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8 SUZON DELLINGER

9 FILED
10 CIVIL BUSINESS OFFICE 4
11 CENTRAL DIVISION

12 2012 MAY 25 AM 10: 50

13 CLERK SUPERIOR COURT
14 SAN DIEGO COUNTY, CA

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SAN DIEGO

17 SUZON DELLINGER, an individual,

18 Plaintiff,

19 vs.

20 MELISSA A. KELMAN, an individual; JAMES
21 A. DAVIES, an individual; DAVIES EYE
22 CENTER, a California business; and DOES 1
23 through 20, inclusive,

24 Defendants.

25 CASE NO: 37-2012-00097995-CU-MM-CTL

26 COMPLAINT FOR:

27 (1) MEDICAL MALPRACTICE

28 GENERAL ALLEGATIONS

COMES NOW Plaintiff who alleges as follows:

1. At all times mentioned herein, Defendant MELISSA A. KLEMAN was and is a
optometrist licensed to practice medicine under the laws of the State of California and was engaged in
the practice of medicine in Carlsbad, California.

2. At all times mentioned herein, Defendant JAMES A. DAVIS was and is a physician
licensed to practice medicine under the laws of the State of California and was engaged in the practice
of medicine in Carlsbad, California.

1 3. Plaintiff is informed and believes and based thereon alleges that at all times
2 mentioned herein, DAVIES EYE CENTER was and is, a business organization duly organized and
3 existing under the laws of the State of California with a principal place of business in Carlsbad,
4 California.

5 4. At all times mentioned herein, Plaintiff SUZON DELLINGER was and is an
6 individual who resides in the city of Carlsbad, San Diego.

7 5. Plaintiff is ignorant of the true names and capacities of defendants sued herein
8 as DOES 1 through 20, Inclusive, and therefore sues these defendants by such fictitious names.
9 Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff
10 is informed and believes and thereon alleges that each of said fictitiously named defendants is
11 negligently responsible in some manner for the occurrences herein alleged, and that the injuries herein
12 alleged were proximately caused by said negligence.

13 6. Defendant, DAVIES EYE CENTER is a business entity engaged in the business of
14 providing medical treatment in San Diego, California and employed defendants MELISSA A.
15 KLEMAN, JAMES A. DAVIES and DOES 1 through 20, Inclusive.

16 7. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein
17 Defendant JAMES A. DAVIES owned and operated, and continues to own and operate, Defendant
18 DAVIES EYE CENTER.

19 8. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein
20 each of the defendants was the agent and employee of each of the remaining defendants and was at all
21 times herein mentioned acting within the scope of such agency and employment.

22 9. Defendants, and each of them, negligently failed to exercise the proper
23 degree of knowledge and skill in examining, diagnosing, treating and caring for Plaintiff, SUZON
24 DELLINGER.

25 10. All acts complained of herein occurred within the County of San Diego.

26 11. On February 27, 2012, plaintiff served Defendants MELISSA A. KELMAN, JAMES
27 A. DAVIES and DAVIES EYE CENTER at their respective places of business with a notice of
28 intention to commence this action pursuant to California Code of Civil Procedure §364.

I.

**FIRST CAUSE OF ACTION
MEDICAL MALPRACTICE**

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4 12. Plaintiff incorporates by reference paragraphs 1-11, as though fully set forth
5 herein.

6 13. On or around March 25, 2011, Plaintiff was referred by her optometrist to DAVIES
7 EYE CENTER. Ms. DELLINGER engaged Defendants, and each of them, to examine, monitor,
8 diagnose and treat symptoms of irritation, itchiness and filmy discharge in her eye.

9 14. Pursuant to this engagement, Defendants, and each of them, undertook the duty to
10 properly monitor, diagnose and treat SUZON DELLINGER's medical condition and to provide
11 adequate medical care for her.

12 15. Defendants, and each of them, negligently failed to exercise the proper degree of
13 knowledge and skill in examining, monitoring, diagnosing, and rendering medical care and treatment
14 to Plaintiff, SUZON DELLINGER.

15 16. Specifically, Defendants MELISSA A. KELMAN, JAMES A. DAVIES and other
16 DAVIES EYE CENTER physicians, nurses and healthcare providers, acted negligently when
17 KLEMAN, an optometrist, failed to properly treat Plaintiff and failed to properly monitor and follow-
18 up with Plaintiff regarding her condition. Rather, KLEMAN scheduled Plaintiff for a follow-up visit
19 10 days later, by which time Plaintiff's medical condition worsened. As a result of Defendants
20 negligent actions and omissions, Ms. DELLINGER developed glaucoma in the treated eye and had to
21 undergo surgery. Ms. DELLINGER is now 80% blind in that eye and will suffer permanent loss of
22 vision.

23 17. As a direct and proximate result of the negligence of defendants, Plaintiff has
24 incurred and may further incur economic loss in the form of lost income and medical bills and other
25 related expenses in an amount not yet known.

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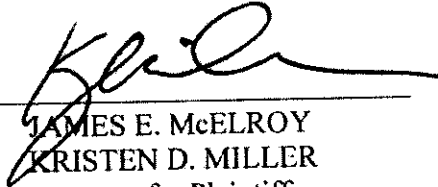
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1 **WHEREFORE PLAINTIFF PRAYS** for judgment against defendants, and each of them, as follows:

- 2 (1) For general damages in a sum according to proof, including emotional distress;
- 3 (2) For special damages for economic loss, with interest thereon, in a sum according to
- 4 proof at trial;
- 5 (3) For costs of this suit;
- 6 (4) For attorneys' fees as allowed by law; and
- 7 (5) For any such other and further relief as the court deems just and proper.

10 DATED: MAY 25, 2012

LAW OFFICE OF JAMES E. McELROY

By: 
JAMES E. McELROY
KRISTEN D. MILLER
Attorney for Plaintiff,
SUZON DELLINGER

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