

CIV-140204-CIV-DS1401280-ICF-105402



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System Code: CIV
Case Number: DS1401280
Case Type: CIV
Action Code: ICF
Action Date: 02/04/14
Action Time: 10:54
Action Seq: 0002
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NEW FILE

SCANNED

TRIAL SETTING CONFERENCE

Hearing Set for: 8/5/14
Date: 8:30AM
Time: 8-37
Dept:

LAW OFFICES OF ROBERT J. REYNOLDS
ROBERT J. REYNOLDS - SBN 151243
12526 High Bluff Dr. Suite 300
San Diego, CA 92130
Telephone: (858) 792-3426
Facsimile: (858) 792-3427

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 04 2014

ATTORNEYS FOR: PLAINTIFFS, LAURA HERNANDEZ
AND BENITO HERNANDEZ

By Alma M. DeBunno
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNADINO - CENTRAL DISTRICT BY FAX

LAURA HERNANDEZ and BENITO HERNANDEZ,
Plaintiffs,

CASE NO. CIVDS1401280

COMPLAINT FOR DAMAGES

[UNLIMITED JURISDICTION]

vs.

KAISER FOUNDATION HOSPITALS, a
California Corporation;; KAISER
FOUNDATION HEALTH PLAN, INC.;
SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP, a business entity of
unknown form; JERRY KUN YU, M.D.;
REINALDO V. RUIZ, M.D.; and DOES 1
through 100, inclusive,

Defendants.

\$4/350
#140040233

Plaintiffs, LAURA HERNANDEZ and BENITO HERNANDEZ, complain and for causes
of action allege as follows:

FIRST CAUSE OF ACTION

[MEDICAL MALPRACTICE]

1. Plaintiffs, LAURA HERNANDEZ and BENITO HERNANDEZ, complain and allege
that at all times herein mentioned, Defendants, and each of them, are subject to the
jurisdiction of this court and that the damages claimed, herein, are within the "unlimited"
jurisdictional limits of the Superior Court of the County of San Bernardino.

Law Offices of Robert J. Reynolds
12526 High Bluff Dr. # 300
San Diego, CA 92130
(858) 792-3426

2. All of the acts described herein occurred within the County of San Bernardino, within the jurisdiction of the Central District of the Superior Court of the County of San Bernardino.
3. At all times herein mentioned, Defendant, KAISER FOUNDATION HOSPITALS, was a California Corporation, number C0224971, organized and operating under the laws of the state of California and doing business within the State of California and in the Central District of the Superior Court of the County of San Bernardino.
4. At all times herein mentioned, Defendant, KAISER FOUNDATION HEALTH PLAN, INC. was a California Corporation, number C0299541, organized and operating under the laws of the state of California doing business within the State of California and in the Central District of the Superior Court of the County of San Bernardino.
5. At all times herein mentioned, Defendant, SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, was a business entity of unknown form, doing business in the Central District of the Superior Court of the County of San Bernardino.
6. At all times herein mentioned, Defendant, KAISER FOUNDATION HOSPITALS, KAISER FOUNDATION HEALTH PLAN, INC. and SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, and each of them, are referred to, collectively, as "KAISER."
7. At all times herein mentioned, Defendants, "KAISER" and DOES 1 through 30, employed physicians, surgeons, registered nurses and/or physician assistants licensed to practice medicine and perform surgery under the laws of the State of California that were engaged in the practice of medicine in the City of Fontana, County of San Bernardino, California.
8. At all times herein mentioned, Defendants, JERRY KUN YU, M.D.; REINALDO V. RUIZ, M.D. and DOES 31 through 60, and each of them, were physicians, surgeons, registered nurses and/or physician assistants licensed to practice medicine and perform surgery under the laws of the State of California and were engaged in the practice of medicine in the City of Fontana, County of San Bernardino, California.

- 1 9. At all times herein mentioned; Defendants, JERRY KUN YU, M.D.; REINALDO V.
2 RUIZ, M.D. and DOES 31 through 60, and each of them, were employed by Defendants
3 "KAISER" and were acting within the course and scope of their employment with the
4 permission and consent of Defendants "KAISER" and DOES 1 through 30.
- 5 10. Plaintiff is informed, believes, and alleges thereon that at all times herein mentioned
6 Defendants, and each of them, in doing the things hereinafter alleged, were the agents
7 and/or employees, employers of, or in some manner agents and/or principals for each
8 other Defendant and acting within the course and scope of said agency and/or
9 employment at all times stated herein.
- 10 11. The acts alleged in this Complaint occurred at Fontana Medical Center, 9961 Sierra
11 Avenue, Fontana, California. Fontana Medical Center is operated by "KAISER" and
12 DOES 61 to 80, inclusive.
- 13 12. Plaintiffs are unaware of the true names or capacities of defendants DOES 1 through 100,
14 inclusive, and therefore sue these defendants by such fictitious names. Leave of this
15 court will be asked to amend this complaint to assert the true names of these defendants
16 when they have been ascertained. Plaintiffs are informed and believe, and thereupon
17 allege that each of the defendants designated herein as a DOE is negligently responsible
18 in some manner for the occurrences herein alleged, and that plaintiff's injuries as herein
19 alleged were proximately caused by the negligence of these defendants.
- 20 13. From and after the time of the employment, defendants, and each of them, so
21 negligently failed to exercise the proper degree of knowledge and skill in examining,
22 diagnosing, treating and caring for Plaintiff Laura Hernandez, that such plaintiff and her
23 unborn child were caused to suffer the injuries and/or damages hereinafter, alleged.
- 24 14. On or about January 8, 2013, until on or about February 4, 2013, and at all times
25 herein mentioned Plaintiff, LAURA HERNANDEZ was pregnant with, Baby Hernandez,
26 which by all standards was a high risk pregnancy, due to ruptured membranes during the
27 course of amniocentesis undertaken on January 8, 2013.
- 28

1 15. On multiple occasions, including February 4, 2013, Plaintiff entered Fontana Medical
2 Center with concern for her health and that of Baby Hernandez.

3 16. Defendants and each of them until on or around the death of Baby Hernandez
4 undertook to treat and care for Plaintiff LAURA HERNANDEZ and Baby Hernandez.

5 17. From January 8, 2014 and after the time of their employment, Defendants, and each
6 of them, so negligently failed to exercise the proper degree of knowledge and skill in
7 examining, diagnosing, treating and caring for Plaintiff, LAURA HERNANDEZ, and
8 Baby Hernandez, that Plaintiff was caused to suffer the injuries and damages hereinafter
9 alleged.

10 18. Defendants, and each of them, repeatedly negligently failed to continuously monitor
11 Plaintiff and Baby Hernandez to ensure a reassuring status of Plaintiff and her baby.

12 19. Defendants, and each of them, by their repeated negligent failures to monitor Plaintiff
13 failed to recognize the fetal distress of Baby Hernandez in a timely manner which directly
14 caused Plaintiff to suffer medical complications resulting in her injury and the death of
15 Baby Hernandez.

16 20. Defendants, and each of them, by their repeated negligent failures to provide
17 treatment to Plaintiff and her baby failed to treat the dangerous condition from the
18 ruptured membrane that occurred on January 8, 2013 in a timely manner which directly
19 caused Plaintiff to suffer the complications that resulted in her injury and the death of
20 Baby Hernandez.

21 21. Defendants, and each of them, were negligent and grossly negligent by their repeated
22 extreme departures of the standard of care in not monitoring, recognizing and/or acting
23 on the symptoms of preterm premature ruptured membranes.

24 22. Defendants and each of them failed to adequately monitor Plaintiff LAURA
25 HERNANDEZ and Baby Hernandez and take the appropriate action for signs of fetal
26 distress.

27 23. If not for the incompetence, negligence and/or gross negligence of Defendants, and
28 each of them, Plaintiff would either not have suffered preterm premature rupture of

1 membranes and/or suffered the in utero death of Baby Hernandez. The gross negligence
2 and incompetence demonstrated by Defendants, and each of them, by their not
3 continuously monitoring Plaintiff LAURA HERNANDEZ and Baby Hernandez and not
4 recognizing the signs and symptoms of conditions which led to the imminent death of
5 Baby Hernandez.

6 24. As a proximate result of the negligence of Defendants, and each of them, and of their
7 subsequent failure to treat and care for and their abandonment of Plaintiff with the
8 knowledge of her worsening condition as herein alleged, Plaintiff, LAUREN
9 HERNANDEZ sustained injury and the loss of Baby Hernandez.

10 25. As a further proximate result of the negligence of Defendants, and each of them, as
11 herein alleged, and of the in utero death of Baby Hernandez, Plaintiff has incurred funeral
12 and burial expenses.

13 26. As a proximate result of the negligence of Defendants, and each of them, Plaintiff
14 LAURA HERNANDEZ has sustained injury to her health, strength, and activity, all of
15 which injuries have caused, and continue to cause, Plaintiff great mental, physical, and
16 nervous pain and suffering. Plaintiff is informed and believes and thereon alleges that
17 such injuries will result in some degree of permanent disability to her. As a result of such
18 injuries, Plaintiff has sustained general damages.

19 27. As a proximate result of the negligence of Defendants, and each of them, Plaintiff
20 LAURA HERNANDEZ has incurred and will continue to incur medical, hospital, and
21 related expenses, all to her special damage.

22 28. As a proximate result of the negligence of Defendants, and each of them, Plaintiff
23 LAURA HERNANDEZ was prevented from attending to her usual occupation, and will
24 continue to be so prevented for an indefinite time in the future, all to her further damage.

25 29. On January 31, 2014, Plaintiff, pursuant to the provisions of Section 364 of the Code
26 of Civil Procedure, caused to be served on Defendants, and each of them, a notice of
27 Plaintiff's intention to commence this action. A true and correct copy of the notice is
28 attached hereto as Exhibit A and made a part hereof.

SECOND CAUSE OF ACTION

[Negligent Infliction of Emotional Distress – Direct Victim]

30. Plaintiffs, LAURA HERNANDEZ and BENITO HERNANDEZ, incorporate herein each and every allegation contained in paragraphs 1 through 29 of the First Cause of Action.

31. At all times mentioned herein, Defendants, and each of them, were providing medical care for Plaintiff LAURA HERNANDEZ and Baby Hernandez.

32. At all times mentioned herein, it was foreseeable that Plaintiffs herein would be harmed should the decedent suffer injury or death as a result of the hereinbefore described negligence of Defendants, and each of them.

33. As plaintiffs were the patient and the patient's husband, and both were the parents of Baby Hernandez the degree of certainty that the plaintiff suffered injury is unquestionable.

34. There is a close connection between the defendant's conduct and the injury suffered by Plaintiff's herein as Plaintiffs would not be in such a state of distress had defendants, and each of them, provided adequate to LAURA HERNANDEZ and Baby Hernandez.

35. Plaintiffs herein had a special relationship to defendants herein in that defendants were the designated medical providers to provide the medical care provided to Plaintiff LAURA HERNANDEZ and Baby Hernandez.

36. The conduct of the defendants, and each of them, in failing to provide adequate and appropriate care to LAURA HERNANDEZ, following the rupture of her membranes during, in a manner that did not comply with the standard of care in the applicable medical community, was reprehensible such that moral blame is attributable to the defendants', and each of their, conduct.

37. If Defendants, and each of them, are not held responsible for the severe emotional distress suffered by the plaintiffs herein, the policy of preventing future harm will be of little consequence as defendants, and each of them, and those similarly situated, will be

1 free to dispense medical care in a manner below the applicable standard of care in the
2 community without concern that they will be held liable for such care.

3 38. The burden to the Defendants, and each of them, and the consequences to the
4 community of imposing a duty to exercise care with resulting liability for breach, and the
5 availability, cost, and prevalence of insurance for the risk involved is such that it is
6 appropriate the Defendants, and each of them, bear the risk of injury and damages to
7 Plaintiffs LAUREN HERNANDEZ and BENITO HERNANDEZ herein.

8 39. The Defendants, and each of them, knew, or should have known, that their failure to
9 exercise due care in the performance of services provided to decedent herein would cause
10 Plaintiffs LAUREN HERNANDEZ and BENITO HERNANDEZ severe emotional
11 distress.

12 40. As a proximate result of the Defendants', and each of their, above described acts and
13 omissions and the consequences proximately caused by it, as hereinabove alleged,
14 Plaintiffs LAUREN HERNANDEZ and BENITO HERNANDEZ suffered severe
15 emotional distress and mental suffering, all to their damage.

16 41. As a proximate result of the negligence of Defendants, and each of them, Plaintiffs
17 LAUREN HERNANDEZ and BENITO HERNANDEZ have sustained injury to their
18 health, strength, and activity, all of which injuries have caused, and continue to cause,
19 plaintiffs great mental, physical, and nervous pain and suffering. Plaintiffs are informed
20 and believe and thereon allege that such injuries will result in some degree of disability to
21 them. As a result of such injuries, plaintiffs have sustained general damages.

22 42. As a further proximate result of the negligence of the Defendants, and each of them,
23 plaintiff has incurred and will continue to incur medical, hospital, and related expenses,
24 all to their special damage.

25 43. As a further proximate result of the negligence of the defendants, and each of them,
26 Plaintiffs were prevented from attending to their usual occupations, and will continue to
27 be so prevented for an indefinite time in the future, all to their further damage.

28 ///

THIRD CAUSE OF ACTION

[Negligent Infliction of Emotional Distress – Bystander Liability]

44. Plaintiffs LAUREN HERNANDEZ and BENITO HERNANDEZ, incorporate herein each and every allegation contained in paragraphs 1 through 37 of the First and Second Causes of Action.

45. Plaintiffs and each of them had to witness the death of Baby Hernandez and the injury to Plaintiff LAURA HERNANDEZ, due to the Defendants' and each of their, negligence.

46. Because of the negligence of the Defendants, and each of them, and their agents, partners and employees and as a proximate result thereof, Plaintiff sustained severe emotional distress and mental suffering, all of which has caused, and continues to cause, and will cause them great physical and mental pain and suffering, all to their damage.

WHEREFORE, plaintiffs pray judgment against defendants as follows:

1. For general damages according to proof;
2. For funeral and burial expenses according to proof;
3. For economic damages, according to proof;
4. For costs of suit herein incurred; and
5. For such other and further relief as the court may deem proper.

Dated: February 3, 2014

LAW OFFICES OF ROBERT J. REYNOLDS

ROBERT J. REYNOLDS,
Attorney at Law
Attorneys for Plaintiff

EXHIBIT

EXHIBIT

EXHIBIT

EXHIBIT

EXHIBIT A

Courthouse News Service

LAW OFFICES OF ROBERT J. REYNOLDS
ATTORNEYS AT LAW

PLAZA DEL MAR
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SAN DIEGO, CALIFORNIA 92131

PH 858.792.3426
FAX 858.792.3426
EMAIL: RJR@REYNOLDSRJ.COM

January 31, 2014

Via First Class Mail

NOTICE OF PENDING LITIGATION

Kaiser Foundation Health Plan, Inc.
Legal Department
393 East Walnut Street
Pasadena, CA 91106

Jerry Fun Yu, M.D.
Reinaldo V. Ruiz, M.D.
Kaiser Permanente
9961 Sierra Ave.
Fontana, CA 91735

Re: Our Clients	:	Benito and Lauren Hernandez
Dates of Treatment	:	Commencing November 03, 2012
Date of Death	:	February 04, 2013
Date of Discovery	:	March 14, 2013

To whom it may concern:

Commencing on the above-referenced date, our clients, **Benito and Laura Hernandez**, received treatment from you at your facility at Fontana Medical Center. As a result of negligent care, provided at Fontana Medical Center, Mrs. Hernandez suffered injury to her person and Mr. and Mrs. Hernandez' child died, prior to birth and, subsequent to such treatment, they discovered that the cause of Mrs. Hernandez' injury and their child's death was care provided by your employees or agents at Fontana Medical Center that was below the standard of care for nurses and physicians and medical personnel in San Bernardino County.

Kaiser Foundation Health Plan, Inc.
Jerry Kim Yu, M.D.
Reinaldo V. Ruiz, MD
January 31, 2014
Page 2

Accordingly, you are hereby notified, in accordance with the provisions of Article 104 of the Code of Civil Procedure of the State of California, that on or before May 1, 2014, the undersigned, on behalf of **Benito and Laura Hernandez**, intends to file on your behalf a demand for arbitration against you for damages resulting from your negligence in providing professional health care services.

This action is based on the injuries, pain, and death of the child, which resulted from the above-described negligence. The negligence claimed will be based on the fact that you failed to comply with all the professional standards in the treatment of **Laura Hernandez and her unborn child**, which negligence caused the above described condition and related symptoms, pain, discomfort and death. Loss of income, pain and suffering and other damages will be asserted as well.

You should notify your malpractice insurance carrier and your attorney immediately. We are available to discussing this action with you as well as the possibility of a settlement, so that this matter may be concluded without further delay.

Thank you for your assistance and cooperation. Please contact us if you have any questions regarding this matter.

Very truly yours,
Law Office of Robert J. Reynolds


Robert J. Reynolds
Attorney at Law

RJR:am

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO
PROOF OF SERVICE
1013a and 2015.5 C.C.P.

I am a resident of the United States and employed in the County of San Diego, over the age of eighteen years and not a party to the within action or proceedings, that my business address is 12526 High Bluff Drive, Suite 300, San Diego, CA 92130. On the date this declaration is dated, I served a copy of the paper to which this proof of service by mail is attached, the within

NOTICE OF PENDING LITIGATION

in the following manner:

☒ BY FIRST CLASS MAIL, by depositing the original or true copy thereof in a sealed envelope with postage thereon, via first class mail in the United States mail at San Diego, California. I am readily familiar with the firm's practice of collection and processing correspondence and documentation for mailing. Under that practice it is deposited with the United States postal Service on the same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the stated date of deposit for mailing:

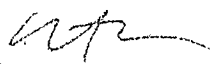
addressed to the following persons or entities:

Keiser Foundation Health Plan, Inc.
Legal Department
323 East Wadsworth Street
Pasadena, CA 91105

Jerry Kuo Yu, M.D.
Reinaldo V. Ruiz, M.D.
Keiser Permanente
9961 Sierra Ave
Fontana, CA 92335

☒ STATE: I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on January 31, 2014, at San Diego, California.


ROBERT J. REYNOLDS

1013a and 2015.5 C.C.P.
PROOF OF SERVICE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

SAN BERNARDINO CIVIL DIVISION
303 WEST THIRD STREET
SAN BERNARDINO, CA 92415-0210

SCANNED

CASE NO: CIVDS1401280

NOTICE OF TRIAL SETTING CONFERENCE
and NOTICE OF CASE ASSIGNMENT

IN RE: HERNANDEZ -V-KAISER

THIS CASE HAS BEEN ASSIGNED TO: BRYAN F FOSTER IN DEPARTMENT S37
FOR ALL PURPOSES.

Notice is hereby given that the above-entitled case has been set for
Trial Setting Conference at the court located at 303 West Third Street
San Bernardino, CA.

HEARING DATE: 08/05/14 at 8:30 in Dept. S37

DATE: 02/04/14 Christina M. Volkers, Clerk of the Court

By: GINA DEBIASO

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San
Bernardino at the above listed address. I am not a party to this
action and on the date and place shown below, I served a copy of the
above listed notice:

() Enclosed in a sealed envelope mailed to the interested party
addressed above, for collection and mailing this date, following
standard Court practices.

() Enclosed in a sealed envelope, first class postage prepaid in the
U.S. mail at the location shown above, mailed to the interested party
and addressed as shown above, or as shown on the attached listing.

(✓) A copy of this notice was given to the filing party at the counter

() A copy of this notice was placed in the bin located at this office
and identified as the location for the above law firm's collection of
file stamped documents.

Date of Mailing: 02/04/14

I declare under penalty of perjury that the foregoing is true and
correct. Executed on 02/04/14 at San Bernardino, CA

BY: GINA DEBIASO

Notice 'NTSC' has been printed for the following Attorneys/Firms
or Parties for Case Number CIVDS1401280 on 2/04/14:

ROBERT J REYNOLDS.

12520 HIGH BLUFF DRIVE STE 220

SAN DIEGO, CA 92130

SCANNED

Courthouse News Service