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14
15 Attorneys for Plaintiffs and the Class Members

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 FOR THE COUNTY OF LOS ANGELES

18 CENTINELA FREEMAN EMERGENCY)
MEDICAL ASSOCIATES; VALLEY)
19 PRESBYTERIAN EMERGENCY MEDICAL)
ASSOCIATES; VALLEY EMERGENCY)
20 MEDICAL ASSOCIATES; SUTTER)
EMERGENCY MEDICAL ASSOCIATES;)
21 VALLEY EMERGENCY PHYSICIANS)
MEDICAL GROUP and all others similarly)
22 situated.

Plaintiffs,

23 v.

24 SANDRA SHEWRY in her official capacity)
as, DIRECTOR OF DEPARTMENT OF)
25 HEALTH CARE SERVICES OF THE)
STATE OF CALIFORNIA; THE)
26 DEPARTMENT OF HEALTH CARE)
SERVICES; THE STATE OF CALIFORNIA;)
27 and DOES 1 through 500, inclusive,

28 Defendants.

CASE NUMBER:

CLASS ACTION COMPLAINT FOR:

1. Violations of the Equal Protection Clause
2. Unlawful Taking of Property for Public Use
3. Violation of Title XIX of the Social Security Act, 42 U.S.C. §§ 1396a(a)(30)(A) ("The Medicaid Act")
4. Unjust Enrichment

1 Plaintiffs CENTINELA FREEMAN EMERGENCY MEDICAL ASSOCIATES, VALLEY
2 PRESBYTERIAN EMERGENCY MEDICAL ASSOCIATES, VALLEY EMERGENCY
3 MEDICAL ASSOCIATES, SUTTER EMERGENCY MEDICAL ASSOCIATES and VALLEY
4 EMERGENCY PHYSICIANS MEDICAL GROUP on behalf of themselves and all others
5 similarly situated (collectively "Plaintiffs") allege as follows:

6
7 **I.**

8 **NATURE OF THE ACTION**

9 1. Access to adequate emergency health care is essential to all Californians,
10 particularly to children and those confronting the racial and ethnic disparities in healthcare
11 that exist in this state. California has made a commitment to the underserved that
12 promises healthcare justice through Medi-Cal assistance. Yet, California's promise is
13 backed by a bounced check, a half full bank account that is 17 years out of balance, that
14 requires emergency room physicians to cover California's marker. The state of California's
15 Medi-Cal reimbursement rate shifts the costs of providing emergency medical services from
16 the state to emergency room physicians. Physicians are required by state and federal law
17 to provide emergency room services, yet they receive reimbursement from the state at
18 rates that are significantly below the cost of care. Not only is this practice unfair and unjust,
19 it is illegal. By forcing the cost of California's inadequate funding of its Medi-Cal promise
20 upon California emergency room physicians, the state has placed our emergency care
21 system into a state of crisis and is forcing many emergency room physicians out of practice
22 and out of the state.

23 2. The cost of this inequity has increased over the last 17 years of neglect to
24 the point where emergency room physicians, particularly in rural and inner city areas, are
25 no longer capable of absorbing it. In 2007 alone, emergency room physicians lost over
26 \$100 million in services provided to Medi-Cal patients.

27 3. California's emergency room physicians and medical groups are legally
28 mandated to treat all patients in need of emergency medical care, regardless of the

1 patient's ability to pay. Through Medi-Cal, defendants are required to pay these
2 emergency medical providers a fair and adequate amount for the treatment of those unable
3 to pay for emergency care. However, the State's reimbursement payments do not bear a
4 reasonable relationship to the emergency room doctors' costs for providing the care.
5 Defendants pay far less than the cost of treating these patients, in violation of the medical
6 providers' rights under the United States and California Constitutions, and in violation of
7 other state and federal laws.

8 4. The consequences of defendants' failures go far beyond unfair payment to
9 those fulfilling their legal and ethical obligations. Each year, class members treat
10 approximately 5 million patients without adequate compensation. Because of defendants'
11 conduct and failures, emergency departments throughout the State struggle on a daily
12 basis to provide Californians with adequate emergency care.¹ Over the last 10 years, and
13 despite increases in California's population, 85 hospitals and 55 emergency rooms have
14 closed – placing California first in the nation in emergency department closures. Since
15 2003, Los Angeles County has lost 10 emergency departments. Each closure places even
16 more strain on an already broken system and increases the significant risk that a number of
17 high percentage Medi-Cal emergency facilities will close in the near future. Nearly two
18 dozen hospitals in Los Angeles and Orange Counties are currently in dire financial straits
19 and in danger of either filing bankruptcy or closing altogether. These hospitals represent
20 15 percent of the total hospital beds in the region.

21 5. Over the past decade, the cost of providing health care to patients has nearly
22 doubled, and the average number of visits to each California emergency department
23 increased from about 23,300 to nearly 30,000 (28.7 percent) between 1997 and 2006.
24 Despite sky-rocketing costs, Medi-Cal reimbursement rates for emergency care have
25 largely remained stagnant over the same time period, with only minor and insignificant
26 adjustments. Emergency treatment costs now significantly exceed Medi-Cal

27 _____
28 ¹ Emergency Department: a designated area within an acute care licensed hospital, staffed by emergency physicians, nurses and other emergency personnel, which treats and stabilizes all patients regardless of medical complaints or financial status.

1 reimbursement rates. Plaintiffs and class members are required by force of law to treat
2 Medi-Cal patients at a substantial loss.

3 6. Defendants' failure to pay what is due stresses the entire emergency medical
4 care system. California ranks last in emergency department access and last in the number
5 of emergency departments per capita. This failure to pay also has lead to a shortage of on-
6 call specialists, including cardiologists, neurologists, orthopedists and obstetricians, further
7 eroding the quality of care emergency departments are able to provide.

8 7. These problems exist throughout California, threatening the lives of the sick
9 and injured in need of emergency care. Those who suffer most are those who live in
10 California's inner-cities, rural communities and other low-income areas. It is these
11 Californians that are faced with the longest life-threatening waits for care. They must travel
12 the farthest for emergency care because so many emergency departments close, and
13 needed ones never open. This is the direct result of emergency departments loss of
14 money with every low-income patient they treat, and the fact that emergency departments
15 do not have access to the on-call specialists often needed for quality emergency medical
16 treatment. Approximately 40 percent of patients seeking emergency department care in
17 California wait longer than the recommended threshold of one hour due to overcrowding.
18 Causes of emergency department overcrowding include lack of specialty physicians willing
19 to take emergency department calls, closures of nearby hospitals and use of emergency
20 departments for non-urgent medical problems.

21 8. Only half of the State's physician's participate in the Medi-Cal program.
22 While physicians in other areas of practice are given the right to participate, or not, in the
23 Medi-Cal program, emergency room physicians must participate. In fact, a person turned
24 away for treatment because their physician no longer accepts Medi-Cal patients could turn
25 around and walk down the hall to the emergency room located in that very same hospital
26 and get treated. The emergency room physician would not be afforded the same option to
27 turn that person away because he or she is a Medi-Cal patient. Emergency room
28 physicians, unlike other doctors, have no choice and must treat all patients in the State's

1 overburdened emergency rooms.

2 9. With access to primary medical care shrinking, Medi-Cal patients often turn to
3 emergency departments for primary care. Adults with Medi-Cal coverage are more likely
4 than the privately insured to visit emergency departments. Children covered by Medi-Cal
5 have nearly 11 percent more avoidable emergency department visits than privately insured
6 children and about 5 percent more than uninsured children. Medi-Cal patients have the
7 highest emergency department visit rates in the State and are more likely than uninsured or
8 privately insured patients to use emergency departments for non-urgent or avoidable
9 conditions. Medi-Cal patients were more than twice as likely as privately insured
10 emergency department users to report difficulties accessing primary care. Over 40 percent
11 of Medi-Cal patients who had recently visited an emergency department indicated they
12 would have seen a primary care provider had they been able to get an appointment within
13 24 hours.

14 10. Today, California requires emergency room physicians to contribute millions
15 of dollars to the State's Medi-Cal system. These physicians can no longer afford to absorb
16 the State's neglect as the problem increases. This action is brought on behalf of those
17 emergency department physicians and medical groups obligated by Cal. Health & Safety
18 Code §1317 and 42 U.S.C. §1395, *et seq.* to provide emergency medical treatment to
19 Medi-Cal recipients, but are not adequately paid for the life-saving care they provide.
20 Plaintiffs seek reimbursement of the money owed to them and the other class members
21 and an injunction prohibiting defendants from continuing to engage in this conduct. Without
22 relief, many more emergency rooms will close their doors, overcrowding will significantly
23 increase and more emergency room physicians will be forced out of practice. The State
24 has a mandate, it's time for the State to fund it.

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1 II.

2 **THE PARTIES**

3 11. Plaintiff, Centinela Freeman Emergency Medical Associates (hereinafter
4 referred to as "Centinela") is an emergency physician medical group which delivers
5 emergency medical care to Centinela Freeman Regional Medical Center. Centinela
6 provides all emergency department professional staffing to the hospital, including
7 physicians, Physician Assistants, Nurse Practitioners, and administrative staff. Centinela
8 delivers emergency care to residents of the "inner city," a community of low income,
9 unemployed, uninsured and predominately minority residents. Centinela also serves a
10 significant homeless population. A high percentage of Centinela's patients are Medi-Cal
11 recipients. Many of Centinela's patients receive primary care in the emergency department.
12 The closure of Martin Luther King Hospital, Daniel Freeman Memorial Hospital and Robert
13 F. Kennedy Hospital placed an additional heavy burden on Centinela.

14 12. Plaintiff, Valley Presbyterian Emergency Medical Associates (hereinafter
15 referred to as "Valley Presbyterian") is an emergency physician medical group which
16 delivers emergency medical care to Valley Presbyterian Hospital. Valley Presbyterian
17 provides all emergency department staffing to the hospital, including physicians and
18 administrative staff. Valley Presbyterian patients are predominantly low income,
19 unemployed, uninsured and minority residents of the San Fernando Valley. A high
20 percentage of the patient base are Medi-Cal recipients. Valley Presbyterian also serves a
21 significant homeless population. The closure of Northridge Hospital Medical Center-
22 Sherman Way significantly increased the patient base and facility burden of Valley
23 Presbyterian.

24 13. Plaintiff, Valley Emergency Medical Associates (hereinafter referred to as
25 "Valley Emergency") is an emergency medical group which delivers emergency medicine to
26 Mission Community Hospital in Panorama City. Valley Emergency provides all emergency
27 department staffing to the hospital; including physicians and administrative staff. Valley
28 Emergency's patients are predominantly non-English speaking low income, unemployed,

1 uninsured and minority residents. Valley Emergency treats a high percentage of Medi-Cal
2 recipients. Valley Emergency also serves a significant homeless population. Mission
3 Community Hospital and its emergency department was impacted by the closure of
4 Granada Hills Hospital and Northridge Hospital Sherman Way Campus.

5 14. Sutter Emergency Medical Associates (hereinafter referred to as SEMA) is an
6 emergency medical group which delivers staffing and management services to six hospitals
7 in Northern and Central California. SEMA provides emergency care to a number of rural
8 locations, including Memorial Hospital of Los Banos (hereinafter referred to as “Los
9 Banos”). A high percentage of Los Banos patients are Medi-Cal recipients. Many patients
10 are unemployed, uninsured and are seasonal agricultural workers. The SEMA physicians
11 often deliver primary care to the Los Banos patients, whose only contact with a physician is
12 in the SEMA Emergency Department.

13 15. Valley Emergency Physicians Medical Group (hereinafter referred to as
14 “VEP”) delivers emergency medicine and primary care physician services to 25 hospitals
15 and seven clinics in California. VEP provides emergency services to numerous remote
16 communities where the next nearest hospital is over an hour away. One such site is Glen
17 Medical Center in the City of Willows, one and a half hours north of Sacramento. At Glen
18 Medical Center VEP delivers care to a high percentage of Medi-Cal recipients. The
19 surrounding community supports minimal industry. It is comprised of low income,
20 uninsured and indigent residents. The VEP physicians often deliver primary care are to the
21 Glen Medical Center patients, whose only contact with a physician is in the VEP
22 Emergency department.

23 16. Plaintiffs bring this action individually and on behalf of all other persons and
24 entities similarly situated, and on behalf of the general public.

25 17. Defendant State of California is responsible for providing accessible
26 healthcare to its residents. Defendant State of California is also responsible for the
27 administration of the California Department of Health Care Services (“DHCS”).

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1 18. Defendant DHCS is a government agency of the State of California. DHCS is
2 responsible for the administration of the Medi-Cal program, including the establishment of
3 the Medi-Cal reimbursement rates.

4 19. Defendant Sandra Shewry is the Director of Defendant DHCS, and is sued
5 herein in her official capacity as the Director of the DHCS.

6 20. The true names and capacities, whether individual, corporate, associate, or
7 otherwise, of defendants DOE 1 through 500, inclusive, are unknown to plaintiffs who
8 therefore sues such defendants by such fictitious names, and will amend the complaint to
9 show the true names and capacities of each such DOE defendant when ascertained.
10 Plaintiffs allege on information and belief that each defendant designated as DOE is legally
11 responsible in some manner for the events, happenings, and/or tortious, unlawful and
12 unconstitutional conduct alleged in this complaint.

13 21. Plaintiffs are informed, believe, and based thereon allege, that at all
14 times relevant during the liability period, that Defendants, and each of them, including
15 without limitations those Defendants herein sued as DOES, are the agents, officers and
16 employees of the defendants who engaged in the wrongful conduct alleged in this operative
17 complaint. Defendants, and each of them, are individuals, corporations, partnerships, and
18 other entities which engaged in, joined in, and conspired with the other wrongdoers in
19 carrying out the tortious, unlawful and unconstitutional activities alleged in this complaint.

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III.

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JURISDICTION AND VENUE

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22. This Court has jurisdiction pursuant to California Constitution,

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Article VI, §10, because this case is a cause not given by statute to other trial courts.

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Jurisdiction is vested in this Court because the declaratory and injunctive relief sought are

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not a type of relief that may be granted in a limited civil case and the amount in controversy

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exceeds \$25,000.

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1 (emphasis added).

2 27. The patients served by Plaintiffs and Class members include, among others,
3 California residents covered by Medi-Cal. Medi-Cal is a public health insurance program
4 available to low-income individuals including families with children, seniors, persons with
5 disabilities, foster care and pregnant women.

6 28. In 1965 when Medi-Cal was first established it was intended to be a marginal
7 cost program - - intended to allow physicians to maintain their normal practice and add a
8 few Medi-Cal patients. However, the number of Medi-Cal patients has steadily increased.
9 Today, 29 percent of all Californian's are Medi-Cal beneficiaries. Since 1965 the cost of
10 providing medical care has increased dramatically. Furthermore, the number of patient
11 visits to emergency rooms has also greatly increased.

12 29. Emergency physicians and their staff attempt to stabilize, and treat, all
13 patients that present to the emergency department. Only later, after the patient has been
14 treated, does the emergency group seek reimbursement for services provided in a
15 hospitals emergency department. Claims for Medi-Cal patients are submitted directly to the
16 Defendant, -- The State of California - or to the plans and subcontracted medical groups
17 that administer the Medi-Cal fee for service program. Defendant, DHSC determines the
18 rates of reimbursement for all Medi-Cal recipients - either directly through the Medi-Cal fee
19 for service program or indirectly through the Medi-Cal managed care program. In the Medi-
20 Cal managed care program, providers who are not contracted with the Medi-Cal managed
21 care plan, or subcontracting medical group, must be paid at the DHCS published rates for
22 the fee for service program, and thus these published fee for service rates also indirectly
23 establish a standard for the Medi-Cal managed care patients.

24 30. Medi-Cal reimburses emergency medical providers at a rate well below the
25 cost of providing care. It costs Plaintiffs and Class members who treat Medi-Cal enrollees
26 more money than they are reimbursed by Medi-Cal. On average Plaintiffs and Class
27 members are only reimbursed 50 percent of the actual cost of care of a Medi-Cal recipient.
28 However, Plaintiffs and Class members are *mandated* by statute to provide treatment. As

1 a result, emergency health care providers are being forced to leave hospital emergency
2 departments because the State of California does not reimburse the cost of delivering care.
3 In 2007, California hospitals provided \$9.7 billion in uncompensated care. Of that amount,
4 \$2.7 billion is directly related to Medi-Cal payment shortfalls.

5 31. In fact, objective studies reviewed by the American College of Emergency
6 Physicians ranks California as **first** in the country in emergency department closures and
7 **last** in emergency department access. California ranks **last** in the number of emergency
8 departments per million people. The most populous state in the nation is ranked **forty-third**
9 in Medicaid physician reimbursements, **forty-ninth** in Medicaid payments per enrollee for
10 children and **last** in total Medicaid payments per enrollee.

11 32. When a hospital, or emergency group, has a patient mix of approximately 20
12 percent or more Medi-Cal beneficiaries it struggles to remain solvent. This results in
13 emergency groups having difficulty in recruiting and maintaining qualified and board
14 certified physicians. The failure to attract qualified physicians has a negative impact on the
15 level of care a group is able to provide. As a result emergency medicine has become a
16 less desirable field of practice for new physicians. Certain geographic regions, such as
17 inner cities, large urban areas and rural communities have a very high percentage of Medi-
18 Cal recipients. As such, people living in these areas, the economically disadvantaged and
19 minorities bear the brunt of vastly reduced access to emergency medical care.

20 33. The following maps graphically depict which groups are most impacted by
21 reduced healthcare accessibility. Each indicates that low income, racially and ethnically
22 diverse populations are hardest hit. The majority of the hospitals and emergency rooms in
23 financial trouble have approximately 20 percent or more of their patients as Medi-Cal
24 enrollees. These emergency rooms are located in lower income areas and serve racially
25 and ethnically diverse populations. Further, when any one hospital or emergency room
26 closes, the other hospitals nearby are impacted and pushed towards insolvency. These
27 other hospitals absorb the displaced Medi-Cal patients, which increases the number of
28 Medi-Cal patients they are mandated to treat below cost. Likewise, since the burden of

1 uninsured patients generally mirrors the burden of Medi-Cal patients in an ER population,
2 the impact of this displacement is doubly felt by those hospitals and the ER groups that
3 staff these facilities.

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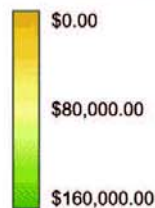
**EMERGENCY ROOM CLOSURES AND FINANCIALLY STRESSED HOSPITALS:
GREATER LOS ANGELES AREA**

ERs which have closed (1997-2007, represented by a "c"), alongside profitable (blue triangle) and unprofitable (red triangle) hospitals. The map is color-coded to represent median household income by ZIP code. Greener areas represent areas with predominately higher-income households, while areas which are darker gold represent areas with predominately lower-income households.



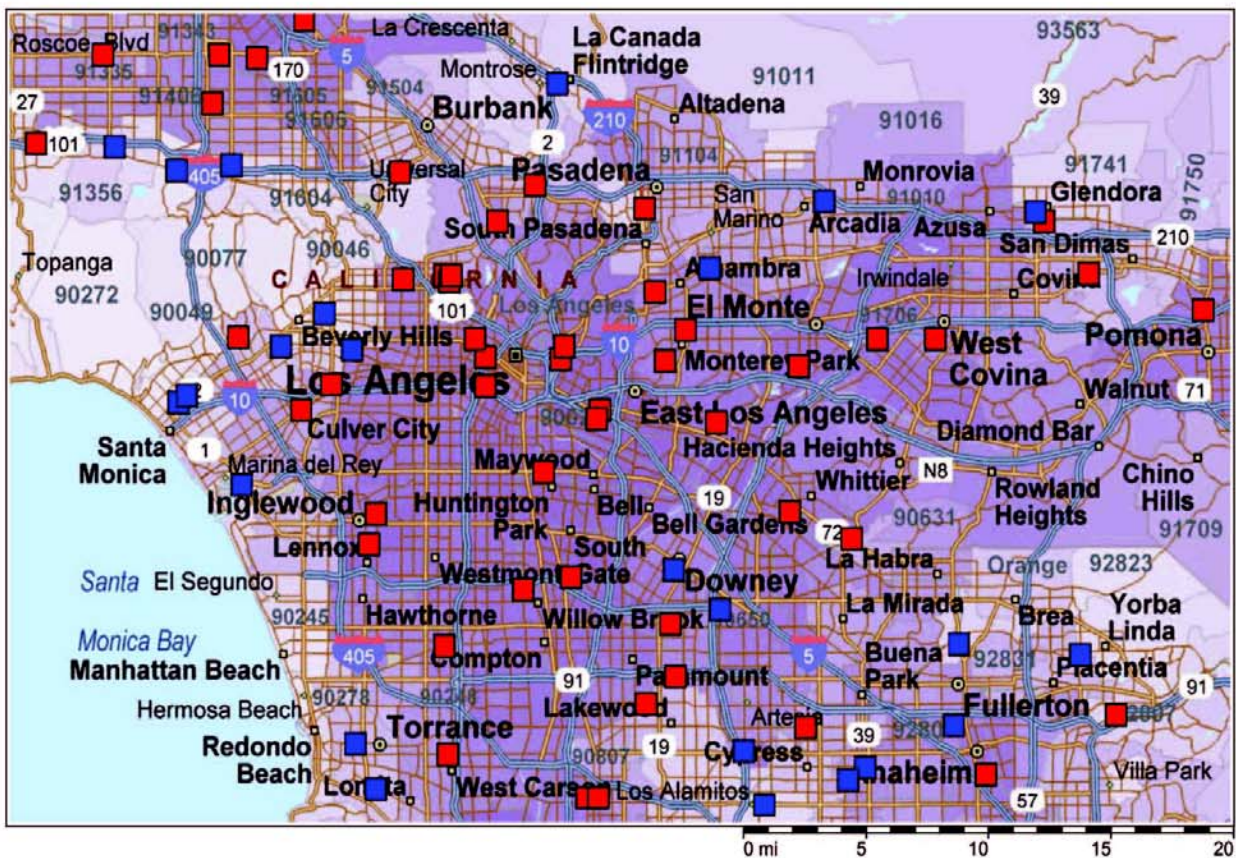
- Closed Emergency Rooms (1997-2007)
- Unprofitable Hospitals with Emergency Rooms (2007)
- Profitable Hospitals with Emergency Rooms (2007)

Household Median Income by ZIP Code (2007)



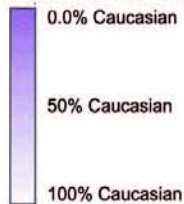
1 **HOSPITALS BY PERCENTAGE OF MEDI-CAL REVENUE AND ETHNIC POPULATION**
 2 **OF AREA SERVED:**
 3 **GREATER LOS ANGELES AREA**

4 *Hospitals which derive 20% or more of their revenue from Medi-Cal patients are*
 5 *represented by red squares, and hospitals which derive less than 20% of their*
 6 *revenue from Medi-Cal patients are represented by blue squares. The areas*
 7 *on the map which are lighter in shade represent ZIP codes with a higher percent*
 8 *Caucasian population, the darker purple areas represent ZIP codes with a lower*
 9 *percent Caucasian population.*



- 10 ■ Hospitals Reporting Less than 20% Medi-Cal Revenue (2006)
- 11 ■ Hospitals Reporting 20% or Higher Medi-Cal Revenue (2006)

12 **Percent Caucasian Population by ZIP Code (2006)**



1 **EMERGENCY ROOM CLOSURES AND FINANCIALLY STRESSED HOSPITALS:**
 2 **BAY AREA**

3 *ERs which have closed (1997-2007, represented by a "c"), alongside profitable*
 4 *(blue triangle) and unprofitable (red triangle) hospitals. The map is color-coded*
 5 *to represent median household income by ZIP code. Greener areas represent*
 6 *areas with predominately higher-income households, while areas which are*
 7 *darker gold represent areas with predominately lower-income households.*



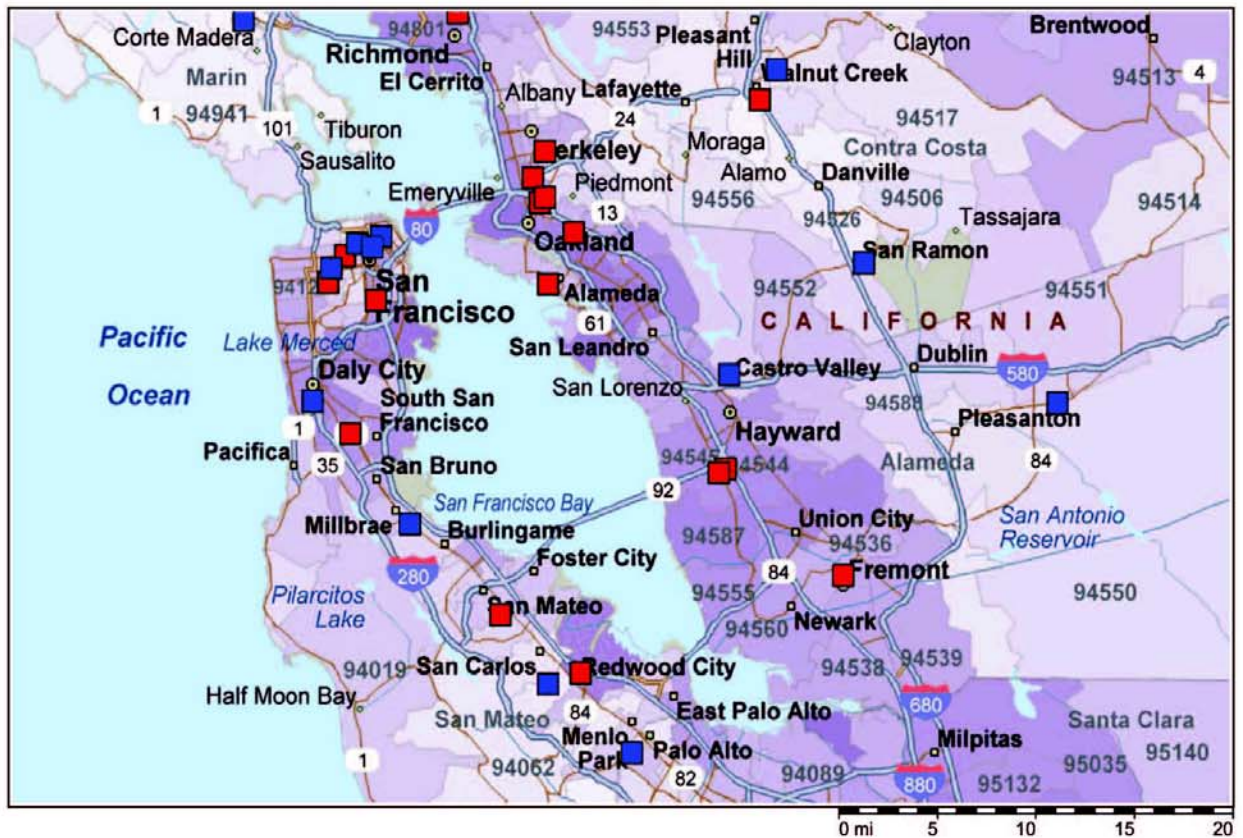
- Closed Emergency Rooms (1997-2007)
- Unprofitable Hospitals with Emergency Rooms (2007)
- Profitable Hospitals with Emergency Rooms (2007)

Household Median Income by ZIP Code (2007)



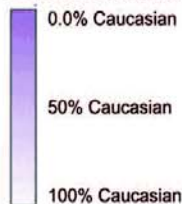
1 HOSPITALS BY PERCENTAGE OF MEDI-CAL REVENUE AND ETHNIC POPULATION
 2 OF AREA SERVED:
 3 BAY AREA

4 *Hospitals which derive 20% or more of their revenue from Medi-Cal patients are*
 5 *represented by red squares, and hospitals which derive less than 20% of their*
 6 *revenue from Medi-Cal patients are represented by blue squares. The areas*
 7 *on the map which are lighter in shade represent ZIP codes with a higher percent*
 8 *Caucasian population, the darker purple areas represent ZIP codes with a lower*
 9 *percent Caucasian population.*



- 10 [Blue Square] Hospitals Reporting Less than 20% Medi-Cal Revenue (2006)
- 11 [Red Square] Hospitals Reporting 20% or Higher Medi-Cal Revenue (2006)

12 **Percent Caucasian Population by ZIP Code (2006)**



1 34. Defendants have reimbursed Plaintiffs and Class members at an amount
2 substantially below the cost of providing mandatory services to Medi-Cal patients.

3 35. As such, Defendants have denied Plaintiffs equal protection as required by the
4 U.S. Constitution, and Article 1, § 7 of the California Constitution, because Defendants
5 have implemented a policy that charges the cost of operations of a state function,
6 conducted for the public benefit, to a particular class of persons and entities - emergency
7 room groups and physicians.

8 36. In effect, Defendants' inappropriately low Medi-Cal reimbursement rate results
9 in the unlawful deprivation of Plaintiffs' property, because it requires Plaintiffs to provide
10 emergency care services without receiving just and reasonable compensation.

11 37. Defendants' abject failure to pay even the costs of providing service to Medi-
12 Cal patients has resulted in the shifting of the State's financial responsibility to care for its
13 residents on to emergency department physician groups – a financial burden which
14 properly rests with the State.

15 38. Defendants' failure to reimburse emergency department physician groups the
16 marginal cost of providing emergency care to Medi-Cal enrollees violates the Equal
17 Protection Clauses of both the federal and state constitutions. Additionally, emergency
18 department physician groups have lost significant property rights due to the State's failure
19 in raising physician Medi-Cal reimbursement rates, in violation of both the Fifth
20 Amendment's prohibition against the taking of private property for public use, without just
21 compensation and Article 1, § 7 of the California Constitution.

22 39. The action of the Defendants in underfunding the Medi-Cal program has
23 forced a substantial portion of the cost of public healthcare on the shoulders of emergency
24 department physician groups, including Plaintiffs and Class members. It is a violation of
25 Plaintiffs' constitutional rights and has caused them to suffer damages. If the State is not
26 forced to adequately fund its Medi-Cal system, California's health delivery structure will
27 soon collapse.

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V.

CLASS ACTION ALLEGATIONS

40. Plaintiffs bring this action individually and on behalf of all persons and entities that received, at any time from January, 2005 to the date notice is provided to the Class, payment from Medi-Cal for providing (1) emergency services or care within the meaning of Cal. Health & Safety Code §1317 and/or (2) medical screening examinations for the purpose of determining whether one is suffering from an emergency medical condition and any resulting treatment of such emergency medical condition within the meaning of 42 U.S.C. §1395 et seq. and related regulations.

41. At all material times Plaintiffs have been members of the Class described above. Plaintiffs and the Class members have been singled out to subsidize the State of California for the cost of services to Medi-Cal patients and have thus lost property rights without just compensation.

42. Plaintiffs reserve the right to amend or otherwise alter the Class definitions presented to the Court at the appropriate time, or propose or eliminate sub-Classes, in response to facts learned through discovery, legal arguments advanced by Defendants or otherwise.

43. Numerosity: The Class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of Class members is unknown at this time, Plaintiffs are informed and believe that the entire Class or Classes consist of approximately thousands of members.

44. Commonality: There is a well-defined community of interest in the questions of law and fact raised in this complaint between Plaintiffs and the Class. Common questions of law or fact are shared by the Class members. This action is suitable for class treatment because these common questions of fact and law predominate over any individual issues. Such common questions include, but are not limited to, the following:

- (a) Whether the Defendants, by requiring Plaintiffs and the Class members to subsidize the cost of medical services to Medi-Cal

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recipients have violated Plaintiffs' and Class members' constitutional rights to equal protection under the law;

- (b) Whether the Defendants, by requiring the Plaintiffs and the Class members to subsidize the cost of medical services to Medi-Cal recipients have violated Plaintiffs' and Class members' constitutional right to be justly compensated for the taking of their property rights for public use;
- (c) Whether Plaintiffs and the Class members are treated differently than other physicians and health care providers by Defendants as a result of the combined effect of EMTALA and state law;
- (d) Whether the conduct of Defendants, and each of them, constitutes an ongoing and continuing violation against Plaintiffs and the Class members;
- (e) Whether the Defendants' uniform reimbursement rates are below the fair market value for emergency medical services;
- (f) Whether the Defendants' uniform reimbursement rates are below the cost of care of Medi-Cal patients;
- (g) Whether the Defendants' failure to compensate emergency care providers, including Plaintiffs and the Class members, for the fair market value of their labor constitutes an unlawful taking;
- (h) What is the proper method of redress for the wrongs committed by Defendants, and each of them, against Plaintiffs and the Class members in having required Plaintiffs and the Class members to subsidize the cost of medical services to Medi-Cal recipients; and
- (i) Whether the Defendants have been unjustly enriched as a result of their conduct.

45. Typicality: Plaintiffs' claims are typical of the claims of the Class members.

Plaintiffs and the other Class members were subjected to the same kind of unlawful

1 conduct and the claims of Plaintiffs and the other Class members are based on the same
2 legal theories.

3 46. Adequacy: Plaintiffs are adequate representatives of the Class because their
4 interests do not conflict with the interests of the other members of the Class Plaintiffs seek
5 to represent. Plaintiffs have retained counsel competent and experienced in complex class
6 action litigation and Plaintiffs intend on prosecuting this action vigorously. The interests of
7 members of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

8 47. Ascertainable Class: The proposed Class is ascertainable in that the
9 members can be identified and located using information, e.g., contained in Defendants'
10 own reimbursement records.

11 48. This case is brought and can be maintained as a class action pursuant to
12 California Code of Civil Procedure § 382 and Fed. Rules of Civ. Proc., Rule 23(b)(1),
13 23(b)(2), and 23(b)(3):

14 (a) Risk of Inconsistent Judgments: The unlawful acts and practices of
15 Defendants, as alleged herein, constitute a course of conduct common
16 to Plaintiffs and each Class member. Prosecution of separate actions
17 by individual Class members would create a risk of inconsistent or
18 varying adjudications which would establish incompatible standards of
19 conduct for Defendants and/or substantially impair or impede the ability
20 of individual Class members to protect their interests;

21 (b) Injunctive and/or Declaratory Relief to the Class is Appropriate:
22 Defendants, and each of them, have acted or refused to act on
23 grounds generally applicable to the Class, thereby making final
24 injunctive relief or corresponding declaratory relief with respect to the
25 Class as a whole appropriate; and

26 (c) Predominant Questions of Law or Fact: Questions of law or fact
27 common to the Class members, including those identified above,
28 predominate over questions affecting only individual Class members (if

1 any), and a class action is superior to other available methods for the
2 fair and efficient adjudication of the controversy. Class action
3 treatment will allow a large number of similarly situated consumers to
4 prosecute their common claims in a single forum, simultaneously,
5 efficiently, and without the unnecessary duplication of effort and
6 expense that numerous individual actions would require. Further, an
7 important public interest will be served by addressing the matter as a
8 class action. The cost to the court system of adjudicating each such
9 individual lawsuit would be substantial.

10
11 **VI.**

12 **FIRST CAUSE OF ACTION**

13 **(Violation of The Equal Protection Clause of the**
14 **Fourteenth Amendment to the U.S. Constitution and Art. 1,**
§ 7 of the California Constitution as Against all Defendants)

15 49. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

16 50. Defendants have singled out Plaintiff emergency physicians and emergency
17 physician groups, from all other types of physicians, by mandating that emergency
18 physicians treat all patients who enter an emergency department regardless of their ability
19 to pay. Other physician specialties, in non-emergency settings, have freedom of choice as
20 to which patients they will treat. California Health and Safety Code Section 1317 states:

21 Emergency services and care shall be provided to any person requesting
22 services or care . . . In no event shall the provision of emergency services
23 and care be based upon, or affected by, the person's . . . **insurance status,**
economic status, or ability to pay for medical services. Emergency
services and care shall be rendered without first questioning the patient
or any other person as to his or her ability to pay therefore.

24 (See also The Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C.
25 1395, *et seq.*)

26 51. A violation of California Health and Safety Code Section 1317, exposes an
27 emergency physician to severe penalties. A Section 1317.6 violation, even an inadvertent
28 one, has a penalty of 5,000.00 dollars per incident, a charge of a criminal misdemeanor

1 and holds the potential of a loss of the physicians license to practice medicine. California
2 Health and Safety Code Section 1317.6(c).

3 52. Defendants have failed to provide Plaintiffs with reasonable compensation for
4 services rendered to Medi-Cal patients.

5 53. Defendants actions have shifted their responsibility to provide healthcare to
6 the residents of California to Plaintiffs, thus causing Plaintiffs to substantially subsidize the
7 cost of healthcare to Medi-Cal patients.

8 54. Consequently, Defendants have implemented a mandate that affects Plaintiffs
9 in an unlawful and unequal manner, as compared to other similarly situated groups, e.g.,
10 non-emergency care physicians. Non emergency care physicians are not mandated to
11 treat all patients presented to them. They have the ability to decline to see patients for
12 which they will not be reimbursed the cost of care.

13 55. In singling out Plaintiffs for discriminatory treatment by requiring them alone to
14 bear the cost of operation of a state function conducted for public benefit, Defendants'
15 conduct violates the Equal Protection Clause of the United States Constitution and Article 1
16 Section 7 of the California Constitution.

17
18 **VII.**

19 **SECOND CAUSE OF ACTION**

20 **(Unlawful Taking in Violation of the Fifth Amendment**
21 **to the U.S. Constitution and art. 1, § 7**
22 **of the California Constitution as Against all Defendants)**

23 56. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

24 57. Plaintiffs' emergency medical services constitute a property interest, and are
25 therefore subject to protection under the Fifth Amendment to the U.S. Constitution and
26 Article 1 Section 7 of the California Constitution.

27 58. Plaintiffs in delivering medical care to Medi-Cal patients, without just
28 compensation, are deprived of property interests in the value of their medical education,
training and experience, time spent providing care and the value of actual healthcare

1 services rendered.

2 59. Specifically, reimbursement amounts provided by Defendants to Plaintiffs are
3 substantially below the cost of providing emergency care services to Medi-Cal
4 beneficiaries.

5 60. As such, Plaintiffs are required to provide such services, but do not receive
6 just and reasonable compensation.

7 61. As Defendants' conduct results in a taking of Plaintiffs' private property for
8 public use without providing just compensation, Defendants' conduct violates the Fifth
9 Amendment of the U.S. Constitution and Article 1 Section 7 of the California Constitutions'
10 prohibition against unlawful takings.

11

12

VIII.

13

THIRD CAUSE OF ACTION

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(Violation of Title XIX of the Social Security Act, 42 U.S.C §§1396a(a)(30)(A) ("The Medicaid Act"))

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16 62. Defendants have accepted federal funds under Title XIX of the Social Security
17 Act 42 U.S.C. §1396a (a)(30)(A) "The Medicaid Act," which partially funds Defendants'
18 Medi-Cal program, and are subject to "The Medicaid Act."

19 63. The "quality of care" clause of §30 (A) of "The Medicaid Act" provides in
20 pertinent part:

21

"(a) A state plan for medical assistance must - (30)(A) provide such methods and procedures relating to the...payment for, care and services available under the plan...as may be necessary...to assure that payments are consistent with efficiency, economy, and quality of care..."

22

23

24

64. The "equal access" clause of Sec. 30(A) provides in pertinent part:

25

"(a) A state plan for medical assistance must - (30)(A) provide such methods and procedures relating to the...payment for, care and services available under the plan...as may be necessary...to assure that payments...are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

26

27

28

1 Defendants' failure to reimburse physicians for the care of Medi-Cal patients at a
2 rate that assures physicians can, at a minimum, meet their costs of care, violates Sec.
3 30(A) of "The Medicaid Act."

4 Defendants' failure to administer its Medi-Cal program in a manner that assures the
5 "quality of care" and "equal access to care," in not paying for the cost of Medi-Cal patient
6 care, violates Sec. 30(A) of "The Medicaid Act."

7 As a result of Defendants' failure to comply with "The Medicaid Act," Plaintiffs and
8 Class members, as well as the general public, have suffered injuries. Unless Defendants
9 are enjoined from further violating the provisions of "The Medicaid Act," Defendants will
10 continue to cause injury to Plaintiffs and Class members.

11 IX.

12 FOURTH CAUSE OF ACTION

13 **(Unjust Enrichment as Against all Defendants)**

14 65. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

15 66. Plaintiffs provided Medi-Cal beneficiaries with emergency care services, which
16 services are immediately necessary to prevent serious bodily harm to or suffering by the
17 Medi-Cal beneficiaries who received such services.

18 67. Defendants have benefitted directly and substantially from the emergency
19 care services provided by Plaintiffs which services were provided to Medi-Cal beneficiaries
20 with the expectation that they would be reasonably compensated for those services.
21 Plaintiffs' lost services include the value of Plaintiffs' education and experience, labor and
22 time required to treat Medi-Cal beneficiaries

23 68. Defendants have not provided reasonable reimbursement for the services
24 rendered by Plaintiffs and Class members. Moreover, the amounts provided by
25 Defendants to Plaintiffs and Class members do not cover the cost of providing such
26 services.

27 69. As such, Defendants have been unjustly enriched, and should be ordered to
28

1 reimburse Plaintiffs and Class members the past and present fair market value for services
2 rendered, to be determined at trial, together with interest thereon.

3

4

X.

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PRAYER FOR RELIEF

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WHEREFORE, Plaintiffs and all Class members pray for judgment against each

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Defendant, jointly and severally, as follows:

8

1. An order certifying this case as a class action and appointing

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Plaintiffs and their counsel to represent the Class;

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2. For economic damages according to proof;

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3. For equitable relief including restitution, according to proof at trial,

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and interest in any money or property defendants acquired by means of the

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unlawful and/or unconstitutional conduct as alleged in this Complaint;

14

4. For an Order declaring that Defendants have violated Plaintiffs' and Class

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members' constitutional rights to equal protection under the law;

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5. For an Order declaring that Defendants violated Plaintiffs' and Class

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members' constitutional right to be justly compensated for the taking of their

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property rights for public use;

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6. For a permanent injunction prohibiting Defendants from violating Plaintiffs'

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and Class members' constitutional rights to equal protection under the law

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and from unjustly taking Plaintiffs' and Class members' property for public

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use;

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7. For prejudgement interest on the sums ordered as damages, to the

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extent permitted by law;

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8. For reasonable attorneys' fees and costs; and

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9. For such other relief as is just and proper.

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1 Dated:

KIESEL BOUCHER LARSON, LLP

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By: _____

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