintiff is informed and believes,
25 and upon such information and belief, alleges that he will be unable to work for an indefinite
26 period in the future, all to Plaintiff's damage in an amount to be shown according to proof.

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V.

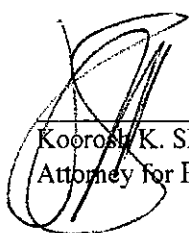
PRAYER FOR RELIEF

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

- a. General Damages for fraudulent inducement in the sum according to proof;
- b. Special Damages incurred and to be incurred for services of hospitals, physicians, surgeons, nurses and other medical supplies and services in a sum according to proof at trial;
- c. Damages for permanent or temporary disability;
- d. Damages for emotional distress;
- e. For loss of earnings, both past and prospective, in an amount to be proven at trial;
- f. Damages for business loss;
- g. For loss of capacity to earn income in an amount to be proven at trial;
- h. For loss of homemaking services in an amount to be proven at trial;
- i. For the interest provided by law including, but not limited to, *Civil Code* § 3291; and
- j. Costs of suit and for such other and further relief as the court deems proper.

Dated: June 25, 2016

NATIONAL CHOICE LAWYERS


Koorosh K. Shahrokh
Attorney for Plaintiff