

Superior Court of California

County of Orange



Case Number : 30-2013-00662555-CU-BC-CJC

Copy Request: 992266

Request Type: Case Documents

Prepared for: cns

Number of documents: 1

Number of pages: 12

07/15/2013 at 12:58:43 PM

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By Emma Castle, Deputy Clerk

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DBA ST. JUDE MEDICAL CENTER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ST. JUDE HOSPITAL dba ST. JUDE MEDICAL
CENTER, a California Corporation,

Plaintiff,

vs.

KAISER FOUNDATION HEALTH PLAN, INC.,
a California Corporation; KAISER
PERMANENTE INSURANCE COMPANY, a
California Corporation; KAISER FOUNDATION
HOSPITALS, a California Corporation; and
DOES 1 through 25, inclusive,

Defendants.

Case No: 30-2013-00662555-CU-BC-CJC

ASSIGNED TO: Judge David T. McEachen

UNLIMITED - DAMAGES IN EXCESS OF \$25,000

COMPLAINT FOR DAMAGES FOR:

- 1. UNFAIR BUSINESS PRACTICES**
- 2. BREACH OF WRITTEN CONTRACT**
- 3. BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING**
- 4. OPEN BOOK ACCOUNT**
- 5. UNJUST ENRICHMENT**

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

GENERAL ALLEGATIONS

1. Plaintiff ST. JUDE HOSPITAL dba ST. JUDE MEDICAL CENTER is a California corporation, with its principal place of business in Orange County, in the State of California (hereinafter referred to as "the Hospital"). The Hospital is a California licensed hospital located in the City of Fullerton.

2. Defendant KAISER FOUNDATION HEALTH PLAN, INC. is a California corporation, organized and existing under the laws of the State of California with its principal place of

1 business in the City of Oakland, County of Alameda, in the State of California (hereinafter referred to
2 as “KFHP”). KFHP is licensed as a health care service plan by the California Department of Managed
3 Health Care.

4 3. The Hospital is informed and believes that Defendant KAISER PERMANENTE
5 INSURANCE COMPANY is a California corporation, organized and existing under the laws of the
6 State of California with its principal place of business in the City of Oakland, County of Alameda, in
7 the State of California (hereinafter referred to as “KPIC”). KPIC is licensed as an insurer by the
8 California Department of Insurance.

9 4. Defendant KAISER FOUNDATION HOSPITALS is a California corporation,
10 organized and existing under the laws of the State of California with its principal place of business
11 operations in the City of Pasadena, County of Los Angeles, in the State of California (hereinafter
12 referred to as “KFH”).

13 5. KFHP, KPIC and KFH collectively are referred to as “Kaiser.”

14 6. The Hospital is unaware of the true names, identities, and capacities of Defendants sued
15 herein as Does 1 through 25, inclusive, and each of them as based thereon, sues said Defendants by
16 such fictitious names. When their true names and capacities are ascertained, Plaintiff will amend this
17 complaint by inserting their true names and capacities herein. The Hospital is informed and believes
18 and thereon alleges that each of the fictitiously named defendants is responsible in some manner for
19 the occurrences alleged herein, and that the Hospital’s damages as alleged herein were proximately
20 caused by those defendants.

21 7. The Hospital is informed and believes and thereon alleges that at all times mentioned
22 herein, each of the Defendants, including all Defendants sued under fictitious names, were the agent
23 and/or employee of each of the remaining Defendants, and in so doing the things alleged herein, were
24 acting within the scope of his, her or its agency and employment, and with the permission and consent
25 of the other Defendants.

26 8. The Hospital is withholding the full name of the Patients in this Complaint to preserve
27 the Patients’ protected rights to privacy concerning health care information. The Patients will be
28

1 referred to as Patients 1 and 2, and their medical and claims information has been and will be made
2 available to Defendants upon request.

3 THE AGREEMENT

4 9. The Hospital and Kaiser entered into the "Agreement for Hospital Services for Kaiser
5 Permanente Members" ("the Agreement") effective on or about September 1, 2006. Due to
6 confidentiality concerns, the Agreement is not attached to this complaint, but has been and will be
7 made available to the Defendants alleged to be parties to such Agreement upon request.

8 10. The Hospital is informed and believes that, in addition to entering into the Agreement
9 on its own behalf, KFHP entered into the Agreement as actual and/or ostensible agent of KFHP, KPIC
10 and Does 1 through 25. The Hospital is informed and believes that, at all times herein mentioned,
11 KFHP was the agent of KFHP, KPIC and Does 1 through 25, and in executing the Agreement was
12 acting in the scope of its authority as such agent and with the permission and consent of KFHP, KPIC
13 and Does 1 through 25. The Hospital is informed and believes that KFHP, KPIC and Does 1 through
14 25 actually performed under the Agreement, thus giving the Hospital the reasonable impression that
15 KFHP was their agent in executing the Agreement, and/or ratified the Agreement by issuing payment to
16 Hospital based on the rates set forth in the Agreement.

17 11. Pursuant to the Agreement, the Hospital is obligated to provide health care services to
18 Kaiser Commercial Members and Kaiser and Does 1 through 25 are obligated to reimburse the
19 Hospital for such service pursuant to the terms and rates set forth in the Agreement.

20 12. According to the terms of the Agreement, Kaiser and Does 1 through 25 are entitled to
21 pay the Hospital the discounted rate set forth in the Agreement for the Hospital's claims for
22 reimbursement for services provided to Kaiser Commercial Members only if Kaiser and Does 1
23 through 25 fully pay such claims within 60 days. The Agreement explicitly provides that, upon the
24 failure of Kaiser and Does 1 through 25 to fully pay a claim within 60 days, the discounted contract
25 rate will no longer apply and Kaiser and Does 1 through 25 will owe the Hospital total billed charges,
26 plus statutory interest, for such claim. The Agreement further provides that a partial payment does not
27 constitute full payment of a claim.

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1 22. On September 13, 2011, the Hospital subsequently requested a retro authorization
2 review for the denied in-patient dates of service, and provided Kaiser with a complete set of medical
3 records along with an itemized bill.

4 23. On October 24, 2011, Kaiser denied payment on medical services received after July
5 24, 2011, again stating services were not authorized because Patient 1 was stable for transfer.
6 However, Kaiser authorized payment for emergency stabilization services through July 24, 2011.

7 24. On November 8, 2011, Kaiser improperly paid the Hospital a total of \$101,822.53 for
8 services provided on July 22, 2011 through July 24, 2011 only, and identified an additional \$250.00 as
9 Patient liability for the services provided on those same dates. Kaiser improperly denied payment to
10 the Hospital for services provided on July 24, 2011 through July 25, 2011.

11 25. On January 10, 2012, the Hospital appealed Kaiser's denial of post stabilization
12 services received after July 24, 2011.

13 26. Pursuant to the applicable rates for the length of the Patient's stay and services rendered
14 that are set forth in the Agreement, and amounts assigned as patient responsibility and received from
15 Kaiser to date, Kaiser and Kaiser Hospitals owe the Hospital the remaining outstanding balance of
16 \$31,525.29.

17
18 **SPECIFIC ALLEGATIONS AS TO PATIENT 2**

19 27. On July 11, 2011, Patient 2 presented to the Emergency Room and was admitted as an
20 inpatient. The Hospital provided Patient 2 medically necessary and physician-ordered services through
21 July 15, 2011 for treatment of Tibia & Fibula Fractures.

22 28. Upon admission, the Hospital was unable to obtain Patient 2's Kaiser commercial
23 member insurance information, as Patient 2 arrived by ambulance into the emergency department of
24 the Hospital. Patient 2 stated her injury was work related, and failed to provide any Kaiser insurance
25 coverage information.

26 29. On July 14, 2011, the Hospital's admissions department was notified by a worker's
27 compensation adjuster regarding the denial of Patient 2's workers compensation claim due to Patient 2
28 being intoxicated at the time of the injury.

1 30. On July 14, 2011, Patient 2 gave the Hospital information regarding her Kaiser
2 insurance coverage, and Kaiser was immediately contacted and notified of Patient 2's admission.

3 31. The Hospital is informed and believes, and on that basis alleges, that Hospital was not
4 notified of Patient 2's eligibility and coverage with Kaiser until July 14, 2011. Therefore, Patient 2
5 could not have been transferred due to lack of proper insurance information at time of admission.

6 32. On July 29, 2011, the Hospital timely billed Kaiser for medical services provided to
7 Patient 2 from July 11, 2011 through July 15, 2011 in the amount of \$77,619.27.

8 33. On September 22, 2011, Kaiser notified the Hospital that it was denying the claim
9 based upon a failure to receive additional information requested to assist with its coverage
10 determination. On November 10, 2011, the Hospital forwarded said medical records to Kaiser for its
11 reconsideration.

12 34. On December 30, 2011, the Hospital provided further notice to Kaiser regarding its
13 provider Dispute, and again submitted its claim for reimbursement.

14 35. On January 31, 2012, Kaiser improperly paid the Hospital a total of \$5,432.20 for
15 services provided on July 11, 2011 only, and identified an additional \$50 as Patient liability for the
16 services provided on those same dates. Kaiser improperly denied payment to the Hospital for services
17 provided on July 12, 2011 through July 15, 2011.

18 36. Under the terms of the Agreement, Kaiser was entitled to a discount on the total
19 charges if Kaiser fully paid the claim within 60 days, which Kaiser failed to do. Rather, Kaiser
20 improperly made an underpayment to the Hospital in the amount of only \$5,432.20, and thus
21 improperly denied payment of the remaining amount due.

22 37. On February 1, 2012, Kaiser denied authorization for the care of services provided to
23 Patient 2 from July 12 2011 through July 15, 2011, stating post-stabilization services were not
24 authorized because Patient 2 was stable for transfer.

25 38. On February 14, 2012, the Hospital subsequently submitted an appeal of the denial of
26 its claim for services provided July 12, 2011 through July 15, 2011.

27 39. Pursuant to the terms of the Agreement, Kaiser owes the Hospital total reimbursement
28 of \$77,619.27 and no contractual discount applies, for the services provided to Patient 2. Applying

1 Kaiser's partial payment of \$5,432.20, and Patient responsibility of \$50.00, Kaiser owes the Hospital a
2 balance of \$72,137.07.

3 40. On April 5, 2012, Kaiser denied payment on medical services received after July 12,
4 2011, and stating services were not authorized and Patient 2 was stable for transfer.

5 41. Pursuant to the applicable rates for the length of the Patient's stay and services rendered
6 that are set forth in the Agreement, and amounts assigned as Patient responsibility and received from
7 Kaiser to date, Kaiser owes the Hospital the remaining outstanding balance of \$72,137.07.

8
9 **FIRST CAUSE OF ACTION**
10 **UNFAIR BUSINESS PRACTICES**
11 **(Business and Professions Code §17200 et seq.)**
12 **(AS TO ALL DEFENDANTS)**

13 42. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
14 Paragraphs 1 through 41 above.

15 43. California Business and Professions Code §17200 provides that "unfair competition
16 shall mean and include any unlawful, unfair or fraudulent business act or practice."

17 44. Beginning on an exact date unknown to Plaintiff, but within four years preceding the
18 filing of this complaint, Defendants engaged in acts of unfair business practices as defined in Business
19 and Professions Code §17200, as follows: Each and every denial of payments for services to provider
20 hospitals in which Kaiser unilaterally determined the patient was clinically stable for transfer to a
21 Kaiser facility and denied payment in full to provider hospitals.

22 45. Kaiser's denials of the claims for services provided to Patients 1 and 2 are in violation
23 of 22 *California Code of Regulations* §70717, which requires a patient's treating physician make the
24 determination that a transfer or discharge would not create a medical hazard to the patient. Kaiser
25 made the determination that Patients 1 and 2 were stable for transfer to a Kaiser Hospital and denied
26 the Hospital's claims without consulting Patient 1 and Patient 2's treating physicians before denying
27 said claims.

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1 46. The Hospital suffered injury in fact when Kaiser denied full payment of the Hospital's
2 claims for the care provided to the Patient as fully set forth above, alleging Patient 1 and 2 were stable
3 for transfer and Kaiser would not pay for post-stabilization care.

4 47. Said violations render Defendants liable to Hospital for restitution and injunctive relief
5 preventing Kaiser from denying claims on the basis that patients are "stable for transfer" when Kaiser
6 has not consulted with Patient 1 and Patient 2's treating physicians.

7
8 **SECOND CAUSE OF ACTION**
9 **BREACH OF WRITTEN CONTRACT**
10 **AS TO PATIENTS 1 AND 2**
11 **(AS TO ALL DEFENDANTS)**

12 48. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
13 paragraphs 13 through 41 above.

14 49. At the time Patients 1 and 2 were admitted to the Hospital on July 22, 2011, and July
15 11, 2011, respectively, the Agreement between Kaiser and the Hospital was in place and Kaiser was
16 obligated to make payment in accordance with its terms. The Agreement and the Kaiser-specific rates
17 stated therein provide for various payment schedules and discounts depending upon the type of
18 medical goods and services provided to Patients 1 and 2 by the Hospital.

19 50. The Hospital submitted its claims to Kaiser for the care and treatment provided to
20 Patient 1 for the last date of service from July 22, 2011 through July 25, 2011 and Patient 2 for the
21 dates of service from July 12, 2011 through July 15, 2011. The Hospital expects reimbursement under
22 the terms of the Agreement in the amount of \$211,217.09. Kaiser was entitled to a discount on the
23 total charges if Kaiser fully paid the claim within 60 days. However, Kaiser failed to fully pay the
24 claims within 60 days.

25 51. Rather, Kaiser improperly made underpayments to the Hospital in the amount of only
26 \$107,254.20 and thus breached the Agreement by improperly denied payment of the remaining
27 amount due.

28 52. The Hospital performed all its obligations under the Agreement.

1 53. As a result of Kaiser's failure to fulfill its contractual obligations in a reasonable, timely
2 or competent manner, the Hospital has not been fully compensated for the significant health care
3 services it provided to Patients 1 and 2 and has suffered damages.

4 54. The Hospital has attempted to resolve the dispute concerning the claim for Patient 1
5 several times. Such attempts have been to no avail.

6 55. On or about November 8, 2011, Kaiser breached the Agreement with respect to Patient
7 1 in regards to the last date of service and on or about January 31, 2012, Kaiser breached the
8 Agreement with respect to Patient 2 in regards to the dates of service from July 12, 2011 through July
9 15, 2011, by refusing to pay the full amounts due under the terms of the Agreement despite the
10 Hospital's appeals to Kaiser for further payments.

11
12 **THIRD CAUSE OF ACTION**
13 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
14 **(AS TO ALL DEFENDANTS)**

15 56. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
16 forth in paragraphs 9 through 41 above.

17 57. California law implies a covenant of good faith and fair dealing in all contracts between
18 parties entered into in the State of California.

19 58. At the time the Hospital submitted its bills to Kaiser for each of the Patient's
20 hospitalizations, the Agreement between the Hospital and Kaiser was in effect.

21 59. The Hospital provided medically necessary care and treatment to the Patients during
22 each hospitalization and met its obligations under the Agreement including timely submitting its bills
23 to Kaiser for the services rendered to the Patient.

24 60. All the conditions required under the Agreement for Kaiser to fully reimburse the
25 Hospital occurred.

26 61. Kaiser unfairly interfered with the Hospital's right to receive the benefits of the
27 Agreement by failing to pay the Hospital the amounts required by the Agreement after the Hospital
28 provided medically necessary services to the Patients and billed Kaiser for those services.

1 62. The Hospital was harmed by Kaiser's conduct in the amount of \$103,662.36, plus
2 interest thereon at the rate set forth in California Health & Safety Code §1371.35(b).

3
4 **FOURTH CAUSE OF ACTION**

5 **OPEN BOOK ACCOUNT**

6 **AS TO PATIENTS 1 AND 2**

7 **(AS TO ALL DEFENDANTS)**

8 63. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
9 forth in paragraphs 13 through 41 above.

10 64. The Hospital rendered services to Patient 1 and 2, Kaiser's insureds, from July 22,
11 2011, through July 25, 2011, and from July 11, 2011, through July 15, 2011, respectively, and Kaiser
12 is therefore responsible for payment of said services.

13 65. The Hospital has kept an accurate accounting of the payments made by Kaiser toward
14 the amounts it owes the Hospital for the services rendered to Patients 1 and 2.

15 66. Kaiser was entitled to a discount on the total charges if Kaiser fully paid the claims
16 within 60 days. However, Kaiser failed to fully pay the claims within 60 days. The Hospital expected
17 reimbursement in the amount of \$211,217.09. However, Kaiser only paid a portion of the amounts
18 owed totaling \$107,254.20. As a result, Kaiser continues to owe the Hospital for the services rendered
19 to Patient 1.

20 67. To this date, Kaiser continues to owe the Hospital for the services rendered to Patients
21 1 and 2 in the amount of \$103,662.36.

22
23 **FIFTH CAUSE OF ACTION**

24 **UNJUST ENRICHMENT**

25 **(AS TO ALL DEFENDANTS)**

26 68. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
27 forth in paragraphs 9 through 41 above.

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1 69. The Hospital provided medically necessary care and treatment to Patients 1 and 2 to
2 the best of the Hospital's ability.

3 70. The Hospital's provision of said medically necessary care and treatment to Patient 1
4 from July 22, 2011 through July 25, 2011, and to Patient 2 from July 11, 2011 through July 15, 2011,
5 was intended to and, in fact, benefited Kaiser because Patients 1 and 2 were provided with medical
6 care and treatment Kaiser was obliged to provide to its insureds.

7 71. The value of the benefit conferred upon Kaiser is \$211,217.09, which represents the
8 Hospital's total charges for the services provided to Patients 1 and 2 during their admissions. Kaiser
9 has failed to reimburse the Hospital for these charges, thereby retaining the benefit provided by the
10 Hospital.

11 72. As a result of the benefit conferred upon Kaiser by the Hospital, the Hospital is entitled
12 to restitution in the amount of \$211,217.09 less the \$107,254.20, paid by Kaiser and Patient 1
13 responsibility of \$250.00 and Patient 2 responsibility of \$50.00, for a total balance due of \$103,662.36.

14 73. Kaiser failed to reimburse the Hospital for the benefit of the significant health care
15 services the Hospital provided to Patients 1 and 2 and thus retained the benefit of these services at the
16 expense of the Hospital.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for relief for service provided to the Patients as follows:

- 3 1. For breach of contract, breach of the implied covenant of good faith and fair dealing
4 and open book account in the amount of \$103,662.36; or
5 2. For restitution and unjust enrichment in the amount of \$ 103,662.36, to be proven at the
6 time of trial;
7 3. For pre-judgment interest as provided by law;
8 4. For costs of suit herein incurred; and
9 5. For such other and further relief as the Court deems just and proper.

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11 DATED: July 15, 2013

HELTON LAW GROUP, APC

12 By: 

13 JONATHAN F. BUCK
14 STEVEN D. SPERLING

Attorneys for Plaintiff ST JUDE HOSPITAL dba
ST. JUDE MEDICAL CENTER