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11 John Martin Kennedy, Charlette Madeline  
12 Armstrong, Betsy Ann Crabtree

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE COUNTY OF SOLANO

15 Vicky Georgia Kennedy, Betsy Ann  
16 Crabtree, Charlette Madeline Armstrong,  
17 John Martin Kennedy,

18 Plaintiffs,

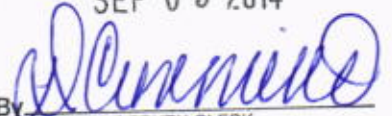
19 vs.

20 THE PERMANENTE MEDICAL GROUP;  
21 KAISER FOUNDATION HEALTHPLAN,  
22 INC., KAISER FOUNDATION HOSPITALS,  
23 VACAVILLE CONVALESCENT AND  
24 REHAB CENTER, JAU DEAN LEE, M.D.,  
25 an individual; MICHAEL L. EARWOOD,  
26 an individual; RONALD VICTOR  
27 STRADIOTTO, an individual; KYAW  
28 AUNG, an individual; JOHN SCUDDER  
MILLAR, an individual; JUDITH EILEEN  
PECK, an individual; WILLARD LEE  
FREDRICKSON, II, an individual; KULLADA  
OYL RICHAKRON, an individual;  
MANUEL AYSON BALLESCA, an  
individual; RUBY SALIHA ALI, an  
individual; THEODORE CRAIG YEE, an  
individual; KELVIN NOLAN KAY, an  
individual; AND DOES 1 THROUGH 50.

Defendant(s).

**FILED**  
Clerk of the Superior Court

SEP 05 2014

By   
DEPUTY CLERK

Case No. *FC0044135*

*\$435.00 CMF262190*

COMPLAINT FOR DAMAGES FOR:

- 1. NEGLIGENCE;
- 2. ELDER ABUSE;
- 3. WRONGFUL DEATH.

AND DEMAND FOR JURY TRIAL

A Professional Law Corporation  
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**I.  
PARTIES**

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1. PLAINTIFFS, Vicky Georgia Kennedy, the surviving spouse of the DECEDENT, and DECEDENT'S children, Betsy Ann Crabtree, Charlette Madeline Armstrong and John Martin Kennedy, bring this action on behalf of DECEDENT, Charles William Kennedy. they bring this action under the provisions of Code of Civil Procedure Section 377.60, which provides that the PLAINTIFF may bring this action on behalf of DECEDENT'S heirs: "A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by any one of the following persons.....(a) The decedent's surviving spouse..., children..." There are approximately four heirs of the DECEDENT: his surviving spouse, Vicky Georgia Kennedy, and his three children: Betsy Ann Crabtree, Charlette Madeline Armstrong and John Martin Kennedy. PLAINTIFF is one of them. As an heir of DECEDENT, PLAINTIFF also has standing to bring this action pursuant to Welfare and Institutions Code Section 15657, et seq. In addition, concurrently with or immediately following the filing of this action, PLAINTIFF Vicky Georgia Kennedy will file a Petition for Probate in the Solano County Superior Court, as a person entitled to Letters of Administration.

2. Defendant The Permanente Medical Group, is a corporation or business plan of unknown form, doing business in Oakland, California, at 1950 Franklin St., 17<sup>th</sup> Floor, Oakland, CA 94612.

3. Defendant Kaiser Foundation Health Plan, Inc. is a corporation or business plan of unknown form, doing business in County of Solano, California, at 1 Quality Drive, Vacaville, CA 95688-9494, which is the location wherein the injuries, death, and damages occurred.

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1           4. Defendant Kaiser Foundation Hospitals is a corporation or business plan of  
2 unknown form, doing business in the County of Solano, California at 1 Quality Drive,  
3 Vacaville, CA 95688-9494, which is the location wherein the injuries, death, and damages  
4 occurred.  
5

6           5. Defendant Vacaville Convalescent and Rehab Center is a corporation or business  
7 plan of unknown form, doing business in the County of Solano, California at 585 Nut Tree  
8 Ct., Vacaville, CA 95688, which is a location wherein injuries and damages occurred.  
9

10           6. Defendant Jau Dean Lee, is an individual who, upon information and belief, is  
11 licensed as a physician in the State of California and does business in the County of Solano  
12 at the facility owned and operated by KAISER at 1 Quality Drive, Vacaville, CA 95688-  
13 9494.

14           7. Defendant Michael L. Earwood, is an individual who, upon information and  
15 belief, is licensed as a physician in the State of California and does business in the County  
16 of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494.  
17

18           8. Defendant Kyaw Aung, is an individual who, upon information and belief, is  
19 licensed as a physician in the State of California and does business in the County of Solano,  
20 at 1 Quality Drive, Vacaville, CA 95688-9494

21           9. Defendant Ronald Victor Stradiotto, is an individual who, upon information and  
22 belief, is licensed as a physician in the State of California and does business in the County  
23 of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494  
24

25           10. Defendant John Scudder Millar, is an individual who, upon information and  
26 belief, is licensed as a physician in the State of California and does business in the County  
27 of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494  
28

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1 11. Defendant Judith Eileen Peck, is an individual who, upon information and  
2 belief, is licensed as a physician in the State of California and does business in the County  
3 of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494.  
4

5 12. Defendant Willard Lee Fredrickson, II, is an individual who, upon information  
6 and belief, is licensed as a physician in the State of California and does business in the  
7 County of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494.

8 13. Defendant Kullada Oyl Richakron, is an individual who, upon information and  
9 belief, is licensed as a physician in the State of California and does business in the County  
10 of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494.  
11

12 14. Defendant Manuel Ayson Balleca, is an individual who, upon information and  
13 belief, is licensed as a physician in the State of California and does business in the County  
14 of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494.

15 15. Defendant Ruby Saliha Ali, is an individual who, upon information and belief,  
16 is licensed as a physician in the State of California and does business in the County of  
17 Solano, at 1 Quality Drive, Vacaville, CA 95688-9494.  
18

19 16. Defendant Theodore Craig Yee, is an individual who, upon information and  
20 belief, is licensed as a physician in the State of California and does business in the County  
21 of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494.

22 17. Defendant Kelvin Nolan Kay, is an individual who, upon information and  
23 belief, is licensed as a physician in the State of California and does business in the County  
24 of Solano, at 1 Quality Drive, Vacaville, CA 95688-9494.  
25

26 18. PLAINTIFF is ignorant of the names and capacities of DOES 1 through 50 and  
27 sues them as DOES 1 through 50, inclusive. PLAINTIFF will amend this action to allege  
28

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1 these DOE defendants' names and capacities when ascertained. Each of the Defendants  
2 herein is responsible in some manner for the occurrences, injuries, and damages herein,  
3 and that the damages were directly and proximately caused by these defendants' acts and  
4 omissions. Each defendant herein was the agent of each of the remaining defendants, and  
5 in doing the things alleged herein were acting within the course and scope of their agency.  
6

7 19. All defendants collectively, including Kaiser Foundation Health Plan, Kaiser  
8 Foundation Hospitals, Vacaville Convalescent and Rehab Center, Dr.s Lee, Yee, Kay,  
9 Earwood, Balesca and all other physicians named herein, and DOES 1 through 50, are  
10 referred to herein as "DEFENDANTS".  
11

12 **II.**  
13 **STATEMENT OF FACTS**

14 20. On August 19, 2013, DECEDENT Charles William Kennedy was admitted to  
15 DEFENDANT KAISER HOSPITAL in Vacaville, located at 1 Quality Drive, Vacaville,  
16 CA 95688-9494, for the purpose of having an elective surgery, specifically, a left total  
17 knee replacement, to be performed by and under the care of DEFENDANT physicians  
18 and surgeons, including Dr.s Yee, Aung and others, as named hereinabove.  
19

20 21. Prior to and on August 19, 2013, DECEDENT was seen and examined by  
21 said DEFENDANT physicians and surgeons prior to said surgery and determined to be in  
22 a condition to have the surgery safely.  
23

24 22. The surgery, for left total knee replacement, took place on August 19, 2013, at  
25 DEFENDANT KAISER HOSPITAL, located in Vacaville, California. Thereafter,  
26 DECEDENT was an inpatient at DEFENDANT KAISER HOSPITAL, located in  
27 Vacaville, until on or about August 21, 2013.  
28





1 ultimately led to his death.

2           27. On or about August 27, 2013, DEFENDANTS VACAVILLE  
3 CONVALESCENT AND REHAB CENTER finally noted that DECEDENT was in  
4 significant distress, as a result of his deteriorated condition, including significant  
5 abdominal distension, difficulty in breathing and deteriorating vital signs. Thus, on that  
6 morning of August 27, 2013, DEFENDANTS finally determined to transfer DECEDENT  
7 back to DEFENDANT KAISER HOSPITAL, for Emergency medical care.  
8

9           28. Had DEFENDANTS taken appropriate action prior to August 27, 2013, to  
10 care for DECEDENT and his signs and symptoms, his condition would not have  
11 deteriorated to the extent it did on that date, resulting in his death.  
12

13           29. DECEDENT was transferred by DEFENDANT VACAVILLE  
14 CONVALESCENT AND REHAB CENTER in this greatly deteriorated and unstable  
15 condition on or about August 27, 2013, where he was received by the Emergency Room  
16 staff and physicians of DEFENDANT KAISER HOSPITAL at Vacaville, who took on  
17 the obligation to care for him appropriately at that time and place.  
18

19           30. Despite their duty to provide DECEDENT with appropriate emergency room  
20 care, DEFENDANTS KAISER HOSPITAL and the DEFENDANT Kaiser physicians,  
21 including but not limited to Dr.s Peck, Fredrickson, Millar and other DEFENDANTS,  
22 failed to care for DECEDENT appropriately, causing him to aspirate and suffer  
23 respiratory arrest, among other things, ultimately contributing to his death.  
24

25           31. Despite their duty to provide DECEDENT with appropriate post-operative  
26 care at all times, DEFENDANTS so negligently cared for DECEDENT throughout his  
27 post-operative period that he ultimately suffered respiratory arrest, acute renal failure  
28

1 and blood culture negative septic shock, cardiac arrest and anoxic brain injury. Finally,  
2 due to his devastating neurologic injuries as a result of DEFENDANTS' failure to care  
3 for him appropriately, DECEDENT ultimately died on September 8, 2013.  
4

5  
6 **III.**

7 **FIRST CAUSE OF ACTION**

8 **(Negligence, v. all DEFENDANTS)**

9 32. PLAINTIFF re-alleges and incorporates by reference the allegations  
10 contained in Paragraphs 1 through 31.  
11

12 33. DECEDENT was a patient of DEFENDANTS from August 19, 2013 until his  
13 death on September 8, 2013. During this period, DECEDENT was under the care of the  
14 DEFENDANTS who acted as his "primary care physicians" and other care physicians,  
15 including Emergency Room physicians, as described hereinabove.  
16

17 34. By virtue of the aforesaid, DEFENDANTS owed a duty of ordinary care to  
18 DECEDENT, to use the degree of care and skill that a reasonably prudent person would  
19 use. In the case of LEE, EARWOOD, YEE and the other physician DEFENDANTS, to  
20 use that degree of care that a reasonably prudent physician would owe, given his or her  
21 knowledge, training, expertise and skill.  
22

23 35. DEFENDANTS breached the aforesaid duties of care.

24 36. As a direct and legal result of the aforesaid, DECEDENT sustained injuries  
25 and death. As a further direct and legal result of the aforesaid, DECEDENT sustained  
26 lost income and other damages in a sum according to proof at trial.  
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**IV.**  
**SECOND CAUSE OF ACTION**  
**(Elder Abuse v. all DEFENDANTS)**

37. PLAINTIFF re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 36.

38. DECEDENT was at all times herein over 65 years of age and a dependant adult within the meaning of Welfare & Institutions Code Section 15610.23, owing to the fact that he resided in California and had temporary physical or mental limitations that restricted his ability to carry out normal activities or protect his rights, given the sedative medication and the treatments he was treated with.

39. At all times herein, each of the DEFENDANTS had care or custody of the DECEDENT.

40. By virtue of the foregoing, DEFENDANTS and each of them have committed neglect as defined at Welfare & Institutions Code Section 15610.57.

41. During the aforesaid periods during which DEFENDANTS and each of them had care or custody of the DECEDENT, he was deprived of oxygen and appropriate nutrition for extended periods of time, among other things, and accordingly, suffered "physical abuse" as defined at Welfare & Institutions Code Section 15610.63.

42. By virtue of the aforesaid, DEFENDANTS have acted in conscious disregard of the probability of DECEDENT'S undesired and unauthorized injury and death. DEFENDANTS' acts and omissions were despicable and it subjected DECEDENT to cruel and unjust hardship in conscious disregard of his rights and safety. By virtue of the aforesaid, DEFENDANTS have each acted with recklessness, oppression and malice, and

1 according to proof at trial.

2 43. By virtue of the aforesaid, DECEDENT is entitled to pre-death pain and  
3 suffering damages under Welfare & Inst. Code Section 15657 and PLAINTIFF is entitled  
4 to attorneys' fees unilaterally to them under the same provision of law.  
5

6 III.

7 THIRD CAUSE OF ACTION

8 (Wrongful Death v. all DEFENDANTS)

9 44. PLAINTIFF hereby re-alleges and incorporates by reference the allegations  
10 contained in Paragraphs 1 through 43.  
11

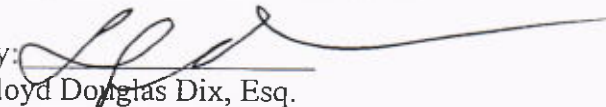
12 45. As a direct and proximate result of the aforesaid, DECEDENT died and his  
13 heirs (represented by PLAINTIFF under Code of Civil Procedure Section 377.60, as  
14 alleged above), have been deprived of DECEDENT'S love, care, comfort, and society to  
15 their general damages according to proof at trial.  
16

17 WHEREFORE, PLAINTIFFS pray for judgment against DEFENDANTS as  
18 follows:

- 19 1. For general and special damages as according to proof;
- 20 2. For the loss of the care, comfort, and society of DECEDENT.
- 21 3. For attorneys fees, unilaterally to PLAINTIFF.
- 22 4. For costs of suit, including expert costs.
- 23 5. For such other and further relief as the court deems just and proper.  
24

25 Dated: 9/5/14

DIX AND ASSOCIATES, APLC

26 By:   
27 Lloyd Douglas Dix, Esq.  
28 Attorneys for Plaintiffs