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

21 UNITED STATES OF AMERICA ex rel.)	Case No. 3:13-cv-03891-EMC
22 RONDA OSINEK,)	
23 Plaintiff,)	UNITED STATES' RESPONSE TO
24 v.)	DEFENDANTS' REQUEST FOR JUDICIAL
25 KAISER PERMANENTE, et al.,)	NOTICE AND FOR INCORPORATION OF
26 Defendants.)	DOCUMENTS BY REFERENCE
)	Hearing: October 14, 2022 at 1:30 p.m.
)	Location: Zoom videoconference

27 (captions continued on next page)

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’ RESPONSE TO**
) **DEFENDANTS’ REQUEST FOR JUDICIAL**
) **NOTICE AND FOR INCORPORATION OF**
) **DOCUMENTS BY REFERENCE**
)
) Hearing: October 14, 2022 at 1:30 p.m.
) Location: Zoom videoconference

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’ RESPONSE TO**
) **DEFENDANTS’ REQUEST FOR JUDICIAL**
) **NOTICE AND FOR INCORPORATION OF**
) **DOCUMENTS BY REFERENCE**
)
) Hearing: October 14, 2022 at 1:30 p.m.
) Location: Zoom videoconference

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’ RESPONSE TO**
) **DEFENDANTS’ REQUEST FOR JUDICIAL**
) **NOTICE AND FOR INCORPORATION OF**
) **DOCUMENTS BY REFERENCE**
)
) Hearing: October 14, 2022 at 1:30 p.m.
) Location: Zoom videoconference

(captions continued on next page)

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.)
 7

Case No. 3:21-cv-03124-EMC

**UNITED STATES' RESPONSE TO
 DEFENDANTS' REQUEST FOR JUDICIAL
 NOTICE AND FOR INCORPORATION OF
 DOCUMENTS BY REFERENCE**

Hearing: October 14, 2022 at 1:30 p.m.
 Location: Zoom videoconference

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' RESPONSE TO
 DEFENDANTS' REQUEST FOR JUDICIAL
 NOTICE AND FOR INCORPORATION OF
 DOCUMENTS BY REFERENCE**

Hearing: October 14, 2022 at 1:30 p.m.
 Location: Zoom videoconference

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1 Kaiser has moved the Court to review nine exhibits as incorporated by reference into the United
2 States' Complaint and has moved the Court to take judicial notice of the Justice Manual. Dkt. 179.

3 The United States agrees that Kaiser's exhibits A through I are incorporated by reference into the
4 United States' Complaint and may be reviewed as part of the Complaint.¹ The United States likewise
5 agrees that the Justice Manual is judicially noticeable. The Justice Manual contains "publicly available
6 Department of Justice (DOJ) policies and procedures." Justice Manual § 1-1.100 (updated Apr. 2018),
7 *available at* <https://www.justice.gov/jm/jm-1-1000-introduction> (last visited Aug. 5, 2022). "The Justice
8 Manual provides internal DOJ Guidance. It is not intended to, does not, and may not be relied upon to
9 create any rights, substantive or procedural, enforceable at law by any party in any matter civil or
10 criminal. Nor are any limitations hereby placed on otherwise lawful litigation prerogatives of DOJ." *Id.*
11 § 1-1.200.

12 However, Kaiser's citation on page 8 of its Motion to Dismiss to a non-judicially noticeable
13 document, the 2014 RADV Reviewer Guidance, quoted previously by Kaiser in Dkt. 150, is improper
14 and must be ignored on a motion to dismiss. Kaiser also did not request judicial notice of that document.

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28 ¹ Many of these exhibits are not subject to judicial notice. The United States does not understand that
Kaiser argues to the contrary, and the Court need not reach the issue because the exhibits are
incorporated into the Complaint by reference.

1 DATED: August 5, 2022

Respectfully submitted,

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5 *s/Shiwon Choe*
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