

Superior Court of California

County of Orange



Case Number : 30-2016-00886488-CU-BC-CJC

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ATTORNEYS FOR PLAINTIFF HOAG MEMORIAL HOSPITAL PRESBYTERIAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

HOAG MEMORIAL HOSPITAL
PRESBYTERIAN, a California Corporation,

Plaintiff,

vs.

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

Defendants.

Case No: 30-2016-00886488-CU-BC-CJC

ASSIGNED TO: Judge Sheila Fell

DEPT.:

UNLIMITED – DAMAGES EXCEED \$25,000

COMPLAINT FOR DAMAGES FOR:

- 1. BREACH OF WRITTEN CONTRACT**
- 2. QUANTUM MERUIT**
- 3. OPEN BOOK ACCOUNT**

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PARTIES

1. Plaintiff, HOAG MEMORIAL HOSPITAL PRESBYTERIAN (collectively hereinafter referred to as “Hospital” or “Hoag”) is a California corporation, with its principal place of business in the County of Orange, in the State of California. Hoag operates a California licensed acute-care hospital in the City of Newport Beach.

2. Defendant KAISER FOUNDATION HEALTH PLAN, INC. (“KFHP”) is a California Corporation, organized and existing under the laws of the State of California with its principal place of business in the City of Oakland, County of Alameda, in the State of California.

1 3. Defendant KAISER FOUNDATION HOSPITALS (“KFH”) is a California Corporation,
2 organized and existing under the laws of the State of California with its principal place of business in the
3 city of Oakland, County of Alameda, in the State of California.

4 4. Hoag is unaware of the true names, identities, and capacities of defendants sued herein as
5 Does 1 through 25, inclusive, and each of them as based thereon, sues said defendants by such fictitious
6 names. When their true names and capacities are ascertained, Hoag will amend this complaint by
7 inserting their true names and capacities herein. Hoag is informed and believes and thereon alleges that
8 each of the fictitiously named defendants is responsible in some manner for the occurrences alleged
9 herein, and that Hoag’s damages as alleged herein were proximately caused by those defendants.

10 5. Hoag is informed and believes and thereon alleges that at all times mentioned herein,
11 each of the defendants, including all defendants sued under fictitious names, were the agent and/or
12 employee of each of the remaining defendants, and in so doing the things alleged herein, were acting
13 within the scope of his or her agency and employment and with their knowledge and consent.

14 6. KFHP, KFH, and Does 1 through 25 are collectively hereinafter referred to as
15 “Defendants” or “Kaiser.”

16 7. Hoag is withholding the name of each Patient in this Complaint to preserve the Patients’
17 protected rights to privacy concerning health care information. Each Patient’s name has been and will
18 be provided to Defendants upon request.

19 8. Jurisdiction is proper in this judicial district because this is where the contract at issue
20 was entered into and/or where the breach occurred.

21 **ALLEGATIONS AS TO THE KAISER DEFENDANTS**

22 9. Hoag is informed and believes that KFHP is a health care services plan licensed with the
23 California Department of Managed Health Care and is subject to the Knox-Keene Act and related
24 regulations on such health care services plans.

25 10. Hoag is informed and believes that KFH is a capitated provider of the health care
26 services plan KFHP, and is subject to the Knox-Keene Act and related regulations on health care
27 services plans and their capitated providers.

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1 11. Hoag is informed and believes that KFHP, KFH, and Does 1 through 25 are affiliates of
2 each other and/or are otherwise related corporate entities, and that the entities, cooperate in the conduct
3 of the health care program commonly known as the “Kaiser Permanente Medical Care Program.”

4 **THE RECIPROCAL PAYMENT AGREEMENT**

5 12. On or about June 1, 2004, Kaiser and Hoag entered into a written Reciprocol [sic]
6 Payment Agreement (“Agreement”). The Agreement was entered in order for KFH and KFHP to gain
7 access to Hoag’s discounted rates for medical services provided to Kaiser members treated at Hoag.

8 13. Paragraph 7 of the Agreement states that Kaiser agrees to pay Hoag 90% of billed
9 charges for all authorized Covered Services provided to Kaiser members at Hoag. Furthermore, failure
10 to pay Hoag within 45 business days will void the 10% discount rate and revert reimbursement rates to
11 one hundred percent (100%) of billed charges.

12 **SPECIFIC ALLEGATIONS AS TO PATIENT 1**

13 14. Hoag provided Patient 1, a health plan member of Kaiser, with treatment for medically
14 necessary and physician ordered services. Patient 1 was admitted to Hoag as an inpatient for cesarean
15 delivery of a child on November 4, 2013 and received medical care until Patient 1 was discharged on
16 November 7, 2013.

17 15. Immediately upon discovering that Patient 1 was a Kaiser member, Hoag timely billed
18 Kaiser for medical services provided to Patient 1 in the amount of \$16,387.19. Under the terms of the
19 Agreement, Kaiser was entitled to a discounted rate of \$14,748.47. Kaiser was required to pay Hoag
20 within 45 business days. However, Kaiser failed to pay the claim within 45 business days. Kaiser has
21 yet to issue any payment on this claim.

22 16. Pursuant to the terms of the Agreement, Kaiser’s failure to timely pay Hoag’s claim
23 results in Kaiser losing the discount provided therein.

24 17. On several occasions, Hoag submitted timely written appeals to Kaiser requesting
25 payment. However, such attempts to resolve Kaiser’s breach and nonpayment were unsuccessful. As of
26 this date, Kaiser has failed to issue any payment to Hoag for services provided to Patient 1.

27 18. By denying the claim, Kaiser breached the Agreement by failing to timely and fully
28 pay Hoag’s claim for reimbursement for the services provided to Patient 1. Thus, Kaiser’s breach of

1 the Agreement has caused damages to Hoag in the amount of \$16,387.19, not including statutory
2 interest, for the services provided to Patient 1.

3 **SPECIFIC ALLEGATIONS AS TO PATIENT 2**

4 19. Hoag provided Patient 2, a health plan member of Kaiser, with treatment for medically
5 necessary and physician ordered services. Patient 2 was admitted to Hoag as an inpatient for spinal
6 fusion on December 11, 2013 and received medical care until Patient 2 was discharged on December
7 19, 2013.

8 20. Kaiser was made aware of Patient 2's medical treatment and Hoag timely billed Kaiser
9 for the medical services provided to Patient 2 in the amount of \$209,205.08. Under the terms of the
10 Agreement, Kaiser was entitled to a discounted rate of \$188,284.57. Kaiser was required to pay Hoag
11 within 45 business days. However, Kaiser failed to pay the claim within 45 business days.

12 21. Kaiser ultimately issued a payment of \$49,931.51. Patient 2 also issued a payment of
13 \$54,068.49 as part of her copay. Thus, the outstanding balance due is \$84,284.57.

14 22. Kaiser acknowledged its obligation to pay for medically necessary and physician ordered
15 services provided to Patient 2 when it issued an underpayment at the contractually discounted rate.
16 However, Kaiser breached the Agreement by failing to pay the contractual rate in full and by denying
17 portions of the claim related to medically necessary services.

18 23. Pursuant to the terms of the Agreement, Kaiser's failure to timely pay Hoag's claim
19 results in Kaiser losing the discount provided therein.

20 24. On several occasions, Hoag submitted timely written appeals to Kaiser requesting
21 payment. However, such attempts to resolve Kaiser's breach and nonpayment were unsuccessful.

22 25. By denying the claim, Kaiser breached the Agreement by failing to timely and fully
23 pay Hoag's claim for reimbursement for the services provided to Patient 2. Thus, Kaiser's breach of
24 the Agreement has caused damages to Hoag in the amount of \$105,205.08, not including statutory
25 interest, for the services provided to Patient 2.

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1 **SPECIFIC ALLEGATIONS AS TO PATIENT 3**

2 26. Hoag provided Patient 3, a health plan member of Kaiser, with treatment for medically
3 necessary and physician ordered services. Patient 3 was treated as an outpatient for a cutaneous
4 abscess of the abdominal wall on December 19, 2015.

5 27. Hoag timely billed Kaiser for the medical services provided to Patient 3 in the amount
6 of \$8,424.75. Under the terms of the Agreement, Kaiser was entitled to a discounted rate of
7 \$7,582.28. Kaiser was required to pay Hoag within 45 business days. However, Kaiser failed to pay
8 the claim within 45 business days. Kaiser has yet to issue any payment on this claim.

9 28. Pursuant to the Agreement, Kaiser's failure to timely pay Hoag's claim results in
10 Kaiser losing the discount provided therein.

11 29. On several occasions, Hoag submitted timely written appeals to Kaiser requesting
12 payment. However, such attempts to resolve Kaiser's breach and nonpayment were unsuccessful. As of
13 this date, Kaiser has failed to issue any payment to Hoag for services provided to Patient 3.

14 30. By denying the claim, Kaiser breached the Agreement by failing to timely and fully
15 pay Hoag's claim for reimbursement for the services provided to Patient 3. Thus, Kaiser's breach of
16 the Agreement has caused damages to Hoag in the amount of \$8,424.75, not including statutory
17 interest, for the services provided to Patient 3.

18 **FIRST CAUSE OF ACTION**

19 **BREACH OF WRITTEN CONTRACT**

20 **(AGAINST ALL DEFENDANTS)**

21 31. Hoag re-alleges and incorporates by reference each and every allegation set forth in
22 the preceding paragraphs above.

23 32. Hoag is informed and believes, and thereon alleges, at all relevant times that Patients
24 1, 2 and 3 (collectively the "Patients") had health care coverage through Kaiser, including during the
25 dates of service Hoag provided health care services to the Patients.

26 33. The Agreement was a valid and enforceable contract between Hoag and Kaiser.

27 34. At the time Hoag provided services to the Patients, the Agreement between Hoag and
28 Kaiser was in place and Kaiser was obligated to make payment in accordance with its terms.

1 Specifically, Kaiser was required to timely reimburse Hoag for the medically-necessary services that
2 Hoag provided to the Patients at the rates stated therein.

3 35. Hoag performed all of its obligations under the Agreement, including, but not limited
4 to providing medically necessary and physician ordered services to the Patients, who are Kaiser
5 members.

6 36. Hoag timely submitted clean claims for reimbursement to Kaiser for the medical
7 services provided to the Patients.

8 37. Kaiser breached the Agreement by (1) improperly denying Hoag's claims on timely
9 submission and/or lack of authorization bases, and (2) failing to properly and timely pay Hoag's clean
10 claims regarding medically necessary services provided to the Patients.

11 38. After receiving notice of Kaiser's improper denials, Hoag timely appealed each of
12 Kaiser's denials and underpayments of its claim. To date, Kaiser has not fully reimbursed Hoag for
13 services provided to the Patients.

14 39. Per the Agreement, clean claims not paid within 45 days will not be eligible for the
15 discounted rates contained in the agreement.

16 40. As a direct and proximate result of Kaiser's failure to pay the clean claim in full within
17 45 business days, Hoag has suffered damages in an amount to be proven at trial, but in no event less
18 than \$128,378.30, plus statutory interest, for the services provided to the Patients.

19 **SECOND CAUSE OF ACTION**

20 **QUANTUM MERUIT**

21 **(AGAINST ALL DEFENDANTS)**

22 41. Hoag re-alleges and incorporates by reference each and every allegation set forth in
23 the preceding paragraphs above.

24 42. As alleged above, Hoag believes it is entitled to full and complete payment from
25 Kaiser in accordance with the Agreement. However, to the extent the implied agreement alleged
26 above does not apply and/or is deemed unenforceable, and absent any other legally controlling rate,
27 Hoag alleges in the alternative that Kaiser owes Hoag for the services provided to Patient 3 in
28 *quantum meruit*.

1 43. Hoag's provision of medically necessary care and treatment to Patient 3 was intended
2 to and benefited Kaiser because Hoag provided Patient 3 with medical care and treatment that Kaiser
3 was obliged to pay for, arrange and/or provide at their own expense.

4 44. The reasonable value of the benefit conferred upon Kaiser is \$8,424.75 for the
5 medically necessary and physician-ordered services provided to Patient 3. Kaiser failed to fully
6 reimburse Hoag for these charges, thereby retaining a benefit provided by Hoag.

7 45. Because of the benefit conferred upon Kaiser, Hoag is entitled to restitution in the
8 amount to be proven at trial but not less than \$8,424.75.

9 **THIRD CAUSE OF ACTION**
10 **OPEN BOOK ACCOUNT**
11 **(AGAINST ALL DEFENDANTS)**

12 46. Hoag re-alleges and incorporates by reference each and every allegation set forth in
13 the preceding paragraphs above.

14 47. As alleged above, Hoag believes it is entitled to full and complete payment from Kaiser
15 in accordance with the Agreement set forth above. However, to the extent the Agreement alleged above
16 does not apply and/or is deemed unenforceable against Kaiser for any of the services at issue, and absent
17 any other legally controlling rate, Hoag alleges in the alternative that Kaiser owes Hoag for these
18 services pursuant to an open book account.

19 48. Defendants are indebted to Hoag in the sum of \$128,378.30.

20 49. Hoag provided consideration to Kaiser by rendering services to its members, the Patients.
21 Thus, Kaiser is responsible for payment of said services.

22 50. Hoag billed Kaiser for the services provided to the Patients. However, Kaiser failed to
23 fully reimburse Hoag for the services.

24 51. Hoag has kept an accurate accounting of the payments made by Kaiser toward the
25 amounts they owe Hoag for the services rendered to the Patients and one or more items are unsettled.

26 52. To date, Kaiser continues to owe Hoag money on the account in the amount of
27 \$128,378.30 for the services rendered to the Patients.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For damages in an amount according to proof at trial;
2. For *quantum meruit* in amounts according to proof at trial;
3. For services had and received in amounts according to proof at trial;
4. For interest at the various statutory rates;
5. For costs and reasonable attorneys' fees to the extent allowed by law; and
6. For such other and further relief as this Court may deem just and proper.

DATED: November 2, 2016

HELTON LAW GROUP, APC

By: 

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OMAR Z. DABUNI
Attorneys for Plaintiff
HOAG MEMORIAL HOSPITAL
PRESBYTERIAN