

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

MICHELLE O'CONNELL  
9339 Heather Glen Drive  
Alexandria, VA 22309

Plaintiff,

v.

KAISER FOUNDATION  
HEALTH. PLAN OF THE MID-ATLANTIC  
STATES, INC.  
2101 E. Jefferson Street  
Rockville, MD 20852

SERVE:  
Corporation Service Company  
11 S. 12th Street  
Richmond, VA 23219

and

MID-ATLANTIC PERMANENTE  
MEDICAL GROUP, P.C.  
2101 E. Jefferson Street  
Rockville, MD 20852

SERVE:  
Beverly Crump, Esquire  
1111 East Main St., 16th Floor  
Richmond, VA 23219

and

BASSEMA ANTABLI, M.D.  
12255 Fair Lakes Pkwy  
Fairfax, VA 22033

and

CHRIS CHUN RHIM, M.D.

Case No.:

201610362

JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

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FILED  
CIVIL INTAKE

3300 Gallows Road  
Falls Church, VA 22042

and

REBECCA J. DAVISON, M.D.  
6501 Loisdale Court  
Springfield, VA 22150-1826

and

JANET ELLEN SILVERS, PT  
201 N Washington Street  
Falls Church, VA 22046

Defendants.

### COMPLAINT

Plaintiff, Michelle O'Connell, by and through counsel, respectfully moves for judgment against Defendants, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., Mid-Atlantic Permanente Medical Group, P.C., Bassima Antabli, M.D., Chris Chun Rhim, M.D., Rebecca J. Davison, M.D. and Janet Ellen Silvers, PT on the grounds and in the amount set forth below:

### JURISDICTION AND VENUE

1. This cause of action arises under Virginia Code Section 8.01-581.1 et seq., as well as the common law of Virginia.
2. The negligence leading to the severe and permanent injuries to Plaintiff Michelle O'Connell occurred in Fairfax County, Virginia, and thus venue is appropriate in this Court.

### PARTIES

3. At all times relevant to this action, Plaintiff Michelle O'Connell was a resident of Alexandria, Virginia.

4. At all times relevant to this action, Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. (hereinafter "Kaiser"), was a health maintenance organization that was operating in the Mid-Atlantic states including Virginia, the District of Columbia and Maryland.
5. Upon information and belief, Defendant Kaiser is incorporated in the state of Maryland, with its headquarters and principal place of business in the State of Maryland.
6. At all times relevant to this action, Defendant Mid-Atlantic Permanent Medical Group P.C. (hereinafter "MAPMG"), was a professional organization of physicians and health care providers incorporated in the State of Maryland, with its headquarters and principal place of business in the State of Maryland.
7. At all times relevant to this action, the negligent acts and/or omissions committed by the agents, servants and/or employees of Defendants Kaiser and/or MAPMG occurred in facilities owned and operated by the Defendants in Fairfax Virginia.
8. At all times relevant hereto, Dr. Antabli was a medical provider licensed to practice and practicing in the Commonwealth of Virginia. Upon information and belief Dr. Antabli was acting as an employee, agent and/or servant of Defendant Kaiser and Defendant MAPMG.
9. At all times relevant hereto, Dr. Rhim was a medical provider licensed to practice and practicing in the Commonwealth of Virginia. Upon information and belief, Dr. Rhim was acting as an employee, agent and/or servant of Defendant Kaiser and Defendant MAPMG.
10. At all times relevant hereto, Dr. Davison was a medical provider licensed to practice and practicing in the Commonwealth of Virginia. Upon information and belief, Dr. Davison

was acting as an employee, agent and/or servant of Defendant Kaiser and Defendant MAPMG.

11. Ms. Silvers is a physical therapist licensed to practice and practicing in the Commonwealth of Virginia at all times relevant hereto. Upon information and belief, Ms. Silvers was acting as an employee, agent and/or servant of Defendant Kaiser and Defendant MAPMG.

### FACTS

12. Plaintiff, Michelle O'Connell has received medical care from Defendant Dr. Davison, her primary care physician through Defendant Kaiser for several years, including January 2010 until December 2014.
13. In 2011, Plaintiff was diagnosed with breast cancer.
14. On July 6 2011, Plaintiff underwent a lumpectomy performed by Defendant Kaiser, Defendant MAPMG and its employees.
15. In September of 2011, Plaintiff Michelle O'Connell underwent a bilateral mastectomy at Defendant Kaiser Permanente's facility in Springfield, Virginia.
16. This procedure was performed by employees, agents and/or servants of Defendant Kaiser and Defendant MAPMG.
17. Shortly thereafter, Plaintiff O'Connell began the breast reconstruction process. During this process she was treated by Defendants Kaiser and MAPMG's doctors and physical therapists, including but not limited to, Defendants Antabli, Rhim, Davison and Silvers.
18. Throughout the fall of 2011, and throughout 2012 and 2013, Plaintiff Michelle O'Connell made repeated complaints of pain in her sternum and surrounding area. She repeatedly

made these complaints of pain to Defendant Antebi, Defendant Rhim, Defendant Davison, and Defendant Silvers, during this time period.

19. During several appointments in 2012 and 2013, Plaintiff made repeated complaints of pain in her sternum area to Dr. Antebi. Despite these complaints of pain, Dr. Antebi failed to order an MRI, CT Scan or any other diagnostic test to treat Plaintiff or to determine what was the cause of the pain in Plaintiff's sternum area.
20. During several appointments in 2012 and 2013, Plaintiff made repeated complaints of pain in her sternum area to Dr. Rhim. Despite these complaints of pain, Dr. Rhim failed to order an MRI, CT Scan or any other diagnostic test to treat Plaintiff or to determine what was the cause of the pain in Plaintiff's sternum area.
21. During several appointments in 2012 and 2013, Plaintiff made repeated complaints of pain in her sternum area to Dr. Davison. Despite these complaints of pain, Dr. Davison failed to order an MRI, CT Scan or any other diagnostic test to treat Plaintiff or to determine what was the cause of the pain in Plaintiff's sternum area.
22. During several appointments in 2012 and 2013, Plaintiff made repeated complaints of pain in her sternum area to Ms. Silvers. Despite these complaints of pain, Ms. Silvers failed to order an MRI, CT Scan and/or other types of diagnostic tests to treat Plaintiff and/or to determine what was the cause of the pain in Plaintiff's sternum area.
23. In January of 2014, after the continued pleas of Plaintiff, Defendant Antebi finally ordered additional tests, including an ultrasound and CT Scan.
24. After receiving these initial tests Defendants' employees stated to Plaintiff that there was a mass in her chest, but it was merely scar tissue and/or could potentially be a leakage of her breast implant.

25. However, additional tests were ordered wherein this initial diagnosis was disputed.
26. Finally, on February 11, 2014, Dr. Booth, Defendants Kaiser and MAPMG's employee, advised the Plaintiff that the mass was not scar tissue and looked like a potential desmoid tumor. At this time, Dr. Booth was unable to definitively diagnose the mass, but stated that it probably was not scar tissue.
27. Plaintiff continued to treat with Dr. Rhim, Dr. Antabli and Dr. Davison in 2014, to treat this mass and Plaintiff's complaints of pain. A surgery was performed by Defendants' employees on March 13, 2014, by Dr. Rhee, Defendant Rhim and others. During this procedure, Dr. Rhim and others removed the mass, removed a portion of Plaintiff O'Connell's chest wall, including several of her ribs and a portion of her sternum.
28. The mass was then taken to pathology and later the diagnosis was communicated to Plaintiff that the mass was, in fact, a desmoid tumor. This tumor has been described to Plaintiff as a malignant tumor that required immediate removal.
29. Plaintiff continued to see Defendants Antabli, Rhim, Davison and Silvers on several dates in 2014, for follow up treatment as a result of the desmoid tumor and the surgery which was caused by it. Many of these dates included the following: March 27, 2014; April 9, 2014; April 22, 2014; May 15, 2014; May 23, 2014; May 29, 2014; July 3, 2014; August 4, 2014; September 4, 2014; September 25, 2014; October 9, 2014; October 17, 2014; and November 10, 2014.
30. Plaintiff continued to treat with Dr. Antabli from 2011 until October 17, 2014 for this condition and the resulting injuries.
31. Plaintiff continued to treat with Dr. Rhim from 2011 until April 9, 2014, for this condition and the resulting injuries.

32. Plaintiff continued to treat with Dr. Davison from 2011 until September 4, 2014 for this condition and the resulting injuries.
33. Plaintiff continued to treat with Ms. Silvers from 2011 until November 17, 2014, for this condition and the resulting injuries.
34. During the years of 2012 through 2014, Plaintiff continued to demonstrate signs and symptoms consistent with a desmoid tumor and developing trauma. Yet the condition was not diagnosed by the Defendants until several years later, in March of 2014. Due to this delay in the diagnosis, Plaintiff suffered severe and permanent injuries, including but not limited to, unnecessary surgeries, loss of several ribs, loss of a portion of her chest wall, and a permanent hole in her chest. These injuries caused Plaintiff a great amount of physical pain and anguish as well as difficulty breathing and in other activities of daily living.

#### **COUNT I**

##### **(Medical Negligence)**

35. Plaintiff incorporates by reference paragraphs 1 through 34 above, and further alleges that, at all times relevant to the allegations in the Complaint, Plaintiff Michelle O'Connell had a patient-health care provider relationship with Dr. Bassem Antabli, Dr. Chris Rhim, Dr. Davison, Janet Silvers, PT and all of Defendant Kaiser's health care providers and all of Defendant MAPMG's health care providers. By virtue of the patient-health care provider relationship, the Defendants' agents and employees were obligated to use the degree of care and skill of reasonably prudent health care providers practicing under the same or similar circumstances.

36. At all times relevant to the Complaint, all agents, servants or employees of Defendants Kaiser and MAPMG who were involved in the care and treatment of Michelle O'Connell, entered into a relationship in which each such health care provider was required to act with the degree of care and skill of a reasonably prudent health care provider practicing under the circumstances presented.
37. Plaintiff further alleges that at all times relevant to the Complaint the agents, servants and employees of Defendants Kaiser and MAPMG, including but not limited to, Dr. Bassema Antabli, Dr. Chris Rhim, Dr. Davison, Janet Silvers, PT, were acting within the course and scope of their employment with Defendants Kaiser or MAPMG. Therefore, Defendants Kaiser and MAPMG are vicariously liable for any negligent acts or omissions of their employees.
38. Plaintiff further alleges that by virtue of the health care provider/patient relationship with Defendants Kaiser and MAPMG, all of Defendants' agents, servants and/or employees, including but limited to, Dr. Bassema Antabli, Dr. Chris Rhim, Dr. Davison, Janet Silvers, PT, were required to comport with the standard of care applicable to the treatment of patients such as Michelle O'Connell.
39. Plaintiff further alleges that Defendants, through their agents, servants and/or employees who were involved in the rendering of medical care and treatment to Plaintiff Michelle O'Connell, including but not limited to, Dr. Bassema Antabli, Dr. Chris Rhim, Dr. Davison, Janet Silvers, PT, breached the applicable standard of care by committing negligent acts and/or omissions, including but not limited to:
- a. failure to properly diagnose and advise Michelle O'Connell of her options given her symptoms;



- b. failure to properly work up Michelle O'Connell for her symptoms including failure to address her complaints of pain;
  - c. failure to timely order MRI, CT Scan or other diagnostic tests to identify the reason for the pain in Plaintiff's chest and sternum area;
  - d. failure to diagnosis Plaintiff's desmoid tumor in a timely manner;
  - e. failure to treat Plaintiff's desmoid tumor in a timely manner;
  - f. failing to identify and treat Plaintiff's tumor at a time wherein the tumor could have been treated with less invasive treatments or without requiring the need for surgery;
  - g. by misdiagnosing Plaintiff's complaints of pain as being just normal pain after breast reconstruction surgery;
  - h. failure to obtain timely and proper specialty consults under the circumstances; and
  - i. in otherwise failing to provide Michelle O'Connell with the degree of medical skill and attention required of health care providers under the circumstances.
40. Plaintiff further alleges that the negligent acts and/or omissions committed by the Defendants, through their agents, servants and/or employees, including but not limited to, Dr. Bassem Antabli, Dr. Chris Rhim, Dr. Davison, Janet Silvers, PT, directly and proximately caused or contributed to cause significant physical injuries, ultimately resulting in Plaintiff's severe and permanent injuries, including unnecessary surgeries, loss of several ribs, loss of a portion of her chest wall, and a permanent hole in her chest.
41. As a further direct and proximate result of the negligence of the Defendants, including but not limited to, Dr. Bassem Antabli, Dr. Chris Rhim, Dr. Davison, Janet Silvers,

Plaintiff Michelle O'Connell has suffered and will continue to suffer much physical pain, suffering, disfigurement, deformity, embarrassment, inconvenience, and mental anguish.

42. As a further direct and proximate result of negligence of the Defendants, including but not limited to, Dr. Bassema Antabli, Dr. Chris Rhim, Dr. Davison, Janet Silvers, PT, Plaintiff Michelle O'Connell has incurred substantial medical expenses, and will incur future medical expenses and related damages.

**WHEREFORE**, Plaintiff, Michelle O'Connell, demands judgment against the Defendants, jointly and severally, in the full and just amount of \$3,000,000.00 (Three Million Dollars), plus costs and interest.

**PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES OF FACT.**

Respectfully submitted,

MICHELLE O'CONNELL,

By 

Counsel

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