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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 CALIFORNIA MEDICAL ASSOCIATION,

11 Plaintiff,

12 v.

13 BLUE CROSS OF CALIFORNIA, INC.,
PACIFICARE HEALTH SYSTEMS, INC.,
14 PACIFICARE OPERATIONS, INC., and
FOUNDATION HEALTH SYSTEMS, INC.

15 Defendants.
16

Case No.:

COMPLAINT

DEMAND FOR JURY TRIAL

17 **I. INTRODUCTION**

18 1. Plaintiff brings this action on behalf of its membership, which is a group of physicians
19 who believe they are victims of a scheme implemented by defendants in violation of the Racketeer
20 Influenced and Corrupt Organization Act (“RICO”). Plaintiff brings this action because it believes its
21 membership has been damaged in its business as a result of the pattern of racketeering activity alleged
22 herein, but moreover because it believes the defendants’ scheme is detrimental to its members’ patients.
23

24 2. These defendants have promised both the patient and the physicians freedom from
25 improper interference and control in the physician-patient relationship. Every physician has a professional
26 ethical obligation to place his or her patient’s medical interests foremost. Certainly, Plaintiff’s
27 membership is entitled to conduct its business of delivering appropriate healthcare services to patients
28 free of coercion and intimidation.

1 3. Physicians must receive adequate and timely reimbursement in order to maintain their
2 practices and provide continuity of care that their patients require as a matter of sound medical practice.
3 A stable health care system that fosters a trusting relationship between the physician and patient depends
4 on reimbursement adequate to cover the costs of delivering the health care services patients have been
5 promised by defendants. However, Defendants' failure to provide funding of the health care system has
6 resulted in tremendous hardships for all physicians. Physicians have been forced to suffer from patently
7 unfair contract terms, delays, decreases and denials in payment of claims, and the refusal of defendants to
8 provide the data necessary to enable physicians to evaluate the rates provided and the level of risk
9 assumed under the contract.

10 4. Physicians contract with health plans through one of two models: (1) the direct
11 contract model, and (2) the delegated model. With respect to the direct contract model, physicians
12 contract with and receive reimbursement from defendants directly. Under this model, defendants engage
13 in a host of improper utilization management and payment practices which result in the denial, delay or
14 reduction in services to patients and/or payment to physicians.

15 5. Plaintiff's membership is harmed by the damages caused its individual members by
16 Defendants' actions. Plaintiff's membership is further harmed as physicians have been forced to leave the
17 practice of medicine, and/or terminate their membership with Plaintiff, due to Defendants' unlawful,
18 coercive and extortionate conduct.

19 6. In California particularly, Defendants routinely enter into contracts with medical
20 groups, independent practice associations and other contracting intermediaries (hereinafter "Physician
21 Groups") for arranging and managing the medical services provided to Defendants' enrollees and
22 subscribers ("Members"). These physician groups, in turn, contract with physicians to provide the
23 covered services to defendants' members. This is known as the "delegated model." Under this model,
24 health plans delegate to physician groups the responsibilities, including the financial risk of providing
25 health care services to members. Defendants generally pay these physician groups through "capitated"
26 payments, which is a set payment per member per month, regardless of the number of times the member
27 may visit the particular physician. Yet, defendants set reimbursement rates, including capitation rates to
28 these physician groups at unconscionably low levels which defendants know are not adequate to cover

1 the medical services defendants promise to provide their members and/or know are for services for which
2 there can be no sound actuarial projection because expected usage cannot be controlled or predicted.
3 Defendants engage in these and other coercive and unfair activities which threaten the physician groups
4 with economic ruin and in turn threatens patients with a disruption of continuity of care in the provision
5 of health care services. Defendants' practice of providing inadequate reimbursement to these physician
6 groups has caused individual physicians contracting with these groups to experience some of the same
7 problems discussed above under the direct contracting model. As the problems these individual
8 physicians experience are a direct result of Defendants' unlawful activities, this lawsuit seeks to redress
9 the harms suffered by both the individual physicians and the physician groups. The physician groups are
10 victims of Defendants' unlawful activities and are not defendants or other wrongdoers.

11 7. As a result of Defendants' coercive, unfair and fraudulent activities, these defendants
12 not only intrude into the physician-patient relationship, but utilize their power to dominate and control
13 this relationship for financial gain to the detriment of both patients and physicians. As a result of the
14 coercive acts and policies of these defendants, the professional relationship between a physician and
15 patient may become adversarial. Defendants attempt to utilize their economic power and market control
16 to coerce physicians to breach their duties to their patients.

17 8. Accordingly, physicians often find themselves in a proverbial "Catch 22". The
18 physician providing care to one of the Defendants' members in accordance with Defendants' policies risks
19 providing substandard care to his patient. Obviously, the patient stands to suffer as a result of
20 Defendants' coercive policies. Yet, the physician is also harmed. The physician who cares for a patient
21 in strict accordance with Defendants' policies risks loss of trust, of relationship, of reputation, of
22 profession and also faces an increased risk of liability. Alternatively, defendants punish any physician who
23 provides care in accordance with the physician's duty to his patient through nonpayment, inadequate
24 payment, delayed payment or other coercive tactics. In addition, the physician must bear the burden of an
25 ever-increasing expenditure of administrative time and expense, all without compensation, to the
26 detriment of both physicians and patients.

27 9. Therefore, Plaintiff, on behalf of its membership, seeks a declaration regarding
28 Defendants' right to usurp the physician's ability and duty to make decisions regarding patient care and

1 furthermore seeks appropriate injunctive relief. Plaintiff also seeks to recover injunctive and declaratory
2 relief from Defendants' wrongful interference and coercive actions.

3 10. Plaintiff brings this individual action against Blue Cross, which has undertaken a
4 common scheme to further its own financial interests at the expense of Plaintiff's membership and their
5 patients. Plaintiff's claims as to this defendants group involves common factual patterns and common
6 legal principles. More specifically, Plaintiff brings this action against Blue Cross of California, Inc. ("Blue
7 Cross"). The Blue Cross healthcare plans are alleged herein to be aiders, abettors and co-conspirators
8 with each other. The Blue Cross healthcare plans are collectively referred to as the "Blue Cross health
9 plan" or "Blue Cross health plans". Defendants Blue Cross, and their subsidiaries, operate health
10 maintenance organizations ("HMOs"), preferred provider organizations ("PPOs") and point of service
11 ("POS") health plans in various states across the nation. The Blue Cross healthcare plans are not charged
12 as defendants in this Complaint. The defendants and the Blue Cross healthcare plans are collectively
13 referred to as "Blue Cross" unless otherwise specified.

14 11. Plaintiff brings this individual action against PacifiCare, which has undertaken a
15 common scheme to further its own financial interests at the expense of Plaintiff's membership and their
16 patients. Plaintiff's claims as to this defendants group involves common factual patterns and common
17 legal principles. More specifically, Plaintiff brings this action against PacifiCare Health Systems, Inc. and
18 PacifiCare Operations, Inc. ("PacifiCare"). The PacifiCare healthcare plans are alleged herein to be
19 aiders, abettors and co-conspirators with each other. The PacifiCare healthcare plans are collectively
20 referred to as the "PacifiCare health plan" or "PacifiCare health plans". Defendants PacifiCare, and their
21 subsidiaries, operate health maintenance organizations ("HMOs"), preferred provider organizations
22 ("PPOs") and point of service ("POS") health plans in various states across the nation. The PacifiCare
23 healthcare plans are not charged as defendants in this Complaint. The defendants and the PacifiCare
24 healthcare plans are collectively referred to as "PacifiCare" unless otherwise specified.

25 12. Plaintiff brings this individual action against Foundation, which has undertaken a
26 common scheme to further its own financial interests at the expense of Plaintiff's membership and their
27 patients. Plaintiff's claims as to this defendants group involves common factual patterns and common
28 legal principles. More specifically, Plaintiff brings this action against Foundation Health Systems, Inc.

1 (“Foundation”). The Foundation healthcare plans are alleged herein to be aiders, abettors and co-
2 conspirators with each other. The Foundation healthcare plans are collectively referred to as the
3 “Foundation health plan” or “Foundation health plans”. Defendants Foundation, and their subsidiaries,
4 operate health maintenance organizations (“HMOs”), preferred provider organizations (“PPOs”) and
5 point of service (“POS”) health plans in various states across the nation. The Foundation healthcare
6 plans are not charged as defendants in this Complaint. The defendants and the Foundation healthcare
7 plans are collectively referred to as "Foundation" unless otherwise specified.

8 **II. JURISDICTION AND VENUE**

9 13. This Court has jurisdiction over the subject matter of this action pursuant to 18
10 U.S.C. § § 1961, 1962, 1964 and 28 U.S.C. § § 1331 and 1337. The Court has personal jurisdiction
11 over the defendants pursuant to 18 U.S.C. § § 1965(b) and (d). Venue is proper in this district pursuant
12 to 18 U.S.C. § 1965(a) and 28 U.S.C. § 1391(b), since each of the defendants is found, has an agent, and
13 transacts affairs in this district.

14 **III. PARTIES**

15 14. Plaintiff California Medical Association (“CMA”) is a non-profit, incorporated
16 professional association of California physicians, with its principal place of business in San Francisco,
17 California. CMA is comprised of more than 30,000 physicians, including California physicians in private
18 practice of medicine in all specialties. CMA’s primary purposes as set forth in its bylaws are to promote
19 the art and science of medicine, the care and well being of patients, and the protection of the public health
20 and the betterment of the medical profession. CMA is duly authorized to bring this action on behalf of its
21 own interests, and in its representative capacity, on behalf of its members in this proceeding.

22 15. CMA brings this lawsuit to protect the interests of its members. Many members of
23 CMA do not have the time or financial resources to follow or pursue the claims at issue in this litigation.
24 Many members also are concerned about retribution by Defendants if they were to participate as a named
25 plaintiff.

26 16. Plaintiff, through its membership, has and continues to provide medical services to
27 patients who are members in the defendants’ health plans.

28 17. The Plaintiff brings this action on behalf of its membership. The Plaintiff’s members

1 have been similarly subjected to and wronged by the similar extortionate, unlawful, nefarious conduct
2 discussed herein.

3 18. Defendant Blue Cross of California, Inc. is a California corporation.

4 19. Defendant Blue Cross of California, Inc. is a health plan which operates and
5 administers Blue Cross healthcare and the numerous Blue Cross health plans in California and throughout
6 the United States.

7 20. Defendants PacifiCare Health Systems, Inc. and PacifiCare Operations, Inc. are
8 California corporations.

9 21. Defendants PacifiCare Health Systems, Inc. and PacifiCare Operations, Inc. are
10 health maintenance organizations which operate and administer PacifiCare healthcare and the numerous
11 PacifiCare health plans in California and throughout the United States.

12 22. Defendant Foundation Health Systems, Inc. is a California corporation.

13 23. Defendant Foundation Health Systems, Inc. is a health maintenance organization
14 which operates and administers Foundation healthcare and the numerous Foundation health plans in
15 California and throughout the United States.

16 24. The defendants acted in concert or at least as a part of a common scheme in their
17 efforts to induce Plaintiff's membership to provide services and to expend time on behalf of Defendants'
18 members, in setting policy, and in the other actions set forth in this complaint through the coordinated
19 inter-corporate relationship described above. Defendants were and are active participants in the unlawful,
20 coercive, nefarious, and extortionate acts and practices described herein. The acts of the defendants
21 present common questions of fact and law to be resolved in this case.

22 25. Whenever this Complaint alleges that Blue Cross did any act or thing, it is meant that
23 Blue Cross of California, Inc., and the directors of said entities, or their subsidiaries, affiliates, directors,
24 officers, agents, or employees who performed or participated in such thing, and in each instance where
25 the subsidiaries, affiliates, directors, officers, agents, or employees of Blue Cross of California, Inc.
26 performed or participated in such act or thing, they were authorized to and did in fact act on behalf of
27 Blue Cross of California, Inc.

28 26. At all relevant times, each Blue Cross defendant and Blue Cross health plan was an

1 agent and/or employer of the other Blue Cross defendants and Blue Cross health plans. In committing the
2 acts alleged herein, these defendants acted within the scope of their agency and/or employment and were
3 acting with the consent, permission, authorization and knowledge of their other respective defendants,
4 and perpetrated and/or conspired to or aided and abetted the unlawful acts described herein. All actions
5 of the Blue Cross defendants and Blue Cross health plans alleged herein were ratified and approved by
6 the other respective Blue Cross defendants and Blue Cross health plans or their respective officers,
7 directors, controlling persons, agents, aiders and abettors or co-conspirators even though the overt and
8 predicate acts in furtherance of the conspiracy and aiding and abetting violations set forth herein have
9 been and are contrary to stated corporate policy and to representations to the Plaintiff.

10 27. At all relevant times, each Blue Cross plan co-conspirator was respectively an agent
11 and/or employer of each and every other Blue Cross plan co-conspirator and the respective defendants.
12 In committing the acts alleged herein, the Blue Cross plan co-conspirators acted within the scope of their
13 respective agency and/or employment and were acting with the consent, permission, authorization and
14 knowledge of each of the other Blue Cross plan co-conspirators and defendants respectively, and
15 perpetrated and/or conspired to or aided and abetted the unlawful acts described herein.

16 28. All actions of the Blue Cross plan co-conspirators and the respective defendants
17 alleged herein were ratified and approved by the other respective Blue Cross plan co-conspirators and the
18 respective defendants or their officers, directors, controlling persons, agents, aiders and abettors or co-
19 conspirators even though the overt and predicate acts in furtherance of the conspiracy and aiding and
20 abetting violations set forth herein have been and are contrary to stated corporate policy and to
21 representations to the Plaintiff.

22 29. Whenever this Complaint alleges that PacifiCare did any act or thing, it is meant that
23 PacifiCare Health Systems, Inc. and PacifiCare Operations, Inc., and the directors of said entities, or their
24 subsidiaries, affiliates, directors, officers, agents, or employees who performed or participated in such
25 thing, and in each instance where the subsidiaries, affiliates, directors, officers, agents, or employees of
26 PacifiCare Health Systems, Inc. and PacifiCare Operations, Inc. performed or participated in such act or
27 thing, they were authorized to and did in fact act on behalf of PacifiCare Health Systems, Inc. and
28 PacifiCare Operations, Inc.

1 30. At all relevant times, each PacifiCare defendant and PacifiCare health plan was an
2 agent and/or employer of the other PacifiCare defendants and PacifiCare health plans. In committing the
3 acts alleged herein, these defendants acted within the scope of their agency and/or employment and were
4 acting with the consent, permission, authorization and knowledge of their other respective defendants,
5 and perpetrated and/or conspired to or aided and abetted the unlawful acts described herein. All actions
6 of the PacifiCare defendants and PacifiCare health plans alleged herein were ratified and approved by the
7 other respective PacifiCare defendants and PacifiCare health plans or their respective officers, directors,
8 controlling persons, agents, aiders and abettors or co-conspirators even though the overt and predicate
9 acts in furtherance of the conspiracy and aiding and abetting violations set forth herein have been and are
10 contrary to stated corporate policy and to representations to the Plaintiff.

11 31. At all relevant times, each PacifiCare plan co-conspirator was respectively an agent
12 and/or employer of each and every other PacifiCare plan co-conspirator and the respective defendants. In
13 committing the acts alleged herein, the PacifiCare plan co-conspirators acted within the scope of their
14 respective agency and/or employment and were acting with the consent, permission, authorization and
15 knowledge of each of the other PacifiCare plan co-conspirators and defendants respectively, and
16 perpetrated and/or conspired to or aided and abetted the unlawful acts described herein.

17 32. All actions of the PacifiCare plan co-conspirators and the respective defendants
18 alleged herein were ratified and approved by the other respective PacifiCare plan co-conspirators and the
19 respective defendants or their officers, directors, controlling persons, agents, aiders and abettors or co-
20 conspirators even though the overt and predicate acts in furtherance of the conspiracy and aiding and
21 abetting violations set forth herein have been and are contrary to stated corporate policy and to
22 representations to the Plaintiff.

23 33. Whenever this Complaint alleges that Foundation did any act or thing, it is meant that
24 Foundation Health Systems, Inc., and the directors of said entities, or their subsidiaries, affiliates,
25 directors, officers, agents, or employees who performed or participated in such thing, and in each instance
26 where the subsidiaries, affiliates, directors, officers, agents, or employees of Foundation Health Systems,
27 Inc. performed or participated in such act or thing, they were authorized to and did in fact act on behalf
28 of Foundation Health Systems, Inc.

1 34. At all relevant times, each Foundation defendant and Foundation health plan was an
2 agent and/or employer of the other Foundation defendants and Foundation health plans. In committing
3 the acts alleged herein, these defendants acted within the scope of their agency and/or employment and
4 were acting with the consent, permission, authorization and knowledge of their other respective
5 defendants, and perpetrated and/or conspired to or aided and abetted the unlawful acts described herein.
6 All actions of the Foundation defendants and Foundation health plans alleged herein were ratified and
7 approved by the other respective Foundation defendants and Foundation health plans or their respective
8 officers, directors, controlling persons, agents, aiders and abettors or co-conspirators even though the
9 overt and predicate acts in furtherance of the conspiracy and aiding and abetting violations set forth
10 herein have been and are contrary to stated corporate policy and to representations to the Plaintiff.

11 35. At all relevant times, each Foundation plan co-conspirator was respectively an agent
12 and/or employer of each and every other Foundation plan co-conspirator and the respective defendants.
13 In committing the acts alleged herein, the Foundation plan co-conspirators acted within the scope of their
14 respective agency and/or employment and were acting with the consent, permission, authorization and
15 knowledge of each of the other Foundation plan co-conspirators and defendants respectively, and
16 perpetrated and/or conspired to or aided and abetted the unlawful acts described herein.

17 36. All actions of the Foundation plan co-conspirators and the respective defendants
18 alleged herein were ratified and approved by the other respective Foundation plan co-conspirators and the
19 respective defendants or their officers, directors, controlling persons, agents, aiders and abettors or co-
20 conspirators even though the overt and predicate acts in furtherance of the conspiracy and aiding and
21 abetting violations set forth herein have been and are contrary to stated corporate policy and to
22 representations to the Plaintiff.

23 37. As defendants have engaged in the unlawful overt and predicate acts against the
24 physician groups, the physician groups are not co-conspirators or otherwise involved in the aiding or
25 abetting of the violations set forth herein.

26 **IV. SUMMARY OF FACTUAL AND LEGAL ALLEGATIONS**

27 38. The following factual and legal allegations are based upon knowledge, information
28 and belief.

1 39. This is a claim for which relief can be granted pursuant to Title IX of the Organized
2 Crime Control Act of 1970, Public Law 91-452, 84 Stat. 922, commonly known and referred to as RICO
3 (Racketeer Influenced Corrupt Organization Act), codified at 18 U.S.C. § 1961, et seq., and in particular
4 for violation of 18 U.S.C. § 1962. The Plaintiff also seeks declaratory and injunctive relief and monetary
5 damages as restitution as well as treble damages to the Plaintiff for the Defendants' violation as alleged
6 herein pursuant to 18 U.S.C. § 1964(c).

7 40. This complaint asserts violations of the Racketeer Influenced and Corrupt
8 Organizations Act ("RICO"), 18 U.S.C. § 1961, et seq. The Plaintiff hereby reserves all rights to file
9 further appropriate amendments to add additional parties and causes of action.

10 41. Plaintiff brings this action on behalf of itself and its membership.

11 42. Defendants contract to provide their members healthcare coverage in exchange for
12 premiums. Defendants know that the premium levels and the physician reimbursement levels must be set
13 at levels adequate to cover the cost of services provided under the plan policy so that the physicians will
14 be able to exercise independent medical judgment based on their patients' needs, free from improper
15 interference or influence.

16 43. Defendants necessarily rely on physicians, such as Plaintiff's members, to provide
17 healthcare services to Defendants' members.

18 44. Defendants promise both the patient and the physician freedom from interference
19 and control in the physician-patient relationship and in healthcare decision-making. Defendants have
20 misrepresented and continue to misrepresent to members and to physicians that their members are to be
21 provided high quality healthcare services by physicians exercising independent medical judgment based on
22 the patient's needs, free from improper interference or influence. Defendants have also misrepresented
23 that they provide financial incentives based on the high quality of healthcare provided.

24 45. Instead, as set forth more fully herein, Defendants have engaged and are continuing
25 to engage in a pattern of unlawful, fraudulent and extortionate conduct against the Plaintiff's membership
26 by aggressively attempting to influence and interfere with the delivery of healthcare services provided by
27 Plaintiff's membership in an effort to reduce the level and quality of services and thereby to increase their
28 own profits.

1 46. In order to effectuate their goal of increasing profit by limiting healthcare services,
2 Defendants have provided patently inadequate and unconscionably low reimbursement rates, have
3 inappropriately shifted unreasonable financial risk to physicians and physician groups, and have failed to
4 provide physicians and physician groups with information sufficient to assess the level of reimbursement
5 Defendants are paying for services, all to the effect of creating inappropriate financial incentives and
6 disincentives designed to reduce and limit healthcare services, and have refused to negotiate with
7 Plaintiff's membership regarding policies, practices and other matters even where such matters impact
8 patient care.

9 47. In furtherance of their profit goals, Defendants have and are continuing to conspire
10 with and aid and abet certain unknown co-conspirators and aiders and abettors in attempting to and
11 actually extorting property interests from Plaintiff's membership. Defendant's conduct has and is
12 continuing to result in multiple unlawful acts of extortion under 18 U.S.C. § 1951(b)(2), thereby
13 damaging Plaintiff's membership in its business or property.

14 48. In committing multiple acts of extortion under 18 U.S.C. § 1951(b)(2), Defendants
15 have traveled in interstate commerce and have utilized the United States mail for the purpose of and
16 committing such illegal acts through policy making and implementation, the distribution of materials to
17 Plaintiff's membership, seminars, training, contract negotiations, audits, inspection visits, and have
18 thereby committed multiple violations of the Travel Act, 18 U.S.C. § 1952(a), which have damaged and
19 which continue to damage Plaintiff's membership in its business or property.

20 49. Defendants have also exhibited a pattern of conduct constituting mail and wire
21 fraud in their attempts to influence and interfere with physicians' professional obligations to their patients
22 and to deprive the Plaintiff's membership of its right to conduct its business free of extortionate influence
23 in violation of 18 U.S.C. § § 1341 and 1343. Defendants have utilized the United States Postal Services
24 mail and other interstate means of communications, including wire services and the internet, to further
25 their fraudulent scheme.

26 50. Defendants have also engaged in a scheme or artifice to defraud Plaintiff's
27 membership in its activities designed to deprive Plaintiff's membership of its intangible right to provide
28 appropriate services to its patients in violation of 18 U.S.C. § § 1341 and 1343 as defined by 18 U.S.C. §

1 1346.

2 51. Furthermore, Defendants have acted to improperly influence and interfere with
3 employee welfare benefit plans by accepting and soliciting monetary compensation in interference with
4 those plans in violation of 18 U.S.C. § 1954.

5 52. By engaging in this unlawful scheme, conspiring to violate 18 U.S.C. § 1962(b) & (c)
6 and by continuing to commit multiple overt acts and RICO predicate acts of extortion, and Travel Act
7 violations, Defendants have proximately caused Plaintiff's membership injury to its business or property
8 and has violated 18 U.S.C. § 1962(d). By engaging in this unlawful scheme to violate 18 U.S.C. §
9 1962(b) & (c), Defendants have likewise violated 18 U.S.C. § 2 and have acted as principals in seeking to
10 and in aiding and abetting unlawful schemes to violate 18 U.S.C. § 1962(b) & (c).

11 53. Defendants' systemic policies and practices have been and are primarily driven by
12 fiscal and administrative initiatives that place cost consideration and profits over maintaining and
13 improving quality healthcare for patients. The American Medical Association (the "AMA") and various
14 state medical associations, including Plaintiff, have repeatedly voiced concerns that Defendants' policies
15 and practices detrimentally interfere with the physician-patient relationship and have a severe adverse
16 influence and impact upon the physicians' ability to make independent medical decisions based upon the
17 medical services that should be provided to Defendants' members. Obviously, patients stand to suffer as
18 a result of Defendants' coercive, extortionate and fraudulent conduct. However, physicians such as
19 Plaintiff's membership, are also harmed by Defendants' conduct. The Defendants' scheme deprives
20 Plaintiff's membership of business and property rights, including the right to deliver appropriate
21 healthcare services without fear of reprisals or economic and/or business loss. The Defendants'
22 extortionate schemes are directed toward Plaintiff's membership to coerce Plaintiff's membership in order
23 to limit its delivery of healthcare services in order to increase Defendants' respective profit margins.
24 Defendants attempt to coerce Plaintiff's membership through threats, inadequate payment for services,
25 nonpayment for services, delayed payment for services, or other coercive tactics. Plaintiff's membership
26 has a right to deliver appropriate healthcare services without fear of reprisals or economic and/or business
27 loss. Defendants' coercive activities damage the relationship between the physician and his or her patient
28 and limit the physicians' ability to deliver healthcare services in accordance with their professional

1 obligation, thereby subjecting Plaintiff's membership to a risk of losing not only the relationship with the
2 patient, but also loss of business and loss of income, to bear an increased risk of liability and to suffer
3 damage to their reputation and sense of professionalism. Alternatively, physicians who refuse to submit
4 to Defendants' coercion are punished through nonpayment, inadequate payment, delayed payment or
5 other coercive tactics, thereby suffering economic harm. In addition, Plaintiff's membership bears the
6 burden of ever-increasing expenditures of administrative time and expense, without compensation, to the
7 detriment of physicians and patients.

8 54. The Defendants' violations of federal laws and the effects thereof are continuing and
9 will continue unless declaratory or injunctive relief prohibiting the Defendants' illegal acts which
10 constitute a pattern of racketeering activity is ordered.

11 55. The relief the Plaintiff seeks for Defendants' activities that result in injury to its
12 membership's business or property includes declaratory and injunctive relief, costs of suit, attorneys' fees,
13 declaratory and injunctive relief, and such other relief as this Honorable Court deems just and proper.

14 **VI. FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

15 56. Blue Cross, PacifiCare and Foundation are providers of healthcare services to millions
16 of subscribers nationwide. There are millions of present and past Blue Cross, PacifiCare, and Foundation
17 members who, as a group, subscribed and enrolled in Blue Cross, PacifiCare, and Foundation healthcare
18 plans.

19 57. Blue Cross, PacifiCare and Foundation have and continue to provide their members
20 healthcare coverage in exchange for payment of premiums. These defendants promise their members and
21 prospective members that, in return for their payment of premium, they will receive all healthcare services
22 that they will need to maintain, improve or restore health.

23 58. To provide the Blue Cross, PacifiCare and Foundation plan coverage, defendants
24 depend upon tens of thousands of physicians to provide medical services. Defendants promise physicians,
25 either through direct agreements, or through agreements with Independent Physician Associations
26 ("IPAs"), or other medical groups or other intermediaries ("Physician Groups"), that they will receive
27 adequate and reasonable compensation sufficient to cover the costs of medical services to be provided
28 under the health plan policy. Such misrepresentations are made with the intent to induce customers to

1 enroll in Blue Cross, PacifiCare and Foundation plans and to induce physicians and physician groups,
2 including Plaintiff's members, to agree to provide care to Blue Cross's, PacifiCare's, and Foundation's
3 members.

4 59. Blue Cross, PacifiCare and Foundation, either directly or through physician groups,
5 promise both the patient and the physician freedom from improper interference and control in the
6 physician-patient relationship and in healthcare decision-making. Blue Cross, PacifiCare and Foundation
7 have misrepresented and continue to misrepresent to members and to physicians that its members are to
8 be provided high quality healthcare services by physicians exercising independent medical judgment based
9 on the patient's needs, free from improper interference or influence. Blue Cross, PacifiCare and
10 Foundation have also misrepresented that they provide financial incentives based on the high quality of
11 healthcare provided.

12 60. Trust and confidence are the cornerstones of the physician-patient relationship. The
13 act of Defendants intentionally interfere and erode this unique professional relationship.

14 61. Plaintiff's members, justifiably relied on Blue Cross's, PacifiCare's, and
15 Foundation's promises of adequate and reasonable compensation and noninterference in agreeing to
16 provide medical services for Blue Cross, PacifiCare and Foundation plans. Blue Cross's, PacifiCare's,
17 and Foundation's members have likewise relied on Defendants' promises in agreeing to purchase health
18 coverage.

19 62. Because Plaintiff's membership's business is the provision of healthcare services,
20 Plaintiff's membership's interest in its relationship with its patients and in the provision of medical
21 services to its patients constitute business or property interests.

22 63. Defendants not only intrude into the physician-patient relationship, but utilize their
23 power to dominate and control this relationship for financial gain to the detriment of both patients and
24 physicians. In fact, Defendants utilize their economic power and market control in an effort to coerce
25 physicians to breach their professional duties to their patients. Defendants have clearly engaged in
26 coercive conduct and a scheme amounting to extortion of Plaintiff's membership in its effort to limit and
27 control the delivery of healthcare to its members in order to maximize their profits.

28 64. Defendants' policies and practices are financially driven rather than patient

1 oriented. Cost considerations and profits are routinely given priority over patient care. Contrary to
2 Defendants' representations, because of Defendants' failure to adequately fund the provision of necessary
3 medical care, physicians are not allowed to exercise professional medical judgment in the delivery of
4 healthcare to their patients, free of inordinate worry over the financial implications of their decisions.

5 65. Contrary to representations that physicians are solely responsible for all medical
6 services provided, defendants improperly influence or the medical-decision-making process. Although
7 patients are led to believe that their own physicians determine the course and extent of healthcare services
8 they receive, in actuality such decisions are often made directly by referring to sources such as published
9 "guidelines" and claims personnel who have never met the patient and are unfamiliar with the member's
10 specific healthcare needs, or indirectly by providing reimbursement to physician groups and physicians
11 which is inadequate to cover the cost of the medically appropriate care Defendants have promised their
12 members. Defendants' reimbursement, evaluation and coverage decisions are driven by and premised
13 upon costs rather than patient medical needs.

14 66. For example, Defendants' policies limit or deny Plaintiff's membership the ability
15 to deliver medical services on the basis of medical necessity. Instead the approval and reimbursement of
16 medical services are based upon cost criteria that are different from or more restrictive than what
17 Plaintiff's membership determines to be the services which are medically optimal for each patient. Such
18 policies may impose unreasonable and potentially unsafe restrictions on the level of medical services that
19 Plaintiff's membership may deliver.

20 67. Defendants define "medical necessity" in an administrative and profit driven
21 manner to reduce and limit the quality of health care Plaintiff's membership can provide its patients.

22 68. In addition, Defendants' policies allow defendants to override their physicians'
23 decisions regarding medical necessity.

24 69. Contrary to misrepresentations that physicians cannot be penalized for filing a
25 complaint or appeal, Defendants fail to provide a reasonable mechanism for their physicians to appeal a
26 Defendants' decision regarding medical necessity or the funding necessary to provide the care. Instead,
27 the appeals process, (where it exists), is created and applied in an arbitrary, confusing, costly and overly-
28 time consuming manner designed to discourage the physician from appealing the Defendants'

1 determination of “medical necessity” or reimbursement.

2 70. Defendants base their funding and coverage decisions on their own fiscal
3 determinations and are not bound by the medical necessity decisions of Plaintiff’s membership, or the
4 professional standard of care, or sound actuarial projections as to what it costs to provide the medically
5 appropriate care Defendants have promised their members.

6 71. Where defendants have not improperly delegated the risk to physician groups, as
7 discussed below, Defendants’ formularies or lists of covered prescription drugs are subject to change at
8 Defendants’ discretion. Defendants’ decisions to remove a drug, even in the middle of treatment, is based
9 upon financial considerations and incentives from pharmaceutical manufacturers rather than the members’
10 healthcare need or the physicians’ medical expertise. Such decisions are based solely on cost without
11 consideration of the efficacy or the potency of the drug.

12 72. Where Defendants have delegated pharmacy risk to physician groups, they do it
13 pursuant to capitation rates they know or blatantly disregard are inadequate to provide the pharmacy
14 services Defendants had promised to provide Defendants’ members. In addition, Defendants’ contracts
15 create ostensibly “shared” risk pools for provision of pharmacy services. In the event a pool falls short,
16 the parties are required to make up the shortage in accordance with a contractually pre-determined split.

17 73. Although the risk is presumably “shared”, Defendants base their funding of the risk
18 pools on projections, which they know are unsound and which Defendants know are inadequate to cover
19 the reasonably foreseeable costs of providing pharmacy services to their patients. This information,
20 however, is not shared with the physicians or physician groups, who likewise have no input into the
21 creation of the risk pool arrangement. As a result, Defendants’ own “risk” in these pharmaceutical pools
22 is no risk at all, and represents yet another method by which Defendants shift the costs of providing
23 healthcare to the physicians and physician groups to both their detriment and the detriment of their
24 patients.

25 74. In addition to policies and payment levels which restrict physicians and limit patient
26 care, Defendants have developed numerous other means to coerce Plaintiff’s membership to place
27 Defendants’ profits above patient care.

28 75. Defendants’ policies not only hinder Plaintiff’s membership’s ability to deliver

1 quality healthcare and appropriate services but are actually designed to discourage Plaintiff's membership
2 from delivering necessary medical services.

3 76. For example, Defendants set reimbursement rates at unreasonably low levels which
4 are not sufficient to cover the cost of providing the services promised under their policies. By providing
5 reimbursement that is too low to cover the cost of providing medically appropriate care, Defendants are
6 illegally exerting control over the range of services a physician can realistically provide.

7 77. Defendants have developed inappropriate financial incentives and disincentives which
8 reward Plaintiff's membership for limiting treatment to patients and which punish physicians and
9 physician groups who provide medically appropriate treatment. Such incentives and disincentives are
10 designed to reduce and limit healthcare services such as referrals to specialists, emergency treatment for
11 patients and hospitalization services. Incentives and disincentives have also been implemented to achieve
12 large patient/member ratios.

13 78. In order to assure physician compliance in maximizing their profits, Defendants
14 have instituted a practice to financially penalize physicians and physician groups who exceed budgeted
15 amounts. If the cost of services for certain institutional and ancillary sources such as inpatient hospital
16 admissions exceed budgeted amounts, physicians are penalized and must pay a percentage of the deficit.
17 Alternatively, if the cost of such services is below the budgeted amount, physicians are rewarded with
18 part of the surplus as a bonus. However, the "budgets" are set at unrealistically low levels such that
19 physicians and physician groups will be penalized if they provide medically appropriate care.

20 79. Defendants have also instituted incentives and disincentives in the form of so called
21 "shared" risk pools for the cost of certain services such as inpatient hospital admissions. Shared risk
22 pools are the mechanism through which physicians, other providers and health plans share the risk for the
23 expenses of particular anticipated services. The "pool" consists of funds or a budget that Defendants
24 represent will cover the services. If the cost of services does not exceed the budgeted amount, physicians
25 receive a bonus calculated as a percentage of the surplus difference between the funded amount and the
26 costs of the services. However, if the costs exceed the specified amount, physicians are penalized and
27 must pay some or all of the deficit. Again, the "pool" is not sufficient to cover the cost of the services
28 which Defendants have promised their members such that physicians and physician groups will be

1 penalized if they provide medically appropriate care.

2 80. Physician incentives and disincentives include a variable utilization component in
3 which additional compensation is available based upon the physicians' utilization of healthcare services,
4 such as withholds which are ultimately paid or not depending upon the physicians' utilization of
5 healthcare services, and a cost/utilization component in which additional compensation is available based
6 upon the physicians' utilization of healthcare services.

7 81. Again, these withholds are not properly structured to ensure that physicians and
8 physician groups are not penalized for providing medically appropriate services. Withholds in the context
9 of capitation payments are particularly unfair since by definition the capitation payment would not be
10 actuarially sound for the provision of professional services going forward once a withhold is extended to
11 cover prior years' losses.

12 82. Defendants have utilized their economic and market power to coerce Plaintiff's
13 membership into accepting contracts and Defendants' policies and practices on a "take it or leave it"
14 basis. Defendants' refusal to negotiate regarding policies, practices, payment rates, and contract
15 provisions raise serious concerns regarding the delivery of healthcare services appropriate to patients'
16 needs.

17 83. Defendants have maintained a policy and practice of retaining power to unilaterally
18 amend the terms of their physician contracts, including fee structures and clinical protocols and
19 procedures.

20 84. Defendants have engaged in extortionate conduct designed to exploit Plaintiff's
21 membership's fear of economic loss or loss of business in order to influence, interfere with and induce a
22 reduction and limitation on the provision of healthcare services.

23 85. Defendants have engaged in and continues to engage in a practice of systemized
24 extortion and coercion for the purpose of instilling fear among its physicians that any physician who fails
25 to follow Defendants' policies will be made to suffer economic injury in the form of non-payment or
26 inadequate payment for services, punishment, fines or loss of business.

27 86. As a result of Defendants' respective coercive acts and unreasonable policies, the
28 professional relationship between Plaintiff's membership, and its patients have been and continue to be

1 harmed. Plaintiff's membership's property and business interests are severely effected.

2 87. Plaintiff's membership often find itself caught in a proverbial "Catch 22" between
3 patient needs and Defendants' policies and practices. Physicians who provide care in accordance with
4 Defendants' policies, practices, and reimbursement levels risk providing substandard care to their
5 patients. However, physicians who fail to comply with the Defendants' policies and practices and instead
6 provide appropriate services and quality healthcare are penalized.

7 88. Obviously, the patient stands to suffer as a result of Defendants' coercive policies.
8 However, the physician is also harmed.

9 89. The physician who cares for a patient in strict accordance with Defendant policies
10 risks loss of trust, of relationship, of reputation, of profession and also faces an increased risk of liability.
11 Alternatively, Defendants punish physicians who eschew Defendants' policies in order to provide
12 appropriate healthcare services through threats, nonpayment, inadequate payment, delayed payment,
13 denial of access to patients, loss of business and other coercive tactics. Plaintiff's membership is entitled
14 to conduct its business of delivering appropriate healthcare services to patients free of coercion or
15 intimidation.

16 90. Plaintiff's membership must also bear the burden of ever-increasing expenditures
17 of administrative time and expense, all without compensation, to the detriment of Plaintiff's membership
18 and its patients.

19 **VII. GENERAL ALLEGATIONS RELATING TO ALL CLAIMS FOR RELIEF**

20 91. Plaintiff incorporates and realleges the preceding paragraphs as if fully set out herein.

21 92. These claims arise under 18 U.S.C. § 1964(a) of RICO and seek to obtain injunctive
22 and declaratory relief against the defendants for violations of 18 U.S.C. § 1962(b) & (c), for a conspiracy
23 to violate 18 U.S.C. § 1962(b) & (c) in violation of 18 U.S.C. § 1962(d) and for seeking to aid and abet
24 and for aiding and abetting violations of 18 U.S.C. § 1962(b) & (c) within the meaning of 18 U.S.C. § 2.

25 93. The Plaintiff is a "person" within the meaning of 18 U.S.C. § 1964(c).

26 94. At all times relevant hereto, the Plaintiff's membership, and the defendants were
27 and are "persons" within the meaning of 18 U.S.C. § 1961(3).

28 95. The Plaintiff alleges alternative theories of enterprise. An enterprise need not be a

1 specific legal entity but rather may be “any union or group of individuals associated in fact although not a
2 legal entity.” 18 U.S.C. § 1961(4).

3 96. The first theory of enterprise is that the health care provider or delivery system in the
4 United States is an enterprise. The health care delivery system is made up of physicians and other health
5 care providers who must be associated in fact for the system to function. The health care delivery system
6 in the United States has an ascertainable structure separate and apart from the pattern of racketeering
7 conduct. The health care providers must be associated and must function as at least an informal
8 organization to provide health care services to the residents of the United States. The defendants and
9 other for profit health plans have sought to participate in the affairs of the enterprise through the pattern
10 of racketeering activity that the Plaintiff has alleged.

11 97. Alternatively, the Plaintiff alleges that the health care delivery systems within
12 California or every other geographic area in California constitute an enterprise and that the defendants
13 have participated in the affairs of those enterprises which include the classes in this case through a pattern
14 of racketeering activity.

15 98. Under all theories of enterprise alleged by the Plaintiff, the enterprises have an
16 ascertainable structure separate and apart from the pattern of racketeering activity in which the
17 defendants engage.

18 99. With respect to the activities alleged herein, the defendants acted at all times with
19 malice toward the Plaintiff’s membership, intent to engage in the conduct complained of for the benefit of
20 the corporate defendants and with knowledge that such conduct constituted unlawfulness. Such conduct
21 was done with actionable wantonness and reckless disregard for the rights of the plaintiff’s membership,
22 as well as the laws to which the defendants are subject, the same amounting to actionable wantonness.

23 100. With respect to the activities alleged herein, each Blue Cross defendant and Blue
24 Cross health plan aided and abetted each other Blue Cross defendant and Blue Cross health plan, and
25 others not named as defendants in this Complaint, in committing those activities, within the meaning of
26 18 U.S.C. § 2, by seeking to aid and abet and aiding and abetting a scheme to violate 18 U.S.C. §
27 1962(b) & (c). Each Blue Cross defendant also agreed to the operation of the scheme or artifice to
28 deprive Plaintiff’s membership of the right to provide appropriate services free of the exploitation of fear

1 of economic loss and/or loss of business. In furtherance of these agreements, each Blue Cross defendant
2 and Blue Cross health plan also agreed to interfere with, obstruct, delay or affect commerce by
3 attempting to obtain and/or actually obtaining property interests to which the defendant is not entitled
4 through the exploitation of fear of economic loss and/or loss of business. 101. With respect to
5 the overt acts and activities alleged herein, each Blue Cross defendant and Blue Cross health plan
6 conspired with each other Blue Cross defendant and Blue Cross health plan, and with others not named
7 as defendants in this Complaint, to violate 18 U.S.C. § 1962(b) and (c), all in violation of 18 U.S.C. §
8 1962(d). Each Blue Cross defendant and Blue Cross health plan also agreed and conspired with each
9 other Blue Cross defendant and Blue Cross health plan to participate, directly or indirectly, in the
10 fraudulent scheme or artifice alleged herein, to wrongfully retain money owed to Plaintiff's membership,
11 to deprive Plaintiff 's membership of its rights in the physician-patient relationship and in the provision of
12 appropriate healthcare services. Each Blue Cross defendant and Blue Cross health plan also agreed and
13 conspired with each other Blue Cross defendant and Blue Cross health plan to participate, directly or
14 indirectly, in interfering with, obstructing, delaying or affecting commerce by attempting to obtain and/or
15 actually obtaining property interests to which the defendants are not entitled through the exploitation of
16 fear of economic loss and/or loss of business.

17 102. With respect to the activities alleged herein, each PacifiCare defendant and
18 PacifiCare health plan aided and abetted each other PacifiCare defendant and PacifiCare health plan, and
19 others not named as defendants in this Complaint, in committing those activities, within the meaning of
20 18 U.S.C. § 2, by seeking to aid and abet and aiding and abetting a scheme to violate 18 U.S.C. §
21 1962(b) & (c). Each PacifiCare defendant also agreed to the operation of the scheme or artifice to
22 deprive Plaintiff's membership of the right to provide appropriate services free of the exploitation of fear
23 of economic loss and/or loss of business. In furtherance of these agreements, each PacifiCare defendant
24 and PacifiCare health plan also agreed to interfere with, obstruct, delay or affect commerce by attempting
25 to obtain and/or actually obtaining property interests to which the defendant is not entitled through the
26 exploitation of fear of economic loss and/or loss of business. 103. With respect to the

27 overt acts and activities alleged herein, each PacifiCare defendant and PacifiCare health plan conspired
28 with each other PacifiCare defendant and PacifiCare health plan, and with others not named as defendants

1 in this Complaint, to violate 18 U.S.C. § 1962(b) and (c), all in violation of 18 U.S.C. § 1962(d). Each
2 PacifiCare defendant and PacifiCare health plan also agreed and conspired with each other PacifiCare
3 defendant and PacifiCare health plan to participate, directly or indirectly, in the fraudulent scheme or
4 artifice alleged herein, to wrongfully retain money owed to Plaintiff's membership, to deprive Plaintiff's
5 membership of its rights in the physician-patient relationship and in the provision of appropriate
6 healthcare services. Each PacifiCare defendant and PacifiCare health plan also agreed and conspired with
7 each other PacifiCare defendant and PacifiCare health plan to participate, directly or indirectly, in
8 interfering with, obstructing, delaying or affecting commerce by attempting to obtain and/or actually
9 obtaining property interests to which the defendants are not entitled through the exploitation of fear of
10 economic loss and/or loss of business.

11 104. With respect to the activities alleged herein, each Foundation defendant and
12 Foundation health plan aided and abetted each other Foundation defendant and Foundation health plan,
13 and others not named as defendants in this Complaint, in committing those activities, within the meaning
14 of 18 U.S.C. § 2, by seeking to aid and abet and aiding and abetting a scheme to violate 18 U.S.C. §
15 1962(b) & (c). Each Foundation defendant also agreed to the operation of the scheme or artifice to
16 deprive Plaintiff's membership of the right to provide appropriate services free of the exploitation of fear
17 of economic loss and/or loss of business. In furtherance of these agreements, each Foundation defendant
18 and Foundation health plan also agreed to interfere with, obstruct, delay or affect commerce by
19 attempting to obtain and/or actually obtaining property interests to which the defendant is not entitled
20 through the exploitation of fear of economic loss and/or loss of business.

21 105. With respect to
22 the overt acts and activities alleged herein, each Foundation defendant and Foundation health plan
23 conspired with each other Foundation defendant and Foundation health plan, and with others not named
24 as defendants in this Complaint, to violate 18 U.S.C. § 1962(b) and (c), all in violation of 18 U.S.C. §
25 1962(d). Each Foundation defendant and Foundation health plan also agreed and conspired with each
26 other Foundation defendant and Foundation health plan to participate, directly or indirectly, in the
27 fraudulent scheme or artifice alleged herein, to wrongfully retain money owed to Plaintiff's membership,
28 to deprive Plaintiff's membership of its rights in the physician-patient relationship and in the provision of
appropriate healthcare services. Each Foundation defendant and Foundation health plan also agreed and

1 conspired with each other Foundation defendant and Foundation health plan to participate, directly or
2 indirectly, in interfering with, obstructing, delaying or affecting commerce by attempting to obtain and/or
3 actually obtaining property interests to which the defendants are not entitled through the exploitation of
4 fear of economic loss and/or loss of business.

5 106. The numerous predicate acts of mail and wire fraud, extortion, Travel Act, and
6 benefit plan interference violations described herein are part of separate fraudulent and extortionate
7 schemes by Defendants designed to defraud Plaintiff’s membership of money and property interests under
8 false pretenses; to deprive the Plaintiff’s membership of the its rights in the doctor patient relationship and
9 in the delivery of appropriate healthcare services to their patients. The Plaintiff’s membership, as a victim
10 of these unlawful patterns of illegal activity has and continues to suffer losses as a result of these
11 activities.

12 107. In carrying out the overt acts and fraudulent and extortionate scheme described
13 above the defendants engaged in, *inter alia*, conduct in violation of federal laws, including 18 U.S.C. §§
14 1341 and 1343, 18 U.S.C. §§ 1341 and 1346, 18 U.S.C. § 1343 and 1346, 18 U.S.C. § 1951(b)(2), 18
15 U.S.C. § 1952(a), 18 U.S.C. § 1954, and 18 U.S.C. § 1961 *et seq.*

16 108. Section 1961(1) of RICO provides that “‘racketeering activity’ means, any act
17 which is indictable under any of the following provisions of Title 18, United States Code § 1341 (relating
18 to mail fraud), §1343 (relating to wire fraud), § 1346 (relating to scheme or artifice to defraud), § 1951
19 (relating to extortion), [and] section 1952 (relating to racketeering [Travel Act]), § 1954 (interference
20 with an employee welfare benefit plan).” Violations of 18 U.S.C. §§ 1341 and 1346, and 18 U.S.C. §§
21 1343 and 1346.

22 **VIOLATIONS OF 18 U.S.C. § § 1341, 1343 and 1346**

23 109. For the purpose of executing and/or attempting to execute their scheme to defraud
24 and to obtain money by means of false pretenses, representations or promises, as well as to execute
25 and/or attempt to execute their scheme or artifice to deprive another of the intangible right of
26 appropriate services, the defendants, in violation of 18 U.S.C. §§ 1341 and 1346, placed in post offices
27 and/or in authorized repositories for mail matter, matters and things to be sent or delivered by the Postal
28 Service, and received matters and things therefrom and knowingly caused to be delivered by mail those

1 matters and things according to the direction thereon or at the place at which they were directed to be
2 delivered by the person to whom they were addressed.

3 110. For the purpose of executing and/or attempting to execute their scheme to defraud
4 and to obtain money by means of false or fraudulent pretenses, misrepresentations, or promises, as well as
5 to execute and/or attempt to execute their scheme or artifice to deprive Plaintiff's membership of
6 property interests, including Plaintiff's membership's right to compensation for services provided, the
7 intangible property right to provide appropriate healthcare services and Plaintiff's right to conduct its
8 business free of extortionate influence, the defendants, in violation of 18 U.S.C. §§ 1343 and 1346,
9 transmitted in interstate commerce wire, radio and television transmissions advertising their plans.

10 111. In those matters and things sent or delivered by the Postal Service and the other
11 mediums referred to above, defendants falsely and fraudulently represented to the Plaintiff's membership
12 that (i) Defendants' health plan members receive high quality healthcare services from physicians solely
13 responsible for providing all needed medical services based on their independent medical judgment free of
14 improper influence or interference with the physician-patient relationship and (ii) Defendants' physicians
15 are compensated under a system that provides adequate reimbursement to physicians for the provision of
16 the healthcare services Defendants promise their members.

17 112. With respect to their unlawful activities described above, defendants also transmitted
18 funds, contracts and other forms of business communications and transactions in a continuous and
19 uninterrupted flow across state lines and employed the United States mails and interstate wires in
20 violation of 18 U.S.C. §§ 1341, 1343, and 1346.

21 113. The defendants intentionally and knowingly made the material misrepresentations to
22 the Plaintiff's membership referred to above for the purpose of deceiving it and thereby obtaining
23 financial gain. The defendants either knew or recklessly disregarded that the misrepresentations and
24 omissions described above were material. The Plaintiff's membership justifiably relied on the
25 misrepresentations and omissions.

26 114. Defendants have represented to their members and prospective members that
27 Plaintiff's membership will provide healthcare services to Defendants' members without interference with
28 the physician-patient relationship. Yet, these defendants had no intention of not interfering with the

1 physician-patient relationship or in allowing Plaintiff's membership to deliver appropriate healthcare
2 services to plan members. Plaintiff's membership has been deprived of compensation, of their intangible
3 interest in the physician-patient relationship and in their right to deliver appropriate healthcare services as
4 a result of the Defendants' fraudulent conduct involving the United States mails and interstate wires and
5 as a result of the Defendants' fraudulent misrepresentations, omissions, and unlawful conduct.

6 115. Plaintiff's membership has therefore been injured in its business or property by the
7 Defendants' overt acts and racketeering activities in an amount to be determined at trial.

8 **VIOLATIONS OF 18 U.S.C. § 1951(b)(2)**

9 116. During the relevant times, and in furtherance of and for the purpose of executing
10 and/or attempting to execute the above discussed scheme and artifice to defraud or deprive, the
11 defendants and others not named as defendants in this Complaint on numerous occasions aided and
12 abetted and conspired to and attempted to and did interfere with, obstruct, delay or affect "commerce" as
13 the term is defined in 18 U.S.C. §1951 and by "extortion" as defined in 18 U.S.C. §1951(b)(2). The
14 defendants unlawfully attempted to and/or did induce Plaintiff's membership to part with various property
15 interests to which Defendants are not entitled, including the intangible property right to conduct their
16 business free of extortionate influence and their intangible property right and professional obligation to
17 provide its patients appropriate services without the Defendants' exploitation of fear of economic loss
18 and/or loss of business, in violation of 18 U.S.C. §1951(b)(2).

19 117. In furtherance of the scheme or artifice to defraud and obtain money by false
20 pretenses and the scheme or artifice to deprive the Plaintiff's membership of its intangible property right
21 to conduct its business free of extortionate influence and its intangible property right and professional
22 obligation to provide its patients services without the Defendants' exploitation of fear of economic loss
23 and/or loss of business, the Blue Cross, PacifiCare and Foundation defendants agreed and conspired
24 amongst themselves, with each other and with others not named as defendants to participate, directly or
25 indirectly, in interfering with, obstructing, delaying or affecting commerce by attempting to obtain and/or
26 actually obtaining property interests to which these defendants are not entitled through the exploitation of
27 physicians' fear of economic loss and/or loss of business.

28 118. The Defendants' overt acts and fraudulent and extortionate racketeering activity

1 have and continue to defraud the Plaintiff's membership, have and continue to unlawfully influence and
2 interfere with the physician-patient relationship, and have and continue to attempt to and/or deprive the
3 Plaintiff's membership of its intangible right to conduct its business free of extortionate influence and its
4 intangible property right and professional obligation to provide their patients appropriate services
5 without the Defendants' exploitation of fear of economic loss and/or loss of business.

6 119. The Plaintiff's membership has, therefore, been injured in its business or property by
7 the Defendants' overt acts and racketeering activities in amounts to be determined at trial.

8 **VIOLATIONS OF 18 U.S.C. § 1952(a)**

9 120. During the relevant times, and in furtherance of and for the purpose of executing the
10 above-described scheme and artifice to defraud the Plaintiff's membership, the defendants on numerous
11 occasions did travel and caused others not named as defendants in this Complaint to travel in interstate
12 commerce in order to attempt to and to commit mail fraud, wire fraud, and extortion in violation of the
13 Travel Act, 18 U.S.C. §1952(a).

14 121. The Defendants' overt acts and fraudulent and extortionate racketeering activity
15 have and continue to defraud the Plaintiff's membership of money, have unlawfully influenced and
16 interfered and continue to unlawfully influence and interfere with the physician-patient relationship, and
17 have attempted to and/or deprived and continue to attempt to and/or deprive the Plaintiff's membership
18 of their intangible right to conduct its business free of extortionate influence and its intangible property
19 right and professional obligation to provide their patients appropriate services without the Defendants'
20 exploitation of fear of economic loss and/or loss of business.

21 122. The Plaintiff's membership has, therefore, been injured in its business or property by
22 the Defendants' overt acts and racketeering activities in amounts to be determined at trial.

23 123. The defendants have engaged in a "pattern of racketeering activity," as defined in
24 §1961(5) of RICO, by committing and/or conspiring to or aiding and abetting a scheme for at least two
25 such acts of racketeering activity, as described above, within the past ten years. Each such act of
26 racketeering activity was related, had similar purposes, involved the same or similar participants and
27 methods of commission, and had similar results impacting upon similar victims, including the Plaintiff's
28 membership.

1 124. The multiple acts of racketeering activity committed and/or conspired to or aided
2 and abetted by defendants, as described above, were related to each other and amount to and pose a
3 threat of continued racketeering activity, and, therefore, constitute a “pattern of racketeering activity,” as
4 defined in 18 U.S.C. §1961(5).

VIOLATIONS OF 18 U.S.C. § 1954

6 125. During the relevant times, and in furtherance of and for the purpose of executing the
7 above-described scheme and artifice to defraud the plaintiff’s membership, the defendants were agents or
8 administrators of health benefits provided by Defendants through various employee welfare benefit plans
9 as defined under 18 U.S.C. § 1954.

10 126. As agents and/or administrators of said health benefits and in other capacities,
11 Defendants, by their overt acts and fraudulent and extortionate racketeering activity, have and continue to
12 unlawfully interfere with the health benefits portion of said employee welfare benefit plants in violation of
13 18 U.S.C. § 1954.

14 127. Defendants have and continue to act to offer, solicit and accept the monetary
15 benefits of the above-described employee welfare benefit plans through their conduct of unlawful,
16 extortionate and fraudulent acts committed against Plaintiff’s membership, in violation of 18 U.S.C. §
17 1954.

18 128. The plaintiff’s membership, therefore, has been injured in its business or property as
19 a result of Defendants’ overt acts and racketeering activities in amounts to be determined at trial.

20 129. The defendants have engaged in a “pattern of racketeering activity,” as defined in §
21 1961(5) of RICO, by committing and/or conspiring to or aiding and abetting a scheme for at least two
22 such acts of racketeering activity, as described above, within the past ten years. Each such act of
23 racketeering activity was related, had similar purposes, involved the same or similar participants and
24 methods of commission, and had similar results impacting upon similar victims, including the plaintiff’s
25 membership.

26 130. The multiple acts of racketeering activity committed and/or conspired to or aided
27 and abetted by Defendants, as described above, were related to each other and amount to and pose a
28 threat of continued racketeering activity, and, therefore, constitute a “pattern of racketeering activity,” as

1 defined in 18 U.S.C. § 1961(5).

2 **COUNT I**

3 **(VIOLATIONS OF RICO 18 U.S.C. § 1962(b))**

4 131. Plaintiff incorporates and realleges the preceding paragraphs as if fully set out herein.

5 132. Section 1962(b) of RICO provides that, “it shall be unlawful for any person through
6 a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly
7 or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which
8 affect, interstate or foreign commerce.”

9 133. 18 U.S.C. § 1961(4) of RICO defines “enterprise” to include “any individual,
10 partnership, corporation, association, or other legal entity, and any union or group of individuals
11 associated in fact although not a legal entity.” 18 U.S.C. § 1961(4).

12 134. The first theory of enterprise is that the health care provider or delivery system in
13 the United States is an enterprise. The health care delivery system is made up of physicians and other
14 health care providers who must be associated in fact for the system to function. The health care delivery
15 system in the United States has an ascertainable structure separate and apart from the pattern of
16 racketeering conduct. The health care providers must be associated and must function as at least an
17 informal organization to provide health care services to the residents of the United States. The
18 defendants and other for profit health plans have sought to participate in the affairs of the enterprise
19 through the pattern of racketeering activity that the Plaintiff has alleged.

20 135. Alternatively, the Plaintiff alleges that the health care delivery system within
21 California or every other geographic area in California constitutes an enterprise and that the defendants
22 have participated in the affairs of those enterprises which include the classes in this case through a pattern
23 of racketeering activity.

24 136. Under all theories of enterprise alleged by the Plaintiff, the enterprises have an
25 ascertainable structure separate and apart from the pattern of racketeering activity in which the
26 defendants engage.

27 137. With respect to the allegations contained herein, the Defendants have engaged in a
28 “pattern of racketeering activity”, as defined in § 1961(5) of RICO, by committing and/or conspiring to

1 or aiding and abetting a scheme for at least two such acts of racketeering activity, as described above,
2 within the past ten years. Each such act of racketeering activity was related, has similar purposes,
3 involved the same or similar participants and methods of commission, and had similar results impacting
4 upon similar victims, including the Plaintiff's membership.

5 138. The multiple acts of racketeering activity committed and/or conspired to or aided
6 and abetted by the Defendants, were related to each other and amount to and pose a threat of continued
7 racketeering activity, and therefore, constitute a "pattern of racketeering activity", as defined in 18
8 U.S.C. § 1961(5).

9 139. With respect to the activities alleged herein, the Defendants have acted at all times
10 with malice toward Plaintiff's membership in their efforts to acquire and maintain an interest in an
11 enterprise(s) which affects interstate commerce.

12 140. The Defendants' acts amount to an overt and extortionate scheme to acquire or
13 maintain an interest in or control of, an enterprise(s) which affect interstate commerce. The Defendants'
14 acts amount to an overt and extortionate scheme to deprive Plaintiff's membership of business or
15 property rights, including the right to deliver appropriate healthcare services without fear of reprisals or
16 economic and/or business loss, have and continue to constitute a pattern of illegal activity that has and
17 continues to inflict harm upon the plaintiff's membership.

18 141. In carrying out the overt acts and fraudulent extortionate scheme described above,
19 the defendants have engaged in conduct in violation of federal laws, including *inter alia* 18 U.S.C. §§
20 1341 and 1343, 18 U.S.C. § § 1341 and 1346, 18 U.S.C. §§ 1343 and 1346, 18 U.S.C. § 1951(b)(2), 18
21 U.S.C. § 1952(a), 18 U.S.C. § 1954 and 18 U.S.C. § 1961, et seq. (RICO) as set forth more fully above.

22 142. Therefore, defendants have each engaged in "racketeering activity which is defined
23 in § 1961(1) of RICO to mean "any act which is indictable under any of the following provisions of Title
24 18, United States Code § 1341 (relating to mail fraud), § 1343 (relating to wire fraud) § 1951 (relating to
25 extortion), § 1952 (relating to racketeering [Travel Act]), [and] § 1954 (interference with an employee
26 welfare benefit plan).

27 143. As a proximate result of Defendants' unlawful pattern of illegal extortionate
28 conduct as described above, Plaintiff's membership has been injured in its business or property as

1 described above.

2 **COUNT II**

3 **(VIOLATIONS OF RICO 18 U.S.C. § 1962(c))**

4 144. Plaintiff incorporates and realleges the preceding paragraphs as if fully set out herein.

5
6 145. Section 1962(c) of RICO provides that it “shall be unlawful for any person
7 employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or
8 foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s
9 affairs through a pattern of racketeering activity or collection of unlawful debt.”

10 146. 18 U.S.C. § 1961(4) of RICO defines “enterprise” to include “any individual,
11 partnership, corporation, association, or other legal entity, and any union or group of individuals
12 associated in fact although not a legal entity.” 18 U.S.C. § 1961(4).

13 147. The first theory of enterprise is that the health care provider or delivery system in
14 the United States is an enterprise. The health care delivery system is made up of physicians and other
15 health care providers who must be associated in fact for the system to function. The health care delivery
16 system in the United States has an ascertainable structure separate and apart from the pattern of
17 racketeering conduct. The health care providers must be associated and must function as at least an
18 informal organization to provide health care services to the residents of the United States. The
19 defendants and other for profit health plans have sought to participate in the affairs of the enterprise
20 through the pattern of racketeering activity that the Plaintiff has alleged.

21 148. Alternatively, the Plaintiff alleges that the health care delivery system within
22 California or every geographic area in California constitutes an enterprise and that the defendants have
23 participated in the affairs of those enterprises which include the classes in this case through a pattern of
24 racketeering activity.

25 149. Under all theories of enterprise alleged by the Plaintiff, the enterprises have an
26 ascertainable structure separate and apart from the pattern of racketeering activity in which the
27 defendants engage.

28 150. With respect to the allegations contained herein, the Defendants have engaged in a

1 “pattern of racketeering activity”, as defined in § 1961(5) of RICO, by committing and/or conspiring to
2 or aiding and abetting a scheme for at least two such acts of racketeering activity, as described above,
3 within the past ten years. Each such act of racketeering activity was related, has similar purposes,
4 involved the same or similar participants and methods of commission, and had similar results impacting
5 upon similar victims, including the Plaintiff’s membership.

6 151. The multiple acts of racketeering activity committed and/or conspired to or aided
7 and abetted by the Defendants, as described above, were related to each other and amount to and pose a
8 threat of continued racketeering activity, and therefore, constitute a “pattern of racketeering activity”, as
9 defined in 18 U.S.C. § 1961(5).

10 152. With respect to the activities alleged herein, the Defendants have acted at all times
11 with malice toward the class, in their participation and control over the enterprises of the Plaintiff’s
12 membership and the healthcare reimbursement system. The Defendants have exercised influence and
13 power over these enterprises with the intent to engage in the conduct complained of for the benefit of
14 itself and with knowledge that such conduct constituted unlawfulness. Such conduct was done with
15 reckless disregard for the rights of Plaintiff’s membership as well as the laws to which the defendants are
16 subject, the same amounting to actionable wantonness.

17 153. The Defendants’ acts amount to an overt and extortionate scheme to exercise
18 control over Plaintiff’s membership by withholding payments, by threatening to withhold payments due
19 for services provided and/or other coercive activities. The Defendants’ respective acts amount to an
20 overt and extortionate scheme to deprive Plaintiff’s membership of business or property rights, including
21 the right to deliver appropriate healthcare services without fear of reprisals or economic and/or business
22 loss, have and continue to constitute a pattern of illegal activity that has and continues to inflict harm
23 upon the Plaintiff’s membership.

24 154. In carrying out the overt acts and fraudulent extortionate scheme described above,
25 the Defendants have engaged in conduct in violation of federal laws, including inter alia 18 U.S.C. §§
26 1341 and 1343, 18 U.S.C. § § 1341 and 1346, 18 U.S.C. §§ 1343 and 1346, 18 U.S.C. § 1951(b)(2), 18
27 U.S.C. § 1952(a), 18 U.S.C. § 1954 and 18 U.S.C. § 1961, et seq. (RICO) as set forth more fully above.

28 155. Therefore, defendants have each engaged in “racketeering activity which is defined

1 in § 1961(1) of RICO to mean “any act which is indictable under any of the following provisions of Title
2 18, United States Code § 1341 (relating to mail fraud), § 1343 (relating to wire fraud) § 1951 (relating to
3 extortion), § 1952 (relating to racketeering [Travel Act]), [and] § 1954 (interference with an employee
4 welfare benefit plan).”

5 156. As a proximate result of Defendants’ unlawful pattern of illegal extortionate
6 conduct as described above, Plaintiff has been injured in its business or property as described above.

7
8 **COUNT III**

9 **(VIOLATIONS OF RICO 18 U.S.C. § 1962(d) BY**
10 **CONSPIRING TO VIOLATE 18 U.S.C. § 1962(b) and (c))**

11 157. Plaintiff incorporates and realleges the previous paragraphs as if fully set out herein.

12 158. This claim for relief arises under 18 U.S.C. § 1964(a) of RICO and seeks to obtain
13 injunctive and declaratory relief from the defendants activities described herein for violations of 18 U.S.C.
14 § 1962(d) for their conspiring to violate 18 U.S.C. § 1962(b) and (c).

15 159. Section 1962(d) of RICO provides that it “shall be unlawful for any person to
16 conspire to violate any of the provisions of subsection (b), or (c) of this section.”

17 160. Section 1961(4) of RICO defines “enterprise” to include “any individual,
18 partnership, corporation, association or other legal entity, and any union or group of individuals
19 associated in fact although not a legal entity.”

20 161. The first theory of enterprise is that the health care provider or delivery system in
21 the United States is an enterprise. The health care delivery system is made up of physicians and other
22 health care providers who must be associated in fact for the system to function. The health care delivery
23 system in the United States has an ascertainable structure separate and apart from the pattern of
24 racketeering conduct. The health care providers must be associated and must function as at least an
25 informal organization to provide health care services to the residents of the United States. The
26 defendants and other for profit health plans have sought to participate in the affairs of the enterprise
27 through the pattern of racketeering activity that the Plaintiff has alleged.

28 162. Alternatively, the Plaintiff alleges that the health care delivery system within

1 California or every geographic area in California constitutes an enterprise and that the defendants have
2 participated in the affairs of those enterprises which include the classes in this case through a pattern of
3 racketeering activity.

4 163. Under all theories of enterprise alleged by the Plaintiff, the enterprises have an
5 ascertainable structure separate and apart from the pattern of racketeering activity in which the
6 defendants engage.

7 164. Defendants have violated § 1962(d) by conspiring to violate 18 U.S.C. § 1962(b).
8 The object of this conspiracy has been and is to acquire or maintain an interest in or control over the
9 affairs of the § 1962(b) enterprises described previously through a pattern of racketeering activity

10 165. Defendants have also violated § 1962(d) by conspiring to violate 18 U.S.C.
11 §1962(b). The object of this conspiracy has been and is to conduct or participate in, directly or indirectly,
12 the conduct of the affairs of the § 1962(c) Enterprises described previously through a pattern of
13 racketeering activity.

14 166. Defendants, their subsidiaries, employees, and multiple agents have been joined in
15 the conspiracies to violate 18 U.S.C. §1962(b) and (c) in violation of § 1962(d) by various third parties
16 not named as defendants herein, such as those persons or entities providing support for Defendants'
17 acquisition of other PPOs, HMOs, and POSs.

18 167. As demonstrated in detail above, the defendants co-conspirators have engaged in
19 numerous overt and predicate fraudulent and extortionate racketeering acts in furtherance of the
20 conspiracy, including material misrepresentations and omissions designed to fraudulently induce the
21 Plaintiff's membership to agree to provide healthcare services to Defendants' members and failure to
22 disclose numerous internal systemic fraudulent and extortionate policies and practices designed to
23 defraud the Plaintiff's membership of money, to unlawfully influence and interfere with the physician-
24 patient relationship and to deprive Plaintiff's membership of its intangible property right and professional
25 obligation to provide its patients appropriate healthcare services without the Defendants' exploitation of
26 fear of economic loss and/or loss of business.

27 168. The defendants co-conspirators' pattern of fraudulent and extortionate racketeering
28 acts include, but are not limited to providing inadequate payment, withholding payments, threatening to

1 withhold payments due for services provided, adoption of internal policies and practices by the co-
2 conspirators that are: (i) specifically designed to interfere with Plaintiff's membership's independent
3 medical judgment and the delivery of appropriate medical care, thereby unlawfully interfering with the
4 physician-patient professional relationship; (2) specifically designed to exploit fear of economic loss
5 and/or loss of business in attempting to extort Plaintiff's membership of compensation and its ability to
6 conduct the practice of medicine free of extortionate conduct.

7 169. The nature of the above described defendants co-conspirators' acts, material
8 misrepresentations, and omissions in furtherance of the conspiracy gives rise to an inference that they not
9 only agreed to the objective of an 18 U.S.C. § 1962(d) violation of RICO by conspiring to violate 18
10 U.S.C. § 1962(b) and (c), but they were aware that their ongoing fraudulent and extortionate acts have
11 been and are part of an overall pattern of racketeering activity.

12 170. As a direct and proximate result of the Defendants' overt acts and predicate acts in
13 furtherance of violating 18 U.S.C. § 1962(d) by conspiring to violate 18 U.S.C. §§ 1962(b) and (c), the
14 Plaintiff's membership has been and is continuing to be injured in its business or property as set forth
15 more fully above. Pursuant to 18 U.S.C. § 1964(c) of RICO, the Plaintiff is entitled, therefore, to bring
16 this action on behalf of itself, and its membership and to obtain injunctive and declaratory relief, as well as
17 the costs of bringing this suit and attorneys' fees.

18 171. The defendants have sought to and have engaged in the commission of and continue
19 to commit overt acts and the following described unlawful racketeering predicate acts that have and
20 continue to generate income or proceeds received by defendants from such pattern of racketeering
21 activity, including:

- 22 a. Multiple instances of mail and wire fraud violations of 18
23 U.S.C. §§ 1341 and 1343;
- 24 b. Multiple instances of mail fraud violations of 18 U.S.C. §§ 1341
25 and 1346;
- 26 c. Multiple instances of wire fraud violations of 18 U.S.C. §§
27 1343 and 1346;
- 28 d. Multiple instances of extortion violations of 18 U.S.C. §
1951(b)(2);
- e. Multiple instances of travel in interstate commerce to attempt to
and to actually commit mail fraud, wire fraud, and extortion, in

1 violation of 18 U.S.C. § 1952(a);

2 f. Multiple instances of offers, solicitations and acceptance of
3 money in their activity to influence and interfere with employee
4 welfare benefit plans in violation of 18 U.S.C. § 1954.

5 172. The Defendants' violations of the above federal laws and the effects thereof detailed
6 above are continuing and will continue unless injunctive relief prohibiting the Defendants' illegal acts
7 constituting a pattern of racketeering activity is fashioned and imposed by the Court.

8 **COUNT IV**

9 **(RICO VIOLATIONS OF 18 U.S.C. § 2**
10 **BY SEEKING TO AND AIDING AND ABETTING**
11 **A SCHEME TO VIOLATE 18 U.S.C. § 1962(b) and (c))**

12 173. Plaintiff incorporates and realleges the preceding paragraphs as if fully set out
13 herein.

14 174. This claim for relief arises under 18 U.S.C. § 1964(c) of RICO providing for
15 injunctive and declaratory relief for Defendants' violations of 18 U.S.C. § 2 by seeking to aid and abet
16 and aiding and abetting a scheme to violate 18 U.S.C. § 1962(b) and (c).

17 175. The first theory of enterprise is that the health care provider or delivery system in
18 the United States is an enterprise. The health care delivery system is made up of physicians and other
19 health care providers who must be associated in fact for the system to function. The health care delivery
20 system in the United States has an ascertainable structure separate and apart from the pattern of
21 racketeering conduct. The health care providers must be associated and must function as at least an
22 informal organization to provide health care services to the residents of the United States. The
23 defendants and other for profit health plans have sought to participate in the affairs of the enterprise
24 through the pattern of racketeering activity that the Plaintiff has alleged.

25 176. Alternatively, the Plaintiff alleges that the health care delivery system within
26 California or every geographic area in California constitutes an enterprise and that the defendants have
27 participated in the affairs of those enterprises which include the classes in this case through a pattern of
28 racketeering activity.

177. Under all theories of enterprise alleged by the Plaintiff, the enterprises have an
ascertainable structure separate and apart from the pattern of racketeering activity in which the

1 defendants engage.

2 178. With respect to the Defendants' violation of 18 U.S.C. § 2, each defendant and their
3 respective health plans have sought to, and have aided and abetted, each other respectively, and others
4 not named as defendants in this Complaint, in the commission of those violations of 18 U.S.C. § 2 by
5 seeking to and aiding and abetting a scheme to violate 18 U.S.C. § 1962(b) and (c).

6 179. Each Blue Cross defendant and Blue Cross health plan, each PacifiCare defendant
7 and PacifiCare health plan, and each Foundation defendant and Foundation health plan has aided and
8 abetted, and has a shared intent to aid and abet each other Blue Cross defendant and Blue Cross health
9 plan, each PacifiCare defendant and PacifiCare health plan, and each Foundation defendant and
10 Foundation health plan respectively, in attempting to derive, and in actually deriving substantial income
11 and proceeds through the above described pattern of racketeering activity. Each Blue Cross defendant
12 and Blue Cross health plan, each PacifiCare defendant and PacifiCare health plan, and each Foundation
13 defendant and Foundation health plan respectively has aided and abetted, and has a shared intent to aid
14 and abet, each other Blue Cross defendant and Blue Cross health plan, each PacifiCare defendant and
15 PacifiCare health plan, and each Foundation defendant and Foundation health plan respectively in
16 acquiring or maintaining an interest or control of the § 1962(b) Enterprise described above through a
17 pattern of racketeering activity, in violation of 18 U.S.C. § 2 and 18 U.S.C. § 1962(b). Each Blue Cross
18 defendant and Blue Cross health plan, each PacifiCare defendant and PacifiCare health plan, and each
19 Foundation defendant and Foundation health plan respectively, has further aided and abetted, and has a
20 shared intent to aid and abet, each other defendant and health plan respectively, in conducting or
21 participating in the conduct of the affairs of the Section 1962(c) Enterprise described above through a
22 pattern of racketeering activity, in violation of 18 U.S.C. § 2 and 18 U.S.C. § 1962(c).

23 180. As a direct and proximate result of Defendants' RICO violation of 18 U.S.C. § 2 by
24 seeking to and aiding and abetting a scheme to violate 18 U.S.C. § 1962(b) and (c), the Plaintiff's
25 membership has been and is continuing to be injured in its business or property. Pursuant to 18 U.S.C. §
26 1964(c) of RICO, the Plaintiff is entitled, therefore, to bring this action on behalf of itself and its
27 membership, and to obtain injunctive and declaratory relief, as well as the costs of bringing this suit and
28 attorneys' fees.

1 181. The defendants have attempted to and have aided and abetted and have committed
2 and continue to commit the following unlawful racketeering predicate acts. Through these unlawful
3 racketeering predicate acts, defendants have attempted to generate, and have continued to generate,
4 income or proceeds, including:

- 5 a. Multiple instances of mail and wire fraud violations of 18
6 U.S.C. §§ 1341 and 1343;
- 7 b. Multiple instances of mail fraud violations of 18 U.S.C. §§
8 1341 and 1346;
- 9 c. Multiple instances of wire fraud violations of 18 U.S.C. §§
10 1343 and 1346;
- 11 d. Multiple instances of extortion violations of 18 U.S.C. §
12 1951(b)(2);
- 13 e. Multiple instances of travel in interstate commerce to
14 attempt to and to actually commit mail fraud, wire fraud,
15 and extortion, in violation of 18 U.S.C. § 1952(a); and
- 16 f. Multiple instances of offers, solicitations and acceptance of
17 money in their activity to influence and interfere with
18 employee welfare benefit plans in violation of 18 U.S.C. §
19 1954.

20 182. The Defendants' violations of the above federal laws and the effects thereof
21 detailed above are continuing and will continue unless injunctive relief prohibiting the Defendants' illegal
22 acts constituting a pattern of racketeering activity is fashioned and imposed by the Court.

23 183. By reason of each Defendants' violations of 18 U.S.C. § 1962(d) and 18 U.S.C. §
24 2 by conspiring to violate 18 U.S.C. §§ 1962(b) and (c), and seeking to and aiding and abetting a scheme
25 to violate 18 U.S.C. §§ 1962(b) and (c), the Plaintiff is entitled to injunctive and declaratory relief
26 pursuant to 18 U.S.C. § 1964(c).

PRAYER FOR RELIEF

27 WHEREFORE, the Plaintiff prays for judgment in its favor and against the defendants in
28 each claim for relief, as well as general and special relief as follows:

 A. A declaration regarding Defendants' 1) right to usurp the Plaintiff's
members' ability and duty to make decisions regarding patient needs, based on professional medical
judgment and the professional standard of care, and 2) to prevent Plaintiff's members from providing the
appropriate medical care.

1 B. An injunction enjoining defendants from pursuing the fraudulent and extortionate
2 policies and practices complained of herein, including but not limited to prohibiting the payment of
3 reimbursement which is not adequate to cover the costs of delivering the health care services Defendants
4 have promised Defendants' members;

5 C. An injunction enjoining Defendants from utilizing or enforcing any current or
6 proposed provider contracts or policies which compromise patient care or are otherwise unfair or
7 unreasonable. These contracts and policies may include, but are not limited to, the following:

- 8 (1) The lack of a sound actuarial basis for
9 current or proposed reimbursement which
10 does not adequately cover the costs of
11 benefits to be provided under the contract or
 concerns over the methodology for
 determining the payment for a health care
 service;
- 12 (2) The scope of and amount of payment for all
13 services to be provided under the contract;
- 14 (3) The definition of medical necessity, how it is
15 determined, and other conditions of
 coverage;
- 16 (4) Utilization review criteria and procedures,
17 including, but not limited to, all matters
 relating to prior authorization or physician
 profiling;
- 18 (5) Clinical practice guidelines and/or medical
19 management policies;
- 20 (6) Drug formularies and standards and
21 procedures for prescribing off-formulary
 drugs;
- 22 (7) Patient referral standards, including those
23 applicable to out-of-network referrals;
- 24 (8) Quality assurance programs and audits;
- 25 (9) Any matters that arise after a contract has
26 been executed, such as the need for
 increased reimbursement for new technology
 and pharmaceutical therapeutics;
- 27 (10) The delegation of undefined or unreasonable
28 risk, including, but not limited to, the failure
 to disclose information to the physician that
 enables the physician to be informed
 regarding the financial risk assumed under

1 the contract.

2 D. Costs and reimbursements for this action, including the cost of the suit and
3 reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c), and reimbursement of expenses and expert
4 fees in amounts to be determined by the Court; and

5 E. Granting such other and further relief as this Honorable Court deems to be just
6 and appropriate.

7 **JURY DEMAND**

8 The Plaintiff demands a trial by jury of all issues so triable.

9 Date: May 25, 2000

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