

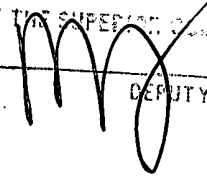


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FILED
ALAMEDA COUNTY

2014 JUN 13 PM 12:27

CLERK OF THE SUPERIOR COURT

BY  DEPUTY

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Attorney for Plaintiff
KAYSOME SUVANASENG

CALIFORNIA SUPERIOR COURT, ALAMEDA COUNTY

UNLIMITED JURISDICTION

RG14728990

KAYSOME SUVANASENG,

Plaintiff,

vs.

KAISER PERMANENTE INSURANCE
COMPANY, INC.; KAISER FOUNDATION
HEALTH PLAN, INC.; and DOES 1-50,

Defendants.

CASE NO:

CIVIL COMPLAINT FOR:

- 1) DECLARATORY RELIEF
- 2) BREACH OF CONTRACT

GENERAL ALLEGATIONS

Plaintiff KAYSOME SUVANASENG alleges the following:

- 1) At all times pertaining to the dispute which is the subject of this lawsuit, plaintiff KAYSOME SUVANASENG has been a resident of the State of California.
- 2) At all times pertaining to the dispute which is the subject of this lawsuit,

1 defendants KAISER PERMANENTE INSURANCE COMPANY, INC., and
2 KAISER FOUNDATION HEALTH PLAN, INC., have had their principal
3 business headquarters located in Alameda County, within the State of
4 California.

5
6 3) Plaintiff does not presently know the true names and capacities of the
7 defendants sued herein as DOES 1-50, inclusive. Plaintiff will seek leave
8 of the Court to amend her complaint to allege said defendants' true
9 names as soon as plaintiff ascertains them.

10 4) Plaintiff believes and is informed, and accordingly alleges, that at all times
11 pertaining to the dispute which is the subject of this lawsuit, defendants
12 KAISER PERMANENTE INSURANCE COMPANY, INC.; KAISER
13 FOUNDATION HEALTH PLAN, INC.; and DOES 1-50 were the agents
14 and employees of other defendants, and that they were acting in the
15 course and scope of that agency and employment. Plaintiff will seek
16 leave of the Court to amend her complaint to allege said defendants' true
17 names as soon as plaintiff ascertains them.
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19
20 **FIRST CAUSE OF ACTION: DECLARATORY RELIEF**

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22 5) Plaintiff re-alleges and incorporates by reference paragraphs one through
23 four, as though fully set forth herein.

24 6) On February 22nd, 2010, plaintiff was involved in a motor vehicle accident,
25 which occurred on northbound US-101, in an unincorporated area of
26 Marin County, California (hereinafter "THE ACCIDENT"). THE
27 ACCIDENT was caused by John Heenan, when he rear-ended a vehicle
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1 driven by Vanphenh Khammyvong. At the time of THE ACCIDENT,
2 plaintiff was a passenger in Khammyvong's vehicle.

- 3
4 7) At the time of THE ACCIDENT, the plaintiff was employed with Kentucky
5 Fried Chicken, and was actually en route to a management conference.
6 As a consequence, she was in the course and scope of her employment
7 when THE ACCIDENT occurred.
- 8 8) Plaintiff suffered bodily injuries from THE ACCIDENT, including a sternal
9 fracture. Immediately after THE ACCIDENT, she was taken by
10 ambulance to Marin General Hospital, where she received treatment for
11 her injuries. After she was discharged, plaintiff was billed by the hospital
12 in the amount of \$37,820.60.
- 13 9) At the time of THE ACCIDENT, plaintiff had a policy of health insurance
14 through defendants KAISER PERMANENTE INSURANCE COMPANY,
15 INC. and KAISER FOUNDATION HEALTH PLAN, INC. Upon receipt of
16 the bill from Marin General Hospital, the plaintiff forwarded the bill to those
17 defendants, for payment under the terms of the health insurance policy.
18 On or around July 15th, 2010, defendants paid \$24,270.82 to Marin
19 General Hospital.
- 20
21 10) The contract of insurance between plaintiff and defendants contained a
22 third-party liability reimbursement clause. It stated that if defendants paid
23 insurance benefits for treatment that plaintiff required as a consequence
24 of a third party's negligence, the defendants would be entitled to
25 reimbursement of those benefits in the event that plaintiff recovered funds
26 from a claim against the negligent third party.
- 27 11) At the time of THE ACCIDENT, Mr. Heenan was insured through CSAA,
28

1 and plaintiff made a bodily injury claim against that insurance policy. On
2 or around June 14th, 2011, plaintiff settled her claim for the sum of
3 \$80,000.00 (hereinafter, "THE SETTLEMENT").
4

5 12) Pursuant to Labor Code section 3825, *et seq*, plaintiff obtained approval
6 from her worker's compensation insurance carrier (Risk Enterprise
7 Management Limited) for THE SETTLEMENT. This was necessary
8 because the worker's compensation carrier had paid approximately
9 \$3,400.00 for medical treatment arising from THE ACCIDENT.

10 13) By the time THE SETTLEMENT had been finalized, defendants had paid
11 approximately \$25,000.00 in benefits through plaintiff's insurance policy.
12 On that subject, plaintiff's counsel started communicating with defendants,
13 in an attempt to ascertain their final reimbursement claim.

14 14) Despite over two years and dozens of contacts, defendants have been
15 completely incapable of locating the \$24,270.82 payment to Marin
16 General Hospital in their records. In fact, the only documentation
17 provided to plaintiff's counsel thus far has been a ledger from an office
18 visit, which occurred the day after THE ACCIDENT. The charge for that
19 service was \$170.00.
20

21 15) On or about January 16th, 2013, plaintiff's counsel wrote Kaiser
22 Permanente, with a renewed demand that the defendants locate the
23 records of the payment. That letter also confirmed that the plaintiff was
24 filing a formal grievance.

25 16) Those steps did nothing to break this logjam, and on or about April 10th,
26 2013, plaintiff's counsel wrote Ana Cordova, who works in defendant
27 KAISER FOUNDATION HEALTH PLAN, INC.'s, Member Services
28

1 Department. As part of that letter, plaintiff's counsel included the July
2 15th, 2010, payment ledger from defendants, which confirmed that the
3 majority of the Marin General Hospital bill had been paid through plaintiff's
4 health insurance policy with defendants. Since that time, various
5 employees and agents of defendants have assured plaintiff's counsel on
6 multiple occasions that this new information would allow them to locate
7 the payment to Marin General Hospital.
8

9 17) In the year since the last letter, defendants' employees have once again
10 failed to locate the payment within their internal records.

11 18) The plaintiff does not wish to violate her contractual obligations with
12 defendants. To that end, she and her attorneys have kept \$46,476.00 in
13 trust, pending notification of defendants' actual claim for reimbursement.
14 Plaintiff has chosen not to rely on defendants' initial representation that
15 their claim is for the sum of \$170.00, as her duty to deal with defendants
16 in good faith requires her to advise them that the amount they're seeking
17 is several orders of magnitude less than the amounts they have actually
18 paid.
19

20 19) Defendants' ongoing inability to find any record of the amounts they have
21 paid to Marin General Hospital has put plaintiff to considerable hardship,
22 as tens of thousands of dollars have been tied up in trust for over two
23 years. Additionally, plaintiff has been unable to finalize payment of the
24 lien from the workers' compensation carrier. This is because the carrier
25 will not agree to settling its claim until it has received confirmation from
26 defendants that defendants will not present a claim to the worker's
27 compensation carrier for reimbursement of the Marin General Hospital
28

1 payment.

2 20) Under the terms of the contract, defendants are required to take
3 reasonable efforts to provide the plaintiff with a demand for
4 reimbursement in a reasonable time frame.

5 21) Plaintiff has been attempting to get an accurate confirmation of
6 defendants' claim for reimbursement for nearly three years at this point,
7 and so far, defendants have been completely unable to present the
8 plaintiff with an accurate demand. As far as plaintiff is concerned, the
9 defendants are in breach of a material term of their contract of insurance
10 with the plaintiff. The delay has been completely unreasonable, and
11 plaintiff believes that defendants have waived any interest in
12 reimbursement for their payment to Marin General Hospital at this time.

13 22) Plaintiff has an interest in the funds presently held in trust. She has legal
14 fees and costs that are owed to her attorneys, as a result of work
15 performed on her bodily injury claim arising from THE ACCIDENT.
16 Additionally, her workers' compensation carrier has filed a lien against her
17 recovery from THE ACCIDENT, for approximately \$3,400.00. As long as
18 defendants continue to drag their feet, the plaintiff will not have the funds
19 to reimburse her workers' compensation carrier.

20 23) Plaintiff now respectfully requests a binding judicial declaration of her
21 rights and responsibilities under her contract of insurance with the
22 defendants. Particularly, plaintiff requests a judicial declaration that
23 defendants have waived all interest in any reimbursement for their
24 \$24,270.82 payment to Marin General Hospital.
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SECOND CAUSE OF ACTION: BREACH OF CONTRACT

24) Plaintiff re-alleges and incorporates by reference paragraphs one through twenty-three, as though fully set forth herein.

25) At the time of THE ACCIDENT, plaintiff had a contract of health insurance through defendants (hereinafter "THE CONTRACT"). THE CONTRACT contained various terms outlining the rights and responsibilities of each party to THE CONTRACT.

26) One of the terms of THE CONTRACT requires plaintiff to reimburse defendants for benefits paid for treatment that is necessitated for injuries caused by the wrongful acts of a third party. Plaintiff's duty to reimburse defendants is triggered when (a) she makes some kind of financial recovery from such a tortfeasor, and (b) defendants advise her of their claim for reimbursement.

27) Despite dozens of attempts by plaintiff to ascertain a "correct" reimbursement claim amount from the defendants, defendants have been completely unable to provide the plaintiff with such information. On that subject, plaintiff's counsel has supplied the defendants with documentation *from their own files* evidencing the \$24,270.82 payment to Marin General Hospital. In response, the defendants have bounced the paperwork and correspondence on this matter between multiple departments, keeping the conclusion of plaintiff's claim in limbo for over two years.

28) An implied term in the contract between plaintiff and defendants is the duty for each party to THE CONTRACT to fairly deal with the other parties

1 to THE CONTRACT in good faith. Plaintiff alleges that defendants'
2 inexcusable failure to provide her with a correct reimbursement claim is a
3 breach of a material term of THE CONTRACT.
4

5 29) Defendants have also refused to provide plaintiff's counsel with a copy of
6 the reimbursement language from THE CONTRACT, despite plaintiff's
7 counsel having supplied them long ago with a legally-valid patient
8 information release. Thus, the plaintiff has been unable to fully determine
9 the extent of her liabilities under THE CONTRACT. Plaintiff alleges that is
10 further evidence of the defendants' lack of good faith in this matter.

11 30) As a result of defendants' breach of THE CONTRACT, the plaintiff has
12 suffered monetary damages, as she has been unable to use or enjoy a
13 large portion of the funds from the \$80,000.00 settlement of her bodily
14 injury claim. Instead of being put to productive use, her funds have been
15 sitting in a trust account. Plaintiff alleges that her special damages from
16 this failure are in an amount not exceeding \$25,000.00.
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18 31) Plaintiff further alleges that the defendants' inability to perform on their
19 end of the contract has put her to great uncertainty, and that this
20 uncertainty has caused her substantial emotional distress. Plaintiff
21 alleges that her damages arising from the distress are in an amount not
22 exceeding \$10,000.00.
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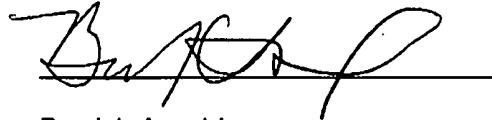
24 **PRAYER FOR RELIEF**

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26 Based on the foregoing, plaintiff KAYSOME SUVANASENG requests entry of
27 judgment against defendants KAISER PERMANENTE INSURANCE COMPANY, INC.,
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1 and KAISER FOUNDATION HEALTH PLAN, INC., as follows:

- 2
- 3 1) For recovery of special damages arising from defendants' breach of
- 4 contract, according to proof;
- 5 2) For recovery of damages for emotional distress arising from defendants'
- 6 breach of contract, according to proof;
- 7 3) For a judicial declaration that defendants have waived any interest in
- 8 reimbursement for their \$24,270.82 payment to Marin General Hospital;
- 9 4) For a judicial declaration of any other pertinent rights and responsibilities
- 10 that plaintiff and defendants have under THE CONTRACT;
- 11 5) For recovery of attorney fees and legal costs incurred by plaintiff in the
- 12 prosecution of this action;
- 13 6) For further relief as the Court deems just and proper.
- 14

15 DATED: June 12, 2014

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17 Barrick Arnold

18 Attorney for Plaintiff

19 KAYSOME SUVANASENG

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