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10 *Attorneys for Defendants Sutter Health and*
 11 *Palo Alto Medical Foundation*

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA *ex rel.*
 16 KATHY ORMSBY,

17 Plaintiff,

18 v.

19 SUTTER HEALTH and PALO ALTO
 MEDICAL FOUNDATION,

20 Defendants.
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Case No. 3:15-cv-01062-LB

Assigned to Hon. Laurel Beeler

**DEFENDANTS' ANSWER TO
 RELATOR'S FIRST AMENDED
 COMPLAINT**

1 Defendants Sutter Health (“Sutter”) and Sutter Bay Medical Foundation dba Palo Alto
2 Medical Foundation (“PAMF”) (collectively, “Defendants”) by and through their counsel,
3 hereby answer and state their defenses and affirmative defenses to the First Amended Complaint
4 (“Complaint”) filed herein by Relator Kathy Ormsby (“Relator” or “Ormsby”). Defendants
5 generally allege that they have at all times acted lawfully, in compliance with all applicable
6 requirements of law, including, without limitation, the Anti-Kickback Statute, 42 U.S.C. §§
7 1320a-7b(b) (“AKS”), the False Claims Act, 31 U.S.C. §§ 3729-32 (“FCA”), and the California
8 False Claims Act, Gov’t Code §§ 12650 *et seq.* Defendants contend that they never knowingly
9 presented or caused to be presented any false claim or payment or made a false statement or
10 record to cause a false claim to be paid or approved, and that they are not therefore liable to
11 Plaintiffs, or any other person or entity in connection with the facts and causes of action asserted
12 in the Complaint. Except as expressly admitted herein, all allegations in the Complaint are
13 denied. Defendants state as follows:

14 **PRELIMINARY STATEMENT**

15 1. Defendants deny all allegations in Paragraph 1.

16 2. To the extent Paragraph 2 purports to summarize and/or describe the provisions of
17 the Medicare program, Defendants state that the Medicare statute and regulations speak for
18 themselves, and to the extent that the allegations in Paragraph 2 vary therefrom or with other
19 applicable statutory or decisional law, Defendants deny those allegations. Defendants deny the
20 remaining allegations in Paragraph 2.

21 3. Paragraph 3 contains no allegations with respect to a particular Defendant or
22 claim, and therefore no response is required. However, to the extent Paragraph 3 purports to
23 summarize and/or describe the provisions of the Medicare program, Defendants state that the
24 Medicare statute and regulations speak for themselves, and to the extent that the allegations in
25 Paragraph 3 vary therefrom or with other applicable statutory or decisional law, Defendants deny
26 those allegations. Paragraph 3 also states legal conclusions to which no response is required.

27 4. Paragraph 4 contains no allegations with respect to a particular Defendant or
28 claim, and therefore no response is required. However, to the extent Paragraph 4 purports to

1 summarize and/or describe the provisions of the Medicare program, Defendants state that the
2 Medicare statute and regulations speak for themselves, and to the extent that the allegations in
3 Paragraph 4 vary therefrom or with other applicable statutory or decisional law, Defendants deny
4 those allegations.

5 5. Paragraph 5 contains no allegations with respect to a particular Defendant or
6 claim, and therefore no response is required.

7 6. Defendants deny all allegations in Paragraph 6.

8 7. Defendants admit that the Government intervened in the portion of this case
9 related to the PAMF allegations. Defendants deny the remaining allegations in Paragraph 7.

10 **PARTIES**

11 8. Defendants admit that Relator was employed at PAMF from May 2013 through
12 May 2015. Defendants deny the remaining allegations in Paragraph 8.

13 9. Paragraph 9 refers to the United States' notice of intervention and Complaint-in-
14 Intervention, both legal documents, which speak for themselves and to which no response is
15 required.

16 10. Defendants admit that Sutter is a California non-profit public benefit corporation
17 headquartered in Sacramento County. The allegation that Sutter "controls" PAMF states a legal
18 conclusion to which no response is required. Defendants deny the remaining allegations in
19 Paragraph 10.

20 11. Defendants admit that Sutter is the sole member of Sutter Bay Medical
21 Foundation (doing business as PAMF, Sutter East Bay Medical Foundation and Sutter Pacific
22 Medical Foundation) and Sutter Valley Medical Foundation (doing business as Sutter Medical
23 Foundation and Sutter Gould Medical Foundation). Defendants deny the remaining allegations
24 in Paragraph 11.

25 12. Defendants admit that Sutter Connect, LLC, doing business as Sutter Physician
26 Services, was a single member limited liability company, of which Sutter Health was the sole
27 member. Sutter Connect, LLC, doing business as Sutter Physician Services merged into Sutter
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1 Health on March 31, 2019 and no longer exists as a separate entity. Defendants deny all
2 remaining allegations in Paragraph 12.

3 13. Defendants deny all allegations in paragraph 13.

4 14. Defendants admit that PAMF is an affiliate of Sutter and that PAMF is a
5 California non-profit public benefit corporation with locations across Alameda, San Mateo,
6 Santa Clara and Santa Cruz counties. PAMF is headquartered in Emeryville, California. The
7 allegation that Sutter “controls” PAMF states a legal conclusion to which no response is
8 required. Defendants deny the remaining allegations in Paragraph 14.

9 **JURISDICTION AND VENUE**

10 15. Paragraph 15 states legal conclusions to which no response is required.

11 16. Paragraph 16 states legal conclusions to which no response is required. To the
12 extent a response is required, Defendants admit that Sutter has operations within this district.

13 17. Paragraph 17 states legal conclusions to which no response is required. To the
14 extent a response is required, Defendants admit that Sutter transacts business and resides in this
15 judicial district.

16 **REGULATORY BACKGROUND**

17 **I. THE FALSE CLAIMS ACT**

18 18. Paragraph 18 contains no allegations with respect to a particular Defendant or
19 claim, and therefore no response is required.

20 19. Paragraph 19 states legal conclusions and contains no allegations with respect to a
21 particular Defendant or claim, and therefore no response is required.

22 20. Paragraph 20 states legal conclusions and contains no allegations with respect to a
23 particular Defendant or claim, and therefore no response is required.

24 21. Paragraph 21 states legal conclusions and contains no allegations with respect to a
25 particular Defendant or claim, and therefore no response is required.

26 22. Paragraph 22 states legal conclusions and contains no allegations with respect to a
27 particular Defendant or claim, and therefore no response is required.

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1 23. Paragraph 23 states legal conclusions and contains no allegations with respect to a
2 particular Defendant or claim, and therefore no response is required.

3 24. Paragraph 24 states legal conclusions and contains no allegations with respect to a
4 particular Defendant or claim, and therefore no response is required.

5 25. Paragraph 25 states legal conclusions and contains no allegations with respect to a
6 particular Defendant or claim, and therefore no response is required.

7 26. Paragraph 26 states legal conclusions and contains no allegations with respect to a
8 particular Defendant or claim, and therefore no response is required.

9 27. Paragraph 27 states legal conclusions and contains no allegations with respect to a
10 particular Defendant or claim, and therefore no response is required.

11 28. Paragraph 28 states legal conclusions and contains no allegations with respect to a
12 particular Defendant or claim, and therefore no response is required. However, to the extent
13 Paragraph 28 purports to summarize and/or describe the provisions of the Medicare program,
14 Defendants state that the Medicare statute and regulations speak for themselves, and to the extent
15 that the allegations in Paragraph 28 vary therefrom or with other applicable statutory or
16 decisional law, Defendants deny those allegations.

17 29. Paragraph 29 states legal conclusions and contains no allegations with respect to a
18 particular Defendant or claim, and therefore no response is required. However, to the extent
19 Paragraph 29 purports to summarize and/or describe the provisions of the Medicare program,
20 Defendants state that the Medicare statute and regulations speak for themselves, and to the extent
21 that the allegations in Paragraph 29 vary therefrom or with other applicable statutory or
22 decisional law, Defendants deny those allegations.

23 **II. THE MEDICARE PROGRAM**

24 30. Paragraph 30 contains no allegations with respect to a particular Defendant or
25 claim, and therefore no response is required. However, to the extent Paragraph 30 purports to
26 summarize and/or describe the provisions of the Medicare program, Defendants state that the
27 Medicare statute and regulations speak for themselves, and to the extent that the allegations in
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1 Paragraph 30 vary therefrom or with other applicable statutory or decisional law, Defendants
2 deny those allegations.

3 31. Paragraph 31 contains no allegations with respect to a particular Defendant or
4 claim, and therefore no response is required. However, to the extent Paragraph 31 purports to
5 summarize and/or describe the provisions of the Medicare program, Defendants state that the
6 Medicare statute and regulations speak for themselves, and to the extent that the allegations in
7 Paragraph 31 vary therefrom or with other applicable statutory or decisional law, Defendants
8 deny those allegations.

9 32. Paragraph 32 contains no allegations with respect to a particular Defendant or
10 claim, and therefore no response is required. However, to the extent Paragraph 32 purports to
11 summarize and/or describe the provisions of the Medicare program, Defendants state that the
12 Medicare statute and regulations speak for themselves, and to the extent that the allegations in
13 Paragraph 32 vary therefrom or with other applicable statutory or decisional law, Defendants
14 deny those allegations.

15 33. Paragraph 33 contains no allegations with respect to a particular Defendant or
16 claim, and therefore no response is required. However, to the extent Paragraph 33 purports to
17 summarize and/or describe the provisions of the Medicare program, Defendants state that the
18 Medicare statute and regulations speak for themselves, and to the extent that the allegations in
19 Paragraph 33 vary therefrom or with other applicable statutory or decisional law, Defendants
20 deny those allegations.

21 34. Paragraph 34 contains no allegations with respect to a particular Defendant or
22 claim, and therefore no response is required. However, to the extent Paragraph 34 purports to
23 summarize and/or describe the provisions of the Medicare program, Defendants state that the
24 Medicare statute and regulations speak for themselves, and to the extent that the allegations in
25 Paragraph 34 vary therefrom or with other applicable statutory or decisional law, Defendants
26 deny those allegations.

27 35. Paragraph 35 contains no allegations with respect to a particular Defendant or
28 claim, and therefore no response is required. However, to the extent Paragraph 35 purports to

1 summarize and/or describe the provisions of the Medicare program, Defendants state that the
2 Medicare statute and regulations speak for themselves, and to the extent that the allegations in
3 Paragraph 35 vary therefrom or with other applicable statutory or decisional law, Defendants
4 deny those allegations.

5 36. Paragraph 36 contains no allegations with respect to a particular Defendant or
6 claim, and therefore no response is required. However, to the extent Paragraph 36 purports to
7 summarize and/or describe the provisions of the Medicare program, Defendants state that the
8 Medicare statute and regulations speak for themselves, and to the extent that the allegations in
9 Paragraph 36 vary therefrom or with other applicable statutory or decisional law, Defendants
10 deny those allegations.

11 37. Paragraph 37 contains no allegations with respect to a particular Defendant or
12 claim, and therefore no response is required. However, to the extent Paragraph 37 purports to
13 summarize and/or describe the provisions of the Medicare program, Defendants state that the
14 Medicare statute and regulations speak for themselves, and to the extent that the allegations in
15 Paragraph 37 vary therefrom or with other applicable statutory or decisional law, Defendants
16 deny those allegations.

17 38. Paragraph 38 contains no allegations with respect to a particular Defendant or
18 claim, and therefore no response is required. However, to the extent Paragraph 38 purports to
19 summarize and/or describe the provisions of the Medicare program, Defendants state that the
20 Medicare statute and regulations speak for themselves, and to the extent that the allegations in
21 Paragraph 38 vary therefrom or with other applicable statutory or decisional law, Defendants
22 deny those allegations.

23 39. Defendants admit that Sutter contracts with some Medicare Advantage
24 Organizations. To the extent Paragraph 39 purports to describe a document or documents,
25 including email communications, such documents speak for themselves and, as such, no
26 response is required. Defendants deny the remaining allegations in Paragraph 39.

27 40. Paragraph 40 contains no allegations with respect to a particular Defendant or
28 claim, and therefore no response is required. However, to the extent Paragraph 40 purports to

1 summarize and/or describe the provisions of the Medicare program, Defendants state that the
2 Medicare statute and regulations speak for themselves, and to the extent that the allegations in
3 Paragraph 40 vary therefrom or with other applicable statutory or decisional law, Defendants
4 deny those allegations.

5 41. Paragraph 41 contains no allegations with respect to a particular Defendant or
6 claim, and therefore no response is required. However, to the extent Paragraph 41 purports to
7 summarize and/or describe the provisions of the Medicare program, Defendants state that the
8 Medicare statute and regulations speak for themselves, and to the extent that the allegations in
9 Paragraph 41 vary therefrom or with other applicable statutory or decisional law, Defendants
10 deny those allegations.

11 42. Paragraph 42 contains no allegations with respect to a particular Defendant or
12 claim, and therefore no response is required. However, to the extent Paragraph 42 purports to
13 summarize and/or describe the provisions of the Medicare program, Defendants state that the
14 Medicare statute and regulations speak for themselves, and to the extent that the allegations in
15 Paragraph 42 vary therefrom or with other applicable statutory or decisional law, Defendants
16 deny those allegations.

17 43. Paragraph 43 contains no allegations with respect to a particular Defendant or
18 claim, and therefore no response is required. However, to the extent Paragraph 43 purports to
19 summarize and/or describe the provisions of the Medicare program, Defendants state that the
20 Medicare statute and regulations speak for themselves, and to the extent that the allegations in
21 Paragraph 43 vary therefrom or with other applicable statutory or decisional law, Defendants
22 deny those allegations.

23 44. To the extent Paragraph 44 purports to summarize and/or describe the provisions
24 of the Medicare program, Defendants state that the Medicare statute and regulations speak for
25 themselves, and to the extent that the allegations in Paragraph 44 vary therefrom or with other
26 applicable statutory or decisional law, Defendants deny those allegations. Defendants deny the
27 remaining allegations in Paragraph 44.

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1 45. To the extent Paragraph 45 purports to describe a document or documents,
2 including email communications, such documents speak for themselves and, as such, no
3 response is required. Defendants deny the remaining allegations in Paragraph 45.

4 46. To the extent Paragraph 46 purports to summarize and/or describe the provisions
5 of the Medicare program, Defendants state that the Medicare statute and regulations speak for
6 themselves, and to the extent that the allegations in Paragraph 46 vary therefrom or with other
7 applicable statutory or decisional law, Defendants deny those allegations. Defendants deny all
8 remaining allegations in Paragraph 46.

9 47. Paragraph 47 states legal conclusions and contains no allegations with respect to a
10 particular Defendant or claim, and therefore no response is required. However, to the extent
11 Paragraph 47 purports to summarize and/or describe the provisions of the Medicare program,
12 Defendants state that the Medicare statute and regulations speak for themselves, and to the extent
13 that the allegations in Paragraph 47 vary therefrom or with other applicable statutory or
14 decisional law, Defendants deny those allegations.

15 48. To the extent Paragraph 48 purports to summarize and/or describe the provisions
16 of the Medicare program, Defendants state that the Medicare statute and regulations speak for
17 themselves, and to the extent that the allegations in Paragraph 48 vary therefrom or with other
18 applicable statutory or decisional law, Defendants deny those allegations. Paragraph 48 also
19 states legal conclusions to which no response is required. Defendants deny all remaining
20 allegations in Paragraph 48.

21 49. Paragraph 49 contains no allegations with respect to a particular Defendant or
22 claim, and therefore no response is required. However, to the extent Paragraph 49 purports to
23 summarize and/or describe the provisions of the Medicare program, Defendants state that the
24 Medicare statute and regulations speak for themselves, and to the extent that the allegations in
25 Paragraph 49 vary therefrom or with other applicable statutory or decisional law, Defendants
26 deny those allegations.

27 50. To the extent Paragraph 50 purports to summarize and/or describe the provisions
28 of the Medicare program, Defendants state that the Medicare statute and regulations speak for

1 themselves, and to the extent that the allegations in Paragraph 50 vary therefrom or with other
2 applicable statutory or decisional law, Defendants deny those allegations. Paragraph 50 also
3 states legal conclusions to which no response is required. Defendants deny all remaining
4 allegations in Paragraph 50.

5 **THE SUTTER-WIDE FRAUD¹**

6 **I. RELATOR'S EXPERIENCE IN RISK ADJUSTMENT**

7 51. Paragraph 51 contains no allegations with respect to a particular Defendant or
8 claim, and therefore no response is required.

9 52. Paragraph 52 contains no allegations with respect to a particular Defendant or
10 claim, and therefore no response is required.

11 53. To the extent Paragraph 53 purports to describe a document or documents,
12 including email communications, such documents speak for themselves and, as such, no
13 response is required. Defendants are without knowledge or information sufficient to form a
14 belief as to the truth or falsity of the remaining allegations in Paragraph 53; therefore, such
15 allegations are denied.

16 54. Paragraph 54 contains no allegations with respect to a particular Defendant or
17 claim, and therefore no response is required.

18 55. Defendants admit that in 2013, Relator was hired at PAMF. Defendant deny all
19 remaining allegations in Paragraph 55.

20 **II. SUTTER'S UNDERSTANDING OF PART C REIMBURSEMENT AND ITS**
21 **OBLIGATIONS AS A MEDICARE ADVANTAGE PROVIDER**

22 56. Defendants admit that Relator began her employment at PAMF on May 6, 2013.
23 Defendants deny the remaining allegations in Paragraph 56.

24 57. To the extent Paragraph 57 purports to describe a document or documents,
25 including email communications, such documents speak for themselves and, as such, no
26 response is required. Defendants deny the remaining allegations in Paragraph 57.

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28 ¹ Defendants have taken the Complaint's headings verbatim and only repeat them here for
reference. Defendants deny Relator's characterization of each heading contained in the
Complaint.

1 58. To the extent Paragraph 58 purports to describe a document or documents,
2 including email communications, such documents speak for themselves and, as such, no
3 response is required. Defendants deny the remaining allegations in Paragraph 58.

4 59. Defendants deny all allegations in Paragraph 59.

5 60. To the extent Paragraph 60 purports to describe a document or documents,
6 including email communications, such documents speak for themselves and, as such, no
7 response is required. Defendants deny the remaining allegations in Paragraph 60.

8 61. To the extent Paragraph 61 purports to describe a document or documents,
9 including email communications, such documents speak for themselves and, as such, no
10 response is required. Defendants deny the remaining allegations in Paragraph 61.

11 62. To the extent Paragraph 62 purports to describe a document or documents,
12 including email communications, such documents speak for themselves and, as such, no
13 response is required. Defendants deny the remaining allegations in Paragraph 62.

14 63. To the extent Paragraph 63 purports to describe a document or documents,
15 including email communications, such documents speak for themselves and, as such, no
16 response is required. Defendants deny the remaining allegations in Paragraph 63.

17 64. Defendants deny all allegations in Paragraph 64.

18 65. To the extent Paragraph 65 purports to describe a document or documents,
19 including email communications, such documents speak for themselves and, as such, no
20 response is required. Defendants deny the remaining allegations in Paragraph 65.

21 66. Defendants deny all allegations in Paragraph 66.

22 67. Defendants deny all allegations in Paragraph 67.

23 **III. SUTTER'S CAMPAIGN TO INCREASE RAF REVENUE ACROSS ALL**
24 **AFFILIATES**

25 68. To the extent Paragraph 68 purports to describe a document or documents,
26 including email communications, such documents speak for themselves and, as such, no
27 response is required. Defendants deny the remaining allegations in Paragraph 68.

28 69. Defendants deny all allegations in Paragraph 69.

- 1 70. Defendants deny all allegations in Paragraph 70.
- 2 71. Defendants deny all allegations in Paragraph 71.
- 3 72. Defendants deny all allegations in Paragraph 72.
- 4 73. Defendants deny all allegations in Paragraph 73.
- 5 74. Defendants deny all allegations in Paragraph 74.
- 6 75. Defendants deny all allegations in Paragraph 75.
- 7 76. Defendants deny all allegations in Paragraph 76.
- 8 77. Defendants deny all allegations in Paragraph 77.
- 9 78. Defendants deny all allegations in Paragraph 78.
- 10 79. Defendants deny all allegations in Paragraph 79.
- 11 80. Defendants deny all allegations in Paragraph 80.
- 12 81. Defendants deny all allegations in Paragraph 81.
- 13 82. Defendants deny all allegations in Paragraph 82.
- 14 83. Defendants deny all allegations in Paragraph 83.
- 15 84. Defendants deny all allegations in Paragraph 84.
- 16 85. Defendants deny all allegations in Paragraph 85.
- 17 86. Defendants deny all allegations in Paragraph 86.

18 **IV. THE MAO AUDITS PROVIDED A RED FLAG TO SUTTER OF SYSTEM-WIDE**
19 **INACCURATE CODING AND OVERPAYMENTS**

20 87. Paragraph 87 contains no allegations with respect to a particular Defendant or
21 claim, and therefore no response is required.

22 88. To the extent Paragraph 88 purports to describe a document or documents, such
23 documents speak for themselves and, as such, no response is required. Defendants deny the
24 remaining allegations in Paragraph 88.

- 25 89. Defendants deny all allegations in Paragraph 89.
- 26 90. Defendants deny all allegations in Paragraph 90.
- 27 91. Defendants deny all allegations in Paragraph 91.
- 28 92. Defendants deny all allegations in Paragraph 92.

1 93. Defendants deny all allegations in Paragraph 93.

2 94. Defendants deny all allegations in Paragraph 94.

3 95. To the extent Paragraph 95 purports to describe a document or documents,
4 including email communications, such documents speak for themselves and, as such, no
5 response is required. Defendants deny the remaining allegations in Paragraph 95.

6 96. To the extent Paragraph 96 purports to describe a document or documents,
7 including email communications, such documents speak for themselves and, as such, no
8 response is required. Defendants deny the remaining allegations in Paragraph 96.

9 97. To the extent Paragraph 97 purports to describe a document or documents,
10 including email communications, such documents speak for themselves and, as such, no
11 response is required. Defendants deny the remaining allegations in Paragraph 97.

12 98. To the extent Paragraph 98 purports to describe a document or documents,
13 including email communications, such documents speak for themselves and, as such, no
14 response is required. Defendants deny the remaining allegations in Paragraph 98.

15 99. To the extent Paragraph 99 purports to describe a document or documents,
16 including email communications, such documents speak for themselves and, as such, no
17 response is required. Defendants deny the remaining allegations in Paragraph 99.

18 100. Defendants deny all allegations in Paragraph 100.

19 101. Defendants deny all allegations in Paragraph 101.

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21 **V. PAMF'S RAF PROGRAM FAILURES PROVIDED ANOTHER RED FLAG TO
SUTTER OF SYSTEM-WIDE INACCURATE CODING AND OVERPAYMENTS**

22 102. Defendants deny all allegations in Paragraph 102.

23 103. Defendants deny all allegations in Paragraph 103.

24 104. Defendants deny all allegations in Paragraph 104.

25 105. Defendants deny all allegations in Paragraph 105.

26 106. Defendants deny all allegations in Paragraph 106.

27 107. Defendants deny all allegations in Paragraph 107.

28 108. Defendants deny all allegations in Paragraph 108.

1 109. Defendants deny all allegations in Paragraph 109.

2 110. Defendants deny all allegations in Paragraph 110.

3 111. To the extent Paragraph 111 purports to describe a document or documents,
4 including email communications, such documents speak for themselves and, as such, no
5 response is required. Defendants deny the remaining allegations in Paragraph 111.

6 112. Defendants deny all allegations in Paragraph 112.

7 113. To the extent Paragraph 113 purports to describe a document or documents,
8 including email communications, such documents speak for themselves and, as such, no
9 response is required. Defendants deny the remaining allegations in Paragraph 113.

10 114. To the extent Paragraph 114 purports to describe a document or documents,
11 including email communications, such documents speak for themselves and, as such, no
12 response is required. Defendants deny the remaining allegations in Paragraph 114.

13 115. To the extent Paragraph 115 purports to describe a document or documents,
14 including email communications, such documents speak for themselves and, as such, no
15 response is required. Defendants deny the remaining allegations in Paragraph 115.

16 116. Defendants deny all allegations in Paragraph 116.

17 117. Defendants deny all allegations in Paragraph 117.

18 118. Defendants deny all allegations in Paragraph 118.

19 119. Defendants deny all allegations in Paragraph 119.

20 120. Defendants deny all allegations in Paragraph 120.

21 121. Defendants deny all allegations in Paragraph 121.

22 122. Defendants deny all allegations in Paragraph 122.

23 123. Defendants deny all allegations in Paragraph 123.

24 124. Defendants deny all allegations in Paragraph 124.

25 125. Defendants deny all allegations in Paragraph 125.

26 126. Defendants deny all allegations in Paragraph 126.

27 127. Defendants deny all allegations in Paragraph 127.

28 128. Defendants deny all allegations in Paragraph 128.

- 1 129. Defendants deny all allegations in Paragraph 129.
- 2 130. Defendants deny all allegations in Paragraph 130.
- 3 131. Defendants deny all allegations in Paragraph 131.
- 4 132. Defendants deny all allegations in Paragraph 132.
- 5 133. Defendants deny all allegations in Paragraph 133.
- 6 134. Defendants deny all allegations in Paragraph 134.
- 7 135. Defendants deny all allegations in Paragraph 135.
- 8 136. Defendants deny all allegations in Paragraph 136.
- 9 137. Defendants deny all allegations in Paragraph 137.
- 10 138. Defendants deny all allegations in Paragraph 138.
- 11 139. Defendants deny all allegations in Paragraph 139.
- 12 140. Defendants deny all allegations in Paragraph 140.
- 13 141. Defendants deny all allegations in Paragraph 141.
- 14 142. Defendants deny all allegations in Paragraph 142.
- 15 143. Defendants deny all allegations in Paragraph 143.
- 16 144. Defendants deny all allegations in Paragraph 144.
- 17 145. Defendants deny all allegations in Paragraph 145.
- 18 146. Defendants deny all allegations in Paragraph 146.
- 19 147. Defendants deny all allegations in Paragraph 147.

20 **VI. SUTTER KNOWINGLY SUBMITTED FALSE CLAIMS, RETAINED**
21 **MEDICARE OVERPAYMENTS, AND EXPANDED ITS SCHEME TO USE**
22 **AGGRESSIVE FALSE CODING TO INCREASE RAF SCORES SUTTER-WIDE**

- 23 148. Defendants deny all allegations in Paragraph 148.
- 24 149. Defendants deny all allegations in Paragraph 149.
- 25 150. Defendants deny all allegations in Paragraph 150.
- 26 151. Defendants deny all allegations in Paragraph 151.

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1 152. To the extent Paragraph 152 purports to describe a document or documents,
2 including email communications, such documents speak for themselves and, as such, no
3 response is required. Defendants deny the remaining allegations in Paragraph 152.

4 153. Defendants deny all allegations in Paragraph 153.

5 154. Defendants deny all allegations in Paragraph 154.

6 155. To the extent Paragraph 155 purports to describe a document or documents,
7 including email communications, such documents speak for themselves and, as such, no
8 response is required. Defendants deny the remaining allegations in Paragraph 155.

9 156. To the extent Paragraph 156 purports to describe a document or documents,
10 including email communications, such documents speak for themselves and, as such, no
11 response is required. Defendants deny the remaining allegations in Paragraph 156.

12 157. Defendants deny all allegations in Paragraph 157.

13 **CMS RELIES ON ACCURATE CODING TO MAKE APPROPRIATE PAYMENT**

14 158. To the extent Paragraph 158 purports to summarize and/or describe the provisions
15 of the Medicare program, Defendants state that the Medicare statute and regulations speak for
16 themselves, and to the extent that the allegations in Paragraph 158 vary therefrom or with other
17 applicable statutory or decisional law, Defendants deny those allegations. Paragraph 158 also
18 states legal conclusions to which no response is required. Defendants deny the remaining
19 allegations in Paragraph 158.

20 159. To the extent Paragraph 159 purports to summarize and/or describe the provisions
21 of the Medicare program, Defendants state that the Medicare statute and regulations speak for
22 themselves, and to the extent that the allegations in Paragraph 159 vary therefrom or with other
23 applicable statutory or decisional law, Defendants deny those allegations. Paragraph 159 also
24 states legal conclusions to which no response is required. Defendants deny the remaining
25 allegations in Paragraph 159.

26 160. To the extent Paragraph 160 purports to summarize and/or describe the provisions
27 of the Medicare program, Defendants state that the Medicare statute and regulations speak for
28 themselves, and to the extent that the allegations in Paragraph 160 vary therefrom or with other

1 applicable statutory or decisional law, Defendants deny those allegations. Paragraph 160 also
2 states legal conclusions to which no response is required. Defendants deny the remaining
3 allegations in Paragraph 160.

4 161. Defendants deny all allegations in Paragraph 161.

5 162. To the extent Paragraph 162 purports to summarize and/or describe the provisions
6 of the Medicare program, Defendants state that the Medicare statute and regulations speak for
7 themselves, and to the extent that the allegations in Paragraph 162 vary therefrom or with other
8 applicable statutory or decisional law, Defendants deny those allegations. Paragraph 162 also
9 states legal conclusions to which no response is required. Defendants deny the remaining
10 allegations in Paragraph 162.

11 163. Defendants deny all allegations in Paragraph 163.

12 **HARM TO THE GOVERNMENT**

13 164. Defendants deny all allegations in Paragraph 164.

14 165. Defendants deny all allegations in Paragraph 165.

15 166. Defendants deny all allegations in Paragraph 166.

16 167. Defendants deny all allegations in Paragraph 167.

17 168. Defendants deny all allegations in Paragraph 168.

18 169. Defendants deny all allegations in Paragraph 169.

19 170. Defendants deny all allegations in Paragraph 170.

20 171. To the extent Paragraph 171 purports to describe a document or documents,
21 including email communications, such documents speak for themselves and, as such, no
22 response is required. Defendants deny the remaining allegations in Paragraph 171.

23 172. Defendants deny all allegations in Paragraph 172.

24 **PUBLIC DISCLOSURE/ORIGINAL SOURCE**

25 173. Defendants deny all allegations in Paragraph 173.

26 174. Defendants deny all allegations in Paragraph 174.

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COUNT I

Retention of Overpayments

Violation of the False Claims Act – 31 U.S.C. § 3729(a)(1)(G)

175. Defendants incorporate their responses to each and every allegation set forth above as if fully stated herein.

176. Paragraph 176 states legal conclusions to which no response is required. To the extent Paragraph 176 contains any factual allegations, such allegations are denied.

177. Paragraph 177 states legal conclusions to which no response is required. To the extent Paragraph 177 contains any factual allegations, such allegations are denied.

178. Paragraph 178 states legal conclusions to which no response is required. To the extent Paragraph 178 contains any factual allegations, such allegations are denied.

COUNT II

Retention of Overpayments

Violation of the False Claims Act – 31 U.S.C. § 3729(a)(1)(G)

179. Defendants incorporate their responses to each and every allegation set forth in Paragraphs 1-174 above as if fully stated herein.

180. Paragraph 180 states legal conclusions to which no response is required. To the extent Paragraph 180 contains any factual allegations, such allegations are denied.

181. Paragraph 181 states legal conclusions to which no response is required. To the extent Paragraph 181 contains any factual allegations, such allegations are denied.

182. Paragraph 182 states legal conclusions to which no response is required. To the extent Paragraph 182 contains any factual allegations, such allegations are denied.

COUNT III

Presentation of False or Fraudulent Claims In

Violation of the False Claims Act – 31 U.S.C. § 3729(a)(1)(A)

183. Defendants incorporate their responses to each and every allegation set forth in Paragraphs 1-174 above as if fully stated herein.

1 184. Paragraph 184 states legal conclusions to which no response is required. To the
2 extent Paragraph 184 contains any factual allegations, such allegations are denied.

3 185. Paragraph 185 states legal conclusions to which no response is required. To the
4 extent Paragraph 185 contains any factual allegations, such allegations are denied.

5 186. Paragraph 186 states legal conclusions to which no response is required. To the
6 extent Paragraph 186 contains any factual allegations, such allegations are denied.

7 **COUNT IV**

8 **False or Fraudulent Records and Statements Material to False or Fraudulent Claims**

9 **Violation of the False Claims Act – 31 U.S.C. § 3729(a)(1)(B)**

10 187. Defendants incorporate their responses to each and every allegation set forth in
11 Paragraphs 1-174 above as if fully stated herein.

12 188. Paragraph 188 states legal conclusions to which no response is required. To the
13 extent Paragraph 188 contains any factual allegations, such allegations are denied.

14 189. Paragraph 189 states legal conclusions to which no response is required. To the
15 extent Paragraph 189 contains any factual allegations, such allegations are denied.

16 190. Paragraph 190 states legal conclusions to which no response is required. To the
17 extent Paragraph 190 contains any factual allegations, such allegations are denied.

18 **RELIEF REQUESTED**

19 All paragraphs in this section contain a prayer for relief to which no response is required.
20 To the extent a response is required, Defendants deny any remaining allegations in the
21 Complaint and deny that Relator is entitled to any relief whatsoever against Defendants.

22 **DEMAND FOR JURY TRIAL**

23 This section contains a prayer for relief to which no response is required.

24 **AFFIRMATIVE DEFENSES**

25 Defendants plead the following affirmative defenses and reserve the right to assert
26 additional affirmative defenses to the extent that such defenses become known as a result of
27 discovery or otherwise:
28

1 1. Relator’s claims are barred, in whole or in part, by the statute of limitations, as
2 they incorporate acts that occurred more than six years prior to the commencement of her qui
3 tam action.

4 2. The conduct of the United States in continuing to pay Medicare Advantage plans
5 at a previously determined rate as long as the plans’ diagnosis coding error rates did not exceed
6 CMS’s own error rate, even when CMS knew that diagnosis codes were unsupported, negates the
7 materiality of any alleged misrepresentations by Defendants and thus, Relator cannot recover
8 under the Complaint against Defendants.

9 3. Defendants are not vicariously liable, in whole or in part, for the acts alleged in
10 the Complaint, including physicians’ individual determinations as to whether any given
11 diagnosis code accurately represented the condition of their patients.

12 4. Relator’s claims are barred, in whole or in part, by the existence of an express
13 contract that did not establish the requirements with regard to submission of diagnosis codes that
14 the United States alleges were violated by Defendants.

15 5. Relator’s claims are barred because the alleged false certifications were not a
16 condition of payment and the allegedly false implied certifications concern a statute or regulation
17 that does not expressly require compliance as a condition of payment.

18 6. The United States at all times relevant to the Complaint knew of the conduct
19 allegedly engaged in by Defendants and thus, Relator cannot recover under the Complaint.

20 7. The services and products reimbursed by the United States under Medicare were
21 worth what the government paid, and Relator cannot demonstrate that payments would have
22 been altered by the omission of the codes at issue.

23 8. Relator’s claims based on alleged conduct by Defendants are barred, in whole or
24 in part, by the fact that the United States has suffered no actual injury.

25 9. Relator’s claims based on alleged conduct by Defendants are barred, in whole or
26 in part, because of the prior public disclosures of the core allegations upon which the
27 Complaint’s “false claims” allegations purport to be based and/or because Relator is not an
28 “original source” of the information, as defined in the statutes therein, such that she is not

1 entitled to pursue this action or be awarded any recovery, nor the does the Court have
2 jurisdiction.

3 10. Relator's causes of action and allegations in the Complaint are vague, ambiguous
4 and uncertain.

5 11. Damages and claims for which Relator seeks relief in the Complaint, if any, were
6 caused by the acts, errors or omissions or other fault of third parties and/or contributed to and/or
7 other fault of third parties, for whose conduct Defendants were not responsible.

8 12. Relator's alleged damages are speculative, uncertain, or contingent and are not
9 recoverable.

10 13. To the extent any damages are awarded against Defendants, they must be reduced
11 pursuant to 31 U.S.C. § 3729(a)(2).

12 14. Relator's claims are barred, in whole or in part, by the doctrine of estoppel. The
13 United States misrepresented requirements with regard to the submission of diagnosis codes
14 under its Medicare Advantage program, despite knowledge that Defendants understood such
15 requirements differently, thus resulting in Defendants' continued participation in the MA
16 program under false pretenses and ultimately in the United States' allegations of fraud against
17 Defendants in this False Claims Act action.

18 15. The United States ratified, or otherwise consented to, the transactions and
19 occurrences that are the subject of this action, by continuing to pay Medicare Advantage plans at
20 a previously determined rate as long as the plans' diagnosis coding error rates did not exceed
21 CMS's own error rate, even when CMS knew that diagnosis codes were unsupported.

22 16. Relator's claims are barred, in whole or in part, by the doctrines of course of
23 performance, course of dealing, and usage of trade, which govern the meaning of any contractual
24 agreement under which Defendants received payment by the United States.

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17. Relator’s claims are barred, in whole or in part, by prior settlement of claims related to Defendants other than Palo Alto Medical Foundation.

DATED: June 29, 2020

By: /s/ Katherine A. Lauer

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