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IN THE UNITED STATES DISTRICT COURT

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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12 UNITED STATES, STATE OF
CALIFORNIA, STATE OF COLORADO,
13 STATE OF GEORGIA, STATE OF HAWAII,
STATE OF MARYLAND,
14 COMMONWEALTH OF VIRGINIA, STATE
OF WASHINGTON *ex rel.* JEFFREY
15 MAZIK,

2:19-cv-0559 JAM KJN

**THE PLAINTIFF STATES’ NOTICE OF
ELECTION TO DECLINE
INTERVENTION AS TO FIRST
AMENDED COMPLAINT**

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Plaintiffs,

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v.

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19 KAISER FOUNDATION HEALTH PLAN,
INC., KAISER FOUNDATION HOSPITALS,
20 INC., and THE PERMANENTE MEDICAL
GROUPS,

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Defendants.

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Pursuant to the California False Claims Act, Cal. Gov’t Code § 12652(c)(6)(B), the State of California notifies this Court of its decision not to intervene as to the allegations in relator’s First Amended Complaint in this action. Pursuant to their respective state false claims acts, the states of Colorado, Georgia, Hawaii, Maryland, Virginia, and Washington (collectively, with California, the “Plaintiff States”) notify this court of their decisions not to intervene as to the allegations in relator’s

1 First Amended Complaint. The Plaintiff States have authorized Kevin Davis, Deputy Attorney
2 General for the State of California, to file this Notice on behalf of the Plaintiff States.

3 Additionally, the Maryland False Health Claims Act provides that “[i]f the State does not
4 elect to intervene and proceed with the action . . . before unsealing the complaint, the court shall
5 dismiss the action.” Md. Code Ann., Health Gen, § 2-604 (a)(7). Accordingly, the State of
6 Maryland requests that all claims asserted on behalf of the State of Maryland be dismissed without
7 prejudice.

8 Although the Plaintiff States decline to intervene, we respectfully refer the Court to Cal.
9 Gov’t Code § 12652(c)(1) and the Plaintiff States’ respective false claims acts, with the exception
10 of the Maryland False Health Claims Act, which allow the relator to maintain this action in the
11 name of the Plaintiff States; providing, however, that the action may be dismissed only if the court
12 and the Plaintiff States give written consent to the dismissal and their reasons for consenting. The
13 United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language,
14 the Federal False Claims Act, after which the Plaintiff States’ false claims acts are patterned,
15 provides the United States with the right only to a hearing when it objects to a settlement or
16 dismissal of the action. *U.S. ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995);
17 *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994). Therefore, the
18 Plaintiff States (other than Maryland) request that, should either the relator or the defendants
19 propose that this action be dismissed, settled, or otherwise discontinued, this Court provide the
20 Plaintiff States with an opportunity to be heard before ruling or granting its approval.

21 Furthermore, the Plaintiff States’ respective false claims acts permit the Plaintiff States to be
22 served with copies of all pleadings filed in the action (e.g., Cal. Gov’t Code § 12652(f)(1)). The
23 Plaintiff States (other than Maryland) reserve their right to order any deposition transcripts and to
24 intervene in this action at a later date as permitted by their respective state false claims acts. The
25 Plaintiff States (other than Maryland) also reserve their right to seek the dismissal of the relator’s
26 action or claim pursuant to the Plaintiff States’ respective false claims acts (e.g., Cal. Gov’t Code
27 § 12652(e)(2)(A)) and to request a stay of discovery pursuant to the Plaintiff States’ respective false
28 claims acts (e.g., Cal. Gov’t Code § 12652(h)).

1 Finally, the Plaintiff States request that the relator's First Amended Complaint be unsealed
2 and that the seal be lifted as to all matters subsequently occurring in this action. The Plaintiff States
3 request that all other papers on file under seal in this action remain under seal because in discussing
4 the content and extent of the Plaintiff States' investigations, such papers are provided by law to the
5 Court alone for the sole purpose of evaluating whether the seal and time for making an election to
6 intervene should be extended.

7 A proposed order accompanies this notice.

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9 Dated: December 6, 2021

Respectfully submitted,

10 ROB BONTA
11 Attorney General of California

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13 */s/ Kevin C. Davis*

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17 *Attorneys for Plaintiff State of California*
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