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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.
22

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

**DEFENDANT KAISER FOUNDATION
HEALTH PLAN OF COLORADO'S
ANSWER AND AFFIRMATIVE DEFENSES
TO UNITED STATES' AMENDED
COMPLAINT-IN-INTERVENTION;
COUNTERCLAIMS**

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

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

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

1 **I. PRELIMINARY STATEMENT**

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

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

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

27 4. Paragraph 4 contains allegations that do not reference Defendant, which require no
28 response. To the extent any response to such allegations is necessary, Defendant lacks sufficient

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

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

18 6. Paragraph 6 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. To the extent paragraph 6 references ¶¶ 90–100 of the Amended
21 Complaint, *see* Defendant's responses to those paragraphs, which are incorporated herein.
22 Defendant denies each and every other allegation in paragraph 6.

23 7. Paragraph 7 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 7.

26 8. Answering paragraph 8, Defendant admits that, during at least some of the relevant
27 period: Defendant's employees identified in members' medical records certain conditions
28 diagnosed in previous service years but not yet diagnosed in the current service year, sometimes

1 referred to as “refresh” activities; after those members’ medical visits, Defendant’s employees
2 sometimes provided CPMG’s physicians with lists of conditions identified via refresh activities
3 but not diagnosed in a specific form in those members’ medical records at those members’
4 medical visits. Defendant denies each and every other allegation in paragraph 8.

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

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

17 11. Paragraph 11 contains allegations that do not reference Defendant, which require
18 no response. To the extent any response to such allegations is necessary, Defendant lacks
19 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
20 such allegation. To the extent paragraph 11 references ¶¶ 234–86 of the Amended Complaint, *see*
21 Defendant’s responses to those paragraphs, which are incorporated herein. Defendant denies
22 each and every other allegation in paragraph 11.

23 12. Paragraph 12 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 12 contains allegations that do not reference Defendant, which
26 require no response. To the extent any response to such allegations is necessary, Defendant lacks
27 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
28 such allegation. Paragraph 12 contains reference to a document, which requires no response

1 because the referenced document speaks for itself. To the extent any response to such allegations
 2 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
 3 basis, denies each and every such allegation. Defendant lacks sufficient knowledge to admit or
 4 deny the allegation that Relator Randi Osinek is a certified medical coder, and, on that basis,
 5 denies each and every such allegation. To the extent paragraph 12 references ¶¶ 287–358 of the
 6 Amended Complaint, *see* Defendant’s responses to those paragraphs, which are incorporated
 7 herein. Defendant denies each and every other allegation in paragraph 12.

8 13. Paragraph 13 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 13.

11 **II. PARTIES**

12 **A. PLAINTIFF AND RELATORS**

13 14. Answering Paragraph 14, Defendant admits that, during at least some of the
 14 relevant period: upon information and belief, CMS was an operating division of the United States
 15 Department of Health and Human Services (“HHS”); upon information and belief, CMS
 16 administered the MA Program and made risk adjustment payments under the MA program.
 17 Paragraph 14 contains the United States’ characterization of the Amended Complaint, which
 18 requires no response. To the extent any response to such allegations is necessary, Defendant
 19 admits that the Amended Complaint is brought by Plaintiff United States of America, suing on
 20 behalf of HHS. Paragraph 14 references the procedural background of this case, which requires
 21 no response. To the extent any response to such allegations is necessary, Defendant admits that
 22 paragraph 14 references a Notice of Election to Intervene in Part and to Decline to Intervene in
 23 Part filed by the United States on July 27, 2021 (Case No. 3:13-cv-03891-EMC (N.D. Cal.) (Dkt.
 24 64). Paragraph 14 contains legal conclusions and/or argument, which require no response. To
 25 the extent any response to such allegations is necessary, Defendant admits that paragraph 14
 26 references 31 U.S.C. § 3730(b)(4)(A). Defendant denies each and every other allegation in
 27 paragraph 14.
 28

1 15. Paragraph 15 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant lacks
3 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
4 such allegation. Paragraph 15 references the procedural background of this case, which requires
5 no response. To the extent any response to such allegations is necessary, Defendant admits that
6 paragraph 15 references a Complaint filed by Relator Osinek on August 22, 2013 (Case No. 3:13-
7 cv-03891-EMC (N.D. Cal.) (Dkt. 1). Paragraph 15 contains the United States' characterization of
8 Relator Osinek's Complaint, which requires no response. To the extent any response to such
9 allegations is necessary, Defendant admits that Relator Osinek alleges violations of the FCA on
10 behalf of herself and the United States pursuant to the *qui tam* provisions of the FCA. Paragraph
11 15 contains legal conclusions and/or argument, which require no response. To the extent any
12 response to such allegations is necessary, Defendant admits that this paragraph references
13 31 U.S.C. § 3730(b). Defendant lacks sufficient knowledge to admit or deny the allegations that
14 Relator Osinek is currently a citizen of the United States, a resident of the State of Oregon, and a
15 certified medical coder, and, on that basis, denies each and every such allegation. Defendant
16 denies each and every other allegation in paragraph 15.

17 16. Paragraph 16 contains allegations that do not reference Defendant, which require
18 no response. To the extent any response to such allegations is necessary, Defendant lacks
19 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
20 such allegation. Paragraph 16 references the procedural background of this case, which requires
21 no response. To the extent any response to such allegations is necessary, Defendant admits that
22 paragraph 16 references a Complaint filed by Relator James Taylor, M.D., in the District of
23 Colorado on October 22, 2014 (Case No. 3:21-cv-03894-EMC (N.D. Cal.) (Dkt. 1). Paragraph 16
24 contains the United States' characterization of Relator Taylor's Complaint, which requires no
25 response. To the extent any response to such allegations is necessary, Defendant admits that
26 Relator Taylor alleges violations of the FCA on behalf of himself and the United States pursuant
27 to the *qui tam* provisions of the FCA. Defendant lacks sufficient knowledge to admit or deny the
28 allegations that Relator Taylor is a citizen of the United States and a resident of the State of

1 Colorado, and, on that basis, denies each and every such allegation. Defendant denies each and
2 every other allegation in paragraph 16.

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

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

1 Complaint and Amended Complaint, which requires no response. To the extent any response to
2 such allegations is necessary, Defendant admits that Relators Stein and Bone allege violations of
3 the FCA on behalf of themselves and the United States pursuant to the *qui tam* provisions of the
4 FCA. Defendant lacks sufficient knowledge to admit or deny the allegations that Relators Stein
5 and Bone are currently citizens of the United States and residents of the State of California and
6 that Relator Bone is a medical school graduate, and, on that basis, denies each and every such
7 allegation. Defendant denies each and every other allegation in paragraph 18.

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

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

Paragraph 20 contains the United States' characterization of Relator Bicocca's Complaint, which requires no response. To the extent any response to such allegations is necessary, Defendant admits that Relator Bicocca alleges violations of the FCA on behalf of himself and the United States pursuant to the *qui tam* provisions of the FCA. Defendant lacks sufficient knowledge to admit or deny the allegations that Relator Bicocca is currently a citizen of the United States and a resident of the State of California, and, on that basis, denies each and every such allegation. Defendant denies each and every other allegation in paragraph 20.

B. DEFENDANTS

21. Answering paragraph 21, Defendant admits that Defendant and certain other health plans, physician medical groups, and hospitals maintain a business relationship with one another under the trade name "Kaiser Permanente" to offer an integrated care model. Paragraph 21 contains the United States' characterization of the Amended Complaint, which requires no response. To the extent any response to such allegations is necessary, Defendant admits that the Amended Complaint names Defendants KFHP, KFHP-CO, TPMG, SCPMG, and CPMG. Defendant denies each and every other allegation in paragraph 21.

1. KAISER HEALTH PLANS

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

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

1 24. Answering paragraph 24, Defendant admits that Defendant contracts with CMS to
2 act as an MAO that administers private MA plans under which it assumes the financial risk of
3 providing Medicare benefits to members enrolled in its MA plans; that Defendant administers
4 private MA plans under which it assumes the financial risk of providing Medicare benefits to
5 members enrolled in its MA plans in the Colorado region. Defendant denies each and every other
6 allegation in paragraph 24.

7 **2. PERMANENTE MEDICAL GROUPS**

8 25. Answering paragraph 25, Defendant admits that TPMG, SCPMG, and CPMG are
9 medical groups; that TPMG and SCPMG contract with KFHP to provide health care services to
10 members who enroll in KFHP's health plans, including members who enroll in Defendant's MA
11 plan; that CPMG contracts with Defendant to provide health care services to members who enroll
12 in Defendant's health plans, including members who enroll in KFHP-CO's MA plan. Paragraph
13 25 contains allegations that do not reference Defendant, which require no response. To the extent
14 any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or
15 deny such allegations and, on that basis, denies each and every such allegation. Defendant denies
16 each and every other allegation in paragraph 25.

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

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

1 28. Answering paragraph 28, Defendant admits that CPMG is headquartered in
 2 Denver, Colorado; that CPMG provides medical services in the Colorado region. Paragraph 28
 3 contains allegations that do not reference Defendant, which require no response. To the extent
 4 any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or
 5 deny such allegations and, on that basis, denies each and every such allegation. Defendant denies
 6 each and every other allegation in paragraph 28.

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

12 3. **KAISER’S INTEGRATED AND COLLABORATIVE RISK- 13 ADJUSTMENT OPERATIONS**

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

22 31. Answering paragraph 31, Defendant admits that, during at least some of the
 23 relevant period: Defendants used an electronic health record system called KP HealthConnect;
 24 certain of KFHP’s employees had the ability to access electronic health records in KP
 25 HealthConnect; certain of each Defendant Permanente Medical Groups’ employees had the
 26 ability to access electronic health records of that Permanente Medical Group’s members in KP
 27 HealthConnect. Defendant denies each and every other allegation in paragraph 31.
 28

1 32. Paragraph 32 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant lacks
3 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
4 such allegation. Paragraph 32 contains reference to a document, which requires no response
5 because the referenced document speaks for itself. To the extent any response to such allegations
6 is necessary, Defendant admits that paragraph 32 quotes a portion of a document. Defendant
7 denies each and every other allegation in paragraph 32.

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

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

17 35. Paragraph 35 contains allegations that do not reference Defendant, which require
18 no response. To the extent any response to such allegations is necessary, Defendant lacks
19 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
20 such allegation. Paragraph 35 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 35 quotes and references a portion of a document.
23 Defendant lacks sufficient knowledge to admit or deny the allegations that the Permanente
24 Federation employed Jack Cochran as Executive Director and Dr. Simon Cohn as Associate
25 Executive Director, and, on that basis, denies each and every such allegation. Defendant denies
26 each and every other allegation in paragraph 35.

27 36. Answering paragraph 36, Defendant admits that, during at least some of the
28 relevant period, KFHP had a National Medicare Finance (“NMF”) department. Paragraph 36

1 contains allegations that do not reference Defendant, which require no response. To the extent
2 any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or
3 deny such allegations and, on that basis, denies each and every such allegation. Paragraph 36
4 contains reference to a document, which requires no response because the referenced document
5 speaks for itself. To the extent any response to such allegations is necessary, Defendant admits
6 that paragraph 36 quotes and references a portion of a document. Defendant denies each and
7 every other allegation in paragraph 36.

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

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

19 39. Answering paragraph 39, Defendant admits that, during at least some of the
20 relevant period: KFHP had a National Compliance, Ethics & Integrity Office or National
21 Compliance Office (“NCO”); KFHP’s NCO employees provided training to coders in the
22 Permanente Medical Groups; KFHP’s NCO employees conducted audits of the Permanente
23 Medical Groups’ diagnosis coding of member diagnoses. Paragraph 39 contains allegations that
24 do not reference Defendant, which require no response. To the extent any response to such
25 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
26 and, on that basis, denies each and every such allegation. Defendant denies each and every other
27 allegation in paragraph 39.
28

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

6 41. Paragraph 41 contains allegations that do not reference Defendant, which require
7 no response. To the extent any response to such allegations is necessary, Defendant lacks
8 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
9 such allegation. Paragraph 41 contains reference to the content of an image, which requires no
10 response because the referenced image speaks for itself. To the extent any response to such
11 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
12 and, on that basis, denies each and every such allegation. Defendant denies each and every other
13 allegation in paragraph 41.

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

15 **III. JURISDICTION AND VENUE**

16 43. Paragraph 43 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 43 references 28 U.S.C. §§ 1331 and 1345 and 31 U.S.C. § § 3732(a)-(b). Defendant
19 denies each and every other allegation in paragraph 43.

20 44. Paragraph 44 contains legal conclusions and/or argument, which require no
21 response. To the extent any response to such allegations is necessary, Defendant admits that, for
22 purposes of personal jurisdiction, at least one of the Defendants can be found in, resides in, or
23 transacts business in the Northern District of California; that paragraph 44 references 31 U.S.C.
24 § 3732(a); that paragraph 44 quotes and references Fed. R. Civ. P. 4(k)(1)(C). Defendant denies
25 each and every other allegation in paragraph 44.

26 45. Paragraph 45 contains legal conclusions and/or argument, which require no
27 response. To the extent any response to such allegations is necessary, Defendant admits that, for
28 purposes of venue, at least one of the Defendants can be found in, resides in, or transacts business

1 in the Northern District of California; that paragraph 45 references 28 U.S.C. § 1391(b)-(c) and
2 31 U.S.C. § 3732(a). Defendant denies each and every other allegation in paragraph 45.

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

8 **IV. THE FALSE CLAIMS ACT**

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

16 48. Paragraph 48 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 48 quotes and references 31 U.S.C. §§ 3729(a)(1)(A); that paragraph 48 references 31
19 U.S.C. § 3729(b)(2). Defendant denies each and every other allegation in paragraph 48.

20 49. Paragraph 49 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 49 quotes and references 31 U.S.C. § 3729(a)(1)(B); that paragraph 49 references
23 Fraud Enforcement and Recovery Act of 2009 ("FERA"), Pub. L. No. 111-21 (May 20, 2009).
24 Defendant denies each and every other allegation in paragraph 49.

25 50. Paragraph 50 contains legal conclusions and/or argument, which require no
26 response. To the extent any response to such allegations is necessary, Defendant admits each and
27 every allegation.
28

1 51. Paragraph 51 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 51 references 31 U.S.C. §§ 3729(b)(1)(A) and 3729(b)(1)(B). Paragraph 51 contains
 4 the United States' characterization of the Amended Complaint, which requires no response. To
 5 the extent any response to such allegations is necessary, Defendant denies each and every such
 6 allegation. Defendant denies each and every other allegation in paragraph 51.

7 52. Paragraph 52 contains legal conclusions and/or argument, which require no
 8 response. To the extent any response to such allegations is necessary, Defendant admits that
 9 paragraph 52 quotes and references 31 U.S.C. § 3729(b)(4). Defendant denies each and every
 10 other allegation in paragraph 52.

11 53. Paragraph 53 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 53 references 31 U.S.C. § 3729(a)(1) and 28 C.F.R. § 85.5. Defendant denies each and
 14 every other allegation in paragraph 53.

15 **V. THE MEDICARE ADVANTAGE PROGRAM AND ITS RISK-ADJUSTMENT**
 16 **PAYMENT SYSTEM**

17 **A. MEDICARE PART C AND RISK-ADJUSTMENT PAYMENTS TO MA**
 18 **ORGANIZATIONS**

19 54. Paragraph 54 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 is a federally operated health insurance program administered by CMS benefiting
 22 individuals 65 and older and certain disabled individuals; that there are four parts to the Medicare
 23 program; that Medicare Part A covers inpatient and institutional care; that Medicare Part B covers
 24 physician, hospital, outpatient, and ancillary services and durable medical equipment; that
 25 Medicare Part C establishes the MA program; that Medicare Part D establishes prescription drug
 26 coverage; that paragraph 54 references 42 U.S.C. §§ 1395c *et seq.* Paragraph 54 contains the
 27 United States' characterization of the Amended Complaint, which requires no response. To the
 28 extent any response to such allegations is necessary, Defendant admits that the Amended

1 Complaint brings allegations related to Medicare Advantage. Defendant denies each and every
2 other allegation in paragraph 54.

3 55. Paragraph 55 contains legal conclusions and/or argument, which require no
4 response. To the extent any response to such allegations is necessary, Defendant admits that a
5 Medicare beneficiary may enroll in Medicare Parts A and B; that Medicare Parts A and B are
6 commonly referred to as “traditional” Medicare; that, under Medicare Parts A and B, CMS
7 reimburses health care providers using a fee-for-service system, under which health care
8 providers transmit claims for payment to CMS for medical services actually rendered; that, upon
9 information and belief, CMS then typically pays the providers directly for each service based on
10 payment rates predetermined by the government. Defendant denies each and every other
11 allegation in paragraph 55.

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

17 57. Paragraph 57 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant admits that
19 MAOs are insurers that contract with CMS to administer private MA plans under which they
20 assume the financial risk of providing Medicare benefits to members enrolled in their MA plans;
21 that MA plans must provide to Medicare beneficiaries benefits available under traditional
22 Medicare, subject to certain exceptions; that Defendant and KFHP administer MA plans in
23 Colorado and California, respectively; that paragraph 57 references 42 U.S.C. §§ 1395w-21-
24 1395w-28. Defendant denies each and every other allegation in paragraph 57.

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

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

5 59. Paragraph 59 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 CMS reimburses MA plans differently than it reimburses health care providers for Medicare Parts
8 A and B; that under Medicare Part C, CMS pays each MAO a predetermined base monthly
9 amount for each enrollee in their MA plans; that this monthly payment varies for each MA plan
10 depending on various factors; that paragraph 59 references 42 U.S.C. § 1395w-23, 42 C.F.R. Part
11 422 Subpart F, and 42 C.F.R. Part 422 Subpart G. Defendant denies each and every other
12 allegation in paragraph 59.

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

19 60. Paragraph 60 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 upon information and belief, CMS adjusts the monthly payment amount for each MA beneficiary
22 using demographic factors such as age and gender (among others) and health status, pursuant to
23 the CMS-HCC risk adjustment model; that, upon information and belief, CMS calculates a risk
24 score for each beneficiary pursuant to the CMS-HCC risk adjustment model, which is a multiplier
25 that is applied to the bid amount for the relevant beneficiary and is a component of the payment
26 amount for each beneficiary; that paragraph 60 references a portion of 42 U.S.C. §§ 1395w-
27 23(a)(1)(C)(i), 1395w-23(a)(1)(G), and 42 C.F.R. § 422.308(e). Defendant denies each and every
28 other allegation in paragraph 60.

1 61. Paragraph 61 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 since 2004, CMS has used the CMS-HCC risk adjustment model for beneficiaries enrolled in MA
4 plans, pursuant to which it uses demographic factors and health status to calculate risk scores for
5 beneficiaries; that this paragraph references 42 U.S.C. § 1395w-23(a)(1)(C), 42 C.F.R.
6 § 422.308(c), and 42 U.S.C. § 1395w-23(a)(1)(C)(i). Defendant denies each and every other
7 allegation in paragraph 61.

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

17 63. Paragraph 63 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant admits that HHS
19 has adopted the ICD code sets as the source of numeric and alphanumeric diagnosis codes for
20 certain health care transactions; that this paragraph references 45 C.F.R. §§ 162.1002(a)(1),
21 (b)(1), (c)(2), (c)(3), and 42 C.F.R. § 422.310(d)(1). Paragraph 63 contains references to
22 documents, which require no response because the referenced documents speak for themselves.
23 To the extent any response to such allegations is necessary, Defendant admits that paragraph 63
24 references CMS, *Medicare Managed Care Manual*, Chapter 7, Exhibit 30 (Rev. 57, Aug. 13,
25 2004); and CMS, *Medicare Managed Care Manual*, Chapter 7 § 40 (Rev. 118, Sept. 19, 2014).
26 Defendant denies each and every other allegation in paragraph 63.

27 64. Paragraph 64 contains legal conclusions and/or argument, which require no
28 response. To the extent any response to such allegations is necessary, Defendant admits that ICD

1 diagnosis codes are numeric and alphanumeric diagnosis codes used to represent diagnoses; that
2 ICD diagnosis codes are set forth in the ICD-9-CM through October 1, 2015, and thereafter in the
3 ICD-10-CM; that paragraph 64 references 45 C.F.R. § 162.1002, the Health Insurance Portability
4 and Accountability Act, and HHS regulations. Paragraph 64 contains references to documents,
5 which require no response because the referenced documents speak for themselves. To the extent
6 any response to such allegations is necessary, Defendant admits that paragraph 64 references
7 ICD-9-CM and the ICD-10-CM. Paragraph 64 contains the United States' characterization of the
8 Amended Complaint, which requires no response. To the extent any response to such allegations
9 is necessary, Defendant denies each and every such allegation. Defendant denies each and every
10 other allegation in paragraph 64.

11 Paragraph 64 footnote 3 contains references to documents, which require no response
12 because the referenced documents speak for themselves. To the extent any response to such
13 allegations is necessary, Defendant admits that paragraph 64 references
14 <https://www.cdc.gov/nchs/icd/icd9cm.htm> and <https://www.cdc.gov/nchs/icd/icd10cm.htm>.
15 Paragraph 64 footnote 3 contains the United States' characterization of the Amended Complaint,
16 which requires no response. To the extent any response to such allegations is necessary,
17 Defendant denies each and every such allegation. Defendant denies each and every other
18 allegation in paragraph 64 footnote 3.

19 65. Answering paragraph 65, Defendant admits that the CMS-HCC risk adjustment
20 model uses diagnosis codes from the ICD-9-CM or the ICD-10-CM; that HCCs are disease
21 groupings consisting of diagnosis codes (currently from the ICD-10-CM and previously from the
22 ICD-9-CM); that, during at least some of the relevant period, under the CMS-HCC risk
23 adjustment model, certain diagnosis codes for cancer, including colorectal and bladder cancers,
24 were grouped together under HCC 11; that, during at least some of the relevant period, under the
25 CMS-HCC risk adjustment model, certain diagnosis codes for metastatic cancer were grouped
26 together under HCC 8, which had the highest risk coefficient of the HCCs within the cancer
27 hierarchy; that the CMS-HCC risk adjustment model generally does not provide for risk-
28 adjustment payments based upon "history" diagnosis codes; that there are different ICD diagnosis

1 codes for malignant neoplasm and other cancers versus personal history of malignant neoplasm
2 and other cancers; that a malignant neoplasm or other cancer diagnosis code results in payment
3 under the CMS-HCC risk adjustment model but a personal history of malignant neoplasm or
4 other cancer diagnosis code does not; that if a patient is diagnosed with a condition that is
5 reported to CMS as a diagnosis code that corresponds to more than one HCC in a hierarchy, only
6 the most severe HCC is kept and any lower-ranking HCCs are dropped; that each HCC
7 coefficient within the CMS-HCC risk adjustment model aims to correlate with the marginal
8 predicted cost of medical expenditures for that set of medical disease groupings based on CMS's
9 data from administering the traditional Medicare fee-for-service program. Defendant denies each
10 and every other allegation in paragraph 65.

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

17 Answering paragraph 66 footnote 4, Defendant admits that CMS has adjusted the CMS-
18 HCC risk adjustment model over time, utilizing different versions. Paragraph 66 footnote 4
19 contains the United States' characterization of the Amended Complaint, which requires 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 64 footnote
22 4.

23 67. Paragraph 67 contains legal conclusions and/or argument, which require no
24 response. To the extent any response to such allegations is necessary, Defendant admits that each
25 HCC has an associated coefficient within the CMS-HCC risk adjustment model that aims to
26 correlate with the marginal predicted cost of medical expenditures for that set of medical disease
27 groupings based on CMS's data from administering the traditional Medicare fee-for-service
28 program; that, upon information and belief, CMS calculates a beneficiary's risk score by adding

1 risk coefficients for each HCC associated with the beneficiary together with the risk coefficients
2 for other factors, including demographic characteristics such as age and gender; that under the
3 CMS-HCC risk adjustment model, a risk score of 1.0 reflects the expected Medicare-incurred
4 expenditures of an average beneficiary; that under the CMS-HCC risk adjustment model, a risk
5 score of 0.75 reflects expected Medicare-incurred expenditures that are 25% less than an average
6 beneficiary; that under the CMS-HCC risk adjustment model, a risk score of 1.25 reflects
7 expected Medicare-incurred expenditures that are 25% greater than an average beneficiary.

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

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

20 68. Paragraph 68 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 upon information and belief, CMS adjusts the monthly payment amount for a given MA
23 beneficiary using that beneficiary's risk score; that, upon information and belief, each MA
24 beneficiary's risk score is based in part upon diagnosis codes that are transmitted by MAOs to
25 CMS associated with the beneficiary's medical visits in a given service year; that, upon
26 information and belief, CMS uses an MA beneficiary's risk score calculated based on diagnosis
27 codes from a given service year to determine monthly payments to MAOs for that beneficiary in
28 the following year (the payment year); that, upon information and belief, a given MA

1 beneficiary's risk score is calculated each year. Defendant denies each and every other allegation
2 in paragraph 68.

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

7 Answering paragraph 69 footnote 6, Defendant admits that, upon information and belief,
8 CMS makes further adjustments to the risk score before reaching a final calculation. Paragraph
9 69 footnote 6 contains the United States' characterization of the Amended Complaint, which
10 requires no response. To the extent any response to such allegations is necessary, Defendant
11 denies each and every such allegation. Defendant denies each and every other allegation in
12 paragraph 69 footnote 6.

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

16 71. Paragraph 71 contains legal conclusions and/or argument, which require no
17 response. To the extent any response to such allegations is necessary, Defendant admits that this
18 paragraph references 42 C.F.R. § 422.504(*l*). Paragraph 71 contains reference to a document,
19 which requires no response because the referenced document speaks for itself. To the extent any
20 response to such allegations is necessary, Defendant admits that paragraph 71 quotes and
21 references CMS, *2013 National Technical Assistance Risk Adjustment 101 Participant Guide* 13
22 (2013). Defendant denies each and every other allegation in paragraph 71.

23 72. Answering paragraph 72, Defendant admits that, during at least some of the
24 relevant period, MAOs transmitted risk adjustment data, including diagnosis codes, through two
25 electronic systems administered by CMS: the Risk Adjustment Processing System ("RAPS") and
26 the Encounter Data Processing System ("EDPS"). Defendant denies each and every other
27 allegation in paragraph 72.
28

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

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

8 **B. STANDARDS GOVERNING RISK-ADJUSTMENT PAYMENTS**

9 75. Paragraph 75 contains legal conclusions and/or argument, which require no
10 response. To the extent any response to such allegations is necessary, Defendant admits that
11 paragraph 75 references 42 U.S.C. § 1395w-26(b) and 42 C.F.R. Part 422. Defendant denies each
12 and every other allegation in paragraph 75.

13 76. Answering paragraph 76, Defendant admits that, during at least some of the
14 relevant period, Defendant and KFHP entered into contracts with CMS to act as MAOs that
15 administer private MA plans under which they assume the financial risk of providing Medicare
16 benefits to members enrolled in their respective MA plans. Paragraph 76 contains legal
17 conclusions and/or argument, which require no response. To the extent any response to such
18 allegations is necessary, Defendant admits that paragraph 76 references 42 U.S.C. § 1395w-27(a),
19 42 C.F.R. Part 422, Subpart K, 42 C.F.R. § 422.505, and 422.503(b)(4)(vi)(G). Defendant denies
20 each and every other allegation in paragraph 76.

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

25 78. Answering paragraph 78, Defendant admits that entities like physician groups may
26 enter into agreements with MAOs to provide health care services to MA beneficiaries. Paragraph
27 78 contains legal conclusions and/or argument, which require no response. To the extent any
28 response to such allegations is necessary, Defendant admits that paragraph 78 quotes and

1 references 42 C.F.R. § 422.500 and 42 C.F.R. § 422.504(i). Defendant denies each and every
2 other allegation in paragraph 78.

3 79. Paragraph 79 contains legal conclusions and/or argument, which require no
4 response. To the extent any response to such allegations is necessary, Defendant admits that the
5 paragraph references 42 C.F.R. § 422.504(i)(3)(iii) and 42 C.F.R. § 422.504(l)(3); that paragraph
6 79 quotes and references 42 C.F.R. § 422.504(i)(4)(v). Defendant denies each and every other
7 allegation in paragraph 79.

8 80. Paragraph 80 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 allegation in paragraph 80.

11 81. Paragraph 81 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 81 quotes and references 42 C.F.R. § 422.504(l). Paragraph 81 contains references to
14 documents, which require no response because the referenced documents speak for themselves.
15 To the extent any response to such allegations is necessary, Defendant admits that paragraph 81
16 references CMS, *Medicare Managed Care Manual*, Chapter 11 § 130 (Rev. 79, Feb. 17, 2006);
17 that paragraph 81 references and attempts to quote Defendant contracts with CMS. Defendant
18 denies each and every other allegation in paragraph 81.

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

26 Paragraph 82 footnote 7 contains reference to a document, which requires no response
27 because the referenced document speaks for itself. To the extent any response to such allegations
28 is necessary, Defendant admits that paragraph 82 footnote 7 references CMS, *Medicare Managed*

1 *Care Manual*, Chapter 7 Table 19 (Rev. 118, Sept. 19, 2014). Paragraph 82 footnote 7 contains
2 the United States' characterization of the Amended Complaint, which requires no response. To
3 the extent any response to such allegations is necessary, Defendant denies each and every such
4 allegation. Defendant denies each and every other allegation in paragraph 82 footnote 7.

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

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

26 85. Paragraph 85 contains legal conclusions and/or argument, which require no
27 response. To the extent any response to such allegations is necessary, Defendant denies each and
28 every such allegation. Paragraph 85 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 85 references ICD-10 Guidelines § IV.J
3 and ICD-9 Guidelines § IV.K. Defendant denies each and every other allegation in paragraph 85.

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

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

19 87. Paragraph 87 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 in paragraph 87. Defendant denies each and every other allegation in
22 paragraph 87.

23 88. Paragraph 88 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 88 contains reference to a document, which requires no
26 response because the referenced document speaks for itself. To the extent any response to such
27 allegations is necessary, Defendant admits that paragraph 88 references ICD-10 Guidelines
28

1 § IV.H, ICD-9 Guidelines § IV.I, ICD-10 Guidelines § IV.J, and ICD-9 Guidelines § IV.K.

2 Defendant denies each and every other allegation in paragraph 88.

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

7 **VI. KAISER KNEW THE CMS STANDARD FOR SUBMISSION OF RISK-**
8 **ADJUSTMENT DIAGNOSES**

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

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

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

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

26 94. Paragraph 94 contains reference to a document, which requires no response
27 because the referenced document speaks for itself. To the extent any response to such allegations
28

1 is necessary, Defendant admits that paragraph 94 references and attempts to quote a portion of a
2 document. Defendant denies each and every other allegation in paragraph 94.

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

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

11 97. Paragraph 97 contains reference to a document, which requires no response
12 because the referenced document speaks for itself. To the extent any response to such allegations
13 is necessary, Defendant admits that paragraph 97 quotes and references a portion of a
14 document. Defendant denies each and every other allegation in paragraph 97.

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

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

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

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

101. Paragraph 101 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 101.

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

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

104. Answering paragraph 104, Defendant admits that, during at least some of the relevant period, Defendant's employees tracked diagnosis codes and financial results related to refresh and data mining activities. Paragraph 104 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 104.

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

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

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

1 because the referenced document speaks for itself. To the extent any response to such allegations
2 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
3 basis, denies each and every such allegation. Defendant denies each and every other allegation in
4 paragraph 106.

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

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

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

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

1 regarding risk adjustment, including successful initiatives. Defendant denies each and every
2 other allegation in paragraph 110.

3 111. Paragraph 111 contains reference to a document, which requires no response
4 because the referenced document speaks for itself. To the extent any response to such allegations
5 is necessary, Defendant admits that paragraph 111 quotes and references a portion of a document.
6 Defendant denies each and every other allegation in paragraph 111.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 136. Paragraph 136 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. To the extent paragraph 136 references ¶¶ 202-233 of the Amended
 24 Complaint, *see* Defendant's responses to those paragraphs, which are incorporated herein.
 25 Defendant denies each and every other allegation in paragraph 136.

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

27 138. Paragraph 138 contains allegations that do not reference Defendant, which require
 28 no response. To the extent any response to such allegations is necessary, Defendant denies each

1 and every such allegation. Paragraph 138 contains a hypothetical example containing no factual
2 assertions, which requires no response. To the extent any response to such allegations is
3 necessary, Defendant denies each and every such allegation. Defendant denies each and every
4 other allegation in paragraph 138.

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

6 **1. DATA MINING GENERATES NEW RISK-ADJUSTMENT**
7 **DIAGNOSES.**

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

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

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

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

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

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

3 Answering paragraph 144 footnote 10, Defendant admits that when the Affordable Care
4 Act (“ACA”) was implemented in 2014, it provided for additional risk adjustment payments from
5 the government for ACA patients. Defendant denies each and every other allegation in paragraph
6 144 footnote 10.

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

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

23 147. Answering paragraph 147, Defendant admits that, during at least some of the
24 relevant period: employees of KFHP’s NMF department facilitated a smaller predecessor group
25 called the HCC Data Mining Workgroup; that workgroup had a goal to share information; that
26 workgroup had representatives from each Defendant region. Defendant denies each and every
27 other allegation in paragraph 147.
28

1 148. Answering paragraph 148, Defendant admits that, during at least some of the
2 relevant period: the Risk Adjustment Data Mining Workgroup met approximately monthly;
3 employees of each Defendant attended meetings to discuss data mining activities and results;
4 attendees discussed data mining activities, tracking data mining activities, ideas to improve the
5 accuracy of algorithms, and addenda to medical records; the workgroup's activities were
6 presented outside of the workgroup, including to the RRG. Defendant denies each and every
7 other allegation in paragraph 148.

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

20 150. Paragraph 150 contains allegations that do not reference Defendant, which require
21 no response. To the extent any response to such allegations is necessary, Defendant lacks
22 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
23 such allegation. Paragraph 150 contains reference to a document, which requires no response
24 because the referenced document speaks for itself. To the extent any response to such allegations
25 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
26 basis, denies each and every such allegation. Defendant lacks sufficient knowledge to admit or
27 deny the allegation that "[m]any of these diagnosis-specific algorithms coincided with regional
28

1 initiatives,” and, on that basis, denies each and every such allegation. Defendant denies each and
2 every other allegation in paragraph 150.

3 151. Defendant denies each and every allegation in paragraph 151.

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

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

12 154. Answering paragraph 154, Defendant admits that, during at least some of the
13 relevant period: Defendant’s employees and CPMG’s employees jointly developed data mining
14 algorithms; Defendant’s auditors used data mining results to send template “Medicare Queries” to
15 CPMG’s physicians. Defendant denies each and every other allegation in paragraph 154.

16 155. Answering paragraph 155, Defendant admits that, during at least some of the
17 relevant period: when CMS made changes to the CMS-HCC risk adjustment model related to the
18 diagnosis of hypoxia (a below-normal level of oxygen), Defendant’s employees identified
19 members on oxygen; Defendant’s auditors sent “Medicare Queries” to CPMG’s physicians of
20 members on oxygen regarding (1) acute and/or chronic respiratory failure and (2) obesity
21 hypoventilation syndrome; Defendant’s auditors sent these “Medicare Queries” including for
22 members that had been previously diagnosed with hypoxia; the “Medicare Query” was drafted in
23 conjunction with Dr. Teresa Welsh. Paragraph 155 contains reference to a document, which
24 requires no response because the referenced document speaks for itself. To the extent any
25 response to such allegations is necessary, Defendant admits that paragraph 155 references a
26 “Medicare Query.” Defendant lacks sufficient knowledge to admit or deny the allegation that
27 “[i]nitiatives were sometimes sparked by the prospect of reduced revenue from Medicare based
28

1 on existing diagnoses,” and, on that basis, denies each and every such allegation. Defendant
2 denies each and every other allegation in paragraph 155.

3 156. Paragraph 156 contains reference to a document, which requires no response
4 because the referenced document speaks for itself. To the extent any response to such allegations
5 is necessary, Defendant admits that paragraph 156 references a “Medicare Query.” Defendant
6 denies each and every other allegation in paragraph 156.

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

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

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

22 160. Answering paragraph 160, Defendant admits that, during at least some of the
23 relevant period: Defendant Permanente Medical Groups’ employees developed tracking
24 mechanisms to monitor data mining activities; tracking mechanisms were discussed and shared
25 with other Defendant entities, including through the Risk Adjustment Data Mining Workgroup;
26 some tracking mechanisms tracked expected risk adjustment payments in connection with data
27 mining activities; Risk Adjustment Improvement Plans provided to Defendant included details
28 about data mining activities. Paragraph 160 contains allegations that do not reference Defendant,

1 which require no response. To the extent any response to such allegations is necessary,
 2 Defendant lacks sufficient knowledge to admit or deny such allegations and, on that basis, denies
 3 each and every such allegation. Defendant denies each and every other allegation in paragraph
 4 160.

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

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

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

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

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

28 165. Answering paragraph 165, Defendant admits that, during at least some of the
 relevant period: employees of KFHP’s NMF department identified and monitored certain

1 conditions diagnosed in previous service years but not yet diagnosed in the current service year
2 on a regular basis and shared results with Defendant Permanente Medical Groups' and
3 Defendant's employees; Defendant Permanente Medical Groups' and Defendant's employees ran
4 algorithms to identify and monitor certain conditions diagnosed in previous service years but not
5 yet diagnosed in the current service year; employees of KFHP's NMF department evaluated Risk
6 Adjustment Improvement Plans, which included discussion of refresh activities, quarterly;
7 Defendants' employees discussed refresh activities as part of the RRG and Risk Adjustment Data
8 Mining Work Group. Defendant denies each and every other allegation in paragraph 165.

9 166. Answering paragraph 166, Defendant admits that, during at least some of the
10 relevant period: refresh activities focused on assessing diagnoses during a member's medical
11 visit; Defendant Permanente Medical Groups' physicians were sometimes given a list of
12 refreshable diagnoses prior to member medical visits in paper or electronic format; Defendant
13 Permanente Medical Groups' employees utilized "pushpins" in Defendant Permanente Medical
14 Groups' electronic health records to identify chronic conditions; Defendant Permanente Medical
15 Groups' physicians could add conditions from the problem list to the encounter field. Paragraph
16 166 contains reference to a document, which requires no response because the referenced
17 document speaks for itself. To the extent any response to such allegations is necessary,
18 Defendant admits that paragraph 166 quotes and shows a portion of a document. Defendant
19 denies each and every other allegation in paragraph 166.

20 167. Answering paragraph 167, Defendant admits that, during at least some of the
21 relevant period, a tool was developed within the electronic health record called a chronic disease
22 widget or chronic disease grid. Defendant denies each and every other allegation in paragraph
23 167.

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

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

1 170. Paragraph 170 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant lacks
3 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
4 such allegation. Defendant denies each and every other allegation in paragraph 170.

5 171. Paragraph 171 contains allegations that do not reference Defendant, which require
6 no response. To the extent any response to such allegations is necessary, Defendant lacks
7 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
8 such allegation. Defendant denies each and every other allegation in paragraph 171.

9 172. Paragraph 172 contains allegations that do not reference Defendant, which require
10 no response. To the extent any response to such allegations is necessary, Defendant lacks
11 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
12 such allegation. Defendant denies each and every other allegation in paragraph 172.

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

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

18 175. Paragraph 175 contains allegations that do not reference Defendant, which require
19 no response. To the extent any response to such allegations is necessary, Defendant lacks
20 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
21 such allegation. Paragraph 175 contains reference to a document, which requires no response
22 because the referenced document speaks for itself. To the extent any response to such allegations
23 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
24 basis, denies each and every such allegation. Defendant denies each and every other allegation in
25 paragraph 175.

26 176. Paragraph 176 contains allegations that do not reference Defendant, which require
27 no response. To the extent any response to such allegations is necessary, Defendant lacks
28 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every

1 such allegation. Paragraph 176 contains reference to a document, which requires no response
2 because the referenced document speaks for itself. To the extent any response to such allegations
3 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
4 basis, denies each and every such allegation. Defendant denies each and every other allegation in
5 paragraph 176.

6 177. Answering paragraph 177, Defendant admits that the CMS-HCC risk adjustment
7 model generally does not provide for risk adjustment payments based upon ICD history codes.
8 Paragraph 177 contains reference to a document, which requires no response because the
9 referenced document speaks for itself. To the extent any response to such allegations is
10 necessary, Defendant admits that paragraph 177 references the ICD Guidelines. Defendant
11 denies each and every other allegation in paragraph 177.

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

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

14 180. Paragraph 180 contains allegations that do not reference Defendant, which require
15 no response. To the extent any response to such allegations is necessary, Defendant lacks
16 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
17 such allegation. Paragraph 180 contains reference to a document, which requires no response
18 because the referenced document speaks for itself. To the extent any response to such allegations
19 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
20 basis, denies each and every such allegation. Defendant denies each and every other allegation in
21 paragraph 180.

22 181. Paragraph 181 contains allegations that do not reference Defendant, which require
23 no response. To the extent any response to such allegations is necessary, Defendant lacks
24 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
25 such allegation. Defendant denies each and every other allegation in paragraph 181.

26 182. Defendant denies each and every allegation in paragraph 182.
27
28

1 **3. CHART REVIEW IS ANOTHER PROGRAM TO GENERATE**
2 **RISK-ADJUSTMENT DIAGNOSES.**

3 183. Answering paragraph 183, Defendant admits that, during at least some of the
4 relevant period, Defendant's and CPMG's employees administered some chart reviews.
5 Paragraph 183 contains reference to a document, which requires no response because the
6 referenced document speaks for itself. To the extent any response to such allegations is
7 necessary, Defendant admits that paragraph 183 quotes a portion of a document. Defendant
8 denies each and every other allegation in paragraph 183.

9 184. Paragraph 184 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 184 contains references to documents, which require no
12 response because the referenced documents speak for themselves. To the extent any response to
13 such allegations is necessary, Defendant admits that paragraph 184 quotes a portion of a
14 document; that paragraph 184 references the ICD Guidelines. Defendant denies each and every
15 other allegation in paragraph 184.

16 185. Answering paragraph 185, Defendant admits that, during at least some of the
17 relevant period: Defendant's and CPMG's employees jointly ran and funded some chart reviews;
18 Dr. Teresa Welsh, Jeremy Walsleben (then Senior Manager of Risk Adjustment, KFHP-CO), and
19 Maegen Leake (then Senior Risk Adjustment Operations Consultant, KFHP-CO) were involved
20 in administering chart reviews; Defendant's auditors sent "Medicare Queries" to CPMG's
21 physicians regarding conditions corresponding to HCCs. Defendant denies each and every other
22 allegation in paragraph 185.

23 186. Answering paragraph 186, Defendant admits that, during at least some of the
24 relevant period, with funding from Defendant, CPMG's physicians performed some chart review
25 activities for Defendant members. Paragraph 186 contains reference to a document, which
26 requires no response because the referenced document speaks for itself. To the extent any
27 response to such allegations is necessary, Defendant admits that paragraph 186 quotes a portion
28 of a document. Defendant denies each and every other allegation in paragraph 186.

1 187. Answering paragraph 187, Defendant admits that, during at least some of the
2 relevant period: CPMG's physicians performing some chart reviews were instructed to identify
3 only existing diagnoses not yet diagnosed in a specific form in members' medical records;
4 CPMG's physicians performing some chart reviews were instructed that if they identified an
5 existing diagnosis not yet diagnosed in a specific form in a member's medical record that was in
6 the "same category" as a diagnosis on the problem list or already diagnosed in a specific form in
7 the member's medical record during the service year, a query need not be sent; under the CMS-
8 HCC risk adjustment model, an MAO only receives a risk adjustment payment corresponding
9 with any given HCC once per HCC per service year, so if an MAO transmits two diagnosis codes
10 for a beneficiary in a service year that correspond to the same HCC, the HCC risk coefficient is
11 counted only once in the beneficiary's risk score for the service year. Defendant denies each and
12 every other allegation in paragraph 187.

13 188. Answering paragraph 188, Defendant admits that, during at least some of the
14 relevant period: conditions on the Review Grid were lined up with HCC numbers; when CMS
15 changed the CMS-HCC risk adjustment model, the Review Grid was updated. Defendant denies
16 each and every other allegation in paragraph 188.

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

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

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

25 192. Paragraph 192 contains legal conclusions and/or argument, which require no
26 response. To the extent any response to such allegations is necessary, Defendant denies each and
27 every such allegation. Defendant denies each and every other allegation in paragraph 192.
28

1 193. Answering paragraph 193, Defendant admits that, during at least some of the
2 relevant period, CPMG's physicians performed some chart reviews only for members for whom
3 Defendant could receive risk adjustment payments. Paragraph 193 contains allegations that do
4 not reference Defendant, which require no response. To the extent any response to such
5 allegations is necessary, Defendant denies each and every such allegation. Paragraph 193
6 contains reference to a document, which requires no response because the referenced document
7 speaks for itself. 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 193.

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

11 195. Paragraph 195 contains reference to a document, which requires no response
12 because the referenced document speaks for itself. To the extent any response to such allegations
13 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
14 basis, denies each and every such allegation. Defendant denies each and every other allegation in
15 paragraph 195.

16 196. Answering paragraph 196, Defendant admits that, during at least some of the
17 relevant period: Defendant's and CPMG's employees tracked the results of chart review and
18 "Medicare Query" activities; Defendant's and CPMG's employees tracked chart review by chart
19 reviewer, physician, and facility. Defendant denies each and every other allegation in paragraph
20 196.

21 197. Answering paragraph 197, Defendant admits that, during at least some of the
22 relevant period, Defendant's employees generated spreadsheets that were shared with CPMG's
23 employees tracking open "Medicare Queries" and which "Medicare Queries" were associated
24 with addenda. Defendant denies each and every other allegation in paragraph 197.

25 198. Answering paragraph 198, Defendant admits that, during at least some of the
26 relevant period: Defendant's and CPMG's employees tracked overall number of "Medicare
27 Queries," addenda, revenue generated, and return on investment for some chart reviews; that
28 Defendant's employees circulated these reports, including to employees of KFHP's NMF

department. Paragraph 198 contains references to documents, which require no response because the referenced documents speak for themselves. To the extent any response to such allegations is necessary, Defendant admits that paragraph 198 references portions of documents. Due to the non-specific and vague nature of Plaintiff's allegations, Defendant lacks sufficient information to admit or deny the allegation that "[c]alculations for other query programs involving data mining showed that they generated thousands of queries and addenda, resulting in millions of dollars in risk-adjustment revenue," and, on that basis, denies such allegation. Defendant denies each and every other allegation in paragraph 198.

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

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

C. KAISER PRESSURED PHYSICIANS TO ADD DIAGNOSES VIA ADDENDA.

201. Defendant denies each and every allegation in paragraph 201.

1. INAPPROPRIATE QUERIES PRESSURED PHYSICIANS TO CREATE ADDENDA.

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

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

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

1 such allegation. Defendant denies each and every other allegation in paragraph 204.

2 205. Answering paragraph 205, Defendant admits that, during at least some of the
3 relevant period, some queries came orally. Paragraph 205 contains allegations that do not
4 reference 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 205.

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

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

13 208. Answering paragraph 208, Defendant admits that, during at least some of the
14 relevant period, AHIMA practice briefs were cited in some policy documents and training
15 materials created by Defendants' employees. Defendant denies each and every other allegation in
16 paragraph 208.

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

21 210. Paragraph 210 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. Paragraph 210 contains references to documents, which require no
24 response because the referenced documents speak for themselves. To the extent any response to
25 such allegations is necessary, Defendant admits that paragraph 210 references portions of
26 documents. Defendant denies each and every allegation in paragraph 210.

27 211. Paragraph 211 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 211 quotes and references AHIMA's
2 2008 practice brief "Managing an Effective Query Process" and AHIMA's 2013 practice brief
3 "Guidelines for Achieving a Compliant Query Practice." Defendant denies each and every other
4 allegation in paragraph 211.

5 212. Paragraph 212 contains allegations that do not reference Defendant, which require
6 no response. To the extent any response to such allegations is necessary, Defendant lacks
7 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
8 such allegation. Paragraph 212 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 212 quotes a portion of a document;
11 Defendant lacks sufficient knowledge to admit or deny the allegation that "a 2011 Northern
12 California training instructed that "[t]he query format should not sound presumptive, directing,
13 prodding, probing, or as though the provider is being led to make an assumption,"" and, on that
14 basis, denies such allegation. Defendant denies each and every other allegation in paragraph 212.

15 213. Paragraph 213 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 213.

18 214. Paragraph 214 contains allegations that do not reference Defendant, which require
19 no response. To the extent any response to such allegations is necessary, Defendant lacks
20 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
21 such allegation. Paragraph 214 contains references to documents, which require no response
22 because the referenced documents speak for themselves. To the extent any response to such
23 allegations is necessary, Defendant admits that paragraph 214 quotes AHIMA's 2008 practice
24 brief "Managing an Effective Query Process," AHIMA's 2013 practice brief "Guidelines for
25 Achieving a Compliant Query Practice," and a document; Defendant lacks sufficient knowledge
26 to admit or deny the allegation that "a 2014 training given by Nancy Andersen (then a Senior
27 Compliance Manager with Kaiser's National Compliance Office) provided the same guidance,"
28

1 and, on that basis, denies such allegation. Defendant denies each and every other allegation in
2 paragraph 214.

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

6 216. Paragraph 216 contains references to documents, which require no response
7 because the referenced documents speak for themselves. To the extent any response to such
8 allegations is necessary, Defendant admits that paragraph 216 quotes and references AHIMA's
9 2008 practice brief "Managing an Effective Query Process" and documents. Defendant denies
10 each and every other allegation in paragraph 216.

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

14 218. Paragraph 218 contains allegations that do not reference Defendant, which require
15 no response. To the extent any response to such allegations is necessary, Defendant lacks
16 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
17 such allegation. Paragraph 218 contains references to documents, which require no response
18 because the referenced documents speak for themselves. To the extent any response to such
19 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
20 and, on that basis, denies each and every such allegation. Defendant denies each and every other
21 allegation in paragraph 218.

22 219. Paragraph 219 contains allegations that do not reference Defendant, which require
23 no response. To the extent any response to such allegations is necessary, Defendant lacks
24 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
25 such allegation. Paragraph 219 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 lacks sufficient knowledge to admit or deny such allegations
28

1 and, on that basis, denies each and every such allegation. Defendant denies each and every other
2 allegation in paragraph 219.

3 220. Answering paragraph 220, Defendant admits that thrombocytopenia is a condition
4 where a patient has a low blood platelet count. Paragraph 220 contains legal conclusions and/or
5 argument, which require no response. To the extent any response to such allegations is necessary,
6 Defendant denies each and every such allegation. Paragraph 220 contains allegations that do not
7 reference Defendant, which require no response. To the extent any response to such allegations is
8 necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
9 basis, denies each and every such allegation. Paragraph 220 contains references to documents,
10 which require no response because the referenced documents speak for themselves. To the extent
11 any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or
12 deny such allegations and, on that basis, denies each and every such allegation. Defendant denies
13 each and every other allegation in paragraph 220.

14 221. Paragraph 221 contains allegations that do not reference Defendant, which require
15 no response. To the extent any response to such allegations is necessary, Defendant lacks
16 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
17 such allegation. Paragraph 221 contains references to documents, which require no response
18 because the referenced documents speak for themselves. To the extent any response to such
19 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
20 and, on that basis, denies each and every such allegation. Defendant denies each and every other
21 allegation in paragraph 221.

22 222. Paragraph 222 contains allegations that do not reference Defendant, which require
23 no response. To the extent any response to such allegations is necessary, Defendant lacks
24 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
25 such allegation. Paragraph 222 contains reference to a document, which requires no response
26 because the referenced document speaks for itself. To the extent any response to such allegations
27 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
28

1 basis, denies each and every such allegation. Defendant denies each and every other allegation in
2 paragraph 222.

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

4 224. Answering paragraph 224, Defendant admits that cachexia is a complex metabolic
5 syndrome associated with physical wasting, loss of weight, muscle atrophy, fatigue and anorexia,
6 commonly seen with diagnoses such as HIV/AIDS, cancer, and other major chronic progressive
7 diseases. Paragraph 224 contains allegations that do not reference Defendant, which require no
8 response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
9 knowledge to admit or deny such allegations and, on that basis, denies each and every such
10 allegation. Paragraph 224 contains references to documents, which require no response because
11 the referenced documents speak for themselves. To the extent any response to such allegations is
12 necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
13 basis, denies each and every such allegation. Defendant denies each and every other allegation in
14 paragraph 224.

15 225. Paragraph 225 contains allegations that do not reference Defendant, which require
16 no response. To the extent any response to such allegations is necessary, Defendant lacks
17 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
18 such allegation. Paragraph 225 contains references to documents, which require no response
19 because the referenced documents speak for themselves. To the extent any response to such
20 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
21 and, on that basis, denies each and every such allegation. Defendant denies each and every other
22 allegation in paragraph 225.

23 226. Paragraph 226 contains allegations that do not reference Defendant, which require
24 no response. To the extent any response to such allegations is necessary, Defendant lacks
25 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
26 such allegation. Paragraph 226 contains reference to a document, which requires no response
27 because the referenced document speaks for itself. To the extent any response to such allegations
28 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that

1 basis, denies each and every such allegation. Defendant denies each and every other allegation in
2 paragraph 226.

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

10 228. Paragraph 228 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 228 quotes and references a portion of a
13 “Medicare Query”; Defendant lacks sufficient knowledge to admit or deny each and every other
14 such allegation in paragraph 228 and, on that basis, denies each and every such allegation.
15 Defendant denies each and every other allegation in paragraph 228.

16 229. Answering paragraph 229, Defendant admits that in October 2013, Nancy
17 Andersen emailed Dr. Teresa Welsh that a Medicare Query template being used by CPMG might
18 be interpreted as leading by CMS; that in October 2013, Andersen sent Dr. Welsh a copy of an
19 AHIMA practice brief titled “Managing an Effective Query Process.” Defendant denies each and
20 every other allegation in paragraph 229.

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

22 231. Paragraph 231 contains allegations that do not reference Defendant, which require
23 no response. To the extent any response to such allegations is necessary, Defendant lacks
24 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
25 such allegation. Paragraph 231 contains reference to a document, which requires no response
26 because the referenced document speaks for itself. To the extent any response to such allegations
27 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
28

1 basis, denies each and every such allegation. Defendant denies each and every other allegation in
2 paragraph 231.

3 232. Paragraph 232 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. Paragraph 232 contains reference to a document, which requires no response
7 because the referenced document speaks for itself. To the extent any response to such allegations
8 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
9 basis, denies each and every such allegation. Defendant denies each and every other allegation in
10 paragraph 232.

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

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

18 234. Answering paragraph 234, Defendant admits that, during at least some of the
19 relevant period, SmartPhrases were a tool within Defendants’ electronic-health-record system that
20 allowed users to insert specific text by typing a short abbreviation. Defendant denies each and
21 every other allegation in paragraph 234.

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

27 236. Paragraph 236 contains allegations that do not reference Defendant, which require
28 no response. To the extent any response to such allegations is necessary, Defendant lacks

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 allegation in paragraph 236.

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

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

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

15 240. Paragraph 240 contains allegations that do not reference Defendant, which require
16 no response. To the extent any response to such allegations is necessary, Defendant lacks
17 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
18 such allegation. Paragraph 240 contains reference to a document, which requires no response
19 because the referenced document speaks for itself. To the extent any response to such allegations
20 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
21 basis, denies each and every such allegation. Defendant denies each and every other allegation in
22 paragraph 240.

23 241. Paragraph 241 contains allegations that do not reference Defendant, which require
24 no response. To the extent any response to such allegations is necessary, Defendant lacks
25 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
26 such allegation. Paragraph 241 contains reference to a document, which requires no response
27 because the referenced document speaks for itself. To the extent any response to such allegations
28 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that

1 basis, denies each and every such allegation. Defendant denies each and every other allegation in
2 paragraph 241.

3 242. Paragraph 242 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. Paragraph 242 contains reference to a document, which requires no response
7 because the referenced document speaks for itself. To the extent any response to such allegations
8 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
9 basis, denies each and every such allegation. Defendant denies each and every other allegation in
10 paragraph 242.

11 **3. KAISER PRESSURED PHYSICIANS BY REQUIRING THEM TO**
12 **JUSTIFY REFUSALS TO ADD DIAGNOSES.**

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

14 244. Paragraph 244 contains allegations that do not reference Defendant, which require
15 no response. To the extent any response to such allegations is necessary, Defendant lacks
16 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
17 such allegation. Paragraph 244 references the content of an image, which requires no response
18 because the referenced image speaks for itself. 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 allegation. To the extent paragraph 244 references other paragraphs
21 of the Amended Complaint, *see* Defendant's responses to those paragraphs, which are
22 incorporated herein. Defendant denies each and every other allegation in paragraph 244.

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

24 246. Paragraph 246 contains allegations that do not reference Defendant, which require
25 no response. To the extent any response to such allegations is necessary, Defendant lacks
26 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
27 such allegation. Defendant denies each and every other allegation in paragraph 246.
28

1 247. Paragraph 247 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant lacks
3 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
4 such allegation. Paragraph 247 contains reference to a document, which requires no response
5 because the referenced document speaks for itself. To the extent any response to such allegations
6 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
7 basis, denies each and every such allegation. Defendant denies each and every other allegation in
8 paragraph 247.

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

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

17 250. Paragraph 250 contains allegations that do not reference Defendant, which require
18 no response. To the extent any response to such allegations is necessary, Defendant lacks
19 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
20 such allegation. Paragraph 250 contains reference to a document, which requires no response
21 because the referenced document speaks for itself. To the extent any response to such allegations
22 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
23 basis, denies each and every such allegation. Defendant denies each and every other allegation in
24 paragraph 250.

25 **4. KAISER USED FINANCIAL INCENTIVES AND OTHER**
26 **METRICS TO PRESSURE PERMANENTE MEDICAL GROUP**
27 **PHYSICIANS TO CREATE ADDENDA.**

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

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

2 253. Paragraph 253 contains allegations that do not reference Defendant, which require
3 no response. To the extent any response to such allegations is necessary, Defendant lacks
4 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
5 such allegation. Paragraph 253 contains reference to a document, which requires no response
6 because the referenced document speaks for itself. To the extent any response to such allegations
7 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
8 basis, denies each and every such allegation. Defendant denies each and every other allegation in
9 paragraph 253.

10 254. Paragraph 254 contains allegations that do not reference Defendant, which require
11 no response. To the extent any response to such allegations is necessary, Defendant lacks
12 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
13 such allegation. Paragraph 254 contains reference to a document, which requires no response
14 because the referenced document speaks for itself. To the extent any response to such allegations
15 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
16 basis, denies each and every such allegation. Defendant denies each and every other allegation in
17 paragraph 254.

18 255. Paragraph 255 contains allegations that do not reference Defendant, which require
19 no response. To the extent any response to such allegations is necessary, Defendant lacks
20 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
21 such allegation. Paragraph 255 contains reference to a document, which requires no response
22 because the referenced document speaks for itself. To the extent any response to such allegations
23 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
24 basis, denies each and every such allegation. Defendant denies each and every other allegation in
25 paragraph 255.

26 256. Paragraph 256 contains allegations that do not reference Defendant, which require
27 no response. To the extent any response to such allegations is necessary, Defendant lacks
28 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every

1 such allegation. Paragraph 256 contains reference to a document, which requires no response
2 because the referenced document speaks for itself. To the extent any response to such allegations
3 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
4 basis, denies each and every such allegation. Defendant lacks sufficient knowledge to admit or
5 deny each and every other allegation in paragraph 256 and, on that basis, denies each and every
6 such allegation.

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

11 258. Answering paragraph 258, Defendant admits that, in 2013, CPMG compensated
12 CPMG's physicians with overtime payments to respond to all pending queries by the end of the
13 year. Paragraph 258 contains reference to a document, which requires no response because the
14 referenced document speaks for itself. To the extent any response to such allegations is
15 necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
16 basis, denies each and every such allegation. Defendant denies each and every other allegation in
17 paragraph 258.

18 259. Paragraph 259 contains allegations that do not reference Defendant, which require
19 no response. To the extent any response to such allegations is necessary, Defendant lacks
20 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
21 such allegation. Paragraph 259 contains reference to a document, which requires no response
22 because the referenced document speaks for itself. To the extent any response to such allegations
23 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
24 basis, denies each and every such allegation. Defendant denies each and every other allegation in
25 paragraph 259.

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

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

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

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

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

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

1 because the referenced image speaks for itself. To the extent any response to such allegations is
2 necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
3 basis, denies each and every such allegation. Defendant denies each and every other allegation in
4 paragraph 263.

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

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

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

26 267. Paragraph 267 contains allegations that do not reference Defendant, which require
27 no response. To the extent any response to such allegations is necessary, Defendant lacks
28

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Defendant denies each and every other allegation in paragraph 267.

3 268. Paragraph 268 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. Paragraph 268 contains reference to a document, which requires no response
7 because the referenced document speaks for itself. To the extent any response to such allegations
8 is necessary, Defendant admits that paragraph 268 quotes a portion of the transcript of the
9 October 5, 2020 testimony of Karen Graham (former Managing Director, EIO) pursuant to a Civil
10 Investigative Demand. Defendant denies each and every other allegation in paragraph 268.

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

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

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

1 basis, denies each and every such allegation. Defendant denies each and every other allegation in
2 paragraph 271.

3 272. Paragraph 272 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. Paragraph 272 contains reference to a document, which requires no response
7 because the referenced document speaks for itself. To the extent any response to such allegations
8 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
9 basis, denies each and every such allegation. Defendant denies each and every other allegation in
10 paragraph 272.

11 273. Paragraph 273 contains allegations that do not reference Defendant, which require
12 no response. To the extent any response to such allegations is necessary, Defendant lacks
13 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
14 such allegation. Paragraph 273 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 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 273.

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

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

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

1 such allegations and, on that basis, denies each and every such allegation. To the extent
2 paragraph 276 references other paragraphs of the Amended Complaint, *see* Defendant's responses
3 to those paragraphs, which are incorporated herein. Defendant denies each and every other
4 allegation in paragraph 276.

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

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

15 279. Paragraph 279 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 279.

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

26 281. Answering paragraph 281, Defendant admits that, during at least some of the
27 relevant period, the Professional Documentation and Coding Group, also known as the Physician
28 Documentation and Coding Group, was a group of physicians from multiple regions that provided

1 advice relating to documentation and diagnosis coding. Paragraph 281 contains reference to a
2 document, which requires no response because the referenced document speaks for itself. To the
3 extent any response to such allegations is necessary, Defendant admits that paragraph 281 quotes
4 and references a portion of a document. Defendant denies each and every other allegation in
5 paragraph 281.

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

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

15 284. Paragraph 284 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 allegation in paragraph 284.

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

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

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

28 287. Defendant denies each and every allegation in paragraph 287.

1 **1. KAISER KNEW THAT ITS USE OF ADDENDA TO ADD RISK-**
2 **ADJUSTMENT DIAGNOSES DID NOT COMPLY WITH CMS**
3 **RULES FOR SUBMISSION OF DIAGNOSES FOR RISK-**
4 **ADJUSTMENT PAYMENT.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 306. Answering paragraph 306, Defendant admits that, in January 2014, physicians
3 could no longer hold medical visits for the 2013 service year. Paragraph 306 contains legal
4 conclusions and/or argument, which require no response. To the extent any response to such
5 allegations is necessary, Defendant denies each and every such allegation. Paragraph 306
6 contains allegations that do not reference Defendant, which require no response. To the extent
7 any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or
8 deny such allegations and, on that basis, denies each and every such allegation. Paragraph 306
9 contains references to documents, which require no response because the referenced documents
10 speak for themselves. To the extent any response to such allegations is necessary, Defendant
11 lacks sufficient knowledge to admit or deny such allegations and, on that basis, denies each and
12 every such allegation. Defendant denies each and every other allegation in paragraph 306.

13 **3. KAISER PHYSICIANS PUT KAISER ON FURTHER NOTICE OF**
14 **FRAUDULENT DIAGNOSES.**

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

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

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

1 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
2 basis, denies each and every such allegation. Defendant denies each and every other allegation in
3 paragraph 309.

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

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

20 312. Paragraph 312 contains allegations that do not reference Defendant, which require
21 no response. To the extent any response to such allegations is necessary, Defendant lacks
22 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
23 such allegation. Paragraph 312 contains reference to a document, which requires no response
24 because the referenced document speaks for itself. To the extent any response to such allegations
25 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
26 basis, denies each and every such allegation. Defendant denies each and every other allegation in
27 paragraph 312.
28

1 313. Paragraph 313 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant lacks
3 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
4 such allegation. Paragraph 313 contains reference to a document, which requires no response
5 because the referenced document speaks for itself. To the extent any response to such allegations
6 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
7 basis, denies each and every such allegation. Defendant denies each and every other allegation in
8 paragraph 313.

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

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

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

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

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

1 basis, denies each and every such allegation. Defendant denies each and every other allegation in
2 paragraph 318.

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

11 320. Paragraph 320 contains allegations that do not reference Defendant, which require
12 no response. To the extent any response to such allegations is necessary, Defendant lacks
13 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
14 such allegation. Paragraph 320 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 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 320.

19 321. Paragraph 321 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. Due to the non-specific and vague nature of Plaintiff's allegations, Defendant
23 lacks sufficient information to admit or deny the other allegations in paragraph 321, and on that
24 basis, denies each and every other allegation in paragraph 321.

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

1 323. Paragraph 323 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant lacks
3 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
4 such allegation. Paragraph 323 contains reference to a document, which requires no response
5 because the referenced document speaks for itself. To the extent any response to such allegations
6 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
7 basis, denies each and every such allegation. Defendant denies each and every other allegation in
8 paragraph 323.

9 **4. KAISER'S INTERNAL AUDITS PUT KAISER ON FURTHER**
10 **NOTICE OF FRAUDULENT DIAGNOSES.**

11 324. Paragraph 324 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 324 quotes and references 42 C.F.R. § 422.503(b)(4)(vi) and 422.503(b)(4)(vi)(G).
14 Defendant denies each and every other allegation in paragraph 324.

15 325. Paragraph 325 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 325 references and attempts to quote 42 C.F.R. § 422.503(b)(4)(vi)(G). Defendant
18 denies each and every allegation in paragraph 325.

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

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

27 328. Answering paragraph 328, Defendant admits that, during at least some of the
28 relevant period, the Government Audit & Reimbursement Team conducted annual audits of

1 Defendant regions, called “probe” audits. Paragraph 328 contains reference to a document, which
2 requires no response because the referenced document speaks for itself. To the extent any
3 response to such allegations is necessary, Defendant admits that paragraph 328 quotes and
4 references a portion of a document. Defendant denies each and every other allegation in
5 paragraph 328.

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

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

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

26 332. Paragraph 332 contains allegations that do not reference Defendant, which require
27 no response. To the extent any response to such allegations is necessary, Defendant lacks
28 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every

1 such allegation. Paragraph 332 contains reference to a document, which requires no response
2 because the referenced document speaks for itself. To the extent any response to such allegations
3 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
4 basis, denies each and every such allegation. Defendant denies each and every other allegation in
5 paragraph 332.

6 333. Paragraph 333 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 333.

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

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

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

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

26 338. Paragraph 338 contains allegations that do not reference Defendant, which require
27 no response. To the extent any response to such allegations is necessary, Defendant lacks
28

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Defendant denies each and every other allegation in paragraph 338.

3 339. Paragraph 339 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. Paragraph 339 contains reference to a document, which requires no response
7 because the referenced document speaks for itself. To the extent any response to such allegations
8 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
9 basis, denies each and every such allegation. Defendant denies each and every other allegation in
10 paragraph 339.

11 340. Paragraph 340 contains allegations that do not reference Defendant, which require
12 no response. To the extent any response to such allegations is necessary, Defendant lacks
13 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
14 such allegation. Paragraph 340 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 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 340.

19 341. Paragraph 341 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 341.

23 342. Paragraph 342 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 342.

27 343. Paragraph 343 contains allegations that do not reference Defendant, which require
28 no response. To the extent any response to such allegations is necessary, Defendant lacks

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Paragraph 343 contains reference to a document, which requires no response
3 because the referenced document speaks for itself. To the extent any response to such allegations
4 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
5 basis, denies each and every such allegation. Defendant denies each and every other allegation in
6 paragraph 343.

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

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

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

24 347. Paragraph 347 contains allegations that do not reference Defendant, which require
25 no response. To the extent any response to such allegations is necessary, Defendant lacks
26 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
27 such allegation. To the extent paragraph 347 references other paragraphs of the Amended
28

1 Complaint, *see* Defendant's responses to those paragraphs, which are incorporated herein.

2 Defendant denies each and every other allegation in paragraph 347.

3 348. Paragraph 348 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 348.

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

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

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

19 352. Answering paragraph 352, Defendant admits that, in 2013, Dr. Teresa Welsh gave
20 a presentation regarding chart review and query activities in the Colorado region to employees of
21 other Defendants at a semi-annual meeting of the RRG. Paragraph 352 contains allegations that
22 do 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 352.

26 353. Paragraph 353 contains reference to a document, which requires no response
27 because the referenced document speaks for itself. To the extent any response to such allegations
28

1 is necessary, Defendant admits that paragraph 353 quotes and references a portion of a document.
2 Defendant denies each and every other allegation in paragraph 353.

3 354. Paragraph 354 contains reference to a document, which requires no response
4 because the referenced document speaks for itself. To the extent any response to such allegations
5 is necessary, Defendant admits that paragraph 354 quotes and references a portion of a document.
6 Due to the non-specific and vague nature of Plaintiff's allegations, Defendant lacks sufficient
7 information to admit or deny the allegation that "[t]he Colorado Medical Group did not change its
8 query language at that time," and, on that basis, denies such allegation. Defendant denies each
9 and every other allegation in paragraph 354.

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

11 356. Answering paragraph 356, Defendant admits that KFHP transmitted to CMS an
12 ICD diagnosis code for emphysema for Patient #11 for service year 2013. Paragraph 356
13 contains legal conclusions and/or argument, which require no response. To the extent any
14 response to such allegations is necessary, Defendant denies each and every such allegation.
15 Paragraph 364 contains allegations that do not reference Defendant, which require no response.
16 To the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge
17 to admit or deny such allegations and, on that basis, denies each and every such allegation.
18 Paragraph 356 contains references to documents, which require no response because the
19 referenced documents speak for themselves. 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. To the extent paragraph 356 references other
22 paragraphs of the Amended Complaint, *see* Defendant's responses to those paragraphs, which are
23 incorporated herein. Defendant denies each and every other allegation in paragraph 356.

24 357. Answering paragraph 357, Defendant admits that KFHP transmitted to CMS a
25 deletion for the ICD diagnosis code for emphysema for Patient #11 for service year 2013 on April
26 29, 2015. Paragraph 357 contains legal conclusions and/or argument, which require no response.
27 To the extent any response to such allegations is necessary, Defendant denies each and every such
28 allegation. Paragraph 357 contains allegations that do not reference Defendant, which require no

1 response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
 2 knowledge to admit or deny such allegations and, on that basis, denies each and every such
 3 allegation. Defendant denies each and every other allegation in paragraph 357.

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

5 **VIII. KAISER RECEIVED MONEY FROM MEDICARE BASED ON THE**
 6 **PRESENTATION OF FALSE CLAIMS.**

7 359. Paragraph 359 contains allegations that do not reference Defendant, which require
 8 no response. To the extent any response to such allegations is necessary, Defendant lacks
 9 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
 10 such allegation. Due to the non-specific and vague nature of Plaintiff's allegations, Defendant
 11 lacks sufficient information to admit or deny the other allegations in paragraph 359 and, on that
 12 basis, denies each and every other allegation in paragraph 359.

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

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

20 362. Paragraph 362 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 362.

23 363. Paragraph 363 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 363.

26 **A. PATIENT #1**

27 364. Paragraph 364 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 364 contains allegations that do not reference Defendant, which
2 require no response. To the extent any response to such allegations is necessary, Defendant lacks
3 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
4 such allegation. Paragraph 364 contains references to documents, which require no response
5 because the referenced documents speak for themselves. To the extent any response to such
6 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
7 and, on that basis, denies each and every such allegation. Defendant denies each and every other
8 allegation in paragraph 364.

9 **B. PATIENT #2**

10 365. Paragraph 365 contains legal conclusions and/or argument, which require no
11 response. To the extent any response to such allegations is necessary, Defendant denies each and
12 every such allegation. Paragraph 365 contains allegations that do not reference Defendant, which
13 require no response. To the extent any response to such allegations is necessary, Defendant lacks
14 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
15 such allegation. Paragraph 365 contains references to documents, which require no response
16 because the referenced documents speak for themselves. To the extent any response to such
17 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
18 and, on that basis, denies each and every such allegation. Defendant denies each and every other
19 allegation in paragraph 365.

20 **C. PATIENT #3**

21 366. Paragraph 366 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. Paragraph 366 contains allegations that do not reference Defendant, which
24 require no response. To the extent any response to such allegations is necessary, Defendant lacks
25 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
26 such allegation. Paragraph 366 contains references to documents, which require no response
27 because the referenced documents speak for themselves. To the extent any response to such
28 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations

1 and, on that basis, denies each and every such allegation. Defendant denies each and every other
2 allegation in paragraph 366.

3 **D. PATIENT #4**

4 367. Paragraph 367 contains legal conclusions and/or argument, which require no
5 response. To the extent any response to such allegations is necessary, Defendant denies each and
6 every such allegation. Paragraph 367 contains allegations that do not reference Defendant, which
7 require no response. To the extent any response to such allegations is necessary, Defendant lacks
8 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
9 such allegation. Paragraph 367 contains references to documents, which require no response
10 because the referenced documents speak for themselves. To the extent any response to such
11 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
12 and, on that basis, denies each and every such allegation. Defendant denies each and every other
13 allegation in paragraph 367.

14 **E. PATIENT #5**

15 368. Paragraph 368 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 368 contains allegations that do not reference Defendant, which
18 require no response. To the extent any response to such allegations is necessary, Defendant lacks
19 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
20 such allegation. Paragraph 368 contains references to documents, which require no response
21 because the referenced documents speak for themselves. To the extent any response to such
22 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
23 and, on that basis, denies each and every such allegation. Defendant denies each and every other
24 allegation in paragraph 368.

25 **F. PATIENT #6**

26 369. Answering paragraph 369, Defendant admits that KFHP transmitted to CMS an
27 ICD diagnosis code for major depression, recurrent, for Patient #6 for service year 2014.
28 Paragraph 369 contains legal conclusions and/or argument, which require no response. To the

1 extent any response to such allegations is necessary, Defendant denies each and every such
2 allegation. Paragraph 369 contains allegations that do not reference Defendant, which require no
3 response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
4 knowledge to admit or deny such allegations and, on that basis, denies each and every such
5 allegation. Paragraph 369 contains references to documents, which require no response because
6 the referenced documents speak for themselves. To the extent any response to such allegations is
7 necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
8 basis, denies each and every such allegation. Defendant denies each and every other allegation in
9 paragraph 369.

10 **G. PATIENT #7**

11 370. Paragraph 370 contains legal conclusions and/or argument, which require no
12 response. To the extent any response to such allegations is necessary, Defendant denies each and
13 every such allegation. Paragraph 370 contains allegations that do not reference Defendant, which
14 require no response. To the extent any response to such allegations is necessary, Defendant lacks
15 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
16 such allegation. Paragraph 370 contains references to documents, which require no response
17 because the referenced documents speak for themselves. To the extent any response to such
18 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
19 and, on that basis, denies each and every such allegation. Defendant denies each and every other
20 allegation in paragraph 370.

21 **H. PATIENT #8**

22 371. Paragraph 371 contains legal conclusions and/or argument, which require no
23 response. To the extent any response to such allegations is necessary, Defendant denies each and
24 every such allegation. Paragraph 371 contains allegations that do not reference Defendant, which
25 require no response. To the extent any response to such allegations is necessary, Defendant lacks
26 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
27 such allegation. Paragraph 371 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 lacks sufficient knowledge to admit or deny such allegations
2 and, on that basis, denies each and every such allegation. Defendant denies each and every other
3 allegation in paragraph 371.

4 **I. PATIENT #9**

5 372. Paragraph 372 contains legal conclusions and/or argument, which require no
6 response. To the extent any response to such allegations is necessary, Defendant denies each and
7 every such allegation. Paragraph 372 contains allegations that do not reference Defendant, which
8 require no response. To the extent any response to such allegations is necessary, Defendant lacks
9 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
10 such allegation. Paragraph 372 contains references to documents, which require no response
11 because the referenced documents speak for themselves. To the extent any response to such
12 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
13 and, on that basis, denies each and every such allegation. Defendant denies each and every other
14 allegation in paragraph 372.

15 **J. PATIENT #10**

16 373. Paragraph 373 contains legal conclusions and/or argument, which require no
17 response. To the extent any response to such allegations is necessary, Defendant denies each and
18 every such allegation. Paragraph 373 contains allegations that do not reference Defendant, which
19 require no response. To the extent any response to such allegations is necessary, Defendant lacks
20 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
21 such allegation. Paragraph 373 contains references to documents, which require no response
22 because the referenced documents speak for themselves. To the extent any response to such
23 allegations is necessary, Defendant 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 373.

26 374. Paragraph 374 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 allegation in paragraph 374.

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

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

5 **IX. CAUSES OF ACTION**

6 **FIRST CLAIM FOR RELIEF**

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

8 **31 U.S.C. § 3729(a)(1)(A) (formerly 31 U.S.C. § 3729(a)(1))**

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

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

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

17 380. Paragraph 380 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 380.

20 381. Paragraph 381 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 381.

23 **SECOND CLAIM FOR RELIEF**

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

25 **31 U.S.C. § 3729(a)(1)(B) (formerly 31 U.S.C. § 3729(a)(2))**

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

28 383. Paragraph 383 contains legal conclusions and/or argument, which require no

1 response. To the extent any response to such allegations is necessary, Defendant denies each and
 2 every such allegation. Defendant denies each and every other allegation in paragraph 383.

3 384. Paragraph 384 contains legal conclusions and/or argument, which require no
 4 response. To the extent any response to such allegations is necessary, Defendant denies each and
 5 every such allegation. Defendant denies each and every other allegation in paragraph 384.

6 385. Paragraph 385 contains legal conclusions and/or argument, which require no
 7 response. To the extent any response to such allegations is necessary, Defendant denies each and
 8 every such allegation. Defendant denies each and every other allegation in paragraph 385.

9 **THIRD CLAIM FOR RELIEF**

10 **Conspiracy to Violate the False Claims Act**

11 **31 U.S.C. § 3729(a)(1)(C) (formerly 31 U.S.C. § 3729(a)(3))**

12 386. Answering paragraph 386, Defendant reasserts its answers to the above paragraphs
 13 as if fully set forth herein.

14 387. Paragraph 387 contains legal conclusions and/or argument, which require no
 15 response. To the extent any response to such allegations is necessary, Defendant denies each and
 16 every such allegation. Defendant denies each and every other allegation in paragraph 387.

17 388. Paragraph 388 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 388.

20 **FOURTH CLAIM FOR RELIEF**

21 **Payment by Mistake**

22 389. Answering paragraph 389, Defendant reasserts its answers to the above paragraphs
 23 as if fully set forth herein.

24 390. Paragraph 390 contains legal conclusions and/or argument, which require no
 25 response. To the extent any response to such allegations is necessary, Defendant denies each and
 26 every such allegation. Defendant denies each and every other allegation in paragraph 390.

27 391. Paragraph 391 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

every such allegation. Defendant denies each and every other allegation in paragraph 391.

FIFTH CLAIM FOR RELIEF

Unjust Enrichment

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

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

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

X. PRAYER FOR RELIEF

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

XI. DEMAND FOR JURY TRIAL

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

AFFIRMATIVE DEFENSES

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

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

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

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

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

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

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

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

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

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

COUNTERCLAIMS

Kaiser Foundation Health Plan of Colorado (“Defendant”) hereby alleges as follows as counterclaims (the “Counterclaims”) against Plaintiff United States:

1. Defendant incorporates by reference the responses and affirmative defenses contained in Defendant's Answer to the United States' Amended Complaint as described above as if fully set forth herein.

JURISDICTION AND VENUE

2. These Counterclaims present a federal question arising out of the same contracts at issue in the United States' Amended Complaint and therefore implicate this Court's subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1367, and Federal Rule of Civil Procedure 13. Defendant notes that because these Counterclaims seek monetary relief stemming from

1 contractual relations between Defendant and the United States, they appear to be subject to the
 2 jurisdiction of the Court of Federal Claims under 28 U.S.C. § 1491(a). In advance of filing these
 3 Counterclaims, counsel for Defendant and the United States met and conferred about whether the
 4 United States would stipulate that these Counterclaims are not compulsory within the meaning of
 5 Rule 13(a) because the United States would not agree to waive sovereign immunity over such
 6 claims for relief. Counsel for the United States advised counsel for Defendant that it declined to
 7 sign a proposed stipulation agreeing that these Counterclaims are not compulsory within the
 8 meaning of Rule 13(a) until after Defendant filed such Counterclaims, at which point the United
 9 States would consider a stipulation of dismissal. Because the United States has thus far declined
 10 to stipulate that these Counterclaims are not compulsory counterclaims that must be brought in
 11 this action under Rule 13(a), Defendant asserts these Counterclaims here out of an abundance of
 12 caution.

13 PARTIES

14 3. Plaintiff and Counter-Defendant is the United States of America. The United
 15 States Department of Health and Human Services (“HHS”), through its component agency the
 16 Centers for Medicare & Medicaid Services (“CMS”), administers the Medicare Advantage
 17 program.

18 4. Defendant and Counter-Plaintiff Kaiser Foundation Health Plan of Colorado is a
 19 California entity. Defendant executed the Medicare Advantage contract substantially similar to
 20 the contract attached here as Exhibit A during the time period at issue in the United States’
 21 Amended Complaint.

22 FACTUAL ALLEGATIONS

23 Medicare Advantage

24 5. In the 1960s, the federal government established Medicare, a groundbreaking
 25 insurance program geared toward ensuring healthcare coverage for the country’s aging
 26 population. Traditional Medicare consists of Medicare Part A, which covers inpatient hospital
 27 care, and Medicare Part B, which covers outpatient medical care. Medicare Part C, now known
 28 as Medicare Advantage, allows members to elect to receive their Medicare benefits from private

1 MAOs, such as Defendant. CMS administers both traditional Medicare and Medicare Advantage.

2 6. Under traditional Medicare, CMS uses a fee-for-service reimbursement model; it
3 compensates healthcare providers directly for every service rendered to Medicare members. For
4 example, Medicare pays healthcare providers a specified amount for an office visit with a patient
5 and another for a diagnostic x-ray, both under a fee schedule. Healthcare providers have no
6 financial incentive to avoid delivering services that may be duplicative, inefficient, or
7 expensive—the more services they perform, the more money they earn.

8 7. Congress enacted the predecessor to Medicare Advantage, the Medicare+Choice
9 program, in the 1990s as an alternative to traditional Medicare to help the government manage the
10 complicated task of insuring Medicare members. The Medicare Advantage program allows
11 Medicare members to choose to receive their Medicare benefits from private managed care or
12 health maintenance organizations, also known as MAOs.

13 **Medicare Advantage Payments and Actuarial Equivalence**

14 8. Unlike in traditional Medicare, CMS payments to MAOs do not change based on
15 the healthcare services provided to members. MAOs instead contract with CMS to bear the
16 financial risk of insuring members in return for a prospective, fixed monthly per-member
17 payment to anticipate the cost of care. Congress sought “to harness the power of private sector
18 competition to stimulate experimentation and innovation that would ultimately create a more
19 efficient and less expensive Medicare system.” *In re Avandia Mktg., Sales Pracs. & Prods. Liab.*
20 *Litig.*, 685 F.3d 353, 363 (3d Cir. 2012). This payment model encourages MAOs to actively
21 manage the healthcare of members to promote long-term health and avoid expensive healthcare
22 services down the road that would increase the costs of care.

23 9. Under the original Medicare Advantage reimbursement model, CMS set fixed per-
24 member monthly payments regardless of the health status of individual members. CMS would
25 reimburse MAOs the same amount for a member suffering from a chronic medical condition such
26 as diabetes as it would for a member with no known chronic illnesses. This payment model
27 unintentionally incentivized MAOs to enroll healthier individuals—who would generally require
28 fewer services and cost MAOs less—over less healthy individuals. In response, Congress

1 introduced the “risk-adjustment” payment model when it created the current Medicare Advantage
2 program and that risk-adjustment payment model is central to the Plaintiff’s allegations in this
3 case.

4 10. Under this payment model, the monthly payment from CMS to MAOs takes into
5 account the health-risk profiles of individual members during the previous year to estimate the
6 healthcare costs those members are likely to incur in the coming year. CMS, in other words, pays
7 MAOs more for Medicare Advantage members who are more likely to incur additional healthcare
8 costs based in part on each of the members’ prior-year health profiles. This process of adjusting
9 payments to MAOs to account for variations in the anticipated cost of insuring members is known
10 as “risk adjustment.”

11 11. CMS calculates payments to MAOs, such as the Defendant, using the CMS
12 Hierarchical Condition Category (“HCC”) risk-adjustment model. Each HCC is a group of
13 different “diagnosis codes,” which are alphanumeric codes that correspond to illnesses or
14 medical conditions diagnosed by healthcare providers. CMS determines the expected costs of
15 care for the health conditions encompassed in each HCC by calculating “risk coefficients”
16 designed to measure the marginal expected costs of providing medical care for traditional
17 Medicare members diagnosed with those same conditions. CMS derives its risk coefficients
18 using diagnosis codes it receives from healthcare providers who treat traditional Medicare
19 members; CMS examines how much money it spends to provide benefits to those traditional
20 Medicare members and uses traditional Medicare diagnosis-code data to predict how much it
21 would cost an MAO to provide Medicare benefits to a Medicare Advantage member with a
22 similar diagnosis. CMS pays for healthcare services rendered to members in the traditional
23 Medicare program based on the representations made by healthcare providers on the claim forms
24 submitted to CMS by those providers. The agency does not verify the healthcare providers’
25 representation of the diagnosis in the claim form through a review of medical records before
26 making payment to the healthcare providers who render services to members in traditional
27 Medicare. Nor does CMS systematically audit the vast majority of that traditional Medicare
28 diagnosis code data to determine if the codes are supported by the medical records for those

1 members.

2 12. During the period at issue in this case, CMS had knowledge that a significant
3 percentage of diagnosis codes submitted by healthcare providers in traditional Medicare is not
4 substantiated by medical record documentation. CMS nevertheless used those unsubstantiated
5 diagnosis codes in calculating its risk coefficients for medical conditions in the Medicare
6 Advantage program; in other words, diagnosis codes that were not substantiated by medical
7 records were baked into the CMS-HCC risk adjustment payment model for the Medicare
8 Advantage program.

9 13. This feature of the CMS-HCC payment model causes the Medicare Advantage
10 risk-adjustment model to understate the costs that CMS incurs to treat different medical
11 conditions in the traditional Medicare program. Because some traditional Medicare providers
12 report unsubstantiated diagnosis codes to CMS and CMS does not remove those unsubstantiated
13 diagnosis codes when measuring the costs associated with the underlying members' health care
14 services, CMS's calculations spread costs to more members than the members' medical records
15 can substantiate. The obvious result of these calculations is a lowered average rate of
16 expenditures per member—i.e., by including unsubstantiated diagnosis codes when estimating
17 costs associated with a given medical condition, CMS spreads the costs across more members and
18 lowers the average expected cost of health care services associated with that condition. When
19 CMS applies the resulting lower risk coefficients to MAO payments in the Medicare Advantage
20 risk-adjustment model, CMS systematically underpays MAOs if it then later adjusts payments to
21 the MAOs to account only for members whose diagnosis codes are substantiated by medical
22 record documentation. Because CMS's risk coefficients reflect the cost of providing care for a
23 population that includes *both* traditional Medicare diagnosis codes supported by medical records
24 *and* traditional Medicare diagnosis codes *not* supported by medical records, CMS underpays
25 MAOs when it applies those coefficients to adjust Medicare Advantage payments only for a
26 population of members whose diagnosis codes are supported by medical records; such payments
27 are necessarily less than the estimated cost of treating an equivalent population in traditional
28 Medicare. *See, e.g.*, 42 U.S.C. § 1395w-23(a)(1)(C)(i) (directing CMS to “adjust” payments to

1 ensure “actuarial equivalence”).

2 **Medicare Advantage Contract and Bid Process**

3 14. MAOs enter into annual contracts with CMS through which MAOs agree to cover
4 their members’ Medicare benefits for the coming year in exchange for premium payments from
5 CMS.

6 15. As referenced in Defendant’s contracts with CMS, MAOs develop an annual
7 benefit and price bid proposal that they submit to CMS. An MAO’s bid must reflect its estimate
8 of the payment that the MAO will require to provide the benefits covered by traditional Medicare
9 to a member with an average risk profile for the specific population in the bid’s service area. This
10 estimate must include all estimated revenue required, including administrative costs. To make
11 these estimates, an MAO must calculate anticipated revenues and expenses, taking into account
12 CMS’s risk coefficients and CMS’s risk score model, as set forth in an annual rate announcement
13 issued by CMS. A “risk score,” also known as a “risk adjustment factor” or “RAF,” is a
14 multiplier that is applied to the bid amount for an applicable Medicare Advantage member, and
15 the risk score model is a component of the bid proposal that estimates the risk score at the
16 population level associated with the bid.

17 16. CMS is required to determine whether the bid reasonably and equitably reflects the
18 estimated revenue requirements for providing the benefits under the Medicare Advantage plan. If
19 the bid does not, CMS cannot accept it. The bid undergoes a review and audit, and if CMS
20 determines that the bid is reasonable and equitable and accepts it, then CMS agrees to pay the
21 MAO under the contract for each Medicare Advantage member consistent with the MAO’s bid.

22 17. During the relevant time period, Defendant formulated its Medicare Advantage
23 bids with the reasonable understanding that CMS would make payments to MAOs based on
24 diagnosis codes for which the underlying documentation standards were reasonably consistent
25 with the documentation standards applied to the diagnosis codes submitted pursuant to the
26 traditional Medicare program. Defendant also formulated its Medicare Advantage bids with the
27 reasonable understanding that CMS would “adjust the payment” that Defendant received under
28 the contract “so as to ensure actuarial equivalence.” *See* 42 U.S.C. § 1395w-23(a)(1)(C)(i).

1 18. CMS never issued any guidance that indicated that it would require that MAOs
2 substantiate the diagnosis codes they submit with medical record documentation that is not
3 required for diagnosis codes submitted pursuant to the traditional Medicare program. CMS
4 accepted Defendant's bids knowing that it had not communicated this otherwise.

5 19. CMS and Defendant entered into multiple contracts during the time period at issue
6 in the Amended Complaint. For example, on August 18, 2016, Defendant entered into a contract
7 with CMS for the 2017 payment year. *See* Counterclaim Ex. A. This contract references the bid
8 submissions made by Defendant. *See, e.g.,* Counterclaim Ex. A at Art. III(A)(1) (referencing
9 Defendant's "final benefit and bid price proposal as approved by CMS"). The contract also states
10 that "CMS agrees to pay the MA Organization under this contract in accordance with the
11 provisions of § 1853 of the Act," which includes the statutory requirement for CMS to "adjust"
12 payments to ensure "actuarial equivalence." *Id.* at IV(B); 42 U.S.C. § 1395w-23(a)(1)(C)(i).

13 20. This mandate of actuarial equivalence requires that the data used to determine
14 Medicare Advantage payments (i.e., diagnosis codes submitted pursuant to the traditional
15 Medicare program) is consistent with the data that the payment model is applied to (i.e., the
16 diagnosis codes submitted pursuant to the Medicare Advantage program). *See* American
17 Academy of Actuaries, Actuarial Standard of Practice (ASOP) No. 45 ("The type of input data
18 that is used in the application of [a] risk adjustment [model] should be reasonably consistent with
19 the type of data used to develop the model."). By requiring that Medicare Advantage diagnosis
20 codes are substantiated with documentation that is not required in traditional Medicare, CMS
21 violates this principle of actuarial equivalence.

22 CAUSES OF ACTION

23 Count I: Breach of Contract

24 21. Defendant repeats and restates the allegations in Paragraphs 1 to 20 as if fully set
25 forth in this paragraph.

26 22. During the relevant time period for the Amended Complaint, CMS and Defendant
27 were parties to Medicare Advantage contracts relating to Defendant's participation in the
28 Medicare Advantage program.

1 23. Defendant performed all requirements and obligations under those Medicare
2 Advantage contracts.

3 24. As referenced in Defendant's contracts with CMS, Defendant submitted bid
4 proposals to CMS. *See, e.g.*, Counterclaim Ex. A at Art. III(A)(1). CMS approved and accepted
5 those bid proposals, and agreed to pay Defendant based on those approved bids.

6 25. Defendant's bids were premised on the parties' mutual understanding that CMS
7 would make payments to MAOs based on diagnosis codes for which the underlying
8 documentation standards were reasonably consistent with the documentation standards applied to
9 the diagnosis codes submitted pursuant to the traditional Medicare program..

10 26. The United States' lawsuit improperly seeks to deprive Defendant of
11 compensation legally owed to Defendant under the Medicare Advantage contracts between the
12 parties in which Defendant agreed to cover the Medicare benefits of its enrollees. The allegations
13 in the Amended Complaint that Defendant failed to substantiate the diagnosis codes it submitted
14 with medical record documentation that is not required for diagnosis codes submitted pursuant to
15 the traditional Medicare program contradicts the parties' assumptions underlying Defendant's
16 bids, the terms of the parties' contracts, and both parties' course of performance under those
17 contracts.

18 27. Depriving the Defendant of risk adjusted payments under those Medicare
19 Advantage contracts with CMS would breach those agreements. The United States is, in effect,
20 seeking to rescind payments owed to Defendant for healthcare coverage that Defendant provided
21 to Medicare Advantage members under the terms of the contracts with CMS. Such liability
22 would proximately cause Defendant to suffer actual monetary loss, entitling Defendant to recover
23 compensatory damages in an amount to be determined at trial.

24 **Count II: Breach of the Covenant of Good Faith and Fair Dealing**

25 28. Defendant repeats and restates the allegations in Paragraphs 1 to 27 as if fully set
26 forth in this paragraph.

27 29. During the relevant time period for the Amended Complaint, CMS and Defendant
28 were parties to Medicare Advantage contracts relating to Defendant's participation in Medicare

1 Advantage. These contracts, like all contracts, impose a duty of good faith and fair dealing upon
2 the parties in performance and enforcement of the contracts.

3 30. Defendant performed all requirements and obligations under those Medicare
4 Advantage contracts.

5 31. The United States' attempt to hold Defendant liable for failing to substantiate the
6 diagnosis codes it submitted with medical record documentation that is not required for diagnosis
7 codes submitted pursuant to the traditional Medicare program violates the United States' duty of
8 good faith and fair dealing. The United States' lawsuit in effect asserts that Defendant should not
9 have submitted diagnosis codes for medical conditions that are permitted to be submitted under
10 traditional Medicare, thereby violating the requirement of actuarial equivalence. The United
11 States knew that, when it executed the Medicare Advantage contracts with Defendant, the
12 contracts required the United States to apply the same medical record documentation standards to
13 Medicare Advantage data as it applies to traditional Medicare when calculating payment.

14 32. The United States further breached the covenant of good faith and fair dealing by
15 continuing to accept benefits from Defendant under the parties' Medicare Advantage contracts
16 while pursuing litigation to recover its payments under those same contracts. Having secured the
17 benefits of Defendant's performance, the United States is now attempting to recover the payments
18 it made in exchange for those benefits.

19 33. Such liability would proximately cause Defendant to suffer actual monetary loss,
20 entitling Defendant to recover compensatory damages in an amount to be determined at trial.

21 **PRAYER FOR RELIEF**

22 34. Defendant requests that the Court grant the monetary relief sought in each of the
23 counterclaims, as well as costs and disbursements of this litigation, including attorneys' fees and
24 such other and further relief in favor of Defendant as this Court deems just and proper.

1 Dated: July 31, 2023

Respectfully submitted,

2
3 By: /s/ K. Lee Blalack, II
4 K. LEE BLALACK, II
5 DAVID DEATON
6 STEPHEN M. SULLIVAN
7 CAITLIN M. BAIR
8 DIMITRI D. PORTNOI
9 KYLE M. GROSSMAN

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*Attorneys for Defendant Kaiser
Foundation Health Plan of Colorado*

Exhibit A

Case 3:13-cv-03891-EMC Document 283 Filed 07/31/23 Page 102 of 122
**CONTRACT WITH ELIGIBLE MEDICARE ADVANTAGE (MA) ORGANIZATION
PURSUANT TO SECTIONS 1851 THROUGH 1859 OF THE SOCIAL SECURITY ACT
FOR THE OPERATION OF A MEDICARE ADVANTAGE COORDINATED CARE PLAN(S)**

CONTRACT (H0630)

Between

Centers for Medicare & Medicaid Services (hereinafter referred to as CMS)

and

KAISER FOUNDATION HP OF CO
(hereinafter referred to as the MA Organization)

CMS and the MA Organization, an entity which has been determined to be an eligible Medicare Advantage Organization by the Administrator of the Centers for Medicare & Medicaid Services under 42 CFR §422.503, agree to the following for the purposes of §§ 1851 through 1859 of the Social Security Act (hereinafter referred to as the Act):

(NOTE: Citations indicated in brackets are placed in the text of this contract to note the regulatory authority for certain contract provisions. All references to Part 422 are to 42 CFR Part 422.)

Article I Term of Contract

The term of this contract shall be from the date of signature by CMS' authorized representative through December 31, 2017, after which this contract may be renewed for successive one-year periods in accordance with 42 CFR §422.505(c) and as discussed in Paragraph A of Article VII below. **[422.505]**

This contract governs the respective rights and obligations of the parties as of the effective date set forth above, and supersedes any prior agreements between the MA Organization and CMS as of such date. MA organizations offering Part D benefits also must execute an Addendum to the Medicare Managed Care Contract Pursuant to §§ 1860D-1 through 1860D-43 of the Social Security Act for the Operation of a Voluntary Medicare Prescription Drug Plan (hereafter the "Part D Addendum"). For MA Organizations offering MA-PD plans, the Part D Addendum governs the rights and obligations of the parties relating to the provision of Part D benefits, in accordance with its terms, as of its effective date.

Article II Coordinated Care Plan

A. The MA Organization agrees to operate one or more coordinated care plans as defined in 42 CFR §422.4(a)(1)(iii)), including at least one MA-PD plan as required under 42 CFR 422.4(c), as described in its final Plan Benefit Package (PBP) bid submission (benefit and price bid) proposal as approved by CMS and as attested to in the Medicare Advantage Attestation of Benefit Plan and Price, and in compliance with the requirements of this contract and applicable Federal statutes, regulations, and policies (e.g., policies as described in the Call Letter, Medicare Managed Care Manual, etc.).

B. Except as provided in paragraph (C) of this Article, this contract is deemed to incorporate any changes that are required by statute to be implemented during the term of the contract and any regulations or policies implementing or interpreting such statutory provisions.

C. CMS will not implement, other than at the beginning of a calendar year, requirements under 42 CFR Part 422 that impose a new significant cost or burden on MA organizations or plans, unless a different effective date is required by statute. **[422.521]**

D. If the MA Organization had a contract with CMS for Contract Year 2016 under the contract ID number designated above, this document is considered a renewal of the existing contract. While the terms of this document supersede the terms of the 2016 contract, the parties' execution of this contract does not extinguish or interrupt any pending obligations or actions that may have arisen under the 2016 or prior year contracts.

E. This contract is in no way intended to supersede or modify 42 CFR, Part 422. Failure to reference a regulatory requirement in this contract does not affect the applicability of such requirements to the MA organization and CMS.

Article III Functions To Be Performed By Medicare Advantage Organization

A. PROVISION OF BENEFITS

1. The MA Organization agrees to provide enrollees in each of its MA plans the basic benefits as required under 42 CFR §422.101 and, to the extent applicable, supplemental benefits under 42 CFR §422.102 and as established in the MA Organization's final benefit and price bid proposal as approved by CMS and listed in the MA Organization Plan Attestation of Benefit Plan and Price, which is attached to this contract. The MA Organization agrees to provide access to such benefits as required under subpart C in a manner consistent with professionally recognized standards of health care and according to the access standards stated in 42 CFR §422.112.

2. The MA Organization agrees to provide post-hospital extended care services, should an MA enrollee elect such coverage, through a home skilled nursing facility, as defined at 42 CFR §422.133(b), according to the requirements of § 1852(l) of the Act and 42 CFR §422.133. **[422. 133; 422.504(a)(3)]**

B. ENROLLMENT REQUIREMENTS

1. The MA Organization agrees to accept new enrollments, make enrollments effective, process voluntary disenrollments, and limit involuntary disenrollments, as provided in 42 CFR Part 422, Subpart B.

2. The MA Organization shall comply with the provisions of 42 CFR §422.110 concerning prohibitions against discrimination in beneficiary enrollment, other than in enrolling eligible beneficiaries in a CMA-approved special needs plan that exclusively enrolls special needs individuals as consistent with 42 CFR §§422.2, 422.4(a)(1)(iv) and 422.52. **[422.504(a)(2)]**

C. BENEFICIARY PROTECTIONS

1. The MA Organization agrees to comply with all requirements in 42 CFR O Part 422, Subpart M governing coverage determinations, grievances, and appeals. **[422.504(a)(7)]**

2. The MA Organization agrees to comply with the confidentiality and enrollee record accuracy requirements in 42 CFR §422.118.

3. Beneficiary Financial Protections. The MA Organization agrees to comply with the following requirements:

(3.a) Each MA Organization must adopt and maintain arrangements satisfactory to CMS to protect its enrollees from incurring liability for payment of any fees that are the legal obligation of the MA Organization. To meet this requirement the MA Organization must—

(3.a.i) Ensure that all contractual or other written arrangements with providers prohibit the Organization's providers from holding any beneficiary enrollee liable for payment of any fees that are the legal obligation of the MA Organization; and

(3.a.ii) Indemnify the beneficiary enrollee for payment of any fees that are the legal obligation of the MA Organization for services furnished by providers that do not contract, or that have not otherwise entered into an agreement with the MA Organization, to provide services to the organization's beneficiary enrollees. **[422.504(g)(1)]**

(3.b) The MA Organization must provide for continuation of enrollee health care benefits-

(3.b.i) For all enrollees, for the duration of the contract period for which CMS payments have been made; and

(3.b.ii) For enrollees who are hospitalized on the date its contract with CMS terminates, or, in the event of the MA Organization's insolvency, through the date of discharge. **[422.504(g)(2)]**

(3.c) In meeting the requirements of this paragraph, other than the provider contract requirements specified in subparagraph 3(a) of this paragraph, the MA Organization may use—

(3.c.i) Contractual arrangements;

(3.c.ii) Insurance acceptable to CMS;

(3.c.iii) Financial reserves acceptable to CMS; or

(3.c.iv) Any other arrangement acceptable to CMS. **[422.504(g)(3)]**

D. PROVIDER PROTECTIONS

1. The MA Organization agrees to comply with all applicable provider requirements in 42 CFR Part 422 Subpart E, including provider certification requirements, anti-discrimination requirements, provider participation and consultation requirements, the prohibition on interference with provider advice, limits on provider indemnification, rules governing payments to providers, and limits on physician incentive plans. **[422.504(a)(6)]**

2. Prompt Payment.

(2.a) The MA Organization must pay 95 percent of "clean claims" within 30 days of receipt if they are claims for covered services that are not furnished under a written agreement between the organization and the provider.

(i) The MA Organization must pay interest on clean claims that are not paid within 30 days in accordance with §§ 1816(c)(2) and 1842(c)(2) of the Act.

(ii) All other claims from non-contracted providers must be paid or denied within 60 calendar days from the date of the request. **[422.520(a)]**

(2.b) Contracts or other written agreements between the MA Organization and its providers must contain a prompt payment provision, the terms of which are developed and agreed to by both the MA Organization and the relevant provider. **[422.520(b)]**

(2.c) If CMS determines, after giving notice and opportunity for hearing, that the MA Organization has failed to make payments in accordance with subparagraph (2)(a) of this paragraph, CMS may provide-

(2.c.i) For direct payment of the sums owed to providers; and

(2.c.ii) For appropriate reduction in the amounts that would otherwise be paid to the MA Organization, to reflect the amounts of the direct payments and the cost of making those payments. **[422.520(c)]**

E. QUALITY IMPROVEMENT PROGRAM

1. The MA Organization agrees to operate, for each plan that it offers, an ongoing quality improvement program as stated in accordance with § 1852(e) of the Social Security Act and 42 CFR §422.152.

2. The MA Organization agrees to develop and operate a chronic care improvement program in accordance with the requirements of 42 CFR §422.152(c).

3. Performance Measurement and Reporting: The MA Organization shall measure performance under its MA plans using standard measures required by CMS, and report (at the organization level) its performance to CMS. The standard measures required by CMS during the term of this contract will be uniform data collection and reporting instruments, to include the Health Plan and Employer Data Information Set (HEDIS), Consumer Assessment of Health Plan Satisfaction (CAHPS) survey, and Health Outcomes Survey (HOS). These measures will address clinical areas, including effectiveness of care, enrollee perception of care and use of services; and non-clinical areas including access to and availability of services, appeals and grievances, and organizational characteristics. **[422.152(b)(1), (e)]**

4. Utilization Review:

(4.a) An MA Organization for an MA coordinated care plan must use written protocols for utilization review and policies and procedures must reflect current standards of medical practice in processing requests for initial or continued authorization of services and have in effect mechanisms to detect both underutilization and over utilization of services. **[422.152(b)]**

(4.b) For MA regional preferred provider organizations (RPPOs) and MA local preferred provider organizations (PPOs) that are offered by an organization that is not licensed or organized under State law as an HMOs, if the MA Organization uses written protocols for utilization review, those policies and procedures must reflect current standards of medical practice in processing requests for initial or continued authorization of services and include mechanisms to evaluate utilization of services and to inform enrollees and providers of services of the results of the evaluation. **[422.152(e)]**

5. Information Systems:

(5.a) The MA Organization must:

(5.a.i) Maintain a health information system that collects, analyzes and integrates the data necessary to implement its quality improvement program;

(5.a.ii) Ensure that the information entered into the system (particularly that received from providers) is reliable and complete;

(5.a.iii) Make all collected information available to CMS. **[422.152(f)(1)]**

6. External Review: The MA Organization will comply with any requests by Quality Improvement Organizations to review the MA Organization's medical records in connection with appeals of discharges from hospitals, skilled nursing facilities, and home health agencies.

7. The MA Organization agrees to address complaints received by CMS against the MA Organization as required in 42 CFR §422.504(a)(15) by:

(7.a) Addressing and resolving complaints in the CMS complaint tracking system; and

(7.b) Displaying a link to the electronic complaint form on the Medicare.gov Internet Web site on the MA plan's main Web page.

F. COMPLIANCE PLAN

The MA Organization agrees to implement a compliance plan in accordance with the requirements of 42 CFR §422.503(b)(4)(vi). **[422.503(b)(4)(vi)]**

G. COMPLIANCE DEEMED ON THE BASIS OF ACCREDITATION

CMS may deem the MA Organization to have met the quality improvement requirements of §1852(e) of the Act and 42 CFR §422.152, the confidentiality and accuracy of enrollee records requirements of §1852(h) of the Act and 42 CFR §422.118, the anti-discrimination requirements of §1852(b) of the Act and 42 CFR §422.110, the access to services requirements of §1852(d) of the Act and 42 CFR §422.112, the advance directives requirements of §1852(i) of the Act and 42 CFR §422.128, the provider participation requirements of §1852(j) of the Act and 42 CFR Part 422, Subpart E, and the applicable requirements described in 42 CFR §423.156, if the MA Organization is fully accredited (and periodically reaccredited) by a private, national accreditation organization approved by CMS and the accreditation organization used the standards approved by CMS for the purposes of assessing the MA Organization's compliance with Medicare requirements. The provisions of 42 CFR §422.156 shall govern the MA Organization's use of deemed status to meet MA program requirements.

H. PROGRAM INTEGRITY

1. The MA Organization agrees to provide notice based on best knowledge, information, and belief to CMS of any integrity items related to payments from governmental entities, both federal and state, for healthcare or prescription drug services. These items include any investigations, legal actions or matters subject to arbitration brought involving the MA Organization (or MA Organization's firm if applicable) and its subcontractors (excluding contracted network providers), including any key management or executive staff, or any major shareholders (5% or more), by a government agency (state or federal) on matters relating to payments from governmental entities, both federal and state, for healthcare and/or prescription drug services. In providing the notice, the sponsor shall keep the government informed of when the integrity item is initiated and when it is closed. Notice should be provided of the details concerning any resolution and monetary payments as well as any settlement agreements or corporate integrity agreements.

2. The MA Organization agrees to provide notice based on best knowledge, information, and belief to CMS in the event the MA Organization or any of its subcontractors is criminally convicted or has a civil judgment entered against it for fraudulent activities or is sanctioned under any Federal program involving the provision of health care or prescription drug services.

I. MARKETING

1. The MA Organization may not distribute any marketing materials, as defined in 42 CFR §422.2260 and in the Marketing Materials Guidelines for Medicare Advantage-Prescription Drug Plans and Prescription Drug Plans (Medicare Marketing Guidelines), unless they have been filed with and not disapproved by CMS in accordance with 42 CFR §422.2264. The file and use process set out at 42 CFR §422.2262 must be used, unless the MA organization notifies CMS that it will not use this process.

2. CMS and the MA Organization shall agree upon language setting forth the benefits, exclusions and other language of the Plan. The MA Organization bears full responsibility for the accuracy of its marketing materials. CMS, in its sole discretion, may order the MA Organization to print and distribute the agreed upon marketing materials, in a format approved by CMS. The MA Organization must disclose the information to each enrollee electing a plan as outlined in 42 CFR §422.111.

3. The MA Organization agrees that any advertising material, including that labeled promotional material, marketing materials, or supplemental literature, shall be truthful and not misleading. All marketing materials must include the Contract number. All membership identification cards must include the Contract number on the front of the card.

4. The MA Organization must comply with the Medicare Marketing Guidelines, as well as all applicable statutes and regulations, including and without limitation § 1851(h) of the Act and 42 CFR § 422.111, 42 CFR Part 422 Subpart V and 42 CFR Part 423 Subpart V. Failure to comply may result in sanctions as provided in 42 CFR Part 422 Subpart O.

Article IV CMS Payment to MA Organization

A. The MA Organization agrees to develop its annual benefit and price bid proposal and submit to CMS all required information on premiums, benefits, and cost sharing, as required under 42 CFR Part 422 Subpart F. **[422.504(a)(10)]**

B. METHODOLOGY

CMS agrees to pay the MA Organization under this contract in accordance with the provisions of § 1853 of the Act and 42 CFR Part 422 Subpart G. **[422.504(a)(9)]**

C. ELECTRONIC HEALTH RECORDS INCENTIVE PROGRAM PAYMENTS

The MA Organization agrees to abide by the requirements in 42 CFR §§495.200 et seq. and §1853(l) and (m) of the Act, including the fact that payment will be made directly to MA-affiliated hospitals that are certified Medicare hospitals through the Medicare FFS hospital incentive payment program.

D. ATTESTATION OF PAYMENT DATA (Attachments A, B, and C).

As a condition for receiving a monthly payment under paragraph B of this article, and 42 CFR Part 422 Subpart G, the MA Organization agrees that its chief executive officer (CEO), chief financial officer (CFO), or an individual delegated with the authority to sign on behalf of one of these officers, and who reports directly to such officer, must request payment under the contract on the forms attached hereto as Attachment A (enrollment attestation) and Attachment B (risk adjustment data) which attest to *(based on best knowledge, information and belief, as of the date specified on the attestation form)* the accuracy, completeness, and truthfulness of the data identified on these attachments. The Medicare Advantage Plan Attestation of Benefit Plan and Price must be signed and attached to the executed version of this contract.

(NOTE: The forms included as attachments to this contract are for reference only. CMS will provide instructions for the completion and submission of the forms in separate documents. MA Organizations should not take any action on the forms until appropriate CMS instructions become available.)

1. Attachment A requires that the CEO, CFO, or an individual delegated with the authority to sign on behalf of one of these officers, and who reports directly to such officer, must attest based on best knowledge, information, and belief that each enrollee for whom the MA Organization is requesting payment is validly enrolled, or was validly enrolled during the period for which payment is requested, in an MA plan offered by the MA Organization. The MA Organization shall submit completed enrollment attestation forms to CMS, or its contractor, on a monthly basis.

2. Attachment B requires that the CEO, CFO, or an individual delegated with the authority to sign on behalf of one of these officers, and who reports directly to such officer, must attest to *(based on best knowledge, information and belief, as of the date specified on the attestation form)* that the risk adjustment data it submits to CMS under 42 CFR §422.310 are accurate, complete, and truthful. The MA Organization shall make annual attestations to this effect for risk adjustment data on Attachment B and according to a schedule to be published by CMS. If such risk adjustment data are generated by a related entity, contractor, or subcontractor of an MA Organization, such entity, contractor, or subcontractor must also attest to *(based on best knowledge, information, and belief, as of the date specified on the attestation form)* the accuracy, completeness, and truthfulness of the data. **[422.504(I)]**

3. The Medicare Advantage Plan Attestation of Benefit Plan and Price (an example of which is attached hereto as Attachment C) requires that the CEO, CFO, or an individual delegated with the authority to sign on behalf of one of these officers, and who reports directly to such officer, must attest *(based on best knowledge, information and belief, as of the date specified on the attestation form)* that the information and documentation comprising the bid submission proposal is accurate, complete, and truthful and fully conforms to the Bid Form and Plan Benefit Package requirements; and that the benefits described in the CMS-approved proposed bid submission agree with the benefit package the MA Organization will offer during the period covered by the proposed bid submission. This document is being sent separately to the MA Organization and must be signed and attached to the executed version of this contract, and is incorporated herein by reference. **[422.504(I)]**

4. The MA Organization must certify based on best knowledge, information, and belief, that the information provided for the purposes of reporting and returning of overpayments under 42 CFR §422.326 is accurate, complete, and truthful. The form for this certification will be determined by CMS. **[422.504(I)]**

Article V

MA Organization Relationship with Related Entities, Contractors, and Subcontractors

A. Notwithstanding any relationship(s) that the MA Organization may have with related entities, contractors, or subcontractors, the MA Organization maintains full responsibility for adhering to and otherwise fully complying with all terms and conditions of its contract with CMS. **[422.504(i)(1)]**

B. The MA Organization agrees to require all related entities, contractors, or subcontractors to agree that—

1. HHS, the Comptroller General, or their designees have the right to audit, evaluate, collect, and inspect any books, contracts, computer or other electronic systems, including medical records and documentation of the first tier, downstream, and related entities related to CMS contract with the MA organization;

2. HHS, the Comptroller General, or their designees have the right to audit, evaluate, collect, and inspect any records under paragraph B (1) of this Article directly from any first tier, downstream, or related entity;

3. For records subject to review under paragraph B(2) of this Article, except in exceptional circumstances, CMS will provide notification to the MA organization that a direct request for information has been initiated; and

4. HHS, the Comptroller General, or their designees have the right to inspect, evaluate, and audit any pertinent information for any particular contract period for 10 years from the final date of the contract period or from the date of completion of any audit, whichever is later. **[422.504(i)(2)]**

C. The MA Organization agrees that all contracts or written arrangements into which the MA Organization enters with providers, related entities, contractors, or subcontractors (first tier and downstream entities) shall contain the following elements:

1. Enrollee protection provisions that provide—

(1.a) Consistent with Article III, paragraph C, arrangements that prohibit providers from holding an enrollee liable for payment of any fees that are the legal obligation of the MA Organization; and

(1.b) Consistent with Article III, paragraph C, provision for the continuation of benefits.

2. Accountability provisions that indicate that the MA Organization may only delegate activities or functions to a provider, related entity, contractor, or subcontractor in a manner consistent with requirements set forth at paragraph D of this Article.

3. A provision requiring that any services or other activity performed by a first tier, downstream, or related entity in accordance with a contract or written agreement will be consistent and comply with the MA Organization's contractual obligations. **[422.504(i)(3)]**

D. If any of the MA Organization's activities or responsibilities under this contract with CMS is delegated to other parties, the following requirements apply to any first tier, downstream, or related entity:

1. Each and every contract must specify delegated activities and reporting responsibilities.

2. Each and every contract must either provide for revocation of the delegation activities and reporting requirements or specify other remedies in instances where CMS or the MA Organization determine that such parties have not performed satisfactorily.

3. Each and every contract must specify that the performance of the parties is monitored by the MA Organization on an ongoing basis.

4. Each and every contract must specify that either-

(4.a) The credentials of medical professionals affiliated with the party or parties will be either reviewed by the MA Organization; or

(4.b) The credentialing process will be reviewed and approved by the MA Organization and the MA Organization must audit the credentialing process on an ongoing basis.

5. Each and every contract must specify that the first tier, downstream, or related entity comply with all applicable Medicare laws, regulations, and CMS instructions. **[422.504(i)(4)]**

E. If the MA Organization delegates selection of the providers, contractors, or subcontractors to another organization, the MA Organization's contract with that organization must state that the CMS-contracting MA Organization retains the right to approve, suspend, or terminate any such arrangement. **[422.504(i)(5)]**

F. As of the date of this contract and throughout its term, the MA Organization

1. Agrees that any physician incentive plan it operates meets the requirements of 42 CFR §422.208, and

2. Has assured that all physicians and physician groups that the MA Organization's physician incentive plan places at substantial financial risk have adequate stop-loss protection in accordance with 42 CFR §422.208(f). **[422.208]**

Article VI Records Requirements

A. MAINTENANCE OF RECORDS

1. The MA Organization agrees to maintain for 10 years books, records, documents, and other evidence of accounting procedures and practices that-

(1.a) Are sufficient to do the following:

(1.a.i) Accommodate periodic auditing of the financial records (including data related to Medicare utilization, costs, and computation of the benefit and price bid) of the MA Organization.

(1.a.ii) Enable CMS to inspect or otherwise evaluate the quality, appropriateness and timeliness of services performed under the contract, and the facilities of the MA Organization.

(1.a.iii) Enable CMS to audit and inspect any books and records of the MA Organization that pertain to the ability of the organization to bear the risk of potential financial losses, or to services performed or determinations of amounts payable under the contract.

(1.a.iv) Properly reflect all direct and indirect costs claimed to have been incurred and used in the preparation of the benefit and price bid proposal.

(1.a.v) Establish component rates of the benefit and price bid for determining additional and supplementary benefits.

(1.a.vi) Determine the rates utilized in setting premiums for State insurance agency purposes and for other government and private purchasers; and

(1.b) Include at least records of the following:

(1.b.i) Ownership and operation of the MA Organization's financial, medical, and other record keeping systems.

(1.b.ii) Financial statements for the current contract period and ten prior periods.

(1.b.iii) Federal income tax or informational returns for the current contract period and ten prior periods.

(1.b.iv) Asset acquisition, lease, sale, or other action.

(1.b.v) Agreements, contracts (including, but not limited to, with related or unrelated prescription drug benefit managers) and subcontracts.

(1.b.vi) Franchise, marketing, and management agreements.

(1.b.vii) Schedules of charges for the MA Organization's fee-for-service patients.

(1.b.viii) Matters pertaining to costs of operations.

(1.b.ix) Amounts of income received, by source and payment.

(1.b.x) Cash flow statements.

(1.b.xi) Any financial reports filed with other Federal programs or State authorities.**[422.504(d)]**

2. Access to facilities and records. The MA Organization agrees to the following:

(2.a) The Department of Health and Human Services (HHS), the Comptroller General, or their designee may evaluate, through inspection or other means—

(2.a.i) The quality, appropriateness, and timeliness of services furnished to Medicare enrollees under the contract;

(2.a.ii) Compliance with CMS requirements for maintaining the privacy and security of protected health information and other personally identifiable information of Medicare enrollees;

(2.a.iii) The facilities of the MA Organization; and

(2.a.iv) The enrollment and disenrollment records for the current contract period and ten prior periods.

(b) HHS, the Comptroller General, or their designees may audit, evaluate, or inspect any books, contracts, medical records, documents, papers, patient care documentation, and other records of the MA Organization, related entity, contractor, subcontractor, or its transferee that pertain to any aspect of services performed, reconciliation of benefit liabilities, and determination of amounts payable under the contract, or as the Secretary may deem necessary to enforce the contract.

(c) The MA Organization agrees to make available, for the purposes specified in paragraph A of this Article, its premises, physical facilities and equipment, records relating to its Medicare enrollees, and any additional relevant information that CMS may require, in a manner that meets CMS record maintenance requirements.

(2.d) HHS, the Comptroller General, or their designee's right to inspect, evaluate, and audit extends through 10 years from the final date of the contract period or completion of audit, whichever is later unless-

(2.d.i) CMS determines there is a special need to retain a particular record or group of records for a longer period and notifies the MA Organization at least 30 days before the normal disposition date;

(2.d.ii) There has been a termination, dispute, or fraud or similar fault by the MA Organization, in which case the retention may be extended to 10 years from the date of any resulting final resolution of the termination, dispute, or fraud or similar fault; or

(2.d.iii) HHS, the Comptroller General, or their designee determines that there is a reasonable possibility of fraud, in which case they may inspect, evaluate, and audit the MA Organization at any time. **[422.504(e)]**

B. REPORTING REQUIREMENTS

1. The MA Organization shall have an effective procedure to develop, compile, evaluate, and report to CMS, to its enrollees, and to the general public, at the times and in the manner that CMS requires, and while safeguarding the confidentiality of the doctor patient relationship, statistics and other information as described in the remainder of this paragraph. **[422.516(a)]**

2. The MA Organization agrees to submit to CMS certified financial information that must include the following:

(2.a) Such information as CMS may require demonstrating that the organization has a fiscally sound operation, including:

(2.a.i) The cost of its operations;

(2.a.ii) A description, submitted to CMS annually and within 120 days of the end of the fiscal year, of significant business transactions (as defined in 42 CFR §422.500) between the MA Organization and a party in interest showing that the costs of the transactions listed in subparagraph (2)(a)(v) of this paragraph do not exceed the costs that would be incurred if these transactions were with someone who is not a party in interest; or

(2.a.iii) If they do exceed, a justification that the higher costs are consistent with prudent management and fiscal soundness requirements.

(2.a.iv) A combined financial statement for the MA Organization and a party in interest if either of the following conditions is met:

(2.a.iv.aa) Thirty five percent or more of the costs of operation of the MA Organization go to a party in interest.

(2.a.iv.bb) Thirty five percent or more of the revenue of a party in interest is from the MA Organization. **[422.516(b)]**

(2.a.v) Requirements for combined financial statements.

(2.a.v.aa) The combined financial statements required by this subparagraph must display in separate columns the financial information for the MA Organization and each of the parties in interest.

(2.a.v.bb) Inter-entity transactions must be eliminated in the consolidated column.

(2.a.v.cc) The statements must have been examined by an independent auditor in accordance with generally accepted accounting principles and must include appropriate opinions and notes.

(2.a.v.dd) Upon written request from the MA Organization showing good cause, CMS may waive the requirement that the organization's combined financial statement include the financial information required in this subparagraph with respect to a particular entity. **[422.516(c)]**

(2.a.vi) A description of any loans or other special financial arrangements the MA Organization makes with contractors, subcontractors, and related entities. **[422.516(e)]**

(2.b) Such information as CMS may require pertaining to the disclosure of ownership and control of the MA Organization. **[422.504(f)]**

(2.c) Patterns of utilization of the MA Organization's services. **[422.516(a)(2)]**

3. The MA Organization agrees to participate in surveys required by CMS and to submit to CMS all information that is necessary for CMS to administer and evaluate the program and to simultaneously establish and facilitate a process for current and prospective beneficiaries to exercise choice in obtaining Medicare services. This information includes, but is not limited to:

(3.a) The benefits covered under the MA plan;

(3.b) The MA monthly basic beneficiary premium and MA monthly supplemental beneficiary premium, if any, for the plan.

(3.c) The service area and continuation area, if any, of each plan and the enrollment capacity of each plan;

(3.d) Plan quality and performance indicators for the benefits under the plan including —

(3.d.i) Disenrollment rates for Medicare enrollees electing to receive benefits through the plan for the previous 2 years;

(3.d.ii) Information on Medicare enrollee satisfaction;

(3.d.iii) The patterns of utilization of plan services;

(3.d.iv) The availability, accessibility, and acceptability of the plan's services;

(3.d.v) Information on health outcomes and other performance measures required by CMS;

(3.d.vi) The recent record regarding compliance of the plan with requirements of this part, as determined by CMS; and

(3.d.vii) Other information determined by CMS to be necessary to assist beneficiaries in making an informed choice among MA plans and traditional Medicare;

(3.d.viii) Information about beneficiary appeals and their disposition;

(3.d.ix) Information regarding all formal actions, reviews, findings, or other similar actions by States, other regulatory bodies, or any other certifying or accrediting organization;

(3.d.x) Any other information deemed necessary by CMS for the administration or evaluation of the Medicare program. **[422.504(f)(2)]**

4. The MA Organization agrees to provide to its enrollees and upon request, to any individual eligible to elect an MA plan, all informational requirements under 42 CFR §422.64 and, upon an enrollee's request, the financial disclosure information required under 42 CFR §422.516. **[422.504(f)(3)]**

5. Reporting and disclosure under ERISA —

(5.a) For any employees' health benefits plan that includes an MA Organization in its offerings, the MA Organization must furnish, upon request, the information the plan needs to fulfill its reporting and disclosure obligations (with respect to the MA Organization) under the Employee Retirement Income Security Act of 1974 (ERISA).

(5.b) The MA Organization must furnish the information to the employer or the employer's designee, or to the plan administrator, as the term "administrator" is defined in ERISA. **[422.516(d)]**

6. Electronic communication. The MA Organization must have the capacity to communicate with CMS electronically. **[422.504(b)]**

7. Risk Adjustment data. The MA Organization agrees to comply with the requirements in 42 CFR §422.310 for submitting risk adjustment data to CMS. **[422.504(a)(8)]**

8. The MA Organization acknowledges that CMS releases to the public summary reconciled Part D Payment data after the reconciliation of Part C and Part D Payments for the contract year as provided in 42 CFR §422.504(n) and, for Part D plan sponsors, 42 CFR §423.505(o).

9. The MA Organization agrees that it must subject information collected pursuant to 42 CFR §422.516(a) to a yearly independent audit to determine their reliability, validity, completeness, and comparability in accordance with specifications developed by CMS. **[422.516(g)]**

Article VII Renewal of the MA Contract

A. RENEWAL OF CONTRACT

In accordance with 42 CFR §422.505, following the initial contract period, this contract is renewable annually only if-

1. The MA Organization has not provided CMS with a notice of intention not to renew; **[422.506(a)]**
2. CMS and the MA Organization reach agreement on the bid under 42 CFR Part 422, Subpart F; and **[422.505(d)]**
3. CMS informs the MA Organization that it authorizes a renewal.

B. NONRENEWAL OF CONTRACT

1. Nonrenewal by the Organization.

(1.a) In accordance with 42 CFR §422.506, the MA Organization may elect not to renew its contract with CMS as of the end of the term of the contract for any reason, provided it meets the time frames for doing so set forth in this subparagraph.

(1.b) If the MA Organization does not intend to renew its contract, it must notify—

(1.b.i) CMS, in writing, by the first Monday in June of the year in which the contract would end, pursuant to 42 CFR §422.506

(1.b.ii) Each Medicare enrollee by mail, at least 90 calendar days before the date on which the nonrenewal is effective. This notice must include a written description of all alternatives available for obtaining Medicare services within the service area including alternative MA plans, MA-PD plans, Medigap options, and original Medicare and prescription drug plans and must receive CMS approval prior to issuance.

(1.c) CMS may accept a nonrenewal notice submitted after the applicable annual non-renewal notice deadline if -

(1.c.i) The MA Organization notifies its Medicare enrollees and the public in accordance with subparagraph (1)(b)(ii) of this paragraph; and

(1.c.ii) Acceptance is not inconsistent with the effective and efficient administration of the Medicare program.

(1.d) If the MA Organization does not renew a contract under this subparagraph, CMS may deny an application for a new contract or a service area expansion from the Organization or with any organization whose covered persons, as defined at 42 CFR §422.506(a)(5), also served as covered persons for the non-renewing MA Organization for 2 years unless there are special circumstances that warrant special consideration, as determined by CMS. This prohibition may apply regardless of the product type, contract type, or service area of the previous contract. **[422.506(a)]**

2. CMS decision not to renew.

(2.a) CMS may elect not to authorize renewal of a contract for any of the following reasons:

(2.a.i) For any of the reasons listed in 42 CFR §422.510(a) which would also permit CMS to terminate the contract.

(2.a.ii) The MA Organization has committed any of the acts in 42 CFR §422.752(a) that would support the imposition of intermediate sanctions or civil money penalties under 42 CFR Part 422 Subpart O.

(2.a.iii) The MA Organization did not submit a benefit and price bid or the benefit and price bid was not acceptable **[422.505(d)]**

(2.b) Notice. CMS shall provide notice of its decision whether to authorize renewal of the contract as follows:

(2.b.i) To the MA Organization by August 1 of the contract year, except in the event described in subparagraph (2)(a)(iii) of this paragraph, for which notice will be sent by September 1.

(2.b.ii) To the MA Organization's Medicare enrollees by mail at least 90 days before the end of the current calendar year.

(2.c) Notice of appeal rights. CMS shall give the MA Organization written notice of its right to reconsideration of the decision not to renew in accordance with 42 CFR §422.644. **[422.506(b)]**

Article VIII Modification or Termination of the Contract

A. MODIFICATION OR TERMINATION OF CONTRACT BY MUTUAL CONSENT

1. This contract may be modified or terminated at any time by written mutual consent.

(1.a) If the contract is modified by written mutual consent, the MA Organization must notify its Medicare enrollees of any changes that CMS determines are appropriate for notification within time frames specified by CMS. **[422.508(a)(2)]**

(1.b) If the contract is terminated by written mutual consent, except as provided in subparagraph 2 of this paragraph, the MA Organization must provide notice to its Medicare enrollees and the general public as provided in paragraph B, subparagraph 2(b) of this Article. **[422.508(a)(1)]**

2. If this contract is terminated by written mutual consent and replaced the day following such termination by a new MA contract, the MA Organization is not required to provide the notice specified in paragraph B of this Article. **[422.508(b)]**

3. As a condition of the consent to a mutual termination, CMS will require as a provision of the termination agreement language prohibiting the MA organization from applying for new contracts or service area expansions for a period of 2 years, absent circumstances warranting special consideration. This prohibition may apply regardless of the product type, contract type, or service area of the previous contract. **[422.508(c)]**

B. TERMINATION OF THE CONTRACT BY CMS OR THE MA ORGANIZATION

1. Termination by CMS.

(1.a) CMS may at any time terminate a contract if CMS determines that the MA Organization meets any of the following:

(1.a.i) has failed substantially to carry out the terms of its contract with CMS.

(1.a.ii) is carrying out its contract in a manner that is inconsistent with the efficient and effective implementation of 42 CFR Part 422.

(1.a.iii) no longer substantially meets the applicable conditions of 42CFR Part 422.

(1.b) CMS may make a determination under paragraph B(1)(a)(i), (ii), or (iii) of this Article if the MA Organization has had one or more of the following occur:

(1.b.i) based on credible evidence, has committed or participated in false, fraudulent or abusive activities affecting the Medicare, Medicaid or other State or Federal health care program, including submission of false or fraudulent data.

(1.b.ii) experiences financial difficulties so severe that its ability to make necessary health services available is impaired to the point of posing an imminent and serious risk to the health of its enrollees, or otherwise fails to make services available to the extent that such a risk to health exists.

(1.b.iii) substantially failed to comply with the requirements in 42 CFR Part 422 Subpart M relating to grievances and appeals.

(1.b.iv) failed to provide CMS with valid data as required under 42 CFR §§422.310.

(1.b.v) failed to implement an acceptable quality assessment and performance improvement program as required under 42 CFR Part 422 Subpart D.

(1.b.vi) substantially failed to comply with the prompt payment requirements in 42 CFR §422.520.

(1.b.vii) substantially failed to comply with the service access requirements in 42 CFR §422.112.

(1.b.viii) failed to comply with the requirements of 42 CFR §422.208 regarding physician incentive plans.

(1.b.ix) substantially failed to comply with the marketing requirements in 42 CFR Part 422 Subpart V.

(1.b.x) Failed to comply with regulatory requirements contained in 42 CFR Parts 422 or 423 or both.

(1.b.xi) Failed to meet CMS performance requirements in carrying out the regulatory requirements contained in 42 CFR Parts 422 or 423 or both.

(1.b.xii) Achieves a Part C summary plan rating of less than 3 stars for 3 consecutive contract years.

(1.b.xiii) Has failed to report MLR data in a timely and accurate manner in accordance with 42 CFR §422.2460.

(1.c) Notice. If CMS decides to terminate a contract, it will give notice of the termination as follows:

(1.c.i) CMS will notify the MA Organization in writing at least 45 calendar days before the intended date of the termination.

(1.c.ii) The MA Organization will notify its Medicare enrollees of the termination by mail at least 30 calendar days before the effective date of the termination.

(1.c.iii) The MA Organization will notify the general public of the termination at least 30 calendar days before the effective date of the termination by releasing a press statement to news media serving the affected community or county and posting the press statement prominently on the organizations Web site.

(1.d) Expedited termination of contract by CMS.

(1.d.i) For terminations based on violations prescribed in subparagraph 1(b)(i) or (b)(ii) of this paragraph or if CMS determines that a delay in termination would pose an imminent and serious threat to the health of the individuals enrolled with the MA Organization, CMS will notify the MA Organization in writing that its contract has been terminated on a date specified by CMS. If a termination is effective in the middle of a month, CMS has the right to recover the prorated share of the capitation payments made to the MA Organization covering the period of the month following the contract termination.

(1.d.ii) CMS will notify the MA Organization's Medicare enrollees in writing of CMS' decision to terminate the MA Organization's contract. This notice will occur no later than 30 days after CMS notifies the plan of its decision to terminate this contract. CMS will simultaneously inform the Medicare enrollees of alternative options for obtaining Medicare services, including alternative MA Organizations in a similar geographic area and original Medicare.

(1.d.iii) CMS will notify the general public of the termination no later than 30 days after notifying the MA Organization of CMS' decision to terminate this contract. This notice will be published in one or more newspapers of general circulation in each community or county located in the MA Organization's service area.

(1.e) Corrective action plan

(1.e.i) General. Before providing a notice of intent to terminate a contract for reasons other than the grounds specified in subparagraph 1(a)(iv) or (v) of this paragraph, CMS will provide the MA Organization with notice specifying the MA Organization's deficiencies and a reasonable opportunity of at least 30 calendar days to develop and implement an approved corrective action plan to correct the deficiencies that are the basis of the proposed termination.

(1.e.ii) Exceptions. If a contract is terminated under subparagraph 1(a)(iv) or (v) of this paragraph, the MA Organization will not be provided with the opportunity to develop and implement a corrective action plan.

(1.f) Appeal rights. If CMS decides to terminate this contract, it will send written notice to the MA Organization informing it of its termination appeal rights in accordance with 42 CFR Part 422 Subpart N. **[422.510(d)]**

2. Termination by the MA Organization

(2.a) Cause for termination. The MA Organization may terminate this contract if CMS fails to substantially carry out the terms of the contract.

(2.b) Notice. The MA Organization must give advance notice as follows:

(2.b.i) To CMS, at least 90 days before the intended date of termination. This notice must specify the reasons why the MA Organization is requesting contract termination.

(2.b.ii) To its Medicare enrollees, at least 60 days before the termination effective date. This notice must include a written description of alternatives available for obtaining Medicare services within the service area, including alternative MA and MA-PD plans, PDP plans, Medigap options, and original Medicare and must receive CMS approval.

(2.b.iii) To the general public at least 60 days before the termination effective date by publishing a CMS-approved notice in one or more newspapers of general circulation in each community or county located in the MA Organization's geographic area.

(2.c) Effective date of termination. The effective date of the termination will be determined by CMS and will be at least 90 days after the date CMS receives the MA Organization's notice of intent to terminate.

(2.d) CMS' liability. CMS' liability for payment to the MA Organization ends as of the first day of the month after the last month for which the contract is in effect, but CMS shall make payments for amounts owed prior to termination but not yet paid.

(2.e) Effect of termination by the organization. CMS (2.e) may deny an application for a new contract or service area expansion from the MA Organization or with an organization whose covered persons, as defined in 42 CFR §422.512(e)(2), also served as covered persons for the terminating MA Organization for a period of two years from the date the Organization has terminated this contract, unless there are circumstances that warrant special consideration, as determined by CMS. This prohibition may apply regardless of the product type, contract type, or service area of the previous contract. **[422.512]**

Article IX Requirements of Other Laws and Regulations

A. The MA Organization agrees to comply with—

1. Federal laws and regulations designed to prevent or ameliorate fraud, waste, and abuse, including, but not limited to, applicable provisions of Federal criminal law, the False Claims Act (31 USC §§3729 et seq.) , and the anti-kickback statute (§ 1128B(b) of the Act): and

2. HIPAA administrative simplification rules at 45 CFR Parts 160, 162, and 164. **[422.504(h)]**

B. Pursuant to § 13112 of the American Recovery and Reinvestment Act of 2009 (ARRA), the MA Organization agrees that as it implements, acquires, or upgrades its health information technology systems, it shall utilize, where available, health information technology systems and products that meet standards and implementation specifications adopted under § 3004 of the Public Health Service Act, as amended by § 13101 of the ARRA.

C. The MA Organization maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of its contract with CMS, notwithstanding any relationship(s) that the MA Organization may have with related entities, contractors, or subcontractors. **[422.504(i)]**

D. In the event that any provision of this contract conflicts with the provisions of any statute or regulation applicable to an MA Organization, the provisions of the statute or regulation shall have full force and effect.

E. The MA Organization agrees to comply with the requirements relating to Nondiscrimination in Health Programs and Activities in 45 CFR Part 92, including submitting assurances that the MA Organizations health programs and activities will be operated in compliance with the nondiscrimination requirements, as required in 45 CFR §92.5.

Article X Severability

The MA Organization agrees that, upon CMS' request, this contract will be amended to exclude any MA plan or State-licensed entity specified by CMS, and a separate contract for any such excluded plan or entity will be deemed to be in place when such a request is made. **[422.504(k)]**

Article XI Miscellaneous

A. DEFINITIONS

Terms not otherwise defined in this contract shall have the meaning given to such terms in 42 CFR Part 422.

B. ALTERATION TO ORIGINAL CONTRACT TERMS

The MA Organization agrees that it has not altered in any way the terms of this contract presented for signature by CMS. The MA Organization agrees that any alterations to the original text the MA Organization may make to this contract shall not be binding on the parties.

C. APPROVAL TO BEGIN MARKETING AND ENROLLMENT

The MA Organization agrees that it must complete CMS operational requirements prior to receiving CMS approval to begin Part C marketing and enrollment activities. Such activities include, but are not limited to, establishing and successfully testing connectivity with CMS systems to process enrollment applications (or contracting with an entity qualified to perform such functions on the MA Organization's Sponsor's behalf) and successfully demonstrating capability to submit accurate and timely price comparison data. To establish and successfully test connectivity, the MA Organization must, 1) establish and test physical connectivity to the CMS data center, 2) acquire user identifications and passwords, 3) receive, store, and maintain data necessary to perform enrollments and send and receive transactions to and from CMS, and 4) check and receive transaction status information.

D. MA Organization agrees to maintain a fiscally sound operation by at least maintaining a positive net worth (total assets exceed total liabilities) as required in 42 CFR § 422.504(a)(14).

E. MA Organization agrees to maintain administrative and management capabilities sufficient for the organization to organize, implement, and control the financial, marketing, benefit administration, and quality improvement activities related to the delivery of Part C services as required by 42 CFR §422.504(a)(17).

F. MA Organization agrees to maintain a Part C summary plan rating score of at least 3 stars as required by 42 CFR §422.504(a)(18).

G. CMS may determine that an MA organization is out of compliance with a Part C requirement when the organization fails to meet performance standards articulated in the Part C statutes, regulations, or guidance. If CMS has not already articulated a measure for determining noncompliance, CMS may determine that an MA organization is out of compliance when its performance in fulfilling Part C requirements represents an outlier relative to the performance of other MA organizations. **[422.504(m)]**

H. **Business Continuity:** The MA organization agrees to develop, maintain, and implement a business continuity plan as required by 42 CFR §422.504(o).

**ATTESTATION OF ENROLLMENT INFORMATION
RELATING TO CMS PAYMENT
TO A MEDICARE ADVANTAGE ORGANIZATION**

Pursuant to the contract(s) between the Centers for Medicare & Medicaid Services (CMS) and (INSERT NAME OF MA ORGANIZATION), hereafter referred to as the MA Organization, governing the operation of the following Medicare Advantage plans (INSERT PLAN IDENTIFICATION NUMBERS HERE), the MA Organization hereby requests payment under the contract, and in doing so, makes the following attestation concerning CMS payments to the MA Organization. The MA Organization acknowledges that the information described below directly affects the calculation of CMS payments to the MA Organization and that misrepresentations to CMS about the accuracy of such information may result in Federal civil action and/or criminal prosecution. This attestation shall not be considered a waiver of the MA Organization's right to seek payment adjustments from CMS based on information or data which does not become available until after the date the MA Organization submits this attestation.

1. The MA Organization has reported to CMS for the month of (INDICATE MONTH AND YEAR) all new enrollments, disenrollments, and appropriate changes in enrollees' status with respect to the above-stated MA plans. Based on best knowledge, information, and belief as of the date indicated below, all information submitted to CMS in this report is accurate, complete, and truthful.

2. The MA Organization has reviewed the CMS monthly membership report and reply listing for the month of (INDICATE MONTH AND YEAR) for the above-stated MA plans and has reported to CMS any discrepancies between the report and the MA Organization's records. For those portions of the monthly membership report and the reply listing to which the MA Organization raises no objection, the MA Organization, through the certifying CEO/CFO, will be deemed to have attested, based on best knowledge, information, and belief as of the date indicated below, to its accuracy, completeness, and truthfulness.

**ATTESTATION OF RISK ADJUSTMENT DATA INFORMATION RELATING TO
CMS PAYMENT TO A MEDICARE ADVANTAGE ORGANIZATION**

Pursuant to the contract(s) between the Centers for Medicare & Medicaid Services (CMS) and (INSERT NAME OF MA ORGANIZATION), hereafter referred to as the MA Organization, governing the operation of the following Medicare Advantage plans (INSERT PLAN IDENTIFICATION NUMBERS HERE), the MA Organization hereby requests payment under the contract, and in doing so, makes the following attestation concerning CMS payments to the MA Organization. The MA Organization acknowledges that the information described below directly affects the calculation of CMS payments to the MA Organization or additional benefit obligations of the MA Organization and that misrepresentations to CMS about the accuracy of such information may result in Federal civil action and/or criminal prosecution.

The MA Organization has reported to CMS during the period of (INDICATE DATES) all (INDICATE TYPE - DIAGNOSIS/ENCOUNTER) risk adjustment data available to the MA Organization with respect to the above-stated MA plans. Based on best knowledge, information, and belief as of the date indicated below, all information submitted to CMS in this report is accurate, complete, and truthful.

ATTACHMENT C - Medicare Advantage Plan Attestation of Benefit Plan and Price

In witness whereof, the parties hereby execute this contract.

This document has been electronically signed by:

FOR THE MA ORGANIZATION

Susan Gertz

Contracting Official Name

8/18/2016 5:01:39 PM

Date

KAISER FOUNDATION HP OF CO

Organization

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