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*Attorneys for Plaintiffs RYAN DIAS,  
individually and as Administrator  
of the Estate of Nicole Dias, Deceased, NICK  
RIVERA and ANDREW RIVERA*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF STANISLAUS  
UNLIMITED JURISDICTION

RYAN DIAS, Individually and Administrator  
of the Estate of NICOLE DIAS, deceased,  
NICK RIVERA and ANDREW RIVERA,

Plaintiffs,

vs.

KAISER FOUNDATION HEALTH  
PLAN, INC.; KAISER FOUNDATION  
HOSPITALS; THE PERMANENTE  
MEDICAL GROUP, INC.; ALIASGAR  
SAIFUDDIN CHINWALA, M.D.; JEREMY  
CARL MESCHES, M.D., FAMILY  
HEALTH CARE MEDICAL GROUP OF  
MODESTO, A PROFESSIONAL  
CORPORATION, KAISER DOES 1 Through  
25, and NON-KAISER DOES 26 through 50,  
Inclusive,

Defendants.

CASE NO.

68401

COMPLAINT FOR DAMAGES  
(Professional Negligence)

JURY TRIAL REQUESTED

BY FAX

I. PARTIES AND JURISDICTION

1. Plaintiff RYAN DIAS is the surviving spouse of NICOLE DIAS, deceased. He brings this action on behalf of all heirs of NICOLE DIAS, deceased, pursuant to Code of Civil

This case has been assigned to Judge

MURL W. JOHNSON

Department 2 for all purposes including Trial.  
COMPLAINT FOR DAMAGES JURY TRIAL REQUESTED

1 Procedure Section 377.60 as the Administrator for the estate of NICOLE DIAS. The Stanislaus  
2 County Probate Court issued an order granting his appointment under Case Number 445027.

3 2. Plaintiff RYAN DIAS also brings this suit in his individual capacity, as a witness  
4 to the events that are the subject matter of this action for wrongful death.

5 3. Plaintiff NICK RIVERA is NICOLE DIAS's surviving parent and witnessed the  
6 events that are the subject matter of this action for wrongful death.

7 4. Plaintiff ANDREW RIVERA is NICOLE DIAS's surviving sibling and witnessed  
8 the events that are the subject matter of this action for wrongful death.

9 5. Defendant KAISER FOUNDATION HEALTH PLAN, INC. is and has been at  
10 all relevant times a corporation, partnership, joint venture, or other entity organized and existing  
11 under the laws of the State of California with its principal place of business situated in the  
12 County of Alameda, State of California.

13 6. Defendant KAISER FOUNDATION HOSPITALS is and has been at all relevant  
14 times a duly organized California corporation, partnership, or other entity, existing under and by  
15 virtue of the laws of the State of California that owned, operated, managed and controlled the  
16 Kaiser Medical Center in Modesto, California, a general hospital facility within the County of  
17 Stanislaus, State of California. It held itself out to the public at large and to the Plaintiff herein,  
18 as properly equipped, fully accredited, competently staffed by qualified and prudent personnel  
19 and operating in compliance with the standard of due care maintained in other properly  
20 equipped, efficiently operated and administered, accredited hospitals in said community  
21 commonly.

22 7. Defendant THE PERMANENTE MEDICAL GROUP, INC. is and has been at all  
23 relevant times a physician practice group duly organized as a corporation, partnership, or other  
24 entity under and by virtue of the laws of the State of California with its principal place of  
25 business located in the County of Alameda, State of California, and which at all relevant times  
26 was the employer of defendant ALIASGAR SAIFUDDIN CHINWALA, M.D., or a partnership  
27 of which defendant ALIASGAR SAIFUDDIN CHINWALA, M.D. was a member.  
28

1           8. Defendant ALIASGAR SAIFUDDIN CHINWALA, M.D. is and has been at all  
2 relevant times a duly licensed and practicing doctor of medicine in the State of California and on  
3 information and belief has resided in Stanislaus County at all times mentioned herein, including  
4 on or about January 14, 2013 through and including January 19, 2013.

5           9. Defendant, JEREMY CARL MESCHES, M.D., is and has been at all relevant  
6 times a duly licensed and practicing doctor of medicine in the State of California and on  
7 information and belief has resided in Stanislaus County at all times mentioned herein, including  
8 on or about January 14, 2013 through and including January 19, 2013.

9           10. Defendant, FAMILY HEALTH CARE MEDICAL GROUP OF MODESTO, A  
10 PROFESSIONAL CORPORATION, is and has been at all relevant times a corporation,  
11 partnership, joint venture, or other entity organized and existing under the laws of the State of  
12 California, and is doing business in the County of Stanislaus, State of California. At all relevant  
13 times, Defendant, JEREMY CARL MESCHES, M.D., was an agent, employee, officer, and/or  
14 director of FAMILY HEALTH CARE MEDICAL GROUP OF MODESTO, A  
15 PROFESSIONAL CORPORATION.

16           11. At all times herein mentioned, each KAISER defendant was the agent and  
17 employee of the other KAISER defendants in the commission of the acts herein alleged,  
18 including but not limited to the KAISER DOE defendants 1 through 25, and was acting in the  
19 course and scope of his/her/its authority as such agent and employee and with the permission and  
20 consent of all KAISER defendants.

21           12. At all times herein mentioned, JEREMY CARL MESCHES, M.D. was the agent  
22 and employee of the other NON-KAISER defendants in the commission of the acts herein  
23 alleged, including but not limited to the NON-KAISER DOE defendants 26 through 50, and  
24 FAMILY HEALTH CARE MEDICAL GROUP OF MODESTO, A PROFESSIONAL  
25 CORPORATION, and was acting in the course and scope of his/her/its authority as such agent  
26 and employee and with the permission and consent of all NON-KAISER defendants.

27           13. KAISER DOES 1-25 are the licensed physicians, or other professional medical  
28 staff, nurses, physicians assistants, attendants, or any other medical staff that negligently assisted

1 Defendant ALIASGAR SAIFUDDIN CHINWALA, M.D. with decedent, NICOLE DIAS'S,  
2 care and treatment that took place at the Kaiser Medical Center in Modesto, CA on or about  
3 January 14, 2013 through January 19, 2013

4 14. NON-KAISER DOES 26 through 50 negligently assisted Defendant JEREMY  
5 CARL MESCHES, M.D. with decedent, NICOLE DIAS'S, care and treatment.

6  
7 **II. VENUE**

8 15. Venue in this action is proper in Stanislaus County based upon the fact that the  
9 injury occurred there.

10 **III. FACTS**

11 13. Beginning on or about Monday, January 14, 2013, decedent, NICOLE DIAS,  
12 sought treatment at from her primary care physician, JEREMY CARL MESCHES, M.D.,  
13 Modesto, CA, for diagnosis and treatment of an illness, including but not limited to an infection.  
14 DR. MESCHES instructed her to go to the emergency room at Kaiser Medical Center, Modesto,  
15 CA for further and immediate assessment and medical treatment. At all relevant times, the  
16 primary care physician-patient relationship continued between DR. MESCHES and NICOLE  
17 DIAS.

18 14. Beginning on or about Monday, January 14, 2013, decedent, NICOLE DIAS,  
19 sought treatment from the Emergency Department of the Kaiser Medical Center, Modesto, CA,  
20 for diagnosis and treatment of an illness, including but not limited to an infection. The  
21 physicians and medical staff employed by defendants KAISER FOUNDATION HEALTH  
22 PLAN, INC.; KAISER FOUNDATION HOSPITALS; THE PERMANENTE MEDICAL  
23 GROUP, INC., and KAISER DOES 1 Through 25, misdiagnosed her condition, and sent her  
24 home without properly treating her illness.

25 15. On Tuesday, January 15, 2013, decedent, NICOLE DIAS, again sought treatment  
26 at the Emergency Department of the Kaiser Medical Center, Modesto, CA, for diagnosis and  
27 treatment of an illness, including but not limited to an infection. Again, the physicians and  
28

1 medical staff employed by defendants KAISER FOUNDATION HEALTH PLAN, INC.;  
2 KAISER FOUNDATION HOSPITALS; THE PERMANENTE MEDICAL GROUP, INC., and  
3 KAISER DOES 1 Through 25, misdiagnosed her condition, and sent her home without properly  
4 treating her illness.

5 16. On Thursday, January 17, 2013, decedent NICOLE DIAS, went back a third time  
6 to the Emergency Department of the Kaiser Medical Center, Modesto, CA, for care and  
7 treatment of the infection. The physicians and medical staff employed by defendants KAISER  
8 FOUNDATION HEALTH PLAN, INC.; KAISER FOUNDATION HOSPITALS; THE  
9 PERMANENTE MEDICAL GROUP, INC., ALIASGAR SAIFUDDIN CHINWALA, M.D.,  
10 and KAISER DOES 1 Through 25, misdiagnosed her condition. Dr. ALIASGAR SAIFUDDIN  
11 CHINWALA, gave NICOLE DIAS a few pain pills, misdiagnosed her with sciatica, and sent her  
12 home. The defendants, and each of them, did not properly treat NICOLE DIAS'S illness.

13 17. On Friday, January 18, decedent NICOLE DIAS, went back to the Emergency  
14 Department of the Kaiser Medical Center, Modesto, CA, a fourth time for diagnosis and  
15 treatment of her illness, including but not limited to an infection. She complained of pain so bad  
16 that she wanted to die. Instead of properly diagnosing and treating her, the physicians and  
17 medical staff employed by defendants KAISER FOUNDATION HEALTH PLAN, INC.;  
18 KAISER FOUNDATION HOSPITALS; THE PERMANENTE MEDICAL GROUP, INC.,  
19 ALIASGAR SAIFUDDIN CHINWALA, M.D., and KAISER DOES 1 Through 25,  
20 misdiagnosed her condition, and placed her on an involuntary suicide watch.

21 18. Several hours later, the physicians and medical staff employed by defendants  
22 KAISER FOUNDATION HEALTH PLAN, INC.; KAISER FOUNDATION HOSPITALS;  
23 THE PERMANENTE MEDICAL GROUP, INC., ALIASGAR SAIFUDDIN CHINWALA,  
24 M.D., and KAISER DOES 1 Through 25, finally recognized that they had misdiagnosed  
25 NICOLE DIAS' condition. By that time, NICOLE'S illness had evolved into, among other  
26 things, a fatal sepsis and a systemic infection.  
27  
28

1           19.    On Saturday, January 19, 2013, NICOLE DIAS passed away at the Kaiser  
2   Medical Center in Modesto, California as a proximate result of negligent conduct of defendants,  
3   and each of them.

4           20.    NICOLE DIAS left surviving heirs under the wrongful death statute including a  
5   spouse, plaintiff RYAN DIAS, and three minor children who were dependent upon her for  
6   support, KOHEN JOHNSON-RIVERA, AUBREE DIAS, and DANIKA DIAS. She also left  
7   surviving her a brother, plaintiff ANDREW RIVERA, and her father, plaintiff NICK RIVERA.

8           21.    The conduct of defendants, and each of them, constituted willful, reckless, and  
9   conscious disregard of the rights of decedent NICOLE DIAS and the Plaintiffs. Plaintiffs  
10   reserve the right to file a motion to amend this complaint to include a prayer for punitive  
11   damages based on the defendants' conduct.

12   **IV.    CAUSE OF ACTION FOR WRONGFUL DEATH - RYAN DIAS, AS**  
13   **ADMINISTRATOR FOR THE ESTATE OF NICOLE DIAS**  
14   **(Court I - Against All Defendants)**

15           22.    Plaintiffs refer to and incorporate Paragraphs 1-21 as though fully set forth herein.

16           23.    At all times mentioned herein, defendant ALIASGAR SAIFUDDIN  
17   CHINWALA, M.D and on information and belief each of KAISER DOES 1-25 were duly  
18   licensed and practicing physicians who were holding themselves out to be duly licensed to  
19   practice medicine in the State of California and to possess that degree of skill, expertise and  
20   ability and learning of similar physicians in said community.

21           24.    At all times mentioned herein, defendant JEREMY CARL MESCHES, M.D. and  
22   on information and belief each of the NON-KAISER DOES 26-50 were duly licensed and  
23   practicing physicians who were holding themselves out to be duly licensed to practice medicine  
24   in the State of California and to possess that degree of skill, expertise and ability and learning of  
25   similar physicians in said community.

26           25.    The treatment NICOLE DIAS received at the Kaiser Medical Center in Modesto  
27   from defendants KAISER FOUNDATION HEALTH PLAN, INC.; KAISER FOUNDATION  
28

1 HOSPITALS; THE PERMANENTE MEDICAL GROUP, INC., and from ALIASGAR  
2 SAIFUDDIN CHINWALA, M.D., and KAISER DOES 1 Through 25, on or about January 14,  
3 2013 continuing through January 19, 2013 fell below the standard of care required of physicians  
4 in their community. Had the defendants' medical services met the standard of care for such  
5 medical providers in the nearby community, NICOLE DIAS'S condition would have been  
6 diagnosed and treated, and she would not have passed away.

7 26. The treatment NICOLE DIAS received from defendants JEREMY CARL  
8 MESCHES, M.D., and FAMILY HEALTH CARE MEDICAL GROUP OF MODESTO, A  
9 PROFESSIONAL CORPORATION, and NON-KAISER DOES 26 Through 50, on or about  
10 January 14, 2013 continuing through January 19, 2013 fell below the standard of care required of  
11 physicians in their community. Had the defendants' medical services met the standard of care  
12 for such medical providers in the nearby community, NICOLE DIAS'S condition would have  
13 been diagnosed and treated, and she would not have passed away.

14 27. As a direct and proximate result of the negligence of the Defendants, and each of  
15 them, NICOLE DIAS'S heir have been deprived of her care, comfort, and society, and they are  
16 entitled to general damages according to proof. NICOLE DIAS'S heirs have suffered special  
17 and general, economic and non-economic damages, including, but not limited to, lost financial  
18 support, loss of gifts or benefits, funeral and burial expenses, loss of household services, love,  
19 companionship, comfort, care, assistance, protection, affection, society, moral support, training,  
20 and guidance.

21 **V. CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF EMOTIONAL**  
22 **DISTRESS – PLAINTIFF, RYAN DIAS, INDIVIDUALLY.**

23 **(Count II - Against All Defendants, Except Jeremy Carl Mesches, M.D., and Family Health**  
24 **Care Medical Group Of Modesto, A Professional Corporation)**

25 28. Plaintiff refers to and incorporates Paragraphs 1-21 as though fully set forth  
26 herein.

27 29. At all relevant times, defendants, and each of them, owed Plaintiff, RYAN DIAS,  
28 a duty of care based on defendants' care and treatment of NICOLE DIAS, deceased. The duty is



1 based on the defendants' common law duties, custom and practice, and their obligations to  
2 perform such acts, and to possess that degree of skill, expertise and ability and learning of  
3 similar medical professionals in their surrounding community.

4 30. At all relevant times, defendants, and each of them, owed Plaintiff, RYAN DIAS,  
5 a duty based on the requirements of Section 1714 of the Civil Code requiring all persons to act in  
6 a reasonable manner toward others.

7 31. The treatment NICOLE DIAS received at the Kaiser Medical Center in Modesto  
8 from defendants KAISER FOUNDATION HEALTH PLAN, INC.; KAISER FOUNDATION  
9 HOSPITALS; THE PERMANENTE MEDICAL GROUP, INC., ADIASGAR SAIFUDDIN  
10 CHINWALA, M.D., and KAISER DOES 1 Through 25, on or about January 14, 2013  
11 continuing through January 19, 2013 fell below the standard of care required of physicians in  
12 their community.

13 32. Plaintiff, RYAN DIAS, observed the defendants, and each of them, actively fail  
14 to properly diagnose and treat his wife, NICOLE DIAS.

15 33. Plaintiff, RYAN DIAS, knew that NICOLE RIVER-DIAS was being injured by  
16 defendants, and each of them, by the failure to diagnose her and treat.

17 34. As a proximate result of the conduct of defendants, and each of them, Plaintiff,  
18 RYAN DIAS, suffered serious emotional distress.

19 **VI. CAUSE OF ACTION FOR NEGLIGENT INFLECTION OF EMOTIONAL**  
20 **DISTRESS – PLAINTIFF NICK RIVERA, INDIVIDUALLY.**

21 **(Count III - Against All Defendants, Except Jeremy Carl Mesches, M.D., and Family**  
22 **Health Care Medical Group Of Modesto, A Professional Corporation)**

23 35. Plaintiff refers to and incorporates Paragraphs 1-21 as though fully set forth  
24 herein.

25 36. At all relevant times, defendants, and each of them, owed Plaintiff, NICK  
26 RIVERA, a duty of care based on defendants' care and treatment of NICOLE DIAS, deceased.  
27 The duty is based on the defendants' common law duties, custom and practice, and their  
28



1 obligations to perform such acts, and to possess that degree of skill, expertise and ability and  
2 learning of similar medical professionals in their surrounding community.

3 37. At all relevant times, defendants, and each of them, owed Plaintiff, NICK  
4 RIVERA, a duty based on the requirements of Section 1714 of the Civil Code requiring all  
5 persons to act in a reasonable manner toward others.

6 38. The treatment NICOLE DIAS received at the Kaiser Medical Center in Modesto  
7 from defendants KAISER FOUNDATION HEALTH PLAN, INC.; KAISER FOUNDATION  
8 HOSPITALS; THE PERMANENTE MEDICAL GROUP, INC., ALIASGAR SAIFUDDIN  
9 CHINWALA, M.D., and KAISER DOES 1 Through 25, on or about January 14, 2013  
10 continuing through January 19, 2013 fell below the standard of care required of physicians in  
11 their community.

12 39. Plaintiff, NICK RIVERA, observed the defendants, and each of them, actively  
13 fail to properly diagnose and treat his daughter, NICOLE DIAS.

14 40. Plaintiff, NICK RIVERA, knew that NICOLE RIVER-DIAS was being injured  
15 by defendants, and each of them, by the failure to diagnose her and treat.

16 41. As a proximate result of the conduct of defendants, and each of them, Plaintiff,  
17 NICK RIVERA, suffered serious emotional distress.

18 **VII. CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF EMOTIONAL**  
19 **DISTRESS – PLAINTIFF ANDREW RIVERA, INDIVIDUALLY.**

20 (Count IV - Against All Defendants, Except Jeremy Carl Mesches, M.D., and Family  
21 Health Care Medical Group Of Modesto, A Professional Corporation)

22 42. Plaintiff refers to and incorporates Paragraphs 1-21 as though fully set forth  
23 herein.

24 43. At all relevant times, defendants, and each of them, owed Plaintiff, ANDREW  
25 RIVERA, a duty of care based on defendants' care and treatment of NICOLE DIAS, deceased.  
26 The duty is based on the defendants' common law duties, custom and practice, and their  
27 obligations to perform such acts, and to possess that degree of skill, expertise and ability and  
28 learning of similar medical professionals in their surrounding community.

1           44.     At all relevant times, defendants, and each of them, owed Plaintiff, ANDREW  
2 RIVERA, a duty based on the requirements of Section 1714 of the Civil Code requiring all  
3 persons to act in a reasonable manner toward others.

4           45.     The treatment NICOLE DIAS received at the Kaiser Medical Center in Modesto  
5 from defendants KAISER FOUNDATION HEALTH PLAN, INC.; KAISER FOUNDATION  
6 HOSPITALS; THE PERMANENTE MEDICAL GROUP, INC., ALIASGAR SAIFUDDIN  
7 CHINWALA, M.D., and KAISER DOES 1 Through 25, on or about January 14, 2013  
8 continuing through January 19, 2013 fell below the standard of care required of physicians in  
9 their community.

10          46.     Plaintiff, ANDREW RIVERA, observed the defendants, and each of them,  
11 actively fail to properly diagnose and treat his sister, NICOLE DIAS.

12          47.     Plaintiff, ANDREW RIVERA, knew that NICOLE RIVER-DIAS was being  
13 injured by defendants, and each of them, by the failure to diagnose her and treat.

14          48.     As a proximate result of the conduct of defendants, and each of them, Plaintiff,  
15 ANDREW RIVERA, suffered serious emotional distress.

16 **VIII. CAUSE OF ACTION FOR INTENTIONAL INFLECTION OF EMOTIONAL**  
17 **DISTRESS – PLAINTIFF RYAN DIAS, INDIVIDUALLY.**

18 **(Count V - Against All Defendants, Except Jeremy Carl Mesches, M.D., and Family Health**  
19 **Care Medical Group Of Modesto, A Professional Corporation)**

20          49.     Plaintiff refers to and incorporates Paragraphs 1-21 as though fully set forth  
21 herein.

22          50.     At all relevant times, defendants, and each of them, owed Plaintiff, RYAN DIAS,  
23 a duty of care based on defendants' care and treatment of NICOLE DIAS, deceased. The duty is  
24 based on the defendants' common law duties, custom and practice, and their obligations to  
25 perform such acts, and to possess that degree of skill, expertise and ability and learning of  
26 similar medical professionals in their surrounding community.

1           51. At all relevant times, defendants, and each of them, owed Plaintiff, RYAN DIAS,  
2 a duty based on the requirements of Section 1714 of the Civil Code requiring all persons to act in  
3 a reasonable manner toward others.

4           52. Defendants' KAISER FOUNDATION HEALTH PLAN, INC.; KAISER  
5 FOUNDATION HOSPITALS; THE PERMANENTE MEDICAL GROUP, INC., ALIASGAR  
6 SAIFUDDIN CHINWALA, M.D., and KAISER DOES 1 Through 25, treatment of NICOLE  
7 DIAS from on about January 14, 2013 continuing through January 19, 2013, fell below the  
8 standard of care required of physicians in their community, and was outrageous conduct.

9           53. Defendants' KAISER FOUNDATION HEALTH PLAN, INC.; KAISER  
10 FOUNDATION HOSPITALS; THE PERMANENTE MEDICAL GROUP, INC., ALIASGAR  
11 SAIFUDDIN CHINWALA, M.D., and KAISER DOES 1 Through 25, acted with reckless  
12 disregard of the probability that RYAN DIAS would suffer emotional distress, knowing that  
13 RYAN DIAS was present when the defendants misdiagnosed NICOLE DIAS and placed her on  
14 an involuntary suicide watch instead of treating her illness.

15           54. Plaintiff, RYAN DIAS, suffered severe emotional distress as a result of the  
16 KAISER defendants' outrageous conduct.

17           55. As a proximate result of the conduct of defendants, and each of them, Plaintiff,  
18 RYAN DIAS, suffered serious emotional distress.

19  
20 **IX. PRAYER FOR RELIEF**

21  
22 WHEREFORE, Plaintiff prays for judgment as follows against all Defendants, and each  
23 of them, named herein:

- 24           a. For special, compensatory, consequential, incidental and all other allowable  
25 economic damages in a sum according to proof at trial, including damages for  
26 wrongful death;  
27           b. For general damages, and all other allowable damages in a sum according to  
28 proof at trial, including damages for wrongful death;

- 1 c. For pre-judgment and post-judgment interest as allowed by law;  
2 d. For cost of suit herein incurred; and  
3 e. For such other and further relief as the Court may deem proper.  
4

5 DATED: May 30, 2013

BRENT, FIOL & NOLAN LLP

6  
7  
8 By: 

9 Joseph P. Brent  
10 Attorneys for Plaintiffs  
11

12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs, RYAN DIAS, individually, and as Administrator of the Estate of NICOLE  
14 DIAS, deceased, and NICK RIVERA and ANDREW RIVERA, hereby demand a trial by jury.  
15

16 DATED: May 30, 2013

BRENT, FIOL & NOLAN LLP

17  
18  
19 By: 

20 Joseph P. Brent  
21 Attorneys for Plaintiffs  
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