

1 Thomas Quick, Esq. (SBN 242638)
2 22568 Mission Boulevard, #507
3 Hayward, California 94541
4 Telephone: (510) 579-8510
5 Facsimile: (510) 439-2643
6 E-mail: thomasgeraldquick@msn.com
7 Attorney for Plaintiff, MARIA C. FLORES.

FILED
Clerk of the Superior Court

JAN 14 2019

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN THE COUNTY OF SOLANO**

FCS052156

11 MARIA C. FLORES,

Case No. _____

12 Plaintiff,

COMPLAINT

13 vs.

1. Negligence.

14 KAISER FOUNDATION HOSPITALS;
15 KAISER FOUNDATION HEALTH PLAN,
16 INC.; THE PERMANENTE MEDICAL
17 GROUP, INC.; ADELE E. ROJA, M.D.;
18 GAVIN LEE, D.P.M.; and, DOES 1
19 THROUGH 25,

Defendants.

Judge:
Dept:
Action filed:
Trial Date:

ASSIGNED TO
JUDGE **MICHAEL MATTICE**
FOR ALL PURPOSES

20
21 TO THIS HONORABLE COURT AND ALL INTERESTED PARTIES:

22
23 1. Plaintiff, MARIA C. FLORES, by and through her attorney at law, Thomas
24 Quick, Esq., states her complaint and request for relief as follows.

25 **PARTIES**

26 2. Plaintiff, MARIA C. FLORES, is an individual residing in the County of
27 Solano, California.

28 3. For simplicity and brevity, subsequent references to Plaintiff, MARIA C.

1 FLORES, will be shortened to 'FLORES.'

2 4. Defendants, KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION
3 HEALTH PLAN, INC.; and, THE PERMANENTE MEDICAL GROUP, INC., and each of
4 them, are corporations organized under the laws of the State of California. Defendants,
5 KAISER FOUNDATION HOSPITALS, and KAISER FOUNDATION HEALTH PLAN,
6 INC., are both organized as non-profit public benefit corporations. Defendant, THE
7 PERMANENTE MEDICAL GROUP, INC., is a for-profit corporation.

8 5. Defendant, ADELE E. ROJA, M.D., is an individual licensed by the Medical
9 Board of California to practice medicine and surgery.

10 6. Defendant, GAVIN LEE, D.P.M., is an individual licensed by the California
11 Board of Podiatric Medicine as a podiatric medical resident.

12 7. Defendants, KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION
13 HEALTH PLAN, INC.; THE PERMANENTE MEDICAL GROUP, INC.; ADELE E. ROJA,
14 M.D., and GAVIN LEE, D.P.M., have their principle places of business in the State of
15 California.

16 8. Defendant, KAISER FOUNDATION HOSPITALS, is licensed by the State of
17 California to operate a general acute care hospital facility known as Kaiser Foundation Hospital
18 & Rehab Center - Vallejo, which is located in the city of Vallejo, California.

19 9. The true names and capacities of Defendants, DOES 1 through 25, and each of
20 them, whether individuals, corporations, partnerships, associations, or other, are not known to
21 FLORES who therefore sues said Defendants by such fictitious names. When the true names,
22 identities or capacities of such fictitiously-designated Defendants are ascertained, FLORES will
23 ask for leave to amend the Complaint to insert said true names, identities and capacities,
24 together with the proper charging allegations.

25 10. FLORES is informed and believes and thereon alleges that Defendants, DOES 1
26 through 25, and each of them, were the agents, masters, principals, partners, and/or alter egos
27 of each of the other Defendants at all times herein relevant, and that they are therefore liable for
28 the acts and omissions of each of the other Defendants.

1 11. Most of the events described herein occurred in the County of Solano, in the
2 State of California.

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4 **FIRST CAUSE OF ACTION**

5 **Negligence.**

6 (By Plaintiff, MARIA C. FLORES, against Defendants, KAISER FOUNDATION
7 HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.; THE PERMANENTE
8 MEDICAL GROUP, INC.; ADELE E. ROJA, M.D.; GAVIN LEE, D.P.M.; DOES 1 through
9 25; and, each of them.)

10 12. The allegations of Paragraphs 1 through 11, above, are re-alleged, referred to,
11 and are herein incorporated by reference as if set forth here again in full.

12 13. References hereinafter to the conduct, actions, and omissions of Defendants,
13 KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.;
14 THE PERMANENTE MEDICAL GROUP, INC.; and, each of them, are meant to include the
15 conduct, actions, and omissions of the officers, directors, and managing agents of Defendants,
16 KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.;
17 THE PERMANENTE MEDICAL GROUP, INC.; and, each of them.

18 14. References hereinafter to the conduct, actions, and omissions of Defendants,
19 KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.;
20 THE PERMANENTE MEDICAL GROUP, INC.; ADELE E. ROJA, M.D.; GAVIN LEE,
21 D.P.M.; DOES 1 through 25; and, each of them, are meant to include the conduct, actions, and
22 omissions of the employees and other agents of Defendants, KAISER FOUNDATION
23 HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.; THE PERMANENTE
24 MEDICAL GROUP, INC.; ADELE E. ROJA, M.D.; GAVIN LEE, D.P.M.; DOES 1 through
25 25; and, each of them, within the course and scope of employment and agency.

26 15. Defendants, KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION
27 HEALTH PLAN, INC.; THE PERMANENTE MEDICAL GROUP, INC.; ADELE E. ROJA,
28 M.D.; GAVIN LEE, D.P.M.; DOES 1 through 25; and, each of them, in their conduct herein

1 alleged, whether by commission or omission, in addition to acting for themselves, and on their
2 own behalf individually, were acting as the partner, agent, servant, employee, and
3 representative of the remaining Defendants, and were acting with the knowledge, consent,
4 permission, and ratification of the remaining Defendants, within the course, scope, and
5 authority of their partnership, agency, service, employment, and representation.

6 16. FLORES has the right to seek relief by this negligence cause of action by the
7 authority of California Civil Code section 1714(a), and by the authority of the California
8 common law, on the basis that FLORES alleges Defendants, KAISER FOUNDATION
9 HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.; THE PERMANENTE
10 MEDICAL GROUP, INC.; ADELE E. ROJA, M.D.; GAVIN LEE, D.P.M.; DOES 1 through
11 25; and, each of them, were negligent and failed to use the care required under the
12 circumstances, which, by such lack of care, caused injury, harm, and loss to FLORES.

13 17. Defendants, KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION
14 HEALTH PLAN, INC.; THE PERMANENTE MEDICAL GROUP, INC.; ADELE E. ROJA,
15 M.D.; GAVIN LEE, D.P.M.; DOES 1 through 25; and, each of them, undertook the provision
16 of health services for FLORES, which, by such undertaking, created a special relationship
17 between FLORES and Defendants, KAISER FOUNDATION HOSPITALS; KAISER
18 FOUNDATION HEALTH PLAN, INC.; THE PERMANENTE MEDICAL GROUP, INC.;
19 ADELE E. ROJA, M.D.; GAVIN LEE, D.P.M.; DOES 1 through 25; and, each of them.

20 18. On the basis of said special relationship, Defendants, KAISER FOUNDATION
21 HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.; THE PERMANENTE
22 MEDICAL GROUP, INC.; ADELE E. ROJA, M.D.; GAVIN LEE, D.P.M.; DOES 1 through
23 25; and, each of them, had a duty of care to FLORES; that duty being the possession and
24 exercise of the skill, prudence, diligence, knowledge, and care in diagnosis and treatment that
25 other reasonably careful health service providers would use in the same or similar
26 circumstances.

27 19. FLORES was 28 years of age when she presented with severe abdominal pain at
28 the emergency department of Kaiser Foundation Hospital & Rehab Center - Vallejo on

1 November 29, 2017. FLORES had a past medical history of abdominal pain due to gallstones.
2 FLORES was admitted to the hospital as an inpatient with a medical diagnosis of biliary colic,
3 which means, in lay terms, a gallstone attack.

4 20. On November 30, 2017, FLORES was seen by Defendant, ADELE E. ROJA,
5 M.D., who made plans to treat FLORES the next day with two procedures during one session
6 of general anesthesia. Those two procedures were a laparoscopic cholecystectomy and a
7 surgical endoscopic retrograde cholangiopancreatography.

8 21. Laparoscopic cholecystectomy is the surgical removal of the gall bladder using a
9 camera and other surgical instrumentation on narrow rods entering the abdomen through short
10 incisions of the abdominal wall. During this procedure, access to the gall bladder is achieved
11 by passing the surgical instruments first through skin and any underlying fat and loose
12 connective tissue, then through dense connective tissue called 'deep fascia,' and then through a
13 membranous lining called the 'peritoneum.' The peritoneum is a membranous lining that
14 envelopes several abdominal organs, including the gall bladder. The peritoneum lines a cavity
15 called the 'peritoneal cavity' through which surgical instruments are passed to reach the gall
16 bladder for its removal.

17 22. Endoscopic retrograde cholangiopancreatography, hereinafter abbreviated as
18 'ERCP,' is performed under general anesthesia. During ERCP, a flexible tube with a camera,
19 light source, and other instruments is inserted through the mouth, and then, sequentially,
20 through the esophagus, stomach, and pylorus to the duodenum where bile ducts are injected
21 with radiopaque dye for visualization of any gallstones that may be within the bile ducts.
22 Depending on the results seen, the bile duct opening may be widened, gallstones may be
23 removed, and other procedures may be performed as necessary.

24 23. On December 1, 2017, Defendants, KAISER FOUNDATION HOSPITALS;
25 KAISER FOUNDATION HEALTH PLAN, INC.; THE PERMANENTE MEDICAL GROUP,
26 INC.; ADELE E. ROJA, M.D.; GAVIN LEE, D.P.M.; and, each of them, undertook the
27 delivery of health services to FLORES at Kaiser Foundation Hospital & Rehab Center - Vallejo
28 for laparoscopic cholecystectomy and ERCP.

1 for laparoscopic cholecystectomy and ERCP.

2 24. Laparoscopic cholecystectomy and ERCP can be done in combination, during
3 one general anesthesia session, as same-day outpatient procedures with no overnight hospital
4 stay, and are usually performed with no more than one overnight hospital stay when there are
5 no complications.

6 25. ERCP was needed by FLORES on December 1, 2017, because: a) she had a
7 history of gallstones; b) she had symptoms of bile duct blockage by gallstones; c) magnetic
8 resonance imaging had shown small gallstones, which were only two millimeters in size, were
9 likely obstructing FLORES's bile duct; and, d) laboratory tests on FLORES's blood showed
10 increasing liver byproduct concentrations. The concurrence of these findings indicated a need
11 to open FLORES's bile duct and remove the gallstones from FLORES's bile duct by ERCP.

12 26. During FLORES's pre-operative medical care there were no features of
13 FLORES's medical history, surgical history, physical condition, or compliance with medical
14 advice that made FLORES's risk of surgical complications any greater than that of any other
15 patient of like age and gender undergoing the same procedures.

16 27. Prior to FLORES's surgery of December 1, 2017, no clinical laboratory blood
17 testing had been performed for: a) determining whether or not FLORES had a bleeding
18 predisposition; b) determining FLORES's ABO-Rh blood type; and, c) determining whether or
19 not there were unexpected antibodies in FLORES's blood.

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21 **The Surgery of December 1, 2017.**

22 28. Paragraphs 29 through 45, below, are facts of the circumstances, events, and
23 surgical procedures performed on the body of FLORES on December 1, 2017, in the care of
24 Defendants, KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH
25 PLAN, INC.; THE PERMANENTE MEDICAL GROUP, INC.; ADELE E. ROJA, M.D.;
26 GAVIN LEE, D.P.M.; and, each of them. Other and additional facts will be revealed in pre-
27 trial discovery.

28 29. At the time of surgery on December 1, 2017, the body of FLORES was

1 HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.; THE PERMANENTE
2 MEDICAL GROUP, INC.; ADELE E. ROJA, M.D.; GAVIN LEE, D.P.M.; and, each of them,
3 because FLORES was anesthetized and unconscious during the surgery.

4 30. To gain access to the peritoneal cavity, Defendants, ADELE E. ROJA, M.D.,
5 and GAVIN LEE, D.P.M., used a scalpel to incise the abdominal skin and underlying tissues
6 near FLORES's umbilicus.

7 31. Access to FLORES's peritoneal cavity did not proceed as expected because
8 Defendants, ADELE E. ROJA, M.D., and GAVIN LEE, D.P.M., saw an unexplained, unusual,
9 and abnormal amount of blood when they made incisions near FLORES's umbilicus.

10 32. After making incisions near the umbilicus, a camera was passed through the
11 periumbilical incision, through the peritoneum, and into the peritoneal cavity, whereupon a
12 blood clot was seen within FLORES's pelvis. This blood clot in the pelvis was unexplained,
13 unusual, and abnormal. Defendants, ADELE E. ROJA, M.D., and GAVIN LEE, D.P.M.,
14 continued with three more abdominal incisions to insert additional instruments for use during
15 the laparoscopic cholecystectomy.

16 33. After instrumentation was placed through the three additional incisions,
17 Defendants, ADELE E. ROJA, M.D., and GAVIN LEE, D.P.M., observed another
18 unexplained, unusual, and abnormal finding – a hematoma in the retroperitoneal space. A
19 hematoma is a localized collection of blood outside the blood vessels, due to disease or trauma.
20 The retroperitoneal space is an area located posterior to the peritoneal cavity, and is anterior to
21 the spine. The aorta, iliac arteries, iliac veins, and other blood vessels are located in the
22 retroperitoneal space.

23 34. The findings of unexplained, unusual, and abnormal amounts of blood at the
24 umbilicus, and also of a blood clot in the pelvis, and also of the retroperitoneal hematoma,
25 meant that something was bleeding internally, and meant that the source or sources of the
26 bleeding needed to be identified and controlled.

27 35. When Defendants, ADELE E. ROJA, M.D., and GAVIN LEE, D.P.M.,
28 observed the retroperitoneal hematoma, they abandoned the laparoscopic procedure and,

1 instead, they took action to find and control the source or sources of bleeding by opening
2 FLORES's abdomen widely for an exploratory laparotomy. An incision through FLORES's
3 skin and abdominal wall was made, extending several inches above and below the umbilicus.
4 A vascular surgeon joined the surgery, an intra-arterial line was inserted, and a second
5 intravenous line was inserted.

6 36. During the December 1, 2017, surgery, Defendants, ADELE E. ROJA, M.D.,
7 and GAVIN LEE, D.P.M., did not order the performance of clinical laboratory blood testing
8 for: a) determining whether or not FLORES had a bleeding predisposition; b) determining
9 FLORES's ABO-Rh blood type; and, c) determining whether or not there were unexpected
10 antibodies in FLORES's blood.

11 37. Upon opening and exploring FLORES's abdomen, a hole in the midline of the
12 posterior peritoneum was seen. The posterior peritoneum was incised, and the retroperitoneal
13 space was opened and explored. A small artery in the retroperitoneal space was found to be
14 bleeding.

15 38. Defendants, ADELE E. ROJA, M.D., and GAVIN LEE, D.P.M., clipped the
16 bleeding artery, which controlled the bleeding.

17 39. After clipping the bleeding artery, and after finding no other source of abnormal
18 bleeding, Defendants, ADELE E. ROJA, M.D., and GAVIN LEE, D.P.M., performed
19 FLORES's cholecystectomy through the open abdominal wall.

20 40. The artery in the retroperitoneal space had been pierced, lacerated, or transected
21 by the sharp edge of the scalpel used by Defendants, ADELE E. ROJA, M.D., and GAVIN
22 LEE, D.P.M., when they made incisions near the umbilicus for peritoneal access, but, in
23 addition to incising the skin and deep fascia near the umbilicus, Defendants, ADELE E. ROJA,
24 M.D., and GAVIN LEE, D.P.M., inserted the scalpel deeply into FLORES's body on an errant
25 journey beginning near the umbilicus, then cutting through the anterior peritoneum and
26 entering into the peritoneal cavity, then continuing through the peritoneal cavity, then exiting
27 out of the peritoneal cavity through the posterior peritoneum into the retroperitoneal space, and
28 then continuing through the retroperitoneal space and into the artery, causing the artery to

1 bleed.

2 41. The bleeding artery in FLORES's retroperitoneal space was the source of the
3 blood seen when incisions were made near the umbilicus, and was the source of the blood clot
4 seen in the pelvis, and was the source of the blood that created the retroperitoneal hematoma.
5 No other source of bleeding was found to explain the blood at the umbilicus, in the pelvis, and
6 in the retroperitoneal space.

7 42. Using a gloved hand, by manual palpation, Defendant, ADELE E. ROJA, M.D.,
8 did not perceive any gallstones within FLORES's bile duct, but the recently obtained magnetic
9 resonance imaging had shown tiny gallstones were there in FLORES's bile duct, each gallstone
10 measuring only two millimeters in size, which were too small to perceive by palpating with a
11 gloved hand.

12 43. The inability of Defendant, ADELE E. ROJA, M.D., to palpate gallstones in
13 FLORES's bile duct did not mean obstructing gallstones were not in FLORES's bile duct, and
14 was not an adequate reason to abandon FLORES's ERCP on December 1, 2017.

15 44. The intended ERCP procedure was abandoned by Defendant, ADELE E. ROJA,
16 M.D., on the basis that no gallstones were palpated in the duct where they had been seen on
17 prior magnetic resonance imaging, and because there had been a complication of internal
18 bleeding.

19 45. FLORES's posterior peritoneum was closed with vicryl suture. FLORES's
20 anterior abdominal fascia was closed with polyglyconate sutures, and the abdominal skin
21 incisions were closed with metallic clips.

22 46. While in the post-anesthesia care unit, FLORES had much pain from the large
23 abdominal wall incision. An anesthesiologist administered regional anesthesia injections to
24 temporarily reduce FLORES's pain from the abdominal wall incision.

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26 **Post-Operative Course and Second Surgery.**

27 47. Paragraphs 48 through 52, below, are facts describing circumstances and events
28 after FLORES's surgery of December 1, 2017, and through the performance of a second

1 surgery on December 7, 2017. Other and additional facts will be revealed in pre-trial
2 discovery.

3 48. After the first surgery, of December 1, 2017, FLORES remained hospitalized for
4 several days at Kaiser Foundation Hospital & Rehab.Center - Vallejo where FLORES
5 continued to have abdominal pain and nausea consistent with bile duct blockage by gallstones,
6 and there were increasingly abnormal liver enzyme test results indicating gallstones were
7 blocking FLORES's bile duct.

8 49. Magnetic resonance imaging on December 5, 2017, showed a suspected
9 gallstone in FLORES's distal common bile duct with dilation of the common bile duct, which
10 indicated there was gallstone blockage of FLORES's bile duct.

11 50. The continued pain and nausea symptoms, in concert with the increased liver
12 enzymes and with the findings on imaging studies, indicated that the ERCP that had been
13 abandoned on December 1, 2017, continued to be necessary to relieve FLORES of obstructing
14 gallstones in FLORES's bile duct.

15 51. FLORES underwent ERCP on December 7, 2017, at which time the bile duct
16 was opened, and two gallstones were extracted from the bile duct.

17 52. FLORES was discharged to home on December 8, 2017.

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19 **The Standards of Care.**

20 53. The standards of care for health service providers performing abdominal surgery
21 require the health service providers to possess and exercise of the skill, prudence, diligence,
22 knowledge, and care in diagnosis and treatment that other reasonably careful health service
23 providers would use in the same or similar circumstances.

24 54. The standards of care for health service providers performing laparoscopic
25 cholecystectomy require the health service providers to:

26 a) possess adequate training, knowledge, skill, and ability to perform
27 laparoscopy in the role of lead surgeon, and in the role of an assistant surgeon;

28 b) exercise the utmost attention to every technical detail of the procedure;

- c) employ proper technique in obtaining access to the peritoneum;
- d) adequately elevate the anterior abdominal wall away from the underlying abdominal contents and retroperitoneal structures when dividing the periumbilical abdominal skin and deep fascia;
- e) properly utilize retractors to attain adequate exposure of the deep fascia;
- f) properly utilize clamps to elevate the deep fascia before entering the peritoneal cavity;
- g) bluntly divide the deep fascia before entering the peritoneal cavity;
- h) divide the deep fascia slowly and cautiously;
- i) divide the deep fascia near the peritoneum fascia bluntly, not sharply;
- j) divide the deep fascia bluntly, not sharply, when uncertain of the depth of the deep fascia remaining anterior to the peritoneum;
- k) use blunt instrumentation to enter the peritoneal cavity;
- l) avoid penetration of the posterior peritoneum;
- m) avoid entry into the retroperitoneal space; and,
- n) protect retroperitoneal blood vessels from injury.

55. The standard of care during abdominal surgery when there appears unexplained, abnormal, or unusual bleeding, blood clots, or hematomas, is for the health service providers to order the performance of laboratory testing of the patient's blood, if such tests have not already been performed, for: a) tests to show whether or not there is a bleeding predisposition; b) tests to determine the ABO-Rh blood type; and, c) tests to screen for the presence of unexpected antibodies. This is the standard of care because unexplained, abnormal, or unusual bleeding during surgery may progress to blood loss that requires prompt blood transfusion or treatment with blood products, and, having the necessary blood tests already completed reduces the risk of patient injury from avoidable delay in preparing and administering blood and blood products.

56. The standard of care applicable to health service providers caring for a patient such as FLORES, with a history of gallstones, with symptoms of nausea and abdominal pain,

1 with obstructing gallstones seen on imaging studies, with increasing liver byproduct
2 concentrations, having already consented to ERCP, and who is already under general
3 anesthesia, is for the health service providers to proceed with performing ERCP on the patient
4 while the patient is already under general anesthesia.

5 57. Other and additional standards of care will be provided in due course by expert
6 medical and surgical witnesses.

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8 **Breaches of the Standards of Care.**

9 58. Defendants, KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION
10 HEALTH PLAN, INC.; THE PERMANENTE MEDICAL GROUP, INC.; ADELE E. ROJA,
11 M.D.; GAVIN LEE, D.P.M., and each of them, breached standards of health care when
12 delivering health services to FLORES by:

13 a) the failure of Defendants, KAISER FOUNDATION HOSPITALS;
14 KAISER FOUNDATION HEALTH PLAN, INC.; THE PERMANENTE MEDICAL GROUP,
15 INC.; ADELE E. ROJA, M.D.; GAVIN LEE, D.P.M., and each of them, to possess and
16 exercise the skill, prudence, diligence, knowledge, and care in diagnosis and treatment during
17 the performance of surgery on the abdomen of FLORES that other reasonably careful health
18 service providers commonly possess and exercise under the same or similar circumstances.

19 b) the failure of Defendants, KAISER FOUNDATION HOSPITALS;
20 KAISER FOUNDATION HEALTH PLAN, INC.; THE PERMANENTE MEDICAL GROUP,
21 INC.; ADELE E. ROJA, M.D.; and, each of them, to engage and employ a surgical assistant
22 with adequate training, knowledge, experience, skill, and ability for the performance of
23 FLORES's laparoscopic abdominal surgery;

24 c) the failure of Defendants, KAISER FOUNDATION HOSPITALS;
25 KAISER FOUNDATION HEALTH PLAN, INC.; THE PERMANENTE MEDICAL GROUP,
26 INC.; ADELE E. ROJA, M.D.; and, each of them, to adequately supervise, direct, and control
27 the conduct of Defendant, GAVIN LEE, D.P.M., to meet the standards of care during the
28 performance of FLORES's laparoscopic abdominal surgery;

1 d) Defendant, GAVIN LEE, D.P.M.'s, consenting to perform as a surgical
2 assistant at laparoscopic abdominal surgery when Defendant, GAVIN LEE, D.P.M., did not
3 have prior adequate training, knowledge, experience, skill, and ability to perform as a surgical
4 assistant at laparoscopic abdominal surgery;

5 e) employing faulty technique in obtaining access to the peritoneum;

6 f) failing to elevate, and failing to adequately elevate, the anterior
7 abdominal wall away from the underlying abdominal contents and retroperitoneal structures at
8 the time of dividing the periumbilical abdominal skin;

9 g) failing to elevate, and failing to adequately elevate, the anterior
10 abdominal wall away from the underlying abdominal contents and retroperitoneal structures at
11 the time of dividing the periumbilical deep fascia;

12 h) failing to utilize retractors, and failing to properly utilize retractors, to
13 attain adequate exposure of the deep fascia;

14 i) failing to utilize clamps, and failing to properly utilize clamps, to elevate
15 the deep fascia before entering the peritoneal cavity;

16 j) failing to bluntly divide the deep fascia before entering the peritoneal
17 cavity;

18 k) performing aggressive and excessive sharp division of the skin and deep
19 fascia;

20 l) failing to proceed slowly, cautiously, and safely during sharp dissection;

21 m) failing to frequently pause during sharp dissection for intermittent re-
22 inspection and testing of the need for, and safety of, continued sharp dissection;

23 n) failing to use blunt instrumentation to enter the peritoneal cavity;

24 o) creating a hole in the posterior lining of the peritoneal cavity;

25 p) piercing, lacerating, transecting, or otherwise damaging an artery in the
26 retroperitoneal space;

27 q) the failure of Defendants, KAISER FOUNDATION HOSPITALS;
28 KAISER FOUNDATION HEALTH PLAN, INC.; THE PERMANENTE MEDICAL GROUP,

1 INC.; ADELE E. ROJA, M.D.; and, each of them, to proceed with performing ERCP on
2 FLORES on December 1, 2017;

3 r) failing to order the performance of laboratory testing of FLORES's
4 blood for: a) tests to show whether or not FLORES had a bleeding predisposition; b) tests to
5 determine FLORES's ABO-Rh blood type; and, c) tests to screen for the presence of
6 unexpected antibodies in FLORES's blood; and,

7 s) other and additional careless, inattentive, or unskillful conduct not
8 meeting the standards of care as shall be revealed in due course by expert opinion.

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10 Causation of Injury

11 59. Breaches of the standards of care, as described above, by the conduct, actions,
12 and omissions of Defendants, KAISER FOUNDATION HOSPITALS; KAISER
13 FOUNDATION HEALTH PLAN, INC.; THE PERMANENTE MEDICAL GROUP, INC.;
14 ADELE E. ROJA, M.D.; GAVIN LEE, D.P.M., and each of them, proximately and legally
15 caused FLORES to suffer arterial injury during surgery on December 1, 2017.

16 60. FLORES's arterial injury during surgery on December 1, 2017, was caused by a
17 piercing, lacerating, or transecting of the artery by the sharp edge of a scalpel used by
18 Defendants, ADELE E. ROJA, M.D., and GAVIN LEE, D.P.M., when they made incisions
19 near the umbilicus for peritoneal access, but, in addition to incising the skin and deep fascia
20 near the umbilicus, Defendants, ADELE E. ROJA, M.D., and GAVIN LEE, D.P.M., inserted
21 the scalpel deeply into FLORES's body on an errant journey beginning near the umbilicus, then
22 cutting through the anterior peritoneum and entering into the peritoneal cavity, then continuing
23 through the peritoneal cavity, then exiting out of the peritoneal cavity through the posterior
24 peritoneum into the retroperitoneal space, and then continuing through the retroperitoneal space
25 and into the artery, which caused the artery to bleed.

26 61. Blood exiting the injured artery in FLORES's retroperitoneal space caused an
27 unusual amount of blood to be seen when incisions were made near the umbilicus, and caused
28 internal bleeding in the form of a blood clot seen in the pelvis, and caused internal bleeding in

1 the form of a hematoma seen in the retroperitoneal space.

2 62. Internal bleeding caused FLORES's laparoscopic procedure to be converted to
3 an exploratory laparotomy.

4 63. The exploratory laparotomy caused a large incision to be made on FLORES's
5 abdomen, which caused FLORES to suffer severe post-operative pain that caused FLORES to
6 be unable to perform activities of daily living and childcare. Flores had to rely on family,
7 friends, and a babysitter for meal preparation, bathing, house-cleaning and childcare, which
8 caused indebtedness to family and friends for the impositions put upon on them, and which also
9 caused an economic burden on FLORES.

10 64. The exploratory laparotomy caused a disfiguring abdominal scar that: a)
11 required FLORES to obtain outpatient treatment to control blistering and keloid formation; and,
12 b) caused FLORES much embarrassment, anger, grief, social isolation, self-consciousness, and
13 loss of intimacy.

14 65. The exploratory laparotomy caused FLORES to undergo: a) incision of the
15 posterior peritoneum; b) suturing of the posterior peritoneum; and, c) manipulation of the
16 abdominal and retroperitoneal contents, all of which caused: a) post-operative pain; b)
17 recurrent, uncomfortable abdominal distention; and, c) increased likelihood of future surgeries
18 to release adhesions and bowel obstructions.

19 66. The arterial injury FLORES suffered can only be explained as having been
20 caused by negligence because the anatomic location of the injured artery was outside of the
21 field of surgical activity for laparoscopic cholecystectomy, and because arterial injury at that
22 anatomic location does not ordinarily occur in the absence of negligence.

23 67. The arterial injury and internal bleeding caused a six day postponement of the
24 ERCP that was needed by FLORES, and that had been planned to be performed on December
25 1, 2017, which, by such postponement, caused FLORES to suffer: a) prolonged hospitalization,
26 with attendant medical costs, social isolation, and child care costs; b) physical and mental pain
27 and suffering, inconvenience, and nuisance; and, c) five days of hunger and malnutrition
28 because food was withheld from FLORES in anticipation of later performance of the ERCP.

68. Other and additional causes of injury, harm, and loss to FLORES will be revealed in pre-trial discovery by expert opinion.

69. No unusual local environmental circumstances such as storm, flood, fire, fire alarm, civil unrest, power outage, terror threat, or police action occurred during FLORES's surgery of December 1, 2017, nor did any such environmental circumstance cause or contribute to FLORES's injuries, harms, or losses.

70. Nothing FLORES did, and nothing FLORES failed to do, caused or contributed to any portion of FLORES's injuries, harms, or losses.

71. FLORES has not failed to do anything reasonable to mitigate her injuries, harms, and losses.

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Damages

72. FLORES suffered arterial injury and internal bleeding, which proximately caused multiple other physical, mental, social, and economic injuries, harms and losses, including those described above, and as will be proven at trial, for which FLORES seeks monetary compensation from Defendants, KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.; THE PERMANENTE MEDICAL GROUP, INC.; ADELE E. ROJA, M.D.; GAVIN LEE, D.P.M.; DOES 1 through 25; and, each of them.

PRAYER FOR RELIEF

ON THE FIRST CAUSE OF ACTION

(Negligence)

(By Plaintiff, MARIA C. FLORES, against Defendants, KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.; THE PERMANENTE MEDICAL GROUP, INC.; ADELE E. ROJA, M.D.; GAVIN LEE, D.P.M.; DOES 1 through 25; and, each of them.)

WHEREFORE, Plaintiff, MARIA C. FLORES; prays for judgment against Defendants, KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION HEALTH PLAN, INC.:

1 THE PERMANENTE MEDICAL GROUP, INC.; ADELE E. ROJA, M.D.; GAVIN LEE,
2 D.P.M.; DOES 1 through 25; and, each of them, as follows:

- 3 1. For compensatory damages, both special and general, according to proof
4 at trial;
- 5 2. For interest at the legal rate according to proof at trial; and,
- 6 3. For the costs of this litigation and such other and further relief as the
7 Court deems proper and just.

8 Date: Jdn. 14, 2019

By: _____

Thomas Quick, Esq. (SBN 242638)
22568 Mission Boulevard, #507
Hayward, California 94541
Telephone: (510) 579-8510
Facsimile: (510) 439-2643
E-mail: thomasgeraldquick@msn.com
Attorney for Plaintiff, MARIA C. FLORES.