

BY FAX

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SCOTT POWELL and HOLLIE POWELL

FILED
ALAMEDA COUNTY

DEC 18 2014

CLERK OF THE SUPERIOR COURT
By Monica J. Davis Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

SCOTT POWELL, individually, by and through
his guardian ad litem, HOLLIE POWELL;
HOLLIE POWELL, individually, and as guardian
ad litem for SCOTT POWELL;

Plaintiffs,

v.

KAISER FOUNDATION HEALTH PLAN, INC., a
California corporation, doing business as KAISER
PERMANENTE; KAISER FOUNDATION
HOSPITALS, a California corporation; THE
PERMANENTE MEDICAL GROUP, INC., a
California corporation; and DOES 1 through 100,
Inclusive,

Defendants.

CASE NO.

RG14751883

COMPLAINT FOR DAMAGES

1. **BREACH OF CONTRACT**
2. **BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING**
3. **NEGLIGENCE (Civil Code § 3428)**
4. **INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**
5. **NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS**

PRAYER FOR EXEMPLARY DAMAGES

DEMAND FOR JURY TRIAL

[Petition for Guardian Ad Litem filed
concurrently herewith]

BY FAX

1 COME NOW plaintiffs and allege as follows:

2 **THE PARTIES**

3 1. Plaintiffs SCOTT POWELL and HOLLIE POWELL are, and at all relevant times were,
4 residents of the State of California, residing in the City of San Mateo in San Mateo County. SCOTT
5 POWELL and HOLLIE POWELL are now, and at all times herein mentioned were, husband and wife.

6 2. Plaintiff is informed and believes that Defendant KAISER FOUNDATION HEALTH
7 PLAN, INC. (hereinafter referred to as "KAISER"), doing business as KAISER PERMANENTE, is,
8 and at all relevant times was, a corporation duly organized and existing under the laws of the State of
9 California and is authorized to transact and is transacting the business of insurance in the State of
10 California, with its principal place of business in the City of Oakland in Alameda County.

11 3. Plaintiffs are informed and believe, and based thereon allege, that THE PERMANENTE
12 MEDICAL GROUP, INC. is, and at all relevant times was, a corporation duly organized and existing
13 under the laws of the State of California. Plaintiffs are informed and believe that THE PERMANENTE
14 MEDICAL GROUP, INC. has its principal place of business in the City of Oakland in Alameda County.

15 4. Plaintiffs are informed and believe, and based thereon allege, that KAISER
16 FOUNDATION HOSPITALS, is and at all relevant times was, a corporation duly organized and
17 existing under the laws of the State of California and is authorized to transact business in California.
18 Plaintiffs are informed and believe that KAISER FOUNDATION HOSPITALS has its principal place of
19 business in the City of Oakland in Alameda County.

20 5. Plaintiffs are further informed and believe that DOES 1 through 100 were agents and
21 employees of Defendants KAISER FOUNDATION HEALTH PLAN, INC., THE PERMANENTE
22 MEDICAL GROUP, and KAISER FOUNDATION HOSPITALS.

23 6. The true names and/or capacities of Defendants DOES 1 through 100 are unknown to
24 plaintiffs, who therefore sue said defendants by such fictitious names. Plaintiffs are informed and
25 believe and thereon allege that each of the defendants fictitiously named herein as a DOE is tortiously
26 responsible for the events and happenings hereinafter referred to and thereby proximately caused the
27 injuries and damages to plaintiffs as hereinafter alleged. Plaintiffs will seek leave of court to amend this
28 complaint to allege the true names and/or capacities of said fictitiously named defendants when

1 ascertained. Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously-named
2 defendants are responsible in some manner for the claims, obligations and damages sued upon herein.

3 7. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned,
4 defendants were the agents, servants, employees, and/or joint venturers of each of their codefendants,
5 and each was, as such, acting within the course, scope and authority of said agency, employment and/or
6 venture, with the advance knowledge, acquiescence or subsequent ratification of each codefendant.

7 8. Defendants' conduct as described herein was undertaken by officers and managing agents
8 of KAISER, THE PERMANENTE MEDICAL GROUP, INC., KAISER FOUNDATION HOSPITALS
9 and DOES 1 through 100, who are responsible for claims operations, communications and/or decisions.
10 The conduct of said managing agents and individuals was therefore undertaken on behalf of defendants.
11 Plaintiffs are further informed and believe that defendants had advance knowledge of the actions and
12 conduct of said individuals whose actions and conduct were ratified, authorized and approved by
13 managing agents and other officers, directors and managing agents.

14 COMMON ALLEGATIONS

15 9. At all times herein mentioned, plaintiffs SCOTT POWELL (hereinafter referred to as
16 "SCOTT POWELL" or "SCOTT") and HOLLIE POWELL (hereinafter referred to as "HOLLIE
17 POWELL" or "HOLLIE") had a contract for health insurance through KAISER.

18 10. Plaintiffs SCOTT POWELL and HOLLIE POWELL were enrolled in and insured during
19 all relevant times pursuant to a small business health insurance plan issued to Scott W. Powell dba
20 Galaxie Construction (hereinafter referred to as the "POLICY"). SCOTT POWELL, during all relevant
21 times, was the self-employed owner of Galaxie Construction. During all relevant times, HOLLIE
22 POWELL was employed as a bookkeeper for Galaxie Construction. During all relevant times, Galaxie
23 Construction had no other employees and HOLLIE POWELL and SCOTT POWELL were the only
24 persons insured under the POLICY.

25 11. The first party relationship with plaintiffs alleged herein imposes on defendants separate
26 and distinct legal duties. By way of its contracts with enrollees, such as plaintiffs, KAISER undertakes
27 the duty to provide indemnity against medical care costs to the members enrolled in KAISER's health
28 plans, including the POLICY. Because the POLICY provides indemnity against the risk of medical care

1 costs, it is the equivalent of and constitutes medical insurance. All the standard indicia of insurance
2 exist in the relationship and all of the factors as to which a duty of good faith and fair dealing, the breach
3 of which sounds in tort, exist in the context of that relationship.

4 12. Because the POLICY provides coverage exclusively for a self-employed person and his
5 spouse, plaintiffs are informed and believe and based thereon allege that the instant dispute is not
6 governed by the Employee Retirement Income Security Act of 1974 ("ERISA").

7 13. Plaintiffs sought and purchased insurance coverage from KAISER for economic
8 protection and peace of mind in the event of a health calamity in their family. In exchange for plaintiffs'
9 payment of premiums, the POLICY provides coverage for medically necessary care and obligates
10 defendants to promptly pay benefits owed to plaintiffs pursuant to the POLICY. A true and correct copy
11 of the Evidence of Coverage for the period commencing August 1, 2012 through June 30, 2013 is
12 attached hereto as Exhibit 1.

13 14. The POLICY provides, in the pertinent parts:

14 Outpatient Care

15 We cover the following outpatient care subject to the Cost Sharing
16 Indicated:

17 *****

- 18 • Physical, occupational, and speech therapy: a \$50 Copayment per
19 day.
- 20 • Physical, occupational, and speech therapy provided in an
21 organized, multidisciplinary rehabilitation day-treatment program:
22 a \$50 Copayment per day.

23 *****

24 Hospital Inpatient Care

25 We cover the following inpatient Services at a \$500 Copayment per day in
26 a Plan Hospital, when the services are generally and customarily provided
27 by acute care general hospitals inside our Service Area:

- 28 • Room and board, including a private room if Medically Necessary

- Specialized care and critical care units
- General and special nursing care
- Operating and recovery rooms
- Services of Plan Physicians, including consultation and treatment by specialists

- Durable medical equipment and surgical supplies

- **Physical, occupational, and speech therapy (including treatment in an organized, multidisciplinary rehabilitation program)** (Emphasis added).

Skilled Nursing Facility Care

Inside our Service Area, we cover at no charge up to 100 days per benefit period (including any days we covered under any other evidence of coverage offered by your Group) of skilled inpatient Services in a Plan Skilled Nursing Facility. The skilled inpatient Services must be customarily provided by a Skilled Nursing Facility, and above the level of custodial or intermediate care.

We cover the following Services:

- Physician and nursing Services
- Room and board
- Drugs prescribed by a Plan Physician as part of your plan of care in the Plan Skilled Nursing Facility in accord with our drug formulary guidelines if they are administered to you in the Plan Skilled Nursing Facility by medical personnel

- Durable medical equipment in accord with our durable medical equipment formulary if Skilled Nursing Facilities ordinarily furnish the equipment
- Imaging and laboratory Services that Skilled Nursing Facilities ordinarily provide
- Medical social services
- Blood, blood products, and their administration
- Medical supplies
- Physical, occupational, and speech therapy

BENEFITS AND COST SHARING

We cover the Services described in this “Benefits and Cost Sharing” section, subject to the “Exclusions, Limitations, Coordination of Benefits, and Reductions” section, only if all of the following conditions are satisfied:

- You are a Member on the date that you receive the Services
- The Services are Medically Necessary
- The Services are one of the following:
 - Health care items and services for preventive care
 - Health care items and services for diagnosis, assessment, or treatment
 - Health education covered under “Health Education” in this “Benefits and Cost Sharing” section
 - Other health care items and services
- The Services are provided, prescribed, authorized, or directed by a Plan Physician except where specifically noted to the contrary in the sections listed below....

1 *****

2 EXCLUSIONS, LIMITATIONS, COORDINATION OF BENEFITS,
3 AND REDUCTIONS

4 Exclusions

5 The items and services listed in this "Exclusions" section are excluded
6 from coverage. These exclusions apply to all Services that would
7 otherwise be covered under this Evidence of Coverage regardless of
8 whether the services are within the scope of a provider's license or
9 certificate. Additional exclusions that apply only to a particular benefit
10 are listed in the description of that benefit in the "Benefits and Cost
11 Sharing" section.

12 *****

13
14 Custodial Care

15 Assistance with activities of daily living (for example: walking, getting in
16 and out of bed, bathing, dressing, feeding, toileting, and taking medicine).
17 This exclusion does not apply to assistance with activities of daily living
18 that is provided as part of covered hospice, Skilled Nursing Facility, or
19 inpatient hospital care.

20 *****

21
22 Residential Care

23 Care in a facility where you stay overnight, except that this exclusion does
24 not apply when the overnight stay is part of covered care in a hospital, a
25 Skilled Nursing Facility, inpatient respite care covered in the "Hospice
26 Care" section, a licensed facility providing crisis residential Services
27 covered under "Inpatient psychiatric hospitalization and intensive
28 psychiatric treatment programs" in the "Mental Health Services" section,

1 or a licensed facility providing transitional residential recovery Services
2 covered under the "Chemical Dependency Services" section.

3 *****

4 DEFINITIONS

5 *****

6 Medically Necessary: A Service is Medically Necessary if it is medically
7 appropriate and required to prevent, diagnose, or treat your condition or
8 clinical symptoms in accord with generally accepted professional
9 standards of practice that are consistent with a standard of care in the
10 medical community.

11 *****

12 Post-Stabilization Care: Medically Necessary Services related to your
13 Emergency Medical Condition that you receive after your treating
14 physician determines that this condition is Stabilized.

15 *****

16 Preventive Care Services: Services that do one or more of the following:

- 17 • Protect against disease, such as in the use of immunizations
18 • Promote health, such as counseling on tobacco use
19 • Detect disease in its earliest stages before noticeable symptoms
20 develop, such as screening for breast cancer.

21 *****

22 Stabilize: To provide the medical treatment of the Emergency Medical
23 Condition that is necessary to assure, within reasonable medical
24 probability, that no material deterioration of the condition is likely to
25 result from or occur during the transfer of the person from the facility.

26 *****

27 15. On or about June 22, 2012, SCOTT POWELL (age 45) was driving home from visiting
28 an ill friend and suffered an intracranial hemorrhage caused by an arteriovenous malformation (AVM).

1 AVM is rare condition caused by an abnormal connection between arteries and veins in the brain.
2 SCOTT was rendered unconscious, discovered by a passerby and rushed to Kaiser Hospital – Redwood
3 City. SCOTT underwent an emergent craniotomy with resection of ruptured AVM and remained
4 unconscious for a period of several weeks. When he awoke, he was paralyzed on the right side of his
5 body, required a feeding tube, and he was unable to communicate.

6 16. On or about August 10, 2012, SCOTT was deemed medically stable and discharged to
7 Kaiser Permanente Post Acute Care Center, San Leandro, a skilled nursing facility. SCOTT
8 commenced but was unable to continue with therapy due to suffering various medical complications at
9 the facility, including various infections and respiratory distress.

10 17. On or about September 9, 2012, SCOTT was transferred to Eden Hospital and treated in
11 the Intensive Care Unit for additional medical complications, including infections and cardiac arrest.

12 18. On or about September 10, 2012, SCOTT was returned to Kaiser Hospital – Redwood
13 City for further treatment and management of the various infections he contracted while at Kaiser
14 Permanente Post Acute Care Center, San Leandro.

15 19. On or about October 7, 2012, SCOTT was discharged from Kaiser Hospital – Redwood
16 City to Valley House Skilled Nursing Facility in Santa Clara. SCOTT experienced further medical
17 complications and was transferred on or about October 10, 2012 to Kaiser Hospital Santa Clara for
18 treatment of infection.

19 20. Per HOLLIE POWELL's request that SCOTT receive acute rehabilitation for his brain
20 injury pursuant to the POLICY, on or about October 27, 2012, SCOTT was discharged to Santa Clara
21 Valley Medical Center for rehabilitation in the facility's Brain Injury Rehabilitation unit.

22 21. While at Santa Clara Valley Medical Center, SCOTT suffered a further recurrence of
23 infections and required treatment. Once his symptoms were controlled, SCOTT was able to participate
24 in and was making progress in rehabilitation. Specifically, he demonstrated an ability to follow
25 commands and communicate and to swallow and chew food, among other functional gains.

26 22. Despite his continued improvements, on or about December 19, 2012, KAISER
27 discharged SCOTT from Santa Clara Valley Medical Center to a lower level of care at Sunnyvale Health
28 Care Center Skilled Nursing Facility. There, SCOTT's condition deteriorated. SCOTT was emergently

1 transported on or about January 17, 2013 to Kaiser Hospital – Redwood City Emergency Department
2 where he was treated for pneumonia.

3 23. On or about December 27, 2012, following SCOTT's premature discharge from Santa
4 Clara Valley Medical Center's Acute Rehabilitation Center, HOLLIE POWELL transmitted a request to
5 KAISER that SCOTT be readmitted to Santa Clara Valley Medical Center to continue with the program
6 of rehabilitation therapy for his brain injury. In her request, HOLLIE outlined the gains that SCOTT
7 was making in the rehabilitation program and explained his need for continued intensive physical,
8 speech and occupational therapy, which was not available to him at the skilled nursing level of care.

9 24. In a letter dated December 30, 2012, KAISER denied HOLLIE POWELL's request for
10 further acute rehabilitation for SCOTT POWELL stating that acute rehabilitation was not medically
11 indicated and SCOTT POWELL was not a candidate for acute rehabilitation. KAISER's denial letter
12 further stated,

13 "Mr. Powell's discharge plan is to a skilled nursing facility. Our
14 specialists would like to express that a skilled nursing facility is proficient
15 in caring for patients who, like Mr. Powell, require treatment of aspiration
16 pneumonia, bed sores, bowel and bladder training, tube feedings,
inhalation therapy treatments, and sub-acute rehabilitation services."

17 25. HOLLIE POWELL requested an Independent Medical Review through the California
18 Department of Managed Health Care regarding KAISER's denial of coverage for acute rehabilitation for
19 SCOTT POWELL. On or about January 10, 2013, SCOTT's case was forwarded to the Center for
20 Health Dispute Resolution for an independent review.

21 26. On or about January 18, 2013, the Department of Managed Health Care (DMHC) issued
22 its written decision regarding the disputed services and adopted the determination of the Independent
23 Medical Review Organization (IMRO). The IMRO determined that the requested service, acute
24 inpatient rehabilitation, was medically necessary, thus reversing KAISER's denial. Reviewing the case
25 for the IMRO was a physician board certified and actively practicing in physical medicine and
26 rehabilitation. The physician determined that during SCOTT's acute inpatient rehabilitation stay,

27 "[Scott] demonstrated the ability to participate and achieve functional
28 gains in an intensive rehabilitation setting. He also appeared to benefit
significantly from close physician monitoring for the early detection and
management of medical complications. While in the skilled facility

1 setting, the patient developed multiple medical complications requiring
2 repeated hospitalizations.”

3 The reviewing physician went on to state,

4 “Recovery from ICH (intracranial hemorrhage) can be slow and
5 significant recovery has been observed up to six months to one year
6 following presentation. The patient therefore meets the generally accepted
7 guidelines for acute inpatient rehabilitation and continues to have the
8 potential to achieve further functional recovery. All told, acute inpatient
9 rehabilitation is medically necessary.”

10 27. In a letter dated January 23, 2013, KAISER notified HOLLIE POWELL that KAISER’s
11 denial had been overturned by the DMHC. On or about January 22, 2013, KAISER transferred SCOTT
12 to Kaiser Foundation Rehabilitation Center - Vallejo, an acute inpatient rehabilitation facility.

13 28. Shortly after SCOTT’s transfer to Kaiser Foundation Rehabilitation Center – Vallejo and
14 his commencement of acute rehabilitation, SCOTT’s therapies were decreased and HOLLIE POWELL
15 was advised that SCOTT was going to be discharged to a long term care facility because KAISER did
16 not feel he could meet its standards for rehabilitation improvements. KAISER determined that SCOTT
17 would be transferred to long term care skilled nursing facility, distantly located approximately 190 miles
18 from plaintiffs’ home.

19 29. On or about March 25, 2013, HOLLIE POWELL submitted a grievance to KAISER
20 objecting to SCOTT being transferred to a lower level of care at a distant facility after receiving only a
21 limited opportunity to participate in the rehabilitation program. Subsequently, in a denial letter to
22 HOLLIE POWELL dated March 29, 2013, KAISER denied the request for SCOTT to receive acute
23 rehabilitation services, stating, “Mr. Powell does not meet the acute rehabilitation criteria because of a
24 lack of meaningful functional progress, and he is medically stable for a less intense level of care.” In its
25 denial letter, KAISER went on to state to HOLLIE,

26 “The discharge options have been discussed many times with you, and it
27 has been noted that you have no plans to take Mr. Powell home at this
28 time. A skilled nursing facility was located for Mr. Powell, and according
to the records you refused to have him transferred. If Mr. Powell remains
at the Kaiser Foundation Rehabilitation Center in Vallejo, CA, beyond his
discharge date, please understand that he might be financially responsible
for any expenses incurred.”

1 30. While SCOTT was at Kaiser Foundation Rehabilitation Center – Vallejo and plaintiffs
2 were requesting continued rehabilitation for SCOTT, KAISER transmitted to SCOTT and HOLLIE via
3 certified mail a “Guarantor Statement” summarizing the charges associated with SCOTT’s room, board
4 and rehabilitation for the twelve (12) day period from March 14, 2013 through March 25, 2013. The
5 statement reflected charges in the amount of \$39,120.00 and stated that this amount was due by 90 days
6 post discharge.

7 31. On or about April 1, 2013, HOLLIE POWELL requested an Independent Medical
8 Review through the Department of Managed Health Care (DMHC) regarding KAISER’s denial of acute
9 rehabilitation therapy for SCOTT POWELL.

10 32. In a letter dated April 8, 2013, the DMHC upheld KAISER’s denial of coverage for acute
11 rehabilitation therapy for SCOTT POWELL.

12 33. Thereafter, in a letter dated April 23, 2013, KAISER confirmed its intent to discharge
13 SCOTT from Kaiser Foundation Rehabilitation Center.

14 34. On or about April 23, 2013, SCOTT was discharged from Kaiser Foundation
15 Rehabilitation Center and transferred to Burlingame Long Term Care Center Skilled Nursing Facility –
16 San Mateo.

17 35. On or about September 19, 2013, SCOTT POWELL underwent a comprehensive
18 evaluation by Michael L. Raney, a Certified Brain Injury Specialist with the Centre For Neuro Skills.
19 The Centre For Neuro Skills (CNS) provides high-quality, individualized, specialized, comprehensive,
20 post-acute brain injury rehabilitation services in a highly-structured environment to return individuals
21 like SCOTT who have sustained debilitating brain injuries to the highest level of independence possible.

22 36. As a result of the rehabilitation evaluation, Mr. Raney determined that in order to achieve
23 the best outcome for SCOTT, SCOTT’s neurological deficits needed to be more thoroughly explored
24 and aggressively treated by therapy specialists experienced with brain injury as part of a cohesive
25 program. Among numerous other detailed recommendations for SCOTT’s rehabilitation, Mr. Raney
26 recommended that SCOTT participate in an appropriately intensive and sustained inpatient post-acute
27 neurological rehabilitation program, to include speech therapy, occupational therapy, physical therapy,
28 and counseling.

1 37. On or about March 24, 2014, HOLLIE POWELL submitted a request to KAISER for
2 SCOTT to participate in the recommended multidisciplinary rehabilitation program at CNS.

3 38. In a letter dated April 23, 2014, KAISER denied the request, stating that an out-of-Plan
4 referral for physical, occupational, and speech therapy services was not medically indicated for
5 SCOTT's condition. The denial letter further stated,

6 "It has been determined that the care you have requested from a non-Plan
7 provider can be provided by appropriately credentialed in-Plan providers.
8 The committee recommends an in-Plan evaluation in the Kaiser
9 Permanente South San Francisco Medical Center Physical Medicine and
10 Rehabilitation (PMR) Department."

11 39. KAISER's April 23, 2014 letter instructed HOLLIE to follow up with the Kaiser
12 Permanente South San Francisco Medical Center Physical Medicine and Rehabilitation (PMR)
13 Department to schedule the rehabilitation evaluation for SCOTT.

14 40. Following multiple attempts by HOLLIE to schedule the promised evaluation, HOLLIE
15 was finally provided with an appointment for SCOTT on August 6, 2014 – nearly four (4) months after
16 KAISER denied coverage to SCOTT for multidisciplinary rehabilitation at CNS on the basis that the
17 requested services could be provided in-Plan.

18 41. On or about August 6, 2014, SCOTT underwent the in-Plan evaluation promised in
19 KAISER's April 23, 2014 denial letter and an appointment was completed with Elizabeth Heilman MD.

20 42. Since the time of the August 6 evaluation and continuing, KAISER has refused to
21 provide coverage to SCOTT POWELL for a mutli-disciplinary acute rehabilitation program at CNS or
22 any other rehabilitation center.

23 43. Plaintiffs to date have not received a written denial or explanation from KAISER
24 regarding its determination following the in-Plan rehabilitation evaluation.

25 //

26 //

27 //

28 //

FIRST CAUSE OF ACTION BY PLAINTIFF SCOTT POWELL, an individual, and HOLLIE POWELL, an individual, FOR BREACH OF CONTRACT AGAINST DEFENDANTS KAISER FOUNDATION HEALTH PLAN, INC., a California corporation, KAISER FOUNDATION HOSPITALS, a California corporation, THE PERMANENTE MEDICAL GROUP, INC., a California corporation, and DOES 1 through 100, Inclusive.

44. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 43 as though fully set forth in this cause of action.

45. Under the terms of the POLICY, defendants and DOES 1 through 100, inclusive, had a duty to authorize, approve and pay for covered benefits. Plaintiffs SCOTT POWELL and HOLLIE POWELL reasonably relied upon the POLICY for coverage for medically necessary services and for the peace of mind that they would be able to obtain medical treatment if necessary.

46. Among other things, the POLICY provides coverage for Plaintiff SCOTT POWELL's medically necessary care and treatment. The POLICY, as detailed above, expressly provides coverage for physical, occupational, and speech therapy provided in an organized multidisciplinary rehabilitation program.

47. The care and treatment that plaintiffs requested for SCOTT POWELL, *i.e.*, a multidisciplinary rehabilitation program to treat SCOTT POWELL's brain injury, was medically necessary and was a covered benefit under the POLICY.

48. Plaintiffs have performed all of the terms, conditions and obligations of the POLICY, including paying the premiums due under the POLICY.

49. Defendants breached the POLICY by refusing to fully and promptly pay benefits due under the POLICY. Defendants refused to pay for the care and treatment Plaintiff SCOTT POWELL required to appropriately address his brain injury during the above referenced time period and continuing under the specious assertion that the care was not medically necessary.

50. Plaintiffs are informed and believe and thereon allege that defendants have breached the terms and provisions of the POLICY by other acts or omissions of which plaintiffs are presently unaware and which will be shown according to proof at the time of trial.

1 51. As a direct and proximate result of defendants' conduct and breach of their contractual
2 obligations, plaintiffs have suffered damages under the POLICY in an amount to be determined
3 according to proof at the time of trial, plus interest and other foreseeable incidental damages according
4 to proof.

5 **SECOND CAUSE OF ACTION BY PLAINTIFFS SCOTT POWELL, an individual, and**
6 **HOLLIE POWELL, an individual, FOR BREACH OF THE IMPLIED COVENANT OF GOOD**
7 **FAITH AND FAIR DEALING AGAINST DEFENDANTS KAISER FOUNDATION HEALTH**
8 **PLAN, INC., a California corporation, KAISER FOUNDATION HOSPITALS, a California**
9 **corporation, THE PERMANENTE MEDICAL GROUP, INC., a California corporation**
10 **and DOES 1 through 100, Inclusive.**

11 52. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 51 as though
12 fully set forth in this cause of action.

13 53. Defendants agreed to act in good faith and deal fairly with plaintiffs in all matters relating
14 to the POLICY and claims arising thereunder. As an insurer, defendants had the responsibility to
15 promptly, thoroughly and fairly conduct balanced investigations of claims for benefits by their insureds
16 (i.e., plaintiffs) and to not unreasonably delay or withhold payment of benefits. In discharging such
17 responsibilities, KAISER was required to: (1) investigate plaintiffs' claims thoroughly; (2) fully inquire
18 as to all possible bases that might support plaintiffs' claims; and (3) search diligently for any and all
19 facts which would support the payment of plaintiffs' claims for benefits.

20 54. Defendants unreasonably and without proper cause have withheld and refused to pay
21 benefits owed plaintiffs under the POLICY, frustrating the agreed common purposes of the contract and
22 disappointing plaintiffs' reasonable expectations that plaintiffs' covered claims would be paid and paid
23 promptly. Plaintiffs are further informed and believe that defendants breached their duty of good faith
24 and fair dealing and unreasonably:

- 25 a. Failed to reasonably and promptly investigate, adjust, and process the claims of
26 plaintiffs;
27 b. Failed to investigate plaintiffs' claims thoroughly;
28 c. Failed to evaluate plaintiffs' claims objectively;

- 1 d. Failed to consider all relevant information and data when erroneously determining
2 that Plaintiff SCOTT POWELL's requested treatment was not a covered benefit;
- 3 e. Failed to consider SCOTT POWELL's inability to be effectively treated at a
4 lower level of care (*i.e.*, skilled nursing) given the diminished opportunities for
5 rehabilitation in this setting as well as SCOTT's history of suffering from numerous
6 medical complications and recovery setbacks at this level of care;
- 7 f. Failed to consider SCOTT POWELL's young age (45) when determining that he
8 would not be provided with an opportunity to continue participating in a multi-
9 disciplinary brain injury rehabilitation program to improve his quality of life and
10 independence going forward;
- 11 g. Failed to consider that without the appropriate rehabilitative interventions and
12 therapies of sufficient intensity and duration, SCOTT POWELL would be deprived of the
13 opportunity for a meaningful recovery;
- 14 h. Failed to consider the consequences to SCOTT POWELL, a brain injured patient,
15 of not participating in intensive rehabilitation in a timely manner and that without
16 appropriate neurological rehabilitative interventions, SCOTT POWELL may be
17 permanently prevented from obtaining the fullest recovery possible;
- 18 i. Failed to give at least as much consideration to plaintiffs' interests as to their own
19 interests;
- 20 j. Failed to diligently search for and consider evidence supporting the medical
21 necessity of Plaintiff SCOTT POWELL's requested treatment;
- 22 k. Failed to further investigate and re-evaluate initial erroneous claims decisions
23 following appeals by plaintiffs;
- 24 l. Were aware that the breach of their duty of good faith and fair dealing could
25 result in plaintiffs suffering economic damages and emotional distress yet refused to
26 provide coverage for Plaintiff SCOTT POWELL's medically necessary treatment;
- 27 m. Engaged in unfair and/or hostile and/or oppressive tactics in an effort to reduce
28 amounts legitimately payable to plaintiffs.

1 55. Plaintiffs are informed and believe and thereon allege that defendants and DOES 1
2 through 100 have breached their duty of good faith and fair dealing owed to plaintiffs by other acts or
3 omissions of which plaintiffs are presently unaware and which will be shown according to proof at the
4 time of trial.

5 56. Each and all of defendants' acts and omissions, were and are an unreasonable and bad
6 faith failure to pay for medically necessary treatment at a time when defendants knew or should have
7 known that plaintiffs were and are entitled to benefits under the terms of the POLICY.

8 57. As a direct and proximate result of the aforementioned unreasonable and bad faith
9 conduct of defendants, plaintiffs have suffered and will continue to suffer in the future, damages under
10 the POLICY, plus interest and other economic and consequential damages for a total amount to be
11 shown at the time of trial.

12 58. As a direct and proximate result of the acts and conduct of defendants, plaintiffs have
13 suffered mental and emotional distress, nervousness, grief, anxiety, worry, mortification, humiliation,
14 and indignation all to their general damage in an amount in excess of the minimum jurisdiction of this
15 court to be shown at the time of trial.

16 59. As a further direct and proximate result of the acts and conduct of defendants, plaintiffs
17 were compelled to retain legal counsel to obtain the benefits due under the POLICY and have incurred,
18 and will continue to incur, legal fees and costs in an amount according to proof.

19 60. Plaintiffs are informed and believe and thereon allege that defendants' refusal to carry out
20 their obligations under the POLICY was done deliberately and with a conscious disregard of the rights
21 of plaintiffs to receive the benefits due under the POLICY.

22 61. Defendants' bad faith breach of the POLICY subjected and continues to subject plaintiffs
23 to cruel and unjust hardship. Plaintiffs are informed and believe and thereon allege that defendants
24 acted with a conscious disregard of their rights and with the intention to deprive plaintiffs of property,
25 legal rights or to otherwise cause injury. These acts constitute malice, oppression or fraud under *Civil*
26 *Code* section 3294, thereby entitling plaintiffs to punitive damages in an amount appropriate to punish or
27 set an example of defendants.
28

1 62. Plaintiffs are informed and believe and thereon allege that the above acts were done with
2 the knowledge, approval, and ratification of defendants' officers, directors, and/or managing agents.
3 The precise identities of these individuals are unknown at this time to plaintiffs and these individuals are
4 therefore identified and designated herein as DOES 1 through 100.

5 **THIRD CAUSE OF ACTION BY PLAINTIFFS SCOTT POWELL, an individual, and HOLLIE**
6 **POWELL, an individual, FOR NEGLIGENCE (Civil Code § 3428) AGAINST DEFENDANTS**
7 **KAISER FOUNDATION HEALTH PLAN, INC., a California corporation, KAISER**
8 **FOUNDATION HOSPITALS, a California corporation, THE PERMANENTE MEDICAL**
9 **GROUP, INC., a California corporation and DOES 1 through 100, Inclusive.**

10 63. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 62 as though
11 fully set forth in this Cause of Action.

12 64. Defendants, and each of them, in accordance with Civil Code section 3428, were under a
13 duty of ordinary care to arrange for the provision of medically necessary health care services to
14 defendants' subscribers and enrollees, including SCOTT POWELL and HOLLIE POWELL.

15 65. At all relevant times, defendants knew that plaintiffs would rely upon the accuracy, good
16 faith, competence and expertise of defendants, and each of them, and their agents, directors, employees,
17 and representatives, in handling, processing and investigating plaintiffs' requests for benefits under the
18 POLICY. As such, defendants knew of the importance to plaintiffs of defendants' performing
19 competently and in good faith with respect to the handling, processing and investigation of plaintiffs'
20 requests for medically necessary care.

21 66. Defendants were negligent and careless in failing to arrange for the provision of
22 medically necessary health care services recommended for SCOTT POWELL and to which SCOTT
23 POWELL was entitled under the POLICY. As a result, defendants negligently delayed and/or denied
24 appropriate care and treatment required by SCOTT POWELL.

25 67. Defendants' conduct as described herein was undertaken by its officers and/or managing
26 agents. These defendants, identified herein as DOES 1 through 100, inclusive, are responsible for
27 claims, operations, communications and/or decisions. The above-described conduct of said managing
28 agents and individuals was therefore undertaken on behalf of defendants. Furthermore, as plaintiffs are

1 informed and believe, defendants had advance knowledge of the actions and conduct of said individuals
2 whose actions and conduct were ratified, authorized, and approved by its managing agents, by their
3 officers, directors, or managing agents whose precise identities are unknown to plaintiffs, and who are
4 therefore designated herein as DOES 1 through 100, inclusive.

5 68. As a proximate result of the conduct of defendants, plaintiffs have suffered substantial
6 harm, and have suffered and will continue to suffer in the future damages under the POLICY, plus
7 interest, and other economic and consequential damages, for a total amount to be shown at the time of
8 trial.

9 69. As a further proximate result of the above-mentioned negligent conduct of defendants, its
10 employees, agents, officers and directors, plaintiffs have suffered anxiety, worry, and emotional distress
11 of a physical and mental nature.

12 70. The acts and omissions of the defendants and DOES 1 through 100 were made with a
13 conscious disregard for the health and safety of plaintiffs, thereby entitling plaintiffs to punitive
14 damages in an amount appropriate to punish or set an example of defendants and DOES 1 through 100,
15 inclusive.

16 **FOURTH CAUSE OF ACTION BY PLAINTIFF HOLLIE POWELL, an individual, FOR**
17 **INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS AGAINST DEFENDANTS**
18 **KAISER FOUNDATION HEALTH PLAN, INC., a California corporation, KAISER**
19 **FOUNDATION HOSPITALS, a California corporation, THE PERMANENTE MEDICAL**
20 **GROUP, INC., a California corporation and DOES 1 through 100, Inclusive.**

21 71. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 70 as though
22 fully set forth in this cause of action.

23 72. During the time period when defendants denied coverage, HOLLIE POWELL was and is
24 uniquely vulnerable and susceptible to severe emotional distress caused by delays or denials of adequate
25 and appropriate medical treatment for SCOTT POWELL. During all relevant times, Plaintiff HOLLIE
26 POWELL was dealing with a catastrophic brain injury concerning her husband, SCOTT POWELL.

27 73. Defendants were in a position of power over HOLLIE POWELL insofar as this plaintiff
28 was facing a severe and life-altering health calamity involving her husband, and desperately needed

1 defendants to honor their contractual obligations and pay health insurance benefits to protect SCOTT
2 POWELL and HOLLIE POWELL from physical, mental and economic harm in their time of greatest
3 need.

4 74. Plaintiffs are informed and believe and thereon allege that defendants knew that SCOTT
5 POWELL, when he was provided the benefit of mutli-disciplinary brain injury rehabilitation, began
6 making improvements in his functioning. Plaintiffs are informed and believe and thereon allege that at
7 the relevant times, defendants knew that given the severity of his brain injury, SCOTT POWELL
8 required an intensive rehabilitation program and therapies of sufficient intensity and duration to have an
9 opportunity to function independently and regain a better quality of life.

10 75. Plaintiffs are informed and believe and thereon allege that nevertheless, defendants
11 willfully denied health benefits to SCOTT POWELL, even though defendants knew or should have
12 known that such denials would impede SCOTT POWELL's recovery and diminish his chances to
13 function independently and regain a better quality of life, and knew or should have known that failure to
14 authorize appropriate neurological rehabilitation in a timely manner may permanently prevent SCOTT
15 from achieving a meaningful recovery.

16 76. Knowing that SCOTT POWELL and HOLLIE POWELL would be forced to endure the
17 physical, emotional and financial implications of the consequences of defendants' refusal to cover
18 SCOTT POWELL's medically necessary care, defendants intentionally, unreasonably, and unfairly
19 deprived SCOTT POWELL of medically necessary treatment.

20 77. As a direct and proximate result of defendants' aforementioned conduct, Plaintiff
21 HOLLIE POWELL has suffered severe mental, physical and emotional distress and discomfort,
22 including, but not limited to, fear, depression, humiliation, anxiety, and severe mental anguish, all to her
23 detriment and damage in an amount to be shown according to proof at the time of trial.

24 78. Defendants' wrongful and unreasonable denials of medically necessary benefits to
25 plaintiffs exceed all bounds of decency tolerated in a civilized society, given that at the time of the
26 defendants' wrongful acts, the defendants knew that plaintiffs were extremely vulnerable due to
27 SCOTT's condition and need to obtain adequate treatment, and knew that SCOTT was entitled to
28 medically necessary care under the POLICY, so as to constitute extreme and outrageous conduct in

1 putting his life and well-being at risk. Defendants' conduct is further deplorable, given that, as plaintiffs
2 are informed and believe, defendants engaged in the above mentioned conduct for their own financial
3 gain by attempting to avoid the costs of the treatment that SCOTT required, without concern that doing
4 so put SCOTT's opportunity for recovery at risk and diminished his chances at only forty-five (45) years
5 of age to function independently and regain a better quality of life.

6 79. Defendants intentionally engaged in the aforementioned wrongful conduct and/or did so
7 with reckless disregard for the probability that said wrongful conduct would cause Plaintiff HOLLIE
8 POWELL to suffer mental anguish and severe emotional distress.

9 80. Defendants' conduct described herein was intended to cause injury to plaintiffs, or was
10 despicable conduct carried on by said defendants with a willful and conscious disregard of the rights,
11 health, and safety of plaintiffs, subjected plaintiffs to cruel and unjust hardship in conscious disregard of
12 their rights, and was an intentional misrepresentation, deceit, or concealment of a material fact known to
13 defendants with the intention to deprive plaintiffs of property, legal rights, or to otherwise cause injury,
14 such as to constitute malice, oppression, or fraud under California *Civil Code* section 3294, thereby
15 entitling plaintiffs to punitive damages in an amount appropriate to punish or set an example of
16 defendants.

17 81. Defendants' conduct described herein was undertaken by defendants' officers, managing
18 agents, or employees identified herein as DOES 1 through 100, inclusive, who were responsible for
19 claims handling and/or decisions. The aforementioned conduct of said managing agents and individuals
20 was therefore undertaken on defendants' behalf. Plaintiffs are informed and believe that defendants had
21 advance knowledge of the actions and conduct of said individuals whose actions and conduct were
22 ratified, authorized, and approved by managing agents and by other corporate officers, directors, or
23 managing agents whose precise identities are unknown to plaintiffs at this time and are therefore
24 identified and designated herein as DOES 1 through 100, inclusive.

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1 **FIFTH CAUSE OF ACTION BY PLAINTIFF HOLLIE POWELL, an individual, FOR**
2 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST DEFENDANTS KAISER**
3 **FOUNDATION HEALTH PLAN, INC., a California corporation, KAISER FOUNDATION**
4 **HOSPITALS, a California corporation, THE PERMANENTE MEDICAL GROUP, INC., a**
5 **California corporation and DOES 1 through 100, Inclusive.**

6 82. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 81 as though
7 fully set forth in this cause of action.

8 83. Defendants were in a position of power over HOLLIE POWELL, who desperately
9 needed defendants to honor their contractual obligations and pay health insurance benefits pursuant to
10 the POLICY so that SCOTT POWELL could obtain adequate and appropriate medical treatment for his
11 catastrophic brain injury.

12 84. Plaintiffs are informed and believe and thereon allege that defendants knew or should
13 have known that SCOTT POWELL, when he was provided the benefit of mutli-disciplinary brain injury
14 rehabilitation, began making improvements in his functioning. Plaintiffs are informed and believe and
15 thereon allege that at the relevant times, defendants knew or should have known that given the severity
16 of his brain injury, SCOTT POWELL required an intensive rehabilitation program to have an
17 opportunity to function independently and regain a better quality of life. Plaintiffs are informed and
18 believe and thereon allege that at the relevant times, defendants knew or should have known that without
19 the appropriate rehabilitative interventions and therapies of sufficient intensity and duration, SCOTT
20 POWELL would be deprived of the opportunity for a meaningful recovery.

21 85. Plaintiffs are informed and believe and thereon allege that nevertheless, defendants
22 willfully denied health benefits to SCOTT POWELL, even though defendants knew or should have
23 known that such denials could impede SCOTT POWELL's recovery and diminish his chances to
24 function independently and regain a better quality of life, and knew or should have known that SCOTT's
25 medically necessary care was covered under the POLICY.

26 86. Knowing that SCOTT POWELL and HOLLIE POWELL would be forced to endure the
27 physical, emotional and financial implications of the consequences of defendants' refusal to cover
28

1 SCOTT POWELL's medically necessary care, defendants intentionally, unreasonably, and unfairly
2 deprived SCOTT POWELL of medically necessary treatment.

3 87. At all material times and in doing the things alleged herein, defendants, and each of them,
4 knew, or in the exercise of reasonable care should have known, that plaintiffs were relying on
5 defendants to competently handle and process plaintiffs' claims for benefits. In doing the acts alleged
6 above, defendants knew or should have known that their actions and conduct would cause severe
7 emotional distress to plaintiffs. Nevertheless, defendants acted negligently and without exercising due
8 care with respect to plaintiffs' rights.

9 88. Defendants' conduct described herein was undertaken by defendants' officers, managing
10 agents, or employees identified herein as DOES 1 through 100, inclusive, who were responsible for
11 claims handling and/or decisions. The aforementioned conduct of said managing agents and individuals
12 was therefore undertaken on behalf of defendants. Plaintiffs are further informed and believe that said
13 defendants further had advance knowledge of the actions and conduct of said individuals whose actions
14 and conduct were ratified, authorized, and approved by managing agents and by other corporate officers,
15 directors, or managing agents whose precise identities are unknown to plaintiffs at this time and are
16 therefore identified and designated herein as DOES 1 through 100, inclusive.

17 89. As a direct and proximate result of the conduct of defendants as alleged above, Plaintiff
18 HOLLIE POWELL has suffered severe mental, physical and emotional distress and discomfort,
19 including, but not limited to, fear, depression, humiliation, and severe mental anguish, all to her
20 detriment and damage in an amount to be shown according to proof at the time of trial.

21
22 WHEREFORE, plaintiffs pray for judgment against defendants as follows:

23 **AS TO THE FIRST CAUSE OF ACTION**

- 24 1. Damages for failure to provide benefits under the POLICY, plus interest, and other
25 economic and consequential damages, according to proof;
26 2. For prejudgment interest;
27 3. For costs of suit incurred herein; and
28 4. For such other and further relief as the Court may deem just and proper.

1 **AS TO THE SECOND CAUSE OF ACTION**

- 2 1. Damages for failure to provide benefits under the POLICY, plus interest, and other
3 economic and consequential damages, according to proof;
4 2. For general damages for mental and emotional distress, according to proof;
5 3. For prejudgment interest;
6 4. For attorney's fees, witness fees and costs incurred to obtain the benefits of the POLICY,
7 according to proof;
8 5. For punitive and exemplary damages in an amount appropriate to punish or set an
9 example of defendants;
10 6. For costs of suit incurred herein; and
11 7. For such other and further relief as the Court may deem just and proper.

12 **AS TO THE THIRD CAUSE OF ACTION**

- 13 1. Damages for failure to provide benefits under the POLICY, plus interest, and other
14 economic and consequential damages, according to proof;
15 2. For general damages for mental and emotional distress, according to proof;
16 3. For prejudgment interest;
17 4. For attorney's fees, witness fees and costs incurred to obtain the benefits of the POLICY,
18 according to proof;
19 5. For punitive and exemplary damages in an amount appropriate to punish or set an
20 example of defendants;
21 6. For costs of suit incurred herein; and
22 7. For such other and further relief as the Court may deem just and proper.

23 **AS TO THE FOURTH CAUSE OF ACTION**

- 24 1. For general damages for mental and emotional distress, according to proof;
25 2. For non-economic damages for pain and suffering, according to proof;
26 3. For punitive and exemplary damages in an amount appropriate to punish or set an
27 example of defendants;
28 4. For costs of suit incurred herein; and

1 5. For such other and further relief as the Court may deem just and proper.

2 AS TO THE FIFTH CAUSE OF ACTION

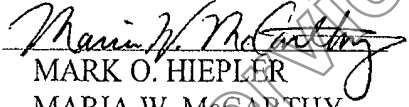
3 1. For general damages for mental and emotional distress, according to proof;

4 2. For non-economic damages for pain and suffering, according to proof;

5 3. For such other and further relief as the Court may deem just and proper.

6 DATED: December 16, 2014

HIEPLER & HIEPLER
A Professional Corporation

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8 By: 
9 MARK O. HIEPLER
10 MARIA W. MCCARTHY
11 Attorneys for Plaintiffs

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