

FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

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11 JOY BARNES, a minor, by and through her
12 Guardian Ad Litem, Charnesha Cobb

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN FRANCISCO

15 JOY BARNES, a minor, by and through her
16 Guardian Ad Litem, Charnesha Cobb,

Case No.: CGC 13-536069

17 Plaintiff,

18 vs.

19 **COMPLAINT FOR DAMAGES FOR
20 MEDICAL NEGLIGENCE AND
21 DEMAND FOR JURY TRIAL**

22 KAISER FOUNDATION HEALTH PLAN,
23 INC., KAISER FOUNDATION HOSPITALS,
24 THE PERMANENTE MEDICAL GROUP, INC.
25 and DOES 1 through 50, inclusive,

26 Defendants.

27 Plaintiff JOY BARNES, a minor, by and through her Guardian Ad Litem, Charnesha
28 Cobb, alleges as follows:

GENERAL ALLEGATIONS

1. The true names, identities or capacities, whether individual, associate, corporate
or otherwise of Defendants DOES 1 through 50, inclusive, are unknown to Plaintiff who,
therefore, sues said Defendants by such fictitious names. When the true names, identities or
capacities of such fictitiously-designated Defendants are ascertained, Plaintiff will ask leave of
Court to amend the Complaint to insert said true names, identities and capacities, together with
the proper charging allegations.

BY FAX

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1 2. Plaintiff is informed and believes and thereon alleges that each of the Defendants
2 sued herein as a DOE is responsible in some manner for the events and happenings herein
3 referred to, thereby legally causing the injuries and damages to the Plaintiff as herein alleged.

4 3. Plaintiff is informed and believes and thereon alleges that all of the facts, acts,
5 events and circumstances herein mentioned and described occurred in the County of San
6 Francisco, State of California, and all Defendants are residents of the County of San Francisco,
7 State of California, doing business in said County, State of California.

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

12 5. At all times herein mentioned, Defendants, DOES 11 through 20, inclusive,
13 were, and now are, registered nurses, licensed vocational nurses, practical nurses, certified nurse
14 midwives, aids, technicians, attendants, students or other paramedical personnel, holding
15 themselves out as duly able to practice their profession under and by virtue of the laws of the
16 State of California and were, and now are, engaged in the practice of their profession in the
17 State of California and acting as agents, ostensible agents, employees and servants of some or
18 all of the other Defendants within the course and scope of said agency or employment.

19 6. At all times herein mentioned, Defendants, KAISER FOUNDATION HEALTH
20 PLAN, INC., KAISER FOUNDATION HOSPITALS, THE PERMANENTE MEDICAL
21 GROUP, INC. and DOES 21 through 30, inclusive, were corporations, partnerships, joint
22 ventures, or other entities organized and existing under the laws of the State of California, with
23 their principal place of business situated in the State of California and are the employees,
24 partners, agents, ostensible agents, principles of all other defendants, and each of them.

25 7. At all times herein mentioned, Defendants, KAISER FOUNDATION HEALTH
26 PLAN, INC., KAISER FOUNDATION HOSPITALS, THE PERMANENTE MEDICAL
27 GROUP, INC. and DOES 31 through 40, inclusive, were duly organized California
28 corporations, partnerships, hospitals or other entities, existing under and by virtue of the laws of

1 the State of California; that said Defendant corporations, hospitals and the remaining
2 Defendants, and each of them, owned, operated, managed and controlled a general hospital
3 facility within the County of San Francisco, State of California, held out to the public at large
4 and to the Plaintiff herein, as properly equipped, fully accredited, competently staffed by
5 qualified and prudent personnel and operating in compliance with the standard of due care
6 maintained in other properly equipped, efficiently operated and administered, accredited
7 hospitals in said community commonly.

8 8. At all times herein mentioned Defendants, DOES 41 through 50, were doing
9 business as a district hospital, a hospital operated by a government entity open to the public, or a
10 medical facility operated by a government entity open to the public, or a physician, nurse
11 midwife, or nurse, or other health care professional employed by a government entity, rendering
12 medical, surgical, hospital, diagnostic, nursing and other care to the general public for
13 compensation, existing under and by virtue of the laws of the State of California; that said
14 Defendant corporations, hospitals and the remaining Defendants, and each of them, owned,
15 operated, managed and controlled a general hospital facility within the County of San Francisco,
16 State of California, held out to the public at large and to the Plaintiff herein, as properly
17 equipped, fully accredited, competently staffed by qualified and prudent personnel and
18 operating in compliance with the standard of due care maintained in other properly equipped,
19 efficiently operated and administered, accredited hospitals in said community commonly.

20 9. Defendants, KAISER FOUNDATION HEALTH PLAN, INC., KAISER
21 FOUNDATION HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC. and DOES 31
22 through 50, inclusive, at all times herein mentioned were institutions or controlled institutions,
23 duly accredited by the Joint Commission on Hospital Accreditation, and assumed and held
24 themselves out to the public as in compliance with the minimum standards required by said
25 Joint Commission for such accreditation.

26 10. Plaintiff is informed and believes and upon such information and belief alleges
27 that at all times herein mentioned, Defendants and other Defendants, including DOES 1 through
28 50, named fictitiously, were the agents, ostensible agents, servants, employees, joint-venturers,

1 and co-partners of their said co-Defendants, including DOES 1 through 50, and, as such, were
2 acting within the course and scope of such agency, service, partnership, venture, and
3 employment at all times herein mentioned; that each and every Defendant, as aforesaid, when
4 acting as a principal, was negligent in the selection and hiring of each and every other
5 Defendant, as its agent, ostensible agent, servant, employee, joint-venturer and partner. Further,
6 each and every Defendant ratified the conduct of the other Defendants.

7 11. Plaintiff is informed and believes that at the time of judgment she will be entitled
8 to prejudgment interest because the Defendants will have rejected an offer pursuant to the terms
9 of Code of Civil Procedure Section 998 and will have failed to obtain a more favorable
10 judgment.

11 **FIRST CAUSE OF ACTION FOR MEDICAL NEGLIGENCE**

12 **(BY PLAINTIFF JOY BARNES, a minor, by and through her Guardian Ad Litem,**
13 **Charnesha Cobb, AGAINST DEFENDANTS KAISER FOUNDATION HEALTH PLAN,**
14 **INC., KAISER FOUNDATION HOSPITALS, THE PERMANENTE MEDICAL GROUP,**
15 **INC. AND DOES 1 THROUGH 50)**

16 12. Plaintiff JOY BARNES repeats and repleads each and every allegation
17 contained in all prior paragraphs and incorporates the same herein.

18 13. On or about the filing of this Complaint, Charnesha Cobb, mother of the minor
19 Plaintiff, was by order duly made and entered by the above entitled Court, appointed Guardian
20 Ad Litem of Plaintiff JOY BARNES, a minor, born December 15, 2011.

21 14. Prior to December 15, 2011, the date of JOY BARNES's birth, and thereafter,
22 Charnesha Cobb employed Defendants, and each of them, to diagnose and treat her condition of
23 pregnancy and to do all things necessary for her care and the care of her baby, JOY BARNES,
24 including, but not limited to, prenatal care, pre-delivery care, delivery, and post-delivery care.

25 15. While minor Plaintiff JOY BARNES was under the sole and exclusive care and
26 control of the Defendants, and each of them, Defendants, and each of them negligently,
27 carelessly and unskillfully delivered, examined, treated, cared for, diagnosed, operated upon,
28 attended and otherwise handled and controlled the minor Plaintiff herein, thereby proximately

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causing injuries and damages to the minor Plaintiff.

16. Defendants neglected to adequately select a competent medical staff and to periodically review the competency of its medical staff and failed to adequately monitor its staff such that the minor Plaintiff was caused to, and did suffer damages.

17. At all times herein mentioned when Plaintiff was in the exclusive control of Defendants, and DOES 1 through 50 and each of them, at no time prior to the events, conduct, activities, care and treatment herein complained of did the Defendants herein, or any of them, obtain knowledgeable, informed consent for said care, treatment or conduct; that prior to the initiation of or performance of said care, treatment, procedure or conduct no opportunity was afforded the Plaintiff or any authorized agent of the Plaintiff to exercise voluntary, knowledgeable and informed consent to said care, treatment, procedure or conduct.

18. As a legal result of the negligence of the Defendants, and each of them, the minor Plaintiff was injured in health, strength and activity, sustaining severe shock, and injury to the body, all of which said injuries have caused and continue to cause Plaintiff great physical, emotional, and nervous pain and suffering, and which said injuries Plaintiff is informed and believes, and thereon alleges, will result in loss of earnings, permanent disability, loss of enjoyment of life, and impairment of earning capacity all to Plaintiff's damage in a sum in excess of the jurisdiction of the Municipal Court. JOY BARNES has been diagnosed with Erb's Palsy and is permanently disabled.

19. As a further legal result of the negligence of the Defendants, and each of them, and the resulting injuries to the minor Plaintiff, said minor Plaintiff was compelled to, and did, incur expenses for medical and surgical attention, hospitalization, nursing, medication and incidentals for said Plaintiff in an amount to be proven at trial.

20. As a further legal result of the negligence of the Defendants, and each of them, and of the resulting injuries, the minor Plaintiff will be obliged to incur expenses for medical care and hospitalization for an indefinite period in the future and to pay for these expenses in the treatment and relief of injuries for medical and surgical attention, hospitalization, nursing, medication, and incidentals for said minor Plaintiff in an amount unknown to Plaintiff at present

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and to be proven at trial.

21. As a further legal result of the negligence of the Defendants, and each of them, Plaintiff will suffer a decreased earning capacity in the future and future earnings to Plaintiff's further damage in a sum unknown at present and to be proven at the trial in this matter.

WHEREFORE, Plaintiff prays for judgment against Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC. and DOES 1 through 50, and each of them as follows:

- 1. Economic and non-economic 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. Prejudgment interest;
- 5. Costs of suit incurred herein, and
- 6. For such other and further relief as to the Court appears just and proper.

DATED: December 10, 2013

DONAHUE & HORROW, LLP



THOMAS E. DONAHUE
REBECCA CUCU
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury.

DATED: December 10, 2013

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THOMAS E. DONAHUE
REBECCA CUCU
Attorneys for Plaintiff