

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

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

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

11  
 12  
 13 **UNITED STATES DISTRICT COURT**  
 14 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

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

18 Plaintiff,

19 v.

20 KAISER PERMANENTE, et al.,

21 Defendants.

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

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

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

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

1 **I. PRELIMINARY STATEMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 7 **II. PARTIES**

### 8 **A. PLAINTIFF AND RELATORS**

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

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

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

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

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

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

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

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

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

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

1 admit or deny the allegations that Relator Biccocca is currently a citizen of the United States and a  
2 resident of the State of California, and, on that basis, denies each and every such allegation.  
3 Defendant denies each and every other allegation in paragraph 20.

4 **B. DEFENDANTS**

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

12 **1. KAISER HEALTH PLANS**

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

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

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

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

3 **2. PERMANENTE MEDICAL GROUPS**

4 25. Answering paragraph 25, Defendant admits that Defendant, TPMG, and SCPMG  
5 are medical groups; that TPMG and SCPMG contract with KFHP to provide health care services  
6 to members who enroll in KFHP's health plans, including members who enroll in KFHP's MA  
7 plan; that Defendant contracts with KFHP-CO to provide health care services to members who  
8 enroll in KFHP-CO's health plans, including members who enroll in KFHP-CO's MA plan.

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

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

13 26. Answering paragraph 26, Defendant admits that TPMG is headquartered in  
14 Oakland, California; that TPMG provides medical services in the Northern California region.

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

18 Defendant denies each and every other allegation in paragraph 26.

19 27. Answering paragraph 27, Defendant admits that SCPMG is headquartered in  
20 Pasadena, California; that SCPMG provides medical services in the Southern California region.

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

24 Defendant denies each and every other allegation in paragraph 27.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 7 **III. JURISDICTION AND VENUE**

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

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

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

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

1 **IV. THE FALSE CLAIMS ACT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 Paragraph 64 footnote 3 contains references to documents, which require no response  
5 because the referenced documents speak for themselves. To the extent any response to such  
6 allegations is necessary, Defendant admits that paragraph 64 references

7 <https://www.cdc.gov/nchs/icd/icd9cm.htm> and <https://www.cdc.gov/nchs/icd/icd10cm.htm>.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 201. Defendant denies each and every allegation in paragraph 201.  
27  
28

1                   **1.       INAPPROPRIATE QUERIES PRESSURED PHYSICIANS TO**  
2                   **CREATE ADDENDA.**

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

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

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

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

21                  206.    Paragraph 206 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 206.

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

26                  208.    Answering paragraph 208, Defendant admits that, during at least some of the  
27 relevant period, AHIMA practice briefs were cited in some policy documents and training  
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 267. Paragraph 267 contains allegations that do not reference Defendant, which require  
25 no response. To the extent any response to such allegations is necessary, Defendant lacks  
26 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every  
27 such allegation. Defendant denies each and every other allegation in paragraph 267.  
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 287. Defendant denies each and every allegation in paragraph 287.  
27  
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 338. Paragraph 338 contains allegations that do not reference Defendant, which require  
25 no response. To the extent any response to such allegations is necessary, Defendant lacks  
26 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every  
27 such allegation. Defendant denies each and every other allegation in paragraph 338.  
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **A. PATIENT #1**

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

1           **B.     PATIENT #2**

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

12           **C.     PATIENT #3**

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

23           **D.     PATIENT #4**

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

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

6 **E. PATIENT #5**

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

17 **F. PATIENT #6**

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

1           **G.     PATIENT #7**

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

12           **H.     PATIENT #8**

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

23           **I.     PATIENT #9**

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

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

6 **J. PATIENT #10**

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

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

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

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

24  
25  
26  
27  
28

1 **IX. CAUSES OF ACTION**

2 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

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

19 **SECOND CLAIM FOR RELIEF**

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

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

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

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

27  
28



**FIFTH CLAIM FOR RELIEF**

**Unjust Enrichment**

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

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

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

**X. PRAYER FOR RELIEF**

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

**XI. DEMAND FOR JURY TRIAL**

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

**AFFIRMATIVE DEFENSES**

397. A person liable under the False Claims Act “is liable to the United States Government for civil penalties of not less than \$5,000 and not more than \$10,000 [as adjusted for inflation], plus 3 times the amount of damages which the Government sustains because of the act of that person.” 31 U.S.C. § 3729(a)(1). The United States seeks hundreds of millions of dollars in damages, which are subject to trebling if awarded. *See* U.S. Am. Compl. ¶ 13 (alleging “Kaiser improperly obtained and retained hundreds of millions of dollars in risk-adjustment payments from CMS”). In addition, the United States contends that each diagnosis code at issue is a claim for payment, such that each allegedly false diagnosis code could result in mandatory

1 civil penalties ranging from \$5,000 to \$10,000.<sup>1</sup> While the United States has not yet disclosed in  
2 discovery all of the diagnosis codes that it may allege are false, Defendant alleges that hundreds  
3 of thousands of diagnosis codes may be at issue. Accordingly, upon information and belief,  
4 Defendant alleges that the civil penalties and damages that the United States seeks would result in  
5 an unconstitutionally excessive fine under the Eighth Amendment to the United States  
6 Constitution because any award would be grossly disproportional to the gravity of Defendant's  
7 offense, if any.

8 398. Defendant contends that, for at least some of the relevant time period at issue in  
9 the United States' Amended Complaint-in-Intervention, through Risk Adjustment Data  
10 Validation audits, CMS reviewed and verified the types of diagnosis codes that the United States  
11 now alleges are false in its Amended Complaint-in-Intervention. Defendant contends that, as  
12 early as 2003, CMS also has stated that healthcare provider documentation of a diagnosis in the  
13 beneficiary's medical record is acceptable support for submission of diagnosis codes to CMS  
14 under Medicare Part C, even though the United States' Amended Complaint-in-Intervention  
15 challenges submission of diagnosis codes to CMS where a healthcare provider has documented in  
16 the medical record the diagnosis at issue. Accordingly, upon information and belief, Defendant  
17 asserts that through its actions and omissions, the United States ratified, or otherwise consented  
18 to, transactions and occurrences that are the subject of this action.

19 399. The United States did not take reasonable steps to notify Defendant that the United  
20 States disagreed with Defendant's interpretation of Section IV.K of the ICD-9 Guidelines and  
21 Section IV.J of the ICD-10 Guidelines (the "Contested Provision") and that the United States  
22 believed that Defendant was improperly presenting diagnosis codes to CMS based on that  
23 disputed interpretation. Defendant alleges that CMS knew of Defendant's interpretation and  
24 application of the Contested Provision through CMS's Risk Adjustment Data Validation  
25 ("RADV") audits, through which CMS reviewed and verified diagnoses coded consistent with  
26 Defendant's interpretation of the Contested Provision. Defendant alleges that the United States

---

27 \_\_\_\_\_  
28 <sup>1</sup> Defendant reserves its right to contest later in the case whether diagnosis codes constitute claims for payment within  
the meaning of 31 U.S.C. § 3729(b)(2).

1 knew that Medicare Advantage Organizations also held the same interpretation of the Contested  
2 Provision as Defendant, including through communications with Medicare Advantage  
3 Organizations about their risk-adjustment programs and CMS’s RADV audits, through which  
4 CMS reviewed and verified diagnoses coded consistent with Defendant’s interpretation of the  
5 Contested Provision. Through such RADV audits and communications with other industry  
6 participants about risk-adjustment data submissions, the United States affirmed Defendant’s  
7 interpretation and application of the Contested Provision during the period at issue in this case.  
8 Accordingly, even if Defendant’s interpretation of the Contested Provision is proven to be  
9 incorrect, Defendant is not liable to the extent that the United States failed to take adequate  
10 measures to mitigate its damages.

11 400. In the alternative to the ratification and failure-to-mitigate defenses above,  
12 Defendant alleges that CMS was aware of Defendant’s risk-adjustment practices and similar  
13 practices by other industry participants through auditing activity and interactions with Medicare  
14 Advantage Organizations in its role administering the Medicare Advantage program. Defendant  
15 alleges that CMS knew of Defendant’s interpretation and application of the Contested Provision  
16 through CMS’s RADV audits, through which CMS reviewed and verified diagnoses coded  
17 consistent with Defendant’s interpretation of the Contested Provision. Even though CMS knew  
18 how Defendant and others in the industry interpreted and applied the Contested Provision, and  
19 even though CMS received repeated requests to clarify how to interpret and apply the Contested  
20 Provision, CMS persistently refused to provide clear guidance to Defendant and Medicare  
21 Advantage Organizations about the correct way to interpret the Contested Provision. Defendant  
22 relied on these acts and/or omissions by CMS in conducting its risk-adjustment activities and in  
23 interpreting the ICD Guidelines, which the United States now challenges in its Amended  
24 Complaint-in-Intervention. Accordingly, even if Defendant’s interpretation of the Contested  
25 Provision is proven to be incorrect, the United States’ claims for relief are barred, in whole or in  
26 part, by the doctrine of estoppel.

27 401. During the period at issue in the Amended Complaint-in-Intervention, the  
28 American Health Information Management Association (“AHIMA”) was a private professional

1 organization that, among other things, issued guidance on diagnosis coding practices, including  
2 about physician query practices. This guidance was updated from time to time. Defendant never  
3 agreed to comply with AHIMA guidance in any binding contract with the United States, nor did  
4 any statutes or regulations require Defendant to comply with AHIMA guidance. The United  
5 States nonetheless alleges that “the queries Kaiser sent to physicians frequently ran afoul of the  
6 standards set by AHIMA[.]” U.S. Am. Compl. ¶ 217. The American Hospital Association  
7 (“AHA”) is a private professional organization that represents hospitals, healthcare systems, and  
8 other healthcare organizations. During the period at issue in the Amended Complaint-in-  
9 Intervention, AHA provided public and private guidance regarding the interpretation of the ICD  
10 Guidelines, including the Contested Provision, which states as follows: “Code all documented  
11 conditions that coexist at the time of the encounter/visit, and require or affect patient care  
12 treatment or management. Do not code conditions that were previously treated and no longer  
13 exist. However, history codes (categories Z80- Z87) may be used as secondary codes if the  
14 historical condition or family history has an impact on current care or influences treatment.”  
15 Defendant never agreed to comply with AHA guidance in any binding contract with the United  
16 States, nor did any statutes or regulations require Defendant to comply with AHA guidance.  
17 Upon information and belief, the United States will argue that Defendant violated AHA’s  
18 guidance regarding the ICD Guidelines. To the extent that the United States premises its claims  
19 for relief on allegations that Defendant violated guidance or an interpretation of guidance issued  
20 by a private, non-governmental entity, such as AHIMA or AHA, the United States’ claims for  
21 relief are barred by the nondelegation doctrine.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: September 11, 2023

Respectfully submitted,

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

*Attorneys for Defendant Colorado  
Permanente Medical Group*