

DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO Boulder County Justice Center 1777 6th St, Boulder, CO 80302 Phone: (303) 441-1776	DATE FILED: December 18, 2019 12:03 PM FILING ID: 97FDEC0DEF98F CASE NUMBER: 2019CV31215
Plaintiff: EMMALYN NGUYEN, an incapacitated adult, by and through her Guardian and Conservator, LYNN CHAN FAM v. Defendants: REX L. MEEKER, CRNA; REX MEEKER, INC.; GEOFFREY S. KIM, MD; COLORADO AESTHETIC & PLASTIC SURGERY, P.C.; SHAY HUBERT, RN; AND CRNA ASSOCIATES, INC.	▲ COURT USE ONLY ▲
Attorney for Plaintiff: David Woodruff, #32585 WAHLBERG, WOODRUFF, NIMMO & SLOANE, LLP 4601 DTC Boulevard, Suite 950 Denver, CO 80237 Telephone: 303/ 571-5302 Facsimile: 303/ 571-1806 e-mail: david@denvertriallawyers.com	Case No: Division:
COMPLAINT AND JURY DEMAND	

Plaintiff Emmalyn Nguyen, by and through her attorney, David S. Woodruff of the law firm Wahlberg, Woodruff, Nimmo & Sloane, LLP, respectfully submits this Complaint and Jury Demand against the above-named Defendants. For this Complaint and Jury Demand, Plaintiff states, avers, and alleges as follows:

CERTIFICATE OF REVIEW AGAINST ALL NAMED DEFENDANTS

Pursuant to C.R.S. § 13-20-602(3)(a), the undersigned counsel certifies as follows:

- a. Counsel has consulted with appropriately credentialed medical professionals with expertise in the area of the alleged negligent conduct as set forth in Plaintiffs' Complaint and Jury Demand;
- b. The professionals who have been consulted can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience, they are familiar with the applicable standards of care and practice as they relate to the acts or omissions by each of the named defendants and are competent to express opinions as to the negligent conduct alleged;
- c. The professionals who have been consulted regarding the allegations of physician negligence meet the requirements of section 13-64-401 C.R.S;
- d. The professionals who have been consulted have reviewed the known facts, including medical records and other materials which the professionals have found to be relevant to the allegations of negligent conduct, and further state that;
- e. Based upon the review of such facts, the professionals who have been consulted have concluded that the filing of the claims against each of the defendants does not lack substantial justification within the meaning of C.R.S. § 13-17-102(4).

I. PARTIES, VENUE AND JURISDICTION

The Plaintiff

1. At all times material hereto, Plaintiff Emmalyn Nguyen was and is an 18-year old resident of Brighton, Adams County, Colorado.
2. As a result of this incident, Plaintiff Emmalyn Nguyen is now permanently incapacitated, and resides at Vibra Hospital, 8451 Pearl St, Thornton, Adams County, Colorado.
3. Plaintiff Emmalyn Nguyen appears herein by and through her court-appointed Guardian and Conservator, **Lynn Chan Fam**. Ms. Fam is the natural mother of Emmalyn Nguyen, and resides in Brighton, Adams County, Colorado.

The Defendants

4. At all times material hereto, Rex L. Meeker, CRNA ("**Defendant Meeker**") was and is a Certified Registered Nurse Anesthetist ("CRNA"), licensed to practice nursing in the State of Colorado and holding himself out as having specialized skill and knowledge in the field of nursing anesthesia. Defendant Meeker resides at 11375 Jasper Road, Lafayette, Boulder County, Colorado.

5. At all times material hereto, Defendant Meeker was the principal of Defendant Rex Meeker, Inc. (“**Defendant Meeker Inc.**”), a Colorado corporation with its principal business offices located at 11375 Jasper Road, Lafayette, Boulder County, Colorado.

6. Defendant Meeker, Inc. committed negligent acts and omissions vicariously through its principal and employee, Rex Meeker, such that the acts of Defendant Meeker and Defendant Meeker Inc. are inseparable. Thus, for purposes of simplifying the factual allegations herein, Defendants Meeker and Meeker Inc. will be referred to jointly as “Defendant Meeker.”

7. At all times material hereto, Defendant Geoffrey S. Kim, M.D. (“**Defendant Kim**”) was and is a physician, licensed and practicing medicine in Colorado and holding himself out as having specialized knowledge and skill in the field of plastic surgery. At all times relevant hereto, Defendant Kim operated a medical practice under the names “Colorado Aesthetic & Plastic Surgery” and “Geoffrey Kim, M.D. Plastic Surgery & Med Spa.” Defendant Kim resides at 4986 S. Fillmore Ct, Englewood, Arapahoe County, Colorado.

8. At all times material hereto, Defendant Colorado Aesthetic & Plastic Surgery, PC. (“**Defendant CAPS**”) was and is a Colorado Professional Corporation. At the time of the incident which forms the basis of this lawsuit, Defendant CAPS was located at 7180 E. Orchard Road, Suite 206, Greenwood Village, Arapahoe County, Colorado. Shortly after this incident occurred, Defendant CAPS moved to a new location. Defendant CAPS’ current principal office is now located at 5420 South Quebec Street, Suite 204, Greenwood Village, Arapahoe County, Colorado.

9. At all times material hereto, Defendant Kim and Colorado Aesthetics & Plastic Surgery, P.C. were and are the principal owners and operators of a medical practice known and advertised to the public as “Colorado Aesthetics & Plastic Surgery” and “Geoffrey Kim, M.D. Plastic Surgery & Med Spa,” which was located at the time of this incident at 7180 E. Orchard Road, Suite 206, Greenwood Village, Arapahoe County, Colorado.

10. At all times material hereto, Shay Nicole Hubert, R.N. (“**Defendant Hubert**”) was and is a registered nurse licensed to practice nursing in the State of Colorado and practicing nursing in Colorado. Defendant Hubert resides at 1975 19th Street, Apartment 5033, City and County of Denver, Colorado.

11. At all times material hereto, Defendant Hubert was and is an employee of Defendant Kim and/or Defendant CAPS at the surgical offices known as “Colorado Aesthetics & Plastic Surgery” and “Geoffrey Kim, M.D. Plastic Surgery & Med Spa,” previously located at 7180 E. Orchard Road, Suite 206, Greenwood Village, CO 80111 and now located at 5420 South Quebec Street, Suite 204, Greenwood Village, CO 80111.

12. While operating in the course and scope of her employment with Defendant Kim and/or Defendant CAPS, Defendant Hubert provided medical care and treatment on August 1, 2019 to Plaintiff Emmalyn Nguyen.

13. Defendant CRNA Associates, Inc. (“**Defendant CRNA Associates**”) was and is a Colorado corporation with its principal business address located at 2 Cimarron Drive, Greenwood Village, Arapahoe County, Colorado.

14. The Court has personal and subject matter jurisdiction over this action pursuant to C.R.S. § 13-1-124.

15. One or more of the defendants reside in Boulder County, Colorado. As such, venue is proper in Boulder County.

II. FACTUAL ALLEGATIONS

16. In the summer of 2019, Plaintiff was a healthy, 18-year old woman who desired breast augmentation for a better self-image.

17. On July 22, 2019, Plaintiff presented to Defendants Kim and CAPS for possible breast augmentation.

18. Defendant Kim and employees of Defendant Kim/CAPS performed a full consultation, including physical examination and history.

19. Defendant Kim and employees of Defendant Kim/CAPS recommended to Plaintiff that she undergo bilateral augmentation mammoplasty with silicone gel implants.

20. Plaintiff signed the necessary paperwork, paid the required deposit and scheduled her pre-operative consult for July 24, 2019, and her bilateral augmentation mammoplasty surgical procedure for the afternoon of August 1, 2019.

21. The night before her surgical procedure, Plaintiff followed all required pre-operative directions as directed by Defendants.

22. Sometime prior to August 1, 2019 Defendant CAPS and Defendant Kim contracted with Defendant CRNA Associates to provide anesthesia services to patients at Colorado Aesthetic & Plastic Surgery/ Geoffrey Kim, M.D. Plastic Surgery & Med Spa.

23. Pursuant to contract(s) entered into between the defendants, Defendant CRNA Associates had the responsibility of coordinating and assigning an anesthesia provider to Defendants Kim and CAPS on August 1, 2019.

24. Defendant CRNA Associates had a duty to inquire, investigate, and ensure that its nurse anesthetists, including Defendant Meeker, were competent, complied with all applicable standards of practice, and did not present an unreasonable danger to patients, including Plaintiff.

25. Pursuant to said contract, Defendant CRNA Associates coordinated and assigned Defendant Meeker to provide anesthesia services to Emmalyn Nguyen during her breast augmentation procedure.

26. In coordinating and assigning Defendant Meeker to provide anesthesia services to Emmalyn Nguyen, Defendant CRNA Associates failed to appropriately investigate Defendant Meeker's background and history; failed to ensure Defendant Meeker was properly trained and qualified under applicable standards to provide anesthesia; failed to ensure Defendant Meeker was competent to safely provide anesthesia services; and failed to ensure Defendant Meeker was capable of safely utilizing the anesthesia equipment and supplies at Colorado Aesthetic & Plastic Surgery.

Emmalyn Nguyen's Anoxic Brain Injury

27. On the afternoon of August 1, 2019, Plaintiff presented to Defendants Kim and CAPS at the medical office of Colorado Aesthetic & Plastic Surgery/ Geoffrey Kim, M.D. Plastic Surgery & Med Spa, 7180 E. Orchard Road, Suite 206, Greenwood Village, Colorado.

28. At approximately 1:45 p.m., employees of Defendants Kim and CAPS transferred Ms. Nguyen to the in-office operating room.

29. Working in conjunction with Defendant Kim and employees of Defendant Kim/CAPS, Defendant Meeker provided anesthesia to Ms. Nguyen.

30. Prior to the beginning of Ms. Nguyen's procedure, Defendant Kim entered orders for anesthesia, including intercostal, intramuscular (intravascular) and subcutaneous injections of 4mg versed, fentanyl and propofol localized anesthesia.

31. At approximately 2:00 p.m., Defendant Meeker followed Defendant Kim's orders and administered anesthesia to Plaintiff Emmalyn Nguyen.

The Defendants Fail to Monitor Ms. Nguyen During Anesthesia

32. The standard of care for anesthesia administration requires monitoring of vital signs for all patients undergoing general anesthesia, including Emmalyn Nguyen.

33. The standard of care for anesthesia administration requires monitoring of blood pressure, end-tidal CO₂, and pulse oximetry for all patients undergoing general anesthesia, including Emmalyn Nguyen.

34. The standard of care for anesthesia administration requires the presence of an anesthesia clinician throughout anesthesia.

35. The standard of care for anesthesia administration requires ongoing presence and observation of the patient by a qualified medical professional.
36. Defendant Kim, the plastic surgeon in charge of the procedure, was responsible to ensure that Ms. Nguyen was safely administered anesthesia and was safely monitored during anesthesia.
37. Defendant Kim failed to ensure that Ms. Nguyen was safely administered anesthesia.
38. Defendant Kim failed to ensure that Ms. Nguyen was safely monitored during anesthesia.
39. Defendant Kim failed to monitor Ms. Nguyen's vital signs while she was under general anesthesia.
40. Defendant Meeker, the nurse anesthetist in charge of anesthesia administration, was also responsible to ensure that Ms. Nguyen was safely administered anesthesia and was safely monitored during anesthesia.
41. Defendant Meeker failed to safely administer Ms. Nguyen anesthesia.
42. Defendant Meeker failed to monitor Ms. Nguyen's vital signs while she was under general anesthesia.
43. Defendant Meeker failed to ensure that Ms. Nguyen was safely monitored during anesthesia.
44. Employees of Defendant Kim/CAPS, including Defendant Hubert, failed to monitor Ms. Nguyen's vital signs while she was under general anesthesia.
45. Defendant Meeker did not remain present in the operating room for the first fifteen minutes that Ms. Nguyen was under general anesthesia.
46. Employees of Defendant Kim/CAPS, including Defendant Hubert, did not remain present in the operating room for the first fifteen minutes that Ms. Nguyen was under general anesthesia.
47. Defendant Kim was not present in the operating room for the first fifteen minutes that Ms. Nguyen was under general anesthesia.
48. After the start of anesthesia, Ms. Nguyen was left unobserved in the operating room.
49. Defendant Meeker failed to properly observe and monitor Ms. Nguyen while she was under general anesthesia.
50. Employees of Defendant Kim/CAPS also failed to properly observe and monitor Ms. Nguyen while she was under general anesthesia.

51. Defendant Kim failed to properly observe and monitor Ms. Nguyen while she was under general anesthesia.
52. At approximately 2:15 p.m., fifteen minutes after the start of anesthesia, employees of Defendant Kim/CAPS re-entered the operating room.
53. At approximately 2:15 p.m., employees of Defendant Kim/CAPS discovered that Ms. Nguyen's lips and face were blue and that cyanosis was quickly spreading to her upper extremities and torso.
54. Upon discovering Plaintiff in a cyanotic state, Defendant Meeker and employees of Defendant Kim/CAPS began vital sign monitoring and discovered that Ms. Nguyen was bradycardiac and was in asystole/cardiac arrest.
55. Defendant Meeker and employees of Defendant Kim/CAPS, including Defendant Hubert, did not immediately attempt to resuscitate Ms. Nguyen.
56. Defendant Kim entered the operating room and began cardiopulmonary resuscitation with chest compressions.
57. Approximately 2-3 minutes after the start of CPR, Plaintiff's heart rate/pulse returned.
58. Shortly thereafter, the defendants noted that Ms. Nguyen was again in cardiac arrest. They again attempted cardiopulmonary resuscitation with chest compressions.
59. The defendants continued CPR for approximately 3 minutes, at which point Plaintiff became hemodynamically stabilized.
60. Although plaintiff's heart rate and breathing returned, she remained neurologically unresponsive.
61. The Defendants, acting together and in concert to fulfill an agreed-upon plan of care, did not call 911 or otherwise obtain emergency medical care and treatment for Plaintiff.
62. Defendant Meeker attempted to pharmacologically reverse Plaintiff's sedation, to no effect.
63. Having gone into cardiac arrest twice, and having received reversing agents with no neurologic response, Plaintiff demonstrated signs and symptoms that any reasonable health care provider would recognize as a likely anoxic brain injury.
64. Nevertheless, the Defendants failed to call 911 for more than five hours.

65. Likewise, the Defendants did not call or otherwise notify Plaintiff's mother, Lynn Fam, that her daughter had suffered cardiac arrest and remained unresponsive.
66. For the next five hours, Ms. Nguyen lay on the operating room table in an unresponsive state.
67. During this five-hour period, the Defendants, and each of them, knew or should have known that Emmalyn Nguyen had suffered an anoxic brain injury and required immediate emergency medical care and treatment.
68. During this five-hour period, the defendants did not call 911, did not seek emergency medical assistance, and did not transfer Ms. Nguyen to a hospital for a higher level of medical care.
69. At approximately 4:00 p.m., Ms. Nguyen's mother, Lynn Fam, returned to Colorado Aesthetic & Plastic Surgery to pick up her daughter.
70. Upon her arrival at CAPS, the Defendants, including employees of Defendant Kim/CAPS, withheld from Ms. Fam, and did not inform her, that her daughter had twice gone into cardiac arrest and remained unresponsive in the operating room.
71. From approximately 4:00-7:30 p.m., the Defendants, including employees of Defendant Kim/CAPS, purposely concealed from Ms. Fam that her daughter had gone into cardiac arrest and remained unresponsive.
72. From approximately 2:15-7:30 p.m. the Defendants prevented Plaintiff from receiving medical care to address an anoxic brain injury causing her to be neurologically unresponsive.
73. From approximately 2:15-7:30 p.m., the Defendants, including employees of Defendant Kim/CAPS, prevented Plaintiff's mother from seeking medical care for her daughter by failing to notify Ms. Fam of Plaintiff's cardiac arrest and unresponsive neurologic state.
74. At approximately 7:30 p.m., the Defendants finally alerted Plaintiff's mother about her condition and agreed to call 911 for emergency medical assistance.
75. At approximately 7:35 p.m., Defendant Meeker called 911 to request a transport of Plaintiff by ambulance to Littleton Adventist Hospital.
76. The named defendants, including employees and agents of the named defendants, collaborated, agreed upon, and executed the above-described plan of care for Plaintiff on the afternoon of August 1, 2019.

Emmalyn Nguyen's Anoxic Brain Injury

77. Plaintiff arrived in the Emergency Department at Littleton Adventist Hospital at 8:29 p.m. where it was determined she had suffered a severe anoxic brain injury due to prolonged cardiac arrest.

78. Plaintiff was admitted to the Intensive Care Unit in critical condition at Littleton Adventist Hospital, where she remained in an unresponsive state. She remained admitted to Littleton Adventist Hospital for 22 days and showed no neurological recovery from her severe anoxic brain injury.

79. On August 23, 2019, Plaintiff was transferred to Vibra Hospital of Denver, where she currently resides and remains in a non-responsive/minimally conscious neurological state, requiring 24/7 care.

III. FIRST CLAIM FOR RELIEF **(Nursing Negligence - Defendant Meeker)**

80. Plaintiffs incorporate herein and make a part hereof all preceding paragraphs as though fully set forth herein.

81. At times material hereto, Defendant Meeker held himself out as a nurse with specialized expertise in the administration of anesthesia.

82. On August 1, 2019, Defendant Meeker provided anesthesia services for Plaintiff's anticipated bilateral augmentation mammoplasty procedure.

83. At all times material hereto, Defendant Meeker owed a duty to Plaintiff to exercise that degree of skill, care, caution, diligence, and foresight exercised by reasonably careful nurse anesthetists under the same or similar circumstances.

84. Defendant Meeker breached his duty, and deviated from the applicable standard of care and was negligent with respect to his care and treatment of Plaintiff, including, but not limited to, the following acts or failures to act:

- a. Negligently failing to administer anesthesia in a safe and prudent manner;
- b. Negligently failing to monitor Plaintiff's vital signs;
- c. Negligently failing to properly observe Plaintiff while she was under anesthesia;
- d. Negligently failing to properly communicate with the treatment team, including the other named defendants, to ensure Plaintiff was safely administered anesthesia and safely monitored during anesthesia;
- e. Negligently failing to ensure that equipment used during anesthesia was maintained in a safe and prudent manner;
- f. Negligently failing to timely respond to changes in Plaintiff's vital signs;

- g. Negligently failing to properly respond to Plaintiff's condition;
- h. Negligently failing to properly treat Plaintiff's medical condition while she was in the operating room at Defendant CAPS;
- i. Negligently failing to timely call emergency medical services;
- j. Negligently failing to transport Plaintiff to a hospital for higher level of medical care and treatment; and
- k. Providing nursing anesthesia care and treatment to Plaintiff that fell below the applicable standard of care.

85. As a direct and proximate result of Defendant Meeker's negligence, Plaintiff suffered asystole, cardiac arrest, an anoxic brain injury, and subsequently remains in a permanently impaired neurologic state that requires 24/7 nursing care.

86. As a further direct and proximate result of the aforesaid negligence and carelessness of Defendant Meeker, Plaintiff has suffered and continues to suffer injuries, damages and losses as more fully set forth below.

IV. SECOND CLAIM FOR RELIEF
(Vicarious Liability – Defendant Meeker, Inc.)

87. Plaintiffs incorporate herein and make a part hereof all preceding paragraphs as though fully set forth herein.

88. Defendant Meeker, Inc. is a corporation which acts by and through its employees, officers, agents, and principals.

89. Defendant Meeker, Inc. is vicariously liable for the negligence of its agent(s) and/or employee(s) committed during their care and treatment of Plaintiff to the extent provided under C.R.S. § 12-36-134 and common law.

90. On August 1, 2019, Defendant Meeker was an employee, officer, agent and/or principal of Defendant Meeker, Inc.

91. As set forth above, Defendant Meeker was negligent in his care and treatment of Plaintiff Emmalyn Nguyen.

92. Defendant Meeker, Inc. was vicariously negligent by and through Rex Meeker's negligent care and treatment of Plaintiff, as set forth above.

93. As a direct and proximate result of Defendant Meeker, Inc.'s negligence, vicariously through its officer/employee Rex Meeker, Plaintiff suffered asystole, cardiac arrest, an anoxic brain injury, and subsequently remains in a permanently impaired neurologic state that requires 24/7 nursing care.

94. As a further direct and proximate result of the aforesaid negligence and carelessness of Defendant Meeker, Inc., Plaintiff has suffered and continues to suffer injuries, damages and losses as more fully set forth below.

V. THIRD CLAIM FOR RELIEF
(Professional Negligence – Defendant Kim)

95. Plaintiff incorporates herein and makes a part hereof all preceding paragraphs as though fully set forth herein.

96. At times material hereto, Defendant Kim held himself out as a specialist in the field of Plastic Surgery.

97. On August 1, 2019, Defendant Kim provided medical care and treatment to Plaintiff.

98. At all times material hereto, Defendant Kim owed a duty to Plaintiff to exercise that degree of skill, care, caution, diligence, and foresight exercised by reasonably careful physicians practicing in the field of Plastic Surgery under the same or similar circumstances.

99. Defendant Kim breached his duty, and deviated from the applicable standard of care and was negligent with respect to his care and treatment of Plaintiff, including, but not limited to, the following acts or failures to act:

- a. Negligently failing to administer anesthesia in a safe and prudent manner;
- b. Negligently failing to ensure the safe administration of anesthesia;
- c. Negligently failing to ensure proper monitoring of his patient during anesthesia;
- d. Negligently failing to ensure that equipment used during anesthesia was maintained in a safe and prudent manner;
- e. Negligently failing to respond to signs and symptoms of complications exhibited by Plaintiff on August 1, 2019;
- f. Negligently failing to properly evaluate Plaintiff's medical condition while she was in the operating room at Defendant CAPS;
- g. Negligently failing to properly monitor Plaintiff's medical condition while she was in the operating room at Defendant CAPS;
- h. Negligently failing to timely call emergency medical services;
- i. Negligently failing to transport Plaintiff to a hospital for treatment of her life-threatening condition;
- j. Providing medical care and treatment to Plaintiff that fell below the applicable standard of care.

100. As a direct and proximate result of Defendant Kim's negligence, negligence by failing to provide reasonable and appropriate medical care, and failing to properly respond to Plaintiff's emergency on August 1, 2019, causing Plaintiff's condition to remain untreated, Plaintiff suffered

asystole, cardiac arrest, an anoxic brain injury, and subsequently remains in a permanently impaired neurologic state that requires 24/7 nursing care.

101. As a further direct and proximate result of the aforesaid negligence and carelessness of Defendant Kim, Plaintiff has suffered and continues to suffer injuries, damages and losses as more fully set forth below.

VI. FOURTH CLAIM FOR RELIEF
(Nursing Negligence – Defendant Hubert, R.N.)

102. Plaintiffs incorporate herein and make a part hereof all preceding paragraphs as though fully set forth herein.

103. On August 1, 2019, Defendant Hubert was acting within the course and scope of her employment with Defendants Kim and/or CAPS, when she provided medical care and treatment to Plaintiff.

104. At all times material hereto, Defendant Hubert owed a duty to Plaintiff to exercise the skill, care, caution, diligence, and foresight exercised by reasonably careful nurses under the same or similar circumstances, when she provided medical care and treatment to Plaintiff.

105. Defendant Hubert breached her duty and failed to exercise reasonable care and was negligent in providing post-operative medical care and treatment to Plaintiff in the PACU, including but not limited to, the following acts or omissions:

- a. Negligently failing to ensure anesthesia was safely administered;
- b. Negligently failing to monitor Plaintiff;
- c. Negligently failing to ensure Plaintiff was monitored during anesthesia;
- d. Negligently failing to ensure that equipment used during anesthesia was maintained in a safe and prudent manner;
- e. Negligently failing to communicate with the treatment team;
- f. Negligently failing to evaluate Plaintiff's medical condition;
- g. Negligently failing to provide anesthesia care and treatment in a safe and prudent manner;
- h. Negligently failing to respond to Plaintiff's medical condition;
- i. Negligently failing to call emergency medical services;
- j. Negligently failing to transport Plaintiff to a hospital for a higher level of care for her medical condition;
- k. Negligently failing to respond to Plaintiff's condition in a safe and prudent manner; and
- l. Providing medical care and treatment to Plaintiff that fell below the applicable standard of care.

106. As a direct and proximate result of Defendant Hubert's negligence by failing to provide reasonable and appropriate medical care, and failing to properly respond to Plaintiff's emergency on August 1, 2019, causing Plaintiff's condition to remain untreated, Plaintiff suffered asystole, cardiac arrest, an anoxic brain injury, and subsequently remains in a permanently impaired neurologic state that requires 24/7 nursing care.

107. As a further direct and proximate result of the aforesaid negligence and carelessness of Defendant Hubert, Plaintiff has suffered and continues to suffer injuries, damages and losses as more fully set forth below.

VII. FIFTH CLAIM FOR RELIEF
(Vicarious Liability – Defendants Kim and CAPS)

108. Plaintiffs incorporate herein and make a part hereof all preceding paragraphs as though fully set forth herein.

109. On August 1, 2019, the nurses, technicians, physician assistants, aides, receptionists, all and other personnel who were present in the CAPS facility during Ms. Nguyen's care and treatment, including but not limited to Defendant Hubert, were agents and/or employees of Defendants Kim and CAPS, and were acting within the course and scope of their employment or agency with said defendants when they provided medical care and treatment to Plaintiff.

110. Defendants Kim, and CAPS are vicariously liable for the negligence of its agents and/or employees committed during their care and treatment of Plaintiff to the extent provided under C.R.S. § 12-36-134 and common law.

111. At all times material hereto, the employees and agents of Defendants Kim and CAPS owed a duty to Plaintiff to exercise reasonable care and comply with applicable standards of care while providing medical care and treatment to Plaintiff.

112. The agents and/or employees of Defendants Kim and CAPS who were present in the facility were negligent, including but not limited to:

- a. Negligently failing to ensure Plaintiff was safely administered anesthesia;
- b. Negligently failing to ensure that equipment used during anesthesia was maintained in a safe and prudent manner;
- c. Negligently failing to communicate with other health care providers in the facility regarding Plaintiff's condition;
- d. Negligently failing to ensure that Plaintiff was properly monitored during anesthesia;
- e. Negligently failing to provide proper nursing and medical treatment;
- f. Negligently failing to timely and properly respond to Plaintiff's medical condition;
- g. Negligently failing to call emergency services;

- h. Negligently failing to transport Plaintiff to a hospital for treatment of her medical condition;
- i. Negligently failing to notify Plaintiff's mother to enable her to seek emergency medical attention for her daughter;
- j. Failing to act in a reasonable and prudent manner with regard to Plaintiff's condition.

113. Therefore, Defendants Kim and CAPS, vicariously by and through their agents/employees, breached their duty, failed to exercise reasonable care and were negligent directly and under a theory of Respondeat Superior.

114. As a direct and proximate result of these Defendants' negligence, vicariously through their agents and employees, Plaintiff suffered cardiac arrest, anoxic brain injury, and a permanently impaired neurologic state that requires 24/7 nursing care.

115. As a further direct and proximate result of the aforesaid negligence and carelessness of Defendants Kim and CAPS, Plaintiff has suffered and continues to suffer injuries, damages and losses as more fully set forth below.

VIII. SIXTH CLAIM FOR RELIEF
(Negligence and Vicarious Liability – Defendant CRNA Associates)

116. Plaintiffs incorporate herein and make a part hereof all preceding paragraphs as though fully set forth herein.

117. Sometime prior to August 1, 2019, Defendants Kim and CAPS contracted with Defendant CRNA Associates to provide anesthesia services to patients undergoing surgical procedures at CAPS, including Emmalyn Nguyen.

118. Defendant CRNA Associates arranged, coordinated, and provided Defendant Meeker to provide anesthesia services for Plaintiff's anticipated bilateral augmentation mammoplasty procedure.

119. In fulfilling its contractual obligations, Defendant CRNA Associates had a duty to use reasonable care.

120. Defendant CRNA Associates breached its duty, and was negligent, including but not limited to the following acts or omissions:

- a. Negligently failing to inquire or investigate to determine Defendant Meeker's competence to safely administer anesthesia;
- b. Negligently failing to ensure Defendant Meeker was properly trained;
- c. Negligently failing to ensure Defendant Meeker complied with applicable standards of care;

- d. Negligently failing to ensure Defendant Meeker was familiar with and complied with safe standards of anesthesia administration;
- e. Negligently failing to implement and enforce policies and procedures applicable to Defendant Meeker;
- f. Negligent hiring, training, and supervision of Defendant Meeker;
- g. Negligently failing to ensure anesthesia equipment used by Defendant Meeker was maintained in a safe and prudent manner;
- h. Negligently placing Defendant Meeker in a surgical setting and environment in which he was not safe to practice;
- i. Negligently breaching, or failing to comply with terms of, its contract with Defendant Kim/CAPS.

121. Additionally, Defendant Meeker was employed by, or acted as agent for, Defendant CRNA Associates when he provided anesthesia services to Emmalyn Nguyen on August 1, 2019.

122. Defendant CRNA, Inc. is vicariously liable for the negligence of its agent(s) and/or employee(s) committed during their care and treatment of Plaintiff to the extent provided under C.R.S. § 12-36-134 and common law.

123. Defendant CRNA Inc., vicariously by and through its agent(s)/employee(s), breached its duty, failed to exercise reasonable care and were negligent directly and under a theory of Respondeat Superior.

124. As a direct and proximate result of Defendant CRNA, Inc.'s negligence by failing to provide reasonable and appropriate medical care, and failing to properly respond to Plaintiff's emergency on August 1, 2019, causing Plaintiff's condition to remain untreated, Plaintiff suffered asystole, cardiac arrest, an anoxic brain injury, and subsequently remains in a permanently impaired neurologic state that requires 24/7 nursing care.

125. As a further direct and proximate result of the aforesaid negligence and carelessness of Defendants, Plaintiff has suffered and continues to suffer injuries, damages and losses as more fully set forth below.

IX. SEVENTH CLAIM FOR RELIEF
(Negligent Hiring, Training, and Supervision - Defendant CAPS)

126. Plaintiffs incorporate the preceding paragraphs by reference as if fully set forth herein.

127. Defendant CAPS owed a duty to its patients, including Plaintiff Emmalyn Nguyen, to use reasonable care in hiring, training and supervising its employees and staff, including the nursing and other staff who provided medical care and treatment to Plaintiff.

128. At all times material hereto, with respect to the care and treatment provided to Plaintiff, in the defendant surgery center, Defendant CAPS had a duty to use reasonable care in hiring, training and supervising its employees to ensure that they exercised that degree of skill, care, caution,

diligence, and foresight exercised by or expected of health care providers in providing care and treatment to patients in an operative setting.

129. In hiring, training and supervising its employees, Defendant CAPS had a duty to use reasonable care to ensure that its employees' lack of training, knowledge, education or experience did not create an undue risk of harm to patients, including Plaintiff Emmalyn Nguyen.

130. Defendant CAPS knew, or should have known, that there would be a substantial risk of injury to patients, including Plaintiff, if it failed to take protective action to ensure its nursing staff and other employees were sufficiently knowledgeable of nursing standards of care as well as facility policies, procedures and protocols for providing care and treatment to patients demonstrating anesthesia complications.

131. Defendant CAPS failed to use reasonable care in hiring, training and/or supervising its nursing staff and other employees with regard to responding to patients with post-operative airway compromise, and thus, was negligent in the hiring, training and supervising of its employees, agents, and staff.

132. As a direct and proximate result of Defendant CAPS's negligent hiring, training and supervising of its employees, said employees failed to properly respond to Plaintiff's emergency on August 1, 2019, causing Plaintiff's condition to remain untreated, Plaintiff suffered asystole, cardiac arrest, an anoxic brain injury, and subsequently remains in a permanently impaired neurologic state that requires 24/7 nursing care.

133. As a further direct and proximate result of the aforesaid negligence and carelessness of Defendant CAPS, Plaintiff suffered a brain injury which has left her in a permanently impaired neurologic state. Additionally, Plaintiff has suffered and continues to suffer damages and losses as more fully set forth below.

X. EIGHTH CLAIM FOR RELIEF
(Res Ipsa loquitur)

134. Plaintiffs incorporate the preceding paragraphs by reference as if fully set forth herein.

135. Defendants, acting together and in concert, carelessly and negligently delayed calling 911 and seeking emergency medical services for immediate transportation to a hospital.

136. Plaintiff did not, in any way, cause or contribute to her own injuries and damages. Because Plaintiff was over-anesthetized, she was unconscious and not able to contract for or provide for her own safety.

137. Plaintiff was in the full custody of the Defendants, which had the sole legal duty and responsibility to provide for her care and safety.

138. Under the circumstances giving rise to this case, Defendants, acting together, were in the exclusive control of monitoring the operative equipment, following office procedures and policies,

and providing medical care that fell below the standard of care when they caused a 5 ½-hour delay in calling 911 for emergency medical services.

139. The unreasonable delay in calling for emergency medical services as described in more detail herein does not occur in the absence of negligence by one or more healthcare providers within the surgical setting.

140. As such, the doctrine of *res ipsa loquitur* applies in this case.

141. Defendants' actions directly and proximately caused or exacerbated Plaintiff's injuries. The delay in seeking emergency medical attention, and allowing Plaintiff to remain untreated, resulted in Plaintiff suffering a permanent anoxic brain injury, leaving her in a minimally conscious state that requires 24/7 nursing care.

142. As a further direct and proximate result of the aforesaid negligence and carelessness of Defendants, Plaintiff has suffered and continues to suffer damages and losses as more fully set forth below.

XI. NINTH CLAIM FOR RELIEF
(Joint & Several Liability Pursuant to C.R.S. § 13-21-111.5(4))

143. Plaintiffs incorporate herein and make a part hereof all preceding paragraphs as though fully set forth herein.

144. In providing care and treatment to Plaintiff, the named Defendants acted in concert to provide a course of care and treatment to Plaintiff.

145. In providing care and treatment to Plaintiff, the named Defendants knowingly agreed upon a common plan to treat and monitor Plaintiff.

146. Defendants, and each of them, acted negligently in furtherance of their common plan for care and treatment of Plaintiff.

147. Accordingly, all named Defendants herein are jointly and severally liable for damages suffered by the Plaintiff, pursuant to C.R.S. 13-21-111.5(4).

DAMAGES

148. Plaintiff incorporates the preceding paragraphs by reference as if fully set forth herein.

149. As a direct and proximate result of the negligent acts and/or failures to act of all named Defendants as described above, Plaintiff suffered injuries, including, but not limited to; an irreversible anoxic brain injury resulting in a permanent "semi-conscious" state; permanent mental and physical impairment requiring 24/7 medical care; complications and necessary medical care resulting from her brain injury, including permanent tube-feeding, and other medical and functional limitations and needs arising directly as a result of Plaintiff's brain injury.

150. As a direct and proximate result of the negligent acts and/or failures to act of all named Defendants as described above, Plaintiff has incurred damages and losses, including but not limited to, past and future noneconomic damages including pain and suffering, impairment, disfigurement, a loss of enjoyment of life, and emotional distress; past and future medical and other care expenses; past and future loss of household and other services; past and future loss of earnings and loss of earning capacity; legal and other expenses associated with guardianship and conservatorship.

151. Additionally and as a further direct and proximate result of the negligent acts and/or failures to act of the Defendants as described above, Plaintiff Lynn Chan Fam, as the legal guardian and conservator for Emmalyn Nguyen, has incurred past and future damages including medical and other expenses related to Emmalyn's lifelong care and treatment; loss of services; and other incidental and consequential economic losses associated with Emmalyn Nguyen's catastrophic injury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered in her favor and against Defendants for general and special damages in an amount which will fully and fairly compensate the Plaintiff for her injuries and resulting economic and noneconomic damages, both past and future. Plaintiffs further pray that the court award them pre- and post- judgment interest as permitted by Colorado law, cost of this suit, and such other and further relief as this court may deem just and proper.

PLAINTIFF REQUESTS A JURY OF SIX TO HEAR ALL ISSUES IN THIS CASE

Respectfully submitted this 18th day of December, 2019.

WAHLBERG, WOODRUFF, NIMMO & SLOANE, LLP

Electronically signed.

/s/ David S. Woodruff

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