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CLERK OF THE SUPERIOR COURT

By Stacy Parker Deputy

1 KATHRYN A. STEBNER (SB #121088)
KARMAN RATLIFF (SB #267631)
2 **STEBNER AND ASSOCIATES**
870 Market Street, Suite 1212
3 San Francisco, CA 94105
Tel: (415) 362-9800
4 Fax: (415) 362-9801

5 CRAIG NEEDHAM (SB #52010)
KIRSTEN FISH (SB #217940)
6 **NEEDHAM, KEPNER FISHER & JONES, LLP**
1960 The Alameda, Suite 210
7 San Jose, CA 95126
Tel: (408) 244-2166
8 Fax: (408) 244-7815

9 Attorneys for Plaintiffs

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN THE COUNTY OF ALAMEDA

13 RAQUEL MARTINEZ, DAVID MARTINEZ,
VICTORIA MARTINEZ; and ELIZABETH
14 MARTINEZ,

15 Plaintiffs,

16 vs.

17 KAISER FOUNDATION HOSPITALS; THE
PERMANENTE MEDICAL GROUP, INC.;
18 KAISER FOUNDATION HEALTH PLAN,
INC.; KAISER PERMANENTE MEDICAL
19 CENTER, WALNUT CREEK; KAISER
PERMANENTE MEDICAL CENTER,
20 OAKLAND; and DOES 1 through 100,
inclusive,

21 Defendants.

CASE NO.

10513800

COMPLAINT FOR DAMAGES

1. Negligence;
2. Dependent Abuse;
3. Negligent Infliction of Emotional Distress;
and
4. Loss of Consortium

BY FAX

22 Plaintiffs allege:

23 1. Plaintiffs RAQUEL MARTINEZ is and was at all times herein mentioned a resident of
24 the City of Alameda, County of Alameda, State of California. DAVID MARTINEZ is the husband of
25 RAQUEL MARTINEZ. He is and at all times mentioned herein was a resident of the City of Alameda,
26 County of Alameda, State of California. ELIZABETH MARTINEZ is the daughter of RAQUEL
27 MARTINEZ. She is and at all times mentioned herein was a resident of the City of Alameda, County of
28 Alameda, State of California. VICTORIA MARTINEZ is the daughter of RAQUEL MARTINEZ. She

1 is and at all times mentioned herein was a resident of the City of Alameda, County of Alameda, State of
2 California.

3 2. Defendants KAISER FOUNDATION HOSPITALS and KAISER PERMANENTE
4 MEDICAL CENTER, OAKLAND own and operate a hospital located in the County of Alameda, State
5 of California.

6 3. Defendants KAISER FOUNDATION HOSPITALS and KAISER PERMANENTE
7 MEDICAL CENTER, WALNUT CREEK own and operate a hospital located in the County of Contra
8 Costa, State of California.

9 4. Defendant KAISER FOUNDATION HEALTH PLAN, INC. is a non-profit California
10 public benefit corporation in the practice of healthcare insurance and organized and existing under the
11 laws of the State of California with its principal place of business in Oakland, California, County of
12 Alameda.

13 5. Defendant THE PERMANENTE MEDICAL GROUP, INC. is a professional corporation
14 in the practice of providing health care services and organized and existing under the laws of the State of
15 California, with its principal place of business in Oakland, California, County of Alameda.

16 6. Hereinafter, all the defendants referred to in paragraphs 2 through 5 will be referred to as
17 "KAISER" or "the Kaiser Defendants."

18 7. At all times relevant herein, the Kaiser Defendants were and are "care custodians" as that
19 term is defined in Welfare and Institutions Code § 15610.17.

20 8. At all times relevant herein, the Kaiser Defendants were and are engaged in the business
21 of providing care or services to elders and/or dependent adults, and operate as a twenty four-hour health
22 facility as defined in Section 1250 et seq. of the Health and Safety Code and subject to the requirements
23 of federal and state law regarding the operation of such facilities.

24 9. Plaintiffs are ignorant of the true names and capacities of those Defendants named and
25 sued herein as DOES 1 through 100, and for that reason has sued said Defendants by such fictitious
26 names. Plaintiffs will seek leave to amend this Complaint to reflect their true names when ascertained.

27 10. Plaintiffs are informed and believe, and accordingly allege, that each of the Defendants
28 sued herein as DOES 1 through 100 are responsible in some manner for the occurrences alleged in this

1 action and that these Defendants proximately caused the harm suffered by Plaintiff.

2 11. Plaintiffs are further informed and believe, and accordingly allege, that at all relevant
3 times each of the Defendants was the employer, employee, agent, servant, principal or subsidiary of the
4 other Defendants and at all times acted within the course and scope of such employment or agency and
5 with the knowledge and approval of said co-Defendants.

6 **FIRST CAUSE OF ACTION**

7 **(Negligence)**

8 12. Plaintiffs refer to paragraphs 1 through 11 and incorporate them into this cause of action
9 as though fully set forth herein.

10 13. Plaintiff RAQUEL MARTINEZ was initially admitted to KAISER PERMANENTE
11 MEDICAL CENTER, WALNUT CREEK on or about November 12, 2009. After approximately three
12 weeks, she was transferred to KAISER PERMANENTE MEDICAL CENTER, OAKLAND for surgery.
13 She remained at KAISER PERMANENTE MEDICAL CENTER, OAKLAND for approximately one
14 month. While under the care of the Kaiser defendants, plaintiff developed a Stage IV decubitus ulcer on
15 her coccyx. At all times relevant, defendants knew of plaintiff's condition and the critical need to
16 monitor and properly treat her condition. Nevertheless, defendants repeatedly failed to monitor and
17 properly care for plaintiff's condition, so as to cause injury.

18 14. Plaintiff RAQUEL MARTINEZ went to the Emergency Room at KAISER
19 PERMANENTE MEDICAL CENTER, WALNUT CREEK, on November 12, 2009 due to increased
20 pain and dizziness. Upon admission, RAQUEL MARTINEZ's skin was clear and she weighed
21 approximately 185 lbs. RAQUEL MARTINEZ' medical history at the time of admission put her at
22 increased risk for developing decubitus ulcers. While at KAISER PERMANENTE MEDICAL
23 CENTER, WALNUT CREEK, RAQUEL MARTINEZ' mobility was extremely limited, and she lay in
24 bed continuously for an approximately three-week period, during which time she was dependent on the
25 Kaiser defendants' staff to turn and reposition her. Defendants failed to turn RAQUEL MARTINEZ
26 every two hours for pressure relief, and failed to create and/or implement an appropriate plan of care to
27 address her risk for skin breakdown. As a result, she developed a decubitus ulcer on her sacrum.
28 RAQUEL MARTINEZ was later told that she had been "non-compliant" with turning; however, her

1 family, who were at her bedside on a daily basis, was never informed that the lift team required
2 additional assistance with turning. RAQUEL MARTINEZ was left lying in her own feces on several
3 occasions while at KAISER PERMANENTE MEDICAL CENTER, WALNUT CREEK. Her adult
4 diapers were frequently left unchanged, despite being soaked with urine. RAQUEL MARTINEZ did
5 not receive showers during her admission to KAISER PERMANENTE MEDICAL CENTER,
6 WALNUT CREEK. On many occasions, her call light went unanswered. Despite her limited mobility,
7 RAQUEL MARTINEZ was not given assistance with feeding while at KAISER PERMANENTE
8 MEDICAL CENTER, WALNUT CREEK.

9 15. Physicians ultimately determined that RAQUEL MARTINEZ had an infection in her
10 cervical spine, and she was transferred to KAISER PERMANENTE MEDICAL CENTER, OAKLAND
11 for surgery. Subsequent to this surgery, RAQUEL MARTINEZ lost all sensation and use of her body
12 below the neck. While at KAISER PERMANENTE MEDICAL CENTER, OAKLAND, RAQUEL
13 MARTINEZ's wound continued to worsen. The Kaiser Defendants again failed to turn and reposition
14 RAQUEL MARTINEZ while at KAISER PERMANENTE MEDICAL CENTER, OAKLAND. Staff
15 again failed to provide her with proper hygiene. On December 16, 2009, RAQUEL MARTINEZ was
16 transferred to KAISER PERMANENTE MEDICAL CENTER, VALLEJO for rehabilitation.

17 16. Upon admission to the Rehab facility, the admitting doctor expressed that he was
18 shocked at the condition of RAQUEL MARTINEZ's sacral decubitus ulcer, which was dirty and not
19 adequately described on her medical chart. He also questioned the continued use of a urinary catheter,
20 which had resulted in a urinary tract infection. DAVID MARTINEZ saw his wife's wound upon
21 admission to the Vallejo facility. At that time, the decubitus ulcer on RAQUEL MARTINEZ's coccyx
22 was greater than one inch deep, and was approximately the circumference of a man's fist. Her condition
23 began to improve as she regained the use of her hands and regained sensation in her lower body. On
24 January 28, 2010, RAQUEL MARTINEZ was discharged home with orders to receive home health care
25 for her Stage IV decubitus from KAISER HOME HEALTH AGENCY. Prior to her discharge, the
26 wound vac was disconnected from RAQUEL MARTINEZ's sacral wound; home health nurses
27 attempted to reconnect the wound vac, but experienced recurrent equipment problems. Home health
28 nurses made approximately 3-4 visits before RAQUEL MARTINEZ's wound began to show signs of

1 infection.

2 17. After approximately one week at home, RAQUEL MARTINEZ was re-admitted to the
3 Emergency Room at KAISER PERMANENTE MEDICAL CENTER, OAKLAND. While at Kaiser
4 Oakland, RAQUEL MARTINEZ's infection was treated. However, surgery to her initial infection had
5 to be postponed due to the severity of her wound. A feeding tube was placed through RAQUEL
6 MARTINEZ's stomach to help her receive adequate nutrition for wound healing. In late March, 2010,
7 RAQUEL MARTINEZ was transferred to KAISER PERMANENTE POST-ACUTE CARE CENTER,
8 where she remains. Her stage IV wound remains open, and she continues to receive wound vac therapy.

9 18. At all times herein mentioned, said defendants, and each of them, did negligently care
10 for plaintiff in the manner herein alleged. Said defendants, and each of them, failed to exercise that
11 degree of skill and care commonly required of health care providers.

12 19. In its operations, defendants did not hire competent employees, and did not provide
13 adequate training to those employees. As a result, RAQUEL MARTINEZ was placed in serious
14 jeopardy.

15 20. As a legal result of the negligence and carelessness of said defendants, and each of them,
16 as stated above, RAQUEL MARTINEZ was severely damaged and injured.

17 21. As a further legal result of the negligence of the Kaiser Defendants, and each of them, as
18 aforesaid, plaintiff has incurred medical expenses, and other related expenses, the full nature, extent and
19 amount of which are not yet known to plaintiffs and leave is requested to amend this Complaint when
20 the same are ascertained to conform to proof at the time of the trial.

21 WHEREFORE, plaintiff prays for judgment as hereinafter set forth.

22 **SECOND CAUSE OF ACTION**

23 **(Dependent Neglect)**

24 22. Plaintiffs refer to paragraphs 1-21 and incorporate them into this Second Cause of Action
25 as though fully set forth herein.

26 23. At all times mentioned, plaintiff RAQUEL MARTINEZ was a dependent within the
27 meaning of Welfare & Institutions Code section 15610.27.

28 24. At all times mentioned herein, Kaiser Defendants had care and custody of plaintiff

1 RAQUEL MARTINEZ. At all times mentioned herein, the Kaiser Defendants were "care custodians"
2 as defined by Cal. Welfare & Institutions Code § 15610.17(a).

3 25. The above-mentioned acts of defendants, and each of them, constituted "abuse,"
4 "neglect," and/or "abandonment" within the meaning of California Welfare & Institutions Code section
5 15610 *et seq.*, and caused physical pain and/or mental suffering and/or deprived plaintiff RAQUEL
6 MARTINEZ of the services that were necessary to avoid physical harm or mental suffering.

7 26. As a direct result of the abuse, neglect and/or abandonment of plaintiff RAQUEL
8 MARTINEZ by defendants, plaintiff suffered fear, anxiety, humiliation, physical pain and discomfort,
9 and emotional distress, all to her general damage in a sum to be established according to proof. The acts
10 of said defendants also caused plaintiff to incur the expenses of health care, all to her special damage.

11 27. These acts and omissions were not only to RAQUEL MARTINEZ, but, instead, were part of
12 a continual pattern, causing decubitus ulcers and other illnesses and injuries. This pattern of substandard
13 care was well known to defendants, including defendants' managing agents. Specifically, the nurses
14 who provided care to RAQUEL MARTINEZ were under the direction of nursing supervisors and their
15 supervisors, who were corporate managing agents of the Kaiser Defendants. These corporate managing
16 agents had the duty to direct the nurses and staff, yet did not make any changes in staffing at the
17 hospitals, even with knowledge of understaffing, poor training regarding wound care, poor
18 documentation, poor turning, lack of nourishment, poor wound treatment and assessment. These
19 corporate managing agents were the Directors of the wound care specialists and the Directors of the
20 nursing staff and their supervisors at KAISER PERMANENTE MEDICAL CENTER, OAKLAND and
21 KAISER PERMANENTE MEDICAL CENTER, WALNUT CREEK. There were conferences that took
22 place where the staff met at least weekly with the corporate heads of the departments, who were the
23 corporate managing agents, about what was happening on the floor as to wounds in the hospitals. The
24 corporate managing agents knew or should have known of understaffing, poor training regarding wound
25 care, poor documentation, poor turning, lack of nourishment, poor wound treatment and assessment.
26 The neglect was known to the Directors of wound care specialists and the Directors of the nursing staff
27 and their supervisors at the Kaiser facilities or should have been known to them. Specifically,
28 Defendants' nursing staff supervisors and their supervisors knew or should have known of the lack of

1 nourishment, poor turning, poorly documented wound assessment, and the lack of treatment. The
 2 Directors of the wound care specialists and their supervisors knew or should have known of the
 3 understaffing of the wound staff at these facilities, yet did nothing in response. The Directors of the
 4 nursing staff and the Directors of the wound care supervisors had notice of understaffing, poor training
 5 regarding wound care, poor documentation, poor turning, lack of nourishment, poor wound assessment
 6 and poor treatment, yet did nothing. Despite defendants' conscious knowledge of these conditions, the
 7 managing agents did not take appropriate and adequate steps to prevent and correct them, and they did
 8 not inform RAQUEL MARTINEZ or her family of what they knew about these dangerous conditions.

9 28. Defendants' managing agents knew of the aforementioned custodial neglect but did nothing.
 10 RAQUEL MARTINEZ's family constantly put defendants' managing agents on notice of the facts
 11 described above, but there was no response. Defendants' managing agents not only ratified these acts
 12 but also acted recklessly themselves by continuing to allow the constant neglect to occur. Defendants'
 13 managing agents knew of the failure to care for, clean, reposition, feed and relieve pain, yet they did
 14 nothing. Defendants' managing agents not only ratified these acts but also acted recklessly themselves
 15 by continuing to allow the constant neglect to occur. Defendants' managing agents knew of the failure
 16 to care for, clean, reposition, feed and relieve pain, yet they did nothing.

17 29. By their conduct, acts, and omissions of said defendants, as alleged above, defendants
 18 and its managing agents are each guilty of recklessness, oppression, and/or malice. In addition to other
 19 relief, pursuant to California Welfare & Institutions Code section 15657, plaintiffs are, therefore,
 20 entitled to an award against said defendants, and each of them, of the reasonable attorneys' fees and
 21 costs incurred in prosecuting this case.

22 WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

23 **THIRD CAUSE OF ACTION**

24 (Negligent Infliction of Emotional Distress)

25 30. Plaintiffs refer to paragraphs 1 - 29 and incorporate them into this Third Cause Action as
 26 though set forth herein.

27 31. Plaintiffs DAVID MARTINEZ, VICTORIA MARTINEZ and ELIZABETH
 28 MARTINEZ are the husband and daughters of plaintiff RAQUEL MARTINEZ. At all times relevant,

1 DAVID MARTINEZ, VICTORIA MARTINEZ and ELIZABETH MARTINEZ witnessed the
 2 defendants' acts as set forth above, and would repeatedly plead with employees, agents, and managing
 3 agents of the Kaiser Defendants to give RAQUEL MARTINEZ proper care, but defendants ignored
 4 their pleas. Plaintiffs DAVID MARTINEZ, VICTORIA MARTINEZ and ELIZABETH MARTINEZ
 5 visited plaintiff RAQUEL MARTINEZ diligently while under the care of defendants, and they
 6 contemporaneously witnessed the defendants' negligence and saw RAQUEL MARTINEZ's condition
 7 decline as the skin breakdown on her coccyx developed and continued to grow larger, all without
 8 intervention by the Kaiser Defendants.

9 32. As a result of the above mentioned, plaintiffs DAVID MARTINEZ, VICTORIA
 10 MARTINEZ and ELIZABETH MARTINEZ experienced extreme emotional distress and were so
 11 injured.

12 WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

13 **FOURTH CAUSE OF ACTION**

14 **(Loss of Consortium)**

15 33. Plaintiffs refer to paragraphs 1 – 32 and incorporate them into this Fourth Cause Action
 16 as though set forth herein.

17 34. As alleged in Paragraphs 1 through 32, inclusive, defendants are liable in tort for the
 18 injury to RAQUEL MARTINEZ.

19 35. Prior to the injuries described above, RAQUEL MARTINEZ was able to and did perform
 20 her duties as a spouse. Subsequent to the injuries and as a proximate result thereof, RAQUEL
 21 MARTINEZ has been unable to perform the necessary duties as a spouse, in that she can no longer
 22 perform the work and services usually performed by her in the care, maintenance and management of
 23 the family home. RAQUEL MARTINEZ will be unable to perform these duties in the future. By
 24 reason thereof, plaintiff DAVID MARTINEZ has been deprived and will be deprived of the consortium
 25 of his spouse, including the performance of his spouse's necessary duties, all to his damage.

26 WHEREFORE, plaintiffs pray for judgment as hereinafter set forth.

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28 ///

PRAYER

WHEREFORE, plaintiff prays for judgment against the Kaiser Defendants, and each of them, as follows:

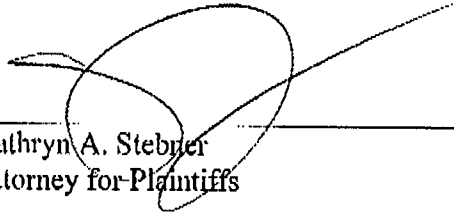
- 1. For general damages according to law and proof;
- 2. For special damage according to law and proof;
- 3. For costs of suit;
- 4. For attorney's fees;
- 5. For punitive damages;
- 6. For pre-judgment interest according to law; and
- 7. For such other and further relief as the Court may deem proper.

Dated: May 4, 2010

STEBNER & ASSOCIATES

By: _____

Kathryn A. Stebner
Attorney for Plaintiffs



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