

CIV-150127-CIV-DS1501078-CASEEN-131502



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**Complaint and Party information entered**



NEW FILE

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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

**JAN 27 2015**

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BY   
ERIN MUELLER, DEPUTY

8 **SUPERIOR COURT STATE OF CALIFORNIA**  
9 **COUNTY OF SAN BERNARDINO**

10 LIBRAMED, INC.,

11 Plaintiff,

12 vs.

13 KAISER FOUNDATION HEALTH  
14 PLAN, INC. and DOES 1 through 50,  
15 Inclusive,

16 Defendants.

Case **CIVDS1501078**

) **ORIGINAL COMPLAINT FOR**

- ) 1. Recovery of Services Rendered;  
) 2. Recovery on Open Book Account;  
) 3. Quantum Meruit;  
) 4. Violation of Business & Professions  
) Code §17200 *et seq*;  
) 5. Declaratory Relief

**150127-2364 \$435-**

28 **ORIGINAL COMPLAINT**

1           **LIBRAMED, INC.** ("Plaintiff") alleges as follows:

2           1.       Plaintiff is a California Corporation which receives assignments of  
3 unpaid medical invoices and collects the amounts owed from insurance carriers, health  
4 plans and other entities.

5           2.       Plaintiff received a valid assignment to collect unpaid invoices owed to  
6 Dr. Amos Kuvhenguwa. As set forth below, Dr. Kuvhenguwa performed emergency  
7 surgeries and other emergency services for a number of Kaiser Foundation Health Plan  
8 ("Kaiser") members. Kaiser, as set forth below, refused to pay the normal and customary  
9 rates for those services.

10          3.       Kaiser Foundation Health Plan, Inc. ("Kaiser") is a California health plan  
11 providing medical and other health related services throughout California.

12          4.       The true names and capacities, whether individual, corporate, associate, or  
13 otherwise of Defendants DOES 1-50, inclusive, are unknown to Plaintiff who, therefore,  
14 sues the DOE Defendants by fictitious names. Plaintiff is informed and believes and  
15 thereon alleges that each Defendant designated as a DOE is legally responsible in some  
16 manner for the events and happenings herein referred to and legally caused the injuries  
17 and damages to Plaintiff. DOES 1-50 are residents and citizens of the state of California,  
18 or have their principal places of business within this State, or have conducted business in  
19 this state at all relevant times. Plaintiff will amend this Complaint to insert the true names  
20 and capacities of the DOE Defendants when they become known.

21          5.       At all times mentioned herein, Defendants, and each of them, were  
22 the agents, employees, principals, subsidiaries, co-conspirators, successors and/or  
23 predecessors of each of the other Defendants and were at all times acting within the  
24 course and scope of said relationship, and each Defendant was fully aware of the conduct  
25 of the remaining Defendants, and all Defendants authorized, ratified, and approved the  
26 acts of each other.

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**ORIGINAL COMPLAINT**

1           6.       Under state and federal law, with certain exceptions not applicable here,  
2 emergency rooms are required to render emergency medical care to all patients who come  
3 within their care regardless of ability to pay. Insurers and health care plans are required to  
4 pay for those services at the normal and customary rate charged by the physicians in the  
5 absence of an expressly negotiated rate with the physicians.

6           7.       Dr. Kuvhenguhwa was not an "in-network" provider with Kaiser, i.e.,  
7 he had no agreement to provide services to Kaiser members at a discounted rate.

8           8.       This complaint arises out of Kaiser's failure to pay reasonable and  
9 customary rates for emergency services rendered by Dr. Kuvhenguhwa to Kaiser  
10 members. To protect their privacy of the patients, they will be referred to as Patients "A" -  
11 "M." Each patient entered into a valid and enforceable agreement with Kaiser to pay for  
12 emergency services rendered by physicians such as Dr. Kuvhenguhwa.

13          9.       Patients "A" - "M" received emergency (usually surgical) care from Dr.  
14 Kuvhenguhwa for life-threatening conditions in an emergency room setting. In nearly  
15 every case, Dr. Kuvhenguhwa performed life-saving procedures - incubating and  
16 ventilating patients, inserting catheters and performing laparoscopic and other surgical  
17 procedures on patients suffering from sepsis, appendicitis and other life-threatening  
18 conditions. Although Kaiser has refused to adequately compensate Dr. Kuvhenguhwa, in  
19 at least one case, a patient was transported at Kaiser's behest from a Kaiser urgent care  
20 facility to the emergency room for surgery by Dr. Kuvhenguhwa.

21          10.      As required by state and federal law (as well as medical ethics) these  
22 patients received emergency treatment without regard to their ability to pay. This crucial  
23 system of mandatory emergency room care depends on the physician's ability to obtain  
24 payment for services at his or her reasonable and customary rates, absent an express  
25 agreement to provide those services at a discount.

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**ORIGINAL COMPLAINT**

11. In every case Kaiser has refused to pay the total charges for treatment and has instead offered approximately 15-50% of the actual invoice as set forth in the chart below. Plaintiff is informed and believes that defendant has improperly offered discounted compensation to Dr. Kuvhenguwa as if we were an in-network provider who agreed to substantially discount his rates in exchange for access to Kaiser patients. The general nature of the treatment provided to Patients "A" to "M" and the total billed and paid are as follows:

<u>PATIENT</u>	<u>DATE</u>	<u>AILMENT/ TREATMENT</u>	<u>TOTAL BILLED/PAID</u>
A	2013	Pulmonary failure/ Placement of tracheostomy tube	\$3,986.00/ \$616.31
B	2013	Urosepsis and Multiple wounds/Wound Management	\$3,421.68/ \$434.53
C	2013	Cholecystitis, Cholelithiasis, Gallstone pancreatitis, Incarcerated inguinal hernia with appendix in right inguinal canal/Complex cholecystectomy; reduction of hernia and appendectomy	\$7,950.00/ \$3,264.68
D	2012	Acute cholecystitis, cholelithiasis/ Cholecystostomy	\$2,350.00/ \$401.62
E	2012	Retroperitoneal bleeding/Surgical Consult	\$3,150.00/ \$505.49
F	2012	Appendicitis/ Appendectomy	\$4,358.00/ \$2,369.19
G	2013	Appendicitis/ Appendectomy	\$6,825.00/ \$2,944.68

ORIGINAL COMPLAINT

1	H	2013	Septic Shock,	\$7,408.80/
2			Acute Renal	\$1,005.90
3			Failure,	
4			Tachycardia/ Resuscitated Patient, Catheter Insertion	
5	I	2013	Hematemesis/ Resuscitate Patient,	\$3,808.80/ \$452.51
6			Catheter Insertion	
7	J	2013	Appendicitis/ Appendectomy	\$5,346.00 \$2,256.72
8	K	2013	Severe Sepsis, Renal Failure et al/Consult	\$3,360.00/ \$474.99
9				
10	L	2012	Sigmoid Diverticulitis/ Consult	\$1,942.00/ \$666.00
11				
12	M	2013	Ruptured Appendix, Aortic Aneurysm/ Enterolysis, Catheter Insertion, Appendectomy	\$17,918.80/ \$2,189.35
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12. The California Knox-Keene Health Care Services Plan Act of 1975 ("Act") provides that a "health care service plan shall reimburse providers for emergency services and care provided to its enrollees, until care results in stabilization of the enrollee, except as provided in subdivision (c)." Cal. *Health & Safety Code* §1371.4(b).

13. The Act defines emergency services as "medical screening, examination, and evaluation by a physician. . . to determine if an emergency medical condition. . . exists and, if it does, the care, treatment, and surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the capability of the facility." Cal. *Health & Safety Code* §1317.1(a)(1).

1           14.     The Act defines emergency medical condition as “a medical condition  
2 manifesting itself by acute symptoms of sufficient severity (including severe pain) such  
3 that the absence of immediate medical attention could reasonably be expected to result in  
4 any of the following: (1) Placing the patient’s health in serious jeopardy[;] Serious  
5 impairment of bodily functions [;or] (3) serious dysfunction of any bodily organ or part.”  
6 Cal. *Health & Safety Code* §1317.1(b).

7           15.     Under the Act a health care service plan such as Kaiser must pay or contest  
8 the claim within 30 days. In the instant case, Kaiser paid a small portion of the charges  
9 well below their reasonable and customary rates, without contestation.

10                               **FIRST CAUSE OF ACTION**

11                     (For Recovery of Services Rendered Against Defendant and Does 1-50)

12           16.     Plaintiff incorporates as if fully set forth herein paragraphs 1-15 above.

13           17.     Under California law Dr. Kuvhengahwa was required to provide emergency  
14 services to Patients “A” - “M” and Kaiser was legally required to pay the reasonable and  
15 customary costs of that emergency treatment.

16           18.     Plaintiff has demanded payment for the emergency treatment rendered  
17 to Patients “A” - “M” but Kaiser has paid only a small percentage of the reasonable  
18 charges billed.

19           19.     Kaiser has refused to pay and continues to refuse to pay the full, reasonable  
20 amount for the services billed and \$54,999.56 is currently due and owing.

21                               **SECOND CAUSE OF ACTION**

22                     (For Recovery on Open Book Account against Defendant and Does 1-50)

23           20.     Plaintiff incorporates as if fully set forth herein paragraphs 1-19 above.

24           21.     Kaiser had become indebted to plaintiff’s assignor on an open book  
25 account for money due in the sum of \$55,999.56 for emergency medical services  
26 rendered to Kaiser members.  
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ORIGINAL COMPLAINT

22. Plaintiff's assignor maintained contemporaneous records of all medical services provided to patients "A" to "M."

23. Plaintiff has provided Defendant statements itemizing the medical treatment provided along with an accounting of amounts owed.

24. Kaiser has refused and continues to refuse to pay the full, reasonable and customary amount charged for the emergency services rendered to its members. Accordingly, there is now due and owing the sum of \$55,999.56 plus interest for emergency medical services rendered to Kaiser members.

### THIRD CAUSE OF ACTION

(For Quantum Meruit against Defendant and DOES 1-50)

25. Plaintiff incorporates as if fully set forth herein paragraphs 1-24 above.

26. Plaintiffs' assignor rendered emergency medical services to the Defendant's members.

27. The Act provides that “a health care service plan shall reimburse providers for emergency services and care provided to its enrollees, until the care results in stabilization” of the patient. *Cal. Health & Safety Code* §1371.4(b).

28. Under California law, Kaiser is required to reimburse plaintiff at a *quantum meruit* rate for all emergency services rendered to its enrollees up to the point of rendering the patient medically stable. This amount is determined according to the customary and reasonable charges that would be billed by the physician in the absence of contractual rates.

29. The *quantum meruit* rate for the medical treatment rendered to Patients “A” to “M” totals \$55,999.56. Kaiser has refused and continues to refuse to pay that amount.

30. Plaintiff seeks damages in the amount of \$55,999.56 plus interest.

## ORIGINAL COMPLAINT



1 **FOURTH CAUSE OF ACTION**

2 (Breach of Implied-In-Fact Contract against Defendant and DOES 1-50)

3 31. Plaintiff incorporates as if fully set forth herein paragraphs 1-30 above.

4 32. Patients "A" - "M" had valid policies of insurance with Kaiser providing  
5 that Defendant would provide them health care services.

6 33. Patients "A" - "M" had policies with Kaiser specifically, in party, to ensure  
7 that they would have access to emergency medical services like those provided to them  
8 by Dr. Kuvhenguhwa and that Kaiser would pay for those emergency services. Kaiser  
9 knew that its members would seek emergency treatment at the closest hospital and from  
10 the closest physicians regardless of whether the physicians had contracts with Kaiser  
11 providing for payment for the provision of emergency services.

12 34. On information and belief, Kaiser received and continues to receive  
13 premiums from Patients "A" -- "M."

14 35. Plaintiff's assignor provided emergency medical treatment to Patients "A"  
15 -- "M" which Kaiser implicitly agreed to pay (and is legally required to pay) at the  
16 customary and reasonable rates for such treatment.

17 36. Kaiser has refused and continues to refuse to pay the full, reasonable  
18 customary rate for treatment rendered to Patients "A" -- "M."

19 37. As result, Plaintiff has been damaged in the amount of \$55,999.56  
20 plus interest.

21 **FIFTH CAUSE OF ACTION**

22 (Cal. Bus. Prof. Code §17200, et seq against Defendant and DOES 1-50)

23 38. Plaintiff incorporates as if fully set forth herein paragraphs 1-37 above.

24 39. Kaiser operates health care service plans licensed pursuant to the Act.

25 40. The Act provides that a "health care service plain is prohibited from  
26 engaging in an unfair payment pattern." The Act defines any unfair payment pattern  
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**ORIGINAL COMPLAINT**

1 to include "[e]ngaging in a demonstrable and unjust pattern, as defined by the department,  
2 of reducing the amount of payment or denying complete and accurate claims."

3 41. Kaiser has engaged in unfair and unlawful acts by, among other things,  
4 knowingly engaging in an unfair payment pattern by failing to adequately reimburse  
5 Plaintiff for emergency services rendered to Patients "A" -- "M."

6 42. This conduct constitutes illegal and unfair business practices under  
7 California Business & Professions Code §17200 et seq

8 43. Plaintiff seeks restitution of the sum of \$55,999.56 plus interest and  
9 injunctive relief requiring the payment to Plaintiff of all amounts owed.

10 **FIFTH CAUSE OF ACTION**

11 (Violation of Cal. Bus. Prof. Code §17200, et seq against Defendant and DOES 1-50

12 44. Plaintiff incorporates as if fully set forth herein paragraphs 1-43 above.

13 45. A dispute exists between Plaintiff and Defendant regarding the amount of  
14 reimbursement for services rendered to Patients "A" -- "M."

15 46. Plaintiff seeks a declaration that Kaiser is required to pay the full amount  
16 billed for the emergency services rendered to Patients "A" -- "M."

17 47. Such a declaration is necessary and appropriate so that the parties may  
18 ascertain their rights and obligations with respect to the outstanding invoices for services  
19 provided to Patients "A" -- "M."

20 **PRAYER**

21 Wherefore, Plaintiff prays for damages as follows:

- 22 1. For compensatory damages in an amount not less than  
23 \$54,999.56 plus interest;  
24 2. For restitution in an amount not less than  
25 \$54,999.56 plus interest;  
26 3. For a declaration that Kaiser is required to pay the full amount billed  
27 for services rendered to Patients "A" -- "M";  
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**ORIGINAL COMPLAINT**

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- 4. For attorneys fees and costs incurred in bringing this action;
- 5. For interest;
- 6. For such other relief as the Court deems just and appropriate.

Dated: January 19, 2014

MASTROIANNI LAW FIRM

By: \_\_\_\_\_

For Plaintiff

Courthouse News Service

ORIGINAL COMPLAINT