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FILED
Superior Court of California
County of San Francisco

MAY 31 2019

CLERK OF THE COURT
BY: [Signature] Deputy Clerk
BOWMAN LU

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 SAN FRANCISCO COUNTY - UNLIMITED CIVIL JURISDICTION

12 BING GEE WONG,

13 Plaintiff,

14 vs.

15 KAISER FOUNDATION HEALTH PLAN,
16 INC.; KAISER FOUNDATION HOSPITALS;
17 KAISER PERMANENTE SAN FRANCISCO
18 MEDICAL CENTER; XIAOYAN ZHANG,
19 M.D.; and Does 1 through 20, inclusive,

20 Defendants.

Case No.: **CCC-19-576365**

COMPLAINT FOR DAMAGES

1. Professional Negligence (Medical Malpractice)
2. Negligent Hiring and Retention
3. Negligent Infliction of Emotional Distress
4. Lack of Informed Consent

21 Plaintiff BING GEE WONG ("Plaintiff"), by and through his attorneys, hereby alleges
22 against the Defendants the following based on his knowledge, information and belief:

PARTIES:

- 23 1. Plaintiff is a resident of the City and County of San Francisco, State of California.
- 24 2. Defendant KAISER FOUNDATION HEALTH PLAN, INC. is a California
corporation headquartered in Oakland, California that provides health insurance for its members.

1 3. Defendant KAISER FOUNDATION HOSPITALS, is a hospital located in
2 Oakland, California that provides medical services for its members and is funded by Defendant
3 KAISER FOUNDATION HEALTH PLAN, INC.

4 4. Defendant KAISER PERMANENTE SAN FRANCISCO MEDICAL CENTER
5 (“Defendant MEDICAL FACILITY”), is an organization which provides and arranges for
6 medical care of its members and is funded by Defendant KAISER FOUNDATION HEALTH
7 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 XIAOYAN ZHANG, M.D. (“Defendant ZHANG”) is a licensed
11 physician, with surgical privileges at Defendant MEDICAL FACILITY in San Francisco,
12 California.

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

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

 9. Plaintiff is informed and believes and thereon alleges that at all times herein
mentioned each of the defendants used herein as a Doe was the agent, partner, assignee,
successor and or/employee of each of the remaining defendants and was at all times acting
within the purpose and scope of such agency and or employment When Plaintiff ascertains the

1 true names and capacities of said Does 1 through 10, inclusive, Plaintiff will ask leave of the
2 Court to amend this Complaint to allege the true names and capacities of such defendants at such
3 time as the same have been ascertained.

4 JURISDICTION

5 10. The occurrence of events which are the subject matter of this Complaint occurred
6 within the County of San Francisco, State of California.

7 11. Defendant MEDICAL FACILITY is located within the County of San Francisco,
8 State of California.

9 FACTUAL SUMMARY

10 12. Plaintiff is a 76 year-old male who is married and has been a long-time patient
11 with Defendant HOSPITAL.

12 13. Plaintiff suffers from glaucoma in both of his eyes, and has been seeking
13 treatment at Defendant HOSPITAL and the consultation and advice of Defendant ZHANG for
14 over 10 years.

15 14. In or about April 2018, during one of the visits with Defendant ZHANG, upon
16 examination of Plaintiff's eyes and due to the increased pressure in both eyes, Defendant
17 ZHANG advised Plaintiff to have surgery on his eyes to reduce the pressure.

18 15. Although Plaintiff was able to see well in his left eye, but due to the pressure,
19 Defendant ZHANG recommended to Plaintiff to have surgery in his left eye first, and soon after,
20 the right eye.

21 16. Based on Defendant ZHANG's recommendation, Plaintiff agreed to have surgery
22 on his left eye.

23 17. Although Plaintiff was not fully aware of or informed the type of surgery that
24 Defendant ZHANG was going to perform on his left eye, Plaintiff agreed to do so based on
Defendant ZHANG's recommendation and experience as Defendant ZHANG has been treating
Plaintiff for many years. Based on the discussion with Defendant ZHANG, Plaintiff believed
that the surgery was just a minor procedure to help him relieve pressure in his eyes.

1 18. On or about June 1, 2018, Defendant ZHANG performed the recommended
2 surgery to Plaintiff's left eye.

3 19. Plaintiff later discovered that Defendant ZHANG performed a micropulse laser
4 surgery (MicroPulse transscleral cyclophotocoagulation) on his left eye. The micropulse laser
5 surgery is a technique that uses repetitive micropulse of active diode laser, and the procedure was
6 a much more complex than what Plaintiff was led to believe. Plaintiff was never told or fully
7 explained the possible side effects of the surgery, which included blindness. Plaintiff had agreed
8 to the surgery believing it was a minor procedure which little to no side effects or symptoms, .

9 20. During the time of the surgery on or about June 1, 2018, Plaintiff recalled that
10 only after receiving anesthesia, Plaintiff was asked to sign a consent form for the surgery, which
11 Plaintiff complied as he was sedated.

12 21. The next day after the surgery was performed, Plaintiff was not feeling well and
13 had severe pain and blurred visions in his left eye. Therefore, Plaintiff immediately requested to
14 move up his follow up appointment visit with Defendant ZHANG.

15 22. On or about June 4, 2018, Plaintiff had a post-surgery follow up visit with
16 Defendant ZHANG. Defendant ZHANG told Plaintiff that she needed additional observations,
17 and therefore did not provide any comments or advice to Plaintiff during such visit, and asked
18 that he come back a few days later.

19 23. On or about June 7, 2018, Plaintiff had another follow up visit, but this time with
20 Dr. Geraldine Rosaura. Plaintiff was shocked when Dr. Rosaura commented that Plaintiff's left
21 choroidal got detached, with severe corneal swelling. Plaintiff was told to use ofloxacin eye
22 drops for treatment.

23 24. Plaintiff continued to use the ofloxacin eye drops for treatment but continued to
24 have pain and blurred vision on his left eye.

 25. On or about June 13, 2018, Plaintiff met with Defendant ZHANG again for his
follow up visit. Defendant ZHANG advised Plaintiff that the current issue with his sight on the
left eye is due to the corneal swelling after the surgery. Defendant ZHANG further advised that
after the swelling and inflammation subsided, Plaintiff's left eye and visions will be back to

1 normal, and the choroidal detachment will also heal itself once the swelling and inflammation
2 subsided.

3 26. On or about August 15, 2018, Defendant Zhang decided to perform another
4 surgery for the drainage pipe on Plaintiff's left eye, in an attempt to relieve Plaintiff of his
5 symptoms. The surgery took about 2 hours, and after a few examinations thereafter, there was
6 no improvement.

7 27. As the days continued to pass, Plaintiff was losing his sight in his left eye
8 dramatically, and his vision got darker and darker. Plaintiff continued to have many visits with
9 Defendant ZHANG and during each examination, his vision in his left eye continued to
10 deteriorate but was assured by Defendant ZHANG that it will eventually heal and his vision will
11 be back to normal soon.

12 28. Since the surgery, Plaintiff has almost completely lost sight in his left eye. The
13 vision in his left eye is blurred and dark, and he has lost the use of his left eye for all practical
14 purposes. Plaintiff's vision in the left eye is extremely poor and he is unable to distinguish
15 shapes or feature of the objects. Furthermore, Plaintiff is continuing to suffer from pain in his
16 left eye area.

17 29. Defendant ZHANG has determined that the left eye complication from the
18 surgery is likely irreversible. Defendant ZHANG had also commented to Plaintiff that over
19 application of the laser during the surgery may have caused the lost of vision in his left eye.

20 **FIRST CAUSE OF ACTION**

21 **PROFESSIONAL NEGLIGENCE (MEDICAL MALPRACTICE)**

22 **(Against Defendant ZHANG)**

23 30. Plaintiff repeats, realleges, refer to and incorporate herein by reference each and
24 every allegation contained in the Paragraphs above as though fully set forth herein.

31. "[N]egligence is conduct which falls below the standard established by law for the
protection of others against unreasonable risk of harm." (Rest.2d Torts, § 282.) Thus, as a
general proposition one "is required to exercise the care that a person or ordinary prudence

1 would exercise under the circumstances.” Fn.2 (*Pork v. City of Los Angeles* (1945) 26 Cal.2d
2 519, 525 [159 P.2d 931]; *Rowland v. Christian* (1968) 69 Cal. 2d 108 [443 P.2d 561].

3 32. With respect to professionals, their specialized education and training do not serve
4 to impose an increased duty of care but rather are considered additional “circumstances” relevant
5 to an overall assessment of what constitutes “ordinary prudence” in a particular situation. Thus,
6 the standard for professionals is articulated in terms of exercising “the knowledge, skill and care
7 ordinarily possessed and employed by members of the profession in good standing...” (Prosser
8 & Keeton, Torts (5th ed. 1984) The Reasonable Person, § 32, p.187). For example, the law
9 “‘demands only that a physician or surgeon have the degree of learning and skill ordinarily
10 possessed by practitioners of the medical profession in the same locality and that he [or she]
11 exercise ordinary care in applying such learning and skill to the treatment of [the] patient.’
12 [Citation.]” (*Huffman v. Lindquist* (1951) 37 Cal.2d 465, 472 [234 P.2d 34, 29 A.L.R.2d 485]).

13 33. Similarly, a hospital’s “business is caring for ill persons, and its conduct must be
14 in accordance with that of a person or ordinary prudence under the circumstances, a vital part of
15 those circumstances being the illness of the patient and incidents thereof.” (*Rice v. California
16 Lutheran Hospital* (1945) 27 Cal.2d 296, 302 [163 P.2d 860]; *Flowers v. Torrance Memorial
17 Hospital Medical Center* (1994) 8 Cal. 4th 992, 997-998 [35 Cal. Rptr. 2d 685, 884 P.2d 142].)

18 34. Plaintiff alleges that Defendant ZHANG breached the duty of care owed to him,
19 of performing an eye operation in a professional manner and with due care and caution, in the
20 same manner as other surgeons would have exercised in the same location. Plaintiff further
21 alleges that Defendant ZHANG breached those duties, by failing to exercise the same or similar
22 skill of other surgeons in the same area, when she performed the laser surgery.

23 35. Plaintiff alleges that the laser surgery is such a novice surgical procedure, that
24 Defendant ZHANG had to be negligent and recklessly so, to cause damage to his left eye,
including the choroid. Further, Defendant ZHANG failed to use proper technique during the
surgery. Had she performed with the proper technique and the correct application of laser, the
damage to the choroid and the eye would not have occurred.

1 36. As a result of the carelessness, recklessness, negligence, lack of due care,
2 prudence, reasonable judgment, and concern for the welfare of Plaintiff, he has suffered and
3 continues to suffer severe pain, physical limitations, mental anguish and other physical
4 consequences as hereinafter alleged.

5 37. As a result of the aforesaid negligence, Plaintiff has suffered and continues to
6 suffer from severe and permanent disabling injuries and damages. As a further result of the
7 negligence of Defendant ZHANG, Plaintiff has incurred, and will continue to incur further
8 medical expenses. The full amount of such damages is not known to Plaintiff at this time, but
9 will be provided at the time of trial.

10 **SECOND CAUSE OF ACTION**

11 **NEGLIGENT HIRING AND RETENTION**

12 **(Against Defendant HOSPITAL, and DOES 1-10)**

13 38. Plaintiff repeats, re-alleges, and incorporates herein by reference each and every
14 allegation contained in the Paragraph above as though fully set forth herein.

15 39. "A hospital's conduct must be in accordance with that of a person of ordinary
16 prudence under the circumstances. (*Flowers v. Torrance Memorial Hospital Medical Center*
17 (1994) 8 Cal.4th 992, 998.) When a patient is admitted into the care of a hospital, the hospital
18 must exercise reasonable care to protect that patient from harm. (*Elam v. College Park Hospital*
19 (1982) 132 Cal.App.3d 332.) In *Elam*, the Court of Appeal held that a hospital may be liable
20 under the doctrine of "corporate negligence" for the malpractice of independent physicians and
21 surgeons who were members of hospital staff, and availed themselves of the hospital facilities.
22 That is because a hospital generally owes a duty to screen the competency of its medical staff
23 and to evaluate the quality of medical treatment rendered on its premises. (*Elam, supra* at 346-
24 47.) Thus, a hospital may be found liable for injury to a patient caused by the hospital's negligent
failure "to insure the competence of its medical staff through careful selection and review,"
thereby creating an unreasonable risk of harm to the patient.

40. Plaintiff alleges that Defendant HOSPITAL breached a duty owed to him, in
which Defendant HOSPITAL would employ only competent and skilled professionals at its

1 medical facility, to ensure his safety and to prevent the type of misdiagnosis and treatment that
2 he experienced at that facility. Plaintiff further alleges that Defendant HOSPITAL either knew,
3 or should have known, as part of its peer review procedures, that Defendant ZHANG lacked
4 basic diagnostic and surgical skills and competency, and that Defendant HOSPITAL should have
5 prevented an unreasonable risk of harm to those patients on whom professionals may examine
and treat with such a lack of skill, care, and competence.

6 41. Plaintiff also alleges that Defendant HOSPITAL, as the employer of Defendant
7 ZHANG, is liable to him for both hiring Defendant ZHANG in the first instance, based on the
8 lack of skill and training, and/or, in retaining Defendant ZHANG as a staff physician based on
the same obvious concerns.

9 42. As a direct and proximate consequence of the acts and omissions of Defendant
10 HOSPITAL as set forth above, Plaintiff has been caused to suffered medical complications, such
11 as loss of his left eye sight, constant pain in his left eye and head, social embarrassment and
12 personal humiliation from not being able to socialize and even walk about in public due to his
eye sight problem.

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

16 **THIRD CAUSE OF ACTION**

17 **RECKLESS INFLICTION OF EMOTIONAL DISTRESS**

18 **(Asserted against all Defendants, and DOES 11-20)**

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

20 45. Plaintiff alleges that the Defendants and each of them, had a duty pursuant to
21 California law (C.C. §§ 1708, 1714) to exercise due care to refrain from committing any act
22 which would reasonably be expected to cause severe emotional distress to the Plaintiff with
23 respect to his person and medical condition in this context.
24

1 46. Plaintiff further alleges that each of the Defendants breached those duties by
2 failing to properly perform their professional duties that were owed to Plaintiff. Defendant
3 ZHANG used improper surgical procedure, was reckless in causing damage to Plaintiff's eye,
4 and was incompetent to properly operate on Plaintiff.

5 47. Plaintiff alleges that the Defendants showed a reckless disregard for his well-
6 being and inflicted emotional distress by leaving him to wonder and worry about loss of his
7 eyesight. Plaintiff suffered and continued to suffer severe emotional distress due to his loss of
8 eye sight and inability to see properly and having constant pain. Plaintiff also alleges that
9 Defendants showed a reckless disregard for his health and well-being and a complete lack of
10 interest in his emotional predicament for which he was suffering extreme mental anguish not
11 knowing whether he would ever regain his eyesight.

12 48. As a direct and proximate result of the recklessness of the Defendants as set forth
13 above, the Plaintiff has suffered severe emotional trauma, anguish and distress, due to the
14 uncertainty about his eyesight and vision and whether she could ever be able to function as well
15 as prior to the surgery.

16 49. As a further direct and proximate result of Defendants' recklessness, Plaintiff also
17 suffered monetary losses which the amount is unknown to Plaintiff at this time and is subject to
18 proof at the time of trial.

19 **FOURTH CAUSE OF ACTION**

20 **LACK OF INFORMED CONSENT**

21 **(Asserted against all Defendants, and DOES 11-20)**

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

24 51. Defendant ZHANG never fully informed Plaintiff of the results and side-effects
of the surgery, as well as the risks of, and alternatives to, the surgery to Plaintiff as Plaintiff
simply thought, through the representation of Defendant ZHANG, that Plaintiff was having a
minor procedure to alleviate the pressure in his left eye.

52. Defendant HOSPITAL and Defendant ZHANG performed the surgery on Plaintiff without first obtaining informed consent from Plaintiff. Plaintiff was not asked to sign a consent form until he was administered anesthesia, at which time Plaintiff was not fully aware of what he was signing.

53. By virtue of the foregoing, a reasonable person in Plaintiff's position would not have agreed to the laser surgery had he or she been fully informed of the results and/or risks of, and alternatives to, the laser surgery.

54. As a result of the foregoing, Plaintiff has suffered and continues to suffer from severe and permanent disabling injuries and damages. The full amount of such damages is not known to Plaintiff at this time, but will be provided at the time of trial.

PRAYER FOR RELIEF

Wherefore Plaintiff BING GEE WONG prays for judgment against the Defendants, and each of them, and for the following to be awarded for the causes of action herein:

1. For general damages in an amount to be determined at trial;
2. For special consequential damages incurred including costs of hospital and medical expenses to be determined according to proof at time of trial;
3. For punitive damages according to proof at time of trial;
4. For costs of suit, including expert costs; and
5. For such other and further relief as the Court may deem just and proper.

CHAN CHOW & DAI, P.C.

Dated: May 30, 2019

By: John Chow
Attorney for BING GEE WONG