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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF PLACER
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12 RUBY STRODE, a minor, by and through her
13 guardian ad litem, JEANIE ZAIRIS, ISAAH
P. STRODE; JEANIE ZAIRIS, individually,

14 Plaintiffs,

15 vs.

16 KAISER FOUNDATION HOSPITALS, a
17 California Corporation, d/b/a KAISER
FOUNDATION HOSPITAL - ROSEVILLE; THE
18 PERMANENTE MEDICAL GROUP, INC., a
Corporation; KAISER FOUNDATION HEALTH
19 PLAN, INC., a Corporation; and DOES 1-
250, inclusive,

20 Defendants.

Case No.

COMPLAINT FOR DAMAGES
FOR MEDICAL MALPRACTICE

1. Negligence
2. Negligence
3. Negligent Infliction
of Emotional Distress
4. Negligent Infliction
of Emotional Distress

21 Plaintiffs, through counsel, allege:

22 1. The true names, identities or capacities, whether
23 individual, associate, corporate or otherwise of Defendants DOES 1
24 through 250, inclusive, are unknown to Plaintiffs, who therefore, sues
25 said Defendants by such fictitious names. When the true names,
26 identities or capacities of such fictitiously-designated Defendants are
27 ascertained, Plaintiffs will ask leave of Court to amend the Complaint to
28 insert said true names, identities and capacities, together with the

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1 proper charging allegations.

2 2. Plaintiffs are informed and believe and thereon allege that
3 each of the Defendants sued herein as a DOE is responsible in some manner
4 for the events and happenings herein referred to, thereby legally
5 causing the injuries and damages to the Plaintiffs as herein alleged.

6 3. All of the facts, acts, events and circumstances herein
7 mentioned and described occurred in the County of PLACER, State of
8 California, and all Defendants are residents of the County of PLACER,
9 State of California, doing business in said County, State of California.

10 4. At all times herein mentioned, Defendants DOES 1 through 50,
11 inclusive, were, and now are, physicians and surgeons, holding
12 themselves out as duly licensed to practice their profession under and by
13 virtue of the laws of the State of California and were, and now are,
14 engaged in the practice of their profession in the State of California.

15 5. At all times herein mentioned, Defendants DOES 51 through
16 100, inclusive, were, and now are, registered nurses, nurse
17 practitioners, nurse midwives, licensed vocational nurses, practical
18 nurses, physician assistants, aids, technicians, attendants, students
19 or other paramedical personnel, holding themselves out as duly able to
20 practice their profession under and by virtue of the laws of the State of
21 California and were, and now are, engaged in the practice of their
22 profession in the State of California and acting as agents, employees and
23 servants of some or all of the other Defendants within the course and
24 scope of said agency or employment.

25 6. At all times herein mentioned, Defendants KAISER FOUNDATION
26 HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC., KAISER FOUNDATION HEALTH
27 PLAN, INC., and DOES 101 through 150, and each of them, were
28 corporations, partnerships, joint ventures, or other entities organized

1 and existing under the laws of the State of California, with their
2 principal place of business situated in the State of California and other
3 States.

4 7. Defendants KAISER FOUNDATION HOSPITALS, d/b/a KAISER
5 FOUNDATION HOSPITAL - ROSEVILLE, and DOES 151 through 200, inclusive,
6 were at all times herein mentioned duly organized California
7 corporations or hospitals existing under and by virtue of the laws of the
8 State of California and other States; that said Defendant corporations,
9 hospitals and the remaining Defendants, and each of them, owned,
10 operated, managed and controlled a general hospital facility within the
11 County of PLACER, State of California, held out to the public at large and
12 to the Plaintiffs herein, as properly equipped, fully accredited,
13 competently staffed by qualified and prudent personnel and operating in
14 compliance with the standard of due care maintained in other properly
15 equipped, efficiently operated and administered, accredited hospitals
16 in said community.

17 8. At all times herein mentioned Defendants DOES 201 through 250
18 were doing business as a district or County hospital or clinic, and DOES
19 240-250, a hospital operated by a government entity or medical clinic or
20 hospital, open to the public, or a medical facility or clinic, operated
21 by a government entity open to the public rendering medical, surgical,
22 hospital, diagnostic, nursing and other care to the general public for
23 compensation. All of the acts complained of herein by Plaintiffs against
24 said Defendants were done and performed by said Defendants by and through
25 their duly authorized agents, servants and employees, each of whom and
26 all of whom were at all times mentioned herein acting within the course,
27 purpose, and scope of their said agency, service and employment, and
28 whose conduct was ratified by all Defendants, and each of them.

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9. Each Defendant ratified and affirmed the conduct of each other Defendant. Each of the Defendants were the agents, servants, and employees of the other Defendants.

10. Plaintiffs are informed and believe and upon such information and belief allege that at all times herein mentioned, Defendants and other Defendants named fictitiously, were the agents, servants, employees, joint-venturers, and copartners of their said co-Defendants and, as such, were acting within the course and scope of such agency, service, partnership, venture, and employment at all times herein mentioned; that each and every Defendant, as aforesaid, when acting as a principal, was negligent in the selection and hiring of each and every other Defendant, as its agent, servant, employee, joint-venturer and partner. Further, each and every Defendant ratified the conduct of the other Defendants.

I.

PLAINTIFF RUBY STRODE, A MINOR, BY AND THROUGH HER
GUARDIAN AD LITEM JEANIE ZAIRIS, ALLEGES FOR A CAUSE OF
ACTION FOR MEDICAL MALPRACTICE AGAINST DEFENDANTS AND EACH OF
THEM AS FOLLOWS

12 Plaintiff RUBY STRODE repeats and repleads each and every allegation contained each of the foregoing paragraphs, and incorporates the same herein by reference.

13. On or about the date of the filing of the complaint, JEANIE ZAIRIS was by order duly made and entered by the above entitled Court, appointed Guardian ad Litem of Plaintiff RUBY STRODE a minor, born June 7, 2018.

14. At all times herein mentioned, and prior thereto, the Plaintiff was in the exclusive control of the Defendants, and each of

1 extend the abdominal incision required the standard of care, which
2 resulted in the child being pulled out of her mother's uterus by her feet,
3 with her head stuck within the uterus, all-the-while-suffering from lack
4 of oxygen which substantially caused profound neurological injuries.

5 17. Defendants KAISER FOUNDATION HOSPITALS, and DOES 151-200,
6 failed and neglected to adequately select a competent medical staff and
7 to periodically review the competency of its medical staff, and failed to
8 adequately monitor its staff such that the minor Plaintiff was caused to,
9 and did suffer injuries and damages as herein alleged.

10 18. As a legal result of the negligence of the Defendants, and
11 each of them, the minor Plaintiff was injured in health, strength and
12 activity, sustaining severe shock, and injury to the body, all of which
13 said injuries have caused and continue to cause Plaintiff great
14 physical, emotional, and nervous pain and suffering, and which said
15 injuries Plaintiff is informed and believes, and thereon alleges, will
16 result in loss of earnings, permanent disability, loss of enjoyment of
17 life, and impairment of earning capacity all to Plaintiff's damage in a
18 sum in excess of the jurisdiction of the Municipal Court.

19 19. As a further legal result of the negligence of the Defendants,
20 and each of them, and the resulting injuries to the Plaintiff, said
21 Plaintiff was compelled to, and did, incur expenses for medical and
22 surgical attention, hospitalization, nursing, medication and
23 incidentals for said Plaintiff in an amount unknown to Plaintiff at
24 present.

25 20. As a further legal result of the negligence of the Defendants,
26 and each of them, and of the resulting injuries, Plaintiff will be
27 obliged to incur expenses for medical care and hospitalization for an
28 indefinite period in the future and to pay for these expenses in the

1 treatment and relief of injuries for medical and surgical attention,
2 hospitalization, nursing, medication, and incidentals for said
3 Plaintiff in an amount unknown to Plaintiff at present.

4 21. As a further legal result of the negligence of the Defendants,
5 and each of them, Plaintiff will suffer a decreased earnings and earning
6 capacity in the future and future earnings to Plaintiff's further damage
7 in a sum unknown at present.

8 II.

9 PLAINTIFF JEANIE ZAIRIS ALLEGES FOR A SEPARATE AND DISTINCT
10 CAUSE OF ACTION FOR MEDICAL MALPRACTICE AGAINST DEFENDANTS AND
11 EACH OF THEM

12 22. Plaintiff JEANIE ZAIRIS repeats and repleads each and every
13 allegation contained in each of the preceding paragraphs and
14 incorporates the same herein by reference.

15 23. At all times herein mentioned, the Plaintiff was in the
16 exclusive control of the said Defendants and that at no time prior to the
17 events, conduct, activities, care and treatment herein complained of did
18 the said Defendants obtain knowledgeable, informed consent for said
19 care, treatment or conduct; that prior to the initiation of or
20 performance of said care, treatment, procedure or conduct no opportunity
21 was afforded the Plaintiff or any authorized agent of the Plaintiff to
22 exercise voluntary, knowledgeable and informed consent to said care,
23 treatment, procedure or conduct.

24 24. Prior to June 7, 2018, the date of RUBY STRODE'S birth, and
25 thereafter, JEANIE ZAIRIS employed said Defendants them, to diagnose and
26 treat her condition of pregnancy and to do all things necessary for his
27 care, including, but not limited to, pre-delivery care, the delivery and
28 post-delivery care.

1 25. While Plaintiff JEANIE ZAIRIS was under the sole and
2 exclusive care and control of the said Defendants, Defendants,
3 negligently, carelessly and unskillfully delivered, examined, treated,
4 cared for, diagnosed, operated upon, attended and otherwise handled and
5 controlled the Plaintiff herein, thereby proximately causing injuries
6 and damages to Plaintiff, including, but not limited to, failing to
7 perform a timely delivery and to diagnose and treat fetal distress.

8 26. As a legal result of the negligence of the Defendants, and
9 each of them, Plaintiff was injured in her health, strength and activity,
10 sustaining severe shock, and injury to Plaintiff's body, all of which
11 said injuries have caused and continue to cause Plaintiff great
12 physical, emotional, and nervous pain and suffering, and which said
13 injuries Plaintiff is informed and believes, and thereon alleges, will
14 result in loss of earnings, permanent disability, loss of enjoyment of
15 life, and impairment of earning capacity all to Plaintiff's damage in a
16 sum in excess of the jurisdiction of the Municipal Court.

17 27. As a further legal result of the negligence of the Defendants,
18 and each of them, and the resulting injuries to the Plaintiff, said
19 Plaintiff was compelled to, and did, incur expenses for medical and
20 surgical attention, hospitalization, nursing, medication and
21 incidentals for said Plaintiff in an amount unknown to Plaintiff at
22 present.

23 28. As a further legal result of the negligence of the Defendants,
24 and each of them, and of the resulting injuries, Plaintiff will be
25 obliged to incur expenses for medical care and hospitalization for an
26 indefinite period in the future and to pay for these expenses in the
27 treatment and relief of injuries for medical and surgical attention,
28 hospitalization, nursing, medication, and incidentals for said

1 Plaintiff in an amount unknown to Plaintiff at present.

2 29. As a further legal result of the negligence of the Defendants,
3 and each of them, Plaintiff JEANIE ZAIRIS has suffered loss of earnings
4 and will suffer a decreased earning capacity in the future and future
5 earnings to Plaintiff's further damage in a sum unknown at present.

6 III.

7 PLAINTIFF JEANIE ZAIRIS ALLEGES FOR A SEPARATE AND DISTINCT
8 CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF EMOTIONAL
9 DISTRESS AGAINST DEFENDANTS AND EACH OF THEM AS FOLLOWS

10 30. Plaintiff JEANIE ZAIRIS repeats and repleads each and every
11 allegation contained in the preceding paragraphs and incorporates the
12 same herein by reference.

13 31. At all times herein mentioned, JEANIE ZAIRIS was the mother of
14 RUBY STRODE the minor Plaintiff, and was and is under a duty to care for
15 the minor child herein. Plaintiff JEANIE ZAIRIS employed said Defendants
16 to care for and treat herself and her minor child, RUBY STRODE during the
17 pregnancy.

18 32. At all times mentioned, said Defendants were under a legal
19 duty to Plaintiff with respect to the care and treatment of the child,
20 RUBY STRODE while the child was a patient in the said hospital and under
21 the care of the said Defendants. Said Defendants treated and cared for
22 both the minor and JEANIE ZAIRIS during the labor and delivery of JEANIE
23 ZAIRIS and thereafter.

24 33. At all times mentioned, there existed a close relationship
25 between Plaintiff JEANIE ZAIRIS and RUBY STRODE namely, mother and
26 child, and said Defendants were aware of this close relationship when
27 they agreed to care for the child. It was foreseeable that Plaintiff
28 JEANIE ZAIRIS would be damaged directly by negligent acts or omissions to

1 act and committed upon the child. Said Defendants were aware that
2 Plaintiff JEANIE ZAIRIS was concerned about the physical well being of
3 her child when Defendants agreed to treat both the child and mother.

4 34. It was reasonably foreseeable and easily predictable that any
5 acts of negligence by these Defendants that would injure the child would
6 lead to serious emotional distress in Plaintiff JEANIE ZAIRIS. Because
7 the risk of harm to the Plaintiff was reasonably foreseeable and easily
8 predictable, Defendants owed Plaintiff a duty to exercise due care in
9 diagnosing, caring for, and treating Plaintiff's child, RUBY STRODE.
10 This is especially true as Defendants agreed to and did treat both JEANIE
11 ZAIRIS and RUBY STRODE at the same time.

12 35. Said Defendants in disregard of the probability that their
13 actions would cause severe emotional distress, in failing to provide the
14 necessary medical treatment to Plaintiff JEANIE ZAIRIS and her child,
15 caused Plaintiff JEANIE ZAIRIS severe emotional distress arising from
16 the abnormal event of participating in a negligent delivery and reacting
17 to the tragic outcome with fright nervousness and shock, grief, anxiety,
18 worry, mortification, shock, humiliation and indignity.

19 36. These damages for emotional distress accrued separately, and at
20 separate times, and upon different facts, from Plaintiff JEANIE ZAIRIS's
21 previous cause of action for negligence from which she suffered physical
22 injuries and pain and suffering during the negligently conducted labor
23 and delivery.

24 37. As a further legal result of the negligence of the Defendants,
25 and of the resulting injuries, Plaintiff will be obliged to incur
26 expenses for medical care and hospitalization for an indefinite period
27 in the future and to pay for these expenses in the treatment and relief of
28 injuries for medical and surgical attention, hospitalization, nursing,

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1 injury to his child and wife when it occurred and at that time and place in
2 the labor room and operating room and other areas of the hospital, and had
3 contemporaneous sensory awareness of the causal connection between the
4 negligent conduct of the Defendants and was reasonably certain that his
5 child was being injured from negligent and delayed medical care during
6 labor and delivery and lack of a timely response for medical care in her
7 delivery. This negligent medical care was obvious to and within the
8 common knowledge of the average layman.

9 45. Plaintiff was contemporaneously aware that his daughter
10 was being injured during the labor and delivery. As a result of
11 witnessing his daughter being injured, Plaintiff suffered severe
12 emotional distress

13 46. Said Defendants in disregard of the probability that their
14 actions, in failing to provide the necessary and timely medical
15 treatment to RUBY STRODE, were a substantial factor in causing Plaintiff
16 ISAIAH P. STRODE to suffer severe emotional distress.

17 47. By reason of the negligence of said Defendants in failing to
18 treat his wife and daughter timely, Plaintiff ISAIAH P. STRODE suffered
19 severe and serious emotional distress and shock and injury to his nervous
20 system and body, all to his general damage in a sum within the
21 jurisdiction of this Court and pursuant to *Thing v. LaChusa* (1989) 48
22 Cal.3d 644.

23 48. As a further legal result of the negligence of the Defendants,
24 and each of them, and of the resulting injuries, Plaintiff will be
25 obliged to incur expenses for medical care and hospitalization for an
26 indefinite period in the future and to pay for these expenses in the
27 treatment and relief of injuries for medical and surgical attention,
28 hospitalization, nursing, medication, and incidentals for said

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Plaintiff in an amount unknown to Plaintiff at present.

49. As a further legal result of the negligence of the Defendants, and each of them, Plaintiff has suffered loss of earnings and will suffer a decreased earning capacity in the future and future earnings to Plaintiff's further damage in a sum unknown at present.

WHEREFORE, Plaintiffs pray for damages against the Defendants, and each of them, as follows:

FOR THE CAUSE OF ACTION FOR NEGLIGENCE FOR PLAINTIFF RUBY STRODE, A
MINOR;

1. General damages, according to proof;
2. Past and future medical expenses, according to proof;
3. For loss of future earning and earning capacity, according to proof;
4. Costs of suit incurred herein, and
5. For such other and further relief as to the Court appears just and proper.

FOR THE CAUSE OF ACTION FOR NEGLIGENCE FOR PLAINTIFF JEANIE ZAIRIS:

1. General damages, according to proof;
2. Past and future medical expenses, according to proof;
3. For loss of past and future earning and earning capacity, according to proof;
4. Costs of suit incurred herein, and
5. For such other and further relief as to the Court appears just and proper.

FOR THE CAUSE OF ACTION FOR NEGLIGENT INFLECTION OF EMOTIONAL
DISTRESS FOR PLAINTIFF JEANIE ZAIRIS:

1. General damages, according to proof;
2. Special damages, according to proof;

1 3. Costs of suit incurred herein, and

2 4. For such other and further relief as to the Court appears just
3 and proper.

4 FOR THE CAUSE OF ACTION FOR NEGLIGENT INFLECTION OF
5 EMOTIONAL DISTRESS FOR PLAINTIFF ISAIAH P. STRODE:

6 1. General damages, according to proof;

7 2. Special damages, according to proof;

8 3. Costs of suit incurred herein, and

9 4. For such other and further relief as to the Court appears just
10 and proper.

11
12 DATED: February 8, 2019

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Associates

13
14 By: 

15 Bruce G. Fagel
16 Attorneys for Plaintiffs
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