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FILED
Superior Court of California
County of Los Angeles

SEP 09 2014

Sherril R. Carter, Executive Officer/Clerk
By M. Soto, Deputy
Moses Soto

9 Attorney for Plaintiff Douglas Kerr, as
10 Conservator for Matthew Szitkar-Kerr

D-322
WILLIAM F. HIGHBERGER

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

13 DOUGLAS KERR, as the Conservator for
14 MATTHEW SZITKAR-KERR, an
15 individual, for himself and for all other
16 similarly situated California residents,

17 Plaintiff,

18 vs.

19 KAISER FOUNDATION HEALTH
20 PLAN, INC., KAISER PERMANENTE
21 INSURANCE COMPANY, and DOES 1-
22 50, Inclusive,

23 Defendants.

Case No.: **BC 5 5 6 8 6 3**

CLASS ACTION COMPLAINT FOR:

- 1. VIOLATIONS OF THE UNRUH ACT;
- 2. VIOLATIONS OF THE UNFAIR COMPETITION LAW;
- 3. COMMON LAW FRAUD;
- 4. BREACH OF CONTRACT; AND
- 5. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

DEMAND FOR JURY TRIAL

LI/CASE #: BC556863
LEA/DEF #:
RECEIPT #: C08524680045
DATE PAID: 09/09/14 10:25 AM
PAYMENT: \$1,435.00 310
RECEIVED:
CHECK: \$1,435.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$0.00

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1 Plaintiff, Douglas Kerr, the father and conservator of Matthew Szitkar-Kerr (collectively
2 "Plaintiff," unless otherwise specified as individuals), alleges the following based on his personal
3 knowledge, on counsel's investigation, and on information and belief. Defendants Kaiser
4 Permanente Insurance Company and Kaiser Foundation Health Plan, Inc. are referred to
5 collectively as "Kaiser" unless otherwise specified.
6

7 **INTRODUCTION**

8 1. This action arises from Kaiser's unlawful business practice of "patient dumping" its
9 members who suffer from severe mental illness.

10 2. Plaintiff Douglas Kerr is informed and believes and thereon alleges that Kaiser
11 has a custom and practice of requiring severely disabled patients – those who are hospitalized in
12 Kaiser's psychiatric facility – to cancel their Kaiser insurance. Specifically, Kaiser advises its
13 psychiatric patients that continued treatment will only occur if the patient cancels his or her
14 Kaiser health care plan, rendering that patient uninsured. Kaiser then transfers these patients to
15 non-Kaiser facilities, where – because of their lack of Kaiser insurance – their psychiatric care is
16 paid for by the government through SSI (Supplemental Security Income), Medi-Cal, Medicare
17 and/or the county (through the Los Angeles Department of Mental Health) payments. Kaiser
18 members who suffer from physical illness only, such as cancer or diabetes, are not forced to
19 terminate their insurance plans and rely on government services. Rather, Kaiser's disenroll-and-
20 transfer policy is directed at patients with severe mental illness only. Kaiser's unlawful practices
21 serve to shift the cost of treatment for mental illness away from Kaiser and onto public taxpayers,
22 enabling the company to "socialize" its losses while retaining its revenue – which includes years
23 of premium payments by the Kerr family and the other members of this putative class.
24
25

26 3. Matthew Szitkar-Kerr is a 21-year-old man who suffers from schizophrenia and bipolar
27 disorder. In January of 2014, Mr. Szitkar-Kerr was hospitalized at a Kaiser Permanente facility
28

1 for his condition. On February 13, 2014, Mr. Szitkar-Kerr was placed in a conservatorship and
2 Letters of Conservatorship were issued in favor of his father, Plaintiff Douglas Kerr. (See Exhibit
3 1.) At the time of his hospitalization, Mr. Szitkar-Kerr was insured as a dependent under a health
4 care service plan issued by Kaiser. His health plan provides coverage for the treatment of severe
5 mental illnesses. (See Exhibit 2, a copy of Mr. Szitkar-Kerr's Explanation of Coverage.) Kaiser,
6 however, refused to pay for Mr. Szitkar-Kerr's treatment, despite its contractual and statutory
7 obligations to do so.

9 4. Conservator Douglas Kerr brings this lawsuit on behalf of his son to stop Kaiser's
10 unlawful practice of systematically dumping its members with severe mental illnesses who have
11 been placed in LPS Conservatorships. Kaiser's conduct violates the California Mental Health
12 Parity Act, the Unruh Civil Rights Act, California Welfare & Institutions Code section 5012
13 (which prohibits insurers from determining the payment of treatment based on whether a patient
14 was taken into custody on a psychiatric hold), the terms of its health insurance policies, and the
15 covenant of good faith and fair dealing.

16 LPS Conservatorships

17
18 5. The term "LPS Conservatorship" refers to a conservatorship granted under the
19 "Lanterman-Petris-Short" Act at California Welfare & Institutions Code sections 5350, *et seq.* It
20 is a short-term (one year) conservatorship for individuals suffering from a mental disorder who
21 are gravely disabled and require psychiatric treatment in a locked facility. The one year duration
22 reflects the view that short, intensive treatment can result in sufficient improvement such that the
23 conservatorship is no longer needed. It can be renewed annually, if necessary.

24
25 6. In contrast, a Probate Conservatorship under California Probate Code sections 1800, *et*
26 *seq.*, is a lifetime conservatorship for those unable to care for themselves by virtue of a physical
27 injury, dementia, or other reasons.

1 7. The present action involves LPS Conservatorships only, and not Probate
2 Conservatorships.

3 **The California Mental Health Parity Act**

4 8. Under California's Mental Health Parity Act ("Parity Act"), health insurers must provide
5 all medically necessary treatment for patients suffering from a severe mental illness on the same
6 financial terms and conditions (e.g., co-payments, deductibles and lifetime maximums) as for
7 physical illnesses. The Parity Act was enacted in 1999, after the Legislature found that:

- 8
- 9 a) Mental illness is real.
 - 10 b) Mental illness can be reliably diagnosed.
 - 11 c) Mental illness is treatable.
 - 12 d) The treatment of mental illness is cost effective.¹
- 13

14 The Legislature further found that most private health insurance policies had, until then, provided
15 coverage for mental illnesses at levels far below coverage for other physical illnesses; that
16 limitations in coverage for mental illness in private insurance policies had resulted in inadequate
17 treatment; that inadequate treatment had caused "relapse and untold suffering for individuals with
18 mental illnesses and their families;" and that inadequate treatment for mental illness "had
19 contributed significantly to homelessness, involvement with the criminal justice system, and other
20 significant social problems." To remedy this disparity, the Parity Act mandates broad coverage
21 for "Severe Mental Illnesses," including schizophrenia and bipolar disorder.² The Parity Act is
22 codified at Health and Safety Code section 1374.72 (for health care service plans regulated by the
23 Department of Managed Health Care, such as Kaiser).

24

25

26 ¹ 1999 Cal. Legis. Serv. ch. 534 (A.B. 88).

27 ² The other Severe Mental Illnesses covered by the Parity Act are schizoaffective disorder, major depressive
28 disorders, panic disorder, anorexia nervosa, bulimia, obsessive-compulsive disorder, and pervasive developmental
disorder of children including autism.

1 12. Defendant Kaiser Foundation Health Plan, Inc. is a California corporation authorized to
2 transact and is transacting business in California with its principal place of business in California.
3 Kaiser is a health care service plan subject to the relevant provisions of the California Health and
4 Safety Code, including the Mental Health Parity Act.
5

6 13. Defendant Kaiser Permanente Insurance Company is a California corporation authorized
7 to transact and is transacting business in California with its principal place of business in
8 California. Kaiser is a health care service plan subject to the relevant provisions of the California
9 Health and Safety Code, including the Mental Health Parity Act.
10

11 14. Plaintiff alleges that there exists, and at all times mentioned existed, a unity of interest and
12 ownership between defendants Kaiser Health Plan Foundation, Inc. and Kaiser Permanente
13 Insurance Company, such that any individuality and separateness between them has ceased, such
14 that they are the alter egos of each other, and at all times herein mentioned were mere shells,
15 instrumentalities or conduits through which they carried on their joint business in the State of
16 California. As a result, Kaiser Health Plan Foundation, Inc. and Kaiser Permanente Insurance
17 Company are collectively referred to herein as "Kaiser," unless otherwise individually specified.
18

19 15. Adherence to the fiction of the separate existence of Kaiser Health Plan Foundation, Inc.
20 and Kaiser Permanente Insurance Company as entities that are distinct from each other would
21 permit an abuse of the corporate privilege and would promote injustice by protecting the
22 Defendants from prosecution for the wrongful acts committed by them under the name Kaiser.
23

24 16. Additionally, Plaintiff is informed and believes that the Defendants were in a joint venture
25 to engage in the conduct that is the subject of this lawsuit, and that several of the persons
26 involved in the issuance of the policy, and the claims review and handling, were employees of
27 Kaiser Health Plan Foundation, Inc. and Kaiser Permanente Insurance Company.
28

17. The true names and capacities, whether individual, corporate, associate or otherwise, of

1 defendants named herein as Does 1 – 50, inclusive, are unknown to the Plaintiff, who therefore
2 sues said defendants by fictitious names. Each of the defendants named herein as a Doe is
3 responsible in some manner for the events and happenings hereinafter referred to, and some of
4 Plaintiff's damages as herein alleged were proximately caused by such defendants. Plaintiff will
5 seek leave to amend this complaint to show said defendants' true names and capacities when the
6 same have been ascertained.
7

8 18. At all times mentioned herein, each of the defendants was the agent or employee of the
9 other defendant(s), or an independent contractor, or joint venture, and in doing the thing herein
10 alleged, each such defendant was acting within the purpose and scope of said agency and/or
11 employment and with the permission and consent of each other defendant.
12

13 19. A California Superior Court may properly assert personal jurisdiction over these parties
14 under Code of Civil Procedure section 410.10. Plaintiffs reside in California and Kaiser is a
15 California corporation with its principal place of business in California. A California Superior
16 Court may properly assert subject-matter jurisdiction over this action. It is a putative class action
17 between Kaiser and its California insureds under Kaiser's health care service plans. Plaintiff and
18 the putative class are alleging claims under California law (violations of the Unruh Act and
19 Unfair Competition Act, fraud, breach of contract and breach of the implied covenant of good
20 faith and fair dealing).
21

22 20. There are no grounds for federal jurisdiction. For purposes of diversity jurisdiction under
23 federal law, each of the parties — Plaintiff, the members of the putative class, and Kaiser — is a
24 citizen of California, thus there is no diversity between the Plaintiff(s) and the Defendants. In
25 addition, Plaintiff and the members of the putative class are alleging claims for relief solely under
26 California law, and, therefore, there is no federal question jurisdiction.
27

28 21. Venue is proper in this court under Code of Civil Procedure sections 395 and 395.5.

1 Kaiser's corporate headquarters and principal place of business are located in California. The
2 company's liability to Plaintiff and the members of the putative class arose in Los Angeles
3 County, and the company breached its obligations to them in Los Angeles County. Kaiser's
4 wrongful conduct toward the Plaintiff occurred at its Kaiser Permanente West Los Angeles
5 Medical Center located at 6041 Cadillac Avenue, Los Angeles, California 90034.
6

7 **FACTS**

8 **Matthew Szitkar-Kerr's Health Care Plan**

9 22. At all relevant times, Matthew Szitkar-Kerr has been covered under a health care service
10 plan issued by Kaiser. Mr. Szitkar-Kerr was a dependent under his mother's group HMO policy
11 for the Los Angeles Unified School District, a governmental entity that is exempt from ERISA.
12 A copy of the District's Evidence of Coverage for its Traditional Plan is attached as Exhibit 2.
13

14 23. Kaiser's health plan provides for all medically necessary treatment. "Medically
15 Necessary" is defined as:

16 A Service is Medically Necessary if it is medically appropriate
17 and required to prevent, diagnose, or treat your condition or clinical
18 symptoms in accord with the generally accepted professional
19 standards of practice that are consistent with a standard of care in
20 the medical community.

21 Under the section titled, "Mental Health Services," the Evidence of Coverage states:

22 **Inpatient psychiatric hospitalization.** We cover inpatient psychiatric
23 hospitalization in a Plan Hospital. Coverage includes room and board,
24 drugs, and Services of Plan Physicians and other Plan Providers who
25 are licensed health care professionals acting within the scope of their
26 license. We cover these Services at a **\$100 Copayment per admission.**

27 **Intensive psychiatric treatment programs.** We cover **at no charge** the
28 following intensive psychiatric treatment programs at a Plan Facility:

- Short-term hospital-based intensive outpatient care (partial Hospitalization).
- Short-term multidisciplinary treatment in an intensive outpatient

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1 psychiatric treatment program.

- 2 • Short-term treatment in a crisis residential program in licensed
- 3 psychiatric treatment facility with 24-hour-1-day monitoring
- 4 by clinical staff for stabilization of an acute psychiatric crisis.
- 5 • Psychiatric observation for an acute psychiatric crisis.

6 24. Kaiser's Summary of Benefits for its Traditional Plan for L.A. Unified states that for
7 "Mental/Behavioral Health Services" its insureds pay \$100 for an inpatient admission, and \$20
8 per individual outpatient visit. Under the section titled, "Limitations & Exceptions" for
9 Mental/Behavioral Health Services, the Summary states, "**none.**" (See Exhibit 3.)

10 25. Pursuant to California's Mental Health Parity Law, the Unruh Civil Rights Act, California
11 Welfare and Institutions Code Section 5012, and the terms of his policy, Matthew Szitkar-Kerr is
12 entitled to all medically necessary care and treatment including inpatient hospital care, subacute
13 (residential program) care, partial hospitalization ("PHP") treatment (typically six to eight hours a
14 day, five to seven days a week), and intensive outpatient ("IOP") treatment (typically three to four
15 hours a day, three to five days per week).

16
17 26. Despite this obligation to provide all medically necessary care and treatment, Kaiser, as a
18 result of Matthew Szitkar-Kerr's LPS Conservatorship, which was ordered on February 13, 2014,
19 refused to meet this obligation. Instead, once the conservatorship was issued Kaiser instructed
20 Mr. and Mrs. Kerr to "disenroll" their son Matthew from their Kaiser health plan. Specifically,
21 Kaiser telephoned Douglas Kerr, Matthew's Conservator, and advised him that "it was time" to
22 terminate Matthew's status as a dependent insured so that he could be provided with further
23 treatment in a residential program at a Los Angeles County facility known as "La Casa."
24 Pursuant to Kaiser's mandate, Matthew's mother, Linda Szitkar, deleted her son from her Kaiser
25 policy. (See Exhibit 4, Ms. Szitkar's "Request for Change of Dependent Status" form.) Plaintiff
26 is informed and believes that Matthew Szitkar-Kerr's treatment is now funded in various amounts
27
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1 by the County (through the Los Angeles County Department of Mental Health), the State of
2 California (through Medi-Cal), and the federal government (through SSI and Medicare). As a
3 result of Kaiser's denial of coverage and its compulsory disenrollment policy, Kaiser no longer
4 bears any financial responsibility for Matthew Szitkar-Kerr's services; instead, his expenses – in
5 their entirety – have been unlawfully transferred to the public taxpayer.
6

7 27. Kaiser's policy of denying coverage for the treatment of severe mental illness, coupled
8 with its mandatory policy cancellation or disenrollment, is a uniform and systematic procedure
9 that it applies to all of its insureds who are subject to LPS Conservatorships. Accordingly, all of
10 the costs of the psychiatric treatment and services provided to conserved Kaiser members have
11 similarly been unlawfully shifted from Kaiser to the government and taxpayers.
12

13 CLASS ACTION ALLEGATIONS

14 28. Plaintiff seeks certification of a class under Code of Civil Procedure section 382. An
15 ascertainable class exists, and there is a well-defined community of interest among class
16 members.
17

18 An Ascertainable Class Exists

19 29. Based on the information of which she and her counsel are currently aware, Plaintiff
20 defines the putative class as follows:

21 All California residents who are insured by Kaiser individual and non-
22 ERISA group health plans, who have been diagnosed with a disorder listed
23 as a Severe Mental Illness under the California Mental Health Parity Act,
24 and who have been placed in an LPS conservatorship, from inception of the
25 applicable limitations period, including periods of tolling and estoppel,
26 until the date of the mailing of the class notice in this action ("class
27 period").
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1 The identity of the class insureds is readily ascertainable from Kaiser's records. If necessary,
2 conservators may be added to the class definition.

3 30. The proposed class is limited to insureds who reside in California or who resided in
4 California during the class period. The proposed class does not include plans governed by
5 ERISA. The proposed class does not include requests for Psychiatric Outpatient Treatment (i.e.,
6 outpatient psychotherapy).

7 31. For their Unruh Act claim, Plaintiff and the members of the class are seeking to recover
8 the statutory minimum damages of \$4,000 per violation of the Act.

9 32. Plaintiff reserves his right to modify the definition of the proposed class based on
10 information that he or his counsel learn through discovery.

11 **Common Questions of Fact and Law Predominate**

12 33. Common questions of fact and common questions of law predominate over individual
13 questions of fact and individual questions of law. These common questions of fact and law
14 include, but are not limited to, the following:

- 15 a) Whether Kaiser violated the California Mental Health Parity Act;
- 16 b) Whether Kaiser violated the Unruh Civil Rights Act;
- 17 c) Whether Kaiser violated California Welfare & Institutions Code section
18 5012;
- 19 d) Whether Kaiser committed fraud by promising to provide all medically
20 necessary treatment for severe mental illness when its company policy and
21 protocol were to deny such care and force patients out of the company's
22 health care plans and into county facilities;
- 23 e) Whether Kaiser violated California Business & Professions Code section
24 17200 by engaging in unlawful, unfair or fraudulent conduct, through the
25 practice of denying coverage and requiring LPS conserved patients to
26 terminate their Kaiser insurance, thereby violating the following statutes:
- 27 • The California Mental Health Parity Act, Health & Safety Code
28 section 1374.72;

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- The Unruh Civil Rights Act at Civil Code section 51;
 - California Welfare and Institutions Code Section 5012;
- f) Whether Kaiser violated the Unruh Act, such that the putative class members are entitled to the mandatory statutory penalty of \$4,000 per violation;
- g) Whether equitable relief, in the form of providing all medically necessary psychiatric treatment, is appropriate in order to ensure that Kaiser complies with all applicable statutory mandates requiring insurance coverage for severe mental illnesses; and
- h) Whether Kaiser acted in bad faith by denying treatment and forcing its patients to disenroll or cancel their policies in order to force its members into county psychiatric facilities in violation of and contrary to the terms of its health care service plans and statutory obligations.

34. Plaintiff's claims do not present individualized issues on whether treatment was medically necessary for Kaiser's members. Plaintiff is not claiming that Kaiser wrongfully determines that the services requested are not medically necessary. The violation is that Kaiser, through the use of its systematic policies of denial and disenrollment, does not make a determination of medical necessity at all. Kaiser's systematic policies are unlawful because they do not comply with the policy definition of "Medically Necessary," and they violate the California Mental Health Parity Act, the Unruh Civil Rights Act, and Welfare and Institutions Code section 5012. The application of these systematic policies operates as a uniform barrier to a determination of medical necessity in any particular case. Finally, the proposed class of conservatees present no individualized issues because they have all been adjudicated as gravely disabled and thus in need of all medically necessary treatment.

Plaintiff's Claims are Typical

35. Plaintiff's claims are typical of those of the members of the class. Plaintiff and all members of the proposed class have sustained injury arising out of and caused by Kaiser's common course of unlawful conduct.

1 his severe mental illness, and forced his disenrollment from his health care service plan. Kaiser
2 did so with knowledge of the effect its conduct was having on Plaintiff and other Kaiser patients
3 with severe mental illnesses. Kaiser intentionally discriminated against Plaintiff and other Kaiser
4 patients with psychiatric disorders on the sole basis that they suffer from a Severe Mental Illness.

5 41. Kaiser's denials of treatment for Severe Mental Illness, and its forced disenrollment of
6 members with Severe Mental Illnesses support the maintenance of a discriminatory system, and
7 thus constitute a continuing violation.

8 42. Plaintiff and the members of the class were harmed.

9 43. Kaiser's conduct was a substantial factor in causing their harm.

10 44. Plaintiff is seeking to recover the \$4,000 per violation minimum damages that Civil Code
11 section 52 imposes for violations of the Unruh Act, Civil Code section 51. He is not seeking any
12 other individual damages for Kaiser's violations of the Unruh Act.

13 45. Plaintiff is also seeking exemplary damages under Civil Code section 3294 for Kaiser's
14 violations of the Unruh Act. Kaiser acted with "malice" when it implemented its denial and
15 disenrollment policies because it acted "with a willful and conscious disregard of the rights" of its
16 patients who require benefits for treatment for Severe Mental Illnesses. Kaiser acted with
17 "oppression" when it implemented its denial and disenrollment policies because it subjected its
18 patients to "cruel and unjust hardship in conscious disregard" when they needed benefits for
19 psychiatric treatment for Severe Mental Illnesses. Kaiser acted with "fraud" because its denial
20 and disenrollment policies are presented as lawful and acceptable business practices, when in fact
21 they are contrary to the express terms of its health care service plans and the company's statutory
22 duties. Additionally, Kaiser's fraudulent conduct serves to transfer the entire financial burden of
23 caring for its patients on the public taxpayers.

24 46. Plaintiff and the proposed class consists of disabled persons within the meaning of Civil
25 Code section 3345, and, as a consequence of Kaiser's wrongful actions, they are entitled to a
26 trebling of any damages imposed by the trier of fact pursuant to Civil Code section 3294.

27 47. Plaintiff is also seeking a permanent injunction to prevent further violations of the Unruh
28 Act, as described above.

1 48. Plaintiff is also seeking attorney fees for Kaiser's violation of the Unruh Act.

2 **SECOND CAUSE OF ACTION**

3 **CLASS-WIDE VIOLATIONS OF THE UNFAIR COMPETITION LAW**

4 **(Business and Professions Code sections 17200 et seq., Against Each of the Defendants)**

5 49. Plaintiff incorporates herein the allegations contained in the previous paragraphs above.

6 50. Plaintiff has standing to prosecute his claims under Business and Professions Code
7 section 17200 et seq. He has suffered injury-in-fact, and has lost money or property in which he
8 has a vested interest, including but not limited to the loss of policy benefits, loss of use and
9 possession of a subacute treatment facility, the loss of premiums, the cost of treatment, and the
10 loss of his health care plan as a result of Kaiser's forced disenrollment.

11 **Unlawful Acts**

12 51. Kaiser acted unlawfully under Business and Professions Code section 17200 et seq. in
13 the following ways:

- 14 a) By utilizing denial and disenrollment protocols to engage in
15 discrimination against individuals with Severe Mental Illnesses and
16 disabilities, because of those mental disabilities, in violation of the Unruh
17 Act, Civil Code section 51;
- 18 b) By failing to provide all medically necessary treatment for patients with
19 Severe Mental Illnesses, in violation of California's Mental Health Parity
20 Act, Health & Safety Code section 1374.72; and
- 21 c) By considering the fact that its patients have been taken into custody under
22 the LPS (Lanterman-Petris-Short) Act in order to evade its responsibility
23 to pay for psychiatric treatment in violation of California Welfare and
24 Institutions Code section 5012.

25 **Unfair Acts**

26 52. Kaiser acted unfairly under Business and Professions Code section 17200 et seq., as
27 described in previous paragraphs above. The harm caused by Kaiser's "patient dumping"
28 conduct far outweighs any possible benefit of that conduct, and there are no countervailing

1 benefits to consumers or business competitors through the wrongful denial of benefits for
2 psychiatric treatment, or through the use mandatory disenrollment and transfer to a non-Kaiser
3 facility.

4 53. Plaintiff's resulting injuries are substantial, and could not have been reasonably avoided.
5 Plaintiff has no adequate remedy at law and will suffer irreparable harm if an injunction is not
6 issued. Plaintiff seeks a permanent injunction requiring Kaiser to take the following steps:

- 7 a) Cease and desist denying psychiatric treatment, and forcing patients to
8 disenroll from their health care plans, in order to comply with the Mental
9 Health Parity Act, the Unruh Civil Rights Act, and California Welfare and
10 Institutions Code Section 5012;
- 11 b) Cease and desist the unlawful transfer of LPS Conservatees to non-Kaiser
12 facilities;
- 13 c) Cease and desist the company's conduct in cost-shifting psychiatric
14 patient care to public taxpayers and County facilities; and
- 15 d) Reenroll its members who were disenrolled pursuant to Kaiser's unlawful
16 business practice.

17 **Fraudulent Acts**

18 54. Kaiser acted fraudulently under Business and Professions Code section 17200 *et seq.*, as
19 described in the previous paragraphs above by forcing its patients to disenroll from Kaiser's
20 health care plans in order to transfer them to non-Kaiser, county facilities, and to shift the cost of
21 patient care away from the company and onto public taxpayers. Kaiser represents to its
22 conserved patients and their families that this procedure is lawful and part of the continued
23 treatment process. This is not true. Accordingly, Kaiser's denial and disenrollment procedure
24 operates as a fraud upon its members.

25 55. Kaiser's patients were likely to be deceived, and were deceived, by Kaiser's false
26 information and representations regarding a disenrollment requirement. Plaintiff reasonably
27 relied on these statements, to his detriment.

28 56. Plaintiff has no adequate remedy at law and will suffer irreparable harm if an injunction is

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1 not issued. Plaintiff seeks a permanent injunction requiring Kaiser to take the following steps:

- 2 a) Cease and desist denying psychiatric treatment, and forcing patients to
3 disenroll from their health care plans, in order to comply with the Mental
4 Health Parity Act, the Unruh Civil Rights Act, and California Welfare and
5 Institutions Code Section 5012;
- 6 b) Cease and desist the unlawful transfer of LPS Conservatees to non-Kaiser
7 facilities;
- 8 c) Cease and desist the company's conduct in cost-shifting psychiatric
9 patient care to public taxpayers and County facilities; and
- 10 d) Reenroll its members who were disenrolled pursuant to Kaiser's unlawful
11 business practice.

12 **THIRD CAUSE OF ACTION**

13 **COMMON LAW FRAUD**

14 **(Against Each of the Defendants)**

15 57. Plaintiff incorporates herein the allegations contained in the previous paragraphs above.

16 58. Kaiser made false statements to Plaintiff stating that continued treatment would only
17 be made available to Matthew Szitkar-Kerr in the event he "disenrolled" (meaning cancelled) his
18 Kaiser health care plan. Pursuant to Kaiser's mandate, Matthew's mother, Linda Szitkar
19 terminated his health care coverage. (See Exhibit 4, Ms. Szitkar's "Request For Change of
20 Dependent Status" deleting Matthew from the policy "at the request of Kaiser.")

21 59. Kaiser knew these statements were not true, and that it had a contractual and statutory
22 obligation to provide Matthew Szitkar-Kerr with all medically necessary treatment for his Severe
23 Mental Illnesses. Kaiser intended to defraud the Kerr family, as well as the putative class
24 members who were also subject to the company's disenrollment protocols, in order to evade its
25 obligation to pay for costly psychiatric treatment, and to shift the costs of patient care away from
26 the company. Kaiser intended to, and did, induce reliance on the part of Plaintiff and the
27 members of the putative class through its false statements regarding disenrollment.

28 60. Plaintiff, and other Kaiser patients, justifiably relied on Kaiser's material

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1 misrepresentations in these statements and suffered injury as a result, including but not limited to
2 the wrongful denial of benefits, lost premiums, out-of-pocket expenses, and the termination of
3 their health care plans. The true facts regarding the false statements were not known until
4 Plaintiff consulted with counsel on this matter.

5 61. The outrageous conduct of Kaiser described above was committed with fraud, oppression
6 and malice, and with a conscious disregard for the rights of its insureds and with the intent,
7 design and purpose of injuring them. Kaiser, through its officers, managing agents and/or
8 supervisors authorized, condoned, and/or ratified the unlawful conduct described herein. Such
9 acts evidence malice and a conscious disregard of Kaiser's insureds' rights. By reason thereof,
10 Plaintiff and the prospective class are entitled to punitive or exemplary damages from the
11 Defendants in a sum according to proof at trial.

12 62. Plaintiff is a disabled person within the meaning of Civil Code section 3345, and, as a
13 consequence of Kaiser's wrongful actions, Plaintiff and the proposed class are entitled to a
14 trebling of any damages imposed by the trier of fact pursuant to Civil Code section 3294.

15 **FOURTH CAUSE OF ACTION**

16 **BREACH OF CONTRACT**

17 **(Against Each of the Defendants)**

18 63. Plaintiff incorporates herein the allegations contained in the previous paragraphs above.

19 64. In Plaintiff's Explanation of Coverage, Kaiser agrees to provide treatment that is
20 "medically necessary," which is defined as follows:

21 A Service is Medically Necessary if it is medically appropriate
22 and required to prevent, diagnose, or treat your condition or clinical
23 symptoms in accord with the generally accepted professional
24 standards of practice that are consistent with a standard of care in
the medical community.

25 Under the section titled, "Mental Health Services," the Evidence of Coverage states:

26 **Inpatient psychiatric hospitalization.** We cover inpatient psychiatric
27 hospitalization in a Plan Hospital. Coverage includes room and board,
28 drugs, and Services of Plan Physicians and other Plan Providers who
are licensed health care professionals acting within the scope of their
license. We cover these Services at a **\$100 Copayment per admission.**

1
2 **Intensive psychiatric treatment programs.** We cover **at no charge** the
3 following intensive psychiatric treatment programs at a Plan Facility:

- 4 • Short-term hospital-based intensive outpatient care (partial
5 hospitalization.
- 6 • Short-term multidisciplinary treatment in an intensive outpatient
7 psychiatric treatment program.
- 8 • Short-term treatment in a crisis residential program in licensed
9 psychiatric treatment facility with 24-hour-1-day monitoring
10 by clinical staff for stabilization of an acute psychiatric crisis.
- 11 • Psychiatric observation for an acute psychiatric crisis.

12 65. Kaiser's Summary of Benefits for its Traditional Plan for L.A. Unified states that for
13 "Mental/Behavioral Health Services," its insureds pay \$100 for an inpatient admission, and \$20
14 per individual outpatient visit. Under the section titled, "Limitations & Exceptions" for
15 Mental/Behavioral Health Services, the Summary states, "**none.**" (See Exhibit 3.)

16 66. Kaiser has breached its policies by failing to provide the required medically necessary
17 treatment by denying care and forcing its patients to cancel their health care policies.

18 67. Plaintiff and members of the class were entitled to coverage for treatment of their Severe
19 Mental Illnesses at the level of care that was medically necessary and for as long as was
20 medically necessary under the terms of the Kaiser policy. Kaiser's failure to authorize such
21 treatment was a breach of the insurance contract between Kaiser and its insureds.

22 68. As a direct and proximate result of Kaiser's breaches of the policies, Plaintiff and
23 members of the class have suffered contractual damages under the terms and conditions of the
24 Kaiser policies, including but not limited to wrongfully denied benefits, lost premiums, out-of-
25 pocket expenses, and cancellation of their health care plans.
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09/09/2014

FIFTH CAUSE OF ACTION
BREACH OF THE IMPLIED COVENANT OF
GOOD FAITH AND FAIR DEALING
(Against All Defendants)

69. Plaintiff incorporates herein the allegations contained in the previous paragraphs above.

70. Kaiser has breached its duty of good faith and fair dealing owed to Plaintiff and members of the proposed class in the following respects:

- a) By utilizing denial protocols to engage in discrimination against individuals with Severe Mental Illnesses and disabilities;
- b) By failing to provide all medically necessary treatment for patients with Severe Mental Illnesses;
- c) By identifying those patients who have been taken into custody under the LPS (Lanterman-Petris-Short) Act as part of its scheme to evade its responsibility to pay for psychiatric treatment;
- d) By forcing patients to disenroll from their health care plans;
- e) By engaging in the unlawful transfer of LPS Conservatees to non-Kaiser facilities, as a result of the very lack of insurance which was induced by Kaiser; and
- f) By cost-shifting psychiatric patient care to public taxpayers and county facilities.

71. Plaintiff is informed and believes, and on that basis alleges, that Kaiser has breached its duties of good faith and fair dealing owed to Plaintiff and members of the class by other acts or omissions of which Plaintiff is presently unaware. Plaintiff will amend this Complaint at such time as Plaintiff discovers the other acts or omissions of Kaiser constituting such breach.

72. As a proximate result of the aforementioned wrongful conduct of Kaiser, Plaintiff and members of the class have suffered, and will continue to suffer, damages under the policies.

73. As a further proximate result of the aforementioned wrongful conduct of Kaiser, Plaintiff

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1 was compelled to retain legal counsel. Therefore, Kaiser is liable to Plaintiff and members of the
2 class for those attorneys' fees reasonably necessary and incurred by Plaintiff.

3 74. The outrageous conduct of Kaiser described above was committed with fraud, oppression
4 and malice, and with a conscious disregard for the rights of its insureds and with the intent,
5 design and purpose of injuring them. Kaiser, through its officers, managing agents and/or
6 supervisors authorized, condoned, and/or ratified the unlawful conduct described herein. Such
7 acts evidence malice and a conscious disregard of Kaiser's insureds' rights. By reason thereof,
8 Plaintiff and the prospective class are entitled to punitive or exemplary damages from the
9 Defendants in a sum according to proof at trial.

10 75. Plaintiff and the members of the proposed class are disabled persons within the meaning
11 of Civil Code section 3345, and, as a consequence of Kaiser's wrongful actions, they are entitled
12 to a trebling of any damages imposed by the trier of fact pursuant to Civil Code section 3294.

13 **PRAYER FOR RELIEF**

14 Plaintiff and the prospective class respectfully request that this Court enter judgment for
15 them and against Kaiser, and that the judgment grant them the following relief:

- 16 a) Certifying this case and these claims for class treatment, with the class defined as set forth
17 in this complaint;
- 18 b) Designating Plaintiff Douglas Kerr as the representative for the class;
- 19 c) Designating Kathryn Trepinski as counsel for the class;
- 20 d) A permanent injunction requiring Kaiser to do the following:
- 21 i. Cease and desist denying psychiatric treatment, and forcing patients to
22 disenroll from their health care plans, in order to comply with the terms of
23 their health plans, the Mental Health Parity Act, the Unruh Civil Rights
24 Act, and California Welfare and Institutions Code section 5012;
- 25 ii. Cease and desist the unlawful transfer of LPS Conservatees to non-Kaiser
26 facilities;
- 27 iii. Cease and desist the company's conduct in cost-shifting psychiatric
28 patient care to public taxpayers and county facilities; and


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iv. Reenroll its members who were disenrolled pursuant to Kaiser's unlawful business practice.

- e) Statutory minimum damages of \$4,000.00 for each of Kaiser's violations of the Unruh Act, with the total number of violations to be determined at trial;
- f) Exemplary damages for Kaiser's violations of the Unruh Act and common law fraud in an amount to be determined at trial;
- g) Damages for breach of contract and breach of the covenant of good faith and fair dealing;
- h) Return of all policy premiums paid on policies whose members were subject to a forced disenrollment;
- i) Treble damages under Civil Code sections 3294 and 3345;
- j) Attorney fees under Civil Code section 52 and Code of Civil Procedure section 1021.5;
- k) Costs, as the law allows;
- l) Pre- and post-judgment interest, as the law allows; and
- m) Such further relief, at law or in equity, that the facts justify and that the law allows.

DATED: September 8, 2014

LAW OFFICES OF KATHRYN TREPINSKI
A LAW CORPORATION

By 
Kathryn M. Trepinski
Attorney for Plaintiff Douglas Kerr


09/09/2014

DEMAND FOR JURY TRIAL

Plaintiff and the putative plaintiff class respectfully request that all matters triable to a jury be tried by a jury.

DATED: September 8, 2014

LAW OFFICES OF KATHRYN TREPINSKI
A LAW CORPORATION

By: 
Kathryn M. Trepinski
Attorney for Plaintiff Douglas Kerr

09/09/2014