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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SACRAMENTO

10 ERIK LABHARD and SANDRA LABHARD,

11 Plaintiffs,

12 vs.

13 KAISER FOUNDATION HOSPITALS;
KAISER FOUNDATION HEALTH PLAN,
14 INC.; PERMANENTE MEDICAL GROUP,
INC.; JOHN H. GREENFIELD, III, M.D.;
15 ARTHREX, INC.; ARTHREX CALIFORNIA,
INC.; ARTHREX CALIFORNIA
16 TECHNOLOGY, INC.; and DOES 1 through
125, inclusive,

17 Defendants.

Case No.

COMPLAINT

1. **Medical Negligence**
2. **Negligence**
3. **Strict Products Liability**
4. **Failure to Warn**
5. **Breach of Warranty**
6. **Loss of Consortium**

18
19 Plaintiffs, ERIK LABHARD and SANDRA LABHARD, complain of defendants,
20 KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.;
21 PERMANENTE MEDICAL GROUP, INC.; JOHN H. GREENFIELD, III, M.D.; ARTHREX,
22 INC.; ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA TECHNOLOGY, INC.; and
23 DOES 1 through 125, inclusive, and each of them, and allege as follows:
24

25 **GENERAL ALLEGATIONS**

26 1. The true names and capacities, whether individual, corporate, associate or
27 otherwise, of the defendants DOES 1 through 125, inclusive, are unknown to plaintiffs, who
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1 therefore sue such defendants by such fictitious names, and plaintiffs will amend this complaint to
2 show their true names and capacities when the same have been ascertained. Plaintiffs are
3 informed and believe and thereon allege that each of the defendants, DOES 1 through 125,
4 inclusive, is responsible under law in some manner, negligently, in warranty, strictly, or
5 otherwise, for the events and happenings herein referred to and proximately thereby caused
6 injuries and damages to plaintiffs as herein alleged.
7

8 2. Plaintiffs, ERIK LABHARD and SANDRA LABHARD, are now, and at all times
9 mentioned herein were, citizens of and residents within the State of California, and the amount in
10 controversy exceeds the minimum jurisdiction of the Court.

11 3. Defendants, and each of them, are now, and at all times herein mentioned were,
12 citizens of and residents within the State of California, or doing business in the State of
13 California.
14

15 4. Plaintiffs are informed and believe and thereon allege that defendants KAISER
16 FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.;
17 PERMANENTE MEDICAL GROUP, INC.; and DOES 1 through 25, and each of them, are now,
18 and at all times herein mentioned were, California business entities, corporations, associations,
19 partnerships or other type of business entities, operating as a medical center, hospital, health plan,
20 or other healthcare facility, and plaintiffs will ask leave to insert the correct designation when the
21 same has been ascertained.
22

23 5. Plaintiffs further allege that DOES 1 through 50 were principals and employees of
24 KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.;
25 and/or PERMANENTE MEDICAL GROUP, INC., who treated plaintiff, ERIK LABHARD, or
26 oversaw or coordinated the treatment of plaintiff in some way. KAISER FOUNDATION
27 HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.; and PERMANENTE
28

1 MEDICAL GROUP, INC., were, at all times herein mentioned, institutions or controlled
2 institutions, duly accredited by the Joint Commission on Hospital Accreditation, and assumed and
3 held themselves out to the public as in compliance with the minimum standards required by said
4 Joint Commission for such accreditation.

5
6 6. Plaintiffs further allege that DOES 1 through 50, KAISER FOUNDATION
7 HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.; and PERMANENTE
8 MEDICAL GROUP, INC., inclusive, breached their duty to assure the competence of their
9 employees and independent contractors, and/or failed to exercise ordinary care under the
10 circumstances herein alleged, to evaluate and to assure the quality of their staff, employees and
11 independent contractors, and breached their duty of selecting, reviewing and periodically
12 evaluating their competency. This breach of the duty of careful selection, review, and periodic
13 evaluation of the competency of their staff, employees and independent contractors created an
14 unreasonable risk of harm to patients receiving care and treatment at the hands of the defendants
15 DOES 1 through 50, KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION
16 HEALTH PLAN, INC.; and/or PERMANENTE MEDICAL GROUP, INC., inclusive, including
17 plaintiff, ERIK LABHARD, herein. Defendants and DOES 1 through 50, inclusive, breached
18 their duty to guard against physicians' incompetence, and further breached their duty in that they
19 failed to assure quality medical care by the lack of prudent selection, review, and continuing
20 evaluation of the physicians who were granted staff privileges.
21
22

23 7. Plaintiffs are informed and believe and thereon allege that the Defendants, JOHN
24 H. GREENFIELD, III, M.D., and DOES 51 through 70, at all times herein mentioned were
25 physicians, surgeons, nurses, physician assistants, aids, technicians, attendants, students or other
26 paramedical personnel, midwives, or other healthcare professionals licensed to practice, and
27 practicing, in the State of California.
28

1 8. Plaintiffs are informed and believe and therefore allege that, at all times herein
2 mentioned, defendants, ARTHREX, INC.; ARTHREX CALIFORNIA, INC.; ARTHREX
3 CALIFORNIA TECHNOLOGY, INC.; and DOES 71 through 100, and each of them, are now,
4 and at all times herein mentioned were, corporations, licensed to do and doing business in the
5 State of California, and engaged in the business, among other things, of researchers, formulators,
6 testers, labelers, packagers, designers, manufacturers, makers, producers, promoters, marketers,
7 sellers, distributors, advertisers, suppliers, owners, possessors, operators, constructors, inspectors,
8 maintainers, subcontractors, contractors, supervisors, and coordinators of surgical supplies and/or
9 hardware, including, but not limited to, orthopedic surgical supplies for knee surgeries, including,
10 but not limited to, surgical screws, for sale to hospitals, physicians, and surgeons for the treatment
11 and care of members of the general public.
12

13 9. At all times herein mentioned, ARTHREX, INC.; ARTHREX CALIFORNIA,
14 INC.; ARTHREX CALIFORNIA TECHNOLOGY, INC.; and DOES 71 through 100, and their
15 employees, representatives, agents, officers and/or the corporate directors, and each of them,
16 participated in, authorized and/or directed the design, production, promotion, sale, etc., of the
17 orthopedic surgical supplies for knee surgeries, including, but not limited to, surgical screws,
18 when they knew, or with the exercise of reasonable care should have known, of the hazards and
19 dangerous propensities of said products and thereby actively participated in tortious conduct
20 which resulted in injury to plaintiffs.
21

22 10. Plaintiffs are informed and believe and thereon allege that, at all times herein
23 mentioned, each of the defendants was the agent, employee, principal or employer of each of the
24 remaining defendants and was at all times acting within the course and scope of said relationships
25 and each defendant has authorized, ratified and approved the acts of each of the remaining
26 defendants.
27
28

1 Plaintiffs, ERIK LABHARD and SANDRA LABHARD, complain of defendants,
2 KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.;
3 PERMANENTE MEDICAL GROUP, INC.; JOHN H. GREENFIELD, III, M.D.; and DOES 1
4 through 50, and each of them, and as for a First Cause of Action, allege as follows:

5
6 **FIRST CAUSE OF ACTION**

7 **(Medical Negligence)**

8 11. Plaintiffs reallege and reaffirm each and every paragraph and allegation above as if
9 fully rewritten herein.

10 12. Plaintiffs are informed and believe and thereon allege that defendants KAISER
11 FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.;
12 PERMANENTE MEDICAL GROUP, INC.; JOHN H. GREENFIELD, III, M.D.; and DOES 1
13 through 50, at all times herein mentioned were physicians, surgeons, nurses, physician assistants,
14 aids, technicians, attendants, students or other paramedical personnel, midwives, or other
15 healthcare professionals, licensed and practicing in the State of California, and/or business
16 entities which employed and/or contracted physicians, surgeons, nurses, and other medical
17 professionals, licensed and practicing in the State of California.
18

19 13. On or about May 23, 2012, prior to and thereafter, plaintiff, ERIK LABHARD,
20 was being treated by the defendants, KAISER FOUNDATION HOSPITALS; KAISER
21 FOUNDATION HEALTH PLAN, INC.; PERMANENTE MEDICAL GROUP, INC.; JOHN H.
22 GREENFIELD, III, M.D.; and DOES 1 through 50, and each of them.
23

24 14. During the times herein mentioned, the defendants, KAISER FOUNDATION
25 HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.; PERMANENTE MEDICAL
26 GROUP, INC.; JOHN H. GREENFIELD, III, M.D.; and DOES 1 through 50, and each of them,
27 negligently cared for, monitored, and treated plaintiff, ERIK LABHARD, and failed to exercise
28

1 the standard of care and skill ordinarily and reasonably required of hospitals, medical doctors and
2 other medical practitioners by failing to properly treat plaintiff's knee injury which proximately
3 caused the hereinafter described injuries and damages to plaintiffs.

4 15. As a proximate result of the negligence of the defendants, KAISER
5 FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.;
6 PERMANENTE MEDICAL GROUP, INC.; JOHN H. GREENFIELD, III, M.D.; and DOES 1
7 through 50, and each of them, plaintiff, ERIK LABHARD, was hurt and injured in his health,
8 strength and activity, sustaining injury to his body and shock and injury to his nervous system and
9 person, all of which said injuries have caused and continue to cause plaintiff great mental,
10 physical, and nervous pain and suffering. Plaintiff is informed and believes and thereon alleges
11 that said injuries will result in some permanent disability to him, all to his general damage in an
12 amount in excess of the minimum jurisdictional limits of the Court and that he is entitled to
13 prejudgment interest on the amount when determined, from the date of plaintiff's C.C.P. §998
14 offer to compromise.

15 16. That as a further proximate result of the said negligence of the defendants,
16 KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.;
17 PERMANENTE MEDICAL GROUP, INC.; JOHN H. GREENFIELD, III, M.D.; and DOES 1
18 through 50, and each of them, plaintiff was required to and did employ, and will be required in
19 the future to employ, physicians and surgeons to examine, treat and care for him and did incur,
20 and will in the future incur, medical and incidental expenses. The exact amount of such expense
21 is unknown to plaintiff at this time, and plaintiff will ask leave to amend his pleading to set forth
22 the exact amount thereof when the same is ascertained by him, and any and all prejudgment
23 interest from the date of said injuries.

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1 and employees, jointly, individually and/or severally, negligently, carelessly and recklessly
2 formulated, manufactured, distributed and sold the orthopedic surgical supplies for knee
3 surgeries, including, but not limited to, surgical screws, without any warning or notice of the
4 inherent and dangerous propensities and the defects of the product(s) to the general public,
5 specifically, ERIK LABHARD.

6
7 20. As a proximate result of the negligence of the defendants, ARTHREX, INC.;
8 ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA TECHNOLOGY, INC.; DOES 71
9 through 100, and each of them, plaintiff, ERIK LABHARD, was hurt and injured in his health,
10 strength and activity, sustaining injury to his body and shock and injury to his nervous system and
11 person, all of which said injuries have caused and continue to cause plaintiff great mental,
12 physical, and nervous pain and suffering. Plaintiff is informed and believes and thereon alleges
13 that said injuries will result in some permanent disability to him, all to his general damage in an
14 amount in excess of the minimum jurisdictional limits of the Court and that he is entitled to
15 prejudgment interest on the amount when determined, from the date of plaintiff's C.C.P. §998
16 offer to compromise.

17
18 21. That as a further proximate result of the said negligence of the defendants,
19 ARTHREX, INC.; ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA
20 TECHNOLOGY, INC.; DOES 71 through 100, and each of them, plaintiff was required to and
21 did employ, and will be required in the future to employ, physicians and surgeons to examine,
22 treat and care for him and did incur, and will in the future incur, medical and incidental expenses.
23 The exact amount of such expense is unknown to plaintiff at this time, and plaintiff will ask leave
24 to amend his pleading to set forth the exact amount thereof when the same is ascertained by him,
25 and any and all prejudgment interest from the date of said injuries.

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1 modifying, advertising, promoting, etc., and placing into the market and into the flow of
2 commerce products dangerous to persons by causing injuries to the users and ultimate consumers
3 of the products, designed, produced, marketed and manufactured by the defendants, and each of
4 them. Said products were defective in design and/or manufacture, and failed to carry appropriate
5 warning labels, with the defendants knowing that said products would be used by hospitals,
6 physicians, and surgeons in treating and caring for members of the general public, and
7 particularly plaintiff, ERIK LABHARD, without inspection. Said surgical instruments and/or
8 hardware, including, but not limited to, orthopedic surgical supplies for knee surgeries, including,
9 but not limited to, surgical screws, were defective in design and/or manufacture and unsafe for
10 ultimate consumers such as plaintiff.

12 25. Defendants ARTHREX, INC.; ARTHREX CALIFORNIA, INC.; ARTHREX
13 CALIFORNIA TECHNOLOGY, INC.; DOES 71 through 100, and their agents, representatives
14 and employees, jointly, individually and/or severally, negligently, carelessly and recklessly
15 designed, manufactured, distributed and sold surgical instruments and/or hardware, including, but
16 not limited to, orthopedic surgical supplies for knee surgeries, including, but not limited to,
17 surgical screws, without any warning or notice of their inherent and dangerous propensities and
18 their defects to the general public, specifically, plaintiff, ERIK LABHARD.

20 26. Plaintiff, ERIK LABHARD, was not aware of the aforementioned defects at
21 anytime prior to the injury.

23 27. As a proximate result of the defective product(s) of the defendants, ARTHREX,
24 INC.; ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA TECHNOLOGY, INC.;
25 DOES 71 through 100, and each of them, plaintiff, ERIK LABHARD, was hurt and injured in his
26 health, strength and activity, sustaining injury to his body and shock and injury to his nervous
27 system and person, all of which said injuries have caused and continue to cause plaintiff great
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1 mental, physical, and nervous pain and suffering. Plaintiff is informed and believes and thereon
2 alleges that said injuries will result in some permanent disability to him, all to his general damage
3 in an amount in excess of the minimum jurisdictional limits of the Court and that he is entitled to
4 prejudgment interest on the amount when determined, from the date of plaintiff's C.C.P. §998
5 offer to compromise.
6

7 28. That as a further proximate result of the defective product(s) of the defendants,
8 ARTHREX, INC.; ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA
9 TECHNOLOGY, INC.; DOES 71 through 100, and each of them, plaintiff was required to and
10 did employ, and will be required in the future to employ, physicians and surgeons to examine,
11 treat and care for him and did incur, and will in the future incur, medical and incidental expenses.
12 The exact amount of such expense is unknown to plaintiff at this time, and plaintiff will ask leave
13 to amend his pleading to set forth the exact amount thereof when the same is ascertained by him,
14 and any and all prejudgment interest from the date of said injuries.
15

16 29. As a further proximate result of the defective product(s) of the defendants,
17 ARTHREX, INC.; ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA
18 TECHNOLOGY, INC.; DOES 71 through 100, and each of them, plaintiff was prevented from
19 attending to his usual occupation and plaintiff is informed and believes and therefore alleges that
20 he will thereby be prevented from attending to his usual occupation for a period of time in the
21 future, all to plaintiff's further damage in an amount unknown at this time, and plaintiff will ask
22 leave to amend his complaint to show the exact amount when determined. Further, plaintiff is
23 entitled to prejudgment interest on said amount from the date of plaintiff's C.C.P. §998 offer to
24 compromise.
25

26 30. Plaintiff is informed and believes that at all times herein mentioned, the defendants
27 ARTHREX, INC.; ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA
28

1 TECHNOLOGY, INC.; DOES 71 through 100, and each of them, knew of the defects of said
2 product(s) and the probability that said product(s) would cause injury to unsuspecting users of the
3 product, including ERIK LABHARD. Defendants willfully, knowingly, maliciously,
4 oppressively and fraudulently designed, manufactured, marketed, sold and distributed said
5 products to hospitals, physicians, and surgeons to be used in treating patients, including plaintiff
6 ERIK LABHARD. Defendants' willful, knowing, malicious, oppressive, fraudulent, and callous
7 conduct done in conscious disregard for the legal rights, health and safety of plaintiff, justifies the
8 awarding of exemplary and punitive damages in an amount to be determined at trial.
9

10 Plaintiffs complain of defendants, ARTHREX, INC.; ARTHREX CALIFORNIA, INC.;
11 ARTHREX CALIFORNIA TECHNOLOGY, INC.; DOES 71 through 100, and each of them,
12 and as for a Fourth Cause of Action, allege as follows:
13

14 **FOURTH CAUSE OF ACTION**

15 **(Failure to Warn)**

16 31. Plaintiffs reallege and reaffirm each and every paragraph and allegation above as if
17 fully rewritten herein.

18 32. At the time the defendants' product(s) described herein was supplied for use in the
19 care and treatment of the general public, including ERIK LABHARD, the product(s) was
20 defective as a result of the defendants' failure to give adequate, clear and specific warning, by
21 label or otherwise, to prevent the product(s) from being dangerous to consumers and making them
22 unsafe for their intended purpose. Defendants ARTHREX, INC.; ARTHREX CALIFORNIA,
23 INC.; ARTHREX CALIFORNIA TECHNOLOGY, INC.; DOES 71 through 100; and their
24 agents, representatives and employees, jointly, individually and/or severally, negligently,
25 carelessly and recklessly designed, manufactured, distributed and sold surgical instruments and/or
26 hardware, including, but not limited to, orthopedic surgical supplies for knee surgeries, including,
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1 but not limited to, surgical screws, without any warning or notice of their inherent and dangerous
2 propensities and their defects to the general public, and specifically, plaintiff, ERIK LABHARD.

3 33. At all times mentioned herein, defendants ARTHREX, INC.; ARTHREX
4 CALIFORNIA, INC.; ARTHREX CALIFORNIA TECHNOLOGY, INC.; DOES 71 through
5 100; and their agents, representatives and employees have known that the use of the surgical
6 instruments and/or hardware, including, but not limited to, orthopedic surgical supplies for knee
7 surgeries, including, but not limited to, surgical screws, are prone to breaking and cause
8 irreversible harm to the human body, and, despite this knowledge, failed to disseminate this
9 information to or adequately warn users, specifically ERIK LABHARD, and his hospital,
10 physicians, and surgeons that said product(s) would cause harm. As such, defendants
11 ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA TECHNOLOGY, INC.; DOES 71
12 through 100; and their agents, representatives and employees concealed said dangers and health
13 risks from ERIK LABHARD and his hospital, physicians, and surgeons and withheld the health
14 risks associated with said product(s) by manufacturing, marketing and distributing the product(s)
15 without adequate warnings for use by ERIK LABHARD, and his hospital, physicians, and
16 surgeons herein.

17 34. As a proximate result of the failure to warn of the defendants, ARTHREX, INC.;
18 ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA TECHNOLOGY, INC.; DOES 71
19 through 100, and each of them, plaintiff, ERIK LABHARD, was hurt and injured in his health,
20 strength and activity, sustaining injury to his body and shock and injury to his nervous system and
21 person, all of which said injuries have caused and continue to cause plaintiff great mental,
22 physical, and nervous pain and suffering. Plaintiff is informed and believes and thereon alleges
23 that said injuries will result in some permanent disability to him, all to his general damage in an
24 amount in excess of the minimum jurisdictional limits of the Court and that he is entitled to
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1 prejudgment interest on the amount when determined, from the date of plaintiff's C.C.P. §998
2 offer to compromise.

3 35. That as a further proximate result of the failure to warn of the defendants,
4 ARTHREX, INC.; ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA
5 TECHNOLOGY, INC.; DOES 71 through 100, and each of them, plaintiff was required to and
6 did employ, and will be required in the future to employ, physicians and surgeons to examine,
7 treat and care for him and did incur, and will in the future incur, medical and incidental expenses.
8 The exact amount of such expense is unknown to plaintiff at this time, and plaintiff will ask leave
9 to amend his pleading to set forth the exact amount thereof when the same is ascertained by him,
10 and any and all prejudgment interest from the date of said injuries.

11
12 36. As a further proximate result of the failure to warn of the defendants, ARTHREX,
13 INC.; ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA TECHNOLOGY, INC.;
14 DOES 71 through 100, and each of them, plaintiff was prevented from attending to his usual
15 occupation and plaintiff is informed and believes and therefore alleges that he will thereby be
16 prevented from attending to his usual occupation for a period of time in the future, all to
17 plaintiff's further damage in an amount unknown at this time, and plaintiff will ask leave to
18 amend his complaint to show the exact amount when determined. Further, plaintiff is entitled to
19 prejudgment interest on said amount from the date of plaintiff's C.C.P. §998 offer to compromise.
20

21
22 37. Plaintiff is informed and believes that at all times herein mentioned, the defendants
23 ARTHREX, INC.; ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA
24 TECHNOLOGY, INC.; DOES 71 through 100, and each of them, knew of the defects of said
25 product(s) and the probability that said product(s) would cause injury to unsuspecting users of the
26 product, including ERIK LABHARD. Defendants willfully, knowingly, maliciously,
27 oppressively and fraudulently designed, manufactured, marketed, sold and distributed said
28

1 products to hospitals, physicians, and surgeons to be used in treating patients, including plaintiff
2 ERIK LABHARD. Defendants' willful, knowing, malicious, oppressive, fraudulent, and callous
3 conduct done in conscious disregard for the legal rights, health and safety of plaintiff, justifies the
4 awarding of exemplary and punitive damages in an amount to be determined at trial.

5 Plaintiffs complain of defendants, ARTHREX, INC.; ARTHREX CALIFORNIA, INC.;
6 ARTHREX CALIFORNIA TECHNOLOGY, INC.; DOES 71 through 100, and each of them,
7 and as for a Fifth Cause of Action, allege as follows:
8

9 **FIFTH CAUSE OF ACTION**

10 **(Breach of Warranty)**

11 38. Plaintiffs reallege and reaffirm each and every paragraph and allegation above as if
12 fully rewritten herein.

13
14 39. At all times herein mentioned, defendants, ARTHREX, INC.; ARTHREX
15 CALIFORNIA, INC.; ARTHREX CALIFORNIA TECHNOLOGY, INC.; DOES 71 through
16 100, and each of them, expressly and impliedly warranted that the product(s) herein was fit for its
17 intended uses, including being used by hospitals, physicians and surgeons in treating consumers
18 such as plaintiff, and was safe for such uses, when, in fact, said product(s) was not fit and safe for
19 said uses, but was dangerous and defective in that it was designed and manufactured in such a
20 way that could cause serious injuries to patients, and did cause such injury to plaintiff herein.
21 Defendants ARTHREX, INC.; ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA
22 TECHNOLOGY, INC.; DOES 71 through 100; and their agents, representatives and employees,
23 jointly, individually and/or severally, negligently, carelessly and recklessly designed,
24 manufactured, distributed and sold surgical instruments and/or hardware, including, but not
25 limited to, orthopedic surgical supplies for knee surgeries, including, but not limited to, surgical
26 screws, without any warning or notice of their inherent and dangerous propensities and its defects
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1 to the general public, specifically, plaintiff.

2 40. Plaintiff is informed and believes and thereon alleges that said product(s) was not
3 fit for its intended uses, but to the contrary, was dangerous and in a defective condition, and as a
4 direct and proximate result caused the injuries and damages to plaintiff described herein.

5 41. Defendants ARTHREX, INC.; ARTHREX CALIFORNIA, INC.; ARTHREX
6 CALIFORNIA TECHNOLOGY, INC.; DOES 71 through 100; and their agents, representatives
7 and employees, jointly, individually and/or severally, negligently, carelessly and recklessly
8 breached its express and implied warranties to the general public and specifically to ERIK
9 LABHARD, in that:
10

- 11 (i) They manufactured, supplied, repaired, distributed and sold into the stream of
12 commerce, a product(s) they should have known was defective and unsafe;
13
14 (ii) They knew or should have known of the defective and unsafe product(s), but
15 failed to take sufficient and/or adequate action to remedy these defects and/or
16 advise the user of the same, thus preventing the occurrence of the injuries to
17 plaintiff;
18 (iii) They failed to give adequate and sufficient warning to plaintiff, and his
19 hospital, physicians, and surgeons as to the unreasonable hazard and risk of the
20 product(s) which they manufactured, distributed and sold; and
21 (iv) They failed to sufficiently inspect, replace and/or test the product(s) for defects
22 prior to introducing the same into the stream of commerce.
23

24 42. As a proximate result of the breach of warranty by defendants, ARTHREX, INC.;
25 ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA TECHNOLOGY, INC.; DOES 71
26 through 100, and each of them, plaintiff, ERIK LABHARD, was hurt and injured in his health,
27 strength and activity, sustaining injury to his body and shock and injury to his nervous system and
28

1 person, all of which said injuries have caused and continue to cause plaintiff great mental,
2 physical, and nervous pain and suffering. Plaintiff is informed and believes and thereon alleges
3 that said injuries will result in some permanent disability to him, all to his general damage in an
4 amount in excess of the minimum jurisdictional limits of the Court and that he is entitled to
5 prejudgment interest on the amount when determined, from the date of plaintiff's C.C.P. §998
6 offer to compromise.
7

8 43. That as a further proximate result of the said breach of warranty of the defendants,
9 ARTHREX, INC.; ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA
10 TECHNOLOGY, INC.; DOES 71 through 100, and each of them, plaintiff was required to and
11 did employ, and will be required in the future to employ, physicians and surgeons to examine,
12 treat and care for him and did incur, and will in the future incur, medical and incidental expenses.
13 The exact amount of such expense is unknown to plaintiff at this time, and plaintiff will ask leave
14 to amend his pleading to set forth the exact amount thereof when the same is ascertained by him,
15 and any and all prejudgment interest from the date of said injuries.
16

17 44. As a further proximate result of the said breach of warranty of the defendants,
18 ARTHREX, INC.; ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA
19 TECHNOLOGY, INC.; DOES 71 through 100, and each of them, plaintiff was prevented from
20 attending to his usual occupation and plaintiff is informed and believes and therefore alleges that
21 he will thereby be prevented from attending to his usual occupation for a period of time in the
22 future, all to plaintiff's further damage in an amount unknown at this time, and plaintiff will ask
23 leave to amend his complaint to show the exact amount when determined. Further, plaintiff is
24 entitled to prejudgment interest on said amount from the date of plaintiff's C.C.P. §998 offer to
25 compromise.
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1 45. Plaintiff is informed and believes that at all times herein mentioned, the defendants
2 ARTHREX, INC.; ARTHREX CALIFORNIA, INC.; ARTHREX CALIFORNIA
3 TECHNOLOGY, INC.; DOES 71 through 100, and each of them, knew of the defects of said
4 product(s) and the probability that said product(s) would cause injury to unsuspecting users of the
5 product, including ERIK LABHARD. Defendants willfully, knowingly, maliciously,
6 oppressively and fraudulently designed, manufactured, marketed, sold and distributed said
7 products to hospitals, physicians, and surgeons to be used in treating patients, including plaintiff
8 ERIK LABHARD. Defendants' willful, knowing, malicious, oppressive, fraudulent, and callous
9 conduct done in conscious disregard for the legal rights, health and safety of plaintiff, justifies the
10 awarding of exemplary and punitive damages in an amount to be determined at trial.
11

12 Plaintiffs complain of defendants, KAISER FOUNDATION HOSPITALS; KAISER
13 FOUNDATION HEALTH PLAN, INC.; PERMANENTE MEDICAL GROUP, INC.; JOHN H.
14 GREENFIELD, III, M.D.; ARTHREX, INC.; ARTHREX CALIFORNIA, INC.; ARTHREX
15 CALIFORNIA TECHNOLOGY, INC.; DOES 1 through 125, and each of them, and as for a
16 Sixth Cause of Action, alleges as follows:
17

18 **SIXTH CAUSE OF ACTION**

19 **(Loss of Consortium)**

20
21 46. Plaintiffs reallege and reaffirm each and every paragraph and allegation above as if
22 fully rewritten herein.

23 47. At all times herein mentioned, ERIK LABHARD and SANDRA LABHARD are
24 married and are husband and wife.

25 48. As a proximate result of the negligence of defendants, and each of them, and of
26 ERIK LABHARD resulting injuries, SANDRA LABHARD has been deprived of the services of
27 her husband by reason of his inability to carry on his usual duties and loss of consortium.
28

1 Plaintiff, SANDRA LABHARD, is informed and believes, and thereon alleges, that the said
2 injuries to her husband are of a permanent nature, and that she will be deprived of his said
3 services, love, affection, comfort, care and society for a long period in the future, all to her
4 general damage in an amount in excess of the minimum jurisdictional limits of this Court,
5 together with prejudgment interest thereon from the date of the incident herein.
6

7 WHEREFORE, plaintiffs pray for judgment against the defendants, and each of them, for:

- 8 1. General damages in a sum in excess of the minimum jurisdictional limits of the Court;
- 9 2. All past and future medical and incidental expenses according to proof;
- 10 3. All past and future loss of earnings according to proof;
- 11 4. All prejudgment interest on general and special damages from the date of plaintiffs'
12 Code of Civil Procedure § 998 offer to compromise;
- 13 5. As against defendants ARTHREX, INC.; ARTHREX CALIFORNIA, INC.;
14 ARTHREX CALIFORNIA TECHNOLOGY, INC.; DOES 71 through 100, and each
15 of them, punitive damages in an amount sufficient to punish defendants and deter the
16 conduct described hereinabove in the future;
- 17 6. All costs of suit;
- 18 7. Such other and further relief as this Court may deem just and proper.
19

20 Dated: February 1, 2013

Respectfully submitted,

21
22 KERSHAW, CUTTER & RATINOFF, LLP

23
24
25 By: 

26 KERRIE WEBB
27 Attorneys for Plaintiffs
28 ERIK LABHARD and
SANDRA LABHARD