

MAY 15 2014

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TERESA A. RISI  
CLERK OF THE SUPERIOR COURT  
L. CUMMINGS DEPUTY

CASE PROGRESS CONFERENCE  
DATE: 11-18-2014  
TIME: 9:00 AM  
COURTROOM: 14.

Attorneys for Plaintiff  
COMMUNITY HOSPITAL OF THE MONTEREY  
PENINSULA

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF MONTEREY

COMMUNITY HOSPITAL OF THE  
MONTEREY PENINSULA,

Plaintiff,

v.

KAISER FOUNDATION HEALTH  
PLAN, INC.; KAISER PERMANENTE  
INSURANCE COMPANY; and DOES 1  
through 20, Inclusive,

Defendants.

Case No.

**M127814**

**COMPLAINT FOR DAMAGES AND FOR  
INJUNCTIVE RELIEF**

**[Limited Civil Action]**

**GENERAL ALLEGATIONS**

1. Plaintiff COMMUNITY HOSPITAL OF THE MONTEREY PENINSULA ("Community Hospital") is a California nonprofit public benefit corporation licensed to do business in the State of California, and is a community-based health care provider with its principal place of business in Monterey County, California.

2. Community Hospital is informed and believes that Defendant KAISER FOUNDATION HEALTH PLAN, INC. is a company doing business in the State of California.

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3. Community Hospital is informed and believes that Defendant KAISER PERMANENTE INSURANCE COMPANY is a California corporation doing business in the State of California and is a subsidiary of KAISER FOUNDATION HEALTH PLAN, INC. Community Hospital is further informed and believes and thereon alleges that Defendants KAISER PERMANENTE INSURANCE COMPANY and KAISER FOUNDATION HEALTH PLAN, INC. (collectively "Kaiser") are associated with and are agents of one another, and provide and administer health care benefit plans and related services to their participants in California.

4. Community Hospital is unaware of the true names and capacities of the defendants sued herein as Does 1 through 20, inclusive, and therefore sues those defendants by fictitious names. Community Hospital is informed and believes, and on that basis alleges, that each of these fictitious named defendants is responsible in some manner for the actions alleged in this Complaint. When the true names and capacities are ascertained, Community Hospital will amend this Complaint by asserting their true names and capacities. Community Hospital is informed and believes that each fictitiously named defendant has done, or has caused to be done, those things of which Community Hospital complains. Any reference made to Defendants individually or collectively shall, by such reference, be deemed a reference to, and an allegation against, each fictitiously named defendant.

## **FACTUAL BACKGROUND**

5. On or about October 12, 2012, a patient ("Patient") presented at Community Hospital's emergency room and sought and received emergency medical treatment. Community Hospital assigned Patient visit number 322188046. Patient was discharged on October 16, 2012. All of the medical treatment provided to Patient was medically necessary.

6. At the time of admission, Patient presented to Community Hospital proof of Kaiser health benefits. Patient's Kaiser Group Policy Number is 603701-700; Medical Record Number 14390730.

7. At the time of admission, Kaiser verified Patient's eligibility for health benefits provided by Community Hospital.

1           8.       During patient's stay, Community Hospital contacted Kaiser to provide a clinical  
2 review of Patient's status and to obtain authorization for Patient's continued treatment. Kaiser  
3 refused to accept the clinical review over the telephone refused to authorize or deny Patient's  
4 treatment.

5           9.       On or about October 23, 2012, Community Hospital electronically submitted to  
6 Kaiser a claim for payment for Patient's care from October 12, 2012 through October 16, 2012,  
7 and sent Kaiser a statement in the amount of \$23,499.00. Kaiser assigned claim number  
8 123459002525 to this claim.

9           10.      On or about October 24, 2012, Kaiser denied Community Hospital's claim for  
10 payment on the basis that Community Hospital failed to provide clinical review.

11           11.      Community Hospital appealed Kaiser's decision; however, Kaiser further denied  
12 payment to Community Hospital on the basis that, because clinical reviews were not received, the  
13 treatment provided to Patient was not medical necessity.

14           12.      To date, Kaiser has failed and refused to pay the charges due to Community  
15 Hospital concerning health care services for Patient rendered from October 12, 2012 through  
16 October 16, 2012. As a result, Defendants owe Community Hospital the amount of \$23,499.00.

17                           **FIRST CAUSE OF ACTION**

18                           **(Unfair Competition against all Defendants)**

19           13.      Community Hospital incorporates herein by reference the allegations set forth in  
20 Paragraphs 1 through 12.

21           14.      Kaiser is required to pay Community Hospital for the emergency services provided  
22 to its members without requiring prior authorization, pursuant to the public policy favoring  
23 patient access to health care, as stated in Insurance Code sections 10133 *et seq.*, Health and Safety  
24 Code sections 1317 and 1371 *et seq.*, and related statutes and regulations. The failure of Kaiser to  
25 pay Community Hospital's claim for emergency services for Patient constitutes an unfair business  
26 practice in violation of Business and Professions Code sections 17200 *et seq.*

27           15.      Separately, Defendants failed to take legally required action at the time that they  
28 disputed the medical necessity of the treatment provided to Patient. A plan must have a physician

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1 available for resolving disputed requests for authorization. (Health & Safety Code §1371.4(a).)  
2 If, after consultation with the plan physician, there is still a disagreement between the plan and  
3 the physician regarding the need for necessary medical care, the plan must assume responsibility  
4 for the care of the patient either by 1) having its medical personnel take over the case within a  
5 reasonable time after the disagreement; or 2) having a hospital under contract with the plan agree  
6 to accept the transfer of the patient. If the plan fails to satisfy either (1) or (2) above, further  
7 necessary care is deemed authorized by the plan, and payment may not be denied. (Health &  
8 Safety Code §1371.4(d).) In the case of concurrent review, care cannot be discontinued until the  
9 physician has been notified of the plan's denial, and an alternate care plan has been agreed upon  
10 by the physician. (Health & Safety Code §1367.01(h)(3), Insurance Code §10123.135(h)(3).)  
11 Defendants' failure to comply with the above laws constitutes an unfair business practice in  
12 violation of Business and Professions Code sections 17200 *et seq.*

13 16. Community Hospital is informed and believes and thereon alleges that Kaiser's  
14 members have been denied coverage and will continue to be denied coverage due to Kaiser's  
15 unlawful claims practices. Community Hospital is informed and believes and thereon alleges that  
16 medical providers have been denied payment for treatment and care provided to Kaiser's  
17 members and will continue to be denied such payment due to Kaiser's unlawful claims practices.  
18 No adequate remedy at law lies for Kaiser's continuing violations.

19 17. Community Hospital seeks equitable relief for Kaiser's acts of unfair competition  
20 in the form of disgorgement of the amounts Kaiser should have paid Community Hospital as the  
21 reasonable value of authorized or emergency services, as billed.

22 18. Community Hospital further seeks an injunction to stop Kaiser from denying  
23 Community Hospital's bills for emergency services.

24 19. Community Hospital further seeks an injunction to stop Defendants from denying  
25 Community Hospital's bills after failing to take responsibility for their members' care following a  
26 dispute over the medical necessity of the care.

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1 **SECOND CAUSE OF ACTION**

2 **(Common Count – Open Book Account against all Defendants)**

3 20. Community Hospital incorporates herein by reference the allegations set forth in  
4 Paragraphs 1 through 12.

5 21. Community Hospital has an ongoing business relationship with Defendants.  
6 Pursuant to this relationship, Community Hospital frequently provides medical care to  
7 Defendants' members for which Defendants agree to, and do provide payment.

8 22. Community Hospital maintains a statement in the regular course of business and in  
9 a reasonably permanent manner associated with each patient visit to Community Hospital,  
10 including visit number 322188046. Community Hospital regularly updates this statement to  
11 reflect debits and credits associated with the transaction.

12 23. The invoice for which Kaiser failed to make full payment on is the statement that  
13 Community Hospital sent to Kaiser on October 23, 2012 for Patient's treatment from October 12,  
14 2012 through October 16, 2012.

15 24. Kaiser refuses to pay and has not paid Community Hospital in accordance with its  
16 obligations, and as a result, the account with Community Hospital is in arrears.

17 25. The indebtedness of Kaiser to Community Hospital is evidenced by a statement  
18 maintained by Community Hospital in the regular course of business that is kept in a reasonably  
19 permanent form and manner.

20 26. Kaiser owes Community Hospital the total of the invoiced amount of \$23,499.00.

21 **THIRD CAUSE OF ACTION**

22 **(Common Count – Work, Labor, Services, and Materials Rendered against all Defendants)**

23 27. Community Hospital incorporates herein by reference the allegations set forth in  
24 Paragraphs 1 through 12.

25 28. Kaiser became indebted to Community Hospital for services rendered to Patient  
26 for which Kaiser is statutorily obligated to pay.

27 29. Community Hospital provided the health care services to Patient.

28 30. Rather than pay the billed charges for the health care services provided by

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1 Community Hospital to Patient, Kaiser has denied Community Hospital's entire claim.  
2 Community Hospital has demanded the amounts owed, but Kaiser has not paid those amounts.

3 31. Kaiser owes Community Hospital the total of the invoiced amounts for the  
4 services rendered.

#### 5 **FOURTH CAUSE OF ACTION**

##### 6 **(Quantum Meruit against all Defendants)**

7 32. Community Hospital incorporates herein by reference the allegations set forth in  
8 Paragraphs 1 through 12.

9 33. Defendants were obligated to pay Community Hospital for any emergency care of  
10 its members. Hospitals that operate emergency departments in California, such as Community  
11 Hospital, are legally required to provide emergency treatment to all patients until the patients are  
12 medically stable, without regard to the patients' insurance coverage or ability to pay. Health  
13 insurers and plans, including Defendants, in turn, are required by law to pay the hospitals for the  
14 emergency services provided. California public policy favors timely access to emergency  
15 services and direct payment by insurers to providers for such services, as stated in Insurance Code  
16 sections 10133 et seq., Health and Safety Code sections 1317 and 1371 et seq., and related  
17 statutes and regulations.

18 34. Community Hospital provided emergency services and post-stabilization services  
19 to Patient and billed Defendants for the reasonable value of such services, but Defendants have  
20 refused to pay Community Hospital in full.

21 35. As a result of the benefit conferred, Defendants owe Community Hospital  
22 damages for quantum meruit in the amount of the billed charges.

23 36. Defendants have failed to compensate Community Hospital fully for the  
24 significant health care services it provided to Patient.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff COMMUNITY HOSPITAL OF THE MONTEREY PENINSULA prays for relief as follows:

1. For damages in the amount of \$23,499.00;
2. For interest at the rate of 10% under Insurance Code sections 10123.13 and 10123.147 and applicable regulations, and/or Civil Code sections 3287 and 3289;
3. For an order of this Court ordering Kaiser to pay Community Hospital for all emergency services Community Hospital provides to Kaiser's members;
4. For an order of this Court ordering Defendants to pay Community Hospital's billed charges after failing to take responsibility for Defendants' members' care following a dispute over the medical necessity of the care.
5. For costs of suit; and
6. For such other and further relief as the Court deems just and proper.

Dated: May 15, 2014

Fenton & Keller

By: 

Christopher E. Panetta  
Attorneys for Plaintiff  
COMMUNITY HOSPITAL OF THE  
MONTEREY PENINSULA