

CIV-190528-CIV-DS1915800-CASEEN-122002



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**Complaint and Party information entered**

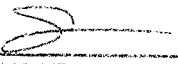


NEW FILE

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

MAY 28 2019

BY   
SAMANTHA NEUBAUER, DEPUTY

Attorney for JAMES RAMIREZ,  
and MALINDA RAMIREZ

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
COUNTY OF COUNTY OF SAN BERNARDINO, CIVIL DIVISION**

**JAMES RAMIREZ, an individual;  
MALINDA RAMIREZ, an individual,**

**Plaintiffs,**

**v.**

**USHA RAGHAVAN, an individual;  
SOUTHERN CALIFORNIA  
PERMANENTE MEDICAL GROUP, INC.,  
SEDGWICK CLAIMS MANAGEMENT  
SERVICES, INC.; DOES 1-50,**

**Defendants.**

) **Case No.: CIVDS1915800**

) **Complaint For Damages**

- ) **1. Negligence;**  
) **2. Breach of Fiduciary Duty;**  
) **3. Loss of Consortium**  
) **4. Fraud**  
) **5. Violation of Cal. Code Reg. §**  
**9767.6(e)**

) **Demand For Jury**

Plaintiffs complain of Defendants USHA RAGHAVAN ("RAGHAVAN") Southern California  
Permanente Medical Group, Inc., ("KAISER"), Sedgwick Claims Management Services, Inc.  
(SEDGWICK), and DOES 1-50 (collectively "DEFENDANTS") and alleges as follows:

**PARTIES AND JURISDICTION**

1. Plaintiffs JAMES RAMIREZ (hereinafter "RAMIREZ" or "PLAINTIFF") and  
MALINDA RAMIREZ ("MALINDA") at all times herein mentioned, were residents and resided  
in Colton, California.

2. Defendant RAGHAVAN, is an individual, who was at the time of the incident, an employee of KAISER. KAISER operated a medical center specializing in occupational medicine in Fontana, California. RAGHAVAN was a medical doctor at that location. SEDGWICK is an insurance claims management foreign corporation registered to conduct business in the State of California and transacts business within the County of San Bernardino.

3. Plaintiff is informed and believes that each of the Defendants herein, including Does 1 through 50 inclusive, is responsible in some capacity for the events herein alleged, or is necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend when the true names, capacities, connections, and responsibilities of the Defendants and Does 1 through 50, inclusive, are ascertained.

#### **FACTUAL ALLEGATIONS**

4. RAMIREZ suffered a workplace injury on or about March 16, 2018. RAMIREZ while operating a forklift at Stater Bros. had an accident which caused the forklift he was driving to slam into a pallet. RAMIREZ was able to assist himself following the accident but complained of pain to his lower back from the impact and immediately reported the accident and injury to his employer. Thereafter, he sought medical treatment through his employer's insurance as a worker's compensation claimant.

5. SEDGWICK is the insurance claims adjuster for Stater Bros. worker's compensation. SEDGWICK's claims adjusters, who have no medical experience or licensure, substantially directed RAMIREZ's post-accident treatment by either approving or denying RAMIREZ's medical requests relating to his injury.

6. SEDGWICK initially directed RAMIREZ to Healthpoint medical clinic in Colton, California on or about May 20, 2018. RAMIREZ states that there was no doctor there for his scheduled appointment and an on-call doctor administered a shot of Toradol into his back as a temporary means of reducing RAMIREZ's pain. The on-call doctor, who admitted he had been drinking alcohol, advised RAMIREZ to return to the clinic the following day without further examination.

1 7. RAMIREZ unsatisfied with his treatment at Healthpoint contacted SEDGWICK and  
2 advised that the he was opting out of being treated at Healthpoint and requested to be treated at  
3 Arrowhead Orthopedics in Redlands, California. This request was denied by persons without  
4 medical licenses as SEDGWICK advised RAMIREZ that the "law had changed" and that he  
5 would not be able to be treated at Arrowhead Orthopedics. RAMIREZ had requested to be  
6 examined at Arrowhead Orthopedics since he had a prior shoulder surgery performed there in or  
7 about 2008. 8 Cal. Code Reg. § 9767.6(e) states in relevant part, "At any point in time after the  
8 initial medical evaluation with an MPN physician, the covered employee may select a physician  
9 of his or her choice from within the MPN."

10 8. SEDGWICK then directed RAMIREZ to defendant KAISER and an appointment was  
11 scheduled on or about May 22, 2018. Without signing any agreement with the defendant  
12 KAISER, including any arbitration agreement, RAMIREZ was seen by KAISER.

13 9. The treating physician, RAGHAVAN, determined RAMIREZ's injury to be lower  
14 lumbar strain. However, RAMIREZ states that RAGHAVAN never performed any physical  
15 examination of him despite RAMIREZ's ongoing complaints of pain (in the range of 6-7 on a  
16 10-scale) and the fact that RAMIREZ's reported feeling a "pop" at the time of the accident  
17 impact. RAGHAVAN only provided RAMIREZ with 800mg of Ibuprofen tablets despite the  
18 fact that RAMIREZ was in so much pain that he could not sit.

19 10. Thereafter, on or about June 6, 2018, RAMIREZ attended at a **second** appointment at  
20 KAISER. Again, RAGHAVAN did not perform any physical examination of him despite  
21 RAMIREZ's complaints. RAGHAVAN advised RAMIREZ that "there is nothing we can do" as  
22 this is a worker's compensation claim. RAMIREZ believes they could not do anything because  
23 the co-defendant SEDGWICK, failed and refused to authorize them to do so in furtherance of  
24 their fraudulent scheme, purporting to provide medical care for worker's compensation claims,  
25 while systematically and pervasively failing to provide that care, and while allowing those  
26 decisions to be made by persons who are not licensed to do medicine. RAMIREZ requested  
27 lidocaine but this request was also denied by RAGHAVAN and/or SEDGWICK.

1 11. Furthermore, RAGHAVEN denied RAMIREZ time off from work and instead  
2 recommended RAMIREZ perform slightly modified work duties until RAMIREZ attended at  
3 KAISER for a third emergency scheduled appointment on or about June 11, 2019.

4 Again, RAGHAVEN did not perform any physical examination of RAMIREZ nor did she order  
5 any diagnostic imaging to be done that could have diagnosed RAMIREZ's urgent medical  
6 condition (a spinal injury) which was thereafter significantly exacerbated by delayed treatment.

7 12. RAMIREZ was forced to leave KAISER on June 11, 2019 in a wheelchair since the pain  
8 he was experiencing was so severe that he could not walk. To aggravate matters further a Nurse  
9 (DOE #1) at KAISER negligently slammed RAMIREZ into the edge of a doorway while she was  
10 transporting RAMIREZ in the wheelchair to exit the hospital. Despite the fact he was in a  
11 wheelchair, and in obvious pain, he was sent home without further diagnosis or care.

12 13. On or about the morning of June 12, 2018, RAMIREZ felt paralyzed from the waist  
13 down and couldn't move his legs. Fearing he might never walk again, RAMIREZ called 911 and  
14 was transported to Loma Linda Hospital Emergency Department. A magnetic resonance imaging  
15 (MRI) was performed at that time which discovered the spinal injury, a L4-L5 disc herniation.  
16 RAMIREZ was then immediately scheduled for an emergency hemilaminectomy surgery and  
17 remained hospitalized for twenty-nine (29) days. He experienced significant pain during this  
18 time. Doctors at Loma Linda performed the surgery, despite being unable to get authorization for  
19 it from the fraudulent scheme known as SEDGEWICK.

20 14. As a result of the delayed treatment RAMIREZ suffered and continues to suffer from  
21 complete numbness in his feet, legs, rectal area, and has had a loss of sexual function.  
22 The injury sustained has left RAMIREZ in a depressed mood and RAMIREZ's wife MALINDA  
23 has experienced a loss of consortium.

24  
25 **FIRST CAUSE OF ACTION**  
26 **NEGLIGENCE**  
27 (Against all Defendants)

28 15. Plaintiffs replead and incorporates by reference, as if fully set forth again herein, the  
allegations contained in all prior paragraphs of this complaint.

1 16. Defendants RAGHAVEN, KAISER, and SEDGWICK all owed RAMIREZ a duty of  
2 care to ensure that he received the proper medical treatment following his workplace injury.

3 17. SEDGWICK instead of ensuring that RAMIREZ was provided with proper medical care  
4 focused on mitigating its costs and denying the requests made by Ramirez and/or his medical  
5 providers.

6 18. RAGHAVEN as a medical doctor breached the duty of care owed to RAMIREZ by  
7 failing to treat him in a reasonably prudent manner and specifically by failing to diagnose  
8 RAMIREZ's injury, failing to recognize RAMIREZ's symptoms, disregarding RAMIREZ's  
9 patient history, failing to order proper testing, prematurely discharging him, and directing  
10 RAMIREZ to return to work.

11 19. RAGHAVEN failed to exercise the degree of care, skill, and learning expected of a  
12 reasonably prudent doctor in the profession to which he belongs.

13 20. KAISER as the employer of RAGHAVEN is liable for RAGHAVEN's negligence  
14 pursuant to the doctrine of Respondeat Superior.

15 21. SEDGWICK's interference and cost minimization together with RAGHAVEN's  
16 negligence proximately caused the injuries suffered by RAMIREZ.

17 22. As a legal result of the above-described conduct, RAMIREZ has sustained severe  
18 physical and emotional pain and injury, all in an amount to be determined according to proof at  
19 trial.

20 **SECOND CAUSE OF ACTION**  
21 **BREACH OF FIDUCIARY DUTY**  
22 (Against all Defendants)

23 23. Plaintiffs replead and incorporates by reference, as if fully set forth again herein, the  
24 allegations contained in all prior paragraphs of this complaint.

25 24. SEDGWICK as an claims management insurer owed a fiduciary duty to RAMIREZ of  
26 good faith and fair dealing knowing that RAMIREZ relied upon its insurance coverage for  
27 treatment of his injury as he could not afford medical treatment otherwise.

28 25. SEDGWICK breached the fiduciary duty to RAMIREZ by continuously focusing on  
minimizing costs rather than approving proper and expedient medical treatment. SEDGWICK

1 was therefore responsible for RAMIREZ's delayed diagnosis and emergency surgery which  
2 resulted in significant and prolonged pain and permanent injury. The extent and permeance of  
3 RAMIREZ's pain and injury were avoidable had SEDGWICK approved RAMIREZ's requests  
4 rather than denying them without good reason.

5 26. RAGHAVEN (and KAISER) owed a fiduciary duty to RAMIREZ. Physicians have a  
6 responsibility to maintain independence and impartiality in their medical decision-making, and to  
7 always put the well-being of their patients first, and to not allow their judgement to be  
8 compromised by other influences.

9 27. RAGHAVEN breached the fiduciary duty owed to RAMIREZ by failing to treat him  
10 and/or denying him treatment that would otherwise be given to another patient because  
11 RAMIREZ's injury was characterized as a worker's compensation claim for which treatment  
12 options were apparently limited.

13 28. As a legal result of the above-described conduct, RAMIREZ has sustained severe  
14 physical and emotional pain and injury, all in an amount to be determined according to proof at  
15 trial.

16 **THIRD CAUSE OF ACTION**  
17 **LOSS OF CONSORTIUM**  
18 (Against all Defendants)

19 29. Plaintiffs replead and incorporates by reference, as if fully set forth again herein, the  
20 allegations contained in all prior paragraphs of this complaint.

21 30. Plaintiff MALINDA is the wife of RAMIREZ and claims a loss of consortium for the  
22 injuries sustained by her husband.

23 31. RAMIREZ was injured by the actions and inactions of the Defendants leaving him in a  
24 physically and emotional diminished state such that RAMIREZ is withdraw from their  
25 relationship and also unable to have regular sexual intimacy.

26 32. As a legal result of the above-described conduct, MALINDA has sustained a loss in an  
27 amount to be determined according to proof at trial.

28 //

**FOURTH CAUSE OF ACTION**  
**FRAUD and Violation of Cal. Code Reg. § 9767.6(e)**  
**(Against All Defendants)**

33. Plaintiffs hereby reallege and replead and incorporate by reference paragraphs 1 thru 32 as if fully pleaded herein.

34. SEDGEWICK and KAISER repeatedly denied workers' compensation benefits to RAMIREZ despite having received proof that he had suffered a work-related injury.

35. KAISER and SEDGEWICK'S actions were part of a scheme to fraudulently deprive him of his workers compensation benefits regardless of facts, and without regard to the duties imposed on it by California law.

Defendants violated Cal. Code Reg. § 9767.6(e), by failing and refusing to refer him to Arrowhead Orthopedic for treatment, as part of their fraudulent scheme and conspiracy by Sedgwick. As neither RAMIREZ nor his wife elected to get treatment at KAISER, neither is bound by any agreement to arbitrate with KAISER, or any "cap" on damages.

36. RAMIREZ furthermore received no notice that treatment by KAISER would expose him to any statutory arbitration or mediation requirement, RAMIREZ has been deprived available remedies without due process, and therefore in violation of his federal civil rights.

37. Cal. Code Reg. § 9767.6(e) is intended to allow persons situated like RAMIREZ from choices that might infringe their rights and the remedies available to him. The actions of SEDGEWICK in depriving him his choice, which would have given him additional remedies including greater possible damages for pain and suffering in the case of medical malpractice, is the direct cause of any damages to RAMIREZ in pursuing a medical malpractice claim. These damages are the direct result of SEDGEWICKS deceptive and fraudulent business practices.

**PRAYER**

Wherefore, the Plaintiffs pray that this court award damages and provide relief as follows:

1. For special and general damages in the amount of \$800,000.00;
2. For general damages for a loss of consortium in an amount according to proof;

- 1           3.     For punitive damages in an amount according to proof;  
2           4.     For attorney fees and costs in an amount according to proof, not less than  
3                 \$10,000.00.  
4

5 DATED: MAY 22, 2019

LAW OFFICE OF JEFF GROTKE

6  
7  
8 By: 

9 JEFF GROTKE, Esq.

10 Attorney for the Plaintiffs

11 James Ramirez, Malinda Ramirez  
12

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands a jury for all claims for which a jury is permitted.  
15  
16

17 DATED: MAY 22, 2019

LAW OFFICE OF JEFF GROTKE

18  
19  
20 By: 

21 JEFF GROTKE, Esq.

22 Attorney for the Plaintiff

23 James Ramirez, Malinda Ramirez  
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25  
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27  
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