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ALAMEDA COUNTY
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THE SUPERIOR COURT
By Rosanne Case, Deputy
CASE NUMBER:
RG12659053

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8 Attorneys for Plaintiffs CHRISTOPHER GAITHER and CAITLIN LANG

9 CHRISTOPHER GAITHER and CAITLIN
10 LANG

11 Plaintiffs,

12 vs.

13 PERMANENTE MEDICAL GROUP, INC.;
14 KAISER FOUNDATION HEALTH PLAN,
15 INC.; KAISER FOUNDATION HOSPITALS
16 and DOES 1-200

17 Defendants.

COMPLAINT FOR DAMAGES

Jury Trial Requested

Amount in Controversy Exceeds \$25,000.00

PARTIES AND JURISDICTION

1. For each of the allegations pled herein based on information and belief, Plaintiffs are likely to have evidentiary support for each such allegation after a reasonable opportunity for further investigation or discovery is had.

2. Plaintiffs Christopher Gaither and Caitlin Lang are lawfully married husband and wife at all relevant times, and residents of Alameda County, California.

3. At all times mentioned herein, PERMANENTE MEDICAL GROUP, INC. (a corporation with its principal place of business in Oakland, California, which is located in Alameda County), KAISER FOUNDATION HEALTH PLAN, INC. (a corporation with its principal place of business in Oakland California); and/or KAISER FOUNDATION HOSPITALS (an entity of unknown type with its principal place of business in Oakland,

1 California) (collectively referred to hereinafter as "The Kaiser Defendants" and "Kaiser")
2 employed the physicians, nurses, medical staff, and all other individuals who provided medical
3 care or services to Plaintiff Christopher Gaither at the Kaiser Oakland Medical Center located
4 at 280 W. MacArthur Blvd., Oakland, CA 94611 with other facilities located in Pinole,
5 Alameda, and Richmond (hereinafter "Kaiser Oakland Medical Center") at all times mentioned
6 herein, and whose failure to exercise due care or other wrongful acts are the proximate cause of
7 the damages alleged herein. Further, such Defendants employed the Doe Defendants named
8 below who were other health care providers, including medical staff, nurses, physicians
9 assistants, and the like, who provided services to Plaintiff Christopher Gaither whose
10 negligence was responsible for Plaintiffs' damages as alleged herein. One or more of such
11 Defendants owned and operated Kaiser Oakland Medical Center in which all acts which fell
12 below the standard of care causal of Plaintiff's injuries took place.

13 4. DOES 1-100 are the physicians, nurses, medical assistants, and/or other agents,
14 employees, staff members or any other person or entity whose wrongful acts were the
15 proximate cause of Plaintiffs' damages as described herein.

16 5. DOES 1-50 are physicians, physicians assistants, nurses, technicians, or other
17 medical personnel employed by, or otherwise acting as the agents of, the Kaiser Defendants,
18 whose wrongful acts or omissions caused Mr. Gaither to contract the Hepatitis C virus from
19 exposure that occurred at the Kaiser Oakland Medical Center.

20 6. Does 51-100 are the manufacturer, distributor or other entity in the chain of
21 distribution of any device, instrument, machine or other thing whose defective or dangerous
22 use, design or properties was in any way the proximate cause of the injuries alleged herein,
23 whose identity is unknown to Plaintiffs at this time.

24 7. In committing the acts alleged in this Complaint, each Defendant, including
25 each Doe Defendant, was the agent and employee of the other, and was acting within the course
26 and scope of that agency and capacity. Such agency may have been actual and/or ostensible.
27 The conduct of each such Defendant was ratified by his or her employer, and each such
28

1 employer had knowledge of the unfitness of the employee and employed him or her with a
2 conscious disregard of the rights or safety of others.

3 **COMMON FACTUAL ALLEGATIONS**

4 8. Plaintiff Christopher Gaither had shoulder surgery performed at the Kaiser
5 Oakland Medical Center, 280 W. MacArthur Blvd. on September 7, 2011 to repair damage to
6 his shoulder he suffered in a September 3, 2011 bicycle accident. At all relevant times, such
7 facility was owned, operated, and/or staffed by, the Kaiser Defendants and/or their employees
8 or legal agents. On May 14, 2011, Mr. Gaither donated blood at a Red Cross location. As a
9 matter of course, the blood he donated at that time was tested and came back negative for any
10 irregularities, including the Hepatitis C virus. The preparations and sterilizations for Mr.
11 Gaither's September 7 surgery, and the procedure itself, were performed by physicians, nurses,
12 technicians and other medical staff that were the agents of Defendants or of unnamed Doe
13 Defendants whose names, identities and roles in causing Plaintiffs' harms are at this time
14 unknown to Plaintiffs. During the procedure, a metal plate was installed to stabilize a bone
15 fracture in the shoulder.

16 9. On December 9, 2011, Mr. Gaither returned to the Kaiser Oakland Medical
17 Center for an additional surgical procedure to remove the metal plate that had been placed
18 during the September 7 surgery.

19 10. On February 25, 2012, Mr. Gaither made another blood donation to the Red
20 Cross. On March 9, 2012, Mr. Gaither received a letter from the Red Cross that was dated
21 March 6, 2012, stating that the blood he had donated on that day was infected with the
22 Hepatitis C virus. This is the first he had any information that he suffered from such virus, or
23 suffered any injury at all that might have related to his September 7 or December 9, 2011
24 surgeries. Repeated testing has confirmed that Mr. Gaither had in fact contracted the Hepatitis
25 C virus at that time.

26 11. Plaintiffs have been informed by agents of the Kaiser Defendants that another
27 patient had been operated on earlier the same day on in the same procedure room where Mr.
28 Gaither's September 7, 2011 procedure took place. Plaintiffs have been further informed that

1 such patient was positive for the same genotype of Hepatitis C, genotype 1B, with which Mr.
2 Gaither is infected. Approximately 17% of Hepatitis C cases are of this genotype.

3 12. Mr. Gaither contracted the Hepatitis C virus from contacted with infected
4 instruments, blood, or other material during one or the other of his two surgeries that took place
5 at the Kaiser Oakland Medical Center, and most probably the September 7, 2011 procedure.
6 Mr. Gaither's infection was proximately caused by Defendant's failure to properly sterilize
7 clothing, equipment, the operating table, surgical instruments, or other material that came into
8 contact with Mr. Gaither that were tainted with the virus from the prior procedure, or some
9 other source.

10 13. Alternatively, Mr. Gaither contracted the Hepatitis C virus from faulty
11 sterilization or other equipment manufactured, supplied, distributed, serviced and/or owned by
12 Defendants whose names and identities are no currently known pending discovery in this
13 action, and who are therefore named as Doe Defendants 51-100.

14 DAMAGES

15 14. As a direct and proximate result of contracting the Hepatitis C virus from being
16 exposed to the virus at the Kaiser Oakland Medical Center, and the intensive medical
17 treatments he has required to treat the virus for the next six or seven months, Mr. Gaither has
18 experienced severe lethargy, fatigue, discomfort, pain, mental anguish, pain, and suffering. His
19 wife, Plaintiff Caitlin Lang, has suffered loss of consortium due to her husband's inability to
20 provide physical consortium, solace, companionship and household services during the
21 extended period of his disability.

22 15. Also as a result of contracting the virus, Mr. Gaither has been unable to work
23 effectively for at least six months, and unable to work at all for at least three months. As a
24 result, he has suffered a substantial loss of past wages that would have otherwise been paid but
25 for his disability. Further, Mr. Gaither suffered a substantial potential delay in his future
26 professional advancement and development at his company, Google, due to his extended
27 absence and inability to perform basic job functions during the period of his illness. This
28 caused a substantial loss of earning capacity in the future. As a result of these injuries,

1 Plaintiffs have also incurred costs for past medical expenses and will continue to incur costs for
2 additional medical expenses required in the future. Plaintiffs have also lost the value of Mr.
3 Gaither's household services as a result of his illness.

4
5 **NOTICE OF INTENT TO SUE AND TOLLING**

6 16. At no point up to the present have Defendants, or any of them, or any of their
7 agents or affiliates, revealed that they or anyone else breached the standard of care owed to
8 Plaintiffs, or that Defendants performed any act or omission that resulted in any damages to
9 Plaintiff.

10 17. Pursuant to Code of Civil Procedure section 364, on September 7, 2012, a
11 Notice of Claim for Medical Negligence that substantially contained the same material facts
12 pled in the Common Factual Allegations section of this Complaint was sent to each of the
13 Defendants at the following addresses:

14
15 Permanente Medical Group, Inc.
16 W. William Petrick
17 1950 Franklin Street, 20th Floor
18 Oakland, CA 94612

19 NOTICE OF CLAIM FOR MEDICAL NEGLIGENCE ENCLOSED

20 Kaiser Foundation Health Plan, Inc.
21 Corporation Service Company
22 2730 Gateway Oaks Drive, Suite 100
23 Sacramento, CA 95833

24 NOTICE OF CLAIM FOR MEDICAL NEGLIGENCE ENCLOSED

25 Kaiser Foundation Hospitals
26 Corporation Service Company
27 2730 Gateway Oaks Drive, Suite 100
28 Sacramento, CA 95833

NOTICE OF CLAIM FOR MEDICAL NEGLIGENCE ENCLOSED

26 **FIRST CAUSE OF ACTION**

27 **Professional Negligence**
28 **(Against All Defendants)**

1 18. Plaintiffs incorporate by reference each allegation set forth above as if fully set
2 forth herein.

3 19. At all times herein, the Kaiser Defendants, as well as other physicians, nurses,
4 and other medical providers named herein as DOE Defendants, provided medical consultation,
5 care and/or treatment to Plaintiff. Such physicians, nurses and other medical staff were duly
6 licensed to practice medicine and/or nursing in the State of California and held themselves out
7 to possess that degree of skill, expertise and ability and learning of similar physicians and
8 nurses in the San Francisco Bay Area.

9 20. The treatment and care Plaintiff received from such Defendants fell below the
10 standard of care required of physicians and other health care providers in the relevant
11 community for at least, and without limitation, the reasons articulated herein. Specifically, had
12 Defendants acted in a manner consistent with the standard of care in the community, the
13 operative theater, equipment, and material to which Christopher Gaither was exposed during
14 his surgical procedures he underwent at the Kaiser Oakland Medical Center would have
15 properly sterilized and Mr. Gaither would not have contracted the Hepatitis C virus from such
16 procedure(s). Plaintiff alleges that that this breach was the actual and proximate cause of
17 Plaintiff's damages and injuries as alleged herein, and that such would not have occurred but
18 for Defendants' negligence, and the negligence of each of them.

19 21. As a direct and proximate result of the negligence of Defendants, and each of
20 them, as aforesaid, Plaintiffs have suffered physical and emotional injuries as described herein,
21 and was caused to suffer general and special damages as alleged herein, in an amount to be
22 proved at trial.

23 22. As a direct and proximate result of the negligence of Defendants, and each of
24 them, Plaintiffs were required to and did employ physicians, physical therapists and other
25 medical professionals to provide medical services to treat them, which would not have occurred
26 but for the negligence of such Defendants, in amounts to be proved at trial. Plaintiffs also
27 suffered wage loss, both past and future loss of earning capacity, and the loss of the value of
28 Mr. Gaither's household services due to such negligence.

SECOND CAUSE OF ACTION
Loss of Consortium
(Plaintiff CAITLIN LANG Against All Defendants)

23. Plaintiffs incorporate by reference each allegation set forth above as if fully set forth herein.

24. Plaintiff Caitlin Lang is and was at all relevant times, the lawfully wedded wife of Plaintiff Christopher Gaither. As a result of the wrongful acts and omissions as described herein, Ms. Lang has suffered and continues to suffer damages in the form of loss of consortium and loss of household services from her husband, Christopher Gaither, including the loss of a loss of love, companionship, comfort, care, assistance, protection, affection, society, moral support; and the loss of the enjoyment of sexual relations with her husband.

THIRD CAUSE OF ACTION
Product Liability
(Against All Defendants)

25. Plaintiffs incorporate by reference each allegation set forth above as if fully set forth herein.

26. Plaintiff Christopher Gaither contracted Hepatitis C virus due to the fact that some piece or pieces of equipment responsible for effectively sterilizing or sanitizing the surgical instruments, tools, or some other object or material to which he was exposed during one of the subject surgical procedures contained a manufacturing defect or was defectively manufactured. Such equipment was manufactured, distributed and/or sold by Doe Defendants Numbers 51-100, and by each of them, and contained such defect when it left each such Defendant's possession. Such product was defective insofar as it differed from the manufacturer's design or specifications or from other typical units of the same product line. Such defective design was a substantial factor in causing harm to Plaintiffs insofar as it caused Christopher Gaither to contract the Hepatitis C virus and Plaintiffs to suffer the consequent damages described herein as a result.

27. Alternatively, the subject equipment was defectively designed by Does 51-100 insofar as it did not perform as safely as an ordinary consumer would have expected it to perform when used or misused in an intended or reasonably foreseeable way regarding its

1 ability to sterilize, sanitize, or otherwise make safe the surgical instruments and/or other objects
2 that caused Mr. Gaither to contract the Hepatitis C virus. The benefit of the design of the
3 equipment that caused such injury did not outweigh the risk such design posed to Plaintiffs and
4 other patients for whose procedures such equipment would be used. Such defective design was
5 a substantial factor in causing harm to Plaintiffs insofar as it caused Christopher Gaither to
6 contract the Hepatitis C virus and Plaintiffs to suffer the consequent damages described herein
7 as a result.

8 28. Alternatively, Does 51-100 failed to provide sufficient instructions or warning
9 of potential risks to users. The equipment had known potential risks that surgical tools and
10 equipment that it would be used to sterilize could cause serious infection and other injury if
11 such sterilization equipment was not used properly. Such risks were generally accepted in the
12 scientific community at the time of the manufacture, distribution, and/or sale of such product.
13 These potential risks presented a substantial danger when product was used or misused in an
14 intended or reasonably foreseeable way. Ordinary users would not have recognized the
15 potential risks of such use. Such Defendants, and each of them, failed to adequately warn or
16 instruct of the potential risks of the use or misuse of the equipment. Such failure to warn was a
17 substantial factor in causing harm to Plaintiffs insofar as it caused Christopher Gaither to
18 contract the Hepatitis C virus and Plaintiffs to suffer the consequent damages described herein
19 as a result.

20 29. Certain Kaiser Defendants bought such sterilization equipment from certain of
21 Doe Defendants 51-100. Does 51-100 who sold such equipment were in the business of selling
22 such equipment and by their occupation held themselves out as having special knowledge or
23 skill regarding these goods. Such equipment was not of the same quality as those generally
24 acceptable in the trade, it was not fit for the ordinary purpose for which it was used, and/or it
25 did not conform to the quality established by usage of trade. Such unfitness of such
26 Defendants' goods was a substantial factor in causing harm to Plaintiffs insofar as it caused
27 Christopher Gaither to contract the Hepatitis C virus and Plaintiffs to suffer the consequent
28 damages described herein as a result.

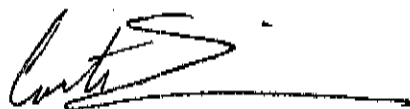
1 30. Doe Defendants 51-100, and each of them, designed, manufactured, supplied,
2 installed, inspected, repaired or rented the subject sterilization equipment to the Kaiser
3 Defendants. Such defendants failed to exercise due care in designing, manufacturing,
4 supplying, inspecting, repairing, or renting such equipment to the Kaiser Defendants insofar as
5 they failed to detect, repair, warn of, or represent of the defects or dangers and risks posed by
6 such equipment, and/or they failed to exercise due care manufacturing and/or designing, and/or
7 transporting such products in such fashion that they could be safely used by the anticipated end
8 user, and not subject patients to an unreasonable risk of harm. Such failure to exercise due care
9 was a substantial factor in causing harm to Plaintiffs insofar as it caused Christopher Gaither to
10 contract the Hepatitis C virus and Plaintiffs to suffer the consequent damages described herein
11 as a result.

12
13 WHEREFORE, Plaintiffs pray for judgment as follows against all Defendants:

- 14 1. For general compensatory damages.
15 2. For special compensatory damages according to proof at trial.
16 3. For costs of suit.
17 4. For such other relief as the Court deems just and proper.

18
19 Dated: December 6, 2012

By:

20
21 

22 Carter M. Zinn, Esq.
23 THE ZINN LAW FIRM
24 Attorneys for Plaintiffs