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11 Attorneys for Plaintiffs

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF RIVERSIDE - CIVIL DEPARTMENT COURTHOUSE

14 REYLI GAEL SILVA, A MINOR BY
15 AND THROUGH HIS GUARDIAN
16 AD LITEM, CECILIA MARTINEZ,
17 CECILIA MARTINEZ,
18 INDIVIDUALLY, IRVIN SILVA,
19 INDIVIDUALLY,

20 Plaintiffs,

21 v.

22 KAISER FOUNDATION
23 HOSPITALS, KAISER
24 FOUNDATION HEALTHPLAN,
25 INC., SOUTHERN CALIFORNIA
26 PERMANENTE MEDICAL GROUP,
27 DOES 1 THROUGH 30, INCLUSIVE,

28 Defendants.

Case No.

Ric
1611124

COMPLAINT FOR DAMAGES FOR:

1) NEGLIGENCE ON BEHALF OF
CECILIA MARTINEZ;

2) NEGLIGENCE ON BEHALF OF
REYLI GAEL SILVA;

3) NEGLIGENT INFLECTION OF
EMOTIONAL DISTRESS ON BEHALF
OF IRVIN SILVA

DEMAND FOR JURY TRIAL

By Fax

29 The plaintiffs REYLI GAEL SILVA by and through her Guardian ad Litem
30 CECILIA MARTINEZ, CECILIA MARTINEZ, individually, and IRVIN SILVA,
individually, and complain of defendants KAISER FOUNDATION HOSPITALS,
KAISER FOUNDATION HEALTH PLAN INC., SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP, and DOES 1 through 30, inclusive, as follows:

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

AUG 29 2016

B. Ellico-Mestas

DHS

AUG 29 2016

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GENERAL ALLEGATIONS

1. Plaintiffs CECILIA MARTINEZ and IRVIN SILVA were and are the parents of the minor REYLI GAEL SILVA whose date of birth is September 25, 2012.

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

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

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

5. At all times herein mentioned defendants KAISER FOUNDATION HOSPITALS, KAISER FOUNDATION HEALTH PLAN INC., SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP and DOES 1 through 30, inclusive, were and are engaged in the owning, operating, maintaining, managing and engaged in rendering medical, surgical, hospital, diagnostic, nursing and other care to the general public. The acts and omissions of these defendants were done and performed (or failed to be done and performed) by defendants by and through their duly authorized agents, and employees, all of whom were acting within the course, purpose and scope of their agency

1 or employment. The conduct of the agents and employees was ratified by the defendants
2 KAISER FOUNDATION HOSPITALS, KAISER FOUNDATION HEALTH PLAN
3 INC., SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP and DOES 1
4 through 30, inclusive. Further, these defendants selected and assigned physicians and
5 other health care professionals to care for and treat the plaintiffs, and through words or
6 actions held those individuals out as agents or employees, knowing and expecting the
7 plaintiffs to rely upon those actions or words, and the plaintiffs did so rely. Those
8 individuals were the ostensible agents of these defendants.

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10 6. The defendants held themselves out to the general public and to plaintiffs as
11 skilled professionals in the science of medicine, surgery, nursing, hospital care, medical
12 attendant technicians, therapists and related care. The defendants held themselves out to
13 the general public and to the plaintiffs as possessing that degree of knowledge and skill
14 customarily possessed and exercised by other physicians, surgeons, nurses, technicians,
15 therapists and hospital attendants engaged in the same or similar locality as that of
16 defendants.

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18 7. The true names, identities and capacities, whether individual, associate,
19 corporate or otherwise of defendants DOES 1 through 30 are unknown to plaintiffs at this
20 time, who therefore name these defendants by the fictitious names. When the true names
21 and capacities of the fictitiously designated defendants are ascertained, plaintiffs will
22 amend this complaint to insert their true names, identities and capacities. Plaintiffs are
23 informed and believe, and thereon allege, that each of the defendants sued in this pleading
24 as a DOE is responsible in some actionable manner for the events and happenings that
25 legally caused the injuries and damages to the various plaintiffs.

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

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10 **FIRST CAUSE OF ACTION**
11 **ON BEHALF OF PLAINTIFF CECILIA MARTINEZ**
12 **AGAINST DEFENDANTS FOR NEGLIGENCE**
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14 9. Plaintiff CECILIA MARTINEZ alleges and incorporates by reference all of
15 the allegations contained in paragraphs 1 through 8 of the General Allegations section of
16 this complaint.
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18 10. On or about September 25, 2012, plaintiff CECILIA MARTINEZ was a
19 patient of defendants in connection with prenatal and obstetrical care, perinatal, delivery
20 and post-natal care concerning a pregnancy which delivered on September 25, 2012.
21 Plaintiff CECILIA MARTINEZ remained under the sole and exclusive care and control of
22 defendants during all times mentioned herein.
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24 11. Defendants agreed to perform and undertook to perform for the plaintiff
25 CECILIA MARTINEZ, all services necessary in the prenatal, perinatal, labor, delivery,
26 and post-natal phase of plaintiff's care which included, but was not limited to,
27 examinations, ultrasound, evaluations, diagnosis, and care and treatment of plaintiff
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1 CECILIA MARTINEZ. In so doing the defendants, and each of them, established a
2 physician/nurse/hospital/caregiver relationship with the plaintiff giving rise to each
3 defendant's duty to plaintiff CECILIA MARTINEZ to provide skillful management of her
4 prenatal, obstetrical, labor, delivery and post-natal care.

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6 12. The defendants were negligent, careless and unskillful in their management
7 of the prenatal, labor, delivery, postnatal phase, including but not limited to the
8 examinations, ultrasound evaluations, diagnosis, care and treatment of plaintiff CECILIA
9 MARTINEZ. That negligence was a legal cause of injuries and damages to all plaintiffs
10 as pleaded below. The defendants' negligence includes, but is not limited to:

11 Negligent obstetrical, hospital and neonatal care.
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13 13. Defendants also negligently failed to properly advise the plaintiff of any
14 other possible alternative methods of diagnosis or treatment and the possible risks
15 attendant to the diagnosis or treatment, thus failing to obtain a free and informed
16 consent. As a legal result of the lack of free and informed consent, plaintiff suffered
17 injuries as set forth below.

18
19 14. As a direct and legal result of the defendants' negligence, carelessness and
20 unskillfulness, plaintiff CECILIA MARTINEZ was injured. Her injuries include but are
21 not limited to non-economic damages, including pain, suffering, mental, physical and
22 emotional distress and loss of sleep and related physical damages. The plaintiff is
23 informed and believes and therefore alleges that said injuries will result in non-economic
24 damages in an amount according to proof.

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26 15. As a direct and legal result of the defendants' negligence, carelessness and
27 unskillfulness, plaintiff CECILIA MARTINEZ has and will in the future incur economic
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1 damages in an amount according to proof.

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SECOND CAUSE OF ACTION

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ON BEHALF OF PLAINTIFF REYLI GAEL SILVA

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AGAINST DEFENDANTS FOR NEGLIGENCE

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16. Plaintiff REYLI GAEL SILVA alleges and incorporates herein by reference all of the allegations contained in paragraphs 1 through 15 of this complaint.

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18. Defendants were negligent in the care rendered to plaintiff's mother. Each defendant rendering neonatal or pediatric care was negligent in the rendition of that care on or about September 25, 2012, and afterwards.

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19. As a legal result of the negligence of the defendants, minor plaintiff REYLI GAEL SILVA was injured in his health, strength and activity, suffered severe physical and emotional injury, has incurred and will in the future incur expenses for medical care, nursing care, attendant care, rehabilitation, physical and occupational therapy, speech therapy, educational therapy and related expenses all to plaintiff's non-economic and economic damages in an amount according to proof.

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

4 **THIRD CAUSE OF ACTION**
5 **ON BEHALF OF PLAINTIFF IRVIN SILVA AGAINST**
6 **DEFENDANTS FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
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8 21. Plaintiff IRVIN SILVA alleges and incorporates herein by reference all of
9 the allegations contained in paragraphs 1 through 20 of this complaint.
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11 22. IRVIN SILVA was a witness to the above events concerning the prenatal
12 care, labor and delivery care to CECILIA MARTINEZ, birth of minor plaintiff, REYLI
13 GAEL SILVA, and neonatal care to child and in particular witnessed the following:

14 Fetal heart decelerations and, despite requests, defendants refused to
15 help or remedy the problem and refused a prompt cesarean section.
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17 23. As a legal result of the witnessing of the above, IRVIN SILVA has suffered
18 severe emotional and physical distress all to his general and economic damages according
19 to proof.
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1 **PRAYER**

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3 THEREFORE, plaintiffs REYLI GAEL SILVA a minor by and through his
4 Guardian ad Litem, CECILIA MARTINEZ, and CECILIA MARTINEZ and IRVIN
5 SILVA, individually, pray for judgment against defendants as follows:
6

- 7 1. Non-economic damages according to proof;
8 2. Economic damages according to proof;
9 3. Legal interest according to proof; and
10 4. Any other and further relief as the Court deems just and proper.

11 Dated: August 29, 2016

LAW OFFICES OF MICHELS & LEW

12
13 By: 

14 PHILIP MICHELS
15 ELIZABETH A. HERNANDEZ
16 Attorneys for Plaintiffs

17 **DEMAND FOR JURY TRIAL**

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19 Plaintiffs demand a jury trial.
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21

22 Dated: August 29, 2016

LAW OFFICES OF MICHELS & LEW

23
24 By: 

25 PHILIP MICHELS
26 ELIZABETH A. HERNANDEZ
27 Attorneys for Plaintiffs
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1. Check one box below for the case type that best describes this case:

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Auto (22)	<input type="checkbox"/> Breach of contract/warranty (06)	<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Uninsured motorist (46)	<input type="checkbox"/> Rule 3.740 collections (09)	<input type="checkbox"/> Construction defect (10)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	<input type="checkbox"/> Other collections (09)	<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Asbestos (04)	<input type="checkbox"/> Insurance coverage (18)	<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Product liability (24)	<input type="checkbox"/> Other contract (37)	<input type="checkbox"/> Environmental/Toxic tort (30)
<input checked="" type="checkbox"/> Medical malpractice (45)	Real Property	<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<input type="checkbox"/> Other PI/PD/WD (23)	<input type="checkbox"/> Eminent domain/inverse condemnation (14)	
Non-PI/PD/WD (Other) Tort	<input type="checkbox"/> Wrongful eviction (33)	
<input type="checkbox"/> Business tort/unfair business practice (07)	<input type="checkbox"/> Other real property (26)	
<input type="checkbox"/> Civil rights (08)	Unlawful Detainer	Enforcement of Judgment
<input type="checkbox"/> Defamation (13)	<input type="checkbox"/> Commercial (31)	<input type="checkbox"/> Enforcement of judgment (20)
<input type="checkbox"/> Fraud (16)	<input type="checkbox"/> Residential (32)	Miscellaneous Civil Complaint
<input type="checkbox"/> Intellectual property (19)	<input type="checkbox"/> Drugs (38)	<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Professional negligence (25)	Judicial Review	<input type="checkbox"/> Other complaint (<i>not specified above</i>) (42)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)	<input type="checkbox"/> Asset forfeiture (05)	Miscellaneous Civil Petition
Employment	<input type="checkbox"/> Petition re: arbitration award (11)	<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Wrongful termination (36)	<input type="checkbox"/> Writ of mandate (02)	<input type="checkbox"/> Other petition (<i>not specified above</i>) (43)
<input type="checkbox"/> Other employment (15)	<input type="checkbox"/> Other judicial review (39)	

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (*check all that apply*): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 3

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 29, 2016

ELIZABETH A. HERNANDEZ, ESQ.
(TYPE OR PRINT NAME)

ed case. (You may use form CM-015.)

Elizabeth A. Hernandez

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
4050 Main Street
Riverside, CA 92501
www.riverside.courts.ca.gov

NOTICE OF DEPARTMENT ASSIGNMENT FOR ALL PURPOSES

SILVA VS KAISER FOUNDATION HOSPITALS

CASE NO. RIC1611124

This case is assigned to the Honorable Judge John W Vineyard in Department 07 for all purposes.

The Case Management Conference is scheduled for 02/27/17 at 8:30 in Department 07.

The plaintiff/cross-complainant shall serve a copy of this notice on all defendants/cross-defendants who are named or added to the complaint and file proof of service.

Any disqualification pursuant to CCP Section 170.6 shall be filed in accordance with that section.

Requests for accommodations can be made by submitting Judicial Council form MC-410 no fewer than five court days before the hearing. See California Rules of Court, rule 1.100.

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the foregoing NOTICE on this date, by depositing said copy as stated above.

Court Executive Officer/Clerk

Date: 08/29/16

by: 

BRIANA N ELLICO-MESTAS, Deputy Clerk