

1 Glenn R. Kantor – SBN 122643
E-mail: gkantor@kantorlaw.net
2 Timothy J. Rozelle – SBN 298332
E-mail: trozelle@kantorlaw.net
3 KANTOR & KANTOR LLP
19839 Nordhoff Street
4 Northridge, California 91324
Telephone: (818) 886 2525
5 Facsimile: (818) 350 6272

6 Attorney for Plaintiff
SANJAY GHOSH, M.D.
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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SANJAY GHOSH, M.D.,
12 Plaintiff,

Case No.: '14CV2785 JLS MDD

13 v.

14 KAISER FOUNDATION HEALTH
15 PLAN, INC.,
16 Defendant.

COMPLAINT FOR:

1. VIOLATION OF ERISA (29 U.S.C. § 1132(a)(1)(B));
2. BREACH OF IMPLIED-IN-FACT CONTRACT – EMERGENCY CLAIMS;
3. QUANTUM MERUIT;
4. UNJUST ENRICHMENT;
5. VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 1371.75; AND
6. DECLARATORY RELIEF

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25 Plaintiff, SANJAY GHOSH, M.D., herein sets forth the allegations of his
26 Complaint against Defendant KAISER FOUNDATION HEALTH PLAN, INC.
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KANTOR & KANTOR LLP
19839 Nordhoff Street
Northridge, California 91324
(818) 886 2525

1 **JURISDICTION AND VENUE**

2 1. This Court has subject matter jurisdiction over this action pursuant to
3 28 U.S.C. § 1331, because this action arises under the laws of the United States.
4 This action is brought under 29 U.S.C. section 1332, because the action seeks to
5 enforce rights under the Employee Retirement Income Security Act of 1974
6 (“ERISA”), and pursuant to 28 U.S.C. section 1367, because the state law claims are
7 so related to the federal claims that they form part of the same case or controversy.

8 2. This Court is the proper venue for this action pursuant to 28 U.S.C. §
9 1391(b) because a substantial part of the events or omissions giving rise to the
10 claims alleged herein occurred in this Judicial District, and because Kaiser
11 Foundation Health Plan, Inc. (“Kaiser”) is doing business in this judicial district, in
12 that it covers employees residing in this judicial district. The medical claims at issue
13 herein are also specifically administered in this judicial district. Thus, venue is
14 proper in this judicial district pursuant to 29 U.S.C. §1132(e)(2) (special venue rules
15 applicable to ERISA actions).

16 **THE PARTIES**

17 3. Plaintiff was, at all times relevant, a resident of the County of San
18 Diego, State of California, and is a licensed medical doctor practicing in San Diego
19 County.

20 4. Plaintiff is a licensed physician and is an emergency trauma physician
21 specialist. Plaintiff has performed and continues to perform emergency medical
22 services for Defendants’ members on a non-contracted basis, sometimes referred to
23 as an “out-of-network” or “non-participating” provider.

24 5. Defendant is a health insurance plan licensed to do business in
25 California, and provided health insurance coverage to an individual treated by Dr.
26 Ghosh.

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19839 Nordhoff Street
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GENERAL ALLEGATIONS

1
2 6. The emergency health care system in California is in critical condition.
3 The demand for emergency care has rapidly increased and will continue to grow in
4 the future. According to a recent evaluation of the emergency care environment in
5 the United States by the American College of Emergency Physicians, California
6 continues to lag behind a majority of states in providing access to adequate
7 emergency care. In order to continue to provide emergency health care services,
8 providers depend on the prompt and full payment of rendered emergency services
9 by health insurers.

10 7. Plaintiff (“Dr. Ghosh”) is a licensed physician and is an emergency
11 trauma physician specialist. Dr. Ghosh has performed and continues to perform
12 emergency medical services for Defendants’ members on a non-contracted basis,
13 sometimes referred to as an “out-of-network” or “non-participating” provider.

14 8. Under the federal Emergency Medical Treatment and Active Labor Act
15 (“EMTALA”), Social Security Act section 1867(a), and California Health and
16 Safety Code section 1317, individuals who believe that they are suffering a medical
17 emergency have the right to seek treatment at the nearest emergency room, and
18 hospitals which have emergency rooms. Providers, like Dr. Ghosh, have a statutory
19 duty to provide emergency services and are to all individual regardless of the
20 patients’ ability to pay or their possession or type of insurance benefits.

21 9. Therefore, by law, when an insured of Defendant presents themselves
22 to an emergency room, the provider on call is legally obligated to treat that person
23 without regard to the person’s ability to pay and without first obtaining insurance
24 verification or authorization to provide the treatment. Provider cannot refuse to
25 provide emergency treatment to one of Defendant’s insureds simply because Kaiser
26 is non-contracted with the provider and the individual does not have the personal
27 resources to pay for such emergency care.

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1 10. Providers can either enter into an agreement with Defendants or they
2 can provide services to Defendants' subscribers without any contract with
3 Defendants governing that relationship. Participating, or in-network providers, are
4 physicians who have signed a contract with a particular managed care entity and
5 receive reimbursement of eligible charges directly from that entity. Participating
6 providers agree to provide healthcare services to plan enrollees at reduced rates in
7 exchange for access to the plan's patient base, among other things.

8 11. Out-of-network providers, by contrast, do not have a signed contract
9 with a particular managed care entity and therefore may collect their full, non-
10 emergency charges directly from patients at the time of service and are not required
11 to accept reduced rates for procedures performed.

12 12. Dr. Ghosh is not contracted with Kaiser for any of the relevant claims
13 at issue in this action. California law requires that physicians provide emergency
14 medical services to patients regardless of the patient's insurance status or ability to
15 pay; the physician cannot turn the emergency patient away without service. *See* Cal.
16 Health & Saf. Code § 1317; *Bell v. Blue Cross of California*, 131 Cal.App.4th 211
17 (2005). As a result of this requirement, California law thus mandates that health
18 plans must cover payment for emergency room services provided to its members by
19 out-of-network providers at least until the patient is stabilized. Cal. Health & Saf.
20 Code § 1371.4; *Prospect Medical Group, Inc. v. Northridge Emergency Medical*
21 *Group*, 45 Cal.4th 497, 504 (2009) ("Subdivision (b) of section 1371.4 was enacted
22 in 1994 to impose a mandatory duty upon health care plans to reimburse non-
23 contracting providers for emergency medical services."). The amount of those
24 payments must be determined as set forth in the California Code of Regulations,
25 Title 28, section 1300.71 (setting forth payment must be at usual and customary rate
26 ("UCR")) and the minimum claims payment and dispute resolution standards to
27 ensure compliance with the Knox-Keene Act's time requirements for claims
28 reimbursement). *Children's Hospital Central California v. Blue Cross of California*,

1 F065603, 2014 WL 2590823 (Cal. Ct. App. June 10, 2014). Defendants may deny
2 payment only if they reasonably determine that services were never performed. 28
3 C.C.R. § 1300.71. Thus, California law provides a sturdy backbone to California's
4 emergency medical care system and provides the crux of an important matter of
5 California public policy. These statutory and regulatory requirements legally bind
6 the relationship between Dr. Ghosh and Kaiser. Furthermore, this relationship has
7 been and will remain active and ongoing as Dr. Ghosh continues to render
8 emergency medical care in California.

9 13. Dr. Ghosh has many years of surgical experience as a neurosurgeon
10 performing complex surgeries of the head, neck and skull base. Dr. Ghosh performs
11 surgical procedures much of which is induced by trauma and requires complicated,
12 expensive, and highly-skilled treatment resulting from a decade of formal education,
13 medical residency and years of medical practice. The complexity of Dr. Ghosh's
14 work is compounded when such services are rendered in an emergency context.
15 Based upon the legal requirements set forth above in California, Dr. Ghosh rendered
16 the emergency medical services referenced herein and reasonably relied upon Kaiser
17 to properly pay for those services as required by law.

18 14. The UCR amount is the maximum amount the insurer will consider
19 eligible for reimbursement to non-participating providers who are outside of their
20 network. UCR is supposedly determined based on a review of the prevailing
21 charges made by peer physicians for a particular medical or health service by a
22 specific type of physician within a specific community or geographical area.
23 However, UCR is typically set by Defendant and other insurance carriers using
24 various internal and external data sources.

25 15. Defendant is obligated to pay emergency doctors, like Plaintiff, their
26 usual, customary and reasonable rates for medical services. Nevertheless,
27 Defendant pays non-contracting emergency doctors, including Plaintiff, arbitrary
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1 amounts that are substantially below the cost, value and common range for the
2 services rendered.

3 16. Plaintiff provided emergency services to a Kaiser insured, Kenneth D.¹
4 Kenneth D. is a 25 year-old man who, on November 15, 2010, fell from a great
5 height and suffered a severe L2 burst fracture, as well as a hemorrhagic contusion of
6 the brain. Kenneth D. was rushed to and admitted at the emergency room at Scripps
7 Memorial Hospital in La Jolla, California. Plaintiff, an employee of San Diego
8 NeuroTrauma Associates, Inc., is on staff at Scripps Hospital and due to his
9 expertise, he was asked by Scripps to perform emergency back and cranial surgery
10 on Kenneth D. Plaintiff was not a contracted provider with Kaiser.

11 17. On November 15, 2010, Plaintiff performed a procedure to place a
12 pressure and oxygen monitor in Kenneth D.'s skull to monitor his intracranial
13 pressure in the post-injury period.

14 18. On November 19, 2010, Plaintiff performed four additional emergency
15 surgeries on Kenneth D. in order to treat patient's declining cerebral oxygen levels
16 and marked rise in intracranial pressure. All four procedures took approximately 15
17 hours to complete.

18 19. Plaintiff was billed \$126,288.86 for services rendered prior to,
19 including and after emergency surgeries performed on November 15, 2010,
20 November 19, 2010, November 26, 2010, and November 30, 2010. To this date,
21 Kaiser has only paid Plaintiff's neurosurgeon \$43,522.49. Kenneth D. still remains
22 responsible and would have to pay out-of-pocket for the outstanding balance of
23 \$82,766.37, the difference between the amount billed to and the amount paid by
24
25

26 ¹ For privacy reasons, the name of Kenneth D. is not set forth herein in full. However, Kaiser has
27 identified the patient via his Medical Record Number: 10268393. If additional information is
28 required by defendant to identify Kenneth D. and/or the services provided to him by Plaintiff, such
information will be disclosed to Defendant upon its request.

1 Kaiser for the emergency surgeries performed on Kenneth D.

2
3 **FIRST CAUSE OF ACTION**

4 **Enforcement Under 29 U.S.C. § 1132(a)(1)(B)**

5 **For Failure to Pay ERISA Plan Benefits, Enforcement and Clarification of**
6 **Rights, Prejudgment and Postjudgment Interest, and Attorneys' Fees**
7 **and Costs**

8 20. Plaintiff incorporates by reference all preceding paragraphs 1 through
9 19, as though fully set forth herein.

10 21. This claim is alleged by Plaintiff for relief in connection with claims
11 for treatment rendered to patient Kenneth D., who was covered by a health benefits
12 plan governed by ERISA. This is a claim to recover benefits, enforce rights and
13 clarify rights to benefits under 29 U.S.C. § 1132(a)(1)(B).

14 22. Plaintiff is a non-assignee provider and third party beneficiary to the
15 health insurance contract created between Kenneth D. and Kaiser. Only ERISA
16 beneficiaries have standing to assert a section 1132(a)(1)(B) claim. ERISA defines
17 "beneficiary" as "a person designated by a participant, or by the terms of an
18 employee benefit plan, who is or may become entitled to a benefit thereunder." 29
19 U.S.C. 1002(8). The term, "beneficiary," has been broadly construed to include
20 more than just "spouses and dependents" of participants. *Peterson v. Am. Life &*
21 *Health Ins. Co.*, 48 F.3d 404, 409 (9th Cir. 1995). Instead, "beneficiary" means
22 "any person designated to receive benefits from a policy that is part of an ERISA
23 plan" by the terms of the plan itself or by a participant." *Id.*

24 23. Plaintiff is informed and believes that Kaiser is the plan administrator
25 and therefore is a proper defendant for this claim.

26 24. Plaintiff is informed and believes that Kaiser received benefit claims,
27 evaluated and processed those claims, made initial benefit determinations, made and
28

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1 administered benefit payments, and handled providers appeals of benefit
2 determinations.

3 25. Plaintiff is informed and believes that Kaiser employs improper
4 methods to calculate UCR rates when determining how much to reimburse
5 emergency providers who render services to their insureds.

6 26. Kaiser breached ERISA plan provisions at issue by under-pricing and
7 underpaying Plaintiff the out-of-network benefits covered by Kenneth D.'s ERISA
8 plan. Kaiser relied on a claims payment system to calculate UCR which arbitrarily,
9 systematically and improperly reduces and underpays benefits owed to physicians,
10 like Plaintiff, for emergency services rendered to its insureds.

11 27. Plaintiff exhausted all administrative remedies available to him, by
12 appealing every adverse claim determination made by Kaiser in the normal course
13 of business. Despite Plaintiff's exhaustion of the appeals process under the terms of
14 patient's ERISA plans, Kaiser failed to establish and follow reasonable claims
15 procedures as required by ERISA.

16 28. Despite Plaintiff's appeals, such appeals and further administrative
17 efforts would be futile and meaningless. Kaiser failed to process claims submitted
18 by Plaintiff in a manner consistent with ERISA regulations. *See* 29 C.F.R. §
19 2560.503-1. Kaiser refused to adequately explain its benefit determinations. In
20 letters sent to Plaintiff, Kaiser provided no methodology or reasonable explanation
21 for determining how it arrived at paying non-contracted claims at such an
22 unreasonable and low amount. By steadfastly applying and systematically relying
23 on its flawed data and methodologies, Kaiser rendered the administrative appeal
24 process a futile and meaningless endeavor.

25 29. In light of Kaiser's failure to comply with ERISA regulations,
26 Plaintiff's claims are "deemed exhausted." Furthermore, Plaintiff's administrative
27 and arbitration remedies are exhausted for the reasons alleged above, including, but
28 not limited to, the fact that Kaiser relied on invalid data and claims processing

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1 systems to determine payment to Plaintiff, a nonparticipating provider. Exhaustion
2 would have been futile given that Kaiser continues to employ and rely on improper
3 methodologies which systematically underpay claims to nonparticipating providers
4 who render emergency procedures to its insureds.

5 30. The Plaintiff is informed and believes and thereupon alleges that in
6 underpaying reimbursement for medically necessary treatment, Kaiser failed to
7 comply with its policy provision requiring it to cover usual, reasonable and
8 customary rates for the provision of emergency services. Rather, Kaiser underpaid
9 Plaintiff on the grounds that the medically necessary services provided exceeded the
10 UCR rates determined by Kaiser.

11 31. As a proximate result of the denial of reimbursement for services
12 rendered to Kaiser's insured and due to Plaintiff, Plaintiff has been damaged in the
13 amount of a substantial majority of the medical bills incurred, in a total sum to be
14 proven at the time of trial.

15 32. As a further direct and proximate result of this underpayment of
16 Plaintiff's provision of emergency services, Plaintiff in pursuing this action has been
17 required to incur attorneys' costs and fees. Pursuant to 29 U.S.C. §1132(g)(1),
18 Plaintiff is entitled to have such fees and costs paid by Defendant.

19 33. Plaintiff is entitled to recover benefits due and enforce his rights to
20 benefits under the terms of the plan under 29 U.S.C. §1132(a)(1)(B).

21
22 **SECOND CAUSE OF ACTION**

23 **For Breach of Implied-In-Fact Contract – Emergency Claims**

24 34. Plaintiff incorporates all allegations set forth in the above paragraphs 1
25 through 33, as though fully set forth herein.

26 35. Under EMTALA and California Health & Safety Code section 1371.4,
27 Kaiser was and is required to reimburse Dr. Ghosh for emergency medical services
28 rendered to its member, Kenneth D.

1 36. Plaintiff is informed and believes and thereon alleges that, at all
2 relevant times herein, Kenneth D. had a valid Policy with Kaiser.

3 37. Plaintiff is informed and believes that Kenneth D. obtained such a
4 Policy with Kaiser for the specific purpose of (1) ensuring that Kenneth D. would
5 have access to medically necessary treatment and emergency room services at health
6 care facilities like Scripps Hospital, and would have access to emergency treatment
7 of the type provided by Plaintiff and (2) ensuring that Kaiser would pay for the
8 health care expenses incurred by Kenneth D. Kaiser knew or reasonably should
9 have known that any insured would seek emergency medical treatment at the
10 hospital in closest proximity to them, such as Kenneth D. did with Scripps Hospital,
11 and that Scripps would utilize the medical services of expert physicians such as
12 Plaintiff.

13 38. By virtue of the obligations imposed by Health & Safety Code section
14 1371.4, there exists and existed an implied-in-law contract between Dr. Ghosh and
15 Kaiser when Dr. Ghosh provided emergency medical services to Kenneth D. at
16 Scripps Hospital. This implied-in-law contract requires Kaiser to reimburse Dr.
17 Ghosh for emergency medical services rendered to Kenneth D., Kaiser's member.

18 39. Despite Kaiser's obligation to reimburse Dr. Ghosh, Kaiser has refused
19 to pay and continues to refuse to pay Dr. Ghosh for the whole of the sums owed to
20 Plaintiff for the treatment services provided to Kenneth D.

21 40. As a result of the foregoing breach, Plaintiff has been damaged by
22 Kaiser by at least \$82,766.37. Accordingly, there is now due, owing, an unpaid sum
23 of \$82,766.37, plus statutory interest thereon.

24
25 **THIRD CAUSE OF ACTION**

26 **For Quantum Meruit**

27 41. Plaintiff incorporates all allegations set forth in the above paragraphs 1
28 through 40, as though fully set forth herein.

1 42. Quantum meruit is an equitable remedy implied by law under which a
2 plaintiff who had rendered services benefitting the defendants may recover the
3 reasonable value of those services.

4 43. In November 2010, Plaintiff rendered emergency medical services to
5 Kenneth D., who is insured with Kaiser. Kaiser knew these services were being
6 provided to their insured, Kenneth D., and did not contest these services being
7 provided. Kenneth D. accepted each of the services provided by Plaintiff.

8 44. Under California law, Kaiser is required to reimburse Plaintiff at a
9 quantum meruit rate for all emergency services rendered to its enrollees. The
10 quantum meruit amount is determined according to the full charges that would be
11 billed by Plaintiff in the absence of contractual rates.

12 45. The quantum meruit rate for the medical treatment Plaintiff provided to
13 Kenneth D. \$82,766.37. This amount represents the amount Plaintiff receives from
14 other health plans for similar treatment provided to their members. Plaintiff has
15 submitted statements to Kaiser for this amount, and has made repeated demands that
16 it be paid for the medical treatment provided to Kenneth D.

17 46. Kaiser has underpaid and continues to refuse to pay Plaintiff for the
18 whole of the sums owed to Plaintiff for the treatment services provided to Kenneth
19 D. Accordingly, there is now due, owing, an unpaid sum of \$82,766.37, plus
20 statutory interest thereon.

21
22 **FOURTH CAUSE OF ACTION**

23 **For Unjust Enrichment**

24 47. Plaintiff incorporates all allegations set forth in the above paragraphs 1
25 through 46, as though fully set forth herein.

26 48. Kaiser has received from Kenneth D. insurance premium benefits
27 having a reasonable value, which they may not justly retain, and therefore have been
28 unjustly enriched in a sum according to proof at trial.

1 49. As a direct and proximate result of Kaiser’s wrongful conduct as
 2 alleged herein, and as further alleged in the Prayer below, Plaintiff has been
 3 damaged in an amount of \$82,766.37, together with prejudgment interest thereon at
 4 the maximum rate provided by law.

5
 6 **FIFTH CAUSE OF ACTION**

7 **For Violation of California Health & Safety Code section 1371.35**

8 50. Plaintiff incorporates all allegations set forth in the above paragraphs 1
 9 through 49, as though fully set forth herein.

10 51. The Knox-Keene Act further requires that “[a] health care service plan,
 11 including a specialized health care service plan, shall reimburse each complete
 12 claim, or portion thereof, whether in state or out of state, as soon as practical, but no
 13 later than 30 working days after receipt of the complete claim by the health care
 14 service plan, or if the health care service plan is a health maintenance organization,
 15 45 working days after receipt of the complete claim by the health care service plan.”
 16 Cal. Health & Safety Code § 1371.35(a) (emphasis added). Alternatively, “a plan
 17 may contest or deny a claim, or portion thereof, by notifying the claimant, in
 18 writing, that the claim is contested or denied, within 30 working days after receipt of
 19 the claim by the health care service plan, or if the health care service plan is a health
 20 maintenance organization, working days after receipt of the claim by the health care
 21 service plan.” *Id.* (emphasis added).

22 52. As alleged herein, Kaiser violated California Health and Safety Code
 23 section 1371.35 by their actions which include, but are not limited to, failing to
 24 reimburse Plaintiff for Kenneth D.’s medically necessary surgical services within
 25 45-working days after receipt of the claim.

26 53. As a direct and proximate result of Kaiser’s wrongful conduct as
 27 alleged herein, and as further alleged in the Prayer below, Plaintiff is entitled to the
 28 greater of \$15 per year per claim or interest at the rate of 15% per claim beginning

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 (818) 886 2525

1 with the first calendar day after the 45-working-day period. Cal. Health & Safety
2 Code § 1371.35(b).

3
4 **SIXTH CAUSE OF ACTION**

5 **For Declaratory Relief**

6 54. Plaintiff incorporates all allegations set forth in the above paragraphs 1
7 through 53, as though fully set forth herein.

8 55. A dispute has arisen between Plaintiff and Kaiser as to the amount that
9 Kaiser is required to pay Plaintiff for the medically necessary services provided by
10 Plaintiff to Kenneth D. Kaiser contends that it owes Plaintiff no additional monies
11 in connection with emergency services provided to Kenneth D. Plaintiff contends
12 that it is entitled to receive payment in the amount of \$82,766.37, plus statutory
13 interest, for the emergency services provided to Kenneth D.

14 56. Plaintiff desires a judicial determination by the Court that Kaiser is
15 required to pay Plaintiff for the emergency services provided to Kenneth D. at a
16 reasonable rate, not the rate that Kaiser has improperly determined is owed for the
17 treatment provided.

18 57. Such a declaration is necessary and appropriate at this time so that
19 Plaintiff and Kaiser may ascertain their rights, duties and obligations concerning the
20 medical services that Plaintiff provided to Kenneth D.

21
22 **REQUEST FOR RELIEF**

23 Wherefore, Plaintiff prays for judgment against Defendant as follows:

24 1. Pursuant to 29 U.S.C. § 1132(a)(1)(b), a Judgment requiring Defendant
25 to immediately reimburse at an adequate level medical benefits due and owing under
26 the Plan and, specifically, to reimburse in full Plaintiff's claims for surgical back
27 procedures by his treating neurosurgeon and all related medical benefits related
28 thereto;

- 1 2. Pursuant to 29 U.S.C. § 1132(g), payment of all costs and attorneys’
- 2 fees incurred in pursuing this action;
- 3 3. For compensatory damages in an amount of not less than \$82,766.37,
- 4 plus statutory interest;
- 5 4. For restitution in an amount of not less than \$82,766.37, plus statutory
- 6 interest;
- 7 5. For a declaration that Kaiser is obligated to pay Plaintiff all monies
- 8 owed for services rendered to Kenneth D.;
- 9 6. For all attorneys’ fees and costs incurred in bringing this action;
- 10 7. For such other and further relief as the Court deems just and proper.

11
12 DATED: November 19, 2014

KANTOR & KANTOR, LLP

13
14 By: /s/ Glenn R. Kantor

15 Glenn R. Kantor
16 Timothy J. Rozelle
17 Attorney for Plaintiff
18 Sanjay Ghosh, M.D.
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KANTOR & KANTOR LLP
19839 Nordhoff Street
Northridge, California 91324
(818) 886 2525

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

'14CV2785 JLS MDD

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SANJAY GHOSH, M.D.

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Glenn R. Kantor; Timothy J. Rozelle (818) 886-2525
Kantor & Kantor, LLP
19839 Nordhoff Street, Northridge, CA 91324

DEFENDANTS

KAISER FOUNDATION HEALTH PLAN, INC.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 374 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property, 21 USC 881 <input type="checkbox"/> 690 Other <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. § 1132(a)(1)(B)

Brief description of cause:
Failure to pay plan benefits

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

11/21/2014

SIGNATURE OF ATTORNEY OF RECORD

/s/ Glenn R. Kantor

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING I/P _____

JUDGE _____

MAG. JUDGE _____