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**FILED**

**NOV 12 2014**

SAN LUIS OBISPO SUPERIOR COURT

J. Cacho, Deputy Clerk

ATTORNEYS FOR PLAINTIFF

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN LUIS OBISPO - BRANCH**

**"Via Fax"**

**14 CV 0582**

SIERRA VISTA HOSPITAL, INC. dba SIERRA  
VISTA REGIONAL MEDICAL CENTER, a  
California Corporation;

Plaintiffs,

vs.

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

Defendants.

Case No:  
ASSIGNED TO:  
DEPT.:

UNLIMITED - DAMAGES EXCEED \$25,000

**COMPLAINT FOR DAMAGES FOR:**

1. BREACH OF WRITTEN CONTRACT AGAINST DEFENDANT KAISER
2. UNFAIR BUSINESS PRACTICES (CAL. BUS. & PROF. CODE §17200
3. BREACH OF IMPLIED-IN-FACT CONTRACT AGAINST DEFENDANT KAISER
4. PROMISSORY ESTOPPEL
5. QUANTUM MERUIT
6. UNJUST ENRICHMENT
7. ACCOUNTS STATED

Complaint Filed:

Trial Date:

None

1 **TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **INTRODUCTION**

3 1. The Defendants, KAISER FOUNDATION HEALTH PLAN, INC. and KAISER  
4 FOUNDATION HOSPITALS, (collectively hereinafter referred to as "Kaiser" and/or "Defendants")  
5 in this action have systematically underpaid and delayed payment for fees owed to the Plaintiff,  
6 SIERRA VISTA HOSPITAL, INC. dba SIERRA VISTA REGIONAL MEDICAL CENTER  
7 ("Plaintiff" or "Hospital") for medically necessary services. The Plaintiff brings this action to redress  
8 this systematic underpayment and delay in payment of hospital fees owed to Plaintiff. Under state  
9 law, the Plaintiff and other public hospitals have a duty to provide emergency treatment to all patients  
10 who need it, regardless of the patient's ability to pay. Defendants have a corresponding duty to  
11 reimburse Plaintiff and other public hospitals based on the full amount charged for medical treatment  
12 provided to Defendants insured's. The Defendants violate this duty because they routinely refuse to  
13 make payments based on the full amount of such charges.

14 2. In addition, the Defendants have a duty to respond promptly and use fair procedures  
15 when processing claims for payment, and appeals from denials of such claims, made by medical  
16 providers, including Plaintiffs and other public hospitals. Defendants systematically violate these  
17 duties through their dilatory and unfair claim handling practices. By engaging in these unlawful,  
18 unfair, and deceptive business practices, Defendants have unjustly enriched themselves at the expense  
19 of California public hospitals, namely Plaintiff, and in some instances at the expense of their insureds.

20 3. Upon Patients' admissions to the Hospital and following stabilization in the emergency  
21 department, the Defendants were immediately contacted and notified for authorization. The  
22 Defendants acknowledged their obligation to pay for medically necessary and physician ordered  
23 services provided to their members by issuing partial payments, and then routinely and systematically  
24 denied further payment on grounds of post stabilization.

25 4. Plaintiff brings this suit to enjoin Defendants from future illegal conduct that is harmful  
26 to patients, public hospitals, and to Defendant's competitors and to recover funds for public hospitals  
27 that were reimbursed by Defendants at illegally low rates. Also, Plaintiff seeks to impose civil  
28 penalties on the Defendants for their illegal conduct. This action arises under the Unfair Competition

1 Law, California Business and Professions Code sections 17200, et seq.

2 **PARTIES**

3 5. Plaintiff, SIERRA VISTA HOSPITAL, INC. dba SIERRA VISTA REGIONAL  
4 MEDICAL CENTER ("Plaintiff" or "Hospital") operates a general acute care hospital with its  
5 principal place of business in San Luis Obispo County, California, is qualified to do business in the  
6 State of California, and is a hospital licensed in good standing under the laws of the State of  
7 California. The services that the Hospital provided and upon which this Complaint is based were  
8 rendered within this judicial district.

9 6. Defendant, KAISER FOUNDATION HEALTH PLAN, INC. ("Kaiser Health Plan") is  
10 a California Corporation, organized and existing under the laws of the State of California with its  
11 principal place of business in the City of Oakland, County of Alameda, in the State of California.

12 7. Defendant, KAISER FOUNDATION HOSPITALS ("Kaiser Hospitals") is a California  
13 Corporation, organized and existing under the laws of the State of California with its principal place  
14 of business in the City of Oakland, County of Alameda, in the State of California.

15 8. Kaiser Health Plan and Kaiser Hospitals are collectively referred to herein as "Kaiser"  
16 or "Defendants."

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

24 10. The Hospital is informed and believes and thereon alleges that at all times mentioned  
25 herein, each of the Defendants, including all Defendants sued under fictitious names, were the agent  
26 and/or employee of each of the remaining Defendants, and in so doing the things alleged herein, were  
27 acting within the scope of his or her agency and employment.

28 ///

1        11.    The Hospital is withholding the full names of the Patients in this Complaint to preserve  
2 the Patients' protected rights to privacy concerning health care information. The Patients' medical  
3 and claims information has been and will be made available to Defendant upon request.

4        12.    Jurisdiction is proper in this judicial district because this is where the contracts at issue  
5 were entered into and/or where the breach occurred.

6                                    **ALLEGATIONS AS TO THE KAISER DEFENDANTS**

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

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

14       15.    The Hospital is informed and believes that, at all times mentioned herein, Kaiser  
15 Hospitals and Kaiser Health Plans are agents of one another for purposes that include, but are not  
16 limited to contracting with hospital providers including the Hospital, entering into network lease  
17 agreements with entities such as Multiplan, Inc. and/or its predecessor, Beech Street Corporation,  
18 receiving notice of a Kaiser member's inpatient admission, authorizing a Kaiser member's medical  
19 services, coordinating a Kaiser member's transfer to another facility, receiving, processing and paying  
20 claims for reimbursement for medical services provided to Kaiser members, and processing claims  
21 appeals, because Kaiser Hospitals and Kaiser Health Plan have in fact performed such actions on one  
22 another's behalf.

23       16.    The Hospital brings this dispute against Defendants and not against the Patients.

24                                    **THE MULTIPLAN AGREEMENT**

25       17.    Multiplan is in the business of entering into written contracts with providers such as  
26 Hospital on behalf of its "Clients," which are health plans and health plan administrators that are  
27 identified in said contracts, such as Kaiser and Does 1 through 25.

28       18.    Based on information and belief, the Hospital contends prior to January 1, 2010, (the

specific date is unknown), Multiplan or its predecessors in interest (collectively "Multiplan"), entered into a written agreement with Kaiser and Does 1 through 25 ("Network Leasing Agreement") to allow Multiplan to enter into contracts on behalf of Kaiser and Does 1 through 25 with providers that participate in, what is currently known as, the Multiplan Network, such as the Hospital, in order for Kaiser and Does 1 through 25 to gain access to the Participating Providers' discounted rates for medical services. Based on information and belief, the Network Leasing Agreement is currently in Kaiser's and Multiplan's possession, custody and control.

19. Thereafter, the Hospital and Multiplan entered into the "MPI Participating Facility Agreement" (the "Multiplan Agreement") effective on or about January 1, 2010, and amended from time to time. Due to confidentiality concerns, the Agreement is not attached to this complaint; the Hospital is informed and believes that Kaiser and Multiplan, Inc. are already in possession of a copy of the Multiplan Agreement, but the Multiplan Agreement has been and will be made available to Defendants upon request.

20. The Hospital is informed and believes that, at all times herein mentioned, Multiplan was acting as the agent and attorney-in-fact for Kaiser and Does 1 through 25, and, in negotiating and executing said Multiplan Agreement with the Hospital, was acting in the scope of its authority as such agent and attorney-in-fact and with the permission and consent of Kaiser and Does 1 through 25. Additionally, Kaiser and Does 1 through 25 ratified the Multiplan Agreement entered into by Multiplan by issuing partial payment on the claims at issue based on the reduced rates set forth in the Multiplan Agreement.

21. Pursuant to the terms of the Multiplan Agreement, the Hospital is obligated to provide hospital services at discounted rates to members of Kaiser and Does 1 through 25. Included in the Multiplan Agreement are specific reimbursement rates Kaiser and Does 1 through 25 are required to pay to the Hospital for services the Hospital provides to their members.

22. Further, Section 4.3 of the Multiplan Agreement requires that Multiplan include an obligation by the Client to abide by the terms of the Multiplan Agreement in any agreement it enters into with a Client that allows said Client to access the discounted network rates.

23. Additionally, Section 3.2 of the Multiplan Agreement prohibits a Client from

1 retroactively denying a claim for payment for Covered Services even where the services are not pre-  
2 certified or pre-authorized except for medical necessity reasons. Section 4.5 of the Multiplan  
3 Agreement prohibits a Client, such as Kaiser, from denying claims for medical services provided to  
4 members when said services are determined to have been medically necessary at the time the Hospital  
5 rendered said services.

6 24. In turn, Kaiser and Does 1 through 25 are obligated to comply with the terms of the  
7 Multiplan Agreement, including reimbursing the Hospital for such hospital services at the discounted  
8 rates set forth in the Multiplan Agreement as well as refraining from denying claims for lack of  
9 authorization when services were determined to be medically necessary. Furthermore, Multiplan and  
10 Does 1 through 25 are obligated to ensure such terms are included in any agreement they enter into  
11 with Clients, such as Kaiser.

12 **SPECIFIC ALLEGATIONS AS TO PATIENT 1**

13 25. In September 2011, the Hospital provided Patient 1, a health plan member of Kaiser  
14 and/or Does 1 through 25, with treatment for medically necessary and physician ordered services.  
15 Plaintiff is withholding the full name of Patient 1 in this Complaint to preserve Patient 1's right to  
16 privacy concerning protected health information. Patient 1's medical and claims information has been  
17 and will be made available to Defendants upon request.

18 26. During Patient 1's hospitalization, the Hospital provided medically necessary and  
19 physician ordered services, which Kaiser was aware of, and either expressly or impliedly requested  
20 said services be provided by the Hospital to Patient 1.

21 27. Patient 1 presented to the Hospital's emergency department ("ER") and was admitted  
22 for a spinal fracture resulting from an ATV accident. On that same day, the Hospital determined  
23 Patient 1 was a Kaiser member and immediately contacted and notified Kaiser of Patient 1's  
24 admission, requesting authorization to treat Patient 1.

25 28. On the same day this Patient was discharged home, the Hospital finally received  
26 approval/treatment authorization from Kaiser, but for only 2 days of Intensive Care Unit (ICU)  
27 treatment under authorization number 49924-02. Thereafter, Hospital received authorization number  
28 SCM0036075 valid for the entirety. However, Kaiser breached the Multiplan Agreement by failing

1 to pay the contractual rate in full when Kaiser notified Hospital of its denial of the remaining 2 days  
2 on the basis of inadequate clinical information received. At no point prior to Patient 1's discharge did  
3 Kaiser attempt to arrange for the transfer of Patient 1 to a Kaiser facility.

4 29. After Patient 1 was discharged from the Hospital, the Hospital timely billed Kaiser for  
5 medical services provided to Patient 1. Under the terms of the Multiplan Agreement, Kaiser was  
6 required to pay the Hospital within 30 days. However, Kaiser failed to fully pay the claim within 30  
7 days, and instead issued a denial of the claim on the grounds that it had not authorized the Hospital to  
8 provide post-stabilization services to Patient 1, and that Patient 1 was stable for transfer to a Kaiser  
9 facility. Kaiser issued such a denial even though Kaiser failed to arrange for Patient 1 to be  
10 transferred to a Kaiser facility despite its knowledge that Patient 1 had been admitted and was being  
11 treated at the Hospital. Kaiser's denial is in breach of the Multiplan Agreement and is a violation of  
12 California law.

13 30. Kaiser acknowledged its obligation to pay for medically necessary and physician  
14 ordered services provided to its member, Patient 1, when it issued a partial payment in the amount of  
15 \$37,413.05, with an additional \$76.89 in interest. However, Kaiser breached the Multiplan  
16 Agreement by failing to pay the contractual rate in full and by denying the claim related to medically  
17 necessary services for lack of authorization.

18 31. Pursuant to the terms of the Multiplan Agreement, Kaiser's failure to timely pay the  
19 Hospital's claim results in Kaiser losing the discount provided therein. Patient 1's responsibility is  
20 nothing. Therefore, Kaiser owes the Hospital \$54,197.28, because no contractual discount applies, for  
21 the services provided to Patient 1.

22 32. On several occasions, the Hospital submitted timely written appeals to Kaiser  
23 requesting further payment. However, such attempts to resolve Kaiser's breach and underpayment  
24 were unsuccessful. As of this date, Kaiser has failed to issue any further payment to the Hospital for  
25 services the Hospital provided to Patient 1.

26 33. By denying the claim related to medically necessary services for lack of authorization,  
27 underpaying the Hospital and refusing to correct the underpayment after numerous appeal efforts  
28 made by the Hospital, Kaiser breached the Multiplan Agreement by failing to timely and fully pay the

1 Hospital's claim for reimbursement for the services provided to Patient 1. Thus, Kaiser's breach of  
2 the Multiplan Agreement has caused damages to the Hospital in the amount of \$16,784.23, plus  
3 statutory interest, for the services provided to Patient 1.

4  
5 **SPECIFIC ALLEGATIONS AS TO PATIENT 2**

6 34. In March-April 2013, the Hospital provided Patient 2, a health plan member of Kaiser  
7 and/or Does 1 through 25, with treatment for medically necessary and physician ordered services.  
8 Plaintiff is withholding the full name of Patient 2 in this Complaint to preserve Patient 2's right to  
9 privacy concerning protected health information. Patient 2's medical and claims information has been  
10 and will be made available to Defendants upon request.

11 35. During Patient 2's hospitalization, the Hospital provided medically necessary and  
12 physician ordered services, which Kaiser was aware of, and either expressly or impliedly requested  
13 said services be provided by the Hospital to Patient 2.

14 36. Patient 2 originally presented to Twin Cities Regional Medical Center's emergency  
15 department ("ER"), but was immediately transferred and admitted to the Hospital to rule out viral  
16 myositis after screening labs demonstrated levels of concern to the treating physician. On that same  
17 day, the Hospital determined Patient 2 was a Kaiser member and immediately contacted and notified  
18 Kaiser of Patient 2's admission, requesting authorization to treat Patient 2. Kaiser did not reply to the  
19 Hospital that day. At no point prior to Patient 2's discharge did Kaiser attempt to arrange for the  
20 transfer of Patient 2 to a Kaiser facility.

21 37. The Hospital had submitted clinical reviews and medical records to Kaiser. However,  
22 Kaiser responded by denying the claim because it had not authorized the Hospital to provide post-  
23 stabilization services to Patient 2, and that Patient 2 was stable for transfer to a Kaiser facility. Kaiser  
24 issued such a denial even though Kaiser failed to arrange for Patient 2 to be transferred to a Kaiser  
25 facility despite its knowledge that Patient 2 had been admitted and was being treated at the Hospital,  
26 as was required by law.

27 38. After Patient 2 was discharged from the Hospital, the Hospital timely billed Kaiser for  
28 medical services provided to Patient 2. Under the terms of the Multiplan Agreement, Kaiser was



1 required to pay the Hospital within 30 days. However, Kaiser failed to fully pay the claim within 30  
2 days, and instead issued a denial of the claim on the grounds that it had not authorized the Hospital to  
3 provide post-stabilization services to Patient 2, and that Patient 2 was stable for transfer to a Kaiser  
4 facility. Kaiser issued such a denial even though Kaiser failed to arrange for Patient 2 to be  
5 transferred to a Kaiser facility despite its knowledge that Patient 2 had been admitted and was being  
6 treated at the Hospital.

7 39. Kaiser acknowledged its obligation to pay for medically necessary and physician  
8 ordered services provided to Patient 2, Kaiser's member, when it issued a partial payment in the  
9 amount of \$5,506.93. However, Kaiser breached the Multiplan Agreement by failing to pay the  
10 contractual rate in full, and by denying the claim related to medically necessary services for lack of  
11 authorization.

12 40. Pursuant to the terms of the Multiplan Agreement, Kaiser's failure to timely pay the  
13 Hospital's claim results in Kaiser losing the discount provided therein. Patient 2's responsibility is  
14 nothing. Therefore, Kaiser owes the Hospital total reimbursement in the amount of \$31,264.78,  
15 because no contractual discount applies, for the services provided to Patient 2.

16 41. On several occasions, the Hospital submitted timely written appeals to Kaiser  
17 requesting further payment. However, such attempts to resolve Kaiser's breach and underpayment  
18 were unsuccessful. As of this date, Kaiser has failed to issue any further payment to the Hospital for  
19 services the Hospital provided to Patient 2.

20 42. Thus, Kaiser's breach of the Multiplan Agreement has caused damages to the Hospital  
21 in the amount of \$25,757.85, plus statutory interest, for the services provided to Patient 2.

### 22 23 **SPECIFIC ALLEGATIONS AS TO PATIENT 3**

24 43. In January 2014, the Hospital provided Patient 3, a health plan member of Kaiser  
25 and/or Dows 1 through 25, with treatment for medically necessary and physician ordered services.  
26 Plaintiff is withholding the full name of Patient 3 in this Complaint to preserve Patient 3's right to  
27 privacy concerning protected health information. Patient 3's medical and claims information has  
28 been and will be made available to Defendants upon request.

1        44. During Patient 3's hospitalization, the Hospital provided medically necessary and  
2 physician ordered services, which Kaiser was aware of, and either expressly or impliedly requested  
3 said services be provided by the Hospital to Patient 3.

4        45. Patient 3 was received by the Trauma Unit, admitted and treated for a basilar skull  
5 fracture. On the subsequent day, the Hospital was able to determine Patient 3 was a Kaiser member  
6 and immediately contacted and notified Kaiser of Patient 3's admission, requesting authorization to  
7 treat Patient 3. Kaiser provided partial coverage due to the trauma, but denied payment for the  
8 remaining 4 days stating Patient 3 was stable for transfer to a Kaiser facility. However, at no point  
9 prior to Patient 3's discharge did Kaiser attempt to arrange for the transfer of Patient 3 to a Kaiser  
10 facility.

11        46. The Hospital had submitted clinical reviews and medical records to Kaiser. However,  
12 Kaiser responded by denying the claim because it had not authorized the Hospital to provide post-  
13 stabilization services to Patient 3, and that Patient 3 was stable for transfer to a Kaiser facility. Kaiser  
14 issued such a denial even though Kaiser failed to arrange for Patient 3 to be transferred to a Kaiser  
15 facility despite its knowledge that Patient 3 had been admitted and was being treated at the Hospital,  
16 as was required by law.

17        47. After Patient 3 was discharged from the Hospital, the Hospital timely billed Kaiser for  
18 medical services provided to Patient 3. Under the terms of the Multiplan Agreement, Kaiser was  
19 required to pay the Hospital within 30 days. However, Kaiser failed to fully pay the claim within 30  
20 days, and instead issued a denial of the claim on the grounds that it had not authorized the Hospital to  
21 provide post-stabilization services to Patient 3, and that Patient 3 was stable for transfer to a Kaiser  
22 facility. Kaiser issued such a denial even though Kaiser failed to arrange for Patient 3 to be  
23 transferred to a Kaiser facility despite its knowledge that Patient 3 had been admitted and was being  
24 treated at the Hospital.

25        48. Kaiser acknowledged its obligation to pay for medically necessary and physician  
26 ordered services provided to Patient 2, Kaiser's member, when it issued a partial payment in the  
27 amount of \$77,629.51, with an additional 667.31 in interest. However, Kaiser breached the Multiplan  
28 Agreement by failing to pay the contractual rate in full, and by denying the claim related to medically

1 necessary services for lack of authorization.

2 49. Pursuant to the terms of the Multiplan Agreement, Kaiser's failure to timely pay the  
3 Hospital's claim results in Kaiser losing the discount provided therein. Patient 3's responsibility is  
4 nothing. Therefore, Kaiser owes the Hospital total reimbursement in the amount of \$124,903.38,  
5 because no contractual discount applies, for the services provided to Patient 3.

6 50. On several occasions, the Hospital submitted timely written appeals to Kaiser  
7 requesting further payment. However, such attempts to resolve Kaiser's breach and underpayment  
8 were unsuccessful. As of this date, Kaiser has failed to issue any further payment to the Hospital for  
9 services the Hospital provided to Patient 3.

10 51. Thus, Kaiser's breach of the Multiplan Agreement has caused damages to the Hospital  
11 in the amount of \$33,534.50, plus statutory interest, for the services provided to Patient 3.

12  
13 **FIRST CAUSE OF ACTION**

14 **BREACH OF WRITTEN CONTRACT**

15 **AGAINST KAISER AND DOES 1 THROUGH 25**

16 52. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in  
17 the preceding paragraphs and further alleges as follows:

18 53. At the time the Hospital provided services to Patients 1 and 2, the Multiplan  
19 Agreement between the Hospital and Kaiser, executed through its agent Multiplan, was in place and  
20 Kaiser was obligated to make payment in accordance with its terms. The Multiplan Agreement  
21 requires Kaiser to reimburse the Hospital for the medically-necessary services the Hospital provided  
22 to Patients 1 through 3 at the rates stated therein and prohibits Kaiser from denying the Hospital's  
23 claims on a lack of authorization basis.

24 54. The Hospital performed all of its obligations under the Multiplan Agreement,  
25 including but not limited to providing medically necessary and physician ordered services to Kaiser's  
26 members.

27 55. The Hospital submitted clean claims for reimbursement to Kaiser for the medical  
28 services provided to Patients 1 through 3.

1           56.     Kaiser improperly denied the Hospital's claims on a lack of authorization basis and  
2 underpaid both claims.

3           57.     The Hospital has appealed Kaiser's denial and underpayment of these claims, but  
4 Kaiser has not issued any additional payments in response to the appeals.

5           58.     Per the Multiplan Agreement, payment of a claim will not be denied on the basis of  
6 the Hospital's failure to secure pre-certification or pre-authorization if Kaiser or their designee  
7 determines that the services were medically necessary. The Hospital is informed and believes that  
8 Kaiser has determined the services were medically necessary, but still refused to make payments.

9           59.     Kaiser breached the Multiplan Agreement by denying the Hospital's claims on a lack  
10 of authorization basis, and by failing to properly pay the Hospital's clean claims regarding medically  
11 necessary services provided to Patients 1 through 3.

12           60.     Per the Multiplan Agreement, a clean claim not paid within 30 days shall not be  
13 eligible for the discounted rates contained in the agreement. Taking into consideration Kaiser's  
14 previous payments and Kaiser's failure to pay the clean claim in full within 30 days, the Hospital has  
15 been damaged as a result of Kaiser's breach in the amount of \$76,076.58, plus statutory interest, for  
16 the services provided to Patients 1 through 3.

17  
18                               **SECOND CAUSE OF ACTION**

19                   **UNFAIR BUSINESS PRACTICES (CAL. BUS. & PROF. CODE §17200)**

20                               **AGAINST KAISER, AND DOES 1 THROUGH 25**

21           61.     Plaintiff re-alleges and incorporates by reference each and every allegation set forth in  
22 preceding paragraphs above and further alleges as follows:

23           62.     Plaintiff Hospital is in the business of providing medically necessary hospital services  
24 to patients. Kaiser is in the business of paying for hospital services on behalf of its insureds. Kaiser is  
25 not a competitor of the Hospital.

26           63.     Defendants have engaged in unlawful, unfair and/or fraudulent business acts and  
27 practices within the meaning of Cal. Bus. & Prof. Code § 17200 by engaging in the following  
28 conduct:

1 (a) Defendants' claims handling acts and practices, as set forth above, have  
2 repeatedly violated provisions of the Health and Safety Code, including but not limited to California  
3 Health and Safety Code Sections 1371, 1371.1, 1371.35, 1371.36, 1371.37, and California Code of  
4 Regulations, Title 28, Sections 1300.71 and 1300.71.38, and therefore has engaged in a pattern of  
5 unlawful business practices;

6 (b) Defendants' claim handling acts and practices, as set forth above, have caused  
7 the Hospital to incur a forfeiture in violation of Cal. Civ. Code § 3275 by denying reimbursement of  
8 the Hospital's claims absent any grossly negligent, willful or fraudulent breach of duty on the part of  
9 the Hospital;

10 (c) Defendants' claims handling acts and practices, as set forth in this complaint,  
11 relating to both the underpayment of claims made by public hospitals for medical treatment and  
12 dilatory claims processing practices, constitute unfair business practices because they offend  
13 established public policy, and because the harm they cause to patients and public hospitals in  
14 California greatly outweighs any benefits associated with those practices; and

15 (d) Defendants' claims handling acts and practices, as set forth in this complaint,  
16 relate to both the underpayment of claims made by public hospitals for emergency medical treatment  
17 and dilatory claims processing practices, constitute deceptive business practices, because they are  
18 likely to deceive patients and employees of public hospitals in California.

19 As a direct and proximate result of Defendants' unlawful, unfair and fraudulent  
20 business practices, Defendants have unlawfully retained monies, for Defendants' own profit, that  
21 were properly due and owing the Hospital, thereby causing the Hospital to sustain damages in a total  
22 amount to be established at trial.

23 64. In addition, Defendants' unlawful, unfair and fraudulent business practices routinely  
24 and systematically contradicts its contractual requirement that prohibits Clients from denying claims  
25 on the basis of no authorization when the services were medically necessary.

26 65. The above-described unlawful, unfair and/or fraudulent business acts and practices  
27 engaged in by Defendants continue to this day and/or present a threat of irreparable harm to the  
28 Hospital.

**THIRD CAUSE OF ACTION**

**BREACH OF IMPLIED-IN-FACT CONTRACT**

**AGAINST KAISER AND DOES 1 THROUGH 25**

66. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in preceding paragraphs above and further alleges as follows:

67. As alleged above, the Hospital believes it is entitled to full and complete payment from Kaiser in accordance with the Multiplan Agreement set forth above. However, to the extent the contract alleged above does not apply and/or is deemed unenforceable against Kaiser for any of the services at issue, and absent any other legally controlling rate, the Hospital alleges in the alternative that Kaiser owes the Hospital for these services pursuant to Kaiser's implied-in-fact contract with the Hospital.

68. The Hospital notified Kaiser of Patients 1, 2 and 3's admission to the Hospital and requested authorization to provide medically necessary and physician ordered services to Kaiser's members.

69. At no time during the Hospital's care and treatment of Patients 1, 2 and 3 did Kaiser assert the Patients were not its insured's, or indicate in any way to the Hospital it would not cover the Patient's medical expenses.

70. By failing to transfer Patients 1, 2 and 3 from the Hospital to a Kaiser facility despite knowing Patients 1, 2 and 3 were hospitalized at the Hospital, Kaiser impliedly requested that the Hospital care for and treat Patients 1, 2 and 3, and in exchange, Kaiser promised it would cover and pay for the expenses incurred in such care and treatment. Also, this is custom and practice in the healthcare industry.

71. The Hospital performed all its obligations under its implied-in-fact contract with Kaiser, in that it cared for and treated Patients 1, 2 and 3 to the best of the Hospital's ability.

72. Kaiser breached its implied-in-fact agreement with the Hospital with respect to Patient 1 on November 22, 2011; with respect to Patient 2 on July 22, 2013; and with respect to Patient 3 on April 25, 2014, by refusing to fully pay the Hospital's claim for the charges incurred in providing medical services to Patients 1, 2 and 3 and issuing final denials of the claims.

1        73. As a result of Kaiser's failure to fulfill its contractual obligations in a reasonable,  
2 timely or competent manner, the Hospital was not fully compensated for the significant health care  
3 services it provided to Patients 1, 2 and 3.

4  
5                                    **FOURTH CAUSE OF ACTION**

6                                    **PROMISSORY ESTOPPEL**

7                                    **AGAINST KAISER AND DOES 1 THROUGH 25**

8        74. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in  
9 preceding paragraphs above and further alleges as follows:

10        75. As alleged above, the Hospital believes it is entitled to full and complete payment from  
11 Kaiser and Does 1 through 25 in accordance with the Multiplan Agreement set forth above. However,  
12 as an alternative and/or additional basis for recovery, the Hospital alleges Kaiser and Does 1 through  
13 25 owe the Hospital for the services provided to Patients 1, 2, and 3 based on promissory estoppel.

14        76. The Hospital notified Kaiser of Patients 1, 2 and 3's admissions respectively to the  
15 Hospital and requested authorization to provide medically necessary and physician ordered medical  
16 services. Kaiser thus had knowledge of Patients 1, 2 and 3's admissions to the hospital and the  
17 opportunity to arrange for the transfer of Patients 1, 2 and 3 to a Kaiser-facility, but declined to do so.  
18 This conduct by Kaiser constituted a promise that they referred Patients 1, 2 and 3 to the Hospital,  
19 authorized the Hospital's provision of health care services to Patients 1, 2 and 3, and would pay for  
20 such services.

21        77. Does 1 through 25 also promised to pay hospital for the services provided to Patients 1  
22 through 3.

23        78. In reasonable reliance on the promises of Kaiser and Does 1 through 25, the Hospital  
24 thereafter provided Patients 1, 2 and 3 medically necessary services. Kaiser refrained from taking  
25 other action, such as seeking to transfer Patients 1, 2 and 3 to a Kaiser-related facility in order to avoid  
26 incurring expenses in caring for and treating Patients 1, 2 and 3. Kaiser and Does 1 through 25 should  
27 have reasonably expected the Hospital to rely on their promises.

28        79. In sum, the Hospital provided Patients 1, 2 and 3 respectively, health care services

1 totaling \$210,365.44. Kaiser initially failed to reimburse the Hospital for medically necessary services  
2 and then improperly made underpayments to the Hospital for Patient 1 in the amount of \$37,413.05,  
3 with an additional \$76.89 in interest; and for Patient 2 in the amount of \$5,506.93; and for Patient 3 in  
4 the amount of \$77,629.51, with an additional \$667.31 in interest.

5 80. Applying Kaiser's partial payments totaling \$120,549.49, Kaiser owes the Hospital a  
6 balance of \$76,076.58.

7 81. Justice requires that the promises of Kaiser and Does 1 through 25 be enforced.

8 **FIFTH CAUSE OF ACTION**

9 **QUANTUM MERUIT**

10 **AGAINST KAISER AND DOES 1 THROUGH 25**

11 82. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in  
12 preceding paragraphs above and further alleges as follows:

13 83. As alleged above, the Hospital believes it is entitled to full and complete payment in  
14 accordance with the Multiplan Agreement. However, to the extent the written agreement alleged  
15 above does not apply and/or is deemed unenforceable, and absent any other legally controlling rate,  
16 the Hospital alleges in the alternative that Defendants owe the Hospital for the services provided to  
17 Patients 1 and 2 in quantum meruit.

18 84. Defendants expressly and/or impliedly requested that the Hospital provide medical  
19 services to Patients 1, 2, and 3 including health care services to Patients 1, 2 and 3 and choosing to  
20 maintain Patients 1, 2 and 3 at the Hospital rather than arrange for the Patients' transfer to a different  
21 facility, and/or because of Patients 1, 2 and 3's emergent need for the Hospital's services. Thereafter,  
22 the Hospital provided medical services to Patients 1, 2 and 3 pursuant to such express and/or implied  
23 requests.

24 85. The Hospital's provision of medically necessary care and treatment to Patients 1, 2 and  
25 3 were intended to and, in fact, benefited Defendants because the Hospital provided Patients 1, 2 and  
26 3 medical treatment that Defendants were contractually obliged to pay for, arrange and/or provide at  
27 their own expense.

28 86. The reasonable value of the services the Hospital provided Patients 1, 2 and 3 at the



1 express and/or implied requests of Defendants is \$210,365.44. Defendants have made payments to  
2 Hospital for Patient 1's services in the amount of \$37,413.05, with an additional \$76.89 in interest;  
3 Patient 2 in the amount of \$5,506.93; and for Patient 3 in the amount of \$77,629.51, with an additional  
4 \$667.31 in interest. Thus, leaving a total unpaid balance of \$76,076.58.

5 87. As a result of the benefit conferred upon Defendants, the Hospital is entitled to  
6 quantum meruit damages in the amount of \$76,076.58.

7 **SIXTH CAUSE OF ACTION**

8 **UNJUST ENRICHMENT**

9 **AGAINST KAISER AND DOES 1 THROUGH 25**

10 88. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in  
11 preceding paragraphs above and further alleges as follows:

12 89. As alleged above, the Hospital believes it is entitled to full and complete payment from  
13 Kaiser in accordance with the Multiplan Agreement as set forth above. However, to the extent the  
14 Multiplan Agreement alleged does not apply and/or are deemed unenforceable against Kaiser for any  
15 of the services at issue, the Hospital alleges in the alternative that Kaiser owes the Hospital for these  
16 services based on unjust enrichment.

17 90. The Hospital alleges that Kaiser owes the Hospital for the services provided to Kaiser's  
18 members, Patients 1, 2 and 3, in good faith based on unjust enrichment.

19 91. The Hospital's provision of medically necessary care and treatment to Patients 1, 2 and  
20 3 were intended to and, in fact, benefited Kaiser because Patients 1, 2 and 3 were provided with  
21 medical care and treatment Kaiser was obliged to provide or arrange for its Members.

22 92. The unpaid value of the benefits conferred upon Kaiser is \$76,076.58 which represents  
23 the Hospital's total damages for the services provided to Patients 1, 2 and 3. Kaiser failed to fully  
24 reimburse the Hospital for these charges, thereby retaining the benefit provided by the Hospital.

25 93. Kaiser failed to reimburse the Hospital for the benefits of the significant health care  
26 services the Hospital provided to Patients 1, 2 and 3, and thus retained the benefits of these services at  
27 the expense of the Hospital.

28 94. As a result of the benefits conferred upon Kaiser by the Hospital, the Hospital is

1 entitled to restitution in the amount exceeding \$76,076.58, plus statutory interest.

2 **SEVENTH CAUSE OF ACTION**

3 **ACCOUNT STATED**

4 **AGAINST KAISER AND DOES 1 THROUGH 25**

5 95. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in  
6 preceding paragraphs above and further alleges.

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

12 97. As required by the laws of the State of California, at all times relevant herein, the  
13 Hospital was required to, and in fact did, publish its charges online on the OSHPD website. The  
14 Hospital's published charges are, and were at all times relevant here, available to the public including  
15 the Defendants. The Hospital's published charges reflect the reasonable and customary value of the  
16 services and supplies the Hospital provides.

17 98. It is custom and practice in the healthcare industry for health care facilities such as the  
18 Hospital and health plans such as Defendants to enter into written contracts wherein the Defendants  
19 agree to encourage their members, like Patients 1, 2 and 3, to use the Hospital for their medical needs  
20 and in exchange the Hospital agrees to accept payment at a discount off the full charge of its rates as  
21 published online on the OSHPD website.

22 99. It is custom and practice in the healthcare industry that where a hospital and a health  
23 plan have not entered into a valid written contract, and said hospital treats a member of said health  
24 plan, the health plan will pay the facility's full billed charges, which are published online on the  
25 OSHPD website, as said charges are the reasonable and customary rate for said services.

26 100. Prior to rendering services to Patients 1, 2 and 3, the Hospital's charges were available  
27 to the public, including to Defendants, because they are published online on the OSHPD website. The  
28 Hospital believes and therefore alleges Defendants knew or should have known of the Hospital's

1 reasonable and customary charges for services rendered to Patients 1, 2 and 3 and therefore agreed to  
2 said charges.

3 101. In the ordinary course of business, the Hospital sent invoices for the services at issue to  
4 the place that Defendants directed the Hospital to send those bills. The bills are commonly referred to  
5 as UB-04s, based on the form originated by the Medicare program, and now used routinely by all  
6 providers and payors, for stating bills. The amounts stated on these bills by the Hospital are the billed  
7 charges for the services, as published online on the OSHPD website, provided to Patients 1, 2 and 3,  
8 which also is industry standard practice.

9 102. The Hospital is informed and believes that Defendants agreed with the Hospital on the  
10 amount due from them, as reflected in the UB-04s sent to Defendants because said charges were  
11 known to Defendants and published on the OSHPD website. Furthermore, Defendant did not ever  
12 contest the accuracy of the charges contained on the UB-04s nor contend that the services listed  
13 thereon were not provided to Patients 1, 2 and 3.

14 103. The Hospital is informed and believes that Defendants expressly and/or implied  
15 promised to pay the amounts due.

16 **PRAYER FOR RELIEF**

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

- 18 1. For damages in an amount according to proof at trial;  
19 2. For restitution for unjust enrichment;  
20 3. For damages in quantum meruit;  
21 4. For interest at the various statutory rates;  
22 5. For costs and reasonable attorneys' fees to the extent allowed by law; and  
23 6. For such other and further relief as this Court may deem just and proper.

24 DATED: November 10, 2014

HELTON LAW GROUP, APC

25  
26 By:

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