

CIV-160707-CIV-DS1610788-CASEEN-083902



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Complaint and Party information entered



NEW FILE

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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 07 2016

BY Sandra Ortega
SANDRA ORTEGA, DEPUTY

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN BERNARDINO

CIVDS 1610788

15 JEWELL HAVENS,

) Case No.:

16 Plaintiff,

)

) COMPLAINT FOR DAMAGES:

17 vs.

)

- 18 1. PROFESSIONAL NEGLIGENCE
(MEDICAL MALPRACTICE)
19 2. NEGLIGENT HIRING AND
RETENTION
20 3. NEGLIGENT INFLECTION OF
EMOTIONAL DISTRESS

21 KAISER FOUNDATION HEALTH
PLAN, INC.; KAISER FOUNDATION
22 HOSPITAL- ONTARIO; SOUTHERN
23 CALIFORNIA PERMANENTE
24 MEDICAL GROUP; CLARENCE
25 HAMILTON, M.D.; and DOES 1 through
26 10, Inclusive,

)

) DEMAND FOR JURY TRIAL

) Defendants.
)

27 COMES NOW, Plaintiff, JEWELL HAVENS ("Plaintiff"), by and through his attorneys,
28 ARYA LAW CENTER, PC, and hereby alleges against the Defendants the following based on
29 his knowledge, information and belief:

30 PARTIES:

- 31 1. Plaintiff is a resident of the City of Chino, State of California.
32 2. Defendant, KAISER FOUNDATION HEALTH PLAN, INC. is a California
33 corporation headquartered in Oakland, California that provides health insurance for its members.

34 COMPLAINT FOR DAMAGES

1 3. Defendant KAISER FOUNDATION HOSPITAL - ONTARIO ("Medical
2 Facility"), is a Licensed Acute Care Hospital located in the City of Ontario, County of San
3 Bernardino that provides medical services for its members and is funded by Defendant KAISER
4 FOUNDATION HEALTH PLAN, INC.

5 4. Defendant SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, is
6 a physician owned for profit organization which provides and arranges for medical care of its
7 members and is funded solely by Defendant KAISER FOUNDATION HEALTH PLAN, INC.

8 5. Together these three Defendants form KAISER PERMANENTE a Health
9 Maintenance Organization in the State of California (collectively, Defendant "HOSPITAL").

10 6. Defendant, CLARENCE HAMILTON, M.D. ("Defendant HAMILTON"), is a
11 licensed physician, with surgical privileges at Defendant KAISER'S Medical Facility in Ontario.

12 7. Plaintiff does not know the true names, capacities, or basis for liability of
13 Defendants sued herein as Does 1 through 10, inclusive, as each fictitiously named Defendant is
14 in some manner liable to Plaintiff. Plaintiff will amend this Complaint to allege their true names
15 and capacities when ascertained. Plaintiff is informed and believes, and thereon alleges, that at
16 all relevant times mentioned in this Complaint, each of the fictitiously named Defendants is/are
17 responsible in some manner for the injuries and damages to Plaintiff as alleged and that such
18 injuries and damages were proximately caused by such Defendants, and each of them.

19 8. Plaintiff is informed and believes that at all times mentioned herein, each
20 Defendant has acted and is continuing to act in concert with the other defendants named in this
21 complaint and each of them has participated in the acts and transactions referred to below and
22 each of them is responsible for said acts and transactions. Plaintiff, therefore sues said defendants
23 under such fictitious names, pursuant to the provisions of California Code of Civil Procedure §
24 474.

25 9. Plaintiff is informed and believes and thereon alleges that at all times herein
26 mentioned each of the defendants sued herein as a Doe was the agent, partner, assignee,

1 successor and/or employee of each of the remaining defendants and was at all times acting
2 within the purpose and scope of such agency and or employment When Plaintiff ascertains the
3 true names and capacities of said Does 1 through 10, inclusive, Plaintiff will ask leave of the
4 Court to amend this complaint to allege the true names and capacities of such defendants at such
5 time as the same have been ascertained.

6 **JURISDICTION**

7 10. The occurrence of events which are the subject matter of this Complaint occurred
8 within the County of San Bernardino, State of California.

9 11. Defendant's Medical Facility is located within the County of San Bernardino,
10 State of California.

11 **FACTUAL SUMMARY**

12 12. Plaintiff is a 72 year house wife who is married and taking care of her son who
13 requires constant care due to his medical condition, as well as caring for her husband who also
14 suffers from certain medical conditions.

15 13. In early May 2015 Plaintiff due to having some vision problem sought the
16 consultation of Defendant HAMILTON. Upon examination she was advised to remove the
17 cataract on her left eye so to improve her vision to the point that she would not require wearing
18 any eye glasses.

19 14. Plaintiff agreed to have the eye surgery as recommended by Defendant
20 HAMILTON. On or about May 20, 2015, Plaintiff went under surgery for removal of the
21 cataract from her left eye.

22 15. Upon completion of the operation, Defendant HAMILTON advised client that he
23 was not able to insert the lens and she needs to have a second operation at a later date.
24 Meanwhile she was prescribed some pain medication and an eye patch to protect her left eye.

25 16. Few days after release from the hospital, Plaintiff was taken to emergency room
26 due to severe pain in her left eye and left side of her head. She was examined by Defendant Kim

1 and was prescribed. Plaintiff was released form Emergency Room and continued with her
2 medication.

3 17. On Or about July 8, 2015 Plaintiff was admitted to Kaiser Hospital for having the
4 second operation as was recommended by Dr. Wang. The surgery was to insert the lens that Dr.
5 Wang was unable to insert in the first surgery. The surgery was performed by Defendant Jime-
6 Chung An Wang.

7 18. Dr. Wang managed to insert a lens which is known as bionic lens. Plaintiff was
8 informed that certain areas around her cornea was damaged as during the previous surgery
9 Defendant HAMILTON attempted to insert a lens which was the wrong size as it was two
10 numbers larger than what could fit in her eye. Further, the wrong jell was applied which rather
11 than helping her eye was absorbed by her body.

12 19. Plaintiff was advised the lens that was inserted is not a permanent fix and may
13 require additional surgery for replacement at any time as it may get damaged. However, that was
14 the best that could be done for Plaintiff.

15 20. Ever since the first and then the second surgery, Plaintiff has lost the use of her
16 left eye for all practical purposes. Plaintiff has to wear a dark sunglass as she cannot tolerate
17 lights. Her vision on the left eye is very poor and is not able to read or distinguish shapes or
18 feature of the objects. Further, Plaintiff is constantly suffering from pain in her left eye and left
19 side of her head. Plaintiff is having hard time to sleep.

20 21. Plaintiff is unable to drive any longer and requires someone to drive her around.
21 Given that her son and husband rely on her for their care, she has been unable to provide care to
22 her love ones as she used to prior to the surgery.

23 **FIRST CAUSE OF ACTION**
24 **PROFESSIONAL NEGLIGENCE (MEDICAL MALPRACTICE)**
(Against Defendant HAMILTON)

25 22. Plaintiff repeats, re-alleges, refer to and incorporate herein by reference each and
26 every allegation contained in the Paragraphs above as though fully set forth herein.

1 23. "[N]egligence is conduct which falls below the standard established by law for the
2 protection of others against unreasonable risk of harm." (Rest.2d Torts, § 282.) Thus, as a
3 general proposition one "is required to exercise the care that a person of ordinary prudence
4 would exercise under the circumstances." fn. 2 (*Polk v. City of Los Angeles* (1945) 26 Cal.2d
5 519, 525 [159 P.2d 931]; *Rowland v. Christian* (1968) 69 Cal.2d 108 . . . [3]

6 24. With respect to professionals, their specialized education and training do not serve
7 to impose an increased duty of care but rather are considered additional "circumstances" relevant
8 to an overall assessment of what constitutes "ordinary prudence" in a particular situation. Thus,
9 the standard for professionals is articulated in terms of exercising "the knowledge, skill and care
10 ordinarily possessed and employed by members of the profession in good standing" (Prosser
11 & Keeton, Torts (5th ed. 1984) The Reasonable Person, § 32, p. 187.) For example, the law "
12 'demands only that a physician or surgeon have the degree of learning and skill ordinarily
13 possessed by practitioners of the medical profession in the same locality and that he [or she]
14 exercise ordinary care in applying such learning and skill to the treatment of [the] patient.'
15 [Citation.]" (*Huffman v. Lindquist* (1951) 37 Cal.2d 465, 473 [234 P.2d 34, 29 A.L.R.2d 485],
16 italics added.)

17 25. Similarly, a hospital's "business is caring for ill persons, and its conduct must be
18 in accordance with that of a person of ordinary prudence under the circumstances, a vital part of
19 those circumstances being the illness of the patient and incidents thereof." (*Rice v. California*
20 *Lutheran Hospital* (1945) 27 Cal.2d 296, 302 . . . "*Flowers v. Torrance Memorial Hospital*
21 *Medical Center* (1994) 8 Cal.4th 992, 997-998.

22 26. Plaintiff alleges that Defendant HAMILTON breached the duty of care owed to
23 him, to perform eye operation in a professional manner and with due care and caution, in the
24 same manner as other surgeons would have exercised in the same location. She further alleges
25 that Defendant HAMILTON breached those duties, by failing to exercise the same or similar
26

1 skill of other surgeons in the same area, when he cut and damaged the surrounding areas of
2 cornea where the lens could be held.

3 27. Plaintiff alleges that the cataract removal is such a basic diagnostic surgical
4 procedure, that Defendant HAMILTON had to be negligent and recklessly so, to damage the
5 cornea. Further, Defendant HAMILTON failed to use proper size lens. Had he applied the right
6 size lens, the damage to the cornea and the eye would not have occurred.

7 28. As a result of the carelessness, recklessness, negligence, lack of due care,
8 prudence reasonable judgment, and concern for the welfare of Plaintiff, she has suffered and
9 continues to suffer severe pain, physical limitations, mental anguish and other physical
10 consequences as hereinafter alleged.

11 29. As a result of the aforesaid negligence, Plaintiff has suffered and continues to
12 suffer from severe and permanent disabling injuries and damages. As a further result of the
13 negligence of Defendant HAMILTON, Plaintiff has incurred, and will continue to incur further
14 medical expenses. The full amount of such damages is not known to Plaintiff at this time, but
15 will be provided at the time of trial.

16 **SECOND CAUSE OF ACTION**
17 **NEGLIGENT HIRING AND RETENTION**
18 (Against Defendant HOSPITAL, and DOES 1-10)

19 30. Plaintiff, repeats, re-alleges, and incorporates herein by reference each and every
20 allegation contained in the Paragraphs above as though fully set forth herein.

21 31. "A hospital's conduct must be in accordance with that of a person of ordinary
22 prudence under the circumstances. (*Flowers v. Torrance Memorial Hospital Medical Center*
23 (1994) 8 Cal.4th 992, 998.) When a patient is admitted into the care of a hospital, the hospital
24 must exercise reasonable care to protect that patient from harm. (*Elam v. College Park Hospital*
25 (1982) 132 Cal.App.3d 332. In *Elam*, the Court of Appeal held that a hospital may be liable
26 under the doctrine of "corporate negligence" for the malpractice of independent physicians and
surgeons who were members of hospital staff, and availed themselves of the hospital facilities.

1 That is because a hospital generally owes a duty to screen the competency of its medical staff
2 and to evaluate the quality of medical treatment rendered on its premises. (*Elam, supra*, at p. 47.)
3 Thus, a hospital may be found liable for injury to a patient caused by the hospital's negligent
4 failure "to insure the competence of its medical staff through careful selection and review,"
5 thereby creating an unreasonable risk of harm to the patient.

6 32. Plaintiff alleges that Defendant HOSPITAL owed to her a duty to employ only
7 competent and skilled professionals at its Ontario medical facility, to ensure her safety and to
8 prevent the type of misdiagnosis and treatment that she experienced at that facility. She further
9 alleges, that Defendant HAMILTON lacked basic diagnostic and surgical skills and competency
10 and that Defendant HOSPITAL either knew, or should have known, as part of its peer review
11 procedures, that he presented a risk to those patients on whom he may examine and treat with
12 such a lack of skill, care and competence.

13 33. Plaintiff also alleges that Defendant HOSPITAL, as the employer of Defendant
14 HAMILTON, is liable to her for both hiring Defendant HAMILTON in the first instance, based
15 on the apparent lack of skill and training, and/or, in retaining Defendant HAMILTON as a staff
16 physician based on the same obvious concerns.

17 34. As a direct and proximate consequence of the acts and omissions of Defendant
18 HOSPITAL as set forth above, the Plaintiff has been caused to suffered medical complications,
19 such as loss of her left eye sight, constant pain in her left eye and head, social embarrassment and
20 personal humiliation from not being able to socialize and even walk alone in public due to her
21 eye sight problem.

22 35. As a further result of the negligence of Defendant HOSPITAL, Plaintiff has
23 incurred, and will continue to incur further medical expenses. The full amount of such damages
24 is not known to Plaintiff at this time, but will be provided at the time of trial.

25 **THIRD CAUSE OF ACTION**
RECKLESS INFLICTION OF EMOTIONAL DISTRESS
26 (Asserted against all Defendants, and DOES 11-20)

1 36. Plaintiff, repeats, re-alleges, and incorporates herein by reference each and every
2 allegation contained in the Paragraphs above as though fully set forth herein.

3 37. Plaintiff alleges that the Defendants and each of them, had a duty pursuant to
4 California law (C.C. §§ 1708, 1714) to exercise due care to refrain from committing any act
5 which would reasonably be expected to cause severe emotional distress to the Plaintiff with
6 respect to her person and medical condition in this context.

7 38. Plaintiff further alleges that each of the Defendants breached those duties by
8 failing to properly perform their professional duties that were owed to Plaintiff. Defendant
9 HAMILTON use of wrong size lens and attempting to insert into her left eyeball was reckless
10 and causing damage to her eye was incompetently failing to properly operate on her. Defendant
11 HAMILTON's later comment as why Plaintiff is having so much pain after the surgery was "she
12 zigged and I zagged" show lack of care and indifference to the well-being of the Plaintiff.

13 39. Plaintiff alleges that the defendants showed a reckless disregard for her well-
14 being and inflicted emotional distress by leaving her to wonder and worry about loss of her
15 eyesight. She suffered and continue to suffer emotional isolation from her family with whom she
16 was very close due to her loss of eyesight and inability to see properly and having constant pain.
17 Plaintiff also alleges that defendants' showed a reckless disregard for her health and well-being
18 and a complete lack of interest in her emotional predicament for which she was suffering
19 extreme mental anguish not knowing whether she would ever regain her eyesight.

20 40. As a direct and proximate result of the recklessness of the Defendants as set forth
21 above, the Plaintiff has suffered severe emotional trauma, anguish and distress, due to the
22 uncertainty about her eyesight and vision and whether she could ever be able to function as well
23 as prior to the surgery.

24 41. As a further direct and proximate result of these Defendants recklessness, Plaintiff
25 also suffered monetary losses which the amount is unknown to Plaintiff at this time and is
26 subject to proof at the time of trial.

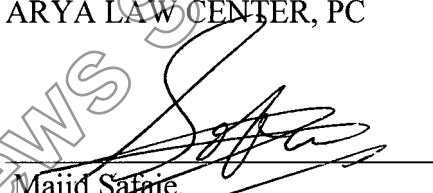
1 **PRAYER FOR RELIEF**

2 WHEREFORE Plaintiff, JEWELL HAVENS, Plaintiff prays for judgment against the
3 Defendants, and each of them, and for the following to be awarded for the **THREE CAUSES**
4 **OF ACTION:**

- 5 1. For General Damages in an amount within this Court's jurisdiction to be determined
6 at trial;
- 7 2. For Special Consequential Damages incurred including costs of hospital and medical
8 expenses to be determined according to proof at time of trial; and
- 9 3. For such other and further relief as the court may deem just and proper.

10 Dated: June 29, 2016

ARYA LAW CENTER, PC

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13 Majid Safaie,
Attorneys for Plaintiff

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