

CSB #68825

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5 Attorneys for Plaintiffs
LUZ ELENA ESCALANTE and
6 ALEXIS ESCALANTE, a minor,
by and through her Guardian ad Litem,
7 LUZ ELENA ESCALANTE

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES - SOUTH DISTRICT

11 LUZ ELENA ESCALANTE, individually;
ALEXIS ESCALANTE, a minor, by and
12 through her Guardian ad Litem, LUZ
ELENA ESCALANTE,

CASE NO.

COMPLAINT FOR
DAMAGES FOR:

13 Plaintiffs,

14 v.

(1) PROFESSIONAL
NEGLIGENCE/WRONGFUL
BIRTH;
(2) WRONGFUL LIFE

15 FAMILY PLANNING ASSOCIATES
MEDICAL GROUP, INC., a California
16 corporation dba FAMILY PLANNING
ASSOCIATES MEDICAL GROUP;
17 RUBEN MARMET, M.D.; SOON CHON
SOHN, M.D.; LAWRENCE H. HANSEN,
18 M.D.; and DOES 1 through 100, inclusive,

[AMOUNT DEMANDED
EXCEEDS \$25,000]

19 Defendants.

20
21 COME NOW the Plaintiffs, LUZ ELENA ESCALANTE, individually and ALEXIS
22 ESCALANTE, a minor, by and through her Guardian ad Litem, LUZ ELENA
23 ESCALANTE, and for causes of action against the defendants, and each of them,
allege:

24 FIRST CAUSE OF ACTION

25 Professional Negligence/Wrongful Birth

26 By Plaintiff LUZ ELENA ESCALANTE against All Defendants

27 1. That all acts complained of herein took place within the
jurisdiction of the
28 above-captioned court.

Complaint (Heard).wpd

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COMPLAINT FOR DAMAGES FOR PROFESSIONAL NEGLIGENCE

1 2. On or about November ____, 2008, pursuant to Order of this
Court, LUZ

2 ELENA ESCALANTE was duly appointed and remains the Guardian ad Litem of plaintiff
3 ALEXIS ESCALANTE for the purpose of prosecuting this action.

4 3. On or about August 7, 2008, pursuant to the provisions of
§364 of the Code of
5 Civil Procedure, Plaintiffs duly served on Defendants herein the notice referred to
in said
6 code section. Plaintiffs discovered defendants' negligence as described herein, less
than one
7 year prior to the filing of this Complaint.

8 4. Plaintiffs are presently unaware of the true names and
capacities of the
9 defendants sued herein as DOE 1 through 100 inclusive, and therefore sue said
defendants

10 by such fictitious names; when the true names and capacities of said defendants are
11 ascertained, Plaintiffs will amend this complaint accordingly. Plaintiffs are
informed and
12 believe, and thereon allege, that the said fictitious defendants, and each of them,
engaged in
13 the same or similar conduct as the named defendants herein, and that said defendants
are
14 responsible in some manner for the events and occurrences herein referred to, and
that their
15 negligence proximately caused the injuries and damages sustained by Plaintiffs as
herein
16 alleged, either through said defendants' own negligent conduct or through the
conduct of their
17 agents, servants, or employees, or in some other manner.
18 5. Plaintiffs are informed and believe, and thereon allege,
that at all times herein
19 mentioned, the defendants, and each of them, were and are the agents, servants,
employees,
20 joint venturers, and partners each of the other, and were, at all such times, acting
within the
21 course and scope of said relationships; furthermore, that each said defendant, while
acting
22 as a principal, expressly directed, consented to, approved, affirmed and ratified
each and
23 every action taken by his co-defendants, as hereinafter alleged.
24 6. Plaintiffs are informed and believe, and thereon allege,
that at all times herein
25 mentioned, defendant FAMILY PLANNING ASSOCIATES MEDICAL GROUP, INC.
26 ("FAMILY PLANNING") is and was a California corporation, authorized to do business
and
27 doing business in the County of Los Angeles, State of California, and that at all
times herein
28 relevant, was doing business as FAMILY PLANNING ASSOCIATES MEDICAL GROUP.

Complaint (Heard).wpd

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COMPLAINT FOR DAMAGES FOR PROFESSIONAL NEGLIGENCE

1 7. Plaintiffs are informed and believe, and thereon allege,
that at all times herein
2 mentioned, defendant FAMILY PLANNING and DOES 1 through 30, inclusive, owned,
3 operated, and maintained a series of clinics and medical facilities commonly
referred to as
4 "FAMILY PLANNING ASSOCIATES MEDICAL GROUP," one of which was located at
5 2777 Long Beach Boulevard #200, Long Beach, California 90806, pursuant to a license
duly
6 issued by the California State Department of Health.
7 8. Plaintiffs are informed and believe that defendant FAMILY
PLANNING and
8 DOES 1 through 60, and each of them, is and at all times herein mentioned were, in
the
9 business of providing medical, surgical, radiological and nursing services and such
other
10 supportive care and at all times herein mentioned, held themselves out at possessing
that
11 degree of skill, knowledge and ability normally exercised by competent health care
facilities
12 in the community.
13 9. Plaintiffs are informed and believe, and thereon allege,
that at all times herein
14 mentioned, defendants RUBEN MARMET, M.D.; SOON CHON SOHN, M.D.;
15 LAWRENCE H. HANSEN, M.D. and DOES 61 through 100, inclusive, and each of them,
16 were and are residents of the County of Los Angeles, State of California, as well as
17 physicians, surgeons, nurses and health care providers duly licensed by the State of

18 California to practice medicine in the State and further, that each of them have
held
19 themselves out as possessing that degree of skill, expertise, learning and ability
ordinarily
20 possessed and exercised by other practitioners engaged in health services; in
providing
21 services to persons, including Plaintiff herein, under such license.
22 10. Commencing prior to and on or about August 13, 2007 and
continuing
23 thereafter, plaintiff LUZ ELENA ESCALANTE, consulted defendants about her pregnancy
24 and relying on defendants' alleged skill and competence, employed the defendants to
perform
25 certain examinations and surgical procedures on her; to treat and care for her, and
do all
26 things necessary in regards to her care and treatment, and specifically to terminate
her
27 pregnancy. Defendants agreed to and did undertake said employment and undertook and
28 agreed to perform all necessary care and treatment of Plaintiff LUZ ELENA ESCALANTE,

Complaint (Heard).wpd

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COMPLAINT FOR DAMAGES FOR PROFESSIONAL NEGLIGENCE

1 and do all things proper in connection therewith. On August 13, 2007 Defendants
performed
2 such examinations and treatment and performed an abortion of plaintiff's pregnancy.
3 11. Defendants so negligently, carelessly and recklessly
performed the abortion
4 procedure on August 13, 2007 such that it failed to terminate the pregnancy.
Defendants
5 thereafter performed a second abortion procedure on September 1, 2007 in order to
terminate
6 the pregnancy. Again, Defendants so negligently, carelessly and recklessly performed
the
7 second abortion procedures such that it also failed to terminate the pregnancy.
8 12. Defendants' negligent acts include, but are not limited to,
defendants' failure
9 to use the care and skill ordinarily exercised in like cases by reputable members of
the
10 profession practicing in the same or similar locality under similar circumstances,
and to use
11 reasonable diligence and defendants' best judgment in the exercise of skill and the
12 application of learning, in an effort to accomplish the purpose for which said
defendants were
13 employed including but not limited to: the failure to perform an abortion procedure
within
14 the standard of care on two separate occasions, the use of improper procedural
techniques
15 on two occasions, the artless execution of procedural techniques on two occasions,
the failure
16 to properly perform the procedures on plaintiff LUZ ELENA ESCALANTE while she was
17 in their care, and/or adequately diagnose and determine whether the subject
procedures were
18 properly performed, the failure to refer plaintiff LUZ ELENA ESCALANTE to the
19 appropriate specialist in a timely manner, failure to provide the related post-
operative care,
20 treatment and diagnosis, and failure to obtain informed consent.
21 13. As a direct and legal result of the negligence of
Defendants, and each of them,
22 Plaintiff LUZ ELENA ESCALANTE gave birth to a genetically-impaired daughter,
plaintiff
23 ALEXIS ESCALANTE, who has been diagnosed with Down Syndrome, and suffers from
24 significant medical complications for which surgical intervention was required to be
25 rendered, as well as ongoing neurological, cognitive and physical defects.

26 14. At all times relevant herein, Defendants, and each of
them, provided
27 continuous and exclusive health care and treatment to Plaintiff LUZ ELENA ESCALANTE
28 with respect to the above-described condition.

Complaint (Heard).wpd

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COMPLAINT FOR DAMAGES FOR PROFESSIONAL NEGLIGENCE

1 15. As a direct and legal result of defendants' negligence, as
hereinabove alleged,
2 Plaintiff LUZ ELENA ESCALANTE was hurt and injured in her health, strength and
3 activity, sustaining injury to said Plaintiff's body, and shock and injury to
Plaintiff's nervous
4 system and person, all of which said injuries have caused and continue to cause said
Plaintiff
5 great mental, physical and nervous strain, emotional distress and pain and
suffering.

6 16. As a direct and legal result of defendants' negligence,
Plaintiff LUZ ELENA
7 ESCALANTE was required to and did employ other physicians, surgeons and health care
8 providers and incurred costs and expenses for additional medical procedures and
treatment
9 related to examine, treat and care for herself as a result of the ensuing pregnancy,
in an
10 amount according to proof.

11 17. As a direct and legal result of defendants' negligence,
Plaintiff LUZ ELENA
12 ESCALANTE was required to and did employ other physicians, surgeons and health care
13 providers and incurred costs and expenses for the birth and delivery, medical
treatment and
14 surgery to her child ALEXIS ESCALANTE who was born with Down Syndrome and suffers
15 from significant medical conditions, in an amount according to proof.

16 18. As a further direct and legal result of the aforesaid
negligent acts of defendants,
17 Plaintiff LUZ ELENA ESCALANTE as well as ALEXIS ESCALANTE, and did incur
18 medical, caretaking and incidental expenses, the exact amount of which are not known
at this
19 time; Plaintiffs are informed and believe, and thereon allege, that Plaintiffs will
incur
20 additional such expenses in the future, in an amount according to proof.

21 19. As a direct and legal result of defendants' negligence,
Plaintiff LUZ ELENA
22 ESCALANTE has incurred and will continue to incur expenses associated with raising
and
23 caring for her genetically-impaired child, including costs and expenses for her
medical care,
24 specialized teaching, training and specialized equipment during the minority of
plaintiff
25 ALEXIS ESCALANTE's life through March 27, 2026, and thereafter, in an amount
26 according to proof..

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Complaint (Heard).wpd

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COMPLAINT FOR DAMAGES FOR PROFESSIONAL NEGLIGENCE

1 20. As a further proximate result of the negligence of
defendants, plaintiff LUZ
2 ELENA ESCALANTE is informed and believes and hereon alleges that she will be obliged
3 to incur expenses, in an amount according to proof.

4 21. As a further direct and legal result of the aforesaid
negligent acts of
5 defendants, plaintiff LUZ ELENA ESCALANTE has lost time from her regular occupation
6 and employment, resulting in lost income in an amount unascertained at this time.
Said

7 plaintiff will also lose time in the future from said employment and occupation in
order to
8 care for ALEXIS ESCALANTE, and the future earning capacity of plaintiff LUZ ELENA
9 ESCALANTE has been impaired, all to said plaintiff's further loss, in an amount
according
10 to proof.

11 SECOND CAUSE OF ACTION

12 Wrongful Life

13 By Plaintiff ALEXIS ESCALANTE against All Defendants
14 22. Plaintiff ALEXIS ESCALANTE repeats and incorporates herein
by reference
15 each and every allegation contained in Paragraphs 1 through 22 above, and repleads
same
16 as if fully set forth at this point.

17 23. At all times herein relevant, Defendants knew or in the
exercise of reasonable
18 care should have known that plaintiff LUZ ELENA ESCALANTE was 37 years old at the
19 time plaintiff ALEXIS ESCALANTE was conceived. Defendants knew, or in the exercise
20 of reasonable care should have known, that plaintiff LUZ ELENA ESCALANTE had certain
21 medical conditions that placed her at risk for developing complications during her
pregnancy
22 and, further, because of LUZ ELENA ESCALANTE's age, there was a greater risk that
the
23 fetus had genetic impairments and defects such as Down Syndrome. During the time
that
24 LUZ ELENA ESCALANTE was in the care of defendants, they failed to adequately advise
25 her of the greater risk of giving birth to a child with birth defects, including
Down Syndrome,
26 because of LUZ ELENA ESCALANTE's high risk status. Due to such risks, defendants
27 knew or should have known that a successful termination of the pregnancy was
important to
28 prevent the birth of a child with such genetic impairments.

Complaint (Heard).wpd

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COMPLAINT FOR DAMAGES FOR PROFESSIONAL NEGLIGENCE

1 24. On or about August 13, 2007 and September 1, 2007, as
alleged above,

2 defendants negligently and carelessly failed to properly perform two abortion
procedures on

3 LUZ ELENA ESCALANTE, who remained pregnant.

4 25. On or about March 27, 2008, minor plaintiff ALEXIS
ESCALANTE was born

5 with Down Syndrome and suffers from significant medical conditions and complications
6 which required and will continue to require medical treatment and surgical
interventions.

7 26. As a direct and legal result of the negligence of
defendants and each of them,

8 plaintiff ALEXIS ESCALANTE did incur and will continue to incur extraordinary
expenses

9 necessitated by the cognitive and physical defects associated with her Down
Syndrome,

10 including medical treatment, specialized teaching, training and equipment, for the
duration

11 of her lifetime, in an amount according to proof.

12
13 WHEREFORE, plaintiffs pray for judgment as follows:

14 1. For general damages, in a sum according to proof;

15 2. For medical and health care expenses, in a sum according to
proof;

16 3. For all incidental expenses, in a sum according to proof;

17 4. Loss of income and earning ability as proved at time of
trial;

18 5. For costs of suit incurred herein; and

19 6. For interest on damages pursuant to Civil Code §3291; and
20 7. For such other and further relief as this Court may deem
just and proper.

21
22 DATED: November __, 2008
23 BENNETT

CHEONG, DENOVE, ROWELL &

24 By _____

25 ELENA

Guardian ad Litem,
26
27
28

STEVEN R. VARTAZARIAN
Attorneys for Plaintiffs LUZ

ESCALANTE and ALEXIS ESCALANTE,
a minor, by and through her

LUZ ELENA ESCALANTE