

1 pursuant to California state law, to wit, California Business and Professions Code Section 17200
2 et seq. and the California Unruh Civil Rights Act.

3 3. Venue is proper in this Court because the Defendant is incorporated in the State of
4 California and has its headquarters in Oakland, California.

5
6 **PARTIES**

7 4. Plaintiff Susan Futterman is a resident of Pt. Richmond, California. She is the
8 surviving spouse of Frederic Paroutaud, who was a Kaiser member at the time of his death in June
9 of 2012. Mr. Paroutaud paid a fee to Kaiser in return for Kaiser's promise to provide him with
10 coverage for, and the arranging of, certain medical services, including mental health services. Ms.
11 Futterman is the sole beneficiary of her late husband's estate. (*See Exhibit 1, Attached Declaration*
12 *of Susan Futterman.*)

13 5. Plaintiff Acianita Lucero is a resident of Oakland, California. She is a current
14 Kaiser member. Ms. Lucero paid a fee to Kaiser in return for Kaiser's promise to provide her
15 with coverage for, and the arranging of, certain medical services, including mental health services.

16 6. Plaintiff Maria Spivey is a resident of the County of San Diego, California. She is
17 the surviving parent of Chloe M. Roston, a minor child. At all times relevant herein, Ms. Spivey
18 and her daughter Chloe M. Roston ("Chloe") were Kaiser members. Ms. Spivey paid a fee to
19 Kaiser in return for Kaiser's promise to provide both herself and her deceased minor child, Chloe,
20 with coverage for, and the arranging of, certain medical services, including mental health services.
21 Ms. Spivey, who has herself suffered economic loss as a result of Defendant's unlawful conduct
22 as described herein, brings this claim herself, and also on behalf of her deceased minor child,
23 Chloe. At all times relevant herein, Ms. Spivey was the parent of Chloe, an unmarried, legitimate
24 child.

25 7. Defendant Kaiser Foundation Health Plan, Inc. ("KFHP" or "Kaiser") is
26 incorporated in the State of California, is a resident of the State of California, and has its
27 headquarters and principal place of business in Oakland, California, in the County of Alameda.

28 8. Defendant KFHP is a part of an integrated healthcare coverage, administration, and

1 delivery system, Kaiser Permanente. Kaiser Permanente is made up of three groups or entities:
2 (1) Defendant Kaiser Foundation Health Plan, Inc.; (2) Kaiser Foundation Hospitals; and (3) the
3 regional Permanente Medical Groups.

4 9. Defendant KFHP is a full service "health care service plan," as defined by Health
5 and Safety Code Section 1345. Defendant collects fees from or on behalf of Kaiser "members"
6 throughout the State of California in return for covering and arranging for the provision of a full
7 range of health care services, including but not limited to behavioral health, ambulatory care,
8 preventative services, hospital care, and skilled nursing.

9 10. Defendant KFHP arranges for behavioral health services for its members through
10 its regional Permanente Medical Groups. The Permanente Medical Group, Inc. ("TPMG"), a for-
11 profit multi-specialty physician corporation, provides mental health services to Defendant's
12 approximately 3.3 million members in Northern California. The Southern California Permanente
13 Medical Group ("SCPMG"), a for-profit multi-specialty physician partnership, provides most of
14 the behavioral health services to Defendant's approximately 3.5 million members in Southern
15 California.¹

16 11. Defendant KFHP has as one of its subsidiaries that it owns, Kaiser Permanente
17 Insurance Company ("KPIC"). Defendant KFHP is the Administrator for KPIC's plans and
18 administers them by, among other things, collecting fees, and arranging for healthcare services
19 through the integrated Kaiser Permanente provider and delivery system in the same manner
20 described in paragraphs 7-10, including but not limited to for mental health services.

21 12. Plaintiffs are unaware of the true names and capacities of those individuals and/or
22 entities sued herein as DOES I-XX, inclusive, and therefore sue these Defendants by fictitious
23 names. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named
24 Defendants is responsible in some manner for the occurrences herein alleged and that these
25 Defendants proximately caused Plaintiffs' injuries. Plaintiffs will amend this Complaint to show

26
27 ¹ SCPMG also subcontracts out to other entities some of its services to a limited number of Kaiser
28 members in Southern California.

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1 such true names and capacities when they have been determined. Plaintiffs are informed and
2 believe and thereon allege that at all times herein mentioned, each Defendant was the agent of the
3 other Defendants and in performing the acts herein alleged was acting within the course and scope
4 of such agency and with the permission and consent of its co-defendants. Each of the Defendants
5 ratified and/or authorized the acts of the other Defendants.

6
7 **FACTUAL ALLEGATIONS COMMON TO THE CLASS**

8 **Plaintiff Susan Futterman**

9 13. Plaintiff Susan Futterman's late husband, Frederic Paroutaud, was a member of
10 Defendant and/or Defendant was responsible for administering and arranging for his health care
11 services, including his mental health services.

12 14. On or around April 28, 2012, Mr. Paroutaud suffered a psychotic break at the age
13 of 57, and he was arrested and put in jail.

14 15. Mr. Paroutaud was released a few days later. Plaintiff Futterman took him to see
15 his regular doctor at Kaiser San Rafael. Because of his behavior, the doctor directed Plaintiff
16 Futterman to take her husband to the Kaiser San Rafael emergency room, which she did.

17 16. After spending several hours in the emergency room, Kaiser transported him to a
18 Kaiser-contracted inpatient facility in Vallejo. On information and belief, Mr. Paroutaud was
19 treated by health care providers who work for Kaiser during his stay in the Vallejo inpatient
20 facility.

21 17. During Mr. Paroutaud's stay in the Vallejo inpatient facility, he was diagnosed as
22 having bipolar disorder. Thus, he had one of the nine enumerated "Severe Mental Illnesses"
23 identified in California's Mental Health Parity Act ("Parity Act"), codified at California Health
24 and Safety Code § 1374.72 and at Insurance Code § 10144.5, and he had a mental health disability
25 and/or mental health medical condition as those terms are defined in California's Unruh Civil
26 Rights Act ("Unruh Act"), codified at California Civil Code §§ 51 et seq.

27 18. After he was in the emergency room for several hours, Mr. Paroutaud stayed in the
28 Vallejo inpatient facility for another approximately 72 hours. A Kaiser physician then released

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1 Mr. Paroutaud, despite the fact that he was still suffering from delusions, and despite the fact that
2 the clinician told Plaintiff Futterman that Mr. Paroutaud could have been directed to stay longer in
3 the facility.

4 19. Upon his release from the Vallejo inpatient facility on or around May 4, 2012,
5 Kaiser referred him to its Intensive Outpatient Program ("IOP") at Kaiser San Rafael. Plaintiff
6 Futterman accompanied her husband to the IOP program at the beginning of the following week.
7 Before he attended the IOP, Kaiser simply provided Mr. Paroutaud with the schedule and directed
8 him to its first group meeting. No one individually assessed Mr. Paroutaud for his suitability in
9 the program, or the medical necessity of the program for Mr. Paroutaud. The IOP program
10 consisted of group therapy sessions four times per week for the next six weeks and intermittent
11 medication management. Mr. Paroutaud was never offered individual psychotherapy as a
12 treatment option. The group-based IOP was the only option presented to him. It is a one-size-fits-
13 all program that is not tailored to the individual medical needs of particular patients or diagnoses.

14 20. From the beginning of the IOP to its end, Kaiser never met with Mr. Paroutaud to
15 individually tailor the IOP to Mr. Paroutaud's individual medical needs, to individually assess his
16 treatment needs other than medication management, or to determine if the IOP's group-based
17 program was appropriate for Mr. Paroutaud's mental health condition and medical need. No
18 Kaiser mental health professional individually managed Mr. Paroutaud's treatment during the
19 IOP.

20 21. During the Kaiser IOP, Kaiser did not provide any one-on-one therapy sessions for
21 Mr. Paroutaud, but rather only group therapy sessions, because that was what was offered under
22 the IOP, and no health care provider made a determination as to whether or not one-on-one
23 therapy sessions were medically necessary for Mr. Paroutaud, despite the fact that they were
24 requested, as discussed below, as part of the IOP program or as otherwise provided by Kaiser. In
25 fact, as discussed below, Kaiser denied Mr. Paroutaud the one-on-one therapy sessions he and
26 Plaintiff Futterman requested, without making an individualized determination of the medical
27 necessity of such therapy for him.

28 22. Mr. Paroutaud's experience is a common one at Kaiser, where Kaiser's policies

1 and patterns of practice are, in violation of the law, including the Parity Act and Unruh Act, to
2 assign mental health patients with Parity Act and Unruh Act qualifying conditions, irrespective of
3 the type of condition, to one-size-fits-all intensive outpatient mental health programs that are
4 group-based, called IOPs or using other names (such as Aftercare Programs), without making an
5 individualized medical determination as to whether the program is medically necessary or
6 appropriate for them, without tailoring the program to the patient's individual medical needs,
7 without determining if group-based therapy is medically necessary or appropriate for the
8 individual patient, and denying individual therapy without determining if it is medically necessary
9 for the individual member. Defendant's policies and patterns of practice in these regards are
10 different than its treatment of physical health conditions.

11 23. When informed that the IOP consisted of group therapy, Plaintiff Futterman told
12 Kaiser that she did not believe that Mr. Paroutaud was well-suited for group therapy. Kaiser told
13 Plaintiff Futterman that this was what was available.

14 24. The group therapy Mr. Paroutaud attended under the IOP – all that was offered and
15 available – consisted of a very large group of individuals, many of whom were recovering from
16 substance abuse. Mr. Paroutaud felt that he could not relate to the problems of these individuals
17 who did not share his condition, he was embarrassed and ashamed about what was happening to
18 him, and as a private person he did not want to speak about his problems in front of a group. Mr.
19 Paroutaud told the lead facilitator for the group, Cecily Martin, that he felt uncomfortable in the
20 group setting, that he could not discuss his private life in a group setting, and that he wanted to
21 speak with a therapist one-on-one. Ms. Martin told Mr. Paroutaud that he should continue to
22 attend the group IOP sessions.

23 25. At some point in May 2012, Plaintiff Futterman and Mr. Paroutaud spoke to Ms.
24 Martin in a hallway in the Kaiser San Rafael facility. Plaintiff Futterman told Ms. Martin that she
25 wanted to speak with Ms. Martin about Mr. Paroutaud's treatment and condition, that she did not
26 believe that the group therapy was working for him, that Mr. Paroutaud was a private person, and
27 that Plaintiff Futterman believed that Mr. Paroutaud needed one-on-one therapy. Ms. Martin
28 responded that one-on-one therapy was not available at Kaiser, and that the IOP was what was

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1 available so Mr. Paroutaud should continue to attend the group therapy sessions.

2 26. At some time in May or June 2012, Plaintiff Futterman also spoke to another
3 Kaiser employee who she believes was a manager of the psychology department at Kaiser San
4 Rafael. Plaintiff Futterman repeated her request that Mr. Paroutaud be provided with one-on-one
5 therapy. Again, she was told that one-on-one therapy was not available for Mr. Paroutaud at
6 Kaiser.

7 27. Mr. Paroutaud completed the initial six weeks of group therapy that was part of the
8 IOP, but he steadily became less responsive and more depressed. Plaintiff Futterman attended
9 brief "drug management" appointments that Mr. Paroutaud had with Dr. Richard Glass, a
10 psychiatrist who was responsible for Mr. Paroutaud's medication management. Plaintiff
11 Futterman was very concerned about her husband's condition, so she told Dr. Glass that she was
12 worried about Kaiser's overall care for her husband, that she did not believe group therapy was
13 useful for her husband, that he did not have anything in common with those in his group with
14 substance abuse problems, and that she believed Mr. Paroutaud needed one-on-one therapy
15 because his condition was getting worse. Dr. Glass's response was that he does not do that –
16 meaning individual therapy, and that Mr. Paroutaud should continue with the group therapy
17 sessions.

18 28. Plaintiff Futterman asked telephonically for an appointment with a Kaiser provider
19 for one-on-one therapy for Mr. Paroutaud because she believed his condition was getting worse.
20 She was told that one-on-one therapy was not available at Kaiser, and that he should go to the
21 available group therapy sessions.

22 29. Mr. Paroutaud's experience is a common one at Kaiser, where Kaiser's policies
23 and patterns of practice in violation of the law including the Parity Act and Unruh Act are, with
24 respect to patients with Parity Act and Unruh Act qualifying conditions, irrespective of the type of
25 condition, to push them to group therapy without an individualized assessment of the suitability of
26 group therapy and the type of group therapy ultimately assigned to the patient, to deny patients
27 one-on-one therapy without a determination of the medical necessity of one-on-one therapy, and
28 to provide such treatment modalities based on scheduling availability and cost-savings

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1 irrespective of the individual medical needs of the patient. Similar policies and practices are not
2 followed by Kaiser in the treatment of physical health conditions.

3 30. Kaiser's treatment of Mr. Paroutaud is also a common one at Kaiser and violates
4 the law, specifically including but not limited to California Code of Regulations, title 28, section
5 1300.67(f)(8), among others, because in telling Plaintiff Futterman and Mr. Paroutaud that Kaiser
6 does not offer one-on-one therapy it was distributing information that is not consistent with
7 Defendant's legal obligations, including but not limited to under the Parity Act, and/or it is
8 information that is misleading and false. Defendant Kaiser has a pattern and practice of
9 distributing this type of unlawful information to its members.

10 31. In the middle of June 2012, as Mr. Paroutaud's condition appeared to be
11 deteriorating, Plaintiff Futterman made multiple calls to Kaiser to request an urgent appointment
12 for her husband with his psychiatrist, Dr. Glass. She told the Kaiser personnel who answered her
13 calls that she was extremely worried about her husband, that he had become non-responsive, that
14 she did not know what to do for him, and that she was very worried, so she needed to make an
15 urgent, immediate appointment. The Kaiser personnel told Plaintiff Futterman that an
16 appointment would not be available for another six to eight weeks. Kaiser did not schedule Mr.
17 Paroutaud with an appointment in the next 48 hours as the law requires for urgent care
18 appointments, and it also did not schedule him for an appointment within ten business days of the
19 request as the law requires for initial and return appointments, as mandated by California Code of
20 Regulations, title 28, section 1300.67.2.2.

21 32. On a frantic call after several (at least three) days of calling and asking for an
22 appointment with Dr. Glass, Kaiser finally informed Plaintiff Futterman that Dr. Glass was on
23 vacation for another several weeks. She asked for an urgent appointment with someone else.
24 Kaiser told her no one was covering Dr. Glass's patients while he was away, and that there was no
25 way to get Mr. Paroutaud an appointment until after his psychiatrist returned.

26 33. On June 26, 2012, Plaintiff Futterman again called Kaiser and requested an
27 appointment, she said that her husband needed to see someone immediately, and she asked to
28 speak to a nurse because her husband was getting worse. Plaintiff Futterman was transferred to an

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1 advice nurse who told Plaintiff Futterman to make sure Mr. Paroutaud was taking his medication
2 and that he could go to group therapy.

3 34. Kaiser never made the appointment that Ms. Futterman requested and on June 28,
4 2012, Mr. Paroutaud committed suicide. It was not until two weeks after her husband's death that
5 Ms. Futterman finally received a phone call from his psychiatrist. At that point, it was simply a
6 voicemail sending his condolences for Mr. Paroutaud's death.

7 35. Mr. Paroutaud made and received several physical health care appointments that
8 Kaiser provided coverage for and/or arranged services for. He never had a problem obtaining an
9 appointment in the timeframe he requested to see an individual health care provider for his
10 physical health conditions.

11 36. Kaiser violated California law in its treatment of Mr. Paroutaud because he was not
12 provided with an urgent care appointment or a return appointment within the timeframes specified
13 by law, nor provided with an appointment in a timely manner as determined by an individualized
14 assessment of his medical need, in violation of the law, including but not limited to California
15 Code of Regulations, title 28, section 1300.67.2.2, the Parity Act, and the Unruh Act. Mr.
16 Paroutaud's experience is a common one at Kaiser, where Kaiser's patterns of practice in
17 violation of the law, including the California Code of Regulations, title 28, section 1300.67.2.2,
18 the Parity Act, and the Unruh Act, are not to provide timely access to care, including but not
19 limited to urgent care for mental health appointments or timely return appointments for mental
20 health care.

21
22 **Plaintiff Acianita Lucero**

23 37. Plaintiff Acianita Lucero is a member of Defendant, who arranges for her health
24 care services. At all times relevant herein, Ms. Lucero received her Kaiser coverage through her
25 employment as a teacher for the Oakland Unified School District. Ms. Lucero's Kaiser coverage
26 is a form of compensation provided to Ms. Lucero by her employer in exchange for her services
27 as an employee. Additionally, Ms. Lucero pays a portion of the cost for her Kaiser coverage
28 through deductions from her salary. Ms. Lucero is also required to make "co-payments" for

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1 various Kaiser services including therapy appointments.

2 38. Ms. Lucero first sought mental health treatment from Kaiser in approximately
3 April of 2010 and was diagnosed as having Major Depression. Major Depression is a mental
4 health disability and/or mental health medical condition as those terms are defined in the Unruh
5 Act, and it is also one of the nine enumerated "Severe Mental Illnesses" identified in the Parity
6 Act.

7 39. After a few months of treatment in 2010, Ms. Lucero was declared to be in
8 "remission." However, in late March of 2012, her Major Depression returned. She requested an
9 urgent care appointment for mental health services that do not require prior authorization.
10 However, she was not seen within 48 hours, as the law required, including pursuant to California
11 Code of Regulations, title 28, section 1300.67.2.2.

12 40. In approximately the last week of March of 2012, Ms. Lucero experienced an
13 emotional crisis and was desperate for mental health treatment. She called both the last Kaiser
14 mental health provider she had seen, as well as the psychiatrist who was handling her medication
15 and left them multiple messages requesting an urgent appointment. However, she received no
16 response. She also called Kaiser reception to book an appointment but was told she would have to
17 leave yet another voicemail. She followed up by sending multiple emails to her medical doctor,
18 mental health provider, and psychiatrist at Kaiser, providing a description of her symptoms and
19 seeking urgent help. After Ms. Lucero waited for more than 48 hours for an urgent appointment,
20 again in violation of California Code of Regulations, title 28, section 1300.67.2.2, her wife called
21 Kaiser on her behalf and pleaded, again, for an urgent appointment.

22 41. Finally, after multiple anguished calls to Kaiser in which both Ms. Lucero and her
23 wife conveyed that Ms. Lucero was in desperate need of mental health services, someone at
24 Kaiser informed Ms. Lucero's wife that there was a Kaiser-run "Crisis Clinic" in Oakland for
25 mental health patients. This was the first time Ms. Lucero had heard about the Crisis Clinic. She
26 and her wife immediately got in the car and went directly to the Crisis Clinic for help. The Kaiser
27 mental health provider who evaluated Ms. Lucero in the Crisis Clinic found that she was in crisis,
28 that she was suffering from severe symptoms of Major Depression, and still needed urgent mental

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1 health care. Nevertheless, Ms. Lucero was sent home and told to return in three days. In other
2 words, Ms. Lucero still needed urgent care but she was again forced to wait more than 48 hours
3 for an appointment, again in violation of California Code of Regulations, title 28, section
4 1300.67.2.2.

5 42. When Ms. Lucero returned for her appointment three days later, she was evaluated
6 by a Kaiser mental health provider and found to be suffering from serious symptoms of
7 depression. She was referred to the IOP, a group-based treatment program consisting primarily of
8 group therapy and didactic instructor-lead classes.

9 43. During the course of her treatment with Kaiser in 2012, Ms. Lucero received
10 educational materials from Kaiser that encourage and promote group therapy and “classes” over
11 individual psychotherapy. The materials state, among other things: “We offer brief, problem
12 solution-focused individual counseling. . . . We do not offer long-term individual psychotherapy at
13 Kaiser.” The materials provided to Ms. Lucero also indicate that there is a cap on mental health
14 treatment stating, for example, that group and individual therapy visits count toward an annual
15 “psychiatric visit limit” and further stating that “[c]lasses, however, do not count as a part of your
16 annual limit of visits to the [psychiatry] department.”

17 44. Ms. Lucero’s experience is not uncommon for Kaiser members seeking mental
18 health treatment. Kaiser routinely fails to provide timely access to mental health appointments for
19 its members, as it did when it failed to provide Ms. Lucero with an urgent appointment within 48
20 hours, violating California Code of Regulations, title 28, section 1300.67.2.2. Similar policies and
21 practices are not followed in Kaiser’s treatment of physical health conditions.

22 45. Also in violation of the law, including the Parity Act and the Unruh Act, without an
23 assessment of individual medical need Kaiser routinely pushes its members into group therapy
24 and didactic “classes” rather than providing them with on-going one-on-one psychotherapy. That
25 is what occurred in Ms. Lucero’s case; she was automatically pushed in group therapy and put
26 into the group-based IOP without any discussion about the possibility of one-on-one therapy as an
27 alternative. There also was no assessment as to the suitability of group therapy or the type of
28 group therapy that should be provided. Similar policies and practices are not followed in Kaiser’s

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1 treatment of physical health conditions.

2 46. Also in violation of the law, Kaiser also routinely dissuades and deters its members
3 from even asking for one-on-one therapy by, for example, distributing literature like that which
4 was provided to Ms. Lucero, highlighting the positive aspects of group therapy over individual
5 therapy, promoting classes over therapy by stating that classes “do not count toward your annual
6 limit,” and stating that long-term one-on-one therapy is not available to Kaiser members. These
7 statements distributed to members are illegal and false, and violate laws including but not limited
8 to the Parity Act and California Code of Regulations, title 28, section 1300.67(f)(8).

9
10 **Plaintiff Maria Spivey**

11 47. Plaintiff Maria Spivey is a resident of the State of California, County of San Diego.
12 She is the surviving parent of Chloe M. Roston, a minor child. At all times relevant herein, Ms.
13 Spivey and her daughter Chloe were Kaiser members. Ms. Spivey paid a fee to Kaiser in return
14 for Kaiser’s promise to provide both herself and her deceased minor child, Chloe, with coverage
15 for, and the arranging of, certain medical services, including mental health services. Ms. Spivey
16 also made “co-payments” for various Kaiser services, including mental health services and
17 medications. Ms. Spivey, who has herself suffered economic loss as a result of Defendant’s
18 unlawful conduct as described herein, brings this claim herself, and also on behalf of her deceased
19 minor child, Chloe. As at times relevant herein, Ms. Spivey was the parent of Chloe, an
20 unmarried, legitimate child.

21 48. In or around 2008, Chloe was diagnosed as having Major Depression, Anxiety, and
22 Post Traumatic Stress Disorder. Thus, she had a “Severe Mental Illness” and/or a “Serious
23 Emotional Disturbance of a Child” pursuant to the Parity Act. She also had a mental health
24 disability and/or mental health medical condition as those terms are defined in the Unruh Act.
25 Chloe, thereafter, participated in some individual therapy sessions, made available to her through
26 the San Diego Unified School District, not through Kaiser.

27 49. In approximately October of 2012, Chloe took a knife from the kitchen and
28 brought it up to her bedroom. Ms. Spivey followed her up and found Chloe holding the knife to

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1 her own neck, indicating that she wanted to kill herself. Ms. Spivey tried to talk her daughter into
2 dropping the knife but Chloe refused, so Ms. Spivey was forced to wrestle the knife away from
3 her. Chloe then ran back down to the kitchen and grabbed another knife. Ms. Spivey and her
4 husband wrestled two more knives away from Chloe while on the phone with 911. They had to
5 physically restrain Chloe until the police came. The police took her to Kaiser for an evaluation.

6 50. Less than two hours later, a Kaiser mental health provider called Ms. Spivey and
7 told her that she had evaluated Chloe and that Ms. Spivey needed to come pick her up and take
8 her home. Ms. Spivey refused, explaining that she was scared that her daughter might hurt herself
9 or someone else in the family. The Kaiser mental health provider threatened to call Child
10 Protective Services to make a claim of "child abandonment," and further stated her belief that
11 Chloe had merely been using the knives to "make a salad." Ms. Spivey was shocked by these
12 comments and the threat to call Child Protective Services. She explained to the provider that she
13 and her husband had witnessed Chloe threatening to harm herself with knives. She also
14 explained, again, that she was scared that Chloe could harm herself or someone else in the family
15 while they slept and that she would pick Chloe up in the morning instead.

16 51. The next morning, Ms. Spivey went to pick her daughter up and learned that Chloe
17 had been re-evaluated later by a different mental health provider and that Chloe would be
18 admitted to Mesa Vista County Mental Health for 72 hours. The 72 hours was then extended to
19 ten days due to the severity of her mental health condition.

20 52. During Chloe's hospitalization at Mesa Vista, Ms. Spivey had to vigorously
21 advocate for a more intensive inpatient treatment program for her daughter. She eventually
22 convinced Kaiser to transfer Chloe to an inpatient facility to receive intensive treatment for her
23 mental health condition. Kaiser sent her to the Center for Discoveries in Long Beach, California
24 and covered six weeks of inpatient treatment.

25 53. Upon Chloe's release from Center for Discoveries in approximately November
26 2012, Kaiser automatically referred Chloe into its group-based "Aftercare" program for teens.
27 Kaiser directed Ms. Spivey to register her daughter for the "Aftercare" program without actually
28 meeting with Chloe first or performing any kind of individual assessment of Chloe's condition to

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1 determine whether the group-based program was medically necessary or the most appropriate
2 option for her mental health needs. Kaiser did not mention, discuss, or offer any other
3 alternatives, such as individual one-on-one therapy, to Ms. Spivey. The only other treatment
4 offered was medication.

5 54. The "Aftercare" program that Chloe was referred to was an outpatient group
6 therapy program for teens, which also required parental attendance. A substantial portion of the
7 teens in Chloe's Aftercare group were in recovery for substance abuse problems. This was not
8 true for Chloe. In fact, she was tested for drugs multiple times and all of her tests were clean.

9 55. Neither Chloe nor Ms. Spivey felt comfortable in the group Aftercare program
10 because it did not seem to address Chloe's specific condition but, rather, was largely focused on
11 the substance abuse problems of the other teens in the program. Chloe eventually refused to go to
12 the meetings and did not complete the program. She continued to meet with her Kaiser
13 psychiatrist approximately every three months strictly for "medication management," but she was
14 never offered individual one-on-one therapy.

15 56. In March of 2014, Chloe committed suicide at the age of 17. She was found
16 hanging in the garage by her older sister.

17 57. Chloe's experiences are illustrative of Kaiser's one-size-fits-all approach to mental
18 health treatment that violates the Parity Act and Unruh Act. Chloe was not individually assessed
19 to determine whether the Aftercare program was medically necessary or an appropriate means to
20 treat her mental health condition. Rather, she was automatically put into a group-based program
21 upon release from the inpatient facility. At no point after her release from the inpatient program
22 was Chloe offered individual one-on-one counseling or assessed to determine whether one-on-one
23 counseling was medically necessary or would have been a more appropriate way to treat her
24 condition. The only individualized meetings that she had were for medication management.

25 58. Chloe's experiences, which are typical for Kaiser members experiencing acute
26 mental health needs, show that Kaiser does not follow its legal obligation to provide all medically
27 necessary treatment for individuals who are suffering from conditions covered by the Parity Act
28 and Unruh Act. Indeed, Kaiser does not even assess whether the group-based programs that it

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1 forces patients into are appropriate to meet the individualized medical needs of its members;
2 instead, members are routinely referred to such programs automatically. Moreover, Kaiser
3 routinely fails to offer or even discuss other alternatives, such as individual one-on-one therapy,
4 which may be medically necessary for some patients. Kaiser's actions have the intended effect of
5 denying or dissuading patients from seeking services that may be available to them. Kaiser does
6 not treat physical health needs in the same way. For example, Chloe would call her primary care
7 physician for appointment for physical health conditions and receive individual appointments
8 within a day or two.

9
10 **Other Factual Allegations Common to the Class**

11 59. Defendant KFHP is subject to the Knox-Keene Health Care Services Act of 1975
12 (hereinafter, "Knox-Keene Act"), codified in the California Health and Safety Code at Sections
13 1340 et seq. The Knox-Keene Act, among other things, identifies a series of statutory
14 prohibitions and requirements for health care service plans such as Defendant KFHP.

15 60. California's Mental Health Parity Act (the "Parity Act") is part of the Knox-Keene
16 Act, codified at California Health and Safety Code § 1374.72, which identifies specific statutory
17 requirements and prohibitions for health care service plans with respect to the coverage and
18 treatment provided and arranged for individuals with specifically enumerated mental health
19 conditions and severe emotional disturbances of a child.²

20 61. Under the Parity Act, health care service plans are required to provide and arrange
21 for coverage and treatment for, as must be determined on an individual basis, all medically
22 necessary services for individuals with statutory defined Severe Mental Illnesses as well as
23 children with serious emotional disturbances (defined below), and the terms and conditions of the
24 health service plan's coverage and treatment for Severe Mental Illnesses and serious emotional
25 disturbances of a child are required to be in parity with those offered for physical illnesses.

26 62. The Parity Act was enacted in 1999, after the Legislature found that:

27
28 ² The California Mental Health Parity Act is also codified as part of the Insurance Code, at
Section 10144.5.

- 1 a. Mental illness is real.
- 2 b. Mental illness can be reliably diagnosed.
- 3 c. Mental illness is treatable.
- 4 d. The treatment of mental illness is cost effective.³

5 The Legislature further found that most private health insurance policies had, until then, provided
 6 coverage for mental illnesses at levels far below coverage for other physical illnesses; that
 7 limitations in coverage for mental illnesses in private insurance policies had resulted in inadequate
 8 treatment; that inadequate treatment had caused “relapse and untold suffering for individuals with
 9 mental illnesses and their families”; and that inadequate treatment for mental illnesses “had
 10 contributed significantly to homelessness, involvement with the criminal justice system, and other
 11 significant social problems.” To remedy this disparity, the Parity Act mandates broad coverage
 12 and treatment requirements for nine listed “Severe Mental Illnesses,” including bipolar disorder
 13 (manic-depressive illness),⁴ as well as for severe emotional disturbances of a child, and prohibits
 14 discrimination in coverage as compared to physical illnesses, as described in the previous
 15 paragraph.

16 63. Defendant KFHP is subject to California’s Unruh Civil Rights Act. The Unruh Act
 17 is codified at California Civil Code §§ 51 et seq. The Unruh Act prohibits a “business
 18 establishment,” include health care service plans and insurers, from discriminating against persons
 19 based on, among other things, any “disability” or “medical condition,” including but not limited to
 20 mental health disabilities and/or mental health medical conditions. The Unruh Act also prohibits
 21 any covered entity from “aid[ing] or incit[ing] a denial, or mak[ing] any discrimination or
 22 distinction contrary to [the Unruh Act],” and any entity that does so is “liable for each and every
 23 offense.”

24 64. Defendant KFHP is governed by the Knox-Keene Act’s provisions and the
 25 regulations promulgated to carry out those provisions, which are contained in title 28 of the

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 27 ³ 1999 Cal. Legis. Serv. Ch. 534 (A.B. 88).

28 ⁴ The other severe mental illnesses covered by the Parity Act are schizophrenia, schizoaffective disorder, major depressive disorders, panic disorder, obsessive-compulsive disorder, pervasive developmental disorder or autism, anorexia nervosa, and bulimia nervosa.

1 California Code of Regulations. The regulations contained in California Code of Regulations,
2 title 28, including Sections 1300.67.2.2 and 1300.67(f)(8), among others, require Defendant
3 KFHP to, *inter alia*, provide timely access to mental health care services for its members and the
4 regulations specify timely access requirements. The regulations further require Kaiser to provide
5 effective and understandable mental health education services and information that is accurate and
6 in accord with Defendant's legal obligations.

7 65. Kaiser regularly makes what constitute coverage, administration, and treatment
8 decisions based on appointment availability rather than an individual assessment of a patient's
9 medical needs, resulting in Kaiser members being denied or delayed one-on-one mental health
10 therapy and being pushed into mental health group therapy and "classes" without consideration of
11 medical necessity and without regard as to whether individual or group therapy would be more
12 medically effective or appropriate for the individual's condition.

13 66. Kaiser has developed one-size-fits-all Intensive Outpatient Programs and/or
14 Aftercare Programs that push patients suffering from acute mental health needs, without an
15 assessment of individual medical necessity or appropriateness, into large groups and classes
16 without regard to whether groups or classes are appropriate for the individual patient and without
17 regard as to whether the type of groups or classes are appropriate.

18 67. Kaiser does not provide adequate back-up coverage for mental health clinicians
19 whose schedules are full or who are out of the office, resulting in added delay in accessing mental
20 health services. By contrast, Kaiser members suffering from physical health conditions, such as
21 the flu, can obtain prompt appointments with a medical provider even when their own medical
22 provider is occupied or out of the office on vacation.

23 68. In or around late 2011 or early 2012, the California Department of Managed
24 Healthcare ("DMHC"), which has administrative responsibility for enforcing the Knox-Keene
25 Act's regulations, began conducting an investigation regarding Defendant KFHP's compliance
26 with the law.

27 69. After a lengthy investigation process, the DMHC came out with its final report in
28 or around March of 2013. The DMHC's March 2013 report concluded that Defendant KFHP

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1 violated the law by, among other things, failing to properly monitor the capacity and availability
2 of its network to ensure that members are offered appointments within the timely access rules'
3 specifications, failing to take action to correct problems with its policies and systems, and by
4 providing inaccurate, misleading, and/or confusing information to its members regarding the
5 availability of mental health services.

6 70. Plaintiffs are informed and believe and thereupon allege that other members of the
7 Class, as defined below, have been harmed by Defendant's violations of the law.

8

9

CLASS ACTION ALLEGATIONS

10 71. This action is brought by Plaintiffs on behalf of themselves and others similarly
11 situated as a class action pursuant to California Code of Civil Procedure § 382. A class action is
12 proper because this action involves questions of common or general interest and involves
13 numerous parties, the joinder of which would be impractical.

14

15 **Class A: Knox-Keene Class (First Cause of Action)**

16 72. All current and former California Kaiser members who have sought mental health
17 services from Kaiser from October 2, 2009 to the present and who have not been provided with
18 timely appointments for mental health services in the timeframes required by law, as specified in
19 California Code of Regulations, title 28, section 1300.67.2.2 and/or who have been provided with
20 unlawful, misleading, and/or false information by Kaiser regarding the availability of mental
21 health services. The proposed Class does not include individuals whose claims in this action are
22 preempted by the Employee Retirement Income Security Act ("ERISA"). This class seeks
23 prospective injunctive relief described in subsection (i) of the Request for Relief, as well as
24 reasonable fees and costs.

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25

26 **Class B: Mental Health Parity Class (Second Cause of Action)**

27 73. All current and former Kaiser members who have been diagnosed with one or more
28 of the nine enumerated Severe Mental Health Illnesses defined in California's Mental Health

1 Parity Act or with a serious emotional disturbance of a child as defined in California's Mental
2 Health Parity Act and who have sought mental health services from Kaiser from October 2, 2009
3 to the present and who have been denied, dissuaded, or deterred from obtaining one-on-one
4 therapy without an individualized determination as to the medical necessity of one-on-one mental
5 health therapy; and/or who have been referred to "group" therapy, without making individualized
6 determinations as to the medical necessity or suitability of group therapy; and/or who have been
7 referred to group therapy without an individualized determination as to what type of group
8 therapy is appropriate and medically necessary for the individual member; and/or who have been
9 forced to wait longer for mental health appointments than for physical health appointments. The
10 proposed Class does not include individuals whose claims in this action are preempted by the
11 Employee Retirement Income Security Act ("ERISA"). This class seeks prospective injunctive
12 relief described in subsection (i) of the Request for Relief, as well as reasonable fees and costs.

13

14 **Class C: Unruh Class (Third Cause of Action)**

15 74. All current and former Kaiser members who have had a mental health "disability"
16 or a mental health "medical condition," as those terms are defined in California's Unruh Civil
17 Rights Act and who sought mental health services from Kaiser from October 2, 2010 to the
18 present and who have been discriminated against by Defendant by being denied, dissuaded, or
19 deterred from obtaining one-on-one therapy without an individualized determination as to the
20 medical necessity of one-on-one mental health therapy; and/or who been referred to "group"
21 therapy, without making individualized determinations as to the medical necessity or suitability of
22 group therapy; and/or who have been referred to group therapy without an individualized
23 determination as to what type of group therapy is appropriate and medically necessary for the
24 individual member; and/or who have been forced to wait longer for mental health appointments
25 than for physical health appointments. The proposed Class does not include individuals whose
26 claims in this action are preempted by the Employee Retirement Income Security Act ("ERISA").
27 This class seeks prospective injunctive relief, as described in subsection (i) of the Request for
28 Relief, as well as statutory penalties, punitive damages, and reasonable attorney fees and costs.

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1 75. Numerosity: The potential members of each Class are numerous, and joinder of all
2 of the potential members is impracticable. Defendant has millions of members throughout the
3 State of California. The precise number of Kaiser members (and/or surviving beneficiaries) who
4 fall within each Class definition has not yet been determined, but it is estimated to exceed 1000
5 individuals.

6 76. Superiority/Risk of Separate Actions: Class action treatment is superior to any
7 alternative to ensure the fair and efficient adjudication of the controversy alleged herein. Such
8 treatment will permit a large number of similarly situated persons to prosecute their common
9 claims in a single forum simultaneously, efficiently, and without the duplication of effort and
10 expense that numerous individual actions would entail. No difficulties are likely to be
11 encountered in the management of this class action that would preclude its maintenance as a class
12 action, and no superior alternative exists for the fair and efficient adjudication of this controversy.
13 The likelihood of individual members of the Classes prosecuting separate claims is remote, and
14 individual Class members do not have a significant interest in controlling the prosecution of
15 separate actions. Additionally, the prosecution of separate actions by individual Class members
16 would create a risk of inconsistent and varying adjudications concerning the subject of this action
17 which, in turn, would establish incompatible standards of conduct for Defendant. Moreover,
18 because a primary purpose of this class action is to provide prospective injunctive relief to address
19 Kaiser's systemic unlawful conduct, a class action is the most efficient forum to address this
20 unlawful conduct and obtain this relief.

21 77. Commonality. Common questions of law and fact exist as to all members of the
22 Classes and predominate over any questions affecting only individual members of the Classes,
23 thereby making a class action superior to other available methods for the fair and efficient
24 adjudication of the controversy. Among the questions of law and fact common to the Plaintiffs
25 and to the members of the Classes are whether, as alleged herein, Defendant has done the
26 following:

- 27 a. Violated the Knox-Keene Act by having a pattern of practice of not providing its
28 members with timely mental health care services in the timeframes required by

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- 1 law, as specified in California Code of Regulations, title 28, section 1300.67.2.2;
- 2 b. Violated the Knox-Keene Act by engaging in a common policy and pattern of
- 3 practice of distributing unlawful, misleading, and/or false information to its
- 4 members regarding the availability of mental health services, in violation of
- 5 California Code of Regulations, title 28, section 1300.67(f)(8);
- 6 c. Violated the Parity Act by having common policies and patterns of practice to
- 7 deny, dissuade, and deter members from obtaining one-on-one mental health
- 8 therapy without making individualized determinations as to the medical necessity
- 9 of one-on-one mental health therapy for individual members, and where similar
- 10 policies and practices are not followed in the treatment of physical health
- 11 conditions;
- 12 d. Violated the Parity Act by having common policies and patterns of practice to
- 13 require, recommend, and/or encourage “group” therapy, without making
- 14 individualized determinations as to the medical necessity or suitability of group
- 15 therapy, and where similar policies and practices are not followed in the treatment
- 16 of physical health conditions;
- 17 e. Violated the Parity Act by having common policies and patterns of practice to
- 18 require, recommend, and/or encourage “group” therapy, without making
- 19 individualized determinations as to the type of group therapy appropriate and
- 20 medically necessary for the individual member, and where similar policies and
- 21 practices are not followed in the treatment of physical health conditions;
- 22 f. Violated the Parity Act by having common policies and pattern of practice to
- 23 assign members in need of mental health treatment to one-size-fits-all group-based
- 24 IOPs or similar programs, without making individualized medical determinations
- 25 as to whether they are medically necessary or appropriate for the member, without
- 26 tailoring the program to the member’s individual medical need, and without
- 27 determining if the program’s group-based therapy is medically necessary or
- 28 appropriate for the individual patient, and where similar policies and practices are

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- 1 not followed in the treatment of physical health conditions;
- 2 g. Violated the Parity Act by not providing timely mental health care services because
- 3 Defendant fails to make individualized assessments of the medical necessity of
- 4 providing mental health care within a particular timeframe;
- 5 h. Violated the Parity Act by having a pattern and practice of requiring members to
- 6 wait longer for mental health appointments than for physical health appointments;
- 7 i. Violated the Parity Act by distributing unlawful, misleading, and/or false
- 8 information regarding the availability of mental health services that is inconsistent
- 9 with Defendant's obligations under the Parity Act;
- 10 j. Violated the Unruh Act by having common policies and patterns of practice to
- 11 deny, dissuade, and deter members from obtaining one-on-one mental health
- 12 therapy without making individualized determinations as to the medical necessity
- 13 of one-on-one mental health therapy for individual members, and where similar
- 14 policies and practices are not followed in the treatment of physical health
- 15 conditions;
- 16 k. Violated the Unruh Act by having common policies and patterns of practice to
- 17 require, recommend, and/or encourage "group" therapy, without making
- 18 individualized determinations as to the medical necessity or suitability of group
- 19 therapy, and where similar policies and practices are not followed in the treatment
- 20 of physical health conditions;
- 21 l. Violated the Unruh Act by having common policies and patterns of practice to
- 22 require, recommend, and/or encourage "group" therapy, without making
- 23 individualized determinations as to the type of group therapy appropriate and
- 24 medically necessary for the individual member, and where similar policies and
- 25 practices are not followed in the treatment of physical health conditions;
- 26 m. Violated the Unruh Act by having common policies and pattern of practice to
- 27 assign members in need of mental health treatment to one-size-fits-all group-based
- 28 IOPs or similar programs, without making individualized medical determinations

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1 as to whether they are medically necessary or appropriate for the member, without
2 tailoring the program to the member's individual medical need, and without
3 determining if the program's group-based therapy is medically necessary or
4 appropriate for the individual patient, and where similar policies and practices are
5 not followed in the treatment of physical health conditions;

- 6 n. Violated the Unruh Act by not providing timely mental health care services
7 because Defendant fails to make individualized assessments of the medical
8 necessity of providing mental health care within a particular timeframe, and where
9 similar policies and practices are not followed in the treatment of physical health
10 conditions;
- 11 o. Violated the Unruh Act by having a pattern and practice of requiring members to
12 wait longer for mental health appointments than for physical health appointments.

13 78. Typicality. The claims of the named Plaintiffs are typical of the claims of the
14 members of the Classes.

15 79. Adequacy of Representation. The named Plaintiffs will fairly and adequately
16 represent and protect the interests of members of the Classes. Counsel who represent the Plaintiffs
17 are competent and experienced litigation attorneys with experience handling class actions.

18 80. Ascertainability. Although the specific identities of all of Class members are not
19 known at this time, they are ascertainable from Defendant's own records. Upon information and
20 belief, Plaintiffs allege that Defendant's own records, including but not limited to patient medical
21 records, chart notes, provider schedules, group therapy patient rosters, IOP patient rosters, and
22 other reports, will yield the identities of the Class members including, among other things, which
23 Kaiser members sought mental health services and how long they waited for an appointment,
24 whether they were provided with individual assessments as to whether one-on-one or group
25 therapy would meet their medical needs, whether they were provided with individual therapy or
26 put into group therapy, whether they have been diagnosed with one or more of the nine
27 enumerated Severe Mental Health Illnesses identified in California's Mental Health Parity Act or
28 with a serious emotional disturbance of a child as identified in California's Mental Health Parity

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1 Act, and which Kaiser members have had a mental health “disability” or mental health “medical
2 condition,” as those terms are defined in California’s Unruh Civil Rights Act.

3 81. Defendant has acted in a manner generally applicable to the Classes, thereby
4 making appropriate final injunctive relief and corresponding declaratory relief with respect to the
5 Classes as a whole.

6
7 **FIRST CAUSE OF ACTION**

8 (Violations of Business and Professions Code Section 17200 et seq.)
9 (Against Defendant on Behalf of Class A)

10 82. Plaintiffs Futterman and Lucero, on their own behalf and on behalf of Class A, re-
11 allege and incorporate by reference each and every allegation set forth in paragraphs 1 through 81
12 above.

13 83. At all times relevant herein, Defendant KFHP was a health care service plan
14 subject to the Knox-Keene Act, codified in the California Health and Safety Code at Sections
15 1340 et seq. and in the statutory regulations promulgated to effectuate those provisions, which are
16 contained in title 28 of the California Code of Regulations.

17 84. The Knox-Keene Act identifies a series of mandatory prohibitions and
18 requirements for health care service plans such as Defendant KFHP.

19 85. The Knox-Keene Act, at Health and Safety Code Section 1345(f), applies to,
20 among other entities, any entity that “undertakes to arrange for the provision of health care
21 services” in exchange for a subscriber fee, which applies to Defendant with respect to the
22 allegations of Plaintiffs Futterman and Lucero and the members of Class A.

23 86. The regulations contained in California Code of Regulations, title 28, include
24 Sections 1300.67.2.2 and 1300.67(f)(8). Section 1300.67.2.2 imposes a mandatory obligation on
25 Defendant to, among other things, provide timely access to mental health care services, and it
26 specifies timely access requirements. Section 1300.67(f)(8) requires Defendant to provide
27 effective and understandable mental health education services, including information regarding
28 the optimal use of health care services provided by Defendant or any health care organization
affiliated with Defendant, and information provided to Defendant’s members must be in accord

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1 with Defendant's legal obligations, accurate, and not misleading.

2 87. Defendant engaged in unlawful and unfair business acts and practices, and unfair
3 competition, in violation of California Business and Professions Code § 17200 et seq. by
4 violating, *inter alia*, the Knox-Keene Act and the regulations promulgated under the Knox-Keene
5 Act, including but not limited to, California Code of Regulations, title 28, Sections 1300.67.2.2
6 and 1300.67(f)(8).

7 88. Defendant engaged in, and continues to engage in, unlawful and unfair business
8 acts and practices prohibited by California Business & Professions Code §17200, et seq. by, as
9 detailed with regard to Plaintiffs Futterman and Lucero, engaging in the acts and practices
10 described above, including but not limited to by failing to provide its members with timely mental
11 health services as required by the Knox-Keene Act, mandated and specified by California Code of
12 Regulations, title 28, Sections 1300.67.2.2, and by distributing unlawful, misleading, and/or false
13 information to its members regarding the availability of mental health services, as prohibited by
14 the Knox-Keene Act, as specified by California Code of Regulations, title 28, Section
15 1300.67(f)(8).

16 89. Plaintiffs Futterman and Lucero have suffered injury in fact and have lost money
17 and property as a result of Defendant's unfair and unlawful business acts and practices alleged
18 herein and can therefore bring this action for relief pursuant to California Business & Professions
19 Code §17200, et seq., and can seek and obtain injunctive relief.

20 90. Plaintiffs Futterman and Lucero have standing to pursue representative claims and
21 relief on behalf of the members of Class A herein in that they meet the standing requirements of
22 California Code of Civil Procedure § 382 as set forth in their class action allegations in paragraphs
23 71-81 above.

24 91. Defendant's course of conduct, acts, and practices in violation of California law
25 mentioned in each paragraph above constitute separate and independent violations of § 17200 et
26 seq. of the California Business and Professions Code.

27 92. The unlawful and unfair business practices and acts of Defendant as described
28 above, have injured Plaintiffs Futterman and Lucero and members of Class A. The harm to

1 Plaintiffs Futterman and Lucero and Class A members outweighs the utility, if any, of
2 Defendant's acts and practices and, therefore, Defendant's actions described herein constitute an
3 unfair business practice or act within the meaning of California Business and Professions Code
4 § 17200.

5 93. Defendant continues to engage in the unlawful and unfair business practices
6 alleged herein.

7 94. As a result of Defendant's unlawful and unfair business acts and practices alleged
8 herein, Plaintiffs Futterman and Lucero and the members of Class A are entitled to declaratory
9 and injunctive relief pursuant to California Business & Professions Code § 17203, including but
10 not limited to a preliminary and/or permanent injunction enjoining Defendant and its respective
11 successors, agents, servants, officers, directors, employees, and all persons acting in concert with
12 it from pursuing the policies, acts and practices complained of herein, prohibiting Defendant from
13 continuing such unfair and illegal business acts and practices, and notifying members of Class A
14 that they may pursue individual remedies for the violations alleged herein.

15 95. As a further direct and proximate result of the unlawful actions committed by
16 Defendant as described herein, Plaintiffs Futterman and Lucero were required to hire lawyers and
17 incur attorneys' fees and costs, in an amount to be proven at trial, to which they are entitled
18 pursuant to a common fund theory and/or pursuant to Code of Civil Procedure § 1021.5 on the
19 grounds that Plaintiffs Futterman and Lucero seek to enforce an important right affecting the
20 public interest, the successful pursuit of this case would confer a significant benefit upon the
21 general public and/or to a large class of persons, and the necessity and cost to Plaintiffs in
22 bringing this private enforcement action outweighs their stake in the action, in addition to
23 prejudgment interest, all in an amount according to proof.

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SECOND CAUSE OF ACTION
(Violations of Business and Professions Code Section 17200 et seq.)
(Against Defendant on Behalf of Class B)

27 96. Plaintiffs Futterman, Lucero, and Spivey re-allege and incorporate by reference
28 each and every allegation set forth in paragraphs 1 through 95 above.

1 97. At all times relevant herein, Defendant KFHP was a health care service plan
2 subject to the Knox-Keene Act, codified in the California Health and Safety Code at Sections
3 1340 et seq. and in the statutory regulations promulgated to effectuate those provisions, which are
4 contained in title 28 of the California Code of Regulations.

5 98. The Knox-Keene Act identifies a series of mandatory prohibitions and
6 requirements for health care service plans such as Defendant KFHP.

7 99. The Knox-Keene Act, at Health and Safety Code Section 1345(f), applies to,
8 among other entities, any entity that “undertakes to arrange for the provision of health care
9 services” in exchange for a subscriber fee, which applies to Defendant with respect to the
10 allegations of Plaintiffs Futterman, Lucero, and Spivey and the members of Class B.

11 100. California’s Mental Health Parity Act (the “Parity Act”) is part of the Knox-Keene
12 Act, codified at California Health and Safety Code § 1374.72, which identifies specific statutory
13 requirements and prohibitions for health care service plans with respect to the coverage and
14 treatment provided and arranged for individuals with specifically enumerated mental health
15 conditions and severe emotional disturbances of a child.

16 101. Under the Parity Act, health care service plans are required to provide and arrange
17 for coverage and treatment for, as to be determined on an individual basis, all medically necessary
18 services for individuals with statutory defined Severe Mental Illnesses and children with serious
19 emotional disturbances, and the terms and conditions of the health service plan’s coverage and
20 treatment for Severe Mental Illnesses and serious emotional disturbances of a child are required to
21 be in parity with those offered for physical illnesses.

22 102. Defendant engaged in unlawful and unfair business acts and practices, and unfair
23 competition, in violation of California Business and Professions Code § 17200 et seq. by
24 violating, *inter alia*, the Knox-Keene Act, codified in the California Health and Safety Code at
25 Sections 1340 et seq., including but not limited to the Mental Health Parity Act, codified at
26 California Health and Safety Code Section 1374.72.

27 103. Defendant engaged in, and continues to engage in, unlawful and unfair business
28 acts and practices prohibited by California Business & Professions Code §17200, et seq. by, as

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1 detailed with regard to Plaintiffs Futterman, Lucero, and Spivey, engaging in the acts and
2 practices described above, including but not limited to, for individuals with qualifying Parity Act
3 conditions, by violating the Parity Act, codified at California Health and Safety Code Section
4 1374.72, in the following manner:

- 5 • Denying, dissuading, and deterring members from obtaining one-on-one mental
6 health therapy without making individualized determinations as to the medical
7 necessity of one-on-one mental health therapy for individual members, and where
8 similar policies and practices are not followed in the treatment of physical health
9 conditions;
- 10 • Requiring, recommending, and/or encouraging “group” therapy, without making
11 individualized determinations as to the medical necessity or suitability of group
12 therapy, and where similar policies and practices are not followed in the treatment
13 of physical health conditions;
- 14 • Requiring, recommending, and/or encouraging “group” therapy, without making
15 individualized determinations as to the type of group therapy appropriate and
16 medically necessary for individual members, and where similar policies and
17 practices are not followed in the treatment of physical health conditions;
- 18 • Assigning members in need of mental health treatment to one-size-fits-all group-
19 based IOPs or similar programs, without making individualized medical
20 determinations as to whether it is medically necessary or appropriate for the
21 member, without tailoring the program to the member’s individual medical need,
22 and without determining if the program’s group-based therapy is medically
23 necessary or appropriate for the individual patient, and where similar policies and
24 practices are not followed in the treatment of physical health conditions;
- 25 • Failing to provide timely mental health care services because Defendant fails to
26 make individualized assessments of the medical necessity of providing mental
27 health care within a particular timeframe;
- 28 • Requiring members to wait longer for mental health appointments than for physical

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1 health appointments;

- 2 • Distributing unlawful, misleading, and/or false information regarding the
3 availability of mental health services that is inconsistent with Defendant's
4 obligations under the Parity Act.

5 104. Plaintiffs Futterman, Lucero, and Spivey have suffered injury in fact and have lost
6 money and property as a result of Defendant's unfair and unlawful business acts and practices
7 alleged herein and can therefore bring this action for relief pursuant to California Business &
8 Professions Code §17200, et seq., and can seek and obtain injunctive relief.

9 105. Plaintiffs Futterman, Lucero, and Spivey have standing to pursue representative
10 claims and relief on behalf of Class B herein in that they meet the standing requirements of
11 California Code of Civil Procedure § 382 as set forth in their class action allegations in paragraphs
12 71-81 above.

13 106. Defendant's course of conduct, acts, and practices in violation of California law
14 mentioned in each paragraph above constitute separate and independent violations of § 17200 et
15 seq. of the California Business and Professions Code.

16 107. The unlawful and unfair business practices and acts of Defendant as described
17 above, have injured Plaintiffs and members of Class B. The harm to Plaintiffs Futterman, Lucero,
18 and Spivey and Class B members outweighs the utility, if any, of Defendant's acts and practices
19 and, therefore, Defendant's actions described herein constitute an unfair business practice or act
20 within the meaning of California Business and Professions Code § 17200.

21 108. Defendant continues to engage in the unlawful and unfair business practices
22 alleged herein.

23 109. As a result of Defendant's unlawful and unfair business acts and practices alleged
24 herein, Plaintiffs Futterman, Lucero, and Spivey and the members of the Class B are entitled to
25 declaratory and injunctive relief pursuant to California Business & Professions Code § 17203,
26 including but not limited to a preliminary and/or permanent injunction enjoining Defendant and its
27 respective successors, agents, servants, officers, directors, employees and all persons acting in
28 concert with it from pursuing the policies, acts and practices complained of herein, prohibiting

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1 Defendant from continuing such unfair and illegal business acts and practices, and notifying
2 members of the Class B that they may pursue individual remedies for the violations alleged
3 herein.

4 110. As a further direct and proximate result of the unlawful actions committed by
5 Defendant as described herein, Plaintiffs Futterman, Lucero, and Spivey were required to hire
6 lawyers and incur attorneys' fees and costs, in an amount to be proven at trial, to which they are
7 entitled pursuant to a common fund theory and/or pursuant to Code of Civil Procedure § 1021.5
8 on the grounds that plaintiffs seeks to enforce an important right affecting the public interest, the
9 successful pursuit of this case would confer a significant benefit upon the general public and/or to
10 a large class of persons, and the necessity and cost to plaintiffs in bringing this private
11 enforcement action outweighs their stake in the action, in addition to prejudgment interest, all in
12 an amount according to proof.

13

14

THIRD CAUSE OF ACTION
(Violations of the Unruh Civil Rights Act)
(Against Defendant on Behalf of Class C)

15

16 111. Plaintiffs Futterman, Lucero, and Spivey re-allege and incorporate by reference
17 each and every allegation set forth in paragraphs 1 through 110 above.

18 112. At all times relevant herein, Defendant was a business subject to the Unruh Civil
19 Rights Act.

20 113. Defendant intentionally discriminated against its members with mental health
21 "disabilities" and mental health "medical conditions," as those terms are defined in the Unruh
22 Civil Rights Act.

23 114. That intentional discrimination includes, but is not limited to, Defendant
24 intentionally discriminating against its members with mental health "disabilities" and mental
25 health "medical conditions," as those terms are defined in the Unruh Civil Rights Act, by, as
26 detailed with regard to Plaintiffs Futterman, Lucero, and Spivey, engaging in the following acts
27 and practices:

28 ///

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- 1 • Denying, dissuading, and deterring members from obtaining one-on-one mental
2 health therapy without making individualized determinations as to the medical
3 necessity of one-on-one mental health therapy for individual members, and where
4 similar policies and practices are not followed in the treatment of physical health
5 conditions;
- 6 • Requiring, recommending, and/or encouraging “group” therapy, without making
7 individualized determinations as to the medical necessity or suitability of group
8 therapy, and where similar policies and practices are not followed in the treatment
9 of physical health conditions;
- 10 • Requiring, recommending, and/or encouraging “group” therapy, without making
11 individualized determinations as to the type of group therapy appropriate and
12 medically necessary for individual members, and where similar policies and
13 practices are not followed in the treatment of physical health conditions;
- 14 • Assigning members in need of mental health treatment to one-size-fits-all group-
15 based IOPs or similar programs, without making individualized medical
16 determinations as to whether it is medically necessary or appropriate for the
17 member, without tailoring the program to the member’s individual medical need,
18 and without determining if the program’s group-based therapy is medically
19 necessary or appropriate for the individual patient, and where similar policies and
20 practices are not followed in the treatment of physical health conditions;
- 21 • Failing to provide timely mental health care services because Defendant fails to
22 make individualized assessments of the medical necessity of providing mental
23 health care within a particular timeframe, and where similar policies and practices
24 are not followed in the treatment of physical health conditions;
- 25 • Requiring members to wait longer for mental health appointments than for physical
26 health appointments.

27 115. The mental health disabilities and/or mental health medical conditions of Plaintiffs
28 Futterman, Lucero, and Spivey and the other members of Class C were a substantial motivating

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1 reason for Defendant's wrongful actions as described in this Complaint.

2 116. Plaintiffs are seeking to recover the \$4,000 per violation minimum damages that
3 Civil Code § 52 imposes for violations of the Unruh Act, Civil Code Sections 51, 51.5, or 51.6.
4 Plaintiffs are not seeking other individual damages for Defendant's violations of the Act.

5 117. As a further proximate result of Defendant's wrongful conduct as described herein,
6 Plaintiffs Futterman, Lucero, and Spivey and Class C members were forced to expend legal fees
7 and costs in an effort to obtain a remedy for Defendant's unlawful conduct.

8 118. The actions alleged above by Defendant were done with malice, fraud, and
9 oppression, and in reckless disregard of the rights of Plaintiffs Futterman, Lucero, and Spivey and
10 Class C, entitling them to punitive damages.

11
12 **REQUEST FOR RELIEF**

13 Plaintiffs on behalf of themselves, the Classes they seek to represent, and all others
14 similarly situated who join in this action request relief as follows:

- 15 a. Certification of this action as a class action;
- 16 b. Notice to the class;
- 17 c. For prejudgment interest and post judgment interest where warranted;
- 18 d. Statutory damages pursuant to California Civil Code § 52 and/or any other
19 applicable laws;
- 20 e. For reasonable attorney fees and costs of suit pursuant to California Civil Code
21 § 52;
- 22 f. For reasonable attorneys fees pursuant to California Code of Civil Procedure
23 § 1021.5 on the grounds that Plaintiffs seek to enforce an important right affecting
24 the public interest, the successful pursuit of this case would confer a significant
25 benefit upon the general public and/or to a large class of persons, and the
26 necessity and cost to Plaintiffs in bringing this private enforcement action
27 outweighs their stake in the action, and/or pursuant to a common fund theory;
- 28 g. For costs of suit pursuant to California Code of Civil Procedure §§ 1032-1034;

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- 1 h. For punitive damages in an amount warranted under the law;
- 2 i. For temporary, preliminary, and permanent prospective injunctive relief:
- 3 (1) that requires Defendant to ensure that mental health care patients are
- 4 provided with timely mental health care services that are based on
- 5 individualized determinations of medical necessity (to remedy
- 6 Defendant's violations alleged in the First Cause of Action, Second Cause
- 7 of Action, and Third Cause of Action);
- 8 (2) that enjoins Defendant from informing members that Kaiser does not
- 9 provide one-on-one mental health treatment, long-term one-on-one mental
- 10 health treatment, or that Kaiser puts a cap on the number of one-on-one
- 11 mental health treatment sessions available to them (to remedy Defendant's
- 12 violations alleged in the First Cause of Action and Second Cause of
- 13 Action);
- 14 (3) that enjoins Defendant from denying, dissuading, and deterring members
- 15 from seeking one-on-one mental health care treatment without a
- 16 individualized determination of the medically necessity of such treatment
- 17 (to remedy Defendant's violations alleged in the Second Cause of Action
- 18 and Third Cause of Action);
- 19 (4) that enjoins Defendant from requiring, recommending, and/or encouraging
- 20 "group" therapy without making individualized determinations as to the
- 21 medical necessity or suitability of group therapy and without
- 22 individualized determinations as to type of group therapy appropriate and
- 23 medically necessary for the individual member (to remedy Defendant's
- 24 violations alleged in the Second Cause of Action and Third Cause of
- 25 Action);
- 26 (5) that enjoins Defendant from referring mental health patients in need of
- 27 intensive outpatient therapy to group-based outpatient programs without a
- 28 determination of the medical necessity or appropriateness of the program

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for the individual patient (to remedy Defendant's violations alleged in the Second Cause of Action and Third Cause of Action);

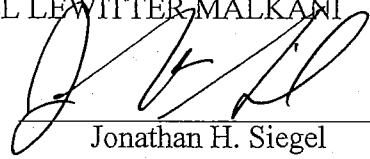
(6) that requires Defendant to ensure timely and individualized assessments of members' needs for individualized and/or group mental health treatment (to remedy Defendant's violations alleged in the Second Cause of Action and Third Cause of Action);

(7) that requires Defendant to inform all members that coverage and service decisions for mental health care treatment will be based on individualized determinations of what mental health care services are medically necessary for the individual member (to remedy Defendant's violations alleged in the First Cause of Action, Second Cause of Action, and Third Cause of Action); and

j. For such other and further relief in law or equity, as this Court may deem appropriate and just.

DATED: March 16, 2015

SIEGEL LEWITTER MALKANI

By: 

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Heather Conger
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