

1 R. Christian Hulburt, Esq., SBN: 138089
2 **HULBURT & BUNN, LLP**
3 1245 Island Avenue
4 San Diego, California 92101
5 Telephone: (619)398-8370
6 Facsimile: (619)398-8377

CIVIL BUSINESS OFFICE 12
CENTRAL DIVISION

2011 SEP 21 P 12: 27

CLERK - SUPERIOR COURT
SAN DIEGO COUNTY, CA

7 Attorneys for Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 JACQUELINE THOMPSON-DUNN,

11 Plaintiff,

12 vs.

13 ROBERT J. SANTELLA, M.D.; ROBERT J.
14 SANTELLA, M.D., INC.; PROMISE
15 HOSPITAL OF SAN DIEGO; PROMISE
16 HEALTHCARE OF CALIFORNIA, INC.;

17 and DOES 1 through 20, Inclusive,
18 Defendants.

) **CASE NO: 37-2011-00098149-CU-MM-CTL**

) **COMPLAINT**

19 Plaintiff alleges:

20 **GENERAL ALLEGATIONS**

21 1. The true names or capacities, whether individual, corporate, associate, or otherwise, of
22 defendants, DOES 1 through 20, inclusive, are unknown to plaintiff at this time who, therefore, sues
23 said defendants by such fictitious names. When the true names and capacities of said defendants have
24 been ascertained, plaintiff will amend this complaint accordingly. Plaintiff is informed and believes,
25 and thereupon alleges, that each defendant designated herein as a DOE is responsible, negligently,
26 strictly, or in some other actionable manner, for the events and happenings referred to and caused
27 injuries and damages to plaintiff through its own conduct or the conduct of its agents, servants or
28 employees, or in some other manner.

COMPLAINT

HULBURT & BUNN LLP

1245 Island Avenue
San Diego, CA 92101
PHONE: (619) 398-8370 - FAX: (619) 398-8377

1 2. Plaintiff is informed and believe, and thereon alleges, that at all times mentioned herein,
2 defendants, and each of them, were the agents, servants, employees and/or joint venturers of their co-
3 defendants and were, as such, acting within the scope, course and authority of said agency,
4 employment and /or joint venture, in that each and every defendant, when acting as a principal, was
5 negligent in the selection and hiring of each and every other defendant as an agent, servant, employee
6 and/or joint venturer, and each defendant endorsed, approved, authorized, permitted, encouraged and
7 ratified the conduct of the others.

8 3. Plaintiff is informed and believes, and on such information and belief alleges, that at
9 all times mentioned herein, Defendant Robert J. Santella, M.D., was and is a medical doctor practicing
10 medicine in San Diego County, California.

11 4. Plaintiff is informed and believes, and on such information and belief alleges, that at
12 all times mentioned herein, Defendant Robert J. Santella, M.D., Inc., was and is a medical corporation,
13 organized and existing under the laws of the State of California, doing business and maintaining its
14 principle place of business in San Diego County, California.

15 5. Plaintiff is informed and believes and thereon alleges that at all times relevant defendant
16 Promise Hospital of San Diego was and is a hospital facility caring for patients in the County of San
17 Diego, California.

18 6. Plaintiff is informed and believes and thereon alleges that at all times relevant defendant
19 Promise Healthcare of California, Inc., was and is a corporation doing business in the County of San
20 Diego, California.

21 7. At all times, defendants, and each of them, owed plaintiff the duty to possess and
22 exercise that degree of care and skill ordinarily possessed and used by similar health care professionals
23 in the same or similar circumstances. Defendants failed in that duty and were negligent, careless and
24 reckless in their care and treatment of Jacqueline Thompson-Dunn.

25 8. On or about June 23, 2010, Plaintiff Jacqueline Thompson-Dunn underwent surgery
26 to remove her ovary at the Promise Hospital of San Diego, performed by Dr. Robert Santella. Dr.
27 Santella caused two punctures in Ms. Thompson-Dunn's bowel during the surgery. When he
28 recognized the complication, Dr. Santella determined a general surgeon should be called to repair the

1 tears. Inexplicably, defendants were unable to locate a general surgeon in the hospital, or on call, or
2 anywhere in the county, who would come to assist Dr. Santella and complete the repair.

3 9. Dr. Santella elected to attempt the bowel repairs himself.

4 10. Plaintiff is informed and believes and thereon alleges that defendants and each of them
5 were negligent in all aspects of the surgery, including the attempted bowel repair.

6 11. Defendants cared for plaintiff at the Promise Hospital until discharge on June 29, 2010.
7 Two days later, on July 1, 2010, Ms. Thompson-Dunn went to Alvarado Hospital experiencing severe
8 abdominal pain and discomfort. It was discovered she suffered from peritonitis and sepsis, and
9 surgeons there discovered defendants' attempted bowel repairs had failed. More than two liters of
10 purulent bowel contents were removed from plaintiff's abdomen.

11 12. As a result of defendants' negligence, Ms. Thompson-Dunn required extensive medical
12 care and treatment. She was initially hospitalized for a nearly a full month, underwent numerous
13 procedures, and suffered permanent and disabling injury. She suffers constant and chronic bowel
14 dysfunction, weight loss, fatigue, and general illness. She also incurred substantial medical and
15 incidental expenses, and is likely to incur additional expenses in the future.

16 13. As a further result of defendants' negligence, Ms. Thompson-Dunn was and is unable
17 to attend to her usual and customary duties in employment. She has suffered a substantial loss of
18 earnings and earning capacity, and will continue to suffer such losses in the future.

19 14. As a direct and legal result of defendants' negligence, as alleged herein, plaintiff has
20 suffered and continues to suffer, permanent and disabling injuries to her person, body and health, all
21 to her general damage in a sum in excess of the jurisdictional minimum of this Court.

22
23 **FIRST CAUSE OF ACTION**

24 **(Medical Negligence)**

25 **(Santella; Santella Inc.; Promise Hospital; Promise Healthcare; and DOES 1-20)**

26 15. Plaintiffs incorporate paragraphs 1 through 14 in their entirety.

27 16. Defendants owed plaintiff a duty to comply with all applicable standards of care. They
28 were negligent in such care, and failed to comply with the standard of care.

1 17. As a result of defendants' negligence, plaintiff was hurt, injured, and damaged as
2 alleged.

3 **SECOND CAUSE OF ACTION**

4 **(Hospital Negligence)**

5 **(Promise Hospital, Promise Healthcare, and DOES 1-20)**

6 18. Plaintiff incorporates paragraphs 1 through 17 in their entirety.

7 19. Plaintiff was admitted by defendants to Promise Hospital of San Diego on June 23,
8 2010, for surgery to be performed by Dr. Robert Santella.

9 20. Plaintiff is informed and believes and thereon alleges that at the same time defendants
10 admitted Ms. Thompson-Dunn to Promise Hospital the hospital was not adequately staffed to care for
11 her surgical needs. During the course of the surgery, Dr. Santella caused two punctures in Ms.
12 Thompson-Dunn's bowel. He requested the hospital to obtain contact the on-call "bowel surgeon" to
13 perform the bowel repair. However, no qualified surgeon was on-call or available to the hospital at
14 the time. As a result of the hospital's failure to have a qualified surgeon on call, Dr. Santella attempted
15 to perform the repair himself, and did so inadequately and negligently.

16 21. Plaintiff is informed and believes and thereon alleges that defendant Robert Santella,
17 M.D., has been a defendant in numerous medical malpractice lawsuits, has been disciplined repeatedly
18 by the Medical Board of California, and has encountered difficulties with credentialing, discipline and
19 privileges at other area hospitals. Plaintiff did not know any of this at the time she consented to allow
20 Dr. Santella to operate on him at Promise Hospital. However, plaintiff is informed and believes
21 defendants Promise Hospital of San Diego, Promise Healthcare of California, Inc., and DOES 1-20,
22 did know, or in the exercise of reasonable care should have known of Dr. Santella's record and
23 reputation.

24 22. Defendants Promise Hospital of San Diego, Promise Healthcare of California, Inc., and
25 DOES 1-20 were negligent in all aspects of their obligations to plaintiff, including but not limited to
26 negligent screening of Dr. Santella's competency, negligent granting of privileges to Dr. Santella to
27 perform surgery at Promise Hospital, negligent failure to warn plaintiff about Dr. Santella's record,
28 and negligent failure to warn plaintiff that no surgeon was available in the event Dr. Santella

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

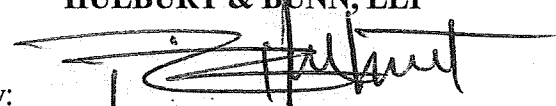
encountered a surgical complication.

22. As a result of such negligence, plaintiff underwent surgery performed by Dr. Robert Santella at Promise Hospital. Dr. Santella's surgical care was negligent. He caused injury. He could not find help to repair the injury. His own effort to repair the injury was negligent and failed. Plaintiff suffered injury, increased care, numerous procedures, severe pain and disability, harm and damages all as alleged more fully above.

WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as follows:

1. General damages according to proof in an amount in excess of the jurisdictional minimum of this Court;
2. All medical and incidental expenses according to proof;
3. All future medical and incidental expenses according to proof;
4. All lost earnings and earning capacity according to proof;
5. For costs of suit incurred herein;
6. For pre-judgment and post-judgment interest, as provided for by law; and
7. For such other and further relief as the Court may deem just and proper.

Dated: 9/20/11

HULBURT & BUNN, LLP

By: R. CHRISTIAN HULBURT
Attorneys for Plaintiffs