

BY FAX



21034927

1 STEPHEN L. GOFF (State Bar No. 114497)
sgoff@kslaw.com
2 LESLIE C. MURPHY (State Bar No. 227454)
lmurphy@kslaw.com
3 JOHN S. WHITTAKER (State Bar No. 251791)
jwhittaker@kslaw.com
4 **KING & SPALDING LLP**
5 621 Capitol Mall, Suite 1500
Sacramento, CA 95814
6 Telephone: +1 916 321 4800
7 Facsimile: +1 916 321 4900

8 BRIAN G. SELDEN (State Bar No. 261828)
bgselden@jonesday.com
9 **JONES DAY**
10 1755 Embarcadero Road
Palo Alto, CA 94303
11 Telephone: +1 650 739 3939
Facsimile: +1 650 739 3900

12 Attorneys for Plaintiffs

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF ALAMEDA
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18 SUTTER BAY HOSPITALS, SUTTER
VALLEY HOSPITALS, and SUTTER
19 COAST HOSPITAL

20 Plaintiffs,

21 v.

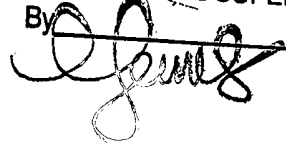
22 KAISER FOUNDATION HEALTH PLAN,
23 INC. and Does 1 – 50, inclusive.

24 Defendants.
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FILED
ALAMEDA COUNTY

NOV-22 2019

CLERK OF THE SUPERIOR COURT

By  Deputy

Case No.

Rq19044516

COMPLAINT FOR:

1. BREACH OF IMPLIED-IN-LAW CONTRACT;
2. BREACH OF IMPLIED-IN-FACT CONTRACT;
3. QUANTUM MERUIT; and
4. VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200

1 Plaintiffs allege against Defendant Kaiser Foundation Health Plan, Inc. and Does 1-50,
2 inclusive, and their agents and assigns, as follows:

3 **PARTIES AND VENUE**

4 1. Plaintiffs Sutter Bay Hospitals, a California nonprofit, public benefit corporation
5 (doing business as California Pacific Medical Center, Eden Medical Center, Mills-Peninsula
6 Medical Center, Novato Community Hospital, Sutter Delta Medical Center, Sutter Lakeside
7 Hospital, and Sutter Santa Rosa Regional Hospital), Sutter Valley Hospitals, a California
8 nonprofit, public benefit corporation (doing business as Memorial Hospital Los Banos, Memorial
9 Medical Center, Sutter Amador Hospital, Sutter Auburn Faith Hospital, Sutter Davis Hospital,
10 Sutter Medical Center, Sacramento, Sutter Roseville Medical Center, and Sutter Tracy Community
11 Hospital), and Sutter Coast Hospital, a California nonprofit, public benefit corporation
12 (collectively, "Hospitals") are California-based health care providers.

13 2. Hospitals are informed and believe that Defendant Kaiser Foundation Health Plan,
14 Inc. ("Kaiser") is a California nonprofit public benefit corporation, licensed as a health care service
15 plan under the Knox-Keene Health Care Service Plan Act ("Knox-Keene Act"), and regulated by
16 the Department of Managed Health Care ("DMHC"). Kaiser offers commercial health plans,
17 Medicare Advantage health plans, and Medi-Cal Managed Care health plans in California and
18 other states. This complaint addresses only Kaiser's commercial health plans, which are those
19 health plans sponsored by employers and similar groups, but not the Medicare program or the
20 Medi-Cal program. Hospitals are informed and believe that Kaiser's principal place of business
21 is in Oakland, California.

22 3. Hospitals are unaware of the true name or capacities of defendants sued herein as
23 Does 1 through 50, inclusive, and therefore sue those defendants by fictitious names. Hospitals
24 are informed and believe, and on that basis allege, that each of these fictitiously named defendants
25 is responsible in some manner for the actions and/or obligations alleged herein. When their true
26 names and capacities are ascertained, Hospitals will amend this Complaint to insert them.
27 Hospitals are informed and believe that each fictitiously named defendant has done, or has caused
28 to be done, those things of which Hospitals complain, and/or are obligated to pay the amounts

1 Hospitals allege to be due and owing. Any reference made to defendants individually or
2 collectively shall, by such reference, be deemed a reference to, and an allegation against, each
3 fictitiously named defendant.

4 4. Hospitals are informed and believe that at all times mentioned herein each of the
5 defendants acted in concert with each and every other defendant and intended to and did participate
6 in the events, acts, practices, and course of conduct alleged herein. Hospitals are further informed
7 and believe that, at all times mentioned herein, each defendant was the agent or partner of each of
8 the other defendants and was acting within the course and scope of such agency or partnership.

9 5. Venue is proper in this Court pursuant to California Code of Civil Procedure § 395
10 because defendant Kaiser resides in the County of Alameda.

11 **BACKGROUND**

12 6. Hospitals are informed and believe that Kaiser enrolls members in its commercial
13 health plans and accepts premiums in exchange for its agreement to provide or arrange for the
14 provision of covered health care services that those members require.

15 7. At times, Kaiser commercial members seek covered health care services at
16 Hospitals, most often emergency and trauma services. Often, Kaiser transfers these members back
17 to Kaiser facilities once Hospitals have stabilized the members' emergency medical conditions
18 such that the patients are stable and ready for transfer in accordance with law. Services provided
19 to patients after the treating physician determines that the patients' emergency medical conditions
20 have been relieved, and that the patient may be safely transferred to another acute care hospital,
21 are referred to as "post-stabilization services." Sometimes, Hospitals provided services to Kaiser
22 members that may not have been emergent or post-stabilization services. In these cases, Hospitals
23 provided the services to patients and only later discovered that the patients were Kaiser enrollees
24 and that Kaiser was the primary payer responsible for the care.

25 8. Hospitals are committed to providing care to under-served populations in the
26 Northern California communities they serve. Hospitals provide a high percentage of Medi-Cal
27 hospital services in Northern California, and they provide a large percentage of uninsured hospital
28 services in Northern California. In comparison, Kaiser hospitals provide a very small percentage

1 of services to Medi-Cal and uninsured patients.

2 Emergency Services

3 9. State and federal laws require that Hospitals that operate emergency departments
4 provide emergency medical services to all patients until their emergency medical conditions are
5 relieved, without regard to the patient's ability to pay. 42 U.S.C. § 1395dd; Cal. Health & Safety
6 Code § 1317.

7 10. Kaiser operates a health care service plan that is regulated by the Knox-Keene Act.
8 California Health and Safety Code sections 1367(i) and 1345(b)(6) require Kaiser to provide
9 coverage for emergency services. California Health and Safety Code sections 1371.4 and
10 1317.2a(d) require Kaiser to pay non-contracted hospitals for emergency services provided to its
11 members. Title 28 of the California Code of Regulations section 1300.71 is a DMHC regulation
12 that requires Kaiser to make payment of the reasonable and customary value of an emergency
13 services provider's services based upon statistically credible information that is updated at least
14 annually and takes into consideration six enumerated factors ("R & C"). Kaiser uses an internal
15 methodology for determining the "reasonable and customary value" amount that it will pay to non-
16 contracted health care providers (Kaiser's "R & C Methodology"). While the methodology is
17 disclosed to the DMHC, it is not disclosed to providers, and is in that sense a "secret." The DMHC
18 does not analyze or formally approve Kaiser's R & C Methodology, but leaves it to health care
19 providers to challenge it in court.

20 Post-Stabilization Services

21 11. After the treating physician has determined that a patient's emergency medical
22 condition has stabilized such that the patient can be safely transferred to another acute care
23 hospital, a non-contracted hospital is required to contact Kaiser for authorization of post-
24 stabilization services. Cal. Health & Safety Code § 1262.8(b). Kaiser must then decide within 30
25 minutes whether to: (i) authorize care or (ii) arrange for the prompt transfer of the patient. Cal.
26 Health & Safety Code § 1262.8(d)(1). When Kaiser elects to have a non-Kaiser hospital provide
27 post-stabilization services, it authorizes the care. If Kaiser fails to notify the hospital of its election
28 within 30 minutes, or fails to promptly transfer the patient, the post-stabilization care is deemed

1 authorized and the health plan is required to “pay charges...for the care...until the enrollee is
2 transferred.” Cal. Health & Safety Code § 1262.8(d)(2), (d)(3).

3 Hospitals’ Charges and Billings Submitted to Kaiser

4 12. Hospitals in California are required to maintain a master list of their usual and
5 customary charges for their services. These usual and customary charges are descriptions of the
6 health care services and items provided by a hospital to its patients, along with the corresponding
7 prices for those “charges.” The master list of the hospital’s charges is called its “charge description
8 master” or “chargemaster.” Hospitals are required to report their chargemasters to California’s
9 Office of Statewide Health Planning and Development (“OSHPD”) annually. OSHPD then
10 publishes each hospital’s chargemaster on its website. At all relevant times, Hospitals have
11 reported their charge description masters annually to OSHPD, and the charge description masters
12 are publicly available online for Kaiser to review.

13 13. When a Hospital provides services to a Kaiser commercial member, the Hospital
14 sends a billing to Kaiser on a standard form specified by the National Uniform Billing Committee
15 called the UB-04 form. This form is populated with information specified in the National Uniform
16 Billing Committee’s UB-04 Data Specification Manual. In general, the UB-04 Data Specification
17 Manual tells hospitals and payers like Kaiser how to aggregate individual charges from the
18 hospital’s chargemaster for the services and items provided to the patient into discrete revenue
19 codes. In addition, Kaiser often asks for and receives itemized bills, which detail each individual
20 charge for the services and items provided to a Kaiser member.

21 Kaiser’s Payments to Hospitals

22 14. For over four years, Hospitals and Kaiser had in place written agreements whereby
23 Kaiser paid Hospitals at agreed-upon rates that provided discounts from Hospitals’ billed charges
24 for certain services. Those contracts have terminated, and Kaiser is no longer entitled to the
25 contractually agreed-upon discounts.

26 15. After its agreements with Hospitals terminated, Kaiser began dramatically reducing
27 the amounts it paid to Hospitals for emergency and trauma services. Hospitals are informed and
28 believe that Kaiser engaged in a pattern of terminating contracts and then paying much lower R &

1 C rates for services in or around 2015 and thereafter. Hospitals are informed and believe that
2 Kaiser terminated its contracts because Kaiser decided to utilize a secret new R & C methodology
3 for paying hospitals that did not have written contracts with Kaiser at amounts that were
4 significantly below the amounts Kaiser agreed to pay under its contracts. Hospitals are informed
5 and believe that Kaiser's secret new methodology does not comply with the requirements of
6 California Health and Safety Code section 1371.4 or Title 28 of the California Code of Regulations
7 section 1300.71, and was in fact a sham to further Kaiser's objective of financially crippling
8 hospitals that compete with Kaiser Foundation Hospitals.

9 16. For dates of services after May 27, 2017, Kaiser also failed to pay the rates
10 Hospitals required for post-stabilization services, though Kaiser knew of those rates when it
11 elected to have Hospitals provide those services, both because Sutter Health, on behalf of
12 Hospitals, had repeatedly notified Kaiser of these rates, and because Kaiser regularly reviews and
13 analyzes information about hospitals' charges, which is published annually on the OSHPD
14 website.

15 17. Hospitals are informed and believe that over the past four years Kaiser has engaged
16 in a pattern and practice of paying Hospitals under its secret R & C Methodology at amounts that
17 are far less than the reasonable value of Hospitals' services.

18 18. Since May 27, 2017, Kaiser has underpaid Hospitals in an amount well in excess
19 of \$60 million, and Kaiser continues to underpay Hospitals for required emergency and post-
20 stabilization services provided to Kaiser members.

21 **FIRST CAUSE OF ACTION**

22 **(For Breach of Implied-In-Law Contract – *Emergency Services*)**

23 19. Hospitals incorporate herein by reference the allegations set forth in Paragraphs 1-
24 18 above as though fully set forth herein.

25 20. At all times from May 27, 2017 to the present, Hospitals were required by law to
26 provide emergency medical services to Kaiser members who presented at Hospitals' emergency
27 departments until the members were stable and ready for transfer or discharge. 42 U.S.C. §
28 1395dd; Cal. Health & Safety Code § 1317. Kaiser was in turn required by law to pay Hospitals

1 for such emergency services until Kaiser arranged for an effectuated transfer or the members could
2 be safely discharged. Cal. Health & Safety Code § 1371.4.

3 21. By virtue of these obligations imposed by law, implied-in-law contracts arose
4 between Hospitals and Kaiser whereby Hospitals are required to provide emergency services to
5 Kaiser members presenting at Hospitals' emergency departments and Kaiser is required to pay
6 Hospitals for those services.

7 22. From May 27, 2017 to the present, Hospitals provided emergency medical services
8 to Kaiser members who presented at Hospitals' emergency departments until the time those
9 members were stable and ready for transfer or discharge.

10 23. Hospitals have performed all of their duties under these implied-in-law contracts
11 and are entitled to be paid in full for their services.

12 24. Beginning on or about May 27, 2017 through the present, Kaiser breached these
13 implied-in-law contracts by failing to pay Hospitals the reasonable value of their emergency
14 services. Instead, Kaiser has paid Hospitals significantly lower amounts using its new secret R &
15 C Methodology, made other improper deductions from Hospitals' billed charges, and improperly
16 denied certain claims and portions of claims, resulting in many unpaid and underpaid claims.

17 25. As a direct and proximate result of Kaiser's breach of the implied-in-law contracts
18 described above, Hospitals have been significantly underpaid for emergency services provided to
19 Kaiser members from May 27, 2017 through the present, in an amount to be proved at trial.
20 Hospitals are entitled to recover the difference between the reasonable value of their services,
21 which Hospitals believe is 100% of Hospitals' billed charges, and the amounts Kaiser paid on such
22 billings, plus interest at the maximum rate allowable by law, which is either 15% in accordance
23 with Health and Safety Code section 1371.35 or 10% in accordance with California Civil Code
24 sections 3287 and 3289.

25 **SECOND CAUSE OF ACTION**

26 **(For Breach of Implied-In-Fact Contract – *Post-Stabilization Services*)**

27 26. Hospitals incorporate herein by reference the allegations set forth in Paragraphs 1-
28 25 above as though fully set forth herein.

1 27. At all relevant times from May 27, 2017, Kaiser was aware that Hospitals expected
2 to be paid 100% of their billed charges for Hospitals' services, unless Kaiser paid 95% of
3 Hospitals' charges within thirty (30) days. Kaiser knew the rates and terms for Hospitals' services,
4 both because Sutter Health, on behalf of Hospitals, repeatedly notified Kaiser of the rates it
5 expected and because detailed information about each Hospital's charges is publicly available on
6 the OSHPD website and Kaiser regularly reviews and analyzes that information.

7 28. Kaiser manifested its assent to pay Hospitals these rates when it elected to have
8 Hospitals provide post-stabilization services with knowledge of the rates Hospitals charged.
9 Hospitals consistently notified Kaiser of their rates for their services, and Hospitals did not agree
10 to accept lower rates.

11 29. Hospitals' rates and terms are consistent with certain statutes, including but not
12 limited to, California Health and Safety Code section 1262.8, which requires Kaiser to pay
13 Hospitals' charges for providing post-stabilization services to Kaiser members after Kaiser elected
14 to have Hospitals provide care and the Hospitals rendered the services in good faith.

15 30. Hospitals performed all of the obligations required of them to be performed under
16 the implied-in-fact contracts with Kaiser.

17 31. Kaiser has breached these implied-in-fact contracts by failing to pay the rates
18 Hospitals required and Kaiser knew about for post-stabilization services that Kaiser elected to have
19 Hospitals provide to its members.

20 32. As a direct and proximate cause of Kaiser's breaches of its implied-in-fact contracts
21 with Hospitals, Hospitals have suffered damages in an amount subject to proof, plus interest at the
22 rate of 15% per annum in accordance with Health and Safety Code section 1371.

23 **THIRD CAUSE OF ACTION**

24 ***(For Quantum Meruit – Services other than emergent/post-stabilization services)***

25 33. Hospitals incorporate herein by reference the allegations set forth in Paragraphs 1-
26 32 above as though fully set forth herein.

27 34. From May 27, 2017 through the present, Hospitals provided services to Kaiser
28 members that may not have been emergent or post-stabilization services. In these cases, Hospitals

1 provided the services to patients and only later discovered that the patients were Kaiser enrollees
2 and that Kaiser was the patients' primary insurer.

3 35. Hospitals are informed and believe that Kaiser commercial plan members pay
4 premiums to Kaiser in return for medical insurance and coverage that includes these services.
5 Accordingly, Kaiser was obligated to pay for medical services provided to its enrollees. In
6 providing such services to Kaiser members, Hospitals intended to and have conferred valuable
7 services to Kaiser. Hospitals provided these services with the reasonable expectation of payment.

8 36. Kaiser has failed to and/or refuses to pay Hospitals for the reasonable value of
9 services rendered by Hospitals to its enrollees and Kaiser has therefore been unjustly enriched in
10 an amount subject to proof at trial.

11 37. To prevent injustice and unjust enrichment, Hospitals are entitled to recovery in
12 *quantum meruit* for the unpaid and underpaid services provided to Kaiser enrollees from May 27,
13 2017 through the present, plus interest at the maximum rate allowable by law.

14 **FOURTH CAUSE OF ACTION**

15 **(Violation of California Business & Professions Code Section 17200)**

16 38. Hospitals incorporate herein by reference the allegations set forth in Paragraphs 1-
17 37 above as though fully set forth herein.

18 39. California Business and Professions Code section 17200 *et seq.* prohibits engaging
19 in an unlawful, deceptive, or unfair business act or practice.

20 40. During the period from May 27, 2017 through the present, Kaiser has engaged in
21 the following unlawful, deceptive, and/or unfair business acts and practices in violation of
22 California Business and Professions Code section 17200 *et seq.*:

23 a. Hospitals are informed and believe that Kaiser's secret new R & C
24 Methodology does not comply with California law, including, but not limited to the
25 requirements of California Health and Safety Code section 1371.4 or Title 28 of the
26 California Code of Regulations section 1300.71. Hospitals are informed and believe that
27 Kaiser's payments to Hospitals under this secret R & C Methodology are not based upon
28 statistically credible information that is updated at least annually; is based on elements that

1 are arbitrary and not tied to or supported by the six factors under Title 28 of the California
2 Code of Regulations section 1300.71(a)(3)(B) or any meaningful test of reasonable value;
3 and fails to take into consideration the six factors required by Title 28 of the California
4 Code of Regulations section 1300.71(a)(3)(B). Hospitals are informed and believe that
5 Kaiser uses its non-compliant R & C Methodology to gain a competitive advantage over
6 hospitals that compete with Kaiser Foundation Hospitals and to gain a competitive
7 advantage over health plans that compete with Kaiser.

8 b. Hospitals are informed and believe that Kaiser has violated California
9 Health and Safety Code section 1395.6 by implementing its secret R & C Methodology in
10 order to pay Hospitals at discounted rates competing health plans have negotiated with
11 Hospitals, despite the fact that Kaiser does not actively encourage its members to obtain
12 services from Hospitals.

13 c. Hospitals are informed and believe that Kaiser has improperly denied
14 certain claims and portions of claims for Hospitals' emergency services and post-
15 stabilization services, in violation of California Health and Safety Code sections 1371.4,
16 1371.35, and 1262.8.

17 d. Hospitals are informed and believe that Kaiser concealed its decisions and
18 methods of adjudicating and paying claims by failing to comply with California laws and
19 industry standards in issuing remittance advices that clearly and accurately explain how
20 Kaiser determined to pay the amounts it paid.

21 41. Hospitals are informed and believe that Kaiser's conduct violates California
22 Business and Professions Code section 17200 *et seq.*

23 42. As a direct and proximate cause of Kaiser's unlawful, deceptive, and/or unfair
24 business practices, Kaiser was unjustly enriched due to its failure to fully compensate Hospitals
25 for providing emergency services and authorized post-stabilization services to Kaiser's members.

26 43. For the period from May 27, 2017 through the present, Hospitals seek restitutionary
27 disgorgement from Kaiser of an amount subject to proof at trial, calculated as the difference
28 between the amounts Kaiser should have paid Hospitals for emergency services and post-

1 stabilization services minus the amounts Kaiser actually paid Hospitals, plus interest at the
2 maximum rate allowable by law.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Hospitals respectfully pray for judgment against Kaiser and Does 1-50 as
5 follows:


- 6 1. Damages for all sums underpaid and unpaid as a result of Kaiser's breach of implied-in-
7 law contracts with Hospitals for the provision of emergency services to Kaiser members
8 from May 27, 2017 through the present, plus interest at the maximum rate allowable by
9 law, which Hospitals believe is 15% under California Health and Safety Code sections
10 1371 and 1371.35, or 10% under California Civil Code sections 3287 and 3289;
- 11 2. Damages for all sums underpaid and unpaid as a result of Kaiser's breach of implied-in-
12 fact contracts with Hospitals for the provision of post-stabilization services to Kaiser
13 members from May 27, 2017 through the present, plus interest at the maximum rate
14 allowable by law, which Hospitals believe is 15% under California Health and Safety Code
15 sections 1371;
- 16 3. Recovery in *quantum meruit* for all sums underpaid and unpaid as a result of Kaiser's
17 failure to pay Hospitals for the provision of services that may not have been emergent or
18 post-stabilization services to Kaiser members from May 27, 2017 through the present, plus
19 interest at the maximum rate allowable by law, which Hospitals believe is 15% under
20 California Health and Safety Code sections 1371, or 10% under California Civil Code
21 sections 3287 and 3289;
- 22 4. A declaration that Kaiser's R & C Methodology used by Kaiser to calculate the amounts
23 Kaiser paid Hospitals for non-contracted emergency and post-stabilization services from
24 May 27, 2017 through the present does not comply with California law and violates
25 California Business and Professions Code section 17200 *et seq.*;
- 26 5. Restitution to Hospitals of all sums unlawfully and/or unfairly withheld by Kaiser, plus
27 interest at the maximum rate allowable by law;
- 28 6. For pre-judgment and post-judgment interest; and

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7. For such other and further relief as the Court deems just and proper.

DATED: November 22, 2019

KING & SPALDING LLP

By: 
STEPHEN L. GOFF
Attorneys for Plaintiffs,
Sutter Bay Hospitals, et al.