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7 *Health Plan, Inc.*

8
9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA et al.
12 ex rel. JEFFREY MAZIK,

13 Plaintiffs,

14 v.

15 KAISER FOUNDATION HEALTH PLAN
16 INC., et al.,

17 Defendants.

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

**DEFENDANT KAISER FOUNDATION
HEALTH PLAN, INC.'S ANSWER AND
AFFIRMATIVE DEFENSES TO RELATOR
JEFFREY MAZIK'S SECOND AMENDED
QUI TAM COMPLAINT**

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INTRODUCTION

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2 1. Paragraph 1 contains Relator’s characterization of this action, which requires no
3 response. To the extent any response to such allegations is necessary, Defendant admits that
4 Relator Jeffrey Mazik brings this action on behalf and in the name of the United States of
5 America, and California, Colorado, Georgia, Hawaii, Virginia, and Washington (the “State
6 Plaintiffs”), against Defendants Kaiser Foundation Health Plan, Inc. (“KFHP”), Kaiser
7 Foundation Hospitals (“KFH”), The Permanente Medical Group, Inc. (“TPMG”), Southern
8 California Permanente Medical Group (“SCPMG”), and Colorado Permanente Medical Group,
9 P.C. (“CPMG”) to recover damages and civil penalties for alleged violations of the False Claims
10 Act (“FCA”) and corresponding statutes of the State Plaintiffs including the California False
11 Claims Act, Colorado Medicaid False Claims Act, Georgia False Medicaid Claims Act, Hawaii
12 False Claims Act, Virginia Fraud Against Taxpayers Act, and Washington State Medicaid Fraud
13 False Claims Act. Paragraph 1 contains legal conclusions and/or argument, which require no
14 response. To the extent any response to such allegations is necessary, Defendant admits that
15 paragraph 1 references 31 U.S.C. §§ 3729–33. Defendant denies each and every other allegation
16 in Paragraph 1.

17 2. Paragraph 2 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant denies each and
19 every such allegation. Defendant denies each and every other allegation in paragraph 2.

20 3. Paragraph 3 contains legal conclusions and/or argument, which require no
21 response. To the extent any response to such allegations is necessary, Defendant denies each and
22 every such allegation. Defendant denies each and every other allegation in paragraph 3.

23 4. Paragraph 4 contains legal conclusions and/or argument, which require no
24 response. To the extent any response to such allegations is necessary, Defendant admits that the
25 Medicare Advantage (“MA”) program is a managed care program funded by the federal
26 government and administered by private health insurance companies; that Medicare Part C
27 establishes the Medicare Advantage program; that the Centers for Medicare & Medicaid Services
28 (“CMS”) pays Defendant a predetermined monthly amount for each enrollee in its Medicare

1 Advantage plans, which Defendant then uses to manage all costs associated with the plan; that,
2 under Medicaid, several states fund portions of enrollees' medical costs through Dual Eligible
3 Special Needs Plans ("D-SNPs") when enrolled individuals are entitled to Medicare and medical
4 assistance from a state Medicaid plan. Defendant denies each and every other allegation in
5 paragraph 4.

6 5. Paragraph 5 contains legal conclusions and/or argument, which require no
7 response. To the extent any response to such allegations is necessary, Defendant admits that,
8 upon information and belief, CMS adjusts the monthly payment amount for a given MA
9 beneficiary using that beneficiary's risk score; that, upon information and belief, to determine
10 payment under MA, CMS determines a bid amount through an annual bid submission process
11 between CMS and each MA plan; that CMS adjusts the monthly payment amount for a given MA
12 beneficiary using demographic factors and health status, pursuant to the CMS-HCC risk
13 adjustment model. Defendant denies each and every other allegation in paragraph 5.

14 6. Paragraph 6 contains legal conclusions and/or argument, which require no
15 response. To the extent any response to such allegations is necessary, Defendant denies each and
16 every such allegation. Defendant denies each and every other allegation in paragraph 6.

17 7. Paragraph 7 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant denies each and
19 every such allegation. Defendant denies each and every other allegation in paragraph 7.

20 **JURISDICTION AND VENUE**

21 8. Paragraph 8 contains Relator's characterization of this action, which requires no
22 response. To the extent any response to such allegations is necessary, Defendant admits that
23 Relator brings this action for alleged violations of the False Claims Act, 31 U.S.C. §§ 3729, *et*
24 *seq.* Paragraph 8 contains legal conclusions and/or argument, which require no response. To the
25 extent any response to such allegations is necessary, Defendant admits that paragraph 8
26 references 28 U.S.C. § 1331, 28 U.S.C. § 1367, 31 U.S.C. §§ 3729, *et seq.*, and 31 U.S.C.
27 §§ 3732(a)–(b). Defendant denies each and every other allegation in paragraph 8.
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1 **B. Defendants Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, Inc.,**
2 **and The Permanente Medical Groups**

3 15. Answering paragraph 15, Defendant admits that Defendant and certain other health
4 plans, physician medical groups, and hospitals maintain a business relationship with one another
5 under the trade name “Kaiser Permanente” to offer an integrated care model; that Defendant is a
6 nonprofit corporation, licensed as a health service plan, headquartered in Alameda County,
7 California; that Defendant enrolls members in individual and group plans; that Defendant Kaiser
8 Foundation Hospitals (“KFH”) and Defendant Permanente Medical Groups (“PMGs”) contract
9 with Defendant to provide health care services to members who enroll in Defendant’s health
10 plans; that Defendant administers various government-funded capitated rate plans, including
11 multiple Medicare Advantage plans, certain Special Needs Plans (“SNPs”), and state-
12 administered Medicaid plans, sometimes through regional subsidiaries, in California, Georgia,
13 Colorado, Hawaii, Maryland, Virginia, and Washington; that Defendant KFH is a nonprofit
14 corporation that is also headquartered in Alameda County; that Defendant KFH operates hospitals
15 and medical facilities that receive their funding from Defendant and provides infrastructure and
16 facilities used by the Defendant PMGs; that Defendant PMGs are groups of physicians; that
17 Defendant PMGs are privately owned and managed by physicians; that Defendant PMGs
18 contract, respectively, with Defendant or Kaiser Foundation Health Plan of Colorado to provide
19 inpatient and outpatient medical services; that each Defendant PMG operates as a separate for-
20 profit partnership or professional corporation in its individual territory; that Defendant PMGs do
21 not publicly report their financial results; that each Defendant PMG is primarily funded by
22 contractual payments from, respectively, Defendant or Kaiser Foundation Health Plan of
23 Colorado.

24 16. Answering paragraph 16, Defendant admits that Defendant, Defendant KFH, and
25 Defendant PMGs maintain a business relationship with one another under the trade name “Kaiser
26 Permanente” to offer an integrated care model; that Defendant, Defendant KFH, Defendant
27 PMGs, and other businesses operating under the trade name “Kaiser Permanente” do business,
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1 respectively, in California, Colorado, Georgia, Hawaii, Maryland, Oregon, Virginia, Washington,
2 or the District of Columbia. Due to the non-specific and vague nature of Plaintiff's allegations,
3 Defendant lacks sufficient information to admit or deny the allegation "to form the largest
4 managed care organization in the United States," and, on that basis, denies such allegation.
5 Defendant denies each and every other allegation in paragraph 16.

6 17. Due to the non-specific and vague nature of Relator's allegations, Defendant lacks
7 sufficient information to admit or deny the allegations in paragraph 17 and, on that basis, denies
8 each and every allegation in paragraph 17.

9 18. Paragraph 18 contains legal conclusions and/or argument, which require no
10 response. To the extent any response to such allegations is necessary, Defendant denies each and
11 every allegation in paragraph 18.

12 19. Answering paragraph 19, Defendant admits that Defendant, Defendant KFH, and
13 their respective subsidiaries reported a combined total operating revenue of approximately
14 \$72.7 billion in or around 2017; that Defendant, Defendant KFH, and their respective subsidiaries
15 across all eight regions reported a combined net income of approximately \$3.8 billion in or
16 around 2017. Defendant denies each and every other allegation in paragraph 19.

17 **RELEVANT LEGAL FRAMEWORK**

18 ***A. Medicare Advantage and Other Government-Funded Capitation Rate Plans***

19 20. Paragraph 20 contains legal conclusions and/or argument, which require no
20 response. To the extent any response to such allegations is necessary, Defendant admits that a
21 Medicare beneficiary may enroll in Medicare Parts A, B, or C; that Medicare Parts A and B are
22 commonly referred to as "traditional" Medicare; that, under Medicare Parts A and B, CMS
23 reimburses health care providers using a fee-for-service system; that, under Medicare Part C, a
24 Medicare beneficiary may enroll in an MA plan managed by a private health plan, known as a
25 Medicare Advantage Organization ("MAO"); that under Medicare Part C, Medicare pays MAOs
26 a capitation rate (per member per month) and those plans are responsible, in part, for paying
27 health care providers for the services they provide to members of that specific MA plan.
28 Defendant denies each and every other allegation in paragraph 20.

1 21. Answering paragraph 21, Defendant admits that a Medicare beneficiary’s health
2 status may affect the beneficiary’s utilization of health care services. Defendant denies each and
3 every other allegation in paragraph 21.

4 22. Paragraph 22 contains legal conclusions and/or argument, which require no
5 response. To the extent any response to such allegations is necessary, Defendant admits that,
6 upon information and belief, CMS adjusts the monthly payment amount for each MA beneficiary
7 using health status, among other factors; that a Medicare beneficiary’s health status may be used
8 to predict the cost of medical expenditures for that beneficiary; that paragraph 22 references
9 42 U.S.C. §§ 1395w-23(a)(1)(C)(i), (a)(3) and 42 C.F.R. § 422.308(c)(2). Defendant denies each
10 and every other allegation in paragraph 22.

11 23. Paragraph 23 contains legal conclusions and/or argument, which require no
12 response. To the extent any response to such allegations is necessary, Defendant admits that,
13 upon information and belief, to determine payment under MA, CMS determines a bid amount
14 through an annual bid submission process between CMS and each MA plan; that, upon
15 information and belief, CMS calculates, for beneficiaries enrolled in an MA plan, risk scores that
16 act as an adjustment to the bid amount for purposes of determining payment pursuant to the CMS
17 Hierarchical Condition Category (“CMS-HCC”) risk adjustment model; that, upon information
18 and belief, CMS adjusts the monthly payment amount for each MA beneficiary using
19 demographic factors such as age and gender (among others) and health status, pursuant to the
20 CMS-HCC risk adjustment model; that, upon information and belief, each MA beneficiary’s risk
21 score is based in part upon diagnosis data obtained by MAOs from healthcare providers who treat
22 beneficiaries in the MAOs’ MA plans, and transmitted by MAOs to CMS; that, upon information
23 and belief, CMS uses an MA beneficiary’s risk score calculated based on diagnosis codes from a
24 given service year to determine monthly payments to MAOs for that beneficiary in the following
25 year (the payment year). Paragraph 23 contains reference to a document, which requires no
26 response because the referenced document speaks for itself. To the extent any response to such
27 allegations is necessary, Defendant admits that paragraph 23 references portions of Medicare and
28 Medicaid Servs., Pub. No. 100-16, Medicare Managed Care Manual, ch. 7, § 40 (2014),

1 <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/mc86c07.pdf>.

2 Defendant denies each and every other allegation in paragraph 23.

3 24. Paragraph 24 contains legal conclusions and/or argument, which require no
4 response. To the extent any response to such allegations is necessary, Defendant admits that,
5 upon information and belief, CMS calculates, for beneficiaries enrolled in an MA plan, risk
6 scores that act as an adjustment to the bid amount for purposes of determining payment pursuant
7 to the CMS Hierarchical Condition Category (“CMS-HCC”) risk adjustment model; that the
8 CMS-HCC risk adjustment model uses diagnosis codes currently from the International
9 Classification of Diseases, Tenth Revision, Clinical Modification (“ICD-10-CM”) and previously
10 from the International Classification of Diseases, Ninth Revision, Clinical Modification (“ICD-9-
11 CM”); that HCCs are disease groupings consisting of diagnosis codes (currently from the ICD-
12 10-CM and previously from the ICD-9-CM); that each HCC coefficient within the CMS-HCC
13 risk adjustment model aims to correlate with the marginal predicted cost of medical expenditures
14 for that set of medical disease groupings based on CMS’s data from administering the traditional
15 Medicare fee-for-service program. Paragraph 24 contains a hypothetical example containing no
16 factual assertions, which requires no response. To the extent any response to such allegations is
17 necessary, Defendant denies each and every such allegation. Paragraph 24 contains references to
18 a document, which require no response because the referenced document speaks for itself. To the
19 extent any response to such allegations is necessary, Defendant admits that paragraph 24
20 references portions of Report to Congress: Risk Adjustment in Medicare Advantage (Dec. 2018),
21 at 14, [https://www.cms.gov/Medicare/Health-
22 Plans/MedicareAdvtgSpecRateStats/Downloads/RTC-Dec2018.pdf](https://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/Downloads/RTC-Dec2018.pdf). Defendant denies each and
23 every other allegation in paragraph 24.

24 25. Paragraph 25 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant denies each and
26 every such allegation. Paragraph 25 contains a hypothetical example containing no factual
27 assertions, which requires no response. To the extent any response to such allegations is
28 necessary, Defendant denies each and every such allegation. Paragraph 25 contains reference to a

1 document, which requires no response because the referenced document speaks for itself. To the
2 extent any response to such allegations is necessary, Defendant admits that paragraph 25 quotes
3 and references portions of *U.S. ex rel. Silingo v. WellPoint, Inc.*, 904 F.3d 667, 673 (9th Cir.
4 2018). Defendant denies each and every other allegation in paragraph 25.

5 26. Paragraph 26 contains legal conclusions and/or argument, which require no
6 response. To the extent any response to such allegations is necessary, Defendant denies each and
7 every such allegation. Defendant denies each and every other allegation in paragraph 26.

8 27. Paragraph 27 contains legal conclusions and/or argument, which require no
9 response. To the extent any response to such allegations is necessary, Defendant admits that,
10 upon information and belief, CMS conducts post-payment risk adjustment data validation
11 (“RADV”); that paragraph 27 references portions of 42 C.F.R. § 422.310(e) and 42 C.F.R.
12 § 422.311. Defendant lacks sufficient knowledge to admit or deny the allegation that “[w]ith data
13 for millions of people being submitted each year, CMS is unable to adequately audit coding
14 submissions or confirm diagnoses before calculating capitation rates,” and, on that basis denies
15 each and every such allegation. Paragraph 27 contains reference to a document, which requires
16 no response because the referenced document speaks for itself. To the extent any response to
17 such allegations is necessary, Defendant admits that this paragraph references portions of U.S.
18 Gov’t Accountability Office, GAO-17-761T, Medicare Advantage Program Integrity: CMS’s
19 Efforts to Ensure Proper Payments and Identify and Recover Improper Payments 1 (2017),
20 <https://www.gao.gov/assets/690/685934.pdf>. Defendant denies each and every other allegation in
21 paragraph 27.

22 28. Paragraph 28 contains legal conclusions and/or argument, which require no
23 response. To the extent any response to such allegations is necessary, Defendant denies each and
24 every such allegation. Paragraph 28 contains references to documents, which require no response
25 because the referenced documents speak for themselves. To the extent any response to such
26 allegations is necessary, Defendant admits that paragraph 28 references and miscites portions of
27 the Medicare Managed Care Manual, ch. 7, §§ 40, 120.1.1; references and cites portions of Ctrs.
28 for Medicare and Medicaid Servs., Pub. No. 100-08, Medicare Program Integrity Manual, ch. 3,

1 § 3.3.2.4 (2018), <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/PIM83c03.pdf>. Defendant denies each and every other
2 allegation in paragraph 28.

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4 29. Paragraph 29 contains legal conclusions and/or argument, which require no
5 response. To the extent any response to such allegations is necessary, Defendant admits that,
6 upon information and belief, CMS uses an MA beneficiary's risk score, calculated based in part
7 on risk adjustment data from a given service year, to determine monthly payments to MAOs for
8 that beneficiary in the following year (the payment year); that paragraph 29 references 42 C.F.R.
9 § 422.310(g) and 42 C.F.R. § 423.329(b)(3). Defendant denies each and every other allegation in
10 paragraph 29.

11 30. Paragraph 30 contains legal conclusions and/or argument, which require no
12 response. To the extent any response to such allegations is necessary, Defendant admits that
13 paragraph 30 references and quotes 42 C.F.R. § 422.503(b)(4)(vi). Defendant denies each and
14 every other allegation in paragraph 30.

15 31. Paragraph 31 contains legal conclusions and/or argument, which require no
16 response. To the extent any response to such allegations is necessary, Defendant admits that
17 paragraph 31 references and quotes 42 C.F.R. § 422.504. Paragraph 31 contains references to a
18 document, which requires no response because the referenced document speaks for itself. To the
19 extent any response to such allegations is necessary, Defendant admits that paragraph 31
20 references portions of a document. Defendant denies each and every other allegation in
21 paragraph 31.

22 32. Paragraph 32 contains legal conclusions and/or argument, which require no
23 response. To the extent any response to such allegations is necessary, Defendant admits that
24 paragraph 32 quotes and references 42 C.F.R. §§ 422.503, (b)(4)(vi)(A)(7), (b)(4)(vi)(B),
25 (b)(4)(vi)(C)(1), (b)(4)(D), 503(b)(4)(vi)(E), (b)(4)(vi)(G), (b)(4)(vi)(G)(1); 42 C.F.R. §§
26 422.504, (i)(1); and 42 C.F.R. § 423.505. Defendant denies each and every other allegation in
27 paragraph 32.
28

1 33. Paragraph 33 contains legal conclusions and/or argument, which require no
2 response. To the extent any response to such allegations is necessary, Defendant admits that
3 paragraph 33 references 42 C.F.R. § 422.504(i)(1). Defendant denies each and every other
4 allegation in paragraph 33.

5 34. Paragraph 34 contains legal conclusions and/or argument, which require no
6 response. To the extent any response to such allegations is necessary, Defendant admits that,
7 upon information and belief, following the Patient Protection and Affordable Care Act (“ACA”),
8 enacted in March 2010, CMS expanded the Recovery Audit program to the Medicare Part C
9 programs; that MAOs are subject to RADV audits. Defendant lacks sufficient knowledge to
10 admit or deny the allegation that “[i]n 2005, CMS implemented a pilot Medicare Recovery Audit
11 Contractor (RAC) Program applicable to Medicare Parts A and B, which successfully corrected
12 more than \$1.03 billion in improper payments to Medicare providers,” and, on that basis denies
13 each and every such allegation. Due to the non-specific and vague nature of Plaintiff’s
14 allegations, Defendant lacks sufficient information to admit or deny the allegations that
15 “Medicare Advantage organizations are subject to . . . risk adjustment medical record reviews
16 (MRRs), which are designed to ensure medical record documentation validates claims data
17 received[,]” and that “DRG Payment Integrity Reviews, which are ongoing comprehensive
18 review of hospital claims that have been submitted to plans for payment, including the diagnosis
19 related groups (DRGs) – the diagnosis codes used to calculate risk adjustment scores – to make
20 sure cases are properly coded and sequenced, and that billed information matches the patient
21 record[,]” and, on that basis, denies such allegations. Defendant denies each and every other
22 allegation in paragraph 34.

23 ***B. Medicaid and Dual Eligibility Special Needs Plans (“SNP”)***

24 35. Paragraph 35 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant admits that a
26 specialized MA plan for special needs individuals (“SNP”) is a MA coordinated care plan that
27 exclusively serves special needs individuals; that California administers a program called Medi-
28 Cal; that the State of Hawaii Department of Human Services administers a program called Med-

1 QUEST; that Virginia’s Department of Medical Assistance Services administers a program called
2 Virginia Medicaid; that the Washington State Health Care Authority administers a program
3 called, since 2014, Apple Health, in which Molina Healthcare of Washington participates.

4 Defendant denies each and every other allegation in paragraph 35.

5 36. Answering paragraph 36, Defendant admits that Defendants and other businesses
6 operating under the trade name “Kaiser Permanente” collectively participate in certain state-
7 administered Medicaid programs, including Medi-Cal in California, Colorado’s Medicaid
8 program (which became known, as of summer 2016, as “Health First Colorado”), Colorado’s
9 Child Health Plan Plus (“CHP+”), Georgia’s Medicaid program run by the Georgia Department
10 of Community Health, and Virginia’s Medicaid program. Defendant denies each and every other
11 allegation in paragraph 36.

12 37. Paragraph 37 contains legal conclusions and/or argument, which require no
13 response. To the extent any response to such allegations is necessary, Defendant admits that a
14 specialized MA plan for special needs individuals (“SNP”) is a MA coordinated care plan that
15 exclusively serves special needs individuals; that Congress first authorized SNPs in the Medicare
16 Modernization Act of 2003, which identified “special needs individual[s]”; that “special needs
17 individuals” include (1) “dual eligible” individuals – those qualifying for both Medicare and
18 Medicaid coverage, (2) individuals with certain severe or disabling chronic conditions, and/or
19 (3) institutionalized or institutionalized-equivalent individuals; that plans covering such
20 individuals are called D-SNPs, C-SNPs and I-SNPs, respectively; that, under Medicaid, several
21 states fund portions of enrollees’ medical costs through Dual Eligible Special Needs Plans (“D-
22 SNPs”) when enrolled individuals are entitled to Medicare and medical assistance from a state
23 Medicaid plan. Defendant denies each and every other allegation in paragraph 37.

24 38. Paragraph 38 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant admits that,
26 since the initial enactment in 2003, Congress has extended the SNP program multiple times,
27 including by the Medicare, Medicaid, and State Children’s Health Insurance Program (SCHIP)
28 Extension Act of 2007 (extending the SNP program to December 31, 2009); the Medicare

1 Improvements for Patients and Providers Act of 2008 (MIPPA) (extending the SNP program
2 through December 31, 2010); the Patient Protection and Affordable Care Act (“ACA”) effective
3 in 2011 (extending the SNP program through December 31, 2013); the American Taxpayer Relief
4 Act of 2012 (ATRA) (extending the SNP program through December 31, 2014); the Bipartisan
5 Budget Act of 2013 (Pub. L. 113-67) (extending the SNP program through December 31, 2015);
6 the Protecting Access to Medicare Act of 2014 (extending the SNP program through December
7 31, 2016); and the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA)
8 (extending the SNP program through December 31, 2018). Defendant denies each and every
9 other allegation in paragraph 38.

10 39. Paragraph 39 contains legal conclusions and/or argument, which require no
11 response. To the extent any response to such allegations is necessary, Defendant denies each and
12 every such allegation. Defendant denies each and every other allegation in paragraph 39.

13 **C. *The False Claims Act (“FCA”)***

14 40. Paragraph 40 contains legal conclusions and/or argument, which require no
15 response. To the extent any response to such allegations is necessary, Defendant admits that
16 paragraph 40 quotes and references portions of *U.S. ex rel. Silingo v. WellPoint, Inc.*, 904 F.3d
17 667, 673 (9th Cir. 2018). Defendant denies each and every other allegation in paragraph 40.

18 41. Paragraph 41 contains legal conclusions and/or argument, which require no
19 response. To the extent any response to such allegations is necessary, Defendant admits that
20 paragraph 41 references 31 U.S.C. §§ 3729(a)(1)(A)–(C), (G). Defendant denies each and every
21 other allegation in paragraph 41.

22 42. Paragraph 42 contains legal conclusions and/or argument, which require no
23 response. To the extent any response to such allegations is necessary, Defendant admits that
24 paragraph 42 quotes and references 31 U.S.C. § 3729(a)(1)(G) and references and attempts to
25 quote portions of 31 U.S.C. § 3729(b)(3). Paragraph 42 contains reference to a document, which
26 requires no response because the referenced document speaks for itself. To the extent any
27 response to such allegations is necessary, Defendant admits that paragraph 42 references portions
28

1 of S. Rep. 111-10 at 14 (2009). Defendant denies each and every other allegation in
2 paragraph 42.

3 43. Paragraph 43 contains legal conclusions and/or argument, which require no
4 response. To the extent any response to such allegations is necessary, Defendant admits that
5 paragraph 43 references 42 U.S.C. § 1320a-7k(d)(2); that, under 42 C.F.R. § 401.305(f), an
6 “overpayment must be reported and returned . . . if a person identifies the overpayment . . . within
7 6 years of the date the overpayment was received.” Paragraph 43 contains reference to a
8 document, which requires no response because the referenced document speaks for itself. To the
9 extent any response to such allegations is necessary, Defendant admits that paragraph 43
10 references portions of 124 Stat. 119, 753–56 (2010). Defendant denies each and every other
11 allegation in paragraph 43.

12 44. Paragraph 44 contains legal conclusions and/or argument, which require no
13 response. To the extent any response to such allegations is necessary, Defendant admits that
14 paragraph 44 references 31 U.S.C. § 3729(a)(1) and 28 C.F.R. § 85.5. Defendant denies each and
15 every other allegation in paragraph 44.

16 **FACTUAL ALLEGATIONS**

17 ***A. Defendants allow false claims by outside providers in order to artificially inflate per
18 capita payments by Medicare and Medicaid.***

19 ***1. Defendants’ Scheme to Allow False Claims by Outside Providers***

20 45. Paragraph 45 contains legal conclusions and/or argument, which require no
21 response. To the extent any response to such allegations is necessary, Defendant denies each and
22 every such allegation. Defendant denies each and every other allegation in paragraph 45.

23 46. Answering paragraph 46, Defendant admits that Defendant collects encounter
24 data, including diagnosis codes, associated with beneficiaries’ medical visits; that Defendant
25 transmits diagnosis codes to CMS associated with beneficiaries’ medical visits in a given service
26 year; that, upon information and belief, CMS adjusts the monthly payment amount for a given
27 MA beneficiary using that MA beneficiary’s risk score. Defendant denies each and every other
28 allegation in paragraph 46.

1 47. Answering paragraph 47, Defendant admits that some members enrolled in
2 Defendant’s MA plans or SNPs receive medical care from external providers. Paragraph 47
3 contains legal conclusions and/or argument, which require no response. To the extent any
4 response to such allegations is necessary, Defendant denies each and every such allegation.
5 Defendant denies each and every other allegation in paragraph 47.

6 48. Paragraph 48 contains legal conclusions and/or argument, which require no
7 response. To the extent any response to such allegations is necessary, Defendant admits that
8 paragraph 48 references and quotes 42 C.F.R. § 422.503. Due to the non-specific and vague
9 nature of Plaintiff’s allegations, Defendant lacks sufficient information to admit or deny the
10 allegation that “Kaiser acts as the gatekeeper for fraudulent claims,” and, on that basis, denies
11 such allegation. Defendant denies each and every other allegation in paragraph 48.

12 49. Defendant denies each and every allegation in paragraph 49.

13 50. Paragraph 50 contains legal conclusions and/or argument, which require no
14 response. To the extent any response to such allegations is necessary, Defendant denies each and
15 every such allegation. Defendant denies each and every other allegation in paragraph 50.

16 **2. Intentionally improper use of fraud-detection software**

17 51. Defendant denies each and every allegation in paragraph 51.

18 52. Answering paragraph 52, Defendant admits that, during at least some of the
19 relevant period, Defendant contracted with data analytics vendors to perform review of outside
20 claims; the vendors provide software applications that perform various types of reviews.
21 Defendant denies each and every other allegation in paragraph 52.

22 53. Defendant denies each and every allegation in paragraph 53.

23 54. Paragraph 54 contains legal conclusions and/or argument, which require no
24 response. To the extent any response to such allegations is necessary, Defendant denies each and
25 every such allegation. Defendant denies each and every other allegation in paragraph 54.

26 55. Answering paragraph 55, Defendant admits that when Relator joined Defendant’s
27 NCO in 2012, he reported to Mia Okinaga (then Vice President, National Compliance
28 Operations); that Okinaga hired Relator to join Defendant’s NCO; that Okinaga announced that

1 Relator's role would involve working with regions and national departments to enhance the
2 effectiveness of fraud control activities. Defendant lacks sufficient knowledge to admit or deny
3 the allegation that "[s]he considered Relator a valuable addition to the team," and, on that basis,
4 denies such allegation. Defendant denies each and every other allegation in paragraph 55.

5 56. Answering paragraph 56, Defendant admits that, during at least some of the
6 relevant period, Relator worked with Mia Okinaga. Due to the non-specific and vague nature of
7 Plaintiff's allegations, Defendant lacks sufficient information to admit or deny the allegation
8 "who actively pushed her initiative to direct Kaiser and the regional offices to effectively utilize
9 various diagnostic compliance and fraud detection tools," and, on that basis, denies such
10 allegation. Defendant lacks sufficient knowledge to admit or deny the allegation that
11 "Ms. Okinaga and Relator believed that such vendors and their tools could be used to
12 substantially reduce losses from health care billing error, abuse, and fraud," and, on that basis,
13 denies such allegation. Defendant denies each and every other allegation in paragraph 56.

14 57. Answering paragraph 57, Defendant admits that, during at least some of the
15 relevant period, Relator worked with Jay Loden (then Senior Manager, Compliance) on tools and
16 analytical studies, Judy Sarles (then Director, Compliance) on compliance systems, and Daren
17 Pursche (then Senior Manager, Compliance) on external and internal compliance standards.
18 Defendant denies each and every other allegation in paragraph 57.

19 58. Defendant denies each and every allegation in paragraph 58.

20 59. Answering paragraph 59, Defendant admits that Mia Okinaga's position was
21 eliminated effective September 25, 2015; that, after Relator reported to Okinaga, Relator reported
22 to Marita Janiga (then National Director, Special Investigations and Compliance Hotline in
23 NCO); that, after Relator reported to Janiga, Relator reported to Laurel Sutcliffe (then Senior
24 Manager, Compliance in NCO). Defendant denies each and every other allegation in
25 paragraph 59.

26 60. Answering paragraph 60, Defendant admits that Relator conducted a comparative
27 analysis of certain McKesson and Verisk tools. Defendant denies each and every other allegation
28 in paragraph 60.

1 61. Defendant denies each and every allegation in paragraph 61.

2 62. Defendant denies each and every allegation in paragraph 62.

3 63. Answering paragraph 63, Defendant admits that Relator, Jay Loden, and Sean
4 Kelly (then Compliance Consultant V) worked on a project with Dave Bohnenstingel (then
5 Strategic Account Manager, Verisk) to analyze claims data from the Georgia region. Defendant
6 denies each and every other allegation in paragraph 63.

7 64. Defendant denies each and every allegation in paragraph 64.

8 65. Defendant denies each and every allegation in paragraph 65.

9 66. Defendant denies each and every allegation in paragraph 66.

10 67. Defendant denies each and every allegation in paragraph 67.

11 68. Defendant lacks sufficient knowledge to admit or deny the allegation that “[h]e
12 then prepared a Webex presentation to report his findings to Ms. Janiga, Relator’s supervisor, and
13 Mr. Pursche of the Government Audit & Reimbursement division,” and, on that basis, denies
14 such allegation. Defendant denies each and every other allegation in paragraph 68.

15 69. Defendant lacks sufficient knowledge to admit or deny the allegation that “[t]he
16 purpose of Relator’s analysis was to put his superiors on notice and lay out various options for the
17 necessary corrective action,” and, on that basis, denies such allegation. Defendant denies each
18 and every other allegation in paragraph 69.

19 70. Defendant denies each and every allegation in paragraph 70.

20 71. Defendant denies each and every allegation in paragraph 71.

21 72. Paragraph 72 contains legal conclusions and/or argument, which require no
22 response. To the extent any response to such allegations is necessary, Defendant denies each and
23 every such allegation. Defendant denies each and every other allegation in paragraph 72.

24 73. Paragraph 73 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant admits that,
26 under 42 C.F.R. § 422.503(b)(4)(vi), Medicare Advantage Plan sponsors must “[a]dopt and
27 implement an effective compliance program, which must include measures that . . . correct non-
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1 compliance with CMS' program requirements as well as measures that . . . correct fraud[.]”

2 Defendant denies each and every other allegation in paragraph 73.

3 74. Paragraph 74 contains legal conclusions and/or argument, which require no
4 response. To the extent any response to such allegations is necessary, Defendant denies each and
5 every such allegation. Defendant denies each and every other allegation in paragraph 74.

6 75. Paragraph 75 contains legal conclusions and/or argument, which require no
7 response. To the extent any response to such allegations is necessary, Defendant denies each and
8 every such allegation. Defendant denies each and every other allegation in paragraph 75.

9 76. Paragraph 76 contains legal conclusions and/or argument, which require no
10 response. To the extent any response to such allegations is necessary, Defendant denies each and
11 every such allegation. Defendant denies each and every other allegation in paragraph 76.

12 77. Paragraph 77 contains legal conclusions and/or argument, which require no
13 response. To the extent any response to such allegations is necessary, Defendant denies each and
14 every such allegation. Defendant denies each and every other allegation in paragraph 77.

15 78. Paragraph 78 contains legal conclusions and/or argument, which require no
16 response. To the extent any response to such allegations is necessary, Defendant denies each and
17 every such allegation. Defendant denies each and every other allegation in paragraph 78.

18 79. Paragraph 79 contains legal conclusions and/or argument, which require no
19 response. To the extent any response to such allegations is necessary, Defendant admits that
20 paragraph 79 references and quotes 42 C.F.R. § 422.503. Defendant denies each and every other
21 allegation in paragraph 79.

22 3. ***Kaiser knowingly covered up its misconduct so as to avoid scrutiny by the Office***
23 ***of the Inspector General.***

24 80. Defendant denies each and every allegation in paragraph 80.

25 81. Defendant lacks sufficient knowledge to admit or deny the allegations in
26 paragraph 81, and, on that basis, denies each and every allegation in paragraph 81.

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1 82. Defendant lacks sufficient knowledge to admit or deny the allegations in
2 paragraph 82, and, on that basis, denies each and every allegation in paragraph 82.

3 83. Defendant denies each and every allegation in paragraph 83.

4 84. Defendant denies each and every allegation in paragraph 84.

5 85. Defendant denies each and every allegation in paragraph 85.

6 86. Defendant denies each and every allegation in paragraph 86.

7 87. Defendant lacks sufficient knowledge to admit or deny the allegation that “Relator
8 understood this as a direct order not to correct or contradict anyone on the call,” and, on that
9 basis, denies such allegation. Defendant denies each and every other allegation in paragraph 87.

10 88. Defendant denies each and every allegation in paragraph 88.

11 **4. Kaiser’s scheme results in false claims.**

12 89. Paragraph 89 contains legal conclusions and/or argument, which require no
13 response. To the extent any response to such allegations is necessary, Defendant denies each and
14 every such allegation. Defendant denies each and every other allegation in paragraph 89.

15 90. Paragraph 90 contains legal conclusions and/or argument, which require no
16 response. To the extent any response to such allegations is necessary, Defendant denies each and
17 every such allegation. Due to the non-specific and vague nature of Plaintiff’s allegations,
18 Defendant lacks sufficient information to admit or deny the allegations that “[f]or example,
19 Kaiser subcontracts with Easterseals, an organization providing healthcare services individuals
20 with disabilities across the country, including in Georgia, California, Colorado, Hawaii, Virginia,
21 and Washington. Kaiser contracts with Easterseals to provide health care services for members
22 diagnosed with autism[,]” and “[a]s revealed in a 2013 audit with respect to Easterseals, Kaiser
23 knew that there was a 50% billing error rate, resulting in 40% claims payment inaccuracies[,]”
24 and, on that basis, denies such allegations. Defendant denies each and every other allegation in
25 paragraph 90.

26 91. Defendant denies each and every allegation in paragraph 91.

27 92. Defendant denies each and every allegation in paragraph 92.

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1 93. Paragraph 93 contains legal conclusions and/or argument, which require no
2 response. To the extent any response to such allegations is necessary, Defendant denies each and
3 every such allegation. Defendant denies each and every other allegation in paragraph 93.

4 94. Defendant denies each and every allegation in paragraph 94.

5 95. Defendant denies each and every allegation in paragraph 95.

6 96. Paragraph 96 contains legal conclusions and/or argument, which require no
7 response. To the extent any response to such allegations is necessary, Defendant denies each and
8 every such allegation. Defendant denies each and every other allegation in paragraph 96.

9 97. Defendant denies each and every allegation in paragraph 97.

10 98. Defendant denies each and every allegation in paragraph 98.

11 99. Paragraph 99 contains legal conclusions and/or argument, which require no
12 response. To the extent any response to such allegations is necessary, Defendant denies each and
13 every such allegation. Defendant denies each and every other allegation in paragraph 99.

14 100. Defendant denies each and every allegation in paragraph 100.

15 101. Paragraph 101 contains legal conclusions and/or argument, which require no
16 response. To the extent any response to such allegations is necessary, Defendant denies each and
17 every such allegation. Defendant denies each and every other allegation in paragraph 101.

18 102. Defendant denies each and every allegation in paragraph 102.

19 103. Paragraph 103 contains legal conclusions and/or argument, which require no
20 response. To the extent any response to such allegations is necessary, Defendant denies each and
21 every such allegation. Defendant denies each and every other allegation in paragraph 103.

22 Paragraph 103 footnote 1 contains legal conclusions and/or argument, which require no
23 response. To the extent any response to such allegations is necessary, Defendant admits that
24 paragraph 103 footnote 1 references Haw. Code R. § 17-1735.2-6(b)(4). Paragraph 103 footnote
25 1 contains references to documents, which require no response because the referenced documents
26 speak for themselves. To the extent any response to such allegations is necessary, Defendant
27 admits that paragraph 103 footnote 1 references portions of documents. Defendant denies each
28 and every other allegation in paragraph 103 footnote 1.

1 104. Paragraph 104 contains legal conclusions and/or argument, which require no
2 response. To the extent any response to such allegations is necessary, Defendant denies each and
3 every such allegation. Defendant denies each and every other allegation in paragraph 104.

4 105. Paragraph 105 contains legal conclusions and/or argument, which require no
5 response. To the extent any response to such allegations is necessary, Defendant admits that
6 paragraph 105 references and attempts to quote 42 C.F.R. § 422.504(I). Defendant denies each
7 and every other allegation in paragraph 105.

8 106. Paragraph 106 contains legal conclusions and/or argument, which require no
9 response. To the extent any response to such allegations is necessary, Defendant denies each and
10 every such allegation. Defendant denies each and every other allegation in paragraph 106.

11 107. Paragraph 107 contains legal conclusions and/or argument, which require no
12 response. To the extent any response to such allegations is necessary, Defendant denies each and
13 every such allegation. Defendant denies each and every other allegation in paragraph 107.

14 108. Paragraph 108 contains allegations that do not reference Defendant, which require
15 no response. To the extent any response to such allegations is necessary, Defendant lacks
16 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
17 such allegation. Defendant denies each and every other allegation in paragraph 108.

18 **5. *Kaiser's Knowing and Improper Failure to Refund Medicaid Overpayments to***
19 ***the Plaintiff States.***

20 109. Paragraph 109 contains legal conclusions and/or argument, which require no
21 response. To the extent any response to such allegations is necessary, Defendant admits that
22 paragraph 109 references 42 U.S.C. § 1320a-7k(d)(2). Defendant denies each and every other
23 allegation in paragraph 109.

24 110. Defendant denies each and every allegation in paragraph 110.

25 111. Paragraph 111 contains legal conclusions and/or argument, which require no
26 response. To the extent any response to such allegations is necessary, Defendant denies each and
27 every such allegation. Defendant denies each and every other allegation in paragraph 111.
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1 112. Answering paragraph 112, Defendant admits that Mia Okinaga left her position at
2 Defendant in 2015. Defendant denies each and every other allegation in paragraph 112.

3 113. Paragraph 113 contains legal conclusions and/or argument, which require no
4 response. To the extent any response to such allegations is necessary, Defendant denies each and
5 every such allegation. Defendant denies each and every other allegation in paragraph 113.

6 114. Defendant denies each and every allegation in paragraph 114.

7 115. Defendant denies each and every allegation in paragraph 115.

8 116. Defendant denies each and every allegation in paragraph 116.

9 117. Defendant denies each and every allegation in paragraph 117.

10 118. Defendant denies each and every allegation in paragraph 118.

11 119. Paragraph 119 contains legal conclusions and/or argument, which require no
12 response. To the extent any response to such allegations is necessary, Defendant denies each and
13 every such allegation. Defendant denies each and every other allegation in paragraph 119.

14 120. Defendant denies each and every allegation in paragraph 120.

15 121. Defendant denies each and every allegation in paragraph 121.

16 122. Defendant denies each and every allegation in paragraph 122.

17 123. Paragraph 123 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant denies each and
19 every such allegation. Defendant denies each and every other allegation in paragraph 123.

20 124. Paragraph 124 contains legal conclusions and/or argument, which require no
21 response. To the extent any response to such allegations is necessary, Defendant denies each and
22 every such allegation. Defendant denies each and every other allegation in paragraph 124.

23 125. Defendant denies each and every allegation in paragraph 125.

24 126. Defendant denies each and every allegation in paragraph 126.

25 127. Paragraph 127 contains legal conclusions and/or argument, which require no
26 response. To the extent any response to such allegations is necessary, Defendant denies each and
27 every such allegation. Defendant denies each and every other allegation in paragraph 127.

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1 128. Answering paragraph 128, Defendant admits that, on December 23, 2016, Relator
2 requested a meeting with Jacqueline Thomas in Program Offices Human Resources. Defendant
3 lacks sufficient knowledge to admit or deny the allegation that “[b]ut the meeting schedule was
4 adjusted several times and ultimately, never happened[,]” and, on that basis, denies each and
5 every such allegation. Defendant denies each and every other allegation in paragraph 128.

6 129. Answering paragraph 129, Defendant admits that, on January 5, 2017, Relator was
7 notified that his employment with Defendant was terminated. Paragraph 129 contains reference
8 to a document, which requires no response because the referenced document speaks for itself. To
9 the extent any response to such allegations is necessary, Defendant admits that paragraph 129
10 quotes a portion of a document. Defendant denies each and every other allegation in
11 paragraph 129.

12 130. Answering paragraph 130, Defendant admits that, since Relator’s start date at
13 Defendant in 2008, he had received numerous performance reviews; that Relator was placed on a
14 Performance Improvement Plan in 2016; that Relator was ultimately terminated from his position.
15 Paragraph 130 contains references to documents, which require no response because the
16 referenced documents speak for themselves. To the extent any response to such allegations is
17 necessary, Defendant admits that paragraph 130 quotes portions of documents. Defendant denies
18 each and every other allegation in paragraph 130.

19 **COUNT I**

20 **VIOLATIONS OF THE FALSE CLAIMS ACT**

21 **31 U.S.C. §§ 3729(A)(1)(A)–(C), (G)**

22 131. Answering paragraph 131, Defendant reasserts its answers to the above paragraphs
23 as if fully set forth herein.

24 132. Paragraph 132 contains Relator’s characterization of this action, which requires no
25 response. To the extent any response to such allegations is necessary, Defendant admits that
26 Relator brings a claim for treble damages, civil penalties, and the fees and costs of this action
27 under the False Claims Act, 31 U.S.C. §§ 3279–33, as amended. Defendant denies each and
28 every other allegation in paragraph 132.

1 133. Paragraph 133 contains legal conclusions and/or argument, which require no
2 response. To the extent any response to such allegations is necessary, Defendant denies each and
3 every such allegation. Defendant denies each and every other allegation in paragraph 133.

4 134. Paragraph 134 contains legal conclusions and/or argument, which require no
5 response. To the extent any response to such allegations is necessary, Defendant denies each and
6 every such allegation. Defendant denies each and every other allegation in paragraph 134.

7 135. Paragraph 135 contains legal conclusions and/or argument, which require no
8 response. To the extent any response to such allegations is necessary, Defendant denies each and
9 every such allegation. Defendant denies each and every other allegation in paragraph 135.

10 136. Paragraph 136 contains legal conclusions and/or argument, which require no
11 response. To the extent any response to such allegations is necessary, Defendant denies each and
12 every such allegation. Defendant denies each and every other allegation in paragraph 136.

13 137. Paragraph 137 contains legal conclusions and/or argument, which require no
14 response. To the extent any response to such allegations is necessary, Defendant denies each and
15 every such allegation. Defendant denies each and every other allegation in paragraph 137.

16 138. Paragraph 138 contains legal conclusions and/or argument, which require no
17 response. To the extent any response to such allegations is necessary, Defendant denies each and
18 every such allegation. Defendant denies each and every other allegation in paragraph 138.

19 **COUNT II**

20 **Violations Of The California False Claims Act**

21 **Cal. Gov't. Code §§ 12650, *et seq.***

22 139. Answering paragraph 139, Defendant reasserts its answers to the above paragraphs
23 as if fully set forth herein.

24 140. Paragraph 140 contains Relator's characterization of this action, which requires no
25 response. To the extent any response to such allegations is necessary, Defendant admits that
26 Relator brings a claim for treble damages, civil penalties, and the fees and costs of this action,
27 under the California False Claims Act, Cal. Gov't. Code §§ 12650 *et seq.* Defendant denies each
28 and every other allegation in paragraph 140.

1 141. Paragraph 141 contains legal conclusions and/or argument, which require no
2 response. To the extent any response to such allegations is necessary, Defendant admits that
3 paragraph 141 references Cal. Gov't Code § 12651(a). Defendant denies each and every other
4 allegation in paragraph 141.

5 142. Paragraph 142 contains legal conclusions and/or argument, which require no
6 response. To the extent any response to such allegations is necessary, Defendant denies each and
7 every such allegation. Defendant denies each and every other allegation in paragraph 142.

8 143. Paragraph 143 contains legal conclusions and/or argument, which require no
9 response. To the extent any response to such allegations is necessary, Defendant denies each and
10 every such allegation. Defendant denies each and every other allegation in paragraph 143.

11 144. Paragraph 144 contains legal conclusions and/or argument, which require no
12 response. To the extent any response to such allegations is necessary, Defendant denies each and
13 every such allegation. Defendant denies each and every other allegation in paragraph 144.

14 145. Paragraph 145 contains legal conclusions and/or argument, which require no
15 response. To the extent any response to such allegations is necessary, Defendant denies each and
16 every such allegation. Defendant denies each and every other allegation in paragraph 145.

17 146. Paragraph 146 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant denies each and
19 every such allegation. Defendant denies each and every other allegation in paragraph 146.

20 147. Paragraph 147 contains legal conclusions and/or argument, which require no
21 response. To the extent any response to such allegations is necessary, Defendant denies each and
22 every such allegation. Defendant denies each and every other allegation in paragraph 147.

23 148. Paragraph 148 contains legal conclusions and/or argument, which require no
24 response. To the extent any response to such allegations is necessary, Defendant denies each and
25 every such allegation. Defendant denies each and every other allegation in paragraph 148.

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COUNT III

Violations Of The Colorado Medicaid False Claims Act

C.R.S. 25.5-4-303.5, *et seq.*

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4 149. Answering paragraph 149, Defendant reasserts its answers to the above paragraphs
5 as if fully set forth herein.

6 150. Paragraph 150 contains Relator's characterization of this action, which requires no
7 response. To the extent any response to such allegations is necessary, Defendant admits that
8 Relator brings a claim for treble damages, civil penalties, and the fees and costs of this action,
9 under the Colorado Medicaid False Claims Act, C.R.S. 25.5-4-303.5, *et seq.* Defendant denies
10 each and every other allegation in paragraph 150.

11 151. Paragraph 151 contains legal conclusions and/or argument, which require no
12 response. To the extent any response to such allegations is necessary, Defendant admits that
13 paragraph 151 references C.R.S. § 25.5-4-305. Defendant denies each and every other allegation
14 in paragraph 151.

15 152. Paragraph 152 contains legal conclusions and/or argument, which require no
16 response. To the extent any response to such allegations is necessary, Defendant denies each and
17 every such allegation. Defendant denies each and every other allegation in paragraph 152.

18 153. Paragraph 153 contains legal conclusions and/or argument, which require no
19 response. To the extent any response to such allegations is necessary, Defendant denies each and
20 every such allegation. Defendant denies each and every other allegation in paragraph 153.

21 154. Paragraph 154 contains legal conclusions and/or argument, which require no
22 response. To the extent any response to such allegations is necessary, Defendant denies each and
23 every such allegation. Defendant denies each and every other allegation in paragraph 154.

24 155. Paragraph 155 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant denies each and
26 every such allegation. Defendant denies each and every other allegation in paragraph 155.

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1 156. Paragraph 156 contains legal conclusions and/or argument, which require no
2 response. To the extent any response to such allegations is necessary, Defendant denies each and
3 every such allegation. Defendant denies each and every other allegation in paragraph 156.

4 157. Paragraph 157 contains legal conclusions and/or argument, which require no
5 response. To the extent any response to such allegations is necessary, Defendant denies each and
6 every such allegation. Defendant denies each and every other allegation in paragraph 157.

7 **COUNT IV**

8 **Violations Of The Georgia False Medicaid Claims Act**

9 **Ga. Code §§ 49-4-168, *et seq.***

10 158. Answering paragraph 158, Defendant reasserts its answers to the above paragraphs
11 as if fully set forth herein.

12 Footnote 2 contains Relator's characterization of this action, which requires no response.
13 To the extent any response to such allegations is necessary, Defendant admits that Relator asserts
14 a claim under Georgia's False Medicaid Claims Act. Footnote 2 references the procedural
15 background of this case, which requires no response. To the extent any response to such
16 allegations is necessary, Defendant admits that footnote 2 references an "Order Granting In Part
17 and Denying In Part Defendants' Motion To Dismiss Relator's First Amended Complaint"
18 entered on February 13, 2024. *See* Dkt. 104. Defendant denies each and every other allegation in
19 footnote 2.

20 159. Paragraph 159 contains Relator's characterization of this action, which requires no
21 response. To the extent any response to such allegations is necessary, Defendant admits that
22 Relator brings a claim for treble damages, civil penalties and the fees and cost of this action,
23 under the Georgia False Medicaid Claims Act, Ga. Code §§ 49-4-168 *et seq.* Defendant denies
24 each and every other allegation in paragraph 159.

25 160. Paragraph 160 contains legal conclusions and/or argument, which require no
26 response. To the extent any response to such allegations is necessary, Defendant admits that
27 paragraph 160 references Ga. Code § 49-4-168.1(a). Defendant denies each and every other
28 allegation in paragraph 160.

1 161. Paragraph 161 contains legal conclusions and/or argument, which require no
2 response. To the extent any response to such allegations is necessary, Defendant denies each and
3 every such allegation. Defendant denies each and every other allegation in paragraph 161.

4 162. Paragraph 162 contains legal conclusions and/or argument, which require no
5 response. To the extent any response to such allegations is necessary, Defendant denies each and
6 every such allegation. Defendant denies each and every other allegation in paragraph 162.

7 163. Paragraph 163 contains legal conclusions and/or argument, which require no
8 response. To the extent any response to such allegations is necessary, Defendant denies each and
9 every such allegation. Defendant denies each and every other allegation in paragraph 163.

10 164. Paragraph 164 contains legal conclusions and/or argument, which require no
11 response. To the extent any response to such allegations is necessary, Defendant denies each and
12 every such allegation. Defendant denies each and every other allegation in paragraph 164.

13 165. Paragraph 165 contains legal conclusions and/or argument, which require no
14 response. To the extent any response to such allegations is necessary, Defendant denies each and
15 every such allegation. Defendant denies each and every other allegation in paragraph 165.

16 166. Paragraph 166 contains legal conclusions and/or argument, which require no
17 response. To the extent any response to such allegations is necessary, Defendant denies each and
18 every such allegation. Defendant denies each and every other allegation in paragraph 166.

19 **COUNT V**

20 **Violations Of The Hawaii False Claims Act**

21 **Haw. Rev. Stat. §§ 661-21, *et seq.***

22 167. Answering paragraph 167, Defendant reasserts its answers to the above paragraphs
23 as if fully set forth herein.

24 168. Paragraph 168 contains Relator's characterization of this action, which requires no
25 response. To the extent any response to such allegations is necessary, Defendant admits that
26 Relator brings a claim for treble damages, civil penalties, and the fees and costs of this action,
27 pursuant to the Hawaii False Claims Act, Haw. Rev. Stat. §§ 661-21, *et seq.* Defendant denies
28 each and every other allegation in paragraph 168.

1 169. Paragraph 169 contains legal conclusions and/or argument, which require no
2 response. To the extent any response to such allegations is necessary, Defendant admits that
3 paragraph 169 references Haw. Rev. Stat. § 661-21(a). Defendant denies each and every other
4 allegation in paragraph 169.

5 170. Paragraph 170 contains legal conclusions and/or argument, which require no
6 response. To the extent any response to such allegations is necessary, Defendant denies each and
7 every such allegation. Defendant denies each and every other allegation in paragraph 170.

8 171. Paragraph 171 contains legal conclusions and/or argument, which require no
9 response. To the extent any response to such allegations is necessary, Defendant denies each and
10 every such allegation. Defendant denies each and every other allegation in paragraph 171.

11 172. Paragraph 172 contains legal conclusions and/or argument, which require no
12 response. To the extent any response to such allegations is necessary, Defendant denies each and
13 every such allegation. Defendant denies each and every other allegation in paragraph 172.

14 173. Paragraph 173 contains legal conclusions and/or argument, which require no
15 response. To the extent any response to such allegations is necessary, Defendant denies each and
16 every such allegation. Defendant denies each and every other allegation in paragraph 173.

17 174. Paragraph 174 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant denies each and
19 every such allegation. Defendant denies each and every other allegation in paragraph 174.

20 175. Paragraph 175 contains legal conclusions and/or argument, which require no
21 response. To the extent any response to such allegations is necessary, Defendant denies each and
22 every such allegation. Defendant denies each and every other allegation in paragraph 175.

23 176. Paragraph 176 contains legal conclusions and/or argument, which require no
24 response. To the extent any response to such allegations is necessary, Defendant denies each and
25 every such allegation. Defendant denies each and every other allegation in paragraph 176.

26 **COUNT VI**

27 **Violations Of The Virginia Fraud Against Taxpayers Act**

28 **Va. Code §§ 8.01-216.1, *et seq.***

1 177. Answering paragraph 177, Defendant reasserts its answers to the above paragraphs
2 as if fully set forth herein.

3 178. Paragraph 178 contains Relator's characterization of this action, which requires no
4 response. To the extent any response to such allegations is necessary, Defendant admits that
5 Relator brings a claim for recover treble damages, civil penalties and the fees and cost of this
6 action, under the Virginia Fraud Against Taxpayers Act, Va. Code §§ 8.01-216.1, *et seq.*
7 Defendant denies each and every other allegation in paragraph 178.

8 179. Paragraph 179 contains legal conclusions and/or argument, which require no
9 response. To the extent any response to such allegations is necessary, Defendant admits that
10 paragraph 179 references Va. Code § 8.01-216.3. Defendant denies each and every other
11 allegation in paragraph 179.

12 180. Paragraph 180 contains legal conclusions and/or argument, which require no
13 response. To the extent any response to such allegations is necessary, Defendant denies each and
14 every such allegation. Defendant denies each and every other allegation in paragraph 180.

15 181. Paragraph 181 contains legal conclusions and/or argument, which require no
16 response. To the extent any response to such allegations is necessary, Defendant denies each and
17 every such allegation. Defendant denies each and every other allegation in paragraph 181.

18 182. Paragraph 182 contains legal conclusions and/or argument, which require no
19 response. To the extent any response to such allegations is necessary, Defendant denies each and
20 every such allegation. Defendant denies each and every other allegation in paragraph 182.

21 183. Paragraph 183 contains legal conclusions and/or argument, which require no
22 response. To the extent any response to such allegations is necessary, Defendant denies each and
23 every such allegation. Defendant denies each and every other allegation in paragraph 183.

24 184. Paragraph 184 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant denies each and
26 every such allegation. Defendant denies each and every other allegation in paragraph 184.

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1 185. Paragraph 185 contains legal conclusions and/or argument, which require no
2 response. To the extent any response to such allegations is necessary, Defendant denies each and
3 every such allegation. Defendant denies each and every other allegation in paragraph 185.

4 **COUNT VII**

5 **Violations Of The Washington State Medicaid Fraud False Claims Act**

6 **Wash. Rev. Code §§ 74.66.005, *et seq.***

7 186. Answering paragraph 186, Defendant reasserts its answers to the above paragraphs
8 as if fully set forth herein.

9 187. Paragraph 187 contains Relator's characterization of this action, which requires no
10 response. To the extent any response to such allegations is necessary, Defendant admits that
11 Relator brings a claim for recover treble damages, civil penalties, and the fees and costs of this
12 action, under the Medicaid Fraud False Claims Act, Wash. Rev. Code §§ 74.66.005, *et seq.*
13 Defendant denies each and every other allegation in paragraph 187.

14 188. Paragraph 188 contains legal conclusions and/or argument, which require no
15 response. To the extent any response to such allegations is necessary, Defendant admits that
16 paragraph 188 references Wash. Rev. Code § 74.66.020(1). Defendant denies each and every
17 other allegation in paragraph 188.

18 189. Paragraph 189 contains legal conclusions and/or argument, which require no
19 response. To the extent any response to such allegations is necessary, Defendant denies each and
20 every such allegation. Defendant denies each and every other allegation in paragraph 189.

21 190. Paragraph 190 contains legal conclusions and/or argument, which require no
22 response. To the extent any response to such allegations is necessary, Defendant denies each and
23 every such allegation. Defendant denies each and every other allegation in paragraph 190.

24 191. Paragraph 191 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant denies each and
26 every such allegation. Defendant denies each and every other allegation in paragraph 191.

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1 192. Paragraph 192 contains legal conclusions and/or argument, which require no
2 response. To the extent any response to such allegations is necessary, Defendant denies each and
3 every such allegation. Defendant denies each and every other allegation in paragraph 192.

4 193. Paragraph 193 contains legal conclusions and/or argument, which require no
5 response. To the extent any response to such allegations is necessary, Defendant denies each and
6 every such allegation. Defendant denies each and every other allegation in paragraph 193.

7 194. Paragraph 194 contains legal conclusions and/or argument, which require no
8 response. To the extent any response to such allegations is necessary, Defendant denies each and
9 every such allegation. Defendant denies each and every other allegation in paragraph 194.

10 **COUNT VIII**

11 **Unlawful Retaliation Pursuant To The False Claims Act**

12 **31 U.S.C. § 3730(h)**

13 195. Answering paragraph 195, Defendant reasserts its answers to the above paragraphs
14 as if fully set forth herein.

15 196. Paragraph 196 contains legal conclusions and/or argument, which require no
16 response. To the extent any response to such allegations is necessary, Defendant denies each and
17 every such allegation. Defendant denies each and every other allegation in paragraph 196.

18 197. Paragraph 197 contains legal conclusions and/or argument, which require no
19 response. To the extent any response to such allegations is necessary, Defendant denies each and
20 every such allegation. Defendant denies each and every other allegation in paragraph 197.

21 **COUNT IX**

22 **Unlawful Retaliation Pursuant To The California False Claims Act**

23 **Cal. Gov't Code § 12653**

24 198. Answering paragraph 198, Defendant reasserts its answers to the above paragraphs
25 as if fully set forth herein.

26 199. Paragraph 199 contains legal conclusions and/or argument, which require no
27 response. To the extent any response to such allegations is necessary, Defendant admits that
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1 paragraph 199 references Cal. Gov't Code § 12653. Defendant denies each and every other
2 allegation in paragraph 199.

3 200. Paragraph 200 contains legal conclusions and/or argument, which require no
4 response. To the extent any response to such allegations is necessary, Defendant denies each and
5 every such allegation. Defendant denies each and every other allegation in paragraph 200.

6 **Count X**

7 **Unlawful Retaliation In Violation Of The California Labor Code**

8 **Cal. Lab. Code § 1102.5(b)**

9 201. Answering paragraph 201, Defendant reasserts its answers to the above paragraphs
10 as if fully set forth herein.

11 202. Paragraph 202 contains legal conclusions and/or argument, which require no
12 response. To the extent any response to such allegations is necessary, Defendant admits that
13 paragraph 202 references Cal. Lab. Code § 1102.5(b). Defendant denies each and every other
14 allegation in paragraph 202.

15 203. Paragraph 203 contains legal conclusions and/or argument, which require no
16 response. To the extent any response to such allegations is necessary, Defendant denies each and
17 every such allegation. Defendant denies each and every other allegation in paragraph 203.

18 **COUNT XI**

19 **Retaliatory Common Law Termination In Violation Of Public Policy**

20 204. Answering paragraph 204, Defendant reasserts its answers to the above paragraphs
21 as if fully set forth herein.

22 205. Paragraph 205 contains legal conclusions and/or argument, which require no
23 response. To the extent any response to such allegations is necessary, Defendant admits that
24 Defendant employed Relator from 2008 to 2017. Defendant denies each and every other
25 allegation in paragraph 205.

26 206. Paragraph 206 contains legal conclusions and/or argument, which require no
27 response. To the extent any response to such allegations is necessary, Defendant denies each and
28 every such allegation. Defendant denies each and every other allegation in paragraph 206.

1 212. Relator’s claims for relief under the False Claims Act are barred in whole or in
2 part because the *qui tam* provisions of the False Claims Act are unconstitutional. Specifically, the
3 provisions violate the Vesting, Take Care, and Appointments Clauses of the U.S. Constitution.
4 U.S. Const. art. II, § 1, cl. 1; *id.* § 2, cl. 2; *id.* § 3. *See also United States ex rel. Polansky v. Exec.*
5 *Health Res., Inc.*, 599 U.S. 419, 449 (2023) (Thomas, J., dissenting) (“there are substantial
6 arguments that the *qui tam* device is inconsistent with Article II”). Therefore, Relator lacks
7 standing to assert claims under the False Claims Act.

8 213. Relator’s claims for relief are barred in whole or in part because, if Defendant did
9 subject Relator to any wrongful or unlawful conduct resulting in harm, although such is not
10 admitted hereby or herein, Relator had a duty to mitigate any damages and failed to do so.

11 214. Relator’s claims for relief are barred in whole or in part by Relator’s unclean
12 hands and/or inequitable or wrongful conduct.

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Dated: May 24, 2024

Respectfully submitted,

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

*Attorneys for Defendant Kaiser
Foundation Health Plan, Inc.*