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

15
16 UNITED STATES OF AMERICA ex rel.
17 RONDA OSINEK,

18 Plaintiff,

19 v.

20 KAISER PERMANENTE, et al.,

21 Defendants.

Case No. 3:13-cv-03891-EMC

**DEFENDANT COLORADO PERMANENTE
MEDICAL GROUP, P.C.'S ANSWER AND
AFFIRMATIVE DEFENSES TO UNITED
STATES' AMENDED COMPLAINT-IN-
INTERVENTION**

Judge: Hon. Edward M. Chen
Courtroom: 5, 17th Floor

1 Defendant Colorado Permanente Medical Group, P.C. (“Defendant”) hereby files its
2 Answer and Affirmative Defenses (“Answer”) to Plaintiff United States’ Amended Complaint-in-
3 Intervention (the “Amended Complaint”). Each numbered response in this Answer is made
4 subject to the following limitations. First, unless specifically admitted, Defendant denies each
5 and every allegation in the Amended Complaint. Second, to the extent the Amended Complaint
6 includes headings, a table of contents, or other impertinent material that is inappropriate under
7 Federal Rules of Civil Procedure 8, 10, or 12(f), no response is necessary and such material
8 should be stricken. To the extent any headings, table of contents, or impertinent material is
9 deemed to require a response, Defendant denies each and every allegation. Any headings from
10 the Amended Complaint that are reproduced herein are reproduced for convenience of reading
11 only.

12 First unnumbered paragraph contains the United States’ characterization of this action,
13 which requires no response. To the extent any response to such allegations is necessary,
14 Defendant admits that the United States brings this action against Defendants Kaiser Foundation
15 Health Plan, Inc. (“KFHP”), Kaiser Foundation Health Plan of Colorado (“KFHP-CO”), The
16 Permanente Medical Group, Inc. (“TPMG”), Southern California Permanente Medical Group
17 (“SCPMG”), and Colorado Permanente Medical Group, P.C. (“CPMG”) to recover treble
18 damages and civil penalties for alleged violations of the False Claims Act (“FCA”) and alleged
19 conspiracy to violate the FCA, and damages and other relief for alleged common law claims of
20 payment by mistake and unjust enrichment. First unnumbered paragraph references the
21 procedural background of this case, which requires no response. To the extent any response to
22 such allegations is necessary, Defendant admits that first unnumbered paragraph references a
23 Notice of Election to Intervene in Part and to Decline to Intervene in Part filed by the United
24 States on July 27, 2021 (Case No. 3:13-cv-03891-EMC (N.D. Cal.) (Dkt. 64). First unnumbered
25 paragraph contains legal conclusions and/or argument, which require no response. To the extent
26 any response to such allegations is necessary, Defendant admits that first unnumbered paragraph
27 references 31 U.S.C. §§ 3729-33 and 3730(b)(4)(A). Defendant denies each and every other
28 allegation in first unnumbered paragraph.

1 **I. PRELIMINARY STATEMENT**

2 1. Paragraph 1 contains legal conclusions and/or argument, which require no
3 response. To the extent any response to such allegations is necessary, Defendant denies each and
4 every such allegation. Paragraph 1 contains the United States' characterization of the Amended
5 Complaint, which requires no response. To the extent any response to such allegations is
6 necessary, Defendant admits that the Amended Complaint brings allegations related to Medicare
7 Advantage. Defendant denies each and every other allegation in paragraph 1.

8 2. Paragraph 2 contains legal conclusions and/or argument, which require no
9 response. To the extent any response to such allegations is necessary, Defendant denies each and
10 every such allegation. To the extent paragraph 2 references ¶¶ 126–39 of the Amended
11 Complaint, *see* Defendant's responses to those paragraphs, which are incorporated herein.
12 Defendant denies each and every other allegation in paragraph 2.

13 3. Answering paragraph 3, Defendant admits that KFHP and KFHP-CO are Medicare
14 Advantage Organizations ("MAOs") that administer private Medicare Advantage ("MA" or "Part
15 C") plans under which they assume the financial risk of providing Medicare benefits to members
16 enrolled in their MA plans and in turn receive monthly payments from the Centers for Medicare
17 & Medicaid Services ("CMS"); that, upon information and belief, to determine payment under
18 MA, CMS determines a bid amount through an annual bid submission process between CMS and
19 each MA plan; that, upon information and belief, CMS calculates, for beneficiaries enrolled in an
20 MA plan, risk scores that act as an adjustment to the bid amount for purposes of determining
21 payment pursuant to the CMS Hierarchical Condition Category ("CMS-HCC") risk adjustment
22 model; that, upon information and belief, CMS in part uses diagnosis codes transmitted by MAOs
23 to CMS to calculate these adjustments. To the extent paragraph 3 references ¶¶ 22–24 and ¶¶ 54–
24 74 of the Amended Complaint, *see* Defendant's responses to those paragraphs, which are
25 incorporated herein. Defendant denies each and every other allegation in paragraph 3.

26 4. Paragraph 4 contains allegations that do not reference Defendant, which require no
27 response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
28 knowledge to admit or deny such allegations and, on that basis, denies each and every such

1 allegation. Paragraph 4 contains references to documents, which require no response because the
2 referenced documents speak for themselves. To the extent any response to such allegations is
3 necessary, Defendant admits that paragraph 4 quotes and references a portion of Defendants'
4 website; Defendant lacks sufficient knowledge to admit or deny each and every other such
5 allegation and, on that basis, denies each and every other such allegation. To the extent paragraph
6 4 references ¶¶ 30–42 and ¶¶ 105–25 of the Amended Complaint, see Defendant's responses to
7 those paragraphs, which are incorporated herein. Defendant denies each and every other
8 allegation in paragraph 4.

9 5. Paragraph 5 contains legal conclusions and/or argument, which require no
10 response. To the extent any response to such allegations is necessary, Defendant denies each and
11 every such allegation. Paragraph 5 contains reference to a document, which requires no response
12 because the referenced document speaks for itself. To the extent any response to such allegations
13 is necessary, Defendant admits that paragraph 5 references the ICD Guidelines. To the extent
14 paragraph 5 references ¶¶ 75–89 of the Amended Complaint, see Defendant's responses to those
15 paragraphs, which are incorporated herein. Defendant denies each and every other allegation in
16 paragraph 5.

17 6. Paragraph 6 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant denies each and
19 every such allegation. To the extent paragraph 6 references ¶¶ 90–100 of the Amended
20 Complaint, see Defendant's responses to those paragraphs, which are incorporated herein.
21 Defendant denies each and every other allegation in paragraph 6.

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

25 8. Answering paragraph 8, Defendant admits that, during at least some of the relevant
26 period: Defendant's employees identified in members' medical records certain conditions
27 diagnosed in previous service years but not yet diagnosed in the current service year, sometimes
28 referred to as "refresh" activities; after those members' medical visits, Defendant's employees

1 sometimes provided Defendant's physicians with lists of conditions identified via refresh
2 activities but not diagnosed in a specific form in those members' medical records at those
3 members' medical visits. Defendant denies each and every other allegation in paragraph 8.

4 9. Paragraph 9 contains legal conclusions and/or argument, which require no
5 response. To the extent any response to such allegations is necessary, Defendant denies each and
6 every such allegation. To the extent paragraph 9 references ¶¶ 140–200 of the Amended
7 Complaint, see Defendant's responses to those paragraphs, which are incorporated herein.
8 Defendant denies each and every other allegation in paragraph 9.

9 10. Answering paragraph 10, Defendant admits that a query is a communication tool
10 used to clarify documentation in the health record for accurate code assignment. Paragraph 10
11 contains legal conclusions and/or argument, which require no response. To the extent any
12 response to such allegations is necessary, Defendant denies each and every such allegation. To
13 the extent paragraph 10 references ¶¶ 202–33 of the Amended Complaint, *see* Defendant's
14 responses to those paragraphs, which are incorporated herein. Defendant denies each and every
15 other allegation in paragraph 10.

16 11. To the extent paragraph 11 references ¶¶ 234–86 of the Amended Complaint, *see*
17 Defendant's responses to those paragraphs, which are incorporated herein. Defendant denies
18 each and every other allegation in paragraph 11.

19 12. Paragraph 12 contains legal conclusions and/or argument, which require no
20 response. To the extent any response to such allegations is necessary, Defendant denies each and
21 every such allegation. Paragraph 12 contains allegations that do not reference Defendant, which
22 require no response. To the extent any response to such allegations is necessary, Defendant lacks
23 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
24 such allegation. Paragraph 12 contains reference to a document, which requires no response
25 because the referenced document speaks for itself. To the extent any response to such allegations
26 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
27 basis, denies each and every such allegation. Defendant lacks sufficient knowledge to admit or
28 deny the allegation that Relator Randi Osinek is a certified medical coder, and, on that basis,

1 denies each and every such allegation. To the extent paragraph 12 references ¶¶ 287–358 of the
2 Amended Complaint, *see* Defendant’s responses to those paragraphs, which are incorporated
3 herein. Defendant denies each and every other allegation in paragraph 12.

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

7 **II. PARTIES**

8 **A. PLAINTIFF AND RELATORS**

9 14. Answering Paragraph 14, Defendant admits that, during at least some of the
10 relevant period: upon information and belief, CMS was an operating division of the United States
11 Department of Health and Human Services (“HHS”); upon information and belief, CMS
12 administered the MA Program and made risk adjustment payments under the MA program.
13 Paragraph 14 contains the United States’ characterization of the Amended Complaint, which
14 requires no response. To the extent any response to such allegations is necessary, Defendant
15 admits that the Amended Complaint is brought by Plaintiff United States of America, suing on
16 behalf of HHS. Paragraph 14 references the procedural background of this case, which requires
17 no response. To the extent any response to such allegations is necessary, Defendant admits that
18 paragraph 14 references a Notice of Election to Intervene in Part and to Decline to Intervene in
19 Part filed by the United States on July 27, 2021 (Case No. 3:13-cv-03891-EMC (N.D. Cal.) (Dkt.
20 64). Paragraph 14 contains legal conclusions and/or argument, which require no response. To
21 the extent any response to such allegations is necessary, Defendant admits that paragraph 14
22 references 31 U.S.C. § 3730(b)(4)(A). Defendant denies each and every other allegation in
23 paragraph 14.

24 15. Paragraph 15 contains allegations that do not reference Defendant, which require
25 no response. To the extent any response to such allegations is necessary, Defendant lacks
26 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
27 such allegation. Paragraph 15 references the procedural background of this case, which requires
28 no response. To the extent any response to such allegations is necessary, Defendant admits that

1 paragraph 15 references a Complaint filed by Relator Osinek on August 22, 2013 (Case No. 3:13-
2 cv-03891-EMC (N.D. Cal.) (Dkt. 1). Paragraph 15 contains the United States' characterization of
3 Relator Osinek's Complaint, which requires no response. To the extent any response to such
4 allegations is necessary, Defendant admits that Relator Osinek alleges violations of the FCA on
5 behalf of herself and the United States pursuant to the *qui tam* provisions of the FCA. Paragraph
6 15 contains legal conclusions and/or argument, which require no response. To the extent any
7 response to such allegations is necessary, Defendant admits that this paragraph references 31
8 U.S.C. § 3730(b). Defendant lacks sufficient knowledge to admit or deny the allegations that
9 Relator Osinek is currently a citizen of the United States, a resident of the State of Oregon, and a
10 certified medical coder, and, on that basis, denies each and every such allegation. Defendant
11 denies each and every other allegation in paragraph 15.

12 16. Answering paragraph 16, Defendant admits that, from 1995 to 2015, Defendant
13 employed Relator James Taylor, M.D., most recently as Medical Director of Revenue Cycle,
14 where his responsibilities included revenue cycle as well as coding governance and compliance.
15 Answering paragraph 16, Defendant admits that, during at least some of the relevant period,
16 Relator Taylor served as Chair of the Board of Directors of Defendant. Paragraph 16 references
17 the procedural background of this case, which requires no response. To the extent any response
18 to such allegations is necessary, Defendant admits that paragraph 16 references a Complaint filed
19 by Relator Taylor in the District of Colorado on October 22, 2014 (Case No. 3:21-cv-03894-EMC
20 (N.D. Cal.) (Dkt. 1). Paragraph 16 contains the United States' characterization of Relator
21 Taylor's Complaint, which requires no response. To the extent any response to such allegations
22 is necessary, Defendant admits that Relator Taylor alleges violations of the FCA on behalf of
23 himself and the United States pursuant to the *qui tam* provisions of the FCA. Defendant lacks
24 sufficient knowledge to admit or deny the allegations that Relator Taylor is currently a citizen of
25 the United States and a resident of the State of Colorado, and, on that basis, denies each and every
26 such allegation. Defendant denies each and every other allegation in paragraph 16.

27 17. Paragraph 17 contains allegations that do not reference Defendant, which require
28 no response. To the extent any response to such allegations is necessary, Defendant lacks

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Paragraph 17 references the procedural background of this case, which requires
3 no response. To the extent any response to such allegations is necessary, Defendant admits that
4 paragraph 17 references a Complaint filed by Relators Naser Arefi, Ajith Kumar, and Prime
5 Healthcare Services, Inc. (“Prime”) on September 4, 2015 (Case No. 3:13-cv-03891-EMC (N.D.
6 Cal.) (Dkt. 1). Paragraph 17 contains the United States’ characterization of Relator Arefi, Kumar,
7 and Prime’s Complaint, which requires no response. To the extent any response to such
8 allegations is necessary, Defendant admits that Relators allege violations of the FCA on behalf of
9 themselves and the United States pursuant to the *qui tam* provisions of the FCA. Defendant lacks
10 sufficient knowledge to admit or deny the allegations that Relator Arefi is currently a citizen of
11 the United States and a resident of the State of California, that Relator Kumar is currently a
12 citizen of the United States and a resident of the State of California, that Relator Kumar was Vice
13 President of Reimbursement Management at Prime, and that Prime owns and operates 25 acute
14 care hospitals, including 15 in California, and, on that basis, denies each and every such
15 allegation. Defendant denies each and every other allegation in paragraph 17.

16 18. Paragraph 18 contains allegations that do not reference Defendant, which require
17 no response. To the extent any response to such allegations is necessary, Defendant lacks
18 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
19 such allegation. Paragraph 18 references the procedural background of this case, which requires
20 no response. To the extent any response to such allegations is necessary, Defendant admits that
21 paragraph 18 references a Complaint filed by Relators Marcia Stein and Rodolfo Bone on May
22 16, 2016 (Case No. 3:16-cv-05337-EMC (N.D. Cal.) (Dkt. 1) and an Amended Complaint filed
23 by Relators Stein and Bone on November 3, 2016 (Case No. 3:16-cv-05337-EMC (N.D. Cal.)
24 (Dkt. 27). Paragraph 18 contains the United States’ characterization of Relators Stein and Bone’s
25 Complaint and Amended Complaint, which requires no response. To the extent any response to
26 such allegations is necessary, Defendant admits that Relators Stein and Bone allege violations of
27 the FCA on behalf of themselves and the United States pursuant to the *qui tam* provisions of the
28 FCA. Defendant lacks sufficient knowledge to admit or deny the allegations that Relators Stein

1 and Bone are currently citizens of the United States and residents of the State of California and
2 that Relator Bone is a medical school graduate, and, on that basis, denies each and every such
3 allegation. Defendant denies each and every other allegation in paragraph 18.

4 19. Paragraph 19 contains allegations that do not reference Defendant, which require
5 no response. To the extent any response to such allegations is necessary, Defendant lacks
6 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
7 such allegation. Paragraph 19 references the procedural background of this case, which requires
8 no response. To the extent any response to such allegations is necessary, Defendant admits that
9 paragraph 19 references a Complaint filed by Relators Victoria Hernandez and Gloryanne Bryant
10 on March 1, 2018 (Case No. 3:18-cv-01347-EMC (N.D. Cal.) (Dkt. 1)). Paragraph 19 contains the
11 United States' characterization of Relators Hernandez and Bryant's Complaint. To the extent any
12 response to such allegations is necessary, Defendant admits that Relators Hernandez and Bryant
13 allege violations of the FCA on behalf of themselves and the United States pursuant to the *qui*
14 *tam* provisions of the FCA. Defendant lacks sufficient knowledge to admit or deny the
15 allegations that Relators Hernandez and Bryant are currently citizens of the United States and
16 residents of the State of California, and, on that basis, denies each and every such allegation.
17 Defendant denies each and every other allegation in paragraph 19.

18 20. Paragraph 20 contains allegations that do not reference Defendant, which require
19 no response. To the extent any response to such allegations is necessary, Defendant lacks
20 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
21 such allegation. Paragraph 20 references the procedural background of this case, which requires
22 no response. To the extent any response to such allegations is necessary, Defendant admits that
23 paragraph 20 references a Complaint filed by Relator Michael Bicocca, M.D., in the Eastern
24 District of California on February 10, 2020 (Case No. 3:21-cv-03124-EMC (N.D. Cal.) (Dkt. 1)).
25 Paragraph 20 contains the United States' characterization of Relator Bicocca's Complaint, which
26 requires no response. To the extent any response to such allegations is necessary, Defendant
27 admits that Relator Bicocca alleges violations of the FCA on behalf of himself and the United
28 States pursuant to the *qui tam* provisions of the FCA. Defendant lacks sufficient knowledge to

1 admit or deny the allegations that Relator BicoCCA is currently a citizen of the United States and a
2 resident of the State of California, and, on that basis, denies each and every such allegation.

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

4 **B. DEFENDANTS**

5 21. Answering paragraph 21, Defendant admits that Defendant and certain other health
6 plans, physician medical groups, and hospitals maintain a business relationship with one another
7 under the trade name “Kaiser Permanente” to offer an integrated care model. Paragraph 21
8 contains the United States’ characterization of the Amended Complaint, which requires no
9 response. To the extent any response to such allegations is necessary, Defendant admits that the
10 Amended Complaint names Defendants KFHP, KFHP-CO, TPMG, SCPMG, and CPMG.

11 Defendant denies each and every other allegation in paragraph 21.

12 **1. KAISER HEALTH PLANS**

13 22. Answering paragraph 22, Defendant admits that KFHP-CO is a wholly-owned
14 subsidiary of KFHP; that KFHP and KFHP-CO are health plans that have executed contracts with
15 CMS to act as MAOs that administer private MA plans under which they assume the financial
16 risk of providing Medicare benefits to members enrolled in their MA plans. Defendant denies
17 each and every other allegation in paragraph 22.

18 23. Answering paragraph 23, Defendant admits that KFHP is headquartered in
19 Oakland, California; that KFHP contracts with CMS to act as an MAO that administers private
20 MA plans under which it assumes the financial risk of providing Medicare benefits to members
21 enrolled in its MA plans; that KFHP administers private MA plans under which it assumes the
22 financial risk of providing Medicare benefits to members enrolled in its MA plans in the Northern
23 California and Southern California regions. Defendant denies each and every other allegation in
24 paragraph 23.

25 24. Answering paragraph 24, Defendant admits that KFHP-CO contracts with CMS to
26 act as an MAO that administers private MA plans under which it assumes the financial risk of
27 providing Medicare benefits to members enrolled in its MA plans; that KFHP-CO administers
28 private MA plans under which it assumes the financial risk of providing Medicare benefits to

1 members enrolled in its MA plans in the Colorado region. Defendant denies each and every other
2 allegation in paragraph 24.

3 **2. PERMANENTE MEDICAL GROUPS**

4 25. Answering paragraph 25, Defendant admits that Defendant, TPMG, and SCPMG
5 are medical groups; that TPMG and SCPMG contract with KFHP to provide health care services
6 to members who enroll in KFHP's health plans, including members who enroll in KFHP's MA
7 plan; that Defendant contracts with KFHP-CO to provide health care services to members who
8 enroll in KFHP-CO's health plans, including members who enroll in KFHP-CO's MA plan.
9 Paragraph 25 contains allegations that do not reference Defendant, which require no response. To
10 the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to
11 admit or deny such allegations and, on that basis, denies each and every such allegation.
12 Defendant denies each and every other allegation in paragraph 25.

13 26. Answering paragraph 26, Defendant admits that TPMG is headquartered in
14 Oakland, California; that TPMG provides medical services in the Northern California region.
15 Paragraph 26 contains allegations that do not reference Defendant, which require no response. To
16 the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to
17 admit or deny such allegations and, on that basis, denies each and every such allegation.
18 Defendant denies each and every other allegation in paragraph 26.

19 27. Answering paragraph 27, Defendant admits that SCPMG is headquartered in
20 Pasadena, California; that SCPMG provides medical services in the Southern California region.
21 Paragraph 27 contains allegations that do not reference Defendant, which require no response. To
22 the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to
23 admit or deny such allegations and, on that basis, denies each and every such allegation.
24 Defendant denies each and every other allegation in paragraph 27.

25 28. Answering paragraph 28, Defendant admits that Defendant is headquartered in
26 Denver, Colorado; that Defendant employs approximately 1,150 physicians; that Defendant
27 provides medical services in the Colorado region. Defendant denies each and every other
28 allegation in paragraph 28.

1 29. Answering paragraph 29, Defendant admits that, during at least some of the
2 relevant period: the Defendant Permanente Medical Groups had a national leadership and
3 consulting organization, The Permanente Federation LLC (“Permanente Federation”); the
4 leadership of the Permanente Federation included employees of some Permanente Medical
5 Groups. Defendant denies each and every other allegation in paragraph 29.

6 **3. KAISER’S INTEGRATED AND COLLABORATIVE RISK-
7 ADJUSTMENT OPERATIONS**

8 30. Answering paragraph 30, Defendant admits that Defendant and certain other health
9 plans, physician medical groups, and hospitals maintain a business relationship with one another
10 under the trade name “Kaiser Permanente” to offer an integrated care model. Paragraph 30
11 contains references to documents, which require no response because the referenced documents
12 speak for themselves. To the extent any response to such allegations is necessary, Defendant
13 admits that paragraph 30 quotes a portion of KFHP’s website; that paragraph 30 quotes a portion
14 of the “Kaiser Permanente 2020 Annual Report.” Defendant denies each and every other
15 allegation in paragraph 30.

16 31. Answering paragraph 31, Defendant admits that, during at least some of the
17 relevant period: Defendants used an electronic health record system called KP HealthConnect;
18 certain of KFHP’s employees had the ability to access electronic health records in KP
19 HealthConnect; certain of each Defendant Permanente Medical Groups’ employees had the
20 ability to access electronic health records of that Permanente Medical Group’s members in KP
21 HealthConnect. Defendant denies each and every other allegation in paragraph 31.

22 32. Paragraph 32 contains allegations that do not reference Defendant, which require
23 no response. To the extent any response to such allegations is necessary, Defendant lacks
24 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
25 such allegation. Paragraph 32 contains reference to a document, which requires no response
26 because the referenced document speaks for itself. To the extent any response to such allegations
27 is necessary, Defendant admits that paragraph 32 quotes a portion of a document. Defendant
28 denies each and every other allegation in paragraph 32.

1 33. Paragraph 33 contains reference to a document, which requires no response
2 because the referenced document speaks for itself. To the extent any response to such allegations
3 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
4 basis, denies each and every such allegation. Defendant denies each and every other allegation in
5 paragraph 33.

6 34. Paragraph 34 contains reference to a document, which requires no response
7 because the referenced document speaks for itself. To the extent any response to such allegations
8 is necessary, Defendant admits that paragraph 34 quotes a portion of a document. Defendant
9 denies each and every other allegation in paragraph 34.

10 35. Paragraph 35 contains allegations that do not reference Defendant, which require
11 no response. To the extent any response to such allegations is necessary, Defendant lacks
12 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
13 such allegation. Paragraph 35 contains reference to a document, which requires no response
14 because the referenced document speaks for itself. To the extent any response to such allegations
15 is necessary, Defendant admits that paragraph 35 quotes and references a portion of a document.
16 Defendant lacks sufficient knowledge to admit or deny the allegations that the Permanente
17 Federation employed Jack Cochran as Executive Director and Dr. Simon Cohn as Associate
18 Executive Director, and, on that basis, denies each and every such allegation. Defendant denies
19 each and every other allegation in paragraph 35.

20 36. Answering paragraph 36, Defendant admits that, during at least some of the
21 relevant period, KFHP had a National Medicare Finance (“NMF”) department. Paragraph 36
22 contains allegations that do not reference Defendant, which require no response. To the extent
23 any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or
24 deny such allegations and, on that basis, denies each and every such allegation. Paragraph 36
25 contains reference to a document, which requires no response because the referenced document
26 speaks for itself. To the extent any response to such allegations is necessary, Defendant admits
27 that paragraph 36 quotes and references a portion of a document. Defendant denies each and
28 every other allegation in paragraph 36.

1 37. Answering paragraph 37, Defendant admits that, during at least some of the
2 relevant period: employees from KFHP, KFHP-CO, and Defendant Permanente Medical Groups
3 attended meetings of the Medicare Regional Reporting Group or Regional Reporting Group
4 (“RRG”). Paragraph 37 contains reference to a document, which requires no response because
5 the referenced document speaks for itself. To the extent any response to such allegations is
6 necessary, Defendant admits that paragraph 37 quotes a portion of a document. Defendant denies
7 each and every other allegation in paragraph 37.

8 38. Paragraph 38 contains reference to a document, which requires no response
9 because the referenced document speaks for itself. To the extent any response to such allegations
10 is necessary, Defendant admits that paragraph 38 quotes and references a portion of a document.
11 Defendant denies each and every other allegation in paragraph 38.

12 39. Answering paragraph 39, Defendant admits that, during at least some of the
13 relevant period: KFHP had a National Compliance, Ethics & Integrity Office or National
14 Compliance Office (“NCO”); KFHP’s NCO employees provided training to coders in the
15 Permanente Medical Groups; KFHP’s NCO employees conducted audits of the Permanente
16 Medical Groups’ diagnosis coding of member diagnoses. Paragraph 39 contains allegations that
17 do not reference Defendant, which require no response. To the extent any response to such
18 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
19 and, on that basis, denies each and every such allegation. Defendant denies each and every other
20 allegation in paragraph 39.

21 40. Answering paragraph 40, Defendant admits that, during at least some of the
22 relevant period: regions had a Regional Compliance Officer and regional Compliance Committee;
23 regional Compliance Committees participated in oversight of certain regional compliance
24 activities, including some with respect to Medicare Advantage. Defendant denies each and every
25 other allegation in paragraph 40.

26 41. Paragraph 41 contains allegations that do not reference Defendant, which require
27 no response. To the extent any response to such allegations is necessary, Defendant lacks
28 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every

1 such allegation. Paragraph 41 contains reference to the content of an image, which requires no
2 response because the referenced image speaks for itself. To the extent any response to such
3 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
4 and, on that basis, denies each and every such allegation. Defendant denies each and every other
5 allegation in paragraph 41.

6 42. Defendant denies each and every allegation in paragraph 42.

7 **III. JURISDICTION AND VENUE**

8 43. Paragraph 43 contains legal conclusions and/or argument, which require no
9 response. To the extent any response to such allegations is necessary, Defendant admits that
10 paragraph 43 references 28 U.S.C. §§ 1331 and 1345 and 31 U.S.C. § § 3732(a) (b). Defendant
11 denies each and every other allegation in paragraph 43.

12 44. Paragraph 44 contains legal conclusions and/or argument, which require no
13 response. To the extent any response to such allegations is necessary, Defendant admits that, for
14 purposes of personal jurisdiction, at least one of the Defendants can be found in, resides in, or
15 transacts business in the Northern District of California; that paragraph 44 references 31 U.S.C. §
16 3732(a); that paragraph 44 quotes and references Fed. R. Civ. P. 4(k)(1)(C). Defendant denies
17 each and every other allegation in paragraph 44.

18 45. Paragraph 45 contains legal conclusions and/or argument, which require no
19 response. To the extent any response to such allegations is necessary, Defendant admits that, for
20 purposes of venue, at least one of the Defendants can be found in, resides in, or transacts business
21 in the Northern District of California; that paragraph 45 references 28 U.S.C. § 1391(b) (c) and 31
22 U.S.C. § 3732(a). Defendant denies each and every other allegation in paragraph 45.

23 46. Paragraph 46 contains legal conclusions and/or argument, which require no
24 response. To the extent any response to such allegations is necessary, Defendant admits that, for
25 purposes of intradistrict assignment, KFHP and TPMG are headquartered in Oakland, California;
26 that paragraph 46 references Civil L.R. 3-2(c). Defendant denies each and every other allegation
27 in paragraph 46.
28

1 **IV. THE FALSE CLAIMS ACT**

2 47. Paragraph 47 contains the United States' characterization of the FCA, which
3 requires no response. To the extent any response to such allegations is necessary, Defendant
4 denies each and every such allegation. Paragraph 47 contains reference to a document, which
5 requires no response because the referenced document speaks for itself. To the extent any
6 response to such allegations is necessary, Defendant admits that paragraph 47 references and
7 attempts to quote a portion of S. Rep. No. 99-345, at 1 (1986), 1986 U.S.C.C.A.N. 5266.
8 Defendant denies each and every other allegation in paragraph 47.

9 48. Paragraph 48 contains legal conclusions and/or argument, which require no
10 response. To the extent any response to such allegations is necessary, Defendant admits that
11 paragraph 48 quotes and references 31 U.S.C. §§ 3729(a)(1)(A); that paragraph 48 references 31
12 U.S.C. § 3729(b)(2). Defendant denies each and every other allegation in paragraph 48.

13 49. Paragraph 49 contains legal conclusions and/or argument, which require no
14 response. To the extent any response to such allegations is necessary, Defendant admits that
15 paragraph 49 quotes and references 31 U.S.C. § 3729(a)(1)(B); that paragraph 49 references
16 Fraud Enforcement and Recovery Act of 2009 ("FERA"), Pub. L. No. 111-21 (May 20, 2009).
17 Defendant denies each and every other allegation in paragraph 49.

18 50. Paragraph 50 contains legal conclusions and/or argument, which require no
19 response. To the extent any response to such allegations is necessary, Defendant admits each and
20 every allegation.

21 51. Paragraph 51 contains legal conclusions and/or argument, which require no
22 response. To the extent any response to such allegations is necessary, Defendant admits that
23 paragraph 51 references 31 U.S.C. §§ 3729(b)(1)(A) and 3729(b)(1)(B). Paragraph 51 contains
24 the United States' characterization of the Amended Complaint, which requires no response. To
25 the extent any response to such allegations is necessary, Defendant denies each and every such
26 allegation. Defendant denies each and every other allegation in paragraph 51.

27 52. Paragraph 52 contains legal conclusions and/or argument, which require no
28 response. To the extent any response to such allegations is necessary, Defendant admits that

1 paragraph 52 quotes and references 31 U.S.C. § 3729(b)(4). Defendant denies each and every
2 other allegation in paragraph 52.

3 53. Paragraph 53 contains legal conclusions and/or argument, which require no
4 response. To the extent any response to such allegations is necessary, Defendant admits that
5 paragraph 53 references 31 U.S.C. § 3729(a)(1) and 28 C.F.R. § 85.5. Defendant denies each and
6 every other allegation in paragraph 53.

7 **V. THE MEDICARE ADVANTAGE PROGRAM AND ITS RISK-ADJUSTMENT**
8 **PAYMENT SYSTEM**

9 **A. MEDICARE PART C AND RISK-ADJUSTMENT PAYMENTS TO MA**
10 **ORGANIZATIONS**

11 54. Paragraph 54 contains legal conclusions and/or argument, which require no
12 response. To the extent any response to such allegations is necessary, Defendant admits that
13 Medicare is a federally operated health insurance program administered by CMS benefiting
14 individuals 65 and older and certain disabled individuals; that there are four parts to the Medicare
15 program; that Medicare Part A covers inpatient and institutional care; that Medicare Part B covers
16 physician, hospital, outpatient, and ancillary services and durable medical equipment; that
17 Medicare Part C establishes the MA program; that Medicare Part D establishes prescription drug
18 coverage; that paragraph 54 references 42 U.S.C. §§ 1395c *et seq.* Paragraph 54 contains the
19 United States' characterization of the Amended Complaint, which requires no response. To the
20 extent any response to such allegations is necessary, Defendant admits that the Amended
21 Complaint brings allegations related to Medicare Advantage. Defendant denies each and every
22 other allegation in paragraph 54.

23 55. Paragraph 55 contains legal conclusions and/or argument, which require no
24 response. To the extent any response to such allegations is necessary, Defendant admits that a
25 Medicare beneficiary may enroll in Medicare Parts A and B; that Medicare Parts A and B are
26 commonly referred to as "traditional" Medicare; that, under Medicare Parts A and B, CMS
27 reimburses health care providers using a fee-for-service system, under which health care
28 providers transmit claims for payment to CMS for medical services actually rendered; that, upon

1 information and belief, CMS then typically pays the providers directly for each service based on
2 payment rates predetermined by the government. Defendant denies each and every other
3 allegation in paragraph 55.

4 56. Paragraph 56 contains legal conclusions and/or argument, which require no
5 response. To the extent any response to such allegations is necessary, Defendant admits that a
6 Medicare beneficiary can enroll in an MA plan managed by an MAO; that paragraph 56
7 references Subchapter XVIII of the Social Security Act, 42 U.S.C. §§ 1395w-21 to 1395w-28.
8 Defendant denies each and every other allegation in paragraph 56.

9 57. Paragraph 57 contains legal conclusions and/or argument, which require no
10 response. To the extent any response to such allegations is necessary, Defendant admits that
11 MAOs are insurers that contract with CMS to administer private MA plans under which they
12 assume the financial risk of providing Medicare benefits to members enrolled in their MA plans;
13 that MA plans must provide to Medicare beneficiaries benefits available under traditional
14 Medicare, subject to certain exceptions; that KFHP and KFHP-CO administer MA plans in
15 California and Colorado, respectively; that paragraph 57 references 42 U.S.C. §§ 1395w-21-
16 1395w-28. Defendant denies each and every other allegation in paragraph 57.

17 58. Paragraph 58 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant admits that a
19 Medicare beneficiary who enrolls in an MA plan is considered a member of and enrollee in that
20 plan. Defendant denies each and every other allegation in paragraph 58.

21 Paragraph 58 footnote 1 contains the United States' characterization of the Amended
22 Complaint, which requires no response. To the extent any response to such allegations is
23 necessary, Defendant denies each and every such allegation. Defendant denies each and every
24 other allegation in paragraph 58 footnote 1.

25 59. Paragraph 59 contains legal conclusions and/or argument, which require no
26 response. To the extent any response to such allegations is necessary, Defendant admits that
27 CMS reimburses MA plans differently than it reimburses health care providers for Medicare Parts
28 A and B; that under Medicare Part C, CMS pays each MAO a predetermined base monthly

1 amount for each enrollee in their MA plans; that this monthly payment varies for each MA plan
2 depending on various factors; that paragraph 59 references 42 U.S.C. § 1395w-23, 42 C.F.R. Part
3 422 Subpart F, and 42 C.F.R. Part 422 Subpart G. Defendant denies each and every other
4 allegation in paragraph 59.

5 Paragraph 59 footnote 2 contains legal conclusions and/or argument, which require no
6 response. To the extent any response to such allegations is necessary, Defendant admits that
7 Medicare+Choice was the predecessor to the Medicare Advantage Program; that paragraph 59
8 footnote 2 quotes and references Medicare Prescription Drug, Improvement, and Modernization
9 Act of 2003, Pub. L. 108-73, § 201(b), 117 Stat. 2066, 2176 (Dec. 8, 2003). Defendant denies
10 each and every other allegation in paragraph 59 footnote 2.

11 60. Paragraph 60 contains legal conclusions and/or argument, which require no
12 response. To the extent any response to such allegations is necessary, Defendant admits that,
13 upon information and belief, CMS adjusts the monthly payment amount for each MA beneficiary
14 using demographic factors such as age and gender (among others) and health status, pursuant to
15 the CMS-HCC risk adjustment model; that, upon information and belief, CMS calculates a risk
16 score for each beneficiary pursuant to the CMS-HCC risk adjustment model, which is a multiplier
17 that is applied to the bid amount for the relevant beneficiary and is a component of the payment
18 amount for each beneficiary; that paragraph 60 references a portion of 42 U.S.C. §§ 1395w-
19 23(a)(1)(C)(i), 1395w-23(a)(1)(G), and 42 C.F.R. § 422.308(e). Defendant denies each and every
20 other allegation in paragraph 60.

21 61. Paragraph 61 contains legal conclusions and/or argument, which require no
22 response. To the extent any response to such allegations is necessary, Defendant admits that,
23 since 2004, CMS has used the CMS-HCC risk adjustment model for beneficiaries enrolled in MA
24 plans, pursuant to which it uses demographic factors and health status to calculate risk scores for
25 beneficiaries; that this paragraph references 42 U.S.C. § 1395w-23(a)(1)(C), 42 C.F.R.
26 § 422.308(c), and 42 U.S.C. § 1395w-23(a)(1)(C)(i). Defendant denies each and every other
27 allegation in paragraph 61.
28

1 62. Answering paragraph 62, Defendant admits that the CMS-HCC risk adjustment
2 model is prospective in the sense that it uses diagnosis codes from a given year (the “service
3 year”), along with demographic information (such as age and gender, among others), to estimate
4 predicted medical costs to the MAO to provide Medicare benefits to beneficiaries in the following
5 year (the “payment year”); that HCCs are disease groupings consisting of diagnosis codes
6 currently from the International Classification of Diseases, Tenth Revision, Clinical Modification
7 (“ICD-10-CM”) and previously from the International Classification of Diseases, Ninth Revision,
8 Clinical Modification (“ICD-9-CM”). Defendant denies each and every other allegation in
9 paragraph 62.

10 63. Paragraph 63 contains legal conclusions and/or argument, which require no
11 response. To the extent any response to such allegations is necessary, Defendant admits that HHS
12 has adopted the ICD code sets as the source of numeric and alphanumeric diagnosis codes for
13 certain health care transactions; that this paragraph references 45 C.F.R. §§ 162.1002(a)(1),
14 (b)(1), (c)(2), (c)(3), and 42 C.F.R. § 422.310(d)(1). Paragraph 63 contains references to
15 documents, which require no response because the referenced documents speak for themselves.
16 To the extent any response to such allegations is necessary, Defendant admits that paragraph 63
17 references CMS, *Medicare Managed Care Manual*, Chapter 7, Exhibit 30 (Rev. 57, Aug. 13,
18 2004); and CMS, *Medicare Managed Care Manual*, Chapter 7 § 40 (Rev. 118, Sept. 19, 2014).
19 Defendant denies each and every other allegation in paragraph 63.

20 64. Paragraph 64 contains legal conclusions and/or argument, which require no
21 response. To the extent any response to such allegations is necessary, Defendant admits that ICD
22 diagnosis codes are numeric and alphanumeric diagnosis codes used to represent diagnoses; that
23 ICD diagnosis codes are set forth in the ICD-9-CM through October 1, 2015, and thereafter in the
24 ICD-10-CM; that paragraph 64 references 45 C.F.R. § 162.1002, the Health Insurance Portability
25 and Accountability Act, and HHS regulations. Paragraph 64 contains references to documents,
26 which require no response because the referenced documents speak for themselves. To the extent
27 any response to such allegations is necessary, Defendant admits that paragraph 64 references
28 ICD-9-CM and the ICD-10-CM. Paragraph 64 contains the United States’ characterization of the

1 Amended Complaint, which requires no response. To the extent any response to such allegations
2 is necessary, Defendant denies each and every such allegation. Defendant denies each and every
3 other allegation in paragraph 64.

4 Paragraph 64 footnote 3 contains references to documents, which require no response
5 because the referenced documents speak for themselves. To the extent any response to such
6 allegations is necessary, Defendant admits that paragraph 64 references
7 <https://www.cdc.gov/nchs/icd/icd9cm.htm> and <https://www.cdc.gov/nchs/icd/icd10cm.htm>.

8 Paragraph 64 footnote 3 contains the United States' characterization of the Amended Complaint,
9 which requires no response. To the extent any response to such allegations is necessary,
10 Defendant denies each and every such allegation. Defendant denies each and every other
11 allegation in paragraph 64 footnote 3.

12 65. Answering paragraph 65, Defendant admits that the CMS-HCC risk adjustment
13 model uses diagnosis codes from the ICD-9-CM or the ICD-10-CM; that HCCs are disease
14 groupings consisting of diagnosis codes (currently from the ICD-10-CM and previously from the
15 ICD-9-CM); that, during at least some of the relevant period, under the CMS-HCC risk
16 adjustment model, certain diagnosis codes for cancer, including colorectal and bladder cancers,
17 were grouped together under HCC 11; that, during at least some of the relevant period, under the
18 CMS-HCC risk adjustment model, certain diagnosis codes for metastatic cancer were grouped
19 together under HCC 8, which had the highest risk coefficient of the HCCs within the cancer
20 hierarchy; that the CMS-HCC risk adjustment model generally does not provide for risk-
21 adjustment payments based upon "history" diagnosis codes; that there are different ICD diagnosis
22 codes for malignant neoplasm and other cancers versus personal history of malignant neoplasm
23 and other cancers; that a malignant neoplasm or other cancer diagnosis code results in payment
24 under the CMS-HCC risk adjustment model but a personal history of malignant neoplasm or
25 other cancer diagnosis code does not; that if a patient is diagnosed with a condition that is
26 reported to CMS as a diagnosis code that corresponds to more than one HCC in a hierarchy, only
27 the most severe HCC is kept and any lower-ranking HCCs are dropped; that each HCC
28 coefficient within the CMS-HCC risk adjustment model aims to correlate with the marginal

1 predicted cost of medical expenditures for that set of medical disease groupings based on CMS's
2 data from administering the traditional Medicare fee-for-service program. Defendant denies each
3 and every other allegation in paragraph 65.

4 66. Answering paragraph 66, Defendant admits that, an MA beneficiary may have a
5 number of associated HCCs for a given payment year, depending on how many diagnosis codes
6 that uniquely correspond to an HCC were transmitted to CMS for the beneficiary for the service
7 year; that some example HCCs under Version 22 of the CMS-HCC risk adjustment model are
8 diabetes with chronic complications (HCC 18), protein-calorie malnutrition (HCC 21), and
9 vascular disease (HCC 108). Defendant denies each and every other allegation in paragraph 66.

10 Answering paragraph 66 footnote 4, Defendant admits that CMS has adjusted the CMS-
11 HCC risk adjustment model over time, utilizing different versions. Paragraph 66 footnote 4
12 contains the United States' characterization of the Amended Complaint, which requires no
13 response. To the extent any response to such allegations is necessary, Defendant denies each and
14 every such allegation. Defendant denies each and every other allegation in paragraph 64 footnote
15 4.

16 67. Paragraph 67 contains legal conclusions and/or argument, which require no
17 response. To the extent any response to such allegations is necessary, Defendant admits that each
18 HCC has an associated coefficient within the CMS-HCC risk adjustment model that aims to
19 correlate with the marginal predicted cost of medical expenditures for that set of medical disease
20 groupings based on CMS's data from administering the traditional Medicare fee-for-service
21 program; that, upon information and belief, CMS calculates a beneficiary's risk score by adding
22 risk coefficients for each HCC associated with the beneficiary together with the risk coefficients
23 for other factors, including demographic characteristics such as age and gender; that under the
24 CMS-HCC risk adjustment model, a risk score of 1.0 reflects the expected Medicare-incurred
25 expenditures of an average beneficiary; that under the CMS-HCC risk adjustment model, a risk
26 score of 0.75 reflects expected Medicare-incurred expenditures that are 25% less than an average
27 beneficiary; that under the CMS-HCC risk adjustment model, a risk score of 1.25 reflects
28

1 expected Medicare-incurred expenditures that are 25% greater than an average beneficiary.

2 Defendant denies each and every other allegation in paragraph 67.

3 Paragraph 67 footnote 5 contains legal conclusions and/or argument, which require no
4 response. To the extent any response to such allegations is necessary, Defendant admits that,
5 upon information and belief, CMS makes further adjustments to the risk score before reaching a
6 final calculation. Paragraph 67 footnote 5 contains reference to a document, which requires no
7 response because the referenced document speaks for itself. To the extent any response to such
8 allegations is necessary, Defendant admits that paragraph 67 footnote 5 references CMS,
9 *Medicare Managed Care Manual*, Chapter 7 § 100 (Rev. 114, June 7, 2013). Paragraph 67
10 footnote 5 contains the United States' characterization of the Amended Complaint, which requires
11 no response. To the extent any response to such allegations is necessary, Defendant denies each
12 and every such allegation. Defendant denies each and every other allegation in paragraph 67
13 footnote 5.

14 68. Paragraph 68 contains legal conclusions and/or argument, which require no
15 response. To the extent any response to such allegations is necessary, Defendant admits that,
16 upon information and belief, CMS adjusts the monthly payment amount for a given MA
17 beneficiary using that beneficiary's risk score; that, upon information and belief, each MA
18 beneficiary's risk score is based in part upon diagnosis codes that are transmitted by MAOs to
19 CMS associated with the beneficiary's medical visits in a given service year; that, upon
20 information and belief, CMS uses an MA beneficiary's risk score calculated based on diagnosis
21 codes from a given service year to determine monthly payments to MAOs for that beneficiary in
22 the following year (the payment year); that, upon information and belief, a given MA
23 beneficiary's risk score is calculated each year. Defendant denies each and every other allegation
24 in paragraph 68.

25 69. Paragraph 69 contains a hypothetical example containing no factual assertions,
26 which requires no response. To the extent any response to such allegations is necessary,
27 Defendant denies each and every such allegation. Defendant denies each and every other
28 allegation in paragraph 69.

1 Answering paragraph 69 footnote 6, Defendant admits that, upon information and belief,
2 CMS makes further adjustments to the risk score before reaching a final calculation. Paragraph
3 69 footnote 6 contains the United States' characterization of the Amended Complaint, which
4 requires no response. To the extent any response to such allegations is necessary, Defendant
5 denies each and every such allegation. Defendant denies each and every other allegation in
6 paragraph 69 footnote 6.

7 70. Paragraph 70 contains legal conclusions and/or argument, which require no
8 response. To the extent any response to such allegations is necessary, Defendant denies each and
9 every such allegation.

10 71. Paragraph 71 contains legal conclusions and/or argument, which require no
11 response. To the extent any response to such allegations is necessary, Defendant admits that this
12 paragraph references 42 C.F.R. § 422.504(l). Paragraph 71 contains reference to a document,
13 which requires no response because the referenced document speaks for itself. To the extent any
14 response to such allegations is necessary, Defendant admits that paragraph 71 quotes and
15 references CMS, *2013 National Technical Assistance Risk Adjustment 101 Participant Guide* 13
16 (2013). Defendant denies each and every other allegation in paragraph 71.

17 72. Answering paragraph 72, Defendant admits that, during at least some of the
18 relevant period, MAOs transmitted risk adjustment data, including diagnosis codes, through two
19 electronic systems administered by CMS: the Risk Adjustment Processing System ("RAPS") and
20 the Encounter Data Processing System ("EDPS"). Defendant denies each and every other
21 allegation in paragraph 72.

22 73. Paragraph 73 contains legal conclusions and/or argument, which require no
23 response. To the extent any response to such allegations is necessary, Defendant denies each and
24 every allegation in paragraph 73.

25 74. Answering paragraph 74, Defendant admits that MAOs may delete diagnosis code
26 encounter data previously transmitted through either RAPS or EDPS; that, upon information and
27 belief, CMS accepts or rejects the deletion and may recalculate payment. Defendant denies each
28 and every other allegation in paragraph 74.

B. STANDARDS GOVERNING RISK-ADJUSTMENT PAYMENTS

1 **B. STANDARDS GOVERNING RISK-ADJUSTMENT PAYMENTS**
2 75. Paragraph 75 contains legal conclusions and/or argument, which require no
3 response. To the extent any response to such allegations is necessary, Defendant admits that
4 paragraph 75 references 42 U.S.C. § 1395w-26(b) and 42 C.F.R. Part 422. Defendant denies each
5 and every other allegation in paragraph 75.

6 76. Answering paragraph 76, Defendant admits that, during at least some of the
7 relevant period, KFHP and KFHP-CO entered into contracts with CMS to act as MAOs that
8 administer private MA plans under which they assume the financial risk of providing Medicare
9 benefits to members enrolled in their respective MA plans. Paragraph 76 contains legal
10 conclusions and/or argument, which require no response. To the extent any response to such
11 allegations is necessary, Defendant admits that paragraph 76 references 42 U.S.C. § 1395w-27(a),
12 42 C.F.R. Part 422, Subpart K, 42 C.F.R. § 422.505, and 422.503(b)(4)(vi)(G). Defendant denies
13 each and every other allegation in paragraph 76.

14 77. Paragraph 77 contains legal conclusions and/or argument, which require no
15 response. To the extent any response to such allegations is necessary, Defendant admits that the
16 paragraph references 42 C.F.R. § 422.504(l). Defendant denies each and every other allegation in
17 paragraph 77.

18 78. Answering paragraph 78, Defendant admits that entities like physician groups may
19 enter into agreements with MAOs to provide health care services to MA beneficiaries. Paragraph
20 78 contains legal conclusions and/or argument, which require no response. To the extent any
21 response to such allegations is necessary, Defendant admits that paragraph 78 quotes and
22 references 42 C.F.R. § 422.500 and 42 C.F.R. § 422.504(i). Defendant denies each and every
23 other allegation in paragraph 78.

24 79. Paragraph 79 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant admits that the
26 paragraph references 42 C.F.R. § 422.504(i)(3)(iii) and 42 C.F.R. § 422.504(l)(3); that paragraph
27 79 quotes and references 42 C.F.R. § 422.504(i)(4)(v). Defendant denies each and every other
28 allegation in paragraph 79.

1 80. Paragraph 80 contains legal conclusions and/or argument, which require no
2 response. To the extent any response to such allegations is necessary, Defendant denies each and
3 every allegation in paragraph 80.

4 81. Paragraph 81 contains legal conclusions and/or argument, which require no
5 response. To the extent any response to such allegations is necessary, Defendant admits that
6 paragraph 81 quotes and references 42 C.F.R. § 422.504(l). Paragraph 81 contains references to
7 documents, which require no response because the referenced documents speak for themselves.
8 To the extent any response to such allegations is necessary, Defendant admits that paragraph 81
9 references CMS, *Medicare Managed Care Manual*, Chapter 11 § 130 (Rev. 79, Feb. 17, 2006);
10 Defendant lacks sufficient knowledge to admit or deny the allegation that “[i]n its contracts with
11 CMS, Kaiser (like other MA Organizations) agreed that: ‘[a]s a condition for receiving a
12 monthly payment under paragraph B of this article, and 42 CFR Part 422 Subpart G,’ it must
13 attest to ‘the accuracy, completeness and truthfulness of the data identified on these
14 attachments,’” and, on that basis, denies each and every such allegation. Defendant denies each
15 and every other allegation in paragraph 81.

16 82. Paragraph 82 contains legal conclusions and/or argument, which require no
17 response. To the extent any response to such allegations is necessary, Defendant denies each and
18 every such allegation. Paragraph 82 contains references to documents, which require no response
19 because the referenced documents speak for themselves. To the extent any response to such
20 allegations is necessary, Defendant admits that paragraph 82 quotes and references CMS,
21 *Medicare Managed Care Manual*, Chapter 7 § 40 (Rev. 118, Sept. 19, 2014). Defendant denies
22 each and every other allegation in paragraph 82.

23 Paragraph 82 footnote 7 contains reference to a document, which requires no response
24 because the referenced document speaks for itself. To the extent any response to such allegations
25 is necessary, Defendant admits that paragraph 82 footnote 7 references CMS, *Medicare Managed*
26 *Care Manual*, Chapter 7 Table 19 (Rev. 118, Sept. 19, 2014). Paragraph 82 footnote 7 contains
27 the United States’ characterization of the Amended Complaint, which requires no response. To
28

1 the extent any response to such allegations is necessary, Defendant denies each and every such
2 allegation. Defendant denies each and every other allegation in paragraph 82 footnote 7.

3 83. Paragraph 83 contains legal conclusions and/or argument, which require no
4 response. To the extent any response to such allegations is necessary, Defendant admits that
5 paragraph 83 references 45 C.F.R. § 162.1002(a)(1)(i), (b)(1), (c)(2)(i) and 42 C.F.R.
6 § 422.504(h)(2); that paragraph 83 quotes and references 42 C.F.R. § 422.301(d)(1). Paragraph
7 83 contains references to documents, which require no response because the referenced
8 documents speak for themselves. To the extent any response to such allegations is necessary,
9 Defendant admits that paragraph 83 quotes and references CMS, *Medicare Managed Care*
10 *Manual*, Chapter 7 § 40 (Rev. 118, Sept. 19, 2014) and ICD Guidelines, Preamble; that paragraph
11 83 references CMS, *Medicare Managed Care Manual*, Chapter 7 § 40 (Rev. 114, June 7, 2013),
12 CMS, *Medicare Managed Manual*, Chapter 7, Exhibit 30 (Rev. 57, Aug. 13, 2004); CMS, *2008*
13 *Risk Adjustment Data Technical Assistance Participant Guide* § 7.1.5. Defendant denies each
14 and every other allegation in paragraph 83.

15 84. Paragraph 84 contains legal conclusions and/or argument, which require no
16 response. To the extent any response to such allegations is necessary, Defendant denies each and
17 every such allegation. Paragraph 84 contains reference to a document, which requires no
18 response because the referenced document speaks for itself. To the extent any response to such
19 allegations is necessary, Defendant admits that paragraph 84 references ICD Guidelines §§ II, III,
20 and IV. Paragraph 84 contains the United States' characterization of the Amended Complaint,
21 which requires no response. To the extent any response to such allegations is necessary,
22 Defendant denies each and every such allegation. Defendant denies each and every other
23 allegation in paragraph 84.

24 85. Paragraph 85 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant denies each and
26 every such allegation. Paragraph 85 contains reference to a document, which requires no
27 response because the referenced document speaks for itself. To the extent any response to such
28

1 allegations is necessary, Defendant admits that paragraph 85 references ICD-10 Guidelines § IV.J
2 and ICD-9 Guidelines § IV.K. Defendant denies each and every other allegation in paragraph 85.

3 Paragraph 85 footnote 8 contains reference to a document, which requires no response
4 because the referenced document speaks for itself. To the extent any response to such allegations
5 is necessary, Defendant admits that paragraph 85 footnote 8 references the ICD-9 Guidelines and
6 ICD-10 Guidelines. Paragraph 85 footnote 8 contains the United States' characterization of the
7 Amended Complaint, which requires no response. To the extent any response to such allegations
8 is necessary, Defendant denies each and every such allegation. Defendant denies each and every
9 other allegation in paragraph 85 footnote 8.

10 86. Paragraph 86 contains legal conclusions and/or argument, which require no
11 response. To the extent any response to such allegations is necessary, Defendant denies each and
12 every such allegation. Paragraph 86 contains reference to a document, which requires no
13 response because the referenced document speaks for itself. To the extent any response to such
14 allegations is necessary, Defendant admits that paragraph 86 references and attempts to quote
15 ICD-10 Guidelines § IV.I and ICD-9 Guidelines § IV.J; that paragraph 86 quotes and references
16 CMS, 2013 *National Technical Assistance Risk Adjustment 101 Participant Guide* 17 (2013).
17 Defendant denies each and every other allegation in paragraph 86.

18 87. Paragraph 87 contains legal conclusions and/or argument, which require no
19 response. To the extent any response to such allegations is necessary, Defendant denies each and
20 every such allegation in paragraph 87. Defendant denies each and every other allegation in
21 paragraph 87.

22 88. Paragraph 88 contains legal conclusions and/or argument, which require no
23 response. To the extent any response to such allegations is necessary, Defendant denies each and
24 every such allegation. Paragraph 88 contains reference to a document, which requires no
25 response because the referenced document speaks for itself. To the extent any response to such
26 allegations is necessary, Defendant admits that paragraph 88 references ICD-10 Guidelines
27 § IV.H, ICD-9 Guidelines § IV.I, ICD-10 Guidelines § IV.J, and ICD-9 Guidelines § IV.K.
28 Defendant denies each and every other allegation in paragraph 88.

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

5 **VI. KAISER KNEW THE CMS STANDARD FOR SUBMISSION OF RISK-**
6 **ADJUSTMENT DIAGNOSES**

7 90. Paragraph 90 contains legal conclusions and/or argument, which require no
8 response. To the extent any response to such allegations is necessary, Defendant denies each and
9 every such allegation. Defendant denies each and every other allegation in paragraph 90.

10 91. Paragraph 91 contains reference to a document, which requires no response
11 because the referenced document speaks for itself. To the extent any response to such allegations
12 is necessary, Defendant admits that paragraph 91 quotes and references a portion of a document.
13 Defendant denies each and every other allegation in paragraph 91.

14 92. Paragraph 92 contains reference to a document, which requires no response
15 because the referenced document speaks for itself. To the extent any response to such allegations
16 is necessary, Defendant admits that paragraph 92 quotes a portion of a document. Paragraph 92
17 contains legal conclusions and/or argument, which require no response. To the extent any
18 response to such allegations is necessary, Defendant denies each and every such allegation.
19 Defendant denies each and every other allegation in paragraph 92.

20 93. Paragraph 93 contains reference to a document, which requires no response
21 because the referenced document speaks for itself. To the extent any response to such allegations
22 is necessary, Defendant admits that paragraph 93 quotes and references a portion of a document.
23 Defendant denies each and every other allegation in paragraph 93.

24 94. Paragraph 94 contains reference to a document, which requires no response
25 because the referenced document speaks for itself. To the extent any response to such allegations
26 is necessary, Defendant admits that paragraph 94 references and attempts to quote a portion of a
27 document. Defendant denies each and every other allegation in paragraph 94.
28

1 95. Paragraph 95 contains reference to a document, which requires no response
2 because the referenced document speaks for itself. To the extent any response to such allegations
3 is necessary, Defendant admits that paragraph 95 quotes a portion of a document. Defendant
4 denies each and every other allegation in paragraph 95.

5 96. Paragraph 96 contains reference to a document, which requires no response
6 because the referenced document speaks for itself. To the extent any response to such allegations
7 is necessary, Defendant admits that paragraph 96 quotes a portion of a document. Defendant
8 denies each and every other allegation in paragraph 96.

9 97. Paragraph 97 contains reference to a document, which requires no response
10 because the referenced document speaks for itself. To the extent any response to such allegations
11 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
12 basis, denies each and every such allegation. Defendant denies each and every other allegation in
13 paragraph 97.

14 98. Paragraph 98 contains reference to a document, which requires no response
15 because the referenced document speaks for itself. To the extent any response to such allegations
16 is necessary, Defendant admits that paragraph 98 quotes a portion of the transcript of the October
17 7, 2020 testimony of Janet Franklin pursuant to a Civil Investigative Demand. Defendant denies
18 each and every other allegation in paragraph 98.

19 99. Defendant denies each and every allegation in paragraph 99.

20 100. Paragraph 100 contains allegations that do not reference Defendant, which require
21 no response. To the extent any response to such allegations is necessary, Defendant lacks
22 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
23 such allegation. Paragraph 100 contains reference to a document, which requires no response
24 because the referenced document speaks for itself. To the extent any response to such allegations
25 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
26 basis, denies each and every such allegation. Defendant denies each and every other allegation in
27 paragraph 100.
28

1 **VII. KAISER KNOWINGLY SUBMITTED OR CAUSED TO BE SUBMITTED**
2 **FRAUDULENT DIAGNOSIS CODES**

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

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

7 103. Defendant denies each and every allegation in paragraph 103.

8 104. Answering paragraph 104, Defendant admits that, during at least some of the
9 relevant period, Defendant's employees tracked diagnosis codes and financial results related to
10 refresh and data mining activities. Paragraph 104 contains legal conclusions and/or argument,
11 which require no response. To the extent any response to such allegations is necessary,
12 Defendant denies each and every such allegation. Defendant denies each and every other
13 allegation in paragraph 104.

14 **A. KAISER RECOGNIZED THE IMPORTANCE OF MEDICARE REVENUE**
15 **AND IMPLEMENTED NATIONAL INITIATIVES TO INCREASE**
16 **PATIENT RISK SCORES.**

17 105. Paragraph 105 contains reference to a document, which requires no response
18 because the referenced document speaks for itself. To the extent any response to such allegations
19 is necessary, Defendant admits that paragraph 105 quotes and references a portion of a document.
20 Due to the non-specific and vague nature of Plaintiff's allegations, Defendant lacks sufficient
21 information to admit or deny the allegation that "Kaiser recognized and emphasized internally
22 that Medicare Advantage, and in particular risk-adjustment payments from diagnoses, were (and
23 are) critical to Kaiser's business," and, on that basis, denies such allegation. Defendant denies
24 each and every other allegation in paragraph 105.

25 106. Paragraph 106 contains allegations that do not reference Defendant, which require
26 no response. To the extent any response to such allegations is necessary, Defendant lacks
27 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
28 such allegation. Paragraph 106 contains reference to a document, which requires no response
because the referenced document speaks for itself. To the extent any response to such allegations

1 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
2 basis, denies each and every such allegation. Defendant denies each and every other allegation in
3 paragraph 106.

4 107. Answering paragraph 107, Defendant admits that, during at least some of the
5 relevant period, employees of Defendant attended meetings of the RRG. Paragraph 107 contains
6 allegations that do not reference Defendant, which require no response. To the extent any
7 response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny
8 such allegations and, on that basis, denies each and every such allegation. Paragraph 107
9 contains reference to a document, which requires no response because the referenced document
10 speaks for itself. To the extent any response to such allegations is necessary, Defendant lacks
11 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
12 such allegation. Defendant denies each and every other allegation in paragraph 107.

13 108. Answering paragraph 108, Defendant admits that, during at least some of the
14 relevant period, KFHP and KFHP-CO compensated certain Permanente Medical Groups for their
15 provision of services for Medicare Advantage members. Paragraph 108 contains reference to a
16 document, which requires no response because the referenced document speaks for itself. To the
17 extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to
18 admit or deny such allegations and, on that basis, denies each and every such allegation.
19 Defendant denies each and every other allegation in paragraph 108.

20 109. Paragraph 109 contains reference to the content of an image, which requires no
21 response because the referenced image speaks for itself. To the extent any response to such
22 allegations is necessary, Defendant admits that paragraph 109 shows a portion of a document.
23 Defendant denies each and every other allegation in paragraph 109.

24 110. Answering paragraph 110, Defendant admits that, during at least some of the
25 relevant period: the National Medicare Leadership Team, NMF department, and RRG were all
26 involved in risk adjustment activities; RRG shared information across Defendant regions
27 regarding risk adjustment, including successful initiatives. Defendant denies each and every
28 other allegation in paragraph 110.

1 111. Paragraph 111 contains reference to a document, which requires no response
2 because the referenced document speaks for itself. To the extent any response to such allegations
3 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
4 basis, denies each and every such allegation. Defendant denies each and every other allegation in
5 paragraph 111.

6 112. Defendant denies each and every allegation in paragraph 112.

7 113. Answering paragraph 113, Defendant admits that, during at least some of the
8 relevant period: employees of KFHP’s NMF department tracked metrics; risk scores were tracked
9 across regions, tracked over time, tracked against forecasts, and compared to benchmarks;
10 volumes of diagnosis codes were tracked across time and regions and against expected upper and
11 lower thresholds; diagnosis codes per medical visit, medical visits per member per year, HCCs
12 per member per year, HCC frequency comparisons, and number of unaddressed known chronic
13 diagnoses were monitored. Defendant denies each and every other allegation in paragraph 113.

14 114. Answering paragraph 114, Defendant admits that, during at least some of the
15 relevant period: reports on risk adjustment metrics were distributed to certain employees of
16 Defendant Health Plans and Defendant Permanente Medical Groups involved in Medicare risk
17 adjustment; reports on risk adjustment metrics were posted to a “KP Medicare Risk Adjustment
18 Website.” Paragraph 114 contains reference to a document, which requires no response because
19 the referenced document speaks for itself. To the extent any response to such allegations is
20 necessary, Defendant admits that paragraph 114 quotes a portion of a document. Defendant
21 denies each and every other allegation in paragraph 114.

22 115. Answering paragraph 115, Defendant admits that, during at least some of the
23 relevant period, the KP Medicare Risk Adjustment Website contained risk adjustment reports,
24 presentations from past RRG conferences, links to training materials, compliance policies, and
25 KFHP’s NCO work plans. Defendant denies each and every other allegation in paragraph 115.

26 116. Paragraph 116 contains reference to a document, which requires no response
27 because the referenced document speaks for itself. To the extent any response to such allegations
28

1 is necessary, Defendant admits that paragraph 116 quotes a portion of a document. Defendant
2 denies each and every other allegation in paragraph 116.

3 117. Answering paragraph 117, Defendant admits that, during at least some of the
4 relevant period, employees of the NMF department worked with employees of each Defendant
5 region to develop a “risk adjustment improvement plan.” Paragraph 117 contains reference to a
6 document, which requires no response because the referenced document speaks for itself. To the
7 extent any response to such allegations is necessary, Defendant admits that paragraph 117 quotes
8 a portion of a document. Defendant denies each and every other allegation in paragraph 117.

9 118. Answering paragraph 118, Defendant admits that, during at least some of the
10 relevant period, the RRG held monthly meetings; the RRG held semi-annual conferences in part
11 to ensure that some employees involved in risk adjustment were updated with the latest
12 information from CMS, review score trends and accuracy rates, and learn about new tools that
13 would allow them to work more efficiently and effectively. Paragraph 118 contains reference to a
14 document, which requires no response because the referenced document speaks for itself. To the
15 extent any response to such allegations is necessary, Defendant admits that paragraph 118 quotes
16 a portion of a document. Defendant denies each and every other allegation in paragraph 118.

17 119. Paragraph 119 contains reference to a document, which requires no response
18 because the referenced document speaks for itself. To the extent any response to such allegations
19 is necessary, Defendant admits that paragraph 119 quotes and references a portion of a document.
20 Defendant denies each and every other allegation in paragraph 119.

21 120. Paragraph 120 contains reference to a document, which requires no response
22 because the referenced document speaks for itself. To the extent any response to such allegations
23 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
24 basis, denies each and every such allegation. Defendant denies each and every other allegation in
25 paragraph 120.

26 121. Answering paragraph 121, Defendant admits that, during at least some of the
27 relevant period, KFHP’s employees calculated the value of each risk score point. Answering
28 paragraph 121, Defendant admits that, for 2015, Defendant’s employees calculated the value of

1 each risk score point across regions to be more than \$80 million. Paragraph 121 contains
2 references to documents, which require no response because the referenced documents speaks for
3 themselves. To the extent any response to such allegations is necessary, Defendant admits that
4 paragraph 121 quotes a portion of a document; Defendant lacks sufficient knowledge to admit or
5 deny the allegation that “[a]s an internal Kaiser training emphasized: ‘If a risk score increases
6 from, say, 1.10 to 1.11, this is considered a point. It might not sound like much of a change, but
7 that point is worth over \$28 Million dollars to a Region like Northern California and over \$62
8 Million dollars if the overall average risk score for the whole KP program increases by a point[,]”
9 and, on that basis, denies such allegation. Defendant denies each and every other allegation in
10 paragraph 121.

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

12 123. Answering paragraph 123, Defendant admits that, during at least some of the
13 relevant period, under the CMS-HCC risk adjustment model, a risk score of 1.0 reflects the
14 expected Medicare-incurred expenditures of an average beneficiary. Answering paragraph 123,
15 Defendant admits that, during the relevant period, Defendant’s risk score forecast was calculated
16 to be higher each year. Paragraph 123 contains reference to a document, which requires no
17 response because the referenced document speaks for itself. To the extent any response to such
18 allegations is necessary, Defendant admits that paragraph 123 quotes a portion of a document.
19 Defendant denies each and every other allegation in paragraph 123.

20 124. Paragraph 124 contains allegations that do not reference Defendant, which require
21 no response. To the extent any response to such allegations is necessary, Defendant lacks
22 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
23 such allegation. Paragraph 124 contains reference to a document, which requires no response
24 because the referenced document speaks for itself. To the extent any response to such allegations
25 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
26 basis, denies each and every such allegation. Defendant denies each and every other allegation in
27 paragraph 124.

28

1 125. Answering paragraph 125, Defendant admits that CMS began using the CMS-
2 HCC risk adjustment model in 2004. Defendant denies each and every other allegation in
3 paragraph 125.

4 Paragraph 125 footnote 9 contains references to documents, which require no response
5 because the referenced documents speak for themselves. To the extent any response to such
6 allegations is necessary, Defendant admits that paragraph 125 footnote 9 references “Kaiser
7 Family Foundation, Do People Who Sign Up for Medicare Advantage Plans Have Lower
8 Medicare Spending? (May 2019), available at [https://files.kff.org/attachment/Issue-Brief-Do-
9 People-Who-Sign-Up-for-Medicare-Advantage-Plans-Have-Lower-Medicare-Spending](https://files.kff.org/attachment/Issue-Brief-Do-People-Who-Sign-Up-for-Medicare-Advantage-Plans-Have-Lower-Medicare-Spending) (last
10 visited Jun. 11, 2023), Jason Brown et al., How Does Risk Selection Respond to Risk
11 Adjustment? Evidence from the Medicare Advantage Program, 104 Am. Econ. Rev. 3335
12 (2014), and *UnitedHealthcare Ins. Co. v. Becerra*, 9 F.4th 868, 876 (D.C. Cir. 2021). Defendant
13 denies each and every other allegation in paragraph 125 footnote 9.

14 **B. KAISER MINED PATIENT MEDICAL RECORDS TO ADD LUCRATIVE
15 RISK-ADJUSTMENT DIAGNOSES VIA ADDENDA TO ACHIEVE RISK-
SCORE TARGETS.**

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

17 127. Defendant denies each and every allegation in paragraph 127.

18 128. Defendant denies each and every allegation in paragraph 128.

19 129. Answering paragraph 129, Defendant admits that, while the term “addendum” has
20 different meanings in different contexts, the Medicare Program Integrity Manual refers to
21 amendments to, corrections of, or entries of documentation after physician-patient encounters.
22 Defendant denies each and every other allegation in paragraph 129.

23 130. Answering paragraph 130, Defendant admits that addenda have legitimate uses.
24 Paragraph 130 contains legal conclusions and/or argument, which require no response, and
25 contains references to documents, which require no response because the referenced documents
26 speaks for themselves. To the extent any response to such allegations is necessary, Defendant
27 admits that paragraph 130 references and cites a portion of CMS, *Medicare Program Integrity
28 Manual*, Chapter 3 § 3.3.2.5(A) and *2008 Risk Adjustment Data Technical Assistance Participant*

1 *Guide* § 6.4.2; that paragraph 130 references and miscites CMS, *Medicare Program Integrity*
2 *Manual*, Chapter 3 § 3.3.2.5(A). Defendant denies each and every other allegation in paragraph
3 130.

4 131. Defendant denies each and every allegation in paragraph 131.

5 132. Defendant denies each and every allegation in paragraph 132.

6 133. Answering paragraph 133, Defendant admits that, during at least some of the
7 relevant period, Defendant’s employees identified in members’ medical records certain conditions
8 diagnosed in previous service years but not yet diagnosed in the current service year, sometimes
9 referred to as “refresh” activities. Defendant denies each and every other allegation in paragraph
10 133.

11 134. Answering paragraph 134, Defendant admits that, during at least some of the
12 relevant period: after members’ medical visits, Defendant’s physicians sometimes received lists
13 of conditions identified via refresh activities but not diagnosed in a specific form in those
14 members’ medical records at those members’ medical visits; lists received by Defendant’s
15 physicians sometimes included potential diagnoses identified via data mining activities.
16 Defendant denies each and every other allegation in paragraph 134.

17 135. Answering paragraph 135, Defendant admits that: a query is a communication tool
18 used to clarify documentation in the health record for accurate code assignment; queries can be
19 written or oral. Defendant denies each and every other allegation in paragraph 135.

20 136. Paragraph 136 contains legal conclusions and/or argument, which require no
21 response. To the extent any response to such allegations is necessary, Defendant denies each and
22 every such allegation. To the extent paragraph 136 references ¶¶ 202-233 of the Amended
23 Complaint, *see* Defendant’s responses to those paragraphs, which are incorporated herein.
24 Defendant denies each and every other allegation in paragraph 136.

25 137. Defendant denies each and every allegation in paragraph 137.

26 138. Paragraph 138 contains a hypothetical example containing no factual assertions,
27 which requires no response. To the extent any response to such allegations is necessary,
28

1 Defendant denies each and every such allegation. Defendant denies each and every other
2 allegation in paragraph 138.

3 139. Defendant denies each and every allegation in paragraph 139.

4 **1. DATA MINING GENERATES NEW RISK-ADJUSTMENT**
5 **DIAGNOSES.**

6 140. Answering paragraph 140, Defendant admits that, during at least some of the
7 relevant period, data mining identified existing diagnoses and potential diagnoses in members'
8 electronic medical records using algorithms that identified certain key words, lab results,
9 medications, clinical indicators, and/or other items that might indicate conditions a member did or
10 may have had. Defendant denies each and every other allegation in paragraph 140.

11 141. Defendant denies each and every allegation in paragraph 141.

12 142. Defendant denies each and every allegation in paragraph 142.

13 143. Paragraph 143 contains allegations that do not reference Defendant, which require
14 no response. To the extent any response to such allegations is necessary, Defendant lacks
15 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
16 such allegation. Paragraph 143 contains reference to a document, which requires no response
17 because the referenced document speaks for itself. To the extent any response to such allegations
18 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
19 basis, denies each and every such allegation. Defendant denies each and every other allegation in
20 paragraph 143.

21 144. Paragraph 144 contains allegations that do not reference Defendant, which require
22 no response. To the extent any response to such allegations is necessary, Defendant lacks
23 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
24 such allegation. Paragraph 144 contains reference to a document, which requires no response
25 because the referenced document speaks for itself. To the extent any response to such allegations
26 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
27 basis, denies each and every such allegation. Defendant denies each and every other allegation in
28 paragraph 144.

1 Answering paragraph 144 footnote 10, Defendant admits that when the Affordable Care
2 Act (“ACA”) was implemented in 2014, it provided for additional risk adjustment payments from
3 the government for ACA patients. Defendant denies each and every other allegation in paragraph
4 144 footnote 10.

5 145. Answering paragraph 145, Defendant admits that, during at least some of the
6 relevant period, Defendant Permanente Medical Groups provided medical care to some traditional
7 (fee-for-service) Medicare members. Defendant denies each and every other allegation in
8 paragraph 145.

9 146. Answering paragraph 146, Defendant admits that, during at least some of the
10 relevant period: a Risk Adjustment Data Mining Workgroup was organized to collect, analyze,
11 and disseminate information to employees of entities including Defendants on data mining
12 activities, including algorithm best practices and effectiveness and return on investment
13 experience; employees from each of KFHP, KFHP-CO, and Defendant Permanente Medical
14 Groups attended meetings of this workgroup; the workgroup was sponsored by Dr. Simon Cohn;
15 the chairs included Ken Nelson and Relator Taylor (then Medical Director of Revenue Cycle,
16 CPMG); the workgroup grew over time to nearly 40 members including employees from each
17 Defendant entity. Paragraph 146 contains allegations that do not reference Defendant, which
18 require no response. To the extent any response to such allegations is necessary, Defendant lacks
19 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
20 such allegation. Defendant denies each and every other allegation in paragraph 146.

21 147. Answering paragraph 147, Defendant admits that, during at least some of the
22 relevant period: employees of KFHP’s NMF department facilitated a smaller predecessor group
23 called the HCC Data Mining Workgroup; that workgroup had a goal to share information; that
24 workgroup had representatives from each Defendant region. Defendant denies each and every
25 other allegation in paragraph 147.

26 148. Answering paragraph 148, Defendant admits that, during at least some of the
27 relevant period: the Risk Adjustment Data Mining Workgroup met approximately monthly;
28 employees of each Defendant attended meetings to discuss data mining activities and results;

1 attendees discussed data mining activities, tracking data mining activities, ideas to improve the
2 accuracy of algorithms, and addenda to medical records; the workgroup's activities were
3 presented outside of the workgroup, including to the RRG. Defendant denies each and every
4 other allegation in paragraph 148.

5 149. Answering paragraph 149, Defendant admits that, during at least some of the
6 relevant period: employees of Defendant Health Plans ran algorithms and distributed results to
7 certain employees of each Defendant region; employees of Defendant Permanente Medical
8 Groups developed algorithms and data mining activities, which they sometimes discussed at
9 workgroup meetings. Paragraph 149 contains allegations that do not reference Defendant, which
10 require no response. To the extent any response to such allegations is necessary, Defendant lacks
11 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
12 such allegation. Defendant lacks sufficient knowledge to admit or deny the allegations that
13 "Kaiser's data-mining programs covered an extensive range of potential diagnoses" and that
14 regions "regularly" shared algorithms and initiatives at workgroup meetings, and, on that basis,
15 denies each and every such allegation. Defendant denies each and every other allegation in
16 paragraph 149.

17 150. Paragraph 150 contains allegations that do not reference Defendant, which require
18 no response. To the extent any response to such allegations is necessary, Defendant lacks
19 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
20 such allegation. Paragraph 150 contains reference to a document, which requires no response
21 because the referenced document speaks for itself. To the extent any response to such allegations
22 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
23 basis, denies each and every such allegation. Defendant lacks sufficient knowledge to admit or
24 deny the allegation that "[m]any of these diagnosis-specific algorithms coincided with regional
25 initiatives," and, on that basis, denies each and every such allegation. Defendant denies each and
26 every other allegation in paragraph 150.

27 151. Defendant denies each and every allegation in paragraph 151.
28

1 152. Answering paragraph 152, Defendant admits that, during at least some of the
2 relevant period: Defendant’s employees participated in activities sometimes referred to as
3 “Natural Language Processing” (“NLP”) activities, which involved use of computer algorithms to
4 search members’ medical records for documented diagnoses that had not resulted in a diagnosis
5 code transmission to CMS; SCPMG employees developed NLP; Dr. Paul Minardi oversaw NLP
6 activities at SCPMG. Defendant denies each and every other allegation in paragraph 152.

7 153. Defendant denies each and every allegation in paragraph 153.

8 154. Answering paragraph 154, Defendant admits that, during at least some of the
9 relevant period: Defendant’s employees and KFHP-CO’s employees jointly developed data
10 mining algorithms; KFHP-CO’s employees sent template “Medicare Queries” to Defendant’s
11 physicians based on data mining results. Defendant denies each and every other allegation in
12 paragraph 154.

13 155. Answering paragraph 155, Defendant admits that, during at least some of the
14 relevant period: when CMS made changes to the CMS-HCC risk adjustment model related to the
15 diagnosis of hypoxia (a below-normal level of oxygen), KFHP-CO’s employees identified
16 members on oxygen; KFHP-CO’s auditors sent “Medicare Queries” to Defendant’s physicians of
17 members on oxygen regarding (1) acute and/or chronic respiratory failure and (2) obesity
18 hypoventilation syndrome; KFHP-CO auditors sent these “Medicare Queries” including for
19 members that had been previously diagnosed with hypoxia; the “Medicare Query” was drafted in
20 conjunction with Dr. Teresa Welsh (then Director of Coding, CPMG). Paragraph 155 contains
21 reference to a document, which requires no response because the referenced document speaks for
22 itself. To the extent any response to such allegations is necessary, Defendant admits that
23 paragraph 155 references a “Medicare Query.” Defendant lacks sufficient knowledge to admit or
24 deny the allegation that “[i]nitiatives were sometimes sparked by the prospect of reduced revenue
25 from Medicare based on existing diagnoses,” and, on that basis, denies each and every such
26 allegation. Defendant denies each and every other allegation in paragraph 155.

27 156. Paragraph 156 contains reference to a document, which requires no response
28 because the referenced document speaks for itself. To the extent any response to such allegations

1 is necessary, Defendant admits that paragraph 156 references a “Medicare Query.” Defendant
2 denies each and every other allegation in paragraph 156.

3 157. Answering paragraph 157, Defendant admits that obesity hypoventilation
4 syndrome exists only in obese individuals. Answering paragraph 157, Defendant admits that,
5 during at least some of the relevant period, obesity hypoventilation syndrome mapped to the
6 morbid obesity HCC under the CMS-HCC risk adjustment model. Paragraph 157 contains
7 reference to a document, which requires no response because the referenced document speaks for
8 itself. To the extent any response to such allegations is necessary, Defendant admits that
9 paragraph 157 references a “Medicare Query.” Defendant denies each and every other allegation
10 in paragraph 157.

11 158. Defendant denies each and every allegation in paragraph 158.

12 159. Paragraph 159 contains allegations that do not reference Defendant, which require
13 no response. To the extent any response to such allegations is necessary, Defendant lacks
14 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
15 such allegation. To the extent paragraph 159 references other paragraphs of the Amended
16 Complaint, *see* Defendant’s responses to those paragraphs, which are incorporated herein.
17 Defendant denies each and every other allegation in paragraph 159.

18 160. Answering paragraph 160, Defendant admits that, during at least some of the
19 relevant period: Defendant’s employees developed tracking mechanisms to monitor data mining
20 activities; tracking mechanisms were discussed and shared with other Defendant entities,
21 including through the Risk Adjustment Data Mining Workgroup; some tracking mechanisms
22 tracked expected risk adjustment payments in connection with data mining activities; Risk
23 Adjustment Improvement Plans provided to KFHP included details about data mining activities.
24 Paragraph 160 contains allegations that do not reference Defendant, which require no response.
25 To the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge
26 to admit or deny such allegations and, on that basis, denies each and every such allegation.
27 Defendant denies each and every other allegation in paragraph 160.

28

1 2. **“REFRESH” AND “MISSED-OPPORTUNITIES” ARE MORE**
2 **DATA-MINING PROGRAMS THAT GENERATE RISK-**
3 **ADJUSTMENT DIAGNOSES.**

3 161. Answering paragraph 161, Defendant admits that, during at least some of the
4 relevant period: Defendant’s employees identified in members’ medical records certain
5 conditions diagnosed in previous service years but not yet diagnosed in the current service year,
6 with such activities sometimes referred to as “refresh” and such conditions sometimes referred to
7 as “unrefreshed diagnoses”; Defendant’s employees identified such conditions in members’
8 electronic medical records using algorithms. Defendant denies each and every other allegation in
9 paragraph 161.

10 162. Defendant denies each and every allegation in paragraph 162.

11 163. Defendant denies each and every allegation in paragraph 163.

12 164. Paragraph 164 contains allegations that do not reference Defendant, which require
13 no response. To the extent any response to such allegations is necessary, Defendant lacks
14 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
15 such allegation. Paragraph 164 contains allegations that do not reference Defendant, which
16 require no response. To the extent any response to such allegations is necessary, Defendant lacks
17 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
18 such allegation. Paragraph 164 contains reference to a document, which requires no response
19 because the referenced document speaks for itself. To the extent any response to such allegations
20 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
21 basis, denies each and every such allegation. Defendant denies each and every other allegation in
22 paragraph 164.

23 165. Answering paragraph 165, Defendant admits that, during at least some of the
24 relevant period: employees of KFHP’s NMF department identified and monitored certain
25 conditions diagnosed in previous service years but not yet diagnosed in the current service year
26 on a regular basis and shared results with Defendant Permanente Medical Groups’ and KFHP-
27 CO’s employees; Defendant Permanente Medical Groups’ and KFHP-CO’s employees ran
28 algorithms to identify and monitor certain conditions diagnosed in previous service years but not

1 yet diagnosed in the current service year; employees of KFHP's NMF department evaluated Risk
2 Adjustment Improvement Plans, which included discussion of refresh activities, quarterly;
3 Defendants' employees discussed refresh activities as part of the RRG and Risk Adjustment Data
4 Mining Work Group. Defendant denies each and every other allegation in paragraph 165.

5 166. Answering paragraph 166, Defendant admits that, during at least some of the
6 relevant period: refresh activities focused on assessing diagnoses during a member's medical
7 visit; Defendant's physicians were sometimes given a list of potential diagnoses identified via
8 refresh activities prior to member medical visits in paper or electronic format; Defendant's
9 employees utilized "pushpins" in Defendant's electronic health records to identify chronic
10 conditions; Defendant's physicians could add conditions from the problem list to the encounter
11 field. Paragraph 166 contains reference to a document, which requires no response because the
12 referenced document speaks for itself. To the extent any response to such allegations is
13 necessary, Defendant admits that paragraph 166 quotes and shows a portion of a document.
14 Defendant denies each and every other allegation in paragraph 166.

15 167. Answering paragraph 167, Defendant admits that, during at least some of the
16 relevant period: Defendant's employees used a tool within the electronic health record called a
17 chronic disease widget or chronic disease grid; this tool could populate a member's medical
18 record for a medical visit with chronic conditions; to populate a member's medical record for a
19 medical visit with chronic conditions using the chronic disease widget or chronic disease grid,
20 Defendant's physicians needed to select chronic conditions and add status updates for those
21 conditions. Defendant denies each and every other allegation in paragraph 167.

22 168. Defendant denies each and every allegation in paragraph 168.

23 169. Paragraph 169 contains a hypothetical example containing no factual assertions,
24 which requires no response. To the extent any response to such allegations is necessary,
25 Defendant denies each and every such allegation. Defendant denies each and every other
26 allegation in paragraph 169.

27 170. Paragraph 170 contains allegations that do not reference Defendant, which require
28 no response. To the extent any response to such allegations is necessary, Defendant lacks

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Defendant denies each and every other allegation in paragraph 170.

3 171. Defendant denies each and every allegation in paragraph 171.

4 172. Defendant denies each and every allegation in paragraph 172.

5 173. Paragraph 173 contains allegations that do not reference Defendant, which require
6 no response. To the extent any response to such allegations is necessary, Defendant lacks
7 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
8 such allegation. Defendant denies each and every other allegation in paragraph 173.

9 174. Defendant denies each and every allegation in paragraph 174.

10 175. Paragraph 175 contains allegations that do not reference Defendant, which require
11 no response. To the extent any response to such allegations is necessary, Defendant lacks
12 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
13 such allegation. Paragraph 175 contains reference to a document, which requires no response
14 because the referenced document speaks for itself. To the extent any response to such allegations
15 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
16 basis, denies each and every such allegation. Defendant denies each and every other allegation in
17 paragraph 175.

18 176. Paragraph 176 contains allegations that do not reference Defendant, which require
19 no response. To the extent any response to such allegations is necessary, Defendant lacks
20 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
21 such allegation. Paragraph 176 contains reference to a document, which requires no response
22 because the referenced document speaks for itself. To the extent any response to such allegations
23 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
24 basis, denies each and every such allegation. Defendant denies each and every other allegation in
25 paragraph 176.

26 177. Answering paragraph 177, Defendant admits that the CMS-HCC risk adjustment
27 model generally does not provide for risk adjustment payments based upon ICD history codes.
28 Paragraph 177 contains reference to a document, which requires no response because the

1 referenced document speaks for itself. To the extent any response to such allegations is
2 necessary, Defendant admits that paragraph 177 references the ICD Guidelines. Defendant
3 denies each and every other allegation in paragraph 177.

4 178. Defendant denies each and every allegation in paragraph 178.

5 179. Defendant denies each and every allegation in paragraph 179.

6 180. Paragraph 180 contains allegations that do not reference Defendant, which require
7 no response. To the extent any response to such allegations is necessary, Defendant lacks
8 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
9 such allegation. Paragraph 180 contains reference to a document, which requires no response
10 because the referenced document speaks for itself. To the extent any response to such allegations
11 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
12 basis, denies each and every such allegation. Defendant denies each and every other allegation in
13 paragraph 180.

14 181. Defendant denies each and every allegation in paragraph 181.

15 182. Defendant denies each and every allegation in paragraph 182.

16 **3. CHART REVIEW IS ANOTHER PROGRAM TO GENERATE**
17 **RISK-ADJUSTMENT DIAGNOSES.**

18 183. Answering paragraph 183, Defendant admits that, during at least some of the
19 relevant period, Defendant's and KFHP-CO's employees administered some chart reviews.
20 Paragraph 183 contains reference to a document, which requires no response because the
21 referenced document speaks for itself. To the extent any response to such allegations is
22 necessary, Defendant admits that paragraph 183 quotes a portion of a document. Defendant
23 denies each and every other allegation in paragraph 183.

24 184. Paragraph 184 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant denies each and
26 every such allegation. Paragraph 184 contains references to documents, which require no
27 response because the referenced documents speak for themselves. To the extent any response to
28 such allegations is necessary, Defendant admits that paragraph 184 quotes a portion of a

1 document; that paragraph 184 references the ICD Guidelines. Defendant denies each and every
2 other allegation in paragraph 184.

3 185. Answering paragraph 185, Defendant admits that, during at least some of the
4 relevant period: Defendant's and KFHP-CO's employees jointly ran and funded some chart
5 reviews; Dr. Teresa Welsh (then Physician Director of Coding, CPMG), Jeremy Walsleben, and
6 Maegen Leake were involved in administering chart reviews; KFHP-CO's auditors sent
7 "Medicare Queries" to Defendant's physicians regarding conditions corresponding to HCCs.
8 Defendant denies each and every other allegation in paragraph 184.

9 186. Answering paragraph 186, Defendant admits that, during at least some of the
10 relevant period, with funding from KFHP-CO, Defendant's physicians performed some chart
11 reviews for KFHP-CO members. Paragraph 186 contains reference to a document, which
12 requires no response because the referenced document speaks for itself. To the extent any
13 response to such allegations is necessary, Defendant admits that paragraph 186 quotes a portion
14 of a document. Defendant denies each and every other allegation in paragraph 186.

15 187. Answering paragraph 187, Defendant admits that, during at least some of the
16 relevant period: Defendant's physicians performing some chart reviews were instructed to
17 identify only existing diagnoses not yet diagnosed in a specific form in members' medical
18 records; Defendant's physicians performing some chart reviews were instructed that if they
19 identified an existing diagnosis not yet diagnosed in a specific form in a member's medical record
20 that was in the "same category" as a diagnosis on the problem list or already diagnosed in a
21 specific form in the member's medical record during the service year, a query need not be sent;
22 under the CMS-HCC risk adjustment model, an MAO only receives a risk adjustment payment
23 corresponding with any given HCC once per HCC per service year, so if an MAO transmits two
24 diagnosis codes for a beneficiary in a service year that correspond to the same HCC, the HCC risk
25 coefficient is counted only once in the beneficiary's risk score for the service year. Defendant
26 denies each and every other allegation in paragraph 187.

27 188. Answering paragraph 188, Defendant admits that, during at least some of the
28 relevant period: conditions on the Review Grid were lined up with HCC numbers; when CMS

1 changed the CMS-HCC risk adjustment model, the Review Grid was updated. Defendant denies
2 each and every other allegation in paragraph 188.

3 189. Defendant denies each and every allegation in paragraph 189.

4 190. Answering paragraph 190, Defendant admits that, during at least some of the
5 relevant period, some chart reviews were performed after member medical visits. Defendant
6 denies each and every other allegation in paragraph 190.

7 191. Paragraph 191 contains a hypothetical example containing no factual assertions,
8 which requires no response. To the extent any response to such allegations is necessary,
9 Defendant denies each and every allegation. Defendant denies each and every other allegation in
10 paragraph 191.

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

14 193. Answering paragraph 193, Defendant admits that, during at least some of the
15 relevant period: Defendant's physicians performed some chart reviews only for members for
16 whom KFHP-CO could receive risk adjustment payments; when discussing "Medicare Queries,"
17 Defendant's physicians at times stated that each diagnosis was worth approximately \$3,000.
18 Paragraph 193 contains reference to a document, which requires no response because the
19 referenced document speaks for itself. To the extent any response to such allegations is
20 necessary, Defendant admits that paragraph 193 quotes a portion of a document. Defendant
21 denies each and every other allegation in paragraph 193.

22 194. Defendant denies each and every allegation in paragraph 194.

23 195. Paragraph 195 contains reference to a document, which requires no response
24 because the referenced document speaks for itself. To the extent any response to such allegations
25 is necessary, Defendant admits that paragraph 195 quotes a portion of a document. Defendant
26 denies each and every other allegation in paragraph 195.

27 196. Answering paragraph 196, Defendant admits that, during at least some of the
28 relevant period: Defendant's and KFHP-CO's employees tracked the results of chart review and

1 “Medicare Query” activities; Defendant’s and KFHP-CO’s employees tracked chart review by
2 chart reviewer, physician, and facility. Defendant denies each and every other allegation in
3 paragraph 196.

4 197. Answering paragraph 197, Defendant admits that, during at least some of the
5 relevant period, KFHP-CO’s employees generated spreadsheets that were shared with
6 Defendant’s employees tracking open “Medicare Queries” and which “Medicare Queries” were
7 associated with addenda. Defendant denies each and every other allegation in paragraph 197.

8 198. Answering paragraph 198, Defendant admits that, during at least some of the
9 relevant period: Defendant’s and KFHP-CO’s employees tracked overall number of “Medicare
10 Queries,” addenda, revenue generated, and return on investment for some chart reviews; that
11 KFHP-CO’s employees circulated these reports, including to employees of KFHP’s NMF
12 department. Paragraph 198 contains references to documents, which require no response because
13 the referenced documents speak for themselves. To the extent any response to such allegations is
14 necessary, Defendant admits that paragraph 198 references portions of documents. Due to the
15 non-specific and vague nature of Plaintiff’s allegations, Defendant lacks sufficient information to
16 admit or deny the allegation that “[c]alculations for other query programs involving data mining
17 showed that they generated thousands of queries and addenda, resulting in millions of dollars in
18 risk-adjustment revenue,” and, on that basis, denies such allegation. Defendant denies each and
19 every other allegation in paragraph 198.

20 199. Defendant denies each and every allegation in paragraph 199.

21 200. Answering paragraph 200, Defendant admits that, during at least some of the
22 relevant period, KFHP-CO’s employees provided weekly reports to Dr. Teresa Welsh to monitor
23 some chart reviews. Defendant denies each and every other allegation in paragraph 200.

24 **C. KAISER PRESSURED PHYSICIANS TO ADD DIAGNOSES VIA**
25 **ADDENDA.**

26 201. Defendant denies each and every allegation in paragraph 201.
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1. INAPPROPRIATE QUERIES PRESSURED PHYSICIANS TO CREATE ADDENDA.

202. Defendant denies each and every allegation in paragraph 202.

203. Defendant denies each and every allegation in paragraph 203.

204. Answering paragraph 204, Defendant admits that, during at least some of the relevant period, Defendant Permanente Medical Groups' employees developed electronic tools that allowed Defendant Permanente Medical Groups' physicians to access lists of conditions identified via refresh and data mining activities via computer. Paragraph 204 contains allegations that do not reference Defendant, which require no response. To the extent any response to such allegations is necessary, Defendant denies each and every such allegation. Paragraph 204 contains reference to a document, which requires no response because the referenced document speaks for itself. To the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every such allegation. Defendant denies each and every other allegation in paragraph 204.

205. Answering paragraph 205, Defendant admits that, during at least some of the relevant period, some queries came orally. Paragraph 205 contains allegations that do not reference Defendant, which require no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every such allegation. Defendant denies each and every other allegation in paragraph 205.

206. Paragraph 206 contains allegations that do not reference Defendant, which require no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every such allegation. Defendant denies each and every other allegation in paragraph 206.

207. Defendant denies each and every allegation in paragraph 207.

208. Answering paragraph 208, Defendant admits that, during at least some of the relevant period, AHIMA practice briefs were cited in some policy documents and training

1 materials created by Defendants' employees. Defendant denies each and every other allegation in
2 paragraph 208.

3 209. Paragraph 209 contains reference to a document, which requires no response
4 because the referenced document speaks for itself. To the extent any response to such allegations
5 is necessary, Defendant admits that paragraph 209 quotes and references a portion of a document.
6 Defendant denies each and every other allegation in paragraph 209.

7 210. Paragraph 210 contains legal conclusions and/or argument, which require no
8 response. To the extent any response to such allegations is necessary, Defendant denies each and
9 every such allegation. Paragraph 210 contains references to documents, which require no
10 response because the referenced documents speak for themselves. To the extent any response to
11 such allegations is necessary, Defendant admits that paragraph 210 references portions of
12 documents. Defendant denies each and every allegation in paragraph 210.

13 211. Paragraph 211 contains references to documents, which require no response
14 because the referenced documents speak for themselves. To the extent any response to such
15 allegations is necessary, Defendant admits that paragraph 211 quotes and references AHIMA's
16 2008 practice brief "Managing an Effective Query Process" and AHIMA's 2013 practice brief
17 "Guidelines for Achieving a Compliant Query Practice." Defendant denies each and every other
18 allegation in paragraph 211.

19 212. Paragraph 212 contains allegations that do not reference Defendant, which require
20 no response. To the extent any response to such allegations is necessary, Defendant lacks
21 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
22 such allegation. Paragraph 212 contains references to documents, which require no response
23 because the referenced documents speak for themselves. To the extent any response to such
24 allegations is necessary, Defendant admits that paragraph 212 quotes a portion of a document;
25 Defendant lacks sufficient knowledge to admit or deny the allegation that "a 2011 Northern
26 California training instructed that "[t]he query format should not sound presumptive, directing,
27 prodding, probing, or as though the provider is being led to make an assumption,"" and, on that
28 basis, denies such allegation. Defendant denies each and every other allegation in paragraph 212.

1 213. Paragraph 213 contains legal conclusions and/or argument, which require no
2 response. To the extent any response to such allegations is necessary, Defendant denies each and
3 every such allegation. Defendant denies each and every other allegation in paragraph 213.

4 214. Paragraph 214 contains allegations that do not reference Defendant, which require
5 no response. To the extent any response to such allegations is necessary, Defendant lacks
6 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
7 such allegation. Paragraph 214 contains references to documents, which require no response
8 because the referenced documents speak for themselves. To the extent any response to such
9 allegations is necessary, Defendant admits that paragraph 214 quotes AHIMA's 2008 practice
10 brief "Managing an Effective Query Process," AHIMA's 2013 practice brief "Guidelines for
11 Achieving a Compliant Query Practice," and a document; Defendant lacks sufficient knowledge
12 to admit or deny the allegation that "a 2014 training given by Nancy Andersen (then a Senior
13 Compliance Manager with Kaiser's National Compliance Office) provided the same guidance,"
14 and, on that basis, denies such allegation. Defendant denies each and every other allegation in
15 paragraph 214.

16 215. Paragraph 215 contains legal conclusions and/or argument, which require no
17 response. To the extent any response to such allegations is necessary, Defendant denies each and
18 every such allegation. Defendant denies each and every allegation in paragraph 215.

19 216. Paragraph 216 contains references to documents, which require no response
20 because the referenced documents speak for themselves. To the extent any response to such
21 allegations is necessary, Defendant admits that paragraph 216 quotes and references AHIMA's
22 2008 practice brief "Managing an Effective Query Process" and documents. Defendant denies
23 each and every other allegation in paragraph 216.

24 217. Paragraph 217 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant denies each and
26 every such allegation. Defendant denies each and every allegation in paragraph 217.

27 218. Paragraph 218 contains allegations that do not reference Defendant, which require
28 no response. To the extent any response to such allegations is necessary, Defendant lacks

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Paragraph 218 contains references to documents, which require no response
3 because the referenced documents speak for themselves. To the extent any response to such
4 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
5 and, on that basis, denies each and every such allegation. Defendant denies each and every other
6 allegation in paragraph 218.

7 219. Paragraph 219 contains allegations that do not reference Defendant, which require
8 no response. To the extent any response to such allegations is necessary, Defendant lacks
9 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
10 such allegation. Paragraph 219 contains references to documents, which require no response
11 because the referenced documents speak for themselves. To the extent any response to such
12 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
13 and, on that basis, denies each and every such allegation. Defendant denies each and every other
14 allegation in paragraph 219.

15 220. Answering paragraph 220, Defendant admits that thrombocytopenia is a condition
16 where a patient has a low blood platelet count. Paragraph 220 contains legal conclusions and/or
17 argument, which require no response. To the extent any response to such allegations is necessary,
18 Defendant denies each and every such allegation. Paragraph 220 contains allegations that do not
19 reference Defendant, which require no response. To the extent any response to such allegations is
20 necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
21 basis, denies each and every such allegation. Paragraph 220 contains references to documents,
22 which require no response because the referenced documents speak for themselves. To the extent
23 any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or
24 deny such allegations and, on that basis, denies each and every such allegation. Defendant denies
25 each and every other allegation in paragraph 220.

26 221. Paragraph 221 contains allegations that do not reference Defendant, which require
27 no response. To the extent any response to such allegations is necessary, Defendant lacks
28 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every

1 such allegation. Paragraph 221 contains references to documents, which require no response
2 because the referenced documents speak for themselves. To the extent any response to such
3 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
4 and, on that basis, denies each and every such allegation. Defendant denies each and every other
5 allegation in paragraph 221.

6 222. Paragraph 222 contains allegations that do not reference Defendant, which require
7 no response. To the extent any response to such allegations is necessary, Defendant lacks
8 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
9 such allegation. Paragraph 222 contains reference to a document, which requires no response
10 because the referenced document speaks for itself. To the extent any response to such allegations
11 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
12 basis, denies each and every such allegation. Defendant denies each and every other allegation in
13 paragraph 222.

14 223. Defendant denies each and every allegation in paragraph 223.

15 224. Answering paragraph 224, Defendant admits that cachexia is a complex metabolic
16 syndrome associated with physical wasting, loss of weight, muscle atrophy, fatigue and anorexia,
17 commonly seen with diagnoses such as HIV/AIDS, cancer, and other major chronic progressive
18 diseases. Paragraph 224 contains allegations that do not reference Defendant, which require no
19 response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
20 knowledge to admit or deny such allegations and, on that basis, denies each and every such
21 allegation. Paragraph 224 contains references to documents, which require no response because
22 the referenced documents speak for themselves. To the extent any response to such allegations is
23 necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
24 basis, denies each and every such allegation. Defendant denies each and every other allegation in
25 paragraph 224.

26 225. Paragraph 225 contains allegations that do not reference Defendant, which require
27 no response. To the extent any response to such allegations is necessary, Defendant lacks
28 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every

1 such allegation. Paragraph 225 contains references to documents, which require no response
2 because the referenced documents speak for themselves. To the extent any response to such
3 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
4 and, on that basis, denies each and every such allegation. Defendant denies each and every other
5 allegation in paragraph 225.

6 226. Paragraph 226 contains allegations that do not reference Defendant, which require
7 no response. To the extent any response to such allegations is necessary, Defendant lacks
8 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
9 such allegation. Paragraph 226 contains reference to a document, which requires no response
10 because the referenced document speaks for itself. To the extent any response to such allegations
11 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
12 basis, denies each and every such allegation. Defendant denies each and every other allegation in
13 paragraph 226.

14 227. Answering paragraph 227, Defendant admits that CMS removed hypoxia from the
15 CMS-HCC risk adjustment model. Paragraph 227 contains reference to a document, which
16 requires no response because the referenced document speaks for itself. To the extent any
17 response to such allegations is necessary, Defendant admits that paragraph 227 quotes a portion
18 of a “Medicare Query.” To the extent paragraph 227 references other paragraphs of the Amended
19 Complaint, *see* Defendant’s responses to those paragraphs, which are incorporated herein.
20 Defendant denies each and every other allegation in paragraph 227.

21 228. Paragraph 228 contains references to documents, which require no response
22 because the referenced documents speak for themselves. To the extent any response to such
23 allegations is necessary, Defendant admits that paragraph 228 quotes and references portions of a
24 “Medicare Query” and medical record. Defendant denies each and every other allegation in
25 paragraph 228.

26 229. Answering paragraph 229, Defendant admits that in October 2013, Nancy
27 Andersen emailed Dr. Teresa Welsh (then Director of Coding, CPMG) that a Medicare Query
28 template being used by CPMG might be interpreted as leading by CMS; that in October 2013,

1 Andersen sent Dr. Welsh a copy of an AHIMA practice brief titled “Managing an Effective
2 Query Process.” Defendant denies each and every other allegation in paragraph 229.

3 230. Defendant denies each and every allegation in paragraph 230.

4 231. Paragraph 231 contains allegations that do not reference Defendant, which require
5 no response. To the extent any response to such allegations is necessary, Defendant lacks
6 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
7 such allegation. Paragraph 231 contains reference to a document, which requires no response
8 because the referenced document speaks for itself. To the extent any response to such allegations
9 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
10 basis, denies each and every such allegation. Defendant denies each and every other allegation in
11 paragraph 231.

12 232. Paragraph 232 contains allegations that do not reference Defendant, which require
13 no response. To the extent any response to such allegations is necessary, Defendant lacks
14 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
15 such allegation. Paragraph 232 contains reference to a document, which requires no response
16 because the referenced document speaks for itself. To the extent any response to such allegations
17 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
18 basis, denies each and every such allegation. Defendant denies each and every other allegation in
19 paragraph 232.

20 233. Paragraph 233 contains references to documents, which require no response
21 because the referenced documents speak for themselves. To the extent any response to such
22 allegations is necessary, Defendant admits that paragraph 233 quotes and references portions of
23 “Medicare Queries.” Defendant denies each and every other allegation in paragraph 233.

24 **2. KAISER USED “SMARTPHRASES” TO MAKE IT EASY FOR**
25 **PHYSICIANS TO CREATE ADDENDA EVEN WHEN THE**
26 **CONDITION DID NOT REQUIRE OR AFFECT PATIENT CARE,**
TREATMENT, OR MANAGEMENT.

27 234. Answering paragraph 234, Defendant admits that, during at least some of the
28 relevant period, SmartPhrases were a tool within Defendants’ electronic-health-record system that

1 allowed users to insert specific text by typing a short abbreviation. Defendant denies each and
2 every other allegation in paragraph 234.

3 235. Answering paragraph 235, Defendant admits that, during at least some of the
4 relevant period: Defendant Permanente Medical Groups' employees created multiple
5 SmartPhrases; that Defendant Permanente Medical Groups' physicians received guidance on how
6 to use SmartPhrases when creating addenda; the input language varied over time and across
7 regions. Defendant denies each and every other allegation in paragraph 235.

8 236. Paragraph 236 contains allegations that do not reference Defendant, which require
9 no response. To the extent any response to such allegations is necessary, Defendant lacks
10 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
11 allegation in paragraph 236.

12 237. Paragraph 237 contains allegations that do not reference Defendant, which require
13 no response. To the extent any response to such allegations is necessary, Defendant lacks
14 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
15 allegation in paragraph 237.

16 238. Paragraph 238 contains allegations that do not reference Defendant, which require
17 no response. To the extent any response to such allegations is necessary, Defendant lacks
18 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
19 allegation in paragraph 238.

20 239. Paragraph 239 contains allegations that do not reference Defendant, which require
21 no response. To the extent any response to such allegations is necessary, Defendant lacks
22 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
23 such allegation. Defendant denies each and every other allegation in paragraph 239.

24 240. Paragraph 240 contains allegations that do not reference Defendant, which require
25 no response. To the extent any response to such allegations is necessary, Defendant lacks
26 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
27 such allegation. Paragraph 240 contains reference to a document, which requires no response
28 because the referenced document speaks for itself. To the extent any response to such allegations

1 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
2 basis, denies each and every such allegation. Defendant denies each and every other allegation in
3 paragraph 240.

4 241. Paragraph 241 contains allegations that do not reference Defendant, which require
5 no response. To the extent any response to such allegations is necessary, Defendant lacks
6 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
7 such allegation. Paragraph 241 contains reference to a document, which requires no response
8 because the referenced document speaks for itself. To the extent any response to such allegations
9 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
10 basis, denies each and every such allegation. Defendant denies each and every other allegation in
11 paragraph 241.

12 242. Paragraph 242 contains allegations that do not reference Defendant, which require
13 no response. To the extent any response to such allegations is necessary, Defendant lacks
14 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
15 such allegation. Paragraph 242 contains reference to a document, which requires no response
16 because the referenced document speaks for itself. To the extent any response to such allegations
17 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
18 basis, denies each and every such allegation. Defendant denies each and every other allegation in
19 paragraph 242.

20 **3. KAISER PRESSURED PHYSICIANS BY REQUIRING THEM TO**
21 **JUSTIFY REFUSALS TO ADD DIAGNOSES.**

22 243. Defendant denies each and every allegation in paragraph 243.

23 244. Paragraph 244 contains allegations that do not reference Defendant, which require
24 no response. To the extent any response to such allegations is necessary, Defendant lacks
25 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
26 such allegation. Paragraph 244 references the content of an image, which requires no response
27 because the referenced image speaks for itself. To the extent any response to such allegations is
28 necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that

1 basis, denies each and every allegation. To the extent paragraph 244 references other paragraphs
2 of the Amended Complaint, *see* Defendant's responses to those paragraphs, which are
3 incorporated herein. Defendant denies each and every other allegation in paragraph 244.

4 245. Defendant denies each and every allegation in paragraph 245.

5 246. Paragraph 246 contains allegations that do not reference Defendant, which require
6 no response. To the extent any response to such allegations is necessary, Defendant lacks
7 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
8 such allegation. Defendant denies each and every other allegation in paragraph 246.

9 247. Paragraph 247 contains allegations that do not reference Defendant, which require
10 no response. To the extent any response to such allegations is necessary, Defendant lacks
11 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
12 such allegation. Paragraph 247 contains reference to a document, which requires no response
13 because the referenced document speaks for itself. To the extent any response to such allegations
14 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
15 basis, denies each and every such allegation. Defendant denies each and every other allegation in
16 paragraph 247.

17 248. Paragraph 248 contains allegations that do not reference Defendant, which require
18 no response. To the extent any response to such allegations is necessary, Defendant lacks
19 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
20 such allegation. Defendant denies each and every other allegation in paragraph 248.

21 249. Paragraph 249 contains allegations that do not reference Defendant, which require
22 no response. To the extent any response to such allegations is necessary, Defendant lacks
23 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
24 such allegation. Defendant denies each and every other allegation in paragraph 249.

25 250. Paragraph 250 contains allegations that do not reference Defendant, which require
26 no response. To the extent any response to such allegations is necessary, Defendant lacks
27 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
28 such allegation. Paragraph 250 contains reference to a document, which requires no response

1 because the referenced document speaks for itself. To the extent any response to such allegations
2 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
3 basis, denies each and every such allegation. Defendant denies each and every other allegation in
4 paragraph 250.

5 **4. KAISER USED FINANCIAL INCENTIVES AND OTHER**
6 **METRICS TO PRESSURE PERMANENTE MEDICAL GROUP**
7 **PHYSICIANS TO CREATE ADDENDA.**

8 251. Defendant denies each and every allegation in paragraph 251.

9 252. Defendant denies each and every allegation in paragraph 252.

10 253. Paragraph 253 contains allegations that do not reference Defendant, which require
11 no response. To the extent any response to such allegations is necessary, Defendant lacks
12 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
13 such allegation. Paragraph 253 contains reference to a document, which requires no response
14 because the referenced document speaks for itself. To the extent any response to such allegations
15 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
16 basis, denies each and every such allegation. Defendant denies each and every other allegation in
17 paragraph 253.

18 254. Paragraph 254 contains allegations that do not reference Defendant, which require
19 no response. To the extent any response to such allegations is necessary, Defendant lacks
20 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
21 such allegation. Paragraph 254 contains reference to a document, which requires no response
22 because the referenced document speaks for itself. To the extent any response to such allegations
23 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
24 basis, denies each and every such allegation. Defendant denies each and every other allegation in
25 paragraph 254.

26 255. Paragraph 255 contains reference to a document, which requires no response
27 because the referenced document speaks for itself. To the extent any response to such allegations
28 is necessary, Defendant admits that paragraph 255 quotes and references a portion of a document.
Defendant denies each and every other allegation in paragraph 255.

1 256. Paragraph 256 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant lacks
3 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
4 such allegation. Paragraph 256 contains reference to a document, which requires no response
5 because the referenced document speaks for itself. To the extent any response to such allegations
6 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
7 basis, denies each and every such allegation. Defendant lacks sufficient knowledge to admit or
8 deny each and every other allegation in paragraph 256 and, on that basis, denies each and every
9 such allegation.

10 257. Paragraph 257 contains allegations that do not reference Defendant, which require
11 no response. To the extent any response to such allegations is necessary, Defendant lacks
12 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
13 such allegation. Defendant denies each and every other allegation in paragraph 257.

14 258. Answering paragraph 258, Defendant admits that, in 2013, it compensated
15 Defendant's physicians with overtime payments for overtime attributed to responding to all
16 pending queries by the end of the year. Paragraph 258 contains reference to a document, which
17 requires no response because the referenced document speaks for itself. To the extent any
18 response to such allegations is necessary, Defendant admits that paragraph 258 references a
19 portion of a document. Defendant denies each and every other allegation in paragraph 258.

20 259. Answering paragraph 259, Defendant admits that, in 2014, Defendant's employees
21 considered compensating Defendant's physicians with overtime payments totaling in aggregate
22 thousands of dollars more than the 2013 figure. Paragraph 259 contains reference to a document,
23 which requires no response because the referenced document speaks for itself. To the extent any
24 response to such allegations is necessary, Defendant admits that paragraph 259 references a
25 portion of a document. Defendant denies each and every other allegation in paragraph 259.

26 260. Paragraph 260 contains allegations that do not reference Defendant, which require
27 no response. To the extent any response to such allegations is necessary, Defendant lacks
28 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every

1 such allegation. Paragraph 260 contains reference to a document, which requires no response
2 because the referenced document speaks for itself. To the extent any response to such allegations
3 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
4 basis, denies each and every such allegation. Defendant denies each and every other allegation in
5 paragraph 260.

6 **D. HOW KAISER TARGETED THE DIAGNOSIS AORTIC**
7 **ATHEROSCLEROSIS TO INCREASE RISK-ADJUSTMENT PAYMENTS:**
8 **“\$40M IS NO CHUMP CHANGE.”**

9 261. Answering paragraph 261, Defendant admits that, during at least some of the
10 relevant period, Defendant’s employees performed activities to document the presence of the
11 condition atherosclerosis of the aorta (“AA”). Answering paragraph 261, Defendant admits that
12 atherosclerosis of the aorta is the hardening of the artery walls of the aorta. Paragraph 261
13 contains allegations that do not reference Defendant, which require no response. To the extent
14 any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or
15 deny such allegations and, on that basis, denies each and every such allegation. Paragraph 261
16 contains reference to a document, which requires no response because the referenced document
17 speaks for itself. To the extent any response to such allegations is necessary, Defendant lacks
18 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
19 such allegation. Defendant denies each and every other allegation in paragraph 261.

20 262. Paragraph 262 contains allegations that do not reference Defendant, which require
21 no response. To the extent any response to such allegations is necessary, Defendant lacks
22 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
23 such allegation. Defendant denies each and every other allegation in paragraph 262.

24 263. Paragraph 263 contains allegations that do not reference Defendant, which require
25 no response. To the extent any response to such allegations is necessary, Defendant lacks
26 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
27 such allegation. Paragraph 263 references the content of an image, which requires no response
28 because the referenced image speaks for itself. To the extent any response to such allegations is
necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that

1 basis, denies each and every such allegation. Defendant denies each and every other allegation in
2 paragraph 263.

3 264. Paragraph 264 contains reference to a document, which requires no response
4 because the referenced document speaks for itself. To the extent any response to such allegations
5 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
6 basis, denies each and every such allegation. Defendant denies each and every other allegation in
7 paragraph 264.

8 265. Paragraph 265 contains allegations that do not reference Defendant, which require
9 no response. To the extent any response to such allegations is necessary, Defendant lacks
10 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
11 such allegation. Paragraph 265 contains reference to a document, which requires no response
12 because the referenced document speaks for itself. To the extent any response to such allegations
13 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
14 basis, denies each and every such allegation. Defendant denies each and every other allegation in
15 paragraph 265.

16 266. Paragraph 266 contains allegations that do not reference Defendant, which require
17 no response. To the extent any response to such allegations is necessary, Defendant lacks
18 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
19 such allegation. Paragraph 266 contains reference to a document, which requires no response
20 because the referenced document speaks for itself. To the extent any response to such allegations
21 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
22 basis, denies each and every such allegation. Defendant denies each and every other allegation in
23 paragraph 266.

24 267. Paragraph 267 contains allegations that do not reference Defendant, which require
25 no response. To the extent any response to such allegations is necessary, Defendant lacks
26 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
27 such allegation. Defendant denies each and every other allegation in paragraph 267.
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1 268. Paragraph 268 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant lacks
3 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
4 such allegation. Paragraph 268 contains reference to a document, which requires no response
5 because the referenced document speaks for itself. To the extent any response to such allegations
6 is necessary, Defendant admits that paragraph 268 quotes a portion of the transcript of the
7 October 5, 2020 testimony of Karen Graham (former Managing Director, EIO) pursuant to a Civil
8 Investigative Demand. Defendant denies each and every other allegation in paragraph 268.

9 269. Paragraph 269 contains allegations that do not reference Defendant, which require
10 no response. To the extent any response to such allegations is necessary, Defendant lacks
11 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
12 such allegation. Defendant denies each and every other allegation in paragraph 269.

13 270. Paragraph 270 contains allegations that do not reference Defendant, which require
14 no response. To the extent any response to such allegations is necessary, Defendant lacks
15 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
16 such allegation. Paragraph 270 contains reference to a document, which requires no response
17 because the referenced document speaks for itself. To the extent any response to such allegations
18 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
19 basis, denies each and every such allegation. Defendant denies each and every other allegation in
20 paragraph 270.

21 271. Paragraph 271 contains allegations that do not reference Defendant, which require
22 no response. To the extent any response to such allegations is necessary, Defendant lacks
23 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
24 such allegation. Paragraph 271 contains reference to a document, which requires no response
25 because the referenced document speaks for itself. To the extent any response to such allegations
26 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
27 basis, denies each and every such allegation. Defendant denies each and every other allegation in
28 paragraph 271.

1 272. Paragraph 272 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant lacks
3 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
4 such allegation. Paragraph 272 contains reference to a document, which requires no response
5 because the referenced document speaks for itself. To the extent any response to such allegations
6 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
7 basis, denies each and every such allegation. Defendant denies each and every other allegation in
8 paragraph 272.

9 273. Paragraph 273 contains allegations that do not reference Defendant, which require
10 no response. To the extent any response to such allegations is necessary, Defendant lacks
11 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
12 such allegation. Paragraph 273 contains reference to a document, which requires no response
13 because the referenced document speaks for itself. To the extent any response to such allegations
14 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
15 basis, denies each and every such allegation. Defendant denies each and every other allegation in
16 paragraph 273.

17 274. Defendant denies each and every allegation in paragraph 274.

18 275. Defendant denies each and every allegation in paragraph 275.

19 276. Paragraph 276 contains legal conclusions and/or argument, which require no
20 response. To the extent any response to such allegations is necessary, Defendant admits that
21 paragraph 276 references the ICD Guidelines. Paragraph 276 contains allegations that do not
22 reference Defendant, which require no response. To the extent any response to such allegations is
23 necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
24 basis, denies each and every such allegation. Paragraph 276 contains reference to a document,
25 which requires no response because the referenced document speaks for itself. To the extent any
26 response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny
27 such allegations and, on that basis, denies each and every such allegation. To the extent
28 paragraph 276 references other paragraphs of the Amended Complaint, *see* Defendant's responses

1 to those paragraphs, which are incorporated herein. Defendant denies each and every other
2 allegation in paragraph 276.

3 277. Paragraph 277 contains allegations that do not reference Defendant, which require
4 no response. To the extent any response to such allegations is necessary, Defendant lacks
5 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
6 allegation in paragraph 277. Defendant denies each and every other allegation in paragraph 277.

7 278. Paragraph 278 contains allegations that do not reference Defendant, which require
8 no response. To the extent any response to such allegations is necessary, Defendant lacks
9 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
10 such allegation. Due to the non-specific and vague nature of Plaintiff's allegations, Defendant
11 lacks sufficient information to admit or deny the other allegations in paragraph 278 and, on that
12 basis, denies each and every other allegation in paragraph 278.

13 279. Paragraph 279 contains legal conclusions and/or argument, which require no
14 response. To the extent any response to such allegations is necessary, Defendant denies each and
15 every such allegation. Defendant denies each and every other allegation in paragraph 279.

16 280. Paragraph 280 contains allegations that do not reference Defendant, which require
17 no response. To the extent any response to such allegations is necessary, Defendant lacks
18 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
19 such allegation. Paragraph 280 contains references to documents, which require no response
20 because the referenced documents speak for themselves. To the extent any response to such
21 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
22 and, on that basis, denies each and every such allegation. Defendant denies each and every other
23 allegation in paragraph 280.

24 281. Answering paragraph 281, Defendant admits that, during at least some of the
25 relevant period, the Professional Documentation and Coding Group, also known as the Physician
26 Documentation and Coding Group, was a group of physicians from multiple regions that provided
27 advice relating to documentation and diagnosis coding. Paragraph 281 contains reference to a
28 document, which requires no response because the referenced document speaks for itself. To the

1 extent any response to such allegations is necessary, Defendant admits that paragraph 281 quotes
2 and references a portion of a document. Defendant denies each and every other allegation in
3 paragraph 281.

4 282. Defendant denies each and every allegation in paragraph 282.

5 283. Paragraph 283 contains allegations that do not reference Defendant, which require
6 no response. To the extent any response to such allegations is necessary, Defendant lacks
7 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
8 such allegation. Paragraph 283 contains reference to a document, which requires no response
9 because the referenced document speaks for itself. To the extent any response to such allegations
10 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
11 basis, denies each and every such allegation. Defendant denies each and every other allegation in
12 paragraph 283.

13 284. Paragraph 284 contains legal conclusions and/or argument, which require no
14 response. To the extent any response to such allegations is necessary, Defendant denies each and
15 every such allegation. Defendant denies each and every allegation in paragraph 284.

16 285. Paragraph 285 contains allegations that do not reference Defendant, which require
17 no response. To the extent any response to such allegations is necessary, Defendant lacks
18 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
19 such allegation. Defendant denies each and every other allegation in paragraph 285.

20 286. Paragraph 286 contains allegations that do not reference Defendant, which require
21 no response. To the extent any response to such allegations is necessary, Defendant lacks
22 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
23 such allegation. Defendant denies each and every other allegation in paragraph 286.

24 **E. KAISER KNEW THAT ITS PRACTICES RESULTED IN THE ADDITION**
25 **OF IMPROPER DIAGNOSES TO PATIENT MEDICAL RECORDS.**

26 287. Defendant denies each and every allegation in paragraph 287.
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1. KAISER KNEW THAT ITS USE OF ADDENDA TO ADD RISK-ADJUSTMENT DIAGNOSES DID NOT COMPLY WITH CMS RULES FOR SUBMISSION OF DIAGNOSES FOR RISK-ADJUSTMENT PAYMENT.

288. Paragraph 288 contains legal conclusions and/or argument, which require no response. To the extent any response to such allegations is necessary, Defendant denies each and every such allegation. Defendant denies each and every other allegation in paragraph 288.

289. Paragraph 289 contains reference to a document, which requires no response because the referenced document speaks for itself. To the extent any response to such allegations is necessary, Defendant admits that paragraph 289 quotes and references a portion of a document. Defendant denies each and every other allegation in paragraph 289.

290. Paragraph 290 contains reference to a document, which requires no response because the referenced document speaks for itself. To the extent any response to such allegations is necessary, Defendant admits that paragraph 290 quotes a portion of a document. Defendant denies each and every other allegation in paragraph 290.

291. Paragraph 291 contains allegations that do not reference Defendant, which require no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every such allegation. Paragraph 291 contains references to documents, which require no response because the referenced documents speak for themselves. To the extent any response to such allegations is necessary, Defendant admits that paragraph 291 references a portion of a document; Defendant lacks sufficient knowledge to admit or deny allegations regarding “a 2011 Northern California training” and “a 2015 Northern California training,” and, on that basis, denies each and every such allegation. Defendant denies each and every other allegation in paragraph 291.

292. Paragraph 292 contains reference to a document, which requires no response because the referenced document speaks for itself. To the extent any response to such allegations is necessary, Defendant admits that paragraph 292 quotes a portion of a document. Defendant denies each and every other allegation in paragraph 292.

1 293. Paragraph 293 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant lacks
3 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
4 such allegation. Paragraph 293 contains reference to a document, which requires no response
5 because the referenced document speaks for itself. To the extent any response to such allegations
6 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
7 basis, denies each and every such allegation. Defendant denies each and every other allegation in
8 paragraph 293.

9 **2. KAISER PUSHED FOR ADDENDA REGARDLESS OF HOW**
10 **MUCH TIME HAD PASSED SINCE THE PATIENT VISIT,**
11 **ESPECIALLY AT THE END OF THE YEAR.**

12 294. Defendant denies each and every allegation in paragraph 294.

13 295. Paragraph 295 contains references to documents, which require no response
14 because the referenced documents speak for themselves. To the extent any response to such
15 allegations is necessary, Defendant admits that paragraph 295 quotes and references portions of
16 documents. Defendant denies each and every other allegation in paragraph 295.

17 296. Paragraph 296 contains reference to a document, which requires no response
18 because the referenced document speaks for itself. To the extent any response to such allegations
19 is necessary, Defendant admits that paragraph 296 references and attempts to quote a portion of
20 the transcript of the October 1, 2020 testimony of Nancy Andersen pursuant to a Civil
21 Investigative Demand. Defendant denies each and every other allegation in paragraph 296.

22 297. Paragraph 297 contains reference to a document, which requires no response
23 because the referenced document speaks for itself. To the extent any response to such allegations
24 is necessary, Defendant admits that paragraph 297 references and attempts to quote a portion of
25 the transcript of the October 7, 2020 testimony of Janet Franklin pursuant to a Civil Investigative
26 Demand. Defendant denies each and every other allegation in paragraph 297.

27 298. Defendant denies each and every allegation in paragraph 298.

28 299. Defendant denies each and every allegation in paragraph 299.

1 300. Paragraph 300 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant lacks
3 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
4 such allegation. Due to the non-specific and vague nature of Plaintiff’s allegations, Defendant
5 lacks sufficient information to admit or deny the allegation that “[m]ore than 6,000 diagnoses
6 were added over a year after the patient visit,” and on that basis, denies such allegation.
7 Defendant denies each and every other allegation in paragraph 300.

8 301. Due to the non-specific and vague nature of Plaintiff’s allegations, Defendant
9 lacks sufficient information to admit or deny the allegations in paragraph 301, and on that basis,
10 denies each and every allegation in paragraph 301.

11 302. Paragraph 302 contains allegations that do not reference Defendant, which require
12 no response. To the extent any response to such allegations is necessary, Defendant lacks
13 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
14 such allegation. Due to the non-specific and vague nature of Plaintiff’s allegations, Defendant
15 lacks sufficient information to admit or deny the other allegations in paragraph 302 and, on that
16 basis, denies each and every other allegation in paragraph 302.

17 303. Paragraph 303 contains allegations that do not reference Defendant, which require
18 no response. To the extent any response to such allegations is necessary, Defendant lacks
19 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
20 such allegation. Due to the non-specific and vague nature of Plaintiff’s allegations, Defendant
21 lacks sufficient information to admit or deny the other allegations in paragraph 303 and, on that
22 basis, denies each and every other allegation in paragraph 303.

23 304. Paragraph 304 contains allegations that do not reference Defendant, which require
24 no response. To the extent any response to such allegations is necessary, Defendant lacks
25 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
26 such allegation. Due to the non-specific and vague nature of Plaintiff’s allegations, Defendant
27 lacks sufficient information to admit or deny the other allegations in paragraph 304 and, on that
28 basis, denies each and every other allegation in paragraph 304.

1 305. Defendant denies each and every allegation in paragraph 305.

2 306. Answering paragraph 306, Defendant admits that, in January 2014, physicians
3 could no longer hold medical visits for the 2013 service year. Paragraph 306 contains legal
4 conclusions and/or argument, which require no response. To the extent any response to such
5 allegations is necessary, Defendant denies each and every such allegation. Paragraph 306
6 contains references to documents, which require no response because the referenced documents
7 speak for themselves. To the extent any response to such allegations is necessary, Defendant
8 admits that paragraph 306 quotes and references portions of documents. Defendant denies each
9 and every other allegation in paragraph 306.

10 **3. KAISER PHYSICIANS PUT KAISER ON FURTHER NOTICE OF**
11 **FRAUDULENT DIAGNOSES.**

12 307. Defendant denies each and every allegation in paragraph 307.

13 308. Paragraph 308 contains allegations that do not reference Defendant, which require
14 no response. To the extent any response to such allegations is necessary, Defendant lacks
15 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
16 such allegation. Paragraph 308 contains reference to a document, which requires no response
17 because the referenced document speaks for itself. To the extent any response to such allegations
18 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
19 basis, denies each and every such allegation. Defendant denies each and every other allegation in
20 paragraph 308.

21 309. Paragraph 309 contains allegations that do not reference Defendant, which require
22 no response. To the extent any response to such allegations is necessary, Defendant lacks
23 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
24 such allegation. Paragraph 309 contains reference to a document, which requires no response
25 because the referenced document speaks for itself. To the extent any response to such allegations
26 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
27 basis, denies each and every such allegation. Defendant denies each and every other allegation in
28 paragraph 309.

1 310. Paragraph 310 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant lacks
3 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
4 such allegation. Paragraph 310 contains reference to a document, which requires no response
5 because the referenced document speaks for itself. To the extent any response to such allegations
6 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
7 basis, denies each and every such allegation. Defendant denies each and every other allegation in
8 paragraph 310.

9 311. Paragraph 311 contains allegations that do not reference Defendant, which require
10 no response. To the extent any response to such allegations is necessary, Defendant lacks
11 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
12 such allegation. Paragraph 311 contains reference to a document, which requires no response
13 because the referenced document speaks for itself. To the extent any response to such allegations
14 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
15 basis, denies each and every such allegation. Defendant denies each and every other allegation in
16 paragraph 311.

17 312. Paragraph 312 contains allegations that do not reference Defendant, which require
18 no response. To the extent any response to such allegations is necessary, Defendant lacks
19 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
20 such allegation. Paragraph 312 contains reference to a document, which requires no response
21 because the referenced document speaks for itself. To the extent any response to such allegations
22 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
23 basis, denies each and every such allegation. Defendant denies each and every other allegation in
24 paragraph 312.

25 313. Paragraph 313 contains allegations that do not reference Defendant, which require
26 no response. To the extent any response to such allegations is necessary, Defendant lacks
27 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
28 such allegation. Paragraph 313 contains reference to a document, which requires no response

1 because the referenced document speaks for itself. To the extent any response to such allegations
2 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
3 basis, denies each and every such allegation. Defendant denies each and every other allegation in
4 paragraph 313.

5 314. Defendant denies each and every allegation in paragraph 314.

6 315. Paragraph 315 contains allegations that do not reference Defendant, which require
7 no response. To the extent any response to such allegations is necessary, Defendant lacks
8 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
9 such allegation. Paragraph 315 contains reference to a document, which requires no response
10 because the referenced document speaks for itself. To the extent any response to such allegations
11 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
12 basis, denies each and every such allegation. Defendant denies each and every other allegation in
13 paragraph 315.

14 316. Paragraph 316 contains allegations that do not reference Defendant, which require
15 no response. To the extent any response to such allegations is necessary, Defendant lacks
16 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
17 such allegation. Defendant denies each and every other allegation in paragraph 316.

18 317. Defendant denies each and every allegation in paragraph 317.

19 318. Paragraph 318 contains allegations that do not reference Defendant, which require
20 no response. To the extent any response to such allegations is necessary, Defendant lacks
21 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
22 such allegation. Paragraph 318 contains reference to a document, which requires no response
23 because the referenced document speaks for itself. To the extent any response to such allegations
24 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
25 basis, denies each and every such allegation. Defendant denies each and every other allegation in
26 paragraph 318.

27 319. Paragraph 319 contains allegations that do not reference Defendant, which require
28 no response. To the extent any response to such allegations is necessary, Defendant lacks

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Paragraph 319 contains reference to a document, which requires no response
3 because the referenced document speaks for itself. To the extent any response to such allegations
4 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
5 basis, denies each and every such allegation. Defendant denies each and every other allegation in
6 paragraph 319.

7 320. Paragraph 320 contains allegations that do not reference Defendant, which require
8 no response. To the extent any response to such allegations is necessary, Defendant lacks
9 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
10 such allegation. Paragraph 320 contains reference to a document, which requires no response
11 because the referenced document speaks for itself. To the extent any response to such allegations
12 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
13 basis, denies each and every such allegation. Defendant denies each and every other allegation in
14 paragraph 320.

15 321. Paragraph 321 contains allegations that do not reference Defendant, which require
16 no response. To the extent any response to such allegations is necessary, Defendant lacks
17 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
18 such allegation. Due to the non-specific and vague nature of Plaintiff's allegations, Defendant
19 lacks sufficient information to admit or deny the other allegations in paragraph 321, and on that
20 basis, denies each and every other allegation in paragraph 321.

21 322. Paragraph 322 contains reference to a document, which requires no response
22 because the referenced document speaks for itself. To the extent any response to such allegations
23 is necessary, Defendant admits that paragraph 322 quotes and references a portion of a document.
24 Defendant denies each and every other allegation in paragraph 322.

25 323. Paragraph 323 contains allegations that do not reference Defendant, which require
26 no response. To the extent any response to such allegations is necessary, Defendant lacks
27 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
28 such allegation. Paragraph 323 contains reference to a document, which requires no response

1 because the referenced document speaks for itself. To the extent any response to such allegations
2 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
3 basis, denies each and every such allegation. Defendant denies each and every other allegation in
4 paragraph 323.

5 **4. KAISER'S INTERNAL AUDITS PUT KAISER ON FURTHER**
6 **NOTICE OF FRAUDULENT DIAGNOSES.**

7 324. Paragraph 324 contains legal conclusions and/or argument, which require no
8 response. To the extent any response to such allegations is necessary, Defendant admits that
9 paragraph 324 quotes and references 42 C.F.R. § 422.503(b)(4)(vi) and 422.503(b)(4)(vi)(G).
10 Defendant denies each and every other allegation in paragraph 324.

11 325. Paragraph 325 contains legal conclusions and/or argument, which require no
12 response. To the extent any response to such allegations is necessary, Defendant admits that
13 paragraph 325 references and attempts to quote 42 C.F.R. § 422.503(b)(4)(vi)(G). Defendant
14 denies each and every allegation in paragraph 325.

15 326. Defendant denies each and every allegation in paragraph 326.

16 327. Paragraph 327 contains allegations that do not reference Defendant, which require
17 no response. To the extent any response to such allegations is necessary, Defendant lacks
18 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
19 such allegation. Paragraph 327 contains reference to a document, which requires no response
20 because the referenced document speaks for itself. To the extent any response to such allegations
21 is necessary, Defendant admits that paragraph 327 quotes a portion of a document. Defendant
22 denies each and every other allegation in paragraph 327.

23 328. Answering paragraph 328, Defendant admits that, during at least some of the
24 relevant period, the Government Audit & Reimbursement Team conducted annual audits of
25 Defendant regions, called "probe" audits. Paragraph 328 contains reference to a document, which
26 requires no response because the referenced document speaks for itself. To the extent any
27 response to such allegations is necessary, Defendant admits that paragraph 328 quotes and
28 references a portion of a document; Defendant lacks sufficient knowledge to admit or deny the

1 allegation that “[t]hey were designed to ‘[e]nsure accurate risk adjustment data submission and
2 payment integrity,’” and, on that basis, denies such allegation. Defendant denies each and every
3 other allegation in paragraph 328.

4 329. Paragraph 329 contains allegations that do not reference Defendant, which require
5 no response. To the extent any response to such allegations is necessary, Defendant lacks
6 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
7 such allegation. Paragraph 329 contains reference to a document, which requires no response
8 because the referenced document speaks for itself. To the extent any response to such allegations
9 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
10 basis, denies each and every such allegation. Defendant denies each and every other allegation in
11 paragraph 329.

12 330. Paragraph 330 contains allegations that do not reference Defendant, which require
13 no response. To the extent any response to such allegations is necessary, Defendant lacks
14 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
15 such allegation. Paragraph 330 contains reference to a document, which requires no response
16 because the referenced document speaks for itself. To the extent any response to such allegations
17 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
18 basis, denies each and every such allegation. Defendant denies each and every other allegation in
19 paragraph 330.

20 331. Paragraph 331 contains allegations that do not reference Defendant, which require
21 no response. To the extent any response to such allegations is necessary, Defendant lacks
22 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
23 such allegation. Defendant denies each and every other allegation in paragraph 331.

24 332. Paragraph 332 contains allegations that do not reference Defendant, which require
25 no response. To the extent any response to such allegations is necessary, Defendant lacks
26 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
27 such allegation. Paragraph 332 contains reference to a document, which requires no response
28 because the referenced document speaks for itself. To the extent any response to such allegations

1 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
2 basis, denies each and every such allegation. Defendant denies each and every other allegation in
3 paragraph 332.

4 333. Paragraph 333 contains allegations that do not reference Defendant, which require
5 no response. To the extent any response to such allegations is necessary, Defendant lacks
6 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
7 such allegation. Defendant denies each and every other allegation in paragraph 333.

8 334. Paragraph 334 contains allegations that do not reference Defendant, which require
9 no response. To the extent any response to such allegations is necessary, Defendant lacks
10 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
11 such allegation. Defendant denies each and every other allegation in paragraph 334.

12 335. Paragraph 335 contains allegations that do not reference Defendant, which require
13 no response. To the extent any response to such allegations is necessary, Defendant lacks
14 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
15 such allegation. Defendant denies each and every other allegation in paragraph 335.

16 336. Paragraph 336 contains allegations that do not reference Defendant, which require
17 no response. To the extent any response to such allegations is necessary, Defendant lacks
18 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
19 such allegation. Defendant denies each and every other allegation in paragraph 336.

20 337. Paragraph 337 contains allegations that do not reference Defendant, which require
21 no response. To the extent any response to such allegations is necessary, Defendant lacks
22 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
23 such allegation. Defendant denies each and every other allegation in paragraph 337.

24 338. Paragraph 338 contains allegations that do not reference Defendant, which require
25 no response. To the extent any response to such allegations is necessary, Defendant lacks
26 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
27 such allegation. Defendant denies each and every other allegation in paragraph 338.
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1 339. Paragraph 339 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant lacks
3 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
4 such allegation. Paragraph 339 contains reference to a document, which requires no response
5 because the referenced document speaks for itself. To the extent any response to such allegations
6 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
7 basis, denies each and every such allegation. Defendant denies each and every other allegation in
8 paragraph 339.

9 340. Paragraph 340 contains allegations that do not reference Defendant, which require
10 no response. To the extent any response to such allegations is necessary, Defendant lacks
11 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
12 such allegation. Paragraph 340 contains reference to a document, which requires no response
13 because the referenced document speaks for itself. To the extent any response to such allegations
14 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
15 basis, denies each and every such allegation. Defendant denies each and every other allegation in
16 paragraph 340.

17 341. Paragraph 341 contains allegations that do not reference Defendant, which require
18 no response. To the extent any response to such allegations is necessary, Defendant lacks
19 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
20 such allegation. Defendant denies each and every other allegation in paragraph 341.

21 342. Paragraph 342 contains allegations that do not reference Defendant, which require
22 no response. To the extent any response to such allegations is necessary, Defendant lacks
23 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
24 such allegation. Defendant denies each and every other allegation in paragraph 342.

25 343. Paragraph 343 contains allegations that do not reference Defendant, which require
26 no response. To the extent any response to such allegations is necessary, Defendant lacks
27 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
28 such allegation. Paragraph 343 contains reference to a document, which requires no response

1 because the referenced document speaks for itself. To the extent any response to such allegations
2 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
3 basis, denies each and every such allegation. Defendant denies each and every other allegation in
4 paragraph 343.

5 344. Paragraph 344 contains allegations that do not reference Defendant, which require
6 no response. To the extent any response to such allegations is necessary, Defendant lacks
7 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
8 such allegation. Paragraph 344 contains reference to a document, which requires no response
9 because the referenced document speaks for itself. To the extent any response to such allegations
10 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
11 basis, denies each and every such allegation. Defendant denies each and every other allegation in
12 paragraph 344.

13 345. Defendant denies each and every allegation in paragraph 345.

14 346. Paragraph 346 contains allegations that do not reference Defendant, which require
15 no response. To the extent any response to such allegations is necessary, Defendant lacks
16 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
17 such allegation. Paragraph 346 contains reference to a document, which requires no response
18 because the referenced document speaks for itself. To the extent any response to such allegations
19 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
20 basis, denies each and every such allegation. Defendant denies each and every other allegation in
21 paragraph 346.

22 347. Paragraph 347 contains allegations that do not reference Defendant, which require
23 no response. To the extent any response to such allegations is necessary, Defendant lacks
24 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
25 such allegation. To the extent paragraph 347 references other paragraphs of the Amended
26 Complaint, *see* Defendant's responses to those paragraphs, which are incorporated herein.
27 Defendant denies each and every other allegation in paragraph 347.
28

1 348. Paragraph 348 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant lacks
3 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
4 such allegation. Defendant denies each and every other allegation in paragraph 348.

5 349. Paragraph 349 contains allegations that do not reference Defendant, which require
6 no response. To the extent any response to such allegations is necessary, Defendant lacks
7 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
8 such allegation. Defendant denies each and every other allegation in paragraph 349.

9 350. Paragraph 350 contains allegations that do not reference Defendant, which require
10 no response. To the extent any response to such allegations is necessary, Defendant lacks
11 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
12 such allegation. Defendant denies each and every other allegation in paragraph 350.

13 351. Answering paragraph 351, Defendant admits that, in 2013, an employee of
14 KFHP's NCO expressed concern that a Medicare Query template being used by employees in the
15 Colorado region might be interpreted as leading by CMS. Defendant denies each and every other
16 allegation in paragraph 351.

17 352. Answering paragraph 352, Defendant admits that, during at least some of the
18 relevant period, Defendant employed Dr. Teresa Welsh as Director of Coding; in 2013, Dr.
19 Teresa Welsh gave a presentation regarding chart review and query activities in the Colorado
20 regions to employees of other Defendants at a semi-annual meeting of the RRG. Defendant
21 denies each and every other allegation in paragraph 352.

22 353. Paragraph 353 contains reference to a document, which requires no response
23 because the referenced document speaks for itself. To the extent any response to such allegations
24 is necessary, Defendant admits that paragraph 353 quotes and references a portion of a document.
25 Defendant denies each and every other allegation in paragraph 353.

26 354. Paragraph 354 contains reference to a document, which requires no response
27 because the referenced document speaks for itself. To the extent any response to such allegations
28 is necessary, Defendant admits that paragraph 354 quotes and references a portion of a document.

1 Due to the non-specific and vague nature of Plaintiff's allegations, Defendant lacks sufficient
2 information to admit or deny the allegation that "[t]he Colorado Medical Group did not change its
3 query language at that time," and, on that basis, denies such allegation. Defendant denies each
4 and every other allegation in paragraph 354.

5 355. Defendant denies each and every allegation in paragraph 355.

6 356. Paragraph 356 contains legal conclusions and/or argument, which require no
7 response. To the extent any response to such allegations is necessary, Defendant denies each and
8 every such allegation. Paragraph 356 contains allegations that do not reference Defendant, which
9 require no response. To the extent any response to such allegations is necessary, Defendant lacks
10 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
11 such allegation. Paragraph 356 contains references to documents, which require no response
12 because the referenced documents speak for themselves. To the extent any response to such
13 allegations is necessary, Defendant admits that paragraph 356 quotes and references a portion of a
14 medical record; that paragraph 356 quotes a portion of a "Medicare Query." To the extent
15 paragraph 356 references other paragraphs of the Amended Complaint, *see* Defendant's responses
16 to those paragraphs, which are incorporated herein. Defendant denies each and every other
17 allegation in paragraph 356.

18 357. Paragraph 357 contains legal conclusions and/or argument, which require no
19 response. To the extent any response to such allegations is necessary, Defendant denies each and
20 every such allegation. Paragraph 357 contains allegations that do not reference Defendant, which
21 require no response. To the extent any response to such allegations is necessary, Defendant lacks
22 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
23 such allegation. Defendant denies each and every other allegation in paragraph 357.

24 358. Defendant denies each and every allegation in paragraph 358.

25 **VIII. KAISER RECEIVED MONEY FROM MEDICARE BASED ON THE**
26 **PRESENTATION OF FALSE CLAIMS.**

27 359. Paragraph 359 contains allegations that do not reference Defendant, which require
28 no response. To the extent any response to such allegations is necessary, Defendant lacks

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Due to the non-specific and vague nature of Plaintiff's allegations, Defendant
3 lacks sufficient information to admit or deny the other allegations in paragraph 359 and, on that
4 basis, denies each and every other allegation in paragraph 359.

5 360. Paragraph 360 contains allegations that do not reference Defendant, which require
6 no response. To the extent any response to such allegations is necessary, Defendant lacks
7 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
8 such allegation. Defendant denies each and every other allegation in paragraph 360.

9 361. Paragraph 361 contains legal conclusions and/or argument, which require no
10 response. To the extent any response to such allegations is necessary, Defendant denies each and
11 every such allegation. Defendant denies each and every allegation in paragraph 361.

12 362. Paragraph 362 contains legal conclusions and/or argument, which require no
13 response. To the extent any response to such allegations is necessary, Defendant denies each and
14 every such allegation. Defendant denies each and every other allegation in paragraph 362.

15 363. Paragraph 363 contains legal conclusions and/or argument, which require no
16 response. To the extent any response to such allegations is necessary, Defendant denies each and
17 every such allegation. Defendant denies each and every other allegation in paragraph 363.

18 **A. PATIENT #1**

19 364. Paragraph 364 contains legal conclusions and/or argument, which require no
20 response. To the extent any response to such allegations is necessary, Defendant denies each and
21 every such allegation. Paragraph 364 contains allegations that do not reference Defendant, which
22 require no response. To the extent any response to such allegations is necessary, Defendant lacks
23 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
24 such allegation. Paragraph 364 contains references to documents, which require no response
25 because the referenced documents speak for themselves. To the extent any response to such
26 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
27 and, on that basis, denies each and every such allegation. Defendant denies each and every other
28 allegation in paragraph 364.

1 **B. PATIENT #2**

2 365. Paragraph 365 contains legal conclusions and/or argument, which require no
3 response. To the extent any response to such allegations is necessary, Defendant denies each and
4 every such allegation. Paragraph 365 contains allegations that do not reference Defendant, which
5 require no response. To the extent any response to such allegations is necessary, Defendant lacks
6 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
7 such allegation. Paragraph 365 contains references to documents, which require no response
8 because the referenced documents speak for themselves. To the extent any response to such
9 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
10 and, on that basis, denies each and every such allegation. Defendant denies each and every other
11 allegation in paragraph 365.

12 **C. PATIENT #3**

13 366. Paragraph 366 contains legal conclusions and/or argument, which require no
14 response. To the extent any response to such allegations is necessary, Defendant denies each and
15 every such allegation. Paragraph 366 contains allegations that do not reference Defendant, which
16 require no response. To the extent any response to such allegations is necessary, Defendant lacks
17 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
18 such allegation. Paragraph 366 contains references to documents, which require no response
19 because the referenced documents speak for themselves. To the extent any response to such
20 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
21 and, on that basis, denies each and every such allegation. Defendant denies each and every other
22 allegation in paragraph 366.

23 **D. PATIENT #4**

24 367. Paragraph 367 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant denies each and
26 every such allegation. Paragraph 367 contains allegations that do not reference Defendant, which
27 require no response. To the extent any response to such allegations is necessary, Defendant lacks
28 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every

1 such allegation. Paragraph 367 contains references to documents, which require no response
2 because the referenced documents speak for themselves. To the extent any response to such
3 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
4 and, on that basis, denies each and every such allegation. Defendant denies each and every other
5 allegation in paragraph 367.

6 **E. PATIENT #5**

7 368. Paragraph 368 contains legal conclusions and/or argument, which require no
8 response. To the extent any response to such allegations is necessary, Defendant denies each and
9 every such allegation. Paragraph 368 contains allegations that do not reference Defendant, which
10 require no response. To the extent any response to such allegations is necessary, Defendant lacks
11 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
12 such allegation. Paragraph 368 contains references to documents, which require no response
13 because the referenced documents speak for themselves. To the extent any response to such
14 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
15 and, on that basis, denies each and every such allegation. Defendant denies each and every other
16 allegation in paragraph 368.

17 **F. PATIENT #6**

18 369. Paragraph 369 contains legal conclusions and/or argument, which require no
19 response. To the extent any response to such allegations is necessary, Defendant denies each and
20 every such allegation. Paragraph 369 contains allegations that do not reference Defendant, which
21 require no response. To the extent any response to such allegations is necessary, Defendant lacks
22 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
23 such allegation. Paragraph 369 contains references to documents, which require no response
24 because the referenced documents speak for themselves. To the extent any response to such
25 allegations is necessary, Defendant admits that paragraph 369 quotes and references a portion of a
26 medical record; that paragraph 369 quotes and references a portion of a document. Defendant
27 denies each and every other allegation in paragraph 369.
28

1 **G. PATIENT #7**

2 370. Paragraph 370 contains legal conclusions and/or argument, which require no
3 response. To the extent any response to such allegations is necessary, Defendant denies each and
4 every such allegation. Paragraph 370 contains allegations that do not reference Defendant, which
5 require no response. To the extent any response to such allegations is necessary, Defendant lacks
6 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
7 such allegation. Paragraph 370 contains references to documents, which require no response
8 because the referenced documents speak for themselves. To the extent any response to such
9 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
10 and, on that basis, denies each and every such allegation. Defendant denies each and every other
11 allegation in paragraph 370.

12 **H. PATIENT #8**

13 371. Paragraph 371 contains legal conclusions and/or argument, which require no
14 response. To the extent any response to such allegations is necessary, Defendant denies each and
15 every such allegation. Paragraph 371 contains allegations that do not reference Defendant, which
16 require no response. To the extent any response to such allegations is necessary, Defendant lacks
17 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
18 such allegation. Paragraph 371 contains references to documents, which require no response
19 because the referenced documents speak for themselves. To the extent any response to such
20 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
21 and, on that basis, denies each and every such allegation. Defendant denies each and every other
22 allegation in paragraph 371.

23 **I. PATIENT #9**

24 372. Paragraph 372 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant denies each and
26 every such allegation. Paragraph 372 contains allegations that do not reference Defendant, which
27 require no response. To the extent any response to such allegations is necessary, Defendant lacks
28 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every

1 such allegation. Paragraph 372 contains references to documents, which require no response
2 because the referenced documents speak for themselves. To the extent any response to such
3 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
4 and, on that basis, denies each and every such allegation. Defendant denies each and every other
5 allegation in paragraph 372.

6 **J. PATIENT #10**

7 373. Paragraph 373 contains legal conclusions and/or argument, which require no
8 response. To the extent any response to such allegations is necessary, Defendant denies each and
9 every such allegation. Paragraph 373 contains allegations that do not reference Defendant, which
10 require no response. To the extent any response to such allegations is necessary, Defendant lacks
11 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
12 such allegation. Paragraph 373 contains references to documents, which require no response
13 because the referenced documents speak for themselves. To the extent any response to such
14 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
15 and, on that basis, denies each and every such allegation. Defendant denies each and every other
16 allegation in paragraph 373.

17 374. Paragraph 374 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant denies each and
19 every such allegation. Defendant denies each and every allegation in paragraph 374.

20 375. Defendant denies each and every allegation in paragraph 375.

21 376. Paragraph 376 contains legal conclusions and/or argument, which require no
22 response. To the extent any response to such allegations is necessary, Defendant denies each and
23 every such allegation. Defendant denies each and every allegation in paragraph 376.

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1 **IX. CAUSES OF ACTION**

2 **FIRST CLAIM FOR RELIEF**

3 **False Claims Act: Presenting or Causing to be Presented False Claims**

4 **31 U.S.C. § 3729(a)(1)(A) (formerly 31 U.S.C. § 3729(a)(1))**

5 377. Answering paragraph 377, Defendant reasserts its answers to the above paragraphs
6 as if fully set forth herein.

7 378. Paragraph 378 contains legal conclusions and/or argument, which require no
8 response. To the extent any response to such allegations is necessary, Defendant denies each and
9 every such allegation. Defendant denies each and every other allegation in paragraph 378.

10 379. Paragraph 379 contains legal conclusions and/or argument, which require no
11 response. To the extent any response to such allegations is necessary, Defendant denies each and
12 every such allegation. Defendant denies each and every other allegation in paragraph 379.

13 380. Paragraph 380 contains legal conclusions and/or argument, which require no
14 response. To the extent any response to such allegations is necessary, Defendant denies each and
15 every such allegation. Defendant denies each and every other allegation in paragraph 380.

16 381. Paragraph 381 contains legal conclusions and/or argument, which require no
17 response. To the extent any response to such allegations is necessary, Defendant denies each and
18 every such allegation. Defendant denies each and every other allegation in paragraph 381.

19 **SECOND CLAIM FOR RELIEF**

20 **False Claims Act: Making or Using False Records or Statements**

21 **31 U.S.C. § 3729(a)(1)(B) (formerly 31 U.S.C. § 3729(a)(2))**

22 382. Answering paragraph 382, Defendant reasserts its answers to the above paragraphs
23 as if fully set forth herein.

24 383. Paragraph 383 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant denies each and
26 every such allegation. Defendant denies each and every other allegation in paragraph 383.

27
28

FIFTH CLAIM FOR RELIEF

Unjust Enrichment

392. Answering paragraph 392, Defendant reasserts its answers to the above paragraphs as if fully set forth herein.

393. Paragraph 393 contains legal conclusions and/or argument, which require no response. To the extent any response to such allegations is necessary, Defendant denies each and every such allegation. Defendant denies each and every other allegation in paragraph 393.

394. Paragraph 394 contains legal conclusions and/or argument, which require no response. To the extent any response to such allegations is necessary, Defendant denies each and every such allegation. Defendant denies each and every other allegation in paragraph 394.

X. PRAYER FOR RELIEF

395. Answering the Prayer for Relief, Defendant denies that Plaintiff is entitled to the relief it seeks in this paragraph.

XI. DEMAND FOR JURY TRIAL

396. The Demand for Jury Trial contains legal conclusions and/or argument, which require no response. To the extent any response to such allegations is necessary, Defendant denies each and every allegation.

AFFIRMATIVE DEFENSES

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

398. The United States' causes of action and allegations in the Amended Complaint regarding a contractual duty to comply with the ICD Guidelines are vague, ambiguous, and uncertain.

399. Damages and claims for relief for which the United States seeks relief in the Amended Complaint, if any, were caused by the acts, errors, or omissions of non-parties for whose conduct Defendant is not responsible.

400. The penalties and damages that the United States seeks would result in an unconstitutionally excessive fine under the Eighth Amendment and Fourteenth Amendment to the

1 United States Constitution because any award would be grossly disproportional to the gravity of
2 Defendant's offense, if any.

3 401. The United States ratified, or otherwise consented to, the transactions and
4 occurrences that are the subject of this action.

5 402. Defendant is not liable to the extent that the United States failed to take adequate
6 measures to mitigate damages.

7 403. The United States' claims for relief are barred, in whole or in part, by the doctrine
8 of estoppel.

9 404. The United States' claims for relief are barred, in whole or in part, because any
10 recovery would result in unjust enrichment.

11 405. To the extent that the United States premises its claims for relief on allegations
12 that Defendant violated a guideline or an interpretation of a guideline issued by a private, non-
13 governmental entity, the United States' claims are barred by the nondelegation doctrine.

14 406. Defendant reserves the right to assert additional affirmative defenses as discovery
15 progresses.

16

17

18 Dated: July 31, 2023

Respectfully submitted,

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By: /s/ K. Lee Blalack, II

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K. LEE BLALACK, II

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