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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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ANGELINA ORAHA, a minor,
by and through her Guardian ad Litem,
SOAD MONA, IBTISAM NISSAN, and ZIAD ORAHA

VIA FAX

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

ANGELINA ORAHA, a minor, by and through
her Guardian ad Litem, SOAD MONA,
IBTISAM NISSAN, and ZIAD ORAHA

Plaintiff,

vs.

KAISER FOUNDATION HOSPITAL, a
California Corporation, KAISER FOUNDATION
HEALTH PLAN, INC., PERMANENTE
MEDICAL GROUP, KAISER PERMANENTE
MEDICAL CARE PROGRAM; DANIELLE
HAMMERMAN, M.D.; CLINICAL
INNOVATIONS, LLC, dba CLINICAL
INNOVATIONS, INC.; and DOES 1 through
100, inclusive,

Defendants.

Case No. 37-2012-00099695-CU-MM-CTL

COMPLAINT

1. Medical Negligence
2. Medical Negligence
3. Negligent Infliction of Emotional Distress (Burgess v. Superior Court)
4. Negligent Infliction of Emotional Distress (Thing v. LaChusa)
5. Strict Products Liability
6. Negligence
7. Failure to Warn
8. Loss of Consortium

Plaintiffs, ANGELINA ORAHA, a minor, by and through her Guardian ad Litem, SOAD
MONA, IBTISAM NISSAN, and ZIAD ORAHA complain of Defendants, KAISER

1 FOUNDATION HOSPITAL, a California Corporation, KAISER FOUNDATION HEALTH
2 PLAN, INC., PERMANENTE MEDICAL GROUP, KAISER PERMANENTE MEDICAL
3 CARE PROGRAM; DANIELLE HAMMERMAN, M.D.; CLINICAL INNOVATIONS, LLC,
4 dba CLINICAL INNOVATIONS, INC.; and DOES 1 through 100, inclusive, and each of them,
5 and allege as follows:
6

7 **GENERAL ALLEGATIONS**

8 1. The true names and capacities, whether individual, corporate, associate or
9 otherwise, of the Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who
10 therefore sue such Defendants by such fictitious names, and Plaintiffs will amend this complaint
11 to show their true names and capacities when the same have been ascertained. Plaintiffs are
12 informed and believe and thereon allege that each of the Defendants, DOES 1 through 100,
13 inclusive, is responsible under law in some manner, negligently, in warranty, strictly, or
14 otherwise, for the events and happenings herein referred to and proximately thereby caused
15 injuries and damages to Plaintiffs as herein alleged.
16

17 2. Plaintiffs, ANGELINA ORAHA, a minor, by and through her Guardian ad Litem,
18 SOAD MONA, IBTISAM NISSAN, and ZIAD ORAHA, are now, and at all times mentioned
19 herein were citizens of and residents within the State of California, County of San Diego, and the
20 amount in controversy exceeds the minimum jurisdiction of the Court.
21

22 3. Defendants, and each of them, are now, and at all times herein mentioned were,
23 citizens of and residents within the State of California, or are doing business in the State of
24 California, County of San Diego.

25 4. Plaintiffs are informed and believe and therefore allege that Defendants KAISER
26 FOUNDATION HOSPITAL, a California corporation, KAISER FOUNDATION HEALTH
27 PLAN, INC., PERMANENTE MEDICAL GROUP, KAISER PERMANENTE MEDICAL
28

1 CARE PROGRAM, are now, and at all times herein mentioned were, California business entities,
2 corporations, associations, partnerships or other type of business entities, operating as a medical
3 center, hospital, health plan, or other healthcare facility, and Plaintiffs will ask leave to insert the
4 correct designation when the same has been ascertained.

5
6 5. Plaintiffs further allege that DOES 1 through 50 were principals and employees of
7 KAISER FOUNDATION HOSPITAL, a California corporation, KAISER FOUNDATION
8 HEALTH PLAN, INC., PERMANENTE MEDICAL GROUP, KAISER PERMANENTE
9 MEDICAL CARE PROGRAM who treated Plaintiffs, or oversaw or coordinated the treatment of
10 Plaintiffs in some way. KAISER FOUNDATION HOSPITAL, a California Corporation,
11 KAISER FOUNDATION HEALTH PLAN, INC., PERMANENTE MEDICAL GROUP,
12 KAISER PERMANENTE MEDICAL CARE PROGRAM were, at all times herein mentioned
13 institutions or controlled institutions, duly accredited by the Joint Commission on Hospital
14 Accreditation, and assumed and held themselves out to the public as in compliance with the
15 minimum standards required by said Joint Commission for such accreditation.

17 6. Plaintiffs further allege that DOES 1 through 50, KAISER FOUNDATION
18 HOSPITAL, a California corporation, KAISER FOUNDATION HEALTH PLAN, INC.,
19 PERMANENTE MEDICAL GROUP, KAISER PERMANENTE MEDICAL CARE
20 PROGRAM, inclusive, breached their duty to assure the competence of their employees and
21 independent contractors, and/or failed to exercise ordinary care under the circumstances herein
22 alleged, to evaluate and to assure the quality of their staff, employees and independent contractors
23 and breached their duty of selecting, reviewing and periodically evaluating their competency.
24 This breach of the duty of careful selection, review, and periodic evaluation of the competency of
25 their staff, employees and independent contractors created an unreasonable risk of harm to
26 patients receiving care and treatment at the hands of the Defendants DOES 1 through 50,
27
28

1 KAISER FOUNDATION HOSPITAL, a California corporation, KAISER FOUNDATION
2 HEALTH PLAN, INC., PERMANENTE MEDICAL GROUP, KAISER PERMANENTE
3 MEDICAL CARE PROGRAM, inclusive, including the decedent. Defendants and DOES 1
4 through 50, inclusive, breached their duty to guard against physicians' incompetence, and further
5 breached their duty in that they failed to assure quality medical care by the lack of prudent
6 selection, review, and continuing evaluation of the physicians who were granted staff privileges.

7
8 7. Plaintiffs are informed and believe and thereon allege that the Defendants,
9 DANIELLE HAMMERMAN, M.D., and DOES 51 through 70, at all times herein mentioned
10 were physicians, surgeons, nurses, physician assistants, aids, technicians, attendants, students or
11 other paramedical personnel, midwives, or other healthcare professionals licensed to practice, and
12 practicing, in the State of California.

13
14 8. Plaintiffs are informed and believe and thereon allege that Defendant CLINICAL
15 INNOVATIONS, LLC, dba CLINICAL INNOVATIONS, INC.; is a Delaware limited liability
16 company with its principal place of business in Utah. At all times relevant to this action,
17 defendant CLINICAL INNOVATIONS, LLC, dba CLINICAL INNOVATIONS, INC., has
18 conducted business in the State of California, County of San Diego.

19
20 9. At all times alleged herein, reference to CLINICAL INNOVATIONS, LLC, dba
21 CLINICAL INNOVATIONS, INC., and DOES 71 through 100, and each of them, includes any
22 and all parent companies, subsidiaries, affiliates, divisions, franchises, partners, joint venturers,
23 and organizational units of any kind, their predecessors, successors, and assigns, and their
24 officers, directors, employees, agents, representatives, and any and all other persons acting on
25 their behalf.

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1 10. Plaintiff is informed and believes and therefore alleges that, at all times herein
2 mentioned, Defendants, CLINICAL INNOVATIONS, LLC, dba CLINICAL INNOVATIONS,
3 INC., and DOES 71 through 100, and each of them, are now, and at all times herein mentioned
4 were some type of business entity doing business in the State of California, including the County
5 of San Diego, and engaged in the business, among other things, as researchers, formulators,
6 testers, labelers, packagers, designers, manufacturers, makers, producers, promoters, marketers,
7 sellers, distributors, advertisers, suppliers, owners, possessors, operators, constructors, inspectors,
8 maintainers, subcontractors, contractors, supervisors, trainers, and coordinators of the Kiwi®
9 vacuum assisted fetal delivery device for sale to hospitals, physicians, surgeons, and other
10 medical professionals for use during the delivery of babies, and to assist in the delivery of
11 members of the general public, including residents within the County of San Diego.
12

13
14 11. At all times herein mentioned, CLINICAL INNOVATIONS, LLC, dba
15 CLINICAL INNOVATIONS, INC., and DOES 71 through 100, and each of them, and their
16 employees, representatives, agents, officers and/or the directors, and each of them, participated in,
17 authorized and/or directed the design, production, labeling, promotion, sale, etc., of the Kiwi®
18 vacuum assisted fetal delivery device when they knew, or with the exercise of reasonable care
19 should have known, of the hazards and dangerous propensities of said product and thereby
20 actively participated in tortious conduct which resulted in injury to Plaintiffs.
21

22 12. At all times mentioned herein, each of the Defendants sued herein was the agent,
23 ostensible agent, alter ego, servant and employee of each other and of his said co-Defendants and
24 was, as such acting within the time, place, purpose and scope of the said agency, ostensible
25 agency, service and employment; and each of the Defendants, as aforesaid, when acting as a
26 principal, was negligent in the selection and hiring of each and every other defendant as an agent,
27 ostensible agent, servant and employee. The defendants and each of them ratified the actions of
28

1 the other defendants. Further, each of the defendants was the agent, servant and employee of the
2 other defendants.

3 13. Plaintiffs are informed and believe that at the time of judgment they will be
4 entitled to prejudgment interest because the Defendants will have rejected an offer pursuant to the
5 terms of Code of Civil Procedure section 998 and will have failed to obtain a more favorable
6 judgment except as to public entities as provided by Civil Code section 3291.

7
8 14. As a direct and proximate result of the aforesaid negligence, carelessness and
9 unskillfulness of the Defendants, and each of them, Plaintiffs will have a lien placed on any
10 monies received from this action which is to be paid to entities including but not limited to the
11 California Department of Health Services for Medi-Cal benefits and other benefits pursuant to
12 law. Consequently, Plaintiffs identify such liens as further damages.

13
14 Plaintiff, ANGELINA ORAHA, a minor, by and through her Guardian ad Litem, SOAD
15 MONA, complains of Defendants, KAISER FOUNDATION HOSPITAL, a California
16 Corporation, KAISER FOUNDATION HEALTH PLAN, INC., PERMANENTE MEDICAL
17 GROUP, KAISER PERMANENTE MEDICAL CARE PROGRAM; DANIELLE
18 HAMMERMAN, M.D.; and DOES 1 through 70, inclusive, and each of them, and as for a First

19 Cause of Action, alleges as follows:
20

21 **FIRST CAUSE OF ACTION**

22 **(Medical Negligence)**

23 15. Plaintiffs reallege and reaffirm each and every paragraph and allegation above as if
24 fully rewritten herein.

25 16. Plaintiff is informed and believes and thereon alleges that Defendants KAISER
26 FOUNDATION HOSPITAL, a California Corporation, KAISER FOUNDATION HEALTH
27 PLAN, INC., PERMANENTE MEDICAL GROUP, KAISER PERMANENTE MEDICAL
28 CARE PROGRAM; DANIELLE HAMMERMAN, M.D.; and DOES 1 through 70, inclusive, at

1 all times herein mentioned were physicians, surgeons, nurses, physician assistants, aids,
2 technicians, attendants, students or other paramedical personnel, midwives, or other healthcare
3 professional licensed and practicing in the State of California and/or business entities which
4 employed and/or contracted with physicians, surgeons, nurses and midwives licensed and
5 practicing in the State of California.

6 17. Prior to July 12, 2011, the date of ANGELINA ORAHA'S birth, and thereafter,
7 IBTISAM NISSAN and ZIAD ORAHA employed Defendants, and each of them, to diagnose and
8 treat IBTISAM NISSAN's condition of pregnancy and to do all things necessary for her care and
9 the care of their baby, ANGELINA ORAHA, including but not limited to, pre-delivery care,
10 delivery, and post-delivery care.

11 18. While minor Plaintiff ANGELINA ORAHA was under the sole and exclusive care
12 and control of the Defendants, and each of them, Defendants, failed to exercise the standard of
13 care and skill ordinarily and reasonably required of hospitals, medical doctors, nurses, midwives,
14 and other medical providers and personnel, and negligently, carelessly and unskillfully delivered,
15 examined, treated, cared for, diagnosed, operated upon, attended and otherwise handled and
16 controlled the minor Plaintiff herein, thereby proximately causing injuries and damages to
17 Plaintiff ANGELINA ORAHA.

18 19. Moreover, Defendants neglected to adequately select a competent medical staff
19 and to periodically review the competency of its medical staff and failed to adequately monitor its
20 staff such that ANGELINA ORAHA was caused to, and did suffer injuries and damages.

21 20. As a proximate result of the negligence of the Defendants, and each of them, the
22 minor Plaintiff ANGELINA ORAHA was hurt and injured in her health, strength, and activity,
23 sustaining severe shock, and injury to her body, all of which said injuries have caused and
24 continue to cause Plaintiff great physical, emotional, and nervous pain and suffering, and which
25 said injuries Plaintiff is informed and believes, and thereon alleges, will result in loss of earnings,
26 permanent disability, loss of enjoyment of life, and impairment of earning capacity all to
27 Plaintiff's damage in a sum in excess of the jurisdiction of the Court and she is entitled to
28 prejudgment interest on the amount when determined, from the date of plaintiffs' C.C.P. §998

1 Offer to Compromise.

2 21. As a further proximate result of the negligence of the Defendants, and each of
3 them, and the resulting injuries to the Plaintiff, ANGELINA ORAHA was compelled to, and did,
4 incur expenses for medical and surgical attention, hospitalization, nursing, medication and
5 incidentals for said Plaintiff in an amount unknown to Plaintiff at present.

6 22. As a further proximate result of the negligence of the Defendants, and each of
7 them, and of the resulting injuries, Plaintiffs will be obliged to incur expenses for medical care
8 and hospitalization for ANGELINA ORAHA for an indefinite period in the future and to pay for
9 these expenses in the treatment and relief of injuries, for medical and surgical attention,
10 hospitalization, nursing, medication, and incidentals for said Plaintiff in an amount unknown to
11 Plaintiffs at present.

12 23. As a further proximate result of the negligence of the Defendants, and each of
13 them, Plaintiff will suffer a decreased earning capacity in the future and decreased future earnings
14 all to Plaintiff's further damage in a sum unknown at present.

15 Plaintiff, IBTISAM NISSAN complains of Defendants, KAISER FOUNDATION
16 HOSPITAL, a California Corporation, KAISER FOUNDATION HEALTH PLAN, INC.,
17 PERMANENTE MEDICAL GROUP, KAISER PERMANENTE MEDICAL CARE
18 PROGRAM; DANIELLE HAMMERMAN, M.D.; and DOES 1 through 70, inclusive, and each
19 of them, and as for a Second Cause of Action, alleges as follows:

20 **SECOND CAUSE OF ACTION**

21 **(Medical Negligence)**

22 24. Plaintiffs reallege and reaffirm each and every paragraph and allegation above as if
23 fully rewritten herein.

24 25. At all times herein mentioned, Plaintiff IBTISAM NISSAN was in the exclusive
25 control of the Defendants, and each of them, and at no time prior to the events, conduct, activities,
26 care and treatment herein complained of did the Defendants herein, or any of them, obtain
27 knowledgeable, informed consent for said care, treatment or conduct; that prior to the initiation of
28 or performance of said care, treatment, procedure or conduct no opportunity was afforded the

1 Plaintiff or any authorized agent of the Plaintiff to exercise voluntary, knowledgeable and
2 informed consent to said care, treatment, procedure or conduct.

3 26. Prior to July 12, 2011, on, and thereafter IBTISAM NISSAN employed
4 Defendants, and each of them, to diagnose and treat her condition of pregnancy and to do all of
5 the things necessary for her care, including, but not limited to, pre-delivery care, the delivery of
6 her baby and post-delivery care.

7 27. While Plaintiff IBTISAM NISSAN was under the sole and exclusive care and
8 control of the Defendants, and each of them, Defendants failed to exercise the standard of care
9 and skill ordinarily and reasonably required of hospitals, medical doctors, nurses, midwives, and
10 other medical providers, and negligently, carelessly and unskillfully delivered, examined, treated,
11 cared for, diagnosed, operated upon, attended and otherwise handled and controlled the Plaintiff
12 herein, thereby proximately causing injuries and damages to Plaintiff.

13 28. Moreover, Defendants neglected to adequately select a competent medical staff
14 and to periodically review the competency of their medical staff and failed to adequately monitor
15 their staff such that Plaintiff was caused to, and did suffer damages.

16 29. As a proximate result of the negligence of the Defendants, and each of them,
17 Plaintiff IBTISAM NISSAN was hurt and injured in her health, strength and activity, sustaining
18 injury to her body and shock and injury to her nervous system and person, all of which said
19 injuries have caused and continue to cause plaintiff great mental, physical, and nervous pain and
20 suffering. Plaintiff is informed and believes and thereon alleges that said injuries will result in
21 some permanent disability to her, all to her general damage in an amount in excess of the
22 minimum jurisdictional limits of the Court and she is entitled to prejudgment interest on the
23 amount when determined, from the date of plaintiff's C.C.P. §998 Offer To Compromise.

24 30. As a further proximate result of the said negligence of Defendants, and each of
25 them, Plaintiff IBTISAM NISSAN was prevented from attending to her usual occupation, and
26 will be prevented from doing so in the future, all to Plaintiff's further damage in an amount
27 unknown at this time, and Plaintiff will ask leave to amend this complaint to show the exact
28 amount when determined. Further, Plaintiff is entitled to prejudgment interest on said amount

1 when determined from the date of plaintiff's CCP §998 Offer To Compromise.

2 31. That as a further proximate result of the said negligence of the Defendants, and
3 each of them, Plaintiff IBTISAM NISSAN was required to and did employ, and will be required
4 in the future to employ, physicians and surgeons to examine, treat and care for her and did incur,
5 and will in the future incur, medical and incidental expenses. The exact amount of such expense
6 is unknown to plaintiff at this time, and plaintiff will ask leave to amend her pleading to set forth
7 the exact amount thereof when the same is ascertained by her, and any and all prejudgment
8 interest from the date of said injuries.

9 Plaintiff, IBTISAM NISSAN complains of Defendants, KAISER FOUNDATION
10 HOSPITAL, a California Corporation, KAISER FOUNDATION HEALTH PLAN, INC.,
11 PERMANENTE MEDICAL GROUP, KAISER PERMANENTE MEDICAL CARE
12 PROGRAM; DANIELLE HAMMERMAN, M.D.; and DOES 1 through 70, inclusive, and each
13 of them, and as for a Third Cause of Action, alleges as follows:

14 **THIRD CAUSE OF ACTION**

15 **(Negligent Infliction of Emotional Distress (Burgess v. Superior Court))**

16 32. Plaintiffs reallege and reaffirm each and every paragraph and allegation above as if
17 fully rewritten herein.

18 33. At all times herein mentioned, IBTISAM NISSAN was the mother of ANGELINA
19 ORAHA, a minor, and was under a duty to care for the minor child herein. Plaintiff IBTISAM
20 NISSAN employed said Defendants to care for and treat herself and her minor child during the
21 pregnancy.

22 34. At all times mentioned, said Defendants were under a legal duty to Plaintiff with
23 respect to the care and treatment of her child, while the child was a patient in said hospitals and
24 under the care of Defendants. Said Defendants and each of them treated and cared for both the
25 minor ANGELINA ORAHA and IBTISAM NISSAN during the labor and delivery of
26 ANGELINA ORAHA.

27 35. At all times mentioned, there existed a close relationship between Plaintiff
28 IBTISAM NISSAN and ANGELINA ORAHA, namely, mother and child, and said Defendants

1 were aware of this close relationship when they agreed to care for the child. It was foreseeable
2 that Plaintiff IBTISAM NISSAN would be damaged directly by negligent acts or omissions to act
3 and committed upon the child. Said Defendants were aware that Plaintiff IBTISAM NISSAN
4 was concerned about the physical well being of her child when Defendants agreed to treat both
5 the child and mother. Plaintiffs were billed for the Defendants' medical services rendered to the
6 child.

7 36. It was reasonably foreseeable and easily predictable that any acts of negligence by
8 these Defendants that would injure the child would lead to serious emotional distress in Plaintiff
9 IBTISAM NISSAN. Because the risk of harm to the Plaintiff was reasonably foreseeable and
10 easily predictable, Defendants owed Plaintiff a duty to exercise due care in diagnosing, caring for,
11 and treating Plaintiff's child. This is especially true as Defendants agreed to and did treat both
12 IBTISAM NISSAN and the minor at the same time.

13 37. Said Defendants in reckless disregard of the probability that their actions, in failing
14 to provide appropriate and necessary medical treatment to Plaintiff IBTISAM NISSAN and her
15 child, and in failing to act within the standard of care, caused Plaintiff IBTISAM NISSAN severe
16 emotional distress.

17 38. By reason of the negligence of said Defendants, Plaintiff IBTISAM NISSAN
18 suffered severe and serious emotional distress and shock and injury to her nervous system and
19 body, all to her general damage in a sum within the jurisdiction of this Court and pursuant to
20 Burgess v. Super. Ct. (1992) 2 Cal.4th 1064.

21 Plaintiff, ZIAD ORAHA complains of Defendants, KAISER FOUNDATION
22 HOSPITAL, a California Corporation, KAISER FOUNDATION HEALTH PLAN, INC.,
23 PERMANENTE MEDICAL GROUP, KAISER PERMANENTE MEDICAL CARE
24 PROGRAM; DANIELLE HAMMERMAN, M.D.; and DOES 1 through 70, inclusive, and each
25 of them, and as for a Fourth Cause of Action, alleges as follows:

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1 **FOURTH CAUSE OF ACTION**

2 **(Negligent Infliction of Emotional Distress (Thing v. LaChusa))**

3 39. Plaintiffs reallege and reaffirm each and every paragraph and allegation above as if
4 fully rewritten herein.

5 40. At all times herein mentioned, Plaintiff ZIAD ORAHA was the father of
6 ANGELINA ORAHA, and was closely related.

7 41. At all times mentioned, said Defendants were under a legal duty to the minor
8 ANGELINA ORAHA with respect to the care and treatment of the child while the child was a
9 patient in said hospitals and under the care of the Defendants. Said Defendants and each of them
10 treated and cared for both the minor and the minor's mother, ZIAD ORAHA's daughter and wife,
11 during labor and delivery, and thereafter.

12 42. ZIAD ORAHA was present during labor and delivery of ANGELINA ORAHA.
13 During labor and delivery, ZIAD ORAHA observed the traumatic birth of his daughter wherein
14 his daughter suffered a fractured skull, brain injury, and seizures, among other injuries. ZIAD
15 ORAHA observed the nursing and medical providers reacting in a manner that that indicated
16 there was an emergency. He saw and heard his wife screaming. ZIAD ORAHA was aware there
17 was a problem with the baby. ZIAD ORAHA was aware that Defendants and each of them had
18 failed to properly and safely deliver his daughter and that this failure was causing injury to his
19 child and wife. ZIAD ORAHA believed that injury then was being caused to his child and wife,
20 and that this injury was caused by the Defendants' care and treatment of IBTISAM NISSAN and
21 ANGELINA ORAHA. Among other things, ZIAD ORAHA saw his daughter shaking from
22 seizures.

23 43. Said Defendants, in disregard of the probability that their actions in failing to
24 provide the appropriate and necessary medical treatment to ANGELINA ORAHA and IBTISAM
25 NISSAN, and in failing to act within the standard of care, caused Plaintiff ZIAD ORAHA to
26 suffer severe emotional distress.

27 44. By reason of the negligence of said Defendants, Plaintiff ZIAD ORAHA suffered
28 severe and serious emotional distress and shock and injury to his nervous system and body, all to

1 his general damage in a sum within the jurisdiction of this Court and pursuant to Thing v.
2 LaChusa (1989) 48 Cal.3d 644.

3 Plaintiff, ANGELINA ORAHA, a minor, by and through her Guardian ad Litem, SOAD
4 MONA, complains of Defendants, CLINICAL INNOVATIONS, LLC; dba CLINICAL
5 INNOVATIONS, INC., and DOES 71 through 100, inclusive, and each of them, and as for a

6 Fifth Cause of Action, allege as follows:

7 **FIFTH CAUSE OF ACTION**

8 **(Strict Products Liability)**

9 45. Plaintiffs reallege and reaffirm each and every paragraph and allegation above as if
10 fully rewritten herein.

11 46. The Defendants, CLINICAL INNOVATIONS, LLC; dba CLINICAL
12 INNOVATIONS, INC., and DOES 71 through 100, inclusive, and each of them, as the designers,
13 testers, manufacturers, makers, producers, promoters, sellers, distributors, advertisers, suppliers,
14 labelers, marketers, trainers, and inspectors of the Kiwi® vacuum assisted fetal delivery device
15 used by Plaintiffs' hospitals, physicians, surgeons, nurses, midwives, and other medical
16 professionals, are strictly liable to Plaintiff under the strict liability theory imposed by the courts
17 of the State of California for researching, formulating, testing, labeling, packaging,
18 manufacturing, retailing, distributing, wholesaling, modifying, advertising, promoting, etc., and
19 placing into the market and into the flow of commerce products dangerous to persons by causing
20 injuries to the users and ultimate consumers of the products, designed, manufactured, produced,
21 labeled, and marketed by the Defendants, and each of them. Said products were defective in
22 design and/or manufacture, and failed to carry appropriate warning labels, with the Defendants
23 knowing that said products would be used by hospitals, physicians, surgeons, nurses, midwives,
24 and other medical professionals, in treating and caring for members of the general public, and
25 particularly Plaintiff, without inspection. Said Kiwi® vacuum assisted fetal delivery device was
26 defective in design and/or manufacture and unsafe for ultimate consumers such as Plaintiff.

27 47. Defendants CLINICAL INNOVATIONS, LLC; dba CLINICAL
28 INNOVATIONS, INC., and DOES 71 through 100, inclusive, and each of them, and their agents,

1 representatives and employees, jointly, individually and/or severally, negligently, carelessly and
2 recklessly designed, manufactured, labeled, distributed and sold the Kiwi® vacuum assisted fetal
3 delivery devices without any warning or notice of their inherent and dangerous propensities and
4 their defects to the general public, specifically, Plaintiffs.

5 48. Plaintiffs were not aware of the aforementioned defects at anytime prior to the
6 injury.

7 49. As a proximate result of the conduct of the Defendants, and each of them, the
8 minor Plaintiff ANGELINA ORAHA was hurt and injured in her health, strength, and activity,
9 sustaining severe shock, and injury to her body, all of which said injuries have caused and
10 continue to cause Plaintiff great physical, emotional, and nervous pain and suffering, and which
11 said injuries Plaintiff is informed and believes, and thereon alleges, will result in loss of earnings,
12 permanent disability, loss of enjoyment of life, and impairment of earning capacity all to
13 Plaintiff's damage in a sum in excess of the jurisdiction of the Court and she is entitled to
14 prejudgment interest on the amount when determined, from the date of plaintiff's C.C.P. §998
15 Offer to Compromise.

16 50. As a further proximate result of the conduct of the Defendants, and each of them,
17 and the resulting injuries to the Plaintiff, ANGELINA ORAHA was compelled to, and did, incur
18 expenses for medical and surgical attention, hospitalization, nursing, medication and incidentals
19 for said Plaintiff in an amount unknown to Plaintiff at present.

20 51. As a further proximate result of the conduct of the Defendants, and each of them,
21 and of the resulting injuries, Plaintiff will be obliged to incur expenses for medical care and
22 hospitalization for an indefinite period in the future and to pay for these expenses in the treatment
23 and relief of injuries for medical and surgical attention, hospitalization, nursing, medication, and
24 incidentals for said Plaintiff in an amount unknown to Plaintiff at present.

25 52. As a further proximate result of the conduct of the Defendants, and each of them,
26 Plaintiff will suffer a decreased earning capacity in the future and future earnings to Plaintiff's
27 further damage in a sum unknown at present.

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1 53. Plaintiff is informed and believes that at all times herein mentioned, the
2 Defendants CLINICAL INNOVATIONS, LLC; dba CLINICAL INNOVATIONS, INC., and
3 DOES 71 through 100, inclusive, and each of them, knew of the defects of said products and the
4 probability that said products would cause injury to unsuspecting users of the product, including
5 ANGELINA ORAHA. Defendants willfully, knowingly, maliciously, oppressively and
6 fraudulently designed, manufactured, labeled, marketed, sold and distributed said products to
7 hospitals, physicians, surgeons, and other medical professionals, to be used in treating patients,
8 and delivering babies, including plaintiff ANGELINA ORAHA. Defendants' willful, knowing,
9 malicious, oppressive, fraudulent, and callous conduct done in conscious disregard for the legal
10 rights, health and safety of plaintiff, justifies the awarding of exemplary and punitive damages in
11 an amount to be determined at trial.

12 Plaintiff, ANGELINA ORAHA, a minor, by and through her Guardian ad Litem, SOAD
13 MONA, complains of Defendants, CLINICAL INNOVATIONS, LLC; dba CLINICAL
14 INNOVATIONS, INC., and DOES 71 through 100, inclusive, and each of them, and as for a
15 Sixth Cause of Action, allege as follows:

16 **SIXTH CAUSE OF ACTION**

17 **(Negligence)**

18 54. Plaintiffs reallege and reaffirm each and every paragraph and allegation above as if
19 fully rewritten herein.

20 55. On or about July 12, 2011, prior thereto, and thereafter, Defendants CLINICAL
21 INNOVATIONS, LLC; dba CLINICAL INNOVATIONS, INC., and DOES 71 through 100,
22 inclusive, and each of them, negligently researched, formulated, tested, labeled, packaged,
23 designed, manufactured, made, produced, warned, promoted, sold, distributed, advertised,
24 marketed, inspected, trained, and supplied the Kiwi® vacuum assisted fetal delivery device so as
25 to cause plaintiff to sustain serious and permanent injuries while her hospitals, physicians,
26 surgeons, nurses, midwives, and other medical providers were using the products. Defendant
27 CLINICAL INNOVATIONS, LLC; dba CLINICAL INNOVATIONS, INC., and DOES 71
28 through 100, inclusive, and each of them, and their agents, representatives and employees, jointly,

1 individually and/or severally, negligently, carelessly and recklessly formulated, manufactured,
2 labeled, marketed, distributed and sold the Kiwi® vacuum assisted fetal delivery device without
3 any warning or notice of the inherent and dangerous propensities and the defects of the products
4 to the general public, specifically, ANGELINA ORAHA.

5 56. As a proximate result of the negligence of the Defendants, and each of them, the
6 minor Plaintiff ANGELINA ORAHA was hurt and injured in her health, strength, and activity,
7 sustaining severe shock, and injury to her body, all of which said injuries have caused and
8 continue to cause Plaintiff great physical, emotional, and nervous pain and suffering, and which
9 said injuries Plaintiff is informed and believes, and thereon alleges, will result in loss of earnings,
10 permanent disability, loss of enjoyment of life, and impairment of earning capacity all to
11 Plaintiff's damage in a sum in excess of the jurisdiction of the Court and she is entitled to
12 prejudgment interest on the amount when determined, from the date of plaintiff's C.C.P. §998
13 Offer to Compromise.

14 57. As a further proximate result of the negligence of the Defendants, and each of
15 them, and the resulting injuries to the Plaintiff, ANGELINA ORAHA was compelled to, and did,
16 incur expenses for medical and surgical attention, hospitalization, nursing, medication and
17 incidentals for said Plaintiff in an amount unknown to Plaintiff at present.

18 58. As a further proximate result of the negligence of the Defendants, and each of
19 them, and of the resulting injuries, Plaintiff will be obliged to incur expenses for medical care and
20 hospitalization for an indefinite period in the future and to pay for these expenses in the treatment
21 and relief of injuries for medical and surgical attention, hospitalization, nursing, medication, and
22 incidentals for said Plaintiff in an amount unknown to Plaintiff at present.

23 59. As a further proximate result of the negligence of the Defendants, and each of
24 them, Plaintiff will suffer a decreased earning capacity in the future and future earnings to
25 Plaintiff's further damage in a sum unknown at present.

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1 Plaintiff, ANGELINA ORAHA, a minor, by and through her Guardian ad Litem, SOAD
2 MONA, complains of Defendants, CLINICAL INNOVATIONS, LLC; dba CLINICAL
3 INNOVATIONS, INC., and DOES 71 through 100, inclusive, and each of them, and as for a

4 Seventh Cause of Action, allege as follows:

5 **SEVENTH CAUSE OF ACTION**

6 **(Failure to Warn)**

7 60. Plaintiff realleges and reaffirms each and every paragraph and allegation above as
8 if fully rewritten herein.

9 61. At the time the Defendants' products described herein were supplied for use in the
10 care and treatment of the general public, and to aid the delivering of babies, including
11 ANGELINA ORAHA, the products were defective as a result of the Defendants' failure to give
12 adequate, clear and specific warnings, by label or otherwise, to prevent the products from being
13 dangerous to consumers and making them unsafe for their intended purpose. Defendants
14 CLINICAL INNOVATIONS, LLC; dba CLINICAL INNOVATIONS, INC., and DOES 71
15 through 100, inclusive, and each of them, and their agents, representatives and employees, jointly,
16 individually and/or severally, negligently, carelessly and recklessly designed, manufactured,
17 labeled, distributed, trained and sold Kiwi® vacuum assisted fetal delivery device without any
18 warning or notice of their inherent and dangerous propensities and their defects to the ultimate
19 users, the general public, and specifically, Plaintiffs.

20 62. As a proximate result of the failure to warn of the Defendants, and each of them,
21 the minor Plaintiff ANGELINA ORAHA was hurt and injured in her health, strength, and
22 activity, sustaining severe shock, and injury to her body, all of which said injuries have caused
23 and continue to cause Plaintiff great physical, emotional, and nervous pain and suffering, and
24 which said injuries Plaintiff is informed and believes, and thereon alleges, will result in loss of
25 earnings, permanent disability, loss of enjoyment of life, and impairment of earning capacity all
26 to Plaintiff's damage in a sum in excess of the jurisdiction of the Court and she is entitled to
27 prejudgment interest on the amount when determined, from the date of plaintiff's C.C.P. §998
28 Offer to Compromise.

1 63. As a further proximate result of the failure to warn of the Defendants, and each of
2 them, and the resulting injuries to the Plaintiff, ANGELINA ORAHA was compelled to, and did,
3 incur expenses for medical and surgical attention, hospitalization, nursing, medication and
4 incidentals for said Plaintiff in an amount unknown to Plaintiff at present.

5 64. As a further proximate result of the failure to warn of the Defendants, and each of
6 them, and of the resulting injuries, Plaintiff will be obliged to incur expenses for medical care and
7 hospitalization for an indefinite period in the future and to pay for these expenses in the treatment
8 and relief of injuries for medical and surgical attention, hospitalization, nursing, medication, and
9 incidentals for said Plaintiff in an amount unknown to Plaintiff at present.

10 65. As a further proximate result of the failure to warn of the Defendants, and each of
11 them, Plaintiff will suffer a decreased earning capacity in the future and future earnings to
12 Plaintiff's further damage in a sum unknown at present.

13 66. Plaintiff is informed and believes that at all times herein mentioned, the
14 Defendants CLINICAL INNOVATIONS, LLC; dba CLINICAL INNOVATIONS, INC., and
15 DOES 71 through 100, inclusive, and each of them, knew of the defects of said products and the
16 probability that said products would cause injury to unsuspecting users of the product, including
17 ANGELINA ORAHA. Defendants willfully, knowingly, maliciously, oppressively and
18 fraudulently designed, manufactured, labeled, marketed, sold, distributed, and failed to warn
19 about said products to hospitals, physicians, surgeons, and other medical providers to be used in
20 treating patients, including plaintiff ANGELINA ORAHA. Defendants' willful, knowing,
21 malicious, oppressive, fraudulent, and callous conduct done in conscious disregard for the legal
22 rights, health and safety of plaintiff, justifies the awarding of exemplary and punitive damages in
23 an amount to be determined at trial.

24 Plaintiff, ZIAD ORAHA complains of Defendants, KAISER FOUNDATION
25 HOSPITAL, a California Corporation, KAISER FOUNDATION HEALTH PLAN, INC.,
26 PERMANENTE MEDICAL GROUP, KAISER PERMANENTE MEDICAL CARE
27 PROGRAM; DANIELLE HAMMERMAN, M.D.; and DOES 1 through 70, inclusive, and each
28 of them, and as for an Eighth Cause of Action, alleges as follows:

1 **EIGHTH CAUSE OF ACTION**

2 **(Loss of Consortium)**

3 67. Plaintiffs reallege and reaffirm each and every paragraph and allegation above as if
4 fully rewritten herein.

5 68. At all times herein mentioned, IBTISAM NISSAN and ZIAD ORAHA are
6 married and are husband and wife.

7 69. As a proximate result of the negligence of Defendants, and each of them, and of
8 IBTISAM NISSAN's resulting injuries, ZIAD ORAHA has been deprived of the services of his
9 wife by reason of her inability to carry on her usual duties and loss of consortium. Plaintiff,
10 ZIAD ORAHA, is informed and believes, and thereon alleges, that the said injuries to his wife are
11 of a permanent nature, and that he will be deprived of her said services, love, affection, comfort,
12 care and society for a long period in the future, all to his general damage in an amount in excess
13 of the minimum jurisdictional limits of this Court, together with prejudgment interest thereon
14 from the date of the incident herein.

15 WHEREFORE, Plaintiffs pray for judgment against the Defendants, and each of them,
16 for:

- 17 1. General damages in a sum in excess of the minimum jurisdictional limits of the Court;
18 2. All past and future medical and incidental expenses according to proof;
19 3. All past and future lost earnings, according to proof;
20 4. All loss of future earning capacity, according to proof;
21 5. All prejudgment interest on general and special damages from the date of Plaintiffs'
22 Code of Civil Procedure §998 Offer to Compromise;

23 6. As against Defendants CLINICAL INNOVATIONS, LLC, dba CLINICAL
24 INNOVATIONS, INC.; and DOES 71 through 100, and each of them, punitive damages in an
25 amount sufficient to punish Defendants and deter the conduct described hereinabove in the future;

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1 7. All costs of suit;

2 8. Such other and further relief as this Court may deem just and proper.

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4 Dated: June 25, 2012

Respectfully submitted,

5 KERSHAW, CUTTER & RATINOFF, LLP

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7
8 By: _____

ERIC RATINOFF
KERRIE WEBB

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10 Attorneys for Plaintiffs
11 ANGELINA ORAHA, a minor,
12 by and through her Guardian ad Litem,
13 SOAD MONA, IBTISAM NISSAN, and
14 ZIAD ORAHA
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