

22CV011664

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2022 SEP 16 20-CVS-11142

NAQAH MAXWELL LAKE, a minor, by
and through his Guardian *ad litem*,
CHRISTOPHER DUGGAN, and
LAUREL BROWNE, individually,

Plaintiffs,

v.

WAKEMED, a North Carolina Non-Profit
Corporation, f/k/a Wake County Hospital
System, Inc., d/b/a WakeMed Health and
Hospital, and d/b/a WakeMed Raleigh
Hospital, WAKEMED SPECIALISTS
GROUP, LLC, a North Carolina Limited
Liability Company, d/b/a WakeMed
Physician Practices, OB-GYN, d/b/a
WakeMed Obstetrics & Gynecology, and
d/b/a WakeMed Maternal Fetal Medicine,
WAKE SPECIALTY PHYSICIANS,
LLC, a North Carolina Limited Liability
Company, d/b/a WakeMed Physician
Practices, OB-GYN, CAROLYN
STEINHAUSER, PA-C, KATHLEEN
JAMESON FOSTER, M.D., ANGELA
BRAWLEY GANTT, M.D. a/k/a
ANGELA GANTT HOLLIDAY; MARILI
UNO WITT, M.D., and DR. TARA
BRENNER, M.D.,

Defendants.

WAKE COUNTY, C.S.C.

BY _____

COMPLAINT

MEDICAL MALPRACTICE

JURY TRIAL DEMANDED

COMPLAINT

COME NOW Plaintiffs, NAQAH MAXWELL LAKE, a minor, by and through his
Guardian ad litem, CHRISTOPHER DUGGAN, and LAUREL BROWNE, individually, by and
through their undersigned counsel, complaining of the Defendants, and hereby allege and state as
follows:

IDENTIFICATION OF PARTIES, JURISDICTION AND VENUE

1. This is a case of medical professional negligence arising out of the medical care and treatment rendered by Defendants to LAUREL BROWNE and her unborn son, minor-Plaintiff NAQAH MAXWELL LAKE, during the prenatal and intrapartum periods.

2. Minor-Plaintiff NAQAH MAXWELL LAKE, the biological child of Plaintiff LAUREL BROWNE, was born on September 17, 2019, and is a minor under the laws of the State of North Carolina. Pursuant to North Carolina Rules Civ. Proc., G.S. § 1A-1, Rule 17, his claims are being brought by and through his Guardian ad litem, CHRISTOPHER DUGGAN.

3. Minor-Plaintiff, NAQAH MAXWELL LAKE (hereinafter “NAQAH” or “Baby NAQAH”), is a citizen and resident of Raleigh, Wake County, North Carolina.

4. Plaintiff, LAUREL BROWNE (hereinafter “LAUREL”), is the mother of NAQAH and a citizen and resident of Raleigh, Wake County, North Carolina.

5. As NAQAH’s Guardian ad litem, CHRISTOPHER DUGGAN seeks to recover for NAQAH’s past and future pain and suffering, both mental and physical, his permanent disabilities, as well as for his medical expenses, lost income, and diminished capacity to labor and earn income from the date of his eighteenth birthday throughout the remainder of his life.

6. As NAQAH’s parent, LAUREL seek to recover for NAQAH’s medical expenses, lost income, and diminished capacity to labor and earn income from the date of his birth until his eighteenth birthday.

7. As an individual Plaintiff, LAUREL seeks to recover her own past and future pain and suffering, both mental and physical, severe emotional distress, her medical expenses, her lost income and other damages she suffered or will suffer as a result of the Defendants’ negligence and/or willful and wanton conduct.

8. Upon information and belief, Defendant WAKEMED, f/k/a Wake County Hospital System, Inc., d/b/a WakeMed Health and Hospital, and d/b/a WakeMed Raleigh Hospital (hereinafter “WAKEMED”), is a non-profit corporation, or other business entity, organized and existing in North Carolina, doing business in North Carolina, and in particular in Wake County, with its principal office in Raleigh, Wake County, North Carolina.

9. At all times relevant to this action Defendant WAKEMED held itself out to the public as a provider of medical care, as being competently staffed, and available to properly care for patients.

10. Defendant WAKEMED is subject to the jurisdiction and venue of this Court by virtue of doing business within Wake County and/or being a joint tortfeasor.

11. Upon information and belief, WAKEMED SPECIALISTS GROUP, LLC, a North Carolina Limited Liability Company, d/b/a WakeMed Physician Practices, OB-GYN, d/b/a WakeMed Obstetrics & Gynecology, and d/b/a WakeMed Maternal Fetal Medicine, (hereinafter “WAKEMED SPECIALISTS”), is a Limited Liability Company or other business entity, organized and existing in North Carolina, doing business in North Carolina, and in particular in Wake County, with its principal office in Raleigh, Wake County, North Carolina.

12. At all times relevant to this action Defendant WAKEMED SPECIALISTS held itself out to the public as a provider of medical care, as being competently staffed and available to properly care for patients.

13. Defendant WAKEMED SPECIALISTS is subject to the jurisdiction and venue of this Court by virtue of doing business within Wake County and/or being a joint tortfeasor.

14. Upon information and belief, WAKE SPECIALTY PHYSICIANS, LLC, a North Carolina Limited Liability Company, d/b/a WakeMed Physician Practices, and d/b/a WakeMed Physician Practices, OB-GYN (hereinafter “WAKE SPECIALTY”), is a Limited Liability

Company or other business entity, organized and existing in North Carolina, doing business in North Carolina, and in particular in Wake County, with its principal office in Raleigh, Wake County, North Carolina.

15. At all times relevant to this action Defendant WAKE SPECIALTY held itself out to the public as a provider of medical care, as being competently staffed, and available to properly care for patients.

16. Defendant WAKE SPECIALTY is subject to the jurisdiction and venue of this Court by virtue of doing business within Wake County and/or being a joint tortfeasor

17. Upon information and belief, Defendant CAROLYN STEINHAUSER, PA-C, (hereinafter "Defendant STEINHAUSER") is a citizen and resident of Wake County, North Carolina and is, and at all times relevant to Plaintiffs' Complaint was, duly licensed with the North Carolina Medical Board as a physician assistant and practicing obstetrics and gynecology.

18. Upon information and belief, Defendant STEINHAUSER was, at all times relevant to Plaintiffs' Complaint, an employee, agent and/or servant of WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY.

19. Defendant STEINHAUSER is subject to the jurisdiction and venue of this Court by virtue of being a resident of Wake County and/or being a joint tortfeasor.

20. As the employer of Defendant STEINHAUSER, Defendants WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY are liable for her acts, errors, or omissions under the doctrine of *Respondeat Superior* and under other agency principles.

21. As the principal of Defendant STEINHAUSER, Defendants WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY are liable for her acts, errors, or omissions as its agent under the doctrine of Apparent Agency and under other theories of agency.

22. Upon information and belief, Defendant KATHLEEN JAMESON FOSTER, M.D., (hereinafter "Defendant FOSTER") is a citizen and resident of Wake County, North Carolina and is, and at all times relevant to Plaintiffs' Complaint was, duly licensed with the North Carolina Medical Board as a medical physician and practicing obstetrics and gynecology.

23. Upon information and belief, Defendant FOSTER was, at all times relevant to Plaintiffs' Complaint, an employee, agent and/or servant of WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY.

24. Defendant FOSTER is subject to the jurisdiction and venue of this Court by virtue of being a resident of Wake County and/or being a joint tortfeasor.

25. As the employer of Defendant FOSTER, Defendants WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY are liable for her acts, errors, or omissions under the doctrine of *Respondeat Superior* and under other agency principles.

26. As the principal of Defendant FOSTER, Defendants WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY are liable for her acts, errors, or omissions as its agent under the doctrine of Apparent Agency and under other theories of agency.

27. Upon information and belief, Defendant ANGELA BRAWLEY GANTT, M.D. a/k/a ANGELA GANTT HOLLIDAY, (hereinafter "Defendant GANTT") is a citizen and resident of Wake County, North Carolina and is, and at all times relevant to Plaintiffs' Complaint was, duly licensed with the North Carolina Medical Board as a medical physician and practicing obstetrics and gynecology.

28. Upon information and belief, Defendant GANTT was, at all times relevant to Plaintiffs' Complaint, an employee, agent and/or servant of WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY.

29. Defendant GANTT is subject to the jurisdiction and venue of this Court by virtue of being a resident of Wake County and/or being a joint tortfeasor.

30. As the employer of Defendant GANTT, Defendants WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY are liable for her acts, errors, or omissions under the doctrine of *Respondeat Superior* and under other agency principles.

31. As the principal of Defendant GANTT, Defendants WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY are liable for her acts, errors, or omissions as its agent under the doctrine of Apparent Agency and under other theories of agency

32. Upon information and belief, Defendant MARILI UNO WITT M.D., (hereinafter “Defendant WITT”) is a citizen and resident of Wake County, North Carolina and is, and at all times relevant to Plaintiffs’ Complaint was, duly licensed with the North Carolina Medical Board as a medical physician and practicing obstetrics and gynecology.

33. Upon information and belief, Defendant WITT was, at all times relevant to Plaintiffs’ Complaint, an employee, agent and/or servant of WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY.

34. Defendant WITT is subject to the jurisdiction and venue of this Court by virtue of being a resident of Wake County and/or being a joint tortfeasor.

35. As the employer of Defendant WITT, Defendants WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY are liable for her acts, errors, or omissions under the doctrine of *Respondeat Superior* and under other agency principles.

36. As the principal of Defendant WITT, Defendants WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY are liable for her acts, errors, or omissions as its agent under the doctrine of Apparent Agency and under other theories of agency.

37. Upon information and belief, Defendant TARA BRENNER, M.D., (hereinafter “Defendant BRENNER”) is a citizen and resident of Durham County, North Carolina and is duly licensed with the North Carolina Medical Board as a medical physician and practices obstetrics and gynecology.

38. Upon information and belief, Defendant BRENNER was, at all times relevant to Plaintiffs’ Complaint, an employee, agent and/or servant of WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY.

39. Defendant BRENNER is subject to the jurisdiction and venue of this Court by virtue of being a joint tortfeasor.

40. As the employer of Defendant BRENNER, Defendants WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY are liable for her acts, errors, or omissions under the doctrine of *Respondeat Superior* and under other agency principles.

41. As the principal of Defendant BRENNER, Defendants WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY are liable for her acts, errors, or omissions as its agent under the doctrine of Apparent Agency and under other theories of agency.

42. Upon information and belief, beginning on or about September 17, 2019, and at all times relevant to this action, Defendant WAKEMED was a provider of medical and/or medically related services operating in North Carolina for the purpose of treating patients for a fee. Said Defendant WAKEMED, at all times relevant to this action, represented and held out to the public in general and to the Plaintiffs, LAUREL and NAQAH, through his *Guardian ad litem*, in particular, that its agents, servants, employees and/or apparent agents were properly trained, appropriately skilled, and adequately supervised and fully capable of performing all obstetric, gynecological, physician assistant, nursing services and/or medical services available at said business in a proper and professional manner and in accordance with the standards of practice among members of the

same health care profession with similar training and experience situated in the same or similar communities at the time of the medical treatment rendered to the Plaintiffs, LAUREL and NAQAH, up to and including September 17, 2019, and at all times relevant to this action. That providing such services would be in keeping with the “Standard of Care.”

43. All references to Defendant WAKEMED shall specifically include, but not be limited to, acts and/or omissions of Defendants STEINHAUSER, FOSTER, GANTT, WITT and BRENNER, nursing staff, physician assistants, nurse practitioners, and/or other staff of WAKEMED, and all staff who were involved in the care and treatment of the Plaintiffs herein during the subject times plead.

44. Upon information and belief, beginning on or about September 17, 2019, and at all times relevant to this action, Defendant WAKEMED SPECIALISTS was a provider of medical or medically related services operating in North Carolina for the purpose of treating patients for a fee. Said Defendant WAKEMED SPECIALISTS, at all times relevant to this action, represented and held out to the public in general and to the Plaintiffs, LAUREL and NAQAH, through his *Guardian ad litem*, in particular, that its agents, servants, employees and/or apparent agents, were properly trained, appropriately skilled, and adequately supervised and fully capable of performing all obstetric, gynecological, physician assistant, medical and/or nursing services available at said business in a proper and professional manner and in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the medical treatment rendered to the Plaintiffs, LAUREL and NAQAH, up to and including September 17, 2019, and at all times relevant to this action. That providing such services would be in keeping with the “Standard of Care.”

45. All references to Defendant WAKEMED SPECIALISTS shall specifically include, but not be limited to, acts and/or omissions of Defendants STEINHAUSER, FOSTER, GANTT,

WITT and BRENNER, nursing staff, physician assistants, nurse practitioners, and/or other staff of WAKEMED SPECIALISTS, and all staff who were involved in the care and treatment of the Plaintiffs herein during the subject admission.

46. Upon information and belief, beginning on or about September 17, 2019, and at all times relevant to this action, Defendant WAKE SPECIALTY was a provider of medical and/or medically related services operating in North Carolina for the purpose of treating patients for a fee. Said Defendant WAKE SPECIALTY, at all times relevant to this action, represented and held out to the public in general and to the Plaintiffs LAUREL and NAQAH, through his *Guardian ad litem*, in particular, that its agents, servants, employees and/or apparent agents were properly trained, appropriately skilled, and adequately supervised and fully capable of performing all obstetric, gynecological, physician assistant, nursing services and/or medical services available at said business in a proper and professional manner and in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the medical treatment rendered to the Plaintiffs, LAUREL and NAQAH, up to and including September 17, 2019, and at all times relevant to this action. That providing such services would be in keeping with the “Standard of Care.”

47. All references to Defendant WAKE SPECIALTY shall specifically include, but not be limited to, acts and/or omissions of Defendants STEINHAUSER, FOSTER, GANTT, WITT and BRENNER, physician assistants, nurse practitioners, and/or nursing staff and other staff of WAKE SPECIALTY, and all staff who were involved in the care and treatment of the Plaintiffs herein during the subject admission.

48. Upon information and belief, beginning on or about September 17, 2019, and at all times relevant to this action, Defendants STEINHAUSER, FOSTER, GANTT, WITT and BRENNER were providers of medical and/or medically related services operating in North Carolina

for the purpose of treating patients for a fee. Said Defendants STEINHAUSER, FOSTER, GANTT, WITT and BRENNER, at all times relevant to this action, represented and held themselves out to the public in general and to the Plaintiffs, LAUREL and NAQAH, through his *Guardian ad litem*, in particular, as properly trained, appropriately skilled, and adequately supervised and fully capable of performing all obstetric, gynecological, physician assistant, nursing services and/or medical services in a proper and professional manner and in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the medical treatment rendered to the Plaintiffs, LAUREL and NAQAH, up to and including September 17, 2019, and at all times relevant to this action. That providing such services would be in keeping with the “Standard of Care.”

FACTUAL ALLEGATIONS

49. The allegations set forth in Paragraphs 1 – 48 are hereby re-alleged and incorporated herein by reference.

50. LAUREL (DOB: March 3, 1985) presented to the Emergency Department (“ED”) at WakeMed Garner Healthplex, on February 15, 2019 with a chief complaint of positive home pregnancy test, lower abdominal pain, nausea, and vomiting times 2 weeks. LAUREL’s medical history included non-insulin dependent diabetes and her Body Mass Index (“BMI”) was 41.3.

51. A transabdominal obstetrical ultrasound on February 16, 2019 confirmed a single live intrauterine pregnancy with a fetal heart rate of 129 beats per minute (bpm). Estimated gestational age was 6 weeks and 6 days by ultrasound with a due date of October 6, 2019.

52. LAUREL presented to the emergency department (ED) at WakeMed Garner Healthplex, on April 4, 2019, at 13 weeks, 4 days gestation, with a chief complaint of right sided pelvic pain. A transabdominal and transvaginal obstetrical ultrasound on that date confirmed a

single live intrauterine pregnancy with a fetal heart rate of 153 bpm. Estimated gestational age was 13 weeks and 4 days by ultrasound. LAUREL's due date remained October 6, 2019.

53. On April 10, 2019, at 14 weeks, 3 days gestation, LAUREL presented to WakeMed Obstetrics & Gynecology-Raleigh for her initial prenatal visit. LAUREL was examined by Defendant STEINHAUSER, who noted a history of pre-existing type 2 diabetes mellitus and a BMI of 41.3. Defendant STEINHAUSER diagnosed LAUREL as a high-risk pregnancy due to her diabetes and obesity. Defendant STEINHAUSER ordered a MFM (maternal-fetal medicine) ultrasound comprehensive anatomy scan that was to be performed at 14 weeks or after. Defendant GANTT concurred with Defendant STEINHAUSER's diagnosis and plan on April 11, 2019, but did not personally examine or observe LAUREL.

54. On May 13, 2019, at 19 weeks, 2 days gestation, LAUREL had a detailed anatomy survey obstetrical ultrasound at WakeMed Maternal Fetal Medicine. The anatomy survey recorded NAQAH's heartrate as 151 bpm and visualized his movement. Fetal Biometry measurements included a OFD of 96% and HC/AC of 88%. No fetal anomalies were visualized on the anatomy survey.

55. On May 17, 2019, at 19 weeks, 5 days gestation, LAUREL returned to WakeMed Obstetrics & Gynecology-Raleigh for follow-up prenatal care at which time she was examined by Defendant STEINHAUSER. LAUREL's BMI was 42.8 on that date and her blood sugars were elevated when checked. Defendant STEINHAUSER counseled LAUREL on her diet and nutrition in light of her diabetes and requested that she return for follow-up in 11 days. Defendant STEINHAUSER also ordered a second ultrasound with MFM on June 10, 2019. Obstetrician Seth Charles Brody, MD concurred with Defendant STEINHAUSER's diagnosis and plan on May 17, 2019, but did not personally examine or observe LAUREL.

56. On May 28, 2019, at 21 weeks, 2 days gestation, LAUREL returned to WakeMed Obstetrics & Gynecology-Raleigh for follow-up prenatal care at which time she was examined by Defendant STEINHAUSER. LAUREL's BMI was 43.0 on that date and her blood sugars were elevated when checked. Defendant STEINHAUSER counseled LAUREL on her diet and nutrition and requested that she return for follow-up in 14 days. Obstetrician Darlene Michelle Esper, MD concurred with Defendant STEINHAUSER's diagnosis and plan on May 28, 2019, but did not personally examine or observe LAUREL.

57. On June 10, 2019, at 23 weeks, 2 days gestation, LAUREL had a MFM Fetal Echocardiography ultrasound ("Echo") at WakeMed Maternal Fetal Medicine. The Echo recorded NAQAH's heartrate as 148 bpm and visualized his movement. Fetal Biometry measurements included a HC/AC of 49% and FL/AC of 82%. No fetal anomalies were visualized on the Echo.

58. Defendant STEINHAUSER acknowledged the Echo report on June 10, 2019.

59. On June 17, 2019, at 24 weeks, 1 day gestation, LAUREL returned to WakeMed Obstetrics & Gynecology-Raleigh for follow-up prenatal care at which time she was examined by Defendant STEINHAUSER. LAUREL's BMI was 43.2 on that date and her A1C result at 5.8. Defendant STEINHAUSER prescribed Metformin and requested that she return for follow-up in 14 days. Defendant STEINHAUSER also ordered a third MFM ultrasound on July 15, 2019. Dr. Esper concurred with Defendant STEINHAUSER's diagnosis and plan on June 18, 2019, but did not personally examine or observe LAUREL.

60. On July 15, 2019, at 28 weeks, 1 day gestation, LAUREL had a MFM transabdominal ultrasound at WakeMed Maternal Fetal Medicine. The transabdominal ultrasound recorded NAQAH's heartrate as 146 bpm and visualized his movement. Fetal Biometry measurements included an AC of 86%. No fetal anomalies were visualized on the transabdominal ultrasound.

61. On July 15, 2019, LAUREL also returned to WakeMed Obstetrics & Gynecology-Raleigh for follow-up prenatal care at which time she was examined by Defendant STEINHAUSER. LAUREL's BMI was 44.4 on that date and her A1C blood result was 5.9. Defendant STEINHAUSER noted that LAUREL had been taking her Metformin and noted that antenatal testing would start on August 12, 2019. Defendant STEINHAUSER requested that LAUREL return in 2 weeks and noted that "no physician was involved in the care of Laurel Browne at this time."

62. LAUREL presented to the WakeMed Raleigh Campus, OB Emergency Department on July 22, 2019, at 29 weeks, 1 day gestation, with a chief complaint of abdominal pain that radiated from top of her abdomen to her groin. A bedside ultrasound was provided by Stacy Jones, NP, captured a normal FHR baseline of 135 bpm, moderate variability, and present accelerations 15 x 15. NP Jones also interpreted a fetal non-stress test ("NST") as reactive and appropriate for gestational age. NP Jones discharged LAUREL with outpatient follow-up as regularly scheduled.

63. On July 31, 2019, at 30 weeks, 3 days gestation, LAUREL returned to WakeMed Obstetrics & Gynecology-Raleigh for follow-up prenatal care at which time she was examined by Megan Elizabeth Miller, NP. LAUREL's BMI was 45.09 on that date, her blood sugars were elevated when checked and her A1C result was 5.9. NP Miller increased LAUREL's Metformin dose, discussed beginning insulin and requested that she return for follow-up in 14 days. Defendant WITT signed off on NP Miller's diagnosis and plan on July 31, 2019, but did not personally examine or observe LAUREL.

64. LAUREL presented to the WakeMed Raleigh Campus, OB Emergency Department, on August 12, 2019, at 32 weeks, 1 day gestation. NP Jones examined LAUREL to rule out preterm labor and noted her BMI as 45.4. NP Jones interpreted a NST as reactive and charted FHR of 150 bpm, moderate variability, early decelerations, and accelerations 15 x 15. NP Jones discharged

LAUREL home and charted clinical impression as: pre-existing type 2 diabetes mellitus during pregnancy in second trimester; 32 weeks gestation of pregnancy; irregular uterine contractions; and episode of dizziness.

65. On August 13, 2019, at 32 weeks, 2 days gestation, LAUREL presented once again to WakeMed Obstetrics & Gynecology-Raleigh for follow-up prenatal visit, at which time she was examined by NP Miller. LAUREL's BMI was 45.99 on that date, her blood sugars were elevated when checked and she was counseled on her diet. NP Miller discussed beginning insulin and requested that she return for follow-up in 10 days. Defendant FOSTER signed off on NP Miller's diagnosis and plan on August 13, 2019, but did not personally examine or observe LAUREL.

66. On August 20, 2019, at 33 weeks, 2 days gestation, LAUREL presented to WakeMed Maternal Fetal Medicine – Raleigh Medical Park, for a NST. James Merritt Edwards, M.D. interpreted the NST as reactive with FHR baseline as 150 BPM, moderate variability, early decelerations, accelerations 15 x 15, and irregular contractions.

67. On August 25, 2019, at 34 weeks gestation, LAUREL presented to the WakeMed Raleigh Campus, OB emergency department, with complaints of leaking of fluid and lower abdominal pain. LAUREL's BMI was 45.9. LAUREL's NST demonstrated a FHR baseline of 130 bpm, moderate variability, accelerations 15 x 15, absent decelerations, and no contractions. Resident Katelyn J Rittenhouse, MD interpreted the NST as reactive. Defendant WITT's impression was false labor and LAUREL was discharged home.

68. On August 27, 2019, at 34 weeks, 2 days gestation, LAUREL presented to WakeMed Maternal Fetal Medicine-Raleigh Medical Park for a NST. Obstetrician Carmen Je Vonne Beamon, MD's interpretation of the NST was reactive, with a FHR baseline of 135 bpm, moderate variability, and accelerations 15 x 15.

69. On August 28, 2019, at 34 weeks, 3 days gestation, LAUREL presented once again to WakeMed Obstetrics & Gynecology-Raleigh for follow-up prenatal visit, at which time she was examined by Marrilyn Diane McGuire, NP. LAUREL's BMI was 46.86 on that date, her blood sugars were elevated when checked and her A1C was 5.9. NP McGuire discussed beginning insulin and stated that LAUREL was "Considering insulin next visit." NP McGuire requested that LAUREL return for follow-up in 7 days. Obstetrician Coryell Jade Perez, MD signed off on NP McGuire's diagnosis and plan on August 29, 2019, but did not personally examine or observe LAUREL.

70. On September 3, 2019, at 35 weeks, 2 days gestation, LAUREL presented to WakeMed Maternal Fetal Medicine-Raleigh Medical Park for a NST. Dr. Edwards interpreted the NST as reactive, with a FHR baseline as 145 BPM, moderate variability, accelerations 15 x 15, and no decelerations.

71. On September 4, 2019, at 35 weeks, 3 days gestation, LAUREL presented once again to WakeMed Obstetrics & Gynecology-Raleigh for follow-up prenatal visit, at which time she was examined by Defendant STEINHAUSER. LAUREL's BMI was 46.9 on that date, her fundal height was measured at 37 cm, and her blood sugars were elevated. Defendant STEINHAUSER documented that she would plan to call LAUREL "today to discuss further starting insulin...". Defendant STEINHAUSER requested that LAUREL return for follow-up in 7 days. Defendant FOSTER signed off on Defendant STEINHAUSER's diagnosis and plan on September 5, 2019, but did not personally examine or observe LAUREL.

72. On September 5, 2019, at 35 weeks, 4 days gestation, LAUREL presented to the WakeMed Raleigh Campus Emergency Department with complaints of abdominal pain, questionable leaking of fluid and reports of decreased fetal movement. Her BMI was listed as 46.9. Obstetrician Ritu Raj Sandhu, M.D. interpreted the NST as reactive with FHR baseline at 140 BPM,

moderate variability, accelerations 15 x 15, and variable decelerations. Dr. Sandhu stated there was no rupture of membranes upon exam and no evidence of labor, and discharged LAUREL home.

73. On September 9, 2019, at 36 weeks, 1 day gestation, LAUREL had a MFM transabdominal ultrasound at WakeMed Maternal Fetal Medicine. The transabdominal ultrasound recorded NAQAH's heartrate as 151 bpm, visualized his movement and noted normal amniotic fluid index (AFI). Fetal Biometry measurements included a AC of >99% and EFW of 6lbs 15oz. No fetal anomalies were visualized on the transabdominal ultrasound. Biophysical Profile scored 8/8. Maternal Fetal Medicine Specialist Dr. Bassam Husam-Rimawi, MD noted in the Report Summary that "AC is >99%tile."

74. Dr. Husam-Rimawi's report was acknowledged by Defendant STEINHAUSER on September 9, 2019.

75. On September 11, 2019, at 36 weeks, 3 days gestation, LAUREL presented once again to WakeMed Obstetrics & Gynecology-Raleigh for follow-up prenatal visit, at which time she was examined by Defendant STEINHAUSER. LAUREL's BMI was 47.1 on that date, her fundal height was measured at 37 cm, and her blood sugars were elevated. Defendant STEINHAUSER documented that LAUREL was willing to increase her Metformin dose but refused insulin. LAUREL stated that she was "actually very worried about fetal size." Defendant STEINHAUSER documented the EFW of 70% and the AC >99% from the ultrasound of September 9, 2019 in her Problem List, but did not document discussing these results with LAUREL. Defendant STEINHAUSER requested that LAUREL return for follow-up in 7 days. Defendant FOSTER signed off on Defendant STEINHAUSER's diagnosis and plan on September 12, 2019, but did not personally examine or observe LAUREL.

76. On September 12, 2019, at 36 weeks, 4 days gestation, LAUREL presented to WakeMed Maternal Fetal Medicine-Raleigh Medical Park, for NST. Dr. Beamon interpreted the

NST as reactive, with a FHR baseline at 145 BPM, moderate variability, accelerations 15 x 15, and variable decelerations.

77. On September 13, 2019, at 36 weeks, 5 days gestation, LAUREL presented to the WakeMed Raleigh Campus OB, Emergency Department, with complaints of back/pelvic pain, intermittent with contractions. Resident Joshua Clark, M.D., noted no evidence of active preterm labor or preterm rupture of membranes and diagnosed LAUREL with false labor. NST was read as reactive, with good variability, greater than two accelerations and no decelerations. Dr. Perez noted that he reviewed the notes and documentation for LAUREL and agreed with Dr. Clark's plan.

78. On September 16, 2019, at 37 weeks, 1 day gestation, LAUREL was seen at WAKEMED Maternal Fetal Medicine Center- Raleigh for a NST. Dr. Edwards interpreted the NST as reactive, with a FHR baseline at 155 BPM, moderate variability, accelerations 15 x 15, and variable decelerations.

79. On September 17, 2019 at 8:32 AM, at 37 weeks, 2 days gestation, LAUREL presented to WakeMed Raleigh Campus Hospital's emergency department complaining of contractions and rupture of membranes since 6:30 AM that morning. While in the Emergency Room, Dr. Perez was listed as LAUREL's admitting and attending provider.

80. Resident Joshua Clark, M.D. examined LAUREL in the emergency department and noted contractions every 2-3 minutes and a BMI of 46.3. A sterile vaginal exam (SVE) documented that LAUREL was 4cm dilated, 50% effaced, and that Baby NAQAH was at -1 station.

81. Continuous EFHM began around 8:40 AM on September 17, 2019.

82. At 9:25 AM, Dr. Clark interpreted LAUREL's NST as reactive, with FHR baseline of 150 bpm, moderate variability, 15X15 accelerations and no decelerations.

83. In his Provider Note, Dr. Clark documented the September 9, 2019 ultrasound findings of AC >99% and EFW 70%. Dr. Clark's plan was to admit LAUREL for labor, which was signed off by Dr. Sandhu.

84. At 9:45 AM, LAUREL was admitted as an obstetrical inpatient at WakeMed Raleigh Campus Hospital. Defendant GANTT was now listed as LAUREL's attending provider.

85. At 10:30 AM, SVE demonstrated that LAUREL was 7 cm dilated, 80% effaced and that Baby NAQAH was at -1 station.

86. At 12:00 PM, SVE demonstrated that LAUREL was RIM, and 100% effaced.

87. At 12:48 PM, LAUREL was in full cervical dilation.

88. At 12:50 PM, LAUREL began pushing.

89. At 1:04 PM, a shoulder dystocia was recognized.

90. Defendant BRENNER prepared a Vaginal Delivery Note, wherein she stated, "[a]fter delivery of the fetal head, the anterior shoulder did not deliver by applying standard downward and neutral axis motion applied to vertex with good maternal effort noted. The diagnosis of shoulder dystocia was made. Help was called for and maneuvers initiated as documented below."

91. Defendant BRENNER also stated in her Vaginal Delivery Note, "[t]he patient was placed in McRoberts maneuver. The fetal head restituted LOA. The fetal vertex was rotated and the anterior shoulder remained impacted. The axilla of the posterior (left) arm was grasped and downward traction was applied without success. The posterior arm was attempted to be swept out by applying pressure from behind the elbow without success. At this time, a second provider attempted delivery. Again, the axilla was grasped and brought downward. The posterior arm was then swept out. The anterior shoulder subsequently delivered followed by the remainder of the body. The cord was clamped and cut. The infant was handed to the pediatric team. A cord segment was obtained."

92. Defendant WITT added an Attending Note to Defendant BRENNER's Vaginal Delivery Note, wherein she stated that she agreed with the documentation by Defendant BRENNER and stated that, "[s]houlder dystocia was anticipated as patient pushed with good effort to a large crown and progress thereafter was very slow. Concern for shoulder dystocia was recognized early and patient was repositioned at the edge of the bed. Patient counseled about our concerns for impending dystocia. Appropriate resources were called for including additional RN as well as the NICU team prior to delivery of the head."

93. Defendant GANTT documented in her discharge summary note that "[a]fter delivery of the fetal head, the anterior right shoulder did not delivery [sic] with standard downward motion and the diagnosis of a shoulder dystocia was made. Help was called for and the following maneuvers were performed: McRoberts maneuver, fetal vertex rotation, downward traction of the axilla of the posterior left arm, and delivery of the left posterior arm."

94. Baby NAQAH was born at 1:06 PM on September 17, 2019 by spontaneous vaginal delivery. Defendant WITT is listed as the deliverer on the Discharge Summary Note and labor was noted to be complicated by shoulder dystocia.

95. Baby NAQAH weighed 9 lb, 0.6 oz. (4100 g) at birth and was assigned Apgar scores of 0 at 1 minute and 0 at 5 minutes.

96. Defendant GANTT also documented in her discharge summary that "[t]otal time between head and newborn delivery was approximately 120 seconds. Apgars were 0,0,5,7. Resuscitation including PPV, chest compressions, and intubation were performed by the NICU team in the delivery room. The patient and family were counseled extensively about the events of the delivery. A primary cesarean delivery should be offered for future pregnancies."

97. Defendant GANTT also documented in her discharge summary that "[a]t the time of [LAUREL's] discharge, [Baby NAQAH] remained in the NICU, extubated and weaned to room

air. [Baby NAQAH] was noted to have persistent left brachial plexus injury noted (no DTR or grasp) with no fractures on x-ray.”

98. Baby NAQAH was admitted to the Neonatal ICU (NICU) at WakeMed Raleigh Campus Hospital at 1:06 PM on September 17, 2019. Neonatologist Tara Kopp Bastek, MD was his admitting and attending provider.

99. On September 19, 2019, Defendant WITT prepared a Progress Note, where she stated that she spoke with LAUREL about Baby NAQAH’s delivery, and wrote, “had questions about why an US was not performed to assess the weight of the infant as given the large size, he reports that they would have chosen a CS.” Defendant WITT also wrote in her Progress Note, “I did review with the patient and FOB to ensure that in subsequent pregnancies, they should alert their prenatal care providers to the fact that she did have a severe shoulder dystocia with this pregnancy and to discuss the option of CS for future delivery.”

100. At 9 days of life, Baby NAQAH’s left arm remained flaccid and left brachial plexus injury was noted.

101. Baby NAQAH remained in the NICU until September 26, 2019. During his admission to the NICU, he was diagnosed with the following conditions, among others: left brachial palsy in the neonate and respiratory depression of the newborn.

102. On March 12, 2020, NAQAH underwent surgery for his left brachial plexus injury, including surgical repair and resection of a neuroma by Dr. Alexander Allori, M.D.

103. NAQAH currently suffers a permanent left brachial injury and Erb’s Palsy that impairs his ability to use his left arm and has left him with permanent and severe disfigurement and disability.

ALLEGATIONS OF NEGLIGENCE

104. Paragraphs 1 – 103 are hereby re-alleged and fully incorporated herein.

105. Upon information and belief, if Plaintiffs had received appropriate treatment as considered to be the standard of care, the damages suffered by Plaintiffs were preventable.

106. As a direct and proximate result of the negligence and/or breach of duties of Defendants, Plaintiffs experienced physical pain, mental suffering, severe emotional distress, economic loss, and permanent injuries, including but not limited to brachial plexus injury and disfigurement to NAQAH. NAQAH is permanently disabled from performing his usual activities and has suffered a resulting loss of enjoyment of life as set forth below.

107. As a further direct and proximate result of the negligence and/or breach of duties of the Defendants, Plaintiffs have become obligated for the payment of sums of money for related medical care and treatment.

RES IPSA LOQUITUR

108. The allegations of paragraphs 1-107 are hereby re-alleged and incorporated herein by reference.

109. Pursuant to N.C.G.S. 1A-i, Rule 9(j)(3) of the North Carolina Rules of Civil Procedure, Plaintiffs allege that the facts establishing negligence under the existing common-law doctrine of *res ipsa loquitur*, as to the medical attention given to the Plaintiffs by the Defendants clearly and without question did not comply with the MINIMAL standard of care for practicing physicians in the State of North Carolina.

110. The negligent acts and/or omissions by Defendants, as alleged herein, were the direct and proximate cause of damage suffered by the Plaintiffs, LAUREL and NAQAH, a minor, through his *Guardian ad litem*, CHRISTOPHER DUGGAN.

111. As a direct and proximate result of the aforesaid acts of negligence of Defendants, Minor-Plaintiff, NAQAH, has experienced physical and mental pain and suffering and disability and permanent injuries, including but not limited to brachial plexus injury. He has received and

will continue to receive medical care and treatment and is disabled from performing his usual activities. Therefore, he has suffered a loss of enjoyment of life. Plaintiffs have incurred medical expenses for the treatment of his injuries and have been damaged in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00).

NEGLIGENCE OF DEFENDANTS

112. The allegations set forth in Paragraphs 1-111 are hereby re-alleged and fully incorporated herein by reference.

Allegations of Negligence as to Defendants **STEINHAUSER, FOSTER, WAKEMED, WAKEMED SPECIALISTS,** **AND WAKE SPECIALTY**

113. At all times relevant to the Plaintiffs' Complaint, there was a physician assistant-patient and/or doctor-patient relationship between LAUREL and her unborn son, NAQAH, and the physician assistants and/or physicians who were providing care to them at Defendants WAKEMED, WAKEMED SPECIALISTS and WAKE SPECIALTY.

114. Defendants, STEINHAUSER, FOSTER, and all nurses and assistants, were agents, servants, employees and/or apparent agents of the Defendants WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY, and owed a duty to Plaintiffs, individually and through that agency, servitude, employment and/or apparent agency, along with WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY, individually, to provide medical care and treatment which complied with the applicable standard of care, to use their best judgment, and to provide reasonable care and diligence in the application of their knowledge and skill in their care and treatment of the Plaintiffs.

115. Defendants STEINHAUSER, FOSTER, all nurses and assistants, individually and through their agency, servitude, employment and/or apparent agency with WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY, individually, breached their duty to

utilize their best judgment in the care and treatment of the Plaintiffs and/or breached their duty to use reasonable care and diligence in the application of their knowledge and skill, and/or breached their duty to provide healthcare in accordance with the standards of practice among members of the same healthcare profession with similar training and experience situated in the same or similar communities at the time the healthcare was rendered.

116. Defendants STEINHAUSER, FOSTER, all nurses and assistants, individually and through their agency, servitude, employment and/or apparent agency with WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY, individually, committed certain acts, errors and omissions which constitute deviations from the applicable standard of care, and/or failed to use their best judgment in the application of their skill and knowledge, and/or failed to use reasonable care and diligence, which acts or omissions were below the applicable standard of care and which constitute medical and/or nursing negligence. These acts, errors and omissions include, but are not limited to, the following:

- a. Did not properly assess LAUREL and baby NAQAH, in utero;
- b. Did not accurately assess the well-being of baby NAQAH, in utero;
- c. Did not provide proper treatment of LAUREL's diabetes during her pregnancy;
- d. Did not transition the primary prenatal care provider of LAUREL from physician assistant to an obstetrician to provide care for her diabetes and high risk pregnancy;
- e. Did not refer LAUREL to a maternal fetal medicine specialist for management of her diabetes during her pregnancy;
- f. Did not transition the primary prenatal care provider of LAUREL from physician assistant to an obstetrician when fetal ultrasound demonstrated increased risk of shoulder dystocia;
- g. Did not consult with LAUREL regarding options for delivery of NAQAH when fetal ultrasound demonstrated increased risk of shoulder dystocia;
- h. Did not carefully and adequately supervise, instruct, order and/or direct the physician assistants and nurses providing care to LAUREL;

- i. Did not develop, implement and/or enforce appropriate policies, procedures and protocols concerning the prenatal care of obstetrical patients such as Plaintiff LAUREL, and her unborn son, NAQAH;
- j. Did not develop, implement and enforce appropriate policies, procedures and/or protocols dealing with the instruction, training and supervision of its agents and employees regarding the prenatal care of obstetrical patients such as Plaintiff LAUREL and her unborn son, NAQAH;
- k. Did not ensure that WAKEMED, WAKEMED SPECIALISTS and WAKE SPECIALTY's agents and employees engaged in the care and treatment of patients such as Plaintiff LAUREL and her unborn son, NAQAH, were adequately instructed, trained and supervised under appropriate policies, procedures, and/or protocols;
- l. Did not perform and measure up to the requisite standards of due care and skill required and observed by licensed physician assistants, licensed physicians and further particulars presently unknown to Plaintiffs, which is verily believed and alleged will be disclosed upon proper discovery procedures in the course of this litigation;
- m. Did not provide care in accordance with the standards of practice among members of the same health care profession(s) with similar training and experience situated in the same or similar communities under the same or similar circumstances at the time of the alleged acts giving rise to this cause of action; that the actions or inactions of Defendants was not in accordance with the standards of practice among similar health care providers situated in the same or similar communities under the same or similar circumstances at the time of the alleged acts giving rise to this cause of action;
- n. Did not perform and measure up to the requisite standards of due care and skill required and observed by health care providers specializing in nursing care and further particulars presently unknown to plaintiffs, which is verily believed and alleged will be disclosed upon proper discovery procedures in the course of this litigation; and
- o. The Defendants were otherwise negligent, reckless, and careless on the occasion in question.

119. As a direct and proximate result of the negligence by Defendants STEINHAUSER, FOSTER, WAKEMED, WAKEMED SPECIALISTS and WAKE SPECIALTY, all nurses and assistants, Plaintiffs have experienced physical pain and emotional suffering, permanent brachial plexus injury, neurological injury, disfigurement, disability and incurred medical bills and loss of enjoyment of life, and have been damaged in an amount in excess of Twenty-Five Thousand Dollars

(\$25,000.00).

120. Defendants STEINHAUSER, FOSTER, WAKEMED, WAKEMED SPECIALISTS and WAKE SPECIALTY, all nurses and assistants acts, failures and omissions were a proximate cause of Plaintiffs' permanent brachial plexus injury and were committed in reckless disregard of the rights of Plaintiffs and others and/or constitute grossly negligent conduct.

Allegations of Negligence as to Defendants
GANTT, WITT, BRENNER, WAKEMED, WAKEMED SPECIALISTS,
AND WAKE SPECIALTY

121. At all times relevant to the Plaintiffs' Complaint, there was a doctor-patient relationship between LAUREL and her unborn son NAQAH, and the physicians who were providing care to them at Defendants WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY.

122. Defendants, GANTT, WITT and BRENNER, and all nurses, physician assistants, and assistants, were agents, servants, employees and/or apparent agents of Defendants WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY and owed a duty to Plaintiffs to provide medical care, nursing care, and/or professional care and treatment, which complied with the applicable standards of care, to use their best judgment, and to provide reasonable care and diligence in the application of their knowledge and skill in their care and treatment of the Plaintiffs.

123. The Defendants, GANTT, WITT and BRENNER, and all nurses, physician assistants, and assistants, as agents, servants, employees and/or apparent agents of Defendants, WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY, breached their duty to utilize their best judgment in the care and treatment of the Plaintiffs, and/or breached their duty to use reasonable care and diligence in the application of their knowledge and skill, and/or breached their duty to provide healthcare in accordance with the standards of practice among members of the

same healthcare profession with similar training and experience situated in the same or similar communities at the time the healthcare was rendered.

124. The Defendants, GANTT, WITT and BRENNER, all nurses, physician assistants, and assistants, WAKEMED, WAKEMED SPECIALISTS and/or WAKE SPECIALTY, committed certain acts, errors and omissions which constitute deviations from the applicable standard of care, and/or failed to use their best judgment in the application of their skill and knowledge, and/or failed to use reasonable care and diligence, which acts or omissions were below the applicable standard of care and which constitute medical negligence. These acts, errors and omissions include, but are not limited to, the following:

- a. Did not appropriately monitor LAUREL and her unborn child, NAQAH;
- b. Did not accurately assess and appropriately respond to NAQAH's condition, *in utero*;
- c. Did not appreciate LAUREL's risk factors for shoulder dystocia;
- d. Did not recognize and appropriately respond to signs of fetal distress;
- e. Did not timely document, communicate, and advise physicians of signs of fetal distress;
- f. Did not inform LAUREL of the known material risks associated with her presentation and Defendants' plan of care;
- g. Did not use the nursing chain of command to advocate for the health and safety of LAUREL and NAQAH;
- h. Applied excessive traction to NAQAH's head during delivery;
- i. Did not use appropriate obstetric maneuvers to manage NAQAH's delivery and shoulder dystocia;
- j. Did not perform all of the available maneuvers to release NAQAH's impacted shoulder;
- k. Did not properly supervise and instruct nurses once the shoulder dystocia was encountered;
- l. Did not appropriately manage labor to avoid shoulder dystocia;

- m. Did not consult with LAUREL regarding options for delivery of NAQAH when increased risk of shoulder dystocia was recognized;
- n. Did not carefully and adequately supervise, instruct, order and/or direct the nurses providing care to LAUREL;
- o. Did not develop, implement and/or enforce appropriate policies, procedures and protocols concerning the intrapartum care of obstetrical patients such as Plaintiff LAUREL, and her unborn son, NAQAH;
- p. Did not develop, implement and enforce appropriate policies, procedures and/or protocols dealing with the instruction, training and supervision of its agents and employees regarding the intrapartum care of obstetrical patients such as Plaintiff LAUREL and her unborn son, NAQAH;
- q. Did not ensure that WAKEMED, WAKEMED SPECIALISTS and WAKE SPECIALTY's agents and employees engaged in the care and treatment of patients such as Plaintiff LAUREL and her unborn son, NAQAH, were adequately instructed, trained and supervised under appropriate policies, procedures, and/or protocols;
- r. Did not perform and measure up to the requisite standards of due care and skill required and observed by licensed physician assistants, licensed physicians and further particulars presently unknown to Plaintiffs, which is verily believed and alleged will be disclosed upon proper discovery procedures in the course of this litigation;
- s. Did not perform and measure up to the requisite standards of due care and skill required and observed by health care providers specializing in nursing care and further particulars presently unknown to plaintiffs, which is verily believed and alleged will be disclosed upon proper discovery procedures in the course of this litigation;
- t. Defendants did not provide care in accordance with the standards of practice among members of the same health care profession(s) with similar training and experience situated in the same or similar communities under the same or similar circumstances at the time of the alleged acts giving rise to this cause of action; that the actions or inactions of Defendants was not in accordance with the standards of practice among similar health care providers situated in the same or similar communities under the same or similar circumstances at the time of the alleged acts giving rise to this cause of action; and
- u. The Defendants were otherwise negligent, reckless, and careless on the occasion in question.

125. As a direct and proximate result of the negligence by Defendants GANTT, WITT, BRENNER, WAKEMED, WAKEMED SPECIALISTS and WAKE SPECIALTY, all nurses and

assistants, Plaintiffs have experienced physical pain and emotional suffering, permanent brachial plexus injury, neurological injury, disfigurement, disability and incurred medical bills and loss of enjoyment of life, and have been damaged in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00).

126. Defendants GANTT, WITT, BRENNER, WAKEMED, WAKEMED SPECIALISTS and WAKE SPECIALTY, all nurses and assistants acts, failures and omissions were a proximate cause of Plaintiffs' permanent brachial plexus injury and were committed in reckless disregard of the rights of Plaintiffs and others and/or constitute grossly negligent conduct.

127. The above deviations from acceptable standards of care by Defendants STEINHAUSER, FOSTER, GANTT, WITT, BRENNER, WAKEMED, WAKEMED SPECIALISTS and WAKE SPECIALTY combined and concurred as proximate causes of the injuries and damages sustained by NAQAH.

128. As a direct and proximate result of the negligent, careless, grossly negligent, in reckless disregard of the rights of others, and wanton acts of Defendants STEINHAUSER, FOSTER, GANTT, WITT, BRENNER, WAKEMED, WAKEMED SPECIALISTS and WAKE SPECIALTY, and their agents, servants, or employees, NAQAH suffered permanent injury in the past and in the future, physical pain and emotional suffering, permanent nerve and neurologic injury, incurred medical bills and expense, loss of enjoyment of life, and has been damaged in an amount in excess of twenty-five thousand dollars (\$25,000).

129. As a direct and proximate result of the negligent, careless, grossly negligent, in reckless disregard of the rights of others, and wanton acts of Defendants STEINHAUSER, FOSTER, GANTT, WITT, BRENNER, WAKEMED, WAKEMED SPECIALISTS and WAKE SPECIALTY, and their agents, servants, or employees, LAUREL suffered severe emotional

distress, incurred medical bills and expense, and has been damaged in an amount in excess of twenty-five thousand dollars (\$25,000).

RULE 9(j) CERTIFICATION

130. Plaintiffs herein incorporate by reference Paragraphs 1-129 as if fully set forth herein.

131. The medical treatment and care and all medical records pertaining to the alleged negligence that are available to the Plaintiffs after reasonable inquiry have been reviewed by persons who are reasonably expected to qualify as expert witnesses under Rule 702 of the North Carolina Rules of Evidence and who are willing to testify that the medical care and treatment rendered to LAUREL and NAQAH did not comply with the applicable standard of care. In addition, in the event the defense has objections to the qualifications of the Plaintiffs' 9(j) experts, Plaintiffs will seek to have that person qualified as an expert by motion under Rule 702(e) of the North Carolina Rules of Evidence, and Plaintiff moves the court (as provided in Rule 9(j) of the North Carolina Rules of Civil Procedure) that such person be qualified as an expert witness under Rule 702(e). The said experts are willing to testify that the medical care and treatment provided to LAUREL and NAQAH by the Defendants did not comply with the applicable standard of care.

Objection to N.C.G.S. §90-21.19 CAP ON NONECONOMIC DAMAGES

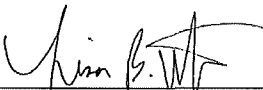
132. Plaintiffs object to N.C.G.S. §90-21.19 ("the cap on noneconomic damages") as unconstitutional. The cap on noneconomic damages denies Plaintiffs the right to a jury trial, due process of law, equal protection under the law and the right to open courts, violates the separation of powers and confers an exclusive emolument on health care providers, in violation of the United States and North Carolina Constitutions. The cap on noneconomic damages violates the Seventh and Fourteenth Amendments of the United States Constitution and Article I, Sections 6, 18, 19, 25 and 32 and Article IV, sections 1 and 13 of the North Carolina Constitution.

WHEREFORE, Plaintiffs respectfully pray to the Court for the following relief:

1. That Plaintiffs have and recover from Defendants, jointly and severally, an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00);
2. That the cost of this action be taxed to the Defendants;
3. That punitive damages be awarded as permitted by N.C.G.S. § 1D-15
4. That a jury rule on all issues of material fact; and,
5. For any other just relief as this Court may deem just and proper.

This the 16th day of September, 2022.

GRANT & EISENHOFER P.A.

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