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PRIME HEALTHCARE SERVICES, INC.

10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 PRIME HEALTHCARE SERVICES,  
13 INC., a Delaware Corporation,

14 Plaintiff,

15 v.

16 SERVICE EMPLOYEES  
INTERNATIONAL UNION, a Labor  
17 Union; SERVICE EMPLOYEES  
INTERNATIONAL UNION – UNITED  
18 HEALTHCARE WORKERS WEST, a  
Labor Union; KAISER PERMANENTE, a  
19 California Partnership; KAISER  
FOUNDATION HEALTH PLAN, INC., a  
20 California Corporation; KAISER  
FOUNDATION HOSPITALS, a  
21 California Corporation; SOUTHERN  
CALIFORNIA PERMANENTE  
22 MEDICAL GROUP, INC., a California  
Corporation; and Does 1-10, inclusive,

23 Defendants.  
24

CASE NO. 11-CV-02652 JLS (RBB)

**FIRST AMENDED COMPLAINT FOR  
VIOLATION OF THE SHERMAN ACT  
AND DEMAND FOR JURY TRIAL**

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**NATURE OF THE ACTION**

1  
2 1. This action challenges an antitrust conspiracy between and among Defendants to  
3 eliminate competing hospitals in Southern California, including those owned and operated by  
4 Plaintiff Prime Healthcare Services, Inc. (“Plaintiff” or “Prime”). As more fully discussed below,  
5 Prime is the only independent hospital system in The Market (as defined below), in that Prime  
6 hospitals are not owned by or otherwise affiliated with health care service plans or health  
7 maintenance organizations (collectively “HMOs”) and Prime’s business model is based on being  
8 largely non-contracted with such payor-controlled plans, including Defendant Kaiser Foundation  
9 Health Plan (“KFHP”) (defined below). To that extent, Prime offers a unique alternative to, and  
10 therefore threatens the dominance of, the payor-controlled, closed-staff model on which  
11 Defendant Kaiser Permanente (defined below) has based its multi-billion dollar business,  
12 particularly with regard to emergency care services. Ultimately, this is an action to protect  
13 competition for some of the most vulnerable of consumers – consumers making life and death  
14 choices about where and when they will receive hospital treatment.

15 2. Most patients enter Prime hospitals through emergency rooms and therefore tend  
16 to be more sick or injured than most hospital patients. Prime has made a significant investment in  
17 capital, equipment, and human resources to provide the required care for these critically sick and  
18 severely injured patients and thereby improve both choices and quality of care for this patient  
19 population. Such improvements include shorter waiting times for emergency services, faster  
20 admissions when necessary to stabilize emergency patients, and increased capacity for hospitals  
21 to provide additional emergency services.

22 3. Federal and State regulations permit KFHP members to seek emergency care at  
23 any hospital, and to remain in that hospital until they are stable and ready to be discharged or  
24 transferred to a Kaiser Permanente owned, affiliated, contracted, or approved hospital. Therefore,  
25 KFHP members with emergency medical conditions, including the severely injured or critically  
26 ill, their families, and in some cases ambulance drivers or others who transport patients to  
27 hospitals, may choose to seek emergency care at a Prime facility based on the location,  
28 accessibility, and services available at Prime facilities. When KFHP members receive emergency

1 care at a Prime facility, KFHP must compensate Prime for the care provided to those KFHP  
2 members. As further alleged below, the presence of Prime in The Market threatens the objectives  
3 of both Kaiser Permanente and SEIU (defined below).

4 4. As to Kaiser Permanente, the presence of Prime presents a competitive alternative  
5 to consumers that threatens Kaiser Permanente's supra-competitive profits and ultimately the  
6 success of its business model. Kaiser Permanente has acknowledged the severe threat Prime  
7 presents to its business model as a result of Prime's superior competitive position in the market  
8 for acute care. From *Healing Together: The Labor-Management Partnership at Kaiser*  
9 *Permanente*, the definitive book on the Kaiser Permanente Labor Management Partnership:

10 From its beginnings, Kaiser has been able to be cost-effective when  
11 members' medical services are kept in-house; but it pays a heavy  
price when members are referred outside of Kaiser facilities and  
networks.

12 Thomas A. Kochan et al., *Healing Together: The Labor-Management Partnership at Kaiser*  
13 *Permanente* 34 (2009).

14 5. In other words, Kaiser Permanente's financial success, and ultimately its entire  
15 model, depends on restricting consumer choice and preventing hospitals that are not Kaiser  
16 Permanente owned, affiliated, or contracted from offering KFHP members a better choice for  
17 emergency services. Absent competition, Kaiser Permanente could further reduce services and  
18 costs, and further increase prices.

19 6. As to the SEIU, Prime's position in The Market threatens the success of the  
20 SEIU's campaign to expand its representation of and raise the price of labor for Healthcare  
21 Workers (defined below), which ultimately gives the SEIU dominance in The Market. The  
22 SEIU's engagement in unlawful activities to achieve market domination is part and parcel of the  
23 SEIU's approach to forcing employer capitulation. As the SEIU's chief strategist, Stephen  
24 Lerner, stated when arguing for the adoption of the market domination strategy that the SEIU has  
25 long since implemented:

26 We can't engage in successful mass organizing or protect existing  
27 collective bargaining if we operate within the confines of the law  
because activities that allow us to exercise power are increasingly  
28 ineffective and/or illegal.

1 Stephen Lerner, *Stephen Lerner Replies: Counter Response on "Reviving Unions"*, Boston  
2 Review (Summer 1996). The SEIU has, in fact, with the assistance of its co-conspirators,  
3 adopted the illegal strategy urged by Lerner

4 7. Starting as early as 1997, Kaiser Permanente and SEIU joined forces and entered  
5 into an unlawful overarching conspiracy and multiple specific oral and written agreements to  
6 restrain trade by eliminating common threats, such as the one posed by Prime, in violation of  
7 Sections 1 and 2 of the Sherman Antitrust Act of 1890 ("Sherman Act"), 15 U.S.C. §§ 1-2.  
8 Pursuant to that central conspiracy and those agreements, Defendants have targeted and attacked  
9 numerous hospital operators that posed a threat to Kaiser Permanente and SEIU, including  
10 Columbia/HCA, Tenet Healthcare Corporation ("Tenet"), and Catholic Healthcare West  
11 ("CHW") (now Dignity Health), each of which eventually capitulated to Defendants' unlawful  
12 and anticompetitive attacks. In accordance with their pre-existing conspiracy to eliminate Kaiser  
13 Permanente's competitors, Defendants' are now targeting and attacking the newest common  
14 threat, Prime, by seeking to raise Prime's costs of doing business and foreclose Prime from  
15 certain business, with the ultimate objective of eliminating Prime from The Market.

16 8. More specifically, Defendants agreed to jointly influence and convince potential  
17 whistleblowers, writers, government agencies, and politicians to raise specious allegations about  
18 Prime's conduct. These agreements have been evidenced over the last several years by and  
19 through certain individuals purporting to be "whistleblowers," meetings in public forums and  
20 public hearings in which Kaiser Permanente and SEIU representatives publically disparaged  
21 Prime and falsely accused Prime of illegal conduct, bills and proposed laws designed to destroy  
22 Prime's business model, and articles published in the SEIU-controlled publication California  
23 Watch. In turn, Kaiser Permanente uses the false information it receives by virtue of its  
24 agreements with the SEIU to its advantage, and ultimately to the advantage of the SEIU and its  
25 union members, and in litigation against Prime. The eventual outcome of Defendants' efforts in  
26 the political, legislative, and judicial arenas have not resulted in harm to Prime as the legislation  
27 fails to pass and investigations are closed without finding that Prime engaged in any wrong-doing  
28 as alleged below. Rather the harm to Prime, as Defendants intend, results from Prime having to

1 disrupt its business responding to Defendants' sham effort as part of the process. For example,  
2 diverting the attention of Prime's executive management team away from Prime's business and  
3 the costs in dollars and man hours to Prime in responding to a state health care agency  
4 investigation, that closed in Prime's favor, significantly harmed Prime. In addition, Defendants'  
5 sham efforts have created delay in Prime's litigation against Kaiser Permanente so that Kaiser  
6 Permanente can continue to hold the monies it owes Prime and recover interest thereon in the tens  
7 of thousands of dollars per day, and also cause Prime to incur high litigation costs and fees.

8 9. In furtherance of this conspiracy, Defendants have also acted in concert to fix  
9 wage rates for Healthcare Workers' services in The Market and force Prime to adopt the high-cost  
10 labor practices of the conspirators with the ultimate goal of eliminating Prime as the sole  
11 remaining independent hospital provider in The Market. Defendants seek to accomplish these  
12 objectives by engaging in a pattern and practice of overt acts designed to damage the business of  
13 Prime by producing the inaccurate reports and studies described herein below, working with  
14 complicit media outlets to publicize the sham and baseless allegations described herein below,  
15 initiating certain sham and baseless complaints causing regulatory and administrative  
16 investigations and sham and baseless litigation, wrongfully withholding reimbursement for care  
17 provided to KFHP members, coercing and threatening KFHP members and others who may direct  
18 KFHP members to Prime hospitals to keep KFHP members from exercising their right to seek  
19 and, where their condition requires, continue to receive treatment at Prime hospitals, and  
20 undertaking various other activities for the purpose of diminishing Prime's revenue and raising  
21 Prime's costs, thereby eliminating Prime as a competitor in the Market.

22 10. Unlike the Kaiser Permanente model, the success of Prime's model depends on  
23 offering, delivering, and preserving its reputation for offering and delivering quality medical care  
24 to its patients. By eliminating Prime from The Market, Kaiser Permanente threatens to eliminate  
25 the potentially lifesaving competitive choice Prime offers to KFHP members and other consumers  
26 in need of emergency care and avoid the higher costs to Kaiser Permanente associated with such  
27 vital care.

28 11. Therefore, Prime brings this action seeking injunctive relief and to recover

1 damages, including treble damages, and attorney’s fees and costs for Defendants’ violations of  
2 Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, pursuant to Sections 4 and 16 of the  
3 Clayton Antitrust Act of 1914 (“Clayton Act”), 15 U.S.C. §§ 15 and 26, and any other damages  
4 this Court may deem appropriate.

5 12. Both the Prime model and the Kaiser Permanente managed-care model have an  
6 important place in a free and competitive health care market. They offer competitive choices to  
7 consumers and others who finance the provision of health care to the ultimate consumer. By this  
8 action, Prime does not seek the elimination of Kaiser Permanente or its model nor does it suggest  
9 that the Kaiser Permanente model is inferior or fundamentally flawed. To the contrary, by this  
10 action, Prime seeks to stop the anticompetitive actions of Defendants to eliminate the choice  
11 Prime offers to consumers and other purchasers of vital health care services in The Market.

12 **THE PARTIES**

13 13. Prime Healthcare Services, Inc. is a Delaware corporation, with its principal place  
14 of business located at 3300 East Guasti Road, Ontario, California 91761. Prime is the sole  
15 shareholder or member of corporations or limited liability companies which own and operate  
16 eleven<sup>1</sup> acute care hospitals located in San Bernardino, San Diego, Los Angeles, Orange, and  
17 Shasta Counties. Prime hospitals are primarily operated without affiliation or reciprocal care  
18 agreements with Kaiser Permanente or any other managed care networks.

19 14. Defendant Service Employees International Union (“International Union”) is an  
20 unincorporated labor association with its principal place of business located at 1800  
21 Massachusetts Avenue, N.W., Washington, DC 20036. The International Union represents units  
22 of workers and attempts to negotiate terms and conditions of employment for the workers it  
23 represents. The International Union transacts business activities in interstate commerce,  
24 including in this judicial district.

25 15. Defendant Service Employees International Union – United Healthcare Workers  
26 West (“UHW”) is a local union affiliate of the International Union with its principal place of

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27 <sup>1</sup> Effective December 31, 2011, Prime donated its interest in Sherman Oaks Hospital to a non-profit public charity,  
28 bringing the number of Prime facilities in California to eleven from the twelve that existed at the time the original  
complaint was filed in this action.



1 business located at 560 Thomas L Berkley Way, Oakland, California 94612. UHW represents,  
2 among others, individuals working in California's hospitals and clinics as nurses, aides (*e.g.*,  
3 operating room, physical therapy), assistants (*e.g.*, laboratory, nurse, physical therapy), case  
4 managers, clerks, coordinators, counselors, food service workers, maintenance workers,  
5 secretaries, schedulers, technicians (*e.g.*, central services, dietary, laboratory, pharmacy,  
6 radiology, surgical, ultrasound), respiratory care practitioners, therapists, transporters, and  
7 housekeeping staff (hereinafter "Healthcare Workers") and attempts to negotiate terms and  
8 conditions of employment for the Healthcare Workers it represents. UHW transacts business  
9 activities in interstate commerce, including in this judicial district.

10 16. Per its Constitution and By-Laws, the International Union has jurisdiction and  
11 control over all of its local unions and their union members. The International Union has full  
12 authority and ultimate control over UHW and its actions. UHW's Constitution and By-Laws are  
13 subordinate to those of the International Union and must be approved by the International Union.  
14 Among other things, the International Union has the right to examine UHW's books and records,  
15 audit its financials, approve or deny UHW proposed strikes, suspend or revoke UHW's charter, or  
16 appoint a trustee to run UHW. In fact, that is exactly what happened to UHW in January 2009 –  
17 then International Union President Andy Stern placed UHW in trusteeship, removed all of its  
18 leaders, and appointed then SEIU Executive Vice President Dave Regan (now UHW's President)  
19 as the trustee with full control over UHW.

20 17. Defendant Kaiser Permanente is a California partnership consisting of Kaiser  
21 Foundation Health Plan, Kaiser Foundation Hospitals ("KFH") (as defined below), and the  
22 Permanente Medical Groups, including the Southern California Permanente Medical Group  
23 ("SCPMG") as the Southern California component of the Permanente Medical Groups, as well as  
24 other similar operating companies active in other jurisdictions, with its principal place of business  
25 in the County of Alameda, California. Alternatively, Kaiser Permanente is an entity capable of  
26 being sued in its common name. *See* Fed. R. Civ. P. 17.

27 18. Defendant Kaiser Foundation Health Plan, Inc. is a California corporation with its  
28 principal place of business in the County of Alameda, California. KFHP is a licensed health care

1 plan under the Knox Keene Act and regulated by the Department of Managed Health Care.  
2 KFHP contracts with KFH (as defined below) and the Permanente Medical Groups, which  
3 includes SCPMG (as defined below) in Southern California, for medical and hospital services for  
4 KFHP members and KFH patients.

5 19. Defendant Kaiser Foundation Hospitals is a California corporation with its  
6 principal place of business located in the County of Alameda, California. KFH is a subsidiary of  
7 KFHP. KFH owns and operates hospitals in California, including in this judicial district, Oregon,  
8 and Hawaii; owns outpatient facilities in several states; provides or arranges hospital services; and  
9 sponsors charitable, educational, and research activities. The physicians that run and staff KFH  
10 facilities are employed exclusively by the Permanente Medical Groups, including SCPMG in  
11 Southern California.

12 20. Defendant Southern California Permanente Medical Group is a professional  
13 medical group qualified to do business in the State of California with its principal place of  
14 business in the County of Los Angeles, California. SCPMG is a for-profit partnership of  
15 physicians that exclusively contracts with KFHP to provide and arrange medical care for KFHP  
16 members at KFH facilities in Southern California. SCPMG serves almost 3.3 million KFHP  
17 members at 13 medical centers and 145 medical offices. SCPMG is one of eight Permanente  
18 Medical Groups across the country – one for each of Kaiser Permanente’s eight regions: Northern  
19 California, Southern California, Colorado, Georgia, Hawaii, mid-Atlantic, Northwest, and Ohio –  
20 all of which are represented nationally by The Permanente Federation.

21 21. KFHP, KFH, and the Permanente Medical Groups, including SCPMG in Southern  
22 California, operate and hold themselves out to the public as partners in the partnership operating  
23 under the name Kaiser Permanente. According to the Kaiser Permanente websites, kp.org and  
24 kaiserpermanente.org – sites owned by KFHP and used jointly by KFHP, KFH, and SCPMG  
25 without differentiation to facilitate, describe, and advertise their respective services – the Kaiser  
26 Permanente partnership is an organization with a unique integrated structure comprised of the  
27 three Defendant entities: KFHP, KFH, and SCPMG (as the Permanente Medical Groups entity for  
28 Southern California). Moreover, according to the website of the Labor Management Partnership,

1 Impartnership.org, Kaiser Permanente is the entity that originally entered into and continues to  
2 enter into written agreements with its union conspirators.

3 22. An organization known as National Functions helps coordinate national efforts and  
4 provides administrative and corporate services within the Kaiser Permanente partnership.  
5 National Functions encompasses two subgroups: Kaiser Permanente Information Technology (the  
6 IT group) and Corporate. Kaiser Permanente's Corporate division, commonly referred to as  
7 Program Offices, is the administrative and business services organization within the Kaiser  
8 Permanente partnership. With positions located in Oakland, California, and across the country,  
9 Corporate includes the Kaiser Permanente national leadership team, as well as staff and program  
10 leads who support Kaiser Permanente's regions in a variety of business areas, including quality,  
11 finance, brand management, communications, government relations, community benefit,  
12 compliance, human resources, health plan operations, hospital operations, legal, and technology.

13 23. Corporate fills a crucial role in the Kaiser Permanente partnership, coordinating  
14 and providing critical services and support to Permanente Medical Group physicians at KFHP  
15 medical centers in order to facilitate the care process to KFHP members. Without the Kaiser  
16 Permanente partnership there would be no KFHP, KFH, or SCPMG, and vice versa.

17 24. The true names and capacities of the defendants named herein as Does  
18 1 through 10, inclusive, whether individual, corporate, associate, or otherwise, are currently  
19 unknown to Prime; therefore, Prime alleges that each of these fictitiously named defendants is  
20 responsible in some manner for the events sued upon. Prime will seek leave of this Court to  
21 amend the Complaint to assert the true identities and capacities of the defendants named herein as  
22 Does 1 through 10, inclusive, when said identities and capacities have been ascertained.

23 25. Throughout this Complaint, unless otherwise indicated, "SEIU" shall mean and  
24 refer to both SEIU International and UHW; "Kaiser Permanente" shall mean and refer to the  
25 Kaiser Permanente partnership, as well as each member of the partnership, including specifically  
26 Defendants KFHP, KFH, and SCPMG; and "Defendants" shall mean and refer to SEIU, Kaiser  
27 Permanente, and Does 1 through 10, and each of them.

28 ////

**JURISDICTION AND VENUE**

1  
2 26. Jurisdiction over Prime’s claims under the Sherman Act is proper under  
3 28 U.S.C. §§ 1331 and 1337(a). Jurisdiction over the Sherman Act claims is also proper under  
4 Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26.

5 27. Personal jurisdiction over SEIU is proper because the SEIU organizes California  
6 workers and collects dues from such workers in this State and has employees in this State. In  
7 addition, the exercise of specific personal jurisdiction is proper because the intended effects of the  
8 SEIU’s conduct were expressly directed at Prime, a company which maintains its headquarters in  
9 this State, and, in fact, caused harm (as the SEIU intended) to Prime in this State.

10 28. Personal jurisdiction over Kaiser Permanente is proper because Kaiser Permanente  
11 conducts substantial business, including sales, in this State, has employees in this State, maintains  
12 its headquarters in this State, and is authorized to conduct business in this State. In addition, the  
13 exercise of specific personal jurisdiction is proper because the intended effects of Kaiser  
14 Permanente’s conduct were expressly directed at Prime, a company which maintains its  
15 headquarters in this State, and, in fact, caused harm (as Kaiser Permanente intended) to Prime in  
16 this State.

17 29. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391,  
18 15 U.S.C. § 15, and/or 15 U.S.C. § 22. Defendants transact business in this District. Also, a  
19 substantial part of the events giving rise to the claims were intended to, and did, cause effects in  
20 this District.

**THE RELEVANT MARKETS AND MARKET POWER**

**I. THE RELEVANT SERVICE MARKETS**

21  
22  
23 30. The relevant service markets for purposes of this action are (1) hospital emergency  
24 care services provided at KFH and non-KFH facilities to the general public, including KFHP  
25 members, consumers covered by non-Kaiser Permanente commercial insurers and health plans,  
26 Medicare and Medicaid beneficiaries, and the underinsured and uninsured; (2) general acute-care  
27 hospital services, which encompasses a broad cluster of basic medical diagnostic and treatment  
28 services provided at KFH and non-KFH facilities, including nursing, surgical, anesthesia,

1 laboratory, radiology, pharmacy, and dietary services; and (3) the services provided by Healthcare  
2 Workers at KFH and non-KFH facilities, including but not limited to direct patient care duties  
3 and responsibilities essential to the provision of the services described in (1) and (2).

4 **II. THE RELEVANT GEOGRAPHIC MARKET AND SUBMARKETS**

5 31. The relevant geographic market is determined by examining the geographic  
6 boundaries within which a hypothetical monopolist for the services at issue could profitably raise  
7 prices or diminish the quality of its offering by a small but significant amount. Due to residents'  
8 clear preference for local emergency room and acute care services, hospitals operate within  
9 relatively small relevant geographic markets.

10 32. The relevant geographic markets are San Bernardino, San Diego, Los Angeles, and  
11 Orange Counties, California.

12 33. In addition, there are several relevant geographic submarkets wherein patients  
13 would not be expected to travel outside the submarket for emergency room or acute care services  
14 in response to a sustained price increase or reduction in quality by a provider within the  
15 submarket. These submarkets include, but are not limited to: the High Desert area serviced by  
16 Prime's Desert Valley Hospital ("Desert Valley") in Victorville, California; the South Los  
17 Angeles Area serviced by Prime's Centinela Hospital Medical Center ("Centinela") in Inglewood,  
18 California; and the South San Diego area serviced by Prime's Paradise Valley Hospital ("Paradise  
19 Valley") in National City, California.

20 34. The elimination of Prime as a competitor to Kaiser Permanente in the relevant  
21 geographic markets and submarkets would result in harm to consumers and increased profit to  
22 Kaiser Permanente.

23 35. For example, there are approximately 50,000 KFHP members in the High Desert  
24 area but the closest KFH hospital, Kaiser Permanente Fontana Medical Center, is more than 40  
25 miles away via the Cajon Pass, which is often closed or otherwise non-passable due to inclement  
26 weather. Desert Valley is more accessible and on "diversion" less than KFH's Fontana Medical  
27 Center.<sup>2</sup> As a result, Desert Valley serves an important role in providing emergency care to the

28 <sup>2</sup> Diversion is a situation where a hospital notifies the local emergency medical services agency

1 High Desert community, including KFHP members.

2 36. If Kaiser Permanente's and the SEIU's illegal conspiracy continues to be  
3 successful, and Prime is forced to shut down its hospitals, including Desert Valley, consumers  
4 will be denied the important and, in some cases, lifesaving option of obtaining emergency care at  
5 a hospital within the relevant geographic market. Such patients may be forced to travel long  
6 distances to the nearest KFHP or other available hospitals, which may increase such patient's risk  
7 of harm, complications, or mortality. Due to the high barriers to entry and reduced incentives for  
8 Kaiser Permanente and its hospitals to respond to consumer demand for shorter wait times and  
9 closer travel distances, the elimination of Prime in these markets will have serious consequences  
10 to consumer welfare. Moreover, the competitive pressure on Kaiser Permanente to expend the  
11 resources to provide adequate acute care and emergency services within the relevant market will  
12 be eliminated.

13 37. Prime is the sole shareholder or member of entities that own and operate ten  
14 hospitals in The Market. Prime is informed and believes that Kaiser Permanente owns fifteen  
15 hospitals, is affiliated with at least ten hospitals, and otherwise contracts with over 100 hospitals  
16 in The Market.

17 38. Throughout this Complaint, unless otherwise indicated, the relevant services and  
18 geographic markets and submarkets will be referred to as "The Market."

19 **III. DEFENDANTS HAVE MARKET POWER IN THE MARKET**

20 39. Kaiser Permanente has market power in the Market. Kaiser Permanente has the  
21 power to control prices, quality, and quantity, and can exclude competition in the markets for  
22 emergency and acute care hospital services. For example, Kaiser Permanente – without regard to  
23 competition – already prices its services at supra-competitive levels, above market competitors,  
24 and at the same time produces an inferior service, spending less money on its emergency and  
25 acute care services than its competitors. Kaiser Permanente does not need to improve its product

26  
27 that the hospital's emergency department is closed to new ambulance traffic due to lack of  
28 available resources.

1 or reduce its prices to obtain customers. Moreover, at the same time, Kaiser Permanente restricts  
2 output by spending more time than its competitor hospitals on diversion, which means that its  
3 emergency rooms are essentially closed to new patients for longer periods of time than its  
4 competitors. Kaiser Permanente also reduces output by tolerating longer wait-times in its  
5 emergency rooms than Prime and other competitors. This reduced output predictably increases  
6 prices and/or permits Kaiser Permanente to reduce the quality of its services. Kaiser Permanente  
7 demonstrates its market power by simultaneously reducing output and raising prices, without  
8 regard to any competition. In addition, Kaiser Permanente, by itself and with the help of its co-  
9 conspirators, has further demonstrated its market power by vanquishing other competitors that  
10 were similarly situated to Prime.

11 40. In addition, KFHP, by virtue of its role as health insurer to a substantial portion of  
12 the relevant geographic markets, exercises leverage over and financially threatens those that it  
13 insures with the purpose and effect of causing these customers to bypass Prime and other  
14 competitor hospitals for KFHP facilities, even when the customer would normally choose a Prime  
15 or other competitor hospital. This is also the exercise of market power.

16 41. Kaiser Permanente is the dominant force in the alleged relevant hospital markets,  
17 with substantial market share and power. There are substantial entry barriers for these markets, as  
18 there are high costs and regulatory requirements of both establishing and running a hospital.  
19 Kaiser Permanente's actions, along with the actions of its co-conspirator SEIU, have further  
20 diminished the likelihood of entry, as any potential entrant understands that it will have costs  
21 from the sorts of activities alleged below, in addition to typical business and regulatory costs.  
22 Finally, each hospital has a limited capacity for patients, and the costs of hospital expansion are  
23 extremely high. Not only must a competitor physically build a new hospital, but there are many  
24 regulatory costs and hurdles that must be overcome. That is one reason why new entrants to a  
25 hospital market often purchase existing hospitals.

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**FIRST CLAIM FOR RELIEF: VIOLATION OF SECTION 1 OF THE SHERMAN ACT**  
**(AGAINST ALL DEFENDANTS)**

**I. SUMMARY OF THE CLAIM**

42. As detailed below, Kaiser Permanente and SEIU (including, collectively, its workers, its leadership, and its entities) have embarked on a concerted campaign to raise prices, to reduce hospital and worker services and quality, and to destroy competitors in the Market, including Prime. They have done so through a conspiracy and various oral and written agreements in furtherance thereof, all under the guise of the collective bargaining process. But the conspiracy entered into, and the oral and written agreements between SEIU and Kaiser Permanente, were not part of the collective bargaining process. To the contrary, the overall conspiracy and agreements at issue involve the provision of assistance by a union (SEIU) to an employer (Kaiser Permanente) in restraining competition in the product/service markets in which the employer competes in exchange for favorable concessions on wages or other terms of employment in the product/service market in which the Healthcare Workers compete for employment.

43. The conspiracy and combination involves the unlawful collaboration of SEIU and Kaiser Permanente to preserve SEIU members' supra-competitive wages and Kaiser Permanente's market dominance. It is, therefore, comprised of two parts: (i) a horizontal agreement between SEIU union members who compete among themselves for wages and other benefits of employment, their leadership, and the defendant union entities themselves (including the SEIU-controlled Coalition of Kaiser Permanente Unions ("Coalition"), its leadership, and its union members); (ii) facilitated and assisted by a vertical conspiracy and combination among these union members, leaders, and entities and Kaiser Permanente entities.

44. A union by its nature and definition is in fact a horizontal conspiracy of workers who have, together with its leaders and union entities, agreed to act in concert to assert their collective market power to obtain higher prices and better working conditions for their labor. It is a classic cartel.

45. Unions co-exist with our antitrust laws by way of an exemption granted to them,



1 but that exemption only applies to the extent that the union acts in its legitimate, unilateral self-  
2 interest and does not combine with non-labor groups. *See USS-POSCO Industries v. Contra*  
3 *Costa County Bldg. & Const. Trades Council, AFL-CIO*, 31 F.3d 800, 807 (9th Cir. 1994).

4 46. Here, the conduct and agreement of SEIU is not exempt from the antitrust laws  
5 because it is outside of the antitrust-exempted area, and instead involves an agreement and  
6 combination with an employer – Kaiser Permanente – to restrain competition in the market in  
7 which Kaiser Permanente competes in exchange for concessions and cash into various union  
8 slush funds. Moreover, the activities of the union members, leaders, and entities are not in the  
9 union’s legitimate, unilateral self-interest, but instead involve combining with an employer –  
10 Kaiser Permanente – to harm and ultimately destroy that employer’s competition through  
11 illegitimate, and in many instances, deceptive acts.

12 47. Without the protections of the antitrust labor exemption, SEIU is merely a  
13 horizontal conspiracy of workers, leaders, and union entities each of whom is forbidden under the  
14 antitrust laws from engaging in concerted action with any of the others to influence prices or  
15 other competitive variables that involve the sale of their services to employers and from entering  
16 into a vertical combination with Kaiser Permanente affecting prices or reducing quality and/or  
17 quantity in the markets for emergency services and acute care services.

18 48. Although Kaiser Permanente is in a vertical relationship with the horizontal  
19 conspiracy of union workers, leaders, and entities, Kaiser Permanente is facilitating and otherwise  
20 participating in that horizontal conspiracy by combining with the union workers, leaders, and  
21 entities to restrain trade in multiple markets.

22 49. Because Defendants have combined and conspired to fix and maintain prices (and  
23 reduce quantity and quality) in the markets for emergency services, acute care services, and  
24 Healthcare Workers services to hospitals, the conspiracy and agreements in furtherance thereof  
25 are not protected under any antitrust exemptions and constitute a *per se* illegal restraint of trade in  
26 violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

27 50. Alternatively, to the extent that the conspiracy and the agreements in furtherance  
28 thereof are determined to involve only a “vertical” restraint of trade, they are in violation of

1 Section 1 of the Sherman Act, 15 U.S.C. § 1, as judged by the rule of reason. Defendants have  
2 market power in the relevant geographic and product markets, and have conspired to restrain  
3 trade in an unreasonable manner, injuring both competition generally and Prime specifically.

4 51. Defendants' conduct has occurred in, and is having a substantial effect on,  
5 interstate commerce. Eliminating Plaintiff as a competitor of Defendant Kaiser Permanente  
6 would affect Prime's (1) substantial (in the tens of millions of dollars) out-of-state purchases in  
7 medicines and supplies; (2) substantial revenues from out-of-state insurance companies, including  
8 federally funded Medicare reimbursement; and (3) substantial sums from out-of-state sources to  
9 help Prime run its daily operations.

10 52. As a direct competitor of Kaiser Permanente that was targeted and damaged by  
11 Kaiser Permanente's anticompetitive conduct, and as a purchaser of services from HealthCare  
12 Workers in The Market, Prime has suffered antitrust injury and has standing to bring this claim.

13 53. Prime is entitled to recover treble damages under Section 4 of the Clayton Act, 15  
14 U.S.C. § 15, and to injunctive relief under Section 16 of the Clayton Act, 15 U.S.C. § 26.

15 **II. BACKGROUND OF DEFENDANTS' INVOLVEMENT IN THE**  
16 **CONSPIRACY**

17 **A. Kaiser Permanente's Motive to Enter the Conspiracy**

18 54. Kaiser Permanente was created for the express purpose of providing health care to  
19 union workers, and, as a result, it has always had a close relationship with unions. After World  
20 War II, Kaiser Permanente grew rapidly by adding additional union health plans to its customer  
21 base. Given that Kaiser Permanente was so heavily dependent on union customers, it necessarily  
22 was unionized very early in its history.

23 55. In fact, because Kaiser Permanente was so closely identified with unions and  
24 working people in its early years, most large employers were openly hostile to the organization  
25 during the 1950s. So much so that the prepaid plans provided by Kaiser Permanente were  
26 denounced as socialized medicine by the American Medical Association. It was the unions that  
27 publicly defended Kaiser Permanente and came to its aide by providing almost all of KFHP's  
28 members.

1           56. Labor costs are critical in the hospital industry, which is a labor-intensive industry.  
2 While labor costs for businesses generally average approximately thirty percent of expenses,  
3 labor costs in the hospital industry are significantly higher. By way of example, in 2008, the year  
4 that Prime acquired Garden Grove Hospital, which was formerly owned by Tenet and organized  
5 by UHW, Garden Grove's labor costs were 59 percent of its total operating expenses and 60  
6 percent of its total operating revenue.

7           57. Despite the high labor costs imposed by unionization, up until the 1980s, Kaiser  
8 Permanente was able to provide competitively priced services. As commentators have observed,  
9 the reason Kaiser Permanente could do so was not related to any superiority of its business model.  
10 Rather, during that time, Kaiser Permanente "could use some cost-plus pricing and thereby pass  
11 on the costs of improvements in its labor contracts to its customers." Susan C. Eaton et al., *The*  
12 *Kaiser Permanente Labor Management Partnership: The First Five Years* 15 (2003).

13           58. In the 1980s, Kaiser Permanente's ability to stick consumers with the bill for its  
14 inefficient union contracts and excessive labor costs began to erode. The federal government  
15 moved from a "cost-plus" reimbursement structure to a flat-rate reimbursement program for  
16 Medicare and Medicaid.

17           59. When Medicare was established in 1965, the United States Congress adopted the  
18 private health insurance sector's retrospective cost-based reimbursement system to pay for  
19 hospital services. Medicare made interim payments to hospitals throughout their fiscal year,  
20 which were reconciled with the hospitals' cost reports at the end of each year. Because the  
21 payment methodology created an incentive for hospitals to provide more services and also  
22 increase costs, Medicare hospital costs increased dramatically over the following 15 years.

23           60. In 1982, to control hospital costs, Congress mandated the implementation of a  
24 prospective per-case reimbursement system designed to become more efficient in the delivery of  
25 services. Under this prospective payment system ("PPS"), which remains in effect today,  
26 inpatient admission cases are divided into medical severity diagnosis related groups ("MS-  
27 DRGs") and Medicare then reimburses hospitals a flat rate per case for inpatient hospital care that  
28 is based upon the associated MS-DRG. For example, a hospital receives a single set payment

1 amount for a Medicare beneficiary's in-patient hospital stay, based on diagnosis and standardized  
2 functional assessments, in exchange for which the hospital must render whatever healthcare  
3 services are needed by the Medicare beneficiary during the stay (with some exceptions).  
4 Accordingly, the PPS system rewards efficient hospitals, and inefficient hospitals have an  
5 incentive to become more efficient. As implementation occurred and progressed in the 1980s,  
6 hospital revenues dropped and many inefficient hospitals went out of business because they could  
7 not deliver care within the payment limits.

8 61. With the advent of PPS, which was based on the model HMOs had developed in  
9 the 1960s, HMOs expanded significantly. During the 1980s, most hospitals became involved in  
10 managed care through ownership/sponsorship of an HMO, offering HMO discounts, or  
11 participating with medical staffs in economic joint ventures — all designed to shift financial risk  
12 to providers and promote cost-savings.

13 62. This shift in payment was successful in creating pressure to control costs, which  
14 necessarily meant increased pressure to control labor costs. No longer could health groups such  
15 as Kaiser Permanente increase labor costs and expect taxpayers to pick up the tab. With labor  
16 costs being such a large part of hospital expenses, this necessarily created conflict with the labor  
17 unions that represented many hospital employees, particularly the SEIU and the California Nurses  
18 Association (“CNA”).

19 63. Kaiser Permanente was placed in a particularly difficult position by these new  
20 competitive pressures because of its long relationship with and reliance on the labor movement.  
21 Not surprisingly, Kaiser Permanente was one of the most heavily unionized health care providers  
22 in the United States. At the same time, unions constituted its largest customers. Kaiser  
23 Permanente was so identified with unions that it has been referred to as “the HMO that labor  
24 built.” This reality presented Kaiser Permanente with a dilemma: Kaiser Permanente had to  
25 either remain friendly with unions, which meant operating under a cost prohibitive model that  
26 would likely lead to failure, or adopt a more confrontational approach which would alienate the  
27 union customer base upon which it was dependent.

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1           **B.       SEIU's Motive to Enter the Conspiracy**

2           64.       The labor unions, particularly the SEIU, also were threatened by the same new  
3 financial realities due to the concentration of the union members at KFH facilities. The new  
4 economic realities meant that Kaiser Permanente would have to get labor costs under control,  
5 leading to increased fights over contracts and unionization. The result for the SEIU and other  
6 unions would be the expenditure of scarce resources merely to attempt to maintain its existing  
7 market position, diverting those resources away from growth. In the rapidly changing healthcare  
8 market, marked by fast growing, efficient operators, the result would be the plummeting share of  
9 the market that was represented by the SEIU.

10          65.       By 1987, it was apparent that the SEIU was losing ground and membership. Most  
11 significantly, these market forces led to a bitter strike at Kaiser Permanente. The result was  
12 humbling for the SEIU: a two-tier wage system. The lesson that SEIU took from the strike was  
13 that market density – the exclusion of non-union participants – was critical to the survival of its  
14 model. The SEIU concluded that in order to succeed, Kaiser Permanente's competition had to be  
15 brought to its knees. In economic terms, that meant making certain that Kaiser Permanente's  
16 competitors' costs were increased to a level at or above Kaiser Permanente's costs or forced to  
17 withdraw from the market completely.

18          66.       Until the mid-1990s, the SEIU focused primarily on what would be considered  
19 traditional organizing. Traditional organizing involved seeking support among workers and then  
20 invoking the election processes of the National Labor Relations Board ("NLRB") in order to  
21 become the legally certified bargaining representative for a group of employees.

22          67.       By the late 1990s, however, the SEIU was moving away from the traditional  
23 model of organizing. The SEIU's new strategy was based on a belief that laws were an  
24 impediment to its objectives.

25          68.       In the place of a lawful organizing model, the SEIU adopted a strategy that spoke  
26 in terms of market domination. Under this new approach the key aim of any union organizing  
27 effort was for unions to win a decisive market share in industries by increasing "union density"  
28 and controlling the "labor supply" and to gain the ability "to take wages out of competition and

1 raise standards.” In other words, the goal of the density strategy is to eliminate competition in the  
2 market for service workers represented by SEIU and establish supra-competitive wage rates for  
3 such services in the relevant market.

4 69. The SEIU recognized that it could not achieve market dominance as long as the  
5 market place remained open to competition – competition not from the organizing efforts of other  
6 unions but competition from companies operating in the same market as companies organized by  
7 the SEIU. The SEIU knows that it cannot achieve its goals in a competitive market because  
8 union employers would resist incurring higher wage costs and risk losing market share to  
9 competitors who maintain lower costs structures. The SEIU concluded, therefore, that unless the  
10 majority of employers were bound to union agreements or the SEIU was able to raise those  
11 employers’ costs in some other way, the SEIU’s contracts and representations would become  
12 untenable and its model would collapse.

13 70. The SEIU also recognized that it was incapable of organizing sufficient employees  
14 through traditional and lawful means to mitigate the threat to its market dominance model of  
15 unionization. The SEIU’s chief strategist, Lerner, succinctly described the problem and the SEIU  
16 solution as follows:

17 Currently our organizing is driven by the questions: “How do we  
18 win a majority of votes?”

19 Instead we need to ask . . . : “How do we develop power to force  
20 employers to recognize the union and sign good contracts?”

21 Stephen Lerner, *Let’s Get Moving: Labor’s Survival Depends on Organizing Industry-Wide for  
22 Justice and Power*, Labor Research Review: Volume 1, No. 18, Article 10 (1991).

23 71. Consequently, the SEIU began seeking agreements with employers in which the  
24 parties would work together to achieve market dominance for the SEIU while reducing or  
25 eliminating the competitive threat from non-union employers. Many of these agreements on their  
26 face violate the labor laws and the antitrust laws because they (1) constitute a combination with a  
27 non-labor group; and (2) involve conduct that is not undertaken in the pursuit of the *legitimate*  
28 self-interest of the SEIU. As such, they are outside the antitrust exemptions afforded to legitimate  
organizing and collective bargaining activities. *See, e.g., United Mine Workers v. Pennington*,

1 381 U.S. 657, 662 (1965); *Allen Bradley Co. v. Local No. 3, IBEW*, 325 U.S. 797, 806-07 (1945);  
2 *USS-POSCO Indus. v. Contra Costa Cnty. Bldg. & Constr. Trades Council, AFL-CIO*,  
3 31 F.3d 800, 806-07 (9th Cir. 1994); *Bodine Produce, Inc. v. United Farm Workers Org. Comm.*,  
4 494 F.2d 541, 557-58 (9th Cir. 1974). Defendants' conspiracy, as detailed below, has all the  
5 earmarks of an illegal SEIU scheme to interfere with the competitive dynamics of markets.

6 72. The SEIU's efforts to expand its representation of service workers in the relevant  
7 market are questionable given the tactics used to accomplish that goal. When the SEIU, itself a  
8 combination of competitors, partners with non-labor entities to accomplish its market domination  
9 strategy, as the SEIU has done on many prior occasions and is now doing with Kaiser  
10 Permanente, that combination is *per se* unlawful under the antitrust laws.

### 11 C. Defendants' Relationship Prior to the Conspiracy

12 73. For the SEIU's plan to succeed, the SEIU had to protect the inroads that it already  
13 had made with Kaiser Permanente. Initially, in 1992, SEIU Local 250 (which later merged with  
14 another SEIU healthcare local, Local 399, and became UHW), which had been targeting Kaiser  
15 Permanente, formed a labor management partnership with Kaiser Permanente. This 1992  
16 partnership is distinct from the conspiracy at issue in this case.

17 74. The 1992 partnership was ineffective at stemming the decline at unionized Kaiser  
18 Permanente due to the inability of the partnership to eliminate the entrance or operation of more  
19 efficient non-union competitors. As a result, Kaiser Permanente was forced to pursue a more  
20 pragmatic labor relations strategy that focused on competitive market wages. The result of this  
21 strategy was a highly confrontational and adversarial relationship with the SEIU during the early  
22 1990s.

23 75. The various, separate unions representing Kaiser Permanente's workers responded  
24 by staging protracted and bitter strikes. For example, SEIU Local 250 conducted a seven-week  
25 strike in 1986 largely to resist a two-tier wage structure that they ultimately had to accept; SEIU  
26 Local 535 in Southern California conducted multiple strikes from the late 1970s through 1990;  
27 and the Oregon nurses union went on strike for fifty-eight days in 1988. This labor discontent  
28 created a significant amount of negative publicity for Kaiser Permanente. Kaiser Permanente, an



1 organization that was long hailed for both quality care and positive employee relations, was now  
2 facing opposite headlines.

3 76. Despite their frequency, none of the strikes were coordinated among the various  
4 Kaiser Permanente local unions, each of which bargained locally. Against this backdrop of  
5 decentralized bargaining and growing difficulties with Kaiser Permanente, SEIU locals  
6 representing Kaiser Permanente workers in Northern and Southern California, among other states,  
7 began to meet to strategize and share information.

8 77. The unions recognized that their disunity created a strategic disadvantage in their  
9 attempts to bring pressure to bear on Kaiser Permanente. In an attempt to address this problem,  
10 some local union leaders began to advocate for inter-union cooperation in developing and  
11 executing the attacks on Kaiser Permanente. With anticipated difficult negotiations on the  
12 horizon in 1995, the SEIU, then led by John Sweeney, approached the Industrial Union  
13 Department (“IUD”) of the AFL-CIO to seek its assistance in coordinating the unions  
14 representing Kaiser Permanente workers.

15 78. IUD was the originator of the union corporate campaign concept – on which SEIU  
16 relies to advance the goals of the conspiracy – publishing the first manual explaining how unions  
17 could adopt and implement such pressure campaigns against target employers in 1985. *See* IUD,  
18 *Developing New Tactics: Winning With Coordinated Corporate Campaigns* (1985). As defined  
19 by the United States Court of Appeals for the District of Columbia, a corporate campaign

20 . . . encompasses a wide and indefinite range of legal and  
21 potentially illegal tactics used by unions to exert pressure on an  
22 employer. These tactics may include, but are not limited to,  
23 litigation, political appeals, requests that regulatory agencies  
investigate and pursue employer violations of state or federal law,  
and negative publicity campaigns aimed at reducing the employer’s  
goodwill with employees, investors, or the general public.

24 *Food Lion, Inc. v. United Food & Commercial Workers Int’l Union, AFL-CIO, et al.*, 103 F.3d  
25 1007, 1014 n.9 (D.C. Cir. 1997).

26 79. In January 1995, Peter DiCicco, IUD Secretary-Treasurer, requested that the  
27 presidents of each of the AFL-CIO unions representing workers at Kaiser Permanente attend an  
28 organizing meeting. As a result, the first International President’s Committee meeting was held



1 in February 1995. Later that year, in April 1995, a group called the IUD-Kaiser Permanente  
2 Coordinated Bargaining Committee met and included more than 100 delegates. In June 1995, a  
3 steering committee composed of presidents of local unions representing workers at Kaiser  
4 Permanente met in Denver, Colorado.

5 80. The result of these efforts was the 1995 formation of the Coalition of Kaiser  
6 Permanente Unions (hereinafter the “Coalition”), consisting of twenty-six (26) local unions  
7 representing Kaiser Permanente workers. The purpose of the Coalition was to develop a joint  
8 strategy and structure for dealing with Kaiser Permanente going forward. *Id.* From 1995 through  
9 present, the Coalition has been controlled by and operated for the benefit of the SEIU. The  
10 majority of the Coalitions’ union members are SEIU union members.

11 81. From inception, the SEIU-controlled Coalition pursued two tracks in dealing with  
12 Kaiser Permanente: (i) an adversarial approach focused on a corporate campaign against Kaiser  
13 Permanente; and (ii) a strategy of partnering with Kaiser Permanente in a way that would enable  
14 each party to advance their agenda. Local Coalition leaders described the dual approaches as  
15 Plan A and Plan B.

16 82. The Coalition unions agreed to fund a corporate campaign against Kaiser  
17 Permanente. Many union leaders, however, were concerned about the impact of such a  
18 campaign. As stated by DiCicco, “we might do permanent damage to [Kaiser] and to our 55,000  
19 union members if we mount an all-out corporate campaign or use the information we amassed for  
20 short-term advantage or leverage.” *See Kochan, Healing Together, 37.* One union activist,  
21 Kathy Schmidt, President of the Oregon Federation of Nurses and Health Professionals,  
22 American Federation of Teachers underscored the damage to membership that could result from  
23 such an approach by noting: “we started building a corporate campaign capacity to bring them to  
24 their knees in bargaining. Then we realized, here is the most unionized system in the country,  
25 why don’t we try to help them?” Eaton, *The First Five Years, 17.*

26 83. As a result, DiCicco began to focus on establishing a partnership with Kaiser  
27 Permanente, and, in mid-1995, the IUD developed a proposal that emphasized a dual track  
28 approach. As DiCicco saw it, the partnership approach would have to employ the SEIU-

1 controlled Coalition's resources in a way that would make Kaiser Permanente a market winner.  
2 Specifically, DiCicco's proposal provided: "We feel there is potential – and a great need – for a  
3 modified competitive vision that will be successful for Kaiser in the marketplace." Kochan,  
4 *Healing Together*, 37.

5 84. At about the same time the unions were beginning to coordinate in an effort to deal  
6 with Kaiser Permanente with one voice, Kaiser Permanente's market share was rapidly declining  
7 due to its inability to compete in the changing marketplace. Between the late 1980s and early  
8 1990s, Kaiser Permanente experienced "severe competitive challenges, particularly from for-  
9 profit health care providers aggressively seeking to increase their market share." Eaton, *The First*  
10 *Five Years*, 15. Kaiser Permanente was incurring losses in excess of \$250 million a year. As a  
11 result, labor relations became more strained as Kaiser Permanente sought to gain control over the  
12 excessive labor costs that were crippling its ability to compete and destroying its business.

13 85. Kaiser Permanente was also concerned about the SEIU-controlled Coalition and  
14 the adversarial strategies it was considering. Specifically, Kaiser Permanente worried about  
15 threats of a SEIU corporate campaign, strikes, and further bad press.

16 86. Kaiser Permanente understood, however, that the SEIU-controlled Coalition was  
17 also concerned about an adversarial approach and that the unions were themselves considering a  
18 partnership approach. This mutual realization led to high-level conversations about a  
19 "partnership" between Kaiser Permanente and the SEIU-controlled Coalition to advance their  
20 collective interests.

21 87. As stated by one of the architects of the conspiracy, Thomas Kochan, "[t]he  
22 partnership was not the product of an ideological conversion to labor-management cooperation on  
23 the part of either the union coalition or Kaiser Permanente management, but developed out of a  
24 pragmatic judgment that the parties would have more to lose separately and jointly by going  
25 further down the path of escalating conflict." See Kochan, *Healing Together*, 38

26 88. Notwithstanding the mutual benefit to both the SEIU-controlled Coalition and  
27 Kaiser Permanente of entering into the conspiracy, the SEIU-controlled Coalition, consistent with  
28 its dual-track approach, obtained funding for its adversarial strategy and launched its corporate

1 campaign against Kaiser Permanente. As described by the then AFL-CIO President John  
2 Sweeney and former International Union President, “[w]e’re going to renovate the HMO that  
3 labor built.” Carl T. Hall, *Unions Stepping Up Pressure on Kaiser: AFL-CIO President*  
4 *Condemns HMO’s Cost-Cutting Plans*, San Francisco Chronicle, March 20, 1996.

### 5 **III. THE CONTRACT, COMBINATION, OR CONSPIRACY**

#### 6 **A. SEIU and Kaiser Permanente Form their Unlawful Conspiracy**

7 89. The SEIU-controlled Coalition’s intensification of its pressure tactics on Kaiser  
8 Permanente resulted in a pivotal December 1995 meeting between Coalition officials, including  
9 former International Union President and then AFL-CIO President John Sweeney, and Kaiser  
10 Permanente executives, including Chief Executive Officer David Lawrence. The meeting took  
11 place at the Dallas-Ft. Worth Airport.

12 90. David Lawrence described his participation in the meeting as follows: “I agreed  
13 . . . that we would meet with labor representatives privately at Dallas-Ft. Worth airport. It was  
14 almost a make-or-break meeting.” See Kochan, *Healing Together*, 38. The result of that meeting  
15 was an agreement in principle between Defendants to work together as step one in the formation  
16 of the conspiracy.

17 91. It took most of 1996 and into 1997 to discuss the elements of the conspiracy and  
18 what the public aspects of the “partnership” would look like. The 1996-1997 meetings were led  
19 by senior Kaiser Permanente executives and union leaders. Indeed, from its earliest days, the  
20 conspiracy has been orchestrated at the highest levels at Kaiser Permanente, the SEIU-controlled  
21 Coalition, and SEIU.

22 92. During those meetings, the Kaiser Permanente executives and union leaders  
23 ultimately agreed to work together to achieve market domination for Kaiser Permanente through  
24 the elimination of competitive threats in the marketplace. Examining Defendants’ conduct  
25 following these meetings further reveals the agreements made during those meetings.  
26 Specifically, shortly after the 1996-1997 meetings, the Defendants’ behavior changed drastically.  
27 Instead of attacking Kaiser Permanente, the SEIU began attacking Kaiser Permanente’s  
28 competitors in a manner consistent with a desire to advance the market dominance objectives of

1 the conspiracy. The SEIU (including its members and leaders), working within the conspiracy,  
2 engaged in deceptive and exclusionary conduct with the sole aim to harm or destroy Kaiser  
3 Permanente's competitors for the benefit of the conspiracy.

4 93. Once the executives from the SEIU-controlled Coalition and Kaiser Permanente  
5 agreed to the key provisions of the conspiracy, the "partnership" agreement was presented to a  
6 vote of the entire Coalition which, at the time, included twenty-seven unions. Ultimately, in June  
7 of 1997, the agreement was approved by the Coalition union members. As a result, the SEIU-  
8 controlled Coalition and Kaiser Permanente entered into what they termed a "strategic  
9 partnership" – publicly known as the Labor Management Partnership ("LMP") – as a way to  
10 transform their relationship and the organizations. Kaiser Permanente agreed to bear all costs  
11 associated with administering the LMP. *See* Kaiser Permanente National Labor Management  
12 Partnership Agreement, 1997, Section 2, Costs of the Partnership (the "1997 Agreement").

13 94. The written 1997 Agreement itself constitutes an unlawful agreement in restraint  
14 of trade, as well as evidence of the greater conspiracy, which goes well beyond the four corners of  
15 that document. Naturally, the subjects discussed and agreements reached between the Kaiser  
16 Permanente and Coalition leaders during the December 1995 Dallas-Ft. Worth Airport meeting  
17 and subsequent meetings throughout 1996 and 1997 were not all specifically addressed by the  
18 express terms of the 1997 Agreement. While the 1997 Agreement was advertised by the  
19 conspirators as the culmination of their "collaborative" meetings, it was nothing more than a  
20 façade behind which the planned future conspiratorial conduct could evade detection.

21 95. The 1997 Agreement identified six original goals of the LMP. One of those goals  
22 was to "[a]ssist Kaiser Permanente in achieving and maintaining market leading competitive  
23 performance." Another initial goal was to "[e]xpand Kaiser Permanente's members in current  
24 and new markets, including designation as a provider of choice for all labor organization in the  
25 areas we serve." In 2002, senior leaders from the Coalition and Kaiser Permanente agreed to an  
26 additional LMP goal: "to consult on public policy issues and jointly advocate when possible and  
27 appropriate."

28 96. By its own admission, including in various written agreements and in current

1 statements on the Kaiser Permanente websites and the LMP website, Kaiser Permanente – the  
2 Defendant partnership comprised of Defendants KFHP, KFH, and SCPMG – was the entity that  
3 entered into this unlawful “partnership” with the Coalition, an entity controlled by Defendant  
4 SEIU.

5 97. While Defendants did their best to mask the unlawful purpose of the 1997  
6 Agreement, in reality, it was the memorialization of the commitment of the SEIU-controlled  
7 Coalition and Kaiser Permanente to work together to increase Kaiser Permanente’s market share  
8 by bringing the collective market power of the service workers to bear to injure Kaiser  
9 Permanente’s competitors. In exchange, Kaiser Permanente committed to wage and benefits  
10 concessions to SEIU represented workers and payments to union slush funds. Such concessions  
11 would only be sustainable as competition – and especially non-union competition – was  
12 eliminated. It was the quintessential *quid pro quo* arrangement.

13 98. So began the unlawful conspiracy and oral and written agreements between  
14 Defendants to achieve Kaiser Permanente’s market domination through the use of SEIU’s market  
15 density strategy to attack and then either destroy or force the capitulation of Kaiser Permanente’s  
16 competitors. The purpose of the written 1997 Agreement was twofold. First, it provided the  
17 necessary subterfuge behind which the SEIU-controlled Coalition and Kaiser Permanente could  
18 disguise their activities aimed at market domination. Second, it provided a sense of security to  
19 the parties who had a contentious and adversarial history, consistent with typical labor-  
20 management relations. In order for the conspiracy to be effective, Defendants had to first secure  
21 trust among conspirators.

22 99. One of the most significant aspects of the 1997 Agreement was that it facilitated  
23 union organizing of Kaiser Permanente employees. At a time when industry cost pressures were  
24 threatening Kaiser Permanente’s union model, Kaiser Permanente inexplicably entered into an  
25 agreement with the SEIU-controlled Coalition that to outsiders appeared to increase the problem.  
26 But in the context of the unions’ and their members’ agreement to destroy Kaiser Permanente’s  
27 competition, the agreement makes sense. Without competition in the relevant markets, the cost  
28 pressures dissipate.

1           100. A 1997 *Labor Notes* article about the “partnership” highlights the problems with  
2 and the illicit objectives of Defendants’ conspiracy. See Martha Gruelle, *AFL-CIO Launches*  
3 *Partnership with Health Care Giant*, *Labor Notes*, June 1997, at 5. The article notes that the  
4 health care industry was restructuring “as for-profit providers invade markets where public and  
5 charity systems once dominated.” *Id.* The article observes that Kaiser Permanente was  
6 responding to these market pressures by closing hospitals and departments, and by contracting out  
7 significant portions of its operations. *Id.* The article states that “[t]he [Kaiser-Coalition]  
8 agreement mark[ed] the first time that the AFL-CIO has agreed to promote the interests of a  
9 specific business in this way on a national basis.” *Id.* The article further states that the joint  
10 purpose behind Defendants’ agreement was to make “Kaiser Permanente the preeminent deliverer  
11 of health care in the United States.” *Id.* That is, the conspiracy allowed the SEIU (including its  
12 members, leaders, and entities) to work hand-in-hand with Kaiser Permanente to do whatever was  
13 necessary to eliminate the hospital’s competitors.

14           101. Thus, the conspiracy invested the unions, primarily SEIU, with an interest in  
15 Kaiser Permanente’s success over its competitors. Indeed, the explicit purposes of the  
16 “partnership” listed in the 1997 Agreement include establishing a partnership to, among other  
17 things, “[a]ssist Kaiser Permanente in achieving and maintaining market leading competitive  
18 performance” and “[e]xpand Kaiser Permanente’s membership in current and new markets.”  
19 1997 Agreement, Section 1, Purpose.

20           102. The illegality of the conspiracy is apparent from the many public descriptions of  
21 the “partnership” and its purposes. Labor advocates have observed that “[t]he partnership is not  
22 between management and Kaiser employees. It is a partnership between management and the  
23 leadership of the union, which ‘owns the contract,’ against the members if necessary.” Mike  
24 Parker, *Who Are the Partners in Kaiser Partnership?*, *Labor Notes*, Feb. 25, 2010.

25           103. In *Healing Together*, the authors observe that Defendants’ overarching conspiracy  
26 and agreement in restraint of trade “creates a high-level labor-management committee to work on  
27 *marketing, product development, and other strategic issues needed to attract the new customers*  
28 *and to secure Kaiser Permanente’s future.*” Kochan, *Healing Together*, 3 (emphasis added).

1           104. A 1998 report on the progress illustrates that the conspiracy’s focus is market  
2 control, and not collective bargaining. *See Labor Day 1998: Kaiser Permanente/AFL-CIO*  
3 *Partnership Progress Report*, BW HealthWire (Aug. 31, 1998). Indeed, the report observes that  
4 “collective bargaining is explicitly excluded from the partnership . . . .” *Id.* Meanwhile, the  
5 “partnership” does include “joint participation in strategic business planning efforts.” *Id.* Thus,  
6 the essence of the conspiracy and the agreement was cooperation in attacking the threat  
7 represented by a competitive marketplace, not labor issues.

8           105. The 1997 Agreement was not a collective bargaining agreement. Indeed, at the  
9 time the 1997 Agreement was negotiated and ratified, Kaiser Permanente had local collective  
10 bargaining agreements with each union member of the Coalition. It was those local collective  
11 bargaining agreements that governed the conditions of the union members’ employment, such as  
12 hours of work, wages, leave, vacation, benefits, seniority, discipline, grievances, arbitration,  
13 strikes/lockouts, etc. None of those subjects, or any other mandatory subject of bargaining, were  
14 addressed in the 1997 Agreement. The 1997 Agreement was intended to “enhance Kaiser  
15 Permanente’s competitive performance” and “expand Kaiser Permanente’s membership.” *See*  
16 *National Agreement, Kaiser Permanente and the Coalition of Kaiser Permanente Unions, AFL-*  
17 *CIO* (Oct. 1, 2000) (hereinafter the “2000 Agreement”). In so doing, membership population, and  
18 dues money, available to the SEIU would increase.

19           106. At the time the 1997 Agreement was executed, the parties agreed that partnership  
20 activities would be kept separate from collective bargaining. This was done not in an effort to  
21 protect the bargaining of traditional subjects but rather to alleviate the anticipated skepticism of  
22 Defendants’ joint efforts in the early stages of the conspiracy. In other words, the leadership of  
23 Kaiser Permanente and the SEIU-controlled Coalition had to secure the buy-in of the managers  
24 with decision-making authority and the elected union officials with bargaining responsibilities in  
25 order for the conspiracy to be successful.

26           107. Again, this conspiracy was conceptualized, developed, and executed at the highest  
27 levels of Kaiser Permanente, the SEIU-controlled Coalition, and SEIU. For the conspiracy to be  
28 effective, these executives understood that they needed to eliminate any internal resistance on



1 both sides.

2 **B. SEIU and Kaiser Permanente Continue their Conspiracy and Abandon**  
3 **the Traditional Arms-Length Labor-Management Relationship**

4 108. An early internal threat to the conspiracy came shortly after the 1997 Agreement  
5 was signed, in the form of a strike in Portland, Oregon in Kaiser Permanente's Northwest region.  
6 That strike showed the conspirators how vulnerable the conspiracy was to local level conflicts.

7 109. In order to silence local union leaders and thereby remove any further roadblocks  
8 from the conspiracy's path, the SEIU-controlled Coalition and Kaiser Permanente created a  
9 fiction of a national common issues bargaining framework. Under the guise of this national  
10 bargaining scheme, Defendants were able to control any internal opposition by making it appear  
11 as if the terms and conditions of the union members' employment were of paramount importance.  
12 In reality, of paramount importance to the conspiracy was market domination.

13 110. Over the course of the next several years, Defendants thus engaged in the charade  
14 of negotiating a series of "national agreements." By their own terms, the national agreements did  
15 not replace the local collective bargaining agreements that were in place, the provisions of which  
16 already addressed issues relating to terms and conditions of employment. While the national  
17 agreements were designed by the conspirators to include aspects of traditional collective  
18 bargaining agreements, they were, instead, a continued implementation of the conspiracy itself  
19 and purposefully designed to include such aspects so as to create the illusion of a lawful  
20 partnership.

21 111. At these meetings (described in detail below), representatives of the SEIU-  
22 controlled Coalition and Kaiser Permanente specifically discussed, behind closed doors, details  
23 for a strategy to advance the goals of the conspiracy by taking actions against Kaiser Permanente  
24 competitors like Prime (but also including, as described later, Columbia/HCA, Tenet, and CHW).  
25 Discovery will reveal the specific secret discussions, but the conduct discussed included, for  
26 example, producing the inaccurate reports and studies described throughout this Amended  
27 Complaint, working with complicit media outlets to publicize the sham and baseless allegations  
28 described throughout, initiating certain sham and baseless complaints causing regulatory and



1 administrative investigations and sham and baseless litigation, wrongfully withholding  
2 reimbursement for care provided to KFHP members, coercing and threatening KFHP members  
3 and others who may direct KFHP members to Prime hospitals to keep KFHP members from  
4 exercising their right to seek and, where their condition requires, continuing to receive treatment  
5 at Prime hospitals, and undertaking various other activities for the purpose of diminishing Prime's  
6 (and other Kaiser Permanente competitors') revenue and raising competitors' costs, thereby  
7 eliminating Prime and others as competitors in the Market.

8 112. The representatives at these meetings discussed, negotiated, and agreed upon a  
9 specific strategy to harm and destroy Kaiser Permanente's competitors, including Prime, for the  
10 benefit of the conspiracy. These specific plans were then communicated to the relevant Kaiser  
11 Permanente and SEIU officials, SEIU members, and SEIU employees, who carried them out. In  
12 addition, both SEIU and Kaiser Permanente officials, SEIU members, and SEIU employees  
13 communicated these strategies to certain cooperating third-parties like California Watch to help  
14 carry out the objectives and plans of the conspiracy. To state one of several examples, SEIU  
15 leaders and members coordinated the production of specific deceptive and inaccurate reports  
16 about fictional upcoding for cases of septicemia at Prime hospitals. SEIU leaders and members,  
17 with the assistance of Kaiser Permanente employees, arranged to have California Watch produce  
18 these reports, so they would have a greater impact because the general public did not realize that  
19 California Watch was working at the direction of the conspiracy. The SEIU leaders, member, and  
20 entities, and Kaiser Permanente, then used these reports, as part of the conspiracy, in various  
21 ways described in this Amended Complaint to harm Prime. The same pattern occurred with  
22 regard to several other actions by the conspiracy against Kaiser Permanente competitors like  
23 Prime. Many of them are described in this Amended Complaint, but others will be uncovered  
24 during discovery, as the conspirators, like typical antitrust conspirators, sought to keep many of  
25 the details secret.

26 113. The 2000 Agreement was developed by the LMP's Commission Issues Committee  
27 ("CIC"), made up of SEIU-controlled Coalition and Kaiser Permanente representatives, over the  
28 course of several months from April to September 2000. The 2000 Agreement included thirty-

1 three bargaining units of union members. It became effective on October 1, 2000. The signature  
2 pages for the 2000 Agreement are not publicly available. That information resides solely with  
3 Defendants.

4 114. Per the 2000 Agreement, the governing body for the LMP is the LMP Strategy  
5 Group, comprised of a small group of representatives from the Kaiser Permanente Partnership  
6 Group (“KPPG) and the Coalition in approximately equal numbers. 2000 Agreement, 6. “The  
7 KPPG represents the highest level decision-making body within Kaiser Permanente.” *Id.*

8 115. The 2000 Agreement was not a collective bargaining agreement. Indeed, at the  
9 time the 2000 Agreement was entered, Kaiser Permanente had local collective bargaining  
10 agreements with each union member of the Coalition. It was those local collective bargaining  
11 agreements that governed the terms and conditions of the union members’ employment.

12 116. The 2000 Agreement expressly stated that it was designed to support the  
13 “implementation of the Partnership on a national and local level,” *i.e.*, to gain internal support for  
14 the conspiracy, and to “serve as the blueprint for making Kaiser Permanente the employer and  
15 care provider of choice.” *Id.* at 4. A handful of traditional labor issues were listed in the 2000  
16 Agreement by the conspirators to disguise their unlawful objective – to achieve market  
17 domination for Kaiser Permanente and SEIU – which was simply an extension of the 1997  
18 Agreement.

19 117. In 2002, after a series of management changes at Kaiser Permanente, the SEIU-  
20 controlled Coalition requested a meeting between executives of Kaiser Permanente and the  
21 Coalition to determine whether the conspirators still possessed a shared vision for their  
22 “partnership.” As such, on August 21 and November 6, 2002, leaders of Kaiser Permanente and  
23 the SEIU-controlled Coalition participated in two retreats to reexamine the future envisioned  
24 under the LMP.

25 118. The conspirators quickly reaffirmed the original “partnership” vision,  
26 characterizing it as “critical to Kaiser Permanente’s success,” and then discussed process and  
27 implementation issues. LMP, *Labor Management Partnership Vision, Reaffirmation and*  
28 *Understandings*, 4 (2002) (hereinafter the “2002 Agreement”). Following the retreats, the LMP

1 published a booklet summarizing those discussions. *See id.*

2 119. The meetings were led by KFHP CEO and Chairman of the Board George  
3 Halvorson; The Permanente Federation Executive Director Jay Crosson; Coalition Executive  
4 Director Peter DiCicco; Kaiser Permanente Senior Vice President for Human Resources Lon  
5 O’Neil; and Kaiser Permanente Vice President for Labor Management Partnership Anthony  
6 Gately. Participants included the KPPG, Regional Presidents, Medical Directors, and other  
7 Coalition and Kaiser Permanente management representatives on the Partnership Strategy Group.

8 120. As a result of discussions at these retreats, the KPPG and the SEIU-controlled  
9 Coalition agreed to fully support the LMP as the central operational strategy for fully engaging  
10 employees in transforming Kaiser Permanente to achieve its market domination strategy. That  
11 strategy was based on “an assessment of critical threats and opportunities presented by the current  
12 health care environment – and the Partnership was deemed essential for succeeding in today’s  
13 challenging environment.” *Id.* at 4-5.

14 121. The conspirators recognized that continued implementation of their strategy would  
15 require “a substantial increase in resources from operations, as well as Partnership and internal  
16 union sources,” and stated that they were “strongly committed to providing the resources to  
17 support organizational transformation through the Partnership.” *Id.* at 5. Indeed, an entire section  
18 of the 2002 Agreement details how such investments in the “partnership” would be made.

19 122. Retreat participants agreed that “the execution of the LMP Vision was essential to  
20 the well-being of Kaiser Permanente” as the healthcare industry undergoes significant and  
21 disruptive change. Core elements for implementation of that vision included that “[u]nion leaders  
22 are fully integrated into the strategic decision-making process and are knowledgeable about the  
23 health care environment, budget, and performance issues[,]” that “[u]nions and management  
24 focus on joint problem-solving at all levels of the organization[,]” and that “[t]here is shared  
25 leadership and decision-making at all organizational levels.” *Id.* at 7-8.

26 123. Without a commitment at the highest levels of Kaiser Permanente and the SEIU-  
27 controlled Coalition to move forward with the conspiracy, Kaiser Permanente would not survive  
28 in the marketplace. As explained in the 2002 Agreement:

1 Kaiser Permanente's success is contingent on our ability to transform our  
2 organization. This shared vision compels us to align policies and practices to  
3 support the success of the Labor Management Partnership, to provide systems and  
4 information to prepare union and management leaders and employees for  
5 challenging new roles, and to substantially engage the workforce in making  
6 Kaiser Permanente the best. Achieving this will require our collective  
7 commitment to unwavering sponsorship, leadership and investment.

8 *Id.* at 8.

9 124. By early 2004, as the 2000 Agreement was to set to expire, the Coalition and  
10 Kaiser Permanente had to again decide whether to execute another national agreement or to  
11 engage in collective bargaining at the local union level. It took many meetings of Kaiser  
12 Permanente executives before the decision was made to move forward with another national  
13 agreement to further the goals of the conspiracy.

14 125. Prior to the start of discussions regarding a new written agreement, a large union  
15 delegates' conference was held where union and key Kaiser Permanente executives shared data  
16 on past and future financial and market trends.

17 126. In January 2005, just prior to the start of talks, SEIU Locals 250 and 399 merged  
18 to form UHW – a new, statewide local with 150,000 union members. UHW quickly became the  
19 dominant labor force within Kaiser Permanente and the Coalition.

20 127. In February 2005, the meetings for the newest agreement to incorporate the public  
21 terms of the conspiracy began at a dinner meeting involving approximately 40 senior  
22 management and labor leaders. The co-chairs were DiCicco, representing the SEIU-controlled  
23 Coalition, and Leslie Margolin, Senior Vice President Workforce Development, Kaiser  
24 Permanente. Margolin was also a member of the KPPG and the chief negotiator for Kaiser  
25 Permanente. Both were CIC representatives.

26 128. DiCicco and Margolin opened the meeting with speeches wherein they each said  
27 that reaching a new agreement was important to Kaiser Permanente, the workforce, to the  
28 partnership, and even to the future of health care in the United States. They both expressed the  
29 aspiration that everyone would focus on transitioning from a labor-management partnership to a  
30 health care partnership.

31 129. The culmination of the March to June 2005 meetings between Kaiser Permanente

1 and the SEIU-controlled Coalition was the conspirators' second national agreement, now  
2 covering employees in forty-four bargaining units. *See* National Agreement between Kaiser  
3 Permanente and Coalition of Kaiser Permanente Unions (Oct. 1, 2005) (hereinafter the "2005  
4 Agreement"). The 2005 Agreement was entered "by and between the labor organizations  
5 participating in the Coalition of Kaiser Permanente Unions (the Coalition) and the organizations  
6 participating in the Kaiser Permanente Medical Care Program (the Program), including Kaiser  
7 Foundation Health Plan, Inc. and Kaiser Foundation Hospitals (KFHP/H) and the Permanente  
8 Medical Groups (collectively Kaiser Permanente or Employers, or individually, Employer),  
9 which are signatories hereto." *Id.* at 6. The signature pages of the 2005 Agreement are not  
10 publicly available. That information resides solely with Defendants.

11 130. As with the prior national agreements, the 2005 Agreement memorializes the  
12 purported lawful terms of a cooperative arrangement. Like the prior national agreements, the  
13 2005 Agreement is an extension of the conspiracy of the SEIU-controlled Coalition and Kaiser  
14 Permanente to dominate the market. The 2005 Agreement not only constitutes an unlawful  
15 agreement in restraint of trade, it also serves to implement the greater conspiracy among  
16 Defendants.

17 131. The 2005 Agreement, like its predecessor, served as "a blueprint for making  
18 Kaiser Permanente the Employer and care provider of choice." *Id.* at 6. It again reaffirms the  
19 commitment by the conspirators to the conspiracy. Specifically, the 2005 Agreement provides:

20 In the 1997 Labor Management Partnership agreement, the  
21 unions and management committed to work together to  
22 "expand Kaiser Permanente's membership in current and  
23 new markets, including designation as a provider of choice  
24 for all labor organizations in the areas we serve." The  
25 parties reaffirm their commitment to market Kaiser  
26 Permanente to new and existing union groups and to  
27 establish . . . appropriate funding, to ensure the joint Labor  
28 Management Partnership marketing effort . . . result[s] in  
increased enrollment in Kaiser Foundation Health Plan.

*Id.* at 17.

132. The 2005 Agreement also provided that the "Coalition and its affiliated unions,  
acting in the interest of and in support of the Partnership, will use their influence, to the greatest  
extent possible." *Id.*

1           133. The 2005 Agreement also called for a Joint Labor Management Partnership  
2 Marketing Action Plan to be submitted annually to the Strategy Group for approval and  
3 implementation. *Id.* That Marketing Action Plan was to include the annual goals and objectives,  
4 resources, responsibilities, and accountabilities for the following year. *Id.*

5           134. The 2005 Agreement, like the prior agreements, was not a collective bargaining  
6 agreement. Indeed, at the time the 2005 Agreement was entered, Kaiser Permanente had local  
7 collective bargaining agreements with each union member of the Coalition. It was those local  
8 collective bargaining agreements that governed the terms and conditions of the union members'  
9 employment. The 2005 Agreement focused largely on advancing the anti-competitive goals of  
10 the conspiracy: preserving and promoting the dominant market position of Kaiser Permanente, for  
11 the benefit of all of the conspirators by, among other tactics, destroying non-union competitors.

12           135. By 2007, SEIU's dominance over the Coalition led other unions in the partnership  
13 to express concern about the SEIU using the partnership for its own selfish interests. Kaiser  
14 Permanente, however, continued to have a need to manipulate the market to insulate itself from  
15 competitive pressures, and the unions viewed the partnership as the only effective vehicle to assist  
16 Kaiser Permanente in that effort.

17           136. Toward that end, in a March 31, 2010 joint announcement, the Coalition's lead  
18 negotiator John August and the Senior Vice President of Kaiser Permanente's National Labor  
19 Relations, Chuck Columbus, expressed their commitment to extend the conspiracy by beginning  
20 discussions over a 2010 national agreement. All told, the parties agreed to four three-day  
21 meetings, which took place in the spring of 2010 in Oakland, San Francisco, and Los Angeles,  
22 California.

23           137. The initial three-day meeting conducted by 68 union leaders and 43 Kaiser  
24 Permanente leaders for the 2010 national agreement took place between April 6-8, 2010 in  
25 Oakland, California. John August stated during the April 6-8, 2010 kick-off meetings that the  
26 purpose of their meetings, the national agreement, and the partnership was to fortify the "asset we  
27 call Kaiser Permanente." To accomplish that objective, August added: "We need to build this  
28 partnership to succeed in the future, no matter what the obstacles or challenges."

1           138. One issue addressed during the meetings was strategies for developing the labor  
2 management partnership. Specifically, developing recommendations on what Kaiser Permanente  
3 and the Coalition should focus on, as partners, over the next several years of the conspiracy. In  
4 other words, during the 2010 meetings, the Coalition and Kaiser Permanente analyzed which of  
5 its market competitors at that time represented the biggest threat to their goal of market  
6 domination.

7           139. The initial meetings were followed by meetings that took place between April 20-  
8 22 in San Francisco, and May 4-6 and 25-27 in Los Angeles. During the April 20-22, 2010  
9 discussions, funding streams for the partnership and positioning Kaiser Permanente and the  
10 Coalition for future success were discussed. Barb Grimm, a Kaiser Permanente management co-  
11 lead stated that they had made enormous progress in taking the next steps to strengthen the  
12 partnership.

13           140. The next meeting took place between May 4-6, 2010, and the final meetings over  
14 the 2010 agreement took place between May 25-27, 2010. At the conclusion of this three-day  
15 session, the Coalition and Kaiser Permanente reached a tentative agreement on a new, two year  
16 National Agreement.

17           141. In reaching the tentative agreement, the Defendants agreed to a strategy for  
18 strengthening the conspiracy by eliminating what the conspirators identified during their 2010  
19 meetings as increased competition. At the time of the 2010 meetings, the Defendants had already  
20 successfully conspired to target and eliminate hospitals that posed a threat to Kaiser Permanente  
21 and SEIU, including Columbia/HCA, Tenet Healthcare, and CHW. The conspiracy had to  
22 necessarily evolve with the marketplace and eliminate any new competitors. In 2010, Prime  
23 represented the newest threat to the conspirators' objective of market domination. Consequently,  
24 oral and written agreements were reached during the 2010 meetings between the Defendants to  
25 focus on eliminating Prime as the next obstacle to the conspiracy.

26           142. Not only did the parties agree during those meetings to target Prime, but they  
27 agreed to the specific tactics to be used to accomplish this goal. Defendants agreed to, among  
28 other things, act in concert to fix wage rates for healthcare workers' services in The Market and



1 force Prime to adopt the high-cost labor practices of the conspirators with the ultimate goal of  
2 eliminating Prime as the sole remaining independent hospital provider in The Market.  
3 Defendants also agreed during their 2010 meetings to engage in a pattern and practice of overt  
4 acts designed to damage the business of Prime by producing the inaccurate reports and studies  
5 described herein below, by working with complicit media outlets to publicize the sham and  
6 baseless allegations described herein below, by initiating certain sham and baseless complaints  
7 causing regulatory and administrative investigations and sham and baseless litigation, by  
8 wrongfully withholding reimbursement for care provided to KFHP members, by coercing and  
9 threatening KFHP members and others who may direct KFHP members to Prime hospitals to  
10 keep KFHP members from exercising their right to seek and, where their condition requires,  
11 continuing to receive treatment at Prime hospitals, and by undertaking various other activities for  
12 the purpose of diminishing Prime's revenue and raising Prime's costs, thereby eliminating Prime  
13 as a competitor in the Market.

14 143. In June 2010, the tentative agreement was endorsed by Coalition delegates and  
15 Kaiser Permanente employees. After the endorsement, the tentative agreement was voted on by  
16 the Coalition's local union members.

17 144. On October 1, 2010, the tentative agreement was ratified by Kaiser Permanente  
18 and the SEIU-controlled Coalition. *See* National Agreement between Kaiser Permanente and The  
19 Coalition of Kaiser Permanente Unions (Oct. 1, 2010) (hereinafter the "2010 Agreement"). The  
20 2010 Agreement was signed by twenty-six "Employer" (*i.e.*, Kaiser Permanente) representatives  
21 and twenty-three "Union" (*i.e.*, SEIU-controlled Coalition) representatives. *Id.* at 51-54.

22 145. The Kaiser Permanente signatories to the 2010 Agreement included: Charles  
23 Columbus, SVP, Chief HR Officer, KFHP; Benjamin Chu, President, Southern California  
24 Region, KFHP; Jake Cochran, Executive Director, The Permanente Federation; Phil Fasano,  
25 SVP, Chief Information Officer, KFHP; Martin Gilbert, Senior Adviser, SCPMG; Barb Grimm,  
26 SVP, Office of Labor Management Partnership, KFHP; Kathy Lancaster, EVP, Chief Financial  
27 Officer, KFHP; Judith Saunders, Director, National Labor Relations, KFHP; Arthur Southam,  
28 EVP, Health Plan Operations, KFHP; Bernard Tyson, EVP, Health Plan Operations, KFHP;



1 Jeffrey Weisz, Executive Medical Director, SCPMG; Larry Wilson, SVP, Financial & Strategic  
2 Services, KFHP; and executives from other regional Permanente Medical Groups, KFHP, and  
3 KFH entities (*e.g.*, President, Northwest Region, KFH & KFHP; Executive Director & CEO of  
4 Northern California, The Permanente Medical Group). *Id.*

5 146. The SEIU-controlled Coalition representatives included: John August, Executive  
6 Director, Coalition; Mateos Alvarez, President, SEIU Local 105; Dennis DeMaio, Coordinator,  
7 SEIU International; Mike Kapsa, Director of Business Strategy, Coalition; Katy McKenzie,  
8 Special Assistant to the Trustee, UHW; Meg Niem, President, SEIU Local 49; Dave Regan,  
9 Trustee (now President), UHW; Dan Ryan, Field Director, Coalition; Joe Simoes, Kaiser Division  
10 Director, UHW; Jack Weberski, Director of Labor Relations & Research, Coalition; and  
11 representatives from several other unions in the SEIU-controlled Coalition (*e.g.*, OPEIU; UFCW).  
12 *Id.*

13 147. As touched upon in the prior agreements, the 2010 Agreement explained that the  
14 Strategy Group, the governing body for the LMP, is comprised of “the Regional Presidents, a  
15 subset of KFHP/[KF]H National Leadership Team, representatives from the Permanente Medical  
16 Groups [including SCPMG], the Permanente Federation [national representative of the  
17 Permanente Medical Groups, including SCPMG], the Office of Labor Management Partnership  
18 (OLMP) [a Kaiser Permanente entity] and the Coalition.” *Id.* at 8. The 2010 Agreement also  
19 explained that “The OLMP will provide administrative support to the Strategy Group and support  
20 the implementation of the Partnership, including: *management of the Labor Management*  
21 *Partnership Trust (the Partnership Trust) budget, as determined by the Strategy Group, including*  
22 *financial reports and fund transfers; . . .and management and/or support for other initiatives and*  
23 *programs as assigned.” Id.* (italics in original).

24 148. As with the prior partnership agreements, the 2010 Agreement documents the  
25 purportedly lawful public facing aspects of Defendants’ conspiracy. The 2010 Agreement itself,  
26 however, constitutes an unlawful agreement in restraint of trade, as well as evidence of the greater  
27 conspiracy among Defendants.

28 149. Again, using language to mask the unlawful intent and strategies of the conspiracy,

1 the 2010 Agreement further emphasized the focus on market dominance.. Thus, Section 1,  
2 “Privileges and Obligations of Partnership,” states:

3 The parties commit to the involvement of high-level Union,  
4 Permanente and Health Plan leaders to work together on growth  
5 strategies. The parties will work in a proactive manner on other  
6 growth potential, including discussing both contiguous and non-  
7 contiguous opportunities, new geographies and regions, mergers  
8 and acquisitions that best position opportunities for KP to grow  
9 more quickly and respond to opportunities, and will explore new  
10 health care vehicles that could be made available to union trust  
11 funds, multiemployer trust funds and single employers.

12 The parties shall work together to explore and utilize available  
13 growth opportunities. This requires positioning to ensure that we  
14 are a major player in current and future debates over national health  
15 care reform. The parties shall emphasize the unique advantages of  
16 the Kaiser Permanente model.

17 *Id.* at 5.

18 150. The extent to which the unions are involved in all aspects of Kaiser Permanente’s  
19 business, and committed to Kaiser Permanente’s market dominance, is illustrated by the  
20 subsection of the 2010 Agreement titled “Partnership Governance and Structure,” which states:

21 Integration of labor into the normal business structures of the  
22 organization does not mean co-management, but rather full  
23 participation in the decision-making forums and processes at every  
24 level of the organization as described on pages 14–16 of the Labor  
25 Management Partnership Vision: Reaffirmation, and subject only to  
26 the capacity of the unions to fully engage and contribute.

27 *Id.* at 6.

28 151. The 2010 Agreement also commits the unions to aggressively increasing Kaiser  
Permanente’s market share. Specifically, the 2010 Agreement states:

The parties reaffirm their commitment to market Kaiser Permanente  
to new and existing union groups and to establish the necessary  
strategic and policy oversight, as well as appropriate funding, to  
ensure the joint Labor Management Partnership marketing effort  
becomes a successful sustainable model, resulting in increased  
enrollment in the Kaiser Foundation Health Plan. The Coalition  
and its affiliated unions, acting in the interest of and in support of  
the Partnership, will use their influence to the greatest extent  
possible to assure that unionized Employers, union health and  
welfare trusts and Taft-Hartley trusts operating in, or providing  
benefits to union members in areas served by Kaiser Permanente,  
offer the Kaiser Foundation Health Plan. National oversight and  
sponsorship of the joint marketing effort will be provided by the  
Strategy Group. The foundation of the joint marketing efforts will  
require organizational alignment, integration (*e.g.*, participating in

1 the regional rate-setting process), and coordination between the  
2 Coalition and departments engaged in promoting Kaiser  
3 Permanente at the regional level.

4 *Id.* at 18. Pursuant to the 2010 Agreement, on an annual basis, the parties also create a Joint  
5 Labor Management Partnership Marketing Action Plan. *Id.*

6 152. The 2010 Agreement, like the preceding LMP's ostensibly lawful public-facing  
7 agreements, was not a collective bargaining agreement. It applies only to "national common  
8 issues" negotiated between Kaiser Permanente and the SEIU-controlled Coalition. Many of these  
9 issues have nothing to do with terms and conditions of employment, such as advancing Kaiser  
10 Permanente's competitive position in the marketplace, necessarily to the detriment of Kaiser  
11 Permanente's competitors.

12 153. Further distancing the 2010 Agreement from collective bargaining is the fact that,  
13 at the time the 2010 Agreement was executed, Kaiser Permanente already had 38 local collective  
14 bargaining agreements with the union members of the SEIU-controlled Coalition. This includes a  
15 collective bargaining agreement, which the parties declared was the "first negotiated [collective  
16 bargaining] agreement between Kaiser Permanente and United Healthcare Workers-West." That  
17 collective bargaining agreement was entered into on October 1, 2005 by and between UHW and  
18 KFHP, KFH, The Permanente Medical Groups, and SCPMG and addresses traditional subjects of  
19 collective bargaining such as management rights, union recognition, union membership/security,  
20 dues, job classifications, hours, overtime, wages, seniority, leave, benefits, discipline, grievances,  
21 and arbitration.

22 154. As with the UHW-Kaiser Permanente collective bargaining agreement, it was the  
23 local collective bargaining agreements that governed the terms and conditions of the union  
24 members' employment. Indeed, per the 2010 Agreement, "[t]he provisions of Local Agreements  
25 between the Coalition and Kaiser Permanente establish terms and conditions of employment  
26 applicable to the recognized or certified bargaining units." *Id.* at 49.

27 155. On February 6, 2012, Kaiser Permanente's lead negotiator Dennis Dabney, Senior  
28 Vice President of Labor Relations, Kaiser Permanente, and the Coalition's lead negotiator John  
August, issued a joint announcement that Kaiser Permanente and the SEIU-controlled Coalition

1 were preparing to begin the process of “negotiating” the fourth National Agreement and that  
2 meetings would begin on March 6, 2012 and continue through May 10, 2012.

3 156. On March 5, 2012, Dabney and August issued another announcement that the CIC  
4 would begin meetings for a successor agreement the following day. The first meetings took place  
5 on March 6-8, 2012 in Los Angeles, California. Included in the meetings was a subgroup of  
6 Kaiser Permanente and Coalition leaders titled Growth of Kaiser Permanente and the Unions.  
7 The objective of that subgroup was to develop specific recommendations for working  
8 collaboratively to grow the membership of Kaiser Permanente and the partner unions, and for  
9 optimizing the Partnership Recognition & Campaign Procedures, *i.e.* market domination. The  
10 parties were also to discuss whether actual collective bargaining at the local level would survive.

11 157. The bulk of the first week’s session was spent in training on the LMP process, but  
12 the meetings opened with a half-day of presentations by leaders from both Kaiser Permanente and  
13 the Coalition. Speakers included Dabney and August as well as Bernard Tyson, President and  
14 Chief Operating Officer, Kaiser Permanente; Chuck Columbus, Senior Vice President and Chief  
15 Human Resources Officer, Kaiser Permanente; Artie Southan, Executive Vice President Health  
16 Plan Operations, Kaiser Permanente; and Dave Regan, President, UHW.

17 158. The meetings continued on March 27-29 in Los Angeles, and then next on April  
18 10-12 in San Jose, California. During the April 10-12 meetings, the subgroup on growth dealt  
19 exclusively with two issues: how to better leverage the LMP to help grow Kaiser Permanente  
20 membership and how to grow the membership of the unions that make up the SEIU-controlled  
21 Coalition, *i.e.*, how to further the interests of the conspiracy. The Kaiser Permanente  
22 representatives on the growth subgroup included, among others, Arlene Peasnell, Senior Vice  
23 President, Human Resources, Southern California Region; Don Bruzzi, Human Resources,  
24 Southern California Region; Bill Caswell, Senior Vice President, Hospital Operations, Southern  
25 California Region; Deanna Dudley, National Labor Relations; Marie Monard, Office of Labor  
26 Management Partnership; and Barbara Gilkerson, Director of Human Resources, Southern  
27 California Region. Six of the twelve union representatives on the growth subgroup were from  
28 SEIU, including four from UHW (Lasonia Cosio, Mary Lufkin, Gabriela Padilla, and Earlene

1 Pearson). Only one other union had more than one representative on the subgroup – UFCW had  
2 two representatives, one each from a Mid-Atlantic local and a Georgia local.

3 159. At the following set of meetings on April 24-26, 2012 in Pasadena, California,  
4 leaders of the subgroups made presentations to all representatives regarding their respective  
5 subgroup meetings, including joint recommendations. An additional set of CIC member meetings  
6 was held on May 9-10, 2012 in Los Angeles.

7 160. Despite the lengthy public process, during the evening of May 10, 2012, the  
8 leadership of Kaiser Permanente and the SEIU-controlled Coalition conducted closed door  
9 meetings to finalize the conspiracy’s oral and written agreements to achieve Kaiser Permanente  
10 market domination through the elimination of its competitors, specifically including Prime. All  
11 union members previously involved in the “negotiations,” even including union members on the  
12 UHW Executive Board, were blocked from the meeting between the Kaiser Permanente  
13 executives – including Dennis Dabney – and the SEIU-controlled Coalition leaders – including  
14 John August, Dave Regan, and Joe Simoes, Kaiser Division Director, UHW. Early on the  
15 morning of May 11, the Kaiser Permanente executives and the Coalition leadership emerged from  
16 their secret meeting with an announcement that the parties had reached a tentative agreement on a  
17 new three-year national agreement.

18 161. Interestingly, well before the tentative agreement had been announced or the final  
19 2012 Agreement had been ratified and while UHW was telling its union members that  
20 negotiations were falling apart, the Coalition had already scheduled an “Endorsement  
21 Conference” to take place on May 18-19, 2012 at the Sheraton Gateway LAX hotel. Included in  
22 the agenda for the “Endorsement Conference,” discussions of the “newly negotiated National  
23 Agreement” as well as “ideas about [the] contract implementation process.” That is no surprise,  
24 as the “negotiations” for the 2012 Agreement were simply a cover for the conspiracy orchestrated  
25 at the highest levels of Kaiser Permanente, UHW, and the SEIU-controlled Coalition.

26 162. The Coalition held its National Union Delegates Conference – the Endorsement  
27 Conference – on May 18-19 as scheduled. John August and Dave Regan led the conference. The  
28 delegates, in accordance with the preordained outcome, endorsed the tentative agreement for a

1 new, three-year national agreement. By July 26, 2012, the Coalition member unions had all  
2 ratified the 2012 Agreement.

3 163. A copy of the final 2012 Agreement is not publicly available, nor is a list of the  
4 signatories. The documented tentative agreements between Kaiser Permanente and the Coalition  
5 have, however, been made publicly available. *See* 2012 National Bargaining Tentative  
6 Agreements by and between Kaiser Permanente and Coalition of Kaiser Permanente Unions  
7 (May 2012) (hereinafter the “2012 Tentative Agreements”). Each page of the 22-page 2012  
8 Tentative Agreements was signed on or around May 11, 2012 by Dabney on behalf of Kaiser  
9 Permanente and August on behalf the SEIU-controlled Coalition. *See id.* Based on the 2012  
10 Tentative Agreements between Kaiser Permanente and the Coalition it is apparent that the 2012  
11 Agreement, like the predecessor agreements, constitutes an unlawful agreement in restraint of  
12 trade, as well as evidence of the greater conspiracy among Defendants to target competitors, such  
13 as Prime, who threatened the “dominance/market density” goals of the conspiracy.

14 164. The sections of the 2012 Tentative Agreements for the growth subgroup list  
15 numerous ways in which the SEIU-controlled Coalition will support and assist with Kaiser  
16 Permanente’s membership growth, *i.e.*, market domination, efforts. For example, one component  
17 of the 2012 Agreement, as contemplated in the 2012 Tentative Agreements, will be to “[a]ssure  
18 that Regional Local and Local leadership and Labor leadership accept accountability for assuring  
19 that member growth activities are focused on the appropriate areas and are conducted in  
20 partnership.” *Id.* Specifically, Kaiser Permanente will “[h]old LMP accountable for achieving  
21 KP growth initiatives” and reward union member employees for specific membership growth  
22 activities. *Id.* There is a similar focus on the ways in which Kaiser Permanente will support and  
23 assist with the growth of the SEIU-controlled Coalition’s membership, including growth outside  
24 of Kaiser Permanente. *Id.* Cryptically, the only recommendation for accomplishing such outside  
25 growth: that it needs to be aligned with legal parameters.

26 165. The 2012 Agreement, as contemplated in the 2012 Tentative Agreements, like the  
27 conspirators’ predecessor agreements, is not a collective bargaining agreement. It applies to  
28 national issues negotiated between Kaiser Permanente and the SEIU-controlled Coalition, such as

1 advancing Kaiser Permanente's competitive position in the marketplace, not the types of issues  
2 typically covered by an employer-union collective bargaining agreement (*i.e.*, terms and  
3 conditions of employment for bargaining unit members).

4 166. Indeed, at the time the 2012 Agreement was negotiated and ratified, Kaiser  
5 Permanente had local collective bargaining agreements that addressed and governed traditional  
6 subjects of collective bargaining with each of the local unions in the SEIU-controlled Coalition,  
7 such as the previously mentioned collective bargaining agreement between UHW and KFHP,  
8 KFH, The Permanente Medical Groups, and SCPMG. What the 2012 Agreement did, however,  
9 was make clear that there would not be any local bargaining over union member terms and  
10 conditions of employment and that all local agreements would simply be extended for three more  
11 years.

12 167. When conspirators enter into a conspiracy, they do not hold themselves out as  
13 conspirators to the public nor do they provide specific details of the illegal goals, strategies, and  
14 targets in their public documents. Such conspiracies operate in secret and, often times, under  
15 cover of a purportedly lawful partnership. Just as Defendants have done here.

16 168. In perhaps an overzealous effort to conceal their conspiracy behind a purportedly  
17 lawful partnership, however, Defendants have created myriad public documents that reflect an  
18 agreement between a labor organization and employer to work together to change the competitive  
19 dynamics of the market through the elimination of the employer's competitors. As detailed  
20 above, those documents use code language to document Defendants' plans and communicate their  
21 strategies. When one deciphers that "code" by looking at both what Defendants' publicly stated  
22 and what they have done, it is clear that Kaiser Permanente and the SEIU have entered into an  
23 unlawful conspiracy to eliminate competitive threats to their joint interests, and that Prime, as the  
24 newest such threat, is now the target of Defendants' unlawful conspiracy.

25 169. What Defendants "said" was that they were going to work together to advance  
26 Kaiser Permanente's competitive position in The Market to assure that it remains dominant and  
27 pursue a density strategy to minimize non-union employers' ability to threaten the profitability of  
28 the higher cost union model. What they "did" was engage in a pattern and practice of overt acts



1 designed to damage the business of Prime by producing the inaccurate reports and studies  
2 described herein below, working with complicit media outlets to publicize the sham and baseless  
3 allegations described herein below, initiating certain sham and baseless complaints causing  
4 regulatory and administrative investigations and sham and baseless litigation, wrongfully  
5 withholding reimbursement for care provided to KFHP members, coercing and threatening KFHP  
6 members and others who may direct KFHP members to Prime hospitals to keep KFHP members  
7 from exercising their right to seek and, where their condition requires, continuing to receive  
8 treatment at Prime hospitals, and undertaking various other activities for the purpose of  
9 diminishing Prime's revenue and raising Prime's costs, thereby eliminating Prime as a competitor  
10 in the Market.

11 170. Moreover, Defendants agreed to jointly influence and convince potential  
12 whistleblowers, writers, government agencies, and politicians to raise specious allegations about  
13 Prime's conduct. These agreements have been evidenced over the last several years by and  
14 through certain individuals purporting to be "whistleblowers," meetings in public forums and  
15 public hearings in which Kaiser Permanente and SEIU representatives publically disparaged  
16 Prime and falsely accused Prime of illegal conduct, bills and proposed laws designed to destroy  
17 Prime's business model, and articles published in the SEIU-controlled publication California  
18 Watch, all as detailed below. In turn, Kaiser Permanente uses the false information it receives by  
19 virtue of its agreements with the SEIU to its advantage, and ultimately to the advantage of the  
20 SEIU and its union members, and in litigation against Prime. The eventual outcome of  
21 Defendants' efforts in the political, legislative, and judicial arenas have not resulted in harm to  
22 Prime as the legislation fails to pass and investigations are closed without finding that Prime  
23 engaged in any wrong-doing as alleged below. Rather the harm to Prime, as Defendants intend,  
24 results from Prime having to disrupt its business responding to Defendants' sham effort as part of  
25 the process. For example, diverting the attention of Prime executive management team away  
26 from Prime's business and the costs is dollars and man hours to Prime in responding to a state  
27 health care agency investigation, that closed in Prime's favor, significantly harmed Prime. In  
28 addition, Defendants' sham efforts have created delay in Prime's litigation against Kaiser

1 Permanente so that Kaiser Permanente can continue to hold the monies it owes Prime and recover  
2 interest thereon in the tens of thousands of dollars per day, and also cause Prime to incur high  
3 litigation costs and fees.

4 171. The conspiracy, which was formed in 1997, memorialized, in part, in the 1997  
5 Agreement, and later reinforced and reaffirmed by the subsequent agreements detailed above,  
6 specifically contemplated a collaborative effort to, among other illegal objectives, minimize and  
7 if necessary eliminate competition from the market. Targeting competitors such as Prime was  
8 necessary to achieve the SEIU's goals. Kaiser Permanente could not survive in a market with  
9 competitors that were not burdened by the extra costs placed upon the operation of the Kaiser  
10 Permanente enterprise by the unions. And without Kaiser Permanente, the SEIU would be  
11 without an employer ally to advance its goals. Moreover, the SEIU's density campaign in the  
12 health care industry involves a number of legal and regulatory initiatives that advance union  
13 objectives through increased union membership or power, such as staffing mandates, but either do  
14 not increase or diminish the quality of care to consumers. The conspiracy obtains for the SEIU  
15 the support of Kaiser Permanente for these initiatives, which provides those initiatives with the  
16 veneer of legitimacy necessary to their success. The conspiracy was also necessary to Kaiser  
17 Permanente's goals. Without the SEIU's help, Kaiser Permanente could not survive, let alone  
18 gain dominance in the Market. Thus, in exchange for higher wages and other benefits flowing to  
19 SEIU-represented employees, the SEIU (including its members and leaders) conspired with  
20 Kaiser Permanente and engaged in the various tactics alleged herein to injure Prime with the  
21 ultimate goal of forcing it out of the Market. In other words, the SEIU struck a bargain with  
22 Kaiser Permanente in which Kaiser Permanente agreed to compensation and benefits packages  
23 above the prevailing competitive level (as well as direct payments that eventually landed in union  
24 coffers) in exchange for an agreement from the SEIU (including its members and leaders) to use  
25 its resources to assist in the elimination of competitors like Prime and the protection of Kaiser  
26 Permanente from competition.

27 172. While there is nothing inherently improper about a union organizing a particular  
28 industry or unilaterally expanding its coverage of the employers in the relevant market, SEIU

1 went beyond the permissible purpose for organizing when it formed an unlawful alliance with  
2 Kaiser Permanente for the purpose of inhibiting competition and changing the terms and  
3 conditions of employment for Healthcare Workers in The Market. Had SEIU not conspired with  
4 an employer in its efforts to advance its interests, its conduct might well have been protected  
5 action under labor law. But the SEIU did not so limit its conduct.

#### 6 IV. ACTS IN FURTHERANCE OF THE CONSPIRACY

##### 7 A. Unlawful Payments From Kaiser Permanente to SEIU Under the 8 Conspiracy

9 173. As part of the conspiracy and written agreements between Kaiser Permanente and  
10 SEIU (including its members and leaders), the parties developed an elaborate, and apparently  
11 illegal, scheme to make payments in the tens of millions of dollars from Kaiser Permanente to the  
12 SEIU and other unions for their support of and participation in the conspiracy.

13 174. Kaiser Permanente is prohibited by Section 302 of the Taft-Hartley Act from  
14 paying the conspirator unions (and their officers and employees) and its own employees for their  
15 assistance in achieving the goals of the conspiracy. *See* 29 U.S.C. § 186. Section 302 prohibits  
16 “any employer . . . to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other  
17 thing of value . . . to any labor organization, or any officer or employee thereof, which represents,  
18 seeks to represent, or would admit to membership, any of the employees of such employer who  
19 are employed in an industry affecting commerce . . . .” *Id.* at § 186(a)(2). It also prohibits “any  
20 employer . . . to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing  
21 of value . . . to any employee or group or committee of employees of such employer employed in  
22 an industry affecting commerce in excess of their normal compensation for the purpose of  
23 causing such employee or group or committee directly or indirectly to influence any other  
24 employees in the exercise of the right to organize and bargain collectively through representatives  
25 of their own choosing . . . .” *Id.* at § 186(a)(2).

26 175. In an attempt to disguise these illegal payments, Defendants created a Labor  
27 Management Partnership Trust (“Partnership Trust”) purportedly to support the Labor  
28 Management Partnership. According to the 2010 Agreement, the Partnership Trust was

1 ostensibly established for the purpose of carrying out lawful activities under the conspiracy, such  
2 as labor management administration and other “Partnership activities.” 2010 Agreement at 17.  
3 The Partnership Trust is managed by the Kaiser Permanente OLMP and overseen by the Strategy  
4 Group.

5 176. In practice, however, the Partnership Trust is nothing more than a vehicle, run by  
6 Kaiser Permanente and the SEIU to funnel payments directly to Kaiser Permanente’s co-  
7 conspirators to advance their conspiracy to destroy competitors in the Market. In fact, Kaiser  
8 Permanente is directly paying SEIU (including its leaders and members) to knock out Kaiser  
9 Permanente’s competitors. Just as if Kaiser Permanente made such payments directly to the  
10 Coalition or SEIU, the payments are blatant violations of the Taft-Hartley Act. *See*  
11 29 U.S.C. § 186.

12 177. Kaiser Permanente, as named on the Partnership Trust’s tax documents, paid about  
13 \$19.8 million to the Partnership Trust in 2004, \$21.8 million in 2005, \$21.2 million in 2006,  
14 \$21.5 million in 2007, \$22.3 million in 2008, \$23.3 million in 2009, and \$22.8 million in 2010.  
15 Since 2004, the earliest year for which tax documents were available, Kaiser Permanente has paid  
16 over \$152 million dollars to the conspirator controlled Partnership Trust. During those years, the  
17 payments from Kaiser Permanente constitute more than ninety-seven percent (97%) of all  
18 revenue received by the Partnership Trust.

19 178. The Partnership Trust then transferred millions of dollars annually to the Coalition,  
20 an entity almost entirely controlled by the SEIU. The “trust” transferred about \$2.2 million to the  
21 Coalition in 2002, \$3.4 million in 2003, \$4.6 million in 2004, \$4.6 million in 2005, \$4.7 in 2006,  
22 \$5.4 million in 2007, \$7.0 million in 2008, \$5.8 million in 2009, \$6.7 million in 2010, and \$7.3  
23 million in 2011. In several instances the disbursements to the Coalition listed on the Partnership  
24 Trust’s tax documents do not line up with the payments received by the Coalition on its federal  
25 disclosure documents. Over the past ten years, the “trust,” using money it almost exclusively  
26 receives from Kaiser Permanente, has paid over \$51.5 million to the Coalition – essentially  
27 payments to the SEIU. The payments from the Partnership Trust constitute more than ninety-  
28 three percent (93%) of all revenue received by the Coalition.

1           179. Kaiser Permanente provides almost all of the funding for The Partnership Trust.  
2 Likewise, the Partnership Trust provides almost all of the funding for the Coalition. Kaiser  
3 Permanente, therefore, almost exclusively funds the Coalition.

4           180. From the Kaiser Permanente funded revenue the Coalition receives, the Coalition  
5 then turns around and makes payments directly to the SEIU in further apparent violation of  
6 Section 302 of the Taft-Hartley Act. *See* 29 U.S.C. § 186. For example, over the past ten years,  
7 the Coalition has made over \$2.7 million in payments to the International Union and UHW.

8           181. Kaiser Permanente's payments to the Partnership Trust which flow directly to the  
9 conspirator unions and their supporters are funneled further to officers and employees of the  
10 conspirator unions also in apparent violation of Section 302 of the Taft-Hartley Act. *See* 29  
11 U.S.C. § 186. For example, over the past five years, John August, the current Executive Director  
12 of the Coalition and a long time International Union and UHW officer, received almost \$1 million  
13 in total compensation from the Coalition. The prior Executive Director, Peter DiCicco, the AFL-  
14 CIO official brought in by John Sweeney (former SEIU President and, at the time, AFL-CIO  
15 President) to facilitate the creation of the overarching conspiracy between Defendants, received  
16 more than \$750,000 in compensation from the Coalition just during the limited years for which  
17 federal disclosure documents are available.

18           182. The payments made to the co-conspirator unions (and their officers and  
19 employees) demonstrate that the Partnership Trust essentially is a sophisticated money laundering  
20 operation, designed to do indirectly what the conspirators cannot do directly. However, the  
21 indirect scheme is no more lawful. Instead of Kaiser Permanente simply paying its co-  
22 conspirators, it pays the Partnership Trust which in turn pays Kaiser Permanente's co-  
23 conspirators. This elaborate scheme serves no legitimate purpose other than to attempt to  
24 disguise illegal payments to the unions. Ignoring the smoke screen created by the Partnership  
25 Trust, the reality of what is happening is a direct and apparently illegal transfer of millions of  
26 dollars from Kaiser Permanente to the SEIU and other unions. These payments are part of the  
27 benefits the SEIU (including its leaders and members) receives directly for participating in the  
28 *per se* illegal conspiracy between Kaiser Permanente and the SEIU (including its leaders and

1 members).

2 183. Not surprisingly, the Partnership Trust and the Coalition are run by Kaiser  
3 Permanente and the SEIU. Indeed, the current President of the Coalition is Mary Kay Henry,  
4 International Union President, and the prior President of the Coalition, from at least 2002 to mid-  
5 2010, was Andy Stern, then President of the International Union. During their respective terms as  
6 Coalition President, Henry and Stern each received about \$300,000 in yearly compensation from  
7 the International Union. Moreover, the current Coalition Executive Director, John August, is a  
8 former SEIU official. August, the only officer paid directly by the Coalition, has received almost  
9 \$1 million in compensation from the Coalition over the past five years. The prior Coalition  
10 Executive Director from inception to 2005, Peter DiCicco, was also affiliated with SEIU and  
11 played an integral role in the creation of Defendants' conspiracy. During the years for which  
12 federal disclosure documents are available, DiCicco received more than \$750,000 in  
13 compensation from the Coalition.

14 184. For each of the years for which there are publicly available tax documents for the  
15 Partnership Trust, there were between 6-8 trustees. At all times, the overwhelming majority of  
16 those trustees were employed by or affiliated with Defendants. For example, the trustees listed on  
17 the Partnership Trust's 2009 tax documents included: John August, Coalition Executive Director  
18 (a former SEIU official); Martin Gilbert, Permanente Federation Senior Advisor; Barbara Grimm,  
19 Kaiser Permanente Senior Vice President; Paul Records, Kaiser Permanente Senior Vice  
20 President; Chuck Columbus, Kaiser Permanente Senior Vice President; Mary Grillo, SEIU  
21 Healthcare Kaiser Division Director (listed as a "Campaign Director" on the International  
22 Union's federal disclosures for that same year); Dave Regan, UHW Trustee (previously an  
23 International Union Executive Vice President, appointed by the International Union President as  
24 the trustee of UHW in 2009, and now UHW President); and Charles Rader, UFCW Associate  
25 Director. Seven of the eight total trustees were employed by or affiliated with Defendants, and  
26 three of the four union trustees were SEIU officials who were at the time or had in the immediate  
27 past received significant compensation from SEIU.

28 185. In addition, to further advance the interests of the conspiracy, Kaiser Permanente

1 pays for and provides employees – clearly “things of value” under Section 302 of the Taft-Hartley  
2 Act – directly to the SEIU-controlled Coalition in apparent violation of the law. *See* 29 U.S.C. §  
3 186. Specifically, Kaiser Permanente pays for individuals to serve as “Contract Specialists” to  
4 provide services to the Coalition unions the same as those previously provided by union stewards  
5 (e.g., union contract interpretation and administration, handling union member grievances).  
6 While Kaiser Permanente compensates and provides benefits to these “Contract Specialists,”  
7 those individuals are appointed by the Coalition union for which they are to provide their  
8 services, are directed by and accountable to that Coalition union, and perform exclusively union  
9 business.

10 186. Kaiser Permanente also provides the SEIU-controlled Coalition and its Executive  
11 Director with valuable office space in Kaiser Permanente’s headquarters in Oakland, California.  
12 That Kaiser Permanente provided office space to the Coalition, valued at almost \$20,000 per year,  
13 was not disclosed by the Coalition on its federal disclosures, and was only reported by KFHP in  
14 2012, well after the initiation of this case.

15 187. Also, Kaiser Permanente has made “loans” to the SEIU without any expectation of  
16 repayment. For example, in 2008, KFHP “advanced” more than \$15,000 to UHW. The advance  
17 was paid to UHW in 2008 and related directly to events on July 7-8, August 4-8, and September  
18 9-12, 2008, yet, based on public disclosures, UHW has failed to reimburse KFHP for the  
19 advanced expenses to date.

20 **B. Using the Conspiracy to Destroy Kaiser Permanente’s Prior Competitors**

21 188. Kaiser Permanente, in concert with the union defendants, have willfully furthered  
22 their conspiracy by engaging in a course of anticompetitive, unfair, exclusionary, predatory, and  
23 deceptive conduct with the specific purpose of raising the costs of its competitors, including  
24 Prime, to foreclose these competitors from competing in the Market with the specific intent to  
25 monopolize and destroy competition in the Market. This anticompetitive conduct is ongoing, and  
26 is continuing to harm both competition and Prime.

27 189. Almost immediately upon entering into the conspiracy, Kaiser Permanente and the  
28 SEIU started working together to eliminate Kaiser Permanente’s competitors. For example, the



1 SEIU used a number of illegitimate tactics at its disposal to exact pressure against several Kaiser  
2 Permanente competitors with the goal and effect of rendering those companies less competitive.

3 190. Kaiser Permanente is the largest not-for-profit HMO in the United States, serving  
4 approximately 8.6 million KFHP members in nine states and the District of Columbia. The vast  
5 majority of its operations, however, are located in California – fully 80% of its business.

6 191. The inability of Kaiser Permanente to grow significantly outside of California,  
7 despite massive marketing and other support from labor unions, strongly suggests that its model  
8 simply is not competitive outside of California. Indeed, from 1995 to 1997, Kaiser Permanente  
9 experienced severe financial losses of approximately \$900 million as it sought to expand into new  
10 areas, including predominantly non-union areas such as North Carolina and Georgia. The lesson  
11 was clear, without heavy support of unions, Kaiser Permanente’s business model was a failure.

12 192. That Kaiser Permanente has become a dominant force in the California market  
13 suggests that there is something unique about that market that enables Kaiser Permanente to  
14 succeed. The available facts suggest that the unique feature is unrelated to the California market,  
15 Kaiser Permanente’s business model or the quality of its services. Rather, it is the result of the  
16 illegal alliance between Kaiser Permanente and the SEIU (including its members and leaders) to  
17 prevent competitors from entering or succeeding in The Market. This is the same conspiracy that  
18 eventually attacked Prime once it became a threat to Kaiser Permanente’s role in The Market.

19 193. KFH has the largest SEIU membership of any other hospital in The Market.  
20 Union representation adds significant operating costs to an employer. The SEIU’s success in  
21 organizing KFH’s Healthcare Workers has increased Kaiser Permanente’s costs, affected Kaiser  
22 Permanente’s ability to compete with healthcare providers in The Market whose Healthcare  
23 Worker employees are not represented by the SEIU, and threatens Kaiser Permanente’s dominant  
24 position in The Market.

25 194. The SEIU benefits from the increased pressure placed on Kaiser Permanente’s  
26 non-union competitors to accept the inevitability of union representation of their workers and the  
27 potential increase in the membership ranks of the SEIU resulting therefrom. The SEIU also  
28 benefits by preserving the viability of Kaiser Permanente and the significant union membership

1 that continues as a result of that relationship. Kaiser Permanente benefits from a reduction in the  
2 competitive threat the non-union companies, like Prime, represent.

3 195. To accomplish this goal, the SEIU (including its leaders and members), in  
4 furtherance of the conspiracy with Kaiser Permanente, sought to build power by increasing its  
5 market density, *i.e.*, the number of Healthcare Workers it represents in The Market. As the SEIU  
6 could not achieve its objective through lawful elections supervised by the NLRB, it implemented  
7 large-scale corporate campaigns to eliminate Kaiser Permanente's competitors and any threat to  
8 the Kaiser-SEIU model.

9 196. The SEIU corporate campaign approach and tactics are best detailed in its secret  
10 "Contract Campaign Manual." A few pages of an outdated copy of the manual published in the  
11 early 1990's recently surfaced in a Racketeer Influenced and Corrupt Organizations Act lawsuit  
12 filed by Sodexo, Inc. against the SEIU. A revised and updated version of the SEIU's corporate  
13 campaign handbook was published in 2005.

14 197. The manual is a 300-plus page "how to" book for union activists that explains how  
15 to identify targets and engage in illegitimate activities to weaken or destroy those targets. In fact,  
16 an entire section of the manual, Section 4, expressly deals with nothing but "Pressuring the  
17 Employer."

18 198. These illegitimate tactics have been an integral part of the SEIU's role in  
19 Defendants' conspiracy. The SEIU, in furtherance of the conspiracy, has spent more than a  
20 decade waging such pressure campaigns against several Kaiser Permanente competitors to render  
21 those companies less competitive. Specifically, prior to Prime, the SEIU targeted  
22 Columbia/HCA, Tenet, and CHW (now Dignity Health).

23 199. In 1988, Columbia Healthcare was formed in partnership with just two hospitals in  
24 El Paso, Texas. In the new competitive environment, Columbia's ability to provide superior  
25 services at lower costs enabled it to grow rapidly. By September of 1993, it owned 99 hospitals.  
26 In February of 1994, Columbia merged with Hospital Corporation of America to form  
27 Columbia/HCA, a \$10 billion company.

28 200. Columbia/HCA experienced this rapid growth at around the same time Kaiser

1 Permanente was failing in its expansion plans and losing hundreds of millions of dollars a year.

2 201. Beginning in 1995, Columbia/HCA was targeted by the SEIU's "Code Columbia"  
3 campaign, which so damaged Columbia/HCA's business, Columbia/HCA was compelled to enter  
4 into an agreement with the SEIU. The conspiracy's tactics – implemented by SEIU – included  
5 raising allegations of Medicare and Medicaid fraud, blocking hospital acquisitions, and issuing  
6 "reports" filled with patient care horror stories. Those actions significantly damaged  
7 Columbia/HCA's business. For example, the SEIU's actions and allegations of impropriety at  
8 Columbia/HCA resulted in the Joint Commission on Accreditation of Healthcare Organizations  
9 ("JCAHO"), a hospital accrediting agency, rescinding its award of an "accreditation with  
10 commendation" to a Columbia/HCA hospital and downgrading that hospital's accreditation.

11 202. The conspiracy's next target was Tenet. At the time, Tenet was the nation's  
12 second largest for-profit hospital chain and its biggest market was California, where it owned 42  
13 of the State's 450 hospitals. In furtherance of the conspiracy, the SEIU alleged, among other  
14 things, that Tenet inflated costs for hospital care, ran up taxpayer funded Medicare bills, increased  
15 the amounts insurers were required to pay, and put patients at risk. Those allegations were based  
16 on SEIU "reports" and "studies" designed to cast the worst possible light on Tenet's patient  
17 services and health care practices. The SEIU's actions for the conspiracy also resulted in  
18 investigations of Tenet by the Federal Bureau of Investigation, the Department of Health and  
19 Human Services, Medicare, and the California Office of Statewide Health Planning and  
20 Development ("OSHPD"). Unable to endure these attacks any longer, Tenet struck a deal with  
21 the SEIU in 2003, which raised its cost-structure and made it less of a market threat to Kaiser  
22 Permanente.

23 203. In the early 2000s, the conspiracy took on a new threat to the Kaiser Permanente-  
24 SEIU empire. That threat consisted of a hospital chain sponsored by nine orders of Catholic  
25 nuns: CHW. In the decade before the conspiracy-induced SEIU attack, CHW had grown from 12  
26 hospitals to the "largest not-for-profit health care system in the West" according to its 1998  
27 annual report. It operated 48 hospitals in California, Nevada, and Arizona. In addition to its  
28 ordinary litany of patient care and billing and Medicare fraud allegations, the SEIU used CHW's

1 status as a Catholic health care provider against the Company. Specifically, the SEIU leveraged  
2 the support of the U.S. Conference of Catholic Bishops and the Cardinal of Los Angeles to force  
3 CHW to reach an agreement with the SEIU. Once again, this raised the CHW's cost structure,  
4 making it less of a competitive threat to Kaiser Permanente.

5 204. SEIU's thinly-disguised goal with these campaigns was simply to mitigate  
6 competition against Kaiser Permanente by forcing each hospital system to adopt the same  
7 uncompetitive business model or to make each system's costs prohibitive by spending money  
8 responding to attacks from the union. As Bruce Raynor, former International President of UNITE  
9 HERE! and at the time a close partner of the SEIU, stated in another campaign:

10 I think Cintas has a decision to make. Are they in the business of  
11 serving shareholders and owners or fighting the union? You can't  
do both. We will set the stage so the company will not do both . . . .

12 Andy Meisler, *A High-Stakes Union Fight: Who Will Fold First?*, Workforce Management,  
13 January 2004, at 28-38.

14 205. The pressure of the SEIU campaign was eventually too much for each of the  
15 hospital systems to bear and each hospital system finally capitulated and reached an agreement  
16 with the SEIU. Once the targeted hospital system agreed to do business the SEIU/Kaiser  
17 Permanente way, any alleged problems that the SEIU had identified with the respective system  
18 disappeared.

19 206. In these campaigns, SEIU Locals 250 and 399 (now UHW) took the lead. Part of  
20 their role in the conspiracy involved educating union members of the need to ensure that all  
21 competitors of Kaiser Permanente faced additional challenges and increased costs.

22 207. More recently, the SEIU, in another effort to further the goals of the conspiracy,  
23 prepared and obtained the necessary signatures for two ballot initiatives that targeted Kaiser  
24 Permanente's competitors while specifically excluding Kaiser Permanente and Dignity Health  
25 (formerly Catholic Healthcare West), another UHW organized hospital operator. UHW  
26 represents approximately 60,000 workers in those two systems. The ballot initiatives, if passed,  
27 would have served to protect profit margins at Kaiser Permanente by limiting the amount non-  
28 contracted hospitals such as Prime could charge KFHP for services provided to KFHP members.

1 Specifically, one initiative – the Fair Healthcare Pricing Act of 2012 – was intended to prevent  
2 private hospitals like Prime from charging more than twenty-five percent (25%) above the actual  
3 cost of providing care. The other initiative – the Charity Care Act of 2012 – called for private,  
4 for-profit hospitals like Prime to devote at least five percent (5%) of their patient revenue to free  
5 care for the poor. The ballot initiatives were opposed by the CHA and many of its member  
6 hospitals. According to the California Legislative Analyst Office and the Department of Finance,  
7 both measures could have caused for-profit hospitals to eliminate services, raise rates, or reduce  
8 staff.

9 208. The initiatives were used by the SEIU, for its benefit and the benefit of the other  
10 Defendants, as leverage to achieve the illegitimate ends of the conspiracy. As with much of the  
11 other legislation proposed or advocated for by the SEIU as part of the conspiracy, Defendants do  
12 not care about the ultimate outcome of the proposed legislation, the threat of the legislation is all  
13 that is needed to harm the target(s) and force capitulation. The ballot initiatives were a success in  
14 that regard. In this case, CHA estimated that had UHW filed the signatures for the initiatives and  
15 the initiatives qualified for the November 2012 ballot, CHA and its member hospitals would have  
16 been forced to spend \$58.5 million in an opposition campaign.

17 209. As Defendants intended, the threat of the ballot initiatives alone was sufficient for  
18 CHA – the association created to represent the interests of its member hospitals – to enter into  
19 negotiations with UHW – the entity responsible for myriad attacks against those same hospitals.  
20 After several weeks of negotiations in March-April 2012, UHW and CHA entered into an  
21 agreement on May 2, 2012. Not surprisingly, given the intended purpose of the initiatives, the  
22 initiatives were simultaneously abandoned by the SEIU.

23 210. Shortly after UHW and CHA entered into this private agreement, UHW and CHA  
24 pushed for legislation to relax nurse-to-patient ratios at California hospitals – ratios for which the  
25 SEIU had previously been a strong advocate as detailed above. Dave Regan, UHW President,  
26 attempted to obtain support from the California Labor Federation for the legislation. The board  
27 of the Federation overwhelmingly voted down UHW’s proposal sixty to two, with the only two  
28 votes in favor coming from SEIU representatives.

1           211. Duane Dauner, President of CHA, and UHW's new ally, informed Prime that  
2 CHA and UHW were going to push to eliminate the ratios but that they needed to exempt  
3 hospitals at which UNAC represented nurses (UNAC is the nurses union affiliated with SEIU and  
4 the Coalition, as opposed to CNA which is not a member of the Coalition). The reason Dauner  
5 informed Prime of the exemptions for UNAC organized hospitals: to get Prime's agreement that  
6 its Chino Valley Medical Center, a hospital at which UNAC represents the nurses, would not get  
7 the benefit of the proposed legislation because of the UNAC exemption.

8           **C. General Anticompetitive Conduct**

9           212. In addition to its direct attacks on Kaiser Permanente's competitors, the  
10 conspirators colluded to engage in conduct generally designed to drive competitors out of the  
11 Market.

12           213. Kaiser Permanente and the SEIU (including its members and leaders) coordinated  
13 their efforts at the legislative level, but in a manner that furthered SEIU's interests by raising  
14 already high labor costs while working against Kaiser Permanente's clear business interests and  
15 the interests of KFHP members, a point noted by other unions representing Kaiser Permanente  
16 employees. For example, in *Healing Together*, the authors recite:

17                       In particular, CNA seemed troubled by the unions' agreement to  
18                       promote Kaiser as a quality health care provider "regardless of the  
19                       facts, the decreasing quality of care at Kaiser, and the ongoing harm  
20                       to workers and consumers resulting from current Kaiser business  
21                       initiatives sanctioned by the Agreement."

22           Kochan, *supra*, at 44.

23           214. The SEIU, with the assistance of Kaiser Permanente, pursued an agenda that  
24 provided few benefits to consumers, but which mandated the excessive costs of Defendants'  
25 model for the entire industry. As described by one admirer of the SEIU, "[f]or employers who  
26 engaged constructively, SEIU would lend its political muscle to common objectives, particularly  
27 funding. Resources would increase; the need to squeeze workers decrease; and care would  
28 improve, along with the providers' reputations." Katherine Sciacchitano, *Unions and Health  
Care Reform*, Dissent, Summer 2004.

215. For example, in 2001, Kaiser Permanente announced that it endorsed a proposal by

1 the SEIU regarding the establishment of nurse staffing ratios. *See CHA Responds to Kaiser*  
2 *Permanente's Support of SEIU's Proposed Nurse Ratios; New Federal Report Calls into*  
3 *Question Impact of Ratios on Patient Care*, Business Wire HealthWire (July 19, 2001).

4 216. Significantly, CHA President Duane Dauner, noted in 2001 that the evidence  
5 failed to support the SEIU's claims that increased staffing resulted in improved care. *See CHA*  
6 *Responds to Kaiser Permanente's Support of SEIU's Proposed Nurse Ratios; new Federal Report*  
7 *Calls into Question Impact of Ratios on Patient Care*, Business Wire HealthWire, July 19, 2001.  
8 Specifically, the Agency for Healthcare Research and Quality, a research arm of the U.S.  
9 Department of Health and Human Services, concluded that there was "insufficient evidence" that  
10 nurse staffing ratios lead to improved patient outcomes. *See id.*

11 217. Kaiser Permanente's position was clearly contrary to the interests of its patients,  
12 but also ran contrary to its own business interests. Historically, and to this day, one objective of  
13 the SEIU has been to mandate increased staffing at hospitals in order to increase its membership.  
14 Hospitals have opposed such efforts for obvious reasons – the increased staffing results in  
15 increased costs, without any measurable benefit to consumers.

16 218. Indeed, in 1999, when the conspiracy was relatively new, Kaiser Permanente took  
17 the position that there was no research conducted on the effect of ratios on patient outcomes.  
18 Kaiser Permanente at that time also criticized the proposal for staffing ratios on the basis that a  
19 shortage of nurses existed, suggesting that such ratios would only make the problem worse.

20 219. Kaiser Permanente's change of heart and support for the legislation made sense  
21 only when looked at in the context of an illegal agreement whereby Kaiser Permanente helps the  
22 SEIU increase the ranks and wages of its membership – in this case, vocational nurses not  
23 represented by CNA – in exchange for assurances that Kaiser Permanente's competitors will also  
24 be burdened by the increased costs of hospital care.

25 220. Even other unions saw that Kaiser Permanente's endorsement was not a principled  
26 position, but merely part of the conspiracy to benefit Kaiser Permanente and the SEIU to the  
27 detriment of other employers and unions. Specifically:

28 The [CNA] fears that, to save money, Kaiser will use licensed



1 vocational nurses, who are less broadly skilled than registered  
2 nurses, for tasks that require a registered nurse's expertise. The  
3 [SEIU] represents a large number of licensed vocational nurses.  
The [CNA] on Thursday called Kaiser's move a "death-bed  
conversion."

4 Charles Ornstein, *Kaiser Backs Union Plan to Boost Nurse Staffing Levels*, Los Angeles Times,  
5 July 20, 2001.

6 221. Furthermore, in 2003, as part of their efforts to lessen competition in The Market,  
7 the SEIU and Kaiser Permanente co-sponsored California Assembly Bill 1628 ("AB 1628"),  
8 which imposed additional requirements on non-KFH hospitals with regard to the treatment of  
9 KFHP member patients seeking emergency care at non-KFH hospitals, allowed Kaiser  
10 Permanente to skirt its responsibility to pay for medically necessary healthcare services, and put  
11 the lives of patients at risk – all to increase Kaiser Permanente's revenue and injure its  
12 competitors. Specifically, AB 1628 called for the prohibition on non-contracting hospitals like  
13 Prime from billing patients who are enrollees of health care service plans, like KFHP's members,  
14 for post-stabilization care, except for copayments, coinsurance, and deductibles unless certain  
15 conditions were met.

16 222. With the SEIU's support, Kaiser Permanente used and uses California Health and  
17 Safety Code Section 1262.8, the statute resulting from AB 1628, to force the transfer of KFHP-  
18 member patients who were not stable and ready for transfer, intimidate physicians and hospitals  
19 into believing that Kaiser Permanente was entitled to dictate care, and otherwise put the safety of  
20 patients at risk. Specifically, Section 1262.8 requires non-contracting hospitals like Prime to  
21 follow an onerous process to receive authorization from Kaiser Permanente for the post-  
22 stabilization care of KFHP members who present at Prime emergency rooms with emergency  
23 medical conditions. Kaiser Permanente's actions in this regard are particularly troubling as they  
24 have led to the tragic deaths of patients.

25 223. The fact that SEIU took such an active role in advancing the legislation when it  
26 had no real or legitimate interest in its success or failure underscores the existence of the  
27 conspiracy.  
28

1           224. In furthering the goals of the conspiracy – diminishing the ability of other business  
2 organizations to compete with Kaiser Permanente and raising labor costs to the benefit of the  
3 SEIU – the Defendant conspirators have also worked together to attack and undermine other labor  
4 organizations with collective bargaining disputes with Kaiser Permanente. For example, the  
5 “partnership” between Kaiser Permanente and the SEIU-controlled Coalition was announced in  
6 the middle of a strike by the CNA against Kaiser. This slap in the face to another union  
7 representing workers at Kaiser Permanente is not surprising when one considers that CNA was  
8 specifically excluded from the SEIU-controlled Coalition and thus the conspiracy because the  
9 SEIU already had an affiliated union that represented nurses at Kaiser Permanente.

10           225. The conspirators have continued to undermine labor organizations that are a threat  
11 to or act contrary to the interests and objectives of the conspiracy. As recently as last year, the  
12 SEIU worked against the interest of labor unions to benefit Kaiser Permanente. During a CNA  
13 strike at Kaiser Permanente Medical Center-Richmond

14                           [the] SEIU not only opposed the strike but colluded with Kaiser  
15 management to break it. Kaiser workers were told by SEIU staff  
16 that they were prohibited from joining the strike; they might be  
17 terminated if they did. SEIU told members they would not be  
18 defended if they were disciplined. They circulated management  
19 warnings. Again at [Kaiser Permanente Medical Center-]Redwood  
20 City, management used a mandatory monthly department meeting  
21 as a platform for an SEIU representative – inviting him to warn  
22 workers that they would face discipline, indeed that the whole  
23 unit’s scheduled pay increases might be jeopardized.

24           Cal Winslow, *Biggest Healthcare Strike Ever*, CounterPunch (Sept. 27, 2011).

25           226. Since the formation of the conspiracy, the SEIU also has put Kaiser Permanente’s  
26 interests and the broader objectives of the conspiracy ahead of traditional union interests when  
27 those interests conflict with the objectives of the conspiracy. For example, during the summer of  
28 2009, the SEIU entered into what another California union characterized as a secret agreement  
with Kaiser Permanente to terminate the employment of hundreds of SEIU-represented Kaiser  
Permanente employees.

          227. The negotiations for the controversial layoffs took place at a time when Kaiser  
Permanente was experiencing a significant increase in its net income – Kaiser Permanente

1 reported net income of \$620 million for the quarter ending June 30, 2009, up from net income of  
2 \$451 million for the same quarter a year before. Approximately 1,350 SEIU-represented Kaiser  
3 Permanente employees were terminated as a result of the conspiracy.

4 228. This massive termination was inconsistent with the fundamental goal of every  
5 union and expressly contrary to one of the key stated objectives of the partnership – the creation  
6 of job security for union members. Once again, the SEIU supported an initiative that reduced  
7 Kaiser Permanente’s expenses and strengthened its position in the market with no apparent  
8 benefit to the labor movement. Such conduct only makes sense in the context of the alleged  
9 conspiracy between Kaiser Permanente and the SEIU.

10 229. That the primary purpose of the conspiracy is not collective bargaining, but rather  
11 to maintain unlawful market dominance, is further evidenced from the behavior of the parties in a  
12 recent union representation election. Given Kaiser Permanente’s commitment under the  
13 “partnership” to maintain a strictly neutral position on union organizing efforts, Kaiser  
14 Permanente should not be opposing unionization or attempting to influence selection of the  
15 representative of its employees, much less engaging in illegal conduct to preserve its relationship  
16 with the SEIU. But the latter is precisely what Kaiser Permanente has done.

17 230. The NLRB held elections at several KFH facilities in September/October 2010 to  
18 allow Healthcare Workers at those facilities to choose whether they would be represented by a  
19 new union, the National Union of Healthcare Workers (“NUHW”), or the incumbent union,  
20 UHW, over which SEIU has full authority and ultimate control (hereinafter the “Fall 2010  
21 Election”). NUHW is a union founded by former UHW officers that competes with UHW for  
22 representation of Healthcare Workers in California, including in The Market. The election stakes  
23 were high, as the prevailing union stood to become the exclusive representative of 43,000 Kaiser  
24 Permanente employees and the recipient of those employees’ dues payments.

25 231. It became apparent during the Fall 2010 Election process that the SEIU and Kaiser  
26 Permanente were colluding and engaging in illegal activities in an effort to prevent employees  
27 from selecting NUHW as their representative. Specifically, Defendants threatened that Kaiser  
28 Permanente would not provide contractually-bargained for benefits if the Healthcare Workers

1 chose NUHW over UHW – a violation of the National Labor Relations Act (“NLRA”). For  
2 example, while the election process was unfolding, according to NUHW, on an August 3, 2010  
3 conference call, Kaiser Permanente Regional President Dr. Benjamin Chu threatened employees  
4 by claiming that joining NUHW would result in Kaiser Permanente cutting their benefits.

5 232. Kaiser Permanente’s threats carried special legitimacy when considered with  
6 Kaiser Permanente’s conduct just months earlier during a similar election process, for which  
7 Kaiser Permanente was deemed to have acted illegally. Specifically, in connection with an earlier  
8 February 2010 election where more than 40,000 Healthcare Workers at other KFH facilities were  
9 choosing between representation by NUHW or UHW, Kaiser Permanente engaged in unfair labor  
10 practices (“ULPs”) in violation of the NLRA by refusing benefits to employees after they voted in  
11 favor of UHW. *See Southern Cal. Permanente Med. Group, Inc.*, 2010 WL 5101082 (N.L.R.B.  
12 Div. of Judges Dec. 13, 2010), adopted by the Board with minor modification at *Southern*  
13 *California Permanente Medical Group*, 356 NLRB No.106 (2011). In that case, following the  
14 Healthcare Workers selecting NUHW over UHW during the NLRB election, Kaiser Permanente  
15 illegally withheld tuition-reimbursement benefits, time for monthly shop-steward training and  
16 development, as well as scheduled wage increases. *Id.* The judge ruled that Kaiser Permanente’s  
17 actions were so egregious that they were “inherently destructive” of employee rights under the  
18 NLRA. *Id.*

19 233. Further demonstrating the existence of a conspiracy between Kaiser Permanente  
20 and the SEIU, the SEIU – despite its general stance that *any* employer involvement in a union  
21 election interferes with employee rights – remained completely silent regarding Kaiser  
22 Permanente’s conduct during and following the elections. That fact alone speaks volumes of the  
23 lengths to which the Defendants would go to further the goals of the conspiracy.

24 234. On July 14, 2011, several months after the Fall 2010 Election, a NLRB  
25 administrative law judge overturned that election, holding that the collusion between Kaiser  
26 Permanente and the SEIU “interfered with the employees’ exercise of a free and reasoned choice”  
27 by threatening that Kaiser Permanente would not provide contractually-bargained for benefits if  
28 employees chose NUHW over UHW. *See Kaiser Foundation Health Plan, Inc.*, Case 32-RC-

1 5775, JD(SF)-19-11 (N.L.R.B. Div. of Judges July 14, 2011). Indeed, the NLRB judge cited the  
2 impact of the earlier Kaiser Permanente ULPs on the threats made by Kaiser Permanente in the  
3 Fall 2010 Election: “Kaiser’s ULPs figured as silent, menacing reminders that Kaiser not only  
4 could, but already had, unilaterally withheld benefits when other employees had chosen to be  
5 represented by NUHW.” *See Kaiser Foundation Health Plan, Inc., Case 32-RC-5775, JD(SF)-*  
6 *19-11 (N.L.R.B. Div. of Judges July 14, 2011).*

7 235. Although NUHW’s election objections to the Fall 2010 Election were ultimately  
8 overruled by the NLRB in July 2012, *The Permanente Med. Group, Inc.*, 358 NLRB 1 (2012),  
9 NUHW’s allegations and the initial findings by the administrative law judge nevertheless  
10 demonstrate a concerted and united effort by SEIU and Kaiser Permanente to influence employee  
11 behavior and to persist in maintaining SEIU’s dominance at Kaiser Permanente.

12 236. In response to the same and similar conduct by Defendants, NUHW also filed suit  
13 in the Northern District of California on August 19, 2010, alleging that Kaiser Permanente  
14 violated Section 302 of the LMRA by paying Kaiser Permanente employees, including union  
15 stewards, contract specialists, and “lost timers” to engage in full-time election campaigning for  
16 SEIU. *See National Union of Healthcare Workers v. Kaiser Foundation Health Plan, Inc.*, 2010  
17 WL 3560016 (N.D. Cal. Aug. 19, 2010).

18 237. Kaiser Permanente’s blatant illegal conduct to protect the SEIU’s status as the  
19 collective bargaining representative for its workers is inexplicable under labor law. It is even  
20 more so when one considers the union security agreement in the original 1997 Agreement, which  
21 states:

22 The parties to this agreement believe that Kaiser Permanente  
23 employees should exercise free choice and decide for themselves  
24 whether or not they wish to be represented by a labor organization.

24 1997 Agreement.

25 238. Of course, once one ignores the self-serving public statements about the  
26 conspiracy, it becomes clear that the “partnership” has nothing to do with employee choice and  
27 everything to do with eliminating competitors. Indeed, the various documented partnership  
28 agreements say as much, extending this so-called “enlightened” approach only to unions that

1 signed those agreements – agreements that require the affirmative marketing and promotion of  
2 Kaiser Permanente.

3 239. Kaiser Permanente’s conduct is inconsistent with the typical arms-length  
4 relationship between labor and management but completely consistent with the relationship of  
5 participants in an unlawful, anti-competitive scheme. Defendants’ actions make clear that Kaiser  
6 Permanente is protecting its ability to partner with a select group of unions, primarily the SEIU,  
7 committed to working illegally to destroy Kaiser Permanente’s competitors.

## 8 **V. THE CONSPIRACY’S NEW TARGET**

### 9 **A. The Newest Threat to the Conspiracy**

10 240. The destructive campaigns by the SEIU against Columbia/HCA, Tenet, and CHW  
11 illustrate the early execution and success of the conspiracy. Defendants had largely succeeded in  
12 mitigating the competitive pressure faced by Kaiser Permanente. A new challenge, however,  
13 arose in the form of Prime, which purchased its first hospital in California in 2001.

14 241. Prime’s business model, unlike Kaiser Permanente’s model, is based on offering  
15 quality care on a fee-for-service basis to consumers. Prime’s model is rooted in providing care to  
16 patients who enter Prime’s hospitals through the hospital emergency rooms, including Medicare  
17 and Medi-Cal patients, patients insured by commercial plans, and the uninsured. Prime enters  
18 written contracts with commercial plans on a very limited basis,<sup>3</sup> and Prime does not accept deep  
19 discounts in exchange for merely being included in a health plan’s network. As a result, Prime  
20 does not agree to terms that reduce Prime’s effectiveness in The Market. Prime’s model rewards  
21 the company for providing quality emergency care with shorter wait times to the general public,  
22 many of whom have the choice of selecting the closest emergency room not on diversion, which  
23 oftentimes is a Prime hospital, to seek lifesaving emergency care.

24 242. In contrast, Kaiser Permanente’s model is based on providing all covered services  
25 to KFHP members in exchange for fixed monthly premiums. Kaiser Permanente, through the

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26 <sup>3</sup> Only Prime’s Garden Grove Hospital & Medical Center (“Garden Grove”) and San Dimas  
27 Community Hospital (“San Dimas”) rely on managed care agreements, both of which arose out of  
28 the respective hospitals’ prior ownership by a different entity.

1 Permanente Medical Groups, including SCPMG, controls costs by employing, managing, and  
2 incentivizing the physicians who treat KFHP members at KFH facilities. Specifically, through  
3 the direct control by the Permanente Medical Groups, including SCPMG, over the physicians  
4 treating KFHP members at KFH facilities, Kaiser Permanente is able to dictate, control, and  
5 manage the nature, quantity, and quality of health care services delivered to KFHP members at  
6 KFH facilities.

7 243. Prime attracts patients by, among other things, investing in the latest equipment  
8 and utilizing additional staffing and other management tools in order to reduce wait time and  
9 increase throughput through the emergency room. For example, when Prime purchased Centinela  
10 Hospital, it increased expenditures on capital equipment and staffing. Within a year, wait times  
11 in the emergency room improved significantly, the length of stays decreased, and the overall  
12 emergency room throughput increased as a result.

13 244. Although the efficiency of Prime's hospitals does attract a disproportionate  
14 number of uninsured patients, the bulk of Prime's revenue is from Medicare and Medi-Cal  
15 patients for which Prime's reimbursement is limited to applicable Medicare and Medi-Cal  
16 reimbursement rates. Similarly, reimbursement for emergency services provided to Medicare  
17 managed care enrollees (Medicare + Advantage) and Medi-Cal managed care enrollees, which  
18 includes such KFHP members, is limited to the applicable Medicare and Medi-Cal rates.

19 245. As required by the Emergency Medical Treatment and Active Labor Act  
20 ("EMTALA") and State law, Prime also treats patients who are enrolled in managed care plans,  
21 including KFHP members, that seek emergency care at Prime's hospitals. Because Prime is, for  
22 the most part, not under contract with managed care plans, including KFHP, Prime is entitled to  
23 be reimbursed at Prime's reasonable and customary rates for care provided to commercial  
24 managed care enrollees (not Medicare and Medi-Cal managed care enrollees for whom the  
25 applicable Medicare and Medi-Cal rates apply).

26 246. The quality and quantity of services that Prime introduces to the emergency and  
27 acute care hospital markets creates a competitive problem for Kaiser Permanente. Instead of  
28 trapping KFHP members in KFH facilities, KFHP members are attracted to Prime hospitals, so



1 Kaiser Permanente cannot continue to skimp on these services. Treatment of a commercial  
2 enrollee at a hospital provider like Prime thus has a significant impact on Kaiser Permanente's  
3 costs, profits, and reputational interests. This in turn has led to Kaiser Permanente seeking to  
4 eliminate Prime as a provider irrespective of the important service Prime provides in The Market  
5 and the risk of harm to KFHP members, the general public, and competition itself.

6 247. In addition, in an emergency situation, Medicare and commercial patients,  
7 including those who are enrolled under an HMO plan administered by a managed care  
8 organization like Kaiser Permanente, prefer Prime's shorter emergency room waiting times to the  
9 demonstrably longer waiting times at KFHP hospitals. Also, emergency responders seek to  
10 transport Medicare and commercial patients in need of emergency services to the nearest  
11 emergency room that is receiving or open to new patients, which most often is a Prime hospital as  
12 KFHP hospitals spend a disproportionate amount of time on diversion.

13 248. Because Prime's independent model threatens Kaiser Permanente's profitability  
14 and potentially its very existence and threatens the SEIU's objectives to preserve and increase  
15 wage rates for its union members, Kaiser Permanente and the SEIU (along with its members and  
16 leaders) turned their attention to Prime as the newest target of Defendants' preexisting conspiracy  
17 and endeavored to eliminate Prime from The Market.

18 249. As described above, the terms of the conspiracy, which started in 1997, before  
19 Prime's presence in the Market, called for Kaiser Permanente and the SEIU to engage in conduct  
20 designed to exclude *any* competitive threats to the market. That is, the conspiracy was not  
21 directed at any particular competitor – it was directed at competition itself. *Any* competitor who  
22 entered the Market and threatened the goals of the conspiracy was an intended target. Therefore,  
23 when Prime entered the Market, offering (among other competitive qualities) a lower cost  
24 structure, greater capital investment in services, and better wait times and service in the  
25 emergency rooms, it posed a serious threat to the goals of the conspiracy. Faced with this new  
26 threat to the goals of the conspiracy, the Defendants automatically began engaging in the same  
27 anti-competitive tactics they had engaged in with Kaiser Permanente's other competitors,  
28 consistent with the terms of the parties' pre-existing conspiracy.

1           250. As the SEIU is a combination of competitors who benefit from higher prices for  
2 Healthcare Workers' labor, the conspiracy constitutes a *per se* violation of the antitrust laws.

3                   **B. The Conspiracy Targets Prime**

4           251. Prime has a competitive advantage over Kaiser Permanente because Prime offers  
5 Medicare, Medi-Cal, commercially insured, and HMO patients, as well as underinsured and  
6 uninsured patients, the opportunity to seek prompt, quality healthcare in their own communities.  
7 As Kaiser Permanente is incapable of competing with Prime on the relative merits of the  
8 companies' respective services, as part of Defendants' conspiracy, Kaiser Permanente and the  
9 SEIU (including its members and leaders) have engaged in an escalating pattern of  
10 anticompetitive, unfair, exclusionary, predatory, and deceptive practices with the specific design  
11 and purpose to raise the costs of competitors, including Prime, and to foreclose these competitors  
12 from competing in the Market. Kaiser, by itself and as part of the conspiracy with the defendant  
13 unions, harmed competition in the emergency and acute care hospital markets through the acts  
14 detailed below.

15           252. On information and belief, Kaiser Permanente encourages KFHP members to call  
16 a "nurse line" before seeking emergency care and uses these calls to direct its enrollees to bypass  
17 closer non-KFH facilities and instead travel to a KFHP facility located farther away even though  
18 such travel puts the well-being of the KFHP member at risk. If a KFHP member arrives at a non-  
19 KFHP emergency room (either by emergency transport or on his/her own), KFHP then seeks to  
20 transfer the member to a KFHP emergency room at all costs regardless of whether the treating  
21 physician has determined that the patient could be safely transferred.

22           253. Federal and State law mandate that the market for emergency hospital services  
23 remain open to all patients at all facilities. Thus, KFHP members may seek treatment at Prime  
24 hospitals or other competitor hospitals, and by law KFHP is not permitted to limit the rights of  
25 these patients to do so. Kaiser Permanente's actions in coercing and misleading these customers  
26 to select KFHP facilities for their emergency room needs – even if doing so risks the health or life  
27 of the customer – harms competition, as well as the customer. Kaiser Permanente's actions  
28 foreclose a substantial part of the emergency market (and the acute care market for follow-on

1 services) from Prime and other competitors. Kaiser Permanente's deceptive and dangerous  
2 conduct has no redeeming competitive value, and is undertaken for the purpose of foreclosing a  
3 substantial part of the market from competitors, as well as raising the costs of these competitors  
4 by depriving them of both scale and the most profitable customers in the market.

5 254. Kaiser Permanente accomplishes the transfer of KFHP members to KFH facilities  
6 by and through its Emergency Prospective Review Program ("EPRP"), which is staffed by  
7 physicians employed by the Permanente Medical Groups, including SCPMG. Kaiser  
8 Permanente, by its own admission, views Prime as a threat to that "repatriation model" and, as a  
9 result, has taken drastic measures to force the transfer of KFHP members from Prime's hospitals  
10 to KFH hospitals.

11 255. As a result, Kaiser Permanente, through its EPRP, seeks to harass, intimidate, and  
12 coerce the treating physician at the Prime hospital into transferring the KFHP member even  
13 though Kaiser Permanente's employed physicians have never seen the patient and the treating  
14 physician has oftentimes already determined that the patient is not stable for transfer. If the  
15 treating physician resists Kaiser Permanente's efforts to compel a transfer of the KFHP member,  
16 Kaiser Permanente then embarks upon a campaign of harassment, intimidation, and coercion  
17 against its own member and the member's family. *See, e.g., Forsyth v. Humana, Inc.*, 114 F.3d  
18 1467, 1478 (9th Cir. 1997) (holding that threatening physicians that do not support a hospital's  
19 monopoly is anticompetitive conduct).

20 256. Kaiser Permanente's representatives have also repeatedly called and faxed letters  
21 to critically ill patients while they are in a Prime emergency room or hospital bed and threaten  
22 them with financial harm if they do not demand a transfer to a KFH hospital against the medical  
23 advice of the treating physician. Kaiser Permanente representatives have also frequently called  
24 and faxed letters family members of KFHP's members so that the Kaiser Permanente  
25 representative can seek to convince the family members to sign the enrollee out of the hospital  
26 against medical advice and transport the member to a KFH facility. In both cases, Kaiser  
27 Permanente falsely claims that the KFHP member and his/her family members may receive bills  
28 for as much as \$200,000 unless they demand a transfer to a KFH facility even though Kaiser

1 Permanente knows that reimbursement for Medicare and Medi-Cal managed care enrollees is  
2 limited to the applicable Medicare and Medi-Cal reimbursement rate. These actions directly  
3 harm Prime and other competitors by depriving them of both scale and the most profitable  
4 customers in the market.

5 257. As part of its efforts to diminish Prime's competitive advantage, Kaiser  
6 Permanente, as part of the conspiracy, unlawfully refuses to pay those physicians who provide  
7 critically needed emergency services ("ER Physicians") to KFHP members at Prime hospitals.  
8 Since non-KFH hospitals like Prime do not employ physicians as Kaiser Permanente does  
9 through the Permanente Medical Groups, including SCPMG, Kaiser Permanente's refusal to pay  
10 ER Physicians limits the availability of such physicians for all consumers in the community,  
11 including KFHP members, who seek care at non-KFH hospitals.

12 258. Kaiser Permanente also refuses to pay claims from non-KFH hospitals like Prime  
13 by falsely claiming that the care provided was not medically necessary or did not constitute  
14 emergency care, which forces Prime and other non-KFH hospitals to spend time and substantial  
15 financial resources to seek payment. Kaiser Permanente's refusal to reimburse non-KFH  
16 hospitals like Prime also makes it more difficult for Prime to retain on-call physicians, pay the  
17 hospital staff who support the treatment of physicians who treat KFHP members at Prime  
18 Hospitals, impeding Prime's ability to continue staffing its hospitals, maintain and update  
19 expensive and sophisticated equipment, and otherwise offer and provide high quality care with  
20 those physicians and driving the quantity of services that Prime can provide to its patients down  
21 even further.

22 259. Kaiser Permanente also refuses to pay claims from Prime for the primary purpose  
23 of requiring Prime to spend time and substantial resources to seek these payments. As a matter of  
24 course, KFHP, based on its self-created, arbitrary, and inappropriate criteria, improperly threatens  
25 that it will not pay lawful claims from Prime for services rendered to KFHP members. Even after  
26 Prime expends significant resources to challenge KFHP's payment failures, KFHP still only pays  
27 approximately 50% percent of charges for care rendered to KFHP's commercial members at  
28 Prime's hospitals.

1           260. This anticompetitive conduct not only raises Prime's costs, but negatively affects  
2 its cash flow patterns and capital, thus making it more difficult to remain a competitor of Kaiser  
3 Permanente in the defined relevant markets. There is no redeeming efficiency or competitive  
4 value to Kaiser Permanente's action of disputing these claims for the primary purpose of  
5 weakening Prime's abilities to compete. The sheer amount of the receivable at any point in time  
6 (currently believed to exceed \$100 million) and the time and expense incurred in litigating a  
7 majority of claims for reimbursement for services rendered to KFHP members has a significant  
8 adverse impact on Prime's operations.

9           261. Consistent with Defendants' agreement to make Prime the newest target of their  
10 preexisting conspiracy, the unlawful attacks against Prime come not only from Kaiser  
11 Permanente, but also from its co-conspirator SEIU. Pursuant to Defendants' preexisting  
12 conspiracy and the agreements between them, SEIU (including its members and leaders) has  
13 provided assistance to Kaiser Permanente in injuring Prime as a viable competitor in The Market  
14 in exchange for concessions on wages and working conditions for its union members, as well as  
15 direct payments through intermediaries to the union and its leaders. As agents for Kaiser  
16 Permanente, and as part of the ongoing conspiracy with Kaiser Permanente, the union defendants  
17 have additionally and concurrently harmed competition in the emergency and acute care hospital  
18 markets through the actions described below.

19           262. Kaiser's combination with the SEIU, its union members, and leadership to increase  
20 Healthcare Workers wages and eliminate Prime was an attempt to mask its anticompetitive  
21 conduct from antitrust scrutiny by taking advantage of the antitrust exemption afforded labor  
22 unions under current case law. The combination of a labor union and an employer to achieve  
23 these objectives itself, however, is an unlawful antitrust conspiracy *per se* because, as discussed  
24 above and in more detail below, the SEIU's activities have not been limited to matters relating  
25 solely to collective bargaining agreements or otherwise related to legitimate protected union  
26 activities.

27           263. Defendants launched a campaign to have the SEIU, as a purported independent  
28 party without a competitive motive to injure Prime, attack Prime's business practices, its patient

1 care, and its hospitals and employees, as hereinafter alleged. Defendants' began planning the  
2 SEIU campaign well before the first public attack in February 2010.

3 264. An early May 2010 "Strategic Campaigns" workshop held at the University of  
4 California at Berkeley Labor Center – a workshop aimed at teaching and equipping union leaders  
5 with the "tools" to conduct a corporate campaign against a target employer – illustrates how  
6 Defendants, and SEIU specifically, were committed not to achieving any legitimate labor  
7 objective at Prime, but rather to destroying Prime to advance the objectives of the conspiracy. At  
8 that conference, an SEIU representative, believed to be Amanda Cooper, gave a presentation to  
9 the attendees outlining the conspiracy's planned attacks against Prime as an example of how to  
10 plan for and carry out such a campaign. Blocking Prime from acquiring additional acquisitions  
11 was listed as one of the primary goals of the campaign. This objective illustrates that the  
12 conspiracy was focusing at an early date not on any legitimate labor activity but rather on  
13 implementing the market dominance objectives of the conspiracy, as articulated in the various  
14 oral and written agreements detailed above. As detailed below, that is exactly what Defendants  
15 have done as part of their unlawful attacks on Prime.

16 265. The SEIU's first overt attacks against Prime involved sham and baseless  
17 allegations that Prime was failing to bring its hospitals into compliance with California's seismic  
18 safety requirements. The purpose of the seismic safety requirements is to prevent damage to  
19 buildings and allow for uninterrupted operation of hospitals during an earthquake. State Bill 1953  
20 ("SB 1953") allows hospitals to request an extension until 2013 to bring their facilities into  
21 compliance with the law. The SEIU caused the publication on the internet and in print media of  
22 false claims that Prime was not in compliance with the State of California's mandate with respect  
23 to the seismic safety requirements.

24 266. Building safety is of concern to consumers in general and especially when making  
25 choices about where they will receive hospital care. However, consumers cannot readily verify a  
26 hospital's compliance with SB 1953. California OSHPD maintains this data. The publication of  
27 the false information about Prime's compliance with SB 1953 continued over a prolonged period  
28 of time. Predictably, since the SEIU targeted Prime, no other competitor had any incentive to

1 offset or neutralize the baseless allegations regarding Prime's SB 1953 compliance. Although the  
2 SEIU directly caused the publication of these baseless allegations, its conspiracy with Kaiser  
3 Permanente had already developed (as set forth above) and, indeed, the publication of the  
4 baseless allegations about Prime's compliance with seismic safety requirements was in  
5 furtherance of Defendants' conspiracy.

6 267. A related chain of attacks perpetrated by Defendants as part of their illegal  
7 conspiracy included sham and baseless allegations that Medical Properties Trust ("MPT"), a real  
8 estate investment trust that owns ten of the hospitals operated by Prime, had failed to make  
9 adequate financial disclosures regarding the alleged costs of remedying the alleged deficiencies at  
10 the Prime hospitals, and included a direct request by the SEIU to the U.S. Securities and  
11 Exchange Commission ("SEC") to investigate MPT. In fact, MPT had made all the requisite  
12 financial disclosures.

13 268. The allegations that MPT had not made the necessary disclosures and of the  
14 supposed deficiencies at the Prime hospitals, including the already mentioned seismic compliance  
15 allegations, were published on the internet and in print media to the general public, including  
16 potential Prime patients. The purpose of the publication was to create doubt about the integrity of  
17 Prime's facilities and create conflict between MPT and Prime. A consumer would not know  
18 whether or not MPT complied with the law in this regard or whether Prime's facilities were  
19 seismically safe. A consumer, however, would have concern over receiving treatment at a facility  
20 that he or she has heard fails to comply with the law.

21 269. The conspiracy, through SEIU, did not make an isolated publication about MPT's  
22 alleged failure to make the requisite financial disclosures to the SEC. Rather, it made such  
23 allegations over a prolonged and continued period of time. Since the SEIU targeted MPT and  
24 Prime, no other competitor had any incentive to offset or neutralize the baseless allegations  
25 regarding MPT's financial disclosures or the alleged deficiencies at Prime's hospitals.

26 270. At around the same time, the SEIU prepared and published a "study" attacking  
27 Prime and its hospitals – "Septicemia at Prime Hospitals." In its propaganda piece, the SEIU  
28 alleged that, based on the SEIU's analysis of 2008 Medicare data, Prime's hospitals experienced



1 unusually high rates of septicemia, a serious and often life-threatening blood infection, as either a  
2 result of pervasive patient care and quality problems or that those hospitals were engaged in  
3 Medicare fraud by “upcoding” for cases of septicemia (*i.e.*, that a patient who did not have  
4 septicemia was nevertheless coded for septicemia so that the hospital would receive a higher  
5 Medicare reimbursement).

6 271. Interestingly, around the same time, as part of a coordinated attack on Prime,  
7 Kaiser Permanente also asserted sham counterclaims in the pending litigation between Prime and  
8 Kaiser Permanente, captioned *Prime Healthcare Cases*, Case No. BC 390969, California Superior  
9 Court, Los Angeles County (the “LA Litigation”), relating to KFHP’s failure to reimburse Prime  
10 amounts owed for services rendered to KFHP members based on false claims that Prime  
11 “upcodes.” When viewed in the context of KFHP’s practice of wrongfully refusing payment for  
12 services rendered by Prime to KFHP’s members, the claim that Prime “upcodes” is objectively  
13 baseless. The counterclaims have been asserted solely to delay payment to Prime for monies  
14 owed by KFHP to Prime for treating KFHP’s members.

15 272. In an effort to bring the full power of the Federal and State governments to bear on  
16 Prime, and to force Prime to spend time and money playing defense, the SEIU forwarded the  
17 information contained in its septicemia propaganda piece to, among others, the California  
18 Attorney General, members of the U.S. House of Representatives, and members of the California  
19 Senate and Assembly. As a result, it was reported in October 2010 that the U.S. Department of  
20 Health and Human Services, the California Attorney General, and the California Department of  
21 Public Health (“CDPH”) had initiated investigations of Prime and its hospitals. *See* Christina  
22 Jewett & Lance Williams, *State Health Officials Launch Probe into Hospitals with High Infection*  
23 *Rates*, California Watch, Oct. 13, 2010.

24 273. The SEIU contacted the government for the sole purpose of getting it to initiate an  
25 investigation into Prime that would disrupt Prime’s business affairs, harm its reputation, and  
26 cause Prime to expend significant time, money, and resources solely for the purpose of  
27 responding to the investigation. The harm to Prime was not the outcome of the investigations, but  
28 the costs of responding to the investigations. As discussed in detail below, the fact that the CDPH

1 investigation was closed after finding no wrong-doing evidences SEIU’s sham lobbying.

2 274. At this time, it became apparent that Defendants’ had enlisted the services of  
3 California Watch, a purportedly independent investigative media organization, to serve as the  
4 SEIU’s ally and spokesperson under the conspiracy. Beginning on or about October 11, 2010 and  
5 continuing through the present, California Watch published numerous articles in support of the  
6 conspiracy attacking Prime on the baseless issues created by the SEIU (including its members and  
7 leaders) and Kaiser Permanente alleged herein and dedicated an entire section of its website –  
8 “Decoding Prime” – to furthering Defendants’ campaign to eliminate Prime as a competitive  
9 threat.

10 275. During this time, California Watch has not published a single article critical of  
11 Kaiser Permanente, despite myriad opportunities that beg for such “investigative reporting” on  
12 healthcare related issues as detailed below, or any other California hospital or hospital operating  
13 company. Indeed, California Watch goes so far as to often exclude Kaiser Permanente from its  
14 reports and studies. No other hospital or operating company shares the notorious distinction of  
15 having its own dedicated section on California Watch’s website. In addition, in order to further  
16 spread word of Defendants’ attacks against Prime on their own website, California Watch’s  
17 writers have penned articles raising the same sham and baseless allegations against Prime for  
18 other news organizations, including the Los Angeles Times.

19 276. Defendants followed the SEIU’s initial septicemia-related attacks with their first  
20 attempt to prevent Prime from acquiring additional hospitals in California. These efforts included  
21 calls from the SEIU to California State officials to stop issuing licenses to Prime until the  
22 investigations regarding septicemia were complete. SEIU also reached out directly to CDPH  
23 following Prime’s November 2010 acquisition of Alvarado Hospital in San Diego, California,  
24 falsely alleging that Prime was in violation of California hospital licensing law and demanding  
25 that CDPH initiate legal action against Prime and prohibit Prime from operating the hospital.

26 277. It was at this time that the SEIU first publicly released its “Septicemia at Prime  
27 Hospitals” propaganda piece, available for download on the portion of the SEIU-UHW’s website  
28 dedicated to its attacks against Prime – originally titled “Eye on Prime Healthcare” and now

1 called “Holding Prime Healthcare Accountable.” See <http://uhw.seiu.org/page/s/prime>.

2 278. In January 2011, the SEIU published “Care and Coding at Prime Healthcare  
3 Services,” another “study” attacking Prime, this time based on the SEIU’s analysis of 2009  
4 Medicare data. “Care and Coding” included the same sham and false and unsupported septicemia  
5 allegations as its original propaganda article and also included similar allegations regarding  
6 malnutrition at Prime’s hospitals (*i.e.*, that Prime’s hospitals had extraordinarily high rates of  
7 malnutrition because of either extremely poor patient care or Medicare fraud). The publication of  
8 “Care and Coding” coincided with a series of articles by California Watch attacking Prime for the  
9 septicemia and malnutrition issues raised in the SEIU’s propaganda. See Lance Williams *et al.*,  
10 *Hospital Chain, Already Under Scrutiny, Reports High Malnutrition Rates*, Feb. 19, 2011.

11 279. The SEIU’s false “Septicemia at Prime Hospitals” and “Care and Coding”  
12 propaganda articles (hereinafter the “SEIU Propaganda Articles”) were published and  
13 disseminated on the Internet and print media over a continued and prolonged period of time.  
14 Potential patients are understandably interested in whether they are more likely to be  
15 malnourished or contract a blood infection if they visit a Prime facility versus some other facility.  
16 Because the baseless SEIU Propaganda Articles are solely directed at Prime, in furtherance of the  
17 conspiracy’s goal of eliminating Prime as a competitor due to the unique threat Prime represents  
18 to the Kaiser Permanente model, no other competitor has any incentive to offset or neutralize the  
19 baseless allegations regarding Prime’s alleged patient care issues.

20 280. In furtherance of their conspiracy, Defendants, along with their agents and  
21 surrogates, routinely cite to the SEIU Propaganda Articles as “independent” evidence of Prime’s  
22 alleged poor performance in The Market. In fact, Defendants inundated Prime’s customers,  
23 prospective customers, physicians, hospital boards of directors, government officials, public  
24 interest organizations, and the public at large with the highly disparaging SEIU Propaganda  
25 Articles aimed solely at harming Prime.

26 281. Beginning in late February 2011, SEIU sent flyers to Prime’s current and  
27 prospective patients attacking Prime’s hospitals for blood poisoning. To make matters worse, the  
28 SEIU resorted to the use of phone banks to scare elderly patients into believing that those patients

1 had already or would in the future obtain blood infections when they sought care at a Prime  
2 hospital and that Prime's hospitals had improperly disclosed private information about the  
3 patients to the caller.

4 282. On March 16, 2011, a reporter from California Watch, Lance Williams, sent Prime  
5 an email asking whether Prime wanted to comment on the request by California State Senator Ed  
6 Hernandez ("Sen. Hernandez") to the CDPH to investigate the SEIU reported septicemia and  
7 malnutrition rates at Prime's hospitals.

8 283. Sen. Hernandez has a close relationship with and financial ties to both Kaiser  
9 Permanente and the SEIU. For example, the SEIU and its local union affiliates have provided  
10 approximately \$30,000 in direct financial support to Sen. Hernandez for his recent election  
11 campaigns. Also, Sen. Hernandez has financially benefited from a business relationship with  
12 Kaiser, while at the same time, being involved in and voting on bills directly affecting Kaiser  
13 Permanente and the California healthcare market. Specifically, in October 2006, Kaiser  
14 Permanente began renting a property owned by Sen. Hernandez in Los Angeles. Since that time,  
15 Sen. Hernandez has collected more than \$430,000 in rent from Kaiser Permanente. Interestingly,  
16 during his election campaigns, Sen. Hernandez's campaign headquarters were located at that  
17 same property.

18 284. On April 12, 2011, the SEIU sent a letter to Prime's Centinela Hospital's Board of  
19 Directors. The letter claimed that California Watch published an "independent" analysis of  
20 Prime's Medicare bills and "their exposé . . . revealed extraordinarily high rates of septicemia and  
21 malnutrition or possibly a systematic practice to collect higher reimbursements under Medicare."  
22 The letter further claimed that, in 2009, eight of the nine hospitals in California with the highest  
23 malnutrition rates were operated by Prime – the same false and baseless allegations as those in the  
24 SEIU Propaganda Articles.

25 285. Of course, the highly disparaging, false, and inflammatory SEIU Propaganda  
26 Articles relied on by Defendants and their allies are not "independent" studies. Rather, they are  
27 contrived propaganda pieces organized by Kaiser Permanente and the SEIU to disparage Prime  
28 and weaken its position as a competitor in The Market. Defendants create the appearance of

1 “evidence” against Prime and then cite to their own creation in order to demonstrate the  
2 credibility of their accusations.

3 286. Even a cursory analysis of the SEIU Propaganda Articles demonstrate that the  
4 SEIU’s sole objective was to misrepresent the record for no purpose other than to prevent Prime  
5 from continuing to threaten the conspiracy’s model, and the ability of the conspirators to divide  
6 the monopoly profits. That is obvious from the SEIU Propaganda Articles themselves. For  
7 example, the SEIU “analysis” regarding the reporting by Prime facilities of septicemia and  
8 malnutrition incidence for patients is insufficient to support any specific causality argument of a  
9 deliberate manipulation for financial gain. Other obvious causes disregarded in the SEIU  
10 Propaganda Articles explain the phenomena presented, some of which are notably positive in  
11 terms of Prime’s performance.

12 287. The fraudulent and deceptive nature of the SEIU Propaganda Articles is further  
13 illustrated by a June 2011 report on sepsis by the Center for Disease Controls (CDC). *See*  
14 *Margaret Jean Hall et al., Inpatient Care for Septicemia or Sepsis: A Challenge for Patients and*  
15 *Hospitals*, NCHS Data Brief, No. 62., June 2011. The CDC report observes that sepsis has  
16 become a substantial and growing problem in hospitals, and that the proper course of treatment is  
17 for hospitals to aggressively treat patients when sepsis is suspected, even before sepsis has been  
18 diagnosed in a patient.

19 288. The approach recommended by the CDC is precisely one that Prime had adopted  
20 with great success, leading to a substantial decrease in mortality from sepsis. Yet, once again  
21 placing the conspiracy’s interests ahead of patient health, the SEIU has extensively criticized  
22 Prime for engaging in precisely the course of conduct recommended by the CDC. The attack  
23 would be completely irrational unless one understands that it has nothing to do with healthcare  
24 and everything to do with closing the healthcare market to parties who challenge the Kaiser  
25 Permanente-SEIU hegemony.

26 289. In addition, on or about September 30, 2011, CDPH officially withdrew its charges  
27 and ceased its investigations related to the diagnosis and coding of septicemia and malnutrition at  
28 Prime hospitals that were initiated by CDPH in response to the baseless allegations of the SEIU

1 and repeated by Sen. Hernandez. The outcome of the SEIU's sham lobbying did not harm Prime.  
2 Instead, as was intended by the SEIU, the harm to Prime was the disruption to its business and  
3 costs in responding to the investigation.

4 290. CDPH's findings were consistent with those of JCAHO and the Healthcare  
5 Facilities Accreditation Program ("HFAP"), the nation's largest and second largest Medicare  
6 accreditation organizations, respectively. JCAHO and HFAP conducted surveys at ten Prime  
7 hospitals in response to the SEIU's and the Sen. Hernandez's allegations regarding septicemia  
8 and found no evidence to support those allegations.

9 291. Defendants also put SEIU's campaign machine to work in an effort to directly  
10 restrict Prime's ability to grow its business. For example, the SEIU and Sen. Hernandez worked  
11 together to champion California Senate Bill 408 ("SB 408"), a bill prepared in retaliation for  
12 Prime's November 2010 acquisition of Alvarado Hospital and designed for no purpose other than  
13 to restrict Prime's ability to acquire additional hospitals. *See Prime Healthcare Should be Denied*  
14 *New Hospital Licenses Until Federal, State Investigations into Extraordinarily High Septicemia,*  
15 *Malnutrition Rates and Risk to Patients Are Complete*, SEIU-UHW (Feb. 21, 2011). Despite  
16 opposition from other major hospitals and CHA to the sweeping and overly broad nature of SB  
17 408, Kaiser Permanente stood on the sidelines, complicit in this attempt to restrict its competition.  
18 California Governor Jerry Brown vetoed SB 408 on October 7, 2011.

19 292. The SEIU's involvement in SB 408 and that its purpose was directed solely at  
20 Prime, is further clarified by statements made at a September 24, 2011 Executive Board meeting  
21 of another SEIU healthcare local shortly before Governor Brown vetoed the bill in October. The  
22 2011 Legislative Report presented by SEIU California at that Executive Board meetings states  
23 clearly that SB 408 was sponsored by SEIU. And, the Nurse Alliance Report presented at that  
24 Executive Board meeting provides the following: "SB 408 (the Prime bill): passed as well. That  
25 is to prevent Prem Ready [President and CEO of Prime] from purchasing hospitals, using the  
26 previous owners license and providing substandard care. He would have to apply for a new  
27 license with each purchase. It's huge for us, especially UHW!"

28 293. Similarly, the SEIU, again with the assistance of Sen. Hernandez and its Coalition

1 partner UNAC, campaigned to block the bankruptcy sale of Victor Valley Community Hospital  
2 (“VVCH”) to Prime Healthcare Services Foundation (the “Foundation”), a 501(c)(3) nonprofit  
3 public charity founded by Prime’s President and Chief Executive Officer, Dr. Prem Reddy, and  
4 his family. Despite the SEIU’s efforts to the contrary, including in the proceedings before the  
5 bankruptcy court, the sale of VVCH to the Foundation was approved by the bankruptcy court and  
6 VVCH’s Board of Directors. In addition, a medical expert hired by the California Attorney  
7 General recommended approval of the sale upon certain conditions to which the Foundation had  
8 agreed. Nevertheless, and as threatened by SEIU, on September 20, 2011, the Attorney General,  
9 without providing any specific reason for doing so, denied the sale.

10 294. In an attempt to keep VVCH open following the denial of the sale to the  
11 Foundation, VVCH sought to enter into a stop-gap financing plan and consulting agreement with  
12 Prime. The financing and consulting plan was tentatively approved by the bankruptcy court on  
13 October 20, 2011, and backed by several California healthcare agencies. Despite the support for  
14 the plan, on October 28, 2011, the Attorney General filed a request for a temporary restraining  
15 order to prevent VVCH from moving forward with the financing plan and consulting agreement.  
16 On October 31, 2011, the San Bernardino County Superior Court judge hearing the Attorney  
17 General’s request for a temporary restraining order denied the Attorney General’s attempt to  
18 prevent the financing and consulting agreement between VVCH and Prime. And, that same day,  
19 the bankruptcy court approved the financing and consulting plan.

20 295. Even that small victory was short lived. SEIU’s efforts to block the VVCH sale  
21 gave the union increased momentum to ratchet up the conspiracy’s attacks on Prime.  
22 Specifically, in February 2012, SEIU ally Sen. Hernandez held a joint hearing of the California  
23 State and Assembly Health Committees, which, according to UHW, “spawned a bill (SB 1285)  
24 that would limit [Prime’s] exploitative practices.” UHW, *Federal Judge Rejects Prime  
25 Healthcare’s Objections, Approves New Buyer to Purchase Victor Valley Community Hospital*,  
26 June 29, 2012.

27 296. Ultimately, on June 27, 2012, the federal bankruptcy judge approved the sale of  
28 VVCH, over Prime’s objections, to the same buyer that had previously failed to close on the sale



1 threatening VVCH's very existence. *See id.* Following the bankruptcy's judge's decision, UHW  
2 and its union members took credit for helping to "stop Prime again." UHW, *Stopping Prime in*  
3 *Its CEO's Backyard: Federal Judge Rejects Prime Healthcare*. The final sale is still pending.

4 297. The conspiracy's efforts in interfering with and blocking Prime's hospital  
5 acquisitions was not a substitute for the media attacks by its mouthpiece California Watch.  
6 Rather, both tactics were designed to work hand-in-hand to saturate the market with negative  
7 news about Prime thereby poisoning its reputation in The Market. California Watch's attacks  
8 have evolved and continue to be unrelenting. In fact, less than two weeks following the filing of  
9 the initial Complaint with this Court, California Watch lobbed four separate media attacks against  
10 Prime in a single day regarding its coding and Medicare reimbursement. *See, e.g.,* Lance  
11 Williams, Stephen K. Doig, Christina Jewett, *Heart Failure Cases Surge Among Prime*  
12 *Hospital's Medicare Patients; Patient's Case Illustrates Bonus Payment for Heart Failure;*  
13 *Chainwide, Prime has High Heart Failure Rates;* and *How We Calculated Hospitals' Heart*  
14 *Failure Rates*, California Watch, Nov. 27, 2011. In all four of these articles, California Watch  
15 alleged that Prime was engaged in upcoding of acute heart failure incidents to obtain enhanced  
16 Medicare payments, the same types of allegations which the SEIU created in the SEIU  
17 Propaganda Articles. California Watch's unfounded attacks have continued through 2012.

18 298. The deceptive nature of California Watch's health care reporting is apparent. The  
19 statements and innuendo contained in the California Watch "reports" have been shown to be false  
20 and deceptive and persons allegedly quoted in them have testified that they were misquoted and  
21 mischaracterized. The sheer length of California Watch's reporting on Prime coupled with the  
22 lack of any findings of any wrongdoing exposes the outlet for what it is: a delegate for the  
23 conspiracy.

24 299. The Defendants' campaign to disparage Prime as alleged herein involved the  
25 publication of purported "studies" and other "information" that was: clearly false; clearly  
26 material; clearly likely to induce reasonable reliance on the part of patients and others on whom  
27 Prime depended for its business; directed to patients and others who lacked true knowledge of the  
28 subject matter of such material; continued for prolonged periods; and was not readily susceptible

1 of neutralization or other offset by rivals. This deceptive conduct has both maintained and  
2 expanded Kaiser's market and monopoly power, as it has diminished the ability of Prime and  
3 other competitors to compete with Kaiser Permanente for patients.

4 300. Not coincidentally, at the same time as the SEIU, including through its instrument  
5 California Watch, and its funded political representative, Sen. Hernandez, was disguising its  
6 actions as consumer advocacy, they failed to turn the same alleged critical eye on Kaiser  
7 Permanente. Tellingly, the SEIU Propaganda Articles created and circulated by the SEIU and its  
8 allies omit reference to Kaiser Permanente, which had the highest rates for malnutrition of any  
9 hospital studied as part of a study by California OSHPD in 2009.

10 301. Similarly, there are no separate studies by the SEIU, California Watch, or any  
11 other SEIU ally alleging patient care issues and/or Medicare fraud at Kaiser Permanente, despite  
12 Kaiser Permanente reporting a disproportionately higher number of certain health conditions that  
13 result in significantly higher monthly Adjusted Average Per Capita Cost (AAPCC) premium  
14 payments from Medicare to Kaiser Permanente.

15 302. Based on 2009 Medicare data, Kaiser Permanente received a potential  
16 overpayment of approximately \$300 million for its California business alone in 2009 for reporting  
17 excess cases of diabetes with certain types of complications, malnutrition, and major psychiatric  
18 illnesses. For example:

- 19 • incidences of diabetes with kidney, vascular, and eye complications reported by  
20 KFH hospitals were five time higher than for all other California hospitals;
- 21 • approximately ninety percent of all California cases involving proliferative  
22 diabetic retinopathy and vitreous hemorrhage (essentially bleeding in the eye), a  
23 very rare complication of diabetes, were reported at KFH hospitals;
- 24 • KFH hospitals reported over four times higher incidences of diabetes with  
25 neurological complications than other California hospitals;
- 26 • KFH hospitals reported twice the number of malnutrition cases as compared to all  
27 other California hospitals; and
- 28 • incidences of major psychiatric illnesses were two and a-half times higher at KFH

1 hospitals than all other California hospitals.

2 These figures are even more significant because Kaiser Permanente provides and is responsible  
3 for the overall care of the patients at issue. Nonetheless, KFH's disproportionate reporting of  
4 these health conditions and the potentially huge yearly overpayment by Medicare to Kaiser  
5 Permanente has not received a single mention from the SEIU or its allies.

6 303. This practice of presenting itself as a "consumer advocate" when attacking targets  
7 like Prime, while giving Kaiser Permanente a pass for real and serious problems is a consistent  
8 pattern for the SEIU. In fact, Kaiser Permanente has a long history of violations with the  
9 California Department of Managed Health Care ("DMHC"). For example, a letter dated April 2,  
10 2007 from the DMHC to Kaiser Permanente referring to Enforcement Matter 05-326 states that it  
11 found sufficient support for complaints that Kaiser failed to "pay claims for out-of-network  
12 emergency services . . . ." DMHC assessed Kaiser Permanente with a \$500,000 penalty for these  
13 violations, but deferred \$250,000 contingent upon Kaiser Permanente implementing a corrective  
14 action plan. Kaiser Permanente failed to even submit such a plan to DMHC and the agency  
15 reinstated the \$250,000 deferred penalty. Yet despite the SEIU's supposed concern for  
16 consumers, it never criticized Kaiser Permanente for this violation.

17 304. The behavior of the SEIU would be sufficiently offensive and questionable if this  
18 were the only instance of such misconduct. However, this pattern has repeated itself frequently,  
19 encompassing the following Enforcement Matters: 05-326; 07-027; 07-053; 07-054; 07-071; 07-  
20 204; 07-275; 07-304; 07-329; 07-374; 08-064; 08-167; 08-188; 08-227; 08-228; 08-240; 08-331;  
21 08-414; 08-510; 08-511; 08-513; 09-154; 09-155; 09-156; 09-165; 09-166; 09-167; 09-197; 09-  
22 223; 09-304; 09-368; 09-446; 10-002.

23 305. Prime has confronted Kaiser Permanente over its misconduct. Nine Prime  
24 hospitals have engaged in litigation against Defendants KFHP, KFH, and SCPMG for their failure  
25 to properly pay all amounts due for medical care rendered by Prime's hospitals to KFHP  
26 members (*i.e.* the LA Litigation). As a result of its misconduct, Kaiser Permanente owes the  
27 hospitals more than \$100 million. In response to Prime's attempts to recover amounts properly  
28 owed, Kaiser Permanente filed sham counterclaims and has pursued theories based on the same

1 accusations described above that the SEIU and its allies have leveled against Prime in furtherance  
2 of the conspiracy.

3 306. Despite this extensive record of violations by Kaiser Permanente, including its  
4 practice of failing to remedy the violations, the SEIU failed completely to engage in the kind of  
5 so-called consumer advocacy it has engaged in against targets such as Prime. The SEIU was  
6 silent even when the media identified clear health care problems at Kaiser Permanente. *See, e.g.,*  
7 Kathy Robertson, *Mixed Quality Record for Local Kaiser Hospitals*, Sacramento Business  
8 Journal, December 30, 2010 (“Kaiser Permanente’s Sacramento/Roseville Medical Center had a  
9 higher rate of death than the statewide average in 2009” for certain classes of patients).

10 307. Indeed, the SEIU was noticeably absent when Kaiser Permanente was assessed  
11 record penalties. *See* Tracey Weber & Charles Ornstein, *State Fines Kaiser Again*, Los Angeles  
12 Times, July 26, 2007 (“Kaiser Permanente will be assessed a record . . . fine for its haphazard  
13 investigations of questionable care, physician performance and patient complaints at its California  
14 hospitals . . .”). Even more shocking, the SEIU failed to comment even though Kaiser  
15 Permanente essentially admitted its misconduct. A Kaiser Permanente official called the findings  
16 “thorough and actually very constructive.” *Id.*

17 308. The SEIU’s absence is particularly notable given the mortality rates identified in  
18 Kaiser Permanente’s kidney transplant program. Specifically, “[i]n Kaiser’s program, twice as  
19 many patients died on the waiting list in 2005 as received kidneys, The Times found. The  
20 statewide pattern was the reverse: Twice as many patients received kidneys as died.” *Id.*

21 309. The same pattern of ignorance is evident with respect to the SEIU’s behavior  
22 regarding Occupational Safety and Health complaints filed against Kaiser Permanente. Kaiser  
23 Permanente has been cited for violations by the California Department of Industrial Relations,  
24 Division of Occupational Safety and Health, but with no comment from the SEIU.

25 310. The SEIU’s conduct demonstrates that it has little concern for consumers and that  
26 its consumer advocate role merely is a shroud to obscure its true purposes on behalf of the  
27 conspiracy: attacking any threats to Defendants’ anti-competitive, anti-consumer model. The  
28 SEIU’s sole concern is to manipulate the record for the purpose of making baseless charges in

1 order to advance its conspiracy with Kaiser Permanente by destroying any competitive threats to  
2 Kaiser Permanente.

3 311. This deceptive conduct has both maintained and expanded Kaiser Permanente's  
4 market and monopoly power, as it has diminished the ability of Prime and other competitors to  
5 compete with Kaiser Permanente for patients.

6 312. More recently, Defendants' have manipulated the legislative process to  
7 specifically attack Prime and its superior business model. Specifically, in February 2012, Sen.  
8 Hernandez, in conjunction with Kaiser Permanente and SEIU, proposed a bill, SB 1285, that  
9 would require hospitals with an out-of-network emergency utilization rate of greater than fifty  
10 percent (50%) to adjust charges for out-of-network emergency care so that expected  
11 reimbursement does not exceed the greater of (1) the amount the hospital could reasonably expect  
12 Medicare to pay for the care or (2) a good faith and reasonable estimate of the actual cost of  
13 providing the necessary pre-stabilization care. Defendants'/Hernandez's SB 1285 does not apply  
14 in situations where there is a contract between the hospital and a health plan or health insurer that  
15 would otherwise govern the payment.

16 313. That SB1285 was designed by Kaiser Permanente and SEIU specifically to target  
17 Prime is made even more clear by the comments to the bill, many of which directly reference  
18 Prime and its business plan as the bill's target. The comments include a recitation of the various  
19 California Watch articles that relied on the SEIU Propaganda Articles, the allegations from Kaiser  
20 Permanente that Prime trapped KFHP's members, and other attacks against Prime. The SEIU  
21 included a statement in support of SB 1285 that made clear that Prime was the target of the  
22 legislation. And, the legislation was drafted, at least in part, by Kaiser Permanente  
23 representatives.

24 314. Moreover, on February 24, 2012, Sen. Hernandez held a Joint Informational  
25 Hearing of the Senate and Assembly Health Committees regarding how private insurers and  
26 health plans and the major government health care programs reimburse/pay contracted and non-  
27 contracted hospitals for providing healthcare services, *i.e.*, the subject matter of SB 1285. The  
28 hearing was really planned, however, to serve as a platform for Defendants to advance the

1 interests of the conspiracy and jointly attack Prime.

2 315. As planned by Sen. Hernandez and Defendants, the hearing very quickly turned  
3 into an all-out attack on Prime and its largely non-contracted business model as the impetus for  
4 SB 1285. Indeed, entire sections of the February 24, 2012 hearing were devoted to furthering  
5 Defendants' attacks against Prime and its business model although entirely unrelated to the  
6 alleged purpose of the hearing. Sen. Hernandez regularly steered the testimony and questioning  
7 at the hearing to focus on the same types of allegations against Prime as detailed in the SEIU  
8 Propaganda Articles and the various California Watch reports. There was even testimony from a  
9 woman who was the subject of one such California Watch article disparaging Prime.

10 316. In addition, representatives from both Kaiser Permanente and SEIU testified in  
11 favor of SB 1285 and against Prime at the February 24, 2012 hearing. Both representatives raised  
12 the same meritless allegations against Prime detailed above (*e.g.*, patient trapping, upcoding,  
13 overcharging, septicemia and malnutrition) that Defendants have consistently used to attack  
14 Prime and advance the interests of the conspiracy. Indeed, the SEIU representative testified about  
15 nothing other than Prime and relief exclusively on the baseless assertions against Prime created  
16 by the conspiracy, even giving a presentation with charts using the data from the SEIU  
17 Propaganda Articles.

18 317. At the close of the February 24, 2012 hearing, despite his opening remarks about  
19 the general purpose of the hearing, Sen. Hernandez made explicit what had been obvious to any  
20 casual observer – Sen. Hernandez had called the hearing to allow Defendants to target Prime as  
21 requested by the SEIU.

22 318. In late August 2012, while SB 1285 was bouncing around the California  
23 Assembly, UHW President Dave Regan, through his new ally at CHA, Duane Dabner, reached  
24 out to Prime to schedule a meeting. That meeting took place on August 23, 2012. During the  
25 meeting, Regan demanded that Prime enter into an organizing agreement with UHW, whereby  
26 Prime would remain neutral or take a positive stance towards UHW while the union organized all  
27 of Prime's Healthcare Workers, and even provided such an agreement to Prime. Regan threatened  
28 that if Prime did not capitulate to his demands, SEIU would push the "Prime Bill," *i.e.*, SB 1285,

1 through the California legislature in a matter of weeks. If Prime agreed, however, the conspiracy  
2 would cease its attacks against Prime, including a hiatus on public attacks, disparaging remarks,  
3 or publications as well as not making any further complaints to governmental agencies or other  
4 entities, and SEIU would get the legislation directed at Prime dropped. Prime did not capitulate  
5 to Defendants' demands.

6 319. The very next day, on August 24, 2012, Sen. Hernandez took a bill he had initially  
7 proposed in February 2011 as an amendment to the Health and Safety Code regarding hand  
8 washing requirements for food facilities, SB 359, and amended that bill to make it an amendment  
9 to the Health and Safety Code regarding hospital billing for emergency services and care by  
10 replacing the original text entirely with the previously proposed language from SB 1285. As  
11 threatened by UHW's President, within a week the newly amended SB 359 targeting Prime had  
12 passed through the Assembly Health Committee and was also passed on the Assembly and Senate  
13 Floors. It was presented to the Governor of California for signature on September 11, 2012.

14 320. As made clear by the UHW-Prime meeting and UHW's "proposal," SEIU and  
15 Kaiser Permanente did not care about the final outcome of the legislation and whether it was ever  
16 passed into law. Defendants were willing to pull the legislation immediately if Prime capitulated  
17 to the conspiracy. Instead, Defendants were interested in and used the threat of the  
18 implementation of the legislation in an attempt to accomplish the conspiracy's goals – forcing  
19 Prime to adopt Kaiser Permanente's and SEIU's business model or exit the market. SB  
20 1285/SB359 was nothing more than a bargaining chip to force Prime to enter into essentially the  
21 same deal as did Columbia/HCA and Tenet when those companies finally capitulated to the  
22 conspiracy's attacks.

23 321. The SEIU, in furtherance of the conspiracy, has also directly engaged in sham and  
24 baseless litigation against Prime. Specifically, the SEIU filed a Worker Adjustment Relocation  
25 and Notification ("WARN") Act action against Prime and MPT following Prime's takeover of  
26 management at Shasta Regional Medical Center ("Shasta") in November 2008. The U.S. District  
27 Court for the Eastern District of California granted summary judgment in Prime's and MPT's  
28 favor, holding that the SEIU had failed to offer any evidence that there was an employment loss



1 at Shasta sufficient to constitute a mass layoff requiring advance notification under WARN. *See*  
2 *Service Employees Int'l Union v. Prime Healthcare Services, Inc.*, 2010 WL 2843942, \*3-5 (E.D.  
3 Cal. July 19, 2010) (slip copy).

4 322. Despite the clear ruling from the district court rejecting the SEIU's legal theories,  
5 the SEIU appealed that decision, and, on November 1, 2011, the U.S. Court of Appeals for the  
6 Ninth Circuit summarily affirmed the district court decision. *See Service Employees Int'l Union,*  
7 *United Healthcare Workers West v. Prime Healthcare Services*, 2011 WL 5147897, \*1 (9th Cir.  
8 Nov. 1, 2011) (slip copy).

9 323. As detailed above, Defendants agreed to jointly influence and convince potential  
10 whistleblowers, writers, government agencies, and politicians to raise specious allegations about  
11 Prime's conduct. These agreements have been evidenced over the last several years by and  
12 through certain individuals purporting to be "whistleblowers," meetings in public forums and  
13 public hearings in which Kaiser Permanente and SEIU representatives publically disparaged  
14 Prime and falsely accused Prime of illegal conduct, bills and proposed laws designed to destroy  
15 Prime's business model, and articles published in the SEIU-controlled publication California  
16 Watch. In turn, Kaiser Permanente uses the false information it receives by virtue of its  
17 agreements with the SEIU to its advantage, and ultimately to the advantage of the SEIU and its  
18 union members, and in litigation against Prime. The eventual outcome of Defendants' efforts in  
19 the political, legislative, and judicial arenas have not resulted in harm to Prime as the legislation  
20 fails to pass and investigations are closed without finding that Prime engaged in any wrong-doing  
21 as alleged below. Rather the harm to Prime, as Defendants intend, results from Prime having to  
22 disrupt its business responding to Defendants' sham effort as part of the process. For example,  
23 diverting the attention of Prime executive management team away from Prime's business and the  
24 costs is dollars and man hours to Prime in responding to a state health care agency investigation,  
25 that closed in Prime's favor, significantly harmed Prime. In addition, Defendants' sham efforts  
26 have created delay in the LA Litigation allowing Kaiser Permanente to continue to hold the  
27 monies it owes Prime and recover interest thereon in the tens of thousands of dollars per day, and  
28 also cause Prime to incur high litigation costs and fees.

1           **VI. THE CONSPIRACY'S ACTIONS HAVE INJURED BOTH COMPETITION**  
2                           **AND PRIME**

3           324. Neither the antitrust laws nor this action are intended to inhibit Kaiser Permanente  
4 from competing on the merits with Prime or to inhibit the SEIU from acting unilaterally in its  
5 own self-interest to expand the representation of Healthcare Workers in The Market. Rather, this  
6 Complaint challenges Defendants' concerted attempts to restrain competition in the markets for  
7 (1) emergency care services provided to the general public; (2) general acute-care hospital  
8 services; and (3) the services provided by Healthcare Workers, including but not limited to direct  
9 patient care duties and responsibilities essential to the provision of the services described in (1)  
10 and (2), through deceptive disparagement campaigns and other anticompetitive acts.

11           325. Kaiser Permanente, in concert with the union defendants, has unlawfully entered  
12 into a conspiracy to restrain competition in the Market and furthered the aims of that conspiracy  
13 by willfully and affirmatively engaging in the course of anticompetitive, unfair, exclusionary,  
14 predatory, and deceptive conduct alleged above and summarized below.

15           326. As noted above, Kaiser Permanente would prefer to provide a single integrated  
16 product to KFHP's members, but state and federal laws and regulations necessarily create a  
17 separate market for emergency and other acute-care hospital services. That is, federal and state  
18 requirements permit KFHP members to seek emergency care at any hospital, and to remain in that  
19 hospital until they are stable and ready to be discharged or transferred to a Kaiser Permanente-  
20 owned, affiliated, contracted, or approved hospital.

21           327. A significant number of hospital patients enter the hospital care market through the  
22 emergency room. When a KFHP member enters a Prime or other emergency facility, KFHP, as  
23 an insurer, is required by law to make certain payments to the owner of that facility, for services  
24 rendered.

25           328. Instead of competing on the merits by providing higher quality emergency and  
26 acute care services to attract KFHP's members and other patients, Kaiser Permanente has  
27 purposefully engaged (both by itself and as part of a conspiracy with the union defendants) in a  
28 specific course of conduct to foreclose a substantial part of hospital emergency and acute care

1 services market from its competitors like Prime. It has also purposefully engaged in a specific  
2 course of conduct to raise the costs of its competitors like Prime through actions with no  
3 redeeming competitive value, or that make no economic sense.

4 329. The conspirators' conduct has injured and threatens future injury to competition by  
5 virtue of Kaiser Permanente's market power in the relevant market. Specifically, Kaiser  
6 Permanente, in addition to competing as a seller in the hospital markets and a buyer in the market  
7 for Healthcare Workers at KFHP facilities, has substantial market power in various California  
8 geographic markets to sell health insurance policies as KFHP. This market and monopoly power  
9 is evidenced by the fact that KFHP can price its health insurance policies without regard to  
10 competition in the market. This market and monopoly power is also evidenced by the fact that  
11 Kaiser Permanente can reduce the quality of its health insurance policies without regard to  
12 competition in the market. Instead of competing on price and quality in the health insurance  
13 markets, KFHP sells a substantial amount of its health insurance policies through its relationships  
14 with the SEIU, other unions, and public officials.

15 330. To maintain and strengthen its market power, Kaiser Permanente, together with the  
16 SEIU, seeks to eliminate hospital competitors like Prime for emergency and acute care hospital  
17 services in the relevant geographic markets. Such elimination of competition will preserve Kaiser  
18 Permanente's ability to collect monopoly rents by pricing its services above competitive levels  
19 and without regard to any competition. Kaiser Permanente also seeks to send a message to other  
20 potential competitors that entering these hospital markets is futile, because Kaiser Permanente,  
21 through both its own actions and the actions of its co-conspirators, will foreclose any competitors  
22 from a substantial part of the market and will unreasonably raise the costs of any competitors  
23 through actions with no redeeming competitive value.

24 331. Kaiser Permanente and the co-conspirators also seek to eliminate competitors like  
25 Prime for emergency and acute care hospital services in the relevant geographic markets so  
26 Kaiser Permanente can continue to limit its spending on its own hospital facilities and services, as  
27 well as funnel money to the union and its union members. By reducing its spending, Kaiser  
28 Permanente is reducing the quality and quantity of the hospital services that it provides to

1 KFHP's members and other customers. Kaiser Permanente's spending reduction is particularly  
2 profitable and therefore tempting in the markets for emergency and acute care services because  
3 many patients that enter the emergency rooms are either uninsured or insured through government  
4 programs that pay a low rate for services. Federal and state laws and regulations forbid KFHP or  
5 any other hospital from turning these customers away, so it is especially important to and  
6 profitable for Kaiser Permanente to reduce its spending on these services. For the same reasons,  
7 KFHP facilities spend a disproportionate amount of time on diversion, which means that it is not  
8 taking additional emergency patients during particular times. When a hospital spends time on  
9 diversion it is reducing the quantity of emergency and ultimately acute care services that it  
10 provides to the market.

11 332. Prime and other competitors that, instead of skimping on emergency and acute  
12 care services, make substantial investments into the quality and quantity of those services disrupt  
13 Kaiser Permanente's preferred model. Kaiser Permanente has reduced and seeks to continue to  
14 reduce the quality and quantity of the emergency and acute care hospital services it provides to  
15 the public (as well as pricing above competitive levels). But if competitors like Prime continue to  
16 compete, then many of KFHP's members and other profitable customers will enter Prime or other  
17 competitors' emergency facilities instead of KFHP's facilities to be treated by SCPMG physicians.  
18 KFHP will then be forced under state and federal law to pay these competitors for the hospital  
19 services. With competition, Kaiser Permanente is forced into a decision to either improve the  
20 quantity, quality and price of its emergency and acute care services, or to lose KFHP's members  
21 to other competitors to whom Kaiser Permanente must separately pay for the costs of such  
22 services.

23 333. Rather than accepting the consequences of competition on the merits, Kaiser  
24 Permanente instead chose to engage in a course of conduct with its union conspirators to  
25 eliminate competitors like Prime that disrupt the Market and Kaiser Permanente's preferred  
26 business model. This allows Kaiser Permanente to spend low amounts on emergency and acute  
27 care services without the risk of incurring a large bill for the care of its patients from a more  
28 attractive provider of emergency care services. In sum, Kaiser Permanente's business model

1 depends upon depriving KFHP members of an effective choice of emergency and acute care  
2 services in the alleged geographic markets.

3 334. To summarize, the effect of Defendants' conduct with respect to The Market has  
4 been and, if not restrained by this Court, will continue to be:

- 5 a. to preclude or lessen competition on the merits between Kaiser Permanente and  
6 Prime;
- 7 b. to enable Kaiser Permanente to acquire, maintain, and/or expand its market share  
8 and monopoly power in The Market;
- 9 c. to unfairly prejudice consumer choice through deceptive manipulation of "studies"  
10 and reports on the quality of care at Prime's hospitals;
- 11 d. to raise the price paid for the services provided by Healthcare Workers;
- 12 e. to eliminate the competitive pressure placed on Kaiser Permanente by the presence  
13 of Prime in The Market to reduce waiting times, add hospitals in locations poorly  
14 served by the existing Kaiser Permanente hospital network, and expand emergency  
15 care capacity to meet the demands of KFHP members; and
- 16 f. to reduce the quality of medical service available to the general public, including  
17 KFHP members, other managed care members, Medicare and Medicaid  
18 beneficiaries, and the uninsured.

19 335. The injury from this conspiracy on consumers is particularly acute. Consumers –  
20 including KFHP members, members of other managed care organizations, individuals covered by  
21 commercial insurers and health plans, Medicare and Medi-Cal beneficiaries, individuals with  
22 other forms of medical care financing, and the underinsured and uninsured – have faced and will  
23 continue to face higher prices, reductions in quality of care, reductions in quantity of services, and  
24 have been and will continue to be deprived of a free, unfettered competitive market for (1)  
25 emergency care services provided to the general public; and (2) general acute-care hospital  
26 services.

27 336. Prime is an actual competitor of Kaiser Permanente in The Market and a purchaser  
28 of the labor of Healthcare Workers. Prime's position as one of the few remaining competitors

1 threatening Kaiser Permanente's market power in The Market has been and continues to be  
2 undermined by Defendants' anticompetitive conduct. As such, Prime has suffered antitrust injury  
3 as a result of Defendants' anticompetitive conduct including, but not limited to, higher than  
4 competitive wages for the services of Healthcare Workers generally in The Market resulting from  
5 the inflated wages Kaiser Permanente agreed to pay to the SEIU's union members pursuant to the  
6 conspiracy as well as the loss of actual and potential customers, lost profits, and the loss of  
7 business goodwill resulting from the campaign to eliminate Prime from The Market. Prime has  
8 been deprived of the opportunity to freely compete in the marketplace with Kaiser Permanente as  
9 a direct result of Defendants' wrongful conduct.

10 337. If Kaiser Permanente and its co-conspirators are able to continue these  
11 anticompetitive acts, Prime will be forced out of the market, which will lead to reduced choice,  
12 quality, and quantity of hospital services, as well as higher costs. The conduct of Kaiser  
13 Permanente and its co-conspirators has already diminished Prime's ability to compete in the  
14 relevant hospital markets, and has similarly reduced the competitive pressure on Kaiser  
15 Permanente to reduce prices and improve quality and quantity of services in the relevant hospital  
16 markets. Thus, Kaiser Permanente's and the conspiracy's activity has harmed both Prime,  
17 individually, and the Market as a whole.

18 338. Prime's business plan is and has been to buy underperforming and under-  
19 producing hospitals and invest substantial sums to increase their capacity and quality. The  
20 anticompetitive activities by Defendants to diminish Prime as a competitor thus directly reduces  
21 both the quantity and quality of emergency and acute care services in the relevant geographic  
22 markets because Prime is less able to purchase and expand hospitals. This reduction in quantity  
23 also negatively affects prices because the same demand for hospital services is chasing fewer  
24 supplies of these services.

25 **SECOND CLAIM FOR RELIEF: MONOPOLIZATION IN VIOLATION OF SECTION 2**  
26 **OF THE SHERMAN ACT (AGAINST KAISER PERMANENTE)**

27 339. Plaintiff incorporates by reference all of the above allegations as if expressly  
28 realleged herein.

1           340. As detailed in Paragraphs 30-35, there is a relevant market for emergency medical  
2 care and treatment services and general acute-care hospital services, which encompasses a broad  
3 cluster of basic medical, surgical diagnostic and treatment services, in Southern California, which  
4 has been referred to herein as The Market.

5           341. Kaiser Permanente possesses monopoly power in The Market.

6           342. Kaiser Permanente has taken affirmative predatory and exclusionary steps to  
7 acquire and maintain its monopoly power in The Market.

8           343. Through the anticompetitive, unfair, exclusionary, predatory, and deceptive  
9 conduct described herein, Kaiser Permanente has willfully achieved and maintained, and unless  
10 restrained by the Court, will continue to willfully maintain and expand, that monopoly power.

11           344. Kaiser's acts and the continuing course of Kaiser's anticompetitive conduct have  
12 harmed and threaten to continue to harm customers, end-users, and competition in The Market.

13           345. Kaiser's acts, undertaken with the intent to acquire and maintain its monopoly  
14 power in The Market, violated and continue to violate Section 2 of the Sherman Act, 15 U.S.C.  
15 § 2.

16           346. Kaiser's conduct has occurred in, and is having a substantial effect on, interstate  
17 commerce. If Kaiser's scheme to monopolize The Market succeeds, Defendant Kaiser  
18 Permanente would affect Plaintiff's (1) substantial (in the tens of millions of dollars) out-of-state  
19 purchases in medicines and supplies; (2) substantial revenues from out-of-state insurance  
20 companies, including federally funded Medicare reimbursement; and (3) substantial sums from  
21 out-of-state sources to help Plaintiff run its daily operations.

22           347. As a direct and proximate result of Kaiser's exclusionary and anticompetitive  
23 conduct, Prime has been injured and has sustained substantial damages in its business or property.  
24 Prime will continue to sustain foreseeable damages in the future as a result of Kaiser's wrongful  
25 conduct. Unless the activities complained of are enjoined, Prime will suffer immediate and  
26 irreparable injury for which Prime will have no adequate remedy at law.

27           348. As a direct competitor that was targeted by Kaiser's anticompetitive conduct,  
28 Prime has suffered antitrust injury and has standing to bring this claim.



1           349. Prime is entitled to recover treble damages under Section 4 of the Clayton Act, 15  
2 U.S.C. § 15. Prime is also entitled, under Section 16 of the Clayton Act, 15 U.S.C. § 26, to a  
3 permanent injunction restraining Kaiser Permanente from engaging in the anticompetitive acts.

4           **I. KAISER POSSESSES MONOPOLY POWER IN THE MARKET**

5           350. Plaintiff incorporates by reference the allegations discussing Service and  
6 Geographic Markets in Paragraphs 30-35. Plaintiff has and will refer to these markets as “the  
7 Market.”

8           351. Kaiser Permanente has monopoly power in the Market. That is, Kaiser Permanente  
9 has the power to control prices, quality, quantity, and can exclude competition in the markets for  
10 emergency and acute care hospital services. For example, Kaiser Permanente – without regard to  
11 competition – already prices its services at supra-competitive levels, above market competitors,  
12 and at the same time produces an inferior service, spending less money on its emergency and  
13 acute care services than its competitors. Kaiser Permanente does not need to improve its product  
14 or reduce its prices to obtain customers. Moreover, KFH restricts output by spending more time  
15 than its competitor hospitals on diversion, which means that its emergency rooms essentially  
16 close to new patients for longer periods of time than its competitors. KFH also reduces output by  
17 tolerating longer wait-times in its emergency rooms than Prime and other competitors. This  
18 reduced output predictably increases prices and/or permits Kaiser Permanente to reduce the  
19 quality of its services. Kaiser Permanente demonstrates its monopoly power by simultaneously  
20 reducing output and raising prices, without regard to any competition. In addition, Kaiser  
21 Permanente, by itself and with the help of its co-conspirators, has further demonstrated its market  
22 and monopoly power by vanquishing other competitors that were similarly-situated to Prime.

23           352. In addition, KFHP by virtue of its dominant role as health insurer to a substantial  
24 portion of the relevant geographic markets, exercises leverage over and financially threatens those  
25 that it insures with the purpose and effect of causing these customers to bypass Prime and other  
26 competitor hospitals for KFH facilities, even when the customer would normally choose a Prime  
27 or other competitor hospital. This is also the exercise of market power.

28           353. Kaiser Permanente is the dominant force in the alleged relevant hospital markets,

1 with substantial market share and power. There are substantial entry barriers for these markets, as  
2 there are high costs and regulatory requirements for both establishing and running a hospital.  
3 Kaiser Permanente's actions, along with the actions of its co-conspirator unions, have further  
4 diminished the likelihood of entry, as any potential entrant understands that it will have costs  
5 from the sorts of activities alleged below, in addition to typical business and regulatory costs.  
6 Finally, each hospital has a limited capacity for patients, and the costs of hospital expansion are  
7 extremely high. Not only must a competitor physically build a new hospital, but there are many  
8 regulatory costs and hurdles that must be overcome. That is one reason why new entrants to a  
9 hospital market often purchase existing hospitals.

## 10 **II. KAISER HAS ENGAGED IN ANTICOMPETITIVE CONDUCT IN THE** 11 **MARKET**

12 354. Kaiser, acting both alone and in concert with the union defendants, has engaged in  
13 a course of anticompetitive, unfair, exclusionary, predatory, and deceptive conduct with the  
14 specific design and purpose to raise the costs of competitors, including Prime, and to foreclose  
15 these competitors from competing in the Market. Rather than competing on the merits in the  
16 Market, Kaiser Permanente chose to eliminate competition by unfairly and unreasonably raising  
17 their costs, through both its own actions and the actions of its co-conspirators, and by foreclosing  
18 these same competitors from competing the Market. This anticompetitive conduct is ongoing, and  
19 is continuing to harm both competition and Prime.

20 355. Kaiser Permanente willfully and affirmatively engaged and is engaging in this  
21 conduct with the specific intent of monopolizing and destroying competition in the Market.

22 356. Kaiser's conduct has led to higher prices, lower quality, and fewer services  
23 (including more emergency room diversion time) in the Market. Thus, Kaiser's conduct has  
24 injured consumers and threatens to continue injuring consumers in the Market.

25 357. Consumers, including KFHP members, members of other managed care  
26 organizations, consumers covered by commercial insurers and health plans, Medicare and Medi-  
27 Cal beneficiaries, consumers with other forms of medical care financing, and the underinsured  
28 and uninsured, have faced and will continue to face higher prices, reductions in quality of care,

1 reductions in quantity of services, and have been and will continue to be deprived of a free,  
2 unfettered competitive market for (1) emergency care services provided to the general public; and  
3 (2) general acute-care hospital services.

4 358. Kaiser Permanente, in addition to competing as a seller in the hospital markets and  
5 a buyer in the market for healthcare workers, has substantial market power in the same California  
6 geographic markets alleged in Paragraphs 30-35 to sell health insurance policies. This market  
7 and monopoly power is evidenced by the fact that KFHP can price its health insurance policies  
8 without regard to competition in the market. This market and monopoly power is also evidenced  
9 by the fact that KFHP can reduce the quality and supply of its health insurance policies without  
10 regard to competition in the market. Instead of competing on price and quality in the health  
11 insurance markets, KFHP sells a substantial amount of its health insurance policies through its  
12 relationships with the SEIU, other unions, and public officials.

13 359. Kaiser Permanente would prefer to provide an integrated product of both health  
14 insurance and hospital services, but state and federal laws and regulations necessarily create a  
15 separate market for emergency and other acute-care hospital services. That is, federal and state  
16 requirements permit KFHP members to seek emergency care not just at KFHP hospitals, but at any  
17 hospital, and to remain in that hospital until they are stable and ready to be discharged or  
18 transferred to a Kaiser Permanente-owned, affiliated, contracted, or approved hospital.

19 360. When a KFHP member enters a Prime or other emergency facility, KFHP, as an  
20 insurer, is required by law to make certain payments to the owner of that facility, for services  
21 rendered. This fact, combined with the federal and state mandates that KFHP members can  
22 choose any emergency room for their treatment, provides extra motivation for Kaiser Permanente  
23 to take whatever actions it can to destroy competition. If KFHP members do not have a  
24 meaningful choice of higher quality emergency rooms, Kaiser Permanente can trap these KFHP  
25 members in its own facilities and avoid paying hospitals like Prime for KFHP's members'  
26 emergency and acute care treatment. In the absence of meaningful competition, Kaiser  
27 Permanente can continue to minimize spending on its emergency and acute care services and at  
28 the same time avoid having to pay for more expensive services from other hospitals for KFHP's

1 members' treatment.

2 361. Instead of competing on the merits by providing higher quality and lower priced  
3 emergency and acute care services to entice KFHP members and other patients, Kaiser  
4 Permanente has purposefully engaged in a specific course of conduct to foreclose a substantial  
5 part of hospital emergency and acute care services market from its competitors like Prime. Kaiser  
6 Permanente has also purposefully engaged in a specific course of conduct to raise the costs of its  
7 competitors like Prime through actions with no redeeming competitive value.

8 362. Kaiser Permanente's goal is to eliminate its competitors like Prime for emergency  
9 and acute care hospital services in the relevant geographic markets so it can continue to collect  
10 monopoly rents by pricing its services above competitive levels and without regard to any  
11 competition. Kaiser Permanente also seeks to send a message to other potential competitors that  
12 entering these hospital markets is futile, because Kaiser Permanente, through both its own actions  
13 and the actions of its co-conspirators, will foreclose any competitors from a substantial part of the  
14 market and will unreasonably raise the costs of any competitors through actions with no  
15 redeeming competitive value.

16 363. Kaiser Permanente also seeks to eliminate its competitors like Prime for  
17 emergency and acute care hospital services in the relevant geographic markets so it can continue  
18 to limit its spending on its own hospital facilities and services. By reducing its spending, Kaiser  
19 Permanente is reducing the quality and quantity of the hospital services that it provides to KFHP  
20 members and other customers. Kaiser Permanente's spending reduction is particularly profitable  
21 and therefore tempting in the markets for emergency and acute care services because many  
22 patients that enter the emergency rooms are either uninsured or insured through government  
23 programs that pay a low rate for services. Federal and state laws and regulations forbid KFHP or  
24 any other hospital from turning these customers away, so it is especially important to and  
25 profitable for Kaiser Permanente to reduce its spending on these services. For the same reasons,  
26 KFHP's hospitals spend a disproportionate amount of time on diversion, which means that those  
27 hospitals are not taking additional emergency patients during particular times. When a hospital  
28 spends time on diversion it is reducing the quantity of emergency and ultimately acute care

1 services that it provides to the market.

2 364. Kaiser Permanente's overall business model concentrates most on insuring KFHP  
3 members and providing hospital services for KFHP members, as well as other profitable insured  
4 patients, at KFH facilities. The state and federal laws and regulations that permit KFHP's  
5 members to enter any emergency room, however, interferes with that plan. Prime and other  
6 competitors that, instead of skimping on emergency and acute care services, make substantial  
7 investments into the quality and quantity of those services disrupt Kaiser Permanente's preferred  
8 model. Kaiser Permanente has reduced and seeks to continue to reduce the quality and quantity  
9 of the emergency and acute care hospital services it provides to the public (as well as pricing  
10 above competitive levels) at KFH hospitals. But if competitors like Prime continue to compete,  
11 then many of KFHP's members (and other profitable customers) will enter Prime or other  
12 competitors' emergency facilities instead of KFH's facilities. KFHP will then be forced under  
13 state and federal law to pay these competitors for the hospital services. With competition, Kaiser  
14 Permanente is forced into a decision to either improve the quantity, quality and price of its  
15 emergency and acute care services, or to lose KFHP's members and other profitable customers to  
16 other competitors.

17 365. Instead of accepting the consequences of competition on the merits, Kaiser  
18 Permanente instead chose to engage in a course of conduct to eliminate competitors like Prime  
19 that disrupt the Market and Kaiser Permanente's preferred business model, which allows Kaiser  
20 Permanente to spend low and price high on emergency and acute care services. Kaiser  
21 Permanente's business model depends upon depriving its members and other profitable customers  
22 of an effective choice of emergency and acute care services in the alleged geographic markets.

23 366. Kaiser Permanente, through both its own actions and the actions of the defendant  
24 unions as part of the conspiracy, has engaged in a course of anticompetitive, unfair, exclusionary,  
25 predatory, and deceptive conduct with the specific design and purpose to raise the costs of  
26 competitors, including Prime, and to foreclose these competitors from competing in the Market.  
27 For example, Kaiser Permanente, by itself and as part of the conspiracy with the defendant  
28 unions, harmed competition in the emergency and acute care hospital markets.

1           **III.    ANTICOMPETITIVE ACTIONS BY KAISER**

2           367.    Kaiser Permanente, and as part of the ongoing conspiracy with the SEIU, has  
3 additionally and concurrently harmed competition in the emergency and acute care hospital  
4 markets through the anticompetitive actions detailed in Paragraphs 212-225, 251-260, 271, 274-  
5 283, 305, and 312-323, which Prime incorporates by reference as if expressly realleged herein.

6           368.    Prime has confronted Kaiser Permanente over its misconduct.    Nine Prime  
7 hospitals have engaged in litigation against Defendants KFHP, KFH, and SCPMG for their failure  
8 to properly pay all amounts due for medical care rendered by those hospitals to KFHP members  
9 (*i.e.*, the LA Litigation).  As a result of its misconduct, Kaiser Permanente owes the hospitals  
10 more than \$100 million.  In response to Prime's attempts to recover amounts properly owed, the  
11 defendants in that action filed sham counterclaims alleging and have pursued theories based on  
12 the same accusations that Defendants, including the SEIU and its allies, have leveled against  
13 Prime during their campaign to eliminate Prime as a competitive threat.

14           369.    Kaiser Permanente's deceptive conduct has both maintained and expanded Kaiser  
15 Permanente's market and monopoly power, as it has diminished the ability of Prime and other  
16 competitors to compete with Kaiser Permanente for patients.

17           **IV.    ANTICOMPETITIVE ACTIONS BY KAISER AND SEIU**

18           370.    As agents for Kaiser, and as part of the ongoing conspiracy with Kaiser, the union  
19 defendants have additionally and concurrently harmed competition in the emergency and acute  
20 care hospital markets through the anticompetitive actions of Defendants' conspiracy detailed in  
21 Paragraphs 221-223, 230-233, 261-273, 274-301, and 312-323, which Prime incorporates by  
22 reference as if expressly realleged herein.

23           371.    This deceptive conduct has both maintained and expanded Kaiser Permanente's  
24 market and monopoly power, as it has diminished the ability of Prime and other competitors to  
25 compete with Kaiser Permanente for patients.

26           **V.    ANTITRUST INJURY TO PRIME**

27           372.    Prime is an actual competitor of Kaiser Permanente in the markets for emergency  
28 and acute care hospital services.  As such, Prime has suffered antitrust injury as a result of

1 Defendants' anticompetitive conduct including the loss of actual and potential customers, lost  
2 profits, and the loss of business goodwill resulting from the campaign to eliminate Prime from  
3 The Market. Prime has been deprived of the opportunity to freely compete in the marketplace  
4 with Kaiser Permanente as a direct result of Kaiser Permanente's and its union co-conspirators'  
5 wrongful conduct. Kaiser Permanente's conduct, both individually and through the conspiracy,  
6 has both substantially foreclosed Prime from the relevant hospital markets and has raised Prime's  
7 costs, substantially harming Prime's ability to remain a competitor in the market.

8 373. If Kaiser Permanente and its co-conspirators are able to continue these  
9 anticompetitive acts, Prime will be forced out of the market, which will lead to reduced choice,  
10 quality, and quantity of hospital services, as well as higher costs. The conduct of Kaiser  
11 Permanente and its co-conspirators has already diminished Prime's ability to compete in the  
12 relevant hospital markets, and has similarly reduced the competitive pressure on Kaiser  
13 Permanente to reduce prices and improve quality and quantity of services in the relevant hospital  
14 markets. Thus, Kaiser Permanente and the conspiracy's activity has harmed both Prime,  
15 individually, and the Market as a whole.

16 374. Prime's business plan is and has been to buy underperforming and under-  
17 producing hospitals and invest substantial sums to increase their capacity and quality. The  
18 anticompetitive activities by Kaiser Permanente and the conspiracy to diminish Prime as a  
19 competitor thus directly reduces both the quantity and quality of emergency and acute care  
20 services in the relevant geographic markets because Prime is less able to purchase and expand  
21 hospitals. This reduction in quantity also negatively affects prices because the same demand for  
22 hospital services is chasing fewer supplies of these services.

23 **THIRD CLAIM FOR RELIEF: ATTEMPTED MONOPOLIZATION IN VIOLATION OF**  
24 **SECTION 2 OF THE SHERMAN ACT (AGAINST KAISER PERMANENTE)**

25 375. Prime incorporates by reference all of the above allegations as if expressly  
26 realleged herein.

27 376. There is a relevant market for emergency medical care and treatment services and  
28 general acute-care hospital services, which encompasses a broad cluster of basic medical, surgical



1 diagnostic and treatment services, in Southern California, which has been referred to herein as  
2 The Market.

3 377. Kaiser Permanente has attempted to monopolize The Market.

4 378. Kaiser Permanente has a specific intent to monopolize, and to destroy effective  
5 competition in, The Market.

6 379. Kaiser Permanente has willfully and affirmatively engaged in, and is engaging in,  
7 a course of exclusionary and predatory conduct, as alleged above, in an attempt to monopolize  
8 The Market.

9 380. Kaiser Permanente's alleged prior acts and the continuing course of Kaiser's  
10 anticompetitive conduct have harmed and threaten to continue to harm consumers and  
11 competition in The Market.

12 381. There is a dangerous probability that, unless restrained by this Court, Kaiser  
13 Permanente will succeed in acquiring, maintaining, and/or expanding its monopoly power in The  
14 Market, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

15 382. Kaiser Permanente's conduct has occurred in, and is having a substantial effect on,  
16 interstate commerce. If Kaiser Permanente's scheme to monopolize The Market succeeds, it  
17 would affect Prime's (1) substantial, in the tens of millions of dollars, out-of-state purchases in  
18 medicines and supplies; (2) substantial revenues from out-of-state insurance companies, including  
19 federally funded Medicare reimbursement; and (3) substantial sums from out-of-state sources to  
20 help Prime run its daily operations.

21 383. As a direct and proximate result of Kaiser Permanente's exclusionary, predatory,  
22 and anticompetitive conduct, Prime has been injured and has sustained damages. Prime will  
23 continue to sustain foreseeable damages in the future as a result of result of Kaiser Permanente's  
24 exclusionary, predatory, and anticompetitive conduct. Unless the activities complained of are  
25 enjoined, Prime will suffer immediate and irreparable injury for which Prime will have no  
26 adequate remedy at law.

27 384. As a direct competitor that was targeted by Kaiser Permanente's anticompetitive  
28 conduct, Prime has suffered antitrust injury and has standing to bring this claim.

1 385. Prime is entitled to recover treble damages under Section 4 of the Clayton Act, 15  
2 U.S.C. § 15. Prime is also entitled, under Section 16 of the Clayton Act, 15 U.S.C. § 26, to a  
3 permanent injunction restraining Kaiser Permanente from engaging in anticompetitive acts.

4 **FOURTH CLAIM FOR RELIEF: CONSPIRACY TO MONOPOLIZE IN VIOLATION**  
5 **OF SECTION 2 OF THE SHERMAN ACT (AGAINST KAISER PERMANENTE)**

6 386. Prime incorporates by reference all of the above allegations as if expressly  
7 realleged herein.

8 387. There is a relevant market for emergency medical care and treatment services and  
9 general acute-care hospital services, which encompasses a broad cluster of basic medical,  
10 surgical, diagnostic and treatment services, in Southern California, which has been referred to  
11 herein as The Market.

12 388. As set forth above, Kaiser Permanente and SEIU have formed an illegal  
13 conspiracy *per se* in an effort to eliminate Prime as a competitor in The Market.

14 389. Each of the acts described herein, specifically including but not limited to the acts  
15 alleged in Paragraphs 251-323 above, was undertaken and constitute overt acts in furtherance of  
16 Defendants' unlawful conspiracy.

17 390. Kaiser Permanente has willfully and affirmatively engaged in, and is engaging in,  
18 a course of exclusionary and predatory conduct, as alleged above, with the specific intent to  
19 monopolize The Market.

20 391. Kaiser Permanente's alleged prior acts and the continuing course of Kaiser  
21 Permanente's anticompetitive conduct have harmed and threaten to continue to harm consumers  
22 and competition in The Market.

23 392. There is a dangerous probability that, unless restrained by this Court, Kaiser  
24 Permanente will succeed in acquiring, maintaining, and/or expanding its monopoly power in The  
25 Market, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

26 393. Kaiser Permanente's conduct has occurred in, and is having a substantial effect on,  
27 interstate commerce. If Kaiser Permanente's scheme to monopolize The Market succeeds, it  
28 would affect Prime's (1) substantial, in the tens of millions of dollars, out-of-state purchases in

1 medicines and supplies; (2) substantial revenues from out-of-state insurance companies, including  
2 federally funded Medicare reimbursement; and (3) substantial sums from out-of-state sources to  
3 help Prime run its daily operations.

4 394. As a direct and proximate result of Kaiser Permanente’s exclusionary, predatory,  
5 and anticompetitive conduct, Prime has been injured and has sustained damages. Prime will  
6 continue to sustain foreseeable damages in the future as a result of Kaiser Permanente’s  
7 exclusionary, predatory, and anticompetitive conduct. Unless the activities complained of are  
8 enjoined, Prime will suffer immediate and irreparable injury for which Prime will have no  
9 adequate remedy at law.

10 395. As a direct competitor that was targeted by Kaiser Permanente’s anticompetitive  
11 conduct, Prime has suffered antitrust injury and has standing to bring this claim.

12 396. Prime is entitled to recover treble damages under Section 4 of the Clayton Act, 15  
13 U.S.C. § 15. Prime is also entitled, under Section 16 of the Clayton Act, 15 U.S.C. § 26, to a  
14 permanent injunction restraining Kaiser Permanente from engaging in anticompetitive acts.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them jointly  
17 and severally, as follows:

- 18 1. For temporary, preliminary, and permanent injunctions and specific performance:
- 19 a. enjoining Defendants from:
- 20 i. continuing their collusive “corporate campaign” of baseless  
21 disparagement of Plaintiff in concert with each other;
- 22 ii. colluding to disrupt Plaintiff’s business through the dissemination of  
23 biased research studies, reports, or similar publications regarding the  
24 quality of care at Plaintiff’s hospitals;
- 25 iii. coercing and threatening patients, not to seek or continue their care at  
26 Plaintiff’s hospitals where such care would be authorized and  
27 appropriate under applicable laws and regulations;
- 28 iv. coercing and threatening physicians to transfer patients currently under

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care at Plaintiff’s hospitals where such transfer is not appropriate or authorized under applicable laws and regulations;

v. coercing and threatening others not to transport or direct patients to Plaintiff’s hospitals where the care of such patients would be authorized and appropriate under applicable laws and regulations;

vi. withholding payment from Plaintiff for services rendered to KFHP members without just cause; and

vii. taking any other steps or engaging in any other concerted conduct, directly or indirectly, having the purpose or effect of destroying, restricting, or hampering Plaintiff’s ability to compete in the relevant market; and

b. compelling Defendants to issue corrective advertising and statements to correct the false and misleading statements set forth above;

2. For general damages, the exact amount to be determined at trial, to compensate Prime for the harm caused by Defendants’ anticompetitive acts;

3. For trebling of Prime’s damages pursuant to the federal antitrust laws;

4. For Prime’s reasonable attorneys’ fees and costs incurred in connection with this action; and

5. For such other legal and equitable relief as this Court deems just and proper, including disgorgement by Defendants of all sums obtained pursuant to the scheme described herein.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury for each and every one of the foregoing claims for

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1 relief so triable.

2 Respectfully submitted,

3 Dated: September 20, 2012

**DLA PIPER LLP (US)**

4  
5 By /s/ Jeffrey M. Shohet

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8 *Attorneys for Plaintiff*

PRIME HEALTHCARE SERVICES, INC.

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