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9  
10 **UNITED STATES DISTRICT COURT**  
11 **EASTERN DISTRICT OF CALIFORNIA**  
12

13 UNITED STATES OF AMERICA et al.  
14 ex rel. JEFFREY MAZIK,

15 Plaintiffs,

16 v.

17 KAISER FOUNDATION HEALTH PLAN  
18 INC., et al.,

19 Defendants.

Case No. 2:19-cv-0559-DAD-JDP

**DEFENDANTS' NOTICE OF MOTION AND  
MOTION TO TRANSFER UNDER 28 U.S.C.  
§ 1404; MEMORANDUM OF POINTS AND  
AUTHORITIES**

*[Filed concurrently with Declaration of Kyle M.  
Grossman; Declaration of Charlotte Tang]*

Hearing Date: June 18, 2024

Time: 1:30 p.m.

Judge: Hon. Dale A. Drozd

Courtroom: 4, 15th Floor

**NOTICE OF MOTION AND MOTION**

**TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that on June 18, 2024 at 1:30 p.m. (or as soon thereafter as the matter may be heard), in the above-entitled Court, located at Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, California 95814, Defendants Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, The Permanente Medical Group, Inc., Southern California Permanente Medical Group, and Colorado Permanente Medical Group, P.C. (collectively, “Defendants”) will and hereby do move the Court to transfer this action to the U.S. District Court for the Northern District of California under 28 U.S.C. § 1404(a). The Court should exercise its discretion to transfer this case because it is related to several similar actions that are consolidated and pending before Judge Edward M. Chen in the Northern District of California (the “*Osinek* matters”). Transfer to the Northern District of California and consolidation with those matters would best serve judicial economy. In addition, most of the witnesses and documentary evidence in this case are located in the Northern District of California, rendering that venue the most convenient for the parties and witnesses.

This Motion is made following the conference of counsel pursuant to the Court’s standing order which took place on April 4, 2024. The parties met and conferred about Defendants’ proposal to transfer this action to the Northern District. Declaration of Kyle M. Grossman (“Grossman Decl.”) ¶ 2. Defendants explained that, with allegations about Medicare Advantage still in this case, transfer to the Northern District and consolidation or coordination with the *Osinek* matters would be the most efficient way to litigate this action. *Id.* On April 8, 2024, counsel for Relator informed counsel for Defendants that Relator would not be in a position to object or consent to the Motion without reviewing the filed Motion. *Id.* ¶ 4.

The Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of Kyle M. Grossman and Charlotte Tang filed in support of the Motion, all other pleadings and papers on file in this action, any oral argument at the hearing on the Motion, and any further matters of which this Court may take judicial notice.

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Dated: April 8, 2024

Respectfully submitted,

By: /s/ Dimitri D. Portnoi  
DIMITRI D. PORTNOI  
KYLE M. GROSSMAN

*Attorneys for Defendants Kaiser  
Foundation Health Plan, Inc.; Kaiser  
Foundation Hospitals; The Permanente  
Medical Group, Inc.; Southern  
California Permanente Medical Group;  
and Colorado Permanente Medical  
Group, P.C.*

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Relator Jeffrey Mazik’s *qui tam* action is one of seven *qui tam* actions, along with one complaint filed by the United States, filed or pending in federal courts in California against various entities associated with the Kaiser Permanente brand. All of these actions have alleged, among other things, that the defendants defrauded the United States in administering health benefits under the Medicare Advantage program in violation of the False Claims Act (“FCA”). Three relator actions, and the FCA action by the United States, were filed in the Northern District of California, which is also where Relator worked at Kaiser Foundation Health Plan’s (“KFHP”) headquarters, and where he currently resides. Another three FCA actions, filed in the Central District of California and the District of Colorado, were later transferred to the Northern District as well and consolidated with the three cases already pending there before Judge Edward Chen. And because many of Relator’s claims for relief relate to his Oakland-based employment, half or more of the witnesses the parties have identified in their initial disclosures work or worked in Oakland in the Northern District. The Court should therefore exercise its discretion to transfer this action to the Northern District for “the convenience of parties and witnesses, in the interest of justice.” 28 U.S.C. § 1404(a). Multiple factors weigh in favor of transfer here:

**First**, the potential for consolidation or coordination with the related FCA cases pending before Judge Chen in the Northern District heavily favors transfer. While Defendant challenged Relator’s Medicare Advantage allegations on a motion to dismiss, those allegations survived in part. With those allegations still in the case, transfer to a court confronting similar issues asserted against similar defendants will make litigating this case more efficient for all involved and will reduce the potential for inconsistent rulings on common legal issues across the various cases.

**Second**, the most relevant witnesses and evidence will be located in the Northern District, given that Relator was employed by KFHP in the Northern District where KFHP is headquartered and many of the witnesses the parties have already identified in their initial disclosures are located in the Northern District. In addition, Relator’s operative Second Amended Complaint (“SAC”) does not include a single allegation specifically referencing conduct or evidence in the

1 Eastern District.

2 **Third**, this Motion is timely because this case is not too far advanced such that transfer  
3 would be inefficient and cause unreasonable delay—in fact, Defendants have not even answered  
4 the SAC and no trial date has been set.

5 For all these reasons, and those described below, the Court should transfer this action to  
6 the Northern District, where it can be consolidated or coordinated with the related FCA matters  
7 pending before Judge Chen.

## 8 **II. BACKGROUND**

### 9 **A. Relator’s Complaint and Related *Qui Tam* Actions in the Northern District**

10 Relator filed this *qui tam* action under seal in April 2019, alleging violations of the federal  
11 FCA, state FCA equivalents, and federal and California employment retaliation laws. *See* Dkt.  
12 No. 1 (“Complaint”). The original Complaint alleged that Defendants defrauded Medicare and  
13 several state Medicaid programs by “failing to identify and/or self-disclose identified  
14 overpayments to the government within sixty (60) days” as required under applicable Medicare  
15 regulations. *Id.* ¶ 2. While the Complaint referenced Medicare Part C—also known as Medicare  
16 Advantage—it did so sparingly with reference to claims data sent to Defendants from an external  
17 healthcare provider named Easterseals that provided services to Defendants’ patients. *Id.* ¶¶ 29,  
18 191-98. The Complaint focused primarily on payments under Medicare generally, the 60-day  
19 overpayment rule, and Medicaid. *See, e.g., id.* ¶¶ 32-54, 78, 85.

20 At the time Relator filed his original Complaint, five other *qui tam* actions had been filed  
21 under seal against Defendants (or some combination of them), the first of which was filed in 2013  
22 in the Northern District. *See United States ex rel. Osinek v. Kaiser Permanente*, No. 3:13-cv-  
23 3891 (N.D. Cal.), Dkt. No. 1.<sup>1</sup> Each of these actions—*Osinek*, *Taylor*, *Arefi*, *Stein*, and  
24 *Bryant*<sup>2</sup>—alleged that Defendants violated the FCA by knowingly submitting false diagnosis

25 <sup>1</sup> Further references to documents on the *Osinek* docket will be referred to as “*Osinek* Dkt. No.  
26 \_\_\_\_.”

27 <sup>2</sup> *See United States ex rel. Taylor v. Kaiser Permanente*, No. 3:21-cv-03894-EMC (N.D. Cal.)  
28 (“*Taylor*”); *United States ex rel. Arefi v. Kaiser Found. Health Plan, Inc.*, No. 3:16-cv-01558-  
EMC (N.D. Cal.) (“*Arefi*”); *United States ex rel. Stein v. Kaiser Found. Health Plan, Inc.*, No.

1 codes to the U.S. Centers for Medicare & Medicaid Services (“CMS”) in order to defraud the  
2 Medicare Advantage program. *See Osinek* Dkt. No. 64 at 1 (summarizing the complaints).

3 In April 2021, Relator filed under seal the First Amended Complaint (“FAC”), which  
4 shifted the focus of the federal FCA claim to an alleged scheme to defraud the Medicare  
5 Advantage program rather than Medicare generally. Specifically, Relator alleged that Defendants  
6 “knowingly allow[ed] false and fraudulent diagnoses codes submitted in claims for payment by  
7 non-Kaiser providers” (also referred to as “external providers”) and incorporated “those false data  
8 into [Defendants’] own electronic data for its Medicare Advantage and Medicaid program  
9 enrollees.” *See* Dkt. No. 48 (“FAC”) ¶ 3. Relator also continued to allege retaliation claims  
10 under federal and state law. *Id.* ¶¶ 186-98.

11 In June 2021, the United States moved to consolidate *Osinek, Taylor, Arefi, Stein, Bryant,*  
12 and a sixth *qui tam* action, *Bicocca*,<sup>3</sup> that had been filed in February 2020 (together, “*Osinek*” or  
13 the “*Osinek* matters”) before Judge Edward Chen in the Northern District. *See Osinek* Dkt. No.  
14 61. In its motion to consolidate, the United States explained that the six *qui tam* actions “each  
15 allege that Kaiser submitted claims to the Medicare Advantage Program ... for risk-adjustment  
16 payments for diagnoses that its patients did not actually have and/or that were not actually  
17 addressed by the treating physician during a patient encounter.” *Id.* at 2. The United States  
18 argued that, given “the commonality between the six actions, consolidating the actions will  
19 conserve judicial resources and promote the efficient conduct and determination of the actions.”  
20 *Id.* Judge Chen granted the motion, consolidating the actions “for all purposes” in the Northern  
21 District. *See id.* at 4.

22 On July 27, 2021, the United States filed a notice of election to partially intervene in the  
23 *Osinek* matters—specifically, on allegations that certain Defendants “submitted, or caused to be  
24 submitted, false claims for risk-adjustment payments based on diagnoses improperly added [to  
25

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26 3:16-cv-05337-EMC (N.D. Cal.) (“*Stein*”); *United States ex rel. Bryant v. Kaiser Permanente*,  
27 No. 3:18-cv-1347-EMC (N.D. Cal.) (“*Bryant*”).

28 <sup>3</sup> *See United States ex rel. Bicocca v. Permanente Med. Grp., Inc.*, No. 3:21-cv-03124-EMC  
(N.D. Cal.) (“*Bicocca*”).

1 medical records] via addenda under Medicare Part C from the years 2009 until present.” *Osinek*  
2 Dkt. No. 64 at 1. Judge Chen unsealed the *qui tam* actions on July 29, 2021. *Osinek* Dkt. No. 65  
3 at 2. The United States subsequently filed its Complaint-In-Intervention in *Osinek* on October 25,  
4 2021. *Osinek* Dkt. No. 110.

5 **B. Stay Pending First-to-File Motion in *Osinek***

6 On December 6, 2021, the Court in this matter unsealed the First Amended Complaint  
7 after the United States and the Plaintiff States declined to intervene. *See* Dkt. No. 67 at 2.<sup>4</sup>  
8 Shortly thereafter, the parties filed a joint stipulation requesting that the Court temporarily stay  
9 the action. *See* Dkt. No. 68. The parties explained that, like this action, the *Osinek* matters also  
10 alleged that Defendants submitted false claims for payment to the Medicare Advantage program,  
11 and that the parties in *Osinek* were in the process of briefing a motion to dismiss under the FCA’s  
12 first-to-file bar. *Id.* at 3. The first-to-file bar prohibits duplicative relator actions, providing that  
13 after a relator brings a *qui tam* action, “no person other than the Government may intervene or  
14 bring a related action based on the facts underlying the pending action.” 31 U.S.C. § 3730(b)(5).  
15 Defendants explained that Relator’s action also was vulnerable to a challenge under the first-to-  
16 file bar given the earlier-filed cases in *Osinek*. Dkt. No. 68 at 3. The parties agreed that “it would  
17 serve the interests of the Parties and this Court to stay proceedings ... until a ruling [in *Osinek*] on  
18 the first-to-file motions.” *Id.* at 4. The Court then stayed the action pending resolution of the  
19 first-to-file motion in *Osinek*. Dkt. No. 69 at 4.

20 On June 23, 2022, the parties notified the Court that Judge Chen had granted in part and  
21 denied in part the first-to-file motion in *Osinek*. Dkt. No. 71 at 2. Among other things, Judge  
22 Chen partially dismissed the *Taylor* action as duplicative of the first-filed *Osinek* action; but  
23 *Taylor* still survived as to certain allegations, including to the extent it alleged “a fraud based on  
24 improper coding by external providers.” *Osinek* Dkt. No. 171 at 46.

25 **C. Defendants’ Motion to Dismiss and Relator’s Second Amended Complaint**

26 With the stay lifted after Judge Chen’s ruling, the parties to this action agreed to a briefing

27 \_\_\_\_\_  
28 <sup>4</sup> Relator’s original Complaint previously was unsealed in July 2020 after the United States and  
Plaintiff States declined to intervene. Dkt. Nos. 17, 19-20.

1 schedule for Defendants’ motion to dismiss, which Defendants filed on July 13, 2022. Dkt. No.  
2 78. As relevant, the motion sought to dismiss the entirety of Relator’s FCA cause of action that  
3 now focused on an alleged fraud on the Medicare Advantage program. *Id.* at 7-15. Defendants  
4 argued that (1) *Taylor*’s allegations about external providers fully barred Relator’s FCA cause of  
5 action under the first-to-file rule and (2) Relator failed to sufficiently plead his FCA cause of  
6 action under Federal Rule of Civil Procedure 9(b). *See id.* at 10-15.

7 On October 4, 2022, Judge John A. Mendez took Defendants’ motion under submission.  
8 Dkt. No. 92. But on October 25, 2022, Judge Mendez recused himself, and the action was  
9 reassigned to the current presiding judicial officer: the Honorable Dale A. Drozd. Dkt. No. 93.  
10 On April 10, 2023, the Court issued a minute order notifying the parties that “the long-standing  
11 lack of judicial resources in this district long ago reached crisis proportions” that “continues to  
12 have serious implications for this court and litigants appearing before it.” Dkt. No. 100. The  
13 order further noted that Judge Drozd recently transferred to the Sacramento courthouse and was  
14 reassigned cases that “came with a substantial backlog of over 100 fully briefed motions,” *id.*,  
15 which included Defendants’ motion to dismiss.

16 On February 13, 2024, the Court issued an order granting in part and denying in part  
17 Defendants’ motion. Dkt. No. 104. The Court held that *Taylor* barred part of Relator’s FCA  
18 cause of action, but allowed Relator to proceed to the extent that he “alleges that defendants  
19 deliberately tampered with compliance software to ensure that it did not identify erroneous  
20 diagnosis codes” that were then allegedly submitted to the Medicare Advantage program. *Id.* at  
21 12. Relator’s FAC had focused on alleged compliance software from three companies in  
22 particular—FICO, Verisk, and McKesson. *See* FAC ¶¶ 51, 55-57. The Court also dismissed  
23 Relator’s allegations about fraud on state Medicaid programs other than Medi-Cal and dismissed  
24 the retaliation causes of action against Defendants The Permanente Medical Group, Southern  
25 California Permanente Medical Group, and Colorado Permanente Medical Group. *See* Dkt. 104  
26 at 22, 28-29.

27 On March 26, 2024, Relator filed his SAC. Dkt. No. 107. The SAC continues to assert a  
28 cause of action alleging fraud on the Medicare Advantage program, and adds allegations about

1 state Medicaid programs other than Medi-Cal. *See id.* ¶¶ 35-36.

2 On April 4, 2024, the parties met and conferred about Defendants’ proposal to transfer  
3 this FCA action to the Northern District. Declaration of Kyle M. Grossman (“Grossman Decl.”)  
4 ¶ 2. Defendants explained that, with allegations about Medicare Advantage still in this case,  
5 transfer to the Northern District and consolidation or coordination with *Osinek* would be the most  
6 efficient way to litigate this action. *Id.* On April 8, 2024, counsel for Relator informed counsel  
7 for Defendants that Relator would not be in a position to object or consent to the Motion without  
8 reviewing the filed Motion. *Id.* ¶ 4.

### 9 **III. LEGAL STANDARD**

10 Under 28 U.S.C. § 1404(a), “a district court may transfer any civil action to any other  
11 district” where the action “might have been brought” for “the convenience of parties and  
12 witnesses, in the interest of justice.” The Court must engage in a two-step process in considering  
13 a motion under § 1404(a). First, the Court must determine whether the moving party could have  
14 brought the action in the proposed venue. *See* 28 U.S.C. § 1404(a). If so, then the Court will  
15 “weigh multiple factors in its determination whether transfer is appropriate in a particular case.”  
16 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000). “The primary factors to be  
17 considered are convenience of witnesses and parties and concerns for judicial economy (including  
18 duplicative effort, waste of time and money). Other factors include plaintiff’s choice of forum,  
19 administrative considerations, and the respective parties’ contacts with the forum.” *Right to Life*  
20 *of Cent. Cal. v. Bonta*, 614 F. Supp. 3d 729, 733 (E.D. Cal. 2022) (Drozd, J.) (internal quotations  
21 and citations omitted).<sup>5</sup>

22 In addition, an “important consideration in determining whether the interests of justice  
23 dictate a transfer of venue is the pendency of a related case in the transferee forum. ‘The

24 \_\_\_\_\_  
25 <sup>5</sup> Other courts have identified a similar list of nonexclusive factors to consider on a motion to  
26 transfer under § 1404(a), including “(1) plaintiff’s choice of forum; (2) the convenience of the  
27 parties; (3) the convenience of the witnesses; (4) the location of books and records; (5) which  
28 forum’s law applies; (6) the interests of justice; and (7) administrative considerations.” *Rubio v.*  
*Monsanto Co.*, 181 F. Supp. 3d 746, 759 (C.D. Cal. 2016); *see also Jones*, 211 F.3d at 498-99  
(listing similar factors and noting that a transfer decision under § 1404(a) depends on an  
“individualized, case-by-case consideration of convenience and fairness” (internal quotations  
omitted)).

1 feasibility of consolidation is a significant factor in a transfer decision.” *Hawkins v. Gerber*  
2 *Prods. Co.*, 924 F. Supp. 2d 1208, 1214 (S.D. Cal. 2013) (quoting *A.J. Indus., Inc. v. U.S. Dist.*  
3 *Ct. for Cent. Dist. of Cal.*, 503 F.2d 384, 389 (9th Cir. 1974)). “In general, cases should be  
4 transferred to districts where related actions are pending.” *Bratton v. Schering-Plough Corp.*,  
5 2007 WL 2023482, at \*5 (D. Ariz. July 12, 2007) (internal quotations omitted). Centralizing  
6 related cases can conserve “time, energy and money” and help “avoid the possibility of  
7 inconsistent judgments.” *Callaway Golf Co. v. Corp. Trade Inc.*, 2010 WL 743829, at \*7 (S.D.  
8 Cal. Mar. 1, 2010) (internal quotations omitted).

#### 9 **IV. ARGUMENT**

10 The Court should transfer this action to the Northern District. Relator could have brought  
11 the action in the Northern District, and the § 1404(a) factors weigh in favor of transfer, especially  
12 given that this action can be consolidated or coordinated with the related *Osinek* matters  
13 following transfer.

14 The threshold question—whether Relator could have brought the suit in the Northern  
15 District—is easily met. Actions asserting FCA claims, such as this one, “may be brought in any  
16 judicial district in which the defendant or, in the case of multiple defendants, any one defendant  
17 can be found, resides, [or] transacts business.” 31 U.S.C. § 3732(a). Relator himself alleges that  
18 Defendants KFHP and KFH are headquartered in the Northern District—specifically in Alameda  
19 County. *See* SAC ¶ 15(a)-(b) (alleging KFHP and KFH are headquartered in “Alameda  
20 County”). Nothing prevented Relator from bringing this action in the Northern District in the  
21 first place.

22 Turning to the second inquiry of a § 1404(a) motion, the convenience and fairness factors  
23 favor transfer:

##### 24 **A. Potential Consolidation or Coordination with the *Osinek* Matters Heavily** 25 **Favors Transfer**

26 The potential for consolidation or coordination of *Mazik* with the related *Osinek* matters  
27 “is a significant factor” weighing in favor of transfer here. *See A.J. Indus.*, 503 F.2d at 389;  
28 *Hawkins*, 924 F. Supp. 2d at 1214; *Bratton*, 2017 WL 2023482, at \*5. If the Court transfers this

1 action to the Northern District, Defendants intend to move to consolidate the suit with the *Osinek*  
2 matters pending there before Judge Chen. *See* Fed. R. Civ. P. 42(a) (a court may consolidate  
3 actions that “involve a common question of law or fact”). As noted above, Relator’s action  
4 concerns an alleged effort by Defendants to knowingly submit false diagnosis codes to CMS in an  
5 effort to defraud the Medicare Advantage program in violation of the FCA. SAC ¶¶ 3, 5, 45, 50.  
6 In *Osinek*, Judge Chen consolidated six *qui tam* actions—including actions originally filed in the  
7 Central District of California (*Arefi* and *Stein*) and the District of Colorado (*Taylor*)—based on  
8 similar allegations in each action. *Osinek* Dkt. No. 61 at 4. Indeed, the United States moved to  
9 consolidate the six *qui tam* actions because they each alleged that “Kaiser submitted claims to the  
10 Medicare Advantage Program ... for risk-adjustment payments for diagnoses that its patients did  
11 not actually have and/or that were not actually addressed by the treating physician during a  
12 patient encounter as required by Medicare billing rules.” *Id.* at 2. Accepting this argument,  
13 Judge Chen granted the motion to consolidate. *Id.* at 4. The exact same rationale for  
14 consolidation applies to *Mazik*, given its FCA cause of action premised on allegedly improper  
15 submission of false diagnosis codes to the Medicare Advantage program. At minimum, even if  
16 Judge Chen does not formally consolidate *Mazik* with the *Osinek* matters, *Mazik* could be  
17 assigned to Judge Chen as a related case. *See* N.D. Cal. Local Civil Rule 3-12. Judge Chen can  
18 then ensure the *Mazik* and *Osinek* actions are generally coordinated in terms of discovery and  
19 case management.

20 Litigating this action with the *Osinek* matters—either before Judge Chen as a related case  
21 or in a formally consolidated proceeding—will promote efficiency and judicial economy. While  
22 the actions differ in certain respects, they share commonalities that would make litigating them  
23 together more efficient. For example, *Mazik*, *Taylor*, and the United States’ Complaint-In-  
24 Intervention in *Osinek* all generally involve how Medicare Advantage operates and Defendants’  
25 risk-adjustment business practices. SAC ¶ 2 (“Kaiser has engaged in a scheme to knowingly  
26 submit, cause to be submitted, and conspire to submit false claims for payment to the United  
27 States in connection with Medicare Advantage programs[.]”); *Osinek* Dkt. No. 240 (“U.S. Am.  
28 Compl.”) ¶ 101 (“Kaiser operated a widespread coordinated scheme to wrongfully obtain risk-

1 adjustment payments.”); *Osinek* Dkt. No. 239 (“*Taylor* Third Am. Compl.”) ¶ 2 (“Defendants  
2 and/or their agents and employees have perpetrated a systematic fraud on the Medicare  
3 Advantage [] program.”). In addition, like *Mazik*, the *Taylor* action directly challenges the  
4 validity of Defendants’ compliance programs, citing to the same Medicare Advantage program  
5 regulations about effective compliance programs. Compare SAC ¶ 30 (alleging that Medicare  
6 Advantage Organizations (“MAOs”) must “[a]dopt and implement an effective compliance  
7 program, which must include measures that prevent, detect, and correct non-compliance with  
8 CMS’ program requirements as well as measures that prevent, detect, and correct fraud, waste,  
9 and abuse.” (quoting 42 C.F.R. § 422.503(b)(4))), ¶ 44 (describing “Kaiser’s compliance  
10 program” as a “sham”), with *Taylor* SAC ¶¶ 59 (alleging that MAOs must “[a]dopt and  
11 implement an effective compliance program” quoting 42 C.F.R. § 422.503(b)(4)), ¶ 92 (alleging  
12 the defendants had “no regard for compliance or accuracy”). Discovery into topics such as  
13 Defendants’ compliance programs and risk-adjustment business practices could proceed more  
14 efficiently and without duplication of effort across cases if *Mazik* is transferred and consolidated  
15 or coordinated with the *Osinek* matters.

16 Defendants also have legal defenses in *Mazik* that overlap with legal defenses that they  
17 have asserted in the *Osinek* matters. For example, both Relator and the litigants in the *Osinek*  
18 matters appear to allege that diagnosis codes themselves are claims for payment under the FCA.  
19 See SAC ¶¶ 2, 3; U.S. Am. Compl. ¶ 379; *Taylor* Third Am. Compl. ¶ 263. But Defendants  
20 intend to challenge as a matter of law whether the diagnosis codes they submitted to CMS are  
21 claims for payment within the meaning of 31 U.S.C. § 3729(b)(2), and they have already asserted  
22 this defense in the *Osinek* litigation. See *Osinek* Dkt. No. 150 (Joint Case Management Statement  
23 and Rule 26(f) Report explaining that a “primary legal issue[]” is “[w]hether diagnosis codes  
24 submitted to CMS for risk-adjusted payment constitute ‘claims’ within the meaning of the FCA”).  
25 Transfer and consolidation or coordination will help avoid duplicative work considering such  
26 defenses as well as the potential for inconsistent judicial rulings on legal issues that will affect  
27 both *Mazik* and *Osinek*. See *Hawkins*, 924 F. Supp. 2d at 1217 (granting transfer motion where  
28 the court concluded that if it “were to deny transfer, the overall cost of litigation will be

1 effectively doubled because both suits will proceed independently—and possibly with different  
2 Plaintiff’s counsel”); *Parker v. FedEx Nat’l, Inc.*, 2010 WL 5113809, at \*4 (E.D. Cal. Dec. 9,  
3 2010), *report and recommendation adopted sub nom. Parker v. FedEx Nat’l LTL, Inc.*, 2011 WL  
4 13323369 (E.D. Cal. Jan. 18, 2011) (granting transfer motion in part because related cases  
5 involving overlapping defendants were pending in transferee court and “aspects of discovery  
6 could be consolidated and/or coordinated between the cases resulting in a savings of time, money,  
7 and court resources”).

8 In addition, given their years of experience in *Osinek*, Judge Chen and the Magistrate  
9 Judge in that case are already familiar with Defendants, the Medicare Advantage program, and  
10 the sort of discovery that is relevant in these types of cases and with this specific group of  
11 Defendants. Indeed, thus far, the *Osinek* court has resolved three rounds of motions to dismiss  
12 and three discovery motions, covering all manner of topics related to Defendants’ risk-adjustment  
13 business practices, and discovery into key legal and factual issues about the operation of the  
14 Medicare Advantage program. *See Osinek* Dkt. Nos. 171, 219, 223-26, 257, 275-77, 279.

15 **B. The Convenience of Witnesses and Location of Evidence Favor Transfer**

16 Defendants have strong reason to believe that most of the key witnesses and evidence will  
17 be located in the Northern District, which also weighs heavily in favor of transfer. *See* 28 U.S.C.  
18 § 1404(a); *Hawkins*, 924 F. Supp. 2d at 1215 (“The convenience of witnesses” is often an  
19 “important factor” when deciding a motion to transfer). At the very least, it is clear that the vast  
20 majority of witnesses and evidence are *not* located in the Eastern District. Indeed, the SAC does  
21 not allege any facts about any conduct or evidence in the Eastern District. Defendants recognize  
22 that Sacramento, where this Court is located, and San Francisco, where Judge Chen is located, are  
23 not distant. But when combined with the ability to coordinate discovery with the *Osinek* matters,  
24 which can avoid duplication of effort and the potential need for multiple depositions of the same  
25 witnesses across the matters, this factor favors transfer.

26 The location of witnesses identified in the parties’ initial disclosures—which also contain  
27 descriptions of their potential testimony—confirms that the most convenient venue is the  
28 Northern District. Relator himself worked for KFHP in Oakland in the Northern District.

1 Declaration of Charlotte Tang (“Tang Decl.”) ¶ 4. And the last residential address KFHP has on  
2 file for Relator is in Alameda County, also in the Northern District *Id.*

3 In addition, Relator and Defendants have identified a number of current and former  
4 employees of Defendants in their initial disclosures as persons likely to have discoverable  
5 information. *See* Grossman Decl., Exs. A & B. Not a single one of these employees worked in  
6 the Eastern District. Tang Decl. ¶¶ 5-29. Of the 25 current and former employees identified  
7 (including Relator), 13 worked within the Northern District, including 12 in Oakland where  
8 KFHP is headquartered. *Id.* ¶¶ 4-6, 9-14, 19, 21, 23-24. Only one of these 13 employees has a  
9 home address in the Eastern District, although he worked at KFHP’s headquarters in Oakland.  
10 *See id.* ¶ 10. The employees who worked in Oakland include individuals likely to have important  
11 testimony, such as Relator’s direct supervisors and other colleagues who Relator contends worked  
12 closely with him on projects that uncovered the alleged fraud. *See* SAC ¶¶ 57 (Sarles, Loden, and  
13 Pursche), 59 (Janiga), 63 (Kelly), 114 (Sutcliffe). These witnesses will be important not only to  
14 Relator’s retaliation claims, since they can testify as to his performance and reasons for  
15 termination, but also to his fraud claims, since they allegedly worked with Relator on compliance  
16 issues. *See id.*

17 The other employees that the parties have identified in their initial disclosures have no  
18 apparent connection to the Eastern District. Five worked or lived in Los Angeles County in the  
19 Central District of California, one worked and lived in San Diego County in the Southern District  
20 of California, and six others are located in Alabama, Georgia, Oregon, or Washington. Tang  
21 Decl. ¶¶ 7-8, 15-17, 20-22, 25, 26, 28-29.

22 Defendants also have no reason to believe that any of the non-parties identified in  
23 Relator’s initial disclosures are located in the Eastern District. Defendants expect that the most  
24 important non-party witnesses will be those who can speak to the functionalities of the alleged  
25 compliance tools Relator has identified—i.e., the FICO, Verisk, and McKesson tools. Grossman  
26 Decl., Ex. A at 6-7. The telephone number Relator provides for Andrea Allmon, listed as a FICO  
27 employee, has a San Diego-region area code; the telephone number for Dave Bohnenstingel,  
28

1 listed as a “Verisk Health/Verscend” employee, has a Minneapolis-region area code. *Id.*<sup>6</sup> Relator  
 2 also lists employees of the Office of Personnel Management of the U.S. Office of the Inspector  
 3 General, *see id.*, which is located in Washington, D.C.<sup>7</sup>

4 In short, most of the relevant witnesses and evidence will be located in the Northern  
 5 District—Relator worked for KFHP in the Northern District; KFHP is headquartered in the  
 6 Northern District and is the entity that Relator alleges submitted false diagnosis-code data to the  
 7 Medicare Advantage and Medicaid programs in violation of the FCA, *see* SAC ¶¶ 15(a), 31, 34;  
 8 and half of the witnesses the parties have identified to date in their initial disclosures worked in  
 9 the Northern District. Virtually no relevant witnesses or evidence appears to be located in the  
 10 Eastern District—including Relator himself. Accordingly, litigating the case in the Northern  
 11 District will be more convenient to both the parties and key witnesses.

12 **C. The Status of This Case Also Favors Transfer**

13 The relative infancy of this case also counsels in favor of transfer or, at the very least,  
 14 does not weigh against transfer. While courts have denied motions to transfer where a case “had  
 15 already been set for trial or the case has already been extensively litigated,” that is not the  
 16 situation here. *Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152, 1168 (S.D. Cal. 2005) (collecting  
 17 cases and declining to deny defendants’ motion to transfer on timeliness grounds where transfer  
 18 “would not entail unnecessary expense or result in the waste of time on the part of the parties”);  
 19 *see Sam Kohli Enters., Inc. v. Comsys Servs. LLC*, 2011 WL 13257533, at \*9 (S.D. Cal. Oct. 3,  
 20 2011) (similar). Defendants have not answered the operative SAC, little discovery has occurred,  
 21 and no trial date or discovery schedule has been set as of the filing of this Motion.

22 \_\_\_\_\_  
 23 <sup>6</sup> *See* California Public Utilities Commission, Report on the 858 Area Code, *available at*  
 24 <https://docs.cpuc.ca.gov/published/report/19543.htm#:~:text=The%20858%20area%20code%20includes,code%20was%20created%20in%201982> (last accessed Apr. 4, 2024) (explaining the  
 25 “858” area code is a San Diego area code); Minnesota Legislature, Minneapolis Area Codes,  
 26 <https://www.gis.lcc.mn.gov/pdf/misc/areacode.pdf> (last accessed Apr. 4, 2024) (showing  
 Minnesota area codes, including “952”); *Fishman v. Subway Franchisee Advert. Fund Tr., Ltd.*,  
 2019 WL 6135030, at \*2 (C.D. Cal. Nov. 19, 2019) (taking judicial notice that particular area  
 code included a certain geographic region).

27 <sup>7</sup> *See* U.S. Office of Personnel Management, Office of Inspector General, Contact Us: General  
 28 Contact Information, *available at* <https://www.opm.gov/about-us/contact-us/> (last accessed Apr.  
 4, 2024) (listing address in Washington, D.C.).

1           **D.     Relator’s Choice of Forum Does Not Weigh in Favor of Transfer Here**

2           Finally, Relator’s choice of forum should not control the transfer analysis here. Given the  
3 potential for consolidation with the related *Osinek* matters and the location of most witnesses and  
4 evidence in the Northern District—where Relator himself worked and lives—Relator cannot  
5 show that his choice of forum outweighs other considerations favoring transfer. *See In re Ferrero*  
6 *Litig.*, 768 F. Supp. 2d 1074, 1079 (S.D. Cal. 2011) (“Courts may also consider the facts of the  
7 case in determining how much deference to give the plaintiff’s choice.”); *A.F.P. v. United States*,  
8 2022 WL 2704570, at \*5 (E.D. Cal. July 11, 2022) (finding plaintiff’s choice of forum “accorded  
9 diminished weight” given lack of “material connections between the events underlying this action  
10 and the Eastern District of California”).

11           Moreover, the Court should give Relator’s choice of forum little weight in the transfer  
12 analysis because the Eastern District is not even Relator’s home forum. A foreign plaintiff’s  
13 choice of forum is “entitled to substantially less deference” than that of a plaintiff at home in the  
14 forum. *In re Apple, Inc.*, 602 F.3d 909, 913 (8th Cir. 2010) (internal quotation omitted); *see*  
15 *Rubio*, 181 F. Supp. 3d at 762 (concluding the choice-of-forum factor weighed “slightly in favor  
16 of granting the motion to transfer” where plaintiff’s chosen forum was not his “home forum” and  
17 because “the great majority of the operative facts ... occurred” in the proposed forum); *Ferrarini*  
18 *v. Irgit*, 2018 WL 7501285, at \*3 (C.D. Cal. Dec. 28, 2018) (“If the operative facts have not  
19 occurred within the forum of original selection and that forum has no particular interest in the  
20 parties or the subject matter, the plaintiff’s choice of forum is entitled only to minimal  
21 consideration.” (quoting *Pac. Car & Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968))).  
22 In fact, Relator lives in the Northern District—Defendants’ proposed forum—which presumably  
23 would be more convenient to Relator as well.

24           **V.     CONCLUSION**

25           For the foregoing reasons, the Court should grant the Motion and transfer *Mazik* to the  
26 Northern District, where it can be consolidated or coordinated with the pending *Osinek* matters.

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Dated: April 8, 2024

Respectfully submitted,

By: /s/ Dimitri D. Portnoi  
DIMITRI D. PORTNOI  
KYLE M. GROSSMAN

*Attorneys for Defendants Kaiser  
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Foundation Hospitals; The Permanente  
Medical Group, Inc.; Southern  
California Permanente Medical Group;  
and Colorado Permanente Medical  
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7 *Permanente Medical Group, Inc.; Southern California*  
*Permanente Medical Group; and Colorado Permanente*  
8 *Medical Group, P.C.*

9  
10 **UNITED STATES DISTRICT COURT**  
11 **EASTER DISTRICT OF CALIFORNIA**

12  
13 UNITED STATES OF AMERICA et al. ex rel.  
JEFFREY MAZIK,  
14  
15 **Plaintiffs,**  
16  
17 v.  
18 KAISER FOUNDATION HEALTH PLAN  
INC., et al,  
19  
20 **Defendants.**

Case No. 2:19-cv-0559-DAD-JDP

**DECLARATION OF CHARLOTTE  
TANG IN SUPPORT OF MOTION TO  
TRANSFER**

Hearing Date: June 18, 2024  
Time: 1:30 p.m.  
Judge: Hon. Dale A. Drozd  
Courtroom: 4, 15th Floor

1 I, Charlotte Tang, hereby declare and state as follows:

2 1. I am a Human Resources Consultant for Defendant Kaiser Foundation Health  
3 Plan, Inc. (“KFHP”). I submit this declaration in support of Defendants’ Motion to Transfer  
4 Under 28 U.S.C. § 1404. This declaration is based upon my personal knowledge and, if called as  
5 a witness, I could and would testify to the matters set forth below.

6 2. In my capacity as Human Resources Consultant, I am knowledgeable regarding  
7 the location of employees of Defendants in this matter. I have reviewed the Parties’ Initial  
8 Disclosures, and have reviewed the work and residential address information on file with  
9 Defendants for individuals listed in the Initial Disclosures. The information provided in this  
10 declaration is based on the current address information on file with Defendants.

11 3. KFHP is headquartered at One Kaiser Plaza, Oakland, California 94612.

12 4. Relator Jeffrey Mazik worked at One Kaiser Plaza, Oakland, California 94612.  
13 The last residential address KFHP has on file for Relator is in Alameda County, California.

14 5. Rob Beltch works at One Kaiser Plaza, Oakland, California 94612, and resides in  
15 Connecticut.

16 6. Derric Gregory worked at One Kaiser Plaza, Oakland, California 94612. The last  
17 residential address KFHP has on file for Mr. Gregory is in Maryland.

18 7. Claudia Herrera works at 10740 4th St., Rancho Cucamonga, California 91730,  
19 and resides in Los Angeles County, California.

20 8. Derek Ho works at 74 N. Pasadena Ave., Pasadena, California 91103, and resides  
21 in Los Angeles County, California.

22 9. Marita Janiga works at One Kaiser Plaza, Oakland, California 94612, and resides in  
23 Contra Costa County, California.

24 10. Sean Kelly works at One Kaiser Plaza, Oakland, California 94612, and resides in  
25 Solano County, California.

26 11. Sean Killeen works at One Kaiser Plaza, Oakland, California 94612, and resides in  
27 Alameda County, California.

28 12. Jay Loden worked at One Kaiser Plaza, Oakland, California 94612. The last

1 residential address KFHP has on file for Mr. Loden is in Los Angeles County, California.

2 13. Lorrie Marwick worked at One Kaiser Plaza, Oakland, California 94612. The last  
3 residential address KFHP has on file for Ms. Marwick is in Georgia.

4 14. Brian Messaris works at One Kaiser Plaza, Oakland, California 94612, and resides  
5 in Maryland.

6 15. Timothy Molloy worked at 500 NE Multnomah St., Portland, Oregon 97232. The  
7 last residential address KFHP has on file for Mr. Molloy is in Oregon.

8 16. Gloria Napue worked at 3100 Thornton Ave., Burbank, California 91504. Ms.  
9 Napue was a contractor, and KFHP does not have a residential address on file for her.

10 17. Remedios P. Osorio works at 8889 Rio San Diego Dr., San Diego, California  
11 92108, and resides in San Diego County, California.

12 18. Sue Preston works at 393 E. Walnut St., Pasadena, California 91188, and resides  
13 in Sacramento County, California.

14 19. Daren Pursche worked at One Kaiser Plaza, Oakland, California 94612. The last  
15 residential address KFHP has on file for Mr. Pursche is in Contra Costa County, California.

16 20. Rick Reynolds worked at 11 Piedmont Center, 3495 Piedmont Rd., NE, Atlanta,  
17 Georgia 30305. The last residential address KFHP has on file for Mr. Reynolds is in Alabama.

18 21. Judy Sarles worked at 4460 Hacienda Dr., Pleasanton, California 92108. The last  
19 residential address KFHP has on file for Ms. Sarles is in Washington.

20 22. Alice Stoltz works at 500 NE Multnomah St., Portland, Oregon 97232, and resides  
21 in Oregon.

22 23. Laurel Sutcliffe worked at One Kaiser Plaza, Oakland, California 94612. The last  
23 residential address KFHP has on file for Ms. Sutcliffe is in Alameda County, California.

24 24. Jacqueline Thomas worked at 2101 Webster Street, Oakland, California 94612.  
25 The last residential address KFHP has on file for Ms. Thomas is in Contra Costa County,  
26 California.

27 25. Judy Warford worked at 500 NE Multnomah St., Portland, Oregon 97232. The  
28 last residential address KFHP has on file for Ms. Warford is in Washington.



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 7 *Permanente Medical Group, Inc.; Southern California*  
*Permanente Medical Group; and Colorado Permanente*  
 8 *Medical Group, P.C.*

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 10 **UNITED STATES DISTRICT COURT**  
 11 **EASTER DISTRICT OF CALIFORNIA**

12  
 13 UNITED STATES OF AMERICA et al. ex rel.  
 JEFFREY MAZIK,  
 14  
 Plaintiffs,  
 15  
 v.  
 16 KAISER FOUNDATION HEALTH PLAN  
 17 INC., et al,  
 18 Defendants.

Case No. 2:19-cv-0559-DAD-JDP

**DECLARATION OF KYLE M.  
 GROSSMAN IN SUPPORT OF MOTION  
 TO TRANSFER**

Hearing Date: June 18, 2024  
 Time: 1:30 p.m.  
 Judge: Hon. Dale A. Drozd  
 Courtroom: 4, 15th Floor

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1 I, Kyle M. Grossman, hereby declare and state as follows:

2 1. I am an active member in good standing of the State Bar of California. I am a  
3 counsel at O'Melveny & Myers LLP, counsel of record for Kaiser Foundation Health Plan, Inc.,  
4 Kaiser Foundation Hospitals, The Permanente Medical Group, Inc., Southern California  
5 Permanente Medical Group, and Colorado Permanente Medical Group, P.C. (collectively,  
6 "Defendants"). I submit this declaration in support of Defendants' Motion to Transfer Under 28  
7 U.S.C. § 1404 ("Motion"). This declaration is based upon my personal knowledge and, if called  
8 as a witness, I could and would testify to the matters set forth below.

9 2. On April 4, 2024, counsel for the parties met and conferred about Defendants'  
10 Motion. I explained that, with allegations about Medicare Advantage still in this case, transfer to  
11 the Northern District of California and consolidation or coordination with the *Osinek* matter  
12 pending there would be the most efficient way to litigate this action.

13 3. Counsel for Relator indicated that they would confer with their client about  
14 whether to oppose Defendants' Motion.

15 4. On April 8, 2024, counsel for Relator informed me that Relator would not be in a  
16 position to object or consent to the Motion without reviewing the filed Motion.

17 5. Attached as **Exhibit A** is a true and correct copy of Relator's Initial Disclosures  
18 served in this matter on September 29, 2022.

19 6. Attached as **Exhibit B** is a true and correct copy of Defendants' Initial Disclosures  
20 served in this matter on September 28, 2022.

21 EXECUTED this 8th day of April, 2024 in Los Angeles, California.

22

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/s/ Kyle M. Grossman

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# **Exhibit A**

1 POLLOCK COHEN LLP  
Christopher K. Leung, CA Bar No. 210325  
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3 San Francisco, CA 94105  
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Tel: (510) 530-9060  
8 jlfried@comcast.net

9 *Counsel for Plaintiff-Relator Jeffrey Mazik*

10  
11 **UNITED STATES DISTRICT COURT**  
12 **EASTERN DISTRICT OF CALIFORNIA**

13 UNITED STATES OF AMERICA *et al.*,  
14 *ex rel.* JEFFREY MAZIK,

15 Plaintiffs,

16 v.

17 KAISER PERMANENTE, INC. *et al.*,

18 Defendants.  
19  
20

Case No. 2:19-cv-0559-JAM-KJN

21 **PLAINTIFF-RELATOR'S INITIAL DISCLOSURES**

22 Pursuant to Rule 26(a)(1), Plaintiff-Relator Jeffrey Mazik ("Plaintiff"), by and through the  
23 undersigned attorneys, hereby provides the following initial disclosures. These disclosures are  
24 based on the information reasonably available to Plaintiff at this time and are made without waiving  
25 any objections as to the relevance, materiality, or admissibility of evidence in this action.  
26 Accordingly, Plaintiff reserves the right to revise, correct, supplement, or clarify these disclosures  
27 as necessary, consistent with Rule 26(e).  
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|    |                   |  |  |  |
|----|-------------------|--|--|--|
| 1  | Marita Janiga     | Kaiser Permanente<br>(Current),<br>Executive Director of<br>Investigations,<br>Claims Cost Containment<br>Administration | martia.c.janiga@kp.org<br>O: (510) 271-6937<br>C: (510) 363-6385 | Reporting of retaliation<br>against Relator by<br>Laurel Sutcliffe.<br>Relator's internal<br>reports on overpayment<br>violations. Defendants'<br>claims practices.  |
| 2  | Sean Kelly        | Kaiser Permanente<br>(Current),<br>Senior IT Compliance<br>Consultant  | sean.kelly@kp.org<br>C: (707) 301-9555                           | Verisk and FICO<br>overpayments.<br>Easterseals. General<br>information about<br>Kaiser Permanente.  |
| 3  | Sean Killeen      | Kaiser Permanente<br>(Current),<br>Executive Director,<br>Claims Cost Containment<br>Administration                      | On file with Defendants.   | Claim cost containment<br>scope, including<br>whether upcoding and<br>fraud issues were within<br>the scope of the claim<br>reviews performed by<br>Claims Cost<br>Containment. Georgia<br>region claims data. |
| 4  | Jay Loden         | Kaiser Permanente<br>(Former),<br>Assistant Director<br>Information Analytics<br>and Compliance<br>Technology            | jmloden@gmail.com<br>C: (661) 644-9228                           | Verisk and FICO<br>overpayments.<br>Easterseals. General<br>information about<br>Kaiser Permanente.<br>Georgia region claims<br>data.  |
| 5  | Lorrie Marwick    | Kaiser Permanente<br>(Former),<br>Senior Director,<br>Internal Audit   | lorriemarwick@gmail.<br>com<br>C: (404) 483-1402                 | Results of claim audits<br>including noted claim<br>fraud (upcoding) and<br>any response by the<br>Permanente Medical<br>Group management.   |
| 6  | Luz<br>McCullough | Southern California<br>Permanente Medical<br>Group,<br>Internal Audit Team   | On file with Defendants.   | Internal memoranda on<br>billing errors and claims<br>payment inaccuracies<br>from Easterseals Audit.  |
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|----|-----------------------|---|--------------------------|---|
| 1  | Brian Messaris        | Kaiser Permanente,<br>Internal Legal Counsel  | On file with Defendants. | Representations by<br>defendants to OPM-<br>OIG regarding<br>corporate structure,<br>medical loss ratio<br>reporting, audits, claims<br>accuracy, and fraud<br>detection and reduction. |
| 2  |                       |   |                          |   |
| 3  |                       |   |                          |   |
| 4  |                       |   |                          |   |
| 5  |                       |   |                          |   |
| 6  | Timothy<br>Molloy     | Kaiser Permanente,<br>Northwest Regional<br>Compliance Manager,<br>Investigations and<br>Training | On file with Defendants. | Northwest Region<br>overpayment data.   |
| 7  |                       |   |                          |   |
| 8  |                       |   |                          |   |
| 9  |                       |   |                          |   |
| 10 | Gloria Napue          | Kaiser Permanente,<br>Vice President,<br>National Compliance<br>Office                            | On file with Defendants. | Pharmacy claims<br>review project.  |
| 11 |                       |   |                          |   |
| 12 |                       |   |                          |   |
| 13 | Remedios P.<br>Osorio | Kaiser Permanente,<br>Regulatory and Strategy<br>Contracts  | On file with Defendants. | Pharmacy claims<br>review project.  |
| 14 |                       |   |                          |   |
| 15 | Sue Preston           | Kaiser Permanente,<br>National Director,<br>Enterprise Regional<br>Compliance                     | On file with Defendants. | Overpayment and<br>claims data.   |
| 16 |                       |   |                          |   |
| 17 |                       |   |                          |   |
| 18 | Daren Pursche         | Kaiser Permanente<br>(Current),<br>Director,<br>Government Audit &<br>Reimbursement               | daren.pursche@kp.org     | Kaiser Permanente<br>process for<br>reimbursement to CMS.   |
| 19 |                       |   |                          |   |
| 20 |                       |   |                          |   |
| 21 |                       |   |                          |   |
| 22 | Rick Reynolds         | Kaiser Permanente<br>(Current),<br>Director,<br>Claims Cost Containment                           | On file with Defendants. | Claim cost containment<br>scope, including<br>whether upcoding and<br>fraud issues were within<br>the scope of the claim<br>reviews performed by<br>Claims Cost<br>Containment.         |
| 23 |                       |   |                          |   |
| 24 |                       |   |                          |   |
| 25 |                       |   |                          |   |
| 26 |                       |   |                          |   |
| 27 | Judy Sarles           | Kaiser Permanente,<br>Senior Director   | On file with Defendants. | Defendants' compliance<br>systems.  |
| 28 |                       |   |                          |   |

|    |                      |  |                           |   |
|----|----------------------|--|---------------------------|---|
| 1  | Alice Stolz          | Kaiser Permanente,<br>Claims Edit/COB<br>Specialist,<br>Claims Cost Containment<br>Administration                  | On file with Defendants.  | Internal review and<br>comparison of<br>McKesson and Verisk<br>claims tools.                          |
| 2  |                      |  |                           |   |
| 3  |                      |  |                           |   |
| 4  |                      |  |                           |   |
| 5  | Laurel Sutcliffe     | Kaiser Permanente<br>(Current),<br>Director and Senior<br>Manager,<br>National Compliance<br>Office, Fraud Control | laurel.j.sutcliffe@kp.org | Retaliation claims.<br>Overpayment data.  |
| 6  |                      |  |                           |   |
| 7  |                      |  |                           |   |
| 8  |                      |  |                           |   |
| 9  | Jacqueline<br>Thomas | Kaiser Permanente,<br>Human Resources  | On file with Defendants.  | Retaliation claims.   |
| 10 |                      |  |                           |   |
| 11 | Judy Lee<br>Warford  | Kaiser Permanente,<br>Coding Consultant  | On file with Defendants.  | Northwest Region<br>overpayment data.   |
| 12 |                      |  |                           |   |
| 13 | Bill Withers         | Kaiser Permanente,<br>Vice President,<br>Georgia Region Claims<br>Department                                       | On file with Defendants.  | Defendants' claims<br>practices. Georgia<br>region claims data.                                       |
| 14 |                      |  |                           |   |
| 15 |                      |  |                           |   |
| 16 | Blaine Yanabu        | Southern California<br>Permanente Medical<br>Group,<br>Director,<br>Internal Audit Unit                            | On file with Defendants.  | Internal memoranda on<br>billing errors and claims<br>payment inaccuracies<br>from Easterseals Audit. |
| 17 |                      |  |                           |   |
| 18 |                      |  |                           |   |
| 19 |                      |  |                           |   |
| 20 |                      |  |                           |   |
| 21 |                      |  |                           |   |
| 22 |                      |  |                           |   |
| 23 |                      |  |                           |   |
| 24 |                      |  |                           |   |
| 25 |                      |  |                           |   |
| 26 |                      |  |                           |   |
| 27 |                      |  |                           |   |
| 28 |                      |  |                           |   |

*Third Parties*

| Name               | Organization and Title  | Contact Information                                   | Subject Matter  |
|--------------------|---|---|---|
| Andrea Allmon      | Fair Isaac Corporation (Former), Senior Director, Client Engagement | C: (858) 366-2623                                     | Overpayments identified by FICO. Easterseals.   |
| Dave Bohnenstingel | Verisk Health/Verscend (Current), Strategic Account Manager         | david.bohnenstingel@verscend.com<br>C: (952) 457-4838 | Verisk overpayment work in Georgia, Mid-Atlantic, and Northwest regions.  |
| John DiMaggio      | Diversified Compliance Group LLC, Partner                           | On file with Defendants.                              | Briefing to Kaiser Permanente management regarding compliance with Medicare and Medicaid rules, including FCA and 60-day rule for overpayment.                    |
| Eileen Guiney      | Fair Isaac Corporation Senior Consultant                            | On file with Defendants.                              | Kaiser claims, overpayment, and reimbursement practices.  |
| Stephanie Oliver   | Office of Personnel Management OIG, Manager                         | On file with Defendants.                              | Representations by defendants to OPM-OIG regarding corporate structure, medical loss ratio reporting, audits, claims accuracy, and fraud detection and reduction. |
| Robin Richardson   | Office of Personnel Management                                      | On file with Defendants.                              | Representations by defendants to OPM-OIG regarding corporate structure,   |

|    |                                   |   |                          |   |
|----|-----------------------------------|---|--------------------------|---|
| 1  |                                   | OIG,<br>Counsel                                   |                          | medical loss ratio reporting, audits, claims accuracy, and fraud detection and reduction.   |
| 2  |                                   |   |                          |   |
| 3  |                                   |   |                          |   |
| 4  |                                   |   |                          |   |
| 5  | John C. Robertson                 | Diversified Compliance Group LLC, Partner         | On file with Defendants. | Briefing to Kaiser Permanente management regarding compliance with Medicare and Medicaid rules, including FCA and 60-day rule for overpayment.                    |
| 6  |                                   |   |                          |   |
| 7  |                                   |   |                          |   |
| 8  |                                   |   |                          |   |
| 9  |                                   |   |                          |   |
| 10 | Nekitra Tuell                     | Office of Personnel Management<br>OIG,<br>Auditor | On file with Defendants. | Representations by defendants to OPM-OIG regarding corporate structure, medical loss ratio reporting, audits, claims accuracy, and fraud detection and reduction. |
| 11 |                                   |   |                          |   |
| 12 |                                   |   |                          |   |
| 13 |                                   |   |                          |   |
| 14 |                                   |   |                          |   |
| 15 |                                   |   |                          |   |
| 16 | Maryland Insurance Administration |   | On file with Defendants. | Inquiry into suspicious claims reports for 2014-2015.   |
| 17 |                                   |   |                          |   |
| 18 | McKesson ClaimsXten               |   | On file with Defendants. | Kaiser claims payment and compliance.   |
| 19 |                                   |   |                          |   |

20 In addition to the witnesses listed above, Plaintiff anticipates that other, unknown  
 21 individuals may have discoverable information that Plaintiff may use to support his claims, and  
 22 may call other witnesses, both factual and expert, to testify at trial. Plaintiff incorporates by  
 23 reference any other individuals disclosed by other parties in this matter and further reserves the  
 24 right to obtain discovery in support of his claims from any other persons or entities identified in  
 25 any other party's Rule 26(a)(1) disclosure.

26 **2. Categories and Location of Relevant Documents.** The following categories of  
 27 documents and/or tangible things may be in the possession, custody, or control of Plaintiff, and  
 28 may be used by Plaintiff to support his claims in this action:

1           1) Documents, communications, and data concerning deficiencies in Defendants’  
2 government healthcare program compliance operations during the relevant time period.

3           2) Documents, communications, and data concerning the accuracy of Hierarchical  
4 Condition Category (“HCC”) codes that formed the basis of Defendants’ risk adjustment  
5 submissions to government healthcare programs during the relevant time period.

6           3) Communications between Plaintiff and Defendants’ employees and/or third-party  
7 vendors concerning the accuracy of HCC codes that formed the basis of Defendants’ risk  
8 adjustment submissions to government healthcare programs and/or deficiencies in Defendants’  
9 government healthcare program compliance operations during the relevant time period.

10          4) Publicly available information from news articles, publications, and/or official  
11 government sources.

12          **3.       Computation of Damages.** Plaintiff’s damages calculations rely on information  
13 still subject to pending discovery and within Defendants’ possession or control. Plaintiff  
14 anticipates that expert analysis may be necessary to compute damages, and will provide  
15 appropriate disclosures concerning such analysis in accordance with the schedule set for expert  
16 discovery entered by the Court in this action.

17          **4.       Relevant Insurance Policies.** Pursuant to Rule 26(a)(1)(A)(iv), and subject to the  
18 reservation of rights and privileges described above, Plaintiff states that he does not have any  
19 insurance policies or coverage relevant to the claims in this action.

20  
21 Dated: September 29, 2022

Respectfully submitted,

22 POLLOCK COHEN LLP  
23 LAW OFFICE OF JEREMY L. FRIEDMAN

24 */s/ Adam Pollock*

\_\_\_\_\_  
Adam Pollock

25 *Counsel for Plaintiff-Relator Jeffrey Mazik*  
26  
27  
28

# **Exhibit B**

1 DIMITRI D. PORTNOI (S.B. # 282871)  
dportnoi@omm.com  
2 KYLE M. GROSSMAN (S.B. #313952)  
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3 O'MELVENY & MYERS LLP  
4 400 S. Hope Street, 18th Floor  
Los Angeles, California 90071  
5 Telephone: (213) 430-6000  
6 Facsimile: (213) 430-6407

7 *Attorneys for Defendants*

8  
9  
10  
11  
12 **UNITED STATES DISTRICT COURT**  
13 **EASTERN DISTRICT OF CALIFORNIA**

14  
15 UNITED STATES OF AMERICA *et al. ex rel.*  
JEFFREY MAZIK,

16  
17 Plaintiffs,

18 v.

19 KAISER FOUNDATION HEALTH PLAN,  
INC., KAISER FOUNDATION HOSPITALS,  
20 INC., and THE PERMANENTE MEDICAL  
GROUPS,

21 Defendants.  
22

Case No. 2:19-cv-0559-JAM-KJN

**DEFENDANTS' INITIAL  
DISCLOSURES PURSUANT TO FED.  
R. CIV. P. 26(A)**

**RULE 26(a) INITIAL DISCLOSURES OF DEFENDANTS**

Pursuant to Rule 26(a)(1)(A)(i)–(v) of the Federal Rules of Civil Procedure, Kaiser Foundation Health Plan, Inc.; Kaiser Foundation Hospitals; The Permanente Medical Group, Inc.; Southern California Permanente Medical Group; and Colorado Permanente Medical Group, P.C. (collectively, “Defendants”), hereby serve these initial disclosures on Relator Jeffrey Mazik. Defendants reserve the right to amend, modify, or supplement these disclosures pursuant to Rule 26(e) following the resolution of Defendants’ Motion to Dismiss, Dkt No. 78, as additional information becomes known to Defendants, or as any other circumstances may warrant. Nothing in these initial disclosures shall constitute a waiver of any claim, defense, privilege, or objection, including, without limitation, the following: (i) any claim or defense regarding the sufficiency of the operative Complaint; (ii) any applicable privilege, including the attorney-client privilege, the work product doctrine, or any other privilege; and (iii) any objection to discovery that seeks materials, documents, testimony, or information that is not relevant or sufficiently probative to justify the burden or expense of production. Moreover, nothing in these initial disclosures shall constitute an admission or concession on the part of Defendants with respect to any issues of fact or law, including, but not limited to, the relevance, discoverability, or admissibility of any information set forth herein. Defendants specifically reserve the right to challenge the discoverability or admissibility of any testimony, documents, or information related to these initial disclosures.

**1. Individuals Likely to Have Discoverable Information**

Pursuant to Rule 26(a)(1)(a)(i), Defendants hereby identify below the individuals who may have discoverable information that Defendants may use to support their defenses. The list below does not include individuals with information that would be used solely for impeachment purposes. The individuals identified below may be contacted only through Dimitri D. Portnoi of O’Melveny & Myers LLP, counsel for Defendants, who is available at 400 South Hope Street, 18th Floor, Los Angeles, CA 90071 or (213) 430-6000.

| Name             | Subjects of Information  |
|------------------|--|
| Marita Janiga    | <ul style="list-style-type: none"> <li>• Defendants' policies and procedures related to internal compliance investigations</li> <li>• Defendants' policies and procedures related to claims submitted by external providers to Defendants</li> <li>• Defendants' use of data analytics tools for auditing</li> <li>• Termination of Jeffrey Mazik</li> </ul>         |
| Laurel Sutcliffe | <ul style="list-style-type: none"> <li>• Defendants' policies and procedures related to internal compliance investigations</li> <li>• Defendants' policies and procedures related to claims submitted by external providers to Defendants</li> <li>• Defendants' use of data analytics tools for auditing</li> <li>• Termination of Relator Jeffrey Mazik</li> </ul> |
| Tyrone Redden    | <ul style="list-style-type: none"> <li>• Defendants' human resources policies and procedures</li> </ul>  |

## 2. Description by Category and Location of Documents

Pursuant to Rule 26(a)(1)(A)(ii), the following is a description of the categories of documents, electronically stored information, and tangible things that may be used to support Defendants' defenses, unless their use would be solely for impeachment. Some documents in these categories may include confidential or proprietary information, which will not be produced or disclosed except pursuant to an appropriate confidentiality agreement and protective order. In addition, certain documents may be protected by the attorney-client privilege, the work product doctrine, or other applicable privilege or protection against disclosure. The following categories of documents are in Defendants' possession and located on Defendants' servers or at Defendants' offices in Oakland, California; Pasadena, California; or Denver, Colorado.

- a. Medicare Advantage and Medicaid policies and procedures;
- b. Medicare Advantage contracts with CMS;
- c. Medicaid program contracts with state government entities;
- d. Communications with CMS and other government payors, including communications regarding compliance programs and audits;
- e. Documents regarding audits or reviews of Defendants' Medicare Advantage and Medicaid data or compliance programs;
- f. Defendants' documents regarding Medicare Advantage and Medicaid program data

1 submissions or data corrections;

2 g. Defendants' Medicare Advantage and Medicaid compliance program documents,  
3 including documents related to auditing programs;

4 h. Documents governing relationships or contracts with external providers and vendors  
5 that Defendants rely on to provide health care services to Medicare Advantage and  
6 Medicaid members;

7 i. Documents and communications regarding Defendants' termination policies and  
8 procedures.

9 **3. Computation of Damages**

10 Defendants are not required to make any disclosures pursuant to Rule 26(a)(1)(A)(iii)  
11 because Defendants do not claim any damages at this time.

12 **4. Insurance Agreements**

13 Defendants are not required to make any disclosures pursuant to Rule 26(a)(1)(A)(iv)  
14 because, at this time, Defendants are not aware of any insurance agreement under which any  
15 insurance business may be liable to satisfy all or part of a possible judgment in the action or to  
16 indemnify or reimburse for payments made to satisfy the judgment.

17  
18  
19 Dated: September 29, 2022

By: /s/ Dimitri D. Portnoi

DIMITRI D. PORTNOI  
KYLE M. GROSSMAN

*Attorneys for Defendants*