

1 DAVID DEATON (S.B. # 205713)  
 ddeaton@omm.com  
 2 STEPHEN M. SULLIVAN (S.B. # 245314)  
 ssullivan@omm.com  
 3 CAITLIN M. BAIR (S.B. # 256994)  
 cbair@omm.com  
 4 DIMITRI D. PORTNOI (S.B. # 282871)  
 dportnoi@omm.com  
 5 KYLE M. GROSSMAN (S.B. # 313952)  
 kgrossman@omm.com  
 6 O'MELVENY & MYERS LLP  
 Two Embarcadero Center  
 7 San Francisco, California 94111  
 Telephone: (415) 984-8700  
 8 Facsimile: (415) 984-8701

K. LEE BLALACK, II (admitted *pro hac vice*)  
 lblalack@omm.com  
 O'MELVENY & MYERS LLP  
 1625 Eye Street, N.W.  
 Washington, D.C. 20006  
 Telephone: (202) 383-5300  
 Facsimile: (202) 383-5414

9 *Attorneys for Defendant Colorado Permanente*  
 10 *Medical Group*

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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 RELATOR  
 JAMES TAYLOR'S THIRD AMENDED  
 COMPLAINT**

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

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

12 First unnumbered paragraph contains Relator’s characterization of this action, which  
13 requires no response. To the extent any response to such allegations is necessary, Defendant  
14 admits that Relator brings allegations related to Medicare Advantage (“MA”) for alleged  
15 violations of the False Claims Act (“FCA”). First unnumbered paragraph references the  
16 procedural background of this case, which requires no response. To the extent any response to  
17 such allegations is necessary, Defendant admits that first unnumbered paragraph references a  
18 complaint filed by Relator in the District of Colorado on October 22, 2014 (Case No. 3:21-cv-  
19 03894-EMC (N.D. Cal.) (Dkt. 1)) and a first amended complaint filed by Relator in the District of  
20 Colorado on November 3, 2014 (Case No. 3:21-cv-03894-EMC (N.D. Cal.) (Dkt. 4)). First  
21 unnumbered paragraph contains legal conclusions and/or argument, which require no response.  
22 To the extent any response to such allegations is necessary, Defendant admits that first  
23 unnumbered paragraph references 31 U.S.C. §§ 3729-33. Defendant denies each and every other  
24 allegation in first unnumbered paragraph.

25 First unnumbered paragraph footnote 1 references the procedural background of this case,  
26 which requires no response. To the extent any response to such allegations is necessary,  
27 Defendant admits that Relator’s initial complaint named Kaiser Foundation Health Plan, Inc.  
28 (“KFHP”), Kaiser Foundation Health Plan of Colorado (“KFHP-CO”), Kaiser Foundation Health

1 Plan of Georgia, and Kaiser Foundation Health Plan of the Northwest; and that Relator's initial  
2 complaint named Kaiser Permanente, which is not a legal entity. *See United States ex rel. Osinek*  
3 *v. Kaiser Permanente*, N.D. Cal. Case No. 3:13-cv-03891-EMC, Req. for Judicial Notice in Supp.  
4 of Mot. to Dismiss Pursuant to False Claims Act's First-to-File Bar (Dkt. 142) at 4–5, Ex. F.  
5 Defendant denies each and every other allegation in first unnumbered paragraph footnote 1.

6 Second unnumbered paragraph contains Relator's characterization of the United States'  
7 complaint, which requires no response. To the extent any response to such allegations is  
8 necessary, Defendant admits that the United States' complaint brings allegations related to  
9 Medicare Advantage. Second unnumbered paragraph references the procedural background of  
10 this case, which requires no response. To the extent any response to such allegations is necessary,  
11 Defendant admits that second unnumbered paragraph references a consolidation order filed on  
12 June 25, 2021 (Case No. 3:13-cv-03891-EMC (N.D. Cal.) (Dkt. 61)); the United States' Notice of  
13 Election to Intervene in Part and to Decline to Intervene in Part dated July 27, 2021 (Case No.  
14 3:13-cv-03891-EMC (N.D. Cal.) (Dkt. 64)); and the United States' complaint (Case No. 3:13-cv-  
15 03891-EMC (N.D. Cal.) (Dkt. 110)). Defendant denies each and every other allegation in second  
16 unnumbered paragraph.

17 Second unnumbered paragraph footnote 2 references the procedural background of this  
18 case, which requires no response. To the extent any response to such allegations is necessary,  
19 Defendant admits that second unnumbered paragraph footnote 2 quotes and references the United  
20 States' Notice of Election to Intervene in Part and to Decline to Intervene in Part dated July 27,  
21 2021 (Case No. 3:13-cv-03891-EMC (N.D. Cal.) (Dkt. 65)). Defendant denies each and every  
22 other allegation in second unnumbered footnote 2.

23 Third unnumbered paragraph contains Relator's characterization of this action and the  
24 United States' action, which requires no response. To the extent any response to such allegations  
25 is necessary, Defendant admits that third unnumbered paragraph references the United States'  
26 Notice of Election to Intervene in Part and to Decline to Intervene in Part dated July 27, 2021  
27 (Case No. 3:13-cv-03891-EMC (N.D. Cal.) (Dkt. 65)). Defendant denies each and every other  
28 allegation in third unnumbered paragraph.

1 Fourth unnumbered paragraph contains legal conclusions and/or argument, which require  
2 no response. To the extent any response to such allegations is necessary, Defendant incorporates  
3 its responses to the United States' first amended complaint (Case No. 3:13-cv-03891-EMC (N.D.  
4 Cal.) (Dkt. 240)), filed separately. Defendant lacks sufficient knowledge to admit or deny the  
5 allegations about Relator's knowledge and belief and, on that basis, denies each and every such  
6 allegation. Defendant denies each and every other allegation in fourth unnumbered paragraph.

7 Fourth unnumbered paragraph footnote 3 contains legal conclusions and/or argument,  
8 which require no response. To the extent any response to such allegations is necessary,  
9 Defendant incorporates its responses to the United States' first amended complaint (Case No.  
10 3:13-cv-03891-EMC (N.D. Cal.) (Dkt. 240)), filed separately; and admits that fourth unnumbered  
11 paragraph footnote 3 references *United States ex. rel. Dresser v. Qualium Corp.*, No. 5:12-cv-  
12 01745 BLF, 2016 WL 3880763, at \*10 (N.D. Cal. July 18, 2016). Defendant denies each and  
13 every other allegation in fourth unnumbered paragraph footnote 3.

#### 14 PRELIMINARY STATEMENT

15 1. Paragraph 1 contains Relator's characterization of this action, which requires no  
16 response. To the extent any response to such allegations is necessary, Defendant admits that  
17 Relator brings this action against Defendants KFHP-CO and Colorado Permanente Medical  
18 Group, P.C. ("CPMG") for alleged violations of the FCA; and that Relator brings allegations  
19 related to Medicare Advantage. Paragraph 1 contains legal conclusions and/or argument, which  
20 require no response. To the extent any response to such allegations is necessary, Defendant  
21 admits paragraph 1 references 31 U.S.C. § 3729 *et seq.* Defendant denies each and every other  
22 allegation in paragraph 1.

23 2. Paragraph 2 contains reference to conduct that occurred before November 15,  
24 2011, for which Defendant cannot be liable and which requires no response. *See* Case No. 3:13-  
25 cv-03891-EMC (N.D. Cal.), Dkt. No. 225, November 14, 2022 Order at 19. Paragraph 2 contains  
26 legal conclusions and/or argument, which require no response. To the extent any response to  
27 such allegations is required, Defendant denies each and every such allegation. Defendant denies  
28 each and every other allegation in paragraph 2.

1           3. Paragraph 3 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 3.

4           4. Paragraph 4 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 4.

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

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

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

12          8. Paragraph 8 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 8.

15          9. Paragraph 9 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 9.

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

21          11. Paragraph 11 contains legal conclusions and/or argument, which require no  
22 response. To the extent any response is necessary, Defendant denies each and every such  
23 allegation. Defendant denies each and every other allegation in paragraph 11.

24          12. Paragraph 12 contains Relator's characterization of this action, which requires no  
25 response. To the extent any response to such allegations is necessary, Defendant admits that  
26 Relator brings this action to recover damages and civil penalties for alleged violations of the  
27 FCA; and that Relator brings allegations related to Medicare Advantage. Defendant denies each  
28 and every other allegation in paragraph 12.

**PARTIES**

1  
2 13. Answering paragraph 13, Defendant admits that Defendant employed Relator  
3 beginning in 1995. Defendant lacks sufficient knowledge to admit or deny the following  
4 allegations: that Relator is currently a resident of the State of Colorado; that he practiced in rural  
5 Ohio for eight years before being employed by Defendant; and that he is currently a certified  
6 professional coder and AHIMA approved ICD-10 trainer and, on that basis, denies each and  
7 every such allegation. Defendant denies each and every other allegation in paragraph 13.

8 14. Paragraph 14 contains reference to conduct that occurred before November 15,  
9 2011, for which Defendant cannot be liable and which requires no response. *See* Case No. 3:13-  
10 cv-03891-EMC (N.D. Cal.), Dkt. No. 225, November 14, 2022 Order at 19. Defendant admits  
11 that, during at least some of the relevant period: Relator was the Medical Director of Revenue  
12 Cycle; that Relator was a member of Defendant’s Board of Directors; and that Relator was a  
13 member of the Coding Governance Group. Defendant denies each and every other allegation in  
14 paragraph 14.

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

19 16. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks  
20 sufficient information to admit or deny the allegations in paragraph 16 and, on that basis, denies  
21 each and every allegation. Defendant denies each and every other allegation in paragraph 16.

22 17. Answering paragraph 17, Defendant admits that Defendant and certain other health  
23 plans, physician medical groups, and hospitals maintain a business relationship with one another  
24 under the trade name “Kaiser Permanente” to offer an integrated care model. Paragraph 17  
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 17 quotes and references a portion of Defendants’ website. Defendant denies each  
28 and every other allegation in paragraph 17.

1 18. Answering paragraph 18, Defendant admits that Defendant and certain other health  
2 plans, physician medical groups, and hospitals maintain a business relationship with one another  
3 under the trade name “Kaiser Permanente” that comprises one of the largest managed care  
4 organizations in the United States and serves millions of members across all lines of business  
5 throughout various states including California, Colorado, Georgia, Hawaii, Maryland, Oregon,  
6 Virginia, Washington, and the District of Columbia, and was founded in 1945. Defendant denies  
7 each and every other allegation in paragraph 18.

8 19. Answering paragraph 19, 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” that has over 210,000 employees and over 20,000  
11 physicians, in total, and reported more than \$80 billion in operating revenue, in total, in 2020.  
12 Defendant denies each and every other allegation in paragraph 19.

13 20. Answering paragraph 20, Defendant admits that Defendant and certain other health  
14 plans, physician medical groups, and hospitals maintain a business relationship with one another  
15 under the trade name “Kaiser Permanente” that, during at least some of the relevant period,  
16 offered a health maintenance organization (“HMO”) plan with a Medicare contract in California,  
17 Hawaii, Washington, Colorado, Oregon, Georgia, Maryland, Virginia and the District of  
18 Columbia. Defendant denies each and every other allegation in paragraph 20.

19 21. Answering paragraph 21, Defendant admits that it provides services to KFHP-  
20 CO’s members; that Defendant does not own hospitals in Colorado; and that, during at least some  
21 of the relevant period, Defendant entered into contracts for the provision of professional or  
22 physician services to KFHP-CO’s members. Paragraph 21 contains allegations that do not  
23 reference Defendant, which require no response. To the extent any response is necessary,  
24 Defendant lacks sufficient knowledge to admit or deny such allegations and, on that basis, denies  
25 each and every such allegation. Paragraph 21 contains Relator’s characterization of the Amended  
26 Complaint, which requires no response. To the extent any response to such allegations is  
27 necessary, Defendant admits that the Amended Complaint includes the words “Kaiser” or  
28 “Defendants.” Defendant denies each and every other allegation in paragraph 21.

1           22. Paragraph 22 contains allegations that do not reference Defendant, which require  
2 no response. To the extent any response to such allegations is necessary, Defendant admits that  
3 KFHP is a non-profit HMO headquartered in Oakland, California. Defendant denies each and  
4 every other allegation in paragraph 22.

5           23. Paragraph 23 contains allegations that do not reference Defendant, which require  
6 no response. To the extent any response to such allegations is necessary, Defendant admits that  
7 KFHP-CO is a non-profit HMO. Defendant denies each and every other allegation in paragraph  
8 23.

9           24. Answering paragraph 24, Defendant admits that it is a multi-specialty physician  
10 group with, for at least some of the relevant period, over 1,000 physicians; and that Defendant,  
11 for at least some of the relevant period, contracted with KFHP-CO to provide medical care to  
12 KFHP-CO's members. Defendant denies each and every other allegation in paragraph 24.

13           25. Paragraph 25 contains Relator's characterization of the Amended Complaint,  
14 which requires no response. To the extent any response to such allegations is necessary,  
15 Defendant admits that the Amended Complaint includes the phrase "Kaiser Colorado."  
16 Defendant denies each and every other allegation in paragraph 25.

17           26. Paragraph 26 contains allegations that do not reference Defendant, which require  
18 no response. To the extent any response to such allegations is necessary, Defendant admits that  
19 The Permanente Medical Group, Inc. is headquartered in Oakland, California; that, for at least  
20 some of the relevant period: it employed approximately 9,500 physicians; and that it provides  
21 medical services to members in Northern California. Defendant denies each and every other  
22 allegation in paragraph 26.

23           27. Paragraph 27 contains allegations that do not reference Defendant, which require  
24 no response. To the extent any response to such allegations is necessary, Defendant admits that  
25 Southern California Permanente Medical Group, a California partnership, is headquartered in  
26 Pasadena, California and provides medical services to members in Southern California.  
27 Defendant denies each and every other allegation in paragraph 27.

28

**JURISDICTION AND VENUE**

1  
2 28. Paragraph 28 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 28 references 28 U.S.C. § 1331 and 31 U.S.C. §§ 3730, 3732(a). Defendant denies  
5 each and every other allegation in paragraph 28.

6 29. Paragraph 29 contains legal conclusions and/or argument, which require no  
7 response. To the extent any response is necessary, Defendant admits that paragraph 29 references  
8 31 U.S.C. § 3730(e). Paragraph 29 contains Relator’s characterization of this action, which  
9 requires no response. To the extent any response to such allegations is necessary, Defendant  
10 lacks sufficient knowledge to admit or deny such allegations, and, on that basis, denies each and  
11 every such allegation. Defendant denies each and every other allegation in paragraph 29.

12 30. Paragraph 30 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; and that paragraph 30 references  
16 31 U.S.C. § 3732(a). Defendant denies each and every other allegation in paragraph 30.

17 31. Paragraph 31 contains legal conclusions and/or argument, which require no  
18 response. To the extent any response to such allegations is necessary, Defendant admits that, for  
19 purposes of venue, at least one of the Defendants can be found in, resides in, or transacts business  
20 in the Northern District of California; and that paragraph 31 references 31 U.S.C. §§ 3732(a),  
21 3729. Defendant denies each and every other allegation in paragraph 31.

**THE FALSE CLAIMS ACT**

22  
23 32. Paragraph 32 contains legal conclusions and/or argument, which require no  
24 response. To the extent any response to such allegations is necessary, Defendant admits that the  
25 FCA was enacted in 1863, over a century before Medicare. Defendant denies each and every  
26 other allegation in paragraph 32.

27 33. Paragraph 33 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 33 quotes a portion of *United States v. Neifert-White Co.*, 390 U.S. 228, 232 (1968);  
2 that paragraph 33 quotes a portion of *Rainwater v. United States*, 356 U.S. 590, 592 (1958); and  
3 that paragraph 33 references and attempts to quote a portion of *Cook Cty. v. United States ex rel.*  
4 *Chandler*, 538 U.S. 119, 129 (2003). Defendant denies each and every other allegation in  
5 paragraph 33.

6 34. Paragraph 34 contains legal conclusions and/or argument, which require no  
7 response. To the extent any response to such allegations is necessary, Defendant admits that  
8 paragraph 34 references and attempts to quote *United States ex rel. Kane v. Healthfirst, Inc.*, 120  
9 F. Supp. 3d 370, 391 (S.D.N.Y. 2015). Defendant denies each and every other allegation in  
10 paragraph 34.

11 35. Paragraph 35 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 35 references and attempts to quote 31 U.S.C. § 3729(a)(1)(A),(B), (G). Defendant  
14 denies each and every other allegation in paragraph 35.

15 36. Paragraph 36 contains legal conclusions and/or argument, which require no  
16 response. To the extent any response to such allegations is necessary, Defendant admits that  
17 paragraph 36 quotes the Fraud Enforcement and Recovery Act of 2009 (“FERA”), Pub. L. 111-21  
18 (May 20, 2009) and 31 U.S.C. § 3729(a)(1)(B). Defendant denies each and every other allegation  
19 in paragraph 36.

20 37. Paragraph 37 contains legal conclusions and/or argument, which require no  
21 response. To the extent any response to such allegations is necessary, Defendant admits that  
22 paragraph 37 references FERA, Pub. L. 111-21 (May 20, 2009), which amended the False Claims  
23 Act, and quotes 31 U.S.C. § 3729(a)(1)(G). Defendant denies each and every other allegation in  
24 paragraph 37.

25 38. Paragraph 38 contains legal conclusions and/or argument, which require no  
26 response. To the extent any response to such allegations is necessary, Defendant admits that  
27 paragraph 38 quotes and references 31 U.S.C. § 3729(b)(1)(A), (B). Defendant denies each and  
28 every other allegation in paragraph 38.



1 hospital stay; and that, upon information and belief, CMS then typically pays the providers  
2 directly for each service based on payment rates predetermined by the Government. Defendant  
3 denies each and every other allegation in paragraph 43.

4 44. Paragraph 44 contains legal conclusions and/or argument, which require no  
5 response. To the extent any response to such allegations is necessary, Defendant admits that in  
6 1997, Congress created Medicare Part C, which provides similar benefits to Medicare members,  
7 but does so using a managed care model, rather than the traditional fee-for-service model; that  
8 under Medicare Part C, rather than pay health care providers directly, Medicare pays private  
9 managed care organizations (later named “Medicare Advantage Organizations” or “MAOs”) a  
10 capitation rate (per member per month) and those plans are responsible, in part, for paying health  
11 care providers for the services they provide to members of that specific MA plan. Defendant  
12 denies each and every other allegation in paragraph 44.

13 45. Paragraph 45 contains legal conclusions and/or argument, which require no  
14 response. To the extent any response to such allegations is necessary, Defendant admits that in  
15 2003, Congress passed the Medicare Prescription Drug, Improvement, and Modernization Act,  
16 creating Medicare Part D, which provides prescription drug coverage; that managed care model  
17 plans are provided under both Medicare Part D prescription drug plans, which offer only  
18 prescription drug coverage, and Medicare Part C plans, which integrate the prescription drug  
19 coverage with the Medicare Part C health care coverage. Defendant denies each and every other  
20 allegation in paragraph 45.

21 Answering paragraph 45 footnote 4, Defendant admits that the Amended Complaint  
22 refers, collectively, to MAOs with and without Part D coverage as “MAOs.” Defendant denies  
23 each and every other allegation in paragraph 45 footnote 4.

24 46. Paragraph 46 contains legal conclusions and/or argument, which require no  
25 response. To the extent any response to such allegations is necessary, Defendant admits that  
26 paragraph 46 references 42 C.F.R. §§ 422.504 & 422.505 (Part C); 42 C.F.R. §§ 423.504 &  
27 423.505 (Part D); and that Defendant must comply with legally binding requirements. Defendant  
28 denies each and every other allegation in paragraph 46.

1 Paragraph 46 footnote 5 contains reference to conduct that occurred before November 15,  
2 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
3 November 14, 2022 Order at 19. Defendant admits that for at least some of the relevant period:  
4 CMS put out a periodic “Participant Guide”; that the names varied somewhat for each year – for  
5 example, the Regional Risk Adjustment Training for Medicare+Choice Organizations Participant  
6 Guide; the Risk Adjustment Data Basic Training for MAOs Participant Guide; Risk Adjustment  
7 Technical Assistance for MAOs Participant Guide; and that Relator refers to the Risk Adjustment  
8 Technical Assistance for MAOs Participant Guide throughout the Amended Complaint to the  
9 “Participant Guide,” with the year of issue. Defendant denies each and every other allegation in  
10 paragraph 46 footnote 5.

11 **I. Risk Adjustment and Claims Submission**

12 47. Paragraph 47 contains legal conclusions and/or argument, which require no  
13 response. To the extent any response to such allegations is necessary, Defendant admits that  
14 through the MA program, CMS allows private health insurers to set up managed care plans to  
15 cover Medicare beneficiaries; that CMS pays each MA plan a predetermined base monthly  
16 amount for each enrollee in their MA program; that this monthly payment varies for each MA  
17 plan depending on various factors. Defendant denies each and every other allegation in paragraph  
18 47.

19 48. Paragraph 48 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 Medicare Part D is prescription drug coverage. Defendant denies each and every other allegation  
22 in paragraph 48.

23 49. Paragraph 49 contains legal conclusions and/or argument, which require no  
24 response. To the extent any response to such allegations is necessary, Defendant admits that,  
25 under both Medicare Parts C and D, upon information and belief, CMS adjusts the capitation rate  
26 for each beneficiary using individual demographic factors such as age and gender (among others),  
27 geographic location, and health status; and that paragraph 49 references a portion of 42 U.S.C.  
28 § 1395w-23(a)(1)(C). Defendant denies each and every other allegation in paragraph 49.

1           50. Paragraph 50 contains legal conclusions and/or argument, which require no  
2 response. To the extent any response to such allegations is necessary, Defendant admits that,  
3 upon information and belief, CMS calculates a risk score for each MA member pursuant to the  
4 CMS Hierarchical Condition Category (“CMS-HCC”) risk adjustment model, which is a  
5 multiplier that is applied to the bid amount for the relevant MA beneficiary and is a component of  
6 the payment amount for each MA beneficiary; and that paragraph 50 references a portion of 42  
7 U.S.C. § 1395w-23(a)(1)(C). Due to the non-specific and vague nature of Relator’s allegations,  
8 Defendant lacks sufficient information to admit or deny the following allegations, “The  
9 adjustment for each member’s health status is a significant component of the capitation rate,” and  
10 “CMS pays a substantially higher capitation rate for members whose medical records meet all  
11 criteria laid out in CMS rules and agreed to in contracts between CMS and MAOs and properly  
12 support that they have been recently treated for one or more serious, expensive diseases or  
13 conditions,” and, on that basis, denies each and every such allegation. Defendant denies each and  
14 every other allegation in paragraph 50.

15           51. Paragraph 51 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 51 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 51 quotes CMS, *Medicare Managed*  
20 *Care Manual*, Chapter 7 § 20 (Rev. 118, Sept. 19, 2014). Defendant denies each and every other  
21 allegation in paragraph 51.

22           52. Paragraph 52 contains legal conclusions and/or argument, which require no  
23 response. To the extent any response to such allegations is necessary, Defendant admits that,  
24 upon information and belief, since 2004, CMS has used the CMS-HCC risk adjustment model for  
25 MA beneficiaries enrolled in MA plans; that HCCs are disease groupings consisting of diagnosis  
26 codes that aim to correlate with the marginal predicted cost of medical expenditures for that set of  
27 medical disease groupings based on CMS’s data from administering the traditional Medicare fee-  
28 for-service program; that HCCs aim to represent the disease component of the MA beneficiary

1 score that are applied to MA patients; that paragraph 52 references a portion of 42 C.F.R. § 422.2;  
2 that between 2004 and 2013, the CMS-HCC model included 70 HCCs; and that in 2014, the  
3 CMS-HCC model included 79 HCCs. Defendant denies each and every other allegation in  
4 paragraph 52.

5 53. Paragraph 53 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 MAOs transmit diagnosis codes to the Government for the beneficiaries in their plans; that the  
8 CMS-HCC risk adjustment model uses diagnosis codes from a given year (the “service year”),  
9 along with demographic factors, (such as age and gender, among others), to predict medical costs  
10 to MAOs to provide Medicare benefits to MA beneficiaries in the following year (the “payment  
11 year”). Defendant denies each and every other allegation in paragraph 53.

12 54. Paragraph 54 contains legal conclusions and/or argument, which require no  
13 response. To the extent any response to such allegations is necessary, Defendant admits that  
14 payments to Medicare Part D plans for prescription drug benefits are risk-adjusted based on  
15 health status; that as with Medicare Part C, Medicare Part D employs a health-based risk  
16 adjustment model known as the Rx Hierarchical Condition Categories (“RxHCC”) model; and  
17 that RxHCCs are disease groupings consisting of diagnosis codes that aim to correlate with the  
18 marginal predicted cost of prescription drug expenditures for that set of medical disease  
19 groupings based on CMS’s data from administering the traditional Medicare fee-for-service  
20 program. Defendant denies each and every other allegation in paragraph 54.

21 55. Paragraph 55 contains legal conclusions and/or argument, which require no  
22 response. To the extent any response to such allegations is necessary, Defendant admits that each  
23 HCC and RxHCC coefficient within each respective risk adjustment model aims to correlate with  
24 the marginal predicted cost of medical or prescription drug expenditures. Defendant denies each  
25 and every other allegation in paragraph 55.

26 56. Paragraph 56 contains legal conclusions and/or argument, which require no  
27 response. To the extent any response to such allegations is necessary, Defendant admits that,  
28 upon information and belief, CMS calculates a risk score for each beneficiary, which is used to

1 calculate monthly payments to the MAO for that beneficiary for the payment year. Defendant  
2 denies each and every other allegation in paragraph 56.

## 3 **II. MAO Requirement and Certifications**

4 57. Paragraph 57 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 57.

7 Paragraph 57 footnote 6 contains legal conclusions and/or argument, which require no  
8 response. To the extent any response to such allegations is necessary, paragraph 57 footnote 6  
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 admits  
11 that paragraph 57 footnote 6 references CMS, *Medicare Managed Care Manual*, Chapter 7 § 40  
12 (Rev. 118, Sept. 19, 2014). Defendant denies each and every other allegation in paragraph 57  
13 footnote 6.

14 Paragraph 57 footnote 7 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 57 footnote 7 references CMS, *Medicare Managed*  
17 *Care Manual*, Chapter 7 Table 19 (Rev. 118, Sept. 19, 2014). Defendant denies each and every  
18 other allegation in paragraph 57 footnote 7.

19 58. Paragraph 58 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 58 quotes and references a portion of *UnitedHealthCare Ins. Co. v. Becerra*, 9 F.4th  
22 868, 868 (D.C. Cir. 2021), *superseded by UnitedHealthcare Ins. Co. v. Becerra*, 16 F.4th 867  
23 (D.C. Cir. 2021). Defendant denies each and every other allegation in paragraph 58.

24 59. Paragraph 59 contains legal conclusions and/or argument, which require no  
25 response. To the extent any response to such allegations is necessary, Defendant admits that  
26 paragraph 59 references 42 C.F.R. §§ 422.504(1)(2); and that paragraph 59 quotes and references  
27 422.503(b)(4)(vi). Defendant denies each and every other allegation in paragraph 59.  
28

1           60. Paragraph 60 contains legal conclusions and/or argument, which require no  
2 response. To the extent any response to such allegations is necessary, Defendant admits that  
3 paragraph 60 references and attempts to quote a portion of *United States ex rel. Swoben v.*  
4 *UnitedHealthcare Insurance Co.*, 848 F.3d 1161, 1174 (9th Cir. 2016). Defendant denies each  
5 and every other allegation in paragraph 60.

6           61. Answering paragraph 61, Defendant admits that KFHP-CO is a health plan that  
7 has an executed contract with CMS to act as an MAO that administers private MA plans.  
8 Paragraph 61 contains legal conclusions and/or argument, which require no response. To the  
9 extent any response to such allegations is necessary, Defendant admits that paragraph 61  
10 references 42 U.S.C. § 1395w-27(a), 42 C.F.R. Part 422, Subpart K, 42 C.F.R. §§ 422.504 &  
11 422.505 (Part C); and 42 C.F.R. §§ 423.504 & 423.505 (Part D). Defendant denies each and  
12 every other allegation in paragraph 61.

13           62. Answering paragraph 62, Defendant admits that entities like the Permanente  
14 Medical Groups may enter into agreements with MAOs to provide health care services to MA  
15 beneficiaries. Paragraph 62 contains legal conclusions and/or argument, which require no  
16 response. To the extent any response to such allegations is necessary, Defendant admits that  
17 paragraph 62 references and attempts to quote a portion of 42 C.F.R. § 422.500; and that  
18 paragraph 62 references 42 C.F.R. § 422.504(i). Defendant denies each and every other  
19 allegation in paragraph 62.

20           63. Paragraph 63 contains legal conclusions and/or argument, which require no  
21 response. To the extent any response to such allegations is necessary, Defendant admits that  
22 paragraph 63 references 42 C.F.R. § 422.504(i)(3)(iii) and 42 C.F.R. 422.504(1)(3); and that  
23 paragraph 63 quotes and references 42 C.F.R. § 422.504(i)(4)(v). Defendant denies each and  
24 every other allegation in paragraph 63.

25           64. Paragraph 64 contains legal conclusions and/or argument, which require no  
26 response. To the extent any response to such allegations is necessary, Defendant denies each and  
27 every such allegation. Paragraph 64 contains references to documents, which require no response  
28 because the referenced documents speak for themselves. To the extent any response to such

1 allegations is necessary, Defendant admits that paragraph 64 references CMS, *2003 Participant*  
2 *Guide*, § 6.1; CMS, *2004 Participant Guide* § 4.1; CMS, *2005 Participant Guide* § 4.1; CMS,  
3 *2006 Participant Guide* § 4.1; CMS, *2007 Participant Guide* § 4.1; CMS, *2008 Participant Guide*  
4 § 4.1; CMS, *Risk Adjustment 101 Participant Guide* § 2.1 (2013); CMS, *Medicare Managed Care*  
5 *Manual*, Chapter 7 § 120.2.1 (Rev. 114, June 7, 2013); and that paragraph 64 references and  
6 attempts to cite CMS, *Medicare Managed Care Manual*, Chapter 7 § 111.6.1 (Rev. 47, Aug. 13,  
7 2004). Defendant denies each and every other allegation in paragraph 64.

8         65. Paragraph 65 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 CMS has adopted the International Classification of Diseases (“ICD”) code sets as the source of  
11 numeric and alphanumeric diagnosis codes for certain health care transactions; and that paragraph  
12 65 references 45 C.F.R. § 162.1002(a)(1)(i), (b)(1), (c)(2)(i) and 42 C.F.R. § 422.310(d)(1).  
13 Paragraph 65 contains references to documents, which require no response because the referenced  
14 documents speak for themselves. To the extent any response to such allegations is necessary,  
15 Defendant admits that paragraph 65 references CMS, *Medicare Managed Care Manual*,  
16 Chapter 7, Exhibit 30 (Rev. 57, Aug. 13, 2004); and that paragraph 65 quotes and references  
17 CMS, *2005 Participant Guide* § 5.2. Defendant denies each and every other allegation in  
18 paragraph 65.

19         66. Paragraph 66 contains legal conclusions and/or argument, which require no  
20 response. To the extent any response to such allegations is necessary, Defendant admits that ICD  
21 diagnosis codes are set forth in the ICD-9-CM through October 1, 2015, and thereafter in the  
22 ICD-10-CM; and that paragraph 66 quotes and references *United States ex rel. Silingo v.*  
23 *WellPoint, Inc.*, 904 F.3d 667, 673 (9th Cir. 2018). Paragraph 66 contains reference to  
24 documents, which require no response because the referenced documents speak for themselves.  
25 To the extent any response to such allegations is necessary, Defendant admits that paragraph 66  
26 references ICD-10 Guidelines, ICD-9 Guidelines, and CMS, *Medicare Managed Care Manual*,  
27 Chapter 7, Exhibit 30 (Rev. 57, Aug. 13, 2004). Defendant denies each and every other  
28 allegation in paragraph 66.

1           67. Paragraph 67 contains legal conclusions and/or argument, which require no  
2 response. To the extent any response to such allegations is necessary, Defendant denies each and  
3 every such allegation. Paragraph 67 contains references to documents, which require no response  
4 because the referenced documents speak for themselves. To the extent any response to such  
5 allegations is necessary, Defendant admits that paragraph 67 references CMS, *Medicare Managed*  
6 *Care Manual*, Chapter 7 § 111.8 (Rev. 47, Feb. 20, 2004) and CMS, *2008 Participant Guide*  
7 § 7.1.5. Defendant denies each and every other allegation in paragraph 67.

8           68. Paragraph 68 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. Paragraph 68 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 admits that paragraph 68 references CMS, *Medicare Managed*  
13 *Manual*, Chapter 7, Exhibit 30 (Aug. 13, 2004); ICD-10 Guidelines § IV.J; and ICD-9 Guidelines  
14 § IV.K. Defendant denies each and every other allegation in paragraph 68.

15           Answering paragraph 68 footnote 8, Defendant lacks sufficient knowledge to admit or  
16 deny the allegations about CMS conduct, and, on that basis, denies each and every such  
17 allegation. To the extent any response to such allegations is necessary, Defendant admits that the  
18 ICD-10 Guidelines became effective in 2015. Defendant denies each and every other allegation  
19 in paragraph 68 footnote 8.

20           69. Paragraph 69 contains legal conclusions and/or argument, which require no  
21 response. To the extent any response to such allegations is necessary, Defendant denies each and  
22 every such allegation. Paragraph 69 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 69 references ICD-10 Guidelines  
25 § IV.H; and ICD-9 Guidelines § IV.I. Defendant denies each and every other allegation in  
26 paragraph 69.

27           70. Paragraph 70 contains legal conclusions and/or argument, which require no  
28 response. To the extent any response to such allegations is necessary, Defendant denies each and

1 every such allegation. Paragraph 70 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 admits that paragraph 70 references ICD-10 Guidelines  
4 § IV.J; and ICD-9 Guidelines § IV.K. Defendant denies each and every other allegation in  
5 paragraph 70.

6 71. Paragraph 71 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 71 contains references to documents, which require no response  
9 because the referenced documents speak for themselves. To the extent any response to such  
10 allegations is necessary, Defendant admits that paragraph 71 quotes and references a portion of  
11 CMS, *Medicare Managed Care Manual*, Chapter 7 § 111.8 (Aug. 13, 2004); that paragraph 71  
12 quotes and references a portion of CMS, *Medicare Managed Care Manual*, Chapter 7 § 40 (June  
13 2013); and that paragraph 71 quotes and references a portion of CMS, *2003 Participant Guide*  
14 § 4.1. Defendant denies each and every other allegation in paragraph 71.

15 Paragraph 71 footnote 9 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 71 footnote 9 contains references to documents, which require  
18 no response because the referenced documents speak for themselves. To the extent any response  
19 to such allegations is necessary, Defendant admits that paragraph 71 footnote 9 references CMS,  
20 *2003 Participant Guide* §§ 12.3, 12.6; CMS, *2004 Participant Guide* §§ 5.1, 5.5, 6.1.3; CMS,  
21 *2005 Participant Guide* §§ 4.1, 5, 5.1, 5.5, 8.7.3, 9.1, 9.2; CMS, *2006 Participant Guide* §§ 5.1,  
22 5.4, 5.5, 7.7.3, 8.1, 8.2; CMS, *2007 Participant Guide* §§ 6.1, 6.4, 7.1, 7.2, 8.7.3; CMS, *2008*  
23 *Participant Guide* §§ 5.6, 6, 6.1, 6.4, 6.5, 7.1, 7.2; CMS, *2012 Participant Guide* § 2.2; CMS,  
24 *Risk Adjustment 101 Participant Guide* §§ 3.2.4; 4.3 (2013); Risk Adjustment Webinar (July 1,  
25 2014); and that paragraph 71 footnote 9 quotes and references a portion of CMS, *2003 Regional*  
26 *Risk Adjustment Training for Medicare+Choice Organizations* at 8-19. Defendant denies each  
27 and every other allegation in paragraph 71 footnote 9.  
28

1           72. Paragraph 72 contains legal conclusions and/or argument, which require no  
2 response. To the extent any response to such allegations is necessary, Defendant denies each and  
3 every such allegation. Paragraph 72 contains references to documents, which require no response  
4 because the referenced documents speak for themselves. To the extent any response to such  
5 allegations is necessary, Defendant admits that paragraph 72 quotes and references a portion of  
6 CMS, *2005 Participant Guide* § 8.7.3; and that paragraph 72 quotes, references, and attempts to  
7 cite a portion of CMS, *Medicare Managed Care Manual*, Chapter 7 § 111.8 (Rev. 47, Feb. 20,  
8 2004). Defendant denies each and every other allegation in paragraph 72.

9           Paragraph 72 footnote 10 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 72 footnote 10 contains references to documents, which require  
12 no response because the referenced documents speak for themselves. To the extent any response  
13 to such allegations is necessary, Defendant admits that paragraph 72 footnote 10 references CMS,  
14 *2003 Participant Guide* § 12.2; CMS, *2004 Participant Guide* § 6.1.3; CMS, *2004*  
15 *Medicare+Choice Organizations Resource Guide*; CMS, *2005 Participant Guide* §§ 5.1, 9.1.3;  
16 CMS, *2006 Participant Guide* §§ 5.1, 7.7.3; CMS, *2007 Participant Guide* §§ 6.1, 7.1.4, 8.7.3;  
17 CMS, *2008 Participant Guide* §§ 5.6.3, 6.1; and CMS, *2012 Participant Guide* § 2.2. Defendant  
18 denies each and every other allegation in paragraph 72 footnote 10.

19           73. Paragraph 73 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 73 references 42 C.F.R. § 422.310(e) and 42 U.S.C. § 1395w-23(3)(C)(iii). Defendant  
22 denies each and every other allegation in paragraph 73.

23           74. Paragraph 74 contains legal conclusions and/or argument, which require no  
24 response. To the extent any response to such allegations is necessary, Defendant denies each and  
25 every such allegation. Paragraph 74 contains references to documents, which require no response  
26 because the referenced documents speak for themselves. To the extent any response to such  
27 allegations is necessary, Defendant admits that paragraph 74 quotes and references 2003 Regional  
28 Risk Adjustment Training for Medicare+Choice Organization, Questions & Answers; and that

1 paragraph 74 references and attempts to quote a portion of CMS, Regional Training, Risk  
2 Adjustment Data Basic Training (August 9, 2005). Defendant denies each and every other  
3 allegation in paragraph 74.

4 75. Paragraph 75 contains legal conclusions and/or argument, which require no  
5 response. To the extent any response to such allegations is necessary, Defendant admits that  
6 paragraph 75 references 42 C.F.R. § 422.503(b)(4)(vi), 42 C.F.R. § 423.504(b)(4)(vi), 42 C.F.R.  
7 § 422.504(l), and 42 C.F.R. § 423.505(k); and that paragraph 75 references and attempts to quote  
8 a portion of 42 C.F.R. § 422 and 42 C.F.R. § 423. Defendant lacks sufficient knowledge to admit  
9 or deny the allegations about CMS's capabilities and reliance, and, on that basis denies each and  
10 every such allegation. Defendant denies each and every other allegation in paragraph 75.

11 76. Paragraph 76 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 76 references 42 C.F.R. § 423.504(b)(4)(vi), 42 C.F.R. § 422.503(a), and 65 Fed. Reg.  
14 40170-01 at 40264 (June 29, 2000). Defendant denies each and every other allegation in  
15 paragraph 76.

16 77. Paragraph 77 contains legal conclusions and/or argument, which require no  
17 response. To the extent any response to such allegations is necessary, Defendant admits that  
18 paragraph quotes and references from 42 C.F.R. §§ 422.503(b)(4)(vi) and 423.504(b)(4)(vi).  
19 Defendant denies each and every other allegation in paragraph 77.

20 78. Paragraph 78 contains legal conclusions and/or argument, which require no  
21 response. To the extent any response to such allegations is necessary, Defendant admits that  
22 paragraph 78 references 42 C.F.R. § 422.504(l). Paragraph 78 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 78 references CMS,  
25 *Medicare Managed Care Manual*, Chapter 11 § 130 (Rev. 79, Feb. 17, 2006). Defendant denies  
26 each and every other allegation in paragraph 78.

27 79. Paragraph 79 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 79 quotes and references 42 C.F.R. § 422.504(l). Defendant lacks sufficient  
2 knowledge to admit or deny the allegation that “In its contracts with CMS, Kaiser (like all  
3 MAOs) agreed that: “[a]s a condition for receiving a monthly payment under paragraph B of this  
4 article, and 42 CFR Part 422 Subpart G,” it must attest to “the accuracy, completeness and  
5 truthfulness of the data identified on these attachments” and, on that basis, denies each and every  
6 such allegation. Defendant denies each and every other allegation in paragraph 79.

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

#### 11 **KAISER VIOLATED THE FALSE CLAIMS ACT**

12 81. Paragraph 81 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 81.

15 82. Defendant denies each and every allegation in paragraph 82.

16 83. Paragraph 83 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 other allegation in paragraph 83.

19 84. Paragraph 84 contains legal conclusions and/or argument, which require no  
20 response. To the extent any response to such allegations is necessary, Defendant denies each and  
21 every such allegation. Defendant denies each and every other allegation in paragraph 84.

22 85. Defendant denies each and every allegation in paragraph 85.

23 86. Answering paragraph 86, Defendant lacks sufficient knowledge to admit or deny  
24 the allegations about Relator’s knowledge and awareness and, on that basis, denies each and  
25 every such allegation. Defendant denies each and every other allegation in paragraph 86.

26 87. Paragraph 87 contains reference to conduct that occurred before November 15,  
27 2011, for which Defendant cannot be liable and which requires no response. *See* Case No. 3:13-  
28

1 cv-03891-EMC (N.D. Cal.), Dkt. No. 225, November 14, 2022 Order at 19. Defendant denies  
2 each and every allegation in paragraph 87.

3 88. Defendant denies each and every allegation in paragraph 88.

4 89. Defendant denies each and every allegation in paragraph 89.

5 **I. Kaiser’s Aggressive Push for MA Revenue**

6 90. Defendant denies each and every allegation in paragraph 90.

7 91. Paragraph 91 contains allegations that do not reference Defendant, which require  
8 no response. To the extent any response is necessary, Defendant lacks sufficient knowledge to  
9 admit or deny such allegations and, on that basis, denies each and every such allegation.  
10 Defendant denies each and every other allegation in paragraph 91.

11 92. Paragraph 92 contains reference to conduct that occurred before November 15,  
12 2011, for which Defendant cannot be liable and which requires no response. *See* Case No. 3:13-  
13 cv-03891-EMC (N.D. Cal.), Dkt. No. 225, November 14, 2022 Order at 19. Defendant admits  
14 that, during at least some of the relevant period, Relator was a member of the Medicare  
15 Advantage Governance Group. Defendant denies each and every other allegation in paragraph  
16 92.

17 93. Paragraph 93 contains reference to conduct that occurred before November 15,  
18 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
19 November 14, 2022 Order at 19. Defendant admits that, during at least some of the relevant  
20 period: “Filling the Tank” reports were generated; these reports tracked risk scores; and Chris  
21 Tholen discussed these reports at meetings. Defendant denies each and every other allegation in  
22 paragraph 93.

23 94. Paragraph 94 contains reference to conduct that occurred before November 15,  
24 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
25 November 14, 2022 Order at 19. Defendant lacks sufficient knowledge to admit or deny the  
26 allegations in paragraph 94 and, on that basis, denies each and every such allegation. Defendant  
27 denies each and every other allegation in paragraph 94.  
28

1           95.     Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks  
2 sufficient information to admit or deny the allegations that “Kaiser Colorado ran a serious of  
3 revenue-boosting projects,” and, on that basis, denies each and every such allegation. Defendant  
4 denies each and every other allegation in paragraph 95.

5     **II.     Kaiser Knew the CMS Standard for Submission of RA Diagnoses**

6           96.     Answering paragraph 96, Defendant admits that, in accordance with 42 C.F.R  
7 § 422.504(*I*), MAOs must, as a condition for receiving payment, certify (based on best  
8 knowledge, information, and belief) the accuracy, completeness, and truthfulness of relevant data  
9 that CMS requests. Defendant denies each and every other allegation in paragraph 96.

10          97.     Paragraph 97 contains reference to conduct that occurred before November 15,  
11 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
12 November 14, 2022 Order at 19. Paragraph 97 contains allegations that do not reference  
13 Defendant, which require no response. To the extent any response to such allegations is  
14 necessary, Defendant admits that, during at least some of the relevant period, KFHP’s National  
15 Compliance, Ethics, & Integrity Office (“NCO”) employees conducted a pre-close audit of  
16 diagnosis codes reported during the data collection period of 2005; Defendant lacks sufficient  
17 knowledge to admit or deny each and every other such allegation and, on that basis, denies each  
18 and every such allegation. Defendant denies each and every other allegation in paragraph 97.

19          98.     Answering paragraph 98, Defendant admits that, during at least some of the  
20 relevant period, KFHP’s NCO employees audited diagnosis code data; and that for certain years  
21 these audits were referred to as “HCC Probe Audits.” Paragraph 98 contains allegations that do  
22 not reference Defendant, which require no response. To the extent any response to such  
23 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations  
24 and, on that basis, denies each and every such allegation. Defendant denies each and every other  
25 allegation in paragraph 98.

26          99.     Paragraph 99 contains reference to conduct that occurred before November 15,  
27 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
28 November 14, 2022 Order at 19. Paragraph 99 contains allegations that do not reference

1 Defendant, which require no response. To the extent any response to such allegations is  
2 necessary, Defendant admits that, an audit of some cancer diagnosis codes was conducted in 2007  
3 and, during at least some of the relevant period, redactions related to cancer diagnosis codes were  
4 transmitted. Defendant denies each and every other allegation in paragraph 99.

5 100. Due to the non-specific and vague nature of Relator's allegations, Defendant lacks  
6 sufficient information to admit or deny the allegations in paragraph 100, and on that basis denies  
7 each and every such allegation. Defendant denies each and every other allegation in paragraph  
8 100.

### 9 **III. Kaiser's Claim Submission Process**

10 101. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph  
11 101, on that basis denies each and every such allegation. Defendant denies each and every other  
12 allegation in paragraph 101.

13 102. Answering paragraph 102, Defendant admits that, during at least some of the  
14 relevant period, Defendants used an electronic health record system called KP HealthConnect in  
15 which members' diagnosis information is documented. Due to the non-specific and vague nature  
16 of Relator's allegations, Defendant lacks sufficient information to admit or deny the following  
17 allegations, "Diagnosis codes that Kaiser MAOs submitted to CMS for payment were derived  
18 from several sources" and "codes were later submitted to a Kaiser claims database" and, on that  
19 basis denies each and every such allegation. Defendant denies each and every other allegation in  
20 paragraph 102.

21 103. Due to the non-specific and vague nature of Relator's allegations, Defendant lacks  
22 sufficient information to admit or deny the allegations in paragraph 103 and, on that basis denies  
23 each and every such allegation. Defendant denies each and every other allegation in paragraph  
24 103.

25 104. Defendant denies each and every other allegation in paragraph 104.

26 105. Paragraph 105 contains allegations that do not reference Defendant, which require  
27 no response. To the extent any response to such allegations is necessary, Defendant admits that,  
28 during at least some of the relevant period, diagnosis codes were sent through the Risk

1 Adjustment Tracking System or “RATS” and some diagnosis codes in RATS were transmitted to  
2 CMS. Defendant denies each and every other allegation in paragraph 105.

3 106. Answering paragraph 106, Defendant lacks sufficient knowledge to admit or deny  
4 the allegations about Relator’s knowledge and, on that basis denies each and every such  
5 allegation. Defendant denies each and every other allegation in paragraph 106.

6 **IV. Kaiser Conducted Impermissible One-Way Look Chart Reviews of Colorado**  
7 **External Providers**

8 107. Defendant denies each and every allegation in paragraph 107.

9 108. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks  
10 sufficient information to admit or deny the allegations that “[s]everal of Kaiser’s regions rely  
11 heavily on providers at hospitals or other facilities that are not owned by Kaiser, known as  
12 external providers, to furnish inpatient care to Kaiser’s HMO members” and, on that basis, denies  
13 each and every such allegation. Paragraph 108 contains allegations that do not reference  
14 Defendant, which require no response. To the extent any response to such allegations is  
15 necessary, Defendant admits that diagnosis code data from external providers were transmitted to  
16 CMS. Defendant denies each and every other allegation in paragraph 108.

17 109. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks  
18 sufficient information to admit or deny the allegations in paragraph 109, and, on that basis, denies  
19 each and every such allegation. Defendant denies each and every other allegation in paragraph  
20 109.

21 **A. Kaiser Knew Many of Its Colorado External Provider Codes Were False**

22 110. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks  
23 sufficient information to admit or deny the allegation that “Kaiser’s Probe and other audits have  
24 identified significant error rates in risk adjustment claims Kaiser submitted to CMS based on  
25 diagnoses provided by external providers,” and, on that basis, denies each and every such  
26 allegation. Defendant denies each and every other allegation in paragraph 110.

1 111. Paragraph 111 contains reference to conduct that occurred before November 15,  
2 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
3 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 111.

4 112. Paragraph 112 contains reference to conduct that occurred before November 15,  
5 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
6 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 112.

7 113. Paragraph 113 contains reference to conduct that occurred before November 15,  
8 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
9 November 14, 2022 Order at 19. Paragraph 113 contains reference to a document, which requires  
10 no response because the referenced document speaks for itself. To the extent any response to  
11 such allegations is necessary, Defendant admits that paragraph 113 references a portion of a  
12 document. Defendant denies each and every other allegation in paragraph 113.

13 Defendant denies each and every allegation in paragraph 113 footnote 11.

14 114. Paragraph 114 contains reference to conduct that occurred before November 15,  
15 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
16 November 14, 2022 Order at 19. Paragraph 114 contains reference to a document, which requires  
17 no response because the referenced document speaks for itself. To the extent any response to  
18 such allegations is necessary, Defendant admits that paragraph 114 references a portion of a  
19 document. Defendant denies each and every other allegation in paragraph 114.

20 115. Paragraph 115 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 115 references a portion of a document. Defendant  
23 denies each and every other allegation in paragraph 115.

24 Answering paragraph 115 footnote 12, Defendant admits that, upon information and  
25 belief, Sisters of Charity Leavenworth acquired Exempla. Defendant denies each and every other  
26 allegation in paragraph 115 footnote 12.

27 116. Due to the non-specific and vague nature of Relator's allegations, Defendant lacks  
28 sufficient information to admit or deny the allegations in paragraph 116 and, on that basis, denies

1 each and every such allegation. Defendant denies each and every other allegation in paragraph  
2 116.

3 117. Defendant denies each and every allegation in paragraph 117.

4 118. Paragraph 118 contains reference to conduct that occurred before November 15,  
5 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
6 November 14, 2022 Order at 19. Paragraph 118 contains allegations that do not reference  
7 Defendant, which require no response. To the extent any response to such allegations is  
8 necessary, Defendant denies each and every such allegation. Defendant denies each and every  
9 other allegation in paragraph 118.

10 119. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks  
11 sufficient information to admit or deny the allegations in paragraph 119 and, on that basis, denies  
12 each and every such allegation. Paragraph 119 contains allegations that do not reference  
13 Defendant, which require no response. To the extent any response to such allegations is  
14 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 119.

17 120. Paragraph 120 contains reference to conduct that occurred before November 15,  
18 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
19 November 14, 2022 Order at 19. Defendant admits that in Fall 2010 Relator presented at a  
20 Regional Reporting Group (“RRG”) meeting on hospital discharge review in Colorado.  
21 Defendant denies each and every other allegation in paragraph 120.

22 121. Defendant denies each and every allegation in paragraph 121.

23 122. Paragraph 122 contains legal conclusions and/or argument, which require no  
24 response. To the extent any response to such allegations is necessary, Defendant denies each and  
25 every such allegation. Defendant denies each and every other allegation in paragraph 122.

26 123. Paragraph 123 contains reference to conduct that occurred before November 15,  
27 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
28 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 123.

1           124. Paragraph 124 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 124.

4           125. Paragraph 125 contains reference to conduct that occurred before November 15,  
5 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
6 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 125.

7           126. Paragraph 126 contains reference to conduct that occurred before November 15,  
8 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
9 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 126.

10           127. Paragraph 127 contains reference to conduct that occurred before November 15,  
11 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
12 November 14, 2022 Order at 19. Due to the non-specific and vague nature of Relator's  
13 allegations, Defendant lacks sufficient information to admit or deny the allegation that "over half  
14 of the errors identified in the Date of Service 2008 audit were, at least partially, attributable to  
15 external providers," and, on that basis, denies each and every such allegation. Paragraph 127  
16 contains references to documents, which require no response because the referenced documents  
17 speak for themselves. To the extent any response to such allegations is necessary, Defendant  
18 admits that paragraph 127 references portions of documents. Defendant denies each and every  
19 other allegation in paragraph 127.

20           128. Paragraph 128 contains reference to conduct that occurred before November 15,  
21 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
22 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 128.

23           129. Paragraph 129 contains reference to conduct that occurred before November 15,  
24 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
25 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 129.

26           130. Paragraph 130 contains reference to conduct that occurred before November 15,  
27 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
28 November 14, 2022 Order at 19. Paragraph 130 contains references to documents, which require

1 no response because the referenced documents speak for themselves. To the extent any response  
2 to such allegations is necessary, Defendant admits that paragraph 130 quotes and references  
3 portions of documents. Defendant denies each and every other allegation in paragraph 130.

4 131. Paragraph 131 contains reference to conduct that occurred before November 15,  
5 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
6 November 14, 2022 Order at 19. Defendant lacks sufficient knowledge to admit or deny the  
7 allegations in paragraph 131, and, on that basis, denies each and every such allegation. Defendant  
8 denies each and every other allegation in paragraph 131.

9 132. Due to the non-specific and vague nature of Relator's allegations, Defendant lacks  
10 sufficient information to admit or deny the allegation that "Because of Relator's concerns with  
11 these consistently high errors, in or around 2009, he pushed Kaiser Colorado to perform another  
12 audit of external hospitals," and, on that basis, denies each and every such allegation. Defendant  
13 lacks sufficient knowledge to admit or deny the allegations that Relator "does not know if the  
14 audit was ever completed, and the final results were never released" and, on that basis, denies  
15 each and every such allegation. Paragraph 132 contains reference to a document, which requires  
16 no response because the referenced document speaks for itself. To the extent any response to  
17 such allegations is necessary, Defendant admits that paragraph 132 references and attempts to cite  
18 a portion of a document. Defendant denies each and every other allegation in paragraph 132.

19 133. Defendant denies each and every allegation in paragraph 133.

20 **B. Kaiser's Retrospective, One-Way Look Chart Review Program**

21 134. Defendant denies each and every allegation in paragraph 134.

22 135. Paragraph 135 contains allegations that do not reference Defendant, which require  
23 no response. To the extent any response to such allegations is necessary, Defendant admits that  
24 during at least some of the relevant period, KFHP-CO's employees reviewed its MA members'  
25 medical records from inpatient visits with non-Defendant operated hospitals. Defendant denies  
26 each and every other allegation in paragraph 135.

27  
28

1 136. To the extent paragraph 136 references Section IV.A. and ¶¶ 138-141 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 136.

4 137. Paragraph 137 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 137 references *United States ex rel. Poehling v. UnitedHealth Group, Inc.*, No. CV-16-  
7 08697- MWF, 2018 WL 1363487 (C.D. Cal. Feb. 12, 2018) and *United States ex rel. Ormsby v.*  
8 *Sutter Health*, 444 F. Supp. 3d 1010 (N.D. Cal. 2020). Defendant denies each and every other  
9 allegation in paragraph 137.

10 138. Paragraph 138 contains reference to conduct that occurred before November 15,  
11 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
12 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 138.

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

14 140. Defendant denies each and every allegation in paragraph 140.

15 141. Paragraph 141 contains reference to conduct that occurred before November 15,  
16 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
17 November 14, 2022 Order at 19. Paragraph 141 contains references to documents, which require  
18 no response because the referenced documents speak for themselves. To the extent any response  
19 to such allegations is necessary, Defendant admits that paragraph 141 quotes and references  
20 portions of documents. Defendant denies each and every other allegation in paragraph 141.

21 142. Paragraph 142 contains legal conclusions and/or argument, which require no  
22 response. To the extent any response to such allegations is necessary, Defendant denies each and  
23 every such allegation. Defendant denies each and every other allegation in paragraph 142.

24 143. Defendant denies each and every allegation in paragraph 143.

25 144. Paragraph 144 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 the allegations in paragraph 144 and, on that basis, denies  
28

1 each and every such allegation. Defendant denies each and every other allegation in paragraph  
2 144.

3 145. Defendant denies each and every allegation in paragraph 145.

4 146. Paragraph 146 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 146.

7 147. Paragraph 147 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 such allegation. Defendant denies each and every other  
10 allegation in paragraph 147.

11 148. Defendant denies each and every allegation in paragraph 148.

12 149. Paragraph 149 contains reference to conduct that occurred before November 15,  
13 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
14 November 14, 2022 Order at 19. Paragraph 149 contains allegations that do not reference  
15 Defendant, which require no response. To the extent any response to such allegations is  
16 necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that  
17 basis, denies each and every such allegation. Defendant denies each and every other allegation in  
18 paragraph 149.

19 150. Paragraph 150 contains legal conclusions and/or argument, which require no  
20 response. To the extent any response to such allegations is necessary, Defendant denies each and  
21 every such allegation. Defendant denies each and every other allegation in paragraph 150.

22 151. Answering paragraph 151, Defendant lacks sufficient knowledge to admit or deny  
23 the allegations about Relator's knowledge and, on that basis, denies each and every allegation.  
24 Defendant denies each and every other allegation in 151.

25 152. Defendant denies each and every allegation in paragraph 152.

26 153. Paragraph 153 contains legal conclusions and/or argument, which require no  
27 response. To the extent any response to such allegations is necessary, Defendant denies each and  
28 every such allegation. Defendant denies each and every other allegation in paragraph 153.

1 154. Paragraph 154 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 154.

4 155. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks  
5 sufficient information to admit or deny the allegations that Relator “repeatedly raised concerns  
6 regarding this program” and, on that basis, denies each and every allegation. Defendant denies  
7 each and every other allegation in 155.

8 156. Answering paragraph 156, Defendant admits that for at least some of the relevant  
9 period, processes were in place, some of which were referred to as a “filter,” to select encounters  
10 with certain diagnosis codes for auditing. Defendant also admits that Relator requested an  
11 external filter. Defendant denies each and every other allegation in paragraph 156.

12 157. Paragraph 157 contains reference 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 admits that paragraph 157 references portions of documents.  
15 Defendant denies each and every other allegation in 157.

16 158. Paragraph 158 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 158.

19 159. Defendant denies each and every allegation in paragraph 159.

20 160. Paragraph 160 contains legal conclusions and/or argument, which require no  
21 response. To the extent any response to such allegations is necessary, Defendant denies each and  
22 every such allegation. Defendant denies each and every other allegation in paragraph 160.

23 **V. Kaiser Ignored and Failed to Correct Widespread False Coding by Internal**  
24 **Providers**

25 161. Defendant denies each and every allegation in paragraph 161.  
26  
27  
28

1           **A. Kaiser Ignored Numerous Red Flags That Gave It Knowledge of False Claims**  
2           **from Internal Providers**

3           162. Answering paragraph 162, Defendant admits that for some of the relevant period,  
4 KFHP's NCO employees audited diagnosis code data that had been transmitted to CMS the prior  
5 year; and that for certain years these audits were referred to as "HCC Probe Audits." Defendant  
6 denies each and every other allegation in paragraph 162.

7           163. Answering paragraph 163, Defendant admits that, in addition to conducting HCC  
8 Probe Audits, KFHP's NCO employees, before CMS's Risk Adjustment Data Validation  
9 ("RADV") audits, audited diagnosis code data that had been transmitted to CMS. Defendant  
10 denies each and every other allegation in paragraph 163.

11                       **1. Kaiser's Audits Were a Red Flag About Its False Coding**

12           164. Defendant denies each and every allegation in paragraph 164.

13           165. Paragraph 165 contains reference to conduct that occurred before November 15,  
14 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
15 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 165.

16           166. Paragraph 166 contains reference to conduct that occurred before November 15,  
17 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
18 November 14, 2022 Order at 19. Paragraph 166 contains allegations that do not reference  
19 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. Defendant denies each and every other allegation in  
22 paragraph 166.

23           167. Paragraph 167 contains reference to conduct that occurred before November 15,  
24 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
25 November 14, 2022 Order at 19. Defendant admits that Relator asked that HCC Probe Audit  
26 results for all regions be combined to learn from the results of other regions' HCC Probe Audits.  
27 Defendant denies each and every other allegation in paragraph 167.

28

1 168. Paragraph 168 contains reference to conduct that occurred before November 15,  
2 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
3 November 14, 2022 Order at 19. Paragraph 168 contains allegations that do not reference  
4 Defendant, which require no response. To the extent any response to such allegations is  
5 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 168.

8 169. Defendant denies each and every allegation in paragraph 169.

9 170. Defendant denies each and every allegation in paragraph 170.

10 **2. Kaiser Knew Certain of Its Diagnosis Codes Were Frequently False**

11 171. Paragraph 171 contains reference to conduct that occurred before November 15,  
12 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
13 November 14, 2022 Order at 19. To the extent paragraph 171 references ¶¶ 108-109 of the  
14 Amended Complaint, *see* Defendant's responses to those paragraphs, which are incorporated  
15 herein. Defendant denies each and every other allegation in paragraph 171.

16 172. Paragraph 172 contains reference to conduct that occurred before November 15,  
17 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
18 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 172.

19 173. Due to the non-specific and vague nature of Relator's allegations, Defendant lacks  
20 sufficient information to admit or deny the allegations in paragraph 173, and, on that basis, denies  
21 each and every such allegation. Defendant denies each and every other allegation in paragraph  
22 173.

23 174. Paragraph 174 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 174.

27 175. Answering paragraph 175, Defendant admits that "history of cancer" diagnoses  
28 generally fall within ICD "history" codes; and that the CMS-HCC risk adjustment model

1 generally does not provide for risk adjustment payments based upon ICD “history” codes.

2 Paragraph 175 contains reference to a document, which requires no response because the  
3 referenced document speaks for itself. To the extent any response to such allegations is  
4 necessary, Defendant denies each and every such allegation. Defendant denies each and every  
5 other allegation in paragraph 175.

6 176. Paragraph 176 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. Defendant denies each and every other allegation in paragraph 176.

10 177. Paragraph 177 contains reference to conduct that occurred before November 15,  
11 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
12 November 14, 2022 Order at 19. Defendant admits that, during at least some of the relevant  
13 period, Defendants used an electronic health record system called KP HealthConnect that  
14 launched in 2004. Defendant denies each and every other allegation in paragraph 177.

15 178. Paragraph 178 contains reference to conduct that occurred before November 15,  
16 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
17 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 178.

18 179. Paragraph 179 contains reference to conduct that occurred before November 15,  
19 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
20 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 179.

21 180. Paragraph 180 contains reference to conduct that occurred before November 15,  
22 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
23 November 14, 2022 Order at 19. Defendant admits that, for at least some of the relevant period:  
24 KP HealthConnect displayed Best Practices Alerts when a CPMG physician entered a diagnosis  
25 of certain types of cancer; and that the Best Practice Alert for breast cancer said: “DISEASE  
26 MANAGEMENT REMINDER: To use this diagnosis, you must have documented in your note  
27 that the cancer is active or exists and/or the current treatment for the cancer. ACTION: IF NOT  
28

1 ACTIVE, use History of Breast Cancer – enter Hx Breast in the Encounter Diagnosis field to  
2 select.” Defendant denies each and every other allegation in paragraph 180.

3 181. Paragraph 181 contains reference to conduct that occurred before November 15,  
4 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
5 November 14, 2022 Order at 19. Paragraph 181 contains reference to a document, which requires  
6 no response because the referenced document speaks for itself. To the extent any response to  
7 such allegations is necessary, Defendant admits that paragraph 181 references a portion of a  
8 document. Defendant denies each and every other allegation in paragraph 181.

9 182. Paragraph 182 contains reference to conduct that occurred before November 15,  
10 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
11 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 182.

12 183. Defendant denies each and every allegation in paragraph 183.

13 184. Paragraph 184 contains reference to conduct that occurred before November 15,  
14 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
15 November 14, 2022 Order at 19. Due to the non-specific and vague nature of Relator’s  
16 allegations, Defendant lacks sufficient information to admit or deny the allegations in paragraph  
17 184 and, on that basis, denies each and every allegation in paragraph 184. Defendant denies each  
18 and every other allegation in paragraph 184.

19 185. Paragraph 185 contains reference to conduct that occurred before November 15,  
20 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
21 November 14, 2022 Order at 19. Defendant admits that KFHP’s NCO employees developed a  
22 corrective action plan (“CAP”) related to coding of active cancer after the 2011 HCC Probe Audit  
23 of the Colorado region; and that Dr. Teresa Welsh, who was the CPMG Physician Director of  
24 Coding, and Relator met with hematology/oncology for ongoing education as part of the CAP.  
25 Defendant lacks sufficient knowledge to admit or deny the following allegations, “to Relator’s  
26 knowledge, no such audits were ever performed,” and “Dr. Welsh conducted some follow-up  
27 training, but reported back to Relator that, to be effective, such training would have to be done  
28

1 annually given the high turnover rate for oncologists,” and, on that basis, denies each and every  
2 such allegation. Defendant denies each and every other allegation in paragraph 185.

3 186. Paragraph 186 contains reference to conduct that occurred before November 15,  
4 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
5 November 14, 2022 Order at 19. Defendant admits that KFHP-CO engaged Peak Health  
6 Solutions in 2011 to audit diagnosis code data. Paragraph 186 contains reference to a document,  
7 which requires no response because the referenced document speaks for itself. To the extent any  
8 response is necessary, Defendant admits that paragraph 186 references a portion of a document.  
9 Defendant lacks sufficient knowledge to admit or deny the allegations that “Relator believes that  
10 part of this project was to review past cancer diagnoses submitted for risk adjustment to CMS”  
11 and “Any findings of the Peak audit have been withheld from Relator,” and, on that basis, denies  
12 each and every such allegation. Defendant denies each and every other allegation in paragraph  
13 186.

14 187. Paragraph 187 contains reference to conduct that occurred before November 15,  
15 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
16 November 14, 2022 Order at 19. Paragraph 187 contains reference to documents, which require  
17 no response because the referenced documents speak for themselves. To the extent any response  
18 to such allegations is necessary, Defendant admits that paragraph 187 references portions of  
19 documents. Defendant denies each and every other allegation in paragraph 187.

20 188. Paragraph 188 contains legal conclusions and/or argument, which require no  
21 response. To the extent any response to such allegations is necessary, Defendant denies each and  
22 every such allegation. Defendant denies each and every other allegation in paragraph 188.

23 189. Paragraph 189 contains allegations that do not reference Defendant, which require  
24 no response. To the extent any response to such allegations is necessary, Defendant lacks  
25 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every  
26 such allegation. Defendant denies each and every other allegation in paragraph 189.

27 190. Defendant denies each and every allegation in paragraph 190.  
28

1           191. Paragraph 191 contains reference to conduct that occurred before November 15,  
2 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
3 November 14, 2022 Order at 19. Defendant admits that in 2010 there was a pilot project to have  
4 Defendant physicians review stroke diagnoses. Defendant denies each and every other allegation  
5 in paragraph 191.

6           192. Defendant denies each and every allegation in paragraph 192.

7           193. Paragraph 193 contains reference to conduct that occurred before November 15,  
8 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
9 November 14, 2022 Order at 19. Due to the non-specific and vague nature of Relator's  
10 allegations, Defendant lacks sufficient information to admit or deny the allegations in paragraph  
11 193, and, on that basis, denies each and every such allegation. Defendant denies each and every  
12 other allegation in paragraph 193.

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

14           195. Paragraph 195 contains reference to conduct that occurred before November 15,  
15 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
16 November 14, 2022 Order at 19. Paragraph 195 contains reference to documents, which require  
17 no response because the referenced documents speak for themselves. To the extent any response  
18 is necessary, Defendant admits that paragraph 195 references portions of documents. Defendant  
19 denies each and every other allegation in paragraph 195.

20           196. Paragraph 196 contains reference to conduct that occurred before November 15,  
21 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
22 November 14, 2022 Order at 19. Paragraph 196 contains reference to documents, which require  
23 no response because the referenced documents speak for themselves. To the extent any response  
24 is necessary, Defendant admits that paragraph 196 references portions of documents. Defendant  
25 denies each and every other allegation in paragraph 196.

26           197. Due to the non-specific and vague nature of Relator's allegations, Defendant lacks  
27 sufficient information to admit or deny the allegations in paragraph 197 and, on that basis, denies  
28

1 each and every such allegation. Defendant denies each and every other allegation in paragraph  
2 197.

3 198. Answering paragraph 198, Defendant admits that pulmonary embolism is a  
4 condition when blood clots travel to the patient's lungs, thereby blocking one or more pulmonary  
5 arteries; that in some cases, pulmonary embolism is caused by blood clots that travel to the lungs  
6 from the legs; and that patients who have one or more pulmonary emboli are often treated with  
7 anti-coagulants to prevent the development of additional emboli. Due to the non-specific and  
8 vague nature of Relator's allegations, Defendant lacks sufficient information to admit or deny the  
9 allegation that "Until a recent rule change, it was improper to classify patients being treated with  
10 anti-coagulants to prevent emboli as being treated for pulmonary embolism; they were properly  
11 coded as having only a history of pulmonary embolism," and, on that basis, denies each and every  
12 such allegation. Defendant denies each and every other allegation in paragraph 198.

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

14 200. Answering paragraph 200, Defendant admits that pain in the legs associated with  
15 physical activity may be a result of a lack of blood supply to the legs (vascular claudication); and  
16 that pain in the legs associated with physical activity may be a result of nerve root compression  
17 (neurogenic claudication). Defendant lacks sufficient knowledge to admit or deny the allegation  
18 that "Relator discovered that when a physician attempted to diagnose a patient with the  
19 neurologic condition, it incorrectly mapped to the ICD-9 code for the vascular disorder," and, on  
20 that basis, denies each and every such allegation. Defendant denies each and every other  
21 allegation in paragraph 200.

22 201. Paragraph 201 contains reference to conduct that occurred before November 15,  
23 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
24 November 14, 2022 Order at 19. Paragraph 201 contains reference to documents, which require  
25 no response because the referenced documents speak for themselves. To the extent any response  
26 is necessary, Defendant admits that paragraph 201 references portions of documents. Defendant  
27 denies each and every other allegation in paragraph 201.  
28

1           202. Paragraph 202 contains reference 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 admits that paragraph 202 references portions of documents.  
4 Defendant denies each and every other allegation in paragraph 202.

5           203. Paragraph 203 contains reference to conduct that occurred before November 15,  
6 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
7 November 14, 2022 Order at 19. Paragraph 203 contains reference to a document, which requires  
8 no response because the referenced document speaks for itself. To the extent any response to  
9 such allegations is necessary, Defendant admits that paragraph 203 references a portion of a  
10 document. Defendant denies each and every allegation in paragraph 203.

11           204. Defendant denies each and every allegation in paragraph 204.

12           205. Paragraph 205 contains reference to conduct that occurred before November 15,  
13 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
14 November 14, 2022 Order at 19. Paragraph 205 contains reference to documents, which require  
15 no response because the referenced documents speak for themselves. To the extent any response  
16 to such allegations is necessary, Defendant admits that paragraph 205 references portions of  
17 documents. Defendant denies each and every other allegation in paragraph 205.

18           206. Defendant denies each and every allegation in paragraph 206.

19           207. Paragraph 207 contains reference to conduct that occurred before November 15,  
20 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
21 November 14, 2022 Order at 19. Paragraph 207 contains reference to documents, which require  
22 no response because the referenced documents speak for themselves. To the extent any response  
23 to such allegations is necessary, Defendant admits that paragraph 207 references portions of  
24 documents. Defendant denies each and every other allegation in paragraph 207.

25           208. Paragraph 208 contains reference to conduct that occurred before November 15,  
26 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
27 November 14, 2022 Order at 19. Defendant admits that a myocardial infarction (“MI”) is a heart  
28 attack. Paragraph 208 contains reference to documents, which require no response because the

1 referenced documents speak for themselves. To the extent any response to such allegations is  
2 necessary, Defendant admits that paragraph 208 references portions of documents. Defendant  
3 denies each and every other allegation in paragraph 208.

4 209. Paragraph 209 contains reference to conduct that occurred before November 15,  
5 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
6 November 14, 2022 Order at 19. Paragraph 209 contains reference to documents, which require  
7 no response because the referenced documents speak for themselves. To the extent any response  
8 is necessary, Defendant admits that paragraph 209 references portions of documents. Defendant  
9 denies each and every other allegation in paragraph 209.

10 210. Due to the non-specific and vague nature of Relator's allegations, Defendant lacks  
11 sufficient information to admit or deny the allegations in paragraph 210 and, on that basis, denies  
12 each and every such allegation. Defendant denies each and every other allegation in paragraph  
13 210.

14 211. Defendant denies each and every allegation in paragraph 211.

15 212. Paragraph 212 contains reference to conduct that occurred before November 15,  
16 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
17 November 14, 2022 Order at 19. Paragraph 212 contains reference to documents, which require  
18 no response because the referenced documents speak for themselves. To the extent any response  
19 to such allegations is necessary, Defendant admits that paragraph 212 references portions of  
20 documents. Defendant denies each and every other allegation in paragraph 212.

21 213. Paragraph 213 contains reference to conduct that occurred before November 15,  
22 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
23 November 14, 2022 Order at 19. Defendant admits that decubitus ulcers, which refer specifically  
24 to pressure ulcers, and venous stasis ulcers, which are caused by poor venous circulation, are two  
25 types of skin ulcers; and that pressure ulcers map to HCC 148. Defendant denies each and every  
26 other allegation in paragraph 213.

27 214. Paragraph 214 contains reference to conduct that occurred before November 15,  
28 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,

1 November 14, 2022 Order at 19. Paragraph 214 contains reference to a document, which requires  
2 no response because the referenced document speaks for itself. To the extent any response to  
3 such allegations is necessary, Defendant admits that paragraph 214 quotes a portion of a  
4 document. Defendant denies each and every other allegation in paragraph 214.

5 215. Paragraph 215 contains reference to conduct that occurred before November 15,  
6 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
7 November 14, 2022 Order at 19. Paragraph 215 contains reference to documents, which require  
8 no response because the referenced documents speak for themselves. To the extent any response  
9 is necessary, Defendant admits that paragraph 215 references portions of documents. Defendant  
10 denies each and every other allegation in paragraph 215.

11 216. Answering paragraph 216, Defendant admits that sick sinus syndrome (“SSS”) is  
12 the name given to a group of arrhythmias that occur because the normal pacemaker of the heart  
13 (the sinus node) does not work properly; that various irregular heart rates (arrhythmias) or  
14 combinations of arrhythmias can occur in this condition; that people with this condition can have  
15 slow arrhythmias or a combination of fast and slow arrhythmias; and that treatment for SSS may  
16 be a pacemaker. Defendant denies each and every other allegation in paragraph 216.

17 217. Defendant denies each and every allegation in paragraph 217.

18 218. Paragraph 218 contains reference to conduct that occurred before November 15,  
19 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
20 November 14, 2022 Order at 19. Paragraph 218 contains reference to a document, which requires  
21 no response because the referenced document speaks for itself. To the extent any response is  
22 necessary, Defendant admits that paragraph 218 quotes and references a portion of a document.  
23 Defendant denies each and every other allegation in paragraph 218.

24 219. Defendant denies each and every allegation in paragraph 219.

25 220. Defendant denies each and every allegation in paragraph 220.

26 221. Paragraph 221 contains reference to conduct that occurred before November 15,  
27 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
28 November 14, 2022 Order at 19. Paragraph 221 contains reference to documents, which require

1 no response because the referenced documents speak for themselves. To the extent any response  
2 to such allegations is necessary, Defendant admits that paragraph 221 references portions of  
3 documents. Defendant denies each and every other allegation in paragraph 221.

4 222. Answering paragraph 222, Defendant admits that chronic kidney disease (“CKD”)  
5 is classified based on severity, which is designated by stages 1-5; and that, for at least some of the  
6 relevant period, CKD mapped to HCC 131. Defendant denies each and every other allegation in  
7 paragraph 222.

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

9 224. Paragraph 224 contains reference to conduct that occurred before November 15,  
10 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
11 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 224.

12 **B. Despite Its Knowledge of Falsity, Kaiser Submitted False Claims for**  
13 **Payments Based on Internal Provider Coding**

14 225. Paragraph 225 contains legal conclusion and/or argument, which require no  
15 response. To the extent any response to such allegations is necessary, Defendant denies each and  
16 every such allegation. Defendant denies each and every other allegation in paragraph 225.

17 **1. Kaiser Submitted False Claims for Certain “High Risk” Diagnoses**

18 226. Paragraph 226 contains legal conclusions and/or argument, which require no  
19 response. To the extent any response to such allegations is necessary, Defendant denies each and  
20 every such allegation. Defendant denies each and every other allegation in paragraph 226.

21 227. Paragraph 227 contains reference to conduct that occurred before November 15,  
22 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
23 November 14, 2022 Order at 19. Defendant admits that for at least some of the relevant period,  
24 processes were in place, some of which were referred to as a “filter,” to select encounters with  
25 certain diagnosis codes for auditing. Due to the non-specific and vague nature of Relator’s  
26 allegations, Defendant lacks sufficient information to admit or deny the allegation that “If the  
27 Kaiser coders determined that the diagnosis was invalid, it would be flagged to prevent Kaiser  
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1 from submitting that diagnosis to CMS,” and, on that basis, denies each and every such  
2 allegation. Defendant denies each and every other allegation in paragraph 227.

3 228. Paragraph 228 contains reference to conduct that occurred before November 15,  
4 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
5 November 14, 2022 Order at 19. Due to the non-specific and vague nature of Relator’s  
6 allegations, Defendant lacks sufficient information to admit or deny the allegation that “The filter  
7 was successful in reducing the error rate for many of the diagnoses it targeted,” and, on that basis,  
8 denies each and every such allegation. Defendant denies each and every other allegation in  
9 paragraph 228.

10 229. Paragraph 229 contains reference to conduct that occurred before November 15,  
11 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
12 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 229.

13 230. Paragraph 230 contains reference to conduct that occurred before November 15,  
14 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
15 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 230.

16 231. Answering paragraph 231, Defendant lacks sufficient knowledge to admit or deny  
17 the allegation that “Much to Relator’s frustration, though, the filter did not address the category of  
18 claims with the highest error rate—external providers,” and, on that basis, denies each and every  
19 such allegation. Defendant denies each and every other allegation in paragraph 231.

20 232. Answering paragraph 232, Defendant admits that the “filter” process in place  
21 between 2010 and 2012 ended. Defendant denies each and every other allegation in paragraph  
22 232.

23 233. Defendant denies each and every allegation in paragraph 233.

24 234. Defendant denies each and every allegation in paragraph 234.

25 235. Paragraph 235 contains reference to conduct that occurred before November 15,  
26 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
27 November 14, 2022 Order at 19. Defendant admits that, in 2006, “Reimbursement Recovery  
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1 Audits” (“RRA”) were conducted for at least 19 different diagnoses. Defendant denies each and  
2 every other allegation in paragraph 235.

3 236. Paragraph 236 contains reference to conduct that occurred before November 15,  
4 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
5 November 14, 2022 Order at 19. Defendant denies each and every allegation in paragraph 236.

6 237. Paragraph 237 contains reference to conduct that occurred before November 15,  
7 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
8 November 14, 2022 Order at 19. Paragraph 237 contains allegations that do not reference  
9 Defendant, which require no response. To the extent any response to such allegations is  
10 necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that  
11 basis, denies each and every such allegation. Due to the non-specific and vague nature of  
12 Relator’s allegations, Defendant lacks sufficient information to admit or deny each and every  
13 other allegation in paragraph 237 and, on that basis, denies each and every such allegation.  
14 Defendant denies each and every other allegation in paragraph 237.

15 238. Paragraph 238 contains reference to conduct that occurred before November 15,  
16 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
17 November 14, 2022 Order at 19. Paragraph 238 contains allegations that do not reference  
18 Defendant, which require no response. To the extent any response to such allegations is  
19 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 238.

22 **2. Kaiser Submitted False Claims Due to Systematized Violations of**  
23 **Coding Rules**

24 239. Defendant denies each and every allegation in paragraph 239.

25 240. Paragraph 240 contains reference to conduct that occurred before November 15,  
26 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
27 November 14, 2022 Order at 19. Paragraph 240 contains legal conclusions and/or argument,  
28 which require no response. Paragraph 240 contains reference to a document, which requires no

1 response because the referenced document speaks for itself. To the extent any response to such  
2 allegations is necessary, Defendant admits that paragraph 240 references CMS, *2008 Risk*  
3 *Adjustment Data Technical Assistance Participant Guide* § 6.4.2. Defendant denies each and  
4 every other allegation in paragraph 240.

5 241. Paragraph 241 contains reference to conduct that occurred before November 15,  
6 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
7 November 14, 2022 Order at 19. Paragraph 241 contains reference to a document, which requires  
8 no response because the referenced document speaks for itself. To the extent any response to  
9 such allegations is necessary, Defendant admits that paragraph 241 references and attempts to  
10 quote a portion of a document. Defendant denies each and every other allegation in paragraph  
11 241.

12 242. Paragraph 242 contains reference to conduct that occurred before November 15,  
13 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
14 November 14, 2022 Order at 19. Paragraph 242 contains reference to a document, which requires  
15 no response because the referenced document speaks for itself. To the extent any response to  
16 such allegations is necessary, Defendant admits that paragraph 242 quotes and references a  
17 portion of a document. Defendant denies each and every other allegation in paragraph 242.

18 243. Paragraph 243 contains reference to conduct that occurred before November 15,  
19 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
20 November 14, 2022 Order at 19. Paragraph 243 contains legal conclusions and/or argument,  
21 which require no response. To the extent any response to such allegations is necessary,  
22 Defendant denies each and every such allegation. Paragraph 243 contains references to  
23 documents, which require no response because the referenced documents speak for themselves.  
24 To the extent any response to such allegations is necessary, Defendant admits that paragraph 243  
25 references portions of documents. Defendant denies each and every other allegation in paragraph  
26 243.

27 244. Paragraph 244 contains reference to conduct that occurred before November 15,  
28 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,

1 November 14, 2022 Order at 19. Paragraph 244 contains reference to a document, which requires  
2 no response because the referenced document speaks for itself. To the extent any response to  
3 such allegations is necessary, Defendant admits that paragraph 244 quotes and references a  
4 portion of a document. Defendant denies each and every other allegation in paragraph 244.

5 245. Paragraph 245 contains reference to conduct that occurred before November 15,  
6 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
7 November 14, 2022 Order at 19. Paragraph 245 contains legal conclusions and/or argument,  
8 which require no response. Paragraph 245 contains reference to documents, which require no  
9 response because the referenced documents speak for themselves. To the extent any response to  
10 such allegations is necessary, Defendant admits that paragraph 245 references portions of  
11 documents. Defendant denies each and every other allegation in paragraph 245.

12 246. Paragraph 246 contains reference to conduct that occurred before November 15,  
13 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
14 November 14, 2022 Order at 19. Paragraph 246 contains reference to a document, which requires  
15 no response because the referenced document speaks for itself. To the extent any response to  
16 such allegations is necessary, Defendant admits that paragraph 246 references a portion of a  
17 document. Defendant denies each and every other allegation in paragraph 246.

18 247. Paragraph 247 contains legal conclusion and/or argument, which require no  
19 response. To the extent any response to such allegations is necessary, Defendant denies each and  
20 every other allegation in paragraph 247.

21 **3. Kaiser's Natural Language Processing Audit Program Caused the**  
22 **Submission of False Claims**

23 248. Paragraph 248 contains reference to conduct that occurred before November 15,  
24 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
25 November 14, 2022 Order at 19. Defendant admits that, during at least some of the relevant  
26 period: Defendant's employees participated in activities sometimes referred to as Natural  
27 Language Processing ("NLP") activities; that NLP involves use of computer algorithms to search  
28 members' medical records for documented diagnoses that had not resulted in a diagnosis code

1 transmission to CMS; and that NLP analysis can be an effective tool to find diagnoses  
2 documented in members' medical records that had not resulted in a diagnosis code transmission  
3 to CMS. Defendant denies each and every other allegation in paragraph 248.

4 249. Due to the non-specific and vague nature of Relator's allegations, Defendant lacks  
5 sufficient information to admit or deny the allegations in paragraph 249 and, on that basis, denies  
6 each and every such allegation. Defendant denies each and every other allegation in paragraph  
7 249.

8 250. Defendant denies each and every allegation in paragraph 250.

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

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

11 253. Defendant denies each and every allegation in paragraph 253.

12 254. Paragraph 254 contains reference to conduct that occurred before November 15,  
13 2011, for which Defendant cannot be liable and which requires no response. *See* Dkt. No. 225,  
14 November 14, 2022 Order at 19. Paragraph 254 contains allegations that do not reference  
15 Defendant, which require no response. To the extent any response to such allegations is  
16 necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that  
17 basis, denies each and every such allegation. Defendant denies each and every other allegation in  
18 paragraph 254.

19 255. Paragraph 255 contains allegations that do not reference Defendant, which require  
20 no response. To the extent any response to such allegations is necessary, Defendant lacks  
21 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every  
22 such allegation. Defendant denies each and every other allegation in paragraph 255.

23 256. Defendant lacks sufficient knowledge to admit or deny every allegation in  
24 paragraph 256 and, on that basis, denies each and every such allegation. Defendant denies each  
25 and every other allegation in paragraph 256.

26 257. Paragraph 257 contains legal conclusions and/or argument that require no  
27 response. To the extent any response to such allegations is necessary, Defendant denies each and  
28 every such allegation. Defendant lacks sufficient knowledge and information to admit or deny

1 every allegation in paragraph 257 and, on that basis, denies each and every such allegation.

2 Defendant denies each and every other allegation in paragraph 257.

3 258. Paragraph 258 contains allegations that do not reference Defendant, which require  
4 no response. To the extent any response to such allegations is necessary, Defendant lacks  
5 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every  
6 such allegation. Defendant denies each and every other allegation in paragraph 258.

7 259. Paragraph 259 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 259.

10 260. The Amended Complaint lacks a paragraph 260 and, as such, no response is  
11 required.

12 **FIRST CLAIM FOR RELIEF**

13 **False Claims Act: Presenting or Causing to be Presented False Claims**  
14 **31 U.S.C. § 3729(a)(1)(A) (formerly 31 U.S.C. § 3729(a)(1))**

15 261. Answering paragraph 261, Defendant reasserts its answers to the above paragraphs  
16 as if fully set forth herein.

17 262. Paragraph 262 contains legal conclusions and/or argument, which require no  
18 response. To the extent any response to such allegations is necessary, Defendant denies each and  
19 every such allegation. Defendant denies each and every other allegation in paragraph 262.

20 263. Paragraph 263 contains legal conclusions and/or argument, which require no  
21 response. To the extent any response to such allegations is necessary, Defendant denies each and  
22 every such allegation. Defendant denies each and every other allegation in paragraph 263.

23 264. Paragraph 264 contains legal conclusions and/or argument, which require no  
24 response. To the extent any response to such allegations is necessary, Defendant denies each and  
25 every such allegation. Defendant denies each and every other allegation in paragraph 264.

26 265. Paragraph 265 contains legal conclusions and/or argument, which require no  
27 response. To the extent any response to such allegations is necessary, Defendant denies each and  
28 every such allegation. Defendant denies each and every other allegation in paragraph 265.

**SECOND CLAIM FOR RELIEF**

**False Claims Act: Making or Using False Records or Statements  
31 U.S.C. § 3729(a)(1)(B) (formerly 31 U.S.C. § 3729(a)(2))**

266. Answering paragraph 266, Defendant reasserts its answers to the above paragraphs as if fully set forth herein.

267. Paragraph 267 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 267.

268. Paragraph 268 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 268.

269. Paragraph 269 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 269.

**THIRD CLAIM FOR RELIEF**

**False Claims Act: Reverse False Claims  
31 U.S.C. § 3729(a)(1)(G) (formerly 31 U.S.C. § 3729(a)(7))**

270. Answering paragraph 270, Defendant reasserts its answers to the above paragraphs as if fully set forth herein.

271. Paragraph 271 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 271.

272. Paragraph 272 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 272.

273. Paragraph 273 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 273.

1 **PRAYER**

2 Answering the Prayer for Relief, Defendant denies that Relator is entitled to the relief he  
3 seeks in this paragraph, including subparagraphs (a)–(i).

4 **JURY DEMAND**

5 The Jury Demand contains legal conclusions and/or argument, which require no response.  
6 To the extent any response to such allegations is necessary, Defendant denies each and every such  
7 allegation. Defendant denies each and every other allegation in the Jury Demand.

8 **AFFIRMATIVE DEFENSES**

9 274. Relator’s claims for relief are barred, in whole or in part, by 31 U.S.C. § 3731(b).

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

12 276. Relator’s causes of action and allegations in the Amended Complaint regarding a  
13 contractual duty to comply with the ICD Guidelines are vague, ambiguous, and uncertain.

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

17 278. The penalties and damages that Relator seeks would result in an unconstitutionally  
18 excessive fine under the Eighth Amendment and Fourteenth Amendment to the United States  
19 Constitution because any award would be grossly disproportional to the gravity of Defendant’s  
20 offense, if any.

21 279. The United States ratified, or otherwise consented to, the transactions and  
22 occurrences that are the subject of this action.

23 280. Defendant is not liable to the extent that Realtor failed to take adequate measures  
24 to mitigate damages.

25 281. Relator’s claims for relief are barred, in whole or in part, by the doctrine of  
26 estoppel.

27 282. Relator’s claims for relief are barred, in whole or in part, because any recovery  
28 would result in unjust enrichment.

1           283. To the extent that Relator premises his claims for relief on allegations that  
2 Defendant violated a guideline or an interpretation of a guideline issued by a private, non-  
3 governmental entity, Relator’s claims are barred by the nondelegation doctrine.

4           284. Defendant reserves the right to assert additional affirmative defenses as discovery  
5 progresses.

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7  
8 Dated: July 31, 2023

Respectfully submitted,

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By: /s/ K. Lee Blalack, II  
K. LEE BLALACK, II  
DAVID DEATON  
STEPHEN M. SULLIVAN  
CAITLIN M. BAIR  
DIMITRI D. PORTNOI  
KYLE M. GROSSMAN

*Attorneys for Defendant Colorado  
Permanente Medical Group*