

1 R. PARKER WHITE
State Bar No. 95579
2 **POSWALL, WHITE & CUTLER**
1001 G Street, Suite 301
3 Sacramento, California 95814
Telephone: (916) 449-1300
4 Facsimile: (916) 449-1320

5 Attorneys for Plaintiff
PAUL HERRON, JR.
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FILED
Superior Court Of California,
Sacramento
06/20/2012
mpurcell
By _____, Deputy
Case Number:
34-2012-00126357

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

Department
Assignments

Case Management 44
Law and Motion 53
Minors Compromise 45

11 PAUL HERRON, JR.,

CASE NO.

12 Plaintiff,

COMPLAINT FOR DAMAGES
(Personal Injury - Medical
Malpractice; Product Liability)

13 v.

14 KAISER FOUNDATION HOSPITALS, a
California corporation; PERMANENTE
15 MEDICAL GROUP, a California
corporation; KAISER FOUNDATION
16 HEALTH PLAN INC., a California
corporation; SMITH & NEPHEW, INC.,
17 a Delaware corporation; and DOES 1
through 60, inclusive,

18 Defendants.
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21 Plaintiff PAUL HERRON, JR., complains of defendants, KAISER FOUNDATION
22 HOSPITALS, a California corporation; PERMANENTE MEDICAL GROUP, a California
23 corporation; KAISER FOUNDATION HEALTH PLAN INC., a California corporation;
24 SMITH & NEPHEW, INC., a Delaware corporation; and DOES 1 through 60, inclusive,
25 and each of them, for an amount in excess of \$25,000.00 and in excess of the
26 minimum jurisdictional limits of this Court, and alleges as follows:

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1 **ALLEGATIONS COMMON TO ALL COUNTS**

2 1. The true names and capacities, whether individual, corporate, associate
3 or otherwise, of the defendants and DOES 1 through 60, inclusive, are unknown to
4 plaintiff, who therefore sues such defendants by such fictitious names, and plaintiff will
5 amend this complaint to show their true names and capacities when the same have
6 been ascertained. Plaintiff is informed and believes and thereon alleges that each of
7 the defendants, DOES 1 through 60, inclusive, is responsible under law in some
8 manner, negligently, in warranty, strictly, or otherwise, for the events and happenings
9 herein referred to and proximately thereby caused injuries and damages to plaintiff as
10 herein alleged.

11 2. Plaintiff is now, and at all times herein mentioned was, a citizen of and
12 resident within the State of California, and the defendants, and each of them, are now,
13 and at all times herein mentioned were citizens of and residents within the State of
14 California, and the amount in controversy exceeds the minimum jurisdictional limits of
15 the Court.

16 3. Plaintiff is informed and believes and thereon alleges that, at all times
17 herein mentioned, each of the defendants were the agents, employees, principals or
18 employers of each of the remaining defendants and were at all times relevant, acting
19 within the course and scope of said relationships and each defendants have authorized,
20 ratified and approved the acts of each of the remaining defendants.

21 4. That defendants KAISER FOUNDATION HOSPITALS, a California
22 corporation; PERMANENTE MEDICAL GROUP, a California corporation; KAISER
23 FOUNDATION HEALTH PLAN INC., a California corporation; and DOES 1 through 20,
24 and each of them, are now, and at all times herein mentioned were, corporations,
25 associations, partnerships or other types of business entity, doing business as a
26 hospital and clinic in the State of California, and plaintiff will ask leave to insert the
27 correct designation when the same has been ascertained.

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5. That the defendants DOES 21 through 40, and each of them, at all times herein mentioned, were registered nurses, physicians and surgeons practicing in the State of California, and employed by defendants KAISER FOUNDATION HOSPITALS, a California corporation; PERMANENTE MEDICAL GROUP, a California corporation; KAISER FOUNDATION HEALTH PLAN INC., a California corporation; and DOES 1 through 20, and each of them.

6. Defendants, SMITH & NEPHEW, INC., a Delaware corporation; and DOES 41 through 60, and each of them, are now, and at all times herein mentioned were, corporations, associations, partnerships or other types of business entities, doing business as developers, manufacturers, and distributors of medical supplies, in the State of California, and plaintiff will ask leave to insert the correct designation when the same has been ascertained.

Plaintiff PAUL HERRON, JR., complains of defendants KAISER FOUNDATION HOSPITALS, a California corporation; PERMANENTE MEDICAL GROUP, a California corporation; KAISER FOUNDATION HEALTH PLAN INC., a California corporation; and DOES 1 through 40, inclusive, and each of them, and for a First Cause of Action alleges as follows:

FIRST CAUSE OF ACTION
(Medical Malpractice)

7. Plaintiff incorporates by reference herein all paragraphs as stated in paragraphs 1 through 6 as if fully set forth herein.

8. On or about July 10, 2009, plaintiff PAUL HERRON, JR., was treated by the defendants DOES 26 through 50, and each of them, at the hospitals and clinics of defendants KAISER FOUNDATION HOSPITALS, a California corporation; PERMANENTE MEDICAL GROUP, a California corporation; KAISER FOUNDATION HEALTH PLAN INC., a California corporation; and DOES 1 through 25, and each of them.

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1 9. On or about October 1, 2011, plaintiff PAUL HERRON, JR., first had
2 cause to know that during the times herein mentioned, the defendants, and each of
3 them, negligently cared for, diagnosed, and treated him and failed to exercise the
4 standard of care and skill ordinarily and reasonably required of physicians, surgeons,
5 hospitals; nurses, etc., which proximately caused the hereinafter described injuries and
6 damages to plaintiff.

7 10. On or about July 10, 2009, and thereafter, defendants and each of them,
8 inclusive, impermissibly delayed, failed or were negligent in providing proper care
9 resulting in severe injury to plaintiff PAUL HERRON, JR.'s, body. Defendants were
10 further negligent in their failure to warn and inform plaintiff of risks incident to their
11 treatment of plaintiff resulting in plaintiff's injuries and damages.

12 11. As a proximate result of the said negligence and carelessness of the
13 defendants, and each of them, plaintiff PAUL HERRON, JR., was hurt and injured in his
14 health, strength and activity, sustaining injury to his body and shock and injury to his
15 nervous system and person, all of which said injuries have caused and continue to
16 cause plaintiff great mental, physical and nervous pain and suffering. Plaintiff is
17 informed and believes and therefore alleges that said injuries will result in some
18 permanent disability to plaintiff all to his general damage in an amount in excess of the
19 minimum jurisdictional limits of this Court.

20 12. As a further proximate result of the negligence of defendants, and each of
21 them, plaintiff PAUL HERRON, JR., was required to and did employ, physicians and
22 surgeons to examine, treat and care for him and did incur, and will in the future incur,
23 medical and incidental expenses. The exact amount of such expense is unknown to
24 plaintiff at this time, and plaintiff shall seek leave to amend this pleading when the same
25 has been ascertained by him.

26 13. As a further proximate result of the said negligence of the defendants, and
27 each of them, plaintiff PAUL HERRON, JR., was prevented from attending to his usual
28 occupation, all to plaintiff's further damage in an amount unknown at this time, and

1 plaintiff will ask leave to amend his complaint to show the exact amount when
2 determined. Further, plaintiff is entitled to prejudgment interest on said amount when
3 determined from the date of the accident of the present complaint.

4 WHEREFORE, plaintiff PAUL HERRON, JR., prays for judgment against the
5 defendants, KAISER FOUNDATION HOSPITALS, a California corporation;
6 PERMANENTE MEDICAL GROUP, a California corporation; KAISER FOUNDATION
7 HEALTH PLAN INC., a California corporation; and DOES 1 through 25, and each of
8 them, as follows:

- 9 1. For general damages in a sum in excess of the minimum
10 jurisdictional limits of this Court;
- 11 2. For medical and incidental expenses according to proof;
- 12 3. For loss of earnings according to proof;
- 13 4. For all costs of suit incurred herein; and
- 14 5. For such other and further relief as this Court may deem just and
15 proper.

16 Plaintiff PAUL HERRON, JR., complains of defendants SMITH & NEPHEW,
17 INC.; and DOES 41 through 60, inclusive, and each of them, and for a Second Cause
18 of Action alleges as follows:

19 **SECOND CAUSE OF ACTION**
20 **(Product Liability)**

21 14. Plaintiff incorporates by reference herein all paragraphs as stated in
22 paragraphs 1 through 6 and the First Cause of Action as if fully set forth at length
23 herein.

24 15. The defendants, SMITH & NEPHEW, INC., a Delaware corporation; and
25 DOES 41 through 60, and each of them, as the manufacturer, retailer, designer,
26 wholesaler, and distributor of the products in question described as BIRMINGHAM HIP
27 Resurfacing System (BHR) and are strictly liable to the plaintiff under the strict liability
28 theory imposed by the Courts of the State of California for manufacturing, designing,

1 modifying, and placing on the market and in the flow of commerce a defective product
2 knowing that said product would be used by the public and particularly by the plaintiff
3 without inspection, that said product was not fit for its intended purpose and that the
4 benefits of the design did not outweigh the risks inherent in the design. All of these
5 defects proximately contributed to the injuries and damages sustained by the plaintiff as
6 alleged herein.

7 16. As a proximate result of the said negligence and carelessness of the
8 defendants, and each of them, plaintiff PAUL HERRON, JR., was hurt and injured in his
9 health, strength and activity, sustaining injury to his body and shock and injury to his
10 nervous system and person, all of which said injuries have caused and continue to
11 cause plaintiff great mental, physical and nervous pain and suffering. Plaintiff is
12 informed and believes and therefore alleges that said injuries will result in some
13 permanent disability to the plaintiff, all to his general damage in an amount in excess of
14 the minimum jurisdictional limits of this Court.

15 17. As a further proximate result of the negligence of defendants, and each of
16 them, plaintiff PAUL HERRON, JR., was required to and did employ, physicians and
17 surgeons to examine, treat and care for him and did incur, and will in the future incur,
18 medical and incidental expenses. The exact amount of such expense is unknown to
19 plaintiff at this time, and plaintiff shall seek leave to amend this pleading when the same
20 has been ascertained by him.

21 18. As a further proximate result of the said negligence of the defendants, and
22 each of them, plaintiff PAUL HERRON, JR., was prevented from attending to his usual
23 occupation, all to plaintiff's further damage in an amount unknown at this time, and
24 plaintiff will ask leave to amend his complaint to show the exact amount when
25 determined. Further, plaintiff is entitled to prejudgment interest on said amount when
26 determined from the date of the accident of the present complaint.

27 WHEREFORE, plaintiff PAUL HERRON, JR., prays for judgment against
28 defendants SMITH & NEPHEW, INC., a Delaware corporation; and DOES 41 through

1 60, inclusive, and each of them, for:

2 1. For general damages in a sum in excess of the minimum
3 jurisdictional limits of this Court;

4 2. For medical and incidental expenses according to proof;

5 3. For loss of earnings according to proof;

6 4. For all costs of suit incurred herein; and

7 5. For such other and further relief as this Court may deem just and
8 proper.

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10 Dated: June 18, 2012

POSWALL, WHITE & CUTLER

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12 By 

13 R. PARKER WHITE
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