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ALAMEDA COUNTY

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8 Attorneys for Plaintiffs Joanne M. Loritz, M.D. and Mark Homer

CLERK OF
THE SUPERIOR COURT
 By Corinna Carden, Depu

9 SUPERIOR COURT OF CALIFORNIA - UNLIMITED CIVIL JURISDICTION
 10 IN AND FOR THE COUNTY OF ALAMEDA

CASE NUMBER:
RG12637501

11 JOANNE M. LORITZ, M.D. and MARK
 12 HOMER

COMPLAINT FOR DAMAGES

13 Plaintiffs,

14 vs.

1. **Professional Negligence**
 (By Plaintiff JOANNE M. LORITZ,
 M.D. Against All Defendants)

15 PERMANENTE MEDICAL GROUP, INC.;
 16 KAISER FOUNDATION HEALTH PLAN,
 17 INC.; KAISER FOUNDATION HOSPITALS;
 18 GARWOOD GEE, M.D.; and DOES 1-100

2. **Medical Battery**
 (By Plaintiff JOANNE M. LORITZ,
 M.D. Against All Defendants)

19 Defendants

3. **Loss of Consortium**
 (By Plaintiff MARK HOMER Against
 All Defendants)

20 Amount In Controversy Exceeds \$25,000

21 Jury Trial Requested

22
 23
 24
 25 **PARTIES AND JURISDICTION**

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

COMPLAINT FOR DAMAGES

1 2. At all times mentioned herein, plaintiffs JOANNE M. LORITZ, M.D. and
2 MARK HOMER were and are natural persons, a married couple, and resided in Napa,
3 California.

4 3. At all times mentioned herein, PERMANENTE MEDICAL GROUP, INC. (a
5 corporation with its principal place of business in Oakland, California, which is located in
6 Alameda County), KAISER FOUNDATION HEALTH PLAN, INC. (a corporation with its
7 principal place of business in Oakland, California); and/or KAISER FOUNDATION
8 HOSPITALS (an entity of unknown type with its principal place of business in Oakland,
9 California) employed the DOE defendants whose provided medical care resulted in the injuries
10 alleged herein, and whose names and identifies are at this time unknown to the plaintiff. One
11 or more of such defendants owned and operated the medical facilities where Plaintiff JOANNE
12 M. LORITZ, M.D. received the relevant care in which all negligent acts committed took place.
13 Each of these defendants shall hereinafter be collectively referred to as the "KAISER
14 DEFENDANTS."

15 4. At all times mentioned herein, Defendant GARWOOD GEE, M.D. was duly
16 licensed as a doctor of medicine in the state of California, practicing medicine in San Francisco
17 County and Alameda County.

18 5. Plaintiffs are ignorant of the true names and capacities of defendants identified
19 as DOES 1-100. DOES 1-100 are the physicians, nurses, medical assistants, and/or other
20 agents, employees, staff members or persons who were employed by, or acting as the agent of,
21 any of the Defendants named in this action whose negligent acts were the proximate cause of
22 plaintiffs' damages. Plaintiffs are informed and believe that DOES 1-100 were in some manner
23 the proximate and legal cause of the injuries and damages suffered by plaintiffs as alleged
24 herein.

25 6. In committing the acts alleged in this Complaint, each defendant, including each
26 Doe Defendant, was the agent and employee of the other, and was acting within the course and
27 scope of that agency and capacity.
28

1 7. The conduct of each such defendant was ratified by his or her employer, and
2 each such employer had knowledge of the unfitness of the employee and employed him or her
3 with a conscious disregard of the rights or safety of others.

4 **COMMON FACTUAL ALLEGATIONS**

5 8. On April 6, 2011, Plaintiff JOANNE M. LORITZ, M.D. presented to Kaiser
6 Permanente Vallejo Medical Center for a cardiovascular stress test. The test was being
7 performed primarily because of Plaintiff's history of dyslipidemia and complaints of right arm
8 pain and shortness of breath that Plaintiff was experiencing with physical exertion. After
9 beginning the stress test, Plaintiff began to experience right arm pain and shortness of breath.
10 As a result of the symptoms and accompanying EKG changes, the stress test was terminated
11 and DR. LORITZ was admitted to Kaiser Permanente Vallejo Medical Center. The
12 supervising physician, Kevin Bobrowsky, M.D., F.A.C.C., recommended that DR. LORITZ
13 have a cardiac catheterization to further evaluate Plaintiff's cardiac condition.

14 9. Plaintiff DR. LORITZ was informed that while cardiac catheterizations were
15 performed at the Kaiser Permanente Vallejo Medical Center, cardiac stent placements are not.
16 Since it was likely she would need a stent placed based on her symptoms and EKG changes, it
17 was decided that her care would be transferred to Kaiser Foundation Hospital in San Francisco.
18 DR. LORITZ agreed and was sent by ambulance and admitted as an inpatient to Kaiser
19 Foundation Hospital in San Francisco on April 7, 2011. The cardiac catheterization was
20 scheduled to be performed the same day. During the preparation for the catheterization, DR.
21 LORITZ informed the nurses who were prepping her for the procedure that she had a history of
22 difficult IV line insertion during a previous cardiac procedure in her right arm and was told she
23 had small blood vessels in that arm. Because of that, she asked that the catheterization be
24 performed through her femoral artery in her leg and not through her right arm. The Kaiser
25 nurse preparing her for the procedure agreed, and the nurse prepared the femoral artery area for
26 the procedure.

27 10. While Plaintiff was in the preparation room, she was told by the physician who
28 was to perform the catheterization, GARWOOD GEE, M.D., that he intended to access

1 Plaintiff's cardiovascular system through the radial artery in her arm, rather than the femoral
2 artery. Plaintiff explained that she had concerns about a radial artery catheterization because of
3 her prior cardiac procedure. In response to these concerns, DR. GEE agreed to use the femoral
4 artery in the preparation room. The last thing Plaintiff remembers before losing consciousness
5 due to sedation was being prepped for the procedure at the femoral artery site. When Plaintiff
6 regained consciousness following the procedure, she discovered that Defendant, DR. GEE had
7 in fact performed the procedure through her right radial artery. Plaintiff never consented to this
8 procedure being performed through her right femoral artery.

9 11. On the evening of April 7, 2011, Plaintiff developed a white right hand, right
10 hand pain and right arm pain. Defendants attempted to discharge her anyway; however,
11 Plaintiff refused to be discharged and insisted on further examination. She was ultimately sent
12 to ultrasound where a thrombosis extending from the right wrist to the upper arm was found. A
13 heparin drip was started in an effort to restore the blood flow, but by the next morning the
14 situation had not significantly improved. As a result, Plaintiff was forced to undergo
15 thrombolectomy surgery which restored the blood flow.

16 12. However, Plaintiff, who is right hand dominant, has experienced pain and
17 weakness in her right arm ever since the April 7, 2011 cardiac catheterization as a result of the
18 thrombosis and the surgery to repair it. Plaintiff has been informed that she suffered potential
19 nerve injury as a result of the thrombosis. The pain and weakness has been debilitating,
20 causing Plaintiff not to be able to work and additionally causing significant mental and
21 emotional anguish. Plaintiff has been forced to undergo significant physical and occupational
22 therapy, and other medical treatment as a result of the thrombosis which developed subsequent
23 to the April 7, 2011 cardiac catheterization.

24 13. At all times, Defendant GARWOOD GEE, M.D. was an agent and employee of
25 PERMANENTE MEDICAL GROUP, INC.; KAISER FOUNDATION HEALTH PLAN,
26 INC.; and/or KAISER FOUNDATION HOSPITALS, hereinafter referred to collectively as the
27 "Kaiser Entities." Further, one or more of the Kaiser Entities owned and operated the Kaiser
28 Foundation Hospital in San Francisco, California and related facilities where Plaintiff JOANNE

1 M. LORITZ, M.D. received the relevant care, and therefore employed all other medical staff
2 working there involved in DR. LORITZ'S care, diagnosis and treatment.

3 14. Defendants, and their employees and agents, including Defendant GARWOOD
4 GEE, M.D. who treated DR. LORITZ as described herein and as evidenced in the Kaiser
5 medical records, breached the standard of care by performing the April 7, 2011 cardiac
6 catheterization through Plaintiff DR. LORITZ'S radial artery and/or by failing to administer
7 heparin or other anticoagulants prior, during or immediately following the procedure, which is
8 required by the standard of care. More likely than not, had DR. GEE performed the procedure
9 through Plaintiff's femoral artery instead of her radial artery, Plaintiff would not have suffered
10 the complications which she did suffer as a result of the April 7, 2011 transradial cardiac
11 catheterization. In addition, had DR. GEE administered heparin or another similar
12 anticoagulant in conjunction with the April 7, 2011 cardiac catheterization, Plaintiff would not
13 have suffered the clot and/or thrombosis at issue. Defendants' negligence was the actual and
14 proximate cause of their damages.

15 15. Further, Defendants never obtained informed consent from DR. LORITZ to
16 perform the procedure through the right radial artery, the location of the catheterization that
17 was actually performed. As such, Defendants committed a battery by performing a medical
18 procedure – a radial catheterization – that was a substantially different from the procedure to
19 which she consented, which was a femoral catheterization.

20 **DAMAGES**

21 16. As a result of Defendants' negligence, and each of them, and other wrongful
22 acts alleged herein, Plaintiff JOANNE M. LORITZ, M.D. has suffered and will suffer physical
23 pain, inconvenience, mental anguish and suffering, past and future medical expense, and past
24 and future wage loss, and diminished earning capacity.

25 17. Plaintiff MARK HOMER is the husband of Plaintiff JOANNE M. LORITZ,
26 M.D. As a result of DR. LORITZ's injuries, he has suffered from a loss of consortium, and a
27 loss of the value of her household services. As a result of DR. LORITZ's injuries, Plaintiffs
28

1 have also been and/or will be forced to employ household assistance that they would not have
2 employed but for the injuries that were caused by Defendants.

3 18. The amount of Plaintiffs' total damages caused by Defendants' wrongful acts is
4 well in excess of \$25,000.00, the exact amount of which will be proven at trial.

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

6 19. At no point up to the present have defendants, or any of their agents or affiliates,
7 revealed that they or anyone else breached the standard of care owed to Plaintiff DR. LORITZ,
8 or that defendants performed any act or omission that resulted in any damages to Plaintiff.

9 20. Pursuant to Code of Civil Procedure section 364, on April 5, 2012, a Notice of
10 Claim for Medical Negligence that substantially contained the same material facts pled in the
11 Common Factual Allegations section of this Complaint was sent to each of the Defendants at
12 the following addresses:

13
14 Garwood Gee, M.D.
15 280 West MacArthur
16 Oakland, CA 94611
17 NOTICE OF CLAIM FOR MEDICAL
18 NEGLIGENCE ENCLOSED

19 Permanente Medical Group, Inc.
20 W. William Petrick
21 1950 Franklin Street, 20th Floor
22 Oakland, CA 94612
23 NOTICE OF CLAIM FOR MEDICAL
24 NEGLIGENCE ENCLOSED

25 Kaiser Foundation Health Plan, Inc.
26 One Kaiser Plaza
27 Oakland, CA 94612
28 NOTICE OF CLAIM FOR MEDICAL
NEGLIGENCE ENCLOSED

Kaiser Foundation Health Plan, Inc.
Corporation Service Company
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833
NOTICE OF CLAIM FOR MEDICAL
NEGLIGENCE ENCLOSED

1 Kaiser Foundation Hospitals
2 One Kaiser Plaza
3 Oakland, CA 94612
4 NOTICE OF CLAIM FOR MEDICAL
5 NEGLIGENCE ENCLOSED

6 Kaiser Foundation Hospitals
7 Corporation Service Company
8 2730 Gateway Oaks Drive, Suite 100
9 Sacramento, CA 95833
10 NOTICE OF CLAIM FOR MEDICAL
11 NEGLIGENCE ENCLOSED

12 **FIRST CAUSE OF ACTION**

13 **Professional Negligence**

14 **(By Plaintiff JOANNE M. LORITZ, M.D. Against All Defendants)**

15 21. Plaintiff incorporates by reference each allegation set forth above as if fully set
16 forth herein.

17 22. At all times herein, physicians employed by, and/or acting in the course and
18 course of the employment or agency of, the KAISER DEFENDANTS, named herein and named
19 as DOE DEFENDANTS, provided medical consultation, care and/or treatment to Plaintiff.
20 Such physicians were duly licensed to practice medicine in the State of California and held
21 themselves out to possess that degree of skill, expertise and ability and learning of similar
22 physicians in the San Francisco Bay Area.

23 23. The treatment and care Plaintiff received from such Defendants fell below the
24 standard of care required of physicians and other health care providers in the relevant
25 community for at least, and without limitation, the reasons articulated herein. Plaintiff alleges
26 that that breach was the actual and proximate cause of her damages and injuries as alleged
27 herein, and that such would not have occurred but for Defendants' negligence.

28 24. Specifically, and without limitation, Defendants, and their employees and
agents, including Defendant GARWOOD GEE, M.D. who treated DR. LORITZ as described
herein and as evidenced in the Kaiser medical records, breached the standard of care by
performing the April 7, 2011 cardiac catheterization through Plaintiff DR. LORITZ'S radial
artery and/or by failing to administer heparin or other anticoagulants prior, during or

1 immediately following the procedure, which is required by the standard of care. More likely
 2 than not, had DR. GEE performed the procedure through Plaintiff's femoral artery instead of
 3 her radial artery, Plaintiff would not have suffered the complications which she did suffer as a
 4 result of the April 7, 2011 transradial cardiac catheterization. In addition, had DR. GEE
 5 administered heparin or another similar anticoagulant in conjunction with the April 7, 2011
 6 cardiac catheterization, Plaintiff would not have suffered the clot and/or thrombosis at issue.
 7 Defendants' negligence was the actual and proximate cause of Plaintiff's damages.

8 25. As a direct and proximate result of the negligence of the KAISER
 9 DEFENDANTS, and each of them, as aforesaid, Plaintiff has suffered physical and emotional
 10 injuries as described herein, and was caused to suffer general and special damages as alleged
 11 herein, in an amount to be proved at trial.

12 26. As a direct and proximate result of the negligence of defendants, and each of
 13 them, plaintiff was required to and did employ physicians, physical therapists and other
 14 medical professionals to provide medical services to treat him, which would not have occurred
 15 but for the negligence of such defendants, in amounts to be proved at trial.

SECOND CAUSE OF ACTION

Medical Battery

(By Plaintiff JOANNE M. LORITZ, M.D. Against All Defendants)

17 27. Plaintiffs incorporate by reference each allegation set forth above as if fully set
 18 forth herein.
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20 28. Defendant GARWOOD GEE, M.D. performed a harmful touching to JOANNE
 21 M. LORITZ, M.D. to which she did not consent when performing the April 7, 2011 cardiac
 22 catheterization through Plaintiff DR. LORITZ'S radial artery. Defendant DR. GEE persuaded
 23 JOANNE M. LORITZ, M.D. to undergo the April 7, 2011 cardiac catheterization by telling her
 24 that he would perform the procedure using the femoral approach. In fact DR. GEE had no
 25 intention of doing anything but a radial artery approach. Although there was no
 26 contraindication for the use of the femoral artery, defendant DR. GEE chose, against his
 27 patient's will, to perform the procedure through the radial artery.
 28

1 29. On information and belief, he did so because he was conducting research on the
2 use of the radial artery when performing cardiac catheterizations, a relatively new approach.
3 DR. GEE failed to inform Plaintiff of his research prior to performing the subject procedure.
4 Thus, despite DR. LORITZ's specific warnings that the radial artery should not be used, DR.
5 GEE chose to place his research ahead of his patient's best interest and performed an
6 unconsented to procedure.

7 30. Plaintiff provided consent only for a cardiac catheterization using the femoral
8 artery, performed according to the standard of care. Defendant DR. GEE instead performed a
9 cardiac catheterization using the radial artery. Therefore, the procedure that was ultimately
10 performed – was substantially different from the procedure for which consent was granted.

11 31. A reasonable person in Plaintiff's situation would have been offended by the
12 touching as described above.

13 32. As a direct and proximate result of the procedure performed, Plaintiff DR.
14 LORITZ suffered emotional, psychological and physical injuries to her body, and was caused
15 to suffer general and special damages as alleged herein, in an amount to be proved at trial.

16 33. As a direct and proximate result of the procedure performed, Plaintiff DR.
17 LORITZ was required to and did employ physicians, surgeons, physical therapists and other
18 medical professionals to provide medical services to treat her, which would not have occurred
19 but for the negligence of such defendants, in amounts to be proved at trial.

20 34. As a direct and proximate result of the procedure performed, Plaintiff DR.
21 LORITZ will be required to employ additional medical and/or psychological services in the
22 future as a result for the injuries he suffered, in amounts to be proved at trial.

23 **THIRD CAUSE OF ACTION**

24 **Loss of Consortium and Household Services**
25 **(Plaintiff MARK HOMER Against All Defendants)**

26 35. Plaintiffs incorporate by reference each allegation set forth above as if fully set
27 forth herein.

28 36. As a result of the negligent and intentional acts of Defendants alleged herein that
plaintiffs allege constitute negligence and battery, plaintiff MARK HOMER has suffered and

1 continues to suffer damages in the form of loss of consortium and loss of household services
2 from JOANNE M. LORITZ, M.D.

3 37. Therefore, as a direct and proximate result of the wrongful acts and omission of
4 Defendants as described herein, Plaintiff MARK HOMER has suffered a loss of love,
5 companionship, comfort, care, assistance, protection, affection, society, moral support; and the
6 loss of the enjoyment of sexual relations with his wife.

7
8 WHEREFORE, Plaintiffs pray for judgment as follows against all Defendants:

- 9 1. For general compensatory damages.
- 10 2. For special compensatory damages according to proof at trial.
- 11 3. For any and all damages awardable, without limitation, under Civil Code section
12 3428(j).
- 13 4. For costs of suit.
- 14 5. For such other relief as the Court deems just and proper.

15
16
17 Dated: July 2, 2012

By:

18 

19
20 T. Andrew Davies, Esq.
21 The Zinn Law Firm
22 Attorneys for Plaintiffs
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