

<b>DISTRICT COURT, BOULDER COUNTY, COLORADO</b> Court Address: Boulder Justice Center 1777 6th Street Boulder, CO 80302	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<b>Plaintiff:</b> AMI SADLER; COMPASSION & CHOICES; COMPASSION & CHOICES OF COLORADO; and STEPHEN KREBS, MD,  v.  <b>Defendant:</b> COMMUNITY FIRST FOUNDATION f/k/a LUTHERAN MEDICAL CENTER FOUNDATION; SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC.; EXEMPLA, INC., in its capacity and in its trade dress of EXEMPLA LUTHERAN MEDICAL CENTER; EXEMPLA GOOD SAMARITAN MEDICAL CENTER LLC; KAISER HOSPITAL ASSET MANAGEMENT, INC.; and KAISER FOUNDATION HEALTH PLAN OF COLORADO	
Attorneys for Defendants Kaiser:  Name:                      Geraldine A. Brimmer Antonio Gallegos Address:                    HOLLAND & HART LLP 555 Seventeenth Street, Suite 3200 Post Office Box 8749 Denver, Colorado 80201-8749 Telephone:                (303) 295-8199 Facsimile:                (303) 295-8261 E-mail:                     gbrimmer@hollandhart.com Atty.Reg.#:                13157, 32271	
<b>KAISER DEFENDANTS' ANSWER TO COMPLAINT</b>	

As their Answer to the Complaint, Defendants Kaiser Hospital Asset Management, Inc. and Kaiser Foundation Health Plan of Colorado (collectively “Kaiser Defendants”), through their counsel, state as follows:

## **I. INTRODUCTION**

1. The first sentence of paragraph 1 of the Complaint is a legal conclusion to which no response by the Kaiser Defendants is required. To the extent a response is required, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 1 of the Complaint. With respect to the remaining allegations of paragraph 1 of the Complaint, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.

2. With respect to the allegations contained in the first sentence of paragraph 2 of the Complaint, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations. The second sentence of paragraph 2 of the Complaint is a legal conclusion to which no response by the Kaiser Defendants is required. To the extent a response is required, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.

## **II. JURISDICTION AND VENUE**

3. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint.

4. The Kaiser Defendants admit that Kaiser Hospital Asset Management, Inc. is an out-of-state nonprofit corporation. The Kaiser Defendants further admit Ms. Sadler is a Kaiser member who resides in Boulder, Colorado, and that the Kaiser Defendants and Good Samaritan Hospital do substantial business in Boulder County. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 4 of the Complaint.

5. Paragraph 5 of the Complaint is a statement of the basis for the relief sought by Plaintiffs, to which no response by the Kaiser Defendants is required. To the extent a response is required, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint.

6. Paragraph 6 of the Complaint is a legal conclusion to which no response by the Kaiser Defendants is required. To the extent a response is required, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint.

## **III. PARTIES**

7. The Kaiser Defendants admit that Ms. Sadler is a member of Kaiser and a resident of Boulder, Colorado. Because of patient privacy laws, the Kaiser Defendants can neither admit nor deny the allegations regarding any medical treatment. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 7 of the Complaint.

8. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint.

9. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint.

10. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint.

11. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint.

12. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint.

13. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint.

14. The Kaiser Defendants admit that Exempla Northwest Medical Center, LLC is a Delaware limited liability company that owns Good Samaritan Hospital located in Lafayette, Colorado (Boulder County). The Kaiser Defendants further admit that Exempla Northwest Medical Center, LLC is the sole economic member of Good Samaritan Hospital. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 14 of the Complaint.

15. The Kaiser Defendants admit that Kaiser Hospital Asset Management, Inc. is a California nonprofit corporation with its registered address at 1560 Broadway, Suite 2090, Denver, CO 80202. The Kaiser Defendants further admit that Kaiser Hospital Asset Management, Inc. cooperated with Exempla, Inc. in the formation of Good Samaritan Hospital. To the extent further response is required, the Kaiser Defendants deny the allegations.

16. The Kaiser Defendants admit that Kaiser Foundation Health Plan of Colorado is a Colorado nonprofit corporation with its registered address at 1560 Broadway, Denver, CO 80202. The Kaiser Defendants deny the remaining allegations contained in paragraph 16 of the Complaint.

17. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint.

18. Paragraph 18 is a legal conclusion to which no response is required by the Kaiser Defendants. To the extent a response is required, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint.

#### **IV. FACTUAL ALLEGATIONS**

##### **A. Background**

19. On information and belief, the Kaiser Defendants admit that Lutheran is a nonprofit hospital that provides broad non-sectarian health care services to the public, including the Jefferson County community. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 19 of the Complaint.

20. The Kaiser Defendants admit the allegations contained in paragraph 20 of the Complaint.

21. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint.

22. The Kaiser Defendants are aware of the Notice given to the Colorado Attorney General on October 30, 2007, and admit that the Notice reports the proposed terms of the transaction, including the terms alleged in paragraph 22 of the Complaint. To the extent further response is required, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22.

23. The Kaiser Defendants admit in response to paragraph 23 of the Complaint that it is their understanding that one result of the Proposed Transaction will be that the Ethical and Religious Directives for Catholic Health Care Services (“Catholic Directives”) will be applied to Lutheran and Good Samaritan Hospitals. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 23 of the Complaint.

24. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint.

25. Paragraph 25 of the Complaint is a statement of the relief sought by Plaintiffs to which no response by the Kaiser Defendants is required. To the extent a response is required, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint.

##### **B. The Affiliation Between CFF and SCLHS**

26. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint.

27. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint.

28. The Kaiser Defendants admit on information and belief the allegations contained in the first sentence of paragraph 28 of the Complaint. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 28 of the Complaint.

29. The Kaiser Defendants admit on information and belief the allegations contained in the first sentence of paragraph 29 of the Complaint. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 29 of the Complaint.

30. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint.

31. In response to the allegations contained in paragraph 31 of the Complaint, the Kaiser Defendants admit that Good Samaritan Hospital opened in 2004 and has been operated as a hospital with no religiously based restrictions. The Kaiser Defendants further admit that Kaiser Hospital Asset Management, Inc. negotiated a Hospital Services Agreement with Exempla Northwest Medical Center, LLC. The Kaiser Defendants admit that Exempla Northwest Medical Center, LLC operates and manages Good Samaritan Hospital. With respect to the remaining allegations of paragraph 31 of the Complaint, the Kaiser Defendants are without knowledge of information sufficient to form a belief as to the truth of the remaining allegations.

**C. Lutheran and Good Samaritan are Financially Healthy and Successful**

32. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Complaint.

33. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint.

34. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint.

**D. The Proposed Transaction**

35. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint.

36. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint.

37. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint.

38. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint.

39. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint.

40. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint.

41. The Kaiser Defendants admit that it is their understanding that upon the closing of the Proposed Transaction, the Catholic Directives will be applied to Lutheran and Good Samaritan Hospitals. Because of the uncertainty of potential options such as a negotiated carve-out, the Kaiser Defendants can neither admit nor deny that health care access in Jefferson and Boulder Counties will be reduced. To the extent further response is required, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Complaint.

**E. Lutheran and Good Samaritan's Purposes are to Provide Broad Non-Sectarian Healthcare**

42. The Kaiser Defendants admit on information and belief that Lutheran and Good Samaritan are charitable hospitals that provide health care services to the public. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 42 of the Complaint.

43. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the Complaint.

44. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the Complaint.

45. With respect to the allegations contained in paragraph 45 of the Complaint, the Kaiser Defendants admit that Kaiser Hospital Asset Management, Inc. entered into a Hospital Services Agreement with Exempla Northwest Medical Center LLC. The Hospital Services Agreement speaks for itself. To the extent further answer is required, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to what is explicitly prohibited by the Catholic Directives.

**F. The Catholic Directives Severely Curtail Hospital Care Contrary to the Original Charitable Purpose**

46. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the Complaint.

47. The Kaiser Defendants admit the allegations of the first and second sentences of paragraph 47 of the Complaint on information and belief. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations related to the interpretation of the Catholic Directives. The Kaiser Defendants assert, on information and belief, that the Catholic Directives are subject to canonical interpretation and direction by the Archbishop.

48. The Kaiser Defendants admit the Catholic Directives can broadly impact the care a hospital may provide to its patients and to its community. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 48 and its subparagraphs of the Complaint. Specifically, the Kaiser Defendants can neither admit nor deny the allegations related to the interpretation of the Catholic Directives and assert, on information and belief, that the Directives are subject to canonical interpretation and direction by the Archbishop.

49. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the Complaint.

50. Paragraph 50 is a legal conclusion to which no response by the Kaiser Defendants is required. To the extent a response is required, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Complaint.

**FIRST CLAIM FOR RELIEF  
(Violation of UMIFA and Declaratory Judgment)**

51. The Kaiser Defendants incorporate by reference all preceding paragraphs of this Answer in their entirety.

52. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the Complaint.

53. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the Complaint.

54. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the Complaint.

55. Paragraph 55 is a legal conclusion to which no response by the Kaiser Defendants is required. To the extent a response is required, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the Complaint.

56. Paragraph 56 is a legal conclusion to which no response by the Kaiser Defendants is required. To the extent a response is required, the Kaiser Defendants are without knowledge

or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint.

57. Paragraph 57 is a legal conclusion to which no response by the Kaiser Defendants is required. To the extent a response is required, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the Complaint.

58. The Kaiser Defendants admit the allegations contained in paragraph 58 of the Complaint.

59. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the Complaint.

60. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the Complaint.

61. Paragraph 61 is a legal conclusion to which no response by the Kaiser Defendants is required. To the extent a response is required, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 of the Complaint.

62. Paragraph 62 is a legal conclusion to which no response by the Kaiser Defendants is required. To the extent a response is required, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 of the Complaint.

63. The Kaiser Defendants admit on information and belief that Lutheran and Good Samaritan Hospitals provide a broad scope of health care services not limited by Catholic Directives. With respect to the remaining allegations of paragraph 63 of the Complaint, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations.

64. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 of the Complaint.

65. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 of the Complaint.

66. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the Complaint.

67. The Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the Complaint.

68. Paragraph 68 is a legal conclusion to which no response by the Kaiser Defendants is required. To the extent a response is required, the Kaiser Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the Complaint.

**SECOND CLAIM FOR RELIEF**  
**(*Cy Pres* / Breach of Charitable Trust Against CFF)**

69. The Kaiser Defendants incorporate by reference all preceding paragraphs of this Answer in their entirety.

70. The Plaintiffs do not assert these allegations against the Kaiser Defendants and therefore the Kaiser Defendants have no obligation to respond.

71. The Plaintiffs do not assert these allegations against the Kaiser Defendants and therefore the Kaiser Defendants have no obligation to respond.

72. The Plaintiffs do not assert these allegations against the Kaiser Defendants and therefore the Kaiser Defendants have no obligation to respond.

73. The Plaintiffs do not assert these allegations against the Kaiser Defendants and therefore the Kaiser Defendants have no obligation to respond.

74. The Plaintiffs do not assert these allegations against the Kaiser Defendants and therefore the Kaiser Defendants have no obligation to respond.

The Kaiser Defendants deny all allegations not specifically admitted herein.

Because the Complaint does not seek relief against the Kaiser Defendants, the Kaiser Defendants are not asserting any affirmative defenses. The Kaiser Defendants reserve the right to amend their Answer if the allegations or nature of the relief changes.

WHEREFORE, the Kaiser Defendants pray that the Complaint be dismissed in its entirety and the Kaiser Defendants be awarded their costs and attorneys' fees.

Dated January 18, 2008.

Respectfully submitted,

s/ Geraldine A. Brimmer

Geraldine A. Brimmer, #13157

Antonio Gallegos, #32271

HOLLAND & HART LLP

**ATTORNEYS FOR DEFENDANTS KAISER HOSPITAL**

**ASSET MANAGEMENT, INC. AND KAISER**

**FOUNDATION HEALTH PLAN OF COLORADO**

## CERTIFICATE OF SERVICE

I certify that on January 18, 2008, I served a copy of the foregoing document to the following by

- U.S. Mail, postage prepaid  
 Hand Delivery  
 Fax  
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