

Superior Court of California

County of Orange



Case Number : 30-2017-00955716-CU-MM-CJC

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County of Orange

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5 Attorneys for Plaintiffs

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE

Judge Nathan Scott

11 CAMDEN CHAVIRA, a minor, by and through
his Guardian ad Litem CHARISE CHAVIRA;
12 CHARISE CHAVIRA, JACOB CHAVIRA,

13 Plaintiffs,

14 vs.

15 KAISER FOUNDATION HOSPITALS, a
Corporation; SOUTHERN CALIFORNIA
16 PERMANENTE MEDICAL GROUP, a
California Partnership; KAISER FOUNDATION
17 HEALTH PLAN, INC., a Corporation; and
DOES 1 through 250, inclusive,
18

19 Defendants.

Case No. 30-2017-00955716-CU-MM-CJC

COMPLAINT FOR DAMAGES FOR
MEDICAL MALPRACTICE

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

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,
26 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 2. Plaintiffs are informed and believe and thereon allege that each of the

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1 Defendants sued herein as a DOE is responsible in some manner for the events and
2 happenings herein referred to, thereby legally causing the injuries and damages to the
3 Plaintiffs as herein alleged.

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

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

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

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

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1 of the laws of the State of California and other States; that said Defendant corporations,
2 hospitals and the remaining Defendants, and each of them, owned, operated, managed and
3 controlled a general hospital facility within the County of ORANGE, State of California, held
4 out to the public at large and to the Plaintiffs herein, as properly equipped, fully accredited,
5 competently staffed by qualified and prudent personnel and operating in compliance with the
6 standard of due care maintained in other properly equipped, efficiently operated and
7 administered, accredited hospitals in said community commonly known as KAISER
8 FOUNDATION HOSPITAL - ORANGE COUNTY - ANAHEIM.

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

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

21 10. Plaintiffs are informed and believe and upon such information and belief allege
22 that at all times herein mentioned, Defendants and other Defendants named fictitiously,
23 were the agents, servants, employees, joint-venturers, and copartners of their said co-
24 Defendants and, as such, were acting within the course and scope of such agency, service,
25 partnership, venture, and employment at all times herein mentioned; that each and every
26 Defendant, as aforesaid, when acting as a principal, was negligent in the selection and hiring
27 of each and every other Defendant, as its agent, servant, employee, joint-venturer and
28 partner. Further, each and every Defendant ratified the conduct of the other Defendants.

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I.

PLAINTIFF CAMDEN CHAVIRA A MINOR, BY AND THROUGH HIS GUARDIAN
AD LITEM CHARISE CHAVIRA ALLEGES FOR A CAUSE OF ACTION FOR
NEGLIGENCE AGAINST DEFENDANTS AND EACH OF THEM AS FOLLOWS:

11. Plaintiff CAMDEN CHAVIRA repeats and repleads each and every allegation contained each of the foregoing paragraphs, and incorporates the same herein by reference.

12. On or about the date of the filing of the complaint, CHARISE CHAVIRA was by order duly made and entered by the above entitled Court, appointed Guardian ad Litem of Plaintiff CAMDEN CHAVIRA a minor, born December 19, 2015 at KAISER FOUNDATION HOSPITAL - ORANGE COUNTY-ANAHEIM.

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

14. Prior to December 19, 2015, the date of CAMDEN CHAVIRA' birth, and thereafter, CHARISE CHAVIRA employed Defendants, and each of them, to diagnose and treat her condition of pregnancy and to do all things necessary for her care and the care of her baby, CAMDEN CHAVIRA, including but not limited to, pre-delivery care, the delivery, and post-delivery care.

15. While minor Plaintiff CAMDEN CHAVIRA was under the sole and exclusive care and control of the Defendants, and each of them, Defendants, and each of them negligently, carelessly and unskillfully selected various hospitals and physicians and other health care provides, negligently delivered, examined, treated, cared for, diagnosed, operated upon, attended and otherwise handled and controlled the minor Plaintiff herein, thereby

1 proximately causing injuries and damages to the minor Plaintiff. Said acts of negligence
2 include, but are not limited to, negligently failing to diagnose and treat his
3 hyperbilirubinemia and kernicterus, such that he now suffers from complete hearing loss
4 and brain and neurological injuries, including cerebral palsy.

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

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

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

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

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

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1 II.

2 PLAINTIFF CHARISE CHAVIRA ALLEGES FOR A SEPARATE AND
3 DISTINCT CAUSE OF ACTION FOR NEGLIGENCE AGAINST DEFENDANTS
4 AND EACH OF THEM:

5 21. Plaintiff CHARISE CHAVIRA repeats and repleads each and every allegation
6 contained in each of the preceding paragraphs and incorporates the same herein by
7 reference.

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

15 23. Prior to December 19, 2015, the date of CAMDEN CHAVIRA's birth, and
16 thereafter, CHARISE CHAVIRA employed said Defendants, to diagnose and treat her
17 condition of pregnancy and to do all things necessary for her care, including, but not limited
18 to, pre-delivery care, the delivery and post-delivery care.

19 24. While Plaintiff CHARISE CHAVIRA was under the sole and exclusive care
20 and control of the said Defendants, Defendants, negligently, carelessly and unskillfully
21 delivered, examined, treated, cared for, diagnosed, operated upon, attended and otherwise
22 handled and controlled the Plaintiff herein, thereby proximately causing injuries and
23 damages to Plaintiff.

24 25. Plaintiff did not discover the injury or the negligent cause of the injury to herself
25 and to her son until on or about December 19, 2016, when her son was one year of age, and
26 then first diagnosed by a neurologist with cerebral palsy caused by the kernicterus.

27 26. As a legal result of the negligence of the Defendants, and each of them,
28 Plaintiff was injured in her health, strength and activity, sustaining severe shock, and injury

1 to Plaintiff's body, all of which said injuries have caused and continue to cause Plaintiff great
2 physical, emotional, and nervous pain and suffering, and which said injuries Plaintiff is
3 informed and believes, and thereon alleges, will result in loss of earnings, permanent
4 disability, loss of enjoyment of life, and impairment of earning capacity all to Plaintiff's
5 damage in a sum in excess of the jurisdiction of the Municipal Court.

6 27. As a further legal result of the negligence of the Defendants, and each of them,
7 and the resulting injuries to the Plaintiff, said Plaintiff was compelled to, and did, incur
8 expenses for medical and surgical attention, hospitalization, nursing, medication and
9 incidentals for said Plaintiff in an amount unknown to Plaintiff at present.

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

15 29. As a further legal result of the negligence of the Defendants, and each of them,
16 Plaintiff CHARISE CHAVIRA has suffered loss of earnings and will suffer a decreased
17 earning capacity in the future and future earnings to Plaintiff's further damage in a sum
18 unknown at present.

19 III.

20 PLAINTIFF CHARISE CHAVIRA ALLEGES FOR A SEPARATE AND
21 DISTINCT CAUSE OF ACTION FOR NEGLIGENT INFLICTION OF EMOTIONAL
22 DISTRESS AGAINST DEFENDANTS AND EACH OF THEM AS FOLLOWS:

23 30. Plaintiff CHARISE CHAVIRA repeats and repleads each and every allegation
24 contained in the preceding paragraphs and incorporates the same herein by reference.

25 31. At all times herein mentioned, CHARISE CHAVIRA was the mother of CAMDEN
26 CHAVIRA the minor Plaintiff, and was and is under a duty to care for the minor child
27 herein. Plaintiff CHARISE CHAVIRA employed said Defendants to care for and treat herself
28 and her minor child, CAMDEN CHAVIRA during the pregnancy.

1 32. At all times mentioned, said Defendants were under a legal duty to Plaintiff
2 with respect to the care and treatment of the child, CAMDEN CHAVIRA while the child was
3 a patient in the said hospital and under the care of the said Defendants. Said Defendants
4 treated and cared for both the minor and CHARISE CHAVIRA during the labor and delivery
5 of CHARISE CHAVIRA and thereafter.

6 33. At all times mentioned, there existed a close relationship between Plaintiff
7 CHARISE CHAVIRA and CAMDEN CHAVIRA namely, mother and child, and said
8 Defendants were aware of this close relationship when they agreed to care for the child. It
9 was foreseeable that Plaintiff CHARISE CHAVIRA would be damaged directly by negligent
10 acts or omissions to act and committed upon the child. Said Defendants were aware that
11 Plaintiff CHARISE CHAVIRA was concerned about the physical well being of her child when
12 Defendants agreed to treat both the child and mother.

13 34. It was reasonably foreseeable and easily predictable that any acts of
14 negligence by these Defendants that would injure the child would lead to serious emotional
15 distress in Plaintiff CHARISE CHAVIRA. Because the risk of harm to the Plaintiff was
16 reasonably foreseeable and easily predictable, Defendants owed Plaintiff a duty to exercise
17 due care in diagnosing, caring for, and treating Plaintiff's child, CAMDEN CHAVIRA. This is
18 especially true as Defendants agreed to and did treat both CHARISE CHAVIRA and
19 CAMDEN CHAVIRA at the same time.

20 35. Said Defendants in disregard of the probability that their actions would cause
21 severe emotional distress, in failing to provide the necessary medical treatment to Plaintiff
22 CHARISE CHAVIRA and her child, caused Plaintiff CHARISE CHAVIRA severe emotional
23 distress arising from the abnormal event of participating in a negligent delivery and reacting
24 to the tragic outcome with fright nervousness and shock, grief, anxiety, worry, mortification,
25 shock, humiliation and indignity.

26 36. These damages for emotional distress accrued separately, consist of different acts,
27 and at separate times, from Plaintiff CHARISE CHAVIRA's previous cause of action for
28 negligence from which she suffered physical injuries and pain and suffering during the

1 negligently conducted labor and delivery.

2 37. As a further legal result of the negligence of the Defendants, and of the
3 resulting injuries, Plaintiff will be obliged to incur expenses for medical care and
4 hospitalization for an indefinite period in the future and to pay for these expenses in the
5 treatment and relief of injuries for medical and surgical attention, hospitalization, nursing,
6 medication, and incidentals for said Plaintiff in an amount unknown to Plaintiff at present.

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

10 39. By reason of the negligence of said Defendants, Plaintiff CHARISE CHAVIRA
11 suffered severe and serious emotional distress and shock and injury to her nervous system
12 and body, all to her general damage in a sum within the jurisdiction of this Court and
13 pursuant to *Burgess v. Superior Court* (1992) 2 Cal.4th 1064.

14 IV.

15 PLAINTIFF JACOB CHAVIRA ALLEGES FOR A SEPARATE AND
16 DISTINCT CAUSE OF ACTION FOR LOSS OF CONSORTIUM AGAINST
17 DEFENDANTS AND EACH OF THEM AS FOLLOWS:

18 40. Plaintiff JACOB CHAVIRA repeats and repleads each and every allegation
19 contained in all prior paragraphs and incorporates the same herein by reference as to said
20 Defendants and each of them.

21 41. At all times herein mentioned, CHARISE CHAVIRA and JACOB CHAVIRA
22 were married and are husband and wife.

23 42. As a direct and proximate result of the aforesaid conduct of Defendants, and
24 each of them, and the resultant injuries to Plaintiff CHARISE CHAVIRA, Plaintiff JACOB
25 CHAVIRA has suffered and is reasonably certain to suffer in the future the loss of
26 consortium, love, companionship, comfort, affection, society, solace, moral support,
27 enjoyment of sexual relations and physical assistance in the operation and maintenance of
28 the home, causing damage in a sum in excess of the jurisdiction of the Municipal Court.

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

3 FOR THE CAUSE OF ACTION FOR NEGLIGENCE FOR PLAINTIFF CAMDEN

4 CHAVIRA A MINOR:

- 5 1. General damages, according to proof;
- 6 2. Past and future medical expenses, according to proof;
- 7 3. For loss of future earning and earning capacity, according to
8 proof;
- 9 4. Costs of suit incurred herein, and
- 10 5. For such other and further relief as to the Court appears just and proper.

11 FOR THE CAUSE OF ACTION FOR NEGLIGENCE FOR PLAINTIFF CHARISE

12 CHAVIRA:

- 13 1. General damages, according to proof;
- 14 2. Past and future medical expenses, according to proof;
- 15 3. For loss of past and future earning and earning capacity, according to 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 NEGLIGENT INFLECTION OF EMOTIONAL

19 DISTRESS FOR PLAINTIFF CHARISE CHAVIRA:

- 20 1. General damages, according to proof;
- 21 2. Special damages, according to proof;
- 22 3. Costs of suit incurred herein, and
- 23 4. For such other and further relief as to the Court appears just and proper.

24 FOR THE CAUSE OF ACTION FOR NEGLIGENT INFLECTION OF

25 EMOTIONAL DISTRESS FOR PLAINTIFF JACOB CHAVIRA:

- 26 1. General damages, according to proof;
- 27 2. Special damages, according to proof;
- 28 3. Costs of suit incurred herein, and

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4. For such other and further relief as to the Court appears just and proper.

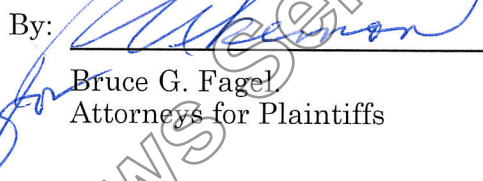
FOR THE CAUSE OF ACTION FOR LOSS OF CONSORTIUM FOR PLAINTIFF

JACOB CHAVIRA:

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

DATED: November 14, 2017

Law Offices of Bruce G. Fagel and Associates

By: 

Bruce G. Fagel
Attorneys for Plaintiffs

Courthouse News Service

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