

STATE OF NEW YORK

SUPREME COURT COUNTY OF [Insert County]

[Insert Caption]

Plaintiff

VERIFIED BILL OF PARTICULARS

Index No: [Insert Index Number]

vs.

RJI No: [Insert RJI]

Defendant

Plaintiffs, [Insert Plaintiff(s) Name(s)], Individually, and [Insert Name] as Administrator of the Estate of [Insert Name of Decedent], by and through their attorneys, [Name of Law Firm] as and for a verified bill of particulars in response to the demand of Defendants, [Insert Name(s) of Defendant(s)], state as follows:

1. The date and approximate time of day of each occurrence complained of in this action.

ANSWER:

a) Plaintiff [Insert Decedent's Name] died at the [Insert Hospital Name] in the morning of [Insert Time]. He was listed in the relevant records as being admitted at [Insert Time] pm on [Insert Date], although his actual admission to the floor was later.

2. The approximate location where each occurrence took place.

ANSWER:

Plaintiff [Insert Decedent's Name] died at the [Insert Defendant Hospital's Name], [Insert Address].

3. Each and every act of omission and commission constituting the negligence with which the plaintiff(s) charge the answering defendant(s).

ANSWER:

Plaintiff objects to this demand as being improper in that it calls for evidentiary material or information in the form of, or to be gleaned from, expert testimony and, therefore, such demand is overly broad, improper and beyond the scope of a bill of particulars. *Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978).

However, without waiving the foregoing objection, plaintiff can state that, at this time, Defendant, Hospital and its employee [Insert Name of Each Defendant], were negligent in the following respects:

- a. Proceeding to surgery without cardiac consultation within three months of the planned surgery;
- b. Failing to recognize the special physiological limitations imposed by the Fontan procedure;
- c. Proceeding with the treatment plan and towards surgery without access to ordered laboratory testing;
- d. Failure to perform or ensure that laboratory testing was performed on the child as set forth in the admission orders;
- e. Violation of request for laboratory testing during the resuscitation period as no record of any laboratory tests ordered exists or was made available during the resuscitation period;
- f. Negligent and improper monitoring of the patient, including vital signs;
- g. Negligent and improper assessment of the changes in the child's condition, including the child's complaints of increasing tiredness, his emesis, the failure to get an IV line, his continued loss of hydration, his complaints that he was thirsty, and that his heart was beating fast;
- h. Failure to assess and treat the patient's condition including the child's complaints of increasing tiredness, his emesis, the failure to get an IV line, his continued loss of hydration, his complaints that he was thirsty, and that his heart was beating fast;
- i. Lack of administration of fluids during admission;
- j. Failure to detect, monitor, treat and assess fluid imbalance in the child;
- k. Absence of an IV line during resuscitation;
- l. Failure to give parenteral fluid until [Insert Time] a.m., [Insert #] minutes after resuscitation started;
- m. Failure to obtain IV access in the resuscitation until [Insert Time] a.m. when a cut-down was established;
- n. Improper and excessive dosage of enemas and laxatives;
- o. Creation of and failure to detect, monitor and prevent a lack of vascular volume combined with fluid restriction;

- p. Improper management of the patient, and failure to call in appropriate and trained physicians to diagnose and treat the child;
- q. Failure to refer the child to appropriate specialists to assess his condition on [Insert Date] and [Insert Date] as his pre-surgery course continued;
- r. Failure to have experienced and qualified physicians on hand during the pre-surgery course to evaluate and manage the conditions that occurred;
- s. Failure to have appropriate medical staff on hand to assess the patient during the pre-surgical phase;
- t. Failing to arrange for proper coverage for the infant should Dr. [Insert Name] not be present to personally handle the pre-surgical phase;
- u. Failure to provide proper admitting instructions and orders for the care and treatment of the infant, given his history;
- v. Improper administration orders, and failure for the nursing and residents to take appropriate measures to clarify them and to ensure that proper care was given;
- w. Failure of the nursing and resident staff to seek appropriate counsel and instruction from the hospital chain of command to advocate for the child and prevent his death;
- x. Violation of the patient's bill of rights and associated New York State regulations under Title 10.
- y. Improper pre-operative pediatric evaluation by a 4th year medical student;
- z. Failure to secure appropriate, timely laboratory data;
- aa. Lack of timely initiation of intravenous access for hydration;
- bb. Lack of timely cardiac clearance;
- cc. Lack of written physician orders for the nasogastric tube insertion;
- dd. Lack of additional physicians' orders for the administration of additional bowel preparation measures other than those noted on the admission orders;
- ee. Failure to have in place well defined working relationships between medical staff, nursing staff and other staff to assure that the child was given appropriate medical care and survived a routine procedure;
- ff. Improper and negligent monitoring, assessment and recording of the amount of medication ordered, the degree and amount of vomiting, and the amount and timing of the bowel preparation;
- gg. Lack of physician's written orders for the additional bowel preparation measures.

- hh. Improper administration of an enema, and failure to record it.
 - ii. Administration of treatment by the nursing staff without orders;
 - jj. Lack of timely, appropriate assessments to include vital signs during the 11-7 shift on [Insert Dates].
 - kk. Failure to take and record oral intake.
 - ll. Failure to use appropriate monitoring techniques to ensure that the child's vital signs and clinical indicators were observed.
 - mm. Proceeding with the surgery preparations given the child's symptoms and status since admission.
 - nn. Failing to cancel the planned elective, non-emergent procedure given the child's course of events during [Insert Date(s)].
 - oo. Failure to diagnose, treat, chart, or notify any physicians that the patient's feet were turning purple or blue.
4. Each and every act of omission and commission constituting the negligence and of each co-defendant.

ANSWER:

Plaintiffs object because they do not have the burden of proof as to this Defendant to prove the negligence of co-Defendant [Insert Name of Co-Defendant]. Therefore, Plaintiffs need not respond to this inquiry as it is palpably improper. (*See Lamb v. Rochester Gen. Hosp.*, 130 A.D.2d 963, 964, 516 N.Y.S.2d 379, 380-81 (4th Dep't 1987)). Plaintiffs are serving a copy of their Verified Bill of Particulars to the Defendant [Insert Name of Defendant] as required by the CPLR.

5. Specify the particular sections of the (a) laws, (b) statutes, (c) ordinances, (d) rules and (e) regulations which the plaintiff(s) will claim the answering defendant(s) violated and in what respects.

ANSWER:

Plaintiff objects to this demand in its entirety as being improper in that it fails to comply with the provisions of Rule 3043(a) of the CPLR and/or calls for evidentiary material or information in the form of, or to be gleaned from, expert testimony and, therefore, is overly broad, improper and beyond the scope of a bill of particulars. *See Felock v. Albany Med. Ctr. Hosp.*, 258 A.D.2d 772, 685 N.Y.S.2d 844 (3d Dep't 1999); *Liddell v. Cree*, 233 A.D.2d 593, 649 N.Y.S.2d 101 (3d Dep't 1996); *Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); *Rockefeller v. Hwang*, 106 A.D.2d 817, 484 N.Y.S.2d 206 (3d Dep't 1984); *Wadler v. Stern*, 124 A.D.2d 725, 507 N.Y.S.2d 1010 (2d Dep't 1986); *Patterson v. Jewish Hosp. & Med. Ctr. of*

Brooklyn, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978).

Without waiving the foregoing objections, plaintiffs allege as follows:

- (a) 10 N.Y.C.R.R. § 405.2(b)(2);
- (b) 10 N.Y.C.R.R. § 405.2(c);
- (c) 10 N.Y.C.R.R. § 405.2(e)(2), (8)-(11);
- (d) 10 N.Y.C.R.R. § 405.2(f)(1), (2), (5), (7);
- (e) 10 N.Y.C.R.R. § 405.4(a)(1), (2);
- (f) 10 N.Y.C.R.R. § 405.5(a), (b), (c), (d);
- (g) 10 N.Y.C.R.R. § 405.7(a), (b);
- (h) 10 N.Y.C.R.R. § 405.10;
- (i) 10 N.Y.C.R.R. § 405.16.

6. Please describe all injuries, ailments, disabilities and pains which you claim the decedent suffered as a result of the occurrences in question and every sequelae of each said injury, ailment, disability and pain.

ANSWER:

- a. Death;
- b. Vomiting;
- c. Pain and Suffering;
- d. Rapid Heart Beat;
- e. Thirst;
- f. Circulatory and cardiac collapse;
- g. Cyanosis;
- h. Bleeding in connection with the nasogastric tube;
- i. Pain with screaming on insertion of the nasogastric tube;
- j. Shock, fright, fear, terror, and emotional harm;
- k. Fatigue.

7. With respect to each said injury, ailment, disability and pain, state:
- (a) Its severity;
 - (b) Its location;
 - (c) The date and time when each first manifested itself;
 - (d) If permanency is claimed.

ANSWER:

Death is permanent. The other injuries occurred from [Insert Date of Treatment] to [Insert Decedent's Name]'s death on the morning of [Insert Date of Death].

8. State the length of time the plaintiff's decedent was:
- (a) totally disabled;
 - (b) partially disabled;
 - (c) confined to the hospital;
 - (d) confined to bed;
 - (e) confined to house; and
 - (f) incapacitated from employment.

ANSWER:

[Insert Date(s) separately for each].

- (a) totally disabled;
- (b) partially disabled;
- (c) confined to the hospital;
- (d) confined to bed;
- (e) confined to house; and
- (f) incapacitated from employment.

The child's death totally incapacitated him for the rest of his life as will be determined by reference to the PJI at the time of trial.

9. State whether plaintiff's decedent had ever suffered from any such injury, ailment, disability or pain prior to the occurrence in question and, if so, state:

- (a) The date or dates of the prior occurrence of said injury, ailment, disability or pain and;
- (b) If plaintiff's decedent received examination, treatment or care regarding these, state the name and address of the treatment and/or care provider and the date or dates when said services were rendered.

ANSWER: Plaintiffs object to this request as (1) it is an interrogatory barred by CPLR 3130, (2) it seeks evidentiary material in a bill of particulars, (3) it seeks matters on which the Plaintiff does not have the burden of proof, and (4) it seeks matters requiring expert opinions that are improper in a Bill of Particulars. See *Felock v. Albany Med. Ctr. Hosp.*, 258 A.D.2d 772, 685 N.Y.S.2d 844 (3d Dep't 1999); *Liddell v. Cree*, 233 A.D.2d 593, 649 N.Y.S.2d 101 (3d Dep't 1996); *Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); *Rockefeller v. Hwang*, 106 A.D.2d 817, 484 N.Y.S.2d 206 (3d Dep't 1984); *Wadler v. Stern*, 124 A.D.2d 725, 507 N.Y.S.2d 1010 (2d Dep't 1986); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978); see also *Schatz v. Bankers & Shippers Ins. Co.*, 40 Misc. 2d 1061, 244 N.Y.S.2d 1005 (Dist. Ct., Nassau Co. 1963).

10. Please state each and every date of any examination, treatment or care which plaintiff's decedent received from any doctor, physician, medical practitioner, hospital, clinic or other institution for any injury, ailment or disability which you claim was suffered or sustained as a result of the occurrence in question, setting forth in detail as to each such date of examination, treatment or care:

- (a) The name and address of each such doctor, physician, practitioner, hospital, clinic or institution;
- (b) The nature and extent of the examination, treatment or care received in each such hospital, clinic or institution, or from each such doctor, physician or practitioner;
- (c) The inclusive dates of any period of confinement, with respect to any such examination, treatment or care, at any hospital, clinic, institution or other place, including home;
- (d) The amount of any charge made to you or plaintiff's decedent or to any other person or organization for the account of any such person, by each such doctor, physician, practitioner, hospital, clinic or institution, fully itemized as indicated in any bill rendered therefore.

ANSWER: Any treatment that the child suffered as a result of the acts and omissions complained of would have occurred during [Insert Date] and [Insert Date] and be reflected in the records and billing of the [Insert Hospital] chart. Please refer to the table below for a listing of the names and addresses of the hospitals and health care providers who have treated and/or examined the infant to date. Where known, the dates of treatment and the cost of the services provided is also included.

NAME/ADDRESS OF PROVIDER	DATES OF SERVICE	CHARGES
[Insert Hospital]	[Insert Dates of Treatment]	\$
[Insert Hospital]	[Insert Dates of Treatment]	\$
[Insert Hospital]	[Insert Dates of Treatment]	\$
	Total Medical Expenses:	\$

11. State the total amount claimed as special damages for loss of earnings, further specifying the plaintiff's decedent's:

- (a) Business and/or occupation;
- (b) Name and address of employer;
- (c) Amount of wages and/or salary per day, week, or month;
- (d) Length of time plaintiff's decedent was prevented from performing said business and/or occupation, further specifying the date that plaintiff's decedent returned to work.

ANSWER: Under EPTL 5-4.3 the child cannot claim for himself the lost wages that he was never able to earn.

12. The date and place of birth of the decedent.

ANSWER:

Plaintiff, [Insert Decedent's Name] was born on [Insert Date of Birth].

13. State whether the decedent left surviving next of kin or other persons who were dependent upon the decedent, either in whole or in part, for support.

ANSWER:

None at the time of death, however, his parents had reasonable expectations of future support within the range of damages set forth by EPTL 5-4.3.

14. With respect to the individuals listed in response to the previous demand, please state:

- (a) Name, date of birth and address of each such person;
- (b) The relationship of each such person to the decedent;

- (c) If any person in section “(a)” is the spouse of the decedent, the date and place of the marriage;
- (d) Whether each such person was dependent upon the decedent in whole or in part for support, including in your response an itemized account of the amount paid or contributed to the aid or support of each such dependent, stating the form in which such amounts were paid, and the dates of such payments, in the calendar year of decedent’s death and each of the three (3) preceding years.

ANSWER:

None at the time, however, his parents had reasonable expectations of future support within the range of damages set forth by EPTL 5-4.3.

15. An itemized statement of each and every other damage, either general or special, which plaintiff or a person dependent upon the decedent claims to have resulted from the alleged negligence of the answering defendant(s) and the death of the decedent.

ANSWER: Plaintiffs object to this request as it seeks in part matters requiring expert opinions that are improper in a Bill of Particulars. *See Felock v. Albany Med. Ctr. Hosp.*, 258 A.D.2d 772, 685 N.Y.S.2d 844 (3d Dep’t 1999); *Liddell v. Cree*, 233 A.D.2d 593, 649 N.Y.S.2d 101 (3d Dep’t 1996); *Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep’t 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep’t 1995); *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep’t 1981); *Rockefeller v. Hwang*, 106 A.D.2d 817, 484 N.Y.S.2d 206 (3d Dep’t 1984); *Wadler v. Stern*, 124 A.D.2d 725, 507 N.Y.S.2d 1010 (2d Dep’t 1986); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings Co.), *aff’d*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep’t 1978).

Plaintiffs also object because the demand seeks particulars as to general damages, which is improper in a Verified Bill of Particulars. *See Havens v. Tucker*, 136 A.D.2d 814, 523 N.Y.S.2d 648 (3d Dep’t 1988); *Nastro Contracting v. Agusta*, 217 A.D.2d 874, 629 N.Y.S.2d 848 (3d Dep’t 1995). Subject to same, Plaintiffs claim the full range of pecuniary and economic losses allowed by EPTL 5-4.3 and all damages that will pass to the Estate through the personal injury action. As to the wrongful death action, these are funeral expenses in the sum of \$[Insert Total Amount], tombstone expenses in the amount of \$[Insert Amount], interest on the principal sum recovered, and the pecuniary benefits that the distributees had a reasonable right to expect if the decedent had lived, including loss of support and voluntary assistance. At trial Plaintiffs will prove that the child [Insert Decedent’s Name] was a beloved and integral part of the family and that he would have financially supported his parents and distributees throughout their lives, irrespective of any physical limitations. They will also offer evidence that he would have been able to assist in household chores and provide services around the house, irrespective of any physical limitations. The specific amount that would be proven at trial on these two special damage categories — future financial support and future loss of services — must remain the province of experts, and will be disclosed in the appropriate expert response. Neither parent has the skill or knowledge to assess this figure. Plaintiffs need not further particularize this aspect of damages at this juncture. *See Graves v. County of Albany*, 278 A.D.2d 578, 717 N.Y.S.2d 420 (3d Dep’t 2000).

Remaining damages under EPTL 5-4.3 and under the personal injury aspect of the claim would be general in nature and therefore need not be further particularized here. The primary distributees under EPTL 4-1.1(a)(4) would be the parents who are Plaintiffs in this case.

16. If the plaintiff claims damages for loss of consortium, please give a complete description of the loss suffered, including each individual aspect of the loss suffered as a result of the alleged occurrence or occurrences.

ANSWER:

The child was not married and therefore no loss of consortium claim is alleged.

17. Please give a statement showing the cause of decedent's death.

ANSWER:

Plaintiffs object to this request as (1) it is an interrogatory barred by CPLR 3130, (2) it seeks evidentiary material in a bill of particulars, (3) it seeks matters on which the Plaintiff does not have the burden of proof, and (4) it seeks matters requiring expert opinions that are improper in a Bill of Particulars. *See Felock v. Albany Med. Ctr. Hosp.*, 258 A.D.2d 772, 685 N.Y.S.2d 844 (3d Dep't 1999); *Liddell v. Cree*, 233 A.D.2d 593, 649 N.Y.S.2d 101 (3d Dep't 1996); *Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); *Rockefeller v. Hwang*, 106 A.D.2d 817, 484 N.Y.S.2d 206 (3d Dep't 1984); *Wadler v. Stern*, 124 A.D.2d 725, 507 N.Y.S.2d 1010 (2d Dep't 1986); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978). Subject to same, to amplify the pleadings, Plaintiffs believe that the errors and omissions and violations of statute set forth in this Verified Bill of Particulars were a cause of the child's death.

18. Please give a statement detailing the length of the decedent's last illness.

ANSWER:

Plaintiffs object to this request as (1) it is an interrogatory barred by CPLR 3130, (2) it seeks evidentiary material in a bill of particulars, (3) it seeks matters on which the Plaintiff does not have the burden of proof, and (4) it seeks matters requiring expert opinions that are improper in a Bill of Particulars. *See Felock v. Albany Med. Ctr. Hosp.*, 258 A.D.2d 772, 685 N.Y.S.2d 844 (3d Dep't 1999); *Liddell v. Cree*, 233 A.D.2d 593, 649 N.Y.S.2d 101 (3d Dep't 1996); *Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); *Rockefeller v. Hwang*, 106 A.D.2d 817, 484 N.Y.S.2d 206 (3d Dep't 1984); *Wadler v. Stern*, 124 A.D.2d 725, 507 N.Y.S.2d 1010 (2d Dep't 1986); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978). Plaintiffs additionally object because the phrase "length of the last illness" is so vague as to be incapable of answering without undue speculation. Plaintiffs further object because they need not provide information about prior injuries in a bill of particulars. *See Schatz v. Bankers & Shippers Ins. Co.*, 40 Misc. 2d 1061, 244 N.Y.S.2d 1005 (Dist. Ct., Nassau Co. 1963).

AS TO [Insert Plaintiff/Parent's Name]

19. With respect to plaintiff's claim for loss of consortium, please state whether plaintiff claims:

- (a) Loss of companionship of infant child;
- (b) Loss of society of infant child;
- (c) Loss of affection of infant child;
- (d) Loss of services of infant child regarding domestic work;
- (e) Loss of other services of infant child and identify these services;

ANSWER: Plaintiffs object because the demand seeks particulars as to general damages, which is improper in a Verified Bill of Particulars. *See Havens v. Tucker*, 136 A.D.2d 814, 523 N.Y.S.2d 648 (3d Dep't 1988); *Nastro Contracting v. Agusta*, 217 A.D.2d 874, 629 N.Y.S.2d 848 (3d Dep't 1995). Subject to same, Plaintiffs claim the full range of pecuniary and economic losses allowed by EPTL 5-4.3 and all damages passing to the Estate through the personal injury action. As to the wrongful death action, these are funeral expenses, interest on the principal sum recovered, and the pecuniary benefits that the distributees had a reasonable right to expect if the decedent had lived, including loss of support and voluntary assistance. At trial Plaintiffs will prove that the child [Insert Decedent's Name] was a beloved and integral part of the family and that he would have financially supported his parents and distributees throughout their lives, irrespective of his physical limitations. They will also offer evidence that he would have been able to assist in household chores and provide services around the house, irrespective of his physical limitations. The specific amount that would be proven at trial on these two special damage categories — future financial support and future loss of services — must remain the province of experts, and will be disclosed in the appropriate expert response. *See Graves v. County of Albany*, 278 A.D.2d 578, 717 N.Y.S.2d 420 (3d Dep't 2000).

Neither parent has the skill or knowledge to assess this figure. Remaining damages under EPTL 5-4.3 and under the personal injury aspect of the claim would be general in nature and therefore need not be further particularized here.

20. With respect to each of the items of loss claimed in response to the preceding demand, please give the following information:

- (a) The length of time claimed for each said loss, giving the inclusive dates of said loss;
- (b) Whether said loss is claimed to be permanent;
- (c) The damages claimed for each said loss;

ANSWER: Plaintiffs object because the demand seeks particulars as to general damages, which is improper in a Verified Bill of Particulars. *See Havens v. Tucker*, 136 A.D.2d 814, 523 N.Y.S.2d 648 (3d Dep't 1988); *Nastro Contracting v. Agusta*, 217 A.D.2d 874, 629 N.Y.S.2d

848 (3d Dep't 1995). Subject to same, the loss is claimed to be permanent, and the specific damages will be a matter of expert testimony.

21. If the plaintiff claims a loss of the earning capacity of his/her infant child, state:
- (a) The business and/or occupation of the infant child on the date of the occurrence;
 - (b) The name and address of the employer of the infant child;
 - (c) The amount of wages and/or salary per day, week or month;
 - (d) The length of time plaintiff's infant child was prevented from performing said business and/or occupation, further specifying the date that plaintiff's infant child returned to work;
 - (e) Total earnings lost.

ANSWER: Plaintiffs object to this request as (1) it is an interrogatory barred by CPLR 3130, (2) it seeks evidentiary material in a bill of particulars, (3) it seeks matters on which the Plaintiff does not have the burden of proof, and (4) it seeks matters requiring expert opinions that are improper in a Bill of Particulars. *See Felock v. Albany Med. Ctr. Hosp.*, 258 A.D.2d 772, 685 N.Y.S.2d 844 (3d Dep't 1999); *Liddell v. Cree*, 233 A.D.2d 593, 649 N.Y.S.2d 101 (3d Dep't 1996); *Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); *Rockefeller v. Hwang*, 106 A.D.2d 817, 484 N.Y.S.2d 206 (3d Dep't 1984); *Wadler v. Stern*, 124 A.D.2d 725, 507 N.Y.S.2d 1010 (2d Dep't 1986); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978). Subject to same, the child never worked and therefore there is no answer for items (a), (b), (c). As to item (d), Plaintiffs allege that the child would have entered the workforce at the customary age of 18 and worked to 65. As to item (e), the question is the total amount of financial assistance that the child would have provided to the distributee parents over the course of their lifetime. This is a matter for expert testimony and Plaintiffs will provide the needed expert testimony at the appropriate time. *See Graves v. County of Albany*, 278 A.D.2d 578, 717 N.Y.S.2d 420 (3d Dep't 2000).

22. A detailed statement, item by item, of the sum or sums of money which plaintiff obliged or will be obliged to expend for physician, practitioner, hospital, clinic or institution, drugs and medicine and prosthetic devices as a result of the injuries allegedly sustained by the plaintiff's infant child.

ANSWER: None at this point.

23. Please identify and detail any other special damages being claimed by the plaintiff as a result of the alleged injuries sustained by the plaintiff's infant child.

ANSWER: Plaintiffs object to this request as it seeks matters requiring expert opinions that are improper in a Bill of Particulars. *See Felock v. Albany Med. Ctr. Hosp.*, 258 A.D.2d 772, 685 N.Y.S.2d 844 (3d Dep't 1999); *Liddell v. Cree*, 233 A.D.2d 593, 649 N.Y.S.2d 101 (3d Dep't

1996); *Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); *Rockefeller v. Hwang*, 106 A.D.2d 817, 484 N.Y.S.2d 206 (3d Dep't 1984); *Wadler v. Stern*, 124 A.D.2d 725, 507 N.Y.S.2d 1010 (2d Dep't 1986); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978). However subject to same, Plaintiffs claim a future loss of household and other family assistance services resulting from the death of the child. They will rely on expert proof to establish this level of loss. They do not have the training and expertise to establish the specific amount of this loss. See *Graves v. County of Albany*, 278 A.D.2d 578, 717 N.Y.S.2d 420 (3d Dep't 2000).

24. State and specify in detail each and every procedure which was allegedly performed by the answering defendant(s) without the informed consent of the plaintiff.

ANSWER:

- a. Proceeding to surgery and continuing with a pre-surgical course of treatment which was fatal to the child;
- b. Excessive and improper enema and laxative administration;
- c. Continued lack of hydration in the presence of emesis and continued excessive and improper laxative and enema administration;
- d. Continued treatment with improper monitoring of vital signs and the child's physical condition;
- e. Continued treatment without laboratory data which was ordered and deemed necessary at the time of admission;
- f. Continued treatment with improper administration orders;
- g. Continued treatment and admission based on an admission intake by a fourth year medical student;
- h. Continued treatment without an IV line being established;
- i. Continued treatment without established working relationships between the medical and nursing staff for the child's care;
- j. Continued medical treatment in violation of the New York Rules and Regulations set forth above;
- k. Medical treatment and pre-surgical care without required cardiac clearance within three months;
- l. Medical care including improper medication administered by the nursing staff without orders;

- m. Medical treatment without adequate nursing monitoring such as intake;
- n. Continuing with the pre-surgical treatment plan in light of the deficiencies and nursing and medical staff, and the condition of the child.

25. State and specify in detail each and every test which was allegedly performed by the answering defendant(s) without the informed consent of the plaintiff.

ANSWER:

a. All of the medical treatment from the date of admission onward was done without the informed consent of the Plaintiffs, as Plaintiffs were under the impression that the medical care competent and appropriate and were not aware of the items set forth above with respect to that care. Plaintiffs would not have allowed the medical treatment to continue if they had been aware of the deficiencies and improper nature of the treatment and the outcome of such treatment.

26. State and specify in detail each and every operation which was allegedly performed by the answering defendant(s) without the informed consent of the plaintiff.

ANSWER: None. The operation was never started because the child died.

27. State and specify in detail each and every drug or medication which was allegedly administered by the answering defendant(s) without the informed consent of the plaintiff.

ANSWER: All of the medical treatment from the date of admission onward was done without the informed consent of the Plaintiffs, as Plaintiffs were under the impression that the medical care competent and appropriate and were not aware of the items set forth above with respect to that care. Plaintiffs would not have allowed the medical treatment to continue if they had been aware of the deficiencies and improper nature of the treatment and the outcome of such treatment. This includes enema and laxative items.

28. State the date of all procedures, tests, operations or drug and medication administration which were allegedly performed or administered by the answering defendant(s) without the informed consent of the plaintiff.

ANSWER: [Insert Dates of Treatment].

29. State and specify all risks of the tests performed by the answering defendant(s) which you claim were not informed of by the answering defendant(s) prior to the test.

ANSWER: Plaintiffs object to this request as (1) it is an interrogatory barred by CPLR 3130, (2) it seeks evidentiary material in a bill of particulars, (3) it seeks matters on which the Plaintiff does not have the burden of proof, and (4) it seeks matters requiring expert opinions that are improper in a Bill of Particulars. See *Felock v. Albany Med. Ctr. Hosp.*, 258 A.D.2d 772, 685 N.Y.S.2d 844 (3d Dep't 1999); *Liddell v. Cree*, 233 A.D.2d 593, 649 N.Y.S.2d 101 (3d Dep't 1996); *Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); *Rockefeller v. Hwang*, 106 A.D.2d 817, 484 N.Y.S.2d 206 (3d Dep't 1984); *Wadler v. Stern*, 124 A.D.2d 725, 507

N.Y.S.2d 1010 (2d Dep't 1986); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978).

30. State and specify all risks of the procedures performed by the answering defendant(s) which you claim were not informed of by the answering defendant(s) prior to the test.

ANSWER:

Plaintiffs object to this request as (1) it is an interrogatory barred by CPLR 3130, (2) it seeks evidentiary material in a bill of particulars, (3) it seeks matters on which the Plaintiff does not have the burden of proof, and (4) it seeks matters requiring expert opinions that are improper in a Bill of Particulars. *See Felock v. Albany Med. Ctr. Hosp.*, 258 A.D.2d 772, 685 N.Y.S.2d 844 (3d Dep't 1999); *Liddell v. Cree*, 233 A.D.2d 593, 649 N.Y.S.2d 101 (3d Dep't 1996); *Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't.1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); *Rockefeller v. Hwang*, 106 A.D.2d 817, 484 N.Y.S.2d 206 (3d Dep't 1984); *Wadler v. Stern*, 124 A.D.2d 725, 507 N.Y.S.2d 1010 (2d Dep't 1986); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings. Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978).

31. State and specify all risks of the operations performed by the answering defendant(s) which you claim you were not informed of by the answering defendant(s) prior to the test.

ANSWER: Plaintiffs object to this request as (1) it is an interrogatory barred by CPLR 3130, (2) it seeks evidentiary material in a bill of particulars, (3) it seeks matters on which the Plaintiff does not have the burden of proof, and (4) it seeks matters requiring expert opinions that are improper in a Bill of Particulars. *See Felock v. Albany Med. Ctr. Hosp.*, 258 A.D.2d 772, 685 N.Y.S.2d 844 (3d Dep't 1999); *Liddell v. Cree*, 233 A.D.2d 593, 649 N.Y.S.2d 101 (3d Dep't 1996); *Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); *Rockefeller v. Hwang*, 106 A.D.2d 817, 484 N.Y.S.2d 206 (3d Dep't 1984); *Wadler v. Stern*, 124 A.D.2d 725, 507 N.Y.S.2d 1010 (2d Dep't 1986); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings. Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978).

32. State and specify all risks of the drugs and medications administered by the answering defendant(s) which you claim you were not informed of by the answering defendant(s) prior to the test.

ANSWER: Plaintiffs object to this request as (1) it is an interrogatory barred by CPLR 3130, (2) it seeks evidentiary material in a bill of particulars, (3) it seeks matters on which the Plaintiff does not have the burden of proof, and (4) it seeks matters requiring expert opinions that are improper in a Bill of Particulars. *See Felock v. Albany Med. Ctr. Hosp.*, 258 A.D.2d 772, 685 N.Y.S.2d 844 (3d Dep't 1999); *Liddell v. Cree*, 233 A.D.2d 593, 649 N.Y.S.2d 101 (3d Dep't 1996); *Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); *Rockefeller v. Hwang*,

106 A.D.2d 817, 484 N.Y.S.2d 206 (3d Dep't 1984); *Wadler v. Stern*, 124 A.D.2d 725, 507 N.Y.S.2d 1010 (2d Dep't 1986); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978).

33. If the patient contends that the answering defendant(s) exceeded the scope of his/her consent in performing the treatment, tests, procedures, operations or administration of drugs and medication involved in the plaintiff's alleged occurrence, then state how the answering defendant(s) exceeded the scope of plaintiff's consent as so alleged.

ANSWER: Plaintiffs object to this request as (1) it is an interrogatory barred by CPLR 3130, (2) it seeks evidentiary material in a bill of particulars, (3) it seeks matters on which the Plaintiff does not have the burden of proof, and (4) it seeks matters requiring expert opinions that are improper in a Bill of Particulars. *See Felock v. Albany Med. Ctr. Hosp.*, 258 A.D.2d 772, 685 N.Y.S.2d 844 (3d Dep't 1999); *Liddell v. Cree*, 233 A.D.2d 593, 649 N.Y.S.2d 101 (3d Dep't 1996); *Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); *Rockefeller v. Hwang*, 106 A.D.2d 817, 484 N.Y.S.2d 206 (3d Dep't 1984); *Wadler v. Stern*, 124 A.D.2d 725, 507 N.Y.S.2d 1010 (2d Dep't 1986); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978). In addition, Plaintiffs in a Verified Bill of Particulars need not particularize what advice, diagnoses or treatment should have been given. *See McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); *see also Nuss v. Pettibone Mercury Corp.*, 112 A.D.2d 744, 492 N.Y.S.2d 240 (4th Dep't 1985).

34. If the plaintiff contends that the answering defendant(s) failed to advise the plaintiff of alternatives to the tests, procedures, and operations performed by the answering defendant(s) or drugs and medicines administered by the answering defendant(s) prior to said performance or administration, then specify the alternatives which were not disclosed to the plaintiff as claimed.

ANSWER: Plaintiffs object to this request as (1) it is an interrogatory barred by CPLR 3130, (2) it seeks evidentiary material in a bill of particulars, (3) it seeks matters on which the Plaintiff does not have the burden of proof, and (4) it seeks matters requiring expert opinions that are improper in a Bill of Particulars. *See Felock v. Albany Med. Ctr. Hosp.*, 258 A.D.2d 772, 685 N.Y.S.2d 844 (3d Dep't 1999); *Liddell v. Cree*, 233 A.D.2d 593, 649 N.Y.S.2d 101 (3d Dep't 1996); *Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); *Rockefeller v. Hwang*, 106 A.D.2d 817, 484 N.Y.S.2d 206 (3d Dep't 1984); *Wadler v. Stern*, 124 A.D.2d 725, 507 N.Y.S.2d 1010 (2d Dep't 1986); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978). In addition, Plaintiffs in a Verified Bill of Particulars need not particularize what advice, diagnoses or treatment should have been given. *See McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); *see also Nuss v. Pettibone Mercury Corp.*, 112 A.D.2d 744, 492 N.Y.S.2d 240 (4th Dep't 1985).

35. Set forth with particularity the information that plaintiff will claim was furnished by the answering defendant(s) in order to obtain the plaintiff's consent.

ANSWER: Plaintiffs object to this request as (1) it is an interrogatory barred by CPLR 3130, (2) it seeks evidentiary material in a bill of particulars, (3) it seeks matters on which the Plaintiff does not have the burden of proof, and (4) it seeks matters requiring expert opinions that are improper in a Bill of Particulars. See *Felock v. Albany Med. Ctr. Hosp.*, 258 A.D.2d 772, 685 N.Y.S.2d 844 (3d Dep't 1999); *Liddell v. Cree*, 233 A.D.2d 593, 649 N.Y.S.2d 101 (3d Dep't 1996); *Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); *Rockefeller v. Hwang*, 106 A.D.2d 817, 484 N.Y.S.2d 206 (3d Dep't 1984); *Wadler v. Stern*, 124 A.D.2d 725, 507 N.Y.S.2d 1010 (2d Dep't 1986); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978). In addition, Plaintiffs in a Verified Bill of Particulars need not particularize what advice, diagnoses or treatment should have been given. See *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); see also *Nuss v. Pettibone Mercury Corp.*, 112 A.D.2d 744, 492 N.Y.S.2d 240 (4th Dep't 1985).

36. Set forth with particularity the information that plaintiff will claim the answering defendant(s) should have furnished in order to properly obtain plaintiff's consent.

ANSWER: Plaintiffs object to this request as (1) it is an interrogatory barred by CPLR 3130, (2) it seeks evidentiary material in a bill of particulars, (3) it seeks matters on which the Plaintiff does not have the burden of proof, and (4) it seeks matters requiring expert opinions that are improper in a Bill of Particulars. See *Felock v. Albany Med. Ctr. Hosp.*, 258 A.D.2d 772, 685 N.Y.S.2d 844 (3d Dep't 1999); *Liddell v. Cree*, 233 A.D.2d 593, 649 N.Y.S.2d 101 (3d Dep't 1996); *Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); *Rockefeller v. Hwang*, 106 A.D.2d 817, 484 N.Y.S.2d 206 (3d Dep't 1984); *Wadler v. Stern*, 124 A.D.2d 725, 507 N.Y.S.2d 1010 (2d Dep't 1986); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978). In addition, Plaintiffs in a Verified Bill of Particulars need not particularize what advice, diagnoses or treatment should have been given. See *McKenzie v. St. Elizabeth Hosp.*, 81 A.D.2d 1003, 440 N.Y.S.2d 109 (4th Dep't 1981); see also *Nuss v. Pettibone Mercury Corp.*, 112 A.D.2d 744, 492 N.Y.S.2d 240 (4th Dep't 1985).

PLEASE TAKE NOTICE that plaintiffs reserve their right to supplement this response as the litigation proceeds and further information and/or documentation is obtained.

Dated: [Insert Date]

[Name of Attorney]
[Name of Law Firm]
Attorneys for Plaintiffs
[Address]
[Telephone Number]