Nos. 24-13581, -13583

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES ex rel. CLARISSA ZAFIROV,

Plaintiff-Appellant, and

UNITED STATES OF AMERICA,

Intervenor-Appellant,

v.

FLORIDA MEDICAL ASSOCIATES, LLC, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Florida

APPELLANTS' APPENDIX, VOLUME I

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TABLE OF CONTENTS

Docket/Tab #

Volume I

Docket Sheet ..... A

Complaint 1

Notice of Election to Decline Intervention 40

Amended Complaint 86

Answer by Anion Technologies, LLC, Florida Medical Associates, LLC, and Physician Partners, LLC 129

Volume II

Answer by Freedom Health, Inc., and Optimum Healthcare, Inc. 130

Notice of Intervention Pursuant to 28 U.S.C. § 2403(a) 259

Relator's Supplemental Brief on Founding-Era Historical Evidence Regarding Federal Qui Tam Enforcement, with selected attachments 264

Order 346

Judgment 347

United States's Notice of Appeal 349

Relator's Notice of Appeal 350

APPEAL,CLOSED,MEDIATION,SL DOC

U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:19−cv−01236−KKM−SPF

Zafirov v. Florida Medical Associates, LLC et al
Assigned to: Judge Kathryn Kimball Mizelle
Referred to: Magistrate Judge Sean P. Flynn
Case in other court: Eleventh Circuit, 24−13581−A
Eleventh Circuit, 24−13581−A
Cause: 31:3730 Qui Tam False Claims Act

Date Filed: 05/20/2019
Date Terminated: 09/30/2024
Jury Demand: Both
Nature of Suit: 376 Qui Tam (31 U.S.C. § 3729(a))
Jurisdiction: Federal Question

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05/20/2019	1	COMPLAINT against Anion Technologies, LLC, Anthem, Inc., Florida Medical Associates, LLC, Freedom Health, Inc., Optimum Healthcare, Inc., Siddhartha Pagidipati, Physician Partners Speciality Services, LLC, Physician Partners, LLC, Sun Labs USA, Inc. Filing fee $ 400, receipt number TPA056653 filed by Clarissa Zafirov. (Attachments: # 1 Civil Cover Sheet)(CTR) (Entered: 05/21/2019)

05/20/2019	2	MOTION for leave to file Complaint and Related Documents in camera and under seal by Clarissa Zafirov. (Attachments: # 1 Text of Proposed Order)(CTR) (Entered: 05/21/2019)
05/23/2019	3	**ORDER granting 2––motion to seal. Signed by Judge Steven D. Merryday on 5/23/2019. (BK)** (Entered: 05/23/2019)
07/22/2019	4	Ex Parte Consent Application to extend time to Consider Election to Intervene by United States of America. (CTR) (Entered: 07/23/2019)
07/22/2019	5	MEMORANDUM in support re 4 Ex Parte Consent Application to extend time to Consider Election to Intervene filed by United States of America. (CTR) (Entered: 07/23/2019)
07/26/2019	6	**ORDER granting 4––motion for an extension of time; extending through 1/22/2020 the time within which the United States must decide whether to intervene. Signed by Judge Steven D. Merryday on 7/26/2019. (BK)** (Entered: 07/26/2019)
10/23/2019	7	EXPARTE CONSENT APPLICATION for a Partial Lifting of the Seal and Supporting Legal Memeorandum by United States of America. (CTR) (Entered: 10/24/2019)
10/24/2019	8	**ORDER granting 7––*ex parte* motion for miscellaneous relief; directing the clerk to SEND a copy of this order to the United States. Signed by Judge Steven D. Merryday on 10/24/2019. (BK)** (Entered: 10/24/2019)
01/21/2020	9	EXPARTE Consent Application for an Extension of Time to Consider Election to Intervene by United States of America. (CTR) (Entered: 01/22/2020)
01/21/2020	10	MEMORANDUM in support re 9 Exparte Consent Application for an Extension of Time to Consider Election to Intervene filed by United States of America. (CTR) (Entered: 01/22/2020)
01/28/2020	11	**ORDER denying 9––*ex parte* motion for an extension of time; United States must decide by 2/21/2020 whether to intervene; directing the clerk to MAIL a copy of this order to counsel for the United States and to counsel for the relator. Signed by Judge Steven D. Merryday on 1/28/2020. (BK)** (Entered: 01/28/2020)
02/10/2020	12	UNOPPOSED MOTION for miscellaneous relief, specifically to Maintain the Seal Until April 1, 2020 by Clarissa Zafirov. (Attachments: # 1 Proposed Order)(CTR) (Entered: 02/11/2020)
02/12/2020	13	**ORDER granting 12––motion to extend the seal; extending the seal to 4/1/2020; intervention deadline is 2/21/2020; directing the clerk to EMAIL a copy of this order to counsel for the relator and to counsel for the United States. Signed by Judge Steven D. Merryday on 2/12/2020. (BK)** (Entered: 02/12/2020)
02/21/2020	14	NOTICE of the United States of America that it is not Intervening at this time. (CTR) (Entered: 02/24/2020)
02/21/2020	15	EXPARTE CONSENT MOTION for Leave to File Partilly Redacted Documents by United States of America. (CTR) (Entered: 02/24/2020)
06/11/2020	17	**ORDER granting 15––United States' motion to file a redacted version of certain documents; directing the clerk to FILE separately each of the redacted documents appended to Doc. 16; directing the clerk to PUBLISH the docket sheet to CM/ECF and to unseal each item except for Doc. 16 and theunredacted versions of Docs. 7 and 10; directing the clerk to e−mail acopy of this order to counsel for the United States and to counsel for the relator. Signed by Judge Steven D. Merryday on 6/11/2020. (BK)** (Entered: 06/11/2020)
06/11/2020	18	REDACTED VERSION EXPARTE MOTION/ Consent Application for a Partial Lifting of the Seal by United States of America. (DG) Motions referred to Magistrate Judge Sean P. Flynn. Modified on 6/12/2020 (DG). (Entered: 06/12/2020)
06/11/2020	19	***REDACTED VERSION EX PARTE MEMORANDUM OF LAW in support of Ex Parte Consent Application for an extension of time to consider election to intervene by United States of America. (DG) Modified on 6/12/2020 (DG). Modified on

		6/12/2020 (DG). (Entered: 06/12/2020)
06/12/2020	20	**ENDORSED ORDER finding as moot 18 Ex Parte Motion for Miscellaneous Relief. Pursuant to the Court's order 17, the Clerk docketed a redacted version of the motion filed under seal 7 and previously granted 8. Signed by Magistrate Judge Sean P. Flynn on 6/12/2020. (Flynn, Sean)** (Entered: 06/12/2020)
07/01/2020	21	Unopposed MOTION for Miscellaneous Relief, specifically Unseal Documents Pursuant to Court's Order Unsealing Documents by Florida Medical Associates, LLC. (Lafferty, Latour) (Entered: 07/01/2020)
07/01/2020	22	NOTICE of designation under Local Rule 3.05 − Track 2. (GSO) (Entered: 07/01/2020)
07/01/2020	23	**ORDER re 22−−notice of designation of track. See document for details. Signed by Judge Steven D. Merryday on 7/1/2020. (GSO)** (Entered: 07/01/2020)
07/02/2020	24	SUPPLEMENT re 21 Unopposed MOTION for Miscellaneous Relief, specifically Unseal Documents Pursuant to Court's Order Unsealing Documents by Florida Medical Associates, LLC. (Lafferty, Latour) (Entered: 07/02/2020)
07/07/2020	25	**ORDER granting 21−−motion requesting unsealing; directing the clerk to unseal documents 8, 9, 11, 18, 19, and 20. Signed by Judge Steven D. Merryday on 7/7/2020. (BK)** (Entered: 07/07/2020)
07/15/2020	26	Unopposed MOTION to Stay *Track Two Deadlines* by Clarissa Zafirov. (Estes, Jillian) (Entered: 07/15/2020)
07/15/2020	27	NOTICE of pendency of related cases per Local Rule 1.04(d) by Florida Medical Associates, LLC. Related case(s): no (Lafferty, Latour) (Entered: 07/15/2020)
07/22/2020	28	**ORDER granting 26−−motion for an extension of time; extending through 8/31/2020 the time within which the parties must conduct the case management conference; case management report due 9/14/2020. Signed by Judge Steven D. Merryday on 7/22/2020. (BK)** (Entered: 07/22/2020)
09/14/2020	29	Consent MOTION for David J. Leviss to appear pro hac vice, Special Admission fee paid, Receipt No. 113A−17302273 for $150 *Written Designation and Consent to Act and Request to Receive Notices or Electronic Filing* by Anthem, Inc., Freedom Health, Inc., Optimum Healthcare, Inc. (Attachments: # 1 Exhibit)(Boyd, Ginger) Motions referred to Magistrate Judge Sean P. Flynn. Modified on 9/14/2020 (DG). (Entered: 09/14/2020)
09/14/2020	30	Consent MOTION for Elizabeth M. Bock to appear pro hac vice, Special Admission fee paid, Receipt No. 113A−17302301 for $150 *Written Designation and Consent to Act, and Request to Receive Notices of Electronic Filing* by Anthem, Inc., Freedom Health, Inc., Optimum Healthcare, Inc. (Attachments: # 1 Exhibit)(Boyd, Ginger) Motions referred to Magistrate Judge Sean P. Flynn. Modified on 9/14/2020 (DG). (Entered: 09/14/2020)
09/14/2020	31	Consent MOTION for David M. Deaton to appear pro hac vice, Special Admission fee paid, Receipt No. 113A−17302335 for $150 *Written Designation and Consent to Act, and Request to Receive Notices of Electronic Filing* by Anthem, Inc., Freedom Health, Inc., Optimum Healthcare, Inc. (Attachments: # 1 Exhibit)(Boyd, Ginger) Motions referred to Magistrate Judge Sean P. Flynn. Modified on 9/14/2020 (DG). (Entered: 09/14/2020)
09/14/2020	32	Consent MOTION for Benjamin D. Singer to appear pro hac vice, Special Admission fee paid, Receipt No. 113A−17302375 for $150 *Written Designation and Consent to Act, and Request to Receive Notices of Electronic Filing* by Anthem, Inc., Freedom Health, Inc., Optimum Healthcare, Inc. (Attachments: # 1 Exhibit)(Boyd, Ginger) Motions referred to Magistrate Judge Sean P. Flynn. Modified on 9/14/2020 (DG). (Entered: 09/14/2020)
09/14/2020	33	CORPORATE Disclosure Statement by Anthem, Inc., Freedom Health, Inc., Optimum Healthcare, Inc. identifying Corporate Parent Anthem, Inc. for Freedom Health, Inc., Optimum Healthcare, Inc. (Boyd, Ginger) Modified on 9/14/2020 (DG). (Entered: 09/14/2020)

09/14/2020	34	**ENDORSED ORDER granting 29 Motion to Appear Pro Hac Vice; granting 30 Motion to Appear Pro Hac Vice; granting 31 Motion to Appear Pro Hac Vice; granting 32 Motion to Appear Pro Hac Vice. Attorneys David J. Leviss, Elizabeth M. Bock, David M. Deaton, and Benjamin D. Singer may appear pro hac vice on behalf of Defendants Anthem, Inc., Freedom Health, Inc., and Optimum HealthCare, Inc., with Attorney Ginger Barry Boyd designated as local counsel pursuant to Local Rule 2.02(a). Within twenty−one (21) days of the date of this Order, counsel shall comply with the electronic filing requirements and file a notice of compliance with said requirements. Signed by Magistrate Judge Sean P. Flynn on 9/14/2020. (CKR)** (Entered: 09/14/2020)
09/14/2020	35	CASE MANAGEMENT REPORT. (Estes, Jillian) (Entered: 09/14/2020)
09/14/2020	36	NOTICE of Appearance by Arthur Lee Bentley, III on behalf of Anion Technologies, LLC, Florida Medical Associates, LLC, Siddhartha Pagidipati, Physician Partners Speciality Services, LLC, Physician Partners, LLC, Sun Labs USA, Inc. (Bentley, Arthur) (Entered: 09/14/2020)
09/14/2020	37	NOTICE of Appearance by Jason Paul Mehta on behalf of Anion Technologies, LLC, Florida Medical Associates, LLC, Siddhartha Pagidipati, Physician Partners Speciality Services, LLC, Physician Partners, LLC, Sun Labs USA, Inc. (Mehta, Jason) (Entered: 09/14/2020)
09/14/2020	38	NOTICE of Appearance by Giovanni P. Giarratana on behalf of Anion Technologies, LLC, Florida Medical Associates, LLC, Siddhartha Pagidipati, Physician Partners Speciality Services, LLC, Physician Partners, LLC, Sun Labs USA, Inc. (Giarratana, Giovanni) (Entered: 09/14/2020)
09/21/2020	39	CORPORATE Disclosure Statement by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners Speciality Services, LLC, Physician Partners, LLC, Sun Labs USA, Inc. (Bentley, Arthur) Modified on 9/21/2020 (DG). (Entered: 09/21/2020)
09/21/2020	40	NOTICE by United States of America *of Election to Decline Intervention* (Keefe, Sean) (Entered: 09/21/2020)
09/22/2020	41	MOTION to Dismiss for Failure to State a Claim by Anthem, Inc., Freedom Health, Inc., Optimum Healthcare, Inc. (Leviss, David) Modified on 9/23/2020 (DG). (Entered: 09/22/2020)
09/22/2020	42	Unopposed MOTION for Miscellaneous Relief, specifically For Judicial Notice by Anthem, Inc., Freedom Health, Inc., Optimum Healthcare, Inc. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H)(Leviss, David) Modified on 9/23/2020 (DG). (Entered: 09/22/2020)
09/22/2020	43	MOTION to Stay Discovery by Anthem, Inc., Freedom Health, Inc., Optimum Healthcare, Inc. (Leviss, David) Motions referred to Magistrate Judge Sean P. Flynn. Modified on 9/23/2020 (DG). (Entered: 09/22/2020)
09/22/2020	44	MOTION to Dismiss the Complaint by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners Speciality Services, LLC, Physician Partners, LLC, Sun Labs USA, Inc.. (Attachments: # 1 Exhibit Exhibit A)(Robisch, Kyle) COUNSEL WHO ELECTRONICALLY SIGNED ITEM TO REFILE ITEM USING HIS/HER OWN PERSONAL ECF LOGIN/PASSWORD. Modified on 9/23/2020 (DG). (Entered: 09/22/2020)
09/22/2020	45	NOTICE of compliance re 34 Order on Motion to Appear Pro Hac Vice by Anthem, Inc., Freedom Health, Inc., Optimum Healthcare, Inc. (Bock, Elizabeth) (Entered: 09/22/2020)
09/22/2020	46	NOTICE of compliance re 34 Order on Motion to Appear Pro Hac Vice by Anthem, Inc., Freedom Health, Inc., Optimum Healthcare, Inc. (Leviss, David) (Entered: 09/22/2020)
09/22/2020	47	NOTICE of compliance re 34 Order on Motion to Appear Pro Hac Vice by Anthem, Inc., Freedom Health, Inc., Optimum Healthcare, Inc. (Singer, Benjamin) (Entered: 09/22/2020)

09/22/2020	48	NOTICE of compliance re 34 Order on Motion to Appear Pro Hac Vice by Anthem, Inc., Freedom Health, Inc., Optimum Healthcare, Inc. (Deaton, David) (Entered: 09/22/2020)
09/22/2020	49	MOTION to Dismiss the Complaint by Siddhartha Pagidipati. (Robisch, Kyle) COUNSEL WHO ELECTRONICALLY SIGNED ITEM TO REFILE SAME USING HIS/HER OWN PERSONAL ECF LOGIN/PASSWORD. Modified on 9/23/2020 (DG). (Entered: 09/22/2020)
09/23/2020	50	MOTION to Dismiss Complaint *(this motion is re−filed only to use correct login credentials)* by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners Speciality Services, LLC, Physician Partners, LLC, Sun Labs USA, Inc.. (Attachments: # 1 Exhibit A − Agreement)(Bentley, Arthur) (Entered: 09/23/2020)
09/23/2020	51	MOTION to Dismiss Complaint *(this motion is re−filed only to use correct login credentials)* by Siddhartha Pagidipati. (Bentley, Arthur) (Entered: 09/23/2020)
09/25/2020	52	MOTION to Stay Discovery by Anion Technologies, LLC, Florida Medical Associates, LLC, Siddhartha Pagidipati, Physician Partners Speciality Services, LLC, Physician Partners, LLC, Sun Labs USA, Inc. (Bentley, Arthur) Motions referred to Magistrate Judge Sean P. Flynn. Modified on 9/25/2020 (DG). (Entered: 09/25/2020)
10/01/2020	53	NOTICE of pendency of related cases per Local Rule 1.04(d) by Clarissa Zafirov. Related case(s): yes. (Estes, Jillian) Modified on 10/2/2020 (DG). (Entered: 10/01/2020)
10/02/2020	54	Unopposed MOTION for Extension of Time to File Response/Reply as to 52 MOTION to Stay Discovery , 41 MOTION to Dismiss for Failure to State a Claim , 43 MOTION to Stay Discovery *Relator's Unopposed Motion to Extend Time to Respond to Defendants' Motions to Dismiss and Motions to Stay* by Clarissa Zafirov. (Estes, Jillian) (Entered: 10/02/2020)
10/05/2020	55	**ORDER granting 54−−motion for an extension of time; extending through 10/20/2020 the time within which the relator must respond to 41−−motion to dismiss and 52−−−motion to stay discovery. Signed by Judge Steven D. Merryday on 10/5/2020. (BK)** (Entered: 10/05/2020)
10/20/2020	56	RESPONSE in Opposition re 44 MOTION to Dismiss the Complaint filed by Clarissa Zafirov. (Estes, Jillian) (Entered: 10/20/2020)
10/20/2020	57	RESPONSE in Opposition re 41 MOTION to Dismiss for Failure to State a Claim filed by Clarissa Zafirov. (Estes, Jillian) (Entered: 10/20/2020)
10/20/2020	58	RESPONSE in Opposition re 52 MOTION to Stay Discovery , 43 MOTION to Stay Discovery filed by Clarissa Zafirov. (Estes, Jillian) (Entered: 10/20/2020)
10/20/2020	59	RESPONSE in Opposition re 49 MOTION to Dismiss the Complaint filed by Clarissa Zafirov. (Estes, Jillian) (Entered: 10/20/2020)
10/23/2020	60	Consent MOTION for Miscellaneous Relief, specifically for Leave to File Unredacted Documents by United States of America. (Keefe, Sean) (Entered: 10/23/2020)
10/26/2020	61	**ORDER granting 60−−motion by the United States to publish unredacted versions of S−7 and S−10; directing the clerk to publish the unredacted versions of S−7 and S−10. Signed by Judge Steven D. Merryday on 10/26/2020. (BK)** (Entered: 10/26/2020)
10/27/2020	62	Unopposed MOTION for Frederick M. Morgan, Jr. to appear pro hac vice, Special Admission fee paid, Receipt No. 113A−17475565 for $150 by Clarissa Zafirov. (Attachments: # 1 Special Admission Attorney Certification, # 2 Certificate of Good Standing)(Estes, Jillian) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 10/27/2020)
10/27/2020	63	**ENDORSED ORDER granting 62 Motion to Appear Pro Hac Vice. Attorney Frederick M. Morgan, Jr. may appear pro hac vice on behalf of Plaintiff/Relator, with Attorney Jillian L. Estes designated as local counsel pursuant to Local Rule 2.02(a). Signed by Magistrate Judge Sean P. Flynn on 10/27/2020. (CKR)** (Entered: 10/27/2020)

10/28/2020	64	Unopposed MOTION for Leave to File Other Document :Reply in Support of His Motion to Dismiss Complaint by Siddhartha Pagidipati. (Mehta, Jason) (Entered: 10/28/2020)
10/28/2020	65	Unopposed MOTION for Leave to File Other Document :Reply in Support of Their Motion to Dismiss Complaint by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners Speciality Services, LLC, Physician Partners, LLC, Sun Labs USA, Inc. (Mehta, Jason) Modified on 10/28/2020 (DG). (Entered: 10/28/2020)
10/28/2020	66	Unopposed MOTION for Leave to File Other Document :Reply in Support of Motion to Dismiss by Anthem, Inc., Freedom Health, Inc., Optimum Healthcare, Inc. (Leviss, David) Modified on 10/29/2020 (DG). (Entered: 10/28/2020)
10/28/2020	67	Unopposed MOTION for Leave to File Other Document :Reply in Support of Motion to Stay Discovery by Anthem, Inc., Freedom Health, Inc., Optimum Healthcare, Inc. (Leviss, David) Modified on 10/29/2020 (DG). (Entered: 10/28/2020)
11/03/2020	68	**ORDER denying 64, 65, 66, and 67−−motions by the defendants for leave to reply. Signed by Judge Steven D. Merryday on 11/3/2020. (BK)** (Entered: 11/03/2020)
11/05/2020	69	MOTION for Jonathan Michael Lischak to appear pro hac vice, Special Admission fee paid, Receipt No. 113A−17515102 for $150 by Clarissa Zafirov. (Attachments: # 1 Special Admission Attorney Certification, # 2 Certificate of Good Standing)(Estes, Jillian) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 11/05/2020)
11/05/2020	70	**ENDORSED ORDER granting 69 Unopposed Motion for Pro Hac Vice Admission. Attorney Jonathan M. Lischak may appear pro hac vice on behalf of Plaintiff/Relator, with Attorney Jillian L. Estes designated as local counsel pursuant to Local Rule 2.02(a). Within twenty−one (21) days of the date of this Order, counsel shall comply with the electronic filing requirements and file a notice of compliance with said requirements. Signed by Magistrate Judge Sean P. Flynn on 11/5/2020. (CKR)** (Entered: 11/05/2020)
12/02/2020	71	**ORDER: On or before Wednesday, December 16, 2020, the affected defendants may file a consolidated reply not exceeding ten pages to Points III, IV, and V of the plaintiff's response (Doc. 56) to those defendants' motion to dismiss. No sur−reply is permitted unless invited by a later order. Signed by Judge Steven D. Merryday on 12/2/2020.** (Entered: 12/02/2020)
12/02/2020	72	**ORDER: On or before Wednesday, December 16, 2020, the affected defendants may file a consolidated reply not exceeding ten pages to Point IV of the plaintiff's response (Doc. 57) to those defendants' motion to dismiss. No sur−reply is permitted unless invited by a later order. Signed by Judge Steven D. Merryday on 12/2/2020. Signed by Judge Steven D. Merryday on 12/2/2020.** (Entered: 12/02/2020)
12/10/2020	73	NOTICE of compliance re 70 Order on Motion to Appear Pro Hac Vice by Clarissa Zafirov (Lischak, Jonathan) (Entered: 12/10/2020)
12/16/2020	74	MEMORANDUM in support re 51 Motion to Dismiss *Defendants Anthem, Inc., Freedom Health, Inc., and Optimum Healthcare, Inc's Reply in Support of Motion to Dismiss* filed by Anthem, Inc., Freedom Health, Inc., Optimum Healthcare, Inc.. (Boyd, Ginger) (Entered: 12/16/2020)
12/16/2020	75	MEMORANDUM in support re 50 Motion to Dismiss filed by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners Speciality Services, LLC, Physician Partners, LLC, Sun Labs USA, Inc.. (Attachments: # 1 Exhibit A)(Bentley, Arthur) (Entered: 12/16/2020)
01/08/2021	76	Case Reassigned to Judge Kathryn K. Mizelle. New case number: 8:19−cv−1236−T−210SPF. Judge Steven D. Merryday no longer assigned to the case. (JNB) (Entered: 01/08/2021)
01/19/2021	77	NOTICE of pendency of related cases per Local Rule 1.04(d) by Anthem, Inc., Freedom Health, Inc., Optimum Healthcare, Inc. Related case(s): yes (Leviss, David) (Entered: 01/19/2021)

01/21/2021	78	NOTICE of pendency of related cases per Local Rule 1.04(d) by Physician Partners, LLC. Related case(s): yes (Mehta, Jason) (Entered: 01/21/2021)
06/11/2021	79	**ENDORSED ORDER granting 42 unopposed motion for judicial notice. The Court takes judicial notice of the items described in and attached to the defendants' motion. Signed by Judge Kathryn Kimball Mizelle on 6/11/2021. (DMP)** (Entered: 06/11/2021)
06/11/2021	80	**ORDER granting 43 and 52 motions to stay discovery. Discovery is stayed pending an order on the defendants' motions to dismiss. Signed by Judge Kathryn Kimball Mizelle on 6/11/2021. (DMP)** (Entered: 06/11/2021)
09/28/2021	81	**ORDER granting 41 50 51 Motions to Dismiss. By 10/22/2021, Zafirov may file an amended complaint. Signed by Judge Kathryn Kimball Mizelle on 9/28/2021. (JMB)** (Entered: 09/28/2021)
10/05/2021	82	**ENDORSED ORDER: In light of the Court's 81 Order granting Motions to Dismiss, the Court's 80 previous direction that the parties meet and confer and file an amended Case Management Report is mooted if and until the Plaintiff chooses to file an Amended Complaint and the Defendants file an Answer to the Amended Complaint. If that occurs and within ten days of the new Answer being filed, the parties must file an amended Case Management Report. Signed by Judge Kathryn Kimball Mizelle on 10/5/2021. (JMB)** (Entered: 10/05/2021)
10/07/2021	83	Unopposed MOTION for Extension of Time to File Amended Complaint by Clarissa Zafirov. (Estes, Jillian) (Entered: 10/07/2021)
10/08/2021	84	**ENDORSED ORDER granting 83 Motion for Extension of Time. By 11/12/2021, Plaintiff Zafirov may file an Amended Complaint. If Plaintiff Zafirov chooses to file an Amended Complaint, Defendants must respond by 12/17/2021. Signed by Judge Kathryn Kimball Mizelle on 10/8/2021. (JMB)** (Entered: 10/08/2021)
11/12/2021	85	NOTICE of voluntary dismissal by Clarissa Zafirov. (Estes, Jillian) Modified text on 11/15/2021 (JLD). (Entered: 11/12/2021)
11/12/2021	86	AMENDED COMPLAINT *Alleging Violations of the Federal False Claims Act and Demand for a Jury Trial* against Anion Technologies, LLC, Florida Medical Associates, LLC, Freedom Health, Inc., Optimum Healthcare, Inc., Physician Partners, LLC with Jury Demand filed by Clarissa Zafirov. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8)(Estes, Jillian) Modified text on 11/15/2021 (JLD). (Entered: 11/12/2021)
11/16/2021	87	NOTICE of Consent by United States of America re 85 Notice of voluntary dismissal. (Keefe, Sean) Modified text on 11/16/2021 (JLD). (Entered: 11/16/2021)
11/23/2021	88	Unopposed MOTION for Extension of Time to File Answer 86 Amended Complaint by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Bentley, Arthur) Corrected event type and notified counsel on 11/23/2021. (JLD) (Entered: 11/23/2021)
11/23/2021	89	**ENDORSED ORDER granting 88 Motion for Extension of Time to Answer. By January 14, 2022, Defendants must respond to Plaintiff's Amended Complaint. Within ten days of the new Answer being filed, the parties must file an amended Case Management Report. Signed by Judge Kathryn Kimball Mizelle on 11/23/2021. (JMB)** (Entered: 11/23/2021)
11/29/2021	90	Unopposed MOTION for Miscellaneous Relief, specifically for Clarification *or, in the Alternative,* MOTION for Extension of Time to File Answer re 86 Amended Complaint by Freedom Health, Inc., Optimum Healthcare, Inc. (Leviss, David) Modified text on 11/29/2021 (JLD). (Entered: 11/29/2021)
11/30/2021	91	**ENDORSED ORDER granting 90 Motion to Clarify that 89 Order granting Extension of Time to Answer applies to all Defendants. Signed by Judge Kathryn Kimball Mizelle on 11/30/2021. (JMB)** (Entered: 11/30/2021)
12/27/2021	92	Unopposed MOTION for Miscellaneous Relief, specifically *Leave to Submit Video Exhibit in Connection with Motion to Dismiss Amended Complaint* by Freedom Health, Inc., Optimum Healthcare, Inc. (Leviss, David) Modified text on 12/28/2021 (JLD). (Entered: 12/27/2021)

12/28/2021	93	**ENDORSED ORDER granting 92 Motion to File USB Drive in Support of Motion to Dismiss. Defendants must submit the USB drive to the clerk's office no later than January 18, 2022. Signed by Judge Kathryn Kimball Mizelle on 12/28/2021. (Mizelle, Kathryn)** (Entered: 12/28/2021)
12/30/2021	94	MOTION for Ryon M. McCabe; Havan M. Clark to Withdraw as Attorney by Clarissa Zafirov. (McCabe, Ryon) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 12/30/2021)
12/30/2021	95	**ENDORSED ORDER granting 94 Motion for Withdrawal of Counsel. Attorney Ryon M. McCabe terminated. Signed by Magistrate Judge Sean P. Flynn on 12/30/2021. (CKR)** (Entered: 12/30/2021)
01/14/2022	96	MOTION to Dismiss Amended Complaint by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners Speciality Services, LLC, Physician Partners, LLC, Sun Labs USA, Inc. (Bentley, Arthur) Modified on 1/18/2022 to edit text (CRK). (Entered: 01/14/2022)
01/14/2022	97	Motion to Dismiss Amended Complaint and Incorporated Memorandum of Law by Freedom Health, Inc., Optimum Healthcare, Inc. (Attachments: # 1 Declaration of David Leviss in support)(Leviss, David) Modified on 1/18/2022 to edit text (CRK). (Entered: 01/14/2022)
01/18/2022	98	Amended MOTION to Dismiss Amended Complaint by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Bentley, Arthur) (Entered: 01/18/2022)
01/18/2022	99	NOTICE of compliance re 97 Motion to Dismiss Amended Complaint and incorporated Memorandum of Law by Freedom Health, Inc., Optimum Healthcare, Inc. (Attachments: # 1 Attachment A)(Leviss, David) Modified on 1/19/2022 to edit text (CRK). (Entered: 01/18/2022)
01/19/2022	100	**ENDORSED ORDER denying as moot 96 Motion to Dismiss. Signed by Judge Kathryn Kimball Mizelle on 1/19/2022. (JMB)** (Entered: 01/19/2022)
01/20/2022	101	Unopposed MOTION for Extension of Time to File Response/Reply as to 97 MOTION to Dismiss, 98 Amended MOTION to Dismiss Amended Complaint by Clarissa Zafirov. (Estes, Jillian) (Entered: 01/20/2022)
01/21/2022	102	**ENDORSED ORDER granting 101 Motion for Extension of Time. By February 22, 2022, Relator Zafirov must respond to Defendants' 97 98 Motions to Dismiss. Signed by Judge Kathryn Kimball Mizelle on 1/21/2022. (JMB)** (Entered: 01/21/2022)
02/18/2022	103	MOTION for Extension of Time to File Response/Reply as to 97 MOTION to Dismiss, 98 Amended MOTION to Dismiss Amended Complaint *(TIME SENSITIVE)* by Clarissa Zafirov. (Estes, Jillian) (Entered: 02/18/2022)
02/18/2022	104	**ENDORSED ORDER: Finding good cause, the Court grants Relator Zafirov's 103 Motion for Extension of Time. By March 8, 2022, Relator Zafirov must file her responses to Defendants' 97 98 motions to dismiss. Signed by Judge Kathryn Kimball Mizelle on 2/18/2022. (JMB)** (Entered: 02/18/2022)
03/08/2022	105	NOTICE by United States of America *of its Objection to Dismissal on the Basis of the Public Disclosure Bar.* (Keefe, Sean) Modified on 3/9/2022 to edit text (CRK). (Entered: 03/08/2022)
03/08/2022	106	RESPONSE in Opposition re 96 MOTION to Dismiss Amended Complaint *Relator's Response in Opposition to the Provider Defendants' Motion to Dismiss Relator's Amended Complaint* filed by Clarissa Zafirov. (Estes, Jillian) (Entered: 03/08/2022)
03/08/2022	107	RESPONSE in Opposition re 97 MOTION to Dismiss *Relator's Response in Opposition to Freedom Health and Optimum Healthcare's Motion to Dismiss Relator's Amended Complaint* filed by Clarissa Zafirov. (Estes, Jillian) (Entered: 03/08/2022)
03/15/2022	108	MOTION for Leave to File Other Document : Reply In Support of Motion to Dismiss Amended Complaint by Freedom Health, Inc., Optimum Healthcare, Inc. (Attachments: # 1 Declaration of Kimya Saied in Support of Defendants Motion for Leave to File a Reply)(Leviss, David) Modified on 3/16/2022 to edit text (CRK).

		(Entered: 03/15/2022)
03/16/2022	109	MOTION for Leave to File Other Document : Reply in Support of Motion to Dismiss by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Bentley, Arthur) Modified on 3/17/2022 to edit text (CRK). (Entered: 03/16/2022)
03/22/2022	110	**ENDORSED ORDER granting the defendants' 108 109 motions for leave to file replies in support of their motions to dismiss. By April 12, 2022, Defendants Freedom Health and Optimum must file a reply not to exceed seven (7) pages. By April 12, 2022, Defendants Physician Partners, Florida Medical Associates, and Anion Technologies must file a reply not to exceed five (5) pages. Signed by Judge Kathryn Kimball Mizelle on 3/22/2022. (JMB)** (Entered: 03/22/2022)
03/23/2022	111	NOTICE of Appearance by Havan M Clark on behalf of Clarissa Zafirov. (Clark, Havan) Modified on 3/24/2022 to edit text (CRK). (Entered: 03/23/2022)
03/23/2022	112	NOTICE of Appearance by Adam T. Rabin on behalf of Clarissa Zafirov. (Rabin, Adam) Modified on 3/24/2022 to edit text (CRK). (Entered: 03/23/2022)
04/12/2022	113	REPLY to Response to Motion re 97 MOTION to Dismiss filed by Freedom Health, Inc., Optimum Healthcare, Inc. (Leviss, David) Modified text on 4/13/2022 (MCB). (Entered: 04/12/2022)
04/12/2022	114	REPLY to Response to Motion re 96 MOTION to Dismiss Amended Complaint filed by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Bentley, Arthur) Modified text on 4/13/2022 (MCB). (Entered: 04/12/2022)
05/27/2022	115	MOTION for Leave to File a Statement of Interest by United States of America. (Keefe, Sean) Modified text on 5/31/2022 (AG). (Entered: 05/27/2022)
06/02/2022	116	RESPONSE in Opposition re 115 MOTION for Leave to File a Statement of Interest filed by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Mehta, Jason) (Entered: 06/02/2022)
06/06/2022	117	**ENDORSED ORDER granting the United States' 115 Motion for Leave to File a Statement of Interest. By June 15, 2022, the United States must file its statement of interest to clarify its position as to the two issues the United States' identifies in its motion. Signed by Judge Kathryn Kimball Mizelle on 6/6/2022. (JMB)** (Entered: 06/06/2022)
06/10/2022	118	MOTION for David J Leviss to Withdraw as Attorney *MA Defendants* by Freedom Health, Inc., Optimum Healthcare, Inc.. (Singer, Benjamin) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 06/10/2022)
06/14/2022	119	**ENDORSED ORDER denying without prejudice 118 Motion to Withdraw as Attorney for failure to comply with Local Rule 2.02(c)(1) and (2). The motion is not filed by the withdrawing lawyer and fails to address Local Rule 2.02(c)(1)(B)'s certification requirement. Signed by Magistrate Judge Sean P. Flynn on 6/14/2022. (CED)** (Entered: 06/14/2022)
06/15/2022	120	STATEMENT OF INTEREST/RESPONSE to Motion re 96 MOTION to Dismiss Amended Complaint *(Statement of Interest)* filed by United States of America. (Keefe, Sean) Modified on 6/30/2022 (BES). (Entered: 06/15/2022)
06/21/2022	121	Unopposed MOTION for David J Leviss to Withdraw as Attorney by Freedom Health, Inc., Optimum Healthcare, Inc. (Leviss, David) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 06/21/2022)
06/22/2022	122	**ENDORSED ORDER granting 121 Motion to Withdraw as Attorney. Attorney David J. Leviss is terminated as counsel of record for Defendants Freedom Health, Inc. and Optimum Healthcare, Inc. and relieved of any further responsibility in this matter. Attorneys Benjamin D. Singer, David M. Deaton, Elizabeth M. Bock, and Ginger Boyd to remain counsel of record for Defendants Freedom Health, Inc. and Optimum Healthcare, Inc. Signed by Magistrate Judge Sean P. Flynn on 6/22/2022. (CED)** (Entered: 06/22/2022)

06/29/2022	123	RESPONSE *to the Government's Statement of Interest* re 120 Response to motion filed by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Mehta, Jason) Modified on 6/30/2022 (BES). (Entered: 06/29/2022)
09/12/2022	124	**ORDER denying 97 Motion to Dismiss; denying 98 Motion to Dismiss. Signed by Judge Thomas P. Barber on 9/12/2022. (RLD)** (Entered: 09/12/2022)
09/16/2022	125	Unopposed MOTION for Extension of Time to File Answer re 86 Amended Complaint by Freedom Health, Inc., Optimum Healthcare, Inc. (Singer, Benjamin) (Entered: 09/16/2022)
09/16/2022	126	**ENDORSED ORDER granting 125 Motion for Extension of Time. By October 24, 2022, Defendants Freedom Health, Inc. and Optimum Healthcare Inc. must respond to the Plaintiff's Complaint. Signed by Judge Kathryn Kimball Mizelle on 9/16/2022. (RLD)** (Entered: 09/16/2022)
09/18/2022	127	Unopposed MOTION for Extension of Time to File Answer re 86 Amended Complaint by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Mehta, Jason) (Entered: 09/18/2022)
09/19/2022	128	**ENDORSED ORDER granting 127 Motion for Extension of Time to Answer. By October 24, 2022, the Provider Defendants must respond to the Plaintiff's Amended Complaint. Signed by Judge Kathryn Kimball Mizelle on 9/19/2022. (RLD)** (Entered: 09/19/2022)
10/24/2022	129	ANSWER and affirmative defenses with Jury Demand to 86 Amended Complaint by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC.(Bentley, Arthur) (Entered: 10/24/2022)
10/24/2022	130	ANSWER and affirmative defenses to 86 Amended Complaint by Freedom Health, Inc., Optimum Healthcare, Inc.(Singer, Benjamin) (Entered: 10/24/2022)
10/24/2022	131	AMENDED CORPORATE Disclosure Statement by Freedom Health, Inc., Optimum Healthcare, Inc. identifying Corporate Parent Elevance Health, Inc. for Freedom Health, Inc., Optimum Healthcare, Inc. (Singer, Benjamin) (Entered: 10/24/2022)
11/03/2022	132	CASE MANAGEMENT REPORT. (Bock, Elizabeth) (Entered: 11/03/2022)
11/21/2022	133	**CASE MANAGEMENT AND SCHEDULING ORDER: Dispositive motions due by October 2, 2024. Pretrial Conference scheduled for April 2, 2025 at 9:00 AM in Tampa Courtroom 13B before Judge Kathryn Kimball Mizelle. Jury Trial scheduled for the May 2025 trial calendar in Tampa Courtroom 13B before Judge Kathryn Kimball Mizelle. Conduct mediation by April 2, 2024. Lead counsel to coordinate dates. Signed by Judge Kathryn Kimball Mizelle on 11/21/2022. (GSO)** (Entered: 11/21/2022)
12/09/2022	134	NOTICE of Appearance by Natalie Adams on behalf of Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC (Adams, Natalie) (Entered: 12/09/2022)
01/30/2023	135	NOTICE OF SELECTION of Stephen Altman as mediator by Clarissa Zafirov. (Attachments: # 1 Exhibit Altman Resume)(Estes, Jillian) (Entered: 01/30/2023)
01/31/2023	136	**MEDIATION ORDER: This case is set for mediation on January 22, 2024. Within seven days following the mediation conference, Lead Counsel shall file a Mediation Report. Signed by Judge Kathryn Kimball Mizelle on 1/31/2023. (RLD)** (Entered: 01/31/2023)
03/20/2023	137	NOTICE of Appearance by Jessica Elizabeth Joseph on behalf of Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Joseph, Jessica) (Entered: 03/20/2023)
04/06/2023	138	Unopposed MOTION for Parth Y. Patel to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC−20696363 for $150 by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Joseph, Jessica) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 04/06/2023)
04/06/2023	139	**ENDORSED ORDER granting 138 Motion to Appear Pro Hac Vice. Attorney Parth Y. Patel may appear pro hac vice on behalf of Defendants Physician**

		Partners, LLC; Florida Medical Associates, LLC d/b/a VIPcare; and Anion Technologies, LLC. Within twenty−one days from the date of this Order, counsel shall register with the Court's CM/ECF system. Signed by Magistrate Judge Sean P. Flynn on 4/6/2023. (CED) (Entered: 04/06/2023)
06/28/2023	140	Joint MOTION for Protective Order *Joint Motion for Entry of Stipulated Protective Order and Incorporated Memorandum of Law* by Clarissa Zafirov. (Attachments: # 1 Exhibit Stipulated Protective Order)(Estes, Jillian) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 06/28/2023)
06/28/2023	141	**ENDORSED ORDER granting 140 Motion for Protective Order. Signed by Magistrate Judge Sean P. Flynn on 6/28/2023. (Flynn, Sean)** (Entered: 06/28/2023)
08/08/2023	143	MOTION to Compel Discovery for the Full Temporal Scope of the Amended Complaint by Clarissa Zafirov. (Attachments: # 1 Exhibit A1−A4, Relator's First Requests for Production to Defendants, # 2 Exhibit B, Physician Partners, LLC's Responses to Relator's First Requests for Production, # 3 Exhibit C, Florida Medical Associations, LLC Responses to Relator's First Requests for Production, # 4 Exhibit D, Defendant Anion Technologies, LLC's Responses to Relator's First Requests for Production, # 5 Exhibit E, Defendant Freedom Health, Inc. and Optimum Healthcare, Inc.s' Responses and Objections to Relator's First Requests for Production)(Estes, Jillian) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 08/08/2023)
08/22/2023	145	RESPONSE in Opposition re 143 MOTION to Compel Discovery for the Full Temporal Scope of the Amended Complaint filed by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Attachments: # 1 Exhibit 1 − Emily Gallman Declaration)(Adams, Natalie) (Entered: 08/22/2023)
08/23/2023	146	NOTICE of Appearance by Lauren Lisette Valiente on behalf of Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC (Valiente, Lauren) (Entered: 08/23/2023)
08/28/2023	147	MOTION for Leave to File Reply by Clarissa Zafirov. (Estes, Jillian) (Modified on 8/29/2023, to edit text) (BGR). (Entered: 08/28/2023)
08/31/2023	148	**ENDORSED ORDER granting 147 Motion for Leave to File Reply. Reply due no later than September 5, 2023, and shall not exceed 3 pages. Signed by Magistrate Judge Sean P. Flynn on 8/31/2023. (Flynn, Sean)** (Entered: 08/31/2023)
09/01/2023	149	REPLY to Response to Motion re 143 MOTION to Compel Discovery for the Full Temporal Scope of the Amended Complaint *Reply in Support of Relator's Motion to Compel Discovery* filed by Clarissa Zafirov. (Estes, Jillian) (Entered: 09/01/2023)
09/05/2023	150	NOTICE TO COUNSEL Jennifer M. Verkamp of Local Rule 2.01(c), Special Admission of Non−Resident Lawyer − File a Motion to Appear Pro Hac Vice. Co−counsel with filing rights may electronically file the motion on behalf of the non−resident lawyer or the motion may be filed on paper; Pay the Special Admission Fee; (Signed by Deputy Clerk). (BD) (Entered: 09/05/2023)
09/05/2023	151	Unopposed MOTION for Scott P. Drake to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC−21214710 for $150 by Freedom Health, Inc., Optimum Healthcare, Inc. (Boyd, Ginger) Motions referred to Magistrate Judge Sean P. Flynn. Modified text on 9/6/2023 (MCB). (Entered: 09/05/2023)
09/05/2023	152	Unopposed MOTION for Amanda M. Santella to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC−21217536 for $150 by Freedom Health, Inc., Optimum Healthcare, Inc. (Boyd, Ginger) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 09/05/2023)
09/05/2023	153	**ENDORSED ORDER granting 151 Motion to Appear Pro Hac Vice; granting 152 Motion to Appear Pro Hac Vice. Attorney Scott P. Drake and Attorney Amanda M. Santella may appear pro hac vice on behalf of Defendants Freedom Health, Inc. and Optimum Healthcare, Inc. Within twenty−one days from the date of this Order, counsel shall register with the Court's CM/ECF system. Signed by Magistrate Judge Sean P. Flynn on 9/5/2023. (CED)** (Entered: 09/05/2023)
09/06/2023	154	NOTICE of compliance re 153 Order on Motion to Appear Pro Hac Vice by Freedom Health, Inc., Optimum Healthcare, Inc. (Drake, Scott) (Entered: 09/06/2023)

09/08/2023	155	NOTICE of compliance re 153 Order on Motion to Appear Pro Hac Vice by Freedom Health, Inc., Optimum Healthcare, Inc. (Santella, Amanda) (Entered: 09/08/2023)
09/11/2023	156	NOTICE TO COUNSEL Elizabeth A. Arias Local Rule 2.01(c), Special Admission of Non−Resident Lawyer − File a Motion to Appear Pro Hac Vice. Co−counsel with filing rights may electronically file the motion on behalf of the non−resident lawyer or the motion may be filed on paper; Pay the Special Admission Fee; Submit a Pro Hac Vice E−File Registration through PACER. Visit www.flmd.uscourts.gov/for−lawyers for details (Signed by Deputy Clerk). (AJS) (Entered: 09/11/2023)
09/11/2023	157	NOTICE TO COUNSEL of Record of Local Rule 2.02(a), which states, "The first paper filed on behalf of a party must designate only one lead counsel who − unless the party changes the designation − remains lead counsel throughout the action." Counsel must file a **Notice of Lead Counsel Designation** identifying lead counsel. (Signed by Deputy Clerk). (AJS) (Entered: 09/11/2023)
09/11/2023	158	NOTICE of Lead Counsel Designation by Jillian Levy Estes on behalf of Clarissa Zafirov. Lead Counsel: Jillian L. Estes. (Estes, Jillian) (Entered: 09/11/2023)
09/14/2023	159	Unopposed MOTION for Elizabeth A. Arias to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC−21251451 for $150 by Freedom Health, Inc., Optimum Healthcare, Inc.. (Boyd, Ginger) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 09/14/2023)
09/14/2023	160	**ENDORSED ORDER granting 159 Motion to Appear Pro Hac Vice. Attorney Elizabeth A. Arias may appear pro hac vice on behalf of Defendants Freedom Health, Inc. and Optimum Healthcare, Inc. Within twenty−one days from the date of this Order, counsel shall register with the Court's CM/ECF system. Signed by Magistrate Judge Sean P. Flynn on 9/14/2023. (CED)** (Entered: 09/14/2023)
09/14/2023	161	NOTICE of Lead Counsel Designation by Scott P. Drake on behalf of Freedom Health, Inc., Optimum Healthcare, Inc.. Lead Counsel: Scott Drake. (Drake, Scott) (Entered: 09/14/2023)
09/15/2023	162	NOTICE of Lead Counsel Designation by Jason Paul Mehta on behalf of Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. Lead Counsel: Jason Mehta. (Mehta, Jason) (Entered: 09/15/2023)
09/15/2023	163	NOTICE of compliance re 160 Order on Motion to Appear Pro Hac Vice by Freedom Health, Inc., Optimum Healthcare, Inc. (Arias, Elizabeth) (Entered: 09/15/2023)
09/29/2023	164	MOTION to Quash Non−Party Subpoenas and to Issue a Protective Order by Clarissa Zafirov. (Attachments: # 1 Exhibit A, Notice of Non−Party Subpoena − First Physicians Group, # 2 Exhibit B, Notice of Non−Party Subpoena − Mercy Medical Center, # 3 Exhibit C, Notice of Non−Party Subpoena − Sarasota Memorial Hospital)(Estes, Jillian) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 09/29/2023)
10/13/2023	165	RESPONSE in Opposition re 164 MOTION to Quash Non−Party Subpoenas and to Issue a Protective Order filed by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Mehta, Jason) Modified text on 10/16/2023 (LNR). (Entered: 10/13/2023)
10/20/2023	166	Unopposed MOTION for Natalie Adams to Withdraw as Attorney by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Adams, Natalie) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 10/20/2023)
10/20/2023	167	**ENDORSED ORDER granting 166 Motion to Withdraw as Attorney. Attorney Natalie Adams is terminated as counsel of record for Defendants Physician Partners, LLC, Florida Medical Associates, LLC, and Anion Technologies, LLC and is relieved of any further responsibility in this matter. Attorneys Jason Mehta, Jessica Joseph, Lauren Valiente, and Arthur Lee Bentley to remain counsel of record. Signed by Magistrate Judge Sean P. Flynn on 10/20/2023. (CED)** (Entered: 10/20/2023)

11/08/2023	168	NOTICE of Appearance by Joseph Warren Swanson on behalf of Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Swanson, Joseph) (Entered: 11/08/2023)
11/29/2023	169	**ORDER granting in part and denying in part 143 Motion to Compel. See Order for details. Signed by Magistrate Judge Sean P. Flynn on 11/29/2023. (CED)** (Entered: 11/29/2023)
12/07/2023	170	Unopposed MOTION to Modify of Case Management Order by Clarissa Zafirov. (Estes, Jillian) Modified text on 12/8/2023 (MCB). (Entered: 12/07/2023)
12/08/2023	171	**ENDORSED ORDER granting Plaintiff's 170 Unopposed Motion to Extend Remaining Deadlines. Amended Case Management and Scheduling Order to Follow. Signed by Judge Kathryn Kimball Mizelle on 12/8/2023. (ZG)** (Entered: 12/08/2023)
12/11/2023	172	**AMENDED CASE MANAGEMENT AND SCHEDULING ORDER: Dispositive motions due by January 27, 2025. Pretrial Conference scheduled for July 28, 2025, at 1:00 PM in Tampa Courtroom 13B before Judge Kathryn Kimball Mizelle. Jury trial scheduled for the September 2025 trial calendar in Tampa Courtroom 13B before Judge Kathryn Kimball Mizelle. Conduct mediation by July 29, 2024. Signed by Judge Kathryn Kimball Mizelle on 12/11/2023. (ZG)** (Entered: 12/11/2023)
12/13/2023	173	NOTICE of change of address by Scott P. Drake (Drake, Scott) (Entered: 12/13/2023)
01/31/2024	175	NOTICE of Appearance by Michael P Matthews on behalf of Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC (Matthews, Michael) (Entered: 01/31/2024)
02/07/2024	176	Unopposed MOTION for Matthew D. Krueger to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC−21743086 for $150 by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Mehta, Jason) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 02/07/2024)
02/07/2024	177	**ENDORSED ORDER granting 176 Motion to Appear Pro Hac Vice. Attorney Matthew D. Krueger may appear pro hac vice on behalf of Defendants Physician Partners, LLC, Florida Medical Associates, LLC d/b/a VIPcare, and Anion Technologies, LLC. Within twenty−one days from the date of this Order, counsel shall register with the Court's CM/ECF system. Signed by Magistrate Judge Sean P. Flynn on 2/7/2024. (CED)** (Entered: 02/07/2024)
02/12/2024	178	MOTION to Compel Discovery *from Provider Defendants Regarding Affiliate Providers* by Clarissa Zafirov. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(Estes, Jillian) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 02/12/2024)
02/12/2024	179	**ENDORSED ORDER: The 136 Mediation Order requires Lead Counsel to submit a mediation report within seven days after the mediation conference. Lead Counsel fails to comply. Lead Counsel must submit either a mediation report or an amended mediation notice no later than February 16, 2024. Signed by Judge Kathryn Kimball Mizelle on 2/12/2024. (ZG)** (Entered: 02/12/2024)
02/16/2024	180	Joint MOTION for Judgment on the Pleadings *or MOTION to Dismiss for Lack of Subject−Matter Jurisdiction* by Anion Technologies, LLC, Florida Medical Associates, LLC, Freedom Health, Inc., Optimum Healthcare, Inc., Physician Partners, LLC. (Mehta, Jason) Modified text and added event on 2/20/2024 (GL). (Entered: 02/16/2024)
02/16/2024	181	Unopposed REQUEST for oral argument re 180 Joint MOTION for Judgment on the Pleadings *or to Dismiss for Lack of Subject−Matter Jurisdiction* by Anion Technologies, LLC, Florida Medical Associates, LLC, Freedom Health, Inc., Optimum Healthcare, Inc., Physician Partners, LLC. (Mehta, Jason) (Entered: 02/16/2024)
02/16/2024	182	NOTICE of compliance re 180 Joint MOTION for Judgment on the Pleadings *or to Dismiss for Lack of Subject−Matter Jurisdiction (FRCP 5.1 Constitutional Challenge)*

		by Anion Technologies, LLC, Florida Medical Associates, LLC, Freedom Health, Inc., Optimum Healthcare, Inc., Physician Partners, LLC (Mehta, Jason) (Entered: 02/16/2024)
02/16/2024	183	NOTICE by Freedom Health, Inc., Optimum Healthcare, Inc. re 179 Order / *Joint Mediation Notice* (Drake, Scott) (Entered: 02/16/2024)
02/20/2024	184	MOTION to Compel Responses to Requests for Production Nos. 4−7 by Freedom Health, Inc., Optimum Healthcare, Inc.. (Attachments: # 1 Declaration of Jamie M. Quinn in Support, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E)(Drake, Scott) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 02/20/2024)
02/23/2024	185	MOTION for Kyle Robisch to Withdraw as Attorney by Physician Partners, LLC. (Robisch, Kyle) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 02/23/2024)
02/23/2024	186	**ENDORSED ORDER granting 185 Motion to Withdraw as Attorney. Attorney Kyle Robisch terminated. Signed by Magistrate Judge Sean P. Flynn on 2/23/2024. (Flynn, Sean)** (Entered: 02/23/2024)
02/23/2024	187	Unopposed MOTION for Leave to File Amicus Brief by The Chamber of Commerce of the United States of America. (Attachments: # 1 Exhibit Proposed Amicus Curiae Brief)(Andersen, Jeffrey) (Entered: 02/23/2024)
02/23/2024	188	CORPORATE Disclosure Statement by The Chamber of Commerce of the United States of America. (Andersen, Jeffrey) (Entered: 02/23/2024)
02/23/2024	189	Unopposed MOTION for Steven A. Engel to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC−21801715 for $150 by The Chamber of Commerce of the United States of America. (Andersen, Jeffrey) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 02/23/2024)
02/23/2024	190	Unopposed MOTION for Michael H. McGinley to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC−21801788 for $150 by The Chamber of Commerce of the United States of America. (Andersen, Jeffrey) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 02/23/2024)
02/26/2024	191	**ENDORSED ORDER granting Defendants' 181 Unopposed Request for Oral argument and the Chamber of Commerce's 187 Unopposed Motion for Leave to File Amicus Brief. Oral argument on Defendants' 180 joint motion will be held before the undersigned in Courtroom 13B, 801 North Florida Avenue, Tampa, Florida, on April 22, 2024, at 1:00 PM. Each side will be permitted 30 minutes. Signed by Judge Kathryn Kimball Mizelle on 2/26/2024. (ZG)** (Entered: 02/26/2024)
02/26/2024	192	**ENDORSED ORDER granting 189 Motion to Appear Pro Hac Vice; granting 190 Motion to Appear Pro Hac Vice. Attorneys Steven A. Engel and Michael H. McGinley may appear pro hac vice on behalf of the Chamber of Commerce of the United States of America. Within twenty−one days of the date of this Order, counsel shall register with the Court's CM/ECF system. Signed by Magistrate Judge Sean P. Flynn on 2/26/2024. (CED)** (Entered: 02/26/2024)
02/26/2024	193	RESPONSE in Opposition re 178 MOTION to Compel Discovery filed by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Attachments: # 1 Exhibit Declaration of James Daniel Kollefrath, # 2 Exhibit Letter from J Mehta to J Estes)(Mehta, Jason) Modified on 2/27/2024 to edit docket text (EAM). (Entered: 02/26/2024)
02/27/2024	194	**ORDER denying 164 Motion to Quash. Signed by Magistrate Judge Sean P. Flynn on 2/27/2024. (CED)** (Entered: 02/27/2024)
02/27/2024	195	***COUNSEL NOTIFIED TO RE−FILE AS A MOTION TO REPLY***NOTICE by Clarissa Zafirov re 193 Response in Opposition to Motion, 178 MOTION to Compel Discovery *from Provider Defendants Regarding Affiliate Providers Relator's Motion for Leave to File Reply* (Estes, Jillian) Modified on 2/28/2024 (CTR). (Entered: 02/27/2024)

02/28/2024	196	MOTION for Leave to File Other Document :Reply *Relator's Motion for Leave to File Reply* by Clarissa Zafirov. (Estes, Jillian) (Entered: 02/28/2024)
02/28/2024	197	MOTION for Parth Y. Patel to Withdraw as Attorney by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Patel, Parth) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 02/28/2024)
02/28/2024	198	RESPONSE in Opposition re 196 MOTION for Leave to File Other Document :Reply *Relator's Motion for Leave to File Reply in Support of Motion to Compel* filed by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Mehta, Jason) (Entered: 02/28/2024)
02/28/2024	199	**ENDORSED ORDER granting 197 Motion to Withdraw as Attorney. Attorney Parth Y. Patel is terminated as counsel of record for Defendants Florida Medical Associates, LLC; Physician Partners, LLC; and AnionTechnologies, LLC and is relieved of any further responsibility in this matter. Signed by Magistrate Judge Sean P. Flynn on 2/28/2024. (CED)** (Entered: 02/28/2024)
03/01/2024	200	**ENDORSED ORDER granting 196 Motion for Leave to File Reply. A reply, not to exceed 5 pages, may be filed on or before March 8, 2024. Signed by Magistrate Judge Sean P. Flynn on 3/1/2024. (Flynn, Sean)** (Entered: 03/01/2024)
03/04/2024	201	Joint MOTION for Miscellaneous Relief, specifically Motion Regarding Briefing Schedule and Issues Related to Defendants' Motion for Judgment on the Pleadings or to Dismiss for Lack of Subject Matter Jurisdiction by Clarissa Zafirov. (Estes, Jillian) (Entered: 03/04/2024)
03/05/2024	202	RESPONSE to Motion re 184 MOTION to Compel Responses to Requests for Production Nos. 4−7 *Relator's Response to Defendants Freedom Health, Inc. and Optimum Healthcare, Inc.'s Motion to Compel* filed by Clarissa Zafirov. (Attachments: # 1 Exhibit A, Declaration of Jillian L. Estes)(Estes, Jillian) (Entered: 03/05/2024)
03/06/2024	203	**ORDER granting in part 201 Joint Motion for Omnibus Briefing Schedule. Signed by Judge Kathryn Kimball Mizelle on 3/6/2024. (ZG)** (Entered: 03/06/2024)
03/08/2024	204	REPLY to Response to Motion re 178 MOTION to Compel Discovery *from Provider Defendants Regarding Affiliate Providers* filed by Clarissa Zafirov. (Attachments: # 1 Exhibit A, Filed Under Seal, # 2 Exhibit B)(Estes, Jillian) (Entered: 03/08/2024)
03/08/2024	205	MOTION for leave to file DOCUMENT *Relator's Motion to File Exhibit Under Seal* under seal by Clarissa Zafirov (Estes, Jillian).Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 03/08/2024)
03/11/2024	206	MOTION for Leave to File Other Document :Reply in Support of Motion to Compel Responses to Requests for Productions Nos. 4−7 by Freedom Health, Inc., Optimum Healthcare, Inc. (Santella, Amanda) Modified text on 3/12/2024 (KME). (Entered: 03/11/2024)
03/15/2024	207	Unopposed MOTION for Miscellaneous Relief, specifically to Participate In Oral Argument as Amicus Curiae by The Chamber of Commerce of the United States of America. (Engel, Steven) (Entered: 03/15/2024)
03/18/2024	208	**ENDORSED ORDER granting Amicus Curiae's 207 Motion to Participate in Oral Argument. The time for oral argument is enlarged to 40 minutes per side and the Chamber is permitted 10 minutes to participate in oral argument. Signed by Judge Kathryn Kimball Mizelle on 3/18/2024.** (Entered: 03/18/2024)
03/18/2024	209	**ENDORSED ORDER granting 206 Motion for Leave to File Reply. A reply, not to exceed 5 pages, may be filed on or before 3/25/2024. Signed by Magistrate Judge Sean P. Flynn on 3/18/2024. (Flynn, Sean)** (Entered: 03/18/2024)
03/18/2024	210	Supplemental MOTION for Miscellaneous Relief, specifically for Continued Sealing / Defendants Freedom Health, Inc. and Optimum Healthcare, Inc.'s Supplemental Motion to Seal ECF No. 204−1 Under Federal Rule 5.2(d)−(e), Local Rule 1.11, and ECF No. 140−1 by Freedom Health, Inc., Optimum Healthcare, Inc.. (Attachments: # 1 Exhibit Declaration of Michelle Molina)(Santella, Amanda) (Entered: 03/18/2024)
03/20/2024	211	SUPPLEMENT re 210 Supplemental MOTION for Miscellaneous Relief, specifically for Continued Sealing / Defendants Freedom Health, Inc. and Optimum Healthcare,

		Inc.'s Supplemental Motion to Seal ECF No. 204−1 Under Federal Rule 5.2(d)−(e), Local Rule 1.11, and ECF No Defendants Freedom Health, Inc. and Optimum Healthcare, Inc.'s Statement of Compliance with Local Rule 3.01(G)(3) Concerning Motion to Seal by Freedom Health, Inc., Optimum Healthcare, Inc. (Santella, Amanda). (Entered: 03/20/2024)
03/21/2024	212	Unopposed MOTION for Jessica Joseph to Withdraw as Attorney by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Joseph, Jessica) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 03/21/2024)
03/21/2024	213	**ENDORSED ORDER granting 212 Motion to Withdraw as Attorney. Attorney Jessica Elizabeth Joseph is terminated as counsel of record for Defendants Physician Partners, LLC; Florida Medical Associates, LLC d/b/a VIPCare; and Anion Technologies, LLC and is relieved of any further responsibility in this matter. Signed by Magistrate Judge Sean P. Flynn on 3/21/2024. (CED)** (Entered: 03/21/2024)
03/22/2024	214	REPLY to Response to Motion re 178 MOTION to Compel Discovery *from Provider Defendants Regarding Affiliate Providers Relator's Reply in Support of Motion to Compel Discovery from Provider Defendants Regarding Affiliate Providers* filed by Clarissa Zafirov. (Estes, Jillian) (Entered: 03/22/2024)
03/22/2024	215	RESPONSE re 211 Supplement *Response to Defendants Freedom Health Inc. and Optimum HealthCare, Inc's Statement of Compliance with Local Rule 3.01(G)(3) Concerning Motion to Seal* filed by Clarissa Zafirov. (Estes, Jillian) (Entered: 03/22/2024)
03/25/2024	216	REPLY to Response to Motion re 184 MOTION to Compel Responses to Requests for Production Nos. 4−7 filed by Freedom Health, Inc. (Santella, Amanda) Modified on 3/26/2024 (JK) (Entered: 03/25/2024)
03/29/2024	217	STATEMENT of Interest re 180 Joint MOTION for Judgment on the Pleadings filed by United States of America. (Keefe, Sean) (Modified on 3/29/2024, to edit text) (BGR). (Entered: 03/29/2024)
03/29/2024	218	MEMORANDUM in opposition re 180 Motion for Judgment on the Pleadings Motion to Dismiss / Lack of Jurisdiction filed by Clarissa Zafirov. (Estes, Jillian) (Entered: 03/29/2024)
03/29/2024	219	MOTION for Leave to File Amicus Curiae Brief of the Anti−Fraud Coalition in Support of Qui Tam Relators filed by Anti−Fraud Coalition. (Grover, Steven) Modified on 4/2/2024 to correct event code and text. (LD). (Entered: 03/29/2024)
03/29/2024	220	CERTIFICATE of interested persons and corporate disclosure statement re 203 Order on Motion for Miscellaneous Relief by Anti−Fraud Coalition. (Grover, Steven) (Entered: 03/29/2024)
03/29/2024	221	***INCORRECT EVENT CODE; COUNSEL TO REFILE UNDER CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT*** CERTIFICATE of counsel re 203 Order on Motion for Miscellaneous Relief by Steven F. Grover on behalf of Anti−Fraud Coalition (Grover, Steven) Modified on 4/2/2024 (LD). (Entered: 03/29/2024)
03/29/2024	222	MOTION for Tejinder Singh to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC−21927942 for $150 by Anti−Fraud Coalition. (Grover, Steven) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 03/29/2024)
03/29/2024	223	MOTION for Jacklyn DeMar to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC−21927952 for $150 by Anti−Fraud Coalition. (Grover, Steven) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 03/29/2024)
03/29/2024	224	REQUEST for oral argument re 203 Order on Motion for Miscellaneous Relief by Anti−Fraud Coalition. (Grover, Steven) (Entered: 03/29/2024)
03/29/2024	225	MEMORANDUM in opposition re 203 Order on Motion for Miscellaneous Relief filed by Anti−Fraud Coalition. (Grover, Steven) (Entered: 03/29/2024)

04/01/2024	226	**ENDORSED ORDER granting (Docs. 222, 223) The Anti−Fraud Coalition's Unopposed Motions to Appear pro hac vice. Attorneys Tejinder Singh and Jacklyn DeMar may appear pro hac vice on behalf of The Anti−Fraud Coalition. Within twenty−one (21) days of the date of this Order, counsel shall comply with Local Rule 2.01(b)(1)(G), which requires registration with the Middle District CM/ECF system.Signed by Magistrate Judge Sean P. Flynn on 4/1/2024. (ACS)** (Entered: 04/01/2024)
04/02/2024	227	**ENDORSED ORDER granting The Anti−Fraud Coalition's 219 Motion for Leave to File Amicus Brief and 224 Request to Participate in Oral Argument. The Anti−Fraud Coalition is permitted 10 minutes to participate in oral argument. Signed by Judge Kathryn Kimball Mizelle on 4/2/2024. (ZG)** (Entered: 04/02/2024)
04/02/2024	228	CERTIFICATE of interested persons and corporate disclosure statement by Anti−Fraud Coalition. (Grover, Steven) (Entered: 04/02/2024)
04/02/2024	229	**ENDORSED ORDER: The Relator states in her Response that "the United States will share time with Relator during oral arguments." *See* (Doc. 218) at 3. But the United States does not request to participate in oral argument from its 217 Statement of Interest. The Relator and the United States are directed to clarify whether the United States intends to request to participate in oral argument no later than April 5, 2024, and if so, who will be arguing for each party. Signed by Judge Kathryn Kimball Mizelle on 4/2/2024. (ZG)** (Entered: 04/02/2024)
04/04/2024	230	Unopposed MOTION for the United States to Participate in Oral Arguments by Clarissa Zafirov. (Estes, Jillian) Modified text on 4/5/2024 (BD). (Entered: 04/04/2024)
04/05/2024	231	**ENDORSED ORDER granting the Relator and the United States's 230 Joint Motion for the United States to Participate in Oral Argument. Signed by Judge Kathryn Kimball Mizelle on 4/5/2024. (ZG)** (Entered: 04/05/2024)
04/12/2024	232	NOTICE of Appearance by Priyanka Ghosh−Murthy on behalf of Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC (Ghosh−Murthy, Priyanka) (Entered: 04/12/2024)
04/12/2024	233	REPLY to Response to Motion re 180 Joint MOTION for Judgment on the Pleadings *or to Dismiss for Lack of Subject−Matter Jurisdiction* MOTION to Dismiss for Lack of Jurisdiction filed by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Mehta, Jason) (Entered: 04/12/2024)
04/12/2024	234	Unopposed MOTION for William T. Buffaloe to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC−21979580 for $150 by Freedom Health, Inc.. (Boyd, Ginger) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 04/12/2024)
04/12/2024	235	Unopposed MOTION for Kelly A. McDonnell to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC−21979592 for $150 by Freedom Health, Inc. and Optimum Healthcare, Inc. (Boyd, Ginger) Motions referred to Magistrate Judge Sean P. Flynn. (Modified on 4/15/2024, to edit text) (BGR). (Entered: 04/12/2024)
04/12/2024	236	Unopposed MOTION for Catherine Nagle to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC−21979598 for $150 by Freedom Health, Inc. and Optimum Healthcare, Inc. (Boyd, Ginger) Motions referred to Magistrate Judge Sean P. Flynn. (Modified on 4/15/2024, to edit text) (BGR). (Entered: 04/12/2024)
04/15/2024	237	**ENDORSED ORDER granting 234 Motion to Appear Pro Hac Vice; granting 235 Motion to Appear Pro Hac Vice; granting 236 Motion to Appear Pro Hac Vice. Attorneys William T. Buffaloe, Kelly A. McDonnell, and Catherine Nagle may appear pro hac vice on behalf of Defendants Freedom Health, Inc. and Optimum Healthcare, Inc. Within twenty−one days from the date of this Order, counsel shall register with the Court's CM/ECF system. Signed by Magistrate Judge Sean P. Flynn on 4/15/2024. (CED)** (Entered: 04/15/2024)
04/22/2024	238	**ENDORSED ORDER re 205 *Relator's Motion to File Exhibit Under Seal*. Pursuant to Local Rule 1.11(b)(8), a motion to seal must include the item, which is sealed pending further investigation. On or before 4/26/2024, Relator is directed**

		to file the item under seal consistent with the Local Rule. Signed by Magistrate Judge Sean P. Flynn on 4/22/2024. (CED) (Entered: 04/22/2024)
04/22/2024	239	MINUTE ENTRY for 4/22/2024 in−person Oral Argument before Judge Kathryn Kimball Mizelle. Court Reporter: Bill Jones (GSO) (Entered: 04/23/2024)
04/23/2024	240	**SUPPLEMENTAL BRIEFING ORDER: To assist in the Court's fully informed resolution of Defendants' motion for judgment on the pleadings, the Parties, their Amicus, and the United States are invited to file supplemental briefs providing additional founding−era historical evidence regarding federal qui tam enforcement. Supplemental briefs are not to exceed 15 pages and are due no later than May 21, 2024. Signed by Judge Kathryn Kimball Mizelle on 4/23/2024. (ZG)** (Entered: 04/23/2024)
04/24/2024	241	SEALED DOCUMENT re 238 Order by Clarissa Zafirov (Estes, Jillian). (Entered: 04/24/2024)
04/25/2024	242	Time Sensitive MOTION to Stay Discovery Pending Resolution of Dispositive Motion by Clarissa Zafirov. (Estes, Jillian) Modified on 4/29/2024 (JK). (Entered: 04/25/2024)
04/26/2024	243	**ENDORSED ORDER: The Court sees much merit to Relator's Motion to Stay Discovery 242. If Defendants intend on filing a written opposition, any such response is due no later than noon on Monday, April 29, 2024, so that the Court can rule on the motion to allow the parties to avoid unnecessary discovery expenses. Signed by Judge Kathryn Kimball Mizelle on 4/26/2024. (ZG)** (Entered: 04/26/2024)
04/29/2024	244	RESPONSE in Opposition re 242 Time Sensitive MOTION to Stay Discovery Pending Resolution of Dispositive Motion filed by Freedom Health, Inc., Optimum Healthcare, Inc. (Drake, Scott) Modified text on 4/29/2024 (JK). (Entered: 04/29/2024)
04/29/2024	245	**ENDORSED ORDER denying Relator's 242 Motion to Stay Discovery. This action has been pending for almost five years. *See* (Doc. 1). During that time, the Parties have expended substantial resources to comply with the Court's discovery deadlines, including the current fact discovery deadline that is quickly coming to a close on May 29, 2024. *See* (Doc. 172). Even considering the resolution of Defendants' pending motion for judgment on the pleadings, the potential harm of imposing a blanket stay of the Court's fact discovery deadline at this late date outweighs the potential benefit. That said, should the Parties agree on a more limited stay, *see, e.g.*, Resp. (Doc. 244) at 5, they may file a motion seeking a stay of other deadlines. Signed by Judge Kathryn Kimball Mizelle on 4/29/2024. (ZG)** (Entered: 04/29/2024)
05/06/2024	246	Unopposed MOTION for Chandra Napora to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC−22063190 for $150 by Clarissa Zafirov. (Estes, Jillian) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 05/06/2024)
05/06/2024	247	Unopposed MOTION for Jennifer M. Verkamp to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC−22063193 for $150 by Clarissa Zafirov. (Estes, Jillian) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 05/06/2024)
05/06/2024	248	Unopposed MOTION for Anne Hayes Hartman to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC−22063196 for $150 by Clarissa Zafirov. (Estes, Jillian) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 05/06/2024)
05/07/2024	249	**ENDORSED ORDER granting 246 Motion to Appear Pro Hac Vice; granting 247 Motion to Appear Pro Hac Vice; granting 248 Motion to Appear Pro Hac Vice. Attorneys Chandra Napora, Jennifer M. Verkamp, and Anne Hayes Hartman may appear pro hac vice on behalf of Plaintiff. Within twenty−one days from the date of this Order, counsel shall register with the Court's CM/ECF system. Signed by Magistrate Judge Sean P. Flynn on 5/7/2024. (CED)** (Entered: 05/07/2024)
05/07/2024	250	NOTICE TO COUNSEL Tejinder Singh and Jacklyn DeMar Local Rule 2.01(c), Special Admission − Submit a Pro Hac Vice E−File Registration through PACER.

		Visit www.flmd.uscourts.gov/for−lawyers for details. (Signed by Deputy Clerk). (GL) (Entered: 05/07/2024)
05/13/2024	251	MOTION for Miscellaneous Relief, specifically Motion for Leave to File Sur−Reply by Clarissa Zafirov. (Estes, Jillian) (Entered: 05/13/2024)
05/14/2024	252	Joint MOTION to Stay Discovery Pending Resolution of Defendants' Dispositive Motion by Clarissa Zafirov. (Estes, Jillian) Modified on 5/15/2024 to edit docket text (EAM). (Entered: 05/14/2024)
05/15/2024	253	MOTION to Compel Nonparty− The United States Department of Health and Human Services, Office of Inspector General− To Comply with Subpoena by Freedom Health, Inc., Optimum Healthcare, Inc.. (Attachments: # 1 Declaration of Benjamin D. Singer In Support of Motion to Compel, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit C (Continued), # 6 Exhibit D, # 7 Exhibit E, # 8 Exhibit F, # 9 Exhibit G, # 10 Exhibit H)(Singer, Benjamin) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 05/15/2024)
05/17/2024	254	**ENDORSED ORDER granting the Parties' 252 Joint Motion to Stay Discovery Pending Resolution of Defendants' 180 Dispositive Motion. All deadlines other than the fact discovery deadline (which shall remain May 29, 2024, subject to the Parties' agreed upon extension to complete certain depositions by June 14, 2024) are stayed pending resolution of Defendants' dispositive motion. If applicable, within 21 days of the motion being resolved, the Parties must meet and confer and propose a schedule for the resumption of any remaining deadlines. Signed by Judge Kathryn Kimball Mizelle on 5/17/2024. (ZG)** (Entered: 05/17/2024)
05/20/2024	255	Time Sensitive MOTION for Miscellaneous Relief, specifically Status Conference *Relator's Time−Sensitive Motion for Status Conference* by Clarissa Zafirov. (Estes, Jillian) (Entered: 05/20/2024)
05/21/2024	256	Time Sensitive MOTION to Stay Discovery by United States of America. (Keefe, Sean) (Entered: 05/21/2024)
05/21/2024	257	**ENDORSED ORDER: If Defendants intend on filing a written opposition to the United States's 256 Motion to Stay Discovery, any such response is due no later than EOD on Wednesday, May 22, 2024. Signed by Judge Kathryn Kimball Mizelle on 5/21/2024. (ZG)** (Entered: 05/21/2024)
05/21/2024	258	NOTICE of Appearance by Jonathan Kroner on behalf of Anti−Fraud Coalition (Kroner, Jonathan) (Entered: 05/21/2024)
05/21/2024	259	NOTICE by United States of America *(of Intervention)* (Keefe, Sean) (Entered: 05/21/2024)
05/21/2024	260	SUPPLEMENT re 240 Order *(Brief)* by United States of America. (Keefe, Sean) (Entered: 05/21/2024)
05/21/2024	261	SUPPLEMENT re 240 Order by Anti−Fraud Coalition. (Singh, Tejinder) (Entered: 05/21/2024)
05/21/2024	262	SUPPLEMENT re 240 Order *Amicus Curiae Brief* by The Chamber of Commerce of the United States of America. (Engel, Steven) (Entered: 05/21/2024)
05/21/2024	263	RESPONSE in Opposition re 255 Time Sensitive MOTION for Miscellaneous Relief, specifically Status Conference *Relator's Time−Sensitive Motion for Status Conference* filed by Freedom Health, Inc., Optimum Healthcare, Inc.. (Attachments: # 1 Declaration of Lucile H. Cohen in Support)(Drake, Scott) (Entered: 05/21/2024)
05/21/2024	264	SUPPLEMENT re 240 Order *Relator's Supplemental Briefing on Founding Era Historical Evidence Regarding Federal Qui Tam Enforcement* by Clarissa Zafirov. (Attachments: # 1 Exhibit Declaration of Jennifer M. Verkamp, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 Exhibit 11, # 14 Exhibit 12, # 15 Exhibit 13, # 16 Exhibit 14, # 17 Exhibit 15, # 18 Exhibit 16, # 19 Exhibit 17, # 20 Exhibit 18)(Verkamp, Jennifer) (Entered: 05/21/2024)

05/21/2024	265	RESPONSE in Opposition re 255 Time Sensitive MOTION for Miscellaneous Relief, specifically Status Conference *Relator's Time−Sensitive Motion for Status Conference* filed by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Mehta, Jason) (Entered: 05/21/2024)
05/21/2024	266	SUPPLEMENT re 240 Order *Brief* by Physician Partners, LLC. (Mehta, Jason) (Entered: 05/21/2024)
05/22/2024	267	NOTICE TO COUNSEL Jacklyn N. DeMar TO COMPLY with Local Rule 2.01(c), Special Admission − Submit a Pro Hac Vice E−File Registration through PACER. Visit www.flmd.uscourts.gov/for−lawyers for details (Signed by Deputy Clerk). (LSS) (Entered: 05/22/2024)
05/22/2024	268	**ORDER denying 255 Time−Sensitive Motion for Status Conference. Signed by Magistrate Judge Sean P. Flynn on 5/22/2024. (CED)** (Entered: 05/22/2024)
05/22/2024	269	RESPONSE in Opposition re 256 Time Sensitive MOTION to Stay Discovery filed by Freedom Health, Inc., Optimum Healthcare, Inc.. (Singer, Benjamin) (Entered: 05/22/2024)
05/22/2024	271	**ENDORSED ORDER granting 251 Motion for Leave to File Sur−Reply. Relator may file a sur−reply, not to exceed five pages, by EOD on 5/28/2024. Signed by Magistrate Judge Sean P. Flynn on 5/22/2024. (CED)** (Entered: 05/22/2024)
05/22/2024	272	**ORDER granting 205 Motion to Seal; granting 210 Supplemental Motion to Seal. Signed by Magistrate Judge Sean P. Flynn on 5/22/2024. (CED)** (Entered: 05/22/2024)
05/22/2024	273	**ORDER re 184 MOTION to Compel Responses to Requests for Production Nos. 4−7 filed by Optimum Healthcare, Inc., Freedom Health, Inc. Relator is directed to file her privilege log by EOD on 5/28/2024. Signed by Magistrate Judge Sean P. Flynn on 5/22/2024. (CED)** (Entered: 05/22/2024)
05/24/2024	274	**ORDER denying 256 Motion to Stay Discovery. Signed by Magistrate Judge Sean P. Flynn on 5/24/2024. (CED)** (Entered: 05/24/2024)
05/28/2024	275	NOTICE of Filing Privilege Log by Clarissa Zafirov re 273 Order (Attachments: # 1 Exhibit A)(Lischak, Jonathan) Modified on 5/29/2024 to edit docket text (JDR). (Entered: 05/28/2024)
05/28/2024	276	SUR−REPLY to Response to Motion re 178 MOTION to Compel Discovery *from Provider Defendants Regarding Affiliate Providers Relator's Sur−Reply in Support of Motion to Compel Discovery Regarding Affiliate Providers* filed by Clarissa Zafirov. (Lischak, Jonathan) Modified on 5/29/2024 to edit docket text(JDR). (Entered: 05/28/2024)
05/28/2024	277	*Relator's* MOTION to file DOCUMENT under seal by Clarissa Zafirov (Attachments: # 1 Proposed Sealed Item A, Excerpts from the Transcript of the Deposition of Emily Gallman, # 2 Proposed Sealed Item B, Excerpts from the Transcript of the Deposition of Sajitha Johnson, # 3 Proposed Sealed Item C, Excerpts from the Transcript of the Deposition of Dennis Mihale, # 4 Proposed Sealed Item D, Excerpts from the Transcript of the 30(b)(6) Deposition of Freedom Health, Inc.)(Lischak, Jonathan).Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 05/28/2024)
05/29/2024	278	RESPONSE in Opposition re 253 MOTION to Compel Nonparty− The United States Department of Health and Human Services, Office of Inspector General− To Comply with Subpoena filed by United States of America. (Attachments: # 1 Declaration of Candace Ashford)(Keefe, Sean) (Entered: 05/29/2024)
05/29/2024	279	MOTION to Compel Discovery Relator's Motion to Compel Discovery from Freedom Defendants and Request for Oral Argument by Clarissa Zafirov. (Attachments: # 1 Exhibit A, Defendants Freedom Health, Inc. and Optimum Healthcare, Inc.'s Responses and Objections to Relator's First Requests for Production, # 2 Exhibit B, Defendants Freedom Health, Inc. and Optimum Healthcare, Inc.'s Responses and Objections to Relator's Second Set of Requests for Production)(Estes, Jillian) Motions referred to Magistrate Judge Sean P. Flynn. Modified docket text on 5/30/2024 (JTM). (Entered: 05/29/2024)

05/29/2024	280	MOTION to Compel Production of Documents in Response to Request for Production No.11 by Freedom Health, Inc., Optimum Healthcare, Inc. (Attachments: # 1 Declaration of Scott Drake In Support, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G)(Drake, Scott) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 05/29/2024)
05/29/2024	281	MOTION to Compel Discovery Relator's Motion to Compel Discovery from Provider Defendants and Motion for Sanctions and Request for Oral Argument by Clarissa Zafirov. (Attachments: # 1 Exhibit A, Physician Partners' Response and Objections to to Relator's Second RFP, # 2 Exhibit B, VIPcare's Response and Objections to to Relator's Second RFP, # 3 Exhibit C, Anion Technologies Response and Objections to to Relator's Second RFP, # 4 Exhibit D, Physician Partners' Response and Objections to Relator's First RFP, # 5 Exhibit E, VIPcare's Response and Objections to Relator's First RFP, # 6 Exhibit F, Anion Technologies Response and Objections to Relator's First RFP)(Estes, Jillian) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 05/29/2024)
06/05/2024	282	Unopposed MOTION for Extension of Time to File Motion to Seal by Freedom Health, Inc., Optimum Healthcare, Inc. (Santella, Amanda) Modified text on 6/6/2024 (GL). (Entered: 06/05/2024)
06/05/2024	283	Unopposed MOTION for Leave to File Other Document: Reply in Support of Motion to Compel Nonparty –– The United States Department of Health and Human Services, Office of Inspector General –– to Comply With Subpoena by Freedom Health, Inc., Optimum Healthcare, Inc. (Drake, Scott) Modified text on 6/6/2024 (GL). (Entered: 06/05/2024)
06/05/2024	284	**ORDER granting in part and denying in part 184 Motion to Compel. Signed by Magistrate Judge Sean P. Flynn on 6/5/2024. (CED)** (Entered: 06/05/2024)
06/05/2024	285	NOTICE of hearing: re: 281 MOTION to Compel Discovery *Relator's Motion to Compel Discovery from Provider Defendants and Motion for Sanctions and Request for Oral Argument*; 178 MOTION to Compel Discovery *from Provider Defendants Regarding Affiliate Providers*; 279 MOTION to Compel Discovery *Relator's Motion to Compel Discovery from Freedom Defendants and Request for Oral Argument*; 280 MOTION to Compel Production of Documents in Response to Request for Production No. 11. Discovery Hearing set for 6/18/2024 at 10:00 AM by Zoom Video Conference before Magistrate Judge Sean P. Flynn. The Court will email the parties the Zoom information prior to the hearing. (CED) (Entered: 06/05/2024)
06/07/2024	286	NOTICE of Appearance by Samantha Marie Gerencir on behalf of Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC (Gerencir, Samantha) (Entered: 06/07/2024)
06/07/2024	287	**ENDORSED ORDER granting 282 Motion for Extension of Time to File. Freedom Defendants may file their supplemental motion to seal on or before 6/14/2024. Signed by Magistrate Judge Sean P. Flynn on 6/7/2024. (CED)** (Entered: 06/07/2024)
06/07/2024	288	**ENDORSED ORDER granting 283 Motion for Leave to File Reply. Freedom Defendants may file a reply of no more than five pages on or before 6/14/2024. Signed by Magistrate Judge Sean P. Flynn on 6/7/2024. (CED)** (Entered: 06/07/2024)
06/12/2024	290	RESPONSE in Opposition re 281 MOTION to Compel Discovery from Provider Defendants and Motion for Sanctions and Request for Oral Argument filed by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Attachments: # 1 Exhibit 1 − Declaration of Jason Mehta, # 2 Exhibit 2 − Declaration of Sriram Sundaramoorthy, # 3 Exhibit 3 − Declaration of Evgeny Koloda)(Mehta, Jason) Modified text on 6/13/2024 (JK). (Entered: 06/12/2024)
06/12/2024	291	Unopposed MOTION to file *Excerpts from the Transcript of the Deposition of Clarissa Zafirov* under seal by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC (Attachments: # 1 Proposed Sealed Item)(Mehta, Jason). Motions referred to Magistrate Judge Sean P. Flynn. Modified on 6/13/2024 (JK). (Entered: 06/12/2024)

06/12/2024	292	RESPONSE in Opposition re 279 MOTION to Compel Discovery from Freedom Defendants and Request for Oral Argument filed by Freedom Health, Inc., Optimum Healthcare, Inc. (Attachments: # 1 Declaration of Radha Rai in Support of Opposition to Motion to Compel [SEALED], # 2 Declaration of Amanda M. Santella in Support of Opposition to Motion to Compel, # 3 Exhibit − A, # 4 Exhibit − B, # 5 Exhibit − C, # 6 Exhibit − D, # 7 Exhibit − E, # 8 Exhibit − F, # 9 Exhibit − G, # 10 Exhibit − H)(Santella, Amanda) Modified text on 6/13/2024 (JK). (Entered: 06/12/2024)
06/12/2024	293	RESPONSE in Opposition re 280 MOTION to Compel Production of Documents in Response to Request for Production No.11 filed by Clarissa Zafirov. (Attachments: # 1 Exhibit A, Protocol Relating to Privileged Responsive Materials)(Estes, Jillian) Modified text on 6/13/2024 (JK). (Entered: 06/12/2024)
06/12/2024	294	MOTION to file DOCUMENT under seal by Freedom Health, Inc., Optimum Healthcare, Inc. (Attachments: # 1 Declaration of Radha Rai in Support of Motion to Seal, # 2 Proposed Sealed Item : Declaration of Radha Rai in Support of Opposition to Motion to Compel)(Drake, Scott).Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 06/12/2024)
06/14/2024	295	NOTICE of supplemental authority re 264 Supplement *Relator's Supplemental Authority* by Clarissa Zafirov. (Verkamp, Jennifer) (Entered: 06/14/2024)
06/14/2024	296	Supplemental MOTION for Miscellaneous Relief, specifically for Continued Sealing / *Defendants Freedom Health, Inc. and Optimum Healthcare, Inc.'s Supplemental Motion to Seal Under Federal Rule 5.2(D)−(E), Local Rule 1.11, and ECF 140−1* by Freedom Health, Inc., Optimum Healthcare, Inc.. (Attachments: # 1 Declaration of Michelle Molina in Support of Defendants Freedom Health, Inc. and Optimum Healthcare, Inc.'s Supplemental Motion To Seal Under Federal Rule 5.2(D)−(E), Local Rule 1.11, and ECF No. 140−1)(Drake, Scott) (Entered: 06/14/2024)
06/14/2024	297	SUPPLEMENT re 294 MOTION to file DOCUMENT under seal / *Defendants Freedom Health, Inc. and Optimum Healthcare, Inc.'s Statement of Compliance with Local Rule 3.01(G)(3) Concerning Motion to Seal* by Freedom Health, Inc., Optimum Healthcare, Inc.. (Drake, Scott) (Entered: 06/14/2024)
06/14/2024	298	REPLY to Response to Motion re 253 MOTION to Compel Nonparty− The United States Department of Health and Human Services, Office of Inspector General− To Comply with Subpoena filed by Freedom Health, Inc., Optimum Healthcare, Inc.. (Attachments: # 1 Exhibit A)(Singer, Benjamin) (Entered: 06/14/2024)
06/18/2024	299	**ENDORSED ORDER granting 291 Motion to seal. Signed by Magistrate Judge Sean P. Flynn on 6/18/2024. (Flynn, Sean)** (Entered: 06/18/2024)
06/18/2024	300	Unopposed MOTION for Leave to File Other Document: Sur−Reply by United States of America. (Keefe, Sean) Modified text on 6/18/2024 (GL). (Entered: 06/18/2024)
06/18/2024	301	**ENDORSED ORDER granting 300 Motion for Leave to File Sur−Reply. A sur−reply, not to exceed five pages, may be filed on or before June 26, 2024. Signed by Magistrate Judge Sean P. Flynn on 6/18/2024. (Flynn, Sean)** (Entered: 06/18/2024)
06/18/2024	302	Minute Entry. Virtual Proceedings held before Magistrate Judge Sean P. Flynn: Discovery Hearing held on 6/18/2024. (DIGITAL) (EJC) (Entered: 06/18/2024)
06/18/2024	303	Unopposed MOTION for Leave to File Other Document :Response to Notice of Supplemental Authority by All Defendants. (Mehta, Jason) (Entered: 06/18/2024)
06/19/2024	304	**ENDORSED ORDER granting Defendants' 303 Unopposed Motion for Leave to File a Response to Relator's 295 Notice of Supplemental Authority. Defendants may file a response, no longer than two pages, by June 24, 2024. Signed by Judge Kathryn Kimball Mizelle on 6/19/2024. (ZG)** (Entered: 06/19/2024)
06/24/2024	305	RESPONSE re 295 NOTICE of Filing Supplemental Authority filed by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC. (Mehta, Jason) (Entered: 06/24/2024)
06/24/2024	306	MOTION to Quash Relator's Third−Party Subpoena and Motion for Protective Order by Freedom Health, Inc., Optimum Healthcare, Inc. (Attachments: # 1 Declaration of Catherine Nagle, # 2 Exhibit A)(Drake, Scott) Motions referred to Magistrate Judge

		Sean P. Flynn. Added MOTION for Protective Order on 6/25/2024 (LNR). (Chambers notified)Modified on 6/25/2024 (CTR). (Entered: 06/24/2024)
06/25/2024	307	**ENDORSED ORDER re 306 MOTION to Quash Relator's Third−Party Subpoena and Motion for Protective Order MOTION for Protective Order filed by Optimum Healthcare, Inc., Freedom Health, Inc. Relator is directed to respond to this Motion by close of business on 6/26/2024. Signed by Magistrate Judge Sean P. Flynn on 6/25/2024. (CED)** (Entered: 06/25/2024)
06/26/2024	308	NOTICE of Appearance by Shane K. Warner on behalf of Mital Panara (Warner, Shane) (Entered: 06/26/2024)
06/26/2024	309	MOTION for Joinder by Mital Panara. (Attachments: # 1 Affidavit)(Warner, Shane) (Entered: 06/26/2024)
06/26/2024	310	RESPONSE re 298 Reply to Response to Motion filed by United States of America. (Keefe, Sean) (Entered: 06/26/2024)
06/26/2024	311	RESPONSE in Opposition re 306 MOTION to Quash Relator's Third−Party Subpoena and Motion for Protective Order filed by Clarissa Zafirov. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Estes, Jillian) Modified text on 6/28/2024 (AM). (Entered: 06/26/2024)
06/27/2024	312	**ORDER granting in part and denying in part 280 Motion to Compel Production of Documents in Response to Request for Production No. 11. Signed by Magistrate Judge Sean P. Flynn on 6/27/2024. (CED)** (Entered: 06/27/2024)
06/28/2024	313	**ORDER denying 306 Motion to Quash and Motion for Protective Order; denying 309 Joinder in Defendants' Motion. Signed by Magistrate Judge Sean P. Flynn on 6/28/2024. (CED)** (Entered: 06/28/2024)
06/28/2024	314	JOINT Notice of Filing Deposition Testimony by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC re 178 MOTION to Compel Discovery (Swanson, Joseph) (Modified on 7/1/2024, to edit text) (BGR). (Entered: 06/28/2024)
06/28/2024	315	Unopposed MOTION, and Incorporated Legal Memorandum, to File Testimony under Seal Pursuant to Local Rule 1.11 and the Stipulated Protective Order by Anion Technologies, LLC, Florida Medical Associates, LLC, Physician Partners, LLC (Attachments: # 1 Proposed Sealed Item Deposition Transcript of Daniel Kollefrath, # 2 Proposed Sealed Item Excerpts from Deposition Transcript of Emily Gallman, # 3 Proposed Sealed Item Excerpts from Deposition Transcript of Christopher Barber)(Swanson, Joseph).Motions referred to Magistrate Judge Sean P. Flynn. (Modified on 7/1/2024, to edit text) (BGR). (Entered: 06/28/2024)
07/02/2024	316	**ORDER re 281 MOTION to Compel Discovery *Relator's Motion to Compel Discovery from Provider Defendants and Motion for Sanctions and Request for Oral Argument* filed by Clarissa Zafirov, 279 MOTION to Compel Discovery *Relator's Motion to Compel Discovery from Freedom Defendants and Request for Oral Argument* filed by Clarissa Zafirov. The parties' deadline to inform the Court of whether they have reached an agreement on the number of medical records to be produced is extended to 08/23/2024. See Order for details. Signed by Magistrate Judge Sean P. Flynn on 7/2/2024. (CED)** (Entered: 07/02/2024)
07/03/2024	317	*SEALED* TRANSCRIPT of motion hearing held on June 18, 2024 before Magistrate Judge Sean P. Flynn. Court Reporter/Transcriber: David J. Collier. Email address: david_collier@flmd.uscourts.gov. Telephone number: (813) 301−5575. NOTICE TO THE PARTIES − The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such notice is filed, the transcript may be made remotely available to the public without redaction after ninety (90) calendar days. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 7/24/2024. Redacted Transcript Deadline set for 8/5/2024. Release of Transcript Restriction set for 10/1/2024. (DJC) Modified on 8/21/2024 to add sealed restriction. Court ordered transcript redacted for

		public docket. See redacted transcript at 334 (KE). (Entered: 07/03/2024)
07/03/2024	318	MOTION to Compel Production of Communications in Response to Request for Production NO. 6 by Freedom Health, Inc., Optimum Healthcare, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Drake, Scott) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 07/03/2024)
07/08/2024	319	Unopposed MOTION for Extension of Time to File Response/Reply as to 318 MOTION to Compel Production of Communications in Response to Request for Production NO. 6 *Relator's Unopposed Motion for Extension of Deadline to Respond to Freedom Defendants' Motion to Compel* by Clarissa Zafirov. (Estes, Jillian) (Entered: 07/08/2024)
07/08/2024	320	**ENDORSED ORDER granting the Relator's 319 Unopposed Motion for Extension of Time to Respond to (Doc. 318). The Relator must respond by July 24, 2024. Signed by Judge Kathryn Kimball Mizelle on 7/8/2024. (ZG)** (Entered: 07/08/2024)
07/10/2024	321	NOTICE of intent to request redaction by Amanda M. Santella re 317 Transcript. Electronic notification sent to Court Reporter David Collier. (Santella, Amanda) (Entered: 07/10/2024)
07/24/2024	322	MOTION to Redact 317 Transcript (electronic notification sent to Court Reporter David Collier) by Freedom Health, Inc., Optimum Healthcare, Inc.. (Santella, Amanda) Motions referred to Magistrate Judge Sean P. Flynn. (Entered: 07/24/2024)
07/24/2024	323	RESPONSE in Opposition re 318 MOTION to Compel Production of Communications in Response to Request for Production NO. 6 filed by Clarissa Zafirov. (Attachments: # 1 Exhibit A)(Estes, Jillian) (Entered: 07/24/2024)
07/30/2024	324	MOTION for Frederick M. Morgan, Jr. to Withdraw as Attorney by Clarissa Zafirov. (Morgan, Frederick) Motions referred to Magistrate Judge Sean P. Flynn. Modified text on 7/30/2024 (JK). (Entered: 07/30/2024)
07/30/2024	325	**ENDORSED ORDER granting 324 Motion to Withdraw as Attorney. Attorney Frederick M. Morgan, Jr terminated. Signed by Magistrate Judge Sean P. Flynn on 7/30/2024. (Flynn, Sean)** (Entered: 07/30/2024)
07/31/2024	326	MOTION for Leave to File Other Document :Reply in Support of Motion to Compel Production of Communications in Response to Request for Production No 6 by Freedom Health, Inc., Optimum Healthcare, Inc.(Drake, Scott). (Entered: 07/31/2024)
08/06/2024	327	RESPONSE in Opposition re 322 MOTION to Redact 317 Transcript (electronic notification sent to Court Reporter David Collier) filed by Clarissa Zafirov. (Estes, Jillian) (Entered: 08/06/2024)
08/07/2024	328	**ENDORSED ORDER granting 315 Unopposed Motion to Seal. The Sealed Documents (Docs. 315−1, 315−2, 315−3) shall remain under seal. The seal shall expire ninety days after the case is closed and all appeals have been exhausted. Signed by Magistrate Judge Sean P. Flynn on 8/7/2024. (CED)** (Entered: 08/07/2024)
08/19/2024	330	**ENDORSED ORDER granting 326 Motion for Leave to File Reply. Relator has failed to respond to the motion, and the time to do so has expired. As a result, the motion is deemed unopposed. *See* L.R. 3.01(c), M.D. Fla. Signed by Magistrate Judge Sean P. Flynn on 8/19/2024. (CED)** (Entered: 08/19/2024)
08/20/2024	331	**ORDER granting 294 Motion to Seal. Signed by Magistrate Judge Sean P. Flynn on 8/20/2024. (CED)** (Entered: 08/20/2024)
08/20/2024	332	**ORDER granting in part and denying in part 277 Motion to Seal; granting 296 Supplemental Motion to Seal. Signed by Magistrate Judge Sean P. Flynn on 8/20/2024. (CED)** (Entered: 08/20/2024)
08/20/2024	333	**ORDER granting in part and denying in part 322 Motion to Redact Transcript (electronic notification sent to Court Reporter David Collier). Signed by Magistrate Judge Sean P. Flynn on 8/20/2024. (CED)** (Entered: 08/20/2024)

08/21/2024	334	REDACTED TRANSCRIPT of motion hearing (via Zoom videoconference) held on June 18, 2024 before Magistrate Judge Sean P. Flynn, re 317 Transcript,. Court Reporter/Transcriber: David J. Collier. Email address: david_collier@flmd.uscourts.gov. Telephone number: 813−301−5575. (DJC) (Entered: 08/21/2024)
08/22/2024	335	THIRD NOTICE TO COUNSEL Jacklyn N. DeMar Local Rule 2.01(c), Special Admission − Submit a Pro Hac Vice E−File Registration through PACER. Visit www.flmd.uscourts.gov/for−lawyers for details (Signed by Deputy Clerk). (JK) (Entered: 08/22/2024)
08/22/2024	336	REPLY to Response to Motion re 318 MOTION to Compel Production of Communications in Response to Request for Production NO. 6 */ Reply in Support of Motion to Compel Production of Communications in Response to Request for Production NO. 6* filed by Freedom Health, Inc., Optimum Healthcare, Inc.. (Drake, Scott) (Entered: 08/22/2024)
08/23/2024	337	NOTICE by Anion Technologies, LLC, Florida Medical Associates, LLC, Freedom Health, Inc., Optimum Healthcare, Inc., Physician Partners, LLC *and Plaintiff/Relator jointly on Status of Negotiations Regarding Production of Medical Records* (Swanson, Joseph) (Entered: 08/23/2024)
09/03/2024	338	**ORDER granting 178 Motion to Compel. Signed by Magistrate Judge Sean P. Flynn on 9/3/2024. (CED)** (Entered: 09/03/2024)
09/03/2024	339	MOTION for Leave to File Statement of Interest by United States of America. (Keefe, Sean) (Entered: 09/03/2024)
09/09/2024	340	**ENDORSED ORDER: The United States' motion 339 for leave to file a statement of interest is GRANTED. The United States must file its statement of interest by September 16, 2024. Signed by Judge Kathryn Kimball Mizelle on 9/9/2024. (BTM)** (Entered: 09/09/2024)
09/12/2024	341	NOTICE of supplemental authority re 217 Response to motion by United States of America. (Keefe, Sean) (Entered: 09/12/2024)
09/13/2024	342	Joint NOTICE on Status of negotiations Regarding Production of Medical Records by Clarissa Zafirov (Estes, Jillian) Modified on 9/16/2024 as to docket text (ARL). (Entered: 09/13/2024)
09/16/2024	343	RESPONSE to Motion re 318 MOTION to Compel Production of Communications in Response to Request for Production NO. 6 *(Statement of Interest)* filed by United States of America. (Keefe, Sean) (Entered: 09/16/2024)
09/19/2024	344	MOTION for Leave to File Response to Government's Statement of Interest by Freedom Health, Inc., Optimum Healthcare, Inc. (Drake, Scott) Modified text on 9/20/2024 (KME). (Entered: 09/19/2024)
09/30/2024	345	TRANSCRIPT of MISCELLANEOUS HEARING held on APRIL 22, 2024 before Judge KATHRYN K. MIZELLE. Court Reporter/Transcriber: Bill Jones. Email address: Bill_Jones@flmd.uscourts.gov. Telephone number: 813−301−5024. NOTICE TO THE PARTIES − The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such notice is filed, the transcript may be made remotely available to the public without redaction after ninety (90) calendar days. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 10/21/2024. Redacted Transcript Deadline set for 10/31/2024. Release of Transcript Restriction set for 12/30/2024. (SAM) (Entered: 09/30/2024)
09/30/2024	346	**ORDER: The defendants' 180 Motion for Judgment on the Pleadings is GRANTED. The Clerk is directed to ENTER JUDGMENT for the defendants and against Zafirov, which shall read "This case is dismissed with prejudice as to Dr. Clarissa Zafirov." The Clerk is directed to terminate any pending motions and deadlines, and to CLOSE the case. Signed by Judge Kathryn Kimball Mizelle on 9/30/2024. (BTM)** (Entered: 09/30/2024)

09/30/2024	347	**JUDGMENT in favor of Anion Technologies, LLC, Florida Medical Associates, LLC, Freedom Health, Inc., Optimum Healthcare, Inc., Physician Partners, LLC against Clarissa Zafirov. This case is dismissed with prejudice as to Dr. Clarissa Zafirov. Signed by Deputy Clerk on 9/30/2024. (JNB)** (Entered: 09/30/2024)
09/30/2024	348	NOTICE of Local Rule 1.11(e), which provides that, unless an order states another time, a seal under Rule 1.11 expires ninety days after a case is closed and all appeals are exhausted. To prevent the content of a sealed item from appearing on the docket after the seal expires, a party or interested non−party must move for relief before the seal expires. (Signed by Deputy Clerk). (JNB) (Entered: 09/30/2024)
10/29/2024	349	NOTICE OF APPEAL as to 347 Judgment, 346 Order on Motion for Judgment on the Pleadings by United States of America. Filing fee not paid. (Keefe, Sean) (Entered: 10/29/2024)
10/29/2024	350	NOTICE OF APPEAL as to 347 Judgment, 346 Order on Motion for Judgment on the Pleadings by Clarissa Zafirov. Filing fee $ 605, receipt number AFLMDC−22665973. (Estes, Jillian) (Entered: 10/29/2024)
10/30/2024	351	TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of appeal, docket sheet, order/judgment being appealed, and motion, if applicable to USCA re 349 Notice of Appeal. (MGB) (Entered: 10/30/2024)
10/30/2024	352	TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of appeal, docket sheet, order/judgment being appealed, and motion, if applicable to USCA re 350 Notice of Appeal. (MGB) (Entered: 10/30/2024)
11/13/2024	353	TRANSCRIPT information form filed by United States of America re 349 Notice of Appeal. USCA number: 24−13581. No transcript(s) requested. (Keefe, Sean) (Entered: 11/13/2024)
11/13/2024	354	TRANSCRIPT information form filed by Clarissa Zafirov re 350 Notice of Appeal. USCA number: 24−13581. No transcript(s) requested. (Estes, Jillian) (Entered: 11/13/2024)

FILED

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

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MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA *ex rel.* DR. CLARISSA ZAFIROV, Plaintiff/Relator v. FLORIDA MEDICAL ASSOCIATES, LLC, d/b/a VIPCARE; PHYSICIAN PARTNERS, LLC, PHYSICIAN PARTNERS SPECIALITY SERVICES, LLC; SUN LABS USA, INC. ANION TECHNOLOGIES, LLC; ANTHEM, INC.; FREEDOM HEALTH, INC.; OPTIMUM HEALTHCARE, INC.; and SIDDHARTHA PAGIDIPATI, Defendants.	CASE NO. 8:19 cv 1236 T 23 SPF COMPLAINT ALLEGING VIOLATIONS OF THE FEDERAL FALSE CLAIMS ACT **FILED IN CAMERA AND UNDER SEAL -** **DO NOT PUT ON PACER**

1. DR. CLARISSA ZAFIROV ("Relator") brings this action on behalf of the UNITED STATES OF AMERICA ("UNITED STATES") for treble damages and civil penalties arising from the Defendants' conduct in violation of the Federal False Claims Act ("FCA"), 31 U.S.C. § 3729, *et seq.*

2. The violations of the FCA set forth herein have taken place for at least the preceding ten years from the date of the filing of this Complaint.

3. The FCA provides that any person who knowingly submits or causes to be submitted a false or fraudulent claim to a governmental entity for payment or approval is liable for a civil penalty for each such claim, plus three times the amount of the damages suffered by the government. The Act allows any person having information regarding a false or fraudulent claim against the government to bring an action on behalf of herself (the "*qui tam* plaintiff" or "relator") and the government and to share in any recovery.

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4. The schemes described hereinafter give rise to FCA violations made by Defendants for submitting and causing the submission of false claims in violation of 31 U.S.C. § 3729(a)(1)(A), using and causing the use of false records and statements material to false claims in violation of § 3729(a)(1)(B), and using or causing the use of false records and statements material to the obligation to repay overpayments and avoiding the obligation to repay overpayments in violation of § 3729(a)(1)(G).

THE PARTIES

5. The UNITED STATES operates and administers the Medicare and Medicaid programs through the Department of Health and Human Services ("HHS"), which includes its operating division, Centers for Medicare and Medicaid Services ("CMS"). At all times relevant to this Complaint, CMS administered and supervised the Medicare Part C Program and made Medicare Advantage ("MA") risk-adjustment payments under Part C of the Program.

6. *Qui tam* Plaintiff/Relator DR. CLARISSA ZAFIROV is a resident of the state of Florida and a Board-certified Family Medicine physician licensed to practice in Florida. Dr. Zafirov has been an employee of Defendant Florida Medical Associates d/b/a VIPcare since 2018. Although her employment agreement is with FMA, her paychecks are issued by Sun Labs USA, Inc. as her employer.

7. The "Provider Organization ("PO") Defendants" are as follows:

a. Defendant FLORIDA MEDICAL ASSOCIATES, LLC d/b/a VIPcare (hereinafter referred to as "VIPcare") is a Florida Limited Liability Company whose Articles of Organization were filed on Feb. 22, 2006, and whose listed principal address is 601 S. Harbour Island Blvd, Suite 213, Tampa, Florida. It filed its fictitious name

registration to do business as "VIPCARE" with the State of Florida Secretary of State on Feb. 26, 2018.

b. Defendant PHYSICIAN PARTNERS, LLC, (hereinafter referred to as "PP") is a Florida Limited Liability Company whose Articles of Organization were filed on June 26, 2012, and whose listed principal address is 601 S. Harbour Island Boulevard, Suite 200, Tampa, Florida.

c. Defendant PHYSICIAN PARTNERS SPECIALTY SERVICES, LLC f/k/a FMA Specialist, LLC (hereinafter referred to as "PPS") is a Florida Limited Liability Company whose Articles of Organization were filed on Dec. 28, 2012, and whose listed principal office address is 1714 SW 17th St., Ocala, Florida. PPS was formerly known as FMA Specialist, LLC, but filed a name change amendment to PHYSICIAN PARTNERS SPECIALTY SERVICES, LLC, with the Florida Secretary of State on April 27, 2015.

d. Defendant SUN LABS USA, INC. is a Florida corporation with its principal place of business at 1010 N. Florida Ave., Tampa, Florida. The President of Sun Labs USA, Inc. is Devaiah Pagidipati; Defendant Sidd Pagidipati is identified as an officer. The Articles of Incorporation state that it was "organized for the sole and specific purpose of engaging in every phase and aspect of the business of providing laboratory services and information technologies." Sun Labs USA, Inc. is the employer listed on Relator's paystubs.

8. The "Medicare Advantage ("MA") Defendants" are as follows:

a. Defendant FREEDOM HEALTH, INC. ("Freedom") is a Florida corporation with its principal place of business in Tampa, Florida. Freedom is a health maintenance organization ("HMO") currently operating in twenty-five counties throughout

Florida pursuant to a certificate of authority from the Florida Office of Insurance Regulation and the approval of CMS and the Florida Agency for Health Care Administration ("AHCA"). Freedom participates in the MA program under contract with CMS.

b. Defendant OPTIMUM HEALTHCARE, INC. ("Optimum") is a Florida corporation with its principal place of business in Tampa, Florida. Optimum is an HMO currently operating in twenty-five counties throughout Florida pursuant to a certificate of authority from the Florida Office of Insurance Regulation and the approval of CMS and AHCA. Optimum participates in the MA program under contract with CMS.

c. Defendant ANTHEM, INC. is an Indiana corporation whose headquarters are located at 220 Virginia Avenue, Indianapolis, Indiana. On or about Feb. 15, 2017, Anthem, Inc. paid over $1.7 billion to buy America's 1st Choice. America's 1st Choice includes Freedom Health, Inc., Optimum Healthcare, Inc., and America's 1st Choice of South Carolina, Inc. These Medicare Advantage plans are described by ANTHEM, INC. as "a unified Medicare Advantage organization with a strong provider-focused health care model that offers HMO products, including Chronic Special Needs Plans (C-SNP) and Dual-Eligible Special Needs Plans, operating in South Carolina and Florida through the brands Optimum, Freedom Health, and America's 1st Choice of South Carolina." ANTHEM, INC. is grouped in this Complaint as a MA Defendant because, as the parent company directing the policies and practices, it is ultimately responsible for the policies and practices of its subsidiaries, named as MA Defendants herein.

9. In addition to their standard MA plans, Freedom and Optimum contracted with CMS to operate C-SNPs for chronically ill and/or especially vulnerable beneficiaries. C-SNPs are

supposed to provide extra healthcare services and management to better facilitate care for at-risk beneficiaries. For example, a C-SNP might provide special disease management and care tracking programs for patients with conditions such as diabetes in order to ensure the patient is compliant with dietary and blood sugar management protocols. Because such plans are specifically designed to serve sicker members, the capitation rates are frequently higher for C-SNP plans than for traditional plans.

10. The MA Defendants have a combined enrollment of over 135,000 Medicare Advantage members in 25 counties throughout Florida, and three counties in South Carolina. They also have enrolled more than 60,000 members in C-SNPs. Freedom and Optimum had a combined $1.55 billion in premium revenue in 2017.

11. At all material times, the MA Defendants have had common ownership and control. Through February 2017, Freedom and Optimum were owned by America's 1st Choice Holdings of Florida, LLC; and after February 2017, by Defendant Anthem, Inc. Though they have separate CMS contracts and are operated under their own names, Freedom and Optimum are effectively the same entity. Upon information and belief, the companies share the same management and staff/employees and use the same offices, databases, network systems, storage facilities, and coders. Upon information and belief, the managers and employees conduct the business of both plans jointly and concurrently, such that Freedom and Optimum follow the same policies and engage in the same practices. The practices which lead to violations of the False Claims Act described herein are common to both Freedom and Optimum.

12. Defendant ANION TECHNOLOGIES, LLC, ("Anion") is a Florida Limited Liability Company whose Articles of Organization were filed on June 1, 2007, and whose listed principal address is 601 S. Harbour Island Blvd, Suite 200, Tampa, Florida, with a mailing address

to Suite 213 – the same addresses as Defendants VIPcare and PP. Defendant Sidd Pagidipati is identified as a Member/Managing Member since 2017. Anion Technologies, upon information and belief, does business for the PO Defendants under the name Anion Healthcare Services. Anion Health Services involvement with the PO Defendants includes, but is not limited to, coding, billing and the daily distribution of the 5 Star Check Lists (as described more fully in Para. 54, *et seq.*, *infra.*) The majority of Anion's employees are based in Hyderabad, India, and the remainder are located in Ocala, Florida.

13. Coders and other employees located in Ocala and India communicate with the PO Defendants' physicians though various modes of communication. They are identified to Relator as employees of "Anion Healthcare Services," and sometimes of "Physician Partners." Upon information and belief, "Anion Healthcare Services" is managed and controlled by Defendant Pagidipati, and works closely in coordination with PP.

14. "Anion Healthcare Services" has a website at www.anion.com. Anion Healthcare Services holds itself out as "offering provider billing, medical coding, claims entry and processing, and other services," and "has its roots strong in the US (in Florida and Massachusetts). Promoters & Business experts work from these offices interfacing with clients while all the operational processes happen at the offshore facility based in Hyderabad, India." "Anion Healthcare Services" is neither a business entity formed within the State of Florida, nor is "Anion Healthcare Services" registered to do business as a foreign for-profit corporation in the State of Florida. Upon information and belief, this entity is owned and controlled by Defendant Pagidipati.

15. Defendant SIDDHARTHA "SIDD" PAGIDIPATI ("Pagidipati"), a resident of Tampa, Florida, is the former Chief Operating Officer ("COO") of Freedom and Optimum. He became COO of both Freedom and Optimum in 2007, and in 2017, agreed to individually pay

$750,000 to resolve, *inter alia*, the FCA Medicare Advantage upcoding FCA violations against him in *U.S. ex rel. Sewell v. Freedom Health, Inc., et al.*, Case No. 8:09-cv-1625 (M.D. Fla.). Having resigned from Freedom and Optimum, he has nevertheless continued to direct and carry out the False Claims Act violations by the MA and PO Defendants, as he not only owns but also controls the policies, procedures and operations of the PO Defendants – PPS, VIPcare and Anion. The PO Defendants in turn are capitated providers of the MA Defendants and are integrally involved in the MA Defendant FCA violations described herein.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this action per 28 U.S.C. § 1345 because the UNITED STATES is the Plaintiff. In addition, the Court has subject matter jurisdiction over FCA claims for relief under 31 U.S.C. § 3732(a) and (b).

17. This Court has personal jurisdiction over Defendants under 31 U.S.C. § 3732(a) because at least one of the Defendants can be found in, resides in, and transacts business in this District, or has committed the alleged acts in this District.

18. Venue lies in this District under 28 U.S.C. § 1391(b), (c) and 31 U.S.C. § 3732(a) because the Defendants can be found in and/or transact business in this District, a substantial part of the events or omissions giving rise to the claims occurred in this District, and all of the Defendants are subject to the Court's jurisdiction under the FCA.

THE FEDERAL FALSE CLAIMS ACT

19. The FCA is the primary civil remedial statute designed to deter fraud upon the UNITED STATES and reflects Congress's objective to "enhance the Government's ability to recover losses as a result of fraud against the Government." S. Rep. 99-345, at 1, as reprinted in

1986 U.S.C.C.A.N. 5266. "The Medicare Advantage capitation payment system is subject to the False Claims Act." *U.S. ex rel. Silingo v. WellPoint, Inc.*, 904 F.3d 667, 673 (9th Cir. 2018).

20. First, a defendant violates the FCA when it "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval." 31 U.S.C. § 3729(a) (1)(A). As pertinent to this case, the term "claim" under Section 3729(b)(2) of the FCA includes "(A) . . . any request or demand, whether under a contract or otherwise, for money . . . that . . . (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government—(I) provides or has provided any portion of the money . . . requested or demanded; or (II) will reimburse such contractor, grantee, or other recipient for any portion of the money which is requested or demanded." *Id.* § 3729(b)(2).

21. Second, a defendant violates the FCA when it "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim." *Id.* § 3729(a)(1)(B).

22. Third, a defendant violates the FCA when it "knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government." *Id.* § 3729(a)(1)(G). The FCA defines the term "obligation" to include "the retention of any overpayment." *Id.* § 3729(b)(3).

23. Upon learning of a false diagnosis code resulting in an MA overpayment from CMS, the duty exists to delete or otherwise withdraw that code. *See U.S. ex rel. Swoben v. United Healthcare Ins. Co.*, 848 F.3d 1161, 1176–77 & n.8 (9th Cir. 2016). So doing would result in

CMS's electronic processing system recalculating the payment amount, which is the first step in CMS's process to recoup the overpayment. The failure to delete or withdraw these false codes after notice thereof constitutes the knowing retention of an overpayment in violation of 31 U.S.C. § 3729(a)(1)(G).

24. Under the FCA, the terms "knowing" and "knowingly" include "actual knowledge of the information," "deliberate ignorance of the truth or falsity of the information," or "reckless disregard of the truth or falsity of the information," and "require no proof of specific intent to defraud." *Id.* § 3729(b)(1)(A),(B). Congress intended that the terms "knowing" and "knowingly" to "reach what has become known as the 'ostrich' type situation where an individual has 'buried his head in the sand' and failed to make simple inquiries which would alert him that false claims are being submitted." S. Rep. No. 99-345, at 21, as reprinted in 1986 U.S.C.A.N. 5266, 5286 (quotations in original.) "It is intended that persons who ignore 'red flags' that the information may not be accurate or those persons who deliberately choose to remain ignorant of the process through which their company handles a claim should be held liable under the Act." H. Rep. No. 99-660, at 21 (1986) (to accompany False Claims Act of 1986, H.R. 4827). As used in this Complaint, the terms "knowing" and "knowingly" have the meaning ascribed to them by the FCA, as do their derivatives "knowledge," "known," and "knew."

25. The term "material," as used in the FCA, "means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property." 31 U.S.C. § 3729(b)(4).

26. The FCA imposes liability of treble damages plus a civil penalty for each false claim in an amount (as pertinent here) not less than $5,500 and not more than $11,000 for claims submitted prior to August 1, 2016; not less than $10,781 and not more than $21,563 for claims

submitted between August 1, 2016 and February 3, 2017, and as appropriately statutorily adjusted for inflation each successive year under the Bipartisan Budget Act of 2015, Pub. L. 114-74, § 701, 129 Stat. 584, 599-601 (2015). See 31 U.S.C. § 3729(a)(1).

THE MEDICARE ADVANTAGE SYSTEM

27. Medicare is a federally-operated health insurance program administered by CMS benefiting individuals 65 and older and the disabled. *See* 42 U.S.C. § 1395c *et seq*.

28. There are four parts to the Medicare Program. Part A covers inpatient care, Part B covers outpatient care, Part C is the Medicare Advantage Program discussed below, and Part D is prescription drug coverage. A beneficiary eligible for Medicare may choose to be covered under what is commonly referred to as "traditional" Medicare, which is Medicare Parts A and B, in which CMS reimburses healthcare providers for services rendered via submission of claims. This is known as a fee-for-service payment system. Another option for a Medicare beneficiary is Medicare Advantage, in which a beneficiary may opt instead to enroll in a Medicare Advantage Plan ("MA Plan") managed by a private insurance company ("MA Organization"). See Subchapter XVIII of the Social Security Act, 42 U.S.C. §§ 1395w-21 to 1395w-28. The MA Plans are run by MA Organizations, which are often private insurers. *See* 42 C.F.R. §§ 422.2, 422.503(b)(2). Many MA Organizations contract with Provider Organizations ("POs") (hospital networks, physician groups, and other providers) to furnish healthcare services under the MA Plans.

29. Pursuant to Medicare regulations, POs are classified as "first tier entities" and "related entities." *See id.* §§ 422.2 & 422.500. A first-tier entity "means any party that enters into a written agreement, acceptable to CMS, with an MA organization . . . to provide . . . healthcare services for a Medicare eligible individual under the MA program." *Id.*, §§ 422.2. A related entity

"means any entity that is related to the MA organization by common ownership or control and (1) [p]erforms some of the MA organization's management functions under contract or delegation; [or] (2) [f]urnishes services to Medicare enrollees under an oral or written agreement . . . ." *Id.* First tier and related entities must, among other things, perform their services in a manner that complies with the MA Organization's contractual obligations to the Government, *id.* at § 422.504(i)(3)(iii); agree to "comply with all applicable Medicare laws, regulations, and CMS instructions," *id.* at § 422.504(i)(4)(v); and receive effective compliance training and education relating to preventing fraud, waste, and abuse, *id.* at § 422. 503(b)(4)(vi)(C)(1). Furthermore, if a related entity or first tier entity generates data relating to an MA Organization's claims for payments from the MA Program, it (as well as the MA Organization) must certify the accuracy and truthfulness of that data. *Id.* at § 422.504(l)(3).

30. In Medicare Part C, the Government pays to each MA Organization a fixed, capitated (per beneficiary enrollee in each MA Plan) amount, adjusted by the expected risk of each beneficiary, on a monthly basis for the provision of items and services that are covered for Medicare beneficiaries under Parts A and B of the Social Security Act. This per-member, per-month payment does not depend on the amount of healthcare services provided to an enrollee. Each year this payment is based on a bidding process with CMS, in which each MA Plan, through an MA Organization, submits a bid amount, which is then compared to an administratively set benchmark set by CMS based on a statutory formula. *See* 42 U.S.C. § 1395w-23; *see also* 42 C.F.R. § 422.2, subparts F and G. Since 2000, Congress has required that the capitated payments be adjusted for each MA Plan enrollee based on (1) each enrollee's demographic factors such as age, and gender, among others, and (2) each enrollee's health conditions, or "health status." See 42 U.S.C. § 1395w-23 (a)(1)(C). This is known as risk adjustment, and the risk score, sometimes

referred to as the risk-adjustment factor or "RAF," acts as a multiplier that is applied to the MA Organization's bid for covering Part A and B services. 42 U.S.C. § 1395w-23(a)(1)(G) and 42 C.F.R. § 422.308(e).

31. The ICD classifications set forth the standards accepted by CMS and the healthcare industry for the identification of diagnosis codes for health conditions. See 45 C.F.R. § 162.1002(a)(1)(i), (b)(1), (c)(2)(i); 42 C.F.R. § 422.310(d)(1); CMS, *Medicare Managed Care Manual* Chapter 7, Exhibit 30 (Rev. 57, Aug. 13, 2004). ICD codes are alphanumeric codes used by the healthcare providers, insurance companies and public health agencies to represent diagnoses; every disease, injury, infection and symptom has its own code. The applicable standards for these ICD diagnosis codes are set forth in the International Classification of Diseases, Ninth Revision, Clinical Modification ("ICD-9") through October 1, 2015, and thereafter the International Classification of Diseases, Tenth Revision, Clinical Modification ("ICD-10"). To ensure accuracy, the patient's diagnoses must result from a face-to-face encounter between physician and patient during the relevant year and must be appropriately documented in the patient's medical record at the time of the encounter. In addition, codes should be based on documented conditions that require or affect patient care treatment or management. *See* CMS, *Medicare Managed Care Manual* Chapter 7, § 111.8 (Rev. 57, Aug. 13, 2004), *see also* CMS, *2008 Risk Adjustment Data Technical Assistance for Medicare Advantage Organizations Participant Guide* (2008).

32. POs submit patient encounter data, including diagnosis codes, to MA Organizations for their MA Plan enrollees. The MA Organizations, in turn, submit these diagnosis codes to CMS through what is known as the Risk-Adjustment Processing System ("RAPS") and through the Encounter Data System ("EDS"). CMS uses these diagnosis codes to calculate a risk score for each

beneficiary, which is then used to adjust the capitated payments to the MA Organizations for each MA Plan enrollee.

33. To do so, CMS employs a risk-adjustment model, called the Hierarchical Conditions Category ("HCC") model, which takes into account both demographic factors (such as age and gender) and medical conditions of a patient to determine the risk scores for beneficiaries in MA Plans. The medical conditions, as represented by diagnosis codes, are grouped into HCCs, which are categories of clinically-related medical diagnoses. See 42 C.F.R. § 422.2. The diagnosis codes are grouped or "mapped" into HCCs that affect payment include major, severe, and/or chronic illnesses. These diagnosis codes are referred to as "risk-adjusting diagnosis codes." Not all diagnosis codes result in an adjustment in risk score and thus not all diagnosis codes affect payment. Related groups of diagnoses are ranked on the basis of disease severity and the cost associated with their treatment. With respect to health status, the HCC model relies on diagnosis codes documented by authorized healthcare providers, e.g., physicians in patient encounters during office visits and hospital outpatient and inpatient stays. In fact, diagnoses are the sole determinant in the calculation of any risk-adjustment payment based on a beneficiary's health status.

34. The HCC model is prospective, meaning that it relies on risk-adjusting diagnosis codes from dates of service by a provider in one year (the "date of service year") to determine payments in the following year (the "payment year"). Each MA Plan beneficiary's risk score is calculated anew for the following year. The higher a MA Plan beneficiary's risk score, the higher the payments by CMS to the MA Organizations.

35. Every month, CMS pays the MA Organizations the capitation amount as established by the bid and adjusted using its risk-adjustment methodology for each enrolled beneficiary. MA Organizations pay providers who care for beneficiaries through a variety of

arrangements; however, many large POs enter into a capitated or "gainsharing" arrangements with MAs that align their financial interests. Under a capitated arrangement, the MA Organization enters into a contract to pay a portion of the capitation payment from the Government to its Provider Organizations, less a percentage fee for administration as determined by its contracts. Frequently, the PO also enters into "gainsharing" agreements with the MA Organizations where they receive incentive payments based in whole or in part on total revenues that MA Organizations receive from the Government for the beneficiaries cared for by these gainsharing providers. These agreements incentivize POs and their providers to increase the number of risk-adjusting diagnoses they report to MA Organizations, and to report diagnosis codes for more severe risk-adjusting medical conditions. The more risk-adjustment payments obtained by the MA Organizations for the beneficiaries cared for by POs, the more money MA Organizations pay to POs pursuant to the capitation and gainsharing agreements. Hence, the patient risk-adjusting diagnosis codes that map to HCCs directly impact the payments received by the MA Organizations, POs, and their providers.

36. CMS relies on the risk-adjusting diagnosis codes submitted by providers to determine and make accurate capitation payments for each patient enrolled in the Part C Program. "Accurate risk-adjusted payments rely on the diagnosis coding derived from the member's medical record." *See, e.g.*, 42 C.F.R. § 422.504(l)(3); CMS, *2013 National Technical Assistance Risk Adjustment 101 Participant Guide* 13 (2013).

37. MA Organizations can delete diagnoses from both the Risk-Adjusting Processing System ("RAPS") and Encounter Data System ("EDS") to comply with their obligation to delete known erroneous, invalid, unsupported or otherwise false diagnosis codes previously submitted to CMS. Indeed, the MA Organizations have an obligation to delete these false codes in their systems. Doing so should cause the MA Organizations to delete those codes in the RAPS system,

and thereby cause CMS to adjust the RAF score for the patient downward and the capitated payment downward as well.

38. Because submitting incorrect diagnosis codes increases risk adjustment payments, CMS requires MA plans to follow strict guidelines when submitting codes. See, e.g., 2008 Risk Adjustment Training for Medicare Advantage Organizations Participant Guide ("Participant Guide"). First, CMS requires that the patient must have been treated for the relevant diagnoses during a face-to-face encounter with a physician or a hospital during the year in question. The treating provider must document the facts supporting the coded diagnosis in the patient's medical record and sign and date the record.

39. Only services provided by a treating physician, or by a hospital in an inpatient or outpatient setting may be included. CMS expressly prohibits MA plans from submitting "risk adjustment diagnoses based on any diagnostic radiology services." Participant Guide, at 4-3. The reason CMS prohibits MA plans from submitting codes based on radiology charts is that "[d]iagnostic radiologists typically do not document confirmed diagnoses. Confirmed diagnoses come from referring physician or physician extenders." *Id.* at 4-3. In other words, radiology services are not a valid provider type.

40. MA plans are responsible for the content of risk adjustment data submissions to CMS, regardless of whether they submit the data themselves or through an intermediary. Before submitting data to CMS, MA plans are required to filter the data "to ensure that they submit data from only appropriate data sources." Participant Guide, at 4-11. For example, filters should include checking that physician data comes from face-to-face encounters with patients and ensuring that data does not come from non-covered providers, such as diagnostic radiology services.

41. MA plans must also filter the data to ensure that only diagnoses treated through approved procedure types are included. In the CMS-HCC system, procedures are classified using Current Procedural Terminology ("CPT") codes. These codes show whether the type of service in question was a face-to-face procedure such as a physical examination, or a non-qualifying remote procedure, such as a laboratory test or radiology exam.

Attestations/Certifications

42. Given the importance of accurate information, CMS requires certifications signed by MA Organization executives regarding the truth and accuracy of coding and other patient information submitted to CMS. These signed certifications are a condition of payment by CMS. 42 C.F.R. § 422.504(l)(2). CMS also requires PO executives to certify the truth and accuracy of coding and other information submitted to MA Organizations.

43. One of the annual certifications requires the MA organization to attest that the risk adjustment data it submits annually to CMS is "accurate, complete, and truthful." The attestation acknowledges that risk adjustment information "directly affects the calculation of CMS payments … and that misrepresentations to CMS about the accuracy of such information may result in Federal civil action and/or criminal prosecution."

SUBSTANTIVE ALLEGATIONS

Knowledge

44. At all times relevant to this Complaint, Defendants knew the importance of risk adjustment and the workings of CMS's RAPS and EDS data systems, including but not limited to: (1) how the HCC model calculated a beneficiary's risk score; (2) the ICD classification system for diagnoses codes; (3) the mapping of risk-adjusting diagnosis codes to HCCs; (4) the importance of these risk-adjusting diagnosis codes in determining each beneficiary's risk score; (5) the direct

relationship between a beneficiary's RAF and the ultimate payments by CMS; (6) the requirements that each diagnosis code in a patient's records must result from a face-to-face encounter between health care provider and patient and be documented in the patient's medical records; (7) the importance of these requirements to payment under the Medicare Advantage program; and (8) the duty to delete known invalid, false or unsupported diagnosis codes and return overpayments to CMS.

45. Despite this knowledge, Defendants violated the FCA as described herein, resulting in the submission of thousands of erroneous, invalid, phony, unsupported or otherwise false risk-adjusting diagnosis codes to CMS for tens of thousands of Medicare Advantage beneficiaries. These false claims inflated CMS's reimbursements by hundreds of millions of dollars.

46. Defendants had this knowledge not only because they are in the business of operating MA Plans and POs, but their principals are all seasoned executives of MA Plans. In fact, both the MA and PO Defendants are entities which are largely comprised of and led by the same individuals in control of the entities previously sued under the FCA in *U.S. ex rel. Sewell v. Freedom Health, Inc., et al.*, Case No. 8:09-cv-1625 (M.D. Fla.) which settled in 2017 for approximately $32.5 million.

Overview of FCA Violations

47. Despite Freedom/Optimum and Pagidipati's previous lawsuit and settlement, the Defendants violated the FCA *again* – brazenly and knowingly – resulting in the submission of false and unsubstantiated risk adjustment data to CMS in order to unlawfully increase their capitation payments. Defendants' unlawful practices include, without limitation: (a) using coders to submit and cause physicians to submit false diagnoses, ultimately resulting in the submission of false risk adjustment data to CMS; (b) misleading and inducing physicians to code improperly,

resulting in phony diagnoses assigned and recorded in the medical records of thousands of patients; (c) incentivizing physicians to report and record phony diagnosis codes; (d) knowingly using an automated submission processing system that was incapable of filtering out invalid data; (e) knowingly causing physicians to perform medically unnecessary and unreasonable procedures in order to increase risk scores; and (f) knowingly failing to have any meaningful compliance program and failing to abide by its commitments pursuant to its Corporate Integrity Agreement entered into with the Office of the Inspector General of the United States Department of Health in or about May, 2017.

48. Through each of these fraudulent schemes, practices and machinations, the MA Defendants have knowingly submitted to CMS hundreds of thousands of false and unsubstantiated diagnosis codes, in order to fraudulently obtain higher capitation rates than they were entitled to receive.

49. The PO Defendants, for reasons including but not limited, to increasing their own per-member-per-month risk adjustment gain sharing payments from the MA Defendants, engaged in, among others, the following unlawful practices:

a. First, the PO Defendants (and the MA Defendants) caused physicians to bring members in for medically unnecessary office visits for the sole purpose of capturing diagnosis codes. These visits were not for the benefit of the patient. Instead, the Defendants caused these visits to happen solely for the purpose of increasing risk adjustment-based reimbursement. Once a patient signs up for an MA Defendant's program, she is pressured to see her PO-assigned primary care physician at least four times a year, if not more frequently. If a patient is not responsive to VIPcare trying to schedule visits, then Freedom itself will call the patient repeatedly and hassle if the visit is not

scheduled. While this seems counterintuitive because more resources are expended by the PO Defendants to conduct these visits, it actually gives the physician more opportunities to insert phony diagnoses on the 5 Star Check Lists (see Paragraph 54, et seq., for an explanation of the "5 Star Check Lists"). utilize the PO Defendants' "Five Star" system to increase risk-adjustment scores, thereby increasing the future reimbursements to the MA Defendants.

b. Second, the PO Defendants submit as many phony diagnosis codes as possible, by reviewing patient records in order to look for any hint of medical conditions that correspond to HCC codes that substantially increase CMS payments, and then claim that the patient was treated for that condition — regardless of whether the patient actually has the condition or was treated for it in the year in question by a qualified provider in a face-to-face visit.

c. Third, the PO Defendants' team of coders scour medical records looking for "missing" diagnosis codes for use by physicians. Coders are instructed to ignore CMS and ICD coding standards in order to maximize the number of codes they send to CMS for risk adjustment. Coders review patient records in order to "suggest" phony additional diagnosis codes to physicians. In one very common and flagrant example, physicians are encouraged to diagnose any patient who has ever been on an antidepressant medication as having Major Depressive Disorder ("MDD"), a complex condition with numerous diagnostic criterial as well as consequences for the future health care of the patient. For example, in a May 2019 "Performance Forum," a monthly training meeting for VIPcare physicians, Defendant VIPcare posted a slide stating that it was a "rework trend" (meaning areas that needed to be addressed and "reworked") where there were 110 instances in which a patient had a

score of 5-or-higher on a standardized Patient Health Questionnaire ("PHQ-9") but MDD was not assessed. However, the industry standard – consistent with the guidance provided by the PHQ-9 test-makers – is that a patient must have a score of 10 or higher before MDD is even *considered.* A score of 5 is typically associated with mild depression at most.

d. Fourth, the coders populate forms with the recommended diagnosis codes and send them to the PO physicians in the form of a "5 Star Check List." The Check List is specifically designed to induce the physicians to report phony diagnoses codes. The information on the Check Lists includes new suggested diagnoses, the diagnostic codes, and remarkably, the effect which each code will have on the individual patient's risk adjustment score (and ultimately on the physician's bonus). For example, Patient D.F., born in May 1947, may or may not have had an episode of depression in 2017. The relevant 5 Star Check List directed Relator to evaluate him for Major Depressive Disorder, which the patient did not manifest and of which he had no history. However, the 5 Star Check List included a "bubble" at the top with the HCC diagnostic group for MDD and showed that the Risk Adjustment Factor for MDD was .346, meaning that diagnosing the condition would make the patient more valuable to all defendants – and would also increase the physician's compensation.

50. In reviewing the patient charts generated by VIPcare colleagues like Dr. Akhil Patel and Dr. David Hunt, and other physicians within the Freedom network like Dr. Rick Simovitz (and Dr. George Mansour, as stated to Relator by another colleague), Relator identified flagrant coding violations related to Defendants' 5 Star Check Lists. Relator found that physicians routinely coded, and Freedom accepted, every condition the doctor could conceivably find and then

assigned the highest possible code to those conditions, regardless of whether the diagnoses were supported by the ICD or whether the coding violated CMS rules.

51. She determined that Freedom typically submitted three types of incorrect codes. First, Freedom submitted codes from impermissible sources (i.e., outside of any face-to-face encounter between physician and patient) such as laboratory, electrocardiogram ("EKG"), and radiology reports, and external specialist physicians, even though Freedom knows that ICD coding guidelines forbid Freedom to submit codes based on these sources alone.

52. Second, Freedom, Anion, and the physicians (pursuant to Defendants' scheme), "upcoded" certain medical conditions by replacing codes chosen by doctors with higher-value codes that had no support in the medical records. For example, for members with multiple, coexisting conditions, Freedom coded one condition as a complication of the other, when the medical records did not support a causal relationship between them. Freedom coded in this manner because Medicare assigns more valuable HCCs to conditions where a causal relationship exists.

53. Third, Relator noted that 5 Star Check Lists had entirely inapplicable conditions – conditions that the patients denied, that she could find no mention of them in the patients' medical records, and that specialist records often directly refute as well. As noted, the 5 Star Check List is crafted to make clear to the VIPcare physician that additional diagnoses increase risk scores. When Relator spoke to Emily Gallman, Senior Director of Healthcare Operations at VIPcare, in May 2019 about how to increase annual bonuses, Gallman explained to Relator that VIPcare physicians need only to accept the "white circles" on the form in order to drive up the risk scores. Together, Relator and Gallman looked at one patient's Checklist, and Gallman pointed out that had Relator coded five additional diagnoses, which were indicated by five "white circles" on the form, the risk score for the patient would have increased by the amount shown on the form. Gallman further

explained that agreeing to add those additional diagnoses, even though Relator found them unsupported by the patient's clinical presentation and medical records, would have contributed to Relator's substantial annual bonus.

Use of "5 Star Check List" to Implement Phony Coding Scheme

54. Inducements as well as pressure on physicians to capitalize on the risk adjustment process is seamlessly and systematically enhanced through the use of the "5 Star Check List." The checklist is created in advance of every patient visit by an Anion employee, who populates a daily electronic folder with patients scheduled for visits that day. Each morning, an Anion associate, typically Ratnakar Mekala, an Anion Healthcare Services Process Associate, Provider Dept., in Hyderabad, India, sends an email that the 5 Star Check Lists for the date are available and loaded into a shared Google Docs drive. Each doctor or office then goes onto the drive and downloads the forms for the day.

55. A manual provided to physicians by Defendant Physician Partners describes the 5 Star Check List, how the data is aggregated, and how it should be used by a physician. Of note, the manual explicitly condones that some physicians are too busy to look at the medical record of a patient. Rather than direct that the physician must review all necessary documents to provide appropriate care, the 5 Star Check List is intended to be a shortcut around performing that basic standard of care.

> How will it help the member or PCP?
>
> Primary Care Physician does not have time to always review specialist notes and hospital discharge summaries, which means there is a chance that PCP may not know all the medical conditions that were addressed by the specialists and hospitals. We gather all that information and present it on the 5 star checklists so that PCP can continue to monitor those conditions and help members achieve better health outcomes.

56. Moreover, the manual concedes that, despite the Checklist stating on its face that is based on the patient's past medical conditions, that is not true. The data is gathered from industry trends and from algorithms written into Defendants system to select conditions, regardless of whether any trained physician actually treating the patient has identified that condition as applicable.

> Where are the chronic medical codes coming from?
>
> Health plans provide us monthly claims files, these files include claims details from all medical providers the members have visited, we extract chronic diagnosis codes from the claims and report them on 5 star checklist.
>
> Where are the suspect conditions?
>
> The monthly data that we receive from health plans also include Rx claims and Lab test results. We built suspect algorithms in our system that looks for medications specific to certain chronic conditions and abnormal test results that lead to potential chronic conditions, if such conditions are not already addressed or reported by the PCP, we present them as suspect conditions on the 5 star checklists. These are only suspect conditions and its for the PCP to determine if the condition exists are not *[sic]*.

57. As directed by VIPcare Medical Director Dr. Sangeeta Hans, physicians must complete a 5 Star Check List for each patient at least once per year, but may do so more often. The 5 Star Check List, which declares on its face not to be part of the patient's medical record, lists risk-adjusting conditions which have either been previously diagnosed by a physician or have been assigned to a patient's chart by a billing specialist, irrespective of the patient's actual medical history. The Check List may indicate whether a suggested diagnosis is based on the patient's "past history" or "clinical review," but usually does not state the reason for the recommended diagnosis (or if it does, it simply states that some test result or prior record is suspect for the new code).

58. For patients new to Freedom and having their first visit at VIP, the 5 Star Check List does not have any diagnoses specific to the patient's reason for visit. Rather, the New Patient

5 Star Check List provides a disclaimer that has a headline "PLEASE EVALUATE, ASSESS, AND TREAT," and states, "Listed in the table below are common deseases *[sic]* that are high prevalent in senior population. Please complete a comprehensive assessment and evaluate if any of the potential conditions exist on this member. If a condition(s) exist, mark Yes on the last column of the checklist and document appropriately on your progress note." Categorized by HCC code, a predetermined set of conditions are listed with their ICD code, description, and associated Risk-Adjustment Factor. All of the conditions have risk-adjusting diagnosis codes; there are no conditions listed which would not result in a risk adjustment, regardless of how prevalent they may be in the senior population.

59. At the top of the page, the 5 Star Check List includes a series of bubbles, each populated with an HCC code that is a suggested condition on the checklist. No code is suggested unless the corresponding diagnosis would increase the patient's risk adjustment score. Each circle is white until a physician agrees to code one of the diagnoses associated with that HCC. Once an HCC has been coded during that calendar year, the circle will be greyed out. The circles also correspond to a horizontal bar which tracks the percentage of HCC codes selected by a physician (represented by the color grey) or still unselected by the physician (represented by the color white). Thus, for new patients, the entire percentage bar is white and marked with 100%, meaning 100% of the codes have yet to be evaluated. If a physician determines that the patient should be diagnosed with a risk-adjusting condition, the associated HCC bubble will be greyed out and the horizontal bar will be greyed out in the appropriate percentage (i.e. 10% filled in grey if one-out-of-ten HCCs is coded).

60. If a patient has been seen at VIPcare in the past or was enrolled with Freedom and used another primary care physician, the 5 Star Check List will show greyed out bubbles for any

conditions that were already diagnosed that calendar year and the percentage bar will reflect what percent of the possible risk adjusted score has already been coded, what percent of recommended conditions remains undiagnosed, and the maximum risk adjustment if all diagnoses are accepted. The remaining fields are populated with conditions that have been assigned to the patient by one of Anion's billers or coders. The suggested conditions may be based (accurately or exaggeratedly) on the patient's medical chart, but often are protocol-driven suggestions which are seemingly assigned at random, based on annual trends, or otherwise improper sources. The Check List must be submitted by a physician at least once per year, but is provided for every visit regardless of whether it has already been completed because a physician may choose to complete it again to close-out some of the HCC bubbles and thereby increase his performance percentage.

61. As with the common conditions listed for a new patient, every listed condition on a returning patient's 5 Star Check List identifies the Risk Adjustment Factor that applies if the physician codes that condition again. The Checklist also shows how many times the condition has been "reported" (meaning billed and therefore factored into the risk adjustment score) in the previous three years, and whether the condition has already been reported for the current year. The form does not tell the physician whether the condition was actually diagnosed by another physician based on a physical assessment of the patient, whether it was agreed to by a physician based on an Anion suggestion, or whether it was simply added by an Anion biller without a physician's knowledge or input.

62. The 5 Star Check List states: "Disclaimer: This 5 Star checklist is not intended to be part of the patient's medical record. It is provided only to show the past medical conditions of the patient. Please document any existing conditions in your progress note." In practice, however, the patient's medical records routinely do not support the risk-enhancing conditions suggested on

the form, and the Quality Training manual provided by Defendant Physician Partners confirms the suggestions are not *actually* based on the patient's past medical conditions. Based on Relator's review of several thousand 5 Star Check Lists and the associated medical charts for her patient panel, the forms and subsequent billing records routinely include at least three categories of conditions which are inapplicable and not related to the patient's actual medical status: (1) diagnoses that have no clinical support but were assigned to the patient at random or are seemingly based on protocols set for billing professionals, (2) diagnoses that may have been historically-accurate but are no longer applicable, *e.g.* cancer which has been treated and is in remission, and (3) conditions which are tangentially related to other notes in the chart but not supported by the record or examination (for example, COPD is "recommended" for every patient who ever smoked).

63. The sometimes-preposterous nature of these proposed diagnoses is illustrated by, for example, Patient M.E., age 76. The 5 Star Check List provided to Relator suggested a diagnosis of microcephaly with a Risk Adjustment Factor of .509. Microcephaly was reported two times in 2018 and two times in 2017, although the patient was seen at least six times in 2018 and at least four times in 2017. Microcephaly is a very rare birth defect (2-12 out of 10,000 live births) in which a patient has an abnormally small head. It is a permanent condition which would be present at all visits or does not exist at all. Based on Relator's physical examination of the patient, the patient does not have microcephaly and there is nothing in the medical charts to suggest otherwise. In addition, this patient's 5 Star Check List suggested thrombotic microangiopathy and Type II diabetes, which were not reflected in the patient's history, had no clinical evidence, and of which the patient denied having when questioned by Relator. M.E. was also coded as having Major Depressive Disorder when she only had anxiety, an abdominal aortic aneurysm when her vascular

study was normal, and nonthrombocytopenic pupurea when she had no subjective or objective evidence of the same.

64. Relator observed a similar pattern of unsubstantiated diagnoses and medically-questionable diagnosing and coding practices on a daily basis.

65. During a patient's visit, the physicians are required by their employment contracts to use the 5 Star Check List as a guide in evaluating the patient. Although the physician may mark up the form according to their own findings, the significant part is whether the physician writes "Yes" (or something similar) in the "Comments" column to indicate agreement with that condition existing for the patient at the time of the evaluation, or "No" (or something similar) indicating that the suggested condition is not supported and should not be billed for the patient. Once completed at the end of a patient visit, the 5 Star Check List is submitted along with the rest of the medical chart, including the physician's notes, to Anion. The physician is required to sign the Check List certifying, "I attest that I have reviewed and addressed all relevant medical conditions during the face-to-face encounter with the patient on the below date." Although the forms are submitted to Anion for billing, they not placed in the patient's permanent medical record.

66. If a physician had true autonomy over the diagnosis codes applicable to a patient, Anion would accept the 5 Star Check List as submitted by the physician. However, billing specialists at Anion reviewed every submitted chart to determine if the physician left off any of the suggested common conditions or any of the previously diagnosed conditions on the 5 Star Check List. If the physician failed to treat and code for a condition on the 5 Star Check List, then the condition is logged as a "care gap" and the physician is given the equivalent of a demerit for each such care gap. Upon information and belief, the care gaps associated with each patient

directly correlate to the number of white bubbles which remain at the top of the 5 Star Check List after a patient visit.

67. "Care gaps" are monitored by PO Defendant management and reports are sent to physicians periodically, identifying every incident in which a physician did not diagnose and code a condition that was on the 5 Star Check List. A care gap remains on a physician's record until the physician reviews a billing suggestion made by an Anion employee and either agrees to make the suggested changes or reaffirms the initial diagnosis that the suggested HCC codes are not applicable to that patient. There are some appropriate suggestions wherein a physician has put all of the coding that the PO Defendants want, but has not closed out the note or has not documented one part of the care as necessary. However, in Relator's practice, a substantial majority of Anion's billing suggestions relate to conditions that the physician has said do not exist and Anion wants to change, conditions that a physician has billed as less severe and Anion wants to upcode to appear more severe, or conditions that the physician simply did not discuss at all and Anion has determined should apply based on the billing representative's review of the chart. For example, a review of sixty 5 Star Check Lists from patient visits in February and March of 2019 revealed well over 200 "care gaps" – diagnoses which Anion urged Relator to use as upward risk adjustments, but which Relator found unsupported by the patient's condition and chart.

68. As physicians accumulate care gaps, PO Defendant and Anion billing administrators require the physicians to schedule time to do an individual review and to explain the reasons why the physician did not code a specific diagnosis. By way of example, on or about Feb. 12, 2019, Anion employee, Quality Analyst Sajitha Johnson, emailed Relator with a significant list of patients following a "huddle discussion" about the care gaps. Sajitha stated to Relator, "If you decide to make an addendum or disagree with a condition, let me know so I can

have the team close out reworks accordingly. Otherwise, these will remain as pending care gaps until they are addressed in a future 2019 progress note." Sajitha did not give Relator an option to clear the "care gaps" by reviewing the gaps and making an affirmative determination that the condition was not present. The care gap would only be cleared – and therefore not counted against Relator – if Relator made changes.

69. In addition to the physician's secondary review process at the direction of an Anion representative, Anion representatives also make billing changes based on notes from a patient visit, regardless of whether the physician expressly agrees to the change or not. For example, Relator is aware of certain instances where she indicated "No" to a condition on a the 5 Star Check List, but an Anion billing representative reviewed her notes and submitted a bill in her name where she did not expressly reject a condition but documented that it was "not confirmed" or "needs further investigation."

70. For example, Patient K.S. was examined by Relator on Jan. 3, 2019. Her 5 Star Check List identified arteriole disorder. Relator determined that the patient did not have any conditions which would support that diagnosis, and therefore marked "no" the 5 Star Check List, which was returned in due course to Anion. Subsequent documentation revealed that Anion nonetheless billed the code under Dr. Zafirov's name, and the code is identified in the patient's record as having been paid.

71. In addition, Relator identified many other instances of submissions of factitious diagnoses which were not supported by the patient's actual medical condition. Among many examples, one of Relator's Freedom patients is J.C., a 77-year-old man. Relator first saw him on March 1, 2019. Anion provided a 5-Star Check List for J.C. which, based on "past history," proposed diagnoses of Primary Pulmonary Hypertension ("PPH") and Chronic Obstructive

Pulmonary Disease ("COPD"). "Past History," in 5 Star parlance, means that PO Defendant coding personnel, presumably in India, saw breadcrumbs which led them to direct the VIPcare physician to evaluate, and hopefully diagnose, these conditions. Each of these conditions is very serious. Symptoms of PPH, which is high blood pressure in the lungs, include shortness of breath, fatigue, dizziness, chest pain, and swelling of the lower extremities and abdomen. COPD, which is a chronic inflammatory lung disease, including shortness of breath, cough, excessive mucous production and wheezing. When Relator examined J.C., she did not find symptoms which would support either diagnosis.

72. In addition, a particularly egregious, but hardly unique, situation is that of Patient C.B., an 83-year-old male who has participated in Freedom's Part C plan since 2009. Relator examined him in early March 2019. His 5 Star Check List directed Relator to evaluate him for, among other things, rheumatoid arthritis, which carries a risk adjustment of .374; malnutrition, which carries a risk adjustment of .713; opioid dependence, which carries a risk adjustment of .420; and peripheral vascular disease, which carries a risk adjustment of .299. Relator found none of these conditions and refused to diagnose any of them. A follow-up 5 Star Check List dated Mar. 18, 2019, included all the same recommended diagnoses, identified six "care gaps," and showed that she had only accomplished 14% of the expected risk adjustment enhancement. (Three care gaps remain as of the date of filing of this complaint, even though Relator has submitted subsequent 5 Star Check Lists reaffirming her medical judgment on those conditions.) But most egregiously, billing included in Patient C.B.'s file shows that, in 2017, his then-physician identified him as having anencephaly; Freedom paid that claim and, upon information and belief, assigned C.B. that diagnosis in documents submitted to CMS. Anencephaly, according to the CDC, "is a serious birth defect in which a baby is born without parts of the brain and skull. It is a

type of neural tube defect (NTD). As the neural tube forms and closes, it helps form the baby's brain and skull (upper part of the neural tube), spinal cord, and back bones (lower part of the neural tube) . . . [a]lmost all babies born with anencephaly will die shortly after birth."

73. Additionally, Freedom Patient B.G. was diagnosed by Dr. Rick Simovitz, a non-VIPcare physician for at least the years 2015-2017, as having Chronic Lymphocytic Leukemia, a type of bone marrow cancer. Upon information and belief, Freedom submitted claims and documentation to CMS for B.G in at least the years 2015, 2016, 2017 as if he had Chronic Lymphocytic Leukemia. In 2018, Patient B.G. became a patient of VIPcare. Relator's review of patient care notes confirm that the patient *did not* have a formal CLL diagnosis and had not seen a hematologist/oncologist, nor was ever even referred to one for further evaluation. Patient B.G. does not have CLL, yet Defendant Anion coded B.G. as if he had CLL, and Defendant Freedom submitted claims and other documentation to CMS with the phony CLL diagnosis in order to unlawfully maximize reimbursement for this patient. Patient B.G. was also coded as having peripheral vascular disease, pupurea and MDD – all of which were unsubstantiated by clinical exam, history and patient report.

74. In another instance of Defendants' falsely coding a patient with cancer, Patient A.B. was diagnosed and billed for malignant neoplasm of connective tissue in 2018, even though an oncologist from Moffit Cancer Center noted that the patient only had a benign angiofibroma, and the patient denied ever having a malignant cancer diagnosis. Malignant neoplasm of the prostate was also diagnosed in 2017 and submitted by VIPcare physician Dr. Patel on five different occasions, though A.B. stated he never had that and did not received treatment for it. Patient A.B. was also coded as having purpurea which had no evidence on examination, and opoid dependence even though he only used it post-operatively as diagnosed. A.B.'s records also show that the PO

Defendants characterized A.B. as having at least two other diagnoses for which Freedom submitted claims and other documentation to CMS, even though the medical records do not support those diagnoses.

75. The 5 Star Check List for patient W.D., a 69-year-old man who told Relator that he works as a landscaper, called for a diagnosis of diabetes "with diabetic peripheral angiopathy without gangrene." Relator examined W.D. on Jan. 23, 2019, and found no evidence of diabetes. She documented both the rejection of the diagnosis and the reasons why, writing: "Question completeness of initial diagnosis. Patient may have been prediabetes but it does not seem the lab criteria quite matches the diagnosis. If it is a question later on, will repeat [testing]." Remarkably, despite this clear rejection and request for additional confirmatory testing if necessary, a subsequent 5 Star Check List sent to Relator by Anion in mid-May 2019 represents that W.D.'s "current PCP" diagnosed "Type 2 diabetes with diabetic peripheral angiopathy without gangrene" and the associated billing records show the HCC associated with this diagnoses was billed and paid in 2019.

76. On or around May 18, 2019, Defendant Anion's "Quality Analyst" Sajitha Johnson asked Relator whether she maintained copies of any of her old 5 Star Check Lists. On information and belief, the reason for this request was that the Defendants intend that VIPCare physicians not be able to review those checklists because they repeatedly "suggest" conditions that the doctors identify conditions which they already have rejected, and have also billed conditions under a physician's name which the physician has rejected.

77. Relator has access to charts which show the frequency with which other VIPcare physicians diagnose the PO Defendants' favored, chronic conditions. The result of all Defendants conduct, often coordinated and in concert with one another, is that many more patients have been

diagnosed with these and other serious medical conditions than in the Medicare population at large. With respect to Major Depressive Disorder, for example, its prevalence among Medicare beneficiaries is about 7%, meaning seven of every 100 patients suffer from the condition. However, many of the PO physicians diagnose the condition with far greater frequency. For example, the following are the percentages of patients diagnosed with MDD by the listed physicians:

Physician	2017	2018
Dr. Gil Gutierrez	25%	25%
Dr. David Hunt	14%	14%
Dr. Auxi Peachey	23%	23%
Dr. James Goszkowski	30%	30%
Dr. Claudine Frederiks	29%	29%
Dr. John Watson	16%	16%
Dr. Stephen Seecharan	25%	25%
Dr. Myriam A.E. Miller	31%	31%
Dr. Charles Powers	10%	10%
Dr. Veronica Machado	31%	31%
Dr. Paula Gregory	16%	16%
Dr. Jerome Lopez	24%	24%
Dr. Lawrence Campo	12%	12%
Dr. Jose Llamas	25%	25%
Dr. Rodger Rothenberger	23%	23%

78. Other phony diagnoses similarly included in patient charts and billing documentation, to include the 5 Star Forms, by the PO and MA Defendants, include, among many others, malnutrition, morbid obesity, drug dependency, and cardiac and vascular problems.

79. A review of sixty 5 Star Check Lists provided to Relator regarding her patients in February and March 2019 show no patient with respect to whom she found all "recommended" diagnoses to be supported by objective evidence. For one patient (R.F.), 21 conditions were "recommended" and 20 were rejected. For another (T.B.), 11 were recommended, and all were rejected. For these 6o patients, Relator rejected approximately 446 of approximately 523

"recommended" diagnoses—85%. With respect to favored chronic diagnoses, Relator rejected, among these 60 patients and among other diagnoses, 15 recommended diagnoses of Congestive Heart Failure; 18 recommended diagnoses of Major Depressive Disorder; 23 recommendations of Chronic Obstructive Pulmonary Disorder; 25 recommendations of Peripheral Vascular Disease; and 29 recommendations of Nonthrombocytopenic Purpura; and eight recommendations of Type 2 Diabetes.

Physician Compensation and Performance

80. The expectation for VIPcare physicians (and upon information and belief, all PO Defendant physicians) to participate in inflating MRA scores is established during the hiring process. In exchange for attractive working conditions – low-volume daily patient visits (sometimes less than 5-10 patients per day) with comparatively high compensation – a new physician must enter into an employment agreement which demands, *inter alia*, that the physician "follow the direction of FMA with respect to all administrative matters pertaining to the services provided pursuant to this Agreement." Further, the physician must agree to provide treatment "in accordance with FMA's care protocols, quality assurance program, standard operating procedures and managed care requirements" and to "execute any such required forms, including without limitation, assignments, as may be required to facilitate billing and other data capture by FMA for services performed by Physician pursuant to this Agreement."

81. Despite the MA and PO Defendants' complete control of billing and administrative oversight, the employment agreement, on its face, purports to protect physician autonomy, stating, "Physician shall be responsible for and shall have complete authority, responsibility, supervision and control over the provision of any and all services rendered by Physician for which a license is required to practice medicine within the State of Florida, including without limitation, the

provision of diagnoses, treatments, procedures performed for and on behalf of patients ("Medical Services"). Nothing herein is intended to interfere with Physician's professional autonomy as a physician."

82. In practice, no such autonomy exists. The Defendants exert consistent pressure to ensure the physicians participate as expected, and the PO Defendants heavily incentivize physicians to comply with the expectations to enter false diagnosis codes to artificially inflate patients' risk adjustment scores.

83. In addition to consistent pressure by PO and MA Defendants, to include Anion billers and upper management to modify diagnosis codes and close "care gaps," the PO Defendants implemented a bonus system which hinged physicians' personal financial gains on their willingness to increase risk assessment scores as high as possible. By creating a system which is based on surplus – payments taken in minus incurred expenses – Defendants incentivized physicians to boost the incoming funds to have a higher starting point for the calculation. In a capitated system, the only way that a physician can influence the amount of money taken in for each patient is to increase the risk adjustment score. With an average patient load of 300, each physician cares for a patient load which results in approximately to $3 million in capitated payments to the MA Defendants, varying based on the risk scores assigned to a specific physician's and patient panel.

84. In 2018, VIPcare's Performance Bonus Program had three opportunities to achieve the financial incentives: (1) Monthly Training Bonus, (2) Quality Performance Bonus, and (3) Financial Performance Bonus. The first two categories are innocuous and relatively minimal as compared to the Financial Performance metric. The Monthly Training Bonus provides a Per Meeting bonus of $300 for each meeting attended by the physician, up to an annual limit of $3,600.

The Quality Performance Bonus – arguably the most important metric to ensure proper patient care – incentivizes physicians to maintain high scores on the Healthcare Effectiveness Data and Information Set ("HEDIS") which uses nearly 100 metrics to assess quality of care. Physicians who have HEDIS Star Scores of 4.5-4.74 out of 5 earn up to $5,000 per year, where physicians who have HEDIS Star Scores of 4.75 or greater earn up to $10,000 per year.

85. The third category, however, directly implicates a physician's willingness to boost risk assessment scores. To earn the maximum Financial Performance Bonus, a physician must see more than 600 Freedom Medicare Advantage patients in a year, and then the physician may be awarded up to 50% of the surplus associated with those patients. The profits associated with each patient are derived by their adjusted capitation rate, or MRA score. Relator has been advised by Emily Gallman that the target capitated payment amount is $800 per patient per month to max out the bonus. The total incoming funding attributable to qualifying patients is then reduced by expenses associated with those patients. The expenses are typically related to (1) in-patient hospital admissions, (2) professional expenses like imaging, referrals and/or associated expenses, and (3) prescriptions. A physician can reduce expenses by avoiding admitting patients to a hospital, by writing generic prescriptions instead of brand names, by referring patients to use VIPcare's in-house imaging resources, by withholding or reducing the number of specialist referrals. If a physician can maximize funding and minimize expenses, the physician can and does receive up to $100,000 over and above their already-generous salaries.

III. FINANCIAL PERFORMANCE BONUS

GOAL: SURPLUS IPA BONUS PROGRAM – INDIVIDUAL PCP PERFORMANCE		
FR MA PATIENTS	**ANNUAL POTENTIAL BONUS**	**PAYMENT FREQUENCY**
100 - 249	50% of Surplus Up To $20,000	Quarterly
250 - 599	50% of Surplus Up To $50,000	Quarterly
600+	50% of Surplus Up To $100,000	Quarterly

86. Each physician's bonus is largely computed on the basis of the average risk score of her Freedom patients. Remarkably, only the risk scores of Freedom insureds are effectively taken into account. Thus, the 5 Star Check List forms use the physician's economic interest to induce the physicians to code the patient with additional diagnoses which are proposed by PO Defendant/Anion employees in India, which in turn allows Freedom to demonstrate to the CMS that its enrolled population is sicker than average, thus driving up its capitation rate for the next year and future years.

87. Bonuses are also based on the total cost expended by the MA Defendants on patients under their care. These out of pocket expenses, paid for by either the MA Defendants or PO Defendants, include hospital costs, diagnostic test costs, prescription drug costs, and so on. The lower the total cost, the higher the evaluation (and therefore bonus) the physician receives. This rationing of care, advocated by Defendants, runs counter to appropriate patient care and violates both the contractual obligation of the MA Defendants to CMS, and the mandatory statutory condition of payment requirements required by law.

88. Physicians are incentivized to minimize or withhold medically reasonable and necessary referrals to specialists. In reference to ways to reduce the expenses that count against

the Financial Performance bonus, Senior Director of Healthcare Operations Emily Gallman advised Relator to contact oncologists who wanted to treat a VIPcare patient with expensive infusions to "see what they want." Relator understood this to mean asking the oncologist about what kind of treatment he would provide and ration the referrals in the same way that other physicians (like Dr. Hans) do to keep their expenses low. Gallman made clear to Relator that the more Freedom/Optimum had to spend on a patient's specialist care, the less money would be available to pay Relator's bonus.

89. The PO Defendants, through various schemes, inducements, artifices, and artificial layers of approval, engaged in conduct which resulted in PO physicians failing to refer patients to specialists, despite obvious medical necessity and, in some cases, patient pleas for specialist care. Relator has personally identified multiple such patients, and in many cases, patients have suffered harm due to the lack of (or delay in receiving) medically reasonable and necessary specialist care. For example:

a. Patient R.H., a 95-year-old veteran of World War II, was seen by Dr. Hunt on September 4, 2018. At 109 pounds and 69 inches tall, he was severely malnourished and had low white count. He was then seen by Dr. Patel on October 25, 2018. Both physicians stated the patient declined interventions although he has dementia and capacity currently in question. The patient was told by Dr. Patel that his diet of Boost alone was adequate for nutrition. No further evaluation or workup was performed. When R.H. became Relator's patient, she provided two different referrals to appropriate specialists which he readily accepted. From those referrals, R.H. was found to suffer from a likely leukemia and an esophageal stenosis.

b. Patient S.S. was seen by Dr. Simovitz on multiple occasions for evaluation of a painful abdominal hernia. He reported to Relator that he begged for a referral to a surgeon, which Dr. Simovitz refused. The patient brought his son in to discuss the situation, but no referral was made. When S.S. became Relator's patient, imaging revealed a partially incarcerated hernia, which can be life-threatening. Relator immediately referred him to a specialist for a hernia repair. Relator examined him in December 2018 and in January, March, and April 2018, and understands that hernia repair has been or will be effectuated.

c. Patient W.M. was seen by Dr. Patel several times in 2018. Worsening renal function was diagnosed as approaching stage IV (severe) kidney disease. The condition had been billed on multiple visits, but was never referred to a nephrologist. When Relator treated him, he reported that he was unaware he had been diagnosed with approaching Stage IV kidney disease. She immediately referred him to nephrology and cardiology specialists, who continue to treat him.

d. Patient W.L. was examined by Dr. Patel on September 6, 2018. Dr. Patel ordered imaging for screening and subsequently told W.L. that the imaging was normal. Dr. Patel commented in his note, "CT abdomen without significant findings supporting weight loss." There was no further follow up or referral done. When W.L. became her patient, Relator reviewed the radiologist's report from CT scan, and determined that it had identified thyroid calcifications (associated with possible malignancy), emphysema, lung nodules and heavy coronary plaque, gallbladder sludge, adrenal adenoma, renal calculi, prostate

enlargement. A number of these conditions required further imaging and/or referrals, which Relator promptly made to the appropriate specialists.

90. Physicians are incentivized to minimize or withhold medically reasonable and necessary referrals to specialists. In reference to ways to reduce the expenses that count against the Financial Performance bonus, Senior Director of Healthcare Operations Emily Gallman advised Relator to contact oncologists who wanted to treat a VIPcare patient with expensive infusions to "see what they want." Relator understood this to mean asking the oncologist about what kind of treatment he would provide and ration the referrals in the same way that other physicians (like Dr. Hans) do to keep their expenses low. Gallman made clear to Relator that the more Freedom/Optimum had to spend on a patient's specialist care, the less money would be available to pay Relator's bonus.

Lack of Effective Compliance Programs

91. Defendants knowingly pursued these FCA violations without any meaningful compliance training programs for their affiliated physicians, coders, and other employees or contractors relating to preventing Part C fraud, waste, or abuse. This, despite that Defendants Freedom and Optimum are under strict legal obligations pursuant to the Corporate Integrity Agreement.

Failure To Return Overpayments

92. CMS audits MA Organizations, and the MA Organizations in turn audit providers, concerning the accuracy of their coding because of its importance to MA Plan reimbursement. In the event that erroneous risk-adjusting diagnoses codes are "swept" into the reimbursement system, CMS requires the return of any overpayments. *See* Medicare Managed Care Manual, Chapter 7, § 40 (June 2013); *Swoben*, 848 F.3d at 1176–77 & n.8 (9th Cir. 2016).

93. Instead of reimbursing CMS for the overpayments, conducting further audits, and funding compliance and training programs, Defendants turned a blind eye at best; and at worst, intentionally doubled down on their scheme to increase risk-adjusting diagnosis codes. Defendants knew that the diagnosis codes being submitted to CMS were false and knew that the submission of these false risk-adjusting codes would inflate the Medicare Part C payments.

Patient Harm Due To Phony Patient Diagnoses

94. The result of the violations of the False Claims Act described herein are not just monetary – Defendants scheme results in significant patient harm. First, the false diagnosis codes, whether upcoded or entirely false, drive patient care. Physicians, whether primary care successors or specialists, make medical decisions for treatment specifically based upon information in each patients' chart. If previous diagnoses are false, subsequent diagnoses and care suffers.

95. Second, the patients themselves make decisions based upon their being labeled with false diagnoses. For example, many of the patients have been falsely told they have Major Depressive Disorder or Alcohol Dependency and will take certain courses of action they otherwise would not.

96. Third, the phony diagnoses affect the patients' relationships with third parties. Patients will be forced to choose between including the phony diagnoses in a life insurance, health insurance or job application even though the diagnoses are false, or to deny the diagnoses at the risk of being accused of withholding information on "diagnosed" condition. If a patient is made to appear sick enough, he may have increased difficulty getting new health insurance, thereby forcing the patient to maintain coverage with the MA Defendants.

FIRST CLAIM FOR RELIEF

False Claims Act: Reverse False Claims
31 U.S.C. § 3729 (a)(1)(A) Against All Defendants

97. The Relator repeats and re-alleges the allegations contained in ¶¶ 1 to 96 above as though they are fully set forth herein.

98. All Defendants violated 31 U.S.C. § 3729(a)(1)(A) by knowingly presenting and causing the presentment of false or fraudulent claims for payment or approval resulting in inflated Medicare reimbursements to which they were not entitled.

99. Had CMS been aware of Defendants' knowing false coding, it would have refused to make risk-adjustment payments based on the false coding and/or pursued other legal remedies to avoid the potential disruption of MA Plan benefits to thousands of Medicare beneficiaries to whom Defendants provided healthcare services

100. By virtue of the said acts of concealment and/or improper avoidance, the UNITED STATES has incurred damages and therefore is entitled to treble damages under the FCA, plus a civil penalty for each violation of the Act.

SECOND CLAIM FOR RELIEF

False Claims Act: Reverse False Claims
31 U.S.C. § 3729 (a)(1)(B) Against All Defendants

101. The Relator repeats and re-alleges the allegations contained in ¶¶ 1 to 96 above as though they are fully set forth herein.

102. All Defendants violated 31 U.S.C. § 3729(a)(1)(B) by knowingly making, using, and causing to be made or used, false records and statements material to false or fraudulent claims resulting in inflated Medicare reimbursements to which they were not entitled.

103. Had CMS been aware of all Defendants' knowing false coding, it would have refused to make risk-adjustment payments to the MA Defendants based on the false coding and/or pursued other legal remedies to avoid the potential disruption of MA Plan benefits to thousands of Medicare beneficiaries.

104. By virtue of the said false records, statements, and other acts of concealment and improper avoidance, the UNITED STATES has incurred damages and therefore is entitled to treble damages under the FCA, plus a civil penalty for each violation of the Act.

THIRD CLAIM FOR RELIEF

False Claims Act: Making or Using False Records or Statements 31 U.S.C. § 3729 (a)(1)(G) against MA Defendants

105. The Relator repeats and re-alleges the allegations contained in ¶¶ 1 to 96 above as though they are fully set forth herein.

106. MA Defendants violated 31 U.S.C. § 3729(a) (1)(G) as follows: the MA Defendants knowingly made or used, or cause to be made or used, a false record or statement material to an obligation to pay or transmit money to the United States. The MA Defendants also knowingly concealed and knowingly and improperly avoided or decreased an obligation to pay or transmit money or property to the Government by failing to repay Medicare overpayments to which they were not entitled.

107. Had CMS been aware of Defendants' knowing false coding and knowing failure to return overpayments, it would have taken steps to recover them.

108. By virtue of the said false records and statements, the UNITED STATES has incurred damages and therefore is entitled to treble damages under the FCA, plus a civil penalty of each violation of the Act.

WHEREFORE, Plaintiff/Relator requests the Court grant judgment for Plaintiff/Relator and the United States against the Defendants, as follows:

a. For civil penalties for each false claim submitted, pursuant to 31 U.S.C. § 3729(a), and as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015;

b. For three times the amount of damages proved, pursuant to 31 U.S.C. § 3729(a);

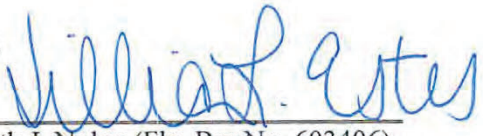
c. For Relator's reasonable attorney's fees and costs, in accordance with 31 U.S.C. § 3730(d);

d. For the maximum Relator's share award, pursuant to 31 U.S.C. § 3729(d);

e. For pre-judgment and post-judgment interest permitted as provided by law; and

f. For such other and further relief as may be appropriate and authorized by law.

Respectfully submitted this 20th day of May, 2019,



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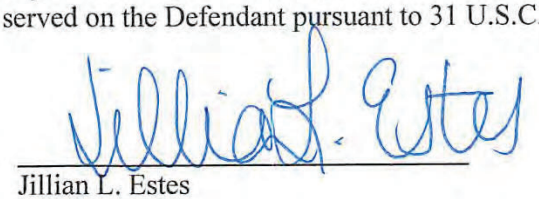
CERTIFICATE OF SERVICE

I, Jillian L. Estes, hereby certify that a true and correct copy of the foregoing Complaint was served by U.S. Mail on the Office of the Attorney General of the United States of America and on the Office of the United States Attorney for the Middle District of Florida on this 20th day of May, 2019. The Complaint was not served on the Defendant pursuant to 31 U.S.C. 3730(b)(2).



Jillian L. Estes

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,
ex rel. DR. CLARISSA ZAFIROV,

Plaintiffs,

v. Case No.: 8:19-cv-1236-T-23SPF

FLORIDA MEDICAL ASSOCIATES, LLC, *et al.*,

Defendants.
_____/

GOVERNMENT'S NOTICE OF ELECTION TO DECLINE INTERVENTION

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States hereby notifies the Court of its decision to decline intervention in this action. Although the United States is not intervening at this time, it respectfully refers the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing, however, that the "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." *Id.* Therefore, the United States requests that, should either the relator or the defendant propose that this action be dismissed, settled, or otherwise discontinued, this Court solicit the written consent of the United States before ruling or granting its approval.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings filed in this action be served upon it. The United States also

requests that orders issued by the Court be sent to the Government's counsel. The United States reserves its right to order any deposition transcripts, to intervene in this action, for good cause, at a later date, and to seek the dismissal of the relator's action or claim. The United States also requests that it be served with all notices of appeal.

Respectfully submitted,

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Dated: September 21, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will provide electronic service to all counsel of record.

/s/ Sean P. Keefe
SEAN P. KEEFE
Assistant United States Attorney

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA ex rel. DR. CLARISSA ZAFIROV, Relator and Plaintiff, v. PHYSICIAN PARTNERS, LLC; FLORIDA MEDICAL ASSOCIATES, LLC, d/b/a VIPCARE; ANION TECHNOLOGIES, LLC; FREEDOM HEALTH, INC; and OPTIMUM HEALTHCARE, INC, Defendants.	) Case No. 8:19-CV-01236-KMM-SPF) Jury Trial Demanded

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FIRST AMENDED COMPLAINT ALLEGING VIOLATIONS OF THE FEDERAL FALSE CLAIMS ACT
AND
DEMAND FOR A JURY TRIAL

TABLE OF CONTENTS

I. INTRODUCTION 1

A. Summary of Fraudulent Scheme 2
B. Resulting Claims and Retained Overpayments. 5

II. PARTIES 7

III. JURISDICTION AND VENUE 12

A. Public Disclosure 12
B. Original Source 14

IV. PROCEDURAL POSTURE 14

V. THE FEDERAL FALSE CLAIMS ACT 16

VI. MEDICARE AND THE MEDICARE ADVANTAGE PROGRAM 17

A. The Medicare Advantage Risk-Adjustment System 20
B. The Role of Providers in the MA Risk Adjustment Process 24
C. Repayment Obligations Under the Medicare Advantage Program 27

VII. ALLEGATIONS OF DEFENDANTS' CONDUCT RESULTING IN THE SUBMISSION OF FALSE CLAIMS 29

A. Allegations Against Physician Partners, Anion and VIPcare 30

i. Overview of the Relationship between Physician Partners, Anion Technologies, and VIPcare 32
ii. Overview of the 5 Star Checklist 35
iii. Physician Partners Incentivized Employed Physicians to Increase the Risk Scores while Reducing Costs to Treat Freedom Patients 47
iv. Physician Partners Directed and Pressured Physicians to Use Risk Adjusting Scores. 54

B. Allegations Against Freedom and Optimum 75

VIII. DEFENDANTS KNOWINGLY SUBMITTED OR CAUSED TO BE SUBMITTED FALSE OR FRAUDULENT CLAIMS 83

IX. EXAMPLES OF SPECIFIC FALSE OR FRAUDULENT CLAIMS SUBMITTED OR CAUSED TO BE SUBMITTED 85

A. Claims Submitted Where Source of Diagnosis Code was Changed to Anonymous "Physician" 85
B. Codes Submitted in Relator's Name After She Said No or Expressly Notified of Inaccuracy 98
C. Defendants' Failure to Return Overpayments 108

X. COUNTS 117

I. INTRODUCTION

1. This Civil Action brought by Relator Dr. Clarissa Zafirov alleges manipulation of the Medicare Advantage program from January 2014 through the present by one of Florida's largest healthcare providers, Defendant Physician Partners, LLC ("Physician Partners"), and two insurance companies, Defendants Freedom Health, Inc. ("Freedom") and Optimum Healthcare, Inc. ("Optimum"), who worked in tandem to bilk the United States out of millions of dollars in artificially-increased capitation payments. Taking advantage of a system intended to ensure senior citizens and severely disabled individuals have access to the healthcare services that they need, Physician Partners – for itself and through its subsidiaries Defendants Anion Technologies, LLC ("Anion") and Florida Medical Associates, LLC d/b/a VIPcare ("VIPcare") – submitted unsupported diagnosis codes to Freedom and Optimum, who encouraged and accepted the inflated codes, and then paid Physician Partners with the United States' money.

2. The United States relies on Medicare providers to honestly and accurately report the health conditions of its beneficiaries through diagnostic codes, and relies on its contracted Medicare Advantage insurers to ensure the accuracy of the providers' claims. As described in Section VI, payments under the Medicare Advantage program hinge on truthful submissions of diagnosis codes in the encounter data, which serve as the claim for payment. See ¶¶48-54.

3. Thus, when participants in the Medicare Advantage program – whether providers or insurers – provide false diagnosis codes to make their beneficiaries look sicker and to increase payments from Medicare, those codes are false claims which violate the False Claims Act. And when recipients of inflated capitation payments fail to return overpayments to which they know they are not entitled, the recipients violate the "reverse False Claims Act" as well.

A. Summary of Fraudulent Scheme

4. Physician Partners is a provider organization which employs or contracts with about 500 physicians who treat about 130,000 Medicare beneficiaries throughout Florida. Its subsidiary Anion is the billing arm of Physician Partners, employing chart reviewers in Florida and India to access patient records, evaluate diagnosis codes, and modify the codes to enhance risk scores. Physician Partners and Anion provide their management and services to contracted private practices, or to practices that are wholly owned and operated by Physician Partners, like VIPcare.

5. Through policies, practices and procedures imposed on both contracted and employed physicians, Physician Partners and Anion systematically manipulate patient health records to document and submit unsupported conditions to increase their patients' "risk adjustment scores," which in turn substantially increases the amount that Medicare pays for the patients' care. The

unsupported risk-adjusting diagnoses are not a matter of medical judgment: They are fraud.

6. Physician Partners' scheme could not have been successful without the knowledge and participation of Freedom and Optimum, the Medicare Advantage organizations who provide insurance coverage for approximately 90% of Physician Partners' patients. The entities are more than business affiliates; they are inextricably linked by Sidd Pagidipati, the CEO of Physician Partners who took the helm of the provider organization after the policies he implemented as the COO of Freedom and Optimum led those companies to a $32 million False Claims Act settlement. As described at ¶¶26-29, Freedom and Optimum operate as a single entity and are referred to collectively as "Freedom" throughout this Amended Complaint.

7. Together, Physician Partners and Freedom directed healthcare providers how to code using false and misleading medical information to persuade physicians to set aside their medical judgment in favor of diagnosing inflated, serious conditions. Specifically, physicians, including Dr. Zafirov, were directed to use fictitious criteria to diagnose rare conditions like Major Depressive Disorder or Complicated Diabetes, to "diagnose" cancers which had long been in remission; to characterize prescribed use of pain medication as drug addiction;

and to diagnose conditions based on physical exam rather than the necessary diagnostic tests or imaging.

8. The principal vehicle used by Physician Partners to implement its scheme is a document called a "5 Star Checklist," an Anion-generated form which "suggests" diagnoses that are ostensibly based on a patient's medical history, but in reality *only* suggest conditions that would increase a patient's risk score, and thus increase the amount that Medicare pays for that patient's care. Freedom knew that Physician Partners used these 5 Star Checklists as improper steering tools, but turned a blind eye so long as the documents were not kept in the patients' medical records. These Checklists are discussed throughout the factual allegations of this Amended Complaint, with a detailed explanation beginning at ¶105.

9. The relator, Dr. Clarissa Zafirov is Board certified in Family Medicine and was employed as a VIPcare physician. She found countless "suggested" diagnoses on 5 Star Checklists which were not supported by the patient's symptoms, test results, or medical history. Dr. Zafirov's refusal to alter her coding to meet Physician Partner's financial demands was met with relentless, increasing pressure from her VIPcare administrators and directors, Anion chart reviewers, Physician Partners quality analysts and Physician Partners' senior administrators – first threatening her financial success through their bonus structure, and when that didn't work, repeatedly challenging her medical decision-making.

10. Physician Partners, through Anion, routinely overruled Dr. Zafirov's medical judgment, submitting risk-adjusting diagnosis codes which Dr. Zafirov expressly rejected. The false claims sometimes indicated that Dr. Zafirov made the diagnosis even when she did not, and sometimes were modified to indicate that an unidentified "physician" made the diagnosis even when the medical record contained neither the physician's information nor the diagnosis.

11. The Amended Complaint details Physician Partners' role in directing fraudulent coding in Section VII(A). Specifically, the financial incentives that they used to pressure employed physicians to diagnose risk-adjusting codes are discussed at ¶¶125-137. Physician Partners' training and directives to inflate risk scores are described at ¶¶138-157. And Physician Partner's use of direct pressure to accept their coding model is discussed at ¶¶158-179. The role that Freedom had in directing and causing the submission of false claims is discussed in Section VII(B) at ¶¶180-194.

B. Resulting Claims and Retained Overpayments

12. In response to the Court's Sept. 28, 2021 Order, Relator's Amended Complaint provides significant additional details regarding Defendants' fraudulent scheme, the resulting false claims, and the failure to return overpayments of fraudulently-obtained capitation payments.

13. As Dr. Zafirov discovered that false claims were being submitted, she began retaining copies of the 5 Star Checklists that she submitted to Anion. She also had access to Q360, Physician Partners' billing records system which recorded the codes submitted by Anion to Freedom and Optimum for each of her patients, including which codes were paid, the source of those codes, and the date of service on which the code was entered. Dr. Zafirov was also provided with credentials to Freedom's MRA/HEDIS physician portal which allowed her to access Freedom's Member Health Profiles and Prospective Possible Condition Reports. These reports identify the codes that were submitted from Freedom and Optimum to CMS for each patient, including the dates of service and the source for the submitted codes.

14. As described in Section VI, these submitted codes comprise the service record or "encounter data" that serves as the claim for payment in the Medicare Advantage program.

15. As a result of her three-part access, Dr. Zafirov is able to trace the false claims alleged in this case from "cradle to grave" – identifying the falsity of the code from the 5 Star Checklist through submission to the United States. Details of exemplar claims, including supporting documents, appear *infra* at Section IX. Specifically, false claims that were submitted with a changed "source" after Dr. Zafirov rejected the code are identified at ¶¶202-240, and false claims that were

submitted in Dr. Zafirov's name even though she did not make the diagnosis are identified at ¶¶241-271.

16. The false codes also give rise to violations of the "reverse False Claims Act" because neither Physician Partners nor Freedom or Optimum returned overpayments attributable to the unsupported claims. Additional examples overpayments that were not returned are identified at ¶¶272-295.

17. Through these claims, and as described throughout the Amended Complaint, Dr. Zafirov alleges with specificity that Physician Partners – by itself and through Anion and VIPcare – acted in concert with and severely disabled individuals who rely on the Medicare Advantage program to provide them with healthcare services. In doing so, the Defendants knowingly submitted unsupported diagnosis codes which cost the United States millions of dollars in artificially inflated capitation payments. Each of those unsupported codes is a false claim submitted in violation of the False Claims Act.

II. PARTIES

18. The United States of America is the real party of interest in this case. The United States operates and administers the Medicare and Medicaid programs through the Department of Health and Human Services ("HHS"), which includes its operating division, the Centers for Medicare and Medicaid Services ("CMS"). At all times relevant to this Complaint, CMS administered the Medicare Part C

Program and made Medicare Advantage ("MA") risk-adjusting payments thereunder.

19. *Qui tam* Plaintiff/Relator Dr. Clarissa Zafirov is a Board-certified Family Medicine physician licensed in the State of Florida. She also holds a Certification of College of Family Physicians in Canada.

20. From October 2018 through March 2020, Dr. Zafirov was employed as a primary care physician at Florida Medical Associates d/b/a VIPcare. As described herein, Dr. Zafirov regularly interacted with billing and coding specialists from Physician Partners and Anion, attended and watched training sessions created by representatives of Physician Partners and Freedom Health, and had access to the insurers' billing portal for the express purpose of seeing which claims were submitted to the United States.

21. Dr. Zafirov was provided with access credentials to both the Physician Partners' Q360 billing system and eClinicalWorks electronic medical records, as well as Freedom's MRA/HEDIS physician portal which provided access to claims data submitted from Freedom and Optimum to CMS for each of her enrolled beneficiaries.

22. Defendant Physician Partners, LLC ("Physician Partners" or "PP") is a medical practice management company which advertises itself as coordinating services between physicians, payors and patients. Physician Partners is a Florida

limited liability company with a principal address of 601 S. Harbour Island Blvd., Suite 200, Tampa, Florida.

23. Physician Partners employs or manages more than 500 physicians providing services to approximately 130,000 patients. Physician Partners includes fully-owned and operated practice groups, such as Defendant Florida Medical Associates d/b/a VIPcare, for which Physician Partners assigns all patients, manages all billing, and establishes and implements all practices and procedures. Physician Partners also has management contracts with private medical practices through which it handles, *inter alia*, insurance credentialing, and all billing and coding for the practice.

24. Defendant Anion Technologies, LLC ("Anion"), which also does business as Anion Healthcare Services, is the wholly-owned billing and coding subsidiary of Physician Partners. For all providers, regardless of whether they have a private or affiliated practice, Physician Partners uses uniform billing and coding processes implemented through Anion. Anion's U.S.-based headquarters are located at the same address as Physician Partners, at 601 S. Harbour Island Blvd., Suite 200, Tampa, Florida, but a majority of its employees are located in and access patient records from Hyderabad, India or Ocala, FL. Anion's Ocala facility is located at 2955 SE 3rd St., Ocala, FL, which is also the listed address for SunLabs, Inc. – the entity which paid Dr. Zafirov's salary as a VIPcare physician.

25. Defendant Florida Medical Associates, Inc. ("FMA") d/b/a VIPcare ("VIPcare") is a provider group which is fully affiliated with and operated by Physician Partners. VIPcare operates 45 clinics spanning 16 Florida counties, including its Venice location where Dr. Zafirov was employed as the sole physician. Although FMA does not publicly disclose its association with Physician Partners on its website, its mailing address and principal addresses are also 601 S. Harbour Island Blvd., Suite 200, Tampa, Florida. The policies, procedures, documents, and manuals utilized at VIPcare are created, distributed, and implemented by Physician Partners, and its billing is performed by Anion.

26. Defendant Freedom Health, Inc. ("Freedom") is a health maintenance organization ("HMO") currently operating in 24 Florida counties, pursuant to a Certificate of Authority from the Florida Office of Insurance Regulation. Freedom is a wholly-owned subsidiary of Anthem, Inc., which acquired Freedom in 2018. Freedom is a Florida corporation with its principal place of business in Tampa. Relevant to this case, Freedom participates in the Medicare Advantage ("MA") program pursuant to Contract No. H5427 with CMS. As of October 2021, Freedom had 68,382 enrolled MA beneficiaries.

27. Defendant Optimum Healthcare, Inc. is also an HMO operating in the same 24 counties throughout Florida, pursuant to a Certificate of Authority from the Florida Office of Insurance Regulation. Optimum is also a wholly-owned

subsidiary of Anthem, Inc., and is a Florida corporation with its principal place of business in Tampa. Relevant to this case, Optimum participates in the Medicare Advantage ("MA") program pursuant to Contract No. H5594 with CMS. As of October 2021, Optimum had 52,313 enrolled MA beneficiaries.

28. Defendants Freedom and Optimum are sibling entities and operate indistinguishably from one another. Both are registered with the State of Florida with a mailing address of 4200 W. Cypress Street, Suite 1000, Tampa, Florida, 33607. They were jointly co-founded by Sidd Pagidipati (the owner and former CEO of Physician Partners), who was the Chief Operating Officer of both entities until approximately 2017. Presently, both companies have the same President, Chief Executive Officer, Director, Chief Medical Officer, Treasurer, Assistant Treasurer, Secretary and Assistant Secretary. Enrollees of both entities are directed to contact the companies at the same post office box, fax number and TTY extension through websites that are virtually identical except for color scheme and stock photographs.

29. Freedom and Optimum refer to themselves collectively in publications distributed to its provider physicians. In contractual agreements with the United States, Freedom and Optimum have been referred to collectively as "Freedom," and statutory and regulatory obligations imposed on "Freedom" were

binding as to both entities. Accordingly, Relator refers to Freedom and Optimum collectively as "Freedom," unless otherwise specified.

III. JURISDICTION AND VENUE

30. This Court has subject matter jurisdiction over this action per 28 U.S.C. § 1345 because the United States is the real-party-in-interest. In addition, the Court has subject matter jurisdiction over FCA claims for relief under 31 U.S.C. § 3732(a) and (b).

31. Personal jurisdiction lies under 31 U.S.C. § 3732(a) because at least one of the Defendants can be found in, resides in, and transacts business in this District, or has committed the alleged acts in this District.

32. Venue lies in this District under 28 U.S.C. §§ 1391(b), (c) and 31 U.S.C. § 3732(a) because the Defendants can be found in and/or transact business in this District; a substantial part of all of the events or omissions giving rise to the claims occurred in this District; and all of the Defendants are subject to the Court's jurisdiction under the FCA.

A. Public Disclosure

33. This Court's order dated Sept. 28, 2021, concluded that Relator's allegations against Freedom, Optimum and Pagidipati in Relator's original complaint were publicly disclosed by documents related to a prior lawsuit

involving those parties, *U.S. ex rel. Sewell v. Freedom Health, et al.*, Civil Action No. 8:09-CV-01625 (M.D. Fl.).

34. That case was filed in 2009 and all claims against the defendants were dismissed in May 2017. The covered conduct in that case related to false claims submitted between January 2008 and December 2013. In this case, Relator alleges violations beginning in January 2014 through the present. None of the claims alleged to be false in the *Sewell* matter are at issue in this case.

35. The *Sewell* complaint alleged that Freedom and Optimum, at the direction of Pagidipati, submitted unsupported diagnosis data which resulted in manipulation of the risk adjustment scores of their enrolled beneficiaries. In the Medicare Advantage industry, *all* allegations of fraud ultimately relate to the submission of unsupported diagnosis data and the manipulation of the risk adjustment score because that is the only way to increase funding from the Government.

36. The *Sewell* case identified five specific schemes developed by the defendants to manipulate the risk adjustment data. None of those schemes describe the allegations of this case – that Freedom and Optimum actively participated in the operation of a provider group, including training providers on how to code specific diseases, for the purpose of increasing risk scores of the patients being treated by the provider group.

37. In this Amended Complaint, Relator clarifies how her allegations are distinct from the *Sewell* allegations as to time, scope, and factual basis. Accordingly, Dr. Zafirov's allegations related to Freedom and Optimum in this Amended Complaint were not previously publicly disclosed as defined in the False Claims Act, 31 U.S.C. § 3730(e)(4).

B. Original Source

38. Even if substantially the same allegations or transactions as alleged in this complaint were publicly disclosed by the *Sewell* case, Relator is an "original source" as defined in 31 U.S.C. § 3730(e)(4)(B). Relator voluntarily disclosed her allegations to the United States Attorney's Office for the Middle District of Florida on May 16, 2019, prior to the filing of this case, and has knowledge that is independent of and materially adds to any information disclosed in the *Sewell* litigation.

IV. PROCEDURAL POSTURE

39. Relator filed the original complaint in this case on May 20, 2019, in the Middle District of Florida. The Court granted Relator's motion to place the case under seal pursuant to 31 U.S.C. § 3730(b)(2). Counsel for the United States sought a six-month extension of the initial seal date, which the Court granted on July 26, 2019. Dkt. 6.

40. During that time, the Government was actively investigating the case as both a civil and criminal matter. Consistent with its ongoing investigation, the Government requested additional time for the case to remain under seal on or about Jan. 21, 2020. Dkt. 9, 10. The Court denied the request on January 28, 2020, eight months after the case was filed. Dkt. 11. The language of the order departed from the typical unsealing order, acknowledging the public harm associated with the conduct alleged by Relator:

> The relator alleges a widespread, fraudulent scheme in which managed-care entities and healthcare providers act in concert to bilk the public fisc and otherwise injure the public. If true, the activity presents an ongoing and serious injury to the public.

41. The Government's investigation came to an end and the Government filed a notice not to intervene at that time. Dkt. 14. The Government later filed its notice of election to decline intervention. Dkt. 40.

42. Relator timely served her complaint on Defendants, and Defendants responded with motions to dismiss. Dkts. 41, 50 and 51. Briefing was closed on the motions to dismiss on Dec. 16, 2020, upon filing of specific replies permitted by the Court. Dkt. 74 and 75. Less than a month later, on Jan. 8, 2021, this case was reassigned to Judge Mizelle. Dkt. 76.

43. On Sept. 28, 2021, the Court entered an Order dismissing Relator's Complaint pursuant to Rule 9(b), Fed. R. Civ. P., and, as to certain defendants,

public disclosure grounds. Dkt. 81. The Court granted leave for Relator to file this amended complaint by Nov. 12, 2021. Dkts. 81, 84.

V. THE FEDERAL FALSE CLAIMS ACT

44. The Civil War-era False Claims Act ("FCA") is the United States' primary tool to prevent and remedy fraud against the Government and its taxpayers. The FCA reflects Congress's objective to "enhance the Government's ability to recover losses as a result of fraud against the Government." S. Rep. 99-345, at 1, *reprinted at* 1986 U.S.C.C.A.N. 5266. Since the 1986 enactment of the modern version of the FCA, it has returned more than $64 billion to the United States.

45. This case invokes three portions of the federal False Claims Act: 31 U.S.C. § 3729(a)(1)(A), (B) and (G). In salient part, the False Claims Act states,

> [A]ny person who –
>
> > A. Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
> >
> > B. Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; [or]…
> >
> > G. Knowingly makes, uses, or causes to be made or use, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

> is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus 3 times the amount of damages which the Government sustains because of the act of that person.

VI. MEDICARE AND THE MEDICARE ADVANTAGE PROGRAM

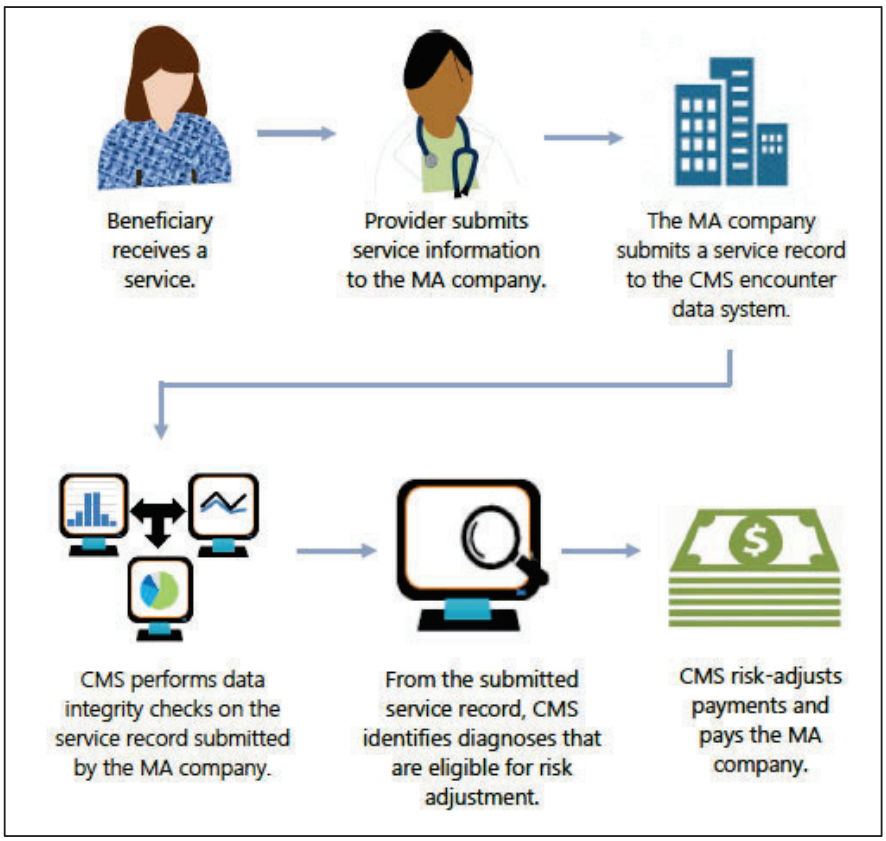
46. Medicare is a federally-operated health insurance program administered by CMS for the benefit of individuals 65 and older and certain disabled persons. *See* 42 U.S.C. § 1395, *et seq*.

47. There are four parts to the Medicare program. Part A covers inpatient care, Part B covers outpatient care, Part C establishes the Medicare Advantage program, and Part D is prescription drug coverage. A beneficiary eligible for Medicare may choose to be covered under Medicare Parts A and B, known as "traditional Medicare," in which CMS reimburses healthcare providers for services rendered via submission of claims for payment for each service provided. This is known as a fee-for-service payment system.

48. Alternatively, as relevant here, Medicare beneficiaries can elect to enroll in Medicare Part C, the Medicare Advantage program. Beneficiaries who choose this program enroll in a Medicare Advantage plan that is managed by a private insurance company known in this context as a Medicare Advantage Organization, or "MAO." 42 U.S.C. §§ 1395w-21-28; 42 C.F.R. §§ 422.2, 422.503(b)(2). In the Medicare Advantage program, CMS does not reimburse

providers on a fee-for-service basis but pays providers in advance for the anticipated cost of treatment for each beneficiary.

49. The Medicare Advantage payment process, as graphically illustrated by HHS-OIG, is as follows:



50. The CMS graphic shows that the information that triggers payment in the Medicare Advantage system is not a standalone "claim for payment" such as those submitted in traditional fee-for-service Medicare. Rather, the service record entered in the CMS encounter data system is itself the claim for payment.

51. As described in a *Medicare Provider Manual* (pg. 82) jointly published by Defendants Freedom and Optimum and provided to Dr. Zafirov in the course of her employment, "[c]laims submitted under a capitation contract are referred to as 'encounter data.'" Encounter data includes several pieces of information, the most important of which is the clinical conditions with which a patient has been diagnosed.

52. Because the submission of encounter data is itself the claim for payment, "an unsupported code submitted by a Medicare Advantage insurer [ ] triggers overpayment in every case. That is because individual codes in that program are used to determine payments, not as data points in a complex and rigorous statistical model." *Unitedhealthcare Ins. Co. v. Becerra*, 9 F.4th 868, 890 (D.C. Cir. 2021).

53. When an overpayment is identified and must be returned, as described *infra*, the MAO or provider does not send a specific amount of money back to the United States, but rather "it is the act of submitting the corrected data to CMS…that constitutes fulfillment of the requirement to report and return the overpayment." 79 Fed. Reg. 29,921. The return of funds then occurs through "routine processing." *Id.* at 29,920.

54. "The Medicare Advantage capitation payment system is subject to the False Claims Act." *U.S. ex rel. Silingo v. WellPoint, Inc.*, 904 F.3d 667, 673 (9th Cir. 2018).

A. The Medicare Advantage Risk-Adjustment System

55. The Medicare Advantage capitated system means that, each month, the Government pays a fixed amount per beneficiary enrolled in each MA Plan to each MAO. The baseline capitated amount is determined by an annual bid which is then adjusted by the expected risk of each beneficiary.

56. The per-member-per-month payment is not determined by the cost of healthcare services provided to an enrollee. Rather, each year, each MAO submits a bid amount for each of its MA plans, which is then compared to a benchmark set by CMS based on a statutory formula to establish the bid price, which is the baseline for the capitated payment. 42 U.S.C. § 1395w-23; 42 CFR § 422.2, subparts F and G.

57. Since 2000, Congress has required that the bid price be adjusted for each MA Plan enrollee based on (1) the enrollee's demographic factors, including age and gender, among others, and (2) the enrollee's health status. This process is called "risk adjustment."

58. Risk adjustment results in a "risk score," sometimes referred to as the "risk adjustment factor" or "RAF," which is a multiplier that is applied to the MA organization's bid price to determine the actual amount paid for each enrollee.

59. The enrollee's health status adjustment is determined using the CMS Hierarchical Condition Category ("HCC") risk-adjustment model. In sum, CMS predicts that patients who have been diagnosed with certain conditions will cost the insurer more to treat than the average Medicare patient, so it adjusts the monthly payment to make up for that cost difference. Likewise, a person who is healthier than the average Medicare patient may cost less to treat, so the bid price is adjusted down for those patients.

60. To make its predictive process even more accurate, CMS's model factors in the cost of certain co-morbidities, or multiple diagnoses whose treatments in combination are expected to be costlier than the cost of treating each disease separately. In sum, "the point of the Secretary's discretion to select, and obligation to apply, risk factors is to 'ensure that [Medicare Advantage insurers] are paid appropriately for their plan enrollees (that is, less for healthier enrollees and more for less healthy enrollees).'" *Becerra*, 9 F.4th at 874, quoting *Establishment of the Medicare Advantage Program*, 70 Fed Reg. 4588, 4657 (Jan 28, 2005).

61. Medical conditions, represented by diagnosis codes, are grouped into Hierarchical Condition Categories, or HCCs, which are categories of clinically-

related medical diagnoses. 42 CFR § 422.2. Certain HCCs contain diagnoses codes which indicate major, severe and/or chronic illnesses and are predicted to require more expensive treatments. These are referred to as "risk-adjusting diagnosis codes" and are assigned a numerical risk-adjustment score. The numerical scores for all of the risk-adjusting conditions with which a patient is diagnosed are added together to determine the patient's ultimate Medicare Risk Adjustment, or "MRA," value.

62. Not all diagnosis codes are risk-adjusting, meaning that conditions which are not expected to increase a patient's cost of treatment over an MAO's bid price do not have an associated risk-adjustment value and do not affect the amount paid for that beneficiary.

63. The HCC model is prospective, such that it relies on risk-adjusting diagnosis codes from one year (the "date of service year") to determine payments in the following year (the "payment year").

64. The Court of Appeals for the District of Columbia set forth the following explanation and example of how the Medicare Advantage risk adjustment model works in practice:

> To enable CMS to apply those relative factors to pay Medicare Advantage insurer at the correct risk-adjusted rate, the insurers must report to CMS the salient demographic and health characteristics of each of their Medicare-eligible beneficiaries. 42 CFR § 422.310(b), (d). CMS then combines the relative factors for a particular beneficiary to arrive at her individualized overall 'risk score.' *See* Pope et al.,

Evaluation of the CMS-HCC Risk Adjustment Model: Final Report 15, J.A. 532. CMS posits that an 'average beneficiary' in traditional Medicare has a risk score of 1.0. If a Medicare Advantage beneficiary has a risk score of exactly 1.0, CMS pays the insurer the base payment rate for that beneficiary's location. For Medicare Advantage beneficiaries with risk scores above 1.0, meaning they are of higher-than-average risk, CMS pays insurers more than the base payment rate; for beneficiaries with risk scores below 1.0, the payments are correspondingly lower than the base rate. But Medicare Advantage beneficiaries are not presumptively scored as 1.0; the per-capita payments that CMS makes to insurers instead depend on an aggregation of the beneficiaries' cost-predictive demographic and diagnostic factors.

CMS illustrates the operation of relative factors with an example:

> [U]nder the 2014 model, a 72-year-old woman living independently (relative factor 0.348), with diabetes without complications (relative factor 0.118), and multiple sclerosis (relative factor 0.556) would have a total risk score of 1.022, which means that she is expected to cost Medicare slightly more than the average traditional Medicare beneficiary (who would by definition have a risk score of 1.0)

[Government's Brief at 7] (citing Announcement of CY 2014 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter, at 67-68 (Apr. 1, 2013), J.A. 276-77). In other words, as a woman near the younger end of the Medicare-eligible population and living outside any long-term institutional setting, this sample beneficiary starts with a risk score well below the overall Medicare average. The fact that she suffers from diabetes raises her risk score, but not by much, presumably because she has not experienced complications and ordinary diabetes care is not as costly as many other conditions common among older Americans. The larger bump, putting her over the average predicted costs of care even for the cost-intensive Medicare population, is that she suffers from multiple sclerosis. A Medicare Advantage insurer providing coverage to this woman therefore "would be paid 102.2 percent of the relevant base rate." *Id.* at 8.

Becerra, 9 F.4th at 875-76.

65. The risk-adjustment model was created to incentivize cost-effective care and preventative medicine in an effort to reduce the rapidly increasing costs of the Medicare program, while ensuring that MAOs have sufficient funds available to meet their enrollees' healthcare needs. However, risk-adjusting creates a financial incentive for Medicare Advantage insurers to accept and approve diagnoses codes which make their beneficiaries appear sicker than they really are.

66. "Overpayment to Medicare Advantage insurers is a serious drain on the Medicare program's finances. In 2016 alone, audits of the data submitted by Medicare Advantage insurers to CMS showed that CMS paid out an estimated $16.2 billion for unsupported diagnoses, equal to 'nearly ten cents of every dollar paid to Medicare Advantage organizations.'" *Becerra*, 9 F.4th at 872-73, quoting *Silingo*, 904 F.3d at 673, *citing* James Cosgrove, U.S. Gov't Accountability Ofc., GAO-17-761T, *Medicare Advantage Program Integrity: CMS's Efforts to Ensure Proper Payments* 1 (2017), https://www.gao.gov/assets/690/685934.pdf.

B. The Role of Providers in the MA Risk Adjustment Process

67. Many MA organizations contract with Provider Organizations ("POs"), such as hospital networks and physician groups, to furnish healthcare services under the MA plans.

68. MA organizations pay providers through a variety of arrangements, but many large POs, to include Physician Partners and VIPcare, enter into capitated and/or "gainsharing" arrangements with the MAOs which align their financial interests. In a capitated arrangement, the MAO enters into a contract to pay a portion of the per-enrollee payment from the Government to the PO. In "gainsharing" agreements, the POs receive incentive payments from the MAO based in whole or in part on total revenues that the MAO receives from the Government for the beneficiaries cared for by those providers.

69. These financial arrangements align the interests of the MAO and the PO. When the PO increases a Medicare Advantage beneficiary's risk adjustment score, the MAO receives a higher capitation payment from the United States.

70. Pursuant to Medicare regulations, providers can be classified as "first tier entities" or "related entities." See 42 CFR §§ 422.2, 422.500.

71. A first-tier entity is "any party that enters into a written agreement, acceptable to CMS, with an MA organization…to provide…healthcare services for a Medicare eligible individual under the MA program." 42 CFR § 422.2.

72. A related entity is "any entity that is related to the MA organization by common ownership or control and (1) [p]erforms some of the MA organization's management functions under contract or delegation; [or]

[f]urnishes services to Medicare enrollees under an oral or written agreement…." 42 CFR § 422.500.

73. First-tier and related organizations must perform their services in a manner that complies with the MAO's contractual obligations to the Government; must agree to comply with all applicable Medicare laws, regulations and CMS instructions; and must receive effective compliance training and education relating to preventing fraud, waste and abuse. 42 CFR §§ 422.503-04.

74. If a related or first-tier entity generates data relating to an MAO's claims for payment to the United States, both it and the MAO are required by law to certify that the data is accurate and truthful. 42 C.F.R. § 422.504(l)(1)-(4).

75. Defendants Physician Partners and VIPcare are first-tier entities who provide healthcare services to Medicare Advantage patients by agreement with Freedom and Optimum.

76. "[D]iagnosis codes, as reported by medical providers, are the only factors that CMS uses to determine a beneficiary's health status." *U.S. ex rel. Ormsby v. Sutter Health*, 444 F.Supp.3d 1010, 1025 (N.D. Cal. Mar. 16, 2020). Patient records are also critical as the only documentation of a Medicare Part C beneficiary's health status.

77. As a result, "a traditional Medicare provider that submits an unsupported diagnosis code does not cause CMS to pay out any additional money,

whereas a Medicare Advantage provider that submits an unsupported diagnosis code does." *Id.* at 1021, n.1.

78. "Notwithstanding any relationship(s) that the MA organization may have" with first tier and related entities, "the MA organization maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of its contract with CMS." 42 C.F.R. § 422(i)(1).

C. Repayment Obligations Under the Medicare Advantage Program

79. 31 U.S.C. § 3729(a)(1)(G) is the "reverse False Claims" provision of the False Claims Act. It provides that liability will attach when a defendant conceals, avoids, or decreases an "obligation to pay or transmit money or property to the Government." In 2010, Congress amended the definition of the term "obligation" to include "an established duty, whether or not fixed, arising from…the retention of any overpayment."

80. The Affordable Care Act, enacted by Congress in 2010, includes what has come to be called the "Overpayment Rule." 42 U.S.C. § 1320a-7k(d). The Overpayment Rule obligates any person to report and return any overpayment that they receive from CMS within 60 days of identifying it. 42 U.S.C. § 1320a-7k(d)(1), (2).

81. The statute defines "overpayments" as "any funds that a person receives or retains under [Medicare or Medicaid] to which the person, after applicable reconciliation, is not entitled." 42 U.S.C. § 1320a-7k(d)(4)(B).

82. For purposes of the statute, the definition of the term "person" includes both the provider of services and Medicare Advantage organizations. 42 U.S.C. § 1320a-7k(d)(4)(C).

83. In 2014, CMS promulgated the Overpayment Rule to implement the statutory requirement for MA Organizations. *Overpayment Rule*, 79 Fed. Reg. at 29,958 (codified at 42 CFR § 422.326(a)). The rule mirrors the statute: "If an MA organization has identified that it has received an overpayment, the MA organization must report and return that overpayment in the form and manner set forth in this section." 42 CFR § 422.326(b). An "identified overpayment" occurs when the MAO has determined, *or should have determined through the exercise of reasonable diligence*, that it received an overpayment. 42 CFR § 422.326(b) (emphasis supplied).

84. The preamble to the Overpayment Rule states that "a risk adjustment diagnosis that has been submitted for payment but is found to be invalid because it does not have supporting medical record documentation would result in an overpayment." 79 Fed. Reg. at 29,921.

85. The failure to report and return a knowing overpayment within 60 days of discovering it violates the reverse false claims provision of the False Claims Act. 42 U.S.C. § 1320a-7k(d)(3); 42 CFR § 422.326(e).

86. Defendants Freedom and Optimum's *Medicare Provider Manual* (pg. 23) expressly recognizes that "[l]iability can also be created by the improper retention of an overpayment."

VII. ALLEGATIONS OF DEFENDANTS' CONDUCT RESULTING IN THE SUBMISSION OF FALSE CLAIMS

87. Physician Partners and its subsidiaries, including Anion and VIPcare, acted in concert with Freedom and Optimum to artificially increase risk adjustment scores of their Medicare Advantage enrollees, making their patients look sicker than they were, thus fraudulently increasing costs to the government while minimizing the amount of money actually spent to treat the patients.

88. In its September 28, 2021, Order (Dkt. 81 at 21-22), the Court directed that Relator clarify which conduct is attributable to which defendant. Relator endeavors to do so herein. However, Relator notes that it is critical to the success of this fraudulent scheme that all of the defendants operated in tandem, a relationship made possible largely by the knowledge and former control of Freedom and Optimum held by Siddhartha Pagidipati, the owner and CEO of Physician Partners.

89. But for these intertwined operations – where, *inter alia*, the Freedom instructed Physician Partners physicians how to increase risk scores and granted the physicians access to their internal claims submission portal, where Physician Partners allowed Freedom access to patients who were enrolled with other MAOs to persuade them to change programs, and where VIPcare bonused its employee physicians based on the risk scores of their Freedom patients – the conduct alleged herein could not have occurred.

A. ALLEGATIONS AGAINST PHYSICIAN PARTNERS, ANION, AND VIPCARE

90. Defendants Physician Partners, Anion and VIPcare provide healthcare services to thousands of senior or severely-disabled citizens throughout Florida who receive their care under the Medicare Advantage program. They have created and implemented a coding process designed to inflate their patients' Medical Risk Adjustment (MRA) scores to increase their capitated payments by making the patients look sicker than they are.

91. Through coordinated efforts to maximize profits, Physician Partners and VIPcare engaged in high-pressure directives to ensure their physicians selected only risk-adjusting HCCs, including tying the physicians' compensation to their willingness to comply with the system. And when physicians like Relator would not comply, Anion submitted unsupported diagnosis codes anyway, either

expressly disregarding the physician's instructions or modifying the code to appear as if it came from some other source.

92. In this way, Physician Partners ensured the implementation of its corporate directives to increase risk scores without regard to the actual physical condition of the patients.

93. In reviewing hundreds of 5 Star Checklists in connection with her patients, Dr. Zafirov saw none where the defendants changed a diagnosis code which resulted in lowering the patient's MRA score. Rather, this was always done to increase the patient's MRA score, and increase the funding from the United States.

94. In Section IX, *infra*, Relator identifies patients who she encountered in the course of her employment at VIPcare whose encounter data was not supported by clinical findings. For some, Relator notified Physician Partners that past codes were inarguably wrong and should be changed, but they were not. For others, Relator expressly rejected the "suggested" codes but Anion submitted them in her name anyway. And for others still, Relator rejected codes so Anion submitted them under an anonymous "physician" descriptor, despite the medical records lacking any support therefor. The patients identified in this complaint are examples only; they are by no means all of the patients with respect to whom false claims were submitted.

95. The submission of unsupported and false diagnosis codes by Anion, at the direction of Physician Partners and VIPcare, increased patients' risk scores and therefore the capitated payments received for those patients.

96. However, despite the additional diagnoses, no additional medical services resulted. Often, expensive medical services that *were* actually needed were withheld. Relator's physician colleagues boasted of restricting specialist access, deterring hospital admissions in potentially life-threatening situations, and even touted the cost-saving repercussions when patients suffered untimely deaths. As described herein and specifically stated to Relator by her VIPcare Regional Director Alex Lavin at an in-person meeting at her office on September 26, 2019, Physician Partners' physicians were expected to "do whatever needs to be done" to increase risk scores and lower costs.

i. Overview of the Relationship between Physician Partners, Anion Technologies, and VIPcare

97. Physician Partners advertises itself as "the intersection of patients, providers and payors" with more than 129,000 patients, more than 500 providers and relationships with 14 payor entities. www.phypartners.com (last accessed Nov. 2, 2021).

98. Physician Partners associates with providers in one of two ways. First, it employs physicians through PP-owned provider groups which have their own name and internal corporate structure but are part of the Physician Partners

corporate entity. Second, it enters into management contracts with independent physician practices wherein the physician maintains ownership of the practice, but Physician Partners assumes operational control.

99. VIPcare is in the former category – it is wholly owned and operated by Physician Partners. Under the VIPcare brand name, Physician Partners operates 45 clinic locations, each of which has one or more primary care physicians and a small nursing and clinical staff. The physicians sign employment contracts with FMA, receive their paychecks through another Physician Partners affiliate called SunLabsUSA (which shares an address with Anion) and are considered employees of Physician Partners.

100. Dr. Zafirov was employed as the primary care physician at a VIPcare clinic located in Venice, FL. When Dr. Zafirov requested an employment verification letter, she received a letter on SunLabsUSA letterhead which stated, "Dr. Zafirov practiced in our ambulatory primary care clinic for an assigned Medicare-focused patient panel…. She held the position of Physician at our VIPcare clinic located at 333 Tamiami Trail S, Suite 102, Venice, FL during this period." The letter was signed by Katrina Hall, Team Resources Operations Manager, whose signature block provided a Physician Partners email address, teamresources@phypartners.com.

101. In Relator's experience, and as described herein, VIPcare approved and implemented the directives set forth by Physician Partners. Accordingly, any conduct or policies attributable to Physician Partners are also attributable to VIPcare.

102. Among the policies and practices implemented by Physician Partners is the use of Anion as the billing and coding entity for all of Physician Partners' physicians, whether employed or independent. Anion employees – some located in Florida and others in Hyderabad, India – interact with a patient's medical record before and after each encounter.

103. On the day of or just before a patient visit, an Anion representative generates a "5 Star Checklist" (described in detail below) for the patient and transmits it to the physician for use during the visit.

104. Following a patient visit, an Anion representative reviews the physicians' notes, the physicians' diagnostic coding, and the 5 Star Checklist (if used). If the physician has not appended the codes suggested by Anion on the 5 Star form, or any codes which the Anion representative suggests upon review of the physician's notes, then the Anion representative engages directly with the physician to add the suggested HCCs. As described below, Anion representatives have complete access to the Physician Partners' patient records, enabling them to modify a physician's coding without the consent of the physician.

ii. Overview of the 5 Star Checklist

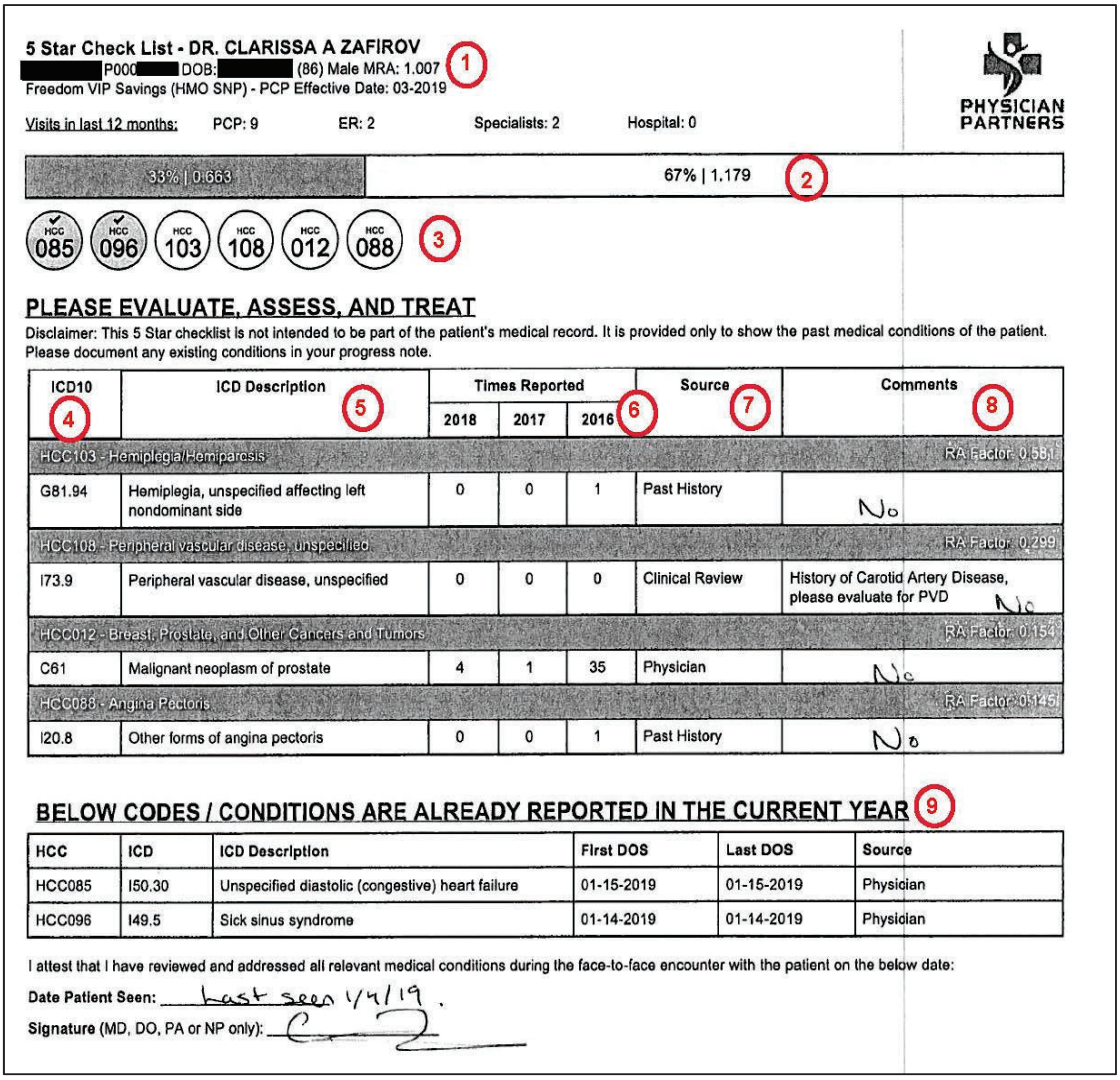
105. At the heart of Defendants' scheme to increase patient risk scores is the use of their proprietary code-steering form called the "5 Star Checklist." The Checklist is created in advance of every patient visit by an Anion employee, who populates a daily electronic folder with 5 Star Checklists for all patients scheduled for visits that day. Each morning, an Anion associate based in India, typically Ratnakar Mekala (whose signature block identifies him as Anion Healthcare Services | Process Associate - Provider Department), sends an email to the clinics that the 5 Star Checklists for that day are available and loaded into a Google Docs drive. Each doctor or office then goes onto the drive, downloads the forms for the day, and prints them in hardcopy.

106. VIPcare Medical Director Dr. Sangeeta Hans instructed Relator at the beginning of her employment that VIPcare physicians *must* complete a 5 Star Checklist for each patient at least once per year, but later instructed that it must be done twice a year. A Checklist is generated by Anion before every patient visit, regardless of whether one or two have already been completed that calendar year.

107. Despite the importance of the 5 Star Checklist to Anion's coding, Emily Gallman, Senior Director of Healthcare Operations at VIPcare, encouraged Dr. Zafirov to have her medical assistant simply accept the diagnoses on the 5 Star

Checklists and Dr. Zafirov could "just sign them" instead of completing the records herself.

108. The following is an example of a typical 5 Star Checklist, annotated to describe each section of the form:



5 Star Check List - DR. CLARISSA A ZAFIROV (1)
[redacted] P000[redacted] DOB:[redacted] (86) Male MRA: 1.007
Freedom VIP Savings (HMO SNP) - PCP Effective Date: 03-2019

PHYSICIAN PARTNERS

Visits in last 12 months: PCP: 9 ER: 2 Specialists: 2 Hospital: 0

33% | 0.663 | 67% | 1.179 (2)

HCC 085 ✓ | HCC 096 ✓ | HCC 103 | HCC 108 | HCC 012 | HCC 088 (3)

PLEASE EVALUATE, ASSESS, AND TREAT

Disclaimer: This 5 Star checklist is not intended to be part of the patient's medical record. It is provided only to show the past medical conditions of the patient. Please document any existing conditions in your progress note.

ICD10 (4)	ICD Description (5)	Times Reported 2018	2017	2016 (6)	Source (7)	Comments (8)
HCC103 - Hemiplegia/Hemiparesis						RA Factor: 0.581
G81.94	Hemiplegia, unspecified affecting left nondominant side	0	0	1	Past History	No
HCC108 - Peripheral vascular disease, unspecified						RA Factor: 0.299
I73.9	Peripheral vascular disease, unspecified	0	0	0	Clinical Review	History of Carotid Artery Disease, please evaluate for PVD No
HCC012 - Breast, Prostate, and Other Cancers and Tumors						RA Factor: 0.154
C61	Malignant neoplasm of prostate	4	1	35	Physician	No
HCC088 - Angina Pectoris						RA Factor: 0.145
I20.8	Other forms of angina pectoris	0	0	1	Past History	No

BELOW CODES / CONDITIONS ARE ALREADY REPORTED IN THE CURRENT YEAR (9)

HCC	ICD	ICD Description	First DOS	Last DOS	Source
HCC085	I50.30	Unspecified diastolic (congestive) heart failure	01-15-2019	01-15-2019	Physician
HCC096	I49.5	Sick sinus syndrome	01-14-2019	01-14-2019	Physician

I attest that I have reviewed and addressed all relevant medical conditions during the face-to-face encounter with the patient on the below date:

Date Patient Seen: last seen 1/4/19.

Signature (MD, DO, PA or NP only): [signature]

Annotation Key:

1 – The information at the top of the form provides the name of the current primary care physician, followed by the patient's name, patient number, date of birth, age, gender, risk score for the previous

year and the patient's insurance provider and plan. In this example, the patient had an MRA score of 1.007 the prior year, meaning he was very close to the average Medicare patient.

2 – The rectangular bar acts as a dashboard to track how much of the potential risk score suggested by Anion has been coded so far. At the beginning of each calendar year, the rectangle is completely white and says "100% | X.XX" where the X.XX reflects the maximum risk score if the physician agreed with every HCC suggested by Anion. As the suggested risk-adjusting HCCs are diagnosed, the white bar begins to fill up with grey, reflecting the percentage of maximum risk score that the physician has diagnosed. In this example, the patients' MRA score would be 1.842 if all the suggested conditions were accepted, meaning Freedom would receive 184.2% of the negotiated bid price for this patient.

3 – Each white bubble corresponds with a suggested HCC on the table below. All bubbles are white at the beginning of a calendar year, and are greyed out and checked once the HCC has been coded for that patient. The bubbles serve as a visual tally of the specific codes which have been suggested and which are still available to increase the patient's risk score.

4 – An ICD-10 code, often referred to as a "diagnosis code," is an alphanumeric code assigned to every disease process by the International Classification of Diseases, Tenth Revision, Clinical Modification ("ICD-10"). Each HCC is comprised of a series of related ICD codes. In this exemplar form, there is only one suggested ICD-10 code under each HCC, but often 5 Star Checklists include two or more suggested ICD-10 codes under an HCC. Once an ICD-10 code is diagnosed, it closes out that HCC and any subsequent ICD-10 codes under that same HCC will not increase the risk score any further. **There are no ICD codes on 5 Star Checklists which are associated with a non-risk-adjusting HCCs.**

5 – The ICD Description is a brief description of the associated ICD-10 code. The ICD-10 provides a detailed description of what diseases processes must be present to code each diagnosis; the name provided here is a short-form description for purposes of the 5 Star Checklist only.

6 – The "Times Reported" category shows the number of times the specific ICD-10 code was reported in the previous three years. A number in one of those three columns means that Physician Partners submitted that code as part of the patients' encounter data in the specified year. Certain of the numbers should be consistent year to year (i.e. unchangeable physical characteristics like an amputation or interminable diseases like cystic fibrosis or multiple sclerosis) and others will change depending on a patient's health condition.

7 – The "Source" column purports to identify the reason that a submitted a suggested code was placed on the 5 Star Checklist. The options for this column include "Current PCP," "Physician" or "Hospitalist" to indicate a condition that was previously reported to CMS by one of those providers, "past history" to identify a condition that was previously reported to CMS but the specific provider is unknown, "Clinically Inferred Criteria" to identify a condition that is selected by a chart reviewer based on the existence of other medical conditions, and "Review Suspect" to identify a condition that is selected by a chart reviewer based on some other criteria.

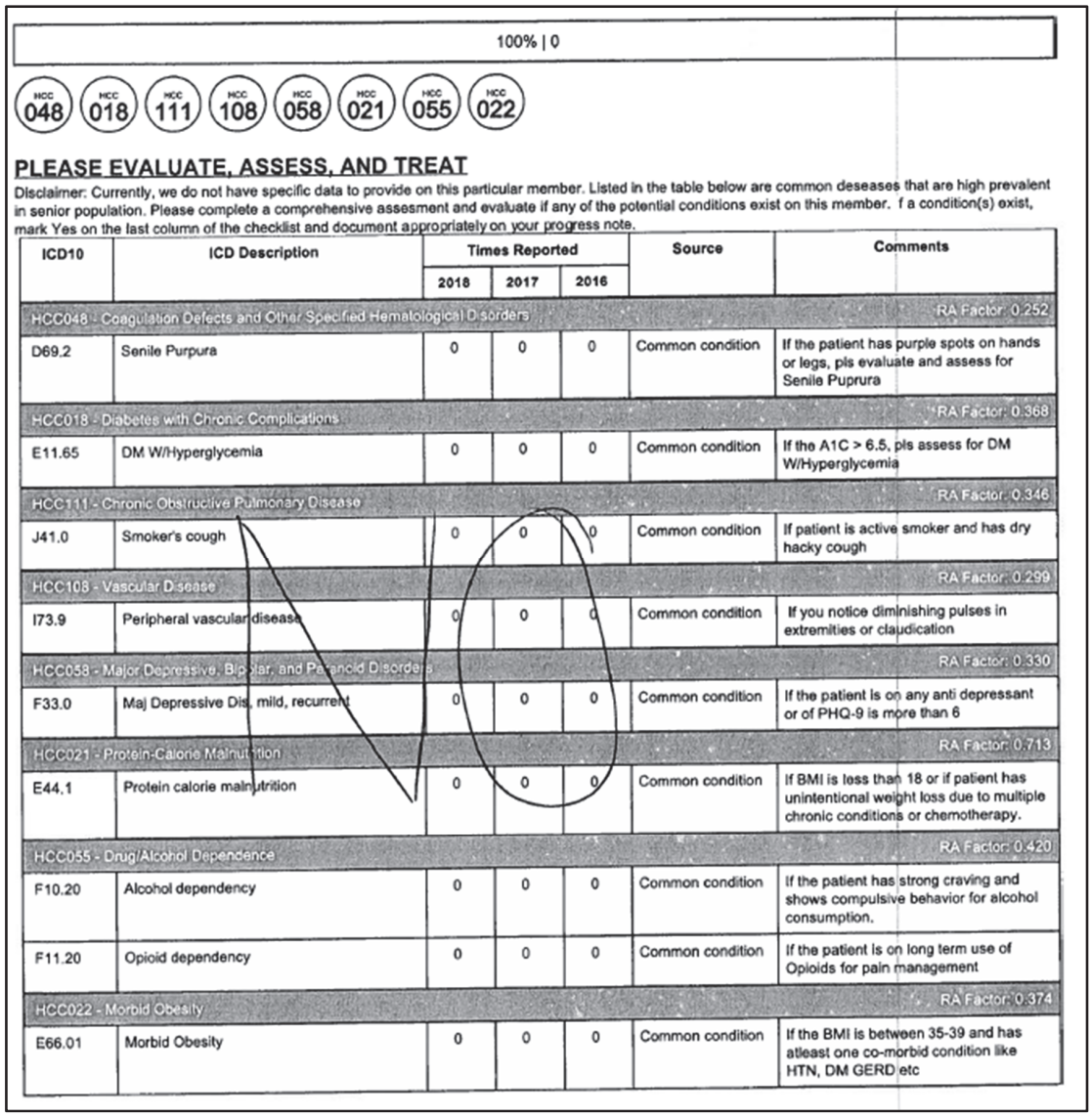
8 – The "Comments" field is where the patient's current primary care physician communicates findings to the Anion representative who is conducting the post-encounter chart review. The physician marks "yes," "no," or some other response to convey whether the code should be submitted for the patient. Anion may also put notes in the "Comments" section to explain why a certain condition was suggested.

9 – The "Codes/Conditions Already Reported" chart identifies HCCs – with the corresponding specific ICDs – which have already been diagnosed for that patient in the current calendar year, including the first date of service on which the code was identified and any subsequent dates of service on in which the code was identified. In this section of the chart, "source" indicates the person who actually diagnosed the reported code, so it only has three viable options – "Current PCP" to indicate the doctor presently seeing the patient, "Physician" which indicates a physician other than the current PCP, or "Hospital" if a patient received care in a hospital which resulted in an additional diagnosis. The HCCs in this section correlate to the

bubbles which are greyed-in as described in Section 4 of this paragraph.

109. For patients who are new to Physician Partners or Freedom, the 5 Star Checklist for their first visit is a standard template, rather than drawn from their transferred medical records. The form has a header that says, "PLEASE EVALUATE, ASSESS AND TREAT," and then states, "Listed in the table below are common deseases [sic] that are high prevalent in senior population [sic]. Please complete a comprehensive assessment and evaluate if any of the potential conditions exist on this member. If a condition(s) exist, mark Yes on the last column of the checklist and document appropriately on your progress note." *Every* condition listed has a risk-adjusting diagnosis code; there are no suggested codes which would not result in a risk adjustment, regardless of prevalence in the senior population. The associated comments are also medically inaccurate and misleading.

110. The following is an example of a standard new-patient 5 Star Checklist which bears a "No" marking from Dr. Zafirov indicating that the patient did not have any of the suggested ailments:



100% | 0

HCC 048 HCC 018 HCC 111 HCC 108 HCC 058 HCC 021 HCC 055 HCC 022

PLEASE EVALUATE, ASSESS, AND TREAT

Disclaimer: Currently, we do not have specific data to provide on this particular member. Listed in the table below are common deseases that are high prevalent in senior population. Please complete a comprehensive assesment and evaluate if any of the potential conditions exist on this member. f a condition(s) exist, mark Yes on the last column of the checklist and document appropriately on your progress note.

ICD10	ICD Description	Times Reported			Source	Comments
		2018	2017	2016		
HCC048 - Coagulation Defects and Other Specified Hematological Disorders						RA Factor: 0.252
D69.2	Senile Purpura	0	0	0	Common condition	If the patient has purple spots on hands or legs, pls evaluate and assess for Senile Puprura
HCC018 - Diabetes with Chronic Complications						RA Factor: 0.368
E11.65	DM W/Hyperglycemia	0	0	0	Common condition	If the A1C > 6.5, pls assess for DM W/Hyperglycemia
HCC111 - Chronic Obstructive Pulmonary Disease						RA Factor: 0.346
J41.0	Smoker's cough	0	0	0	Common condition	If patient is active smoker and has dry hacky cough
HCC108 - Vascular Disease						RA Factor: 0.299
I73.9	Peripheral vascular disease	0	0	0	Common condition	If you notice diminishing pulses in extremities or claudication
HCC058 - Major Depressive, Bipolar, and Paranoid Disorders						RA Factor: 0.330
F33.0	Maj Depressive Dis, mild, recurrent	0	0	0	Common condition	If the patient is on any anti depressant or of PHQ-9 is more than 6
HCC021 - Protein-Calorie Malnutrition						RA Factor: 0.713
E44.1	Protein calorie malnutrition	0	0	0	Common condition	If BMI is less than 18 or if patient has unintentional weight loss due to multiple chronic conditions or chemotherapy.
HCC055 - Drug/Alcohol Dependence						RA Factor: 0.420
F10.20	Alcohol dependency	0	0	0	Common condition	If the patient has strong craving and shows compulsive behavior for alcohol consumption.
F11.20	Opioid dependency	0	0	0	Common condition	If the patient is on long term use of Opioids for pain management
HCC022 - Morbid Obesity						RA Factor: 0.374
E66.01	Morbid Obesity	0	0	0	Common condition	If the BMI is between 35-39 and has atleast one co-morbid condition like HTN, DM GERD etc

111. Physician Partners published a *2020 Quality Training Manual ("QTM")* and distributed it to physicians, including Relator, in or about February 2020. The *2020 QTM* included a "Know Your 5 Star Checklist" page which identified the various parts of a 5 Star Checklist. On the example graphic, Physician Partners included a section for "conditions that were marked as not active this year" which

would appear between the top and bottom tables on the example checklist shown above.

112. Ostensibly, conditions in that section would no longer show up as "care gaps" once they had been identified as inactive. However, in Relator's review of thousands of 5 Star Checklists, she very rarely – if ever – saw that section present on a 5 Star Checklist. Rather, even when she expressly stated "no" to a suggested condition, that condition would remain on the suggested list unless or until it was diagnosed; there were no options to render a condition "inactive."

113. In the *QTM*, Physician Partners responded to a "Frequently Asked Question" about conditions marked with "no," and acknowledged that physician judgement would be overruled by the Anion review team:

> Why do conditions that have been marked as "No" keep appearing on the 5 Star Checklist?
>
> Conditions that the PCP has said "No" to *and our review team does not find evidence of*, then the condition will appear in the middle (Inactive section) of the 5 Star Checklist. [sic] These are conditions that Physician Partners has received claims, billing, PCP encounters, specialist notes, etc within the past 3 years. These conditions will continue to appear on the 5 Star Checklist to ensure that all data is given to our providers."

(Emphasis added.) Of note, as described below, these conditions are not gathered from patient-specific information but from trend data.

114. The "frequent" refusal to accept a "no" is consistent with the message that Dr. Sangeeta Hans, VIPcare's Medical Director, conveyed to Relator in a

meeting on Aug. 9, 2019. Dr. Hans explained that even if Dr. Zafirov wrote "no" to reject a suggested condition, Anion would continue to suggest the condition on future 5 Star Checklists because "they" (meaning the Anion chart reviewers) did not agree with Relator, despite the fact that the chart reviewers are not medical professionals. Dr. Hans informed Relator that she would personally begin holding meetings with Relator to evaluate her coding decisions, even though Dr. Hans had not evaluated or treated any of the patients herself.

115. The prior version of the *Quality Training Manual* provided to physicians by Physician Partners described the 5 Star Checklist in more detail, including how the data is aggregated, and how it should be used by a physician. The manual predicted that some physicians may be too busy to look at the medical records of a patient. Rather than direct that physicians must review all necessary documentation to provide appropriate care, Physician Partners condones using the 5 Star Checklist as a shortcut around performing that basic standard of care:

> How will it help the member or [Primary Care Physician]?
>
> Primary Care Physician does not have time to always review specialist notes and hospital discharge summaries, which means there is a chance that PCP may not know all the medical conditions that were addressed by the specialists and hospitals. We gather all that information and present it on the 5 star checklists so that PCP can continue to monitor those conditions and help members achieve better health outcomes.

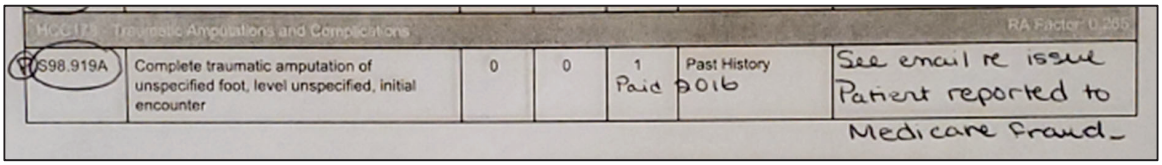
116. Moreover, the *QTM* recognized that, despite the 5 Star Checklist stating on its face that it is provided "to show the past medical conditions of the patient," that is not true. The data is gathered from industry trends and from algorithms written into Defendants' system, regardless of whether any physician who actually treated the patient ever diagnosed that condition:

> Where are the chronic medical codes coming from?
>
> Health plans provide us monthly claims files, these files include claims details from all medical providers the members have visited, we extract chronic diagnosis codes from the claims and report them on 5 star checklist [sic].
>
> What are the suspect conditions?
>
> The monthly data that we receive from health plans also include Rx claims and Lab test results. We built suspect algorithms in our system that looks for medications specific to certain chronic conditions and abnormal test results that lead to potential chronic conditions, if such conditions are not already addressed or reported by the PCP, we present them as suspect conditions on the 5 star checklists. These are only suspect conditions and its for the PCP to determine if the conditions are not [sic].

117. Based on Relator's review of hundreds of 5 Star Checklists and the associated medical charts for her patient panel, the 5 Star Checklists and subsequent billing records routinely include at least three categories of conditions which are inapplicable and not reflective of a patient's actual medical status: (1) diagnoses that have no clinical support but were assigned to the patient at random or based entirely on the algorithms created by Physician Partners and Anion; (2)

diagnoses that may have been historically-accurate but are no longer applicable, e.g. cancer which has been treated and is remission; or (3) conditions which are tangentially related to notes in the patient's chart but are not supported by clinical evidence, e.g. recommending COPD for every patient who ever smoked.

118. The sometimes-preposterous nature of these suggested diagnoses is illustrated by, for example, Patient A.[1] Dr. Zafirov treated Patient A on July 23, 2019. The 5 Star Checklist provided by Anion for Patient A's visit included a suggestion for "complete traumatic amputation of unspecified foot, level unspecified, initial encounter" based on "past history." Except the patient plainly had *not* had either foot amputated (traumatically or otherwise) and, despite the marking that the code had been diagnosed in 2016, it had not actually been. There was nothing in the patient's chart related to an amputation, and the suggestion was completely unfounded.


HCC173 Traumatic Amputations and Complications — RA Factor: 0.265

S98.919A	Complete traumatic amputation of unspecified foot, level unspecified, initial encounter	0	0	1 Paid 2016	Past History	See email re issue Patient reported to Medicare fraud.

[1] Relator has deidentified all of the patients referenced in this complaint and assigned a name of Patient A, Patient B, etc. Relator can provide the complete patient information to the Court *in camera* upon request, or to Defendants upon entry of a qualified protective order under the Health Insurance Portability and Accountability Act ("HIPAA").

119. At the end of a patient visit, the 5 Star Checklist is submitted to Anion along with the rest of the medical chart, including the physician's notes. The physician is required to sign the Checklist, certifying, "I attest that I have reviewed and addressed all relevant medical conditions during the face-to-face encounter with the patient on the below date." Although the forms are submitted to Anion for billing, they are not placed in the patients' permanent medical records so they cannot be accessed again by the physician once sent to Anion. Dr. Zafirov began keeping copies of her 5 Star Checklists once she determined that Anion had submitted codes which she had specifically rejected.

120. If a physician had true autonomy over the diagnosis codes applicable to a patient, Anion would accept the 5 Star Checklists as submitted. However, billing specialists at Anion reviewed every chart to determine if the physician rejected any of the suggested conditions on the 5 Star Checklist. If the physician failed to code for a condition on the 5 Star Checklist, regardless of the "source" of that code, then the condition is logged as a "care gap" – the equivalent of a demerit for each unapproved code.

121. "Care gaps" are monitored by Anion, Physician Partners and VIPcare management, and reports documenting "care gaps" are sent to physicians identifying every instance in which a physician did not diagnose a condition that was on the 5 Star Checklist. The care gap remains on the physician's record until

the physician reviews the billing suggestion from the Anion employee and either agreed to make the suggested changes or reaffirms the initial diagnosis.

122. Chart reviews are not inherently improper: there are some appropriate occasions where Anion's chart review determines that a physician has entered a diagnostic code but has not closed out the note, has coded a diagnosis but did not document one part of the care necessary to support the code, or even where a physician has documented all of the necessary conditions for a diagnosis in the notes but left the diagnosis code off of the coding paperwork.

123. However, in Relator's experience, a substantial majority of Anion's "care gaps" related to conditions that the physician has said do not exist and Anion wanted to add anyway, conditions that a physician has coded as less severe and Anion wanted to upcoded to appear more severe, or conditions that the physician simply did not discuss but a chart reviewer wanted to apply.

124. Care gaps are not issued for non-risk adjusting diagnoses, meaning even if a physician's note makes clear that the physician intended to diagnose a non-risk adjusting diagnosis code but forgot to do so, the Anion chart reviewers will not create a "care gap" and will not flag that code as an area of review for the physician. Thus, despite the name, "care gaps" are unrelated to patient care and exclusively refer to gaps in risk-adjusting diagnosis codes.

iii. Physician Partners Incentivized Employed Physicians to Increase the Risk Scores while Reducing Costs to Treat Freedom Patients.

125. Physician Partners incentivizes physicians to participate in inflating MRA scores by aligning the financial interests of the physician with the financial interests of Physician Partners, much akin to how the gainsharing relationship between Physician Partners and the MAOs align their financial interests. In fact, the physicians are bound by contract to provide treatment "in accordance with FMA's care protocols, quality assurance program, standard operating procedures and managed care requirements" and to "execute any such required forms, including without limitation, assignments, as may be required to facilitate billing and other data captured by FMA for services performed by Physician pursuant to [the Employment] Agreement."

126. Pursuant to those obligation, Physician Partners, Anion and VIPcare exert consistent pressure to ensure that the physicians participate in their protocols and procedures as expected. And to add additional pressure, Physician Partners directly tie the physician's financial success to their willingness to inflate their patients' risk adjustment scores, both for employed and contracted physicians.

127. Specifically, in 2018, VIPcare's Performance Bonus Program – as directed by Physician Partners – allowed physicians three opportunities to achieve

financial incentives: (1) Monthly Training Bonus, (2) Quality Performance Bonus, and (3) Financial Performance Bonus.

128. The first two categories are innocuous, and their value is relatively minimal compared to the Financial Performance metric. The Monthly Training Bonus provides $300 bonus for each meeting attended by the physicians, up to an annual limit of $3,600. The Quality Performance Bonus – arguably the most important metric to ensure proper patient care – incentivizes physicians to maintain high scores on the Healthcare Effectiveness Data and Information Set ("HEDIS") which uses nearly 100 factors to assess quality of care. Physicians who maintained HEDIS Star Scores of 4.5-4.74 out of 5 earn up to $5,000 per year, while physicians who have HEDIS Star Scores of 4.75 or greater earn up to $10,000 per year.

129. The third category, however, directly implicates a physician's willingness to comply with the directives to boost risk adjustment scores. To earn the maximum Financial Performance Bonus, a physician must see more than 600 Freedom Medicare Advantage ("FR MA") patients in a year, and then the physician can be awarded up to 50% of the surplus associated with those patients.

III. FINANCIAL PERFORMANCE BONUS

GOAL: SURPLUS IPA BONUS PROGRAM – INDIVIDUAL PCP PERFORMANCE		
FR MA PATIENTS	**ANNUAL POTENTIAL BONUS**	**PAYMENT FREQUENCY**
100 - 249	50% of Surplus Up To $20,000	Quarterly
250 - 599	50% of Surplus Up To $50,000	Quarterly
600+	50% of Surplus Up To $100,000	Quarterly

130. Because the bonus considers *only* Freedom Medicare Advantage patients, the physician can *only* generate bonus income by increasing the risk scores and reducing expenditures for their Freedom patients. Relator was advised by VIPcare Senior Direction Gallman that the target capitated payment amount is $800 per patient per month to maximize the bonus.

131. Relator and her physician-colleagues were also consistently pressured to reduce expenses which are typically related to (1) in-patient hospital admissions, (2) professional expenses like imaging or specialist referrals, and (3) prescription drugs. A physician can reduce expenses by avoiding hospital admissions, writing generic prescriptions instead of brand names, referring patients to use VIPcare's in-house imaging resources, or withholding specialist referrals. If a physician can maximize risk scores and minimize expenditures, the physician is entitled to up to $100,000 over and above their already-generous salaries.

132. Gallman often spoke to Relator about her compensation and bonus potential. In one such conversation in May 2019, Gallman advised Relator that VIPcare physicians need only to "accept the white circles" to increase their bonuses, a reference to the white bubbles at the top of the 5 Star Checklist which represent every HCC suggested by Anion. Gallman also encouraged Relator to minimize expenses by, for example, contacting oncologists who recommended expensive infusion treatments to "see what they want." Relator understood this to mean to inquire about what kind of treatment the doctor would provide and to ration referrals to expensive oncologists to keep the expenses low. Gallman made clear to Relator that the more that VIPcare had to spend on a patient's specialist care, the less money would be available to pay Relator's bonus.

133. VIPcare's Regional Director, Alex Lavin, reiterated this message to Relator in a Zoom conversation held on Aug. 9, 2019. In a meeting also attended by Dr. Sangeeta Hans, VIPcare's Medical Director, Lavin told Relator that he wanted to explain the Physician Partner financial model to her, and that her most important focuses needed to be limiting hospital and emergency room admissions while coding the way she was directed. Lavin specifically stated to Relator that having a higher risk score is important, and that the better she does with the parameters that he described, the more money she would make in bonus payments.

134. Just one week later, on Aug. 15, 2019, Gallman, Lavin and Hans held another Zoom meeting with Relator to walk through the bonus structure yet again. Together, the VIPcare representatives emphasized that Relator needed to increase her patients' average risk score in order to be profitable, and her target needed to be at least 1.5. Dr. Hans stated that her MRA score was 1.96 (meaning her patients, *on average*, receive nearly 200% of the capitated bid price). Dr. Hans also mentioned that her prescription drug expenses used to be very high due to her cancer patients, but a number of those patients have died so her numbers are better now.

135. Of note, on another occasion, on Nov. 13, 2019, in a monthly meeting for all VIPcare physicians, Dr. Hans shared her cost-saving story wherein she withheld a referral to a hematologist-oncologist for a young man in his 20s who had metastatic breast cancer and convinced him to go to hospice instead. Dr. Hans admitted that, "if I would have sent him on to oncology, they would have promised they can cure this." The young man's cancer had metastasized, so based on *her* opinion (as a primary care doctor), the expensive specialist care would not be successful and the less-expensive hospice was the right decision. Dr. Hans parlayed the story into a discussion of advanced directives and DNRs for patients who she thought wouldn't survive CPR.

136. When Relator began employment at VIPcare, she took over a patient panel that had been previously treated by other VIPcare or Physician Partner

physicians. In evaluating her patient records, Relator encountered several patients where she determined that referrals to specialists had been withheld, thus reducing VIPcare's costs and increasing those physicians' bonus pools. The following are examples of such rationed care:

a. Patient B, a 95-year-old veteran of World War II, was seen by Dr. David Hunt on Sept. 4, 2018. At 109 pounds and 5 feet, 9 inches tall, Patient B was severely malnourished and had low white count. Patient B was seen by Dr. Akhil Patel on Oct. 25, 2018. Both physicians stated the patient declined interventions, although he had dementia and his mental capacity was in question. The patient was told by Dr. Patel that his diet of Boost alone was adequate for nutrition; no further evaluation or work-up was performed. When Patient B became Dr. Zafirov's patient, she provided two different referrals to appropriate specialists which he readily accepted. From those referrals, Patient B was found to suffer from a likely leukemia and an esophageal stenosis, both treatable conditions which had been contributing to his weight loss.

b. Patient C was seen by Dr. Rick Simovitz on multiple occasions for evaluation of a painful abdominal hernia. Patient C reported to Relator that he begged for a referral to a surgeon, which Dr. Simovitz

refused. The patient brough his son in to discuss the situation, but still no referral was made. When Patient C became Dr. Zafirov's patient, she ordered imaging that revealed a partially incarcerated hernia, which can be life-threatening. Dr. Zafirov immediately referred him to a specialist for a hernia repair.

c. Patient D was seen by Dr. Patel several times in 2018, during which worsening renal function was diagnosed as approaching stage IV (severe) kidney disease. The condition had been billed on multiple visits, but Patient D was never referred to a nephrologist. When Dr. Zafirov treated him, Patient D reported that he was unaware that he had ever been diagnosed with approaching stage IV kidney disease. Dr. Zafirov referred him to nephrology and cardiology specialists who promptly began to treat him.

d. Patient E was examined by Dr. Patel on Sept. 6, 2018. Dr. Patel ordered imaging for screening and subsequently told Patient E that the imaging was normal. Dr. Patel commented in his note, "CT abdomen without significant findings supporting weight loss." There was no further follow-up done or referral made. When Patient E became Dr. Zafirov's patient, she reviewed the radiologist's report from the CT scan and determined that it had identified thyroid calcifications

(associated with possible malignancy), emphysema, lung nodules and heavy coronary plaque, gallbladder sludge, adrenal adenoma, renal calculi, and prostate enlargement. A number of those conditions required further imaging and/or referrals, and several could have contributed to the patient's weight loss. Dr. Zafirov promptly made referrals to the appropriate specialists.

137. Relator also spoke directly with other physicians who indicated that the financial incentives were, in fact, considerations in their patient care decisions. For example, during an August 2019 Monthly Forum Meeting attended by most (possibly all) VIPcare physicians, Relator discussed with Dr. Esenbike Bek (North Port clinic physician) the notion that Physician Partners directed them to administer IV fluids in their offices rather than send patients to the hospital. Relator stated that she would not do so for patients with certain co-morbidities because it was too risky, particularly when there was a hospital right next door. Dr. Bek agreed, but questioned what would happen to their bonuses and wouldn't they lose the bonuses if they sent the patient to the hospital? Dr. Zafirov countered that whatever the bonus would be was not worth losing her medical license.

iv. Physician Partners Directed and Pressured Physicians to Use Risk Adjusting Scores

138. Physician Partners engages with its physicians – both employed and contracted - in person, in writing, via Zoom, and through pre-recorded training

videos to convey and enforce its expected coding protocols. At various times, Physician Partners interacted with physicians directly, and at other times, its messaging was conveyed through VIPcare, Anion, and, remarkably, Freedom and Optimum. The directives have a consistent message: make more money by utilizing only risk-adjusting diagnosis codes to inflate a patients' risk score, even when such codes are inconsistent with or unsupported by the physician's medical training.

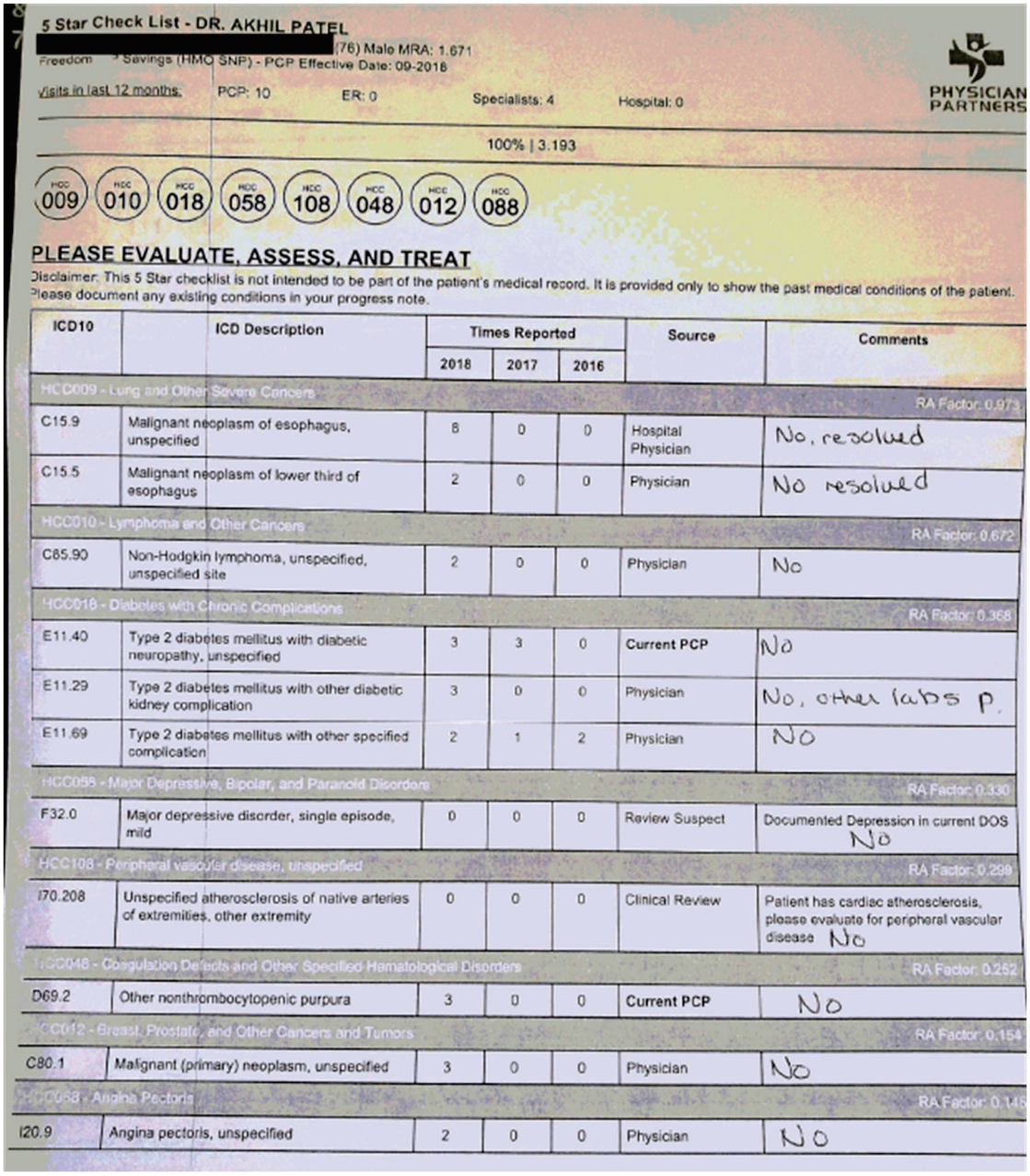
139. Physician Partners has favored conditions which it heavily emphasizes in trainings, on 5 Star Checklists, and in one-on-one "training sessions" with physicians like Relator whose diagnostic coding does not meet Physician Partner's expectations. These favored conditions include Diabetes with Manifestation (HCC018), Diabetes without Manifestations (HCC019), Malnutrition (HCC021), Morbid Obesity (HCC022), Drug/Alcohol Dependence (HCC055), Major Depressive Disorder (HCC058), Congestive Heart Failure (HCC085), Vascular Disease (HCC108), COPD (HCC111), Chronic Kidney Disease Stage 5 (HCC136), Chronic Kidney Disease Stage 4 (HCC137), and Angina Pectoris (HCC088).

140. Some or all of Physician Partners' favored conditions were suggested on many 5 Star Checklists prepared by Anion, regardless of the patient's medical history. For example, Relator reviewed sixty 5 Star Checklists prepared for her

patients throughout February and March 2019. For those patients, Relator found no patients for whom she found all suggested codes to be supported by clinical evidence. One patient had a risk score of 3.256 in the prior year, but her first 5 Star Checklist of 2019 had 21 conditions suggested which, if accepted by the patient's physician, would yield a total risk score of 6.052. Her capitated payment would be more than 600% of the baseline payment. The suggested codes included favored conditions HCC055, HCC108, HCC088, along with several forms of cancer that she did not have. Relator rejected 19 of the 21 codes as unsupported by clinical findings.

141. Another patient treated by Dr. Zafirov had a risk score of 1.671 in the prior year, but the 5 Star Checklist supplied by Anion suggested 11 conditions which would have yielded a total risk score of 3.193 if submitted. The suggested codes included favored conditions HCC018, HCC058, HCC108, and HCC088, along with several cancers that he did not have. All suggestions were rejected.[2]

[2] For all documents used in or attached to this Amended Complaint, Relator has redacted all Protected Health Information and any other information which may potentially lead to the identity of the patient. Relator has non-redacted copies in her possession and can provide them to the Court or other parties upon request.



5 Star Check List - DR. AKHIL PATEL

[redacted] (76) Male MRA: 1.671

Freedom Savings (HMO SNP) - PCP Effective Date: 09-2018

Visits in last 12 months: PCP: 10 ER: 0 Specialists: 4 Hospital: 0

PHYSICIAN PARTNERS

100% | 3.193

HCC 009 HCC 010 HCC 018 HCC 058 HCC 108 HCC 048 HCC 012 HCC 088

PLEASE EVALUATE, ASSESS, AND TREAT

Disclaimer: This 5 Star checklist is not intended to be part of the patient's medical record. It is provided only to show the past medical conditions of the patient. Please document any existing conditions in your progress note.

ICD10	ICD Description	Times Reported 2018	2017	2016	Source	Comments
HCC009 - Lung and Other Severe Cancers						RA Factor: 0.973
C15.9	Malignant neoplasm of esophagus, unspecified	8	0	0	Hospital Physician	No, resolved
C15.5	Malignant neoplasm of lower third of esophagus	2	0	0	Physician	No resolved
HCC010 - Lymphoma and Other Cancers						RA Factor: 0.672
C85.90	Non-Hodgkin lymphoma, unspecified, unspecified site	2	0	0	Physician	No
HCC018 - Diabetes with Chronic Complications						RA Factor: 0.368
E11.40	Type 2 diabetes mellitus with diabetic neuropathy, unspecified	3	3	0	Current PCP	No
E11.29	Type 2 diabetes mellitus with other diabetic kidney complication	3	0	0	Physician	No, other labs p.
E11.69	Type 2 diabetes mellitus with other specified complication	2	1	2	Physician	No
HCC058 - Major Depressive, Bipolar, and Paranoid Disorders						RA Factor: 0.330
F32.0	Major depressive disorder, single episode, mild	0	0	0	Review Suspect	Documented Depression in current DOS No
HCC108 - Peripheral vascular disease, unspecified						RA Factor: 0.299
I70.208	Unspecified atherosclerosis of native arteries of extremities, other extremity	0	0	0	Clinical Review	Patient has cardiac atherosclerosis, please evaluate for peripheral vascular disease No
HCC048 - Coagulation Defects and Other Specified Hematological Disorders						RA Factor: 0.252
D69.2	Other nonthrombocytopenic purpura	3	0	0	Current PCP	No
HCC012 - Breast, Prostate, and Other Cancers and Tumors						RA Factor: 0.154
C80.1	Malignant (primary) neoplasm, unspecified	3	0	0	Physician	No
HCC088 - Angina Pectoris						RA Factor: 0.145
I20.9	Angina pectoris, unspecified	2	0	0	Physician	No

142. For the 60 patients represented in the sample of records from February-March 2019, Relator rejected approximately 446 of approximately 523 suggested conditions – an 85% rejection rate. With respect to the favored chronic diagnosis, for these 60 patients, Relator rejected 15 recommended diagnoses of

Congestive Heart Failure, 18 recommended diagnoses of Major Depressive Disorder, 23 recommendations of Chronic Obstructive Pulmonary Disorder, 25 recommendations of Peripheral Vascular Disease, 8 recommendations of Type 2 Diabetes, and 29 recommendations of Nonthrombocytopenic Purpura. In Relator's personal observations and experience, the rejection rate in this sample is representative of the universe of patients she evaluated using the 5 Star Checklists.

143. In one very common and flagrant example, physicians are pressured to diagnose any patient who has ever been on an antidepressant as having Major Depressive Disorder ("MDD"), a risk-adjusting HCC which has numerous diagnostic criterial and potentially serious consequences for the future healthcare of the patient. For example, in a May 2019 "Performance Forum" (a monthly training meeting for VIPcare physicians), a VIPcare representative presented a slide which stated that there had been 110 instances in which a patient had a score of five or higher on a standardized Patient Health Questionnaire ("PHQ-9") but MDD had not been diagnosed. The MDD care gaps were identified this as a "rework trend," meaning that the code need to be addressed and revised.

144. However, the industry standard – consistent with the guidance provided by the PHQ-9 test-makers – is that a patient must have a PHQ-9 score of 10 or higher before MDD is even *considered*. A score of five is typically associated

with mild depression at most, and mild depression is not a risk-adjusting diagnosis.

145. Through Physician Partners' Q360 electronic records system, Relator had access to reports which showed the frequency with which other VIPcare physicians diagnosed the favored conditions, including major depressive disorder. These reports indicate that the result of Defendants' concerted effort to increase diagnosis of risk-adjusted conditions is that many VIPcare patients have been diagnosed with serious medical conditions at far greater rates than the Medicare population at large.

146. For example, with respect to Major Depressive Disorder, the prevalence among Medicare beneficiaries is about 4%, meaning four of every 100 patients suffer from the condition. Diniz, B., *Major Depressive Disorder in Older Adults,* accessed at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4615590/ (2014). However, many of the VIPcare physicians diagnosed the condition with far greater frequency – some as much as eight or nine times as often:

Physician	**Prevalence of MDD in 2017 & 2018**
Dr. Gil Gutierrez	25%
Dr. David Hunt	14%
Dr. Auxi Peachy	23%
Dr. James Goskowski	30%
Dr. Claudine Fredericks	29%
Dr. John Watson	16%
Dr. Stephen Seecharan	25%
Dr. Myriam A.E. Miller	31%

Dr. Charles Powers	10%
Dr. Veronica Machado	31%
Dr. Paula Gregory	16%
Dr. Jerome Lopez	24%
Dr. Lawrence Campo	12%
Dr. Jose Llamas	25%
Dr. Rodger Rothenberger	23%

147. In another avenue to influence its providers' coding, Physician Partners uses its Anion chart reviewers to falsely modify patients' "Problem Lists" in their charts to influence treating physicians to agree to suggested diagnosis codes. Problem Lists are a specific section of a patient's medical record where the physician can keep a working diagnostic list. In Dr. Zafirov's experience, the Problem List is a way for physicians to make notes for themselves to review when the patient returns. It may also be a way for physicians to communicate with other physicians in the same practice who may take over the patient's care or see the patient if the PCP is unavailable. It serves as a quick-view list of a patient's medical condition that a physician *should* be able to rely on at the start of a patient visit without needing to review the entire medical chart every time. Because of the importance of an accurate problem list, no one should make additions, removals, or any other edits to the problem list other than the treating physician.

148. The Problem List is housed in the patient's eClinicalWorks medical record, not in the Q360 billing system. The Problem List has nothing to do with

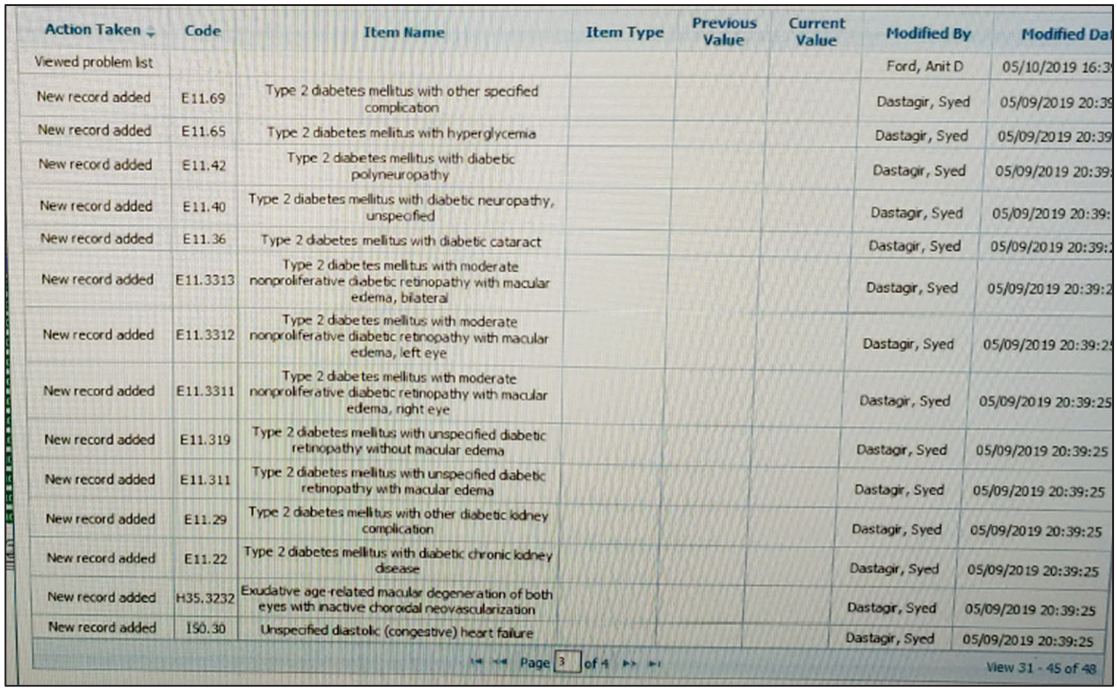
billing and there is no valid reason for a billing representative to have the ability to edit it.

149. Codes entered into the Problem List are not yet claims submitted for payment to an insurer or the United States, so the entrance of unsupported codes on the Problem List is not, in and of itself, a false claim. However, entering codes to appear as though another physician has already diagnosed those codes has the intended purpose of pushing the next physician towards those codes rather than allowing the physician to evaluate the patient with a clean, or at least accurate, slate.

150. Dr. Zafirov identified several occasions where dozens of suggested codes were added to a patient's problem list by various individuals and then removed shortly thereafter by the treating physician because the codes were unsupported by clinical evidence. While the Problem List shows the name of the person who entered the code, it does not say whether that person is a physician or not. However, Dr. Zafirov determined that the individuals who entered the codes were non-physician Anion representatives.

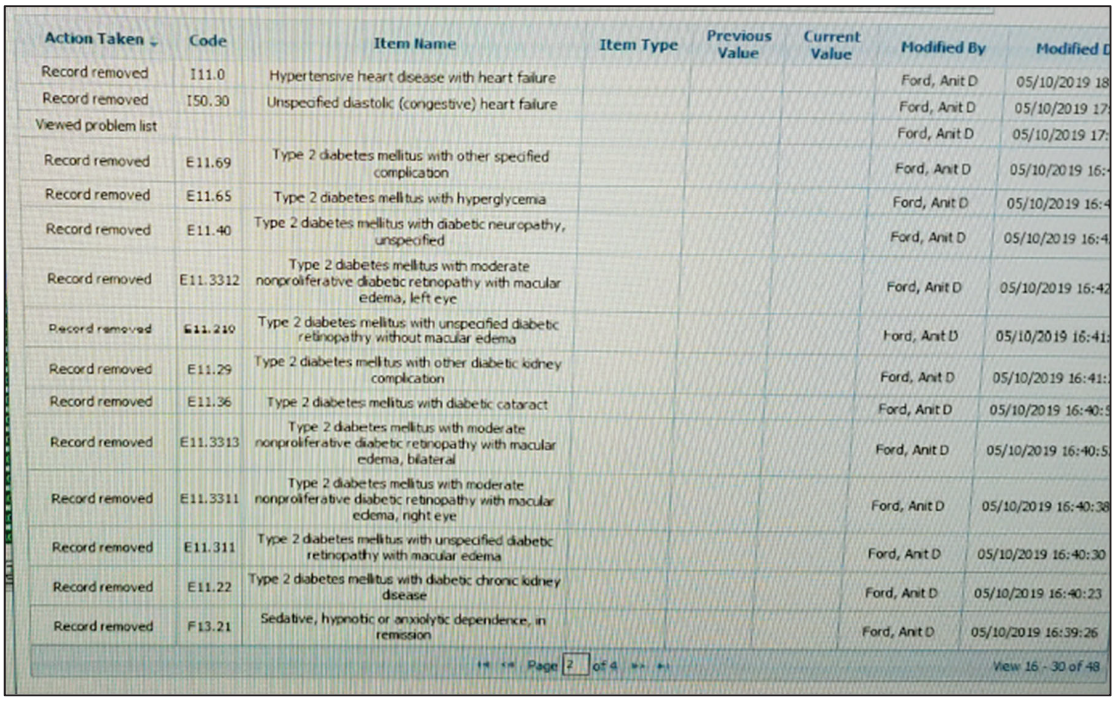
a. For example, Dr. Zafiov was seeing patients for Dr. Amit Ford on or about June 25, 2019, including Patient F. In reviewing Patient F's chart to prepare for the visit, Dr. Zafirov noted that Dr. Ford had removed fourteen conditions from Patient F's Problem List. Dr. Zafirov

determined that seventeen codes, including all of the removed codes, had been entered into the Problem List by an individual named Syed Dastagir on May 9, 2019. Syed Dastagir is an employee of Anion Technologies. Of those conditions, twelve were variations on Type 2 Diabetes, some of which were internally inconsistent with one another (i.e. "Type 2 diabetes mellitus with unspecified diabetic retinopathy without macular edema" and "Type 2 diabetes mellitus with unspecified diabetic retinopathy with macular edema"). Other codes were duplicative, such as three individual codes for a right eye, left eye, and both eyes. Although Dr. Ford had removed the entries for "hypertensive heart disease with heart failure" and "unspecified diastolic (congestive) heart failure," the 5 Star Checklist for RW still listed both conditions as suggested diagnoses



Action Taken	Code	Item Name	Item Type	Previous Value	Current Value	Modified By	Modified Dat
Viewed problem list						Ford, Anit D	05/10/2019 16:3
New record added	E11.69	Type 2 diabetes mellitus with other specified complication				Dastagir, Syed	05/09/2019 20:39
New record added	E11.65	Type 2 diabetes mellitus with hyperglycemia				Dastagir, Syed	05/09/2019 20:39
New record added	E11.42	Type 2 diabetes mellitus with diabetic polyneuropathy				Dastagir, Syed	05/09/2019 20:39:
New record added	E11.40	Type 2 diabetes mellitus with diabetic neuropathy, unspecified				Dastagir, Syed	05/09/2019 20:39:
New record added	E11.36	Type 2 diabetes mellitus with diabetic cataract				Dastagir, Syed	05/09/2019 20:39:2
New record added	E11.3313	Type 2 diabetes mellitus with moderate nonproliferative diabetic retinopathy with macular edema, bilateral				Dastagir, Syed	05/09/2019 20:39:2
New record added	E11.3312	Type 2 diabetes mellitus with moderate nonproliferative diabetic retinopathy with macular edema, left eye				Dastagir, Syed	05/09/2019 20:39:25
New record added	E11.3311	Type 2 diabetes mellitus with moderate nonproliferative diabetic retinopathy with macular edema, right eye				Dastagir, Syed	05/09/2019 20:39:25
New record added	E11.319	Type 2 diabetes mellitus with unspecified diabetic retinopathy without macular edema				Dastagir, Syed	05/09/2019 20:39:25
New record added	E11.311	Type 2 diabetes mellitus with unspecified diabetic retinopathy with macular edema				Dastagir, Syed	05/09/2019 20:39:25
New record added	E11.29	Type 2 diabetes mellitus with other diabetic kidney complication				Dastagir, Syed	05/09/2019 20:39:25
New record added	E11.22	Type 2 diabetes mellitus with diabetic chronic kidney disease				Dastagir, Syed	05/09/2019 20:39:25
New record added	H35.3232	Exudative age-related macular degeneration of both eyes with inactive choroidal neovascularization				Dastagir, Syed	05/09/2019 20:39:25
New record added	I50.30	Unspecified diastolic (congestive) heart failure				Dastagir, Syed	05/09/2019 20:39:25

Page 3 of 4 View 31 - 45 of 48



Action Taken	Code	Item Name	Item Type	Previous Value	Current Value	Modified By	Modified D
Record removed	I11.0	Hypertensive heart disease with heart failure				Ford, Anit D	05/10/2019 18
Record removed	I50.30	Unspecified diastolic (congestive) heart failure				Ford, Anit D	05/10/2019 17
Viewed problem list						Ford, Anit D	05/10/2019 17:
Record removed	E11.69	Type 2 diabetes mellitus with other specified complication				Ford, Anit D	05/10/2019 16:
Record removed	E11.65	Type 2 diabetes mellitus with hyperglycemia				Ford, Anit D	05/10/2019 16:4
Record removed	E11.40	Type 2 diabetes mellitus with diabetic neuropathy, unspecified				Ford, Anit D	05/10/2019 16:4
Record removed	E11.3312	Type 2 diabetes mellitus with moderate nonproliferative diabetic retinopathy with macular edema, left eye				Ford, Anit D	05/10/2019 16:42
Record removed	E11.319	Type 2 diabetes mellitus with unspecified diabetic retinopathy without macular edema				Ford, Anit D	05/10/2019 16:41
Record removed	E11.29	Type 2 diabetes mellitus with other diabetic kidney complication				Ford, Anit D	05/10/2019 16:41:
Record removed	E11.36	Type 2 diabetes mellitus with diabetic cataract				Ford, Anit D	05/10/2019 16:40:5
Record removed	E11.3313	Type 2 diabetes mellitus with moderate nonproliferative diabetic retinopathy with macular edema, bilateral				Ford, Anit D	05/10/2019 16:40:5
Record removed	E11.3311	Type 2 diabetes mellitus with moderate nonproliferative diabetic retinopathy with macular edema, right eye				Ford, Anit D	05/10/2019 16:40:38
Record removed	E11.311	Type 2 diabetes mellitus with unspecified diabetic retinopathy with macular edema				Ford, Anit D	05/10/2019 16:40:30
Record removed	E11.22	Type 2 diabetes mellitus with diabetic chronic kidney disease				Ford, Anit D	05/10/2019 16:40:23
Record removed	F13.21	Sedative, hypnotic or anxiolytic dependence, in remission				Ford, Anit D	05/10/2019 16:39:26

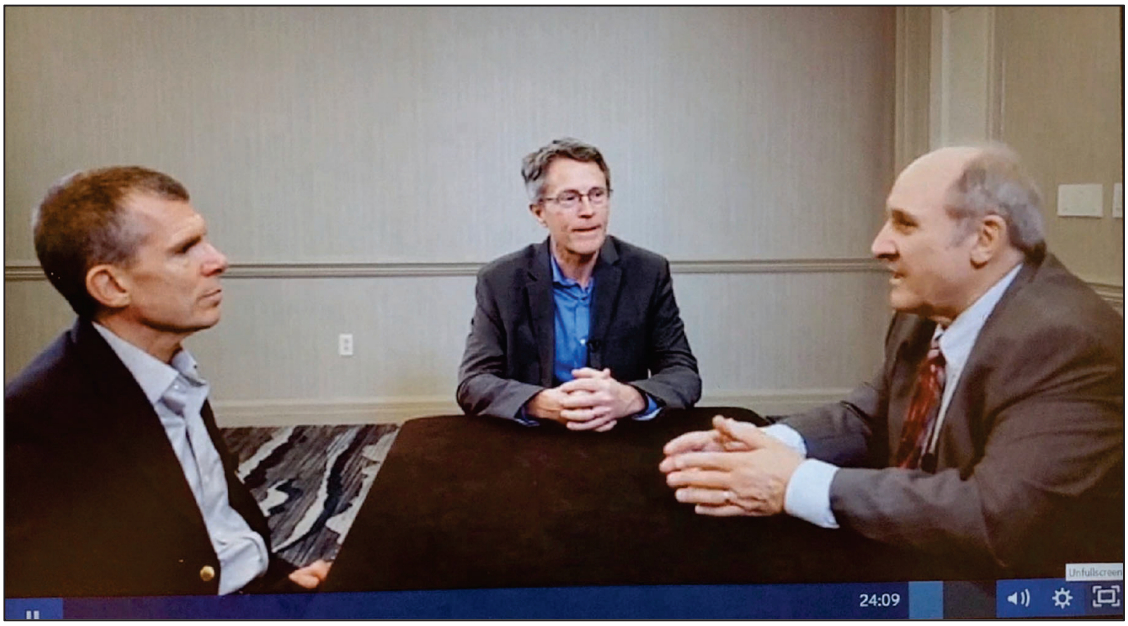
Page 2 of 4 View 16 - 30 of 48

b. On another occasion that Dr. Zafirov was seeing patients for Dr. Ford, Patient G had an appointment scheduled for June 19, 2019. Patient G

had been a patient of Dr. Patel before being assigned to Dr. Ford's patient panel. Dr. Zafirov noted an extensive Problem List for Patient G – 6 pages long. In reviewing the list to familiarize with the patient – as it is intended– Dr. Zafirov noted that a great deal of codes had been entered by Syed Dastagir while Patient G was a patient of Dr. Patel. Specifically, she noted that Mr. Dastagir added 27 codes to Patient G's Problem List on May 15, 2019. Dr. Patel removed or modified 24 of those added codes the same day. The 5 Star Checklist provided by Anion noted that several codes were reported in the current year, including three forms of complicated diabetes that Dr. Patel had specifically removed from the Problem List, and listed several other removed codes as suggested diagnoses.

151. Another means by which Physician Partners provides coding guidance to its physicians is through a series of videos called "Five Star University" that is posted on their physician portal. The hours-long video series is broken into segments consistent with the Physician Partners favored diagnoses, plus additional videos for overviews of the Medicare Risk Adjustment System and Documentation Guidelines. Five Star University recordings are presented by Dr. Eric Haas, Chief Medical Officer of Physician Partners; Dr. Ford Brewer, who is

identified only as a "Career Medical Director;" and Dr. Dennis Mihale, Medical Director of Freedom Health, as pictured below.



152. Five Star University's "Bootcamp Introduction" video directs physicians to the "Quick Coding Guide" in the Physician Partners' *Quality Training Manual*, noting "This colorful laminated tool will help you pick the right diagnosis code for specific disease conditions. We listed about 200 ICD-10 codes with their risk value." This statement is emblematic of Physician Partners' coding directive: Physician Partners represents that the Quick Coding Guide will have "the right diagnosis code," but the Guide *only* contains risk-adjusting codes.

153. The condition-specific videos primarily include guidance and case studies which focus on instructing physicians on opportunities to increase a

patient's risk score, opportunities which often are loosely connected to actual medical science or medical standards.

154. For example, a video on vascular disease suggests that the diagnosis can be made by physical examination only, rather than the clinical standard of doppler imaging, and recommends the risk-adjusting code for peripheral vascular disease if a patient has leg pain in place of the non-risk adjusting code for "pain in the legs."

155. A Five Star University video on morbid obesity suggests that a patient has obesity hypoventilation syndrome so long as the patient has a high BMI and sleep apnea, which is inconsistent with the American Thoracic Society's directive that the diagnosis requires additional symptoms that must be confirmed by an arterial blood gas.

156. A Five Star University video addressing drug dependence states that a patient who had dependency issues 20 years before should *always* be considered to be in remission even if they had no recent issues. Under the risk-adjustment system, "past history" is not risk-adjusting while "in remission" is; thus, diagnosing "remission" results in extra money for the defendants, while noting the patient's past history does not.

157. The Five Star University videos also characterize certain conditions as common in an effort to influence physicians to become comfortable frequently

coding conditions which are actually quite rare. For example, in a video regarding major depressive disorder, Dr. Brewster leads off by stating, "This is one of the most common, highly prevalent conditions in our senior population." This statement is simply false: minor depression may be very common, but Major Depressive Disorder is not and has specific diagnostic criteria. "The prevalence of major depressive disorder at any given time in community samples of adults age 65 and older ranges from 1-5% . . . with the majority of studies reporting prevalence in the lower end of the range." Fiske, A., et al. *Depression in Older Adults*, Annual Rev. Clin. Psychol. 2009, 5: 363-389, accessed at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2852580/; see also Para 146, *supra*.

158. When the videos and published guidance are not successful in convincing a doctor to code in a manner which inflates risk scores, Physician Partners begins a concerted, direct effort to pressure the nonconforming physician to change their diagnostic practices. Relator was one such physician.

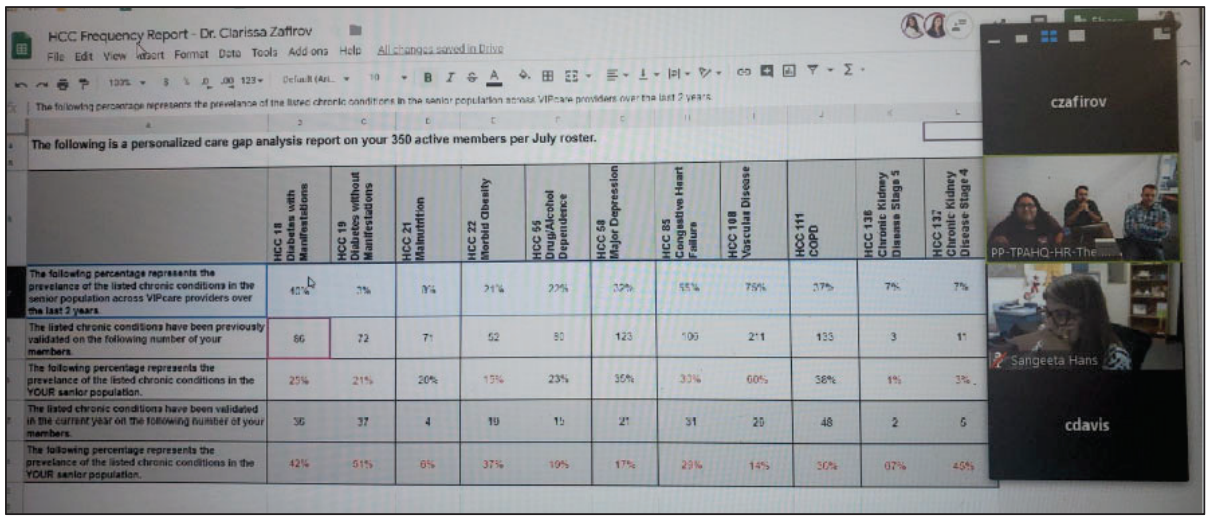
159. In or around August 2019, Dr. Zafirov was required to participate in routine meetings with a then-newly-hired VIPcare Regional Director named Alex Lavin. Mr. Lavin repeatedly told Dr. Zafirov that VIPcare and Physician Partners were not happy with her coding and the level of her average MRA score, and that

she needed to change her coding practices to be consistent with the Physician Partners financial model.

160. When Relator expressed resistance to changing her medical practice to achieve some desired financial outcome, Lavin began scheduling Relator for regular meetings – sometimes alone and sometimes with Dr. Sangeeta Hans (Chief Medical Officer of VIPcare), Emily Gallman (Senior Director of Healthcare Operations of VIPcare), Sajitha Johnson (Physician Partners Quality Analyst), and various other individuals who detailed the coding and billing practices with which she was expected to comply. In addition, Relator was required to "check in" with Lavin weekly to discuss her hospital admission rates, HEIDIS data, and her completion of 5 Star Checklists.

161. On Aug. 21, 2019, Relator had a meeting via Zoom with Hans, Lavin, Johnson and a Physician Advisor named Kothari. Relator's nurse, Catherine Davis, attended as well. The meeting began with the presentation of a chart which compared Relator's coding prevalence to the physicians who treated that practice before her, where every area in which she had a lower prevalence than the previous physicians was marked in red. All of the conditions that were presented on the slide were Physician Partners' favored conditions. For example, the chart showed that Relator diagnosed 15 patients with drug dependency whereas it had been "previously validated" for 80 of the patients in the past; Relator diagnosed 4

with malnutrition as compared to 71 in the past; and Relator diagnosed 21 with major depression as compared to 123 in the past. Lavin and Hans made clear that they believed it was Relator who was under-coding now, not that the prior diagnoses had been improper.



162. In the same meeting, Dr. Hans then proceeded to walk Dr. Zafirov step-by-step through risk-adjusting diagnoses which she believed Dr. Zafirov should adopt, including medical advice that was either inconsistent with Relator's medical training or blatantly wrong. For example, with respect to diabetes, Dr. Hans advised Dr. Zafirov that *all* diabetes is complicated diabetes. This is flatly false: not only is it medically inaccurate, but there are separate codes for Diabetes

Without Complications (HCC 19), Diabetes with Chronic Complications (HCC 18) and Diabetes with Acute Complications (HCC 17).[3]

163. The reason Dr. Hans wanted all diabetes diagnoses to be "complicated" is easily discerned: the Risk Adjustment Factor for "Diabetes" is approximately 0.105, while the Risk Adjustment Factor for "Diabetes with [chronic or acute] complications" is 0.302 or greater—almost three times as high. A report prepared under contract for CMS for the purpose of evaluating the Risk Adjustment Model makes this point clearly:

> For example, if a beneficiary is diagnosed with uncomplicated diabetes only, his or her expenditure prediction will be relatively modest. But if a beneficiary has diagnoses for diabetes with chronic complications, congestive heart failure, vascular disease, cancer, and chronic obstructive pulmonary disease, his or her predicted expenditures will be much higher.

Pope, G., et al., *Evaluation of the CMS-HCC Risk Adjustment Model*, at 27-28 (RTI Int'l, March 2011).

164. In that same meeting, Dr. Hans also instructed Dr. Zafirov to diagnose Congestive Heart Failure ("CHF") – a risk-adjusting diagnosis – for any patient

[3] Dr. Hans would go on to repeat this directive several more times. At a Weekend Training Bootcamp held on Sept. 21, 2019, Dr. Hans was discussing prevalence rates of various conditions, and stated several times that 0% of patients should have uncomplicated diabetes. At the VIPcare Annual meeting on Jan. 11, 2020, which was attended by Physician Partners senior staff and VIPcare physicians. Dr. Hans announced during a seminar that, "There should not be a patient out there that does not have a complication."

who had structural cardiac damage which was a *potential* precursor to CHF, even when the patient did not yet have actual indications of CHF. Dr. Hans's direction is expressly contradicted by Medicare guidelines which state that the submission of codes that are simply documented as suspected or possible should be avoided.

165. Also in the same meeting, Dr. Hans repeatedly asserted that Dr. Zafirov would not be "diagnosing" the condition just because she coded it. This is palpably false, as the codes themselves are called "diagnosis codes" and the submission of the code is the only means by which a provider indicates to CMS that a patient has been diagnosed with a condition.

166. Dr. Zafirov later asked Mr. Lavin if Dr. Hans had similar conversations with other employed physicians. Lavin confirmed she had done so several times.

167. The following day, August 22, 2019, Mr. Lavin showed up to Relator's office in person even though he had scheduled a Zoom meeting.[4] Lavin told Relator that they had "very serious things" to discuss. Lavin – with no medical

[4] Lavin's demeanor in that unexpected, in-person meeting made Dr. Zafirov very uncomfortable. Relator learned days later that Lavin had a lengthy criminal history, including being incarcerated in the Florida prison system on an Aggravated Battery with a Deadly Weapon conviction. Physician Partners and VIPcare had not notified Dr. Zafirov of this and did nothing to stop Lavin from showing up after hours, unannounced, at the office of a female physician. After learning this information, Relator felt Lavin's unannounced visit to be a subtle threat that she cooperate as he requested. As a result, Dr. Zafirov increased the security at her home and took measures not to be alone in her office any longer.

background at all – argued with Dr. Zafirov about her diagnostic coding and argued that she needed to "meet in the middle" with what was expected of her. He also explained that her projected risk score for the following year would be around .7 - 1 (which, with 1 being the calculated average Medicare beneficiary's risk score, is to be expected), and that if she wanted to put money in her own pocket, that would be a factor.

168. For the next several weeks, Dr. Zafirov was required to have regular meetings with Dr. Hans, Johnson, Lavin and occasionally Gallman, Nursing Manager Jan Morsey, or other Anion chart reviewers. The phone calls became weekly interrogations, where Dr. Hans challenged Dr. Zafirov on specific diagnoses in her charts and Dr. Zafirov was forced to repeatedly defended her medical judgment.

169. For example, on Sept. 12, 2019, Dr. Hans chastised Dr. Zafirov for sending a patient to the emergency room instead of seeing her in the office first. Dr. Zafirov noted that the patient had acute worsening shortness of breath and a delay in care could have been dangerous. Despite having the patient's chart accessible, it was not until Dr. Zafirov pointed out that the patient had severe congestive heart failure and wore a LifeVest that Dr. Hans conceded that she had made the right choice.

170. Lavin again came to Dr. Zafirov's clinic unannounced on Sept. 26, 2019, and spoke to her for approximately 90 minutes. He said that her clinic was getting negative attention and she was being watched closely. Lavin stated that Dr. Hans and Anion chart reviewers were looking through all of Dr. Zafirov's charts and that Dr. Hans was unhappy about continuing the weekly sparring phone calls about Dr. Zafirov's coding. Lavin told Dr. Zafirov that Physician Partners has certain expectations of her and that her continued employment depended on her to "cod[ing] more aggressively" and reaching a target MRA of 1.5-1.6.

171. By telling her to "code more aggressively," Lavin made clear that Dr. Zafirov was expected to accede to the risk-adjusting diagnoses "suggested" on her patients' 5 Star Checklists.

172. Pressure steadily increased following the threat to Dr. Zafirov's job. One way this happened was the introduction of additional people into the meetings to criticize Relator's coding and persuade her to change.

173. On Oct. 16, 2019, Dr. Zafirov was required to attend a meeting with a nurse in her clinic, Catherine Davis, Sajitha Johnson, Cassidy Cooper, a Physician Partners "Quality Analyst," and Dr. Rajiv Patel, "Physician Consultant/Trainer."

174. In that meeting, Dr. Patel pushed Dr. Zafirov to find alternative risk-adjusting diagnosis codes if she did not want to diagnose their favored codes; for

example, he urged her to diagnose "mood disorder," a risk-adjustment diagnosis, rather than minor depression if she was unwilling to diagnose Major Depressive Disorder.

175. Dr. Patel also stated to Dr. Zafirov that she should have diagnosed cardiomyopathy based on a years-old imaging result, despite the fact that the patient in question was under the care of a cardiologist who had made no findings of cardiomyopathy. Dr. Patel stated to Dr. Zafirov, "We [primary care physicians] don't look at the notes of cardiology to make our diagnoses."

176. On Nov. 6, 2019, Relator was required to attend a 90-minute meeting with Emily Gallman and Dr. Eric Haas, Chief Medical Officer of Physician Partners.

177. Given Dr. Haas's position, Dr. Zafirov relayed to him her concerns about delayed referral approvals by Freedom when she referred to an outside specialist, as well as missing records transmitted by Anion to the primary care physicians from specialists. Dr. Haas asserted that Physician Partners' Preferred Providers were "better" because they were more cost-efficient and have lower hospital admissions. Dr. Haas provided Dr. Zafirov with a list of specialists who he wanted her to use because they use surgery centers instead of hospitals. This list was provided to Physician Partners by Freedom.

178. Dr. Haas also criticized Dr. Zafirov for not administering a drug, Procrit, to her end-stage renal disease patients rather than referring such patients to a nephrologist. Procrit should always be administered under the supervision of a nephrologist for end-stage renal disease patients. Dr. Haas advised her that other VIPcare physicians were administering Procrit in their clinics, a decision that would allow those physicians to reduce expensive specialist costs and increase the physicians' potential bonus payments.

179. Dr. Haas provided Dr. Zafirov with a list of the patients he viewed to be her most high-cost, high-risk patients who had recently been to the hospital to review how she had managed their care and coded their diagnoses. Dr. Haas reviewed five patients in depth with Dr. Zafirov, in response to which she identified clinical findings that he had ignored and repeated her explanation as to why she rejected conditions that were inconsistent with her evaluation of the patient.

B. ALLEGATIONS AGAINST FREEDOM AND OPTIMUM.

180. The conduct of Physician Partners, VIPcare and Anion which led to the submission of false claims was only possible because of the Providers' close relationship with Freedom and Optimum, the MAOs responsible for approximately 90% of the Providers' enrolled patients. Freedom and Optimum's role in the submission of these false claims comes not only from their failure to

conduct appropriate oversight Physician Partner's submitted claims, but from the MAOs' role in the operation of Physician Partners.

181. The role of Freedom and Optimum as gatekeepers to the providers' access to Medicare and Medicaid funds is precisely delineated in the regulatory regime. CMS requires as "a condition for receiving a monthly payment," that a Medicare Advantage insurer,

> agrees that its chief executive officer (CEO), chief financial officer (CFO), or an individual delegated the authority to sign on behalf of one of these officers, and who reports directly to such officer, must request payment under the contract [with CMS] on a document that certifies (based on best knowledge, information, and belief), the accuracy, completeness, and truthfulness of relevant data that CMS requests. Such data include specified enrollment information, encounter data, and other information that CMS may specify.

42 CFR § 422.504(l). The signatory must certify that "the information relied upon by CMS in determining payment (based on best knowledge, information and belief) is accurate, complete, and truthful. 42 CFR 422.504(l)(1).

182. Freedom and Optimum convey the regulations to providers through a jointly published and distributed *Medicare Provider Manual* ("*MPM*") which bears the logos of both entities on its face and which collectively refers to the two health plans as "we" throughout. Accordingly, all statements made in the *MPM* implicate the knowledge of both defendants without distinction. The *Medicare Provider Manual* acknowledges, *inter alia*, that:

a. A claim submitted to an intermediary, such as a managed care organization, is included in the definition of a claim "submitted to the government" (pg. 23);

b. Liability to the Government attaches not only from the submission of false claims but from the improper retention of an overpayment (pg. 23).

c. Indicators of fraud, waste and abuse include upcoding, the use of fictitious providers, and statistical outliers (pg. 28);

d. In the Medicare Advantage context, the "claim" is the encounter data submitted after a patient visit (pg. 82).

183. Despite Freedom and Optimum's knowledge of their obligations to the United States, the entities developed a unique relationship with Physician Partners – the provider group run by Sidd Pagidipati, the MAOs' former Chief Operating Officer who paid $750,000 in 2017 to resolve False Claims Act violations related to his conduct and management of the entities.

184. Far from a third-party claims reviewing and processing entity, Freedom took an active role in the operations of Physician Partners including educating physicians on Physician Partners' coding expectations, allowing Physician Partners' physicians access to the Freedom billing portal to review codes submitted to CMS and the patients' running MRA scores, and contacting patients

on behalf of VIPcare to schedule visits. In return, Physician Partners not only increased the profitability of Freedom by submitting inflated risk adjustments, but also allowed Freedom access to its patient records for the purpose of contacting non-Freedom patients to persuade the patient to change their MAO.

185. With respect to training, Freedom presented a united force with Physician Partners in the Five Star University video series, described above. In particular, Dr. Dennis Mihale, in his capacity as the Medical Director of Freedom Health Plans, provided commentary for several hours over a series of more than a dozen videos, offering both general commentary on coding and specific advice on the discussed conditions.

186. In his introduction, Dr. Mihale tacitly implies that coding supersedes medical education and experience, stating, "In medical school, we will say,

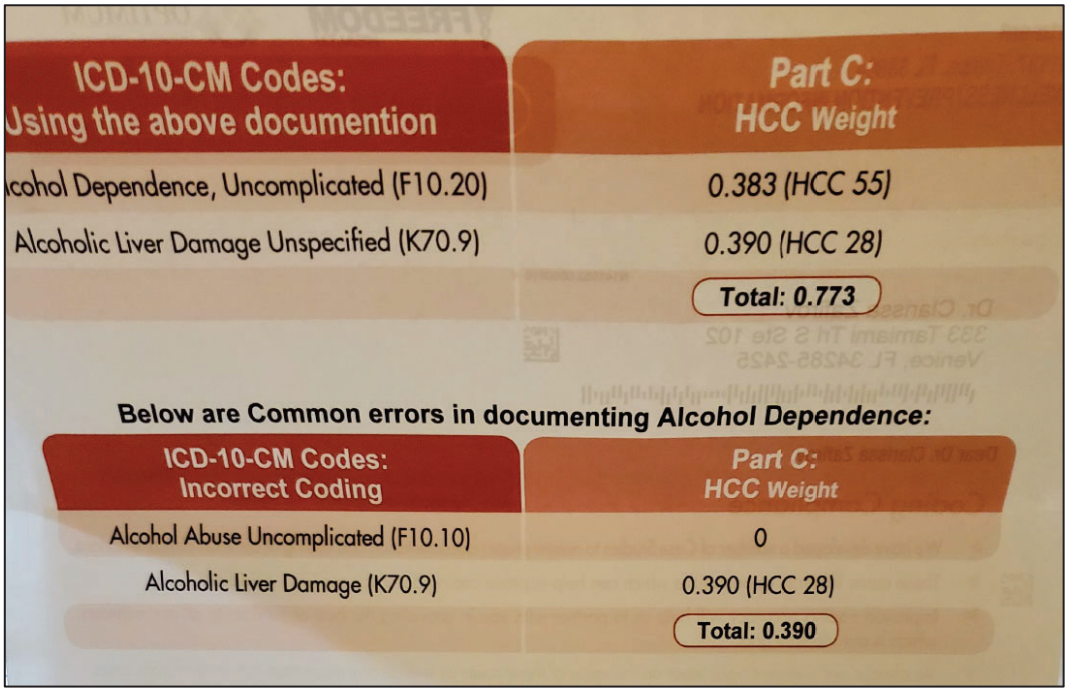
'history of' because we weren't trained in coding." He continues by suggesting that the physician could just be a bit creative with the coding to achieve a risk adjustment: "Sometimes, you say 'history of,' you just can't do it. But if you put a comma there and say 'active,' then we've done the right kind of coding." In making such an assertion, Dr. Mihale conveyed to the entire 500+ Physician Partner physician network that it is appropriate in Freedom's perspective to code a past condition as active just by "put[ting] a little comma there."

187. Notably, Dr. Mihale also suggested that physicians may alter their documentation to satisfy certain codes for the purposes of risk adjusting. For example, Dr. Mihale stated that dementia may become a risk-adjusting code the following year and that if it is "we're going to share it with you and then you can adjust your documentation properly." This either presupposes that physicians are not currently documenting their patient's conditions accurately because the disease is not risk adjusting (contrary to standards of medical care) or that the physicians will change their documentation to satisfy different criteria once a code becomes risk-adjusting.

188. Dr. Mihale participated in offering guidance throughout the entire Five Star University video series, either by affirmatively giving coding guidance or by agreeing with the guidance offered by Drs. Haas or Brewster. Because of his

role, it was clearly conveyed to all of Physician Partners' physicians that the guidance presented in Five Star University is endorsed and approved by Freedom.

189. Freedom also provided coding guidance directly to Physician Partners physicians through written mailers which emphasized the use of risk-adjusting codes in place of less severe, non-risk-adjusting conditions. For example, a mailer of a "case study" related to "Alcohol Abuse vs Alcohol Dependence" identified that the "ICD-10 classifies alcohol and drug dependence as use, abuse and dependence. but it does not provide guidance as to when each condition is proper. Rather, the graphic shows two alternative coding options – one with a risk-adjusting HCC for alcohol dependence and one with a non-risk-adjusting code for alcohol abuse; it describes use of the latter as a "common error."



190. Freedom's coding guidance is complimented by Freedom allowing Physician Partner's physicians to access to Freedom's online billing portal, the MRA/HEDIS Portal. Physicians had access to several different parts of the portal, including patient specific charts identifying the codes that had been submitted for a patient in the current year and in past years along with the dates of service for the past submissions, as well as a report that showed every patient in the physician's Freedom panel with their running MRA scores for the past year, current year, and the score predicted for the following year, as well as the decrease year-over-year (if any).

191. In return for Freedom's guidance and open access to its billing records, Physician Partners encouraged its physicians to actively engage with Freedom insurance agents in manners wholly unique to Freedom as compared to any other MAO. For example, on Sept. 19, 2019, a bus of approximately 20 Freedom agents arrived at Relator's office, guided by a Physician Partners representative. The Freedom agents included regional insurance agent Danny Stearns. The year prior, Dr. Rand Hans, Regional Director of Operations for VIPcare, and Stearns asked approached Dr. Zafirov and her nurse, asking for Stearns to be granted access to Dr. Zafirov's non-Freedom patient list and for Dr. Zafirov to provide contact information for each patient. Dr. Hans and Stearns were

clear that the information would be used for Stearns could visit the patients in their homes or in Dr. Zafirov's office in an effort to convert them to a Freedom patient.

192. Physician Partners never brought representatives of any other MAO to Dr. Zafirov's office, never asked her to give access to her patient information to any other MAO, and never encouraged her to hold meet-and-greets with agents who enrolled patients in other MAOs. These were services only provided by Physician Partners to Freedom and Optimum.

193. For the patients already on the Freedom panel, Freedom took an active role in helping manage Physician Partner's patient care. For example, Physician Partners and Freedom both financially benefited by physicians completing HEIDIS data for each patient, but such data could only be completed at an in-person patient visit and not every patient needed to be seen every year. Relator agreed to try to reach a patient a few times to get them to come in, but if they did not have any medical needs, she was not willing to harass the patient to come in. However, if Freedom determined that HEDIS data had not been captured for a patient in a calendar year, Freedom would repeatedly call the patient on VIPcare's behalf until the patient acquiesced and scheduled a visit.

194. In addition to Freedom's active role in guiding the coding practices of Physician Partners' physicians, Freedom had or should have had actual knowledge of the policies and practices at Physician Partners which caused false

claims to be made. For example, on Jan. 9, 2020, Dr. Zafirov had a phone call with Dr. Hans, Alex Lavin and Emily Gallman wherein Dr. Zafirov raised a variety of concerns, including both Freedom and Physician Partners' refusals to accept referrals to non-preferred specialists. Dr. Hans stated to Dr. Zafirov that they (meaning the VIPcare administrators) held weekly meeting with Freedom and would discuss the issue then. Based on other conversations with Lavin, Dr. Zafirov understood this to be the standard procedure when a physician made a complaint – reach out to Freedom and handle the conversation together.

VIII. DEFENDANTS KNOWINGLY SUBMITTED OR CAUSED TO BE SUBMITTED FALSE OR FRAUDULENT CLAIMS

195. By their conduct alleged in this complaint, each Defendant knowingly presented or caused to be presented, false or fraudulent claims; knowingly made, used or caused to be made or used, a false record or statement material to a false or fraudulent claim; knowingly made, used or caused to be made or used, a false record or statement material to an obligation to pay or transmit money to the Government; and knowingly concealed and improperly avoided or decreased an obligation to pay or transmit money to the United States.

196. The terms "knowing" and "knowingly" are defined by the False Claims Act to mean that, with respect to information, a person "(i) has actual knowledge of the information; (ii) acts in deliberate ignorance of the truth or falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the

information." 31 U.S.C. § 3729(b)(1). Knowledge under the False Claims Act does not require proof of a specific intent to defraud. *Id.*

197. All of the Defendants knew that the intended and foreseeable consequence of their fraudulent scheme was the overpayment of claims submitted to the United States pursuant to the Medicare Advantage program.

198. Defendants knew that truthful submission of encounter data, including diagnosis codes, is material to Medicare's decision to pay claims and is a material requirement of Freedom and Optimum's contract with the United States, which requirements flowed to Physician Partners, Anion and VIPcare as first-tier or related entities. Defendants knew that the falsification of diagnosis codes directly affects the amount of reimbursement under the MA Program and renders the claim, via the encounter data, factually false.

199. As alleged throughout this complaint, each Defendant acted with actual knowledge that the diagnoses codes submitted by Physician Partners, through Anion on behalf of VIPcare and other contracted and affiliated providers, to Freedom and Optimum, and from Freedom and Optimum to the United States, were not accurate, complete and truthful and were, in fact, factually false.

200. Alternatively, each Defendant acted with deliberate ignorance or reckless disregard as to the truth or falsity of the diagnoses codes submitted by Physician Partners, through Anion on behalf of VIPcare and other contracted and

affiliated providers, to Freedom and Optimum, and from Freedom and Optimum to the United States.

201. As a result of the conduct alleged in this complaint, Defendants submitted and caused to be submitted false claims, examples of which are identified below.

IX. EXAMPLES OF SPECIFIC FALSE OR FRAUDULENT CLAIMS SUBMITTED OR CAUSED TO BE SUBMITTED

A. Claims Submitted Where Source of Diagnosis Code was Changed to Anonymous "Physician"

202. The following patients are examples where a diagnostic code was listed on a 5 Star Checklist as a code that was submitted for the current year with "Current PCP" listed as the source of the diagnostic code. For each of the listed examples, Dr. Zafirov was the "Current PCP" and did not submit the code. When Dr. Zafirov marked on a subsequent 5 Star Checklist that the patient did not have that condition and/or that she did not submit the code, Defendants did not remove the code but instead changed the source simply to "Physician" – a designation which indicates a physician other than the patient's current primary care provider. However, the records show that the codes were originally represented as being submitted by Dr. Zafirov and there were no other physicians that treated the patients or provided the code in question. For clarity, select 5 Star Checklists or screenshots from each patient's medical records are identified and

attached hereto as Exhibits to provide a step-by-step illustration of the changed documentation.

Patient H

203. Patient H was a 73-year-old on Dr. Zafirov's patient panel who received treatment by VIPcare pursuant to enrollment in the Freedom VIP Savings (HMO SNP) plan. The following documents are associated with Patient H:

1. **Exhibit 1-H1**: Screenshot of Patient H's "PCP Encounter & PCP Claims" log from May 31, 2018
2. **Exhibit 1-H2**: Screenshot of Patient H's "PCP Encounter & PCP Claims" log from January/February 2019
3. **Exhibit 1-H3**: March 25, 2019 5 Star Checklist
4. **Exhibit 1-H4:** Screenshot of Paid Claims for 2019
5. **Exhibit I-H5**: April 2019 Five Star Form
6. **Exhibit 1-H6**: Subsequent Five Star Form
7. **Exhibit I-H7**: Dr. Barry Weckesser Cardiology Report from March 12, 2019
8. **Exhibit 1-H8**: Freedom Health Member Health Profile

204. Patient H was previously a patient of Dr. Akhil Patel. Patient H's records show that the diagnostic code for congestive heart failure (HCC 085 / ICD I50.30) was submitted under Dr. Patel's name on May 31, 2018. **Exhibit 1-H1.** Dr. Patel treated Patient H again in January 2019 for knee pain. He submitted a non-risk-adjusting code for hypertension, but did not code any HCCs at that time. **Exhibit 1-H2.**

205. Dr. Zafirov saw Patient H on March 25, 2019, in follow-up to a January 2019 general physical. At that time, Dr. Zafirov marked "no" next to the suggested

code for HCC 085, "unspecified diastolic (congestive) heart failure" on the 5 Star Checklist submitted by Anion. **Exhibit 1-H3.**

206. Despite Dr. Zafirov's rejection of the "proposed" congestive heart failure diagnosis, Patient H's billing record, under "PCP Encounters & PCP Claims," reflect that the code for congestive heart failure was submitted for payment under Dr. Zafirov's name on Feb. 25, 2019 (which appears to be a scrivner's error for March 25, 2019, when Patient H was actually seen). ***See*** **Exhibit I-H2.** It is listed as a "paid code" for 2019, along with a notation that it was reported four times the previous year (while Patient H was a patient of Dr. Patel) but not in the five years before that. **Exhibit I-H4.**

207. Dr. Zafirov saw Patient H again on April 17, 2019. By that time, HCC 085 for "unspecified diastolic (congestive) heart failure" was on the 5 Star Check List as a "condition already reported in the current year" with the listed source of "Current PCP" (who was Dr. Zafirov) and both the first and last date of service as Feb 25, 2019 (again, assumed to be a scriver's error as Dr. Zafirov saw Patient H on March 25, 2019, not February 25, 2019). Dr. Zafirov marked "No and should be removed" on the 5 Star Checklist next to that entry and returned the form. **Exhibit I-H5** (emphasis in original).

208. Rather than remove the code as ordered by Dr. Zafirov, a subsequent 5 Star Checklist, dated Aug. 12, 2019, still identified HCC 085, "unspecified

diastolic (congestive) heart failure," as a reported condition. **Exhibit 1-H6.** However, the source was changed from "Current PCP" simply to "Physician" and the last date of service was changed to March 12, 2019, a date on which Dr. Zafirov did not see Patient H.

209. Patient H did see a physician on March 12, 2019 – Dr. Barry Weckesser, a cardiologist with The Heart Institute of Venice. Dr. Weckesser conducted a full cardiac assessment and his notes are in Patient H's medical record. **Exhibit 1-H7.** While Dr. Weckesser notes his impressions of hypertension, mild carotid artery disease, insulin dependent diabetes and mitral insufficiency, he does not diagnose or even mention congestive heart failure anywhere in his notes. There is no indication anywhere else in Patient H's medical file of any physician diagnosing her with congestive heart failure that year.

210. Through the access to the Freedom MRA/HEDIS Portal granted by Freedom to the Physician Partners' physicians, Dr. Zafirov observed that the false code from Physician Partners for HCC085, Unspecified diastolic (congestive) heart failure, was submitted by Freedom to the CMS with the date of service March 12, 2019. **Exhibit 1-H8.**

211. The initial submission of a claim for congestive heart failure for Patient H was a false claim which fraudulently represented that Dr. Zafirov made that diagnosis. This false claim was submitted for payment to Freedom by Anion

on behalf of Physician Partners and VIPcare. It was paid by Freedom on behalf of the United States.

212. Physician Partner's decision to falsify the coding source rather than to submit correct records to remove the code after Dr. Zafirov specifically informed them that the code was incorrect resulted in a false record used to conceal an obligation under the Overpayment Rule.

Patient I

213. Patient I was an 81-year-old on Dr. Zafirov's patient panel who received treatment by VIPcare pursuant to enrollment in the Freedom VIP (HMO SNP) plan. The following documents are associated with Patient I:

1. **Exhibit 2-I1**: January 2019 Five Star Form
2. **Exhibit 2-I2**: April 2019 Five Star Form
3. **Exhibit 2-I3**: Screenshot of Paid Claims for 2019
4. **Exhibit 2-I4**: April 26, 2019 Five Star Form

214. Patient I was a frequent patient of Dr. Zafirov. Dr. Zafirov discussed his physical history with him at length and reviewed the entirety of his medical chart. Patient I had prostate cancer in 1999 – more than twenty years ago – which was resolved without need for further therapy. He has not had any active cancer since that time.

215. Dr. Zafirov first saw Patient I on January 31, 2019. The attendant 5 Star Checklist provided by Anion, **Exhibit 2-I1**, identified Dr. Akhil Patel as the Current PCP because this was Patient I's first visit since he was placed into Dr.

Zafirov's patient panel. The 5 Star Checklist suggested HCC012 ("Breast, Prostate, and Other Cancers and Tumors") with the specific diagnosis of ICD-10 C61, "Malignant neoplasm of prostate." The source of the code was "Past History," and the 5 Star Checklist showed that the HCC was reported twice in 2017 and four times in 2016. Dr. Zafirov wrote "No in remission" next to the risk-adjustment code. **Exhibit 2-I1.**

216. Dr. Zafirov saw Patient I on April 26, 2019. For that visit, Anion provided a 5 Star Checklist which had the HCC 012 risk-adjustment bubble greyed in; included the associated MRA risk-adjustment score of .154 on the progress bar at the top of the form. Under the heading "BELOW CODES/CONDITIONS ARE ALREADY REPORTED IN THE CURRENT YEAR," Anion had listed "Malignant neoplasm of prostate" as assigned on a date of service of April 2, 2019, and the source for the submitted diagnosis was "Current PCP," meaning Dr. Zafirov, who was then the established PCP. **Exhibit 2-I2.**

217. Dr. Zafirov did not treat Patient I on April 2, 2019, and the patient's medical record did not document any physician visit on that or any other date between January 31, 2019 and the visit of April 26, 2019. Thus, there is no evidence of any medical care which could have given rise to a diagnosis of prostate cancer for Patient I on April 2, 2019. Dr. Zafirov did not assign that diagnosis code on any other day either.

218. Dr. Zafirov consulted Physician Partners' billing records and determined that the HCC012 code was identified as "Paid" for 2019. **Exhibit 2-I3.**

219. In or about August 2019, Dr. Zafirov reviewed the then-current 5 Star Checklist for Patient I. **Exhibit 2-I4**. The code for "malignant neoplasm of prostate" was still on the form, and the date of service was still April 2, 2019. However, the "Source" column was altered to read "Physician" instead of "Current PCP." *Id*. There is nothing in Patient I's medical record that indicates that any physician other than Dr. Zafirov saw Patient I – much less diagnosed him with prostate cancer – in April 2019 (or any other time since 1999).

220. The submission of a claim for prostate cancer for Patient I was a false claim which fraudulently represented that Dr. Zafirov made that diagnosis. This false claim was submitted for payment to Freedom by Anion on behalf of Physician Partners and VIPcare. It was paid by Freedom on behalf of the United States.

221. Physician Partner's decision to falsify the coding source rather than to submit correct records to remove the code after Dr. Zafirov specifically informed them that the code was incorrect resulted in a false record used to conceal an obligation under the Overpayment Rule.

Patient J

222. Patient J was a 72-year-old on Dr. Zafirov's patient panel who received treatment by VIPcare pursuant to enrollment in the Freedom VIP Savings (HMO C-SNP) plan. The following documents are associated with Patient J:

1. **Exhibit 3-J1**: Dr. Andy Trotti Oncology Report
2. **Exhibit 3-J2**: January 2019 Five Star Form
3. **Exhibit 3-J3**: May 2019 Five Star Form
4. **Exhibit 3-J4**: Subsequent Five Star Form
5. **Exhibit 3-J5**: Screenshot of Paid Claims for 2019
6. **Exhibit 3-J6**: Freedom Health Member Health Profile

223. Patient J is a 72-year-old who had tonsil cancer in 2017. By 2019, his cancer was in remission and he was in overall good health. On Jan. 3, 2019, Patient J visited his oncologist, Dr. Andy Trotti, for a follow-up examination. Dr. Trotti's report states that he found "No evidence of disease." **Exhibit 3-J1.** Follow-up visits after a cancer is in remission do not generate HCC risk-adjusting codes.

224. Dr. Zafirov first examined Patient J on January 21, 2019. The 5 Star Checklist associated with his initial visit listed five "suggested" diagnoses under "HCC 011 – Colorectal, Bladder and Other Cancers," including ICD C09.9 for "Malignant neoplasm of tonsil, unspecified" which had been reported 82 times in 2017 and 8 times in 2018 with a source of "Current PCP." Because Patient J had not been formally transferred to Dr. Zafirov's patient panel yet, the reference to "Current PCP" at that time meant Dr. Patel. There were also suggested diagnoses of other forms of tonsil cancer, bladder cancer, and a general "malignant neoplasm of head, face and neck." Dr. Zafirov marked "No" next to all of the suggested

cancer diagnoses, and wrote "No, now in remission" with brackets next to the first two codes for throat cancer. **Exhibit 3-J2.**

225. Dr. Zafirov next examined Patient J on May 21, 2019. A new 5 Star Checklist was provided by Anion. The bubble for HCC011 – the cancer diagnosis code - was colored in and the risk-adjustment bar was increased by .317, which is the risk adjustment for HCC 011. **Exhibit 3-J3.** There were no conditions on the list for "conditions already reported in the current year" but all of the HCC 011 codes had been removed from the suggested diagnosis code list.

226. On or about August 11, 2019, Dr. Zafirov reviewed the then-current 5 Star Checklist for Patient J. At that time, under the heading "BELOW CODES/CONDITIONS ARE ALREADY REPORTED IN THE CURRENT YEAR," Anion had listed "Malignant neoplasm of tonsil, unspecified" as assigned on a first date of service of Jan. 3, 2019, and a last date of service as June 6, 2019. **Exhibit 3-J4.** The source of the code had been changed from "Current PCP" to "Physician Hospital."

227. The billing section of Patient J's electronic medical record shows HCC 011 with five different ICD codes for tonsil cancer and bladder cancer as "paid" for 2019. **Exhibit 3-J5.** Moreover, the Freedom Health Member Health Profile for Patient J reflects that the code for "Malignant neoplasm of tonslar fossa" was submitted from Freedom to CMS, most recently with a date of service of Jan. 13,

2020. However, as of the time that Dr. Zafirov left VIPcare, there was no documentation in Patient J's medical record to suggest that he had been diagnosed with tonsil or bladder cancer in 2019 and he was not receiving any treatment for cancer at his last visit with Dr. Zafirov.

228. The submission of a claim for cancer for Patient J was a false claim which fraudulently represented that an anonymous "Hospital Physician" made that diagnosis. This false claim was submitted for payment to Freedom by Anion on behalf of Physician Partners and VIPcare. It was paid by Freedom on behalf of the United States.

229. Further, Physician Partner's decision to falsify the coding source rather than to submit correct records to remove the code after Dr. Zafirov specifically informed them that the code was incorrect resulted in a false record used to conceal an obligation under the Overpayment Rule.

Patient K

230. Patient K was an 80-year-old Dr. Zafirov's patient panel who received treatment by VIPcare pursuant to enrollment in the Freedom VIP Savings (HMP SNP) plan. The following documents are associated with Patient K:

1. **Exhibit 4-K1**: Screenshots of PCP Claims and PCP Encounters listed in Dr. Patel's name for January 2019
2. **Exhibit 4-K2**: January 2019 Five Star Form
3. **Exhibit 4-K3**: Dr. Zafirov's Notes on January Five Star Form
4. **Exhibit 4-K4**: Screenshot of PCP Claims and PCP Encounters for 2019

5. **Exhibit 4-K5**: April 2019 Five Star Form
6. **Exhibit 4-K6**: Screenshot of Paid Claims for 2019
7. **Exhibit 4-K7**: May 2019 Five Star Form
8. **Exhibit 4-K8:** Subsequent Five Star Form
9. **Exhibit 4-K9**: Freedom Health Prospective Possible Condition Report

231. Patient K is an 80-year-old who had been a patient of Dr. Rick Simovitz, a Freedom provider before becoming a patient of Dr. Akhil Patel at VIPcare. She officially became part of Dr. Zafirov's panel in Feb. 2019, but Dr. Zafirov first treated her in Jan. 2019 and several times subsequently since then. The PCP Encounters and Claims records list Dr. Patel as the PCP who submitted codes in January 2019 (**Exhibit 4-K1**), but 5 Star Checklist from January 7, 2019, was submitted by Dr. Zafirov, indicating that some of the visits where Dr. Zafirov saw Patient K may have been documented under Dr. Patel's name

232. The 5 Star Checklist provided by Anion in January 2019 suggested three codes related to peripheral vascular disease (HCC108), all of which were billed in 2018, even though Dr. Patel's 2018 note establishing patient care makes no mention of this condition. **Exhibit 4-K2.** Dr. Zafirov did not find support for any of the diagnoses on the 5 Star Checklist, and she noted "no mention in cardiology notes, no u/s result" on the personal notes she made on another version of the form. **Exhibit 4-K3.**

233. Dr. Zafirov treated Patient K again on Feb. 25, 2019. The PCP Encounter and Claims data from that day reflect a code of HCC 018, ICD I70.201,

"unspecified atherosclerosis of native arteries of extremities, right leg" in Dr. Zafirov's name. **Exhibit 4-K4**. However, peripheral vascular disease cannot be diagnosed without diagnostic tests which Dr. Zafirov did not perform and Dr. Zafirov did not diagnose Patient K with that condition.

234. An April 18, 2019, 5 Star Checklist listed HCC 018, ICD I70.201, "unspecified atherosclerosis of native arteries of extremities, right leg," as a "condition already reported in the current year" with first and last date of service of Feb. 25, 2019 and a source of "Current PCP," meaning Dr. Zafirov. **Exhibit 4-K5**. HCC 018, ICD I70.209, "unspecified atherosclerosis of native arteries of extremities, unspecified extremity," was listed for the same dates of service but with a source of "Other Provider." Physician Partners claimed not to have received the 5 Star Checklist that Dr. Zafirov submitted in April 2019, and she had to resubmit a 5 Star Checklist for the April visit later in the year. ***See*** **Exhibit 4-K5**, date line

235. Both codes are listed in Patient K's billing record as paid in 2019. **Exhibit 4-K6.**

236. Shortly after Dr. Zafirov resubmitted the form, Anion began changing the "source" of the unsupported atherosclerosis diagnosis. In or about May 2019, a the 5 Star Checklist for Patient K showed that the "unspecified extremity" code

was removed completely, but four other conditions were changed from a generic "physician" or "physician hospital" to "Current PCP." **Exhibit 4-K7.**

237. In or about August 2019, another 5 Star Checklist reflected that Anion changed the "source" once again, making it appear as though some other physician made the diagnosis. The code for "unspecified atherosclerosis of native arteries of extremities, unspecified extremity" that was previously removed has been added back, still with a source of "other provider" but on the same date that Dr. Zafirov rendered services to Patient K. **Exhibit 4-K8.**

238. Through the access to the Freedom MRA/HEDIS Portal granted by Freedom to the Physician Partners' physicians, Dr. Zafirov observed that the Prospective Possible Condition Report (which reflects possible HCCs for each patient based on conditions that were submitted from Freedom to CMS in the past) showed that the HCC for Vascular Disease was "submitted previously" to CMS with a date of service of 02/25/2019 – the same date and code which was falsified by Physician Partners with repeatedly-changing "sources." **Exhibit 4-K9.**

239. The submission of a claim for unspecified athlerosclerosis for Patient K was a false claim which fraudulently represented various sources diagnosed the unsupported code, when none actually did. This false claim was submitted for payment to Freedom by Anion on behalf of Physician Partners and VIPcare. It was paid by Freedom on behalf of the United States.

240. Further, Physician Partner's decision to falsify the coding source rather than to submit correct records to remove the code resulted in a false record used to conceal an obligation under the Overpayment Rule.

B. Codes Submitted in Relator's Name After She Said No or Expressly Notified of Inaccuracy

241. The following patients are examples where a code was submitted in Dr. Zafirov's name and was left on the patient record even after Dr. Zafirov has expressly stated on a 5 Star Checklist or by email that the code is inaccurate. In these examples, Dr. Zafirov did not initially enter the diagnosis codes, but rather an Anion billing representative appended them following chart reviews.

Patient L

242. Patient L was an 81-year-old on Dr. Zafirov's patient panel who received treatment by VIPcare pursuant to enrollment in the Optimum Diamond Rewards (HMO SNP) plan. The following documents are associated with Patient L:

1. **Exhibit 5-L1**: Dr. Zafirov's Progress Note from January 2019
2. **Exhibit 5-L2**: January 2019 Five Star Form
3. **Exhibit 5-L3**: Screenshot of PCP Encounters and PCP Claims
4. **Exhibit 5-L4**: Dr. Zafirov's Progress Note from February 2019
5. **Exhibit 5-L5**: Subsequent Five Star Form
6. **Exhibit 5-L6**: Screenshot of Paid and Excluded Claims for 2019

243. Patient L was a patient of both Dr. Patel and Dr. Simovitz before being assigned to Dr. Zafirov's patient panel. Dr. Zafirov treated Patient L on January

23, 2019. Dr. Zafirov's progress note from that visit states, "Patient has a past diagnosis of diabetes however at the time of diagnosis in 16 hemoglobin A1C not seen above 6.5." **Exhibit 5-L1**. Under the detailed notes assessing that condition, Dr. Zafirov wrote, "Question initial diagnosis since patient does not follow any particular diet, eats what he wants and maintains his blood sugars with minimal effort. Patient has never had a hemoglobin A1C greater than 6.5."

244. The 5 Star Checklist provided by Anion for Patient L's January 2019 visit recommended three codes for HCC 018, Diabetes with Chronic Complications, but none for uncomplicated diabetes. Based on her clinical findings, Dr. Zafirov wrote "no" next to each of the suggested codes and included, "awaiting lab confirmation" on ICD E11.40, "Type 2 diabetes mellitus with diabetic neuropathy, unspecified." **Exhibit 5-L2.**

245. Despite Dr. Zafirov writing "no" on the submitted 5 Star Checklist, the PCP Encounter and Claims section of the patient's Physician Partners billing records reflected that the ICD code E11.65 for "Type 2 diabetes mellitus with hyperglycemia" was submitted to Optimum, with the source for this code noted as "progress notes" indicating that an Anion representative scanned Dr. Zafirov's progress notes and pulled the code from there. **Exhibit 5-L3**.

246. Dr. Zafirov treated Patient L again on Feb. 25, 2019. At that time, she wrote in the progress notes, "We did check a fasting glucose tolerance test with

labs to confirm diabetes which patient showed to have a glucose level in the 200s as the 1 hour mark." In the detailed notes, Dr. Zafirov diagnosed Patient L with "Type 2 diabetes mellitus *without complication*, without long-term use of insulin" (emphasis supplied) and noted "Well-controlled hemoglobin A1C in normal range." She did not include any mention of any complicating factors. **Exhibit 5-L4**.

247. Despite Dr. Zafirov's notations in January, the 5 Star Checklist for Patient L as of August 2019 showed *both* HCC 018 for "Type 2 diabetes mellitus with hyperglycemia" *and* HCC 019 for "Type 2 diabetes mellitus without complications" as conditions reported in 2019. **Exhibit 5-L5.**

248. Although the two codes are contradictory, Physician Partners did not remove the HCC 018 code for diabetes with a complication. Rather, the 5 Star Checklist provided by Anion still lists the date of service as Jan. 23, 2019, with Current PCP as the source. However, HCC 019 for uncomplicated diabetes is *also* listed with a date of service of Feb. 25, 2019, with Current PCP as the source – this second code is correct and should be the only one reported in 2019.

249. The billing records reflected in Physician Partner's electronic medical records reflect that that is not a possibility to bill for both complicated and uncomplicated diabetes. CD's records show that the correct code of HCC019 (diabetes without complications) is an "excluded code" because HCC019 (diabetes

with chronic complications) – the far more expensive but false code - was also submitted and paid for 2019. **Exhibit 5-L6.**

250. The submission of a claim for Type 2 diabetes mellitus with hyperglycemia was a false claim because it falsely represented that Dr. Zafirov submitted that diagnosis code when she expressly denied it. This false claim was submitted for payment to Optimum by Anion on behalf of Physician Partners and VIPcare. It was paid by Optimum on behalf of the United States.

251. Further, once Dr. Zafirov diagnosed Patient L with uncomplicated diabetes, Physician Partner's decision not to correct the previous code with the less expensive but accurate code is a violation of their obligations under the Overpayment Rule.

Patient M

252. Patient M was a 76-year-old on Dr. Zafirov's patient panel who received treatment by VIPcare pursuant to enrollment in the Freedom Medicare Plan Rx (HMO) plan. The following documents are associated with Patient ME:

1. **Exhibit 6-M1**: February 2019 Five Star Form
2. **Exhibit 6-M2**: Dr. Zafirov's Progress Note from Feb 2019
3. **Exhibit 6-M3**: Screenshot of Paid Claims from 2019
4. **Exhibit 6-M4**: July 2019 Five Star Form
5. **Exhibit 6-M5**: July 2019 Email to Sajitha Johnson
6. **Exhibit 6-M6**: Subsequent Five Star Form
7. **Exhibit 6-M7**: Freedom Prospective Possible Condition Report

253. Patient M is a 76-year-old who was previously a patient of Dr. Patel. Dr. Zafirov treated Patient M on Feb. 15, 2019. The 5 Star Checklist provided by Anion for that visit listed two suggested codes under HCC 058, Major Depressive, Bipolar, and Paranoid Disorders.[5] **Exhibit 6-M1**. Dr. Zafirov marked "No" next to both ICD F33.9 for "Major depressive disorder, recurrent, unspecified" and ICD F32.4 for "Major depressive disorder, single episode, in partial remission," which had been reported four and three times the previous year, respectively.

254. Dr. Zafirov's progress notes from that date of service indicate a score of 0 on the PHQ-9 mental health assessment test, noted that Patient M takes Celexa for anxiety instead of depression, and specifically noted (twice) that the patient denies and has no history of depression. **Exhibit 6-M2**. Per standard protocol, Dr. Zafirov included an assessment for Major Depressive Disorder, but her notes and 5 Star Checklist both plainly indicate she was *not* diagnosing that condition.

255. In July 2019, Dr. Zafirov reviewed Patient M's medical records and noted that the billing records show that HCC 059, the code for MDD was captured from the Feb. 2015 visit with Dr. Zafirov as the source and is marked as "paid" for 2019. **Exhibit 6-M3**. In addition, HCC 058 for "reactive and unspecified

[5] The current HCC code for "Major Depressive, Bipolar and Paranoid Disorders" is HCC 059 as of 2018. It was HCC 058 in 2017 and prior. HCC 058 is now the code for "Reactive and Unspecified Psychosis."

psychosis" is listed as "paid" in 2019, though no other details are provided for that code.

256. A July 2019 5 Star Checklist also showed HCC 058, ICD F32.4 as a condition already reported in 2019 with a date of service as Feb. 15, 2019 by "Current PCP." **Exhibit 6-M4**. Dr. Zafirov circled the code and wrote at the bottom the page, "Patient does not have major depressive disorder. Please amend."

257. Dr. Zafirov also emailed Physician Partner's Quality Analyst Sajitha Johnson or about July 19, 2019, and specifically asked that the code be removed from Patient M's medical records. **Exhibit 6-M5**. She wrote,

> In regards to [Patient M], if you read below the code, it is stated not once, but twice that she does not have major depression in the note. The patient is adamant that she is only taking for anxiety. It was meant to be a comment on the condition and not a diagnosis. The note makes that very clear. Not only that, but it has been marked "no" on the 5-star sheet I turned in to you. As far as what physicians coded before me, my responsibility lies in my own evaluation in the room with the patient. I do think that in regards to diagnosis, it is very important that this is done accurately. I would assume that your team also reads the physicians commentary on a condition as this is relevant. If there are previous codes on the chart, I will comment and then remove them from the chart after the visit.
>
> So yes, please remove the code from her medical records.

258. Despite this clear directive from Dr. Zafirov, the code remained on Patient M's medical record. In or about August 2019, the then-current 5 Star

Checklist showed HCC 059, ICD F32.4 for "Major depressive disorder, single episode, in partial remission" with a date of service on Feb. 15, 2019 by "Current PCP," (meaning Dr. Zafirov) under the conditions already reported in the current year. **Exhibit 6-M6**.

259. Physician Partner's submission of a claim for major depressive disorder for Patient M was a false claim which fraudulently represented that Dr. Zafirov submitted that diagnosis code when she did not. This false claim was submitted for payment to Freedom by Anion on behalf of Physician Partners and VIPcare. It was paid by Freedom on behalf of the United States.

260. As of October 2019, the Prospective Possible Condition Report for Patient M, accessed through the Freedom MRA/HEDIS Portal, reflected "Major Depressive, Bipolar, and Paranoid Disorder" an "HCC submitted previously" for Patient M, but now reflects the source of "other physician" and a date of service of Oct. 9, 2018. This indicates that Physician Partners or Freedom removed Dr. Zafirov's diagnosis code, but did not correct the codes which were previously submitted despite lack of any objective clinical evidence. **Exhibit 6-M7.**

261. Even if Physician Partners did ultimately remove the code as submitted by Dr. Zafirov, the decision not to submit correct records to remove the prior unsupported code is a violation of their obligations under the Overpayment Rule.

262. Further, if Physician Partners submitted a code and then corrected the submission because the code was unsupported, Freedom knew or should have known that previous diagnosis of that same code were also unsupported. The failure to evaluate the prior code submissions and to submit corrected information to CMS is a violation of Freedom's obligations under the Overpayment Rule.

263. In addition, the February 2019 5 Star Checklist provided to Dr. Zafirov for Patient M suggested a diagnosis of microcephaly under the HCC 072, Spinal Cord Disorders/Injuries, which carries a risk adjustment factor of .509. **Exhibit 6-M1.** The 5 Star Checklist revealed that the code has been submitted to Freedom two times in 2018 and two times in 2017, although the patient was seen at least six times in 2018 at least four times in 2017. Microcephaly is a very rare, incurable birth defect (2-12 out of 10,000 live births) in which a baby's head is significantly smaller than normal, often accompanied by intellectual impairment. https://www. cdc.gov/ncbddd/birthdefects/microcephaly.html. It is a permanent condition which would either be present at all visits or does not exist at all. There are no records in Patient M's chart which support a microcephaly diagnosis and Dr. Zafirov's physical examination of the patient confirmed that the patient did not have the rare disorder, then or ever before.

264. The Prospective Possible Condition Report shows that the HCC for Spinal Cord Disorder/Injurie was previously submitted to CMS for Patient M,

with a date of service of January 24, 2018, and a source of "other physician." Physician Partner's submission of a claim for microcephaly for Patient M was a false claim which fraudulently represented condition had been diagnosed by a physician when there is no support for it in the medical record. This false claim was submitted for payment to Freedom by Anion on behalf of Physician Partners and VIPcare. It was paid by Freedom on behalf of the United States.

265. Further, because microcephaly is a permanent condition, Dr. Zafirov's notation that the condition did not exist should have caused Physician Partners to submit correct records to remove the prior unsupported code. The failure to do so is a violation of their obligations under the Overpayment Rule.

266. Likewise, the presence of the diagnoses code for a permanent birth defect – particularly one with such a large MRA score - in some years but not in others should have caused Freedom to review the code and reject it as applied to Patient M because it was not medically supported. The failure to conduct such a review and to submit correct records to remove the unsupported code is a violation of their obligations under the Overpayment Rule.

Patient N

267. Patient N was a 70-year-old on Dr. Zafirov's patient panel who received treatment by VIPcare pursuant to enrollment in the Freedom VIP Savings (HMP SNP) plan. The following documents are associated with Patient N:

1. **Exhibit 7-N1**: January 2019 Five Star Checklist
2. **Exhibit 7-N2**: Dr. Zafirov's Progress Note from Jan. 23 visit
3. **Exhibit 7-N3**: May 2019 Five Star Checklist

268. Dr. Zafirov treated Patient N on or about Jan. 23, 2019. The 5 Star Checklist provided to Dr. Zafirov by Anion in advance of that appointment suggested a diagnoses of "[diabetes] with diabetic peripheral angiopathy without gangrene." **Exhibit 7-N1.** On the 5 Star Checklist, Relator wrote "No – see below" and included a detailed explanation of why she was rejecting both the suggested diagnosis and why she questioned even the original diagnosis of diabetes for Patient N.

269. Dr. Zafirov also documented both the rejection of the diagnosis and the reasons why in her progress notes, writing, "Question completeness of initial diagnosis Patient may have been prediabetes but it does not seem the lab criteria quite matches the diagnosis. If it is a question later on, will repeat [testing]." **Exhibit 7-N2.**

270. Patient N returned to Dr. Zafirov on May 18, 2019 for a follow-up visit. Despite Dr. Zafirov's previous notations, the 5 Star Checklist provided by Anion for the May 2019 visit reflected "[diabetes] with diabetic peripheral angiopathy without gangrene" in the "BELOW CODES/CONDITIONS ARE ALREADY REPORTED IN THE CURRENT YEAR" section with the source of "Current PCP" (meaning Dr. Zafirov) and a date of service of Jan. 22, 2019 – the

same visit on which Dr. Zafirov expressly denied such condition (with a scrivner's error adjusting the date by one day). **Exhibit 7-N3.**[6]

271. The submission of a claim for diabetes with diabetic peripheral angiopathy without gangrene for Patient N was a false claim because it fraudulently represented that Dr. Zafirov assigned that specific diagnostic code when she expressly rejected it. This false claim was submitted for payment to Freedom by Anion on behalf of Physician Partners and VIPcare. It was paid by Freedom on behalf of the United States.

C. Defendants' Failure to Return Overpayments

272. Each of the patient examples in this Amended Complaint resulted in claims for which Physician Partners had actual knowledge of their falsity. By failing to submit proper codes to convey the accurate information to Freedom which would then be passed on to the United States, Physician Partners violated its obligations under the Overpayment Rule and failed to return funds in violation of 31 U.S.C. 3729(a)(1)(G).

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[6] Of note, on the same date that Dr. Zafirov received the 5 Star Checklist for Patient N which reflected billing that directly contradicted her notations, Sajitha Johnson, the Quality Analyst assigned to Relator, questioned Relator as to whether she maintained copies of any of her old 5 Star Checklists. Relator understood the reason for that inquiry to be because Physician Partners and Anion did not want VIPcare physicians to be able to review their notes on past checklists because Anion continued to suggest codes which had already been rejected or billed conditions under the physician's name despite the physician's rejection of that code.

273. Likewise, Freedom and Optimum had or should have had knowledge of the falsity of the claims submitted to it by Physician Partners. For each of the above patient examples, by failing to submit proper codes to convey accurate information to CMS, Freedom and Optimum violated their repayment obligations under the Overpayment Rule and failed to return funds in violation of 31 U.S.C. 3720(a)(1)(G).

274. In addition to the patients identified throughout the Amended Complaint, the following are specific examples where Physician Partners, the MAOs or both had knowledge of the falsity of their codes and failed to submit correct codes pursuant to their overpayment obligations.

Patient O

275. Patient O was a 69-year-old on Dr. Zafirov's patient panel who received treatment by VIPcare pursuant to enrollment in the Freedom VIP Savings (HMP SNP) plan. The following documents are associated with Patient O:

1. **Exhibit 8-O1**: January 2019 Five Star Form
2. **Exhibit 8-O2**: Screenshot of Paid Claims for 2019
3. **Exhibit 8-O3**: March 2019 Five Star Form
4. **Exhibit 8-O4**: Dr. Zafirov's Progress Note from March 2019
5. **Exhibit 8-O5**: Dr. Barry Weckesser Cardiology Report from May 2019
6. **Exhibit 8-O6**: Dr. Zafirov's Amended Progress Note from Jan. 2019
7. **Exhibit 8-O7**: Subsequent Five Star Form
8. **Exhibit 8-O8**: Screenshot of PCP Encounters and PCP Claims for 2019
9. **Exhibit 8-O9**: Screenshot of Paid Claims for 2019

10. **Exhibit 8-O10**: Freedom Prospective Possible Condition Report

276. This is an example where Dr. Zafirov admits to making a mistake on her patient's Five Star form. However, despite Dr. Zafirov's efforts, Physician Partners refused to correct the code even after Dr. Zafirov identified it as an error.

277. Patient O was a patient of Dr. Patel before getting switched to Dr. Zafirov's panel. On January 3, 2019, Dr. Zafirov treated Patient O and submitted a Five Star form that said "OK yes" next to "HCC 085, ICD I50.30, "unspecified diastolic (congestive) heart failure." **Exhibit 8-O1.** The billing records show that code as paid in 2019, and the detailed record shows that the date of service was Jan. 3, 2019, with Dr. Zafirov as the billing provider. **Exhibit 8-O2.**

278. On March 4, 2019, Dr. Zafirov noted that the 5 Star Checklist provided by Anion reflected HCC 085 as a submitted code. **Exhibit 8-O3.** Dr. Zafirov circled the code and marked on the bottom of the form, "HCC 085 – should be corrected. Patient does NOT have. Should be amended." She further noted in the medical record, "Patient scheduled to see cardiology in the next few months. Patient has a grade 1 diastolic dysfunction which is not abnormal for age on cardiac echo. Does not qualify for congestive heart failure as previously on problem list." **Exhibit 8-O4**.

279. Patient O was seen by a cardiologist on May 13, 2019. The cardiologist made no references to congestive heart failure anywhere in the notes. **Exhibit 8-**

O5. Dr. Zafirov then went back to her January Progress Note, and added an amendment to the note on May 15, 2019, which stated, "Amendment to chart. No CHF. Should not be included in problem list." **Exhibit 8-O6**.

280. Despite Dr. Zafirov's repeated attempts to correct the code and amend the billing, the code continued to appear on Patient O's 5 Star Checklist with the date of service of Jan. 3, 2019 and the source as "Current PCP." **Exhibit 8-O7.** The PCP Encounters & PCP Claims records also still show the HCC 085 code as submitted by Dr. Zafirov *and* Dr. Patel, *both* on Jan. 3, 2019 (**Exhibit 8-O8**), although only Dr. Zafirov treated Patient O that day.

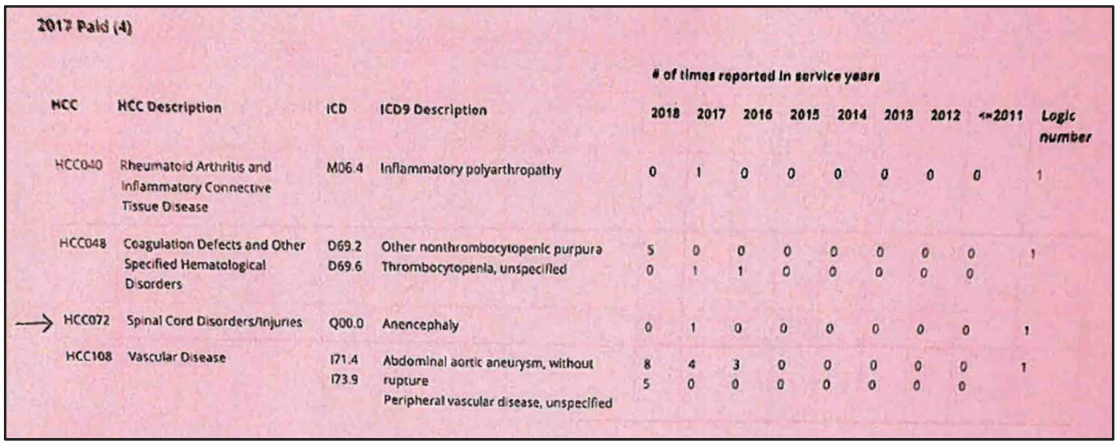
281. As of August 2019, the billing records still showed HCC 085 for congestive heart failure as a paid code for 2019. **Exhibit 8-O9.** Moreover, as of October 2019, the Prospective Possible Condition Report for Patient O, accessed through the Freedom MRA/HEDIS Portal, reflected Congestive Heart Failure as an "HCC previously submitted" by the PCP (meaning Dr. Zafirov) with a date of service of Jan. 3, 2019. **Exhibit 8-O10.**

282. In this case, the initial submission of the claim for congestive heart failure was not a false claim because Dr. Zafirov had marked "OK" for that code on her 5 Star Checklist. That claim was submitted for payment to Freedom by Anion on behalf of Physician Partners and VIPcare. It was paid by Freedom on behalf of the United States.

283. However, Physician Partner's refusal to submit correct records to remove the code after Dr. Zafirov specifically informed them that the code was incorrect is a violation of its obligations under the Overpayment Rule.

Additional Patient Examples

284. In one egregious example, Dr. Zafirov reviewed the billing records of Patient P, an 83-year-old on her Freedom patient panel, in association with a patient visit in March 2019. Relator determined that the patient's Q360 electronic record reflected that Physician Partners was paid in 2017 for risk-adjusting HCC072 (spinal cord disorders/injuries) for the ICD-9 code Q00.0, anencephaly. The billing record shows the code was reported only once in 2017, never before or after.



2017 Paid (4)

HCC	HCC Description	ICD	ICD9 Description	# of times reported in service years								Logic number
				2018	2017	2016	2015	2014	2013	2012	<=2011	
HCC040	Rheumatoid Arthritis and Inflammatory Connective Tissue Disease	M06.4	Inflammatory polyarthropathy	0	1	0	0	0	0	0	0	1
HCC048	Coagulation Defects and Other Specified Hematological Disorders	D69.2	Other nonthrombocytopenic purpura	5	0	0	0	0	0	0	0	1
		D69.6	Thrombocytopenia, unspecified	0	1	1	0	0	0	0	0	
→ HCC072	Spinal Cord Disorders/Injuries	Q00.0	Anencephaly	0	1	0	0	0	0	0	0	1
HCC108	Vascular Disease	I71.4	Abdominal aortic aneurysm, without rupture	8	4	3	0	0	0	0	0	1
		I73.9	Peripheral vascular disease, unspecified	5	0	0	0	0	0	0	0	

285. Anencephaly, as defined by the CDC, "is a serious birth defect in which a baby is born without parts of the brain and skull. It is a type of neural tube defect (NTD). As the neural tube forms and closes, it helps form the baby's brain

and skull (upper part of the neural tube), spinal cord, and back bones (lower part of the neural tube)…Almost all babies born with anencephaly will die shortly after birth." A patient would either always or never have anencephaly; Patient P unequivocally does not. The anencephaly diagnosis code is so preposterous that Anion did not put it on Patient P's 5 Star Checklists as a suggested diagnosis code.

286. Whether the code was initially submitted intentionally or accidently, its continued presence on the "2017 Paid" list indicates that it was not reversed. Physician Partners' failure to submit correct records to remove the code after Dr. Zafirov specifically informed them that the code was incorrect is a violation of its obligations under the Overpayment Rule.

287. Freedom's Member Health Profile for Patient P reflects that HCC072 for "spinal cord disorders/injuries" was "reported to CMS in the past for this member." However, unlike every other submitted code, the HCC072 entry does not include a provider type, diagnosis code, diagnosis description or date of service.

Provider Type	Confirmed 2020 DOS	RA FACTOR	Diagnosis Code	Diagnosis Description	Date Of Service	CMS HCC	CMS HCC Description
	N	0.481				HCC072	Spinal Cord Disorders/Injuries
Physician	Y	0.521	H35.32	Exudative age-related macular degeneration, right eye, with active choroidal neovascularization	1/6/2020	HCC124	Exudative Macular Degeneration
Physician	Y	0.268	I48.91	Unspecified atrial fibrillation	1/24/2020	HCC096	Specified Heart Arrhythmias
Physician	N	0.219	K56.41	Fecal impaction	3/8/2019		

288. Freedom knew or should have known that a diagnosis code for anencephaly for a senior citizen was false or accidental, particularly a code that was submitted only once for the patient. Still, Freedom submitted the code to CMS and increased Patient P's risk score by .481. Freedom's failure to identify this clearly inaccurate code as incorrect or fraudulent, and its resulting failure to submit correct records to remove the code is a violation of its obligations under the Overpayment Rule.

289. In another instance, Physician Partners submitted claims for Patient Q for malignant neoplasm of connective tissue in 2018, even though an oncologist from Moffit Cancer Center noted that the patient only had an angiofibroma, which is a benign condition. Physician Partners also submitted diagnosis codes for malignant neoplasm of the prostate (prostate cancer) during five encounters in 2017, although there is no record in his medical chart for receiving any treatment for prostate cancer. Patient Q's medical record contains no support for either cancer diagnosis and the patient denied having ever been diagnosed with cancer during his evaluation by Dr. Zafirov.

290. Dr. Zafirov reported on Patient Q's 5 Star Checklist that Patient Q did not have cancer, that he reported, "I've had every test in the world for cancer and nothing," and that patient had no history of prostate cancer. Still, HCC010 for two forms of malignant neoplasm of connective tissue were reported five times in 2018

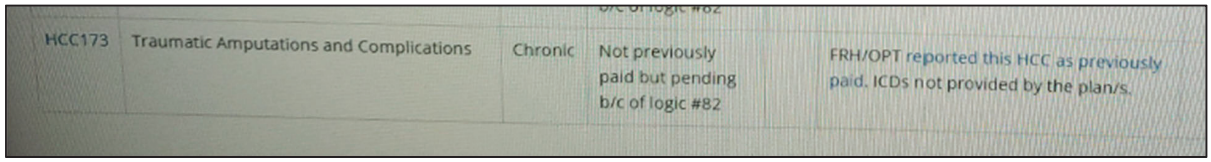
(4 times for ICD-10 C49.9 and one time for ICD-10 C49.6) and HCC012 for unspecified malignant neoplasm was reported twice in 2018 and once in 2017 for ICD-10 C80.1. Physician Partners should have submitted corrected records to remove the code after Dr. Zafirov specifically informed them that the code was incorrect. The failure to do so is a violation of its obligations under the Overpayment Rule.

291. Freedom also knew or should have known that the Physician Partner's repeated codes for cancer were false because Patient Q never received any treatments related to a cancer diagnosis, let alone two different types of cancer. Given that the entire purpose of increased MRA scores is to provide funding to treat the diagnosed condition, Freedom's failure to return payments for cancer that was "diagnosed" but never treated is a violation of its overpayment obligations.

292. The following failures to return overpayments are specific to Freedom:

293. Paragraph 118, *supra*, describes Patient A, whose 5 Star Checklist from July 23, 2019, included the remarkable suggestion of "complete traumatic amputation of unspecified foot, level unspecified, initial encounter" with a source of "past history." Noting that the patient plainly had *not* had one of her feet amputated, Dr. Zafirov reviewed patient's electronic medical records and identified that Physician Partner's listed the HCC in its 2016 paid claims but

without any specific ICD or reporting date. The HCC appears again in a section called "2017 Leftover" with a notes that clarify "Not previously paid but pending b/c of logic #82." The next column reports that "FRH/OPT reported this HCC as previously paid. ICDs not provided by the plan/s." "FRH/OPT" means Freedom/Optimum and the information links to the data from Freedom's MRA/HEDIS billing portal.



HCC173	Traumatic Amputations and Complications	Chronic	Not previously paid but pending b/c of logic #82	FRH/OPT reported this HCC as previously paid. ICDs not provided by the plan/s.

294. There is no indication as to how Freedom came to append this code to Patient A. Freedom either had actual knowledge that it was completely fabricated or should have known that the code for an amputation was inaccurate when it was submitted only once, without any supporting documentation or any related treatment. Freedom should have submitted corrected records to remove the code because it lacked any clinical support, and the failure to do so is a violation of its obligations under the Overpayment Rule.

295. In another example, prior to becoming a VIPcare patient, Patient R was treated by Freedom provider Dr. Rick Simovitz for at least the years 2015-2017. During those years, Freedom submitted diagnostic codes to CMS indicating Patient R had Chronic Lymphocytic Leukemia ("CLL"), a type of bone marrow cancer. However, Patient R's medical records indicate that she did not have a

formal CLL diagnosis and had not seen a hematologist, nor was ever even referred to one for further evaluation. When Patient R did not receive any treatment for CLL, nor did the medical records did identify even a referral for treatment for CLL, Freedom should have submitted corrected codes to remove because it lacked any clinical support. Freedom's failure to do so is a violation of its overpayment obligations.

FIRST CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(A)
Against Physician Partners, LLC ("Physician Partners")

296. Relator repeats and re-alleges the background allegations contained in Sections V and VI, and the specific allegations in Section VII(A)(i)-(iv) in support of this Count. The paragraphs not specifically realleged in this Count provide critical contextual support as to how the fraud alleged in this Count occurred. The patient examples alleged in Section IX(A) and (B) resulted in false claims submitted or caused to be submitted by Physician Partners in violation of 31 U.S.C. § 3729(a)(1)(A).

297. Defendant Physician Partners violated 31 U.S.C. § 3729(a)(1)(A) by knowingly presenting and causing the presentment of false or fraudulent claims for payment or approval. By engaging in this conduct, Physician Partners caused inflated Medicare reimbursements to which neither it nor the Medicare Advantage organizations were entitled.

298. Had the United States been aware of Physician Partners' conduct, it would have refused to pay the inflated risk-adjusted payments and/or pursued other legal remedies to avoid the potential disruption of Medicare benefits to thousands of Medicare beneficiaries to whom Physician Partners provide services.

299. By virtue of the conduct alleged in this Count, the United States has incurred damages and is entitled to treble damages under the FCA, plus a civil penalty for each violation of the Act.

SECOND CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(B)
Against Physician Partners, LLC ("Physician Partners")

300. Relator repeats and re-alleges the background allegations contained in Sections V and VI, and the specific allegations in Section VII(A)(i)-(iv) in support of this Count. The paragraphs not specifically realleged in this Count provide critical contextual support as to how the fraud alleged in this Count occurred. The patient examples alleged in Section IX(A) and (B) illustrate false claims by Physician Partners in violation of 31 U.S.C. § 3729(a)(1)(B).

301. Defendant Physician Partners violated 31 U.S.C. § 3729(a)(1)(B) by knowingly making, using, or causing to be made or used, false records or statements material to false or fraudulent claims. By engaging in this conduct, Physician Partners caused inflated Medicare reimbursements to which neither it nor the Medicare Advantage organizations were entitled.

302. Had the United States been aware of Physician Partners' conduct, it would have refused to pay the inflated, risk-adjusted payments and/or pursued other legal remedies to avoid the potential disruption of Medicare benefits to thousands of Medicare beneficiaries to whom Physician Partners provide services.

303. By virtue of the conduct alleged in this Count, the United States has incurred damages and is entitled to treble damages under the FCA, plus a civil penalty for each violation of the Act.

THIRD CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(G)
Against Physician Partners, LLC ("Physician Partners")

304. Relator repeats and re-alleges the background allegations contained in Sections V and VI, and the specific allegations in Section VII(A)(i)-(iv) in support of this Count. The paragraphs not specifically realleged in this Count provide critical contextual support as to how the fraud alleged in this Count occurred. The patient examples alleged in Section IX(A), (B) and (C) illustrate false claims by Physician Partners leading to violations of 31 U.S.C. § 3729(a)(1)(G), except for Paragraphs 293-295 which apply to Defendants Freedom and Optimum only.

305. Defendant Physician Partners violated 31 U.S.C. § 3729(a)(1)(G) by knowingly making, using, or causing to be made or used, false records or statements material to an obligation to pay or transmit money to the United States, or knowingly concealing or knowingly and improperly avoiding or decreasing an

obligation to pay or transmit money to the Government. In engaging in this conduct, Physician Partners retained Medicare overpayments to which it was not entitled.

306. Had the United States been aware of Physician Partners' conduct, it would have demanded repayment of the inflated capitation payments, would have refused to pay the inflated risk-adjusted payments, and/or pursued other legal remedies to avoid the potential disruption of Medicare benefits to thousands of Medicare beneficiaries to whom Physician Partners provide services.

307. By virtue of the conduct alleged in this Count, the United States has incurred damages and is entitled to treble damages under the FCA, plus a civil penalty for each violation of the Act.

FOURTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(A)
Against Anion Technologies, LLC ("Anion")

308. Relator repeats and re-alleges the background allegations contained in Sections V and VI, and the specific allegations in Section VII(A)(i)-(iv) in support of this Count. The paragraphs not specifically realleged in this Count provide critical contextual support as to how the fraud alleged in this Count occurred. The patient examples alleged in Section IX(A) and (B) resulted in false claims submitted or caused to be submitted by Anion in violation of 31 U.S.C. § 3729(a)(1)(A).

309. Defendant Anion violated 31 U.S.C. § 3729(a)(1)(A) by knowingly presenting and causing the presentment of false or fraudulent claims for payment or approval. By engaging in this conduct, Anion caused inflated Medicare reimbursements to which neither it, Physician Partners, VIPcare, nor the Medicare Advantage organizations were entitled.

310. Had the United States been aware of Anion's conduct, it would have refused to pay the inflated risk-adjusted payments and/or pursued other legal remedies to avoid the potential disruption of Medicare benefits to thousands of Medicare beneficiaries for whom Anion, through Physician Partners, provides services

311. By virtue of the conduct alleged in this Count, the United States has incurred damages and is entitled to treble damages under the FCA, plus a civil penalty for each violation of the Act.

FIFTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(B)
Against Anion Technologies, LLC ("Anion")

312. Relator repeats and re-alleges the background allegations contained in Sections V and VI, and the specific allegations in Section VII(A)(i)-(iv) in support of this Count. The paragraphs not specifically realleged in this Count provide

critical contextual support as to how the fraud alleged in this Count occurred. The patient examples alleged in Section IX(A) and (B) illustrate false claims by Anion in violation of 31 U.S.C. § 3729(a)(1)(B).

313. Defendant Anion violated 31 U.S.C. § 3729(a)(1)(B) by knowingly making, using, or causing to be made or used, false records or statements material to false or fraudulent claims. By engaging in this conduct, Anion caused inflated Medicare reimbursements to which neither it, Physician Partners, VIPcare, nor the Medicare Advantage organizations were entitled.

314. Had the United States been aware of Anion's conduct, it would have refused to pay the inflated risk-adjusted payments and/or pursued other legal remedies to avoid the potential disruption of Medicare benefits to thousands of Medicare beneficiaries for whom Anion, through Physician Partners, provides services.

315. By virtue of the conduct alleged in this Count, the United States has incurred damages and is entitled to treble damages under the FCA, plus a civil penalty for each violation of the Act.

SIXTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(G)
Against Anion Technologies, LLC ("Anion")

316. Relator repeats and re-alleges the background allegations contained in Sections V and VI, and the specific allegations in Section VII(A)(i)-(iv) in support

of this Count. The paragraphs not specifically realleged in this Count provide critical contextual support as to how the fraud alleged in this Count occurred. The patient examples alleged in Section IX(A), (B) and (C) illustrate false claims by Anion leading to violations of 31 U.S.C. § 3729(a)(1)(G), except for Paragraphs 293-295 which apply to Defendants Freedom and Optimum only.

317. Defendant Anion violated 31 U.S.C. § 3729(a)(1)(G) by knowingly making, using, or causing to be made or used, false records or statements material to an obligation to pay or transmit money to the United States, or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money to the Government. In engaging in this conduct, Anion caused Physician Partners to retain Medicare overpayments to which it was not entitled.

318. Had the United States been aware of Anion's conduct, it would have demanded repayment of the inflated capitation payments, would have refused to pay the inflated risk-adjusted payments, and/or pursued other legal remedies to avoid the potential disruption of Medicare benefits to thousands of Medicare beneficiaries for whom Anion, through Physician Partners, provides services.

319. By virtue of the conduct alleged in this Count, the United States has incurred damages and is entitled to treble damages under the FCA, plus a civil penalty for each violation of the Act.

SEVENTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(A)
Against Florida Medical Associates, LLC d/b/a VIPcare ("VIPcare")

320. Relator repeats and re-alleges the background allegations contained in Sections V and VI, and the specific allegations in Section VII(A)(i)-(iv) in support of this Count. The paragraphs not specifically realleged in this Count provide critical contextual support as to how the fraud alleged in this Count occurred. The patient examples alleged in Section IX(A) and (B) resulted in false claims submitted or caused to be submitted by VIPcare in violation of 31 U.S.C. § 3729(a)(1)(A).

321. Defendant VIPcare violated 31 U.S.C. § 3729(a)(1)(A) by knowingly presenting or causing the presentment of false or fraudulent claims for payment or approval. By engaging in this conduct, VIPcare caused inflated Medicare reimbursements to which neither it, Physician Partners, nor the Medicare Advantage organizations were entitled.

322. Had the United States been aware of VIPcare's conduct, it would have refused to pay the inflated risk-adjusted payments and/or pursued other legal remedies to avoid the potential disruption of Medicare benefits to thousands of Medicare beneficiaries to whom VIPcare provide services.

323. By virtue of the conduct alleged in this Count, the United States has incurred damages and is entitled to treble damages under the FCA, plus a civil penalty for each violation of the Act.

EIGHTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(B)
Against Florida Medical Associates, LLC d/b/a VIPcare ("VIPcare")

324. Relator repeats and re-alleges the background allegations contained in Sections V and VI, and the specific allegations in Section VII(A)(i)-(iv) in support of this Count. The paragraphs not specifically realleged in this Count provide critical contextual support as to how the fraud alleged in this Count occurred. The patient examples alleged in Section IX(A) and (B) illustrate false claims by VIPcare in violation of 31 U.S.C. § 3729(a)(1)(B).

325. Defendant VIPcare violated 31 U.S.C. § 3729(a)(1)(B) by knowingly making, using, or causing to be made or used, false records or statements material to false or fraudulent claims. By engaging in this conduct, VIPcare cause inflated Medicare reimbursements to which neither it, Physician Partners, nor the Medicare Advantage organizations were entitled.

326. Had the United States been aware of VIPcare's conduct, it would have refused to pay the inflated risk-adjusted payments and/or pursued other legal remedies to avoid the potential disruption of Medicare benefits to thousands of Medicare beneficiaries to whom VIPcare provides services.

327. By virtue of the conduct alleged in this Count, the United States has incurred damages and is entitled to treble damages under the FCA, plus a civil penalty for each violation of the Act.

NINTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(G)
Against Florida Medical Associates, LLC d/b/a VIPcare ("VIPcare")

328. Relator repeats and re-alleges the background allegations contained in Sections V and VI, and the specific allegations in Section VII(A)(i)-(iv) in support of this Count. The paragraphs not specifically realleged in this Count provide critical contextual support as to how the fraud alleged in this Count occurred. The patient examples alleged in Section IX(A), (B) and (C) illustrate false claims by VIPcare leading to violations of 31 U.S.C. § 3729(a)(1)(G), except for Paragraphs 293-295 which apply to Defendants Freedom and Optimum only.

329. Defendant VIPcare violated 31 U.S.C. § 3729(a)(1)(G) by knowingly making, using, or causing to be made or used, false records or statements material to an obligation to pay or transmit money to the United States, or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money to the Government. In engaging in this conduct, VIPcare retained Medicare overpayments, or caused Physician Partners to retain overpayments, to which neither entity was entitled.

330. Had the United States been aware of VIPcare's conduct, it would have demanded repayment of the inflated capitation payments, refused to pay the inflated risk-adjusted payments, and/or pursued other legal remedies to avoid the potential disruption of Medicare benefits to thousands of Medicare beneficiaries to whom VIPcare provide services.

331. By virtue of the conduct alleged in this Count, the United States has incurred damages and is entitled to treble damages under the FCA, plus a civil penalty for each violation of the Act.

TENTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(A)
Against Freedom Health, Inc. and Optimum Healthcare, Inc.
("Freedom and Optimum")

332. Relator repeats and re-alleges the background allegations contained in Sections V and VI, and the specific allegations in Section VII(B) in support of this Count. The paragraphs not specifically realleged in this Count provide critical contextual support as to how the fraud alleged in this Count occurred. The patient examples alleged in Section IX(A) and (B) resulted in false claims submitted or caused to be submitted by Freedom and Optimum in violation of 31 U.S.C. § 3729(a)(1)(A).

333. As specifically described in Paragraphs 26-29, Freedom and Optimum are indistinguishable entities who operate in tandem, including for purposes of contracting with and executing obligations to the United States. Accordingly, the

allegations made in this Count are made against both Freedom and Optimum, jointly and severally.

334. Defendants Freedom and Optimum violated 31 U.S.C. § 3729(a)(1)(A) by knowingly presenting and causing the presentment of false or fraudulent claims for payment or approval. By engaging in this conduct, Freedom and Optimum caused inflated Medicare reimbursements to which neither they nor the providers were entitled.

335. Had the United States been aware of Freedom and Optimum's conduct, it would have refused to pay the inflated risk-adjusted payments and/or pursued other legal remedies to avoid the potential disruption of Medicare benefits to thousands of Medicare beneficiaries to whom Freedom and Optimum provide services.

336. By virtue of the conduct alleged in this Count, the United States has incurred damages and is entitled to treble damages under the FCA, plus a civil penalty for each violation of the Act.

ELEVENTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(B)
Against Freedom Health, Inc. and Optimum Healthcare, Inc.
("Freedom and Optimum")

337. Relator repeats and re-alleges the background allegations contained in Sections V and VI, and the specific allegations in Section VII(B) in support of this Count. The paragraphs not specifically realleged in this Count provide critical

contextual support as to how the fraud alleged in this Count occurred. The patient examples alleged in Section IX(A) and (B) illustrate false claims by Freedom and Optimum in violation of 31 U.S.C. § 3729(a)(1)(B).

338. As specifically described in Paragraphs 26-29, Freedom and Optimum are indistinguishable entities who operate in tandem, including for purposes of contracting with and executing obligations to the United States. Accordingly, the allegations made in this Count are made against both Freedom and Optimum, jointly and severally.

339. Defendants Freedom and Optimum violated 31 U.S.C. § 3729(a)(1)(B) by knowingly making, using, or causing to be made or used, false records or statements material to false or fraudulent claims. By engaging in this conduct, Freedom and Optimum cause inflated Medicare reimbursements to which neither they nor the providers were entitled.

340. Had the United States been aware of Freedom and Optimum's conduct, it would have refused to pay the inflated, risk-adjusted payments and/or pursued other legal remedies to avoid the potential disruption of Medicare benefits to thousands of Medicare beneficiaries to whom Freedom and Optimum provide services.

341. By virtue of the conduct alleged in this Count, the United States has incurred damages and is entitled to treble damages under the FCA, plus a civil penalty for each violation of the Act.

TWELFTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(G)
Against Freedom Health, Inc. and Optimum Healthcare, Inc.
("Freedom and Optimum")

342. Relator repeats and re-alleges the background allegations contained in Sections V and VI, and the specific allegations in Section VII(B) in support of this Count. The paragraphs not specifically realleged in this Count provide critical contextual support as to how the fraud alleged in this Count occurred. The patient examples alleged in Section IX(A), (B) and (C) illustrate false claims by Freedom and Optimum leading to violations of 31 U.S.C. § 3729(a)(1)(G).

343. As specifically described in Paragraphs 26-29, Freedom and Optimum are indistinguishable entities who operate in tandem, including for purposes of contracting with and executing obligations to the United States. Accordingly, the allegations made in this Count are made against both Freedom and Optimum, jointly and severally.

344. Defendants Freedom and Optimum violated 31 U.S.C. § 3729(a)(1)(G) by knowingly making, using, or causing to be made or used, false records or statements material to an obligation to pay or transmit money to the United States,

or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money to the Government. In engaging in this conduct, Freedom and Optimum retained Medicare overpayments, or caused providers to retain overpayments, to which they were not entitled.

345. Had the United States been aware of Freedom and Optimum's conduct, it would have demanded repayment of the inflated capitation payments, refused to pay the inflated risk-adjusted payments, and/or pursued other legal remedies to avoid the potential disruption of Medicare benefits to thousands of Medicare beneficiaries to whom Freedom and Optimum provide services.

346. By virtue of the conduct alleged in this Count, the United States has incurred damages and is entitled to treble damages under the FCA, plus a civil penalty for each violation of the Act.

PLEA

WHEREFORE, Plaintiff/Relator requests the Court grant judgment for Plaintiff/Relator and the United States against the Defendants, as follows:

a. For three times the amount of damages proved, pursuant to 31 U.S.C. § 3729(a).

b. For mandatory civil penalties for each false claim submitted, pursuant to 31 U.S.C. § 3729(a), as adjusted. For violations submitted before Nov. 5, 2015, the minimum mandatory penalty is $5,500 and the

maximum mandatory penalty is $11,000. For false claims submitted to the United States or after Nov. 5, 2015, the amount of the penalties will be determined at the time the penalties are assessed. The minimum mandatory penalty is presently $11,181 per false claim submitted on or after Nov. 5, 2015, and the maximum mandatory penalty is presently $22,363 per false claim submitted on or after Nov. 5, 2015.

c. For Relator's reasonable attorney's fees and costs, pursuant to 31 U.S.C. § 3730(d);

d. For the maximum Relator's share award, pursuant to 31 U.S.C. § 3730(d);

e. For pre-judgment and post-judgment interest as provided by law; and

f. For such other and further relief as may be appropriate and authorized by law.

JURY TRIAL DEMAND

Relator demands a trial by jury for all issues so triable.

Respectfully submitted this 12th day of November, 2021,

/s/ Frederick M. Morgan, Jr.
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Counsel for Relator Dr. Clarissa Zafirov

CERTIFICATE OF SERVICE

I, Frederick M. Morgan, Jr., hereby certify that the foregoing motion was served on Nov. 12, 2021, to all parties of record via the CM/ECF electronic filing system.

/s/ Frederick M. Morgan, Jr.
Frederick M. Morgan, Jr.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

United States of America
ex rel. Dr. Clarissa Zafirov,

Relator and Plaintiff,

v. CASE NO. 8:19-cv-01236-KKM-SPF

Physician Partners, LLC;
Florida Medical Associates, LLC
d/b/a VIPcare;
Anion Technologies, LLC;
Freedom Health, Inc.; and
Optimum Healthcare, Inc.,

Defendants.
_____/

PHYSICIAN PARTNERS, LLC, FLORIDA MEDICAL ASSOCIATES D/B/A VIPCARE AND ANION TECHNOLOGIES, LLC'S ANSWER AND DEFENSES TO THE FIRST AMENDED COMPLAINT AND DEMAND FOR A JURY TRIAL

Defendants Physician Partners, LLC ("Physician Partners"), Florida Medical Associates, LLC d/b/a VIPcare ("VIPcare"), and Anion Technologies, LLC ("Anion") (collectively the "Provider Defendants") submit the following Answers and Defenses to the First Amended Complaint, stating:

I. INTRODUCTION

1. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

2. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

3. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

4. Admitted that Physician Partners is a provider organization which employs or contracts with more than 500 providers who treat Medicare beneficiaries throughout Florida. Admitted that Physician Partners and Anion provide management support services and other services to contracted private practices. To the extent a further response is required, the allegations of this paragraph are denied.

5. Denied.

6. Admitted that Freedom Health, Inc. ("Freedom") and Optimum Healthcare, Inc. ("Optimum") entered into a False Claims Act settlement. Admitted that Freedom and Optimum are referred to collectively as "Freedom" throughout the Amended Complaint. To the extent a further response is required, the allegations of this paragraph are denied.

7. Denied.

8. Admitted that Physician Partners physicians sometimes use a document called a 5 Star Checklist. To the extent a further response is required, the allegations of this paragraph are denied.

9. Admitted that Dr. Clarissa Zafirov ("Zafirov") is Board certified in Family Medicine and was briefly employed as a VIPcare physician. To the extent a further response is required, the allegations of this paragraph are denied.

10. Denied.

11. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

12. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

13. Admitted that Zafirov had access to Q360 and Freedom's MRA/HEDIS physician portal. To the extent a further response is required, the Provider Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny the allegations.

14. Denied.

15. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

16. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

17. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

II. PARTIES

18. Admitted.

19. Admitted.

20. Admitted that from October 2018 through March 2020, Zafirov was employed as a primary care physician at VIPcare. Admitted that while employed with VIPcare, Zafirov interacted with Physician Partners and Anion staff and attended Physician Partners training sessions. To the extent a further response is required, the allegations of this paragraph are denied.

21. Admitted that Zafirov was provided access credentials to Physician Partners' Q360 system, eClincial Works electronic medical records system, and Freedom's MRA/HEDIS physician portal. To the extent a further response is required, the allegations of this paragraph are denied.

22. Admitted that Physician Partners is a Florida limited liability company with a principal address of 601 S. Harbour Island Blvd., Suite 200, Tampa, Florida. Admitted that Physician Partners holds itself out as at the intersection of patients, providers, and payors. To the extent a further response is required, the allegations of this paragraph are denied.

23. Admitted that Physician Partners employs or contracts with more than 500 providers who serve over 143,000 patients nationwide. Admitted that VIPcare is affiliated with Physician Partners and that Physician Partners provides services to independent medical practices. Admitted that Physicians Partners' services include management support. To the extent a further response is required, the allegations of this paragraph are denied.

24. Admitted that Anion also does business as Anion Healthcare Services and was previously located at 601 S. Harbour Island Blvd., Suite 200 Tampa, Florida. Admitted that SunLabs, Inc. facilitated payment of Zafirov's salary. Admitted that Anion employs individuals based in India and Florida and operates a facility in Ocala, Florida. To the extent a further response is required, the allegations of this paragraph are denied.

25. Admitted that VIPcare operates in multiple Florida counties with multiple clinics, including Venice. Admitted that VIPcare's mailing address and principal address is 601 S. Harbour Island Blvd., Suite 200, Tampa, Florida. Admitted that VIPcare billing is performed by Anion. To the extent a further response is required, the allegations of this paragraph are denied.

26. The allegations of this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is required, the Provider Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny the

allegations.

27. The allegations of this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is required, the Provider Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny the allegations.

28. Admitted that Sidd Pagidipati has an ownership interest in and is the former CEO of Physician Partners. To the extent a further response is required, the allegations are not directed to the Providers Defendants; thus, no response is required. Otherwise, the Provider Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny the allegations.

29. The allegations of this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is required, the Provider Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny the allegations.

III. JURISDICTION AND VENUE

30. Admitted for jurisdictional purposes only. To the extent a further response is required, the allegations of this paragraph are denied.

31. Admitted for jurisdictional purposes only. To the extent a further response is required, the allegations of this paragraph are denied.

32. Admitted for venue purposes only. To the extent a further response is required, the allegations of this paragraph are denied.

33. Admitted that the Court entered an order on September 28, 2021 dismissing Zafirov's original complaint. To the extent a further response is required, the allegations in this paragraph characterize the Court's order dated September 28, 2021, which speaks for itself. Otherwise, the allegations of this paragraph are denied.

34. Admitted that another case involving some of the same defendants was previously filed and dismissed. To the extent a further response is required, the allegations in this paragraph characterize filings in another lawsuit, which speak for themselves. Otherwise, the allegations of this paragraph are denied.

35. The allegations in this paragraph characterize the *Sewell* Complaint, which speaks for itself, and otherwise set forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

36. The allegations in this paragraph characterize filings in the *Sewell* case, which speak for themselves, and otherwise set forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

37. The allegations in this paragraph characterize the Amended Complaint, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

38. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied

IV. PROCEDURAL POSTURE

39. Admitted.

40. The allegations in this paragraph characterize filings in this and other litigation, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

41. Admitted that the Government investigated Zafirov's allegations and nonetheless elected not to intervene in this case. To the extent a further response is required, the allegations of this paragraph characterize filings in this litigation which speak for themselves. Otherwise, the allegations of this paragraph are denied.

42. Admitted.

43. Admitted that the Court dismissed Zafirov's original complaint, dismissed certain Defendants with prejudice, and granted Zafirov leave to file a narrower amended complaint. To the extent a further response is required, the allegations of this paragraph characterize filings in this litigation which speak for themselves. Otherwise, the allegations of this paragraph are denied.

V. THE FEDERAL FALSE CLAIMS ACT

44. The allegations in this paragraph characterize the False Claims Act ("FCA"), which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

45. The allegations in this paragraph characterize the FCA, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

VI. MEDICARE AND THE MEDICARE ADVANTAGE PROGRAM

46. Admitted that Medicare is a federal health insurance program operated by the Center for Medicaid Services ("CMS") for individuals 65 or older and certain disabled persons. To the extent a further response is required, the allegations in this paragraph characterize federal statutes, which speak for themselves. Otherwise, the allegations of this paragraph are denied.

47. The allegations in this paragraph characterize federal statutes, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

48. The allegations in this paragraph characterize federal statutes and Medicare billing policies and guidelines, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

49. The allegations in this paragraph characterize a graphic, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are

denied.

50. The allegations in this paragraph characterize a graphic, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

51. The allegations in this paragraph characterize a Medicare Provider Manual, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

52. The allegations in this paragraph characterize a judicial opinion, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

53. The allegations in this paragraph characterize the Federal Register, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

54. The allegations in this paragraph characterize a judicial opinion, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

55. The allegations in this paragraph characterize Medicare Advantage policies and guidelines, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

56. The allegations in this paragraph characterize Medicare Advantage policies and guidelines and federal statutes and regulations, which speak for

themselves. To the extent a further response is required, the allegations of this paragraph are denied.

57. The allegations in this paragraph characterize Medicare Advantage policies and guidelines and federal statutes and regulations, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

58. The allegations in this paragraph characterize Medicare Advantage policies and guidelines and federal statutes and regulations, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

59. The allegations in this paragraph characterize Medicare Advantage policies and guidelines and federal statutes and regulations, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

60. The allegations in this paragraph characterize a judicial opinion and the Federal Register, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

61. The allegations in this paragraph characterize Medicare Advantage policies and guidelines and federal statutes and regulations, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

62. The allegations in this paragraph characterize Medicare Advantage policies and guidelines and federal statutes and regulations, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

63. The allegations in this paragraph characterize Medicare Advantage policies and guidelines and federal statutes and regulations, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

64. The allegations in this paragraph characterize a judicial opinion, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

65. The allegations in this paragraph characterize Medicare Advantage policies and guidelines and federal statutes and regulations, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

66. The allegations in this paragraph characterize a judicial opinion and a federal document, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

67. Admitted.

68. Admitted that Medicare Advantage organizations pay healthcare providers, including the Provider Defendants, through a variety of arrangements

including through arrangements than can align efficiency, quality, and financial outcomes. To the extent a further response is required, the allegations of this paragraph are denied.

69. Admitted that Medicare Advantage organizations and provider organizations sometimes enter into agreements that can align their interests in providing efficient, effective healthcare. To the extent a further response is required, the allegations of this paragraph are denied.

70. The allegations in this paragraph characterize the Code of Federal Regulations, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

71. The allegations in this paragraph characterize the Code of Federal Regulations, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

72. The allegations in this paragraph characterize the Code of Federal Regulations, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

73. The allegations in this paragraph characterize the Code of Federal Regulations, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

74. The allegations in this paragraph characterize the Code of Federal Regulations, which speaks for itself. To the extent a further response is required, the

allegations of this paragraph are denied.

75. Admitted that Physician Partners and VIPcare provide healthcare services to Medicare Advantage patients by agreement with Medicare Advantage organizations including, but not limited to, Freedom and Optimum. To the extent a further response is required, the allegations of this paragraph set forth legal conclusions and questions of law for which no response is required. Otherwise, the allegations of this paragraph are denied.

76. The allegations in this paragraph characterize a judicial opinion, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

77. The allegations in this paragraph characterize a judicial opinion, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

78. The allegations in this paragraph characterize the Code of Federal Regulations, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

79. The allegations in this paragraph characterize the FCA, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

80. The allegations in this paragraph characterize federal statutes, which speaks for themselves. To the extent a further response is required, the allegations of

this paragraph are denied.

81. The allegations in this paragraph characterize federal statutes, which speaks for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

82. The allegations in this paragraph characterize federal statutes, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

83. The allegations in this paragraph characterize federal regulations, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

84. The allegations in this paragraph characterize the Federal Register, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

85. The allegations in this paragraph characterize federal statutes and regulations, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

86. The allegations in this paragraph characterize a Medicare Provider Manual, which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

VII. ALLEGATIONS OF DEFENDANTS' CONDUCT RESULTING IN THE SUBMISSION OF FALSE CLAIMS

87. Denied.

88. Admitted that the Court found that Zafirov's original complaint constituted an impermissible shotgun pleading which lumped allegations against multiple Defendants. To the extent a further response is required, this paragraph characterizes a Court order, which speaks for itself, and sets forth legal conclusions and questions of law for which no response is required. Otherwise, the allegations of this paragraph are denied.

89. Denied.

90. Admitted that Physician Partners and VIPcare provide healthcare services to individuals nationwide and in Florida, including many who receive care through the Medicare Advantage program. To the extent a further response is required, the allegations of this paragraph are denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Admitted that Physician Partners holds itself out as at "the intersection of patients, providers, and payors" and that it serves more than 143,000 patients, offers more than 500 providers, and has relationships with 14 different payors. To the extent a further response is required, the allegations of this paragraph are denied.

98. Admitted that Physician Partners contracts with VIPcare and other healthcare practices and offers management support services for those practices' Medicare Advantage patients and programs. To the extent a further response is required, the allegations of this paragraph are denied.

99. Admitted that, through VIPcare, Physician Partners contracts with 45 clinic locations, each of which has one or more primary care physicians and other staff. Admitted that SunLabsUSA provided payroll services to Physician Partners and VIPcare. To the extent a further response is required, the allegations of this paragraph are denied.

100. Admitted.

101. Admitted that certain Physician Partners policies and procedures applied to VIPcare during Zafirov's employment with VIPcare. To the extent a further response is required, the allegations of this paragraph are denied.

102. Admitted that Anion has employees located in Florida and India. Admitted that Anion provides certain services, including reviewing patients' medical records, to Physician Partners for some Physician Partners patients. To the extent a further response is required, the allegations of this paragraph are denied.

103. Admitted that before certain patient visits, an Anion system downloads a "5 Star Checklist" from Q360 and uploads same to a Google Drive as a courtesy. To the extent a further response is required, the allegations of this paragraph are denied.

104. Admitted that following certain patients' visits, an Anion representative reviews the physicians' notes, the physicians' diagnostic coding, and the 5 Star Checklist (if used). Admitted that Anion has access to certain patient records. To the extent a further response is required, the allegations of this paragraph are denied.

105. Admitted that most business days, an Anion associate based in India, typically Ratnakar Mekala, sends an email to VIPcare clinics that the 5 Star Checklists for that day are available and loaded into a Google Docs drive. Admitted that VIPcare doctors and offices can go onto the drive and download or print 5 Star Checklists. To the extent a further response is required, the allegations of this paragraph are denied.

106. Admitted that VIPcare Medical Director Dr. Sangeeta Hans provided guidance to Zafirov at the beginning of her employment that VIPcare physicians should complete a 5 Star Checklist for each patient at least once per year and later provided guidance that a 5 Star Checklist should ideally be completed for each patient twice a year. Admitted that a 5 Star Checklist is usually generated before patient visits. To the extent a further response is required, the allegations of this paragraph are denied. Otherwise, the allegations of this paragraph are denied.

107. Admitted that Emily Gallman met with Zafirov multiple times in person and over Zoom and discussed a variety of topics. To the extent a further response is

required, the allegations of this paragraph allege that particular words and phrases were exchanged during one or more of those meetings, for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

108. Admitted that the image in paragraph 108, excepting the red text and "annotation key," is an example of a 5 Star Checklist from 2018. To the extent a further response is required, the "annotation key" characterizes the image in paragraph 108, which speaks for itself. Otherwise, the allegations of this paragraph are denied.

109. Admitted that for new Physician Partners patients, the 5 Star Checklist is often a new template which includes a common conditions checklist drawn from the CMS-created HCC system. To the extent a further response is required, the allegations of this paragraph are denied.

110. Admitted paragraph 110 excerpts an example of a new-patient 5 Star Checklist used when Zafirov was employed by VIPcare. The Provider Defendants lack knowledge or information to form a belief as to the truth or falsity of the remaining allegations in this paragraph, and therefore the remaining allegations of this paragraph are denied.

111. Admitted that Physician Partners made a 2020 Quality Training Manual ("QTM") available to physicians, including Zafirov, in or about February 2020. The

remaining allegations in this paragraph characterize the QTM which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

112. The allegations of this paragraph incorporate by reference 5 Star Checklists that were not attached to the Amended Complaint, and to the extent that such records exist, such records speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

113. Admitted that information about common conditions is gathered from patient population data at-large. Admitted that information about potential patient-specific conditions is gathered from a patient's specific medical records and sometimes included on a 5 Star Checklist. Admitted that versions of the QTM contain a "Frequently Asked Questions" section. To the extent a further response is required, the allegations in this paragraph characterizes a version of the QTM which speaks for itself. Otherwise, the allegations of this paragraph are denied.

114. Admitted that VIPcare includes patient-specific information grounded in a particular patient's medical records on many 5 Star Checklists and that VIPcare explained that fact to Zafirov. Admitted that Dr. Sangeeta Hans met with Zafirov multiple times in person and over Zoom and discussed a variety of topics including 5 Star Checklists. To the extent a further response is required, the allegations of this paragraph allege that particular words and phrases were exchanged during an August 9, 2019 meeting, for which the Provider Defendants lack sufficient knowledge or

information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

115. Admitted that there were prior versions of the QTM which, among other things, described the 5 Star Checklist and how data is used. The allegations in this paragraph characterize a prior version of the QTM which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

116. Admitted that certain data on some 5 Star Checklists is gathered from patient population data at-large. To the extent a further response is required, the allegations of this paragraph characterize a version of the QTM which speaks for itself. Otherwise, the allegations of this paragraph are denied.

117. Denied.

118. Admitted that the excerpted 5 Star Checklist displays "[c]omplete traumatic amputation of unspecified foot, level unspecified, initial encounter" as a condition previously reported by a different healthcare provider. To the extent a further response is required, the allegations of this paragraph incorporate by reference a 5 Star Checklist for Patient A (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) and associated medical chart that were not attached to the Amended Complaint, and to the extent that such records exist, such records speak for themselves. Otherwise, the allegations of this

paragraph are denied.[1]

119. Admitted that after a patient visit, it was suggested that physicians submit completed 5 Star Checklists. Admitted that certain 5 Star Checklists contain language asking a provider to certify that they have reviewed and addressed all relevant medical conditions during their face-to-face encounter with a patient. To the extent a further response is required, the allegations of this paragraph characterize an unattached 5 Star Checklist which speaks for itself. Otherwise, the allegations of this paragraph are denied.

120. Admitted that Anion staff review patient charts to identify potential care gaps, provide quality control, and support physician-driven care. To the extent a further response is required, the allegations of this paragraph are denied.

121. Denied.

122. Admitted.

123. Denied.

124. Admitted that Anion staff prioritize reviewing certain conditions, in a manner consistent with CMS' HCC guidelines, during chart reviews. To the extent a

[1] Paragraph 118 and others throughout the Amended Complaint contain Zafirov's description of her actions in preparing the Amended Complaint and her interpretations gleaned from same, which require no response. This paragraph and others throughout the Amended Complaint contain references to patient information that might eventually be provided upon entry of a qualified protective order under the Health Insurance Portability and Accountability Act. Such a protective order has not yet been submitted to the Court and entered in this matter, and the Provider Defendants have therefore not yet received the referenced complete patient information. To the extent any response is necessary to any such allegations, actions, and interpretations described throughout the Amended Complaint, the Provider Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, those allegations are denied.

further response is required, the allegations of this paragraph are denied.

125. Admitted that Physician Partners requires its physicians to abide by certain care protocols, quality assurance programs, standard operating procedures, and managed care requirements designed to facilitate effective, efficient healthcare outcomes for patients. Admitted that Physician Partners asks that its physicians fill out and submit certain forms and undertake certain contractual terms of employment. To the extent a further response is required, the allegations of this paragraph characterize unattached documents which speak for themselves. Otherwise, the allegations of this paragraph are denied.

126. Denied.

127. Admitted that VIPcare's 2018 physician bonus program provided three categories of opportunities for physicians to achieve financial incentives beyond their base salary based on training, quality, and efficiency metrics. To the extent a further response is required, the allegations in this paragraph characterize VIPcare's 2018 Performance Bonus Program which speaks for itself. Otherwise, the allegations of this paragraph are denied.

128. Admitted that VIPcare's 2018 Performance Bonus Program provided for monthly training bonuses ($300 for each meeting attended, up to an annual limit of $3,600) and a quality performance bonus (up to an annual limit of $10,000). To the extent a further response is required, the allegations in this paragraph characterize VIPcare's 2018 Performance Bonus Program which speaks for itself. Otherwise, the

allegations of this paragraph are denied.

129. Denied.

130. Admitted that Emily Gallman met with Zafirov multiple times in person and over Zoom and discussed a variety of topics including, but not limited to, physician compensation. To the extent a further response is required, the allegations of this paragraph allege that particular words and phrases were exchanged during one or more of those meetings, for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

131. Denied.

132. Admitted that Emily Gallman and other VIPcare staff spoke to Zafirov and other physicians about a variety of topics including, but not limited to, compensation and bonus potential. To the extent a further response is required, the allegations of this paragraph allege that particular words and phrases were exchanged during an alleged May 2019 meeting, for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

133. Admitted that Dr. Sangeeta Hans, Alex Lavin, and other VIPcare staff spoke to Zafirov and other physicians about a variety of topics including, but not

limited to, physician compensation, coding, and hospital and emergency room admissions. Admitted that Alex Lavin sometimes discusses the basics of risk scores, including the importance of maintaining an accurate risk score, with new VIPcare providers. To the extent a further response is required, the allegations of this paragraph allege that particular words and phrases were exchanged during an alleged August 9, 2019 meeting, for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

134. Admitted that Dr. Sangeeta Hans, Emily Gallman, Alex Lavin, and other VIPcare staff spoke to Zafirov and other physicians about a variety of topics including, but not limited to, physician compensation and MRA scores. Admitted that a meeting took place between VIPcare staff and Zafirov on or about August 15, 2019. To the extent a further response is required, the allegations of this paragraph allege that particular words and phrases were exchanged during an alleged August 15, 2019 meeting, for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

135. Admitted that Dr. Sangeeta Hans sometimes participated in meetings with groups of VIPcare physicians. To the extent a further response is required, the

allegations of this paragraph allege that particular words and phrases were exchanged during an alleged November 13, 2019 meeting, for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

136. Admitted that Zafirov took over a patient panel that included patients who had been previously treated by other VIPcare or Physician Partner physicians. To the extent a further response is required, the allegations of this paragraph characterize medical records which speak for themselves and allege Zafirov's personal impressions which the Provider Defendants lack sufficient knowledge or information of to form a belief as to their truth or falsity and, therefore, the Provider Defendants deny the remaining allegations.

a. Admit that Patient B (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was seen by Dr. David Hunt on September 4, 2018. Admit that Patient B was seen by Dr. Akhil Patel ("Dr. Patel") on October 25, 2018. To the extent a further response is required, the allegations of this paragraph characterize medical records which speak for themselves and allege Zafirov's personal impressions which the Provider Defendants lack sufficient knowledge or information of to form a belief as to their truth or falsity and, therefore, the Provider

Defendants deny the remaining allegations.

b. Admit that Patient C (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was seen by Dr. Rick Simovitz on multiple occasions. To the extent a further response is required, the allegations of this paragraph characterize medical records which speak for themselves and allege Zafirov's personal impressions which Provider Defendants lack sufficient knowledge or information of to form a belief as to their truth or falsity and, therefore, the Provider Defendants deny the remaining allegations.

c. Admit that Patient D (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was seen by Dr. Patel several times in 2018. To the extent a further response is required, the allegations of this paragraph characterize medical records which speak for themselves and allege Zafirov's personal impressions which Provider Defendants lack sufficient knowledge or information of to form a belief as to their truth or falsity and, therefore, the Provider Defendants deny the remaining allegations.

d. Admit that Patient E (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider

Defendants) was seen by Dr. Patel on September 6, 2018 and that a CT scan was obtained. To the extent a further response is required, the allegations of this paragraph characterize medical records which speak for themselves and allege Zafirov's personal impressions which Provider Defendants lack sufficient knowledge or information of to form a belief as to their truth or falsity and, therefore, the Provider Defendants deny the remaining allegations.

137. The Provider Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny the allegations.

138. Admitted that Physician Partners engages with physicians in person, in writing, through Zoom, and through recorded videos about a variety of topics including, but not limited to, coding and documentation guidelines. To the extent a further response is required, the allegations of this paragraph are denied.

139. Admitted that Physician Partners educates and trains physicians about a variety of medical conditions. To the extent a further response is required, the allegations of this paragraph are denied.

140. Admitted that 5 Star Checklists may contain medical conditions linked to a patient's medical records and medical history. To the extent a further response is required, the allegations of this paragraph incorporate by reference associated medical records and 5 Star Checklists that were not attached to the Amended Complaint, and

to the extent that such records exist, such records speak for themselves. Otherwise, the allegations of this paragraph are denied.

141. Admitted that the graphic in paragraph 141 purports to be a 5 Star Checklist. Admitted that the 5 Star Checklist displays actual or potential risk scores of 1.671 and 3.193. To the extent a further response is required, the Provider Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny the allegations.

142. The allegations of this paragraph incorporate by reference associated medical records and 5 Star Checklists that were not attached to the Amended Complaint, and to the extent that such records exist, such records speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

143. Admitted that in May 2019, a VIPcare training session discussed Major Depressive Disorder, which has numerous diagnostic criteria and potentially serious consequences for patient well-being and treatment. To the extent a further response is required, the allegations of this paragraph are denied.

144. The allegations of this paragraph characterize "guidance" provided by PHQ-9 and an uncited "industry standard," which speaks for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

145. Admitted that Zafirov had access to Physician Partners' Q360 system. To the extent a further response is required, the allegations of this paragraph are

denied.

146. The allegations of this paragraph characterize a medical article and uncited and unattached medical records, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

147. Admitted that physicians may use "problem lists" to track patient care. To the extent a further response is required, the allegations of this paragraph are denied.

148. Admitted that when VIPcare physicians reference problem lists, the problem lists are housed in the eClinicalWorks system. Admitted that problem lists have nothing to do with billing. To the extent a further response is required, the allegations of this paragraph are denied.

149. Admitted that codes entered into a problem list are not claims submitted for payment to an insurer or the United States, so the entrance of an unsupported code on a problem list is not a false claim. To the extent a further response is required, the allegations of this paragraph are denied.

150. The allegations of this paragraph characterize medical records which speak for themselves and allege Zafirov's personal impressions which the Provider Defendants lack sufficient knowledge or information of to form a belief as to their truth or falsity and, therefore, the Provider Defendants deny the remaining allegations.

a. Admit that Zafirov saw Patient F (a deidentified patient for which Zafirov has not yet provided complete patient information to the

Provider Defendants) on June 25, 2019. Admit that an Anion employee included certain ICD codes on the patient's problem list based on information derived from that patient's medical records and history. To the extent a further response is required, the allegations of this paragraph characterize medical records which speak for themselves and allege Zafirov's personal impressions which the Provider Defendants lack sufficient knowledge or information of to form a belief as to their truth or falsity and, therefore, the Provider Defendants deny the remaining allegations.

b. Admit that Zafirov had an appointment scheduled with Patient G (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) on June 19, 2019. Admit that an Anion employee included certain ICD codes on the patient's problem list based on information derived from that patient's medical records and history. To the extent a further response is required, the allegations of this paragraph characterize medical records which speak for themselves and allege Zafirov's personal impressions which the Provider Defendants lack sufficient knowledge or information of to form a belief as to their truth or falsity and, therefore, the Provider Defendants deny the remaining allegations.

151. Admitted that Physician Partners provides information to its physicians

through videos that are posted on their physician portal. Admitted that those videos feature several presenters including Dr. Eric Haas, Dr. Ford Brewer, and Dr. Dennis Mihale. To the extent a further response is required, the allegations of this paragraph are denied.

152. Admitted that the videos posted on Physician Partners' physician portal includes a video which references the QTM. To the extent a further response is required, the allegations characterize videos, which speak for themselves. Otherwise, the allegations of this paragraph are denied.

153. Denied.

154. Admitted that one or more videos posted on Physician Partners' physician portal discuss vascular disease. To the extent a further response is required, the allegations of this paragraph characterize an uncited video and uncited "clinical standards" which speak for themselves. Otherwise, the allegations of this paragraph are denied.

155. Admitted that one or more videos posted on Physician Partners' physician portal discuss morbid obesity. To the extent a further response is required, the allegations of this paragraph characterize an uncited video and an uncited American Thoracic Society directive which speak for themselves. Otherwise, the allegations of this paragraph are denied.

156. Admitted that one or more videos posted on Physician Partners' physician portal discuss drug dependence. To the extent a further response is required,

the allegations of this paragraph characterize an uncited video and uncited risk-adjustment system documents which speak for themselves. Otherwise, the allegations of this paragraph are denied.

157. Admitted that one or more videos posted on Physician Partners' physician portal discuss relatively common medical conditions. To the extent a further response is required, the allegations of this paragraph characterize an uncited video and a medical article, which speak for themselves. Otherwise, the allegations of this paragraph are denied.

158. Denied.

159. Admitted that Zafirov participated in several meetings with Alex Lavin in which they discussed several topics including, but not limited to, coding and documentation guidelines and MRA scores. To the extent a further response is required, the allegations of this paragraph allege that particular words and phrases were exchanged during one or more meetings in or around August 2019, for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

160. Admitted that Zafirov participated in several meetings with Alex Lavin, Dr. Sangeeta Hans, Emily Gallman, Sajitha Johnson, and/or other individuals in which they discussed several topics including, but not limited to, billing practices and

coding and documentation guidelines. To the extent a further response is required, the allegations of this paragraph allege that particular words and phrases were exchanged during undefined meetings, for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

161. Admitted that Zafirov participated in several meetings with Alex Lavin, Dr. Sangeeta Hans, and/or other individuals in which they discussed several topics including, but not limited to, coding and documentation guidelines. To the extent a further response is required, the allegations of this paragraph allege that particular words and phrases were exchanged during an alleged August 21, 2019 meeting, for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

162. The Provider Defendants fully incorporate their response to paragraph 161 here.

163. The Provider Defendants fully incorporate their response to paragraph 161 here. To the extent a further response is required, the allegations of this paragraph characterize CMS risk-adjustment guidance, a report, and alleged comments from Dr. Hans which lack context and detail and speak for themselves. Otherwise, the

allegations of this paragraph are denied.

164. The Provider Defendants fully incorporate their response to paragraph 161 here. To the extent a further response is required, the allegations of this paragraph characterize uncited Medicare guidelines and alleged comments from Dr. Hans which lack context and detail and speak for themselves. Otherwise, the allegations of this paragraph are denied.

165. The Provider Defendants fully incorporate their response to paragraph 161 here. To the extent a further response is required, the allegations of this paragraph characterize uncited Medicare guidelines and alleged comments from Dr. Hans which lack context and detail and speak for themselves. Otherwise, the allegations of this paragraph are denied.

166. Admitted that Dr. Hans has met with other VIPcare physicians to discuss a variety of topics including, but not limited to, clinical best practices and billing, coding, and documentation guidelines. To the extent a further response is required, the allegations of this paragraph allege that particular words and phrases were exchanged during an alleged meeting on an unknown date, for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

167. Admitted that Alex Lavin met with Zafirov several times over Zoom and in person during which they discussed several topics including, but not limited to, clinical best practices, coding and documentation guidelines, and physician compensation. To the extent a further response is required, the allegations of this paragraph allege that particular words and phrases were exchanged during an alleged meeting on August 22, 2019, for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

168. Admitted that Zafirov had several meetings with Dr. Hans, Sajitha Johnson, Alex Lavin, Emily Gallman, Jan Morsey, and/or others. To the extent a further response is required, the allegations in this paragraph are denied.

169. Admitted that Dr. Hans met with Zafirov several times during which they discussed several topics including, but not limited to, clinical best practices and patient charts and outcomes. To the extent a further response is required, the allegations of this paragraph allege that particular words and phrases were exchanged during an alleged meeting on September 12, 2019, for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

170. Admitted that Alex Lavin met with Zafirov several times in person during which they discussed several topics including, but not limited to, clinical best practices, coding and documentation guidelines, MRA scores, and Zafirov's performance. To the extent a further response is required, the allegations of this paragraph allege that particular words and phrases were exchanged during an alleged meeting on September 26, 2019, for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

171. The Provider Defendants fully incorporate their response to paragraph 170 here.

172. Denied.

173. Admitted that Zafirov attended a meeting on or about October 16, 2019 with several individuals including Sajitha Johnson, Cassidy Cooper, and Dr. Rajiv Patel. To the extent a further response is required, the allegations of this paragraph allege that particular words and phrases were exchanged during an alleged meeting on October 16, 2019, for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

174. The Provider Defendants fully incorporate their response to paragraph 173 here.

175. The Provider Defendants fully incorporate their response to paragraph 173 here.

176. Admitted that Zafirov met with Emily Gallman and Dr. Eric Haas on or about November 6, 2019. To the extent a further response is required, the allegations of this paragraph are denied.

177. Admitted that Zafirov, Dr. Eric Haas, and Emily Gallman discussed several topics, including but not limited to, referrals and specialists, during a meeting on or about November 6, 2019. Admitted that on or about November 6, 2019, VIPcare staff provided Zafirov with a list of specialists recommended by Dr. Haas and others. To the extent a further response is required, the allegations of this paragraph allege that particular words and phrases were exchanged during a meeting on or about November 6, 2019, for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

178. The Provider Defendants fully incorporate their response to paragraph 177 here.

179. Admitted that Dr. Haas, Emily Gallman, and Zafirov discussed a subset of Zafirov's patients to assess patient care and clinical best practices. To the extent a

further response is required, the Provider Defendants fully incorporate their response to paragraph 177 here.

180. Denied.

181. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

182. The allegations of this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is required, the allegations in this paragraph characterize a Medicare Provider Manual, which speaks for itself. Otherwise, the allegations of this paragraph are denied.

183. Admitted that Sidd Pagidipati formerly served as Chief Operating Officer of Freedom and Optimum. Admitted that Sidd Pagidipati amicably settled False Claims Act allegations in 2017 without any finding or admission of wrongdoing. To the extent a further response is required, the allegations of this paragraph are denied.

184. Admitted that Physician Partners works with Medicare Advantage organizations, including Freedom. Admitted that Freedom provided information to certain Physician Partners physicians on coding and documentation guidelines and provided certain Physician Partners' physicians access to certain Freedom online portals. To the extent a further response is required, the allegations of this paragraph are denied.

185. Admitted that Dr. Dennis Mihale participated in videos posted on Physician Partners' physician portal. Admitted that Dr. Dennis Mihale independently served as Medical Director for Freedom. To the extent a further response is required, the allegations of this paragraph characterize uncited videos which speak for themselves. Otherwise, the allegations of this paragraph are denied.

186. The allegations of this paragraph characterize an uncited video which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

187. The allegations of this paragraph characterize an uncited video which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

188. Admitted that Dr. Mihale participated in videos posted on Physician Partners' physician portal. To the extent a further response is required, the allegations of this paragraph characterize uncited videos which speak for themselves. Otherwise, the allegations of this paragraph are denied.

189. Admitted that Freedom and other payors provide information about coding and documentation guidelines and other topics to Physician Partners physicians through mailers. To the extent a further response is required, the allegations of this paragraph characterize a "mailer" which speaks for itself. Otherwise, the allegations of this paragraph are denied.

190. Admitted that Freedom and other payors provide Physician Partners physicians access to portions of certain online portals which contain coding and documentation guidelines and other information. To the extent a further response is required, the allegations of this paragraph characterize Freedom's online portal which speaks for itself. Otherwise, the allegations of this paragraph are denied.

191. Admitted that Physician Partners worked with Freedom and other payors to offer tours to provide current and prospective patients information about Physician Partners physicians and practices. Admitted that Rand Hans was Regional Director of Operations for VIPcare in September 2019. To the extent a further response is required, the allegations of this paragraph allege that particular words and phrases were exchanged during a conversation sometime in 2018, for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

192. Admitted that Physician Partners never asked Zafirov to give patient information to a Medicare Advantage organization not already affiliated with a particular patient. To the extent a further response is required, the allegations of this paragraph are denied.

193. The allegations of this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is required,

the Provider Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny the allegations.

194. Admitted that Dr. Sangeeta Hans, Alex Lavin, and Emily Gallman met with Zafirov several times during which they discussed several topics including specialists and referrals. To the extent a further response is required, the allegations of this paragraph allege that particular words and phrases were exchanged during an alleged meeting on January 9, 2020 for which the Provider Defendants lack sufficient knowledge or information to form a belief as to the definitive truth or falsity of. To the extent those particular words and phrases were definitively used, they lack context and detail. Otherwise, the allegations of this paragraph are denied.

195. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

196. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

197. Denied.

198. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

199. Denied.

200. Denied.

201. Denied.

202. Admitted that paragraphs 203–295 purport to characterize patient medical history and records for patients seen by Zafirov. Admitted that Zafirov was sometimes listed as "current PCP" on certain 5 Star Checklists. To the extent a further response is required, the Provider Defendants fully incorporate their responses to paragraphs 203–295 as if fully incorporated here. Otherwise, the allegations of this paragraph are denied.

203. Admitted that Patient H (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was a 73-year-old on Zafirov's patient panel. Admitted that Patient H received treatment by VIPcare pursuant to enrollment in the Freedom VIP Saving (HMO SNP) plan. Admitted that the exhibits identified in paragraph 203 appear to be excerpts of Patient H's medical and treatment records, although Provider Defendants cannot definitively confirm as much. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

204. Admitted.

205. Admitted that Zafirov saw Patient H (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants)

on March 25, 2019. Admitted that Zafirov marked "no" next to the suggested code for HCC 085, "unspecified diastolic (congestive) heart failure" on the 5 Star Checklist. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

206. Admitted that the I50.30 code was displayed on the Q360 portal as associated with a February 25, 2019 visit. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

207. Admitted that Zafirov saw Patient H (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) on April 17, 2019. Admitted that the I50.30 code appeared on the 5 Star Checklist for that visit with a date of service of February 25, 2019. Admitted that Zafirov marked "No and should be removed" on the 5 Star Checklist. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

208. Admitted that an August 12, 2019 5 Star Checklist for Patient H (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) displayed the I50.30 code as reported on

March 12, 2019 by a physician other than Zafirov. Admitted that Zafirov did not see Patient H on March 12, 2019. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

209. Admitted that Patient H (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) saw Dr. Barry Weckesser on March 12, 2019. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

210. Admitted that the Freedom MRA/HEDIS portal showed the I50.30 code as reported with a date of service of March 12, 2019. Otherwise, the allegations of this paragraph are denied.

211. Denied.

212. Denied.

213. Admitted Patient I (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was an 81-year-old on Zafirov's patient panel who received treatment by VIPcare pursuant to enrollment in the Freedom VIP (HMO SNP) plan. Admitted that the exhibits identified in paragraph 213 appear to be excerpts of Patient I's medical and treatment

records, although the Provider Defendants cannot definitively confirm as much. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

214. Admitted that Patient I (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was seen by Zafirov multiple times in 2019. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

215. Admitted that Zafirov saw Patient I (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) on January 31, 2019 at which time Dr. Akhil Patel was listed as the patient's then-current PCP. Admitted that the ICD C61 code appeared on Patient I's 5 Star Checklist for the January 31, 2019 visit and that Zafirov wrote "No in remission" on that 5 Star Checklist. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

216. Admitted that Zafirov saw Patient I (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) on April 26, 2019. Admitted that a 5 Star Checklist associated with that visit displayed

an ICD C61 code associated with an April 2, 2019 date of service. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

217. Admitted that Zafirov did not treat Patient I (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) on April 2, 2019. Admitted that Zafirov did not assign an ICD C61 diagnosis code to Patient I. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

218. Admitted that the document identified in paragraph 218 displayed HCC012 under the "Paid" section. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents which speak for themselves. Otherwise, the allegations of this paragraph are denied.

219. Admitted that the 5 Star Checklist identified in paragraph 219 contains an ICD10 C61 code associated with an April 2, 2019 date of service. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

220. Denied.

221. Denied.

222. Admitted that Patient J (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was a 72-year-old on Zafirov's patient panel who received treatment by VIPcare pursuant to enrollment in the Freedom VIP Savings (HMO SNP) plan. Admitted that the exhibits identified in paragraph 222 appear to be excerpts of Patient J's medical and treatment records, although the Provider Defendants cannot definitively confirm as much. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

223. Admitted that Patient J (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was a 72-year-old. Admitted that Patient J saw Dr. Andy Trotti on January 3, 2019. Admitted that Dr. Trotti wrote "no evidence of disease" and several other things on the exhibit identified in paragraph 223. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

224. Admitted that Zafirov saw Patient J (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) on January 21, 2019. Admitted that several cancer-related ICD codes related to the

patient's medical record and history appeared on the 5 Star Checklist for Patient J's January 21, 2019 visit. Admitted that "No" and "No, now in remission" appear on the 5 Star Checklist identified in paragraph 224. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

225. Admitted that the 5 Star Checklist identified in paragraph 225 shows the bubble for HCC 011 colored in and showed no specific ICD codes associated with the then-current year. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

226. Admitted that the exhibit identified in paragraph 226 displayed "malignant neoplasm of tonsil, unspecified" as associated with service dates of January 3, 2019 and June 6, 2019. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

227. Admitted that the exhibit identified in paragraph 227 appears to be a Q360 screenshot showing several cancer-related ICD codes. Admitted that the Q360 screenshot shows "Paid" near several cancer-related ICD codes. Admitted that the Freedom Health Member Health Profile shows an ICD for "malignant neoplasm of

tonslar fossa" associated with a January 13, 2020 date of service. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

228. Denied.

229. Denied.

230. Admitted that Patient K (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was an 80-year-old on Zafirov's patient panel who received treatment by VIPcare pursuant to enrollment in the Freedom VIP Savings (HMO SNP) plan. Admitted that the exhibits identified in paragraph 230 appear to be excerpts of Patient K's medical and treatment records, although the Provider Defendants cannot definitively confirm as much. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

231. Admitted that Patient K (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was an 80-year-old who had been a patient of Dr. Rick Simovitz and Dr. Akhil Patel. Admitted that Patient K became part of Zafirov's patient panel in February 2019. Admitted that Zafirov saw Patient K multiple times in 2019. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment

documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

232. Admitted that three ICD codes related to vascular disease were displayed on the 5 Star Checklist identified in paragraph 232. Admitted that Zafirov wrote "no mention in cardiology notes, no u/s result" on Exhibit 4-K3. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

233. Admitted that on February 25, 2019, Zafirov did not perform diagnostic tests on Patient K (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) and did not diagnose Patient K with peripheral vascular disease. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

234. Admitted that the 5 Star Checklist identified in paragraph 234 displayed ICD I70.201 and ICD I70.209 codes. Admitted that the ICD I70.201 code listed "Current PCP" as a source and the ICD I70.209 code listed "Other Provider" as a source. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

235. Admitted that the screenshot of the Q360 identified in paragraph 235 shows "Paid" near the two ICD codes identified in paragraph 234. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

236. The allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

237. The Provider Defendants fully incorporate their response to paragraph 236 here.

238. Admitted that Zafirov had access to the Freedom MRA/HEDIS Portal. Admitted that the exhibit identified in paragraph 238 shows a vascular disease code with a date of service of February 25, 2019. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

239. Denied.

240. Denied.

241. Denied.

242. Admitted that Patient L (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was an 81-

year-old on Zafirov's patient panel who received treatment by VIPcare pursuant to enrollment in the Optimum Diamond Rewards (HMO SNP) plan. Admitted that the exhibits identified in paragraph 242 appear to be excerpts of Patient L's medical and treatment records, although the Provider Defendants cannot definitively confirm as much. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

243. Admitted that Patient L (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was a patient of both Dr. Patel and Dr. Simovitz before being assigned to Zafirov's patient panel. Admitted that Zafirov saw Patient L on January 23, 2019. Admitted that Zafirov wrote "patient has a past diagnosis of diabetes however at the time of diagnosis in 16 hemoglobin A1C not seen above 6.5" and "question initial diagnosis since patient does not follow any particular diet, eats what he wants and maintains his blood sugars with minimal effort . . . Patient has never had a hemoglobin A1C greater than 6.5" in her notes associated with the January 23, 2019 visit. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

244. Admitted that the 5 Star Checklist associated with Patient L's (a deidentified patient for which Zafirov has not yet provided complete patient

information to the Provider Defendants) January 2019 visit displayed three ICD codes associated with diabetes. Admitted that Zafirov wrote "no" near two of those ICD codes and "awaiting lab" near the other. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

245. Admitted that ICD code E11.65 was reported based on medical records written by Zafirov. Admitted that information written on 5 Star Checklists is not used for billing purposes. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

246. Admitted that Zafirov saw Patient L (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) on February 25, 2019. Admitted that Zafirov wrote "we did check a fasting glucose tolerance test with labs to confirm diabetes which patient showed to have a glucose level in the 200s at the 1 hour mark" and "type 2 diabetes mellitus without complication, without long-term use of insulin" and "well-controlled hemoglobin A1C in normal range" in notes associated with Patient L's February 25, 2019 visit. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

247. Admitted that the 5 Star Checklist identified in paragraph 247 displayed the HCC 018 and HCC 019 codes as previously reported. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

248. Admitted that Zafirov included both the HCC 018 and HCC 019 codes in notes associated with her assessment of Patient L (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants). Admitted that 5 Star Checklists associated with visits for Patient L displayed HCC 018 and HCC 019 codes. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

249. Denied.

250. Denied.

251. Denied.

252. Admitted that Patient M (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was a 76-year-old on Zafirov's patient panel who received treatment by VIPcare pursuant to enrollment in the Freedom Medicare Plan Rx (HMO) plan. Admitted that the exhibits identified in paragraph 252 appear to be excerpts of Patient L's medical and treatment

records, although the Provider Defendants cannot definitively confirm as much. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

253. Admitted that Patient M (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was a 76-year-old who was previously a patient of Dr. Patel. Admitted that Zafirov saw Patient M on February 15, 2019. Admitted that the 5 Star Checklist identified in paragraph 253 displayed ICD F33.9 and ICD F32.4 codes each of which had been reported multiple times in the previous year. Admitted that Zafirov wrote "No" near the ICD F33.9 and ICD F32.4 codes on the 5 Star Checklist identified in paragraph 253. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

254. Admitted that in the exhibit identified in paragraph 254, Zafirov indicated a PHQ-9 score of 0 and that she wrote "Celexa for anxiety and not depression." To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

255. Admitted that Zafirov reported an ICD F32.4 code on or about February 15, 2019. Admitted that "paid" is written near the ICD F32.4 code on the exhibit

referenced in paragraph 255. Admitted that CMS modified HCC categorizations, moving several ICDs from HCC 058 to HCC 059, causing potential code overlap associated with those modifications. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

256. The Provider Defendants fully incorporate their response to paragraph 255 here.

257. The allegations in this paragraph characterize an alleged email which speaks for itself. To the extent a further response is required, the allegations of this paragraph are denied.

258. Admitted that the 5 Star Checklist referenced in paragraph 258 displayed an ICD F32.4 code associated with a date of service of February 15, 2019. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

259. Denied.

260. The allegations of this paragraph characterize entries in the Freedom MRA/HEDIS Portal, which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

261. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

262. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

263. Admitted that the 5 Star Checklist referenced in this paragraph displayed an HCC 072 code which was reported by a previous medical provider. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents, physician impressions, and websites which speak for themselves. Otherwise, the allegations of this paragraph are denied.

264. The Provider Defendants fully incorporate their responses to paragraphs 262 and 263 here. To the extent a further response is required, this paragraph sets forth legal conclusions and questions of law for which no response is required and characterize medical and treatment documents which speak for themselves. Otherwise, the allegations of this paragraph are denied.

265. The Provider Defendants fully incorporate their responses to paragraphs 262–64 here. To the extent a further response is required, this paragraph sets forth legal conclusions and questions of law for which no response is required and characterize medical and treatment documents which speak for themselves. Otherwise, the allegations of this paragraph are denied.

266. The Provider Defendants fully incorporate their responses to paragraphs 262–65 here. To the extent a further response is required, this paragraph sets forth legal conclusions and questions of law for which no response is required, characterize medical and treatment documents which speak for themselves, and are not directed to the Provider Defendants such that no response is required. Otherwise, the allegations of this paragraph are denied.

267. Admitted that Patient N (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was a 70-year-old on Zafirov's patient panel who received treatment by VIPcare pursuant to enrollment in the Freedom VIP Savings (HMO SNP) plan. Admitted that the exhibits identified in paragraph 267 appear to be excerpts of Patient N's medical and treatment records, although the Provider Defendants cannot definitively confirm as much. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

268. Admitted that Zafirov saw Patient N (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) on or about January 23, 2019. Admitted that Zafirov wrote "No – see below" on the exhibit identified in paragraph 268. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this

paragraph are denied.

269. Admitted that Zafirov included "Type 2 diabetes mellitus with diabetic peripheral angiopathy without gangrene" in the treatment section of the exhibit identified in paragraph 269. Admitted that Zafirov wrote "Question completeness of initial diagnosis Patient may have been prediabetes but it does not seem the lab criteria quite matches the diagnosis . . . If it is a question later on, will repeat" in the treatment section of the exhibit identified in paragraph 269. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

270. Admitted that the exhibit identified in paragraph 270 displayed language that "Below codes/conditions are already reported in the current year" and included diabetes "with diabetic peripheral angiopathy without gangrene" associated with a service date of January 22, 2019. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

271. Denied.

272. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

273. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

274. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

275. Admitted that Patient O (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was a 69-year-old on Zafirov's patient panel who received treatment by VIPcare pursuant to enrollment in the Freedom VIP Savings (HMO SNP) plan. Admitted that the exhibits identified in paragraph 275 appear to be excerpts of Patient O's medical and treatment records, although the Provider Defendants cannot definitively confirm as much. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

276. Admitted that Zafirov might have made mistakes on her patients' Five Star Checklists and other patient-related documents. To the extent a further response is required, the allegations of this paragraph are denied.

277. Admitted that Patient O (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was previously a patient of Dr. Patel. Admitted that Zafirov saw Patient O on January 3, 2019 and

wrote "OK yes" next to "HCC 085, ICD I50.30," "unspecific diastolic (congestive) heart failure" on the Exhibit 8-O1 identified in paragraph 277. Admitted that Exhibit 8-O2 identified in paragraph 277 shows an HCC 085 code as paid and associated with January 3, 2019. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

278. Admitted that Exhibit 8-O3 identified in paragraph 278 shows HCC 085 as a previously submitted code based on Zafirov's previous documentation. Admitted that Zafirov wrote "HCC 085 – should be corrected. Patient does not have. Should be amended" and "Patient scheduled to see cardiology in the next few months . . . Patient has a grade 1 distolic dysfunction which is not abnormal for age on cardiac echo . . . Does not quality for congestive heart failure as previously on problem list" on Exhibit 8-O4 identified in paragraph 278. Admitted that information written on 5 Star Checklists is not used for billing purposes. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

279. Admitted that Patient O (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was seen by a cardiologist on May 13, 2019. Admitted that Zafirov wrote "Amendment to chart . . . No CHF . . . Should not be included in problem list" in Exhibit 8-O6 identified in

paragraph 279. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

280. Admitted that Patient O (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was on Dr. Patel's panel as of January 3, 2019. To the extent a further response is required, the Provider Defendants fully incorporate their responses to paragraphs 275–79 here.

281. The Provider Defendants fully incorporate their responses to paragraphs 275–80 here.

282. Denied.

283. This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

284. Admitted that Zafirov saw Patient P (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) on March 8, 2019. Admitted that Q360 displayed HCC 072 as "paid" once in 2017, before Patient P was eligible with or received treatment from the Provider Defendants. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

285. The allegations of this paragraph characterize uncited CDC documents and patient medical records which speak for themselves. To the extent a further response is required, the allegations of this paragraph are denied.

286. The Provider Defendants fully incorporate their responses to paragraphs 284–85. To the extent a further response is required, the Provider Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny the allegations.

287. The Provider Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny the allegations.

288. The Provider Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny the allegations.

289. Admitted that a Physician Partners-associated provider appropriately documented a malignant neoplasm for Patient Q (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) and reported an associated billing code. To the extent a further response is required, the allegations of this paragraph characterize medical and treatment documents and physician impressions which speak for themselves. Otherwise, the allegations of this paragraph are denied.

290. Denied.

291. Denied.

292. The Provider Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny the allegations.

293. The Provider Defendants fully incorporate their response to paragraph 118 here.

294. The Provider Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny the allegations.

295. Admitted that Patient R (a deidentified patient for which Zafirov has not yet provided complete patient information to the Provider Defendants) was treated by Dr. Rick Simovitz. To the extent a further response is required, the Provider Defendants lack sufficient knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph, and therefore deny the allegations.

FIRST CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(A)
Against Physician Partners, LLC ("Physician Partners")

296. Physician Partners incorporates by reference its response to paragraphs 1-295 as if fully set forth herein.

297. Denied.

298. Denied.

299. Denied.

SECOND CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(B)
Against Physician Partners, LLC ("Physician Partners")

300. Physician Partners incorporates by reference its response to paragraphs 1-295 as if fully set forth herein.

301. Denied.

302. Denied.

303. Denied.

THIRD CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(G)
Against Physician Partners, LLC ("Physician Partners")

304. Physician Partners incorporates by reference its response to paragraphs 1-295 as if fully set forth herein.

305. Denied.

306. Denied.

307. Denied.

FOURTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(A)
Against Anion Technologies ("Anion")

308. Anion incorporates by reference its response to paragraphs 1-295 as if fully set forth herein.

309. Denied.

310. Denied.

311. Denied.

FIFTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(B)
Against Anion Technologies ("Anion")

312. Anion incorporates by reference its response to paragraphs 1-295 as if fully set forth herein.

313. Denied.

314. Denied.

315. Denied.

SIXTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(G)
Against Anion Technologies ("Anion")

316. Anion incorporates by reference its response to paragraphs 1-295 as if fully set forth herein.

317. Denied.

318. Denied.

319. Denied

SEVENTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(A)
Against Florida Medical Associates, LLC d/b/a VIPcare ("VIPcare")

320. VIPcare incorporates by reference its response to paragraphs 1-295 as if fully set forth herein.

321. Denied.

322. Denied.

323. Denied.

EIGHTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(B)
Against Florida Medical Associates, LLC d/b/a VIPcare ("VIPcare")

324. VIPcare incorporates by reference its response to paragraphs 1-295 as if fully set forth herein.

325. Denied.

326. Denied.

327. Denied.

NINTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(G)
Against Florida Medical Associates, LLC d/b/a VIPcare ("VIPcare")

328. VIPcare incorporates by reference its response to paragraphs 1-295 as if fully set forth herein.

329. Denied.

330. Denied.

331. Denied.

TENTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(A)
Against Freedom Health, Inc. and Optimum Healthcare, Inc.
(Freedom and Optimum")

332. The Provider Defendants incorporate by reference their response to paragraphs 1-295 as if fully set forth herein.

333. The allegations contained in this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is

required, the allegations of this paragraph are denied.

334. The allegations contained in this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

335. The allegations contained in this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

336. The allegations contained in this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

ELEVENTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(B)
Against Freedom Health, Inc. and Optimum Healthcare, Inc.
(Freedom and Optimum")

337. The Provider Defendants incorporate by reference their response to paragraphs 1-295 as if fully set forth herein.

338. The allegations contained in this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

339. The allegations contained in this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

340. The allegations contained in this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

341. The allegations contained in this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

TWELFTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(G)
Against Freedom Health, Inc. and Optimum Healthcare, Inc.
(Freedom and Optimum")

342. The Provider Defendants incorporate by reference their response to paragraphs 1-295 as if fully set forth herein.

343. The allegations contained in this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

344. The allegations contained in this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

345. The allegations contained in this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

346. The allegations contained in this paragraph are not directed to the Provider Defendants; thus, no response is required. To the extent a further response is required, the allegations of this paragraph are denied.

GENERAL DENIAL

Denied that Plaintiff is entitled to judgment or any relief requested in the Amended Complaint. To the extent any allegations in the Amended Complaint—including footnotes, headings, subheadings, diagrams, exhibits, or subparagraphs—have not been admitted or specifically responded to, the Provider Defendants deny such allegations.

AFFIRMATIVE DEFENSES

The Provider Defendants assert the following affirmative defenses:

First Affirmative Defense

The Amended Complaint fails to state a claim upon which relief may be granted.

Second Affirmative Defense

The Amended Complaint fails to state with particularity facts to support the fraud allegations against the Provider Defendants.

Third Affirmative Defense

Plaintiff Relator's claims are barred, in whole or in part, by the applicable statute of limitations.

Fourth Affirmative Defense

Plaintiff Relator's claims for damages are barred by the fact that the United States has suffered no actual damages.

Fifth Affirmative Defense

Plaintiff Relator's claims are barred in whole or in part, as a result of set-off due to monies previously paid by the Provider Defendants.

Sixth Affirmative Defense

Plaintiff Relator's claims are barred, in whole or in part, to the extent that they have been released, settled, resolved through an accord and satisfaction, waived, or otherwise compromised.

Seventh Affirmative Defense

Plaintiff Relator's claims are barred, in whole or in part, under the doctrine of estoppel.

Eighth Affirmative Defense

Plaintiff Relator's claims are barred by the Government's prior knowledge of the facts underlying the allegedly false claims.

Ninth Affirmative Defense

The award of penalties and damages to the Government and/or Plaintiff Relator would be an unconstitutionally excessive fine under the Eighth Amendment to the United States Constitution because any award would be grossly disproportional to the gravity of the Provider Defendants' offense, if any.

Tenth Affirmative Defense

Plaintiff Relator's claim for penalties and treble damages cannot be upheld to the extent that it violates or contravenes the constitutional limitations on damages and fines.

Eleventh Affirmative Defense

Plaintiff Relator's claims are barred by the jurisdictional requirements of 31 U.S.C. § 3730.

Twelfth Affirmative Defense

Plaintiff Relator's claims are barred, in whole or in part, by the doctrine of waiver.

Thirteenth Affirmative Defense

Plaintiff Relator's claims are barred, in whole or in part, by the doctrine of laches.

Fourteenth Affirmative Defense

Plaintiff Relator's claims are barred, in whole or in part, by her failure to mitigate damages.

Fifteenth Affirmative Defense

Plaintiff Relator's claims, damages, and relief, to the extent Plaintiff Relator is entitled to any damages or relief, were caused or contributed to by the acts, errors, or omissions of third-parties and nonparties for which the Provider Defendants were not responsible or lacked control.

Sixteenth Affirmative Defense

Plaintiff Relator's claims are governed by the doctrines of course of performance, course of dealing, and usage of trade, which govern the meaning of any contractual agreement or course of conduct between the United States and Defendants.

Seventeenth Affirmative Defense

Plaintiff Relator's claims are barred, in whole or in part, by failure to disclose to the United States substantially all material evidence and information that she possessed in violation of 31 U.S.C. § 3730(b)(2).

Eighteenth Affirmative Defense

Plaintiff Relator's claims and relief are barred, in whole or in part, because the United States ratified or otherwise consented to the transactions, occurrences, conduct, and submissions that are the subject of this action including by continuing to pay Medicare Advantage plans at a previously determined rate as long as the plans' and their providers' coding error rates did not exceed CMS's own error rate or some other error rate, despite CMS's knowledge that some diagnosis codes are, as a general matter, mistaken or otherwise unsupported.

***

The Provider Defendants have not waived any defenses and reserve their right to amend or supplement the above defenses or to delete and withdraw such defenses as may become necessary during the course of these proceedings. The Provider

Defendants incorporate any affirmative defenses pled by any co-defendants in this action.

JURY TRIAL DEMAND

The Provider Defendants, pursuant to Federal Rule of Civil Procedure 38(b) and Local Rule 1.06(a), demand trial by jury of all issues so triable.

WHEREFORE, the Provider Defendants request that the Court deny the relief requested in the First Amended Complaint Alleging Violations of the Federal False Claims Act, award the Provider Defendants their attorneys' fees and costs incurred in defending this matter, and grant any further relief that the Court deems just and proper.

Dated: October 24, 2022.

Respectfully submitted,

/s/ A. Lee Bentley III

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CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2022, I filed the foregoing with the Court's electronic filing system, which will cause a copy to be served upon all counsel of record.

/s/ A. Lee Bentley III
Attorney for Provider Defendants

Nos. 24-13581, -13583

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES ex rel. CLARISSA ZAFIROV,

Plaintiff-Appellant, and

UNITED STATES OF AMERICA,

Intervenor-Appellant,

v.

FLORIDA MEDICAL ASSOCIATES, LLC, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Florida

APPELLANTS' APPENDIX, VOLUME II

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TABLE OF CONTENTS

Docket/Tab #

Volume I

Docket Sheet ..... A

Complaint 1

Notice of Election to Decline Intervention 40

Amended Complaint 86

Answer by Anion Technologies, LLC, Florida Medical Associates, LLC, and Physician Partners, LLC 129

Volume II

Answer by Freedom Health, Inc., and Optimum Healthcare, Inc. 130

Notice of Intervention Pursuant to 28 U.S.C. § 2403(a) 259

Relator's Supplemental Brief on Founding-Era Historical Evidence Regarding Federal Qui Tam Enforcement, with selected attachments 264

Order 346

Judgment 347

United States's Notice of Appeal 349

Relator's Notice of Appeal 350

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

UNITED STATES OF AMERICA *ex rel.* DR. CLARISSA ZAFIROV,

Plaintiff/Relator,

v.

PHYSICIAN PARTNERS, LLC; FLORIDA MEDICAL ASSOCIATES, LLC, d/b/a VIPCARE; ANION TECHNOLOGIES, LLC; FREEDOM HEALTH, INC.; and OPTIMUM HEALTHCARE, INC.,

Defendants.

Case No. 8:19-cv-01236-KKM-SPF

DEFENDANTS FREEDOM HEALTH, INC. AND OPTIMUM HEALTHCARE, INC.'S ANSWER TO THE FIRST AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES

Defendants Freedom Health, Inc. ("Freedom") and Optimum Healthcare, Inc. ("Optimum") (collectively, "Freedom Defendants") hereby file their Answer and Affirmative Defenses ("Answer") to Dr. Clarissa Zafirov's ("Relator") First Amended Complaint ("FAC") (Doc. 86). Each numbered response in this Answer is made subject to the following limitations. First, unless specifically admitted, Freedom Defendants deny each and every averment in the FAC. Second, to the extent Relator has included headings, a table of contents, or other impertinent material that is inappropriate under Federal Rule of Civil Procedure ("FRCP") 8 or FRCP 12(f), no response is necessary and such material should be stricken. To the extent any headings, table of contents, or impertinent material is deemed to require a

response, Freedom Defendants deny each and every allegation. Any headings from the FAC that are reproduced herein are reproduced for convenience of reading only.

I. INTRODUCTION

1. Paragraph 1 contains Relator's characterization of this action, which requires no response. To the extent any response is necessary, Freedom Defendants admit that Relator brings allegations related to the Medicare Advantage ("MA") program. Freedom Defendants deny each and every other allegation.

2. Paragraph 2 contains Relator's characterization of the MA program, which requires no response. To the extent this paragraph references ¶¶ 48–54 of the FAC, *see* Freedom Defendants' responses to those paragraphs, which are incorporated herein. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

3. Paragraph 3 contains Relator's characterization of the MA program and the False Claims Act ("FCA"), which requires no response. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

A. Summary of Fraudulent Scheme

4. The allegations in paragraph 4 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants admit upon information and belief that Physician Partners, LLC ("Physician Partners") is an independent physician association

located in Florida. Freedom Defendants deny each and every other allegation.

5. The allegations in paragraph 5 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

6. Paragraph 6 contains legal conclusions or other conclusions or argument that require no response. To the extent this paragraph references ¶¶ 26–29 of the FAC, *see* Freedom Defendants' responses to those paragraphs, which are incorporated herein. To the extent any response is necessary, Freedom Defendants admit that they are MA organizations ("MAOs"); that Physician Partners entered into Group Participation Agreements with Freedom Defendants; that at some point in time before Elevance Health, Inc. ("Elevance Health") (formerly "Anthem, Inc.") acquired Freedom Defendants in 2018, Siddhartha Pagidipati was the Chief Operating Officer of Freedom Defendants; that under prior ownership Freedom Defendants entered into a settlement agreement in an FCA suit in 2017 (*see* Doc.42-3), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. Freedom Defendants admit upon information and belief that Siddhartha Pagidipati was a manager at Physician Partners. Freedom Defendants deny each and every other allegation.

7. Paragraph 7 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary,

Freedom Defendants deny each and every allegation.

8. Paragraph 8 contains legal conclusions or other conclusions or argument that require no response. To the extent this paragraph references other paragraphs in the FAC starting at ¶ 105, *see* Freedom Defendants' responses to those paragraphs, which are incorporated herein. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

9. The allegations in paragraph 9 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants admit upon information and belief that Relator is a family medicine physician; that Relator was previously employed by Florida Medical Associates, LLC d/b/a VIPcare ("VIPcare"). Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

10. The allegations in paragraph 10 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

11. To the extent paragraph 11 references ¶¶ 125–94 of the FAC, *see* Freedom Defendants' responses to those paragraphs, which are incorporated herein. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

B. Resulting Claims and Retained Overpayments

12. Paragraph 12 contains Relator's characterization of the FAC, which requires no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

13. Paragraph 13 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants admit that they each maintained a separate MRA/HEDIS portal through which providers could view diagnosis codes previously submitted to the Centers for Medicare and Medicaid Services ("CMS"), Member Health Profiles, and Prospective Possible Condition Reports; that as a general practice, Freedom Defendants gave providers access to those portals; that Freedom Defendants signed Business Associate Agreements with Anion Technologies, LLC ("Anion"). Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

14. To the extent paragraph 14 references factual allegations in Section VI of the FAC, *see* Freedom Defendants' responses to those paragraphs, which are incorporated herein. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

15. Paragraph 15 contains legal conclusions or other conclusions or argument that require no response. To the extent this paragraph references ¶¶ 202–71 of the FAC, *see* Freedom Defendants' responses to those paragraphs, which are

incorporated herein. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

16. Paragraph 16 contains legal conclusions or other conclusions or argument that require no response. To the extent this paragraph references ¶¶ 272–95 of the FAC, *see* Freedom Defendants' responses to those paragraphs, which are incorporated herein. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

17. Paragraph 17 contains legal conclusions or other conclusions or argument that require no response. This paragraph contains Relator's characterization of the FAC, which requires no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

II. PARTIES

18. Answering paragraph 18, Freedom Defendants admit that the United States is the real party in interest in this case; that the United States operates and administers the Medicare and Medicaid programs through CMS within the Department of Health and Human Services ("HHS"); that at all times relevant to the FAC, CMS administered the MA program and made payments to MAOs for MA beneficiaries pursuant to the CMS Hierarchical Condition Category ("CMS-HCC") risk adjustment model. Freedom Defendants deny each and every other allegation.

19. Answering paragraph 19, Freedom Defendants admit upon information and belief that Relator is a family medicine physician licensed in the State of Florida as of November 12, 2021. Freedom Defendants lack information or knowledge

sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

20. Answering paragraph 20, Freedom Defendants admit that as a general practice, they occasionally provided educational materials or conducted trainings for providers covering complete and proper documentation of diagnosis codes. Freedom Defendants admit upon information and belief that Relator was previously employed by VIPcare. Due to the non-specific and vague nature of Relator's allegations, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

21. Answering paragraph 21, Freedom Defendants admit that they each maintained a separate MRA/HEDIS portal through which providers could view diagnosis codes previously submitted to CMS; that as a general practice, Freedom Defendants gave providers access to those portals. Freedom Defendants deny each and every other allegation.

22. Answering paragraph 22, Freedom Defendants admit upon information and belief that Physician Partners is a limited liability corporation; that Physician Partners is an independent physician association located in Florida; that Physician Partners' principal address is 601 S. Harbour Island Blvd., Suite 200, Tampa, Florida, 33602. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

23. Answering paragraph 23, Freedom Defendants admit upon information and belief that Physician Partners is an independent physician association located in Florida; that Physician Partners has a business relationship with VIPcare. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

24. Answering paragraph 24, Freedom Defendants admit upon information and belief that Anion is a limited liability corporation; that Anion's principal address is 1010 N. Florida Ave., Tampa, FL, 33602. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every other allegation.

25. Answering paragraph 25, Freedom Defendants admit upon information and belief that Relator was previously employed by VIPcare; that VIPcare is a limited liability corporation; that VIPcare's principal address is 601 S. Harbour Island Blvd., Suite 200, Tampa, Florida, 33602. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

26. Answering paragraph 26, Freedom Defendants admit that Freedom is an MAO; that Freedom is a subsidiary of Elevance Health as of 2018 (*see* Doc. 33); that Freedom is incorporated in Florida; that Freedom's principal address is 4200 W. Cypress Street, Suite 1000, Tampa, Florida, 33607; that Freedom operates in 24 Florida counties; that Freedom has over 65,000 members; that Freedom participates

in the MA program pursuant to Contract No. H5427 with CMS. Freedom Defendants deny each and every other allegation.

27. Answering paragraph 27, Freedom Defendants admit that Optimum is an MAO; that Optimum is a subsidiary of Elevance Health as of 2018 (*see* Doc. 33); that Optimum is incorporated in Florida; that Optimum's principal address is 4200 W. Cypress Street, Suite 1000, Tampa, Florida, 33607; that Optimum operates in 24 Florida counties; that Optimum has over 50,000 members; that Optimum participates in the MA program pursuant to Contract No. H5594 with CMS. Freedom Defendants deny each and every other allegation.

28. Paragraph 28 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants admit that they are both subsidiaries of Elevance Health as of 2018 (*see* Doc. 33); that they both have the same registered mailing address of 4200 W. Cypress Street, Suite 1000, Tampa, Florida, 33607; that at some point in time before Elevance Health acquired Freedom Defendants in 2018, Siddhartha Pagidipati was the Chief Operating Officer of Freedom Defendants; that as of November 12, 2021, Freedom Defendants had the same Presidents, Chief Executive Officer, Directors, Chief Medical Officer, Treasurer, Assistant Treasurer, Secretary, and Assistant Secretary; that MA beneficiaries at both companies are directed to contact Freedom Defendants at the same post office box, fax number, and use the same TTY extension on their websites. Freedom Defendants deny each and every other allegation.

29. Paragraph 29 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants admit that they are both subsidiaries of Elevance Health as of 2018 (*see* Doc. 33). Due to the non-specific and vague nature of Relator's allegations, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

III. JURISDICTION AND VENUE

30. Paragraph 30 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants admit that the United States is the real party in interest in this case and this Court has subject matter jurisdiction over this action. Freedom Defendants deny each and every other allegation.

31. Paragraph 31 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants admit for the purposes of jurisdiction that they transact business in the Middle District of Florida. Freedom Defendants deny each and every other allegation.

32. Paragraph 32 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants admit for the purposes of venue that they transact business in the Middle District of Florida. Freedom Defendants deny each and every other

allegation.

A. Public Disclosure

33. Paragraph 33 references an order from the Court dated Sept. 28, 2021 (Doc. 81), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants admit to each and every allegation.

34. Paragraph 34 contains legal conclusions or other conclusions or argument that require no response. This paragraph references allegations from the complaint in *U.S. ex rel. Sewell v. Freedom Health, et al.*, Civil Action No. 8:09-CV-01625 (M.D. Fla.) ("*Sewell*") (Doc. 42-1), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants admit that *Sewell* was filed in 2009; that the claims against the defendants in *Sewell* were dismissed in May 2017; that Relator makes allegations in the FAC that Relator alleges begin in January 2014; that none of the claims alleged to be false in *Sewell* are at issue in this case. Freedom Defendants deny each and every other allegation.

35. Paragraph 35 contains legal conclusions or other conclusions or argument that require no response. This paragraph references allegations from the complaint in *Sewell* (Doc. 42-1), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

36. Paragraph 36 contains legal conclusions or other conclusions or

argument that require no response. This paragraph references allegations from the complaint in *Sewell* (Doc. 42-1), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

37. Paragraph 37 contains Relator's characterization of the FAC, which requires no response. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

B. Original Source

38. Paragraph 38 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

IV. PROCEDURAL POSTURE

39. To the extent paragraph 39 references the procedural background of this case, Freedom Defendants respectfully refer the Court to the case docket for its complete and accurate content. To the extent any response is necessary, Freedom Defendants admit to each and every allegation.

40. To the extent paragraph 40 references the procedural background of this case and the allegations in the FAC, Freedom Defendants respectfully refer the Court to the case docket and the FAC for their complete and accurate content. To

the extent any response is necessary, Freedom Defendants admit that the Government requested additional time for the case to remain under seal on January 21, 2020 (*see* Docs. 9, 10); that the Court denied the request on January 28, 2020 (*see* Doc. 11). Freedom Defendants admit upon information and belief that the Government was still investigating this matter as of February 21, 2020 (*see* Doc. 14). Freedom Defendants deny each and every other allegation.

41. To the extent paragraph 41 references the procedural background of this case, Freedom Defendants respectfully refer the Court to the case docket for its complete and accurate content. To the extent any response is necessary, Freedom Defendants admit that the Government filed "Notice Of The United States That It Is Not Intervening At This Time" on January 21, 2020 (Doc. 14); that the Government filed "Government's Notice Of Election To Decline Intervention" on September 21, 2020 (Doc. 40). Freedom Defendants deny each and every other allegation.

42. To the extent paragraph 42 references the procedural background of this case, Freedom Defendants respectfully refer the Court to the case docket for its complete and accurate content. To the extent any response is necessary, Freedom Defendants admit that defendants filed motions to dismiss Relator's Complaint (Docs. 41, 50, 51); that briefing was closed on December 16, 2020, upon filing of specific replies permitted by the Court (Docs. 74, 75); and that on January 8, 2021, this case was reassigned to Judge Mizelle (Doc. 76). Freedom Defendants deny each and every other allegation.

43. To the extent paragraph 43 references the procedural background of this

case and a September 28, 2021 Order (Doc. 81), Freedom Defendants respectfully refer the Court to the case docket and that order for their complete and accurate content. To the extent any response is necessary, Freedom Defendants admit that the Court dismissed Relator's Complaint in full and granted Relator leave to file an Amended Complaint (Docs. 81, 84). Freedom Defendants deny each and every other allegation.

V. THE FEDERAL FALSE CLAIMS ACT

44. Paragraph 44 contains Relator's characterization of the FCA, which requires no response. This paragraph references and misquotes S. Rep. 99-345, at 1, to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

45. Paragraph 45 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 31 U.S.C. § 3729(a)(1)(A), (B), and (G), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. Freedom Defendants deny each and every other allegation.

VI. MEDICARE AND THE MEDICARE ADVANTAGE PROGRAM

46. Paragraph 46 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants admit that Medicare is a federally operated health insurance program administered by CMS. This paragraph references 42 U.S.C. § 1395, *et seq.*,

to which Freedom Defendants respectfully refer the Court for its complete and accurate content. Freedom Defendants deny each and every other allegation.

47. Answering paragraph 47, Freedom Defendants admit that there are four parts to the Medicare program; that Medicare Part A covers inpatient care; that Medicare Part B covers outpatient care; that Medicare Part C establishes the MA program; that Medicare Part D is prescription drug coverage; that Medicare Parts A and B are known as "traditional Medicare." Freedom Defendants admit upon information and belief that under traditional Medicare CMS generally reimburses healthcare providers for services rendered via submission of claims for payment for each service provided known as a fee-for-service payment system. Freedom Defendants deny each and every other allegation.

48. Paragraph 48 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 42 U.S.C. § 1395w-21–28 and 42 C.F.R. §§ 422.2, 422.503(b)(2), to which Freedom Defendants respectfully refer the Court for their complete and accurate content. To the extent any response is necessary, Freedom Defendants admit that Relator's allegations in this case involve Medicare Part C, through which MA beneficiaries receive their benefits through MA Plans that are administered by insurance companies, such as Freedom Defendants, called MAOs; that CMS does not compensate MAOs on a fee-for-service basis for specific medical services for an MA beneficiary. Freedom Defendants deny each and every other allegation.

49. Answering paragraph 49, Freedom Defendants admit that this

paragraph includes a graphic illustration. As to the content of that illustration, Freedom Defendants admit that under Medicare Part C, MA beneficiaries receive Medicare benefits administered by insurance plans known as MAOs; that when a healthcare provider furnishes medical services to an MA beneficiary, the healthcare provider submits claims and encounter data to the MAO that operates the MA Plan. Freedom Defendants deny each and every other allegation.

50. Paragraph 50 references the content of a graphic illustration in ¶ 49 of the FAC, that requires no response because the referenced image speaks for itself. To the extent any response is necessary, Freedom Defendants admit that CMS does not compensate MAOs on a fee-for-service basis for specific medical services for an MA beneficiary. Freedom Defendants deny each and every other allegation.

51. Paragraph 51 contains reference to a document that requires no response because the referenced document is not in the record and speaks for itself. To the extent any response is necessary, Freedom Defendants admit that a Medicare Provider Manual is publicly available on their websites and provided to some providers contracted with Freedom Defendants. Freedom Defendants deny each and every other allegation.

52. Paragraph 52 contains legal conclusions or other conclusions or argument that require no response. This paragraph references *Unitedhealthcare Ins. Co. v. Becerra* ("*Becerra*"), 9 F.4th 868, 890 (D.C. Cir. 2021), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every

allegation.

53. Paragraph 53 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 79 Fed. Reg. 29,920–29,921, to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

54. Paragraph 54 contains legal conclusions or other conclusions or argument that require no response. This paragraph references *U.S. ex rel. Silingo v. WellPoint, Inc.*, 904 F.3d 667, 673 (9th Cir. 2018), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

A. The Medicare Advantage Risk-Adjustment System

55. Answering paragraph 55, Freedom Defendants admit that the payments CMS makes to MAOs under MA do not depend on the amount of services provided to a specific MA beneficiary; that a bid amount is determined through an annual bid submission process between CMS and each MA Plan; that CMS calculates, for applicable MA beneficiaries, risk scores that reflect expected risk and act as an adjustment to the bid amount for purposes of determining payment for each applicable MA beneficiary pursuant to the CMS-HCC risk adjustment model. Freedom Defendants deny each and every other allegation.

56. Paragraph 56 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 42 U.S.C. § 1395w-23

and 42 CFR § 422, subparts F and G, to which Freedom Defendants respectfully refer the Court for their complete and accurate content. To the extent any response is necessary, Freedom Defendants admit that the payments CMS makes to MAOs under MA do not depend on the amount of services provided to a specific MA beneficiary; that to determine payment under MA, CMS determines a bid amount through an annual bid submission process between CMS and each MA Plan; that CMS calculates, for applicable MA beneficiaries, risk scores that reflect expected risk and act as an adjustment to the bid amount for purposes of determining payment for each applicable MA beneficiary pursuant to the CMS-HCC risk adjustment model. Freedom Defendants deny each and every other allegation.

57. Answering paragraph 57, Freedom Defendants admit that since 2000, Congress has directed the agency now known as CMS to adjust payments to MA Plans for MA beneficiaries for age, gender, disability status, institutional status, and other factors CMS determines to be appropriate, including health status, in order to ensure actuarial equivalence and that this process is called "risk adjustment." 42 U.S.C. § 1395w-23(c); 42 C.F.R. § 422.308(c). Freedom Defendants deny each and every other allegation.

58. Answering paragraph 58, Freedom Defendants admit that risk adjustment pursuant to the CMS-HCC risk adjustment model results in a "risk score," sometimes referred to as the "risk adjustment factor" or "RAF," which is a multiplier that is applied to the bid amount for an applicable MA beneficiary and is a component of the payment amount for applicable MA beneficiaries. Freedom

Defendants deny each and every other allegation.

59. Answering paragraph 59, Freedom Defendants admit that CMS uses demographic factors and health status to calculate risk scores pursuant to the CMS-HCC risk adjustment model for MA beneficiaries enrolled in MA Plans, which is a multiplier that is applied to the bid amount for the relevant MA beneficiary and is a component of the payment amount for each MA member; that CMS employs an HCC model; that each HCC within the CMS-HCC risk adjustment model aims to correlate with the marginal predicted cost of medical expenditures for that set of medical disease groupings based on CMS's data from administering the traditional Medicare Fee-For-Service program. Freedom Defendants deny each and every other allegation.

60. Paragraph 60 contains legal conclusions or other conclusions or argument that require no response. This paragraph references *Becerra*, 9 F.4th at 874, to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants admit that the CMS-HCC risk adjustment model allows for higher risk scores for certain conditions in combination with another disease status that CMS has determined is indicative of higher costs. Freedom Defendants deny each and every other allegation.

61. Paragraph 61 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 42 CFR § 422.2, to which Freedom Defendants respectfully refer the Court for its complete and accurate

content. To the extent any response is necessary, Freedom Defendants admit that HCCs are disease groupings consisting of disease codes (currently ICD-10-CM codes and previously ICD-9-CM codes) that aim to correlate with the marginal predicted cost of medical expenditures for that set of medical disease groupings based on CMS's data from administering the traditional Medicare Fee-For-Service program and that HCCs are the basis of the disease component of the MA beneficiary risk score. Freedom Defendants deny each and every other allegation.

62. Answering paragraph 62, Freedom Defendants admit that not all ICD-9-CM or ICD-10-CM diagnosis codes are risk adjusting under the CMS-HCC risk adjustment model. Freedom Defendants deny each and every other allegation.

63. Answering paragraph 63, Freedom Defendants admit that CMS relies on ICD-10-CM or ICD-9-CM diagnosis codes that are coded from MA beneficiary encounters with providers during dates of service in one year (the "DOS year" or "date of service year") to determine payments for each applicable MA beneficiary in a future year (the "payment year") pursuant to the CMS-HCC risk adjustment model. Freedom Defendants deny each and every other allegation.

64. Paragraph 64 contains legal conclusions or other conclusions or argument that require no response. This paragraph references *Becerra*, 9 F.4th at 875–76, to which Freedom Defendants respectfully refer the Court for its complete and accurate content. Freedom Defendants deny each and every other allegation.

65. Paragraph 65 contains Relator's characterization of MA, which requires no response. To the extent any response is necessary, Freedom Defendants deny

each and every allegation.

66. Paragraph 66 contains legal conclusions or other conclusions or argument that require no response. This paragraph references *Becerra*, 9 F.4th at 872–73, to which Freedom Defendants respectfully refer the Court for its complete and accurate content. Freedom Defendants deny each and every other allegation.

B. The Role of Providers in the MA Risk Adjustment Process

67. Answering paragraph 67, Freedom Defendants admit that under Medicare Part C, MA beneficiaries receive Medicare benefits administered by MA Plans; that when a healthcare provider furnishes medical services to an MA beneficiary, the provider submits claims and encounter data to the MAO that operates the MA Plan. Freedom Defendants deny each and every other allegation.

68. Answering paragraph 68, Freedom Defendants admit upon information and belief that MAOs pay providers through a variety of arrangements, including through sharing percentages of payments received from CMS for MA beneficiaries with contracted providers. Freedom Defendants deny each and every other allegation.

69. Answering paragraph 69, Freedom Defendants deny each and every allegation.

70. Paragraph 70 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 42 CFR §§ 422.2, 422.500, to which Freedom Defendants respectfully refer the Court for their complete and accurate content. Freedom Defendants deny each and every other

allegation.

71. Paragraph 71 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 42 CFR § 422.2, to which Freedom Defendants respectfully refer the Court for its complete and accurate content. Freedom Defendants deny each and every other allegation.

72. Paragraph 72 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 42 CFR § 422.500, to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

73. Paragraph 73 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 42 CFR §§ 422.503–422.504, to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

74. Paragraph 74 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 42 C.F.R. § 422.504(l)(1)–(4), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

75. Paragraph 75 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary,

Freedom Defendants admit that Physician Partners entered into Group Participation Agreements with Freedom Defendants. Freedom Defendants deny each and every other allegation.

76. Paragraph 76 contains legal conclusions or other conclusions or argument that require no response. This paragraph references *U.S. ex rel. Ormsby v. Sutter Health*, 444 F.Supp.3d 1010, 1025 (N.D. Cal. Mar. 16, 2020) ("*Ormsby*"), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

77. Paragraph 77 contains legal conclusions or other conclusions or argument that require no response. This paragraph references *Ormsby*, 444 F.Supp.3d at 1021 n.1, to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

78. Paragraph 78 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 42 C.F.R. § 422(i)(1), which requires no response, as the referenced regulation does not exist. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

C. Repayment Obligations Under the Medicare Advantage Program

79. Paragraph 79 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 31 U.S.C. §

3729(a)(1)(G), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants admit that 31 U.S.C. § 3729(a)(1)(G) is known as the "reverse false claims" provision; that for purposes of 31 U.S.C. § 3729, obligation is defined to "mean[] an established duty, whether or not fixed, arising from an express or implied contractual . . . relationship . . . , from statute or regulation, or from the retention of any overpayment." *Id.* § 3729(b)(3). Freedom Defendants deny each and every other allegation.

80. Paragraph 80 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 42 U.S.C. § 1320a-7k(d), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants admit that under 42 U.S.C. § 1320a-7k(d)(2), "[a]n overpayment must be reported and returned . . . by the later of—(A) the date which is 60 days after the date on which the overpayment was identified; or (B) the date any corresponding cost report is due, if applicable." Freedom Defendants deny each and every other allegation.

81. Paragraph 81 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 42 U.S.C. § 1320a-7k(d)(4)(B), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

82. Paragraph 82 contains legal conclusions or other conclusions or

argument that require no response. This paragraph references 42 U.S.C. § 1320a-7k(d)(4)(C), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every other allegation.

83. Paragraph 83 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 42 CFR § 422.326(a)–(b), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

84. Paragraph 84 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 79 Fed. Reg. at 29,921, to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every other allegation.

85. Paragraph 85 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 42 U.S.C. § 1320a-7k(d)(3) and 42 CFR § 422.326(e), to which Freedom Defendants respectfully refer the Court for their complete and accurate content. To the extent any response is necessary, Freedom Defendants admit that under 42 U.S.C. § 1320a-7k(d)(2), "[a]n overpayment must be reported and returned . . . by the later of—(A) the date which is 60 days after the date on which the overpayment was identified; or (B) the date any corresponding cost report is due, if applicable." Freedom Defendants deny each and

every other allegation.

86. Paragraph 86 contains reference to a document that requires no response because the referenced document is not in the record and speaks for itself. To the extent any response is necessary, Freedom Defendants admit that a Medicare Provider Manual is publicly available on their websites. Freedom Defendants deny each and every other allegation.

VII. ALLEGATIONS OF DEFENDANTS' CONDUCT RESULTING IN THE SUBMISSION OF FALSE CLAIMS

87. Paragraph 87 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

88. Paragraph 88 contains legal conclusions or other conclusions or argument that require no response. This paragraph references an order from the Court dated Sept. 28, 2021 (Doc. 81), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants admit that at some point in time before Elevance Health acquired Freedom Defendants in 2018, Siddhartha Pagidipati was the Chief Operating Officer of Freedom Defendants. Freedom Defendants deny each and every other allegation.

89. Paragraph 89 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants admit that Physician Partners entered into Group Participation

Agreements with Freedom Defendants; that as a general practice, Freedom Defendants occasionally provided educational materials or conducted trainings for providers covering complete and proper documentation of diagnosis codes; that Freedom Defendants each maintained a separate MRA/HEDIS portal through which providers could view diagnosis codes previously submitted to CMS; that as a general practice, Freedom Defendants gave providers access to those portals. Due to the non-specific and vague nature of Relator's allegations, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

A. ALLEGATIONS AGAINST PHYSICIAN PARTNERS, ANION, AND VIPCARE

90. The allegations in paragraph 90 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

91. The allegations in paragraph 91 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

92. The allegations in paragraph 92 are not asserted against Freedom

Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

93. The allegations in paragraph 93 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

94. The allegations in paragraph 94 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph references Section IX of the FAC, to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

95. The allegations in paragraph 95 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

96. The allegations in paragraph 96 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is

necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

i. Overview of the Relationship between Physician Partners, Anion Technologies, and VIPcare

97. The allegations in paragraph 97 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains reference to a webpage that requires no response because the referenced webpage is not in the record and speaks for itself. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

98. The allegations in paragraph 98 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

99. The allegations in paragraph 99 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants admit upon information and belief that Physician Partners has a business relationship with VIPcare. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the

other allegations and, on that basis, deny each and every other allegation.

100. The allegations in paragraph 100 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains reference to a document that requires no response because the referenced document is not in the record and speaks for itself. To the extent any response is necessary, Freedom Defendants admit upon information and belief that Relator is a family medicine physician; that Relator was previously employed by VIPcare. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

101. The allegations in paragraph 101 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants admit upon information and belief that Physician Partners has a business relationship with VIPcare. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

102. The allegations in paragraph 102 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

103. The allegations in paragraph 103 are not asserted against Freedom

Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

104. The allegations in paragraph 104 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

ii. Overview of the 5 Star Checklist

105. The allegations in paragraph 105 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

106. The allegations in paragraph 106 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

107. The allegations in paragraph 107 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is

necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

108. The allegations in paragraph 108 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph references the content of an image that requires no response because the referenced image speaks for itself. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

109. The allegations in paragraph 109 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

110. The allegations in paragraph 110 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph references the content of an image that requires no response because the referenced image speaks for itself. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

111. The allegations in paragraph 111 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains

reference to a document that requires no response because the referenced document is not in the record and speaks for itself. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

112. The allegations in paragraph 112 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

113. The allegations in paragraph 113 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains reference to a document that requires no response because the referenced document is not in the record and speaks for itself. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

114. The allegations in paragraph 114 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

115. The allegations in paragraph 115 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains reference to a document that requires no response because the referenced document is not in the record and speaks for itself. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

116. The allegations in paragraph 116 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains reference to a document that requires no response because the referenced document is not in the record and speaks for itself. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

117. The allegations in paragraph 117 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

118. The allegations in paragraph 118 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph references the content of an image that requires no response because the referenced image speaks

for itself. To the extent any response is necessary, this paragraph contains allegations related to deidentified patients, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

118 n.1 Paragraph 118 n.1 contains Relator's description of her actions in preparing the FAC, which requires no response. This paragraph contains reference to patient information that can be provided upon entry of a qualified protective order under the Health Insurance Portability and Accountability Act. Such a protective order has not yet been submitted to the Court and entered in this matter, and Freedom Defendants have therefore not yet received the referenced complete patient information. To the extent any response is necessary, Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

119. The allegations in paragraph 119 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

120. The allegations in paragraph 120 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is

necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

121. The allegations in paragraph 121 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

122. The allegations in paragraph 122 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants admit that chart reviews are not inherently improper. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

123. The allegations in paragraph 123 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

124. The allegations in paragraph 124 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a

belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

iii. Physician Partners Incentivized Employed Physicians to Increase the Risk Scores while Reducing Costs to Treat Freedom Patients.

125. The allegations in paragraph 125 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

126. The allegations in paragraph 126 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

127. The allegations in paragraph 127 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

128. The allegations in paragraph 128 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a

belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

129. The allegations in paragraph 129 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph references the content of an image that requires no response because the referenced image speaks for itself. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

130. The allegations in paragraph 130 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

131. The allegations in paragraph 131 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

132. The allegations in paragraph 132 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and

every allegation.

133. The allegations in paragraph 133 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

134. The allegations in paragraph 134 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

135. The allegations in paragraph 135 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

136. The allegations in paragraph 136 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, this paragraph contains allegations related to deidentified patients, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the

allegations and, on that basis, deny each and every allegation.

137. The allegations in paragraph 137 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

iv. Physician Partners Directed and Pressured Physicians to Use Risk Adjusting Scores

138. The allegations in paragraph 138 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants admit that as a general practice, they occasionally provided educational materials or conducted trainings for Physician Partners providers covering complete and proper documentation of diagnosis codes. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

139. The allegations in paragraph 139 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

140. The allegations in paragraph 140 are not asserted against Freedom

Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

141. The allegations in paragraph 141 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph references the content of an image that requires no response because the referenced image speaks for itself. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

141 n.2 Paragraph 141 n.2 contains Relator's description of her actions in preparing the FAC, which requires no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

142. The allegations in paragraph 142 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

143. The allegations in paragraph 143 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and

every allegation.

144. The allegations in paragraph 144 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

145. The allegations in paragraph 145 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

146. The allegations in paragraph 146 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains reference to a webpage that requires no response because the referenced webpage is not in the record and speaks for itself. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

147. The allegations in paragraph 147 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and

every allegation.

148. The allegations in paragraph 148 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

149. The allegations in paragraph 149 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

150. The allegations in paragraph 150 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph references the content of an image that requires no response because the referenced image speaks for itself. To the extent any response is necessary, this paragraph contains allegations related to deidentified patients, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

151. The allegations in paragraph 151 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph references the

content of a video (*see* Docs. 92, 93, 97-1), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. This paragraph references the content of an image that requires no response because the referenced image speaks for itself. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

152. The allegations in paragraph 152 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph references the content of a video (*see* Docs. 92, 93, 97-1), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

153. The allegations in paragraph 153 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph references the content of a video (*see* Docs. 92, 93, 97-1), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

154. The allegations in paragraph 154 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph references the content of a video (*see* Docs. 92, 93, 97-1), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. Freedom Defendants lack

information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

155. The allegations in paragraph 155 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph references the content of a video (*see* Docs. 92, 93, 97-1), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

156. The allegations in paragraph 156 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph references the content of a video (*see* Docs. 92, 93, 97-1), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

157. The allegations in paragraph 157 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph references the content of a video (*see* Docs. 92, 93, 97-1), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. This paragraph contains reference to a webpage that requires no response because the referenced webpage is not in the record and speaks for itself. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every

other allegation.

158. The allegations in paragraph 158 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

159. The allegations in paragraph 159 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

160. The allegations in paragraph 160 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

161. The allegations in paragraph 161 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph references the content of an image that requires no response because the referenced image speaks for itself. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

162. The allegations in paragraph 162 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

162 n.3 The allegations in paragraph 162 n.3 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

163. The allegations in paragraph 163 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

164. The allegations in paragraph 164 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

165. The allegations in paragraph 165 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is

necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

166. The allegations in paragraph 166 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

167. The allegations in paragraph 167 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

167 n.4 The allegations in paragraph 167 n.4 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

168. The allegations in paragraph 168 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and

every allegation.

169. The allegations in paragraph 169 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

170. The allegations in paragraph 170 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

171. The allegations in paragraph 171 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

172. The allegations in paragraph 172 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

173. The allegations in paragraph 173 are not asserted against Freedom

Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

174. The allegations in paragraph 174 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

175. The allegations in paragraph 175 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

176. The allegations in paragraph 176 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

177. The allegations in paragraph 177 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a

belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

178. The allegations in paragraph 178 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

179. The allegations in paragraph 179 are not asserted against Freedom Defendants, and, therefore, no response is necessary. To the extent any response is necessary, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

B. ALLEGATIONS AGAINST FREEDOM AND OPTIMUM.

180. Paragraph 180 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants admit to being MAOs who enter into contracts with CMS, whereby they provide benefits to their MA beneficiaries through various healthcare providers; that Physician Partners entered into Group Participation Agreements with Freedom Defendants; that Freedom Defendants signed Business Associate Agreements with Anion. Freedom Defendants deny each and every other allegation.

181. Paragraph 181 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 42 CFR 422.504(l)(1),

to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants admit that they receive a monthly payment from CMS for enrolled MA beneficiaries. Freedom Defendants deny each and every other allegation.

182. Paragraph 182 contains legal conclusions or other conclusions or argument that require no response. This paragraph contains reference to a document that requires no response because the referenced document is not in the record and speaks for itself. To the extent any response is necessary, Freedom Defendants admit that they are both subsidiaries of Elevance Health as of 2018 (*see* Doc. 33); that a Medicare Provider Manual is publicly available on their websites. Freedom Defendants deny each and every other allegation.

183. Paragraph 183 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants admit that Physician Partners entered into Group Participation Agreements with Freedom Defendants; that at some point in time before Elevance Health acquired Freedom Defendants in 2018, Siddhartha Pagidipati was the Chief Operating Officer of Freedom Defendants; that under prior ownership Freedom Defendants entered into a settlement agreement in an FCA suit in 2017 (*see* Doc.42-3), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. Freedom Defendants deny each and every other allegation.

184. Paragraph 184 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary,

Freedom Defendants admit that they do not provide care directly to MA beneficiaries and do not diagnose MA beneficiaries' conditions, but instead receive diagnosis information in the form of diagnosis codes generated by providers; that Freedom Defendants each maintained a separate MRA/HEDIS portal through which providers could view diagnosis codes previously submitted to CMS; that as a general practice, Freedom Defendants gave providers access to those portals; that as a general practice, Freedom Defendants occasionally provided educational materials or conducted trainings for Physician Partners providers covering complete and proper documentation of diagnosis codes; that Freedom Defendants would sometimes contact members to schedule certain types of visits. Freedom Defendants deny each and every other allegation.

185. Paragraph 185 contains legal conclusions or other conclusions or argument that require no response. This paragraph references the content of a video (*see* Docs. 92, 93, 97-1), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. This paragraph references the content of an image that requires no response because the referenced image speaks for itself. To the extent any response is necessary, Freedom Defendants admit that Dr. Dennis Mihale participated in a video discussing complete and proper documentation of diagnosis codes. Freedom Defendants deny each and every other allegation.

186. Paragraph 186 contains legal conclusions or other conclusions or argument that require no response. This paragraph references the content of a video (*see* Docs. 92, 93, 97-1), to which Freedom Defendants respectfully refer the Court

for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

187. Paragraph 187 contains legal conclusions or other conclusions or argument that require no response. This paragraph references the content of a video (*see* Docs. 92, 93, 97-1), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

188. Paragraph 188 contains legal conclusions or other conclusions or argument that require no response. This paragraph references the content of a video (*see* Docs. 92, 93, 97-1), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

189. Paragraph 189 contains reference to a document that requires no response because the referenced document is not in the record and speaks for itself. This paragraph references the content of an image that requires no response because the referenced image speaks for itself. To the extent any response is necessary, Freedom Defendants admit that as a general practice, they occasionally provided educational materials covering complete and proper documentation of diagnosis codes; that these materials were sometimes mailed; that Freedom Defendants sent Relator educational materials consisting of a "case study" on "Alcohol Abuse v. Alcohol Independence" in May 2019 (*see* Doc. 97-1 at 7–9). Freedom Defendants deny each and every other allegation.

190. Answering paragraph 190, Freedom Defendants admit that they each maintained a separate MRA/HEDIS portal through which providers could view diagnosis codes previously submitted to CMS; that as a general practice, they gave providers access to those portals. Freedom Defendants deny each and every other allegation.

191. Answering paragraph 191, Freedom Defendants admit that as a general practice, Freedom Defendants' employees occasionally visited providers' offices; that Dennis Stearns or other employees of Freedom Defendants visited Relator's office. Freedom Defendants deny each and every other allegation.

192. Answering paragraph 192, Freedom Defendants admit that as a general practice, Freedom Defendants' employees occasionally visited providers' offices; that Dennis Stearns or other employees of Freedom Defendants visited Relator's office. Freedom Defendants deny each and every other allegation as to Freedom Defendants. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

193. Answering paragraph 193, Freedom Defendants admit that as a general practice, they contacted members occasionally to schedule certain types of visits. Freedom Defendants deny each and every allegation as to Freedom Defendants. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

194. Paragraph 194 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants admit that it was their practice to sometimes meet with VIPcare for administrative purposes or sometimes coordinate with VIPcare when addressing provider complaints. Freedom Defendants deny each and every allegation as to Freedom Defendants. Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

VIII. DEFENDANTS KNOWINGLY SUBMITTED OR CAUSED TO BE SUBMITTED FALSE OR FRAUDULENT CLAIMS

195. Paragraph 195 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

196. Paragraph 196 contains legal conclusions or other conclusions or argument that require no response. This paragraph references 31 U.S.C. § 3729(b)(1), to which Freedom Defendants respectfully refer the Court for its complete and accurate content. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

197. Paragraph 197 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

198. Paragraph 198 contains legal conclusions or other conclusions or

argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

199. Paragraph 199 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

200. Paragraph 200 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

201. Paragraph 201 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

IX. EXAMPLES OF SPECIFIC FALSE OR FRAUDULENT CLAIMS SUBMITTED OR CAUSED TO BE SUBMITTED

A. Claims Submitted Where Source of Diagnosis Code was Changed to Anonymous "Physician"

202. Paragraph 202 contains legal conclusions or other conclusions or argument that require no response. This paragraph contains reference to exhibits attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to deidentified patients, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every

allegation.

Patient H

203. Paragraph 203 contains reference to exhibits attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

204. Paragraph 204 contains reference to exhibits attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

205. Paragraph 205 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the

allegations and, on that basis, deny each and every allegation.

206. Paragraph 206 contains reference to exhibits attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

207. Paragraph 207 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

208. Paragraph 208 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

209. Paragraph 209 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

210. Paragraph 210 contains legal conclusions or other conclusions or argument that require no response. This paragraph contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, Freedom Defendants admit that they each maintained a separate MRA/HEDIS portal through which providers could view diagnosis codes previously submitted to CMS; that as a general practice, Freedom Defendants gave providers access to those portals. This paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

211. Paragraph 211 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

212. The allegations in paragraph 212 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

Patient I

213. Paragraph 213 contains reference to exhibits attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

214. Paragraph 214 contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

215. Paragraph 215 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants

(*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

216. Paragraph 216 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

217. Paragraph 217 contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

218. Paragraph 218 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

219. Paragraph 219 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

220. Paragraph 220 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

221. The allegations in paragraph 221 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

Patient J

222. Paragraph 222 contains reference to exhibits attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the

allegations and, on that basis, deny each and every allegation.

223. Paragraph 223 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

224. Paragraph 224 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

225. Paragraph 225 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

226. Paragraph 226 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

227. Paragraph 227 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

228. Paragraph 228 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

229. The allegations in paragraph 229 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

Patient K

230. Paragraph 230 contains reference to exhibits attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

231. Paragraph 231 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

232. Paragraph 232 contains reference to exhibits attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

233. Paragraph 233 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

234. Paragraph 234 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

235. Paragraph 235 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

236. Paragraph 236 contains reference to an exhibit attached to the FAC, to

which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

237. Paragraph 237 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

238. Paragraph 238 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, Freedom Defendants admit that they each maintained a separate MRA/HEDIS portal through which providers could view diagnosis codes previously submitted to CMS; that as a general practice, Freedom Defendants gave providers access to those portals. This paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or

falsity of the other allegations and, on that basis, deny each and every other allegation.

239. Paragraph 239 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

240. The allegations in paragraph 240 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

B. Codes Submitted in Relator's Name After She Said No or Expressly Notified of Inaccuracy

241. Paragraph 241 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, this paragraph contains allegations related to deidentified patients, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

Patient L

242. Paragraph 242 contains reference to exhibits attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response

is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

243. Paragraph 243 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

244. Paragraph 244 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

245. Paragraph 245 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and

Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

246. Paragraph 246 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

247. Paragraph 247 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

248. Paragraph 248 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants

(*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

249. Paragraph 249 contains legal conclusions or other conclusions or argument that require no response. This paragraph contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

250. Paragraph 250 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

251. The allegations in paragraph 251 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

Patient M

252. Paragraph 252 contains reference to exhibits attached to the FAC, to

which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

253. Paragraph 253 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

253 n.5 Answering paragraph 253 n.5, Freedom Defendants lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

254. Paragraph 254 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the

allegations and, on that basis, deny each and every allegation.

255. Paragraph 255 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

256. Paragraph 256 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

257. Paragraph 257 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

258. Paragraph 258 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

259. Paragraph 259 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

260. Paragraph 260 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, Freedom Defendants admit that they each maintained a separate MRA/HEDIS portal through which providers could view diagnosis codes previously submitted to CMS; that as a general practice, Freedom Defendants gave providers access to those portals. This paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants

therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

261. Paragraph 261 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

262. Paragraph 262 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

263. Paragraph 263 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. This paragraph contains reference to a webpage that requires no response because the referenced webpage is not in the record and speaks for itself. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

264. Paragraph 264 contains legal conclusions or other conclusions or argument that require no response. This paragraph contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a

deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

265. Paragraph 265 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

266. Paragraph 266 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

Patient N

267. Paragraph 267 contains reference to exhibits attached to the FAC to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

268. Paragraph 268 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and

Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

269. Paragraph 269 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

270. Paragraph 270 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

270 n.6 Paragraph 270 n.6 contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or

falsity of the allegations and, on that basis, deny each and every allegation.

271. Paragraph 271 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

C. Defendants' Failure to Return Overpayments

272. The allegations in paragraph 272 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

273. Paragraph 273 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

274. Paragraph 274 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

Patient O

275. Paragraph 275 contains reference to exhibits attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack

information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

276. Paragraph 276 contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

277. Paragraph 277 contains reference to exhibits attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

278. Paragraph 278 contains reference to exhibits attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

279. Paragraph 279 contains reference to exhibits attached to the FAC, to

which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

280. Paragraph 280 contains reference to exhibits attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

281. Paragraph 281 contains reference to exhibits attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, Freedom Defendants admit that they each maintained a separate MRA/HEDIS portal through which providers could view diagnosis codes previously submitted to CMS; that as a general practice, Freedom Defendants gave providers access to those portals. This paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or

falsity of the other allegations and, on that basis, deny each and every other allegation.

282. Paragraph 282 contains reference to an exhibit attached to the FAC, to which Freedom Defendants respectfully refer the Court. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

283. The allegations in paragraph 283 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

Additional Patient Examples

284. Paragraph 284 contains reference to a document that requires no response because the referenced document is not in the record and speaks for itself. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every

allegation.

285. Paragraph 285 contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

286. The allegations in paragraph 286 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. This paragraph contains reference to a document that requires no response because the referenced document is not in the record and speaks for itself. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

287. Paragraph 287 contains reference to a document that requires no response because the referenced document is not in the record and speaks for itself. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to

the truth or falsity of the allegations and, on that basis, deny each and every allegation.

288. Paragraph 288 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

289. Paragraph 289 contains reference to a document that requires no response because the referenced document is not in the record and speaks for itself. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

290. The allegations in paragraph 290 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. This paragraph contains reference to a document that requires no response because the referenced document is not in the record and speaks for itself. To the extent any

response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

291. Paragraph 291 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

292. Paragraph 292 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

293. To the extent paragraph 293 references ¶ 118 of the FAC, *see* Freedom Defendants' response to that paragraph, which is incorporated herein. This paragraph contains reference to a document that requires no response because the referenced document is not in the record and speaks for itself. This paragraph references the content of an image that requires no response because the referenced image speaks for itself. To the extent any response is necessary, Freedom Defendants admit that they each maintained a separate MRA/HEDIS portal

through which providers could view diagnosis codes previously submitted to CMS; that as a general practice, Freedom Defendants gave providers access to those portals. This paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the other allegations and, on that basis, deny each and every other allegation.

294. Paragraph 294 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or falsity of the allegations and, on that basis, deny each and every allegation.

295. Paragraph 295 contains reference to a document that requires no response because the referenced document is not in the record and speaks for itself. This paragraph contains reference to a document that requires no response because the referenced document is not in the record and speaks for itself. To the extent any response is necessary, this paragraph contains allegations related to a deidentified patient, and Relator has not yet provided complete patient information to Freedom Defendants (*see* Freedom Defendants' response to ¶ 118 n.1). Freedom Defendants therefore lack information or knowledge sufficient to form a belief as to the truth or

falsity of the allegations and, on that basis, deny each and every allegation.

FIRST CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(A)
Against Physician Partners, LLC ("Physician Partners")

296. Answering paragraph 296, Freedom Defendants reassert their answers to the above paragraphs as if fully set forth herein. The allegations in this paragraph are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

297. The allegations in paragraph 297 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

298. The allegations in paragraph 298 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

299. The allegations in paragraph 299 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the

extent any response is necessary, Freedom Defendants deny each and every allegation.

SECOND CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(B)
Against Physician Partners, LLC ("Physician Partners")

300. Answering paragraph 300, Freedom Defendants reassert their answers to the above paragraphs as if fully set forth herein. The allegations in this paragraph are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

301. The allegations in paragraph 301 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

302. The allegations in paragraph 302 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

303. The allegations in paragraph 303 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal

conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

THIRD CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(G)
Against Physician Partners, LLC ("Physician Partners")

304. Answering paragraph 304, Freedom Defendants reassert their answers to the above paragraphs as if fully set forth herein. The allegations in this paragraph are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

305. The allegations in paragraph 305 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

306. The allegations in paragraph 306 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

307. The allegations in paragraph 307 are not asserted against Freedom

Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

FOURTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(A)
Against Anion Technologies, LLC ("Anion")

308. Answering paragraph 308, Freedom Defendants reassert their answers to the above paragraphs as if fully set forth herein. The allegations in this paragraph are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

309. The allegations in paragraph 309 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

310. The allegations in paragraph 310 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

311. The allegations in paragraph 311 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

FIFTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(B)
Against Anion Technologies, LLC ("Anion")

312. Answering paragraph 312, Freedom Defendants reassert their answers to the above paragraphs as if fully set forth herein. The allegations in this paragraph are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

313. The allegations in paragraph 313 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

314. The allegations in paragraph 314 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every

allegation.

315. The allegations in paragraph 315 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

SIXTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(G)
Against Anion Technologies, LLC ("Anion")

316. Answering paragraph 316, Freedom Defendants reassert their answers to the above paragraphs as if fully set forth herein. The allegations in this paragraph are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

317. The allegations in paragraph 317 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

318. The allegations in paragraph 318 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the

extent any response is necessary, Freedom Defendants deny each and every allegation.

319. The allegations in paragraph 319 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

SEVENTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(A)
Against Florida Medical Associates, LLC d/b/a VIPcare ("VIPcare")

320. Answering paragraph 320, Freedom Defendants reassert their answers to the above paragraphs as if fully set forth herein. The allegations in this paragraph are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

321. The allegations in paragraph 321 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

322. The allegations in paragraph 322 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal

conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

323. The allegations in paragraph 323 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

EIGHTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(B)
Against Florida Medical Associates, LLC d/b/a VIPcare ("VIPcare")

324. Answering paragraph 324, Freedom Defendants reassert their answers to the above paragraphs as if fully set forth herein. The allegations in this paragraph are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

325. The allegations in paragraph 325 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

326. The allegations in paragraph 326 are not asserted against Freedom

Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

327. The allegations in paragraph 327 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

NINTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(G)
Against Florida Medical Associates, LLC d/b/a VIPcare ("VIPcare")

328. Answering paragraph 328, Freedom Defendants reassert their answers to the above paragraphs as if fully set forth herein. The allegations in this paragraph are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

329. The allegations in paragraph 329 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

330. The allegations in paragraph 330 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

331. The allegations in paragraph 331 are not asserted against Freedom Defendants, and, therefore, no response is necessary. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

TENTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(A)
Against Freedom Health, Inc. and Optimum Healthcare, Inc.
("Freedom and Optimum")

332. Answering paragraph 332, Freedom Defendants reassert their answers to the above paragraphs as if fully set forth herein. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

333. Paragraph 333 contains legal conclusions or other conclusions or argument that require no response. To the extent this paragraph references ¶¶ 26–29 of the FAC, *see* Freedom Defendants' responses to those paragraphs, which are incorporated herein. To the extent any response is necessary, Freedom Defendants

admit that they are both subsidiaries of Elevance Health as of 2018 (*see* Doc. 33). Freedom Defendants deny each and every other allegation.

334. Paragraph 334 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

335. Paragraph 335 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

336. Paragraph 336 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

ELEVENTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(B)
Against Freedom Health, Inc. and Optimum Healthcare, Inc.
("Freedom and Optimum")

337. Answering paragraph 337, Freedom Defendants reassert their answers to the above paragraphs as if fully set forth herein. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

338. Paragraph 338 contains legal conclusions or other conclusions or argument that require no response. To the extent this paragraph references ¶¶ 26–29 of the FAC, *see* Freedom Defendants' responses to those paragraphs, which are

incorporated herein. To the extent any response is necessary, Freedom Defendants admit that they are both subsidiaries of Elevance Health as of 2018 (*see* Doc. 33). Freedom Defendants deny each and every other allegation.

339. Paragraph 339 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

340. Paragraph 340 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

341. Paragraph 341 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

TWELFTH CLAIM FOR RELIEF
Violations of 31 U.S.C. § 3729(a)(1)(G)
Against Freedom Health, Inc. and Optimum Healthcare, Inc.
("Freedom and Optimum")

342. Answering paragraph 342, Freedom Defendants reassert their answers to the above paragraphs as if fully set forth herein. This paragraph contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

343. Paragraph 343 contains legal conclusions or other conclusions or argument that require no response. To the extent this paragraph references ¶¶ 26–29

of the FAC, *see* Freedom Defendants' responses to those paragraphs, which are incorporated herein. To the extent any response is necessary, Freedom Defendants admit that they are both subsidiaries of Elevance Health as of 2018 (*see* Doc. 33). Freedom Defendants deny each and every other allegation.

344. Paragraph 344 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

345. Paragraph 345 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

346. Paragraph 346 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

PLEA

347. Answering paragraph 347, Freedom Defendants deny that Relator is entitled to the relief she seeks in this paragraph, including subparagraphs (a)–(f).

JURY TRIAL DEMAND

348. Paragraph 348 contains legal conclusions or other conclusions or argument that require no response. To the extent any response is necessary, Freedom Defendants deny each and every allegation.

AFFIRMATIVE DEFENSES

349. Relator's claims are barred, in whole or in part, by the applicable statute

of limitations.

350. Relator's claims are barred, in whole or in part, by the doctrine of laches.

351. Relator's claims are barred, in whole or in part, by the doctrine of waiver.

352. Relator's claims are barred, in whole or in part, by the doctrine of estoppel.

353. Relator's claims are barred, in whole or in part, by her failure to mitigate damages.

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

355. Relator's claims are barred, in whole or in part, by failure to disclose to the United States "substantially all material evidence and information" that she possessed in violation of 31 U.S.C. § 3730(b)(2).

356. Damages and claims for which Relator seeks relief in the FAC, if any, were caused and/or contributed to by the acts, errors, or omissions or otherwise the fault of third parties, for whose conduct Freedom Defendants are not responsible.

357. The United States did not suffer actual injury as it ratified, or otherwise consented to, the transactions and occurrences that are the subject of this action, by continuing to pay MA Plans at a previously determined rate as long as the plans'

diagnosis coding error rates did not exceed CMS's own error rate, despite CMS's knowledge that some diagnosis codes were unsupported.

358. The penalties and damages that Relator seeks would be an unconstitutionally excessive fine under the Eighth Amendment and Fourteenth Amendment to the United States Constitution because any award would be grossly disproportional to the gravity of Freedom Defendants' offense, if any.

359. Freedom Defendants hereby give notice that they intend to rely upon such other defenses as may become available to them by operation of law or pursuant to statute or as a result of discovery within or without this proceeding, and hereby reserve the right to amend their answer accordingly and/or to present such additional defenses at trial, in accordance with applicable law, including, without limitation, the Federal Rules of Civil Procedure.

Dated: October 24, 2022

Respectfully submitted,

By: */s/ Benjamin D. Singer*

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Counsel for Defendants Freedom Health, Inc. and Optimum HealthCare, Inc.

** admitted pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will provide electronic service to all counsel of record.

By: */s/ Benjamin D. Singer*

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,
ex rel. DR. CLARISSA ZAFIROV,

Plaintiffs,

v. Case No.: 8:19-cv-1236-T-23SPF

FLORIDA MEDICAL ASSOCIATES, LLC, *et al.*,

Defendants.
_____/

UNITED STATES' NOTICE OF INTERVENTION PURSUANT TO 28 U.S.C. § 2403(a)

Pursuant to 28 U.S.C. § 2403(a) and Federal Rule of Civil Procedure 24(a)(1), the United States respectfully exercises its statutory right to intervene in this matter for the limited purpose of defending the constitutionality of the *qui tam* provisions of the False Claims Act (FCA), 31 U.S.C. § 3729, *et seq*.

This is an FCA *qui tam* suit in which the United States has previously declined to intervene on September 21, 2020, pursuant to 31 U.S.C. § 3730(b)(4)(B). Dkt. 40. On February 16, 2024, the Defendants filed a Joint Motion for Judgment on the Pleadings challenging the constitutionality of the *qui tam* provisions of the FCA. Dkt. 180. The parties briefed the motion and the United States submitted a Statement of Interest.[1] On April 22, 2024, the Court held a hearing on the motion.

[1] 28 U.S.C. § 517 authorizes an officer of the Department of Justice "to attend to the interest of the United States in a suit pending in a court of the United States."

On April 23, 2024, the Court requested supplemental briefing "providing additional founding-era evidence of federal qui tam enforcement." Dkt. 240. The Supplemental Brief for the United States is filed simultaneously with this Notice.

Under FRCP 24(a)(1), the Court must permit anyone to intervene who "is given an unconditional right to intervene by a federal statute." Under 28 U.S.C. § 2403(a), the United States has an unconditional right to intervene in "any action . . . wherein the constitutionality of an Act of Congress affecting the public interest is drawn into question." Defendants have challenged the constitutionality of the *qui tam* provisions of the False Claims Act.

The United States respectfully notifies the Court and the parties that the United States intervenes in this action for the limited purpose of defending the constitutionality of the *qui tam* provisions of the FCA. The United States is simultaneously filing its Supplemental Brief with this Notice.

Respectfully submitted,

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Dated: May 21, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will provide electronic service to all counsel of record.

Sean P. Keefe
SEAN P. KEEFE
Assistant United States Attorney

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA
ex rel. DR. CLARISSA ZAFIROV,

Plaintiff/Relator,

v.

PHYSICIAN PARTNERS, LLC; FLORIDA MEDICAL ASSOCIATES, LLC, d/b/a VIPCARE; ANION TECHNOLOGIES, LLC; FREEDOM HEALTH, INC.; and OPTIMUM HEALTHCARE, INC.,

Defendants.

Case No. 8:19-cv-01236-KMM-SPF

RELATOR'S SUPPLEMENTAL BRIEFING ON FOUNDING ERA HISTORICAL EVIDENCE REGARDING FEDERAL QUI TAM ENFORCEMENT (Pursuant to April 23, 2024 Order, Doc. 240)

TABLE OF CONTENTS

page(s)

I. Introduction 1

II. Founding-Era History and Practice Confirms that *Qui Tam* Was a Well Known and Accepted Part of American Practice 2

III. The Early Congresses Deliberately Employed *Qui Tam* Provisions 6

IV. Federal Qui Tam Enforcement Is Evident in Post-ratification Practice 9

VI. The False Claims Act is Well-Supported by Founding Era History and Practice 13

TABLE OF AUTHORITIES

Cases **page(s)**

Adams, qui tam v. Woods
U.S. (2 Cranch) 336, 1805 U.S. Dist. LEXIS 279 (Feb. 19, 1805) 9

Beadleston v. Sprague,
6 Johns. 101, 1810 N.Y. LEXIS 81, (1810) 2

Bowsher v. Synar, 478 U. S. 714, (1986) 1

Brown v. United States,
12 U.S. (8 Cranch) 110, (1814) 10

Burrow-Giles Lithographic Co. v. Sarony,
111 U.S. 53, 57 (1884) 14

Consumer Fin. Prot. Bureau (CFPB) v. Community Fin. Servs. Ass'n of Am., Ltd.,
No. 22- 448, 2024 U.S. LEXIS 2169, (May 16, 2024) 1, 5, 6, 14

Marvin v. *Trout*,
199 U.S. 212, (1905) 2

Marbury v. Madison
5 U.S. (1 Cranch) 137, (1803) 10

New York State Rifle & Pistol Ass'n v. Bruen
597 U.S. 1, 20 (2022) 3, 14

Sherman qui tam v. The Schooner Exchange,
U.S.D.C. New York (1803) 12

The Laura, 114 U.S. 411 (1885) 13, 14

United States ex rel. Marcus v. Hess,
317 U.S. 537, (1943) 2

United States v. Simms, 5 U.S. 252,
(U.S. February 23, 1803) 10

Vermont Agency of Nat. Res. v. United States ex rel. Stevens,
529 U.S. 765, (2000) 2, 3, 6

Statutes and Rules

Act of July 31, 1789, ch. 5, § 38, 1 Stat. 48 8

Act of February 20, 1792, ch. 7, S 25, 1 Stat. 232 9

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Act of March 2, 1799, ch. 43 9

Act of March 3, 1799, ch. 46, 1 Stat. 743 9

S. Rep. 99-345, 1986 U.S.S.C.A.N. 5266 14

Other Authorities

A History of Uniontown: The County Seat of Fayette County, Pennsylvania 194-195 (1913) 13

Biographies of the Secretaries of State: John Marshall (1755-1835) 10

2 BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 4

3 WILLIAM BLACKSTONE, COMMENTARIES 4

Presidential Message Transmitting Opinions of Attorneys General, pt. 2: 1838-51 (1851) 13

Private Enforcement and Article II (draft publication May 8, 2024) ..... *passim*

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Qui Tam Litigation Against Government Officials: Constitutional Implications of a Neglected History, 93 Notre Dame L. Rev. 1235, (2018) 4, 7, 8

Reports of Cases Argued and Determined in the Circuit Court of the United States for the First Circuit, v. 1 (1815) 12

Sylvia, Claire M., (2010). *The False Claims Act: Fraud Against the Government*, 2nd ed., Thomson West, Rochester, N.Y, §2:6, ... 14

The Doctrine of Standing as an Essential Element of the Separation of Powers, 17 SUFFOLK U.L. REV. 881 (1983) 5

*The Law Practice of Alexander H*amilton, 857 (1969) 12

The Works of the Honourable James Wilson, L.L.D. 144 (Philadelphia: Lorenzo Press 1804) 11

TransUnion, Vermont Agency and Statutory Damages Under Article III (August 23, 2023) ..... *passim*

I. Introduction.

As Justice Thomas reiterated in a recent decision, "the practice of the First Congress . . . 'provides contemporaneous and weighty evidence of the Constitution's meaning.'" *CFPB v. Community Fin. Servs. Ass'n of Am., Ltd.*, No. 22-448, 2024 U.S. LEXIS 2169, at *23 (May 16, 2024), *quoting Bowsher v. Synar*, 478 U. S. 714, 723 (1986). Justice Thomas, on behalf of the majority of the Court, engaged in a lengthy analysis of the history of the Appropriations Clause to determine whether Congress's statutory authorization for the CFPB's funding mechanism violates the Constitution. *Id.* The Court's retrospection started with the pre-founding history (including the "practice in the Colonies and early state legislatures") and moved through the events surrounding the passage of the Appropriations Clause at the Constitutional Convention, the practice of the First Congress, and post-ratification practice. *CFPB*, 2024 U.S. LEXIS 2169, at *16-28. Finding that the history "confirms [the Court's] interpretation of the Appropriations Clause," the Court held the CFPB's funding mechanism was constitutional. *Id.* at *27.

In a similar manner, a retrospection of the origins of *qui tam* actions, from colonial and state practice through the practice of the first Congresses and early federal courts, confirms that *qui tam* was an enforcement tool well-known and well-accepted by the Framers, for many of the same reasons that the False Claims Act was signed into law by President Lincoln more than 160 years ago. Far from being a thoughtless "holdover" from English law (Doc.180, Defs.' Joint Mot. at 23), *qui tam* was selectively employed in the earliest laws of this country, and the use of *qui tam* provisions can be found in decisions of the early federal courts, including matters in which Hamilton and Jefferson

represented litigants. There is no evidence in any of this historic review that the Framers, any of the early Congresses, the first Presidents, or any court, questioned whether *qui tam* provisions presented any constitutional concern.

II. Founding Era History and Practice Confirms that *Qui Tam* Was a Well Known and Accepted Part of American Practice.

The False Claims Act is no modern interloper—it is strongly rooted in hundreds of years of *qui tam* tradition. This uncontroverted history has long been recognized by the Supreme Court. In *United States ex rel. Marcus v. Hess*, the Court recounted: "Statutes providing for actions by a common informer, who himself has no interest whatever in the controversy other than that given by statute, have been in existence for hundreds of years in England, and in this country ever since the foundation of our Government . . ." 317 U.S. 537, 541 n.4 (1943), *quoting Marvin* v. *Trout*, 199 U.S. 212, 225 (1905).[1] The Court underscored this in *Stevens*: After reviewing the steeped history of *qui tam* going back to the 13th century, it concluded that "*[q]ui tam* actions appear to have been as prevalent in America as in England, at least in the period immediately before and after

[1] In *Marvin v. Trout*, the Court cited older *qui tam* actions while considering the constitutionality of an Ohio gambling statute, which permitted recovery not just against gamblers, but building owners who permitted gambling, by uninjured informers. The Court concluded "[w]e are aware of no provision in the Federal Constitution which prevents this kind of legislation in a State for such a purpose." 199 U.S. 212, 225 (1905). The *Marvin* court observed: "The right to recover the penalty or forfeiture granted by statute is frequently given to the first common informer who brings the action, although he has no interest in the matter whatever except as such informer." *Id.* at 225 (citations omitted). "To say that it must be limited to a provision allowing a recovery of the money by the one who lost it, would be in effect to hold invalid all legislation providing for proceedings in the nature of qui tam actions." *Id*. Among the cases cited, the Court referenced *Beadleston v. Sprague*, a *qui tam* involving the Distilled Sprits Act. 6 Johns. 101, 1810 N.Y. LEXIS 81 (1810). In that action, the Supreme Court of New York held that "the person who first commences a *qui tam*, or popular action, attaches a right in himself, which no other common informer, by a subsequent suit, can devest; and he may demur to a plea of a recovery in such subsequent suit." *Id*. at 103.

the framing of the Constitution." *Vermont Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 776 (2000).

At oral argument, this Court observed that *Stevens* did not do a detailed parsing of the American history of *qui tam* enforcement actions. Tr. at 13-14, April 22, 2024 Hr'g. Referencing the historical analogies set forth in *New York State Rifle & Pistol Ass'n v. Bruen,*[2] the Court asked counsel whether there was a more fulsome compendia of the historical evidence to deduce the relevant comparators and whether *qui tam* made a deliberate entry into the founding era landscape. *E.g.,* Tr. at 16, 17, 35. In recent years, in direct response to questions raised about the historical roots of private enforcement of public laws, several history scholars have published detailed reviews of the *qui tam* enforcement traditions in place at the time of the framing. *See e.g.,* Randy Beck, *TransUnion, Vermont Agency and Statutory Damages Under Article III* (August 23, 2023), accepted for publication in Florida Law Review ("Beck");[3] Nitisha Baronia, Jared Lucky, Diego Zambrano, *Private Enforcement and Article II* (draft publication May 8, 2024) ("Baronia");[4] James E. Pfander, *Public Law Litigation in Eighteenth Century America: Diffuse Law Enforcement in a Partisan World*, 92 Fordham L. Rev. 469 (2023) ("Pfander").[5]

As Professor Beck summarized, "[f]rom the fourteenth through the eighteenth centuries, *qui tam* litigation by uninjured common informers was one of three extremely common methods of statutory enforcement, alongside suits by public officials and suits

[2] 597 U.S. 1, 20 (2022).
[3] We introduce the exhibits through the declaration of Jennifer Verkamp (the "Verkamp Decl."). *See* Verkamp Decl., Ex. 1, and available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4549914.
[4] Verkamp Decl., Ex. 2, and available at http://dx.doi.org/10.2139/ssrn.4821934.
[5] Verkamp Decl., Ex. 3, and available at https://ssrn.com/abstract=4424076.

by injured parties." Randy Beck, *Qui Tam Litigation Against Government Officials: Constitutional Implications of a Neglected History*, 93 Notre Dame L. Rev. 1235, 1254 (2018) ("Beck, *Neglected History*").[6] The use of private *qui tam* informer-initiated actions was widely embedded in the enforcement mechanisms of the American colonies and states. Professor Beck provides a detailed catalog of how early American governments used *qui tam* actions by informers to help ensure a wide range of government functions were implemented. *Id.* at 1269-1291. The *qui tam* mechanism served an important need at a time when government resources were very limited. Beck, at 15.

Ms. Baronia and her co-authors describe that *qui tam* laws were a "well-defined and expansive category of Founding Era lawmaking closely analogous to private enforcement." Baronia, at 4. They describe that many of these laws were also called penal statutes, "not because they defined a crime, but because they permitted private litigants to collect a *penalty.*" *Id*. (emphasis in original). While oft-miscited to require exclusive power of the executive, William Blackstone described that the great variety of penal statutes "would be too 'tedious' to enumerate," and "'more usually'" brought by informers in a *qui tam* action.[7] *Id.* at 4, 23; *see also* Beck, at 15-17. As Blackstone recounted, "penalties given by the legislature to 'any person that will sue for the same'

[6] Verkamp Decl., Ex. 4, and available at https://ssrn.com/abstract=2910801.

[7] 2 BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *420; 3 WILLIAM BLACKSTONE, COMMENTARIES *161 ("[M]ore usually these forfeitures created by statute are given at large to any common informer; or, in other words, to any such person or persons as will sue for the same: and hence such actions are called popular actions, because they are given to the people in general. Sometimes one part is given to the king, to the poor, or to some public use, and the other part to the informer or prosecutor: and then the suit is called a *qui tam action*, because it is brought by a person "*qui tam pro domino rege, &c., quam pro se ipso in hac parte sequitur* [who prosecutes this suit as well for the lord king… as for himself]."

are 'placed as it were in a state of nature . . . open therefore to the first occupant, who declares his intention to possess them, by obtaining judgement to recover them.'" Baronia, at 34.[8]

Carrying forward this common understanding of such actions, "the colonial assemblies themselves (and the state legislatures that succeeded them) passed reams of statutes which relied on private enforcement." *Id.* at 26. By way of example, Founding Era Massachusetts used private informers to enforce "public policy in nearly every domain of legislative activity: duties on luxury goods, restraints on roving livestock, fishing and hunting regulations, limits on dirty industries like tanning and smithing, quarantine measures for people and livestock, prohibitions on usury and price gouging, qualifications for the skilled trades, states, ship building, fish pickling, meat packing, and more." Baronia, at 27.[9] Massachusetts is viewed as a state that embraced a strict approach to separation of powers,[10] but yet still imbued its laws with *qui tam* provisions. Baronia, at 26-27.[11] This practice also continued post-ratification: "Every state in the union continued to pass penal statutes (with both private damages awards and *qui tam* provisions) in the first twenty-five years of independence." Baronia, at 30.[11]

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[8] *Quoting* 2 WILLIAM BLACKSTONE. COMMENTARIES *437.

[9] *See also* Pfander, at 474-78 (describing Rhode Island's pre-ratification enactment and successful use in the courts of uninjured informer litigation to prevent slave trade). These enforcement proceedings were publicized in the newspapers of the day. *Id.* at 478.

[10] Baronia at 26, *citing* Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U.L. REV. 881 (1983).

[11] The authors describe two Massachusetts *qui tam* cases post-ratification in which two Federalist judges upheld the right of the private *qui tam* claimant to bring suit. Baronia, at 32-33; *see also id.* at 33 n. 196.

[11] The authors also note: "A sweeping revision of Virginia's statutes (proposed by Thomas Jefferson in 1776, and later taken up by James Madison) included twelve informer's actions and many more statutory damages provisions." *Id.* at 30.

As the Court's decision in *CFPB* illustrates, this "practice in the Colonies and early state legislatures" is relevant because it reflects the views that were formed by the Framers "[b]y the time of the Constitutional Convention." *CFPB*, 2024 U.S. LEXIS 2169, at *20, 22. And, at that time, the use of *qui tam* actions by uninjured informers for enforcement of public functions was well understood. "The Framers (including John Adams, Thomas Jefferson, James Madison, and Alexander Hamilton) understood and participated in this broader legal culture of private enforcement—as did pivotal early jurists like Joseph Story and John Marshall." Baronia, at 4-5. "The delegates of the Constitutional Convention, almost without exception, gained their legislative experience in colonial and state assemblies." *Id.* at 26.

III. The Early Congresses Deliberately Employed *Qui Tam* Provisions.

The Court recognized in *Stevens* that the First Congress enacted six statutes authorizing uninjured informers to bring *qui tam* suits. 529 U.S. at 777 n.6. Far from the "thoughtless adoption" advocated by Defendants (Tr. at 17, April 22, 2024), the full enactment history of early Congresses supports a deliberate employment of *qui tam* provisions. *Qui tam* statutes with private rights of action by uninjured informers were enacted not just by the First Congress, but by the first nine Congresses, and in numbers not reported in *Stevens*.[12]

Professor Beck's historical examination of this era reflects that the early Congresses made use of the *qui tam* provisions around the needs served by individual

[12] An appendix listing 47 statutes authorizing *qui tam* actions by uninjured informers is attached at Verkamp Decl., Ex. 5.

statute: He observed that "[p]rovision for popular enforcement was common when Congress sought to regulate decentralized activity—*e.g.*, the slave trade or trade with Native American tribes—that might take place in remote areas outside the view or reach of federal officials." Beck, at 21.[13]

One of the needs identified by Congress was in the area of revenue collection. "When the House of Representatives opened its doors to the public on April 8, 1789, James Madison gave a speech highlighting the widely recognized 'deficiency in our treasury' and urging an impost on imports to establish a national revenue." Beck, *Neglected History,* at 1291-92. This deficiency was left behind by the debts of the Revolutionary War, and the government had to figure out how to "incentivize and monitor" compliance with congressional directives, at a reasonable cost, in a vast territory with widely dispersed federal monitoring. *Id. Qui tam* litigation was an effective tool to accomplish that objective.

Duties on liquor was one of the first areas that Congress targeted for revenue collection. In 1791, the First Congress passed the Distilled Spirits Act, which imposed duties on distilled spirits and permitted uninjured informers to file an action of debt in their name or the name of the United States. These provisions were expanded by the Second and Third Congresses, including to add expanded provisions for informer enforcement.[14] Prior to these amendments, Treasury Secretary Alexander Hamilton

[13] The Slave Trade Act, for example, was passed by the Third Congress with *qui tam* enforcement provisions by uninjured informers with the right to bring actions. Further discussion of the Slave Trade Act can be found in Section III *infra.*

[14] Beck, at 22, *citing* An Act Concerning Duties on Spirits Distilled Within the United States, ch. 32, 1 Stat. 267, §§ 13 (new forfeitures), 17 (incorporating enforcement mechanisms from 1791 act [including

reported to Congress on "the inadequacy of centralized monitoring of a dispersed network of customs officials, combined with a new, more challenging tax collection environment" with federal tax collection efforts widely distributed throughout the country, along with domestic distillers. Beck, *Neglected History,* 1297-98. Expanded *qui tam* provisions helped the government monitor these domestic collection activities.[15]

Conversely, the First Congress also passed the Collection Act in 1789,[16] and congressmen's correspondence at the time reflects debate about whether informers should be used as an enforcement mechanism for collections relating to importing goods. Beck, *Neglected History,* 1292-93. Congress selectively included bounty-only provisions for revenue offenses against private parties, but permitted *qui tam* enforcement actions against collectors who failed to comply with statutory duties. *Id.* at 1293-94.

The enactment history of the early Congresses does not show reactive adoption of English law. Rather, it reflects careful consideration of *qui tam* enforcement because those early Congresses bolstered *qui tam* provisions as needed. For example, the first statute regulating interaction with Native American tribes was passed by the First Congress as a bounty-only statute, but was amended by the Second Congress to add an "expanded regulatory regime" with different divisions of the forfeiture depending on

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allowing an unaggrieved party to seize property and institute an action in debt]) (May 8, 1792).

[15] There is no evidence Hamilton had any constitutional objections to *qui tam* enforcement. In fact, Baronia and her co-authors identified correspondence between Hamilton and an auditor for the Treasury Department discussing the impact of the pardon power on *qui tam* actions. Baronia, at 37. Hamilton and the auditor determined that the *qui tam* claim could not be displaced. *Id.* at 37-38.

[16] An Act to Regulate the Collection of the Duties Imposed by Law on the Tonnage of Ships or Vessels, and on Goods, Wares and Merchandises Imported into the United States, ch. 5, 1 Stat. 29 (1789).

whether the informer or the United States initiated suit. Beck, at 23.[17] The Fourth and Fifth Congresses passed statutes replacing or amending the regulatory regime for trade with native tribes, but retained the *qui tam* provisions authorizing informer actions. *Id.* at 23-24.[18] By way of further example, the Second Congress implemented postal service regulations enforced by uninjured informer actions, and subsequent statutes by the Third and Fifth Congresses contained comparable *qui tam* provisions.[19]

This history of enactment throughout the early Congresses demonstrates that there was a consensus around the use of *qui tam* provisions by the Framers of the Constitution. Far from there being evidence that *qui tam* was incompatible with the Constitution, "Congress deployed private enforcement—mostly informer's actions— to implement nearly every one of its constitutionally enumerated powers: to make war; raise and support a military; grant copyrights and patents; regulate immigration; establish post offices; lay and collect taxes; coin money; and regulate commerce between the states and with Indian tribes." Baronia, at 36.

IV. Federal Qui Tam Enforcement Is Evident in Post-Ratification Practice.

The historical evidence confirms that *qui tam* provisions were not just enacted, but used to enforce federal law. In *Adams, qui tam v. Woods*, the Supreme Court applied a

[17] An Act to Regulate Trade and Intercourse with the Indian Tribes, ch. 19, § 12, 1 Stat. 329 (Mar. 1, 1793).

[18] An Act to Regulate Trade and Intercourse with the Indian Tribes, and to Preserve Peace on the Frontiers, ch. 30 § 18, 1 Stat. 469, § 21 (May 19, 1796); An Act to Regulate Trade and Intercourse with the Indian Tribes, and to Preserve Peace on the Frontiers, ch. 46, 1 Stat. 743 (Mar. 3, 1799).

[19] Beck, at 24, *citing* An Act to Establish the Post-Office and Post-Roads Within the United States, ch. 7, 1 Stat. 232, § 25 (Feb. 20, 1792); *See* An Act to Establish the Post-Office and Post-Roads Within the United States, ch. 23, 1 Stat. 354, § 25 (May 8, 1794); An Act to Establish the Post-Office of the United States, ch. 43, 1 Stat. 733, § 24 (Mar. 2, 1799).

statute of limitations in a *qui tam* action under the Slave Trade Act. 6 U.S. (2 Cranch) 336, 342, 1805 U.S. Dist. LEXIS 279 (Feb. 19, 1805). There is no indication the Court raised concerns about the constitutionality of the Act. And certainly this was at a time when the Court carefully considered such issues, as this *qui tam* matter was decided after the Court's 1803 decision on mandamus in *Marbury v. Madison*, delivered by Chief Justice Marshall. 5 U.S. (1 Cranch) 137, 153 (1803).

In this same time frame, Justice Marshall delivered an opinion of the Court regarding jurisdiction over a *qui tam* action under penal provisions governing the District of Columbia. *United States v. Simms*, 5 U.S. 252, 259 (U.S. February 23, 1803) ("an action of debt in the name of the United States and of the informer, would seem to be the remedy given by the act"). Just years before, in 1788, Marshall was also personally involved in Virginia's ratification of the Constitution.[20]

Justice Story was also no stranger to *qui tam* actions. "Justice Story helped compile the first complete edition of the colonial session laws of Massachusetts, which included dozens of informer's actions." Baronia, at 34-35. "He also voted to enact *qui tam* laws, both as a federal Congressman and as a Representative in the Massachusetts state legislature." *Id.* For example, in *Brown v. United States* (1814), Justice Story specifically dismissed the suggestion that there was anything improper about the co-mingling of the interests of the United States and the informer. 12 U.S. (8 Cranch) 110, 130-131 (1814) ("I do not think this exception is entitled to much consideration"). Justice

[20] *See Biographies of the Secretaries of State: John Marshall (1755-1835)*, available at https://history.state.gov/departmenthistory/people/marshall-john

Story's experience would have been similar to other Founding Era jurists. For example, in his lectures on law, Justice Wilson (1789-1798) referenced *qui tam* as an ordinary component of criminal prosecutions and civil suits.[21]

Qui tam actions were not just selectively employed by Congress, and heard by the courts, but resulted in recorded revenue to the Treasury. In a "Message from the President of the United States" dated January 26, 1829, President Adams reported, among other things, on the recovery of fines, forfeitures, and other collections.[22] The table included $8,400 in penalties imposed upon slave traders via *qui tam* suits between 1802 and 1803. *Id.* at 12, 14. It showed $658.36 fines assessed via *qui tam* for violation of internal revenue laws taxing distilled spirits. *Id.* In a similar example, an 1816 report from the Secretary of the Treasury noted $10 recovered in Connecticut in 1814 via the *qui tam* suit *Fosdick v. Rotham*.[23]

The Slave Trade Act, passed by the Third Congress, has perhaps the most detailed survey to date of the history of its specific enactment and enforcement through *qui tam* provisions. Professor Pfander's detailed examination reveals that the statute originated from a proposal in the First Congress to ban slavery, with James Madison urging Congress to enact a middle ground regulating international commerce. Pfander, at 479. By 1789, that middle ground was enacted, in a law deemed to "facilitate federal

[21] Verkamp Decl., Ex. 6, 3 James Wilson and Bird Wilson, *The Works of the Honourable James Wilson*, L.L.D. 144 (Philadelphia: Lorenzo Press 1804) ("A second mode of prosecuting crimes and offences is by information. Some informations are brought . . . at the suit of a citizen. These are a species of qui tam actions . . .).

[22] Verkamp Decl., Ex. 7.

[23] Verkamp Decl., Ex. 8.

enforcement at the waterfront." *Id.* at 480.[24] Signed into law by President Washington, "the 1794 Act reflects a remarkable consensus as to the legitimacy of no-injury informer litigation." *Id.* at 481. Pfander's evaluation of Founding Era evidence identified many *qui tam* actions brought by informers to enforce the Slave Trade Act. *Id.* at 481-487.[25]

Notwithstanding the heavy lift it would be to trace every *qui tam* statute and early enforcement decision (and in the case of original handwritten records, a proverbial needle-in the-haystack search), the available records strongly reflect deliberateness on the part of Congress and the use of these *qui tam* provisions going back to the earliest days of our country. Attached at Ex. 9 to the Verkamp Decl. is a list of early *qui tam* decisions involving informer actions identified by news articles and other means.[26] These decisions are by no means exhaustive, but in addition to the Pfander analysis, significantly

[24] To the extent Defendants attempt to exclude enforcement mechanisms like the Slave Trade Act as peculiar only to admiralty, such an argument does not bear weight. Not only was *qui tam* enforcement used in other necessary activities of the government, but, at that time, admiralty and customs was a large part of the federal docket. For example, in the year 1814, the First Circuit, U.S. Court of Appeals reported on ninety-six cases. Almost all of them were decided by Justice Joseph Story, as Supreme Court justices then "rode circuit," hearing cases at the appellate level. Seventy-one of these cases (74%) were related to admiralty, customs, or the embargo. 1 John Gallison, *Reports of Cases Argued and Determined in the Circuit Court of the United States for the First Circuit* (1815) ("the many admiralty and maritime cases").

[25] Relator's counsel identified evidence of other Slave Trade Act *qui tam* actions decisions in other districts outside the scope of Professor Pfander's article. Because of their age, some district court archives are in original hard copy or in microfiche available at the National Archives. Indeed, Professor Pfander focused on Rhode Island because he was able to use digital archives for portions of those records. Pfander, at 472. Examples include *Sherman qui tam v. The Schooner Exchange*, U.S.D.C. New York (1803), in which Hamilton represented the vessel owner in a *qui tam* action (Verkamp Decl., Ex. 10, attaching decision and excerpt from 2 Julius Goebel, Jr., *The Law Practice of Alexander H*amilton, 857 (1969)), and *Samuel Adams qui tam vs. John Edwards*, (September Term 1802) and *Samuel Adams qui tam vs. Thomas Brown* (December Term 1803) reflecting *qui tam* enforcement actions in D. Mass. (Verkamp Decl, Ex. 11, attaching decisions from National Archives).

[26] Through archived news reports, legal research, and inquiry into the works of legal historians, Relator identified a body of caselaw demonstrating the use of *qui tam* statutes from the founding era through the passage of the FCA. Relator cross-referenced caselaw, historic publications, congressional records, and statutory provisions to distill this information into a convenient format, with citations, for the Court's review.

represent the use of *qui tam* statutes. Not one of these decisions or news reports reflect constitutional concern.

Other pieces of historical evidence emphasize this point. For instance, in 1844, with the support of the postmaster, Lucius W. Stockton of Uniontown, Pennsylvania initiated 169 federal *qui tam* suits to recover penalties from state toll collectors on the Cumberland Road. Stockton was not a government official; he was the manager of the National Stage Coach lines, under contract with the postal service to carry the mail. His suits contended that the Commonwealth of Pennsylvania had no right to tax mail carriers under the 1825 postal act.[27]

V. The False Claims Act is Well-Supported by Founding Era History and Practice.

In *The Laura*, the Supreme Court considered the constitutionality of a penal statute applicable to the number of passengers on steam vessels, in which the vessel owner challenged under Article II the right of an informer to enforce a lien for penalties under the statute when he obtained a pardon from the Secretary of the Treasury. 114 U.S. 411 (1885). The Court rejected that the pardon power was exclusive, because to hold such would mean rejecting practice "which has been observed and acquiesced in for nearly a century." *Id.* at 414. The Court recognized that "none of the cases in this court or in the Circuit and District Courts of the United States, involving the operation or effect of such warrants of remission, was it ever suggested or intimated that the legislation was an encroachment upon the President's power of pardon…" *Id.* at 415. The Court's decision

[27] Verkamp Decl., Ex. 12, *Presidential Message Transmitting Opinions of Attorneys General*, pt. 2: 1838-51 (1851), 2054-2056; James Hadden, *A History of Uniontown: The County Seat of Fayette County, Pennsylvania* 194-195 (1913).

rested on the principle that:

> The construction placed upon the Constitution by the first act of 1790, and the act of 1802, by the men who were contemporary with its formation, many of whom were members of the convention which framed it, is, of itself, entitled to very great weight; and when it is remembered that the rights thus established have not been disputed during a period of nearly a century, it is conclusive.

114 U.S. at 416 (*citing Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 57 (1884)). *The Laura* – decided twenty years after the passage of the FCA – is instructive as to the conclusion that a type of law, in this case *qui tam* statutes, passed by "men who were contemporary with [the Constitution's formation]" is "conclusive[ly]" constitutional.

So too, here. The FCA's *qui tam* provisions were enacted by Congress and signed into law by President Lincoln, based on Congress's identification of specific needs for *qui tam* enforcement – much like the selective enactment of the early Congresses along specific needs.[28] "So far as we know, the [Founding Era] statutes were signed without objection by early Presidents and applied in judicial proceedings without anyone raising a constitutional issue under Article II." Beck, at 40. Rather, the historical evidence reflects that those contemporary with the Constitution's formation raised no constitutional concern with such provisions, but instead enacted such laws when necessary—on both the federal and state level—and construed them with far less executive control than in place for the FCA. The Court should find, consistent with the analysis in *Bruen* and *CFPB*, that this evidence confirms that the FCA is constitutional.

[28] *E.g.,* Sylvia, Claire M., (2010). *The False Claims Act: Fraud Against the Government*, 2nd ed., Thomson West, Rochester, N.Y, §2:6, pp.41-48. Congress continued to strengthen the FCA for the same specific reasons. S. Rep. 99-345, 1986 U.S.S.C.A.N. 5266, 5267-68 (It was "in the face of [] sophisticated and widespread fraud" that Congress sought "a coordinated effort of both the Government and citizenry [to] decrease this wave of defrauding public funds").

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2024, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will provide electronic service to all counsel of record.

By: */s/ Jennifer M. Verkamp*
Jennifer M. Verkamp

Counsel for Relator Dr. Clarissa Zafirov

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA *ex rel.* DR. CLARISSA ZAFIROV, Plaintiff and Relator, v. FLORIDA MEDICAL ASSOCIATES, LLC, d/b/a VIPCARE; PHYSICIAN PARTNERS, LLC; ANION TECHNOLOGIES, LLC; FREEDOM HEALTH, INC.; and OPTIMUM HEALTHCARE, INC.; Defendants.	)	NO. 8:19-cv-01236-KMM-SPF

DECLARATION OF JENNIFER M. VERKAMP IN SUPPORT OF RELATOR'S SUPPLEMENTAL BRIEFING ON FOUNDING ERA HISTORICAL EVIDENCE REGARDING FEDERAL QUI TAM ENFORCEMENT

I, Jennifer M. Verkamp, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a resident of Ohio and over 18 years old.

2. I am an attorney with Morgan Verkamp, LLC, which represents Relator Dr. Clarissa Zafirov in the above-captioned matter.

3. I make this declaration in support of Relator's Supplemental Briefing on Founding Era Historical Evidence Regarding Federal Qui Tam Enforcement.

4. Attached as Exhibit 1 is a true and correct copy of the law review article cited as Randy Beck, *TransUnion, Vermont Agency and Statutory Damages Under Article III* (August 23, 2023), accepted for publication in Florida Law Review.

5. Attached as Exhibit 2 is a true and correct copy of the law review article cited as Nitisha Baronia et al., *Private Enforcement and Article II* (draft published May 8, 2024).

6. Attached as Exhibit 3 is a true and correct copy of the law review article cited as James E. Pfander, *Public Law Litigation in Eighteenth Century America: Diffuse Law Enforcement in a Partisan World*, 92 Fordham L. Rev. 469 (2023).

7. Attached as Exhibit 4 is a true and correct copy of the law review article cited as Randy Beck, *Qui Tam Litigation Against Government Officials: Constitutional Implications of a Neglected History*, 93 Notre Dame L. Rev. 1235, 1254 (2018).

8. Attached as Exhibit 5 is a non-exhaustive summary of founding era *qui tam* statutes prepared by counsel, narrowed to uninjured informer cause of actions.

9. Attached as Exhibit 6 is a true and correct copy of an excerpt from 3 James Wilson and Bird Wilson, *The Works of the Honourable James Wilson, L.L.D.* 144 (Philadelphia: Lorenzo Press 1804).

10. Attached as Exhibit 7 is a true and correct copy of a Message from President of the United States John Quincy Adams dated January 26, 1829 regarding *qui tam* recoveries.

11. Attached as Exhibit 8 is a true and correct copy of a Report of the Secretary of the Treasury in Relation to Expenses in the Prosecution of Offences Against the United States dated April 1, 1816, regarding *qui tam* recoveries.

12. Attached as Exhibit 9 is a non-exhaustive list of founding era judicial opinions and other publications, prepared by or at the direction of counsel, which demonstrate the use and enforcement of *qui tam* statutes by uninjured informers.

13. Attached as Exhibit 10 is a true and correct copy of excerpts from Julius Goebel, Jr. and Joseph H. Smith, *The Law Practice of Alexander Hamilton Documents and Commentary Volume II* (New York: William Nelson Cromwell Foundation by Columbia University Press, 1969) and a handwritten legal opinion in the matter captioned *Sherman qui tam v. The Schooner Exchange*, U.S.D.C. New York (1803).

14. Attached as Exhibit 11 is a true and correct copy of handwritten legal opinions from the National Archives in the matters captioned *Samuel Adams qui tam vs. John Edwards*, (September Term 1802) (downloaded from the National Archives at https://catalog.archives.gov/id/6803655) and *Samuel Adams qui tam vs. Thomas Brown* (December Term 1803) (downloaded from the National Archives at https://catalog.archives.gov/id/7290794), reflecting *qui tam* enforcement actions.

15. Attached as Exhibit 12 is a true and correct copy of a Presidential Message Transmitting Opinions of the Attorney General dated September 1, 1838, and James Hadden, *A History of Uniontown: The County Seat of Fayette County,*

Pennsylvania (Uniontown: James Hadden, 1913), regarding the enforcement of 169 *qui tam* actions relating to the imposition of tolls on postal carriers.

16. Attached as Exhibit 13 is a true and correct copy of a newspaper publication regarding the case *Talbot qui tam v. The Ship Amelia*, 4 U.S. 34 (1800).

17. Attached as Exhibit 14 is a true and correct copy of a newspaper publication regarding the case *Clayton et al. v. Stone et al.,* 2 Paine 382 (2d Cir. 1829).

18. Attached as Exhibit 15 is a true and correct copy of a newspaper publication regarding the case *Blunt v. Patten*, 2 Paine 393 (2d Cir. 1828).

19. Attached as Exhibit 16 is a true and correct copy of a newspaper publication regarding the case *Dwight v. Appleton*, 1 N.Y. Legal Obs. 198 (2d Cir. 1840).

20. Attached as Exhibit 17 is a true and correct copy of a newspaper publication regarding the case *Ferrett & Arthur qui tam v. Atwill*, 4 NY Legal Observer 294 (2d Cir. 1846).

21. Attached as Exhibit 18 is a true and correct copy of a newspaper publication regarding the case *Stevens v. Gladding*, 60 U.S. 64 (1856).

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 21st day May 2024.

/s/ Jennifer M. Verkamp
Jennifer M. Verkamp
Counsel for Relator Dr. Clarissa Zafirov

USCA11 Case: 24-13581 Document: 40-2 Date Filed: 01/08/2025 Page: 134 of 330

Relator's Exhibit 5:
Non-Exhaustive Summary of Founding-Era *Qui Tam* Statutes Prepared by Counsel, Narrowed to Uninjured Informer Causes of Action.

Citation	Name of Statute	Date of Passage	Congress	Right of Action by Uninjured Informer*
Act of July 31, 1789, ch. 5, § 38, 1 Stat. 48	An Act to regulate the Collection of the Duties imposed by law on the tonnage of ships or vessels, and on goods, wares and merchandises imported into the United States.	July 31, 1789	First Congress, First Session	Yes.
Act of Mar. 1, 1790, ch. 2, § 3, 1 Stat. 101, 102	An Act providing for the enumeration of the Inhabitants of the United States.	March 1, 1790	First Congress, Second Session	Yes. Statute cited in *Stevens*, 529 U.S. at 777 n.6 (2000) as "provid[ing] both a bounty and an express cause of action."
Act of April 30, 1790, ch. 9 S 16, 1 Stat. 112, 116	An Act for the Punishment of certain Crimes against the United States.	April 30, 1790	First Congress, Second Session	Yes.
Act of July 5, 1790, ch. 25, § 1, 1 Stat. 129	An Act for giving effect to an act intituled "An act providing for the enumeration of the Inhabitants of the United States," in respect to the state of Rhode Island and Providence Plantations.	July 5, 1790	First Congress, Second Session	Yes. Statute cited in *Stevens*, 529 U.S. at 777 n.6 (2000) as "provid[ing] both a bounty and an express cause of action."
Act of July 20, 1790, ch. 29, 1, 4, 1 Stat. 131, 133	An Act for the government and regulation of Seamen in the merchants service.	July 20, 1790	First Congress, Second Session	Yes. Statute cited in *Stevens*, 529 U.S. at 777 n.6 (2000) as "provid[ing] both a bounty and an express cause of action."
Act of July 22, 1790, ch. 33, 3, 1 Stat. 137, 137-138	An act to regulate trade and intercourse with the Indian tribes.	July 22, 1790	First Congress, Second Session	Yes. Statute cited in *Stevens*, 529 U.S. at 777 n.6 (2000) as "provid[ing] both a bounty and an express cause of action."
Act of Aug. 4, 1790, ch. 35, § 55, 1 Stat. 145, 173	An Act to provide more effectually for the collection of the duties imposed by law on goods, wares and merchandise imported into the United States, and on the tonnage of ships or vessels.	August 4, 1790	First Congress, Second Session	Yes. While this statute was cited in *Stevens*, 529 U.S. at 777 n.7 (2000) as "provid[ing] a bounty only," closer analsis by historians reflects that Congress selectively included bounty-only provisions for revenue offenses against private parties, but permitted *qui tam* enforcement actions against collectors who failed to comply with statutory duties. Brief at 9.
Act of Sept. 2, 1789, ch. 12, § 8, 1 Stat. 67	An Act to establish the Treasury Department.	September 2, 1789	First Congress, First Session	Likely. While this statute was cited in *Stevens*, 529 U.S. at 777 n.7 (2000) as "provid[ing] a bounty only," Professor Beck observed that the statutory language regarding the "information" by the informer likely referred to a right of action, citing (as *Stevens* also caveats in that footnote) the Court's holding in *Hess.** Beck, Fordham L.R. at 1300-1301; Beck *TransUnion* at 22.

USCA11 Case: 24-13581 Document: 40-2 Date Filed: 01/08/2025 Page: 135 of 330

Relator's Exhibit 5:
Non-Exhaustive Summary of Founding-Era *Qui Tam* Statutes Prepared by Counsel, Narrowed to Uninjured Informer Causes of Action.

Citation	Name of Statute	Date of Passage	Congress	Right of Action by Uninjured Informer*
Act of Mar. 3, 1791, ch. 15, § 44, 1 Stat. 199, 209	An Act repealing, after the last day of June next, the duties heretofore laid upon Distilled Spirits imported from abroad, and laying others in their stead; and also upon Spirits distilled within the United States, and for appropriating the same.	March 3, 1791	First Congress, Third Session	Yes. Statute cited in *Stevens*, 529 U.S. at 777 n.6 (2000) as "provid[ing] both a bounty and an express cause of action."
Act of February 20, 1792, ch. 7, S 25, 1 Stat. 232, 239	An Act to establish the Post-Office and Post Roads within the United States.	February 20, 1792	Second Congress, First Session	Yes.
Act of May 2, 1792, ch. 27	An Act for Raising a Farther Sum of Money for the Protection of the Frontiers, and for other purposes therein mentioned.	May 2, 1792	Second Congress, First Session	Yes.
Act of May 8, 1792 ch. 32	An Act Concerning Duties on Spirits Distilled Within the United States.	May 8, 1792	Second Congress, First Session	Yes.
Act of May 8, 1792 ch. 39	An Act to Provide for a Copper Coinage.	May 8, 1792	Second Congress, First Session	Yes.
Act of May 8, 1792 Ch 36 S 5, 1 Stat. 275, 277-8	An Act for regulating Processes in the Courts of the United States, and providing Compensation for the Officers of the said Courts, and for Jurors and Witnesses.	May 8, 1792	Second Congress, First Session	Yes.
Act of March 1, 1793, ch. 19 S 12, 1 Stat. 329, 331	An act to regulate trade and intercourse with the Indian tribes.	March 1, 1793	Second Congress, Second Session	Yes.
Act of March 22, 1974, ch. 11, 4, 1 Stat. 347, 349	An Act to prohibit the carrying of the Slave Trade from the United States to any foreign place or country.	March 22, 1794	Third Congress, First Session	Yes.
Act of May 8, 1794 ch. 23	An Act to Establish the Post-Office and Post-Roads Within the United States.	May 8, 1794	Third Congress, First Session	Yes.
Act of June 5, 1794, ch. 45, S 10, 1 Stat. 373, 375	An Act laying duties upon Carriages for the conveyance of Persons.	June 5, 1794	Third Congress, First Session	Yes.

USCA11 Case: 24-13581 Document: 40-2 Date Filed: 01/08/2025 Page: 136 of 330

Relator's Exhibit 5:
Non-Exhaustive Summary of Founding-Era *Qui Tam* Statutes Prepared by Counsel, Narrowed to Uninjured Informer Causes of Action.

Citation	Name of Statute	Date of Passage	Congress	Right of Action by Uninjured Informer*
Act of June 5, 1794, ch. 50	An Act in addition to the act for the punishment of certain crimes against the United States.	June 5, 1794	Third Congress, First Session	Yes.
Act of May 19, 1796, ch. 30, S 18, 1 Stat. 469, 474	An Act to regulate Trade and intercourse with the Indian tribes, and to preserve Peace on the Frontiers.	May 19, 1796	Fourth Congress, First Session	Yes.
Act of March 3, 1797, ch. 20	An Act to provide more effectually for the Settlement of Accounts between the United States, and Receivers of public Money.	March 3, 1797	Forth Congress, Second Session	Yes.
Act of July 6, 1797, ch. 11, S 20, 1 Stat. 527, 532	An Act laying Duties on stamped Vellum, Parchment and Paper.	July 6, 1797	Fifth Congress, First Session	Yes.
Act of June 13, 1798 ch. 53	An Act to Suspend the Commercial Intercourse between the United States and France, and the Dependencies Thereof.	June 13, 1798	Fifth Congress, Second Session	Yes.
Act of June 18, 1798 ch. 54	An Act supplementary to and to Amend the Act, Intituled “An Act to Establish an Uniform Rule of Naturalization; and to Repeal the Act heretofore Passed on that Subject.	June 18, 1798	Fifth Congress, Second Session	Yes.
Act of June 25, 1798 ch. 60	An Act to authorize the defense of the Merchant Vessels of the United States against French depredations.	June 25, 1798	Fifth Congress, Second Session	Yes.
Act of February 28, 1799, ch. 17, S 5, 1 Stat. 622, 623	An Act to alter the Stamp Duties imposed upon Foreign Bills of Exchange and Bills of Lading, by an act intituled "An act laying duties on stamped vellum, parchment and paper," and further to amend the same.	February 28, 1799	Fifth Congress, Third Session	Yes.
Act of May 10, 1800 ch. 51	An Act in addition to the act intituled "An act to prohibit the carrying on the Slave Trade from the United States to any foreign place or country."	May 10, 1800	Sixth Congress, First Session	Yes.
Act of March 2, 1799 ch. 43	An Act to Establish the Post-Office of the United States.	March 2, 1799	Fifth Congress, Third Session	Yes.
Act of March 3, 1801, ch. 24, S 2, 2 Stat. 115, 115	An Act supplementary to the act intituled "An act concerning the District of Columbia."	March 3, 1801	Sixth Congress, Second Session	Yes.
Act of April 2, 1802, ch. 13, S 18, 2 Stat. 139, 145	An Act to regulate Trade and intercourse with the Indian tribes, and to preserve Peace on the Frontiers.	April 2, 1802	Seventh Congress, First Session	Yes.
Act of April 29, 1802 Ch 36 SS 3-4, 2 Stat. 171, 172	An Act supplementary to an act, intituled "An act for the encouragement of learning, by securing copies of maps, charts, and books to the authors and propietors of such copies during time therein mentioned," and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints.	April 29, 1802	Seventh Congress, First Session	Yes.
Act of May 3, 1802, ch. 48, 4, 2 Stat. 189, 191	An Act further to alter and establish certain Post Roads; and for the more secure carriage of the Mail of the United States.	May 3, 1802	Seventh Congress, First Session	Yes.

USCA11 Case: 24-13581 Document: 40-2 Date Filed: 01/08/2025 Page: 137 of 330

Relator's Exhibit 5:
Non-Exhaustive Summary of Founding-Era *Qui Tam* Statutes Prepared by Counsel, Narrowed to Uninjured Informer Causes of Action.

Citation	Name of Statute	Date of Passage	Congress	Right of Action by Uninjured Informer*
Act of February 28 1803, ch. 9	An Act supplementary to the act concerning consuls and vice-consuls, and for the further protection of American Seamen.	February 28, 1803	Seventh Congress, Second Session	Yes.
Act of March 26, 1804, ch. 38, S 10, 2 Stat. 283, 286	An Act erecting Louisiana into two territories, and providing for the temporary government thereof.	March 26, 1804	Eighth Congress, First Session	Yes.
Act of March 2, 1807, ch. 22, S 3, 2 Stat. 426, 426	An Act to prohibit the importation of Slaves into any port of place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord one thousand eight hundred and eight.	March 2, 1807	Ninth Congress, Second Session	Yes.
Act of June 26, 1812 ch. 107	An Act concerning Letters of Marque, Prizes, and Prize Goods.	June 26, 1812	Twelfth Congress, First Session	Yes.
Act of February 3, 1831, ch. 16	An act to amend the several acts respecting copyrights.	February 3, 1831	Twenty-First Congress, Second Session	Yes.
25 USC § 201	Penalties; how recovered.	June 30, 1834	Twenty-Third Congress, First Session	Yes.
Act of March 3, 1839 ch. 80	An Act to provide for taking the sixth census or enumeration of the inhabitants of the United States.	March 3, 1839	Twenty-Fifth Congress, Third Session	Yes.
Act of August 5, 1861, ch. 45, 11, 12 Stat. 292, 297	An Act to provide increased Revenue from Imports, to pay Interest on the Public Debt, and for other Purposes.	August 5, 1861	Thirty-Seventh Congress, First Session	Yes.
Act of March 2, 1863, ch. 67, 12 Stat. 696.	An Act to prevent and punish Frauds upon the Government of the United States.	March 2, 1863	Thirty-Seventh Congress, Third Session	Yes.
Act of July 4, 1864, ch. 249, S 9, 13 Stat. 390, 392	An Act further to regulate the Carriage of Passengers in Steamships and other vessels.	July 4, 1864	Thirty-Eighth Congress, First Session	Yes.
Act of July 8, 1870, ch. 230, 39, 16 Stat. 198, 203	Patent Act of 1870.	July 8, 1870	Forty-First Congress, Second Session	Yes.
Act of July 8, 1870, ch. 230, S 39, 16 Stat. 198, 203	An Act to revise, consolidate, and amend the Statutes relating to Patents and Copyrights.	July 8, 1870	Forty-First Congress, Second Session	Yes.
25 U.S.C § 81	Contracts with Indian Nations.	March 3, 1871	Forty-First Congress, Third Session	Yes.
Act of Feb. 28, 1871	An Act to provide for the better Security of Lige on board of Vessels propelled in Whole or in Part by Steam, and for other Purposes.	February 28, 1871	Forty-First Congress, Third Session	Yes.
18 U.S.C. § 962	Arming vessel against friendly nation.	March 4, 1909	Sixtieth Congress, Second Session	Yes.

* The Supreme Court held in *United States ex rel. Marcus v. Hess* that "[s]tatutes providing for a reward to informers which do not specifically either authorize or forbid the informer to institute the action are construed to authorize him to sue." 317 U.S. 537, 541 n.4 (1943) (*citing Adams v. Woods* , 2 Cranch 336 (1805)); *see also; Vermont Agency of Nat. Res. v. United States ex rel. Stevens,* 529 U.S. 765, 777 n.7 (2000) (reciting this rule of construction). As such, Relator's list is likely underinclusive.

CHAPTER X.

OF THE DIFFERENT STEPS PRESCRIBED BY THE LAW, FOR APPREHENDING, DETAINING, TRYING, AND PUNISHING OFFENDERS.

I NOW proceed to the different steps which the law prescribes for apprehending, detaining, trying, and punishing criminals.

A warrant is the first step usually taken for their apprehension.

A warrant is a precept from a judicial to a ministerial officer of justice, commanding him to bring the person mentioned in it, before him who issues it, or before some other officer having judicial authority in the cause.[a] This warrant should be under the hand and seal of the magistrate issuing it: it should mention the time and place of making it, and the cause for which it is granted. It

[a] Wood. Ins. 81, 1. Bl. Com. 137. 4. Bl. Com. 287.

may be either to bring the party generally before any magistrate, or specially to bring him before the magistrate only who grants it. It may be directed to the sheriff, constable, or to a private person; for the warrant constitutes him, for this purpose, an authorized officer.[b]

By the constitution of Pennsylvania,[c] no warrant to seize persons shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation. Such warrant may be granted, even by any justice of the peace, for treason, felony, or any other offence against the peace.[d]

When the warrant is received by the person to whom it is directed, he is authorized, and, if a publick officer, obliged to execute it, so far as the jurisdiction of the magistrate and himself extends.[e] A sheriff may depute others; but every other person is obliged himself to execute it; though others may lawfully assist him. A warrant directed to all constables generally can be executed by each only in his own precinct: but a warrant directed to a particular constable by name, may be executed by him any where within the jurisdiction of the magistrate.[f]

The execution of the warrant is commenced by an arrest; which is the apprehending or restraining of the person, whom it mentions or describes.[g] But, besides those arrests which are made in the execution of warrants, there are others enjoined or justified by the law.

[b] 2. Haw. 85. [c] Art. 9. s. 8. [d] 2. Haw. 84.

[e] 4. Bl. Com. 288. [f] 2. Haw. 86. [g] 4. Bl. Com. 286.

All, of age, who are present when a felony is committed, or when a dangerous wound is given, are, on pain of fine and imprisonment, bound to apprehend the person who has done the mischief.[h] If the crime has been committed out of their view, they are, upon a hue and cry, obliged to pursue with the utmost diligence, and endeavour to apprehend him who has committed it. Hue and cry is the pursuit of an offender from place to place, till he is taken: all who are present when he commits the crime, are bound to raise it against him on his flying for it. Every one is obliged to assist an officer demanding his assistance, in order to apprehend a felon, to suppress an affray, or to secure the persons of affrayers.[i] In all these cases, the doors of houses may, if necessary, be broken open for the apprehension of the offenders, if admittance is refused on signifying the cause of demanding it.[j]

It is a general rule, that, at any time, and in any place, every private person is justified in arresting a traitor or a felon; and, if a treason or a felony has been committed, he is justified in arresting even an innocent person, upon his reasonable suspicion that by such person it has been committed.[k] If one see another upon the point of committing a treason or a felony, or doing any act which would manifestly endanger the life of another; he may lay hold on him, and detain him till it may be presumed reasonably that he has altered his design.[l] In the case of a mere breach of the peace, no private person can arrest one for it after it is over.[m]

[h] 2. Haw. 74. [i] Id. 75. [j] Id. 86. 4. Bl. Com. 289.

[k] 2. Haw. 76. [l] Id. 77. [m] Id. ibid.

Whenever an arrest may be justified by a private person, it may *a fortiori* be justified by an officer of justice.[n] In addition to their own personal exertions, they have a right to demand the assistance of others.[o] A constable may not only arrest affrayers, but may also detain them till they find security for the peace.[p] A justice of the peace may, by parol, authorize any one to arrest another, who, in his presence, is guilty of an actual breach of the peace, or, in his absence, is engaged in a riot.[q]

Whenever a person is arrested for a crime, he ought to be brought before a justice of the peace, or other judicial magistrate. This magistrate is obliged immediately to examine into the circumstances of the crime alleged; and according to the result of this examination, the person accused should be either discharged, or bailed, or committed to prison.

If it clearly appear that no crime was committed, or, if committed, that the suspicion conceived against the prisoner is entirely unfounded; he should be restored to his liberty.[r]

To bail a person is to deliver him to his sureties, who give sufficient security for his appearance: he is intrusted to their friendly custody, instead of being committed to the confinement of the gaol. At the common law, every man accused or even indicted of treason or of any felony whatever, might be bailed upon good surety: for at the common law, says my Lord Coke,[s] the gaol was

[n] 2. Haw. 80. [o] Id. 81. [p] Id. ibid.

[q] Id. 83. [r] Id. 87. [s] 2. Ins. 189.

his pledge, who could find no other: he could be bailed, till he was convicted.

This part of the common law, however, is, in England, greatly altered by parliamentary provisions, which restrict, in numerous instances, the power of admitting to bail. Indeed it is obvious, that between the law of capital punishments and that of commitments, the connexion must be intimate and inseparable. In capital offences, no bail can be a security equal to the actual custody of the person: for what is there, which a man may not be induced to forfeit to save his life?[t] One court in England, and only one—the court of king's bench, or, in the time of the vacation, any judge of that court—still possesses the discretionary power of bailing in any case, according to its circumstances; excepting only such persons as are committed by either house of parliament, while the session lasts, and such as are committed for contempts by any of the superiour courts of justice.[u]

To refuse or to delay bail, where it ought to be granted, is a misdemeanor at the common law,[v] and may be punished on an indictment. By the constitution of Pennsylvania,[w] it is declared, as an inviolable rule, "that excessive bail shall not be required;" and "that all prisoners shall be bailable by sufficient sureties; unless for capital offences, when the proof is evident or presumption great."

If the crime is not bailable, or if the prisoner cannot find sureties, the magistrate is under the disagreea-

[t] 4. Bl. Com. 294.

[u] Id. 296.

[v] 2. Haw. 90.

[w] Art. 9. s. 13, 14.

ble necessity of ordering, by a warrant under his hand and seal and containing the cause of the order, that he shall be imprisoned in the publick gaol, till he be thence delivered by the due course of law.[x] This is a commitment.

This imprisonment, it ought to be remembered, is for the purpose only of keeping, not for that of punishing the prisoner: he ought, for this reason, to be treated with every degree of tenderness, of which his safe custody will possibly admit. In particular, a gaoler is not justified, by the law, in fettering a prisoner, unless where he is unruly, or where it is absolutely necessary to prevent an escape.[y] "Solent præsides in carcere continendos damnare ut in vinculis contineantur; sed hujusmodi interdicta sunt a lege, quia carcer ad continendos, et non puniendos, haberi debeat."[z] "Custodes vero gaolarum pœnam sibi commissis non augeant, nec eos torqueant; sed, omni sævitia remota, pietateque adhibita, judicia in ipsos promulgata debite exequantur."[a] Such is the law of imprisonment, ancient and approved.

When the party is taken, and bailed or imprisoned; the next step in order is, to institute a prosecution against him. This may be done by four different methods—by appeal; by information; by presentment; by indictment.

1. An appeal is an accusation by one private person against another for some crime: it is a private action of

[x] 4. Bl. Com. 297.

[y] 3. Ins. 34.

[z] Bract. 105. a.

[a] Fleta. l. 1. c. 26.

the party injured, demanding punishment for the injury which he has suffered: it is also a prosecution for the state, on account of the crime committed against the publick.[b]

In ancient times there were appeals for a breach of the peace, for a battery, and for false imprisonment, as well as for more aggravated injuries and crimes; but they have been out of use, and converted into actions of trespass, for many hundred years.[c]

An appeal lies for mayhem, for larceny, for arson, for rape, for death. It is brought by the party ravished, robbed, maimed, or whose house was burned; or by the wife, or, if no wife, by the heir, of the person killed.[d] An appeal may be brought previous to an indictment; and if the defendant be acquitted, he cannot afterwards be indicted for the same crime: if he is found guilty, he shall suffer the same punishment as if he had been convicted on a prosecution by an indictment.[e] An appeal may be discharged by the concurrence of all the parties interested—by a pardon of the crown, and by the release of the appellant.[f]

The appeal can be traced to the ancient forests of Germany. "Luitur homicidium," says Tacitus,[g] "certo armentorum ac pecorum numero; recipitque satisfactionem universa domus."

[b] 4. Bl. Com. 308. 2. Haw. 155.
[c] 2. Haw. 157.
[d] 2. Haw. 164. 4. Bl. Com. 310.
[e] 4. Bl. Com. 311.
[f] 1. Hale. P. C. 9.
[g] De mor. Ger. c. 21.

On this subject there is, in our law books, an immense profusion of professional learning. As the appeal is now but little used, I decline any minute inquiry concerning it: as it is still in force, it would have been improper wholly to have omitted it.

2. A second mode of prosecuting crimes and offences is by information. Some informations are brought partly at the suit of the state, and partly at the suit of a citizen. These are a species of *qui tam*[h] actions; and will be considered when we treat concerning civil suits.

Informations in the name of the state or of the crown alone are of two kinds: those which are filed *ex officio* by the publick prosecutor, and are properly at the suit of the publick; and those which are carried on in the name, indeed, of the commonwealth or crown, but, in fact, at the instance of some private person or common informer. The first have been the source of much; the second have been the source of intolerable vexation: both were the ready tools, by using which Empson and Dudley, and an arbitrary star chamber, fashioned the proceedings of the law into a thousand tyrannical forms. Neither, indeed, extended to capital crimes: but ingenious tyranny can torture in a thousand shapes, without depriving the person tortured of his life.

Restraints have, in England, been imposed upon the last species: but the first—those at the king's own suit, filed by his attorney general—are still unrestrained.[i] By the constitution of Pennsylvania, both kinds are effec-

[h] 4. Bl. Com. 303. [i] Id. 307.

Wilson, James, and Bird Wilson. The works of the Honourable James Wilson, LL.D. late one of the associate justices of the Supreme Court of the United States, and professor of law in the College of Philadelphia / published under the direction of Bird Wilson. Vol. 3, Lorenzo Press, 1804. The Making of Modern Law: Legal Treatises, 1800–1926, link.gale.com/apps/doc/F0105018528/MOML?u=camb55135&sid=bookmark-MOML&pg=141. Accessed 6 May 2024.

20th Congress, 2d Session. [Doc. No. 146.] H. of R. Executive.

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

TRANSMITTING,

In compliance with a resolution of the House of Representatives of 13th January, 1825,

A STATEMENT OF CONVICTIONS, EXECUTIONS, AND PARDONS,

Under the authority of the Government of the United States, since the adoption of the Constitution.

FEBRUARY 26, 1829.—Read, and laid upon the table.

To the House of Representatives of the United States:

WASHINGTON, *January* 26, 1829.

I transmit, herewith, a report from the Secretary of State, with voluminous documents, prepared and collected in compliance with a resolution of the House of Representatives of the 13th January, 1825, calling for a statement of convictions, executions, and pardons, for capital offences, under the authority of the Government of the United States, since the adoption of the Constitution.

JOHN QUINCY ADAMS.

REPORT

Of the Secretary of State, in pursuance of the following resolution of the House of Representatives, viz:

"That the President of the United States be requested to communicate to this House, a statement, showing, as far as may be in his power, 1st, The number of persons that have been convicted, since the adoption of the Constitution, of capital offences against the laws of the United States; 2d, The number that have been executed; 3d, The number that have been pardoned by the President of the United States, and of what offences they were convicted; and, also, a statement of the number that have been convicted of each particular offence."

DISTRICT OF MASSACHUSETTS—No. 2.

ACCOUNT of fines, recognizances, and appearance bonds, forfeited, &c. and moneys collected and not collected thereon, in the District and Circuit Courts of the United States, for the District of Massachusetts, together with the application of the funds arising therefrom, and the expense attending prosecution.

In what year.	Amount of Fine, or Forfeiture, &c.	For what offence imposed.	When, and by whom collected.	Not recovered, and the reason.	How applied.	Remitted, and by whom.	Expense paid by U. S.	Expense paid by the party.	Observations.
1790	Fine - $ 500	False oath at custom-house.							
1791	do - 100	Same as above.							
	do - 50	Perjury at cus. house	Dep. Mar. Bradford - -	- -	P'd to Coll'r.		-	19 66	
1793	do - 100	False oath at c. house	Marshall.	- -	- -	- -			
1794	do - 200	Serving on board a French armed vessel	S. Bradford, D'y Marshal, Feb. 1795.	- -	- -	- - -	-	16 50	
1795	do - 500	Manslaughter.							
1797	3 persons fined each, - 1,500	Forgery.							
	Fine - 50	Offering to pass counterfeit bills.							
	do - 150	Passing counterfeit bills.							
1798	do - 160	Larceny - -	- - -	Pardoned by Pres't	- -	Pres't & informer.			
	do - 100	Serving on board a French armed vessel	Clerk of Court -	- -	Unknown.				
1799	Forfeiture, 2 bonds, $ 500 each 1,000	Non-appearance -	Not collected -	Not found	- -	- - -	-	-	Neither property or bodies to be found.
	Fine - 400	Seditious publication.							
	do - 100	Forgery.							

[Doc. No. 146.]

21

DISTRICT OF MASSACHUSETTS.—No. 2.—Continued.

In what year.	Amount of Fine, or Forfeiture, &c.	For what offence imposed.	When, and by whom collected.	Not recovered, and the reason.	How applied.	Remitted, and by whom.	Expense paid by U. S.	Expense paid by the party.	Observations.
1799	Fine - $500	Unknown.							
	do - 8	Contempt of Court.							
1800	5 persons fined 480	Endeavor to make a revolt on high seas.							
1802	Fine - 16 66	Not serving as juror.							
	2 persons 120 00	Resisting cus. house officer and riot.							
1805	Fine - $50	Unknown.							
	do - 300	Passing counterfeit bills.							
	do - 150	Same.							
1806	Appearance bonds, 2 of $1,250 each 2,500	Embezzlement in Post Office.	June, 1806, by George Blake, Dist. Attorney.	- -	- -	- - -	-	-	Bail for Hen'y Deming. Recognizance defaulted.
1807	Appearance bond, unknown amount.								
	3 persons, 20 dollars each, - 60	Endeavor to make a revolt.	Not collected.	Pardoned by Pres't	- -	Pres't of U. States	139 54	-	Recognizance defaulted. Bail to give evidence, don't know whether collected or not.
	Fine - 7	Delinquent juror.							
	2 persons - 80	Arming foreign vessel.							
1810	Recognizance 300	Larceny in navy yard	- - -	- -	- -	- - -	-	-	Recognizance defaulted, 1810.
1811	Fine - 50	Illegal rescue of property.	- - -	- -	- -	- - -	-	50 60	Costs appear to have been received by Clerk. Unknown as to fine.
1813	Recognizance 1,000	Obtaining Brit. license	Unknown whether collected.	- -	- -	- - -	-	-	No execution.
1814	2 fines - 2,000	Manslaughter -	- - -	- -	- -	Pardoned by Pres't.			

1815	Fine -	1,000	Obtaining and using British license.	- - -	Pardoned - -	By President.		
	do -	200	Resisting custom-house officer.	Marshal -	- - - -	- - - -	- - -	Believed by Marshal Prince.
1816	do -	10	Enticing soldiers to desert					
	2 fines -	2	Endeavor to make a revolt.	- - - - -	- - - -	- - - -	- - -	Not known whether collected or not.
1817	Recognizance	2,000	Using British license	- - - -	- - - -	- - - -	- - -	No execution.
1818	2 fines -	10	Purchasing soldiers' clothes.	- - - -	- - - -	- - - -	- - -	Believed to have been collected by Marshal Prince.
	Fine -	25	Delinquent juror -	- - -	Remitted by Court.			
1819	do -	1	Misdemeanor.					
	do -	5	Resisting officer of revenue.	- - - - -	- - - -	- - - -	- - -	Fine probably paid to Marshal.
1820	do -	3,000	Slave trade -	- - -	Remitted by Pres't	- - President	- - -	Pardoned, May, 1822.
	do -	3,000	do					
1821	Recognizance	1,000	Non-appearance as witness.					
	Fine -	5	Misdemeanor.					
1822	do -	2,000	Forgery.					
1815	3 fines -	250	Resisting rev. officers	Clerk of Court	- -	Paid to Collector Newburyport.		
1823	Fine -	50	Manslaughter -	- - -	Remitted by Pres't	- - President	- - -	July, 1825.
1824	2 fines -	20	Endeavoring to make a revolt.	- - -	$10 remitted by Pres't.	- - $10, President	- - -	June, 1825.
1825	4 do -	20	Same.					
1826	Fine -	120	Larceny - -	- - -	Remitted by Pres't	- - President	- - -	February, 1828.
1827	do -	20	Larceny - -	- - -	Remitted by Pres't	- - President	- - -	May, 1827.
	do -	100	Manslaughter.					
	DISTRICT COURT.							
1809	Fine -	$20	Delinquent Juror.					

[Doc. No. 146.]

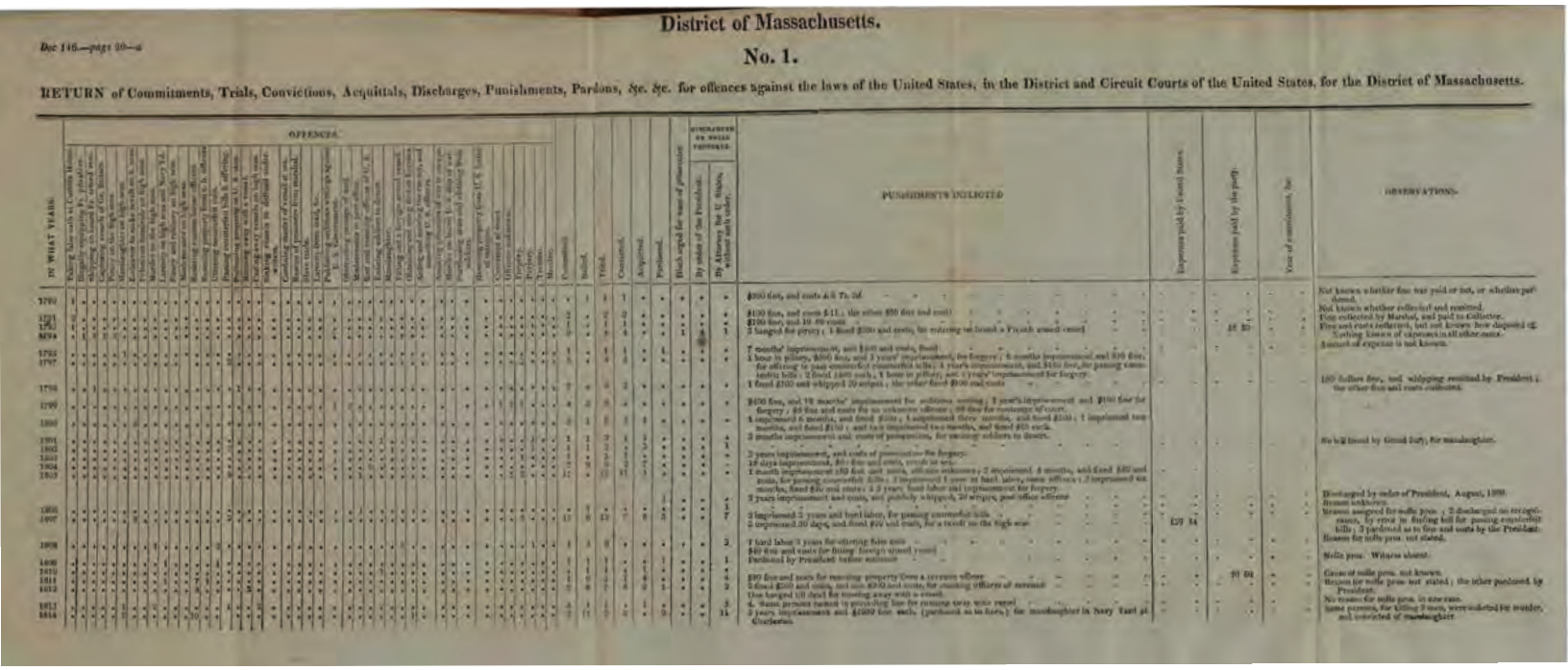
23

DISTRICT OF MASSACHUSETTS.—No. 3.

ACCOUNT of Penalties and Forfeitures recovered in the District and Circuit Courts of the United States for the District of Massachusetts, for breaches of the laws of Revenue and Navigation in that District.

In what year.	Article or sum forfeited.	Offence against what law.	Gross amount of sales.	Amount of expenses.	Costs paid by U. States.	Costs paid by the party.	Nett proceeds received by U. States.	Total.	Observations.
	CIRCUIT COURT.								
1798	Ship Alligator - -	Collect'n; appraism.	4,000 00	-	-	-	-	-	Decreed forfeit in appeal from District Court. $4,000 paid to Collector of Boston by claimant. Afterwards refunded to claimant, excepting $350, probably remitted by Secretary of the Treasury.
1800	400 dollars penalty - -	- - -	- -	72 86	-	-	none	-	Execution returned unsatisfied. Non est inventus 1802. Not known who paid expenses.
1801	Ship Deux Anges and cargo -	Prize to the frigates Constitution and Boston.	Unknown	none	-	-	-	-	Decreed one moiety to the United States, the other to captors. No account of sales.
	50 dollars penalty - -	Collection -	- -	-	-	-	-	-	It does not appear whether this penalty was paid. No execut'n.
1802	5 barrels rum - - -	do - -	- -	-	-	-	-	-	Decreed forfeited. No papers, no record.
	550 dollars—3 penalties -	Internal revenue -	- -	-	-	-	-	-	Execution issued for two penalties $300, but not to be found on file. $250 penalty paid by Marshal to Supervisor of Revenue.
	2,000 dollars penalty, qui tam action. Executed, but not on file.	Slave trade -	- -	195 87	-	61 96	-	311 96	

[Doc. No. 146.]

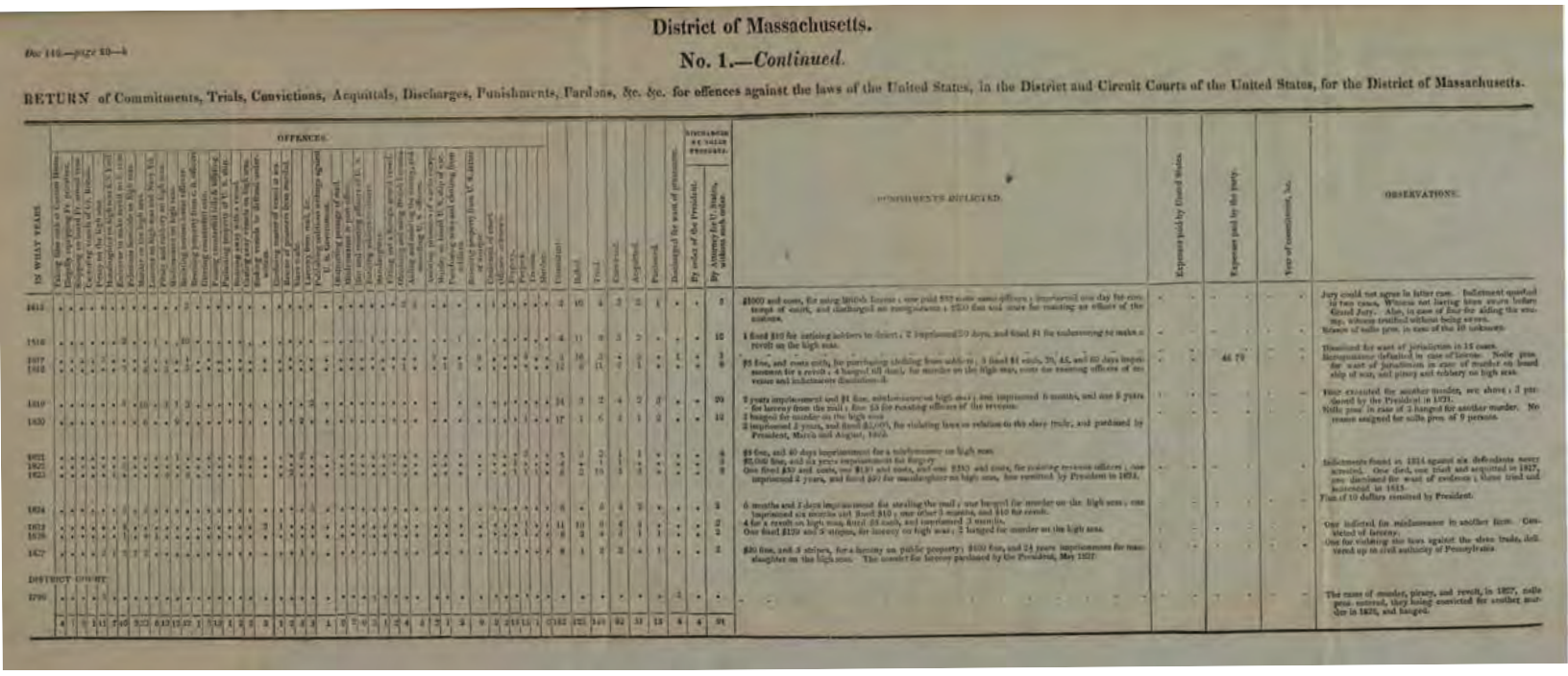


District of Massachusetts.

Doc 146.—page 10—a

No. 1.

RETURN of Commitments, Trials, Convictions, Acquittals, Discharges, Punishments, Pardons, &c. &c. for offences against the laws of the United States, in the District and Circuit Courts of the United States, for the District of Massachusetts.



District of Massachusetts.

No. 1.—*Continued.*

RETURN of Commitments, Trials, Convictions, Acquittals, Discharges, Punishments, Pardons, &c. &c. for offences against the laws of the United States, in the District and Circuit Courts of the United States, for the District of Massachusetts.

IN WHAT YEARS	OFFENCES	Committed	Bailed	Tried	Convicted	Acquitted	Pardoned	Discharged for want of prosecution	SENTENCES OF CAPITAL PUNISHMENT: By sentence of the President.	SENTENCES OF CAPITAL PUNISHMENT: By Attorney for U. States, without such order.	PUNISHMENTS INFLICTED.	Expenses paid by United States.	Expenses paid by the jury.	Fees of commissioner, &c.	OBSERVATIONS.
1815		2	16	4	3	2	1	.	.	3	$1000 and costs, for using British license; one paid $50 costs omitted; imprisoned one day for contempt of court, and discharged on compromise; $250 fine and costs for resisting an officer of the customs.	-	-	-	Jury could not agree in latter case. Indictment quashed in two cases. Witness not having been sworn before Grand Jury. Also, in case of four for aiding the escape, witness omitted without being sworn.
1816		4	11	9	3	2	.	.	.	12	1 fined $10 for enticing soldiers to desert; 2 imprisoned 30 days, and fined $1 for endeavoring to make a revolt on the high seas.	-	-	-	Witness of mills gone, in case of the 10 unknown.
1817 1818		3 12	16 9	3 11	2 1	1 .	. .	1 .	. .	3 9	$5 fine, and costs each, for purchasing clothing from soldiers; 3 fined $1 each, 30, 45, and 60 days imprisonment for a revolt; 4 hanged till dead, for murder on the high seas, were the remaining officers of the vessel and indictments dismissed.	-	-	46 79	-	Dismissed for want of jurisdiction in 15 cases. Incompetency defended in case of license. Nolle pros. for want of jurisdiction in case of murder on board ship of war, and piracy and robbery on high seas.
1819		14	3	2	4	2	2	.	.	10	2 years imprisonment and $1 fine, misdemeanor on high seas; one imprisoned 6 months, and one 8 years for larceny from the mail; fine $3 for resisting officers of the revenue.	-	-	-	Fine executed for another murder, see above; 2 pardoned by the President in 1821.
1820		17	1	6	1	1	2	.	.	12	2 hanged for murder on the high seas. 2 imprisoned 3 years, and fined $2,000, for violating laws in relation to the slave trade, and pardoned by President, March and August, 1820.	-	-	-	Nolle pros. in case of 2 hanged for another murder. No reason assigned for nolle pros. of 9 persons.
1821 1822 1823		3 5 12	1 4 10	2 1 5	1 . 3	1 1 2	. . .	. . .	. . .	4 1 3	$3 fine, and 40 days imprisonment for a misdemeanor on high seas. $5,000 fine, and six years imprisonment for forgery. One fined $50 and costs, one $1,01 and costs, and one $150 and costs, for resisting revenue officers; one imprisoned 2 years, and fined $50 for manslaughter on high seas, fine remitted by President in 1824.	-	-	-	-	Indictments found in 1814 against six defendants never arrested. One died, one tried and acquitted in 1817, one discharged for want of evidence; three tried and sentenced in 1815. Fine of 10 dollars remitted by President.
1824		6	.	6	4	2	.	.	.	3	6 months and 2 days imprisonment for stealing the mail; one hanged for murder on the high seas; one imprisoned six months and fined $10; one other 3 months, and $10 for costs.	-	-	-	-	
1825 1826		11 2	10 2	6 2	4 1	2 1	. .	. .	. .	2 2	4 for a revolt on high seas, fined 24 cents, and imprisoned 3 months. One fined $120 and 3 stripes, for larceny on high seas; 2 hanged for murder on the high seas.	-	-	-	-	One indicted for misdemeanor in another form. Convicted of larceny. One for violating the laws against the slave trade, dismissed up in civil authority of Pennsylvania.
1827		8	1	2	2	1	.	.	.	2	$20 fine, and 3 stripes, for a larceny on public property; $100 fine, and 24 years imprisonment for manslaughter on the high seas. The convict for larceny pardoned by the President, May 1827.	-	-	-	-	
DISTRICT COURT.															
1790		.	.	.	.	.	.	.	2	.		-	-	-	-	The cases of murder, piracy, and revolt, in 1827, nolle pros. entered, they being convicted for another murder in 1828, and hanged.
		91	4	6	82	33	13	8	4	91					

1804	500 dollars penalty	Collection		48 64		48 64			$500 amount penalty paid Geo. Blake, District Attorney.
1808	1,000 dollars penalty	Collection, unloading without permit.		234 00		234 00		1,234 00	Paid to George Blake, District Attorney.
	Schooner Louisa	Collection		255 68					Decreed forfeit on appeal from Maine District Court, and ordered to be sold. Warrant for sale not on file.
1809	Schooner Betsey and cargo	Embargo	2,741 92	474 25					Nett proceeds $2,267 67 paid to Collector of Boston. 48 paid by Clerk to Collector of New Bedford.
1812	10 barrels flour		48 00						
	Shallop Phœnix and cargo	Embargo; appraised	val. 246 12						No execution.
	Sloop Industry	Embargo							No execution. An appeal from Maine.
	Brig Gleaner	Embargo							Appeal by claimant from Maine. Dismissed. No execution.
	Sloop Nancy		21 00						
	Brig Plough Boy and cargo	Embargo; appraised	val. 1,950 00	169 90	24 27	145 53	1,925 63	2,095 53	Nett proceeds paid to Collector of Boston.
	Schooner Industry	do do	1,850 00	258 34		258 34		2,108 34	Paid to George Blake, District Attorney.
	Sch'ner Two Friends and cargo	do do	222 90	216 45		92 09			Nett proceeds $6 45. Unknown how disposed of.
	Schooner Packet	do do	2,150 00	192 16		192 16		2,342 16	Appraised value and costs paid to George Blake, Attorney.
	Brig Greyhound	do do	2,000 00	88 76		88 76		2,088 76	Paid to Collector of Boston.
	Ship Argo	do do	3,000 00	119 79		119 79		3,119 79	Claimant committed on execution returned, 1814.
	Schooner Two Brothers	do do	1,900 00	191 02				2,091 02	No execution.
	Brig Hannah	Collection	1,350 00	185 93					Claimant Hews committed on execution returned, 1814.
	3,200 dollars penalty	do							Judgment of Maine Dist. Court affirmed in Circuit Court. No execution.
	Schooner Harmony	do	1,350 00	317 12		317 12		1,667 12	$1,333 33 paid to Collector.
	Schooner Chance	Non-intercourse	1,000 00	93 28		93 28		1,093 28	987 78 penalty less Clerk's commission. Paid Collector.

DISTRICT OF MASSACHUSETTS.—No. 3—Continued.

In what year.	Article or sum forfeited.	Offence against what law.	Gross amount of sales.	Amount of expenses.	Costs paid by U. States.	Costs paid by the party.	Nett proceeds received by U. States.	Total.	Observations.
1812	Brig Alligator	Non-intercourse	1,000 00	93 15	-	93 15	-	1,093 15	$997 78 appraised value, less Clerk's commission. Paid Collector.
	One-sixteenth part of brig Wasp	do	312 50	119 92	-	119 92	-	432 42	312 50 less Clerk's commission. ½ per cent. paid by him to Collector of Boston.
	Schooner Mars	do	1,200 00	92 48	-	92 48	-	1,292 48	1,200 less Clerk's commission. Paid to Collector of New Bedford.
	10 hhds. rum	do	531 31	71 76	-	71 76	-	603 07	Appraised value less Clerk's commission. Paid to Collector of Boston.
	25 cords fire wood	Coasting act	51 00	-	-	-	-	- -	$26 06 paid to Collector of Boston.
	Sloop Julia	do	300 00	-	-	-	-	- -	$182 40 paid to Collector of Boston.
1813	Ship General Blake	Embargo; appraised	val.1,600 00	356 78	-	356 78	-	1,956 78	Paid less Clerk's commission to Collector of Boston.
	Boat Marstrand and cargo	Trading with enemy	do 5,775 16	565 20	116 34	-	-	- -	$5,326 21 nett balance paid to Collector of Boston.
	Brig Struggle	Non-importation	do 1,800 00	333 54	-	-	-	2,133 54	Appraised value less commission paid to Collector Portsmouth, N. H.
	Brig Hector and part of cargo	do	do 1,491 50	53 59	-	53 59	-	1,544 89	$1,472 86 paid Collector of Bath, Maine.
	Boat Eliza and cargo	Coasting act	495 00	69 32 deducted from sales	-	-	-	- -	Nett proceeds $425 78 paid Collector of Boston.
1814	Brig Ann	Embargo; appraised	val.1,500 00	88 50	-	88 50	-	1,588 50	Nett proceeds $1,423 52 paid Collector of Newburyport.

	Brig Julia and cargo - -	Declaring war ag'nst Great Britain.	do	1,600 00	-	-	-	-	-	Condemned as prize to U. S. frigate Chesapeake. ½ appraised value 1,600 dolls. paid to Treasurer of United States.
	Brig American and cargo -	Non-importation -	do	1,857 00	94 10	-	94 10	-	1,951 10	1,857 dollars less commission pa.d Collector of Bath.
	Schooner Industry - -	Non-intercourse -	do	900 00	105 19	-	105 19	-	1,005 19	$ 395 50 paid to Collector of Boston.
	50 hhds. molasses, &c. -	do -	do	1,708 31	21 61 deducted	-	-	-	- -	1,687 70 paid Collector of Newburyport.
	3 boxes hardware, &c. -	do -		661 12	103 98	-	72 29	-	- -	Nett proceeds paid Collector of Boston $ 639 43.
	Schooner Resolution - -	do appraised		675 00	122 74	-	-	-	777 74	$ 671 63 paid Collector of Boston.
	Brig Teresa - - -	do do		1,200 00	80 90	-	80 90	-	1,280 90	Nett proceeds paid Collector of Newburyport.
	Cargo of Teresa 4600 bush. salt	do do		1,462 50	66 90	-	66 90	-	1,529 40	Nett proceeds paid Collector of Newburyport
	23 barrels sugar, &c. - -	do do		3,386 90	104 51	-	104 51	-	1,491 41	$ 3,368 22 paid Collector of Boston.
	Brig Mars - - -	do do		3,000 00	160 78	-	160 78	-	3,160 78	2,983 25 paid Collector of Boston.
	Brig San Antonio - -	do do		1,000 00	89 95	-	-	-	1,089 95	Defendant committed.
	Brig Diamond and cargo -	do do		15,062 00	76 39	-	76 39	-	15,138 39	$ 15,036 74 paid Collector of Portland, Maine.
	Brig Gladeen - - -	do do		1,800 00	-	-	-	-	- -	1,791 paid Collector of Plymouth.
	15 puncheons rum - -	do gross sales		1,912 43	-	-	-	-	- -	Presumed to have been paid by the Collector of Boston to Clerk.
1815	Schooner Delesdernier -	do appraised		700 00	-	-	-	-	-	Decree October term, 1815. No execution issued.
	95 tons plaster, cargo of do. -	do do		570 00						
	Brig Struggle - -	do do		2,500 00	117 75	-	117 75	-	2,617 75	Less commissions paid Collector of Boston.
1816	Ship Edward - - -	do do		12,000 00	148 22	-	148 22	-	12,148 22	$ 12,000 less commissions paid Collector of Boston.
	Schooner Aurora and cargo -	Coasting act -		1,276 19	176 45	-	90 50	-	- -	1,190 24 less commissions paid Collector of Wiscassett.
1817	3 casks and 2 trunks shawls, &c.	Collect'n; appraised		2,613 70	195 83	-	177 11	-	- -	2,594 98 paid Collector of Boston.

DISTRICT OF MASSACHUSETTS.—No. 3—Continued.

In what year.	Article or sum forfeited.	Offence against what law.	Gross amount of sales.	Amount of expenses.	Costs paid by U. States.	Costs paid by the party.	Nett proceeds received by U. States.	Total.	Observations.
1817	Ship Mercurius and cargo -	Non-intercourse. appraised	40,967 50	272 99	-	272 99	-	- -	Moiety accruing to United States remitted by President. Moiety less commissions paid by Clerk to Collector of Plymouth.
	Ship Octavia - - -	do do	6,000 00	97 07	-	97 07	-	- -	Moiety remitted by President, and a moiety less commissions paid Collector of Boston.
1818	Brig Catherine Shepard -	Collection -	870 00	722 22	-	680 22	-	-	$ 828 paid Collector of Waldoborough, Maine.
	Sloop Leader - - -	do -	360 00	27 15	-	-	-	- -	142 85 paid Collector of New Bedford.
	Schooner Betsey - -	do appraised	475 00	135 66	-	122 08	-	- -	461 42 paid Collector of Boston.
	Sloop Abby - - -	Coasting do	650 90	136 54	-	122 09	-	- -	635 55 paid Collector of Boston.
	Barque Argo and cargo -	Non-importation do	12,000 00	703 52	-	703 52	-	- -	12,000 paid Collector of Portland.
1820	Schooner Ann and cargo -	Collection do	1,141 60	145 75	-	136 05	-	- -	1,131 89 less commissions paid Collector of Boston.
1822	Schooner Elizabeth and Jane	do do	800 00	122 64	-	116 64	-	- -	794 less commissions paid Collector of Newburyport.
1823	Brig Alexander and cargo -	Slave trade -	1,659 50	1,416 01	108 54	176 02	-	- -	The expenses include seamen's wages. Nett moiety $ 176 02 paid Treasurer of United States to George C. Read, commander of United States ship Hornet, captor.
1825	Schooner Nantucket - -	Collection—apprais ed	400 00	464 84	-	462 24	-	- -	$ 394 paid Collector of Nantucket.

DISTRICT COURT.

1790	2 chests tea, 3 horses, 1 cask and 4 bags coffee, 10 boxes lemons, 2 trunks merchandise, 1 hhd molasses, 6 saddles, schooner Bee.	Collection -	1,485 46	334 28	deducted	from sales	—no claim.		$113 03 paid Collector of Salem and Beverly. $1,017 96 paid Collector of Boston.
	Ship Neptune - -	do appraised	3,666 66	53 10	-	53 10	-	- -	3,666 66 paid Collector of Boston.
	2 penalties $400 ea. - $800	do do	800 00	29 37	-	29 37	-	828 38	Collected by Marshal.
	1 penalty $400 - -	do do	400 00	15 27	-	-	-	415 27	Execution returned not satisfied—on file.
1791	Schooner Nancy and cargo, 2 bbls. sugar, 1 bbl. and 4 bags coffee, sundry goods, &c.	do - -	415 27	181 55	-	-	-	-	$146 74 paid Coll'tor of Boston. 97 16 paid Collector of Salem and Beverly.
1792	Penalty $1000 - -	do - -	1,000 00	43 45	-	-	-	1,043 45	Execution returned. Defendant committed.
	2 cases gin, 2 cases rum, &c. -	do - -	31 6	68 19					
1793	Sundry goods - -	Collection -	1,198 23	325 58	deducted	frm. sales,	no claim.	- -	$255 71 paid col. of Barnstable
	2 bags coffee, 4 casks molasses	do - -	- -	-	-	-	-	- -	68 15 do Boston
	12 bbls. sugar, 2 hhds. rum -	do - -	- -	-	-	-	-	- -	338 95 do Dighton
	Sloop Hannah - -	do - -	- -	-	-	-	-	- -	207 84 do Salem and Beverly
			- -	-	-	-	-	- -	713 00 do Boston
	2 hhds. rum, sundry goods -	do - -	- -	-	-	-	-	- -	No account sales, or costs, or payment to collector, in case of rum and gin
	2 bbls. rum, 7 cases gin -	do - -	832 36	128 37	-	90 30	-	- -	
	41 kegs rum, sch. Commerce								
	Penalty 250 dolls. do. 400 dolls.	do - -	- -	17 40	-	417 40	-	- -	250 dolls. paid to col. of Boston 417 40 collected by marshal in court; how disposed of does not appear
	Penalty 558 36 - -	Internal revenue -	- -	25 90	-	25 90	-	584 26	Collected by marshal on qui tam action, but does not say how disposed of.
1794	3 bags cocoa - -	Collection -	- -	14 39	-	-	-	- -	No return made on warrant of sale.
1795	19 bags cocoa - -	do - -	560 98	-	-	-	-	- -	No account of costs or payment to collector.
	500 bushels salt - -	do - -	- -	-	-	-	-	- -	Net proceeds paid collector of Barnstable, 307 06.
	Penalty 1000 dollars -	do - -	- -	17 14	-	-	-	1,017 14	Execution ret. not satisfied.

[Doc. No 146.]

29

DISTRICT OF MASSACHUSETTS.—No. 3.—Continued.

In what year.	Article or sum forfeited.	Offence against what law.	Gross amount of sales.	Amount of expenses.	Costs paid by U. States.	Costs paid by the party.	Net proceeds received by U. States.	Total.	Observations.
1796	244 kegs herrings, &c.	do	360 74	45 22	deducted	frm. sales,	no claim.		$315 52 probably paid by marshal to col. of Boston.
	2 bags cotton, &c.	do	246 76						No acct. of costs or payment to collector.
	Penalty 400 dollars	do		22 01				422 01	400 dollars paid collector of Dighton by marshal.
1797	6 penalties, $50 each, $300	Coasting		103 84				422 84	Execs. returned not satisfied.
	Penalty $400	Collection		31 68				431 68	Exec. not found.
	3 penalties, $50 each, $150	Internal revenue		55 74				205 74	$66 96 paid dist. attor. & 70 45 paid col. of internal revenue.
	1 do. 3, 1 do. 20, is 23 dolls.	do		24 56		24 56		47 56	47 dolls. 56 cts. paid do.
	1 pipe gin, sundry watches	Collection	7,382 00	376 63		sundry	watches	335 63	No account of payment.
	54 tierces and 4 hhds. sugars Sch. Sukey, 3 casks Geneva 1 trunk merchandize								$7005 34 paid col. of Boston
1798	11 elephants' teeth, 1 cask of wine, 1 chest goods, 36 bags and 2 chests coffee, 5 hhds. rum, &c.	do	1,566 57	20 09					$903 95 paid col. of Boston 171 42 do Marbleh'd 489 20 do Salem and Beverly 1,564 57
	Penalty 1500 dollars	Internal revenue		12 61				1,512 61	Committed on exe. ret. 1799
	5 penalties 543 dolls. 75 cts.	do		57 93		11 22		535 37	411 dolls 22 cents, remitted by President and officers 67 dolls. 47 cts. paid dis attor. 3 execs. returned unsatisfied.
1799	2 penalties 300 dollars	do							No execution.
	Penalty 2000 dollars	Laws against slave trade		13 88		13 88		2,013 88	1000 moiety of penalty paid by marshal to Treas. U. S.
	Penalty 400 dollars	Collection		16 60				416 60	Exec. ret. not satisfied, 1800
	Sundry goods, 2 bags coffee, &c. 4 bbls. molasses, 19 kegs barley,	do	377 40	30 24	in 1 case.				118 dolls. 34 cts. paid col. of Salem and Beverly

	17 boxes limes, &c.								259 dolls. 6 cts. paid by marshal to col. of Boston.
1800	Sch. L'Active	Letter of marque against France	2,450 00	348 19	deducted	frm. sales			$1687 94 paid Treas. U. S.
	3 bags coffee, 2 casks wine, 9 bales merchandise, &c.	Collection	150 19	222 74					146 19 paid col. of Boston
1801	Ship LeBerceau	Letter of marque against France	22,203 29	1,515 89	deducted	from proceeds			One moiety 10,343 dolls. 70 cts. adjudged to U. S.
	1 pipe wine, 6 watches	Collection	1,602 26	328 68	deducted	from proceeds			
	Sundry goods, 1 box hats	do							$863 78 paid col. of Boston
	17 bags cocoa, 1 pipe gin	do							161 19 do Plymouth
	2 bbls. and 1 bag coffee, &c.	do							64 96 do N. Bedford
	12 bbls. and 1 box sugar, &c. Sundry goods	do							70 99 do Edgartown
	Penalty 50 dollars	Internal revenue							Qui tam action; no exec.; no costs taxed
1802	5 bags coffee, 1 trunk merchandise, 75 pieces bandannas, 2 trunks merchandise, sundry goods, 4 bags coffee	Collection	2,448 86	338 24	deducted	from proceeds			No acct. sales of 5 bags coffee $1641 70 paid col. of Boston 638 08 presumed to have been paid col. of Boston.
	2 hhds. rum, &c.	Internal revenue	127 88	64 21	deducted	from proceeds			No account sales of rum, $59 92
	Penalty 50 dollars	do		13 28	qui tam	act'n, ex.	ret. not	found	$33 47 paid col. of internal rev.
	Penalty 400 dollars	Laws agt. sl. trade		44 30	qui tam				Paid to G. Blake, dis. at. $400
	Penalty 400 dollars	do							No exec. or account payment
	Penalty 400 dollars	Collection							Penalty rec'd by G. Blake, d. at.
	Penalty 400 dollars	do							Do do by marshal
	Sloop Cynthia	do	375 00	48 75		48 75		423 78	$375 recd by G. Blake, dis. at.
1803	10 hhds. rum, 1 hhd. molasses, 10 cases hair powder, 2 bags coffee	do	707 64	197 44	deducted from proceeds.				$122 10 paid col. of Boston 387 10 do Plymouth
	Penalty qui. tam. 2000 dolls.	Laws agt. sl. trade							No acct. sales or costs taxed for coffee
	Do do 2000	do		15 77		15 77		2,015 77	2000 dolls. penalty U. S. attor.
	Do do 2000	do		58 85				2,088 85	2000 dolls. penalty and costs, collected by marshal, and a moiety paid prosecutor
1804	Sloop Washington, 26 bags 4 chests and sundry bags cof fee, 1 bag cocoa, sundry merchandise, 3 bbls. sugar, &c.	Collection	2,268 69	308 41	do. in part	28 20		608 20	Exec. ret. not to be found $1881 30 paid col. of Boston No acct. sales or payment to col. $445 81, or costs taxed

[Doc. No. 146.]

31

DISTRICT OF MASSACHUSETTS.—No. 3—Continued.

In what year.	Article or sum forfeited.	Offence against what law.	Gross amount of sales.	Amount of Expenses.	Costs paid by U. States.	Costs paid by the party.	Net proceeds received by U. States.	Total.	Observations.
1805	12 bbls. and 1 hhd. sugar, 1 pipe wine, 1 bbl. honey, sundry merchandise, 8 bales cotton, &c. 2 pipes and 2 qr. casks wine	Collection -	1,064 76	350 82	deducted from proceeds, in part.	.	.	. .	$268 33 paid col. of Boston 162 30 do Edgartown 114 90 do Salem Excess of costs over proceeds to amt. few dollars, by cols.
	Penalty 100 dollars - -	do - -	. .	25 76	do	.	.	. .	Exec. issued and on file without return
1806	1 hhd. 1 tierce and 9 bbls. sugar, 2 cases French liquor, 20 boxes segars, 14 bags of coffee, 6 bbls. molasses, &c.	do - -	870 70	400 15	do	.	.	. .	$407 44 paid col. of Boston 23 48 do Salem 1 21 do Plymouth 29 99 do Gloucester ——461 12
1807	35 bags coffee, 14 bbls. molasses, 19 barrels sugar, 1 trunk lace, 265 bushels salt, bbl. segars, sch. Wiley Reynard.	do - -	2,266 08	742 05	do	.	.	. .	$596 30 paid col. of Boston 531 85 do Newburyport 526 06 do Marblehead
	Penalty 400 dollars - -	do - -	. .	18 77	.	.	.	418 77	Exec. ret. not satisfied
1808	Sch. Rebecca - -	do - -	2,325 00	277 40	.	.	.	. .	$1675 10 paid col. of Boston, 372 50 wages and costs first deducted
	102 boxes capers, 12 bags coffee, 1 cask porter, 5 bales cotton, 4 casks rice, 8 bbls. sugar, 4 hhds. and 2 bbls. rum, pilot boat and 5 bbls. flour, sch. Victory.	do - -	1,473 03	444 69					$767 11 paid col. of Boston 48 01 do Newburyport 198 52 do New Bedford No acct. sales or acct. of costs taxed in case of sch. Victory
	Penalty 100 dollars - -	Coasting act -	. .	16 93	.	.	.	116 93	Paid Geo. Blake, dis. attor.
	Penalty 100 dollars - -	do - -	. .	19 61	.	.	.	119 61	Exec. ret. unsatisfied by attorney, order
	Sloop Humbird - -	do - -	30 00	47 20	do				
	Sloop Ruth - -	do - -	30 00	47 26	do				
	Penalty 1000 dollars - -	do - -	. .	34 87	.	.	.	1,034 87	Alias exc. not on file

	Sloop Lively and cargo, sloop Ruby, 25 bbls. flour, sch. Republican, 11 boxes dried fish, &c. sch. Clara and cargo, sch. Mary and cargo, sch. Lilly and cargo, sch. Astrea and cargo, sch. Waife, sch. Prudentia.	Embargo laws	8,462 11	2,785 84		165 32			$421 36 paid col. of Edgartown 1821 92 do Newburyport 36 10 do Salem 3093 74 do Boston 282 20 do New Bedford 410 91 pd com. U.S. brig Argus 410 91 accrues to U. S. but no mention how disposed of Excess of costs 34 40, paid by collector of Barnstable Excess of costs in one case 320 62.
1809	18 hhds. and 31 barrels sugar 644 bolts cotton bagging A boat and merchandise	Collection	26,956 91	1,588 12	deducted	from proceeds			$25,083 99 paid Coll. of Boston 88 24 do N. Bedford. No account of payment to Collector, or of costs; $196 56 seized at Gloucester.
	7 bales broad cloth Penalty, $4,069 30	Embargo Act		not taxed					No execution. Appeal dismissed by Circuit Court for want of jurisdiction.
	Do 4,069 30 Do 2,325 00	Do Do		do do					Do do. No execution. Dismissed for want of jurisdiction.
	Do 1,170 00 Schr. Resolution	Do Embargo	3,400 53	255 88 768 93	deducted	255 88 from sales		1,425 88	Penalty and costs paid Dist. Att. No account of payment to Collector; seized at Plymouth.
	Schr. Morning Star Sloop Tear 10 bbls. flour and 2 bbls. pork								$911 32 paid Coll'r of Boston. 713 69 do Barnstable. No account of sales of schooner Hannah and cargo.
	69 boxes segars, &c. Schr. Hope, alias Glyde, and 12 hhds. and 3 bbls. sugar Schr. Deborah Sloop William								Seized at Newburyport. Sch. Glyde, gross sales $919 88 one-third paid as salvage, no mention of balance. Net proceeds sloop William to pay wages.

[Doc. No. 146.]

33

DISTRICT OF MASSACHUSETTS.—No. 3.—Continued.

In what year.	Article or sum forfeited.	Offence, against what law.	Gross amount of sales.	Amount of expenses.	Costs paid by U. States.	Costs paid by the party.	Net proceeds received by U. States.	Total.	Observations.
1809	Sloop Julia, alias Caraib								In some cases the costs exceed the article condemned.
	A sloop, name unknown								
	9 penalties, 21,736 dollars	Embargo		1,010 92					In 6 cases, on appeal, dismissed for want of jurisdiction; $1,741 98 penalty andcosts, paid District Attorney; one pardoned, amount 2,420 15; one committed, amount 1,648 19, 1811.
1810	50 bags coffee, 3 pieces cloth 1 bale cassimeres, boat Fancy, 8 pieces cloth, 4 hhds. and 10 bags coffee, 2 hhds. rum, 1 bbl. sugar, 14 drums raisins, 6 bbls. molasses, sch. unknown, 40 bbls. mackerel, 68 pieces linen, &c. 1 trunk English goods, 197 boxes herring, 4 barrels, 3 bags and 1 basket sugar.	Collection	7,098 26	1,090 83	deducted	50 68			$5,804 97 paid Coll. of Boston. 247 25 do Salem. Excess of costs 24 22, paid by Collector of Salem.
	Penalty, 400 dollars			68 48		41 50			Ca. sa. issued, but not returned.
	Do 50							91 51	$91 51 paid District Attorney.
	Sloop Frances	Non-intercourse	2,200 40	332 05		43 50			456 34 paid Coll'r of Dighton.
	Sloop Patty, 23 pieces cloths								1,445 01 do Boston.
	Schr. Victory, schr. George								
	4 hhds. molasses								No account of proceeds of 4 hhds. molasses.
	Penalty $826	Embargo							Appeal dismissed for want of jurisdiction.
	Do 3,826								Do do

	Do 1,000										Do do
	Do 8,544 14										Do do
	Do 6,588										Do do
	2 Do 2,000										Dismissed by Circuit Court.
	Do 1,000					50 65				1,050 65	Committed. Pardoned by President, February, 1827.
	Do 8,000										Dismissed by Circuit Court. No execution.
	Sloop General Knox		Embargo		852 23	311 46		127 31			$76 18 paid Collector Boston.
	Sloop Fame										734 81 do nolle pros.
1811	4 bags pimento		Collection		1,295 02	371 52 deducted	8 60				1,014 48 paid Coll'r of Boston.
	4 pipes gin										Excess of costs in three instances, 39 79, paid by Collector of Boston.
	22 bags, 6 tierces, 2 bbls. and 2 chests coffee, 19 bbls. sugar.										
	Sloop Calnab										
	Penalty 5,000 dollars		Embargo			90 88				5,090 88	Execution returned not satisfied, 1813.
	Do 5,000		Do			90 35				5,090 35	Do do
	Do 1,000		Do			84 35				1,084 35	Do do
	Do 2,144		Do								Dismissed in Cir. Court. No execution.
	Do 700		Collection			not taxed					
	Do 800		Do			123 51	123 51			823 51	Not satisfied, March, 1817, *vs.* Peleg Tripp.
	Do 1,000		Do			17 29	8 50			1,017 29	Execution returned not satisfied, by direction of District Attorney.
1811	5 barrels molasses, &c. 8 bbls. sugar, 17 bbls. sugar, 156 watch faces, brig Betsey.		Non-intercourse		415 96	179 25	deducted from proceeds, in part.				$246 76 paid Coll'r of Boston.
											No account of sales—seized at Boston.
	Penalty $2,600		Do								Dismissed in Circuit Court. No execution.
	Do 1,400		Do			36 67				1,436 67	Execution returned not satisfied in 1813.

DISTRICT OF MASSACHUSETTS—No. 3—Continued.

In what year.	Article or sum forfeited.	Offence against what law.	Gross amount of sales.	Amount of expenses.	Costs paid by U. States.	Costs paid by the party.	Net proceeds received by U. States.	Total.	Observations.
1811	Penalty $ 400	Act concerning seamen.							Defendants dismissed in Circuit Court. No execution.
1812	24 pieces kerseys, &c. 18 pieces broad cloths, 227 dozen gloves, 4 casks cutlery and hardware, 231 pieces and 4 boxes calicoes, 42 barrels tapes, &c. 31 silver watches, 245 tons plaster, schr. Avery, schr. Lively and cargo, schr. Exchange, schr. Dromo, sundry pieces cloths, 16 blankets, 3 pieces cloths and 6 pieces kerseys, 1 trunk cambrics, 1 box vestings, 6 ales plains, bundle cloths, boat Orange, 4 bbls. cambrics, schr. Galen, schr. Eliza, boat Liberty, 5 casks wine, 6 bundles and 4 pieces flannel, &c. 2 barrels molasses, &c. 4 boxes castor oil, &c. 23 pieces broad cloths, &c. schr. Dolphin and cargo of salt.	Non-intercourse	86,903 87	5,232 28	deducted	from pro	ceeds		$73,266 28 paid Collector of Boston. Proceeds of schr. Avery appropriated to satisfy decree for seamen's wages. $ 207 09 paid Coll. N. Bedford. 234 88 do Barnstable. 106 84 do Boston. 3,810 12 do Gloucester. 1,621 76 do Newburyport. 250 90 do Ipswich. 79,497 87 paid Collectors.
	Brig Gleaner	Collection							Conditional remission by the Secretary of Treasury, and 237 dolls. paid Coll'r of Boston.
	5 pieces and 1 box cloths, 44 hats, &c. 2 pieces cloths, 3 barrels and 5 bags coffee, 8 cases cotton goods, 3 barrels	Collection	3,433 55	732 79	deducted	from pro	ceeds.		$2,211 07 paid Coll'r of Boston. 90 37 do Salem. 50 83 do Gloucester.

	and 1 bag sugar, 1 bbl. coffee, 45 grindstones, 3 packages calicoes.									
	Penalty $ 300 85 - -	Do -	- -	53 07	-	53 07	-	353 92	Collected & paid Dis. Attorney.
	Do 6,400 - -	Do -	- -	48 24	-	48 24	-	6,448 24	Land taken on execution, and returned satisfied. Not shown how disposed of.
	Do 200 - -	Do -	- -	29 78	-	29 78	-	229 78	Paid District Attorney.
	90 tons plaster paris - -	Do -	- -	-	-	-	-	- -	No papers.
	7 pieces blue cloth, 14 pieces black handkerchiefs, 17 do. cassimere, &c. 3 do. cloths, 3 bags wire, 1 bag coffee, &c. 75 tons plaster paris, 1 box merchandise, 20 pieces blankets, 2 trunks merchandise, 276 tons plaster paris, 100 quintals fish, &c. cargo of schr. Mars, 100 tons plaster, brig Abeona, brig Hiram, 3 pieces broad cloth, shallop Phœnix and cargo	Non-intercourse -	12,754 09	1,143 31	deducted from proceeds, in part.	345 66	-	2,060 24 1,480 61	No execution in case 100 quintals fish, valued at $ 211 50, Robbins claimant; execution for brig Abeona, app't and costs, $ 535 41; not returned. No execution—no paper in case of shallop Phœnix and cargo, appraised at $ 246 12. $ 1,296 01 paid Coll'r of New Bedford. 793 05 do Barnstable. 8,296 42 do Boston. 685 61 paid Dist. Attorney.
	1 trunk calicoes, &c. -	Non-importation -	556 10	74 32	-	-	-	- -	$ 481 78 paid Collector of Boston.
	120 tons plaster - -	Do -	41 40	46 12	-	-	-	- -	$ 4 72 excess of costs paid by Collector of Boston.
	2 trunks merchandise -	Non-Intercourse -	- -	-	-	-	-	- -	Delivered up to claimant by Collector of Boston.
1812	Penalty 1,400 dollars -	Embargo -	- -	136 99	-	136 99	-	1,536 99	Penalty and costs paid District Attorney.
	Schooner Hope - -	Do - -	1,170 00	-	-	-	-	- -	Not shown how disposed of.
	Penalty 5,412 dollars -	Do - -	- -	128 27	-	-	-	5,540 27	Execution returned unsatisfied, in 1813.
	Do 6,920 do -	Do - -	- -	130 27	-	-	-	7,050 27	Same.
	Do 7,200 do -	Do - -	- -	130 27	-	-	-	7,330 27	Same.
1813	Brig Truxtun - -	Do appr'd	2,000 00	122 71	-	122 71	-	2,122 71	1,975 dollars paid Collector of Boston.

DISTRICT OF MASSACHUSETTS.—No. 3.—Continued.

In what year.	Article or sum forfeited.	Offence against what law.	Gross amount of sales.	Amount of expenses.	Costs paid by U. States.	Costs paid by the party.	Net proceeds received by U. States.	Total.	Observations.
1813	Schr. Lyre and cargo, 207 rolls iron wire, 8 dozen black silk hose, &c. 2 cases merchandise, schr. Cynthia, 18 pieces Ravens' duck, 6 bags ribbons, 1 trunk calicoes, a bundle spy glasses, 1 hhd. rum, 2 trunks cutlery, &c. 3 bbls. sewing silk, 2 pieces cloth, schooner Nymph, ship Admittance, schr. Donna Teresa, sloop Factor, sloop Sally, sloop Deborah, sloop Hermit, 23 bbls. sugar, &c. 1 hhd. rum, brig Medelpadria, 5 boxes hardware, 48 bales calicos, &c. schr. Calmud, 9 cases merchandise, sloop Vulture, 11 pieces broadcloth.	Non-intercourse -	24,301 53	2,754 10	deducted in part, from proceeds.	420 70	-	5,035 23	Execution for 740 dollars issued. No return. $ 10,533 20 paid Coll'r Boston. 133 00 do Dighton. 959 62 do Plymouth. 7,046 69 do Newburyport. 3,073 69 do N. Bedford. 13 88 do Barnstable. 11 pieces broad cloth not found by Marshal. No sale.
	Penalty 400 dollars -	Non-intercourse -	- -	377 73	do	-	-	777 73	Collected & paid Dist. Attorney.
	Do 3,090 do - -	do -	- -	46 84	-	-	-	3,130 84	Execution *vs.* Paul Thurlow.
	1 bale merchandise, 1 trunk calicoes, &c. 15 bags coffee, &c. schr. U. S. del Sicoro, 1 trunk sewing silk, 2 pieces calico, 21 bags coffee, 10 boxes segars, 1 barrel sugar, &c. 2 casks hardware.	Collection -	8,366 23	700 86	deducted	fr'm sales	-	653 75	$ 4,964 47 paid Coll'r of New Bedford. 2,749 95 do of Boston. Goods not found by Marshal.
	Penalty 100 dollars -	Collection -	- -	21 84	-	21 84	-	121 84	Exe'n returned satisfied, 1813.
	Do 1,000 do - -	do -	- -	19 74	-	-	-	1,019 74	Execution returned unsatisfied, 1813.

	Do 400 do - -	Collection	-	-	-	35 61	-	-	-	435 61	Committed on execution, and afterwards pardoned.
	Do 400 do - -	do	-	-	-	128 68	-	128 68	-	528 68	Collected on execution, 1814.
1814	Do 1,000 do - -	do	-	-	-	150 70	-	-	-	1,150 70	Execution returned unsatisfied, 1816.
	Do 1,000 do - -	do	-	-	-	149 54	-	-	-	1,149 54	Do do 1815.
	Do 1,000 do - -	do	-	-	-	147 62	-	-	-	1,147 62	Do do dead.
	Do 8,400 do - -	do	-	-	-	204 81	-	-	-	8,604 81	Defendant committed on execution, returned 1816.
	Do 905 do - -	do	-	-	-	-	-	-	-	- -	No execution.
	22 bags and 1 chest coffee, 21 pieces shirting, &c. 14 pieces gingham, 20 pieces calico, schr. John and cargo, 2 hhds. and 5 sacks sugar, 141 bags, 4 barrels and 1 box sugar, 6 hampers sugar, 3 cases and 2 trunks merchandise, 1 piece carpeting, 3 pieces calico, 8 pieces linen, &c. 1 tierce sugar, 100 lbs. coffee, 1 cask rum.	do	-	16,023 05		1,628 13	deducted	fr'm sales	-	- -	8 bags coffee not to be found. No sale. $11,749 38 paid to Collector of Boston. 495 73 do Newburyport. 591 93 do Ipswich. 1,051 79 do Gloucester. 57 45 do Plymouth. 185 97 do Edgartown. 295 64 do Barnstable. Excess of $33 02 paid by Collector of Barnstable.
	Penalty 20 dollars -	do	-	-	-	-	-	-	-	- -	No execution issued.
	Do 400 do - -	do	-	-	-	45 80	-	-	-	445 80	Penalty less commissions paid Collector of Ipswich.
	Do 400 do - -	do	-	-	-	52 96	-	-	-	452 96	Execution returned unsatisfied, June, 1816.
	Schooner Old Carpenter -	Non-intercourse	-	-	-	-	-	-	-	- -	Warrant of sale not returned.
	Sloop Anna Maria.										
	8 bags coffee.										
	Sch. Mary and merchandise.										
	Brig Carl Gustaf.										
	Brig Wilhelm.										
	2 hhds sugar, 1 trunk vestings.										
	Bundles broad cloths.										
	130 tons of plaster.										
	Cargo of sloop Deborah -	do	-	-	-	-	-	-	-	- -	No papers on record.
	Schooner Nysted and cargo.										
	Penalty $3000 - -	do	-	-	-	67 30	-	-	-	3,067 30	Execution returned unsatisfied, 1816.
	Schooner Maria.										

[Doc. No. 146.]

39

DISTRICT OF MASSACHUSETTS.—No. 3—Continued.

In what year.	Article or sum forfeited.	Offence against what law.	Gross amount of sales.	Amount of expenses.	Costs paid by U. S.	Costs paid by the party	Net proceeds received by U. S.	Total.	Observations.
	Ship Neptune, sch. Stralsund	Non Intercourse	103,583 01	14,002 48	-	278 67	-	2,943 61	
	Schooner Gottenburg	-	-	-	-	-	-	-	$51 21 probably paid to Collector of Nantucket.
	Brig Antonio	-	-	-	-	-	-	-	608 18 net proceeds probably remitted by Sec'y of Treas'y.
	Brig Crown Prince.								
	31 hhds molasses and 8 hhds sugar.								
	100 tons iron, 5 hhds sugar	-	-	-	-	-	-	-	$70,542 04 paid Col. of Boston.
	93 bbls tin plates	-	-	-	-	-	-	-	15,266 85 do Plymouth.
	53 bales woollens, &c.	-	-	-	-	-	-	-	591 00 do Dighton.
	10 boxes tin plates	-	-	-	-	-	-	-	79 51 do Edgartown.
	Sloop Cosmopolite	-	-	-	-	-	-	-	1,845 41 do New Bedford.
	Schooner Jungfruc	-	-	-	-	-	-	-	309 91 do Barnstable.
	Schooner Lively and cargo	-	-	-	-	-	-	-	123 07 do Dist. Attorney.
	Schooner Pacific.								
	Schooner Westerwick	-	-	-	-	-	-	-	Defendant committed in 1815, for $636 83, proceeds of sch. Westerwick.
	Boat and broad cloths.								
	Schooner Polly	-	Coasting Act	-	213 75	107 92	-	-	-	-	$105 83 pd Coll. of Gloucester.
	Boat Clinker	-	Do	-	165 00	156 88	-	-	-	-	8 12 do Newburyport.
	24 pieces linen cambric, 24 pieces lace, 5 bbls calicoes, &c, 48 boxes tin.		Collection	-	4,544 93	342 01	-	-	-	-	807 03 do Plymouth. 3195 89 do Boston.
1815	3 dozen shawls, 3 hhds sugar.								
	5 casks merchandise	-	-	-	-	-	-	-	-	No warrant of sale returned for 5 casks merchandise.
	5 chests hyson tea, &c.								
	2 hhds and 9 bbls rum	-	Collection	-	8,208 46	1,702 98	deducted	in part	from proceeds.		$4784 13 paid Coll. of Boston.

	10 boxes cigars, 5 bags coffee	- -	-	-	-	-	-	-	401 90	do New Bedford.
	2 bbls sugar, 2 bbls molasses -	- -	-	-	-	-	-	-	652 50	do Newburyport.
	Corvette Paz - -	- -	-	-	-	-	-	-	216 23	do Salem.
	287 boxes herrings - -	- -	-	-	-	-	-	-	390 21	do Edgartown.
	3 hhds and 1 bbl rum.									
	1 chest and 2 boxes merchd'se	- -	-	-	-	-	-	-	Excess of costs in several in-	
	14 bags and 1 bbl coffee.								stances paid by collectors.	
	Schooner Raven and cargo.									
	10 yards vestings, 20 boxes									
	cigars.									
	7 bags coffee, 3 hampers glass									
	Penalty $400 - -	Do -	-	45 88		45 88	-	-	Penalty less commissions paid	
									Collector of New Bedford.	
	Do $1,000 - - -	Do -	-	33 13	-	-	-	1,033 13	Believed to have been pardoned	
									by President.	
	Do $400 - - -	Do -	-	36 40	-	36 40	-	436 40	Committed and discharged.	
	Do $400 - - -	Do -	-	615 60	-	36 40	-	436 40	Do do	
	27 boxes tin, schooner Cave -	Non Intercourse -	2,420 90	36 49					$619 10 paid Coll. of Plymouth	
	Sloop Charlotte and cargo -	Do							1116 21 do Boston.	
	Schooner Orpheus.	Do								
	Schooner Caroline - -	Do -								
1816	2 pieces flannel, 2 hhds rum.	Collection -	4,620 97	1,413 57	Deduct-	71 12	-	379 60	$8,219 11 paid Coll. of Boston.	
	5 kegs lead, 11 casks mustard				ed in part				1,673 00 do Edgartown.	
	5 frails figs, 7 bags coffee, 6				from pro-				73 20 do New Bedford.	
	boxes raisins, 4 pipes gin, 1				ceeds.				246 94 do Newburyport.	
	trunk glass ware, 2 bbls glass								447 70 do Gloucester.	
	ware, a still head, 62 boxes								$2,816 02 paid Coll. of Boston.	
	herrings, 15 boxes raisins, 4								603 19 do Edgartown.	
	bags coffee, 4 casks molasses,								Excess of costs in several in-	
	sundry phials, 1 keg gin, 10								stances paid by collectors.	
	demijohns gin.									
	1 pipe spikes & nails, 3 bbls su-									
	gar, 1 trunk pins, 12 bags									
	coffee, 1 cable, 1 chest goods,									
	13 boxes raisins.									
	Penalty $400 - -	Collection -	-	104 01	-	104 01	-	504 01	Penalty less commissions paid	
									Collector of Edgartown.	
	Do $400 - -	Do -	-	36 93	-	36 93	-	436 93	Do do of Boston.	
	Do $150 - -	Internal Revenue	-	202 90	-	202 90	-	352 90	Penalty and 15 duty paid col-	
									lector of Int. revenue.	

DISTRICT OF MASSACHUSETTS.—No. 3.—Continued.

In what year.	Article or sum forfeited.	Offence against what law.	Gross amount of sales.	Amount of Expenses.	Costs paid by U. S.	Costs paid by the party	Net proceeds received by U. S.	Total.	Observations.
	One still head - -	Internal Revenue	150 00	57 99	Deducted from proceeds	-	-	-	92 01 paid E Jones, Collector of internal revenue.
	Penalty $150 - -	Do -	-	70 38		-	-	220 38	Execution ret'd unsatisfied, by direction of Dist. Att'y, 1817.
	Penalty $100 - -	Regulating seamen	-	24 26	-	-	-	124 26	No execution issued.
1817	5 bbls molasses, 4 boxes cigars, 6 cases merchandise, 8 hhds and 2 bbls rum, schooner Washington, 12 pieces silk handkerchiefs, 9 boxes cigars, 25 pieces Bandana handkerchiefs, 5 bags coffee, 2 hampers cheese, 2 tierces merchandise, 1 pipe brandy, 8 bbls sugars, &c. ¼ ship Plato, 19 gold watches, 6 boxes cigars, 1 box boots, &c. 215 boxes herrings, 2 boxes steel, 2 hhds rum, 9 tierces salmon, 1 tin case jewelry, 35 boxes sugars, &c. 9 bales cotton, 1 bale merchandise, sloop Olive and cargo.	Collection -	12,433 03	2,359 36	9 48 Deducted in p't.	102 56			
	Penalty 150 dollars - -	Internal Revenue	-	42 68	-	-	-	192 68	Execution not returned.
	Do 10 dollars - -	Do -	-	38 27	-	-	-	48 27	10 dollars paid 9th Coll. Dist.
	Do 10 dollars - -	Do -	-	41 39	-	41 39	-	51 39	10 dollars paid Nathan Martin, Collector Internal Revenue.
	Do 400 dollars - -	Collection -	-	52 32	-	-	-	452 32	Penalty less coms. paid Col. of Gloucester.
	Do 400 dollars - -	Do -	-	31 12	-	-	-	431 12	Execution issued. No return.

[Doc. No. 146.]

	Do 400 dollars - -	Collection -	-	25 21	4 80	20 41	-	420 41	Coll'd and included in amount paid Coll. of Boston, this year, 1817.
1818	13 penalties of 150 dollars each - - 1950	Internal Revenue	-	808 00	-	620 07	-	2,840 00	$1,967 87 paid Dist Att'y.
	2 do of 1000 dolls. each 2000	Do -	-	140 62	-	140 62	-	2,140 62	872 13 returned not satisfied.
	3950								2,140 62 paid Dist. Att'y.
	Penalty 400 dollars - -	Collection -	-	13 80	13 80	-	-	-	Defendant committed on execution and pardoned.
	Do 600 dollars - -	Do -	-	87 89	87 89	-	-	687 89	Ret'd unsatisfied by Dist. Att'y.
	72 quintals cod fish, brig Christopher and boat, appurtenances of said brig, 21 bags and 1 box coffee, 7 yards calico, 7 yards silk, &c. 6 pairs blankets, &c. 42 boxes of ribbons, 2 pieces dowlas linens, sundry boxes merchandise, a sail boat, 1 hhd and 6 bbls molasses, 5 pieces cloth, and a box of merchandise.	Do -	4,087 50	1,117 17	6 25 Costs deducted in part.	40 60	-	-	$1,124 53 paid Coll. of Boston. 502 75 do New Bedford. 166 99 do Edgartown. 199 85 do Newburyport. 206 87 do Salem. 3 25 do Nantucket. 954 68 do Barnstable. Excess of costs in several instances paid by the seizing collectors.
1919	Schooner American Roman, 10 hhds and 10 bbls rum, 1 trunk silk goods, 2 pieces flannel, 14 bags coffee, and 1 trunk watches, &c.	Do -	2,314 97	655 95	Deducted from proceeds in part.				$160 paid Coll. of Dighton. 23 87 do of Edgartown. 1,505 83 do of Boston. $1,689 70
									Excess of costs in some cases paid by Collectors.
	4 penalties of $400 ea. $1600	Collection -	- -	102 82	-	102 82	-	1,302 82	$400 penalty paid col. of Boston; $862 66 ret. unsatisfied, by attorney's direction; 1 case no exec. sued out; $100 less clk's com. paid col. Nantucket.
	Penalty 100 dollars - -	do -	- -	42 50	-	42 50	-	142 50	
1820	Sch. Hazard and cargo, 4 bbls. coffee, sch. Adolphus and cargo.	Non-intercourse -	- -	none taxed.	-	-	-	- -	No warrant for sale—vessels never arrested.

[Doc. No. 146.]

43

DISTRICT OF MASSACHUSETTS.—No. 3—Continued.

In what year.	Article or sum forfeited.	Offence against what law.	Gross amount of sales.	Amount of expenses.	Costs paid by U. States.	Costs paid by the party.	Nett proceeds received by U. States.	Total.	Observations.
	4 qr. chests tea, sch. Sophia, sch. Commerce, 40 bbls. sewing silks, &c. 1 trunk silks, &c. 6 bbls. sugar, 14 bags of coffee, sch. New Hope, sch. George, 1 hhd. rum, 4 bbls. and 51 bags sugar, 2 hhds. of coffee, 1 barrel of molasses, sch. Resolution, 3 bbls. old copper, one-half of schr. Augustus, sch. Lydia and cargo, schr. Silvia and cargo, 217 bushels salt.	Collection -	7,881 39	1,896 19	75 62	614 71	-	673 55	$4812 83 paid col. Boston 1626 47 do Barnstable 23 87 do N. Bedford Excess of costs in several cases paid by collectors seizing the property—the amounts but in few cases shown.
	Penalty 400 dollars - -	do - -	- -	64 80	-	64 80	-	464 80	Penalty less coms. paid col. of Barnstable
	Penalty 400 dollars - -	do - -	- -	43 27	43 27	-	-	443 27	Defendant committed and pardoned by President
	Penalty 100 dollars - -	do - -	- -	29 27	29 27	-	-	129 27	
	Penalty 120 dollars - -	do - -	- -	56 86	56 86	-	-	156 87	
1821	2 bbls. sugar, 31 bags coffee, 10 frails figs, 1 bale feathers, 18 hhds. and 47 bbls. rum, 2 bbls. segars, 2 bbls. old copper, 61 bags pimento, schr. Centaur, sch. Eli and merchandise, 40 lbs. of tortoise shell, 8 bags coffee, 39 boxes raisins, 32 bags pimento, sch. Little Cherub, boat KingFisher, boat Rolla, 13 bags salt, ulage hhd. rum, 25 bolts duck, 12 puncheons of rum, 85 fir	do . .	13,689 30	2,642 77	deducted in part fr. proceeds.	139 34	.	.	$12,144 09 pd. col. Boston 112 42 do Edgartown 968 75 do Salem 165 67 do Newburyport $13,290 90 Excess of costs in several instances paid by collectors.

	caps, 4 bbls. old copper, sch. Joseph and Mary, 46 kegs of white lead, 7 bags pimento, 2 bags tea.								
	Penalty $2052 60	do		53 04	12 86	40 18			*Note.* $2039 84 included in sum named above paid col. Boston.
	Penalty 400	do		26 27	26 27				Exe. ret. unsatisfied 1822.
	Penalty 600	do		18 45	18 45			618 45	Deft. committed, March, 1822.
1822	Three-fourths of sch. Pilgrim, 183 hhds. and 46 bbls. rum, 2 qr. casks wine, 17 bags coffee, 2 bales rags, quantity of coal, 23 bags shot, boat Drake, 28 bbls. and 4 boxes sugar, sch. Four Sisters, 5 bbls. molasses, 118 boxes raisins, 4 chests tea, 2 pieces duck, 5 casks copper.	do	16,726 44	1,782 97	110 86	281 56		10,720 18	$13,521 07 pd. col. Boston 533 23 do Nantucket 1,459 44 do Salem 29 84 do Newburypt. 10 77 do Edgartown $15,554 35 Excess of costs paid by cols.
	3 penalties 1200 dollars	do		69 94	27 05	21 55		1,269 94	400 dolls. less coms. paid col. of Newburyport. Dft. in 1 case com. for 427 05, in the other, ex. ret. not satis.
1823	Five-sixteenths of sch. Pilgrim, 1 hhd. rum, 12 pieces ravens duck, 20 bags and 3 casks of coffee, 25 bbls. cheroots, &c. 1 box cut glass, 1 hamper of cheese, 1 box tortoise shell, 3 bags cloves, 6 bbls. sugar, sch. Columbia and cargo, half of sch. Sparrow, sloop Fair American, 2 bundles bridle-bits, 1 box sugar 8 bbls. salmon	do	3,981 31	1,447 39		159 57		402 51	$2006 33 paid col. of Boston 35 35 do Nantucket 619 29 do Newburyport 325 00 less com. paid col. of Belfast, Me.
	Penalty 400 dollars	do		33 63	33 63			433 63	Exe. ret. not satisfied, June 1823
	Penalty 400 dollars	do		31 88	31 88			431 88	do do do
	Penalty 100 dollars	Act regulating seamen		24 30		24 30			100 dollars penalty, less coms. paid Treas. U. S.
1824	8 bags coffee, 45 hhds. and 10 bbls. rum, 12 bbls. sugar, 6 casks wine, 3 bales ravens duck, 8 bbls. oranges, sch. Four Sisters.	Collection	4,458 42	881 29	deducted from proceeds				$2945 62 paid col. of Salem 749 93 do Boston Excess of costs in several instances paid by collectors.

[Doc. No. 146.]

45

DISTRICT OF MASSACHUSETTS.—No. 3.—Continued.

In what year.	Article or sum forfeited.	Offence against what law.	Gross amount of sales.	Amount of expenses.	Costs paid by U.States.	Costs paid by the party.	Net proceeds received by U.States.	Total.	Observations.
	Penalty 500 dollars	Collection law		29 99		29 99		529 99	$500 less com. pd. col. Newbu't
	Penalty 50 dollars	Post Office act		72 39		72 39		122 39	Believ'd to have been pd. dis.at.
	Penalty	do							Judgment, no exe. sued out.
1825	88 bags coffee, 6 bales cotton, 1 piece cloth, 1 trunk watch glasses, &c. sch. Richmond.	Collection	1,910 06	516 22	do.in part	103 53		501 53	$1179 51 paid col. of Ipswich 315 86 do Boston
	Penalty 400 dollars	do		72 71	72 71			472 71	Committed deft. Dec. 1826.
1826	56 kegs wine, 3 hhds. rum, 25 bags coffee, boat, 9 bbls. sugar and 7 bbls. molasses, 1 bag tortoise shell, sch. Avon.	do	1,740 89	537 48	deducted in part.	49 02		715 02	$423 14 paid col. of Boston 189 71 do Salem 666 00 less coms. Plymouth Excess of costs paid by cols.
1827	Sch. Tiger, sch. Salmon, bbl. sugar, bbl. and half wine, 21 casks of coffee, &c. 2 hhds. rum, &c.	do	1,651 35	605 88		220 18			$1356 09 paid col. of Boston
	Penalty 260 dollars	do		29 60		29 60		289 60	260 dolls. penalty less coms. pd. col. of Plymouth.
	3 penalties 400 dolls. ea. 1200	do		199 83				1,399 83	Executions not returned.
	4 cases nutmegs, &c. 1 chain cable, sch. Clara.	do	2,841 49	393 28	55 77	132 33			$2580 54 paid col. of Boston
1828	50 drums figs	do	80 68	53 70	deducted				$26 98
1813	4 bales merchandise	Non-intercourse	4,202 83	167 81	deducted				$4034 99 paid col. of Boston
	Brig Rambler	do	655 35						$647 16 ordered by Sec. Treas. to be distributed in same manner as forfeitures would have been, residue of forfeiture remitted.
	Half proceeds of flour from sch. Mysted.	do	127 50						$127 50 paid col. of Boston—the other half remitted by the Sec'y of Treasury.
		Dollars,	633,955 93	81,144 13	1,107 63	13,667 01	1,925 63	214,974 32	

NOTE.—The amount of penalties, except in few cases, has been carried into the column headed "Gross amount of Sales."

Certified in the following manner: *Boston, March* 17, 1828. Prepared and collated with the records under the superintendence of

GEO. BLAKE,
U. S. Attorney for Massachusetts District.

The following is the result found under the head of Observations, in abstract No. 3 :—

Paid Collectors of the Customs	$497,925 56
District Attorney of the United States	20,593 63
Marshal of United States	3,128 16
Supervisor and Collectors of Internal Revenue	678 47
Treasurer of the United States	3,963 96
Into Court	417 40
Collected, but not shown how disposed of	528 68
Refunded, pardoned, and remitted	33,899 74
Probably remitted by Secretary of the Treasury, but no reason assigned for the probability	608 18
Decreed to the United States, but not shown whether it has ever been paid	10,754 61
Decreed to United States, half French ship Deux Anges and cargo, but of which there is no account of sales or of payment.	
Executions issued, but not on file or returned, to amount of	9,321 36
Appraised value, &c. where no executions issued	11,985 13
Executions returned not satisfied	47,381 76
Do do do by direction of District Attorney	2,911 87
Executions, and defendants committed for	21,219 87
Defendants not found	2,490 53
Warrant of sale not on file, no account of sales and no papers	8,602 18
	$ 676,411 11

Schooners Louisa, Resolution, Victory, brig Betsey, 90 tons plaster, 5 bbls. and 41 kegs rum, 15 bags coffee, 4 hhds. molasses, 5 cases merchandise, sch. Hannah and cargo, and cargo of sloop Deborah.

Property not arrested and not found, sch. Hazard and cargo, 4 bags coffee, and sch. Adolphus and cargo, 11 pieces cloth, 10 boxes segars, bbls. sugar and 8 bags coffee, brig Eleanor pardoned.

[Doc. No. 146.]

47

DISTRICT OF MASSACHUSETTS—No. 4.

NUMBER of commitments, trials, executions, and pardons, for capital and other offences, against the laws of the United States, in the District of Massachusetts.

OFFENCE.	COMMITMENTS.	TRIALS.	CONVICTIONS.	EXECUTIONS.	PARDONS.	OBSERVATIONS.
Piracy and Murder, - - - - -	14	14	14—viz : Piracy on high seas 5 Murder on do. 9 — 14	12	1—convicted of piracy on the high seas.	One person, who was sentenced to death for murder on the high seas, committed suicide a short time previous to the day assigned for his execution.

Dated BOSTON, 17TH MARCH, 1828.

Prepared and collated with the Records, under the superintendence of

GEO. BLAKE,

U. S. Attorney for Massachusetts District.

[Doc. No. 146.]

REPORT

OF THE

Secretary of the Treasury,

IN

OBEDIENCE TO A RESOLUTION OF THE HOUSE,
OF THE 7th ULT.

IN

RELATION TO EXPENSES

IN THE

PROSECUTION OF OFFENCES AGAINST THE UNITED STATES,

IN

THE DISTRICTS OF CONNECTICUT, MASSACHUSETTS, NEW-HAMPSHIRE,
VERMONT, AND NEW-YORK,

FROM

The year 1803, to the year 1815, inclusive, &c. &c.

April 1, 1816.
Read, and Ordered to lie upon the Table.

WASHINGTON:

PRINTED BY WILLIAM A. DAVIS.

.....

1816.

STATEMENT of Fines and Penalties paid into the treasury of the United States from the Districts of New-Hampshire, Massachusetts, Connecticut, Vermont, and New-York, by marshals, district attorneys, collectors &c. from the year 1808, to the year 1815, inclusive.

Years.	New-Hampshire.	Massachusetts.	Connecticut.	Vermont.	New-York.	From whom recovered, and under what prosecutions.		Total.
1808.	None.	Ben. Lincoln, collector.				Fines and penalties for breach of laws against the slave trade, parties not known,	2,400	
		James Prince, marshal.				Forfeiture of Henry Deming's recognisance charged with fraud upon General Post-Office,	2,509	
1809.		Sam. Bradford, do.				Fines imposed by Circuit Court of United States upon Isaac Barnes and Richard Holmes,	120	
1811.		James Prince, do.				Fines imposed on Luke Thorndike for resisting the officers of government in the execution of their duties,	50	
1813.		Tho. G. Thornton, do.				Penalties recovered from Nason, Atkinson and others, under the embargo laws,	814 96	
1814.		James Prince, do.				Recovered from Richard Scaro, Mulford Howes, jun. and David Howes, jun. for resisting the officers of the customs in Barstable county,	900	
		Tho. G. Thornton, do.				Penalties recovered from Nason, Atkinson and others, for violation of embargo laws,	1,018 51	7,803 47
1812.			R. Fairchild, marshal.			Fine imposed and recovered from Josiah Rogers for resisting deputy marshal,	100	
1813.			Do.			Recovered on a qui tam action by Fosdick vs. Rothom,	10	
			H. Huntington, D. At.			Recovered from Miles and Amos Merwin, for a violation of embargo laws.	427 50	537 50
				T. Hutchinson, Dis. At.		Recovered from Moses Ambler, surety of Job Barber, for resisting the marshal of Vermont in the execution of his duty,		503 75
1808.					D. Gelston, collector.	Received for a stamp duty and penalty,	10 25	
1809.					C. Clinton, Cl. Dis. Ct.	Being the United States' moiety of the nett proceeds of brig Nereid and cargo, and part of cargo of brig Hiram, captured by Frigate Chesapeake, captain Decatur, and condemned for violation of embargo laws,	7,106 25	
1810.					Hart Massey, Collector.	Received for a stamp duty and penalty,	10 10	
1812.					Henry Meigs, assistant justice 1st ward N. Y.	Received for the United States' proportion of two penalties incurred by Elisha L. Pratt and Abraham Shaw, under the act for the government and regulation of seamen in the merchant service,	30	
					D. Gelston, collector.	Received for stamp duty and penalty,	10 10	7,166 70
								16,011 42

Treasury Department,

Register's Office, March 26, 1816.

JOSEPH NOURSE, *Register.*

Relator's Exhibit 9:

Non-Exhaustive List of Founding-Era Judicial Opinions Demonstrating the Use and Enforcement of *Qui Tam* Statutes by Uninjured Informers.

Case	Cite	Year	Jurisdiction	Likely Statute*	Right of Action by Uninjured Informer**	Additional Sources
Evans qui tam v Boller	4 Dall 342	1797	Circuit Court, District of Pennsylvania	Act of March 22, 1794, ch 11, 4, 1 Stat 347, 349 - An Act to prohibit the carrying of the Slave Trade from the United States to any foreign place or country	Yes	
Talbot qui tam v The Ship Amelia	4 U S 34	1800	Supreme Court of the United States	*The Act of June 25, 1798 - An Act to Authorize the Defense of the Merchant Vessels of the United States against French Depredations.*	Yes	*See* Exhibit 13 to the Declaration of Jennifer M Verkamp for a contemporaneous newspaper publication regarding this matter
Samuel Adams qui tam vs John Edwards, District Court for the District of Massachusetts (September Term 1802)		1802	District Court for the District of Massachusetts	Act of March 22, 1794, ch 11, 4, 1 Stat 347, 349 - An Act to prohibit the carrying of the Slave Trade from the United States to any foreign place or country; Act of May 10, 1800 ch 51 - An Act in addition to the act intituled "An act to prohibit the carrying on the Slave Trade from the United States to any foreign place or country "	Yes	
Shearman v The Schooner Exchange		1803	District Court for the District of New York	Act of May 10, 1800 ch 51 - An Act in addition to the act intituled "An act to prohibit the carrying on the Slave Trade from the United States to any foreign place or country "	Yes	
United States v Simms	5 U S 252	1803	Supreme Court of the United States	Act of March 3, 1801, p 287 § 2 - An Act supplementary to the act intituled "An act concerning the District of Columbia "	Yes	
United States vs Schooner Amelia		1803	District of Georgia in Admiralty	Act of March 22, 1794, ch 11, 4, 1 Stat 347, 349 - An Act to prohibit the carrying of the Slave Trade from the United States to any foreign place or country; Act of May 10, 1800 ch 51 - An Act in addition to the act intituled "An act to prohibit the carrying on the Slave Trade from the United States to any foreign place or country "	Yes	
Morrill v The Brig Providence		1804	District Court for the District of New York	*Act of May 10, 1800 ch. 51 - An Act in addition to the act intituled "An act to prohibit the carrying on the Slave Trade from the United States to any foreign place or country."*	Yes	
Adams qui tam v Woods	6 U S 336	1804	Supreme Court of the United States	Act of March 22, 1794, ch 11, 4, 1 Stat 347, 349 - An Act to prohibit the carrying of the Slave Trade from the United States to any foreign place or country	Yes	
The Cargo of the Emulous, Brown, Claimant	1 Gallis 562	1813	Circuit Court, District of Massachusetts	*Prize Act of 26 June, 1812, ch. 107 (and possibly Salvage Act of 3 March, 1800, ch. 14).*	Yes	
The Emulous v Brown	8 F Cas 697	1813		*Prize Act of 26 June, 1812, ch. 107 (and possibly Salvage Act of 3 March, 1800, ch. 14).*	Yes	
Brown v United States	8 Cranch 110	1814	Supreme Court of the United States	*Prize Act of 26 June, 1812, ch. 107.*	Yes	
Malebran's case	NY City Hall Rec 122	1820	District Court for the District of New York	Act of March 22, 1794, ch 11, 4, 1 Stat 347, 349 - An Act to prohibit the carrying of the Slave Trade from the United States to any foreign place or country	Yes	
U S v Morris	10 Wheat 246	1825	Supreme Court of the United States	Act of March 3, 1797, Ch 20, S 2, 2 Stat 512 - Collections Act	Unclear	

USCA11 Case: 24-13581 Document: 40-2 Date Filed: 01/08/2025 Page: 180 of 330

Relator's Exhibit 9:

Non-Exhaustive List of Founding-Era Judicial Opinions Demonstrating the Use and Enforcement of *Qui Tam* Statutes by Uninjured Informers.

Case	Cite	Year	Jurisdiction	Likely Statute*	Right of Action by Uninjured Informer**	Additional Sources
Blunt v Patten	2 Paine 393	1828	Circuit Court, Southern District of New York	*Act of April 29, 1802 Ch 36 SS 3-4, 2 Stat. 171, 172 - An Act supplementary to an act, intituled "An act for the encouragement of learning, by securing copies of maps, charts, and books to the authors and proprietors of such copies during time therein mentioned," and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints.*	Yes	*See* Exhibit 15 to the Declaration of Jennifer M Verkamp for a contemporaneous newspaper publication regarding this matter
Clayton et al v Stone et al ,	2 Paine 382	1829	Circuit Court, Southern District of New York	Act of May 31, 1790, ch 15, § 2, 1 Stat 124, 124-25 - An Act for the encouragement of learning, by securing copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned Act of April 29, 1802 Ch 36 SS 3-4, 2 Stat 171, 172 - An Act supplementary to an act, intituled "An act for the encouragement of learning, by securing copies of maps, charts, and books to the authors and proprietors of such copies during time therein mentioned," and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints	Yes	*See* Exhibit 14 to the Declaration of Jennifer M Verkamp for a contemporaneous newspaper publication regarding this matter
Dwight v Appleton	1 N Y Legal Obs 198	1840	Circuit Court, Southern District of New York	Act of May 31, 1790, ch 15, § 2, 1 Stat 124, 124-25 - An Act for the encouragement of learning, by securing copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned; Act of April 29, 1802 Ch 36 SS 3-4, 2 Stat 171, 172 - An Act supplementary to an act, intituled "An act for the encouragement of learning, by securing copies of maps, charts, and books to the authors and proprietors of such copies during time therein mentioned," and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints	Yes	*See* Exhibit 16 to the Declaration of Jennifer M Verkamp for a contemporaneous newspaper publication regarding this matter
U S v Murphy and Morgan	16 Peters 203	1842	Supreme Court of the United States	Act of April 30, 1790, ch 36, § 16 - An Act for the Punishment of certain Crimes against the United States	Yes Statute cited in *Vermont Agency of Nat. Res. v. United States ex rel. Stevens* , 529 U S 765, 777 n 6 (2000) as "provid[ing] both a bounty and an express cause of action "	
United States v Patterson	3 McLean 299	1843	Circuit Court, District of Ohio	Act of March 3, 1839 ch 80 - An Act to provide for taking the sixth census or enumeration of the inhabitants of the United States	Unclear - statute refers to suit or indictment, but without reference to who can sue	

USCA11 Case: 24-13581 Document: 40-2 Date Filed: 01/08/2025 Page: 181 of 330

Relator's Exhibit 9:

Non-Exhaustive List of Founding-Era Judicial Opinions Demonstrating the Use and Enforcement of *Qui Tam* Statutes by Uninjured Informers.

Case	Cite	Year	Jurisdiction	Likely Statute*	Right of Action by Uninjured Informer**	Additional Sources
Ferrett & Arthur qui tam v Atwill	4 NY Legal Observer 294	1846	Circuit Court, Southern District of New York	Act of February 3, 1831, ch 16 - An act to amend the several acts respecting copyrights	Yes	*See* Exhibit 17 to the Declaration of Jennifer M Verkamp for a contemporaneous newspaper publication regarding this matter
Backus v Gould	48 U S 798	1849	Supreme Court of the United States	Act of February 3, 1831, ch 16 - An act to amend the several acts respecting copyrights	Yes	
Harrison v Vose	50 U S 372	1850	Supreme Court of the United States	Act of February 28, 1803, ch 9 - An Act supplementary to the act concerning consuls and vice-consuls, and for the further protection of American Seamen	No - requires injured plaintiff	
Stevens v Gladding	60 U S 64	1856	Supreme Court of the United States	Act of February 3, 1831, ch 16 - An act to amend the several acts respecting copyrights	Yes	*See* Exhibit 18 to the Declaration of Jennifer M Verkamp for a contemporaneous newspaper publication regarding this matter
The Laura	114 U S 411 (1885)	1885	Supreme Court of the United States	Act of Feb 28, 1871, 16 Stat 440, 454 - An Act to provide for the better Security of Lige on board of Vessels propelled in Whole or in Part by Steam, and for other Purposes	Yes	

* For cases where the applicable statute is shown in *italics*, the Court did not specifically cite a statute However, the substance and dates of the Court's opinion and statute align such that Relator has reasonably concluded the statute to be the likely source of the cause of action

** The Supreme Court held in *United States ex rel. Marcus v. Hess* that "[s]tatutes providing for a reward to informers which do not specifically either authorize or forbid the informer to institute the action are construed to authorize him to sue " 317 U S 537, 541 n 4 (1943) (citing Adams v Woods, 2 Cranch 336 (1805)); see also; Vermont Agency of Nat Res v United States ex rel Stevens, 529 U S 765, 777 n 7 (2000) (reciting this rule of construction) As such, Relator's list is likely underinclusive

USCA11 Case: 24-13581 Document: 40-2 Date Filed: 01/08/2025 Page: 182 of 330

270848

CITY HALL
at Wall and Broad streets
e were held the New York City terms of the Supreme Court of Judicature
opper engraving by Cornelius Tiebout; Edward W. C. Arnold Collection;
nt by the Metropolitan Museum of Art; photograph courtesy Museum of
the City of New York

THE LAW PRACTICE OF *Alexander Hamilton*

DOCUMENTS AND COMMENTARY

VOLUME II

JULIUS GOEBEL JR., *Editor*
SCHOOL OF LAW, COLUMBIA UNIVERSITY

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USCA11 Case: 24-13581 Document: 40-2 Date Filed: 01/08/2025 Page: 183 of 330

common Law Remedy, where the Common Law is competent to give it"

If we attend to this Passage it appears evident that the Congress meant to include all such Seizures as are therein described in the Description of Causes of Admiralty & maritime Jurisdiction. The only Difficulty arises from the latter Part of the Clause "saving to Suitors their common Law Remedy."—But neither the United States, nor their Attorney could properly be called Suitors, & there could be no Reason why any Thing should be saved to them—Again, Defendants, who might perhaps be considered as Suitors instead of having a Trial by Jury, have a common Law Remedy, saved to them, which implies some Wrong or Injury that they must have previously sustained—Now the Fact of their having sustained an Injury can never be known until after the Trial upon the Seizure; & consequently the Remedy contemplated must be something to take Place after such Trial. Now, the Common Law Remedy for unjust Seisures was by Action of Trespass; and the Act seems to have had it in View to exclude the Inference that might be derived (whether justly or not) from the Case of Le Caux & Eden in Douglass, and those there cited, that where an Admiralty Court has Cognizance of the principal Question, it shall also have Cognizance of the Incidents, and that no Suit at Common Law could be sustained for an Injury where the Admy Court might have given Compensation to the injured Party.

In the Case of the La Vengeance (reported in the third Volume of Dallas, but very imperfectly) the Cause was determined in the District, Circuit and Supreme Court, to be of Admiralty Jurisdiction; though it must be confessed that the Act upon which that Case depended expressly referred to the Mode of Proceeding under the Collection Act; which Circumstance does not appear to have been noticed by the Judges of the Supreme Court.—The Case however (independent of that Circumstance) does not appear to have been less properly a Case for a Common Law Trial than the one now under consideration.

Upon the whole, though I consider this Case as by no Means free from Doubt, I am of Opinion

1st. that the regular Mode of proceeding is by Libel and the Cause of Admiralty Jurisdiction—but

2dly. that as the Admiralty Jurisdiction depends upon the Seizure for the Breach of a Law of Trade "upon Waters navigable from the

Sea by Vessels of ten or more Tons Burthen" this Fact ought to have been alledged.

ISAAC SHERMAN QUI TAM v. THE SCHOONER EXCHANGE, OTHERWISE CALLED THE EL CAMBIO OR NEUSTRA SIGNORA DELOS DOLORES, JOHN DE LA VILLA, CLAIMANT

US District Court for NY, 1803

The case involved Section 1 of the Slave Trade Act of 1800, which prohibited United States citizens from having any property interest in a vessel employed in the transportation of slaves from a foreign country.[41] Edward Livingston and Rudolph Bunner were counsel for the libellant; David A. Ogden, Samuel Boyd, and Hamilton represented the claimant.

The libel of Sherman was filed (date unknown) per Livingston against the schooner *Exchange*.[42] Sherman alleged that Daniel Edes, a United States citizen, was owner of the vessel; he charged that on December 1, 1802, said schooner had been used for the transport of slaves from Africa to Havana, and therefore had become forfeit. The answer and claim of de la Villa, master, filed September 1, 1803, by Ogden, denied that Edes was presently the owner of the vessel or had been such at the time of the alleged violation.[43] Instead he averred that the schooner belonged to a Spanish citizen and had never been used in the slave trade. Restoration was prayed.

At that time Ogden read an affidavit of de la Villa, stating that the schooner was loaded and ready to sail within three days' time but was detained by the process of the court.[44] The court thereon ordered the libellant to enter a stipulation with sureties to pay the damages and costs that accrued if he failed to sustain his libel. On September 8 the libellant made the stipulation and it was recorded that the *Exchange*

41. Case Papers: RG 21, US District Court for NY, Admiralty Case Files, Box 6 (NA).

42. The Libel was not found among the case papers, nor is its filing date given in the minute book entries. For allegations of libel, see Monition, returned Sep 8, 1803, in Admiralty Case Files, *supra* n. 41.

43. Answer and Claim, in Admiralty Case Files, *supra* n. 41.

44. *Ms. Mins US Dist Ct for NY* 1802–1807, 101 *sub* Sep 1, 1803 (NA).

USCA11 Case: 24-13581 Document: 40-2 Date Filed: 01/08/2025 Page: 184 of 330

had been attached.[45] Then on motion of Hamilton the cause was ordered to be heard September 19. On that date the court examined the witnesses of the parties and twelve depositions were introduced.[46] Hamilton twice made motions to read into evidence the deposition of Edes, but each time was overruled. After each side had introduced its evidence, Livingston and Bunner argued for the libellant. The court, finding it unnecessary to hear arguments for the claimants, dismissed the libel. It later awarded the claimant $812 damages, and counsel fees of $100 for Hamilton, $100 for Boyd, and $50 for Ogden.[47] Additional costs brought the judgment against the libellants to $1,287.39.

Trade with France

THE UNITED STATES v. THE BRIGANTINE HARRIOTT OTHERWISE THE JOHN, GEORGE TOPHAM, CLAIMANT

US District Court for NY, 1799
US Circuit Court for NY, 1799
US Supreme Court, 1800

This case arose under the June 13, 1798, act prohibiting trade between the United States and the territories of France.[48] Richard Harison, Robert Troup, and Hamilton prosecuted the action for the United States at the district court; Brockholst Livingston, William Cutting, and Aaron Burr represented claimant Topham. Although the case reached the Supreme Court, Hamilton's participation was limited to that at the district court level.

The brigantine *Harriott*, owned and duly registered by John Vanneman of Philadelphia, sailed in September, 1798, under the command of Topham from Virginia to St. Thomas in the West Indies. At that time trade with France and her possessions was prohibited. Before the sailing, bond was given to the United States conditioned upon the vessel's

45. *Id.* at 104 *sub* Sep 8, 1803.
46. *Id.* at 112–113 *sub* Sep 19, 1803. One of these depositions, that of James Anderson, then sailing master of the schooner, has Hamilton's "pointing hand" in the margin. Deposition, filed Sep 19, 1803, in Admiralty Case Files, *supra* n. 41.
47. *Ms. Mins US Dist Ct for NY* 1802–1807, 140–141 *sub* Dec 3, 1803 (NA).
48. Case Papers: A complete record of the case is contained in RG 267, US Supreme Court Case Papers, Case No. 75 (NA). See also RG 21, US District Court for NY, Admiralty Case Files, Box 3 (NA).

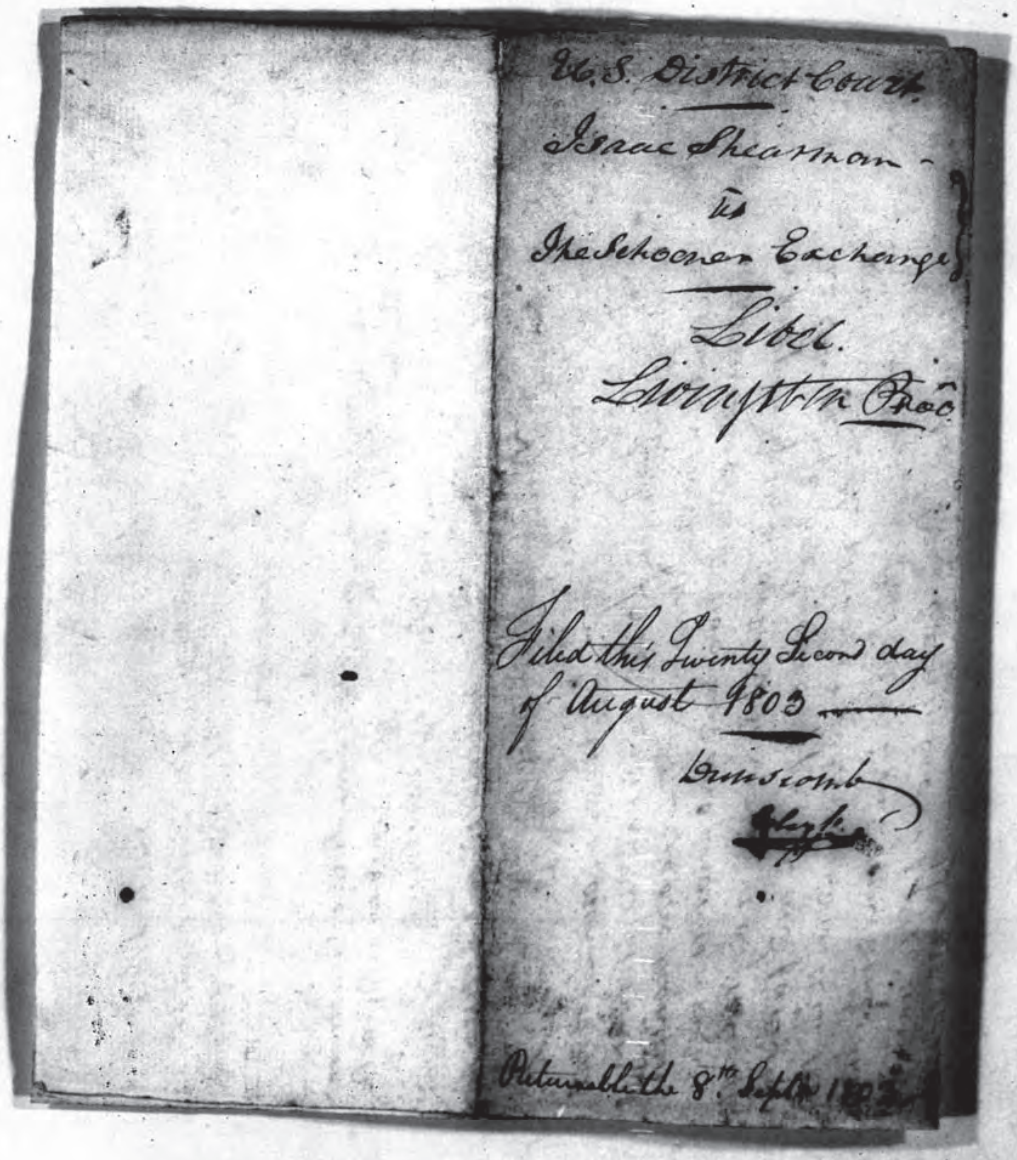
not sailing to French territories.[49] Upon arrival of the *Harriott* at St. Thomas, her cargo was landed and new cargo taken aboard. Thereafter, the vessel proceeded in January, 1799, to Port Liberty on the French island of Hispaniola where the cargo was again sold and a new cargo laden. The vessel, still commanded by Topham, then set sail for the United States and put into the port of New York where she was seized.

On March 14, the libel of the United States was filed per Harison alleging that the *Harriott* proceeded to a French possession in violation of the above statute; forfeiture of the vessel was prayed.[50] The following month Topham filed his answer and claim (no attorney was denominated).[51] He stated that upon arrival in St. Thomas the vessel was sold to John Imlay Jr., a Danish resident of the island. With Danish papers, under Danish colors, and carrying a cargo of dry goods owned by Imlay, the *Harriott* proceeded to Hispaniola. There Topham sold the dry goods and purchased sugar and coffee with the proceeds; laden with such cargo, the brigantine returned to the United States. Since the vessel had become Danish, he averred that no violation had occurred and prayed the return of the brigantine. On April 23 the court, John Sloss Hobart J., ordered the cause to be heard at the next term in May.[52]

Meanwhile, a second libel had been filed on April 9 per Cutting for Robert Thurston *et al.*, seven mariners who had served on the above voyage.[53] Libellants stated that their wages had not been paid, and requested the condemnation and sale of the brigantine to satisfy the amounts due them. The answer and claim was filed by Harison in behalf of the United States on May 8;[54] he stated that a libel had previously been filed by the United States in this case, and prayed that the court dismiss this second libel. That same day, on motion of Livingston, advocate for the libellants, and by consent of Harison, the court ordered the *Harriott* to be sold upon fifteen days' notice, the

49. Such bond was required by the above statute in order to obtain a clearance for a foreign voyage. See 1 *US Stats at Large* 565.
50. Libel, in US Supreme Court Case Papers, *supra* n. 48.
51. Answer and Claim, filed Apr 4, 1799, in US Supreme Court Case Papers, also in Admiralty Case Files, *supra* n. 48.
52. *Ms. Mins US Dist Ct for NY* 1798–1800, 111 *sub* Apr 23, 1799 (NA).
53. Libel, in US Supreme Court Case Papers, also in Admiralty Case Files, *supra* n. 48.
54. Answer and Claim, *id.*

USCA11 Case: 24-13581 Document: 40-2 Date Filed: 01/08/2025 Page: 185 of 330



U.S. District Court.

Isaac Shearman -

vs

The Schooner Exchange

Libel.

Livingston Proc

Filed this Twenty Second day of August 1803

Duncomb

Clerk

Returnable the 8th Sept 1803

To the Honorable John Sloss
Hobart Judge of the District Court
of the United States for the District
of New York.

Humbly sheweth your libellant, Isaac Sherman
of Boston in the State of Massachusetts, and doeth
the said Court now here to understand.

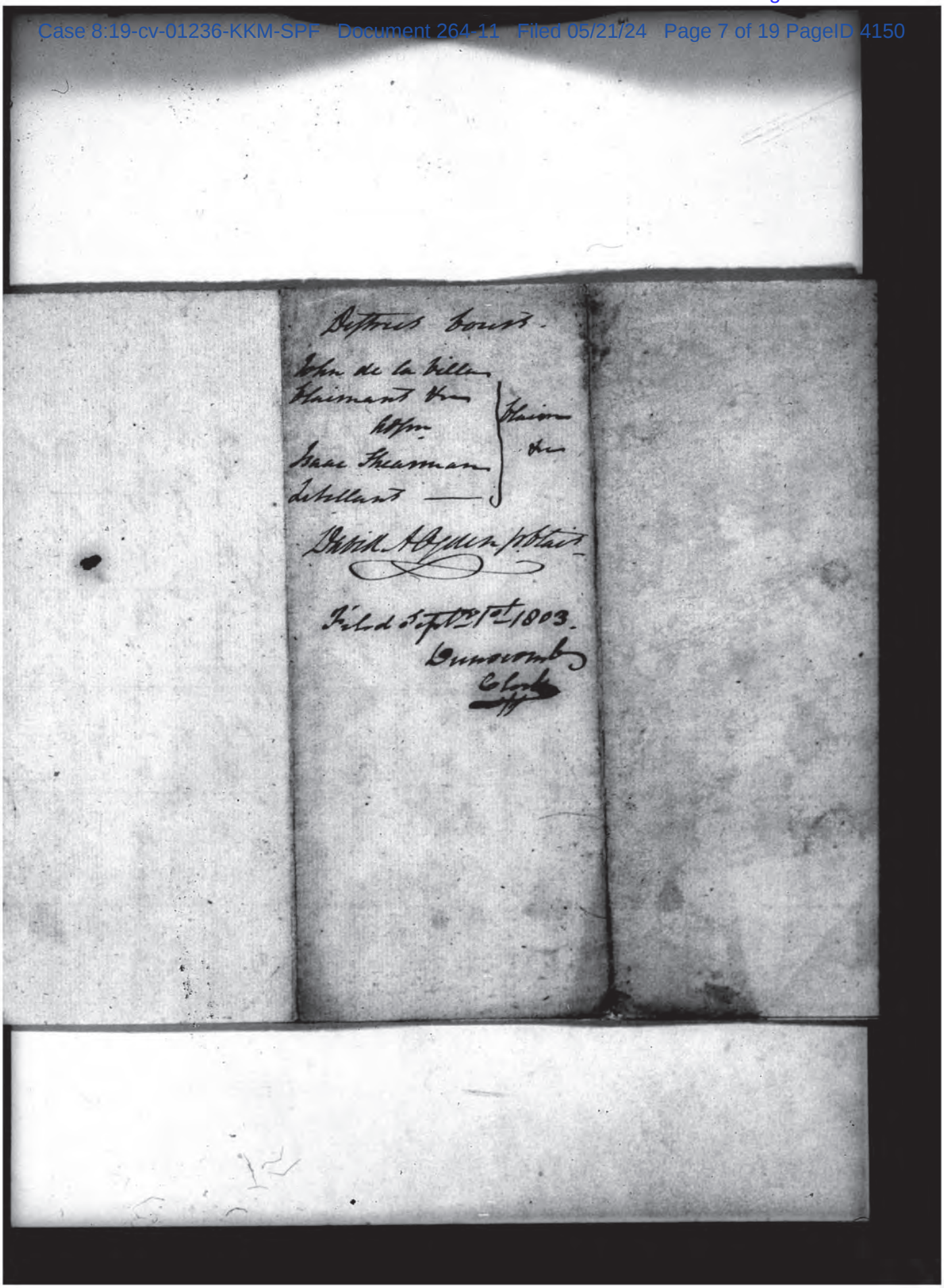
First that a certain Daniel Edes being a Citizen of
the United States and residing within the same
before the day of the filing of this libel, and after
the tenth day of May in the Year of our Lord one
thousand eight hundred, to wit on the first day of
December in the Year of our Lord one thousand
eight hundred and two did, and now has, a right
or property in a certain Schooner or vessel called
the Exchange her tackle apparel and furniture
now lying in the port of New York and within the
Jurisdiction of this Court and sometimes known
by the name of the Excambio or by the name of
Buena Signora delos Dolores of the burthen of one
hundred and eighty tons or thereabouts.
Second, that the said Vessel was on the day and
year aforesaid employed and made use of in the
transportation of Slaves from one foreign
place to another, to wit, from Africa to the Island
of Cuba contrary to the
form of the act in such case made and provided
by reason whereof and also by force of the said
Statute and the filing of this libel the said Schr
ooner or vessel became forfeited to the use of
the said Libellant.
Lastly, that all and singular the premises were
and are true public and notorious of which
due proof being made he humbly prays the
usual process and Monition of this Court in
this behalf to be made and that all persons in
terested in the said Schooner by whatsoever
name she may be known be cited in general
and special to answer the premises and all

proceedings being had, that the said Schooner or Vessel or the interest or property of the said Daniel Coes therein at the time aforesaid may for the causes aforesaid and others appearing be condemned by the definitive Sentence and decree of this honorable Court as forfeited to the use of the said Libellant according to the form of the Statute in such case made & provided.

And he will ever pray &c.

Edw Livingston
Proctor & Advocate
for Libellant

D.C. District of Louisiana
Libel of Edward Livingston
vs
The Schooner Exchange
Libel.
Filed the twenty second day
of August 1803
Duncomb Clk
Returnable 8th Sept 1803



District Court.

John de la Villa
Plaintiff &c
vs
Isaac Thearman
Defendant

David A Ogden p.t.

Filed 5 Sept 21st 1803.
Dunscomb
Clerk

To the Honorable John Kops Hobart Judge of the District Courts of the United States for the New York District

The Answer and Claim of John McCa Villa the Master of the Schooner or Vessel called Steambie Austria Signora Delos Dolores, formerly known by the Name of the Exchange, now lying in the Port of New York and within the Jurisdiction of this Court, of the Burthen of One Hundred & Seventy Tons or thereabouts, in behalf of Don Joseph Maria de Ormabegal of the Havanah in the Island of Cuba, the sole owner of the said Schooner or Vessel, to the Libel filed by Isaac Pearson of Boston against the said Schooner or Vessel -

Respectfully sheweth -

First - That Daniel Edes named in the said Libel is not, neither was he on the first day of December in the Year of our Lord One Thousand Eight Hundred and Two, the owner of the said Schooner or Vessel called the Steambie Austria Signora Delos Dolores, formerly called the Exchange, but the said Schooner or Vessel was really and truly the sole Property of the said Don Joseph Maria

de Amezaga. a Subject of His Majesty the King of Spain. residing at the Havanah in the said Island of Cuba.

And. That the said Schooner or Vessel was not at the said time and then last aforesaid or at any other period employed or made use of in the transportation of Slaves from one foreign Place to another to wit. from Africa to the Havanah in the said Island of Cuba contrary to the Form of the Act of the Congress of the United States in such case made and provided

Wherefore the said John de Lamberton the Master of the said Schooner or Vessel called the Clambia in behalf of the said Don Joseph Maria de Amezaga. submits himself to the Judgment of this Honorable Court. and prays that the said Schooner or Vessel may be restored to him. together with his reasonable costs & charges sustained by him. by reason of the Premises — Juan de la Villa

Sworn the first day

At a Special District Court ~~of the United States~~ held for the District of New York at the City of New York on thursday the first day of September 1803 at 11 O'Clock, A. M —

Present

The Honorable John Sloss Hobart Esquire
Judge of the District

The Schooner Elcambio, Nuestra Signora Delos Dolores, lately called the Exchange her Tackle Apparel &c, John De La Villa in behalf of Don Joseph Maria De Arnabazel Claimant

adsm

Isaac Shegumans Libellant

John De La Villa Master of the said Schooner or Vessel this day came into Court and in behalf of Don Joseph Maria de Arnabazel of the Havannah in the Island of Cuba the sole owner of the said Schooner or Vessel filed an Answer and Claim to the Libel filed in this Cause and the said Answer and Claim being read thereupon and on Motion of Mr. David A Ogden Proctor for the Claimant in this Cause and on Reading and filing the affidavit of the said John De La Villa the Claimant above named stating that the "above named Schooner Elcambio Nuestra Signora Delos Dolores "is now ready loaded and ready for Sea, that her Laden can be "Compleated in the course of one Day, and that she would be ready "to Sail to Seaville in the Course of three days at furthest "if not detained by the Process of this Honorable Court and this "Deponent further saith that he is informed and believes the

"the libellant resides out of the Jurisdiction of this Court to wit at Boston in the State of Massachusetts"

It is ordered by the Court that the libellant in this Cause enter into Stipulation with two Sufficient Sureties to be approved of by the Court on or before the eighth day of September Instant to pay all such Damages and Costs as shall accrue to the Claimant in this Cause by reason of the filing of the libel in this Cause in case the said libellant shall fail to sustain his said Libel.

(A true Abstract from the Minutes)

Edward Dumcomb
Clerk

State of New York } We the undersigned do hereby report to the Honorable District Court of the United States of America for the New York District

That we have appraised the Spanish Schooner Nostra Senora Delores Cambia with her Tackle Furniture and Apparel at Three Thousand Two Hundred and Fifty Dollars

In Testimony whereof we have hereunto subscribed our names this first day of September in the year of our Lord One Thousand Eight Hundred and Three

James Farquhar

D Clagg

G Bunker

New York District Court United States -

The Schooner Elcambio Neustra
Segnora Delos Dolores, otherwise
called the Exchange her tackle
apparel &c. } notice
John de la Villa in
behalf &c Claimant
adsm
Isaac Sherman Libellant

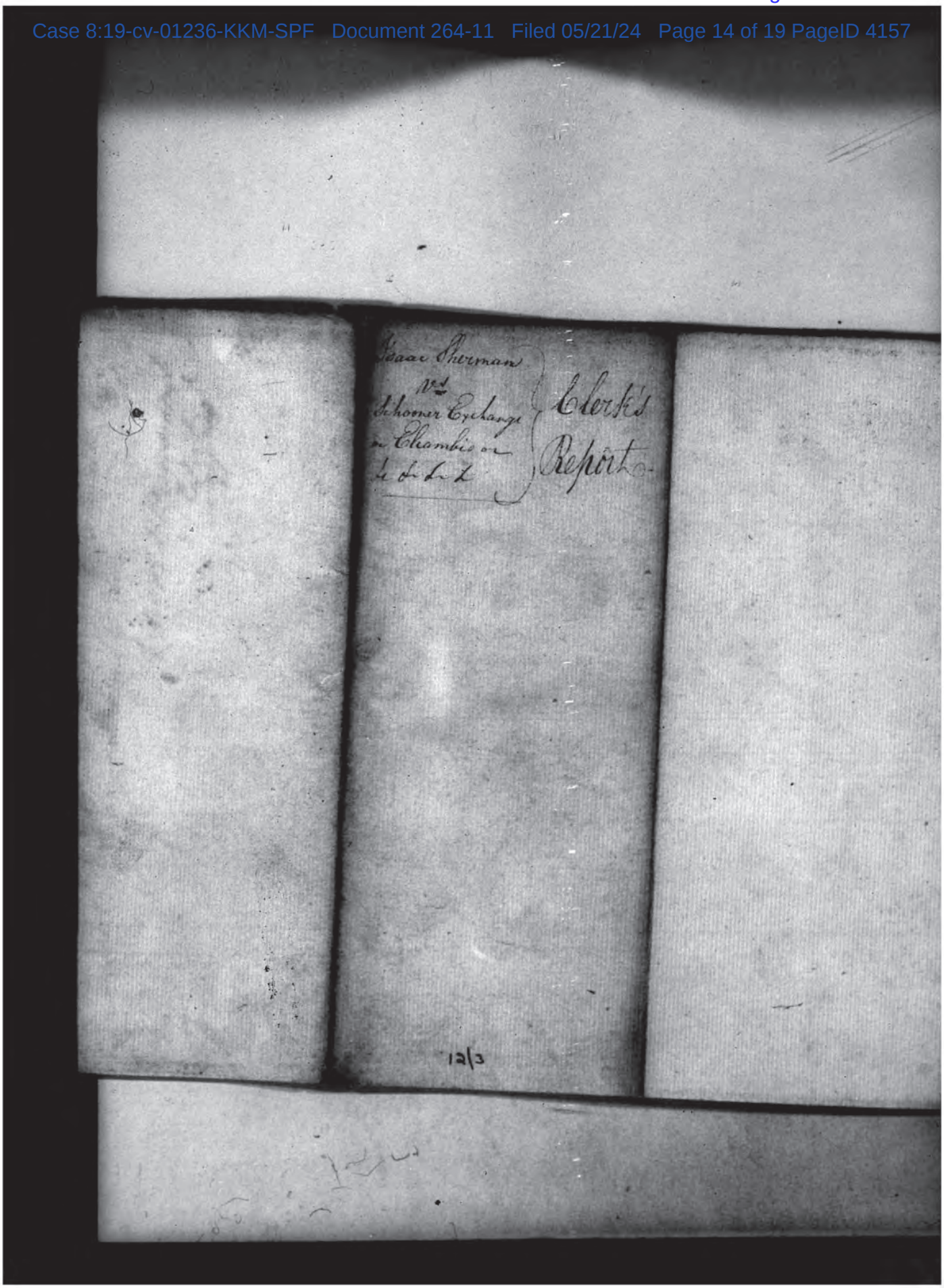
Sir

you will be pleased to take notice

That Edward Dunscomb Esqr the Clerk of the District Court of the United States, in and for the District of New York, will, pursuant to a Rule of the said Court, on Saturday the Twelfth day of November Next, at ten o'clock in the forenoon of that day at his Chambers, No. 49 Wall Street, assess the Damages sustained by the Claimant in the above Cause, by reason of the seizure and detention of the above named Vessel, on the Libel filed by the above named Isaac Sherman in this Court, against the said Vessel her Tackle apparel & furniture — Dated 6th 29th 1803 -

yours &c
Daniel McGregor Procr
for Claimant

To Edward Livingston Esqr
Proctor for Libellant


Isaac Sherman
Vs
Schooner Exchange
on Chambis on
Le de Le L
Clerk's
Report
12/3

[illegible], Appellants

vs.

The Schooner Exchange, her Tackle, apparel and furnitures, otherwise called the Elcambio, or the Nuestra Signora Delos Dolores, John De la Villa Master of the said Schooner, in behalf of Don Joseph Maria De Arnazabel of the Havannah in the Island of Cuba sole Owner of the said Schooner her Tackle, apparel and furniture, Claimant.

Clerks Report.

I Edward Dunscomb Clerk of the District Court of the United States for the New York District in pursuance of the Decree and Order of the said Court made and pronounced in this cause on the nineteenth day of September last, do most respectfully Report To this Honorable Court, That I have enquired into the Damages Sustained by the Claimant in the above Cause, by reason of the Seizure and Detention of the said Vessel on the Libel filed in this Cause, and for the purpose of ascertaining the same, have duly affirmed Samuel Hicks, Jacob Barker and Silvanus F Jenkins all of the City of New York Merchants witnesses produced to me on the part of the said Claimant, and that from the affirmations of the said Witnesses it has appeared to me that there is due to the said Claimant for Twenty nine Days Demurage of the said Schooner at Twenty eight dollars per day, the sum of eight hundred and twelve dollars, and that he has paid to Alexander Hamilton Esqr. for fees as Counsel one hundred dollars and to Samuel Boyd Esqr. fees as Counsel the like sum of one hundred dollars, and to David A Ogden Esquire as his fees fifty dollars, and for the Costs and Charges of the Marshal of the District one hundred and forty two Dollars and Twenty Cents, and to B Fine for his services as interpretor when attending his Counsel fifty dollars, making the sum of Twelve hundred and fifty four Dollars and Twenty Cents, and do also Report, that there is due to me for my Costs in this Cause the sum of thirty three Dollars and nineteen Cents, making together the Sum of Twelve hundred and eighty Seven dollars and thirty nine Cents. All which

is

is most respectfully submitted to this Honorable Court.
Dated this 2nd day of December 1803 —
Edward Dumoscomb
Clerk
Cliff

At a Special District Court of the United States held for the District of New York at the City of New York on Saturday the third day of December 1803 at 12 O'Clock M,

Present

The Honorable John Sloss Hobart Esquire

Judge of the District,

Isaac Norman Libellant

vs

The Schooner Exchange, her Tackle apparel and furniture, otherwise called the Elcambio or the Nuestra Signora, de los Dolores, John Dela Villa, Master of the said Schooner in behalf of Don Joseph Maria De Ormazabel of the Havanah in the Island of Cuba, Sole Owner of the said Schooner, her tackle, apparel and furniture, Claimant

On motion of Mr Boyd in behalf of Mr D. A. Ogden Proctor for the Claimant, It is Ordered that the Report of the Clerk filed in this Cause, stand Confirmed unless the Libellant Shew cause to the contrary on the eighth Instant, at the Opening of the Court on that day, or as soon thereafter as Counsel can be heard, and it is also

Ordered, that the parties in this cause be heard at the same time, on the Claim made by the Claimant for an Increase of Damages in the same

A true abstract from the minutes

Edward Dunscomb

Clerk

The Schooner Exchange
&c —
vs
Isaac Thomson Libellt —

The Court having confirmed the Report made by Edward Duyckinck Esq. the Clerk of this Court, whereby he reports that in this above cause by reason of the Libel filed in this cause the Claimant hath sustained Damages to the Amount of Twelve Hundred and Eighty four Dollars and Thirty Nine Cents — On Motion of Mr. David Thurston and Mr. David Aspinwall Proctor for Claimants it is ordered by the Court that John Murray Junr. and William Gilliland of the City of N.Y. Brewers & Sureties of said Claimant, then cause on the 26th day of December Inst. at Eleven O'Clock in the forenoon of that day, why Execution should not issue against them according to the Terms of the Stipulations entered into by them respectively in the above cause

Dated the 8th of December 1803

held for the District of New York at the City of New York on Thursday the eighth day of December 1803 at 11 O'Clock a. M.

Present

The Honorable John Sloss Hobart Esquire Judge of the District.

Isaac Sherman Libellant

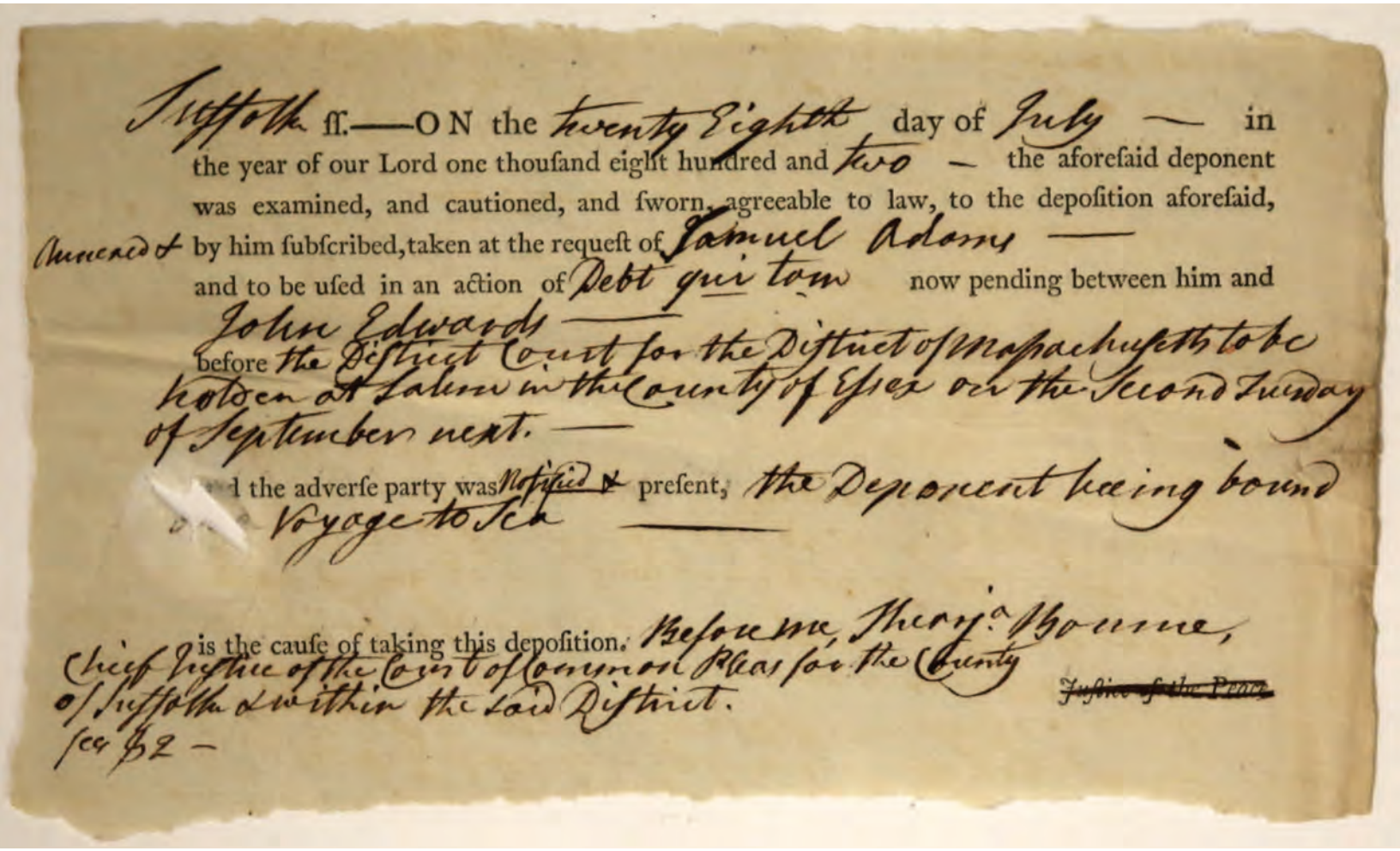
vs.

The Schooner Exchange, otherwise called the Chambris, otherwise called Nuestra Signora Delos Dolores. her Tackle, apparel and furniture John De la Villa, Master of the said Schooner, in behalf of Don Joseph Maria De Ormazabel of the Havannah in the Island of Cuba Sole owner of the said Schooner her Tackle, apparel and furniture Claimant.

The Court having confirmed the Report made by the Clerk of this Court in this Cause, whereby he Reports that the Claimant hath sustained damages by Reason of the Libel filed in this Cause to the Amount of Twelve hundred and eighty Seven dollars and thirty nine Cents Thereupon and on Motion of Mr. David A Ogden Proctor for Claimant

It is ordered by the Court, that John Murray Junior of the City of New York Brewer and William Fillinghast Slocum of said City Merchant shew cause on the twenty sixth day of December Instant at eleven O'Clock in the forenoon of that day why execution should not issue against them according to the terms of the Stipulation entered into by them respectively in the above Cause

A true Abstract from the Minutes
Edward Duyckinck
Clerk



Suffolk ff.—ON the twenty Eighth day of July — in the year of our Lord one thousand eight hundred and two — the aforesaid deponent was examined, and cautioned, and sworn, agreeable to law, to the deposition aforesaid, Annexed & by him subscribed, taken at the request of Samuel Adams — and to be used in an action of Debt qui tam now pending between him and John Edwards — before the District Court for the District of Massachusetts to be holden at Salem in the County of Essex on the Second Tuesday of September next. —

And the adverse party was Notified & present, the Deponent being bound on a Voyage to Sea —

The cause of taking this deposition is Chief Justice of the Court of Common Pleas for the County of Suffolk & within the said District. Before me, Thos. Bourne, ~~Justice of the Peace~~

Fees $2 —

The Jurors under Oath or Affirmation do find that John Edwards & Samuel Adams the plaintiff who sues as well for himself as for the United States is indebted to the United States the Sum of Four Hundred Dollars —

Isaac Hacker foreman

The Jurors find that the Defendant is indebted to the plaintiff who sues as well for himself as for the United States the sum of four Hundred Dollars in manner & form as set forth in the writ

United States of America
Massachusetts District ss

To the Hon.ble John Davis Judge of the District Court of the United States for the District of Massachusetts

Be it remembered that on the twenty third day of November in the year of our Lord Eighteen hundred & two. Before the Honorable John Davis Judge of said Court comes Samuel Adams of Boston in said District Libelant and as well for and as for the name of the United States as for himself and in behalf of the said United States as of himself Libels propounds and saith the said Court to understand and be informed, that on the fifteenth day of January last past one Nathan Winds[illegible] of said Boston Mariner was a citizen of the United States residing within the same and that the said Nathan for being a citizen as aforesaid was then ever since hath been & now is owner of & having all the right and property in and unto a certain Brigantine or Vessel of about Two hundred called the Betsey together with all her Tackle Apparel and Furniture And that said Brigantine afterwards & between the said fifteenth day of January aforesaid and the first day of October last past was employed and made use of in the transportation or carrying of Slaves from one foreign country or place viz from a foreign country or place called Africa, to another foreign port or

place for the [illegible] foreign port or place in the West Indies or in South America — Contrary to an Act of the United States, entitled An Act in addition to the Act, entitled an Act to prohibit the carrying on the Slave trade from the United States to any foreign place or country — Give the said Samuel who Libels as aforesaid Oath further that the said Nathan on the said fifteenth day of January last past was and now is a citizen of the United States residing within the same

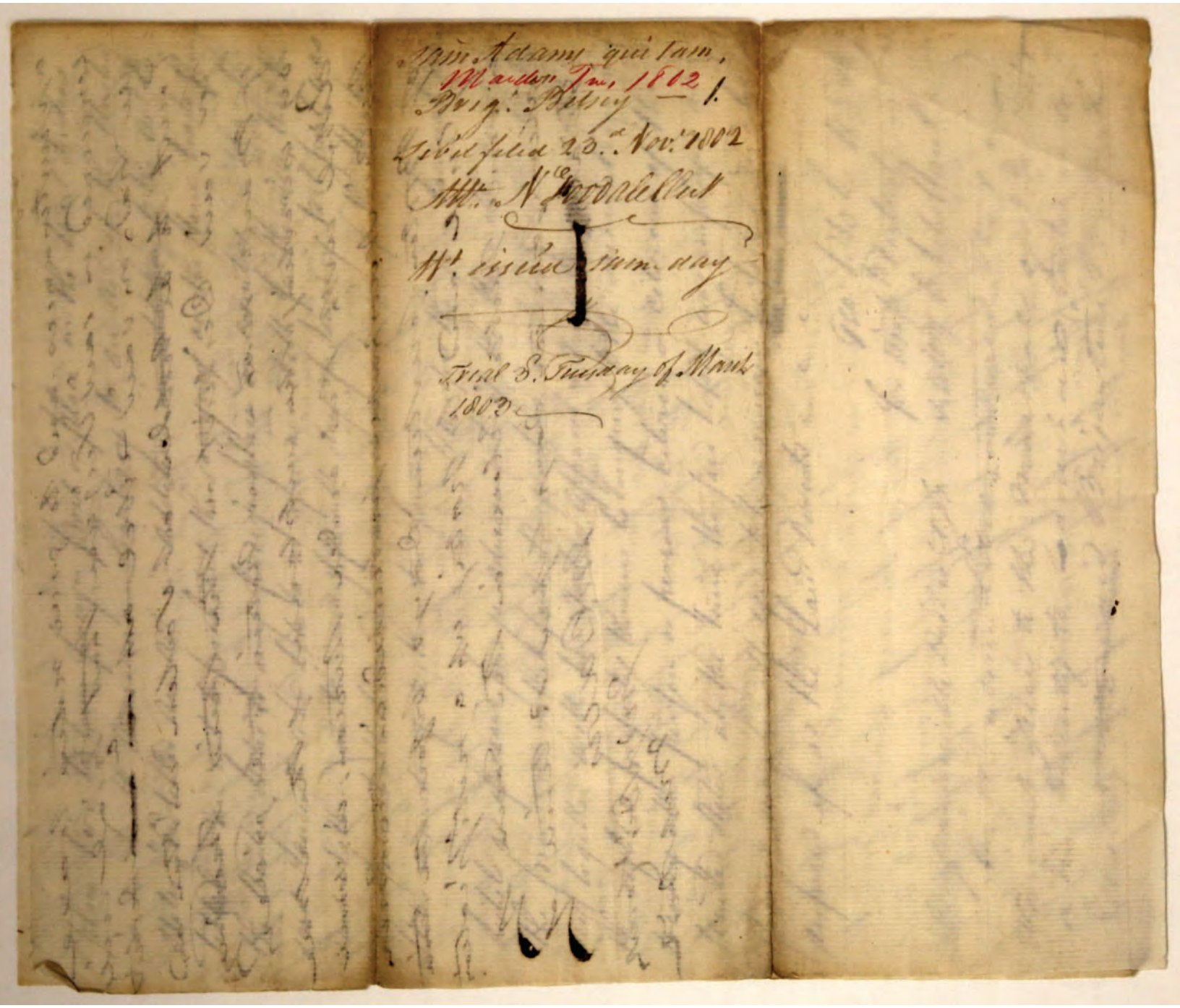
Wherefore the said Samuel who Libels as aforesaid prays Advisement of the Honorable Court in the premises and that said Brigantine or Vessel called the Betsey together with her Tackle Apparel & Furniture and all the right & property thereon belonging to the said Nathan and every other person or persons claiming or claiming to be of the United States at the time the said Vessel was siezed as aforesaid may be adjudged to be & remain forfeited and be disposed of as the Law directs

Geo. Blake U S Atty
for said District
Attorney for Libellant

On the above Libel ordered that a Warrant issue to the Marshal of said District or his Deputy to arrest and take into Custody the said Brigantine Betsey &

appurtenances and to give notice to all persons concerned in said Seizure that Trial will be had on said Libel at the District Court to be holden at Salem within and for said District on the third Monday of March next — said notice to be given by inserting the substance of the above Libel with this order thereon, in some public Newspaper published in the Town of Boston fourteen Days before the time of Trial and by posting up a notification in some public place in the Town of Salem fourteen days before said time of Trial

M Davis
Judge Dist Court
Mass Dist



The President of the United States of America

To the Marshal of Our District of Massachusetts, or his Deputy—Greeting.

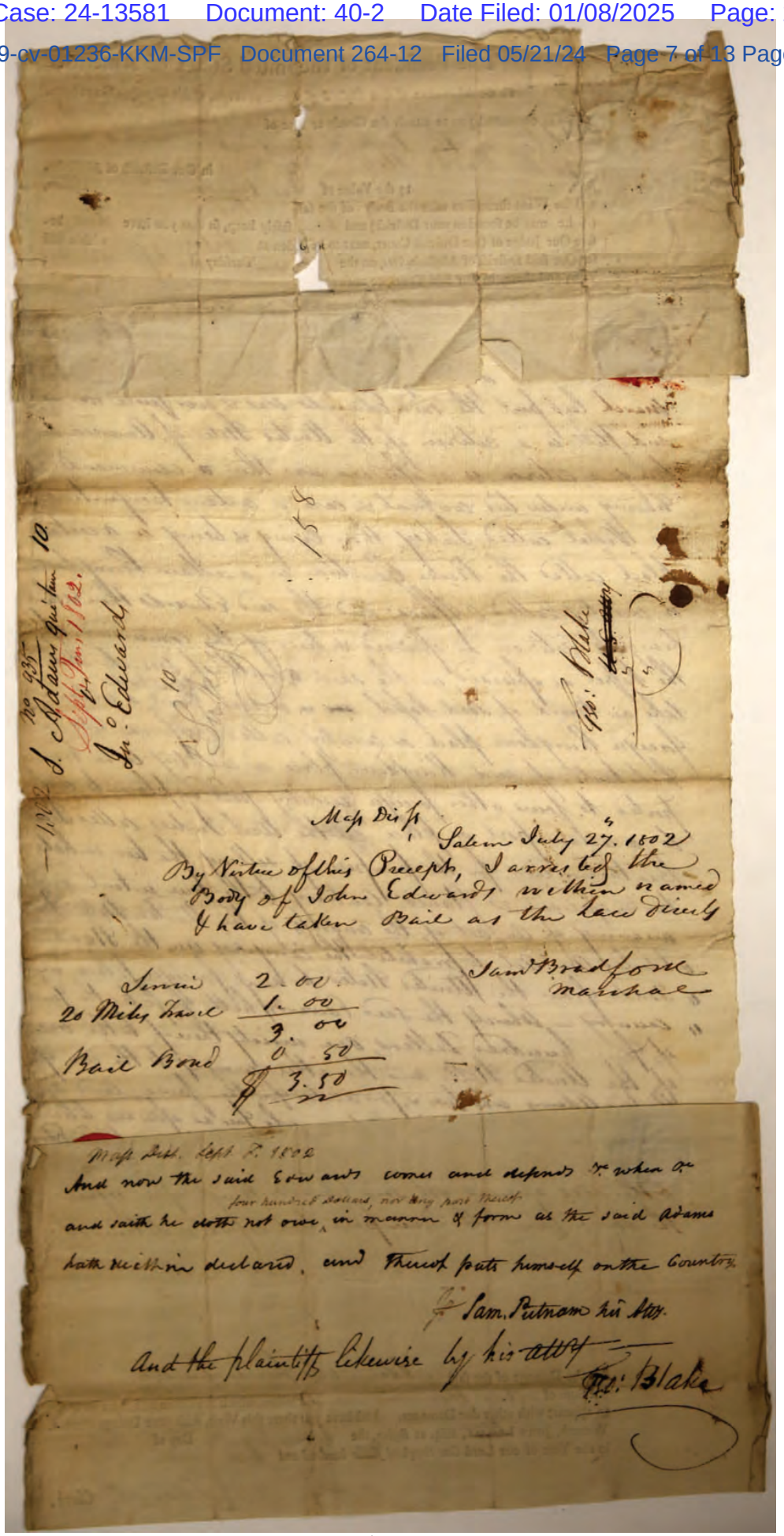
We command you to attach the Goods or Estate of John Edwards of Salem in the District aforesaid mariner & a citizen of the United States

to the Value of one thousand Dollars, in Our District of Massachusetts, and for Want thereof to take the Body of the said John Edwards (if he may be found in your District) and him safely keep, so that you have him before Our Judge of Our District Court, next to be holden at Salem within and for Our said District of Massachusetts, on the second Tuesday of September next. Then and there, in Our said Court, to answer

& Samuel Adams of Boston in the District aforesaid Esquire in a plea of Debt for that in the month of March last past the said Edwards was & ever since has been and still is a citizen of the United States of America and being a citizen so as aforesaid was then a commander & having under his command & care a certain Burgantine or Vessel called Sukey then lying & being in a certain place called the River Gambia in a certain Kingdom or country called Africa; and the said Edwards then & there being a citizen as aforesaid & having the command of the Vessel as aforesaid, in the said month of March did take on Board of said Vessel & receive & transport from a certain foreign Kingdom place or country called Africa two inhabitants of said Kingdom place or country to be transported to some other foreign country port or place, to wit to a certain port or place in the West Indies called Saint Bartholemews, for the purpose of selling the two inhabitants aforesaid as Slaves; Contrary to the true intent and meaning of An act of the congress of the United States; Intituled An Act to prohibit the carrying on the Slave Trade from the United States to any foreign place or country — whereby the said Edwards hath forfeited the sum of four hundred Dollars, one moiety thereof to the use of the United States and the other moiety to the use of the said Adams who sues & prosecutes for the same; And an action accrues to the said Adams who sues as aforesaid whereby and recover said sum of four hundred Dollars of said Edwards to the uses aforesaid, yet said Edwards though often requested the same sum hath never paid but refuses & detains it,

To the Damage of the said Adams who sues as aforesaid the Sum of one thousand Dollars, which shall then and there be made to appear, with other due Damages. And have you there this Writ, with your Doings therein. Witness, John Lowell, Esq. at Boston the twenty seventh Day of July in the Year of our Lord One thousand eight hundred and five

N. Goodale Clerk.



No 235
J. Adams qui tam
vs
Jn. Edward
Sept Term 1802.

Mass Dist, Salem July 27. 1802

By Virtue of this Precept, I arrested the Body of John Edwards within named & have taken Bail as the Law directs

Sam Bradford
Marshal

Service 2.00
20 Miles Travel 1.00
3.00
Bail Bond 0.50
$ 3.50

Mass Dist. Sept T. 1802

And now the said Edwards comes and defends &c when &c and saith he owes not four hundred dollars, nor any part thereof in manner & form as the said Adams hath within declared, and thereof puts himself on the Country

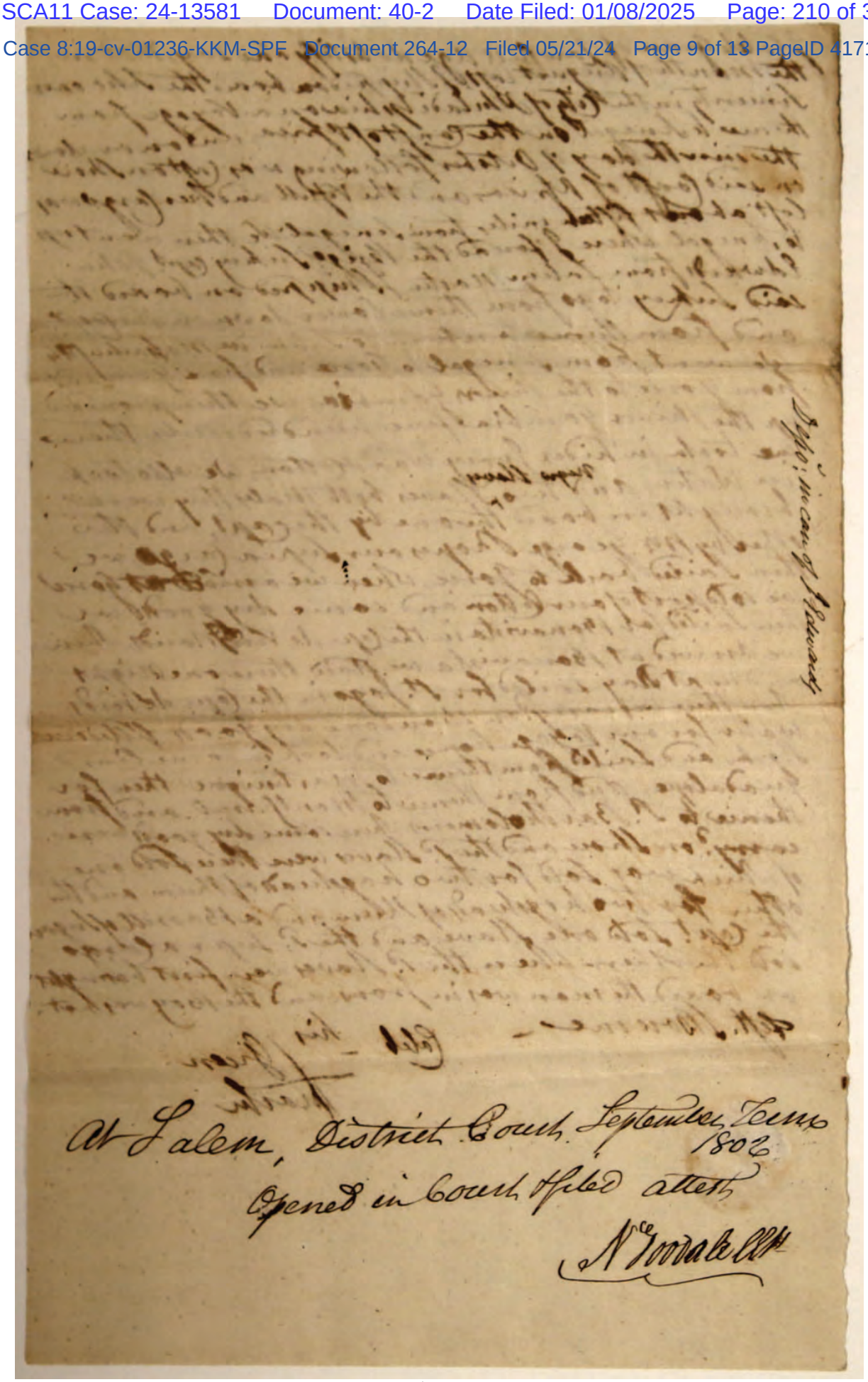
Sam. Putnam his Atty.

And the plaintiff likewise by his Atty

Wm. Blake

Caleb Green a lawfull aged do depose and say, that in
the month of August last I shipped on board the Schooner
Sincerity in the City of Philadelphia on a Voyage from
thence to Senegal on the Coast of Africa, and on or about
the ninth day of October following was cast on shore
on said Coast of Africa, and the Vessell and her Cargo was
lost about fifteen miles from Senegal; We then went up
to Senegal where I found the Ketch Sukey Capt. John
Edwards from Salem Master, I shipped on board the
said Sukey to go from thence down on the Coast
and from thence to return to Salem in Massachusetts
We went from Senegal to Goree and from Goree
from Goree to the River Gambia, we then proceeded
up the River Gambia five hundred Miles, there
we took in hides, Ivory Wax & Cotton, We also took
in Water, and two Negro Slaves both Males they were
brought on board the one by the Capt, and the
other by Mr George Hopes our Supra Cargo, we
then sailed back to Goree, when we arrived at Goree
we sold part of our Cotton and some dry goods we
then sailed for Bonavista in the Cape de Verd Islands, when
we arrived at Bonavista we staid there one night
and next day sailed for St. Jago in the Cape de Verds
there we carry'd on shore some dry Goods, filled our
water for our Voyage home and took in some live
Stock, and sailed from thence and took in some Cocoa
Guadaloupe, and from thence to Martinique, then from
thence to St. Bartholomews, where some dry goods were
carry'd on shore and the Negro Slaves were there sold, one
of which was sold for two hogsheads of Rum and the
other for two hogsheads of Rum and a Barrell of Sugar
the Capt. sold one Slave and the Supra Cargo
sold the other. When the Negro Slaves were first brought
on board the man was in Irons and the Boy was not.

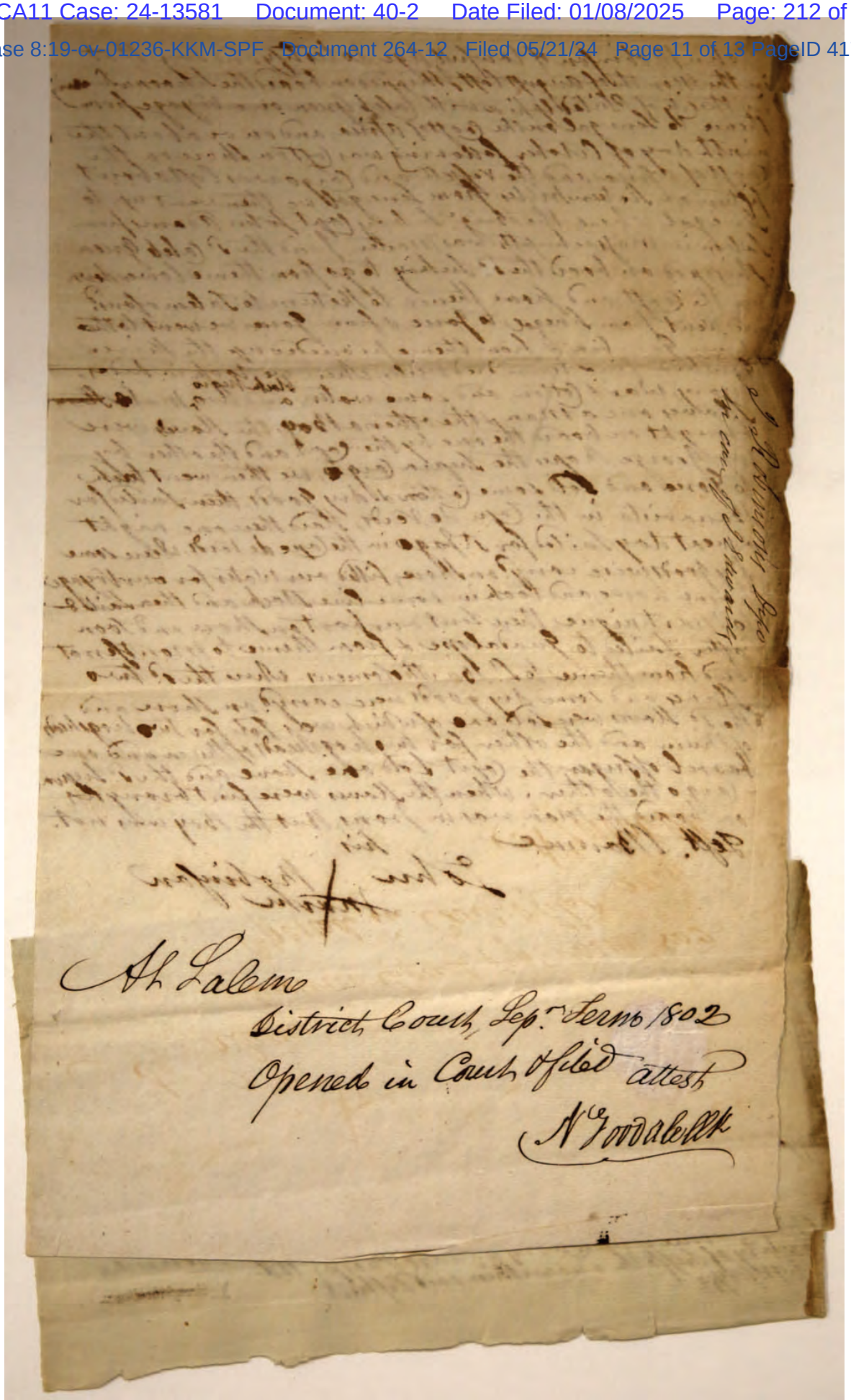
Sworn to in Court Boorne — Caleb his Green mark


Deposition in case of Edwards
At Salem, District Court, September Term 1802
Opened in Court & filed attest
N. Goodale Clk

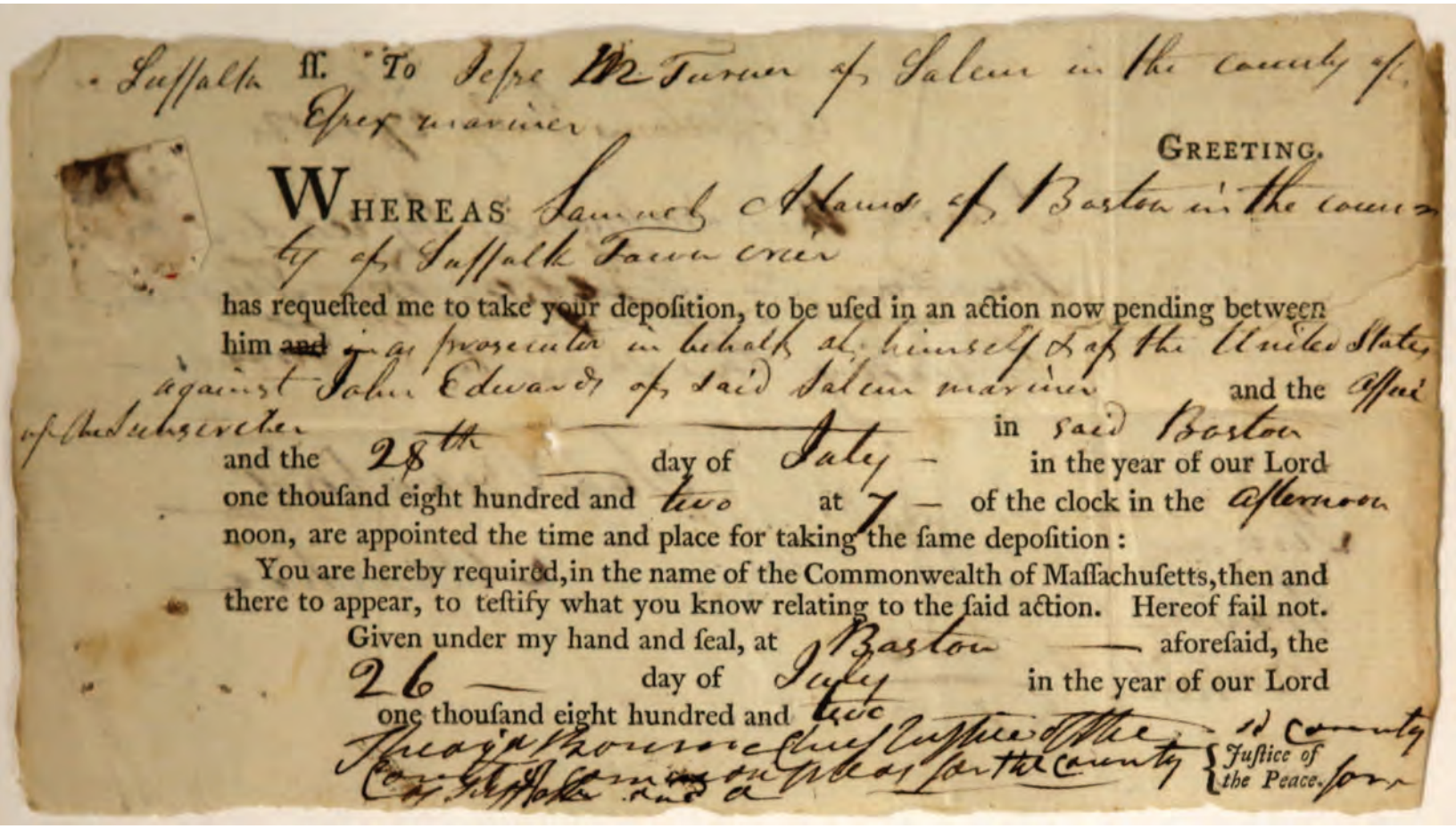
in the Month of August last Shipped on board the Schoonr Nancy
in the City of Philadelphia with Caleb Green on a Voyage from
thence to Senegal on the Coast of Africa, and on or about the
ninth day of October following was Cast on shore on the
Coast of Africa and the Vessell and Cargo was lost about
fifteen or Sixteen miles from Senegal, we then went up to
Senegal, where the Brig. Sukey Capt John Adams from
Salem in Massachusetts was Master, I and the s.d Caleb Green
Shipped on board the s.d Sukey to go from thence Leewardown
on the Coast, and from thence to the return to Salem aforesd
We went from Senegal to Goree, & from Goree we went to the
River Gambia, & from thence proceeded up the River
Gambia five hundred miles, where we took in hides,
Ivory, Wax & Cotton, and some water, and two Negro
Slaves one a man & the other a Boy, the Slaves were
brought on board the one by the Capt. and the other by
Mr George Rope, the Supra Cargo, we then went both
to Goree and sold some Cotton & dry Goods, then sailed for
Bonavista in the Cape de Verds, Staid there one night
& next day sailed for St Jago in the Cape de Verds, where some
dry goods were carry.d on shore, filled our Water for our Voyage
home home, and took in some live Stocks and then sailed
to Martinique, there sent our boat on shore and soon
after sailed to Guadalope, & from thence to Montserrat
and from thence to St Bartholomews - where the s.d two
Slaves and some dry goods were carry.d on shore, and
the s.d Slaves were sold one of which was sold for two hogsheads
of Rum and the other for two hogsheads of Rum and one
barrel of Sugar, the Capt. sold one Slave and the s.d Supra
Cargo the other. When the Slaves were first brought
on board the Man was in Irons, But the Boy was not.

his
John ✕ Robinson
mark

Suffolk ss.—ON the twenty Eighth day of July — in
the year of our Lord one thousand eight hundred and two — the aforesaid deponent
was examined, and cautioned, and sworn, agreeable to law, to the deposition aforesaid,
Answered & by him subscribed, taken at the request of Samuel Adams —
and to be used in an action of Debt & Tort now pending between him and
John Edwards —
before the District Court for the District of Massachusetts to be
holden at Salem in the County of Essex on the second Tuesday
of September next. —
a Voyage to Sea and the adverse party was Notified & present, The Deponent being bound
Chief is the cause of taking this deposition. Before me, Abraja Bourne,
Justice of the Court of Common Pleas for the
County of Suffolk and within said District.
July 28 1802



Ah Salem
District Court Sep.r Term 1802
Opened in Court & filed attest
N.o Goodale Clk



Suffolk ss. To Jesse M. Turner of Salem in the county of Essex mariner

GREETING.

WHEREAS Samuel Adams of Boston in the county of Suffolk Esquire

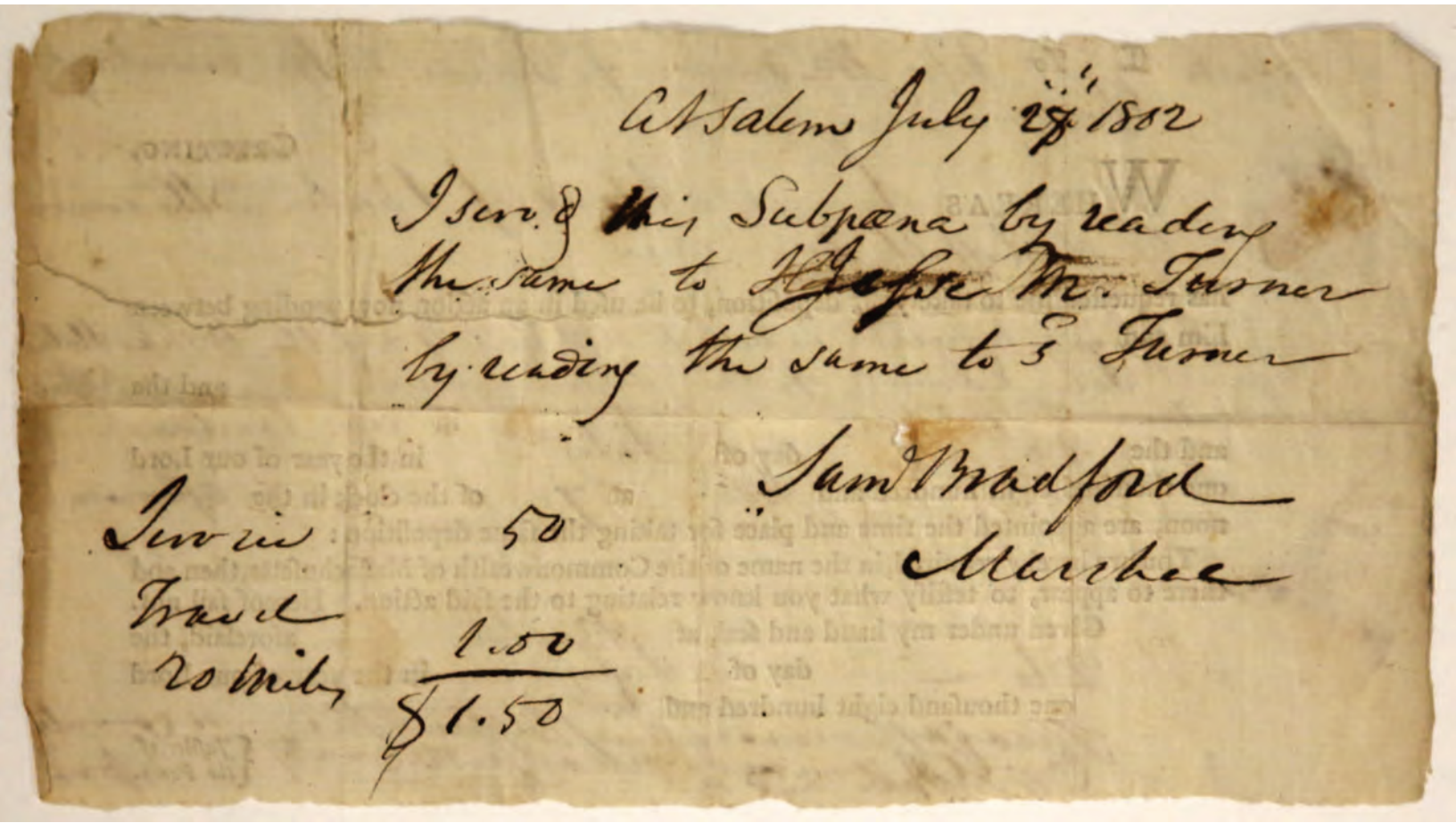
has requested me to take your deposition, to be used in an action now pending between him and ~~in~~ as prosecutor in behalf of himself & of the United States against John Edwards of said Salem mariner and the assd of the subscriber

and the 28th day of July in said Boston in the year of our Lord one thousand eight hundred and two at 7 of the clock in the afternoon noon, are appointed the time and place for taking the same deposition:

You are hereby required, in the name of the Commonwealth of Massachusetts, then and there to appear, to testify what you know relating to the said action. Hereof fail not.

Given under my hand and seal, at Boston aforesaid, the 26 day of July in the year of our Lord one thousand eight hundred and two

Theoph. Bowman Chief Justice of the C. C. Pleas for the County of Suffolk and a Justice of the Peace for the County



At Salem July 27th 1852

I serv'd this Subpœna by reading
the same to ~~Hon~~ Mr. Turner
by reading the same to s Turner

Sam'l Bradford
Marshal

Serving 50
Travel
20 miles 1.00
$1.50

I Jacob Barry of Lawful age do testify & say that I first saw Capt Brown in Lunenburg about the fourth of August 1803 when I was shipped on board the Schooner May Ann of which Cap. Taylor was master.

Question by Mr Putnam

Was there a man on board the May Ann by the name of John Thompson who acted as Cook?

Answer — Yes. —

Question. What was the Character of John Thompson on board the vessel?

Answer He was a drunken fellow & a great liar

Question Did you ever hear John Thompson say that the Captain of the vessel was a Dutchman?

Answer Yes. —

Question Did he ever tell you that Capt. Brown had any Command on board the Brandy?

Answer. He said — Capt. had no command on board her.

Question Did he ever tell you that the Dutch Capt used to flog him often?

Answer. Yes he said that he complained to Mr Brown meaning Capt. Brown that the Dutch Capt. used him cruelly, &

Captain Brown said he could not help it, he was only a passenger in the vessel?

Question. Did you ever hear John Thompson say he wished he could be with his old master - meaning Capt. Brown?

Ans: Yes.—

Question by Mr. Adams.

Was you in Surinam when Capt Brown arrived there in the Polarity?

Ans: No — I do not know whether I was at Cayenne or at sea.

Question. What was the name of the vessel the Capt. in which you came to Surinam?

Answer The Greenwood Schooner Capt. Green of Philadelphia —

Question How long after you arrived at Surinam before you shipped on board the Mary Ann?

Answer I do not recollect, but I believe five or six days, after I left the Schooner.

Question Who first spoke to you to go on board the Mary Ann, & who agreed with you for your wages?

Answer Captain Brown told me; I might go

well go on board the Schooner Capt. Taylor would employ me. And Capt Taylor agreed with me for my wages.

Question How long passage had you from Savannah to Boston? when did the Conversation with Jack take place?

Answer I never keep any accounts, & do not recollect what passage we had. I do not recollect, when the Conversation with Jack took place exactly.

Question Since your arrival at Boston who has employed you? & do you not expect to go to sea again with Capt Brown?

Answer. For Dr Putnam sometimes on board the Schooner Sometimes in the Distillery, I expect to go to sea again with Capt. Brown who is frequently on board the vessel.

Question Have you seen the Mate Hinds along side of the vessel?

Answer I once saw him, I know him in Charlestown

his
Jacob X Barry
mark

22 Octo.

Commonwealth of Massachusetts.

Suffolk ss.

On the twenty second day of October, in the year of our Lord One thousand Eight Hundred & three the aforesaid Deponent was examined, & cautioned & sworn according to Law, to the Deposition aforesaid by him subscribed taken at the request of Thomas Brown to be used in an action of Debt pending between him & Samuel Adams. before the District Court of the United States for the District of Massachusetts to be holden at Boston within & for the District of Massachusetts on the first Tuesday of December next. And the adverse party was notified & present; And the Deponent being bound on a voyage to sea is the Cause of taking the Deposition. Before me Thos. Dawes Chief Justice of the Court of Common Pleas, for said County, within said District.

A true Copy.
Attest. W. Tudor Clerk

Fees 2..
Dep 32
Off? 30
2..62

I Giles Taylor do testify & say that on or
about the 26th of April last I arrived at
Surinam from New York Master of the Schoo.
ner Union; & there sold her. I remained
there some time, & saw a Dutch Schooner Called
the Industry Capt Hadding from the Coast
of Africa, with a number of Passengers
among them Mr Thomas Browne was
one. I got acquainted with him.
and Mr Browne bying the schooner Mary
Ann; & Capt Browne being taken very
ill gave me the Command. There I
shipped a blackman for Cook, by the
name of Jack Thompson. who behaved
himself in a very bad manner.
So as to cause me to turn him on shore
, but by the influence of Mr Browne
I took him on board again; & he behaved
himself very bad again; so as that I
thought he was crazy. But
Compassion led me to bring him to Boston.
— at hear — I paid him his wages
took his resate & turned him on
shore. Jack the Cook came to me

told me that there were Constable after him
for debt Requed me to get him a passage
on board Capt. Le more, Capt Lemore
told him he would give him 10 Dollars
per month — so he parted from me.
Question by Mr Adams. What passengers were
onboard the Schooner; were they black & white, &
did you see the vessel arrive?
Ans. I saw the vessel arrive, there
were 4 or 5 gentlemen passengers
among whom Capt Browne was
one.
Q. How many blacks were there?
Ans. Twenty or more. Capt Hadley
told me that a French or Dutch Gentle
man (I do not recollect which) paid
him for the passage of the blackmen
Q. Did Jno Thompson behave in such
a manner that you struck him
on the passage home?
Ans. No. I did not strike him: but
Ordered him out of the Cabein for his
behavior.
Q Where Does Capt. Leymire live: What was
the vessel in which you procured him a
passage?

He lives at Hartford. I dare say he is in
port now, the vessel was aground Thursday at the
end of long wharf: outside of another vessel.
2. Since you have arrived at Boston
have you been frequently with Capt Brown.
Ans: Now & then — in the habit of visiting.
Question by Capt Brown. Had I any
knowledge of the bargain, or any part of the
transaction with Capt. Seymour about Jack
Thompson until after he had agreed
with Seymour.
Ans: No. Capt. Brown had not.
He never knew Capt. Seymour
till after ward. -
Question Did not Jack Thompson
request of you, to let him have the
boat to carry him to Seymours vessel?
Answer Yes. He had it.
Quest: Did I not say I would go in
the boat as I was obliged to go to
Long Wharf?
Answer Yes. Giles Taylor

Com[monwealth] of Mass[achusetts] Suffolk ss. On the 12.
day of October A.D. 1803. the aforesaid Deponent
was examined & cautioned & sworn agreeable
to law, to the Deposition aforesaid
by him subscribed taken at the
request of Thomas Brown to be used in an
action of debt & issue now pending between
him & Samuel Adams before the District
Court of the United States for the District of
Massachusetts to be holden at Boston within
& for said District on the first Tuesday of
December next; and the adverse
party was notified & present; &
the Deponent being bound on a voyage
to sea is the cause of taking this Deposi-
tion: Before me Henry Bourne
Chief Justice of the Court of Common
Pleas for ~~Suffolk~~ said County
within said District

Fees.

& 2.

A true Copy 33
Attest. W. Tidd Clerk 30

2. 63

I Elisha Callender of lawful age do testify & say, that about two years since, I was acquainted with Jack Thompson a blackman in North Carolina. He belonged to a Gentleman there, & his master sold him to a gentleman bound from thence to Georgia, & the reason his master sold him was, on account of his being a thief, & a liar.

Question by Mr. Adams.

Do you live in Boston & what is your business?

Answer I live in Boston. & follow the sea -

Question. What was Jack Thompson's Masters name, who sold him in North Carolina?

Answer His name was Caleb Davis a Pilot- there.

Question What business did you follow in N. Carolina.

Answer I belonged to the Diligence Revenue Cutter, John Brown Commander.

Question How long ——— since you left Wilmington in N. Carolina.?

Answer. Twelve months the 23d of April last.

Question. When did you last see Jack Thompson?

Answer. Not since he was sold & carried on board the vessel.

Question Are you going to sea?

Answer I expect to go.

Question Who requested you to come & give your deposition?

Answer - Capt. Giles Taylor

Question Who shew you to Captain Taylor & what is his name?

Answer His name at that is John Goodman.

Nov - 24th

Elisha Callender

Suffolk ss. On the twenty fourth day of November in the year of our Lord 1803 the aforesaid Deponent was examined, & cautioned & sworn agreeable to law, to the deposition aforesaid by him subscribed taken at the request of Thomas Brown & to be used in an action of debt questum, now pending between him & Samuel Adams before the District Court of the United States to be holden at Boston within & for the District of Massachusetts on the first Tuesday of December next, and the adverse

for Browne

Elisha Callender's

Deposition

Copy

USCA11 Case: 24-13581 Document: 40-2 Date Filed: 01/08/2025 Page: 225 of 330

I William Walker of Lawful age do
testify & say that on or about the 25th
day of August A.D. 1802 I shipped
on board the Schooner Industry Thomas
Brown Master on a voyage from Boston
to Amsterdam, & in about thirty eight
days after we left Boston we arrived
at Amsterdam, & in a few days
after our arrival there we discharged
our cargo which consisted of Sugar
Staves Tobacco. Coffee, whale bone,
Pot & Pearl ashes, after we discharged
the Cargo, we began to refit the
vessel, which was much out of repair
I often heard Captain Brown, while
there, say he intended to sell the vessel
if he could: before the vessel was ready
for us, Capt. Brown came on board
& told all hands the vessel was sold, &
paid me off & one other hand & all hands
were discharged, Capt. Brown took from the
vessel his trunk, quadrant & charts &
all he had on board. After Capt

Brown had discharged me, the Dutch Cap. of the same vessel employed me to work on board him five days at Dutch pay, I heard the Mate of the Schooner say, that she was bound to the Coast of Africa, with a Cargo for the Dutch Government, during the five days I was employed by the Dutch Captain he had the Command of the Vessel, after I was discharged by Captain Brown, he told me that the Dutch Captain would employ me on board, which would save my board on Shore

Question by Mr Paterson,

Did Captain Brown any Command on board the Vessel, whilst you was to work for the Dutch Captain.

Answer — No —

Question Did the American Consul at Amsterdam tell you the Schooner was sold?

Answer — Yes —

Question Was there a negro man by the name of John Thompson on board the Industry during the voyage, who acted as Cook &

what was his general character

Answer – There was: He was a very great liar, it was a common saying on board that no body could believe what Jack said.

Question. Was John Thompson on board any of the time you worked on board for the Dutch Captain?

Answer. No he was not; I saw him on shore frequently drunk.

Question By Mr Adams.

How long was it after you sailed from Boston when Captain Brown said he had orders from his owners to sell the vessel if he could?

Answer. I suppose it was about twenty days.

Question. When Capt. Brown says he had orders to sell the vessel, who did you understand the owners to be?

Answer. I understood by the Captain that it belonged to Dr. Putnam.

Question. How long after you arrived at Amsterdam was it, before you was discharged from the vessel?

Answer Two or three weeks while I worked on board for Captain Brown

Question. After you was discharged by Capt. Brown how many times did you see him on board?

Answer Two or three times

Question Did One of your men who went from Boston, ship in Amsterdam to go to africa as a Mate?

Answer. To the best of my recollection, the Dutch Captain shipped one of the hands, which went from Boston as mate.

Question What was the American Consuls name. who told you the vessel was sold?

Answer I do not know his name nor did he shew me any papers.

Question Might not John Thompson have been on board & you not see him?

Answer I do not think he could, but he might be.

William Walker

22 Octob.

Ques by Mr. Adams

Did you ever hear John Thompson tell a lie, & what about?

Answer, Yes, He told the mate that Captain Brown told him to come on shore & wait on him

which Captain Brown said was a lie

William Walker

Question by Mr Adams

Do you know Mr Edward Smith, & where he lives?

Answer Yes he lives in North Square

Qu — Was you ever in Smith's House?

Answ. Yes I went to see Hicks sometime last week, & found him at Smith's.

Question What conversation took place?

Ans. We talked about the voyage to Amsterdam: — How merry we were on board &c.

Qu What conversation took place between Cap. Brown & the Mate, upon the outward bound passage to Amsterdam?

Answer I know of none.

Qu. Have you seen Hicks at Charleston since you arrived?

Ans. Yes. Once when Jacob saw him

William Walker

Commonwealth of

Massachusetts.

Suffolk ss. On the twenty second day of October in the year of our Lord One thousand Eight Hundred & three, the above named deponent was examined, & cautioned & sworn, agreeably to law to the Deposition aforesaid. -

by him subscribed. taken at the request of Thomas Brown, to be used in an action of Debt qui tam, now pending between Wm Samuel Adams, before the District Court of the United States for the District of Massachusetts to be holden at Boston within & for said District on the first Tuesday of December next

and the adverse party was notified present, and the deponent being bound on a voyage to sea is the cause of taking this Deposition

Before me Sheary Bourne

Chief Justice of the Court of Common Pleas, for the said County within said District.

fees. 2 . .	D.	Cts
Dep. . . 33	2	63
Officer . . 30		

The foregoing are true copies

Attest. N Goodale Clerk

Copy — for Town —
Wm Watkins Depo
in favor of Bacon
— ad. Sec.
Sam. Adams.

USCA11 Case: 24-13581 Document: 40-2 Date Filed: 01/08/2025 Page: 233 of 330

I Daniel Marsten of Boston in the County of Suffolk Mariner testify & say that sometime in the latter end of September, or beginning of October last past I was employed by Captain Giles Taylor to go to work on board the Schooner Mary Ann then lying at the Long Wharf, I & I went to work with said Taylor on board his said Schooner, & while I was at work in said Schooner I saw a Blackman at work on board her by the name of John Thompson & I heard said Captain Taylor say that he shipped said Thompson as a hand on board said Schooner at Surinam, & that said Thompson was sent on board the Mary Ann at Surinam by Captain Thomas Brown, & that said Brown requested him said Taylor, to ship said Thompson, which he did. — While I was on board said Schooner at work

as aforesaid, I heard said Taylor Speak of said Thompson with high approbation of his good Character; Captain Taylor said that Thompson was a very honest good fellow, that he could trust him with any thing. I was never afraid to trust said Thompson with the vessel, or any thing on board. I further said that he had left said Thompson in charge of the Vessel several times.

After said Schooner had been some days at the I aforesaid, she was hailed to Charlestown; I said Thompson & myself went to Charleston in said Schooner. A few days after we went to Charleston in said Schooner Capt. Thomas Brown came on board said Schooner & told John Thompson that he had got a voyage for him

to Newyork on board of Captain
Seymours Sloop, & urged Thompson to
go with Captain Seyman & told
Thompson that if he would go with
Seymour, he said Brown, would pay
Thompson his wages, which he owed
him, for his former voyage, by placing
the money in the hands of Captain
Seymour, so that Seymour might
pay it over to him, but Thompson
told Capt Brown he did not
want a voyage, but if he could
have his wages paid into his own
hands for his voyage with Captain
Brown, he would consent to go
with Captain ~~Brown~~ Seymour
In the afternoon of that day Cap-
Brown came on board the Mary
Ann to Charlestown, & asked me and
Jacob Barry to take the Mary Ann

Boat drew him & John Thompson on board
Captain Leymons Sloop which was then lying
on the outside of another vessel at the
lower end of the long Wharf in Boston on
the North Side thereof; & we went together
in the boat as Captain Brown had desired
on board Leymons Sloop, when we
were all there Captain Brown again
told Thompson that if he would go
with Captain Leymon, he would put
into Captain Leymons hands the
money for the wages due Thompson,
but Thompson replied, that unless Capt.
Brown would pay him his wages
that were due into his own hands
he would not go in the Sloop, Imme-
diately Thompson jumped out of the
Sloop & went on shore upon the wharf,
Captain Brown soon after desired me to
go up the wharf after Thompson, & if
I could find him to bring him on board
Leymons Sloop. And I went up

the wharf looked after him but did not find him, & I went back & informed Captain Brown that I could not find him. Captain Brown then told me & Barry to take the Boat & return to Charleston, & said that he would go & look after Thompson, & I went away in the boat to Charlestown. Captain Brown appeared to be very anxious to get Thompson to go away in Seymour's sloop — While I was on board the May Ann at Charlestown I saw a large parcel of hand cuffs on board her. and by direction of Captain Taylor took them out of the vessel & ran to clear out; & afterwards Captain Taylor told me to put them things out of sight, into the Run again, which I did. Captain Brown was frequently on board, the May Ann while I was on board her at Charlestown; & Captain Brown

Answer. I think he would, he trusted much to Jack.

Question by the Jane. Did not Capt. Brown appear to like Thompson better than any hand on board?

Answer I cannot say that he liked him better than any other; but he put much trust in him.

Question by Mr. Putnam – Who was present when the Conversation was between Capt. Brown & Capt. Taylor about the hand Cuffs?

Answer I was present & Jacob Barry also

David his Marstin mark.

Commonwealth of Massachusetts.

Suffolk Ss. — On the 3d day of December in the year our Lord 1803, the aforesaid David Marstin the Deponent was carefully examined & duly cautioned to testify the whole truth & nothing but the truth & made solemn oath that the foregoing deposition by him Signed is true —

Taken at the request of Samuel Adams to be used in an action of Debt brought by said Adams in behalf

of the United States, as well as Insurance against Thomas Brown. And is to be tried at the District Court of the United States next to be holden at Boston in & for the District of Massachusetts, on the first Tuesday of December Current: And the said Brown was notified & was present by his attorney at the taking this deposition

The Deponent being bound on a voyage to sea is the Cause of taking this deposition Taken before me & in my hand writing

Wm Dennison Judge of the Court of Common Pleas.

fees $2:50

A true Copy

Attest. W. Tidwell Clerk

Dep. Adams Esq. Plaintiffs Deposition

I John Thompson of Boston in the County of
Suffolk Mariner testify and say that, in the
month of August one thousand eight hundred and
two, I sailed from the port of Boston and Charlestown
in the Schooner Industry of which Thomas Brown
was Master for Amsterdam and arrived safe
at said Amsterdam in about thirty eight days,
as nearly as I can remember, and it was about
two months after our arrival there, as nearly as
I can remember, that we sailed from thence—
While I was at Amsterdam in the said Schooner
we took onboard some beef, some Musquets, Cutlasses,
Hand Cuffs, and feet Irons, some Gin, small looking
Glasses and other articles - There were several
passengers came onboard and went in the said Schooner.
The first place we Anchored at after leaving Am-
sterdam was St. Jagos - before we arrived at St. Jagos
we carried away our main boom - and we set
sail from St. Jagos and ran the main land of
Africa down to the Grand Cefs, an Island on
the Coast of Africa - and the same afternoon
of our Arrival at Grand Cefs King William
a black man came onboard the Industry and
tarried onboard all night, we did not Anchor
there, but ran down to Delamina where we
came to Anchor - I was sick while at Dela-
mina for about twenty five days and was on
shore during that time - while I was onshore
the platforms and other things were made in the
Schooner for the Accommodation of the Slaves, and
when I got better I went onboard the Schooner,
and afterwards saw a number of Slaves brought
onboard, and I believe there were as many Negro
Slaves brought onboard while at Delamina
as

as Seventy or eighty, of which five belonged to
Captain Brown - After we had taken our Cargo
of Slaves onboard we sailed from Delamina for
Surrinam, and arrived safe at Surrinam with
the Slaves, and there landed the said Slaves,
except two which had died on the passage -
And the said Captain Brown continued onboard
the Industry as Master of her all the Voyage
from Boston to Amsterdam, from thence to
Delamina, and from thence to Surrinam -
And Captain Brown sold the said Schooner
Industry at Surrinam, and bought the
Schooner Mary Ann, and I returned home
to the Port of Boston and Charlestown in the
said Schooner Mary Ann - And I do further
testify and say that as nearly as I can remember
the several passages and stoppages were as follows -
I think we were about thirty six or forty eight
days from Boston to Amsterdam, I think we were
about Sixty days there before we sailed from thence,
by reason of great repairs made there, and I
believe we were about nine weeks from Amsterdam
to Delamina on the Coast of Affrica - I believe we
were at Delamina upwards of thirty days, and
from thence to Surrinam about thirty seven days -
I was shipped at Boston by Captain Thomas
Brown to go to Amsterdam in the Schooner
Industry as Cook -
Question by Samuel Adams - Was there any
other person on board the Industry but Captain
Brown who pretended to be the Captain or Master

of

3

of her between Charlestown and Amsterdam? and who was ~~Master~~ the Mate of said Schooner?
Answer. No other person pretended to be Captain but Thomas Brown aforesaid, and Thomas Hinds was Mate of said Schooner.
Question by the same. Was there any other person than Captain Brown onboard who pretended to be Captain after you left Amsterdam?
Answer. Yes, a Dutchman by the name of Hayding.
Question by the same. Did the said Dutchman act and take upon himself to give orders as Captain of the Schooner?
Answer. No, and I do not think the Dutchman was capable of acting as Captain. and one day a dispute happened between Captain Brown and the said Dutchman and Captain Brown told him in my hearing that he (said Brown) was Master and Owner of the Industry, and would let him (the Dutchman) know it, and he struck the Dutchman. The said Dutchman remained at Surrinam, and Captain Brown came home in the Mary Ann which he bought at Surrinam and he employed Captain Giles Taylor to navigate her to Boston.
Question by the same. While at Delamena did Captain Brown act as Master of said Schooner Industry and receive the said Slaves onboard?
Answer. Captain Brown was sometimes on shore when the Negroes came along side, but generally he was onboard and was active in taking onboard the Slaves.

Question

Question by Sam.l Adams – Did you see the Slaves landed at Surinam?

Answer – I saw them taken from onboard, but I did not see them landed –

Question by Captain Brown – Do you know to whom the goods you have mentioned belonged, and to whom they were delivered?

Answer – I do not know to whom the goods belonged, but the greatest part of them were received at Delamina by the Governor there –

Question by Mr. Adams – Since your return in the Mary Ann has Captain Brown applied to you to go to sea in any other Vessel?

Answer – I think it was the next day after I left the Mary Ann, Captain Brown asked me to go to Sea with one Captain Seymour and he went in a Boat with me onboard Captain Seymour's Vessel with my Chest, and that without my making any bargain to go in her – Captain Brown discovered some anxiety that I should go with Captain Seymour, and an attempt was made to shove off the Vessel with me in her, and I did think an attempt was made to carry me off against my will, but I escaped

Boston 21st October 1803 John X Thompson his mark

Question by Sam.l Adams – Was you not taken out of the Mary Ann by Captain Brown and a Mr. Edmands a day or two after you arrived at the T Wharf in Boston and carried to Charlestown in a boat by them and there confined in a Blacksmiths Shop four days –

-and was you not afterwards carried by said Brown & others onboard Captain Seymours Vessel in a Boat from Charlestown to Boston, to the end of the Long Wharf with your Chest?

Answer - Yes —

Question by Sam[l] Adams - After you first went on board Captain Seymours Sloop, did you not go up Long Wharf and return again after your Chest and Cloaths and when you was going down the Wharf did not Captain Brown take you by the Collar and pull you to Captain Seymours Sloop?

Answer - Yes, and I did not resist him very much because I wanted to get my Chest and Cloaths out of the Sloop - When I got onboard the Sloop Captain Brown endeavoured to persuade me to go with Captain Seymour, and told me he would pay into the hands of Captain Seymour for me my wages for my Voyage in the Industry if I would go with Captain Seymour - and he told me I did not know how to take care of my money and that Captain Seymour would pay me a little (or a quarter of a dollar) at a time, as I wanted it - and because I would not consent to go with Captain Seymour, Captain Brown would not pay me my wages - and then an attempt was made to push off the Vessel with me in her, I forbid them but they did not mind me, and I jumped onboard a ship which was along side and escaped, leaving my Chest behind, but I found my Chest afterwards onboard the Ship where it had been put after I left the Sloop -

Question by Samuel Adams - Was you not about

the middle of last week, shut up in a Chamber with Thomas Hinds in the House of Edward Smith in North Square and at whose instigation was you shut up in the Chamber?

Answer Yes, I was twice shut up in said House and Mr. Smith told us to keep the door shut fast and gave the Key to Hinds and told us not to go out ourselves, nor let any one come in and Hinds kept the Key in his pocket - and said Hinds said he had been part of the Voyage in the Industry with Captain Brown -

Question by Saml. Adams - Did you ever hear said Smith or Hinds say that they expected to get any money out of Captain Brown or Doct. Putnam, in consequence of keeping you shut up and prevented from going abroad? -

Answer Yes - Hinds said he had been to see Captain Brown twice, and Hinds said he had a good prospect of getting a handsome sum of money out of Captain Brown, and advised me to be still - Smith said he had been to see Doctor Putnam and expected to git two thousand out of him - and further said that as soon as the money was obtained Hinds and myself must be off. -

Question by the same - When you was shut up in said Smiths Chamber with said Hinds did you not see me and Constable Lewis come to Smiths House, and did you not hear the conversation between

7.

between Smith and myself at that time?

Answer - I did not see you but I heard you and Lewis talking with Smith, and Hinds also heard it and Hinds said there was a row below & they would have us yet - and Lewis asked after Hinds, Smith said to Lewis that he would not find them - Lewis asked if he had seen the black boy (meaning me I suppose) Smith replied that he would not have either the blackboy or Hinds for he had them both under his own thumb -

Question by Saml. Adams - Have you been to Captain Brown since you escaped from the sloop?

Answer - Yes - I went to see Captain Brown and took Manuel a Man of Colour with me to Charlestown because I was afraid of being carried off - And I applied to Captain Brown for my wages, but he refused to pay me, and said he owed me nothing -

Question by the Same - Did I ever advise you to sue Captain Brown - or did I not advise you to settle with him without suing?

Answer - You never advised me to sue for my wages - but advised me to settle -

John his X mark Thompson

~~Sworn to~~

Boston October 21st 1803

Commonwealth of Massachusetts Suffolk ss

On the twenty first day of October in the year of

8

June 1, 1803, John Thompson the aforesaid Deponent was carefully examined & duly Cautioned to testify the whole truth & nothing but the truth & made solemn oath that the foregoing deposition by him subscribed is true. Taken at the request of Samuel Adams of Boston in said County Laborer to be used in an action of Debt brought by said Adams in behalf of the United States, as well as himself, against Thomas Brown of Charlestown to be tried at the District Court of the United States next to be holden at Boston in & for the district of Massachusetts District on the third Tuesday of December next, the said Thomas Brown was notified & present at the taking of this Deposition: & the Deponent being bound on a voyage to sea is the cause of taking this deposition taken by & before me Wm Dennison Judge of the Court of Common Pleas, for the County of Suffolk

Fees $3.83

The foregoing are true Copies -
Attest. N Goodale Clerk

Copy
Deposition
of
John Thompson
Against
Captain Brown

Massachusetts }
District ss. } The President of the United States of America

To the Marshal of our District of Massachusetts, or his Deputy Greeting.

Seal of Cir. Court Massachu.

We Command you to attach the goods or estate of Thomas Brown of Boston, otherwise of Charlestown, Mariner & a Citizen of the United States, in our District of Massachusetts, to the value of Fifteen Thousand Dollars, and for want thereof take the body of the said Thomas (if he may be found in your District) & him safely keep, so that you may have him before Our Judge of our District Court, next to be holden at Boston, within & for our said District of Massachusetts on the first Tuesday of December, then & there in our said Court to answer unto Samuel Adams of Boston in the District aforesaid Labor-

Our Judge of our District Court
next to be holden at Boston, within for
our said District of Massachusetts on the
first Tuesday of December, then there
in our said Court to answer

unto Samuel Adams of Boston in the District aforesaid Laborer
in a plea of debt for that said Thomas at
said Boston on the first day of September
in the year of our Lord Eighteen Hundred
& two was, ever since hath been & now is
a Citizen of the United States residing
within the same, & the said Thomas being
a Citizen aforesaid at said Boston
on the said first day of September in the
aforesaid year of our Lord Eighteen hundred & two
did, within a port or place of the United
States, to wit the port of Boston aforesaid
for himself or some other person as owner
master & factor fit equip load & otherwise
prepare a certain Schooner or Vessel
called the Industry, & caused said vessel
to sail from said place or port of
Boston for the purpose of carrying on
a trade or traffic in Slaves, to some foreign
country, & for the purpose of procuring from
some foreign Kingdom place or country

called [illegible] to said [illegible] part of
Boston for the purpose of carrying on
a trade or traffic in Slaves, to some foreign
country. & for the purpose of procuring from
some foreign Kingdom place or country

1)

to wit from a foreign country called africa, the
Inhabitants of said Kingdom place or country
to be transported to some other foreign country
port or place; which said vessel afterwards
to wit between the said first day of September
aforesaid & the first day of June last past
pursuant to the intent & purpose aforesaid was
employed in the Trade or Traffic in Slaves
& in the transportation of divers of the Inhabi-
tants of said foreign country called africa
to some other foreign country port or place
to wit to some port or place in the West
Indies to be sold & disposed of as Slaves;
— contrary to an act of the Congress of
the United States, made & passed on the
twenty second day of March in the
year of our Lord Seventeen Hundred &
Ninety four, — intitled "An Act to
"prohibit the carrying on the Slave
"trade from the United States to any
"foreign place or Country" —

3.

called the [illegible] from said place or port of
Boston for the purpose of carrying on
a trade or traffic in Slaves, to some foreign
country. & for the purpose of procuring from
some foreign Kingdom place or country

11

to wit from a foreign country called africa, the
Inhabitants of said Kingdom place or country
to be transported to some other foreign country
port or place; which said vessel afterwards
to wit between the said first day of September
aforesaid & the first day of June last past
pursuant to the intent & purpose aforesaid was
employed in the Trade or Traffic in Slaves
& in the transportation of divers of the Inhabi-
tants of said foreign country called africa
to some other foreign country port or place
to wit to some port or place in the West
Indies to be sold & disposed of as Slaves;
— contrary to an act of the Congress of
the United States, made & passed on the
twenty second day of March in the
year of our Lord Seventeen Hundred &
Ninety four, — intitled "An Act to
"prohibit the carrying on the Slave
"trade from the United States to any
"foreign place or Country" —

— Whereby & by force of the said act the said
Thomas hath forfeited the Sum of Two Thou-
sand Dollars, & an action hath
accrued to the [illegible]
sues as aforesaid to demand & recover
of the said Thomas the aforesaid Sum
of Two thousand [illegible] Thomas

"prohibit the carrying on the Slave
"trade from the United States to any
"foreign place or Country"—

3.

— Whereby by force of the said Act the said Thomas hath forfeited the Sum of Two Thousand Dollars, & an action hath accrued to the said Samuel, who sues as aforesaid to demand & recover of the said Thomas the aforesaid Sum of Two Thousand Dollars to the uses specified in the said Act; Yet said Thomas though often requested hath never paid the said Sum & to the United States nor to the said Samuel who sues as aforesaid; but detains it.

Also for that afterwards on the first day of September in the year of our Lord Eighteen hundred & two some Citizen or Citizens of the United States, or other person or persons then residing within the same did for themselves or some other person or persons, as masters, as factors & owners, build fit equip, load & otherwise prepare a certain [illegible] called the Industry, other than, though like unto the Schooner aforesaid, within a port or place of the United States, to wit within the port of Boston aforesaid for the purpose of carrying on a [illegible] for the purpose

Lord Eighteen [illegible] Citizens

or Citizens of the United States, or other person or persons then residing within the same did for themselves or some other person or persons, as masters, as factors & owners, build fit equip, load & otherwise prepare a certain [illegible], called the Industry, other than, though like unto the Schooner aforesaid, within a port or place of the United States, to wit within the port of Boston aforesaid for the purpose of carrying on a trade & traffic in slaves & for the purpose of procuring from some foreign Kingdom place or country the Inhabitants of said Kingdom place or country, to be transported to some other foreign Country port or place to be sold & disposed of as slaves; which said vessel so fitted, equipped, loaded & prepared as aforesaid for the purposes aforesaid, afterwards, to wit on the ~~said~~ first day of September was caused to sail from the port of Boston aforesaid to a foreign country called Africa for the purposes aforesaid. And the said Samuel who saw as aforesaid doth swear that the said Thomas sometime between

5

the first day of September aforesaid & the last day of March last past in a certain foreign country called Africa, he the

purpose [illegible] the said [illegible] was
caused to sail from the port of Boston
aforesaid to a foreign country called Africa
for the purposes aforesaid. And the said
Samuel who sues as aforesaid doth aver
that the said Thomas sometime between

the first day of September aforesaid & the last
day of March last past in a certain
foreign country called Africa, he the
said Thomas during all that time being
a citizen of the United States, did take
on board receive in said vessel
fitted equipped, prepared & caused
to sail as aforesaid, twenty of
the Inhabitants of the said foreign
country called Africa, to wit
fifty of the Inhabitants of said
foreign country for the purpose of
their being transported in said
vessel to some other foreign Country
port or place to wit to a
certain foreign port or place
called Jacinam in the West Indies
to be sold & disposed of as slaves
— Contrary to the aforesaid Act

of the United States — Intitled an

vessel to some other foreign country
port or place to wit to a
certain foreign port or place
called Jarinam in the West Indies
to be sold & disposed of as slaves
— Contrary to the aforesaid Act

6

of the United States — Intitled "an
"act to prohibit the carrying on
"the slave trade from the United
"States to any foreign place or
"country" — Whereby & by force of
which act the said Thomas
hath forfeited the Sum of Two
Hundred Dollars for each & every
of the said fifty persons or inhabitants
so received by him on board of the said
vessel as aforesaid, amounting in the
whole to the Sum of Ten Thousand
Dollars, for the whole of the said
fifty persons or Inhabitants aforesaid
which Sum of Ten thousand Dollars
the Plaintiff sues as aforesaid
avers that the said Thomas hath forfeited
& an action accrues to the said Jam-

7

uel, who sues as aforesaid, to have recover
of the said Thomas, the aforesaid Sum of

fifty persons, [illegible] which sum of ten thousand Dollars the Plaintiff sheweth as aforesaid avers that the said Thomas hath forfeited & an action accrued to the said Samuel, who sues as aforesaid, to have recovered of the said Thomas, the aforesaid sum of Ten thousand Dollars, being two hundred ~~Dollars~~ & dollars, for each & every of the said fifty persons, received as aforesaid on board of the said vessel to the uses specified in the said act; Yet said Thomas although often requested hath never paid said sum nor any part thereof, to the United States, nor to the said Samuel who sues as aforesaid, but detains it.

To the damage of the said Samuel who sues as aforesaid the sum of fifteen thousand dollars, which shall then & there be made to appear with other due damages. And have you there this writ, with your doings therein. Witness John Davis Esq. at Boston the fifth day of October in the year of our Lord One thousand Eight Hundred & three

J Woodale Clerk

Adams who sues as aforesaid claims an appeal from the aforesaid Judgment to the next Circuit Court of the United States to be holden at Boston within & for the District of Massachusetts on the first day of June 1804.

which claim is allowed on Condition that the said Adams files Stipulation within twenty days the 2d Jany. 1804 in the sum of Two Hundred Dollars to prosecute his appeal & pay all Cost in case he does not recover Judgment in his favor. —

Stipulation made accordingly to order of Court —

The foregoing are true Copies
Attest Nathl Goodale Clerk

Case 8:19-cv-01238-KKM-SPF Document 264-13 Filed 05/21/24 Page 45 of 46 PageID 4220

United States } Mississippi District Court
Territory } December Term 1803

Samuel Adams qui tam

vs

Thomas Browne.

The Jury find that Thomas Browne
the Defendant is not guilty in manner & form as
the Plaintiff hath alleged

Verdict for Defendant

Attest. Nicholas Ellis Clerk

Thos. Bolton Foreman

It is therefore Considered by
the Court, that the said Thomas
Browne ~~Adams who sues as aforesaid~~
recover against the said ~~Samuel~~
~~Adams~~ Brown the sum of ——
Costs

Mass. Dis. ss.

Charlestown Oct. 8. 1803

By virtue of this Precept I Arrested the body of the within named Thomas Brown & held him to bail as the Law directs

Saml W Horsey
Deputy Marshal.

Copy - Writ - Attorney
Bond - Summons
Precept - Summons

Service $ 2..
Bail Bond .. 50
Travel 2 Miles .. 10
2.. 60

Mr. Officer attach to the
body of Thomas Brown
in a plea of Trespass
& Samuel Adams

and the said Thomas Brown comes & defends &c. when &c. and says that he does not owe the said Adams in manner & form as he has above declared, & thereof puts himself on the Country

Theop Parsons
And the said Adams likewise
Geo Blake

Mass. Dist. Court
June 1803

Thomas Brown
Plea
Trespass
Bond & Surety
Mr. Marshall Clerk

OPINIONS

OF

FELIX GRUNDY, OF TENNESSEE:

APPOINTED SEPTEMBER 1, 1838.

PENSIONS FOR WOUNDS RECEIVED IN THE NAVAL SERVICE.

The act of 23d April, 1800, does not authorize pensions for wounds received in the line of duty prior to the passage of the act; nor can the act of 3d March, 1837, be construed to embrace such cases.

ATTORNEY GENERAL'S OFFICE,
September 3, 1838.

SIR: You state in your letter of the 31st of August last, that Commodore David Porter claims a pension for wounds received in the line of his duty in the naval service prior to the 23d of April, 1800, (the date of the law which established the navy pension fund;) and my opinion is requested whether your department has authority to grant pensions for deaths or disabilities which occurred before the pension fund was established.

My opinion is, that no such authority exists. Upon an examination of the act of 23d April, 1800, no expression is found indicating an intention on the part of Congress that the fund then provided should be subject to cases which had occurred before that time. The second section of the act the 3d of March, 1837, it is believed, cannot be so construed as to embrace a class of persons not included in former laws. The only object of that section is to make the pensions more ample in behalf of those entitled under pre-existing laws.

Yours, very respectfully,

FELIX GRUNDY.

To the SECRETARY OF THE NAVY.

DUTIES ON MILLINERY, HOSIERY, AND READY-MADE CLOTHING.

The act of 2d March, 1833, to modify the act of July 14, 1832, and other acts admitting silks, did not repeal the act of 14th July, 1832, and former acts, which impose duties on millinery, hosiery, and ready-made clothing; and those articles, of whatever material composed, are subject to duties.

The operation of the revenue laws cannot be legally suspended by the Comptroller, even though goods may have been ordered in view of an erroneous practice, and the importers wish to countermand their orders from abroad.

ATTORNEY GENERAL'S OFFICE,
September 8, 1838.

SIR: I have examined the two questions submitted for my opinion in your letter of the 4th instant. The first is, "Has the act of the 2d of

COMPENSATION OF DISTRICT ATTORNEY OF PENNSYLVANIA.

Where the district attorney of Pennsylvania had, by the direction of the Postmaster General, instituted several suits against toll-gate keepers and others, to enforce the penalties prescribed by the 9th section of the act of 3d March, 1825, for sundry interruptions of the transit of the United States mails, by exacting tolls upon passengers conveyed in the mail coaches, and a *nolle prosequi* was subsequently entered by direction of a subsequent Postmaster General in every case—DECIDED, that the said district attorney is fairly entitled to compensation from the United States for the services rendered.

The judgments in the matter, however, are not binding upon the treasury.

ATTORNEY GENERAL'S OFFICE,
November 13, 1849.

SIR: The claim of Mr. Cornelius Darragh, which you have submitted to this office, presents two questions: 1st. Is it to be considered as established by decision of the court in the case of the United States against him, in the circuit court of the United States for the western district of Pennsylvania? and, 2d. Whether, independent of that decision, and upon the facts otherwise appearing, it is established? First, the judgment of the courts. If there ever could have been a doubt on this question, none exists now. The settled question is, that such a verdict or judgment, as evidence of a claim against the United States, is a mere nullity. It neither warrants its payment by the treasury, nor can be used as a set-off, either at law or in equity, against any demand the United States may have against the claimant. In the case of the United States *vs.* James Johnson, an opinion to this effect was given by Mr. Wirt, in January, 1823, and a like opinion by Mr. Legaré, on the 2d April, 1842, in the case of Pearson Cogswell, marshal of New Hampshire. The verdict in such a case extinguishes the particular demand for which the United States sues; but in its excess, and as evidence of a debt due the defendant by the United States, it has no operation whatever. Mr. Darragh's claim, therefore, must rest upon evidence *aliunde*—the judgment to be allowed.

Is there, then, secondly, such evidence? I think there is. The facts appearing by the papers before me are these: The Post Office Department had made a contract with Lucius Stockton to carry the mail over that part of the national road running through Pennsylvania, and that State imposed a toll tax upon passengers travelling in the mail stage. The authority of this tax the then Postmaster General (Wickliffe) denied. Writing in reference to it, he, in his letter to Harwood Kennedy, the agent of the department, dated the 17th April, 1843, in reply to a letter from Kennedy, of the 15th, says: "My own opinion has been often and decidedly expressed, that the whole vehicle and its contents, which conveys the United States mail, is exempt from taxation or the payment of tolls. In this I may be mistaken. If I understand your letter, the agent of the State now claims toll for passengers in the stage which conveys the mail; they do not claim the right to tax the vehicle or horses. Is this not whipping the devil round the stump? to use an old but not unmeaning adage. Does the State exact the same tax upon all persons who travel upon the road in other carriages, public or private? I have no particular directions to give. If the authorities of the State of Pennsylvania choose to stop the mail, they must do so; and when it is done, the question will be fairly met by a presentment against those who hinder or obstruct its lawful transit. I can enter into no obligation, express or implied, conditional or otherwise, to pay the tolls upon passengers in the mail stage."

Under the authority of this letter, Kennedy afterwards instructed Darragh, then the district attorney of the United States, to institute suits, and he did institute one hundred and seventy separate actions to enforce the penalty prescribed by the 9th section of the act of Congress of 3d March, 1825, (4 *Stat. at Large*, 104,) against toll-keepers and others on the road, who, as the agents of Pennsylvania, and for the purpose of enforcing the payment of tolls under her act, had interrupted the passing of the mail stages over the road.

On the 16th of September, 1844, the then district attorney, Mr. W. H. H. Robinson, wrote to the Auditor of the department as follows: "I beg leave to call the attention of the Post Office Department to over one hundred and sixty-nine *qui tam* actions, instituted at the last October term, at the instance of the late Mr. Stockton, of Uniontown, to recover penalties for stopping the mail by toll-collectors on the national road. I have understood that these suits were authorized by the Post Office Department. If so, and there is any determination to press them, it would be of importance that I should know, since the attorneys for the defence may press the court for a judgment of abatement on account of the death of Stockton, at the next court." On this letter the Postmaster General made this endorsement: "Dr. Kennedy will take this letter, and try and make some arrangement by which these suits can be disposed of without costs to the United States. If this cannot be done, they must be prosecuted."

No such arrangement having been made as to costs, the district attorney afterwards, on the 10th March, 1845, obtained a rule for the trial of the cases at the following May term, evidently acting under the contingent direction of Mr. Wickliffe, that they were in that event to be prosecuted. But before the trial could be had, Mr. Cave Johnson, the then Postmaster General, directed the district attorney to enter a *nolle prosequi* in each case, and it was done in these words: "The United States disclaims having authorized the institution of this suit, and refuses to prosecute it." Upon these facts, I am clear in the opinion that Mr. Darragh is entitled to the fees he claims over and beyond the amount already allowed him as a set-off in the case of the United States against him, in which the judgment referred to was found.

The acts of Kennedy, the admitted agent of the department, in relation to the suits, were not only fully authorized by the letter of the Postmaster General of the 17th April, 1843, but were in substance imperatively ordered. There was no discretion given him. The point in dispute between the department and Pennsylvania was "to be fairly met by a prosecution against those who hinder or obstruct its (the mail's) lawful transit;" and this could only be done by such proceedings as Kennedy resorted to—suits to recover the penalties imposed by the act of 3d March, 1825. But if there could be a doubt as to this, it was removed by the endorsement of the Postmaster General on Robinson's letter of the 16th September, 1844, after the suits had been instituted and were pending. The letter virtually inquired whether suits had been authorized by the department; and if so, asked for instructions. The endorsement referred the matter to Kennedy, still the agent of the department, with instructions to try and make some arrangement by which these suits could be "disposed of without costs to the United States;" and added, that "if this cannot be done, they must be prosecuted."

Here was a full recognition of what had been before done. The suits were considered as having been authorized by the department, and unless an arrangement as to costs could be made, they were directed by the department to be prosecuted.

It was now, if not from the first, too late for the department to deny its authority to bring the suits. The attorney had acted upon the faith of such authority; and was not only justified in so doing, but was bound to do so. His acts were afterwards adopted by the department, and it was not in the power of the department then to repudiate what it had done under its sanction, or to defeat the attorney of the compensation due him for what was done.

My opinion, therefore, is, that Mr. Darragh's claim is a fair and legal one, and binding upon the United States.

I have the honor to be, very respectfully, sir, your obedient servant,

REVERDY JOHNSON.

Hon. JACOB COLLAMER,
Postmaster General.

THE CLAIM OF CHARLES F. SIBBALD.

The award of the 3d of June, 1847, for an amount in addition to the sum formerly allowed upon the claim of Charles F. Sibbald, must be regarded as a full and final execution of the act of 1842 and the resolution of 1846; and if it were not, the claimant is concluded by his receipt of the award.

The claim having been thus disposed of, it is not competent for the present Secretary to re-examine it, to correct errors, nor to receive other evidence in relation to it.

The whole matter is *res judicata* and terminated, and can never be reviewed, except under some future act or resolution of Congress.

ATTORNEY GENERAL'S OFFICE,
November 14, 1849.

SIR: The additional questions, which, at the instance of the claimant, you have submitted to this office, in the case of Charles F. Sibbald, for my opinion, I have considered. They are: First, admitting the act of the 3d of August, 1842, (5 *Stat.*, 864,) and the joint resolution of the 10th August, 1846, to have been executed, has the present Secretary of the Treasury the right, and is it not his duty, to review the action of his predecessor, so far as to ascertain whether there be not in it errors of facts which ought to be rectified? And second, whether there be not new evidence exhibited, which would materially change the result?

In the opinion I had the honor to give upon your former reference of this case to me, I advised you, first, that the award of Mr. Secretary Walker of the 3d June, 1847, allowing the claimant $26,029 70 in addition to the sum formerly allowed him by Mr. Attorney General Nelson, under the act of 1842, of $27,132 06, was of itself a full and final execution of that act and of the resolution of the 10th August, 1846; and secondly, that if it was not of itself such an execution, the receipt by the claimant, or his attorney, of the amount awarded, estopped the claimant from questioning its conclusiveness. I have again examined the former questions, as well as those now before me, and am strengthened in my former conclusions. For the reasons upon which they rest, without adding others, which could readily be done, I refer to that opinion.

TALBOT *against the* AMELIA.

Came on the 11th inſt. in the Supreme Court of the United States, a cauſe of great importance, both on account of the legal principles, applicable to neutral commerce, and the magnitude of the pecuniary intereſt involved in the event, being no leſs than one hundred and eighty thouſand dollars. The caſe was thus :—

Talbot Qui tam,
vs.
The ſhip Amelia, &c.

} Error from the Circuit Court for the Newyork Diſtrict.

Case of Copyright.—By the following abstract of the opinion of Judge Thompson, in the United States Circuit Court, in a cause in which the Editors of this paper were defendants, it will be seen that we have come borne successfully through one of the most vexatious and unjustifiable pieces of litigation, that we recollect to have heard. No such case was ever tried, in this or any other country, before; and by contesting it, we have had the double satisfaction of establishing a principle heretofore unsettled, and of doing so at the expense of our opponents. The latter circumstance would not be mentioned, were it not for the fact, that, not content with trying the question a principle, they sought to recover vindictive damages in a second suit, which they may now withdraw at their leisure.

CIRCUIT COURT OF THE UNITED STATES,
Southern District of New-York.

Elisha E. Clayton and al.
vs.
William L. Stone and
Francis Hall.

This was an action qui tam, under the statute of copyright, for abridging an article published in a number of a rival weekly newspaper, of which the plaintiffs are proprietors, called "The Price Current." The plaintiffs had never secured their copy-right in any number of their paper except the one now in question.

The action was tried at the early part of the present term, and the jury were, for the purpose of bringing the questions of law before the Court for revision, directed to find a nominal verdict for the plaintiffs. On Thursday last Judge Thompson delivered the opinion of the Court in the case, which had been argued before them, ordering judgment to be entered for the defendants.

The following are substantially the reasons assigned by the learned judge, forming but an outline of the opinion delivered.

I am inclined to think the Price Current can not be considered a book, within the sense and meaning of the act of Congress. The literary property intended to be protected by the act, is not to be determined by the size, form, or shape in which it makes its appearance, but by the subject matter of the work. Nor is this question to be determined by reference to Lexicographers, to ascertain the origin and meaning of the word book. It will be more satisfactory to enquire into the general scope and object of the Legislature, for the purpose of ascertaining the sense in which the word book was intended to be used in the statute.

It seems to be well settled in England, that a literary production to be entitled to the protection of the statutes or copy rights, need not be a book in the common acceptation of the word; a volume written or printed, made up of several sheets and bound up together.—It may be printed on only one sheet, as the words of a song on the music accompanying it. It is true that the English statute of 8th Anne, in the preamble, speaks of books and other writings. But the body of the act speaks only of books the same as in the act of Congress: and a learned commentator upon American Law, seems to think the English decisions on this subject have been given upon the body of the statute of Anne, without laying any stress upon the words, "other writings" in the preamble.

In determining the true construction to be given to the act of Congress, it is proper to look at the constitution of the United States, to aid us in ascertaining the nature of the property intended to be protected. "Congress shall have power to promote the progress of science and useful arts, by securing for limited times to authors and inventors, the exclusive right to their respective writings and discoveries." (art. 1, s. 8.) The act in question was passed in execution of the power here given, and the object therefore was the promotion of science. It would certainly be a pretty extraordinary view of the sciences to consider a daily or weekly publication of the state of the market, as falling within any class of the sciences. They are of a more fixed, permanent and durable character. The term science cannot with any propriety be applied to a work of so fluctuating and fugitive a form as that of a newspaper or price current; the subject matter of which is daily changing, and is of mere temporary use. Although great praise may be due to the plaintiffs for their industry and enterprise in publishing this paper, yet the law does not contemplate their being rewarded in this way. It must seek patronage and protection from its utility to the public and not as a work of science.

The title of the act of Congress is "for the encouragement of learning," and was not intended for the encouragement of mere industry, unconnected with learning and the sciences. The preliminary steps required by the law to secure the copy right, cannot reasonably be applied to a work of so ephemeral a character as that of a newspaper. The author is required to deposit a printed copy of the title of his book, in the Clerk's office of the District Court, and the Clerk is required to record the same; a copy of which record must be published for four weeks, in one or more newspapers, within two months from the date thereof: And a copy of the book is to be delivered to the Secretary of State within six months from the publication, to be preserved in his office: And all this would have to be done for every newspaper. The right can not be secured for any given time, but a series of papers published from day to day, or from week to week: And it is so improbable that any publisher of a newspaper would go through the form for every paper, that it cannot reasonably be presumed that Congress intended to include newspapers under the term book. That no such pretence has ever before been set up, either in England or in this country, affords a pretty strong argument that such publications never were considered as falling under the protection of the copy right laws.

We are accordingly of opinion, that the paper in question is not a book, the copy right to which can be secured under the act of Congress.

Judgment must accordingly be entered for the defendants.

Reported for the Commercial Advertiser.

Edmund M. Blunt, qui tam, &c. vs. Richard Patten. } Present—Justices Thompson and Betts.

This action was brought for a breach of copy-right. It appeared, in evidence, that the plaintiff, in 1821, caused a survey to be made of the South Shoal of Nantucket, and that it was then ascertained, that the said Shoal had been laid down in all the charts previously in use, twenty miles too far to the southward; it being in latitude 41 deg. 4 min., instead of 40 deg. 44 min., as in the old charts.

It was also proved, that the same year, the plaintiff projected a survey of George's Shoal, and sent a vessel, with competent surveyors for that purpose, to Boston to join a vessel which Capt. Hull, the commander on that station, permitted to assist in said survey. That the said survey was made chiefly at the expense of the plaintiff, and that it was expressly understood by Capt. Hull, that it was for the private benefit of the plaintiff. The results of the survey were placed on a chart, drawn by Mr. Edmund Blunt, and copies of the same were given to an officer of the United States, to be transmitted to the Navy Department, for the use of the Government, and to preserve the information among the public archives.

The plaintiff published these surveys on his chart, of the North Eastern Coast of the United States, in October, 1821, and the copy-right was duly secured.

In May, 1827, the defendant published his chart of the North Eastern Coast, with these Shoals substantially copied in form, position, and bearings, from the chart of the plaintiff. The plaintiff then rested, and the defendant, in his defence shewed that he had obtained a copy of the chart lodged in the Navy Department by permission of one of the Navy Commissioners, and that by being placed there it became a public document which he had a right to copy. He also attempted to shew that he had obtained the true position of the south shoal of Nantucket from a survey taken by a British officer in 1805. It did not appear however that, that survey had ever been published, or that any person except the witness produced by the defendant had ever heard of it. He produced the draftsman and the engraver of his chart, but on cross-examination, it appeared that the former was directed to use in the draft of Nantucket Shoal, and that the engraver copied it from a separate paper furnished by the defendant, and drawn by some person unknown.

The defendant also proved that the soundings near Nantucket Shoal on his chart were different from those on the plaintiff's, being taken from Desbarre's survey published in 1776. The defendant's counsel then contended that there could be no copyright in the location of a Shoal, that it was a thing which by nature could only be placed in one position, and that it was obviously here taken from other authorities than from the plaintiff's chart. He also contended that the chart in the Navy Department was a public document, and open to all the world, and that the plaintiff had no right to make a monopoly of either that or of the true position of Nantucket Shoal.

Many respectable shipmasters were produced, who testified that they always regarded the discovery of the error in the position of Nantucket Shoal, as having been made entirely by the plaintiff, whom the mariners of the U. States, had been indebted to for most of the information now obtained concerning their own coast, and had been in the habit of relying upon as the publisher of the charts; and nautical works now in general use. They also testified that the surveys of Nantucket and George's Shoals were highly important, and that they appeared to be substantially copied on the defendant's chart from the plaintiff's.

After the testimony had been commented upon by the counsel for the parties, Judge Thompson charged the jury that the privilege of an author to the exclusive sale of his works for a limited term of years, although a monopoly, was not so in the odious meaning of the term. It was but a proper reward for his labor provided by law, and to which he was as much entitled, as to the exclusive enjoyment of any other kind of property. That the plaintiffs could not, it was true, obtain a copy right in the Shoal itself, nor in the original elements of his charts; but that he had an exclusive right to the results of his labors and surveys. The defendant might resort to the original materials of the chart and survey for himself, but he could not avail himself either in whole or in part of the surveys of plaintiff. The law was intended to secure to authors the benefits of their skill, labor and genius, for a limited time, and if in this instance the defendant had availed himself of the surveys of plaintiff in compiling his chart, the plaintiff was entitled to a verdict. In the case of Nantucket Shoal, the defendant produced a witness who stated that he had communicated to the defendant its true position, and it was a question for the jury to decide whether the defendant had copied it from the plaintiff's survey or not.—As to Georges Shoal, no doubt existed that it was copied from his survey, deposited in the Navy department, and the pretence that it became a public document from being deposited there, was entirely untenable. The survey was made chiefly at the Plaintiff's expense, and according to the understanding, it was to be for his benefit. It was of great use to the navigating community, and Capt. Hull was justified in aiding him in it upon such terms.

The jury retired, and in less than five minutes, brought in a verdict for the Plaintiff.

Counsel for Plaintiff, D. B. Ogden and J. Blunt —for Defendant, J. Anthon.

PUBLIC INFORMERS.—*New way of making money.*—Mr. Atwill, the music seller, of Broadway, some time since instituted proceedings against certain persons in this city, acting as agents of Ferrett & Arthur of Philadelphia, the cheap music venders, for selling a portion of the music from the opera of the *Bohemian Girl*, as adapted by Atwill, the copyright of which he had secured to himself; and that as a *quid pro quo*, Ferrett & Arthur commenced eleven distinct suits against Atwill, to recover penalties for having, as was alleged, vended some music without having strictly complied with the provisions of the statute regulating copyrights. The statute in question provides that where any persons shall vend music, &c., without having acquired the copyright thereof, he or they shall be subject to a penalty of $100, to be recovered by any person suing, as informer on behalf of the United States and himself. Now these eleven suits were commenced by Ferrett and Arthur, there were, therefore two plaintiffs, and the question was whether such suits could be sustained? To the plaintiff's declaration in each suit demurrers were interposed, on the ground that actions, to recover the penalties in question, could only be brought by *one person*. The question was discussed at the bar with great ability, and Judge Nelson delivered his opinion that the demurrer must be sustained, and awarded judgement in favor of the defendant Atwill, thereby rendering Ferrett & Arthur liable to the cost of the eleven suits. The counsel for the plaintiffs were T. V. Townsend and Samuel Sherwood. For the defendant, M. S. Bidwell, and Samuel Owen.—*Times*.

U. S. Circuit Court.—The Court was engaged Wednesday morning in the trial of the action James Stevens vs. Gladding & Proud. This is a *Qui Tam* suit for the recovery of the penalty under the copy right law, for an alleged violation of the Plff's. copy right of a Map of Rhode Island.

Henry M. Western, Esq., of New York, for Plff. Mr. Staples, of New York, and S. Ames, Esq., of Providence, for Dfts.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA
ex rel. CLARISSA ZAFIROV,

Relator/Plaintiff,

v. Case No: 8:19-cv-01236-KKM-SPF

FLORIDA MEDICAL
ASSOCIATES, LLC, et al.,

Defendants.

ORDER

For five years, Clarissa Zafirov has prosecuted various corporate entities on behalf of the United States, pursuing treble damages and other daunting monetary penalties for alleged harms to the public fisc. Zafirov has determined which defendants to sue, which theories to raise, which motions to file, and which evidence to obtain. If the action proceeds to an appeal, Zafirov will decide which arguments to preserve, further binding the federal government. Yet no one—not the President, not a department head, and not a court of law—appointed Zafirov to the office of relator. Instead, relying on an idiosyncratic provision of the False Claims Act, Zafirov appointed herself. This she may not do.

"Under our Constitution, the 'executive Power'—all of it—is 'vested in a President.' " *Seila Law LLC v. CFPB*, 591 U.S. 197, 203 (2020) (quoting U.S. CONST. art. II, § 1, cl. 1). Central to that power is the "exclusive authority and absolute discretion" to determine who to investigate and which charges to prosecute. *United States v. Nixon*, 418 U.S. 683, 693 (1974). Likewise, "the power to seek daunting monetary penalties against private parties on behalf of the United States in federal court" is "a quintessentially executive power." *Seila Law*, 591 U.S. at 219.

"[T]he Framers expected that the President would rely on subordinate officers for assistance" in discharging his duties. *Id.* at 203–04. Under Supreme Court precedent, anyone who "exercise[s] significant authority pursuant to the laws of the United States" and who occupies a "continuing position established by law" qualifies as an officer. *Lucia v. SEC*, 585 U.S. 237, 245 (2018) (quotations omitted). To ensure accountability in the Executive Branch, the Constitution requires "Officers of the United States" to be appointed by "the President alone, in the Courts of Law, or in the Heads of Departments." U.S. CONST. art. II, § 2, cl.2.

The defendants correctly argue that Zafirov exercises significant authority, indeed core executive power, under the continuing position of relator but lacks proper appointment under the Constitution. As a result, the case must be dismissed.

I. BACKGROUND

A. The False Claims Act

The False Claims Act (FCA) proscribes fraudulent claims for payment from the United States and the withholding of payments owed to the United States. 31 U.S.C. § 3729(a)(1)(A)–(G), (b)(2)(A)(ii), (b)(3). Those prohibitions sweep broadly. For example, a recipient of federal funds is liable whenever it knowingly misrepresents compliance with a "statutory, regulatory, or contractual requirement" when the representation is "material to the Government's payment decision." *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 192 (2016). A physician is liable when he knowingly certifies to the government, in an attempt to obtain reimbursement, that a procedure is 'reasonable and necessary' " if "the procedure was not reasonable and necessary under the government's definition of the phrase." *United States ex rel. Polukoff v. St. Mark's Hosp.*, 895 F.3d 730, 742–43 (10th Cir. 2018). And a manufacturer is liable who "knowingly supplies nonconforming goods to the government, based on a belief that the nonconforming goods are just as good as the goods specified in the contract." *United States ex rel. Compton v. Midwest Specialties, Inc.*, 142 F.3d 296, 304 (6th Cir. 1998).

The complexity of the regulations and contractual requirements in the fields where FCA litigation often occurs—such as healthcare, defense spending, or government contracting—frequently render the legal obligations of defendants "subject to multiple

interpretations." *United States v. AseraCare, Inc.*, 938 F.3d 1278, 1299 (11th Cir. 2019). Of course, FCA litigation generates considerable factual disputes about the materiality of representations and actual damages suffered by the government. *See, e.g.*, *United States ex rel. Heath v. Wis. Bell, Inc.*, 92 F.4th 654, 664–65 (7th Cir. 2024) (concluding that a genuine issue of fact existed as to whether the "alleged falsity of the [defendant's] claims was material to the government's payment decisions"). When found liable, defendants face "significant penalties" for FCA violations: treble damages plus fines up to almost $28,000 for each infraction. *Universal Health Servs.*, 579 U.S. at 180; 31 U.S.C. § 3729(a)(1); 28 C.F.R. § 85.5(a), (d) (2024).

As one would expect, the FCA empowers the United States to prosecute offenders. *See* 31 U.S.C. § 3730(a). More unusually, the statute also entitles any "person" (however broadly that term extends, presumably including a foreign national or any natural person) to enforce the statute by filing a lawsuit in the federal government's name. *Id.* § 3730(b)(1). If that person, known as a "relator," prevails, she may collect an "award" of up to thirty percent of the proceeds of the action. *Id.* § 3730(d). This procedural device, known as a qui tam provision, encourages litigation—so much so that private relators bring the majority of FCA actions. *See* U.S. Dep't of Just., *Fiscal Year 2023 False Claims Act Statistics* (*2023 FCA Stats*) at 2 (Feb. 22, 2024) (showing 712 new FCA qui tam matters

in fiscal year 2023, compared to 500 outside the qui tam process), https://perma.cc/D2HN-SYE8.

The FCA allows a relator not only to direct litigation, but also to bind the federal government without direct accountability to anyone in the Executive Branch. A relator need not consult with the federal government before filing suit, nor does she receive a commission or swear an oath of loyalty to the United States. Instead, a relator enjoys unfettered discretion to decide whom to investigate, whom to charge in the complaint, which claims to pursue, and which legal theories to employ.

Nor does a relator's discretion stop at final judgment. A relator determines whether to appeal and which arguments to preserve, thereby shaping the broader legal landscape for the federal government. In that way, a relator acts with greater independence than a Senate-confirmed United States Attorney or Assistant Attorney General, who must obtain the approval of the Solicitor General to appeal. *See* U.S. Dep't of Just., Just. Manual § 2-2.121 (2024) ("All appeals to the lower appellate courts in cases handled by divisions of the Department and United States Attorneys and all petitions for certiorari and direct appeals to the Supreme Court must be authorized by the Solicitor General."), https://perma.cc/BL95-BUVL.

After filing the complaint, the government may choose to intervene as a plaintiff in the action, which transfers "the primary responsibility for prosecuting the action" from the

relator to the government. *See* 31 U.S.C. § 3730(c). But even when it intervenes, the government must generally seek judicial approval before the relator's action may be settled or dismissed. *See id.* § 3730(c)(2)(A)–(B). If the government declines to intervene, as it does in the vast majority of actions, the relator prosecutes the action without direction from the Department of Justice (DOJ) or consultation with pertinent agencies. *See* Stephen Cox, Deputy Assoc. Att'y Gen., U.S. Dep't of Just., Remarks at the Federal Bar Association Qui Tam Conference (Feb. 28, 2018) ("Despite the significant role that qui tam cases continue to play in the Department's False Claims Act efforts . . . it remains the case that the Department intervenes in only about 1 in 5 cases that are filed."), https://perma.cc/NY8E-DAG3; *see contra* U.S. Dep't of Just., Just. Manual § 4-4.110 (2024) (requiring that government attorneys, but not realtors, "confer with the relevant agency during the investigative, litigation, and settlement phases of [an FCA matter]"), https://perma.cc/ZFL5-TVXB.

Today's frequent use of the FCA's qui tam provision emerged relatively recently. Although the FCA as enacted in 1863 permitted relator suits, it took a package of pro-relator amendments in 1986 to elevate the device from obscurity. At least one study found that the DOJ's records reveal only three qui tam actions in the four decades between 1943 and 1986, *see* WILLIAM L. STRINGER, THE FALSE CLAIMS ACT AMENDMENTS: AN ASSESSMENT OF ECONOMIC IMPACT 23 (1996) (admitting that the records are

incomplete but concluding that qui tam actions were "undoubtedly very few"), while others estimate that the "DOJ used to receive about six qui tam cases a year" before the 1986 amendments, Steve France, *The Private War on Pentagon Fraud*, 76 A.B.A. J. 46, 48 (1990). Whatever the precise figure, the relator amendments triggered an explosion of qui tam lawsuits. *See 2023 FCA Stats* at 1–2 (showing 31 new FCA qui tam matters in fiscal year 1987 rising to 712 new qui tam matters in 2023).

The proliferation of qui tam litigation of the last forty years has yielded mixed results for the United States. On the one hand, qui tam actions now generate increased revenue for the federal government. *See 2023 FCA Stats* at 1–2 (showing that fiscal year 2023 settlements and judgments in FCA qui tam actions totaled over $2.3 billion, as compared to roughly $2.3 million in 1988). On the other hand, non-intervened qui tam actions require the DOJ and federal agencies to "devote significant resources to monitoring them" at the cost of "pursu[ing] other meritorious cases and priorities." *See* Jesse Panuccio, Acting Assoc. Att'y Gen., U.S. Dep't of Just., Remarks at the American Bar Association's 12th National Institute on the Civil False Claims Act and Qui Tam Enforcement (June 14, 2018), https://perma.cc/Q897-3942. This strain on federal resources recently spurred the DOJ to instruct government attorneys to dismiss FCA actions when, among other things, a relator's action lacks merit; duplicates a pre-existing government investigation and adds no useful information; interferes with an agency's policies or programs; or threatens

classified information or national security interests. Michael D. Granston, U.S. Dep't of Just., *Factors for Evaluating Dismissal Pursuant to 31 U.S.C. 3730(c)(2)(a)* (*Granston Memo*) at 1, 3–7 (Jan. 10, 2018); *see* U.S. Dep't of Just., Just. Manual (2024) § 4-4.111 (incorporating the Granston memo), https://perma.cc/6ECC-J85P.

The unclear role of litigation funding heightens the tension between qui tam actions and ordinary Executive Branch practice. Because a relator may sell portions of her interest in an FCA action to third parties, including firms that specialize in litigation funding, *see Ruckh v. Salus Rehab., LLC*, 963 F.3d 1089, 1100–03 (11th Cir. 2020), the government might not know who is involved in FCA enforcement. The government has conceded in the past that the DOJ does not "really know the extent to which third party litigation funders are behind the qui tam cases that [the DOJ was] investigating, litigating, or monitoring." Ethan P. Davis, Principal Deputy Att'y Gen., U.S. Dep't of Just., Remarks on the False Claims Act at the U.S. Chamber of Commerce's Institute for Legal Reform (June 26, 2020), https://perma.cc/778D-FLEP. Nor does the government "know whether relators are sharing information with third party funders, or whether and to what extent the funders are exercising control over relators' litigation and settlement decisions." *Id.*

B. Zafirov's Qui Tam Action under the FCA

In 2019, Zafirov sued her employer and the other defendants for violations of the FCA by misrepresenting patients' medical conditions to Medicare. Am. Compl. (Doc. 86)

¶¶ 1–3, 91–92, 95. Zafirov never asserted that the defendants' allegedly illegal conduct harmed her. Instead, like a United States Attorney, Zafirov proceeds on behalf of the "real party of interest in this case," the "United States of America," Am. Compl. ¶ 18, to avenge "a wrong to the public as a whole," *Trump v. United States*, 144 S. Ct. 2312, 2331 (2024) (quotations omitted).

After the government declined to intervene, Zafirov litigated the action on behalf of the United States for the next five years. *See, e.g.*, (Docs. 40, 56–59, 106–07). Zafirov's tenure as a relator has stretched so long that she now resides in a different country than when the suit began. *See* OA Tr. (Doc. 345) at 104:6–10 (confirming that Zafirov "is currently residing in Canada"). Throughout, the government has refrained from participating, only at times presenting the United States' position in "statements of interest." *See, e.g.*, (Docs. 120, 343). That partly changed when the defendants moved for judgment on the pleadings, arguing that the FCA's qui tam provision violates Article II's Appointments Clause, Take Care Clause, and Vesting Clause. Mot. for J. on the Pleadings (MJP) (Doc. 180). Even then, the government intervened solely to contest the constitutional arguments and otherwise allows Zafirov to drive the litigation. *See* (Doc. 278) at 1 n.1.

The parties, the United States, and two *amici* have extensively briefed the constitutional challenges. After holding oral argument, I invited additional briefing to

allow the parties and their *amici* to address historical evidence of federal qui tam enforcement in the United States. All briefing is now complete, and the defendants' motion is ripe.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(c) permits judgment on the pleadings "[a]fter the pleadings are closed—but early enough not to delay trial." "Judgment on the pleadings is appropriate where there are no material facts in dispute and the moving party is entitled to judgment as a matter of law." *Carson v. Monsanto Co.*, 72 F.4th 1261, 1266 (11th Cir. 2023) (quotations omitted).

III. ANALYSIS

The defendants assert that the FCA's qui tam provision is unconstitutional twice over. First, they argue that the qui tam provision violates the Take Care Clause and the Vesting Clause of Article II because the FCA "den[ies] the President necessary removal authority and sufficient supervisory control over" a relator. MJP at 7–13. Second, they contend that the qui tam provision violates the Appointments Clause because a relator is an improperly appointed officer of the United States. *Id.* at 13–18. As a result of these constitutional infirmities, the defendants urge dismissal of the action. Zafirov resists both arguments, relying on the history of qui tam suits, as well as the relevant precedents, to

contend that she is subject to sufficient control by the President and is not an officer of the United States. *See* Resp. (Doc. 218) at 5-9.

After addressing two preliminary matters, I reach three conclusions about the Appointments Clause argument. First, an FCA relator is an officer of the United States. Second, historical examples of qui tam provisions do not exempt an FCA relator from the Appointments Clause. Third, because Zafirov is not constitutionally appointed, dismissal is the only permissible remedy. Given these conclusions, I do not address the defendants' other Article II argument.

A. The Defendants' Article II Challenges Are Non-Jurisdictional, Timely, and Unwaived

Before reaching the merits, Zafirov contends that the motion for judgment on the pleadings is untimely. To address this argument, I must answer two preliminary questions. The first is whether the constitutionality of the FCA's qui tam provision cuts to subject matter jurisdiction so that the defendants may raise it at any time. The second is whether the defendants waived the Article II challenges. The answer to both questions is "no."

The defendants contend that, because their Article II challenges bear on Zafirov's standing, the motion for judgment on the pleadings implicates subject matter jurisdiction. MJP at 25. *Vermont Agency of Natural Resources v. United States ex rel. Stevens* forecloses this argument. 529 U.S. 765 (2000). *Stevens* holds that the FCA "gives the relator [her]self an interest in the lawsuit, and not merely the right to retain a fee out of the

recovery," and thus that a relator has Article III standing. *Id.* at 772–74. Applying this reasoning, the Supreme Court and the Eleventh Circuit have rejected attacks on a relator's standing while expressly reserving a ruling on an Article II challenge. *Id.* at 778 n.8; *Ruckh*, 963 F.3d at 1100 n.9.[1] Because precedent gives Zafirov standing, the motion for judgment on the pleadings does not threaten subject matter jurisdiction.

With subject matter jurisdiction secured, Zafirov argues that the defendants waived the Article II challenges. Resp. at 4. Zafirov is mistaken. If "a plaintiff receives notice [of a constitutional affirmative defense] . . . by some means other than pleadings, the defendant's failure" may be excused. *Grant v. Preferred Rsch., Inc.*, 885 F.2d 795, 797 (11th Cir. 1989) (quotations omitted). That is the case here. Zafirov received notice of the defendants' Article II challenges in a motion for judgment on the pleadings filed well over a year before the scheduled trial. *See* FED. R. CIV. P. 12(c) (permitting such motions "after the pleadings have closed" but "early enough not to delay trial"); *see also, e.g.*, *King v.*

[1] Intervening Supreme Court decisions and longstanding precedent arguably undermine *Stevens*'s core assumption—that a relator's interest in the lawsuit vests before final judgment. *Compare United States ex rel. Polansky v. Exec. Health Res.*, 599 U.S. 419, 428–39 (2023) (explaining that the United States may intervene in an FCA qui tam action at any time and then move to dismiss under a deferential standard), *with id.* at 451 (Thomas, J., dissenting) (explaining that "[f]or [*Stevens*'s] holding to make sense, it appears that [a relator's partial] assignment must be effective no later than the point in time at which the Government declines to intervene in the seal period and the relator may proceed with the action as the only plaintiff in court"). *See also* Saikrishna Prakash, *The Chief Prosecutor*, 73 GEO. WASH. L. REV. 521, 591 (2005) (explaining that nineteenth century precedent "suggests that the qui tam relator has no right to fines until she actually receives them . . . [h]ence, even after the relator commences the suit, the president may pardon or perhaps take the lesser step of entering a nolle prosequi before the court"). Whatever tension exists in the precedent, the Supreme Court has not overruled *Stevens*, so its holding remains binding.

Akima Glob. Servs., 775 F. App'x 617, 620 n.1 (11th Cir. 2019) (per curiam) (concluding that a similar motion filed four months before trial was timely). Zafirov had every opportunity to rebut the challenges in written submissions and at oral argument. Under these circumstances, Zafirov suffers no prejudice by consideration of a motion that is "purely legal and does not require either side to present additional facts or arguments to a jury." *United States ex rel. Wallace v. Exactech, Inc.*, No. 18-cv-1010, 2023 WL 8027309, at *3 (N.D. Ala. Nov. 20, 2023) (permitting the same challenge on a similar procedural posture).

In the alternative but for similar reasons, I would grant the defendants' request for leave to amend their responsive pleadings under Rule 15(a)(2) to include the Article II challenges as affirmative defenses. *See* MJP at 4 n.4; Reply (Doc. 233) at 2 n.4.

B. An FCA Relator Is an Officer of the United States

"[U]nlike anyone else, the President is a branch of government, and the Constitution vests in him sweeping powers and duties." *Trump*, 144 S. Ct. at 2346. Relevant here, "the 'executive Power'—all of it—is 'vested in [the] President,' who must 'take Care that the Laws be faithfully executed.' " *Seila Law*, 591 U.S. at 203 (quoting U.S. CONST. art. II, § 1, cl. 1; *id.* § 3). That is to say, the President, as the head of the Executive Branch, has the power and the duty to enforce federal law. *See, e.g.*, *United States v. Texas*, 599 U.S. 670, 678–79 (2023).

The Framers understood that this concentration of power, "unique in our constitutional structure," is "necessary to secure the authority of the Executive so that he could carry out his unique responsibilities." *Seila Law*, 591 U.S. at 223–24. "To justify and check that authority . . . the Framers made the President the most democratic and politically accountable official in Government." *Id.* at 224 (emphasis omitted). Unlike any other elected official, "[o]nly the President (along with the Vice President) is elected by the entire Nation." *Id.* "And the President's political accountability is enhanced by the solitary nature of the Executive Branch, which provides 'a single object for the jealousy and watchfulness of the people.' " *Id.* (quoting THE FEDERALIST NO. 70, at 475 (A. Hamilton) (J. Cooke ed. 1961)).

The Framers also knew that "it would be 'impossib[le]' for 'one man' to 'perform all the great business of the State.' " *Id.* at 213 (quoting 30 WRITINGS OF GEORGE WASHINGTON 334 (J. Fitzpatrick ed. 1939)). Thus, "the Constitution assumes that lesser executive officers will 'assist the supreme Magistrate in discharging the duties of his trust.' " *Id.* (quoting 30 WRITINGS OF GEORGE WASHINGTON 334). To maintain the Executive Branch's unitary structure and prevent the abuse of power, "[t]hese lesser officers must remain accountable to the President, whose authority they wield." *Id.* at 213. In this way, " 'the chain of dependence [is] preserved,' so that 'the lowest officers, the middle grade, and

the highest' all 'depend, as they ought, on the President, and the President on the community.' " *Id.* at 224 (quoting 1 ANNALS OF CONG. 499 (1789) (J. Madison)).

The Appointments Clause retains accountability in the Executive Branch by creating a two-track system for appointing "Officers of the United States." "Principal officers," such as agency heads and other senior government officials, must be nominated by the President and confirmed by the Senate. *United States v. Arthrex, Inc.*, 594 U.S. 1, 10 (2021). This appointment procedure balances the separation of powers with the need to secure a "chain of dependence" connecting the President and his subordinates. In addition, this framework "preserves another aspect of the Constitution's structural integrity by preventing the diffusion of the appointment power." *Freytag v. Comm'r*, 501 U.S. 868, 878 (1991). "The Framers understood . . . that by limiting the appointment power, they could ensure that those who wielded it were accountable to political force and the will of the people." *Id.* at 884. But as a concession to "administrative convenience," *Edmond v. United States*, 520 U.S. 651, 660 (1997), the Framers included a limited exception that sidesteps the normal "advice and consent of the Senate" requirement. For "inferior Officers," Congress may vest their appointment "in the President alone, in the Courts of Law, or in the Heads of Departments." U.S. CONST. art. II, § 2, cl. 2

The Supreme Court identifies a third category of government official unmentioned in the Constitution: the mere "employees" that comprise "the broad swath of 'lesser

functionaries' in the Government's workforce." *Lucia*, 585 U.S. at 245 (quoting *Buckley v. Valeo*, 424 U.S. 1, 126 n.162 (1976) (per curiam)). The Appointments Clause does not apply to a mere employee. *Id.* Thus, much hangs in the balance when distinguishing between an officer and an employee.

The Supreme Court deems an individual an officer of the United States if she "exercis[es] significant authority pursuant to the laws of the United States," *id.* (quoting *Buckley*, 424 U.S. at 126), and "occup[ies] a 'continuing' position established by law," *id.* (quoting *United States v. Germaine*, 99 U.S. 508, 511 (1879)). If an individual satisfies both conditions, the Constitution requires that she be appointed consistent with the Appointments Clause.[2]

Applying that test, an FCA relator is an "Officer[] of the United States." Because a relator possesses civil enforcement authority on behalf of the United States, a relator exercises significant authority. And because the FCA prescribes a relator's statutory duties, powers, and emoluments, and the position mirrors the role of a bank receiver or special

[2] Once a court concludes that an individual is an officer of the United States, a different test determines whether the individual is a principal or inferior officer. *Arthrex*, 594 U.S. at 13–14. Under *Arthrex*, a plausible argument exists that an FCA relator is a principal officer because she "bind[s] the Executive Branch to exercise executive power in a particular manner" during an enforcement action. *Id.* at 23. In non-intervened cases such as this one, the relator will necessarily make "final [litigation] decisions binding the Executive Branch" as to the allegedly fraudulent conduct at issue. *Id.* On the other hand, *Arthrex* contemplated that an inferior officer might exercise power otherwise reserved to principal officers "under 'special and temporary conditions.' " *Id.* at 22 (citing *United States v. Eaton*, 169 U.S. 331, 343 (1898), for the proposition "that an inferior officer can perform functions of principal office on acting basis"). Because Zafirov was unconstitutionally appointed so long as she is not an employee, no need arises to decide if she is a principal or inferior officer.

prosecutor in its duration and non-personal nature, a relator occupies a continuing position. Thus, Zafirov is subject to the Appointments Clause.

1. An FCA Relator Exercises Significant Authority Pursuant to the Laws of the United States

The power to initiate an enforcement action in the name of the United States to vindicate a public right constitutes "significant authority pursuant to the laws of the United States." *Lucia*, 585 U.S. at 245 (quoting *Buckley*, 424 U.S. at 126). The FCA confers that power to relators and allows them to litigate actions to final judgment and beyond. In the process, a relator often binds the federal government (sometimes even in future cases) and recovers punitive damages that flow to the public treasury. Under *Buckley*'s "significant authority" test, an FCA relator passes muster. Executive branch practice confirms the point. And none of Zafirov's abundant attempts to distinguish a relator's power from officials that the Supreme Court holds are constitutional officers persuades otherwise.

i. An FCA Relator's Civil Litigation Powers Are "Significant Authority"

When articulating the "significant authority" test in *Buckley*, the Supreme Court held that members of the Federal Election Commission (FEC) were "Officers of the United States" for two independent reasons. First, the Court explained that an official vested with the power to "conduct[] civil litigation in the courts of the United States for vindicating public rights" must be an officer under the Appointments Clause. *Buckley*, 424 U.S. at 126, 140. The Court reasoned that "[a] lawsuit is the ultimate remedy for a breach

of the law" and thus an executive function reserved to the President to whom "the Constitution entrusts the responsibility to 'take Care that the Laws be faithfully executed.' " *Id.* at 138 (quoting U.S. CONST. art. II, § 3). Because the FEC possessed civil "enforcement power, exemplified by its discretionary power to seek judicial relief," the commissioners exercised this kind of significant authority. *Id.* As a result, the commissioners must be subject to the Appointments Clause to remain accountable to the Executive Branch.

Second, the FEC commissioners possessed other "broad administrative powers," each of which "represent[ed] the performance of a significant governmental duty exercised pursuant to a public law." *Id.* at 140–41. The Court considered these functions—"rulemaking, advisory opinions, and determinations of eligibility of funds"—as distinct from the FEC's enforcement authority, which the Court understood as unequivocally executive and sufficient to constitute significant authority alone. *Compare id.* at 139–140 (concluding that the FEC's enforcement authority "may be discharged only by persons who are 'Officers of the United States' within the language of [the Appointments Clause]"), *with id.* at 140–41 (analyzing separately the FEC's "administrative powers"). Still, because the FEC's "administrative functions" neither "operate[d] merely in aid of congressional authority to legislate [nor were] sufficiently removed from the administration and

enforcement of public law," they too could be exercised only by officers of the United States. *Id.* at 141.

The Supreme Court continues to rely on *Buckley*'s significant authority standard to discern who qualifies as an officer. In *Morrison v. Olson*, the Supreme Court thought it "clear" that an independent counsel—required by statute not to "hold[] any office of profit or trust under the United States" before appointment, 28 U.S.C. § 593(b)(2)—became an officer when she assumed the government's prosecutorial responsibilities in a single action. 487 U.S. 654, 671 n.12 (1988). The Supreme Court has likewise held that other executive officials who play a role in enforcing or administering federal law are Officers of the United States, including SEC administrative law judges, *Lucia*, 585 U.S. at 241, 244–51, administrative patent judges, *Arthrex*, 594 U.S. at 13, and the Directors of the Consumer Financial Protection Bureau and the Federal Housing Finance Authority, *Seila Law*, 591 U.S. at 219–20; *Collins v. Yellen*, 594 U.S. 220, 250–53 (2021).

Similar to those officials, an FCA relator wields significant authority because she "conduct[s] civil litigation in the courts of the United States for vindicating public rights." *Buckley*, 424 U.S. at 126, 140. A relator may file a complaint, without *ex ante* oversight by the federal government, to initiate an enforcement action on behalf of the United States for treble damages and substantial statutory penalties. 31 U.S.C. §§ 3729(a)(1), 3730(b). That act precludes all but the Attorney General from "interven[ing] or bring[ing] a related

action based on the facts underlying" the complaint. *Id.* § 3730(b)(5). The filing of the complaint also begins a sixty-day seal period during which the government investigates both the claims and the relator and determines whether to intervene. *Id.* § 3730(b)(2). That ticking clock forces the Executive Branch to align its investigative priorities with those of a self-interested third party. If the government elects to intervene, the relator still enjoys "the right to continue as a party to the action, subject to [statutory limitations in § 3730(c)(2)]." *Id.* § 3730(c)(1).[3] If the government does not intervene, the relator may prosecute her action to final judgment however she chooses, including litigating appeals that can become binding precedent on the government. *Id.* § 3730(b)(4). That is textbook "significant authority." *Buckley*, 424 U.S. at 126, 138–39.

Other precedents reinforce the conclusion that a relator exercises significant authority by stressing how enforcement authority is inherent in, and crucial to, the executive power. A relator exercises core executive power[4] by deciding "how to prioritize

[3] Under *Polanksy*'s interpretation of the government's intervention and dismissal authority, a relator's statutory "right to continue as a party" stands on tenuous footing when the government decides to terminate the action. *See supra* n.1.

[4] I label as "core executive power" the power to initiate a civil enforcement action to right a public wrong in the name of the United States because such authority lies at the heart of Article II. *See, e.g.*, *Seila Law*, 591 U.S. at 219 (observing that criminal prosecution is a "core executive power" and that "the power to seek daunting monetary penalties against private parties on behalf of the United States in federal court" is "a quintessentially executive power"); *Buckley*, 424 U.S. at 138 (describing "[a] lawsuit [a]s the ultimate remedy for a breach of law, and it is to the President . . . that the Constitution entrusts the responsibility to 'take Care that the Laws be faithfully executed.' "); *Sierra v. City of Hallandale Beach*, 996 F.3d 1110, 1134 (11th Cir. 2021) (Newsom, J., concurring) ("Thus, at its core, the 'executive power' entailed the authority to bring legal actions on behalf of the community for remedies that accrued to the public generally.").

and how aggressively to pursue legal actions against defendants who violate the law." *Texas*, 599 U.S. at 678 (quotations omitted). Indeed, the ability to initiate an FCA enforcement action for "daunting monetary penalties against private parties on behalf of the United States," *Seila Law*, 591 U.S. at 219, is indistinguishable from the Executive Branch's "exclusive authority and absolute discretion to decide whether to prosecute a case," *Nixon*, 418 U.S. at 693. In sum, by suing on behalf of the United States to secure "essentially punitive" penalties, *Stevens*, 529 U.S. at 784, a relator performs a "traditional, exclusive function of the government," *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1308, 1310 (11th Cir. 2021), that is integral to the "administration and enforcement of the public law," *Buckley*, 424 U.S. at 139. That kind of core executive power is "significant authority."

Executive branch practice confirms this conclusion. For example, the United States regularly asserts that presidential exercise of similar authority is core executive power when litigation involves the President's ability to prosecute and exercise enforcement discretion. *See, e.g.*, *Trump*, 144 S. Ct. at 2334 ("Investigation and prosecution of crimes is a quintessentially executive function." (alterations accepted) (quoting Br. for United States at 19)). Likewise, counsel for the United States conceded that the Attorney General's enforcement of the FCA is "significant," "substantial," and "definitely a core executive power." OA Tr. at 68:1–7. A relator's exercise on behalf of the United States of the same

power under the same statute must—for the same compelling reasons—constitute the exercise of significant executive authority.

ii. Zafirov's Arguments to the Contrary Are Unpersuasive

Zafirov resists this conclusion primarily by citing non-binding decisions that held otherwise. *See* Resp. at 13–15 (collecting cases). Of the four courts of appeals opinions that she cites, only two—both from the early 1990s—addressed the significant authority element. *See United States ex rel. Kelly v. Boeing Co.*, 9 F.3d 743, 757–59 (9th Cir. 1993) (conceding that non-intervened cases "present[] what may seem a close question under *Buckley*"); *United States ex rel. Taxpayers Against Fraud v. Gen. Elec. Co.*, 41 F.3d 1032, 1041 (6th Cir. 1994) (concluding without analysis that, "[a]lthough a relator may sue in the government's name, the relator is not vested with governmental power"). The other two courts resolved the Appointments Clause argument on the "continuing position" ground alone; one even appears to assume that an FCA relator exercises significant authority. *United States ex rel. Stone v. Rockwell Int'l Corp.*, 282 F.3d 787, 804–05 (10th Cir. 2002) (concluding that meeting *Buckley*'s "significant authority" test is insufficient); *Riley v. St. Luke's Episcopal Hosp.*, 252 F.3d 749, 757–58 (5th Cir. 2001) (en banc).

None of those circuits examined, much less reconciled, the long line of Supreme Court precedents explaining that enforcement authority and charging discretion are core executive power, especially when coupled with the authority to impose a punitive sanction.

See Heckler v. Chaney, 470 U.S. 821, 831 (1985) ("[A]n agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion."); *Nixon*, 418 U.S. at 693; *The Confiscation Cases*, 74 U.S. 454, 457 (1868) ("Civil suits, in the name and for the benefit of the United States," are instituted and controlled by the Attorney General and the district attorneys.); *see also United States v. Cox*, 342 F.2d 167, 190 (5th Cir. 1965) (en banc) (Wisdom, J., specially concurring) ("The prosecution of offenses against the United States is an executive function within the exclusive prerogative of the Attorney General."); Saikrishna Prakash, *The Chief Prosecutor,* 73 GEO. WASH. L. REV. 521, 528 (2005) ("[T]he president is the chief prosecutor, i.e., the constitutional prosecutor of all offenses against the United States."). Nor did those circuits have the benefit of more recent Supreme Court precedents, which only further emphasize the point. See *Texas*, 599 U.S. at 679 ("The Executive Branch—not the Judiciary—makes arrests and prosecutes offenses on behalf of the United States."); *TransUnion LLC v. Ramirez*, 594 U.S. 413, 429 (2021); *Seila Law*, 591 U.S. at 219. Although not all the above precedents addressed the Appointments Clause, their repeated emphasis that enforcement through litigation is a core executive power matches *Buckley*'s understanding of "significant authority." *See Buckley*, 424 U.S. at 138–39 (reasoning that the "discretionary power to seek judicial relief[] is authority that cannot possibly be regarded as merely in aid of the legislative function of Congress" but instead belongs

exclusively to the President because "the Constitution entrusts [him with] the responsibility to 'take Care that the Laws be faithfully executed' " (quoting U.S. CONST. art. II, § 3)). And after those circuits rejected the Article II challenge, the Supreme Court has only solidified the strictures of the Appointments Clause. *See Lucia*, 585 U.S. at 244–52; *Arthrex*, 594 U.S. at 11–23.

Zafirov, the United States, and an *amicus* propose a host of distinctions between a relator's power and the exercise of significant authority in *Buckley*. The most substantial proposed distinctions depend on (1) a categorical line between civil and criminal law enforcement, (2) a relator's lack of rulemaking or other administrative powers, (3) the fact that a relator pursues ordinarily only one enforcement action rather than many, (4) the Attorney General's ability to intervene or pursue a parallel action and to dismiss a relator's suit over her objection, and (5) a relator's lack of pre-suit investigatory resources from the federal government. None of these arguments exempt a relator from the need to be appointed consistent with the Appointments Clause.

The Supreme Court has long rejected a constitutional distinction between civil and criminal cases when evaluating whether an individual exercises core executive power. *See Seila Law*, 591 U.S. at 219 (authority to "seek daunting monetary penalties against private parties on behalf of the United States in federal court" is "a quintessentially executive power"). For obvious reasons, the same distinction bears no relevance in assessing whether

an individual wields significant authority. *See Buckley*, 424 U.S. at 140 (concluding that the "primary responsibility for conducting civil litigation in the courts of the United States for vindicating public rights" is confined to properly appointed officers because civil enforcement authority rests with the President). Zafirov's attempted demarcation between criminal and civil authority ignores the punitive realities inherent in an FCA action. *Yates,* 21 F.4th at 1308 ("FCA monetary awards are, at least, partially punitive."). As the United States conceded, the FCA's financial sanctions "may look worse" than fines imposed in a criminal prosecution for the same conduct, particularly against corporate defendants. *Cf.* OA Tr. at 87:16–88:8; *id.* at 113:11–17 (Zafirov conceding the same, at least "financially").

Buckley rebuts Zafirov's argument that a relator's lack of rulemaking or other administrative powers like those possessed by the FEC commissioners deprives a relator of significant authority. The Supreme Court held that the FEC's enforcement power—by itself—constituted significant authority. 424 U.S. at 140–41. Although the Court also held that the FEC's "administrative functions" properly belonged to officers, *id.* at 141–42, the Court's second holding does not undermine the first. *Cf. The Confiscation Cases*, 74 U.S. at 457 ("Settled rule is that [district and circuit] courts will not recognize any suit, civil or criminal, as regularly before them, if prosecuted in the name and for the benefit of the United States, unless the same is represented by the district attorney, or some one designated by him to attend to such business.").

The frequency of the exercise of enforcement power likewise does not diminish a relator's significant authority. *Buckley*'s reasoning does not depend on the number of enforcement actions brought by one official as compared to another. The officer distinction instead turns on the power bestowed to the official, namely the power to litigate civil cases "in the courts of the United States for vindicating public rights." *Buckley*, 424 U.S. at 138–40. That a relator ordinarily files a single action in no way undercuts the immense power that the FCA grants her. Nor does the FCA preclude a relator from initiating subsequent actions. And, as a practical point, relators collectively prosecute most FCA actions, so they indeed hold the "primary responsibility" in this field. *See 2023 FCA Stats* at 2 (showing 712 new FCA qui tam matters in fiscal year 2023, compared to 500 outside the qui tam process). A contrary conclusion would allow Congress to subvert the Appointments Clause by dispersing core executive power throughout the American people *en masse* rather than establishing power in a properly appointed officer. *See Freytag*, 501 U.S. at 885 (rejecting an "excessively diffuse appointment power"). Zafirov's argument invites the legislative encroachment that, "mask[ed] . . . under complicated and indirect measures," the Framers feared when crafting the Constitution, THE FEDERALIST NO. 48, at 310 (J. Madison) (C. Rossiter ed. 1961); *Freytag*, 501 U.S. at 878, 883–84.

Next, the government's ability to pursue a parallel action and to exert limited control after intervening does not lessen a relator's unchecked civil enforcement authority to initiate

an enforcement action. Whether the President exercises sufficient control over a relator is a question better suited to the defendants' other Article II argument, which I need not reach. But back-end executive supervision—exercised by the government in only a fifth of cases—does not diminish the significance of an FCA relator's front-end power to bring an enforcement action against a private party in federal court on behalf of the United States. *See also Kelly*, 9 F.3d at 758 (conceding that the issue is a "close question under *Buckley*" in non-intervened cases where the "relator retains primary responsibility for the litigation").

Lastly, Zafirov lacks support for the view that an individual who prosecutes matters on behalf of the United States must receive federal resources for her pre-suit investigations to be deemed an officer of the United States. Simply naming a power that relators do not possess does not vitiate their officer status. And the lack of government resources to investigate before filing a complaint does not negate the relator's power to sue, which under *Buckley* is significant authority.

In addition to the above proposed distinctions, Zafirov contends that *Cochise Consultancy, Inc. v. United States ex rel. Hunt* settled this issue. Resp. at 13. In *Cochise*, the Supreme Court noted that relators are not officials of the United States "in the ordinary sense of that phrase." 587 U.S. 262, 272 (2019). Zafirov misreads the import of that statement. The Court was rejecting a statutory interpretation argument about why a particular statute of limitations did not apply to relators. In so doing, the Court explained—

referencing the FCA's text—why the statute treats relators as private persons, not government officials. *Cochise Consultancy*, 587 U.S. at 272. *Cochise* made the factual observation that relators are not appointed consistent with Article II, but the Court had no occasion to opine on the constitutionality of the FCA's qui tam provision. *Id.* In fact, Justice Thomas, the author of *Cochise*, cited the same language from *Cochise* when raising his Article II concerns in his subsequent dissenting opinion in *Polansky*. 599 U.S. at 449 (Thomas, J., dissenting) (citing *Cochise Consultancy*, 587 U.S. at 272).

The United States and an *amicus* suggest that relators resemble ordinary private plaintiffs, who do not exercise significant authority when they seek relief under other federal statutes. USA Br. (Doc. 217) at 10–12, 15–17; TAF Br. (Doc. 225) at 24–25. That analogy ignores the longstanding distinction between injured parties seeking reparation for private harms and suits by sovereigns that "seek to redress a wrong to the public as a whole, not just a wrong to the individual." *Trump*, 144 S. Ct. at 2331 (quotations omitted). A relator's lack of a personal injury is the crux of the issue in *Stevens*, which held that the FCA gives a relator a partial assignment of the United States's interest in a lawsuit vindicating public rights. 529 U.S. at 772. Such an arrangement is unnecessary for a Title VII plaintiff who sues her employer to remedy discrimination against herself. But unlike a Title VII plaintiff, a relator performs a "traditional, exclusive function of the government," *Yates*, 21 F.4th at 1310, by "seek[ing] daunting monetary penalties against private parties

on behalf of the United States," *Seila Law*, 591 U.S. at 219; *Yates*, 21 F.4th at 1308. That power renders the comparison inapt.

Finally, Zafirov gestures at a much broader attack on the Supreme Court's Article II precedent, placing extensive reliance on a draft academic article purporting to "[a]pply[] a novel, mixed-method study of private rights of action" to justify "the vast majority of private enforcement schemes." Nitisha Baronia, et al., *Private Enforcement and Article II* (*Private Enforcement*) (Doc. 264-3) at 1. Yet the article itself concedes that, if any private delegation of enforcement authority is unconstitutional, it is probably the FCA's qui tam provision. *See id.* at 56–57 (explaining that the FCA "implicate[s] nearly every cross-doctrinal concern identified" in the manuscript). Thus, the centerpiece of Zafirov's Article II structural argument not only fails to justify an exception to longstanding Article II jurisprudence, but the article also cuts against her on the constitutionality of the FCA qui tam provision that the defendants challenge.

* * *

In the end, none of Zafirov's arguments overcome the reality that an FCA relator initiates a lawsuit that "seek[s] daunting monetary penalties against private parties on behalf of the United States in federal court." *Seila Law*, 591 U.S. at 219. Exercising such "quintessentially executive power" disposes of the significant authority question in the

defendants' favor. *Id.*; *see also Buckley*, 424 U.S. at 140. Zafirov's power to enforce public law through litigation necessarily satisfies the first step for officer status.

2. An FCA Relator Occupies a Continuing Position Established by Law

In addition to exercising significant federal authority, one deemed an "Officer of the United States" must "occupy a 'continuing' position established by law." *Lucia*, 585 U.S. at 245 (quoting *Germaine*, 99 U.S. at 511). The "continuing position" inquiry "stress[es] 'ideas of tenure [and] duration' " and asks whether the individual's statutory duties are " 'occasional or temporary' rather than 'continuing and permanent.' " *Id.* (quoting *Germaine*, 99 U.S. at 511–12). As the FCA's structure evidences and Supreme Court precedent confirms, an FCA relator occupies a continuing position.

Because the "continuing position" inquiry focuses on an individual's statutory duties, powers, and emoluments, I begin with the FCA, which defines all three for the office of relator. When a relator initiates an enforcement action, she must comply with several statutory duties. She must file the initial complaint in camera, serve "[a] copy of the complaint and written disclosure of substantially all material evidence and information [she] possesses" on the government, and wait at least sixty days before serving the defendant so that the government may investigate and decide whether to intervene. *See* 31 U.S.C. § 3730(b)(2)–(3). Beyond the ability to initiate and litigate an action that binds the federal government, a relator enjoys unfettered freedom to prosecute the action as she determines

best. She may choose which defendants to sue (and which not to sue, for reasons of her own), which theories to raise, which motions to file, and which evidence to obtain. *Id.* § 3730(b)(4)(B) (granting the relator "the right to conduct the action"). Unlike a government attorney, a relator proceeds untethered to, and unbound by, DOJ policy or the Justice Manual. And she has no duty to report to the Attorney General or his subordinates beyond serving (at taxpayer expense and upon request) certain litigation documents on the government. *Id.* § 3730(c)(3). Finally, if the action succeeds, the FCA compensates a relator with a statutory moiety between fifteen to twenty-five percent of the judgment. *Id.* § 3730(d). The existence of statutorily defined duties, powers, and emoluments confirms that a relator holds a continuing office. *Germaine*, 99 U.S. at 511.

As the above statutory duties, powers, and emoluments prove, the office of an FCA relator is continuous even if it is not continually filled. Although a particular person occupies the office—in the manner of an Attorney General, an Ambassador, or Secretary of the Treasury—for a time that varies from occupant to occupant, the office of relator persists by operation of the FCA regardless of the occupant and regardless of any intermittent vacancy, resignation, debilitation, or the like. Stated otherwise, the office of relator exists whether a person is appointed to that office or not, making that office "continuous and permanent."

Precedent suggests that a relator occupies a "continuing position" despite that term expiring at the end of a single matter. In *Morrison v. Olson*, the Supreme Court concluded that Independent Counsel Alexia Morrison—authorized "to exercise all investigative and prosecutorial functions and powers of the Department of Justice" for purposes of a single investigation—was an inferior officer. 487 U.S. at 660–63, 670–73. Although the Supreme Court focused on the distinction between principal and inferior officers, the majority thought it "clear that [Morrison was] an 'officer' of the United States, not an 'employee.' " *Id.* at 671 n.12 (citing *Buckley*, 424 U.S. at 126 & n.162). Justice Scalia agreed on that point, dissenting instead on the basis that Morrison was a principal officer who required Senate confirmation. *Id.* at 715–23 (Scalia, J., dissenting).

Relators self-appoint as special prosecutors to recover punitive damages against private parties on behalf of the federal government. *See Seila Law*, 591 U.S. at 219; *Yates*, 21 F.4th at 1308. Such responsibility is analogous to that of the Independent Counsel in *Morrison*. If anything, a relator occupies a more continuous position because the scope of her prosecutorial jurisdiction is limited only by the complaint (of which she is the master) and § 3730's jurisdictional provisions (which are open-ended rather than narrowly defined by the Attorney General). Like Morrison and her fellow Independent Counsels, an FCA relator is an officer, too.

Older decisions discussing bank receivers offer another helpful analogy. Bank receivers were officials charged with winding up a specific insolvent bank and entrusted with "statutory authority to bring suit, through a [United States] Attorney and under the direction of the Solicitor of the Treasury." *See* Officers of the United States Within the Meaning of the Appointments Clause, 31 Op. O.L.C. 73, 110–11 (2007).[5] Even though bank receivers' duties were tied to a specific bank and discharged on completion of the project, "it was the uniform view of the federal courts" in the nineteenth and early twentieth centuries that these officials were "officers of the United States" under a statute conferring federal jurisdiction for certain lawsuits. *Id.* (collecting cases); *see, e.g.*, *United States v. Weitzel*, 246 U.S. 533, 541 (1918) ("The receiver, unlike a [bank] president, director, cashier, or teller, [was] an officer, not of the corporation, but of the United States."); *see also Ex parte Chetwood*, 165 U.S. 443, 457–58 (1897) (holding that a bank receiver appointed by the Comptroller of the Currency "was not the officer of any court, but the agent and officer of the United States"); *Platt v. Beach*, 19 F. Cas. 836, 840 (E.D.N.Y. 1868) (holding that a receiver was an officer because his "duties [were] not defined by any contract, but by law and rule prescribed by the government"); *Stanton v. Wilkeson*, 22 F.

[5] The cited Office of Legal Counsel Opinion concluded that relators were not officers of the United States based on the "continuing position" requirement, although the Opinion did not discuss the analogy to bank receivers' authorization to initiate civil litigation on behalf of the United States. Officers of the United States Within the Meaning of the Appointments Clause, 31 Op. O.L.C. at 114. Like other Office of Legal Counsel Opinion documents cited throughout this order, I rely on the opinion as descriptive, not as a statement of the government's position on the appropriate analogy to relators.

Cas. 1074, 1075 (S.D.N.Y. 1876) (addressing and rejecting a continuity challenge to a receiver's officer status); *Price v. Abbott*, 17 F. 506, 507–08 (C.C.D. Mass. 1883) (Gray, J.) (explaining that a receiver was an officer of the United States because "being appointed pursuant to an act of congress to execute duties prescribed by that act, he is, in the execution of those duties, an agent and officer of the United States").

Like bank receivers, relators are appointed to handle a specific problem, at the conclusion of which their term in office ends. And like bank receivers, relators are empowered to initiate litigation on behalf of the United States to enforce a complex regulatory scheme with serious implications for the public fisc and for targeted defendants. Thus, like bank receivers, relators are officers of the United States.

Terms that endure for only a single action—such as bank receivers, special prosecutors, and relators—can qualify as continuing positions. Another circuit has rightly recognized that an official occupies a continuing position when "they wield federal prosecutorial power and hold a position that is not personal to a specific individual and may last for years." *United States v. Donziger*, 38 F.4th 290, 294 (2d Cir. 2022), *cert. denied* 143 S. Ct. 868 (2023); *see also Ass'n of Am. R.Rs. v. U.S. Dep't of Transp.*, 821 F.3d 19, 37–38 (D.C. Cir. 2016) (holding that a one-off arbitrator was an officer of the United States). In *United States v. Donziger*, the Second Circuit applied a three-part test to determine "whether a temporary position is an office: (1) the position is not personal to

a particular individual; (2) the position is not transient or fleeting; and (3) the duties of the position are more than incidental." 38 F.4th at 297 (citing Officers of the United States Within the Meaning of the Appointments Clause, 31 Op. O.L.C. at 112–13). Although not the ultimate arbiter of whether a temporary position is "continuing" under *Lucia* and *Germaine*, *Donziger* provides a useful rubric and further confirms that a relator is an officer of the United States.[6]

At step one, "to qualify as an office, the position must not depend on the identity of the person occupying it, and the duties should continue, though the person be changed." *Donziger*, 38 F.4th at 297 (quotations omitted). As Chief Justice Marshall opined in 1823, "[a] man may certainly be employed under a contract . . . without becoming an officer. But if [his] duty be a continuing one, which is defined by rules prescribed by the government, and not by contract . . . [and] if those duties continue, though the person be changed; it seems very difficult to distinguish such a charge or employment from an office, or the person who performs the duties from an officer." *United States v. Maurice*, 26 F. Cas. 1211, 1214 (C.C.D. Va. 1823) (Marshall, C.J.). The FCA contemplates that arrangement for a relator, permitting any "person" to bring an FCA action—and thus, to occupy the position of realtor—if the person can allege the facts of a fraud. 31 U.S.C. § 3730(b)(1).

[6] The government (through Special Counsel Jack Smith) recently cited *Donziger* as support for the argument that special prosecutors like Smith are Officers of the United States and not employees. *See* Resp. to Amicus Br. in Supp. of Mot. to Dismiss at 6, *United States v. Trump*, No. 23-cr-80101 (Doc. 432) (S.D. Fla. Apr. 4, 2024).

Put differently, the position of relator does not depend on the identity of the person initiating the action, as any "person" can be the relator if she satisfies the statutory prerequisites. *See id.* § 3730(e). Although the statutory scheme's "first come, first served" preclusion rule contemplates and pretermits duplicative relators, the statute does not grant a preference to potential relators based on superior knowledge, skill, or any other attribute unique to the person. *See id.* § 3730(b)(5).

Eleventh Circuit precedent permitting the alienability of a relator's interest likewise supports the view that the position of an FCA relator operates independent of any particular person who occupies the role. First, when a relator dies, his estate's personal representative may be substituted in the relator's place because "a relator's *qui tam* action survives his death." *United States v. NEC Corp.*, 11 F.3d 136, 139 (11th Cir. 1993), *as amended* (Jan. 12, 1994). If another may be substituted in the relator's shoes, then the office is not personal in nature to the original relator. Second, a relator may assign (at least in part) her interest in an FCA action. *Ruckh*, 963 F.3d at 1102. Because a relator's "right to represent the interests of the United States" and pursue her portion of the judgment constitutes her position for Appointments Clause purposes, the ability to assign that right to others confirms that the position does "not depend on the identity of the person occupying it." *Id.*; *Donziger*, 38 F.4th at 297.

At step two, "the position must not be transient or fleeting." *Donziger*, 38 F.4th at 297. The Second Circuit concluded that the special prosecutors appointed by the court were neither "transient [n]or fleeting" because they had "already served for nearly three years." *Id.* Zafirov's tenure nearly doubles three years, and she is hardly an outlier in duration. *See, e.g.*, *United States ex rel Alderson v. Quorum Health Grp., Inc.*, 171 F. Supp. 2d 1323, 1325, 1340–41 (M.D. Fla. 2001) (awarding the relator his statutory moiety after litigating the FCA action for eight years). Thus, "[a]lthough [Zafirov's] duties terminate upon performance," her "position[] [is] not transient or fleeting." *Id.*

At step three, "the duties of the position must be more than incidental to the regular operations of government." *Id.* Consideration of substance is "necessary to ensure against evasion of the Appointments Clause through the creation of temporary positions with the same powers as officers." *Id.* at 297 n.5 (citing Officers of the United States Within the Meaning of the Appointments Clause, 31 Op. O.L.C. at 113). For reasons already given, the power to vindicate public rights through litigation is far from "incidental to the regular operations of government." *Id.* at 297; *see also Trump*, 144 S. Ct. at 2348 n.1 (Thomas, J., concurring) (explaining that "it is difficult to see how an official exercising the Department of Justice's duties to enforce the criminal law by leading a prosecution could be anything but an officer"); *supra* n.4.

In short, officials who exercise important duties are more likely to occupy a constitutional office even when their term is temporary or otherwise cabined to circumstances. That commonsense principle helps explain why bank receivers and the Independent Counsel were officers, but merchant appraisers and civil surgeons were not. *Compare Weitzel*, 246 U.S. at 541; *Morrison*, 487 U.S. at 671 n.12, *with Germaine*, 99 U.S. at 511–12; *Auffmordt v. Hedden*, 137 U.S. 310, 326–28 (1890). The former exercised core executive power by litigating in the name of the United States. Because an FCA relator similarly exercises core executive power, *see supra* at 20–26, her "duties are [by definition] more than incidental to regular government operations." *Donziger*, 38 F.4th at 298; *cf. Buckley*, 424 U.S. at 138–39.

Zafirov and her allies only minimally contest continuity. The thrust of their argument is that a relator's position is personal and that the powers associated with the position are minimal compared to those held by officers in other cases. *See* Resp. at 15–17; USA Br. at 16–17. The FCA's text negates Zafirov's first contention, as any "person" with knowledge of the fraud could sue. 31 U.S.C. § 3730(b)(1). The former contention is also belied by *NEC* and *Ruckh*, which clarify that the position is not personal by permitting substitution or "reassignment" of a relator's "right to represent the interests of the United States in [a] qui tam action[]."11 F.3d at 139; 963 F.3d at 1102. And the latter contention

repackages Zafirov's "significant authority" argument, which is wrong for reasons already explained. *See supra* at 17–30.

An FCA relator possesses all the traditional indicia of holding a constitutional "office." Her position is analogous to other temporary officials wielding core executive power whom courts have categorized as officers. And a relator passes the *Donziger* test for temporary-yet-continuing officers. In sum, Zafirov occupies a "continuing position" as a relator and thus satisfies step two of the test for officer status.

C. Article II Contains No "Qui Tam" Exception

The historical pedigree of qui tam provisions does not save Zafirov from qualifying as an officer under Supreme Court precedent. Zafirov argues that the FCA's qui tam structure survives constitutional scrutiny because early Congresses enacted some analogous statutes. But no Supreme Court or Eleventh Circuit precedent blesses Zafirov's theory of historical exceptionalism when the enactments directly contradict the Constitution. Simply put, the Constitution prevails over practice, especially when the text is clear and the practice is neither continuous nor challenged. To accept Zafirov's alternative Article II proposal—that historical existence equals constitutionality—would eviscerate longstanding Article II jurisprudence.

A "basic principle" of constitutional interpretation requires that "[t]ext controls over contrary historical practices." *United States v. Rahimi*, 144 S. Ct. 1889, 1912 n.2 (2024)

(Kavanaugh, J., concurring). Thus, "[s]tanding alone, historical patterns cannot justify contemporary violations of constitutional guarantees." *Marsh v. Chambers*, 463 U.S. 783, 790 (1983); *see also Walz v. Tax Comm'n*, 397 U.S. 664, 678 (1970) ("[N]o one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire national existence and indeed predates it."). Applying this principle, the Supreme Court explains that when historical evidence of a practice conflicts with well-settled understandings of constitutional text, practice will prevail only when "unambiguous and unbroken history" leaves "no doubt that the practice . . . has become part of the fabric of our society." *Marsh*, 463 U.S. at 792. Evidence that a constitutional concern was raised and dismissed can "infuse[] [a practice] with power by demonstrating that the subject was considered carefully and the action not taken thoughtlessly, by force of long tradition and without regard to the problems posed by [the Constitution's new system of government]." *Id.* at 791. But a practice implemented "without full examination & deliberation" is entitled to little weight. *See* William Baude, *Constitutional Liquidation*, 71 STAN. L. REV. 1, 18 (2019) (quoting Letter from James Madison to Spencer Roane (May 6, 1821), *reprinted in* 2 THE PAPERS OF JAMES MADISON: RETIREMENT SERIES 320 (David B. Mattern et al. eds., 2013)).

An even more careful approach is required when a practice inherited from England implicates the separation of powers. *See* Prakash, *The Chief Prosecutor*, 73 GEO. WASH.

L. REV. at 589 (urging caution before "importing English constraints or exceptions to the executive power, when those limitations might be based on the principle of parliamentary supremacy"); Ann Woolhandler & Caleb Nelson, *Does History Defeat Standing Doctrine?*, 102 MICH. L. REV. 689, 725–26 (2004). "[R]eflexively resorting to English law or history without careful analysis can sometimes be problematic because America had fought a war . . . to free itself from British law and practices and rid itself of tyrannical British rule." *Rahimi*, 144 S. Ct. at 1915 n.3 (Kavanaugh, J., concurring). Courts, therefore, should approach English common law and historical practice with caution when constitutional questions involve the separation of powers. *See id.* ("[T]he Constitution . . . did not purport to take English law or history wholesale and silently download it into the U.S. Constitution.").

Zafirov's historical argument begins with a recitation of Justice Stevens's dissenting opinion in *Stevens*: that the same evidence cited in support of Article III standing is "sufficient to resolve the Article II question." Resp. at 4 n.3 (quoting *Stevens*, 529 U.S. at 801 (Stevens, J., dissenting)); *see also id.* at 20. Zafirov, the United States, and an *amicus* argue that early congressional enactments of qui tam statutes, even if never enforced, insulate the FCA's qui tam provision from Article II challenge. *See* OA Tr. at 73:12–77:16; 112:4–115:9, 146:7–16; USA Suppl. Br. (Doc. 260) at 1 n.1 (denying the need to show that analogous enactments were used); Relator Suppl. Br. (Doc. 264); TAF Suppl.

Br. (Doc. 261) at 4 ("enactment alone is sufficient"). They also believe that a broad range of informer statutes are relevant to the historical inquiry. Relator Suppl. Br. at 6–9; USA Suppl. Br. at 4–12; TAF Suppl. Br. at 2–3, 9–13. These assertions suffer from three serious methodological flaws.

First, Zafirov's mechanistic focus on enactments is overbroad. As anyone familiar with *Marbury* knows, "enactment by the First Congress [is not] a guarantee of a statute's constitutionality." *Polansky*, 599 U.S. at 450 (Thomas, J., dissenting). "[W]e should be especially careful not to overread [early enactments] given that the Constitution's creation of a separate Executive Branch coequal to the Legislature was a structural departure from the English system of parliamentary supremacy, from which many legal practices like qui tam were inherited." *Id.*; *see also* Prakash, *The Chief Prosecutor*, 73 GEO. WASH. L. REV. at 589; Woolhandler & Nelson, *Does History Defeat Standing Doctrine?*, 102 MICH. L. REV. at 725–26.

Actual practice under these early statutes reveals a complicated relation between founding-era relators and properly appointed officers. For example, district attorneys often represented relators in nominally private enforcement actions, which gave the government a potential gatekeeping mechanism and control over a relator's litigation decisions. *See* James E. Pfander, *Public Law Litigation in Eighteenth Century America: Diffuse Law Enforcement in a Partisan World*, 92 FORDHAM L. REV. 469, 488–89 & nn.166–73

(2023); *see also id.* at 488 (conceding "some blurring of the lines between public and private proceedings" in the only close study of analogous founding-era enforcement); *cf.* Prakash, *The Chief Prosecutor*, 73 GEO. WASH. L. REV. at 587 (suggesting that "certain popular prosecutions [may not have been] brought precisely because potential popular prosecutors understood that the president might terminate the popular prosecution"). This blurring of public and private enforcement undermines the idea that founding-era enactments alone show a constitutional settlement reconciling the qui tam device with Article II. *See* Baude, *Constitutional Liquidation*, 71 STAN. L. REV. at 1 (explaining that constitutional liquidation requires "textual indeterminacy," "a course of deliberate practice," and "a constitutional settlement" marked by "acquiescence" and "public sanction").

Second, Zafirov overstates the historical case for qui tam provisions by lumping all founding-era bounty statutes together. In her view, every early statute that offered a bounty supports the FCA's relator provision. *See* Relator Suppl. Br. at 6–9; USA Suppl. Br. at 4–12; TAF Suppl. Br. at 2–3, 9–13. But *Stevens* identified three categories of statutes: those that "provided both a bounty and an express cause of action," those that "provided a bounty only," and those "that allowed injured parties to sue in vindication of their own interests (as well as the Crown's)." 529 U.S. at 775–77. Although the Supreme Court sometimes refers to these categories using the umbrella term "qui tam," it does not follow that each is

analogous to the FCA, which permits a relator to perform a "traditional, exclusive function of the government." *Yates*, 21 F.4th at 1310.

For example, consider an ordinary bounty statute offering informers a reward. Such a statute does not authorize the informer to wield power, much less the core executive power a relator exercises by litigating on behalf of the United States to vindicate a public right and impose punitive sanctions on private parties. Similarly, a statute regulating conduct injurious to both public and private rights that attaches additional remedies to a private cause of action operates more like an environmental citizen-suit provision than the FCA. Only *Stevens*'s narrowest category of statutes, those "provid[ing] both a bounty and an express cause of action [to common informers]," 529 U.S. at 777, is "relevantly similar" for Article II purposes, *N. Y. State Rifle & Pistol Assoc. v. Bruen*, 597 U.S. 1, 29 (2022). This narrower view tracks English qui tam practice, where similar statutes generally used language authorizing "any person [to] . . . sue for the [penalty]" as a "common informer." 2 WILLIAM BLACKSTONE, COMMENTARIES *438.[7] Thus, while the exact number of this narrow category of qui tam-like statutes at the founding is uncertain and their use even

[7] *Stevens* explained that the Supreme Court had previously "suggested, in dictum, that '[s]tatutes providing for a reward to informers which do not specifically either authorize or forbid the informer to institute the action are construed to authorize him to sue.' " 529 U.S. at 777 n.7 (alteration in the original) (quoting *United States ex rel. Marcus v. Hess*, 317 U.S. 537, 541 n. 4 (1943)). But though *Stevens*'s dicta mentioned *Hess*'s dicta, the former did not endorse the latter. *See id.* For good reason—giving conclusive weight to *Hess*'s dicta would work an enormous change in federal law enforcement by converting every bounty statute into a private cause of action. Such a sea change is unwarranted, especially given that *Hess* misinterpreted a third, still earlier piece of dicta in *Adams v. Woods*, 6 U.S. (2 Cranch) 336 (1805). *See* Woolhandler & Nelson, *Does History Defeat Standing Doctrine?*, 102 MICH. L. REV. at 727 n.183.

more unclear, Zafirov's simplistic reliance on all bounty statutes from that time does not establish "a course of deliberate practice." *See* Baude, *Constitutional Liquidation*, 71 STAN. L. REV. at 1.

Third, Zafirov fails to show how those early enactments liquidated the meaning of Article II to permit FCA-style delegations of sweeping litigation authority. Zafirov never identifies a challenge to the constitutionality of FCA-like qui tam actions at the founding (or during the Civil War), much less that those actions were accepted as compatible with the Constitution's separation of powers. *See Sierra v. City of Hallandale Beach*, 996 F.3d 1110, 1135 (11th Cir. 2021) (Newsom, J., concurring) (highlighting the "unchallenged" existence of qui tam actions); *Riley*, 252 F.3d at 773 (Smith, J., dissenting) ("[H]istory provides no indication of . . . the founders' general opinions of the constitutionality of qui tam statutes."). Nor has Zafirov proven a continuous, unbroken practice throughout our Nation's history that might otherwise inform an ambiguous constitutional text. *See CFPB*, 601 U.S. at 445 (Kagan, J., concurring, joined by Sotomayor, Kavanaugh, and Barrett, JJ.); *Marsh*, 463 U.S. at 792. Indeed, the widespread use of the FCA qui tam provision appears to be of relatively modern vintage. *See* Constitutionality of the Qui Tam Provisions of the False Claims Act, 13 Op. O.L.C. 207, 209, 235–36 (1989) (William Barr, Ass't Att'y Gen.); JOHN T. BOESE & DOUGLAS W. BARUCH, CIVIL FALSE CLAIMS AND QUI TAM ACTIONS § 1.01[B] (5th ed. Aug. 2024 update).

Setting Zafirov's methodological problems aside, it is true that early Congresses enacted at least some statutes containing an enforcement mechanism roughly analogous to the FCA. And those provisions were deployed (if perhaps only rarely) by individuals roughly analogous to Zafirov. At least one such provision was explicitly punitive, allowing violators to "be publicly whipped" and inflicting quadruple damages. *See An Act for the Punishment of Certain Crimes Against the United States*, ch. 9, § 16, 1 Stat. 112, 116 (1790). But it appears even these early statutes quickly fell into disuse and were eventually rescinded. Evan Caminker, *The Constitutionality of Qui Tam Actions*, 99 YALE L.J. 341, 342 (1989) (recognizing that "[m]ost early qui tam statutes have long been repealed"); Constitutionality of the Qui Tam Provisions of the False Claims Act, 13 Op. O.L.C. at 235–36 (William Barr, Ass't Att'y Gen.); *see also* LEONARD D. WHITE, THE FEDERALISTS: A STUDY IN ADMINISTRATIVE HISTORY 417 (1948) (explaining that, by 1799, "the tide had begun to turn against informers, although there was yet no repeal of legislation offering them inducements"). And uncritical reliance on such enactments would prove too much. After all, Article II likely would not permit criminal prosecution by a private individual. *See, e.g.*, *Sierra*, 996 F.3d at 1133 (Newsom, J., concurring) ("[F]ew would suggest, for instance, that Congress could outsource the criminal-prosecution power to the plaintiffs' bar.").

Nor can the FCA's history buttress its constitutionality. Although enacted during the Civil War, "few relators came forward to institute actions under the 1863 Act" and "[t]here are few reported . . . FCA decisions prior to 1943." BOESE & BARUCH, *supra*, § 1.01[B]. The statute briefly saw some use in the 1930s and 40s when lawyers realized they could recover generous bounties by filing "parasitical" suits that copied federal criminal indictments. *Id.* In response, the Attorney General pushed for repeal and Congress reacted by passing amendments "discourag[ing] use of the [FCA]" and forbidding parasitical suits. *Id.* §§ 1.01[B], 1.02; *see also* S. REP. NO. 77-1708, at 1–2 (1942) (reproducing Attorney General Francis Biddle's letter urging repeal). The FCA largely returned to dormancy until 1986, when further amendments animated by Congress's "generalized distrust of, and dissatisfaction with, the way the Executive Branch was carrying out its law enforcement responsibilities" ushered in a new era of qui tam litigation. Constitutionality of the Qui Tam Provisions of the False Claims Act, 13 Op. O.L.C. at 230 (William Barr, Ass't Att'y Gen.). Only the last forty years have witnessed a proliferation of FCA qui tam suits. *See* France, *The Private War on Pentagon Fraud*, 76 A.B.A. J. at 48 (estimating that the "DOJ used to receive about six qui tam cases a year" before the 1986 amendments); *2023 FCA Stats* at 2 (showing 712 new FCA qui tam matters in fiscal year 2023).

Zafirov's argument turns on whether the foregoing history requires a departure from the Supreme Court's well-settled Article II jurisprudence. It does not. When the

Constitution is clear, no amount of countervailing history overcomes what the States ratified. *See Rahimi*, 144 S. Ct. at 1912 n.2 (Kavanaugh, J., concurring); *id.* at 1908 (Gorsuch, J., concurring); *Polansky*, 599 U.S. at 450 (Thomas, J., dissenting); *N.L.R.B. v. Noel Canning*, 573 U.S. 513, 573, 613–14 (2014) (Scalia, J., concurring in the judgment, joined by Roberts, C.J., Thomas, and Alito, JJ.).

As already discussed, individuals who are vested with the power that an FCA relator possesses are subject to the Appointments Clause. Zafirov's "strategy for dealing with the [irreconcilability of her historical arguments and the overwhelming weight of Article II jurisprudence] is not to offer a theory for rationalizing this body of law." *Haaland v. Brackeen*, 599 U.S. 255, 279 (2023). "Instead, [she] frame[s] [her] arguments as if the slate were clean. More than two centuries in, it is anything but." *Id.* at 279–80. Zafirov has failed to articulate a coherent way for the FCA's qui tam provision to comport with the Appointments Clause. In lieu of such an explanation, one must conclude that Zafirov's appointment is unconstitutional.

* * *

Because Zafirov is an officer, there is no question that she is improperly appointed. At its most permissive, the Appointments Clause allows Congress to "by law" vest the appointment of inferior officers "in the President alone, the head of an executive department, or a court." *Arthrex*, 594 U.S. at 10. The FCA is a law, but rather than vest

the appointment of a relator in the Executive Branch or in a court, the qui tam provision permits any "person" to self-appoint by initiating an enforcement action. *See* 31 U.S.C. § 3730(b)(1). Because self-appointment, obviously, does not satisfy the Appointments Clause, the defendants prevail on this constitutional challenge.[8]

D. The Remedy Is Dismissal

Under *Lucia*, " 'one who makes a timely challenge to the constitutional validity of the appointment of an officer who adjudicates his case' is entitled to relief." 585 U.S. at 251 (quoting *Ryder v. United States*, 515 U.S. 177, 182 (1995)). When a litigant's challenge "involve[s] a Government actor's exercise of power that the actor did not lawfully possess," such as when an official is improperly appointed, the remedy is to set aside ultra

[8] The Supreme Court has, at times, articulated the "significant authority" element of its test for officer status as a negative restraint on delegated executive power. *See Arthrex*, 594 U.S. at 23 ("Only an officer properly appointed to a principal office may issue a final decision binding the Executive Branch in [inter partes patent adjudication]."); *Buckley*, 424 U.S. at 119 ("[I]f Congress insists upon retaining the power to appoint, then the members of the [Federal Election] Commission may not discharge those many functions of the Commission which can be performed only by 'Officers of the United States,' as that term must be construed within the doctrine of separation of powers."); *id.* at 141 (similar). To the extent that the Appointments Clause contains an Article II nondelegation principle that limits Congress's ability to authorize individuals to wield executive power, *see Consumers' Rsch., Cause Based Com., Inc. v. Fed. Commc'ns Comm'n*, 88 F.4th 917, 933–38 (11th Cir. 2023) (Newsom, J., concurring in the judgment) (discussing this idea), *cert. denied Consumers' Rsch. v. Fed. Commc'ns Comm'n*, 144 S. Ct. 2629 (June 10, 2024), the implication for the defendants' motion is the same. Because Zafirov has not been properly appointed to even an inferior office, she may not exercise significant authority under the laws of the United States by maintaining an enforcement action for punitive sanctions that could bind the government. To conclude otherwise would "create a constitutional loophole" and permit Congress to avoid the Appointments Clause altogether by vesting executive power outside the government. *Alpine Sec. Corp. v. Fin. Indus. Regul. Auth.*, No. 23-5129, 2023 WL 4703307, at *4 (D.C. Cir. July 5, 2023) (Walker, J., concurring). But "[w]hat cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows." *Id.* (quotations omitted).

vires actions. *Collins*, 594 U.S. at 258 (collecting cases); *see also id.* at 283 (Gorsuch, J., concurring in part) ("[O]fficials cannot wield executive power except as Article II provides. Attempts to do so are void."). Put differently, in Appointments Clause cases, "invalidation" is "the remedy," which "follows directly from the government actor's lack of authority to take the challenged action in the first place." *CFPB v. All Am. Check Cashing, Inc.*, 33 F.4th 218, 241 (5th Cir. 2022) (en banc) (Jones, J., concurring); *Collins*, 594 U.S. at 266 (Thomas, J., concurring) ("[A]n officer must be properly appointed before he can legally act as an officer."). Here, these remedial principals require dismissal.

Zafirov, the only litigant on her side of the enforcement action,[9] lacks the authority to prosecute on behalf of the United States. And absent congressional amendment, there is no way to obtain such authority (at least under the qui tam provision). Thus, the portion of this action vindicating the government's interest cannot continue.

Similarly, Zafirov cannot maintain a private action based on her partial assignment under *Stevens* (if indeed, after *Polansky,* a relator's partial assignment ever truly vests before final judgment). An FCA relator's partial assignment is inextricably intertwined with the statute's unconstitutional "attempt to vest the authority to represent the United States in

[9] Of course, the government remains both a "real party in interest," *Polansky*, 599 U.S. at 425 (quoting *United States ex rel. Eisenstein v. City of New York*, 556 U.S. 928, 930 (2009), and a limited intervenor under 28 U.S.C. § 2403(a) to defend the qui tam provision's constitutionality and to weigh in on a discovery dispute between Zafirov and the defendants. But I have resolved the constitutional question, and the government has shown no desire to intervene more fully or to take over Zafirov's action.

litigation in a party outside the Executive Branch." *Polansky*, 599 U.S. at 451 (Thomas, J., dissenting). In fact, the earliest possible moment such an assignment could have been created is Zafirov's first *ex officio* act—filing a complaint to initiate an enforcement action for punitive sanctions on behalf of the United States. Returning things to the way they were before Zafirov first acted ultra vires means that, for our purposes, no partial assignment attached.[10]

IV. CONCLUSION

It is no surprise that the Supreme Court describes the FCA qui tam provision as "unusual" and "unique." *Polansky*, 599 U.S. at 423–24. An FCA relator's authority markedly deviates from the constitutional norm. The provision permits anyone—wherever situated, however motivated, and however financed—to perform a "traditional, exclusive [state] function" by appointing themselves as the federal government's "avatar in litigation." *Yates*, 21 F.4th at 1310. That arrangement directly defies the Appointments Clause by permitting unaccountable, unsworn, private actors to exercise core executive power with substantial consequences to members of the public. And although the Supreme Court and the Eleventh Circuit have reserved the Article II issue, my conclusion that an FCA relator

[10] Regardless, the partial assignment would fail given Zafirov's inability to prosecute the government's case. Even in England, an informer's property interest could not attach if the right to recover on behalf of the Crown was extinguished before the informer filed suit. *See* 3 EDWARD COKE, INSTITUTES OF THE LAWS OF ENGLAND § 105, *238 (explaining that because an informer "cannot bring an action or information originally for his part only," a relator may not bring a qui tam action if the King "discharge[s] the whole" action before the relator sues).

is an officer of the United States is neither novel nor surprising. *See Polansky*, 599 U.S. at 442 (Kavanaugh, J., concurring, joined by Barrett, J.) (urging the Court to consider in an appropriate case the "substantial arguments" that qui tam is inconsistent with Article II); *id.* at 449 (Thomas, J., dissenting) (same); *Taxpayers Against Fraud*, 41 F.3d at 1050 (Nelson, J., concurring in part and in the judgment) (declining to concur in "Part II of the court's opinion, where the constitutionality of the qui tam provisions of the False Claims Act is upheld"); *Riley*, 252 F.3d at 758–75 (Smith, J., dissenting) (identifying "the FCA's violation of the Appointments Clause"); Constitutionality of the Qui Tam Provisions of the False Claims Act, 13 Op. O.L.C. at 221 (William Barr, Ass't Att'y Gen.) (arguing that "qui tam suits brought by private parties to enforce the claims of the United States plainly violate the Appointments Clause of the Constitution").

Because Zafirov initiated this FCA action when unconstitutionally appointed, I grant the defendants' motion for judgment on the pleadings and dismiss the case.

Accordingly, the following is **ORDERED:**

1. The defendants' Motion for Judgment on the Pleadings (Doc. 180) is **GRANTED**.
2. The Clerk is directed to **ENTER JUDGMENT** for the defendants and against Zafirov, which shall read "This case is dismissed with prejudice as to Dr. Clarissa Zafirov."

3. The Clerk is directed to terminate any pending motions and deadlines, and to **CLOSE** the case.

ORDERED in Tampa, Florida, on September 30, 2024.

Kathryn Kimball Mizelle
Kathryn Kimball Mizelle
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CLARISSA ZAFIROV, ex rel; Dr. and THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,

Plaintiffs,

v. **Case No: 8:19-cv-1236-KKM-SPF**

FLORIDA MEDICAL ASSOCIATES, LLC, PHYSICIAN PARTNERS, LLC, ANION TECHNOLOGIES, LLC, FREEDOM HEALTH, INC., and OPTIMUM HEALTHCARE, INC.,

Defendants.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that this case is dismissed with prejudice as to Dr. Clarissa Zafirov.

Any motions seeking an award of attorney's fees and/or costs must be filed within the time and in the manner prescribed in Local Rule 7.01, United States District Court Middle District of Florida.

Date: September 30, 2024

ELIZABETH M. WARREN,
CLERK

s/J. Bowerman, Deputy Clerk

CIVIL APPEALS JURISDICTION CHECKLIST

1. **Appealable Orders**: Courts of Appeals have jurisdiction conferred and strictly limited by statute:

   (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291**: Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Pitney Bowes, Inc. V. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge's report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).

   (b) **In cases involving multiple parties or multiple claims**, a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys' fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy's Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).

   (c) **Appeals pursuant to 28 U.S.C. Section 1292(a)**: Appeals are permitted from orders "granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions..." and from "[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed." Interlocutory appeals from orders denying temporary restraining orders are not permitted.

   (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court's denial of a motion for certification is not itself appealable.

   (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen V. Beneficial Indus. Loan Corp., 337 U.S. 541,546,69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass'n v. Blythe Eastman Paine Webber, Inc., 890 F. 2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).

2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:

   (a) **Fed.R.App.P. 4(a)(1)**: A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.

   (b) **Fed.R.App.P. 4(a)(3)**: "If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later."

   (c) **Fed.R.App.P.4(a)(4)**: If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.

   (d) **Fed.R.App.P.4(a)(5) and 4(a)(6)**: Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.

   (e) **Fed.R.App.P.4(c)**: If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

3. **Format of the notice of appeal**: Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant.

4. **Effect of a notice of appeal**: A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA
ex rel. DR. CLARISSA ZAFIROV,
Plaintiffs,

v. Case No. 8:19-cv-1236-SDM-SPF

FLORIDA MEDICAL ASSOCIATES, LLC *et al.*,
Defendants

UNITED STATES' NOTICE OF APPEAL

The United States of America appeals to the United States Court of Appeals for the Eleventh Circuit from the order and judgment entered on September 30, 2024, Docs. 346 & 347.

Respectfully submitted,

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Dated: October 29, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will provide electronic service to all counsel of record.

/s/ Sean P. Keefe
SEAN P. KEEFE
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA *ex rel.* DR. CLARISSA ZAFIROV, Plaintiff and Relator, v. PHYSICIAN PARTNERS, LLC; FLORIDA MEDICAL ASSOCIATES, LLC, d/b/a VIPCARE; ANION TECHNOLOGIES, LLC; FREEDOM HEALTH, INC.; and OPTIMUM HEALTHCARE, INC., Defendants.	) No. 8:19-cv-01236-KKM-SPF

RELATOR'S NOTICE OF APPEAL

Notice is hereby given that Relator Dr. Clarissa Zafirov appeals to the United States Court of Appeals for the Eleventh Circuit from the order and final judgment of the Court entered on September 30, 2024 (Docs. 346 and 347) granting Defendants' Joint Motion for Judgment on the Pleadings (Doc. 180) and dismissing the case with prejudice.

Dated: October 29, 2024

Respectfully submitted,

/s/ Jillian L. Estes

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Counsel for Relator Dr. Clarissa Zafirov

* appearing *pro hac vice*

CERTIFICATE OF SERVICE

I, Jillian Estes, hereby certify that a copy of this Notice of Appeal was served on October 29, 2024, to all parties of record via the CM/ECF electronic filing system.

/s/ Jillian L. Estes
Jillian L. Estes (Fla. Bar No. 0055774)