

ORIGINAL

GARY L. TYSCH, ESQ. #128389
LAW OFFICES OF GARY L. TYSCH
16255 Ventura Boulevard, Suite 205
Encino, California 91436-2300

(818) 995-9555 main
(818) 995-9550 facsimile

Attorneys for Plaintiff JOSEPH DIPAOLO

FILED
Clerk of the Superior Court

JUN 11 2015

By Yatep Geph
DEPUTY CLERK

**ASSIGNED TO
JUDGE SCOTT L. KAYS
FOR ALL PURPOSES**

8435 Cm IT 27802

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SOLANO

JOSEPH DIPAOLO,

Plaintiff,

v.

KAISER FOUNDATION HOSPITALS,
THE PERMANENTE MEDICAL
GROUP, INC., KAISER FOUNDATION
HEALTH PLAN, INC., KAISER
PERMANENTE INSURANCE
COMPANY, and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: *FCSD045473*

COMPLAINT FOR DAMAGES FOR:

1. Professional Negligence;
2. Violation of Statutes and Regulations;
3. EMTALA Violations (42 U.S.C. § 1395dd and *California Health & Safety Code* § 1317)
4. Negligence Per Se;
5. Breach of the Duty of Good Faith and Fair Dealing;
6. HMO Negligence (Civil Code Section 3428); and
7. Unlawful and Unfair Business Acts and Practices (*California Business & Professions Code* § 17200 et seq.);

(JURY TRIAL REQUESTED)

Plaintiff JOSEPH DIPAOLO complains and alleges that:

THE PARTIES AND THEIR RELATIONSHIPS

1. The true names, identities, or capacities, whether individual, associate, corporate, or otherwise of defendants, DOES 1 through 10, inclusive, are unknown to the DIPAOLO who therefore sues said defendants by such fictitious names. When the true names, identities or capacities of such fictitiously designated defendants are ascertained, DIPAOLO will ask leave of

1 this Court to amend this complaint to assert their true names, identities and capacities, together
2 with the proper charging allegations.

3 2. Plaintiff is informed and believes and thereon alleges that each of the defendants
4 designated herein as a DOE is legally responsible, in some manner, for the events and happenings
5 herein referred to, thereby proximately causing the injuries and damages to DIPAOLA as
6 hereinafter alleged.

7 3. That all of the facts, acts, events and circumstances herein mentioned and described
8 occurred in the County of Solano and various other Counties in the State of California, and that
9 DIPAOLA and defendants are residents of or have their principal place of business in said County
10 of Solano, State of California.

11 4. That at all times herein mentioned, defendants KAISER FOUNDATION
12 HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC. and DOES 1 through 50,
13 inclusive, and each of them, were and now are physicians, surgeons or hospitals holding
14 themselves out as duly licensed to practice their profession under and by virtue of the laws of the
15 State of California, and were and now are engaged in the practice of their profession in the County
16 of Solano and/or other counties in the State of California.

17 5. That at all times herein mentioned, defendants and each of them were regulated by
18 California law and were and are Medicare licensees, receiving funding from the Federal
19 Government to provide care, treatment and therapy to Medicare enrollees. At all relevant times,
20 defendants KAISER FOUNDATION HEALTH PLAN, INC. and DOES 1 through 50, inclusive
21 (hereinafter referred to as the "KAISER Insurers"), were and are federally qualified HMO's,
22 licensed as such by the federal government. At all relevant times, KAISER FOUNDATION
23 HEALTH PLAN, INC., KAISER PERMANENTE INSURANCE COMPANY, and DOES 1
24 through 50, inclusive, and each of them, are or were health care service plans and/or insurers,
25 licensed by the State of California to provide managed care, insurance and health maintenance
26 services to the general public of California.

27 6. That at all times herein mentioned, defendants were duly organized California
28 corporations, existing under and by virtue of the laws of the State of California and that said

1 defendant corporations and DOES 1 through 50, inclusive, and each of them, owned, operated,
2 managed, and controlled general medical facilities, hospitals, and/or medical clinics in the County
3 of Los Angeles, State of California, and held themselves out to the public at large and to
4 DIPAOLA herein, as properly equipped, fully accredited, completely staffed and qualified with
5 prudent personnel, and operating in compliance with the standard of due care maintained in other
6 properly equipped, efficiently operated and administered accredited hospitals, clinics and general
7 medical facilities in said community, with laboratory, cardiac catheterization labs, coronary
8 surgery facilities, x-rays, anesthesia, and paramedical services available to the general public and
9 to DIPAOLA; that DIPAOLA is informed and believes and thereon alleges that said defendants,
10 and each of them, administered, governed, controlled, managed and directed all of the necessary
11 functions, activities and operations of said hospitals, medical facilities, including its nursing care,
12 including, but not limited to, the personnel and staff of said specialized departments, clinical
13 laboratories, physical therapy facilities, and technicians necessary to the operation of said medical
14 clinics and hospitals.

15 7. That at all times herein mentioned, the defendants, and each of them, were the
16 employers, employees, agents, servants and joint venturers and co-conspirators of each other and
17 of their co-defendants, and were acting within the course and scope of their ownership,
18 employment, agency or joint venture and conspiracy. That at all times relevant herein, the acts and
19 omissions of the defendants were directed, ratified, approved and/or ordered by officers, managers
20 and administrators of the defendants.

21 8. Plaintiff names the DOE defendants herein, and each of them, because DIPAOLA
22 is in doubt and does not know exactly from which of said defendants DIPAOLA is entitled to
23 redress and whether the injuries and damages to the DIPAOLA herein alleged was caused by the
24 combined negligence of all of the defendants or by the concurrent or successive and separate
25 negligence of the defendants, and one or more of them. For that reason, DIPAOLA names all of
26 said defendants and asks that the Court determine the liability of each and all of the said
27 defendants in this action and to what extent and what responsibility falls upon each of said
28 defendants, and that the Court award judgment to the DIPAOLA as against such or all of the

1 defendants either jointly or severally, as may be found liable.

2 **FACTUAL BACKGROUND**

3 9. At all relevant times, plaintiff DIPAOLA was a member, subscriber, enrollee and
4 insured of the KAISER Insurers and was entitled to receive health care, treatment, hospitalization
5 and therapies by virtue of his KAISER membership, subscription and insurance. At all relevant
6 times, the KAISER Insurers operated a health maintenance organization, insurance company and
7 health care service plan and promised plaintiff DIPAOLA and the general public that they would
8 provide all medically necessary and appropriate care and services, that they would operate full-
9 fledged, comprehensive emergency rooms with all appropriate and necessary cardiac care services
10 and that they would offer their members such as DIPAOLA timely and appropriate referrals for
11 specialty care. At all relevant times, defendants promised plaintiff DIPAOLA and the general
12 public, through the Evidence of Coverage documents that they distributed to their members,
13 through their advertising campaigns, advertising literature, commercials, signs and otherwise, that
14 they maintained state of the art facilities which offered comprehensive medical care and treatment
15 which was on par with that of other general acute care facilities and hospitals and that they
16 maintained equipment, facilities and had physicians on call who could handle all emergencies,
17 including cardiac emergencies.

18 10. Additionally, defendants, touted, advertised and promoted their technological
19 prowess to the general public and to DIPAOLA specifically, including their abilities to treat and
20 care for heart attack patients, and to reduce death and morbidity from heart attacks through
21 advertising campaigns in the print media, radio broadcasts and commercials on television and in
22 other media fora, leading the public and DIPAOLA to believe that they possessed, maintained,
23 staffed and equipped each emergency department at each Kaiser Hospital with state of the art
24 coronary diagnostic equipment, interventional cardiology services, including cardiac
25 catheterization, cardiovascular surgical services and other services which are commonly and
26 standardly used for the treatment of myocardial infarctions or heart attacks. At all relevant times,
27 defendants purported to plaintiff DIPAOLA and to the general public at large, that they complied
28 with California laws, regulations and all laws and regulations which applied to them.

1 11. On Sunday, March 16, 2014 at about 7:15 p.m., DIPAOLA began to experience
2 classic symptoms of a heart attack, including chest pain and heaviness, pain radiating into his left
3 shoulder and neck, sweating, etc. Prior to this date, DIPAOLA had never before suffered a heart
4 attack or been treated for myocardial infarction symptoms nor had he ever had any known cardiac
5 symptoms, problems or conditions. In fact, DIPAOLA had been examined and seen by his
6 primary care physician at KAISER less than a week before his heart attack and had been given a
7 clean bill of health.

8 12. Believing that he was having a heart attack and that he needed immediate, prompt
9 and emergency medical attention, DIPAOLA chose not to summon the paramedics and wait for
10 their arrival, but instead was immediately transported by car to the local KAISER hospital
11 emergency room approximately eight miles from his home. DIPAOLA consciously chose to visit
12 a KAISER hospital emergency room, because he presumed and believed that each Kaiser hospital
13 emergency room was equipped, ready and able to offer him timely and comprehensive, state of the
14 art and standard coronary care. DIPAOLA arrived at the KAISER emergency department nearest
15 his residence, KAISER Vacaville Medical Center, at about 7:30 p.m., approximately ten minutes
16 after the onset of his symptoms.

17 13. At all times prior to arriving at the emergency room at KAISER Vacaville Medical
18 Center, DIPAOLA believed that KAISER maintained and operated a full-fledged, comprehensive
19 emergency department which included comprehensive cardiac care and which had interventional
20 cardiologists on staff and which had a cardiac catheterization lab available which would provide
21 angiography and, if necessary angioplasty. Believing that KAISER Vacaville Medical Center had
22 a comprehensive coronary care unit in its emergency room, DIPAOLA consciously chose to visit
23 KAISER Vacaville Medical Center in lieu of other emergency rooms which were closer or
24 equidistant to his residence and which, in fact, had comprehensive coronary care units, including
25 cardiac catheterization labs or facilities and on-call interventional cardiologists. At all times prior
26 to arriving at the emergency room at KAISER Vacaville Medical Center, DIPAOLA understood
27 that time was of the essence in diagnosing and treating a heart attack. DIPAOLA fully intended
28 that he be seen, diagnosed and treated as soon as possible in order to give himself the best chance

1 of survival and minimize any side effects of a heart attack. DIPAOLA therefore chose to visit
2 KAISER Vacaville Medical Center, where he believed that his condition could and would be
3 treated in a timely, effective and appropriate manner, consistent with the level of care of other non-
4 KAISER facilities near his residence.

5 14. Upon approaching the KAISER Vacaville Medical Center – an extremely large
6 hospital with 140 beds, built approximately six years ago at a cost of half a billion dollars –
7 plaintiff DIPAOLA noticed that there were signs directing him to the emergency department at
8 KAISER Vacaville Medical Center and indicating that KAISER Vacaville Medical Center
9 maintained an emergency room. However, the signs visible from the street did not inform or
10 advise DIPAOLA that KAISER Vacaville Medical Center's emergency department was "basic."
11 The language on the signs to the effect that the emergency department at KAISER Vacaville
12 Medical Center provided only "basic" medical care was either not visible from the street or was so
13 small as to be un-readable, un-noticeable and/or invisible from the street. Had DIPAOLA known
14 that the emergency department at KAISER Vacaville Medical Center was "basic" and not
15 comprehensive and had DIPAOLA known that KAISER Vacaville Medical Center was not
16 equipped to service patients suffering a myocardial infarction, he would not have visited this
17 emergency room, but would have transported himself to another equidistant emergency room in
18 Davis, California which was equipped to provide full services to such patients.

19 15. Shortly after his arrival at KAISER Vacaville Medical Center's emergency
20 department, DIPAOLA was advised that diagnostic testing confirmed that he was suffering from a
21 ST Elevation Myocardial Infarction (STEMI). DIPAOLA was shocked and dismayed to learn
22 from the staff at KAISER Vacaville Medical Center's emergency department that the emergency
23 department did not have a cardiac catheterization laboratory, that it did not have interventional
24 cardiologists on call at the emergency room and that KAISER Vacaville Medical Center lacked the
25 capacity to offer him the treatment that he needed on an emergency basis, to adequately diagnose
26 and treat him, since it did not have a cardiac catheterization lab and did not have access to
27 interventional cardiologists at that site. Plaintiff DIPAOLA was advised by staff and physicians at
28 KAISER Vacaville Medical Center that he would need to be transferred to another KAISER

1 facility, where a cardiac catheterization laboratory was located and where interventional
2 cardiologists were on staff or on-call. Plaintiff was advised by the staff and physicians at KAISER
3 Vacaville Medical Center that he was likely suffering an acute ST Elevation myocardial infarction
4 or heart attack and that he needed to be seen by interventional cardiologists to perform angioplasty
5 with stenting. DIPAOLA was advised that his troponin levels were elevated and that this signified
6 that blood supply through the vessels leading to his heart had been blocked and the blockages were
7 causing his heart to die and damaging his heart muscles. DIPAOLA was also told that his EKG
8 studies showed that he was suffering from a heart attack or myocardial infarction.

9 16. It is well known and understood that heart attack patients must be treated on an
10 emergency basis to open their arteries and prevent permanent and irreversible heart damage.
11 Typically, the goal is that a patient is to have angioplasty initiated as soon as possible, but not
12 longer than ninety minutes of entry to the emergency room. It is well established by competent
13 medical literature, peer-reviewed studies and scientific data that the sooner that blood supply is
14 reestablished to the heart following a heart attack, by unblocking clogged arteries through
15 angioplasty, the less likely it is that the heart will sustain permanent and irreparable damage. The
16 standard of care requires that patients suffering a STEMI are to be administered an angioplasty as
17 soon as possible but no later than 90 minutes from the time that they enter the emergency room
18 (known as "90 minutes from door to balloon"). The standard of care also requires that PCI is to be
19 performed before thrombolytics are administered.

20 17. Because of the absence of a cardiac catheterization laboratory at KAISER Vacaville
21 Medical Center, plaintiff DIPAOLA could not be treated in the conventional and standard way that
22 persons suffering from his condition would be treated at general acute care hospitals and
23 emergency rooms that have cardiac catheterization laboratories and interventional cardiologists on-
24 call or on-staff. Instead, plaintiff DIPAOLA was offered substandard treatment and treatments
25 which are not recommended by the American Heart Association or American College of
26 Cardiology and other national associations who issue and promulgate guidelines on the care and
27 treatment of cardiac care patients. The treatments offered to plaintiff DIPAOLA were known by
28 KAISER to have side-effects and untoward consequences and/or were known by KAISER to be

1 contraindicated when combined with subsequent cardiac interventions such as coronary
2 angioplasty and percutaneous coronary interventions (PCI). Moreover, KAISER knew that its
3 failure to maintain a cardiac catheterization facility at KAISER Vacaville Medical Center or any of
4 its other satellite general acute care hospitals, and emergency rooms meant that it could not
5 adequately or timely service, treat or offer standard of care therapy and treatment to potential
6 coronary care patients and that it would be forced to offer substandard treatments and treatments
7 which are not recommended by the majority of cardiologists and which are considered antiquated
8 and below the standard of care.

9 18. Because KAISER Vacaville Medical Center's emergency department had no onsite
10 access to a cardiac catheterization lab or interventional cardiologists, and because it lacked the
11 ability to perform coronary angiography, coronary angioplasty and stenting, it routinely and
12 regularly transferred its myocardial infarction patients to other KAISER facilities for such cardiac
13 care, after offering stop gap treatments before such transfers, including thrombolytics. Because
14 KAISER Vacaville Medical Center's emergency department had no onsite access to a cardiac
15 catheterization lab or interventional cardiologists, KAISER knew and intended that it would not
16 perform angioplasty or bypass surgery in a timely manner for those patients suffering from a heart
17 attack who needed such care and treatments, since such patients would necessarily be required to
18 be transported, at great distances to other facilities by ambulance.

19 19. By design and intent, KAISER Vacaville Medical Center was precluded from
20 transferring its emergency department patients suffering heart attacks to non-KAISER facilities
21 which had cardiac catheterization labs, even if those facilities were closer in geographical
22 proximity to KAISER Vacaville Medical Center than the KAISER facilities to which KAISER
23 Vacaville Medical Center's heart attack patients were transferred. In order to save KAISER the
24 expense of paying for out-of-network care at non-KAISER facilities, KAISER Vacaville Medical
25 Center was required to transfer its heart attack patients to KAISER Vallejo Medical Center, forty
26 five miles away or to KAISER's tertiary care center in San Francisco. Moreover, KAISER
27 Vacaville Medical Center was precluded from transferring its heart attack patients to KAISER
28 Sacramento Medical Center, a tertiary care center with a cardiac catheterization lab.

1 20. By design and intent, after KAISER Vacaville Medical Center had diagnosed
2 patients as suffering from a STEMI (through the use of EKG and other cardiac testing), KAISER
3 Vacaville Medical Center was required to contact another KAISER facility at which a cardiac
4 catheterization lab existed and arrange for transfer of its patients to such facility. By design and
5 intent, this process was known by KAISER to make it nearly impossible for heart attack patients
6 entering KAISER Vacaville Medical Center's emergency room, to be diagnosed, arranged to be
7 transferred and transported to another KAISER facility with a cardiac catheterization lab within 90
8 minutes from the time that a patient entered the emergency room to the time that angioplasty was
9 initiated. Defendants, and each of them, intended to establish a system by which satellite hospitals
10 would feed their STEMI patients to a select group of KAISER facilities which had cardiac
11 catheterization labs (typically tertiary care centers, located in urban centers) so that Defendants and
12 each of them would be spared the expense of having cardiac catheterization labs at each KAISER
13 emergency room or acute hospital facility and would be spared the cost of having interventional
14 cardiologists and cardiologists available to provide coronary surgery services to KAISER patients.

15 21. Defendants, and each of them, intentionally, consciously and purposefully designed,
16 maintained, constructed and established a system by which KAISER patients suffering myocardial
17 infarctions would be transferred from emergency rooms where no on-site cardiac catheterization
18 lab was located to a distant KAISER facilities which maintained cardiac catheterization
19 laboratories and which provided emergent angiograms, angioplasty procedures and PCI procedures
20 to KAISER members. This system all but guaranteed that KAISER members such as DIPOLA
21 would be denied timely access to angioplasty, coronary surgery services and interventional
22 cardiologists, unless they happened to have a heart attack near one of the few KAISER facilities
23 which had a cardiac catheterization lab. This system also all but guaranteed that KAISER facilities
24 which did have cardiac catheterization laboratories would be so over-utilized given the patient
25 population and Kaiser membership that there would be insufficient cardiac catheterization lab beds
26 to accommodate KAISER's members who needed either emergent or elective coronary

1 angiography.¹

2 22. At all relevant times, KAISER knew that potential heart attack patients required
3 time-sensitive angiograms, which could not be performed in the absence of a cardiac
4 catheterization laboratory and without interventional cardiologists to perform the angiograms. At
5 all relevant times, KAISER knew that potential heart attack patients required time-sensitive
6 angioplasty, which could not be performed in the absence of a cardiac catheterization laboratory
7 and without interventional cardiologists to perform the angioplasty. At all relevant times,
8 KAISER knew that potential heart attack patients required time-sensitive stenting, which could not
9 be performed in the absence of a cardiac catheterization laboratory and without interventional
10 cardiologists to perform the angiograms and angioplasty procedures. At all relevant times,
11 KAISER knew that it would never be able to evaluate, diagnose and then transfer its patients from
12 satellite facilities to KAISER facilities which had catheterization labs, within a 90 minute time
13 frame to perform angiography, angioplasty and/or stenting, which procedures were the standard of
14 care for cardiac patients such as plaintiff DIPAOLA.

15 23. It is well established and understood that the use of thrombolytic agents, clot-
16 busters and anti-coagulative therapy is inferior to the use of angioplasty in treating heart attack
17 patients. Further, the American Heart Association recommends that all general acute care
18 hospitals with cardiac catheterization units subscribe to the principles that myocardial infarction
19 patients with ST elevations be treated with angioplasty within 90 minutes of entering the doors of
20 the emergency room. While most emergency rooms strive to reduce their "door-to-balloon" times
21 to under 90 minutes, in order to optimize their heart attack patients' survival and recovery,
22 KAISER has designed an HMO delivery system which deprives its members and subscribers of
23 the ability to obtain timely and rapid PCI and cardiovascular surgeries, unless they happen to be
24 admitted to one of the few KAISER tertiary hospitals, or a KAISER hospital where cardiac

25 ¹ There are a total of thirty eight Kaiser Hospitals in the State of California. Sixteen
26 of those hospitals are located in Southern California and twenty two are located in
27 Northern California. Only two of the sixteen hospitals in Southern California
28 have cardiac catheterization laboratories, while ten out twenty two Kaiser
hospitals in Northern California have cardiac catheterization labs.

1 catheterization services are available. When KAISER members, subscribers and/or patients, such
2 as DIPAOLA suffering from cardiac symptoms or heart attacks are seen at KAISER's community
3 general acute care hospitals, no efforts are made to divert or transfer such patients to a nearby
4 acute care hospital with a cardiac catheterization unit, especially when such facilities are not
5 owned by or affiliated with KAISER. In fact, it would be physically impossible, impracticable and
6 unfeasible to diagnose, treat, and then transfer a heart attack patient by ambulance from a KAISER
7 facility without a cardiac catheterization unit to another non-KAISER facility maintaining a
8 cardiac catheterization unit or to a KAISER cardiac catheterization laboratory within 90 minutes
9 from the entry of the patient into the emergency room door.

10 24. Recognizing that DIPAOLA was suffering a STEMI, that he needed to have an
11 angiogram performed to locate the blockages, that he needed to have angioplasty performed to
12 open the blockages, that KAISER Vacaville Medical Center lacked the facilities to offer
13 appropriate care and treatment to DIPAOLA, and that DIPAOLA would need to be transferred
14 emergently to another facility which had a cardiac catheterization laboratory as quickly as possible,
15 the staff at KAISER Vacaville Medical Center attempted to contact other KAISER facilities and to
16 locate a KAISER facility willing and able to accept DIPAOLA as a transfer patient. No attempts
17 were made to transfer DIPAOLA to a geographically closer non-KAISER hospital with a cardiac
18 catheterization unit, despite the fact that such facilities existed. No attempts were made to transfer
19 DIPAOLA to KAISER Sacramento, a tertiary care hospital with a cardiac catheterization unit.

20 25. An ambulance was summoned to KAISER Vacaville Medical Center and arrived to
21 transport DIPAOLA to another facility, but waited outside KAISER Vacaville Medical Center for
22 over a half an hour while arrangements were being made to transfer DIPAOLA from KAISER
23 Vacaville Medical Center to KAISER Vallejo Medical Center. KAISER Vallejo Medical Center
24 had a small cardiac catheterization lab, which was maintained only for the purposes of handling
25 emergency care cases and did not provide elective angiography or coronary surgery service to
26 KAISER members. KAISER Vallejo Medical Center was located at a distance of approximately
27 28 miles from KAISER Vacaville Medical Center.

28 26. On or about March 16, 2014, plaintiff DIPAOLA was transferred by ambulance

1 from KAISER Vacaville Medical Center to KAISER Vallejo Medical Center in order for him to
2 have emergency cardiac catheterization. By the time that DIPAOLA arrived at KAISER Vallejo
3 Medical Center, more than 90 minutes had already elapsed since he had entered the emergency
4 room at KAISER Vacaville Medical Center.

5 27. Although multiple lesions and occlusions of DIPAOLA's heart vessels were noted
6 by physicians at KAISER Vallejo Medical Center, unsuccessful attempts were made to open only
7 one of the lesions/occlusions suffered by DIPAOLA. When those attempts were unsuccessful, the
8 physicians at KAISER Vallejo Medical Center had no further non-palliative options to offer
9 DIPAOLA at KAISER Vallejo Medical Center, since there was no coronary care service available
10 at KAISER Vallejo Medical Center. KAISER Vallejo Medical Center maintained a cardiac
11 catheterization lab without cardiovascular surgery service, such that it was unable to offer its
12 patients cardiovascular operative procedures, such as coronary bypass surgery. Thus, although
13 KAISER Vallejo Medical Center physicians recognized that they had not been able to
14 revascularize DIPAOLA's vessels with angioplasty and that he therefore needed emergent
15 coronary bypass surgery, they were unable to offer him coronary bypass surgery, due to the lack of
16 facilities, staff, equipment and coronary service at KAISER Vallejo Medical Center and due to the
17 lack of expert and trained staff able to perform coronary bypass surgery at KAISER Vallejo
18 Medical Center.

19 28. The failure of KAISER Vallejo Medical Center to offer, maintain and provide
20 cardiovascular surgery services, such as coronary bypass surgery, a service commonly needed after
21 angioplasty is either unsuccessful or after angioplasty complications occur is and was intended,
22 designed and established by defendants, and each of them. Satellite facilities such as KAISER
23 Vallejo Medical Center were intended to feed their cardiovascular surgery service patients to
24 tertiary care centers such as KAISER's Permanente San Francisco Hospital, in order to save
25 KAISER money. The failure of KAISER Vallejo Medical Center to offer, maintain and provide
26 cardiovascular surgery services, such as coronary bypass surgery, a service commonly needed after
27 angioplasty is either unsuccessful or after angioplasty complications occur is and was violative of
28 California law. 22 CCR Section 70431 provides:

1 “Cardiovascular surgery service means the performance of
2 laboratory procedures for obtaining physiologic, pathologic and
3 angiographic data on patients, **and** cardiovascular operative
4 procedures, each supported by appropriate staff, space, equipment
5 and supplies. **It is the intent of this definition that the two**
6 **aspects of this service shall not exist separately.”**

7 (Emphasis added.) See, also 22 CCR Section 70433(d), requiring that “[t]he cardiovascular
8 surgical service shall be available at all times for emergencies” when a hospital maintains a cardiac
9 catheterization lab and provides cardiac catheterization services to its patients.

10 29. DIPAOLA is informed and believes and thereon alleges that KAISER Vallejo
11 Medical Center’s physicians who staffed its cardiac catheterization lab and who rendered care to
12 DIPAOLA were not appropriately qualified, experienced, trained and/or competent to perform
13 angiographic and/or cardiovascular surgery services and that they failed to meet the minimum
14 requirements of California law to perform such services. DIPAOLA is informed and believes and
15 thereon alleges that KAISER Vallejo Medical Center’s physicians who staffed its cardiac
16 catheterization lab and who rendered care to DIPAOLA failed to render PCI procedures in
17 sufficient numbers per year and failed to achieve successful angioplasty outcomes in a significant
18 number of the patients seen for that treatment in the year preceding DIPAOLA’s treatment at
19 KAISER Vallejo Medical Center, as recommended by the guidelines established by the American
20 College of Cardiology and the American Heart Association. DIPAOLA is informed and believes
21 and thereon alleges that KAISER Vallejo Medical Center’s cardiac catheterization lab which
22 rendered care to DIPAOLA was not supported by an adequate service base (as required by 22 CCR
23 Section 70433(c)), and otherwise failed to comply with the minimum standards of California law.

24 30. The physicians at KAISER Vallejo Medical Center determined that DIPAOLA
25 required coronary bypass surgery, but they could not provide such surgery, lacking the facilities,
26 expertise and support to perform such surgery at KAISER Vallejo Medical Center. Although
27 DIPAOLA should have been transferred emergently to KAISER San Francisco Center for
28 treatment, including possible coronary bypass surgery, KAISER San Francisco Medical Center

1 could not immediately accommodate the transfer, since it's facilities were full, it lacked sufficient
2 medical personnel to perform surgery and it otherwise was incapable of accepting DIPAOLA for
3 transfer on an emergent basis. By failing to ensure that cardiac surgery staff and facilities would
4 be "immediately available to the patient upon notification of an emergency", and by failing to
5 maintain a written transfer agreement under California Health & Safety Code Section 1255,
6 defendants, and each of them violated 22 CCR Section 70438.1(a). The staff and physicians at
7 KAISER Vallejo Medical Center further violated 22 CCR Section 70438.1(a), by failing and
8 refusing to transfer DIPAOLA to another non-KAISER facility for the provision of emergency
9 cardiovascular surgery in order to stabilize and treat DIPAOLA's emergency condition.

10 31. Because DIPAOLA could not be transferred to KAISER San Francisco Medical
11 Center on March 16, 2014 due to congestion at KAISER San Francisco Medical Center, he was
12 instead warehoused at KAISER Vallejo Medical Center until he could be transferred to KAISER
13 San Francisco Medical Center. For six days, DIPAOLA remained at KAISER Vallejo Medical
14 Center, while his condition deteriorated, without receiving necessary coronary care, treatment
15 and/or surgery. On March 22, 2014, DIPAOLA was finally transferred from KAISER Vallejo
16 Medical Center to KAISER San Francisco Medical Center. Initially, DIPAOLA was admitted to
17 the Intensive Care Unit, since the Coronary Care Unit was full. Later, he was moved to the
18 Coronary Care Unit to wait until the cardiac catheterization lab at KAISER San Francisco had
19 space for him to be seen. From the date of admission to KAISER San Francisco Medical Center to
20 the date that he was seen in the cardiac catheterization unit, a period of three days were lost
21 waiting for an opening in the cardiac catheterization lab.

22 32. As a result of the congestion of the cardiac catheterization laboratory at KAISER
23 San Francisco Medical Center, plaintiff DIPAOLA's treatment was again delayed. Defendants,
24 and each of them, designed a health maintenance system and cardiac care delivery system which
25 consciously deprives patients of necessary, time-sensitive and standard treatment at its general
26 acute care hospitals and then forces those patients to be transferred to its tertiary hospitals, such as
27 KAISER San Francisco Medical Center, where cardiac catheterization facilities and coronary
28 surgery services are available. Because coronary care patients, such as DIPAOLA, are funneled to

1 KAISER San Francisco Medical Center, undue pressure is placed upon the cardiac catheterization
2 unit at KAISER San Francisco Medical Center, resulting in undue and inappropriate delays,
3 queues, rationing, triage and in the failure of patients to obtain necessary and time-sensitive
4 cardiac care and treatment at KAISER San Francisco Medical Center, which unnecessarily puts
5 patient health and safety in jeopardy. Such delays result in unnecessary deaths or severe and
6 debilitating injuries to patients.

7 33. When DIPAOLA was finally seen in the cardiac catheterization laboratory at
8 KAISER San Francisco Medical Center on March 25, 2014 (nine days after he had been seen in
9 the emergency room at KAISER Vacaville Medical Center and nine days after he was admitted to
10 KAISER Vallejo Medical Center), angioplasty was successfully performed and three stents were
11 inserted into his arteries. The success of the angioplasty procedures, demonstrated that successful
12 angioplasty was possible and obviated the need for coronary bypass surgery. Despite this
13 treatment, however, as a result of the delays, negligence and substandard care offered him by
14 Defendants, DIPAOLA suffered permanent and irreversible heart damage and is now severely
15 disabled and debilitated. Further, while DIPAOLA was waiting for his arteries to be unblocked by
16 angioplasty and/or bypass surgery, he was at tremendous risk of having another heart attack which
17 could have resulted in his death.

18 34. As a proximate result of the delay in diagnosis and treatment of plaintiff
19 DIPAOLA and as a proximate result of the negligent acts and omissions of defendants, plaintiff
20 DIPAOLA was injured and damaged, sustaining permanent and irreparable heart damage and
21 chronic heart failure, rendering him permanently disabled and debilitated.

22 35. Defendants, and each of them, consciously and intentionally concealed the fact that
23 they did not maintain cardiac catheterization units and facilities, did not have interventional
24 cardiologists available to service their general acute care hospitals and did not have or maintain
25 cardiovascular surgery services at each and every general acute care hospital owned, operated,
26 maintained and managed by defendants. The absence of cardiac catheterization units and
27 facilities, lack of interventional cardiologists and absence of cardiac catheterization units and
28 facilities was not revealed in any of the literature distributed to DIPAOLA prior to his selection

1 and enrollment in KAISER, nor was it made known in advertisements, solicitations, commercials,
2 public relations campaigns or ad campaigns to the general public.

3 36. At no time did KAISER Vacaville Medical Center and/or KAISER Vallejo Medical
4 Center certify or provide any written verification that the transfer from one KAISER facility to
5 another KAISER facility was necessary, appropriate, not hazardous, or that the risks of such a
6 transfer were outweighed by the need for a transfer. The failure of defendants to transfer
7 DIPAOLA to the geographically closest facility or hospital which could offer cardiac
8 catheterization, angioplasty and/or bypass surgery and the transfers of the decedent to more distant
9 KAISER facilities were violative of various statutes, including, but not limited to 42 U.S.C. §
10 1395dd, *California Health & Safety Code* § 1317, *California Administrative Code* § 70431 *et seq.*
11 and *California Welfare & Institutions Code* § 15600 *et seq.*

12 **FIRST CAUSE OF ACTION:**

13 **FOR MEDICAL MALPRACTICE**

14 **IAS AGAINST DEFENDANTS KAISER FOUNDATION HOSPITALS,**

15 **THE PERMANENTE MEDICAL GROUP, INC. AND**

16 **DOES 1 THROUGH 50, INCLUSIVE ONLY**

17 37. In March 2014, and continuing thereafter, DIPAOLA consulted defendants
18 KAISER FOUNDATION HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC. and
19 DOES 1 through 50, and each of them, for medical examination, care, testing, and treatment
20 involving medical and surgical procedures at those defendants' facilities, offices and institutions.
21 Thereafter, the defendants, and each of them, did undertake to and did examine, diagnose, treat,
22 test, provide medical and surgical care, purportedly for the care of the DIPAOLA's condition.

23 38. The defendants KAISER FOUNDATION HOSPITALS, THE PERMANENTE
24 MEDICAL GROUP, INC. and DOES 1 through 50, and each of them, so negligently and
25 carelessly examined, diagnosed, operated, treated and furnished medical aids and materials, cared
26 for, tested and otherwise provided medical and surgical services and advice so as to directly,
27 proximately and legally cause permanent and irreparable injury and damages to DIPAOLA by,
28 among other things, failing to offer cardiac catheterization and other cardiac interventions, failing

1 to accurately diagnose DIPAOLA's condition, failing to monitor DIPAOLA's condition, failing to
2 perform necessary surgery, delaying the referral of DIPAOLA to appropriate specialists, allowing
3 DIPAOLA's condition to become serious and irreversible, and necessitating the DIPAOLA's
4 subsequent hospitalization for medical and surgical management and treatment of the condition
5 which arose.

6 39. That defendants KAISER FOUNDATION HOSPITALS, THE PERMANENTE
7 MEDICAL GROUP, INC. and DOES 1 through 50, and each of them, so negligently and
8 carelessly diagnosed and treated DIPAOLA so as to proximately cause irreversible and permanent
9 heart damage and other damages and injuries to DIPAOLA.

10 40. That defendants KAISER FOUNDATION HOSPITALS, THE PERMANENTE
11 MEDICAL GROUP, INC. and DOES 1 through 50, and each of them, so negligently and
12 carelessly examined, diagnosed, treated, prescribed and furnished medical care to the DIPAOLA,
13 that the DIPAOLA was required to, and did, consult with other physicians and surgeons, and was
14 hospitalized at subsequent hospitals and institutions, for the medical condition which arose as the
15 result of the negligent care and treatment of DIPAOLA, as more fully described hereinabove.

16 41. As a proximate result of the negligence of defendants KAISER FOUNDATION
17 HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC. and DOES 1 through 50, and each
18 of them, DIPAOLA, sustained serious bodily injuries. As a result of said injuries, DIPAOLA has
19 been permanently disabled, incapacitated and debilitated and has suffered various consequential
20 damages, including loss of earnings, loss of future earnings, loss of earning capacity, etc.

21 42. That as a further, direct and proximate result of the negligence, carelessness,
22 recklessness and lack of due care and prudence on the part of defendants KAISER FOUNDATION
23 HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC. and DOES 1 through 50, and each
24 of them, DIPAOLA was caused to retain the services and incur reasonable expenses for further
25 hospitalization, medical, surgical, nursing and technical care and treatment for said injuries
26 sustained, and did thereby incur additional medical expenses for drugs, pharmaceuticals and
27 medications, all in and amount presently unknown to DIPAOLA. Plaintiff will ask leave of this
28 Court to amend this Complaint when said sums have been ascertained, or according to proof at the

1 time of trial.

2 43. Prior to the institution of this action, defendants KAISER FOUNDATION
3 HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC. and DOES 1 through 50, and each
4 of them, were provided a notice of intent to file suit pursuant to *California Code of Civil*
5 *Procedure* § 364.

6 44. Prior to the filing of the within Complaint, a period of less than one calendar year
7 has not yet elapsed after DIPAOLA first learned, or had reasonable opportunity to learn, of the
8 facts that the injuries and damages suffered and complained of herein were the proximate result of
9 the negligent acts or omissions to act on the part of the defendants, and each of them. Further,
10 prior to the filing of the instant Complaint, defendants KAISER FOUNDATION HOSPITALS,
11 THE PERMANENTE MEDICAL GROUP, INC. and DOES 1 through 50, and each of them,
12 knew or should have known of their own negligence and the relationship between that negligence
13 and the DIPAOLA's injuries and failed negligently or intentionally to disclose those acts and
14 circumstances to DIPAOLA prior to the time that DIPAOLA had a reasonable opportunity to learn
15 of said negligent conduct and acts.

16 **SECOND CAUSE OF ACTION**

17 **FOR VIOLATION OF STATUTES (CALIFORNIA HEALTH & SAFETY**
18 **CODE § 1317 AND CALIFORNIA ADMINISTRATIVE CODE § 70431.)**

19 **[AS AGAINST ALL DEFENDANTS]:**

20 45. Plaintiff DIPAOLA repeats by reference and incorporates all previous paragraphs of
21 this complaint as if set forth in full and alleges:

22 46. At all times herein mentioned, DIPAOLA was a patient of defendants and/or a
23 member of defendants's health care service plan and was entitled to receive treatment, medical
24 advice, surgery and emergency care on those bases. At all relevant times, DIPAOLA's condition
25 was emergent and unstable, requiring that he be offered life-saving medical treatments, therapies,
26 surgeries and diagnostic testing. On or about March 16, 2014 and continuing thereafter,
27 DIPAOLA consulted defendants, and each of them, for examination, care, testing, and treatment.
28 Because DIPAOLA's condition was emergent and unstable, defendants had a legal duty to provide

1 treatment, medical advice, surgery, emergency care and diagnostics to DIPAOLA.

2 47. Each defendant had a duty to take such measures as were reasonably necessary to
3 ensure that DIPAOLA's emergency condition was stabilized, ameliorated and/or reversed before
4 discharging DIPAOLA from their care. Defendants, and each of them, had a duty to provide
5 emergency care to DIPAOLA, to stabilize his emergent condition and to take such action as could
6 be reasonably taken to prevent DIPAOLA's condition from worsening, progressing, and/or
7 deteriorating. Each defendant herein sued had a duty to treat the DIPAOLA as if he were a
8 KAISER member, without regard to his ability to pay for emergency services and without regard
9 to his financial or insured status. Such duties arose by virtue of *California Health & Safety Code* §
10 1317 *et seq.* and *California Administrative Code* § 70431 *et seq.*

11 48. Before DIPAOLA could be transferred from KAISER Vacaville Medical Center to
12 KAISER Vallejo Medical Center and/or from KAISER Vallejo Medical Center to KAISER San
13 Francisco Medical Center, each defendant had a duty to certify in writing that the transfer was
14 medically necessary, safe, would not jeopardize DIPAOLA's health or survival, would not expose
15 DIPAOLA to undue risk of loss of health or survival and would benefit the patient. Before
16 DIPAOLA could be transferred from KAISER Vacaville Medical Center to KAISER Vallejo
17 Medical Center and/or from KAISER Vallejo Medical Center to KAISER San Francisco Medical
18 Center, each defendant had a duty to certify in writing that DIPAOLA's medical condition and
19 status was stable for transfer and that his emergent condition had been ameliorated, reversed or
20 abated. Defendants, and each of them, had a duty to provide emergency care to DIPAOLA, to
21 stabilize his emergent condition and to take such action as could be reasonably taken to prevent
22 DIPAOLA's condition from worsening, progressing, and/or deteriorating. Each defendant herein
23 sued had a duty to treat DIPAOLA, without regard to his membership in KAISER and without
24 regard to his insurance status or his financial status and to transfer him to the most appropriate
25 facility able to offer DIPAOLA necessary medical care and attention which was geographically
26 most proximate to the transferring hospital. Such duties arose by virtue of *California Health &*
27 *Safety Code* § 1317 *et seq.* and *California Administrative Code* § 70431 *et seq.*

28 49. As a proximate result of the violation of *California Health & Safety Code* § 1317

1 and *California Administrative Code* § 70431 by defendants, and each of them, which acts were
2 intentional, wilful and knowing, DIPAOLA sustained serious bodily injuries and death. The
3 violation of *California Health & Safety Code* § 1317 and *California Administrative Code* § 70431
4 by defendants, and each of them, was wanton, willful and conscious and consciously disregarded
5 the safety, health and rights of DIPAOLA. The acts and omissions of defendants described herein
6 were intended by defendants to cause injury to DIPAOLA or were willful, intentional, fraudulent,
7 oppressive and despicable conduct carried on by defendants with a willful, callous and conscious
8 disregard of the rights, health and safety of DIPAOLA, subjecting DIPAOLA to cruel and unjust
9 hardship in conscious disregard of his rights, and were intentional misrepresentations, deceits or
10 concealment of material facts known to defendants with the intent to deprive DIPAOLA of his
11 right to receive emergent or urgent medical care, treatment and attention, or to otherwise cause
12 injury, such as to constitute malice, oppression, or fraud under *California Civil Code* § 3294.
13 Defendants were guilty of oppression, fraud and/or malice in their abandonment, discharges and
14 transfers of and failure and refusal to stabilize DIPAOLA.

15 50. The statutory violations of EMTALA committed by defendants, and each of them,
16 were wanton, willful and conscious and consciously disregarded the safety, health and rights of the
17 DIPAOLA. The acts and omissions of defendants described herein were intended by defendants to
18 cause injury to DIPAOLA or were willful, intentional, fraudulent, oppressive and despicable
19 conduct carried on by defendants with a willful, callous and conscious disregard of the rights,
20 health and safety of DIPAOLA, subjecting DIPAOLA to cruel and unjust hardship in conscious
21 disregard of his rights, and were intentional misrepresentations, deceits or concealment of material
22 facts known to defendants with the intent to deprive DIPAOLA of his right to receive emergent or
23 urgent medical care, treatment and attention, or to otherwise cause injury, such as to constitute
24 malice, oppression, or fraud under *California Civil Code* § 3294, thereby entitling DIPAOLA to
25 punitive damages in an amount appropriate to punish or set an example of defendants. Defendants
26 were guilty of oppression, fraud and/or malice in their abandonment, discharges, and transfers of
27 DIPAOLA. Further the acts and omissions which give rise to punitive damages were known of in
28 advance, sanctioned, approved, ratified, adopted, authorized, or committed by officers, directors or

1 managing agents of the defendants, and each of them.

2 51. That as a further, direct and proximate result of the discharges and transfers of
3 DIPAOLA by defendants, and each of them, DIPAOLA was caused, to retain the services of other
4 physicians and medical professionals and to incur reasonable expenses for further hospitalization,
5 medical, surgical, nursing and technical care and treatment and thereby incurred additional medical
6 expenses for drugs, pharmaceuticals and medications, all in and amount presently unknown to
7 DIPAOLA. Plaintiff will ask leave of this Court to amend this Complaint when said sums have
8 been ascertained, or according to proof at the time of trial.

9 52. That as a further, direct and proximate result of the violations of *California Health*
10 *& Safety Code* § 1317 and *California Administrative Code* § 70431 by defendants and each of
11 them, DIPAOLA lost his life. Had appropriate and necessary medical care, intervention and
12 treatment been offered to DIPAOLA, DIPAOLA would have survived his heart attack. The failure
13 and refusal of defendants to offer necessary and life-saving care and treatment was motivated by
14 financial concerns and by the uninsured status of DIPAOLA.

15 **THIRD CAUSE OF ACTION**
16 **FOR EMTALA VIOLATIONS OF EMTALA**
17 **[AS AGAINST ALL DEFENDANTS]:**

18 53. Plaintiff repeats by reference and incorporates all previous paragraphs of this
19 complaint as if set forth in full.

20 54. At all relevant time, DIPAOLA was a patient and/or member of defendants who
21 suffered an emergent condition and was entitled to receive treatment, medical advice, surgery,
22 therapeutic and diagnostic care and emergency care. At all times mentioned herein, DIPAOLA's
23 condition was emergent and unstable, requiring that he be offered life-saving medical treatments,
24 therapies, surgeries and diagnostic testing in a time sensitive fashion as soon as reasonably
25 practicable. On or about March 16, 2014 and continuing thereafter, DIPAOLA consulted
26 defendants KAISER FOUNDATION HOSPITALS, THE PERMANENTE MEDICAL GROUP,
27 INC. and DOES 1 through 50, and each of them for examination, care, testing, and treatment. On
28 or about March 16, 2014 and continuing thereafter, DIPAOLA was a member, enrollee, insured

1 and eligible subscriber of KAISER's healthcare service plan and was insured by defendants
2 KAISER FOUNDATION HEALTH PLAN, INC., KAISER PERMANENTE INSURANCE
3 COMPANY, and DOES 1 through 50, Inclusive. Because DIPAOLA's condition was emergent
4 and unstable, defendants had a legal duty to provide treatment, medical advice, surgery, emergency
5 care and diagnostics to DIPAOLA. Because DIPAOLA's condition was emergent and unstable,
6 defendants had a legal duty to provide treatment, medical advice, surgery, emergency care and
7 diagnostics to DIPAOLA, without regard to his insurance status, KAISER membership or
8 KAISER affiliation. Because DIPAOLA's condition was emergent and unstable and because
9 KAISER Vacaville Medical Center and KAISER Vallejo Medical Center lacked the facilities and
10 capabilities of treating DIPAOLA's emergent and unstable medical condition, defendants had a
11 legal duty to transfer DIPAOLA to appropriate and the most geographically proximate medical
12 facilities, including facilities not owned or affiliated with KAISER, without regard to his insurance
13 status, KAISER membership or KAISER affiliation.

14 55. Each defendant had a duty to take such measures as were reasonably necessary to
15 ensure that DIPAOLA's emergency condition was stabilized, ameliorated and/or reversed before
16 discharging DIPAOLA from their care or to ensure that if his condition could not be stabilized he
17 would be transferred to the most appropriate and most geographically proximate medical facility
18 that could provide emergency stabilization and treatment. Defendants, and each of them, had a
19 duty to provide emergency care to DIPAOLA, to stabilize his emergent condition and to take such
20 action as could be reasonably taken to prevent DIPAOLA's condition from worsening,
21 progressing, and/or deteriorating. Each defendant herein sued had a duty to treat the DIPAOLA
22 without regard to his ability to pay for emergency services and without regard to his financial or
23 insured status. Such duties arose by virtue of EMTALA, 42 U.S.C. § 1395dd et seq.

24 56. Before DIPAOLA could be transferred from KAISER Vacaville Medical Center
25 and KAISER Vallejo Medical Center, each defendant had a duty to certify in writing that the
26 transfer was medically necessary, safe, would not jeopardize DIPAOLA's health or survival,
27 would not expose DIPAOLA to undue risk of loss of health or survival and would benefit the
28 patient. Before DIPAOLA could be transferred from KAISER Vacaville Medical Center and

1 KAISER Vallejo Medical Center, each defendant had a duty to certify in writing that DIPAOLA's
2 medical condition and status were stable for transfer, that his emergent condition had been
3 ameliorated, reversed or abated or that the transfer to another facility/hospital for emergency
4 treatment and/or stabilization was the most appropriate transfer and would expose DIPAOLA to
5 the least amount of risk, hazard and provide DIPAOLA with the best option for emergency
6 treatment and stabilization. Defendants, and each of them, had a duty to provide emergency care
7 to DIPAOLA, to stabilize his emergent condition and to take such action as could be reasonably
8 taken to prevent DIPAOLA's condition from worsening, progressing, and/or deteriorating. Each
9 defendant herein sued had a duty to treat DIPAOLA, without regard to his ability to pay for
10 emergency services and without regard to his financial or insured status. Such duties arose by
11 virtue of EMTALA, 42 U.S.C. § 1395dd et seq.

12 56. Defendants and each of them by design and intent, established, maintained and
13 systematically implemented a program by which a handful of KAISER emergency rooms and
14 hospitals throughout the State of California were equipped and manned with cardiac
15 catheterization labs, offered coronary surgery services and had interventional cardiologists and
16 coronary surgeons on staff or on call. Defendants, and each of them, systematically created a
17 system by which most KAISER emergency rooms and hospitals did not have cardiac
18 catheterization labs, did not offer coronary surgery services, did not have interventional
19 cardiologists and coronary surgeons on staff or on call and did not and could not provide or offer
20 appropriate and standard of care emergency stabilization to patients suffering from myocardial
21 infarctions.

22 56. Defendants and each of them by design and intent, established, maintained and
23 systematically implemented a program by which they deprived their members and the public at
24 large of the ability to obtain appropriate and standard of care emergency stabilization for those
25 suffering from myocardial infarctions from most of their emergency rooms and hospitals in the
26 State of California. Defendants and each of them by design and intent, established, maintained
27 and systematically implemented a program by which patients suffering from myocardial
28 infarctions would be transferred from KAISER facilities lacking cardiac catheterization labs and

1 coronary surgery services to other KAISER facilities which did have such cardiac catheterization
2 labs and coronary surgery services, but which were not the most geographically proximate
3 facilities nearest the transferring KAISER facilities and which were not facilities owned, operated
4 and/or affiliated with KAISER. This system was inherently and existentially violative of both the
5 Federal and California laws known as EMTALA.

6 57. As a proximate result of the violation of EMTALA by defendants, and each of
7 them, which acts were intentional, wilful and knowing, DIPAOLA sustained serious bodily
8 injuries and death. The violation of EMTALA by defendants, and each of them, was wanton,
9 willful and conscious and consciously disregarded the safety, health and rights of DIPAOLA. The
10 acts and omissions of defendants described herein were intended by defendants to cause injury to
11 DIPAOLA and the general public or were willful, intentional, fraudulent, oppressive and
12 despicable conduct carried on by defendants with a willful, callous and conscious disregard of the
13 rights, health, safety and life of DIPAOLA and the general public, subjecting DIPAOLA and the
14 general public to cruel and unjust hardship in conscious disregard of his rights, and were
15 intentional misrepresentations, deceptions or concealment of material facts known to defendants with
16 the intent to deprive DIPAOLA of his right to receive emergent or urgent medical care, treatment
17 and attention, or to otherwise cause injury, such as to constitute malice, oppression, or fraud under
18 California Civil Code § 3294. Defendants were guilty of oppression, fraud and/or malice in their
19 abandonment, transfers and discharges of, and failures to stabilize DIPAOLA.

20 58. That as a further, direct and proximate result of the abandonment, transfers and
21 discharges of, and failures to stabilize DIPAOLA by defendants, and each of them, DIPAOLA was
22 caused, to retain the services of other physicians and medical professionals and to incur reasonable
23 expenses for further hospitalization, medical, surgical, nursing and technical care and treatment
24 and thereby incurred additional medical expenses for drugs, pharmaceuticals and medications, all
25 in and amount presently unknown to plaintiffs. Plaintiffs will ask leave of this Court to amend this
26 Complaint when said sums have been ascertained, or according to proof at the time of trial.

27 59. That as a further, direct and proximate result of the violations of EMTALA by
28 defendants and each of them, DIPAOLA suffered permanent and irreversible heart damage,

1 became incapacitated, disabled and debilitated and suffered other damages and medical injuries.
2 Had appropriate and necessary medical care, intervention and treatment been offered to
3 DIPAOLA, DIPAOLA would have minimized the damage to his heart and would not have
4 suffered the injuries and damages complained of herein. The failure and refusal of defendants to
5 offer necessary and life-saving care and treatment was motivated by financial concerns and by the
6 insured status of DIPAOLA.

7 **FOURTH CAUSE OF ACTION**

8 **FOR NEGLIGENCE *PER SE***

9 **[AS AGAINST ALL DEFENDANTS]:**

10 60. Plaintiff DIPAOLA repeats by reference and incorporates all previous paragraphs of
11 this complaint as if set forth in full and alleges:

12 61. At all times herein mentioned, DIPAOLA was a patient of KAISER and was
13 entitled to receive treatment, medical advice, surgery and emergency care. At all times mentioned
14 herein, DIPAOLA's condition was emergent and unstable, requiring that he be offered life-saving
15 medical treatments, therapies, surgeries and diagnostic testing. On or about August 21, 2005 and
16 continuing thereafter, DIPAOLA consulted defendants, and each of them, for examination, care,
17 testing, and treatment. Because DIPAOLA's condition was emergent and unstable, defendants had
18 a legal duty to provide treatment, medical advice, surgery, emergency care and diagnostics to
19 DIPAOLA.

20 62. Each defendant had a duty to take such measures as were reasonably necessary to
21 ensure that DIPAOLA's emergency condition was stabilized, ameliorated and/or reversed before
22 discharging or transferring DIPAOLA from their care. Defendants, and each of them, had a duty
23 to provide emergency care to DIPAOLA, to stabilize his emergent condition and to take such
24 action as could be reasonably taken to prevent DIPAOLA's condition from worsening,
25 progressing, and/or deteriorating. Each defendant herein sued had a duty to treat the DIPAOLA as
26 if he were a KAISER member, without regard for his ability to pay for emergency services and
27 without regard for his financial or insured status. Such duties arose by virtue of *California Health*
28 *& Safety Code § 1317 et seq.* and *California Administrative Code § 70431 et seq.* and by virtue of

1 EMTALA, 42 U.S.C. § 1395dd.

2 63. Each of the statutes herein mentioned was intended to prevent, prohibit and
3 preclude the type of harm suffered by DIPAOLA. Each of the statutes herein mentioned was
4 intended to prevent, prohibit and preclude defendants from failing and refusing to offer emergent
5 care, medical services and life supporting therapies to the public at large and to DIPAOLA in
6 particular. Each of the statutes herein mentioned was intended to prevent, prohibit and preclude
7 defendants, and each of them, from transferring DIPAOLA to another hospital or institution until
8 his condition was stable and until sufficient care, treatment and therapies had been offered
9 DIPAOLA to prolong his life and prevent his death.

10 64. DIPAOLA was a member of the class of persons to be protected by these statutes,
11 since he was a patient suffering an emergency condition and required medical services, treatments,
12 surgeries, diagnostics and other therapies to treat that emergency condition. Defendants and each
13 of them were regulated by California law and were and are Medicare licensees, receiving funding
14 from the Federal Government to provide care, treatment and therapy to Medicare enrollees.

15 65. Before DIPAOLA could be transferred from KAISER Vacaville Medical Center to
16 KAISER Vallejo Medical Center and/or from KAISER Vallejo Medical Center to KAISER San
17 Francisco Medical, each defendant had a duty to certify in writing that the transfer was medically
18 necessary, safe, would not jeopardize DIPAOLA's health or survival, would not expose DIPAOLA
19 to undue risk of loss of health or survival and would benefit the patient. Before DIPAOLA could
20 be transferred from KAISER Vacaville Medical Center to KAISER Vallejo Medical Center and/or
21 from KAISER Vallejo Medical Center to KAISER San Francisco Medical, each defendant had a
22 duty to certify in writing that DIPAOLA's medical condition and status were stable for transfer
23 and that his emergent condition had been ameliorated, reversed or abated. Defendants, and each of
24 them, had a duty to provide emergency care to DIPAOLA, to stabilize his emergent condition and
25 to take such action as could be reasonably taken to prevent DIPAOLA's condition from worsening,
26 progressing, and/or deteriorating. Each defendant herein sued had a duty to treat the DIPAOLA as
27 if he were a KAISER member, without regard for his ability to pay for emergency services and
28 without regard for his financial or insured status. Such duties arose by virtue of *California Health*

1 & *Safety Code* § 1317 *et seq.* and *California Administrative Code* § 70431 *et seq* as well as
2 EMTALA 42 U.S.C. § 1395dd.

3 66. As a proximate result of the violation of *California Health & Safety Code* § 1317,
4 *California Administrative Code* § 70431 and 42 U.S.C. § 1395dd by defendants and of the
5 breaches of defendants' duties to DIPAOLA, which acts were intentional, wilful and knowing,
6 DIPAOLA sustained serious bodily injuries and death. Defendants' violations of *California*
7 *Health & Safety Code* § 1317, *California Administrative Code* § 70431 and 42 U.S.C. § 1395dd
8 were wanton, willful and conscious and consciously disregarded the safety, health and rights of
9 DIPAOLA. The acts and omissions of defendants described herein were intended by defendants to
10 cause injury to DIPAOLA or were willful, intentional, fraudulent, oppressive and despicable
11 conduct carried on by defendants with a willful, callous and conscious disregard of the rights,
12 health and safety of DIPAOLA, subjecting DIPAOLA to cruel and unjust hardship in conscious
13 disregard of his rights, and were intentional misrepresentations, deceptions or concealment of material
14 facts known to defendants with the intent to deprive DIPAOLA of his right to receive emergent or
15 urgent medical care, treatment and attention, or to otherwise cause injury, such as to constitute
16 malice, oppression, or fraud under *California Civil Code* § 3294. Defendants were guilty of
17 oppression, fraud and/or malice in their abandonment of DIPAOLA.

18 67. That as a further, direct and proximate result of the abandonment of DIPAOLA by
19 defendants, and each of them, DIPAOLA was caused, to retain the services of other physicians and
20 medical professionals and to incur reasonable expenses for further hospitalization, medical,
21 surgical, nursing and technical care and treatment and thereby incurred additional medical
22 expenses for drugs, pharmaceuticals and medications, all in and amount presently unknown to
23 DIPAOLA. Plaintiff will ask leave of this Court to amend this Complaint when said sums have
24 been ascertained, or according to proof at the time of trial.

25 68. That as a further, direct and proximate result of the violations of *California Health*
26 & *Safety Code* § 1317 and *California Administrative Code* § 70431 by defendants and each of
27 them, DIPAOLA lost his life. Had appropriate and necessary medical care, intervention and
28 treatment been offered to DIPAOLA, DIPAOLA would have survived his heart attack. The failure

1 and refusal of defendants to offer necessary and life-saving care and treatment was motivated by
2 financial concerns and by the uninsured status of DIPAOLA.

3 **FIFTH CAUSE OF ACTION**
4 **FOR TORTIOUS BREACH OF THE COVENANT OF**
5 **GOOD FAITH AND FAIR DEALING)**
6 **[AS AGAINST KAISER FOUNDATION HEALTH PLAN, INC., KAISER**
7 **PERMANENTE INSURANCE COMPANY, AND DOES 1**
8 **THROUGH 50, INCLUSIVE ONLY]**

9 69. DIPAOLA hereby incorporates each and every paragraph of the balance of the
10 Complaint as though fully set forth in this cause of action.

11 70. Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER
12 PERMANENTE INSURANCE COMPANY, AND DOES 1 through 50, inclusive, and each of
13 them, have tortiously breached their duty of good faith and fair dealing owed to DIPAOLA in the
14 following respects:

15 (a) By unreasonable and bad faith failures to arrange for and provide ready and
16 timely access to coronary care services, including but not limited to angiography, angioplasty, PCI,
17 coronary surgery services, and cardiac rehabilitation services to DIPAOLA, which services were
18 known to defendants to be covered, medically necessary, medically appropriate, standard of care
19 and otherwise appropriate at a time when defendants knew that DIPAOLA was entitled to them
20 under the terms of KAISER's insurance plans, policies and/or evidence of coverage documents
21 and insuring contracts;

22 (b) By depriving DIPAOLA of ready and timely access to coronary care
23 services, including but not limited to angiography, angioplasty, PCI, coronary surgery services,
24 and cardiac rehabilitation services to DIPAOLA, which services were known to defendants to be
25 covered, medically necessary, medically appropriate, standard of care and otherwise appropriate at
26 a time when defendants knew that DIPAOLA was entitled to them under the terms of KAISER's
27 insurance plans, policies and/or evidence of coverage documents and insuring contracts;

28 (c) By withholding timely access to coronary care services, including but not

1 limited to angiography, angioplasty, PCI, coronary surgery services, and cardiac rehabilitation
2 services from DIPAOLA and failing and refusing to transfer DIPAOLA to the most geographically
3 proximate treatment facility that could offer such services to him, irrespective of DIPAOLA's
4 KAISER eligibility and coverage, membership and/or affiliation with KAISER.

5 (d) By unreasonably and in bad faith misrepresenting to DIPAOLA pertinent
6 facts and insurance Policy provisions relating to the coverage in issue;

7 (e) By unreasonably concealing the fact that it did not offer coronary care and
8 treatment such as PCI and coronary surgery services at most of its hospitals, emergency rooms and
9 facilities and by promoting itself falsely as offering such services at all facilities and hospitals to
10 all KAISER members;

11 (f) Unreasonable and bad faith misrepresentation to DIPAOLA of the law
12 applicable to DIPAOLA's claims;

13 (g) Unreasonable and bad faith failure to adhere to applicable law in establishing
14 its system of providing coronary care and treatment, transferring heart attack patients, and refusing to
15 transfer heart attack patients to non-KAISER; and

16 (h) Unreasonably promoting itself as providing comprehensive care, treatment,
17 specialist services, coronary care services and/or ready and timely access to such services and
18 treatments throughout the State of California.

19 71. DIPAOLA is informed and believes and thereon alleges that Defendants KAISER
20 FOUNDATION HEALTH PLAN, INC., KAISER PERMANENTE INSURANCE COMPANY,
21 and DOES 1 through 50, inclusive, and each of them have breached their duty of good faith and
22 fair dealing owed to DIPAOLA by other acts or omissions of which DIPAOLA is presently
23 unaware. DIPAOLA will seek leave of this Court to amend this Complaint at such time as he
24 discovers the other acts or omissions of Defendants KAISER FOUNDATION HEALTH PLAN,
25 INC., KAISER PERMANENTE INSURANCE COMPANY, and DOES 1 through 50, inclusive,
26 and each of them, constituting further breach of his contract.

27 72. As a proximate result of the aforementioned wrongful conduct of the defendant,
28 DIPAOLA has suffered, and will continue to suffer in the future, damages under the Policy, plus

1 interest, for a total amount to be shown at the time of trial.

2 73. As a further proximate result of the aforementioned wrongful conduct of
3 Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER PERMANENTE
4 INSURANCE COMPANY, and DOES 1 through 50, inclusive, and each of them. DIPAOLA has
5 suffered, and will continue to suffer, anxiety, worry, mental and emotional distress, and other
6 incidental damages and out-of-pocket expenses, all to DIPAOLA's general damages in a sum to be
7 determined at the time of trial.

8 74. As a further proximate result of the aforementioned wrongful business practices
9 and conduct of Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER
10 PERMANENTE INSURANCE COMPANY, and DOES 1 through 50, inclusive, and each of
11 them, DIPAOLA was compelled to retain legal counsel to obtain the benefits due under the Policy.
12 Therefore, Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER
13 PERMANENTE INSURANCE COMPANY, and DOES 1 through 50, inclusive, and each of them
14 are liable to DIPAOLA for those attorney fees incurred by him in order to obtain the benefits under
15 the Policy in a sum to be determined at the time of trial.

16 75. The business practices and conduct described herein were intended to cause injury
17 to DIPAOLA or were despicable conduct carried on by the defendant with a willful and conscious
18 disregard of the rights of DIPAOLA, subjecting DIPAOLA to cruel and unjust hardship in
19 conscious disregard of DIPAOLA's rights, and were intentional misrepresentations, deceit or
20 concealment of material facts known to Defendants KAISER FOUNDATION HEALTH PLAN,
21 INC., KAISER PERMANENTE INSURANCE COMPANY, and DOES 1 through 50, inclusive,
22 and each of them with the intent to deprive DIPAOLA of property, legal rights, or to otherwise
23 cause injury, such as to constitute malice, oppression, or fraud under California Civil Code §3294,
24 thereby entitling DIPAOLA to punitive and/or exemplary damages in an amount appropriate to
25 punish and/or set defendant as an example.

26 ///

27 ///

28 ///

SIXTH CAUSE OF ACTION
FOR HMO NEGLIGENCE (CALIFORNIA CIVIL CODE SECTION 3428)
[AS AGAINST KAISER FOUNDATION HEALTH PLAN, INC., KAISER
PERMANENTE INSURANCE COMPANY, AND DOES 1
THROUGH 50, INCLUSIVE ONLY]

76. DIPAOLA hereby incorporates each and every paragraph of the balance of the Complaint as though fully set forth in this cause of action.

77. As a health care service plan and/or managed care entity and a fully-integrated health maintenance organization, defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER PERMANENTE INSURANCE COMPANY, and DOES 1 THROUGH 50, inclusive, and each of them, owed DIPAOLA and its membership, subscribers and enrollees a duty of ordinary care to arrange for the provision of medically necessary health care services, including, but not limited to, the provision of cardiac catheterization procedures, angiogram procedures, coronary surgery services, coronary rehabilitation services, etc., all of which services and treatments were covered benefits under KAISER's plan. As a health care service plan and/or managed care entity and a fully-integrated health maintenance organization, defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER PERMANENTE INSURANCE COMPANY, and DOES 1 THROUGH 50, inclusive, and each of them, owed DIPAOLA and its membership, subscribers and enrollees a duty of ordinary care to arrange for and provide ready and timely access to coronary care services for the treatment of heart attacks, including but not limited to, the provision of cardiac catheterization procedures, angiogram procedures, coronary surgery services, coronary rehabilitation services, etc.

78. Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER PERMANENTE INSURANCE COMPANY, and DOES 1 THROUGH 50, inclusive, and each of them, breached their duty of care as more particularly described in this complaint. As such those defendants are liable to DIPAOLA for any and all harm legally and proximately caused by their failure to exercise that ordinary care, since:

(a) The failure to exercise ordinary care resulted in the denial, delay, or modification of

1 health care service recommended for, or furnished to DIPAOLA; and

2 (b) DIPAOLA suffered substantial harm.

3 79. Defendants KAISER FOUNDATION HEALTH PLAN, INC., KAISER
4 PERMANENTE INSURANCE COMPANY, and DOES 1 THROUGH 50, inclusive, and each of
5 them, breached their duties and violated California Civil Code Section 3428, such that they are
6 liable for all of the damages proximately caused by their failure to exercise ordinary care.

7 80. The business practices and conduct described herein were intended to cause injury
8 to DIPAOLA or were despicable conduct carried on by the defendant with a willful and conscious
9 disregard of the rights of DIPAOLA, subjecting DIPAOLA to cruel and unjust hardship in
10 conscious disregard of DIPAOLA's rights, and were intentional misrepresentations, deceit or
11 concealment of material facts known to Defendants KAISER FOUNDATION HEALTH PLAN,
12 INC., KAISER PERMANENTE INSURANCE COMPANY, and DOES 1 through 50, inclusive,
13 and each of them with the intent to deprive DIPAOLA of property, legal rights, or to otherwise
14 cause injury, such as to constitute malice, oppression, or fraud under California Civil Code §3294,
15 thereby entitling DIPAOLA to punitive and/or exemplary damages in an amount appropriate to
16 punish and/or set defendant as an example.

17 **SEVENTH CAUSE OF ACTION**

18 **FOR UNLAWFUL AND UNFAIR BUSINESS PRACTICES AND ACTS**

19 **(CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.)**

20 **[AS AGAINST ALL DEFENDANTS]:**

21 81. Plaintiff DIPAOLA repeats by reference and incorporates all previous paragraphs of
22 this complaint as if set forth in full and alleges:

23 82. *Business & Professional Code § 17200 et seq.* prohibits business acts or practices
24 that are unlawful, unfair or fraudulent.

25 83. Defendants, and each of them, engaged in at least one of the following unlawful
26 business acts and practices in their relationship and dealings with DIPAOLA:

27 (a) Defendants discharged DIPAOLA from KAISER Vacaville Medical Center and
28 KAISER Vallejo Medical Center and transferred him to other KAISER facilities, bypassing other

1 non-KAISER facilities who were capable of treating and accommodating DIPAOLA's emergent
2 and unstable medical condition, based upon his insurance status and his membership in KAISER;

3 (b) Defendants discharged DIPAOLA from KAISER Vacaville Medical Center and
4 KAISER Vallejo Medical Center and transferred him to other KAISER facilities before
5 DIPAOLA's condition had been stabilized or treated, while DIPAOLA was in an emergent state;

6 (c) Defendants and each of them failed and refused to offer necessary medical
7 treatments, surgeries, diagnostics and therapies to DIPAOLA because of he was a KAISER
8 member, enrollee and insured;

9 (d) Defendants falsely represented that they would provide and render cardiac care to
10 DIPAOLA, including cardiac catheterization, angioplasty or bypass surgery, that DIPAOLA
11 needed such treatment and that he would receive such treatment, thereby preventing DIPAOLA
12 from obtaining such necessary and life-sustaining treatment from other hospitals which could have
13 provided such medical services and could have prevented DIPAOLA from suffering permanent
14 and irreversible cardiac damage;

15 (e) Defendants discriminated against DIPAOLA on the basis of his financial ability to
16 pay for necessary and emergent medical care and treatment in violation of various Federal and
17 State statutes;

18 (j) Defendants engaged in numerous other acts which constituted acts of unfair
19 competition.,

20 84. Defendants' conduct as described in this Complaint has been immoral, unethical,
21 oppressive and unscrupulous.

22 85. Defendants' unlawful and unfair business practices respecting DIPAOLA, as
23 described above, were not isolated acts or practices, but are typical of the manner in which
24 defendants evaluate, treat, care for, and discharge other patients who are KAISER members and
25 who arrive in KAISER emergency rooms seeking and requiring emergency medical services and
26 treatments. Unless enjoined by this Court, defendants are likely to continue to engage in such
27 unlawful and unfair acts and practices.

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, DIPAOLA prays for judgment against the defendants, and each of them, as
3 follows:

4 **FOR THE FIRST, SECOND, THIRD, FOURTH, FIFTH AND SIXTH CAUSES OF**
5 **ACTION BY PLAINTIFF JOSEPH DIPAOLA:**

- 6 1. For general damages according to proof;
- 7 2. For past and future medical expenses, according to proof;
- 8
- 9 3. For loss of earnings, loss of earning capacity, future loss of earnings and lost
10 benefits, according to proof;
- 11 4. For prejudgment interest pursuant to C.C.P. § 3288;
- 12 5. For special and compensatory damages in an amount to be proven at trial;
- 13 6. For costs of suit incurred herein;
- 14 7. For such other and further relief as the Court deems just and proper.

15 **FOR THE SEVENTH CAUSE OF ACTION ONLY:**

- 16 3. For special and compensatory damages in an amount to be proven at trial;
- 17 4. For restitution as a result of Defendant's unlawful and unfair business practices;
- 18 5. For reasonable attorneys' fees;
- 19 6. For injunctive relief, and for an Order enjoining defendants, and their agents,
20 servants, employees, partners, associates, officers, representatives, and all persons acting under or
21 in concert with or for them, from committing the unlawful or unfair business acts and practices
22 alleged above and an Order that they comply with all laws and regulations regarding the transfer of
23 emergency patients and regarding the provision of emergency medical services to patients
24 suffering medical emergencies;
- 25 7. For costs of suit incurred herein;
- 26 8. For such other and further relief as the Court deems just and proper.

27 **FOR THE SECOND, FOURTH, FIFTH, AND SIXTH CAUSES OF ACTION ONLY:**

- 28 1. For general damages according to proof.

1 2. For punitive or exemplary damages.²

2 DATED: June 10, 2015

LAW OFFICES OF GARY L. TYSCH

3

4

By: Gary L. Tysch
GARY L. TYSCH
Attorneys for Plaintiff JOSEPH DIPAOLA

5

6

7

8

DEMAND FOR JURY TRIAL

9

Plaintiff hereby demands a trial by jury.

10

DATED: June 10, 2015

LAW OFFICES OF GARY L. TYSCH

11

12

By: Gary L. Tysch
GARY L. TYSCH
Attorneys for Plaintiff JOSEPH DIPAOLA

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

² Plaintiff DIPAOLA reserves the right to assert claims for punitive and exemplary damages in addition to the damages herein alleged, related to the Second, Third, Fourth, Seventh and Eighth causes of action, pursuant to C.C.P. § 425.13.