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VICTOR VALLEY GLOBAL MEDICAL CENTER, INC.

ORIGINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CIVDS1830372

VICTOR VALLEY GLOBAL MEDICAL CENTER, INC., a California corporation, Plaintiff, vs. KAISER FOUNDATION HOSPITALS, a California Corporation; KAISER FOUNDATION HEALTH PLAN, INC., a California Corporation; and DOES 1 through 100, inclusive, Defendants.	CASE NO.: _____ Assigned for all purposes to: #1475. 181121-0848-0847 **COMPLAINT FOR DAMAGES FOR:** **1. BREACH OF IMPLIED CONTRACT** **2. QUANTUM MERUIT** **3. RESTITUTION** **4. ACCOUNT STATED** **5. INTENTIONAL VIOLATION OF DUTY TO PAY FOR EMERGENCY MEDICAL SERVICES** **6. INJUNCTIVE AND EQUITABLE RELIEF UNDER BUSINESS AND PROFESSIONS CODE § 17200** **7. DECLARATORY RELIEF**

For causes of action against defendants KAISER FOUNDATION HOSPITALS ("KF HOSPITALS"), KAISER FOUNDATION HEALTH PLAN, INC. ("KF PLAN") (collectively "KAISER") and DOES 1-100, inclusive, and each of them (collectively "DEFENDANTS"), plaintiff VICTOR VALLEY GLOBAL MEDICAL CENTER, INC. ("VVGMC") alleges:

PARTIES, JURISDICTION AND VENUE

1. VVGMC is, and at all times herein mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of California. VVGMC's offices are in Victorville, California. As more particularly described below, VVGMC operates an acute medical care facility at 15248 Eleventh Street, Victorville, California 92395-3704.

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

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

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

5. VVGMC sues defendants Does 1 through 100, inclusive, by fictitious names. VVGMC does so because VVGMC is presently unaware of the true names or capacities of DOES 1 through 100 or, alternatively, is unaware of the precise roles these fictitiously named defendants played in carrying out the wrongdoing described herein. VVGMC is informed and believes, and thereon alleges, DOES 51 through 100, inclusive, and each of them, somehow participated in, were unjustly enriched or benefitted by, or otherwise received or retained benefit

via the wrongful, inequitable and/or unlawful acts described herein. When the true names, capacities or facts establishing the fictitiously named defendants' identities and/or culpability are ascertained, VVGMC will amend this complaint to so specify. For now, VVGMC is informed and believes, and thereon alleges, that each fictitiously named defendant is responsible in some manner, means or degree for the events, occurrences, damages and harm described herein and proximately caused, or materially contributed to the proximate cause of, VVGMC's damages.

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

GENERAL ALLEGATIONS

7. VVGMC is a "health facility" and a "general acute care hospital" licensed in California pursuant to Health and Safety Code section 1250 *et seq*. VVGMC provides the High Desert communities with high quality, professional, and cost-effective healthcare services, including providing emergency services to thousands of patients per year. Today, with its 101-licensed bed facility, VVGMC provides comprehensive services through its Emergency Department, Respiratory Therapy program, Pediatric Department and Maternal Child Health Delivery Land program, which was ranked in the top 10% in the Nation for Obstetrics and Gynecology in 2017.

8. VVGMC receives, among others, emergency patients in and around San Bernardino County based on the patients' location, assessed need and proximity to facilities

offering the required level of care. VVGMC does not control the inflow of such patients; VVGMC is informed and believes, and thereon alleges, the County of San Bernardino, through its administration of the County's Emergency Medical Services system, and individual patients, exercise such control.

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

10. As stated above, KAISER is subject to the Knox-Keene Act and related regulations on healthcare services plans and their capitated providers. Healthcare service plans are governed by the Knox-Keene Healthcare Service Plan Act of 1975 (the "Knox-Keene Act" or "Act"). Health & Saf. Code § 1340 *et seq.* The Knox-Keene Act "is 'a comprehensive system of licensing and regulation' [citation], formerly under the jurisdiction of the Department of Corporations (DOC) and presently within the jurisdiction of the Department of Managed Healthcare (DMHC) (§ 1341; Stats. 1999, ch. 525, § 1(a); Stats. 2000, ch. 857, §§ 19, 100)." *California Medical Assn. v. Aetna U.S. Healthcare of California, Inc.*, 94 Cal. App. 4th 151, 155, fn. 3 (2001) (*California Medical*). The intent and purpose of the Legislature in enacting the Knox-Keene Act was "to promote the delivery and the quality of health and medical care to the people of the State of California who enroll in, or subscribe for the services rendered by, a healthcare service plan or specialized healthcare service plan." § 1342. The Legislature sought to

accomplish this purpose by, among other things, imposing "proper regulatory procedures" to "[e]nsur[e] the financial stability" of the system, and establishing a system that ensures healthcare service plan "subscribers and enrollees receive available and accessible health and medical services rendered in a manner providing continuity of care." *Id.*, subds. (d), (f), & (g). Section 1342.6 reiterates the Act's purpose of providing "high-quality healthcare coverage in the most efficient and cost-effective manner possible," and finds "it is in the public interest to promote various types of contracts between public or private payers of healthcare coverage, and institutional or professional providers of healthcare services." Among the contracts the Act permits are "contracts that contain incentive plans that involve general payments, such as capitation payments, or shared-risk arrangements." § 1348.6(b). The Act expressly allows contracts in which healthcare service plans delegate to the plans' contracting medical providers the plans' financial responsibility to reimburse emergency service providers' claims. § 1371.4(e). Noncontracted emergency service providers are entitled to reimbursement at the reasonable and customary rate for the emergency services they perform. Cal. Code Regs., tit. 28, § 1300.71, subd. (a)(3)(B).

11. Administrative regulations implementing the Knox-Keene Act include, among others, section 1300.67.8 of the California Code of Regulations, which requires health plans to execute written contracts with all healthcare service providers who regularly furnish services to the plans' members, and sections 1300.71 and 1371.37 prohibiting health care service plans from engaging in a "demonstrable and unjust payment pattern" or "unfair payment pattern" that results in repeated delays in the adjudication and correct and timely reimbursement of provider claims, or from improperly denying, adjusting or contesting claims.

12. KAISER does not maintain sufficient hospitals in San Bernardino to service the needs of all KAISER's member population. VVGMC is informed and believes, and thereon alleges, this is intentional. KAISER furthermore does not offer nor have the capacity to provide all the emergency and other specialized services offered by VVGMC. Under the foregoing statutory and regulatory structure, therefore, at all relevant times DEFENDANTS knew and/or reasonably should have known KAISER's member population would require continuing

emergency and other medical services provided by VVGMC. At all relevant times, DEFENDANTS further knew and/or reasonably should have known VVGMC has a continuing legal duty to provide such ongoing emergency care to KAISER's member patients, and VVGMC's rendition of such services and care fulfills KAISER's contractual obligations to a significant segment of KAISER's member population.

13. VVGMC is informed and believes, and thereon alleges, DEFENDANTS, and each of them, are sophisticated healthcare actors. VVGMC is further informed and believes, and thereon alleges, none of the DEFENDANTS have denied, nor at this point plausibly can deny, at any time being aware of VVGMC's published reasonable and customary rates. DEFENDANTS have received a multitude of invoices from VVGMC over the past several years specifying those rates. Further, at all relevant times, VVGMC published its reasonable and customary rates on the website maintained by California's Office of Statewide Health Planning and Development ("OSHPD") as required by Health and Safety Code sections 127400 *et seq.*

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

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

16. In the case of KAISER, in instances where an identified KAISER member patient is medically stable for transport, VVGMC's uniform practice is to advise KAISER the patient

will be admitted/retained unless KAISER promptly arranges for the patient's transfer to another facility. In certain instances, with VVGMC's cooperation, KAISER arranges for its members to be transferred to other facilities. In other instances, KAISER fails to arrange for transfer or explicitly approves of VVGMC's rendition of the prescribed course of care including, in certain instances, poststabilization services. In cases where a KAISER member patient arrives in a condition where it is determined the patient's health and safety would be jeopardized by immediate transport, as required by law, VVGMC renders such services and provides such care as prudent and necessary until the patient can, at KAISER's option, be safely transferred to another facility. Thereafter, again, pursuant to the same procedure, KAISER controls whether the patient is in fact transferred to another facility.

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

18. Notwithstanding, in numerous instances, DEFENDANTS paid *less* or *nothing at all*. That is to say, instead of paying the implicitly understood and legally required non-contract rate (*i.e.*, 100% of VVGMC's published reasonable and customary charges), or even the discounted rate payable under provider network access agreements, such as MultiPlan, Inc., that provides access to a network of health care providers to health care insurers and plans who do not have their own direct contract with certain providers, DEFENDANTS paid only a fraction of VVGMC's reasonable and customary charges for emergency and related poststabilization services and care rendered. Moreover, DEFENDANTS have paid VVGMC's charges in what appears to be a wholly *ad hoc*, arbitrary and unpredictable manner. In some instances, DEFENDANTS paid more than half the bill; in others, less than half; in yet others, denied the claims altogether and paid nothing. Occasionally, DEFENDANTS have held payment on large patient claims hostage unless VVGMC's staff "agreed" to accept a far lesser rate of reimbursement. DEFENDANTS have also consistently failed to pay VVGMC in a timely

manner as required by law. This all amounts to an enjoinable unlawful and unfair business practice as defined in Business & Professions Code section 17200, *et seq.*

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

20. In addition to being statutorily required to pay reasonable and customary charges for emergency and related poststabilization services and care KAISER members receive at non-KAISER facilities, including VVGMC, DEFENDANTS were and continue to be legally required to pay for poststabilization services provided to medically stable KAISER member patients where KAISER fails to timely arrange to have those patients transferred to other facilities. *See, e.g.* Health & Safety Code §1262.8(d) and 1317.2a(e). VVGMC is informed and believes, and thereon alleges, KAISER knowingly left certain of its member patients at VVGMC to receive medically-necessary poststabilization services and care from VVGMC, instead of arranging for their transfer to other facilities. VVGMC is similarly informed and believes, and thereon alleges, in some cases KAISER affirmatively approved VVGMC to render such poststabilization services and care to its member patients. In all such cases, KAISER expressly or implicitly authorized

VVGMC to provide such poststabilization services and care to its member patients on the terms described above: *i.e.*, at VVGMC's published reasonable and customary rates.

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

22. VVGMC is informed and believes, and thereon alleges, the DMHC's foregoing findings and remedial actions against KAISER evidence a larger and continuing strategy, scheme and pattern of practice by DEFENDANTS, and each of them, to violate their statutory and common law duties for the purpose of, among other things, paying less than the reasonable and customary value for the emergency and related poststabilization services rendered by non-contracted providers like VVGMC. VVGMC is further informed and believes, and thereon alleges, KAISER implemented this secret strategy, scheme and pattern knowing and intending to underpay VVGMC and to shift the burden of providing emergency healthcare to its members, and to the public in general, away from KAISER and to VVGMC and similarly situated providers.

23. VVGMC has provided, and continues to provide, necessary and often lifesaving care to thousands of KAISER members annually. By way of example only, one patient ("Patient A") was brought to VVGMC via ambulance because he was under cardiac arrest and had acute

renal failure. Patient A was intubated, put on Levophed drip and received urgent dialysis via a catheter to avoid respiratory failure. During Patient A's forty-one day stay at VVGMC, he went into respiratory failure and cardiac arrest twice and VVGMC was able to bring Patient A's pulse back both times. After extensive treatment, evaluation and assessment by VVGMC, Patient A was rendered stable for transfer, and KAISER transferred Patient A to a Kaiser facility in Panorama City.

24. VVGMC timely billed DEFENDANTS for the care and services provided to Patient A. Notwithstanding, to date DEFENDANTS have failed and refused, and continue to fail and refuse, to pay VVGMC its reasonable and customary billed charges for Patient A. This is but one example. In all cases at issue in this Complaint, which is currently estimated to involve over 1,000 patient accounts, DEFENDANTS have failed and refused, and continue to fail and refuse, to pay VVGMC its reasonable and customary billed charges for emergency and related poststabilization services and care rendered to KAISER member patients.

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

FIRST CAUSE OF ACTION

BREACH OF IMPLIED CONTRACT

(Against All Defendants)

26. VVGMC realleges and incorporates by reference paragraphs 1-25.

27. VVGMC provided, and continues to provide, emergency and related poststabilization services to KAISER member patients. VVGMC is informed and believes, and thereon alleges, those services and care were either immediately necessary to treat patients "in danger of loss of life, or serious injury or illness" or explicitly or implicitly approved by KAISER in due course. VVGMC is further informed and believes, and thereon alleges, KAISER's policies with its members include coverage for such hospital services and care. Accordingly, in rendering

these services, VVGMC intended to and did aid and confer a material benefit on DEFENDANTS in satisfaction of KAISER's contractual duty to its members.

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

29. At all relevant times, DEFENDANTS accepted the benefit of VVGMC's continued rendition of services to KAISER's members. VVGMC is informed and believes, and thereon alleges, DEFENDANTS in general, and KAISER in particular, took no steps to timely arrange for KF HOSPITALS or other providers to provide KAISER's members the services giving rise to the unpaid or underpaid charges at issue herein.

30. Under such facts and circumstances, contracts, implied both in fact and by operation of law, have existed, and continue to exist, between VVGMC and DEFENDANTS.

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

32. VVGMC is informed and believes, and thereon alleges, at no time during the course of VVGMC's rendition of the above-described services, notwithstanding VVGMC's adherence to the procedures described in, *inter alia*, paragraphs 14 through 17, did DEFENDANTS dispute the eligibility of any KAISER member patient for which VVGMC now seeks payment, nor advise VVGMC DEFENDANTS intended to pay less than VVGMC's reasonable and customary rates. Rather, in each such instance, VVGMC is informed and believes, and thereon alleges, DEFENDANTS expressly or impliedly requested that VVGMC

care for and treat the KAISER member patient without objection. Finally, DEFENDANTS either expressly or impliedly promised to pay for such services based on VVGMC's then published reasonable and customary rates.

33. VVGMC's published rates are reasonable and customary. VVGMC provides exceptional services to KAISER member patients. VVGMC charges KASIER the same fees it charges all other financially responsible insurers with whom it does not have a contract. VVGMC is informed and believes, and thereon alleges, its published reasonable and customary charges are lower than the rates charged by other hospitals in the same geographic area, and the rates charged by VVGMC was appropriate (if not below market) for the high quality and medically necessary services and care it provided, and continues to provide, KAISER member patients. KAISER does not have the right, as it has done here, to unilaterally decide after-the-fact how much it will pay VVGMC without regard to VVGMC's published rates and such factors. KAISER similarly does not have the right, as it has done here, to unreasonably delay the payment of VVGMC's bills or pay on an arbitrary *ad hoc* basis.

34. VVGMC is informed and believes, and thereon alleges, at all relevant times DEFENDANTS knew an enforceable implied contract existed between themselves and VVGMC requiring DEFENDANTS to pay VVGMC's undiscounted reasonable and customary charges. More particularly, VVGMC is informed and believes, and thereon alleges, at all relevant times DEFENDANTS knew this implied contract arose from the parties' conduct, the above-described statutory scheme requiring VVGMC to render a majority of the patient services and care in question and requiring DEFENDANTS to in return pay VVGMC's reasonable and customary charges, and the fact VVGMC's services and care was rendered, and continues to be rendered, in satisfaction of KAISER's contractual commitments to its member patients. VVGMC is similarly informed and believes, and thereon alleges, this implied contract is evidenced by the multitude of invoices VVGMC has sent, and continues to send, DEFENDANTS for such continuing services and care, and the payments DEFENDANTS have periodically made in partial satisfaction thereof. Finally, VVGMC is informed and believes, and thereon alleges, DEFENDANTS know they are required under Health and Safety Code sections 1317.2a(d) and (e), 1262.8(d), 1371.4 and

otherwise to pay VVGMC the full amount of VVGMC's reasonable and customary charges for all legally mandated emergency and related poststabilization services and care VVGMC has provided, and continues to provide, to KAISER member patients in the manner described above.

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

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

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

38. As a result of DEFENDANTS' serial and continuing breaches of the implied contracts, VVGMC has sustained, and will continue to sustain, damages subject to proof at trial, but in an amount currently estimated to exceed $2,800,000, which continues to increase daily.

SECOND CAUSE OF ACTION

QUANTUM MERUIT

(Against All Defendants)

39. VVGMC re-alleges and incorporates by reference paragraphs 1-38.

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

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

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

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

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

e. A substantial portion of VVGMC's bill for its emergency and related poststabilization services and care remain unpaid.

41. The estimated unpaid balance of the reasonable and customary value of VVGMC's emergency and related poststabilization services and care rendered to or for the benefit of KAISER member patients and DEFENDANTS is currently estimated to exceed $2,800,000, but continues to increase on a daily basis.

THIRD CAUSE OF ACTION

RESTITUTION

(Against All Defendants)

42. VVGMC realleges and incorporates by reference paragraphs 1-41.

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

a. VVGMC rendered, and by necessity, law and good medical practice continues to render, the foregoing emergency and related poststabilization services and care to and for the benefit of KAISER member patients and DEFENDANTS;

b. The reasonable value of those services and care was and is VVGMC's reasonable and customary rates as published on the OSHPD website;

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

d. VVGMC timely and properly billed DEFENDANTS for those services and care;

e. A substantial portion of VVGMC's bills for those services and care remain unpaid; and

f. DEFENDANTS would be unjustly enriched if they failed to make restitution for the unpaid balance under the circumstances described above.

44. The estimated unpaid balance of the reasonable and customary value of VVGMC's emergency and related poststabilization services and care rendered to or for the benefit of KAISER member patients and DEFENDANTS is currently estimated to exceed $2,800,000, but continues to increase on a daily basis.

FOURTH CAUSE OF ACTION

ACCOUNT STATED

(Against All Defendants)

45. VVGMC realleges and incorporates by reference paragraphs 1-44.

46. In addition and/or in the alternative, VVGMC alleges DEFENDANTS, and each of them, owe VVGMC for the above-described emergency and related poststabilization services and care pursuant to an account stated. More particularly, within four years last past DEFENDANTS, and each of them, became indebted to VVGMC on an open book account or a mutual, open and current account for such services and care rendered to or for the benefit of KAISER member patients and DEFENDANTS presently in the sum in excess of $2,800,000, but which account

stated continues to increase on a daily basis. The services and care were rendered compulsorily, at DEFENDANTS' special instance and request or, in certain instances, both compulsorily and at DEFENDANTS' special instance and request.

47. Neither the whole nor any part of the foregoing sum has been paid, although a demand therefor has been made, and there is now due, owing, and unpaid the sum in excess of $2,800,000, with interest thereon at the rate of percent per annum from the date of issuance of each patient bill, which account stated necessarily continues to increase on a daily basis for the reasons explained above.

FIFTH CAUSE OF ACTION

INTENTIONAL VIOLATION OF DUTY TO PAY FOR EMERGENCY MEDICAL SERVICES

(Against All Defendants)

48. VVGMC re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs 1-47.

49. DEFENDANTS have a statutory duty under the Knox-Keane Act to provide and pay for the reasonable and customary value of the emergency care provided to its members. For, example, California Code of Regulations Title 28, section 1300.67.8, requires that written contracts be executed between healthcare service plans and each provider who regularly furnishes services to the insureds under the plans. KAISER knows VVGMC regularly furnishes emergency and related poststabilization services and care to KAISER's member patients. California Health & Safety Code requires DEFENDANTS to timely and fully pay VVGMC for the reasonable and customary value of the emergency and related poststabilization services provided to KAISER member patients, including, sections 1371, 1371.35, 1371.4, 1317.2a(d), 1317.2a(e) and 1262.8(d).

50. DEFENDANTS owe VVGMC a duty of care to pay for emergency medical and related poststabilization services provided to KAISER member patients.

51. DEFENDANTS' actions were intended to affect and did adversely affect VVGMC

because DEFENDANTS: (a) with specific intent, strategically operated hospitals in locations sufficiently removed from the service area of VVGMC's hospitals so that KAISER's members would seek emergency care from VVGMC and not from KAISER's hospitals, saving DEFENDANTS both the expense of providing the care and the burden of providing emergency care to anyone regardless of the ability to pay; (b) understood that VVGMC has a legal duty to provide emergency services and poststabilization services under certain conditions to all persons, including KAISER members, who present themselves at VVGMC with potentially life threatening conditions; and (c) implemented a provider reimbursement structure that systematically fails to pay, underpays, or delays payment to VVGMC for services rendered to KAISER member patients, despite receiving valuable premium payments from its members intended to be used at least in part to pay for such services, and even though there is a statutory obligation to compensate VVGMC and other healthcare providers under various provisions of the law.

52. It was foreseeable DEFENDANTS' actions would harm VVGMC. DEFENDANTS understood that by failing to compensate or undercompensating VVGMC for services provided to KAISER member patients, VVGMC would suffer continuing financial harm because VVGMC has a legal duty to provide emergency services irrespective of payment.

53. There is a close connection between the financial harm suffered by VVGMC and DEFENDANTS' conduct because in the absence of that conduct VVGMC would not have suffered the harm.

54. DEFENDANTS' conduct is morally blameworthy because it involves violations of the law and DEFENDANTS are taking advantage of their superior position. In the face of a long history of DMHC findings of statutory violations and violations of duties to its members and non-contracting providers, DEFENDANTS knowingly and intentionally implemented a scheme to improperly reduce the overall costs of providing emergency care services to its members, as described above. DEFENDANTS help themselves to steep discounts or failed to pay VVGMC for services provided because DEFENDANTS know VVGMC is legally required to provide emergency services, including to KAISER members, irrespective of payment. DEFENDANTS are effectively shifting the burden of providing emergency services to its members to VVGMC.

55. Having DEFENDANTS held liable for the breach of their duty of care to VVGMC will promote the policy of preventing future harm by causing DEFENDANTS to reevaluate their strategy of paying non-contracting providers less than the reasonable and customary value of their services.

56. As a direct and proximate result of DEFENDANTS' intentional breaches of their duty of care to pay VVGMC for emergency and related post-stabilization services, VVGMC has been damaged in an amount to be proven at trial, but no less than $2,800,000, plus interest.

57. DEFENDANTS' actions were undertaken with fraud, malice or oppression, or with a conscious disregard of the rights of VVGMC, and, therefore, VVGMC is entitled to an award of exemplary and punitive damages against DEFENDANTS, and each of them, in a sum that will be established according to proof at trial sufficient to punish DEFENDANTS and deter others from engaging in similar misconduct.

SIXTH CAUSE OF ACTION

INJUNCTIVE AND EQUITABLE RELIEF UNDER

BUSINESS & PROFESSIONS CODE § 17200

(Against All Defendants)

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

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

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

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

62. VVGMC is informed and believes, and thereon alleges, KF HOSPITALS and DOES 50-75 have at all relevant times been aware that "a hospital which has a legal obligation to provide care for a patient as specified in subdivision (a) of Section 1317.2a to the extent of its legal obligation…which does not accept transfers of, or make other appropriate arrangements for, medically stable patients" is liable to the provider "for the reasonable charges…for providing services and care which should have been provided by the receiving hospital." Health & Safety Code § 1317.2a(e).

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

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

65. Instead, after the emergency medical services have been provided to KAISER member patients and billed to DEFENDANTS, DEFENDANTS have paid in a wholly *ad hoc*,

arbitrary and unpredictable manner amounting to substantially less than the reasonable and customary charges billed for those services. DEFENDANTS have engaged, and continue to engage, in such conduct despite regulations implementing the Knox-Keene Act including, among others, sections 1300.71 and 1371.37 prohibiting health care service plans from engaging in a "demonstrable and unjust payment pattern" or "unfair payment pattern" that results in repeated delays in the adjudication and correct and timely reimbursement of provider claims, or from improperly denying, adjusting or contesting claims. DEFENDANTS' wrongful acts of withholding payment of reasonable charges for emergency medical services DEFENDANTS are statutorily or contractually obligated to pay, as described more fully above, constitutes acts of unlawful and unfair competition within the meaning of Business and Professions Code sections 17200 *et seq.*

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

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

68. As a result of the conduct described above, including but not limited to, violations of Health & Safety Code sections 1317.2a(d), 1317.2a(e), 1262.8(d), 1371, 1371.35 and 1371.4 and California Code of Regulations Title 28, section 1300.67.8, DEFENDANTS have received and continue to receive ill-gotten gains that rightfully belong to VVGMC.

69. Due to the harmful and continuous nature of DEFENDANTS' actions, and each of them, VVGMC and all similarly situated emergency medical service providers are without an expedient or adequate remedy at law to redress the continuing and irreparable harm they have

suffered, and will continue to suffer, owing to such unfair and unlawful business practices. VVGMC is informed and believes, and thereon alleges, the foregoing actions by DEFENDANTS, and each of them, were undertaken with the knowledge, acquiescence, approval, authorization or ratification by each of them of such wrongful acts with prior knowledge and conscious disregard of the rights of VVGMC and other similarly situated emergency medical service providers.

70. VVGMC, on behalf of itself and all similarly situated emergency medical service providers, are entitled to "such orders or judgments ... as may be necessary to prevent the use or employment by [DEFENDANTS] of any practice which constitutes unfair competition [by DEFENDANTS] ... or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition" pursuant to Business and Professions Code section 17203.

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

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

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

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SEVENTH CAUSE OF ACTION

DECLARATORY RELIEF

(Against All Defendants)

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

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

76. As alleged above, VVGMC contends it is entitled to timely and fair payment of its full reasonable and customary charges for the emergency and related poststabilization services and care VVGMC has rendered, and continues to render, to KAISER member patients. VVGMC further contends the multitude of invoices VVGMC has sent DEFENDANTS in connection with those services, together with the information published on the OSHPD's website, evidence VVGMC's reasonable and customary charges.

77. Conversely, VVGMC is informed and believes, and thereon alleges, DEFENDANTS dispute the foregoing.

78. In order to resolve this controversy, VVGMC seeks a declaratory judgment finding DEFENDANTS owe VVGMC its full reasonable and customary charges as identified on the invoices VVGMC has sent, and continues to send, DEFENDANTS and as published on the OSHPD website, together with prejudgment interest and any other statutorily authorized damages, levies or other charges. VVGMC further seeks a declaratory judgment finding that DEFENDANTS are legally obligated to pay such reasonable and customary charges in a timely and fair manner.

PRAYER FOR RELIEF

WHEREFORE, VVGMC prays for judgment as follows:

1. For damages in an amount according to proof at trial;
2. For restitution for unjust enrichment;
3. For damages in quantum meruit;

4. For restitution for unfair business practices;

5. For disgorgement;

6. For payment of the greater of $15 per unpaid account or interest at rate of fifteen percent (15%) per annum;

7. For punitive and exemplary damages in a sum according to proof;

8. For injunctive relief;

9. For a declaratory judgment finding that:

   a. VVGMC is owed its full reasonable and customary charges as identified on the invoices it has sent, and continues to send, DEFENDANTS and as published on the OSHPD website, together with prejudgment interest and any other statutorily authorized damages, levies or other charges, and

   b. DEFENDANTS are legally obligated to pay such reasonable and customary charges in a timely and fair manner;

10. For interest at statutory rates;

11. For costs and reasonable attorneys' fees to the extent allowed by law including, but not limited to, Code of Civil Procedure section 1021.5; and

12. For such other and further relief as the Court deems just and proper.

DATED: November 21, 2018

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By: _____
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