

FOR COURT USE ONLY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
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E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): Plaintiff

FILED
CIVIL BUSINESS OFFICE 8
CENTRAL DIVISION
01 DEC -4 AM 11:14
HARRIS I. STEINBERG
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA
DH

NAME OF COURT: San Diego Superior Court
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS: San Diego, CA 92101
CITY AND ZIP CODE: Downtown Branch
BRANCH NAME:

PLAINTIFF: GEORGE BIAGI, III

DEFENDANT: GLENN A. KAWESCH, M.D., SOUTHWEST EYE CARE CENTER, KAWESCH LASER CENTERS, LASER AND RK EYE CENTERS, and
 DOES 1 TO 10

COMPLAINT — Personal Injury, Property Damage, Wrongful Death
 AMENDED (Number):
Type (check all that apply):
 MOTOR VEHICLE OTHER (specify): Prof.Neg., Fraud
 Property Damage Wrongful Death
 Personal Injury Other Damages (specify):

2115 01 03 GIC779106 12/04/01 12:08
02 001 New Civil \$196.00

Jurisdiction (check all that apply):
 ACTION IS A LIMITED CIVIL CASE
Amount demanded does not exceed \$10,000
 exceeds \$10,000, but does not exceed \$25,000
 ACTION IS AN UNLIMITED CIVIL CASE
 ACTION IS RECLASSIFIED by this amended complaint
 from limited to unlimited
 from unlimited to limited

CASE NUMBER:
GIC 779106

1. PLAINTIFF (name): George Biagi, III alleges causes of action against DEFENDANT (name): Glenn A. Kawesch, M.D., Southwest Eye Care Center, Kawesch Laser Center, Laser and RK Eye Centers and Does 1-10
2. This pleading, including attachments and exhibits, consists of the following number of pages: 7
3. Each plaintiff named above is a competent adult
a. except plaintiff (name):
(1) a corporation qualified to do business in California
(2) an unincorporated entity (describe):
(3) a public entity (describe):
(4) a minor an adult
(a) for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
(b) other (specify):
(5) other (specify):
b. except plaintiff (name):
(1) a corporation qualified to do business in California
(2) an unincorporated entity (describe):
(3) a public entity (describe):
(4) a minor an adult
(a) for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
(b) other (specify):
(5) other (specify):

Information about additional plaintiffs who are not competent adults is shown in Complaint — Attachment 3.
(Continued on reverse)



4. Plaintiff (name):
is doing business under the fictitious name of (specify):
and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

a. except defendant (name): Kawesch Laser Centers

- (1) a business organization, form unknown
- (2) a corporation
- (3) an unincorporated entity (describe):
- (4) a public entity (describe):
- (5) other (specify):

c. except defendant (name): Southwest Eye Care Center

- (1) a business organization, form unknown
- (2) a corporation
- (3) an unincorporated entity (describe):
- (4) a public entity (describe):
- (5) other (specify):

b. except defendant (name): Laser and RK Eye Centers

- (1) a business organization, form unknown
- (2) a corporation
- (3) an unincorporated entity (describe):
- (4) a public entity (describe):
- (5) other (specify):

d. except defendant (name):

- (1) a business organization, form unknown
- (2) a corporation
- (3) an unincorporated entity (describe):
- (4) a public entity (describe):
- (5) other (specify):

Information about additional defendants who are not natural persons is contained in Complaint — Attachment 5.

6. The true names and capacities of defendants sued as Does are unknown to plaintiff.

7. Defendants who are joined pursuant to Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

- a. at least one defendant now resides in its jurisdictional area.
- b. the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
- c. injury to person or damage to personal property occurred in its jurisdictional area.
- d. other (specify):

9. Plaintiff is required to comply with a claims statute, and

- a. plaintiff has complied with applicable claims statutes, or
- b. plaintiff is excused from complying because (specify):

(Continued on page three)

SHORT TITLE: Biagi v. Kawesch

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. Motor Vehicle
- b. General Negligence
- c. Intentional Tort
- d. Products Liability
- e. Premises Liability
- f. Other (specify): Fraud

11. Plaintiff has suffered

- a. wage loss
- b. loss of use of property
- c. hospital and medical expenses
- d. general damage
- e. property damage
- f. loss of earning capacity
- g. other damage (specify):

12. The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. listed in Complaint — Attachment 12.
- b. as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. **PLAINTIFF PRAYS** for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

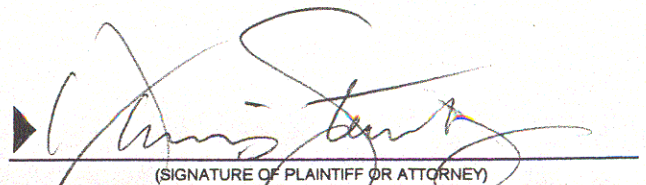
- a. compensatory damages
 - (1) (unlimited civil cases) according to proof.
 - (2) (limited civil cases) in the amount of \$
- b. other (specify):

15. The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

Date: December 4, 2001

Harris I. Steinberg

(TYPE OR PRINT NAME)


(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE: Biagi vs. Kawesch	CASE NUMBER:
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FIRST _____
(number)

CAUSE OF ACTION - General Negligence

Page 4

ATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): George Biagi, III

alleges that defendant (name): Glenn A. Kawesch, M.D., Southwest Eye Care Center, Kawesch Laser Centers, Laser and RK Eye Centers, and

Does 1 _____ to 5 _____

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): July 1, 1999

at (place): Kawesch Lasik Centers, LaJolla, California

(description of reasons for liability):

Defendants examined plaintiff's eyes and falsely told him he was an ideal candidate for laser vision correction. In defendants' exam of plaintiff, defendants measured plaintiff's pupil size as 8mm. Defendants knew that an 8mm pupil made plaintiff an unacceptable or at best less than an ideal candidate for laser vision correction. Further, defendants knew that performing laser surgery on plaintiff would, almost to a certainty, leave him with severe nighttime vision loss and severely compromised vision. Defendants failed to advise plaintiff of these risks and falsely lead him to believe that he would have a successful outcome without telling him of the nearly certain problems that surgery would cause. Plaintiff relied on defendant's representations, had the surgery and ended up with severe loss of nighttime vision. Plaintiff previously had 20/20 corrected vision and no night vision problems. Post-operatively, defendants continually reassured plaintiff that his eyes were fine and advised plaintiff his night vision condition was temporary and would resolve with time. In October 2000, defendants advised plaintiff that his vision loss would not heal on its own, that his pupils were too large and that he was not an ideal candidate for laser surgery and that he should not have had the procedure done.

SECOND

(number)

CAUSE OF ACTION - Fraud

Page 5

ATTACHMENT TO Complaint Cross-Complaint*(Use a separate cause of action form for each cause of action.)*FR-1. Plaintiff (*name*): George Biagi, III

alleges that defendant (*name*): Glenn A. Kawesch, M.D., Southwest Eye Care Center,
Kawesch Laser Centers and Laser and RK Eye Centers
on or about (*date*): July 1, 1999 defrauded plaintiff as follows:

FR-2. Intentional or Negligent Misrepresentationa. Defendant made representations of material fact as stated in Attachment FR-2.a as follows:

That plaintiff was an ideal candidate for laser vision correction and that plaintiff could expect good results from defendants' laser correction procedure. That the results of defendants' office examination of plaintiff showed that plaintiff would be an ideal surgical candidate for laser surgery.

b. These representations were in fact false. The truth was as stated in Attachment FR-2.b as follows:

c. When defendant made the representations,

 defendant knew they were false, or defendant had no reasonable ground for believing the representations were true.

d. Defendant made the representations with the intent to defraud and induce plaintiff to act as described in item FR-5. At the time plaintiff acted, plaintiff did not know the representations were false and believed they were true. Plaintiff acted in justifiable reliance upon the truth of the representations.

FR-3. Concealmenta. Defendant concealed or suppressed material facts as stated in Attachment FR-3.a as follows:

b. Defendant concealed or suppressed material facts

 defendant was bound to disclose. by telling plaintiff other facts to mislead plaintiff and prevent plaintiff from discovering the concealed or suppressed facts.

c. Defendant concealed or suppressed these facts with the intent to defraud and induce plaintiff to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of the concealed or suppressed facts and would not have taken the action if plaintiff had known the facts.

(Continued)

Defendants knew that plaintiff's pupils measured 8mm which rendered plaintiff an unacceptable/nonoptimal candidate for laser correction; that plaintiff would likely experience a severe night vision loss if the procedure was done. Defendants knew that the medical literature available indicated that surgery should not be done on persons with 8mm pupils based on the known and expected loss of vision. Defendants knew of this information and that plaintiff was entitled to know of this information, but defendants concealed it from plaintiff in order to induce him to go forward with an expensive elective surgery. Defendants' intent was to profit from plaintiff's surgery knowing that he would lose his night vision.

Defendants deceptively induced plaintiff to consent to undergo an elective lasik eye surgery on both of his eyes. Defendants, knowing that plaintiff had 8mm pupils and knowing that such individuals will suffer major night vision loss and distortion, falsely advised plaintiff that he was an ideal surgical candidate for this elective procedure. Defendants concealed and suppressed their knowledge of the medical literature which indicated that vision loss and night time blindness was expected on such patients.

Plaintiff, based on defendants' representations and nondisclosures, gave his consent and had the elective surgery and now suffers night blindness and vision loss. His consent to defendants performing the surgery was fraudulently induced in order to generate surgical fees for defendants' "volume" eye surgery practice. Defendants' unconsented conduct and contact with plaintiff's eyes resulted in permanent physical injury to plaintiff.

Plaintiff did not learn until October 2000 that his night vision injury was caused by defendants' conduct in doing surgery on eyes with 8mm pupils, that defendants should never have told him he was an ideal candidate, and that they did so only to get him to consent to surgery that was unnecessary and profitable to defendants.

That medical literature available and known to defendants indicated that laser surgery on persons with 8mm pupils results in injury to the patient and rendered them poor candidates for laser correction. Defendants knew that such persons experience major vision loss from laser surgery. Defendants refused to advise plaintiff of this anticipated and expected result in order to induce him to consent to defendant's highly profitable elective procedure. Defendants knew that if they told plaintiff of his pupil size issue and the nearly certain loss of night vision and poor outcome, that he would not have consented to defendant's elective surgery and that defendants would have lost a profitable "sale."

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TELEPHONE NO.: 619-231-9449 FAX NO.: 619-231-8638
ATTORNEY FOR (Name): Plaintiff

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CIVIL BUSINESS OFFICE 8
CENTRAL DIVISION
01 DEC -4 AM 11:14
STEPH L. HANBERG
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
CASE NAME: GEORGE BIAGI, III v. GLENN KAWESCH, M.D., et al.

CIVIL CASE COVER SHEET
 Limited Unlimited

Complex Case Designation
 Counter Joinder
Filed with first appearance by defendant
(Cal. Rules of Court, rule 1811)

CASE NUMBER: **GIC 779106**
ASSIGNED JUDGE:

Please complete all five (5) items below.

1. Check one box below for the case type that best describes this case:
- | | | |
|--|--|--|
| <input type="checkbox"/> Auto Tort
<input type="checkbox"/> Auto (22) | <input type="checkbox"/> Other employment (15) | <input type="checkbox"/> Writ of mandate (02) |
| <input type="checkbox"/> Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort | <input type="checkbox"/> Contract | <input type="checkbox"/> Other judicial review (39) |
| <input type="checkbox"/> Asbestos (04) | <input type="checkbox"/> Breach of contract/warranty (06) | <input type="checkbox"/> Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) |
| <input type="checkbox"/> Product liability (24) | <input type="checkbox"/> Collections (e.g., money owed, open book accounts) (09) | <input type="checkbox"/> Antitrust/Trade regulation (03) |
| <input type="checkbox"/> Medical malpractice (45) | <input type="checkbox"/> Insurance coverage (18) | <input type="checkbox"/> Construction defect (10) |
| <input type="checkbox"/> Other PI/PD/WD (23) | <input type="checkbox"/> Other contract (37) | <input type="checkbox"/> Claims involving mass tort (40) |
| <input type="checkbox"/> Non-PI/PD/WD (Other) Tort | <input type="checkbox"/> Real Property | <input type="checkbox"/> Securities litigation (28) |
| <input type="checkbox"/> Business tort/unfair business practice (07) | <input type="checkbox"/> Eminent domain/inverse condemnation (14) | <input type="checkbox"/> Toxic tort/Environmental (30) |
| <input type="checkbox"/> Civil rights (e.g., discrimination, false arrest) (08) | <input type="checkbox"/> Wrongful eviction (33) | <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) |
| <input type="checkbox"/> Defamation (e.g., slander, libel) (13) | <input type="checkbox"/> Other real property (e.g., quiet title) (26) | <input type="checkbox"/> Enforcement of Judgment |
| <input checked="" type="checkbox"/> Fraud (16) | <input type="checkbox"/> Unlawful Detainer | <input type="checkbox"/> Enforcement of judgment (e.g., sister state, foreign, out-of-county abstracts) (20) |
| <input type="checkbox"/> Intellectual property (19) | <input type="checkbox"/> Commercial (31) | <input type="checkbox"/> Miscellaneous Civil Complaint |
| <input type="checkbox"/> Professional negligence (e.g., legal malpractice) (25) | <input type="checkbox"/> Residential (32) | <input type="checkbox"/> RICO (27) |
| <input type="checkbox"/> Other non-PI/PD/WD tort (35) | <input type="checkbox"/> Drugs (38) | <input type="checkbox"/> Other complaint (not specified above) (42) |
| <input type="checkbox"/> Employment | <input type="checkbox"/> Judicial Review | <input type="checkbox"/> Miscellaneous Civil Petition |
| <input type="checkbox"/> Wrongful termination (36) | <input type="checkbox"/> Asset forfeiture (05) | <input type="checkbox"/> Partnership and corporate governance (21) |
| | <input type="checkbox"/> Petition re: arbitration award (11) | <input type="checkbox"/> Other petition (not specified above) (43) |

2. This case is is not complex under rule 1800 of the California Rules of Court. If case is complex, mark the factors requiring exceptional judicial management:

- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination and related actions pending in one or more courts in other counties, states or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial post-disposition judicial disposition |

3. Type of remedies sought (check all that apply):

- a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): TWO

5. This case is is not a class action suit.

Date: December 4, 2001

Harris I. Steinberg
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 982.2.)
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet shall be used for statistical purposes only.