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Attorneys for Plaintiffs
Prime Healthcare La Palma, LLC, et al.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PRIME HEALTHCARE LA PALMA,
LLC,
a Delaware limited liability company,
doing business as La Palma
Intercommunity Hospital;
PRIME HEALTHCARE HUNTINGTON
BEACH, LLC,
a Delaware limited liability company
doing business as Huntington Beach
Hospital;

CV14-3835 SVW JPRx
CASE NO. _____

COMPLAINT FOR:

**1) BREACH OF IMPLIED IN
LAW CONTRACT**

2) DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

COMPLAINT

PAID

10 2014
Clerk, US District Court
CENTRAL DISTRICT OF CALIFORNIA

1 PRIME HEALTHCARE ANAHEIM, LLC,
2 a Delaware limited liability company,
3 doing business as West Anaheim Medical
Center;

4 DESERT VALLEY HOSPITAL, INC.,
5 a California corporation, doing business
as Desert Valley Hospital;

6 PRIME HEALTHCARE SERVICES –
7 SHERMAN OAKS, LLC,
8 a Delaware limited liability company,
9 doing business as Sherman Oaks
Hospital;

10 VERITAS HEALTH SERVICES, INC.,
11 a California corporation, doing business
as Chino Valley Medical Center;

12 PRIME HEALTHCARE SERVICES –
13 MONTCLAIR, LLC,
14 a Delaware limited liability company,
15 doing business as Montclair Hospital
Medical Center;

16 PRIME HEALTHCARE CENTINELA,
17 LLC,
18 a Delaware limited liability company,
19 doing business as Centinela Hospital
Medical Center;

20 PRIME HEALTHCARE SERVICES –
21 ENCINO HOSPITAL, LLC,
22 a Delaware limited liability company,
23 doing business as Encino Hospital
Medical Center;

24 PRIME HEALTHCARE SERVICES –
25 GARDEN GROVE, LLC,
26 a Delaware limited liability company,
27 doing business as Garden Grove Hospital
Medical Center;

28 PRIME HEALTHCARE SERVICES –
SAN DIMAS, LLC,
a Delaware limited liability company,
doing business as San Dimas Community
Hospital;

PRIME HEALTHCARE PARADISE

1 VALLEY, LLC,
2 a Delaware limited liability company,
3 doing business as Paradise Valley
4 Hospital; and
5 ALVARADO HOSPITAL, LLC,
6 a Delaware limited liability company,
7 doing business as Alvarado Hospital
8 Medical Center,

9 Plaintiffs,

10 v.

11 KAISER FOUNDATION HEALTH
12 PLAN, INC.,
13 a California corporation,

14 Defendant.

1 Plaintiffs Prime Healthcare La Palma, LLC, Prime Healthcare Huntington
2 Beach, LLC, Prime Healthcare Anaheim, LLC, Desert Valley Hospital, Inc., Prime
3 Healthcare Services – Sherman Oaks, LLC, Veritas Health Services, Inc., Prime
4 Healthcare Services – Montclair, LLC, Prime Healthcare Services, Garden Grove,
5 LLC, Prime Healthcare Centinela, LLC, Prime Healthcare Services – Encino, LLC,
6 Alvarado Hospital, LLC, Prime Healthcare Paradise Valley, LLC, and Prime
7 Healthcare Services – San Dimas, LLC, allege as follows:

8 **JURISDICTION AND VENUE**

9 1. Jurisdiction exists under 28 U.S.C. § 1331 because Prime’s claims in this
10 action implicate substantial questions of federal law, including those involving the
11 proper interpretation of the Medicare Act, 42 U.S.C. §§ 1395ii and 1395w-22(g)(5).

12 2. Venue is proper in the Central District pursuant to 28 U.S.C.
13 § 1391(b)(2) in that a substantial portion of the events giving rise to the claims
14 occurred within the Central District.

15 **INTRODUCTION**

16 3. Plaintiffs are thirteen award-winning California hospitals in the Prime
17 hospital system that have been recognized statewide and nationally for their superior
18 quality of patient care. During the past ten years, Plaintiffs have provided emergency
19 medical care to thousands of patients who are enrolled in health insurance plans
20 offered by defendant Kaiser Foundation Health Plan, Inc. (“KFHP”), including
21 Medicare Advantage (“MA”) plans administered by KFHP under agreements with the
22 federal government for Medicare beneficiaries under Part C of the Medicare program.
23 This dispute arises from KFHP’s wrongful refusal to pay Plaintiffs for emergency
24 medical services provided to KFHP members, including MA members, who presented
25 to Plaintiffs’ emergency rooms seeking emergency medical care.

26 4. Under federal and California law, when a KFHP member, including an
27 MA member, presents for emergency medical care at Plaintiffs’ emergency
28 departments, Plaintiffs *must* provide a medical screening examination to determine

1 whether the patient has an emergency medical condition, and *must* provide the care
2 that the emergency room physicians determine to be medically necessary to treat the
3 emergency medical condition. The independent emergency department physicians
4 who staff Plaintiffs must determine if the patient should be admitted to the Plaintiff
5 hospital for further stabilizing care, or whether the patient's emergency medical
6 condition is stabilized, such that the patient can be safely discharged to home or
7 transferred to another hospital or medical facility for further post-stabilization care. If
8 the emergency department physician determines that the patient should be admitted to
9 the Plaintiff hospital, and should not be transferred or discharged home, an
10 independent physician on the medical staff of the hospital must determine whether to
11 admit the patient to the hospital for further stabilizing care. Under federal and
12 California law, KFHP *must* pay Prime the contracted amount, or if there is no contract
13 between the MA plan and the provider, the Medicare allowable amount, for that
14 episode of care. The physician's determination of when the patient is stable for
15 discharge or transfer is binding on Plaintiffs and on the MA plan – including KFHP.
16 Plaintiffs cannot refuse the physician's orders for necessary stabilizing care, and
17 KFHP, as the health plan, cannot refuse to pay for that care.

18 5. Based on information and belief, Plaintiffs allege that for the past decade
19 KFHP has been engaged in a scheme to improve its financial bottom line by (a) failing
20 to properly pay Plaintiffs for emergency medical services they provide to KFHP
21 members, including MA members, (b) attempting to pressure emergency room and
22 hospital treating physicians to transfer (or, to use Kaiser's term, "repatriate") these
23 members from Plaintiff hospitals to KFHP-designated hospitals for non-medical
24 reasons before the patients are stable and ready for transfer even though such transfers
25 present a substantial risk of deterioration of the patients' medical conditions, and (c)
26 engaging in a variety of unlawful, unfair and fraudulent practices to not pay, only
27 partially pay, or underpay the Plaintiffs' claims to KFHP for emergency medical
28 services provided to its members in order to economically coerce and pressure

1 Plaintiffs to accede to Kaiser's "repatriation" policies and practices.

2 6. To date, KFHP has wrongfully refused to pay, only partially paid, or
3 underpaid more than 50,000 of Plaintiffs' claims for emergency medical services, with
4 an aggregate dollar amount owed to Plaintiffs in excess of \$150,000,000, including
5 more than \$14,000,000 for services provided to approximately 9,000 KHFP MA
6 members. Notwithstanding these extraordinary efforts by Kaiser to financially
7 intimidate Plaintiffs by withholding payment for medical services rendered to KFHP
8 members, Plaintiffs have remained steadfast in their commitment to provide the
9 highest level of medical care to all patients, including KFHP MA members.
10 Accordingly, Plaintiffs bring this action to recover the more than approximately
11 \$14,000,000 in legally mandated payments and interest that KFHP owes the Plaintiffs
12 for providing emergency medical services to KHFP MA members, and to put an end
13 to Kaiser's unlawful, fraudulent and dangerous practices.

14 7. Plaintiffs are currently involved in a complex coordinated state court
15 action against KFHP in Los Angeles Superior Court, entitled *Prime Healthcare Cases*,
16 Judicial Council Coordination Proceeding No. 4580 (the "Prime-Kaiser State Case"),
17 in which Plaintiffs asserted several claims, including a state law claim for breach of
18 implied-in-law contract, arising out of KFHP's failure to pay claims for Plaintiff's
19 emergency medical services to both KFHP MA members and to KFHP commercial
20 plan members for the past ten years. On January 29, 2014, the Los Angeles Superior
21 Court granted KFHP's motion for summary adjudication and dismissal of the KFHP
22 MA claims, ruling that these claims were preempted by federal law and were subject
23 to an administrative exhaustion requirement under the Medicare Act. Plaintiffs
24 immediately challenged what they believed was the state court's erroneous
25 interpretation of federal preemption law by filing an appellate petition for a writ of
26 mandate, but the California court of appeal denied the petition on March 5, 2014.

27 8. The Los Angeles Superior Court's interlocutory ruling in the Prime-
28 Kaiser Case dismissing Plaintiffs' KFHP MA claims has necessitated the filing of this

1 federal action to protect Plaintiffs' in order to litigate the proper application of the
2 Medicare Act, provide notice to all parties of Plaintiffs' intent to preserve and pursue
3 all remedies associated with their KFHP MA claims, and to ensure a tolling of any
4 and all applicable statutes of limitations or repose.

5 **THE PARTIES**

6 **A. PLAINTIFFS PRIME HOSPITALS**

7 9. At all relevant times, plaintiff Desert Valley Hospital, Inc., was, and is
8 now, a California corporation qualified to do business in the State of California with
9 its principal place of business in the County of San Bernardino, California, and doing
10 business as Desert Valley Hospital ("Desert Valley"). Desert Valley is a 148-bed
11 licensed acute-care hospital in Victorville that has an 18-bed emergency department.
12 It was the first hospital acquired by the Prime hospital system, at a time when the
13 hospital was in financial distress. It was acquired in January 2001.

14 10. At all relevant times, plaintiff Veritas Health Services, Inc., was, and is
15 now, a California corporation qualified to do business in the State of California with
16 its principal place of business in the County of San Bernardino, California, and doing
17 business as Chino Valley Medical Center ("Chino Valley"). Chino Valley is a 126-
18 bed licensed acute-care hospital in Chino that has a 15-bed emergency department. It
19 was acquired by the Prime hospital system out of bankruptcy court in October 2004.

20 11. At all relevant times, plaintiff Prime Healthcare Services – Sherman
21 Oaks, LLC, was, and is now, a Delaware limited liability company qualified to do
22 business in the State of California with its principal place of business in the County of
23 Los Angeles, California, and doing business as Sherman Oaks Hospital ("Sherman
24 Oaks"). Sherman Oaks is a non-profit 153-bed licensed acute-care hospital that has a
25 7-bed emergency department. It was acquired by the Prime hospital system in January
26 2006, at a time when the hospital was in severe financial distress.

27 12. At all relevant times, plaintiff Prime Healthcare Centinela, LLC, was, and
28 is now, a Delaware limited liability company qualified to do business in the State of

1 California with its principal place of business in the county of Los Angeles,
2 California, doing business as Centinela Hospital Medical Center ("Centinela").
3 Centinela is a 369-bed licensed acute-care hospital in Inglewood that has a level II
4 emergency department, which means that it provides comprehensive trauma care to
5 fire departments, ambulance companies and community residents. It was acquired by
6 the Prime hospital system in January 2006, at a time when the hospital was in
7 financial distress.

8 13. At all relevant times, plaintiff Prime Healthcare Services – Montclair,
9 LLC, was, and is now, a Delaware limited liability company qualified to do business
10 in the State of California with its principal place of business in the County of San
11 Bernardino, California, and doing business as Montclair Hospital Medical Center
12 ("Montclair"). Montclair is a non-profit 102-bed licensed acute-care hospital that has
13 a 9-bed emergency department. It was acquired by the Prime hospital system in July
14 2006.

15 14. At all relevant times, plaintiff Prime Healthcare Huntington Beach, LLC,
16 was, and is now, a Delaware limited liability company qualified to do business in the
17 State of California with its principal place of business in the County of Orange,
18 California, doing business as Huntington Beach Hospital ("Huntington Beach").
19 Huntington Beach is a non-profit 131-bed licensed acute-care hospital that has a 17-
20 bed emergency department. It was acquired by the Prime hospital system in October
21 2006.

22 15. At all relevant times, plaintiff Prime Healthcare La Palma, LLC, was, and
23 is now, a Delaware limited liability company qualified to do business in the State of
24 California with its principal place of business in the County of Orange, California,
25 doing business as La Palma Intercommunity Hospital ("La Palma"). La Palma is a
26 141-bed licensed acute-care hospital that has a 10-bed emergency department. It was
27 acquired by the Prime hospital system in October 2006.

28 16. At all relevant times, plaintiff Prime Healthcare Anaheim, LLC, was, and

1 is now, a Delaware limited liability company qualified to do business in the State of
2 California with its principal place of business in the County of Orange, California,
3 doing business as West Anaheim Medical Center (“West Anaheim”). West Anaheim
4 is a 219-bed licensed acute-care hospital located in Anaheim that has a 23-bed
5 emergency department. It was acquired by the Prime hospital system in October
6 2006.

7 17. At all relevant times, plaintiff Prime Healthcare Paradise Valley, LLC,
8 was, and is now, a Delaware limited liability company qualified to do business in the
9 State of California with its principal place of business in the County of San Diego,
10 California, doing business as Paradise Valley Hospital (“Paradise Valley”). Paradise
11 Valley is a 301-bed licensed acute-care hospital in National City that has a 20-bed
12 emergency department. Paradise Valley was in severe financial distress when it was
13 acquired by the Prime hospital system in March 2007 from Adventist Health System,
14 which had previously owned the hospital for 105 years.

15 18. At all relevant times, plaintiff Prime Healthcare Services – Encino, LLC,
16 was, and is now, a Delaware limited liability company qualified to do business in the
17 State of California with its principal place of business in the County of Los Angeles,
18 California, doing business as Encino Hospital Medical Center (“Encino”). Encino is a
19 non-profit 150-bed licensed acute-care hospital that has a 9-bed emergency
20 department. It was acquired by the Prime hospital system in June 2008.

21 19. At all relevant times, plaintiff Prime Healthcare Services – Garden
22 Grove, LLC, was, and is now, a Delaware limited liability company qualified to do
23 business in the State of California with its principal place of business in the County of
24 Orange, California, doing business as Garden Grove Hospital Medical Center
25 (“Garden Grove”). Garden Grove is a 167-bed licensed acute-care hospital that has a
26 12-bed emergency room. It was acquired by the Prime hospital system in June 2008.

27 20. At all relevant times, plaintiff Prime Healthcare Services – San Dimas,
28 LLC, was, and is now, a Delaware limited liability company qualified to do business

1 in the State of California with its principal place of business in the County of Los
2 Angeles, California, doing business as San Dimas Community Hospital ("San
3 Dimas"). San Dimas is a 93-bed licensed acute-care hospital in that has an 8-bed
4 emergency department. It was acquired by the Prime hospital system in June 2008.

5 21. At all relevant times, plaintiff Alvarado Hospital, LLC, was, and is now,
6 a Delaware limited liability company qualified to do business in the State of
7 California with its principal place of business in the County of San Diego, California,
8 doing business as Alvarado Hospital Medical Center ("Alvarado"). Alvarado is a
9 306-bed licensed acute-care hospital in San Diego, California, that has a 12-bed
10 emergency department. It was acquired by the Prime hospital system in November
11 2010.

12 **B. DEFENDANT KAISER FOUNDATION HEALTH PLAN**

13 22. Based on information and belief, Plaintiffs allege that, at all relevant
14 times, defendant KFHP was, and is now, a California corporation qualified to do
15 business in the State of California with its principal place of business in the County of
16 Alameda, California. KFHP is licensed as a health care service plan and health
17 maintenance organization under the Knox-Keene Health Care Service Plan Act of
18 1975 (the "Knox-Keene Act"), and is regulated by the Department of Managed Health
19 Care ("DMHC"). KFHP is also a Medicare Managed Care Organization that is
20 contracted with the Centers for Medicare and Medicaid Services ("CMS") in
21 accordance with federal Medicare Part C statutes and regulations.

22 **PROCEDURAL HISTORY**

23 23. On January 23, 2008, several of the Plaintiffs filed five separate actions
24 in various counties against KFHP and related two other Kaiser entities, Kaiser
25 Foundation Hospitals and Southern California Permanente Medical Group
26 (collectively, the "Kaiser defendants") alleging causes of action for (1) Breach of
27 Implied-In-Law Contract, (2) Breach of Implied-In-Fact Contract, (3) Breach of
28 Assigned Contract, (4) Breach of Implied Covenant of Good Faith & Fair Dealing, (5)

1 Quantum Meruit, (6) Intentional Interference with a Contract, and (7) Violation of
2 California Business & Professions Code § 17200 (Unfair Competition), based on the
3 Kaiser defendants' failure to properly pay claims for emergency services provider to
4 KFHP members, including MA members. These five cases were subsequently
5 removed by Kaiser defendants to federal court as follows:

6 a. *Prime Healthcare Services II, LLC v. Kaiser Foundation Health*
7 *Plan, Inc. et al.*, Case No. LC080295, filed in Los Angeles County Superior Court,
8 and removed to the United States District Court for the Central District of California,
9 Case No. CV 08-01858-GW, on March 19, 2008 ("Prime Sherman Oaks Case");

10 b. *Desert Valley Hospital, Inc. et al. v. Kaiser Foundation Health*
11 *Plan, Inc. et al.*, Case No. CIVVS-800317, filed in San Bernardino County Superior
12 Court and removed to the United States District Court for the Central District of
13 California, Case No. EDCV 08-00385-GW, on March 20, 2008 ("Prime Desert Valley
14 Case");

15 c. *Veritas Health System, Inc., et al. v. Kaiser Foundation Health*
16 *Plan, Inc. et al.*, Case No. CIVRS-800590, filed in San Bernardino County Superior
17 Court and removed to the United States District Court for the Central District of
18 California, Case No. EDCV 08-00386 GW, on March 20, 2008 ("Prime Chino Valley
19 Case");

20 d. *Prime Healthcare La Palma, LLC, et al. v. Kaiser Foundation*
21 *Health Plan, Inc. et al.*, Case No. 30-2008-00101717, filed in Orange County Superior
22 Court and removed to the United States District Court for the Central District of
23 California, Case No. SACV 08-00318-GW, on March 20, 2008 ("Prime La Palma
24 Case"); and

25 e. *Prime Healthcare Paradise Valley, LLC, et al. v. Kaiser*
26 *Foundation Health Plan, Inc. et al.*, Case No. 37-2008-00068370-CU-NP-SC, filed in
27 San Diego County Superior Court and removed to the United States District Court for
28

1 the Southern District of California, Case No. 08-CV-0523-JLS, on March 20, 2008
2 (“Prime Paradise Valley Case”).

3 24. Among other grounds, the Kaiser defendants removed each of these five
4 state cases to federal court based on (1) federal question removal under 28 U.S.C. §
5 1441(a) and Medicare complete preemption; and (2) federal actor removal under 28
6 U.S.C. § 1442.

7 25. On April 25, 2008, the Kaiser defendants filed a motion to dismiss Prime
8 Healthcare Services II’s state law claims for failure to pay for services provided to
9 Medicare Advantage patients in the Sherman Oaks Case (Case No. 08-01858-GW) on
10 the grounds that such claims were completely preempted by the Medicare Act and that
11 the district court lacked subject matter jurisdiction because Prime Healthcare Services
12 II had failed to exhaust its administrative remedies under the Medicare Act’s
13 administrative appeals process. (*See* Case No. 08-01858-GW, Docket No. 28-2).

14 26. On May 21, 2008, Prime Healthcare Services II filed a motion to remand
15 the Sherman Oaks Case (Case No. 08-01858-GW) back to state court pursuant to 28
16 U.S.C. § 1446 for lack of subject matter jurisdiction on the grounds that its causes of
17 action against the Kaiser defendants for failure to pay claims for services to KFHP
18 MA members were not completely preempted by the Medicare Act because such
19 claims were based upon state law, did not involve the Medicare beneficiaries, and
20 were excluded from the Medicare Act’s administrative appeals process. (*See* Case
21 No. 08-01858-GW, Docket No. 34-2).

22 27. On June 8, 2008, the Prime Sherman Oaks, Prime Desert Valley, Prime
23 Chino, and Prime La Palma Cases in the Central District of California were ordered
24 related matters before the Honorable George H. Wu, United States District Judge.
25 The parties agreed that the parties’ respective motions in the Sherman Oaks Case
26 (Case No. 08-01858-GW) would be litigated, the remaining three removal cases
27 would be stayed, and the district court’s ruling on such motions would apply to all
28 four related cases. (*See* Case No. 08-01858-GW, Docket No. 70).

1 28. On September 18, 2008, Judge Wu entered an order finding that the
2 plaintiffs' causes of action in the Prime Sherman Oaks, Prime Desert Valley, Prime
3 Chino, and Prime La Palma Cases involving KFHP MA members were only totally
4 preempted by the Medicare Act to the extent that such causes of action were based on
5 an assignment of the MA members' benefits, but that the district court otherwise
6 lacked original jurisdiction over the state law claims involving KFHP MA members.
7 Based on the plaintiffs' stipulation, Judge Wu dismissed the plaintiffs' cause of action
8 for Breach of Assigned Contract in its entirety and those portions of their causes of
9 action for Breach of Implied Covenant of Good Faith and Fair Dealing and Violation
10 of Business & Professions Code § 1720 *et. seq.* only to the extent that they were based
11 upon an alleged assignment to Plaintiffs by KFHP members of benefits under a KFHP
12 health policy. (*See* Case No. 08-01858-GW, Docket No. 70).

13 29. In his September 18, 2008 order, Judge Wu then ruled that plaintiffs'
14 causes of action for Breach of Implied-In-Law Contract, Breach of Implied-In-Fact
15 Contract, Breach of Implied Covenant of Good Faith & Fair Dealing, Quantum
16 Meruit, Intentional Interference with a Contract, and Violation of California Business
17 & Professions Code § 17200 (Unfair Competition) based on the Kaiser defendants'
18 failure to pay claims for services to KFHP MA members were otherwise not totally
19 preempted by the Medicare Act and, declining to exercise supplemental jurisdiction
20 over such causes of action, remanded the Prime Sherman Oaks, Prime Desert Valley,
21 Prime Chino, and Prime La Palma Cases back to state court. (*See* Case No. 08-01858-
22 GW, Docket No. 70).

23 30. KFHP and the other Kaiser defendants did not appeal the September 18,
24 2008 remand order to the Ninth Circuit Court of Appeals. Instead, the Kaiser
25 defendants entered into a written stipulation and agreement that Judge Wu's
26 September 19, 2008 remand order should also be applied to the Paradise Valley Case
27 (Case No. 08-CV-0523-) that had been removed to the United States District Court for
28 the Southern District of California. (*See* Case No. 08-CV-0523-JLS, Docket No. 18).

1 On October 6, 2008, pursuant to the parties' stipulation, the Honorable Janis L.
2 Sammartino, United States District Judge, remanded the Paradise Valley Case to state
3 court after dismissing Paradise Valley's cause of action for Breach of Assigned
4 Contract in its entirety and those portions of their causes of action for Breach of
5 Implied Covenant of Good Faith and Fair Dealing and Violation of Business &
6 Professions Code § 17200 *et. seq.* only to the extent that they were based on an
7 assignment of benefits allegation. (See Case No. 08-CV-0523-JLS, Docket No. 19).

8 31. On May 15, 2008, KFHP filed an action against Prime's parent company
9 Prime Healthcare Services, Inc., in Los Angeles County Superior Court, in *Kaiser*
10 *Foundation Health Plan, Inc. v. Prime Healthcare Services, Inc.*, Case No. BC
11 390969. In March 2009, several of the Plaintiffs filed a cross-complaint against
12 KFHP in that action.

13 32. On July 10, 2009, pursuant to stipulation of the parties, the Los Angeles
14 County Superior Court entered an order coordinating actions in the coordinated case
15 entitled *In Re: Prime Healthcare Cases*, Case No. JCCP 4580, which served to
16 coordinate all of the pending cases between certain of the Plaintiffs and KFHP and the
17 other Kaiser defendants.

18 33. On January 26, 2010, several of the Plaintiffs filed a Complaint in the
19 Coordinated Actions (Case No. JCCP 4580), which consolidated and amended the
20 complaints in each of the underlying actions, alleging causes of action against KFHP
21 and the other Kaiser defendants for (1) Breach of Written Contract, (2) Breach of
22 Written Contract - Third Party Beneficiary, (3) Breach of Implied-In-Law Contract,
23 Quantum Meruit, (4) Breach of Implied-In-Law Contract, Unjust Enrichment, (5)
24 Breach of Implied-In-Law Contract, Statutory Liability, (6) Breach Of Implied-In-
25 Fact Contract, (7) Money Due On Open Account and/or Open Book Account, (8)
26 Violation of California Business & Professions Code § 17200 (Unfair Competition),
27 (9) Intentional Interference with a Contract, (10) Intentional Interference With
28 Prospective Economic Advantage, and (11) Intentional Interference With Prospective

1 Economic Advantage - Based On Economic Relationship Between Hospital and
2 Kaiser Members.

3 34. On February 23, 2010, KFHP and the other Kaiser defendants filed a
4 demurrer to this coordinated complaint (Case No. JCCP 4580), again contending,
5 among other grounds, that Plaintiffs' state law causes of action based on the Kaiser
6 defendants' failure to pay claims for services to KFHP MA members were preempted
7 by the Medicare Act and that Plaintiffs were required to exhaust their administrative
8 remedies under the Medicare Act.

9 35. On May 27, 2010, the Honorable Ann I. Jones, Los Angeles Superior
10 Court Judge, overruled KFHP's demurrer in its entirety. In particular, the trial court
11 found that "Prime's state law claims do not present a claim under the Medicare Act"
12 because:

13 While there may be some resort to federal statutory law in order to
14 establish certain terms of the implied contracts between these
15 parties, plaintiffs' claims based on contract do not derive merely
16 from the coverage otherwise owed by KFHP to its members.

17 Prime does not seek to stand in the shoes of KFHP members who
18 have unpaid bills owing to Prime. Rather, Prime wishes to
19 challenge defendants' practices as contrary to an implied in law
20 contract that it has with Kaiser.

21 Judge Jones also ruled that KFHP's alleged failure to pay Plaintiffs' claims for
22 services to KFHP MA members is not an organization determination subject to the
23 mandatory exhaustion of administrative remedies.

24 36. During the next three years, with the overruling of KFHP's demurrer,
25 Plaintiffs believed, reasonably and in good faith, that state court was the appropriate
26 forum to litigate their state law causes of action against KFHP and the other Kaiser
27 defendants based on their failure to pay Plaintiffs' claims for services to KFHP
28 members, including MA members, and continued to litigate such causes of action,

1 expending substantial resources and time on discovery and additional motion practice.

2 37. In November 2011, three Plaintiffs filed the following “add-on” actions
3 against KFHP and the other Kaiser defendants in the three different counties where
4 those hospitals operate, alleging questions of law and facts common to those in the
5 coordinated case, which were also ordered coordinated with the coordinated case
6 (Case No. JCCP 4580) in January 2012:

- 7 a. *Prime Healthcare Services, Garden Grove, LLC v. Kaiser Foundation*
8 *Health Plan, Inc. et al.*, Case No. 30-2011-00526355-CU-NP-CJC,
9 filed in Orange County Superior Court;
10 b. *Alvarado Hospital LLC v. Kaiser Foundation Health Plan, Inc. et al.*,
11 Case No. 37-2011-00079849-CU-NP-SC, filed in San Diego County
12 Superior Court; and
13 c. *Prime Healthcare Centinela, LLC, et al. v. Kaiser Foundation Health*
14 *Plan, Inc. et al.*, Case No. LC095633, filed in Los Angeles County
15 Superior Court.

16 38. On September 14, 2012, the state coordinated case (Case No. JCCP
17 4580) was assigned to the Honorable Jane Johnson, Los Angeles Superior Court
18 Judge, as the trial coordination judge for all purposes. On October 2, 2013, the trial
19 court ordered that all of the coordinated actions be consolidated for trial.

20 39. On November 20, 2013, KFHP and the other Kaiser defendants filed a
21 motion for summary adjudication, renewing their contention (previously overruled by
22 the trial court when made in their demurrer) that Plaintiffs’ state law causes of action
23 based on the Kaiser defendants’ failure to pay claims for services to KFHP MA
24 members were all preempted by the Medicare Act and that Plaintiffs were required to
25 exhaust their administrative remedies under the Medicare Act’s administrative appeals
26 process.

27 40. On January 29, 2014, Judge Johnson granted KFHP’s motion for
28 summary adjudication of Plaintiffs’ state law causes of action based on the Kaiser

1 defendants' failure to pay claims for services to KFHP MA members on the ground
2 that such causes of action were preempted by the Medicare Act and that Plaintiffs had
3 failed to exhaust their administrative remedies under the Medicare Act. In particular,
4 the trial court ruled that an amendment to the Medicare Act had broadened the
5 preemption clause and that Plaintiffs' state law causes of action involving KFHP MA
6 members were "inextricably intertwined" with the Medicare Act for purposes of
7 preemption and exhaustion of administrative remedies.

8 41. On March 3, 2014, Plaintiffs timely filed a petition for writ of mandate
9 with the California Court of Appeal, seeking to challenge this January 29, 2014 ruling.
10 Plaintiffs argued that its state law causes of action based on the Kaiser defendants'
11 failure to pay claims for services to KFHP MA members do not arise under the
12 Medicare Act and that the Medicare Act's administrative remedies do not apply to
13 Plaintiffs' state law causes of action or to providers under Medicare Advantage plans
14 generally. The California Court of Appeal summarily denied the petition two days
15 later, leaving appeal after judgment as the Plaintiffs' only remaining state law
16 procedural avenue to obtain the reversal of this trial court ruling.

17 42. Plaintiffs allege that the Los Angeles Superior Court's January 29, 2014
18 ruling was incorrect and that their state law causes of action involving KFHP MA
19 members are state law claims that should properly be heard in California state court.
20 However, Plaintiffs have filed the instant complaint to protect their rights and interests
21 in their state law causes of action against KFHP based on its failure to pay claims for
22 services to KFHP MA members and to pursue its federal causes of action against
23 KFHP if these causes of action do in fact present federal questions that should be
24 heard in federal court. In view of prior agreements between Plaintiffs and KFHP and
25 Plaintiffs' continuous pursuit of causes of action in state and federal court as alleged
26 above, the running of any statute of limitation on the causes of action alleged in this
27 complaint was tolled during the relevant period.

28 //

Medicare Part C – Medicare Advantage

43. Medicare Part C, also known as Medicare Advantage, offers Medicare beneficiaries the opportunity to have a private managed care organization licensed under state law (“MA organization”) administer their Medicare benefits. 42 U.S.C. §§ 1395w-22, *et seq.*

44. As an MA organization, KFHP offers its MA plans to Medicare beneficiaries in certain California geographies. KFHP MA plans are governed by both federal and state laws, and are regulated by both CMS and the DMHC.

45. Under the Medicare Part C laws and regulations, the CMS enters into contracts with MA organizations, including KFHP, under which the MA organizations agree to provide health care benefits to Medicare beneficiaries through CMS-approved Medicare Advantage health plans. 42 U.S.C. § 1395w-27. CMS pays the private MA organizations a fixed per-member-per-month sum for the beneficiaries who elect to receive their Medicare benefits through the private plan. 42 U.S.C. § 1395w-21(a). The per member, per month payment remains fixed regardless of the extent, value, or cost of the specific medical services that the Kaiser MA members actually receive. 42 U.S.C. 1395w-27; 42 C.F.R. § 422.304(a).

46. Under these MA arrangements, CMS shifts the financial risk of providing health care benefits to the private MA organizations which assume “full financial risk on a prospective basis for the provision of the health care services for which benefits are required to be provided” to the MA member. 42 U.S.C. § 1395w-25(b). If the cost of providing covered services to MA members exceeds the amount of the per-member-per-month payments, MA organizations lose money, and if the costs are less than CMS pays, MA organizations make money. Therefore, MA organizations are motivated to tightly manage the care provided to MA members in order to reduce their costs and increase their profits.

47. KFHP is required by federal and state law to pay for emergency services provided to its MA members. KFHP MA members are responsible for fixed “cost-

1 share” amounts, but those amounts are not at issue here because Plaintiffs do not seek
2 to recover amounts KFHP MA members may be responsible for and the result in this
3 case will not increase, decrease, or in any way affect those cost-share amounts. Only
4 KFHP is responsible to pay the money that Plaintiffs seek in this action for emergency
5 medical services that Plaintiffs provided to KFHP MA members.

6 48. Plaintiffs seek to recover amounts owed by KFHP based solely upon
7 Plaintiffs’ direct rights under state and federal law to sue for recovery of amounts
8 calculated in accordance with federal law, and not based upon any assignment of
9 rights from the KFHP member.

10 49. Hospitals (including Plaintiffs) are required by the federal Emergency
11 Medical Treatment and Active Labor Act of 1986, or “EMTALA,” 42 U.S.C. §
12 1395dd, 42 C.F.R. § 489.24, and California’s Health and Safety Code, sections 1317
13 *et seq.*, to provide emergency medical treatment to anyone who arrives at the
14 hospitals’ emergency department and requests treatment. Specifically, hospitals
15 (including Plaintiffs) are prohibited from discharging or transferring patients who
16 present at the hospital’s emergency department with an emergency medical condition
17 until after the hospital provides emergency medical services, consisting of (a) a
18 medical screening examination of the patient, and (b) all outpatient and inpatient
19 emergency care that the treating physician determined is needed to stabilize the
20 patient’s emergency medical condition, regardless of the patient’s insurance or
21 financial status (unless the patient refused such examination or services, requested a
22 transfer to another hospital, or the hospital lacked the capacity or capability to
23 stabilize the patient’s emergency medical condition). These federal and California
24 laws were enacted to prevent hospitals from “dumping” patients who were unable to
25 pay for emergency medical services by either refusing to treat them or transferring
26 them to another hospital before their emergency medical condition was stabilized, but
27 these laws also protect all patients who arrive at a hospital seeking treatment for an
28 emergency medical condition, including those covered by insurance and KFHP

1 members. *See Eberhardt v. City of Los Angeles*, 62 F.3d 1253, 1255 (9th Cir. 1995);
2 *Arrington v. Wong*, 237 F.3d 1066, 1069-70 (9th Cir. 2001).

3 50. If a hospital violates its obligations under EMTALA and/or California
4 law by transferring a patient before stabilizing the patient's emergency condition, the
5 legal consequences for the transferring hospital are severe: the hospital is subject to a
6 federal civil monetary penalty of up to \$50,000, the hospital faces termination of its
7 participation in the Medicare program, the hospital can lose its State general acute
8 care hospital license and/or lose its accreditation, and hospital can be sued for
9 malpractice if the patient suffers harm as a result of the transfer. The transferring
10 physician is subject to monetary penalties, licensure proceedings, and malpractice
11 claims as well.

12 51. As a California HMO and a Medicare Advantage Managed Care
13 Organization, KFHP is prohibited by federal and California law from requiring that its
14 members obtain emergency medical services at Kaiser hospitals and facilities.
15 Instead, to ensure that KFHP MA members, and indeed all persons covered by KFHP,
16 receive needed emergency medical services as quickly as possible at the nearest
17 hospital emergency department, KFHP *must* reimburse non-Kaiser hospitals for
18 providing emergency medical services to KFHP members, and is also barred from
19 requiring that non-Kaiser hospitals seek pre-authorization for such services unless and
20 until the member's emergency medical condition is stabilized. Cal. Health & Safety
21 Code §§ 1268.2(f)(4), 1317.2a, 1371.4; Cal. Code Regs. tit. 28, § 1300.71.4(a); 42
22 C.F.R. § 422.113(c)(2). Federal law expressly provides that KFHP is "financially
23 responsible for emergency and urgently needed services," regardless "of whether the
24 services are obtained within or outside the MA organization," and regardless "of
25 whether there is prior authorization for the services." (42 C.F.R. § 422.113(b)(2).)
26 Further, Medicare Part C laws and regulations require MA plans like KFHP to pay for
27 the screening, evaluation, and treatment of the plan member's emergency medical
28 condition at a Medicare allowable rate. 42 C.F.R. §§ 422.100, 422.214.

1 52. State and federal laws also prohibit KFHP from interfering with a
2 provider's advice to MA members regarding the member's health status or medical
3 care or treatment. 42 U.S.C. § 1395w-22(j)(3). These laws also provide that the
4 "*physician treating the enrollee must decide* when the enrollee may be considered
5 stabilized for transfer or discharge, and that decision is binding on the MA
6 organization." 42 C.F.R. § 422.113(b)(3) (emphasis added); Cal. Health & Safety
7 Code § 1317.1(j) ("A patient is 'stabilized' or 'stabilization' has occurred when, in the
8 opinion of the treating physician and surgeon, or other appropriate licensed persons
9 acting within their scope of licensure under the supervision of a treating physician and
10 surgeon, the patient's medical condition is such that, within reasonable medical
11 probability, no material deterioration of the patient's condition is likely to result from,
12 or occur during, the release or transfer of the patient . . .").

13 53. While state law provides the remedy of breach of contract implied in law,
14 federal law specifies that MA plans must reimburse non-contracted hospitals for
15 emergency services based on the Medicare program's reimbursement rates for hospital
16 outpatient and inpatient services. 42 U.S.C. §§ 1395w-22, 1395w-25, 1395w-27; 42
17 C.F.R. § 422.214.

18 54. From at least 2003 and continuing to the present, KFHP has wrongfully
19 failed to pay MA claims or portions of such claims for health care services provided
20 by Plaintiffs to Kaiser MA members who were elderly patients in need of emergency
21 medical care. In denying these MA claims, and portions of such claims, KFHP has
22 falsely asserted that Plaintiffs improperly billed KFHP for medical care rendered to
23 MA members after the patient's emergency medical condition had been stabilized,
24 when, in fact, the physicians treating these MA members had determined that the
25 patient's emergency medical condition had not been stabilized.

26 55. KFHP also improperly disregarded the independent treating physicians'
27 determinations of patient instability for KFHP MA members, and instead engaged its
28 sister company, Southern California Permanente Medical Group, to provide Kaiser

1 physicians who offered their contrary opinions about the stability of KFHP MA
2 members without seeing the patients or the reviewing the patients' medical records, in
3 an attempt to justify denying Plaintiffs' claims and portions of claims for emergency
4 medical services provided to such KFHP MA members. KFHP has denied Plaintiffs'
5 claims for emergency medical services even though the MA members' medical
6 records fully support the independent treating physicians' determinations that the
7 patients were not stable for transfer.

8 56. KFHP also improperly denied claims by Plaintiffs for post-stabilization
9 care even though KFHP had failed to promptly transfer KFHP MA members after
10 being notified by Plaintiffs that the patients were stable for transfer.

11 57. KFHP should reasonably have expected to pay for these emergency
12 medical services for its MA members in accordance with Medicare rates, and it has
13 been thereby been unjustly enriched by its failure to pay.

14 **The Inapplicability of the Medicare Advantage Administrative**
15 **Remedies to Plaintiffs' Direct Claims.**

16 58. Medicare Part C statutes and regulations provide an administrative
17 procedure and ultimately a federal cause of action for Medicare Advantage plan
18 members to challenge their plan's coverage decisions. While a provider can pursue
19 this administrative process "as an assignee of the enrollee" after executing a waiver of
20 liability stating that the provider waives any right to pursue the enrollee for payment,
21 the provider is not under any obligation to pursue this administrative process for its
22 direct, non-assigned claims against the MA Plan. *See* 42 C.F.R. §§ 422.574(b).

23 59. At various times, Plaintiffs have taken assignments of a KFHP MA
24 member's rights under their coverage agreements and have contested KFHP's denials
25 of all or portions of Plaintiffs' claims for payment for emergency services through this
26 administrative process, either partially or to completion. Despite KFHP's systemic
27 efforts to manipulate and obstruct Plaintiffs' pursuit of certain assigned KFHP MA
28 member claims through the administrative process, as further described below, both

1 Medicare administrative law judges and the Medicare Appeals Council have
2 eventually and consistently ruled (in more than 20 cases) that:

3 a. The documented determination by the treating physician of when a
4 KFHP MA member was stable for transfer or discharge is binding on KFHP with
5 respect to the MA organization's obligation to pay Plaintiffs' claims for emergency
6 medical services; and

7 b. KFHP cannot deny Plaintiffs' claims based on an after-the-fact
8 contest of the treating physician's determination of when a MA member was stable for
9 transfer or discharge (e.g., KFHP cannot "second guess or play Monday morning
10 quarterback in rejecting the professional opinions of the treating physicians who
11 determined that the [MA member] was unstable for transfer.").

12 60. In this action, however, Plaintiffs are not pursuing claims as assignees of
13 KFHP MA members. Plaintiffs are not required to exhaust Medicare Part C
14 administrative process in order to vindicate and pursue their own direct causes of
15 action against KFHP for failure to pay Plaintiffs for the emergency services they
16 provided to KFHP MA members. In particular, *only* Plaintiffs' own direct causes of
17 action against KFHP are advanced in this lawsuit and Plaintiffs are not proceeding on
18 behalf of, as the representative of, or pursuant to, any assignment of benefits by KFHP
19 MA members with respect to the claims for emergency medical services that are the
20 basis for this lawsuit.

21 61. In the alternative, if Plaintiffs are required to exhaust the Medicare Act's
22 administrative remedies prior to maintaining a cause of action against KFHP for
23 failure to pay Plaintiffs for the emergency services they provided to KFHP MA
24 members in federal court, attempting to comply with such requirement would have
25 been futile in each and every instance in this particular case, based on KFHP's history
26 and established pattern of systemically manipulating and obstructing Plaintiffs'
27 pursuit of assigned KFHP MA member claims through the MA administrative review
28 process by, among other things:

1 a. Consistently denying Plaintiffs' claims for emergency services
2 provided to KFHP MA members on the ground that the members that were stable for
3 transfer thereby ignoring repeated rulings by Medicare administrative law judges and
4 the Medicare Appeals Council that the treating physician's documented determination
5 that such members were not stable for transfer or discharge was binding on KFHP
6 with respect to the MA organization's obligation to pay Plaintiffs' claims for
7 emergency medical services;

8 b. Rejecting Plaintiffs' administrative appeals of assigned KFHP MA
9 member claims that had been denied by KFHP on the frivolous ground that the waiver
10 forms executed by the MA members were not in the form prescribed by KFHP and,
11 after Plaintiffs submitted executed KFHP waiver forms, denying the appeals at the
12 MA organization level of review as untimely;

13 c. Repeatedly rejecting Plaintiffs' administrative appeals of assigned
14 KFHP MA member claims that had been denied by KFHP on the false ground that
15 Plaintiffs had not submitted necessary supporting medical records and then denying
16 the appeals at the MA organization level of review as untimely or incomplete;

17 d. Intentionally "losing" and failing to decide Plaintiffs' timely and
18 complete appeals of assigned KFHP MA member claims at the MA organization
19 level of review within the required time frames; and

20 e. After denying Plaintiffs' appeals of assigned KFHP MA member
21 claims at the MA organization level of review, failing to provide Plaintiffs with the
22 required notice of such denials or to forward such appeals to the Medicare Qualified
23 Independent Contractor or Independent Review Entity for further automatic review as
24 required by the Medicare Act and related regulations.

25 62. On information and belief, Plaintiffs allege that they are not required to
26 exhaust the Medicare Part C administrative process when KFHP, the MA organization
27 responsible for the first level of administrative review, has systemically and routinely
28 manipulated, corrupted, and wrongfully disrupted that process in order to avoid its

1 obligation under federal and state law to pay for emergency services provided by
2 Plaintiffs to KFHP MA members, and has also systemically and routinely denied and
3 obstructed Plaintiffs' appeals of assigned KFHP MA member claims for reasons
4 totally unrelated to the substance of such appeals.

5 63. As of July 23, 2013, Plaintiffs' administrative appeals of any assigned
6 KFHP MA member claims denied by KFHP's would also be futile because the U.S.
7 Department of Health and Human Services, Office of Medicare Hearings and Appeals
8 ("OMHA"), decided to suspend assignment of all administrative appeals by Medicare
9 hospitals of assigned claims to Medicare administrative law judges after that date for
10 at least two years to address the backlog of appeals of almost 357,000 claims already
11 assigned to the available 65 Medicare administrative law judges for review. OMHA's
12 unauthorized suspension of Plaintiffs' and other hospitals' administrative appeal rights
13 to timely review by Medicare administrative law judges violates these providers' basic
14 right to due process with respect to the denial of their Medicare claims, but also
15 underscores the futility of the current administrative appeal process even without
16 KFHP's additional manipulation and wrongful interference with such process.

17 64. In this case, Plaintiffs' administrative appeals of the many thousands of
18 KFHP MA member claims denied by KFHP at issue in this action would therefore be
19 truly futile and would also further overwhelm a Medicare administrative appeal
20 system that was not intended to handle Plaintiffs' own direct causes of action against
21 KFHP for failure to pay Plaintiffs for the emergency services they provided to KFHP
22 MA members in the first instance. There is, therefore, no true, available
23 administrative remedy, or, in the alternative, pursuing such a remedy would be futile.
24 Based on the foregoing, administrative exhaustion requirement should therefore be
25 excused.

26 //

27 //

28 //

1 **FIRST CLAIM FOR RELIEF**

2 **(Breach of Implied-In-Law Contract Under State and Federal Law)**

3 **(By All Plaintiffs Against KFHP)**

4 65. Plaintiffs hereby replead and incorporate by reference each and every
5 allegation contained in paragraphs 1 through 64, above, as though fully set forth in
6 this paragraph.

7 66. This cause of action is brought by all Plaintiffs, and each of them, against
8 KFHP, is asserted to protect Plaintiffs' interests, and is pleaded in the alternative to
9 the existing state court coordinated action (Case No. JCCP 4580).

10 67. From at least 2003 and continuing to the present, Plaintiffs have provided
11 emergency medical services to thousands of patients who were covered by KFHP's
12 MA Plans. Such emergency medical services were provided at the request of the
13 KFHP MA members or others on the members' behalf for members who came to
14 Plaintiffs' emergency rooms for screening, stabilization, and treatment of their
15 emergency medical conditions.

16 68. During the same period of time, Plaintiffs also provided authorized post-
17 stabilization medical services to KFHP MA members when (a) Plaintiffs received
18 KFHP's authorization to provide such post-stabilization services, (b) Plaintiffs failed
19 to receive a response from KFHP more than one hour after advising the MA
20 organization that the member's emergency medical condition had been stabilized and
21 requesting authorization to provide such post-stabilization services, or (c) KFHP
22 failed to promptly transfer the member after being advised by Plaintiffs that the
23 member was stable and ready for transfer.

24 69. At all relevant times, implied-in-law contracts existed between Plaintiffs,
25 on the one hand, and KFHP, on the other hand, that obligated KFHP to reimburse
26 Plaintiffs for the emergency medical services and authorized post-stabilization
27 services that Plaintiffs provided to KFHP MA members. These implied-in-law
28 contracts arise under California and/or federal common and statutory law, which

1 recognize that a “contract implied in law” exists between health plans and providers of
2 emergency medical services that do not have contracts with the plans, and that such
3 providers have a direct cause of action against a health plan for the breach of the
4 contract implied in law when a health plan fails to meet its obligations under the laws
5 that obligate the health plan to pay such non-contracted emergency services providers.

6 70. The terms of these implied-in-law contracts are established by several
7 California statutes and regulations, certain federal statutes and regulations, and the
8 common law. The state laws include California Health and Safety Code sections
9 1262.8, 1317 *et seq.*, 1371.4, and Title 28 California Code of Regulations section
10 1300.71.4, and the federal laws include the EMTALA laws and Medicare Part C laws
11 and regulations, including sections 1395w-22, 1395w-25, 1395w-27, and 1395dd of
12 title 42 of the United States Code, and sections 422.113, 422.214, and 422.520 of title
13 42 of the Code of Federal Regulations.

14 71. Taken together, these state and federal laws and regulations, and the
15 common law, require KFHP to timely pay for emergency and authorized post-
16 stabilization services ordered by a treating physician and provided by Plaintiffs to
17 KFHP MA members at 100% of the reimbursement rate at which Plaintiffs would be
18 paid under the Medicare program if the federal government was directly responsible
19 for paying their claims for such services.

20 72. Plaintiffs performed all of their obligations and duties under these
21 implied-in-law contracts.

22 73. KFHP breached its obligations to Plaintiffs under these implied-in-law
23 contracts by, among other things:

24 a. Refusing and failing to pay Plaintiffs the amounts due for the
25 medical care and services they provided to KFHP MA members; and

26 b. Refusing and failing to pay Plaintiffs’ claims and portions of
27 claims, and making improper payment deductions, for the medical care and services
28 Plaintiffs provided to KFHP MA members.

1 74. As a direct and proximate result of KFHP's refusal and failure to perform
2 under the terms of the implied-in-law contracts described above, Plaintiffs have
3 suffered damages, according to proof at trial, in an amount exceeding \$14,000,000,
4 plus interest thereon at the maximum legal rate established by law from the time the
5 amounts became due.

6 75. Plaintiffs are also entitled to interest in accordance with California Civil
7 Code sections 3287 and 3289, and 28 U.S.C. § 1961, according to proof at trial.

8 **SECOND CLAIM FOR RELIEF**

9 **(Declaratory Relief)**

10 **(By All Plaintiffs Against KFHP)**

11 76. Plaintiffs hereby replead and incorporate by reference each and every
12 allegation contained in paragraphs 1 through 75, above, as though fully set forth in
13 this paragraph.

14 77. This cause of action is brought by all Plaintiffs, and each of them, against
15 KFHP.

16 78. An actual, ripe, justiciable and substantial controversy has arisen and
17 now exists between Plaintiffs, and each of them, and KFHP, regarding the following
18 matters and issues:

19 a. Plaintiffs contend that they are not legally obligated to contact and
20 notify KFHP when a KFHP MA member presents at a Plaintiff emergency room with
21 an emergency medical condition until the treating physician determines that the
22 patient's emergency medical condition has been stabilized. Based on information and
23 belief, Plaintiffs allege that KFHP disagrees.

24 b. Plaintiffs contend that KFHP cannot deny Plaintiffs' claims or
25 portions of their claims for reimbursement of emergency medical services provided to
26 Kaiser MA Plan members on the ground that the treating physician's documented
27 determination of when the patient's emergency medical condition was stable was
28 incorrect. Based on information and belief, Plaintiffs allege that KFHP disagrees.

1 c. Plaintiffs contend that KFHP and Kaiser physicians cannot contact
2 a KFHP MA member at a Plaintiff hospital and ask the member to request a transfer to
3 a Kaiser hospital before the non-Kaiser treating physician has determined that the
4 member is stable for transfer. Based on information and belief, Plaintiffs allege that
5 KFHP disagrees.

6 d. Plaintiffs contend that Kaiser physicians without privileges at a
7 Plaintiff hospital cannot enter such hospital and write a transfer order in a KFHP MA
8 member's medical record or arrange for the transfer of such member without the non-
9 Kaiser treating physician's consent. Based on information and belief, Plaintiffs allege
10 that Defendants disagree.

11 e. Plaintiffs contend that KFHP has a legal and equitable duty to
12 indemnify and hold harmless Plaintiffs for any injury suffered by a KFHP MA
13 member because KFHP caused the member to be transferred from a Plaintiff hospital
14 before the member's emergency medical condition had been stabilized. Based on
15 information and belief, Plaintiffs allege that KFHP disagrees.

16 79. Plaintiffs thus seek a judicial determination resolving this controversy
17 between the parties pursuant to 28 U.S.C. § 2201.

18 **PRAYER FOR RELIEF**

19 **As to the First Claim for Relief:**

- 20 1. For damages in an amount according to proof at trial.
21 2. For interest and penalties for late payments on said amount at the
22 maximum rate permitted by law.

23 **As to the Second Claim for Relief:**

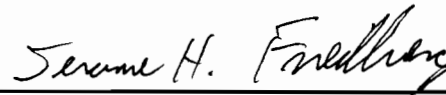
- 24 1. For a declaratory judgment resolving Plaintiffs' contentions for Plaintiffs
25 and against KFHP as set forth in that cause of action.
26
27
28

1 **As to All Causes of Action:**

- 2 1. For costs of suit.
3 2. For such other and further relief as the Court may deem proper and just.
4

5 DATED: May 14, 2014

ISAACS FRIEDBERG & LABATON LLP

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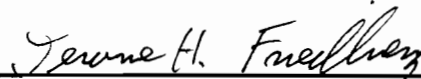
8 JEROME H. FRIEDBERG
9 Attorneys for Plaintiffs

10
11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs demand trial by jury on all claims and issues so triable.
13

14 DATED: May 19, 2014

ISAACS FRIEDBERG & LABATON LLP

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16 

17 JEROME H. FRIEDBERG
18 Attorneys for Plaintiffs
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**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself ☐)

PRIME HEALTHCARE LA PALMA, LLC, et. al;

DEFENDANTS (Check box if you are representing yourself ☐)

(b) County of Residence of First Listed Plaintiff Orange County, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Los Angeles County
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

Jerome H. Friedberg, Esq. SBN 125663
Isaacs Friedberg & Labaton LLP
550 South Flower, Ste. 4250
Los Angeles, CA 90071 (213) 955-5550

Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
☐ 2. U.S. Government Defendant
☒ 3. Federal Question (U.S. Government Not a Party)
☐ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1. Original Proceeding ☐ 2. Removed from State Court ☐ 3. Remanded from Appellate Court ☐ 4. Reinstated or Reopened ☐ 5. Transferred from Another District (Specify) ☐ 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT:** \$ 14,000,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Medicare Act, 42 U.S.C. §§ 1395ii and 1395w-22(g)(5)

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/Etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org. <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input checked="" type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.) <input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 American with Disabilities-Employment <input type="checkbox"/> 446 American with Disabilities-Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee Conditions of Confinement FORFEITURE/PENALTY <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Ret. Inc. Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405 (g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405 (g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

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**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
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VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF?	A DEFENDANT?	
	<small>Then check the box below for the county in which the majority of DEFENDANTS reside.</small>	<small>Then check the box below for the county in which the majority of PLAINTIFFS reside.</small>	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western	

Question C: Location of plaintiffs, defendants, and claims? (Make only one selection per row)	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below. If none applies, answer question C2 to the right. →	C.2. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below. If none applies, go to the box below. ↓
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Western Division

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
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IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT): Jerome Friedberg *Jerome Friedberg* DATE: May 19, 2014

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))