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FILED  
15 MAR 11 PM 1:50  
CIRCUIT COURT  
FOR MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

15CV05660

LAWRENCE H. FINK, as GUARDIAN AD  
LITEM for LILAH FINK, a Minor,

Plaintiff,

v.

PROVIDENCE HEALTH & SERVICES -  
OREGON, an Oregon corporation, DBA  
PROVIDENCE ST. VINCENT MEDICAL  
CENTER; WENDY J. SMITH, M.D.;  
NORTHWEST PERMANENTE, P.C., an  
Oregon corporation; KAISER  
FOUNDATION HOSPITALS, INC., a  
California corporation,

Defendants.

Case No.

COMPLAINT AND DEMAND FOR  
JURY TRIAL  
(Medical Negligence)

Prayer: \$27,250,000.00  
Filing Fee \$1,056.00 per  
ORS 21.160(1)(e)

NOT SUBJECT TO MANDATORY  
ARBITRATION

COMES NOW Plaintiff, and by way of Complaint against Defendants, hereby  
alleges as follows:

1.

At all times material herein, Plaintiff Lawrence Fink was the natural father of Lilah  
Fink (Lilah Fink is hereinafter referred to as "Plaintiff") and the duly-appointed Guardian  
Ad Litem for his daughter, Plaintiff.

2.

At all times material herein, Defendant Providence Health and Services - Oregon,  
Inc. (herein "defendant Providence") was a corporation licensed to do business in the  
State of Oregon and engaged in the business of providing medical care, both inpatient and  
outpatient, to patients in Multnomah County, Oregon and surrounding areas, and at  
various medical facilities at which defendant Providence did business, including

1 Providence St. Vincent Medical Center.

2 3.

3 At all times material herein, Defendant Wendy Smith, M.D. (hereinafter "defendant  
4 Smith") was a physician licensed to practice medicine in the State of Oregon and  
5 practicing the medical specialty of obstetrics and gynecology.

6 4.

7 At all times material herein, Defendant Northwest Permanente, PC was a  
8 professional corporation licensed to do business in the State of Oregon and engaged  
9 through physician and non-physician shareholders/members in the business of providing  
10 medical care and consultation to patients in and around Multnomah County, Oregon.

11 5.

12 At all times material herein, Defendant Kaiser Foundation Hospitals, Inc. was a  
13 California corporation licensed to do business in the State of Oregon and engaged in the  
14 business of providing medical care and consultation to patients in and around Multnomah  
15 County, Oregon.

16 6.

17 At all times material herein, Defendant Northwest Permanente, PC and Defendant  
18 Kaiser Foundation Hospitals, Inc. (hereinafter jointly referred to as "defendant Kaiser")  
19 were engaged in a joint enterprise or activity to provide medical care and consultation to  
20 patients in and around Multnomah County, Oregon. Defendant Kaiser engaged or  
21 employed as agents and/or employees physicians and non-physicians to provide medical  
22 care to patients. At all times material herein, Defendant Smith was an agent or employee  
23 of defendant Kaiser and acting within the course and scope of her agency or employment.

24 7.

25 At all times material herein, Defendant Providence and Defendant Kaiser agreed by  
26 contract that defendant Kaiser would utilize Defendant Providence's St. Vincent Medical

1 Center facility for certain types of specialty medical care, including labor and delivery  
2 services and resulting attendant newborn care. Defendant Providence and Defendant  
3 Kaiser agreed that agents and employees of Defendant Providence would provide medical  
4 care to Defendant Kaiser's labor and delivery patients, as well as Defendant Kaiser's  
5 newborn infant patients, and that Defendant Kaiser's physician and non-physician agents/  
6 employees would provide medical care to such patients at Defendant Providence's St.  
7 Vincent facility. All such agents/employees who provided medical care and consultation  
8 to Plaintiff's mother, Naomi Fink, and Plaintiff, were acting within the course and scope of  
9 their dual agency/employment for both Defendant Providence and Defendant Kaiser.

10 8.

11 At all times material herein, when Defendant Kaiser's labor and delivery patients  
12 and newborn patients were treated by Defendant Providence's and Defendant Kaiser's  
13 agents/employees at Defendant Providence's St. Vincent facility, they were acting in  
14 concert and as part of a common enterprise to jointly provide medical care, treatment and  
15 consultation to Defendant Kaiser's labor and delivery patients and newborn patients.  
16 Accordingly, Defendant Smith and all of Defendant Kaiser's agents/employees were acting  
17 as the agents of Defendant Providence, and all of Defendant Providence's agents/  
18 employees were acting as the agents of Defendant Kaiser, and all were acting within the  
19 course and scope of their agency/employment.

20 9.

21 At all times material herein, Plaintiff's mother, Naomi Fink, and Plaintiff, were both  
22 patients of Defendant Kaiser. On or about March 30, 2010, Naomi Fink was admitted to  
23 Defendant Providence's St. Vincent facility for purposes of going through labor and giving  
24 birth to Plaintiff. At all times material herein, therefore, both Naomi Fink and Plaintiff  
25 were patients of both Defendant Providence and Defendant Kaiser.

26 ///

10.

Plaintiff's mother, Naomi Fink, was admitted to Defendant Providence's St. Vincent facility at approximately 4:13 a.m. on March 30, 2010. Defendants knew that Plaintiff's mother had previously had a child via Cesarean Section delivery, but that she and her physicians at Defendant Kaiser had agreed that she could undergo a trial of labor in hopes of delivering Plaintiff vaginally, a "vaginal birth after cesarean" (or "VBAC") delivery. Defendants, therefore, knew or should have known, that an enhanced degree of monitoring of Naomi Fink's contractions and labor progress, and Plaintiff's heart rate and well-being during labor was necessary to assure the health and well-being of both Naomi Fink and Plaintiff.

11.

Plaintiff was born at approximately 5:00 p.m. on March 30, 2010, and was found to be suffering from the effects of hypoxic ischemic encephalopathy as a result of being subjected to a loss of oxygen to her brain during the course of her mother's labor. This condition was not detected or diagnosed by Defendants and, as a result, Plaintiff has sustained a permanent injury to her brain causing the injuries and damages more fully alleged, below.

12.

Defendants, and each of them, were negligent in one or more of the following respects:

- (a) In failing to recognize the increasing baseline of Plaintiff's heart rate during the course of her mother's labor;
- (b) In failing to recognize that the meconium-stained amniotic fluid seen when Naomi Fink's membranes were ruptured at 12:32 p.m. meant Plaintiff could be at increased risk for an injury to her brain;
- (c) In failing to give fluids to Plaintiff's mother when there was evidence of an

- 1 increasing fetal heart rate baseline;
- 2 (d) In failing to order and administer Terbutaline to slow Plaintiff's mother's
- 3 contractions;
- 4 (e) In failing to timely order and position Plaintiff's mother on her left side to
- 5 help resuscitate Plaintiff;
- 6 (f) In failing to recognize late decelerations in Plaintiff's heart rate after her
- 7 mother's contractions;
- 8 (g) In failing to recognize a decrease in the variability of Plaintiff's heart rate
- 9 during the course of labor;
- 10 (h) In failing to apply/attach a scalp electrode to Plaintiff after the electronic
- 11 fetal monitor revealed late decelerations and an increasing heart
- 12 rate baseline;
- 13 (i) In failing to re-apply the electronic fetal monitor so it would detect Plaintiff's
- 14 heart beat/rate, not her mother's, between 2:03 p.m. and 2:30 p.m., after
- 15 Plaintiff's heart rate baseline had increased and demonstrated late
- 16 decelerations following multiple contractions;
- 17 (j) In failing to continuously monitor Plaintiff's response to the stresses of labor
- 18 up to her delivery at 5:00 p.m. on March 30, 2010;
- 19 (k) In failing to timely deliver Plaintiff by emergency Cesarean Section when
- 20 Defendants knew, or should have known, that Plaintiff was at risk for brain
- 21 injury as a result of the meconium staining, the increasing heart rate
- 22 baseline, the repetitive late decelerations, and the decrease in Plaintiff's fetal
- 23 heart variability; and
- 24 (l) In failing to properly and timely resuscitate Plaintiff immediately upon and
- 25 after delivery;
- 26 (m) In failing to immediately apply a complete cooling protocol, including a cap,

1 to Plaintiff; and

2 (n) In failing to timely and properly treat Plaintiff's seizures.

3 13.

4 The above negligence of Defendants, and each of them, caused Plaintiff to suffer  
5 permanent damage to her brain. Plaintiff's brain damage has caused her to be diagnosed  
6 with cerebral palsy, microcephaly (reduced brain size), developmental delay,  
7 developmental articulation disorder, fine motor and speech delays, seizures, an increase in  
8 peripheral tone, a decrease in central tone, and has left her without the ability to walk,  
9 think, or interact normally with others. Plaintiff's cognitive abilities have also been  
10 reduced as a result of her brain damage, and will be for the rest of her life. Plaintiff has  
11 required medications to treat her conditions, and will require them for the rest of her life.  
12 Plaintiff has also required therapies to treat her disabilities, and will require such therapy  
13 for the rest of her life. As a result of her injuries, Plaintiff has sustained non-economic  
14 damages in the amount of \$15,000,000.00.

15 14.

16 Plaintiff's parents have incurred and will continue to incur medical expenses to  
17 treat Plaintiff's severe injuries, and have filed a Consent to allow those medical expenses  
18 to be sought in this action. Plaintiff's past medical expenses are approximately  
19 \$250,000.00. Plaintiff's future medical expenses and costs of attendant care, education  
20 and therapy will be approximately \$10,000,000.00. Plaintiff will also never be  
21 employable and able to generate an income. Thus, Plaintiff has an impaired earning  
22 capacity in the approximate sum of \$2,000,000.00, all to Plaintiff's economic damages in  
23 the amount of \$12,250,000.00.

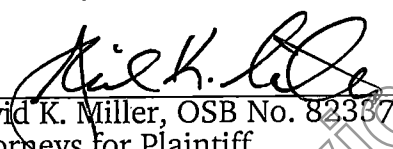
24 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them,  
25 in the following amounts:

26 ///

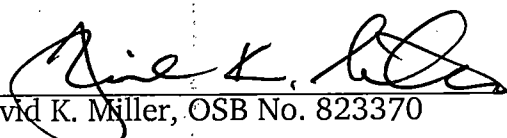
1. Non-economic damages in an amount not to exceed of \$15,000,000.00;
2. Economic damages in the approximate amount of \$12,250,000.00; and
3. Plaintiff's costs and disbursements incurred herein.

DATED this 10<sup>th</sup> day of March, 2015.

MILLER & WAGNER, LLP  
Trial Lawyers

  
David K. Miller, OSB No. 823370  
Attorneys for Plaintiff  
Trial Attorney: David K. Miller, OSB #823370

PLAINTIFF HEREBY DEMANDS  
A JURY TRIAL

  
David K. Miller, OSB No. 823370