

**FILED**  
 LOS ANGELES SUPERIOR COURT  
 OCT 08 2008  
 JOHN A. JENNINE, CLERK  
*Alfredo Morales*  
 BY ALFREDO MORALES, DEPUTY

**SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF LOS ANGELES**

ANDREW A. ARCE, et al.,

Case No.: BC388689

Plaintiffs,

ORDER RE:

vs.

MOTION TO COMPEL ARBITRATION

KAISER FOUNDATION HEALTH PLAN,  
 INC., et al.,

Defendants.

**ORDER**

Plaintiffs are a minor (Andrew Arce ("Andrew")) and his father (Guillermo Arce ("Guillermo")). Andrew has autism, and Plaintiffs allege that he was not properly diagnosed by Defendant Kaiser Foundation Health Plan, Inc. ("Kaiser") and was improperly denied coverage for treatment of his autism. The complaint includes both individual and class claims for breach of contract, breach of the implied covenant of good faith and fair dealing, violation of Business & Professions Code section 17200, and violation of Business & Professions Code section 17500. Kaiser here moves to compel arbitration of the individual contract causes of action.

1 Guillermo is an employee of Los Angeles County ("County"). As part of his  
2 employment, he was allowed to enroll in a healthcare insurance plan. He chose Kaiser's plan.  
3 The Evidence of Coverage ("EOC") in the Kaiser plan includes an arbitration clause that is  
4 broad enough to encompass the contract claims. However, Guillermo originally enrolled in the  
5 County's benefits election program online and was never provided the EOC when he enrolled,  
6 nor was he presented an enrollment form from Kaiser with an arbitration clause that he signed.<sup>1</sup>  
7 *Medeiros v. Superior Court* (2007) 146 Cal.App.4<sup>th</sup> 1008 holds that such facts are insufficient to  
8 satisfy the arbitration disclosure requirements of Health & Safety Code section 1353.1 or to  
9 support an order compelling arbitration.

10 Kaiser makes a different argument in favor of arbitration. Guillermo's son, Andrew, had  
11 not been born at the time Guillermo originally enrolled online in the Kaiser plan. Kaiser  
12 contends Andrew's mother, Maria Arce ("Maria"), enrolled Andrew in the healthcare plan the  
13 day after his birth on December 14, 2005.<sup>2</sup> Maria was still in the hospital and was asked to sign  
14 a "Newborn Information" form. The top of the form states that its purpose is to "provide  
15 temporary identification for your newborn."<sup>3</sup> On the right side of the form are options for  
16 enrolling the newborn in a Kaiser plan. A box must be checked identifying whether enrollment  
17 is desired and, if so, what plan is requested. At the bottom of the form is an arbitration clause.  
18 Maria entered identification information about her son on the form, and she signed it, but she  
19 did not check any box regarding enrollment in her husband's healthcare plan. Kaiser claims the  
20 signing of the document was sufficient to subject the contract claims to arbitration.

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22 <sup>1</sup> (Guillermo Decl., ¶ 4.) No facts are cited showing that Guillermo viewed a sufficient online  
23 version of the arbitration clause, or provided a sufficient online signature agreeing to the  
24 arbitration clause, during his original online registration.

25 <sup>2</sup> Guillermo was the employee/subscriber under the Kaiser healthcare plan. Maria was covered  
under the plan due to her marital relationship with the employee/subscriber.

<sup>3</sup> (Petition to Compel Arbitration, Ex. B.)

1 The Court disagrees. Even assuming the form constitutes an enrollment form within the  
2 meaning of *Medeiros, supra*, 146 Cal.App.4<sup>th</sup> 1008, Maria did not check any box requesting that  
3 Andrew be enrolled in a healthcare plan – i.e., there was no enrollment. It is clear on the face of  
4 the form that, for group plan members such as Guillermo and Maria, filling out the form does  
5 not establish enrollment. Rather, the form states that, for group plan members, enrollment of a  
6 newborn requires approval by the members' employer: "Your employer group must approve  
7 the enrollment of your baby. Within 31 days of your baby's birth, you must notify your group  
8 benefits administrator that you want to enroll your newborn."<sup>4</sup> Such notification would be  
9 unnecessary if the "Newborn Information" form were, itself, an enrollment form that effectuates  
10 enrollment.<sup>5</sup>

11 The reply declaration of Kaiser's person most knowledgeable states that filling out a  
12 "Newborn Information" form is the first step in the enrollment process.<sup>6</sup> Because a box was not  
13 checked requesting enrollment, Andrew's enrollment was treated as "incomplete."<sup>7</sup> Thus, a  
14 letter was sent by Kaiser to Guillermo which states that Andrew is not automatically enrolled in  
15 the plan and must be enrolled to be covered.<sup>8</sup> Kaiser says its records show that Guillermo  
16 thereafter enrolled Andrew on or before January 13, 2006.<sup>9</sup> Guillermo apparently used the  
17 County's online enrollment website to enroll Andrew, and Kaiser attaches a copy of an  
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19 <sup>4</sup> (Petition to Compel Arbitration, Ex. B.)

20 <sup>5</sup> (See also, e.g., Reply, Ex. F. (attaching a letter from Kaiser to Guillermo, dated weeks after  
21 Maria signed the "Newborn Information" form, wherein Kaiser informs Guillermo that Andrew  
22 needs to be enrolled in the plan in order to be covered).)

23 <sup>6</sup> (King Reply Decl., ¶ 4.)

24 <sup>7</sup> (*Id.* at ¶ 5.)

25 <sup>8</sup> (Reply, Ex. F.)

<sup>9</sup> (King Reply Decl., ¶ 6.)

1 enrollment computer screen to show that there is an arbitration clause that Guillermo, in  
2 Kaiser's view, had to have seen when he enrolled Andrew.<sup>10</sup> Kaiser asserts that Plaintiffs must  
3 arbitrate their contract claims because signing a "Newborn Information" form, which includes  
4 an arbitration clause, and subsequently enrolling online, which involves seeing an arbitration  
5 clause, are fundamental steps in the overall enrollment process.

6 The Court finds Kaiser's argument unavailing and finds that the petition to compel  
7 arbitration must be denied for the following reasons:

8 One, for the reasons stated above, the facts do not support the conclusion signing the  
9 "Newborn Information" form was part of the enrollment process here.

10 Two, there is no evidence showing that Guillermo electronically signed an online  
11 agreement for which proper notice of an arbitration clause was provided. The purported  
12 computer screen copy cited by Kaiser is dated September 14, 2005, months before the online  
13 enrollment of Andrew occurred.<sup>11</sup> Kaiser fails to demonstrate that Guillermo viewed and  
14 clicked on an equivalent computer screen at the time of Andrew's enrollment.<sup>12</sup>

15 Three, and regardless whether Guillermo saw an equivalent computer screen, the  
16 arbitration disclosure appearing on the purported computer screen copy does not strictly comply  
17 with Health & Safety Code section 1363.1.<sup>13</sup> For one thing, the language is not "substantially  
18 expressed in the wording provided in subdivision (a) of section 1295 of the Code of Civil  
19 Procedure" – e.g., the language does not mention that the arbitration clause applies to both  
20 parties or that both parties are giving up the right to a jury trial, and there is no detailed

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22 <sup>10</sup> (Reply, Ex. I.)

23 <sup>11</sup> (*Id.*)


24 <sup>12</sup> Guillermo's supplemental declaration suggests that Guillermo did not view such a page.

25 <sup>13</sup> (*Medeiros, supra*, 146 Cal.App.4<sup>th</sup> at 1015 (noting that the disclosure requirements of section 1363.1 are mandatory and must be strictly complied with).)

1 explanation of what a medical malpractice claim is.<sup>14</sup> For another thing, the evidence does not  
2 establish that the online arbitration provision appeared “immediately before the [online  
3 equivalent of] the signature line[.]”<sup>15</sup> The record is unclear as to whether the online disclosure  
4 appeared at the end of the enrollment process – whether other computer screens followed the  
5 disclosure or whether the disclosure appeared on the final computer screen.

6 Four, Kaiser’s assertion – that the arbitration clause in the “Newborn Information” form  
7 should apply because filling out the form is part of multi-tiered enrollment process – is contrary  
8 to the policy behind section 1363.1 to notify enrollees, when they enroll, of the waiver of the  
9 right to a jury trial. The weeks between Maria’s signing of the form and Guillermo’s online  
10 enrollment of Andrew are evidence that the facts here do not comport with the policy. It cannot  
11 be said that the arbitration clause appeared immediately above the signature line where the  
12 enrollment was completed weeks after the “Newborn Information” form was signed.

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14 Dated: **OCT 08 2008**

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17 EMILIE H. ELIAS  
18 Judge of the Superior Court  
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25 <sup>14</sup> (Health & Safety Code section 1363.1(c).)

<sup>15</sup> (*Id.* at section 1363.1(d).)