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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 UNITED STATES OF AMERICA ex rel.
21 RONDA OSINEK,

22 Plaintiff,

23 v.

24 KAISER PERMANENTE,

25 Defendant.

) Case No. 3:13-cv-03891-EMC

) **UNITED STATES' UNOPPOSED EX PARTE**
) **MOTION TO CONSOLIDATE CASES;**
) ~~**PROPOSED**~~ **ORDER**

) **FILED UNDER SEAL**

26
27 (captions continued on next page)

1 UNITED STATES OF AMERICA ex rel.) Case No. 3:16-cv-01558-EMC
 2 NASER AREFI, AJITH KUMAR, and PRIME)
 HEALTHCARE SERVICES,)
 3 Plaintiffs,)
 4 v.)
 5 KAISER FOUNDATION HEALTH PLAN,)
 INC., et al.,)
 6 Defendants.)
 7

**UNITED STATES' UNOPPOSED EX PARTE
 MOTION TO CONSOLIDATE CASES;
~~PROPOSED~~ ORDER**

FILED UNDER SEAL

8 UNITED STATES OF AMERICA ex rel.) Case No. 3:16-cv-05337-EMC
 9 MARCIA STEIN AND RODOLFO BONE,)
 10 Plaintiffs,)
 11 v.)
 12 KAISER FOUNDATION HEALTH PLAN,)
 INC., et al.,)
 13 Defendants.)
 14

**UNITED STATES' UNOPPOSED EX PARTE
 MOTION TO CONSOLIDATE CASES;
~~PROPOSED~~ ORDER**

FILED UNDER SEAL

15 UNITED STATES OF AMERICA and STATE) Case No. 3:18-cv-01347-EMC
 16 OF CALIFORNIA ex rel. GLORYANNE)
 17 BRYANT and VICTORIA M. HERNANDEZ,)
 Plaintiffs,)
 18 v.)
 19 KAISER PERMANENTE, INC., et al.,)
 20 Defendants.)
 21

**UNITED STATES' UNOPPOSED EX PARTE
 MOTION TO CONSOLIDATE CASES;
~~PROPOSED~~ ORDER**

FILED UNDER SEAL

(captions continued on next page)

1 UNITED STATES OF AMERICA and STATE)
 2 OF CALIFORNIA ex rel. MICHAEL)
 BICOCCA,)
 3 Plaintiff,)
 4 v.)
 5 PERMANENTE MEDICAL GROUP, INC., et)
 al.,)
 6 Defendants.)
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Case No. 3:21-cv-03124-EMC
**UNITED STATES' UNOPPOSED EX PARTE
 MOTION TO CONSOLIDATE CASES;
~~PROPOSED~~ ORDER**
FILED UNDER SEAL

8 UNITED STATES OF AMERICA ex rel.)
 9 JAMES M. TAYLOR,)
 10 Plaintiff,)
 11 v.)
 12 KAISER PERMANENTE, INC., et al.,)
 13 Defendants.)
 14

Case No. 3:21-cv-03894-EMC
**UNITED STATES' UNOPPOSED EX PARTE
 MOTION TO CONSOLIDATE CASES;
~~PROPOSED~~ ORDER**
FILED UNDER SEAL

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1 **INTRODUCTION**

2 Pursuant to Federal Rule of Civil Procedure 42(a), the United States respectfully requests that the
3 Court consolidate the following six qui tam actions, which are all designated as related:

- 4 1. *United States ex rel. Osinek v. Kaiser Permanente*, No. 3:13-cv-03891-EMC (N.D. Cal.)
5 (UNDER SEAL);
6 2. *United States ex rel. Arefi v. Kaiser Foundation Health Plan, Inc.*, No. 3:16-cv-01558-
7 EMC (N.D. Cal.) (UNDER SEAL);
8 3. *United States ex rel. Stein v. Kaiser Foundation Health Plan, Inc.*, No. 3:16-cv-05337-
9 EMC (N.D. Cal.) (UNDER SEAL);
10 4. *United States ex rel. Bryant v. Kaiser Permanente*, No. 3:18-cv-1347-EMC (N.D. Cal.)
11 (UNDER SEAL);
12 5. *United States ex rel. Bicocca v. Permanente Medical Group, Inc.*, No. 3:21-cv-03124-
13 EMC (N.D. Cal.) (UNDER SEAL); and
14 6. *United States ex rel. Taylor v. Kaiser Permanente*, No. 3:21-cv-03894-EMC (N.D. Cal.)
15 (UNDER SEAL).

16 The United States respectfully submits that consolidation is warranted because these six qui tam actions
17 are brought against common defendants — related Kaiser Permanente (“Kaiser”) entities — and involve
18 common questions of fact and law, and because consolidation will significantly promote judicial
19 economy.

20 This motion is being filed under seal because the six qui tam actions are currently sealed
21 pursuant to the False Claims Act (“FCA”), 31 U.S.C. § 3729–33. Due to the sealed nature of all six
22 cases and because Defendants have not yet been served in these cases, this notice is not being served on
23 Defendants. The United States has conferred with Relators in all six cases, and none of the Relators
24 opposes this motion.

25 **DISCUSSION**

26 Federal Rule of Civil Procedure 42(a) provides that “[i]f actions before the court involve a
27 common question of law or fact, the court may . . . consolidate the actions[.]”

28 “[A] district court has broad discretion under [Rule 42(a)] to consolidate cases pending in the

1 same district.” *Investors Research Co. v. U.S. Dist. Ct.*, 877 F.2d 777, 777 (9th Cir. 1989). In
 2 determining whether or not to consolidate cases, the court should “weigh the interest of judicial
 3 convenience against the potential for delay, confusion and prejudice.” *Zhu v. UCBH Holdings, Inc.*, 682
 4 F. Supp. 2d 1049, 1052 (N.D. Cal. 2010). “[T]ypically, consolidation is favored.” *Tse v. Apple, Inc.*,
 5 No. C 12-0265, 2013 WL 451639, at *3 (N.D. Cal. Feb. 5, 2013).

6 The six qui tam actions each raise claims under the FCA to recover damages to the government
 7 due to allegedly fraudulent conduct of Kaiser Permanente, a health care consortium headquartered in
 8 Oakland, California. The six actions each allege that Kaiser submitted claims to the Medicare
 9 Advantage Program, also known as Medicare Part C, for risk-adjustment payments for diagnoses that its
 10 patients did not actually have and/or that were not actually addressed by the treating physician during a
 11 patient encounter as required by Medicare billing rules. The United States is the real party in interest in
 12 all six actions, the defendants are the same or related Kaiser entities in all six actions, and the six actions
 13 involve common questions of fact and law. Because of their commonality, the six actions likely will
 14 involve the same or similar discovery and motions practice and, if the actions proceed to trial, the same
 15 or similar witnesses, evidence, and exhibits. In light of the commonality between the six actions,
 16 consolidating the actions will conserve judicial resources and promote the efficient conduct and
 17 determination of the actions.

18 CONCLUSION

19 The United States respectfully requests that the Court consolidate the *Osinek, Arefi, Stein,*
 20 *Bryant, Bicocca,* and *Taylor* actions. A proposed order is attached.

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1 DATED: June 11, 2021

Respectfully submitted,

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Deputy Assistant Attorney General

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5 *s/Shiwon Choe*

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Civil Division
11 Commercial Litigation Branch

12 Attorneys for the United States

1 ~~PROPOSED~~ ORDER


2 The Court, having considered the United States of America's Unopposed Ex Parte Motion to
3 Consolidate Cases, hereby orders that the following actions shall be consolidated for all purposes:

- 4 1. *United States ex rel. Osinek v. Kaiser Permanente*, No. 3:13-cv-03891-EMC (N.D. Cal.)
5 (UNDER SEAL);
- 6 2. *United States ex rel. Arefi v. Kaiser Foundation Health Plan, Inc.*, No. 3:16-cv-01558-
7 EMC (N.D. Cal.) (UNDER SEAL);
- 8 3. *United States ex rel. Stein v. Kaiser Foundation Health Plan, Inc.*, No. 3:16-cv-05337-
9 EMC (N.D. Cal.) (UNDER SEAL);
- 10 4. *United States ex rel. Bryant v. Kaiser Permanente*, No. 3:18-cv-1347-EMC (N.D. Cal.)
11 (UNDER SEAL);
- 12 5. *United States ex rel. Bicocca v. Permanente Medical Group, Inc.*, No. 3:21-cv-03124-
13 EMC (N.D. Cal.) (UNDER SEAL); and
- 14 6. *United States ex rel. Taylor v. Kaiser Permanente*, No. 3:21-cv-03894-EMC (N.D. Cal.)
15 (UNDER SEAL).

16 The Parties shall file all future pleadings and other filings in the consolidated actions on the
17 docket in Case No. 3:13-cv-03891-EMC (N.D. Cal.).

18 IT IS SO ORDERED.

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20 DATED: June 25, 2021

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22 HON. EDWARD M. CHEN
23 United States District Judge
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