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 10 Medical Group*

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

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

18 Plaintiff,

19 v.

20 KAISER PERMANENTE, et al.,

21 Defendants.

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

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

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

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

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

1 **I. PRELIMINARY STATEMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

20 12. Paragraph 12 contains legal conclusions and/or argument, which require no
21 response. To the extent any response to such allegations is necessary, Defendant denies each and
22 every such allegation. Paragraph 12 contains reference to a document, which requires no
23 response because the referenced speaks for itself. To the extent any response to such allegations
24 is necessary, Defendant admits that paragraph 12 quotes a portion of a document. Defendant
25 lacks sufficient knowledge to admit or deny the allegation that Relator Randi Osinek is a certified
26 medical coder, and, on that basis, denies each and every such allegation. To the extent paragraph
27 12 references ¶¶ 287–358 of the Amended Complaint, *see* Defendant's responses to those
28

1 paragraphs, which are incorporated herein. Defendant denies each and every other allegation in
2 paragraph 12.

3 13. Paragraph 13 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 13.

6 **II. PARTIES**

7 **A. PLAINTIFF AND RELATORS**

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

23 15. Answering paragraph 15, Defendant admits that, during at least some of the
24 relevant period: Defendant employed Relator Osinek as a Data Quality Trainer and Audit
25 Manager at its San Rafael, California facility. Paragraph 15 references the procedural
26 background of this case, which requires no response. To the extent any response to such
27 allegations is necessary, Defendant admits that paragraph 15 references a Complaint filed by
28 Relator Osinek on August 22, 2013 (Case No. 3:13-cv-03891-EMC (N.D. Cal.) (Dkt. 1).

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

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

25 17. Answering paragraph 17, Defendant admits that Defendant employed Relator
26 Naser Arefi as a Clinical Documentation Consultant from 2011 to 2014. Paragraph 17 references
27 the procedural background of this case, which requires no response. To the extent any response
28 to such allegations is necessary, Defendant admits that paragraph 17 references a Complaint filed

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

13 18. Paragraph 18 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 18 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 18 references a Complaint filed by Relators Marcia Stein and Rodolfo Bone on May
19 16, 2016 (Case No. 3:16-cv-05337-EMC (N.D. Cal.) (Dkt. 1) and an Amended Complaint filed
20 by Relators Stein and Bone on November 3, 2016 (Case No. 3:16-cv-05337-EMC (N.D. Cal.)
21 (Dkt. 27)). Paragraph 18 contains the United States’ characterization of Relators Stein and Bone’s
22 Complaint and Amended Complaint, which requires no response. To the extent any response to
23 such allegations is necessary, Defendant admits that Relators Stein and Bone allege violations of
24 the FCA on behalf of themselves and the United States pursuant to the *qui tam* provisions of the
25 FCA. Defendant lacks sufficient knowledge to admit or deny the allegations that Relators Stein
26 and Bone are currently citizens of the United States and residents of the State of California and
27 that Relator Bone is a medical school graduate, and, on that basis, denies each and every such
28 allegation. Defendant denies each and every other allegation in paragraph 18.

1 19. Answering paragraph 19, Defendant admits that, from 1995 to 2015, Defendant
2 employed Relator Victoria Hernandez in various positions, including Director Documentation
3 Quality & Training, Director Health Information Management Coding Services, Regional Coding
4 Review Manager, and Health Information Coder II. Paragraph 19 contains allegations that do not
5 reference Defendant, which require no response. To the extent any response to such allegations is
6 necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
7 basis, denies each and every such allegation. Paragraph 19 references the procedural background
8 of this case, which requires no response. To the extent any response to such allegations is
9 necessary, Defendant admits that paragraph 19 references a Complaint filed by Relators
10 Hernandez and Gloryanne Bryant on March 1, 2018 (Case No. 3:18-cv-01347-EMC (N.D. Cal.)
11 (Dkt. 1). Paragraph 19 contains the United States' characterization of Relators Hernandez and
12 Bryant's Complaint. To the extent any response to such allegations is necessary, Defendant
13 admits that Relators Hernandez and Bryant allege violations of the FCA on behalf of themselves
14 and the United States pursuant to the *qui tam* provisions of the FCA. Defendant lacks sufficient
15 knowledge to admit or deny the allegations that Relators Hernandez and Bryant are currently
16 citizens of the United States and residents of the State of California, and, on that basis, denies
17 each and every such allegation. Defendant denies each and every other allegation in paragraph
18 19.

19 20. Answering paragraph 20, Defendant admits that, during at least some of the
20 relevant period prior to his retirement, Defendant employed Relator Michael Bicocca, M.D., as
21 Chief of Pain Management for three hospitals in California and as a practicing physician at its
22 South Sacramento, California office. Paragraph 20 references the procedural background of this
23 case, which requires no response. To the extent any response to such allegations is necessary,
24 Defendant admits that paragraph 20 references a Complaint filed by Relator Bicocca in the
25 Eastern District of California on February 10, 2020 (Case No. 3:21-cv-03124-EMC (N.D. Cal.)
26 (Dkt. 1). Paragraph 20 contains the United States' characterization of Relator Bicocca's
27 Complaint, which requires no response. To the extent any response to such allegations is
28 necessary, Defendant admits that Relator Bicocca alleges violations of the FCA on behalf of

1 himself and the United States pursuant to the *qui tam* provisions of the FCA. Defendant lacks
2 sufficient knowledge to admit or deny the allegations that Relator Bicocca is currently a citizen of
3 the United States and a resident of the State of California, and, on that basis, denies each and
4 every such allegation. Defendant denies each and every other allegation in paragraph 20.

5 **B. DEFENDANTS**

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

13 **1. KAISER HEALTH PLANS**

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

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

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

1 private MA plans under which it assumes the financial risk of providing Medicare benefits to
2 members enrolled in its MA plans in the Colorado region. Defendant denies each and every other
3 allegation in paragraph 24.

4 **2. PERMANENTE MEDICAL GROUPS**

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

14 26. Answering paragraph 26, Defendant admits that Defendant is headquartered in
15 Oakland, California; that Defendant has approximately 9,500 employee and shareholder
16 physicians; that Defendant provides medical services in the Northern California region.
17 Defendant denies each and every other allegation in paragraph 26.

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

24 28. Answering paragraph 28, Defendant admits that CPMG is headquartered in
25 Denver, Colorado; that CPMG provides medical services in the Colorado region. Paragraph 28
26 contains allegations that do not reference Defendant, which require no response. To the extent
27 any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or
28

1 deny such allegations and, on that basis, denies each and every such allegation. Defendant denies
2 each and every other allegation in paragraph 28.

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

8 **3. KAISER’S INTEGRATED AND COLLABORATIVE RISK-
9 ADJUSTMENT OPERATIONS**

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

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

24 32. Paragraph 32 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 32 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 32 quotes a portion of a document. Defendant
2 denies each and every other allegation in paragraph 32.

3 33. Paragraph 33 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 33.

8 34. Paragraph 34 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 34 quotes a portion of a document. Defendant
11 denies each and every other allegation in paragraph 34.

12 35. Paragraph 35 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 35 contains reference to a document, which requires no response
16 because the referenced document speaks for itself. To the extent any response to such allegations
17 is necessary, Defendant admits that paragraph 35 quotes and references a portion of a document.
18 Defendant lacks sufficient knowledge to admit or deny the allegations that the Permanente
19 Federation employed Jack Cochran as Executive Director and Dr. Simon Cohn as Associate
20 Executive Director, and, on that basis, denies each and every such allegation. Defendant denies
21 each and every other allegation in paragraph 35.

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

1 that paragraph 36 quotes and references a portion of a document. Defendant denies each and
2 every other allegation in paragraph 36.

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

10 38. Paragraph 38 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 38 quotes and references a portion of a document.
13 Defendant denies each and every other allegation in paragraph 38.

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

23 40. Answering paragraph 40, Defendant admits that, during at least some of the
24 relevant period: regions had a Regional Compliance Officer and regional Compliance Committee;
25 regional Compliance Committees participated in oversight of certain regional compliance
26 activities, including some with respect to Medicare Advantage. Defendant denies each and every
27 other allegation in paragraph 40.
28

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

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

10 **III. JURISDICTION AND VENUE**

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

15 44. Paragraph 44 contains legal conclusions and/or argument, which require no
16 response. To the extent any response to such allegations is necessary, Defendant admits that, for
17 purposes of personal jurisdiction, at least one of the Defendants can be found in, resides in, or
18 transacts business in the Northern District of California; that paragraph 44 references 31 U.S.C.
19 § 3732(a); that paragraph 44 quotes and references Fed. R. Civ. P. 4(k)(1)(C). Defendant denies
20 each and every other allegation in paragraph 44.

21 45. Paragraph 45 contains legal conclusions and/or argument, which require no
22 response. To the extent any response to such allegations is necessary, Defendant admits that, for
23 purposes of venue, at least one of the Defendants can be found in, resides in, or transacts business
24 in the Northern District of California; that paragraph 45 references 28 U.S.C. § 1391(b)-(c) and
25 31 U.S.C. § 3732(a). Defendant denies each and every other allegation in paragraph 45.

26 46. Paragraph 46 contains legal conclusions and/or argument, which require no
27 response. To the extent any response to such allegations is necessary, Defendant admits that, for
28 purposes of intradistrict assignment, KFHP and TPMG are headquartered in Oakland, California;

1 that paragraph 46 references Civil L.R. 3-2(c). Defendant denies each and every other allegation
2 in paragraph 46.

3 **IV. THE FALSE CLAIMS ACT**

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

10 Defendant denies each and every other allegation in paragraph 47.

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

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

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

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

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

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

9 **V. THE MEDICARE ADVANTAGE PROGRAM AND ITS RISK-ADJUSTMENT**
10 **PAYMENT SYSTEM**

11 **A. MEDICARE PART C AND RISK-ADJUSTMENT PAYMENTS TO MA**
12 **ORGANIZATIONS**

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

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

1 providers transmit claims for payment to CMS for medical services actually rendered; that, upon
2 information and belief, CMS then typically pays the providers directly for each service based on
3 payment rates predetermined by the government. Defendant denies each and every other
4 allegation in paragraph 55.

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

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

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

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

26 59. Paragraph 59 contains legal conclusions and/or argument, which require no
27 response. To the extent any response to such allegations is necessary, Defendant admits that
28 CMS reimburses MA plans differently than it reimburses health care providers for Medicare Parts

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

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

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

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

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 admits that paragraph 97 quotes and references a portion of a
12 document. Defendant denies each and every other allegation in paragraph 97.

13 98. Paragraph 98 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 98 quotes a portion of the transcript of the October
16 7, 2020 testimony of Janet Franklin pursuant to a Civil Investigative Demand. Defendant denies
17 each and every other allegation in paragraph 98.

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

19 100. Paragraph 100 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 100 quotes and references a portion of a
22 document. Defendant denies each and every other allegation in paragraph 100.

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

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

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

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

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

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

11 105. Paragraph 105 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 105 quotes and references a portion of a document.
14 Due to the non-specific and vague nature of Plaintiff's allegations, Defendant lacks sufficient
15 information to admit or deny the allegation that "Kaiser recognized and emphasized internally
16 that Medicare Advantage, and in particular risk-adjustment payments from diagnoses, were (and
17 are) critical to Kaiser's business," and, on that basis, denies such allegation. Defendant denies
18 each and every other allegation in paragraph 105.

19 106. Paragraph 106 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 106 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 106.

27 107. Answering paragraph 107, Defendant admits that, during at least some of the
28 relevant period, employees of Defendant attended meetings of the RRG. Paragraph 107 contains
allegations that do not reference Defendant, which require no response. To the extent any

1 response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny
2 such allegations and, on that basis, denies each and every such allegation. Paragraph 107
3 contains reference to a document, which requires no response because the referenced document
4 speaks for itself. To the extent any response to such allegations is necessary, Defendant lacks
5 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
6 such allegation. Defendant denies each and every other allegation in paragraph 107.

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

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

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

23 111. Paragraph 111 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 111 quotes and references a portion of a document.
26 Defendant denies each and every other allegation in paragraph 111.

27 112. Defendant denies each and every allegation in paragraph 112.
28

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

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

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

20 116. Paragraph 116 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 116 quotes a portion of a document. Defendant
23 denies each and every other allegation in paragraph 116.

24 117. Answering paragraph 117, Defendant admits that, during at least some of the
25 relevant period, employees of the NMF department worked with employees of each Defendant
26 region to develop a “risk adjustment improvement plan.” Paragraph 117 contains reference to a
27 document, which requires no response because the referenced document speaks for itself. To the
28

1 extent any response to such allegations is necessary, Defendant admits that paragraph 117 quotes
2 a portion of a document. Defendant denies each and every other allegation in paragraph 117.

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

11 119. Paragraph 119 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 119 quotes and references a portion of a document.
14 Defendant denies each and every other allegation in paragraph 119.

15 120. Paragraph 120 contains reference to a document, which requires no response
16 because the referenced document speaks for itself. To the extent any response to such allegations
17 is necessary, Defendant admits that paragraph 120 quotes a portion of a document. Defendant
18 denies each and every other allegation in paragraph 120.

19 121. Answering paragraph 121, Defendant admits that, during at least some of the
20 relevant period, KFHP's employees calculated the value of each risk score point. Answering
21 paragraph 121, Defendant admits that, for 2015, Defendant's employees calculated the value of
22 each risk score point across regions to be more than \$80 million. Paragraph 121 contains
23 references to documents, which require no response because the referenced documents speaks for
24 themselves. To the extent any response to such allegations is necessary, Defendant admits that
25 paragraph 121 quotes a portion of a document; Defendant lacks sufficient knowledge to admit or
26 deny the allegation that "[a]s an internal Kaiser training emphasized: 'If a risk score increases
27 from, say, 1.10 to 1.11, this is considered a point. It might not sound like much of a change, but
28 that point is worth over \$28 Million dollars to a Region like Northern California and over \$62

1 Million dollars if the overall average risk score for the whole KP program increases by a point[.]”
2 and, on that basis, denies such allegation. Defendant denies each and every other allegation in
3 paragraph 121.

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

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

14 124. Paragraph 124 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 124 quotes a portion of a document. Defendant
17 denies each and every other allegation in paragraph 124.

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

21 Paragraph 125 footnote 9 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 125 footnote 9 references “Kaiser
24 Family Foundation, Do People Who Sign Up for Medicare Advantage Plans Have Lower
25 Medicare Spending? (May 2019), available at [https://files.kff.org/attachment/Issue-Brief-Do-
26 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
27 visited Jun. 11, 2023), Jason Brown et al., How Does Risk Selection Respond to Risk
28 Adjustment? Evidence from the Medicare Advantage Program, 104 Am. Econ. Rev. 3335

1 (2014), and *UnitedHealthcare Ins. Co. v. Becerra*, 9 F.4th 868, 876 (D.C. Cir. 2021). Defendant
2 denies each and every other allegation in paragraph 125 footnote 9.

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

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

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

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

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

13 130. Answering paragraph 130, Defendant admits that addenda have legitimate uses.
14 Paragraph 130 contains legal conclusions and/or argument, which require no response, and
15 contains references to documents, which require no response because the referenced documents
16 speaks for themselves. To the extent any response to such allegations is necessary, Defendant
17 admits that paragraph 130 references and cites a portion of CMS, *Medicare Program Integrity*
18 *Manual*, Chapter 3 § 3.3.2.5(A) and *2008 Risk Adjustment Data Technical Assistance Participant*
19 *Guide* § 6.4.2; that paragraph 130 references and miscites CMS, *Medicare Program Integrity*
20 *Manual*, Chapter 3 § 3.3.2.5(A). Defendant denies each and every other allegation in paragraph
21 130.

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

23 132. Paragraph 132 contains allegations that do not reference Defendant, which require
24 no response. To the extent any response to such allegations is necessary, Defendant lacks
25 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
26 such allegation. Defendant denies each and every other allegation in paragraph 132.

27 133. Answering paragraph 133, Defendant admits that, during at least some of the
28 relevant period, Defendant’s employees identified in members’ medical records certain conditions
diagnosed in previous service years but not yet diagnosed in the current service year, sometimes

1 referred to as “refresh” activities. Defendant denies each and every other allegation in paragraph
2 133.

3 134. Answering paragraph 134, Defendant admits that, during at least some of the
4 relevant period: after members’ medical visits, Defendant’s physicians sometimes received lists
5 of conditions identified via refresh activities but not diagnosed in a specific form in those
6 members’ medical records at those members’ medical visits, sometimes referred to as “Missed
7 Opportunities”; lists received by Defendant’s physicians sometimes included potential diagnoses
8 identified via data mining activities. Defendant denies each and every other allegation in
9 paragraph 134.

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

13 136. Paragraph 136 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. To the extent paragraph 136 references ¶¶ 202-233 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 136.

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

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

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

24 **1. DATA MINING GENERATES NEW RISK-ADJUSTMENT**
25 **DIAGNOSES.**

26 140. Answering paragraph 140, Defendant admits that, during at least some of the
27 relevant period, data mining identified existing diagnoses and potential diagnoses in members’
28 electronic medical records using algorithms that identified certain key words, lab results,

1 medications, clinical indicators, and/or other items that might indicate conditions a member did or
2 may have had. Defendant denies each and every other allegation in paragraph 140.

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

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

5 143. Paragraph 143 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 143 quotes a portion of a document. Defendant
8 denies each and every other allegation in paragraph 143.

9 144. Answering paragraph 144, Defendant admits that, during at least some of the
10 relevant period: Defendant's data mining activities focused only on diagnoses that would impact
11 risk scores; Defendant employed Steven Simos and Ellen Lingar as auditors. Paragraph 144
12 contains reference to a document, which requires no response because the referenced document
13 speaks for itself. To the extent any response to such allegations is necessary, Defendant admits
14 that paragraph 144 references and attempts to quote a portion of a document. Defendant denies
15 each and every other allegation in paragraph 144.

16 Answering paragraph 144 footnote 10, Defendant admits that when the Affordable Care
17 Act ("ACA") was implemented in 2014, it provided for additional risk adjustment payments from
18 the government for ACA patients. Defendant denies each and every other allegation in paragraph
19 144 footnote 10.

20 145. Answering paragraph 145, Defendant admits that, during at least some of the
21 relevant period: Defendant's data mining activities focused only on patients for whom KFHP
22 could receive a risk adjustment payment; Defendant Permanente Medical Groups provided
23 medical care to some traditional (fee-for-service) Medicare members. Defendant denies each and
24 every other allegation in paragraph 145.

25 146. Answering paragraph 146, Defendant admits that, during at least some of the
26 relevant period: a Risk Adjustment Data Mining Workgroup was organized to collect, analyze,
27 and disseminate information to employees of entities including Defendants on data mining
28 activities, including algorithm best practices and effectiveness and return on investment

1 experience; employees from each of KFHP, KFHP-CO, and Defendant Permanente Medical
2 Groups attended meetings of this workgroup; the workgroup was sponsored by Dr. Simon Cohn;
3 the chairs included Ken Nelson and Relator Taylor; the workgroup grew over time to nearly 40
4 members including employees across from each Defendant entity. Paragraph 146 contains
5 allegations that do not reference Defendant, which require no response. To the extent any
6 response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny
7 such allegations and, on that basis, denies each and every such allegation. Defendant denies each
8 and every other allegation in paragraph 146.

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

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

21 149. Answering paragraph 149, Defendant admits that, during at least some of the
22 relevant period: employees of Defendant Health Plans ran algorithms and distributed results to
23 certain employees of each Defendant region; employees of Defendant Permanente Medical
24 Groups developed algorithms and data mining activities, which they sometimes discussed at
25 workgroup meetings. Answering paragraph 149, Defendant admits that, in 2014, Defendant's
26 employees developed data mining algorithms covering over 30 risk-adjusting diagnoses.
27 Defendant lacks sufficient knowledge to admit or deny the allegations that "Kaiser's data-mining
28 programs covered an extensive range of potential diagnoses" and that regions "regularly" shared

1 algorithms and initiatives at workgroup meetings, and, on that basis, denies each and every such
2 allegation. Defendant denies each and every other allegation in paragraph 149.

3 150. Answering paragraph 150, Defendant admits that Defendant's employees created
4 an initiative in 2012 to focus on four “key conditions,” comprising protein calorie malnutrition
5 and cachexia, diabetes with neurological manifestations, vascular disease, including aortic
6 atherosclerosis, and renal failure, including chronic kidney disease. Answering paragraph 150,
7 Defendant admits that, during at least some of the relevant period: a data mining algorithm was
8 run for each of these conditions; Defendant’s employees informed facilities that forty percent of
9 their facility performance allocation would depend on the prevalence rate of these four
10 conditions; each facility was required to develop work plans for how it would appropriately
11 document and capture existing diagnoses. Paragraph 150 contains reference to a document,
12 which 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 150 quotes a portion
14 of a document. Defendant lacks sufficient knowledge to admit or deny the allegation that
15 “[m]any of these diagnosis-specific algorithms coincided with regional initiatives,” and, on that
16 basis, denies each and every such allegation. Defendant denies each and every other allegation in
17 paragraph 150.

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

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

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

26 154. Paragraph 154 contains allegations that do not reference Defendant, which require
27 no response. To the extent any response to such allegations is necessary, Defendant lacks
28

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Defendant denies each and every other allegation in paragraph 154.

3 155. Paragraph 155 contains allegations that do not reference Defendant, which require
4 no response. To the extent any response to such allegations is necessary, Defendant lacks
5 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
6 such allegation. Paragraph 155 contains reference to a document, which requires no response
7 because the referenced document speaks for itself. To the extent any response to such allegations
8 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
9 basis, denies each and every such allegation. Defendant denies each and every other allegation in
10 paragraph 155.

11 156. Paragraph 156 contains allegations that do not reference Defendant, which require
12 no response. To the extent any response to such allegations is necessary, Defendant lacks
13 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
14 such allegation. Paragraph 156 contains reference to a document, which requires no response
15 because the referenced document speaks for itself. To the extent any response to such allegations
16 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
17 basis, denies each and every such allegation. Defendant denies each and every other allegation in
18 paragraph 156.

19 157. Answering paragraph 157, Defendant admits that obesity hypoventilation
20 syndrome exists only in obese individuals. Answering paragraph 157, Defendant admits that,
21 during at least some of the relevant period, obesity hypoventilation syndrome mapped to the
22 morbid obesity HCC under the CMS-HCC risk adjustment model. Paragraph 157 contains
23 allegations that do not reference Defendant, which require no response. To the extent any
24 response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny
25 such allegations and, on that basis, denies each and every such allegation. Paragraph 157
26 contains reference to a document, which requires no response because the referenced document
27 speaks for itself. To the extent any response to such allegations is necessary, Defendant lacks
28

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Defendant denies each and every other allegation in paragraph 157.

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

4 159. Answering paragraph 159, Defendant admits that, during at least some of the
5 relevant period: Defendant's physicians who disagreed with a prompt to diagnose a condition
6 identified via data mining activities could select the "stop prompt" option; Defendant's
7 physicians were asked to provide a reason for "stop prompts" in writing in order to facilitate
8 review by other of Defendant's employees. To the extent paragraph 159 references other
9 paragraphs of the Amended Complaint, *see* Defendant's responses to those paragraphs, which are
10 incorporated herein. Defendant denies each and every other allegation in paragraph 159.

11 160. Answering paragraph 160, Defendant admits that, during at least some of the
12 relevant period: Defendant's employees developed tracking mechanisms to monitor data mining
13 activities; tracking mechanisms were discussed and shared with other Defendant entities,
14 including through the Risk Adjustment Data Mining Workgroup; some tracking mechanisms
15 tracked expected risk adjustment payments in connection with data mining activities; Risk
16 Adjustment Improvement Plans provided to KFHP included details about data mining activities;
17 Defendant's employees informed Defendant's physicians of data mining response rate targets;
18 Defendant's employees monitored metrics related to data mining activities for physicians and
19 facilities. Defendant denies each and every other allegation in paragraph 160.

20 **2. "REFRESH" AND "MISSED-OPPORTUNITIES" ARE MORE**
21 **DATA-MINING PROGRAMS THAT GENERATE RISK-**
22 **ADJUSTMENT DIAGNOSES.**

23 161. Answering paragraph 161, Defendant admits that, during at least some of the
24 relevant period: Defendant's employees identified in members' medical records certain
25 conditions diagnosed in previous service years but not yet diagnosed in the current service year,
26 with such activities sometimes referred to as "refresh" and such conditions sometimes referred to
27 as "unrefreshed diagnoses"; Defendant's employees identified such conditions in members'
28 electronic medical records using algorithms; algorithms typically searched members' electronic

1 medical records for the prior three service years. Defendant denies each and every other
2 allegation in paragraph 161.

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

4 163. Answering paragraph 163, Defendant admits that, during at least some of the
5 relevant period: Defendant's employees conducting refresh activities only identified certain
6 conditions diagnosed in previous service years but not yet diagnosed in the current service year if
7 they corresponded to an HCC for which KFHP could obtain risk adjustment payment;
8 Defendant's employees conducting refresh activities only identified certain conditions diagnosed
9 in previous service years but not yet diagnosed in the current service year for members for whom
10 KFHP could obtain risk adjustment payment. Defendant denies each and every other allegation
11 in paragraph 163.

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

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

1 Adjustment Improvement Plans, which included discussion of refresh activities, quarterly;
2 Defendants' employees discussed refresh activities as part of the RRG and Risk Adjustment Data
3 Mining Work Group. Defendant denies each and every other allegation in paragraph 165.

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

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

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

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

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

1 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
2 such allegation. Defendant denies each and every other allegation in paragraph 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. Defendant denies each and every allegation in paragraph 173.

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

7 175. Paragraph 175 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 175 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 175.

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

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

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

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

3 180. Answering paragraph 180, Defendant admits that Defendant's regional refresh
4 response rate, i.e., the rate at which physicians responded to refresh prompts by either
5 documenting and diagnosing the prompted condition, reporting that the condition had resolved, or
6 reporting that the original diagnosis was made in error, was 99.2% for 2011. Paragraph 180
7 contains allegations that do not reference Defendant, which require no response. To the extent
8 any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or
9 deny such allegations and, on that basis, denies each and every such allegation. Paragraph 180
10 contains reference to a document, which requires no response because the referenced document
11 speaks for itself. To the extent any response to such allegations is necessary, Defendant admits
12 that paragraph 180 quotes a portion of a document. Defendant denies each and every other
13 allegation in 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. Paragraph 183 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 183 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 183 quotes a portion of a document. Defendant
24 denies each and every other allegation in paragraph 183.

25 184. Paragraph 184 contains legal conclusions and/or argument, which require no
26 response. To the extent any response to such allegations is necessary, Defendant denies each and
27 every such allegation. Paragraph 184 contains allegations that do not reference Defendant, which
28 require 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 184 contains references to documents, which require no response
3 because the referenced documents speaks for themselves. To the extent any response to such
4 allegations is necessary, Defendant admits that paragraph 184 quotes a portion of a document;
5 that paragraph 184 references the ICD Guidelines. Defendant denies each and every other
6 allegation in paragraph 184.

7 185. Paragraph 185 contains allegations that do not reference Defendant, which require
8 no response. To the extent any response to such allegations is necessary, Defendant lacks
9 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
10 such allegation. Defendant denies each and every other allegation in paragraph 185.

11 186. Paragraph 186 contains allegations that do not reference Defendant, which require
12 no response. To the extent any response to such allegations is necessary, Defendant lacks
13 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
14 such allegation. Paragraph 186 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 186 quotes a portion of a document. Defendant
17 denies each and every other allegation in paragraph 186.

18 187. Answering paragraph 187, Defendant admits that under the CMS-HCC risk
19 adjustment model, an MAO only receives a risk adjustment payment corresponding with any
20 given HCC once per HCC per service year, so if an MAO transmits two diagnosis codes for a
21 beneficiary in a service year that correspond to the same HCC, the HCC risk coefficient is
22 counted only once in the beneficiary's risk score for the service year. Paragraph 187 contains
23 allegations that do not reference Defendant, which require no response. To the extent any
24 response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny
25 such allegations and, on that basis, denies each and every such allegation. Defendant denies each
26 and every other allegation in paragraph 187.

27 188. Paragraph 188 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 188.

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

4 190. Paragraph 190 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 190.

8 191. Paragraph 191 contains allegations that do not reference Defendant, which require
9 no response. To the extent any response to such allegations is necessary, Defendant denies each
10 and every such allegation. Paragraph 191 contains a hypothetical example containing no factual
11 assertions, which requires no response. To the extent any response to such allegations is
12 necessary, Defendant denies each and every such allegation. Defendant denies each and every
13 other allegation in paragraph 191.

14 192. Paragraph 192 contains legal conclusions and/or argument, which require no
15 response. To the extent any response to such allegations is necessary, Defendant denies each and
16 every such allegation. Paragraph 192 contains allegations that do not reference Defendant, which
17 require no response. To the extent any response to such allegations is necessary, Defendant
18 denies each and every such allegation. Defendant denies each and every other allegation in
19 paragraph 192.

20 193. Paragraph 193 contains allegations that do not reference Defendant, which require
21 no response. To the extent any response to such allegations is necessary, Defendant denies each
22 and every such allegation. Paragraph 193 contains reference to a document, which requires no
23 response because the referenced document speaks for itself. To the extent any response to such
24 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
25 and, on that basis, denies each and every such allegation. Defendant denies each and every other
26 allegation in paragraph 193.

27
28

1 194. Paragraph 194 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant denies each
3 and every such allegation. Defendant denies each and every other allegation in paragraph 194.

4 195. Paragraph 195 contains allegations that do not reference Defendant, which require
5 no response. To the extent any response to such allegations is necessary, Defendant denies each
6 and every such allegation. Paragraph 195 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 lacks sufficient knowledge to admit or deny such allegations
9 and, on that basis, denies each and every such allegation. Defendant denies each and every other
10 allegation in paragraph 195.

11 196. Paragraph 196 contains allegations that do not reference Defendant, which require
12 no response. To the extent any response to such allegations is necessary, Defendant denies each
13 and every such allegation. Defendant denies each and every other allegation in paragraph 196.

14 197. Paragraph 197 contains allegations that do not reference Defendant, which require
15 no response. To the extent any response to such allegations is necessary, Defendant denies each
16 and every such allegation. Defendant denies each and every other allegation in paragraph 197.

17 198. Paragraph 198 contains allegations that do not reference Defendant, which require
18 no response. To the extent any response to such allegations is necessary, Defendant denies each
19 and every such allegation. Paragraph 198 contains references to documents, which require no
20 response because the referenced documents speak for themselves. To the extent any response to
21 such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such
22 allegations and, on that basis, denies each and every such allegation. Due to the non-specific and
23 vague nature of Plaintiff's allegations, Defendant lacks sufficient information to admit or deny
24 the allegation that "[c]alculations for other query programs involving data mining showed that
25 they generated thousands of queries and addenda, resulting in millions of dollars in risk-
26 adjustment revenue," and, on that basis, denies such allegation. Defendant denies each and every
27 other allegation in paragraph 198.
28

1 200. Paragraph 200 contains allegations that do not reference Defendant, which require
2 no response. To the extent any response to such allegations is necessary, Defendant denies each
3 and every such allegation. Defendant denies each and every other allegation in paragraph 200.

4 201. Paragraph 201 contains allegations that do not reference Defendant, which require
5 no response. To the extent any response to such allegations is necessary, Defendant denies each
6 and every such allegation. Defendant denies each and every other allegation in paragraph 201.

7 **C. KAISER PRESSURED PHYSICIANS TO ADD DIAGNOSES VIA**
8 **ADDENDA.**

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

10 **1. INAPPROPRIATE QUERIES PRESSURED PHYSICIANS TO**
11 **CREATE ADDENDA.**

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

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

14 205. Answering paragraph 205, Defendant admits that, during at least some of the
15 relevant period, Defendant Permanente Medical Groups' employees developed electronic tools
16 that allowed Defendant Permanente Medical Groups' physicians to access lists of conditions
17 identified via refresh and data mining activities via computer. Paragraph 205 contains reference
18 to a document, which requires no response because the referenced document speaks for itself. To
19 the extent any response to such allegations is necessary, Defendant admits that paragraph 205
20 references a portion of a document. Defendant denies each and every other allegation in
21 paragraph 205.

22 206. Answering paragraph 206, Defendant admits that, during at least some of the
23 relevant period, some queries came orally. Defendant denies each and every other allegation in
24 paragraph 206.

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

26 208. Defendant denies each and every allegation in paragraph 208.

27 209. Answering paragraph 209, Defendant admits that, during at least some of the
28 relevant period, AHIMA practice briefs were cited in some policy documents and training

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

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

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

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

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

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

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

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

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

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

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

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

7 219. Answering paragraph 219, Defendant admits that, during at least some of the
8 relevant period, Defendant employed Shannon Henson as a Data Quality Trainer. Paragraph 219
9 contains references to documents, which require no response because the referenced documents
10 speak for themselves. To the extent any response to such allegations is necessary, Defendant
11 admits that paragraph 219 quotes and references portions of a “staff message” and medical
12 record. Defendant denies each and every other allegation in paragraph 219.

13 220. Answering paragraph 220, Defendant admits that thrombocytopenia is a condition
14 where a patient has a low blood platelet count. Paragraph 220 contains legal conclusions and/or
15 argument, which require no response. To the extent any response to such allegations is necessary,
16 Defendant denies each and every such allegation. Paragraph 220 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. Paragraph 220 contains references to documents,
20 which require no response because the referenced documents speak for themselves. To the extent
21 any response to such allegations is necessary, Defendant admits that paragraph 220 quotes and
22 references portions of a “staff message” and medical record. Defendant denies each and every
23 other allegation in paragraph 220.

24 221. Paragraph 221 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 221 contains references to documents, which require no response
28 because the referenced documents speak for themselves. To the extent any response to such

1 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
2 and, on that basis, denies each and every such allegation. Defendant denies each and every other
3 allegation in paragraph 221.

4 222. Paragraph 222 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 222 quotes and references a portion of a document.
7 Defendant denies each and every other allegation in paragraph 222.

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

9 224. Answering paragraph 224, Defendant admits that cachexia is a complex metabolic
10 syndrome associated with physical wasting, loss of weight, muscle atrophy, fatigue and anorexia,
11 commonly seen with diagnoses such as HIV/AIDS, cancer, and other major chronic progressive
12 diseases. Paragraph 224 contains references to documents, which require no response because the
13 referenced documents speak for themselves. To the extent any response to such allegations is
14 necessary, Defendant admits that paragraph 224 quotes and references portions of a “staff
15 message” and a medical record. Defendant denies each and every other allegation in paragraph
16 224.

17 225. Answering paragraph 225, Defendant admits that, during at least some of the
18 relevant period, Defendant employed Dr. Steven Olson as Regional Physician Director of
19 Documentation and Coding, Encounter Information Operations. Paragraph 225 contains
20 references to documents, which require no response because the referenced documents speak for
21 themselves. To the extent any response to such allegations is necessary, Defendant admits that
22 paragraph 225 quotes and references portions of “staff messages” and a medical record.
23 Defendant denies each and every other allegation in paragraph 225.

24 226. Paragraph 226 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 226 quotes a portion of a document. Defendant
27 denies each and every other allegation in paragraph 226.
28

1 227. Paragraph 227 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 227 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. To the extent paragraph 227 references other
8 paragraphs of the Amended Complaint, *see* Defendant's responses to those paragraphs, which are
9 incorporated herein. Defendant denies each and every other allegation in paragraph 227.

10 228. Paragraph 228 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 228 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 lacks sufficient knowledge to admit or deny such allegations
16 and, on that basis, denies each and every such allegation. Defendant denies each and every other
17 allegation in paragraph 228.

18 229. Paragraph 229 contains allegations that do not reference Defendant, which require
19 no response. To the extent any response to such allegations is necessary, Defendant lacks
20 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
21 such allegation. Defendant denies each and every other allegation in paragraph 229.

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

23 231. Paragraph 231 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 231 quotes a portion of a document. Defendant
26 denies each and every other allegation in paragraph 231.

27 232. Paragraph 232 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 232 quotes, references, and shows a portion of a
2 document. Defendant denies each and every other allegation in paragraph 232.

3 233. Paragraph 233 contains allegations that do not reference Defendant, which require
4 no response. To the extent any response to such allegations is necessary, Defendant lacks
5 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
6 such allegation. Paragraph 233 contains references to documents, which require no response
7 because the referenced documents speak for themselves. To the extent any response to such
8 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
9 and, on that basis, denies each and every such allegation. Defendant denies each and every other
10 allegation in paragraph 233.

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

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

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

23 236. Answering paragraph 236, with respect to at least some of the relevant period,
24 Defendant admits each and every allegation with respect to Defendant. Defendant denies each
25 and every other allegation in paragraph 236.

26 237. Answering paragraph 237, with respect to at least some of the relevant period,
27 Defendant admits each and every allegation with respect to Defendant. Defendant denies each
28 and every other allegation in paragraph 237.

1 238. Answering paragraph 238, with respect to at least some of the relevant period,
2 Defendant admits each and every allegation with respect to Defendant. Defendant denies each
3 and every other allegation in paragraph 238.

4 239. Answering paragraph 239, Defendant admits that, during at least some of the
5 relevant period, “staff messages” sent by Defendant’s employees sometimes referenced specific
6 SmartPhrases. Defendant denies each and every other allegation in paragraph 239.

7 240. Paragraph 240 contains reference to a document, which requires no response
8 because the referenced document speaks for itself. To the extent any response to such allegations
9 is necessary, Defendant admits that paragraph 240 quotes and references a portion of a document.
10 Defendant denies each and every other allegation in paragraph 240.

11 241. Paragraph 241 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 241 quotes and references a portion of a document.
14 Defendant denies each and every other allegation in paragraph 241.

15 242. 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 admits that paragraph 242 quotes and references a portion of a document.
18 Defendant denies each and every other allegation in paragraph 242.

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

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

22 244. Answering paragraph 244, Defendant admits that, during at least some of the
23 relevant period, Defendant’s employees implemented a “stop prompt” process. Paragraph 244
24 contains reference to the content of an image, which requires no response because the referenced
25 image speaks for itself. To the extent any response to such allegations is necessary, Defendant
26 admits that paragraph 244 references and shows a portion of a document. To the extent paragraph
27 244 references other paragraphs of the Amended Complaint, *see* Defendant’s responses to those
28

1 paragraphs, which are incorporated herein. Defendant denies each and every other allegation in
2 paragraph 244.

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

4 246. Answering paragraph 246, Defendant admits that, during at least some of the
5 relevant period: according to Defendant's "stop prompt" process, a physician who disagreed with
6 a prompt to diagnose a condition identified via data mining activities could choose to select the
7 "stop prompt" option; Defendant's physicians were asked to provide a reason for "stop prompts"
8 in writing in order to facilitate review sometimes at more than one level, including by
9 Defendant's physician CMS Leads. Defendant denies each and every other allegation in
10 paragraph 246.

11 247. Paragraph 247 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 247 quotes and references a portion of a document.
14 Defendant denies each and every other allegation in paragraph 247.

15 248. Defendant denies each and every allegation in paragraph 248.

16 249. Defendant denies each and every allegation in paragraph 249.

17 250. Paragraph 250 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 250 quotes and references a portion of a document.
20 Defendant denies each and every other allegation in paragraph 250.

21 **4. KAISER USED FINANCIAL INCENTIVES AND OTHER**
22 **METRICS TO PRESSURE PERMANENTE MEDICAL GROUP**
23 **PHYSICIANS TO CREATE ADDENDA.**

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

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

26 253. Paragraph 253 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 253 quotes and references a portion of a document.
Defendant denies each and every other allegation in paragraph 253.

1 254. Paragraph 254 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 254 quotes and references a portion of a document.
4 Defendant denies each and every other allegation in paragraph 254.

5 255. Paragraph 255 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 255 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 255.

13 256. Paragraph 256 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 256 quotes a portion of a document. Defendant
16 lacks sufficient knowledge to admit or deny each and every other allegation in paragraph 256 and,
17 on that basis, denies each and every such allegation.

18 257. Defendant denies each and every allegation in paragraph 257.

19 258. Paragraph 258 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 258 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 258.

27 259. Paragraph 259 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 259 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 259.

7 260. Paragraph 260 contains reference to a document, which requires no response
8 because the referenced document speaks for itself. To the extent any response to such allegations
9 is necessary, Defendant admits that paragraph 259 quotes a portion of a document. Defendant
10 denies each and every other allegation in paragraph 260.

11 **D. HOW KAISER TARGETED THE DIAGNOSIS AORTIC**
12 **ATHEROSCLEROSIS TO INCREASE RISK-ADJUSTMENT PAYMENTS:**
13 **“\$40M IS NO CHUMP CHANGE.”**

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

25 262. Defendant denies each and every allegation in paragraph 262.

26 263. Answering paragraph 263, Defendant admits that, in 2012: Defendant’s employees
27 disseminated forecasted prevalence rates for four HCCs; facility employees prepared work plans
28 for meeting forecasted prevalence rates with accurately coded diagnoses; Defendant’s employees
included AA within the four HCCs. Paragraph 263 references the content of an image, which

1 requires no response because the referenced image speaks for itself. To the extent any response
2 to such allegations is necessary, Defendant admits that paragraph 263 shows a portion of a
3 document. Defendant denies each and every other allegation in paragraph 263.

4 264. Paragraph 264 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 264 quotes a portion of a document. Defendant
7 denies each and every other allegation in paragraph 264.

8 265. Paragraph 265 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 265 references a portion of a document. Due to the
11 non-specific and vague nature of Plaintiff's allegations, Defendant lacks sufficient information to
12 admit or deny the allegation that "Northern California repeatedly stressed the financial benefit of
13 coding AA," and, on that basis, denies such allegation. Defendant denies each and every other
14 allegation in paragraph 265.

15 266. Paragraph 266 contains reference to a document, which requires no response
16 because the referenced document speaks for itself. To the extent any response to such allegations
17 is necessary, Defendant admits that paragraph 266 quotes a portion of a document. Defendant
18 denies each and every other allegation in paragraph 266.

19 267. Answering paragraph 267, Defendant admits that, as of August 2011, every patient
20 diagnosed with AA was entered into the PHASE program. Answering paragraph 267, Defendant
21 admits that, during at least some of the relevant period, "PHASE" stood for "Prevent Heart
22 Attacks and Strokes Everyday." Defendant denies each and every other allegation in paragraph
23 267.

24 268. Paragraph 268 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 268 quotes a portion of the transcript of the
27 October 5, 2020 testimony of Karen Graham (former Managing Director, EIO) pursuant to a Civil
28 Investigative Demand. Defendant denies each and every other allegation in paragraph 268.

1 269. Answering paragraph 269, Defendant admits that, in September 2011, Defendant's
2 employees ended the practice that members diagnosed with AA were automatically enrolled in
3 PHASE. Defendant denies each and every other allegation in paragraph 269.

4 270. Answering paragraph 270, Defendant admits that, during at least some of the
5 relevant period, Defendant employed Anne Cadwell as Managing Director. Paragraph 270
6 contains reference to a document, which requires no response because the referenced document
7 speaks for itself. To the extent any response to such allegations is necessary, Defendant admits
8 that paragraph 270 quotes a portion of a document. Defendant denies each and every other
9 allegation in paragraph 270.

10 271. Paragraph 271 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 271 quotes a portion of a document. Defendant
13 denies each and every other allegation in paragraph 271.

14 272. Answering paragraph 272, Defendant admits that, during at least some of the
15 relevant period: Defendant employed Dr. Jill Dunton as a physician and CMS Lead; Defendant
16 employed Dr. Donald Dyson as Associate Executive Director. Paragraph 272 contains reference
17 to a document, which requires no response because the referenced document speaks for itself. To
18 the extent any response to such allegations is necessary, Defendant admits that paragraph 272
19 quotes and references a portion of a document. Defendant denies each and every other allegation
20 in paragraph 272.

21 273. Answering paragraph 273, Defendant admits that, during at least some of the
22 relevant period, Joel Weiner served as Defendant's Director of the Business Intelligence Team.
23 Paragraph 273 contains reference to a document, which requires no response because the
24 referenced document speaks for itself. To the extent any response to such allegations is
25 necessary, Defendant admits that paragraph 273 quotes and references a portion of a document.
26 Defendant denies each and every other allegation in paragraph 273.

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

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

1 276. Paragraph 276 contains legal conclusions and/or argument, which require no
2 response. To the extent any response to such allegations is necessary, Defendant admits that
3 paragraph 276 references the ICD Guidelines. Paragraph 276 contains reference to a document,
4 which requires no response because the referenced document speaks for itself. To the extent any
5 response to such allegations is necessary, Defendant admits that paragraph 276 quotes and
6 references a portion of a document. To the extent paragraph 276 references other paragraphs of
7 the Amended Complaint, *see* Defendant's responses to those paragraphs, which are incorporated
8 herein. Defendant denies each and every other allegation in paragraph 276.

9 277. Due to the non-specific and vague nature of Plaintiff's allegations, Defendant
10 lacks sufficient information to admit or deny the allegations in paragraph 277 and, on that basis,
11 denies each and every allegation in paragraph 277.

12 278. Paragraph 278 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. Due to the non-specific and vague nature of Plaintiff's allegations, Defendant
16 lacks sufficient information to admit or deny the other allegations in paragraph 278 and, on that
17 basis, denies each and every other allegation in paragraph 278.

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

21 280. Paragraph 280 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 280 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 admits that paragraph 280 quotes and references a portion of a
27 document; Defendant lacks sufficient knowledge to admit or deny the allegation that "Janet
28 Franklin (at the time, a Compliance Manager with Kaiser's National Compliance Office)

1 acknowledged internally that aortic atherosclerosis could ‘be reported only if that treating
2 physician documents that it is more than just an incidental finding and it is relevant to the face-to-
3 face encounter that he or she had with the patient,’” and, on that basis, denies such allegation.
4 Defendant denies each and every other allegation in paragraph 280.

5 281. Answering paragraph 281, Defendant admits that, during at least some of the
6 relevant period, the Professional Documentation and Coding Group, also known as the Physician
7 Documentation and Coding Group, was a group of physicians from multiple regions that provided
8 advice relating to documentation and diagnosis coding. Paragraph 281 contains reference to a
9 document, which requires no response because the referenced document speaks for itself. To the
10 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 281.

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

14 283. Paragraph 283 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 283 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 283.

22 284. Paragraph 284 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 allegation in paragraph 284.

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

1 286. Defendant denies each and every allegation in paragraph 286.

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

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

5 **1. KAISER KNEW THAT ITS USE OF ADDENDA TO ADD RISK-**
6 **ADJUSTMENT DIAGNOSES DID NOT COMPLY WITH CMS**
7 **RULES FOR SUBMISSION OF DIAGNOSES FOR RISK-**
8 **ADJUSTMENT PAYMENT.**

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

12 289. Paragraph 289 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 289 quotes and references a portion of a document.
15 Defendant denies each and every other allegation in paragraph 289.

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

20 291. Paragraph 291 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 291 quotes and references portions of
23 documents. Defendant denies each and every other allegation in paragraph 291.

24 292. Paragraph 292 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 292 quotes a portion of a document. Defendant
27 denies each and every other allegation in paragraph 292.

28 293. Paragraph 293 contains allegations that do not reference Defendant, which require
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 293 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 293.

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

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

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

14 296. Paragraph 296 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 296 references and attempts to quote a portion of
17 the transcript of the October 1, 2020 testimony of Nancy Andersen pursuant to a Civil
18 Investigative Demand. Defendant denies each and every other allegation in paragraph 296.

19 297. Paragraph 297 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 297 references and attempts to quote a portion of
22 the transcript of the October 7, 2020 testimony of Janet Franklin pursuant to a Civil Investigative
23 Demand. Defendant denies each and every other allegation in paragraph 297.

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

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

26 300. Paragraph 300 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. Due to the non-specific and vague nature of Plaintiff's allegations, Defendant
2 lacks sufficient information to admit or deny the allegation that "[m]ore than 6,000 diagnoses
3 were added over a year after the patient visit," and on that basis, denies such allegation.

4 Defendant denies each and every other allegation in paragraph 300.

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

8 302. Paragraph 302 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. Due to the non-specific and vague nature of Plaintiff's allegations, Defendant
12 lacks sufficient information to admit or deny the other allegations in paragraph 302 and, on that
13 basis, denies each and every other allegation in paragraph 302.

14 303. Paragraph 303 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. Due to the non-specific and vague nature of Plaintiff's allegations, Defendant
18 lacks sufficient information to admit or deny the other allegations in paragraph 303 and, on that
19 basis, denies each and every other allegation in paragraph 303.

20 304. Paragraph 304 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. Due to the non-specific and vague nature of Plaintiff's allegations, Defendant
24 lacks sufficient information to admit or deny the other allegations in paragraph 304 and, on that
25 basis, denies each and every other allegation in paragraph 304.

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

27 306. Answering paragraph 306, Defendant admits that, in January 2014, physicians
28 could no longer hold medical visits for the 2013 service year. Paragraph 306 contains legal

1 conclusions and/or argument, which require no response. To the extent any response to such
2 allegations is necessary, Defendant denies each and every such allegation. Paragraph 306
3 contains allegations that do not reference Defendant, which require no response. To the extent
4 any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or
5 deny such allegations and, on that basis, denies each and every such allegation. 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 lacks sufficient knowledge to admit or deny such allegations and, on that basis, denies each and
9 every such allegation. Defendant denies each 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 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 308 quotes and references a portion of a document.
16 Defendant denies each and every other allegation in paragraph 308.

17 309. Paragraph 309 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 309 quotes and references a portion of a document.
20 Defendant denies each and every other allegation in paragraph 309.

21 310. Answering paragraph 310, Defendant admits that, during at least some of the
22 relevant period, Danielle Sheetenhelm was involved with data mining activities for multiple
23 years. Paragraph 310 contains reference to a document, which requires no response because the
24 referenced document speaks for itself. To the extent any response to such allegations is
25 necessary, Defendant admits that paragraph 310 references a portion of a document. Defendant
26 denies each and every other allegation in paragraph 310.

27 311. Paragraph 311 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 311 quotes a portion of a document. Defendant
2 denies each and every other allegation in paragraph 311.

3 312. Answering paragraph 312, Defendant admits that, during at least some of the
4 relevant period, Defendant employed Dr. David Bliss as Regional Director of Documentation and
5 Coding. Paragraph 312 contains reference to a document, which requires no response because the
6 referenced document speaks for itself. To the extent any response to such allegations is
7 necessary, Defendant admits that paragraph 312 quotes and references a portion of a
8 document. Defendant denies each and every other allegation in paragraph 312.

9 313. Paragraph 313 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 admits that paragraph 313 references and attempts to quote a portion of a
12 document. Defendant denies each and every other allegation in paragraph 313.

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

14 315. Answering paragraph 315, Defendant admits that, in 2012, Defendant's employees
15 identified cachexia as one of "4 Key conditions." Paragraph 315 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 admits that paragraph 315 quotes
18 and references a 2009 document. Defendant denies each and every other allegation in paragraph
19 315.

20 316. Answering paragraph 316, Defendant admits that, during at least some of the
21 relevant period, Defendant's employees created a data mining algorithm to identify potential and
22 existing cachexia diagnoses. Defendant denies each and every other allegation in paragraph 316.

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

24 318. Paragraph 318 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 318 quotes a portion of a document. Defendant
27 denies each and every other allegation in paragraph 318.
28

1 319. Paragraph 319 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 319 quotes and references a portion of a document.
4 Defendant denies each and every other allegation in paragraph 319.

5 320. Answering paragraph 320, Defendant admits that, during at least some of the
6 relevant period, Danielle Sheetenhelm served Defendant as a Clinical Review Manager.
7 Paragraph 320 contains reference to a document, which requires no response because the
8 referenced document speaks for itself. To the extent any response to such allegations is
9 necessary, Defendant admits that paragraph 320 quotes and references a portion of a document.
10 Defendant denies each and every other allegation in paragraph 320.

11 321. Paragraph 321 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 321, and on that
16 basis, denies each and every other allegation in paragraph 321.

17 322. Paragraph 322 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 322 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 322.

25 323. Paragraph 323 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 323 references and attempts to quote a portion of a
28 document. Defendant denies each and every other allegation in paragraph 323.

1 **4. KAISER’S INTERNAL AUDITS PUT KAISER ON FURTHER**
2 **NOTICE OF FRAUDULENT DIAGNOSES.**

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

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

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

12 327. Paragraph 327 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 327 contains reference to a document, which requires no response
16 because the referenced document speaks for itself. To the extent any response to such allegations
17 is necessary, Defendant admits that paragraph 327 quotes a portion of a document. Defendant
18 denies each and every other allegation in paragraph 327.

19 328. Answering paragraph 328, Defendant admits that, during at least some of the
20 relevant period, the Government Audit & Reimbursement Team conducted annual audits of
21 Defendant regions, called “probe” audits. Paragraph 328 contains reference to a document, which
22 requires no response because the referenced document speaks for itself. To the extent any
23 response to such allegations is necessary, Defendant admits that paragraph 328 quotes and
24 references a portion of a document. Defendant denies each and every other allegation in
25 paragraph 328.

26 329. Paragraph 329 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 329 quotes and references a portion of a document.
2 Defendant denies each and every other allegation in paragraph 329.

3 330. Paragraph 330 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 330 quotes a portion of a document. Defendant
6 denies each and every other allegation in paragraph 330.

7 331. Answering paragraph 331, Defendant admits that the “Northern California
8 Region 2013 Medicare Advantage Data Validation Targeted HCC Probe Audit” was submitted by
9 Janet Franklin and distributed to certain employees of Defendant and KFHP. Defendant denies
10 each and every other allegation in paragraph 331.

11 332. Paragraph 332 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 332 quotes a portion of a document. Defendant
14 denies each and every other allegation in paragraph 332.

15 333. Answering paragraph 333, Defendant admits that the “Northern California
16 Region 2014 Medicare Advantage Data Validation Targeted HCC Probe Audit” was submitted by
17 Janet Franklin and distributed to certain employees of Defendant and KFHP. Defendant denies
18 each and every other allegation in paragraph 333.

19 334. Answering paragraph 334, Defendant admits that, partially as a result of the
20 “Northern California Region 2014 Medicare Advantage Data Validation Targeted HCC Probe
21 Audit,” EIO conducted an addenda audit in 2015; the audit comprised over 27,000 records in
22 which certain diagnoses, including AA, were documented via addendum. Defendant denies each
23 and every other allegation in paragraph 334.

24 335. paragraph 335, Defendant admits that over 17,000 of the addended diagnoses
25 audited were AA. Defendant denies each and every other allegation in paragraph 335.

26 336. Defendant denies each and every other allegation in paragraph 336.

27 337. Defendant denies each and every allegation in paragraph 337.

28 338. Defendant denies each and every allegation in paragraph 338.

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. Answering paragraph 342, Defendant admits that, in response to the “Northern
22 California Region 2013 Medicare Advantage Data Validation Targeted HCC Probe Audit” and
23 the “Northern California Region 2014 Medicare Advantage Data Validation Targeted HCC Probe
24 Audit,” KFHP’s employees transmitted to CMS deletions for the specific diagnosis codes
25 identified in those audits as discrepant codes. Paragraph 342 contains allegations that do not
26 reference Defendant, which require no response. To the extent any response to such allegations is
27 necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
28

1 basis, denies each and every such allegation. Defendant denies each and every other allegation in
2 paragraph 342.

3 343. Paragraph 343 contains allegations that do not reference Defendant, which require
4 no response. To the extent any response to such allegations is necessary, Defendant lacks
5 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
6 such allegation. Paragraph 343 contains reference to a document, which requires no response
7 because the referenced document speaks for itself. To the extent any response to such allegations
8 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
9 basis, denies each and every such allegation. Defendant denies each and every other allegation in
10 paragraph 343.

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

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

20 346. Paragraph 346 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 346 quotes and references a portion of a
23 document. Defendant denies each and every other allegation in paragraph 346.

24 347. To the extent paragraph 347 references other paragraphs of the Amended
25 Complaint, *see* Defendant's responses to those paragraphs, which are incorporated herein.
26 Defendant denies each and every other allegation in paragraph 347.

27 348. Paragraph 348 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 348 quotes and references a portion of a
2 document. Defendant denies each and every other allegation in paragraph 348.

3 349. Defendant denies each and every allegation in paragraph 349.

4 350. Answering paragraph 350, Defendant admits that, during at least some of the
5 relevant period, KFHP's employees, including employees of KFHP's NMF department, knew
6 that Defendant's employees used a data mining algorithm for cachexia. Defendant denies each
7 and every allegation in paragraph 350.

8 351. Paragraph 351 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 351.

12 352. Answering paragraph 352, Defendant admits that, in 2013, Dr. Teresa Welsh gave
13 a presentation regarding chart review and query activities in the Colorado region to employees of
14 other Defendants at a semi-annual meeting of the RRG. Paragraph 352 contains allegations that
15 do not reference Defendant, which require no response. To the extent any response to such
16 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
17 and, on that basis, denies each and every such allegation. Defendant denies each and every other
18 allegation in paragraph 352.

19 353. Paragraph 353 contains allegations that do not reference Defendant, which require
20 no response. To the extent any response to such allegations is necessary, Defendant lacks
21 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
22 such allegation. Defendant denies each and every other allegation in paragraph 353.

23 354. Paragraph 354 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 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 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 354.

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

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

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

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

23 **VIII. KAISER RECEIVED MONEY FROM MEDICARE BASED ON THE**
24 **PRESENTATION OF FALSE CLAIMS.**

25 359. Paragraph 359 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. Due to the non-specific and vague nature of Plaintiff's allegations, Defendant

1 lacks sufficient information to admit or deny the other allegations in paragraph 359 and, on that
2 basis, denies each and every other allegation in paragraph 359.

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

7 361. Paragraph 361 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 allegation in paragraph 361.

10 362. Paragraph 362 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 362.

13 363. Paragraph 363 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 363.

16 **A. PATIENT #1**

17 364. Paragraph 364 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant denies each and
19 every such allegation. Paragraph 364 contains allegations that do not reference Defendant, which
20 require 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 364 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 364 quotes and references a portion of a
25 medical record; that paragraph 364 quotes a portion of a “staff message.” Defendant denies each
26 and every other allegation in paragraph 364.

27
28

B. PATIENT #2

1
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.

C. PATIENT #3

12
13 366. Answering paragraph 366, Defendant admits that Defendant's employees created
14 the SmartPhrase ".AORTICATHEROSCLEROSIS." Answering paragraph 366, Defendant
15 admits that, during at least some of the relevant period, entry of this SmartPhrase would generate
16 the following language in the patient record: "Aortic Atherosclerosis noted on review of the
17 radiology exam associate with chart review and this visit. Will follow longitudinally as an
18 independent risk factor for CVD and CVA, with management per standard risk factor controls
19 over time by PCP or appropriate specialist." Paragraph 366 contains legal conclusions and/or
20 argument, which require no response. To the extent any response to such allegations is necessary,
21 Defendant denies each and every such allegation. Paragraph 366 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 366 contains references to documents,
25 which require no response because the referenced documents speak for themselves. To the extent
26 any response to such allegations is necessary, Defendant admits that paragraph 366 quotes and
27 references a portion of a medical record; that paragraph 366 quotes a portion of a "staff message."
28 Defendant denies each and every other allegation in paragraph 366.

1 **D. PATIENT #4**

2 367. Paragraph 367 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 367 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 367 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 367 quotes and references a portion of a
10 medical record; that paragraph 367 quotes a portion of a “staff message.” Defendant denies each
11 and every other allegation in paragraph 367.

12 **E. PATIENT #5**

13 368. Paragraph 368 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 368 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 368 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 368.

23 **F. PATIENT #6**

24 369. Paragraph 369 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 369 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 369 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 369.

6 **G. PATIENT #7**

7 370. Paragraph 370 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 370 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 370 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 admits that paragraph 370 quotes and references a portion of a
15 medical record; that paragraph 370 quotes a portion of a data mining prompt. Defendant denies
16 each and every other allegation in paragraph 370.

17 **H. PATIENT #8**

18 371. Paragraph 371 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 371 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 371 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 371 quotes and references a portion of a
26 medical record; that paragraph 371 quotes a portion of a data mining prompt. Defendant denies
27 each and every other allegation in paragraph 371.
28

1 **I. PATIENT #9**

2 372. Paragraph 372 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 372 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 372 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 372 quotes and references a portion of a
10 medical record; that paragraph 372 references and attempts to quote a portion of a “staff
11 message”; that paragraph 372 quotes a portion of correspondence subsequent to the “staff
12 message.” Defendant denies each and every other allegation in paragraph 372.

13 **J. PATIENT #10**

14 373. Paragraph 373 contains legal conclusions and/or argument, which require no
15 response. To the extent any response to such allegations is necessary, Defendant denies each and
16 every such allegation. Paragraph 373 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 373 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 373 quotes and references a portion of a
22 medical record; that paragraph 373 quotes a portion of a “staff message.” Defendant denies each
23 and every other allegation in paragraph 373.

24 374. Paragraph 374 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 374.

27 375. Defendant denies each and every allegation in paragraph 375.
28

1 376. Paragraph 376 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 allegation in paragraph 376.

4 **IX. CAUSES OF ACTION**

5 **FIRST CLAIM FOR RELIEF**

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

7 **31 U.S.C. § 3729(a)(1)(A) (formerly 31 U.S.C. § 3729(a)(1))**

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

10 378. Paragraph 378 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 378.

13 379. Paragraph 379 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 379.

16 380. Paragraph 380 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 380.

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

22 **SECOND CLAIM FOR RELIEF**

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

24 **31 U.S.C. § 3729(a)(1)(B) (formerly 31 U.S.C. § 3729(a)(2))**

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

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28

1 is a claim for payment, such that each allegedly false diagnosis code could result in mandatory
2 civil penalties ranging from \$5,000 to \$10,000.¹ While the United States has not yet disclosed in
3 discovery all of the diagnosis codes that it may allege are false, Defendant alleges that hundreds
4 of thousands of diagnosis codes may be at issue. Accordingly, upon information and belief,
5 Defendant alleges that the civil penalties and damages that the United States seeks would result in
6 an unconstitutionally excessive fine under the Eighth Amendment to the United States
7 Constitution because any award would be grossly disproportional to the gravity of Defendant's
8 offense, if any.

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

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

27
28 ¹ 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 Defendant's interpretation of the Contested Provision. Defendant alleges that the United States
2 knew that Medicare Advantage Organizations also held the same interpretation of the Contested
3 Provision as Defendant, including through communications with Medicare Advantage
4 Organizations about their risk-adjustment programs and CMS's RADV audits, through which
5 CMS reviewed and verified diagnoses coded consistent with Defendant's interpretation of the
6 Contested Provision. Through such RADV audits and communications with other industry
7 participants about risk-adjustment data submissions, the United States affirmed Defendant's
8 interpretation and application of the Contested Provision during the period at issue in this case.
9 Accordingly, even if Defendant's interpretation of the Contested Provision is proven to be
10 incorrect, Defendant is not liable to the extent that the United States failed to take adequate
11 measures to mitigate its damages.

12 400. In the alternative to the ratification and failure-to-mitigate defenses above,
13 Defendant alleges that CMS was aware of Defendant's risk-adjustment practices and similar
14 practices by other industry participants through auditing activity and interactions with Medicare
15 Advantage Organizations in its role administering the Medicare Advantage program. Defendant
16 alleges that CMS knew of Defendant's interpretation and application of the Contested Provision
17 through CMS's RADV audits, through which CMS reviewed and verified diagnoses coded
18 consistent with Defendant's interpretation of the Contested Provision. Even though CMS knew
19 how Defendant and others in the industry interpreted and applied the Contested Provision, and
20 even though CMS received repeated requests to clarify how to interpret and apply the Contested
21 Provision, CMS persistently refused to provide clear guidance to Defendant and Medicare
22 Advantage Organizations about the correct way to interpret the Contested Provision. Defendant
23 relied on these acts and/or omissions by CMS in conducting its risk-adjustment activities and in
24 interpreting the ICD Guidelines, which the United States now challenges in its Amended
25 Complaint-in-Intervention. Accordingly, even if Defendant's interpretation of the Contested
26 Provision is proven to be incorrect, the United States' claims for relief are barred, in whole or in
27 part, by the doctrine of estoppel.
28

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

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Dated: September 11, 2023

Respectfully submitted,

By: /s/ K. Lee Blalack, II
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