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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

APR 29 2013

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BY [Signature] Deputy
Clerk

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

DENNY HERNANDEZ and SABINA
HERNANDEZ,

CASE NO.

BC 507216
L.A. AX

Plaintiffs,

1

COMPLAINT FOR:

vs.

KAISER FOUNDATION HEALTH PLAN;
KAISER FOUNDATION HOSPITALS;
KAISER PERMANENTE INSURANCE
COMPANY; THE PERMANENTE MEDICAL
GROUP; SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP, GURBIR
CHHABRA, M.D.; MOHAMMAD
NAMAZIAN, D.O.; CHRISTOPHER LOUIS
SHERMAN, D.O.; RICHARD ROSE, M.D.;
SUMERA PANHWAR, M.D.; and DOES 1-200,
Inclusive,

1. Negligent Hiring/Retention
2. Medical Malpractice
3. Reckless Misconduct
4. Lack of Informed Consent
5. Fraudulent Concealment
6. Breach of Contract
7. Breach of Duty of Good Faith and Fair Dealing
8. Violation of California Business and Professions Code § 17200 et seq.
9. Fraud
10. Intentional Misrepresentation
11. Negligent Misrepresentation
12. Intentional Infliction of Emotional Distress
13. Negligent Infliction of Emotional Distress
14. Loss of Consortium

Defendants

DEMAND FOR JURY TRIAL

Plaintiffs DENNY HERNANDEZ (hereinafter "Mr. Hernandez" and "Plaintiff") and
SABINA HERNANDEZ (hereinafter "Mrs. Hernandez" and "Plaintiff"), complain of Defendants
KAISER FOUNDATION HEALTH PLAN; KAISER FOUNDATION HOSPITALS;
PERMANENTE INSURANCE COMPANY; THE PERMANENTE MEDICAL GROUP;
SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP; GURBIR CHHABRA, M.D.;

COMPLAINT

\$435.00
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CITY/CASE: EC507216
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LEA/DEF#: 1

1 MOHAMMAD NAMAZIAN, D.O.; CHRISTOPHER LOUIS SHERMAN, D.O.; RICHARD
2 ROSE, M.D.; SUMERA PANHWAR, M.D. and DOES 1 through 200, and each of them
3 (hereinafter, "Defendants"), and allege as follows:

4 INTRODUCTION

5 1. This action arises out of the horrendous medical care and treatment Mr. Hernandez
6 received from Defendants in connection with his degenerative hip joint condition, which care and
7 treatment breached the standard of care commonly exercised by medical practitioners and/or
8 specialists in the community, all of which was in furtherance of Defendants' stratagem to increase
9 profitability at the expense and physical well-being of consumers like Plaintiffs. As part of this
10 strategy, Defendants developed a corporate structure which creates an inherent conflict between
11 the consumers it induces to enroll in plans of medical insurance who become members and the
12 physicians it contracts with who are responsible for the care and treatment of the members, by
13 encouraging physicians to spend as little as possible on the care and treatment of those members,
14 (as the surplus funds get funneled to the physicians), while at the same time insulating physicians
15 from financial liability for substandard medical care and treatment, further encouraging
16 Defendants to breach the standard of care commonly exercised by medical practitioners and/or
17 specialists in the community.

18 2. Because of Kaiser's corporate structure, which rewards Plan physicians who
19 withhold care and treatment, and the related political pressure from fellow Plan physicians to
20 increase profitability, the Plan physicians frequently agree to undertake medical care for which
21 they do not possess the necessary knowledge, training, experience and skill, in lieu of having to
22 refer a member to a non-Plan provider, as the monies paid to a non-Plan provider, effectively
23 reduce the monies that are subsequently distributed to the physicians.

24 3. As part of Defendants' scheme to withhold necessary care and treatment from
25 members in order to maintain or increase profitability, Defendants unfairly, unlawfully and
26 fraudulently require members to submit any and all disputes to arbitration pursuant to its
27 enrollment form which unlawfully violates section 1363.1 of the California *Health and Safety*
28 *Code* as arbitration allows Defendants to avoid public accountability for the regular and continued

1 practice of withholding necessary medical care from members in order to maintain or increase
2 annual profits.

3 4. Unfortunately, Mr. Hernandez was yet another casualty of Defendants' financial
4 objectives. In 2009, at the age of 48 Mr. Hernandez needed a hip replacement because of severe
5 osteoarthritis. Kaiser recommended to Mr. Hernandez that he undergo a Birmingham Hip
6 Resurfacing ("BHR") procedure in lieu of a traditional hip replacement. The BHR system, which
7 had been approved by the FDA three years earlier was designed for younger patients as it provided
8 increased range of motion and it allowed the femur to remain intact; whereas, traditional hip
9 implants require that a sizeable portion of the femur be removed in order to install the device.
10 Allowing the femur to remain intact is extremely important for younger patients who are more
11 likely to require a subsequent replacement (the average lifetime of a hip implant device is 15
12 years), because once a portion of the femur is removed to accommodate a hip implant, subsequent
13 implant surgeries become exponentially more difficult to perform, as care must be taken: (i) not to
14 damage / fracture the portions of the femur that surround the cylindrical femoral component, when
15 removing the existing femoral component and replacing it with a new component; (ii) to ensure
16 that when installed, the replacement implant is properly aligned, which may require making
17 additional surgical adjustments to accommodate changes caused by the prior surgical implant such
18 as a leg length differential, damage to the surrounding musculature (slack or tight surrounding
19 muscles).

20 5. Unbeknownst to Mr. Hernandez, Kaiser beginning on or about 2009, Kaiser
21 undertook the care and treatment of his without having the requisite skill, training experience, tools
22 and equipment to properly provide the necessary care, whereby Mr. Hernandez was induced to
23 undergo several botched surgeries, each followed by years of tortuous physical pain as well as
24 severe emotional and mental anguish/distress. Defendants justified the failure and refusal to
25 contract with physicians and surgeons who had the necessary skills and equipment to provide Mr.
26 Hernandez with the necessary care and treatment by focusing on its annual profitability.

1 12. At all times herein mentioned, Defendant, KAISER PERMANENTE INSURANCE
2 COMPANY, INC. (hereinafter "KPIC"), and DOES 21 through 30 were entities of unknown
3 form, doing business in the State of California.

4 13. At all times herein mentioned, Defendant THE PERMANENTE MEDICAL
5 GROUP (hereinafter "TPMG"), and DOES 31 through 40 were entities of unknown form, doing
6 business in the State of California.

7 14. At all times herein mentioned, Defendant SOUTHERN CALIFORNIA
8 PERMANENTE MEDICAL GROUP (hereinafter "SCPMG"), and DOES 41 through 50 were
9 entities of unknown form, doing business in the State of California. SCPMG provides physician
10 services to members of the Kaiser Foundation Health Plan in Southern California.

11 15. KFH, KFHP, KPIC, TPMG SCPMG and DOES 1 though 50 are sometimes
12 hereinafter collectively referred to as the "Kaiser Entities".

13 16. At all times herein mentioned, one or more of the Kaiser Entities owned, operated,
14 managed, controlled and administered the medical facilities that resulted in the injuries alleged
15 herein, including, without limitation, Kaiser as Facility ID # 240000024, a General Acute Care
16 Hospital located at 9961 Sierra Avenue, Fontana, California 92335 (hereinafter "Kaiser
17 Fontana"), and Kaiser Foundation Hospital-Downey, a facility licensed with the California
18 Department of Public Health as Facility ID # 930000074, a General Acute Care Hospital located at
19 9333 Imperial Highway, Downey, California 90242 (hereinafter "Kaiser Downey"), and
20 represented to the public at large, and to Plaintiffs in particular, that Kaiser Fontana and Kaiser
21 Downey were properly equipped, fully accredited, competently staffed hospitals with qualified and
22 prudent personnel, and operating in compliance with the standard of care maintained in other
23 properly and efficiently operated and administered, accredited hospitals in the Southern California
24 medical community and offering full, competent and efficient hospital, medical, surgical,
25 laboratory, x-ray, anesthesia, paramedical and other services to the general public and to Plaintiffs
26 herein; and said Kaiser Entities and DOES 1-50, administered, governed, controlled, managed and
27 directed all the necessary functions, activities and operations of Kaiser Fontana and Kaiser
28

1 Downey including the nursing care, training of interns, residents and house staff, as well as the
2 activities of physicians and surgeons acting within said hospitals.

3 17. Plaintiffs allege that there exists, and at all times herein mentioned there existed, a
4 unity of interests and ownership between KFHP, KFH, KPIC, TPMG and SCPMG, wherein KFHP
5 is the alter ego of KFH, KPIC, TPMG and SCPMG, and KFHP, and KFH, KPIC, TPMG and
6 SCPMG, and KFHP are, and at all times herein mentioned were, mere shells, instrumentalities and
7 conduits through which KFHP carried on the business of insurance in the state of California.

8 18. At all times herein mentioned, Defendants, GURBIR CHHABRA, M.D. ("Dr.
9 Chhabra"), MOHAMMAD NAMAZIAN, D.O. ("Dr. Namazian"), CHRISTOPHER LOUIS
10 SHERMAN, D.O. ("Dr. Sherman"), RICHARD M. ROSE, M.D. ("Dr. Rose"), SUMERA
11 PANHWAR, M.D. ("Dr. Panhwar"), and DOES 51 through 200 were physicians and surgeons,
12 licensed by the State of California to practice medicine and surgery in the State of California.
13 Defendants, Dr. Chhabra, Dr. Namazian, Dr. Sherman, Dr. Rose, Dr. Panhwar and DOES 51
14 through 200, and each of them, at all times herein mentioned, held themselves out to the public at
15 large and to Plaintiffs, in particular, as fully qualified physicians and surgeons, duly licensed to
16 practice their profession in the State of California, and exercising prudent, reasonable judgment
17 and care in the selection, employment and control of qualified, trained, experienced nurses, nurse
18 practitioners, nursing personnel, physician assistants, orderlies, assistants, aides and employees
19 under their supervision, control, direction, responsibility and authority while performing services
20 and caring for patients including, but not limited to, Mr. Hernandez. Dr. Chhabra, Dr. Namazian,
21 Dr. Sherman, Dr. Rose, Dr. Panhwar and DOES 51 through 200 are sometimes hereinafter
22 collectively referred to as the "Kaiser Practitioners".

23 19. At all times herein mentioned, the Kaiser Entities, and each of them, were the co-
24 joint-venturers, masters, and employers of the Kaiser Practitioners, and each of them, who at all
25 times herein mentioned, were acting within the course and scope of their agency, employment
26 and/or joint venture.

27 20. Plaintiffs are informed and believe, and thereon allege, that at all times herein
28 mentioned, each defendant was an agent, master, servant, employer, employee and/or joint

1 venturer of the remaining defendants, and was at all times acting within the course and scope of
2 such agency, service, employment and/or joint venture; and each defendant has ratified and
3 approved the acts of the remaining defendants.

4 21. The Kaiser Entities and the Kaiser Practitioners are sometimes hereinafter
5 individually and collectively referred to as "Kaiser."

6 VENUE

7 22. Venue is proper in the County of Los Angeles pursuant to California Code of Civil
8 Procedure § 395 *et seq.* because one or more defendants conduct business in this county. Further,
9 incidents of professional negligence and the resulting injuries, alleged herein, took place in the
10 county of Los Angeles.

11 GENERAL ALLEGATIONS

12 A. Plaintiffs' enrollment in the Kaiser Foundation Health Plan

13 23. Plaintiffs initially enrolled in a plan of medical insurance with KFHP through Mr.
14 Hernandez's employment with the United States Postal Service in 2001 and have remained
15 enrolled as members continuously since that time.

16 24. Despite continuous enrollment since 2001, Mr. Hernandez was required to fill out a
17 new enrollment form in 2009, following a change in coverage under his plan of medical insurance
18 (the "2009 Plan").

19 25. The 2009 enrollment form, upon acceptance by Kaiser established a bilateral
20 contract between Plaintiffs and Kaiser, the terms and provisions of which are governed by that
21 certain "Service Agreement" by and between KFHP and the United States Office of Personnel
22 Management (Contract CS1044-B), portions of which are contained in a brochure which is given
23 to members upon enrollment a true and correct copy of the 2009 Plan is attached hereto as Exhibit
24 "A" and incorporated herein by this reference ("Evidence of Coverage" or "EOC").

25 26. Based on the oral representations made by Kaiser as well as the written
26 representations of and warranties of Kaiser set forth in the EOC, Plaintiffs believed that the
27 medical care and treatment that they would receive from Kaiser would be "quality integrated
28 healthcare" that, at a minimum, was at or above the degree or skill and competence commonly

1 exercised by medical practitioners and/or specialists in Southern California, otherwise they never
2 would not have enrolled in a policy of medical insurance with KFHP.

3 27. Under the terms and provisions of the EOC, Plaintiffs agreed to pay pre-determined
4 monthly premiums to Kaiser and Kaiser agreed, "to provide or arrange all necessary physician
5 care". (EOC at P. 11). As a further inducement to enrollees and existing members, Kaiser
6 represents and warrants all of the following:

7 (a) To Coordinate all health care services (EOC at P.6);

8 (b) To have sole responsibility for selecting medical plan providers, all of whom follow
9 generally accepted medical practices (EOC at P. 6)

10 (c) To credential all medical plan providers according to national standards; (EOC at P.
11 11); and

12 (d) That a member's primary care physician has authority to refer a member for most
13 services and can otherwise arrange for any necessary and specialty care. (EOC at P. 11, 13).

14 28. Based on the promises made by Kaiser in the EOC, Plaintiffs were induced to
15 believe, justifiably believed and were entitled to receive, at a minimum, medical care and
16 treatment, dictated by generally accepted medical practices, from skilled professionals,
17 credentialed according to national standards as well as specialty care (which includes medical
18 care and treatment from non-Kaiser providers), so long as a member's primary care physician
19 issued a "referral", which was evidence that the requested medical care and treatment was deemed
20 necessary. However, beginning in or about 2009 and continuing to the present, Mr. Hernandez
21 repeatedly received medical care and treatment that was below the level of care that other
22 reasonably careful physicians would use in the same or similar circumstance, despite Kaiser's
23 continued representations to the contrary. When Mr. Hernandez repeatedly returned to Kaiser
24 complaining of pain and requesting additional diagnostic tests to determine the cause, following a
25 botched surgery Kaiser performed, his requests were repeatedly denied. Instead, Kaiser repeatedly
26 administered intravenous pain medicine to Plaintiff, despite prior documentation by Kaiser that
27 Plaintiff was working to reduce his reliance on pain medicine to manage his hip pain. After
28 complaining of pain for two years and repeatedly requesting care and treatment to discern that

1 cause of Plaintiff's continued pain and stiffness, Kaiser justified its repeated failure to provide the
2 care and treatment needed for a diagnosis by accusing Mr. Hernandez of feigning hip pain in
3 order to get more pain medicine; allowing further savings by withholding care and treatment for
4 diagnostic and related purposes.

5 29. In addition to the foregoing, Kaiser purposefully includes an arbitration clause that
6 is inconspicuous and fails to sufficiently notify enrollees or existing members of its broad
7 application to any and all disputes, including disputes for professional liability, personal injury or
8 wrongful death.

9 30. Under California law, a health care service plan can require its members to submit
10 their disputes to arbitration and waive their right to a jury trial, provided, however, the language
11 requiring mandatory arbitration in the health care service plan contract complies with the
12 requirements set forth in California *Health and Safety Code* §1363.1, which provides as follows:

13 Any health care service plan that includes terms that require binding arbitration to
14 settle disputes and that restrict, or provide for a waiver of, the right to a jury trial
15 shall include, in clear and understandable language, a disclosure that meets all of
16 the following conditions:

17 (a) The disclosure shall clearly state whether the plan uses binding
18 arbitration to settle disputes, including specifically whether the plan uses binding
19 arbitration to settle claims of medical malpractice.

20 (b) The disclosure shall appear as a separate article in the agreement
21 issued to the employer group or individual subscriber and shall be prominently
22 displayed on the enrollment form signed by each subscriber or enrollee.

23 (c) The disclosure shall clearly state whether the subscriber or enrollee is
24 waiving his or her right to a jury trial for medical malpractice, other disputes
25 relating to the delivery of service under the plan, or both, and shall be
26 substantially expressed in the wording provided in subdivision (a) of Section
27 1295 of the California Code of Civil Procedure. [Emphasis added]

28 (d) In any contract or enrollment agreement for a health care service plan,
the disclosure required by this section shall be displayed immediately before the
signature line provided for the representative of the group contracting with a
health care service plan and immediately before the signature line provided for
the individual enrolling in the health care service plan.

Section 1295(a) of the California Code of Civil Procedure further provides:

It is understood that any dispute as to medical malpractice, that is as to whether any medical services rendered under this contract were unnecessary or unauthorized or were improperly, negligently or incompetently rendered, will be determined by submission to arbitration as provided by California law, and not by a lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings. Both parties to this contract, by entering into it, are giving up their constitutional right to have any such dispute decided in a court of law before a jury, and instead are accepting the use of arbitration.

31. The enrollment form signed by Mr. Hernandez in 2001, contained the following arbitration clause:

If you have any claim or dispute that is not governed by the Disputed Claims Process with OPM described in Section 8, then all such claims and disputes of any nature between you and the Plan, including but not limited to malpractice claims, shall be resolved by binding arbitration, subject to the Plan's Arbitration procedures. For more information that describes the arbitration process. Contact our Member Service Call Center at 1-800-464-4000 for copies of our requirements. These will explain how you can begin the binding arbitration process. (EOC at P. 57)

The foregoing language clearly violates California law in that it fails to clearly state the types of disputes that are to be resolved by binding arbitration and instead includes references to defined not otherwise defined on the same page but that require one to search the remainder of the brochure to understand the meaning; and to add to the confusion, not all of the defined terms are included in the index in the back of the EOC. It is clear that Kaiser's Plan purposefully include vague and incoherent references to what type of dispute is subject to arbitration when contrasted with the letter from Kaiser in response to notice provided pursuant to California *Code of Civil Procedure* section 364, which states, This letter also constitutes notification that your client is a member of the Kaiser Foundation Health Plan, Inc., by virtue of a Group Medical and Hospital Service Agreement (Service Agreement"). This Agreement includes and arbitration provision, which requires arbitration of all claims including professional liability, personal injury or wrongful death." A copy of which is attached hereto as Exhibit "C" and incorporated herein by this reference.

ACTUAL MEDICAL TREATMENT RECEIVED UNDER THE 2009 PLAN

32. Although Mr. Hernandez experienced a reduced range of motion as well as pain, swelling and stiffness in his hip, groin, thigh, buttocks and knee, consistent with osteoarthritis in

1 his right hip for many years, it became progressively worse over time. Prior to 2009, he relied on
2 non-surgical treatments to manage the pain and stiffness in lieu of more aggressive treatments
3 such as surgery, out of a fear that surgery could make it worse and since his income was the
4 family's only source of income, he didn't want to take an unnecessary risk.

5 33. In or about 2008, at the age of 48, Mr. Hernandez underwent right hip arthroscopy
6 to diagnose and treat his right hip pain. Following the 2008 arthroscopy, Mr. Hernandez was
7 informed that surgery would be necessary, and that he would likely require a total hip
8 replacement to treat his right hip pain, despite his relative young age (the average age of
9 individuals requiring a hip replacement is 66 years old). Kaiser then referred Mr. Hernandez to
10 one of the Plan's orthopedic specialists, Dr. Chhabra, an orthopedic surgeon.

11 34. On or about February 19, 2009, Mr. & Mrs. Hernandez presented to Kaiser Fontana
12 for an orthopedic consult with Dr. Chhabra. During the consultation Dr. Chhabra confirmed that
13 that recent x-rays revealed moderate to severe osteoarthritis in Mr. Hernandez's right hip. Dr.
14 Chhabra informed Plaintiffs that implantation of a medical device would be necessary due to the
15 severity and extent of Plaintiff's osteoarthritis at that time. Osteoarthritis becomes progressively
16 worse over time, because it causes a breakdown in the cartilage tissue that is designed to protect
17 the underlying bone it surrounds. Dr. Chhabra recommended two surgical procedures to treat
18 Plaintiff's degenerative osteoarthritis, a total hip arthroplasty procedure (hereinafter "THA") and a
19 "Birmingham Hip Resurfacing" procedure (hereinafter "BHR"). Based on information and belief
20 and thereon Plaintiff alleges, the BHR system, which was approved by the FDA in 2006, was
21 marketed to younger patients who would otherwise be candidates for a THA. Although both
22 procedures are designed to treat joint disease, each requires a unique set of skills; training and
23 experience, with the BHR procedure requiring significantly more training and experience in order
24 to regularly achieve a comparable successful outcome. In fact, when the FDA initially approved
25 metal on metal hip resurfacing devices in 2006, surgeons wanting to implant the device were
26 required to undergo formal industry-sponsored training before performing their initial procedure
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1 and a specialist was required to be in attendance during a surgeon's first ten resurfacing
2 procedures¹. This was due in large part to the fact that the successful "outcome of hip resurfacing
3 is strongly dependent on the experience of the surgeon and hospital performing the procedure².
4 The results of subsequent studies published in the Association of Bone and Joint Surgeons, also
5 confirmed that surgeon experience plays a significant role in the successful outcome of resurfacing
6 procedures, with complication rates being six times higher for the first 25 procedures than the
7 second 25 procedures and that proper implant positioning required significantly more experience,
8 between 75 to 100 procedures.³ Additionally, the literature for the BHR system warns physicians
9 of the importance of having sufficient training, with both the recommended instruments and the
10 surgical technique before performing the procedure. However, before Dr. Chhabra could finish
11 discussing the two procedures with Plaintiffs, Mr. Hernandez became so overtaken with anxiety
12 about having surgery that he had to reschedule the consultation for a later date.

13 35. Approximately three weeks later, on or about March 11, 2009, Plaintiffs returned to
14 Kaiser to resume their pre-op consultation with Dr. Chhabra. Following the parties' discussion of
15 the two procedures, Defendant Dr. Chhabra recommended to Mr. Hernandez that he undergo the
16 BHR procedure because of Mr. Hernandez's age, among other reasons. At the time that Dr.
17 Chhabra recommended that Mr. Hernandez undergo the BHR procedure as well as at the time that
18 Mr. Hernandez underwent the BHR procedure, Dr. Chhabra knew he did not possess the
19 necessary knowledge, skill, training, experience, equipment and tools to properly perform the
20 BHR procedure on Mr. Hernandez. Dr. Chhabra represented to Plaintiffs that he had the requisite
21
22

23 ¹ Initial American Experience With Hip Resurfacing Following FDA Approval, Craig J. Della Valle, M.D., Ryan M.
24 Nunley, M.D., Stephan J. Raterman, M.D., Robert L. Barrack, M.D. [Symposium: Papers Presented at the Hip Society
Meetings 2008, Vol. 467, Issue 1 / January 2008]

25 ² Shimmin, AJ. The Effect of Operative Volume on the Outcome of Hip Resurfacing. Paper #316. Presented at the
American Academy of Orthopedic Surgeons 76th Annual Meeting. Feb 25-28, 2009. Las Vegas.

26 ³ Nunley, Ryan M. The Learning Curve for Adopting Hip Resurfacing Among Hip Specialists. Clin Orthop Relat Res
27 (2010) 468: 382-391.

1 knowledge, skill, training, experience, tools and equipment to properly perform the BHR
2 procedure, when in reality, Mr. Hernandez was going to be Dr. Chhabra's guinea pig.

3 36. Plaintiff spent the following six (6) months obtaining the necessary health
4 clearances for his hip surgery, which included an EKG, chest x-rays, blood work, anesthesia
5 consult and a dental clearance, among other clearances.

6 37. Approximately 2 weeks before Mr. Hernandez's scheduled surgery date, Mr.
7 Hernandez was seen at Kaiser Fontana for a pre-anesthesia evaluation with Douglas James Flores,
8 M.D., and some final blood tests and x-rays. The x-rays revealed a combination of eburnation,
9 subchondral sclerosis, collapse of the articulating surface and joint space narrowing effect the
10 right hip, and possible osteonecrosis of the femoral head secondary to advanced degenerative
11 changes.

12 38. Although Plaintiff was still anxious about having to undergo a major surgical
13 procedure, he was excited about the thought of not having constant hip pain.

14 39. On or about September 28, 2009, upon the advice and recommendation of Dr.
15 Chhabra, Mr. Hernandez allowed Dr. Chhabra, Dr. Namazian, Dr. Sherman and DOES 51-200 to
16 perform the BHR surgery on Plaintiff's right hip to treat his osteoarthritis (as part of the BHR, a
17 medical device was implanted in Plaintiff's right hip). Despite the manufacturer's warnings that
18 only physicians who have sufficient training in the BHR system should perform the procedure
19 and that the recommended instruments and surgical approach are crucial to the success of the
20 procedure, Defendants ignored each and every one, including the warning that a posterior surgical
21 approach be utilized.

22 40. On or about September 29, 2009, the day after undergoing the BHR procedure, Mr.
23 Hernandez was visited by Dr. Chhabra, who believing the surgery to be a success, revealed to
24 Plaintiff that he had only performed the BHR procedure once before.

25 41. A few days later, Plaintiff began experiencing an unusual excruciating pain in his
26 right hip and he returned to Kaiser for medical care and treatment. Notwithstanding the fact that
27 Mr. Hernandez underwent a major surgery just one week before and the symptoms were of
28 the type of that he was instructed to report to Kaiser, Kaiser simply prescribed dilaudid to Mr.

1 Hernandez for pain and advised him to decrease activities and continue with light physical
2 therapy.

3 42. On October 12, 2009, when Plaintiff returned to Kaiser for a post-surgical
4 consultation and removal of his sutures, Plaintiffs were surprised that Kaiser spent the majority of
5 the consult discussing Plaintiff's recent five (5) pound weight gain, given that Plaintiff had
6 returned to Kaiser twice since his surgery two (2) weeks ago.

7 43. In or about November 2009, during Plaintiff's post-surgery consultation with Dr.
8 Chhabra, Plaintiff reported pain and stiffness in his hip, thigh and buttock as well as hearing
9 clicking and crunching sounds. Dr. Chhabra advised Plaintiff to continue his home exercises and
10 to use preventative antibiotics, if necessary, leading Plaintiff to believe that his symptoms were
11 normal.

12 44. In or about January 2010, Plaintiff began having episodes where his right hip would
13 just give out on him. Some episodes were worse than others and sometimes if Plaintiff was lucky,
14 he was able to grab onto something before falling to the ground. On or about February 24, 2010,
15 after one of Plaintiff's these episodes, Mr. Hernandez returned to Kaiser when, after his hip gave
16 out, he couldn't tolerate the pain. Kaiser administered intravenous painkillers to Plaintiff, making
17 the pain tolerable so that Kaiser could obtain x-rays of Plaintiff's right hip. After reviewing the x-
18 rays, Kaiser assured Plaintiff that nothing was wrong and that he could go home. By then, the
19 intravenous medicine had masked Plaintiff's earlier pain, so Plaintiff was pleased to be going
20 home.

21 45. A few months later, Plaintiff returned to Kaiser when his right hip gave out on him
22 again, causing pain, swelling and stiffness in his hip, thigh and buttocks. Again, Kaiser
23 administered pain medicine to Plaintiff, took x-rays of Plaintiff's hips and upon confirming that
24 the prosthetic device appeared anatomically aligned, advised Plaintiff that nothing was wrong and
25 released Plaintiff to go home.

26 46. On or about November 5, 2010, Plaintiff was brought to Kaiser by his wife because
27 of pain he was experiencing in his right hip. While leaning over in bed that morning, Plaintiff
28 heard a loud popping sound from his right hip, followed by crippling pain. During the

1 consultation, Mrs. Hernandez was pulled aside and informed that Plaintiff was feigning this
2 alleged hip pain in order to get more pain medicine. Notwithstanding the foregoing, Kaiser simply
3 followed its regular protocol of administering pain medicine and taking x-rays of Plaintiff's hip,
4 confirming that the hip prosthetic appeared to be in anatomical alignment and releasing Plaintiff
5 to go home. Armed with this information, Mrs. Hernandez decided that she was going to take
6 possession of Plaintiff's pain medicine and that he would no longer have unfettered access to his
7 pain medicine and that he would have to ask her for it so that she could monitor his intake.
8 Naturally, arguments ensued and conflict arose as suspicions were aroused. Plaintiff frequently
9 endured severe pain in order to avoid an argument with either Mrs. Hernandez or their adult son.
10 However, all of this took quite an emotional toll on Plaintiff.

11 47. On or about February 3, 2011, after enduring months of severe pain with less than
12 adequate amounts of pain medicine to treat the pain, Plaintiff asked his wife for a little more pain
13 medicine to help manage the stiffness and deep throbbing pain he had been experiencing in his
14 hip, thigh and buttocks for the past few days; Plaintiff's son immediately objected and a verbal
15 argument ensued. No matter what Plaintiff said, it wasn't enough to undo the damage Kaiser
16 caused, not even his family believed him anymore. Not wanting to endure the pain any longer,
17 especially alone, Plaintiff reached for a loaded gun, which fortunately, Mrs. Hernandez
18 intercepted. Mrs. Hernandez immediately transported Mr. Hernandez to Kaiser where he stayed
19 for several days for observation.

20 48. Approximately three weeks later, Plaintiff returned to Kaiser reporting pain and
21 stiffness in his hip and thigh and, again the standard treatment protocol. Kaiser administered pain
22 medicine to Plaintiff, took x-rays of his hips and upon confirmation that the prosthetic appeared to
23 be anatomically aligned, released Plaintiff to return home, assuring Plaintiff that nothing was
24 wrong.

25 46. On June 1, 2011, when Plaintiff returned to Kaiser and reported that he had been
26 experiencing constant groin pain for several weeks, a blood test was administered to Plaintiff,
27 consisting of a complete blood count ("CBC"). The results revealed a high white blood cell count,
28

1 a frequent indicator of infection. Thereafter, Plaintiff was advised that nothing was wrong and was
2 released to go home.

3 47. On August 5, 2011, during an orthopedic consult with Dr. Chhabra, Plaintiff
4 complained of continuous pain, multiple falls due to instability as well as pain up and down his
5 entire right leg. Again, Plaintiff's reported symptoms were ignored, even though Plaintiff had lost
6 approximately forty (40) pounds since the initial surgery, the symptoms of groin pain that Plaintiff
7 was reporting were consistent with the symptoms frequently exhibited due to an improperly
8 positioned hip device and that the CBC tests results from his last visit indicated an elevated white
9 blood cell count (which may be indicative of a systemic infection) and the ease with which it
10 would have been to request additional blood work from Plaintiff in order to perform another CBC
11 in addition to C-Reactive Protein ("CRP") combined with the Erythrocyte Sedimentation Rate
12 ("ESR"), as elevated CRP and ESR values are another indicator of inflammation or infection.
13 Despite the availability of other low cost tests, Dr. Chhabra simply glanced at Plaintiff's x-rays
14 and advised Plaintiff that nothing was wrong, as his hips appeared to be in good alignment with no
15 evidence of loosening or infection.

16 48. On or about November 26, 2011, Plaintiff returned to Kaiser because of continued
17 pain in his right groin that he had been experiencing for several weeks. Although the pain in his
18 groin caused shooting pain down Plaintiff's leg, Plaintiff was diagnosed with groin strain and
19 prescribed pain medicine.

20 49. During the next three weeks, Plaintiff returned to Kaiser on several occasions due to
21 Plaintiff's continued groin pain, which was now coupled with fever, chills and additional weight
22 loss. At no time during those visits, did Kaiser make a concerted effort to administer the tests
23 necessary to either determine the cause of Plaintiff's increasingly debilitating symptoms or to rule
24 out the cause of said symptoms.

25 50. During a visit with his primary care physician on or about December 5, 2011,
26 Plaintiff was given several injections of tramadol for the pain in his groin and prescribed Cipro, a
27 broad spectrum antibiotic, as a precautionary measure, since the symptoms Plaintiff presented
28

1 with, weight loss, fevers and chills, were indicative of an infection. Plaintiff was advised to follow
2 up with his primary care physician, Dr. Kramsch if his pain didn't subside in about two (2) weeks.

3 51. On or about December 16, 2011, Plaintiff contacted his Dr. Kramsch when the pain
4 in his groin had not dissipated. Dr. Kramsch immediately issued a referral and Plaintiff was
5 scheduled for an abdominal and pelvic CT scan on December 21, 2011. The results of the
6 December 21, 2011, revealed the presence of several pockets of accumulated fluid in and around
7 Plaintiff's right hip area.

8 52. Approximately one week later on December 27, 2011, plaintiff returned to Kaiser
9 and was admitted to the hospital for a CT-guided aspiration of the accumulated pockets of fluid
10 that were recently found. The fluid from these pockets was collected and sent for testing. Although
11 the fluid was analyzed for the presence of bacteria, the medical significance of the test results was
12 somewhat limited due to the fact that Plaintiff was taking Cipro at the time. Upon discharge,
13 Plaintiff was instructed to follow up with his total hip resurfacing specialist, Dr. Chhabra.

14 53. On or about January 10, 2012, when Plaintiff returned to Kaiser for a follow up
15 consultation with Dr. Chhabra to discuss the results of his recent CT scan, Plaintiff was surprised
16 when he was immediately admitted to Kaiser Fontana and underwent an emergency revisionary
17 THA procedure several days later. Due to the exigency with which the procedure was performed,
18 Kaiser was unable to obtain the necessary pre-surgical clearances or undertake the necessary pre-
19 operative planning (to ensure proper placement and alignment of the medical implant). Even after
20 Plaintiff's revisionary THA procedure, Kaiser continued to disavow generally accepted medical
21 practices, when Kaiser released Plaintiff to go home 2 days after surgery, despite generally
22 accepted medical practices, which dictate keeping a patient hospitalized for 10 days following a
23 revisionary THA procedure.

24 54. On or about January 30, 2012, Plaintiff returned for a follow-up consultation with
25 Dr. Chhabra who simply reported that x-rays were reviewed with Plaintiff, which revealed good
26 alignment with no polyethylene wear, and that the incision is healing well with no sign of
27 infection.

1 55. On or about February 21, 2012, while Plaintiff was moving around in bed, he felt
2 his hip pop, and immediately let out a scream because of the stabbing pain pulsating up and down
3 his entire right leg. Mrs. Hernandez rushed Plaintiff to Kaiser Downey, who was still in
4 excruciating pain. X-rays confirmed Plaintiff's suspicion that his hip had dislocated. Following
5 sedation, pressure was applied to Plaintiff's knee in order to force the femoral component back
6 into Plaintiff's hip socket. A hip abduction brace was given to Plaintiff to prevent future
7 dislocations with instructions to follow up with Dr. Chhabra in two (2) weeks.

8 56. During Plaintiff's follow up consult with Dr. Chhabra on or about February 27,
9 2012, Dr. Chhabra simply confirmed that Plaintiff had had an anterior dislocation a few weeks
10 earlier but that the x-rays taken that day revealed proper alignment. Dr. Chhabra instructed
11 Plaintiff to continue wearing the hip abduction at all times and to return for a checkup and x-rays
12 in two (2) months.

13 57. During the following month, despite all of the precautions, including wearing the
14 abduction hip brace 24 hours a day 7 days a week, except when in the shower, Plaintiff returned to
15 Kaiser on three (3) separate occasions (March 16, 2012, March 27, 2012 and March 29, 2012),
16 when his hip spontaneously dislocated during such innocuous activities as standing in place. Due
17 to the severity of the dislocations and the associated pain, Kaiser performed each of the closed
18 reduction procedures, to reposition Plaintiff's leg, in the hospital while Plaintiff was under
19 anesthesia.

20 58. Not more than four (4) days after Plaintiff's last close reduction procedure to
21 reposition his hip, Plaintiff returned to Kaiser for medical care to treat the spontaneous pain up and
22 down his entire right leg that was so intense he was crying and screaming, intermittently, not
23 knowing what else to do. Although Plaintiff was admitted to the hospital for overnight observation,
24 Plaintiff was repeatedly accused of lying about the frequency of his hip dislocations and feigning
25 pain in order to obtain more pain medicine. The very next day, when Plaintiff was lying on his
26 being examined by Dr. Kumar, an orthopedic surgeon, his right hip spontaneously dislocated and,
27 although extremely painful, Plaintiff was hopeful that at least now his repeated complaints of pain
28 wouldn't be eschewed as lies. Following the examination, Dr. Kumar recommended that Plaintiff

1 undergo a CT in an attempt to determine the cause of Plaintiff's frequent problems. scan because
2 of the frequency of the dislocations to determine the cause. Plaintiff's subsequent orthopedic care
3 was provided by Dr. Kumar since Dr. Chhabra was scheduled to retire later that year.

4 59. At Plaintiff's request, Dr. Kramsch, Plaintiff's primary care physician referred
5 Plaintiff to a non-Plan physician, Dr. Longjohn, a board certified orthopedic surgeon specializing
6 in joint replacements with a significant amount of experience in handling complicated hip
7 replacement procedures. On July 13, 2012, Plaintiff was examined by Dr. Longjohn, who was able
8 to quickly pinpoint several possible issues responsible for Plaintiff's continued dislocations,
9 including, damage to the abductor musculature caused by the metal surface replacement, the cup
10 might be over anteverted and there may be continued inflammation and fluid around the hip which
11 may require revision of the acetabular and/or femoral implant. Despite Dr. Longjohn's skill,
12 experience and training in repairing botched hip surgeries, Dr. Longjohn felt that Plaintiff would
13 be better served if handled by a practitioner with even greater experience than that which he
14 possessed because the level of accuracy needed to properly align and implant the necessary
15 devices during surgery would require use of computer navigation system. Dr. Long recommended
16 that Mr. Hernandez consult with Dr. Long, a specialist who performs corrective hip surgeries with
17 the assistance of computer navigation and who is located in the greater Los Angeles area. At the
18 conclusion of the consultation, Dr. Longjohn impressed upon Plaintiffs, the need to have a surgeon
19 who specializes in computer-navigation corrective hip surgeries because with each corrective hip
20 surgery the procedure becomes exponentially more complicated. In order to ensure that Mr.
21 Hernandez obtain the type of medical care and treatment that was needed to treat Mr. Hernandez,
22 Dr. Longjohn advised Mr. Hernandez that he would not request payment from Defendants, so that
23 Mr. Hernandez could immediately obtain a consult with Dr. Long using the referral that was
24 previously issued by Kaiser for use with Dr. Longjohn.

25 60. On or about August 27, 2012, Plaintiff presented to Kaiser with reports of
26 continued groin and hip pain. X-rays of Plaintiff's hips were taken and Plaintiff was advised that
27 there was nothing wrong; the prosthetic appeared to be in anatomical alignment.

1 61. On or about September 17, 2012, Plaintiff was examined by Dr. Long, a board-
2 certified orthopedic surgeon who specializes in corrective hip revisions, specifically those
3 requiring the implantation of components with the utmost precision and alignment. Following the
4 exam, Dr. Long concluded that the recurrent dislocations were caused by an acetabular component
5 that was both oversized and malpositioned, having inadequate inclination and excessive
6 anteversion. It was his recommendation that Mr. Hernandez undergo another THA, however, he
7 cautioned that the procedure should be performed with the assistance of computer navigation and
8 by an orthopedic surgeon specializing in joint replacement and who has extensive experience
9 doing revision THA procedures to ensure accurate alignment and placement of the prosthetic
10 components, as another botched surgery may cause irreparable damage cannot be fixed with even
11 the most advanced medical technology. Comparing Dr. Long's assessment of Plaintiff's condition
12 with Kaiser's, which just weeks earlier concluded that the prosthesis was anatomically aligned, it
13 was clear that Kaiser did not possess the necessary skill, knowledge and experience to correct the
14 earlier damage that Kaiser caused.

15 61. Plaintiff became emotionally overwhelmed after hearing Dr. Long's assessment and
16 diagnosis. He was frightened about possible permanent damage if the next surgery was anything
17 like the last two he had, but he also finally felt vindicated. For the past few years, Kaiser kept
18 telling him nothing was wrong, the device was anatomically aligned and that the real problem was
19 him; he was lying about his pain, so he could get more pain medicine to feed his addiction, which
20 subsequently caused a breakdown of trust between Plaintiff and his wife as well as Plaintiff and his
21 son, leaving Plaintiff to feel extremely alienated, which was only exacerbated by the fact that
22 Plaintiff wasn't able to work for over six (6) months because of the constant instability and pain.

23 62. After reviewing Dr. Long's report, Dr. Kramsch (Plaintiff's primary care
24 physician), submitted a referral to have Dr. Long perform a revision THA procedure based on his
25 determination that Dr. Long's skill and extensive experience in performing difficult THA revision
26 procedures was the type of specialized care which Plaintiff required and which Kaiser could not
27 provide. Shortly thereafter, Dr. Kramsch's referral was denied. Without any source of income and
28 after draining all of Plaintiff's available retirement, Plaintiff couldn't afford to wait any longer to

1 appeal Kaiser's denial. With no alternatives available, on or about January 3, 2013, Defendants
2 performed a subsequent THA revision procedure on Plaintiff and although computer navigation
3 was utilized, it was the first time Plaintiff's operating surgeon had ever used computer navigation
4 to perform surgery. As of the date of this Complaint, it is too early to know whether or not
5 Plaintiff's most recent surgery was a success or if irreparable damage was caused.

6 63. Due to the frequency with which Plaintiff was experiencing dislocations, Mr.
7 Hernandez was unable to perform his usual and customary job duties as a diesel truck mechanic
8 for the United States Post Office and was required to take time off of work. Since Mr. Hernandez
9 was not entitled to any financial subsidy during the many months he was unable to work being that
10 he is an employee of the federal government, the periods he was unable to work caused Plaintiffs
11 additional stress and anxiety as Plaintiffs were unable to meet their basic expenses. As a result,
12 within a few months of not being able to work, Plaintiffs were forced to tap into their retirement
13 just to keep a roof over their heads.

14 **TOLLING AND NOTICE OF INTENT TO SUE**

15 64. On or about July 13, 2012, during Plaintiffs' consult with Dr. Longjohn, Plaintiffs'
16 first had cause to know that during the times herein mentioned, Defendants, and each of them,
17 negligently cared for, diagnosed and treated Mr. Hernandez and failed to exercise the standard of
18 care and skill ordinarily and reasonably required of physicians, surgeons, hospitals, nurses,
19 physician assistants, orderlies, assistants, aides and employees, which proximately caused the
20 hereinafter described injuries and damages to Plaintiffs. Until the time of the consult with Dr.
21 Longjohn, Mr. Hernandez was under the professional care of the Kaiser Practitioners and, as a
22 result of Plaintiffs' justifiable reliance on the professional judgment and care of the Kaiser
23 Practitioners; Mr. Hernandez failed to seek other medical advice or treatment to ascertain the true
24 cause of his condition. The failure to discover the cause of the injuries prior to July 13, 2012 was
25 therefore reasonable and not due to any lack of diligence on the part of Plaintiffs.

26 65. That prior to the filing of the within Complaint, a period of less than one calendar
27 year has elapsed since Plaintiffs first learned, or had a reasonable opportunity to learn, of the fact
28 that the injuries suffered and complained of herein were a proximate result of the negligent acts or

1 omissions of Defendants, and each of them, although Defendants, and each of them, knew, or
2 should have known, that their negligence and the relationship between Plaintiff's injuries and their
3 negligence existed, but Defendants, and each of them, failed to disclose these facts and
4 circumstances to Plaintiffs.

5 66. On January 8, 2013, a "Notice of Claim Pursuant To The California Medical Injury
6 Compensation Reform Act" was served on all defendant health care providers, in accordance with
7 California Code of Civil Procedure section 364, a copy of which is attached hereto Exhibit "A"
8 and incorporated herein by this reference.

9 **FIRST CAUSE OF ACTION**

10 **Negligent Hiring/Retention**

11 **(By Plaintiff Mr. Hernandez Against All Defendants)**

12 67. Plaintiff re-alleges and incorporates by reference each and every allegation
13 contained in Paragraphs 1-66 as fully set forth herein.

14 68. At all times herein mentioned, Kaiser had a duty to its members, including
15 Plaintiffs, to hire and retain competent, experienced and qualified professional staff, including the
16 physicians, surgeons, nurses, nurse practitioners, nursing personnel, physician assistants, orderlies,
17 assistants, aides and other employees who worked for Kaiser.

18 69. A month before Plaintiff's initial consultation with Dr. Chhabra, a fifth medical
19 malpractice award, in a six year period, was entered against Dr. Chhabra, in the amount of
20 \$349,273.92, when a patient of his died shortly after Dr. Chhabra performed a knee replacement
21 surgery on him. The sheer number of arbitration awards entered against Dr. Chhabra in such a
22 relatively short period of time was clear evidence that Dr. Chhabra was unfit and incompetent to
23 provide professional services as an orthopedic surgeon.

24 70. Plaintiffs are informed and believe and thereon allege that Kaiser knew, or in the
25 exercise of reasonable diligence, including investigation into Dr. Chhabra's prior arbitration
26 awards, should have known that, Dr. Chhabra was unfit and incompetent to perform the duties for
27 which he was hired and/or retained, namely providing professional services as an orthopedic
28 surgeon, and that an undue risk to members and patients, including Plaintiff, would exist as a result

1 of his hiring and/or retention.

2 71. Despite being aware of Dr. Chhabra's gross incompetence, Kaiser breached its duty
3 of care to its members, including Plaintiff, by allowing Dr. Chhabra to continue providing
4 professional services as an orthopedic surgeon, and further allowing Dr. Chhabra to provide
5 professional services for which he had little or no training, both of which were in conscious
6 disregard of the rights and safety of Plaintiff.

7 72. As a proximate result of the wrongful conduct of Kaiser, Plaintiff was forced to
8 undergo additional corrective surgeries and other treatments.

9 73. As a further proximate result of the wrongful conduct of Kaiser, Plaintiff has
10 sustained injury to his health, strength and activity, all of which injuries have caused, and continue
11 to cause, Plaintiff great mental, physical and nervous pain and suffering. Plaintiff will seek leave
12 of Court to amend this Complaint to set forth the full amount of damage when ascertained.

13 74. As a further proximate result of the wrongful conduct of Kaiser, Plaintiff has
14 sustained, and will continue to sustain, disabling, serious and permanent physical and emotional
15 injuries, all to Plaintiff's general damage in an amount not presently known. Plaintiff will seek
16 leave of Court to amend this Complaint to set forth the full amount of damage when ascertained.

17 75. As a further proximate result of the wrongful conduct of Kaiser, Plaintiff has
18 incurred medical, hospital, psychological and related expenses in a sum not presently known.
19 Plaintiff will seek leave of Court to amend this Complaint to set forth the full amount of damage
20 when ascertained.

21 76. As a further proximate result of the wrongful conduct of Kaiser, Plaintiff will in the
22 future incur medical, hospital, psychological and related expenses, the exact nature and extent of
23 which are currently unknown to Plaintiff. Plaintiff will seek leave of Court to amend this
24 Complaint to set forth the full amount of damage when ascertained.

25 **SECOND CAUSE OF ACTION**

26 **FIRST COUNT**

27 **Medical Malpractice**

28 **(By Plaintiff Mr. Hernandez against All Defendants)**

1 77. Plaintiff re-alleges and incorporates by reference each and every allegation
2 contained in Paragraphs 1-76 as fully set forth herein.

3 78. At all times herein mentioned, Dr. Chhabra, as a licensed physician with a specialty
4 in orthopedic surgery, owed a duty to Kaiser's members, including Plaintiff, to exercise the level
5 of skill, knowledge and care in the diagnosis and treatment that other reasonably careful
6 orthopedic surgeon physicians would use in the same or similar circumstances.

7 79. On or about September 28, 2009, Dr. Chhabra, Dr. Namazian, Dr. Sherman and
8 DOES 51 through 200, inclusive, and each of them, negligently treated and cared for Mr.
9 Hernandez while he was in their exclusive control, in that Defendants improperly implanted a
10 BHR medical device system in Plaintiff's right hip because they didn't have the necessary skill,
11 knowledge, experience, training, equipment and tools to properly perform a BHR procedure and
12 Defendants failed to heed the warnings proscribed by the manufacturer of the BHR system,
13 including, without limitation, to use a posterior surgical approach, to use a special alignment guide
14 (which is a surgical instrument designed specifically for the BHR system, to ensure proper
15 placement and alignment of the BHR components), and to only using low viscosity cement, as
16 high viscosity cement will not allow for correct femoral component seating. Despite the
17 manufacturer's warnings, Kaiser used a trochanter surgical approach, didn't have the alignment
18 guide instrument available during the procedure to confirm proper placement and alignment of the
19 components and Kaiser used high viscosity cement, making it impossible to obtain even adequate
20 femoral component seating; which acts, or omissions were below the degree or skill and
21 competence commonly exercised by medical practitioners and/or specialists in the community.

22 80. As a direct and proximate result of the said conduct of the Defendants, and each of
23 them, Plaintiff was injured in his body and in his health, strength and activities, and sustained
24 injury to his mental health and shock and injury to his nervous system, all of which have caused
25 and continue to cause, Plaintiff great mental, physical and nervous pain and suffering. Plaintiff is
26 informed and believes and thereon alleges that some or all of said injuries will be of a permanent
27 nature and will result in some permanent disability to Plaintiff, all to his general damages in an
28 amount not presently known. Plaintiff will seek leave of Court to amend this Complaint to set forth

1 the full amount of damage when ascertained.

2 81. As a further proximate result of the said misconduct of the Defendants, and each of
3 them, Plaintiff was required to, and did, employ physicians, surgeons and hospitals to examine,
4 treat, and care for him, and did incur, and will in the future incur, medical and other related
5 expenses in connection herewith, the exact amount of which is not presently known. Plaintiff will
6 seek leave of Court to amend this Complaint to set forth the full amount of damage when
7 ascertained.

8 82. As a further proximate result of the misconduct of the Defendants, and each of
9 them, Plaintiff was prevented from attending to his usual occupation and has thereby suffered a
10 loss of income and loss of earning opportunity; and he is informed and believes and thereon
11 alleges that by reason of said injuries as herein alleged, he has suffered and will continue in the
12 future to suffer, a loss of earning capacity, the exact amount of which is not presently known.
13 Plaintiff will seek leave of Court to amend this Complaint to set forth the full amount of damage
14 when ascertained.

15 **SECOND CAUSE OF ACTION**

16 **SECOND COUNT**

(Medical Malpractice)

17 **(By Plaintiff Mr. Hernandez Against All Defendants)**

18 83. Plaintiff re-alleges and incorporates by reference each and every allegation
19 contained in Paragraphs 1-82 as fully set forth herein.

20 84. From and after Plaintiff underwent the BHR procedure on or about September 28,
21 2009, and continuing thereafter until at least December 2012, Plaintiff presented to Kaiser on at
22 least thirty (30) separate occasions, reporting unusual and severe right hip, leg and groin pain, and
23 in each instance, Kaiser impermissibly delayed, failed or were negligent in providing the proper
24 medical care to Plaintiff and failed to exercise the standard of care and skill ordinarily and
25 reasonably required of hospitals, physicians, nurses, nurse practitioners, nursing personnel,
26 physician assistants, orderlies, assistants, aides and employees by, initially dismissing Plaintiff's
27 reports of unusual right hip, leg and groin pain as unimportant (even though the pain Plaintiff
28 described was consistent with a failed BHR procedure), and subsequently dismissing Plaintiff's

1 reports of unusual right hip, leg and groin pain as untrue as the basis for failing to order and
2 administer the tests necessary to properly diagnose the cause of Plaintiff's severe right hip, leg and
3 groin pain for over two years, which proximately caused the hereinafter described injuries.

4 85. As a direct and proximate result of Kaiser's negligence and/or wrongdoing, Plaintiff
5 was hurt and injured in his health, strength and activity, sustaining severe injury to his body and
6 shock and injury to his nervous system and person. All of which have caused and continue to cause
7 Plaintiff great mental, physical and nervous pain and suffering as Mr. Hernandez was forced to
8 endure over two (2) years of agonizing physical pain because Kaiser repeatedly refused to order
9 the diagnostic tests necessary to diagnose Plaintiff's pain, including without limitation, simple
10 blood work to determine Plaintiff's white blood cell count, his chromium and cobalt levels or his
11 CRP and ESR values, an "MRI" (magnetic resonance imaging), and/or computed tomography
12 ("CT") scan Plaintiff's right hip, which would have revealed the presence of infection and/or
13 abscesses in and around Plaintiff's right hip, among other possible tests, and instead Kaiser told
14 Plaintiffs that there was no medical explanation for Plaintiff's chronic hip pain, and then began
15 accusing Plaintiff of lying about his pain to get more pain medicine, which caused strife between
16 Plaintiff and his family leading Plaintiff to feel alienated and hopeless, to the point of wanting to
17 commit suicide. Plaintiff is informed and believes and thereon alleges that some or all of said
18 injuries will be of a permanent nature and will result in some permanent disability to Plaintiff, all
19 to his general damages in an amount not presently known. Plaintiff will seek leave of Court to
20 amend this Complaint to set forth the full amount of damage when ascertained.

21 86. As a further proximate result of Kaiser's negligence and/or wrongdoing, Plaintiff
22 was forced to undergo several revision surgeries and related medical procedures, with the attendant
23 risks and complications and possible death from such revision surgeries, all of which were
24 exacerbated by the fact that Mr. Hernandez's first revision surgery was performed on an
25 emergency basis, wherefore the necessary dental and urological clearances which are to be
26 obtained at least six (6) weeks prior to surgery could not be obtained, thereby increasing the risk of
27 harm to Mr. Hernandez.

28 87. As a further proximate result of the said misconduct of the Defendants, and each of

1 them, Mr. Hernandez was required to, and did, employ physicians, surgeons and hospitals to
2 examine, treat, and care for him, and did incur, and will in the future incur, medical and other
3 related expenses in connection herewith, the exact amount is not presently known. Plaintiff will
4 seek leave of Court to amend this Complaint to set forth the full amount of damage when
5 ascertained.

6 88. As a further proximate result of the misconduct of the Defendants, and each of
7 them, Mr. Hernandez was prevented from attending to his usual occupation and has thereby
8 suffered a loss of income and loss of earning opportunity; and he is informed and believes and
9 thereon alleges that by reason of said injuries as herein alleged, he has suffered and will continue
10 in the future to suffer, a loss of earning capacity, the exact amount of which is not presently
11 known. Plaintiff will seek leave of Court to amend this Complaint to set forth the full amount
12 when ascertained.

13 89. Plaintiffs will seek pre-judgment interest on all items of damages, including
14 economic and non-economic damages. These will include, without limitation, past and future
15 medical expenses, lost wages and any and all incidental expenses and compensatory damages as
16 permitted by law. See California Code of Civil Procedure section 685.10(a) and Civil Code
17 section 3291.

18 **SECOND CAUSE OF ACTION**

19 **THIRD COUNT**

20 **(Medical Malpractice)**

21 **(By Plaintiff Mr. Hernandez against All Defendants)**

22 90. Plaintiff re-alleges and incorporates by reference each and every allegation
23 contained in Paragraphs 1-89 as fully set forth herein.

24 91. On or about January 16, 2012, Dr. Chhabra, Dr. Namazian, Dr. Rose, Dr. Panhwar
25 and DOES 51 through 200, inclusive, and each of them, negligently treated and cared for Plaintiff
26 while he was in their exclusive control, and so negligently operated, managed, maintained,
27 selected, designed, controlled and conducted their services, activities, personnel and equipment in
28 connection with Plaintiff's care and treatment that the same proximately caused the injuries,
damages and detriment to Plaintiff as herein alleged. In that prophylactic antibiotics were not

1 administered to Mr. Hernandez prior to surgery, despite the fact that the results of the fluid cultures
2 were not accurate because at the time that the fluids were aspirated, Mr. Hernandez was taking
3 Cipro, Defendants failed to use the Acetabular Cup Extraction kit, recommended for the removal
4 of the BHR system, Defendants failed to undertake the necessary pre-planning required for
5 accurate sizing of the femoral and acetabular components which are crucial to the success of the
6 operation, as the placement of an uncemented implant requires greater skill and precision to ensure
7 that the maximum area of contact between the bone and the implant is obtained (for proper fixation
8 of the device) and failed to take intra-operative x-rays to confirm the proper placement and
9 alignment of the components.

10 92. As a proximate result of the said conduct of the Defendants, and each of them,
11 Plaintiff was injured in his body and in his health, strength and activities, and sustained injury to
12 his mental health and shock and injury to his nervous system, all of which have caused and
13 continue to cause, Plaintiff great mental, physical and nervous pain and suffering. Plaintiff is
14 informed and believes and thereon alleges that some or all of said injuries will be of a permanent
15 nature and will result in some permanent disability to Plaintiff, all to his general damages in an
16 amount not presently known. Plaintiff will seek leave of Court to amend this Complaint to set forth
17 the full amount of damage when ascertained.

18 93. As a further proximate result of the said misconduct of Kaiser, Plaintiff was
19 required to, and did, employ physicians, surgeons and hospitals to examine, treat, and care for him,
20 and did incur, and will in the future incur, medical and other related expenses in connection
21 herewith, the exact amount is not presently known. Plaintiff will seek leave of Court to amend this
22 Complaint to set forth the full amount of damage when ascertained.

23 94. As a further proximate result of the misconduct of the Kaiser, Plaintiff was
24 prevented from attending to his usual occupation and has thereby suffered a loss of income and
25 loss of earning opportunity; and he is informed and believes and thereon alleges that by reason of
26 said injuries as herein alleged, he has suffered and will continue in the future to suffer, a loss of
27 earning capacity, the exact amount of which is presently unknown. Plaintiff will seek leave of
28 Court to amend this Complaint to set forth the full amount of damage when ascertained.

THIRD CAUSE OF ACTION
(Reckless Misconduct)
(By Plaintiff Mr. Hernandez against All Defendants)

95. Plaintiff re-alleges and incorporates by reference each and every allegation contained in Paragraphs 1-94 as fully set forth herein.

96. At all times mentioned herein, Kaiser knew or should have known that its failure to meet the standard of care with respect to the care and treatment of Plaintiff would, given his condition and the high degree of dependency on Kaiser, pose the probability the he would sustain serious injuries.

97. Despite the foregoing duty and knowledge, beginning on or about 2009 and continuing through December 2012, Kaiser consciously disregarded its duty to provide medical care that met the legal standards for such care and failed to provide such care, thereby subjecting Plaintiff to the increased probability of serious injury, actual injury and unnecessary pain and suffering. Including, without limitation:

(a) Dr. Chhabra represented to Plaintiff that he possessed the necessary knowledge, skill, training, experience, equipment and tools to properly implant a BHR system in Plaintiff's right hip and to perform a revisionary THA, when in fact it was not true;

(b) Dr. Chhabra did improperly implant a BHR system in Plaintiff's right hip when he (i) undertook the procedure without any formal training and only having performed the procedure once before, (ii) used a trochanter surgical approach instead of a posterior approach, (iii) failed to use the special alignment instrument, designed for that specific procedure, and (iv) used high viscosity cement which prevents proper seating of the femoral component because he didn't possess the necessary knowledge, skill, training, experience, equipment and tools to properly install a BHR system in Plaintiff's hip;

(c) Dr. Chhabra represented to Plaintiff that he possessed the necessary knowledge, skill, training, experience, equipment and tools to properly implant a BHR system in Plaintiff's right hip and to perform a revisionary THA, when in fact it was not true;

1 (d) Dr. Chhabra did improperly perform a revisionary THA procedure when he (i)
2 undertook the procedure without the requisite training and experience, (ii) failed to administer
3 prophylactic antibiotics prior to surgery, (iii) failed to use the Acetabular Cup Extraction kit, (iv)
4 failed to undertake the necessary pre-planning required for accurate sizing of the femoral and
5 acetabular components, and (v) failed to take intra-operative x-rays to confirm the proper
6 placement and alignment of the components; because he didn't possess the necessary knowledge,
7 skill, training, experience, equipment and tools to properly install a BHR system in Plaintiff's hip;

8 (e) Kaiser repeatedly failed to diagnose the cause of Mr. Hernandez's right hip
9 condition despite documented evidence of pain, swelling and stiffness in his hip, groin, thigh,
10 buttock and knee, all of which was consistent with a failed BHR procedure and a failed THA
11 procedure and, instead accusing Mr. Hernandez of faking his pain; and

12 (f) Kaiser failed to undertake the necessary diagnostic tests and procedures to make a
13 proper diagnosis, including failing to order and perform a CT scan, an MRI or analyzing Plaintiff's
14 blood work to determine his white blood cell count as well as the values for ESR, CRP, chromium
15 and cobalt.

16 98. At all times mentioned, Kaiser, knew that the failure to meet the standard of care
17 with respect to the care of Plaintiff would, given his condition and his high degree of dependency
18 on Kaiser, pose the probability that Plaintiff would sustain serious injuries.

19 99. As a direct and proximate result of Kaiser's failure to provide Mr. Hernandez with
20 medical care that met the legal standards for such care, Mr. Hernandez was forced to suffer
21 unnecessary pain, disability, debilitation and the need for multiple revision surgeries to correct the
22 failed BHR procedure in 2009 and the failed THA procedure in 2012, which revisions in turn gave
23 rise to additional, unnecessary and avoidable inordinate risks of complications and possible death
24 from further surgery. That there existed this reasonably probable threat of multiple revisions
25 surgeries (as well as the risks resulting therefrom).

26 100. As a further proximate result of Kaiser's failure to provide care to Mr. Hernandez
27 that met the legal standards for such care, Mr. Hernandez has sustained, and will continue to
28 sustain, disabling, serious and permanent physical injuries, all to Mr. Hernandez's general damage

1 in an amount not presently known. Plaintiff will seek leave of Court to amend this Complaint to set
2 forth the full amount of damage when ascertained.

3 101. As a further proximate result of Kaiser's failure to provide care to Mr. Hernandez
4 that met the legal standards for such care, Mr. Hernandez has incurred medical, hospital, incidental
5 and related expenses in a sum not presently known. Mr. Hernandez will seek leave of Court to
6 amend this Complaint to set forth the full amount of damage when ascertained.

7 102. As a further proximate result of Kaiser's failure to provide care to Plaintiff that met
8 the legal standards for such care, Mr. Hernandez will in the future incur medical, incidental,
9 hospital and related expenses, the exact nature and extent of which are currently unknown. Mr.
10 Hernandez will seek leave of Court to amend this Complaint to set forth the full amount of damage
11 when ascertained.

12 103. As a further proximate result of Kaiser's failure to provide care to Mr. Hernandez
13 that met the legal standards for such care, Mr. Hernandez has suffered wage loss and diminished
14 earning capacity, the exact nature and extent of which are currently unknown. Plaintiff will seek
15 leave of Court to amend this Complaint to set forth the full amount of damage when ascertained.

16 104. As a further proximate result of Kaiser's failure to provide care to Mr. Hernandez
17 that met the legal standards for such care, Mr. Hernandez will in the future suffer loss of wages
18 and diminished earning capacity, the exact nature and extent of which are currently unknown. Mr.
19 Hernandez will seek leave of Court to amend this Complaint to set forth the full amount of damage
20 when ascertained.

FOURTH CAUSE OF ACTION

Lack of Informed Consent

(By Plaintiff Mr. Hernandez against all Defendants)

21
22
23 105. Plaintiff re-alleges and incorporates by reference each and every allegation
24 contained in Paragraphs 1-104 as fully set forth herein.

25 106. The treatment and surgery performed by Kaiser and its employees, and each of
26 them, upon Mr. Hernandez, negligently failed to conform to the standard of care both with respect
27 to the care and treatment rendered to Plaintiff and with respect to providing to Plaintiff
28 information about the risks and hazards, or other harmful consequences, that might follow from

1 the treatment, diagnosis or surgery Kaiser planned for Plaintiff.

2 107. At no time during Mr. Hernandez's consultations with Dr. Chhabra did Dr. Chhabra
3 inform Plaintiffs that he had an excessive number of arbitration awards entered against him during
4 a relatively short period of time, that the successful outcome of a BHR procedure and a revisionary
5 THA procedure are directly related to the operating surgeon's experience in performing that type
6 of procedure, that Dr. Chhabra had no formal training in the BHR surgical procedure, that Dr.
7 Chhabra had only performed the BHR procedure once before, and the significance of having
8 performed the procedure only once before, that revision surgeries should be performed by a
9 surgeon that specializes in joint replacement and who has extensive experience in performing hip
10 implant revisions because revisions are inherently more complicated and that the surgical
11 procedures performed on Plaintiff would be performed without the necessary tools and equipment.
12 In fact, during all of Plaintiff's consultations with Dr. Chhabra, Dr. Chhabra repeatedly
13 represented to Plaintiff that he possessed the necessary skill, experience, knowledge, training,
14 equipment and tools to properly perform the BHR procedure as well as the revisionary THA
15 procedure. Wherefore, Mr. Hernandez's consent to allow Dr. Chhabra to perform the BHR
16 procedure and the subsequent revisionary THA procedure were not informed consents.

17 108. Had Mr. Hernandez been adequately informed that Dr. Chhabra didn't have the
18 requisite knowledge, skill, training, experience, equipment and surgical tools to properly perform
19 the BHR procedure as well as the revisionary THA procedure, Mr. Hernandez would not have
20 consented to allowing Dr. Chhabra to perform either the BHR procedure or the revisionary THA
21 procedure on him.

22 109. As a proximate result of wrongful conduct of the Kaiser, Mr. Hernandez was
23 injured in his body and in his health, strength and activities, and sustained injury to his mental
24 health and shock and injury to his nervous system, all of which has caused and continues to cause,
25 Mr. Hernandez great mental, physical and nervous pain and suffering. Mr. Hernandez is informed
26 and believes and thereon alleges that some or all of said injuries will be of a permanent nature and
27 will result in some permanent disability to Mr. Hernandez, all to his general damages in an amount
28

1 not presently known. Plaintiff will seek leave of Court to amend this Complaint to set forth the full
2 amount of damage when ascertained.

3 110. As a further proximate result of the said misconduct of the Kaiser, Plaintiff was
4 required to, and did, employ physicians, surgeons and hospitals to examine, treat, and care for him,
5 and did incur, and will in the future incur, medical and other related expenses in connection
6 herewith, the exact amount of which is unknown to Plaintiff at this time. Plaintiff will seek leave
7 of Court to amend this Complaint to set forth the full amount of damage when ascertained.

8 111. As a further proximate result of the misconduct of Kaiser, Plaintiff was prevented
9 from attending to his usual occupation and has thereby suffered a loss of income and loss of
10 earning opportunity; and he is informed and believes and thereon alleges that by reason of said
11 injuries as herein alleged, he has suffered and will continue in the future to suffer, a loss of
12 earning capacity, the exact amount of which is unknown to Plaintiff at this time. Plaintiff will seek
13 leave of Court to amend this Complaint to set forth the full amount of damage when ascertained.

14 112. That the treatment and surgery performed by Kaiser and its employees, and each of
15 them, upon Mr. Hernandez, negligently failed to conform to the standard of care both with respect
16 to the care and treatment rendered to Plaintiff and with respect to providing to Plaintiff
17 information about the risks and hazards, or other harmful consequences, that might follow from
18 the treatment, diagnosis or surgery Kaiser planned for Plaintiff.

19 **FIFTH CAUSE OF ACTION**

20 **Fraudulent Concealment** 21 **(By Plaintiff Mr. Hernandez against All Defendants)**

22 113. Plaintiff re-alleges and incorporates by reference each and every allegation
23 contained in Paragraphs 1-112 as fully set forth herein.

24 114. At all times mentioned herein, Dr. Chhabra purposefully misrepresented to Mr.
25 Hernandez that he possessed the necessary knowledge, skill, training, experience, equipment and
26 tools to properly perform a BHR procedure and a revisionary THA procedure on Mr. Hernandez.

27 115. Dr. Chhabra knew or was reckless in not knowing that those representations were
28 false.

1 116. In making the misrepresentations to Mr. Hernandez, Dr. Chhabra fraudulently
2 concealed and intentionally omitted the following material information:

3 (a) That in the six year period immediately before his initial consult with Plaintiff, Dr.
4 Chhabra had five (5) arbitration awards entered against him, the fifth award, which was entered on
5 January 15, 2009 was for malpractice that caused the death of one of Dr. Chhabra's shortly after
6 undergoing knee-replacement surgery;

7 (b) That Dr. Chhabra had not received formal training to perform a BHR procedure;

8 (c) That the successful outcome of a BHR procedure and a revisionary THA procedure
9 are directly related to the operating surgeon's skill and experience in performing that type of
10 procedure;

11 (d) That Dr. Chhabra had only performed the BHR procedure once before, and the
12 significance of having performed the procedure only once before;

13 (e) That revision surgeries should be performed by a surgeon who specializes in joint
14 replacement and who has extensive experience in performing hip implant revisions because
15 revisions are inherently more complicated procedures;

16 (f) That Dr. Chhabra did not possess the necessary skill and experience to perform a
17 hip implant revision surgery;

18 (g) That Dr. Chhabra did not possess the necessary tools and equipment to properly
19 perform a BHR procedure as well as a revisionary THA procedure; and

20 (h) That an improperly performed BHR procedure and/or revisionary THA procedure
21 would cause Plaintiff to suffer the injuries, as occurred herein, and would require Plaintiff to
22 undergo additional unnecessary surgeries, further exposing Plaintiff to avoidable inordinate risks
23 of complications and possible death from such further surgeries.

24 117. Dr. Chhabra was under a duty to disclose to Plaintiff, the true facts concerning his
25 lack of knowledge, skill, training, experience, equipment and tools to properly perform a BHR and
26 as well as a revisionary THA procedure on Mr. Hernandez as well as the likelihood that Plaintiff
27 would suffer the injuries, as occurred herein, and would require additional, unnecessary surgeries,
28

1 further exposing Plaintiff to avoidable inordinate risks of complications and possible death from
2 further surgeries.

3 118. Dr. Chhabra had sole access to the material facts regarding his lack of knowledge,
4 skill, training, experience, equipment and tools to perform the BHR procedure as well as a
5 revisionary THA procedure on Plaintiff and likelihood that Plaintiff would suffer the injuries, as
6 occurred herein, and would require additional, unnecessary surgeries, further exposing Plaintiff to
7 avoidable inordinate risks of complications and possible death from further surgeries.

8 119. Dr. Chhabra's concealment and omissions of the foregoing material facts were
9 made purposefully, willfully, wantonly and/or recklessly, to mislead Plaintiff into reliance and to
10 cause Plaintiff to agree to allow Dr. Chhabra to perform both the BHR procedure and the
11 revisionary THA procedure to his person.

12 120. Dr. Chhabra knew that Plaintiff had no way to determine the truth behind Dr.
13 Chhabra's concealments and material omissions, as set forth herein.

14 121. Plaintiff reasonably relied on the foregoing representations made by Dr. Chhabra
15 and those representations fraudulently, purposefully and/or negligently did not include facts that
16 were concealed and/or omitted by Dr. Chhabra.

17 122. In doing the foregoing acts, Dr. Chhabra acted with malice as defined by California
18 *Civil Code* § 3288, with a willful and conscious disregard of the safety and well-being of Mr.
19 Hernandez and/or with a conscious disregard of his safety and well-being. Such conduct qualifies
20 as despicable conduct as that term is defined in California *Civil Code* § 3294, warranting the
21 imposition of punitive or exemplary damages against Dr. Chhabra in an amount reasonably related
22 to his actual damages, and sufficiently large to be an example to Defendants and to others, and to
23 deter Kaiser and others from engaging in similar conduct in the future.

24 **SIXTH CAUSE OF ACTION**

25 **Breach of Contract**

26 **(By Plaintiffs Against By Plaintiffs Against Kaiser Entities)**

27 123. Plaintiffs re-allege and incorporate by reference each and every allegation contained
28 in Paragraphs 1-122 as fully set forth herein.

1 124. Under the terms and provisions of the parties' contract, as evidenced in the EOC,
2 Plaintiffs agreed to pay pre-determined monthly premiums to Kaiser and, in exchange for which,
3 Kaiser agreed, "to provide or arrange all necessary physician care". (EOC at P. 11). As a further
4 inducement to Plaintiffs, Kaiser made the following representations and warranties:

- 5 (a) To Coordinate all health care services (EOC at P.6);
6 (b) To have sole responsibility for selecting medical plan providers, all of whom follow
7 generally accepted medical practices (EOC at P. 6)
8 (c) To credential all medical plan providers according to national standards; (EOC at P.
9 11); and
10 (d) That a member's primary care physician has authority to refer a member for most
11 services and can otherwise arrange for any necessary and specialty care. (EOC at P. 11, 13)

12 125. Based on the forgoing promises made by Kaiser, as set forth in the EOC, Plaintiffs
13 were induced to believe, justifiably believed and were entitled to receive, at a minimum, medical
14 care and treatment, dictated by generally accepted medical practices, from skilled professionals,
15 credentialed according to national standards as well as specialty care (which includes medical care
16 and treatment from non-Kaiser providers), so long as a member's primary care physician issued a
17 "referral", which was evidence that the requested medical care and treatment was deemed
18 necessary. However, beginning in or about 2009 and continuing to the present, Mr. Hernandez
19 learned that Kaiser does not provide medical care that is in accord with generally accepted
20 practices, if the cost of that medical care reduces the annual 'dividends' distributable to the
21 participating physicians. Kaiser's corporate structure was designed to encourage physicians to
22 withhold necessary care and treatment from its members; in that members pay monthly premiums
23 to Kaiser for medical care and treatment and the physicians are then responsible for determining
24 and authorizing that medical care and treatment. If all or a portion of those monies are not spent on
25 the medical care and treatment of the members at the end of the year, the surplus is subsequently
26 distributed to the physicians, which further encourages the physicians to withhold necessary care
27 and treatment. When Mr. Hernandez repeatedly returned to Kaiser complaining of pain, swelling
28 and stiffness in his hip, groin, thigh, buttocks and knee, followed by several botched surgeries that

1 Kaiser performed, Kaiser never attempted to discern the root cause of his problem, regardless of
2 damage caused to Plaintiff. Instead, Kaiser repeatedly administered intravenous pain medicine to
3 Plaintiff, despite prior documentation by Kaiser that Plaintiff was working to reduce his reliance
4 on pain medicine to manage his hip pain, took a few x-rays, noted that his prosthesis appeared to
5 be in anatomical alignment and discharged him to go home. After two years of administering the
6 same treatment protocol to Plaintiff regardless of his presenting symptoms, Kaiser justified its
7 repeated failure to provide the care and treatment needed for a diagnosis by accusing Mr.
8 Hernandez of feigning hip pain in order to get more pain medicine, allowing further savings by
9 withholding care and treatment for diagnostic purposes as well as withholding necessary
10 prescriptions. Under the terms of the EOC, Kaiser had a contractual duty to coordinate all of
11 Plaintiff's health care services, authorize medical care and treatment (care by a non-Plan provider),
12 if deemed necessary by a member's primary care physician, among other duties.

13 126. At all relevant times herein Plaintiffs have paid all premiums due under the EOC
14 and have performed all of their obligations under the EOC.

15 127. Kaiser breached the terms and provisions of the EOC by failing and refusing to
16 provide the benefits it promised to provide under the Plan and to which, Plaintiffs were entitled.

17 128. As a direct and proximate result of Kaiser's conduct and the breach of its
18 contractual obligations under the Plan, Plaintiffs have suffered damages in an amount not presently
19 known. Plaintiffs will seek leave of Court to amend this Complaint to set forth the full amount of
20 damage when ascertained.

21 **SEVENTH CAUSE OF ACTION**
22 **Breach of Duty of Good Faith and Fair Dealing**
23 **(By Plaintiffs Against Kaiser Entities)**

24 129. Plaintiffs re-allege and incorporate by reference each and every allegation contained
25 in Paragraphs 1-128 as fully set forth herein.

26 130. Kaiser breached its duty of good faith and fair dealing owed to Mr. and Mrs.
27 Hernandez in all of the following respects:
28

1 (a) By unreasonably placing its financial interests above the health interests of Mr.
2 Hernandez by performing the BHR procedure on Mr. Hernandez despite not having the requisite
3 knowledge, skill, training, experience, equipment and tools to perform the procedure and refusing
4 to refer Mr. Hernandez to a non-Kaiser physician that had the requisite skill, experience, training
5 and equipment to properly perform the procedure, all of which were due to selfish cost
6 considerations, thereby increasing the likelihood of unsuccessful revision surgeries and causing
7 permanent and irreparable damage to Plaintiff;

8 (b) By unreasonably placing its financial interest above the health interests of Mr.
9 Hernandez by failing and refusing to perform the medical tests needed to make a proper diagnosis
10 despite Mr. Hernandez's forty (40) pound weight loss, his repeated complaints of pain, swelling
11 and stiffness in his hip, groin, thigh buttocks and knee and his subsequent threats of suicide (due to
12 Kaiser's failure to render medical care and treatment that was in accord with generally acceptable
13 medical practices;

14 (c) By failing and refusing to give at least as much consideration to Mr. Hernandez's
15 physical well-being as it gave to its own financial interests;

16 (d) By including an arbitration disclosure in its enrollment form that is in violation of
17 California law; and

18 (e) Requiring that Plan members submit any and all claims to arbitration despite the
19 fact that Kaiser's arbitration provision is in violation of California law; and

20 (f) Plaintiff is informed and believes and thereon alleges that Kaiser has breached its
21 duty of good faith and fair dealing owed to Plaintiffs by other acts or omissions of which Plaintiffs
22 are presently unaware and which will be shown according to proof at the time of the trial.

23 131. Kaiser's conduct, as described above, has resulted in physical injuries to Plaintiffs
24 and constitutes a substantial factor in causing any and all injuries suffered by Plaintiffs.

25 132. As a proximate result of the aforementioned unreasonable and bad faith conduct of
26 Kaiser, Plaintiffs have suffered, and will continue to suffer in the future, economic and
27 consequential damages, in an amount not presently known. Plaintiffs will seek leave of Court to
28 amend this Complaint to set forth the full amount of damage when ascertained.

1 133. As a further proximate result of the aforementioned wrongful conduct of Kaiser,
2 Plaintiffs have suffered personal physical injuries as well as, anxiety, worry, mental and emotional
3 distress, all to Plaintiffs' general damage in an amount not presently known. Plaintiffs will seek
4 leave of Court to amend this Complaint to set forth the full amount of damage when ascertained.

5 **EIGHTH CAUSE OF ACTION**

6 **Violation of California Business and Professions Code § 17200, et seq.
(By Plaintiffs Against Kaiser Entities)**

7 134. Plaintiffs re-allege and incorporate by reference each and every allegation contained
8 in Paragraphs 1-133 as fully set forth herein.

9 135. Section 17200 of the California *Business & Professions Code* precludes a person or
10 entity from engaging in unfair competition, which includes business practices that are unlawful,
11 unfair, or fraudulent as well as advertising that is deceptive, untrue or misleading. California
12 *Business & Professions Code* § 17203 permits the Court in an action based on allegations of unfair
13 competition to issue injunctive, restitutionary or other equitable relief.

14 136. Section 17204 of the California *Business & Professions Code* permits aggrieved
15 individuals, such as Plaintiffs, to institute an action on their own behalf to obtain injunctive and
16 other equitable relief against persons and entities who engage in unfair competition under
17 California *Business & Professions Code* § 17200, et seq. Plaintiffs allege this cause of action in
18 their individual capacity, and not on behalf of the general public.

19 137. Plaintiffs have standing under California *Business & Professions Code* § 17203 to
20 pursue these claims on their own behalf because they have been damaged by the conduct of
21 Kaiser, as alleged herein, and have lost money or property as a result of the unlawful and unfair
22 acts alleged herein.

23 138. By imposing upon Plan members, including Plaintiffs, arbitration clauses that are
24 unlawful and unenforceable under California law, Kaiser has committed acts of unfair competition
25 as defined by the California *Business & Professions Code* § 17200. Further, by advertising that
26 Kaiser provides "quality integrated health care" which has received "Excellent Accreditation" –
27 the highest level of accreditation possible – from the National Committee for Quality Assurance (a
28

1 private, non-profit organization dedicated to improving health care quality), Plaintiffs were
2 unfairly led to believe that the medical care and treatment that they would receive from Kaiser
3 would be at or above the degree or skill and competence commonly exercised by medical
4 practitioners and/or specialists in Southern California, which advertising was misleading, as
5 prohibited by California *Business & Professions Code* § 17500, and therefore constitutes an unfair
6 business practice within the meaning of California *Business & Professions Code* § 17200 *et seq.*

7 139. Plaintiffs are informed and believe and thereon allege that the foregoing unfair
8 competition engaged in by Kaiser is not an isolated event but rather a widespread and continuing
9 practice engaged in by Kaiser.

10 140. As a result of Kaiser's conduct, as alleged herein, Kaiser has been, and will be in
11 the future, unjustly enriched, all at the expense and damage of Plaintiffs and others like them.
12 Specifically, Kaiser has been unjustly enriched by receipt of ill-gotten premiums from the
13 widespread sale of Kaiser's insurance plans in California.

14 141. Because of the fraudulent misrepresentations made by Kaiser, as alleged herein, and
15 the inherently unfair practice of including arbitration clauses that are unlawful and unenforceable
16 under California law, the acts of Kaiser constituted unfair competition.

17 142. Pursuant to California *Code of Civil Procedure* § 1021.5 and California *Business &*
18 *Professions Code* § 17203, Plaintiffs respectfully request that this Court issue an order compelling
19 Kaiser to provide restitution of the monies collected by Kaiser and for injunctive relief to cease
20 such unfair competition in the future (the terms of the requested injunction should both prevent
21 Kaiser from engaging in the conduct alleged herein, and should require Kaiser to notify all affected
22 policyholders in California), attorney's fees and costs as well as punitive and compensatory
23 damages.

24 NINTH CAUSE OF ACTION

25 Fraud

26 (By Plaintiffs Against Kaiser Entities)

27 143. Plaintiff re-alleges and incorporates by reference each and every allegation
28 contained in Paragraphs 1-42 as fully set forth herein.

1 144. Dr. Chhabra falsely and fraudulently represented to Mr. Hernandez that he had the
2 necessary knowledge, skill, training, experience and tools and equipment to properly perform both
3 a BHR procedure and a revisionary THA procedure on Mr. Hernandez. The representations made
4 by Dr. Chhabra were, in fact, false. The true facts were that Dr. Chhabra did not possess the
5 requisite knowledge, skill, training, experience and tools and equipment to properly perform a
6 BHR procedure and a revisionary THA procedure on Mr. Hernandez.

7 145. Dr. Chhabra made the foregoing representations knowing them to be false, with the
8 intent to defraud and deceive Plaintiff, and with the further intent to induce Plaintiff to act in the
9 manner alleged, i.e., to undergo a BHR procedure and a revisionary THA procedure.

10 146. When Dr. Chhabra made the foregoing representations, and when Plaintiff
11 underwent the BHR procedure in 2009 and the revisionary THA in 2012, Plaintiff was ignorant of
12 the falsity of said representations and reasonably believed them to be true. Plaintiff was induced to,
13 and did, undergo both a BHR procedure and a revisionary THA procedure, in reliance upon said
14 representations. Said reliance was justified because Dr. Chhabra reasonably appeared to be in a
15 position to know the true facts. Had Plaintiff known the true facts, Plaintiff would not have agreed
16 to undergo the 2009 BHR procedure or the revisionary THA procedure in 2012.

17 147. As a result of Kaiser's fraud and deceit, Plaintiff was caused to suffer unnecessary
18 pain, and suffering, debilitation and the need for multiple revision surgeries to correct the failed
19 BHR and the failed revisionary THA, which revisions in turn gave rise to additional, unnecessary
20 and avoidable inordinate risks of complications and possible death from further surgery. That there
21 existed this reasonably probable threat of multiple revisions surgeries (as well as the risks resulting
22 therefrom), was and is a material fact that Dr. Chhabra should have disclosed to Plaintiff.

23 148. In committing the acts herein alleged, Dr. Chhabra acted with oppression, fraud and
24 malice, wherefore, Plaintiff shall amend this Complaint to show that Plaintiff is entitled to punitive
25 damages pursuant to *California Code of Procedure* section 425.13.

26 **TENTH CAUSE OF ACTION**

27 **Intentional Misrepresentation**

28 **(By Plaintiff Mr. Hernandez against all Defendants)**

1 149. Plaintiff re-alleges and incorporates by reference each and every allegation
2 contained in Paragraphs 1-148 as fully set forth herein.

3 150. At all times mentioned herein, Kaiser falsely and fraudulently represented to
4 Plaintiff, that Kaiser possessed the necessary knowledge, skill, training, experience and tools and
5 equipment to properly perform a BHR and/or THA procedure on Mr. Hernandez.

6 151. The foregoing representations made by Kaiser were in fact false. The true facts
7 were that:

8 (a) Kaiser did not possess the requisite knowledge, skill, training, experience and tools
9 and equipment to properly perform a BHR and/or THA procedure on Mr. Hernandez;

10 (b) The successful outcome of both the BHR procedure and the THA procedure were
11 and are directly related to the operating surgeon's experience;

12 (c) Kaiser did not possess the necessary tools and equipment to properly perform a
13 BHR procedure and/or THA procedure; and

14 (d) An improperly performed BHR procedure and/or THA procedure would cause
15 Plaintiff to suffer the injuries, as occurred herein, and would require Plaintiff to undergo additional
16 unnecessary surgeries, further exposing Plaintiff to avoidable inordinate risks of complications and
17 possible death from such further surgeries.

18 152. Plaintiff, at the time that Kaiser made these representations, was ignorant of the
19 falsity of Kaiser's representations and believed them to be true. In justifiable reliance on Kaiser's
20 representations, Plaintiff was induced to allow Kaiser to perform a surgery or surgeries for which
21 Kaiser did not have sufficient knowledge, skill, training, experience and tools and equipment to
22 properly perform, which Plaintiff would not have agreed to had he known the actual facts.

23 153. As a proximate result of Kaiser's representations, as alleged herein, Plaintiff was
24 forced to suffer unnecessary pain, disability, loss of mobility in his hip and had an increased risk
25 for needing multiple revision surgeries to correct the failed BHR in 2009 and the failed THA in
26 2012, which revisions in turn gave rise to additional, unnecessary and avoidable inordinate risks of
27 complications and possible death from further surgery. That there existed this increased risk for
28

1 multiple revisions surgeries (as well as the risks resulting therefrom), was and is a material fact
2 that should have been disclosed to Plaintiff by Kaiser.

3 154. As a further proximate result of the representations of Kaiser, Plaintiff has
4 sustained, and will continue to sustain, disabling, serious and permanent physical injuries, all to
5 Plaintiff's general damage in an amount not presently known. Plaintiff will seek leave of Court to
6 amend this Complaint to set forth the full amount of damage when ascertained.

7 155. As a further proximate result of the representations of Kaiser, Plaintiff will in the
8 future incur medical, incidental, hospital and related expenses, the exact nature and extent of
9 which are currently unknown. Plaintiff will seek leave of Court to amend this Complaint to set
10 forth the full amount of damage when ascertained.

11 156. As a further proximate result of the representations of Kaiser, Plaintiff has suffered
12 wage loss and diminished earning capacity and will suffer loss of wages and diminished earning
13 capacity in the future, the exact nature and extent of which are currently unknown. Plaintiff will
14 seek leave of Court to amend this Complaint to set forth the full amount of damage when
15 ascertained.

16 ELEVENTH CAUSE OF ACTION

17 Negligent Misrepresentation 18 (By Plaintiffs against Kaiser Entities)

19 157. Plaintiff re-alleges and incorporates by reference each and every allegation
20 contained in Paragraphs 1-156 as fully set forth herein.

21 158. At all times mentioned herein, Kaiser, falsely and fraudulently represented to
22 Plaintiff, that Kaiser possessed the necessary knowledge, skill, training, experience and tools and
23 equipment to properly perform a BHR and/or THA procedure on Mr. Hernandez.

24 159. The foregoing representations made by Kaiser were in fact false. The true facts
25 were that:

26 (a) Kaiser did not possess the requisite knowledge, skill, training and experience to
27 properly perform a BHR and/or THA procedure on Mr. Hernandez;

28 (b) The successful outcome of a BHR procedure and/or a THA procedure were, and
are, directly related to the operating surgeon's experience;

1 (c) Kaiser did not possess the necessary tools and equipment to properly perform a
2 BHR procedure and/or THA procedure; and

3 (d) An improperly performed BHR procedure and/or THA procedure would cause
4 Plaintiff to suffer the injuries, as occurred herein, and would require Plaintiff to undergo additional
5 unnecessary surgeries, further exposing Plaintiff to avoidable inordinate risks of complications and
6 possible death from such further surgeries.

7 160. At the time that Kaiser made these representations, Plaintiff was ignorant of the
8 falsity of Kaiser's representations and believed them to be true. In justifiable reliance on Kaiser's
9 representations, Plaintiff was induced to allow Kaiser to perform a surgery or surgeries for which
10 Kaiser did not have sufficient knowledge, skill, training, experience and tools and equipment to
11 properly perform, which Plaintiff would not have agreed to if he had known the actual facts.

12 161. As a proximate result of the representations of Kaiser, as alleged herein, Plaintiff
13 was forced to suffer unnecessary pain and suffering, disability, psychological distress and multiple
14 revision surgeries to correct both the failed BHR procedure in 2009 and the failed THA procedure
15 in 2012, which revisions in turn gave rise to additional, unnecessary and avoidable inordinate risks
16 of complications and possible death from further surgery. That Kaiser's lack of knowledge, skill,
17 training and experience increased the likelihood of additional revision surgeries (as well as the
18 risks resulting therefrom), was and is a material fact that should have been disclosed to Plaintiff by
19 Kaiser.

20 162. As a further proximate result of the representations of Kaiser, Mr. Hernandez has
21 sustained, and will continue to sustain, disabling, serious and permanent physical injuries, all to
22 Plaintiff's general damage in an amount not presently known. Plaintiff will seek leave of Court to
23 amend this Complaint to set forth the full amount of damage when ascertained.

24 163. As a further proximate result of the representations of Kaiser, Mr. Hernandez has
25 incurred medical, hospital, incidental and related expenses in a sum not presently known. Mr.
26 Hernandez will seek leave of Court to amend this Complaint to set forth the full amount of damage
27 when ascertained.

28

1 164. As a further proximate result of the representations of Kaiser, Mr. Hernandez will,
2 in the future, incur medical, incidental, hospital and related expenses, the exact nature and extent
3 of which are currently unknown. Plaintiff will seek leave of Court to amend this Complaint to set
4 forth the full amount of damage when ascertained.

5 165. As a further proximate result of the representations of Kaiser, Mr. Hernandez has
6 suffered wage loss and diminished earning capacity, the exact nature and extent of which are
7 currently unknown. Plaintiff will seek leave of Court to amend this Complaint to set forth the full
8 amount of damage when ascertained.

9 166. As a further proximate result of the representations of Kaiser, Mr. Hernandez will
10 in the future suffer loss of wages and diminished earning capacity, the exact nature and extent of
11 which are currently unknown. Plaintiff will seek leave of Court to amend this Complaint to set
12 forth the full amount of damage when ascertained.

13 **TWELFTH CAUSE OF ACTION**

14 **Intentional Infliction of Emotional Distress**

15 **(By Plaintiff Mr. Hernandez Against All Defendants)**

16 167. Plaintiff re-alleges and incorporates by reference each and every allegation
17 contained in Paragraphs 1-66 as fully set forth herein.

18 168. At all times alleged herein, Kaiser knew that Mr. Hernandez was dependent on
19 Kaiser to provide Mr. Hernandez with the health care benefits promised to him under the 2009
20 Plan.

21 169. At all times alleged herein, Kaiser engaged in outrageous conduct, by falsely
22 representing to Plaintiff that Kaiser possessed the necessary skill, training, experience, tools and
23 equipment to properly care, diagnose and treat Plaintiff's degenerative right hip joint, and that such
24 representations were made for the sole purpose of inducing Plaintiff to allow Kaiser to continue to
25 treat him, including, without limitation, allowing Kaiser to perform the BHR and THA procedures.

26 170. Kaiser made the foregoing representations to Plaintiff with the intention of causing,
27 or in reckless disregard of the probability of causing physical harm to Mr. Hernandez as well as
28 emotional distress to Plaintiff.

1 171. The intentional and false representations made by Kaiser, as alleged herein, did in
2 fact induce Mr. Hernandez to allow Kaiser to treat and to continue to treat Mr. Hernandez, all to
3 his detriment.

4 172. As a proximate result of Kaiser's conduct, Plaintiff has suffered and continues to
5 suffer severe mental and emotional distress, including, without limitation, depression, anxiety,
6 nervousness, stress, shock and anguish.

7 173. As a direct and proximate result of the aforementioned wrongful conduct of Kaiser,
8 Plaintiff has been damaged and seeks general and special damages (in a sum to be determined at
9 the time of trial), costs of suit, and such other relief which the Court may deem just and proper.

10 **THIRTEENTH CAUSE OF ACTION**

11 **Negligent Infliction of Emotional Distress**

12 **(By Plaintiff Mr. Hernandez Against All Defendants)**

13 174. Plaintiff re-alleges and incorporates by reference each and every allegation
14 contained in Paragraphs 1-173 as fully set forth herein.

15 175. Defendants knew, or in the exercise of reasonable diligence should have known,
16 that Plaintiffs were dependent on Defendants to provide Mr. Hernandez with the health care
17 benefits promised under the 2009 Plan.

18 176. At all times alleged herein, Defendants knew, or in the exercise of reasonable
19 diligence should have known, that Defendants' false representations of having the necessary skill,
20 training, experience, knowledge and equipment to perform the BHR procedure and subsequently,
21 the THA procedure, would induce Mr. Hernandez to allow Defendants to perform those
22 procedures, resulting in grave harm to treat Mr. Hernandez, when in actuality he unreasonable,
23 improper and unfair withholding of information as to the lack of knowledge, skill and experience
24 would cause, and did cause denial of medically necessary treatment, at a

25 **FOURTEENTH CAUSE OF ACTION**

26 **FIRST COUNT**

27 **Loss of Consortium**

28 **(By Plaintiff Mrs. Hernandez Against All Defendants)**

177. Mrs. Hernandez pleads each and every allegation contained in all prior Paragraphs

1 and incorporates the same herein by reference as to Kaiser as follows.

2 178. At all times herein mentioned, Mr. and Mrs. Hernandez were married and were
3 husband and wife.

4 179. By reason of Kaiser's conduct, as alleged herein, Mr. Hernandez was severely and
5 grievously injured, as set forth herein.

6 180. By reason of the severe injuries and mental anguish suffered by Mr. Hernandez,
7 Mrs. Hernandez has been denied, and continues to be denied her husband's love, companionship,
8 comfort, affection, society, solace, moral support, enjoyment of sexual relations and physical
9 assistance in the operation and maintenance of their home, all to Mrs. Hernandez's general damage
10 in an amount presently unknown. Mrs. Hernandez will seek leave of Court to amend this
11 Complaint to set forth the full amount of damage when ascertained.

12 181. By reason of Kaiser's conduct, Mrs. Hernandez sustained, and continues to sustain,
13 special damages in an amount presently unknown. Mrs. Hernandez will seek leave of Court to
14 amend this Complaint to set forth the full amount of damage when ascertained.

15 **FOURTEENTH CAUSE OF ACTION**

16 **SECOND COUNT**

17 **Loss of Consortium**

18 **(By Plaintiff Mr. Hernandez against Defendants KFHP, KPIC and DOES 11-30)**

19 182. Mr. Hernandez re-alleges and incorporates by reference each and every allegation
20 contained in Paragraphs 1-181 as fully set forth herein.

21 183. At all times herein mentioned, Mr. and Mrs. Hernandez were married and were
22 husband and wife.

23 184. By reason of Kaiser's conduct, as alleged herein, Mrs. Hernandez was severely and
24 grievously injured, as set forth herein.

25 185. By reason of the severe injuries and mental anguish suffered by Mrs. Hernandez,
26 Mr. Hernandez has been denied, and continues to be denied, his wife's love, companionship,
27 comfort, affection, society, solace, moral support, enjoyment of sexual relations and physical
28 assistance in the operation and maintenance of their home, all to Mr. Hernandez's general damage
in a sum in presently unknown. Mr. Hernandez will seek leave of Court to amend this Complaint

1 to set forth the full amount of damage when ascertained.

2 186. By reason of Kaiser's conduct, Mr. Hernandez sustained, and continues to sustain,
3 special damages in an amount presently unknown. Mr. Hernandez will seek leave of Court to
4 amend this Complaint to set forth the full amount of damage when ascertained.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
7 follows:

8 **FOR THE FIRST THROUGH FIFTH CAUSES OF ACTION AGAINST ALL**
9 **DEFENDANTS**

- 10 1. For general damages and special damages according to proof at trial;
- 11 2. For all medical, incidental and related expenses in an amount according to proof at trial;
- 12 3. For all future medical, incidental and related expenses in an amount according to proof at trial;
- 13 4. For all economic losses, including lost wages and diminished earning capacity in an amount
14 according to proof at trial;
- 15 5. For Prejudgment and postjudgment interest on all damages as is allowed by the laws of the State
16 of California;
- 17 6. For costs of suit incurred herein; and
- 18 7. Such other and further relief as the Court may deem just and proper.

19 **FOR THE SIXTH THROUGH EIGHTH CAUSES OF ACTION AGAINST ALL**
20 **DEFENDANTS**

- 21 1. For general damages and special damages according to proof at trial;
- 22 2. For attorney's fees, witness fees and costs of litigation incurred by Plaintiffs;
- 23 3. For economic and consequential damages arising out of Defendants unreasonable failure to
24 provide benefits promised under the 2009 Plan;
- 25 4. For prejudgment interest on all damages awarded to Plaintiffs in accordance with California Civil
26 Code section 3287;
- 27 5. For punitive and exemplary damages in an amount to punish or set an example of Defendants;
- 28 6. For costs of suit incurred herein; and
7. Such other and further relief as the Court may deem just and proper.

FOR THE NINTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

1. For general damages and special damages according to proof at trial;
2. For all medical, incidental and related expenses in an amount according to proof at trial;
3. For all future medical, incidental and related expenses in an amount according to proof at trial;
4. For all economic losses, including lost wages and diminished earning capacity in an amount according to proof at trial;
5. For Prejudgment and postjudgment interest on all damages as is allowed by the laws of the State of California;
6. For costs of suit incurred herein;
7. For punitive and exemplary damages in an amount to punish or set an example of Defendants; and
8. Such other and further relief as the Court may deem just and proper.

FOR THE TENTTH THROUGH FOUTEENTH CAUSES OF ACTION AGAINST ALL DEFENDANTS

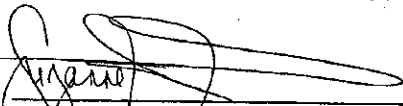
1. For general damages and special damages according to proof at trial;
2. For all medical, incidental and related expenses in an amount according to proof at trial;
3. For all future medical, incidental and related expenses in an amount according to proof at trial;
4. For all economic losses, including lost wages and diminished earning capacity in an amount according to proof at trial;
5. For Prejudgment and postjudgment interest on all damages as is allowed by the laws of the State of California;
6. For costs of suit incurred herein; and
7. Such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

DATED: April 29, 2013

LAW OFFICES OF KUPER & WILSON

By:


Suzanne G. Gatti, Attorney for Plaintiffs