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13 STUART B. SHIKORA, M.D., an individual;
14 SAMUEL H. GLASSNER, M.D., INC., a
15 California Professional Corporation; MICHAEL J.
16 BUCHELE, M.D., an individual; and Intervenor
17 AMERICAN ACADEMY OF EMERGENCY
18 MEDICINE, a Wisconsin Non-Profit Stock Corporation

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

14 QUANTUM HEALTHCARE MEDICAL
15 ASSOCIATES, INC., a California
16 professional corporation,

Case No. RG03080613

17 Plaintiff,

18 v.

COMPLAINT IN INTERVENTION
FOR UNFAIR BUSINESS PRACTICES
(Bus. & Prof. Code §17200)

19 STUART B. SHIKORA, M.D., an individual;
20 MICHAEL J. BUCHELE, M.D., an
21 individual; SAMUEL H. GLASSNER, M.D.,
22 an individual; and DOES 1 through 50,
23 inclusive,

24 Defendants.

25 _____ /

Date Action Filed: January 28, 2003
Cross-complaint Filed: August 11, 2003

26 STUART B. SHIKORA, M.D., an individual;
27 MICHAEL J. BUCHELE, M.D., an
28 individual; SAMUEL H. GLASSNER,
M.D., INC., a California Professional
Corporation,

Cross-complainants,

1 _____ /

2 AMERICAN ACADEMY OF EMERGENCY
3 MEDICINE, a Wisconsin Non-Profit Stock
4 Corporation,

5 Intervenor,

6 _____ /v.

7 TEAM HEALTH, INC., a Tennessee
8 Corporation; QUANTUM HEALTHCARE
9 MEDICAL ASSOCIATES, INC., a California
10 Professional Corporation; HERSCHEL
11 FISCHER, INC., a California Corporation ;
12 KARL MANGOLD, INC., a California
13 Corporation; MT. DIABLO EMERGENCY
14 PHYSICIANS, a California Partnership;
15 QUANTUM, PLUS, INC. a California
16 Corporation, RICHARD GILLESPIE M.D.,
17 an Individual and DOES 1 through 100,
18 inclusive.

19 Cross-defendants.

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22 By leave of court, AMERICAN ACADEMY OF EMERGENCY MEDICINE hereby intervenes
23 in this action, and does hereby join with Cross-complainants as follows:

24 **GENERAL ALLEGATIONS**

25 I. At all times mentioned herein Plaintiff American Academy of Emergency Medicine
26 (AAAEM≡) was and is a non-profit corporation organized under the laws of the State of
27 Wisconsin and formed to promote greater professionalism in Emergency Medicine. Plaintiff has a
28 national membership of approximately 4,000 emergency physicians, with many physician
members practicing Emergency Medicine in the State of California. The parties have a direct
interest in the outcome of the proceeding in that they are practicing physicians in California and
the nation with professional interest in the enforcement of the Corporate Practice of Medicine Ban,
the use of non-competition and non-solicitation agreements for emergency physicians and in the
market for emergency physician services in the state. II. At all times mentioned herein

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30 COMPLAINT IN INTERVENTION FOR UNFAIR BUSINESS PRACTICES (Bus. & Prof. Code § 17200)

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1 defendant TEAM HEALTH, INC. was an entity incorporated under the laws of the State of
2 Tennessee and doing business in California with its principal headquarters in Pleasanton,
3 California. Plaintiff is informed and believes and alleges thereupon that TEAM HEATH, INC. and
4 all other defendants hold and have an interest in hospital and physician contracts at the following
5 facilities in California: Santa Rosa Memorial Hospital, Sutter Solano Medical Center, Redding
6 Medical Center, Ridgecrest Community Hospital, Whittier Hospital Medical Center, Robert F.
7 Kennedy Medical Center, Sutter Lakeside Hospital, Valley Presbyterian Hospital, and Queen of
8 Angeles-Hollywood Presbyterian Hospital. TEAM HEALTH, INC. was a wholly owned subsidiary
9 of MedPartners, Inc., until March 1999, at which time TEAM HEALTH, INC. was purchased by
10 others. Plaintiff is informed and believes and alleges thereupon that TEAM HEALTH, INC. was at all
11 times herein the corporate successor in interest of MedPartners, Inc.

12 III. At all times mentioned herein defendant QUANTUM HEALTHCARE MEDICAL
13 ASSOCIATES, INC. (AQHMA≡) was an entity registered with the Secretary of State as a Professional
14 Corporation authorized to practice medicine and doing business in Pleasanton, California and was a
15 wholly owned subsidiary of TEAM HEALTH, INC. and its alter ego and agent in undertaking the acts
16 herein. At all times mentioned herein QHMA was a shell and a fictional entity created and
17 controlled by TEAM HEALTH, INC. for the purpose of perpetuating TEAM HEALTH, INC.=s
18 illegal corporate practice of medicine in the State of California.

19 IV. At all times mentioned herein defendant HERSCHEL FISCHER, INC. (AHFI≡) was a
20 California Corporation doing business in Pleasanton, California.

21 V. At all times mentioned herein defendant KARL MANGOLD, INC. (AKMI≡) was a
22 California Corporation doing business in Pleasanton, California.

23 VI. At all times mentioned herein defendant MT. DIABLO EMERGENCY PHYSICIANS
24 was a California Partnership doing business in Pleasanton, California.

25 VII. At all times mentioned herein defendant QUANTUM PLUS, INC., was a California
26 Corporation founded in 1997, with its principal place of business in Walnut Creek or Pleasanton,

1 California, and was at all times mentioned a herein a wholly owned subsidiary of TEAM HEALTH,
2 INC., and doing business under the name ATeam Health West.≡

3 VIII. At all times mentioned herein defendant RICHARD GILLESPIE, M.D. was an
4 individual residing in Alameda County, California. RICHARD GILLESPIE, M.D. and President of
5 QUANTUM PLUS, INC., President and director of QHMA, INC., President of HERSCHEL
6 FISCHER, INC., president of KARL MANGOLD, INC., and President of MT. DIABLO
7 EMERGENCY PHYSICIANS.

8 IX. Plaintiff is unaware of the true names and capacities of defendants fictitiously
9 named DOES 1 through 100, inclusive, and is informed and believes they are liable in some
10 manner for all or some of the damages sustained herein.

11 X. Plaintiff is informed and believes and thereon alleges that each defendant was the
12 agent, representative and/or employee of the other defendants, and at all times relevant herein,
13 each defendant acted within the scope and authority of the agency, representation and/or
14 employment, and with the permission, consent, and/or ratification of their fellow defendants.
15 Whenever reference is made herein to defendants in performing or failing to perform any act, the
16 reference shall be construed to mean that the officers, directors, supervisors, managers,
17 employees, members, and agents of the defendants performed, failed to perform, authorized,
18 ratified, or permitted the acts or failures to act while engaged in the furtherance of the business or
19 operations of the other defendants and while acting within the course and scope of their corporate
20 or limited liability company authority and employment.

21 XI. Plaintiff is informed and believes and alleges that at all times herein mentioned,
22 defendants TEAM HEALTH, INC., MT. DIABLO EMERGENCY PHYSICIANS, HFI, KMI and
23 DOES 1 through 25, were and are the owners and alter egos of QUANTUM HEALTHCARE
24 MEDICAL ASSOCIATES, INC. and QUANTUM PLUS, INC. Plaintiff is further informed and
25 believes and based thereon alleges that at all times herein mentioned, there existed a unity of
26 interest in ownership between the herein above defendants and RICHARD GILLESPIE, M.D. and

1 DOES 26 through 50, and that any individualities of any of them have ceased, and that
2 defendants QUANTUM HEALTHCARE MEDICAL ASSOCIATES, INC., KMI, HFI, QUANTUM
3 PLUS, INC., MT. DIABLO EMERGENCY PHYSICIANS, RICHARD GILLESPIE, M.D. and DOES
4 51 through 75 were the alter egos of each and TEAM HEALTH, INC. and the other defendants,
5 and that they were at all times mentioned herein mere shells and sham entities without capacity
6 or assets.

7 XII. Plaintiff is informed and believes and alleges that defendants= QUANTUM
8 HEALTHCARE MEDICAL ASSOCIATES, INC., MT. DIABLO EMERGENCY PHYSICIANS, HFI,
9 KMI, QUANTUM PLUS, INC. and DOES 76 through 100 were conceived, intended, and used by
10 each other defendant as a device to circumvent the Corporate Practice of Medicine Prohibition
11 and other unfair business practices alleged herein and avoid individual liability and for the purpose
12 of substituting financially insolvent corporations or limited liability companies in place of themselves
13 and/or as instrumentalities to accomplish illegal objectives.

14 XIII. Adherence to the fiction of the separate existence of the defendants as entities
15 distinct from each other would permit an abuse of the corporate company privilege and would
16 sanction fraud or promote injustice in that defendants QUANTUM HEALTHCARE MEDICAL
17 ASSOCIATES, INC., MT. DIABLO EMERGENCY PHYSICIANS and QUANTUM PLUS, INC. and
18 DOES 26 through 50 were conceived, intended, and used by defendant TEAM HEALTH, INC.
19 and DOES 1 through 25 inclusive, to circumvent the Corporate Practice of Medicine Prohibition
20 and perpetuate other unfair, illegal and deceptive business practices alleged herein and to avoid
21 individual liability and for the purpose of substituting corporations or limited liability companies in
22 the place of defendants.

23 INTRODUCTION

24 XIV. The regulation and practice of medicine in the State of California are subject to
25 extensive regulatory control. The Corporate Practice of Medicine Prohibition, Bus. & Prof. Code
26 § 2400 et. seq., prohibits non-licensed persons or entities from practicing medicine, employing

1 physicians, assisting in the unlicensed practice of medicine or sharing of professional fees with
2 physicians. Bus. & Prof. Code § 650 further prohibits the offer or payment of consideration for
3 the purpose of inducing the referral of patients.

4 XV. Emergency departments of hospitals in the State of California are, with the
5 exception of narrowly specified exempt entities, staffed by physicians and groups which work
6 under agreements commonly known as exclusive emergency services contracts. These
7 agreements are between the hospital and a medical group of physicians and generally provide that
8 the medical group will treat all of the patients which present to the hospital's emergency room.
9 Such agreements provide emergency departments with continuous physician coverage. Hospitals
10 are generally able to choose among competing physician groups in awarding such exclusive
11 contracts. The contracts are for two or three years in duration. The physicians or group of
12 physicians who receive the contract have the exclusive right to treat patients at the emergency
13 department. Physicians who are not members of the group holding the exclusive contract are
14 excluded from treating patients in such emergency departments.

15 XVI. Since exclusive emergency services contracts guarantee a continuous flow of
16 patients to the group which has the contract, the granting of such a contract constitutes a
17 referral of patients under California and Federal law. Such contracts may not therefore be sold
18 by the hospital or purchased by physicians, nor may consideration be exchanged for the granting
19 or renewal of such agreements.

20 XVII. On or about February 1997 defendants and each of them embarked upon an illegal,
21 unfair and deceptive business practice aimed at fee splitting with emergency physicians in violation
22 of California law and at restraining trade in the emergency medicine profession. The scheme
23 was accomplished by: a.) Defendants illegal purchase of physician groups which held valuable
24 emergency services contracts; b.) Defendants illegal employment of physicians as independent
25 contractors to staff such contracts and treat the patients; c.) Defendant's retention of patient
26 and insurance revenues earned by such physicians in the course of treating patients in such

1 emergency departments; d.) the referral of emergency department patients to physicians for
2 consideration through such ownership of emergency service contracts; e.) Defendant requiring
3 physicians to execute and/or adhere to illegal restrictive covenants to limit competition; f.)
4 threatening physicians with suit upon such restrictive covenants if they competed or worked for a
5 competing entity; g.) threatening hospitals with a group boycott by all Emergency Staff members
6 of the Hospitals if they did not renew emergency services contracts; and h.) the offering of
7 kickbacks to induce the referral of emergency patients contracts in violation of Bus. & Prof. Code
8 § 650.

9 STATEMENT OF FACTS

10 XVIII. Commencing in the 1980s, the exclusive emergency services contract at Mt. Diablo
11 Hospital in Concord, California was held by a California Partnership named Fischer Mangold
12 which, according to public records, was a General Partnership made up of two physicians,
13 Herschel Fischer, M.D. and Karl Mangold, M.D. Fischer and Mangold did business in under the
14 fictitious name AMt. Diablo Emergency Physicians≅ and registered this fictitious name with the
15 California Medical Board as required by Bus.& Prof. Code § 2415, and also registered it with the
16 city of Pleasanton, Alameda County, California. On or about August 1996, Fischer and Mangold
17 executed an exclusive emergency services contract with Mt. Diablo Hospital, under its fictitious
18 name AMt Diablo Emergency Physicians≅ (AMDEP≅). The contract gave Fischer Mangold the
19 exclusive right to treat the Emergency Department patients at Mt. Diablo Hospital for a duration of
20 three years, to the exclusion of any physician not employed or hired by Fischer Mangold d.b.a.
21 Mt. Diablo Emergency Physicians.

22 XIX. In order to staff the emergency department, Fischer Mangold employed physicians
23 as AContractors≅ under the terms of the agreements set forth as Ex. A., B., and C. which
24 purported to be independent contractor agreements. Fischer Mangold paid said physicians a
25 percentage of the billing generated and collected. Fischer Mangold controlled all aspects of the
26 practice, including all management, administrative and financial services, billing, coding collection,

1 regulatory compliance, scheduling physician times and quality assurance. Fischer Mangold had
2 the exclusive right to hire, terminate, manage, employ independently, contract or otherwise control
3 the practice of the physicians at Mt. Diablo by virtue of the emergency services contract. By
4 1997, Fischer Mangold was reported to have similar emergency services contracts at 27 other
5 hospitals.

6 XX. In 1997, TEAM HEALTH INC.'s predecessor MedPartners and DOES 1 through
7 25 purchased Fischer Mangold for the purpose of employing physicians throughout the state of
8 California including at Mt. Diablo Hospital. TEAM HEALTH, INC. was in 1997 a division of
9 MedPartners and is now its successor in interest.

10 XXI. In order to deceive the public and licencing authorities, MedPartners/Team Health
11 undertook to purchase the medical partnership as follows:

12 a.) Defendants established two holding companies, called Herschel Fischer,
13 Inc.

14 (AHFI) and Karl Mangold, Inc. (AKMI). These two holding companies were wholly owned
15 and controlled by TEAM HEALTH, INC. and/or other defendants. They were general purpose
16 corporations, as distinguished from professional corporations, and therefore could not lawfully
17 engage in the practice of medicine in the State of California.

18 b.) Drs. Fischer and Mangold then assigned all of their individual interests in
19 the Fischer Mangold medical practice partnership to their respective holding companies. Thus, on
20 February 15, 1997, Dr. Fischer assigned his Fischer Mangold interest to Herschel Fischer, Inc,
21 (HFI) and Dr. Mangold assigned his to Karl Mangold Inc, (KMI).

22 c.) The holding companies (HFI and KMI) then *combined* to form a partnership
23 known as AMT. DIABLO EMERGENCY PHYSICIANS (AMDEP). This was the same name
24 the Fischer Mangold medical partnership had been using since the 1970's. But whereas the
25 Old MDEP was a genuine professional corporation comprised entirely of licenced
26 physicians/shareholders, the New MDEP was partnership comprised of two non-licenced

1 corporations--subsidiaries of TEAM HEALTH, INC. which were not eligible to practice medicine,
2 employee physicians or hold emergency services contracts.

3 XXII. The shareholders and officers of New MDEP=s were TEAM HEALTH executives
4 that were not licensed to practice medicine in the State of California. New MDEP=s offices were
5 the corporate offices of TEAM HEALTH, INC. located in Knoxville, Tennessee. At all times,
6 TEAM HEALTH, INC. represented to the public, shareholders and security purchasers that MT.
7 DIABLO EMERGENCY PHYSICIANS (New MDEP) is its wholly owned subsidiary. TEAM
8 HEALTH, INC.=s President and CEO Lynn Massingale, Chief Financial Officer Michael L. Hatcher,
9 and Chief Operations Officer David Jones became the Directors and/or Officers of KMI and HFI after
10 its formation.

11 XXIII. After purchase of Fischer Mangold as described above, Defendants through New
12 MDEP commenced in 1997 to illegally employ physicians and hold the emergency services
13 contract at Mt. Diablo Hospital. Defendants required the Contractor physicians to assign all their
14 billings to Team Health or its assignee, and payed such physicians based upon a percentage of
15 amounts collected. Defendants illegally used the tax identification number of Fischer Mangold to
16 pay the Contractor physicians, for two years after the sale, even though Fischer Mangold did not
17 exist and had been sold.

18 XXIV. On August 1, 1999 the ANew≡ MDEP executed a new exclusive emergency
19 services contract with Mt. Diablo Hospital. This contract purports to grant New MDEP the
20 exclusive right to control the practice of medicine at the emergency department of Mt. Diablo
21 Hospital, including the right to hire, retain, contract, employ, terminate or otherwise exclude
22 physicians from treating patients at the emergency department. At the time the Emergency
23 Services Contract was executed, New MDEP was a wholly owned subsidiary of an unlicensed
24 entity, TEAM HEALTH, INC. and was ineligible under California law to practice medicine, employ,
25 hire, retain or otherwise exclude physicians from practice at the emergency department, or hold an
26 emergency services contract.

1 XXV. At or about the same time it purchased Fischer Mangold in 1997, Team
2 Health/Med Partners formed QUANTUM PLUS, INC. to assist its illegal practice of medicine in
3 California. This entity was to act as the regional head for TEAM HEALTH INC. for managing the
4 Fischer Mangold and other purchases of medical groups in the State of California. On November
5 9, 1999, Defendant RICHARD GILLESPIE, M.D. applied for a fictitious name permit for
6 QUANTUM PLUS, INC. to be known as ATeam Health West≡. At all times mentioned Team
7 Health West was represented to the public as the as the western regional division of TEAM
8 HEALTH, INC.

9 XXVI. After approximately two years of illegally employing physicians and holding an
10 emergency medicine contract, Defendants decided in late 1999, to form a shell medical group to
11 deceive the public and State of California that New MDEP was physician-owned. Defendants
12 formed a Professional California Corporation known as QUANTUM HEALTHCARE MEDICAL
13 ASSOCIATES (AQHMA≡). TEAM HEALTH, INC., and Defendants appointed Team Health West
14 President RICHARD GILLESPIE, M.D. (who was a licensed California physician) to be its
15 President of the new entity. Thereupon, TEAM HEALTH, INC. caused its wholly owned subsidiary
16 New MDEP to Aassign≡ the Emergency Services Contract to QHMA. TEAM HEALTH, INC.
17 allegedly also Aassigned≡ its Physician Contractor-subcontractor agreements attached as Exhibits
18 A, B, and C to QHMA.

19 XXVII. QHMA was formed in order to provide a shell to permit TEAM HEALTH, INC. and
20 defendants to illegally employ physicians, acquire and hold emergency services and physician
21 contracts, such as those of Plaintiff and to split professional fees of physicians. The acquisition
22 and holding of such contracts and employment of physicians were perpetuated by fraud and
23 deception, in that defendants disguised QHMA as an independent physicians owned entity while
24 it was at all times the alter ego of, controlled by, operated by Team Health who assigned the
25 Aownership≡ of QHMA to a physician RICHARD GILLESPIE, M.D. TEAM HEALTH, INC.
26 represented to the public that QHMA was its subsidiary and characterized and represented the

1 physician revenues of QHMA physicians as that of its own, exercised the benefits of ownership,
2 executed commands, directives, employee policies and all relevant aspects of control of
3 Physicians through defendants and not through the fiction of QHMA. XXVIII. QHMA
4 Aowner≡ RICHARD GILLESPIE, M.D. never practiced medicine at the Mt. Diablo Emergency
5 Department, and was not on the staff of Mt. Diablo Hospital. Rather, Dr. Gillespie simply lent his
6 medical license to TEAM HEALTH, INC. in order facilitate TEAM HEALTH, INC.'s illegal
7 employment of California physicians and fee splitting. In furtherance of this scheme, defendant
8 RICHARD GILLESPIE M.D. applied for a fictitious name permit for QHMA from the California
9 Medical Board of on December 9, 1999, representing the location of his QHMA medical practice
10 as 24 Happy Valley Road in Pleasanton, CA, although no medical practice has ever existed at
11 24 Happy Valley Road in Pleasanton. Further, Defendant GILLESPIE at no time treated patients
12 or conducted the practice of medicine at Mt. Diablo Hospital, under the name of QHMA or in any
13 capacity. The application stated that the medical practice was Awholly owned and entirely
14 controlled≡ by himself, which statements were not true.

15 XXIX. The purported Aacquisition≡ of the emergency services contract and
16 ContractorBSubcontractor by Defendants alleged in the preceding paragraphs were at all times
17 void and conferred no benefits or rights upon QHMA, because, inter alia, the assigning party
18 New MDEP was a lay entity not permitted to employ physicians (even as Aindependent
19 contractors≡) to preform medical services: and was similarly not legally permitted to hold an
20 emergency services contract though which the Emergency Department is staffed.

21 XXX. The physician contracts attached contain restrictive covenants which purport to
22 restrain signatory physicians from working as emergency physicians at Mt Diablo Hospital for a
23 period of two years after termination, or from working for any other group that acquires the
24 emergency department contract for two years, or working for any competitors of Fischer Mangold
25 or soliciting business from any hospital with which Fischer Mangold had a contract for two years.
26 At all times mentioned herein defendants utilized the restrictive covenants at Mt. Diablo Hospital

1 by threatening with suit physicians who desired to continue to work at Mt. Diablo even if TEAM
2 HEALTH did not win the new contract. Defendants also threatening Mt. Diablo Hospital that it
3 would hold its physicians to the terms of the illegal non-competition provision if Mt. Diablo did
4 not renew the Emergency Services Contract with QHMA. Defendants threat of a group boycott
5 by the entire staff of the department was intended to compel and coerce the hospital to renew the
6 contract with TEAM HEALTH, INC. for reasons other than quality of service. Emergency
7 department staff physicians are a valuable asset of the hospital because they are familiar with
8 other staff, the facilities, policies, and their en mass departure would disrupt care.

9 XXXI. TEAM HEALTH, INC. and defendants and their officers and agents were at all times
10 herein aware that the restrictive covenants were invalid under California law, but compelled
11 physicians to adhere to them in order to unfairly and illegally compete for hospital contracts and for
12 physicians. Defendants believed that individual physicians would comply with illegal non-competes
13 in order to avoid litigation, and in this manner defendants thwarted the objectives of Bus. & Prof.
14 Code § 16600 by the inclusion of such covenants in Team Health physician contracts.

15 XXXII. After it took over the contract, Team Health, Inc., had problems with the contract
16 and did not interact productively with the emergency department physician staff. These difficulties
17 were significant and threatened to impact the provision of quality care in the emergency
18 department, including failure to provide a medical director devoting significant time to the practice in
19 the department.

20 XXXIII. Such physicians were and are at all times mentioned herein members of the
21 Hospital Staff at Mt. Diablo and as such were obliged as members to follow the Bylaws of the
22 Hospital. The Hospital Bylaws provided that all physicians must cooperate with efforts of the
23 Hospital to improve the quality of care. The Mt. Diablo Hospital Bylaws Article XVI granted
24 immunity to physicians for communicating information relating to the improvement of patient care and
25 provide in part that staff members shall have absolute immunity from civil liability from any such
26 act, report, recommendation, or disclosure. . . made in connection with any departmental, service or

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1 committee activities related to quality patient care and inter-professional conduct . . . or any matter that
2 might directly or indirectly have an effect on patient care≡ The purpose of this provision are that
3 Hospitals need assurances that staff members will honestly and truthfully respond to and provide
4 information despite whether they are independent contractors.

5 XXXIV. QHMA had agreed to honor the Bylaws in the Emergency Services Agreement
6 Assignment. It agreed to abide to Mt. Diablo Hospital=s Medical Staff Rules as they relate to
7 Physician conduct, and to Aensure≡ that their physicians will abide with such bylaws. The
8 Agreement provided that although the Hospital would respect the relationship between MDEP and
9 the emergency physicians that if there was Aany conflict≡ between the agreement and the Bylaws,
10the Bylaws would prevail.

11 XXXV. Despite this agreement, QHMA maintained a secret provision in the contracts with
12its physicians which required them to disregard Hospital regulations if inconsistent with the
13Contractor-subcontractor Agreement, providing specifically: ASubcontractor Physician does hereby
14agree to comply with the rules and regulations concerning the emergency facilities as set forth from
15time to time by the hospital, except as they may be inconsistent with this agreement.≡ At no time
16did Defendants reveal the existence of this clause to Mt. Diablo Hospital, to whom it had promised
17in the Emergency Services Agreement precisely to the contrary.

18 XXXVI. The contract for the Emergency Department at Mt. Diablo was to expire on October
192000. Defendants had never competed for the contract or underwent review because Team
20Health had simply Abought≡ the emergency services agreement when it purchased the assets of
21 Fischer Mangold in 1997. Team Health knew or should have known that it would be scrutinized
22and that widespread dissatisfaction among the working doctors created an unlikelihood of renewal.

23

24 XXXVII. Hospital President Tom Harlan wrote to QHMA Vice President Craig that the
25Hospital was concerned over the existence of a Aseemingly high level of dissatisfaction among
26rank and file emergency department physicians with QHMA=s management of our emergency

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1 department physicians . . . While there does not appear to be any =quality of care= issues at this
2 point, we and our physician leaders are concerned that the level of dissatisfaction among rank and
3 file ED physicians could lead to such issues if not addressed≅ . . . Hospital President Harlan
4 also represented to Team Health that the emergency department physicians had Abeen reluctant to
5 come forward and specifically identify their issues and concerns, for fear of *reprisals or retaliation*
6 from your organization≅ and that Abecause of this fear we have not been able to obtain the type
7 of honest and unfiltered information that would allow us to properly assess and address our
8 concerns.≅ The Hospital specifically stated that it would consider any retaliation or reprisals would
9 *Acertainly preclude the extension of our relationship*≅ and asked Quantum to provide assurances
10 they would not punish ED members for responding.

11 XXXVIII. Instead of providing assurances, defendants on August 21, 2002 impliedly
12 threatened each emergency department physician that it would sue under the non-compete to
13 Alock up≅ all the Mt. Diablo staff physicians working for a competitor. TEAM HEALTH , INC sent
14 each physician a letter stating that the hospital created a RFT that:

15 Aessentially opens up the process to groups other than Team Health
16 to acquire the contract for emergency services at Mt. Diablo and
potentially jeopardizes each of your practices at this facility . . .

17 Apparently this action was taken by the contract review committee
18 based upon their review of your responses (ten) to the Emergency
19 Department Survey that was sent to all physicians credentialed in
Emergency Medicine at Mt. Diablo Medical Center.≅

20 In order to communicate the threat of a group boycott to the Hospital, defendants sent the
21 Hospital a copy of the letter.

22 XXXIX. In late 2002, Mt Diablo Hospital announced that it would place the exclusive emergency
23 services contract out for a Request for Proposal (ARFP≅). Mt. Diablo Hospital invited two other entities
24 California Emergency Physicians (ACEP≅) and Emergency Physicians Medical Group (AEPMG≅) to
25 submit proposals. Unlike TEAM HEALTH, INC., CEP and EPMG were physician-owned entities.
26 Further, CEP was already the holder of the emergency service contract for Mt. Diablo Hospital=s sister

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1 facility, John Muir. Emergency physicians were not appointed to the committee which was to
2 decide who received the contract.

3 XL. Prior to awarding the contract the Hospital asked Team Health as to whether, in the
4 event TEAM HEALTH lost the contract, it would sue any of the Mt. Diablo Emergency staff to
5 preclude them from or punish them for working for whatever new group was awarded the contract.
6 RICHARD GILLESPIE, M.D. stated that it was the intention of Team Health to not permit the
7 physicians at Mt. Diablo from continuing to be employed at Mt. Diablo Hospital if Team Health lost
8 the contract. This constituted a direct threat to use its illegal non-competition provision to coerce
9 the hospital into granting it the contract. Mt. Diablo president Thomas Harlan requested QHMA
10 provide assurances that it would not retaliate against physicians for providing honest information.
11 This request for assurances did not reference but was contractually based upon the provisions of
12 the Emergency Services Agreement, which provided immunity. At all times thereafter, QHMA at
13 no time provided such assurances.

14 XLI. At the same time that TEAM HEALTH threaten suit against physicians, it employed
15 other illegal methods of securing the contract. TEAM HEALTH, INC. authorized Vice President
16 PHILIP CHASE, M.D. to approach Plaintiff individually to offer them each \$100,000 for their
17 assistance in trying to influence Mt. Diablo Hospital Administration to renew the TEAM HEALTH,
18 INC. contract. CHASE stated that he needed Attraction \cong for the RFP. He stated that his offer
19 had been Approved by Knoxville, \cong referring to the corporate headquarters of TEAM HEALTH,
20 INC. Payment was contingent upon TEAM HEALTH, INC. getting the contract. The offer was
21 intended by TEAM HEALTH, INC. and CHASE to induce the referral of patients in violation of ϵ
22 650 of the Bus. & Prof. Code, Welf. & Inst. Code ϵ 14107.02, and 42 U.S.C. ϵ 1320a-
23 7bb(1)(B).

24 XLII. After it lost the contract, defendants on November 19, 2002 wrote to each
25 emergency department physician and threatened them with suit if they continued to work at Mt.
26 Diablo Hospital.

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1 **FIRST CAUSE OF ACTION**
2 **(Unfair Business Practice)**

3 XLIII. Paragraphs 1 through 42 are incorporated by reference as if fully restated herein.

4 XLIV. At all times mentioned herein TEAM HEALTH, INC., HFI, KMI, MT DIABLO
5 EMERGENCY PHYSICIANS, QUANTUM PLUS ,INC. and DOES 1 through 25 were non-licensed
6 entities which could not directly or indirectly practice medicine, acquire or control professional
7 medical corporations or practices, but nevertheless purchased on or about June 1997 all beneficial
8 interest in Drs. Fischer and Mangold=s partnership and presently purport to hold and control such
9 interest through control and ownership of the defendants, and are informed and believed to have
10 similarly acquired DOES 25 through 50 in violation of law, including but not limited to Bus. &
11 Prof. Code    2400 et seq., Bus. & Prof. Code    2032, 2051, 2052, 2053, 2415, Corp. Code
12    2408. Defendants= further acts of purchasing emergency room contracts and forcing physicians
13 to split fees as a condition of working in the emergency room constituted kickbacks and referral
14 fees in violation of Bus. & Prof. Code    650, Welf. & Inst. Code    14107.02, and 42 U.S.C.   
15 1320a-7bb(1)(B). Defendants= acts constituted an unfair, illegal and deceptive business practice
16 in violation of Bus. & Prof. Code    17200, et seq.

17 XLV. At all times mentioned herein TEAM HEALTH, INC., HFI, KMI, MT DIABLO
18 EMERGENCY PHYSICIANS and DOES 1 through 50 inclusive were non-licensed entities which
19 may not directly or indirectly acquire emergency department contracts or control staffing of
20 emergency department contracts, but nevertheless purported to acquire the Mt. Diablo Hospital
21 emergency services contract in 1997. Plaintiff is informed and believed they or their agents have
22 similarly acquired other contracts, and presently hold and control such interests, in violation of law,
23 including but not limited to Bus. & Prof. Code    650,    2400 et seq.,    2032, 2051, 2053, 2415
24 and Corp. Code    2408. Defendants= acts constitute an unfair, illegal and deceptive business
25 practice in violation of Bus. & Prof. Code    17200, et seq.

26 XLVI. At all times mentioned herein TEAM HEALTH, INC., HFI, KMI, MT DIABLO

1 EMERGENCY PHYSICIANS, QUANTUM PLUS INC, and DOES 1 through 50 were not licensed
2 to practice in California and may not permissibly employ physicians, either as employees or
3 independent contractors, but nevertheless engaged in a practice of hiring and retaining physicians
4 such as Plaintiff alleged above commencing June 1997 at Mt. Diablo Hospital, Concord, California,
5 including the contracts of physicians attached as exhibits to this Complaint, and are informed and
6 believe to similarly employ physicians throughout the State of California. and presently holds and
7 controls such interest through control and ownership in violation of law, including but not limited to
8 Bus. & Prof. Code § 2400 et seq., §§ 2032, 2051, 2053. 2052, 650, Welf. & Inst. Code §
9 14107.02, and 42 U.S.C. § 1320a-7bb(1)(B). This practice, inter alia, constitutes unfair, illegal
10 and deceptive business practices in violation of Bus. & Prof. Code § 17200, et seq.

11 XLVII. At all times mentioned herein TEAM HEALTH, INC., HFI, KMI, MT. DIABLO
12 EMERGENCY PHYSICIANS, QUANTUM PLUS, INC., and DOES 1 through 50 were non-licensed
13 entities that may not share in the professional fees of physicians, but nevertheless held all right,
14 title and beneficial interest in all physician billings of the defendants and all physicians at Mt.
15 Diablo Emergency Department from 1997 to the present and presently holds and controls such
16 interest through control and ownership of all the defendants. Plaintiff is informed and believes and
17 alleges thereupon that defendants through similar means and methods share in the professional
18 fees in physicians throughout the state, including but not limited to those previously owned by
19 Fischer Mangold and those physicians working in emergency or other facilities set forth in
20 paragraph one. Plaintiff is informed and believes and alleges thereupon that defendants in some
21 cases disguised their fee splitting as payments for A contract management ≡ which physicians had
22 to pay in order to treat patients at TEAM HEALTH, INC. locations, in violation of California law,
23 including but not limited to Bus. & Prof. Code § 2400, § 650, Welf. & Inst. Code § 14107.02, and
24 42 U.S.C. § 1320a-7bb(1)(B). Defendants= practices constitute unfair, illegal and deceptive
25 business practices in violation of Bus. & Prof. Code § 17200, et seq.

26 XLVIII. At all times mentioned herein TEAM HEALTH, INC., MT. DIABLO EMERGENCY

1 PHYSICIANS, QUANTUM PLUS, INC., MT. DIABLO EMERGENCY PHYSICIANS, HFI, and HMI
2 and defendant DOES 1 through 50 were non-licensed entities which may not exercise control over
3 a medical practice or enter into arrangements tantamount to control of the practice of medicine, but
4 nevertheless exercised complete control over the Fischer Mangold partnership and QHMA, and
5 exercised such control at Mt. Diablo Hospital from 1997 to the present, including but not limited
6 to, hiring and termination of all physicians, selection of the medical director of the emergency
7 department, choosing the patients of physicians by requiring them to adhere to third party
8 contracting obligations, institution of a ACode of Conduct≅ for physicians (the failure with which to
9 comply with such was punishable by discharge), retention of the right to discharge physicians,
10 quality assurance authority, scheduling authority, complete and exclusive control over the financial
11 side of the medical practice including assignment of all right title and interest in all physician
12 billings, provision of coding services, and salary and benefits control. The existence of actual and
13 potential control over the medical and business aspects of the physician=s practice violated public
14 policy and constituted the illegal Corporate Practice of Medicine in violation of law, including but
15 not limited to Bus. & Prof. Code   2400. This conduct constitutes an unfair, illegal and deceptive
16 business practice in violation of Bus. & Prof. Code   17200, et seq. Plaintiff is informed and
17 believes and alleges thereupon that defendants similarly exercised such control over all the facilities
18 in the State of California in which defendants have an interest, including those based in facilities
19 set forth in paragraph one.

20 XLIX. On or about June 1997, defendants commenced the use of the fictitious name
21 AMt. Diablo Emergency Physicians≅ to conduct and transact business, including execution of a
22 contract with Mt. Diablo Hospital in order to deceive the public, physicians, contracting parties and
23 licencing authorities that they were a professional medical partnership, all in violation of law,
24 including but not limited to Bus. & Prof. Code   2415 which constituted an illegal, unfair and
25 deceptive practice in violation of Bus. & Prof. Code   17200 et. seq.

26 L. On or about June 1997, defendants commenced the use of the Fischer Mangold

1 partnership vehicle to conduct and transact business, in order to deceive the public, physicians,
2 contracting parties and licensing authorities that they were a professional medical partnership, all in
3 violation of law, including but not limited to Bus. & Prof. Code § 2415. which violate constituted
4 an illegal, unfair and deceptive practice in violation of Bus. & Prof. Code § 17200 et. seq.

5 LI. At all times mentioned herein, defendants required that physicians at Mt. Diablo and
6 other facilities throughout the State of California sign restrictive covenants identical or similar to
7 those set forth in Ex. A., B., and C. which precluded and penalized physicians from working at the
8 facility for a period of two years in the event TEAM HEALTH, INC. lost the contract, which
9 impaired the right to practice their profession and had the intended effect of coercing hospitals to
10 renew contracts. Such covenants violate Bus. & Prof. Code § 16600, § 16700 et. seq. and constitute
11 an unfair restraints of trade and violate public policy. Defendant=s requirement that physicians execute
12 and/or adhere to such restrictive covenants and defendants use of such covenants to force the hospital to
13 renew TEAM HEALTH, INC. contracts in violation of Bus. & Prof. Code § 16600 have the effect of
14 eliminating competition in the business and trade of emergency department physician services,
15 reducing the amount of competitors for Emergency Services Contracts, limiting the supply of
16 emergency physicians available to patients seeking emergency services, and raising the price of
17 such patient services by limiting the facilities where emergency physicians can practice, all of which
18 constitute violations of Bus. & Prof. §16700, et seq and thereby constituted unfair, illegal and
19 deceptive practices under Bus. & Prof. Code § 17200, et. seq. and § 17046. LII. Plaintiff and

20 the public have additionally sustained and continue to sustain damages as a result of the illegal
21 practices set forth above by, inter alia, the existence of the illegal contracting practices which limit
22 the employment options of emergency physicians in California, restrains their ability to practice their
23 profession until January 2005, misleads the public and hospitals as to lay ownership of the
24 groups, and work to the detriment of members of the public through the violations of law and unfair
25 practices alleged above.

26 LIII. Plaintiff is informed and believes and alleges thereupon that TEAM HEALTH, INC.=s

1 structure, relationship, coercive practices, unlicensed practice of a medicine and acts alleged herein
2 are substantially identical to its relationship and contracting scheme with each and every of its
3 contracts with hospitals and physicians in the state of California, and that TEAM HEALTH, INC.
4 engages and proposes to engage in the illegal conduct alleged above throughout the state of
5 California in the future by continuing to undertake the illegal contracting practices set forth above
6 unless enjoined.

7 LIV. At all times Defendants, and each of them, were aware their contracting practices,
8 fee splitting and other conduct alleged herein was illegal and violated California=s law its
9 designation of its physicians as AIndependent Contractors≅ of TEAM HEALTH, INC. did not
10 render the employment of such physicians permissible under California Law, but nevertheless
11 continued the practice, and represented to members of the public that the practice was in
12 conformity with law, and acted maliciously and willfully in undertaking the acts herein alleged.

13 LV. Unless enjoined from its illegal acquisitions, fee splitting contracting activities and
14 business practices alleged herein, defendants will continue to engage in illegal, unfair and
15 deceptive business practices, including but not limited to acquisitions, contracting activities and
16 unlicensed practice of medicine, all to the general harm of plaintiff, emergency physicians, and the
17 general public.

18 LVI. At all times mentioned herein defendants concealed their illegal conduct alleged, and
19 continue to conceal it by the manner and instrumentalities alleged through, inter alia, the
20 concealment of true ownership by establishing shell entities, and fraudulent use of the Mt. Diablo
21 Emergency Physician name, all of which were discovered by Plaintiff in 2003.

22 LVII. Plaintiff is informed and believes that TEAM HEALTH, INC.=s pattern of illegal
23 acquiring and holding emergency and physicians= contracts, use of illegal non-competition provisions,
24 fee splitting and other practices alleged herein are and have been undertaken throughout the State of
25 California from 1997 at numerous facilities to the present, and will continues unless enjoined.

26 WHEREFORE: Plaintiff prays for relief as set forth below:

1 1. A declaration that the physician contracts attached hereto are void, or in the
2 alternative that all restrictive covenants purporting to prevent plaintiff from competing with or
3 soliciting Acustomers≡ of defendants are void against public policy and Bus. & Prof. Code ≡
4 16600, 16700, and 17200 et. seq.

5 2. A declaration that the sale of Drs. Fischer and Mangold interests to
6 defendants and any such similar acquisitions as alleged above were void and ineffective to convey
7 any interest to Defendants and an unfair business practice;

8 3. A declaration that the restrictive covenants in the Contractor-Subcontractor
9 Agreements are void and an unfair business practice and for an injunction preventing defendants
10 and its agents, subsidiaries, alter egos or shell entities such as QHMA from maintaining contracts
11 with a physician in the State of California containing said provisions;

12 4. A declaration and injunction barring Defendants from purchasing medical
13 groups, employing physicians or holding emergency services contracts in the State of California,
14 declaring void any such purchases, agreements or assignments.

15 5. An injunction against defendants, their employees or agents or officers from
16 engaging in the unlawful practice of medicine, fee splitting, the direct or indirect ownership of
17 emergency services contracts in the State of California, the employment of physicians or
18 maintenance of contractual relationships with physicians which operate to control the practice of
19 medicine or inhibit competition;

20 6. An injunction prohibiting TEAM HEALTH, INC. from operating owning
21 medical practices or claiming as its income any physician revenues;

22 7. For cost of suit including attorneys= fees, and;

23 8. Any other and further relief as the Court may deem proper or to which
24 plaintiff is entitled under law.

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26 Dated: October 16, 2013

MILLSTEIN & ASSOCIATES

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COMPLAINT IN INTERVENTION FOR UNFAIR BUSINESS PRACTICES (Bus. & Prof. Code ≡ 17200)

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