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SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

11 ANDREW A. ARCE, a minor, by and  
12 through his Guardian ad Litem,  
13 GUILLERMO ARCE; GUILLERMO  
14 ARCE,

15 Plaintiffs,

16 vs.

17 KAISER FOUNDATION HEALTH PLAN,  
18 INC., AND DOES 1 THROUGH 100,  
19 INCLUSIVE,

20 Defendants.

Case No.: BC 388689

[Assigned to the Hon. Emilie H. Elias]  
Dept. 308

Complaint Filed: April 8, 2008

**PLAINTIFF'S EX-PARTE  
APPLICATION FOR AN ORDER  
COMPELLING KAISER TO COMPLY  
WITH THE COURT'S PRIOR ORDER  
COMPELLING KAISER TO PRODUCE  
DOCUMENTS AT PMK DEPOSITION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES AND DECLARATION  
OF SCOTT C. GLOVSKY**

**Date:** Monday, September 15, 2008

**Time:** 8:30 a.m.

**Dept:** Dept. 308

Trial Date: None Set

1 TO THE COURT, ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on Monday, September 15, 2008 at 8:30 a.m. in  
3 Department 308 of the above-entitled court, located at 600 S. Commonwealth Avenue, Los  
4 Angeles, CA 90005, Plaintiff will make an ex parte application for an order by the Court  
5 compelling Kaiser to comply with the Court's September 4, 2008 order compelling Kaiser to  
6 produce documents at PMK deposition. **This ex-parte application is made on the ground that**  
7 **despite the Court's prior order compelling Kaiser to produce for deposition a PMK and**  
8 **related documents, and despite Kaiser's agreement to produce the requested documents,**  
9 **Kaiser has refused to produce these documents.**  
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11 This ex-parte application is based on this Notice, the attached Memorandum of Points and  
12 Authorities, the attached Declaration of Scott C. Glovsky, Kaiser's Petition to Compel Arbitration  
13 on file with the Court, the Court's order of September 4, 2008, and on such other and further  
14 argument and evidence as may be presented.

15 Dated: September 12, 2008  
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17 LAW OFFICES OF SCOTT C. GLOVSKY  
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19 By: \_\_\_\_\_  
20 SCOTT C. GLOVSKY  
21 Attorneys for Plaintiff  
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## MEMORANDUM OF POINTS AND AUTHORITIES

This is a very simple ex parte application. This Court ordered Kaiser to produce for deposition a PMK and related documents, and Kaiser has failed and refused to produce all of the requested documents.

Plaintiff Andrew Arce is a two and one-half year old boy with autism. Kaiser wrongfully refused Andrew, and probably thousands of other autistic Kaiser patients, necessary treatment for autism. Although California's Mental Health Parity laws require Kaiser to provide care for the treatment of autism, and early treatment leads autistic children to make substantial and sustained gains in IQ, language, academic performance, and adaptive behavior, Kaiser refuses to provide the care that autistic children desperately need to achieve their full potential. Plaintiffs have brought this action to force Kaiser to stop its wrongful, unfair, and, ultimately, unlawful actions.

In the Petition to Compel Arbitration pending before the Court, Kaiser argues that Plaintiffs are required to arbitrate their claims based on the arbitration provision found in Kaiser's Newborn Information form that Andrew Arce's mother (who is not a Kaiser subscriber) signed at a Kaiser hospital soon after Andrew was born. Kaiser has represented to the Court that the *Newborn information form* is an "enrollment form" – an apparent effort to establish that Kaiser has complied with Health & Safety Code § 1363.1's requirements that health plans disclose their arbitration provisions in the enrollment form signed by each subscriber at the time the subscriber enrolls in the health plan. But, in fact, the *Newborn information form* is not an *enrollment form* for Andrew, it did not add or "enroll" Andrew with Kaiser, and it indicates that it is simply a "temporary ID card."

On Thursday, September 4, 2008, plaintiffs appeared before the Court ex parte and requested that the Court enter an order allowing plaintiffs to take a simple Kaiser PMK deposition regarding two issues - *enrollment forms* and the *Newborn information forms*. Plaintiffs' deposition notice requested:

- testimony and documents relating to **enrollment forms**, and all enrollment forms and policies and procedures relating to Kaiser's use of the forms (the "Enrollment form

1 PMK”); and

- 2 • testimony and documents relating to the **Newborn information forms**, and all such  
3 forms and policies and procedures relating to Kaiser’s use of such forms (the  
4 “Newborn Information form PMK”).

5 This Court granted plaintiffs’ ex parte application. When Kaiser’s counsel raised an  
6 objection to the deposition notice, the Court instructed counsel to meet and confer in the hallway.  
7 After meeting and conferring, counsel returned to the Court and advised the Court that Kaiser  
8 would produce the Newborn Information form PMK, but objected to producing the Enrollment  
9 form PMK. Kaiser’s counsel did not object to any of the document requests. After plaintiffs’  
10 counsel told Judge Elias that plaintiff enrolled through the County of Los Angeles, this Court  
11 ordered Kaiser to produce the enrollment form PMK *limited to LA County employees*. As a  
12 result, the Court ordered Kaiser to produce the Enrollment form PMK and the requested  
13 documents *limited to LA County employees* and the Newborn information form PMK as noticed  
14 and the requested documents.

15 Late that afternoon, despite having just been before the Court on Plaintiffs’ ex parte  
16 application and having had Plaintiffs’ ex parte application for several days before the hearing,  
17 Kaiser completely disregarded the Court’s order and served objections to the deposition notice  
18 that indicated that Kaiser would not produce the PMKs and related documents as ordered by the  
19 Court. Kaiser’s objections indicated that Kaiser would not produce the requested documents as  
20 noticed in response to requests numbers 1 through 4, and that Kaiser would only produce a  
21 narrowed PMK. Kaiser’s objections would have undermined the purpose of the PMK deposition  
22 and deprived Plaintiffs of the discovery needed to fully brief the issues on Kaiser’s Petition to  
23 Compel Arbitration, *i.e.*, evidence that the Newborn information form is not an enrollment form.  
24 The next day, Friday, Plaintiffs’ counsel sent Kaiser’s counsel a letter in response to the  
25 objections. The letter requested confirmation that Kaiser would comply with the Court’s order  
26 and produce the PMKs as noticed, with the only limitation being the Court’s limitation that  
27 Kaiser produce the enrollment form PMK limited to LA County employees, and all requested  
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1 documents. The letter indicated that, because the objections wholly undermined the purpose for  
2 Plaintiffs' discovery, Plaintiffs would seek ex parte relief on September 9 and be forced to seek  
3 sanctions if Kaiser refused to produce the requested documents.

4 On Sunday, September 7, Kaiser's counsel responded in a letter that failed to agree to  
5 produce the PMK and documents as requested.

6 On Monday morning, September 8, Plaintiffs' counsel spoke with Kaiser's counsel, Larry  
7 Cox, and repeatedly requested confirmation that Kaiser would comply with the Court's order and  
8 produce the PMKs as noticed, with the only limitation being the Court's limitation that Kaiser  
9 produce the enrollment form PMK limited to LA County employees, and all requested  
10 documents. After the call, Kaiser's counsel sent an email purportedly "summarizing the  
11 agreement" in which Kaiser did not agree to produce the PMK and documents as requested.  
12 Plaintiffs' counsel immediately responded in an email that indicated that there was no agreement  
13 unless Kaiser would confirm that it would produce the PMK and documents as requested.

14 Later that day, Plaintiffs' counsel again called Mr. Cox to request the same confirmation.  
15 Mr. Cox said that it was his "current intent" to produce the PMK and responsive documents, but  
16 that he would send amended objections later that day. Kaiser then sent amended objections that  
17 suggested that Kaiser would produce all responsive documents. As a result, it appeared that  
18 Kaiser would comply with the Court's order, and Plaintiffs proceeded with the deposition the next  
19 day.

20 But at the deposition, despite the Court's order and Kaiser's representation that it would  
21 produce all responsive documents, **the Kaiser PMK testified that Kaiser was not producing**  
22 **enrollment forms relating to Los Angeles County employees, and policies, procedures and**  
23 **guidelines relating to the enrollment forms.**

24 In addition, Kaiser did not produce all policies relating to the Newborn information form.  
25 Kaiser claims (wrongly) that the Newborn information form is an enrollment form. The Newborn  
26 information form was signed shortly after Andrew Arce was born by his mother, **who is not a**  
27 **Kaiser subscriber**. Kaiser produced a policy from 2005 entitled *Newborn Enrollments*,  
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1 *Complete Form*. This policy provides that “if the form is considered incomplete for the following  
2 reasons (...invalid subscriber signature), then go to the *Newborn Enrollments, Incomplete Form*.”  
3 But Kaiser did not produce the *Newborn Enrollments, Incomplete Form*. Why? A subsequent  
4 similar policy from 2006 indicates that “A signature that is not the subscriber’s” is an “invalid  
5 signature” and refers Kaiser employees to the Incomplete Form Procedure (4b) – which provides  
6 “**Do not** enroll the new born” (emphasis in original). Plaintiffs believe that the *Newborn*  
7 *Enrollments, Incomplete Form* that Kaiser has not produced says the same thing.

8 Plaintiffs request that the Court enter an order compelling Kaiser to comply with its  
9 September 4, 2008 order and produce all documents responsive to the document requests in  
10 plaintiffs’ notice of deposition. Plaintiffs also request that the Court order Kaiser to re-produce  
11 its PMK to testify regarding the withheld documents and order Kaiser to pay for the deposition  
12 costs.

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15 Dated: September 11, 2008

16 LAW OFFICES OF SCOTT C. GLOVSKY

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18 By: \_\_\_\_\_  
19 SCOTT C. GLOVSKY  
20 Attorneys for Plaintiff  
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**DECLARATION OF SCOTT C. GLOVSKY**

I, SCOTT C. GLOVSKY, DECLARE:

1. I am an attorney admitted to practice before the courts of this State and am the attorney of record for plaintiff. I have personal knowledge of the information contained in this declaration, and if called to do so, could and would competently testify thereto.

2. In the Petition to Compel Arbitration pending before the Court, Kaiser argues that Plaintiffs are required to arbitrate their claims based on the arbitration provision found in Kaiser's Newborn Information form that Andrew Arce's mother (who is not a Kaiser subscriber) signed at a Kaiser hospital soon after Andrew was born. Kaiser has represented to the Court that the *Newborn information form* is an "enrollment form" – an apparent effort to establish that Kaiser has complied with Health & Safety Code § 1363.1's requirements that health plans disclose their arbitration provisions in the enrollment form signed by each subscriber at the time the subscriber enrolls in the health plan. But, in fact, the *Newborn information form* is not an *enrollment form* for Andrew, it did not add or "enroll" Andrew with Kaiser, and it indicates that it is simply a "temporary ID card."

3. On Thursday, September 4, 2008, I appeared before the Court on behalf of Plaintiffs ex parte and requested that the Court enter an order allowing Plaintiffs to take a simple Kaiser PMK deposition regarding two issues - *enrollment forms* and the *Newborn information forms*. Plaintiffs' deposition notice requested:

- testimony and documents relating to **enrollment forms**, and policies and procedures relating to Kaiser's use of the forms (the "Enrollment form PMK"); and
- testimony and documents relating to the **Newborn information forms**, and procedures relating to Kaiser's use of such forms (the "Newborn Information form PMK").

This Court granted plaintiffs' ex parte application. When Kaiser's counsel, Larry Cox, raised an objection to the deposition notice, the Court instructed counsel to meet and confer in the hallway.

1 After meeting and conferring, we returned to the courtroom and advised the Court that Kaiser  
2 would produce the Newborn Information form PMK, but objected to producing the Enrollment  
3 form PMK. Kaiser's counsel did not object to any of the document requests. After I told Judge  
4 Elias that plaintiff enrolled through the County of Los Angeles, this Court ordered Kaiser to  
5 produce the enrollment form PMK *limited to LA County employees*. As a result, the Court  
6 ordered Kaiser to produce the Enrollment form PMK and the requested documents *limited to LA*  
7 *County employees* and the Newborn information form PMK as noticed and the requested  
8 documents. Attached hereto as Exhibit E is a true and correct copy of Plaintiffs' ex parte  
9 application from September 4, 2008.

10 4. Late that afternoon, despite having just been before the Court on Plaintiffs' ex  
11 parte application and having had Plaintiffs' ex parte application for days before the hearing,  
12 Kaiser completely disregarded the Court's order and served objections to the deposition notice  
13 that indicated that Kaiser would not produce the PMKs and related documents as ordered by the  
14 Court. Kaiser's objections indicated that Kaiser would not produce the requested documents as  
15 noticed in response to requests numbers 1 through 4, and that Kaiser would only produce a  
16 narrowed PMK. Attached hereto as Exhibit A is a true and correct copy of Kaiser's objections.  
17 Kaiser's objections would have undermined the purpose of the PMK deposition and deprived  
18 Plaintiffs of the discovery needed to fully brief the issues on Kaiser's Petition to Compel  
19 Arbitration, *i.e.*, evidence that the Newborn information form is not an enrollment form.

20 5. The next day, Friday, I sent Kaiser's counsel a letter in response to the objections.  
21 The letter requested confirmation that Kaiser would comply with the Court's order and produce  
22 the PMKs as noticed, with the only limitation being the Court's limitation that Kaiser produce the  
23 enrollment form PMK limited to LA County employees, and all requested documents. Attached  
24 hereto as Exhibit B is a true and correct copy of my meet and confer letter requesting compliance  
25 with the Court's order. My letter indicated that, because the objections wholly undermined the  
26 purpose for Plaintiffs' discovery, Plaintiffs would seek ex parte relief on September 9 and be  
27 forced to seek sanctions if Kaiser refused to produce the requested documents.  
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1           6.       Attached hereto as Exhibit C is a true and correct copy the further meet and confer  
2 correspondence between myself and Mr. Cox that reflects Plaintiffs' further efforts to obtain  
3 confirmation that Kaiser would comply with the Court's order and produce all of the requested  
4 documents. These documents reflect the facts relayed in the below paragraphs.

5           7.       On Sunday, September 7, Kaiser's counsel responded to my letter in an email that  
6 failed to agree to produce the PMK and documents as requested.

7           8.       On Monday morning, September 8, I spoke with Kaiser's counsel, Larry Cox, and  
8 repeatedly requested confirmation that Kaiser would comply with the Court's order and produce  
9 the PMKs as noticed, with the only limitation being the Court's limitation that Kaiser produce the  
10 enrollment form PMK limited to LA County employees, and all requested documents. After the  
11 call, Kaiser's counsel sent an email purportedly "summarizing the agreement" in which Kaiser  
12 did not agree to produce the PMK and documents as requested. I immediately responded in an  
13 email that indicated that there was no agreement unless Kaiser would confirm that it would  
14 produce the PMK and documents as requested.

15           9.       Later that day, I again called Mr. Cox to request the same confirmation. Mr. Cox  
16 said that it was his "current intent" to produce the PMK and responsive documents, but that he  
17 would send amended objections later that day. Kaiser then sent amended objections that  
18 suggested that Kaiser would produce all responsive documents. As a result, it appeared that  
19 Kaiser would comply with the Court's order, and I proceeded with the deposition the next day.

20           10.      But at the deposition, despite the Court's order and Kaiser's representation that it  
21 would produce all responsive documents, **the Kaiser PMK testified that Kaiser was not**  
22 **producing enrollment forms relating to Los Angeles County employees** (and therefore not  
23 producing the policies, procedures and guidelines relating to the enrollment forms). Attached  
24 hereto as Exhibit D is a true and correct copy of the relevant pages from the rough deposition  
25 transcript in which the Kaiser PMK testifies about Kaiser's withholding responsive documents –  
26 specifically enrollment forms.

27           11.      In addition, Kaiser did not produce all policies relating to the Newborn  
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1 information form. Kaiser claims (wrongly) that the Newborn information form is an enrollment  
2 form. The Newborn information form was signed shortly after Andrew Arce was born by his  
3 mother, **who is not a Kaiser subscriber**. Kaiser produced a policy from 2005 entitled *Newborn*  
4 *Enrollments, Complete Form*. This policy provides that “if the form is considered incomplete for  
5 the following reasons (...invalid subscriber signature), then go to the *Newborn Enrollments,*  
6 *Incomplete Form*.” But Kaiser did not produce the *Newborn Enrollments, Incomplete Form*.  
7 Why? A subsequent similar policy from 2006 indicates that “A signature that is not the  
8 subscriber’s” is an “invalid signature” and refers Kaiser employees to the Incomplete Form  
9 Procedure (4b) – which provides “**Do not** enroll the new born” (emphasis in original). Plaintiffs  
10 believe that the *Newborn Enrollments, Incomplete Form* that Kaiser has not produced says the  
11 same thing.

12           12. In addition to the other emails regarding this matter, on September 11, 2008, at  
13 approximately 12:42 p.m., I sent an email to Larry Cox that provided “I will appear ex parte at  
14 8:30am on Monday September 15, 2008, in Department 308, in Judge Elias' courtroom, at 600 S.  
15 Commonwealth Avenue, Los Angeles, CA 90005, and seek an order requiring Kaiser to comply  
16 with the Court's prior order. Specifically, based on the Court’s prior order, I will seek production  
17 of all responsive documents, a resumption of the deposition at Kaiser's expense to address the  
18 withheld documents, and sanctions.”

19           I declare under penalty of perjury under the laws of the State of California that the  
20 foregoing is true and correct and that this declaration was executed on September 12, 2008 at  
21 Pasadena, California

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23 \_\_\_\_\_  
SCOTT C. GLOVSKY