

CIV-140213-CIV-DS1401530-ICF-092602



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System Code: CIV  
Case Number: DS1401530  
Case Type: CIV  
Action Code: ICF  
Action Date: 02/13/14  
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**TRIAL SETTING CONFERENCE**

Hearing Set for:

Date: 8/14/14

Time: 8:30AM

Dept: S32

Attorneys for Plaintiffs,  
Holly Dague and Stephen Dague

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO**

140213-0608 #43500

HOLLY DAGUE and STEPHEN DAGUE ) Case No. CIVDS1401530

Plaintiffs,

) **PLAINTIFFS' COMPLAINT FOR:**

vs.

- ) (1) Breach of Written Contract;  
) (2) Breach of Oral Contract;  
) (3) Fraud (Intentional Misrepresentation  
and/or Concealment of Material Facts);  
) (4) Professional Negligence;  
) (5) Negligent Supervision;  
) (6) Loss of Consortium.

KAISER PERMANENTE FONTANA  
MEDICAL CENTER; JINNY Y. KUNG,  
CNM; MEAGHAN MOREEN PINHEIRO,  
M.D., KAISER PERMANENTE  
VENTURES, LLC; KAISER  
PERMANENTE INTERNATIONAL;  
KAISER FOUNDATION HEALTH PLAN,  
INC.; KAISER PERMANENTE  
INSURANCE COMPANY; and DOES 1  
through 60, inclusive.

**DEMAND FOR JURY TRIAL**

Defendants.

COME NOW plaintiffs, HOLLY DAGUE and STEPHEN DAGUE (hereinafter referred  
to collectively as "Plaintiffs"), who complain and allege as follows:

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**COMMON ALLEGATIONS**

**A. The Parties And Jurisdiction**

1. At all times herein mentioned, Plaintiff HOLLY DAGUE was, and is, a resident of Riverside County, State of California.

2. At all times herein mentioned, Plaintiff STEPHEN DAGUE was, and is, the husband of and married to Plaintiff HOLLY DAGUE.

3. At all times herein mentioned, defendant JINNY Y. KUNG, CNM (hereinafter "KUNG") purported to be a Certified Nurse Midwife (hereinafter also referred to as "CNM"), licensed by the State of California. On or about October 4, 2012, defendant KUNG provided medical care in the City of Fontana, County of San Bernardino, State of California.

4. At all times herein mentioned, defendant MEAGHAN MOREEN PINHEIRO, M.D., (hereinafter "DR. PINHEIRO") purported to be a medical doctor licensed to practice medicine in the State of California. On or about October 9, 2012, DR. PINHEIRO was engaged in the practice of medicine in the City of Fontana, County of San Bernardino, State of California.

5. Plaintiffs and each of them are informed and believe and upon that basis allege that at all time herein mentioned defendant KAISER PERMANENTE FONTANA MEDICAL CENTER was a business entity, form unknown, doing business in the City of Fontana, State of California. Plaintiff is informed and believes and upon that basis alleges that at all times herein mentioned defendant KAISER PERMANENTE FONTANA MEDICAL CENTER was a medical provider in the State of California.

6. Plaintiffs and each of them are informed and believe and upon that basis allege that at all times herein mentioned defendant KAISER PERMANENTE FONTANA MEDICAL CENTER was the principal, employer and/or responsible for the hiring, supervision, training, and retention of KUNG and DR. PINHEIRO, and responsible for the acts and omissions of KUNG and PINHEIRO as set forth herein.

7. Plaintiffs and each of them are informed and believe and upon that basis allege that at all times herein mentioned KUNG and DR. PINHEIRO were employees and/or agents of KAISER PERMANENTE FONTANA MEDICAL CENTER, and that in doing the acts and/or

1 omissions complained of KUNG and PINHEIRO were acting in the course and scope of her  
2 employment and/or agency.

3 8. Plaintiffs and each of them are informed and believe and upon that basis allege  
4 that at all times herein mentioned defendant KAISER PERMANENTE VENTURES, LLC was a  
5 business entity, form unknown, doing business in the City of Fontana, State of California.  
6 Plaintiff is informed and believes and upon that basis alleges that at all times herein mentioned  
7 defendant KAISER PERMANENTE VENTURES, LLC was a medical provider in the State of  
8 California.

9 9. Plaintiffs and each of them are informed and believe and upon that basis allege  
10 that at all times herein mentioned defendant KAISER PERMANENTE VENTURES, LLC was an  
11 owner, partner, shareholder, joint venturer, operator, manager and/or responsible for the day-to-  
12 day operations and management of KAISER PERMANENTE FONTANA MEDICAL  
13 CENTER, and the principal, employer and/or responsible for the hiring, supervision, training,  
14 and retention of co-defendant KAISER PERMANENTE FONTANA MEDICAL CENTER,  
15 KUNG and/or PINHEIRO and/or responsible for the acts and omissions of co-defendant  
16 KAISER PERMANENTE FONTANA MEDICAL CENTER, KUNG, and/or DR. PINHEIRO.

17 10. Plaintiffs and each of them are informed and believe and upon that basis allege  
18 that at all times herein mentioned defendant KAISER PERMANENTE INTERNATIONAL was  
19 a business entity, form unknown, doing business in the City of Fontana, State of California.  
20 Plaintiff is informed and believes and upon that basis alleges that at all times herein mentioned  
21 defendant KAISER PERMANENTE INTERNATIONAL was a medical provider in the State of  
22 California.

23 11. Plaintiffs and each of them are informed and believe and upon that basis allege  
24 that at all times herein mentioned defendant KAISER PERMANENTE INTERNATIONAL was  
25 an owner, partner, shareholder, joint venturer, operator, manager and/or responsible for the day-  
26 to-day operations and management of KAISER PERMANENTE FONTANA MEDICAL  
27 CENTER, and the principal, employer and/or responsible for the hiring, supervision, training,  
28 and retention of co-defendant KAISER PERMANENTE FONTANA MEDICAL CENTER,

1 KUNG and/or DR. PINHEIRO, and/or responsible for the acts and omissions of co-defendant  
2 KAISER PERMANENTE FONTANA MEDICAL CENTER, KUNG, and/or DR. PINHEIRO.

3 12. Plaintiffs and each of them are informed and believe and upon that basis allege  
4 that at all times herein mentioned defendant KAISER FOUNDATION HEALTH PLAN, INC.  
5 was a business entity, form unknown, doing business in the City of Fontana, State of California.  
6 Plaintiff is informed and believes and upon that basis alleges that at all times herein mentioned  
7 defendant KAISER FOUNDATION HEALTH PLAN, INC. was a medical provider in the State  
8 of California.

9 13. Plaintiffs and each of them are informed and believe and upon that basis allege  
10 that at all times herein mentioned defendant KAISER FOUNDATION HEALTH PLAN, INC.  
11 was an owner, partner, shareholder, joint venturer, operator, manager and/or responsible for the  
12 day-to-day operations and management of KAISER PERMANENTE FONTANA MEDICAL  
13 CENTER, and the principal, employer and/or responsible for the hiring, supervision, training,  
14 and retention of co-defendant KAISER PERMANENTE FONTANA MEDICAL CENTER,  
15 KUNG and/or DR. PINHEIRO, and/or responsible for the acts and omissions of co-defendant  
16 KAISER PERMANENTE FONTANA MEDICAL CENTER, KUNG and/or DR. PINHEIRO.

17 14. Plaintiffs and each of them are informed and believe and upon that basis allege  
18 that at all times herein mentioned defendant KAISER PERMANENTE INSURANCE  
19 COMPANY was a business entity, form unknown, doing business in the City of Fontana, State  
20 of California. Plaintiffs and each of them are further informed and further believe and upon that  
21 basis allege that at all times herein mentioned defendant KAISER PERMANENTE  
22 INSURANCE COMPANY was a medical provider in the State of California.

23 15. Plaintiffs and each of them are informed and believe and upon that basis allege  
24 that at all times herein mentioned defendant KAISER PERMANENTE INSURANCE  
25 COMPANY was an owner, partner, shareholder, joint venturer, operator, manager and/or  
26 responsible for the day-to-day operations and management of KAISER PERMANENTE  
27 FONTANA MEDICAL CENTER, and the principal, employer and/or responsible for the hiring,  
28 supervision, training, and retention of co-defendant KAISER PERMANENTE FONTANA

1 MEDICAL CENTER, KUNG and/or DR. PINHEIRO, and/or responsible for the acts and  
2 omissions of co-defendant KAISER PERMANENTE FONTANA MEDICAL CENTER, KUNG  
3 and/or DR. PINHEIRO.

4 16. The true names and capacities, whether individual, corporate, associate, or  
5 otherwise, of the defendants named herein as DOES 1 through 60, inclusive, are unknown to  
6 plaintiffs, and each of them, who therefore sue said defendants by such fictitious names pursuant  
7 to California Code of Civil Procedure Section 474. Plaintiffs and each of them will amend this  
8 complaint to show their true names and capacities when the same have been ascertained.  
9 Plaintiffs and each of them are informed and believe and based upon such information and belief  
10 allege that each and all of the defendants that are sued herein as a "DOE" are in some manner  
11 responsible for the acts and omissions herein alleged and that Plaintiffs' damages were  
12 proximately caused by their conduct.

13 17. Plaintiffs and each of them are informed and believe and upon that basis allege  
14 that at all relevant times the defendant identified herein as Does 1 through 10, were and/or are  
15 agents, principals, employees, employers, representatives, joint venturers, co-insurers, and/or  
16 management companies of Defendant KAISER PERMANENTE FONTANA MEDICAL  
17 CENTER, either actually or ostensibly, and in doing the things alleged herein acted within the  
18 course and scope of such agency, employment, representation, joint venture, co-insurance  
19 agreement, or management company agreement, with the authorization, approval, knowledge,  
20 acquiescence and/or ratification of KAISER PERMANENTE FONTANA MEDICAL CENTER.

21 18. Plaintiffs and each of them are informed and believe and upon that basis allege  
22 that at all relevant times the defendant identified herein as Does 11 through 20, were and/or are  
23 agents, principals, employees, employers, representatives, joint venturers, co-insurers, and/or  
24 management companies of Defendant KAISER PERMANENTE VENTURES, LLC, either  
25 actually or ostensibly, and in doing the things alleged herein acted within the course and scope of  
26 such agency, employment, representation, joint venture, co-insurance agreement, or management  
27 company agreement, with the authorization, approval, knowledge, acquiescence and/or  
28 ratification of KAISER PERMANENTE VENTURES, LLC.

1           19.     Plaintiffs and each of them are informed and believe and upon that basis allege  
2 that at all relevant times the defendant identified herein as Does 21 through 30, were and/or are  
3 agents, principals, employees, employers, representatives, joint venturers, co-insurers, and/or  
4 management companies of Defendant KAISER PERMANENTE INTERNATIONAL, either  
5 actually or ostensibly, and in doing the things alleged herein acted within the course and scope of  
6 such agency, employment, representation, joint venture, co-insurance agreement, or management  
7 company agreement, with the authorization, approval, knowledge, acquiescence and/or  
8 ratification of KAISER PERMANENTE INTERNATIONAL.

9           20.     Plaintiffs and each of them are informed and believe and upon that basis allege  
10 that at all relevant times the defendant identified herein as Does 31 through 40, were and/or are  
11 agents, principals, employees, employers, representatives, joint venturers, co-insurers, and/or  
12 management companies of Defendant KAISER FOUNDATION HEALTH PLAN, INC., either  
13 actually or ostensibly, and in doing the things alleged herein acted within the course and scope of  
14 such agency, employment, representation, joint venture, co-insurance agreement, or management  
15 company agreement, with the authorization, approval, knowledge, acquiescence and/or  
16 ratification of KAISER FOUNDATION HEALTH PLAN, INC.

17           21.     Plaintiffs and each of them are informed and believe and upon that basis allege  
18 that at all relevant times the defendant identified herein as Does 41 through 50, were and/or are  
19 agents, principals, employees, employers, representatives, joint venturers, co-insurers, and/or  
20 management companies of Defendant KAISER PERMANENTE INSURANCE COMPANY,  
21 either actually or ostensibly, and in doing the things alleged herein acted within the course and  
22 scope of such agency, employment, representation, joint venture, co-insurance agreement, or  
23 management company agreement, with the authorization, approval, knowledge, acquiescence  
24 and/or ratification of KAISER PERMANENTE INSURANCE COMPANY.

25           22.     Plaintiffs and each of them are informed and believe and upon that basis allege  
26 that at all relevant times the defendant identified herein as DOES 51 through 60, inclusive, and  
27 each of them, were and/or agents, principals, employees, employers, representatives, joint  
28 venturers, co-insurers, and/or management companies of defendants KUNG and/or DR.

PINHEIRO, other than defendants KAISER PERMANENTE FONTANA MEDICAL CENTER, KAISER PERMANENTE VENTURES, LLC, KAISER PERMANENTE INTERNATIONAL, KAISER FOUNDATION HEALTH PLAN, INC., or KAISER PERMANENTE INSURANCE COMPANY; that the acts and/or omissions alleged herein were committed within the course and scope of such agency, employment, representation, joint venture, co-insurance agreement, or management company agreement; and/or that the acts and/or omissions alleged herein were committed with the authorization, approval, knowledge, acquiescence and/or ratification of DOES 51 through 60, inclusive, and each of them.

23. Plaintiffs and each of them are informed and believe and based upon that basis allege that at all times mentioned herein, Defendants and each of them, whether specifically named and/or designated herein as a DOE, were and/or are the agents, principals, employees, employers, representatives, joint venture, co-insurer, or management companies of each of the other Defendants, either actually or ostensibly, and in doing the things alleged herein acted within the course and scope of such agency, employment, representation, joint venture, co-insurance agreement, or management company agreement, with the authorization, approval, knowledge, acquiescence and/or ratification of each of the remaining Defendants.

**B. Delayed Discovery: Defendants' Representations and Failure to Disclose Both Negligence and the Resulting Damages.**

24. "The one-year (Statute of Limitations) period commences when the plaintiff is aware of both the physical manifestation of the injury and *its negligent cause*." (*Rose v. Fife* (1989) 207 Cal.App.3d 760, 768; accord, *Gutierrez v. Mofid* (1985) 39 Cal.3d 892, 896). In the matter at bar, Plaintiff HOLLY DAGUE remained a patient of, and continued to receive medical care, treatment and advise from Defendants, from October 4, 2012 through June 14, 2013, during which time neither Plaintiff knew that defendant KUNG had failed to consult with a doctor(s) after KUNG determined that there was no pregnancy on the Plaintiff's vaginal ultra sound, and during this time KUNG never disclosed this material fact to either Plaintiff.



1           25.     On or about October 4, 2012, after a blood test revealed that that Plaintiff HOLLY  
2 DAGUE was pregnant, defendant KUNG performed a sonogram (ultra sound test) of HOLLY  
3 DAGUE but could not find the pregnancy.

4           26.     On October 8, 2012, Plaintiff began feeling discomfort and went to the emergency  
5 room where she fainted (went unconscious).

6           27.     On October 9, 2012, Plaintiff HOLLY DAGUE underwent emergency surgery at  
7 KAISER PERMANENTE FONTANA MEDICAL CENTER. DR. PINEIRHO performed the  
8 emergency surgery. DR. PINHEIRO spoke to Plaintiff HOLLY DAGUE and informed her  
9 (Plaintiff HOLLY DAGUE) that in a couple of months she (Plaintiff HOLLY DAGUE) could  
10 resume sexual relations and become pregnant.

11          28.     In mid-December 2012, Plaintiff HOLLY DAGUE, with DR. PINEIRHO's "go  
12 ahead", resumed sexual relations.

13          29.     On January 20, 2013, Plaintiff HOLLY DAGUE got her first period.

14          30.     Plaintiff HOLLY DAGUE's expected her second period to begin on February 17,  
15 2013.

16          31.     On February 18, 2013, Plaintiff HOLLY DAGUE returned to Kaiser where a  
17 pregnancy test revealed she had become pregnant. The test results concomitantly caused Plaintiff  
18 HOLLY DAGUE to learn, for the first time, that DR. PINHEIRO's advice to her was incorrect.

19          32.     On various dates between February 19, 2013 and February 28, 2013, Plaintiff  
20 HOLLY DAGUE returned to Kaiser where she was tested regarding her pregnancy.

21          33.     On February 28, 2013, Plaintiff learned that the February 18, 2014 pregnancy was  
22 an ectopic pregnancy.

23          34.     On various dates between February 28, 2013 and June 14, 2013, Plaintiff HOLLY  
24 DAGUE returned to Kaiser where she was further tested.

25          35.     On June 4, 2013, DR. WONG (an Infertility doctor at Kaiser) informed Plaintiff  
26 HOLLY DAGUE that her February 18, 2013 pregnancy was her second ectopic pregnancy and  
27 that it placed Plaintiff HOLLY DAGUE at high risk of having a third ectopic pregnancy. DR.  
28

1 WONG further informed Plaintiff HOLLY DAGUE that she should to do in vitro fertilization  
2 ("IVF") if Plaintiff HOLLY DAGUE wanted to get pregnant.

3 36. On June 14, 2013, DR. WONG scheduled Plaintiff HOLLY DAGUE for a  
4 hysterosalpingogram (HSG) to determine whether or not Plaintiff's fallopian tubes were open or  
5 blocked.

6 37. On June 14, 2013, Plaintiff HOLLY DAGUE learned that she had no left  
7 fallopian tube and that her right fallopian tube was swollen and/or enlarged.

8 38. As alleged and shown in paragraphs 25 through 37, inclusive, and each of them,  
9 until February 18, 2013, Plaintiffs did not know, and had no reason to know, that defendants  
10 were negligent.

11 39. This lawsuit arises from, among other things, Defendants' breach of contract(s),  
12 negligent misrepresentation(s), fraud (intentional misrepresentations of material fact and/or failure to  
13 disclose/concealment of material facts), and professional negligence.

14 40. On or about February 23, 2013, notice was provided to defendants of their  
15 professional negligence pursuant to California Code of Civil Procedure section 364(a).

16 41. On or about July 13, 2013, a second notice was provided to defendants of their  
17 professional negligence pursuant to California Code of Civil Procedure section 364(a).

18 **FIRST CAUSE OF ACTION**

19 **(Breach of Written Contract)**

20 **(By Plaintiffs Holly Dague Against Defendants Kaiser Foundation Health Plan, Inc.,**  
21 **Kaiser Permanente Insurance Company, and Does 31 through 60, inclusive)**

22 42. Plaintiffs and each of them reallege and incorporate herein by this reference each  
23 and every allegation contained in Paragraphs 1 through 41, inclusive, and each of them, as  
24 though said paragraphs, and each of them, were fully set forth herein at length.

25 43. Plaintiff STEPHEN DAGUE entered into a written agreement with KAISER  
26 FOUNDATION HEALTH PLAN, INC., which was for the benefit of Plaintiffs HOLLY  
27 DAGUE and STEPHEN DAGUE, and at all times herein mentioned Plaintiff HOLLY DAGUE  
28 was a third party beneficiary of said written agreement.

1           44. Per the express and/or implied terms of the written agreement, Plaintiffs promised  
2 to pay for medical health care and services, and Defendant KAISER FOUNDATION HEALTH  
3 PLAN, INC. promised to provide Plaintiffs such medical health care and services, that were  
4 reasonably necessary for the health and safety of Plaintiffs.

5           45. At all relevant times and at all times herein mentioned Plaintiffs substantially  
6 complied with the significant obligations required of them under the terms of the agreement,  
7 and/or were excused from having to do all, or substantially all, of the significant things that the  
8 agreement required of Plaintiffs.

9           46. Within the past four years, and specifically on October 4, 2012, Defendant  
10 KAISER FOUNDATION HEALTH PLAN, INC. breached its agreement with Plaintiff HOLLY  
11 DAGUE by failing to have a medical doctor review her pregnancy results when her blood test  
12 revealed that she was pregnant but her pregnancy was not showing up on a vaginal ultra sound.

13           47. As a direct and proximate result of the breach of the above-referenced contract by  
14 Defendant KAISER FOUNDATION HEALTH PLAN, INC., Plaintiff HOLLY DAGUE  
15 sustained damages including, but not limited to: (a) the monies Plaintiff paid for medical insurance,  
16 (b) emergency treatment costs, surgery costs, hospital bills, doctors' bills, nurses' bills, other medical  
17 providers' bills, testing, laboratory, and medication costs, and (c) the damages that Defendants'  
18 actions naturally caused Plaintiff HOLLY DAGUE to incur, including the loss of Plaintiff's left  
19 fallopian tube, and pain and suffering, all to her damage in amounts that has not yet been fully  
20 ascertained but which is greater than the jurisdictional minimum of the Superior Court – Unlimited  
21 Jurisdiction.

22           48. Plaintiffs and each of them are informed and believe and upon that basis allege  
23 that at all times mentioned herein KAISER PERMANENTE INSURANCE COMPANY was  
24 known as and/or doing business as KAISER FOUNDATION HEALTH PLAN, INC., and/or was  
25 the agent, principal, employee, employer, representative, joint venture, co-insurer and/or  
26 management company of KAISER FOUNDATION HEALTH PLAN, INC., either actually or  
27 ostensibly, and in doing the things alleged herein acted within the course and scope of such  
28 agency, employment, representation, joint venture, co-insurance agreement, or management

1 company agreement, and/or and/or authorized, approved, knew, acquiesced and/or ratified the  
2 acts and/or omissions of KAISER FOUNDATION HEALTH PLAN, INC.

3 **SECOND CAUSE OF ACTION**

4 **(Breach of Oral Contract)**

5 **(By Plaintiffs Holly Dague Against Defendants Jinny Y. Kung, CNM, Kaiser Permanente**  
6 **Fontana Medical Center, Kaiser Permanente Ventures, LLC, Kaiser Permanente**  
7 **International, Does 1 through 30, inclusive, and Does 51 through 60, inclusive)**

8 49. Plaintiffs and each of them reallege and incorporate herein by this reference each  
9 and every allegation contained in Paragraphs 1 through 41, inclusive, and each of them, as  
10 though said paragraphs, and each of them, were fully set forth herein at length.

11 50. At all times herein mentioned Plaintiff HOLLY DAGUE agreed to pay for the  
12 medical services of Defendants KUNG and KAISER PERMANENTE FONTANA MEDICAL  
13 CENTER, and said Defendants and each of them expressly and/or impliedly agreed to provide  
14 Plaintiff HOLLY DAGUE with the medical health care and services that were reasonably  
15 necessary for her health and safety.

16 51. At all relevant times and at all times herein mentioned Plaintiff HOLLY DAGUE  
17 substantially complied with the significant obligations required of her under the terms of her  
18 agreement, and/or were excused from having to do all, or substantially all, of the significant  
19 things that the agreement required of Plaintiffs.

20 52. On October 4, 2012, Defendant Defendants KUNG and KAISER  
21 PERMANENTE FONTANA MEDICAL CENTER breached their agreement with Plaintiff  
22 HOLLY DAGUE by failing to have a medical doctor review her pregnancy results when her  
23 blood test revealed that she was pregnant but her pregnancy was not showing up on a vaginal  
24 ultra sound.

25 53. As a direct and proximate result of the breach of the above-referenced agreement  
26 by Defendants KUNG and KAISER PERMANENTE FONTANA MEDICAL CENTER, and  
27 each of them, Plaintiff HOLLY DAGUE sustained damages including, but not limited to: (a) the  
28 monies Plaintiff paid for medical insurance, (b) emergency treatment costs, surgery costs, hospital

1 bills, doctors' bills, nurses' bills, other medical providers' bills, testing, laboratory, and medication  
2 costs, and (c) the damages that Defendants' actions naturally caused Plaintiff HOLLY DAGUE to  
3 incur, including the loss of Plaintiff's left fallopian tube, and pain and suffering, all to her damage in  
4 amounts that has not yet been fully ascertained but which is greater than the jurisdictional minimum  
5 of the Superior Court – Unlimited Jurisdiction.

6 54. Plaintiffs and each of them are informed and believe and upon that basis allege  
7 that at all times mentioned herein KAISER PERMANENTE VENTURES, LLC and KAISER  
8 PERMANENTE INTERNATIONAL, and each of them, were known as and/or doing business as  
9 KAISER PERMANENTE FONTANA MEDICAL CENTER, and/or were the agents, principals,  
10 employees, employers, representatives, joint ventures, co-insurers and/or management  
11 companies of KAISER PERMANENTE FONTANA MEDICAL CENTER, either actually or  
12 ostensibly, and in doing the things alleged herein acted within the course and scope of such  
13 agency, employment, representation, joint venture, co-insurance agreement, or management  
14 company agreement, and/or authorized, approved, knew, acquiesced and/or ratified the acts  
15 and/or omissions of KAISER PERMANENTE FONTANA MEDICAL CENTER.

16 **THIRD CAUSE OF ACTION**

17 **(Fraud: Intentional Misrepresentation and/or Concealment of Material Fact)**

18 **(By Plaintiff Holly Dague Against Defendant Jinny Y. Kung, CNM**  
19 **and Defendant Meaghan Moreen Pinheiro, M.D.)**

20 55. Plaintiffs and each of them reallege and incorporate herein by this reference each  
21 and every allegation contained in Paragraphs 1 through 41, inclusive, and each of them, as  
22 though said paragraphs, and each of them, were fully set forth herein at length.

23 56. On or about October 4, 2012, Defendant JINNY Y. KUNG, CNM undertook to  
24 provide medical care and treatment to Plaintiff HOLLY DAGUE. After a blood test revealed that  
25 that Plaintiff HOLLY DAGUE was pregnant, Defendant KUNG performed a sonogram (ultra  
26 sound test) of Plaintiff HOLLY DAGUE and told DAGUE that she (DAGUE) was not pregnant.

27 57. Plaintiff HOLLY DAGUE reasonably relied upon the representations made by  
28 Defendant KUNG on October 4, 2012 because KUNG and the other defendants herein held out

1 to the public, including Plaintiff HOLLY DAGUE, that KUNG was a Certified Nurse Midwife  
2 and expert in determining whether or not a person was pregnant.

3 58. From October 4, 2012 through June 14, 2013, Plaintiff HOLLY DAGUE  
4 continued to receive medical care, treatment and advice from Defendants. During this entire  
5 time, defendant KUNG never disclosed to Plaintiff HOLLY DAGUE or her husband that she  
6 (KUNG) had failed to consult with a doctor(s) after she (KUNG) had determined that there was  
7 no pregnancy on the Plaintiff's vaginal ultra sound.

8 59. On October 8, 2012, Plaintiff HOLLY DAGUE began feeling discomfort and  
9 went to the emergency room where she fainted (went unconscious). On October 9, 2012,  
10 Plaintiff HOLLY DAGUE underwent emergency surgery. Notwithstanding, from October 8,  
11 2012 to February 28, 2013, Defendant KUNG concealed from Plaintiff HOLLY DAGUE that:

- 12 (a) KUNG had not consulted with a doctor(s) before representing to Plaintiff  
13 HOLLY DAGUE that she (DAGUE) was not pregnant; and  
14 (b) As a result of KUNG's failure to consult with a doctor, Plaintiff HOLLY  
15 DAGUE's left fallopian tube ruptured.

16 60. On October 9, 2012, DR. PINHEIRO, who performed the surgery, perpetuated  
17 KUNG's misrepresentations and/or concealment of material facts from Plaintiff HOLLY  
18 DAGUE by representing to her (DAGUE) that in a couple of months she (DAGUE) could  
19 resume sexual relations with her husband and become pregnant (e.g., have a healthy, normal  
20 baby).

21 61. In truth and in fact, the representations made by DR. PINHEIRO as stated in  
22 Paragraph 60 were false – e.g., in a couple of months Plaintiff HOLLY DAGUE could not  
23 resume sexual relations with her husband and become pregnant (e.g., have a healthy, normal  
24 baby) - and when DR. PINHEIRO made the aforementioned representations she knew that the  
25 representations were false, or that the representations had been made recklessly and without  
26 regard for the truth.

27 62. Plaintiff HOLLY DAGUE reasonably and relied upon the representations of DR.  
28 PINHEIRO because she (DR. PIHEIRO) and the other defendants herein held out to the public,

1 including Plaintiff HOLLY DAGUE, that DR. PINHEIRO was a medical doctor and expert in  
2 determining whether or not a person can become pregnant (e.g, have a healthy, normal baby).

3 63. Plaintiffs, in reliance upon the representations of DR. PINHEIRO, stopped taking  
4 birth control pills and resumed sexual relations in December 2012, and in further reliance upon  
5 the representations of DR. PINHEIRO did not suspect that defendant KUNG and/or DR.  
6 PINEIRHO acted beneath the standard of care of comparable medical providers in Fontana,  
7 California.

8 64. As a direct and proximate result of the intentional misrepresentations and/or  
9 concealment by Defendants KUNG and DR. PINHEIRO, and each of them, Plaintiff HOLLY  
10 DAGUE sustained injuries to her person, left and right fallopian tubes, body, nerves, nervous  
11 system, and head, suffered pain, mental and emotional anguish, was required to incur and did  
12 incur reasonably necessary medical expenses, and was injured in her health and activities,  
13 recreational and professional, and lost earnings, profits and economic opportunities, each to her  
14 damage in an amount in excess of the jurisdictional minimum of the Superior Court – Unlimited  
15 Jurisdiction, the exact amount of which will be proven at trial. Plaintiffs, and each of them, will  
16 seek leave to amend this complaint when said amount is more fully determined.

17 65. As a further direct and proximate result of the intentional misrepresentations  
18 and/or concealment by Defendants KUNG and DR. PINHEIRO, and each of them, it is  
19 reasonably certain that Plaintiff HOLLY DAGUE will suffer pain, mental and emotional anguish  
20 in the future, will require future medical expenses, and will incur future loss of earnings, profits  
21 and economic opportunities, all to her damage in an amount in excess of the jurisdictional  
22 minimum of the Superior Court – Unlimited Jurisdiction, the exact amount of which will be  
23 proven at trial. Plaintiffs, and each of them, will seek leave to amend this complaint when said  
24 amount is more fully determined.

#### 25 **FOURTH CAUSE OF ACTION**

#### 26 **(Professional Negligence)**

27 **(By Plaintiff Holly Dague Against Defendants Jinny Y. Kung, CNM, Kaiser Permanente**  
28 **Fontana Medical Center, Meaghan Moreen Pinheiro, M.D., DOES 1 through 10,**

1 **inclusive, and DOES 51 through 60, inclusive)**

2 66. Plaintiffs and each of them reallege and incorporate herein by this reference each  
3 and every allegation contained in Paragraphs 1 through 41, inclusive, and each of them, as  
4 though said paragraphs, and each of them, were fully set forth herein at length.

5 67. Defendants KUNG and KAISER PERMANENTE FONTANA MEDICAL  
6 CENTER, DOES 1 through 10, and DOES 51 through 60, and each of them undertook to  
7 provide medical care and treatment to Plaintiff HOLLY DAGUE. On October 4, 2012, after a  
8 blood test revealed that that Plaintiff HOLLY DAGUE was pregnant, defendant KUNG  
9 performed a sonogram (ultra sound test) of HOLLY DAGUE but could not find the pregnancy.

10 68. The standard of care for Certified Nurse Midwives in the City of Fontana, State of  
11 California in similar situations to that of defendant KUNG required that Defendant KUNG  
12 consult with a medical doctor when a blood test revealed that a person was pregnant but the  
13 pregnancy was not shown on a vaginal ultra sound.

14 69. When a blood test revealed that Plaintiff HOLLY DAGUE was pregnant but  
15 Defendant KUNG was unable to see the pregnancy on a vaginal ultra sound, the standard of care  
16 required defendant KAISER PERMANENTE FONTANA MEDICAL CENTER, DOES 1  
17 through 10, and DOES 51 through 60, and each of them, to provide a medical doctor for  
18 Defendant KUNG to consult with prior to diagnosing and informing Plaintiff HOLLY DAGUE  
19 that she was not pregnant.

20 70. On October 9, 2012, Defendant DR. PINHEIRO undertook to provide medical  
21 care, treatment and advice to Plaintiff HOLLY DAGUE., including stating to Plaintiff HOLLY  
22 DAGUE that in a couple of months she (DAGUE) could resume sexual relations with her  
23 husband and become pregnant (e.g., have a healthy, normal baby.

24 71. At all relevant times, and specifically on and after October 9, 2012, the standard  
25 of care for medical care providers in similar situations as DR. PINHEIRO was to advise persons  
26 in the similar situation as Plaintiff HOLLY DAGUE that resumption of sexual relations would  
27 result, more likely than not, in a second ectopic pregnancy; that a second ectopic pregnancy  
28 could damage Plaintiff HOLLY DAGUE's fallopian tube and place Plaintiff HOLLY DAGUE at



1 a high risk of having a third ectopic pregnancy; and that Plaintiff HOLLY DAGUE should to do  
2 in vitro fertilization ("IVF") if Plaintiff HOLLY DAGUE wanted to get pregnant.

3 72. As a direct and proximate result of the professional negligence of Defendants  
4 KUNG, KAISER PERMANENTE FONTANA MEDICAL CENTER, DOES 1 through 10,  
5 DOES 51 through 60, DR. PINHEIRO, and each of them, Plaintiff HOLLY DAGUE sustained  
6 injuries to her person, left and right fallopian tubes, body, nerves, nervous system, and head,  
7 suffered pain, mental and emotional anguish, was required to incur and did incur reasonably  
8 necessary medical expenses, and was injured in her health and activities, recreational and  
9 professional, and lost earnings, profits and economic opportunities, each to her damage in an  
10 amount in excess of the jurisdictional minimum of the Superior Court – Unlimited Jurisdiction,  
11 the exact amount of which will be proven at trial. Plaintiffs, and each of them, will seek leave to  
12 amend this complaint when said amount is more fully determined.

13 73. As a further direct and proximate result of the professional negligence of  
14 Defendants KUNG, KAISER PERMANENTE FONTANA MEDICAL CENTER, DOES 1  
15 through 10, DOES 51 through 60, DR. PINHEIRO, and each of them, it is reasonably certain  
16 that Plaintiff HOLLY DAGUE will suffer pain, mental and emotional anguish in the future, will  
17 require future medical expenses, and will incur future loss of earnings, profits and economic  
18 opportunities, all to her damage in an amount in excess of the jurisdictional minimum of the  
19 Superior Court – Unlimited Jurisdiction, the exact amount of which will be proven at trial.  
20 Plaintiffs, and each of them, will seek leave to amend this complaint when said amount is more  
21 fully determined.

## 22 **FIFTH CAUSE OF ACTION**

### 23 **(Negligent Supervision)**

24 **(By Plaintiff Holly Dague Against Defendants Kaiser Permanente Fontana Medical Center,**  
25 **Kaiser Permanente Ventures, LLC, Kaiser Permanente International,**  
26 **DOES 1 through 30, inclusive, and DOES 51 through 60, inclusive)**  
27  
28

1           74. Plaintiffs and each of them reallege and incorporate herein by this reference each  
2 and every allegation contained in Paragraphs 1 through 41, inclusive, and each of them, as  
3 though said paragraphs, and each of them, were fully set forth herein at length.

4           75. Plaintiffs and each of them are informed and believe and upon that basis allege  
5 that at all relevant times on or about October 4, 2012, defendant DOE 1 was responsible for  
6 overseeing, supervising and teaching defendant KUNG, a Certified Nurse Midwife.

7           76. Plaintiffs and each of them are informed and believe and upon that basis allege  
8 that on or about October 4, 2012 defendant KAISER PERMANENTE FONTANA MEDICAL  
9 CENTER, DOE 1 through 10, and/or KAISER PERMANENTE VENTURES, LLC, DOE 11  
10 through 20, and/or KAISER PERMANENTE INTERNATIONAL, DOES 21 through 30, and/or  
11 DOES 51 through 60 was the employer of, in charge of, and/or responsible for defendant KUNG  
12 under the doctrine of respondeat-superior.

13           77. On or about October 4, 2012 and at all relevant times thereafter, defendant  
14 KAISER PERMANENTE FONTANA MEDICAL CENTER, DOE 1 through 10, and/or  
15 KAISER PERMANENTE VENTURES, LLC, DOE 11 through 20, and/or KAISER  
16 PERMANENTE INTERNATIONAL, DOES 21 through 30, and/or DOES 51 through 60,  
17 negligently and carelessly failed to exercise due care in the supervision of defendant KUNG,  
18 thus causing and/or contributing to the negligent treatment and care of Plaintiff HOLLY  
19 DAGUE, to the failure to properly and timely diagnose and treat Plaintiff HOLLY DAGUE's  
20 condition, to the failure to perform proper tests in the proper manner and in accordance with the  
21 standards of reasonably prudent practitioners in the same community, to the negligent  
22 performance of certain diagnostic procedures, and to defendant KUNG's negligent and careless  
23 performance of such procedures, tests and treatments, below the minimally accepted standards  
24 and procedures of medical practitioners in the same community.

25           78. As a direct and proximate result of the negligent supervision by defendants  
26 KAISER PERMANENTE FONTANA MEDICAL CENTER, KAISER PERMANENTE  
27 VENTURES, LLC, KAISER PERMANENTE INTERNATIONAL, DOES 1 through 30,  
28 inclusive, and DOES 51 through 60, inclusive, and each of them, Plaintiff HOLLY DAGUE

1 suffered, and continues to suffer, serious physical injuries to her person and body, physical and  
2 mental pain and suffering including shock and severe emotional distress, and was injured in her  
3 health, strength and activity, all to her general damage in an amount in excess of the  
4 jurisdictional minimum of the Superior Court – Unlimited Jurisdiction, the exact amount of  
5 which will be determined according to proof.

6 79. As a further direct and proximate result of the negligent supervision by defendants  
7 KAISER PERMANENTE FONTANA MEDICAL CENTER, KAISER PERMANENTE  
8 VENTURES, LLC, KAISER PERMANENTE INTERNATIONAL, DOES 1 through 30,  
9 inclusive, and DOES 51 through 60, inclusive, and each of them, Plaintiff HOLLY DAGUE was  
10 required to and did undergo surgery for an ectopic pregnancy, incurred hospital and incidental  
11 expenses, was unable to attend to her usual occupation and employment thereby sustaining loss  
12 of income, and will continue to incur medical bills and to suffer a loss of income, all to her  
13 damage in an amount presently unknown, the exact amount of which will be determined  
14 according to proof. Plaintiff will seek leave to amend this Complaint when these damages have  
15 been fully and completely ascertained.

#### 16 **SIXTH CAUSE OF ACTION**

#### 17 **(Loss of Consortium)**

#### 18 **(By Plaintiff Stephen Dague Against All Defendants)**

19 80. Plaintiffs and each of them reallege and incorporate herein by this reference each  
20 and every allegation contained in Paragraphs 1 through 41, inclusive, each and every allegation  
21 contained in Paragraphs 43 through 46, each and every allegation contained in Paragraphs 50  
22 through 52, each and every allegation contained in Paragraphs 56 through 63, each and every  
23 allegation contained in Paragraphs 67 through 71, each and every allegation contained in  
24 Paragraphs 74 through 77, inclusive, and each of them, as though said paragraphs, and each of  
25 them, were fully set forth herein at length.

26 81. Plaintiffs HOLLY DAGUE and STEPHEN DAGUE are, and at all relevant times  
27 were, wife and husband, respectively, and at all relevant times were living with one another.

28 82. Prior to Plaintiff, HOLLY DAGUE's sustaining the aforementioned injuries,

1 Plaintiff HOLLY DAGUE was able to, and did, perform her duties as a wife. However, after  
2 Plaintiff HOLLY DAGUE sustained the above-referenced injuries and damages, she was unable  
3 to perform her necessary duties as a wife, including her household chores, work, service and  
4 maintenance of the house and/or premise, as well as the conjugal fellowship and sexual relations  
5 between her and her husband, by reason of which plaintiff STEPHEN DAGUE was deprived of  
6 the consortium of HOLLY DAGUE, all to his damage and loss in an amount in excess of the  
7 jurisdictional limitations of the Superior Court – Unlimited Jurisdiction, the exact amount of  
8 which will be proved at trial.

9 **WHEREFORE**, judgment is prayed for as follows:

10 A. For the First Cause of Action:

- 11 1) For contractual damages in an amount to be proved at trial;
- 12 2) For incidental damages;
- 13 3) For costs; and
- 14 4) For such other and further relief as the Court deems just and proper.

15 B. For the Second Cause of Action:

- 16 1) For contractual damages in an amount to be proved at trial;
- 17 2) For incidental damages;
- 18 3) For costs; and
- 19 4) For such other and further relief as the Court deems just and proper.

20 C. For the Third Cause of Action:

- 21 1) For general damages in an amount to be proved at trial;
- 22 2) For special damages in an amount to be proved at trial;
- 23 3) For costs; and
- 24 4) For such other and further relief as the Court deems just and proper.

25 D. For the Fourth Cause of Action:

- 26 1) For general damages in an amount to be proved at trial;
- 27 2) For special damages in an amount to be proved at trial;
- 28 3) For costs; and

1 4) For such other and further relief as the Court deems just and proper.

2 E. For the Fifth Cause of Action:

3 1) For general damages in an amount to be proved at trial;

4 2) For special damages in an amount to be proved at trial;

5 3) For costs; and

6 4) For such other and further relief as the Court deems just and proper.

7 F. For the Sixth Cause of Action:

8 1) For general damages in an amount to be proved at trial;

9 2) For special damages in an amount to be proved at trial;

10 3) For costs; and

11 4) For such other and further relief as the Court deems just and proper.

12 RESPECTFULLY SUBMITTED,

13 DATED: February 10, 2014

By: Lawrence K. Shelton

Robert S. Shtofman, Esq.  
Lawrence K. Shelton, Esq.  
Attorneys for Plaintiffs,  
HOLLY DAGUE and STEPHEN DAGUE

14  
15  
16  
17  
18 **DEMAND FOR JURY TRIAL**

19 Plaintiffs, HOLLY DAGUE and STEPHEN DAGUE, and each of them, hereby demand  
20 a trial by jury.

21 DATED: February 10, 2014

22 By: Lawrence K. Shelton

23 Robert S. Shtofman, Esq.  
24 Lawrence K. Shelton, Esq.  
25 Attorneys for Plaintiffs,  
26 HOLLY DAGUE and STEPHEN DAGUE  
27  
28

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

SAN BERNARDINO CIVIL DIVISION  
303 WEST THIRD STREET  
SAN BERNARDINO, CA 92415-0210

SCANNED

CASE NO: CIVDS1401530

NOTICE OF TRIAL SETTING CONFERENCE  
and NOTICE OF CASE ASSIGNMENT

IN RE: DAGUE-V-KAISER

THIS CASE HAS BEEN ASSIGNED TO: DONALD ALVAREZ IN DEPARTMENT S32  
FOR ALL PURPOSES.

Notice is hereby given that the above-entitled case has been set for  
Trial Setting Conference at the court located at 303 West Third Street  
San Bernardino, CA.

HEARING DATE: 08/14/14 at 8:30 in Dept. S32

DATE: 02/13/14 Christina M. Volkers, Clerk of the Court

By: GLORIA GRECO

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: 02/13/14

I declare under penalty of perjury that the foregoing is true and  
correct. Executed on 02/13/14 at San Bernardino, CA

BY: GLORIA GRECO

civ-ntsc-20130417

Notice 'NTSC' has been printed for the following Attorneys/Firms  
or Parties for Case Number CIVDS1401530 on 2/13/14:

LAW OFFICE OF RICHARD S STONE  
LAW OFFICE OF ROBERT SCOTT SHTOFMA  
18034 VENTURA BOULEVARD  
SUITE 296  
ENCINO, CA 91316

SCANNED

Courthouse News Service