

1 Rafael Miranda  
2 437 Fairgrounds Drive  
3 Vallejo, CA 94589

4 Plaintiff in pro per

FILED  
SOLANO SUPERIOR COURT

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BY  DEPUTY CLERK

5 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
6 FOR THE COUNTY OF SOLANO, FAIRFIELD BRANCH

7  
8 RAFAEL MIRANDA, an individual.

9 vs.

10  
11 SCOTT REYNOLD PHILLIPS, an individual;  
12 KAISER FOUNDATION HEALTH PLAN,  
13 INC., a California Corporation, and DOES 1-  
14 10, INCLUSIVE,

15 Defendants.

Case No. **FC000851**

**COMPLAINT FOR:**

**1. MEDICAL NEGLIGENCE;  
AND**

**2. VIOLATION OF CA BUSINESS  
AND PROFESSIONS CODE §  
17200 ET SEQ.**

**ASSIGNED TO  
JUDGE SCOTT L. KAYS  
FOR ALL PURPOSES**

16 Plaintiff RAFAEL MIRANDA ("Mr. Miranda") hereby alleges:

17 **Parties**

- 18 1. Mr. Miranda is, and at all times herein mentioned was, an individual residing in Solano  
19 County California.
- 20 2. At all relevant times herein, Defendant SCOTT REYNOLD PHILLIPS ("Defendant  
21 Phillips") is and was a licensed physician practicing medicine in the State of California.
- 22 3. Defendant KAISER FOUNDATION HEALTH PLAN, INC. ("Defendant Kaiser") is a  
23 California Corporation and employed Defendant Phillips at all relevant times herein. Mr.  
24 Miranda is informed and believes that Defendant Kaiser has its principal place of  
25 business in California.
- 26 4. Plaintiff is ignorant of the names and capacity of Defendants herein sued as DOES 1-100  
27 inclusive, and therefore sues these Defendants by such fictitious names. When the true  
28 names and capacities of these Defendants become known, Plaintiff will amend this

1 Complaint to include their true names and capacities and, if necessary, will seek leave to  
2 amend to add additional allegations against them. Plaintiff is informed and believes, and  
3 so alleges, that each of the fictitiously named Defendants is responsible in some manner  
4 for the occurrences alleged in the Complaint, and that Plaintiff's damages were  
5 proximately caused by their conduct.

- 6 5. The Defendants, and each of them, are subject to the jurisdiction of the courts of the State  
7 of California by virtue of their business dealings and transactions in California, and by  
8 causing injurious effects in California by their acts or omissions. Venue is proper in this  
9 Court because the property and transactions at issue occurred in Solano County, and the  
10 injury was suffered here.

11 **STATEMENT OF FACTS**

- 12 1. Mr. Miranda is a member of Defendant Kaiser's health plan and has medical record  
13 number 11-9690942.
- 14 2. In early 2011, Mr. Miranda sought help from his medical provider, Defendant Kaiser.
- 15 3. On August 21, 2011, Defendant Phillips, while employed as a licensed physician by  
16 Defendant Kaiser, performed surgery on Mr. Miranda in Vallejo, California.
- 17 4. Defendant Phillips left a piece of composite mesh inside of Mr. Miranda's chest.
- 18 5. In early September 2011, Mr. Miranda discovered that Defendant Phillips had left the  
19 piece mesh in his chest area.
- 20 6. Mr. Miranda has suffered from pain caused by the piece of mesh left in his chest. The  
21 pain has been continuous and has caused him to miss work.
- 22 7. Mr. Miranda tried to follow up with Kaiser but feels that he was given the runaround and  
23 not provided with appropriate service under applicable laws, regulations, and policies  
24 and procedures for Defendant Kaiser.
- 25 8. On August 20, 2012, Mr. Miranda sent a letter pursuant to California Civil Code § 364 to  
26 Defendants Phillips and Kaiser. See Exhibit 1.
- 27 9. As of the filing of this Complaint, Kaiser has not provided Mr. Miranda with a corrective  
28



1 procedure or compensation for his injuries.

2 **FIRST CAUSE OF ACTION**  
3 **VIOLATION OF CALIFORNIA FAIR DEBT CIVIL CODE §§ 1788 ET SEQ.**  
4 **Against all Defendants.**

5 10. Mr. Miranda realleges all of the above paragraphs as though repeated here.

6 11. On August 21, 2011, Defendant Phillips, while employed by Defendant Kaiser,  
7 Performed surgery on Mr. Miranda on August 21, 2011.

8 12. Defendant Kaiser was responsible for the acts of its employee Defendant Phillips.

9 13. During said surgery, Defendant Phillips did not remove all of the mesh from Mr.  
10 Miranda's chest that he was supposed to remove.

11 14. A reasonable physician in Defendant Phillips's position would not have left the piece of  
12 mesh in Mr. Miranda's chest and Defendant Phillips was negligent because he did not.

13 15. As a result of Defendants' negligence, Mr. Miranda suffered damages.

14 16. Defendants' negligence was a substantial factor in causing Mr. Miranda's damages and  
15 pain and suffering.

16 WHEREFORE, Mr. Miranda prays for relief as set forth below:

17 **SECOND CAUSE OF ACTION**  
18 **VIOLATION OF CA BUSINESS AND PROFESSIONS CODE §**  
19 **17200 ET SEQ.**  
20 **Against Defendant Kaiser.**

21 17. Mr. Miranda realleges all of the above paragraphs as though repeated here.

22 18. The Defendant Kaiser's acts and omissions are "unlawful" because they violate the  
23 California and federal law protecting health insurance consumers.

24 19. The Defendant Kaiser's acts and omissions are "unfair" because they contravene the  
25 public policy tethered to the CFDCPA and other laws regulating business entities seeking  
26 to conduct business in California.

27 20. Mr. Miranda seeks disgorgement and restitution of all ill-gotten gains as a result of  
28 Defendant Kaiser's unlawful and unfair business practices;

21 Pursuant to Business & Professions Code §17203, Mr. Miranda seeks an order enjoining

1 Defendant Kaiser from such unlawful and unfair business practices. Mr. Miranda and  
2 the general public will continue to be harmed unless defendants are restrained from such  
3 conduct.

4 WHEREFORE, Mr. Miranda prays for relief as set forth below:

5  
6 **Prayer**

7 That Mr. Miranda receives judgment on the Complaint as follows:

- 8 A. For damages according to proof;  
9 B. For punitive damages;  
10 C. For any and all applicable statutory penalties,  
11 D. For an order enjoining Defendant Kaiser from engaging in the unlawful  
12 and unfair methods, acts, or practices alleged herein;  
13 E. For restitution of all monies wrongfully obtained and for disgorgement of  
14 wrongfully obtained profits;  
15 F. For costs of suit incurred including, if appropriate under law, attorney fees  
16 incurred, and  
17 G. For other such relief as the court deems appropriate.

18 Respectfully submitted,

19 Dated: 11/18/12

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21 Rafael Miranda  
22 Plaintiff RAFAEL MIRANDA  
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