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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
HOSPITALS' 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 KFHP a predetermined monthly amount for each enrollee in its

1 Medicare Advantage plans, which Defendant KFHP then uses to manage all costs associated with
2 the plan; that, under Medicaid, several states fund portions of enrollees' medical costs through
3 Dual Eligible Special Needs Plans ("D-SNPs") when enrolled individuals are entitled to Medicare
4 and medical assistance from a state Medicaid plan. Defendant denies each and every other
5 allegation in 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. Paragraph 7 contains allegations that do not reference Defendant, which
20 require no response. To the extent any response to such allegations is necessary, Defendant lacks
21 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
22 such allegation. Defendant denies each and every other allegation in paragraph 7.

23 **JURISDICTION AND VENUE**

24 8. Paragraph 8 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 this action for alleged violations of the False Claims Act, 31 U.S.C. §§ 3729, *et*
27 *seq.* Paragraph 8 contains legal conclusions and/or argument, which require no response. To the
28 extent any response to such allegations is necessary, Defendant admits that paragraph 8

1 references 28 U.S.C. § 1331, 28 U.S.C. § 1367, 31 U.S.C. §§ 3729, *et seq.*, and 31 U.S.C.
2 §§ 3732(a)–(b). Defendant denies each and every other allegation in paragraph 8.

3 9. Paragraph 9 contains legal conclusions and/or argument, which require no
4 response. To the extent any response to such allegations is necessary, Defendant admits that, for
5 purposes of personal jurisdiction, at least one of the Defendants can be found in or transacts
6 business in the Eastern District of California; that paragraph 9 references 31 U.S.C. § 3732(a).
7 Defendant denies each and every other allegation in paragraph 9.

8 10. Paragraph 10 contains legal conclusions and/or argument, which require no
9 response. To the extent any response to such allegations is necessary, Defendant admits that, for
10 purposes of venue, at least one of the Defendants can be found in, resides in, or transacts business
11 in the Eastern District of California; that paragraph 10 references 31 U.S.C. § 3732(a) and
12 31 U.S.C. § 3729. Defendant denies each and every other allegation in paragraph 10.

13 **PARTIES AND ENTITIES**

14 ***A. Relator Jeffrey Mazik***

15 11. Answering paragraph 11, Defendant admits that Relator Jeffrey Mazik is a resident
16 of California. Paragraph 11 contains allegations that do not reference Defendant, which require
17 no response. To the extent any response to such allegations is necessary, Defendant lacks
18 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
19 such allegation. Defendant denies each and every other allegation in paragraph 11.

20 12. Paragraph 12 contains allegations that do not reference Defendant, which require
21 no response. To the extent any response to such allegations is necessary, Defendant lacks
22 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
23 such allegation. Defendant denies each and every other allegation in paragraph 12.

24 13. Paragraph 13 contains allegations that do not reference Defendant, which require
25 no response. To the extent any response to such allegations is necessary, Defendant lacks
26 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
27 such allegation. Defendant denies each and every other allegation in paragraph 13.

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

7 ***B. Defendants Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, Inc.,***
8 ***and The Permanente Medical Groups***

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

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

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

15 18. Paragraph 18 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 allegation in paragraph 18.

18 19. Answering paragraph 19, Defendant admits that Defendant, Defendant KFHP, and
19 their respective subsidiaries reported a combined total operating revenue of approximately \$72.7
20 billion in or around 2017; that Defendant, Defendant KFHP, and their respective subsidiaries
21 across all eight regions reported a combined net income of approximately \$3.8 billion in or
22 around 2017. Defendant denies each and every other allegation in paragraph 19.

23 **RELEVANT LEGAL FRAMEWORK**

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

25 20. Paragraph 20 contains legal conclusions and/or argument, which require no
26 response. To the extent any response to such allegations is necessary, Defendant admits that a
27 Medicare beneficiary may enroll in Medicare Parts A, B, or C; that Medicare Parts A and B are
28 commonly referred to as “traditional” Medicare; that, under Medicare Parts A and B, CMS

1 reimburses health care providers using a fee-for-service system; that, under Medicare Part C, a
2 Medicare beneficiary may enroll in an MA plan managed by a private health plan, known as a
3 Medicare Advantage Organization (“MAO”); that under Medicare Part C, Medicare pays MAOs
4 a capitation rate (per member per month) and those plans are responsible, in part, for paying
5 health care providers for the services they provide to members of that specific MA plan.

6 Defendant denies each and every other allegation in paragraph 20.

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

10 22. Paragraph 22 contains legal conclusions and/or argument, which require no
11 response. To the extent any response to such allegations is necessary, Defendant admits that,
12 upon information and belief, CMS adjusts the monthly payment amount for each MA beneficiary
13 using health status, among other factors; that a Medicare beneficiary’s health status may be used
14 to predict the cost of medical expenditures for that beneficiary; that paragraph 22 references
15 42 U.S.C. §§ 1395w-23(a)(1)(C)(i), (a)(3) and 42 C.F.R. § 422.308(c)(2). Defendant denies each
16 and every other allegation in paragraph 22.

17 23. Paragraph 23 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant admits that,
19 upon information and belief, to determine payment under MA, CMS determines a bid amount
20 through an annual bid submission process between CMS and each MA plan; that, upon
21 information and belief, CMS calculates, for beneficiaries enrolled in an MA plan, risk scores that
22 act as an adjustment to the bid amount for purposes of determining payment pursuant to the CMS
23 Hierarchical Condition Category (“CMS-HCC”) risk adjustment model; that, upon information
24 and belief, CMS adjusts the monthly payment amount for each MA beneficiary using
25 demographic factors such as age and gender (among others) and health status, pursuant to the
26 CMS-HCC risk adjustment model; that, upon information and belief, each MA beneficiary’s risk
27 score is based in part upon diagnosis data obtained by MAOs from healthcare providers who treat
28 beneficiaries in the MAOs’ MA plans, and transmitted by MAOs to CMS; that, upon information

1 and belief, CMS uses an MA beneficiary’s risk score calculated based on diagnosis codes from a
2 given service year to determine monthly payments to MAOs for that beneficiary in the following
3 year (the payment year). Paragraph 23 contains reference to a document, which requires no
4 response because the referenced document speaks for itself. To the extent any response to such
5 allegations is necessary, Defendant admits that paragraph 23 references portions of Medicare and
6 Medicaid Servs., Pub. No. 100-16, Medicare Managed Care Manual, ch. 7, § 40 (2014),
7 <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/mc86c07.pdf>.
8 Defendant denies each and every other allegation in paragraph 23.

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

3 25. Paragraph 25 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. Paragraph 25 contains a hypothetical example containing no factual
6 assertions, which requires no response. To the extent any response to such allegations is
7 necessary, Defendant denies each and every such allegation. Paragraph 25 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 25 quotes
10 and references portions of *U.S. ex rel. Silingo v. WellPoint, Inc.*, 904 F.3d 667, 673 (9th Cir.
11 2018). Defendant denies each and every other allegation in paragraph 25.

12 26. Paragraph 26 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 26.

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

1 28. Paragraph 28 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. Paragraph 28 contains references to documents, which require no response
4 because the referenced documents speak for themselves. To the extent any response to such
5 allegations is necessary, Defendant admits that paragraph 28 references and miscites portions of
6 the Medicare Managed Care Manual, ch. 7, §§ 40, 120.1.1; references and cites portions of Ctrs.
7 for Medicare and Medicaid Servs., Pub. No. 100-08, Medicare Program Integrity Manual, ch. 3,
8 § 3.3.2.4 (2018), [https://www.cms.gov/Regulations-and-
9 Guidance/Guidance/Manuals/downloads/PIM83c03.pdf](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/PIM83c03.pdf). Defendant denies each and every other
10 allegation in paragraph 28.

11 29. Paragraph 29 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, CMS uses an MA beneficiary's risk score, calculated based in part
14 on risk adjustment data from a given service year, to determine monthly payments to MAOs for
15 that beneficiary in the following year (the payment year); that paragraph 29 references 42 C.F.R.
16 § 422.310(g) and 42 C.F.R. § 423.329(b)(3). Defendant denies each and every other allegation in
17 paragraph 29.

18 30. Paragraph 30 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 30 references and quotes 42 C.F.R. § 422.503(b)(4)(vi). Defendant denies each and
21 every other allegation in paragraph 30.

22 31. Paragraph 31 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 31 references and quotes 42 C.F.R. § 422.504. Paragraph 31 contains references to a
25 document, which requires no response because the referenced document speaks for itself. To the
26 extent any response to such allegations is necessary, Defendant admits that paragraph 31
27 references portions of a document. Defendant denies each and every other allegation in
28 paragraph 31.

1 32. Paragraph 32 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 32 quotes and references 42 C.F.R. §§ 422.503, (b)(4)(vi)(A)(7), (b)(4)(vi)(B),
4 (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. §§
5 422.504, (i)(1); and 42 C.F.R. § 423.505. Defendant denies each and every other allegation in
6 paragraph 32.

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

11 34. Paragraph 34 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, following the Patient Protection and Affordable Care Act (“ACA”),
14 enacted in March 2010, CMS expanded the Recovery Audit program to the Medicare Part C
15 programs; that MAOs are subject to RADV audits. Defendant lacks sufficient knowledge to
16 admit or deny the allegation that “[i]n 2005, CMS implemented a pilot Medicare Recovery Audit
17 Contractor (RAC) Program applicable to Medicare Parts A and B, which successfully corrected
18 more than \$1.03 billion in improper payments to Medicare providers,” and, on that basis denies
19 each and every such allegation. Due to the non-specific and vague nature of Plaintiff’s
20 allegations, Defendant lacks sufficient information to admit or deny the allegations that
21 “Medicare Advantage organizations are subject to . . . risk adjustment medical record reviews
22 (MRRs), which are designed to ensure medical record documentation validates claims data
23 received[,]” and that “DRG Payment Integrity Reviews, which are ongoing comprehensive
24 review of hospital claims that have been submitted to plans for payment, including the diagnosis
25 related groups (DRGs) – the diagnosis codes used to calculate risk adjustment scores – to make
26 sure cases are properly coded and sequenced, and that billed information matches the patient
27 record[,]” and, on that basis, denies such allegations. Defendant denies each and every other
28 allegation in paragraph 34.

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

2 35. Paragraph 35 contains legal conclusions and/or argument, which require no
3 response. To the extent any response to such allegations is necessary, Defendant admits that a
4 specialized MA plan for special needs individuals (“SNP”) is a MA coordinated care plan that
5 exclusively serves special needs individuals; that California administers a program called Medi-
6 Cal; that the State of Hawaii Department of Human Services administers a program called Med-
7 QUEST; that Virginia’s Department of Medical Assistance Services administers a program called
8 Virginia Medicaid; that the Washington State Health Care Authority administers a program
9 called, since 2014, Apple Health, in which Molina Healthcare of Washington participates.
10 Defendant denies each and every other allegation in paragraph 35.

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

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

3 38. Paragraph 38 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 since the initial enactment in 2003, Congress has extended the SNP program multiple times,
6 including by the Medicare, Medicaid, and State Children’s Health Insurance Program (SCHIP)
7 Extension Act of 2007 (extending the SNP program to December 31, 2009); the Medicare
8 Improvements for Patients and Providers Act of 2008 (MIPPA) (extending the SNP program
9 through December 31, 2010); the Patient Protection and Affordable Care Act (“ACA”) effective
10 in 2011 (extending the SNP program through December 31, 2013); the American Taxpayer Relief
11 Act of 2012 (ATRA) (extending the SNP program through December 31, 2014); the Bipartisan
12 Budget Act of 2013 (Pub. L. 113-67) (extending the SNP program through December 31, 2015);
13 the Protecting Access to Medicare Act of 2014 (extending the SNP program through December
14 31, 2016); and the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA)
15 (extending the SNP program through December 31, 2018). Defendant denies each and every
16 other allegation in paragraph 38.

17 39. Paragraph 39 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 39.

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

21 40. Paragraph 40 contains legal conclusions and/or argument, which require no
22 response. To the extent any response to such allegations is necessary, Defendant admits that
23 paragraph 40 quotes and references portions of *U.S. ex rel. Silingo v. WellPoint, Inc.*, 904 F.3d
24 667, 673 (9th Cir. 2018). Defendant denies each and every other allegation in paragraph 40.

25 41. Paragraph 41 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 41 references 31 U.S.C. §§ 3729(a)(1)(A)–(C), (G). Defendant denies each and every
28 other allegation in paragraph 41.

1 42. Paragraph 42 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 42 quotes and references 31 U.S.C. § 3729(a)(1)(G) and references and attempts to
 4 quote portions of 31 U.S.C. § 3729(b)(3). Paragraph 42 contains reference to a document, which
 5 requires no response because the referenced document speaks for itself. To the extent any
 6 response to such allegations is necessary, Defendant admits that paragraph 42 references portions
 7 of S. Rep. 111-10 at 14 (2009). Defendant denies each and every other allegation in
 8 paragraph 42.

9 43. Paragraph 43 contains legal conclusions and/or argument, which require no
 10 response. To the extent any response to such allegations is necessary, Defendant admits that
 11 paragraph 43 references 42 U.S.C. § 1320a-7k(d)(2); that, under 42 C.F.R. § 401.305(f), an
 12 “overpayment must be reported and returned . . . if a person identifies the overpayment . . . within
 13 6 years of the date the overpayment was received.” Paragraph 43 contains reference to a
 14 document, which requires no response because the referenced document speaks for itself. To the
 15 extent any response to such allegations is necessary, Defendant admits that paragraph 43
 16 references portions of 124 Stat. 119, 753–56 (2010). Defendant denies each and every other
 17 allegation in paragraph 43.

18 44. Paragraph 44 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 44 references 31 U.S.C. § 3729(a)(1) and 28 C.F.R. § 85.5. Defendant denies each and
 21 every other allegation in paragraph 44.

FACTUAL ALLEGATIONS

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

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

24 45. Paragraph 45 contains allegations that do not reference Defendant, which require
 25 no response. To the extent any response to such allegations is necessary, Defendant lacks
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1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Defendant denies each and every other allegation in paragraph 45.

3 46. Answering paragraph 46, Defendant admits that Defendant KFHP collects
4 encounter data, including diagnosis codes, associated with beneficiaries' medical visits; that
5 Defendant KFHP transmits diagnosis codes to CMS associated with beneficiaries' medical visits
6 in a given service year; that, upon information and belief, CMS adjusts the monthly payment
7 amount for a given MA beneficiary using that MA beneficiary's risk score. Paragraph 46
8 contains allegations that do not reference Defendant, which require no response. To the extent
9 any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or
10 deny such allegations and, on that basis, denies each and every such allegation. Defendant denies
11 each and every other allegation in paragraph 46.

12 47. Answering paragraph 47, Defendant admits that some members enrolled in
13 Defendant KFHP's MA plans or SNPs receive medical care from external providers. Paragraph
14 47 contains legal conclusions and/or argument, which require no response. To the extent any
15 response to such allegations is necessary, Defendant denies each and every such allegation.
16 Defendant denies each and every other allegation in paragraph 47.

17 48. Paragraph 48 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant admits that
19 paragraph 48 references and quotes 42 C.F.R. § 422.503. Due to the non-specific and vague
20 nature of Plaintiff's allegations, Defendant lacks sufficient information to admit or deny the
21 allegation that "Kaiser acts as the gatekeeper for fraudulent claims," and, on that basis, denies
22 such allegation. Defendant denies each and every other allegation in paragraph 48.

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

24 50. Paragraph 50 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 50 contains allegations that do not reference Defendant, which
27 require no response. To the extent any response to such allegations is necessary, Defendant lacks
28

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Defendant denies each and every other allegation in paragraph 50.

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

4 51. Paragraph 51 contains allegations that do not reference Defendant, which require
5 no response. To the extent any response to such allegations is necessary, Defendant lacks
6 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
7 such allegation. Defendant denies each and every other allegation in paragraph 51.

8 52. Paragraph 52 contains allegations that do not reference Defendant, which require
9 no response. To the extent any response to such allegations is necessary, Defendant lacks
10 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
11 such allegation. Defendant denies each and every other allegation in paragraph 52.

12 53. Paragraph 53 contains allegations that do not reference Defendant, which require
13 no response. To the extent any response to such allegations is necessary, Defendant lacks
14 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
15 such allegation. Defendant denies each and every other allegation in paragraph 53.

16 54. Paragraph 54 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. Paragraph 54 contains allegations that do not reference Defendant, which
19 require no response. To the extent any response to such allegations is necessary, Defendant lacks
20 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
21 such allegation. Defendant denies each and every other allegation in paragraph 54.

22 55. Paragraph 55 contains allegations that do not reference Defendant, which require
23 no response. To the extent any response to such allegations is necessary, Defendant lacks
24 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
25 such allegation. Defendant denies each and every other allegation in paragraph 55.

26 56. Paragraph 56 contains allegations that do not reference Defendant, which require
27 no response. To the extent any response to such allegations is necessary, Defendant lacks
28

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Defendant denies each and every other allegation in paragraph 56.

3 57. Paragraph 57 contains allegations that do not reference Defendant, which require
4 no response. To the extent any response to such allegations is necessary, Defendant lacks
5 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
6 such allegation. Defendant denies each and every other allegation in paragraph 57.

7 58. Paragraph 58 contains allegations that do not reference Defendant, which require
8 no response. To the extent any response to such allegations is necessary, Defendant lacks
9 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
10 such allegation. Defendant denies each and every other allegation in paragraph 58.

11 59. Paragraph 59 contains allegations that do not reference Defendant, which require
12 no response. To the extent any response to such allegations is necessary, Defendant lacks
13 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
14 such allegation. Defendant denies each and every other allegation in paragraph 59.

15 60. Paragraph 60 contains allegations that do not reference Defendant, which require
16 no response. To the extent any response to such allegations is necessary, Defendant lacks
17 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
18 such allegation. Defendant denies each and every other allegation in paragraph 60.

19 61. Paragraph 61 contains allegations that do not reference Defendant, which require
20 no response. To the extent any response to such allegations is necessary, Defendant lacks
21 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
22 such allegation. Defendant denies each and every other allegation in paragraph 61.

23 62. Paragraph 62 contains allegations that do not reference Defendant, which require
24 no response. To the extent any response to such allegations is necessary, Defendant lacks
25 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
26 such allegation. Defendant denies each and every other allegation in paragraph 62.

27 63. Paragraph 63 contains allegations that do not reference Defendant, which require
28 no response. To the extent any response to such allegations is necessary, Defendant lacks

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Defendant denies each and every other allegation in paragraph 63.

3 64. Paragraph 64 contains allegations that do not reference Defendant, which require
4 no response. To the extent any response to such allegations is necessary, Defendant lacks
5 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
6 such allegation. Defendant denies each and every other allegation in paragraph 64.

7 65. Paragraph 65 contains allegations that do not reference Defendant, which require
8 no response. To the extent any response to such allegations is necessary, Defendant lacks
9 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
10 such allegation. Defendant denies each and every other allegation in paragraph 65.

11 66. Paragraph 66 contains allegations that do not reference Defendant, which require
12 no response. To the extent any response to such allegations is necessary, Defendant lacks
13 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
14 such allegation. Defendant denies each and every other allegation in paragraph 66.

15 67. Paragraph 67 contains allegations that do not reference Defendant, which require
16 no response. To the extent any response to such allegations is necessary, Defendant lacks
17 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
18 such allegation. Defendant denies each and every other allegation in paragraph 67.

19 68. Paragraph 68 contains allegations that do not reference Defendant, which require
20 no response. To the extent any response to such allegations is necessary, Defendant lacks
21 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
22 such allegation. Defendant lacks sufficient knowledge to admit or deny the allegation that “[h]e
23 then prepared a Webex presentation to report his findings to Ms. Janiga, Relator’s supervisor, and
24 Mr. Pursche of the Government Audit & Reimbursement division,” and, on that basis, denies
25 such allegation. Defendant denies each and every other allegation in paragraph 68.

26 69. Paragraph 69 contains allegations that do not reference Defendant, which require
27 no response. To the extent any response to such allegations is necessary, Defendant lacks
28 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every

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

5 70. Paragraph 70 contains allegations that do not reference Defendant, which require
6 no response. To the extent any response to such allegations is necessary, Defendant lacks
7 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
8 such allegation. Defendant denies each and every other allegation in paragraph 70.

9 71. Paragraph 71 contains allegations that do not reference Defendant, which require
10 no response. To the extent any response to such allegations is necessary, Defendant lacks
11 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
12 such allegation. Defendant denies each and every other allegation in paragraph 71.

13 72. Paragraph 72 contains allegations that do not reference Defendant, which require
14 no response. To the extent any response to such allegations is necessary, Defendant lacks
15 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
16 such allegation. Defendant denies each and every other allegation in paragraph 72.

17 73. Paragraph 73 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant admits that,
19 under 42 C.F.R. § 422.503(b)(4)(vi), Medicare Advantage Plan sponsors must “[a]dopt and
20 implement an effective compliance program, which must include measures that . . . correct non-
21 compliance with CMS’ program requirements as well as measures that . . . correct fraud[.]”
22 Paragraph 73 contains allegations that do not reference Defendant, which require no response. To
23 the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to
24 admit or deny such allegations and, on that basis, denies each and every such allegation.
25 Defendant denies each and every other allegation in paragraph 73.

26 74. Paragraph 74 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. Paragraph 74 contains allegations that do not reference Defendant, which

1 require no response. To the extent any response to such allegations is necessary, Defendant lacks
2 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
3 such allegation. Defendant denies each and every other allegation in paragraph 74.

4 75. Paragraph 75 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. Paragraph 75 contains allegations that do not reference Defendant, which
7 require no response. To the extent any response to such allegations is necessary, Defendant lacks
8 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
9 such allegation. Defendant denies each and every other allegation in paragraph 75.

10 76. Paragraph 76 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. Paragraph 76 contains allegations that do not reference Defendant, which
13 require no response. To the extent any response to such allegations is necessary, Defendant lacks
14 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
15 such allegation. Defendant denies each and every other allegation in paragraph 76.

16 77. Paragraph 77 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. Paragraph 77 contains allegations that do not reference Defendant, which
19 require no response. To the extent any response to such allegations is necessary, Defendant lacks
20 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
21 such allegation. Defendant denies each and every other allegation in paragraph 77.

22 78. Paragraph 78 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 78 contains allegations that do not reference Defendant, which
25 require no response. To the extent any response to such allegations is necessary, Defendant lacks
26 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
27 such allegation. Defendant denies each and every other allegation in paragraph 78.

28

1 79. Paragraph 79 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 79 references and quotes 42 C.F.R. § 422.503. Paragraph 79 contains allegations that
4 do not reference Defendant, which require no response. To the extent any response to such
5 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
6 and, on that basis, denies each and every such allegation. Defendant denies each and every other
7 allegation in paragraph 79.

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

10 80. Paragraph 80 contains allegations that do not reference Defendant, which require
11 no response. To the extent any response to such allegations is necessary, Defendant lacks
12 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
13 such allegation. Defendant denies each and every other allegation in paragraph 80.

14 81. Paragraph 81 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 81.

18 82. Paragraph 82 contains allegations that do not reference Defendant, which require
19 no response. To the extent any response to such allegations is necessary, Defendant lacks
20 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
21 such allegation. Defendant denies each and every other allegation in paragraph 82.

22 83. Paragraph 83 contains allegations that do not reference Defendant, which require
23 no response. To the extent any response to such allegations is necessary, Defendant lacks
24 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
25 such allegation. Defendant denies each and every other allegation in paragraph 83.

26 84. Paragraph 84 contains allegations that do not reference Defendant, which require
27 no response. To the extent any response to such allegations is necessary, Defendant lacks
28

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Defendant denies each and every other allegation in paragraph 84.

3 85. Paragraph 85 contains allegations that do not reference Defendant, which require
4 no response. To the extent any response to such allegations is necessary, Defendant lacks
5 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
6 such allegation. Defendant denies each and every other allegation in paragraph 85.

7 86. Paragraph 86 contains allegations that do not reference Defendant, which require
8 no response. To the extent any response to such allegations is necessary, Defendant lacks
9 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
10 such allegation. Defendant denies each and every other allegation in paragraph 86.

11 87. Paragraph 87 contains allegations that do not reference Defendant, which require
12 no response. To the extent any response to such allegations is necessary, Defendant lacks
13 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
14 such allegation. Defendant lacks sufficient knowledge to admit or deny the allegation that
15 “Relator understood this as a direct order not to correct or contradict anyone on the call,” and, on
16 that basis, denies such allegation. Defendant denies each and every other allegation in paragraph
17 87.

18 88. Paragraph 88 contains allegations that do not reference Defendant, which require
19 no response. To the extent any response to such allegations is necessary, Defendant lacks
20 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
21 such allegation. Defendant denies each and every other allegation in paragraph 88.

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

23 89. Paragraph 89 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 89.

26 90. Paragraph 90 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. Due to the non-specific and vague nature of Plaintiff’s allegations,

1 Defendant lacks sufficient information to admit or deny the allegations that “[f]or example,
2 Kaiser subcontracts with Easterseals, an organization providing healthcare services individuals
3 with disabilities across the country, including in Georgia, California, Colorado, Hawaii, Virginia,
4 and Washington. Kaiser contracts with Easterseals to provide health care services for members
5 diagnosed with autism[,]” and “[a]s revealed in a 2013 audit with respect to Easterseals, Kaiser
6 knew that there was a 50% billing error rate, resulting in 40% claims payment inaccuracies[,]”
7 and, on that basis, denies such allegations. Defendant denies each and every other allegation in
8 paragraph 90.

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

10 92. Paragraph 92 contains allegations that do not reference Defendant, which require
11 no response. To the extent any response to such allegations is necessary, Defendant lacks
12 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
13 such allegation. Defendant denies each and every other allegation in paragraph 92.

14 93. Paragraph 93 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. Paragraph 93 contains allegations that do not reference Defendant, which
17 require no response. To the extent any response to such allegations is necessary, Defendant lacks
18 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
19 such allegation. Defendant denies each and every other allegation in paragraph 93.

20 94. Paragraph 94 contains allegations that do not reference Defendant, which require
21 no response. To the extent any response to such allegations is necessary, Defendant lacks
22 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
23 such allegation. Defendant denies each and every other allegation in paragraph 94.

24 95. Paragraph 95 contains allegations that do not reference Defendant, which require
25 no response. To the extent any response to such allegations is necessary, Defendant lacks
26 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
27 such allegation. Defendant denies each and every other allegation in paragraph 95.
28

1 96. Paragraph 96 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. Paragraph 96 contains allegations that do not reference Defendant, which
4 require no response. To the extent any response to such allegations is necessary, Defendant lacks
5 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
6 such allegation. Defendant denies each and every other allegation in paragraph 96.

7 97. Paragraph 97 contains allegations that do not reference Defendant, which require
8 no response. To the extent any response to such allegations is necessary, Defendant lacks
9 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
10 such allegation. Defendant denies each and every other allegation in paragraph 97.

11 98. Paragraph 98 contains allegations that do not reference Defendant, which require
12 no response. To the extent any response to such allegations is necessary, Defendant lacks
13 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
14 such allegation. Defendant denies each and every other allegation in paragraph 98.

15 99. Paragraph 99 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. Paragraph 99 contains allegations that do not reference Defendant, which
18 require no response. To the extent any response to such allegations is necessary, Defendant lacks
19 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
20 such allegation. Defendant denies each and every other allegation in paragraph 99.

21 100. Paragraph 100 contains allegations that do not reference Defendant, which require
22 no response. To the extent any response to such allegations is necessary, Defendant lacks
23 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
24 such allegation. Defendant denies each and every other allegation in paragraph 100.

25 101. Paragraph 101 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. Paragraph 101 contains allegations that do not reference Defendant, which
28 require no response. To the extent any response to such allegations is necessary, Defendant lacks

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Defendant denies each and every other allegation in paragraph 101.

3 102. Paragraph 102 contains allegations that do not reference Defendant, which require
4 no response. To the extent any response to such allegations is necessary, Defendant lacks
5 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
6 such allegation. Defendant denies each and every other allegation in paragraph 102.

7 103. Paragraph 103 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. Paragraph 103 contains allegations that do not reference Defendant, which
10 require no response. To the extent any response to such allegations is necessary, Defendant lacks
11 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
12 such allegation. Defendant denies each and every other allegation in paragraph 103.

13 Paragraph 103 footnote 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 103 footnote 1 references Haw. Code R. § 17-1735.2-6(b)(4). Paragraph 103 footnote
16 1 contains references to documents, which require no response because the referenced documents
17 speak for themselves. To the extent any response to such allegations is necessary, Defendant
18 admits that paragraph 103 footnote 1 references portions of documents. Defendant denies each
19 and every other allegation in paragraph 103 footnote 1.

20 104. Paragraph 104 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. Paragraph 104 contains allegations that do not reference Defendant, which
23 require no response. To the extent any response to such allegations is necessary, Defendant lacks
24 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
25 such allegation. Defendant denies each and every other allegation in paragraph 104.

26 105. Paragraph 105 contains legal conclusions and/or argument, which require no
27 response. To the extent any response to such allegations is necessary, Defendant admits that
28 paragraph 105 references and attempts to quote 42 C.F.R. § 422.504(I). Paragraph 105 contains

1 allegations that do not reference Defendant, which require no response. To the extent any
2 response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny
3 such allegations and, on that basis, denies each and every such allegation. Defendant denies each
4 and every other allegation in paragraph 105.

5 106. Paragraph 106 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. Paragraph 106 contains allegations that do not reference Defendant, which
8 require no response. To the extent any response to such allegations is necessary, Defendant lacks
9 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
10 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. Paragraph 107 contains allegations that do not reference Defendant, which
14 require no response. To the extent any response to such allegations is necessary, Defendant lacks
15 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
16 such allegation. Defendant denies each and every other allegation in paragraph 107.

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

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

23 109. Paragraph 109 contains legal conclusions and/or argument, which require no
24 response. To the extent any response to such allegations is necessary, Defendant admits that
25 paragraph 109 references 42 U.S.C. § 1320a-7k(d)(2). Paragraph 109 contains allegations that do
26 not reference Defendant, which require no response. To the extent any response to such
27 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
28

1 and, on that basis, denies each and every such allegation. Defendant denies each and every other
2 allegation in paragraph 109.

3 110. Paragraph 110 contains allegations that do not reference Defendant, which require
4 no response. To the extent any response to such allegations is necessary, Defendant lacks
5 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
6 such allegation. Defendant denies each and every other allegation in paragraph 110.

7 111. Paragraph 111 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. Paragraph 111 contains allegations that do not reference Defendant, which
10 require no response. To the extent any response to such allegations is necessary, Defendant lacks
11 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
12 such allegation. Defendant denies each and every other allegation in paragraph 111.

13 112. Paragraph 112 contains allegations that do not reference Defendant, which require
14 no response. To the extent any response to such allegations is necessary, Defendant lacks
15 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
16 such allegation. Defendant denies each and every other allegation in paragraph 112.

17 113. Paragraph 113 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. Paragraph 113 contains allegations that do not reference Defendant, which
20 require no response. To the extent any response to such allegations is necessary, Defendant lacks
21 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
22 such allegation. Defendant denies each and every other allegation in paragraph 113.

23 114. Paragraph 114 contains allegations that do not reference Defendant, which require
24 no response. To the extent any response to such allegations is necessary, Defendant lacks
25 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
26 such allegation. Defendant denies each and every other allegation in paragraph 114.

27 115. Paragraph 115 contains allegations that do not reference Defendant, which require
28 no response. To the extent any response to such allegations is necessary, Defendant lacks

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Defendant denies each and every other allegation in paragraph 115.

3 116. Paragraph 116 contains allegations that do not reference Defendant, which require
4 no response. To the extent any response to such allegations is necessary, Defendant lacks
5 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
6 such allegation. Defendant denies each and every other allegation in paragraph 116.

7 117. Paragraph 117 contains allegations that do not reference Defendant, which require
8 no response. To the extent any response to such allegations is necessary, Defendant lacks
9 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
10 such allegation. Defendant denies each and every other allegation in paragraph 117.

11 118. Paragraph 118 contains allegations that do not reference Defendant, which require
12 no response. To the extent any response to such allegations is necessary, Defendant lacks
13 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
14 such allegation. Defendant denies each and every other allegation in paragraph 118.

15 119. Paragraph 119 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. Paragraph 119 contains allegations that do not reference Defendant, which
18 require no response. To the extent any response to such allegations is necessary, Defendant lacks
19 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
20 such allegation. Defendant denies each and every other allegation in paragraph 119.

21 120. Paragraph 120 contains allegations that do not reference Defendant, which require
22 no response. To the extent any response to such allegations is necessary, Defendant lacks
23 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
24 such allegation. Defendant denies each and every other allegation in paragraph 120.

25 121. Paragraph 121 contains allegations that do not reference Defendant, which require
26 no response. To the extent any response to such allegations is necessary, Defendant lacks
27 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
28 such allegation. Defendant denies each and every other allegation in paragraph 121.

1 122. Paragraph 122 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant lacks
3 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
4 such allegation. Defendant denies each and every other allegation in paragraph 122.

5 123. Paragraph 123 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. Paragraph 123 contains allegations that do not reference Defendant, which
8 require no response. To the extent any response to such allegations is necessary, Defendant lacks
9 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
10 such allegation. Defendant denies each and every other allegation in paragraph 123.

11 124. Paragraph 124 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. Paragraph 124 contains allegations that do not reference Defendant, which
14 require no response. To the extent any response to such allegations is necessary, Defendant lacks
15 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
16 such allegation. Defendant denies each and every other allegation in paragraph 124.

17 125. Paragraph 125 contains allegations that do not reference Defendant, which require
18 no response. To the extent any response to such allegations is necessary, Defendant lacks
19 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
20 such allegation. Defendant denies each and every other allegation in paragraph 125.

21 126. Paragraph 126 contains allegations that do not reference Defendant, which require
22 no response. To the extent any response to such allegations is necessary, Defendant lacks
23 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
24 such allegation. Defendant denies each and every other 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. Paragraph 127 contains allegations that do not reference Defendant, which
28 require no response. To the extent any response to such allegations is necessary, Defendant lacks

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Defendant denies each and every other allegation in paragraph 127.

3 128. Paragraph 128 contains allegations that do not reference Defendant, which require
4 no response. To the extent any response to such allegations is necessary, Defendant lacks
5 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
6 such allegation. Defendant denies each and every other allegation in paragraph 128.

7 129. Paragraph 129 contains allegations that do not reference Defendant, which require
8 no response. To the extent any response to such allegations is necessary, Defendant lacks
9 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
10 such allegation. Paragraph 129 contains reference to a document, which requires no response
11 because the referenced document speaks for itself. To the extent any response to such allegations
12 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
13 basis, denies each and every such allegation. Defendant denies each and every other allegation in
14 paragraph 129.

15 130. Paragraph 130 contains allegations that do not reference Defendant, which require
16 no response. To the extent any response to such allegations is necessary, Defendant lacks
17 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
18 such allegation. Paragraph 130 contains references to documents, which require no response
19 because the referenced documents speak for themselves. To the extent any response to such
20 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
21 and, on that basis, denies each and every such allegation. Defendant denies each and every other
22 allegation in paragraph 130.

23 **COUNT I**

24 **VIOLATIONS OF THE FALSE CLAIMS ACT**

25 **31 U.S.C. §§ 3729(A)(1)(A)–(C), (G)**

26 131. Answering paragraph 131, Defendant reasserts its answers to the above paragraphs
27 as if fully set forth herein.
28

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

6 141. Paragraph 141 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 141 references Cal. Gov’t Code § 12651(a). Defendant denies each and every other
9 allegation in paragraph 141.

10 142. Paragraph 142 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 142.

13 143. Paragraph 143 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 143.

16 144. Paragraph 144 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 144.

19 145. Paragraph 145 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 145.

22 146. Paragraph 146 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. Defendant denies each and every other allegation in paragraph 146.

25 147. Paragraph 147 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 147.

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1 148. Paragraph 148 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 148.

4 **COUNT III**

5 **Violations Of The Colorado Medicaid False Claims Act**

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

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

9 150. Paragraph 150 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 treble damages, civil penalties, and the fees and costs of this action,
12 under the Colorado Medicaid False Claims Act, C.R.S. 25.5-4-303.5, *et seq.* Defendant denies
13 each and every other allegation in paragraph 150.

14 151. Paragraph 151 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 151 references C.R.S. § 25.5-4-305. Defendant denies each and every other allegation
17 in paragraph 151.

18 152. Paragraph 152 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 152.

21 153. Paragraph 153 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 153.

24 154. Paragraph 154 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 154.

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1 155. Paragraph 155 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 155.

4 156. Paragraph 156 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 156.

7 157. Paragraph 157 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 157.

10 **COUNT IV**

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

12 **Ga. Code §§ 49-4-168, *et seq.***

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

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

23 159. Paragraph 159 contains Relator’s characterization of this action, which requires no
24 response. To the extent any response to such allegations is necessary, Defendant admits that
25 Relator brings a claim for treble damages, civil penalties and the fees and cost of this action,
26 under the Georgia False Medicaid Claims Act, Ga. Code §§ 49-4-168 *et seq.* Defendant denies
27 each and every other allegation in paragraph 159.
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1 168. Paragraph 168 contains Relator’s characterization of this action, which requires no
2 response. To the extent any response to such allegations is necessary, Defendant admits that
3 Relator brings a claim for treble damages, civil penalties, and the fees and costs of this action,
4 pursuant to the Hawaii False Claims Act, Haw. Rev. Stat. §§ 661-21, *et seq.* Defendant denies
5 each and every other allegation in paragraph 168.

6 169. Paragraph 169 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 169 references Haw. Rev. Stat. § 661-21(a). Defendant denies each and every other
9 allegation in paragraph 169.

10 170. Paragraph 170 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 170.

13 171. Paragraph 171 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 171.

16 172. Paragraph 172 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 172.

19 173. Paragraph 173 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 173.

22 174. Paragraph 174 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. Defendant denies each and every other allegation in paragraph 174.

25 175. Paragraph 175 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 175.

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1 176. Paragraph 176 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 176.

4 **COUNT VI**

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

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

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

9 178. Paragraph 178 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 cost of this
12 action, under the Virginia Fraud Against Taxpayers Act, Va. Code §§ 8.01-216.1, *et seq.*
13 Defendant denies each and every other allegation in paragraph 178.

14 179. Paragraph 179 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 179 references Va. Code § 8.01-216.3. Defendant denies each and every other
17 allegation in paragraph 179.

18 180. Paragraph 180 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 180.

21 181. Paragraph 181 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 181.

24 182. Paragraph 182 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 182.

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1 183. Paragraph 183 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 183.

4 184. Paragraph 184 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 184.

7 185. Paragraph 185 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 185.

10 **COUNT VII**

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

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

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

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

20 188. Paragraph 188 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 188 references Wash. Rev. Code § 74.66.020(1). Defendant denies each and every
23 other allegation in paragraph 188.

24 189. Paragraph 189 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 189.

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COUNT IX

Unlawful Retaliation Pursuant To The California False Claims Act

Cal. Gov't Code § 12653

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

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

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

Count X

Unlawful Retaliation In Violation Of The California Labor Code

Cal. Lab. Code § 1102.5(b)

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

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

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

COUNT XI

Retaliatory Common Law Termination In Violation Of Public Policy

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

1 of that person.” 31 U.S.C. § 3729(a)(1). Relator seeks hundreds of millions of dollars in
2 damages, which are subject to trebling if awarded. Second Am. Compl. ¶ 7 (alleging that
3 Defendants identified over \$360 million in overpayments). Defendant alleges that the civil
4 penalties and damages that Relators seek would result in an unconstitutionally excessive fine
5 under the Eighth Amendment to the U.S. Constitution because any award would be grossly
6 disproportional to the gravity of Defendant’s offense, if any.

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

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

17 214. Relator’s claims for relief are barred in whole or in part by Relator’s unclean
18 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 Hospitals*