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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

MARY JEAN BRINE; MARGARET
PARILO; ROBERTA BRINE; ELIZABETH
TATGE; and DIANE BLUME, Individually
and as Successors-In-Interest to the Estate of
ROBERT BRINE

Plaintiffs,

vs.

KAISER FOUNDATION HEALTH PLAN,
INC.; KAISER PERMANENTE INSURANCE
COMPANY; KAISER FOUNDATION
HOSPITALS; KAISER PERMANENTE –
SOUTH SACRAMENTO MEDICAL
CENTER; THE PERMANENTE MEDICAL
GROUP, INC.; CHRISTOPHER M. ABBOT;
and DOES 1-20, Inclusive,

Defendants.

CASE NO. **16837837**

COMPLAINT FOR DAMAGES

- (1) Elder Neglect;
- (2) Negligence;
- (3) Fraud;
- (4) Intentional Misrepresentation;
- (5) Negligent Misrepresentation;
- (6) Intentional Concealment;
- (7) Wrongful Death;
- (8) Survivorship; and
- (9) Negligent Infliction of Emotional Distress.

JURY TRIAL DEMANDED

Plaintiffs MARY JEAN BRINE; MARGARET PARILO; ROBERTA BRINE;
ELIZABETH TATGE; and DIANE BLUME, Individually and as Successors-In-Interest to the

ORIGINAL

1 Estate of ROBERT BRUCE BRINE (hereinafter each a Plaintiff and, collectively, the "Plaintiffs")
2 allege against KAISER FOUNDATION HEALTH PLAN, INC.; KAISER PERMANENTE
3 INSURANCE COMPANY; KAISER FOUNDATION HOSPITALS; KAISER PERMANENTE –
4 SOUTH SACRAMENTO MEDICAL CENTER; THE PERMANENTE MEDICAL GROUP, INC.;
5 CHRISTOPHER M. ABBOT; and DOES 1-20, Inclusive (hereinafter collectively the "Defendants")
6 as follows:

7 INTRODUCTION

8 1. Plaintiff MARY JEAN BRINE is the widow, a successor-in-interest, and the
9 Executor to the Estate of decedent ROBERT BRINE. Plaintiff MARY JEAN BRINE is and was at
10 all times herein mentioned a resident of the City and County of Sacramento, State of California.
11 Decedent ROBERT BRINE was at all times herein mentioned a resident of the City and County of
12 Sacramento, State of California.

13 2. Plaintiffs MARGARET PARILO; ROBERTA BRINE; ELIZABETH TATGE; and
14 DIANE BLUME are the surviving issue and successors-in-interest to the Estate of decedent
15 ROBERT BRINE. Plaintiffs MARGARET PARILO, ROBERTA BRINE, DIANE BLUM are and
16 were at all times herein mentioned residents of the City and County of Sacramento, State of
17 California. Plaintiff ELIZABETH TATGE is and was at all times herein mentioned a resident of the
18 County of Placer, State of California.

19 3. Plaintiffs are the sole successors-in-interest to decedent ROBERT BRINE pursuant to
20 Code of Civil Procedure §§377.11 and 377.32.

21 4. On August 15, 2016, Plaintiffs notified Defendants, and each of them, of their intent
22 to commence this action pursuant to the provisions of Code of Civil Procedure §364.

23 5. Defendants KAISER FOUNDATION HEALTH PLAN, INC.; KAISER
24 PERMANENTE INSURANCE COMPANY; KAISER FOUNDATION HOSPITALS; and THE
25 PERMANENTE MEDICAL GROUP, INC. are located in and doing business in the City of
26 Oakland, County of Alameda, State of California. Said defendants own and operate KAISER
27 PERMANENTE – SOUTH SACRAMENTO MEDICAL CENTER (herein "Kaiser South

1 Sacramento”), a hospital organized and existing under the laws of the State of California located at
2 6600 Bruceville Road, Sacramento, California 95823.

3 6. Defendant CHRISTOPHER M. ABBOT (herein “DR. ABBOT”) is and was at all
4 times mentioned a licensed physician and surgeon in the State of California. He has reported to the
5 Medical Board of California that his primary area of practice is vascular surgery. He is certified by
6 the American Board of Surgery in surgery and vascular surgery.

7 7. Many patients of KAISER SOUTH SACRAMENTO, including Decedent ROBERT
8 BRINE, are dependent adults and/or elders as defined by Welfare and Institutions Code §§15610.23
9 and 15610.27. Defendants knew or should have known that their conduct regarding Decedent
10 ROBERT BRINE, as described below, was directed to a dependent adult and elder. At all times
11 relevant herein, Defendants were and are engaged in the business of providing care or services to
12 individuals, including elders and/or dependent adults, and operate as a twenty four-hour health
13 facility as defined in Section 1250 et seq. of the Health and Safety Code and subject to the
14 requirements of federal and state law regarding the operation of such facilities.

15 8. Decedent ROBERT BRINE was admitted as a patient at KAISER SOUTH
16 SACRAMENTO during the time period from August 17, 2015, through September 22, 2015.

17 9. At all times mentioned herein, Defendants were providing for the care and custody of
18 decedent ROBERT BRINE and were “care custodians” within the meaning of Welfare & Institutions
19 Code §15610.17.

20 10. At all times relevant to this action, decedent ROBERT BRINE was an elder adult as
21 defined by Welfare & Institutions Code §15610.27. ROBERT BRINE, who was eighty-four-years-
22 old at the time of his admission to KAISER SOUTH SACRAMENTO, was a senior citizen
23 substantially more vulnerable than other members of the public to the conduct of Defendants
24 because of his age and condition. Decedent ROBERT BRINE actually suffered substantial physical,
25 emotional, and/or economic damage resulting from the conduct of Defendants, as described below.

26 11. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate,
27 associate or otherwise and the true involvement of those defendants named and sued herein as DOES

1 1-20, and for that reason has sued said defendants by such fictitious names. Plaintiffs will seek leave
2 to amend this complaint to reflect their true names when ascertained. Plaintiffs are informed and
3 believe, and accordingly allege, that each of the defendants sued herein as DOES 1-20 is responsible
4 in some manner for the occurrences alleged in this action and that these defendants proximately
5 caused the harms suffered by Plaintiffs.

6 12. Plaintiffs are further informed and believe, and accordingly allege, that at all relevant
7 times each of the Defendants was the employer, employee, agent, servant, alter ego, principal, or
8 subsidiary of the other defendants and at all times acted within the course and scope of such
9 employment or agency with the express or implied authority of Defendants and with the knowledge
10 and approval of said co-defendants, and each of the Defendants ratified and approved the acts of its
11 agents and employees. Plaintiffs are further informed and believe, and accordingly allege, that at all
12 relevant times the defendants, and each of them, were participating in a joint venture, acting under
13 an express or implied agreement for a common purpose with a community of pecuniary purpose
14 wherein each defendant has an equal right to a voice in the direction of the joint venture.

15 FIRST CAUSE OF ACTION

16 (Elder Neglect)

17 13. Plaintiffs refer to and incorporate herein by this reference, all preceding paragraphs
18 into this Cause of Action as though fully set forth herein.

19 14. Decedent ROBERT BRINE was admitted to KAISER SOUTH SACRAMENTO on
20 August 17, 2015 to undergo an endovascular surgery to repair and abdominal aortic aneurysm. This
21 surgical procedure was performed by DR. ABBOT. Prior to the procedure, ROBERT BRINE,
22 MARY JEAN BRINE, and MARGARET PARILO met with DR. ABBOT for a preoperative
23 appointment. At this appointment, ROBERT BRINE told DR. ABBOT that a cardiologist was not
24 able to advance a J-wire in his iliac artery in a previous procedure in approximately May 2005. This
25 was also well documented in ROBERT BRINE's medical records. DR. ABBOT stated to ROBERT
26 BRINE and his family members that the procedure was routine. The procedure was expected to
27 take four to five hours, and ROBERT BRINE was expected to be discharged home within one to

1 two days.

2 15. During the surgical procedure on August 17, 2016, Defendants severely lacerated
3 and/or ruptured ROBERT BRINE's left iliac artery. DR. ABBOT proceeded to ligate the external
4 iliac artery, perform a left ileofemoral bypass, and placed a stent graft. While DR. ABBOT was
5 aware that ROBERT BRINE's left iliac artery had been severely lacerated and/or ruptured during
6 the surgical procedure, Dr. ABBOT knowingly concealed this fact and failed to inform Plaintiffs of
7 the complications including the iliac rupture. Rather, Dr. ABBOT represented to Plaintiffs that the
8 procedure "went well" although the blood loss "was more than expected." After the procedure,
9 ROBERT BRINE expressed concerns, including to his daughters Plaintiff ELIZABETH TATGE
10 and DIANE BLUME, that the surgery did not go according to plan and "everything went to hell."
11 ROBERT BRINE stated he could feel the abdominal wound. Plaintiff ELIZABETH TATGE told
12 DR. ABBOT on August 18, 2015 that something was wrong with her father. Plaintiff ELIZABETH
13 TATGE asked DR. ABBOT if her father had suffered a stroke because he had no gross motor skills
14 from the waist down and could not bend his legs or sit up on his own. ROBERT BRINE now
15 required a full-body lift with two or three men to transfer out of bed. In addition, Plaintiff
16 ELIZABETH TATGE told DR. ABBOT that a nurse noticed ROBERT BRINE was belching and
17 assumed it was due to an ileus. ROBERT BRINE also had two NG tubes in the ICU, and each time
18 a tube was removed, ROBERT BRINE coughed up green bile. Plaintiff ELIZABETH TATGE
19 asked DR. ABBOT about these problems. However, Defendants, including DR. ABBOT, continued
20 to conceal material facts regarding the iliac rupture and other complications of the surgery on
21 August 17, 2015. Rather, DR. ABBOT curtly stated ROBERT BRINE was having difficulty
22 moving due to pain from the left groin incision and represented to Plaintiffs that ROBERT BRINE
23 would make a full recovery. Plaintiffs also requested on a daily basis for a GI consultation to be done,
24 but Defendants failed to ever perform one, despite ROBERT BRINE and his family's repeated
25 complaints.

26 16. It was not until Plaintiffs MARY JEAN BRINE and MARGARET PARILO obtained
27 a copy of the August 17, 2015 operation report that Plaintiffs learned that DR. ABBOT had ruptured

1 ROBERT BRINE's iliac artery. DR. ABBOTT finally admitted this to Plaintiff MARY JEAN
2 BRINE on September 4, 2015. Plaintiff MARGARET PARILO asked DR. ABBOT why
3 Defendants allowed ROBERT BRINE's condition to remain untreated. DR. ABBOT appeared
4 dumbfounded and merely replied he "must not have known all of the clinical information."

5 17. DR. ABBOT also attempted to conceal the iliac rupture in his operative report. He
6 merely indicated there was extravasation of dye into the peritoneum. As a result, it is unclear
7 whether any of Defendants' physicians or staff who did not perform the August 17, 2015 surgery
8 were made aware of the severe injury to the iliac artery, which led to Defendants' failure to provide
9 ROBERT BRINE with necessary post-operative care, including monitoring and responding to any
10 issues with his blood perfusion and resulting complications.

11 18. Additionally, despite the severity of the injury that ROBERT BRINE suffered during
12 the August 17, 2015 surgery, a complication that forced DR. ABBOT to convert to an open
13 procedure, DR. ABBOT did not save angiographic images of the incident, as a further attempt to
14 conceal the problem from ROBERT BRINE's physicians and family.

15 19. Post operatively, ROBERT BRINE was hypotensive and developed elevated serum
16 lactate levels, ischemia, multiple wounds, sepsis, and ultimately multi-organ failure and death. As a
17 result of the iliac rupture caused by Defendants, including Dr. ABBOT, ROBERT BRINE suffered
18 low blood pressure for an extended period of time, and Defendants failed to monitor and respond to
19 this condition. Between the date of his surgery and his death on September 22, 2015, Defendants
20 failed to monitor and respond to ROBERT BRINE's low mean arterial blood pressure, which led to
21 numerous complications including poor blood perfusion, a heart attack, the development of
22 ischemia in ROBERT BRINE's penis and intestines, inadequate kidney function, the development
23 of sepsis, and ROBERT BRINE's ultimate death.

24 20. During the evening of approximately August 19, 2015, ROBERT BRINE told
25 Plaintiff ELIZABETH TATGE that his left arm and chest hurt. Plaintiff ELIZABETH TATGE
26 notified Defendants' nurses, and tests showed ROBERT BRINE was suffering a heart attack. After
27 much coaxing by the Plaintiffs, ROBERT BRINE was finally given a heart catheterization the next

1 day. On approximately August 20, 2015, ROBERT BRINE had chest pain with elevated troponins
2 without ST elevation on the EKG. As a result of the poor care and neglect by Defendants,
3 ROBERT BRINE developed ischemia in his intestines and penis, and his surgical wound was
4 infected. ROBERT BRINE required an abdominal "washout" on September 4th, 7th, and 9th, 2015.
5 On September 11, 2015, because a portion of ROBERT BRINE's bowel became ischemic and the
6 tissue died because his persistent low mean arterial blood pressure was not addressed, the fascia was
7 closed and a colostomy was performed. ROBERT BRINE also developed progressive multi-organ
8 system failure.

9 21. Defendants, and each of them, failed to provide ROBERT BRINE with adequate
10 custodial care. For example, aside from two popsicles, ROBERT BRINE was not fed by
11 Defendants throughout the entire hospitalization at KAISER SOUTH SACRAMENTO from August
12 17, 2015, through September 22, 2015. ROBERT BRINE and his family begged Defendants and
13 their physicians and staff for anything to eat or drink, such as liquid or ice chips, but their pleas were
14 ignored. A "Dr. Loja" gave ROBERT BRINE two popsicles before being taken off ROBERT
15 BRINE's case by DR. ABBOT. Plaintiffs also had to constantly beg Defendants and their staff to
16 get ROBERT BRINE out of bed and to turn him and to ask for PT help and range of motion.
17 Plaintiff ELIZABETH TATGE told Dr. ABBOT that Defendants staff were not getting ROBERT
18 BRINE up or turning him as much as was needed. Defendants failed to turn and reposition
19 ROBERT BRINE and as a result, he developed three severe stage IV sacral decubitus ulcers during
20 his admission to KAISER SOUTH SACRAMENTO, including one wound that measured
21 approximately 9.5 cm in diameter. Defendants' nurses and physical therapists rarely transferred
22 ROBERT BRINE out of bed, and as a result, on approximately August 22, 2015, ROBERT BRINE
23 developed pneumonia. Severe pressure ulcers (stage 3 or 4) acquired in the hospital are considered
24 by the Center for Medicare & Medicaid Services ("CMS") and JCAHO as one in a category of
25 "never events," defined by the National Quality Forum ("NQF") as "errors in medical care that are
26 clearly identifiable, preventable, and serious in their consequences for patients, and that indicate a
27 real problem in the safety and credibility of a health care facility." As such, Defendants had a duty

1 to report these hospital-acquired pressure ulcers to the California Department of Public Health.
2 Plaintiffs are informed and believe that such a report was not made by Defendants as an attempt by
3 Defendants' administrators and managing agents to cover up what happened.

4 22. By approximately six days post procedure, ROBERT BRINE was hypernatremic.
5 Approximately seven to eight days post procedure, ROBERT BRINE was noted to be delirious. He
6 had been unable to get out of bed on his own with left leg weakness since surgery. By
7 approximately nine days post procedure, there was evidence of a left abdominal wound infection.
8 The wound was opened and drained, noted with foul smelling drainage. Approximately thirteen
9 days post procedure, a rapid response team was called in at night for complaints of respiratory
10 distress and abdominal pain. An emergent CT of ROBERT BRINE's abdomen was done and
11 followed by surgery, which revealed a necrotic bowel found with sigmoid colectomy and partial left
12 colectomy. After this procedure, one of Defendants staff stated to Plaintiff MARGARET PARILO
13 that the nursing staff was frustrated and they "tried" to help ROBERT BRINE, but the doctors
14 would not listen. The staff was in tears more than one time and more than once apologized to
15 Plaintiffs for what has happened to ROBERT BRINE.

16 23. Throughout his admission to KAISER SOUTH SACRAMENTO, ROBERT BRINE
17 demanded that he be discharged and moved to another hospital such as Mercy General Hospital. He
18 sated multiple times that he was "firing" DR. ABBOT. Defendants told Plaintiffs that ROBERT
19 BRINE was merely delirious – that "this wasn't him" – and as a result, did not act in response to his
20 demands. ROBERT BRINE continued to beg to be transferred out of KAISER SOUTH
21 SACRAMENTO, stating they were "killing" him. DR. ABBOT refused the request, stating he is
22 "the only one who knows how to take out the stent should something go wrong with it."
23 Additionally, ROBERT BRINE's family, including MARY JEAN BRINE and MARGARET
24 PARILO, repeatedly demanded that ROBERT BRINE be transferred to Mercy General Hospital for
25 treatment, as another physician had been following him there and was willing to take over his care.
26 Plaintiffs are informed and believe that Mercy General Hospital is a Kaiser-contracted facility, and
27 that the requests by ROBERT BRINE and his family for a transfer to Mercy GENERAL were

1 repeatedly dismissed as an attempt by Defendants to avoid the expense of paying additional costs
2 for ROBERT BRINE's care and treatment.

3 24. On September 21, 2015, the day before ROBERT BRINE died, "Leo", an ICU nurse
4 at KAISER SOUTH SACRAMENTO, demanded a meeting with the Plaintiffs. Hours before this
5 meeting, DR. ABBOT had met with Plaintiffs MARY JEAN BRINE and her granddaughter and
6 stated that ROBERT BRINE was looking good and he did not see any reason why he could not
7 make a full recovery. DR. ABBOT had also separately told Plaintiff ELIZABETH TATGE that day
8 that her father would be fine and that she should ignore the "up and down" reports of the nurses.

9 25. At the September 21, 2015 meeting with "Leo," a social worker, "Dr. Dijacamo,"
10 and DR. ABBOT, "Leo" told Plaintiffs that he thought that they had a right to know that he did not
11 think ROBERT BRINE would live through the night. ROBERT BRINE's granddaughter
12 confronted DR. ABBOT, asking him, "I don't mean to throw you under the bus but how can we just
13 have met with you and you told us Grandpa was doing well and now they are saying he is not going
14 to make it?" DR. ABBOT merely demurred that he was not aware of ROBERT BRINE's most
15 current condition.

16 26. Early in the morning on September 22, 2015, ROBERT BRINE died. Defendants
17 and their managing agents' denial and withholding of basic care to ROBERT BRINE caused his
18 injuries, including but not limited to, hypotension, his wounds, sepsis, and multi-organ failure, and
19 caused his death.

20 27. Defendants, and each of them, had responsibility for meeting the basic needs of
21 ROBERT BRINE, including his safety, nutrition, hydration, hygiene and medical care. Although
22 Defendants knew of conditions that made ROBERT BRINE unable to provide for his own basic
23 needs as described herein, Defendants denied and withheld goods or services necessary to meet
24 ROBERT BRINE's basic needs. Defendants denied and withheld this basic care to decedent
25 ROBERT BRINE despite the knowledge that by doing so, injury was substantially certain to befall
26 ROBERT BRINE or with conscious disregard of the high probability of such injury. Defendants'
27 denial and withholding of basic care to ROBERT BRINE caused his severe injuries and death.

1 28. Defendants failed to take necessary precautions to protect ROBERT BRINE, and
2 these failures caused him severe injuries and death. Defendants failed to provide ROBERT BRINE
3 with adequate supervision and monitoring that he required, failed to provide him with
4 comprehensive assessments and re-assessments, failed to provide him with assistance with his
5 activities of daily living, failed to adequately create and update his plan of care, and failed to protect
6 him from safety hazards, which caused his injury and death. Defendants failed to respond timely to
7 call lights and failed to provide him with adequate hygiene, which caused him injury. When
8 Plaintiffs visited ROBERT BRINE at KAISER SOUTH SACRAMENTO, they found that
9 Defendants' staff were often slow to respond to calls for help. On at least one occasion, Plaintiff
10 MARY JEAN BRINE witnessed ROBERT BRINE's I.V. was depleted, which caused the alarm to
11 sound. After waiting for more than 30 minutes for Defendants' staff to respond to the alarm,
12 MARY JEAN BRINE left ROBERT BRINE's bedside and went searching the halls of the hospital
13 for nursing staff to refill the IV line and provide additional fluids to ROBERT BRINE. Defendants
14 also failed to ensure that KAISER SOUTH SACRAMENTO was adequately staffed, which caused
15 ROBERT BRINE injury and death.

16 29. At all times relevant, the Defendants, and each of them, knew of ROBERT BRINE's
17 declining condition, and the critical need to monitor and treat him condition properly and to provide
18 adequate custodial care to him at all times. However, as described above, Defendants failed to
19 provide proper custodial care to ROBERT BRINE despite his vulnerable and worsening condition.
20 Defendants' conduct, as detailed herein, was reckless and in conscious disregard of ROBERT
21 BRINE's rights and safety.

22 30. In addition to the above referenced failures, Defendants, and each of them:

- 23 a. Failed to organize, staff, equip and supply the nursing service at KAISER SOUTH
24 SACRAMENTO to meet the needs of the patients, including ROBERT BRINE
25 pursuant to 22 C.C.R. §70211;
26 b. Failed to develop, maintain and implement written policies and procedures based on
27 current standards of nursing practice consistent with the nursing process which

1 includes, without limitation, assessment, nursing diagnosis, planning, intervention,
2 evaluation, and patient advocacy, including policies and procedures that require
3 consistency and continuity in patient care, incorporating the nursing process and the
4 medical treatment plan as required by 22 C.C.R. §70213; and

- 5 c. Failed to develop a nursing plan for ROBERT BRINE's care which was discussed
6 with and developed as a result of coordination with ROBERT BRINE, his family,
7 and other representatives and staff of other disciplines involved in the care of the
8 patient pursuant to 22 C.C.R. §70215(c).

9 31. In addition to the above referenced failures, Defendants, and each of them, violated
10 ROBERT BRINE's Patient Rights by:

- 11 a. Failing to provide ROBERT BRINE and his family with accurate information about
12 his illness, the course of treatment and prospects for recovery in terms that the patient
13 could understand;
14 b. Failing to allow ROBERT BRINE to participate actively in decisions regarding
15 medical care;
16 c. Failing to respond reasonable to requests made by ROBERT BRINE and his family
17 for service; and
18 d. Failing to allow ROBERT BRINE to leave the hospital, even against the advice of
19 members of the medical staff.

20 32. These acts and omissions by Defendants were not only to ROBERT BRINE, but,
21 instead, were part of a widespread pattern at KAISER SOUTH SACRAMENTO. The pattern of
22 substandard care and understaffing was well known to Defendants' managing agents. Specifically,
23 the nurses at KAISER SOUTH SACRAMENTO who provided care to ROBERT BRINE were
24 under the direction of nursing supervisors who were corporate managing agents of the Defendants.
25 In addition, the nursing supervisors' direct supervisors were corporate managing agents of
26 Defendants, such as the Administrator, the Chief Nurse Executive, the Director of Nursing, Nursing
27 Department Manager and the Director of nursing staff. There were conferences that took place

1 where the staff met at least weekly with the corporate heads of the departments who were the
2 corporate managing agents about what was happening on the floor at the hospital. The managing
3 agents of Defendants knew or should have known of the lack of proper custodial care to its patients,
4 as well as understaffing, poor training regarding basic custodial care needs. The neglect was known
5 to the Administrator, the Chief Nurse Executive, the Nursing Department Manager, the Director of
6 nursing staff, and their supervisors or should have been known to them. Specifically, Defendants'
7 nursing staff supervisor and their supervisor knew or should have known of the poor care,
8 inadequate staffing, and insufficient monitoring of patients. KAISER SOUTH SACRAMENTO
9 does not employ an adequate number of nursing staff to meet the needs of its patients. Despite
10 Defendants' knowledge of the understaffing of nursing staff at KAISER SOUTH SACRAMENTO,
11 Defendants' managing agents, including the nursing supervisors, the Administrator, Chief Nurse
12 Executive, the Nursing Department Manager, and the Director of nursing staff did not inform the
13 patients, their families or the floor nurses of these shortages, although this understaffing necessarily
14 affected the care provided and KAISER SOUTH SACRAMENTO's response to the care and
15 treatment of patients at the hospital. Defendants' own managing agents, including the nursing
16 supervisors who are responsible for training the floor nurses in how to properly implement these
17 policies and procedures, the Administrator, the Chief Nurse Executive, the Nursing Department
18 Manager and the Director of nursing staff are not adequately familiar with the policies and
19 procedures in the hospital. Additionally, Defendants' protocols, as created by Defendants'
20 managing agents, are inadequate.

21 33. Furthermore, Defendants and their managing agents have received Statements of
22 Deficiencies from the California Department of Public Health (hereinafter referred to as "DPH") as
23 a result of inadequate care provided by KAISER SOUTH SACRAMENTO. These statements of
24 deficiency are provided to Defendants and reviewed and signed by their managing agents, giving
25 Defendants' managing agents additional substantial notice of a pattern of similar neglectful acts and
26 omissions at KAISER SOUTH SACRAMENTO relating to the physical abuse and/or custodial
27 neglect of patients and other incidents of substandard care prior to ROBERT BRINE's admission to

1 KAISER SOUTH SACRAMENTO on August 17, 2015. This was further notice to Defendants and
2 their managing agents, and makes what happened to ROBERT BRINE even more egregious.
3 Defendants and their managing agents clearly knew there was a problem at KAISER SOUTH
4 SACRAMENTO, knew what they needed to do to protect patients from harm, and repeatedly
5 promised the State that they would act to protect their patients at KAISER SOUTH
6 SACRAMENTO. Yet, Defendants and their managing agents did not do what they promised, and
7 the foreseeable consequences ensued. These corporate managing agents did nothing, even with
8 knowledge of the neglect. These managing agents knew or should have known of the lack of proper
9 assessment, monitoring and basic assistance to their patients, and of the lack of training provided to
10 KAISER SOUTH SACRAMENTO physicians and staff. Despite Defendants' conscious knowledge
11 of these conditions, the managing agents did not take appropriate and adequate steps to prevent and
12 correct them, and they did not inform ROBERT BRINE or his family, including the Plaintiffs, of
13 what they knew about these dangerous conditions.

14 34. At the time ROBERT BRINE was admitted to KAISER SOUTH SACRAMENTO,
15 the managing agents of Defendants had knowledge of, ratified and/or otherwise authorized all of the
16 acts or omissions which caused the injuries to ROBERT BRINE. Defendants and Defendants'
17 managing agents knew that Defendants' operation was designed in a manner so as to maximize
18 profitability by circumventing the legal duty to assure the health, safety and oversight of patients
19 such as ROBERT BRINE and, in particular, the duty to provide oversight and management of
20 ROBERT BRINE during his admission at KAISER SOUTH SACRAMENTO. Defendants, and
21 each of them, knew or should have known that KAISER SOUTH SACRAMENTO's operation was
22 designed and operated by the Defendants in a manner to circumvent its legal duty to apply with
23 applicable statutes and regulations so as to maximize profitability. That knowledge was exclusively
24 in the possession of the Defendants. Plaintiffs had no such knowledge, nor the opportunity to obtain
25 such knowledge and information. ROBERT BRINE and his family, including Plaintiffs, believed
26 that KAISER SOUTH SACRAMENTO's business operations was, as represented by the
27 Defendants, properly run in compliance with the law and that the care afforded to its patients was

1 within all State guidelines. In particular, they understood that the management and staff of KAISER
2 SOUTH SACRAMENTO were "experts" and were readily familiar, capable, able and committed to
3 the care and oversight of patients such as ROBERT BRINE.

4 35. Defendants, and each of them, had a duty to continually assess ROBERT BRINE's
5 condition, a duty to note changes in his condition, and a duty to immediately notify ROBERT
6 BRINE's physicians and family of changes. Defendants similarly had a duty to create and update
7 adequate plans of care, and to receive, note and follow physicians' orders. Said Defendants had a
8 duty to assist ROBERT BRINE with transferring, ambulation, hygiene, feeding, bathing, dressing,
9 and toileting, to treat him with dignity and respect, and to provide adequate numbers of nursing and
10 other similar staff to assist him. Said Defendants had a duty to employ adequately trained staff. Yet
11 Defendants failed to provide medical care and custodial care sufficient to meet ROBERT BRINE's
12 physical and mental health needs and failed to protect him from health and safety hazards, as
13 described in detail herein. Defendants knew that ROBERT BRINE was an elder and dependent
14 adult who required assistance to meet his basic needs, yet failed to provide for those needs, even
15 with knowledge of ROBERT BRINE's high risk for injury, his dependence on Defendants, and their
16 substantial certainty that ROBERT BRINE would be injured if these needs were not provided for.
17 Defendants' failure to provide ROBERT BRINE with the care, assistance, and monitoring that he
18 required caused him severe injury and death as described herein.

19 36. The above-mentioned acts of Defendants, and each of them, constituted "abuse,"
20 "neglect" and/or "abandonment" within the meaning of Welfare & Institutions Code §15610 et seq.
21 and caused physical pain and/or mental suffering and/or deprived ROBERT BRINE of the services
22 that were necessary to avoid physical harm or mental suffering.

23 37. Defendants committed elder neglect as defined under the Elder and Dependent Adult
24 Civil Protection Act by failing to assist in ROBERT BRINE's activities of daily living, failing to
25 provide him with adequate custodial care, failing to monitor and supervise him to adequately
26 respond to changes in his condition, failing to report changes of condition to his family and his
27 physicians, and failing to protect ROBERT BRINE from health and safety hazards while he was in

1 their care and custody. (Welf. Inst. Code §15610.57.) Pursuant to Welfare & Institutions Code
2 §15610.57(a)(1), Defendants negligently failed to exercise that degree of care that a reasonable
3 person in a like position would exercise.

4 38. As discussed in detail above, as a direct legal result of the abuse, neglect and/or
5 abandonment of ROBERT BRINE by Defendants, and each of them, ROBERT BRINE was injured
6 and ultimately died.

7 39. As a direct result of the abuse, neglect and/or abandonment of ROBERT BRINE by
8 Defendants, and each of them, ROBERT BRINE was caused to incur the expense of acute
9 hospitalization and other related expenses, all to his special damage in a sum to be established
10 according to proof.

11 40. By the conduct, acts and omissions of Defendants, as alleged above, they are guilty
12 of recklessness, oppression, and/or malice. The specific facts set forth above show a disregard of
13 the high probability that ROBERT BRINE would be injured. In addition to special damages,
14 Plaintiffs are therefore entitled to an award against Defendants, and each of them, of the reasonable
15 attorney's fees and costs incurred in prosecuting this case pursuant to Welfare & Institutions Code
16 §15657, as well as decedent ROBERT BRINE's pre-death pain and suffering. As a direct result of
17 the abuse, neglect and/or abandonment of ROBERT BRINE by Defendants, and each of them,
18 ROBERT BRINE suffered fear, anxiety, humiliation, physical pain and discomfort, and emotional
19 distress, all to his general damage in a sum to be established according to proof.

20 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

21 **SECOND CAUSE OF ACTION**

22 **(Negligence)**

23 41. Plaintiffs refer to and incorporate herein by this reference, all preceding paragraphs
24 into this Cause of Action as though fully set forth herein.

25 42. At all times herein mentioned, Defendants, and each of them, did negligently and
26 carelessly care for ROBERT BRINE in the manner herein alleged. Defendants, and each of them,
27 failed to exercise the degree of skill and care commonly required of a health care provider.

1 Defendants knew them to be false and made these representations to deceive and defraud.
2 Defendants, and each of them, intentionally failed to disclose to ROBERT BRINE and Plaintiffs
3 facts known by Defendants in order to fraudulently induce ROBERT BRINE and Plaintiff to act in
4 the manner herein alleged in reliance thereon, and with the intent to prevent ROBERT BRINE and
5 Plaintiff from further inquiry.

6 47. Said representations and suggestions were made for the purpose of inducing
7 Plaintiffs to keep ROBERT BRINE as a patient of Defendants, so that Defendants could earn fees
8 paid by or on behalf of ROBERT BRINE for his care which purportedly complied with the legal
9 standards therefor. Defendants intended that Plaintiffs rely on said fraudulent representations. Said
10 fraudulent representations and suggestions were made for the purpose of instilling confidence in
11 ROBERT BRINE and Plaintiffs in the care and treatment Defendants were providing to ROBERT
12 BRINE and to discourage Plaintiffs from investigating further.

13 48. ROBERT BRINE and Plaintiffs reasonably relied upon Defendants' fraudulent
14 representations and omissions to their detriment. Had ROBERT BRINE and Plaintiffs been
15 provided with truthful and complete information regarding ROBERT BRINE's deteriorating
16 condition and Defendants' inability to care for his worsening condition, Plaintiffs would have
17 transferred ROBERT BRINE to a health care provider who could better care for him and his
18 condition. As a proximate and legal cause of ROBERT BRINE and Plaintiffs' reliance upon these
19 fraudulent representations and subsequent conduct of Defendants, and each of them, Plaintiffs
20 sustained damages and injuries, including severe emotional distress. Plaintiffs' reliance on
21 Defendants' fraudulent representations were a substantial factor in causing their harm.

22 49. The wrongful acts of Defendants, and each of them, were done maliciously,
23 oppressively, and with the intent to defraud, and Plaintiff is therefore entitled to punitive and
24 exemplary damages in an amount to be ascertained according to proof.

25 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

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1 **FOURTH CAUSE OF ACTION**

2 **(Intentional Misrepresentation)**

3 50. Plaintiffs refer to and incorporate herein by this reference, all preceding paragraphs
4 into this Cause of Action as though fully set forth herein.

5 51. Defendants intentionally and falsely represented to ROBERT BRINE and Plaintiffs
6 that they would provide ROBERT BRINE with care which met legal standards and suggested as fact
7 that ROBERT BRINE could be and would be properly cared for. Defendants also made false
8 representations to Plaintiffs regarding the development and severity of ROBERT BRINE's
9 condition until hours before his death. Said representations were false, and known by Defendants to
10 be false when made or were made by Defendants recklessly and without regard for the truth.
11 Defendants intended that Plaintiffs rely on said representations. Said representations were made for
12 the purpose of inducing Plaintiffs to have ROBERT BRINE remain at KAISER SOUTH
13 SACRAMENTO for Defendants' financial benefit.

14 52. Plaintiffs relied upon said intentional misrepresentations on the assumption that they
15 were true and, accordingly, ROBERT BRINE remained at KAISER SOUTH SACRAMENTO and
16 was injured and died as a result of Defendants' neglect.

17 53. As a proximate and legal cause of ROBERT BRINE and Plaintiffs' reliance upon
18 these intentional misrepresentations and subsequent conduct of Defendants, and each of them,
19 Plaintiffs sustained damages and injuries, including severe emotional distress. Plaintiffs' reliance
20 on Defendants' representations were a substantial factor in causing their harm.

21 54. The wrongful acts of Defendants, and each of them, were done maliciously,
22 oppressively, and with the intent to defraud, and Plaintiff is therefore entitled to punitive and
23 exemplary damages in an amount to be ascertained according to proof.

24 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

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1 **FIFTH CAUSE OF ACTION**

2 **(Negligent Misrepresentation)**

3 55. Plaintiffs refer to and incorporate herein by this reference, all preceding paragraphs
4 into this Cause of Action as though fully set forth herein

5 56. Defendants, and each of them, are in the business of owning and operating a hospital.
6 Defendants, and each of them, owe a duty to Plaintiffs to exercise due care to assure that
7 representations they make and assurances they provide are completely truthful and not misleading.

8 57. Defendants, and each of them, have failed in this duty of care as set forth above.
9 Defendants, and each of them, omitted material facts and/or misrepresented facts to be true that were
10 not true, and/or failed to accurately, adequately and clearly explain the development and severity of
11 ROBERT BRINE's condition until hours before his death. Instead, Defendants repeatedly
12 negligently misrepresented the dire state of ROBERT BRINE's health from all Plaintiffs as stated
13 herein. Defendants had no reasonable ground for believing that the representations were true when
14 made and intended that Plaintiffs rely on the representations as set forth above.

15 58. Plaintiffs were ignorant of the truth and were justified in relying on the negligent
16 misrepresentations made by Defendants as set forth above. Plaintiffs reasonably relied upon
17 Defendants who were in a superior position of knowledge, to adequately explain and counsel
18 Plaintiffs as to the development and severity of ROBERT BRINE's condition.

19 59. As a proximate and legal cause of ROBERT BRINE and Plaintiffs' reliance upon
20 these representations and subsequent conduct of Defendants, and each of them, Plaintiffs sustained
21 damages and injuries, including severe emotional distress. Plaintiffs' reliance on Defendants'
22 representations were a substantial factor in causing their harm.

23 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

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1 SIXTH CAUSE OF ACTION

2 (Intentional Concealment)

3 60. Plaintiffs refer to and incorporate herein by this reference, all preceding paragraphs
4 into this Cause of Action as though fully set forth herein.

5 61. At the time that ROBERT BRINE became under Defendants' care and custody at
6 KAISER SOUTH SACRAMENTO, Defendants' managing agents knew that they could not provide
7 adequate care and knew of their duty to disclose these matters. This information was concealed by
8 Defendants, who intentionally failed to disclose certain facts to Plaintiffs as set forth above.
9 Plaintiffs were also never informed of the development and severity of ROBERT BRINE's
10 condition until hours before his death. Instead, Defendants repeatedly intentionally concealed the
11 dire state of ROBERT BRINE's health from all Plaintiffs as stated herein.

12 62. Defendants' and their managing agents breached their duty to disclose these facts to
13 Plaintiffs and intentionally concealed the above-referenced facts with the intent of misleading them
14 into believing that ROBERT BRINE could and would be cared for at KAISER SOUTH
15 SACRAMENTO. In fact, this was not true. Plaintiffs did not know of the concealed facts, and
16 reasonably relied upon Defendants who were in a superior position of knowledge, to adequately
17 explain and counsel Plaintiffs as to the development and severity of ROBERT BRINE's condition.
18 Defendants intended to deceive Plaintiffs by concealing these facts. Had the omitted information
19 been disclosed, Plaintiffs would have transferred ROBERT BRINE to a health care provider who
20 could better care for him and his condition. Defendants' acts were malicious and oppressive.

21 63. As a legal result of Defendants' intentional concealment, Plaintiffs sustained
22 damages and injuries, including severe emotional distress. Defendants' concealment was a
23 substantial factor in causing Plaintiffs' harm.

24 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

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1 SEVENTH CAUSE OF ACTION

2 (Wrongful Death)

3 64. Plaintiffs refer to, and incorporate herein by this reference, all preceding paragraphs
4 into this Cause of Action as though fully set forth herein.

5 65. Plaintiff MARY JEAN is the widow, a successor-in-interest, and the Executor to the
6 Estate of decedent ROBERT BRINE. Plaintiffs MARGARET PARILO; ROBERTA BRINE;
7 ELIZABETH TATGE; and DIANE BLUME are the surviving daughters and successors-in-interest
8 to the Estate of decedent ROBERT BRINE. As a result of Defendants' acts as alleged above,
9 decedent ROBERT BRINE died.

10 66. As a further proximate result of the acts and omissions of Defendants, and each of
11 them, the Estate of ROBERT BRINE and/or Plaintiffs incurred burial and funeral expenses for the
12 proper disposition of the remains of decedent ROBERT BRINE, the exact cost of said services is
13 unknown at this time, and leave of Court will be sought to amend this Complaint to specify these
14 damages when fully ascertained.

15 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

16 EIGHTH CAUSE OF ACTION

17 (Survivorship)

18 67. Plaintiffs refer to, and incorporate herein by this reference, all preceding paragraphs
19 into this Cause of Action as though fully set forth herein.

20 68. At all times herein mentioned, Plaintiffs MARY JEAN BRINE; MARGARET
21 PARILO; ROBERTA BRINE; ELIZABETH TATGE; and DIANE BLUME were and are the
22 Successors-in-Interest to the Estate of ROBERT BRINE, deceased, pursuant to Code of Civil
23 Procedure §§377.20 and 377.30. They constitute the only heirs at law to his Estate.

24 69. As a direct and proximate result of the above-described conduct of Defendants, and
25 each of them, ROBERT BRINE was compelled to and did employ the services of hospitals,
26 surgeons, physicians, nurses and other health care providers, for medical treatment and care, and did
27 incur medical expenses in a sum not yet ascertained, prior to his death. Plaintiffs, as Successors-in-

1 Interest to the Estate of ROBERT BRINE, deceased, seek to recover such losses or damages as
2 decedent ROBERT BRINE incurred prior to his death.

3 70. As a further result of the above-described conduct of Defendants, and each of them,
4 decedent ROBERT BRINE suffered pain prior to his death.

5 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

6 **NINTH CAUSE OF ACTION**

7 **(Negligent Infliction of Emotional Distress)**

8 71. Plaintiffs refer to and incorporate herein by this reference, all preceding paragraphs
9 into this Cause of Action as though fully set forth herein.

10 72. Plaintiff MARY JEAN BRINE is the widow of decedent ROBERT BRINE, and
11 Plaintiffs MARGARET PARLO, ROBERTA BRINE, ELIZABETH TATGE, and DIANE
12 BLUME are the surviving children of decedent ROBERT BRINE. At all times relevant, said
13 Plaintiffs witnessed Defendants' acts, as set forth above, and pleaded with Defendants' employees,
14 agents and managing agents to address their concerns regarding ROBERT BRINE's condition and
15 pled with Defendants to provide the custodial care to ROBERT BRINE that he required, including
16 assistance with repositioning/turning and providing food, but to no avail. Said Plaintiffs
17 contemporaneously witnessed Defendants' acts and omissions and knew ROBERT BRINE was
18 being injured at that time due to Defendants' conduct. At the time that said Plaintiffs witnessed the
19 above-referenced injury-producing events, they were contemporaneously aware that Defendants'
20 conduct was causing injury to ROBERT BRINE. That is, said Plaintiffs were aware of and
21 observed conduct by Defendants which produced injury to ROBERT BRINE. Said Plaintiffs were
22 aware of the fact that ROBERT BRINE was in an immediate need of assistance and custodial care.
23 To their knowledge, Defendants failed to provide necessary care. Said Plaintiffs were able to
24 perceive and suffer shock from the connection between Defendants' conduct and ROBERT
25 BRINE's resulting injury

26 73. Because of the conduct of Defendants, and as a direct and proximate result thereof,
27 said Plaintiffs, and each of them, were and have been subjected to extreme fright, emotional distress,

1 shock, and injury to the nervous systems as a result of the reckless acts of Defendants that caused
2 the death of their beloved family member, ROBERT BRINE, at Kaiser South Sacramento.
3 Plaintiffs have suffered, and will continue to suffer, severe emotional distress, mental pain and
4 anguish.

5 74. Defendants knew that reckless acts in the treatment of ROBERT BRINE at KAISER
6 SOUTH SACRAMENTO were likely to cause extreme emotional distress to said Plaintiffs and that
7 their failure to exercise due care would result in injury to ROBERT BRINE and his family
8 members.

9 Wherefore, Plaintiffs pray for judgment as set forth hereinafter.

10 **REQUEST FOR JURY TRIAL**

11 Plaintiffs request a jury trial.

12 **PRAYER**

13 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
14 follows:

- 15 1. For general damages according to law and proof;
- 16 2. For special damage according to law and proof;
- 17 3. For costs of suit;
- 18 4. For attorney's fees pursuant to law;
- 19 5. For punitive damages;
- 20 6. For pre-judgment interest according to law;
- 21 7. For damages pursuant to Health and Safety Code § 1430; and
- 22 8. For such other and further relief as the Court may deem proper.

23 DATED: November 4, 2016

STEBNER AND ASSOCIATES

24
25 By:

KATHRYN A. STEBNER
Attorneys for Plaintiffs