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FILED
ALAMEDA COUNTY

JAN 17 2019

CLERK OF THE SUPERIOR COURT
By  Deputy

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ATTORNEYS FOR PLAINTIFFS JEREMY
OPPERMAN AND LEANNE OPPERMAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JEREMY OPPERMAN and LEANNE
OPPERMAN,

Plaintiffs,

v.

FIRST PRESBYTERIAN CHURCH OF
NEWARK dba PARK SIDE
PRESCHOOL, HEATHER MITCHELL
and DOES ONE through ONE
HUNDRED, inclusive,

Defendants.

Case No. **RG19002975**

**COMPLAINT FOR DAMAGES
[WRONGFUL DEATH -
NEGLIGENCE]; DEMAND FOR
JURY TRIAL**

**FIRST CAUSE OF ACTION
[Wrongful Death - Negligence]**

Plaintiffs Jeremy Opperman and Leanne Opperman, hereby complain of
defendants, and each of them, and for a First Cause of Action, allege as follows:

1. The true names or capacities, whether individual, corporate,
governmental or associate, of the defendants named herein as Doe are unknown to
plaintiffs who therefore sue said defendants by such fictitious names. Plaintiffs pray
leave to amend this complaint to show their true names and capacities when the
same have been finally determined. Plaintiffs are informed and believe, and upon

1 such information and belief allege that each of the defendants designated herein as
2 Doe is negligently or otherwise legally responsible in some manner for the events and
3 happenings referred to, and negligently or otherwise legally caused injury and
4 damages thereby to plaintiffs as is hereinafter alleged.

5 2. At all times herein mentioned, each and every of the defendants herein
6 was the agent, servant, employee, joint venturer, partner and/or franchisee, each of
7 the other, and each was acting within the course and scope of such agency, service,
8 employment, joint venture, partnership and/or franchise.

9 3. Plaintiffs herein are the surviving parents of Macie Opperman, who
10 died on October 19, 2018. Plaintiffs constitute all of the surviving heirs at law of the
11 deceased pursuant to California Code of Civil Procedure § 377.60.

12 4. The incident which is the subject of this claim occurred on October 19,
13 2018 at Park Side Preschool which was owned, operated, maintained and controlled
14 by First Presbyterian Church of Newark and located at 35450 Newark Boulevard, in
15 the City of Newark, County of Alameda, State of California.

16 5. At all times herein mentioned, defendants First Presbyterian Church of
17 Newark and Does One through Twenty owned, operated, maintained, controlled,
18 equipped and supervised the property located at 35450 Newark Boulevard including
19 the outdoor areas and children's playground on the premises.

20 6. At all times herein mentioned, defendants First Presbyterian Church of
21 Newark dba Park Side Preschool, Heather Mitchell, and Does Ten through Thirty
22 owned, operated, organized, designed, maintained, controlled, and supervised a
23 preschool known as Park Side Preschool at 35450 Newark Boulevard.

24 7. At all times herein mentioned, defendants First Presbyterian Church of
25 Newark dba Park Side Preschool, Heather Mitchell and Does One through Thirty
26 negligently, carelessly and recklessly owned, organized, operated, maintained,
27 controlled, created, constructed, directed, and supervised the preschool known as
28 Park Side Preschool; and negligently, carelessly and recklessly owned, operated,

1 maintained, controlled, constructed, and supervised the First Presbyterian Church of
2 Newark premises such that the property was dangerous and hazardous including
3 specifically children. The defendants were negligent and reckless in, among other
4 things, permitting, allowing, and inviting children to use and play on a dangerous
5 and defective tire-swing which was not affixed, harnessed, or secured to the ground
6 as required by California Health and Safety Code § 101239. Further, the defendants,
7 and each of them, were negligent and reckless in failing to provide cushioned
8 material underneath the above-described tire-swing in violation of California Health
9 and Safety Code § 101238.

10 8. Prior to and on October 19, 2018 defendants First Presbyterian Church
11 of Newark dba Park Side Preschool, Heather Mitchell, and Does One through Thirty
12 knew, or through the exercise of reasonable care should have known that the First
13 Presbyterian Church of Newark premises, including the above-described tire-swing
14 was dangerous, violated California law and was unsafe for use by children.

15 9. On October 19, 2018 defendants First Presbyterian Church of Newark
16 dba Park Side Preschool, Heather Mitchell and Does One through Thirty, undertook
17 to supervise, care for, and teach plaintiffs' decedent, Macie Opperman, who was then
18 three years-old. At approximately 11:45 a.m., the defendants carelessly, negligently
19 and recklessly invited, encouraged, permitted and assisted plaintiffs' decedent, Macie
20 Opperman, and two other children onto the above-described tire-swing.

21 10. At the aforesaid time and place, and as a direct result of the negligence,
22 carelessness and recklessness of the defendants, and each of them, the above-
23 described tire-swing toppled over, causing Macie Opperman to suffer severe head and
24 brain trauma.

25 11. By reason of the premises, and as a direct and legal result of the
26 negligence of the defendants, and each of them, Macie Opperman sustained fatal
27 injuries which caused her death on or about October 19, 2018.

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1 12. By reason of the premises, and as a direct and legal result of the
2 defendants' careless, negligent, and reckless acts and omissions, plaintiffs Jeremy
3 Opperman and Leanne Opperman have been deprived of a loving daughter, and of
4 their daughter's care, companionship, comfort, love, affection, society and support, all
5 to their special and general damages in a sum in excess of the minimum
6 jurisdictional limits of this court.

7 13. As a further direct and legal result of the defendants' negligence,
8 carelessness, acts and omissions, plaintiffs have sustained special (economic)
9 damages representing expenses for funeral, memorial, and disposition of the remains
10 of the decedent, the exact amount of such expenses and losses being presently
11 unknown to plaintiffs, who therefore pray leave to insert such elements when the
12 same have been finally determined.

13 14. By reason of the premises, plaintiffs have suffered and sustained
14 general non-economic damages in a sum in excess of the minimum jurisdictional
15 limits of this court.

16 WHEREFORE, plaintiffs pray judgment against the defendants, and each of
17 them, jointly and severally, as follows:

- 18 A. For general (non-economic) damages according to proof at the time of
19 trial;
- 20 B. For special (economic) damages according to proof at the time of trial
- 21 C. For pre-judgment interest as permitted by law;
- 22 D. For costs of suit; and
- 23 E. For such other and further relief as this Court may deem proper.

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1 Dated: January 16, 2019

WALKUP, MELODIA, KELLY & SCHOENBERGER

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By: 

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MICHAEL A. KELLY

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CONOR M. KELLY

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Attorneys for PLAINTIFFS JEREMY

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OPPERMAN AND LEANNE OPPERMAN

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DEMAND FOR JURY TRIAL

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Plaintiffs hereby demand a jury trial.

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11 Dated: January 16, 2019

WALKUP, MELODIA, KELLY & SCHOENBERGER

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By: 

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MICHAEL A. KELLY

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CONOR M. KELLY

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Attorneys for PLAINTIFFS JEREMY

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OPPERMAN AND LEANNE OPPERMAN

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