

CIV-141119-CIV-DS1417311-CASEEN-120202



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**Complaint and Party information entered**

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NEW FILE

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FILED  
 SUPERIOR COURT  
 COUNTY OF SAN BERNARDINO  
 SAN BERNARDINO DISTRICT

NOV 19 2014

Attorneys for Plaintiff Eugene W. Zour

By Olivia M. DeBono  
 Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF SAN BERNARDINO – CENTRAL DISTRICT

EUGENE ZOUR, an individual,

Case No. CIVDS1417311

Plaintiff,

vs.

COMPLAINT FOR DAMAGES DUE TO  
 MEDICAL NEGLIGENCE

KAISER FOUNDATION HEALTH PLAN,  
 INC., a California corporation; KAISER  
 FOUNDATION HOSPITALS, a California  
 corporation; SOUTHERN CALIFORNIA  
 PERMANENTE MEDICAL GROUP; DAVID  
 A. SANTOS, M.D., an individual; and DOES 1  
 to 30,

DEMAND FOR JURY TRIAL

Defendants.

THE LAW OFFICE OF  
 JASON D. ANNIGIAN, APC

IDENTIFICATION OF THE PARTIES; JURISDICTION AND VENUE

Plaintiff, Eugene Zour ("Plaintiff"), by and through his attorneys of record, The Law Office of Jason D. Annigian, APC, for his Complaint against Defendants, Kaiser Foundation Health Plan, Inc., a California corporation ("KF Health Plan"), Kaiser Foundation Hospitals, a California corporation ("KF Hospitals"), Southern California Permanente Medical Group ("SC Permanente") (KF Health Plan, KF Hospitals and SC Permanente are collectively referred to as "Kaiser"), David A. Santos, M.D., an individual ("Dr. Santos"), and DOES 1 through 30,<sup>1</sup> inclusive, alleges as follows:

1. Plaintiff is an individual who at all relevant times has resided in the County of San Bernardino.

2. KF Health Plan and KF Hospitals are each a California corporation, with its corporate address located at One Kaiser Plaza, Oakland, CA 94612.

3. Southern California Permanente Medical Group is an entity of unknown form, with its corporate address located at One Kaiser Plaza, Oakland, CA 94612.

4. Kaiser, at all times relevant to this action, has operated a medical hospital in Ontario, California ("Kaiser Ontario").

5. Dr. Santos is an individual who, at times relevant to this action, engaged in the practice of medicine in this judicial district, and specifically at Kaiser Ontario.

6. At all times herein mentioned, Defendants, and each of them, were engaged in the owning, operating, maintaining, managing and engaged in rendering medical, surgical,

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<sup>1</sup> Kaiser, Dr. Santos, and DOES 1 through 30 are collectively referred to as "Defendants"

1 hospital, diagnostic, nursing and/or other care to the general public for compensation in San  
2 Bernardino County; all the acts complained of herein by Plaintiff against said Defendants were  
3 done and performed by said Defendants by and through their duly authorized agents, servants,  
4 joint venturers, and/or employees, each of whom and all of whom were at all times mentioned  
5 herein acting within the course, purpose and scope of their agency, joint venture or employment  
6 and their conduct was ratified by the Defendants, and each of them. Further, these Defendants  
7 selected and assigned physicians and other health care professionals to care for and treat the  
8 Plaintiff, and through words or actions held those individuals out as agents or employees,  
9 knowing and expecting Plaintiff to rely upon those actions or words. Those individuals were  
10 the ostensible agents of these Defendants.

11  
12 7. At all times herein mentioned, Defendants and each of them held themselves out  
13 to the general public and to Plaintiff as skilled professionals in the science of medicine, surgery,  
14 nursing, hospital care, medical attendant and related care; and said Defendants held themselves  
15 out to the general public and to the Plaintiff as possessing that degree of knowledge and skill  
16 customarily possessed and exercised by other physicians, surgeons, nurses, and hospital  
17 attendants engaged in the same or similar locality as that of Defendants and each of them.

18  
19 8. Defendants sued as Does 1 through 30 are presently unknown to Plaintiff, and  
20 Plaintiff therefore uses these fictitious names pursuant to Code of Civil Procedure section 474.  
21 On information and belief, each of the fictitiously named Defendants is responsible for the  
22 events and happenings recited in this Complaint. Plaintiff will amend this Complaint upon  
23 ascertaining the identities and capacities of the Doe Defendants.

24  
25 9. At all times herein mentioned, each of the Defendants sued herein, whether by  
26 their actual name or fictitious name, was the agent, alter ego, servant, joint venture or employee  
27 of each other and of said co-Defendants and was as such acting within the purpose and scope of  
28 said agency, service, joint venture or employment; each of the Defendants, as aforesaid,

whether referred to by their actual names or fictitious names, when acting as a principal was negligent in the selection and hiring of each and every other co-Defendant as an agent, servant or employee and furthermore expressly directed consented to, approved, affirmed and ratified each and every action taken by the co-Defendants.

#### ALLEGATIONS RE MEDICAL NEGLIGENCE

10. Plaintiff was treated and operated on by Dr. Santos at Kaiser Ontario on July 12, 2013 for colon polyps that required surgery. Plaintiff was assigned by Kaiser to its agent and/or employee, Dr. Santos, to perform this surgery.

11. Plaintiff was then operated on and treated by Dr. Santos, which treatment clearly fell below the applicable standard of care, and which resulted in serious injury to Plaintiff, as **Dr. Santos negligently and carelessly caused Plaintiff's colon to be stapled closed** in the course of the initial surgical procedure.

12. A few days later, and after exhibiting symptoms of a high grade blockage, Plaintiff was again treated by Kaiser and a rectal contrast showed "skin staples . . . in the lower abdomen." Plaintiff then underwent a CT scan with findings showing, among other things, "skin staples and postoperative subcutaneous edema."

13. Plaintiff was again referred by Kaiser to Dr. Santos to perform a second surgery, which surgery occurred on July 18, 2013 – a mere six (6) days after the initial surgery. Dr. Santos's operative findings included notations of a "very distended bowel," which left Dr. Santos "unable to proceed laparoscopically." **The operative findings also stated that the "back wall of ileum was stapled creating a complete small bowel obstruction."**

1           14. During this treatment Defendants, and each of them, agreed to perform and  
2           undertook to perform for the Plaintiff all services necessary to address the medical issues with  
3           which Plaintiff presented. In so doing, Defendants, and each of them, established a  
4           physician/nurse/hospital/caregiver relationship with the Plaintiff giving rise to Defendants' duty  
5           to Plaintiff to provide skillful management of his care within the standard of care.

6  
7           15. During said period of time herein alleged, Defendants, and each of them, were  
8           negligent, careless and unskillful in their management of the evaluations, diagnosis, care and  
9           treatment of Plaintiff thereby legally causing injuries and damages to Plaintiff.

10  
11           16. Plaintiff was treated by Defendants, which treatment fell below the applicable  
12           standard of care, and which resulted in serious injury to Plaintiff. On information and belief,  
13           Kaiser negligently credentialed Dr. Santos and at all times was the ostensible agent of Dr.  
14           Santos.

15  
16           17. As a legal result of the negligence of all Defendants, and each of them, Plaintiff  
17           was injured in his health, strength and activity, suffered severe physical and emotional injury,  
18           has incurred and will in the future incur expenses for medical care, nursing care, attendant care,  
19           rehabilitation, physical and occupational therapy and related expenses all to his general and  
20           special damages in an amount according to proof.

21  
22           18. As a further legal result of the negligence of the Defendants, and each of them,  
23           as aforesaid, Plaintiff has lost earning capacity in an amount according to proof.

24  
25           WHEREFORE Plaintiff prays for judgment against Defendants as follows:

26  
27           1. General damages in an amount of \$250,000.00 per MICRA cause of action.  
28

- 1           2.       Special Damages according to proof in excess of \$1 million.
- 2
- 3           3.       Prejudgment interest according to proof.
- 4
- 5           4.       Such other relief as the Court deems just and proper.
- 6

7                           THE LAW OFFICES OF JASON D. ANNIGIAN, APC

8           Dated: November 18 2014

9           By: \_\_\_\_\_

10                   Jason D. Annigian  
11                   Attorneys for Plaintiff Eugene Zour