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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

MATTHEW MARINO and AMY BENTON, Personally and as Guardians Ad Litem for LUCA MARINO,  
Plaintiffs,  
v.  
LEGACY HEALTH, LEGACY EMANUEL HOSPITAL & HEALTH CENTER, and LEGACY HEALTH SYSTEM INSURANCE COMPANY,  
Defendants.

) Case No. 14CV11225  
)  
) AMENDED COMPLAINT FOR MEDICAL MALPRACTICE/ PERSONAL INJURY/ INJUNCTIVE RELIEF  
)  
) Claim not Subject to Mandatory Arbitration  
)  
) Jury Trial Requested  
) Prayer: \$35,908,375  
) Filing Fee: \$1,056  
) Filing Authority: ORS 21.160(1)(e)

Plaintiffs allege:

FIRST CLAIM FOR RELIEF

1.

Matthew Marino and Amy Benton are the duly appointed guardians ad litem for their son, Luca Marino (“Luca”).

2.

Legacy Health (“Legacy”) is and at all times material hereto was an Oregon corporation which owns and operates Legacy Emanuel Hospital & Health Center, Legacy Emanuel Medical Center and Legacy Health System Insurance Company.

3.

Legacy Emanuel Hospital & Health Center is and at all times material hereto was an Oregon

1 corporation and a subsidiary of Legacy and owns and/or operates Legacy Emanuel Medical Center.

2 4.

3 Legacy Health System Insurance Company (“LHSIC”) is and at all times material hereto was  
4 a subsidiary corporation of Legacy which owns and/or operates Legacy Emanuel Hospital & Health  
5 Center and Legacy Emanuel Medical Center and participates with Legacy in providing patient care  
6 at Legacy Emanuel Medical Center.

7 5.

8 On or about June 20, 2011, Amy Benton came under defendants’ care for her pregnancy with  
9 Luca. Amy Benton remained under defendants’ care continuously from June 20, 2011, through  
10 December 14, 2011.

11 6.

12 On or about December 13, 2011, Amy Benton was admitted to Legacy Emanuel Medical  
13 Center under defendants’ care for Luca’s delivery. Amy Benton remained under defendants’ care  
14 continuously from December 13, 2011, through the time of Luca’s birth on December 14, 2011, and  
15 Luca remained under defendants’ care continuously through December 29, 2011.

16 7.

17 Legacy was negligent in one or more of the following respects:

- 18 a. In failing to deliver Luca when delivery was indicated;
- 19 b. In failing to deliver Luca by c-section when c-section delivery was  
20 indicated;
- 21 c. In failing to provide resuscitation to Luca when resuscitation was  
22 indicated;
- 23 d. In failing to provide adequate education and training to defendants’  
24 midwives and nurses who attended to Amy Benton and Luca in  
25 recognition and treatment of high risk pregnancy and obstetric  
26 complications, accepted indications for delivery and c-section  
delivery, proper management of prenatal and intrapartum care and  
labor and delivery, proper fetal heart rate monitoring and assessment  
and proper newborn resuscitation;
- e. In allowing midwives and nurses to manage Amy Benton’s prenatal

1 and intrapartum care and her labor and delivery without supervision  
2 by and consultation with an obstetric physician when such  
supervision and consultation was indicated;

3 f. In failing to monitor Luca's fetal heart rate with continuous electronic  
4 fetal heart rate monitoring when such monitoring was indicated;

5 g. In failing to implement and require defendants' midwives and nurses  
6 providing obstetric care to comply with adequate policies and  
7 procedures for proper management of prenatal and intrapartum care  
8 and labor and delivery, identification of high risk obstetric patients,  
proper management of obstetric complications, proper fetal heart rate  
9 monitoring and assessment, indications for delivery and c-section  
10 delivery, proper newborn resuscitation and indications for  
11 supervision by and consultation with an obstetric physician;

12 h. In misrepresenting to Matthew Marino and Amy Benton the  
13 procedure, alternatives and risks of midwives and nurses managing  
14 Amy Benton's prenatal and intrapartum care and her labor and  
15 delivery without supervision by and consultation with an obstetric  
16 physician in the following respects: defendant represented to  
17 Matthew Marino and Amy Benton that defendants' midwifery care  
18 of Amy Benton would be safe because Amy Benton's prenatal care  
19 and her labor and delivery would be managed not just by midwives  
20 but by a team comprised of obstetric physicians and midwives and  
21 the obstetricians would oversee the midwifery care when defendant  
22 knew such representations were false, when no such team  
23 management and obstetrician oversight were provided and defendant  
24 knew that, without obstetric oversight, there was increased risk of  
25 harm;

26 i. In misrepresenting to Matthew Marino and Amy Benton the  
procedure, alternatives and risks of attempting to monitor Luca's fetal  
heart rate audibly and intermittently instead of with continuous  
electronic fetal heart rate monitoring in the following respects:  
defendant represented to Matthew Marino and Amy Benton that  
monitoring Luca's fetal heart rate audibly and intermittently was as  
safe and effective as continuous electronic monitoring when  
defendant knew that those representations were false and that  
intermittent, audible monitoring carried increased risk of fetal heart  
rate abnormalities and deterioration going unnoticed; and

j. In misrepresenting to Matthew Marino and Amy Benton the  
procedure, alternatives and risks of attempting to perform a water  
birth in the following respects: defendant represented to Matthew  
Marino and Amy Benton that water birth is safe and efficacious, that  
water birth carries less risk of death or complications for the baby  
than a traditional vaginal birth and that Amy Benton was a good  
candidate for water birth when defendant knew that those  
representations were false and misleading, when defendant knew that  
since 2004, the American Academy of Pediatrics (AAP) had declared

1 water birth unsafe and unreasonably dangerous, when defendant  
2 knew that since 2004, AAP had declared that water birth should not  
3 be conducted in any hospital in the United States except as an  
4 experimental procedure and as part of a randomized controlled  
5 clinical trial, when defendant knew that as of June 20, 2011, the  
6 American College of Obstetricians and Gynecologists (ACOG) had  
7 declared that there is insufficient evidence that water birth is a safe  
8 and appropriate birthing method and defendant never at any time  
9 while Amy Benton was under defendants' care disclosed the  
10 foregoing facts to Matthew Marino or Amy Benton.

11 8.

12 Legacy Emanuel Hospital & Health Center was negligent in one or more of the following  
13 respects:

- 14 a. In failing to deliver Luca when delivery was indicated;
- 15 b. In failing to deliver Luca by c-section when c-section delivery was  
16 indicated;
- 17 c. In failing to provide resuscitation to Luca when resuscitation was  
18 indicated;
- 19 d. In failing to provide adequate education and training to defendants'  
20 midwives and nurses who attended to Amy Benton and Luca in  
21 recognition and treatment of high risk pregnancy and obstetric  
22 complications, accepted indications for delivery and c-section  
23 delivery, proper management of prenatal and intrapartum care and  
24 labor and delivery, proper fetal heart rate monitoring and assessment  
25 and proper newborn resuscitation;
- 26 e. In allowing midwives and nurses to manage Amy Benton's prenatal  
and intrapartum care and her labor and delivery without supervision  
by and consultation with an obstetric physician when such  
supervision and consultation was indicated;
- f. In failing to monitor Luca's fetal heart rate with continuous electronic  
fetal heart rate monitoring when such monitoring was indicated;
- g. In failing to implement and require defendants' midwives and nurses  
providing obstetric care to comply with adequate policies and  
procedures for proper management of prenatal and intrapartum care  
and labor and delivery, identification of high risk obstetric patients,  
proper management of obstetric complications, proper fetal heart rate  
monitoring and assessment, indications for delivery and c-section  
delivery, proper newborn resuscitation and indications for  
supervision by and consultation with an obstetric physician;
- h. In misrepresenting to Matthew Marino and Amy Benton the

1 procedure, alternatives and risks of midwives and nurses managing  
2 Amy Benton's prenatal and intrapartum care and her labor and  
3 delivery without supervision by and consultation with an obstetric  
4 physician in the following respects: defendant represented to  
5 Matthew Marino and Amy Benton that defendants' midwifery care  
6 of Amy Benton would be safe because Amy Benton's prenatal care  
7 and her labor and delivery would be managed not just by midwives  
8 but by a team comprised of obstetric physicians and midwives and  
9 the obstetricians would oversee the midwifery care when defendant  
10 knew such representations were false, when no such team  
11 management and obstetrician oversight were provided and defendant  
12 knew that, without obstetric oversight, there was increased risk of  
13 harm;

14 i. In misrepresenting to Matthew Marino and Amy Benton the  
15 procedure, alternatives and risks of attempting to monitor Luca's fetal  
16 heart rate audibly and intermittently instead of with continuous  
17 electronic fetal heart rate monitoring in the following respects:  
18 defendant represented to Matthew Marino and Amy Benton that  
19 monitoring Luca's fetal heart rate audibly and intermittently was as  
20 safe and effective as continuous electronic monitoring when  
21 defendant knew that those representations were false and that  
22 intermittent, audible monitoring carried increased risk of fetal heart  
23 rate abnormalities and deterioration going unnoticed; and

24 j. In misrepresenting to Matthew Marino and Amy Benton the  
25 procedure, alternatives and risks of attempting to perform a water  
26 birth in the following respects: defendant represented to Matthew  
Marino and Amy Benton that water birth is safe and efficacious, that  
water birth carries less risk of death or complications for the baby  
than a traditional vaginal birth and that Amy Benton was a good  
candidate for water birth when defendant knew that those  
representations were false and misleading, when defendant knew that  
since 2004, the American Academy of Pediatrics (AAP) had declared  
water birth unsafe and unreasonably dangerous, when defendant  
knew that since 2004, AAP had declared that water birth should not  
be conducted in any hospital in the United States except as an  
experimental procedure and as part of a randomized controlled  
clinical trial, when defendant knew that as of June 20, 2011, the  
American College of Obstetricians and Gynecologists (ACOG) had  
declared that there is insufficient evidence that water birth is a safe  
and appropriate birthing method and defendant never at any time  
while Amy Benton was under defendants' care disclosed the  
foregoing facts to Matthew Marino or Amy Benton.

9.

LHSIC was negligent in one or more of the following respects:

a. In failing to deliver Luca when delivery was indicated;

- 1           b.     In failing to deliver Luca by c-section when c-section delivery was  
2                     indicated;
- 3           c.     In failing to provide resuscitation to Luca when resuscitation was  
4                     indicated;
- 5           d.     In failing to provide adequate education and training to defendants’  
6                     midwives and nurses who attended to Amy Benton and Luca in  
7                     recognition and treatment of high risk pregnancy and obstetric  
8                     complications, accepted indications for delivery and c-section  
9                     delivery, proper management of prenatal and intrapartum care and  
10                    labor and delivery, proper fetal heart rate monitoring and assessment  
11                    and proper newborn resuscitation;
- 12          e.     In allowing midwives and nurses to manage Amy Benton’s prenatal  
13                     and intrapartum care and her labor and delivery without supervision  
14                     by and consultation with an obstetric physician when such  
15                     supervision and consultation was indicated;
- 16          f.     In failing to monitor Luca’s fetal heart rate with continuous electronic  
17                     fetal heart rate monitoring when such monitoring was indicated;
- 18          g.     In failing to implement and require defendants’ midwives and nurses  
19                     providing obstetric care to comply with adequate policies and  
20                     procedures for proper management of prenatal and intrapartum care  
21                     and labor and delivery, identification of high risk obstetric patients,  
22                     proper management of obstetric complications, proper fetal heart rate  
23                     monitoring and assessment, indications for delivery and c-section  
24                     delivery, proper newborn resuscitation and indications for  
25                     supervision by and consultation with an obstetric physician;
- 26          h.     In misrepresenting to Matthew Marino and Amy Benton the  
                  procedure, alternatives and risks of midwives and nurses managing  
                  Amy Benton’s prenatal and intrapartum care and her labor and  
                  delivery without supervision by and consultation with an obstetric  
                  physician in the following respects: defendant represented to  
                  Matthew Marino and Amy Benton that defendants’ midwifery care  
                  of Amy Benton would be safe because Amy Benton’s prenatal care  
                  and her labor and delivery would be managed not just by midwives  
                  but by a team comprised of obstetric physicians and midwives and  
                  the obstetricians would oversee the midwifery care when defendant  
                  knew such representations were false, when no such team  
                  management and obstetrician oversight were provided and defendant  
                  knew that, without obstetric oversight, there was increased risk of  
                  harm;
- i.     In misrepresenting to Matthew Marino and Amy Benton the  
                  procedure, alternatives and risks of attempting to monitor Luca’s fetal  
                  heart rate audibly and intermittently instead of with continuous  
                  electronic fetal heart rate monitoring in the following respects:  
                  defendant represented to Matthew Marino and Amy Benton that

1 monitoring Luca's fetal heart rate audibly and intermittently was as  
2 safe and effective as continuous electronic monitoring when  
3 defendant knew that those representations were false and that  
intermittent, audible monitoring carried increased risk of fetal heart  
rate abnormalities and deterioration going unnoticed; and

4 j. In misrepresenting to Matthew Marino and Amy Benton the  
5 procedure, alternatives and risks of attempting to perform a water  
6 birth in the following respects: defendant represented to Matthew  
7 Marino and Amy Benton that water birth is safe and efficacious, that  
8 water birth carries less risk of death or complications for the baby  
9 than a traditional vaginal birth and that Amy Benton was a good  
10 candidate for water birth when defendant knew that those  
11 representations were false and misleading, when defendant knew that  
12 since 2004, the American Academy of Pediatrics (AAP) had declared  
13 water birth unsafe and unreasonably dangerous, when defendant  
14 knew that since 2004, AAP had declared that water birth should not  
15 be conducted in any hospital in the United States except as an  
16 experimental procedure and as part of a randomized controlled  
17 clinical trial, when defendant knew that as of June 20, 2011, the  
18 American College of Obstetricians and Gynecologists (ACOG) had  
19 declared that there is insufficient evidence that water birth is a safe  
20 and appropriate birthing method and defendant never at any time  
21 while Amy Benton was under defendants' care disclosed the  
22 foregoing facts to Matthew Marino or Amy Benton.

14 10.

15 Legacy did not obtain Amy Benton's and Matthew Marino's informed consent to treatment  
16 in that Legacy did not explain to Amy Benton and Matthew Marino the procedure, alternatives and  
17 risks of midwives and nurses managing Amy Benton's prenatal and intrapartum care and her labor  
18 and delivery without supervision by and consultation with an obstetric physician, of attempting to  
19 monitor Luca's fetal heart rate audibly and intermittently instead of with continuous electronic fetal  
20 heart rate monitoring and of attempting to perform a water birth.

21 11.

22 Legacy Emanuel Hospital & Health Center did not obtain Amy Benton's and Matthew  
23 Marino's informed consent to treatment in that Legacy Emanuel Hospital & Health Center did not  
24 explain to Amy Benton and Matthew Marino the procedure, alternatives and risks of midwives and  
25 nurses managing Amy Benton's prenatal and intrapartum care and her labor and delivery without  
26 supervision by and consultation with an obstetric physician, of attempting to monitor Luca's fetal

1 heart rate audibly and intermittently instead of with continuous electronic fetal heart rate monitoring  
2 and of attempting to perform a water birth.

3 12.

4 LHSIC did not obtain Amy Benton's and Matthew Marino's informed consent to treatment  
5 in that LHSIC did not explain to Amy Benton and Matthew Marino the procedure, alternatives and  
6 risks of midwives and nurses managing Amy Benton's prenatal and intrapartum care and her labor  
7 and delivery without supervision by and consultation with an obstetric physician, of attempting to  
8 monitor Luca's fetal heart rate audibly and intermittently instead of with continuous electronic fetal  
9 heart rate monitoring and of attempting to perform a water birth.

10 13.

11 As a result of defendants' negligence and their failure to obtain informed consent, Luca's  
12 delivery was unreasonably delayed and he did not receive timely and appropriate resuscitation which  
13 resulted in Luca suffering catastrophic, permanent and irreversible brain injury, cerebral palsy and  
14 permanent and irreversible physical and emotional pain, suffering, impairment and disability, all to  
15 plaintiffs' non-economic damage in the sum of \$10,000,000.

16 14.

17 As a further result of defendants' negligence and their failure to obtain informed consent,  
18 plaintiffs have incurred medical expenses for Luca's evaluation, care and treatment and plaintiffs  
19 will incur future medical, therapeutic and rehabilitative expenses for Luca, to plaintiffs' economic  
20 damage in the sum of \$22,933,640.

21 15.

22 As a further result of defendants' negligence and their failure to obtain informed consent,  
23 Luca has suffered loss of future hearing capacity, to plaintiffs' damage in the sum of \$2,974,735.

24 16.

25 Matthew Marino and Amy Benton bring this action to recover the damages alleged in  
26 paragraphs 13-15 and consent to include in this action all damages which will reasonably and fairly



1 compensate for the doctor, hospital and medical expenses caused by the negligence and injuries  
2 alleged herein.

3 SECOND CLAIM FOR RELIEF

4 (Injunctive Relief)

5 17.

6 Plaintiffs re-allege paragraphs 1-16.

7 18.

8 In 2004, AAP declared that water birth is so dangerous it should not be performed in any  
9 hospital in the United States except as an experimental procedure and as part of a randomized  
10 controlled clinical trial with the patient's informed consent to participate in such an experiment and  
11 clinical trial.

12 19.

13 By 2005, ACOG declared that there is insufficient evidence to show that water birth is safe  
14 and appropriate.

15 20.

16 In April, 2014, AGOG and AAP issued a joint statement reiterating that the safety and  
17 efficacy of water birth has not be established, that water birth has been associated with serious  
18 adverse effects, including death, in the newborn and that therefore water birth should be considered  
19 experimental only and should not be performed in any U.S. hospital except as part of a randomized  
20 controlled clinical trial and only with the patient's informed consent to participate in such an  
21 experiment and clinical trial.

22 21.

23 Despite defendants' knowledge of the foregoing facts and recommendations and warnings  
24 of AAP and ACOG, defendants continue to advertise and perform water birth at defendants'  
25 hospitals in Oregon. Defendants' advertising represents water birth as a safe and "recommended"  
26 procedure which "offers moms-to-be the best of both worlds" and states that the "known benefits

1 of water birth include: creates a gentler welcome for baby as water births are known to speed up  
2 labor, promote relaxation, conserve energy and provides significant pain relief [and] reduces blood  
3 pressure, caesarian rates, the need for drugs and interventions and perineal trauma and eliminates  
4 episiotomies.”

5 22.

6 Defendants’ advertising is false and materially misleading in several respects. First, water  
7 birth is not a “safe” and “recommended” procedure; it is, in fact a procedure considered so unsafe  
8 that ACOG and AAP recommend against its performance in any U.S. hospital except as an  
9 experiment. Second, there are no “known benefits” of water birth, nor have any medical studies or  
10 medical literature demonstrated any benefit to a newborn infant from water birth. Third, defendants’  
11 advertising does not mention or otherwise disclose to the public AAP’s and ACOG’s long-standing  
12 condemnation of the practice of water birth or any of AAP’s and ACOG’s warnings and  
13 recommendations regarding the practice of water birth.

14 23.

15 On information and belief, defendants are offering and performing water birth at defendants’  
16 Oregon hospitals without informing their patients of the known hazards of water birth, without  
17 informing their patients of AAP’s and ACOG’s recommendations and warnings regarding water  
18 birth, defendants are performing water births not as part of an approved randomized controlled  
19 clinical trial and defendants are performing water birth without obtaining the informed consent of  
20 patients to participate in an experimental procedure and a clinical trial.

21 24.

22 Defendants’ advertising and performance of water birth exposes and subjects the public to  
23 unreasonable risk of harm, including serious injury and death and should, therefore be enjoined.

24 WHEREFORE, plaintiffs pray for judgment against defendants and each of them as follows:  
25 for non-economic damage in the sum of \$10,000,000; for economic damage in the sum of  
26 \$25,908,375; and for plaintiffs’ costs and disbursements. Plaintiffs further pray for the following

1 injunctive relief: (1) defendants should be enjoined permanently from performing water birth in  
2 Oregon except as an experimental procedure within the context of an approved randomized,  
3 controlled clinical trial with the patient's informed consent to participate in such an experimental  
4 procedure and clinical trial; and (2) defendants should be enjoined permanently from continuing to  
5 engage in the false and misleading advertising described in paragraphs 21 and 22.

6 DATED: January 14, 2015.

7

8

RICHARD M. ROGERS, P.C.

9

*/s/ Richard M. Rogers*

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By: \_\_\_\_\_  
Richard M. Rogers, OSB #753199  
Trial Attorney for Plaintiffs

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the attached AMENDED COMPLAINT FOR MEDICAL  
3 MALPRACTICE/ PERSONAL INJURY/ INJUNCTIVE RELIEF was served on the following  
4 persons:

5  
6 Robert M. Keating  
7 Keating Jones Hughes, P.C.  
8 One SW Columbia St., Suite 800  
9 Portland, OR 97258  
10 Fax: 503-796-0699

11 Of Attorneys for Defendants Legacy Health and  
12 Legacy Emanuel Hospital & Health Center

13  
14 William G. Earle  
15 David Rothwell Earle & Xochihua  
16 111 SW 5th Ave., Suite 2700  
17 Portland, OR 97204-3650  
18 Fax: 503-222-4428

19 Of Attorneys for Defendant Legacy Health System Insurance Company

20 by MAILING to said attorneys a true and correct copy thereof, placed in a sealed envelope with  
21 postage paid, addressed to said attorneys at the address set forth above, and deposited in the U.S.  
22 Post Office at Portland, Oregon and/or by FAXING to said attorneys a true and correct copy thereof  
23 on January 14, 2015.

24  
25 RICHARD M. ROGERS, P.C.

26 */s/ Richard M. Rogers*

By: \_\_\_\_\_  
Richard M. Rogers, OSB #753199  
Trial Attorney for Plaintiffs