

FILED

JUL 12 2018

Timothy W. Fitzgerald  
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, SPOKANE COUNTY

EMILY E. HOPE,

Plaintiff,

vs.

KAISER FOUNDATION HEALTH PLAN OF  
WASHINGTON, a Washington corporation,  
d/b/a KAISER PERMANENTE,

Defendant.

Case No.

18203042-5

COMPLAINT FOR DECLARATORY  
JUDGMENT AND CONSUMER  
PROTECTION VIOLATIONS

Comes now, EMILY E. HOPE, by and through her attorney, Keith S. Douglass of Keith S. Douglass and Associates, LLP, and claims and alleges as follows:

I. SUMMARY OF CLAIMS:

1. This action seeks a declaration that Defendant Kaiser is not entitled to any portion of a claimed amount of \$11,930.03 out of the proceeds of a medical malpractice claim against Mark C. Paxton, D.D.S., which claim was settled on or about May 1, 2018; seeks damages for violations of Washington State Consumer Protection Act; and seeks attorney fees pursuant to Olympic Steamship Co. v. Centennial Ins. Co. 117 Wn.2d 37; 811 P.2d 673 (1991).

II. PARTIES, JURISDICTION AND VENUE

2. Plaintiff EMILY E. HOPE, (hereinafter "Hope") is a resident of Spokane County, State of Washington.

COMPLAINT FOR DECLARATORY RELIEF  
AND CONSUMER PROTECTION VIOLATIONS - 1

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- 1 3. Defendant KAISER FOUNDATION HEALTH PLAN OF WASHINGTON d/b/a  
2 KAISER PERMANENTE, (hereinafter Kaiser) is a Washington Corporation doing  
3 business in Spokane County, State of Washington  
4  
5 4. Defendant Kaiser, on or about February 1, 2017, acquired the Health Maintenance  
6 Organization, Group Health Cooperative, (hereinafter "Group Health") and assumed  
7 all liabilities of that organization.  
8  
9 5. This court has subject matter jurisdiction, and venue is proper in Spokane County.

10 III. FACTUAL BASIS OF ALLEGATIONS

- 11 6. On September 9, 2016, Plaintiff Hope underwent seven (7) surgical extractions  
12 performed by Dr. Mark Paxton. On September 11, 2016, Plaintiff Hope began to  
13 have facial swelling and saw Dr. Paxton on September 13, 2016. He prescribed oral  
14 antibiotic therapy. On September 15, 2016, Plaintiff Hope was admitted to Valley  
15 Hospital and Medical Center in Spokane, Washington for a large, painful, intraoral  
16 and facial abscess requiring emergent irrigation and debridement and IV antibiotic  
17 therapy.  
18  
19 7. As a result of this hospitalization, Defendant Kaiser paid out \$22,432.98 in medical  
20 expenses.  
21  
22 8. Plaintiff Hope sued Dr. Paxton and his professional corporation for medical  
23 negligence. Plaintiff asserted that Dr. Paxton was negligent in his failure to timely  
24 diagnose and treat the infection, and his failure to transfer her care to a specialist to  
25 drain the abscess earlier. Plaintiff Hope conceded that there was medical evidence  
26 that the hospitalization would have been required regardless of Dr. Paxton's  
27 negligence, but argued that her pain and disfigurement were increased because of  
28  
29  
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1 the delay in treatment. Dr. Paxton disputed liability, and argued that Plaintiff  
2 already had a seriously infected tooth when she initially presented for extractions on  
3 September 9, 2016, and that regardless of his treatment, she would have required  
4 hospitalization for the infection, including incision and drainage. Dr. Paxton  
5 disputed any portion of the hospital charges were due to his negligence. This matter  
6 settled for a nuisance value sum in an amount far less than Plaintiff Hope believed  
7 would fully compensate her, primarily to avoid the expense of litigation. Defendant  
8 Kaiser is aware of the confidential settlement amount.  
9

10  
11 9. Defendant Kaiser has demanded that Plaintiff Hope reimburse the amount of  
12 \$11,930.03 (\$22,432.98 less its proportional share of attorneys fees and costs in  
13 recovering an award from Dr. Paxton). These funds are being held in the Keith S.  
14 Douglass and Associates, LLP IOLTA trust account pending outcome of this  
15 litigation.  
16

17  
18 10. Plaintiff Hope has denied Defendant Kaiser's subrogation claim, and has demanded  
19 Kaiser provide it with a factual basis for its position that Plaintiff Hope has received  
20 \$22,432.98 above full compensation for her pain and suffering, and provide the  
21 basis of its asserting that the hospital expenses were a direct and proximate result of  
22 Dr. Paxton's negligence. Defendant Kaiser has provided no such documentation or  
23 proof, and again demanded the net sum of \$11,930.03 be reimbursed.  
24

25  
26 IV. COUNT 1 – REQUEST FOR DECLARATORY RELIEF

27 11. Defendant Kaiser has not offered evidence, nor can they offer evidence, that  
28 Plaintiff Hope was fully or adequately compensated for the general damage  
29 component of her injury on September 15, 2016.  
30

1 12. Defendant Kaiser has not offered evidence, nor can they offer evidence, that the  
2 hospitalization expenses were the result of Dr. Paxton's negligence.

3 13. Defendant Kaiser is not entitled to reimbursement of any portion of the settlement  
4 proceeds from the settlement with Dr. Paxton and his corporation relative to the  
5 September 15, 2016 injury.  
6

7 14. Plaintiff Hope requests that this court declare Defendant Kaiser's subrogation claim  
8 null and void.  
9

10 15. Plaintiff Hope requests that the court award attorney fees for bringing this action  
11 pursuant to Olympic Steamship Co. v. Centennial Ins. Co. 117 Wn.2d 37; 811 P.2d  
12 673 (1991).  
13

14 V. COUNT 2 – CONSUMER PROTECTION VIOLATION

15 16. Plaintiff Hope is a person as contemplated by RCW 19.86.010 et seq.

16 17. Defendant Kaiser has attempted, despite protest, to recover from Plaintiff Hope, the  
17 amount of \$11,930.03, to which they have no provable basis for recovering.  
18

19 18. The act of demanding recovery of medical payments paid, without specifically  
20 justifying how these payments are in excess of what would be considered full  
21 compensation for general and other pecuniary damages in a personal injury  
22 settlement, constitutes an unfair or deceptive act in trade or commerce pursuant to  
23 RCW 19.86.020.  
24

25 19. Such an act impacts the public interest.  
26

27 20. As a result of such an act, Plaintiff Hope has suffered injury in her business or  
28 property.  
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1 21. A causal link exists between the acts of Defendant Kaiser and the injury suffered by  
2 Plaintiff Hope.

3 22. Plaintiff Hope is entitled to all proved damages as a result of Defendant Kaiser's  
4 unlawful acts, including but not limited to the cost of obtaining declaratory relief,  
5 and is entitled to any additional relief as provided under RCW 19.86.090.  
6

7 VI. PRAYER FOR RELIEF

8 23. Plaintiff Hope therefore prays that this court declare the claimed amount of  
9 \$11,930.03 is not owed, award *Olympic Steamship* fees, award damages for  
10 violation of Washington's Consumer Protection Act, and provide such other  
11 remedies in equity that are just.  
12

13  
14 DATED this 12 day of July, 2018.

15  
16 KEITH S. DOUGLASS AND ASSOCIATES, LLP

17  
18 By \_\_\_\_\_

19 KEITH S. DOUGLASS, #13951  
20 Attorney for Plaintiff  
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