

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

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ATTORNEY FOR (Name): Plaintiffs, Lissa Anderson, et al.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda

STREET ADDRESS: 1225 Fallon Street

MAILING ADDRESS:

CITY AND ZIP CODE: Oakland, CA 94612

BRANCH NAME: Rene C. Davidson Alameda Courthouse

CASE NAME:

Anderson, et al. v. Kaiser Foundation Health Plan, Inc. et al.

FOR COURT USE ONLY

**ENDORSED
FILED
ALAMEDA COUNTY
FEB 11 2009
CLERK OF THE SUPERIOR COURT
By S. Halcrombe**

CIVIL CASE COVER SHEET

☒ **Unlimited**
(Amount
demanded
exceeds \$25,000)

☐ **Limited**
(Amount
demanded is
\$25,000 or less)

Complex Case Designation

☐ **Counter** ☐ **Joinder**

Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

CASE NUMBER:

RG 09435560

JUDGE:

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:**Auto Tort**

☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☒ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☐ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

**Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)**

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. ☒ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify):

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 10, 2009

Sidney Wolinsky

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court Case Matter
Writ–Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

Short Title:

Anderson, et al. v Kaiser Foundation Health Plan, Inc. et al.

Case Number:

CIVIL CASE COVER SHEET ADDENDUM

THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

[] Hayward Hall of Justice (447)

☒ Oakland, Rene C. Davidson Alameda County Courthouse (446)

[] Pleasanton, Gale-Schenone Hall of Justice (448)

Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)	
Auto Tort	Auto tort (22)	[] 34 Auto tort (G)	Is this an uninsured motorist case? [] yes [] no
Other PI /PD / WD Tort	Asbestos (04)	[] 75 Asbestos (D)	
	Product liability (24)	[] 89 Product liability (not asbestos or toxic tort/environmental) (G)	
	Medical malpractice (45)	[] 97 Medical malpractice (G)	
	Other PI/PD/WD tort (23)	[] 33 Other PI/PD/WD tort (G)	
Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07)	[] 79 Bus tort / unfair bus. practice (G)	
	Civil rights (08)	<input checked="" type="checkbox"/> 80 Civil rights (G)	
	Defamation (13)	[] 84 Defamation (G)	
	Fraud (16)	[] 24 Fraud (G)	
	Intellectual property (19)	[] 87 Intellectual property (G)	
	Professional negligence (25)	[] 59 Professional negligence - non-medical (G)	
	Other non-PI/PD/WD tort (35)	[] 03 Other non-PI/PD/WD tort (G)	
Employment	Wrongful termination (36)	[] 38 Wrongful termination (G)	
	Other employment (15)	[] 85 Other employment (G)	
		[] 53 Labor comm award confirmation	
		[] 54 Notice of appeal - L.C.A.	
Contract	Breach contract / Wrnty (06)	[] 04 Breach contract / Wrnty (G)	
	Collections (09)	[] 81 Collections (G)	
	Insurance coverage (18)	[] 86 Ins. coverage - non-complex (G)	
	Other contract (37)	[] 98 Other contract (G)	
Real Property	Eminent domain / Inv Cdm (14)	[] 18 Eminent domain / Inv Cdm (G)	
	Wrongful eviction (33)	[] 17 Wrongful eviction (G)	
	Other real property (26)	[] 36 Other real property (G)	
Unlawful Detainer	Commercial (31)	[] 94 Unlawful Detainer - commercial	Is the deft. in possession of the property?
	Residential (32)	[] 47 Unlawful Detainer - residential	[] Yes [] No
	Drugs (38)	[] 21 Unlawful detainer - drugs	
Judicial Review	Asset forfeiture (05)	[] 41 Asset forfeiture	
	Petition re: arbitration award (11)	[] 62 Pet. re: arbitration award	
	Writ of Mandate (02)	[] 49 Writ of mandate	
	Other judicial review (39)	[] 64 Other judicial review	Is this a CEQA action (Publ.Res.Code section 21000 et seq) [] Yes [] No
Provisionally Complex	Antitrust / Trade regulation (03)	[] 77 Antitrust / Trade regulation	
	Construction defect (10)	[] 82 Construction defect	
	Claims involving mass tort (40)	[] 78 Claims involving mass tort	
	Securities litigation (28)	[] 91 Securities litigation	
	Toxic tort / Environmental (30)	[] 93 Toxic tort / Environmental	
	Ins covrg from cmplx case type (41)	[] 95 Ins covrg from complex case type	
Enforcement of Judgment	Enforcement of judgment (20)	[] 19 Enforcement of judgment	
		[] 08 Confession of judgment	
Misc Complaint	RICO (27)	[] 90 RICO (G)	
	Partnership / Corp. governance (21)	[] 88 Partnership / Corp. governance (G)	
	Other complaint (42)	[] 68 All other complaints (G)	
Misc. Civil Petition	Other petition (43)	[] 06 Change of name	
		[] 69 Other petition	

DISABILITY RIGHTS ADVOCATES
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10 Attorneys for Plaintiffs

11 (Additional Counsel Listed on Final Page)

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF ALAMEDA**

15 LISSA ANDERSON on behalf of herself and
as Guardian ad litem for A.H., a minor; PAUL
16 SANTIAGO, on behalf of himself and as
Guardian ad litem for K.S., a minor; and on
17 behalf of all others similarly situated;
Organizational Plaintiff EQUAL COVERAGE
18 FOR AUTISM;

19
20 Plaintiffs,

21 v.

22 KAISER FOUNDATION HEALTH PLAN,
INC., a California Corporation;
23 PERMANENTE MEDICAL GROUP OF
NORTHERN CALIFORNIA; DOES I-IV,

24 Defendants.
25
26
27
28

**ENDORSED
FILED
ALAMEDA COUNTY**

FEB 10 2009

**CLERK OF THE SUPERIOR COURT
By S. Halcrombe**

Case No. **RG 09435560**

CLASS ACTION

COMPLEX LITIGATION

**COMPLAINT FOR DISCRIMINATION
AGAINST CHILDREN WITH
DISABILITIES IN VIOLATION OF
CIVIL CODE §51 ET SEQ. AND
BUSINESS & PROFESSIONS CODE
§17200 ET SEQ.**

PRELIMINARY STATEMENT

1. This is an action against Kaiser Foundation Health Plan, Inc., Permanente Medical Group of Northern California, and Does I-IV (collectively referred to herein as “KAISER”) to halt KAISER’s policy of systematically denying essential health care services to disabled children with autism and pervasive developmental disorders (collectively referred to herein as “ASD” or “autistic children”). Notwithstanding reported annual revenues of \$33 billion, KAISER implements and enforces a multi-faceted, unlawful corporate policy calculated to avoid the cost of providing effective treatment to autistic children. KAISER implements this policy through unfair tactics that include sham excuses, deliberate delay, and other attempts to avoid its lawful obligations. The direct and often devastating consequence of KAISER’s policy is to delay or deny medical treatment to autistic children during a critical window of opportunity for intervention, to deny full and equal access to health care services to children with disabilities who desperately need it and to treat children disabled with autism differently from children with other forms of illness.

2. KAISER is legally obligated by the governing provisions of California law, its contractual commitments to the individuals and families who enroll in its plans, and its status as a health maintenance organization (“HMO”) to provide health care services for physical and mental illnesses.

3. It is unlawful to deny individuals with disabilities, such as ASD, full and equal access to all of KAISER’s facilities, privileges, and services.

4. Moreover, KAISER has a legal duty to treat individuals with severe mental illnesses, such as ASD, under the same terms and conditions applied to other medical conditions.

5. KAISER refuses to fulfill any of these legal obligations to autistic children. Instead, KAISER’s policy of denying treatment for ASD reallocates the responsibility for and the cost of providing treatment for this disability to families who have paid for KAISER’s health care coverage, to local school districts, and to the taxpayers of this state.

6. KAISER’s policy affects every aspect of how it provides health care services to autistic children.

1 7. KAISER prohibits clinicians from creating diagnostic evaluations with specific
2 treatment recommendations for ASD that families might use to seek treatment from KAISER.

3 8. KAISER issues boilerplate form denials of the only treatment used almost
4 exclusively for ASD, Applied Behavioral Analysis (“ABA”). Using a variety of pretexts and
5 invalid excuses, KAISER does not pay for ABA, even where that is the recommended and most
6 effective treatment.

7 9. Although it provides speech therapy and occupational therapy to members for
8 other physical and mental conditions, KAISER insists that autistic children seek those services
9 from publicly-funded school districts and regional centers for people with developmental
10 disabilities, thus directly making taxpayers pay for treatment for which KAISER is responsible.

11 10. KAISER refuses to determine individually whether a particular medically
12 appropriate treatment will benefit a particular autistic child. Instead, it routinely, systematically,
13 and as a matter of corporate policy denies treatment for ASD.

14 11. KAISER provides medically necessary treatment to autistic children only when it
15 is forced to because the family appeals KAISER’s denial and the California Department of
16 Managed Health Care overturns KAISER’s denial.

17 12. Even for families who have the resources, time, and knowledge successfully to
18 pursue such appeals, KAISER’s policy results in very harmful and potentially catastrophic
19 delays in treatment. As a result, autistic children and their families have been and will continue
20 to be injured by KAISER’s denial of treatment policy until this policy is declared unlawful and
21 permanently enjoined.

22 13. The incidence of ASD is rapidly growing. KAISER’s denial of treatment policy
23 has or will negatively impact thousands of families who have enrolled in KAISER’s health care
24 plans and who are paying substantial premiums for health care coverage that KAISER refuses to
25 provide. Thus, there is an urgent and compelling need for judicial intervention to force KAISER
26 to comply with its legal obligations to treat autistic children.

27 14. Plaintiffs in this action are autistic children enrolled in KAISER’s health care
28 plan, their parents, and parent advocates. They bring this action for injunctive and declaratory

1 relief on behalf of themselves and all others similarly situated, and in support thereof, allege, on
2 information and belief, as follows:

3 **JURISDICTION AND VENUE**

4 15. This Court has jurisdiction over the claims alleged in this action pursuant to Civil
5 Code section 52, Business and Professions Code sections 17203 and 17204, and Code of Civil
6 Procedure section 1060.

7 16. Venue is proper in Alameda County under Code of Civil Procedure sections
8 395(a) and 395.5. Defendant KAISER FOUNDATION HEALTH PLAN, INC.'s corporate
9 headquarters and principal place of business are in Alameda County. Defendants continue to
10 commit acts alleged herein in Alameda County; have been and are violating the rights of
11 individuals with disabilities and engaging in unlawful business practices in Alameda County; and
12 have been and are causing injury to individuals with disabilities and to people in Alameda
13 County as a result of their discriminatory and unlawful business activities. Individual plaintiffs
14 and the organizational plaintiff include residents of Alameda County.

15 **PARTIES**

16 17. Plaintiff A.H. is a five year old boy with autism who was first diagnosed with
17 ASD when he was not quite three years old. A.H. is a person with a disability under California
18 state anti-discrimination law, who requires treatment for a severe mental illness as that term is
19 defined under California's Mental Health Parity Law.

20 18. Plaintiff LISSA ANDERSON is the mother and guardian of A.H. As A.H.'s
21 mother and guardian, ANDERSON, together with her husband, has paid for her son to receive
22 health care services from KAISER, including health care services to treat A.H.'s autism.

23 19. Because of KAISER's refusal to provide coverage for the diagnosis and medically
24 necessary treatment of ASD under the same terms and conditions as it does for other medical
25 diagnoses, ANDERSON and her husband have lost money paying out of pocket for health care
26 services for their son's severe mental illness, as California's Mental Health Parity Law defines
27 that term.

1 20. Plaintiff K.S. is a ten year old girl with autism who was first diagnosed with ASD
2 when she was three years old. K.S. is a person with a disability under California state anti-
3 discrimination law, who requires treatment for a severe mental illness as California's Mental
4 Health Parity Law defines that term.

5 21. Plaintiff PAUL SANTIAGO is the father and guardian of K.S. As the father and
6 guardian of K.S., SANTIAGO, together with his wife, has paid for his daughter to receive health
7 care services from KAISER, including health care services to treat K.S.'s autism.

8 22. Because of KAISER's refusal to provide coverage for the diagnosis and medically
9 necessary treatment of ASD under the same terms and conditions as it does for other medical
10 diagnoses, SANTIAGO and his wife have lost money paying out of pocket for medically
11 necessary health care services for their daughter's severe mental illness, as California's Mental
12 Health Parity Law defines that term.

13 23. Organizational Plaintiff EQUAL COVERAGE FOR AUTISM is a non-profit,
14 educational and advocacy membership organization dedicated to obtaining equal access to health
15 care coverage for the medical treatment of children with autism. EQUAL COVERAGE FOR
16 AUTISM provides information and referral services, direct advocacy and training. EQUAL
17 COVERAGE FOR AUTISM's membership includes families with children with autism, one or
18 more of whom receives services from KAISER, and has lost money and property as a result of
19 KAISER's unlawful business practices as alleged herein.

20 24. Defendant KAISER FOUNDATION HEALTH PLAN, INC. is a non-profit
21 health care organization with 8.7 million members. Its primary corporate headquarters and
22 multiple medical facilities are in Oakland, California. A majority of KAISER FOUNDATION
23 HEALTH PLAN's membership (over 6.5 million members) lives in California, with its highest
24 health plan membership, by region (over 3 million members) in Northern California. KAISER
25 FOUNDATION HEALTH PLAN has a policy and practice of discrimination against people with
26 autism, and engages in unlawful business practices by denying coverage for the diagnosis and
27 medically necessary treatment of ASD under the same terms and conditions it applies to other
28

1 medical conditions. KAISER FOUNDATION HEALTH PLAN is responsible for the
2 discrimination and unlawful business practices of its staff.

3 25. Defendant PERMANENTE MEDICAL GROUP OF NORTHERN
4 CALIFORNIA, is a for-profit professional organization. It is the largest medical group in the
5 country. PERMANENTE MEDICAL GROUP OF NORTHERN CALIFORNIA has a policy
6 and practice of discrimination against people with autism, and engages in unlawful business
7 practices by denying diagnosis and medically necessary treatments for ASD under the same
8 terms and conditions it applies to other medical conditions. PERMANENTE MEDICAL
9 GROUP OF NORTHERN CALIFORNIA is responsible for the discrimination and unlawful
10 business practices of its staff.

11 26. Plaintiffs are unaware of the true names or capacities of the parties fictitiously
12 sued as DOES I- IV, inclusive, and will amend this Complaint to set forth their true names and
13 capacities when the same have been ascertained. Plaintiffs are informed and believe, and
14 therefore allege, that fictitiously-named Defendants DOES I-IV were the agents and employees
15 of fictitiously-named or actually-named Defendants and, acting within the scope of their
16 employment or agency took part in, are the principals and took some part in, or are otherwise
17 responsible for, the acts or omissions set forth herein, by reason of which the fictitiously-named
18 Defendants are liable to Plaintiffs for the relief prayed for herein.

19 20 FACTS

21 **I. AUTISM SPECTRUM DISORDERS**

22 **A. Characteristics of Autism Spectrum Disorders**

23 27. The California Code of Regulations define Pervasive Developmental Disorders,
24 also known as autism spectrum disorders ("ASD") to include Autistic Disorder, Rett's Disorder,
25 Childhood Disintegrative Disorder, Asperger's Disorder and Pervasive Developmental Disorder
26 Not Otherwise Specified (including Atypical Autism), in accordance with the Diagnostic and
27 Statistical Manual for Mental Disorders - IV - Text Revision (June 2000). (Cal. Code Regs. tit.
28 28, § 1300.74.72.) Autism is the most common of these complex neurological disorders.

28. ASD is a severe mental illness and a form of disability.

29. ASD symptoms appear during infancy or early childhood. Sometimes, there is a period of regression during which ASD symptoms appear after seemingly normal development. Both children and adults with autism typically show extreme difficulties in communication and social interaction. The social impairments of ASD usually appear in early childhood and become more pronounced as children with autism become toddlers.

30. Characteristic ASD behavior includes restricted interests, repetitive behavior, stereotyped movements, resistance to environmental change or change in daily routines, atypical eating behaviors, obsessive attachment to objects, decreased motor skills, tantrums, apparent oversensitivity or under-sensitivity to pain, fearlessness, aloofness, and unusual responses to sensory experiences. Individuals with autism may exhibit the characteristic traits of ASD in any combination, and in different degrees of severity.

31. By clinical definition, a diagnosis of ASD requires impairment in important areas of functioning. Without proper medical care, treatment, and therapy, ASD can be a debilitating condition, leading autistic children to grow into adulthood without the ability to perform the most basic functions of life.

B. Prevalence and Increasing Frequency of ASD

32. KAISER's policy of denying treatment to autistic children is driven by a desire to avoid the costs of treating children with autism.

33. ASD occurs in approximately 1 in 150 births nationwide, across all racial, ethnic, and socioeconomic backgrounds. ASD is growing at a rate of 10 to 17 percent per year. During the five years between 2002 and 2007, the developmental services system in California experienced a net increase of about 3,200 persons with autism per year. The number of individuals with autism in California's developmental services system has more than tripled since 1998 and increased more than twelve fold since 1987.

C. Treatments for ASD

1. Importance of Early Intervention

34. Providing intensive interventions in early childhood has great importance for the treatment of ASD. Autistic children who are provided early treatment intervention show significant improvements in their language, cognitive, social, and motor skills, as well as in their future educational placement. They may have less intensive and costly service needs for the rest of their lives, thereby reducing hardships on families and costs for systems of care to serve these children when they become adults. Research suggests that benefits of interventions diminish as children get older, indicating that there is a critical window of opportunity for treatment.

2. Medical Treatments for Autism

35. ASDs are chronic disorders. The American Academy of Pediatrics identifies the goals of ASD treatment as to “minimize the core [social, communication, and behavioral] features and associated deficits, maximize functional independence and quality of life, and alleviate family distress.” The American Academy of Pediatrics recognizes that “facilitating development and learning, promoting socialization, reducing maladaptive behaviors, and educating and supporting families can help accomplish these goals.” The California Legislature’s Blue Ribbon Commission on Autism has indicated that the full range of medically necessary services for ASD include, but are not limited to, assessment, behavioral, psychotherapeutic, psychopharmacological, speech therapy, and physical and occupational therapy services.

a. Applied Behavior Analysis (“ABA”)

36. ABA treatment uses intensive behavioral therapy. Intense behavioral intervention is the standard of care recommended by the American Academy of Pediatrics as an appropriate therapeutic management of ASD. The American Association of Pediatrics recognizes that five decades of research have well documented the effectiveness of ABA-based intervention in ASD. The United States Surgeon General has reported that 30 years of ASD research has “demonstrated the efficacy of applied behavioral methods in reducing inappropriate behavior and increasing communication, learning and appropriate social behavior.”

b. Speech Therapy As A Treatment for ASD

37. The American Academy of Pediatrics advises that “people with ASDs have deficits in social communication, and treatment by a speech-language pathologist usually is appropriate.” Speech therapy helps individuals with autism improve their general ability to communicate and interact with others effectively, as well as develop their speech and language skills. Speech therapists may teach non-verbal ways of communicating and may improve social skills that involve communicating with others.

c. Physical and Occupational Therapy as ASD Treatment

38. Physical therapy for children with autism builds motor control and improves posture and balance. Certain types of occupational therapy for autistic children remediate deficits in neurological processing and integrate sensory information to allow the child to interact with the environment in a more adaptive fashion. Occupational therapy can also help people with autism adjust tasks and conditions to match their needs and abilities.

D. KAISER’s Obligation To Treat Autism

1. KAISER’s Statutory Obligations To Treat Autism

39. KAISER operates under duties imposed by the Knox-Keene Health Care Service Plan Act of 1975, Health and Safety Code section 1340 et seq., and implementing regulations.

40. The purpose of the health care service plan system under the Knox-Keene Health Care Service Plan Act of 1975 is to promote the delivery and the quality of health and medical care to Californians by transferring the financial risk of health care from patients to providers, to help ensure the best possible health care for the public at the lowest possible cost. (Health & Saf. Code § 1342(d).)

41. Individuals pay KAISER for health care services so that they have coverage for treatment if someone in their family becomes ill, because sickness can be financially catastrophic and is, in fact, a primary cause of personal bankruptcy in this country.

42. KAISER is legally required to provide certain minimum basic health care services to its enrollees in its plan contracts. (See Health & Saf. Code § 1367(i).) KAISER’s status as a health care service plan provider, federal and state anti-discrimination law, statutory requirements, and KAISER’s contract with its enrollees all prohibit KAISER from implementing

1 blanket refusals to treat autistic children. Thus, KAISER's denial of treatment policy is blatantly
2 unlawful.

3 43. Basic health care services include physician services, including consultation and
4 referral; hospital inpatient services and ambulatory care services; home health services;
5 preventive health services; and emergency health care services. (See Health & Saf. Code
6 § 1345(b)(1)-(6).) Home health services include medically appropriate rehabilitation, physical,
7 occupational or other therapy. (See Cal. Code Regs., tit. 28, § 1300.67(e)(1).)

8 44. KAISER must provide treatments that fall in these categories, including
9 treatments for autistic enrollees, so long as the treatments are medically necessary.

10 45. California law requires that "[a]ll services shall be readily available at reasonable
11 times to each enrollee consistent with good professional practice." (Health & Saf. Code §
12 1367(e)(1).)

13 46. KAISER's denial of treatment policy both delays and denies health care services
14 for children with autism.

15 47. As a result of its flagrantly discriminatory nature, KAISER's denial of treatment
16 policy fails to "ensure that decisions based on the medical necessity of proposed health care
17 services are consistent with criteria or guidelines that are supported by clinical principles and
18 processes." (See Health & Saf. Code § 1367.01(b); see also Health & Saf. Code § 1367.01(f).)

19 48. California's Mental Health Parity Law requires KAISER's health care service
20 plan to provide coverage for the diagnosis and medically necessary treatment of an autistic child
21 under the same terms and conditions applied to other medical conditions. (See Health & Saf.
22 Code § 1374.72(a).)

23 49. The medical necessity of treatments is determined by factors including peer-
24 reviewed scientific and medical evidence regarding the effectiveness of the disputed service;
25 nationally recognized professional standards; expert opinion; generally accepted standards of
26 medical practice; and whether the treatments are likely to provide a benefit to a patient for
27 conditions for which other treatments are not clinically efficacious. (See Health & Saf. Code §
28 1374.33(b).)

1 50. KAISER does not have discretion to deny coverage for a “basic health care
2 service” for autism that is a “medical necessity.” Generally accepted standards of medical
3 practice recognize that treatments for ASD include ABA, speech therapy, occupational therapy,
4 and physical therapy. These treatments are basic health care services, and as such KAISER must
5 make them available to enrollees consistent with California law.

6 **2. KAISER’s Contractual Obligation To Treat Autism**

7 51. The terms of the health care service plan KAISER promises enrollees are set forth
8 in its “Evidence of Coverage” (“EOC”). The EOC provisions discussed herein are the same or
9 essentially identical in the contracts that KAISER offers to all Plaintiffs and individuals similarly
10 situated.

11 52. Even where KAISER does not have a plan provider to provide a covered service,
12 its EOC states that KAISER “will authorize the Services if [the designee] determines that they
13 are Medically Necessary and are not available from a Plan Provider. Referrals to Non-Plan
14 Physicians will be for a specific treatment plan, which may include a standing referral if ongoing
15 care is prescribed.”

16 53. This provision is consistent with KAISER’s statutory obligation to “furnish
17 services in a manner providing continuity of care and ready referral of patients to other providers
18 at times as may be appropriate consistent with good professional practice.” (Health & Saf. Code
19 § 1367(d).)

20 54. KAISER’s EOC states that “[a] Service is Medically Necessary if it is medically
21 appropriate and required to prevent, diagnose, or treat your condition or clinical symptoms in
22 accord with generally accepted professional standards of practice that are consistent with a
23 standard of care in the medical community.”

24 55. KAISER’s health care plan specifically covers physical, occupational, and speech
25 therapy, including treatment in an organized, multidisciplinary rehabilitation program.

26 56. KAISER’s EOC promises physical, occupational, and speech therapy in, among
27 other treatment settings, outpatient care, hospital inpatient care, and home health care services.
28

1 57. KAISER covers speech therapy services to treat social, behavioral, or cognitive
2 delays in speech or language development if they are medically necessary.

3 58. KAISER's plan contract includes a number of provisions under which ABA is
4 covered. There are no provisions of the EOC that specifically exclude coverage for ASD or the
5 standard-of-care treatments for ASD.

6 59. KAISER is statutorily and contractually obligated to cover services in its EOC for
7 the diagnosis and treatment of ASD under the same terms and conditions that it applies to other
8 medical conditions.

9
10 **II. KAISER'S POLICY TO DENY ASD TREATMENT**

11 60. KAISER has designed, implemented, and enforces a policy of denying treatment
12 for autistic children. This policy has a number of facets described below.

13 **A. Evaluation and Referral for Treatment**

14 61. KAISER prohibits physicians and clinicians evaluating autistic children from
15 making specific medical treatment recommendations or referrals for ASD. Instead, KAISER
16 requires its clinicians to provide only referrals to school districts and regional centers with
17 generic treatment recommendations typical for ASD, under the rubric of "Educational
18 Recommendations" or "Community Services."

19 62. KAISER advises its doctors not to sign outside medical referral or medical
20 clearance forms for "non-standard treatments" for autistic children. KAISER arbitrarily and
21 falsely categorizes treatments that form the standard of care for autism, such as ABA,
22 occupational therapy, and speech therapy, as "non-standard treatments."

23 63. KAISER attempts to shift the responsibility for treating its members with ASD to
24 other institutions. KAISER makes explicit, aggressive recommendations to parents of children
25 with autism to pursue treatment from school districts, regional centers, and other public entities
26 funded by taxpayers.

27 **B. Authorization, Payment, and Provision of Treatment**
28

1 64. It is undisputed that ASD is a severe and disabling form of mental illness and a
2 medical condition. Nevertheless, KAISER refuses to authorize, pay for, and/or provide
3 treatment for ASD. KAISER routinely and as part of a standard practice denies health care
4 services for ASD, including ABA, speech therapy, physical therapy, and occupational therapy. It
5 does so even though ABA is the only treatment used solely for autism, and the only effective
6 behavioral treatment for ASD.

7 65. KAISER refuses to provide to autistic children medically necessary treatments
8 that it routinely covers for individuals without autism. These treatments include speech therapy,
9 physical therapy, and occupational therapy.

10 66. For example, KAISER will provide speech therapy for an “anatomical defect” or
11 for “apraxia” (a neurological speech disorder involving the loss or impairment of speech
12 abilities), but not for ASD. KAISER regularly denies autistic children full and equal access to all
13 of KAISER’s facilities, privileges, and services. Moreover, even though KAISER is fully aware
14 that ASD is a severe mental illness, KAISER routinely fails to treat ASD under the same terms
15 and conditions that it treats other medical conditions.

16 **C. Pretexts For Denying Treatment**

17 67. KAISER has designed, implemented, and enforces a policy of denying services
18 for ASD through a series of pretexts.

19 **1. Pretext That Treatment is Not Medical or Not Health Service**

20 68. KAISER claims to “provide assessment, consultation, treatment of children,
21 adolescents, and their families from a developmental, multi-disciplinary, and best practices
22 perspective.” KAISER publicly states that it recognizes that the field of available treatments for
23 ASD is constantly changing and all providers of services must remain flexible.

24 69. KAISER’s public statements about the importance of flexibility and of a multi-
25 disciplinary approach underscore its discriminatory policies toward the treatment of ASD.
26 KAISER acknowledges that ASD is a medical condition. However, KAISER falsely contends
27 that the medical management of ASD does not include the treatments generally recognized to
28 constitute the standard of care for ASD. Indeed, KAISER takes the position that the standard-of-

1 care treatments for ASD such as ABA, speech therapy, and occupational therapy to address the
2 communication, social and cognitive symptoms of ASD are “non-healthcare” services. In public
3 statements, KAISER asserts that, “[t]hese are services which have not been part of health plan
4 benefits.”

5 70. The treatments for ASD that KAISER refuses to provide to autistic children are
6 basic health care services that KAISER is statutorily obligated to provide to its enrollees.
7 KAISER’s policy to deny these treatments precludes any individualized determination of
8 “medical necessity.”

9 **2. Pretext That Treatment is Excluded Because of Licensing**

10 71. KAISER takes the position that it need not cover certain services for the treatment
11 of ASD, notably ABA, on the basis that a non-licensed person may provide these services.
12 Under California regulations, health plan services include, though not exclusively, referral to
13 “other professionals engaged in the delivery of health services who are licensed to practice, are
14 certified, or practice under authority of the plan, a medical group, or individual practice
15 association or other authority authorized by applicable California law.” (Cal. Code Regs., tit. 28,
16 § 1300.67(a)(1).) California law also affirmatively states that a health plan “shall employ and
17 utilize allied health manpower for the furnishing of services to the extent permitted by law and
18 consistent with good medical practice.” (Health & Saf. Code § 1367(f).)

19 72. California law neither mandates health plans to provide services only when
20 performed by licensed or certified professionals, nor requires health care services to be provided
21 only by licensed persons. There is no justification for KAISER’s denial of treatment policy
22 under California law.

23 73. KAISER denies ABA treatment for autistic children even when such treatment is
24 provided directly by, or under the supervision of, licensed professionals. However, it does
25 provide such treatment when ordered to do so by the Department of Managed Health Care.

26 74. KAISER takes the position that treatments for ASD that do not require medical
27 licenses or certificates or the presence of a supervising licensed nurse are subject to its coverage
28 exclusion of “custodial care,” which it defines in its EOC, in part, as “care that can be performed

1 safely and effectively by people who, in order to provide the care, do not require medical
2 licenses or certificates or the presence of a supervising licensed nurse.” At times, KAISER uses
3 this excuse to explain its denial of services, including ABA, for the treatment of autism.

4 75. KAISER provides, for diagnoses other than ASD, services to its members which
5 do not require medical licenses or certificates or the presence of a supervising licensed nurse, and
6 which KAISER does not exclude on the basis of its custodial care exclusion.

7 76. In policy and practice, KAISER denies ABA, occupational therapy, and speech
8 therapy for autistic children, irrespective of who administers the treatment.

9 **3. Pretext That Treatment Is Excluded Because It Is Educational**

10 77. At times, KAISER justifies its denial of speech therapy, occupational therapy, and
11 ABA treatment for autistic children on the basis that such treatments are purportedly “academic
12 or educational interventions.” For example, KAISER denies speech therapy services for ASD
13 purportedly because such therapy treats “social, behavioral, or cognitive delays in speech or
14 language development” or provides “training to address a developmental language delay” and is
15 thus not a health care service or not a medical service, but rather an “educational service.”

16 78. In other contexts, however, KAISER recognizes the importance of education to
17 improving health and provides education as a part of its covered health care services. KAISER
18 offers its members a wide variety of classes and educational programs targeting specific medical
19 conditions, on topics ranging from “Arthritis Aquatic Exercise” and “Understanding Your
20 Asthma,” to “Ways to a Healthy Heart” and “Weight Management.” Its EOC covers “education”
21 as part of its inpatient detoxification chemical dependency services, and “education” on use of
22 insulin pumps for diabetics.

23 79. KAISER also has, for example, “Educational Theater Programs” that use live
24 theatre to engage and encourage young people to make better decisions about their health.
25 KAISER states that such programs have the goal “to improve the mental and physical health of
26 young people, their families, and their communities.”
27
28

80. Whether or not the medical standard-of-care treatments for ASD may be considered “academic or educational interventions” in certain contexts, such a characterization does not alter the fact that these treatments are basic health care services.

III. NEGATIVE IMPACT OF KAISER’S POLICY ON CHILDREN, FAMILIES, AND TAXPAYERS

81. KAISER’s refusal to treat a child with autism affects not only the child, but the entire family and the general public. Many families who have the financial ability to do so are forced to bear the cost of medically necessary treatments that KAISER has denied, rather than risk the long-term devastating consequences of delaying or forgoing these treatments.

82. The medically necessary treatments that KAISER denies to an autistic child can cost tens of thousands of dollars per year, placing significant financial stress on families, who must already bear the strain of caring for a child with autism. KAISER’s policy forces parents to weigh the emotional and mental burden of watching their child deteriorate, against the financial cost of securing the necessary treatment.

83. KAISER’s policy of refusing to accept its obligation to provide appropriate medical treatments for ASD also strains taxpayer-supported institutions such as schools and state-funded regional centers that serve individuals with developmental disabilities (pursuant to Welfare and Institutions Code section 4620 et seq.). These institutions respond by resisting the additional responsibilities, trapping families in battles between bureaucracies while children with autism go untreated.

A. Impact on Plaintiffs

84. Like many similarly situated individuals, Plaintiffs have suffered compromised medical care, delays in treatment, deteriorating health, and severe financial and emotional burdens as a result of KAISER’s policies regarding autism.

1. A.H. and LISSA ANDERSON

85. When A.H. was not yet two years old, LISSA ANDERSON expressed concern to A.H.’s KAISER pediatrician about her son’s lack of language, short attention span, and lack of

1 interest in toys. At ANDERSON's insistence, KAISER eventually referred A.H. to a
2 developmental pediatrician who diagnosed autism in May 2006, when A.H. was three years old.
3 KAISER referred the family for assessment at KAISER's ASD Center, but advised the family
4 that full evaluation and treatment was the responsibility of the school district.

5 86. At the ASD Center, KAISER diagnosed A.H. with Autistic Disorder. KAISER's
6 only "medical recommendation" for A.H. was case management, which KAISER later clarified
7 was merely to support ANDERSON and her husband with the heightened stress associated with
8 their son's diagnosis, not to treat A.H.'s autism.

9 87. Under "Educational Recommendations," KAISER gave the generic advice that
10 A.H. should be assessed by an occupational therapist and for speech and language therapy.
11 KAISER explicitly covers and provides occupational therapy and speech therapy pursuant to its
12 EOC, but it has never either assessed for, or made a medical referral to, these treatments for
13 A.H.'s autism.

14 88. The school district provided A.H. few, if any, of the standard autism treatments
15 identified in KAISER's ASD Center report. Though A.H. has benefited from limited services
16 provided by his school district, the services provided by the school district are far below the
17 standard of care for autism.

18 89. Six months after A.H.'s diagnosis, ANDERSON expressed frustration to KAISER
19 about the delay in obtaining any sort of treatment for her son from KAISER, the school district,
20 or the regional center. KAISER merely instructed her to continue to pursue treatment from the
21 regional center and school district. ANDERSON told KAISER that A.H.'s behavioral and daily
22 living skills problems had increased in severity, duration, and scope without treatment. KAISER
23 suggested a comprehensive behavioral intervention program for children with autism, but
24 insisted that it had to come from the school system. At KAISER's insistence, ANDERSON
25 requested an occupational therapy assessment from the school district. The request was refused.

26 90. Stressing her fear of the effects delay in treatment was causing A.H.,
27 ANDERSON made requests to KAISER over a period of months to either provide referrals and
28

1 treatment for autism, or to provide a letter confirming that it would not; KAISER refused.

2 Instead, KAISER directed ANDERSON to bureaucratic dead-ends.

3 91. KAISER alternately insisted that it would cover autism treatment with referral
4 from its doctors, who in turn told ANDERSON that they would not refer A.H. for treatment
5 KAISER would not provide; told ANDERSON these services were the school district and
6 regional center's responsibility, not KAISER's; or simply did not return ANDERSON's calls.

7 92. When KAISER did convene a treatment team meeting to discuss coordination of
8 services for A.H., it again told ANDERSON to go to the school district and regional center, and
9 told ANDERSON that KAISER does not provide treatment for autism.

10 93. ANDERSON repeatedly inquired about further diagnostic evaluation of A.H.,
11 explaining that without specific treatment recommendations, obtaining treatment for A.H.'s
12 autism from any source was nearly impossible. KAISER refused to provide such individualized
13 diagnosis. In May 2007 and September 2008, ANDERSON and her husband paid for private
14 neuropsychological evaluations, to obtain the individualized treatment recommendations for
15 A.H.'s autism that KAISER has refused to provide.

16 94. In September 2008, ANDERSON opened a grievance with KAISER, seeking
17 coverage for speech therapy, occupational therapy, and ABA. After failing to respond to
18 ANDERSON's requests for either treatment or confirmation of denial for over two years,
19 KAISER denied ANDERSON's formal request for ABA, speech therapy, and occupational
20 therapy in December 2008.

21 95. Notwithstanding the long history of ANDERSON's interactions with KAISER
22 and her repeated requests for individualized treatment recommendations, KAISER provided the
23 excuse for denial of occupational and speech therapy that "additional clinical information is
24 required to determine if there are any medically necessary services, such as speech and
25 occupational therapy." KAISER denied ABA with the excuse: "The Plan does not cover non-
26 health care services, such as teaching social and communication skills, special education, and
27 academic and communication coaching, tutoring and instruction. Since ABA is a learning theory
28 designed to teach skills that others may learn from observation your request for ABA is denied."

1 96. Because of KAISER's policy and practice of delays and denials, ANDERSON
2 and her family have been forced to pay out of pocket for two neuropsychological assessments.
3 Additionally, from July 2008 through December 2008, ANDERSON and her husband incurred
4 expenses for ABA therapy that KAISER refused to provide A.H., resulting in an outstanding
5 debt of \$30,000. KAISER's policy to deny treatments for autistic children has caused the family
6 devastating financial and emotional strain.

7 97. A.H., who is now five years old, and whom KAISER first diagnosed with autism
8 at age three, still has received no treatment or even specific diagnostic recommendations from
9 KAISER for his autism.

10 **2. K.S. and PAUL SANTIAGO**

11 98. KAISER has been responsible for K.S.'s health care since she was born. K.S.
12 spoke her first words at about eight months and developed the ability speak as many as three to
13 four words together. She then lost speech and regressed to single words between the ages of two
14 and four years.

15 99. From K.S.'s first presentation of ASD symptoms, KAISER told PAUL
16 SANTIAGO and his wife that the diagnosis and treatment of ASD were educational issues that
17 they must pursue with the school district, not medical ones that KAISER would diagnose and
18 treat as it does with other disorders.

19 100. KAISER did not initially provide diagnostic testing for K.S.'s ASD, but instead
20 referred the family to their local school district when K.S. was three. The school district
21 conducted an evaluation, diagnosed Pervasive Developmental Disorder-NOS (PDD-NOS), and
22 started K.S. in special education. The first evaluation KAISER provided for K.S.'s ASD was
23 three years after her diagnosis by the school district, in October 2004. At that time, KAISER's
24 ASD Center diagnosed K.S. with full-blown Autistic Disorder.

25 101. KAISER's only "Medical Recommendations" in October 2004 were referral for
26 screening to rule out genetic or inherited metabolic abnormalities, and for a hearing-audiological
27 exam. Instead of medical treatment planning for ASD, KAISER made general "Language &
28 Educational Recommendations" for SANTIAGO and his wife to pursue through the school

1 district. KAISER recommended that the school district provide K.S speech therapy, as well as
2 treatments outside of school, such as a “one-to-one educational aide” who might assist with
3 “reinforcement and maintenance of desired behaviors...taught in several domains (i.e., home,
4 school, and in public).” KAISER suggested that “perhaps parents could be offered clinical and
5 treatment consultation to help develop and set up a home based program...” but gave this general
6 advice as a “Language & Educational Recommendation” that it referred to the school district.
7 KAISER provided no individualized treatment plan to suggest what the expected prognosis
8 might be for K.S.’s autism with any of the interventions it indicated SANTIAGO and his wife
9 might pursue through the school district.

10 102. In March 2007, KAISER once again evaluated K.S., and provided as “Medical
11 Recommendations” only that KAISER provide K.S. and her parents “case management”
12 services. KAISER provided general “Educational Recommendations” that included “speech and
13 language therapy” and “behavioral programs” and general “Community Services”
14 recommendations that included that the family “receive the services of a behaviorist” through the
15 regional center.

16 103. KAISER provided no specific medical treatment recommendations in either 2004
17 or 2007 about the utility for K.S.’s autism of speech therapy, occupational therapy, and physical
18 therapy through KAISER, even though it provides these treatments as basic health services for
19 other diagnoses. Instead, because of its policy of denying treatment for ASD, KAISER re-
20 labeled as “educational” or a “community service” any of the standard medical treatments for
21 ASD, and passed on its obligation for specific treatment planning and follow-through to public
22 entities. KAISER’s evaluations never mentioned ABA, a standard of care for autism in the
23 medical community.

24 104. KAISER has never provided K.S. any treatment for her autism. The school
25 district provides her twice per week only thirty minutes of group speech therapy with up to three
26 other children. This treatment is dramatically less than the standard of care for autism. After
27 watching their child regress to the point that she was non-verbal, SANTIAGO and his wife began
28 paying for private speech therapy, once a week, in 2005. Through individual speech therapy,

1 K.S. has made progress and can now say two- to three-word phrases. K.S. has never received
2 ABA, a standard of care for ASD.

3 105. K.S.'s family, through SANTIAGO, sought speech and language therapy,
4 occupational therapy, social skills training, and ABA from KAISER in 2008. In a letter dated
5 December 11, 2008, KAISER denied every requested service.

6 106. KAISER denied speech and language therapy as not medically necessary because
7 "the remediation of developmental language delay is not a medical service, but rather an
8 educational service provided by school districts under the guidance of an Individualized
9 Education Plan (IEP)." Notwithstanding documented motor and sensory deficits, KAISER wrote
10 that K.S., "does not experience any motor or sensory deficits. As such, [occupational therapy]
11 services are not considered medically necessary." KAISER denied ABA and social skills
12 training as "non-health care services," on the basis that they are a "learning theory designed to
13 teach skills that others may learn form observation" and could be performed "safely and
14 effectively by people who do not require medical licenses or certificates."

15 107. KAISER's policies mean that while overseeing the onset and escalating affects of
16 K.S.'s primary medical disorder since she was born, KAISER has never provided her any
17 treatment for that medical disorder. Instead, KAISER has forced SANTIAGO and his wife to
18 wage a costly and protracted battle with the family's local school district and to pay out of
19 pocket for the limited amount of speech therapy that they can afford.

20 108. Because of KAISER's policy of dumping its obligations for health care services
21 on public institutions, regardless of health consequences, K.S. has not received the standard of
22 care for her condition through critical developmental years.

23 109. KAISER has duly documented in K.S.'s records that "The legal and financial
24 struggles in their efforts to provide for K.S.'s therapeutic needs have been a significant source of
25 stress affecting the family." Cruelly, KAISER itself is the cause of the legal and financial
26 struggles it documents.

27
28 **CLASS ACTION ALLEGATIONS**

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110. Plaintiffs bring this suit as a class action pursuant to California Code of Civil Procedure section 382 on behalf of themselves and all other similarly situated persons. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the proposed class is ascertainable.

111. Class definition: Plaintiffs bring this action on behalf of the following classes:

Class A: All individuals with ASD enrolled in KAISER’s health plans in California.

Class B: All individuals with ASD or with dependents with ASD enrolled in KAISER’s health plans in California.

112. Numerosity: The proposed classes are so numerous that joinder of all the members of the classes is impracticable. While the precise number of members of each proposed class is not known by Plaintiffs, such information will be ascertainable from the records of KAISER. Plaintiffs are informed and believe and on that basis allege that each of the proposed classes number in the thousands of members.

113. Commonality: There are questions of law and fact common to the Plaintiffs and the classes that predominate over any questions affecting only individual members of the classes. These common questions of law and fact include, without limitation:

- (i) Whether KAISER has a policy of denying treatment to disabled autistic children; and
- (ii) Whether KAISER’s policies, and practices regarding treatment of ASD violate the Unruh Civil Rights Act, Mental Health Parity Law, and Unfair Competition Law.

114. Typicality: Plaintiffs’ claims are typical of the claims of the classes. Defendant’s common course of conduct in violation of law as alleged herein has caused Plaintiffs and class members to sustain the same or similar injuries for the purposes of the injunctive and declaratory relief sought. Plaintiffs’ claims are thereby representative of and co-extensive with the claims of the classes.

115. Adequacy of Representation: Plaintiffs are members of the classes, do not have any conflicts of interest with other class members, and will prosecute the case vigorously on behalf of the classes. Counsel representing Plaintiffs are competent and experienced in litigating large scale disability rights class actions. Plaintiffs will fairly and adequately represent and protect the interests of the classes.

116. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all class members is not practicable, and questions of law and fact common to the classes predominate over any questions affecting only individual members of the classes. Plaintiffs and the class members have been injured or are imminently threatened with injury by reason of Defendant's illegal policies and practices. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Because of the relative economic positions of the parties, few class members could afford to seek legal redress of the wrongs complained herein. Absent a class action, the class members will continue to suffer losses, the violations of law described herein will continue without remedy, and Defendants will continue to violate the law.

FIRST CAUSE OF ACTION

(Violation of Unruh Civil Rights Act, Civ. Code § 51 et seq.)

(On Behalf of Plaintiff Class A Against All Defendants)

117. Plaintiffs hereby incorporate by reference each of the preceding allegations as if fully set forth herein.

118. California's Unruh Civil Rights Act ("Unruh Act") (Civ. Code § 51 et seq.) provides that all persons within California, regardless of disability, "are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." Civil Code section 51(b).

119. Plaintiffs A.H. and K.S. are individuals with disabilities within the meaning of the Unruh Act, and are entitled to its guarantees of full and equal access.

DISABILITY RIGHTS ADVOCATES
2001 CENTER STREET, FOURTH FLOOR
BERKELEY, CALIFORNIA 94704-1204
(510) 665-8644

1 120. Defendants are “business establishments” within the meaning of the Unruh Act.

2 121. California’s Unruh Civil Rights Act requires KAISER to provide full and equal
3 access to plaintiffs A.H. and K.S. and individuals similarly situated, regardless of the
4 individual’s disabilities, in all aspects of KAISER’s business.

5 122. Through their policy, pattern and practice, as alleged herein, of denying basic
6 health care services to treat autism, and thereby denying individuals with autism basic health
7 care services provided to other members, Defendants have denied Plaintiffs A.H. and K.S. and
8 individuals similarly situated, the full and equal accommodations, advantages, facilities,
9 privileges, and services of participation in KAISER’s health care plan.

10 123. By their policy, pattern and practice of denying Plaintiffs A.H. and K.S. and
11 individuals similarly situated the full and equal accommodations, advantages, facilities,
12 privileges, and services of their business, Defendants have violated and continue to violate the
13 Unruh Act, Civil Code section 51 et seq.

14 124. Defendants have denied, aided, and incited denials of full and equal services to
15 plaintiffs A.H. and K.S. and individuals similarly situated, and have discriminated against them
16 and made distinctions against plaintiffs that are contrary to the Unruh Act.

17 125. Because Defendants have violated and continue to violate the Unruh Act,
18 Plaintiffs are entitled to injunctive relief, remedying the discrimination. (Civ. Code § 52.)

19 126. Plaintiffs are entitled to recover their attorneys’ fees, costs, and expenses in this
20 action. (Civ. Code § 52(a).)

21 WHEREFORE, Plaintiffs pray for relief as set forth below.

22

23 **SECOND CAUSE OF ACTION**
24 **(Violation of the Unfair Competition Law, Bus. & Prof. Code § 17200 et seq.)**
25 **(On Behalf of Plaintiff Class B Against all Defendants)**

26 127. Plaintiffs hereby incorporate by reference each of the preceding allegations as if
27 fully set forth herein.

28

1 128. California's Unfair Competition Law, Business and Professions Code section
2 17200 et seq., prohibits "unfair competition," which it defines to include "any unlawful, unfair,
3 or fraudulent business act or practice or practice and unfair, deceptive, untrue or misleading
4 advertising..." (Bus. & Prof. Code § 17200.) "By proscribing any unlawful business practice,
5 Section 17200 borrows violations of other laws and treats them as unlawful practices that the
6 unfair competition law makes independently actionable." (*Goldman v. Standard Insurance*
7 *Company* (9th Cir. 2003) 341 F.3d 1023, 1036, citing *Cel-Tech Communications, Inc. v. Los*
8 *Angeles Cellular Telephone* (1999) 20 Cal.4th 163.)

9 129. Defendants have violated the Unfair Competition Law by violating California's
10 mental health parity law for health care service plans, Health and Safety Code section 1374.72
11 (also referred to herein as the "Mental Health Parity Law").

12 130. The Mental Health Parity Law requires every health care service plan to "provide
13 coverage for the diagnosis and medically necessary treatment of severe mental illnesses of a
14 person of any age...under the same terms and conditions applied to other medical conditions...."
15 (Health & Saf. Code § 1374.72(a).)

16 131. "Pervasive developmental disorder or autism" is encompassed in the Mental
17 Health Parity Law's definition of severe mental illness. (Health & Saf. Code § 1374.72(d)(7).)

18 132. KAISER is a health care service plan within the meaning of Health and Safety
19 Code section 1374.72(a).

20 133. The Mental Health Parity Law requires that a health care service plan provide
21 outpatient services, inpatient hospital services, partial hospital services, and prescription drugs (if
22 the plan contract includes coverage for prescription drugs) for ASD under the same terms and
23 conditions applied to other medical conditions. (Health & Saf. Code § 1374.72.) Diagnostic
24 services, ABA, speech therapy, occupational therapy, physical therapy, and other services to
25 treat ASD are encompassed by these categories of benefits specifically identified in the Mental
26 Health Parity Law. (See Health & Saf. Code § 1374.72(b)(1)-(3).)

1 134. Plaintiffs ANDERSON and SANTIAGO and individuals similarly situated have
2 sought coverage for the diagnosis and medically necessary treatment of their dependants' severe
3 mental illnesses, as that term is defined by Health and Safety Code section 1374.72.

4 135. KAISER has failed to provide Plaintiffs ANDERSON and SANTIAGO and
5 individuals similarly situated coverage for their dependants for the diagnosis and medically
6 necessary treatment for ASD under the same terms and conditions applied to other medical
7 conditions, in violation of the Mental Health Parity Law.

8 136. KAISER's violations of the Mental Health Parity Law serve as unlawful predicate
9 acts and practices for purposes of Business and Professions Code section 17200 et seq.

10 137. Plaintiffs ANDERSON and SANTIAGO and others similarly situated all paid
11 fees to Defendants for full participation in KAISER's health care plan. Plaintiffs thus have a
12 property interest in the health care services that they paid for. These plaintiffs have also paid for
13 diagnosis and/or medically necessary treatment services for their children's severe mental illness,
14 when Defendants have failed to do so. As a result of Defendants' refusal to cover diagnosis and
15 medically necessary treatment for ASD under the same terms and conditions applied to other
16 conditions, Plaintiffs have suffered injury in fact and have lost money or property.

17 138. Plaintiffs ANDERSON and SANTIAGO and others similarly situated have
18 suffered injury in fact and have lost money or property as a result of Defendants' violation of the
19 Mental Health Parity Law and the Unfair Business Practices Act, and are entitled to pursue
20 representative claims for relief on behalf of themselves and others similarly situated. (Bus. &
21 Prof. Code §§ 17203, 17204.)

22 139. The law provides courts jurisdiction to grant injunctive relief or to make orders or
23 judgments to prevent unfair competition or to restore to any person in interest any money or
24 property which may have been acquired by means of such unfair competition. (Bus. & Prof.
25 Code § 17203.)

26 140. Defendants continue to use and employ unfair and unlawful acts and practices to
27 deny coverage for the diagnosis and medically necessary treatment for ASD.
28

142. Plaintiffs' success in this action will enforce important rights affecting the public interest and in that regard Plaintiffs sue on behalf of themselves and others similarly situated. Plaintiffs seek and are entitled to declaratory and injunctive relief, and all other equitable remedies owing to them.

143. There is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right, and it would be against the interests of justice to penalize Plaintiffs by forcing them to pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure section 1021.5 and otherwise.

WHEREFORE, Plaintiffs pray for relief as set forth below.

(Declaratory Relief, Code Civ. Proc. § 1060)

**(On Behalf of Individual Plaintiffs LISSA ANDERSON, PAUL SANTIAGO, A.H., K.S.,
Organizational Plaintiff EQUAL COVERAGE FOR AUTISM and Plaintiff Classes A & B
Against All Defendants)**

144. Plaintiffs hereby incorporate by reference each of the preceding allegations as if fully set forth herein.

145. Plaintiffs assert this cause of action on behalf of themselves and Plaintiff Classes A and B. A real and present controversy exists between Plaintiffs, on the one hand, and

1 Defendants, on the other hand, regarding the Defendants' obligations to provide treatment for
2 ASD.

3 146. Defendants contend that they may lawfully deny speech therapy, occupational
4 therapy, and ABA to prevent, diagnose, or treat ASD or its clinical symptoms as described
5 above. On the other hand, Plaintiffs contend that Defendants must provide these services to its
6 members under the Unruh Civil Rights Act, and the Mental Health Parity Law, and that
7 Defendants' failure to do so is unlawful.

8 147. A judicial declaration is necessary and appropriate at this time in order that each
9 of the parties may know their respective rights and duties and act accordingly.

10 **RELIEF REQUESTED**

11 WHEREFORE, plaintiffs pray for judgment as follows:

12 148. For an order certifying this action as a class action under Code of Civil Procedure
13 section 382, appointing Plaintiffs as Class Representatives, and Plaintiffs' attorneys as Class
14 Counsel;

15 148. For an order finding and declaring that Defendants' acts and practices as alleged
16 herein violate the Unruh Civil Rights Act;

17 149. For an order finding and declaring that KAISER's acts and practices as alleged
18 herein violate the Unfair Competition Law;

19 150. For preliminary and permanent injunctive relief prohibiting Defendants and all
20 those acting in concert with Defendants, from continuing to violate the Unruh Act and Unfair
21 Competition Law through the policies and practices alleged herein;

22 151. For an award of attorneys' fees as provided by Civil Code section 52 and Code of
23 Civil Procedure section 1021.5 and/or other applicable law;

24 152. For costs and expenses of suit incurred herein;

25 153. For such other and further relief as the Court may deem just and proper.

26 //

27 //

28 //

1 Dated: February 11, 2009

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5
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