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9 Attorney for Plaintiff Alice Carrillo

10 SUPERIOR COURT OF CALIFORNIA,

11 KERN COUNTY

12 UNLIMITED JURISDICTION

13 ALICE CARRILLO AS SUCCESSOR IN  
14 INTEREST FOR PORFIRIO CARRILLO,

15 Plaintiff,

16 vs.

17 SAN JOAQUIN COMMUNITY HOSPITAL,  
18 KAISER PERMANENTE, AND DOES 1-100,  
19 INCLUSIVE

20 Defendants

Case No.:

COMPLAINT FOR DAMAGES FOR (1)  
MEDICAL MALPRACTICE, (2) LOSS OF  
CONSORTIUM, (3) MEDICAL NEGLIGENCE,  
AND (4) FAILURE TO WARN

21 Plaintiff ALICE CARRILLO alleges as follows:

22 INTRODUCTION

- 23 1. This case involves certain injuries suffered by Plaintiff's husband, Porfirio Carrillo at the
- 24 Kaiser Permanente Facilities in Kern County and at San Joaquin Community Hospital.
- 25 2. Mr. Carrillo suffered a fatal stroke after being prescribed certain medications.
- 26 3. Plaintiff, Alice Carrillo was at all times herein a resident of Kern County.
- 27 4. Plaintiff's husband, Porfirio Carrillo was at relevant times herein a patient of San Joaquin
- 28 Community Hospital and of Kaiser Permanente.

1 5. Defendant San Joaquin Community Hospital Authority is and all times alleged herein  
2 was a medical facility doing business as Adventist Health in Bakersfield, Kern County,  
3 California.

4 6. Defendant Kaiser Permanente Authority is and all times alleged herein was a medical  
5 facility doing business as Kaiser in Bakersfield, Kern County, California.

6 7. Doe Defendants 1-50 are and at all times alleged herein were employees, agents or  
7 assigns of San Joaquin Community Hospital and were performing their duties in Kern  
8 County, California.

9 8. Doe Defendants 51-100 are and at all times alleged herein were employees, agents or  
10 assigns of Kaiser Permanente and were performing their duties in Kern County,  
11 California.

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13 **GENERAL ALLEGATIONS**

14 9. On 2/18/2016, Mr. Carrillo suffers a Grand Mal seizure cerebral vascular incident. He is  
15 in the hospital from 2/18/16 until 2/23/16. His is also diagnosed with possible pneumonia  
16 and hypertension.

17 10. On 9/26/2016 Mr. Carrillo suffers from shortness of breath goes to the hospital where the  
18 find a mass on his right lung. He is given medication and released.

19 11. On 3/24/2017 Mr. Carrillo is given a prescription for Viagra which he uses on or about  
20 4/2/2017. Mr. Carrillo is not given any warnings as to the side effects of this medication.

21 12. On 4/8/2017 Mr. Carrillo suffers a Right-sided hemorrhagic stroke with cerebral edema.  
22 He is the ICU for approximately 8 days; this is an extraordinarily serious event.

23 13. Mr. Carrillo's family expresses hope that patient will recover to be off life support and  
24 return home. The family wants to allow patient "more time" on life support to see if he will  
25 be more awake and alert.

26 14. Mr. Carrillo is entered into an induced coma and on 4/19/2017 and he undergoes an  
27 operation (Tracheostomy).  
28

1 15. The seriousness of his condition is exemplified by the discussions with the family.

2 16. Mr. Carrillo is eventually discharged on 4/27/2017.

3 17. On 6/23/2017 he presented himself again at the hospital with an acute case of sepsis.

4 18. Mr. Carrillo was discharged on 6/26/2017.

5 19. Mr. Carrillo passed away on October 21, 2017.

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8 **FIRST CAUSE OF ACTION – MEDICAL MALPRACTICE RES IPSA LOQUITUR**

9 20. Plaintiff realleges and incorporates herein paragraphs 1 through 19 as though they were  
10 specifically alleged in this cause of action.

11 21. California law states "The doctrine of *res ipsa loquitur* is applicable where the accident is  
12 of such a nature that it can be said, in the light of past experience, that it probably was  
13 the result of negligence by someone and that the defendant is probably the one  
14 responsible." (*Howe v. Seven Forty Two Co., Inc.* (2010) 189 Cal.App.4th 1155, at  
15 1161.)

16 22. Plaintiff alleges that the injuries to her husband were the direct and proximate cause of  
17 Defendants' negligence.

18 23. In so alleging, Plaintiff further claims that the injuries described herein would not have  
19 occurred unless one or all of the Defendants were negligent.

20 24. The injuries sustained by Plaintiff's husband described herein were caused while he was  
21 under the care and control of one or more of the Defendants.

22 25. Plaintiff further alleges and confirms that no voluntary action on the part of her husband  
23 either contributed to nor caused the events that resulted in the injuries suffered herein.  
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1 **SECOND CAUSE OF ACTION – MEDICAL NEGLIGENCE**

2 26. Plaintiff hereby incorporates and realleges Paragraphs 1 through 25 herein as though  
3 they were specifically alleged in this cause of action.

4 27. Code of Civil Procedure section 340.5, and Civil Code sections 3333.1 and 3333.2  
5 define "professional negligence" as follows: "a negligent act or omission to act by a  
6 health care provider in the rendering of professional services, which act or omission is  
7 the proximate cause of a personal injury or wrongful death, provided that such services  
8 are within the scope of services for which the provider is licensed and which are not  
9 within any restriction imposed by the licensing agency or licensed hospital."  
10

11 28. Plaintiff hereby alleges that the negligent act(s) or omissions thereof by one or more of  
12 the Defendants was the proximate cause of her husband's injuries described herein.

13 29. Plaintiff further alleges based on information and belief that the services being rendered  
14 by one or more of the Defendants were within the scope of services for which the  
15 provider was licensed.

16 30. Defendants held themselves out to be a licensed provider of medical services, and  
17 capable of performing surgery of the type undergone by Plaintiff's husband, in a  
18 reasonable, safe, and diligent manner. Plaintiff had no reason to believe otherwise.  
19

20 31. Plaintiff alleges on information and belief that there were no restrictions on any of the  
21 Defendants by the facility or licensing agency in performing the services her husband  
22 received.

23 **THIRD CAUSE OF ACTION – LOSS OF CONSORTIUM**

24 32. Plaintiff hereby incorporates and realleges Paragraphs 1 through 31 herein as though  
25 they were specifically alleged in this cause of action.  
26

27 33. Plaintiff's husband suffered extreme medical concerns as described herein.  
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1 34. California law is well settled that "each spouse has a cause of action for loss of  
2 consortium, as defined herein, caused by a negligent or intentional injury to the other  
3 spouse by a third party. (*Rodriguez v. Bethlehem Steel Corp.* (1974) 12 Cal.3d 382,  
4 408).

5 35. Plaintiff maintains and alleges that the negligence of the Defendants which caused her  
6 husband harm negatively impacted the relationship between them during his remaining  
7 days.

8 36. Plaintiff has suffered the loss of companionship, comfort, care, protection and support of  
9 her husband, and will continue to do so at some level for the foreseeable future.  
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12 **FOURTH CAUSE OF ACTION – FAILURE TO WARN**

13 37. Plaintiff claims that the Defendants failed to provide sufficient warning of potential risks,  
14 side effects, or allergic reactions

15 38. Plaintiff alleges that the one or more of the Defendants distributed the Viagra  
16 prescription.

17 39. Plaintiff alleges that the Viagra had potential risks, side effects, or allergic reactions that  
18 were known or knowable in light of the medical knowledge that was generally accepted  
19 in the scientific community at the time of distribution via the prescription.  
20

21 40. Plaintiff further alleges that the potential risks, side effects, and allergic reactions  
22 presented a substantial danger when the Viagra is used or misused in an intended or  
23 reasonably foreseeable way.

24 41. Additionally, Defendants knew or should have known that Plaintiff's husband intended to  
25 use the prescription for its known purpose.

26 42. Plaintiff's husband would not have recognized the potential risks, side effects, or allergic  
27 reactions in light of his other health conditions.  
28

1 43. Plaintiff contends that no Defendant adequately warned or instructed her husband of the  
2 potential risks, side effects, or allergic reactions.

3 44. Plaintiff's husband was harmed given the immediate reaction to the medication following  
4 the prescribed dosage. Additionally, the lack of sufficient instructions or warnings was a  
5 substantial factor in causing Mr. Carrillo's harm.  
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8 WHEREFORE, Plaintiff Alice Carrillo prays for judgment and relief against the Defendants as  
9 follows:

- 10 1. For economic damages in an amount to be proven at trial;  
11 2. For punitive damages;  
12 3. For noneconomic damages;  
13 4. For costs of suit herein, including by not limited to attorney's fees;  
14 5. For such other and further relief, as may be deemed just and proper.  
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16 Respectfully submitted this 15<sup>th</sup> day of January, 2018.  
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20 Elizabeth L. Martin  
21 Attorney for Alice Carrillo  
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