

JOSHUA M. HEINLEIN (SBN 239236)  
joshua.heinlein@dinsmore.com  
DINSMORE & SHOHL LLP  
655 West Broadway, Suite 840  
San Diego, CA 92101  
Ph: (619) 356-3518  
Fx: (619) 615-2082

Attorneys for Plaintiff  
ROBERT BEHRENDT, M.D.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ROBERT BEHRENDT, M.D., an  
individual,

Plaintiff,

v.

KAISER FOUNDATION HEALTH  
PLAN, INC., a California corporation,  
in its capacity as Plan Administrator  
and Fiduciary of the Permanente  
Physicians Retirement Plan for Hawaii  
Permanente Medical Group,  
PERMANENTE PHYSICIANS  
RETIREMENT PLAN FOR HAWAII  
PERMANENTE MEDICAL GROUP,

Defendants.

Case No.

**COMPLAINT FOR VIOLATIONS OF  
THE EMPLOYEE RETIREMENT  
INCOME SECURITY ACT OF 1974  
("ERISA")**

1 Plaintiff ROBERT BEHRENDT, M.D. ("Dr. Behrendt") hereby alleges as  
2 follows:

3 **JURISDICTION**

4 1. This Court has jurisdiction pursuant to the Employee Retirement  
5 Income Security Act of 1974, as amended ("ERISA"), and in particular, ERISA §§  
6 502(e)(1) and (f), 29 U.S.C. §§ 1132(e)(1) and (f). Those provisions give the  
7 district court jurisdiction to hear civil actions brought for breach of fiduciary duty  
8 under ERISA. In addition, this action may be brought before this Court pursuant to  
9 28 U.S.C. § 1331.

10 **VENUE**

11 2. Venue is proper under ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), in  
12 that the benefit plan that is the subject of the claims asserted herein is administered  
13 in the Northern District of California and/or the breaches of fiduciary duty  
14 described below occurred within this district and/or one or more defendants may be  
15 found within the territorial limits of this district.

16 **PARTIES**

17 3. Dr. Behrendt is, and at all times mentioned herein was, an individual  
18 residing in the State of Hawaii. Dr. Behrendt is, and at all times relevant was, a  
19 "Participant" and "Beneficiary" within the meaning of ERISA § 3(7), 29 U.S.C. §  
20 1002(7), in the Permanente Physicians Retirement Plan for Hawaii Permanente  
21 Medical Group, Inc.

22 4. Defendant Kaiser Foundation Health Plan, Inc. ("Kaiser") is a  
23 California corporation with its principal place of business at 1 Kaiser Plaza,  
24 Oakland, California 94612. Kaiser is the "Plan Administrator" pursuant to ERISA  
25 § 3(16), 29 U.S.C. § 1002(16), and is a "Fiduciary" pursuant to ERISA § 3(21), 29  
26 U.S.C. § 1002(21).

27 5. Defendant Permanente Physicians Retirement Plan for Hawaii  
28 Permanente Medical Group, Inc. (the "Plan") is an ERISA-regulated employee-

1.

**COMPLAINT**

1 benefits plan administered within the territorial limits of the Northern District of  
2 California.

3 **FACTUAL ALLEGATIONS**

4 6. Dr. Behrendt was employed as a physician with Kaiser from December  
5 16, 1985 to December 31, 2010 and at all times hereto, was a Participant and  
6 Beneficiary of the Plan.

7 7. At the time Dr. Behrendt left employment with Kaiser he was 55 years  
8 old and had earned eligibility for Early Retirement Income. If he elected to do so,  
9 Dr. Behrendt could receive Early Retirement Income as early as in 2015.

10 8. After leaving employment as a physician with Kaiser in December  
11 2010, Dr. Behrendt continued to practice medicine, developing a robust practice,  
12 and providing him with a lucrative income.

13 9. In early 2012 Dr. Behrendt contacted the Kaiser Permanente  
14 Retirement Center ("KPRC") regarding his retirement benefits in order to begin  
15 planning his retirement.

16 10. Upon information and belief, KPRC is the means by which Defendants  
17 provide information about the retirement benefits provided under the Plan to Plan  
18 participants.

19 11. Dr. Behrendt logged into the KPRC website made available to him by  
20 Kaiser several times during 2012, 2013, 2014 and 2015 to confirm the benefits he  
21 would be entitled to.

22 12. Between January 27, 2012 and August 28, 2012, Dr. Behrendt ran  
23 numerous online estimates of his benefits under the Plan. The estimates stated that  
24 Dr. Behrendt would receive a lump sum payment between \$2,282,025.12 and  
25 \$2,816,260.10 or a single-life annuity of \$14,099.63 if he began to receive benefits  
26 on November 30, 2015. The estimates also stated that Dr. Behrendt would receive  
27 a lump-sum payment of \$3,216,547.67 or a single-life annuity of \$22,299.07 if he  
28 began to receive benefits November 20, 2020.

1           13. Upon information and belief, in September 2012, Defendants retained  
2 Mercer as the new third party administrator (“TPA”) for the Plan. Upon  
3 information and belief, Hewitt was the TPA for the Plan prior to September 2012.

4           14. Following the transition to Mercer, Dr. Behrendt ran several more  
5 online estimates of his benefits, all of which confirmed the benefits amounts similar  
6 to those estimates run between January and August 2012.

7           15. In 2013, Dr. Behrendt requested and was sent a paper estimate of his  
8 benefits on June 11, 2013. The 2013 paper estimate reflected benefits amounts  
9 similar to those benefits amounts Kaiser provided him during 2012.

10           16. In 2014, Dr. Behrendt requested and was sent a paper estimate of his  
11 benefits on September 10, 2014. The 2014 paper estimate reflected benefits  
12 amounts similar to those benefits amounts Kaiser provided him during 2012 and  
13 2013.

14           17. In 2015, Dr. Behrendt ran online estimates of his benefits on May 8,  
15 2015 and August 22, 2015. Both estimates reflected benefits amounts similar to  
16 those benefits amounts Kaiser provided him during 2012, 2013, and 2014.

17           18. In reliance on Defendants’ representations as to the amount of Dr.  
18 Behrendt’s benefits, Dr. Behrendt retired from the practice of medicine in 2012,  
19 allowed his emergency medicine board certification to expire, allowed his medical  
20 licenses to expire, allowed his DEA licenses to expire, and allowed other  
21 professional licenses and certificates to expire. Additionally, he agreed to pay his  
22 son’s school tuition, and otherwise planned the remainder of his life assuming the  
23 representations Kaiser made as to his benefits amount over a four-year period were  
24 accurate.

25           19. On September 3, 2015, two months prior to Dr. Behrendt’s anticipated  
26 benefits receipt date, Dr. Behrendt requested and was sent a retirement kit.

27           20. During the course of processing his retirement kit, Defendants for the  
28 first time notified Dr. Behrendt the representations made regarding Dr. Behrendt’s

1 benefits during 2012, 2013, 2014, and 2015 were incorrect, and that Dr. Behrendt's  
2 benefit entitlement was a lump-sum amount of \$1,562,333.84 or a single-life  
3 annuity amount of \$8,919.08. This amount was a massive reduction of the amount  
4 Dr. Behrendt had been repeatedly promised he would receive.

5 21. Defendants admitted their misrepresentations during 2012, 2013, 2014,  
6 and 2015 and attributed them to a computer programming error.

7 22. Defendants breached their fiduciary duties to Dr. Behrendt when they  
8 provided incorrect information to Dr. Behrendt upon which Dr. Behrendt relied,  
9 resulting in pecuniary loss to Dr. Behrendt. Dr. Behrendt's retirement plan was  
10 based upon consistent information, repeatedly provided by Defendants during 2012,  
11 2013, 2014, and 2015. Dr. Behrendt was diligent in confirming the information  
12 provided by Defendants was correct, making numerous inquiries over a four-year  
13 period, and Defendants repeatedly provided written confirmation of the erroneous  
14 benefit amounts.

15 23. In exploring potential retirement, including ending a thirty-year career  
16 in medicine, Dr. Behrendt took his financial situation into consideration, consulted  
17 with a financial professional, and took every possible step to ensure his benefits  
18 would be sufficient to sustain an adequate standard of living for Dr. Behrendt  
19 through the remainder of his life.

20 24. Dr. Behrendt based his retirement plan upon the benefit amounts  
21 Defendants provided to him in writing consistently over a four-year period, and  
22 executed his retirement plan accordingly.

23 25. Dr. Behrendt has been unable to reestablish his medical practice  
24 because in anticipation of retirement he allowed his medical licensure and all  
25 applicable certifications to expire.

26 26. Dr. Behrendt sustained financial damages due to Defendants' breaches  
27 of fiduciary duty. In anticipation of retirement, Dr. Behrendt allowed his medical  
28 license to expire, allowed several other professional certifications to expire, quit his

1 jobs, promised to pay for his son's graduate school, and made numerous other  
2 financial commitments all in anticipation of receiving the amount Kaiser  
3 represented he would receive during 2012, 2013, 2014, and 2015.

4 **FIRST CAUSE OF ACTION**

5 **(Breach of Fiduciary Duty Against All Defendants)**

6 27. Dr. Behrendt incorporates by reference the above allegations as though  
7 fully set forth herein.

8 28. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), requires fiduciaries  
9 to discharge their duties solely in the interests of employee benefit plan participants  
10 and beneficiaries and for the exclusive purpose of providing benefits and defraying  
11 reasonable expenses of administering the plan.

12 29. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B), requires fiduciaries  
13 to discharge their duties with the care, skill, prudence, and diligence under the  
14 circumstances then prevailing that a prudent person acting in like capacity and  
15 familiar with such matters would use in the conduct of an enterprise of a like  
16 character and with like aims.

17 30. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) empowers this Court to  
18 grant appropriate equitable relief to redress any violations of ERISA or to enforce  
19 any provisions of ERISA, including imposing a surcharge.

20 31. In committing the acts and omissions herein alleged, Defendants  
21 breached their fiduciary duties in violation of ERISA §§ 404(a)(1)(A) and (B), 29  
22 U.S.C. §§ 1104(a)(1)(A) and (B) by providing inaccurate information to Dr.  
23 Behrendt, which he relied upon, and by failing to prudently select and retain service  
24 providers to act prudently on Kaiser's behalf.

25 32. As a result of Defendants' breaches of fiduciary duty, Dr. Behrendt has  
26 been harmed, suffered pecuniary loss, and Defendants have been permitted to retain  
27 assets and generate earnings on those assets and to which assets and earnings  
28 Defendants are not entitled.

33. As a result of Defendants' breaches of fiduciary duty, Dr. Behrendt is entitled to judgment and recovery pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), which entitle Dr. Behrendt to appropriate equitable relief including but not limited to injunction, disgorgement, and surcharge, in an amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Dr. Behrendt prays for judgment as follows:

1. For appropriate equitable relief pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), including but not limited to a declaration of Dr. Behrendt's rights hereunder with respect to Defendants and the Plan; disgorgement of any profits or ill-gotten gain realized by Defendants; and surcharge for the pecuniary injuries Dr. Behrendt suffered as a consequence of Defendants' breaches of its fiduciary duties;
2. For reasonable attorneys' fees and costs incurred by Dr. Behrendt in the prosecution of this action pursuant to ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1);
3. For pre-judgment interest and post-judgment interest on any and all amounts awarded to Dr. Behrendt; and
4. For such other and further relief as the Court deems just and proper.

DATED: August 22, 2016

DINSMORE & SHOHL, LLP

By: /s/ Joshua M. Heinlein  
JOSHUA M. HEINLEIN (SBN 239236)

Attorneys for Plaintiff  
ROBERT BEHRENDT, M.D.