



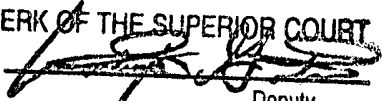
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FILED
ALAMEDA COUNTY

DEC 13 2018

CLERK OF THE SUPERIOR COURT
By 
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ARIELLA CORTES, A Minor, by and
through her Guardian Ad Litem,
ARIANA CORTES, ARIANA
CORTES, Individually, BENITO
CORTES, Individually,

Plaintiffs,

v.

KAISER FOUNDATION,
HOSPITALS, THE PERMANENTE
MEDICAL GROUP, INC. AND DOES
1 THROUGH 30, Inclusive,

Defendants.

RG18932040

COMPLAINT FOR DAMAGES

- 1) Negligence On Behalf Of Ariana Cortes;
- 2) Negligence On Behalf Of Ariella Cortes;
- 3) Loss Of Consortium On Behalf Of Benito Cortes

DEMAND FOR JURY TRIAL

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

COME NOW THE plaintiffs, ARIELLA CORTES by and through her Guardian ad Litem, ARIANA CORTES, ARIANA CORTES, individually, and BENITO CORTES, individually and complain of defendants, KAISER FOUNDATION HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC., and DOES 1 through 30, inclusive, as follows:

GENERAL ALLEGATIONS

1. Plaintiffs, ARIANA CORTES AND BENITO CORTES are husband and wife

1 and the parents of the minor, ARIELLA CORTES, whose date of birth is December 26,
2 2017.

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

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

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

14 5. At all times herein mentioned defendants KAISER FOUNDATION
15 HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC. and DOES 1 through
16 30, inclusive, were and are engaged in the owning, operating, maintaining, managing
17 and engaged in rendering medical, surgical, hospital, diagnostic, nursing and other care
18 to the general public. The acts and omissions of these defendants were done and
19 performed (or failed to be done and performed) by defendants by and through their duly
20 authorized agents, and employees, all of whom were acting within the course, purpose
21 and scope of their agency or employment. The conduct of the agents and employees
22 was ratified by the defendants KAISER FOUNDATION HOSPITALS, THE
23 PERMANENTE MEDICAL GROUP, INC. and DOES 1 through 30, inclusive.
24 Further, these defendants selected and assigned physicians and other health care
25 professionals to care for and treat the plaintiffs, and through words or actions held those
26 individuals out as agents or employees, knowing and expecting the plaintiffs to rely
27 upon those actions or words, and the plaintiffs did so rely. Those individuals were the
28 ostensible agents of these defendants.

1 6. The defendants held themselves out to the general public and to plaintiffs as
2 skilled professionals in the science of medicine, surgery, nursing, hospital care, medical
3 attendant technicians, therapists and related care. The defendants held themselves out to
4 the general public and to the plaintiffs as possessing that degree of knowledge and skill
5 customarily possessed and exercised by other physicians, surgeons, nurses, technicians,
6 therapists and hospital attendants engaged in the same or similar locality as that of
7 defendants.

8 7. The true names, identities and capacities, whether individual, associate,
9 corporate or otherwise of defendants DOES 1 through 30 are unknown to plaintiffs at
10 this time, who therefore name these defendants by the fictitious names. When the true
11 names and capacities of the fictitiously designated defendants are ascertained, plaintiffs
12 will amend this complaint to insert their true names, identities and capacities. Plaintiffs
13 are informed and believe, and thereon allege, that each of the defendants sued in this
14 pleading as a DOE is responsible in some actionable manner for the events and
15 happenings that legally causing the injuries and damages to the various plaintiffs.

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

24 9. Plaintiffs were excusably ignorant of the negligence of defendants and the
25 cause of the injuries alleged herein due to the actions of each of defendant who misled
26 plaintiffs into believing no negligence occurred, plaintiffs' lack of medical records,
27 plaintiffs' lack of any training or experience in medicine and the failure of defendants,
28 and each of them, to fulfill their fiduciary obligations of disclosure to the plaintiffs.

1 **FIRST CAUSE OF ACTION ON BEHALF OF PLAINTIFF ARIANA CORTES**
2 **AGAINST DEFENDANTS, FOR NEGLIGENCE**

3 10. Plaintiff, ARIANA CORTES, alleges and incorporates by reference all of the
4 allegations contained in paragraphs 1 through 9 of the General Allegations section of
5 this complaint.

6 11. On or about December 26, 2017, plaintiff, ARIANA CORTES, was a patient
7 of defendants in connection with prenatal and obstetrical care, perinatal, delivery and
8 post-natal care concerning a pregnancy which delivered on December 26, 2017.
9 Plaintiff, ARIANA CORTES remained under the sole and exclusive care and control of
10 defendants during all times mentioned herein.

11 12. Defendants agreed to perform and undertook to perform for the plaintiff,
12 ARIANA CORTES, all services necessary in the prenatal, perinatal, labor, delivery, and
13 post-natal phase of plaintiff's care which included, but was not limited to, examinations,
14 ultrasound, evaluations, diagnosis, and care and treatment of plaintiff, ARIANA
15 CORTES. In so doing the defendants, and each of them, established a
16 physician/nurse/hospital/caregiver relationship with the plaintiff giving rise to each
17 defendant's duty to plaintiff, ARIANA CORTES, to provide skillful management of her
18 prenatal, obstetrical, labor, delivery and post-natal care.

19 13. The defendants were negligent, careless and unskillful in their management
20 of the prenatal, labor, delivery, postnatal phase, including but not limited to the
21 examinations, ultrasound evaluations, diagnosis, care and treatment of plaintiff,
22 ARIANA CORTES. That negligence was a legal cause of injuries and damages to all
23 plaintiffs as pleaded below. The defendants' negligence includes, but is not limited to:

24 Negligent obstetrical, hospital and neonatal care.

25 14. Defendants also negligently failed to properly advise the plaintiff of any
26 other possible alternative methods of diagnosis or treatment and the possible risks
27 attendant to the diagnosis or treatment, thus failing to obtain a free and informed
28 consent. As a legal result of the lack of free and informed consent, plaintiff suffered

1 injuries as set forth below.

2 15. As a direct and legal result of the defendants' negligence, carelessness and
3 unskillfulness, plaintiff, ARIANA CORTES, was injured. Her injuries include but are
4 not limited to non-economic damages, including pain, suffering, mental, physical and
5 emotional distress and loss of sleep and related physical damages. The plaintiff is
6 informed and believes and therefore alleges that said injuries will result in non-
7 economic damages in an amount according to proof.

8 16. As a direct and legal result of the defendants' negligence, carelessness and
9 unskillfulness, plaintiff, ARIANA CORTES, has and will in the future incur economic
10 damages in an amount according to proof.

11
12 **SECOND CAUSE OF ACTION ON BEHALF OF PLAINTIFF, ARIELLA**
13 **CORTES, AGAINST DEFENDANTS FOR NEGLIGENCE**

14 17. Plaintiff, ARIELLA CORTES, alleges and incorporates herein by reference
15 all of the allegations contained in paragraphs 1 through 16 of this complaint.

16 18. ARIELLA CORTES, a minor, was born on December 26, 2017, in San
17 Leandro, California. Plaintiff's mother, plaintiff, ARIANA CORTES, received prenatal
18 care as set forth above. Additionally, plaintiff, ARIELLA CORTES, received neonatal
19 and pediatric care on or about December 26, 2017, from defendants, KAISER
20 FOUNDATION HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC. and
21 DOES 1 through 30, inclusive.

22 19. Defendants were negligent in the care rendered to plaintiff's mother. Each
23 defendant rendering neonatal or pediatric care was negligent in the rendition of that care
24 on December 26, 2017, and afterwards.

25 20. As a legal result of the negligence of the defendants minor plaintiff,
26 ARIELLA CORTES, was injured in her health, strength and activity, suffered severe
27 physical and emotional injury, has incurred and will in the future incur expenses for
28 medical care, nursing care, attendant care, rehabilitation, physical and occupational

1 therapy, speech therapy, educational therapy and related expenses all to plaintiff's non-
2 economic and economic damages in an amount according to proof.

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

5
6 **THIRD CAUSE OF ACTION ON BEHALF OF PLAINTIFF, BENITO CORTES,**
7 **AGAINST DEFENDANTS FOR LOSS OF CONSORTIUM**

8 22. Plaintiff, BENITO CORTES, alleges and incorporates herein by reference all
9 of the allegations contained in paragraphs 1 through 21 of this complaint.

10 23. As a legal result of the aforementioned negligence of the defendants, and
11 each of them, plaintiff, BENITO CORTES, has and will continue to be deprived of the
12 consortium of his wife plaintiff, ARIANA CORTES, all to his general and economic
13 damages according to proof.

14
15 **PRAYER**

16 THEREFORE, plaintiffs, ARIELLA CORTES, a minor by and through her
17 Guardian ad Litem, ARIANA CORTES, and ARIANA CORTES and BENITO
18 CORTES, individually, pray for judgment against defendants as follows:

- 19 1. Non-economic damages according to proof;
20 2. Economic damages according to proof;
21 3. Legal interest according to proof;
22 4. Any other and further relief as the Court deems just and proper.

23
24 Dated: December 11, 2018

LAW OFFICES OF MICHELS & LEW

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26 By: 

27 PHILIP MICHELS
28 Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial.

Dated: December 11, 2018

LAW OFFICES OF MICHELS & LEW

By: 

PHILIP MICHELS
Attorneys for Plaintiff

Courthouse News Service