

CIV-140528-CIV-DS1407335-CASEEN-142102



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Complaint and Party information entered

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NEW FILE

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 28 2014

BY Edmond Castro
EDMOND CASTRO, DEPUTY

5 Attorneys for Plaintiffs

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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO

11 ARMANI RAMIREZ, a minor, by and through
12 his guardian ad litem, GRACIELA RAMIREZ,
13 CAMILO RAMIREZ, GRACIELA RAMIREZ,
individually,

14 Plaintiffs,

15 vs.

16 KAISER FOUNDATION HEALTH PLAN, INC., a
17 Corporation, KAISER FOUNDATION
HOSPITALS, a Corporation, SOUTHERN
18 CALIFORNIA PERMANENTE MEDICAL
GROUP, a Partnership, ANITA MARIE
BISHOP, R.N., and DOES 1-250, inclusive,

19 Defendants.

Case No. CIV DS1407335
COMPLAINT FOR DAMAGES
FOR MEDICAL MALPRACTICE

- 1. Negligence
- 2. Negligence
- 3. Negligent Infliction of Emotional Distress
- 4. Loss of Consortium

#435.00
#140528

20 Plaintiffs, through counsel, allege in their complaint for damages for medical
21 malpractice as follows:

22 1. The true names, identities or capacities, whether individual, associate,
23 corporate or otherwise of Defendants DOES 1 through 250, inclusive, are unknown to
24 Plaintiffs, who therefore, sues said Defendants by such fictitious names. When the true
25 names, identities or capacities of such fictitiously-designated Defendants are ascertained,
Plaintiffs will ask leave of Court to amend the Complaint to insert said true names,
27 identities and capacities, together with the proper charging allegations.
28

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1 2. Plaintiffs are informed and believe and thereon allege that each of the
2 Defendants sued herein as a DOE is responsible in some manner for the events and
3 happenings herein referred to, thereby legally causing the injuries and damages to the
4 Plaintiffs as herein alleged.

5 3. All of the facts, acts, events and circumstances herein mentioned and
6 described occurred in the County of SAN BERNARDINO, State of California, and all
7 Defendants are residents of the County of SAN BERNARDINO, State of California, doing
8 business in said County, State of California.

9 4. At all times herein mentioned, Defendants DOES 1 through 50, inclusive,
10 were, and now are, physicians and surgeons, holding themselves out as duly licensed to
11 practice their profession under and by virtue of the laws of the State of California and
12 were, and now are, engaged in the practice of their profession in the State of California.

13 5. At all times herein mentioned, Defendants ANITA MARIE BISHOP, R.N., and
14 DOES 51 through 100, inclusive, were, and now are, registered nurses, nurse
15 practitioners, nurse midwives, licensed vocational nurses, practical nurses, physician
16 assistants, aids, technicians, attendants, students or other paramedical personnel,
17 holding themselves out as duly able to practice their profession under and by virtue of
18 the laws of the State of California and were, and now are, engaged in the practice of their
19 profession in the State of California and acting as agents, employees and servants of some
20 or all of the other Defendants within the course and scope of said agency or employment.

21 6. At all times herein mentioned, Defendants KAISER FOUNDATION HEALTH
22 PLAN, INC., KAISER FOUNDATION HOSPITALS, SOUTHERN CALIFORNIA PERMANENTE
23 MEDICAL GROUP, and DOES 101 through 150, and each of them, were corporations,
24 partnerships, joint ventures, or other entities organized and existing under the laws of
25 the State of California, with their principal place of business situated in the State of
California and other States.

26 7. Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER
27 FOUNDATION HOSPITALS, and DOES 151 through 200, inclusive, were at all times herein
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1 mentioned duly organized California corporations or hospitals existing under and by
2 virtue of the laws of the State of California and other States; that said Defendant
3 corporations, hospitals and the remaining Defendants, and each of them, owned,
4 operated, managed and controlled a general hospital facility within the County of SAN
5 BERNARDINO, State of California, held out to the public at large and to the Plaintiffs
6 herein, as properly equipped, fully accredited, competently staffed by qualified and
7 prudent personnel and operating in compliance with the standard of due care
8 maintained in other properly equipped, efficiently operated and administered, accredited
9 hospitals in said community commonly known as KAISER PERMANENTE ONTARIO
10 MEDICAL CENTER.

11 8. At all times herein mentioned Defendants DOES 201 through 250 were doing
12 business as a district or County hospital or clinic, and DOES 240-250, a hospital operated
13 by a government entity or medical clinic or hospital, open to the public, or a medical
14 facility or clinic, operated by a government entity open to the public rendering medical,
15 surgical, hospital, diagnostic, nursing and other care to the general public for
16 compensation. All of the acts complained of herein by Plaintiffs against said Defendants
17 were done and performed by said Defendants by and through their duly authorized
18 agents, servants and employees, each of whom and all of whom were at all times
19 mentioned herein acting within the course, purpose, and scope of their said agency,
20 service and employment, and whose conduct was ratified by all Defendants, and each of
21 them.

22 9. Each Defendant ratified and affirmed the conduct of each other Defendant.
23 Each of the Defendants was the agent, servant, and employee of the other Defendants.

24 10. Plaintiffs are informed and believe and upon such information and belief
25 allege that at all times herein mentioned, Defendants and other Defendants named
fictitiously, were the agents, servants, employees, joint-venturers, and copartners of
their said co-Defendants and, as such, were acting within the course and scope of such
agency, service, partnership, venture, and employment at all times herein mentioned;

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1 that each and every Defendant, as aforesaid, when acting as a principal, was negligent in
2 the selection and hiring of each and every other Defendant, as its agent, servant,
3 employee, joint-venturer and partner. Further, each and every Defendant ratified the
4 conduct of the other Defendants.

5 I.

6 PLAINTIFF ARMANI RAMIREZ A MINOR, BY AND THROUGH HIS GUARDIAN AD
7 LITEM GRACIELA RAMIREZ, ALLEGES FOR A CAUSE OF ACTION FOR
8 NEGLIGENCE AGAINST DEFENDANTS AND EACH OF THEM AS FOLLOWS:

9 11. Plaintiff ARMANI RAMIREZ repeats and repleads each and every allegation
10 contained each of the foregoing paragraphs, and incorporates the same herein by
11 reference.

12 12. On or about the date of the filing of the complaint, GRACIELA RAMIREZ was
13 by order duly made and entered by the above entitled Court, appointed Guardian ad
14 Litem of Plaintiff ARMANI RAMIREZ a minor, born January 19, 2014.

15 13. At all times herein mentioned, and prior thereto, the Plaintiff was in the
16 exclusive control of the Defendants, and each of them, and that at no time prior to the
17 events, conduct, activities, care and treatment herein complained of did the Defendants
18 herein, or any of them, obtain knowledgeable, informed consent for said care, treatment
19 or conduct; that prior to the initiation of or performance of said care, treatment,
20 procedure or conduct no opportunity was afforded the Plaintiff or any authorized agent
21 of the Plaintiff to exercise voluntary, knowledgeable and informed consent to said care,
22 treatment, procedure or conduct.

23 14. Prior to January 19, 2014, the date of ARMANI RAMIREZ' birth, and
24 thereafter, GRACIELA RAMIREZ employed Defendants, and each of them, to diagnose and
25 treat her condition of pregnancy and to do all things necessary for her care and the care
of her baby, ARMANI RAMIREZ including but not limited to, pre-delivery care, the
27 delivery, and post-delivery care.

28 15. While minor Plaintiff ARMANI RAMIREZ was under the sole and exclusive

1 care and control of the Defendants, and each of them, Defendants, and each of them
2 negligently, carelessly and unskillfully selected various hospitals and physicians and
3 other health care provides, negligently delivered, examined, treated, cared for,
4 diagnosed, operated upon, attended and otherwise handled and controlled the minor
5 Plaintiff herein, thereby proximately causing injuries and damages to the minor Plaintiff.
6 Said acts of negligence include, but are not limited to, failing to diagnose or treat his
7 mother's placental abruption, and further failing to perform a timely cesarean section,
8 such that he was born with APGAR scores of 0,0,1, suffering from severe neurological
9 injuries and brain damage.

10 16. Defendants KAISER FOUNDATION HOSPITALS, and DOES 151-200, failed and
11 neglected to adequately select a competent medical staff and to periodically review the
12 competency of its medical staff, and failed to adequately monitor its staff such that the
13 minor Plaintiff was caused to, and did suffer injuries and damages as herein alleged.

14 17. As a legal result of the negligence of the Defendants, and each of them, the
15 minor Plaintiff was injured in his health, strength and activity, sustaining severe shock,
16 and injury to the body, all of which said injuries have caused and continue to cause
17 Plaintiff great physical, emotional, and nervous pain and suffering, and which said
18 injuries Plaintiff is informed and believes, and thereon alleges, will result in loss of
19 earnings, permanent disability, loss of enjoyment of life, and impairment of earning
20 capacity all to Plaintiff's damage in a sum in excess of the jurisdiction of the Municipal
21 Court.

22 18. As a further legal result of the negligence of the Defendants, and each of
23 them, and the resulting injuries to the Plaintiff, said Plaintiff was compelled to, and did,
24 incur expenses for medical and surgical attention, hospitalization, nursing, medication
25 and incidentals for said Plaintiff in an amount unknown to Plaintiff at present.

26 19. As a further legal result of the negligence of the Defendants, and each of
27 them, and of the resulting injuries, Plaintiff will be obliged to incur expenses for medical
28 care and hospitalization for an indefinite period in the future and to pay for these

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1 expenses in the treatment and relief of injuries for medical and surgical attention,
2 hospitalization, nursing, medication, and incidentals for said Plaintiff in an amount
3 unknown to Plaintiff at present.

4 20. As a further legal result of the negligence of the Defendants, and each of them,
5 Plaintiff will suffer a decreased earnings and earning capacity in the future and future
6 earnings to Plaintiff's further damage in a sum unknown at present.

7 II.

8 PLAINTIFF GRACIELA RAMIREZ ALLEGES FOR A SEPARATE AND DISTINCT
9 CAUSE OF ACTION FOR NEGLIGENCE AGAINST DEFENDANTS AND EACH OF
10 THEM:

11 21. Plaintiff GRACIELA RAMIREZ repeats and repleads each and every allegation
12 contained in each of the preceding paragraphs and incorporates the same herein by
13 reference.

14 22. At all times herein mentioned, the Plaintiff was in the exclusive control of
15 the said Defendants and that at no time prior to the events, conduct, activities, care and
16 treatment herein complained of did the said Defendants obtain knowledgeable, informed
17 consent for said care, treatment or conduct; that prior to the initiation of or performance
18 of said care, treatment, procedure or conduct no opportunity was afforded the Plaintiff
19 or any authorized agent of the Plaintiff to exercise voluntary, knowledgeable and
20 informed consent to said care, treatment, procedure or conduct.

21 23. Prior to January 19, 2014, the date of ARMANI RAMIREZ's birth, and
22 thereafter, GRACIELA RAMIREZ employed said Defendants, to diagnose and treat her
23 condition of pregnancy and to do all things necessary for her care, including, but not
24 limited to, pre-delivery care, the delivery and post-delivery care.

25 24. While Plaintiff GRACIELA RAMIREZ was under the sole and exclusive care
and control of the said Defendants, Defendants, negligently, carelessly and unskillfully
27 delivered, examined, treated, cared for, diagnosed, operated upon, attended and
28 otherwise handled and controlled the Plaintiff herein, thereby proximately causing

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1 injuries and damages to Plaintiff, as hereinabove alleged.

2 25. As a legal result of the negligence of the Defendants, and each of them,
3 Plaintiff was injured in her health, strength and activity, sustaining severe shock, and
4 injury to Plaintiff's body, all of which said injuries have caused and continue to cause
5 Plaintiff great physical, emotional, and nervous pain and suffering, and which said
6 injuries Plaintiff is informed and believes, and thereon alleges, will result in loss of
7 earnings, permanent disability, loss of enjoyment of life, and impairment of earning
8 capacity all to Plaintiff's damage in a sum in excess of the jurisdiction of the Municipal
9 Court.

10 26. As a further legal result of the negligence of the Defendants, and each of
11 them, and the resulting injuries to the Plaintiff, said Plaintiff was compelled to, and did,
12 incur expenses for medical and surgical attention, hospitalization, nursing, medication
13 and incidentals for said Plaintiff in an amount unknown to Plaintiff at present.

14 27. As a further legal result of the negligence of the Defendants, and each of
15 them, and of the resulting injuries, Plaintiff will be obliged to incur expenses for medical
16 care and hospitalization for an indefinite period in the future and to pay for these
17 expenses in the treatment and relief of injuries for medical and surgical attention,
18 hospitalization, nursing, medication, and incidentals for said Plaintiff in an amount
19 unknown to Plaintiff at present.

20 28. As a further legal result of the negligence of the Defendants, and each of
21 them, Plaintiff GRACIELA RAMIREZ has suffered loss of earnings and will suffer a
22 decreased earning capacity in the future and future earnings to Plaintiff's further
23 damage in a sum unknown at present.

24 III.

25 **PLAINTIFF GRACIELA RAMIREZ ALLEGES FOR A SEPARATE AND DISTINCT**
26 **CAUSE OF ACTION FOR NEGLIGENT INFLECTION OF EMOTIONAL**
27 **DISTRESS AGAINST DEFENDANTS AND EACH OF THEM AS FOLLOWS:**

28 29. Plaintiff GRACIELA RAMIREZ repeats and repleads each and every allegation

1 contained in the preceding paragraphs and incorporates the same herein by reference.

2 30. At all times herein mentioned, GRACIELA RAMIREZ was the mother of
3 ARMANI RAMIREZ the minor Plaintiff, and was and is under a duty to care for the minor
4 child herein. Plaintiff GRACIELA RAMIREZ employed said Defendants to care for and treat
5 herself and her minor child, ARMANI RAMIREZ during the pregnancy.

6 31. At all times mentioned, said Defendants were under a legal duty to Plaintiff
7 with respect to the care and treatment of the child, ARMANI RAMIREZ while the child
8 was a patient in the said hospital and under the care of the said Defendants. Said
9 Defendants treated and cared for both the minor and GRACIELA RAMIREZ during the
10 labor and delivery of GRACIELA RAMIREZ and thereafter.

11 32. At all times mentioned, there existed a close relationship between Plaintiff
12 GRACIELA RAMIREZ and ARMANI RAMIREZ namely, mother and child, and said
13 Defendants were aware of this close relationship when they agreed to care for the child.
14 It was foreseeable that Plaintiff GRACIELA RAMIREZ would be damaged directly by
15 negligent acts or omissions to act and committed upon the child. Said Defendants were
16 aware that Plaintiff GRACIELA RAMIREZ was concerned about the physical well being of
17 her child when Defendants agreed to treat both the child and mother.

18 33. It was reasonably foreseeable and easily predictable that any acts of
19 negligence by these Defendants that would injure the child would lead to serious
20 emotional distress in Plaintiff GRACIELA RAMIREZ. Because the risk of harm to the
21 Plaintiff was reasonably foreseeable and easily predictable, Defendants owed Plaintiff a
22 duty to exercise due care in diagnosing, caring for, and treating Plaintiff's child, ARMANI
23 RAMIREZ. This is especially true as Defendants agreed to and did treat both GRACIELA
24 RAMIREZ and ARMANI RAMIREZ at the same time.

25 34. Said Defendants in disregard of the probability that their actions would
26 cause severe emotional distress, in failing to provide the necessary medical treatment to
27 Plaintiff GRACIELA RAMIREZ and her child, caused Plaintiff GRACIELA RAMIREZ severe
28 emotional distress arising from the abnormal event of participating in a negligent

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1 delivery and reacting to the tragic outcome with fright nervousness and shock, grief,
2 anxiety, worry, mortification, shock, humiliation and indignity.

3 35. These damages for emotional distress accrued separately, consist of
4 different acts, and at separate times, from Plaintiff GRACIELA RAMIREZ's
5 previous cause of action for negligence from which she suffered physical injuries and
6 pain and suffering during the negligently conducted labor and delivery.

7 36. As a further legal result of the negligence of the Defendants, and of the
8 resulting injuries, Plaintiff will be obliged to incur expenses for medical care and
9 hospitalization for an indefinite period in the future and to pay for these expenses in the
10 treatment and relief of injuries for medical and surgical attention, hospitalization,
11 nursing, medication, and incidentals for said Plaintiff in an amount unknown to Plaintiff
12 at present.

13 37. As a further legal result of the negligence of the Defendants, Plaintiff has
14 suffered loss of earnings and will suffer a decreased earning capacity in the future and
15 future earnings to Plaintiff's further damage in a sum unknown at present.

16 38. By reason of the negligence of said Defendants, Plaintiff GRACIELA
17 RAMIREZ suffered severe and serious emotional distress and shock and injury to her
18 nervous system and body, all to her general damage in a sum within the jurisdiction of
19 this Court and pursuant to *Burgess v. Superior Court* (1992) 2 Cal.4th 1064.

20 IV.

21 PLAINTIFF CAMILO RAMIREZ ALLEGES FOR A SEPARATE AND DISTINCT
22 CAUSE OF ACTION FOR LOSS OF CONSORTIUM AGAINST DEFENDANTS AND
23 EACH OF THEM AS FOLLOWS:

24 39. Plaintiff CAMILO RAMIREZ repeats and repleads each and every allegation
25 contained in all prior paragraphs and incorporates the same herein by reference as to
said Defendants and each of them.

27 40. At all times herein mentioned, GRACIELA RAMIREZ and CAMILO RAMIREZ
28 were married and are husband and wife.

1 41. As a direct and proximate result of the aforesaid conduct of Defendants, and
2 each of them, and the resultant injuries to Plaintiff GRACIELA RAMIREZ, Plaintiff CAMILO
3 RAMIREZ has suffered and is reasonably certain to suffer in the future the loss of
4 consortium, love, companionship, comfort, affection, society, solace, moral support,
5 enjoyment of sexual relations and physical assistance in the operation and maintenance
6 of the home, causing damage in a sum in excess of the jurisdiction of the Municipal
7 Court.

8 WHEREFORE, Plaintiffs pray for damages against the Defendants, and each of
9 them, as follows:

10 **FOR THE CAUSE OF ACTION FOR NEGLIGENCE FOR PLAINTIFF ARMANI RAMIREZ**

11 **A MINOR:**

- 12 1. General damages, according to proof;
- 13 2. Past and future medical expenses, according to proof;
- 14 3. For loss of future earning and earning capacity, according to
15 proof;
- 16 4. Costs of suit incurred herein, and
- 17 5. For such other and further relief as to the Court appears just and proper.

18 **FOR THE CAUSE OF ACTION FOR NEGLIGENCE FOR PLAINTIFF GRACIELA**
19 **RAMIREZ:**

- 20 1. General damages, according to proof;
- 21 2. Past and future medical expenses, according to proof;
- 22 3. For loss of past and future earning and earning capacity, according to proof;
- 23 4. Costs of suit incurred herein, and
- 24 5. For such other and further relief as to the Court appears just and proper.

25 **FOR THE CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF EMOTIONAL**
26 **DISTRESS FOR PLAINTIFF GRACIELA RAMIREZ:**

- 27 1. General damages, according to proof;
- 28 2. Special damages, according to proof;

- 1 3. Costs of suit incurred herein, and
- 2 4. For such other and further relief as to the Court appears just and proper.

3

4 **FOR THE CAUSE OF ACTION FOR LOSS OF CONSORTIUM FOR PLAINTIFF CAMILO**

5 **RAMIREZ:**

- 6 1. General damages, according to proof;
- 7 2. Special damages, according to proof;
- 8 3. Costs of suit incurred herein, and
- 9 4. For such other and further relief as to the Court appears just and proper.

10 DATED: May 23, 2014

Law Offices of Bruce G. Fagel and Associates

11

12 By: _____

Bruce G. Fagel,
Attorneys for Plaintiffs

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

San Bernardino District - Civil
247 West Third Street

San Bernardino, CA. 924150210

CASE NO: CIVDS1407335

NOTICE OF TRIAL SETTING CONFERENCE
and NOTICE OF CASE ASSIGNMENT

IN RE: RAMIREZ, ET AL -V- KAISER FOUNDATION HEALTH, ET AL

THIS CASE HAS BEEN ASSIGNED TO: MICHAEL A SACHS IN DEPARTMENT S28J
FOR ALL PURPOSES.

Notice is hereby given that the above-entitled case has been set for
Trial Setting Conference at the court located at 247 WEST THIRD STREET
SAN BERNARDINO, CA 92415-0210.

HEARING DATE: 11/20/14 at 8:30 in Dept. S28J

DATE: 05/28/14 Christina M. Volkers, Clerk of the Court

By: Edmond Castro

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San
Bernardino at the above listed address. I am not a party to this
action and on the date and place shown below, I served a copy of the
above listed notice:

() Enclosed in a sealed envelope mailed to the interested party
addressed above, for collection and mailing this date, following
standard Court practices.

() Enclosed in a sealed envelope, first class postage prepaid in the
U.S. mail at the location shown above, mailed to the interested party
and addressed as shown above, or as shown on the attached listing.

() A copy of this notice was given to the filing party at the counter

() A copy of this notice was placed in the bin located at this office
and identified as the location for the above law firm's collection of
file stamped documents.

Date of Mailing: 05/28/14

I declare under penalty of perjury that the foregoing is true and
correct. Executed on 05/28/14 at San Bernardino, CA

BY: Edmond Castro

Notice 'NTSC' has been printed for the following Attorneys/Firms
or Parties for Case Number CIVDS1407335 on 5/28/14:

BRUCE G FAGEL & ASSOCIATES
100 N CRESCENT DRIVE
SUITE 360
BEVERLY HILLS, CA 90210

Courthouse News Service