

ORIGINAL

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FILED

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

JUN 18 2013

John A. Chae, Executive Officer/Clerk

BY Shunya Wealey, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

NICOLAS MERCADO aka NICOLAS  
MERCADO RODRIGUEZ, a minor, by  
and through his Guardian ad Litem, SONIA  
MERCADO aka SONIA MERCADO  
RODRIGUEZ; SONIA MERCADO, an  
individual aka SONIA MERCADO  
RODRIGUEZ; RAMIRO MERCADO aka  
RAMIRO MERCADO RODRIGUEZ, an  
individual

Plaintiffs,

v.

KAISER FOUNDATION HOSPITAL;  
KAISER FOUNDATION HEALTH  
PLAN, INC.; KAISER PERMANENTE  
INSURANCE COMPANY; SOUTHERN  
CALIFORNIA PERMANENTE  
MEDICAL GROUP; DOES 1 through 100,  
inclusive,

Defendants.

CASE NO.

BC512365

COMPLAINT FOR DAMAGES

1. Medical Negligence (Count 1)
2. Medical Negligence (Count 2)
3. Medical Negligence (Count 3)
4. Willful Misconduct
5. Negligent Infliction of Emotional  
Distress (Sonia Mercado)
6. Negligent Infliction of Emotional  
Distress (Ramiro Mercado)
7. Breach of Contract
8. Breach of The Implied Covenant  
Good Faith And Fair Dealing
9. Violations of EMFTA
10. Violation of Civil Code § 3261

DEMAND FOR JURY TRIAL

RECEIPT #: CMH465980098  
DATE PAID: 06/28/13 11:19 AM  
AMOUNT: \$435.00  
310  
\$435.00  
\$0.00  
\$0.00  
\$0.00

CIT/CASE: BC512365  
LEA/DEF#:

## GENERAL ALLEGATIONS

1. Plaintiffs Sonia Mercado and Ramiro Mercado were and are husband and wife and the parents of the minor, Nicolas Mercado, whose date of birth is January 12, 2013.

2. At all relevant times, plaintiffs were and are residents of the State of California and the County of Los Angeles.

3. Plaintiffs are informed and believe and thereon allege that each of the defendants sued herein was and is a resident of or doing business in the County of Los Angeles, State of California.

4. At all times herein mentioned the defendants Does 1 through 20, inclusive, and each and every Doe in between, were and now are physicians, surgeons, nurses, medical personnel or other health care professionals, duly licensed to practice their profession and or engaged in the practice of their profession in the County of Los Angeles, State of California.

5. At all times herein mentioned defendants Kaiser Foundation Hospital, Kaiser Foundation Health Plan, Inc., Kaiser Permanente Insurance Company, Southern California Permanente Medical Group, (hereinafter collectively "Kaiser"), and Does 21 through 30, inclusive, and each and every Doe in between, were and now are corporations, partnerships, sole proprietorships, joint ventures or associations duly organized and existing under and by virtue of the laws of the State of California.

6. At all times herein mentioned Kaiser defendants and Does 1 through 30, inclusive, were and are engaged in the insurance business, providing health care insurance coverage, providing health care service plans, owning and operating managed healthcare organizations, and owning, operating, maintaining, managing and engaging in rendering medical, surgical, hospital,

1 diagnostic, nursing and other care to the general public for compensation in Los Angeles  
2 County; all the acts complained of herein by plaintiffs against said defendants were done and  
3 performed by said defendants by and through their duly authorized agents, ostensible agents,  
4 servants, joint venturers, and employees, each of whom and all of whom were at all times  
5 mentioned herein acting within the course, purpose and scope of their agency, joint venture or  
6 employment and their conduct was ratified by the Kaiser defendants, and Does 1 through 30,  
7 inclusive. Further, these defendants selected and assigned physicians and other health care  
8 professionals to care for and treat plaintiff Sonia Mercado, and her unborn child, Nicolas  
9 Mercado, and through words or actions held those individuals out as agents or employees,  
10 knowing and expecting these plaintiffs to rely upon those actions or words, and the plaintiffs  
11 did so rely.  
12

13 7. At all times herein mentioned defendants, and each of them, held themselves out to the  
14 general public and to plaintiffs as skilled, competent, loyal, compassionate, and trustworthy  
15 professionals in the business of providing health care insurance coverage, in the business of  
16 owning and operating managed health care organizations, and/or in the fields of medicine,  
17 surgery, nursing, hospital care, medical attendant and related care; and said defendants held  
18 themselves out to the general public and to the plaintiffs as possessing all of the aforementioned  
19 attributes as would be customarily possessed and exercised by others in the business of  
20 providing health care insurance coverage, owning and operating managed health care  
21 organizations, as well as by other physicians, surgeons, nurses, and hospital attendants engaged  
22 in the same or similar locality as that of defendants herein and each of them.  
23

24 8. The true names, identities and capacities, whether individual, associate, corporate or  
25 otherwise of defendants Does 1 through 30, inclusive, and each Doe in between, are unknown  
26 to Plaintiffs at this time, who therefore sue said defendants by such fictitious names. When the  
27 true names and capacities of such fictitiously designated defendants are ascertained, Plaintiffs  
28 will amend this complaint to insert their true names, identities and capacities, together with the

1 proper charging allegations. Plaintiffs are informed and believe, and thereon allege, that each  
2 of the defendants sued herein as a Doe is responsible in some actionable manner for the events  
3 and happenings herein alleged and thereby legally causing the injuries and damages to the  
4 Plaintiffs as hereinafter set forth.  
5

6 9. At all times herein mentioned each of the defendants sued herein, whether by their actual  
7 name or fictitious name, was the agent, ostensible agent, alter ego, servant, joint venturer or  
8 employee of each other and of said co-defendants and was as such acting within the purpose and  
9 scope of said agency, ostensible agency, service, joint venture or employment; each of the  
10 defendants, as aforesaid, whether referred to by their actual names or fictitious names, when  
11 acting as a principal was negligent in the selection and hiring of each and every other  
12 co-defendant as an agent, servant or employee and furthermore expressly directed, consented  
13 to, approved, affirmed and ratified each and every action taken by the co-defendants.  
14

#### 15 **FACTUAL BACKGROUND**

16

17 10. Plaintiff, Sonia Mercado, (born Sonia Saldana) initially became a Kaiser member through  
18 her employment in or around 1998. Subsequently, she continued to remain a Kaiser member  
19 after she changed employment some time around 2006. At all times herein relevant, Sonia was  
20 enrolled in a Kaiser Permanente Traditional Plan which provides medically necessary care in  
21 exchange for monthly premiums. Sonia did everything required of her under the terms of her  
22 agreement with Kaiser.  
23

24 11. Sonia Saldana married Ramiro Mercado in 2005. Ramiro was added to Sonia's  
25 employment plan, and became covered under her Kaiser health care plan when they married.  
26

27 12. In 2005, Sonia and Ramiro's first child was born. In 2007, their second child was born.  
28 In 2008, their third child was born. Finally, on January 12, 2013, Nicolas, the Mercado's fourth  
29

1 child, was born. Each of the Mercado children became covered under Sonia's Kaiser health care  
2 plan.

3  
4 13. Sonia received all of her prenatal care for all four of her children at Kaiser, West Los  
5 Angeles, and each of her children, except Nicolas, was born there as well. Sonia had cesarean  
6 sections (c-sections) for each of her four children. All prenatal care for each of the 4 children  
7 was routine, and all except Nicolas were born healthy in non-eventful deliveries.

8  
9 14. Sonia had a classical (vertical) c-section when her oldest child was born. And, according  
10 to Kaiser records, her second child was born utilizing a transverse (horizontal) c-section. It is  
11 not clear whether her third child was born using a vertical or a horizontal c-section.

12  
13 15. As a result of the fact that Sonia had a classical (vertical) c-section during the birth of her  
14 first child she was at significantly increased risk for uterine rupture, it was therefore medically  
15 imperative that she never have contractions or go into labor for the births of any of her later  
16 children. These facts were known to Kaiser, which, in fact, provided this information and  
17 caution to Sonia. Kaiser knew that if Sonia were to have contractions and go into labor for the  
18 births of any of her children, the consequences could be medically devastating to Sonia and/or  
19 her unborn child. In particular, the danger to Sonia was that if she were to have contractions and  
20 go into labor, her uterus could rupture causing the placenta to abrupt and extrude the fetus. Any  
21 of these events would be catastrophic.

22  
23 16. In fact, Sonia did not have contractions and did not go into labor for the birth of either  
24 her second or third child at Kaiser West Los Angeles.

25  
26 17. On January 12, 2013, Sonia arrived at Kaiser West Los Angeles, at approximately 3:30  
27 am. It was a Saturday. She was driven there by her husband. At the time, it was believed that she  
28

1 was 36.5 weeks pregnant. At the time of her arrival to Kaiser, Sonia was experiencing back and  
2 abdominal pains and felt she was having contractions.

3  
4 18. From the time of her arrival at Kaiser, Sonia informed Kaiser personnel that she believed  
5 she was having contractions, that she had had a prior classical C-section, and that it was not  
6 medically permissible for her to have contractions or experience labor. A cursory and  
7 inadequate medical examination was performed on Sonia. She was informed that she was,  
8 indeed, having contractions, but was told to come back for her next scheduled appointment  
9 which was to be on January 15, 2013. Sonia left Kaiser at approximately 5:30 a.m. that morning.

10  
11 19. After leaving Kaiser, Sonia returned home. However, her contractions became stronger  
12 and closer together, and her pain had increased. Sonia was alarmed. She returned to Kaiser later  
13 that morning at approximately 11:00 a.m., driven there again by her husband. At this time, new  
14 staff were on duty at Kaiser. Sonia advised Kaiser staff that she had been there earlier that same  
15 morning. On this visit, Sonia was told that perhaps she had kidney stones which were causing  
16 her pain.

17  
18 20. Sonia once again told Kaiser staff that she had previously had a classical C-section and  
19 that it was not permissible for her to go into labor. While there, a Kaiser staff member checked  
20 the computer at Kaiser in Sonia's presence, and confirmed that Sonia did in fact have a classical  
21 C-section for her first child, a transverse C-section for her second child (the manner of C-section  
22 she had had for her third child was not apparent). Sonia was also told that her baby was "fine"  
23 and "very active." That Sonia was still having contractions was also confirmed by Kaiser  
24 personnel. Sonia told personnel that she did not feel that her pain was normal, that she was in  
25 labor, and that she did not wish to leave Kaiser. However, she was again persuaded by Kaiser  
26 personnel to return home. She left in tears holding her abdomen. She arrived home at  
27 approximately 1:00 p.m.

21. Upon arriving home, Sonia's pain continued to increase. Finally, at around 3:00 PM, she noticed "popping" and "stretching" sensations and a dramatic increase in her pain. She knew that something was wrong. 911 was called and paramedics arrived shortly after to Sonia's home. One of the paramedics stated that he did not believe there was sufficient time to take her to Kaiser, so instead, Sonia was taken to Centinela Hospital.

22. Upon arrival at Centinela Hospital, a fetal heart monitor was placed on Sonia, and the fetal heart tracings indicated that her baby's heart beat was very slow. Sonia and Ramiro were aware and afraid of this. Sonia was immediately readied for an emergency C-section. She was informed while being prepared for the C-section that she could require a hysterectomy as a result of the procedure, that there was a good possibility that she would require blood transfusions, that her internal organs could be injured during the procedure, and that there could be problems with her baby due to oxygen deprivation. All of this greatly alarmed Sonia and Ramiro, making them frightened and desperate.

23. Nicolas Mercado was delivered at 3:40 p.m. at Centinela Hospital on January 12, 2013. Sadly, during the C-section when Nicolas was delivered, it was found that Sonia's uterus had ruptured, that there had been a placental abruption and extrusion of the fetus. Nicolas also did not cry upon delivery and required resuscitation due to oxygen deprivation. It is believed that Nicolas did not breathe spontaneously until he was approximately 7:30 minutes old. It has also been confirmed that Nicolas sustained brain injury as a result of these events.

### FIRST CAUSE OF ACTION

ON BEHALF OF PLAINTIFF SONIA MERCADO, AGAINST KAISER FOUNDATION  
HOSPITAL, SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP AND  
DOES 1 THROUGH 100, INCLUSIVE, FOR MEDICAL NEGLIGENCE

24. Plaintiffs refer to each and every paragraph of the Complaint and incorporate those

1 paragraphs as though set forth in full in this cause of action.

2  
3 25. At all times herein mentioned plaintiff Sonia Mercado was a patient of defendants in  
4 connection with prenatal and obstetrical care concerning a pregnancy which delivered on  
5 January 12, 2013.

6  
7 26. Defendants agreed to perform and undertook to perform for the plaintiff Sonia Mercado,  
8 all services necessary in the prenatal, perinatal, labor, delivery, and post-natal phase of  
9 plaintiff's care for the pregnancy which delivered on January 12, 2013, which included, but was  
10 not limited to, examinations, ultrasound, evaluations, diagnosis, and care and treatment of  
11 plaintiff Sonia Mercado. In so doing the defendants, and each of them, established a  
12 physician/nurse/ hospital/ care giver relationship with the plaintiff giving rise to each  
13 defendant's duty to plaintiff Sonia Mercado to perform skillful management of her prenatal,  
14 obstetrical, labor, delivery and postnatal care.

15  
16 27. The defendants were negligent, careless and unskillful in their management of the  
17 prenatal and labor phase, including but not limited to the examinations, ultrasound evaluations,  
18 diagnoses, care and treatment of plaintiff Sonia Mercado. That negligence was a legal cause of  
19 injuries and damages to all plaintiffs as pleaded below. The defendants' negligence includes,  
20 but is not limited to:

21 Negligent medical screening, examination, hospital and emergency care, and prenatal  
22 care.

23  
24 28. Defendants also negligently failed to properly advise plaintiff Sonia Mercado of any other  
25 possible alternative methods of diagnosis or treatment and the possible risks attendant to the  
26 diagnosis or treatment, thus failing to obtain a free and informed consent. as a legal result of the  
27 lack of free and informed consent, plaintiffs suffered injuries as set forth below.  
28

1 29. As a direct and legal result of the defendants' negligence, carelessness and unskillfulness,  
2 plaintiff Sonia Mercado was injured. Her injuries include but are not limited to non-economic  
3 damages, including pain, suffering, mental, physical and emotional distress and loss of sleep and  
4 related physical damages. Plaintiff is informed and believes and therefore alleges that said  
5 injuries will result in non-economic damages in an amount according to proof.

6  
7 30. As a direct and legal result of the defendants' negligence, carelessness, and unskillfulness,  
8 plaintiff Sonia Mercado has and will in the future incur economic damages in an amount  
9 according to proof.

## 10 11 **SECOND CAUSE OF ACTION**

12 ON BEHALF OF PLAINTIFF NICOLAS MERCADO, A MINOR, BY AND THROUGH  
13 HIS GUARDIAN AD LITEM, SONIA MERCADO, AGAINST KAISER FOUNDATION  
14 HOSPITAL, SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, AND  
15 DOES 1 THROUGH 100, INCLUSIVE, FOR MEDICAL NEGLIGENCE

16  
17 31. Plaintiffs refer to each and every paragraph of the Complaint and incorporate those  
18 paragraphs as though set forth in full in this cause of action.

19  
20 32. Plaintiff, Nicolas Mercado, was born on January 12, 2013, at Los Angeles California.  
21 Plaintiff's mother, plaintiff Sonia Mercado received prenatal care as set forth above from Kaiser  
22 Defendants.

23  
24 33. Defendants were negligent in the care rendered to plaintiff's mother. Defendants  
25 rendering prenatal care to Sonia Mercado were negligent in the rendition of that care on January  
26 12, 2013.

1 34. As a legal result of the negligence of the defendants, plaintiff Nicolas Mercado was  
2 injured in his health, strength an activity, suffered severe physical and emotional injury, has  
3 incurred and will in the future incur expenses for medical care, nursing care, attendant care,  
4 rehabilitation, physical and occupational therapy, speech therapy, education therapy, and related  
5 expenses all to plaintiff's non-economic and economic damages in an amount according to  
6 proof.

7  
8 35. As a further legal result of the negligence of the defendants, plaintiff Nicolas Mercado  
9 has lost earning capacity in an amount according to proof.

### 10 11 **THIRD CAUSE OF ACTION**

12 ON BEHALF OF PLAINTIFF RAMIRO MERCADO, AGAINST KAISER  
13 FOUNDATION HOSPITAL, SOUTHERN CALIFORNIA PERMANENTE MEDICAL  
14 GROUP, AND DOES 1 THROUGH 100, INCLUSIVE, FOR MEDICAL NEGLIGENCE  
15

16 36. Plaintiffs refer to each and every paragraph of the Complaint and incorporate those  
17 paragraphs as though set forth in full in this cause of action.  
18

19 37. As a legal result of the aforementioned negligence of the defendants, and each of them,  
20 plaintiff Ramiro Mercado has and will continue to be deprived of the consortium of his wife  
21 plaintiff Sonia Mercado, all to his general and economic damages according to proof.  
22

### 23 **FOURTH CAUSE OF ACTION**

24 ON BEHALF OF PLAINTIFFS NICOLAS MERCADO, A MINOR, BY AND THROUGH  
25 HIS GUARDIAN AD LITEM, SONIA MERCADO, SONIA MERCADO, AN  
26 INDIVIDUAL, AND RAMIRO MERCADO AGAINST ALL KAISER DEFENDANTS ,  
27 AND DOES 1 THROUGH 100, INCLUSIVE, FOR WILLFUL MISCONDUCT  
28

1 38. Plaintiffs refer to each and every paragraph of the Complaint and incorporate those  
2 paragraphs as though set forth in full in this cause of action.  
3

4 39. Plaintiff Sonia Mercado had the right to receive, and defendants had the duty to provide,  
5 appropriate assessment, evaluation, medical screening, and management of plaintiff's prenatal  
6 condition at both times she came to Kaiser *in extremis*, on January 12, 2013. She also had the  
7 right to remain at Kaiser to be delivered there on that day given the circumstances she was in.  
8 Defendants willfully failed, refused, discouraged, and/or dissuaded plaintiff from receiving these  
9 rights.  
10

11 40. Plaintiffs allege on information and belief that Kaiser has in place a system, and/or pattern  
12 and practice of failing to provide adequate medical coverage, staffing, equipment, and other  
13 necessary things, particularly on weekends, which precludes or makes it difficult for defendants  
14 to provide appropriate care and services and to deal with situations such as which occurred to  
15 plaintiff Sonia Mercado on Saturday, January 12, 2013 at Kaiser. Underlying this system,  
16 and/or pattern and practice is a cost saving component which is concealed from defendants'  
17 members and ultimately causes them harm. As a result of this system, and/or pattern and  
18 practice, as afore stated, staff at Kaiser did wrongfully, and willfully refuse, discourage and/or  
19 dissuade Sonia Mercado from remaining at Kaiser while she was in labor even though turning  
20 her away each time she came to Kaiser on January 12, 2013, was medically dangerous to her  
21 because of her prior vertical c-section, accompanied by contractions and active labor.  
22

23 41. Plaintiffs further allege on information and belief that this system, and/or pattern and  
24 practice, with its heavy emphasis on cost saving, results in pressures on defendants' medical  
25 staff to provide care that is not always in the best interest of defendants' members, insureds, and  
26 patients.  
27  
28

1 42. Defendants knew that the failure to appropriately assess, evaluate and provide adequate  
2 medical screening examination to plaintiff Sonia Mercado on January 12, 2013, posed extreme  
3 peril to her, and that this peril posed a high probability that she and/or her unborn child could  
4 experience severe injury and/or death.

5  
6 43. Defendants knew that the failure to appropriately provide adequate medical coverage,  
7 staff, equipment, and other necessary things to plaintiff Sonia Mercado on January 12, 2013,  
8 posed extreme peril to her, and that this peril posed a high probability that she and/or her unborn  
9 child could experience severe injury and/or death, which, in fact, did occur.

10  
11 44. Defendants knew that its system, and/or pattern and practice of heavily emphasizing cost  
12 saving, which resulted in pressures on defendants' medical staff to provide care that is not  
13 always in the best interest of defendants' patients, posed extreme peril to the plaintiff and a high  
14 probability that she and/or her unborn child could experience severe injury and/or death, which,  
15 in fact, did occur.

16  
17 45. Notwithstanding such knowledge, defendants, and each of them, as a matter of routine  
18 business practice, failed in their responsibilities to provide plaintiff with reasonably necessary  
19 medical care, and disregarded the peril and high probability of injury to plaintiff, which, in fact,  
20 did occur.

21  
22 46. Notwithstanding such knowledge, defendants, and each of them, consciously failed to  
23 take steps to avoid the peril and the high probability of injury posed by the peril. These failures  
24 occurred because defendants, and each of them, employed a business practice of promoting  
25 profits at the expense of patient care.

26  
27 47. The failure as set forth above occurred and evidence a practice and/or policy by  
28 defendants' and each of them, to operate in a manner that disregards basic care standards and

1 basic responsibilities.

2  
3 48. The conduct of defendants, and each of them, who were charged with providing basic  
4 medical, nursing, and/or health care services to plaintiff Sonia Mercado was despicable.

5  
6 49. As a direct and legal result of defendants' willful misconduct, plaintiffs have suffered  
7 severe pain, turmoil, anguish and severe emotional distress as well as other non-economic  
8 damages, as well as loss of future income and other economic damages.

9  
10 **FIFTH CAUSE OF ACTION**

11 ON BEHALF OF PLAINTIFFS SONIA MERCADO, AN INDIVIDUAL, AGAINST ALL  
12 KAISER DEFENDANTS, AND DOES 1 THROUGH 100, INCLUSIVE, FOR  
13 NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS

14  
15 50. Plaintiffs refer to each and every paragraph of the Complaint and incorporate those  
16 paragraphs as though set forth in full in this cause of action.

17  
18 51. As a result of defendants' actions and wrongful conduct, as described above, Sonia  
19 Mercado experienced extreme pain, suffering, fear, nervousness, worry, anxiety, stress, grief,  
20 and peril both on account of her own physical condition as well as to the physical condition of  
21 her unborn child.

22  
23 52. Plaintiff Sonia Mercado's worst fears were realized when she learned prior to his birth,  
24 that her unborn child had been oxygen deprived, needed to be resuscitated in order to live, and  
25 was later found to have experienced brain damage as a result of defendants' actions and/or lack  
26 of actions.

1 53. At all relevant times, defendants, and each of them, owed plaintiffs a duty of care , which  
2 they breached.

3  
4 54. Defendants, and each of them, knew, or with any exercise of reasonable care should have  
5 known, that the aforementioned wrongful conduct in failing to provide plaintiff with adequate  
6 and appropriate care, could lead to the disastrous result that ultimately ensued.

7  
8 55. Plaintiffs are informed and believe, and thereon allege, that defendants, and each of them,  
9 have been negligent by other acts or omissions of which plaintiffs are presently unaware, and  
10 which will be shown according to proof at the time of trial.

11  
12 56. Defendants' conduct described herein was undertaken by the corporate defendants'  
13 officers, managing agents, or employees identified herein as Does 1 through 100, inclusive, who  
14 were responsible for defendants' conduct. The aforementioned conduct of said managing agents  
15 and individuals was therefore undertaken on behalf of the corporate defendants' .said corporate  
16 defendants' further had advance knowledge of the actions and conduct of said individuals whose  
17 actions and conduct were ratified , authorized, and approved by managing agents and by other  
18 corporate officers, directors, or managing agents whose precise identities are unknown to  
19 plaintiffs at this time and are therefore identified as Does 1 through 100, inclusive.

20  
21 57. As a direct and proximate result of the negligent conduct of defendants, and each of them,  
22 as alleged above, plaintiffs have suffered severe physical, mental, and emotional distress and  
23 discomfort, including, but not limited to, suffering, anguish , fright, horror , nervousness, grief,  
24 anxiety, worry, shock , humiliation, and shame, all to plaintiffs' detriment and damage in an  
25 amount to be shown according to proof at the time of trial. The emotional distress caused by  
26 defendants was beyond what a reasonable person in a civilized society can be expected to bear.

**SIXTH CAUSE OF ACTION**

ON BEHALF OF PLAINTIFFS RAMIRO MERCADO, AN INDIVIDUAL AGAINST  
ALL KAISER DEFENDANTS, AND DOES 1 THROUGH 100, INCLUSIVE, FOR  
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

58. Plaintiffs refer to each and every paragraph of the Complaint and incorporate those paragraphs as though set forth in full in this cause of action.

59. As a result of defendants' actions and wrongful conduct, as described above, Plaintiff, Ramiro Mercado also witnessed the aforementioned events, and also experienced extreme pain, suffering, fear, nervousness, worry, anxiety, stress, grief, and peril on account of his wife's deteriorating physical condition as well as his unborn son's deteriorating physical condition.

60. Plaintiff Ramiro Mercado's own worst fears were realized when he learned prior to his son's birth, that he had been oxygen deprived, needed to be resuscitated in order to live, and was later found to have experienced brain damage as a result of defendants' actions and/or lack of actions.

61. At all relevant times, defendants, and each of them, owed plaintiffs a duty of care, which they breached.

62. Defendants, and each of them, knew, or with any exercise of reasonable care should have known, that the aforementioned wrongful conduct in failing to provide plaintiff with adequate and appropriate care, could lead to the disastrous result that ultimately ensued.

63. Plaintiffs are informed and believe, and thereon allege, that defendants, and each of them, have been negligent by other acts or omissions of which plaintiffs are presently unaware, and which will be shown according to proof at the time of trial.

64. Defendants' conduct described herein was undertaken by the corporate defendants' officers, managing agents, or employees identified herein as Does 1 through 100, inclusive, who were responsible for defendants' conduct. The aforementioned conduct of said managing agents and individuals was therefore undertaken on behalf of the corporate defendants' .said corporate defendants' further had advance knowledge of the actions and conduct of said individuals whose actions and conduct were ratified , authorized, and approved by managing agents and by other corporate officers, directors, or managing agents whose precise identities are unknown to plaintiffs at this time and are therefore identified as Does 1 through 100, inclusive.

65. As a direct and proximate result of the negligent conduct of defendants, and each of them, as alleged above, plaintiffs have suffered severe physical, mental, and emotional distress and discomfort, including, but not limited to, suffering, anguish , fright, horror , nervousness, grief, anxiety , worry, shock , humiliation, and Shame ,all to plaintiffs' detriment and damage in an amount to be shown according to proof at the time of trial. The emotional distress caused by defendants was beyond what a reasonable person in a civilized society can be expected to bear.

#### SEVENTH CAUSE OF ACTION

ON BEHALF OF PLAINTIFFS NICOLAS MERCADO, A MINOR, BY AND THROUGH  
HIS GUARDIAN AD LITEM, SONIA MERCADO, SONIA MERCADO, AN  
INDIVIDUAL, AND RAMIRO MERCADO AGAINST KAISER FOUNDATION  
HEALTH PLAN, INC., KAISER PERMANENTE INSURANCE COMPANY,  
AND DOES 1 THROUGH 100, INCLUSIVE, FOR BREACH OF CONTRACT

66. Plaintiffs refer to each and every paragraph of the Complaint and incorporate those paragraphs as though set forth in full in this cause of action.

67. Under the terms of Plaintiffs' contract with Kaiser Defendants, there is a document

1 entitled "Kaiser Permanente Traditional Plan Disclosure Form and Evidence of Coverage for  
2 the University of California" (Hereafter EOC). This document constitutes Plaintiffs' Kaiser  
3 health insurance "Plan" through Sonia's employment. A true and correct copy of Sonia's EOC  
4 is attached hereto as Exhibit 1.

5  
6 68. Under the terms of the EOC Plan, Kaiser defendants guarantee that its "medical care  
7 program gives [the member] access to all of the covered Services [the member] may need. . .  
8 " (EOC at p. 9).

9  
10 69. The services which are covered are those that are deemed medically necessary. Kaiser  
11 defendants' EOC defines the term medically necessary as follows:

12 A Service is Medically necessary if it is medically appropriate  
13 and required to prevent, diagnose, or treat your condition or clinical  
14 symptoms in accord with generally accepted professional standards  
15 of practice that are consistent with a standard of care in the medical  
16 community (EOC at p. 10).

17  
18 70. In accord with the EOC, Plaintiffs were entitled to all medically necessary care and  
19 treatment.

20  
21 71. The EOC defines an Emergency Medical Condition as:

22 A medical condition manifesting itself by acute symptoms of  
23 sufficient severity (including severe pain) such that a reasonable  
24 person would have believed that the absence of immediate  
25 medical attention would result in any of the following:

26 \* Placing the person's health (or, with respect to a  
27 Pregnant woman, the health of the woman or her  
28 Unborn child) in serious jeopardy

1                   \* Serious impairment to bodily functions

2                   \* Serious dysfunction of any bodily organ or part

3                   (EOC at p. 10)

4  
5       72.    The EOC Plan also provides that with respect to an Emergency Medical Condition, a  
6    member is to required to receive a medical screening exam that is within the capability of the  
7    emergency department of a hospital, including ancillary services, and the patient is required to  
8    be stabilized (EOC at p. 10).

9  
10   73.   Under law and as a matter of medical reality, when Sonia Mercado came to Kaiser on  
11   January 12, 2013, with contractions, and with a previous history of vertical c-section, she met  
12   the definition of an Emergency Medical Condition. Furthermore, under law and as a matter of  
13   medical reality, Sonia's condition could not be "stabilized" because a woman in active labor is  
14   considered unstable under law, including the EMTALA statutes and regulations.

15  
16   74.   Defendants, and each of them, breached the terms of the EOC Plan by failing to provide  
17   her with medically necessary services to Sonia that she was entitled to under the EOC Plan  
18   including, but not limited to:

19           (a) providing an appropriate medical screening examination;

20           (b) releasing her from care and treatment at Kaiser after she presented there on  
21   two occasions in one day with an emergency medical condition that could not be  
22   stabilized;

23           c) discouraging and dissuading Sonia from remaining at Kaiser to deliver her unborn  
24   child on January 12, 2013, even though she was unstable and should not have been  
25   released from care;

26           d) providing other appropriate diagnostic testing, evaluation, and treatment as were  
27   medically necessary and required.

1 75. Defendants, and each of them, also breached the terms of its contract with plaintiffs by  
2 placing their own financial interests ahead of the healthcare interests of Sonia and her unborn  
3 child.

4  
5 76. Plaintiffs are informed and believe and thereon allege that defendants have breached  
6 the terms and provisions of the EOC Plan by other acts or omissions of which plaintiffs are  
7 presently unaware and which will be shown according to proof at the time of trial.

8  
9 77. As a direct and proximate result of defendants' conduct in breach of their contractual  
10 obligations, plaintiffs have suffered damages under the EOC Plan in an amount to be determined  
11 according to proof at the time of trial, plus interest and other foreseeable and incidental damages  
12 according to proof, and in amounts to be determined at the time of trial.

#### 13 14 **EIGHTH CAUSE OF ACTION**

15 ON BEHALF OF PLAINTIFFS NICOLAS MERCADO, A MINOR, BY AND  
16 THROUGH HIS GUARDIAN AD LITEM, SONIA MERCADO, SONIA MERCARDO,  
17 AN INDIVIDUAL, AND RAMIRO MERCADO AGAINST KAISER FOUNDATION  
18 HEALTH PLAN, INC., KAISER PERMANENTE INSURANCE COMPANY, AND  
19 DOES 1 THROUGH 100, INCLUSIVE, FOR BREACH OF THE IMPLIED  
20 COVENANT OF GOOD FAITH AND FAIR DEALING

21  
22 78. Plaintiffs refer to each and every paragraph of the Complaint and incorporate those  
23 paragraphs as though set forth in full in this cause of action.

24  
25 79. Defendants, and each of them, have breached their duty of good faith and fair dealing  
26 owed to plaintiffs in the following respects:

- 27 (a) Unreasonably denying and delaying care and treatment to Sonia and her  
28 unborn child that was covered under the Evidence of Coverage (EOC);

1 (b) Unreasonably avoiding incurring expenses for diagnostic testing, which was  
2 covered under the EOC, for its own financial gain by ignoring the seriousness  
3 of Sonia's medical condition and needs:

4 c) Unreasonably failing to give at least as much consideration to Sonia and her  
5 unborn child's interests and welfare as they gave to their own interests;

6 (d) Unreasonably engaging in a pattern and practice of failing to give at least as  
7 much consideration to its members' interests and welfare as they gave to their own  
8 interests;

9 (e) Unreasonably placing its own financial interests ahead of the health care  
10 interests of Sonia and her unborn child;

11 (f) Unreasonably placing its own financial interests ahead of the health care  
12 interests of its members;

13  
14 80. Plaintiffs are informed and believe and thereon allege that defendants, and each of them  
15 have breached their duty of good faith and fair dealing owed to plaintiffs by other acts and  
16 omissions of which plaintiffs are presently unaware and which will be shown according to proof  
17 at the time of trial.

18  
19 81. As a proximate result of the aforementioned unreasonable and bad faith conduct of  
20 defendants, and each of them, plaintiffs have suffered, and will continue to suffer in the future,  
21 damages under the Plan, plus interest and other economic and consequential damages, for a  
22 total amount to be shown at the time of trial.

23  
24 82. As a further proximate result of the aforementioned wrongful conduct of defendants,  
25 plaintiffs were compelled to retain legal counsel to obtain the benefits due under the Plan.  
26 Therefore, defendants are liable to plaintiffs for those attorneys' fees reasonably necessary and  
27 incurred by plaintiffs in order to obtain the benefits due under the Plan in a sum to be  
28 determined at the time of trial.

1 83. The defendants' conduct described herein was intended by defendants to cause injury to  
2 plaintiffs, or was despicable conduct carried on by the defendants with a willful and conscious  
3 disregard of the rights of plaintiffs or subjected plaintiffs to cruel and unjust hardship in  
4 conscious disregard of the plaintiff's' rights, or was an intentional misrepresentation, deceit, or  
5 concealment of a material fact known to the defendants with the intention to deprive plaintiffs  
6 of property or legal rights or to otherwise cause injury, such as to constitute malice, oppression  
7 or fraud under California Civil Code section 3294, thereby entitling plaintiffs to punitive  
8 damages in an amount appropriate to punish or set an example of defendants.

9  
10 84. Defendants' conduct described herein was undertaken by the corporate defendants'  
11 officers, managing agents, or employees identified herein as Does 1 through 100, inclusive, who  
12 were responsible for defendants' conduct. The aforementioned conduct of said managing agents  
13 and individuals was therefore undertaken on behalf of the corporate defendants' .said corporate  
14 defendants' further had advance knowledge of the actions and conduct of said individuals whose  
15 actions and conduct were ratified, authorized, and approved by managing agents and by other  
16 corporate officers, directors, or managing agents whose precise identities are unknown to  
17 plaintiffs at this time and are therefore identified as Does 1 through 100, inclusive.

#### 18 19 **NINTH CAUSE OF ACTION**

20 **ON BEHALF OF PLAINTIFFS NICOLAS MERCADO, A MINOR, BY AND THROUGH**  
21 **HIS GUARDIAN AD LITEM, SONIA MERCADO, SONIA MERCADO, AN**  
22 **INDIVIDUAL, AND RAMIRO MERCADO AGAINST KAISER FOUNDATION**  
23 **HOSPITAL, SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, AND**  
24 **DOES 1 THROUGH 100, INCLUSIVE, FOR VIOLATIONS OF EMTALA STATUTES**  
25 **AND REGULATIONS**

26  
27 85. Plaintiffs refer to each and every paragraph of the Complaint and incorporate those  
28 paragraphs as though set forth in full in this cause of action.

1 86. At all times mentioned, defendant Kaisers' acts constituted a violation of 42 U.S.C.  
2 1395dd, in that defendants knew that plaintiff, Sonia Mercado, had not received an appropriate  
3 medical screening examination and could not be medically stabilized under her medical  
4 circumstances, and necessary care had not been provided, in violation of 42 U.S.C. 1395dd.  
5

6 87. Defendants provided disparate treatment to plaintiff, Sonia Mercado, compared to other,  
7 similarly situated patients seen by them. Defendants, and each of them, violated the purpose of  
8 EMTALA which is to prevent hospitals from discriminatorily refusing to treat patients who have  
9 emergency medical conditions.  
10

11 88. Any pregnant woman who is having contractions has an emergency medical condition  
12 and cannot be turned away from a hospital when it may pose a threat to the health or safety of  
13 the woman or unborn child.  
14

15 89. Defendants come within the definition of hospitals which have an emergency department  
16 and under the EMTALA, defendants must  
17

18 (a) provide for an appropriate medical screening examination within the capability of the  
19 hospital's emergency department to determine whether an emergency exists [42 U.S.C.  
20 §1395dd(a)];  
21

22 (b) provide necessary stabilizing treatment for emergency medical conditions and labor  
23 [42 U.S.C. §1395dd(b)];  
24

25 (c) restrict transfers of patients who have an emergency medical condition which have  
26 not been stabilized unless certain strictly enforced requirements are met [42 U.S.C. §1395dd(c)].  
27  
28

1 90. Defendants violated each of these sections. As a result of defendants' conduct described  
2 in this complaint, the plaintiffs have suffered the injuries described and damages all according  
3 to proof.

4  
5 91. As a result of defendants' conduct described in this complaint, plaintiffs suffered injury  
6 and damage including additional medical expenses, loss of earnings, earning capacity and  
7 general and special damages according to proof.

8  
9 **TENTH CAUSE OF ACTION**

10 ON BEHALF OF PLAINTIFFS NICOLAS MERCADO, A MINOR, BY AND THROUGH  
11 HIS GUARDIAN AD LITEM, SONIA MERCADO, SONIA MERCADO, AN  
12 INDIVIDUAL, AND RAMIRO MERCADO AGAINST KAISER FOUNDATION  
13 HEALTH PLAN, INC. AND KAISER PERMANENTE INSURANCE COMPANY, FOR  
14 VIOLATIONS OF CIVIL CODE SECTION 3248

15  
16 92. Plaintiffs refer to each and every paragraph of the Complaint and incorporate those  
17 paragraphs as though set forth in full in this cause of action.

18  
19 93. On information and belief, plaintiffs allege that Defendants, and each of them, receive  
20 Medicare benefits.

21  
22 94. Under *Civil Code* § 3428(c), Health care service plans and managed care entities are not  
23 health care providers under any provision of law.

24  
25 95. Certain Kaiser Defendants sued upon herein are engaged in the business of insurance.  
26 California state law regulates those Kaiser Defendants sued upon herein which are engaged in  
27 the business of insurance.  
28

1 96. A central goal of the California Legislature in enacting *Civil Code* § 3428, was to prevent  
2 and avoid federal preemption under the ERISA laws.  
3

4 97. In the instant case, those Kaiser defendants which are the owners and operators of  
5 managed health care organizations and the providers of health care service plans, have statutory  
6 duties under *Civil Code* Section 3428 to arrange for the provision of medically necessary  
7 services as provided for in the contract with its members.  
8

9 98. Kaiser defendants which are the owners and operators of managed health care  
10 organizations and the providers of health care service plans, have a statutory duty under *Civil*  
11 *Code* Section 3428 to exercise ordinary care in arranging and providing for medically necessary  
12 services to its members.  
13

14 99. The failure to exercise ordinary care in arranging and providing for medically necessary  
15 services to its members is actionable under *Civil Code* § 3428, if the member sustains substantial  
16 harm.  
17

18 100. Certain Kaiser defendants sued upon herein breached their statutory duties under *Civil*  
19 *Code* § 3428 to plaintiffs herein by failing to exercise ordinary care in failing to provide  
20 plaintiffs with medically necessary services pursuant to the EOC Plan as afore stated.  
21

22 101. As a result of the failure of certain Kaiser defendants to provide plaintiffs with medically  
23 necessary services pursuant to the parties' EOC Plan, plaintiffs, and each of them, have suffered  
24 substantial harm. Under *Civil Code* § 3428, substantial harm includes loss of life, significant  
25 impairment of a limb or bodily function, significant disfigurement, severe and chronic physical  
26 pain or significant financial loss.  
27

28 102. As a direct and proximate result of defendants' failing to exercise ordinary care in failing

1 to provide plaintiffs with medically necessary services, plaintiffs have suffered damages in an  
2 amount to be determined according to proof at the time of trial. Those damages include, but are  
3 not limited to, economic damages, non-economic damages, as well as punitive and exemplary  
4 damages.

5  
6 103. Plaintiffs herein are not required to exhaust independent review procedures under *Civil*  
7 *Code* § 3428 before filing suit under this code section because substantial harm occurred to  
8 plaintiffs before a review process could be implemented.

9  
10 **PRAYER**

11 WHEREFORE, Plaintiffs pray for judgment against defendants, and each of them, as  
12 follows:

13  
14 As to the First Cause of Action for Negligence:

- 15  
16 1. Economic damages according to proof;  
17 2. Non-Economic damages according to proof;  
18 3. Legal interest according to proof;  
19 4. Any other and further relief as the Court deems just and proper.

20  
21 As to the Second Cause of Action for Negligence:

- 22  
23 1. Economic damages according to proof;  
24 2. Non-Economic damages according to proof;  
25 3. Legal interest according to proof;  
26 4. Any other and further relief as the Court deems just and proper.  
27  
28

1 As to the Third Cause of Action for Negligence (Loss of Consortium):

- 2
- 3 1. Economic damages according to proof;
- 4 2. Non-Economic damages according to proof;
- 5 3. Legal interest according to proof;
- 6 4. Any other and further relief as the Court deems just and proper.
- 7

8 As to the Fourth Cause of Action for Willful Misconduct:

- 9
- 10 1. Economic damages according to proof;
- 11 2. Non-Economic damages according to proof;
- 12 3. Legal interest according to proof;
- 13 4. Any other and further relief as the Court deems just and proper.
- 14

15 As to the Fifth and Sixth Causes of Action for Negligent Infliction of Emotional Distress:

- 16
- 17 1. Economic damages according to proof;
- 18 2. Non-Economic damages according to proof;
- 19 3. Legal interest according to proof;
- 20 4. Any other and further relief as the Court deems just and proper.
- 21

22 As to the Seventh Cause of Action for Breach of Contract:

- 23
- 24 1. Economic damages according to proof;
- 25 2. Non-Economic damages according to proof;
- 26 3. Legal interest according to proof;
- 27 4. Damages for failure to provide benefits under the Plan, plus interest, in a sum to
- 28 be determined at time of trial;

1           5.     Any other and further relief as the Court deems just and proper.

2  
3     As to the Eighth Cause of Action for Breach of the Implied Covenant of Good Faith and Fair  
4     Dealing:

- 5  
6           1.     Economic damages according to proof;  
7           2.     Non-Economic damages according to proof;  
8           3.     Legal interest according to proof;  
9           4.     Damages for failure to provide benefits under the Plan, plus interest, in a sum to  
10           be determined at time of trial;  
11           5.     For attorneys' fees, witness fees and costs of litigation incurred by plaintiffs to  
12           obtain the Plan benefits in an amount to be determined at trial;  
13           6.     For Punitive and exemplary damages in an amount appropriate to punish or set an  
14           example of defendants;  
15           7.     For costs of suit herein; and  
16           8.     Any other and further relief as the Court deems just and proper.

17  
18     As to the Ninth Cause of Action for Violations of EMTALA Statutes and Regulations:

- 19  
20           1.     Economic damages according to proof;  
21           2.     Non-Economic damages according to proof;  
22           3.     Legal interest according to proof;  
23           4.     Any other and further relief as the Court deems just and proper.

24  
25     As to the Tenth Cause of Action for Violations of Civil Code § 3428:

- 26  
27           1.     Economic damages according to proof;  
28           2.     Non-Economic damages according to proof;

3. Legal interest according to proof;
4. Punitive and exemplary damages in an amount appropriate to punish or set an example of defendants;
5. Any other and further relief as the Court deems just and proper.

Dated: June 14, 2013

PHILIP MICHELS, A PROFESSIONAL LAW  
CORPORATION

PHILIP MICHELS  
Attorney for Plaintiffs

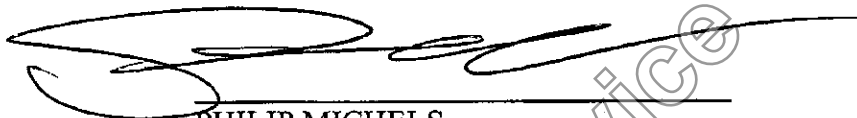
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**DEMAND FOR JURY TRIAL**

Plaintiffs demand a jury trial.

Dated: June 14, 2013

PHILIP MICHELS, A PROFESSIONAL LAW  
CORPORATION



PHILIP MICHELS  
Attorney for Plaintiffs

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