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ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JUN 14 2011

John A. Clarke, Executive Officer/Clerk
BY *[Signature]* Deputy
Glorietta Robinson

12 Attorneys for Plaintiffs
13 LINDA DE ROGATIS AND PETER DE ROGATIS

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF LOS ANGELES

16 LINDA DE ROGATIS, individually and as
17 successor-in-interest to Tara De Rogatis, and
18 PETER DE ROGATIS, individually and as
19 successor-in-interest to Tara De Rogatis,

20 Plaintiffs,

21 v.

22 KAREN MICHELLE SHAINSKY, D.O. and
23 DOES 1 through 25 inclusive,

24 Defendants.

Case No.: BC457891

Judge: Hon. Daniel Buckley

FIRST AMENDED COMPLAINT FOR DAMAGES FOR:

**(1) Medical Malpractice – Professional Negligence; and
(2) Wrongful Death**

JURY TRIAL DEMANDED

Complaint Filed: March 22, 2011

25 Plaintiffs LINDA DE ROGATIS AND PETER DE ROGATIS (“Plaintiffs”),
26 individually and as successors-in-interest to TARA DE ROGATIS, for causes of action against
27 Defendant KAREN MICHELLE SHAINSKY, D.O. (“Dr. Shainsky”) and DOES 1 through 25
28 (collectively “Defendants”), allege as follows:

I.

PARTIES

1. Plaintiffs are, and at all times mentioned in this First Amended Complaint were, individuals residing in the State of New Jersey. They are TARA DE ROGATIS’ (“Tara’s”)



1 parents. Tara died on March 23, 2010 at the age of 30 by overdosing on prescription
2 medications. At the time of her death, Tara resided in the State of California, County of Los
3 Angeles. Tara was not married nor did she have any children. Accordingly, Plaintiffs are
4 Tara's intestate successors. As surviving parents, Plaintiffs bring this action on their behalf
5 individually and as Tara's successors-in-interest.

6 2. Plaintiff LINDA DE ROGATIS ("Linda") is the administrator of Tara's estate,
7 which is located in Los Angeles, California. Accordingly, Linda is Tara's personal
8 representative and may commence the present action against Defendants on Tara's behalf.

9 3. Dr. Shainsky is, and at all times mentioned in this First Amended Complaint was,
10 a physician licensed by the Osteopathic Medical Board of California (License No. 20A8489) as
11 an osteopathic physician and surgeon since 2003 and engaged in the practice of medicine,
12 specifically internal medicine and rheumatology, in the State of California, County of Los
13 Angeles.

14 4. The true names and capacities, whether individual, corporate, associate, or
15 otherwise of Defendants named herein as DOES 1 through 25, inclusive, are unknown to
16 Plaintiffs at the time of filing this First Amended Complaint, and therefore, Plaintiffs sue said
17 Defendants by fictitious names. Plaintiffs are informed and believe and based thereon allege
18 that Defendants DOES 1 through 25, and each of them, are legally responsible to Plaintiffs for
19 the relief sought herein and/or are necessary parties to this litigation. Plaintiffs will ask for
20 leave to amend this First Amended Complaint to state the true names and capacities of DOES 1
21 through 25 when they have ascertained the same.

22 5. At all times mentioned herein, Defendants, and each of them, were the agents,
23 servants, employers, employees, partners and/or joint venturers of the remaining Defendants,
24 and at all times, were acting within the scope and course of such agency, employment,
25 partnership, or joint venture.

26 6. Plaintiffs are informed and believe, and hereby allege, that Does 1 through 10,
27 inclusive, at all relevant times, were physicians duly licensed to practice medicine in the State
28 of California and engaged in doing business in Los Angeles County, California.

1 12. Between February 10, 2010 and March 22, 2010, a physician-patient relationship
2 existed between Dr. Shainsky and Tara. This relationship gave rise to a duty on Dr. Shainsky's
3 part to exercise that degree of skill and care deemed proper by other physicians in similar
4 circumstances.

5 13. From approximately February 10, 2010 through March 22, 2010, Dr. Shainsky
6 treated Tara for chronic pain. At her first medical appointment, on February 10, 2010, Tara
7 informed Dr. Shainsky that she had been suffering from excruciating pain throughout her body
8 for approximately two years and that symptoms had worsened over the past two months. Tara
9 also told Dr. Shainsky that she felt relief when she took Norco, a prescription drug containing
10 hydrocodone and acetaminophen. Tara further advised Dr. Shainsky that she was under
11 psychiatric care for a mood disorder and suffered from anxiety.

12 14. At the February 10, 2010 medical appointment, Dr. Shainsky diagnosed Tara with
13 fibromyalgia. Fibromyalgia is a disorder characterized by widespread musculoskeletal pain
14 accompanied by fatigue, sleep, memory and mood issues. Dr. Shainsky advised Tara about
15 managing her fibromyalgia and discouraged Tara from using narcotics, such as Norco, to
16 relieve pain. Dr. Shainsky recommended that Tara take the prescription drug, Cymbalta 30 mg,
17 and undergo pool therapy for medical treatment. Additionally, Dr. Shainsky administered 20
18 mg of Depo-Medrol and 10 cc of lidocaine to Tara's cervical trigger points.

19 15. On March 1, 2010, Tara had a follow-up appointment with Dr. Shainsky. At that
20 appointment, Tara reported some improvement in the two weeks following the trigger point
21 injections, but told Dr. Shainsky that currently she was experiencing pain throughout her body.
22 Dr. Shainsky again administered injections of Depo-Medrol and lidocaine to Tara's cervical
23 trigger points and recommended Tara return in four weeks for a follow up appointment.

24 16. Following the March 1, 2010 appointment, Dr. Shainsky received a copy of a
25 neurology report from Carl Orfuss, M.D., concerning his examination of Tara. In his report,
26 Dr. Orfuss stated that a psychiatrist had referred Tara to him because Tara was experiencing
27 altered memory and auditory hallucinations.

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1 17. Approximately three weeks later, on March 22, 2010, Tara went to Dr.
2 Shainsky's office with her fiancé, David MacEachern ("David"), complaining again of pain.
3 While in Dr. Shainsky's office and in Dr. Shainsky's presence, Tara stated: "I'm in so much
4 pain that I want to kill myself." Shocked by Tara's statement, Dr. Shainsky excused herself to
5 make a call to Tara's treating psychiatrist, Dr. Paul Bohn. Dr. Shainsky left Dr. Bohn a voice
6 message regarding Tara's statement that she wanted to "kill" herself and requested that he call
7 her back. Dr. Shainsky provided Dr. Bohn with her office and cellular telephone numbers.

8 18. After returning to the examining room, Dr. Shainsky discussed with Tara and
9 David Tara's poor mental health and her current psychiatric medications. Tara informed Dr.
10 Shainsky that currently she was taking Klonopin, Norco, Synthroid, Cymbalta, Trazadone,
11 Straterra, Levothyroxine and Cytomel. During that conversation, David informed Dr. Shainsky
12 that in December 2009, Tara attempted suicide by ingesting prescription medications and that
13 Tara's statement regarding wanting to kill herself should be taken seriously.

14 19. Notwithstanding this critical information, Dr. Shainsky not only failed to take
15 reasonable action to protect Tara from herself, other than leaving a message for Tara's
16 psychiatrist, but Dr. Shainsky further breached her duty of care by writing Tara a prescription
17 for 100 Percocet (Oxycodone) at 10 mg each, the highest available dosage.

18 20. Dr. Shainsky provided Tara with a prescription of an unusually large amount of
19 Percocet, after administering six injections to Tara's cervical trigger points and previously
20 advising Tara against using narcotics to treat pain. At the same time Dr. Shainsky handed Tara
21 the very means to end her life, Dr. Shainsky told Tara, "Promise me you won't hurt yourself."

22 21. After leaving Dr. Shainsky's office, Tara went to a CVS pharmacy, where she
23 filled Dr. Shainsky's prescription for 100 Percocet (Oxycodone).

24 22. After picking up her Percocet prescription on the evening of March 22, 2010,
25 Tara went to her apartment. On the morning of March 23, 2010, David found Tara slumped
26 over on her bed from an overdose of the 100 Percocet Dr. Shainsky prescribed her, and some
27 other pills. Paramedics declared Tara was declared dead at the scene. Law enforcement
28

1 recovered an empty bottle of 100 count Percocet which had been filled at CVS on March 22,
2 2010 from Tara's bedroom.

3 23. The Los Angeles County Coroner's report states that Tara overdosed and died
4 from prescription medication intoxication. The Coroner detected a lethal level of Oxycodone
5 (Percocet) in Tara's body.

6 24. At that time of her death, Tara was a vibrant, beautiful young woman who was
7 actively pursuing an acting career. She had previously acted in a number of short films and
8 was taking acting classes in order to perfect her skills. In addition to performing, she was an
9 avid and accomplished oil painter and photographer. Tara had a marked zest for life, noted by
10 all those who had the pleasure of knowing her. She was an active member of her Catholic
11 Church and was scheduled to make her Confirmation in the presence of family and friends in
12 the weeks following her death.

13 **V.**
CAUSES OF ACTION

14 **FIRST CAUSE OF ACTION**
15 **MEDICAL MALPRACTICE — PROFESSIONAL NEGLIGENCE**
16 **(Against all Defendants)**

17 25. Plaintiffs incorporate by this reference and reallege paragraphs 1 through 24 as
18 though fully set forth at length herein.

19 26. Defendants provided Tara with medical care and treatment and rendered
20 professional services in diagnosing, caring for, and treating Tara beginning in or around
21 February 2010 and continuing thereafter. During this time, Defendants failed to exercise the
22 proper degree of knowledge and skill and negligently, carelessly, recklessly, wantonly, and
23 unlawfully treated and provided care, examination, monitoring, and other professional services
24 for Tara by failing to diagnose adequately and properly and treat and prevent harm to Tara.

25 27. Plaintiffs are informed, believe, and thereon allege that Dr. Shainsky's conduct
26 fell below the standard of care in her profession for several reasons including, but not limited
27 to, the following:
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- 1 • misdiagnosing Tara, a psychiatric patient with serious mental health
- 2 problems, with fibromyalgia;
- 3 • providing Tara with a prescription for 100 Percocet after Tara told Dr.
- 4 Shainsky that she wanted to kill herself and after Tara and David informed
- 5 Dr. Shainsky of Tara's poor mental health, the types and dosages of Tara's
- 6 multiple psychiatric medications, and Tara's December 2009 involuntary
- 7 commitment for a reported near-fatal overdose of prescription medications;
- 8 and
- 9 • failing to take appropriate action to protect Tara from herself other than
- 10 leaving a message for Tara's psychiatrist, Dr. Paul Bohn, such as requesting
- 11 that Dr. Bohn's service reach him on an emergency basis, call 911 to report
- 12 Tara's suicide threat and/or refer Tara to an emergency room for treatment.

13 28. During the course of providing Tara with the medical care, diagnosis, treatment,

14 evaluation, and consultation alleged herein, Defendants were aware, or should have been

15 aware, that Tara was a danger to herself and needed protection from herself, including limited

16 access to large amounts of prescription medication and appropriate psychiatric and/or medical

17 treatment.

18 29. Despite having witnessed Tara threaten suicide and having been informed of

19 Tara's mental health problems, multiple psychiatric medications and Tara's previous

20 involuntary commitment for a reported attempted suicide by overdosing on prescription

21 medications, Dr. Shainsky provided Tara with a prescription for 100 Percocet and did nothing

22 to protect Tara from herself other than leaving a voice message for Tara's treating psychiatrist,

23 Dr. Paul Bohn.

24 30. As a direct and proximate result of Defendants' negligence, carelessness,

25 recklessness, wantonness, and unlawfulness as herein alleged, Tara died.

26 31. As a further direct and proximate result of Defendants' negligence, carelessness,

27 recklessness, wantonness, and unlawfulness as herein alleged, Plaintiffs sustained significant

28 economic and non-economic damages, including but not limited to, past and future lost

1 earnings, funeral, burial, travel, and associated expenses, and general damages all in a sum
2 according to proof at the time of trial.

3 **SECOND CAUSE OF ACTION**
4 **WRONGFUL DEATH**

5 **(Against All Defendants)**

6 32. Plaintiffs incorporate by this reference and reallege paragraphs 1 through 31 as
7 though fully set forth at length herein.

8 33. On June 4, 1979, Tara De Rogatis was born to parents Linda and Peter De
9 Rogatis. At the time of her death, Tara was not married nor did she have any children.
10 Accordingly, Plaintiffs are Tara's intestate successors.

11 34. As Tara's intestate successors-in-interest, Plaintiffs bring this action for their
12 benefit, individually and as Tara's successors-in-interest.

13 35. Defendants were negligent, careless, reckless, wanton, and unlawful in their
14 actions and failures to act as set forth above.

15 36. As a direct and proximate result of the aforementioned negligence, carelessness,
16 recklessness, wantonness, and unlawfulness of Defendants, Tara De Rogatis sustained fatal
17 injuries.

18 37. As a further direct and proximate result of the negligence, carelessness,
19 recklessness, wantonness, and unlawfulness of the Defendants and the resulting death of Tara,
20 Plaintiffs sustained severe injuries and significant economic and non-economic damages in a
21 sum within the jurisdiction of this court and according to proof at the time of trial.

22 38. As a further direct and proximate result of the negligence, carelessness,
23 recklessness, wantonness, and unlawfulness of the Defendants, Plaintiffs have been, continue
24 to, and will in the future be deprived of, among other things, Tara's comfort, care, society, love,
25 affection, presence, attention and companionship, the value of which will be presented
26 according to proof at the time of trial.

27 39. As a further direct and proximate result of the negligence, carelessness,
28 recklessness, wantonness, and unlawfulness of the Defendants, Plaintiffs have incurred funeral,
burial, travel, and related expenses in an amount according to proof at the time of trial.

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VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For general damages in an amount according to proof;
2. For special damages in an amount according to proof;
3. For funeral, burial, transportation, and related expenses according to proof;
4. For interest at the legal rate of ten percent (10%) per annum;
5. For costs of suit incurred herein; and
6. For such other and further relief as the Court may deem just and proper.

VII.

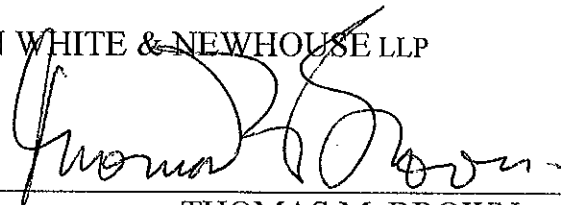
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial.

DATED: June 14, 2011

BROWN WHITE & NEWHOUSE LLP

By



THOMAS M. BROWN
KATHERINE C. MCBROOM
NANNINA L. ANGIONI

Attorneys for Plaintiffs
LINDA AND PETER DE ROGATIS



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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
Linda De Rogatis, et al. v. Karen Michelle Shainsky, D.O., et al.
BC 457891

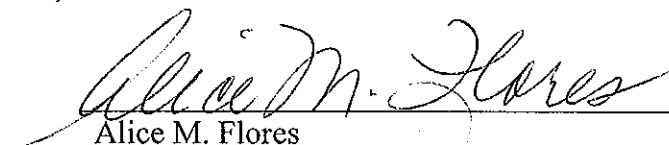
I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 333 South Hope Street, 40th Floor, Los Angeles, California 90071.

On June 14, 2011, I served the following document(s) described as: **FIRST AMENDED COMPLAINT FOR DAMAGES** in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

Patricia M. Tazzara, Esq. Tel.: 213.687.1600
TAYLOR BLESSEY LLP Fax: 213.687.1620
350 S. Grand Avenue, Suite 3850
Los Angeles, CA 90071

- BY MAIL:** I deposited such envelope in the mail at 333 South Hope Street, 40th Floor, Los Angeles, California 90071. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.
- BY FACSIMILE:** I served said document(s) to be transmitted by facsimile pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 213/613-0550. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list.
- BY OVERNIGHT DELIVERY:** I served such envelope or package to be delivered on the same day to an authorized courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier.
- BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the above addressee(s).
- BY ELECTRONIC MAIL:** On the above-mentioned date, from Los Angeles, California, I caused each such document to be transmitted electronically to the party(ies) at the e-mail address(es) indicated below. To the best of my knowledge, the transmission was reported as complete, and no error was reported that the electronic transmission was not completed.
- STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 14, 2011, at Los Angeles, California.


Alice M. Flores

