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14 **UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF CALIFORNIA**

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17 ALEXIS WITT,
18 ON BEHALF OF THE ESTATE OF DEAN
19 WITT, DECEASED

20 Plaintiff,

21 v.

22 UNITED STATES OF AMERICA;

23 Defendant.

CASE NO.

ORIGINAL COMPLAINT FOR:

(1) MEDICAL NEGLIGENCE
[FTCA]

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26 Plaintiff ALEXIS WITT ON BEHALF OF THE ESTATE OF DEAN WITT, DECEASED,

27 by and through her attorney, alleges and shows to the Court as follows:
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I.

PARTIES, JURISDICTION, SERVICE OF PROCESS, AND VENUE

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1.1 This is a medical malpractice case involving the wrongful death of Dean Witt, husband of Alexis Witt, and father of Hannah Witt and Noah Witt, minor children.

1.2 Plaintiff Alexis Witt is the surviving spouse of Dean Witt. Alexis Witt was designated by the Third Judicial District Court of Salt Lake County, State of Utah, as the decedent's successor in interest and was ordered to pursue all claims related to her husband's estate on July 3, 2008. She resides at 9073 South 300 East, Sandy, Utah, 84093.

1.3 The Defendant is the United States of America.

1.4 This Federal District Court has jurisdiction of this cause, because this action is brought pursuant to and in compliance with 28 U.S.C §§1346(b), 2671-2680 et seq., commonly known as the “Federal Tort Claims Act”, which vests exclusive subject matter jurisdiction of Federal Tort Claims litigation in the Federal District Court.

1.5 The United States of America may be served with process in accordance with Rule 4(I) of the Federal Rules of Civil Procedure by serving a copy of the Summons and of the Complaint on McGregor W. Scott, United States Attorney for the Eastern District of California, by certified mail, return receipt requested at his office, United States Attorney, Eastern District of California, 501 I Street, Suite 10-100, Sacramento, CA 95814, to the attention of the Civil Process Clerk, and by serving a copy of the Summons and Plaintiffs’ Original Complaint on Michael Mukasey, Attorney General of the United States, by certified mail, return receipt requested, at the Attorney General’s Office, 10th and Constitution Avenue, N.W., Washington, DC 20530, to the attention of the Civil Process Clerk.

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IV.

THE AIR FORCE IS AN AGENCY OF THE UNITED STATES

4.1 The United States Air Force is an agency of the United States of America. The United States of America, Defendant herein, through its agency, the United States Air Force, at all times material hereto, owned, operated and controlled the health care facilities known as David Grant Medical Center at Travis Air Force Base, and through its agency, the United States Air Force staffed said health care facilities with its agents, servants, and/or employees.

V.

EMPLOYMENT AND COURSE AND SCOPE

5.1 At all times material hereto, all persons involved in the medical and health care services provided to Plaintiffs' decedent Dean Witt at the David Grant Medical Center at Travis Air Force Base, were agents, servants, and/or employees of the Department of the Air Force, the United States of America, or some other agency thereof, and were at all times material hereto, acting within the course and scope of such employment.

VI.

FACTS

6.1 This is a Federal Tort Claims Action for monetary damages sustained by Plaintiff resulting from personal injuries and the wrongful death of Dean Witt as a result of substandard, and therefore, negligent medical care.

6.2 This claim concerns the substandard medical and hospital care provided by agents, servants, and employees of the United States government at the David Grant Medical Center at Travis Air Force Base resulting in the death of Dean Witt on January 9, 2004.

6.3 On October 10, 2003, 25 year old Dean Patrick Witt, was admitted to the David Grant Medical Center for acute appendicitis. At the time of this incident, Dean Witt was in the process of moving to California pursuant to a Permanent Change of Station ("PCS") Order.

1 Dean Witt was not scheduled to report to his commander for his new assignment until October
2 30, 2003 and had no official military duties at any time relevant to this claim.

3 **6.4** An appendectomy was performed under general anesthesia with endotracheal
4 intubation. According to a Narrative Summary prepared by Dr. Ifune, the attending physician,
5 the surgery was "uncomplicated." Postoperatively, Dean Witt was extubated in the Operating
6 Room and was transferred to the Recovery Room. While in the Recovery Room, Dean Witt
7 experienced a loss of his airway due to improper care and treatment, which resulted in a severe
8 lack of oxygen and serious damage to his brain and other organs. Dean Witt never recovered
9 from his anoxic brain injury and lapsed into a persistent vegetative state. Dean Witt was
10 removed from life support and died approximately three months later on January 9, 2004.

11 **6.5** Dean Witt's death resulted from negligent postoperative care and supervision.
12 Dean Witt was left in the postoperative care of student nurses who failed to re-establish Dean
13 Witt's airway following a laryngospasm. Hospital personnel failed to call for help quickly
14 enough; used pediatric equipment when adult equipment was available; failed to use an oral
15 airway device; incorrectly placed an endotracheal tube into Dean Witt; and failed to establish an
16 alternative airway. Due to negligent postoperative care and supervision, what should have been
17 a quick standard re-intubation instead evolved into a preventable medical tragedy. Dean Witt
18 suffered and died from an anoxic injury resulting from negligent postoperative care and
19 negligent postoperative supervision.
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23 **VII.**

24 **CAUSE OF ACTION AGAINST THE UNITED STATES OF AMERICA**

25 **7.1** Defendant, the United States of America, was negligent in their care and
26 treatment of Dean Witt in the following ways, including but not limited to:
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1. Failing to properly and timely postoperatively treat Dean Witt;
2. Failing to properly and timely postoperatively care for Dean Witt;
3. Failing to properly and timely postoperatively monitor Dean Witt;
4. Failing to properly and timely resuscitate Dean Witt;
5. Failing to properly and timely re-establish Dean Witt's airway;
6. Failing to properly and timely call for assistance for Dean Witt;
7. Failing to utilize proper equipment to resuscitate Dean Witt;
8. Failing to utilize an oral airway device in resuscitation Dean Witt;
9. Incorrectly placing an endotracheal tube into Dean Witt;
10. Failing to establish an alternative airway for Dean Witt;
11. Utilizing undertrained personnel to care for Dean Witt; and
12. Failing to properly supervise undertrained personnel caring for Dean Witt.

7.2 At all times mentioned herein, the employees, agents, and/or representatives of the United States Government were negligent and proximately caused all of the injuries and damages sustained by Plaintiff.

VIII.

DAMAGES

8.1 As a direct and proximate result of Defendant's negligent acts and/or omissions, Plaintiff Alexis Witt on behalf of the estate of Dean Witt, deceased, incurred damages, including but not limited to, the following:

1. Past physical pain and suffering Dean Witt suffered before his death;
2. Past mental anguish Dean Witt suffered before his death;

- 1 3. Past medical expenses;
- 2 4. Funeral and burial expenses;
- 3 5. Loss of earnings and earning capacity from the date of Dean Witt's death,
- 4 through the completion of the trial of this cause, and into the future;
- 5 6. All Wrongful Death and Survivorship claims permitted by law;
- 6 7. Death of Dean Witt.
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9 **IX.**

10 **MEANING OF "DEFENDANT"**

11 **9.1** In this Complaint, whenever the term "Defendant" is used, it means Defendant,
12 Defendant's officers, agents, servants, employees, and/or representatives. Whenever in this
13 Complaint it is alleged that Defendant did any act or thing, it is meant that Defendant,
14 Defendant's officers, agents, servants, employees, and/or representatives did such act or thing,
15 and that at the time such act or thing was done, it was done with the full authorization and
16 ratification of Defendant and was done in the normal and routine course and scope of
17 employment of Defendant's officers, agents, servants, employees, and/or representatives.
18 Whenever in this Complaint it is alleged that Defendant omitted any act or thing, it is meant that
19 Defendant, Defendant's officers, agents, servants, employees, and/or representatives omitted
20 such act or thing.
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22 **X.**

23 **PRAYER**

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26 WHEREFORE, PREMISES CONSIDERED, the Plaintiffs request that the Defendant be
27 cited in terms of law to appear and answer herein: that upon final trial and hearing hereof, the
28 Plaintiffs have judgment against the Defendant, for the amount of actual damages; and for such

1 other and different amounts as they shall show by proper amendment before trial; for post
2 judgment interest at the applicable legal rate; for all Court costs incurred in this litigation; and
3 for such other and further relief, at law and in equity, both general and special, to which the
4 Plaintiffs may show themselves entitled and to which the Court believes them deserving.
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10 **ARCHULETA, ALSAFFAR &
11 HIGGINBOTHAM**

12 DATED: 08/27/08

13 By: /s/ Laurie Higginbotham
14 (as authorized on 08/27/2008)
15 LAURIE HIGGINBOTHAM
16 MICHAEL ARCHULETA
17 JAMAL ALSAFFAR
18 Attorneys for Plaintiffs,
19 *pro hac vice application pending*

20 **BAUM & BLAKE**

21 DATED: 08/27/08

22 By: /s/ David B. Baum
23 DAVID B. BAUM
24 Attorney for Plaintiffs, Local Counsel
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