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13 PHYSICIANS FOR HEALTHY
14 HOSPITALS, INC.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUN 17 2019

A. True

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JUN 18 2019

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF RIVERSIDE, SOUTHWEST JUSTICE CENTER

17 PHYSICIANS FOR HEALTHY
18 HOSPITALS, INC., a Delaware
19 corporation,
20
21 Plaintiff,

22 vs.

23 KAISER FOUNDATION HOSPITALS, a
24 California Corporation; KAISER
25 FOUNDATION HEALTH PLAN, INC.,
26 a California Corporation; and
27 DOES 1 through 100, inclusive,
28 Defendants.

) CASE NO.: MCC 1801347
)
) Assigned for all purposes to the Hon. Raquel A.
) Marquez, Dept. S303

) **SECOND AMENDED COMPLAINT FOR
) DAMAGES FOR:**

- 1. BREACH OF IMPLIED CONTRACT
- 2. QUANTUM MERUIT
- 3. RESTITUTION
- 4. ACCOUNT STATED
- 5. VIOLATION OF HEALTH AND SAFETY CODE § 1317.2a(e)
- 6. INJUNCTIVE AND EQUITABLE RELIEF UNDER BUSINESS AND PROFESSIONS CODE § 17200
- 7. DECLARATORY RELIEF

Action Filed: November 21, 2018
Trial: Not Yet Set

For causes of action against defendants KAISER FOUNDATION HOSPITALS ("KF HOSPITALS"), KAISER FOUNDATION HEALTH PLAN, INC. ("KF PLAN") (collectively "KAISER") and DOES 1-100, inclusive, and each of them (collectively "DEFENDANTS"),

1 plaintiff PHYSICIANS FOR HEALTHY HOSPITALS, INC. ("PHH") alleges:
2

3 **PARTIES, JURISDICTION AND VENUE**

4 1. PHH is, and at all times herein mentioned has been, a corporation duly organized
5 and existing under and by virtue of the laws of the State of Delaware. PHH's offices are in
6 Hemet, California. As more particularly described below, PHH operates two acute medical care
7 facilities: (1) Hemet Valley Medical Center located at 1117 E. Devonshire Ave., Hemet,
8 California 92543-3083, and (2) Menifee Valley Medical Center located at 28400 McCall Blvd.,
9 Menifee, California 92585-9658.

10 2. PHH is informed and believes, and thereon alleges, during most of the relevant
11 time period KF HOSPITALS and KF PLAN operated as California nonprofit public benefit
12 corporations throughout California, including Riverside, with their principal places of business in
13 Oakland, California. PHH is informed and believes, and thereon alleges, KF HOSPITALS and
14 KF PLAN are affiliates and/or are otherwise related corporate entities, such that KF HOSPITALS
15 and KF PLAN cooperate in the conduct of the healthcare program commonly known as the
16 "Kaiser Permanente Medical Care Program" and/or "Kaiser Permanente." PHH is informed and
17 believes, and thereon alleges, KAISER is subject to the Knox-Keene Act and related regulations
18 on healthcare services plans and their capitated providers because KF PLAN is a healthcare
19 services plan licensed with the California Department of Managed Healthcare and KF
20 HOSPITALS is a capitated provider of a healthcare service plan and owns and operates hospitals.

21 3. The actions described herein occurred, were accomplished and/or had their
22 purposeful effect in the County of Riverside, State of California. Accordingly, this Court has
23 jurisdiction over such matters pursuant to, *inter alia*, Code of Civil Procedure section 410.10 and
24 Section 10 of Article VI of the California Constitution.

25 4. Venue is proper pursuant to Code of Civil Procedure section 395.

26 5. PHH sues defendants Does 1 through 100, inclusive, by fictitious names. PHH
27 does so because PHH is presently unaware of the true names or capacities of DOES 1 through
28 100 or, alternatively, is unaware of the precise roles these fictitiously named defendants played in

1 carrying out the wrongdoing described herein. PHH is informed and believes, and thereon
2 alleges, DOES 51 through 100, inclusive, and each of them, somehow participated in, were
3 unjustly enriched or benefitted by, or otherwise received or retained benefit via the wrongful,
4 inequitable and/or unlawful acts described herein. When the true names, capacities or facts
5 establishing the fictitiously named defendants' identities and/or culpability are ascertained, PHH
6 will amend this complaint to so specify. For now, PHH is informed and believes, and thereon
7 alleges, that each fictitiously named defendant is responsible in some manner, means or degree
8 for the events, occurrences, damages and harm described herein and proximately caused, or
9 materially contributed to the proximate cause of, PHH's damages.

10 6. PHH is informed and believes, and thereon alleges, in doing the acts or engaging
11 in the omissions alleged herein, all DEFENDANTS, including DOES 1 through 100, inclusive,
12 and each of them, in addition to acting for himself, herself, itself or themselves, and on his, her,
13 its or their behalf(ves), was or were the agent(s), servant(s), employee(s), partner(s), joint
14 venturer(s), co-conspirator(s), aiders and abettor(s), representative(s), surety(ies) or alter ego(s) of
15 some or all of the other defendants, and in doing the things herein alleged, committed such acts or
16 omissions within the course and scope of such agency, servitude, employment, partnership, joint
17 venture, conspiracy, representation, suretyship or alter ego relationship, or for the purpose of
18 carrying out their intended unlawful purpose, with the knowledge, consent, authority, or
19 ratification of some or all of the other defendants.

20
21 **GENERAL ALLEGATIONS**

22 7. PHH is a coalition of local doctors who are committed to creating strong, state of
23 the art hospitals that serve as centers of medical excellence in the Hemet and Menifee Valleys.
24 PHH owns and operates two "health facilities" and "general acute care hospitals" licensed in
25 California pursuant to Health and Safety Code section 1250 *et seq.* as follows: (1) Hemet Valley
26 Medical Center, and (2) Menifee Valley Medical Center. Hemet Valley Medical Center is a 327-
27 licensed bed facility that places the needs of its patients first, focusing on excellent clinical
28 outcomes, patient safety, and exceptional service. Hemet Valley Medical Center provides

1 comprehensive services through its Emergency Department, Cardiac program, Oncology program
2 and Orthopedic Department. Menifee Valley Medical Center is an 84-licensed bed facility
3 operating high quality healthcare with state-of-the-art technology. Menifee Valley Medical
4 Center provides comprehensive services through its Emergency Department, Cardiac program,
5 Orthopedic Department and Speech and Occupational Therapy programs.

6 8. PHH, through Hemet Valley Medical Center and Menifee Valley Medical Center,
7 receives, among others, emergency patients in and around Riverside County based on the
8 patients' location, assessed need and proximity to facilities offering the required level of care.
9 PHH does not control the inflow of such patients; PHH is informed and believes, and thereon
10 alleges, the County of Riverside, through its administration of the County's Emergency Medical
11 Services system, and individual patients, exercise such control.

12 9. PHH, through Hemet Valley Medical Center and Menifee Valley Medical Center,
13 is statutorily required to provide emergency services "to any person requesting [emergency]
14 services or care" because Hemet Valley Medical Center and Menifee Valley Medical Center are
15 health facilities licensed under Chapter 2 of Division 2 of the Health & Safety Code (Health &
16 Safety Code §§ 1200 *et seq.*). Emergency Medical Treatment and Active Labor Act
17 ("EMTALA"), Social Security Act § 1867; Health & Safety Code § 1317(a). More precisely,
18 pursuant to, *inter alia*, Health and Safety Code section 1317(a), at all relevant times PHH has
19 been, and continues to be, statutorily required to receive and treat patients "in danger of loss of
20 life, or serious injury or illness" regardless of plan membership (insurance). Therefore, by law,
21 when KAISER members (insureds) present to PHH's emergency service departments, PHH must
22 treat those individuals without obtaining insurance verification or advance health plan
23 authorization to provide treatment. That continues to hold true as of the filing of this complaint,
24 thus explains why PHH's damages as described herein continue to increase daily.

25 10. As stated above, KAISER is subject to the Knox-Keene Act and related
26 regulations on healthcare services plans and their capitated providers. Healthcare service plans
27 are governed by the Knox-Keene Healthcare Service Plan Act of 1975 (the "Knox-Keene Act" or
28 "Act"). Health & Saf. Code § 1340 *et seq.* The Knox-Keene Act "is 'a comprehensive system of

1 licensing and regulation' [citation], formerly under the jurisdiction of the Department of
2 Corporations (DOC) and presently within the jurisdiction of the Department of Managed
3 Healthcare (DMHC) (§ 1341; Stats. 1999, ch. 525, § 1(a); Stats. 2000, ch. 857, §§ 19, 100)."
4 *California Medical Assn. v. Aetna U.S. Healthcare of California, Inc.*, 94 Cal. App. 4th 151, 155,
5 fn. 3 (2001) (*California Medical*). The intent and purpose of the Legislature in enacting the
6 Knox-Keene Act was "to promote the delivery and the quality of health and medical care to the
7 people of the State of California who enroll in, or subscribe for the services rendered by, a
8 healthcare service plan or specialized healthcare service plan." § 1342. The Legislature sought to
9 accomplish this purpose by, among other things, imposing "proper regulatory procedures" to
10 "[e]nsur[e] the financial stability" of the system, and establishing a system that ensures healthcare
11 service plan "subscribers and enrollees receive available and accessible health and medical
12 services rendered in a manner providing continuity of care." *Id.*, subs. (d), (f), & (g). Section
13 1342.6 reiterates the Act's purpose of providing "high-quality healthcare coverage in the most
14 efficient and cost-effective manner possible," and finds "it is in the public interest to promote
15 various types of contracts between public or private payers of healthcare coverage, and
16 institutional or professional providers of healthcare services." Among the contracts the Act
17 permits are "contracts that contain incentive plans that involve general payments, such as
18 capitation payments, or shared-risk arrangements." § 1348.6(b). The Act expressly allows
19 contracts in which healthcare service plans delegate to the plans' contracting medical providers
20 the plans' financial responsibility to reimburse emergency service providers' claims. § 1371.4(e).
21 Noncontracted emergency service providers are entitled to reimbursement at the reasonable and
22 customary rate for the emergency services they perform. Cal. Code Regs., tit. 28, § 1300.71,
23 subd. (a)(3)(B).

24 11. Administrative regulations implementing the Knox-Keene Act include, among
25 others, section 1300.67.8 of the California Code of Regulations, which requires health plans to
26 execute written contracts with all healthcare service providers who regularly furnish services to
27 the plans' members, and sections 1300.71 and 1371.37 prohibiting health care service plans from
28 engaging in a "demonstrable and unjust payment pattern" or "unfair payment pattern" that results

1 in repeated delays in the adjudication and correct and timely reimbursement of provider claims, or
2 from improperly denying, adjusting or contesting claims.

3 12. KAISER does not maintain sufficient hospitals in Riverside to service the needs of
4 all KAISER's member population. PHH is informed and believes, and thereon alleges, this is
5 intentional. KAISER furthermore does not offer nor have the capacity to provide all the
6 emergency and other specialized services offered by PHH. Under the foregoing statutory and
7 regulatory structure, therefore, at all relevant times DEFENDANTS knew and/or reasonably
8 should have known KAISER's member population would require continuing emergency and
9 other medical services provided by PHH. At all relevant times, DEFENDANTS further knew
10 and/or reasonably should have known PHH, through the two acute hospitals it operates, has a
11 continuing legal duty to provide such ongoing emergency care to KAISER's member patients,
12 and PHH's rendition of such services and care fulfills KAISER's contractual obligations to a
13 significant segment of KAISER's member population.

14 13. PHH is informed and believes, and thereon alleges, DEFENDANTS, and each of
15 them, are sophisticated healthcare actors. PHH is further informed and believes, and thereon
16 alleges, none of the DEFENDANTS have denied, nor at this point plausibly can deny, at any time
17 being aware of PHH's published reasonable and customary rates. DEFENDANTS have received
18 a multitude of invoices from PHH's two hospitals, Hemet Valley Medical Center and Menifee
19 Valley Medical Center, over the past several years specifying those rates. Further, at all relevant
20 times, Hemet Valley Medical Center and Menifee Valley Medical Center published their
21 reasonable and customary rates on the website maintained by California's Office of Statewide
22 Health Planning and Development ("OSHPD") as required by Health and Safety Code sections
23 127400 *et seq.*

24 14. As required by law and ethical practice, upon receiving KAISER member patients
25 seeking emergency care, some of whom were nonresponsive, PHH provided, and continues to
26 provide, a broad array of emergency services and care including, among other things, screening,
27 examination and evaluation to determine whether a *bona fide* emergency medical condition
28 existed and thereafter rendered care and treatment necessary to relieve or eliminate diagnosed

1 emergency medical conditions. That situation continues.

2 15. PHH's standard practice is to ask, if circumstances so permit, whether an incoming
3 patient is a member of a private or governmentally sponsored/administered health plan within a
4 short time after the patient's arrival (post triage). In certain instances, incoming patients cannot,
5 or do not, inform PHH they are health plan members until several days into their inpatient stay.
6 However, once PHH becomes aware a patient is a health plan member, it is PHH's uniform
7 practice to promptly notify the identified plan of the patient's admission, member identifier
8 information and diagnosed condition.

9 16. In the case of KAISER, in instances where an identified KAISER member patient
10 is medically stable for transport, PHH's uniform practice is to advise KAISER the patient will be
11 admitted/retained unless KAISER promptly arranges for the patient's transfer to another facility.
12 In certain instances, with PHH's cooperation, KAISER arranges for its members to be transferred
13 to other facilities. In other instances, KAISER fails to arrange for transfer or explicitly approves
14 of PHH's rendition of the prescribed course of care including, in certain instances,
15 poststabilization services. In cases where a KAISER member patient arrives in a condition where
16 it is determined the patient's health and safety would be jeopardized by immediate transport, as
17 required by law, PHH renders such services and provides such care as prudent and necessary until
18 the patient can, at KAISER's option, be safely transferred to another facility. Thereafter, again,
19 pursuant to the same procedure, KAISER controls whether the patient is in fact transferred to
20 another facility.

21 17. As per PHH's uniform practice, PHH bills DEFENDANTS the full amount of its
22 reasonable and customary charges for services rendered to KAISER member patients. That is to
23 say, PHH bills DEFENDANTS those reasonable and customary rates published online on the
24 OSHPD website. PHH is informed and believes, and thereon alleges, DEFENDANTS never
25 objected to this practice.

26 18. Notwithstanding, in numerous instances DEFENDANTS paid *less* or *nothing at*
27 *all*. That is to say, instead of paying the implicitly understood and legally required non-contract
28 rate (*i.e.*, 100% of the published reasonable and customary charges), or even the discounted rate

1 payable under provider network access agreements, such as MultiPlan, Inc., that provides access
2 to a network of health care providers to health care insurers and plans who do not have their own
3 direct contract with certain providers, DEFENDANTS paid only a fraction of PHH's reasonable
4 and customary charges for emergency and related poststabilization services and care rendered.
5 Moreover, DEFENDANTS have paid PHH's charges in what appears to be a wholly *ad hoc*,
6 arbitrary and unpredictable manner. In some instances, DEFENDANTS paid more than half the
7 bill; in others, less than half; in yet others, denied the claims altogether and paid nothing.
8 Occasionally, DEFENDANTS have held payment on large patient claims hostage unless PHH's
9 staff "agreed" to accept a far lesser rate of reimbursement. DEFENDANTS have also
10 consistently failed to pay PHH in a timely manner as required by law. This all amounts to an
11 enjoined unlawful and unfair business practice as defined in Business & Professions Code
12 section 17200, *et seq.*

13 19. PHH's published reasonable and customary charges on the OSHPD website are,
14 and at all relevant times have been, available to the public; hence, at all relevant times they have
15 been available for review by DEFENDANTS. PHH's published rates reflect the reasonable and
16 customary value of the services, care and supplies PHH provides. PHH is informed and believes,
17 and thereon alleges, DEFENDANTS have never openly contended to the contrary. It is custom
18 and practice in the healthcare industry when a hospital and a health plan do not have a valid
19 written contract for emergency and related poststabilization services and care, and no other rate
20 is set by law, and a hospital treats a health plan member, the hospital expects and is entitled to
21 reimbursement from the health plan in the full amount of the hospital's reasonable and customary
22 charges for such services and care as published on the OSHPD website. Hence, the totality of the
23 circumstances, including statutory mandate, industry practice, DEFENDANTS' failure to timely
24 object and in certain instances DEFENDANTS' course of conduct support a finding that the
25 parties' entered into an implied contract for PHH's provision of emergency and related
26 poststabilization services to KAISER's members at PHH's published reasonable and customary
27 rates.

28 20. In addition to being statutorily required to pay reasonable and customary charges

1 for emergency and related poststabilization services and care KAISER members receive at non-
2 KAISER facilities, including PHH, DEFENDANTS were and continue to be legally required to
3 pay for poststabilization services provided to medically stable KAISER member patients where
4 KAISER fails to timely arrange to have those patients transferred to other facilities. *See, e.g.*
5 Health & Safety Code §1262.8(d) and 1317.2a(e). PHH is informed and believes, and thereon
6 alleges, KAISER knowingly left certain of its member patients at PHH's hospitals to receive
7 medically-necessary poststabilization services and care from PHH, instead of arranging for their
8 transfer to other facilities. PHH is similarly informed and believes, and thereon alleges, in some
9 cases KAISER affirmatively approved PHH to render such poststabilization services and care to
10 its member patients. In all such cases, KAISER expressly or implicitly authorized PHH to
11 provide such poststabilization services and care to its member patients on the terms described
12 above: *i.e.*, at PHH's published reasonable and customary rates.

13 21. PHH is informed and believes, and thereon alleges, KAISER has a long history of
14 systematically underpaying and failing to satisfy its statutory duties to timely pay provider
15 hospitals for emergency and related poststabilization services rendered to its insureds. In 2006,
16 the California Department of Managed Healthcare (the "DMHC") investigation of KAISER
17 resulted in an assessment of an administrative penalty against KAISER of \$500,000 for violations
18 of Health and Safety Code sections 1371.4, 1368, and 1386(b)(1) dealing with the payment of
19 emergency care services and grievances of its plan members. KAISER was provided an
20 opportunity to reduce the penalty by implementing certain curative actions, however, KAISER
21 failed to do so and in 2008 the DMHC again concluded that KASIER had failed to consistently
22 and appropriately pay for out-of-network emergency services provided to its members. In 2010,
23 the DMHC again fined KAISER \$750,000 for violating the minimum legal threshold of paying
24 95 percent of their claims correctly and violating provider dispute resolution procedures, thus,
25 unfairly putting the burden on the provider to fight for payment, either within the plan, through
26 the DMHC or through the courts.

27 22. PHH is informed and believes, and thereon alleges, the DMHC's foregoing
28 findings and remedial actions against KAISER evidence a larger and continuing strategy, scheme

1 and pattern of practice by DEFENDANTS, and each of them, to violate their statutory and
2 common law duties for the purpose of, among other things, paying less than the reasonable and
3 customary value for the emergency and related poststabilization services rendered by non-
4 contracted providers like PHH. PHH is further informed and believes, and thereon alleges,
5 KAISER implemented this secret strategy, scheme and pattern knowing and intending to
6 underpay PHH and to shift the burden of providing emergency healthcare to its members, and to
7 the public in general, away from KAISER and to PHH and similarly situated providers.

8 23. PHH has provided, and continues to provide, necessary and often lifesaving care to
9 thousands of KAISER members annually. By way of example only, one patient ("Patient A")
10 was a 27-year-old male brought to Hemet Valley Medical Center by ambulance post
11 cardiopulmonary arrest with resuscitation and ET intubation by the paramedics. Patient A was
12 admitted to the ICU and treated for suicide attempt by hanging, anoxic brain injury and acute
13 respiratory failure. Patient A received continuous neurological and pulmonary care and
14 management. KAISER was notified Patient A was at Hemet Valley Medical Center and received
15 multiple clinical reviews keeping KAISER apprised of Patient A's condition. After extensive
16 treatment, evaluation and assessment by Hemet Valley Medical Center, Patient A was rendered
17 stable for transfer, and KAISER transferred Patient A.

18 24. Another Patient ("Patient B") was a 61-year-old male brought to Menifee Valley
19 Medical Center by ambulance for complaints of difficulty breathing and shortness of breath.
20 Patient B was admitted to the ICU and treated for acute respiratory acidosis, septicemia,
21 pneumonia and hypoxemia. Patient B required intubation and was placed on a ventilator.
22 KAISER was notified Patient B was at Menifee Valley Medical Center and received multiple
23 clinical reviews keeping KAISER apprised of Patient B's condition. KAISER authorized Patient
24 B's entire hospital stay at Menifee Valley Medical Center.

25 25. PHH timely billed DEFENDANTS for the care and services provided to Patients
26 A and B. Notwithstanding, to date DEFENDANTS have failed and refused, and continue to fail
27 and refuse, to pay PHH its reasonable and customary billed charges for Patients A and B. These
28 are but two examples. In all cases at issue in this Complaint, which is currently estimated to

1 involve over 1,000 patient accounts, DEFENDANTS have failed and refused, and continue to fail
2 and refuse, to pay PHH its reasonable and customary billed charges for emergency and related
3 poststabilization services and care rendered to KAISER member patients.

4 26. PHH is withholding the full names of the patients currently at issue in this
5 Complaint to preserve the patients' protected rights to privacy concerning healthcare information.
6 The patients' names will be made available to DEFENDANTS pursuant to a suitable Court
7 approved protective order.

8
9 **FIRST CAUSE OF ACTION**

10 **BREACH OF IMPLIED CONTRACT**

11 **(Against All Defendants)**

12 27. PHH realleges and incorporates by reference paragraphs 1-26.

13 28. PHH provided, and continues to provide, emergency and related poststabilization
14 services to KAISER member patients. PHH is informed and believes, and thereon alleges, those
15 services and care were either immediately necessary to treat patients "in danger of loss of life, or
16 serious injury or illness" or explicitly or implicitly approved by KAISER in due course. PHH is
17 further informed and believes, and thereon alleges, KAISER's policies with its members include
18 coverage for such hospital services and care. Accordingly, in rendering these services, PHH
19 intended to and did aid and confer a material benefit on DEFENDANTS in satisfaction of
20 KAISER's contractual duty to its members.

21 29. At all relevant times, PHH provided, and continues to provide, the above-
22 described services and care with the reasonable expectation and intent of charging, and being
23 timely paid, its published reasonable and customary rates. PHH's expectation in this regard has,
24 and continues to be, based, among other things, on the mandates of Health and Safety Code
25 sections 1317.2a(d), 1317.2a(e), 1262.8(d), 1371, 1371.35 and 1371.4, Cal. Code Regs., tit. 28,
26 §1300.71(a)(3)(B), industry custom and practice, and what DEFENDANTS explicitly or
27 implicitly acknowledged constituted PHH's reasonable and customary rates.

28 30. At all relevant times, DEFENDANTS accepted the benefit of PHH's continued

1 rendition of services to KAISER's members. PHH is informed and believes, and thereon alleges,
2 DEFENDANTS in general, and KAISER in particular, took no steps to timely arrange for KF
3 HOSPITALS or other providers to provide KAISER's members the services giving rise to the
4 unpaid or underpaid charges at issue herein.

5 31. Under such facts and circumstances, contracts, implied both in fact and by
6 operation of law, have existed, and continue to exist, between PHH and DEFENDANTS.

7 32. Pursuant to the terms of those implied contracts, PHH provided, and continues to
8 provide, the above-described services and care to KAISER member patients in the manner
9 described above, including following the procedures described in paragraphs 14 through 17.
10 DEFENDANTS, in turn, are, and continue to be, obligated to timely pay PHH for those
11 continuing services at PHH's reasonable and customary rates.

12 33. PHH is informed and believes, and thereon alleges, at no time during the course of
13 PHH's rendition of the above-described services, notwithstanding PHH's adherence to the
14 procedures described in, *inter alia*, paragraphs 14 through 17, did DEFENDANTS dispute the
15 eligibility of any KAISER member patient for which PHH now seeks payment, nor advise PHH
16 DEFENDANTS intended to pay less than PHH's reasonable and customary rates. Rather, in each
17 such instance, PHH is informed and believes, and thereon alleges, DEFENDANTS expressly or
18 impliedly requested that PHH care for and treat the KAISER member patient without objection.
19 Finally, DEFENDANTS either expressly or impliedly promised to pay for such services based on
20 PHH's then published reasonable and customary rates.

21 34. PHH's published rates are reasonable and customary. PHH provides exceptional
22 services to KAISER member patients. PHH charges KASIER the same fees it charges all other
23 financially responsible insurers with whom it does not have a contract. PHH is informed and
24 believes, and thereon alleges, the published reasonable and customary charges of its hospitals are
25 lower than the rates charged by other hospitals in the same geographic area, and the rates charged
26 by PHH was appropriate (if not below market) for the high quality and medically necessary
27 services and care it provided, and continues to provide, KAISER member patients. KAISER does
28 not have the right, as it has done here, to unilaterally decide after-the-fact how much it will pay

1 PHH without regard to PHH's published rates and such factors. KAISER similarly does not have
2 the right, as it has done here, to unreasonably delay the payment of PHH's bills or pay on an
3 arbitrary *ad hoc* basis.

4 35. PHH is informed and believes, and thereon alleges, at all relevant times
5 DEFENDANTS knew an enforceable implied contract existed between themselves and PHH
6 requiring DEFENDANTS to pay PHH's undiscounted reasonable and customary charges. More
7 particularly, PHH is informed and believes, and thereon alleges, at all relevant times
8 DEFENDANTS knew this implied contract arose from the parties' conduct, the above-described
9 statutory scheme requiring PHH to render a majority of the patient services and care in question
10 and requiring DEFENDANTS to in return pay PHH's reasonable and customary charges, and the
11 fact PHH's services and care was rendered, and continues to be rendered, in satisfaction of
12 KAISER's contractual commitments to its member patients. PHH is similarly informed and
13 believes, and thereon alleges, this implied contract is evidenced by the multitude of invoices PHH
14 has sent, and continues to send, DEFENDANTS for such continuing services and care, and the
15 payments DEFENDANTS have periodically made in partial satisfaction thereof. Finally, PHH is
16 informed and believes, and thereon alleges, DEFENDANTS know they are required under Health
17 and Safety Code sections 1317.2a(d) and (e), 1262.8(d), 1371.4 and otherwise to pay PHH the
18 full amount of PHH's reasonable and customary charges for all legally mandated emergency and
19 related poststabilization services and care PHH has provided, and continues to provide, to
20 KAISER member patients in the manner described above.

21 36. PHH has performed, and continues to perform, all its duties and obligations under
22 its implied contracts with DEFENDANTS, insofar as PHH has rendered, and continues to render,
23 among other things all requested and/or legally required emergency and related poststabilization
24 services and care to KAISER's member patients.

25 37. All of the conditions for DEFENDANTS' performance of the implied contracts
26 have been satisfied. Specifically, among other things, PHH has rendered, and continues to render,
27 the above-described services and KAISER either approved, failed to object or otherwise failed to
28 timely arrange for its member patients to receive the services elsewhere. Finally, PHH billed

1 DEFENDANTS for those services.

2 38. DEFENDANTS breached the implied contracts by, among other things, refusing
3 to pay PHH's reasonable and customary charges for emergency and related poststabilization
4 services and care PHH rendered to KAISER member patients, by issuing partial payments or
5 denials, and by generally acting in the unlawful, unreasonable and bad faith manner described
6 above.

7 39. As a result of DEFENDANTS' serial and continuing breaches of the implied
8 contracts, PHH has sustained, and will continue to sustain, damages subject to proof at trial, but is
9 in an amount currently over \$25,000 and which continues to increase daily, as stated in PHH's
10 bill of particulars.

11
12 **SECOND CAUSE OF ACTION**

13 **QUANTUM MERUIT**

14 **(Against All Defendants)**

15 40. PHH re-alleges and incorporates by reference paragraphs 1-39.

16 41. In addition and/or in the alternative, PHH alleges DEFENDANTS, and each of
17 them, owe PHH for emergency and related poststabilization services and care rendered to
18 KAISER member patients in quantum meruit. More particularly, PHH reiterates:

19 a. By words, conduct or necessity, DEFENDANTS requested and PHH rendered, and
20 by necessity, law and good medical practice PHH continues to render, the foregoing
21 services and care to and for the benefit of KAISER's member patients and
22 DEFENDANTS;

23 b. The reasonable value of those services was and is PHH's hospitals' reasonable and
24 customary rates as published on the OSHPD website;

25 c. The services and care were and continue to be rendered compulsorily, with
26 DEFENDANTS' express or implied consent or, in certain instances, both;

27 d. PHH timely and properly billed, and continues to bill, DEFENDANTS for the
28 services and care; and

1 e. A substantial portion of PHH's bills for its emergency and related poststabilization
2 services and care remain unpaid.

3 42. The estimated unpaid balance of the reasonable and customary value of PHH's
4 emergency and related poststabilization services and care rendered to or for the benefit of
5 KAISER member patients and DEFENDANTS is in an amount currently over \$25,000 and which
6 continues to increase daily, as stated in PHH's bill of particulars.

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8

THIRD CAUSE OF ACTION

9

RESTITUTION

10

(Against All Defendants)

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43. PHH realleges and incorporates by reference paragraphs 1-42.

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44. In addition and/or in the alternative, PHH alleges DEFENDANTS, and each of
them, owe PHH restitution by way of compensation, reimbursement, indemnification or
reparation for benefits derived by KAISER member patients from PHH, or for loss or injury
caused to PHH by reason of the foregoing continuing events and activities. More particularly,
PHH reiterates:

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- a. PHH rendered, and by necessity, law and good medical practice continues to
render, the foregoing emergency and related poststabilization services and care to and
for the benefit of KAISER member patients and DEFENDANTS;
- b. The reasonable value of those services and care was and is PHH's reasonable and
customary rates as published on the OSHPD website;
- c. The services and care were rendered compulsorily, with DEFENDANTS' express
or implied consent or, in certain instances, both compulsorily and with
DEFENDANTS' express or implied consent;
- d. PHH timely and properly billed DEFENDANTS for those services and care;
- e. A substantial portion of PHH's bills for those services and care remain unpaid; and
- f. DEFENDANTS would be unjustly enriched if they failed to make restitution for
the unpaid balance under the circumstances described above.

1 A hospital which has a legal obligation to provide care for a patient as
2 specified by subdivision (a) of Section 1317.2a to the extent of its legal
3 obligation, imposed by statute or by contract to the extent of that contractual
4 obligation, which does not accept transfers of, or make other appropriate
5 arrangements for, medically stable patients in violation of this article or
6 regulations adopted pursuant thereto shall be liable for the reasonable
7 charges of the transferring hospital and treating physicians for providing
8 services and care which should have been provided by the receiving
9 hospital.

6 51. PHH is informed and believes, and thereon alleges, KF HOSPITALS and DOES
7 51-100, and each of them, are capitated providers of a healthcare service plan for its member
8 patients and own and operate hospitals. Accordingly, PHH is informed and believe, and thereon
9 alleges, KF HOSPITALS and DOES 51-100, and each of them, are hospitals that, at all relevant
10 times, had a legal obligation imposed by statute and contract to provide care for KAISER member
11 patients and, if unable to do so, to make appropriate arrangements for the timely and proper
12 medical care of such patients.

13 52. PHH timely notified KAISER when its member patients sought admission to
14 receive, or were then receiving, services at PHH's facilities. PHH further timely notified
15 KAISER when its member patients were stable for transport to other facilities.

16 53. In multiple instances, to be proven at trial, KF HOSPITALS and DOES 51-100 did
17 not accept the transfer of or make other appropriate arrangements for the timely transfer of
18 medically stable KAISER member patients once informed those patients were in PHH's care and
19 safe for transport.

20 54. PHH is informed and believes, and thereon alleges, they provided services and
21 care to KAISER member patients that should have been provided by KF HOSPITALS and DOES
22 51-100, and each of them.

23 55. In such instances, PHH billed KF HOSPITALS and DOES 51-100 for PHH's
24 published reasonable and customary charges for such services.

25 56. KF HOSPITALS and DOES 51-100, however, failed to pay the invoiced charges
26 for the services PHH provided to KAISER member patients. KF HOSPITALS and DOES 51-100
27 therefore violated Health and Safety Code section 1317.2a(e).

28 57. KF HOSPITALS and DOES 51-100 thus owe PHH the difference between the

1 amount KF HOSPITALS and DOES 51-100 paid and the reasonable charges PHH billed to
2 KAISER for such services in an amount to be proven at trial within the jurisdiction of this Court,
3 which amount increases on a daily basis, as described in PHH's bill of particulars.
4

5 **SIXTH CAUSE OF ACTION**

6 **INJUNCTIVE AND EQUITABLE RELIEF UNDER**

7 **BUSINESS & PROFESSIONS CODE § 17200**

8 **(Against All Defendants)**

9 58. PHH re-alleges and incorporates by reference the allegations set forth in the
10 preceding paragraphs 1-57.

11 59. PHH is informed and believes, and thereon alleges, at all relevant times
12 DEFENDANTS, and each of them, engaged in the unlawful and unfair business acts or practices
13 as described above.

14 60. More particularly, PHH is informed and believes, and thereon alleges,
15 DEFENDANTS have at all relevant times been aware that "any health facility licensed under
16 [Health & Safety Code sections 1250 *et seq.*] that maintains and operates an emergency
17 department [shall] provide emergency services to the public" and that KAISER member patients
18 receive services at such licensed health facilities, including PHH's hospitals. Health & Safety
19 Code § 1317(a).

20 61. PHH is further informed and believes, and thereon alleges, DEFENDANTS have
21 at all relevant times been aware of their "statutory or contractual obligation to provide or
22 indemnify emergency medical services on behalf of [KAISER member patients]" and are liable to
23 the provider of such emergency services (including PHH) for the "reasonable charges ... for the
24 emergency services." Health & Safety Code § 1317.2a(d).

25 62. PHH is informed and believes, and thereon alleges, KF HOSPITALS and DOES
26 51-100 have at all relevant times been aware that "a hospital which has a legal obligation to
27 provide care for a patient as specified in subdivision (a) of Section 1317.2a to the extent of its
28 legal obligation...which does not accept transfers of, or make other appropriate arrangements for,

1 medically stable patients” is liable to the provider “for the reasonable charges...for providing
2 services and care which should have been provided by the receiving hospital.” Health & Safety
3 Code § 1317.2a(e). -

4 63. PHH is further informed and believes, and thereon alleges, DEFENDANTS are
5 healthcare service plans or contracting medical providers, as those terms are used in Health and
6 Safety Code section 1262.8(d) and “shall, within 30 minutes from the time [a] noncontracting
7 hospital makes the initial contact” for authorization of poststabilization care “do either of the
8 following: (A) [a]uthorize poststabilization care” or “(B) [i]nform the noncontracting hospital that
9 it will arrange for the prompt transfer of the enrollee to another hospital.” Health & Safety Code
10 § 1262.8(d)(1). “If the healthcare service plan, or its contracting medical provider, does not
11 notify the noncontracting hospital of its decision...within 30 minutes, the poststabilization care
12 shall be deemed authorized, and the healthcare service plan, or its contracting medical provider,
13 shall pay charges for the care.” Health & Safety Code § 1262.8(d)(2).

14 64. PHH is informed and believes, and thereon alleges, DEFENDANTS have
15 consistently failed and refused, and continue to fail and refuse, to pay the reasonable and
16 customary charges for emergency and related poststabilization services provided to KAISER
17 member patients by PHH and other similarly situated emergency medical service providers.

18 65. Instead, after the emergency medical services have been provided to KAISER
19 member patients and billed to DEFENDANTS, DEFENDANTS have paid in a wholly *ad hoc*,
20 arbitrary and unpredictable manner amounting to substantially less than the reasonable and
21 customary charges billed for those services. DEFENDANTS have engaged, and continue to
22 engage, in such conduct despite regulations implementing the Knox-Keene Act including, among
23 others, sections 1300.71 and 1371.37 prohibiting health care service plans from engaging in a
24 “demonstrable and unjust payment pattern” or “unfair payment pattern” that results in repeated
25 delays in the adjudication and correct and timely reimbursement of provider claims, or from
26 improperly denying, adjusting or contesting claims. DEFENDANTS’ wrongful acts of
27 withholding payment of reasonable charges for emergency medical services DEFENDANTS are
28 statutorily or contractually obligated to pay, as described more fully above, constitutes acts of

1 unlawful and unfair competition within the meaning of Business and Professions Code sections
2 17200 *et seq.*

3 66. Likewise, after the poststabilization medical services have been implicitly or
4 expressly approved for and provided to KAISER member patients, DEFENDANTS have paid,
5 and continue to pay, substantially less than the reasonable and customary charges billed for those
6 services. DEFENDANTS' wrongful acts of withholding payment of reasonable and customary
7 charges for poststabilization medical services DEFENDANTS are statutorily or contractually
8 obligated to pay, as described more fully above, constitutes acts of unlawful and unfair
9 competition within the meaning of Business and Professions Code sections 17200 *et seq.*

10 67. DEFENDANTS' unlawful and unfair business practices, as herein alleged, mislead
11 members of the public, and harm healthcare providers, including PHH, and the public welfare.

12 68. As a result of the conduct described above, including but not limited to, violations
13 of Health & Safety Code sections 1317.2a(d), 1317.2a(e), 1262.8(d), 1371, 1371.35 and 1371.4
14 and California Code of Regulations Title 28, section 1300.67.8, DEFENDANTS have received
15 and continue to receive ill-gotten gains that rightfully belong to PHH, as described in PHH's bill
16 of particulars.

17 69. Due to the harmful and continuous nature of DEFENDANTS' actions, and each of
18 them, PHH and all similarly situated emergency medical service providers are without an
19 expedient or adequate remedy at law to redress the continuing and irreparable harm they have
20 suffered, and will continue to suffer, owing to such unfair and unlawful business practices. PHH
21 is informed and believes, and thereon alleges, the foregoing actions by DEFENDANTS, and each
22 of them, were undertaken with the knowledge, acquiescence, approval, authorization or
23 ratification by each of them of such wrongful acts with prior knowledge and conscious disregard
24 of the rights of PHH and other similarly situated emergency medical service providers.

25 70. PHH, on behalf of itself and all similarly situated emergency medical service
26 providers, are entitled to "such orders or judgments ... as may be necessary to prevent the use or
27 employment by [DEFENDANTS] of any practice which constitutes unfair competition [by
28 DEFENDANTS] ... or as may be necessary to restore to any person in interest any money or

1 property, real or personal, which may have been acquired by means of such unfair competition”
2 pursuant to Business and Professions Code section 17203.

3 71. PHH therefore requests all equitable relief, including restitution of any and all
4 monies received by DEFENDANTS, and each of them, as a result of the aforementioned unfair
5 and unlawful business practices as to all emergency and poststabilization medical services
6 providers, and an accounting to trace the distribution and determine the present disposition of
7 such monies pursuant to Business and Professions Code section 17203.

8 72. PHH is informed and believes, and thereon alleges, DEFENDANTS will continue
9 these acts of unfair and unlawful competition unless and until enjoined and restrained by Order of
10 this Court. Consequently, PHH requests all injunctive relief to prevent DEFENDANTS from
11 continuing these unfair and unlawful acts, including DEFENDANTS’ erratic, arbitrary, and delay
12 ridden bill paying practices. PHH seeks such injunctive relief for the benefit of all similarly
13 situated non-contracted healthcare providers.

14 73. Holding DEFENDANTS accountable for their unfair and unlawful practices will
15 result in the enforcement of an important right affecting the public interest. Accordingly, PHH
16 seeks, and is entitled to, an award of its attorneys’ fees herein pursuant to Code of Civil Procedure
17 section 1021.5.

18
19 **SEVENTH CAUSE OF ACTION**

20 **DECLARATORY RELIEF**

21 **(Against All Defendants)**

22 74. PHH re-alleges and incorporates by reference the allegations set forth in the
23 preceding paragraphs 1-73.

24 75. An actual controversy has arisen and now exists between PHH, on the one hand,
25 and DEFENDANTS, and each of them, on the other.

26 76. As alleged above, PHH contends it is entitled to timely and fair payment of its full
27 reasonable and customary charges for the emergency and related poststabilization services and
28 care PHH has rendered, and continues to render, to KAISER member patients. PHH further

1 contends the multitude of invoices PHH has sent DEFENDANTS in connection with those
2 services, together with the information published on the OSHPD's website, evidence PHH's
3 reasonable and customary charges.

4 77. Conversely, PHH is informed and believes, and thereon alleges, DEFENDANTS
5 dispute the foregoing.

6 78. In order to resolve this controversy, PHH seeks a declaratory judgment finding
7 DEFENDANTS owe PHH its full reasonable and customary charges as identified on the invoices
8 PHH has sent, and continues to send, DEFENDANTS and as published on the OSHPD website,
9 together with prejudgment interest and any other statutorily authorized damages, levies or other
10 charges. PHH further seeks a declaratory judgment finding that DEFENDANTS are legally
11 obligated to pay such reasonable and customary charges in a timely and fair manner, as described
12 in PHH's bill of particulars.

13
14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, PHH prays for judgment as follows:

- 16 1. For damages in an amount according to proof at trial;
- 17 2. For restitution for unjust enrichment;
- 18 3. For damages in quantum meruit;
- 19 4. For restitution for unfair business practices;
- 20 5. For payment of the greater of \$15 per unpaid account or interest at rate of fifteen percent
21 (15%) per annum;
- 22 6. For injunctive relief;
- 23 7. For a declaratory judgment finding that:
 - 24 a. PHH is owed its full reasonable and customary charges as identified on the
25 invoices it has sent, and continues to send, DEFENDANTS and as published on
26 the OSHPD website, together with prejudgment interest and any other statutorily
27 authorized damages, levies or other charges, and
 - 28 b. DEFENDANTS are legally obligated to pay such reasonable and customary


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charges in a timely and fair manner;

- 8. For interest at statutory rates;
- 9. For costs and reasonable attorneys' fees to the extent allowed by law including, but not limited to, Code of Civil Procedure section 1021.5; and
- 10. For such other and further relief as the Court deems just and proper.

DATED: June 12, 2019

ENTERPRISE COUNSEL GROUP
A Law Corporation

By: 

David A. Robinson
Anjuli B. Woods
Brian J. Hoops
Attorneys for Plaintiff PHYSICIANS FOR
HEALTHY HOSPITAL, INC.

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PROOF OF SERVICE

Physicians for Healthy Hospitals, Inc., v. Kaiser Foundation Hospitals, et al.
Riverside County Superior Court, Case No. MCC 1801347

I declare that I am over the age of 18 years, employed in the County of Orange, and not a party to the within action; my business address is Three Park Plaza, Suite 1400, Irvine, CA 92614.

On June 13, 2019, I served the following **STIPULATION AND [PROPOSED] ORDER FOR LEAVE TO FILE SECOND AMENDED COMPLAINT** on the interested parties in this action by placing the original true copies thereof, as follows:

SEE ATTACHED SERVICE LIST

<input type="checkbox"/>	By E-SERVICE. Pursuant to California Rules of Court Rule 2.251(c), adopted effective July 1, 2013, I am e-Serving the above-listed document(s) to the electronic service address(es) on the attached Service List and e-Filing the document(s) using one of the court's approved electronic service providers. A true and correct copy of the e-Service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input checked="" type="checkbox"/>	By MAIL. I am readily familiar with this law firm's practice for collection and processing of documents for mailing with the U. S. Postal Service. The above-listed document(s) will be deposited with the U. S. Postal Service on the same day shown on this affidavit, to the addressee(s) on the attached Service List in the ordinary course of business. I am the person who sealed and placed for collection and mailing the above-listed document(s) on this date at Irvine, California, following ordinary business practices.
<input checked="" type="checkbox"/>	By E-MAIL. I e-mailed above-listed document(s) to the e-mail address(es) of the addressee(s) on the attached Service List. A true and correct copy of the e-mail transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input type="checkbox"/>	By OVERNIGHT DELIVERY. The above-listed document(s) will be deposited with an Overnight Delivery Service on the same day shown on this affidavit, in the ordinary course of business. I am the person who sealed and placed for collection and overnight delivery the above-listed document(s) on this date at Irvine, California, to the addressee(s) on the attached Service List following ordinary business practices. A true and correct copy of the overnight delivery service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input type="checkbox"/>	By PERSONAL SERVICE. I caused to have hand delivered, via Legal Solution Attorney Services, the above-listed document(s) to the addressee(s) on the attached Service List.
<input checked="" type="checkbox"/>	(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 13, 2019, at Irvine, California.

Liz H. Graham
Liz H. Graham

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SERVICE LIST

Physicians for Healthy Hospitals, Inc., v. Kaiser Foundation Hospitals, et al.
Riverside County Superior Court, Case No. MCC 1801347

<p>Moe Keshavarzi, Esq. Matthew T. McCurdy, Esq. SHEPPARD, MULLIN, RICHTER & HAMPTON LLP 333 South Hope Street, 43rd Floor Los Angeles, CA 90071-1422 Telephone: 213-620-1780 Facsimile: 213-620-1398</p>	<p>Attorneys for Defendants KAISER FOUNDATION HOSPITALS and KAISER FOUNDATION HEALTH PLAN, INC. mkeshavarzi@sheppardmullin.com mmccurdy@sheppardmullin.com</p>
<p>Marc J. Feldman, Esq. John T. Brooks, Esq. SHEPPARD, MULLIN, RICHTER & HAMPTON LLP 501 West Broadway, 19th Floor San Diego, CA 92101-3598 Telephone: 619-338-6500 Facsimile: 619-234-3815</p>	<p>Attorneys for Defendants KAISER FOUNDATION HOSPITALS and KAISER FOUNDATION HEALTH PLAN, INC. mfeldman@sheppardmullin.com jbrooks@sheppardmullin.com</p>