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7 *Medical Group, 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 THE PERMANENTE  
MEDICAL GROUP, 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 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 31  
12 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 KFHP, 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 KFHP is a nonprofit  
20 corporation that is also headquartered in Alameda County; that Defendant KFHP operates hospitals  
21 and medical facilities that receive their funding from Defendant KFHP and provides  
22 infrastructure and facilities used by the Defendant PMGs; that Defendant PMGs are groups of  
23 physicians; that Defendant PMGs are privately owned and managed by physicians; that  
24 Defendant PMGs contract, respectively, with Defendant KFHP or Kaiser Foundation Health Plan  
25 of Colorado to provide inpatient and outpatient medical services; that each Defendant PMG  
26 operates as a separate for-profit partnership or professional corporation in its individual territory;  
27 that 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,  
4 Defendant KFH, and other Defendant PMGs maintain a business relationship with one another  
5 under the trade name “Kaiser Permanente” to offer an integrated care model; that Defendant  
6 KFHP, Defendant KFH, Defendant PMGs, and other businesses operating under the trade name  
7 “Kaiser Permanente” collectively do business in California, Colorado, Georgia, Hawaii,  
8 Maryland, Oregon, Virginia, Washington, and the District of Columbia. Due to the non-specific  
9 and vague nature of Plaintiff’s allegations, Defendant lacks sufficient information to admit or  
10 deny the allegation “to form the largest managed care organization in the United States,” and, on  
11 that basis, denies such allegation. Defendant denies each and every other allegation in  
12 paragraph 16.

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

16 18. Paragraph 18 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 allegation in paragraph 18.

19 19. Answering paragraph 19, Defendant admits that Defendant KFHP, Defendant  
20 KFH, and their respective subsidiaries reported a combined total operating revenue of  
21 approximately \$72.7 billion in or around 2017; that Defendant KFHP, Defendant KFH, and their  
22 respective subsidiaries across all eight regions reported a combined net income of approximately  
23 \$3.8 billion in or around 2017. Defendant denies each and every other allegation in paragraph 19.

24 **RELEVANT LEGAL FRAMEWORK**

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

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

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

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

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

11 22. Paragraph 22 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 adjusts the monthly payment amount for each MA beneficiary  
14 using health status, among other factors; that a Medicare beneficiary’s health status may be used  
15 to predict the cost of medical expenditures for that beneficiary; that paragraph 22 references  
16 42 U.S.C. §§ 1395w-23(a)(1)(C)(i), (a)(3) and 42 C.F.R. § 422.308(c)(2). Defendant denies each  
17 and every other allegation in paragraph 22.

18 23. Paragraph 23 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 upon information and belief, to determine payment under MA, CMS determines a bid amount  
21 through an annual bid submission process between CMS and each MA plan; that, upon  
22 information and belief, CMS calculates, for beneficiaries enrolled in an MA plan, risk scores that  
23 act as an adjustment to the bid amount for purposes of determining payment pursuant to the CMS  
24 Hierarchical Condition Category (“CMS-HCC”) risk adjustment model; that, upon information  
25 and belief, CMS adjusts the monthly payment amount for each MA beneficiary using  
26 demographic factors such as age and gender (among others) and health status, pursuant to the  
27 CMS-HCC risk adjustment model; that, upon information and belief, each MA beneficiary’s risk  
28 score is based in part upon diagnosis data obtained by MAOs from healthcare providers who treat

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

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

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-](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/PIM83c03.pdf)  
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-  
28

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.  
14 Paragraph 47 contains legal conclusions and/or argument, which require no response. To the  
15 extent any response to such allegations is necessary, Defendant denies each and every such  
16 allegation. 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  
17 paragraph 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.  
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1 132. Paragraph 132 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 False Claims Act, 31 U.S.C. §§ 3279–33, as amended. Defendant denies each and  
5 every other allegation in paragraph 132.

6 133. Paragraph 133 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 133.

9 134. Paragraph 134 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 134.

12 135. Paragraph 135 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 135.

15 136. Paragraph 136 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 136.

18 137. Paragraph 137 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 137.

21 138. Paragraph 138 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 138.

24 **COUNT II**

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

26 **Cal. Gov’T. Code §§ 12650, *et seq.***

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

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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1 160. Paragraph 160 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 160 references Ga. Code § 49-4-168.1(a). Defendant denies each and every other  
4 allegation in paragraph 160.

5 161. Paragraph 161 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 161.

8 162. Paragraph 162 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 162.

11 163. Paragraph 163 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 163.

14 164. Paragraph 164 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 164.

17 165. Paragraph 165 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 165.

20 166. Paragraph 166 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 166.

23 **COUNT V**

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

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

26 167. Answering paragraph 167, Defendant reasserts its answers to the above paragraphs  
27 as if fully set forth herein.  
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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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1 190. Paragraph 190 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 190.

4 191. Paragraph 191 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 191.

7 192. Paragraph 192 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 192.

10 193. Paragraph 193 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 193.

13 194. Paragraph 194 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 194.

16 **COUNT VIII**

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

18 **31 U.S.C. § 3730(h)**

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

21 196. Paragraph 196 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 196.

24 197. Paragraph 197 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 197.

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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 The  
Permanente Medical Group, Inc.*