

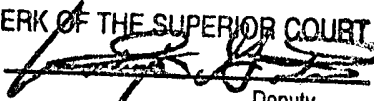


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**FILED**  
**ALAMEDA COUNTY**

DEC 13 2018

CLERK OF THE SUPERIOR COURT  
 By   
 Deputy

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

ARIELLA CORTES, A Minor, by and  
 through her Guardian Ad Litem,  
 ARIANA CORTES, ARIANA  
 CORTES, Individually, BENITO  
 CORTES, Individually,

Plaintiffs,

v.

KAISER FOUNDATION  
 HOSPITALS, THE PERMANENTE  
 MEDICAL GROUP, INC. AND DOES  
 1 THROUGH 30, Inclusive,

Defendants.

**RG18932040**

COMPLAINT FOR DAMAGES

- 1) Negligence On Behalf Of Ariana Cortes;
- 2) Negligence On Behalf Of Ariella Cortes;
- 3) Loss Of Consortium On Behalf Of Benito Cortes

DEMAND FOR JURY TRIAL

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

COME NOW THE plaintiffs, ARIELLA CORTES by and through her Guardian  
 ad Litem, ARIANA CORTES, ARIANA CORTES, individually, and BENITO  
 CORTES, individually and complain of defendants, KAISER FOUNDATION  
 HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC., and DOES 1 through  
 30, inclusive, as follows:

**GENERAL ALLEGATIONS**

- 1. Plaintiffs, ARIANA CORTES AND BENITO CORTES are husband and wife

1 and the parents of the minor, ARIELLA CORTES, whose date of birth is December 26,  
2 2017.

3 2. Plaintiffs are informed and believe and allege that each of the defendants sued  
4 in this complaint was and is a resident of or doing business in the County of Alameda,  
5 State of California.

6 3. At all times mentioned in this complaint the defendants DOES 1 to 20,  
7 inclusive, held themselves out to the public and to the plaintiffs by physicians, surgeons,  
8 nurses, medical personnel or other health care professionals.

9 4. At all times mentioned in this complaint defendants, KAISER  
10 FOUNDATION HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC. and  
11 DOES 21 through 30, were and are corporations, partnerships, sole proprietorships, joint  
12 ventures or associations duly organized and existing under and by virtue of the laws of  
13 the State of California.

14 5. At all times herein mentioned defendants KAISER FOUNDATION  
15 HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC. and DOES 1 through  
16 30, inclusive, were and are engaged in the owning, operating, maintaining, managing  
17 and engaged in rendering medical, surgical, hospital, diagnostic, nursing and other care  
18 to the general public. The acts and omissions of these defendants were done and  
19 performed (or failed to be done and performed) by defendants by and through their duly  
20 authorized agents, and employees, all of whom were acting within the course, purpose  
21 and scope of their agency or employment. The conduct of the agents and employees  
22 was ratified by the defendants KAISER FOUNDATION HOSPITALS, THE  
23 PERMANENTE MEDICAL GROUP, INC. and DOES 1 through 30, inclusive.  
24 Further, these defendants selected and assigned physicians and other health care  
25 professionals to care for and treat the plaintiffs, and through words or actions held those  
26 individuals out as agents or employees, knowing and expecting the plaintiffs to rely  
27 upon those actions or words, and the plaintiffs did so rely. Those individuals were the  
28 ostensible agents of these defendants.

1           6. The defendants held themselves out to the general public and to plaintiffs as  
2 skilled professionals in the science of medicine, surgery, nursing, hospital care, medical  
3 attendant technicians, therapists and related care. The defendants held themselves out to  
4 the general public and to the plaintiffs as possessing that degree of knowledge and skill  
5 customarily possessed and exercised by other physicians, surgeons, nurses, technicians,  
6 therapists and hospital attendants engaged in the same or similar locality as that of  
7 defendants.

8           7. The true names, identities and capacities, whether individual, associate,  
9 corporate or otherwise of defendants DOES 1 through 30 are unknown to plaintiffs at  
10 this time, who therefore name these defendants by the fictitious names. When the true  
11 names and capacities of the fictitiously designated defendants are ascertained, plaintiffs  
12 will amend this complaint to insert their true names, identities and capacities. Plaintiffs  
13 are informed and believe, and thereon allege, that each of the defendants sued in this  
14 pleading as a DOE is responsible in some actionable manner for the events and  
15 happenings that legally causing the injuries and damages to the various plaintiffs.

16           8. Each of the defendants sued in this complaint, whether by their actual name or  
17 fictitious name, was the agent, alter ego, servant, joint venturer or employee of each  
18 other and of his or her co-defendants and was acting within the purpose and scope of  
19 their agency, venture, service or employment. Each of the defendants, whether referred  
20 to by his or her or its actual name or fictitious name, when acting as a principal was  
21 negligent in the selection and hiring of each and every other co-defendant as an agent,  
22 servant or employee and furthermore expressly directed, consented to, approved,  
23 affirmed and ratified each and every action taken by the co-defendants.

24           9. Plaintiffs were excusably ignorant of the negligence of defendants and the  
25 cause of the injuries alleged herein due to the actions of each of defendant who misled  
26 plaintiffs into believing no negligence occurred, plaintiffs' lack of medical records,  
27 plaintiffs' lack of any training or experience in medicine and the failure of defendants,  
28 and each of them, to fulfill their fiduciary obligations of disclosure to the plaintiffs.

1       **FIRST CAUSE OF ACTION ON BEHALF OF PLAINTIFF ARIANA CORTES**  
2                               **AGAINST DEFENDANTS, FOR NEGLIGENCE**

3           10. Plaintiff, ARIANA CORTES, alleges and incorporates by reference all of the  
4       allegations contained in paragraphs 1 through 9 of the General Allegations section of  
5       this complaint.

6           11. On or about December 26, 2017, plaintiff, ARIANA CORTES, was a patient  
7       of defendants in connection with prenatal and obstetrical care, perinatal, delivery and  
8       post-natal care concerning a pregnancy which delivered on December 26, 2017.  
9       Plaintiff, ARIANA CORTES remained under the sole and exclusive care and control of  
10      defendants during all times mentioned herein.

11          12. Defendants agreed to perform and undertook to perform for the plaintiff,  
12      ARIANA CORTES, all services necessary in the prenatal, perinatal, labor, delivery, and  
13      post-natal phase of plaintiff's care which included, but was not limited to, examinations,  
14      ultrasound, evaluations, diagnosis, and care and treatment of plaintiff, ARIANA  
15      CORTES. In so doing the defendants, and each of them, established a  
16      physician/nurse/hospital/caregiver relationship with the plaintiff giving rise to each  
17      defendant's duty to plaintiff, ARIANA CORTES, to provide skillful management of her  
18      prenatal, obstetrical, labor, delivery and post-natal care.

19          13. The defendants were negligent, careless and unskillful in their management  
20      of the prenatal, labor, delivery, postnatal phase, including but not limited to the  
21      examinations, ultrasound evaluations, diagnosis, care and treatment of plaintiff,  
22      ARIANA CORTES. That negligence was a legal cause of injuries and damages to all  
23      plaintiffs as pleaded below. The defendants' negligence includes, but is not limited to:

24               Negligent obstetrical, hospital and neonatal care.

25          14. Defendants also negligently failed to properly advise the plaintiff of any  
26      other possible alternative methods of diagnosis or treatment and the possible risks  
27      attendant to the diagnosis or treatment, thus failing to obtain a free and informed  
28      consent. As a legal result of the lack of free and informed consent, plaintiff suffered

1 injuries as set forth below.

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

8 16. As a direct and legal result of the defendants' negligence, carelessness and  
9 unskillfulness, plaintiff, ARIANA CORTES, has and will in the future incur economic  
10 damages in an amount according to proof.

11  
12 **SECOND CAUSE OF ACTION ON BEHALF OF PLAINTIFF, ARIELLA**  
13 **CORTES, AGAINST DEFENDANTS FOR NEGLIGENCE**

14 17. Plaintiff, ARIELLA CORTES, alleges and incorporates herein by reference  
15 all of the allegations contained in paragraphs 1 through 16 of this complaint.

16 18. ARIELLA CORTES, a minor, was born on December 26, 2017, in San  
17 Leandro, California. Plaintiff's mother, plaintiff, ARIANA CORTES, received prenatal  
18 care as set forth above. Additionally, plaintiff, ARIELLA CORTES, received neonatal  
19 and pediatric care on or about December 26, 2017, from defendants, KAISER  
20 FOUNDATION HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC. and  
21 DOES 1 through 30, inclusive.

22 19. Defendants were negligent in the care rendered to plaintiff's mother. Each  
23 defendant rendering neonatal or pediatric care was negligent in the rendition of that care  
24 on December 26, 2017, and afterwards.

25 20. As a legal result of the negligence of the defendants minor plaintiff,  
26 ARIELLA CORTES, was injured in her health, strength and activity, suffered severe  
27 physical and emotional injury, has incurred and will in the future incur expenses for  
28 medical care, nursing care, attendant care, rehabilitation, physical and occupational

1 therapy, speech therapy, educational therapy and related expenses all to plaintiff's non-  
2 economic and economic damages in an amount according to proof.

3 21. As a further legal result of the negligence of the defendants, minor plaintiff  
4 has lost earning capacity in an amount according to proof.

5  
6 **THIRD CAUSE OF ACTION ON BEHALF OF PLAINTIFF, BENITO CORTES,**  
7 **AGAINST DEFENDANTS FOR LOSS OF CONSORTIUM**

8 22. Plaintiff, BENITO CORTES, alleges and incorporates herein by reference all  
9 of the allegations contained in paragraphs 1 through 21 of this complaint.

10 23. As a legal result of the aforementioned negligence of the defendants, and  
11 each of them, plaintiff, BENITO CORTES, has and will continue to be deprived of the  
12 consortium of his wife plaintiff, ARIANA CORTES, all to his general and economic  
13 damages according to proof.

14  
15 **PRAYER**

16 THEREFORE, plaintiffs, ARIELLA CORTES, a minor by and through her  
17 Guardian ad Litem, ARIANA CORTES, and ARIANA CORTES and BENITO  
18 CORTES, individually, pray for judgment against defendants as follows:

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

23  
24 Dated: December 11, 2018

LAW OFFICES OF MICHELS & LEW

25  
26 By: 

27 PHILIP MICHELS  
28 Attorneys for Plaintiff

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