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 10 *Health Plan of Colorado*

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

15
 16 UNITED STATES OF AMERICA ex rel.
 17 RONDA OSINEK,
 18
 Plaintiff,
 19
 v.
 20 KAISER PERMANENTE, et al.,
 21
 Defendants.

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

**DEFENDANT KAISER FOUNDATION
 HEALTH PLAN OF COLORADO'S
 ANSWER AND AFFIRMATIVE DEFENSES
 TO RELATOR JAMES TAYLOR'S THIRD
 AMENDED COMPLAINT**

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

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

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

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

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

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

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

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

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

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

14 PRELIMINARY STATEMENT

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

23 2. Paragraph 2 contains 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 2.

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

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 13.

3 14. Answering paragraph 14, Defendant admits that, during at least some of the
4 relevant period, Relator was a member of the Coding Governance Group. Paragraph 14 contains
5 allegations that do not reference Defendant, which require no response. To the extent any
6 response to such allegations is necessary, Defendant admits that, during at least some of the
7 relevant period, Relator was a member of CPMG's Board of Directors. Defendant lacks
8 sufficient knowledge to admit or deny each and every other allegation in paragraph 14 and, on
9 that basis, denies each and every such allegation. Defendant denies each and every other
10 allegation in paragraph 14.

11 15. Paragraph 15 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 15.

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

18 17. Answering paragraph 17, Defendant admits that Defendant and certain other health
19 plans, physician medical groups, and hospitals maintain a business relationship with one another
20 under the trade name "Kaiser Permanente" to offer an integrated care model. Paragraph 17
21 contains reference to a document, which requires no response because the referenced document
22 speaks for itself. To the extent any response to such allegations is necessary, Defendant admits
23 that paragraph 17 quotes and references a portion of Defendants' website. Defendant denies each
24 and every other allegation in paragraph 17.

25 18. Answering paragraph 18, Defendant admits that Defendant and certain other health
26 plans, physician medical groups, and hospitals maintain a business relationship with one another
27 under the trade name "Kaiser Permanente" that comprises one of the largest managed care
28 organizations in the United States and serves millions of members across all lines of business

1 throughout various states including California, Colorado, Georgia, Hawaii, Maryland, Oregon,
2 Virginia, Washington, and the District of Columbia, and was founded in 1945. Defendant denies
3 each and every other allegation in paragraph 18.

4 19. Answering paragraph 19, Defendant admits that Defendant and certain other health
5 plans, physician medical groups, and hospitals maintain a business relationship with one another
6 under the trade name “Kaiser Permanente” that has over 210,000 employees and over 20,000
7 physicians, in total, and reported more than \$80 billion in operating revenue, in total, in 2020.
8 Defendant denies each and every other allegation in paragraph 19.

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

15 21. Answering paragraph 21, Defendant admits that CPMG provides services to
16 Defendant’s members; and that Defendant does not own hospitals in Colorado. Paragraph 21
17 contains allegations that do not reference Defendant, which require no response. To the extent
18 any response is necessary, Defendant lacks sufficient knowledge to admit or deny each and every
19 other such allegation and, on that basis, denies each and every such allegation. Paragraph 21
20 contains Relator’s characterization of the Amended Complaint, which requires no response. To
21 the extent any response to such allegations is necessary, Defendant admits that the Amended
22 Complaint includes the words “Kaiser” or “Defendants.” Defendant denies each and every other
23 allegation in paragraph 21.

24 22. Paragraph 22 contains allegations that do not reference Defendant, which require
25 no response. To the extent any response to such allegations is necessary, Defendant admits that
26 KFHP is a non-profit HMO headquartered in Oakland, California. Defendant denies each and
27 every other allegation in paragraph 22.
28

1 34. Paragraph 34 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 34 references and attempts to quote *United States ex rel. Kane v. Healthfirst, Inc.*, 120
4 F. Supp. 3d 370, 391 (S.D.N.Y. 2015). Defendant denies each and every other allegation in
5 paragraph 34.

6 35. Paragraph 35 contains legal conclusions and/or argument, which require no
7 response. To the extent any response to such allegations is necessary, Defendant admits that
8 paragraph 35 references and attempts to quote 31 U.S.C. § 3729(a)(1)(A),(B), (G). Defendant
9 denies each and every other allegation in paragraph 35.

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

15 37. Paragraph 37 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 37 references FERA, Pub. L. 111-21 (May 20, 2009), which amended the False Claims
18 Act, and quotes 31 U.S.C. § 3729(a)(1)(G). Defendant denies each and every other allegation in
19 paragraph 37.

20 38. Paragraph 38 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 38 quotes and references 31 U.S.C. § 3729(b)(1)(A), (B). Defendant denies each and
23 every other allegation in paragraph 38.

24 39. Paragraph 39 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant admits that
26 paragraph 39 quotes and references 31 U.S.C. § 3729(a)(1)(G). Defendant denies each and every
27 other allegation in paragraph 39.

28

1 44. Paragraph 44 contains legal conclusions and/or argument, which require no
2 response. To the extent any response to such allegations is necessary, Defendant admits that in
3 1997, Congress created Medicare Part C, which provides similar benefits to Medicare members,
4 but does so using a managed care model, rather than the traditional fee-for-service model; that
5 under Medicare Part C, rather than pay health care providers directly, Medicare pays private
6 managed care organizations (later named “Medicare Advantage Organizations” or “MAOs”) a
7 capitation rate (per member per month) and those plans are responsible, in part, for paying health
8 care providers for the services they provide to members of that specific MA plan. Defendant
9 denies each and every other allegation in paragraph 44.

10 45. Paragraph 45 contains legal conclusions and/or argument, which require no
11 response. To the extent any response to such allegations is necessary, Defendant admits that in
12 2003, Congress passed the Medicare Prescription Drug, Improvement, and Modernization Act,
13 creating Medicare Part D, which provides prescription drug coverage; that managed care model
14 plans are provided under both Medicare Part D prescription drug plans, which offer only
15 prescription drug coverage, and Medicare Part C plans, which integrate the prescription drug
16 coverage with the Medicare Part C health care coverage. Defendant denies each and every other
17 allegation in paragraph 45.

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

21 46. Paragraph 46 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 46 references 42 C.F.R. §§ 422.504 & 422.505 (Part C); 42 C.F.R. §§ 423.504 &
24 423.505 (Part D); and that Defendant must comply with legally binding requirements. Defendant
25 denies each and every other allegation in paragraph 46.

26 Answering paragraph 46 footnote 5, Defendant admits that for at least some of the
27 relevant period: CMS put out a periodic “Participant Guide”; that the names varied somewhat for
28 each year – for example, the Regional Risk Adjustment Training for Medicare+Choice

1 Organizations Participant Guide; the Risk Adjustment Data Basic Training for MAOs Participant
2 Guide; Risk Adjustment Technical Assistance for MAOs Participant Guide; and that Relator
3 refers to the Risk Adjustment Technical Assistance for MAOs Participant Guide throughout the
4 Amended Complaint as the “Participant Guide,” with the year of issue. Defendant denies each
5 and every other allegation in paragraph 46 footnote 5.

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

7 47. Paragraph 47 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 through the MA program, CMS allows private health insurers to set up managed care plans to
10 cover Medicare beneficiaries; that CMS pays each MA plan a predetermined base monthly
11 amount for each enrollee in their MA program; that this monthly payment varies for each MA
12 plan depending on various factors. Defendant denies each and every other allegation in paragraph
13 47.

14 48. Paragraph 48 contains legal conclusions and/or argument, which require no
15 response. To the extent any response to such allegations is necessary, Defendant admits that
16 Medicare Part D is prescription drug coverage. Defendant denies each and every other allegation
17 in paragraph 48.

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

24 50. Paragraph 50 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant admits that,
26 upon information and belief, CMS calculates a risk score for each MA member pursuant to the
27 CMS Hierarchical Condition Category (“CMS-HCC”) risk adjustment model, which is a
28 multiplier that is applied to the bid amount for the relevant MA beneficiary and is a component of

1 the payment amount for each MA beneficiary; and that paragraph 50 references a portion of 42
2 U.S.C. § 1395w-23(a)(1)(C). Due to the non-specific and vague nature of Relator’s allegations,
3 Defendant lacks sufficient information to admit or deny the following allegations, “The
4 adjustment for each member’s health status is a significant component of the capitation rate,” and
5 “CMS pays a substantially higher capitation rate for members whose medical records meet all
6 criteria laid out in CMS rules and agreed to in contracts between CMS and MAOs and properly
7 support that they have been recently treated for one or more serious, expensive diseases or
8 conditions,” and, on that basis, denies each and every such allegation. Defendant denies each and
9 every other allegation in paragraph 50.

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

17 52. Paragraph 52 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 upon information and belief, since 2004, CMS has used the CMS-HCC risk adjustment model for
20 MA beneficiaries enrolled in MA plans; that HCCs are disease groupings consisting of diagnosis
21 codes that aim to correlate with the marginal predicted cost of medical expenditures for that set of
22 medical disease groupings based on CMS’s data from administering the traditional Medicare fee-
23 for-service program; that HCCs aim to represent the disease component of the MA beneficiary
24 score that are applied to MA patients; that paragraph 52 references a portion of 42 C.F.R. § 422.2;
25 that between 2004 and 2013, the CMS-HCC model included 70 HCCs; and that in 2014, the
26 CMS-HCC model included 79 HCCs. Defendant denies each and every other allegation in
27 paragraph 52.
28

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

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

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

22 56. Paragraph 56 contains legal conclusions and/or argument, which require no
23 response. To the extent any response to such allegations is necessary, Defendant admits that,
24 upon information and belief, CMS calculates a risk score for each beneficiary, which is used to
25 calculate monthly payments to the MAO for that beneficiary for the payment year. Defendant
26 denies each and every other allegation in paragraph 56.

27
28

1 II. MAO Requirements and Certifications

2 57. Paragraph 57 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 other allegation in paragraph 57.

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

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

17 58. Paragraph 58 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant admits that
19 paragraph 58 quotes and references a portion of *UnitedHealthCare Ins. Co. v. Becerra*, 9 F.4th
20 868, 868 (D.C. Cir. 2021), *superseded by UnitedHealthcare Ins. Co. v. Becerra*, 16 F.4th 867
21 (D.C. Cir. 2021). Defendant denies each and every other allegation in paragraph 58.

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

26 60. Paragraph 60 contains legal conclusions and/or argument, which require no
27 response. To the extent any response to such allegations is necessary, Defendant admits that
28 paragraph 60 references and attempts to quote a portion of *United States ex rel. Swoben v.*

1 *UnitedHealthcare Insurance Co.*, 848 F.3d 1161, 1174 (9th Cir. 2016). Defendant denies each
2 and every other allegation in paragraph 60.

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

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

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

23 64. Paragraph 64 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 64 contains references to documents, which require no response
26 because the referenced documents speak for themselves. To the extent any response to such
27 allegations is necessary, Defendant admits that paragraph 64 references *CMS, 2003 Participant*
28 *Guide* § 6.1; *CMS, 2004 Participant Guide* § 4.1; *CMS, 2005 Participant Guide* § 4.1; *CMS,*

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

6 65. Paragraph 65 contains legal conclusions and/or argument, which require no
7 response. To the extent any response to such allegations is necessary, Defendant admits that
8 CMS has adopted the International Classification of Diseases (“ICD”) code sets as the source of
9 numeric and alphanumeric diagnosis codes for certain health care transactions; and that paragraph
10 65 references 45 C.F.R. § 162.1002(a)(1)(i), (b)(1), (c)(2)(i) and 42 C.F.R. § 422.310(d)(1).
11 Paragraph 65 contains references to documents, which require no response because the referenced
12 documents speak for themselves. To the extent any response to such allegations is necessary,
13 Defendant admits that paragraph 65 references CMS, *Medicare Managed Care Manual*,
14 Chapter 7, Exhibit 30 (Rev. 57, Aug. 13, 2004); and that paragraph 65 quotes and references
15 CMS, 2005 Participant Guide § 5.2. Defendant denies each and every other allegation in
16 paragraph 65.

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

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

6 68. Paragraph 68 contains legal conclusions and/or argument, which require no
7 response. To the extent any response to such allegations is necessary, Defendant denies each and
8 every such allegation. Paragraph 68 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 68 references CMS, *Medicare Managed*
11 *Manual*, Chapter 7, Exhibit 30 (Aug. 13, 2004); ICD-10 Guidelines § IV.J; and ICD-9 Guidelines
12 § IV.K. Defendant denies each and every other allegation in paragraph 68.

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

18 69. Paragraph 69 contains legal conclusions and/or argument, which require no
19 response. To the extent any response to such allegations is necessary, Defendant denies each and
20 every such allegation. Paragraph 69 contains references to documents, which require no response
21 because the referenced documents speak for themselves. To the extent any response to such
22 allegations is necessary, Defendant admits that paragraph 69 references ICD-10 Guidelines
23 § IV.H; and ICD-9 Guidelines § IV.I. Defendant denies each and every other allegation in
24 paragraph 69.

25 70. Paragraph 70 contains legal conclusions and/or argument, which require no
26 response. To the extent any response to such allegations is necessary, Defendant denies each and
27 every such allegation. Paragraph 70 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 70 references ICD-10 Guidelines
2 § IV.J; and ICD-9 Guidelines § IV.K. Defendant denies each and every other allegation in
3 paragraph 70.

4 71. Paragraph 71 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 71 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 71 quotes and references a portion of
9 CMS, *Medicare Managed Care Manual*, Chapter 7 § 111.8 (Aug. 13, 2004); that paragraph 71
10 quotes and references a portion of CMS, *Medicare Managed Care Manual*, Chapter 7 § 40 (June
11 2013); and that paragraph 71 quotes and references a portion of CMS, *2003 Participant Guide*
12 § 4.1. Defendant denies each and every other allegation in paragraph 71.

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

26 72. Paragraph 72 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 72 contains references to documents, which require no response

1 because the referenced documents speak for themselves. To the extent any response to such
2 allegations is necessary, Defendant admits that paragraph 72 quotes and references a portion of
3 CMS, *2005 Participant Guide* § 8.7.3; and that paragraph 72 quotes, references, and attempts to
4 cite a portion of CMS, *Medicare Managed Care Manual*, Chapter 7 § 111.8 (Rev. 47, Feb. 20,
5 2004). Defendant denies each and every other allegation in paragraph 72.

6 Paragraph 72 footnote 10 contains legal conclusions and/or argument, which require no
7 response. To the extent any response to such allegations is necessary, Defendant denies each and
8 every such allegation. Paragraph 72 footnote 10 contains references to documents, which require
9 no response because the referenced documents speak for themselves. To the extent any response
10 to such allegations is necessary, Defendant admits that paragraph 72 footnote 10 references CMS,
11 *2003 Participant Guide* § 12.2; CMS, *2004 Participant Guide* § 6.1.3; CMS, *2004*
12 *Medicare+Choice Organizations Resource Guide*; CMS, *2005 Participant Guide* §§ 5.1, 9.1.3;
13 CMS, *2006 Participant Guide* §§ 5.1, 7.7.3; CMS, *2007 Participant Guide* §§ 6.1, 7.1.4, 8.7.3;
14 CMS, *2008 Participant Guide* §§ 5.6.3, 6.1; and CMS, *2012 Participant Guide* § 2.2. Defendant
15 denies each and every other allegation in paragraph 72 footnote 10.

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

20 74. Paragraph 74 contains legal conclusions and/or argument, which require no
21 response. To the extent any response to such allegations is necessary, Defendant denies each and
22 every such allegation. Paragraph 74 contains references to documents, which require no response
23 because the referenced documents speak for themselves. To the extent any response to such
24 allegations is necessary, Defendant admits that paragraph 74 quotes and references 2003 Regional
25 Risk Adjustment Training for Medicare+Choice Organization, Questions & Answers; and that
26 paragraph 74 references and attempts to quote a portion of CMS, Regional Training, Risk
27 Adjustment Data Basic Training (August 9, 2005). Defendant denies each and every other
28 allegation in paragraph 74.

1 75. Paragraph 75 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 75 references 42 C.F.R. § 422.503(b)(4)(vi), 42 C.F.R. § 423.504(b)(4)(vi), 42 C.F.R.
4 § 422.504(l), and 42 C.F.R. § 423.505(k); and that paragraph 75 references and attempts to quote
5 a portion of 42 C.F.R. § 422 and 42 C.F.R. § 423. Defendant lacks sufficient knowledge to admit
6 or deny the allegations about CMS's capabilities and reliance, and, on that basis denies each and
7 every such allegation. Defendant denies each and every other allegation in paragraph 75.

8 76. Paragraph 76 contains legal conclusions and/or argument, which require no
9 response. To the extent any response to such allegations is necessary, Defendant admits that
10 paragraph 76 references 42 C.F.R. § 423.504(b)(4)(vi), 42 C.F.R. § 422.503(a), and 65 Fed. Reg.
11 40170-01 at 40264 (June 29, 2000). Defendant denies each and every other allegation in
12 paragraph 76.

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

17 78. Paragraph 78 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 paragraph 78 references 42 C.F.R. § 422.504(l). Paragraph 78 contains reference to a document,
20 which requires no response because the referenced document speaks for itself. To the extent any
21 response to such allegations is necessary, Defendant admits that paragraph 78 references CMS,
22 *Medicare Managed Care Manual*, Chapter 11 § 130 (Rev. 79, Feb. 17, 2006). Defendant denies
23 each and every other allegation in paragraph 78.

24 79. Paragraph 79 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant admits that
26 paragraph 79 quotes and references 42 C.F.R. § 422.504(l). Paragraph 79 contains reference to a
27 document, which requires no response because the referenced document speaks for itself. To the
28 extent any response is necessary, Defendant admits that paragraph 79 references and attempts to

1 quote Defendant contracts with CMS. Defendant denies each and every other allegation in
2 paragraph 79.

3 80. Answering paragraph 80, Defendant admits that, during at least some of the
4 relevant period: Rick Newsome was the Vice President of Finance and Chief Financial Officer;
5 and that Newsome was involved in Defendant's attestations to CMS. Paragraph 80 contains
6 allegations that do not reference Defendant, which require no response. To the extent any
7 response is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
8 and, on that basis, denies each and every such allegation. Defendant denies each and every other
9 allegation in paragraph 80.

10 **KAISER VIOLATED THE FALSE CLAIMS ACT**

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 denies each and
13 every such allegation. Defendant denies each and every other allegation in paragraph 81.

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

15 83. Paragraph 83 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 other allegation in paragraph 83.

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

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

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

25 87. Defendant denies each and every allegation in paragraph 87.

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

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

28

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

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

3 91. Answering paragraph 91, Defendant admits that, during at least some of the
4 relevant period: Rick Newsome was the Vice President of Finance and Chief Financial Officer.
5 Paragraph 91 contains allegations that do not reference Defendant, which require no response. To
6 the extent any response is necessary, Defendant lacks sufficient knowledge to admit or deny such
7 allegations and, on that basis, denies each and every such allegation. Defendant denies each and
8 every other allegation in paragraph 91.

9 92. Answering paragraph 92, Defendant admits that, during at least some of the
10 relevant period: Relator was a member of the Medicare Advantage Governance Group.
11 Defendant denies each and every other allegation in paragraph 92.

12 93. Answering paragraph 93, Defendant admits that, during at least some of the
13 relevant period: “Filling the Tank” reports were generated; these reports tracked risk scores; and
14 Chris Tholen discussed these reports at meetings. Defendant denies each and every other
15 allegation in paragraph 93.

16 94. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
17 94 and, on that basis, denies each and every such allegation. Defendant denies each and every
18 other allegation in paragraph 94.

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

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

24 96. Answering paragraph 96, Defendant admits that, in accordance with 42 C.F.R
25 § 422.504(*l*), MAOs must, as a condition for receiving payment, certify (based on best
26 knowledge, information, and belief) the accuracy, completeness, and truthfulness of relevant data
27 that CMS requests. Defendant denies each and every other allegation in paragraph 96.
28

1 97. Paragraph 97 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant admits that,
3 during at least some of the relevant period, KFHP’s National Compliance, Ethics, & Integrity
4 Office (“NCO”) employees conducted a pre-close audit of diagnosis codes reported during the
5 data collection period of 2005; Defendant lacks sufficient knowledge to admit or deny each and
6 every other such allegation and, on that basis, denies each and every such allegation. Defendant
7 denies each and every other allegation in paragraph 97.

8 98. Answering paragraph 98, Defendant admits that, during at least some of the
9 relevant period, KFHP’s NCO employees audited diagnosis code data; and that for certain years
10 these audits were referred to as “HCC Probe Audits.” Paragraph 98 contains allegations that do
11 not reference Defendant, which require no response. 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 98.

15 99. Paragraph 99 contains allegations that do not reference Defendant, which require
16 no response. To the extent any response to such allegations is necessary, Defendant admits that,
17 an audit of some cancer diagnosis codes was conducted in 2007 and, during at least some of the
18 relevant period, redactions related to cancer diagnosis codes were transmitted. Defendant denies
19 each and every other allegation in paragraph 99.

20 100. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks
21 sufficient information to admit or deny the allegations in paragraph 100, and on that basis denies
22 each and every such allegation. Defendant denies each and every other allegation in paragraph
23 100.

24 **III. Kaiser’s Claim Submission Process**

25 101. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
26 101, on that basis denies each and every such allegation. Defendant denies each and every other
27 allegation in paragraph 101.

28

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

9 103. Due to the non-specific and vague nature of Relator's allegations, Defendant lacks
10 sufficient information to admit or deny the allegations in paragraph 103 and, on that basis denies
11 each and every such allegation. Defendant denies each and every other allegation in paragraph
12 103.

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

14 105. Paragraph 105 contains allegations that do not reference Defendant, which require
15 no response. To the extent any response to such allegations is necessary, Defendant admits that,
16 during at least some of the relevant period, diagnosis codes were sent through the Risk
17 Adjustment Tracking System or "RATS" and some diagnosis codes in RATS were transmitted to
18 CMS. Defendant denies each and every other allegation in paragraph 105.

19 106. Answering paragraph 106, Defendant lacks sufficient knowledge to admit or deny
20 the allegations about Relator's knowledge and, on that basis denies each and every such
21 allegation. Defendant denies each and every other allegation in paragraph 106.

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

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

25 108. Due to the non-specific and vague nature of Relator's allegations, Defendant lacks
26 sufficient information to admit or deny the allegations that "[s]everal of Kaiser's regions rely
27 heavily on providers at hospitals or other facilities that are not owned by Kaiser, known as
28 external providers, to furnish inpatient care to Kaiser's HMO members" and, on that basis, denies

1 each and every such allegation. Paragraph 108 contains allegations that do not reference
2 Defendant, which require no response. To the extent any response to such allegations is
3 necessary, Defendant admits that diagnosis code data from external providers were transmitted to
4 CMS. Defendant denies each and every other allegation in paragraph 108.

5 109. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks
6 sufficient information to admit or deny the allegations in paragraph 109, and, on that basis, denies
7 each and every such allegation. Defendant denies each and every other allegation in paragraph
8 109.

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

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

15 111. Defendant denies each and every allegation in paragraph 111.

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

17 113. Paragraph 113 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 113 references a portion of a document. Defendant
20 denies each and every other allegation in paragraph 113.

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

22 114. Paragraph 114 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 114 references a portion of a document. Defendant
25 denies each and every other allegation in paragraph 114.

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

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

6 116. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks
7 sufficient information to admit or deny the allegations in paragraph 116 and, on that basis, denies
8 each and every such allegation. Defendant denies each and every other allegation in paragraph
9 116.

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

11 118. Paragraph 118 contains allegations that do not reference Defendant, which require
12 no response. To the extent any response to such allegations is necessary, Defendant denies each
13 and every such allegation. Defendant denies each and every other allegation in paragraph 118.

14 119. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks
15 sufficient information to admit or deny the allegations in paragraph 119 and, on that basis, denies
16 each and every such allegation. Paragraph 119 contains allegations that do not reference
17 Defendant, which require no response. To the extent any response to such allegations is
18 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 119.

21 120. Answering paragraph 120, Defendant admits that in Fall 2010 Relator presented at
22 a Regional Reporting Group (“RRG”) meeting on hospital discharge review in Colorado.
23 Defendant denies each and every other allegation in paragraph 120.

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

25 122. Paragraph 122 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 122.

28 123. Defendant denies each and every allegation in paragraph 123.

1 124. Paragraph 124 contains legal conclusions and/or argument, which require no
2 response. To the extent any response to such allegations is necessary, Defendant denies each and
3 every such allegation. Defendant denies each and every other allegation in paragraph 124.

4 125. Defendant denies each and every allegation in paragraph 125.

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

6 127. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks
7 sufficient information to admit or deny the allegation that “over half of the errors identified in the
8 Date of Service 2008 audit were, at least partially, attributable to external providers,” and, on that
9 basis, denies each and every such allegation. Paragraph 127 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 admits that paragraph 127 references
12 portions of documents. Defendant denies each and every other allegation in paragraph 127.

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

14 129. Defendant denies each and every allegation in paragraph 129.

15 130. Paragraph 130 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 admits that paragraph 130 quotes and references portions of
18 documents. Defendant denies each and every other allegation in paragraph 130.

19 131. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
20 131, and, on that basis, denies each and every such allegation. Defendant denies each and every
21 other allegation in paragraph 131.

22 132. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks
23 sufficient information to admit or deny the allegation that “Because of Relator’s concerns with
24 these consistently high errors, in or around 2009, he pushed Kaiser Colorado to perform another
25 audit of external hospitals,” and, on that basis, denies each and every such allegation. Defendant
26 lacks sufficient knowledge to admit or deny the allegations that Relator “does not know if the
27 audit was ever completed, and the final results were never released” and, on that basis, denies
28 each and every such allegation. Paragraph 132 contains reference to a document, which requires

1 no response because the referenced document speaks for itself. To the extent any response to
2 such allegations is necessary, Defendant admits that paragraph 132 references and attempts to cite
3 a portion of a document. Defendant denies each and every other allegation in paragraph 132.

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

5 **B. Kaiser’s Retrospective, One-Way Look Chart Review Program**

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

7 135. Answering paragraph 135, Defendant admits that, during at least some of the
8 relevant period, its employees reviewed its MA members’ medical records from inpatient visits
9 with non-Defendant operated hospitals. Defendant denies each and every other allegation in
10 paragraph 135.

11 136. To the extent paragraph 136 references Section IV.A. and ¶¶ 138-141 of the
12 Amended Complaint, *see* Defendant’s responses to those paragraphs, which are incorporated
13 herein. Defendant denies each and every other allegation in paragraph 136.

14 137. Paragraph 137 contains legal conclusions and/or argument, which require no
15 response. To the extent any response to such allegations is necessary, Defendant admits that
16 paragraph 137 references *United States ex rel. Poehling v. UnitedHealth Group, Inc.*, No. CV-16-
17 08697- MWF, 2018 WL 1363487 (C.D. Cal. Feb. 12, 2018) and *United States ex rel. Ormsby v.*
18 *Sutter Health*, 444 F. Supp. 3d 1010 (N.D. Cal. 2020). Defendant denies each and every other
19 allegation in paragraph 137.

20 138. Defendant denies each and every allegation in paragraph 138.

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

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

23 141. Paragraph 141 contains references to documents, which require no response
24 because the referenced documents speak for themselves. To the extent any response to such
25 allegations is necessary, Defendant admits that paragraph 141 quotes and references portions of
26 documents. Defendant denies each and every other allegation in paragraph 141.

27
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1 142. Paragraph 142 contains legal conclusions and/or argument, which require no
2 response. To the extent any response to such allegations is necessary, Defendant denies each and
3 every such allegation. Defendant denies each and every other allegation in paragraph 142.

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

5 144. Answering paragraph 144, Defendant admits that, during at least some of the
6 relevant period, coders engaged in a blind review of certain inpatient encounters to abstract
7 documented conditions. Defendant denies each and every other allegation in paragraph 144.

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

9 146. Paragraph 146 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 146.

12 147. Paragraph 147 contains a hypothetical example containing no factual assertions,
13 which requires no response. To the extent any response to such allegations is necessary,
14 Defendant denies each and every such allegation. Defendant denies each and every other
15 allegation in paragraph 147.

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

17 149. Answering paragraph 149, Defendant admits that, during at least some of the
18 relevant period, Defendant employed Rusalyn Maitlen, Stephanie White, Denise Campbell,
19 Rebecca Bolen, Beth Cox, Peggy O’Neil, and Donna Rohde; and that certain encounters from
20 Exempla Good Samaritan and Exempla St. Joseph’s were included in a coding abstraction project
21 in 2010 that was supervised by Treska Francis and involved Rusalyn Maitlen, Stephanie White,
22 Rebecca Bolen, Beth Cox, and Peggy O’Neil. Defendant denies each and every other allegation
23 in paragraph 149.

24 150. Paragraph 150 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 150.

27
28

1 151. Answering paragraph 151, Defendant lacks sufficient knowledge to admit or deny
2 the allegations about Relator’s knowledge and, on that basis, denies each and every allegation.
3 Defendant denies each and every other allegation in 151.

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

5 153. Paragraph 153 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 153.

8 154. Paragraph 154 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 154.

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

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

19 157. Paragraph 157 contains reference 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 157 references portions of documents.
22 Defendant denies each and every other allegation in 157.

23 158. Paragraph 158 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 158.

26 159. Defendant denies each and every allegation in paragraph 159.
27
28

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

4 **V. Kaiser Ignored and Failed to Correct Widespread False Coding by Internal**
5 **Providers**

6 161. Defendant denies each and every allegation in paragraph 161.

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

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

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

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

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

19 165. Defendant denies each and every allegation in paragraph 165.

20 166. Paragraph 166 contains allegations that do not reference Defendant, which require
21 no response. To the extent any response to such allegations is necessary, Defendant lacks
22 sufficient knowledge to admit or deny such allegations, and, on that basis, denies each and every
23 such allegation. Defendant denies each and every other allegation in paragraph 166.

24 167. Answering paragraph 167, Defendant admits that Relator asked that HCC Probe
25 Audit results for all regions be combined to learn from the results of other regions' HCC Probe
26 Audits. Defendant denies each and every other allegation in paragraph 167.

27 168. Paragraph 168 contains allegations that do not reference Defendant, which require
28 no response. To the extent any response to such allegations is necessary, Defendant lacks

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Defendant denies each and every other allegation in paragraph 168.

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

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

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

6 171. To the extent paragraph 171 references ¶¶ 108-109 of the Amended Complaint,
7 *see* Defendant’s responses to those paragraphs, which are incorporated herein. Defendant denies
8 each and every other allegation in paragraph 171.

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

10 173. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks
11 sufficient information to admit or deny the allegations in paragraph 173, and, on that basis, denies
12 each and every such allegation. Defendant denies each and every other allegation in paragraph
13 173.

14 174. Paragraph 174 contains a hypothetical example containing no factual assertions,
15 which requires no response. To the extent any response to such allegations is necessary,
16 Defendant denies each and every such allegation. Defendant denies each and every other
17 allegation in paragraph 174.

18 175. Answering paragraph 175, Defendant admits that “history of cancer” diagnoses
19 generally fall within ICD “history” codes; and that the CMS-HCC risk adjustment model
20 generally does not provide for risk adjustment payments based upon ICD “history” codes.
21 Paragraph 175 contains reference to a document, which requires no response because the
22 referenced document speaks for itself. To the extent any response to such allegations is
23 necessary, Defendant denies each and every such allegation. Defendant denies each and every
24 other allegation in paragraph 175.

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

1 177. Answering paragraph 177, Defendant admits that, during at least some of the
2 relevant period, Defendants used an electronic health record system called KP HealthConnect that
3 launched in 2004. Defendant denies each and every other allegation in paragraph 177.

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

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

6 180. Answering Paragraph 180, Defendant admits that, for at least some of the relevant
7 period: KP HealthConnect displayed Best Practice Alerts when a CPMG physician entered a
8 diagnosis of certain types of cancer; and that the Best Practice Alert for breast cancer said:
9 “DISEASE MANAGEMENT REMINDER: To use this diagnosis, you must have documented in
10 your note that the cancer is active or exists and/or the current treatment for the cancer. ACTION:
11 IF NOT ACTIVE, use History of Breast Cancer – enter Hx Breast in the Encounter Diagnosis
12 field to select.” Defendant denies each and every other allegation in paragraph 180.

13 181. Paragraph 181 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 181 references a portion of a document. Defendant
16 denies each and every other allegation in paragraph 181.

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

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

19 184. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks
20 sufficient information to admit or deny the allegations in paragraph 184 and, on that basis, denies
21 each and every allegation in paragraph 184. Defendant denies each and every other allegation in
22 paragraph 184.

23 185. Answering Paragraph 185, Defendant admits that KFHP’s NCO employees
24 developed a corrective action plan (“CAP”) related to coding of active cancer after the 2011 HCC
25 Probe Audit of the Colorado region; and that Dr. Teresa Welsh, who was the CPMG Physician
26 Director of Coding, and Relator met with hematology/oncology for ongoing education as part of
27 the CAP. Defendant lacks sufficient knowledge to admit or deny the following allegations, “to
28 Relator’s knowledge, no such audits were ever performed,” and “Dr. Welsh conducted some

1 follow-up training, but reported back to Relator that, to be effective, such training would have to
2 be done annually given the high turnover rate for oncologists,” and, on that basis, Defendant
3 denies each and every such allegation in paragraph 185. Defendant denies each and every other
4 allegation in paragraph 185.

5 186. Answering paragraph 186, Defendant admits that Defendant engaged Peak Health
6 Solutions in 2011 to audit diagnosis code data. Paragraph 186 contains reference to documents,
7 which require no response because the referenced document speaks for itself. To the extent any
8 response is necessary, Defendant admits that paragraph 186 references a portion of a document.
9 Defendant lacks sufficient knowledge to admit or deny the allegations that “Relator believes that
10 part of this project was to review past cancer diagnoses submitted for risk adjustment to CMS”
11 and “Any findings of the Peak audit have been withheld from Relator,” and, on that basis, denies
12 each and every such allegation. Defendant denies each and every other allegation in paragraph
13 186.

14 187. Paragraph 187 contains reference to documents, which require no response
15 because the referenced documents speak for themselves. To the extent any response is necessary,
16 Defendant admits that paragraph 187 references portions of documents. Defendant denies each
17 and every other allegation in paragraph 187.

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

21 189. Paragraph 189 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 189.

25 190. Defendant denies each and every allegation in paragraph 190.

26 191. Answering paragraph 191, Defendant admits that in 2010 there was a pilot project
27 to have CPMG physicians review stroke diagnoses. Defendant denies each and every other
28 allegation in paragraph 191.

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

2 193. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks
3 sufficient information to admit or deny the allegations in paragraph 193 and, on that basis, denies
4 each and every such allegation. Defendant denies each and every other allegation in paragraph
5 193.

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

7 195. Paragraph 195 contains reference to documents, which require no response
8 because the referenced documents speak for themselves. To the extent any response to such
9 allegations is necessary, Defendant admits that paragraph 195 references portions of documents.
10 Defendant denies each and every other allegation in paragraph 195.

11 196. Paragraph 196 contains reference 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 196 references portions of documents.
14 Defendant denies each and every other allegation in paragraph 196.

15 197. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks
16 sufficient information to admit or deny the allegations in paragraph 197 and, on that basis, denies
17 each and every such allegation. Defendant denies each and every other allegation in paragraph
18 197.

19 198. Answering paragraph 198, Defendant admits that pulmonary embolism is a
20 condition when blood clots travel to the patient’s lungs, thereby blocking one or more pulmonary
21 arteries; that in some cases, pulmonary embolism is caused by blood clots that travel to the lungs
22 from the legs; and that patients who have one or more pulmonary emboli are often treated with
23 anti-coagulants to prevent the development of additional emboli. Due to the non-specific and
24 vague nature of Relator’s allegations, Defendant lacks sufficient information to admit or deny the
25 allegation that “Until a recent rule change, it was improper to classify patients being treated with
26 anti-coagulants to prevent emboli as being treated for pulmonary embolism; they were properly
27 coded as having only a history of pulmonary embolism,” and, on that basis, denies each and every
28 such allegation. Defendant denies each and every other allegation in paragraph 198.

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

2 300. Answering paragraph 200, Defendant admits that pain in the legs associated with
3 physical activity may be a result of a lack of blood supply to the legs (vascular claudication); and
4 that pain in the legs associated with physical activity may be a result of nerve root compression
5 (neurogenic claudication). Defendant lacks sufficient knowledge to admit or deny the allegation
6 that “Relator discovered that when a physician attempted to diagnose a patient with the
7 neurologic condition, it incorrectly mapped to the ICD-9 code for the vascular disorder,” and, on
8 that basis, denies each and every such allegation. Defendant denies each and every other
9 allegation in paragraph 200.

10 301. Paragraph 201 contains reference 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 201 references portions of documents.
13 Defendant denies each and every other allegation in paragraph 201.

14 302. Paragraph 202 contains reference to documents, which require no response
15 because the referenced documents speak for themselves. To the extent any response to such
16 allegations is necessary, Defendant admits that paragraph 202 references portions of documents.
17 Defendant denies each and every other allegation in paragraph 202.

18 303. Paragraph 203 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 admits that paragraph 203 references a portion of a document. Defendant
21 denies each and every other allegation in paragraph 203.

22 304. Defendant denies each and every allegation in paragraph 204.

23 305. Paragraph 205 contains reference to documents, which require no response
24 because the referenced documents speak for themselves. To the extent any response to such
25 allegations is necessary, Defendant admits that paragraph 205 references portions of documents.
26 Defendant denies each and every other allegation in paragraph 205.

27 306. Defendant denies each and every allegation in paragraph 206.

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1 207. Paragraph 207 contains reference to documents, which require no response
2 because the referenced documents speak for themselves. To the extent any response to such
3 allegations is necessary, Defendant admits that paragraph 207 references portions of documents.
4 Defendant denies each and every other allegation in paragraph 207.

5 208. Answering paragraph 208, Defendant admits that a myocardial infarction (“MI”) is
6 a heart attack. Paragraph 208 contains reference 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 208 references portions of documents.
9 Defendant denies each and every other allegation in paragraph 208.

10 209. Paragraph 209 contains reference 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 209 references portions of documents.
13 Defendant denies each and every other allegation in paragraph 209.

14 210. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks
15 sufficient information to admit or deny the allegations in paragraph 210 and, on that basis, denies
16 each and every such allegation. Defendant denies each and every other allegation in paragraph
17 210.

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

19 212. Paragraph 212 contains reference 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 212 references portions of documents.
22 Defendant denies each and every other allegation in paragraph 212.

23 213. Answering paragraph 213, Defendant admits that decubitus ulcers, which refer
24 specifically to pressure ulcers, and venous stasis ulcers, which are caused by poor venous
25 circulation, are two types of skin ulcers; and that pressure ulcers map to HCC 148. Defendant
26 denies each and every other allegation in paragraph 213.

27 214. Paragraph 214 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 214 quotes a portion of a document. Defendant
2 denies each and every other allegation in paragraph 214.

3 215. Paragraph 215 contains reference to documents, which require no response
4 because the referenced documents speak for themselves. To the extent any response to such
5 allegations is necessary, Defendant admits that paragraph 215 references portions of documents.
6 Defendant denies each and every other allegation in paragraph 215.

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

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

14 218. Paragraph 218 contains reference to a document, which requires no response
15 because the referenced document speaks for itself. To the extent any response to such allegations
16 is necessary, Defendant admits that paragraph 218 quotes and references a portion of a document.
17 Defendant denies each and every other allegation in paragraph 218.

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

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

20 221. Paragraph 221 contains references to documents, which require no response
21 because the referenced documents speak for themselves. To the extent any response to such
22 allegations is necessary, Defendant admits that paragraph 221 references portions of documents.
23 Defendant denies each and every other allegation in paragraph 221.

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

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

1 224. Defendant denies each and every allegation in paragraph 224.

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

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

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

8 226. Paragraph 226 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 226.

11 227. Answering paragraph 227, Defendant admits that for at least some of the relevant
12 period, processes were in place, some of which were referred to as a “filter,” to select encounters
13 with certain diagnosis codes for auditing. Due to the non-specific and vague nature of Relator’s
14 allegations, Defendant lacks sufficient information to admit or deny the allegation that “If the
15 Kaiser coders determined that the diagnosis was invalid, it would be flagged to prevent Kaiser
16 from submitting that diagnosis to CMS,” and, on that basis, denies each and every such
17 allegation. Defendant denies each and every other allegation in paragraph 227.

18 228. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks
19 sufficient information to admit or deny the allegation that “The filter was successful in reducing
20 the error rate for many of the diagnoses it targeted,” and, on that basis, denies each and every
21 such allegation. Defendant denies each and every other allegation in paragraph 228.

22 229. Defendant denies each and every allegation in paragraph 229.

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

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

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1 232. Answering paragraph 232, Defendant admits that the “filter” process in place
2 between 2010 and 2012 ended. Defendant denies each and every other allegation in paragraph
3 232.

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

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

6 235. Answering paragraph 235, Defendant admits that, in 2006, “Reimbursement
7 Recovery Audits” (“RRA”) were conducted for at least 19 different diagnoses. Defendant denies
8 each and every other allegation in paragraph 235.

9 236. Defendant denies each and every allegation in paragraph 236.

10 237. Paragraph 237 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. Due to the non-specific and vague nature of Relator’s allegations, Defendant
14 lacks sufficient information to admit or deny each and every other allegation in paragraph 237
15 and, on that basis, denies each and every such allegation. Defendant denies each and every other
16 allegation in paragraph 237.

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

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

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

24 240. Paragraph 240 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant denies each and
26 every such allegation. Paragraph 240 contains reference to a document, which requires no
27 response because the referenced document speaks for itself. To the extent any response to such
28 allegations is necessary, Defendant admits that paragraph 240 references CMS, *2008 Risk*

1 *Adjustment Data Technical Assistance Participant Guide* § 6.4.2. Defendant denies each and
2 every other allegation in paragraph 240.

3 241. Paragraph 241 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 241 references and attempts to quote a portion of a
6 document. Defendant denies each and every other allegation in paragraph 241.

7 242. Paragraph 242 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 242 quotes and references a portion of a document.
10 Defendant denies each and every other allegation in paragraph 242.

11 243. Paragraph 243 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 243 contains references to documents, which require no
14 response because the referenced documents speak for themselves. To the extent any response to
15 such allegations is necessary, Defendant admits that paragraph 243 references portions of
16 documents. Defendant denies each and every other allegation in paragraph 243.

17 244. Paragraph 244 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 244 quotes and references a portion of a document.
20 Defendant denies each and every other allegation in paragraph 244.

21 245. Paragraph 245 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 245 contains reference to documents, which require no response
24 because the referenced documents speak for themselves. To the extent any response to such
25 allegations is necessary, Defendant admits that paragraph 245 references portions of documents.
26 Defendant denies each and every other allegation in paragraph 245.

27 246. Paragraph 246 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 246 references a portion of a document. Defendant
2 denies each and every other allegation in paragraph 246.

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

6 **3. Kaiser’s Natural Language Processing Audit Program Caused the**
7 **Submission of False Claims**

8 248. Answering paragraph 248, Defendant admits that, during at least some of the
9 relevant period: CPMG’s employees participated in activities sometimes referred to as Natural
10 Language Processing (“NLP”) activities; that NLP involves use of computer algorithms to search
11 members’ medical records for documented diagnoses that had not resulted in a diagnosis code
12 transmission to CMS; and that NLP analysis can be an effective tool to find diagnoses
13 documented in members’ medical records that had not resulted in a diagnosis code transmission
14 to CMS. Defendant denies each and every other allegation in paragraph 248.

15 249. Due to the non-specific and vague nature of Relator’s allegations, Defendant lacks
16 sufficient information to admit or deny the allegations in paragraph 249 and, on that basis, denies
17 each and every such allegation. Defendant denies each and every other allegation in paragraph
18 249.

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

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

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

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

23 254. Paragraph 254 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 254.

27 255. Paragraph 255 contains allegations that do not reference Defendant, which require
28 no response. To the extent any response to such allegations is necessary, Defendant lacks

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Defendant denies each and every other allegation in paragraph 255.

3 256. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
4 256 and, on that basis, denies each and every such allegation. Defendant denies each and every
5 other allegation in paragraph 256.

6 257. Paragraph 257 contains legal conclusions and/or argument that require no
7 response. To the extent any response to such allegations is necessary, Defendant denies each and
8 every such allegation. Defendant lacks sufficient knowledge and information to admit or deny
9 every allegation in paragraph 257 and, on that basis, denies each and every such allegation.
10 Defendant denies each and every other allegation in paragraph 257.

11 258. Paragraph 258 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 258.

15 259. Paragraph 259 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 259.

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

20 **FIRST CLAIM FOR RELIEF**

21 **False Claims Act: Presenting or Causing to be Presented False Claims** 22 **31 U.S.C. § 3729(a)(1)(A) (formerly 31 U.S.C. § 3729(a)(1))**

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

25 262. Paragraph 262 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 262.
28

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

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

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

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

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

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

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

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Dated: July 31, 2023

Respectfully submitted,

By: /s/ K. Lee Blalack, II
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