

Superior Court of California

County of Orange



Case Number : 30-2016-00846506-CU-BC-CJC

Copy Request: 2511451

Request Type: Case Documents

Prepared for: cns

Number of documents: 1

Number of pages: 11

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ELECTRONICALLY FILED
Superior Court of California,
County of Orange

04/15/2016 at 11:06:38 AM
Clerk of the Superior Court
By Trucmy Vu, Deputy Clerk

ATTORNEYS FOR PLAINTIFF HOAG MEMORIAL HOSPITAL PRESBYTERIAN

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

HOAG MEMORIAL HOSPITAL
PRESBYTERIAN, a California Corporation;

Plaintiff,

vs.

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

Defendants.

Case No: 30-2016-00846506-CU-BC-CJC

ASSIGNED TO: Judge David Chaffee

DEPT.:

UNLIMITED – DAMAGES EXCEED \$25,000

COMPLAINT FOR DAMAGES FOR:

- 1. BREACH OF WRITTEN CONTRACT**
- 2. BREACH OF IMPLIED CONTRACT**
- 3. QUANTUM MERUIT**
- 4. OPEN BOOK ACCOUNT**
- 5. UNFAIR BUSINESS PRACTICES**

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

INTRODUCTION

1. Defendants, KAISER FOUNDATION HEALTH PLAN, INC. and KAISER FOUNDATION HOSPITALS (collectively “Defendants” or “Kaiser”), in this action have improperly underpaid and delayed payment of a claim for reimbursement for medically necessary emergency and post-stabilization services Plaintiff, HOAG MEMORIAL HOSPITAL PRESBYTERIAN (“Plaintiff” or “Hospital”), provided to the Kaiser member referred to herein as Patient.

2. Kaiser owes Plaintiff an amount to be proven at trial, but no less than \$57,064.03.

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PARTIES

3. Plaintiff HOAG MEMORIAL HOSPITAL PRESBYTERIAN is a California Corporation, with its principal place of business in the county of Orange, in the state of California. The Hospital is a California licensed acute-care hospital located in the city of Newport Beach.

4. Defendant KAISER FOUNDATION HEALTH PLAN, INC. ("Kaiser Health Plan") is a California corporation, organized and existing under the laws of the state of California with its principal place of business in the city of Oakland, county of Alameda, in the state of California.

5. Defendant KAISER FOUNDATION HOSPITALS ("Kaiser Hospitals") is a California Corporation, organized and existing under the laws of the State of California with its principal place of business in the city of Oakland, county of Alameda, in the state of California.

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

7. The Hospital is informed and believes and thereon alleges that at all times mentioned herein, each of the defendants, including all defendants sued under fictitious names, were the agent and/or employee of each of the remaining defendants, and in so doing the things alleged herein, were acting within the scope of his or her agency and employment and with their knowledge and consent.

8. Kaiser Health Plan, Kaiser Hospitals and Does 1 through 25 are referred to herein collectively as Defendants.

9. The Hospital is withholding the name of the Patient in this Complaint to preserve the Patient's protected rights to privacy concerning health care information. The Patient's name has been and will be made available to Defendants upon request.

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1 10. Jurisdiction is proper in this judicial district because this is where the contract at issue
2 was entered into and/or where the breach occurred.

3 **ALLEGATIONS AS TO THE KAISER DEFENDANTS**

4 11. The Hospital is informed and believes that Kaiser Health Plan is a health care services
5 plan licensed with the California Department of Managed Health Care and, thus is subject to the Knox-
6 Keene Act and related regulations on such health care services plans.

7 12. Plaintiff is informed and believes that Kaiser Hospitals is a capitated provider of the
8 health care services plan Kaiser Health Plan, and thus is subject to the Knox-Keene Act and related
9 regulations on health care services plans and their capitated providers.

10 13. The Hospital is informed and believes that, at all times mentioned herein, Kaiser
11 Hospitals and Kaiser Health Plans are agents of one another for purposes that include, but are not
12 limited to contracting with hospital providers including the Hospital, receiving notice of a Kaiser
13 member's inpatient admission, authorizing a Kaiser member's medical services, receiving, processing
14 and paying claims for reimbursement for medical services provided to Kaiser members, and
15 processing claims appeals, because Kaiser Hospitals and Kaiser Health Plan performed such actions
16 on one another's behalf.

17 14. The Hospital is informed and believes that Kaiser Health Plan and Kaiser Hospitals are
18 affiliates of each other and/or are otherwise related corporate entities, and that the entities, cooperate in
19 the conduct of the health care program commonly known as the "Kaiser Permanente Medical Care
20 Program."

21 **GENERAL ALLEGATIONS**

22 15. The Hospital is informed and believes, and thereon alleges, prior to June 1, 2004 (the
23 specific date is unknown), Kaiser Hospitals, entered into a written agreement with Kaiser Health Plan
24 to pay for health care services provided to Kaiser Health Plan commercial members in a hospital
25 setting.

26 16. Thereafter, the Hospital and Kaiser Hospitals entered into a Reciprocol Payment
27 Agreement effective June 1, 2004 (the "Reciprocol Agreement"). Pursuant to the terms of the
28 Reciprocol Agreement, Hospital agreed to provide hospital services at discounted rates to Kaiser

1 Health Plan members and Kaiser Hospitals' agreed to pay Hospital at the discounted rate for said
2 service.

3 17. Under the terms of the Reciprocol Agreement, Defendants were required to pay the
4 Hospital within 30 days of receipt of the Hospital's claim. Failure to pay within 45 working days of
5 receipt of Hospital's claim would void the reduced payment rates and the reimbursement would
6 default to 100% of billed charges. Additionally, interest would accrue along with penalties allowed
7 under the Knox-Keene Act's prompt payment laws.

8 18. Under the Reciprocol Agreement claims which are underpaid or not paid at the
9 appropriate reimbursement rates do not constitute payment in full and the under paid or incorrectly
10 paid claims will be subject to state prompt payment law provisions.

11 19. The Hospital is informed and believes, and thereon alleges, that, at all times herein
12 mentioned, Kaiser Hospitals was acting as the authorized agent for Kaiser Health Plan, and, in
13 negotiating and executing said Reciprocol Agreement with the Hospital, was acting in the scope of its
14 authority as such agent and with Kaiser Health Plan's permission and consent. Additionally, Kaiser
15 Health Plan ratified the Reciprocol Agreement by issuing partial payment on the claim at issue based on
16 the discounted rates set forth in the Reciprocol Agreement and by identifying on the Explanations of
17 Benefits for the claim at issue, that a "contractual provider discount had been applied."

18 **PATIENT**

19 20. The Hospital is informed and believes, and on this basis alleges, that Patient, at all
20 relevant times discussed herein, had health care coverage through Defendants for the services the
21 Hospital provided to Patient.

22 21. On or about June 26, 2014, Patient, a Kaiser Health Plan member, presented to the
23 Hospital's emergency department ("ER") with chest and abdominal pain, nausea and vomiting. The
24 Patient did not inform the Hospital of her Kaiser Health Plan coverage. The Patient was admitted as an
25 inpatient to the Hospital's sub-intensive care unit ("ICU") for treatment and was found to have
26 metastatic gastric adenocarcinoma. The Patient remained at the hospital until July 7, 2014.

27 22. Throughout the Patient's admission, the Hospital provided the Patient with medically
28 necessary and physician ordered services.

23. Immediately upon discovering the Patient was a Kaiser Health Plan member, the Hospital contacted and notified Defendants of the Patient's admission.

24. Subsequently, the Hospital timely billed Defendants for the medical services provided to the Patient.

25. Defendants acknowledged their obligation to pay for the medically necessary services provided to the Patient, a Kaiser Health Plan member, by issuing a partial payment in the amount of \$26,589.95 and identifying \$500.00 as Patient responsibility.

26. Defendants breached the Reciprocol Agreement by failing to pay the contractual rate in full.

27. Pursuant to the terms of the Reciprocol Agreement, Defendants' failure to fully pay the Hospital's claim results in Defendants' loss of the discount provided therein. Therefore the balance owed by Defendants is \$57,064.03.

28. The Hospital submitted timely written appeals to Defendants requesting further payment. However, Defendants improperly denied such appeals.

29. Accordingly, taking into consideration Defendants' partial payments to date for this claim and the amount designated Patient responsibility, Defendants owe the Hospital the outstanding balance of \$57,064.03, plus statutory interest, for the services provided to the Patient.

FIRST CAUSE OF ACTION

BREACH OF WRITTEN CONTRACT

AGAINST ALL DEFENDANTS

30. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs above.

31. Plaintiff is informed and believes, and thereon alleges, at all relevant times the Patient had health care coverage through Defendants, including during the dates of service Plaintiff provided health care services to Patient.

32. At the time the Hospital provided services to the Patient, the Reciprocol Agreement between the Hospital and Defendants was in place.

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1 33. The Reciprocol Agreement was a valid and enforceable contract between Plaintiff and
2 Defendants.

3 34. Under the Reciprocol Agreement, Defendants were obligated to pay Plaintiff in
4 accordance with its terms. Specifically, the Reciprocol Agreement requires Defendants to reimburse the
5 Plaintiff for the medically-necessary services Plaintiff provided to patients with healthcare coverage
6 through Defendants at the rates stated therein.

7 35. Plaintiff performed all of its obligations under the Reciprocol Agreement, including but
8 not limited to providing covered, medically necessary and physician-ordered services to Defendants'
9 members.

10 36. Plaintiff timely submitted clean claims for reimbursement to Defendants for the medical
11 services provided to the Patient.

12 37. Defendants have breached the Reciprocol Agreement. Defendants' breaches include,
13 but are not limited to improperly denying a portion of the Plaintiff's claim for medically necessary
14 services and failing to pay the correct contract rate.

15 38. After receiving notice of Defendants' improper denials, Plaintiff timely appealed each of
16 Defendants' denials and underpayments of its claim. To date, Defendants have not fully reimbursed the
17 Hospital for services provided to the Patient.

18 39. As a direct and proximate result of Defendants' failure to pay the clean claim in full
19 within 45 business days, Plaintiff has suffered damages in an amount to be proven at trial, but in no
20 event less than \$57,064.03, plus statutory interest, for the services provided to the Patient.

21 **SECOND CAUSE OF ACTION**

22 **BREACH OF IMPLIED CONTRACT**

23 **AGAINST ALL DEFENDANTS**

24 40. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
25 preceding paragraphs above.

26 41. As alleged above, the Hospital believes it is entitled to full and complete payment from
27 Defendants in accordance with the Reciprocol Agreement set forth above. However, to the extent the
28 contract alleged above does not apply and/or is deemed unenforceable against Defendants for any of the

1 services at issue, and absent any other legally controlling rate, the Hospital alleges in the alternative that
2 Defendants owe the Hospital for these services pursuant to their implied contract with the Hospital.

3 42. As soon as the Hospital became aware that Defendants were financially responsible for
4 the Patient, the Hospital contacted and informed Defendants and/or its agent of the Patient's admission
5 and the medically necessary services the Hospital had provided to the Patient. Defendants and/or its
6 agent verified the Patient's eligibility and benefits with the Hospital.

7 43. At no time did Defendants and/or their agents assert that the Patient was not a member or
8 indicate they were not financially responsible for the medical services provided to the Patient, or
9 otherwise indicate in any way to the Hospital that they would not fully pay for the medical services
10 provided by the Hospital.

11 44. By providing and/or having their agents provide partial payments and/or verifications to
12 the Hospital, Defendants promised to pay for the expenses incurred by the Hospital in its care and
13 treatment of the Patient. Such representations by Defendant and/or its agents amounted to a mutual
14 agreement between Defendants and the Hospital that the Hospital would care for and treat the Patient,
15 and in exchange, Defendants would pay for the expenses incurred for such care and treatment.

16 45. The Hospital performed all of its obligations under its implied contract with Defendants,
17 in that it provided medically necessary care and treatment to the Patient. The Hospital's claim was
18 timely presented to Defendants.

19 46. Defendants breached their implied contract with the Hospital to reimburse it for the
20 medically necessary services provided to the Patient by refusing to reimburse the Hospital's claim in
21 full, despite appeals by the Hospital to Defendants for further payments.

22 47. As a direct and proximate result of Defendants' failure to fulfill their contractual
23 obligations in a reasonable, timely or competent manner, the Hospital was not fully compensated for the
24 medically necessary health care services provided to the Patient and suffered damages in the amount of
25 \$57,064.03, plus statutory interest.

26 48. As a result of Defendants' breaches, the Hospital was damaged in that it was not fully
27 compensated for the services it provided to the Patient in an amount according to proof.

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1 **THIRD CAUSE OF ACTION**

2 **QUANTUM MERUIT**

3 **AGAINST ALL DEFENDANTS**

4 49. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
5 the preceding paragraphs above.

6 50. As alleged above, the Hospital believes it is entitled to full and complete payment from
7 Defendants in accordance with the Reciprocol Agreement. However, to the extent the written agreement
8 alleged above does not apply and/or is deemed unenforceable, and absent any other legally controlling
9 rate, the Hospital alleges in the alternative that Defendants owe the Hospital for the services provided to
10 the Patient in *quantum meruit*.

11 51. The Hospital's provision of medically necessary care and treatment to the Patient was
12 intended to and, in fact, benefited Defendants because the Patient was provided with medical care and
13 treatment Defendants were obligated to pay for and/or arrange for their assigned members.

14 52. Defendants and/or their agents verified and issued partial payments for the medically
15 necessary services provided to the Patients. In so doing, Defendants acknowledged the benefit of the
16 Hospital's services.

17 53. The value of the benefit conferred upon Defendants is \$84,153.98 for the medically
18 necessary and physician-ordered services provided to the Patient. Defendants made a partial payment for
19 the services provided to the Patient in the amount of \$26,589.95 (and made \$500.00 the Patient's
20 responsibility), thereby underpaying the Hospital for the medical services provided to the Patient by
21 \$57,064.03. Defendants failed to fully reimburse the Hospital for these charges, thereby retaining the
22 benefit provided by the Hospital.

23 54. As a result of the benefit conferred upon Defendants by the Hospital, the Hospital is
24 entitled to restitution in the amount to be proven at trial but not less than \$57,064.03, plus statutory
25 interest.

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1 **FOURTH CAUSE OF ACTION**

2 **OPEN BOOK ACCOUNT**

3 **AGAINST ALL DEFENDANTS**

4 55. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
5 the preceding paragraphs above.

6 56. As alleged above, the Hospital believes it is entitled to full and complete payment from
7 Defendants in accordance with the contracts set forth above. However, to the extent the contracts
8 alleged above do not apply and/or are deemed unenforceable against Defendants for any of the services
9 at issue, and absent any other legally controlling rate, the Hospital alleges in the alternative that
10 Defendants owe the Hospital for these services pursuant to an open book account.

11 57. Defendants are indebted to the Hospital in the sum of \$57,064.03.

12 58. The Hospital provided consideration to Defendants by rendering services to their
13 member, Patient and Defendants are responsible for payment of said services.

14 59. The Hospital billed Defendants for the services provided to the Patient. However,
15 Defendants' failed to fully reimburse the Hospital for the services.

16 60. The Hospital has kept an accurate accounting of the payments made by Defendants
17 toward the amounts they owe the Hospital for the services rendered to the Patient and on or more items
18 are unsettled.

19 61. To date, Defendants continue to owe the Hospital money on the account in the amount of
20 \$57,064.03 for the services rendered to the Patient.

21 **FIFTH CAUSE OF ACTION**

22 **UNFAIR BUSINESS PRACTICES**

23 **(Business and Professions Code §17200 et seq.)**

24 62. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
25 forth in the preceding paragraphs above.

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

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1 64. The Hospital is informed and believes that beginning on an exact date unknown to
2 Plaintiff, but within four years preceding the filing of this complaint, Defendants engaged in acts of
3 unfair business practices as defined in Business and Professions Code §17200, as follows: Each and
4 every denial of payments and/or underpayment for services to provider hospitals in which Kaiser
5 unilaterally determined the patient was clinically stable for transfer to a Kaiser facility and denied
6 payment in full to Hospitals, and then also failed to issue an Explanation of Benefits identifying the
7 outstanding balance for such services as patient responsibility.

8 65. Kaiser's denials of the claims for services provided to the patients are in violation of
9 Title 22 of the California Code of Regulations §70717, which requires that a patient's treating physician
10 make the determination that a transfer or discharge would not create a medical hazard to the patient.
11 Kaiser made the determination that the Patient was stable for transfer to a Kaiser Hospital and denied the
12 Hospital's claims without consulting the Patient's treating physicians before denying said claims.

13 66. The Hospital is informed and believes that Kaiser's issuance of Explanations of Benefits
14 ("EOBs") that fail to identify as patient responsibility the outstanding balance for the services provided
15 after each patient was allegedly stable for transfer constitute intentional and/or negligent
16 misrepresentations.

17 67. The Hospital is informed and believes that, in each instance in which Kaiser denies a
18 claim for post-stabilization services on the alleged ground that the services were not authorized and the
19 patient allegedly was "stable for transfer," the services are noncovered under the terms of the patient's
20 Evidence of Coverage.

21 68. The Hospital suffered injury in fact when Kaiser denied full payment of the Hospital's
22 claims for the care provided to the patients as fully set forth above, alleging the patients were stable for
23 transfer and Kaiser would not pay for post-stabilization care, without making such amounts patient
24 liability.

25 69. Said violations render each Defendant liable to Plaintiff for restitution and injunctive
26 relief preventing Kaiser from denying claims on the basis that patients are "stable for transfer" when
27 Kaiser has not consulted with the patients' treating physicians, and from issuing EOBs that fail to
28

1 identify as patient responsibility the outstanding balance for the services provided after each patient was
2 allegedly stable for transfer.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 5 1. For damages in an amount according to proof at trial;
- 6 2. For damages in quantum meruit;
- 7 3. For interest at the various statutory rates;
- 8 4. For costs and reasonable attorneys' fees to the extent allowed by law; and
- 9 5. For such other and further relief as this Court may deem just and proper.

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11 DATED: April 15, 2016

HELTON LAW GROUP APC

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13 By: 

14 CARRIE McLAIN
15 VIOLA BROWN
16 Attorneys for Plaintiff
17 HOAG MEMORIAL HOSPITAL
18 PRESBYTERIAN
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