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13 Attorneys for Plaintiff
14 CHARLES DION, on behalf of himself
15 and all others similarly situated
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CHARLES DION, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

KAISER FOUNDATION HEALTH PLAN,
INC.; and DOES 1 through 20, Inclusive

Defendants.

CASE NO.: RG14718903

Assigned to Hon. Wynne Carvill, Dept 21

[Related to *Futterman v. Kaiser*, RG13697775]

CLASS ACTION

SECOND AMENDED COMPLAINT FOR:

**1. VIOLATION OF BUSINESS &
PROFESSIONS CODE SECTION 17200**

2. DECLARATORY RELIEF

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2. Plaintiff Charles Dion is and, at all times mentioned herein, was a resident and citizen of the State of California, County of Alameda.

4. This class action arises out of defendant Kaiser's practices in violating California's Mental Health Parity Act ("MHPA"). The California Legislature passed that law because health plans were discriminating against biologically-based mental illnesses and pushing the cost of mental health care onto state and local governments. The MHPA sought to remedy this injustice by mandating that health plans provide all medically necessary treatment for certain enumerated serious mental illnesses on the same financial terms as those applied to physical illnesses. Kaiser has engaged in systematic violations of the MHPA by failing to provide and cover services for treatment of the enumerated serious mental illnesses on terms equivalent to those applied to physical illnesses. Kaiser has failed to provide and cover psychiatric and psychotherapy office visits sufficient to treat the law's enumerated serious mental illnesses and by limiting the number of office visits a member can receive, requiring members to wait extensive periods of time between office visits to receive treatment. Kaiser has also refused to provide and cover individualized treatment, steering members to attend "group" therapy sessions without regard to individual therapeutic needs. Additionally, Kaiser has failed to provide adequate specialty physicians or treatment modalities to treat the

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1 specified serious mental illnesses and has required members to travel unreasonable distances to non-
2 Kaiser providers to receive proper treatment. These illegal practices have been followed by both
3 Kaiser and its affiliated medical groups.

4 **SUBSTANTIVE ALLEGATIONS**

5 **Kaiser**

6 5. Kaiser is a "health care service plan" licensed by the Department of Managed Health
7 Care and is subject to the relevant provisions of the Health & Safety Code. Under this regime, a
8 contract is called an evidence of coverage ("EOC"), the person purchasing the coverage (or eligible
9 for it through employment) is called the "subscriber" or "member," and the entity providing the
10 coverage is the "plan." Health & Safety Code section 1345.

11 6. Kaiser provides medical services to its members through an arrangement with its
12 affiliated medical groups, The Permanente Medical Group ("TPMG") and Southern California
13 Permanente Medical Group ("SCPMG"). To receive medical services, a member must make an
14 appointment at a Kaiser facility in the specified area and follow the diagnosis and course of
15 treatment prescribed by the primary care physician. If a member desires a specialist, a referral is
16 required from the primary care physician.

17 7. Kaiser provides its members with EOCs that set forth the terms and conditions of
18 their coverage. Superimposed over Kaiser's contractual duties under the EOCs are the obligations
19 imposed on it through various provisions of the Health & Safety Code. Pertinent here are the duties
20 imposed on Kaiser under Health & Safety Code section 1374.72.

21 **The MHPA**

22 8. In 1999, the Legislature enacted the MHPA, which is codified at Health & Safety
23 Code section 1374.72. The statute provides in relevant part:

24 Every health care service plan . . . shall provide coverage for the diagnosis and
25 medically necessary treatment of severe mental illnesses of a person of any age, and
26 of serious emotional disturbances of a child, as specified in subdivisions (d) and (e),
under the same terms and conditions applied to other medical
conditions as specified in subdivision (c).

27 9. The MHPA, in essence, is a "mental health insurance mandate which 'obligate[s]
28 health plans to provide coverage (not merely offer it) for the diagnosis and treatment of mental

1 illness equal to coverage that the plans appl[y] to other medical conditions.” *Arce v. Kaiser*
2 *Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 491, *quoting Yeager v. Blue Cross of*
3 *California* (2009) 175 Cal.App.4th 1098, 1103.

4 10. The MHPA requires plans such as Kaiser to cover a variety of services including
5 outpatient services, inpatient services, partial hospital services and prescription drugs.

6 (b) These benefits shall include the following:

7 (1) Outpatient services.

8 (2) Inpatient hospital services.

9 (3) Partial hospital services.

10 (4) Prescription drugs, if the plan contract includes coverage for
11 prescription drugs.

12 Section 1374.72(b). These services must be provided for treatment of a severe mental illness or for
13 the serious emotional disturbance of a child. “Severe mental illness” is defined to include nine
14 enumerated illnesses:

15 (d) For the purposes of this section, “severe mental illnesses”
16 shall include:

17 (1) Schizophrenia.

18 (2) Schizoaffective disorder.

19 (3) Bipolar disorder (manic-depressive illness).

20 (4) Major depressive disorders.

21 (5) Panic disorder.

22 (6) Obsessive-compulsive disorder.

23 (7) Pervasive developmental disorder or autism.

24 (8) Anorexia nervosa.

25 (9) Bulimia nervosa.

26 Section 1374.72(d). The MHPA also requires plans to provide coverage for mental health
27 services in their entire service areas and in emergency situations.

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11. The MHPA was enacted to prevent discrimination against biologically-based mental illnesses and to prevent the plans from pushing the cost of mental health care onto state and local governments.

In enacting the Mental Health Parity Act, the Legislature expressly found that "[m]ost private health insurance policies provide coverage for mental illness at levels far below coverage for other physical illnesses," and that "[l]imitations in coverage for mental illness in private insurance policies have resulted in inadequate treatment for persons with these illnesses." (Stats. 1999, ch. 534, §1, p. 3702.) The Legislature further found that "[t]he failure to provide adequate coverage for mental illnesses in private health insurance policies has resulted in significant increased expenditures for state and local governments." (*Ibid.*) The stated purpose of the statute was to "prohibit discrimination against people with biologically-based mental illnesses, dispel artificial and scientifically unsound distinctions between mental and physical illnesses, and require equitable mental health coverage among all health plans and insurers to prevent adverse risk selection by health plans and insurers." (Assem. Com. on Health, Rep. on Assem. Bill No. 88 (1999-2000 Reg. Sess.) as amended Feb. 24, 1999, p. 2.)

Arce v. Kaiser Foundation Health Plan, Inc., *supra*, 181 Cal.App.4th at 491.

12. Given the MHPA's purpose, and the fact that treatment for mental and physical illnesses are often not comparable, the law "requires treatment of mental illnesses sufficient to reach the same quality of care afforded physical illnesses." *Rea v. Blue Shield of California* (2014) 226 Cal.App.4th 1209, 1238. As set forth below, Kaiser's practices violate the MHPA and frustrate the law's purpose to provide medically necessary treatment for persons with serious, biologically-based mental illnesses.

Kaiser's Systematic Violation of the MHPA

13. While Kaiser is the plan that contracts with members and assumes the risk of providing health care services, it provides the services through its two affiliated (and controlled) medical groups, TPMG and SCPMG. The medical groups are charged with following the practices and procedures established by Kaiser pursuant to its obligations under the EOCs and applicable laws, including the MHPA.

14. Despite Kaiser's obligation to provide various services for treatment of the aforementioned illnesses, Kaiser has violated the MHPA by engaging in various practices, including:

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- 1 a) Failing to provide and cover services for treatment of the enumerated serious mental
2 illnesses sufficient to reach the same quality of care afforded physical illnesses by refusing to
3 provide and cover residential care to those with a serious mental illness diagnosis such as
4 Mr. Dion;
- 5 b) Failing to provide and cover psychiatric and psychotherapy office visits sufficient to treat
6 the MHPA's enumerated conditions by limiting the number of office visits a member
7 receives through lengthy appointment delays and requiring members to wait extensive
8 periods of time between office visits to receive treatment;
- 9 c) Refusing to provide and cover individualized treatment and requiring members to attend
10 "group" therapy sessions;
- 11 d) Failing to provide adequate specialty physicians or treatment modalities to treat the
12 specified serious mental illnesses, such as Dion's need for healthcare providers including a
13 psychiatrist, a psychologist, and residential treatment;
- 14 e) Failing to provide and cover adequate treatment for Obsessive Compulsive Disorder
15 ("OCD") including Exposure and Response Prevention therapy;
- 16 f) Requiring members to travel unreasonable distances to non-Kaiser providers to receive
17 proper treatment, such as Kaiser's requiring Dion to travel from Berkeley to Sacramento for
18 certain treatment.

19 15. In June of 2013 the Department of Managed Health Care filed an enforcement action
20 against Kaiser regarding certain of its mental health practices including the tracking of timely access
21 to services, the monitoring of the sufficiency of the number of providers, and the sufficiency of
22 educational materials. Because the Department of Managed Health Care only has the power to fine a
23 plan or revoke or suspend a plan's license, it sought a \$4 million fine from Kaiser for the identified
24 improper practices. In September of 2014, on the eve of trial of the enforcement proceeding, Kaiser
25 paid the \$4 million fine to put an end to that proceeding.

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1 **Plaintiff Charles Dion**

2 16. Charles Dion is a 25-year-old man living with a diagnosis of OCD, one of the
3 enumerated serious mental illnesses in the MHPA. Kaiser provides health coverage to Mr. Dion
4 through his mother's group plan through the University of California.

5 17. Despite Kaiser's obligation to provide mental health coverage to Mr. Dion under
6 contract and codified law, Mr. Dion has had to suffer through long delays in treatment as Kaiser
7 impeded his ability to acquire appointments with his Kaiser Psychiatrist and refills on his medically
8 necessary medication. On June 15, 2010, Mr. Dion called his Kaiser psychiatrist, Dr. Peter Frank
9 Cohen. He left a message for Dr. Cohen on his office answering machine. Mr. Dion explained in
10 this message that he needed to make an appointment and needed medication as he had not seen the
11 doctor since December 8, 2009.

12 18. Dr. Cohen did not call him back or schedule an appointment. A nurse from Dr.
13 Cohen's office did call Mr. Dion but only to discuss refills of his medication. On June 20, 2010, Mr.
14 Dion still had not heard from Dr. Cohen about an appointment, so he contacted the Kaiser assistant
15 chief of psychiatry, Dr. David Atkins. Mr. Dion left a message with Dr. Atkins' office in which he
16 explained his frustration with his inability to make an appointment for psychiatry services at Kaiser.
17 By July 23, 2010, Mr. Dion had still not received a call from Dr. Cohen or Dr. Atkins about
18 scheduling a psychiatric appointment and so Mr. Dion wrote Dr. Cohen a letter in which he asked
19 for an appointment and expressed his frustration. It was only after all of these steps that Mr. Dion
20 was able to finally schedule an appointment with Dr. Cohen.

21 19. In October 2013, Mr. Dion requested individual cognitive behavioral therapy,
22 specifically, Exposure and Response Prevention therapy, a type of psychotherapy for the treatment
23 of his OCD. On November 6, 2013, he met with Timothy Brown PhD, a Kaiser psychologist. Dr.
24 Brown advised Mr. Dion that Kaiser does not offer the individualized psychotherapy treatment for
25 patients with OCD. He stated that other than medication, the only treatment that Kaiser offered for
26 OCD was group therapy classes – which Dr. Brown ran. Dr. Brown acknowledged that Mr. Dion
27 has severe OCD and that group therapy once a week would be insufficient. He stated that he might
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1 be able to refer Mr. Dion to a non-Kaiser anxiety clinic. That clinic is nearly 100 miles away from
2 Mr. Dion's home.

3 20. Because he could not receive the individual therapy within Kaiser, Mr. Dion began
4 treatment outside of Kaiser with a non-Kaiser therapist. Mr. Dion filed a grievance with Kaiser on
5 November 19, 2013. On December 31, 2013, Mr. Dion received a letter from Kaiser that stated that
6 it would pay for his current Exposure and Response Prevention therapy ("ERP") but only as a "one
7 time courtesy" and only through January 31, 2014. He has since needed ERP, as Kaiser was aware,
8 and been forced to pay for this treatment.

9 21. Due to Mr. Dion's severe OCD, he sought authorization from Kaiser in March of
10 2014 for admission to a residential treatment program. Kaiser, however, denied that request and
11 advised Mr. Dion that Kaiser does not provide coverage for residential treatment programs for
12 mental illness. Thereafter, Mr. Dion received treatment at a residential treatment program. Mr. Dion
13 has paid for part of the residential treatment costs, and is currently liable for additional costs of the
14 treatment.

15 22. Kaiser refuses to provide Mr. Dion with individualized and consistent psychotherapy
16 despite his severe mental illness and need. As a result, Mr. Dion has spent money and continues to
17 incur costs to treat his OCD.

18 CLASS ACTION ALLEGATIONS

19 23. Pursuant to California Code of Civil Procedure section 382 and California Rules of
20 Court, Rule 3.760 et seq., Plaintiff seeks class certification of the following Class:

21 All California members of Kaiser Foundation Health Plan, Inc. who were
22 diagnosed, at any time within four years of the filing of the complaint, with one or
23 more of the severe mental illnesses itemized in MHPA or with a serious emotional
disturbance of a child. Excluded from this definition are members covered under
ERISA plans, FEHBA plans, and Medi-Cal plans.

24 21. The proposed class meets the requirements of a certified class in that:

- 25 a. The members are so numerous that joinder of all members is impracticable;
- 26 b. The members of the class are ascertainable;
- 27 c. Common questions of law and fact exist as to all members of the class;

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1 d. Plaintiff's claims are typical of the claims of the members of the class and Plaintiff
2 and the members of the classes are similarly affected by Kaiser's wrongful conduct;

3 e. Plaintiff will fairly and adequately protect the interests of the members of the class
4 and has retained counsel competent and experienced in class and insurance litigation;

5 f. Inconsistent or varying adjudications with respect to individual members of the class
6 would establish incompatible standards of conduct for Kaiser;

7 g. Kaiser has acted or refused to act on grounds generally applicable to the class,
8 thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to
9 the class as a whole;

10 h. A class action is superior to all other available methods for the fair and efficient
11 adjudication of this controversy since it will promote judicial economy and avoid inconsistent
12 individual results.

13 24. Excluded from the class allegations are Kaiser's practices regarding applied
14 behavioral analysis and speech therapy employed from April 8, 2004 through June 30, 2012 that
15 were the subject of the class settlement in *Arce v. Kaiser Foundation Health Plan, Inc.*, Los Angeles
16 Superior Court No. BC388689.

17 **FIRST CAUSE OF ACTION**
18 **(Violation of the Unfair Competition Law)**

19 25. Plaintiff and the Class hereby repeat and reallege all preceding paragraphs and
20 incorporate same as though fully set forth herein.

21 26. Business and Professions Code section 17200 et seq., the Unfair Competition Law
22 ("UCL"), prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent
23 business act or practice" and "unfair, deceptive, untrue or misleading advertising." The acts of
24 Kaiser, as alleged herein, constitute an unlawful business practice by virtue of its violation of the
25 MHPA.

26 27. Kaiser has violated the UCL in systematically refusing to comply with the MHPA
27 by: a) failing to provide and cover services for treatment of the enumerated serious mental illnesses
28 on terms equivalent to those applied to physical illnesses; b) failing to provide and cover psychiatric

1 and psychotherapy office visits sufficient to treat the MHPA's enumerated conditions by limiting
2 the number of office visits a member receives or requiring members to wait extensive periods of
3 time between office visits to receive treatment; c) refusing to provide and cover individualized
4 treatment and wrongfully requiring members to attend "group" therapy sessions; d) failing to
5 provide adequate specialty physicians or treatment modalities to treat the specified serious mental
6 illnesses; e) requiring members to travel unreasonable distances to non-Kaiser providers to receive
7 treatment.

8 28. As a result of Kaiser's violation of the MHPA, Plaintiff has suffered injury in fact
9 and has lost money or property because Kaiser has failed to provide the benefits due, as required by
10 statute and, hence, Kaiser's EOCs.

11 29. On behalf of themselves and on behalf of the general public, Plaintiff and the Class
12 request declaratory and injunctive relief as remedies to correct Kaiser's illegal practices. Plaintiff
13 and the Class request that the Court enjoin Kaiser from violating the MHPA and order Kaiser to: a)
14 comply with provisions of the MHPA with respect to requests for treatment of the enumerated
15 mental illnesses; b) notify class members that its position on mental health care was incorrect and
16 that it will cover mental health treatments consistent with the MHPA; c) notify class members that if
17 they have paid monies out of pocket for services for mental health care for the enumerated mental
18 illnesses, they can submit those claims for proper review under the MHPA; and d) review any such
19 claims received in a manner that is consistent with the provisions of the MHPA.

20 30. Plaintiff and the Class request attorneys' fees under Code of Civil Procedure section
21 1021.5 and/or under a common fund theory.

22 **SECOND CAUSE OF ACTION**
23 **(Declaratory Relief)**

24 31. Plaintiff and the Class hereby repeat and re-allege all preceding paragraphs and
25 incorporate the same as though fully set forth herein.

26 32. An actual controversy now exists between the parties regarding their rights and
27 liabilities under the Kaiser EOCs. Plaintiff and the Class request a declaration that Kaiser has
28 violated the MHPA by: a) failing to provide and cover services for treatment of the enumerated

1 serious mental illnesses on terms equivalent to those applied to physical illnesses; b) failing to
2 provide and cover psychiatric and psychotherapy office visits sufficient to treat the MHPA's
3 enumerated conditions or by limiting the number of office visits a member receives or requiring
4 members to wait extensive periods of time between office visits to receive treatment; c) refusing to
5 provide and cover individualized treatment and wrongfully requiring members to attend "group"
6 therapy sessions; d) failing to provide adequate specialty physicians or treatment modalities to treat
7 the specified serious mental illnesses; e) requiring members to travel unreasonable distances to non-
8 Kaiser providers to receive proper treatment.

9 33. Plaintiff and the Class request attorneys' fees under Code of Civil Procedure section
10 1021.5 and/or under a common fund theory.


11 **WHEREFORE, Plaintiff and the Class pray for judgment against Kaiser as**
12 **follows:**

- 13 1. A preliminary and permanent injunction, as described herein;
- 14 2. A declaration of the rights and liabilities of the parties under Kaiser's EOCs;
- 15 3. Reasonable attorneys' fees;
- 16 4. Costs of suit incurred herein; and
- 17 5. For such other and further relief as the Court deems just and proper.

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19 DATED: October 30, 2014

LAW OFFICES OF SCOTT C. GLOVSKY, APC
GIANELLI & MORRIS

20
21
22 By: _____


ROBERT S. GIANELLI
ADRIAN J. BARRIO
Attorney for Plaintiff,
Charles Dion

PROOF OF SERVICE

Charles Dion v. Kaiser Foundation Health Plan, Inc. / RG14718903

**STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES**


I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 550 South Hope Street, Suite 1645, Los Angeles, CA 90071.

On October 31, 2014, I served the foregoing document described as **CLASS ACTION SECOND AMENDED COMPLAINT FOR: 1. VIOLATION OF BUSINESS & PROFESSIONS CODE SECTION 17200 2. DECLARATORY RELIEF** on the interested parties in this action by placing a true copy of the original thereof enclosed in a sealed envelope addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

☒ (By Mail) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 31, 2014 at Los Angeles, California.


Concepcion Gonzales

SERVICE LIST

Charles Dion v. Kaiser Foundation Health Plan, Inc. / RG14718903

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