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RICHARD BRANNAN AND WENDY BRANNAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

RICHARD BRANNAN AND WENDY)
BRANNAN ,)

Plaintiffs,)

vs.)

KAISER PERMANENTE DBA KAISER)
FOUNDATION HOSPITALS, an unknown)
business entity; FREHIWOT Z. TESEMA, an)
individual; ELISSA J. ESMALI, an)
individual; and DOES 1 through 20, inclusive,)

Defendants.)

Case No. _____

COMPLAINT FOR DAMAGES

1. Financial Elder Abuse;
2. Unfair Business Practices;
3. Negligence;
4. Negligent Infliction of Emotional Distress ; and
5. Intentional Infliction of Emotional Distress / Punitive Damages

Plaintiffs RICHARD BRANNAN ("RICHARD") and WENDY BRANNAN ("WENDY")
allege as follows:

INTRODUCTION

Kaiser Permanente ("Kaiser") DBA Kaiser Foundation Hospitals has failed to supervise its employees and contractors having contact with its patient base. Kaiser's physician(s) and nurses, acting in concert, took money and other assets from Misako Pexton ("Victim"), who is a patient of Kaiser at all times herein relevant, through fraudulent and deceptive practices that include:

(1) asking this Victim for money; and (2) having these Victim drugged near comatose, and having Victim while hospitalized at Kaiser execute financial documents, including durable power of attorney for financial matters ("DPA"). With the DPA(s) in hand, the plan was for the participants

1 o secretly take the patient's property. Plaintiffs are informed and believes that Kaiser knew or should
2 have known that its employees were committing this financial elder abuse and yet did nothing to stop
3 it.

4 GENERAL ALLEGATIONS

5 1. At all times mentioned herein, Victim was and is a resident of Santa Clara County,
6 California.

7 2. Plaintiffs are informed and believe and thereon allege that defendant JAMES
8 NGUYEN, M.D. ("Dr. NGUYEN"), is, or was at the times herein alleged, a resident of Santa Clara
9 County.

10 3. Plaintiffs are informed and believe and thereon allege that defendant HELEN
11 NGUYEN ("Helen"), the wife of Dr. NGUYEN, is, or was at the times herein alleged, a resident of
12 Santa Clara County.

13 4. Plaintiffs are informed and believe and thereon allege that defendant FREHIWOT Z.
14 TESEMA ("Frehiwot"), is, or was at the times herein alleged, a resident of Santa Clara County.

15 5. Plaintiffs are informed and believe and thereon allege that defendant MELISSA J
16 ESMAILI ("Melissa"), is, or was at the times herein alleged, a resident of Santa Clara County.

17 6. Plaintiffs are informed and believes and thereon alleges that defendant KAISER
18 FOUNDATION HOSPITALS DBA KAISER PERMANENTE is a corporation or business entity
19 of unknown form, doing business in Santa Clara County.

20 7. Plaintiffs are informed and believe and thereon allege that Dr. NGUYEN is a licensed
21 as a physician in the State of California, and is employed by Kaiser at the Santa Teresa Facility in
22 San José, California.

23 8. Plaintiffs are informed and believe and thereon allege that FREHIWOT is a licensed
24 as a registered nurse in the State of California, and is employed by KAISER in San José, California.

25 9. Plaintiffs are informed and believe and thereon allege that MELISSA is a licensed
26 as a registered nurse in the State of California, and is employed by Kaiser in San José, California.

27 10. Plaintiffs are informed and believe and thereon allege that Dr. NGUYEN,
28 FREHIWOT, MELISSA, and KAISER had a fiduciary relationship with Plaintiff.

1 11. Plaintiffs are informed and believe and thereon allege that all times herein Dr.
2 NGUYEN and HELEN were acting in concert with each other.

3 12. Plaintiffs does not know the true names and capacities of defendants sued hereunder
4 as DOES 1 through 20, inclusive, and therefore sue these defendants by such fictitious names.
5 Plaintiffs will amend this Complaint to state their true names and capacities when the same are
6 ascertained. Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously
7 named defendants participated in, and/or is responsible for the occurrences herein alleged and that
8 Plaintiffs' damages as herein alleged were proximately cause by their conduct. Each reference in
9 this complaint to "Defendant," "Defendants," or a specifically named defendant refers also to all
10 defendants sued under fictitious names.

11 13. Plaintiffs are informed and believe, and thereon allege, that TESEMA AND
12 ESMAILI, including the above said DOES, is, and at all times herein mentioned was, the agent,
13 employee, partner, subsidiary, co-conspirator or joint venturer of KAISER, and in doing the things
14 alleged herein, acted within the course and scope of such agency, employment, partnership,
15 subsidiary, conspiracy or joint venture.

16 14. Plaintiffs allege and incorporate herein by this reference each of the allegations set
17 forth in Paragraphs 1 through 13 above.

18 15. Plaintiff RICHARD is an elderly man. At all times herein, Plaintiff was in his late
19 80s.

20 16. At all times herein, Victim suffered from cognitive impairment.

21 17. Prior to 2015, Victim sought medical attention at KAISER, and as a result met Dr.
22 NGUYEN Victim, who suffered from chronic back pain, became Dr. NGUYEN's patient.

23 18. Dr. NGUYEN prescribed Victim pain medication including morphine, which caused
24 additional cognitive impairment.

25 19. Plaintiffs are informed and believe, and thereon allege, that Dr. NGUYEN and his
26 wife HELEN concocted a scheme to take financial advantage of Victim, who was Victim, eventually
27 asking Victim for money, receiving money from Victim, and then obtaining a durable power of
28

1 attorney to take even more funds from Victim in the presence of Plaintiffs while hospitalized at
2 Kaiser

3 20. Plaintiffs are informed and believe, and thereon allege, that in furtherance of this
4 fraudulent and deceitful plan, Dr. NGUYEN and HELEN became friends with Victim. They would
5 frequently visit her at her house, and at times, even bringing their children along.

6 21. Plaintiffs are informed and believes, and thereon alleges, that at the behest of Dr.
7 NGUYEN and/or HELEN, the Nguyen's children started calling Victim "grandma."

8 22. Victim started to place a great deal of trust and confidence in Dr. NGUYEN and
9 HELEN – trust that had already developed because Dr. NGUYEN was her treating physician. At no
10 time had Kaiser ever intervened to prevent this from happening.

11 23. In March 2015, Dr. NGUYEN and/or HELEN, claimed a need for money and based
12 upon this alleged need, Victim turned over money to them.

13 24. Plaintiffs are informed and believe, and thereon allege, that Dr. NGUYEN's and
14 HELEN's need for money is false.

15 25. Victim, in her mentally weakened state known to Dr. NGUYEN and Helen, gave
16 them money several times in the intervening time period.

17 26. Plaintiffs are informed of Victim money, and Victim giving them payments in the
18 amounts of \$300, \$500 (twice), Victim became seriously ill and was rushed to KAISER at the Santa
19 Teresa facilities. Because of her illness, Victim had to spend several days and nights at KAISER.

20 27. During this period of time, Victim was suffering from significant cognitive
21 impairment including hallucinating, not remember where she was, not understand the most basic of
22 information, and even stating that her date of birth was in February 2017 before realizing this could
23 not be.

24 28. Plaintiffs at all times herein were agents for Victim on her Advanced Health Care
25 Directive on file with Kaiser at all times here in relevant.

26 29. On February 14, 2017, with Victim being hardly aware of her Victim's room at
27 KAISER, and had Victim sign a Statutory Form Power of Attorney ("DPA) that was effective
28

1 immediately At no time before, during or after Victim signed the DPA, did Dr. NGUYEN or the two
2 nurses explain the DPA to Victim. WENDY was also present in the room.

3 30. Moreover, Dr. NGUYEN, TESEMA, and ESMAILI refused to disclose to Victim's
4 husband, RICHARD, what document Plaintiff had signed as he was in Victim's room at the time.
5 Plaintiffs are informed and believe, and thereon allege, that FREHIWOT and MELISSA were part
6 of the Nguyen's scheme to defraud Plaintiff, and by being witnesses to this DPA acted in furtherance
7 of such fraudulent scheme.

8 31. Plaintiffs are informed and believes, and thereon alleges, that similar schemes alleged
9 herein above have occurred in the past at KAISER, and that KAISER should have known that the
10 above-stated actions were taking place.

11 32. As a result of the actions by Dr. NGUYEN, HELEN, TESEMA, and ESMAILI,
12 Plaintiffs retained counsel on Victim's behalf to take legal action to prevent Dr. NGUYEN and
13 HELEN from exercising their powers under the fraudulent DPA resulting in substantial legal fees
14 being incurred by Victim.

15 33. As a direct and proximate result of the breaches, acts and omissions by Dr. NGUYEN,
16 HELEN, TESEMA, ESMAILI, and KAISER Plaintiffs have been damaged in an amount to be
17 proven at trial.

18 34. By virtue of the foregoing, Plaintiffs are informed and believe, and thereon allege that
19 the acts of Dr. NGUYEN, HELEN, TESEMA, and ESMAILI were not only a breach of their duty of
20 loyalty and fiduciary duty owed to Victim, but that Kaiser failed to protect Victim and directly caused
21 damages to Plaintiffs in their capacities as agents for Victim and close relationship with Victim. In
22 addition, the actions of Kaiser were further hurtful in that after notification of the scheme, Kaiser
23 undertook actions intended to emotionally hurt and damage Plaintiffs in an effort to protects its own
24 culpability. These actions were oppressive willful, wanton and malicious, and justify the awarding
25 of exemplary and punitive damages.

26
27 FIRST CAUSE OF ACTION.
(Financial Elder Abuse)

28 PLAINTIFF RICHARD

35. Plaintiffs allege and incorporate herein by this reference each of the allegations set forth in Paragraphs 1 through 34 above.

36. The Victim, being older than 64, was at all times during hospitalization at Kaiser a dependent adult within the meaning of Welfare & Institution Code section 15610.23.

37. KAISER is the employer of Dr. NGUYEN, TESEMA and ESMAILI.

38. Defendants Dr. NGUYEN, HELEN, TESEMA, and ESMAILI, engaged in the above-described conduct affecting Victim's real or personal property interests that transferred to Plaintiff RICHARD upon Victim's death. KAISER knew or should have known that these actions would be harmful to Plaintiff RICHARD.

39. By virtue of the foregoing, KAISER, has aided and abetted third parties committing financial elder abuse pursuant to Welfare & Institution Code section 15610.30.

40. By virtue of the foregoing, Plaintiff RICHARD is informed and believes, and thereon alleges that the acts of Defendants Dr. NGUYEN, HELEN, TESEMA, and ESSMAILI were not only a breach of their duty of loyalty and fiduciary duty owed to Victim, but in addition, the acts transferred to KAISER as employer, and therefore subject it to liability for damages reasonably arising out of the employees' action. As the actions were willful, wanton, malicious, and oppressive, undertaken with the intent to defraud, and they justify the awarding of exemplary and punitive damages.

WHEREFORE, Plaintiff prays for Judgment as set forth below as to Plaintiff RICHARD.

SECOND CAUSE OF ACTION
(Unfair Business Practices – KAISER)

41. Plaintiffs allege and incorporate herein by this reference each of the allegations set forth in Paragraphs 1 through 40 above.

42. Plaintiffs are informed and believe and thereon allege that KAISER knew or should have known that HELEN and the children of Dr. NGUYEN and HELEN were visiting Dr. NGUYEN's patients, including Victim in the hospital and outside of the hospital.

43. Plaintiffs are informed and believe and thereon allege that the above alleged visitations were part of the deceitful plan to take financial advantage of Victim and others, all KAISER members.

44. KAISER, in permitting and allowing these actions, together with the actions of their employees as alleged herein above, has violated Business and Professions Code sections 17200, et seq.

45. As a result of KAISER's actions as alleged herein above, Plaintiffs have been damaged in an amount to be proven at trial.

WHEREFORE, Plaintiff prays for Judgment as set forth below as to both Plaintiffs.

THIRD CAUSE OF ACTION (Negligence)

46. Plaintiffs allege and incorporates herein by this reference each of the allegations set forth in Paragraphs 1 through 45 above.

47. By virtue of the foregoing, Defendants and each of them owed a duty of ordinary care to Plaintiffs, to use that degree of care and skill that a reasonably prudent person would use, and in the case of Dr. Nguyen, to use that degree of care that a reasonably prudent physician would owe given his knowledge, training, expertise, and skill; and in case of TESEMA, and ESMAILI, to use that degree of care that a reasonably prudent registered nurse would owe given their knowledge, training, expertise, and skill; and in the case of KAISER, to use that degree of care that a reasonably prudent hospital would owe given its responsibilities.

48. Plaintiff WENDY and RICHARD were present in Victims Kaiser Room when Dr. Nguyen and TESEMA and ESMALI entered between 9:15 AM and 9:45 Am on 14, 2017.

49. Plaintiffs questioned what was occurring when Dr. Nguyen walked up to Victims bedside and told her to sign paperwork. Plaintiffs believe and thereon allege that Victim was unaware of her surroundings and was not wearing her reading glasses at the time.

50. Both Plaintiffs were distraught and yelled for Victim to not sign paperwork. Plaintiff RICHARD was so emotional that he could not breathe. Plaintiff WENDY went to the hallway yelling for help from the floor nursing staff. Both Plaintiffs were exhibiting signs of

1 shock and physical symptoms of panic when Dr. Nguyen and TESEMA and ESMAILI walked out
2 of the room with the paperwork, saying nothing.

3 51. Plaintiff WENDY notified nursing personal including Nancy McMahon Assistant
4 Nurse manager of what happen immediately after she had stopped yelling. Starting at 10:00 AM
5 on the hour, every hour PLAINTIFF WENDY requested that Kaiser do a mental evaluation of
6 Mimi.

7 52. Plaintiff WENDY witnessed Nancy McMahon attempt, in front of her, for hours
8 attempt to get any KAISER administrator on the phone regarding what had occurred to Victim.
9 Plaintiff WENDY was personally present and is aware the McMahon was unsuccessful for hours.

10 53. Plaintiff RICHARD during this time became comatose and shutdown, being unable
11 to function.

12 54. Plaintiff WENDY, still awaiting KAISER administration to respond, observed Dr.
13 Nguyen approach the nursing station at approximately 12:15 to 12:20 on 14th, and show the nurses
14 the signed power of attorney putting him in charge of Victim.

15 55. Dr. Nguen approached Victim's room at 12:30 PM with Plaintiffs present in the
16 room. Plaintiff WENDY was told by Dr. Nguyen " Wendy lets talk ".

17 56. Plaintiffs were distraught, RICHARD thinking that he had lost his spouse, and
18 WENDY believing there was no help from KAISER.

19 57. Plaintiff Wendy yelled at Dr. Nguyen and demanded that he leave the room. Nursing
20 supervisor Nancy McMahon ordered Dr Nguyen out of the room in the presence of Plaintiffs.

21 58. At the time Kaiser still had not contact the nursing supervisor in her request for
22 assistance. Plaintiffs observed that the supervisor was upset at the lack of KAISER response
23 along with the floor nurses also being upset.

24 59. Plaintiff WENDY was advised at approximately 2 PM by a nurse that KAISER
25 management had finally responded and would be coming to meet with Plaintiffs.

26 60. Plaintiff WENDY had a 3 PM with management and was told that "they" were
27 shocked and sorry and that should not have happened in their hospital" and that "they needed an
28 hour and half to look into" what I was saying and would like to get back to me at "5:00 PM" .

1 Victim so they continued to sit by her hospital room door.

2 61. Plaintiffs were fearful with physical manifestations that Dr Nguyen would again
3 enter Victim's room based on the lack of action by KAISER.

4 62. Plaintiff WENDY observed glances from KAISER administrative persons that
5 appeared doubtful, incredulous, and disbelieve during the time she related the incident at 3 PM.
6 Present at the meeting were Meena Pai MD / APIC for risk, Med legal and Quality, Richard
7 Contreras - Area Compliance and Privacy Officer, Nancy McMahon - Assistant Nurse manager
8 4th floor. Plaintiff WENDY believes and thereon alleges that possibly Marshall Wright Nurse
9 Manager 4th floor and Sonia Cruz, Director Clinical Adult services were also present

10 63. Plaintiff WENDY telephoned the police regarding the incident at approximately 4
11 PM. as she became aware that the police had not been notified. An investigation was conducted
12 by San Jose Police. A police video of the interview of Plaintiff WENDY exists. Plaintiff was
13 present when Officer Haidar advised Richard Contreras KAISER employee that KAISER was
14 responsible for taking care of their patients.

15 64. Plaintiff WENDY telephoned KAISER corporate headquarters to try and get help
16 after the document signing incident in Victim's room. She was not able to speak with anyone
17 who helped when she telephone.

18 65. Plaintiff WENDY met on February 15th, 10:00 PM, with Adam Gress Assistant
19 nurse manager, the top management person in the Kaiser hospital at that hour. He said he did not
20 know of the whole situation although Plaintiff was assured by Kaiser administration at the 3 PM
21 meeting the previous day even that they "was going to alert all management and Dr Nguyen was
22 barred from the 4th floor". This was distressing and cause an emotional upset to Plaintiff
23 WENDY.

24 66. Plaintiff WENDY then was asked to again relive the incident and tell Gress what
25 had occurred the previous day. She spent over thirty minutes reliving the incident and telling
26 what happened, saying at the end that she was shocked that he did not know. Gress then informed
27 her that he knew about the situation, but wanted to hear it from Plaintiff. Another nurse / Kaiser
28 employee was in the room with Adam Gress when this occurred.

67. Plaintiff started yelling at him for putting her through the experience again. In Plaintiff's presence Gress telephoned Irene Chavez, Kaiser Senior Vice President and Area Manager as Plaintiff was extremely upset.

68. Plaintiffs prior to the above meeting with Grees learned of the rescinding of the DPA Victim had signed for Dr. Nguyen by being given a letter by Victim. Apparently, Dr. Jourge a KAISER physician and attending physician replacing Dr, Nguyen, had handed this to the Victim, knowing she was incompetent, after being directed to do so by KAISER administration as the floor nurses had refused to deliver the document to Victim.

69. Plaintiffs are informed and believe and, based thereon, allege that the Defendants, and each of them, owed the Plaintiffs the duties of care AS THE AGENTS OF VICTIM IN HER ADVANCE HEALTH CARE DIRECTIVE ON FILE WITH KAISER AT THE TIME OF THE INCIDENT, as set forth above.

70. Plaintiffs have suffered, without imitation, physical, emotional, and financial harm, as set forth above due to the breach of the duties by KAISER and its employees.

71. Plaintiffs believed thereupon allege that without equivocation KAISER as a defendant and its employees by the breach of their respective duties of care was a substantial factor, as set forth above, causing the Plaintiffs' harm.

WHEREFORE, Plaintiff prays for Judgment as set forth below as to both Plaintiffs.

FOURTH CAUSE OF ACTION

(Negligent Infliction of Emotional Distress)

72. Plaintiffs allege and incorporate herein by this reference each of the allegations set forth in Paragraphs 1 through 72 above.

73. Defendants owed Plaintiffs a duty of care to cause them emotional distress .

Defendants, and each of them, breached this duty by their conduct as alleged herein.

74. Defendants' conduct has caused Plaintiffs emotional distress, such that they knew.

75. As a result of Defendants' extreme and outrageous acts, Plaintiffs have suffered emotional distress, humiliation, and embarrassment.

76. Defendants' conduct has caused and continues to cause Plaintiffs substantial

1 losses in costs of suit, embarrassment and anguish, all to their damages in an amount according to
2 proof at time of trial.

3 WHEREFORE, Plaintiff prays for Judgment as set forth below as to both Plaintiffs.

4 FIFTH CAUSE OF ACTION

5 (Intentional Infliction of Emotional Distress)

6 77. Plaintiffs allege and incorporate herein by this reference each of the allegations set
7 forth in Paragraphs 1 through 76 above.

8 78. KAISER through its employees intended to cause Plaintiffs to suffer humiliation,
9 mental anguish, and emotional and physical distress, during and post incident. The conduct of
10 KAISER was intentional and malicious, well thought out to force the Plaintiffs to disappear with
11 their complaint if the administrators did not respond.

12 79. As a proximate result of KAISER'S actions, and each of the defendant's, the
13 Plaintiff's suffered severe emotional humiliation and distress in the inactions to Plaintiffs' pleas
14 for help to the reprehensible and deliberate action in forcing Plaintiff Wendy to relive the incident
15 and helplessness repeatedly. This caused emotional and physical distress as pled.

16 80. KAISER'S conduct was such that it had committed the acts alleged herein maliciously,
17 fraudulently, oppressively, with the wrongful intention of injuring Plaintiffs and acted with an
18 improper and vial motive amounting to malice and in conscious disregard of Plaintiffs' rights.
19 Because the acts were carried out by KAISER acting in a deliberate, cold, callous, and
20 intentional manner in order to injure and damage Plaintiffs each is entitled to recover punitive
21 damages from Defendants in an amount according to proof.

22 WHEREFORE, Plaintiff prays for Judgment as set forth below as for both Plaintiffs.

23
24 WHEREFORE, Plaintiff prays judgment against defendants and each of them as follows:

- 25 1. For compensatory damages according to proof at trial;
26 2. For interest on the compensatory damages from and after the date this Complaint was filed
27 at a rate of 10% per year or highest interest rate provided by law;
28 3. For punitive damages, against KAISER, according to proof;

4. For attorneys fees, unilaterally to the Plaintiffs;
5. For costs of suit incurred herein; and
6. For such other and further relief as the Court may deem proper.

Date:

2/11/19

HOLMES & USOZ LLP



Stephen J. Usoz, Attorney for Plaintiffs