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   Attorneys for Plaintiffs
    LUZ ELENA ESCALANTE and
 6
    ALEXIS ESCALANTE, a minor,
    by and through her Guardian ad Litem,
 7
    LUZ ELENA ESCALANTE
                               SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9
                         FOR THE COUNTY OF LOS ANGELES - SOUTH DISTRICT
10
11
      LUZ ELENA ESCALANTE, individually;
                                                                 CASE NO.
      ALEXIS ESCALANTE, a minor, by and
      through her Guardian ad Litem, LUZ
12
      ELENA ESCALANTE,
                                                                 COMPLAINT
FOR
13
                                                                 DAMAGES FOR:
                    Plaintiffs,
14
                                                                  (1)
PROFESSIONAL
NEGLIGENCE/WRONGFUL
      FAMILY PLANNING ASSOCIATES
                                                                 BIRTH;
      MEDICAL GROUP, INC., a California
                                                                 (2) WRONGFUL
LIFE
16
      corporation dba FAMILY PLANNING
      ASSOCIATES MEDICAL GROUP;
                                                                 [AMOUNT
DEMANDED
      RUBEN MARMET, M.D.; SOON CHON
                                                                 EXCEEDS
$25,000]
       SOHN, M.D.; LAWRENCE H. HANSEN,
18
      M.D.; and DOES 1 through 100, inclusive,
19
                                Defendants.
20
                  COME NOW the Plaintiffs, LUZ ELENA ESCALANTE, individually
21
and ALEXIS
   ESCALANTE, a minor, by and through her Guardian ad Litem, LUZ ELENA
22
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
                             By Plaintiff LUZ ELENA ESCALANTE against All
26
Defendants
                              That all acts complained of herein took place
                 1.
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.

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- 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.
- $\ensuremath{\mathsf{7}}$   $\ensuremath{\mathsf{8}}\xspace$  . 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.
- 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,

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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  $\ensuremath{\mathsf{E}}$
- 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 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.

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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 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,
- $\,$  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..

27

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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
- $\,\,$  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.

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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

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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.
                            As a direct and legal result of the negligence
                 26.
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
of her lifetime, in an amount according to proof.
12
13
                  WHEREFORE, plaintiffs pray for judgment as follows:
14
                             For general damages, in a sum according to
proof;
15
                  2.
                            For medical and health care expenses, in a sum
according to proof;
                            For all incidental expenses, in a sum according
16
to proof;
17
                            Loss of income and earning ability as proved at
                 4.
time of trial;
18
                 5.
                            For costs of suit incurred herein; and
19
                 6.
                            For interest on damages pursuant to Civil Code
§3291; and
                 7.
                            For such other and further relief as this Court
20
may deem just and proper.
22 DATED: November , 2008
                                                         CHEONG, DENOVE,
ROWELL & BENNETT
23
Ву
                                                               STEVEN R.
VARTAZARIAN
                                                         Attorneys for
Plaintiffs LUZ ELENA
25
                                                         ESCALANTE and
ALEXIS ESCALANTE,
                                                         a minor, by and
through her Guardian ad Litem,
26
                                                         LUZ ELENA ESCALANTE
27
28
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                            COMPLAINT FOR DAMAGES FOR PROFESSIONAL
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NEGLIGENCE