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PAUL FERGUSON, CLERK
ARLINGTON CIRCUIT COURT

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Beverley L. Crump
Bank of America Center, 16th Fl.
1111 East Main Street
Richmond, VA 23219

Defendants

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COMPLAINT

COMES NOW the Plaintiff, Iris Rivera, and brings this civil action, pursuant to Va. Code. Ann. 8.01-50 (2014), against the Defendants Virginia Hospital Center Arlington Health Center d/b/a Virginia Hospital Center, Kaiser Foundation Health Plan of The Mid-Atlantic States, Inc., and Mid-Atlantic Permanente Medical Group, PC on the grounds and in the amount as hereinafter set forth, and for her cause of action states as follows:

JURISDICTION AND VENUE

1. Jurisdiction and venue are proper in this Court because all of the events described herein occurred in the City of Arlington, County of Arlington, Commonwealth of Virginia.

THE PARTIES

2. Plaintiff, Iris Rivera, is the natural mother of decedent Baby Jesenia, a fetus delivered on January 20, 2014. Plaintiff is a resident of the county of Prince William and is a citizen of the Commonwealth of Virginia. Her address is 12284 Dapple Gray Court, Woodbridge Virginia 22192.

3. At all material times, Defendant Virginia Hospital Center Arlington Health System d/b/a/ Virginia Hospital Center (hereinafter "the Hospital") was a business organization engaged in providing health care services, acting directly, and by and through its actual and/or apparent agents, servants and/or employees, including but not limited to Jodi Clark, RN, Nahed Ezmerli, M.D., Stacy Pantuck, RN, Caroline Henke, RN, Virginia Drake, RN, Maria Convery,

RN, Erin Mateer, M.D., Cecilia Rasul, M.D., Charelle Carter, M.D., Regina Decristafaro, RN, Donna Tildon-Archer, M.D., and Evan Hochberg, RN, the labor and delivery nursing staff, and residents and/or attending physicians at Defendant Virginia Hospital Center, in its care of Plaintiff and her unborn child on or about January 20, 2014, in the city of Arlington, in the Commonwealth of Virginia, and maintaining offices and places of business in the city of Arlington, Arlington County, in the Commonwealth of Virginia.

4. At all material times, Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. was a business organization engaged in providing health care services, acting directly, and by and through its actual and/or apparent agents, servants and/or employees, including but not limited to Nahed Ezmerli, M.D., Erin Mateer, M.D., Cecilia Rasul, M.D., Charelle Carter, M.D., and Donna Tildon-Archer, M.D. and/or attending physicians at Defendant Virginia Hospital Center, in its care of Plaintiff and her unborn child on or about January 20, 2014, in the city of Arlington, in the Commonwealth of Virginia, and maintaining offices and places of business in the city of Arlington, Arlington County, in the Commonwealth of Virginia.

5. At all material times, Defendant Mid-Atlantic Permanente Medical Group, PC was a business organization engaged in providing health care services, acting directly, and by and through its actual and/or apparent agents, servants and/or employees, including but not limited to Nahed Ezmerli, M.D., Erin Mateer, M.D., Cecilia Rasul, M.D., Charelle Carter, M.D., and Donna Tildon-Archer, M.D. and/or attending physicians at Defendant Virginia Hospital Center, in its care of Plaintiff and her unborn child on or about January 20, 2014, in the city of Arlington, in the Commonwealth of Virginia, and maintaining offices and places of business in the city of Arlington, Arlington County, in the Commonwealth of Virginia.

6. At all material times, Nahed Ezmerli, M.D. was acting within the scope of her employment with Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.

7. At all material times, Nahed Ezmerli, M.D. was acting within the scope of her employment with Defendant Mid-Atlantic Permanente Medical Group, PC.

8. At all material times, a health care provider/patient relationship existed between Defendant Virginia Hospital Center and the Plaintiff, Iris Rivera and her unborn child.

9. At all material times, a health care provider/patient relationship existed between Nahed Ezmerli, M.D. and Plaintiff, Iris Rivera and her unborn child.

10. At all material times, a health care provider/patient relationship existed between Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and the Plaintiff, Iris Rivera and her unborn child.

11. At all material times, a health care provider/patient relationship existed between Defendant Mid-Atlantic Permanente Medical Group, Inc. and the Plaintiff, Iris Rivera and her unborn child.

12. At all material times, Defendant Virginia Hospital Center, in connection with their health care business activities, employed the services of physicians, nurses and other professional employees including, but not limited to Jodi Clark, RN, Nahed Ezmerli, M.D., Stacy Pantuck, RN, Caroline Henke, RN, Virginia Drake, RN, Maria Convery, RN, Erin Mateer, M.D., Cecilia Rasul, M.D., Charelle Carter, M.D., Regina Decristafaro, RN, Donna Tildon-Archer, M.D., and Evan Hochberg, RN, the nursing staff, residents, and/or attending physicians at the Hospital, and held them out and warranted them to the public as competent, careful and experienced in the medical care and treatment of patients.

13. At all material times, Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., in connection with their health care business activities, employed the services of physicians and other professional employees including, but not limited to, Nahed Ezmerli, M.D., Erin Mateer, M.D., Cecilia Rasul, M.D., Charelle Carter, M.D., Donna Tildon-Archer, M.D., and/or attending physicians at the Hospital, and held them out and warranted them to the public as competent, careful and experienced in the medical care and treatment of patients.

14. At all material times, Defendant Mid-Atlantic Permanente Medical Group, PC, in connection with their health care business activities, employed the services of physicians and other professional employees including, but not limited to, Nahed Ezmerli, M.D., Erin Mateer, M.D., Cecilia Rasul, M.D., Charelle Carter, M.D., Donna Tildon-Archer, M.D., and/or attending physicians at the Hospital, and held them out and warranted them to the public as competent, careful and experienced in the medical care and treatment of patients.

15. At all material times, Defendant Virginia Hospital Center was engaged in promulgating policies, procedures and protocols, were responsible for their implementation and adherence, and was responsible for providing and training physicians, physicians-in-training, and nurses and other health care providers, in the field of obstetrics.

16. At all material times, Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. was engaged in promulgating policies, procedures and protocols, were responsible for their implementation and adherence, and was responsible for providing and training physicians, physicians-in-training, and other health care providers, in the field of obstetrics.

17. At all material times, Defendant Mid-Atlantic Permanente Medical Group, PC was engaged in promulgating policies, procedures and protocols, were responsible for their

implementation and adherence, and was responsible for providing and training physicians, physicians-in-training, and other health care providers, in the field of obstetrics.

18. Defendants, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, PC are hereinafter referred to as the "Kaiser Defendants."

FACTS COMMON TO ALL COUNTS

19. Plaintiff incorporates herein the averments contained in the preceding paragraphs as through fully set forth herein.

20. On January 20, 2014 at 1517, Iris Rivera presented to Virginia Hospital Center's Labor and Delivery Department. She was gravida para 3/2, gestational age 36/4, and estimated date of delivery of 02/13/14.

21. She presented with complaints of radiating back pain and abdominal pain.

22. Iris Rivera was admitted to Virginia Hospital Center and was placed in a Labor and Delivery triage room.

23. At 1526, Iris Rivera was evaluated by Jodi Clark, RN. Nurse Clark documented that Plaintiff reported abdominal pain beginning on or about 1326. Ms. Rivera rated the pain as 8 out of 10. Plaintiff denied any bleeding, leakage of fluid or any complications with her pregnancy. Plaintiff reported good fetal movement. Nurse Clark's noted that she would "place [Ms. Rivera] on a monitor and assess."

24. At 1526, Nurse Clark began monitoring Iris Rivera and her unborn baby utilizing a Philips Avalon FM 30 Fetal Monitor (Serial Number: DE53104525). The fetal monitor utilized had the ability to monitor the fetal heart rate, maternal pulse, and to detect coincidence between fetal and maternal heart/pulse rates. Coincidence detection is a heart rate comparison

technique in which the maternal pulse is continuously compared with the fetal heart rate and, thus, informs health care providers when the maternal heart rate is being picked up instead of the intended fetal heart rate. The coincidence feature was not utilized by health care providers.

25. The Philips Avalon FM30 Fetal monitor utilized software version D.00.77 and bore the serial number DE53104525.

26. On September 4, 2009, Philips issued a Device Safety Alert communicating numerous problems and concerns associated with utilizing the Philips Avalon Fetal Monitor. On November 20, 2009, at the request of the U.S. Food and Drug Administration (FDA) Philips issued an **"URGENT- Medical Recall"** for Philips Avalon FM 30 Fetal Monitors. Virginia Hospital Center nonetheless, continued to utilize these monitors.

27. The external fetal monitor tracing demonstrated a fetal heart rate in the 130's, indicative of normal fetal oxygenation and the absence of fetal acidemia. No contractions were observed.

28. Dr. Ezmereli ordered several tests on a stat basis: aspartate aminotransferase (AST), alanine aminotransferase (ALT), a uric acid test and a basic metabolic panel.

29. The results of the tests were resulted by the laboratory at 1602.

30. At 1600, the nurses documented that the fetal heart rate baseline was 135 beats per minute over the preceding 30 minutes. There were no accelerations or decelerations and there was moderate variability. There were no uterine contractions.

31. Fetal heart tones were initially noted to be in the 130's.

32. The fetal monitor was set to alarm if the fetal heart rate dropped to 100 beats per minute for 180 seconds. The monitor was programmed to record instances of the fetal heart rate dropping to 100 beats per minute for 180 seconds as "bradycardia." Fetal bradycardia is when

the fetal heart rate is less than 120 beats per minute and it is generally associated with hypoxia, often due to placental insufficiency.

33. The fetal monitor was set to alarm if the fetal heart rate dropped to 90 beats per minute for 40 seconds. The monitor was programmed to record instances of the fetal heart rate dropping to 90 beats per minute for 40 seconds as "severe bradycardia."

34. At 1534 the maternal heart rate was noted to be 90 beats per minute.

35. At 1603 the maternal heart rate was noted to be 130 beats per minute.

36. At 1608, the fetal monitoring device detected the fetus was experiencing severe bradycardia.

37. At 1611, the fetal monitoring device detected the fetus was experiencing bradycardia.

38. At 1613 Nurse Clark charted that she was "aware" of the worrisome fetal heart rate. At 1614 Nurse Clark "acknowledged" the monitor's alarm indicating the worrisome heart rate.

39. At 1617, the fetal monitoring device detected fetal bradycardia. At 1617 Nurse Stacy Pantuck notified Nurse Clark about the fetal bradycardia. At 1619, Nurse Pantuck "acknowledged" the monitor's alarm indicating the worrisome heart rate.

40. At 1619, Nurse Clark returned to Iris Rivera's bedside to adjust the fetal heart rate monitor.

41. At 1619, yet again, the fetal monitoring device detected bradycardia.

42. At 1622, Nurse Clark "acknowledged" the monitor's alarm indicating the worrisome heart rate.

43. At 1646, yet again, the fetal monitoring device detected severe bradycardia.

44. At 1648 Nurse Caroline Henke "acknowledged" the monitor's alarm indicating the worrisome heart rate.

45. At 1648, yet again, the fetal monitoring device detected severe bradycardia.

46. At 1652, Nurse Clark responded to Iris Rivera's bedside to adjust the fetal monitor. Ms. Rivera reported needing to use the bathroom. Nurse Clark removed the monitor, and in doing so, she did not have the ability to monitor the fetus' heart rate.

47. Ms. Rivera used the restroom and immediately returned to bed.

48. For more than 20 minutes, Iris Rivera and her fetus remained off of the fetal monitoring device. During that time period, health care providers had no ability to monitor Iris Rivera's fetus' heart rate.

49. At or around 1712 Nurse Clark returned to Iris Rivera's bedside to put her back on the monitor.

50. At 1712, the maternal heart rate was 81 beats per minute.

51. At 1715, unable to detect a fetal heart rate, Nurse Clark called for the charge nurse to report to the bedside.

52. At 1717, Nurse Clark documented that Nurse Pantuck was at Iris Rivera's bedside.

53. At 1717, the fetal monitoring device detected severe bradycardia.

54. At 1718, Nurse Virginia Drake noted "resident at bedside with sono[gram]."

55. At 1722, the charge nurse called Dr. Ezmerli to the bedside stat.

56. At 1725, for the first time, the automated coincidence detection function was enabled.

57. At 1725, the fetal monitoring device detected severe bradycardia.

58. At 1726, Dr. Ezmerli responded to Iris Rivera's bedside.
59. At 1727, Dr. Ezmerli called Dr. Rasul to the bedside.
60. At 1728, the fetal monitoring device detected the maternal heart rate as 115 beats per minute.
61. At 1728, Dr. Rasul, a hospitalist, responded to Iris Rivera's bedside.
62. At 1728, the fetal monitoring device detected severe bradycardia.
63. At 1731, the fetal monitor detected coincidence.
64. At 1733, Dr. Ezmerli called an OB code.
65. At 1738, Iris Rivera's baby was delivered via cesarean section. She weighed 6lbs 12.6 ounces. At birth, Baby Jesenia was limp and was not breathing. She did not have a heart rate. Her airway was cleared and she was intubated. There was no heart beat. The APGAR scores were 0, 0 at 1, 5 minutes respectively.
66. After 20 minutes of asystoly with full CPR, epinephrine and fluid boluses, the code was stopped.
67. At 1759, Iris Rivera's baby was pronounced dead.
68. After its delivery, the placenta was noted to be approximately 50% abrupted.
69. Iris Rivera's placenta was sent for pathologic examination. That examination revealed a third trimester placenta weighing 510 grams. There was a three vessel umbilical cord. It was focally disrupted with focal hemorrhage near the area of disruption. There was no indication of any histologic abnormality.

COUNT I- WRONGFUL DEATH

70. Plaintiff incorporates herein by reference thereto the averments contained in the forgoing paragraphs as though the same were more fully set forth at length herein.

- l. Failure to exercise reasonable care and diligence in the application of their knowledge and skill to Ms. Rivera and her baby's situation;
- m. Failure to possess the degree of professional learning, skill, and ability which others similarly situated ordinarily possess;
- n. Failure to object or notify the physician or supervisors when signs of fetal distress were presenting;
- o. Failure to provide care in accordance with the standards of practice of such health care providers with similar education, training, and experience in the same or similar communities;
- p. Failure to have, establish, effectuate and/or follow protocols, guidelines, policies, and/or procedures to properly care for Ms. Rivera and/or her fetus and patients like them;
- q. Failure to establish, effectuate and/or follow a proper chain of command and protocol; and
- r. Other negligent acts

COUNT II- WRONGFUL DEATH (KAISER DEFENDANTS)

72. Plaintiff incorporates herein by reference thereto the averments contained in the forgoing paragraphs as though the same were more fully set forth at length herein.

73. The Kaiser Defendants were negligent, both independently and through their actual and/or apparent agents, servants and/or employees including but not limited to Nahed Ezmerli, its technicians, residents, midwives and physicians, at all relevant times hereto in at least the following ways:

- a. Failure to properly manage Ms. Rivera's labor;
- b. Failure to properly evaluate the condition of Ms. Rivera and her baby to determine whether the baby was in distress;
- c. Failure to advocate for the fetus;
- d. Failure to adequately monitor the progress and status of Ms. Rivera's labor;

- e. Failure to properly insure that qualified personnel was or were on duty to treat or otherwise participate in the treatment and care being rendered to Ms. Rivera and her child at the time of their labor and delivery and the child's birth;
 - f. Failure to properly select, train, and supervise its employees, agents or servants, including the physicians who provided treatment to Plaintiff;
 - g. Failure to oversee and monitor the quality of treatment provided by its employees, servants, and agents;
 - h. Breached its implied and non-delegable duty to Plaintiff to provide competent medical staff to treat its patients;
 - i. Failure to use reasonable judgment in the treatment and care of Ms. Rivera and her baby;
 - j. Failure to recognize and respond to signs of fetal stress and/or distress in a timely and appropriate fashion;
 - k. Failure to exercise reasonable care and diligence in the application of their knowledge and skill to Ms. Rivera and her baby's situation;
-
- l. Failure to possess the degree of professional learning, skill, and ability which others similarly situated ordinarily possess;
 - m. Failure to object or notify the physician or supervisors when signs of fetal distress were presenting;
 - n. Failure to provide care in accordance with the standards of practice of such health care providers with similar education, training, and experience in the same or similar communities;
 - o. Failure to have available and utilize equipment for the monitoring of the fetal heart rate;
 - p. Failure to have, establish, effectuate and/or follow protocols, guidelines, policies, and/or procedures to properly care for Ms. Rivera and/or her fetus and patients like them;
 - q. Failure to establish, effectuate and/or follow a proper chain of command and protocol; and
 - r. Other negligent acts
74. Plaintiff, in no way, contributed to her injuries and subsequent damages.

PLAINTIFF RESPECTFULLY DEMANDS A TRIAL BY JURY
ON ALL ISSUES SO TRIABLE

WHEREFORE, Plaintiff prays that she have and recover of Defendants, as follows;

1. Damages for the wrongful death of her fetus;
2. Recovery from defendants for the above damages as compensation in the lump sum in Three Million Dollars (\$3,000,000.00);
3. Damages pursuant to VA § 8.01-50 *et. seq*;
4. The costs of this action;
5. Interest as provided by law;
6. Punitive damages; and
7. Such other further relief as the Court deems equitable, just and proper.

Respectfully submitted,

IRIS RIVERA

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