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Superior Court of California,
County of Orange
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Clerk of the Superior Court
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

10 EILEEN JOHNSON and TROY JOHNSON,
11 Plaintiffs,
12 vs.

13 MERLE S. ROBBOY, M.D., MERLE S.
14 ROBBOY, A PROFESSIONAL
15 CORPORATION, PLANNED PARENTHOOD/
16 ORANGE AND SAN BERNARDINO
17 COUNTIES, INC., PLANNED PARENTHOOD/
18 ORANGE AND SAN BERNARDINO
19 COUNTIES FAMILY PLANNING SERVICES,
20 INC., PLANNED PARENTHOOD/ ORANGE
21 AND SAN BERNARDINO COUNTIES
22 REPRODUCTIVE HEALTH SERVICES, INC.,
23 and DOES 1 through 50, inclusive,

24 Defendants.

Case No.: 30-2012-00615557-CU-MM-CJC

COMPLAINT FOR DAMAGES FOR:

1. Negligence (Medical)
2. Negligence (Products Liability)
3. Strict Liability (Products)
4. Constructive Fraud
5. Loss of Consortium

Judge William M. Monroe C16

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26 **COME NOW** the Plaintiffs, EILEEN JOHNSON and TROY JOHNSON (hereinafter
27 "Plaintiffs"), who allege, as follows:

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FIRST CAUSE OF ACTION
FOR NEGLIGENCE (PROFESSIONAL)
(Eileen Johnson Against All Defendants)

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4 1. Plaintiffs EILEEN JOHNSON and TROY JOHNSON are, and at all times herein
5 mentioned were, lawfully married wife and husband, respectively, and residents of the county of
6 Orange, State of California.

7 2. Defendants, MERLE ROBBY, M.D., MERLE S. ROBBY, A PROFESSIONAL
8 CORPORATION and DOES 1 through 5 (collectively, ROBBY, in the singular) is believed to be a
9 resident of the County of Orange, State of California, and held himself out as a physician and surgeon,
10 duly licensed to practice and practicing obstetrics and gynecology, in Orange County. Dr. Robboy was
11 at all times an actual or ostensible employee or agent of defendants, PLANNED PARENTHOOD/
12 ORANGE AND SAN BERNARDINO COUNTIES, INC., PLANNED PARENTHOOD/ ORANGE
13 AND SAN BERNARDINO COUNTIES FAMILY PLANNING SERVICES, INC., PLANNED
14 PARENTHOOD/ ORANGE AND SAN BERNARDINO COUNTIES REPRODUCTIVE HEALTH
15 SERVICES, INC. infra. Plaintiffs are further informed and believe that prior to undertaking the care of
16 plaintiff, defendant held himself out to members of the general public in general and to plaintiff
17 EILEEN JOHNSON in particular, as a qualified gynecological surgeon with expertise, specialized
18 knowledge, training education, learning, skill, techniques, and experience in the services he rendered to
19 plaintiff.

20 3. Defendants, PLANNED PARENTHOOD/ ORANGE AND SAN BERNARDINO
21 COUNTIES, INC., PLANNED PARENTHOOD/ ORANGE AND SAN BERNARDINO COUNTIES
22 FAMILY PLANNING SERVICES, INC., PLANNED PARENTHOOD/ ORANGE AND SAN
23 BERNARDINO COUNTIES REPRODUCTIVE HEALTH SERVICES, INC., and Does 6-15, are
24 corporations, limited liability companies, partnerships, associations, parent and subsidiary, or other
25 business form unknown, and at all times relevant were holding themselves out as licensed to do and
26 doing business in Orange County as a hospital, surgery center, health dispensary, clinic, and/or other
27 health care provider, for members of the general public, including plaintiff herein. Plaintiffs are further
28 informed and believe that prior to undertaking the care of plaintiff, EILEEN JOHNSON, defendants

1 held themselves out to members of the public in general and to plaintiff in particular, as having quality
2 facilities, vetted and qualified physicians and surgeons, who have expertise, specialized knowledge,
3 training, education, learning, skill, techniques, and experience in rendering services to and for the
4 plaintiff, EILEEN JOHNSON .

5 4. The true names and capacities, whether individual, corporate, associate or otherwise of
6 defendants, DOES 1 through 50, inclusive, are unknown to plaintiffs at this time, who therefore sue said
7 defendants by such fictitious names. Plaintiffs are informed and believe, and thereon allege, that each of
8 the defendants designated herein as a DOE is responsible in some manner and liable herein by way of
9 negligence, breach of fiduciary duties, wanton and reckless misconduct, conscious disregard, negligent
10 infliction of emotional distress, and in such other manners and by such wrongful conduct, proximately
11 caused the injuries and damages to plaintiff as alleged herein.

12 5. At all times herein mentioned, defendants, and each of them, whether specifically named
13 or designated herein as a DOE, were agents, servants, employees, joint venturers, consultants, partners,
14 associates and legally liable participants with every other defendant, whether specifically named or
15 designated herein as a DOE, and each of the others in doing the things hereinafter mentioned, were
16 acting within the course and scope of their authority as agents, servants, employees, consultants, partners
17 and joint venturers, and with said authority, consent, ratification and permission of their co-defendants,
18 and each of them.

19 6. At all times herein mentioned, the acts and conduct herein below described of each and
20 every corporate defendant was duly authorized, ordered and directed by the respective defendant
21 corporate employers of the said corporate employees and agents; that in addition thereto, said corporate
22 employers participated in the aforesaid acts and conduct of the said employees, agents, and each of
23 them; and that in addition thereto, upon the completion of the aforesaid acts and conduct of the said
24 corporate employees and agents, the aforesaid defendant corporations respectively ratified, accepted
25 benefits of, condoned and approved of each and all of the said acts and conduct of the aforesaid
26 corporate employees, actual or ostensible.

27 7. Plaintiff EILEEN JOHNSON engaged and secured for valuable consideration, the
28 services of the defendants to examine, diagnose, treat, prescribe, dispense, inject, perform and provide

1 the removal of an old intrauterine device (“IUD”) and insertion of a new IUD to prevent pregnancy.
2 Defendants, and each of them, purported to do all things necessary and reasonable in connection with
3 the care and treatment of the plaintiff.

4 8. In connection with the services and functions to be performed, defendant negligently
5 failed to possess and exercise that degree of knowledge and skill ordinarily possessed and exercised by
6 similar and other physicians and hospital facilities in the community, and such negligence was a
7 substantial factor and proximate cause of injuries, harm and other damages to plaintiff, as hereinafter
8 alleged.

9 9. Among other things, plaintiffs are informed and believe and thereon allege that
10 Defendant ROBBOY used, and PLANNED PARENTHOOD authorized this use of a device he
11 represented he designed and caused to be built and used for removing the IUD that plaintiff was in need
12 of replacing. Plaintiffs are informed and believe that the device was defective and unsafe for its use and
13 that it was not approved for use by any regulatory entity but employed without informed consent by
14 plaintiff EILEEN JOHNSON.

15 10. As a direct and proximate result of the negligent and substandard care provided by
16 defendant, plaintiff, EILEEN JOHNSON, suffered a perforation and internal bleeding that was
17 negligently not discovered by the defendants before authorizing her discharge and discharging plaintiff.
18 As a direct and proximate result of these negligent actions, omissions and conduct, plaintiff has been
19 hurt and injured in his health, strength and activity, sustaining injuries to his body and shock and harm to
20 his mind and nervous system, all of which injuries have caused and continue to cause plaintiff great
21 mental and physical pain and suffering. Plaintiffs are informed and believe, and thereon allege that the
22 above-described conduct has resulted in new and permanent injuries and/or the exacerbation of existing
23 conditions, all to EILEEN JOHNSON's general and special damage, in a sum exceeding the minimum
24 jurisdiction of the unlimited Superior Court, according to proof at trial.

25 11. As a further direct and proximate result of the wrongful conduct of defendants, and each
26 of them, plaintiff EILEEN JOHNSON has employed and incurred medical expenses from health care
27 providers, including, but not limited to, hospitals, clinics, physicians and therapists, in an amount not
28 presently ascertained but not to be proved at trial. In addition, plaintiff was cared for by members of her

1 family who cared and rendered services during the acute phase of her condition. Plaintiff is informed
2 and believes that said her medical care is continuing, and will be required in the future, all to her future
3 economic harm and damage, in a sum according to proof at trial.

4 12. As a further direct and proximate result of the wrongful conduct of defendants, and each
5 of them, plaintiff has sustained a loss of earnings and earnings capacity, in an amount not presently
6 known, but to be proven at trial.

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8 **SECOND CAUSE OF ACTION**

9 **FOR NEGLIGENCE (PRODUCT)**

10 **(By Eileen Johnson Against All Defendants)**

11 13. Plaintiffs repeat and re-allege each and every allegation in paragraphs one through 12 of
12 the First Cause of Action, and incorporate the same herein by reference, as though set forth in full.

13 14. The defendants, and each of them, at all times herein mentioned, represented they were
14 and are engaged in the business of designing, manufacturing, testing, creating, preparing, constructing,
15 utilizing, providing, distributing, supplying, promoting, furnishing, warning, instructing and placing into
16 the stream of commerce certain products and their component parts for use in the placement and/or
17 retrieval of IUDs that resemble those which were implanted in the plaintiff, hereinafter, INSTRUMENT.
18 Defendants represented they did design, manufacture, test, create, prepare, construct, utilize, provide,
19 distribute, supply, promote, furnish, warn and instruct about, and place into the stream of commerce, the
20 subject INSTRUMENT.

21 15. As a direct and proximate result of negligence in the design, manufacture, warnings,
22 instructions and use of the subject INSTRUMENT, plaintiff EILEEN JOHNSON suffered harms and
23 damages as alleged hereinabove.

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2 **THIRD CAUSE OF ACTION**

3 **FOR STRICT LIABILITY**

4 **(By Eileen Johnson Against All Defendants)**

5 16. Plaintiffs repeat and re-allege each and every allegation in paragraphs one through 12 of
6 the First Cause of Action, paragraphs 14 through 15, of the Second Cause of Action, and incorporate the
7 same herein by this reference, as though they were set forth in full.

8 17. Defendants, and each of them, are, and at all times herein mentioned held themselves out
9 or represented they were engaged in the business of designing, manufacturing, marketing, promoting,
10 packaging, testing, furnishing, distributing the INSTRUMENT for use on members of the general
11 public, including the plaintiff, and as part of their business(es), the defendants, and each of them, used
12 the INSTRUMENT on plaintiff, as one it designed and manufactured for that use.

13 18. At all times herein mentioned, defendants, and each of them, knew and intended that the
14 INSTRUMENT would be used on members of the general public without their inspection or testing for
15 defects in its design or manufacture.

16 19. The INSTRUMENT was, at the time it was used and all times thereafter, defective and
17 unsafe for its intended purpose and use, in that it was a substantial factor in perforating plaintiff's tissues
18 and organs, and that no warnings were supplied to the plaintiff about the foreseeability of such an
19 occurrence before its use, failing to meet the reasonable expectations of objective consumers who are
20 subject to severe consequences from perforations of that nature.

21 20. These defects were a substantial factor causing the incident that led to plaintiffs' harms
22 and damages, as alleged hereinabove.

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24 **FOURTH CAUSE OF ACTION**

25 **FOR CONSTRUCTIVE FRAUD**

26 **(By Eileen Johnson Against All Defendants)**

27 21. Plaintiffs repeat and re-allege each and every allegation in paragraphs one through 12 of
28 the First Cause of Action, paragraphs 14 through 15, of the Second Cause of Action, paragraphs 17

1 through 20 of the Third Cause of Action, and incorporates the same herein by this reference, as though
2 they were set forth in full.

3 22. At all times herein alleged, the defendants owed the plaintiff a fiduciary duty and level of
4 care regarding full and informed disclosures of material facts, even at peril to oneself, in the course of
5 providing medical treatment that was also beyond the ken of the plaintiff.

6 23. At all times herein mentioned, defendants represented, expressly and impliedly, that the
7 INSTRUMENT was safely designed, tested, approved for use by some regulatory authority including
8 the Federal Food and Drug Administration, and defendants were at all times aware they owed plaintiff a
9 fiduciary duty of care and full disclosure in conjunction with the goods and services they were supplying
10 in the course of plaintiff's care and treatment.

11 24. Defendants knew that plaintiff was ignorant of the requirements for using
12 INSTRUMENTS like the one that harmed plaintiff, and knew it did not meet US FDA requirements for
13 instruments of that nature. Neither did the defendants inform plaintiff that a safer alternative was
14 available to preserve her health and tissues.

15 25. Defendants knew or reasonably should have known that their representations, express and
16 implied about the INSTRUMENT were unsubstantiated or false, and that plaintiff was reasonable in
17 relying on the defendants to provide forthright and accurate information because they held themselves
18 out as her physicians and health care providers who were at all times experts in the type of care,
19 treatment and surgery that plaintiff was submitting to for retrieving the IUD that was to be replaced.

20 26. These defects were a substantial factor causing the incident that led to plaintiffs' harms
21 and damages, as alleged hereinabove.

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23 **FIFTH CAUSE OF ACTION**
24 **FOR LOSS OF CONSORTIUM**
25 **(By Troy Johnson Against All Defendants)**

26 27. Plaintiffs repeat and re-allege each and every allegation in paragraphs one through 12 of
27 the First Cause of Action, paragraphs 14 through 15 of the Second Cause of Action, paragraphs 17
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1 through 20, of the Third Cause of Action and paragraphs 22 through 26, of the Fourth Cause of Action,
2 incorporating the same herein by this reference, as though they were set forth in full.

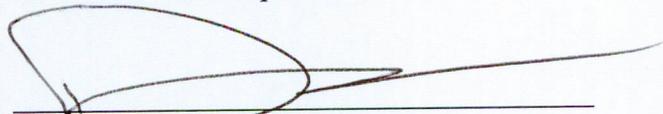
3 28. At all times herein mentioned, plaintiff EILEEN JOHNSON was lawfully married to
4 TROY JOHNSON, and as a consequence of the negligence, defective product and constructive fraud on
5 EILEEN JOHNSON, TROY JOHNSON has suffered the loss of his wife's consortium, including
6 society, companionship, affection, solace, comfort, assistance, and support. Plaintiff TROY
7 JOHNSON's damages and loss is substantial, exceeding the minimum jurisdiction of the "unlimited"
8 superior court.

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10 **WHEREFORE**, plaintiffs pray for judgment against defendants, and each of them, as follows:

- 11 1. For general damages for emotional distress, humiliation, physical pain, fear, anxiety,
12 mental suffering, in an amount according to proof at time of trial;
- 13 2. For all special damages, consequential and incidental expenses incurred, and all
14 additional economic losses, past and future, proximately caused by the defendants' wrongful
15 conduct, according to proof at time of trial;
- 16 3. For loss of future earnings capacity, according to proof at trial;
- 17 4. For general damages for loss of consortium, according to proof at trial;
- 18 5. For costs of suit herein;
- 19 6. For prejudgment interest at the maximum rate permitted by law; and
- 20 7. For such other and further relief as this Court may deem just and proper.

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22 Date: November 20, 2012

LAW OFFICES OF DAVID HOFFMAN
A Professional Corporation

23
24 By: 
25 DAVID HOFFMAN, ESQ., Attorneys for
26 plaintiffs, EILEEN JOHNSON and
TROY JOHNSON