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FRESNO COUNTY SUPERIOR COURT
By: S. Lopez, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO

SAMANTHA GARCIA, a minor, By
and Through her Guardian Ad
Litem CINDY GARCIA, CINDY
GARCIA, Individually

Plaintiffs,

vs.

FRESNO UNIFIED SCHOOL DISTRICT,
DOES 1-200

Defendants.

Case No. [17CECG00123](#)

COMPLAINT FOR DAMAGES

1. Negligence (Plaintiff Samantha Garcia);
2. Intentional Infliction of Emotional Distress (Plaintiff Samantha Garcia);
3. Intentional Infliction of Emotional Distress (Plaintiff Cindy Garcia)

Plaintiffs, through counsel, allege in their Complaint for Damages as follows:

1. The true names, identities or capacities, whether individual, associate, corporate or otherwise of Defendants DOES 1 through 200, inclusive, are unknown to Plaintiffs who, therefore, sue said Defendants by such fictitious names. When the true names, identities or capacities of such fictitiously-designated Defendants are ascertained, Plaintiffs will ask leave of Court to amend the Complaint

1 to insert said true names, identities and capacities,
2 together with the proper charging allegations.

3 2. Plaintiff is informed and believe and thereon
4 alleges that each of the Defendants sued herein as a DOE is
5 responsible in some manner for the events and happenings
6 herein referred to, thereby legally causing the injuries
7 and damages to the Plaintiffs as herein alleged.

8 3. All of the facts, acts, events and circumstances
9 herein mentioned and described occurred in the County of
10 FRESNO, State of California, and all Defendants are
11 residents of the County of FRESNO, State of California,
12 doing business in said County, State of California.

13 4. At all times herein mentioned, Defendants DOES 1
14 through 100, inclusive, were, and now are, teachers,
15 educators, student aides, counselors, and students, holding
16 themselves out as duly licensed to practice their
17 profession under and by virtue of the laws of the State of
18 California and were, and now are, engaged in the practice
19 of their profession in the State of California.

20 5. At all times herein mentioned, Defendants FRESNO
21 UNIFIED SCHOOL DISTRICTS and DOES 101 through 150, and each
22 of them, were school districts, governmental entities,
23 corporations, partnerships, joint ventures, or other
24 entities or governmental entities or districts, organized
25 and existing under the laws of the State of California,
26 with their principal place of business situated in the
27 State of California.

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1 6. On October 6, 2016, Plaintiff SAMANTHA GARCIA caused
2 to be served a government claim on the FRESNO UNIFIED
3 SCHOOL DISTRICT, its SUPERINTENDENT and its GOVERNING BOARD
4 pursuant to Government Code section 910 *et seq.*

5 On October 10, 2016, Plaintiffs SAMANTHA GARCIA and
6 CINDY GARCIA caused to be served upon the Defendants an
7 Amended Claim pursuant to Government Code section 310 *et*
8 *seq.* to include the claims of CINDY GARCIA, which were not
9 included in the original claim for injuries and damages. On
10 November 9, 2016 the Board of Education for the Fresno
11 Unified School District rejected this claim.

12 7. Defendants FRESNO UNIFIED SCHOOL DISTRICT and DOES
13 151 through 200, and each of them, at all times herein
14 mentioned were institutions or controlled institutions of
15 learning and education including elementary schools and
16 special education schools and special needs schools in the
17 City of Fresno who supervised, controlled and managed the
18 day-to-day activities of their students during school
19 hours, including meal times, and at all times herein
20 mentioned supervised, controlled, managed, maintained and
21 owned cleaning supplies for use on their premises for usual
22 purposes.

23 8. Plaintiffs are informed and believe and upon such
24 information and belief allege that at all times herein
25 mentioned, Defendants and other Defendants named
26 fictitiously, were the agents, servants, employees, joint-
27 venturers, and copartners of their said co-Defendants and,
28 as such, were acting within the course and scope of such

1 agency, service, partnership, venture, and employment at
2 all times herein mentioned; that each and every Defendant,
3 as aforesaid, when acting as a principal, was negligent in
4 the selection and hiring of each and every other Defendant,
5 as its agent, servant, employee, joint-venturer and
6 partner. Further, each and every Defendant ratified the
7 conduct of the other Defendants.

8 I.

9 **PLAINTIFF SAMANTHA GARCIA ALLEGES FOR A CAUSE OF ACTION**
10 **FOR NEGLIGENCE AGAINST DEFENDANTS AND EACH OF THEM AS**
11 **FOLLOWS:**

12 9. Plaintiff SAMANTHA GARCIA repeats and repleads
13 each and every allegation contained in all prior paragraphs
14 and incorporates the same herein by reference.

15 10. On or about the date of the filing of the within
16 complaint CINDY GARCIA was appointed the guardian ad litem
17 of Plaintiff SAMANTHA GARCIA, a minor, who was born
18 September 30, 2006.

19 11. On or about September 19, 2016, Plaintiff SAMANTHA
20 GARCIA attended IRWIN O. ADDICOTT ELEMENTARY SCHOOL as a 5th
21 grade special needs student.

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12. On or about September 19, 2016, Plaintiff, during her attendance as a 5th grade special needs student at IRWIN O. ADDICOTT ELEMENTARY SCHOOL, and during regular school hours, Plaintiff SAMANTHA GARCIA was negligently and unknowingly to Plaintiffs administered bleach through her gastrostomy tube.

13. Immediately following the administration of bleach through Plaintiff's gastrostomy tube, no attempt was made by Defendants to contact any medical authority, contact poison control, call 911, seek an ambulance, transport Plaintiff to the hospital, or ascertain any kind of medical care or treatment.

14. As a direct and legal result of being administered a bleach solution through her gastrostomy tube, Plaintiff

1 subsequently suffered attendant aspiration pneumonia, as
2 well as severe gastritis throughout the stomach with
3 multiple aphthous lesions and nodularity in the antrum, an
4 edematous esophogus, ulceration of the gastroesophageal
5 junction, erythema of the proximal stomach and aphthous
6 lesions and extensive nodularity of the antrum, such that
7 she now has, and will suffer in the future, pain and
8 physical and emotional injuries, with permanent impairment
9 to her trachea, esophagus, stomach and lungs.

10 15. Said Defendants, and each of them, had a legal
11 duty and a greater duty to Plaintiff as a student beyond
12 that which each person generally owes others under Civil
13 Code section 1714, to supervise and protect Plaintiff
14 against foreseeable risks, to guard against perils that
15 were reasonably foreseeable, to enforce rules and
16 regulations necessary to Plaintiff's protection, and said
17 Defendants, and each of them, agreed to do all things
18 necessary to supervise, protect and guard Plaintiff from
19 harm, injury, danger and risk.

20 16. Said Defendants, and each of them, had a legal
21 duty, and a greater duty to Plaintiff as a student beyond
22 that which each person generally owes others under Civil
23 Code section 1714, to warn Plaintiff CINDY GARCIA, as
24 guardian of minor and incapacitated Plaintiff SAMANTHA
25 GARCIA, to the benefit of Plaintiffs, of the peril of
26 having administered bleach through Plaintiff's gastrostomy
27 tube once said Defendants, and each of them, created the
28 foreseeable danger not readily discoverable by the

1 endangered Plaintiff SAMANTHA GARCIA, nor readily
2 discoverable by her parents and guardians, including
3 Plaintiff CINDY GARCIA.

4 17. Defendants, and each of them, negligently and
5 carelessly supervised, protected and guarded Plaintiff from
6 foreseeable harm, risk, danger and injury and negligently
7 failed to enforce rules and regulations necessary to
8 Plaintiff's protection; Said Defendants, and each of them,
9 negligently failed to do all things necessary to supervise,
10 protect and guard Plaintiff from harm, injury, danger and
11 risk by administering bleach, a poisonous substance to
12 Plaintiff through her gastrostomy tube.

13 18. Plaintiff SAMANTHA GARCIA was further negligently
14 and carelessly supervised, protected and guarded from
15 foreseeable harm, risk, danger and injury by Defendants,
16 and each of them, when Defendants, and each of them, failed
17 to immediately contact any medical authority, contact
18 poison control, call 911, seek an ambulance, transport
19 Plaintiff to the hospital, or ascertain any kind of medical
20 care or treatment for the administration of bleach through
21 Plaintiff's gastrostomy tube.

22 19. Defendants, and each of them, including agents and
23 employees of the FRESNO UNIFIED SCHOOL DISTRICT, were
24 negligent in contacting the incapacitated minor Plaintiff's
25 parent and guardian, Plaintiff CINDY GARCIA, once Plaintiff
26 became ill following the administration of bleach through
27 her gastrostomy tube, including but not limited to
28 Plaintiff vomiting white chunks, turning purple and

1 becoming otherwise and apparently ill, and affirmatively
2 and deliberately failing to advise Plaintiff CINDY GARCIA
3 that Plaintiff SAMANTHA GARCIA had been administered bleach
4 through her gastrostomy tube.

5 20. Said Defendants, and each of them, including
6 agents and employees of FRESNO UNIFIED SCHOOL DISTRICT,
7 including "Jack", were negligent in contacting Plaintiff
8 CINDY GARCIA and leaving her a voice mail message on her
9 phone advising her that her minor and incapacitated
10 daughter, Plaintiff SAMANTHA GARCIA, had begun vomiting
11 white chunks, and was "looking kind of purple," but that
12 "[h]er stats are good, her heart is good, but she is still
13 looking a little peaked right now," yet not advising
14 Plaintiff CINDY GARCIA that bleach had been administered to
15 Plaintiff SAMANTHA GARCIA through her gastrostomy tube;
16 Said Defendants, and each of them, including agents and
17 employees of FRESNO UNIFIED SCHOOL DISTRICT, including
18 "Jack", were negligent in taking no action to address the
19 harm and potential foreseeable harm caused by Defendants,
20 and each of them, to contact any medical authority, contact
21 poison control, call 911, seek an ambulance, transport
22 Plaintiff to the hospital, or ascertain any kind of medical
23 care or treatment, rather, Defendants, and each of them,
24 negligently told Plaintiff CINDY GARCIA, via voice mail
25 message, simply that her daughter was ill; Plaintiff was
26 given no knowledge of the actual peril or danger her minor
27 and incapacitated daughter was in, she was simply told by
28 Defendants, and each of them, "[J]ust give me a call and

1 let me know what you want us to do."

2 21. Plaintiff CINDY GARCIA contacted IRWIN O. ADDICOTT
3 ELEMENTARY SCHOOL immediately upon receiving the missed
4 call from IRWIN O. ADDICOTT ELEMENTARY SCHOOL, before the
5 voice mail message from "Jack" had even registered on her
6 phone. Plaintiff CINDY GARCIA's call was answered by
7 Office Secretary FiFi who advised Plaintiff that she was
8 unsure of who called her, but that she would find out.
9 Before the call ended, Plaintiff's phone indicated a voice
10 mail message had been left. Plaintiff immediately hung up
11 with Office Secretary FiFi, advising her she would listen
12 to the message.

13 22. Upon receiving the voice mail message from "Jack"
14 indicating that Plaintiff SAMANTHA GARCIA had been vomiting
15 white chunks, was "looking kind of purple," and that "she
16 is still looking a little peaked right now," but not
17 advising Plaintiff CINDY GARCIA that Plaintiff SAMANTHA
18 GARCIA had been administered bleach through her gastrostomy
19 tube, Plaintiff CINDY GARCIA immediately went to IRWIN O.
20 ADDICOTT ELEMENTARY SCHOOL to tend to her minor
21 incapacitated daughter, to assess her and determine if
22 medical attention was needed.

23 23. Upon arriving at IRWIN O. ADDICOTT ELEMENTARY
24 SCHOOL, Plaintiff was met in the parking lot by Principal
25 Katrina Pleshe who stayed with Plaintiff while she took her
26 young son out of her vehicle, and accompanied Plaintiff
27 into the school. At no point during the time in the
28 parking lot or while she accompanied Plaintiff into the

1 school did Principal Katrina Pleshe advise Plaintiff that
2 bleach had been administered to Plaintiff SAMANTHA GARCIA
3 through her gastrostomy tube. Defendants, and each of
4 them, including agents and employees of the FRESNO UNIFIED
5 SCHOOL DISTRICT, including Principal Katrina Pleshe, were
6 negligent in failing to advise Plaintiff CINDY GARCIA
7 during this time in the parking lot and while accompanying
8 her into the school, that Defendants, and each of them, had
9 administered bleach to Plaintiff through her gastrostomy
10 tube.

11 24. Upon entering the school, accompanied by Principal
12 Katrina Pleshe, Plaintiff CINDY GARCIA was brought to her
13 minor and incapacitated daughter Plaintiff SAMANTHA GARCIA,
14 who was in the front office of the school with Office
15 Secretary FiFi, "Jack" who had left the aforementioned
16 voice mail on Plaintiff's phone, School Nurse Jessica,
17 Plaintiff's Classroom Teacher Faree and Teacher Aide Diane.
18 "Jack" advised Plaintiff again that the minor Plaintiff had
19 vomited white chunks. Teacher Aide Diane then said that
20 the vomit smelled. This caused Plaintiff to approach her
21 minor and incapacitated daughter, at which point she
22 smelled a strong odor of bleach. Defendants, and each of
23 them, had actual and constructive knowledge that the minor
24 and incapacitated Plaintiff had been administered bleach
25 through her gastrostomy tube, yet, no one in the room,
26 including Defendants, and each of them, told Plaintiff
27 CINDY GARCIA this information. This deliberate and
28 affirmative failure to warn Plaintiff of the peril, harm

1 and danger that Defendants, and each of them, had caused
2 constitutes extreme and outrageous conduct in direct breach
3 of the duties owed by Defendants, and each of them, to
4 Plaintiffs.

5 25. Plaintiff CINDY GARCIA stated that she would take
6 the minor Plaintiff to the hospital, and Principal Katrina
7 Pleshe insisted Teacher Aide Diane accompany Plaintiffs to
8 the hospital. Plaintiff then left the office and the
9 school building with the minor and incapacitated Plaintiff
10 and Teacher Aide Diane, and was accompanied out of the
11 building by Principal Katrina Pleshe. It was at this time,
12 once it had been decided that Plaintiff CINDY GARCIA would
13 be bringing her minor Plaintiff daughter immediately to the
14 hospital for medical attention, and that she would be
15 accompanied by someone from the school, that Principal
16 Katrina Pleshe finally advised Plaintiff CINDY GARCIA that
17 an incident may have occurred wherein the minor Plaintiff
18 may have been administered a bleach solution through her
19 gastrostomy tube. No information was provided relating to
20 which individual had administered the bleach solution, what
21 the concentration of the bleach solution was, when the
22 bleach solution had been administered, or how much of the
23 bleach solution had been administered.

24 26. Plaintiff then rushed to secure her children in
25 her vehicle for transport to the hospital. At this time,
26 Defendants, and each of them, including agents and
27 employees of FRESNO UNIFIED SCHOOL DISTRICT, including
28 "Jack", exited the school building and approached Plaintiff

1 at her vehicle in the lot and advised Plaintiff that an
2 incident may have occurred wherein the minor Plaintiff may
3 have been administered a bleach solution through her
4 gastrostomy tube, and asked if she wished for an ambulance
5 to be called. No information was provided relating to
6 which individual had administered the bleach solution, what
7 the concentration of the bleach solution was, when the
8 bleach solution had been administered, or how much of the
9 bleach solution had been administered.

10 27. While Plaintiff was under the sole and exclusive
11 care and control of the Defendants, and each of them,
12 Defendants, and each of them negligently, carelessly and
13 unskillfully handled and controlled the Plaintiff herein,
14 thereby proximately causing injuries and damages to
15 Plaintiff, including suffering attendant aspiration
16 pneumonia, as well as severe gastritis throughout the
17 stomach with multiple aphthous lesions and nodularity in
18 the antrum, an edematous esophagus, ulceration of the
19 gastroesophageal junction, erythema of the proximal
20 stomach, aphthous lesions and extensive nodularity of the
21 antrum, such that she now has, and will suffer in the
22 future, pain and physical and emotional injuries.

23 28. Defendants, and each of them, negligently failed to
24 and neglected to adequately select competent staff and to
25 periodically review the competency of its staff, and failed
26 to adequately monitor its staff such that the Plaintiffs
27 were caused to, and did, suffer injuries and damages as
28 alleged herein.

1 29. Said Defendants were further negligent in the
2 supervision of their employees in that the Defendant
3 negligently trained and supervised the staff at IRWIN O.
4 ADDICOTT ELEMENTARY SCHOOL, such that severe injury was
5 caused to Plaintiff during her school day;

6 30. Said Defendants were further negligent and failed
7 to give and obtain informed consent from Plaintiff or her
8 parents as it relates to being fed or administered
9 water/fluids, including the risks and dangers involved in
10 such activity.

11 31. Said Defendants and their employees and agents
12 including were negligent in the storage of feeding supplies
13 such that feeding supplies and apparent cleaning supplies
14 allowing for the negligent switching of feeding supplies
15 with cleaning supplies.

16 32. As a legal result of the negligence of the
17 Defendants, and each of them, Plaintiff was injured in her
18 health, strength and activity, sustaining severe shock, and
19 injury to Plaintiff's body, including suffering attendant
20 aspiration pneumonia, as well as severe gastritis
21 throughout the stomach with multiple aphthous lesions and
22 nodularity in the antrum, an edematous esophagus,
23 ulceration of the gastroesophageal junction, erythema of
24 the proximal stomach, aphthous lesions and extensive
25 nodularity of the antrum, such that she now has, and will
26 suffer in the future, pain and physical and emotional
27 injuries, with permanent impairment to her trachea,
28 esophagus, stomach and lungs, all of which said injuries

1 have caused and continue to cause Plaintiff great physical,
2 emotional, and nervous pain and suffering, and which said
3 injuries Plaintiff is informed and believes, and thereon
4 alleges, will result in loss of earnings, permanent
5 disability, loss of enjoyment of life, and impairment of
6 earning capacity all to Plaintiff's damage in a sum in
7 excess of the jurisdiction of the Municipal Court.

8 33. As a further legal result of the negligence of the
9 Defendants, and each of them, and the resulting injuries to
10 the Plaintiff, said Plaintiff was compelled to, and did,
11 incur expenses for medical and surgical attention,
12 hospitalization, nursing, medication and incidentals for
13 said Plaintiff in an amount unknown to Plaintiff at
14 present.

15 34. As a further legal result of the negligence of the
16 Defendants, and each of them, and of the resulting
17 injuries, Plaintiff will be obliged to incur expenses for
18 medical care and hospitalization for an indefinite period
19 in the future and to pay for these expenses in the
20 treatment and relief of injuries for medical and surgical
21 attention, hospitalization, nursing, medication, and
22 incidentals for said Plaintiff in an amount unknown to
23 Plaintiff at present.

24 35. As a further legal result of the negligence of the
25 Defendants, and each of them, Plaintiff has suffered loss
26 of earnings and will suffer a decreased earnings and
27 earning capacity in the future and future earnings to
28 Plaintiff's further damage in a sum unknown at present.

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II.

PLAINTIFF SAMANTHA GARCIA ALLEGES FOR A CAUSE OF ACTION
FOR INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS
AGAINST DEFENDANTS AND EACH OF THEM AS FOLLOWS:

36. Plaintiff SAMANTHA GARCIA repeats and repleads each and every allegation contained in the previous cause of action and incorporates the same herein by reference.

37. Defendants, and each of them, were all in a position of authority and trust and knew that Plaintiff SAMANTHA GARCIA was in an extremely vulnerable position with respect to her relying entirely on Defendants, and each of them, for her security, safety and well-being during school hours, and for communicating to her mother, Plaintiff CINDY GARCIA, any harm, danger, peril or injury she may have endured during school hours.

38. Plaintiff SAMANTHA GARCIA was aware, though unable to communicate, that she had been administered a poison through her gastrostomy tube, rather than nutrients or water, as she is and was aware of her body's reaction thereto, despite her inability to communicate this.

39. Defendants, and each of them knew, as those who created the danger of administering bleach through Plaintiff SAMANTHA GARCIA's gastrostomy tube, that Plaintiff GARCIA was in need of immediate medical attention, yet they deliberately and intentionally did not contact any medical authority, call 911, contact poison control, seek an ambulance, transport Plaintiff to the hospital, or ascertain any kind of medical care or

1 treatment and Defendants, and each of them, knew that
2 delaying care and treatment of Plaintiff SAMANTHA GARCIA
3 would result in further physical harm to Plaintiff SAMANTHA
4 GARCIA as well as harm due to extreme and severe emotional
5 distress.

6 40. Despite the extremely vulnerable position of
7 Plaintiff SAMANTHA GARCIA, Defendants, and each of them,
8 gave little or no thought to the probable effects of their
9 conduct and were concerned only with concealing the facts
10 of the negligent and outrageous act of having administered
11 bleach through Plaintiff's gastrostomy tube, and
12 Defendants, and each of them, intentionally ignored the
13 fact that the minor Plaintiff was becoming ill and needed
14 immediate medical intervention.

15 41. The conduct of the Defendants, and each of them,
16 as herein alleged in knowingly, intentionally and
17 deliberately failing to contact any medical authority, call
18 911, contact poison control, seek an ambulance, transport
19 Plaintiff to the hospital, or ascertain any kind of medical
20 care or treatment after creating the danger of
21 administering bleach through Plaintiff SAMANTHA GARCIA's
22 gastrostomy tube, thereby substantially delaying care and
23 treatment was outrageous and was intended to cause, or the
24 Defendants acted with reckless disregard of the probability
25 that Plaintiff SAMANTHA GARCIA would suffer, severe
26 emotional distress, as herein alleged.

27 42. The conduct of the Defendants, and each of them,
28 as herein alleged in knowingly, intentionally and

1 deliberately concealing the true facts from Plaintiff
2 SAMANTHA GARCIA's mother, and conspiring among themselves
3 to conceal such facts after creating the danger of
4 administering bleach through Plaintiff SAMANTHA GARCIA's
5 gastrostomy tube, was outrageous and was intended to cause,
6 or the Defendants acted with reckless disregard of the
7 probability that Plaintiff SAMANTHA GARCIA would suffer,
8 severe emotional distress, as herein alleged.

9 43. The conduct of the Defendants, and each of them,
10 as herein alleged in knowingly, intentionally and
11 deliberately failing to contact any medical authority, call
12 911, contact poison control, seek an ambulance, transport
13 Plaintiff to the hospital, or ascertain any kind of medical
14 care or treatment thereby substantially delaying care and
15 treatment after creating the danger of administering bleach
16 through Plaintiff SAMANTHA GARCIA's gastrostomy tube, was
17 so outrageous and extreme as to exceed all bounds of
18 decency in a civilized community.

19 44. The conduct of the Defendants, and each of them,
20 as herein alleged in knowingly, intentionally and
21 deliberately concealing the true facts from Plaintiff
22 SAMANTHA GARCIA's mother and conspiring among themselves to
23 conceal such facts after creating the danger of
24 administering bleach through Plaintiff SAMANTHA GARCIA's
25 gastrostomy tube, was so outrageous and extreme as to
26 exceed all bounds of decency in a civilized community.

27 45. The above acts, including knowingly and
28 deliberately failing to contact any medical authority, call

1 911, contact poison control, seek an ambulance, transport
2 Plaintiff to the hospital, or ascertain any kind of medical
3 care or treatment thereby substantially delaying care and
4 treatment and concealing the true facts from Plaintiff
5 SAMANTHA GARCIA's mother, after creating the danger of
6 administering bleach through Plaintiff SAMANTHA GARCIA's
7 gastrostomy tube, were intended to cause and did cause such
8 emotional distress in Plaintiff, and said Defendants, and
9 each of them, acted with a reckless disregard of the
10 probability that Plaintiff would suffer emotional distress.

11 46. As a direct result of the conduct of said
12 Defendants, and each of them, Plaintiff SAMANTHA GARCIA
13 suffered severe emotional distress, and such conduct was a
14 substantial factor in causing the severe emotional distress
15 as suffered by Plaintiff SAMANTHA GARCIA.

16 47. That the conduct of the Defendants, and each of
17 them, was outrageous and was conduct so extreme,
18 oppressive, malicious, despicable and fraudulent, and
19 carried on by the Defendants with a willful and conscious
20 disregard for the rights and safety of others, that it went
21 beyond all possible bounds of decency and such conduct is
22 intolerable in a civilized community.

23 48. That Plaintiff SAMANTHA GARCIA did in fact suffer
24 severe emotional distress.

25 49. As a legal result of the acts of the Defendants,
26 and each of them, Plaintiff SAMANTHA GARCIA was caused to
27 suffer severe emotional and nervous pain and suffering, and
28 which said injuries Plaintiff is informed and believes, and

1 thereon alleges, will result in loss of earnings, permanent
2 disability, loss of enjoyment of life, and impairment of
3 earning capacity all to Plaintiff's damage in a sum in
4 excess of the jurisdiction of the Municipal Court.

5 50. As a further legal result of the acts of the
6 Defendants, and each of them, and the resulting injuries to
7 Plaintiff SAMANTHA GARCIA, said Plaintiff was compelled to,
8 and did, incur expenses for medical and surgical attention,
9 hospitalization, nursing, medication and incidentals for
10 said Plaintiff in an amount unknown to Plaintiff at
11 present.

12 51. As a further legal result of the acts of the
13 Defendants, and each of them, and the resulting emotional
14 distress, Plaintiff SAMANTHA GARCIA will be obliged to
15 incur expenses for medical care and hospitalization for an
16 indefinite period in the future and to pay for these
17 expenses in the treatment and relief of injuries for
18 medical and surgical attention, hospitalization, nursing
19 medication and incidentals for said Plaintiff in an amount
20 unknown to Plaintiff at present.

21 52. As a further legal result of the acts of the
22 Defendants, and each of them, and the resulting emotional
23 distress, Plaintiff SAMANTHA GARCIA will suffer a decreased
24 earning capacity in the future, and future earnings to
25 Plaintiff's further damage in a sum unknown at present.

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1 III.

2 PLAINTIFF CINDY GARCIA ALLEGES FOR A CAUSE OF ACTION
3 FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
4 AGAINST DEFENDANTS AND EACH OF THEM AS FOLLOWS:

5 53. Plaintiff repeats and repleads each and every
6 allegation contained in the previous causes of action and
7 incorporates the same herein by reference.

8 54. Defendants, and each of them, were all in a
9 position of authority and trust and knew that Plaintiff
10 CINDY GARCIA was in an extremely vulnerable position with
11 respect to her minor and incapacitated child being under
12 the complete control of Defendants, and each of them,
13 during school hours.

14 55. Defendants, and each of them, knew, as those who
15 created the danger of administering bleach through
16 Plaintiff SAMANTHA GARCIA's gastrostomy tube, that
17 intentionally and deliberately failing to advise Plaintiff
18 CINDY GARCIA of the fact that Plaintiff SAMANTHA GARCIA had
19 been administered bleach through her gastrostomy tube would
20 result in a delay in Plaintiff SAMANTHA GARCIA receiving
21 the care and treatment that she needed, and Defendants, and
22 each of them, knew that delaying care and treatment of
23 Plaintiff SAMANTHA GARCIA would result in harm to the
24 Plaintiffs herein due to extreme and severe emotional
25 distress.

26 56. Despite the extremely vulnerable position of
27 Plaintiffs, said Defendants gave little or no thought to
28 the probable effects of their conduct and were concerned

1 only with concealing the facts of the negligent and
2 outrageous act of having administered bleach through
3 Plaintiff's gastrostomy tube, and Defendants, and each of
4 them, intentionally ignored the fact that the minor
5 Plaintiff was becoming ill and needed medical intervention,
6 and that failing to ascertain or facilitate such medical
7 attention would result in severe emotion distress to the
8 minor Plaintiff and her mother.

9 57. The conduct of the Defendants, and each of them,
10 as herein alleged in knowingly and deliberately concealing
11 the true facts from Plaintiff CINDY GARCIA and conspiring
12 among themselves to conceal the true facts from Plaintiff
13 and to make no attempt to contact any medical authority,
14 call 911, contact poison control, seek an ambulance,
15 transport Plaintiff to the hospital, or ascertain any kind
16 of medical care or treatment, thereby substantially
17 delaying care and was outrageous and was intended to cause,
18 or the Defendants acted with reckless disregard of the
19 probability that Plaintiff CINDY GARCIA would suffer,
20 severe emotional distress as herein alleged.

21 58. The conduct of the Defendants, and each of them,
22 as herein alleged in knowingly and deliberately concealing
23 the true facts from Plaintiff CINDY GARCIA and conspiring
24 among themselves to conceal such facts was so outrageous
25 and extreme as to exceed all bounds of decency in a
26 civilized community.

27 59. The above acts, including knowingly and
28 deliberately concealing the true facts from Plaintiff CINDY

1 GARCIA were intended to cause and did cause such emotional
2 distress in Plaintiff, and said Defendants, and each of
3 them, acted with a reckless disregard of the probability
4 that Plaintiff CINDY GARCIA would suffer emotional
5 distress.

6 60. As a direct result of the conduct of said
7 Defendants, and each of them, Plaintiff CINDY GARCIA
8 suffered severe emotional distress, and such conduct was a
9 substantial factor in causing the severe emotional distress
10 as suffered by Plaintiff CINDY GARCIA.

11 61. That the conduct of the Defendants, and each of
12 them, was outrageous and was conduct so extreme,
13 oppressive, malicious, despicable and fraudulent, and
14 carried on by the Defendants with a willful and conscious
15 disregard of the rights and safety of others, that it went
16 beyond all possible bounds of decency and such conduct is
17 intolerable in a civilized community.

18 62. That Plaintiff CINDY GARCIA did in fact suffer
19 severe emotional distress.

20 63. As a legal result of the acts of the Defendants,
21 and each of them, Plaintiff CINDY GARCIA was caused to
22 suffer severe emotional and nervous pain and suffering, and
23 which said injuries Plaintiff is informed and believes, and
24 thereon alleges, will result in loss of earnings, permanent
25 disability, loss of enjoyment of life, and impairment of
26 earning capacity all to Plaintiff's damage in a sum in
27 excess of the jurisdiction of the Municipal Court.

28 64. As a further legal result of the acts of the

1 Defendants, and each of them, and the resulting injuries to
2 Plaintiff CINDY GARCIA, said Plaintiff was compelled to,
3 and did, incur expenses for medical and surgical attention,
4 hospitalization, nursing, medication and incidentals for
5 said Plaintiff in an amount unknown to Plaintiff at
6 present.

7 65. As a further legal result of the acts of the
8 Defendants, and each of them, and the resulting emotional
9 distress, Plaintiff CINDY GARCIA will be obliged to incur
10 expenses for medical care and hospitalization for an
11 indefinite period in the future and to pay for these
12 expenses in the treatment and relief of injuries for
13 medical and surgical attention, hospitalization, nursing,
14 medication and incidentals for said Plaintiff in an amount
15 unknown to Plaintiff at present.

16 66. As a further legal result of the acts of the
17 Defendants, and each of them, and the resulting emotional
18 distress, Plaintiff CINDY GARCIA has suffered loss of
19 earnings and will suffer a decreased earning capacity in
20 the future, and future earnings to Plaintiff's further
21 damage in a sum unknown at present.

22 WHEREFORE, Plaintiff pray for damages against the
23 Defendants, and each of them, as follows:

24 **FOR THE CAUSE OF ACTION FOR NEGLIGENCE:**

- 25 1. General Damages, according to proof;
- 26 2. For all special damages according to proof;
- 27 3. For costs of suit incurred herein;

28 / / /

1 4. For such other and further relief which may seem
2 just and proper to the Court.

3 **FOR THE CAUSE OF ACTION BY SAMANTHA GARCIA FOR**
4 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS:**

- 5 1. General damages, according to proof;
6 2. Past and future medical expenses, according to
7 proof;
8 3. For loss of past and future earnings and earning
9 capacity, according to proof;
10 4. Costs of suit incurred herein, and
11 5. For such other and further relief which may seem
12 just and proper to the Court.

13 **FOR THE CAUSE OF ACTION BY CINDY GARCIA FOR INTENTIONAL**
14 **INFLICTION OF EMOTIONAL DISTRESS:**

- 15 1. General damages, according to proof;
16 2. Past and future medical expenses, according to
17 proof;
18 3. For loss of past and future earnings and earning
19 capacity, according to proof;
20 4. Costs of suit incurred herein, and
21 5. For such other and further relief which may seem
22 just and proper to the Court.

23 DATED: January 11, 2016

Law Offices of Bruce G. Fagel
and Associates

24
25 By: 
26 _____

Bruce G. Fagel
Attorneys for Claimant