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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.
RONDA OSINEK,

21 Plaintiff,

22 v.

23 KAISER PERMANENTE,

24 Defendant.
25

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

) **UNITED STATES' NOTICE OF ELECTION TO**
) **INTERVENE IN PART AND TO DECLINE TO**
) **INTERVENE IN PART; [PROPOSED] ORDER**
) **TO UNSEAL**

) **FILED UNDER SEAL**
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27 (captions continued on next page)
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1 UNITED STATES OF AMERICA ex rel.
 2 NASER AREFI, AJITH KUMAR, and PRIME
 HEALTHCARE SERVICES,
 3 Plaintiffs,
 4 v.
 5 KAISER FOUNDATION HEALTH PLAN,
 INC., et al.,
 6 Defendants.
 7

) Case No. 3:16-cv-01558-EMC
)
) **UNITED STATES’ NOTICE OF ELECTION TO**
) **INTERVENE IN PART AND TO DECLINE TO**
) **INTERVENE IN PART; [PROPOSED] ORDER**
) **TO UNSEAL**
)
) **FILED UNDER SEAL**

8 UNITED STATES OF AMERICA ex rel.
 9 MARCIA STEIN AND RODOLFO BONE,
 10 Plaintiffs,
 11 v.
 12 KAISER FOUNDATION HEALTH PLAN,
 INC., et al.,
 13 Defendants.
 14

) Case No. 3:16-cv-05337-EMC
)
) **UNITED STATES’ NOTICE OF ELECTION TO**
) **INTERVENE IN PART AND TO DECLINE TO**
) **INTERVENE IN PART; [PROPOSED] ORDER**
) **TO UNSEAL**
)
) **FILED UNDER SEAL**

15 UNITED STATES OF AMERICA and STATE)
 16 OF CALIFORNIA ex rel. GLORYANNE)
 BRYANT and VICTORIA M. HERNANDEZ,)
 17 Plaintiffs,)
 18 v.)
 19 KAISER PERMANENTE, INC., et al.,)
 20 Defendants.)
 21

) Case No. 3:18-cv-01347-EMC
)
) **UNITED STATES’ NOTICE OF ELECTION TO**
) **INTERVENE IN PART AND TO DECLINE TO**
) **INTERVENE IN PART; [PROPOSED] ORDER**
) **TO UNSEAL**
)
) **FILED UNDER SEAL**

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1 UNITED STATES OF AMERICA and STATE)
 OF CALIFORNIA ex rel. MICHAEL)
 2 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' NOTICE OF ELECTION TO INTERVENE IN PART AND TO DECLINE TO INTERVENE IN PART; [PROPOSED] ORDER TO UNSEAL

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' NOTICE OF ELECTION TO INTERVENE IN PART AND TO DECLINE TO INTERVENE IN PART; [PROPOSED] ORDER TO UNSEAL

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1 1. Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(2) and (4), the United States
2 notifies the Court that it hereby intervenes in part and declines to intervene in part in the above-
3 captioned consolidated *qui tam* actions. Specifically, the United States intervenes on the allegations that
4 defendants Kaiser Permanente; Kaiser Foundation Health Plan, Inc.; Kaiser Foundation Health Plan of
5 Colorado; The Permanente Medical Group, Inc.; Southern California Permanente Medical Group, Inc.;
6 and Colorado Permanente Medical Group, P.C.; submitted, or caused to be submitted, false claims for
7 risk-adjustment payments based on diagnoses improperly added via addenda under Medicare Part C
8 from the years 2009 until present. The United States declines to intervene on all other allegations. The
9 United States will file and serve its consolidated complaint within 90 days (i.e., by October 25, 2021), as
10 provided for in Federal Rule of Civil Procedure 4(m).

11 2. The United States requests that the following be unsealed:

- 12 a. the Complaint filed on August 22, 2013, by the relator in *United States ex rel.*
13 *Osinek v. Kaiser Permanente*, No. 3:13-cv-03891-EMC (N.D. Cal.);
- 14 b. the Complaint filed on September 4, 2015, by the relators in *United States ex rel.*
15 *Arefi v. Kaiser Foundation Health Plan, Inc.*, No. 3:16-cv-01558-EMC (N.D.
16 Cal.);
- 17 c. the Complaint filed on May 16, 2016, by the relators in *United States ex rel. Stein*
18 *v. Kaiser Foundation Health Plan, Inc.*, No. 3:16-cv-05337-EMC (N.D. Cal.);
- 19 d. the First Amended Complaint filed on November 3, 2016, by the relators in
20 *United States ex rel. Stein v. Kaiser Foundation Health Plan, Inc.*, No. 3:16-cv-
21 05337-EMC (N.D. Cal.);
- 22 e. the Complaint filed on March 1, 2018, by the relators in *United States ex rel.*
23 *Bryant v. Kaiser Permanente*, No. 3:18-cv-01347-EMC (N.D. Cal.);
- 24 f. the Complaint filed on February 10, 2020, by the relator in *United States ex rel.*
25 *Bicocca v. Permanente Medical Group, Inc.*, No. 3:21-cv-03124-EMC (N.D.
26 Cal.);
- 27 g. the First Amended Complaint filed on October 9, 2020, by the relator in *United*
28 *States ex rel. Bicocca v. Permanente Medical Group, Inc.*, No. 3:21-cv-03124-

1 EMC (N.D. Cal.);

2 h. the Complaint filed on October 22, 2014, by the relator in *United States ex rel.*
3 *Taylor v. Kaiser Permanente*, No. 3:21-cv-03894-EMC (N.D. Cal.);

4 i. the First Amended Complaint filed on November 3, 2014, by the relator in *United*
5 *States ex rel. Taylor v. Kaiser Permanente*, No. 3:21-cv-03894-EMC (N.D. Cal.);

6 j. the United States' Motion to Consolidate Cases filed on June 11, 2021;

7 k. the Order Granting the United States' Motion to Consolidate Cases filed on June
8 25, 2021;

9 l. this Notice of Election to Intervene in Part and to Decline to Intervene in Part, and
10 accompanying order; and

11 m. all future filings in this action.

12 All other contents of the Court's files in these matters (including, but not limited to, any applications
13 filed by the United States for an extension of the investigative period under 31 U.S.C. § 3130(b)(3) or
14 for any other reason) should remain under seal (and not placed on the public docket) and not be served
15 upon the defendants.

16 3. Although the United States declines to intervene in a portion of these consolidated
17 actions, we respectfully refer the Court to 31 U.S.C. § 3730(b)(1), which allows a relator to maintain the
18 declined portion of an action in the name of the United States; providing, however, that the "action may
19 be dismissed only if the court and the Attorney General give written consent to the dismissal and their
20 reasons for consenting." The United States Court of Appeals for the Ninth Circuit has held that,
21 notwithstanding this language, the United States only has the right to a hearing when it objects to a
22 settlement or dismissal of the action. *United States ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959
23 (9th Cir. 1995); *United States ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723–25 (9th Cir.
24 1994). Therefore, the United States requests that, should either a relator or a defendant propose that the
25 portion of these actions in which the United States has not intervened be dismissed, settled, or otherwise
26 discontinued, this Court provide the United States with notice and an opportunity to be heard before
27 ruling or granting its approval.

28 4. Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all

1 pleadings filed in this action, even as to the non-intervened portion of these actions, be served upon the
2 United States. The United States also requests that all orders issued by the Court be sent to the
3 government's counsel. The United States reserves its right to order any deposition transcripts and to
4 intervene in the portion of these actions in which it is declining to intervene today, for good cause, at a
5 later date. The United States reserves the right to seek the dismissal of any relator's action or claim on
6 any appropriate grounds, including under 31 U.S.C. §§ 3730(b)(5) and (e)(4).

7 5. The United States requests that the initial case management conference be set at least one
8 month after October 25, 2021, so that the parties may have adequate time to confer after the United
9 States' complaint is filed and served, and prior to the conference.

10
11 DATED: July 27, 2021

Respectfully submitted,

12 SARAH E. HARRINGTON
13 Deputy Assistant Attorney General

14 STEPHANIE M. HINDS
15 Acting United States Attorney

16 /s/ Benjamin J. Wolinsky
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18 SHIWON CHOE
19 Assistant United States Attorneys

20 JAMIE ANN YAVELBERG
21 PATRICIA L. HANOWER
22 ARTHUR S. DI DIO
23 GARY R. DYAL
24 LAURIE A. OBEREMBT
25 United States Department of Justice
26 Civil Division
27 Commercial Litigation Branch

28 Attorneys for the United States of America

[PROPOSED] ORDER

The Court, having considered the United States' Notice of Election to Intervene in Part and to Decline to Intervene in Part, hereby orders that:

1. All current contents of the Court's files in these consolidated actions shall remain under seal (and not placed on the public docket) and not be served upon Defendants, except for:

- a. the Complaint filed on August 22, 2013, by the relator in *United States ex rel. Osinek v. Kaiser Permanente*, No. 3:13-cv-03891-EMC (N.D. Cal.);
- b. the Complaint filed on September 4, 2015, by the relators in *United States ex rel. Arefi v. Kaiser Foundation Health Plan, Inc.*, No. 3:16-cv-01558-EMC (N.D. Cal.);
- c. the Complaint filed on May 16, 2016, by the relators in *United States ex rel. Stein v. Kaiser Foundation Health Plan, Inc.*, No. 3:16-cv-05337-EMC (N.D. Cal.);
- d. the First Amended Complaint filed on November 3, 2016, by the relators in *United States ex rel. Stein v. Kaiser Foundation Health Plan, Inc.*, No. 3:16-cv-05337-EMC (N.D. Cal.);
- e. the Complaint filed on March 1, 2018, by the relators in *United States ex rel. Bryant v. Kaiser Permanente*, No. 3:18-cv-01347-EMC (N.D. Cal.);
- f. the Complaint filed on February 10, 2020, by the relator in *United States ex rel. Bicocca v. Permanente Medical Group, Inc.*, No. 3:21-cv-03124-EMC (N.D. Cal.);
- g. the First Amended Complaint filed on October 9, 2020, by the relator in *United States ex rel. Bicocca v. Permanente Medical Group, Inc.*, No. 3:21-cv-03124-EMC (N.D. Cal.);
- h. the Complaint filed on October 22, 2014, by the relator in *United States ex rel. Taylor v. Kaiser Permanente*, No. 3:21-cv-03894-EMC (N.D. Cal.);
- i. the First Amended Complaint filed on November 3, 2014, by the relator in *United States ex rel. Taylor v. Kaiser Permanente*, No. 3:21-cv-03894-EMC (N.D. Cal.);
- j. the United States' Motion to Consolidate Cases filed on June 11, 2021;

1 k. the Order Granting the United States' Motion to Consolidate Cases filed on June
2 25, 2021;

3 l. the United States' Notice of Election to Intervene in Part and to Decline to
4 Intervene in Part filed on July 27, 2021; and

5 m. this Order.

6 2. The seal is lifted as to all matters occurring in these consolidated actions after the date of
7 this Order.

8 3. The United States shall promptly serve Defendants with a copy of this Order and the
9 United States' Notice of Election to Intervene in Part and to Decline to Intervene in Part, and shall serve
10 defendants Kaiser Permanente; Kaiser Foundation Health Plan, Inc.; Kaiser Foundation Health Plan of
11 Colorado; The Permanente Medical Group, Inc.; Southern California Permanente Medical Group, Inc.;
12 and Colorado Permanente Medical Group, P.C., as well as any other newly named defendants, with the
13 United States' complaint by October 25, 2021, in accordance with Federal Rule of Civil Procedure 4(m).

14 4. Counsel for the United States shall file a notice of appearance in this action, if they have
15 not already done so, for the purpose of receiving ECF notifications of all pleadings and motions filed in
16 this action, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition
17 transcripts and is entitled to intervene in the portion of these actions in which it is declining to intervene
18 today, for good cause, at any time.

19 5. Should either a relator or a defendant propose that the portion of these actions in which
20 the United States has not intervened be dismissed, settled, or otherwise discontinued, the Court will
21 provide the United States with notice and an opportunity to be heard before ruling or granting its
22 approval, in accordance with 31 U.S.C. § 3730(b)(1).

23 6. The initial case management conference in these consolidated actions shall be held on
24 _____ at ____:____ [in Courtroom 5, 17th Floor] [by Zoom webinar.] The parties shall file a
25 joint case management statement no later than seven days before the conference.

1 IT IS SO ORDERED

2
3 DATED: July __, 2021

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5 HON. EDWARD M. CHEN
6 United States District Judge
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that he is causing a copy of:

UNITED STATES' NOTICE OF ELECTION TO INTERVENE IN PART AND TO DECLINE TO INTERVENE IN PART; [PROPOSED] ORDER TO UNSEAL

FILED UNDER SEAL

to be served this date upon the parties as follows:

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1 BY FIRST CLASS MAIL, by placing such envelope(s) with postage thereon fully prepaid in the
2 designated area for outgoing U.S. mail in accordance with this office's practice.

3 BY PERSONAL SERVICE, (MESSENGER)

4 BY FEDERAL EXPRESS

5 BY FACSIMILE, (FAX) Telephone No.:

6 BY EMAIL: I caused each such document to be sent by email to the person or offices of each
7 address above.

8 BY CERTIFIED MAIL, by placing such envelope(s) with postage thereon fully prepaid in the
9 designated area for outgoing U.S. mail in accordance with this office's practice.

10 I declare under penalty of perjury, under the laws of the United States, that the foregoing is true
11 and correct.

12 DATED: July 27, 2021

/s/ Benjamin J. Wolinsky
BENJAMIN J. WOLINSKY
Assistant United States Attorney