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on behalf of himself and all others
similarly situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IAN MOURA, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

KAISER FOUNDATION HEALTH PLAN, INC.,

Defendant.

Case No.: 4:17-cv-02475-JSW

CLASS ACTION

REDACTED VERSION

FIRST AMENDED COMPLAINT FOR:

ENFORCEMENT AND CLARIFICATION OF RIGHTS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974; PREJUDGMENT AND POSTJUDGMENT INTEREST; ATTORNEYS' FEES AND COSTS

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Plaintiff Ian Moura, on behalf of himself and all others similarly situated, herein complains of Kaiser Foundation Health Plan, Inc. (hereinafter "Kaiser"), as follows:

INTRODUCTION

1. Plaintiff Ian Moura is 29 years old. He suffers with anorexia nervosa. Approximately 20 million women and 10 million men suffer from a clinically significant eating disorder at some time in their life. Eating disorders are the third most common chronic illness among adolescents, and the incidence of eating disorders in the United States has doubled since the 1960s. Eating disorders have the highest mortality rate of any mental illness, in excess of twenty percent. They can lead to medical complications including cardiac arrhythmia, heart failure, kidney stones and kidney failure, cognitive impairment, osteoporosis, constipation, electrolyte imbalance, muscle atrophy, amenorrhea, teeth erosion, irritation and tears of the throat, esophagus and stomach, emetic toxicity, infertility and death. Suicide, depression and severe anxiety are common side effects throughout the illness and treatment.

2. Eating disorders are treatable. They can be fully and successfully treated to remission, though only ten percent of those suffering from an eating disorder receive treatment. In this case, Kaiser wrongfully denied Plaintiff's claim for treatment for his eating disorder. As explained below, Kaiser engages in a pattern and practice of behavior which results in the violation of plan terms, violation of ERISA and its implementing regulations, and violation of the California Mental Health Parity Act and the Federal Mental Health Parity Act.

The California Mental Health Parity Act

3. Under California's Mental Health Parity Act ("Parity Act"), health insurers must provide all medically necessary treatment for patients suffering from a severe mental illness on the same financial terms and conditions (e.g., co-payments, deductibles and lifetime maximums) as for physical illnesses. The Parity Act was enacted in 1999, after the Legislature found that:

a) Mental illness is real.

b) Mental illness can be reliably diagnosed.

c) Mental illness is treatable.

d) The treatment of mental illness is cost effective.[1]

The Legislature further found that most private health insurance policies had, until then, provided coverage for mental illnesses at levels far below coverage for physical illnesses; that limitations in coverage for mental illness in private insurance plans had resulted in inadequate treatment; that inadequate treatment had caused "relapse and untold suffering for individuals with mental illnesses and their families;" and that inadequate treatment for mental illness "had contributed significantly to homelessness, involvement with the criminal justice system, and other significant social problems." To remedy this disparity, the Parity Act mandates broad coverage for "Severe Mental Illnesses," including anorexia and bulimia.[2] The Parity Act is codified at California Insurance Code section 10144.5 and Health and Safety Code section 1374.72. The Parity Act is not pre-empted by ERISA. *Orzechwoski v. Boeing Company Non-Union Long-Term Disability Plan*, 856 F.3d 686, 692-93 (9th Cir. 2017) (state insurance law is not preempted by ERISA).

The Federal Mental Health Parity Act

4. The Federal Mental Health Parity and Addiction Equity Act ("MHPAEA") requires health care plans issued by employers with more than 50 employees that choose to provide mental health benefits to cover them, as written and applied, in parity with medical/surgical benefits. Separate cumulative financial requirements (e.g., annual or lifetime dollar limits), or "nonquantitative" limitations in mental health treatment (e.g., caps on number of visits or days of treatment), are not permitted under the Act. Plans, such as Plaintiff's, that classify care in skilled nursing facilities or rehabilitation hospitals as inpatient benefits must likewise treat any covered care in residential treatment facilities for mental health. Final Rules Under the Paul Wellstone and Pete Dominici Mental Health Parity and Addiction Equity Act of 2008 ("Final Rules"), p. 68247.

[1] 1999 Cal. Legis. Serv. ch. 534 (A.B. 88).

[2] The other Severe Mental Illnesses covered by the Parity Act are schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, and pervasive developmental disorder of children including autism.

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GENERAL ALLEGATIONS

5. This action is brought under 29 U.S.C. §§ 1132(a), (e), (f) and (g) of the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA"), as it involves claims regarding employee benefits under employee benefit health plans regulated and governed under ERISA. Jurisdiction is predicated under these code sections as well as 28 U.S.C. § 1331 as this action involves a federal question.

6. This action is brought for the purpose of enforcing Plaintiff's rights under the terms of employee benefit plans, clarifying Plaintiff's rights to future benefits under such plans, and obtaining injunctive and declaratory relief regarding the administration of such plans. Plaintiff seeks relief, including but not limited to declaratory and injunctive relief clarifying how claims should be administered, and attorneys' fees and costs.

7. This action seeks to represent the named plaintiff and all individuals who were covered under group health plans underwritten and/or administered in the State of California by Kaiser. The proposed class only includes persons who were covered under plans regulated by ERISA.

8. Plaintiff Ian Matthew Moura was at all times relevant a resident of [redacted] California. [redacted] The proposed plaintiff class, including Mr. Moura, were at all times covered beneficiaries under employee benefit health plans underwritten and/or administered by Kaiser in the State of California and regulated by ERISA.

9. Defendant Kaiser is, and at all relevant times was, a corporation duly organized and existing under and by virtue of the laws of the State of California and authorized to transact business in the State of California, with its headquarters in Oakland, California.

10. The claims of the named plaintiff in this action were specifically administered in this judicial district. Thus, venue is proper in this judicial district pursuant to 29 U.S.C. § 1132(e)(2) (special venue rules applicable to ERISA actions).

PRELIMINARY FACTUAL ALLEGATIONS

11. At all times relevant, Plaintiff Ian Moura and the members of the proposed plaintiff class, as defined below (the "Plaintiff Class"), were covered by health plans administered and/or

underwritten by Kaiser which provided benefits for medically necessary treatment of severe mental illnesses.

12. Plaintiff and the members of the Plaintiff Class have (a) paid all premiums they were required to pay under said health plans, (b) performed all obligations under said plans on their part to be performed, and (c) complied with all requirements under said plans. Plaintiff and the members of the Plaintiff Class have been diagnosed with the severe mental illnesses of anorexia nervosa and/or bulimia nervosa.

Plaintiff's ERISA Plan

13. At all times relevant, Plaintiff Ian Moura was covered under a Kaiser Permanente Deductible HMO Plan (the "Plan") issued to his father's employer, Fujitsu Technology and Business of America, Inc.

14. The Plan states that Kaiser

> provides covered Services to members using Plan Providers located in our Service Area, which is described in the "Definitions" section. You must receive all covered care from Plan Providers inside our Service Area except as described in the section listed below for the following Services:
>
> - Authorized referrals as described under "Getting a Referral" in the "How to Obtain Services" section.

15. Under "Getting a Referral," the Plan states:

> Referrals to Plan Providers
>
> A Plan Physician *must refer you* before you can receive care from specialists, such as specialists in surgery, orthopedists, cardiology, oncology, urology, dermatology, and physical, occupational, and speech therapies. . . . However, *you do not need a referral or prior authorization to receive most care from any of the following Plan Providers*:
>
> - Your personal Plan Physician
> - Generals in internal medicine, pediatrics, and family practice
> - Specialists in optometry, *psychiatry*, chemical dependency, and obstetrics/gynecology.

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Although a referral or prior authorization is not required for most care from these providers, a referral may be required in the following situations:

- The provider may have to get prior authorization for certain Services in accord with "Medical Group authorization procedure for certain referrals" in this "Getting a Referral" section.
- The provider may have to refer you to a specialist who has a clinical background related to your illness or condition. (Emphasis added.)

16. Under "Medical Group authorization procedure for certain referrals" the Plan further states:

The following are examples of Services that require prior authorization by the Medical Group for the Services to be covered ("prior authorization" means that the Medical Group must approve the Services in advance):

- Durable medical equipment
- Ostomy and urological supplies
- *Services not available from Plan Providers*
- Transplants . . .

Kaiser's Breach of Its Fiduciary Duties

17. Kaiser is an ERISA fiduciary with respect to Plaintiff's plan and the plans of all putative class members in that Kaiser exercises discretionary authority or discretionary control with respect to the management of the plans; exercises discretionary authority or discretionary control with respect to the management or disposition of the assets of the plans; or has discretionary authority or discretionary responsibility in the administration of the plans. 29 U.S.C.A. § 1002.

18. ERISA requires a plan fiduciary to discharge duties "solely in the interest of the participants and beneficiaries," with the "exclusive purpose" of providing benefits and defraying reasonable administration expenses. 29 U.S.C. § 1104(a)(1)(A). ERISA mandates fiduciaries act "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. § 1104(a)(1)(B).

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19. Fiduciaries who breach their statutory duties can be "personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate." 29 U.S.C. § 1109(a). Consequently, ERISA permits participants, beneficiaries or fiduciaries to bring an action against a plan to enjoin any act or practice which violates ERISA or the plan terms, or to obtain "other appropriate equitable relief." 29 U.S.C. § 1132(a)(3). These "'catchall' provisions act as a safety net, offering appropriate equitable relief for injuries caused by violations" that cannot be remedied through other sections of ERISA. *Varity Corp. v. Howe*, 516 U.S. 489, 512 (2011).

20. There are no Kaiser Plan Providers who offer Residential Treatment for members with bulimia nervosa or anorexia nervosa. Kaiser also does not enter into sufficient contracts with outside providers who provide Residential Treatment for bulimia nervosa or anorexia nervosa. As a result, Kaiser engages in a variety of conduct, all of which are in breach of its fiduciary duties under ERISA, to preclude, dissuade, bar and block members from accessing Residential Treatment. This conduct also violates the Parity Act and the MHPAEA.

21. Plaintiff's Plan, as well as the plans of the putative class members, do not identify Residential Treatment for eating disorders as a service that requires prior authorization. Nevertheless, Kaiser did not permit Plaintiff, and does not permit members of the putative class, to access Residential Treatment without prior authorization.

22. Plaintiff's Plan, as well as the plans of the putative class members, do not preclude the member's Plan Physician from referring to or authorizing Residential Treatment. Nevertheless, as outlined below, Kaiser did not permit Plaintiff, and does not permit members of the putative class, to attend Residential Treatment despite having a referral and/or authorization by a Plan Physician.

23. The Plan states that "A Service is Medically Necessary if it is medically appropriate and required to prevent, diagnose, or treat your condition or clinical symptoms in accord with generally accepted professional standards of practice that are consistent with a standard of care in the medical community." Kaiser does not comply with this Plan provision. Plaintiff and putative class members who suffer from anorexia nervosa or bulimia nervosa must comply with additional

requirements and/or obtain an additional level of approval, not disclosed in the plan, prior to receiving Residential Treatment. Similarly, members are not advised of the standards used by Kaiser for authorizing Residential Treatment.

Mr. Moura's Eating Disorder and Requests for Treatment

24. Mr. Moura is a 29 year old man who suffered from anorexia nervosa.

25. Mr. Moura was an anxious child. In fifth grade he changed schools and had a hard time adjusting. He did not fit in with the other kids at his new school, many of whom had known each other since kindergarten, and he struggled to make friends. When he started middle school, he only became more overwhelmed, not just with social issues, but also with logistical details like changing classes multiple times a day and having to keep track of different requirements from different teachers. To cope, he walked a lot after school to try to clear the sense of buzzing inside his head.

26. [redacted]

27. Mr. Moura was a picky eater as a kid; there were a lot of foods he did not like because of the texture or the taste or smell, and he was not keen to try new things. He also did not have much of a sense of hunger, and if he was really wrapped up in something, like a book or a project, it was not unusual for him to forget to eat. Since he played sports and walked a lot, his goal of "not gaining weight" was not especially difficult. He did not think he was fat and was not concerned about whether or not other people thought he was, [redacted]

28. For a number of years, Mr. Moura had a baseline level of disordered eating. He used hunger and activity to deal with things in his life that he could not otherwise control. [redacted]

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[redacted]

29. Mr. Moura managed to stay relatively stable by staying close to home for college (and moving back home for a while after a rough start in the dorms for his first year). In the spring of 2010, Mr. Moura began seeing Dr. Evelyn Hazlett at the Kaiser Fremont location for medication management and periodic assessment.

30. From 2011 through 2013, Mr. Moura attended graduate school in Santa Cruz and saw a non-Kaiser therapist who specialized in eating disorders.

31. By the end of 2013, Mr. Moura had lost a considerable amount of weight and was not eating solid foods. He was surviving on liquid supplements providing 200-500 calories per day. He was losing over 5 pounds per month. His therapist stated that Mr. Moura needed to be in an inpatient treatment program and that she could not continue to treat Mr. Moura as his condition had become too severe.

32. On January 13, 2014, Mr. Moura saw his primary care physician, Dr. Joyce Ann Viloria, at Kaiser Santa Clara, Department of Internal Medicine. Multiple lab tests were performed to determine any medical consequences of his lack of adequate nutrition.

33. On February 10, 2014, Mr. Moura saw Dr. Hazlett, who recommended psychiatric hospitalization. However, Dr. Hazlett was unable to authorize hospitalization.

34. On February 20, 2014, Mr. Moura returned to see Dr. Viloria. Again, hospitalization was not approved. Mr. Moura was referred for assessment to Kaiser in Campbell.

35. Mr. Moura waited until March 14, 2014 for an appointment with Dr. Melody Baumgardner, an eating disorder specialist at Kaiser in Campbell, for a diagnostic evaluation to determine a course of treatment.

36. On March 20, 2014, Mr. Moura went to an intake appointment at the Eating Disorder Intake Outpatient Program at Kaiser Redwood City. He was evaluated by a therapist, dietician and nurse practitioner, who determined that he was not medically stable and sent him to the emergency room. He was immediately hospitalized. This was over 5 weeks after his Kaiser psychiatrist first recommended hospitalization.

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37. Mr. Moura remained in the hospital at Kaiser Redwood City from March 20, 2014 through April 4, 2014 for health complications resulting from his eating disorder. By that time his condition had become so severe a feeding tube was required due to his inability to eat.

38. Upon his discharge from the hospital at Kaiser Redwood City, Mr. Moura was referred to Herrick Hospital (Alta Bates/Summit) in Berkeley. He was admitted on April 7, 2014 when a bed became available. He remained hospitalized until April 26, 2014.

39. The usual course of treatment for patients with eating disorders after a hospitalization is to step down to residential treatment. However, Kaiser did not send Mr. Moura to a residential treatment program after he was hospitalized at Herrick Hospital. Instead, on April 28, 2014, Mr. Moura was admitted to Herrick's partial hospitalization program (PHP), which is a day treatment program, for eating disorders. He was discharged on May 9, 2014 and referred to Kaiser Redwood City's Eating Disorder Intensive Outpatient Program.

40. On May 12, 2014, Mr. Moura underwent an intake assessment at the Redwood City Eating Disorder Intensive Outpatient Program. He was admitted to the program on May 13, 2014. The program met three (3) times per week.

41. On May 20, 2014, Mr. Moura was told to leave the Redwood City Eating Disorder Intensive Outpatient Program because he was unable to finish his meals within the time allotted and otherwise failed to meet the program requirements. Rather than recognizing that Mr. Moura was struggling with symptoms of his eating disorder, the staff proclaimed that he "didn't want to get better."

42. Mr. Moura was discharged from the Redwood City program with no discharge plan, no case manager and no therapist. He immediately began to lose weight.

43. After multiple calls, Mr. Moura was able to find limited resources through Kaiser Santa Clara. On June 16, 2014, Mr. Moura saw Smitha Rau, Psy.D, at Kaiser Santa Clara Psychiatry Department, who referred him to a dietician and an MD for outpatient treatment.

44. On June 20, 2014, Mr. Moura saw Dr. Viloria for plantar fasciitis, caused by excessive exercise, a symptom of his eating disorder.

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45. On June 27, 2014, Mr. Moura was first able to see Dr. Jan Kwong, a Kaiser doctor who specializes in eating disorders. Dr. Kwong ran multiple lab tests and an EKG.

46. Mr. Moura's first follow-up appoint with Dr. Rau was nearly one month after his initial appointment, on July 10, 2014. He had continued to lose weight.

47. On July 15, 2014, Mr. Moura saw Dr. Hazlett. Dr. Hazlett was extremely concerned about his medical stability. It had been two months of weight loss and restriction since his discharge from the Herrick PHP program, with limited follow-up treatment from Kaiser. Dr. Hazlett sent Mr. Moura to the emergency room to see if he was stable enough for psychiatric hospitalization. Dr. Hazlett stated that Kaiser protocol did not allow her to order hospitalization.

48. The emergency department checked Mr. Moura's electrolytes and sent him home with no referrals or follow-up care.

49. On July 21, 2014, after further weight loss and inability to maintain an adequate diet, Mr. Moura sought readmission to Herrick Hospital. Dr. Hazlett advised Mr. Moura to go to the emergency room and tell them that he had an eating disorder and needed psychiatric hospitalization. Dr. Hazlett stated that this would be the best way to get a referral to Herrick Hospital.

50. The attending mental health worker at the Kaiser emergency room did not know how to get a patient approved for hospitalization at Herrick but made several phone calls to try to find out. He was told that there was a weekly conference on Thursdays to make such decisions. Mr. Moura was told that he would hear from Kaiser after the next conference. He was discharged with no referral or follow-up. No one called him after the Thursday conference.

51. On July 28, 2014, Mr. Moura had his first meeting with Shannon Jordan, RD, the dietician in the Kaiser Santa Clara eating disorder program to whom he had been referred by Dr. Rau on June 16, 2014. Ms. Jordan told Mr. Moura that she was unable to assist with meal planning for a patient whose eating disorder was as advanced as his. Mr. Moura was eating 50-100 calories per day at the time.

52. Mr. Moura saw Dr. Rau again on July 31, 2014. Unable to refer Mr. Moura for hospitalization, Dr. Rau referred Mr. Moura to the Eating Disorder Intensive Outpatient Program at Kaiser Walnut Creek.

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53. Mr. Moura had an intake appointment at Kaiser Walnut Creek with Dr. Rachel Fields, Psy.D on August 5, 2014. He was admitted to the program. However, the first three days he attended the program, he was not able to finish meals within the allotted time, was told he could not stay and was sent home. The staff determined that Mr. Moura needed a higher level of care and that the matter was so urgent that they did not wait for the regular Thursday meeting to arrange admittance to Herrick.

54. On August 13, 2014, nearly one month after Dr. Hazlett first sought to hospitalize him, Mr. Moura was admitted to Herrick Hospital. He remained hospitalized for over a month, until September 21, 2014.

55. On September 22, 2014, Mr. Moura was admitted to Center for Discovery in Fremont, a residential treatment facility for eating disorders. Mr. Moura left five days later.

56. Mr. Moura continued to lose weight, eating only a few hundred calories per day. Unable to get adequate treatment from Kaiser, he sought help through Stanford University's Eating Disorder Program. He was given the name of an outpatient therapist, who he saw on November 5, 2014 and November 10, 2014. The therapist said that Mr. Moura's condition was too severe for outpatient treatment, and that residential treatment was the appropriate level of care. The therapist gave Mr. Moura a list of residential treatment centers that she recommended. She said that she would not recommend Center for Discovery.

57. On November 18, 2014, Mr. Moura saw Dr. Hazlett, who referred him to Charlene Laffaye, PhD., an eating disorder specialist at Kaiser Fremont. Mr. Moura saw Dr. Laffaye on November 26, 2014 and December 2, 2014. Dr. Laffaye then referred Mr. Moura back to Kaiser Santa Clara, even though he had not received adequate treatment at that facility.

58. Mr. Moura was then contacted by Kaiser Santa Clara to arrange an appointment with Dr. Rau, but was advised that he could not get individual therapy sessions more often than every 6-8 weeks. Mr. Moura saw Dr. Rau on December 9, 2014, who referred him to a weekly Eating Disorder support group in Santa Clara, but only with the stipulation that he would not lose any more weight before starting the group in January 2015. Mr. Moura was not given any support or referrals to maintain his weight for the month preceding the support group.

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59. Mr. Moura saw Dr. Rau again on January 8, 2015 who confirmed that a residential treatment center was the appropriate level of care for Mr. Moura. Dr. Rau agreed that, by his next appointment on February 9, 2015, she would solidify a plan for him to start residential treatment and know how he would get there, working on her own without Kaiser. Dr. Rau provided the names of residential treatment facilities that she felt were good programs and/or where she had patients who had attended with good results.

60. By January 8, 2015, Mr. Moura was physically weak and was suffering from reduced cognitive functioning, memory problems, and an inability to concentrate. He attended the outpatient Eating Disorder Group but was the only patient with anorexia. Most of the patients were morbidly obese and the primary focus of the group discussion was how to lose weight. Mr. Moura discussed his experience in the group with Dr. Rau, and they decided he should not continue to attend.

61. On February 9, 2015, Mr. Moura saw Dr. Rau and they discussed his decision to seek admission to Monte Nido Eating Disorder Treatment Center. Dr. Rau agreed that this was the appropriate treatment plan given the severity of Mr. Moura's eating disorder. However, Dr. Rau said that she could not give Mr. Moura a referral for residential treatment.

62. On the same day, Dr. Viloria conducted a physical and ordered labs required for admission to Monte Nido.

63. On February 23, 2015, Mr. Moura went to the emergency room in Santa Clara with chest pains, falling down, numbness in his fingers and loss of fine motor control. He was given electrolytes and discharged with instructions to see his regular doctor.

64. On March 4, 2015, Mr. Moura began treatment at Monte Nido. He discharged on April 26, 2015. He paid approximately $75,000 for this treatment.

CLASS ACTION ALLEGATIONS

65. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to Federal Rule of Civil Procedure 23. This action has been brought and may properly be maintained as a class action under the Federal Rules of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed class is ascertainable.

66. Plaintiff seeks to represent a class composed of and defined as follows:

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> All persons who were covered under an ERISA group health plan underwritten and/or administered by Kaiser which was issued, amended, or renewed in the State of California on or after July 1, 2000, who were diagnosed with anorexia nervosa or bulimia nervosa, from inception of the applicable limitations period, including periods of tolling and estoppel, until the final termination of this action ("class period").

67. The proposed class is limited to participants and beneficiaries of plans issued in California. The proposed classes include only plans governed by ERISA. The proposed classes do not include Subscribers and Members of individual PPO plans and other non-ERISA plans.

68. Plaintiff reserves his right to modify the definition of the proposed classes based on information that he or his counsel learn through discovery.

69. The Class and Subclass meet all of the requirements of Federal Rule of Civil Procedure 23, as follows.

Numerosity

70. The potential members of the proposed class as defined are so numerous that joinder of all the members of the proposed class is impracticable. While the precise number of proposed class members has not been determined at this time, Plaintiffs are informed and believe that there is a substantial number of individuals covered under Kaiser plans who have been similarly affected. Numerosity of class members will be ascertained and confirmed by discovery. The number and identity of the members of the class are readily determinable from the records of Defendant.

Commonality

71. There are questions of law and fact common to the proposed class that predominate over any questions affecting only the individual class members. These common questions of law and fact include, without limitation:

a) Whether Kaiser violated ERISA by violating the California Mental Health Parity Act;

b) Whether Kaiser violated ERISA by violating MHPAEA;

c) Whether Kaiser breached its fiduciary duty by failing to provide Residential Treatment;

d) Whether Kaiser breached its fiduciary duty by failing to comply with plan language; and

e) Whether Kaiser breached its fiduciary duty by imposing requirements outside plan language to deny members access to Residential Treatment.

Typicality

72. The claims of the named Plaintiff are typical of the claims of the proposed class. Plaintiff and all members of the proposed class sustained the same or similar injuries arising out of and caused by Kaiser's common course of conduct in violation of its fiduciary duty. Plaintiff's claims are thereby representative of, and co-extensive with, the claims of the Plaintiff Class members.

Adequacy of Representation

73. Plaintiff will fairly and adequately represent and protect the interests of the members of the proposed class. There are no conflicts between the interests of the Plaintiff and the other members of the proposed class. Counsel representing Plaintiff is competent and experienced in litigating class actions.

Superiority of Class Action

74. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed class members is not practicable, and questions of law and fact common to the proposed class predominate over any questions affecting only individual members of the proposed class. Each member of the proposed class has been damaged and is entitled to recovery by reason of Kaiser's conduct. They have little incentive, if any, to prosecute their claims independently, and given their severe mental illness, would be unlikely to find counsel to represent them. The only practical mechanism is for them to vindicate their rights in this instance through class treatment of their claims, which is convenient, economical, consolidates all claims in a single suit, and serves to avoid a multiplicity of suits.

75. Kaiser has acted, or refused to act, on grounds that apply generally to the class, so that final injunctive, statutory penalties, damages and/or declaratory relief is appropriate respecting the

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class as a whole. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

CLAIM FOR RELIEF

(29 U.S.C. § 1132(a) (3), (g))

76. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

77. As a direct and proximate result of the Defendant's breach of fiduciary duties, Plaintiffs are entitled to and hereby request that this Court grant the following relief pursuant to 29 U.S.C. § 1132 (a)(3):

a) A declaration that Kaiser has violated ERISA by violating the Parity Act and MHPAEA;

b) A declaration that Kaiser's policy of not allowing Plan Physicians to refer patients with anorexia nervosa or bulimia nervosa to residential treatment violates ERISA by violating plan language;

c) A declaration that Kaiser's policy of not allowing Plan Physicians to authorize residential treatment for patients with anorexia nervosa or bulimia nervosa violates ERISA by violating the Parity Act and MHPAEA;

d) Reformation of the plans to comply with ERISA, the Parity Act and MHPAEA;

e) A mandatory injunction requiring Kaiser to reprocess claims for benefits for medically necessary residential treatment of anorexia nervosa or bulimia nervosa; and

f) Disgorgement of any profits Kaiser may have realized by virtue of its unlawful conduct.

78. Plaintiffs further seek payment of attorneys' costs and fees, which Plaintiffs are entitled to have paid by Kaiser. 29 U.S.C. § 1132(g) (1).

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REQUEST FOR RELIEF

Wherefore, Plaintiffs pray for judgment against the Defendant, and that the judgment grant the following relief:

1. Certification of this case and these claims for class treatment, with the class defined as set forth in this complaint;

2. Designating Plaintiff Ian Moura as representative for the class;

3. Designating Lisa Kantor, David Oswalt and Kathryn Trepinski as counsel for the class;

4. A declaration that Kaiser has violated ERISA by violating the Parity Act and MHPAEA;

5. A declaration that Kaiser's policy of not allowing Plan Physicians to refer patients with anorexia nervosa or bulimia nervosa to residential treatment violates ERISA by violating plan language;

6. A declaration that Kaiser's policy of not allowing Plan Physicians to authorize residential treatment for patients with anorexia nervosa or bulimia nervosa violates ERISA by violating the Parity Act and MHPAEA;

7. Reformation of the plans to comply with ERISA, the Parity Act and MHPAEA;

8. A mandatory injunction requiring Kaiser to reprocess claims for benefits for medically necessary residential treatment of anorexia nervosa or bulimia nervosa; and

9. Disgorgement of any profits Kaiser may have realized by virtue of its unlawful conduct.

10. Pursuant to 29 U.S.C. § 1132(g), payment of all costs and reasonable attorneys' fees incurred in pursuing this action; and

/ / /

11. For such other and further relief as the Court deems just and proper.

Dated: November 9, 2017 **KANTOR & KANTOR, LLP**

By: */s/ Lisa S. Kantor*
Lisa S. Kantor,
Attorneys for Plaintiff,
Ian Moura, on behalf of himself and all others similarly situated

Dated: November 9, 2017 **LAW OFFICES OF KATHRYN M. TREPINSKI**

By: */s/ Kathryn M. Trepinski*
Kathryn M. Trepinski
Attorneys for Plaintiff,
Ian Moura, on behalf of himself and all others similarly situated

Filer's Attestation: Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, Lisa S. Kantor hereby attests that concurrence in the filing of this document and its content has been obtained by all signatories listed.

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