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APPENDIX A — REMITTITUR OF THE COURT OF APPEAL FOR THE FIRST APPELLATE DISTRICT, DIVISION 2, FILED JANUARY 14, 2025

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 2

Office of the County Clerk
Alameda County Superior Court - Main
1225 Fallon Street, Room G4
Oakland, CA 94612

EDWARD PLUMMER, JR.,

Plaintiff and Appellant,

v.

KAISER FOUNDATION HOSPITALS,

Defendant and Respondent.

A162565
Alameda County Super. Ct. No. RG14738005

*** * REMITTITUR * ***

I, Charles D. Johnson, Clerk of the Court of Appeal of the State of California, for the First Appellate District, do hereby certify that the attached is a true and correct copy of the original opinion or decision entered in the above-entitled cause on September 25, 2024 and that this opinion has now become final.

Appendix A

___Appellant ___Respondent to recover costs
_√_Each party to bear own costs
___Costs are not awarded in this proceeding
___See decision for costs determination

Witness my hand and the Seal of the Court affixed at my office this January 9, 2025

Very truly yours,
Charles D. Johnson
Clerk of the Court

/s/ J. Vado
J. Vado
Deputy Clerk

P.O. Report: ___
Marsden Transcript: ___
Boxed Transcripts: ___
Exhibits: ___
None of the above: _√_

APPENDIX B — ORDER OF THE SUPREME COURT OF CALIFORNIA, FILED DECEMBER 31, 2024

Court of Appeal, First Appellate District, Division Two

No. A162565
S287754

IN THE SUPREME COURT OF CALIFORNIA

En Banc

EDWARD PLUMMER, JR.,

Plaintiff and Appellant,

v.

KAISER FOUNDATION HOSPITALS, *et al.*,

Defendants and Respondents.

Filed December 31, 2024

The petition for review is denied.

GUERRERO
Chief Justice

APPENDIX C — APPELLANT'S PETITION FOR REVIEW OF THE SUPREME COURT OF THE STATE OF CALIFORNIA, DATED NOVEMBER 5, 2024

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

EDWARD PLUMMER JR., AN INDIVIDUAL,

Plaintiff/Appellant,

vs.

KAISER FOUNDATION HOSPITALS *et al.*,
CALIFORNIA CORPORATIONS,

Defendants/Respondents.

Court of Appeal: A162565
Alameda County Superior Court
Case No. RG14738005

APPELLANT'S PETITION FOR REVIEW

From a Decision of the Court of Appeal,
First Appellate District, Division Two,
on Appeal from the Superior Court of the
State of California, County of Alameda.
The Honorable Jeffery Brand

Edward Plummer, Jr.
Appellant/Plaintiff In Pro Per
1658 Club Drive
Pomona, California 91768
(909) 623-3756

Appendix C

[TABLES INTENTIONALLY OMITTED]

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

EDWARD PLUMMER JR., AN INDIVIDUAL,

Plaintiff/Appellant,

vs.

KAISER FOUNDATION HOSPITALS *et al.*,
CALIFORNIA CORPORATIONS,

Defendants/Respondents.

Court of Appeal: A162565
Alameda County Superior Court
Case No. RG14738005

APPELLANT'S PETITION FOR REVIEW

TO THE HONORABLE PATRICIA GUERRERO, CHIEF JUSTICE OF CALIFORNIA, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Edward Plummer, Jr. respectfully petitions this Court to review the attached unpublished decision of the Court of Appeal, First Appellate District, Division Two, filed on September 25, 2024. A copy of the opinion is attached to this petition as Appendix A and is cited herein as "Op." There was no rehearing on this matter.

Appendix C

ISSUES PRESENTED FOR REVIEW

In order to determine whether a party has standing, California courts are guided by prudential considerations.

1.) Whether prudential considerations override a plaintiff's liberty rights when determining standing?

2,) Whether a plaintiff should be granted leave to amend his original complaint, where standing is at issue, and he may have a valid third-party right which provides him the requisite standing?

NECESSITY FOR REVIEW

In an unpublished opinion the Court of Appeal, despite long standing practice to the contrary, has taken the position that California courts can make a presumptive determination that plaintiffs need not be granted leave to amend their original complaint when they have failed to clearly establish their standing in the original complaint.

INTRODUCTION

California Code of Civil Procedure, §472 clearly states that plaintiffs may amend their complaint once without leave of court before the opposing party files an answer, demurrer, or motion to strike. Practically speaking, in cases other than as described in C.C.P. §472, amendment of a complaint requires a prior court order granting

the plaintiff leave to file an amended complaint. As will be argued herein, leave of court to amend an original complaint is granted fairly liberally in California courts.

California courts are consistent and uniform in the application of granting leave to amend an original complaint.

California Code of Civil Procedure, §473 clearly states the courts may, in the furtherance of justice, allow a party to amend any pleading. Thus, where the court denies leave to amend an original complaint, review is warranted to determine if in fact there has been a deviation from the "consistent and uniform" application of granting leave in the "furtherance of justice;" as well as the denial of constitutional due process.

STATEMENT OF THE CASE

The facts and procedural background of this matter are outlined at Qp. 1- 4, and AOB 7-9. To summarize: Christian M. Plummer and Edward Plummer, Jr., father, and grandfather, respectively of Gavin Plummer (decedent) filed an action against defendant Kaiser *et al.* for, *inter alia,* wrongful death of minor Gavin Plummer. The complaint was filed on August 25, 2014. No subsequent complaints have been filed. On or about April 28, 2016 defendants filed a motion for summary judgment. The motion was granted and plaintiff Edward Plummer, Jr appealed. Christian Plummer who had moved to the State of New York, encountered problems receiving notices, and through inadvertence of the part of the court and the

plaintiffs, Christian Plummer was not on the appeal. The trial court's ruling was vacated by the Court of Appeal, and the matter remanded to the trial court for further proceedings. (*Plummer v. Kaiser Foundation Hospitals* (July 10. 2018, A149662) [nonpub. Opn.] [2018 WL 3359010, *1] (*Plummer 1.*)

Edward Plummer, Jr. requested that the court join Christian Plummer to the action because it was due to inadvertence that he was not included in the appeal. The court briefly joined Christian to the action. However, he was summarily removed after the defendants filed an objection. Edward Plummer, Jr does not recall there being any notice as to a tentative hearing on the matter. On August 21, 2020 defendants filed a motion for judgment on the pleadings based on the question of Edward Plummer, Jr.'s standing in the matter. Said motion was granted

On October 23, 2020, Edward Plummer, Jr. did file a motion for reconsideration of the order granting the judgment on the pleading. On December 01, 2020, the trial court granted the motion for reconsideration but affirmed the order granting the judgment on the pleadings due to standing.

ARGUMENT

California courts use a liberal standard when deciding to grant leave to amend an original complaint.

Appendix C

A. Introduction

The expressed right to amend a complaint is found in California Code of Civil Procedure, §472 (a.) This section clearly states that amendment may be taken without stipulation of the parties or without leave of the court. All other relative statutes seem to state that stipulation of the parties or leave by the court is required to amend an original complaint, even though no prior amendments have been filed or have been requested to be filed.

California Code of Civil Procedure, §473 outlines when a court may permit a litigant to amend a complaint. Specifically, section 473(d) states in part that the court may upon "its own motion" correct clerical errors relative to judgment and orders. Further, said section states that on motion of either party, and after notice to the other parties, the court may set aside any void judgment or order. Thus, the state legislature has put in protections for all litigants. It is simply a matter of the courts assuring that all parties are afforded equal protection.

B. Due Process Considerations

The plaintiffs in this case, except for a brief period of time, have been self-represented. According to California law they have a right to represent themselves. *Gray v. Justice's Court of Williams Judicial Township* (1937) 18 Cal.App 2d 420, 423. The right of one to appear and conduct his own case is not affected by the fact that she/he does not possess the appropriate license. Yet, the lower court has been reluctant to rule in a discretionary manner

which ensures that the plaintiff has been afforded due process.

First, Christian Plummer did have standing to bring the action before the lower court. Plaintiff, Edward Plummer, Jr presented evidence to the courts that Christian Plummer was not receiving notices from the court as he should have been, because the court sent said notices to the incorrect address. Further, Plaintiff has shown that after Christian Plummer was no longer a party, he was still receiving notices as if he were a party. CT, Vol. 3, pp. 789, 810, 824. Christian Plummer was removed from the case in 2018. Yet, these court documents were dated in the year of 2021. Thus, Edward Plummer, Jr and Christian Plummer were led to believe that either Christian was a party to the action or should be a party to the action due to inadvertence on the part of the court and the plaintiffs.

Second, considering the inadvertence on the part of the parties mentioned above plaintiff, Edward Plummer, Jr. should have been granted leave to amend his complaint for the following reasons: Notices to him were sent to an incorrect address as well. CT, Vol. 3, pp. 789, 808, 826. Self-represented litigants are not excused for not knowing the law. However, they are not required to have the ability to recognize mistakes, errors or other misleading information or practices by which they may be prejudiced. Further, no investigation has been conducted to determine the cause or motives for these errors. Only due process of law can mitigate such prejudicial errors.

Third, the preceding arguments layout a prima facie case for self-represented litigants being appointed counsel. However, if that is impractical, then every due process consideration available must be afforded self-represented litigants, including affording them the right or privilege of amending their complaint in the first instance. The practice and policy favoring amendments in the first instance is so ubiquitous in California courts, that such denial can hardly be justified; especially if the basis for the claim is meritorious. *Morgan v. Superior Court* (1959) 172 Cal.App. 2d 527, 530.

C. Standing

Though the primary argument is that the court has in fact denied Edward Plummer, Jr. due process in that it denied him leave to amend his complaint; and it is only fair to mention why the court did so. It is Plummer's understanding that the court presumptively decided that he did not have standing to bring the action. He has always maintained that he does, or should under California law, have standing to maintain his action. (Op. 5.) Edward Plummer, Jr. believes that there are several factors which, when viewed collectively, demonstrates his standing.

First, Appellant and Christian Plummer met with Kaiser staff regarding the appellant's interest and involvement in all matters associated with Kaiser and Gavin Plummer. The necessary documents were executed so that Appellant could be directly involved in Gavin Plummer's healthcare. (Op. 7.) By taking this action they, Christian and Edward Plummer, wanted everyone

associated with the defendants to know that it was their intent that Edward Plummer, Jr. be involved with all healthcare and legal matters associated with Gavin Plummer. These meetings occurred prior to the death of Gavin Plummer. Christian Plummer believed that he rightfully exercised his liberty rights, by including his dad Edward Plummer, Jr., in all matters now associated with Gavin Plummer.

Second, in April 2016 the appellant and Christian Plummer appeared as plaintiffs in the County of Alameda Superior Court before the Honorable Lawrence J. Appel and again discussed their liberty interest relative to the decedent, Gavin Plummer. During this proceeding, the Respondent/Defendants effectively forfeited their right to raise the issue of standing. During said proceeding respondents indicated that they had no objection to the plaintiffs representing themselves in this matter. The court recognized that the appellant has a "personal interest in the litigation's outcome."

Third, there is a genetic connection between the Edward Plummer, Jr., Christian Plummer, and Gavin Plummer which has never been in dispute. When viewed "collectively" all the considerations mentioned above, satisfies all reasonable "prudential" considerations required in the State of California. *Roos v. Honeywell International, Inc.*, (2015) 241 Cal. App. 4th 1472, 1484-1485.

The trial court should have recognized these "prudential" considerations and, at minimum, granted

plaintiff leave to amend so as to expound on them if necessary; seeing that each of these factors were before the trial court. Additionally, the plaintiff is further harmed by the trial court ignoring the fact that the defendants forfeited their opportunity to raise lack of standing as an issue. As previously mentioned, during a proceeding in the Alameda Superior Court in April 2016 when Christian and Edward Plummer, Jr were questioned and asserted their liberty interest in this matter and their intent to represent themselves in this action; the defendants had no objections. The issue of standing may be raised at any juncture in the litigation; but parties are not permitted mislead the court, or the opposing party, by indicating that standing is not an issue and later attempt to raise it as being an issue. *Diamond International Corp. v. Boas,* 92 Cal. App. 3d 1015, 1024 (1979.)

The court, in denying plaintiff leave to amend while being presumptive, overlooked his third-party rights; further denying him due process of law. The third-party rights principle has consistently been identified as discretionary but guided by constitutional concerns. The rationale begins with a common presumption: parties usually will be the

The court, in denying plaintiff leave to amend while being presumptive, overlooked his third-party rights; further denying him due process of law. The third-party rights principle has consistently been identified as discretionary but guided by constitutional concerns. The rationale begins with a common presumption: parties usually will be the best proponents of their own rights.

Principally, a litigant must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties. *Department of Labor* v. *Triplett*,(1990) U.S. 715, 720; *Singleton v. Wulff* (1976) 428 U.S. 106, 116, 118.

However, the Court has recognized the right of litigants to bring actions on behalf of third parties, provided three important criteria are satisfied: The litigant must have suffered an "injury in fact," thus giving him or her a "sufficiently concrete interest" in the outcome of the issue in dispute; the litigant must have a close relation to the third party; and there must exist some hindrance to the third party's ability to protect his or her own interests. *Powers v. Ohio* (1991) 499 U.S. 400, 410-411.

Additionally, freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment. *Santosky* v. *Kramer,* (1982) 455 U.S. 745, 753. Thus, the constitutional right of parents to make decisions regarding their children's upbringing, education and other life choices precludes the state from intervening, in the absence of clear and convincing evidence of a need to protect the child from severe neglect or physical abuse. Again, substantive due process forbids the government from infringing on "fundamental" liberty interests. *Reno v. Flores,* (1993) 507 U.S. 292, 301-302.

Finally, the courts of review in the State of California have been clear and succinct in terms of their directive to the lower courts regarding leave to amend. This policy is applied even more liberally to pro se litigants.

Appendix C

Stressing that pro se litigant are entitled to each and every procedural protection available, including the right to amend complaints. *Armstrong v. Rushing,* (9th Cir. 1965) 352 F. 2d 836, 837.

CONCLUSION

Review is warranted in this matter, and therefore should be granted. There should be uniformity within our judicial system. All litigants should be afforded equal protection of the law. Thus, the decisions of the lower courts in this matter should be reversed.

Respectfully submitted on this fifth day of November, 2024.

/s/ Edward Plummer, Jr
Edward Plummer, Jr.
In Pro Per

APPENDIX D — ORDER OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO, DATED OCTOBER 24, 2024

COURT OF APPEAL,
FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 2

Appeal No. A162565
Alameda County Super. Ct. No. RG14738005

EDWARD PLUMMER, JR.,

Plaintiff and Appellant,

v.

KAISER FOUNDATION HOSPITALS,

Defendant and Respondent.

BY THE COURT:

Appellant's petition for rehearing filed on October 10, 2024, is denied.

Date: 10/24/2024

/s/ Stewart, P.J.
Presiding Judge

APPENDIX E — PETITION FOR REHEARING IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO, FILED OCTOBER 10, 2024

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION TWO

No. A162565

EDWARD PLUMMER, JR.,

Plaintiff and Appellant,

v.

KAISER FOUNDATION HOSPITALS, A CALIFORNIA CORPORATION, *et al.*,

Defendants and Respondents.

Superior Court of California, County of Alameda
Case No. RG14738005
Hon. Jeffery Brand

PETITION FOR REHEARING

Edward Plummer, Jr. / In Pro Per
1658 Club Drive

Pomona, California 91768
edwplu@yahoo.com
(909)623-3756

Appendix E

TABLES INTENTIONALLY EXCLUDED

INTRODUCTION

The Appellant hereby requests a rehearing of the opinion rendered in this matter. The Court reviewed the trial court's ruling using the abuse of discretion standard. (Opn. p. 5.) The Appellant believes that a rehearing is warranted because the facts upon which the opinion is based are both incomplete and obscure and that the appropriate standard for review of this matter is de novo. The combination of these factors has resulted in what the appellant believes to be significant factual and legal errors thereby warranting review. Appellant believes that it is difficult, at minimum, to arrive at the correct analysis if the correct standard is not used or if the Court is lacking the appropriate facts. Further, the Appellant believes that there are serious questions of law associated with this matter that can only be appropriately addressed by review de novo.

The Appellant has always argued that the defendants have not complied with standard discovery procedures. The appellant has always argued that the trial court did not require the defendants to comply with said procedures. However, the plaintiff/appellant, at the behest of the defendants, was required by the court (and even sanctioned) to comply which each and every procedure of law. The Appellant has argued in this Court, and in the trial court, that his action cannot be effectively litigated if he is denied the right to conduct discovery as outlined in section 2017.010 of the California Code of Civil Procedure.

This is the reason why the Appellant argued that the trial court must govern according to well established judicial procedures. The trial court's failure to govern accordingly denies the Appellant equal protection of the law. (Opn. p. 2; see also AOB, p. 11.)

The Appellant has sought to explain his participation and the requisite participation of Christian M. Plummer, in this action. Again, the facts as alleged by the Respondents on this issue are incorrect, either through inadvertence or conscious efforts. It is difficult for any court to render the correct judgment if the facts, information which is true and accurate, are not presented. Therefore, the Appellant, pursuant to California Rules of Court, Rule 8.268, petitions this Court for a rehearing on this matter so as to correct any and all mistakes effecting his right to due process and equal protection of the law.

LEGAL DISCUSSION

THE APPLICLE STANDARD OF REVIEW IS DE NOVO

The Court has concluded that the Appellant failed to present a reasoned argument regarding his standing to bring this claim. (Opn. p. 5) Again, the trial court refused to have the defendants/respondents comply with the requisite discovery procedures as set forth in section 2017.010 *et seq.* of the California Code of Civil Procedure. It is more than presumptive for any court to say what would, or would not be revealed, through discovery. The Court is correct when it states that "plaintiff bears the burden

to show a reasonable possibility that amendment would cure the defect identified by the trial court." *(Ibid)* Said burden is placed upon the plaintiff with the understanding and expectation that the plaintiff will be afforded due process and equal protection. Appellant cannot meet this expectation if the Court allows the trial court to govern in such a matter as to suggest that one party is favored over another, or when it comes to the defendants it connives. Trial courts engage in many procedures in which one judicial officer decides an issue. Often there are no cameras or other recording devices present or operating. Thus, the trial courts must operate beyond reproach and with the upmost degree of integrity. A "fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison,* 349 U.S. 133, 136, (1955.) Not only is a biased decisionmaker constitutionally unacceptable but "our system of law has always endeavored to prevent even the probability of unfairness." *In re Murchison, supra at 136.*

To illustrate the Appellant's point regarding "incomplete and obscure' facts, the Appellant requests that the Court simply review the statement within its opinion which reads as follows: "The trial court issued a tentative ruling that the Grandfather did not contest." (Opn. p. 2.) The Appellant argues that this fact is "incomplete or obscure because the Court believes that the Appellant (1) knew that a tentative had been issued (2) knew that he could contest it (3) knew the time constraints regarding contesting the tentative. The Appellant was not aware of the issuance of the tentative, nor any other factors associated with the issuance. This question, and other so like, are questions of facts which are disputable

and therefore in the absence of direct evidence should be determined to be inconclusive. (Evid. C, sec. 410.) The Appellant has clearly stated that he brought his concerns before the trial court regarding defendants' unprofessional, and perhaps illegal, conduct; and that the trial court seemed reluctant to address those issues. In fact, there is no evidence that the trial court addressed any of those issues; despite said conduct being prejudicial to the Appellant; thereby affecting his right to equal protection of the law. (AOB, pp. 11, 12.) It is a fact that courts make mistakes. The lower court determined Appellant to be in default when he initiated this appeal. This was a mistake. (CT., Vol. 3, p. 826.) Christian Plummer was noticed as a party. Was this a mistake? (CT., Vol. 3. pp. 787, 790, 827.) There are only two answers. One, the trial court continued to view Christian Plummer as a party. Two, the trial court made a mistake. If the trial court has erred, those errors should be addressed and the matter remanded if said errors have adversely affected any party. Only a review de novo can address the factual issues, and the collateral legal questions, outlined in this petition.

If the court erred in continuing to view Christian Plummer as a party, how can the same court say that the Appellant cannot make a request that it review a mistake made through inadvertence due to procedural mistakes. A request does not rise to the level of a motion or an order.

The Appellant's Opening Brief is carved in a manner which suggest that all statements made in the Argument and Conclusion sections reference some issue of significance which the Court should address.

Appendix E

One of the primary issues mentioned and addressed in the Court's opinion is that of standing. The Court has addressed the issue (Opin. P. 5) Appellant's appeal focused on the abuses mentioned above. (AOB, p. 11-12.) The Appellant desired not to confuse or overwhelmed the Court. Yet, the Appellant realizes that perhaps his lack of skill in drafting pleadings has taken the Court in a direction that it would not have otherwise taken, The Appellant believes that there are several factors, which when viewed collectively, suggest that the Appellant has standing.

Appellant and Christian Plummer met with Kaiser staff regarding the Appellant's interest and involvement in all matters associated with Kaiser and Gavin Plummer. The necessary documents were executed so that Appellant could be directly involved in Gavin Plummer's healthcare. (Opin. P.7.) Again, because the trial court refused to allow the Appellant to subject Regina Smith and other Kaiser employees (those associated with said transaction) to the discovery processes, the Appellant does not have the "evidence" alluded to by the Court. *(Ibid.)* One of the arguments Defendants put forth for not cooperating with the discovery process was that their employees were "pinnacle employees." (CT. Vol., I, p 227.) Again, the trial court did not compel cooperation.

The second factor to be considered is that this issue was discussed in the initial proceeding. During that proceeding the Defendants/Respondents waived their right to raise the issue of standing. (ARB, p. 8.) The issue of standing may be raised at any juncture in the litigation;

but parties are not permitted mislead the court, or the opposing party, by indicating that standing is not an issue and later attempt to raise it as being an issue. *Diamond International Corp. v. Boas,* 92 Cal. App. 3d 1015, 1024 (1979.)

These two factors alone raise a valid question of law as to the possibility that Appellant may have standing in this matter. That legal question should be addressed under review de novo.

Yet, there is a third factor which, when viewed with the two preceding factors, explain why the Appellant should have standing in this matter. There are serious constitutional concerns that must be addressed prior to any court concluding that a party does not have standing. This is particularly true as to this case. Did the court address any of those concerns? If the court uses a procedure by which the liberty rights of certain litigants are ignored or suppressed, review de novo is warranted. In *Pierce v. Society of Sisters,* 268 U. S. 510, a state statute required all parents (with certain immaterial exceptions) to send their children to public schools. A private and a parochial school brought suit to enjoin enforcement of the act on the ground that it violated the constitutional rights of parents and guardians. No parent or guardian to whom the act applied was a party or before the Court. The Court held that the act was unconstitutional because it "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control." *Pierce v. Society of Sisters,268* U.S. 510, 534-535 (1925.)" Substantive due process forbids the

government from infringing on "fundamental" liberty interests. *Reno v. Flores,* 507 U.S. 292, 301-302, (1993)

In assessing standing, California courts are not bound by the "case or controversy" requirement of article III of the United States Constitution, but instead are guided by "prudential" considerations. *Matrixx Initiatives, Inc. v. Doe,* 885 Cal. App. 4th 877, 878 (2006.) "California decisions generally require a plaintiff to have a personal interest in the litigation's outcome." *Torres v. City of Yorba Linda* 13 Cal. App.4th 1035, 1046 (1993.)

Considering that both Christian Plummer and Edward Plummer, Jr. possess the liberty interest mentioned above. Also, consider that Christian Plummer and the Appellant did discuss their liberty interests with respect to Gavin Plummer with Kaiser staff; specifically, Regina Smith (Patient Services) and the attending medical personnel. These meetings occurred prior to the death of Gavin Plummer. Further, in April 2016 the Appellant and Christian Plummer appeared as plaintiffs in the County of Alameda Superior Court before the Honorable Lawrence J. Appel and again discussed their liberty interest relative to the decedent, Gavin Plummer. During this proceeding, as previously mentioned herein, the Respondent/Defendants effectively waived their right to raise the issue of standing. During said proceeding respondents indicated that they had no objection to the plaintiffs representing themselves in this matter. The Court is aware that the Appellant has a "personal interest in the litigation's outcome." Further, there is a genetic connection between the Appellant, Christian Plummer,

and Gavin Plummer which when viewed "collectively" with all the considerations mentioned above, satisfies all reasonable "prudential" considerations alluded to in *Matrrix, supra* p. 10.

"A parent's right to care, custody and management of a child is a fundamental liberty interest protected by the federal Constitution that will not be disturbed except in extreme cases where a parent acts in a manner incompatible with parenthood. *In re Marquis D.*, 38 Cal.App.4th 1813, 1828 (1995.) Freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment. *Santosky v. Kramer,* 455 U.S. 745, 753 (1982.) Thus, the constitutional right of parents to make decisions regarding their children's upbringing, precludes the state from intervening, in the absence of clear and convincing evidence of a need to protect the child from severe neglect or physical abuse. Are these parental constitutional rights abated postmortem? This is a legal question that should be reviewed de novo. Again, substantive due process forbids the government from infringing on "fundamental" liberty interests. *Reno v. Flores,* 507 U.S. 292, 301 302 (1993.)

A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review." *Kapsimallis v. Allstate Ins. Co.,* 104 Cal.App.4th 667, 672 (2002.)

Appendix E

CONCLUSION

Christian M. Plummer is a combat veteran who has been diagnosed with Post Traumatic Stress Disorder due to his military service prior to the birth of Gavin. This personal information need not be disclosed for purposes argued herein. It is mentioned because the Appellant and others who have a material interest in this matter do not believe that the California legislature intended to deprive any American citizen, and certainly not any citizen similarly situated as Christian Plummer, of the free exercise of his/her liberty rights with respect to his or her family. Therefore, it is respectfully requested that the Court grant a rehearing, adjudicate de novo the questions of law presented, and remand the case to the superior court for further proceedings consistent with the Court's opinion.

Dated: October 10, 2024, Respectfully submitted,

/s/Edward Plummer, Jr.
Edward Plummer, Jr.

APPENDIX F — OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO, FILED SEPTEMBER 25, 2024

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

A162565
(Alameda County Super. Ct. No. RG14738005)

EDWARD PLUMMER, JR.,

Plaintiff and Appellant,

v.

KAISER FOUNDATION HOSPITALS, *et al.*,

Defendants and Respondents.

Filed September 25, 2024

This litigation arises out of the death of four-year-old Gavin Plummer, who received treatment for cancer from defendants Kaiser Foundation Hospitals and Kaiser Foundation Health Plan, Inc. (collectively Kaiser). The trial court granted Kaiser's motion for judgment on the pleadings on the ground that Gavin's grandfather Edward Plummer, Jr. (Grandfather) lacks standing to bring claims arising from Gavin's death. Grandfather argues on appeal that the court erred by denying him leave to amend his

complaint to pursue the action in conjunction with Gavin's father Christian Plummer (Father)—against whom judgment was entered in 2016. We shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This is the second appeal in this litigation. As we recounted in our first opinion, Edward Plummer Jr. and Christian Plummer, representing themselves, filed this action against Kaiser in 2014 after the death of four-year-old Gavin. (*Plummer v. Kaiser Foundation Hospitals* (July 10, 2018, A149662) [nonpub. opn.] [2018 Cal. App. Unpub. LEXIS 4671, 2018 WL 3359010, *1] (*Plummer I*)). Kaiser moved for summary judgment. (*Ibid.*) The trial court denied plaintiffs' request for a continuance to conduct additional discovery (Code Civ. Proc., § 437c, subd. (h)), granted Kaiser's motion, and entered judgment for Kaiser in 2016. (*Ibid.*) Grandfather Edward Plummer Jr. appealed, but Father Christian Plummer did not. (*Id.* at *1, fn. 2.) In *Plummer I*, we held the trial court abused its discretion by denying the continuance, vacated the judgment against Grandfather, and remanded for further proceedings. (*Id.* at *4-5.)

On remand, Grandfather sought to bring Father back into the case. He filed a 10-line ex parte request for an order allowing amendment to the complaint to "join [Father] as a plaintiff," stating that Father had recently appeared at a hearing and "is an indispensable party and materially interested in this action." On August 15, 2019, the trial court (Honorable Robert McGuiness) initially granted Grandfather's request without waiting for a

response, but then denied it after Kaiser immediately filed an objection and the matter could be briefed and heard. The trial court issued a tentative ruling that Grandfather did not contest, and it became the order of the court denying the motion to amend complaint. The order, filed September 24, 2019, stated that "the only Complaint in this action was filed on August 25, 2014," and the request was moot because Father was already a named plaintiff; moreover, Grandfather was not the proper party to attack the judgment against Father and had not shown Father was an indispensable party to Grandfather's own claims.

On August 21, 2020, Kaiser moved for judgment on the pleadings on the ground that Grandfather did not have standing to bring claims arising from Gavin's death because the complaint admitted Gavin's father was still living and thus Grandfather could not state facts sufficient to constitute a cause of action against Kaiser. Grandfather—now represented by counsel—filed an opposition in which he defended *Father's* standing, asserting that "the lack of standing issue has occurred because of a clear error" and it was a "mistake[]" if Father was "not included in the appeal." On September 22, 2020, the trial court (Honorable Jeffrey Brand) granted Kaiser's motion.[1]

On October 23, 2020, Grandfather filed a motion for reconsideration of the order granting judgment on the pleadings. He asserted that Father had transferred his

1. We augment the record on our own motion to include this minute order. (Cal. Rules of Court, rule 8.155(a)(1)(A).)

claims to a trust controlled by Grandfather, and that these were "different facts and circumstances" from the time Kaiser's motion for judgment on the pleadings was granted one month earlier.

By order dated December 1, 2020, the trial court granted the motion for reconsideration but affirmed its order granting judgment on the pleadings. The court stated, "On reconsideration, the court affirms the order of 9/22/20. The order held that Grandfather had no standing under CCP 377.60 to sue for wrongful death. That has not changed. The order held that Father's claim was dismissed in the [summary judgment] order of 7/18/16 and Father did not appeal. That has not changed. [¶] Grandfather through the motion for reconsideration seeks to amend the complaint to add a claim on behalf of the newly formed Trust. Grandfather the individual is the plaintiff in this case. . . . Grandfather, as trustee for the Trust, represents different interests and is not a plaintiff in this case. [Citation.] [¶] In addition, the Trust does not appear to hold viable claims. Father may not revive his claims by transferring the claims to the trust so that Grandfather as trustee can pursue the claims. Father's claims were dismissed as of 7/18/16, and Father transferred those dismissed claims to the trust."

Judgment was entered against Grandfather on February 16, 2021. Once again representing himself, Grandfather moved to vacate the judgment, which the trial court denied on April 29, 2021. Grandfather appealed.

Appendix F

DISCUSSION

Grandfather, representing himself, contends that this appeal presents two issues: "a) Did the trial court commit a reversible error in granting Appellant's Request for Order Allowing Amendment To Complaint and then reversing said order upon objection by the Defendants?" and "b) Did the trial court abuse its discretionary power when it denied Plaintiffs' Complaint without leave to amend said complaint?" He does not address the trial court order affirming judgment on the pleadings following reconsideration or the court order denying his subsequent motion to vacate the judgment. Grandfather has forfeited any challenge to those rulings by failing to present any reasoned argument about them on appeal. (*Vitug v. Alameda Point Storage, Inc.* (2010) 187 Cal.App.4th 407, 412, 113 Cal. Rptr. 3d 782 (*Vitug*).)

As we will explain, Grandfather fails to show the trial court abused its discretion by denying him leave to revive Father's claims by amending the complaint, and he has forfeited any argument that he has direct standing to pursue this action.

A. *Applicable Law and Standard of Review*

In furtherance of justice, the court may "allow a party to amend any pleading . . . by adding or striking out the name of any party." (Code Civ. Proc., § 473, subd. (a)(1).) Applying this provision, "courts have permitted plaintiffs [found] to lack standing . . . to substitute as plaintiffs the true real parties in interest." (*Branick v. Downey Savings*

& Loan Assn. (2006) 39 Cal.4th 235, 243, 46 Cal. Rptr. 3d 66, 138 P.3d 214 (*Branick*).) "Amendments for this purpose are liberally allowed." (*Ibid.*)

Still, "a court has ample discretion to deny a motion for leave to amend where a proposed amendment is legally futile": in other words, where the facts are not disputed and the nature of the claim is clear, but the law does not recognize liability and no amendment would change that. (*Jo Redland Trust, U.A.D. 4-6-05 v. CIT Bank, N.A.* (2023) 92 Cal.App.5th 142, 161-162, 309 Cal. Rptr. 3d 339 (*Redland Trust*).) We review the trial court's ruling for abuse of discretion. (*Branick, supra*, 39 Cal.4th at p. 242.) The plaintiff bears the burden to show a reasonable possibility that amendment would cure the defect identified by the trial court. (*Redland Trust, supra*, 92 Cal.App.5th at p. 162.)

B. *Analysis*

Grandfather insists he never conceded he lacks standing to bring claims arising from Gavin's death. But he presents no reasoned argument and cites no authority to show he does have standing. Grandfather has forfeited this issue. (*Vitug, supra*, 187 Cal.App.4th at p. 412.)

Rather than defend his own standing to bring this action, Grandfather seeks to maintain it by joining Father. However, as the trial court observed, Father is already a party: he was named as a plaintiff in the original complaint. The trial court entered judgment against Father in 2016, and Father did not appeal. Under

these circumstances, "adding" Father as a plaintiff or substituting him for Grandfather would be futile. Grandfather fails to explain how amending the complaint would cure his own lack of standing or avoid the judgment against Father. Without such explanation, Grandfather "cannot satisfy his burden to show a reasonable possibility he could cure the complaint's standing defect, and the trial court did not abuse its discretion in denying leave to amend." (*Williamson v. Genentech, Inc.* (2023) 94 Cal. App.5th 410, 418, 311 Cal. Rptr. 3d 855.)

Grandfather claims it was inadvertent that Father did not appeal the judgment entered in 2016 after the trial court granted Kaiser's motion for summary judgment against Grandfather *and* Father. (This is Grandfather's appeal that resulted in our opinion in *Plummer I.*) But he points to no record evidence establishing Father's intent in this regard and does not explain why Father himself never sought to vacate the judgment against him and continue the action. (See Code Civ. Proc., § 473, subd. (b) [trial court may relieve a party "from a judgment . . . taken against him or her" through "mistake, inadvertence, surprise, or excusable neglect"].)

Grandfather seems to believe he may represent Father's interests in this matter so that Father does not need to participate directly, but in this he is mistaken. The right to represent oneself in propria persona in civil proceedings "is firmly embedded in California jurisprudence." (*Baba v. Board of Supervisors* (2004) 124 Cal.App.4th 504, 526, 21 Cal. Rptr. 3d 428.) But a litigant who is not an active member of the State Bar has no right

to represent the interests of another person. (*Hansen v. Hansen* (2003) 114 Cal.App.4th 618, 621, 7 Cal. Rptr. 3d 688.) "By definition, one cannot appear in 'propria' persona for another person." (*Drake v. Superior Court* (1994) 21 Cal.App.4th 1826, 1830, 26 Cal. Rptr. 2d 829.) "In line with that prohibition, courts have held . . . that a nonattorney mother cannot represent her minor son in propria persona in a paternity action [citation], a juvenile cannot have his nonlawyer father assist in his defense or represent him [citation], and a nonlawyer representing his mother's estate as conservator and executor cannot appear in propria persona on behalf of the estate." (*Id.* at pp. 1830-1831.) By the same token, Grandfather cannot represent Father in propria persona to bring claims arising from Gavin's death.

Grandfather contends he advised the trial court that Kaiser was notified he would be acting on Father's behalf "when and where necessary." He refers to an "allegation" that Father authorized him to discuss Gavin's medical condition with and receive Gavin's medical records from Kaiser. Grandfather points to no record evidence supporting these assertions, and the complaint does not allege any such facts. In any case, even assuming this is all true, the fact that Father wanted Grandfather to be informed about Gavin's medical care does not mean Grandfather is entitled to bring this litigation on Father's behalf in propria persona. As we have discussed, he is not.[2]

2. In his reply brief, Grandfather argues for the first time that we should apply the doctrines of unclean hands and judicial estoppel to bar Kaiser from challenging his standing. "We need not, and typically do not, address arguments raised for the first

Grandfather further contends that Father is an indispensable party to the action. But this is incorrect. As we have stated, Father *is* a party. He has appeared in the case and there is a judgment against him. As such, whatever claims Father may have had do not create a risk that the parties cannot obtain complete relief or may incur inconsistent obligations, and it cannot be said that Father's own interest has been impeded "in his absence"—not in the way those terms are used in the relevant statute. (See Code Civ. Proc., § 389, subd. (a).)

According to Grandfather, Kaiser has made Father indispensable by arguing that "the action must be dismissed if [he] is not a party." What Kaiser has argued is that Grandfather lacks standing to bring this lawsuit. A defect in Grandfather's asserted claims does not entitle him to pursue claims that belong to Father on the theory that Father is "indispensable" to Grandfather's objective in the colloquial sense.

In sum, Grandfather does not show that amending the complaint would salvage his own claims or Father's. The trial court was within its discretion to deem the proposed amendment futile and deny the requested "joinder." (See *Bianka M. v. Superior Court* (2018) 5 Cal.5th 1004, 1018, 236 Cal. Rptr. 3d 610, 423 P.3d 334 [ruling on joinder reviewed for abuse of discretion].)

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time in a reply brief." (*People v. Wilson* (2023) 14 Cal.5th 839, 872, fn. 11, 309 Cal. Rptr. 3d 211, 530 P.3d 323.) We decline to address these arguments.

Appendix F

DISPOSITION

The judgment is affirmed.[3] Each party shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

Miller, J.

WE CONCUR:

Stewart, P. J.

Richman, J.

3. Given our ruling, we need not address Grandfather's request that we issue a stay. Finally, Grandfather appears to claim Kaiser has not paid the costs of his appeal in *Plummer I*. This issue is not before us in this appeal, and Grandfather fails to provide a record demonstrating what he has done to secure and enforce an award of costs (see Cal. Rules of Court, rule 8.278, subd. (c)).

APPENDIX G — OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO, FILED JANUARY 4, 2024

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

Case Number: A162565
Superior Court Case No. RG14738005

EDWARD PLUMMER JR., AN INDIVIDUAL,

Plaintiff/Appellant,

vs.

KAISER FOUNDATION HOSPITALS *et al.*,
CALIFORNIA CORPORATIONS,

Defendants/Respondents.

Filed January 4, 2024

On Appeal from the Superior Court
County of Alameda
The Honorable Jeffery Brand

APPELLANT'S OPENING BRIEF

[TABLES INTENTIONALLY OMITTED]

Appendix G

I. STATEMENT OF APPEALABILITY AND JURISDICTION

This is the second occasion on which the parties are coming before this Court. Previously, the plaintiff appealed to this Court under the same case name, Plummer v, Kaiser Foundation Hospital *et al.* (A 149662, A150537, A150538.) after the trial court denied Plaintiffs request for a continuance and sustained Defendants' motion for summary judgment. The trial court's judgments were vacated. The matter was remanded to the trial court. Though the Plaintiff made every attempt to comply with the Court's order or disposition, the Defendants did not; which in part is the reason for the parties coming before this Court at this time.

Pursuant to the *Code of Civil Procedure*, §904.1 (a) (I) Edward Plummer, Jr., (hereinafter the "Appellant" or "Plaintiff',) appeals from the judgment following the granting of Defendant/Respondent Kaiser Foundation Hospital *et al* (hereinafter "Kaiser", "Defendant" or "Respondent") motion for judgment on the pleadings. Said judgment was signed on February 16, 2021, and the notice of entry was served by the clerk on March 04, 2021 (CT. Vol 3, p.687.) Plaintiff fded a Motion and Notice of Motion to Vacate Judgment and Enter Different Judgment on March 09, 2021. (CT. Vol. 3, p. 688.) On April 29, 2021, said motion was denied. (CT. Vol. 3, p. 783.)

Plaintiffs notice of.appeal was filed on April 30, 2021, within the time limits outlined in *California Rules of Court, Rule 8.104.* (CT. Vol 3, p. 788.) Thus, the appeal is timely.

Appendix G

II. STANDARD OF REVIEW

A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review. *Kapsimallis* v. *Allstate Insurance Company* (2002) Cal.App. 4th. 667,672. A judgment on the pleadings favoring the defendant is only appropriate when the complaint fails to allege facts sufficient to state a cause of action. *(Code of Civ. Proc.*, § 438, subd.(c)(1)(B)(ii.) It is practical to say that the Court assumes the role of the trial court and applies the same rules and standards which govern the trial court's determinations. (*Lenane* v. *Continental Maritime of San Diego* (1998) 61 Cal. App. 4th 1073, 1079.)

The Court should not decide disputed issues, especially when the credibility of a witness may be involved. A motion for judgment on the pleadings does not depend on questions of a witness's credibility or conflicts in the evidence. The motion must be denied if there are material factual issues that require evidentiary resolution. *Schabarum* v. *California Legislature* (1998) 60 Cal. App. 4th 1205, 1217. Our Court has stated that it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows that there is a reasonable possibility that a defect identified by the defendant can be cured by amendment. *Aubry* v. *TriCity Hospital District* (1992) 2 Cal. 4th. 962, 966-967.

III. INTRODUCTION

This case involves the needless suffering and wrongful death of Gavin Plummer, a minor. The Appellant, along

with Plaintiff, Christian Plummer, alleged that the suffering and death of Gavin Plummer was the result of the Defendants' negligent medical practices, and their reluctance to refer Gavin to St. Jude's Children Research Center. Gavin's medical diagnosis was Wilm's tumor. The Appellant has been informed that said medical condition is one that affects the kidneys of minors, but is not fatal provided that detection occurs during the early stages of the illness and the appropriate medical attention is provided.

The Appellant and Christian Plummer met with Kaiser staff regarding Gavin's medical condition. At all times mentioned herein, Kaiser's administrative staff was, or were, aware that Christian Plummer had provided Kaiser with the requisite authorization needed to fully discuss Gavin's medical condition with the Appellant. Additionally, said authorization also included providing the Appellant with any and all requested medical records. Further, said staff knew, or should have known, that the Appellant was, and would be, involved in the medical care and medical decisions relative to Gavin. At no point prior Gavin's death did any employee object to the Appellant's involvement in the medical care, concerns and medical decisions of Gavin Plummer.

IV. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

Plaintiffs, Christian Plummer and Edward Plummer, Jr., filed their one and only complaint in this action on August 25, 2014. (CT. Vol. 1, p 10.) The complaint stemmed

from the suffering and death of Gavin Plummer while under the care, control, and contract of the defendants Kaiser Foundation Hospitals and Kaiser Health Plan, Incorporated. Gavin was born on October 27, 2008. Immediately upon birth Gavin was enrolled in one the health care plans offered by Kaiser Health Plan Incorporated. Gavin remained enrolled as a member of the Kaiser Health Plan until his death on May 30, 2013. Gavin was born in a Kaiser Foundation Hospital and died in a Kaiser Foundation Hospital. Between October 27, 2008 and May 30, 2013 Gavin's health care needs were provided by Kaiser Foundation Hospitals or those providers associated with Kaiser Health Plan. Specifically, on May 17, 2010, Gavin was examined by Kaiser healthcare professionals in Livermore, California. Though on that date he was determined to be in fairly good health, beginning on July 16, 2010 Gavin began to exhibit signs of physical distress which required repeated trips to Kaiser medical facilities. Ultimately, on or about August 10, 2010, Gavin was determined to have a 12.5 cm solid mass tumor near his right kidney. The diagnosis was Wilms tumor. Nearly three months elapsed before the defendants detected that Gavin Plummer was suffering from a life-threatening illness. Three years after Gavin Plummer began suffering from the physical pains associated with Wilms tumor, which exhibited a large solid mass measuring 12.5 cm at the time of detection, and in spite of the plaintiffs' attempts to have Gavin transferred to a specialty hospital outside of the Kaiser group, Gavin Plummer died at the Kaiser Foundation Hospital, Main Campus, located in Oakland, California on May 30, 2013.

Appendix G

This litigation surrounding Gavin Plummer's suffering and untimely death was initiated May 17, 2014 when plaintiffs provided the defendants with a Notice of Intent to sue. On August 25, 2014, the plaintiffs filed the action currently on appeal known as Plummer v. Kaiser Foundation Hospitals *et al.* Specifically, Kaiser Foundation Hospitals and Kaiser Health Plan, Incorporated were named as defendants due to the questionable degree of care and control exercised by the defendants relative to Gavin Plummer until his death, and an agreement which plaintiffs believe was violated by the defendants. The plaintiffs filed their civil action on August 25, 2014 alleging the following causes of actions: wrongful death, medical negligence, abandonment of patient, and breach of contract. (CT. Vol. 1, p. 10-14.) The defendants filed an answer to the complaint on September 29, 2014 (CT. Vol. p. 15-20.) On September 25, 2015, the plaintiffs were deposed by the defendants; the plaintiffs were represented by Stephen R. Pappas, Attorney at Law. The defendants subsequently responded to the complaint by filing a motion for summary judgment on or about April 28, 2016. Although the plaintiffs opposed the motion, the trial court granted the defendants' motion. (CT. Vol 1, p. 21.) Subsequent to entry of judgment a timely appeal was filed by the plaintiff. However, while attempting to prepare the record for the appeal, Plaintiff discovered that there was no record of the oral argument which occurred during the hearing on the tentative ruling. The plaintiff/appellant sought leave to prepare a settled statement. The defendants opposed the motion for leave to prepare a settled statement. The trial court denied Plaintiffs' motion. On or about July 10, 2018, the Court ruled on the Appellants' appeal. Said ruling

vacated the judgments of the lower court and the case was remanded to the trial court for further proceedings. (CT. Vol. p.52-60.) The Remittitur was filed on September 17, 2018. (CT. Vol. 1, p. 73.)

When other proceedings began the plaintiffs were informed that Christian Plummer was no longer a party to the action. The plaintiffs were informed that the manner in which the appeal was drafted precluded Christian Plummer from being included in the action once the matter was remanded to the trial court. On August 12, 2019 the appellant filed a Request For Order Allowing Amendment to Complaint. (CT. Vol, 1, p. 97.) The request was to have Christan Plummer joined to the action. All matters which removed him from the action were the result of inadvertence and he is an indispensable party to this action. Initially, on August 15, 2019, the court granted the Appellant's request. (CT. Vol. I, p. 89.) However, on or about August 20, 2019, the Defendants filed an objection to the Order (CT. Vol I, p. 92.) The court reversed the order thereby removing Christian Plummer from the action. On December 19, 2019 Appellant filed an Ex Parte Application For Recall Of Order. (CT. Vol. I, p. 503.) On December 20, 2019 Defendants filed an opposition to the Ex Parte Application. (CT. Vol. I, p. 514.) The Ex Parte Application was denied. (CT. Vol. I, p. 518.) On or about December 31,2019 a Substitution of Attorney-Civil was filed on behalf of the Plaintiff/Appellant. (CT. Vol. I, p.534.) On or about August 21,2020, Defendants filed a Notice of Motion and Motion For Judgment On The Pleadings. (CT. Vol.1, p. 536.) Said motion was granted on February 16, 2021. Plaintiffs counsel did file a Motion For Reconsideration on October

23, 2020. (CT. Vol. III, p. 560.) Said motion was granted in part on December 01,2020. (C T Vol. p. 607.) On February 16, 2021, the court decreed that Plaintiffs Complaint be dismissed with prejudice. Notice of entry was served by the clerk on March 04, 2021 (CT. Vol 3, p.687.) Plaintiff filed a Motion and Notice of Motion to Vacate Judgment and Enter Different Judgment on March 09, 2021. (CT. Vol. 3, p. 688.) On April 29, 2021, said motion was denied. (CT. Vol. 3, p. 783.)

V. ISSUES PRESENTED

a) Did the trial court commit a reversible error in granting Appellant's Request For Order Allowing Amendment To Complaint and then reversing said order upon objection by the Defendants?

b) Did the trial court abuse its discretionary power when it denied Plaintiffs' Complaint without leave to amend said complaint?

VI. ARGUMENT

A. Appellant contends that the trial court committed a reversible error when it ultimately denied the Appellant's Request For Order Allowing Amendment To Complaint.

The court initially ruled well within its discretion when it granted the Appellant's request. *Code of Civil Procedure*, § 473(a)(1)(b.) Joinder of all persons as plaintiffs in one action is permissive. *Code of Civil*

Procedure, §378(a)(1)(2)(b.) Defendants have attempted to dissuade the court from using its discretionary power to join Christian Plummer to the current action due to their inteipretation of *Code of Civil Procedure*, § 364. This is the first disputable fact on which this action should not be denied without leave to amend. The Appellant advised the Court that Christian and Edward Plummer, Jr met simultaneously with the administrative staff at the Kaiser facility in Oakland, California. At which time said staff was notified that when and where necessary Edward Plummer, Jr. would be acting on his behalf Proper authorization form(s) were executed in the direct presence of said staff Thus, when the Defendants received the requisite timely notice from Edward Plummer, Jr. pursuant to section 364, he was in fact making such notification not only on his behalf, but on behalf of Christian M. Plummer as well. Because the plaintiffs have alleged that they had an agreement with the Defendants regarding this issue, Christian Plummer should be joined to this action. *Vanoi* v. *County of Sonoma* (1974) 40 Cal. App. 3d 743, 746.

The objection to the omission of an indispensable party is so fundamental that it need not be raised by the parties themselves; the court may, of its own motion, "refuse to proceed, until the indispensable parties" are joined. *Bank of Orient* v. *Superior Court* (1977) 67 Cal. App. 3d 588.595-596. The Defendants have defined Christian Plummer as being indispensable in that they have argued that the present action must be dismissed if Christian Plummer is not a party. Joinder of proper parties in a civil action promotes the full and efficient administration of justice and protects the interests of all parties having a material interest in the case and ensures due process.

B. Appellant contends that the trial court abused its discretionary power when it denied Plaintiffs' Complaint without leave to amend.

In the State of California, and certainly within the halls of justice thereof, the law is settled and well established that our courts "may in the furtherance of justice" allow a party to amend a pleading. Further, the court may upon any terms that may be just relieve a party from a judgment, dismissal, or order taken against him through his mistake, inadvertence or excusable mistake. *Code of Civil Procedure,* § 473(a)(1)(b.) Leave to amend is freely granted unless the opposing party makes a showing of undue prejudice, harm, bad faith, or dilatory motive on the part of the moving party. *Sonoma County Association of Retired Employees* v. *Sonoma County* (9th Cir. 2013) 708 F3d 1109, 1117. The Defendants have not argued that in joining Christian Plummer to this action induces undue prejudice *Sonoma County* (9th Cir. 2013) 708 F3d 1109, 1117. The Defendants have not argued that in joining Christian Plummer to this action induces undue prejudice toward either party. Further, both Christian and Edward Plummer, Jr. have appeared pro se in this action for several years. Counsel was retained for a brief period of time after the Defendants accused the Appellant of "attempting to practice law without a license." (CT. Vol. 1, p. 93.) The appellant viewed this allegation as a threat to his civil action and his liberty rights; realizing that practicing law without the proper authorization could result in sanctions or perhaps criminal allegations; seeing that Defendants cited *Business and Professions Code* section 6125. Defendants specifically indented the

section which inferred that the Appellant was committing or attempting to commit a misdemeanor. *(Ibid*, p. 94.) Further, Defendants seemed annoyed and vengeful after the Court's ruling on or about September 13, 2018, stating that the "First District remanded the case on very narrow grounds." The Appellant brought his concerns before the court. The court seemed reluctant to address those issues. (CT. Vol. II, p. 446.) As with any abuser, without sanctions from a person or entity which he/she views as an authority figure, the abuse became increasingly worse. Therefore, counsel was retained primarily to thwart off the threats and abuse. The Appellant has always believed that he can effectively prosecute this phase of the litigation as a *pro se* litigant because he is acutely aware of the facts upon which the action is premised. Further, the Appellant does not have the monetary funds to retain the degree of representation that is needed at this juncture. What the Appellant needs to effectively litigate this action is the requisite oversight from the lower court so as to assure that no party is behaving in a manner akin to those in a boxing ring. That would include first and foremost the court construing the Plaintiffs' complaint in the light most favorable to them. *Barker* v. *Riverside County Office* o/Education (9th Cir. 2009) 548 F3d 821,824. Second, that the court construe pro se complaints liberally when evaluating the merit of their complaints. *Hebbe* v. *Pliler* (9th Cir. 2010) 627 F3d 338, 341-342.) *(Cohen* v. *Five Brooks Stable* (2008) 159 Cal. App. 4th 1476, 1483) Third, that the court rule in a manner that is consistent with due process; affording equal protection to all parties. The courts must have a preference to resolve cases on merit as opposed to procedural default. {*Harding* v. *Collazo* (1986)

177 Cal. App. 3d 1044, 1061.) Judges must not abrogate their duty to see that a miscarriage of justice does not occur due to omissions or defects. *(Lombardi* v. *Citizen National Trust and Savings Bank* (1951) 137 Cal. App. 2d 206, 209) The notices be made clear and understandable to those representing themselves. *(Garnet* v. *Blanchard* {2001) 91 Cal. App. 4th 1276, 1284.

CONCLUSION

For all the reasons outlined above, and due the false and misleading statements made by the defendants the Court should grant the Plaintiffs appeal. Statements contained in the document(s) attached hereto in the form of an Exhibit clearly attests to the fact that the Defendants attempted to interfere or perhaps obstruct the Appellant from proceeding with this legal matter. Therefore, the Appellant is requesting that the Court scrutinize any and all declarations filed by the defendants. Said Exhibit(s) clearly illustrates the conduct of the defendants as argued herein. Said documents contain information which is misleading if not absolutely false. The Court has reviewed some of these documents. Appellant believes that the evidence relative to the issue in the attached documents clearly show that the Appellant was at all relevant times being truthful and accurate. The Appellant will seek leave to augment the record if necessary. Additionally, the Appellant has never advised or confided in anyone that he does not have standing in this action. Nor is that his belief or understanding. Further, Appellant is requesting that this matter be stayed until the Defendants comply with the Courts previous disposition in Plaintiffs previous

appeal and that this matter remain stayed until the Court makes a determination if the actions of the Defendants were designed to obstruct and or deter the Appellant from proceeding with this appeal. Last, the Appellant believes that the foregoing arguments provide compelling reasons why the judgments of the lower court should be reversed.

Dated: January 3, 2024

Respectfully submitted,

/s/_____
Edward Plummer, Jr.

APPENDIX H — APPELLANT'S REPLY BRIEF IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO, FILED ON MAY 31, 2024

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

Case No. A162565

Superior Court Case No. RG14738005

EDWARD PLUMMER, JR.,

Plaintiff/Appellant,

v.

KAISER FOUNDATION HOSPITALS,
A CALIFORNIA CORPORATION, *et al.*,

Defendants/Respondents.

On Appeal from the Superior Court
County of Alameda
The Honorable Jeffery Brand

APPELLANT'S REPLY BRIEF

Edward Plummer, Jr. / In Pro Per
1658 Club Drive
Pomona, California 91768

Appendix H

TABLES INTENTIONALLY EXCLUDED

I. INTRODUCTION

The appellant filed his Opening Brief on January 4, 2024. The respondents filed their responding brief on April 25, 2024. The appellant/plaintiff hereby, Edward Plummer, Jr., replies to the Respondents' Brief.

This appeal references the trial court ruling on the defendants' Motion For Judgment On The Pleadings, and other rulings by the lower court. Plaintiff believes that he has been harmed by each and every adverse ruling.

II. RESPONSIVE ARGUMENT

The respondents are attempting to conflate several issues while ignoring several pertinent issues raised in the Appellant's Opening Brief (AOB.) The respondents argue that this entire matter hinges on the Court's ruling on or about July 10, 2018, which resulted in their understanding that Christian Plummer was forever barred from participating in this matter. (CT-Vol. I, p.52-60.) Despite the fact that the Court did not address that issue as alleged, that is their interpretation. (CT-Vol. I, p.52-71.)

First, as stated in the AOB (p.11) the respondents viewed the Court's ruling as "very narrow grounds." (CT-Vol. I, p. 93, line 8.) Obviously, the respondents' "very narrow grounds" interpretation led them to believe that they could ignore the Court's ruling, disrespect, and

even threaten Plaintiff. (AOB, p. 11.) (CT-Vol. I, p. 93-94.) Judges are the governors of the proceedings held within their assigned courts. They are responsible for making certain the parties conduct themselves properly. Additionally, they must make certain that questions of law are determined properly. *Quercia v. United States,* 289 U.S. 466,469 (1933.) Cases cannot be determined fairly if one party is allowed to conduct themselves as superior to another party. Further, each party must be required to respect and comply with the ruling and/or orders of a superior court. (CT-Vol. III, p. 711-713.)

Since there was no substantial compliance with the Court's directions pursuant to its ruling on July 10, 2018, the appellant is requesting that this matter be stayed until there is such compliance. At minimum, the respondents should be required to reimburse Appellant for his cost on appeal, with the appropriate penalties and interest, prior to going forward and certainly before there is any ruling in their favor. (CT-Vol. I p. 71.) CT-Vol. III p. 712.) First, the respondents reduced the Court's ruling to the lowest denomination, ("very narrow grounds") and then refused to comply with the Court's ruling relative to Appellant's cost.

Normally, it is the defendant who makes an affirmative defense argument regarding unclean hands. However, when the defendants filed their Motion for Judgment on the Pleadings, they became the moving party, and the plaintiff became the respondent party; thereby forcing the plaintiff to respond in opposition (defensively) to their motion. Thus, the plaintiff believes that it is more than

reasonable to argue that the defendants brought their motion before the trial court while knowing that they were in disobedience of a valid Court order, and threatened Plaintiff by accusing him of committing a misdemeanor offence in that he was attempting to practice law without a California Bar license. (CT-Vol. I, p. 93.) (AOB, p. 11.)

The "unclean hands doctrine" is not a legal or technical defense to be used as a shield against a particular element of a cause of action. Rather, it is an equitable rationale for refusing the, in this case, moving party relief where principles of fairness dictate that the moving party should not recover, regardless of the merits of their motion. It is available to protect the court from having its powers used to bring about an inequitable result in the litigation before it." *Kendall-Jackson Winery, Ltd. v. Superior Court*, 76 Cal.App.4th 970, 985 (1999.) (CT-Vol III., p.651-652.)

"The doctrine of unclean hands" requires unconscionable, bad faith, or inequitable conduct by the moving party in connection with the matter in controversy. Unclean hands apply when it would be inequitable to provide the moving party any relief and provides a complete defense to both legal and equitable remedies. "Whether the defense applies in particular circumstances depends on the analogous case law, the nature of the misconduct, and the relationship to the claimed injuries.'" (*Fladeboe v. American Isuzu Motors, Inc.*, 150 Cal. App.4th 42, 56 (2007.)

The defense of unclean hands arises from the maxim, '"He who comes into Equity must come with clean hands."'

Blain v. Doctor's Co. 222 Cal. App.3d 1048, 1059, (1990.) The doctrine demands that a moving party act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his motion.. *Precision Co. v. Automotive Co.,* 324 U.S. 806, 814-815, (1945.) The defense is available in legal as well as equitable actions. *Fibreboard Paper Products Corp. v. East Bay Union of Machinists* (1964) 227 Cal.App.2d 675, 728 (1964.) Whether the doctrine of unclean hands applies is a question of fact. (*CrossTalk Productions, Inc. v. Jacobson,* 65 Cal.App.4th 631, 639, (1998.) The misconduct need not be a crime or an actionable tort. Any conduct that violates conscience, or good faith, or other equitable standards of conduct is sufficient case to invoke the doctrine. *DeRosa v. Transamerica Title Ins. Co.,* 213 Cal.App.3d 1390, 1395-1396, (1989.) A court's discretion to grant equitable defense such as unclean hands is not unlimited. The court must consider the material facts affecting the equities between the parties; the failure to do so is an abuse of discretion. *Dorman v. DWLC Corp.* 35 Cal.App.4th 1808, 1815-1817 (1995.)

Second, Respondents are attempting to ignore Plaintiff's allegation that there is, was, or should be a valid contract between the parties which attests to the fact that at all times mentioned within Plaintiff's complaint Appellant acted with the expressed knowledge and consent of each, and every party mentioned within said complaint. (AOB, p. 6) Based upon said contract each and every party should have known of the appellant's interest and authority in all matters involving and affecting

Gavin Plummer as to his care, lack of care, injuries and harm while in the custody and care Kaiser Foundation Hospital's *et al.* Due to said agreement plaintiffs had the belief and understanding that the defendants knew that plaintiff would be a party to any and all matter concerning Gavin Plummer. The parties participated in one or two proceedings in which there was no objection to the Appellant's standing or participation. Due to the agreement with the defendants and the defendants' silence on the issue of standing, the plaintiffs went forward with the confidence that the defendants had agreed that Christian Plummer and Edward Plummer, Jr. would be standing in this matter. The appellant is fully aware that the issue of lack of standing may be raised at any time during the proceedings. *Horn v. County of Ventura,* 24 Cal.3d 605, 619 (1979 Yet it is Plaintiff's belief and understanding that where the opposing party has led the other party(s) to believe that they agreed to the standing of all parties and showed no intentions of objecting to said standing; judicial estoppel should be applied. (CT.-I, p. 15-18.) "Judicial estoppel precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position. The doctrine [most appropriately] applies when: (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake *Aguilar v. Lerner,* 32 Cal.4th 974, 986-9 7 (2004.) Consistent with these purposes, numerous decisions have

made clear that judicial estoppel is an equitable doctrine, and its application, even where all necessary elements are present, is discretionary.

The legislative intent behind California Code of Civil Procedure (CCP) section 377.60 is to provide a legal avenue for certain family members or representatives of a deceased person to seek compensation for damages resulting from the wrongful death of their loved one. The statute recognizes that when a person dies due to the wrongful act, neglect, or default of another party, it not only causes emotional pain and suffering to the surviving family members but also often results in financial losses.

By allowing eligible individuals to bring a wrongful death action, the legislative intent is to provide a means of holding accountable those responsible for causing the death, whether through negligence, recklessness, or intentional misconduct. This serves both a compensatory and deterrent purpose, seeking to provide some measure of financial relief to the survivors while also discouraging future wrongful conduct.

Additionally, the legislative intent of CCP 377.60 is to specify who may bring a wrongful death action and under what circumstances, as well as to establish the procedures and limitations applicable to such actions within the state of California. This includes defining eligible plaintiffs, determining the types of damages recoverable, and establishing the statute of limitations for filing a wrongful death lawsuit.

Overall, the legislative intent of CCP 377.60 is to ensure that the legal system provides recourse for those who have lost a loved one due to the wrongful actions of others, while also promoting justice and accountability in such cases.

III. SUMMATION

Appellant contends that the order of the trial court to join Christian Plummer to this action on August 15, 2019, was the correct and proper decision due to all of the foregoing reasons mentioned above. Further, California Code of Civil Procedure, section 389 clearly states that Christian Plumer joinder to this action is "compulsory." The beliefs of Christian and Edward Plummer, are more or less enumerated in his declaration filed January 14, 2021. (CT-Vol III., p.651-652.) Further, at no time Christian Plummer voluntarily withdrawn from this action. No was he negligent when responding at the proper times. The court played a significant role in Christian not responding timely due notices being sent to the wrong mailing address.

Appellant contends that trial court abused its discretion in dismissing their complaint with prejudice. First, joining Christian Plummer to this action was well within the discretion of the trial court. Code of Civil Procedure, section 89. A mentioned above C.C.P. section 377.60 is intended to provide recourse for those "who have lost a loved one due to the wrongful actions of others." Appellant need not stablish that he eligible as a matter of law. Instead, he only needs to show that there is a triable

issue as to whether he is a family member who has lost a loved one due to the wrongful actions of others in order to defeat the defendants' motion.

CONCLUSION

Due to each and every argument outlined above, the appellant believes that a reversal of the lower court's ruling is warranted.

Dated: May 30, 2024, Respectfully submitted,

/s/Edward Plummer, Jr.
Edward Plummer, Jr.

APPENDIX I — ~~[PROPOSED]~~ JUDGMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FILED FEBRUARY 16, 2021

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

Case No. RG14738005

EDWARD PLUMMER, JR., AN INDIVIDUAL; AND CHRISTIAN MORGAN PLUMMER, AND INDIVIDUAL,

Plaintiffs,

v.

KAISER FOUNDATION HOSPITALS, A CALIFORNIA CORPORATION; KAISER FOUNDATION HEALTH PLAN, INC.; AND DOES 1 THROUGH 15, INCLUSIVE,

Defendants.

Assigned to: Hon. Jeffrey Brand
Dept.: 22

Action Filed: August 25, 2014
Trial Date: February 16, 2021

Filed February 16, 2021

Appendix I

~~[PROPOSED]~~ JUDGMENT

This Court, on September 22, 2020, having granted Defendants Kaiser Foundation Hospitals and Kaiser Foundation Health Plan, Inc.'s Motion to for Judgment on the Pleadings and having ordered entry of judgment in favor of Defendants Kaiser Foundation Hospitals and Kaiser Foundation Health Plan, Inc. and against Plaintiff Edward Plummer, Jr., and on December 1, 2020, having affirmed its earlier order in Defendants' favor following Plaintiffs' Motion for Reconsideration of the same:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Complaint filed by Plaintiff Edward Plummer Jr. in this matter be and hereby is dismissed with prejudice as to Defendants Kaiser Foundation Hospitals and Kaiser Foundation Health Plan, Inc.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Judgment be and hereby is entered in favor of Defendants Kaiser Foundation Hospitals and Kaiser Foundation Health Plan, Inc. and against Plaintiff Edward Plummer, Jr.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff Edward Plummer, Jr. shall take nothing from Defendants Kaiser Foundation Hospitals and Kaiser Foundation Health Plan, Inc., and that Defendants Kaiser Foundation Hospitals and Kaiser Foundation Health Plan, Inc. shall recover costs in the sum of $ TBD .

Appendix I

IT IS SO ORDERED.

DATED: 2/16, 20201 /s/ JB

/s/ Jeffrey Brand
HON. JEFFREY BRAND
JUDGE OF THE
SUPERIOR COURT

APPROVED AS TO FORM:

DATED: _____, 2020

DESTINEY JOHNSON
LAW OFFICES OF ZULU ALI
Attorneys for Plaintiff
EDWARD PLUMMER, JR.

APPENDIX J — ORDER OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA, RENE C. DAVIDSON ALAMEDA COUNTY COURTHOUSE, DATED SEPTEMBER 22, 2020

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
RENE C. DAVIDSON ALAMEDA
COUNTY COURTHOUSE

No. RG14738005

PLUMMER,

Plaintiff/Petitioner(s),

vs.

KAISER FOUNDATION HOSPITALS,

Defendant/Respondent(s).

ORDER

MOTION FOR JUDGMENT ON THE PLEADINGS GRANTED

The Motion for Judgment on the Pleadings was set for hearing on 09/22/2020 at 02:30 PM in Department 22 before the Honorable Jeffrey Brand. The Tentative Ruling was published and has not been contested.

Appendix J

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Motion for Judgment on the Pleadings filed by Defendants Kaiser Foundation Hospitals and Kaiser Foundation Health Plan ("Defendants") is GRANTED.

BACKGROUND

This is a medical malpractice lawsuit brought by Plaintiff Edward Plummer Jr ("Plaintiff") arising out of the medical care provided to and the death of Plaintiff's grandson, Gavin Plummer ("Decedent").

Decedent passed away on May 30, 2013. (Compl., paras. 14, 15.) Both of Decedent's parents were living at the time of Decedent's death. (Compl., paras. 1, 17.)

On August 25, 2014, Edward Plummer Jr. and Christian Plummer filed the Complaint herein, asserting causes of action for wrongful death, medical negligence, abandonment of patient and breach of contract.

On July 18, 2016, the Court granted Defendants' Motion for Summary Judgment and entered a final judgment against Edward Plummer and Christian Plummer. Edward Plummer appealed that judgment and the Court of Appeal overturned this Court's decision, remitting the case on September 17, 2018. Christian Plummer did not appeal.

Appendix J

LEGAL STANDARD

A motion for judgment under Code of Civil Procedure ("CCP") section 438(c)(1)(B)(ii) "performs the same function as a general demurrer[] and hence attacks only defects disclosed on the face of the pleadings or by matters that can be judicially noticed." (Burnett v. Chinmey Sweep (2004) 123 Cal.App.4th 1057, 1064; see Fire Ins. Exchange v. Superior Court (2004) 116 Cal.App.4th 446, 452; Ponderosa Homes, Inc. v. City of San Ramon (1994) 23 Cal.App.4th 1761, 1767-1768.)

PLAINTIFF LACKS STANDING TO SUE AND IS NO LONGER A PARTY TO THIS LITIGATION

In his Opposition, Plaintiff concedes that he does not have standing to sue based on the death of his grandson. (Opp. at. p. 10:20-26.) Plaintiff contends, however, that it was the intent of the Court of Appeal that the decision reversing this Court's judgment should apply to both Edward Plummer and Christian Plummer.

However, Christian Plummer did not appeal this Court's judgment following the order granting Defendants' Motion for Summary Judgment. The Court of Appeal clearly stated in its opinion that only Edward Plummer had appealed this Court's judgment: "[Decedent's] father is not a party to this appeal." (Opinion of the Court of Appeal, at pp. 1. 2, fn. 2, 5 and 6.) Because Christian Plummer did not file a timely notice of appeal, the Court's November 21, 2016 Amended Judgment remains in place as against him and he is no longer a party to this litigation.

In sum, Christian Plummer lacks standing to sue as an individual. Moreover, he is no longer a party to this litigation and cannot now be reinstated in this case. Because these defects cannot be cured by amendment, Defendant's Motion for Judgment on the Pleadings is GRANTED WITHOUT LEAVE TO AMEND.

Dated: 09/22/2020

/s/_____
Judge Jeffrey Brand

APPENDIX K — ORDER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA, FILED AUGUST 15, 2019

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CaseNo.: RG14738005

Hearing: TBA
Time:
Department: 22
Judge: Hon. Robert McGuiness

EDWARD PLUMMER, JR., AN INDIVIDUAL,

Plaintiff,

vs.

KAISER FOUNDATION HOSPITALS, A CALIFORNIA CORPORATION; KAISER FOUNDATION HEALTH PLAN INC.; AND DOES 1 THROUGH 15, INCLUSIVE.

Defendants.

ORDER ALLOWING AMENDMENT TO COMPLAINT

IT IS ORDERED that Edward Plummer, Jr. be allowed to file his amended complaint ~~or an amendment to the complaint~~ [initials] thereby joining Christian M. Plummer as a plaintiff, or it is hereby ordered that

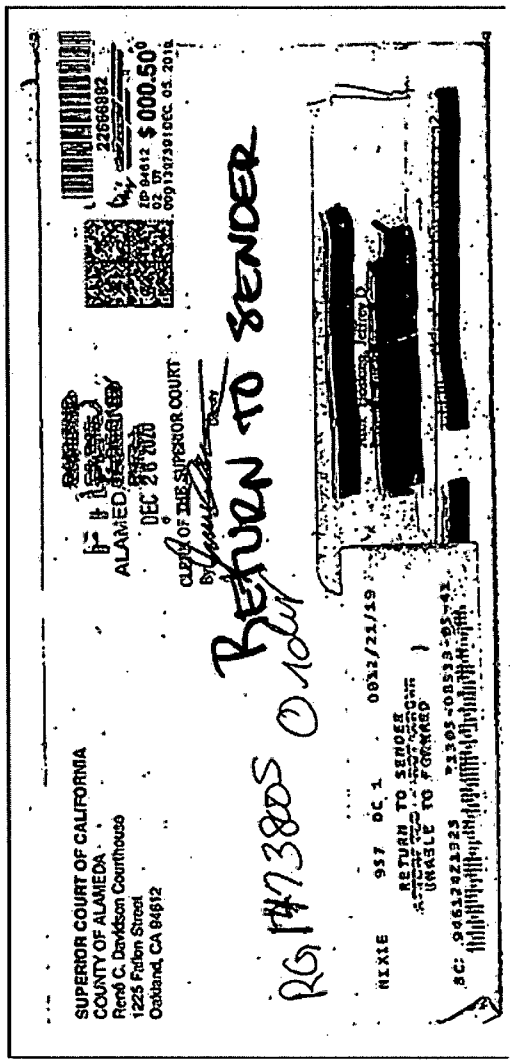
Appendix K

Christian M, Plummer be joined as a plaintiff in this action.

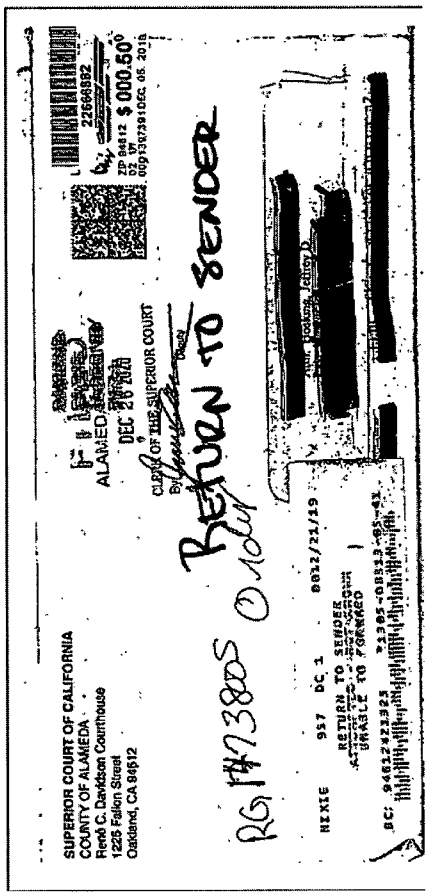
Date: 8/15/19

/s/ Robert McGuiness
Hon. Robert McGuiness, Judge

APPENDIX L — RETURNED CORRESPONDENCE OF THE COUNTY OF ALAMEDA SUPERIOR COURT



Appendix L


SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
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1225 Fallon Street
Oakland, CA 94612
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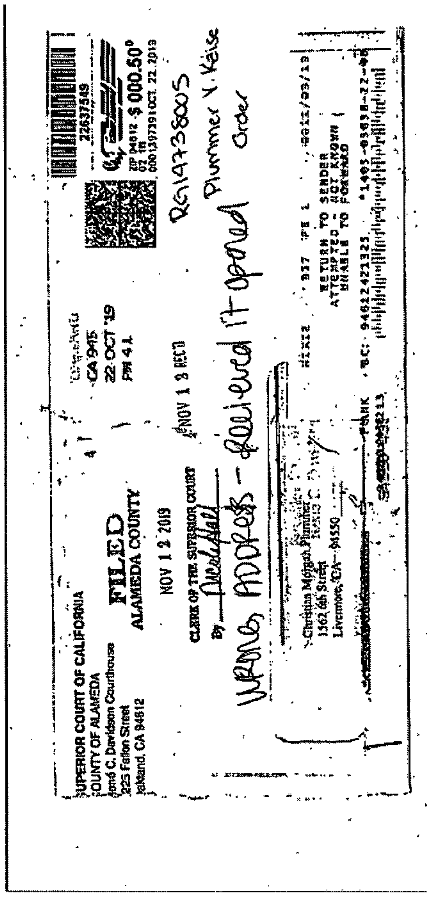
Appendix L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COUNTY OF ALAMEDA
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RG19738005
Plummer v. Keise
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APPENDIX M — OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOR THE FIRST APPELLATE DISTRICT, DIVISION TWO, FILED JULY 10, 2018

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

A149662, A150537, A150538
(Alameda County Super. Ct. No. RG14738005)

EDWARD PLUMMER, JR.,

Plaintiff and Appellant,

v.

KAISER FOUNDATION HOSPITALS, *et al.*,

Defendants and Respondents.

Filed July 10, 2018

Gavin Plummer was less than two years old when he was diagnosed with Wilms' tumor, a cancer of the kidneys. The disease progressed despite surgery and multiple courses of chemotherapy and radiation therapy, and Gavin died when he was just four and a half. Representing themselves, Gavin's father and grandfather (Plaintiffs) sued Kaiser Foundation Health Plan, Inc., and Kaiser

Foundation Hospitals (collectively Kaiser), where Gavin was diagnosed and treated, alleging causes of action associated with the treatment Gavin received. Kaiser moved for summary judgment. The trial court denied Plaintiffs' request for a continuance under Code of Civil Procedure section 437c, subdivision (h),[1] granted Kaiser's motion, and entered judgment for Kaiser.

In these consolidated appeals Gavin's grandfather, Edward Plummer, Jr. (Grandfather) challenges the judgment, including the denial of the request for continuance; an amended judgment specifying the amount to be recovered by Kaiser as costs; and a post judgment order denying Grandfather's motion for leave to prepare a settled statement of the summary judgment hearing.[2] We conclude that the trial court erred by denying Plaintiffs' request to continue the summary judgment hearing, and therefore we vacate the judgments and post judgment order without reaching the remaining issues.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs' complaint alleges four causes of action against Kaiser: wrongful death, medical negligence, abandonment of patient, and breach of contract. In alleging wrongful death and medical negligence, Plaintiffs claim that Kaiser was negligent in several respects concerning

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1. Statutory references are to the Code of Civil Procedure unless otherwise stated.

2. Gavin's mother did not join the suit brought by Gavin's father and grandfather. Gavin's father is not a party to this appeal.

Gavin's treatment and that Kaiser's negligence caused or contributed to Gavin's death. In alleging abandonment of patient, Plaintiffs claim that when Kaiser referred Gavin to hospice care, Kaiser withdrew from Gavin's care and treatment without providing enough notice for another medical provider to be obtained. In alleging breach of contract, Plaintiffs claim to be third party beneficiaries to the contract between Kaiser and Gavin's mother under which Gavin's health care was provided, and claim Kaiser breached that contract by denying a request for a second opinion and a request for a referral to a non-Kaiser provider.

A. *Kaiser's Motion for Summary Judgment*

In support of its motion for summary judgment, Kaiser submitted about 100 pages of Gavin's medical records along with declarations, including one from Dr. Leo Mascarenhas. Dr. Mascarenhas stated he was licensed to practice medicine in California, had been board certified in Pediatrics since 1995, when he was first licensed, and board certified in Pediatric Hematology/Oncology since 1998, and had encountered and treated numerous cases of Wilms' tumor. He stated that he reviewed over 13,000 pages of Gavin's medical records; based on that review and his education and experience as a specialist in pediatric oncology and hematology, he opined that the evaluation, care and treatment provided to Gavin in relation to his Wilms' tumor diagnosis was at all times appropriate, timely, and consistent with the standard of care.

In its motion for summary judgment Kaiser argued that Grandfather lacked standing to bring the wrongful

death claim; that Grandfather's medical negligence and abandonment of patient claims failed as a result of Grandfather's lack of standing to sue under a wrongful death theory and that in any event there could be no dispute that Kaiser's treatment of Gavin was at all times within the standard of care; that Gavin's father's wrongful death, medical negligence and abandonment claims failed because Gavin's treatment was within the standard of care and that Plaintiffs were not third party beneficiaries to the agreement under which Gavin received treatment.

B. *Opposition and Reply*

Plaintiffs argued that there were triable issues of fact and that at a minimum they should be granted a continuance under section 437c, subdivision (h), to conduct additional discovery.

In disputing Kaiser's proffered material facts, Plaintiffs submitted several documents, but primarily relied on a declaration from Grandfather. Based on his own experience as a cancer patient, Grandfather expressed opinions about Gavin's health and the care Gavin received. Grandfather further stated that he had worked at the California Department of Health Care Services for about 20 years and had reviewed thousands of medical records in the course of his work, and reported, "In reviewing the medical records of Gavin Plummer I found what in said practice is known as discrepancies." The declaration does not describe the types of records Grandfather reviewed in his work or the purpose of his reviews, nor does it identify any discrepancies in Gavin's records. Notably, Plaintiffs

did not present a declaration from a medical expert; instead, they invoked the doctrine of res ipsa loquitur.

In support of their request for a continuance, Plaintiffs submitted a copy of Kaiser Foundation Hospitals' response to Grandfather's request for production of documents, a few pages of correspondence between Grandfather and Kaiser's counsel, and Grandfather's declaration, which said the following about discovery: "18. The defendants have refused to respect my efforts at discovery. [¶] 19. I have served interrogatories, admission request and request for production. They have produced nothing."

With their reply brief, Kaiser submitted objections to most of Plaintiffs' evidence, all of which were sustained. Thus the trial court excluded from evidence Grandfather's opinions about the care Gavin received and his claim that there were discrepancies in Kaiser's medical records. Kaiser did not object to the statements in Grandfather's declaration about Kaiser's responses to discovery, but objected to Plaintiffs' submission of Kaiser's written response to Grandfather's request for production and to six pages of correspondence between Grandfather and Kaiser's counsel, all of which the trial court excluded from evidence as irrelevant.

C. *Ruling*

The trial court (Hon. Delbert C. Gee) published a tentative ruling that Plaintiffs contested. After a hearing, which was not reported by a court reporter, the court affirmed the tentative ruling, sustaining Kaiser's

objections to evidence and granting Kaiser's motion in its entirety.[3]

The court denied Plaintiffs' request for a continuance: "Plaintiffs fail to adequately demonstrate that facts essential to oppose this Motion may exist and the reason why any such facts have not been presented with the opposition. The statement in Plaintiff Edward Plummer's Declaration (at paragraphs 18-19) that Defendants 'have refused to respect my efforts at discovery' and have 'produced nothing' is factually unsupported, overly vague, and conclusory, and therefore insufficient to support Plaintiffs' request for a continuance."

The court ruled that Grandfather lacked standing to bring a claim for wrongful death because it was undisputed that Gavin has living parents. With respect to the merits of Plaintiff's causes of action, the court pointed out that the gravamen of all Plaintiffs' claims was medical malpractice, and found that it was undisputed that at all times Kaiser complied with the applicable standard of

3. In a subsequent brief to the trial court, Grandfather represents that there was "significant argument" on the issue of discovery at the hearing. In his opening brief on appeal, Grandfather represents that he advised the trial court that Kaiser was "not forthcoming" with all the evidence and had not provided Plaintiffs with all Gavin's medical records. He further represents that at the hearing Kaiser's counsel "advised the court that the plaintiffs were not entitled to have the records," and that the basis for counsel's statement was nothing more than her claim that she had litigated many similar cases and knew that Plaintiffs "are not suppose[d] to have the records."

care, as reflected in the Mascarenhas declaration. The court noted that although Plaintiffs purported to dispute some of Defendants' facts, they failed to cite admissible evidence to support the existence of any dispute, and the court rejected Plaintiffs' invocation of res ipsa loquitur, finding that "[t]his is emphatically not a case where the conduct required by the applicable standard of care is within the common knowledge of a layperson." As to Plaintiffs' cause of action for breach of contract, the court concluded that Plaintiffs were not third-party beneficiaries to the agreement under which care was provided to Gavin, and that in any event, the undisputed facts demonstrated that there was no breach.

Judgment was entered for Kaiser, and Grandfather timely appealed (appeal A149662).

D. *Further Proceedings in the Trial Court*

Although Kaiser had filed a memorandum of costs in the trial court before the judgment was entered, the judgment stated only that Kaiser would recover costs to the extent permitted by statute. The trial court (Hon. Sandra K. Bean) subsequently issued an amended judgment that specified the amount Kaiser was to recover. Grandfather timely appealed (appeal A150537).[4]

Separately, Grandfather filed a motion in the trial court for leave to prepare a settled statement of the

4. On appeal Grandfather does not challenge the amount of costs awarded; instead, he claims that the trial court erred in granting Kaiser's motion and therefore should not have awarded Kaiser any costs.

hearing on Kaiser's motion for summary judgment for use in his appeal of the judgment. Kaiser opposed the motion, arguing that oral proceedings are unnecessary to an appellate court's de novo review of the issues on summary judgment. In making this argument, Kaiser disregarded that the denial of Plaintiffs' request for a continuance is appealable upon review of the judgment and is reviewed for abuse of discretion. (*Freeman v. Sullivant* (2011) 192 Cal.App.4th 523, 527, 120 Cal. Rptr. 3d 693 (*Freeman*) [failure to grant continuance reviewable on appeal from judgment]; *Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 253-254, 19 Cal. Rptr. 3d 810 (*Cooksey*) [standard of review for denial of continuance under § 437c, subd. (h)].)

Nevertheless, Judge Bean agreed with Kaiser and issued an order denying the motion. Grandfather appealed from this order (appeal A150538).[5]

DISCUSSION

A. *Legal Standard*

Because summary judgment "deprives the losing party of trial on the merits," (*Bunzel v. American Academy of Orthopaedic Surgeons* (1980) 107 Cal.App.3d 165, 169, 165 Cal. Rptr. 433), section 437c, subdivision (h), provides, "[i]f it appears from the affidavits submitted in opposition to a motion for summary judgment . . . that facts essential to justify opposition may exist but cannot, for reasons

5. We consolidated Grandfather's appeals for purposes of briefing, oral argument (which was subsequently waived), and decision, in response to Grandfather's unopposed motion that we do so.

stated, be presented, the court *shall* deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or may make any other order as may be just." (Emphasis added.) The provision was adopted "'"[t]o mitigate summary judgment's harshness," . . . [Citations]' [citation] 'for an opposing party who has not had an opportunity to marshal the evidence[.]'" (*Cooksey, supra*, 123 Cal.App.4th at p. 253, quoting *Frazee v. Seely* (2002) 95 Cal.App.4th 627, 634, 115 Cal. Rptr. 2d 780, and *Mary Morgan, Inc. v. Melzark* (1996) 49 Cal.App.4th 765, 770, 57 Cal. Rptr. 2d 4.)

"A declaration in support of a request for a continuance under section 437c, subdivision (h) must show: '(1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts. [Citations.]' (*Wachs v. Curry* (1993) 13 Cal.App.4th 616, 623, 16 Cal. Rptr. 2d 496.) . . . 'It is not sufficient under the statute merely to indicate further discovery or investigation is contemplated. The statute makes it a condition that the party moving for a continuance show "facts essential to justify opposition may exist."' (*Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 548, 30 Cal. Rptr. 2d 706.)" (*Cooksey, supra*, 123 Cal.App.4th at p. 254.) In the absence of a declaration requiring a continuance, we review a trial court's denial of a request for a continuance for abuse of discretion. (*Ibid.*)

B. *Analysis*

Grandfather argues that the trial court abused its discretion in denying Plaintiffs' request for a continuance.

Kaiser simply declines to address [*10] Grandfather's argument, claiming that the issue is moot, outside our review, and not the subject of Grandfather's appeal. Kaiser is plainly incorrect. Grandfather raises the issue in his opening brief, and as we have stated, the denial of a continuance is appealable upon review of the judgment. (*Freeman, supra*, 192 Cal.App.4th at p. 527.) We therefore proceed to address the issue on the merits.

The essence of plaintiffs' written request for a continuance was that Kaiser had "produced nothing" in response to Grandfather's interrogatories, requests for admission and requests for production. In response, Kaiser came forward with *no* declaration refuting Grandfather's statement. Nor did Kaiser cite any legal authority. Kaiser simply asserted in a two-paragraph argument in its reply brief that plaintiffs had never filed a discovery motion and had never met and conferred, even though Kaiser would have "welcomed" that process. Curiously, at the same time that Kaiser argued that the request for continuance lacked "good cause," it tried to keep the court from addressing it at all, prefacing the second paragraph of its argument this way: "*While the issue is not before the Court*, it is worth noting that Plaintiffs' request for an extension relates to Kaiser's refusal to produce the protected health information requested by decedent's grandfather absent a HIPAA-compliant authorization signed by decedent's parents. As Plaintiffs have not provided such an authorization to counsel, despite Kaiser's numerous requests for one, the documents containing the patient's protected health information have not, and will not, be produced." (Emphasis added.) Again, none of

this was supported by a declaration or by legal authority. Moreover, as we have noted, Kaiser successfully objected on the grounds of relevance to the trial court considering its response to Grandfather's request for production and a few pages of meet and confer correspondence.

In our view, the issue of whether Kaiser had "produced nothing" was the issue placed squarely before the court in deciding whether a continuance should be granted. Section 437c, subdivision (h) reflects a policy to allow reasonable discovery to a litigant who is at risk of losing his case before trial. (*Cooksey, supra*, 123 Cal.App.4th at p. 253.) Kaiser submitted a declaration from its medical expert stating that he had reviewed *13,000* pages of medical records; only about 100 pages of these records were submitted as exhibits supporting the medical expert's declaration in support of summary judgment. Grandfather's unrefuted declaration, in stark contrast, said that Kaiser had "produced nothing" to him. The trial court's conclusion that Plaintiffs' request for continuance should be denied because it was "factually unsupported, overly vague, and conclusory" cannot stand on the basis of the limited evidence before the trial court. It is thus not surprising that, on appeal, Kaiser does not attempt to defend the trial court's order denying the continuance.[6] We conclude it was an abuse of discretion to deny a request for

6. Having objected to (and continuing to oppose on appeal) the creation of a settled statement that might have shed additional light on what transpired at the hearing on the motion for summary judgment and request for continuance, Kaiser cannot (and does not) argue that in the absence of a record of the oral proceedings the trial court's ruling should be affirmed.

continuance and to grant summary judgment. (See *Krantz v. BT Visual Images, L.L.C.* (2001) 89 Cal.App.4th 164, 174, 107 Cal. Rptr. 2d 209 [motion for summary judgment should not be granted where party opposing summary judgment "has been thwarted in the attempt to obtain evidence that might create an issue of material fact, or discovery is incomplete"].)

Because we conclude that the trial court erred in denying Plaintiffs' request for a continuance, we vacate the judgment. Therefore, we need not reach any of Grandfather's other arguments that the trial court erred in granting Kaiser's motion or his argument that the trial court erred in denying his request for a settled statement, and we vacate the amended judgment and post judgment order. We take no position on the merits of the discovery issue or the summary judgment motion.

DISPOSITION

The judgments and order appealed from are vacated and the matter is remanded to the trial court for further proceedings consistent with this opinion. Grandfather shall recover his costs on appeal.

APPENDIX N — COMPLAINT IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA, FILED AUGUST 25, 2014

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

CASE NO. RG14738005

EDWARD PLUMMER, JR., AN INDIVIDUAL;
CHRISTIAN MORGAN PLUMMER, AN INDIVIDUAL,

Plaintiffs,

vs.

KAISER FOUNDATION HOSPITALS, A CALIFORNIA CORPORATION; KAISER FOUNDATION HEALTH PLAN, INC.; DOES 1 THROUGH 15, INCLUSIVE,

Defendants.

COMPLAINT

COMES NOW, Plaintiffs EDWARD PLUMMER, JR. and CHRISTIAN MORGAN PLUMMER, who alleges as follows for their Complaint against Defendants and each of them:

PARTIES

1. Plaintiff Christian Morgan Plummer ("Plaintiff") brings this action on behalf of the deceased, Gavin Plummer ("Decedent"). Christian Morgan Plummer is Decedent's father.

2. Plaintiff Edward Plummer, Jr. ("Grandfather") brings this action on behalf of Decedent. Edward Plummer, Jr. is Decedent's grandfather.

3. Defendant Kaiser Foundation Hospitals is a California corporation doing business at 280 W. MacArthur Blvd. Oakland, CA 94611. Defendant's principal place of business in California is at One Kaiser Plaza, Oakland, CA 94612.

4. Defendant Kaiser Foundation Health Plan, Inc. is a California corporation with its principal place of business at One Kaiser Plaza, Oakland, CA 94612.

5. Plaintiffs are ignorant of the names and capacities of DOES 1 through 15 and sues them as DOES 1 through 15, inclusive. Plaintiffs will amend this action to allege these DOE defendants' names and capacities when ascertained. Each of the defendants herein is responsible in some manner for the occurrences, injuries, and damages herein, and that the damages were directly and proximately caused by these defendants' acts and omissions. Each defendant herein was the agent of each of the remaining defendants, and in doing the things alleged herein were acting within the course and scope of their agency.

FACTUAL ALLEGATIONS

6. Gavin Plummer, the Decedent, was born on October 27, 2008.

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7. Decedent was covered under Kaiser Foundation Health Plan through his mother's employer.

8. In or about July of 2010 Decedent was diagnosed at the Kaiser hospital at 280 W. MacArthur Blvd. Oakland, CA 94611 as having Wilms' tumor, a cancer affecting the kidney(s). Prior to the diagnosis. Decedent was believed to be in good health.

9. Following exploratory laparotomy and a nephrectomy (surgical removal of all or part of kidney), defendants informed Decedent's parents that the cancer was in remission.

10. However, a few months later, Decedent's parents were told that the cancer had returned.

11. Decedent's parents requested a second opinion. The request was denied.

12. Decedent was in and out of treatment from August 2011 through August 2012.

13. Plaintiffs also requested a referral to St. Jude's Children's Research Center in Tennessee. This request was denied.

14. Instead of making a referral or continuing to treat Decedent, defendants encouraged Decedent's parents to take Decedent home for hospice care.

15. On May 30, 2013, Decedent passed away.

16. On or about May 17, 2014, Plaintiff Edward Plummer mailed a Notice of Intent to Sue to Defendants.

FIRST CAUSE OF ACTION
(Wrongful Death against all Defendants)

17. Plaintiffs hereby re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 16.

18. Decedent's death was caused, in whole or in part, by the negligent or intentional conduct of Defendants.

19. As a direct and proximate result of the foresaid, Decedent died and Plaintiffs have been deprived of Decedent's love, care, comfort, and society to their general damages according to proof at trial.

SECOND CAUSE OF ACTION
(Medical Negligence against all Defendants)

20. Plaintiffs hereby re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 16.

21. A physician is negligent if he or she fails to use the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful physicians would use in the same or similar circumstances. This level of skill, knowledge, and care is sometimes referred to as "the standard of care."

22. Furthermore, if a reasonably careful physician in the same situation would have referred Decedent to a medical specialist, then Defendants were negligent if they did not do so.

23. Defendants were medically negligent.

24. Plaintiffs were harmed.

25. Defendants' medical negligence was a substantial factor in causing Plaintiffs' harm.

THIRD CAUSE OF ACTION
(Abandonment of Patient against all Defendants)

26. Plaintiffs hereby re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 16.

27. Defendants withdrew from Decedent's care and treatment.

28. Defendants did not provide sufficient notice for Decedent or his parents to obtain another medical practitioner.

FOURTH CAUSE OF ACTION
(Breach of Contract – Third Party Beneficiary against all Defendants)

29. Plaintiffs hereby re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 16.

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30. Decedent's mother and Defendants entered into a contract to provide health care for Decedent. Plaintiffs were the third party beneficiaries of this contract.

31. Decedent's mother did all, or substantially all, of the significant things that the contract required her to do.

32. All conditions required by the contract for Defendants' performance had occurred.

33. Defendant failed to do something that the contract required it to do.

34. Plaintiffs were harmed by that failure.

PRAYER

WHEREFORE, Plaintiffs pray for relief against Defendants, and each of them as follows:

1. For general and special damages according to proof;

2. For the loss of the care, comfort, and society of Decedent;

3. For attorneys fees and costs;

4. For such other and further relief as the court deems just and proper.

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TRIAL BY JURY

Trial by jury is demanded on all such issues so triable.

Dated: August 21, 2014

By: /s/ Edward Plummer, Jr.
Edward Plummer, Jr., Plaintiff In Pro Per

Dated: August 22, 2014

By: /s/ Christian Morgan Plummer
Christian Morgan Plummer, Plaintiff In Pro Per