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WHATCOM COUNTY
WASHINGTON

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM

RAQUEL FENN aka RAQUEL RUIZ-DIAZ,
individually, and BLAINE WETZEL,
individually,

Plaintiffs;

vs.

KAISER FOUNDATION HEALTH PLAN
OF WASHINGTON, formerly doing
business as GROUP HEALTH OF
WASHINGTON, Washington insurers,

Defendants.

NO. 18 2 02417 37

COMPLAINT FOR BREACH OF
CONTRACT AND VIOLATION OF
THE CONSUMER PROTECTION ACT

COMES NOW the Plaintiffs, RAQUEL FENN and BLAINE WETZEL, by and through
their attorney of record, Tom Mumford, and alleges as follows:

I. PARTIES

Plaintiffs

1.1 At all times relevant hereto, Plaintiffs FENN and WETZEL were residents of
Whatcom County, Washington.

1 Defendant KAISER FOUNDATION HEALTH PLAN OF WASHINGTON

2 1.2 At all times material herein, the Defendant, KAISER FOUNDATION HEALTH
3 PLAN OF WASHINGTON (hereinafter referred to as "KAISER") formerly doing business as
4 GROUP HEALTH OF WASHINGTON was and is a foreign insurance company domiciled
in California and licensed to do business in the State of Washington.

5 1.3 At all times material herein, Defendant KAISER, was engaged in the business
6 of issuing and providing health insurance in the State of Washington and in Whatcom
County, Washington.

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8 **II. JURISDICTION AND VENUE**

9 2.1 Plaintiffs hereby incorporate and re-allege all allegations as previously
10 stated.

11 2.2 This cause of action arises from a claim against KAISER for failure to
reimburse payments made by Plaintiffs under a health insurance policy for injuries
12 sustained by Plaintiff Raquel Fenn in an automobile vs. pedestrian collision that
occurred in Asuncion, Paraguay in February 2015.

13 2.3 Venue is proper and appropriate in Whatcom County Superior Court,
14 because KAISER does business in Whatcom County, Washington. Venue is proper
pursuant to RCW 4.12.025.

15 2.4 The Court has jurisdiction over the subject matter and over the parties
16 herein.

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18 **III. FACTUAL ALLEGATIONS**

19 3.1 Plaintiffs hereby incorporate and re-allege all allegations as previously stated.

20 3.2 This claim is for failure of KAISER to reimburse payments for foreign
claims under a health insurance policy for medical care.

21 3.3 Plaintiff RAQUEL FENN purchased that policy from KAISER so that there
22 would be insurance protection if she was ever ill or injured and required care.

23 3.4 At all times material to this complaint, RAQUEL FENN was insured under a
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1 health care insurance policy that was issued by GROUP HEALTH OF WASHINGTON
2 KAISER, to which KAISER became a successor.

3 3.4 The KAISER Policy was issued and sold with an effective date of January
4 30, 2015.

5 3.5 The KAISER Policy was in full force and effect in February of 2015, the
6 date on which the collision occurred in which RAQUEL FENN sustained severe injuries
7 after being hit by a car while crossing the street in Asuncion, Paraguay.

8 3.6 RAQUEL FENN was walking across the street in Asuncion, Paraguay
9 when a phantom vehicle hit her, then sped away from the scene.

10 3.7 RAQUEL FENN sustained fractures to her legs and hips, a shattered knee
11 cap, and both lungs were punctured.

12 3.8 RAQUEL FENN has incurred medical expenses for the treatment of the
13 bodily injuries that she sustained as a result of the February 2015 collision.

14 3.9 BLAINE WETZEL paid his fiancé RAQUEL FENN's medical bills and out-
15 of-pocket expenses and is entitled to reimbursement from the defendants.

16 3.9 RAQUEL FENN submitted her medical bills to KAISER under the Foreign
17 Claims portion of her health insurance policy.

18 3.10 No response was received from KAISER to plaintiffs' request for
19 reimbursement. On November 14, 2016, Dan Grant of Kaiser's (fka Group Health)
20 customer service department informed plaintiffs that the claim had been denied because it
21 was received after the one year deadline and that it was not received until March 28, 2016.

22 3.11 The claim was sent via U.S. Postal Service certified mail and the proof of
23 service stated that the claim was sent on Thursday, February 18th, delivered Friday
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February 19th, and picked up by Kaiser on Monday, February 22nd.

3.12 After the request for reimbursement was sent, Dan Grant of customer service sent over a request for verification on the claim. He informed plaintiff's counsel that it was probably taking longer to resolve because it was a foreign claim. Mr. Grant stated that it could take up to two more weeks to receive an answer.

3.13 Despite demand for payment defendant has failed to reimburse plaintiffs for medical expenses incurred.

CAUSES OF ACTION

IV. BREACH OF CONTRACT

4.1 Plaintiffs re-allege and restate all previous allegations.

4.1 Plaintiffs paid premiums to Defendant KAISER in exchange for a valid and enforceable contract of health insurance, including foreign medical care. That contract was in effect at the time of the collision that caused the injuries in this case.

4.2 Plaintiffs complied with the conditions precedent to recovery contained in the policy.

4.3 Defendant KAISER has breached the insurance contract by refusing to reimburse for the medical care that plaintiffs are legally entitled to recover.

4.4 Plaintiffs have suffered damages as a result of KAISER's breach of contract in an amount to be determined at trial.

V. BAD FAITH

5.1 Plaintiffs re-allege and restate all previous allegations.

5.2 All insurers have a duty of good faith and fair dealing toward their insureds.

5.3 KAISER acted in bad faith when it unreasonably and unfairly delayed and denied full reimbursement of benefits under RAQUEL FENN's health insurance policy.

5.4 KAISER has unreasonably delayed payment in full to Plaintiffs.

5.5 KAISER has breached its implied common law duty of good faith and fair dealing with the Plaintiffs.

1 5.6 KAISER has caused Plaintiffs to incur expenses, costs, and damages,
2 including attorney's fees, all in an amount to be proven at trial, because she has been
3 forced to engage in litigation to enforce her contractual rights.

4 VI. VIOLATION OF THE CONSUMER PROTECTION ACT

5 6.1 Plaintiffs re-allege and restate all previous allegations.

6 6.2 The business of insurance, as well as the practice of insurers, agents, and
7 adjusters, are subject to the requirements of the Washington Consumer Protection Act,
8 RCW 19.86, et. seq.

9 6.3 The Defendant, by and through the acts and omissions of its agents,
10 employees, and/or counsel, has violated the Consumer Protection Act by engaging in
11 unfair and deceptive acts or practices in the course of trade and commerce that has the
12 potential to harm a substantial portion of the public.

13 6.4 The defendant's unfair and deceptive acts and practices have damaged
14 the Plaintiffs in an amount to be determined at trial, including the trebling of damages
15 and attorneys' fees and litigation costs as provided by statute.

16 VII. DAMAGES

17 7.1 Plaintiffs re-allege and restate all previous allegations.

18 7.2 KAISER is liable in full for all damages that have directly and proximately
19 resulted from its breach of the health insurance contract that it sold to Plaintiffs,
20 including payment of full compensation for the injuries sustained by Plaintiffs for which
21 KAISER is liable, either severally or jointly and severally, as set for herein.

22 7.3 KAISER is liable for all damages that have directly and proximately
23 resulted from its violation of the Consumer Protection Act, including treble damages,
24 attorney's fees and costs.

1 7.4 KAISER is liable for the reasonable attorney's fees of Plaintiffs, pursuant
2 to the Washington Consumer Protection Act, applicable statutes, case law and
3 contractual provisions.

4 **VIII. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

- 6 1. For judgments in such amounts as shall be proven at the time of trial.
7 2. For pre-judgment interest at the statutory rate on all items of special damages
8 including, without limitation, expenses of medical care and treatment and
9 wage loss.
10 3. For an award of attorney's fees and costs incurred herein.
11 4. For treble damages pursuant to the Washington Consumer Protection Act.
12 5. For such other and further relief as the court deems just and equitable.

13 DATED this th 19 day of December, 2018.
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15 **BURI FUNSTON MUMFORD FURLONG, PLLC**

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18 TOM MUMFORD, WSBA 28652
19 Attorney for Plaintiffs Raquel Fenn
20 and Blaine Wetzel
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