

3. The allegations in paragraph 3 are characterizations of Plaintiffs' cause of action, and does not require a response. To the extent the Court requires a response, Defendant denies negligence of its employees and any liability to the Plaintiffs.

4. The allegations in paragraph 4 are legal conclusions and do not require a response. To the extent the Court requires a response, Defendant admits that the United States of America is the only proper defendant in a negligence action related to the conduct of its employees acting within the scope of their employment under the Federal Tort Claims Act ("FTCA").

5. The allegations in paragraph 5 pertaining to jurisdiction constitute statements of law which do not require a response. To the extent the Court requires a response, Defendant admits this Court has jurisdiction over the Defendant for the purpose of a FTCA suit.

6. The United States admits that the alleged negligence in this matter relates to the conduct of deemed federal employees of Chickasaw Nation Medical Center ("CNMC") in Ada, Pontotoc County, Oklahoma, which is located in the geographic jurisdiction of the U.S. District Court for the Eastern District of Oklahoma.

7. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 7 of Plaintiffs' Complaint and thus, denies the same.

8. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 8 of Plaintiffs Complaint and thus, denies the same.

9. The United States admits that three administrative tort claims were filed with the U.S. Department of Health and Human Services ("HHS") on October 21, 2016, that these claims were amended on May 1, 2017 to change the amount of damages alleged, and that on May 15, 2017, HHS formally denied the administrative claims.

10. The United States denies the allegations contained in paragraph 10.

11. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 11 of Plaintiffs Complaint and thus, denies the same.

12. The United States denies that the cited cases are “related” as contemplated in LCvR 3.1 and denies the remaining allegations in paragraph 12.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

13. The United States admits the allegations contained in paragraph 13.

14. The United States admits the allegations contained in paragraph 14.

15. The United States admits the allegations contained in paragraph 15.

16. The United States admits the allegations contained in paragraph 16.

17. The United States admits the allegations contained in paragraph 17.

18. The United States denies the allegations contained in paragraph 18.

19. The United States denies the allegations contained in paragraph 19.

20. The United States denies the allegations contained in paragraph 20.

21. The United States denies the allegations contained in paragraph 21.

22. The United States denies the allegations contained in paragraph 22.

23. The United States denies the allegations contained in paragraph 23.

24. The United States denies the allegations contained in paragraph 24.

25. The United States denies the allegations contained in paragraph 25.

26. The United States denies the allegations contained in paragraph 26.

27. The United States denies the allegations contained in the first sentence of paragraph 27. The United States admits the allegations contained in the second sentence of paragraph 27. The United States admits that CNMC has been in operation since 2010.

28. The United States denies the allegations contained in paragraph 28.

29. The United States denies the allegations contained in paragraph 29.

30. The United States denies the allegations contained in paragraph 30.

31. The United States denies the allegations contained in paragraph 31.

32. The United States denies the allegations contained in paragraph 32.

33. The allegations in paragraph 33 are legal conclusions and does not require a response. To the extent the Court requires a response, Defendant denies the allegations contained in paragraph 33.

34. The United States admits the quotation accurately reflects the section of the Indian Health Manual cited, but denies the legal conclusions set forth in paragraph 34.

35. The United States denies the allegations contained in paragraph 35.

36. The United States denies the allegations contained in paragraph 36.

37. The United States denies the allegations contained in paragraph 37.

38. The United States denies the allegations contained in paragraph 38.

39. The United States denies the allegations contained in paragraph 39.

40. The United States denies the allegations contained in paragraph 40.

41. The United States denies the allegations contained in paragraph 41.

42. The United States admits that federally-operated facilities of the Indian Health Service review and update their policies and procedures annually. The United States denies CNMC is a federally-operated facility of the Indian Health Service.

43. The United States admits the allegations contained in paragraph 43.

44. The United States denies the allegations contained in paragraph 44.

45. The United States denies the allegations contained in paragraph 45.

46. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 46 and thus, denies the same.

47. The United States denies the allegations contained in paragraph 47.

48. The United States denies the allegations contained in paragraph 48.

49. The United States denies the allegations contained in paragraph 49.

50. The United States denies the allegations contained in paragraph 50.

51. The United States denies the allegations contained in paragraph 51.

BREACHES OF DUTY BY THE INDIAN HEALTH SERVICE

52. The United States denies the allegations contained in paragraph 52.

53. The United States denies the allegations contained in paragraph 53.

54. The United States denies the allegations contained in paragraph 54.

55. The United States denies the allegations contained in paragraph 55.

The CNMC is an Accountability Free Zone

56. The United States denies the allegations contained in paragraph 56.

57. The United States denies the allegations contained in paragraph 57.

CNMC Failed to Establish a Culture of Safety

58. The United States denies the allegations contained in paragraph 58.

59. The United States denies the allegations contained in paragraph 59.

60. The United States denies the allegations contained in paragraph 60.

61. The United States denies the allegations contained in paragraph 61.

62. The United States denies the allegations contained in paragraph 62.

63. The United States denies the allegations contained in paragraph 63.

64. The United States denies the allegations contained in paragraph 64.

Normalization of Deviancy

65. The United States denies the allegations contained in paragraph 65 as written.

66. The allegations in paragraph 66 seek to invade matters protected by 25 U.S.C. § 1675, and, on that basis, the United States declines to address the allegation.

67. The allegations in paragraph 67 seek to invade matters protected by 25 U.S.C. § 1675, and, on that basis, the United States declines to address the allegation.

68. The allegations in paragraph 68 seek to invade matters protected by 25 U.S.C. § 1675, and, on that basis, the United States declines to address the allegation.

69. The allegations in paragraph 69 seek to invade matters protected by 25 U.S.C. § 1675, and, on that basis, the United States declines to address the allegation.

Management has Failed

70. The United States denies the allegations contained in paragraph 70.

FACTS SPECIFIC TO ALEXIS STOKES, TAYLOR STOKES AND BABY BOY D.S.

71. The United States admits the allegations contained in paragraph 71.

72. The United States admits the allegations contained in paragraph 72.

73. The United States admits the allegations contained in paragraph 73.

74. The United States admits the allegations contained in paragraph 74.

75. The United States admits the allegations contained in paragraph 75.

76. The United States admits the allegations contained in paragraph 76.

77. The United States admits the allegations contained in paragraph 77.

78. The United States denies the allegations contained in paragraph 78.

79. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 79 and thus, denies the same.

80. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 80 and thus, denies the same.

81. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 81 and thus, denies the same.

82. The United States denies the allegations contained in paragraph 82.

83. The United States denies the allegations contained in paragraph 83.

84. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 84 and thus, denies the same.

85. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 85 and thus, denies the same.

86. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 86 and thus, denies the same.

87. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 87 and thus, denies the same.

88. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 88 and thus, denies the same.

89. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 89 and thus, denies the same.

90. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 90 and thus, denies the same.

91. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 91 and thus, denies the same.

92. The United States denies the allegations contained in paragraph 92.

93. The United States admits that Ashley Curtis, CNM, was one of the obstetric care providers for A.S. on May 16 and 17, 2017.

94. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 94 and thus, denies the same.

95. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 95 and thus, denies the same.

96. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 96 and thus, denies the same.

97. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 97 and thus, denies the same.

98. The United States denies the allegations contained in paragraph 98.

99. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 99 and thus, denies the same.

100. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 100 and thus, denies the same.

101. The United States admits that Tamara Daniel documented at 2:49 a.m. and 2:50 a.m. that she notified Ms. Curtis of the progression of Ms. Stokes' labor.

102. The United States denies the allegations contained in paragraph. 102

103. The United States denies the allegations contained in paragraph 103.

104. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 104 and thus, denies the same.

105. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 105 and thus, denies the same.

106. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 106 and thus, denies the same.

107. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 107 and thus, denies the same

108. The United States denies paragraph 108 as stated and avers that the medical record documents that at 3:17a.m., both Dr. Frow and Ms. Curtis were already present at the bedside, had already discussed with Ms. Stokes the recommendation for vacuum assisted delivery, and that Ms. Stokes had already verbalized her understanding of the need for the same.

109. The United States admits Baby Boy D.S. was born at 3:43 a.m. but denies the remainder of paragraph 109.

110. The United States denies the allegations in paragraph 110 as stated.

111. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 111 and thus, denies the same.

112. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 112 and thus, denies the same.

113. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 113 and thus, denies the same.

114. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 114 and thus, denies the same.

115. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 115 and thus, denies the same.

116. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 116 and thus, denies the same.

117. The United States admits the allegations contained in paragraph 117.

118. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 118 and thus, denies the same.

119. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 119 and thus, denies the same.

120. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 120 and thus, denies the same.

121. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 121 and thus, denies the same.

122. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 122 and thus, denies the same.

123. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 123 and thus, denies the same.

124. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 124 and thus, denies the same.

125. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 125 and thus, denies the same.

126. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 126 and thus, denies the same.

127. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 127 and thus, denies the same.

128. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 128 and thus, denies the same.

129. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 129 and thus, denies the same.

130. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 130 and thus, denies the same.

131. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 131 and thus, denies the same.

132. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 132 and thus, denies the same.

133. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 133 and thus, denies the same.

134. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 134 and thus, denies the same.

135. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 135 and thus, denies the same.

136. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 136 and thus, denies the same.

137. The United States denies the allegations contained in paragraph 137.

138. The United States denies the allegations contained in paragraph 138.

139. The United States denies the allegations contained in paragraph 139.

140. The United States denies the allegations contained in paragraph 140.

141. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 141 and thus, denies the same.

142. The United States denies the allegations contained in paragraph 142.

143. The United States denies the allegations contained in paragraph 143.

144. The United States denies the allegations contained in paragraph 144.

145. The United States denies the allegations contained in paragraph 145.

146. The United States denies the allegations contained in paragraph 146.

147. The United States denies the allegations contained in paragraph 147.

148. The United States denies the allegations contained in paragraph 148.

149. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 149 and thus, denies the same.

150. The United States denies the allegations contained in paragraph 150.

151. The United States admits the allegations contained in paragraph 151.

152. The United States denies the allegations contained in paragraph 152.

153. The United States admits the allegations contained in paragraph 153.

154. The United States denies the allegations contained in paragraph 154

155. The United States denies the allegations contained in paragraph 155.

156. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 156 and thus, denies the same.

157. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 157 and thus, denies the same.

158. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 158 and thus, denies the same.

159. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 159 and thus, denies the same.

160. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 160 and thus, denies the same.

161. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 161 and thus, denies the same.

162. The United States denies the allegations contained in paragraph 162.

163. The United States denies the allegations contained in paragraph 163.

164. The United States denies the allegations contained in paragraph 164.

165. The United States denies the allegations contained in paragraph 165 and states the medical records speak for themselves.

166. The United States denies the allegations contained in paragraph 166 and states the medical records speak for themselves.

167. The United States denies the allegations contained in paragraph 167 as written.

168. The United States denies the allegations contained in paragraph 168.

169. The United States denies the allegations contained in paragraph 169.

170. The United States denies the allegations contained in paragraph 170 as written.

171. The United States admits the allegations contained in paragraph 171.

172. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 172 and thus, denies the same.

173. The United States denies the allegations contained in paragraph 173.

174. The United States denies the allegations contained in paragraph 174.

175. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 175 and thus, denies the same.

176. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 176 and thus, denies the same.

177. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 177 and thus, denies the same.

178. The United States denies the allegations contained in paragraph 178.

179. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 179 and thus, denies the same.

180. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 180 and thus, denies the same.

181. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 181 and thus, denies the same.

182. The United States denies the allegations contained in paragraph 182.

183. The United States denies the allegations contained in paragraph 183.

184. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 184 and thus, denies the same.

185. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 185 and thus, denies the same.

186. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 186 and thus, denies the same.

187. The United States admits the allegations contained in paragraph 187.

188. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 188 and thus, denies the same.

189. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 189 and thus, denies the same.

190. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 190 and thus, denies the same.

191. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 191 and thus, denies the same.

192. The United States denies the allegations contained in paragraph 192.

193. The United States denies the allegations contained in paragraph 193.

194. The United States denies the allegations contained in paragraph 194.

195. The United States denies the allegations contained in paragraph 195.

196. The United States denies the allegations contained in paragraph 196.

197. The United States denies the allegations contained in paragraph 197.

198. The United States denies the allegations contained in paragraph 198.

199. The United States denies the allegations contained in paragraph 199.

200. The United States denies the allegations contained in paragraph 200.

201. The United States denies the allegations contained in paragraph 201.

202. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 202 and thus, denies the same.

203. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 203 and thus, denies the same.

204. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 204 and thus, denies the same.

205. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 205 and thus, denies the same.

206. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 206 and thus, denies the same.

207. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 207 and thus, denies the same.

208. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 208 and thus, denies the same.

209. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 209 and thus, denies the same.

210. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 210 and thus, denies the same.

211. The United States admits the allegations contained in paragraph 211.

212. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 212 and thus, denies the same.

213. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 213 and thus, denies the same.

214. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 214 and thus, denies the same.

215. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 215 and thus, denies the same.

216. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 216 and thus, denies the same.

217. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 217 and thus, denies the same.

218. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 218 and thus, denies the same.

219. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 219 and thus, denies the same.

Failure to Provide Medical Records

220. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 220 and thus, denies the same.

221. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 221 and thus, denies the same.

222. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 222 and thus, denies the same.

223. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 223 and thus, denies the same.

224. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 224 and thus, denies the same.

225. The United States denies the allegations contained in paragraph 225.

226. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 226 and thus, denies the same.

227. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 227 and thus, denies the same.

Other Breaches of the Standard of Care Involving Institutional Negligence

228. The United States denies the allegations contained in paragraph 228.

229. The United States denies the allegations contained in paragraph 229.

230. The United States denies the allegations contained in paragraph 230.

231. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 231 and thus, denies the same.

232. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 232 and thus, denies the same.

233. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 233 and thus, denies the same.

234. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 234 and thus, denies the same.

235. The United States denies the allegations contained in paragraph 235.

236. The United States denies the allegations contained in paragraph 236.

237. The United States admits the allegations contained in paragraph 237.

238. The United States admits the allegations contained in paragraph 238

239. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 239 and thus, denies the same.

240. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 240 and thus, denies the same.

241. The United States denies the allegations contained in paragraph 241.

242. The United States denies the allegations contained in paragraph 242.

243. The United States claims that such information, if any exists, is protected by 25 U.S.C. 1675.

244. The United States claims that such information, if any exists, is protected by 25 U.S.C. 1675.

245. The United States denies the allegations contained in paragraph 245.

246. The United States claims that such information, if any exists, is protected by 25 U.S.C. 1675.

247. The United States claims that such information, if any exists, is protected by 25 U.S.C. 1675.

248. The United States claims that such information, if any exists, is protected by 25 U.S.C. 1675.

249. The United States claims that such information, if any exists, is protected by 25 U.S.C. 1675.

250. The United States denies the allegations contained in paragraph 250.

Lack of Informed Consent

251. The United States denies the allegations contained in paragraph 251.

252. The United States denies the allegations contained in paragraph 252.

253. The United States denies the allegations contained in paragraph 253.

254. The United States denies the allegations contained in paragraph 254.

255. The United States denies the allegations contained in paragraph 255.

256. The United States denies the allegations contained in paragraph 256.

257. The United States denies the allegations contained in paragraph 257.

258. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 258 and thus, denies the same.

259. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 259 and thus, denies the same.

DAMAGES

260. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 260 and thus, denies the same.

261. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 261 and thus, denies the same.

262. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 262 and thus, denies the same.

263. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 263 and thus, denies the same.

264. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 264 and thus, denies the same.

265. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 265 and thus, denies the same.

266. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 266 and thus, denies the same.

267. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 267 and thus, denies the same.

Evidence of Medical Negligence is Clear and Convincing

268. The United States denies the allegations contained in paragraph 268.

269. The United States denies the allegations contained in paragraph 269.

270. The United States denies the allegations contained in paragraph 270.

Evidence Meets Requirements to Award Non-Economic Damages Over \$350,000

271. The United States denies the allegations contained in paragraph 271.

272. The United States denies the allegations contained in paragraph 272.

273. The United States denies the allegations contained in paragraph 273.

274. The United States denies the allegations contained in paragraph 274.

Lost Chance of Recovery or Survival

275. The United States notes that the allegations in paragraph 275 are legal conclusions to which no response is necessary.

276. The United States denies the allegations contained in paragraph 276.

277. The United States denies the allegations contained in paragraph 277.

278. The United States denies the allegations contained in paragraph 278.

Oklahoma Limits on Non-Economic Damages is Unconstitutional

279. The United States notes that the allegations in paragraph 279 are legal conclusions to which no response is necessary.

280. The United States notes that the allegations in paragraph 280 are legal conclusions to which no response is necessary. To the extent the Court requires a response, The United States denies that the Oklahoma statute is unconstitutional.

281. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 281 and thus, denies the same.

282. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 282 and thus, denies the same.

U.S. Seeks Reversionary Trust for Damages to D.S.

283. The United States denies the allegations contained in paragraph 283.

284. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 284 and thus, denies the same.

285. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 285 and thus, denies the same.

286. The United States denies the allegations contained in paragraph 286.

Parents' Lifetime Obligation of Support

287. The United States notes that the information contained in paragraph 287 is a legal conclusion for which no response is necessary.

288. The United States notes that the information contained in paragraph 288 is a legal conclusion for which no response is necessary.

CLAIMS FOR RELIEF

289. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 289 and thus, denies the same.

290. The United States lacks sufficient information or knowledge to admit or deny the allegations contained in paragraph 290 and thus, denies the same.

Preliminary Claim for Relief

291. The United States denies the allegations contained in paragraph 291.

First Claim for Relief

292. The United States denies the allegations contained in paragraph 292.

Second Claim for Relief

293. The United States denies the allegations contained in paragraph 293.

Third Claim for Relief

294. The United States denies the allegations contained in paragraph 294.

ANSWER TO PLAINTIFFS' PRAYER FOR RELIEF

295. The allegations contained in paragraph 295 sets forth Plaintiffs' Prayer for Relief to which no response is required. To the extent that the Court requires a response, the United States denies the allegations and denies Plaintiffs' prayer for relief.

296. The allegations contained in paragraph 296 sets forth Plaintiffs' Prayer for Relief to which no response is required. To the extent that the Court requires a response, the United States denies the allegations and denies Plaintiffs' prayer for relief.

AFFIRMATIVE AND OTHER DEFENSES

Although discovery has not yet been permitted and investigation has only just begun, the following matters are raised at this time to give all parties notice of defenses, affirmative defenses, and other matters that exist now or may arise after discovery and future investigation:

1. There is no subject matter jurisdiction over any claims not administratively exhausted by the Plaintiffs.
2. The only proper claims against the United States are claims for negligence. The Court lacks subject matter jurisdiction of any other claim.
3. Discretionary function exception.
4. No negligent or wrongful act or omission on the part of an employee or agent of the United States was the cause in fact or proximate cause of the Plaintiffs' alleged injuries.

5. With respect to medical services provided to Plaintiffs Alexis Stokes and Baby Boy D.S., The United States employees exercised such skill, prudence, and diligence as other similarly credentialed individuals nationwide.

6. Any injury, damage, or loss suffered by Plaintiffs was caused by the negligent or willful failure of Plaintiffs to follow all reasonable and proper advice and instructions regarding care, activities, and treatment given by the United States personnel or otherwise failing to exercise ordinary care on Plaintiffs' own behalf.

7. If the United States is found liable, which the United States expressly denies, Plaintiffs were more than 50% contributorily negligent, barring recovery from the United States. 23 Okla. St. § 13 (2016).

8. If the United States is found liable, which The United States expressly denies, the negligence of the Plaintiffs was the proximate cause of and contributed to any alleged injuries or damages sustained, thereby barring recovery, or, alternatively, mandating that any recovery be proportionately reduced.

9. If the United States is found liable, which the United States expressly denies, Plaintiffs are limited to the amount set forth in their administrative claims. See 28 U.S.C. § 2675(b) (2006).

10. If Plaintiff Baby Boy D.S. was injured or damaged by the United States, which is specifically denied, such injuries and damages resulted from known risks or unavoidable conditions for which the United States is not responsible.

11. The United States shall not be liable for prejudgment interest or punitive damages. See 28 U.S.C. §2674 (2006).

12. In good faith, based upon the facts as currently known and subject to discovery, to the extent Plaintiffs are entitled to recover damages, the United States is entitled to recoupment, credit, or set-off for any past or future benefits paid to or on behalf of the Plaintiffs under any government program, whether state or federal, to the extent allowed under federal and state law.

13. If the United States is found liable, which the United States expressly denies, others (whether known or unknown) over whom the United States exercised no supervision or control may, in good faith, be negligent. Under the doctrine of several liability, the United States, in such instance, would be liable only for its proportionate share of the fault, if any be found. 23 Okla. St. § 15 (2013).

14. The United States asserts that it has, or may have, additional affirmative defenses that are not known to Defendant at this time, but may be ascertained through discovery. The United States specifically preserves these and other affirmative defenses as they are ascertained through discovery.

WHEREFORE, The United States request that the Court enter judgment in favor of the Defendant, that the Complaint be dismissed, and that the United States of America be granted such other and further relief as the Court may deem just and proper, including recovery of all costs of suit and appropriate fees.

DOUGLAS A. HORN
Acting United States Attorney

s/ Susan Stidham Brandon
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July, 2017 I electronically filed the foregoing with the Clerk of Court using the ECF System. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrant: George W. Braly at Gwbraly@gami.com; Lawrence R. Murphy, Jr. at lmurphy@richardsconnor.com

s/ Susan Stidham Brandon

Susan Stidham Brandon

Assistant U.S. Attorney