

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO: 13-33658 CA 10
CASE NO: 15-011832 CA 10
Consolidated

MIGUEL DIAZ, and ESTHER DIAZ,
his wife, MARTA CASUSO, MERCEDES
MIRO, ZORAIDA OQUENDO, MARIA
PEREZ as Persona Representative of the
Estate of CLEMENTE PEREZ and
individually, MARTHA TUNEZ,
CECILIA BORJA and JAIME F. BORJA,
her husband, MARIA GLADYS CAAMANO
and GILBERT CAAMANO, her husband,
LUIS HERNANDEZ, IRMA HIDALGO,
MARTA MACHIN, DAYSY PEDRAJA,
MIGDALIA PEREZ and ELAINE ESPINOSA

Plaintiffs,
vs.

LEON MEDICAL CENTERS, INC., a Florida
corporation.

Defendant.

**FIFTH AMENDED COMPLAINT (DIAZ), AMENDED COMPLAINT (BORJA), COMPLAINT,
(ELAINE ESPINOSA) AND DEMAND FOR JURY TRIAL**

Plaintiffs Miguel Diaz and his wife, Esther Diaz, Marta Casuso, Mercedes Miro, Zoraida Oquendo, Maria Perez, as personal representative of the Estate of Clemente Perez, deceased, Martha Tunez, Cecilia Borja, and her husband Jamie F. Borja, Maria Gladys Caamano, and her husband Gilbert Caamano, Luis Hernandez, Irma Hidalgo, Marta Machin, Daysy Pedraja, Migdalia Perez and Elaine Espinosa, by and through undersigned counsel, sue the Defendant Leon Medical Centers, Inc., a Florida corporation.

ROSS & GIRTEN

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FACTS COMMON TO ALL COUNTS

1. This is an action for damages in excess of the jurisdictional limits of the Circuit Court, Miami-Dade County, Florida.
2. Plaintiffs, Miguel Diaz and his wife Esther Diaz, are residents of and domiciled in Miami-Dade County, Florida.
3. Plaintiff, Marta Casuso, is a resident of and domiciled in Miami-Dade County, Florida.
4. Plaintiff, Mercedes Miro, is a resident of and domiciled in Miami-Dade County, Florida.
5. Plaintiff, Zoraida Oquendo, is a resident of and domiciled in Miami-Dade County, Florida.
6. Plaintiff, Maria Perez is a resident of and domiciled in Miami-Dade County, Florida and is the personal representative of the Estate of Clemente Perez, deceased.
7. Plaintiff, Martha Tunez, is a resident of and domiciled in Miami-Dade County, Florida.
8. Plaintiffs, Cecilia Borja and her husband Jaime F. Borja, are residents of and domiciled in Miami-Dade County, Florida.
9. Plaintiffs, Maria Gladys Caamano and her husband Gilbert Caamano, are residents of and domiciled in Miami-Dade County, Florida.
10. Plaintiff, Luis Hernandez, is a resident of and domiciled in Miami-Dade County, Florida.

11. Plaintiff, Irma Hidalgo, is a resident of and domiciled in Miami-Dade County, Florida.

12. Plaintiff, Marta Machin, is a resident of and domiciled in Miami-Dade County, Florida.

13. Plaintiff, Daysy Pedraja, is a resident of and domiciled in Miami-Dade County, Florida.

14. Plaintiff, Migdalia Perez, is a resident of and domiciled in Miami-Dade County, Florida.

15. Plaintiff, Elaine Espinosa, is a resident of and domiciled in Miami-Dade County, Florida.

16. Leon Medical Centers, Inc., ("LMC") is a Florida corporation authorized to do business and doing business in Miami-Dade County, Florida as a medical care clinic.

17. LMC provides primary and specialized medical care to Medicare patients through a series of complicated internal contractual arrangements, known only to the contracting parties who benefit, not its patients.

18. At all times pertinent hereto, LMC engaged in a sophisticated advertising and public relations campaign, designed to compete with other medical facilities and providers, and to attract patients.

19. LMC provided ophthalmological care, optometry care, pre-operative care and post-operative care through primary care doctors, ophthalmologists, optometrists, nurses and other medical support staff.

20. All of the Plaintiffs are member subscribers of an HMO previously owned by Leon, but which was sold in 2007. The HMO's member-subscriber provider directory listed the following primary care physicians:

Leon Medical Centers, Inc.
101 S.W. 27th Avenue
Miami, Florida 33135
(305) 642-6366
www.leonmedicalcenters.com
Electronic subscribing is supported

Leon-Rosen, Jonathan, M.D.
Leon Medical Centers, Inc.
(listing 7 locations)

21. All of the Plaintiffs contacted LMC for eye and vision care, and were assigned to Dr. Leon-Rosen.

22. At all times pertinent hereto, LMC held out the doctors it used to provide ophthalmological care, optical care, pre-operative and post-operative care as its apparent agents, acting within the scope of their agency who provided "excellent" medical care. Among other things, LMC selected doctors who treated the Plaintiffs, scheduled appointments for their medical care and treatment, maintained Plaintiffs' medical charts and notes, and arranged for follow up care and treatment.

23. At all times pertinent hereto, Jonathan Leon-Rosen, M.D., Luis Fernandez de Castro, M.D., Richard Padron, O.D., Sumir Yoshi, MD. and Judith Flores, O.D., were ophthalmologists or optometrists, who provided eye care and services for patients of LMC. Although the aforesaid healthcare providers were actually employed by South Florida Eye Associates, Inc., a dissolved Florida corporation, LMC held itself out as the provider of eye care for the Plaintiffs and held the aforesaid health care providers out

as their apparent agents, acting within the scope of their agency to provide medical care on LMC's behalf. Among other things:

- (a) LMC introduced Drs. Leon-Rosen, Luis Fernandez de Castro, M.D., Richard Padron, O.D., Sumir Yoshi, MD. and Judith Flores, O.D. to the Plaintiffs, and selected them to provide Plaintiffs' eye care;
- (b) LMC introduced Drs. Leon-Rosen, Luis Fernandez de Castro, M.D., Richard Padron, O.D., Sumir Yoshi, MD. and Judith Flores, O.D. to each of the Plaintiffs at one of the LMC medical clinics.
- (c) LMC provided Drs. Leon-Rosen, Luis Fernandez de Castro, M.D., Richard Padron, O.D., Sumir Yoshi, MD. and Judith Flores, O.D. an identification badge identifying them as LMC ophthalmologists or optometrists, which they were required to wear, when seeing LMC patients, including Plaintiffs;
- (d) LMC provided Drs. Leon-Rosen, Luis Fernandez de Castro, M.D., Richard Padron, O.D., Sumir Yoshi, MD. and Judith Flores, O.D. white physicians' coats/jackets which had the LMC logo/insignia, identifying them as the ophthalmologist or optometrist for "LMC;"
- (e) LMC provided Drs. Leon-Rosen, Luis Fernandez de Castro, M.D., Richard Padron, O.D., Sumir Yoshi, MD. and Judith Flores, O.D. with progress note paper bearing the LMC name and their notes were entered on LMC medical charts (which patients could see);
- (f) The information LMC provided for Drs. Leon-Rosen, Luis Fernandez de Castro, M.D., Richard Padron, O.D., Sumir Yoshi, MD. and/or Judith Flores, O.D. identifying them as LMC's ophthalmologists or optometrists, corresponded with the identification of the actual entity with which the Plaintiffs dealt: medical services were provided in LMC buildings bearing signage and LMC logos, patients were transported to LMC clinics by vehicles marked LMC bearing its logo, driven by bus drivers bearing LMC nametags (who were actually employed by LMC);

- (g) Patients (including Plaintiffs) were greeted at LMC clinics by LMC doormen, with identifying LMC nametags and logos (and these doormen were actually employed by LMC);
- (h) Patients (including Plaintiffs) checked in for appointments with LMC staff who wore LMC uniforms, bearing LMC's nametags and logos (and LMC scheduling staff were actually employed by LMC);
- (i) Patients (including Plaintiffs) were seen by primary care doctors, nurses and other medical support staff wearing identifying LMC badges with LMC's logo (and these health care providers and support staff were actually employed by LMC);
- (j) LMC made no distinction between Drs. Leon-Rosen, Padron, de Castro, Yoshi, Flores, and other personnel seen by the Plaintiffs (bus drivers, doormen, scheduling personnel, primary doctors, nurses and other medical support staff actually employed by LMC);
- (k) LMC advertised to the public at large that "Leon Medical Center **employs** an elite network of board certified specialty physicians to meet all your (the patient's) needs," actively creating and fostering the belief that it employed all of the persons involved in patient care, as part of its mission to provide "elite" medical care and services; and
- (l) LMC failed to inform the Plaintiffs that Drs. Leon-Rosen, Padron, de Castro, Yoshi, Flores were "independent contractors" pursuant to its own internal contractual arrangements, and went to great lengths to disguise that fact to create the opposite impression.

24. All of the Plaintiffs looked to LMC to provide primary and specialty health care services, and justifiably relied upon LMC's conduct and representations in believing that Drs. Leon-Rosen, Padron, de Castro, Yoshi, and Flores were LMC's agents performing medical care and treatment in the scope of LMC's agency.

25. Plaintiffs changed positions to their detriment in reliance upon LMC's conduct and representations, when they underwent cataract surgery by Dr. Leon-Rosen.

26. On September 3, 2013, Dr. Leon-Rosen performed cataract eye surgery on approximately 16 patients, including Plaintiffs Marta Casuso, Zoraida Oquendo, Clemente Perez (deceased), Maria Gladys Caamano, Luis Hernandez, Irma Hidalgo, Marta Machin, Migdalia Perez, and Elaine Espinosa.

27. Dr. Leon-Rosen usually used Gills solution to irrigate the eyes of his patients and provide antibiotic prophylaxis at the end of each procedure. Just prior to the September 3, 2013 surgeries, Dr. Leon-Rosen was notified that he could not use Gill's solution.

28. Dr. Leon-Rosen chose Gentamicin as a substitute, intending to use preservative free single use ophthalmatic Gentamicin. This type of Gentamicin was supposed to be topically administered to the patients' eyes. However, Dr. Leon-Rosen was used to injecting Gills solution, and instead of applying the Gentamicin topically, he injected it directly into each Plaintiffs' eye(s). In addition, Dr. Leon-Rosen used the wrong type of Gentamicin. He injected multiple use preservative containing Gentamicin for IV and IM (not manufactured for eye use), rather than preservative-free single use ophthalmic Gentamicin.

29. Dr. Leon-Rosen used the same method of injection and the same amount of the drug on each Plaintiff, and the surgeries on each Plaintiff were conducted the same.

30. Dr. Leon-Rosen's injection of multiple use, preservative-containing Gentamicin directly into each Plaintiffs' eyes was contraindicated, and fell below the applicable standard of care.

31. As a result of the cataract surgery by Dr. Leon-Rosen, and a direct consequence of the injection, Plaintiffs Marta Casuso, Zoraida Oquendo, Clemente Perez (now deceased), Maria Gladys Caamano, Luis Hernandez, Irma Hidalgo, Marta Machin, Migdalia Perez and Elaine Espinosa all experienced symptoms and complained of eye injuries – symptoms and injuries that are unusual and do not occur in patients who undergo routine cataract surgery.

32. On September 3, 4, 6 and 9, 2013, Plaintiff, Maria Gladys Caamano reported burning pain, irritation and/or discomfort in her eye to LMC.

33. On September 4, 2013, one day post-surgery, Plaintiff Zoraida Oquendo reported eye pain, flashes and floaters in her eye to LMC.

34. On September 4 and 5, 2013, Plaintiff Irma Hidalgo reported pain, foreign sensation and/or irritation in her eye to LMC.

35. On September 4 and 6, 2013, one day post-surgery, Plaintiff, Marta Casuso reported burning, tearing and/or poor vision in her eye to LMC.

36. On September 4 and 9, 2013, Plaintiff Clemente Perez reported eye pain, a burning sensation and/or redness in his eye to LMC.

37. On September 4, 2013, one day post-surgery, Plaintiff Luis Hernandez reported eye pain, tearing and blurry vision in his eye to LMC.

38. On September 4, 2013, one day post-surgery, Plaintiff Migdalia Perez reported eye pain and tearing in her eye to LMC.

39. On September 4, 2013, one day post-surgery, Benito Leon a patient who is not a party to this lawsuit, reported eye pain and a foreign sensation in his eye to LMC.

40. On September 4, 2013, one day post-surgery, an unknown patient reported eye pain to LMC.

41. On September 9, 2013, six days post-surgery, an unknown patient reported eye discomfort to LMC.

42. All told, approximately 9 out of 16 LMC patients who underwent cataract surgery with Dr. Leon-Rosen on September 3, 2013, reported serious eye pain to LMC on or about September 4, 2013. This was approximately half the patients on whom Dr. Leon-Rosen operated. All were initially screened and seen by LMC staff and were examined by other doctors (Dr. Sumir Joshi, Dr. Richard Padron, Dr. Judith Flores Guerra and Dr. Luis Fernandez de Castro), all whom were employed under the identical circumstances as Dr. Leon-Rosen. All of these other doctors were actually employed by South Florida Eye Associates, but were also held out by LMC as its eye doctors, providing eye care for LMC.

43. In the exercise of reasonable care, LMC should have noticed a trend and pattern of unexpected injury on the part of eye patients between September 4 and September 9, 2013, during follow up treatment and care, and correlated that to the negligent injection of Gentamicin into patients' eyes by Dr. Leon-Rosen during cataract eye surgery on September 3, 2013.

44. LMC never contacted Dr. Leon-Rosen, or took any action during September 4-9, 2013 to investigate or act upon the documented complaints of eye

pain by multiple LMC patients of eye pain immediately following September 3 surgery.

45. From September 3 through September 9, 2013, LMC was negligent and fell below the prevailing standard of care in failing to:

- (a) Have appropriate and comprehensive written policies and procedures in place so that LMC staff (inclusive of all LMC personnel) would be trained and knowledgeable in timely recognizing and acting upon the trend and pattern of injuries that occurred and evolved from September 4 – September 9, 2013 so as to prevent the same medical error(s) and injuries from occurring to multiple cataract patients operated upon on September 10, 2013.
- (b) Timely investigate, appreciate, recognize and act upon the trend and pattern of injuries suffered by multiple cataract patients operated upon on September 3, 2013, so as to timely prevent the same medical error(s) and injuries from occurring to multiple cataract patients operated upon on September 10, 2013.
- (c) Conduct its own post-operative office visits or have other adequate quality control measure(s) in place and in actual practice so as to identify the first group of injuries that occurred on September 3, 2013 so as to prevent the second group of injuries that occurred on September 10, 2013.

46. On September 10, 2013, Dr. Leon-Rosen performed cataract eye surgery on 22 additional LMC patients, including Plaintiffs Miguel Diaz, Mercedes Miro, Marta Tunez, Cecilia Borja and Daysy Pedraja. Without knowledge of the trend and pattern of unexpected injury reported to LMC, Dr. Leon-Rosen operated on all of these named Plaintiffs on September 10, the same way as he had done previously on September 3, 2013. At the conclusion of each surgery, instead of applying

preservative-free single use ophthalmic Gentamicin topically, Dr. Leon-Rosen injected a syringe of multiple use, preservative containing Gentamicin for IV or IM use directly into each Plaintiff's eye(s).

47. Plaintiffs have all suffered and continue to suffer eye pain, eye injury, toxic anterior segment syndrome (TASS), visual loss or blindness which has caused them great physical harm, permanent disability, and mental pain and suffering.

Plaintiffs have complied with all conditions precedent to the filing of this suit, including but not limited to, compliance with the pre-suit provisions of Chapter 766, and undersigned counsel certifies that an investigation has given rise to a good faith belief of the presence of medical negligence on the part of Dr. Leon-Rosen and LMC.

COUNT I
PLAINTIFF MARTA CASUSO AGAINST LMC (VICARIOUS LIABILITY)

48. Plaintiff Marta Casuso realleges and incorporates by reference all of the allegations in paragraphs 1-47.

49. On September 3, 2013, Dr. Leon-Rosen fell below the standard of care and was negligent in the performance of cataract surgery on this Plaintiff.

50. As a direct and proximate cause of Dr. Leon-Rosen's negligence, Plaintiff Casuso sustained serious physical injuries, lost medical, hospitalization and nursing expenses, and mental pain and suffering. Plaintiff will continue to suffer such losses and ongoing damages in the future.

51. LMC is vicariously liable for the negligence of Dr. Leon-Rosen. As previously detailed at length, LMC held Dr. Leon-Rosen out to the Plaintiff and other patients as an apparent agent acting within the scope of his agency, Plaintiff

justifiably relied on LMC's conduct, reasonably believed Dr. Leon-Rosen was LMC's apparent agent, and changed her position in reliance on such conduct by undergoing cataract surgery with Dr. Leon-Rosen.

Wherefore judgment should be entered in favor of Plaintiff Casuso in the total amount of her damages against LMC.

COUNT II
PLAINTIFF ZORAIDA OQUENDO AGAINST LMC (VICARIOUS LIABILITY)

52. Plaintiff Zoraida Oquendo realleges and incorporates by reference all of the allegations in paragraphs 1-47.

53. On September 3, 2013, Dr. Leon-Rosen fell below the standard of care and was negligent in the performance of cataract surgery on this Plaintiff.

54. As a direct and proximate cause of Dr. Leon-Rosen's negligence, Plaintiff Oquendo sustained serious physical injuries, lost medical, hospitalization and nursing expenses, and mental pain and suffering. Plaintiff will continue to suffer such losses and ongoing damages in the future.

55. LMC is vicariously liable for the negligence of Dr. Leon-Rosen. As previously detailed at length, LMC held Dr. Leon-Rosen out to the Plaintiff and other patients as an apparent agent acting within the scope of his agency, Plaintiff justifiably relied on LMC's conduct and reasonably believed Dr. Leon-Rosen was LMC's apparent agent, and changed her position in reliance by undergoing cataract surgery with Dr. Leon-Rosen.

Wherefore judgment should be entered in favor of Plaintiff Oquendo in the total amount of her damages against LMC.

COUNT III
PLAINTIFF MARIA PEREZ, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CLEMENTE PEREZ AGAINST LMC (VICARIOUS LIABILITY) WRONGFUL DEATH

56. Plaintiff Maria Perez realleges and incorporates by reference all of the allegations in paragraphs 1-47.

57. On September 3, 2013, Dr. Leon-Rosen fell below the standard of care and was negligent in the performance of cataract surgery on Plaintiff Clemente Perez.

58. As a direct and proximate cause of Dr. Leon-Rosen's negligence, Clemente sustained serious physical injuries which caused or substantially contributed to causing his death.

59. Plaintiff's widow Maria Perez, was appointed the personal representative of his estate, and is entitled to recover for the estate and herself, individually, as decedent's survivor. §768.20, Fla. Stat. (2011).

60. Maria Perez, the decedent's surviving spouse, seeks to recover the value of decedent's lost support and services from the date of his injury to death, plus interest, plus future loss of support and services from the date of Clemente's death, reduced to present value. §768.21(1), Fla. Stat.

61. Maria Perez also seeks to recover for the loss of Clemente's companionship and protection, and for her past and future mental pain and suffering from the date of decedent's injury. §768.21(2), Fla. Stat.

62. The Estate and Maria Perez seek medical and funeral expenses, §768.21(5), 6(2)(b).

63. The estate further seeks decedent's lost earning and prospective net accumulations. §768.21(6)(a), Fla. Stat.

64. LMC is vicariously liable for the negligence of Dr. Leon-Rosen, which caused Clemente's injuries and death. As previously detailed at length, LMC held Dr. Leon-Rosen out to the Plaintiff and other patients as an apparent agent, acting within the scope of his agency, Clemente Perez justifiably relied on LMC's conduct and reasonably believed Dr. Leon-Rosen was LMC's apparent agent, and changed his position in reliance by undergoing cataract surgery with Dr. Leon-Rosen.

Wherefore judgment should be entered in favor of Maria Perez, personal representative of Clemente's estate, on behalf of the estate and herself, as Clemente's surviving spouse.

COUNT IV
PLAINTIFF MARIA PEREZ AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CLEMENTE PEREZ AGAINST LMC (VICARIOUS LIABILITY) SURVIVAL ACTION

65. Plaintiff Maria Perez realleges and incorporates by reference all of the allegations in paragraphs 1-47.

66. On September 3, 2013, Dr. Leon-Rosen fell below the standard of care and was negligent in the performance of cataract surgery on Plaintiff Clemente Perez.

67. In the event that LMC contends that Clemente Perez died from a cause unrelated to this surgery, Plaintiff asserts a claim for survival damages up to the date of Clemente's death pursuant to §46.021, Fla.Stat., as Clemente suffered physical and mental pain and suffering, loss of enjoyment of life, medical and hospital expense for care and treatment, caused by the negligent surgery.

68. During the period before Clemente died and in conjunction with his alternative survival claim, Plaintiff Maria Perez asserts a lost consortium claim. As a direct result of the events detailed in this complaint, Maria Perez suffered loss of decedent's support, services, care and comfort because of his injuries.

69. LMC is vicariously liable for the negligence of Dr. Leon-Rosen, which caused Clemente's injuries, and the damages sought herein. As previously detailed at length, LMC held Dr. Leon-Rosen out to the Plaintiff and other patients as an apparent agent, acting within the scope of his agency, Clemente Perez justifiably relied on LMC's conduct and reasonably believed Dr. Leon-Rosen was LMC's apparent agent, and changed his position in reliance by undergoing cataract surgery with Dr. Leon-Rosen.

Wherefore judgment should be entered in favor of Maria Perez, as personal representative, for damages preserved by the survival statute.

COUNT V
PLAINTIFF MARIA GLADYS CAAMANO AND HER HUSBAND GILBERT CAAMANO
AGAINST LMC (VICARIOUS LIABILITY)

70. Plaintiffs Maria Gladys Caamano and her husband Gilbert Caamano reallege and incorporate by reference all of the allegations in paragraphs 1-47.

71. On September 3, 2013, Dr. Leon-Rosen fell below the standard of care and was negligent in the performance of cataract surgery on this Plaintiff Maria Gladys Caamano.

72. Plaintiff Gilbert Caamano sustained lost consortium damages, and suffered the loss of his wife's support, services, care and comfort because of her injuries.

73. As a direct and proximate cause of Dr. Leon-Rosen's negligence, Plaintiff Caamano sustained serious physical injuries, lost medical, hospitalization and nursing expenses, and mental pain and suffering. Plaintiff will continue to suffer such losses and ongoing damages in the future.

74. LMC is vicariously liable for the negligence of Dr. Leon-Rosen. As previously detailed at length, LMC held Dr. Leon-Rosen out to the Plaintiff and other patients as an apparent agent acting within the scope of his agency, Plaintiff justifiably relied on LMC's conduct, reasonably believed Dr. Leon-Rosen was LMC's apparent agent, and changed her position in reliance on such conduct by undergoing cataract surgery with Dr. Leon-Rosen.

Wherefore judgment should be entered in favor of Plaintiff Caamano in the total amount of her damages against LMC.

COUNT VI
LUIS HERNANDEZ AGAINST LMC (VICARIOUS LIABILITY)

75. Plaintiff Luis Hernandez realleges and incorporates by reference all of the allegations in paragraphs 1-47.

76. On September 3, 2013, Dr. Leon-Rosen fell below the standard of care and was negligent in the performance of cataract surgery on this Plaintiff.

77. As a direct and proximate cause of Dr. Leon-Rosen's negligence, Plaintiff Hernandez sustained serious physical injuries, lost medical, hospitalization and nursing expenses, and mental pain and suffering. Plaintiff will continue to suffer such losses and ongoing damages in the future.

78. LMC is vicariously liable for the negligence of Dr. Leon-Rosen. As previously detailed at length, LMC held Dr. Leon-Rosen out to the Plaintiff and other patients as an apparent agent acting within the scope of his agency, Plaintiff justifiably relied on LMC's conduct, reasonably believed Dr. Leon-Rosen was LMC's apparent agent, and changed her position in reliance on such conduct by undergoing cataract surgery with Dr. Leon-Rosen.

Wherefore judgment should be entered in favor of Plaintiff Hernandez in the total amount of his damages against LMC.

COUNT VII
IRMA HIDALGO AGAINST LMC (VICARIOUS LIABILITY)

79. Plaintiff Irma Hidalgo realleges and incorporates by reference all of the allegations in paragraphs 1-47.

80. On September 3, 2013, Dr. Leon-Rosen fell below the standard of care and was negligent in the performance of cataract surgery on this Plaintiff.

81. As a direct and proximate cause of Dr. Leon-Rosen's negligence, Plaintiff Hidalgo sustained serious physical injuries, lost medical, hospitalization and nursing expenses, and mental pain and suffering. Plaintiff will continue to suffer such losses and ongoing damages in the future.

82. LMC is vicariously liable for the negligence of Dr. Leon-Rosen. As previously detailed at length, LMC held Dr. Leon-Rosen out to the Plaintiff and other patients as an apparent agent acting within the scope of his agency, Plaintiff justifiably relied on LMC's conduct, reasonably believed Dr. Leon-Rosen was LMC's

apparent agent, and changed her position in reliance on such conduct by undergoing cataract surgery with Dr. Leon-Rosen.

Wherefore judgment should be entered in favor of Plaintiff Hidalgo in the total amount of her damages against LMC.

COUNT VIII
MARTA MACHIN AGAINST LMC (VICARIOUS LIABILITY)

83. Plaintiff Marta Machin realleges and incorporates by reference all of the allegations in paragraphs 1-47.

84. On September 3, 2013, Dr. Leon-Rosen fell below the standard of care and was negligent in the performance of cataract surgery on this Plaintiff.

85. As a direct and proximate cause of Dr. Leon-Rosen's negligence, Plaintiff Machin sustained serious physical injuries, lost medical, hospitalization and nursing expenses, and mental pain and suffering. Plaintiff will continue to suffer such losses and ongoing damages in the future.

86. LMC is vicariously liable for the negligence of Dr. Leon-Rosen. As previously detailed at length, LMC held Dr. Leon-Rosen out to the Plaintiff and other patients as an apparent agent acting within the scope of his agency, Plaintiff justifiably relied on LMC's conduct, reasonably believed Dr. Leon-Rosen was LMC's apparent agent, and changed her position in reliance on such conduct by undergoing cataract surgery with Dr. Leon-Rosen.

Wherefore judgment should be entered in favor of Plaintiff Machin in the total amount of her damages against LMC.

COUNT IX
PLAINTIFF ELAINE ESPINOSA AGAINST LMC (VICARIOUS LIABILITY)

87. Plaintiff Elaine Espinosa realleges and incorporates by reference all of the allegations in paragraphs 1-47.

88. On September 3, 2013, Dr. Leon-Rosen fell below the standard of care and was negligent in the performance of cataract surgery on this Plaintiff.

89. As a direct and proximate cause of Dr. Leon-Rosen's negligence, Plaintiff Espinosa sustained serious physical injuries, lost medical, hospitalization and nursing expenses, and mental pain and suffering. Plaintiff will continue to suffer such losses and ongoing damages in the future.

90. LMC is vicariously liable for the negligence of Dr. Leon-Rosen. As previously detailed at length, LMC held Dr. Leon-Rosen out to the Plaintiff and other patients as an apparent agent acting within the scope of his agency, Plaintiff justifiably relied on LMC's conduct, reasonably believed Dr. Leon-Rosen was LMC's apparent agent, and changed her position in reliance on such conduct by undergoing cataract surgery with Dr. Leon-Rosen.

Wherefore judgment should be entered in favor of Plaintiff Perez in the total amount of her damages against LMC.

COUNT X
PLAINTIFF ZORAIDA OQUENDO AGAINST LMC (VICARIOUS LIABILITY)

91. Plaintiff Zoraida Oquendo realleges and incorporates by reference all of the allegations in paragraphs 1-47.

92. On September 3, 2013, Dr. Leon-Rosen fell below the standard of care and was negligent in the performance of cataract surgery on this Plaintiff.

93. As a direct and proximate cause of Dr. Leon-Rosen's negligence, Plaintiff Oquendo sustained serious physical injuries, lost medical, hospitalization and nursing expenses, and mental pain and suffering. Plaintiff will continue to suffer such losses and ongoing damages in the future.

94. LMC is vicariously liable for the negligence of Dr. Leon-Rosen. As previously detailed at length, LMC held Dr. Leon-Rosen out to the Plaintiff and other patients as an apparent agent acting within the scope of his agency, Plaintiff justifiably relied on LMC's conduct and reasonably believed Dr. Leon-Rosen was LMC's apparent agent, and changed her position in reliance by undergoing cataract surgery with Dr. Leon-Rosen.

Wherefore judgment should be entered in favor of Plaintiff Oquendo in the total amount of her damages against LMC.

COUNT XI
PLAINTIFFS MIGUEL DIAZ AND ESTHER DIAZ AGAINST LMC (DIRECT LIABILITY)

95. Plaintiffs Miguel and Esther Diaz reallege and incorporate by reference all of the allegations in paragraphs 1-47.

96. On September 4 through September 9, 2013, a trend and pattern of unexpected injury was, or in the exercise of reasonable care should have been known to LMC based upon uncharacteristic complaints of eye pain to LMC of 9 out of 16 patients on whom Dr. Leon-Rosen performed cataract surgery on September 3, 2013.

97. LMC negligently failed to implement policies and procedures, administratively, to detect the trend and pattern of unexpected injury.

98. LMC negligently failed to investigate, or act upon the reported, documented complaints of multiple patients who had been injured to prevent a reoccurrence of injuries by more patients in the same way.

99. On September 10, 2013, Dr. Leon-Rosen performed cataract eye surgery on Plaintiff Miguel Diaz. As a direct result of LMC's negligent failure to implement policies and procedures, or to investigate a clear trend and pattern of unexpected injury, Plaintiff underwent the same type of negligent surgery performed previously by Dr. Leon-Rosen on September 3, 2013.

100. As a result of LMC's own policy, procedure and investigative failures, Plaintiff Miguel Diaz sustained serious physical injuries, lost medical, hospitalization and nursing expenses, and mental pain and suffering in the past and in the future.

101. Plaintiff Esther Diaz lost the consortium, support, companionship and services of her husband Miguel, by virtue of his injuries, in the past and in the future.

Wherefore Plaintiffs seek judgment against LMC in the total amount of their damages.

COUNT XII
PLAINTIFFS MIGUEL AND ESTHER DIAZ AGAINST LMC (VICARIOUS LIABILITY)

102. Plaintiffs reallege and incorporate by reference all of the allegations in paragraphs 1-47.

103. On September 10, 2013, Dr. Leon-Rosen fell below the standard of care when he injected the wrong type of Gentamicin into Miguel Diaz' eye at the end of a surgical procedure.

104. As a direct and proximate cause of Dr. Leon-Rosen's negligence, Plaintiff Miguel Diaz sustained physical and mental injuries, medical and nursing care and treatment, and will continue to suffer such losses in the future.

105. Plaintiff Esther Diaz lost the consortium, comfort, companionship, support and services of her husband Miguel in the past and in the future.

106. LMC is vicariously liable for the negligence of Dr. Leon-Rosen, as previously detailed herein, at all times pertinent hereto, LMC held out Dr. Leon-Rosen to the patients as an apparent agent acting within the scope of his agency, Plaintiffs justifiably relied on LMC's conduct and believed that Dr. Leon-Rosen was LMC's apparent agent, and changed their position in reliance when Miguel Diaz underwent cataract surgery with Dr. Leon-Rosen.

Wherefore judgment should be entered in the full amount of Plaintiffs' damages against LMC.

COUNT XIII
PLAINTIFF MERCEDES MIRO AGAINST LMC (DIRECT LIABILITY)

107. Plaintiff Mercedes Miro realleges and incorporates by reference all of the allegations in paragraphs 1-47.

108. On September 4 through September 9, 2013, a trend and pattern of unexpected injury was, or in the exercise of reasonable care should have been known to LMC based upon uncharacteristic complaints of eye pain to LMC of 9 out of approximately 16 patients on whom Dr. Leon-Rosen performed cataract surgery on September 3, 2013.

109. LMC negligently failed to implement policies and procedures, administratively, to detect the trend and pattern of unexpected injury.

110. LMC negligently failed to investigate, or act upon the reported, documented complaints of multiple patients who had been injured to prevent a reoccurrence of injuries by more patients in the same way.

111. On September 10, 2013, Dr. Leon-Rosen performed cataract eye surgery on Plaintiff Mercedes Miro. As a direct result of LMC's negligent failure to implement policies and procedures, or to investigate a clear trend and pattern of unexpected injury, Plaintiff underwent the same type of negligent surgery performed previously by Dr. Leon-Rosen on September 3, 2013.

112. As a result of LMC's own policy, procedure and investigative failures, Plaintiff Mercedes Miro sustained serious physical injuries, lost medical, hospitalization and nursing expenses, and mental pain and suffering in the past and in the future.

Wherefore Plaintiff seeks judgment against LMC in the total amount of her damages.

COUNT XIV
PLAINTIFF MERCEDES MIRO AGAINST LMC (VICARIOUS LIABILITY)

113. Plaintiffs reallege and incorporate by reference all of the allegations in paragraphs 1-47.

114. On September 10, 2013, Dr. Leon-Rosen fell below the standard of care when he injected the wrong type of Gentamicin into Mercedes Miro's eye at the end of a surgical procedure.

115. As a direct and proximate cause of Dr. Leon-Rosen's negligence, Plaintiff Mercedes Miro sustained physical and mental injuries, medical and nursing care and treatment, and will continue to suffer such losses in the future.

116. LMC is vicariously liable for the negligence of Dr. Leon-Rosen, as previously detailed herein, at all times pertinent hereto, LMC held out Dr. Leon-Rosen to the patients as an apparent agent acting within the scope of his agency, Plaintiff justifiably relied on LMC's conduct and believed that Dr. Leon-Rosen was LMC's apparent agent, and changed her position in reliance when she underwent cataract surgery with Dr. Leon-Rosen.

Wherefore judgment should be entered in the full amount of Plaintiff's damages against LMC.

COUNT XV
PLAINTIFF MARTA TUNEZ AGAINST LMC (DIRECT LIABILITY)

117. Plaintiff Marta Tunez realleges and incorporates by reference all of the allegations in paragraphs 1-47.

118. On September 4 through September 9, 2013, a trend and pattern of unexpected injury was, or in the exercise of reasonable care should have been known to LMC based upon uncharacteristic complaints of eye pain to LMC of 9 out of 16 patients on whom Dr. Leon-Rosen performed cataract surgery on September 3, 2013.

119. LMC negligently failed to implement policies and procedures, administratively, to detect the trend and pattern of unexpected injury.

120. LMC negligently failed to investigate, or act upon the reported, documented complaints of multiple patients who had been injured to prevent a reoccurrence of injuries by more patients in the same way.

121. On September 10, 2013, Dr. Leon-Rosen performed cataract eye surgery on Plaintiff Marta Tunez. As a direct result of LMC's negligent failure to implement policies and procedures or to investigate a clear trend and pattern of unexpected injury, Plaintiff underwent the same type of negligent surgery performed previously by Dr. Leon-Rosen on September 3, 2013.

122. As a result of LMC's own policy, procedure and investigative failures, Plaintiff Marta Tunez sustained serious physical injuries, lost medical, hospitalization and nursing expenses, and mental pain and suffering in the past and in the future.

Wherefore Plaintiffs seek judgment against LMC in the total amount of her damages.

COUNT XVI
PLAINTIFF MARTA TUNEZ AGAINST LMC (VICARIOUS LIABILITY)

123. Plaintiff realleges and incorporates by reference all of the allegations in paragraphs 1-47.

124. On September 10, 2013, Dr. Leon-Rosen fell below the standard of care when he injected the wrong type of Gentamicin into Marta Tunez' eye at the end of a surgical procedure.

125. As a direct and proximate cause of Dr. Leon-Rosen's negligence, Plaintiff Marta Tunez sustained physical and mental injuries, medical and nursing care and treatment, and will continue to suffer such losses in the future.

126. LMC is vicariously liable for the negligence of Dr. Leon-Rosen, as previously detailed herein, at all times pertinent hereto, LMC held out Dr. Leon-Rosen to the patients as an apparent agent acting within the scope of his agency, Plaintiff justifiably relied on LMC's conduct and believed that Dr. Leon-Rosen was LMC's apparent agent, and changed her position in reliance when she underwent cataract surgery with Dr. Leon-Rosen.

Wherefore judgment should be entered in the full amount of Plaintiff's damages against LMC.

COUNT XVII
PLAINTIFFS CECILIA BORJA AND JAIME F. BORJA AGAINST LMC (DIRECT LIABILITY)

127. Plaintiffs Cecilia Borja and Jaime F. Borja reallege and incorporate by reference all of the allegations in paragraphs 1-47.

128. On September 4 through September 9, 2013, a trend and pattern of unexpected injury was, or in the exercise of reasonable care should have been established, by complaints of eye pain to LMC of 9 out of approximately 16 patients on whom Dr. Leon-Rosen performed cataract surgery on September 3, 2013.

129. LMC negligently failed to implement policies and procedures, administratively, to detect the trend and pattern of unexpected injury.

130. LMC negligently failed to investigate, or act upon the reported, documented complaints of multiple patients who had been injured to prevent a reoccurrence of injuries by more patients in the same way.

131. On September 10, 2013, Dr. Leon-Rosen performed cataract eye surgery on Plaintiff Cecilia Borja. As a direct result of LMC's negligent failure to implement

policies and procedures, or to investigate a clear trend and pattern of unexpected injury, Plaintiff underwent the same type of negligent surgery performed previously by Dr. Leon-Rosen on September 3, 2013.

132. As a result of LMC's own policy, procedure and investigative failures, Plaintiff Cecilia Borja sustained serious physical injuries, lost medical, hospitalization and nursing expenses, and mental pain and suffering in the past and in the future.

133. Plaintiff Jaime F. Borja lost the consortium, support, companionship and services of his wife Cecilia, by virtue of her injuries, in the past and in the future.

Wherefore Plaintiffs seek judgment against LMC in the total amount of their damages.

COUNT XVIII
PLAINTIFFS CECILIA BORJA AND JAIME F. BORJA AGAINST LMC
(VICARIOUS LIABILITY)

134. Plaintiffs reallege and incorporate by reference all of the allegations in paragraphs 1-47.

135. On September 10, 2013, Dr. Leon-Rosen fell below the standard of care when he injected the wrong type of Gentamicin into Cecilia Borja's eye at the end of a surgical procedure.

136. As a direct and proximate cause of Dr. Leon-Rosen's negligence, Plaintiff Cecilia Borja sustained physical and mental injuries, medical and nursing care and treatment, and will continue to suffer such losses in the future.

137. Plaintiff Jaime F. Borja lost the consortium, comfort, companionship, support and services of his wife Cecilia in the past and in the future.

138. LMC is vicariously liable for the negligence of Dr. Leon-Rosen, as previously detailed herein, at all times pertinent hereto, LMC held out Dr. Leon-Rosen to the patients as an apparent agent acting within the scope of his agency, Plaintiffs justifiably relied on LMC's conduct and believed that Dr. Leon-Rosen was LMC's apparent agent, and changed their position in reliance when Cecilia Borja underwent cataract surgery with Dr. Leon-Rosen.

Wherefore judgment should be entered in the full amount of Plaintiffs' damages against LMC.

COUNT XIX
PLAINTIFF DAYSY PEDRAJA AGAINST LMC (DIRECT LIABILITY)

139. Plaintiff Daysy Pedraja realleges and incorporates by reference all of the allegations in paragraphs 1-47.

140. On September 4 through September 9, 2013, a trend and pattern of unexpected injury was, or in the exercise of reasonable care should have been established, by complaints of eye pain to LMC of 9 out of 16 patients on whom Dr. Leon-Rosen performed cataract surgery on September 3, 2013.

141. LMC negligently failed to implement policies and procedures, administratively, to detect the trend and pattern of unexpected injury.

142. LMC negligently failed to investigate, or act upon the reported, documented complaints of multiple patients who had been injured to prevent a reoccurrence of injuries by more patients in the same way.

143. On September 10, 2013, Dr. Leon-Rosen performed cataract eye surgery on Plaintiff Daysy Pedraja. As a direct result of LMC's negligent failure to implement

policies and procedures, or to investigate a clear trend and pattern of unexpected injury, Plaintiff underwent the same type of negligent surgery performed previously by Dr. Leon-Rosen on September 3, 2013.

144. As a result of LMC's own policy, procedure and investigative failures, Plaintiff Daysy Pedraja sustained serious physical injuries, lost medical, hospitalization and nursing expenses, and mental pain and suffering in the past and in the future.

Wherefore Plaintiff seek judgment against LMC in the total amount of her damages.

COUNT XX
PLAINTIFF DAYSY PEDRAJA AGAINST LMC (VICARIOUS LIABILITY)

145. Plaintiff realleges and incorporates by reference all of the allegations in paragraphs 1-47.

146. On September 10, 2013, Dr. Leon-Rosen fell below the standard of care when he injected the wrong type of Gentamicin into Daysy Pedraja's eye at the end of a surgical procedure.

147. As a direct and proximate cause of Dr. Leon-Rosen's negligence, Plaintiff Daysy Pedraja sustained physical and mental injuries, medical and nursing care and treatment, and will continue to suffer such losses in the future.

148. LMC is vicariously liable for the negligence of Dr. Leon-Rosen, as previously detailed herein, at all times pertinent hereto, LMC held out Dr. Leon-Rosen to the patients as an apparent agent acting within the scope of his agency, Plaintiff justifiably relied on LMC's conduct and believed that Dr. Leon-Rosen was LMC's

apparent agent, and changed her position in reliance when she underwent cataract surgery with Dr. Leon-Rosen.

Wherefore judgment should be entered in the full amount of Plaintiff's damages against LMC.

JURY TRIAL DEMAND

All of the Plaintiffs demand trial by jury on all claims so triable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Clerk of Court CM/ECF system this 2nd day of October, 2015 to:

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