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Attorney for Plaintiff
DEP THI TRIEU

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

DEP THI TRIEU,

Plaintiff

) **CASE NO.**

) **COMPLAINT FOR DAMAGES:**

Versus

) 1. Medical Malpractice/Professional
) Negligence

**KAISER PERMANENTE, EMILIE RUTH
MUELLY, M.D., AND DOES 1 TO 25,
INCLUSIVE,**

Defendants

Plaintiff, DEP THI TRIEU, for the Complaint for medical malpractice against
Defendants KAISER PERMANENTE, EMILIE RUTH MUELLY, M.D., AND DOES 1 TO
25, inclusive, alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff TUYET NGOC THI LE, hereinafter referred to as "Plaintiff", for all times mentioned herein, was, and now is, a resident of Santa Clara County, State of California.

2. Defendant KAISER PERMANENTE, herein individually referred to as "Defendant Hospital", for all times mentioned herein, was, and now is, a business entity, form unknown, with its principal place of business located in the City of San Jose, County of Santa Clara, State of California.
3. Defendant EMILIE RUTH MUELLLY, M.D., herein individually referred to as "Defendant Muelly", for all times mentioned herein, was, and now is, an individual licensed by the State of California to practice medicine in this state, and her place of business is located in the Santa Clara County, State of California.
4. Plaintiff does not yet know the true names of other defendants and therefore sues them under the fictitious names of DOES 1 through 25, inclusive. Plaintiff is informed and believes and thereon alleges that each of these defendants was in some manner negligently and proximately responsible for the events and happenings alleged in this complaint and for Vince's injuries and damages. Plaintiff will amend her Complaint to include the true names of these Defendants when ascertained.
5. Plaintiff is informed and believes and thereon alleges that each defendant, when acting as a principal, was negligent in the selection and hiring of each other defendant as an agent or employee. In the alternative, each defendant, when acting independently as a principal, was negligent in his or her examination, diagnosis, care and treatment that proximately caused the permanent injuries and damages suffered by Vince.
6. When the term "Defendants" is used, it includes Defendant Hospital, Defendant Muelly, and all other fictitious Defendants 1 through 25, inclusive.
7. In or about October 2018, Plaintiff noticed that she had a swell on the right upper cheek area. On or about 10/14/18, she emailed to her family doctor to let her know that she has a swell on the upper right cheek area of her face.

- 1 8. On or about 10/15/18, Dr. Kavitha Jayachandran, MD, sent her an email stating that
2 Defendant Muelly was out of the office for a few days. Thereafter, on or about
3 10/30/18, Plaintiff had an appointment and met with Defendant Muelly for a check-up
4 on the swell on the right side of her face. Plaintiff asked Defendants for referral to
5 have a scan done to determine the nature of the swell. Defendant Muelly said that it
6 was TMJ-related, and she could only refer Plaintiff to physical therapy. Defendant
7 Muelly further said that the only choice was for Plaintiff to go through physical
8 therapy, even though Plaintiff told Defendant Muelly that it was not related to her
9 TMJ because she did not feel that she had any pain in the jaw or TMJ area. Moreover,
10 the swell was close to the right eye, not the TMJ area.
- 11 9. However, Plaintiff accepted Defendants' medical advice and referral and went through
12 physical therapy for several months starting around November 2018 through March
13 2019. By March 2019, Plaintiff noticed that the swell had gotten bigger, and Plaintiff
14 asked her physical therapist Jessica Beaver to refer her back to Defendant Muelly.
- 15 10. Thereafter, Defendant Muelly referred Plaintiff to see a maxillofacial surgeon/ENT
16 specialist. On or about 4/22/19, Plaintiff had an appointment with and met with an
17 ENT specialist, and Plaintiff was referred to MRI for a facial scan, and Plaintiff had a
18 MRI scan on the same day.
- 19 11. In or about early May 2019, Defendants informed Plaintiff that the MRI scan
20 confirmed that the swell on the right side of her face was determined to be cancerous.
21 Defendants then scheduled for her for surgery on 5/24/19. On or about 5/24/19, the
22 surgeon Fidelia Butt, MD, who operated and removed the cancerous tumor from
23 Plaintiff's face, stated that if this surgery had been done last year (in October 2018),
24 the outcome would have been very different for Plaintiff as Dr. Butt informed Plaintiff
25 that what she had was stage III cancer.

1 12. Plaintiff was discharged from the hospital in the evening of 5/24/19. Thereafter, she
2 started radiation on 6/22/19, and the process lasted until 8/13/19, for a total of 33
3 radiation appointments. Plaintiff was advised that she had to wait until November
4 2019 to take another MRI to determine whether the cancer still existed.

5 13. Plaintiff is informed and believes and thereon alleges that the cancer on the right side
6 of her face had metastasized to the lymph nodes, and the surgery to remove the
7 cancerous tumor was more complicated had it been done in or about October 2018.

8 14. As the result of the development of cancerous tumor on the right side of her face that
9 was metastasized to lymph nodes, and the delay in the surgery to remove it, has caused
10 substantial damages to her physical and emotional health.

11 15. Plaintiff's taste is no longer the same. Her face does not feel the same. Even drinking
12 water gave her a sour taste. Plaintiff's eyes are not able to close fully. She does not
13 know whether she will ever be able to close her eyes fully in the future. After the
14 surgery and has been so since. Plaintiff's right eyebrow is much lower than the left
15 eyebrow. She does not see normally in her right eye compared to her left eye.

16 16. Plaintiff was not able to work for about five months after the surgery. Even after she
17 was able to go back to work, she could not function well as she was able to do before
18 the surgery.

19 **PLAINTIFF'S FIRST CAUSE OF ACTION**
20 **(Professional Negligence)**
21 **[Against All Defendants]**

22 17. Plaintiff hereby repeats and re-alleges each and every foregoing, and incorporates by
23 reference the allegations stated in Paragraphs 1 through 16, as if fully alleged herein.

24 18. Defendants failed to provide Plaintiff with adequate medical treatment and care that a
25 reasonably competent physician would have provided to their patients. Defendants
failed to diagnose the swell as potential cancer and believed that it was TMJ-related

1 problem. Instead of referring to MRI for further investigation and diagnosis,
2 Defendants referred to physical therapy. The physical therapy did not help the pain or
3 the swelling on Plaintiff's face, and the delay in proper diagnosis and treatment
4 allowed the cancer on her face to develop and spread for more about 7 months, which
5 further caused injury and damages to Plaintiff.

6 19. Defendants' service and performance as provided to Plaintiff from the inception falls
7 below the standard of care required of a reasonably competent physician, and
8 Defendants owe Plaintiff this duty of reasonable competency.

9 20. As a direct and proximate result of Defendants' negligence, including Defendants
10 DOES 1 to 25, Plaintiff sustained permanent injury to the right side of her face, pain
11 and suffering associated with such injury.

12 21. As a further direct and proximate result of the negligence of Defendants, Plaintiff has
13 suffered a great deal of pain, suffering, emotional distress, for which she respectfully
14 requests compensation for damages in the sum in excess of the jurisdictional amount
15 of this Court.

16 **FOR PLAINTIFF'S ALL CAUSES OF ACTION:**

17 WHEREFORE, Plaintiff demands judgment against Defendant Hospital, Defendant
18 Muelly, and DOES 1 through 25, inclusive, and each of them, for the following:

- 19 1. General damages according to proof, but in no case less than the jurisdiction
20 amount;
- 21 2. Special damages for medical and related expenses according to proof;
- 22 3. Interest according to law;
- 23 4. All costs associated with this lawsuit; and
- 24 5. Any other and further relief that the Court considers proper.
- 25

DATED: April 23, 2020

MICHAEL CHINH VU
Attorney for Plaintiff

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