

**Electronically Filed  
Supreme Court  
SCAP-12-0000361  
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IN THE SUPREME COURT OF THE STATE OF HAWAII

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MICHAEL SIOPEs and LACEY SIOPEs,  
Petitioners/Plaintiffs-Appellants,

vs.

KAISER FOUNDATION HEALTH PLAN, INC.; HAWAII PERMANENTE  
MEDICAL GROUP, INC.; KAISER FOUNDATION HOSPITALS, INC.,  
Respondents/Defendants-Appellees.

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NO. SCAP-12-0361

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(CAAP NO. 10-0000361; CIVIL NO. 11-1-2732-11)

September 26, 2013

CONCURRING OPINION BY MCKENNA, J.

I concur in the result, and also with Justice Acoba's concurring opinion that there was no valid waiver of the Siopes' right to jury trial under Article I, Section 13 of the Hawaii Constitution.

I write separately, however, because respectfully, I do not believe Leong v. Kaiser Found. Hosps., 71 Haw. 240, 788 P.2d 164 (1990) is distinguishable. Rather, I believe Leong should be overruled based on the lack of mutual assent to the arbitration

agreement exhibited by the facts of that case, pursuant to this court's later holding in Brown v. KFC Nat'l Mgmt. Co., 82 Hawai'i 226, 921 P.2d 146 (1996).

/s/ Sabrina S. McKenna

