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 11 *Health Plan of the Northwest*

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

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

19 Plaintiff,

20 v.

21 KAISER PERMANENTE, et al.,

22 Defendants.

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

**DEFENDANT KAISER FOUNDATION
 HEALTH PLAN OF THE
 NORTHWEST'S ANSWER AND
 AFFIRMATIVE DEFENSES TO
 RELATORS BRYANT AND
 HERNANDEZ'S SECOND AMENDED
 COMPLAINT**

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

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

11 First unnumbered paragraph contains the Relators’ characterization of this action, which
12 requires no response. To the extent any response to such allegations is necessary, Defendant admits
13 that Relators bring allegations related to Medicare Advantage (“MA”) for alleged violations of the
14 False Claims Act (“FCA”). Defendant denies each and every other allegation in first unnumbered
15 paragraph.

16 INTRODUCTION

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

21 1. Paragraph 1 contains legal conclusions and/or argument, which require no response.
22 To the extent any response to such allegations is necessary, Defendant admits that Medicare is a
23 federally operated health insurance program benefiting individuals 65 and older and certain
24 disabled individuals; that Medicare Part C establishes the MA program; and that Medicare
25 Advantage Organizations (“MAOs”) administer private MA plans. Defendant denies each and
26 every other allegation in paragraph 1.

27 Paragraph 1 footnote 1 contains Relators’ characterization of the procedural background of
28

1 this case, which requires no response. To the extent any response to such allegations is necessary,
2 Defendant admits that paragraph 1 footnote 1 references portions of Order Granting in Part and
3 Denying in Part Defendants' Motion to Dismiss (Case No. 3:13-cv-03891-EMC (N.D. Cal.) (Dkt.
4 171)) and Order Granting in Part and Denying in Part Defendants' Motion to Dismiss Relators
5 Bryant and Hernandez's First Amended Complaint (Case No. 3:13-cv-03891-EMC (N.D. Cal.)
6 (Dkt. 226)). Paragraph 1 footnote 1 contains legal conclusions and/or argument, which require no
7 response. To the extent any response to such allegations is necessary, Defendant denies each and
8 every such allegation. Defendant denies each and every other allegation in paragraph 1 footnote 1.

9 2. Paragraph 2 contains legal conclusions and/or argument, which require no response.
10 To the extent any response to such allegations is necessary, Defendant admits that, upon
11 information and belief, the Centers for Medicare & Medicaid Services ("CMS") pays each MAO a
12 predetermined base monthly amount for each enrollee in their MA plans; that, upon information
13 and belief, CMS adjusts the monthly payment amount for each MA beneficiary for various factors
14 including health status. Defendant denies each and every other allegation in paragraph 2.

15 3. Paragraph 3 contains legal conclusions and/or argument, which require no response.
16 To the extent any response to such allegations is necessary, Defendant admits that, upon
17 information and belief, MAOs transmit diagnosis codes to CMS; that, upon information and belief,
18 each MA beneficiary's risk score is based in part upon diagnosis codes that are transmitted by
19 MAOs to CMS associated with the beneficiary's medical visits in a given service year; and that,
20 upon information and belief, CMS uses an MA beneficiary's risk score calculated based on
21 diagnosis codes from a given service year to determine monthly payments to MAOs for that
22 beneficiary in the following year. Defendant denies each and every other allegation in paragraph
23 3.

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

27 5. Paragraph 5 contains legal conclusions and/or argument, which require no response.
28 To the extent any response to such allegations is necessary, Defendant admits that paragraph 5

1 references portions of 42 C.F.R. § 422.504(1)(2) and 42 C.F.R. § 422.503(b)(4)(vi). Defendant
2 denies each and every other allegation in paragraph 5.

3 6. Answering paragraph 6, Defendant admits that Defendant and certain other health
4 plans, physician medical groups, and hospitals maintain a business relationship with one another
5 under the trade name “Kaiser Permanente” that comprises one of the largest managed care
6 organizations in the United States and serves millions of members across all lines of business
7 throughout various states. Defendant denies each and every other allegation in paragraph 6.

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

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

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

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

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

24 12. Paragraph 12 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 FCA was passed by Congress during the Civil War and subsequently amended. Defendant denies
27 each and every other allegation in paragraph 12.

28 13. Paragraph 13 contains legal conclusions and/or argument, which require no

1 response. To the extent any response to such allegations is necessary, Defendant admits that
2 paragraph 13 references portions of 31 U.S.C. §§ 3729(a)(1)(A)-(C), and (G) and 31 U.S.C. §
3 3729(a)(1). Defendant denies each and every other allegation in paragraph 13.

4 14. Paragraph 14 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 14 references portions of 31 U.S.C. § 3729(b)(1). Defendant denies each and every other
7 allegation in paragraph 14.

8 15. Paragraph 15 contains legal conclusions and/or argument, which require no
9 response. To the extent any response to such allegations is necessary, Defendant denies each and
10 every allegation in paragraph 15. Defendant denies each and every other allegation in paragraph
11 15.

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

16 17. Paragraph 17 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 allegation in paragraph 17. Defendant denies each and every other allegation in paragraph
19 17.

20 18. Answering paragraph 18, Defendant denies that Relators are entitled to the relief
21 they seek in this paragraph.

22 **JURISDICTION**

23 19. Paragraph 19 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 19 references portions of 28 U.S.C. § 1331, 31 U.S.C. § 3732(a), and 31 U.S.C. § 3730.
26 Defendant denies each and every other allegation in paragraph 19.

27 20. Paragraph 20 contains legal conclusions and/or argument, which require no
28 response. To the extent any response to such allegations is necessary, Defendant admits that, for

1 purposes of personal jurisdiction, at least one of the Defendants named in the SAC can be found in,
2 resides in or transacts business in the Northern District of California. Defendant denies each and
3 every other allegation in paragraph 20.

4 **VENUE AND INTRADISTRICT ASSIGNMENT**

5 21. Paragraph 21 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 allegation in paragraph 21. Defendant denies each and every other allegation in paragraph
8 21.

9 **PARTIES**

10 **I. PLAINTIFFS**

11 22. Defendant lacks sufficient information to admit or deny each and every allegation
12 in paragraph 22, and, on that basis, denies each and every such allegation. Defendant denies each
13 and every other allegation in paragraph 22.

14 23. Defendant lacks sufficient information to admit or deny the allegations in paragraph
15 23, and, on that basis, denies each and every allegation in paragraph 23.

16 24. Paragraph 24 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 24.

19 **II. THE DEFENDANTS**

20 25. Answering paragraph 25, Defendant admits that Kaiser Foundation Health Plan, Inc.
21 (“KFHP”) and certain other health plans, provider medical groups, and hospitals maintain a
22 business relationship with one another under the trade name “Kaiser Permanente” to offer an
23 integrated care model. Defendant denies each and every other allegation in paragraph 25.

24 26. Answering paragraph 26, Defendant admits that KFHP and certain other health
25 plans operate MA plans, including Medicare Advantage health maintenance organization (“HMO”)
26 plans called “Senior Advantage.” Defendant denies each and every other allegation in paragraph
27 26.

28 27. Answering paragraph 27, Defendant admits that Defendant and certain other health

1 plans, physician medical groups, and hospitals maintain a business relationship with one another
2 under the trade name “Kaiser Permanente.” Paragraph 27 contains reference to documents, which
3 require no response because the referenced documents speak for themselves. To the extent any
4 response to such allegations is necessary, Defendant admits that paragraph 27 references portions
5 of documents. Paragraph 27 contains allegations that do not reference Defendant, which require
6 no response. To the extent any response to such allegations is necessary, Defendant denies each
7 and every allegation in paragraph 27. Defendant denies each and every other allegation in
8 paragraph 27.

9 28. Answering paragraph 28, Defendant admits that, during at least some of the relevant
10 period: KFHP compensated certain Permanente Medical Groups for their provision of services for
11 MA members. Defendant denies each and every other allegation in paragraph 28.

12 29. Paragraph 29 contains allegations that do not reference Defendant, which require no
13 response. To the extent any response to such allegations is necessary, Defendant admits that KFHP
14 is a California corporation with its principal place of business in Oakland, California within this
15 judicial district.

16 30. Paragraph 30 contains allegations that do not reference Defendant, which require no
17 response. To the extent any response to such allegations is necessary, Defendant admits that Kaiser
18 Foundation Hospitals (“KFH”) is a California corporation with its principal place of business in
19 Oakland, California within this judicial district.

20 31. Paragraph 31 contains allegations that do not reference Defendant, which require no
21 response. To the extent any response to such allegations is necessary, Defendant admits that The
22 Permanente Medical Group (“TPMG”) is a California corporation with its principal place of
23 business in Oakland, California within this judicial district and that TPMG provides health care
24 services to members who enroll in KFHP’s health plans in Northern California. Defendant denies
25 each and every other allegation in paragraph 31.

26 32. Paragraph 32 contains reference to dismissed allegations, for which Defendant
27 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
28 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 32

1 contains allegations that do not reference Defendant, which require no response. To the extent any
2 response to such allegations is necessary, Defendant admits that Southern California Permanente
3 Medical Group (“SCPMG”) is a California partnership with its principal place of business in
4 Pasadena, California and that SCPMG provides health care services to members who enroll in
5 KFHP’s health plans in Southern California. Defendant denies each and every other allegation in
6 paragraph 32.

7 33. Paragraph 33 contains reference to dismissed allegations, for which Defendant
8 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
9 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 33
10 contains allegations that do not reference Defendant, which require no response. To the extent any
11 response to such allegations is necessary, Defendant admits that Colorado Permanente Medical
12 Group (“CPMG”) is a Colorado professional corporation with its principal place of business in
13 Denver, Colorado and that CPMG provides health care services to members who enroll in health
14 plans in Colorado. Defendant denies each and every other allegation in paragraph 33.

15 34. Paragraph 34 contains reference to dismissed allegations, for which Defendant
16 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
17 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 34
18 contains allegations that do not reference Defendant, which require no response. To the extent any
19 response to such allegations is necessary, Defendant admits that the Southeast Permanente Medical
20 Group, Inc. (“Southeast PMG”) is a Georgia corporation with its principal place of business in
21 Atlanta, Georgia and that Southeast PMG provides health care services to members who enroll in
22 KFHP’s health plans in Georgia. Defendant denies each and every other allegation in paragraph
23 34.

24 35. Paragraph 35 contains reference to dismissed allegations, for which Defendant
25 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
26 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 35
27 contains allegations that do not reference Defendant, which require no response. To the extent any
28 response to such allegations is necessary, Defendant admits that the Hawaii Permanente Medical

1 Group, Inc. (“Hawaii PMG”) is a Hawaii corporation with its principal place of business in
2 Honolulu, Hawaii and that Hawaii PMG provides health care services to members who enroll in
3 KFHP’s health plans in Hawaii. Defendant denies each and every other allegation in paragraph 35.

4 36. Paragraph 36 contains reference to dismissed allegations, for which Defendant
5 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
6 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 36
7 contains allegations that do not reference Defendant, which require no response. To the extent any
8 response to such allegations is necessary, Defendant admits that the Mid-Atlantic Permanente
9 Medical Group, PC (“Mid-Atlantic PMG”) is a Maryland corporation with its principal place of
10 business in Rockville, Maryland and that Mid-Atlantic PMG provides health care services to
11 members who enroll in KFHP’s health plans in parts of Maryland, Virginia, and Washington, D.C.
12 Defendant denies each and every other allegation in paragraph 36.

13 37. Paragraph 37 contains allegations that do not reference Defendant, which require no
14 response. To the extent any response to such allegations is necessary, Defendant admits that the
15 Northwest Permanente, P.C. (“Northwest PMG”) is an Oregon professional corporation with its
16 principal place of business in Portland, Oregon and that Northwest PMG provides health care
17 services to members who enroll in health plans in Oregon and Southwest Washington. Defendant
18 denies each and every other allegation in paragraph 37.

19 38. Paragraph 38 contains reference to dismissed allegations, for which Defendant
20 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
21 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 38
22 contains allegations that do not reference Defendant, which require no response. To the extent any
23 response to such allegations is necessary, Defendant admits that the Washington Permanente
24 Medical Group, P.C. (“Washington PMG”) is a Washington professional corporation with its
25 principal place of business in Washington, and that Washington PMG provides health care services
26 to members who enroll in KFHP’s health plans in covered parts of Washington. Defendant denies
27 each and every other allegation in paragraph 38.

28 39. Paragraph 39 contains reference to dismissed allegations, for which Defendant

1 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
2 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 39
3 contains allegations that do not reference Defendant, which require no response. To the extent any
4 response to such allegations is necessary, Defendant admits that during at least some of the relevant
5 period: the Permanente Medical Groups had a national leadership and consulting organization, The
6 Permanente Federation LLC; and that the leadership of the Permanente Federation included
7 employees of some Permanente Medical Groups. Paragraph 39 contains Relators' characterization
8 of the SAC, which requires no response. To the extent any response to such allegations is
9 necessary, Defendant denies each and every such allegation. Defendant denies each and every
10 other allegation in paragraph 39.

11 40. Paragraph 40 contains reference to dismissed allegations, for which Defendant
12 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
13 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Answering paragraph
14 40, Defendant admits that Defendant is an Oregon Corporation with its principal place of business
15 in Oregon. Paragraph 40 contains allegations that do not reference Defendant, which require no
16 response. To the extent any response to such allegations is necessary, Defendant admits that Kaiser
17 Foundation Health Plan of Colorado is a Colorado corporation with its principal place of business
18 in Colorado; that Kaiser Foundation Health Plan of Georgia, Inc. is a Georgia corporation with its
19 principal place of business in Georgia; that Kaiser Foundation Health Plan of the Mid-Atlantic
20 States, Inc. is a Maryland corporation with its principal place of business in Maryland; that Kaiser
21 Foundation Health Plan of Washington is a Washington corporation with its principal place of
22 business in Washington; and that KFHP wholly owns each of these subsidiary Health Plans.
23 Paragraph 40 contains Relators' characterization of the SAC, which requires no response. To the
24 extent any response to such allegations is necessary, Defendant denies each and every such
25 allegation. Defendant denies each and every other allegation in paragraph 40.

THE LAW

I. MEDICARE ADVANTAGE (MEDICARE PART C)

27 41. Paragraph 41 contains legal conclusions and/or argument, which require no
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1 response. To the extent any response to such allegations is necessary, Defendant admits that, upon
2 information and belief, under Medicare Part C, CMS pays each MAO a predetermined base
3 monthly amount for each enrollee in their MA plans; that this monthly payment varies for each MA
4 plan depending on various factors, including the plan's bid submitted to CMS; that CMS adjusts
5 the monthly payment amount for each MA beneficiary based on various factors such as age, gender,
6 and health status; and that CMS uses a risk adjustment model known as the CMS Hierarchical
7 Condition Category ("HCC") risk adjustment model that takes into account various factors,
8 including diagnoses. Defendant denies each and every other allegation in paragraph 41.

9 42. Paragraph 42 contains legal conclusions and/or argument, which require no
10 response. To the extent any response to such allegations is necessary, Defendant admits that the
11 CMS-HCC model is prospective in the sense that it uses diagnosis codes from a given year, along
12 with demographic information, to estimate predicted medical costs to the MAO to provide
13 Medicare benefits to beneficiaries in the following year; that HCCs are disease groupings consisting
14 of diagnosis codes currently from the International Classification of Diseases, Tenth Revision,
15 Clinical Modification ("ICD-10-CM") and previously from the International Classification of
16 Diseases, Ninth Revision, Clinical Modification ("ICD-9-CM"); that HCCs include groupings for
17 major, severe/acute, and chronic illnesses; that paragraph 42 references portions of 42 C.F.R. §
18 422.2; that, between 2004 and 2013, the CMS-HCC model included 70 HCCs; and that in 2014,
19 the CMS-HCC model included 79 HCCs. Defendant denies each and every other allegation in
20 paragraph 42.

21 43. Paragraph 43 contains legal conclusions and/or argument, which require no
22 response. To the extent any response to such allegations is necessary, Defendant admits that each
23 HCC has an associated coefficient within the CMS-HCC risk adjustment model that aims to
24 correlate with the marginal predicted cost of medical expenditures for that set of medical disease
25 groupings based on CMS's data from administering the traditional Medicare fee-for-service
26 program; and that, upon information and belief, CMS assigns higher coefficients to HCCs that
27 include disease groupings with greater predicted costs associated with treatment based on CMS's
28 data from administering the traditional Medicare fee-for-service program. Defendant denies each

1 and every other allegation in paragraph 43.

2 44. Paragraph 44 contains legal conclusions and/or argument, which require no
3 response. To the extent any response to such allegations is necessary, Defendant admits that the
4 CMS-HCC model is prospective in the sense that it uses diagnosis codes from a given year, along
5 with demographic information, to estimate predicted medical costs to the MAO to provide
6 Medicare benefits to beneficiaries in the following year. Defendant denies each and every other
7 allegation in paragraph 44.

8 45. Paragraph 45 contains legal conclusions and/or argument, which require no
9 response. To the extent any response to such allegations is necessary, Defendant admits that, upon
10 information and belief, a given MA beneficiary's risk score is calculated each year. Paragraph 45
11 contains a hypothetical example containing no factual assertions, which requires no response. To
12 the extent any response to such allegations is necessary, Defendant denies each and every such
13 allegation. Defendant denies each and every other allegation in paragraph 45.

14 46. Paragraph 46 contains legal conclusions and/or argument, which require no
15 response. To the extent any response to such allegations is necessary, Defendant admits that MAOs
16 obtain diagnosis data from healthcare providers who treat beneficiaries in the MAOs' MA plans
17 and healthcare providers can transmit diagnosis data to MAOs through a variety of means.
18 Defendant denies each and every other allegation in paragraph 46.

19 47. Paragraph 47 contains legal conclusions and/or argument, which require no
20 response. To the extent any response to such allegations is necessary, Defendant admits that, during
21 at least some of the relevant period: MAOs transmitted risk adjustment data to CMS through
22 CMS's Risk Adjustment Processing System ("RAPS"); and that a RAPS submission includes,
23 among other things, the Medicare enrollee's identification number, the date of medical service, the
24 provider type, and the diagnosis code; medical encounters can include physician office visits,
25 hospital outpatient visits, and hospital inpatient visits. Defendant denies each and every other
26 allegation in paragraph 47.

27 48. Paragraph 48 contains legal conclusions and/or argument, which require no
28 response. To the extent any response to such allegations is necessary, Defendant denies each and

1 every such allegation. Paragraph 48 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 48 references portions of CMS's 2008 Risk
4 Adjustment Data Technical Assistance for Medicare Advantage Organizations Participant Guide
5 ("2008 RA Participation Guide") § 6.4.1. Defendant denies each and every other allegation in
6 paragraph 48.

7 49. Paragraph 49 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 49 contains reference 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 admits that paragraph 49 references portions of the International
12 Classification of Diseases (ICD) Clinical Modification Guidelines for Coding and Reporting ("ICD
13 Guidelines") and the 2008 RA Participation Guide § 7.2.4.1. Defendant denies each and every
14 other allegation in paragraph 49.

15 50. Paragraph 50 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 50 references portions of 42 U.S.C. § 1320a-7k(d), 31 U.S.C. § 3729, 42 U.S.C. 1320a-
18 7k(d)(4)(B), 42 C.F.R. § 422.326(e) and 42 C.F.R. § 422.326(c). Defendant denies each and every
19 other allegation in paragraph 50.

20 **II. AFFORDABLE CARE ACT**

21 51. Paragraph 51 contains legal conclusions and/or argument, which require no
22 response. To the extent any response to such allegations is necessary, Defendant admits that under
23 the Affordable Care Act ("ACA"), health plans can no longer set premium rates for health insurance
24 coverage offered in the individual or small group market based on preexisting medical conditions;
25 and that the ACA created refundable tax credits for certain individuals. Due to the non-specific
26 and vague nature of Relators' allegations, Defendant lacks sufficient information to admit or deny
27 each and every other allegation in paragraph 51, and, on that basis, denies each and every such
28 allegation. Defendant denies each and every other allegation in paragraph 51.

1 52. Answering paragraph 52, Defendant admits that it offers health plans on the
2 Washington Health Benefit Exchange and the Oregon Health Insurance Marketplace. Paragraph
3 52 contains allegations that do not reference Defendant, which require no response. To the extent
4 any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or
5 deny such allegations and, on that basis, denies each and every such allegation. Defendant denies
6 each and every other allegation in paragraph 52.

7 53. Answering paragraph 53, Defendant admits that the ACA defines four levels of
8 health insurance coverage: bronze, silver, gold, and platinum; and that the ACA created refundable
9 tax credits for certain individuals. Defendant denies each and every other allegation in paragraph
10 53.

11 54. Paragraph 54 contains a hypothetical example containing no factual assertions,
12 which requires no response. To the extent any response to such allegations is necessary, Defendant
13 denies each and every such allegation. Defendant lacks sufficient knowledge to admit or deny each
14 and every other allegation in paragraph 54 and, on that basis, denies each and every such allegation.
15 Defendant denies each and every other allegation in paragraph 54.

16 55. Paragraph 55 contains legal conclusions and/or argument, which require no
17 response. To the extent any response to such allegations is necessary, Defendant admits that
18 paragraph 55 references portions of 77 Fed. Reg. 17220, 17221. Defendant denies each and every
19 other allegation in paragraph 55.

20 56. Answering paragraph 56, Defendant admits that the ACA risk-adjustment program
21 redistributes funds from health plans with a member population that appears to be healthier-than-
22 average to those plans that have a member population that appears to be sicker-than-average.
23 Defendant denies each and every other allegation in paragraph 56.

24 57. Paragraph 57 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 allegation in paragraph 57.

27 58. Paragraph 58 contains a hypothetical example containing no factual assertions,
28 which requires no response. To the extent any response to such allegations is necessary, Defendant

1 denies each and every such allegation. Defendant denies each and every other allegation in
2 paragraph 58.

3 59. Paragraph 59 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 59 references portions of 42 U.S.C. § 18063(a). Defendant denies each and every other
6 allegation in paragraph 59.

7 60. Paragraph 60 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 60 references portions of 42 U.S.C. § 18063(a). Defendant denies each and every other
10 allegation in paragraph 60.

11 61. Paragraph 61 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 61 references portions of 77 Fed. Reg. 17220 and 78 Fed. Reg. 15410. Defendant denies
14 each and every other allegation in paragraph 61.

15 **A. HHS Operates the ACA Risk Adjustment Program**

16 62. Paragraph 62 contains legal conclusions and/or argument, which require no
17 response. To the extent any response to such allegations is necessary, Defendant admits that
18 paragraph 62 references portions of 42 C.F.R. §§ 153.310(a)(2) and (a)(3). Defendant denies each
19 and every other allegation in paragraph 62.

20 63. Paragraph 63 contains allegations that do not reference Defendant, which require no
21 response. To the extent any response to such allegations is necessary, Defendant admits that it
22 offers a healthcare plan through the ACA in Washington and Oregon; and that Congress has
23 directed HHS to operate ACA risk-adjustment programs where states do not do so. Defendant
24 denies each and every other allegation in paragraph 63.

25 64. Paragraph 64 contains legal conclusions and/or argument, which require no
26 response. To the extent any response to such allegations is necessary, Defendant denies each and
27 every such allegation. Defendant denies each and every other allegation in paragraph 64.

28 **B. Requirements and Operation of HHS' Risk Adjustment Program**

1 65. Paragraph 65 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 65 references portions of 78 Fed. Reg. 15410, 15420. Defendant denies each and every
4 other allegation in paragraph 65.

5 66. Paragraph 66 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 66 references portions of 45 C.F.R. § 153.20, 78 Fed. Reg. 15410, 15422, and 81 Fed.
8 Reg. 94058, 94071. Defendant denies each and every other allegation in paragraph 66.

9 67. Paragraph 67 contains legal conclusions and/or argument, which require no
10 response. To the extent any response to such allegations is necessary, Defendant admits that
11 paragraph 67 references portions of 45 C.F.R. § 162.1002(a)-(c) and 45 C.F.R. § 153.610.
12 Defendant denies each and every other allegation in paragraph 67.

13 68. Paragraph 68 contains legal conclusions and/or argument, which require no
14 response. To the extent any response to such allegations is necessary, Defendant admits that
15 paragraph 68 references portions of 45 C.F.R. § 153.700(a). Defendant denies each and every other
16 allegation in paragraph 68.

17 69. Paragraph 69 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant admits that
19 paragraph 69 references portions of 45 C.F.R. § 153.630(b)(7). Defendant denies each and every
20 other allegation in paragraph 69.

21 70. Paragraph 70 contains legal conclusions and/or argument, which require no
22 response. To the extent any response to such allegations is necessary, Defendant admits that
23 paragraph 70 references portions of portions of 45 C.F.R. § 153.710(a). Defendant denies each and
24 every other allegation in paragraph 70.

25 71. Paragraph 71 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 71.

28 72. Paragraph 72 contains legal conclusions and/or argument, which require no

1 response. To the extent any response to such allegations is necessary, Defendant admits that
2 paragraph 72 references portions of 45 C.F.R. §§ 153.710(d) and (e). Defendant denies each and
3 every other allegation in paragraph 72.

4 Paragraph 72 footnote 2 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 72 footnote 2 references portions of 86 Fed. Reg. 24140, 24195-95. Defendant denies
7 each and every other allegation in paragraph 72 footnote 2.

8 73. Paragraph 73 contains legal conclusions and/or argument, which require no
9 response. To the extent any response to such allegations is necessary, Defendant denies each and
10 every such allegation. Paragraph 73 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 73 references portions of a document. Defendant
13 denies each and every other allegation in paragraph 73.

14 **C. How Premiums Are Calculated Under the ACA**

15 74. Paragraph 74 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 74 references portions of 45 C.F.R. § 154.103 and 45 C.F.R. § 154.215. Defendant
18 denies each and every other allegation in paragraph 74.

19 75. Paragraph 75 contains legal conclusions and/or argument, which require no
20 response. To the extent any response to such allegations is necessary, Defendant admits that
21 paragraph 75 references portions of 45 C.F.R. § 154.103 and 45 C.F.R. § 154.215. Defendant
22 denies each and every other allegation in paragraph 75.

23 76. Paragraph 76 contains legal conclusions and/or argument, which require no
24 response. To the extent any response to such allegations is necessary, Defendant denies each and
25 every such allegation. Paragraph 76 contains reference to a document, which requires no response
26 because the referenced document speaks for itself. To the extent that response is necessary,
27 Defendant admits that paragraph 76 references portions of a document. Defendant denies each and
28 every other allegation in paragraph 76.

1 77. Paragraph 77 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 77 references portions of 45 C.F.R. § 156.80(d)(1)(ii) and 42023 Unified Rate Review
4 Instructions, OMB Control No. 0938-1141, at 18. Defendant denies each and every other allegation
5 in paragraph 77.

6 78. Paragraph 78 contains legal conclusions and/or argument, which require no
7 response. To the extent any response to such allegations is necessary, Defendant admits that
8 paragraph 78 references portions of 45 C.F.R. § 154.215, (e) and (f). Defendant denies each and
9 every other allegation in paragraph 78.

10 **D. Premium Tax Credits Under the ACA**

11 79. Answering paragraph 79, Defendant admits that under the ACA, the Government
12 allows as a credit against the tax imposed by Subtitle A of Title 26 of the Internal Revenue Code
13 for any taxable year an amount equal to the premium assistance credit amount. Defendant denies
14 each and every other allegation in paragraph 79.

15 80. Answering paragraph 80, Defendant admits that the amount of the tax credit allowed
16 under the ACA is calculated pursuant to 26 U.S.C. § 36B(b). Defendant denies each and every
17 other allegation in paragraph 80.

18 81. Paragraph 81 contains legal conclusions and/or argument, which require no
19 response. To the extent any response to such allegations is necessary, Defendant admits that
20 paragraph 81 references portions of 26 C.F.R. § 1.36B-3(f). Defendant denies each and every other
21 allegation in paragraph 81.

22 82. Answering paragraph 82, Defendant admits that an individual's expected
23 contribution under the ACA program is determined on a sliding scale, based in part on family size
24 and income. Defendant denies each and every other allegation in paragraph 82.

25 83. Answering paragraph 83, Defendant admits that the amount of the tax credit allowed
26 under the ACA is calculated pursuant to 26 U.S.C. § 36B(b). Defendant denies each and every
27 other allegation in paragraph 83.

28 Answering paragraph 83 footnote 3, Defendant admits that the Inflation Reduction Act caps

1 the expected contribution that individuals must apply to health insurance premiums under the ACA
2 to 8.5% from 2021 through 2025. Defendant denies each and every other allegation in paragraph
3 83 footnote 3.

4 84. Answering paragraph 84, Defendant admits that the ACA created refundable tax
5 credits for certain individuals; that the ACA defines four levels of health insurance coverage:
6 bronze, silver, gold, and platinum; and that the tax credit cannot be more than the premium for the
7 plan in which the individual enrolls. Defendant denies each and every other allegation in paragraph
8 84.

9 **E. Conditions of Insurer Participation in the ACA**

10 85. Paragraph 85 contains legal conclusions and/or argument, which require no
11 response. To the extent any response to such allegations is necessary, Defendant admits that
12 paragraph 85 references portions of 42 U.S.C. § 18033 (a)(6)(A). Defendant denies each and every
13 other allegation in paragraph 85.

14 86. Paragraph 86 contains legal conclusions and/or argument, which require no
15 response. To the extent any response to such allegations is necessary, Defendant admits that
16 paragraph 86 references portions of 45 C.F.R. § 156.200. Defendant denies each and every other
17 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 admits that
20 paragraph 87 references portions of 45 C.F.R. part 153. Defendant denies each and every other
21 allegation in paragraph 87.

22 **THE FACTS**

23 **I. KAISER AND ITS RELATED COMPANIES OVERDOCUMENT AND
24 OVERCODE/UPCODE “HIGH-VALUE” HIERARCHICAL CONDITION CODES
25 (“HCCS”)**

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

27 89. Answering paragraph 89, Defendant admits that every year, certain of the
28 Defendants transmit an attestation pursuant to 42 C.F.R. § 422.504. Defendant denies each and
every other allegation in paragraph 89.

1 90. Answering paragraph 90, Defendant admits that every year, certain of the
2 Defendants transmit an attestation pursuant to 45 C.F.R. § 153.710. Defendant denies each and
3 every other allegation in paragraph 90.

4 **A. Aortic Atherosclerosis (“AA”)**

5 **1. Clinical significance, documentation and coding convention**

6 91. Answering paragraph 91, Defendant admits that atherosclerosis is sometimes
7 referred to as “hardening of the arteries” and that atherosclerosis can describe a thickening and loss
8 of elasticity in the arterial wall. Defendant denies each and every other allegation in paragraph 91.

9 92. Answering paragraph 92, Defendant admits that the American Hospital Association
10 (“AHA”) Coding Clinic website describes the AHA “Central Office” as the “clearinghouse” for
11 issues related to the use of ICD-9-CM. Paragraph 92 contains reference to a document, which
12 requires no response because the referenced document speaks for itself. To the extent any response
13 to such allegations is necessary, Defendant admits that paragraph 92 references portions of Exhibit
14 1 to the SAC. Defendant denies each and every other allegation in paragraph 92.

15 93. Answering paragraph 93, Defendant admits that, for at least some of the relevant
16 period, there is no corresponding HHS-HCC for atherosclerosis of the aorta (“AA”) in the ACA
17 program and that the AA diagnosis is assigned to HCC 108. Paragraph 93 contains reference to
18 documents, which requires no response because the referenced documents speak for themselves.
19 To the extent any response to such allegations is necessary, Defendant admits that paragraph 93
20 references portions of the ICD Guidelines. Defendant denies each and every other allegation in
21 paragraph 93.

22 **2. Kaiser's scheme**

23 94. Paragraph 94 contains allegations that do not reference Defendant, which require no
24 response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
25 knowledge to admit or deny such allegations and, on that basis, denies each and every such
26 allegation. Defendant denies each and every other allegation in paragraph 94.

27 95. Paragraph 95 contains legal conclusions and/or argument, which require no
28 response. To the extent any response to such allegations is necessary, Defendant admits that

1 paragraph 95 references portions of the ICD Guidelines. Paragraph 95 contains allegations that do
2 not reference Defendant, which require no response. To the extent any response to such allegations
3 is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
4 basis, denies each and every such allegation. Defendant denies each and every other allegation in
5 paragraph 95.

6 96. Paragraph 96 contains allegations that do not reference Defendant, which require no
7 response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
8 knowledge to admit or deny such allegations and, on that basis, denies each and every such
9 allegation. Defendant denies each and every other allegation in paragraph 96.

10 97. Paragraph 97 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 97.

14 98. Paragraph 98 contains allegations that do not reference Defendant, which require no
15 response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
16 knowledge to admit or deny such allegations and, on that basis, denies each and every such
17 allegation. Defendant denies each and every other allegation in paragraph 98.

18 99. Due to the non-specific and vague nature of Relators' allegations, Defendant lacks
19 sufficient information to admit or deny the allegations in paragraph 99 and, on that basis, denies
20 each and every allegation in paragraph 99.

21 3. Chronology and evidence

22 100. Paragraph 100 contains reference to a document, which requires no response
23 because the referenced document speaks for itself. To the extent any response to such allegations
24 is necessary, Defendant admits that paragraph 100 references portions of Exhibit 2 to the SAC.
25 Defendant denies each and every other allegation in paragraph 100.

26 101. Paragraph 101 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 101 references portions of Exhibit 3 to the SAC.

1 Defendant lacks sufficient knowledge to admit or deny every other allegation in paragraph 101 and,
2 on that basis, denies each and every such allegation. Defendant denies each and every other
3 allegation in paragraph 101.

4 102. Paragraph 102 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 102 references portions of Exhibit 4 to the SAC.
7 Defendant denies each and every other allegation in paragraph 102.

8 103. Paragraph 103 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 103 references portions of Exhibit 5 to the SAC.
11 Defendant lacks sufficient knowledge to admit or deny each and every other allegation in paragraph
12 103 and, on that basis, denies each and every such allegation. Defendant denies each and every
13 other allegation in paragraph 103.

14 104. Paragraph 104 contains allegations that do not reference Defendant, which require
15 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
16 knowledge to admit or deny such allegations and, on that basis, denies each and every such
17 allegation. Paragraph 104 contains reference to a document, which requires no response because
18 the referenced document speaks for itself. To the extent any response to such allegations is
19 necessary, Defendant admits that paragraph 104 references portions of Exhibit 6 to the SAC.
20 Defendant denies each and every other allegation in paragraph 104.

21 105. Paragraph 105 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 105 references portions of Exhibit 7 to the SAC.
24 Defendant denies each and every other allegation in paragraph 105.

25 106. Paragraph 106 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 106 references portions of Exhibits 8 and 9 to the
28 SAC. Defendant denies each and every other allegation in paragraph 106.

1 Paragraph 106 footnote 4 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 106 footnote 4 references portions of Exhibits 8 and
4 9 to the SAC. Defendant denies each and every other allegation in paragraph 106 footnote 4.

5 107. Answering paragraph 107, Defendant admits that presentations about AA were
6 made in 2013, 2014 and 2015. Paragraph 107 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 107 references portions of Exhibits 10
9 and 11 to the SAC. Paragraph 107 contains allegations that do not reference Defendant, which
10 require no response. To the extent any response to such allegations is necessary, Defendant lacks
11 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every
12 such allegation. Defendant denies each and every other allegation in paragraph 107.

13 108. Paragraph 108 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 108 references portions of Exhibit 12 to the SAC.
16 Defendant lacks sufficient knowledge to admit or deny allegations that “On behalf of NCAL HIM
17 Regional Leadership, Ms. Bryant remained deeply concerned and continued to pursue direction and
18 guidance from Janet Franklin of Kaiser’s National Compliance Office, but received none,” and
19 “Due to her continued concern, Ms. Bryant went so far as to submit a question to AHA Coding
20 Clinic, the recognized authority on ICD-9 and ICD-10 coding, on the issue in December 2012,”
21 and, on that basis, denies each and every such allegation. Defendant denies each and every other
22 allegation in paragraph 108.

23 109. Paragraph 109 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 109 references portions of Exhibit 13 to the SAC.
26 Defendant lacks sufficient knowledge to admit or deny the allegation that “Ms. Bryant was later
27 told by Nancy Anderson of Kaiser’s NCO group that the question was never submitted to AHA
28 Coding Clinic based upon a decision by Kaiser leadership, yet another Kaiser decision that caused

1 Ms. Bryant and Ms. Hernandez significant concern,” and, on that basis, denies each and every such
2 allegation. Defendant denies each and every other allegation in paragraph 109.

3 110. Paragraph 110 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 110 references portions of Exhibit 14 to the SAC.
6 Defendant denies each and every other allegation in paragraph 110.

7 111. Paragraph 111 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 111 references portions of Exhibit 15 to the SAC.
10 Paragraph 111 contains allegations that do not reference Defendant, which require no response. To
11 the extent any response to such allegations is necessary, Defendant denies each and every such
12 allegation. Defendant denies each and every other allegation in paragraph 111.

13 112. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
14 112 regarding the meeting between Relator Bryant and Dr. Cohn and, on that basis, denies each
15 and every such allegation. Defendant denies each and every other allegation in paragraph 112.

16 113. Paragraph 113 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 113 references portions of Exhibit 16 to the SAC.
19 Paragraph 113 contains allegations that do not reference Defendant, which require no response. To
20 the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to
21 admit or deny such allegations and, on that basis, denies each and every such allegation. Defendant
22 denies each and every other allegation in paragraph 113.

23 4. Impact of Kaiser’s HCC AA “missed opportunity” directive

24 114. Paragraph 114 contains reference to documents, which require no response because
25 the referenced documents speak for themselves. To the extent any response to such allegations is
26 necessary, Defendant admits that paragraph 114 references portions of Exhibits 17 and 18 to the
27 SAC. Defendant denies each and every other allegation in paragraph 114.

28 115. Answering paragraph 115, Defendant lacks sufficient knowledge to admit or deny

1 the allegations that “In early 2016, Ms. Bryant discovered in the course of ICD-10-CM/PCS
2 national coding quality monitoring and coding validation that Kaiser was still coding AA based
3 upon it being a systemic condition, notwithstanding the August 2015 conclusion of Kaiser NCO
4 rejecting AA as a ‘chronic, systemic condition,’” and “Both Ms. Bryant and Ms. Hernandez were
5 disturbed and troubled,” and, on that basis, denies each and every such allegation. Defendant denies
6 each and every other allegation in paragraph 115.

7 116. Paragraph 116 contains reference to documents, which require no response because
8 the referenced documents speak for themselves. To the extent any response to such allegations is
9 necessary, Defendant admits that paragraph 116 references portions of Exhibits 17 and 18 to the
10 SAC. Defendant denies each and every other allegation in paragraph 116.

11 117. Answering paragraph 117, Defendant lacks sufficient knowledge to admit or deny
12 the allegations that “Ms. Bryant’s and Ms. Hernandez believe and therefore allege that Kaiser has
13 never gone back to validate the accuracy of AA documentation and coding for years prior to 2016,
14 and has never repaid, restated, or otherwise reimbursed amounts falsely obtained during this period
15 from over-diagnosing and over-coding AA,” and “Moreover, they believe and therefore allege that
16 there was no specific AA validation of documentation and coding or discussion regarding rebilling
17 or resubmission of corrected claims or data,” and, on that basis, denies each and every such
18 allegation. Defendant denies each and every other allegation in paragraph 117.

19 **B. Mechanical Ventilation Dependence Status ("Vent Dependence")**

20 **1. Clinical significance, documentation and coding convention**

21 118. Answering paragraph 118, Defendant admits that, during at least some of the
22 relevant period: HCC 82 corresponded to respirator dependence/tracheostomy status; that HHS-
23 HCC 125 corresponded to respirator dependence/tracheostomy status; and that dependence on a
24 ventilator corresponded to ICD-10-CM code Z99.11. Defendant denies each and every other
25 allegation in paragraph 118.

26 119. Paragraph 119 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 119 references portions of Exhibit 19 to the SAC.

1 Defendant denies each and every other allegation in paragraph 119.

2 120. Defendant denies each and every allegation in Paragraph 120.

3 **2. Kaiser’s scheme originated with ACA newborns**

4 121. Paragraph 121 contains allegations that do not reference Defendant, which require
5 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
6 knowledge to admit or deny such allegations and, on that basis, denies each and every such
7 allegation. Defendant denies each and every other allegation in paragraph 121.

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

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

10 **3. Chronology and evidence**

11 **(a) October/November 2013**

12 124. Answering paragraph 124, Defendant lacks sufficient knowledge to admit or deny
13 the allegations that “Ms. Hernandez and Ms. Bryant were first made aware of Kaiser’s vent
14 dependence status documentation and coding practices in the context of newborns that are placed
15 on ventilators temporarily in Kaiser Foundation Hospitals before being discharged home,” and “Ms.
16 Bryant, Ms. Hernandez and Ms. Toews were extremely concerned with the direction that TPMG
17 wanted to take with the V46.11 status code,” and, on that basis, denies each and every such
18 allegation. Paragraph 124 contains allegations that do not reference Defendant, which require no
19 response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
20 knowledge to admit or deny such allegations and, on that basis, denies each and every such
21 allegation. Defendant denies each and every other allegation in paragraph 124.

22 125. Paragraph 125 contains reference to a document, which requires no response
23 because the referenced document speaks for itself. To the extent any response to such allegations
24 is necessary, Defendant admits that paragraph 125 references portions of Exhibit 20 to the SAC.
25 Paragraph 125 contains allegations that do not reference Defendant, which require no response. To
26 the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to
27 admit or deny such allegations and, on that basis, denies each and every such allegation. Defendant
28 denies each and every other allegation in paragraph 125.

1 knowledge to admit or deny such allegations and, on that basis, denies each and every such
2 allegation. Paragraph 131 contains reference to a document, which requires no response because
3 the referenced document speaks for itself. To the extent any response to such allegations is
4 necessary, Defendant admits that paragraph 131 references portions of Exhibit 22 to the SAC.
5 Defendant denies each and every other allegation in paragraph 131.

6 132. Paragraph 132 contains allegations that do not reference Defendant, which require
7 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
8 knowledge to admit or deny such allegations and, on that basis, denies each and every such
9 allegation. Paragraph 132 contains reference to a document, which requires no response because
10 the referenced document speaks for itself. To the extent any response to such allegations is
11 necessary, Defendant admits that paragraph 132 references portions of Exhibit 20 to the SAC.
12 Defendant denies each and every other allegation in paragraph 132.

13 133. Paragraph 133 contains allegations that do not reference Defendant, which require
14 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
15 knowledge to admit or deny such allegations and, on that basis, denies each and every such
16 allegation. Paragraph 133 contains reference to documents, which require no response because the
17 referenced documents speak for themselves. To the extent any response to such allegations is
18 necessary, Defendant admits that paragraph 133 references portions of Exhibits 19 and 20 to the
19 SAC. Defendant denies each and every other allegation in paragraph 133.

20 134. Paragraph 134 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. Defendant lacks sufficient knowledge to admit or deny the allegation,
23 “Contemporaneously, Ms. Bryant and Ms. Hernandez continued to have deep concern and
24 investigated Kaiser’s coding practices for vent dependence status both inside and outside of the
25 newborn care context, including for patients in the MA program and the ACA program,” and, on
26 that basis, denies each and every such allegation. Due to the non-specific and vague nature of
27 Relators’ allegations, Defendant lacks sufficient information to admit or deny the allegation, “They
28 quickly confirmed that they were similar,” and, on that basis, denies each and every such allegation.

1 Paragraph 134 contains reference to a document, which requires no response because the referenced
2 document speaks for itself. To the extent any response to such allegations is necessary, Defendant
3 admits that paragraph 134 references portions of Exhibit 23 to the SAC. Defendant denies each
4 and every other allegation in paragraph 134.

5 135. Paragraph 135 contains reference to dismissed allegations, for which Defendant
6 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N. D. Cal.), Dkt.
7 No. 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 135
8 contains allegations that do not reference Defendant, which require no response. To the extent any
9 response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny
10 such allegations and, on that basis, denies each and every such allegation. Paragraph 135 contains
11 reference to a document, which requires no response because the referenced document speaks for
12 itself. To the extent any response to such allegations is necessary, Defendant admits that paragraph
13 135 references portions of Exhibit 24 to the SAC. Defendant denies each and every other allegation
14 in paragraph 135.

15 136. Answering paragraph 136, Defendant admits that, during at least some of the
16 relevant period: Regional Reporting Group (“RRG”) meetings included discussions about
17 ventilation status. Due to the non-specific and vague nature of Relators’ allegations, Defendant
18 lacks sufficient information to admit or deny the allegation that “Kaiser promoted the
19 documentation and capture of the respirator/ventilator dependence code in education sessions and
20 materials to Kaiser physicians throughout the Kaiser regions.” Defendant denies each and every
21 other allegation in paragraph 136.

22 4. Impact of Kaiser’s vent dependence practices

23 137. Paragraph 137 contains reference to dismissed allegations, for which Defendant
24 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N. D. Cal.), Dkt.
25 No. 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 137
26 contains reference to documents, which require no response because the referenced documents
27 speak for themselves. To the extent any response to such allegations is necessary, Defendant admits
28 that paragraph 137 references portions of Exhibits 18 and 25 to the SAC. Due to the non-specific

1 and vague nature of Relators' allegations, Defendant lacks sufficient information to admit or deny
2 the allegations in paragraph 137, and, on that basis, denies each and every allegation. Paragraph
3 137 contains allegations that do not reference Defendant, which require no response. To the extent
4 any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or
5 deny such allegations and, on that basis, denies each and every such allegation. Defendant denies
6 each and every other allegation in paragraph 137.

7 138. Paragraph 138 contains reference to documents, which require no response because
8 the referenced documents speak for themselves. To the extent any response to such allegations is
9 necessary, Defendant admits that paragraph 138 references portions of Exhibits 26 and 27 to the
10 SAC. Due to the non-specific and vague nature of Relators' allegations, Defendant lacks sufficient
11 information to admit or deny the allegation that "The coding data includes a high volume of cases
12 in which patients were successfully weaned from ventilation and routinely discharged home or to
13 self-care, including after just a day or two in the hospital," and, on that basis, denies each and every
14 such allegation. Paragraph 138 contains allegations that do not reference Defendant, which require
15 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
16 knowledge to admit or deny such allegations and, on that basis, denies each and every such
17 allegation. Defendant denies each and every other allegation in paragraph 138.

18 139. Due to the non-specific and vague nature of Relators' allegations, Defendant lacks
19 sufficient information to admit or deny the allegation that "Data from all Kaiser Regions confirms
20 that the vent dependence coding volume skyrocketed across Kaiser," and, on that basis, denies each
21 and every such allegation. Paragraph 139 contains reference to documents, which require no
22 response because the referenced documents speak for themselves. To the extent any response to
23 such allegations is necessary, Defendant admits that paragraph 139 references portions of Exhibits
24 28 and 18 to the SAC. Defendant denies each and every other allegation in paragraph 139.

25 140. Due to the non-specific and vague nature of Relators' allegations, Defendant lacks
26 sufficient information to admit or deny the allegations in paragraph 140, and, on that basis, denies
27 each and every allegation in paragraph 140.

28 141. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph

1 141, and, on that basis, denies each and every allegation in paragraph 141.

2 **C. Malnutrition**

3 142. Answering paragraph 142, Defendant admits that for at least some of the relevant
4 period, specific ICD diagnosis codes identify mild, moderate, and severe Protein Calorie
5 Malnutrition (“PCM”). Defendant denies each and every other allegation in paragraph 142.

6 143. Paragraph 143 contains allegations that do not reference Defendant, which require
7 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
8 knowledge to admit or deny such allegations and, on that basis, denies each and every such
9 allegation. Defendant lacks sufficient knowledge to admit or deny the allegations that “Ms.
10 Hernandez addressed the issue with TPMG CDI’s Quality Assurance manager in the hope that it
11 would be communicated to the CDI management team” and “Nevertheless, to Ms. Hernandez’s
12 knowledge, the leading queries were not discontinued nor were the documentation requirements
13 changed,” and, on that basis, denies each and every such allegation. Defendant denies each and
14 every other allegation in paragraph 143.

15 144. Paragraph 144 contains allegations that do not reference Defendant, which require
16 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
17 knowledge to admit or deny such allegations and, on that basis, denies each and every such
18 allegation. Defendant denies each and every other allegation in paragraph 144.

19 145. Paragraph 145 contains reference to documents, which require no response because
20 the referenced documents speak for themselves. To the extent any response to such allegations is
21 necessary, Defendant admits that paragraph 145 references portions of Exhibit 34 to the SAC.
22 Defendant denies each and every other allegation in paragraph 145.

23 146. Paragraph 146 contains allegations that do not reference Defendant, which require
24 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
25 knowledge to admit or deny such allegations and, on that basis, denies each and every such
26 allegation. Defendant lacks sufficient knowledge to admit or deny the allegation, “Ms. Bryant was
27 gravely concerned with and deeply troubled by these warnings and with the barrier placed on her
28 pursuing the issue further,” and, on that basis, denies each and every such allegation. Defendant

1 denies each and every other allegation in paragraph 146.

2 147. Paragraph 147 contains allegations that do not reference Defendant, which require
3 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
4 knowledge to admit or deny such allegations and, on that basis, denies each and every such
5 allegation. Due to the non-specific and vague nature of Relators' allegations, Defendant lacks
6 sufficient information to admit or deny the allegation that "These issues continued at Kaiser long
7 after these interactions," and, on that basis, denies each and every such allegation. Paragraph 147
8 contains reference to a document, which requires no response because the referenced document
9 speaks for itself. To the extent any response to such allegations is necessary, Defendant admits that
10 paragraph 147 references portions of Exhibit 35 to the SAC. Defendant denies each and every
11 other allegation in paragraph 147.

12 148. Paragraph 148 contains allegations that do not reference Defendant, which require
13 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
14 knowledge to admit or deny such allegations and, on that basis, denies each and every such
15 allegation. Due to the non-specific and vague nature of Relators' allegations, Defendant lacks
16 sufficient information to admit or deny the allegation that "Moderate and Severe PCM in hospital
17 inpatient records at Kaiser Foundation Hospitals were a focus of Kaiser's dietary staff once the
18 patient met some specific clinical criteria," and, on that basis, denies each and every such allegation.
19 Defendant lacks sufficient knowledge to admit or deny the allegation, "Ms. Bryant believes and
20 therefore alleges, however, that use of the leading query language had been ongoing for a year or
21 more before it was identified and changed, and has no knowledge of corrective actions taken by the
22 NCAL Region or any other Kaiser region on prior medical records for all risk-based payers,
23 including both the MA program and the ACA program," and, on that basis, denies each and every
24 such allegation. Defendant denies each and every other allegation in paragraph 148.

25 149. Due to the non-specific and vague nature of Relators' allegations, Defendant lacks
26 sufficient information to admit or deny the allegation that "Kaiser data compiled by Ms. Bryant
27 through her national coding quality monitoring work establishes that malnutrition continued to have
28 a high frequency of being coded in Kaiser's MA and ACA populations," and, on that basis, denies

1 each and every such allegation. Defendant lacks sufficient knowledge to admit or deny every other
2 allegation in paragraph 149, and, on that basis, denies each and every such allegation. Defendant
3 denies each and every other allegation in paragraph 149.

4 **D. Other Over-Coded and Up-Coded Diagnoses**

5 150. Paragraph 150 contains reference to dismissed allegations, for which Defendant
6 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
7 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Answering paragraph
8 150, Defendant admits that management for certain types of arrhythmias may involve a pacemaker.
9 Paragraph 150 contains allegations that do not reference Defendant, which require no response. To
10 the extent any response to such allegations is necessary, Defendant denies each and every such
11 allegation. Defendant lacks sufficient knowledge to admit or deny the allegation, “Near the end of
12 her employment with Kaiser, Ms. Bryant was informed and believes, and therefore alleges, that at
13 least Kaiser’s NCAL and Colorado regions (TPMG and CPMG), and perhaps other Kaiser regions,
14 were instructing doctors to diagnose and document so that Kaiser’s coders would code heart
15 arrhythmia for members even after the members receive pacemakers to correct their arrhythmia for
16 all risk-based payers, including both the MA program and the ACA program,” and, on that basis,
17 denies each and every such allegation. Defendant denies each and every other allegation in
18 paragraph 150.

19 151. Paragraph 151 contains reference to dismissed allegations, for which Defendant
20 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
21 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 151
22 contains allegations that do not reference Defendant, which require no response. To the extent any
23 response to such allegations is necessary, Defendant denies each and every such allegation.
24 Defendant lacks sufficient knowledge to admit or deny the allegation, “Ms. Bryant was first made
25 aware of the issue in 2014 with respect to Kaiser’s Colorado PMG, but later (in the fall of 2017)
26 was informed by Ms. Andersen of Kaiser NCO that it was also evidence in Kaiser’s NCL region
27 operated by TPMG,” and, on that basis, denies each and every such allegation. Defendant denies
28 each and every other allegation in paragraph 151.

1 152. Paragraph 152 contains reference to dismissed allegations, for which Defendant
2 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
3 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 152
4 contains allegations that do not reference Defendant, which require no response. To the extent any
5 response to such allegations is necessary, Defendant denies each and every such allegation.
6 Paragraph 152 contains reference to a document, which requires no response because the referenced
7 document speaks for itself. To the extent any response to such allegations is necessary, Defendant
8 admits that paragraph 152 references portions of Exhibit 10 to the SAC. Defendant lacks sufficient
9 knowledge to admit or deny the allegation, “Ms. Hernandez believes that this practice also took
10 place within TPMG,” and, on that basis, denies each and every such allegation. Defendant denies
11 each and every other allegation in paragraph 152.

12 **III. “THE KAISER WAY” IGNORES ESTABLISHED PROCEDURE, INCENTIVIZES**
13 **GREED, AND CULTIVATES FRAUD**

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

15 154. Defendant denies each and every allegation in paragraph 154.

16 **A. Kaiser’s policies and procedures**

17 155. Defendant denies each and every allegation in paragraph 155.

18 156. Defendant denies each and every allegation in paragraph 156.

19 157. Paragraph 157 contains allegations that do not reference Defendant, which require
20 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
21 knowledge to admit or deny such allegations and, on that basis, denies each and every such
22 allegation. Defendant denies each and every other allegation in paragraph 157.

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

24 **1. Query templates**

25 159. Paragraph 159 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 159 references portions of the American Health
28 Information Management Association’s (“AHIMA”) Standards of Ethical Coding. Defendant

1 denies each and every other allegation in paragraph 159.

2 160. Paragraph 160 contains reference to documents, which requires no response because
3 the referenced documents speak for themselves. To the extent any response to such allegations is
4 necessary, Defendant admits that paragraph 160 references portions of Exhibit 29 to the SAC,
5 AHIMA’s practice briefs, “Guidelines for Achieving a Compliant Query Practice” and “Managing
6 an Effective Query Process.” Defendant denies each and every other allegation in paragraph 160.

7 161. Paragraph 161 contains reference to documents, which requires no response because
8 the referenced documents speak for themselves. To the extent any response to such allegations is
9 necessary, Defendant admits that paragraph 161 references portions of Exhibit 30 to the SAC and
10 AHIMA’s practice brief, “Managing an Effective Query Process.” Defendant denies each and
11 every other allegation in paragraph 161.

12 162. Paragraph 162 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 162 references portions of *Health Information*
15 *Management Compliance: A Model Program for Healthcare Organizations*. Defendant denies
16 each and every other allegation in paragraph 162.

17 163. Paragraph 163 contains allegations that do not reference Defendant, which require
18 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
19 knowledge to admit or deny such allegations and, on that basis, denies each and every such
20 allegation. Defendant denies each and every other allegation in paragraph 163.

21 164. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
22 164 and, on that basis, denies each and every allegation in paragraph 164.

23 165. Paragraph 165 contains allegations that do not reference Defendant, which require
24 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
25 knowledge to admit or deny such allegations and, on that basis, denies each and every such
26 allegation. Defendant denies each and every other allegation in paragraph 165.

27 166. Defendant lacks sufficient information to admit or deny the allegation about Relator
28 Bryant’s recollection and, on that basis, denies the allegation. Paragraph 166 contains allegations

1 that do not reference Defendant, which require no response. To the extent any response to such
2 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
3 and, on that basis, denies each and every such allegation. Defendant denies each and every other
4 allegation in paragraph 166.

5 167. Paragraph 167 contains reference to documents, which requires no response because
6 the referenced documents speak for themselves. To the extent any response to such allegations is
7 necessary, Defendant admits that paragraph 167 references portions of Exhibits 31 and 32 to the
8 SAC. Defendant denies each and every other allegation in paragraph 167.

9 168. Paragraph 168 contains reference to documents, which requires no response because
10 the referenced documents speak for themselves. To the extent any response to such allegations is
11 necessary, Defendant admits that paragraph 168 references portions of AHIMA's practice brief,
12 "Guidelines for Achieving a Compliant Query Practice." Defendant denies each and every other
13 allegation in paragraph 168.

14 2. Inquiries to AHA Coding Clinic

15 169. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
16 169, and, on that basis, denies each and every allegation in paragraph 169.

17 170. Paragraph 170 contains allegations that do not reference Defendant, which require
18 no response. To the extent any response to paragraph 170 is necessary, Defendant lacks sufficient
19 knowledge to admit or deny the allegations, and, on that basis, denies each and every allegation in
20 paragraph 170.

21 171. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
22 171, and, on that basis, denies each and every allegation in paragraph 171.

23 172. Paragraph 172 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 172 references portions of Exhibit 22 to the SAC.
26 Defendant lacks sufficient knowledge to admit or deny the other allegations in paragraph 172, and,
27 on that basis, denies each and every such allegation. Defendant denies each and every other
28 allegation in paragraph 172.

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

3 174. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
4 174, and, on that basis, denies each and every allegation in paragraph 174.

5 175. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
6 175, and, on that basis, denies each and every allegation in paragraph 175.

7 **B. Kaiser’s emphasis on financial outcomes**

8 176. Defendant denies each and every allegation in paragraph 176.

9 **1. CDI program and related activities.**

10 177. Paragraph 177 contains reference to dismissed allegations, for which Defendant
11 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
12 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Answering paragraph
13 177, Defendant admits that a Clinical Documentation Improvement (“CDI”) program was launched
14 in Northern California in 2009; that a purpose of the program was to provide and sustain accurate
15 clinical documentation in support of patient safety and quality of care; and CDI programs were
16 adopted in hospital settings in Southern California and the Northwest. Defendant denies each and
17 every other allegation in paragraph 177.

18 178. Paragraph 178 contains allegations that do not reference Defendant, which require
19 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
20 knowledge to admit or deny the allegations about “AHIMA’s guidance on CDI programs,” and, on
21 that basis, Defendant denies each and every such allegation. Defendant denies each and every other
22 allegation in paragraph 178.

23 179. Paragraph 179 contains allegations that do not reference Defendant, which require
24 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
25 knowledge to admit or deny such allegations, and, on that basis, denies each and every allegation
26 in paragraph 179.

27 180. Paragraph 180 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 180 references portions of Exhibit 29 to the SAC.
2 Defendant denies each and every other allegation in paragraph 180.

3 181. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
4 181 and, on that basis, denies each and every allegation in paragraph 181.

5 182. Paragraph 182 contains allegations that do not reference Defendant, which require
6 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
7 knowledge to admit or deny such allegations and, on that basis, Defendant denies each and every
8 such allegation. Defendant denies each and every other allegation in paragraph 182.

9 183. Paragraph 183 contains allegations that do not reference Defendant, which require
10 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
11 knowledge to admit or deny such allegations and, on that basis, Defendant denies each and every
12 such allegation. Paragraph 183 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 183 references portions of Exhibit 33 to the SAC.
15 Defendant denies each and every other allegation in paragraph 183.

16 184. Paragraph 184 contains allegations that do not reference Defendant, which require
17 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
18 knowledge to admit or deny such allegations and, on that basis, Defendant denies each and every
19 such allegation. Paragraph 184 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 184 references portions of Exhibit 11 to the SAC.
22 Defendant denies each and every other allegation in paragraph 184.

23 **2. Kaiser's RRG meetings and Regional Competitions for Revenue/HCC**
24 **Capture.**

25 185. Answering paragraph 185, Defendant admits that, during at least some of the
26 relevant period: the RRG included personnel from KFHP, the Permanente Medical Groups, and
27 Revenue Cycle; that the RRG discussed MA risk adjustment and the ACA program; that Dr. Simon
28 Cohn, who retired in 2015, led certain parts of some RRG meetings; and that Dr. Annette Guido of

1 Northwest Permanente and Hovannes Daniels led certain parts of some RRG meetings during at
2 least some of the relevant period. Defendant denies each and every other allegation in paragraph
3 185.

4 186. Answering paragraph 186, Defendant admits that, during at least some of the
5 relevant period: the RRG met regularly; and that the RRG discussed risk adjustment, RADV audits,
6 regulatory changes, and initiatives across regions. Defendant denies each and every other
7 allegation in paragraph 186.

8 187. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
9 187 about Relator Bryant's interactions with Janet Franklin, and, on that basis, denies each and
10 every such allegation. Defendant denies each and every other allegation in paragraph 187.

11 188. Paragraph 188 contains reference to dismissed allegations, for which Defendant
12 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
13 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 188
14 contains allegations that do not reference Defendant, which require no response. To the extent any
15 response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny
16 such allegations and, on that basis, Defendant denies each and every such allegation. Defendant
17 denies each and every other allegation in paragraph 188.

18 **3. Employee and management bonuses.**

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

23 **4. Kaiser's regional medical groups dominate over Kaiser's compliance** 24 **function.**

25 190. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
26 190 and, on that basis, denies each and every allegation in paragraph 190.

27 **C. Kaiser improperly employs technology to further its HCC and revenue** 28 **capture.**

1 **1. Data Mining and Addenda.**

2 191. Paragraph 191 contains allegations that do not reference Defendant, which require
3 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
4 knowledge to admit or deny the allegations and, on that basis, denies each and every allegation in
5 paragraph 191. Defendant denies each and every other allegation in paragraph 191.

6 192. Paragraph 192 contains allegations that do not reference Defendant, which require
7 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
8 information to admit or deny the allegations and, on that basis, denies each and every such
9 allegation. Defendant denies each and every other allegation in paragraph 192.

10 193. Paragraph 193 contains allegations that do not reference Defendant, which require
11 no 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 193.

14 194. Answering paragraph 194, Defendant admits that, during at least some of the
15 relevant period: TPMG and Northwest PMG employees developed tracking mechanisms to
16 monitor data mining activities; and that some tracking mechanisms tracked data mining data for
17 the MA program and ACA program, including for various medical conditions. Defendant denies
18 each and every other allegation in paragraph 194.

19 195. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
20 195 and, on that basis, denies each and every such allegation. Defendant denies each and every
21 other allegation in paragraph 195.

22 **2. Improper Carry-Over From Prior Years.**

23 196. Paragraph 196 contains allegations that do not reference Defendant, which require
24 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
25 knowledge to admit or deny such allegations and, on that basis, denies each and every such
26 allegation. Defendant denies each and every other allegation in paragraph 196.

27 197. Paragraph 197 contains allegations that do not reference Defendant, which require
28

1 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient
2 knowledge to admit or deny such allegations and, on that basis, denies each and every allegation in
3 paragraph 197. Defendant denies each and every other allegation in paragraph 197.

4 **3. Computer Assisted Coding**

5 198. Answering paragraph 198, Defendant admits that Computer Assisted Coding
6 (“CAC”) is a software tool that generates a set of medical codes for review based on clinical
7 documentation provided by healthcare practitioners; that CAC reviews the electronic medical
8 record including signs, symptoms, diagnoses, and CPT procedure codes; and that CAC was used
9 to increase coding accuracy. Defendant denies each and every other allegation in paragraph 198.

10 199. Paragraph 199 contains allegations that do not reference Defendant, which require
11 no 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 allegation in
13 paragraph 199. Defendant denies each and every other allegation in paragraph 199.

14 200. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
15 200 and, on that basis, denies each and every allegation in paragraph 200.

16 201. Answering paragraph 201, Defendant admits that in 2014, CAC was used on
17 hospital outpatient and inpatient encounters. Paragraph 201 contains allegations that do not
18 reference Defendant, which require no response. To the extent any response to such allegations is
19 necessary, Defendant lacks sufficient information to admit or deny the allegation that “These
20 complaints resulted in NCAL Revenue Cycle Leadership finally discontinuing CAC in hospital
21 outpatient encounters in 2016,” and, on that basis, denies the allegation. Defendant denies each
22 and every other allegation in paragraph 201.

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

24 **D. The Kaiser Defendants Acted With Intent.**

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

26 **E. Kaiser Submitted or Caused to be Submitted False Claims to the ACA 27 Program**

28 204. Paragraph 204 contains legal conclusions and/or argument, which require no

1 response. To the extent any response to such allegations is necessary, Defendant denies each and
2 every such allegation. Defendant denies each and every other allegation in paragraph 204.

3 **1. Risk Adjustment Payments**

4 205. Due to the non-specific and vague nature of Relators' allegations, Defendant lacks
5 sufficient information to admit or deny the allegations in paragraph 205, and, on that basis, denies
6 each and every such allegation. Defendant denies each and every other allegation in paragraph
7 205.

8 206. Paragraph 206 contains legal conclusions and/or argument, which require no
9 response. To the extent any response to such allegations is necessary, Defendant denies each and
10 every such allegation. Defendant denies each and every other allegation in paragraph 206.

11 207. Paragraph 207 contains legal conclusions and/or argument, which require no
12 response. To the extent any response to such allegations is necessary, Defendant denies each and
13 every such allegation. Defendant denies each and every other allegation in paragraph 207.

14 208. Paragraph 208 contains legal conclusions and/or argument, which require no
15 response. To the extent any response to such allegations is necessary, Defendant denies each and
16 every such allegation. Defendant denies each and every other allegation in paragraph 208.

17 209. Paragraph 209 contains legal conclusions and/or argument, which require no
18 response. To the extent any response to such allegations is necessary, Defendant denies each and
19 every such allegation. Defendant denies each and every other allegation in paragraph 209.

20 210. Paragraph 210 contains legal conclusions and/or argument, which require no
21 response. To the extent any response to such allegations is necessary, Defendant denies each and
22 every such allegation. Defendant denies each and every other allegation in paragraph 210.

23 **2. Tax Credits**

24 211. Paragraph 211 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant denies each and
26 every such allegation. Defendant denies each and every other allegation in paragraph 211.

27 212. Paragraph 212 contains legal conclusions and/or argument, which require no
28 response. To the extent any response to such allegations is necessary, Defendant denies each and

1 every such allegation. Defendant denies each and every other allegation in paragraph 212.

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

5 214. Paragraph 214 contains legal conclusions and/or argument, which require no
6 response. To the extent any response to such allegations is necessary, Defendant denies each and
7 every such allegation. Defendant denies each and every other allegation in paragraph 214.

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

11 216. Paragraph 216 contains a hypothetical example containing no factual assertions,
12 which requires no response. To the extent any response to such allegations is necessary, Defendant
13 denies each and every such allegation. Paragraph 216 contains legal conclusions and/or argument,
14 which require no response. To the extent any response to such allegations is necessary, Defendant
15 denies each and every such allegation. Defendant denies each and every other allegation in
16 paragraph 216.

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

20 218. Paragraph 218 contains legal conclusions and/or argument, which require no
21 response. To the extent any response to such allegations is necessary, Defendant denies each and
22 every such allegation. Defendant denies each and every other allegation in paragraph 218.

23 219. Paragraph 219 contains legal conclusions and/or argument, which require no
24 response. To the extent any response to such allegations is necessary, Defendant denies each and
25 every such allegation. Defendant denies each and every other allegation in paragraph 219.

26 **F. Kaiser's Fraud Was and Is Material to the Government's Payment Decision**

27 220. Paragraph 220 contains legal conclusions and/or argument, which require no
28 response. To the extent any response to such allegations is necessary, Defendant denies each and

1 every such allegation. Defendant denies each and every other allegation in paragraph 220.

2 221. Paragraph 221 contains legal conclusions and/or argument, which require no
3 response. To the extent any response to such allegations is necessary, Defendant denies each and
4 every such allegation. Defendant denies each and every other allegation in paragraph 221.

5 222. Paragraph 222 contains legal conclusions and/or argument, which require no
6 response. To the extent any response to such allegations is necessary, Defendant denies each and
7 every such allegation. Defendant denies each and every other allegation in paragraph 222.

8 223. Paragraph 223 contains legal conclusions and/or argument, which require no
9 response. To the extent any response to such allegations is necessary, Defendant denies each and
10 every such allegation. Defendant denies each and every other allegation in paragraph 223.

11 224. Paragraph 224 contains legal conclusions and/or argument, which require no
12 response. To the extent any response to such allegations is necessary, Defendant denies each and
13 every such allegation. Defendant denies each and every other allegation in paragraph 224.

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

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

20 227. Paragraph 227 contains legal conclusions and/or argument, which require no
21 response. To the extent any response to such allegations is necessary, Defendant denies each and
22 every such allegation. Defendant denies each and every other allegation in paragraph 227.

23 228. Paragraph 228 contains legal conclusions and/or argument, which require no
24 response. To the extent any response to such allegations is necessary, Defendant denies each and
25 every such allegation. Defendant denies each and every other allegation in paragraph 228.

26 229. Paragraph 229 contains legal conclusions and/or argument, which require no
27 response. To the extent any response to such allegations is necessary, Defendant denies each and
28 every such allegation. Defendant denies each and every other allegation in paragraph 229.

SECOND CLAIM FOR RELIEF

False Claims Act: Making or Using False Records or Statements

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

238. Answering paragraph 238, Defendant reasserts its answers to the above paragraphs as if fully set forth herein.

239. Paragraph 239 contains legal conclusions and/or argument, which require no response. To the extent any response to such allegations is necessary, Defendant denies each and every such allegation. Defendant denies each and every other allegation in paragraph 239.

240. Paragraph 240 contains legal conclusions and/or argument, which require no response. To the extent any response to such allegations is necessary, Defendant denies each and every such allegation. Defendant denies each and every other allegation in paragraph 240.

241. Paragraph 241 contains legal conclusions and/or argument, which require no response. To the extent any response to such allegations is necessary, Defendant denies each and every such allegation. Defendant denies each and every other allegation in paragraph 241.

242. Paragraph 242 contains legal conclusions and/or argument, which require no response. To the extent any response to such allegations is necessary, Defendant denies each and every such allegation. Defendant denies each and every other allegation in paragraph 242.

THIRD CLAIM FOR RELIEF

False Claims Act: Conspiracy

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

243. Answering paragraph 243, Defendant reasserts its answers to the above paragraphs as if fully set forth herein.

244. Paragraph 244 contains legal conclusions and/or argument, which require no response. To the extent any response to such allegations is necessary, Defendant denies each and every such allegation. Defendant denies each and every other allegation in paragraph 244.

245. Paragraph 245 contains legal conclusions and/or argument, which require no response. To the extent any response to such allegations is necessary, Defendant denies each and every such allegation. Defendant denies each and every other allegation in paragraph 245.

1 every such allegation. Defendant denies each and every other allegation in paragraph 245.

2 246. Paragraph 246 contains legal conclusions and/or argument, which require no
3 response. To the extent any response to such allegations is necessary, Defendant denies each and
4 every such allegation. Defendant denies each and every other allegation in paragraph 246.

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

8 **FOURTH CLAIM FOR RELIEF**

9 **False Claims Act: Reverse False Claims**

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

11 248. Answering paragraph 248, Defendant reasserts its answers to the above paragraphs
12 as if fully set forth herein.

13 249. Paragraph 249 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 249.

16 250. Paragraph 250 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 250.

19 251. Paragraph 251 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 251.

22 252. Paragraph 252 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 252.

25 253. Paragraph 253 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 253.
28

FIFTH CLAIM FOR RELIEF

False Claims Act: Relief From Retaliatory Actions Against Defendant TPMG

U.S.C. § 3730(h)

1
2
3
4 254. Answering paragraph 254, Defendant reasserts its answers to the above paragraphs
5 as if fully set forth herein.

6 255. Paragraph 255 contains legal conclusions and/or argument, which require no
7 response. To the extent any response to such allegations is necessary, Defendant denies each and
8 every such allegation. Defendant denies each and every other allegation in paragraph 255.

9 256. Paragraph 256 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 256.

12 257. Paragraph 257 contains legal conclusions and/or argument, which require no
13 response. To the extent any response to such allegations is necessary, Defendant denies each and
14 every such allegation. Defendant denies each and every other allegation in paragraph 257.

15 258. Paragraph 258 contains legal conclusions and/or argument, which require no
16 response. To the extent any response to such allegations is necessary, Defendant denies each and
17 every such allegation. Defendant denies each and every other allegation in paragraph 258.

18 259. Paragraph 259 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 259.

21 260. Paragraph 260 contains legal conclusions and/or argument, which require no
22 response. To the extent any response to such allegations is necessary, Defendant denies each and
23 every such allegation. Defendant denies each and every other allegation in paragraph 260.

24 261. Paragraph 261 contains legal conclusions and/or argument, which require no
25 response. To the extent any response to such allegations is necessary, Defendant denies each and
26 every such allegation. Defendant denies each and every other allegation in paragraph 261.

27 262. Paragraph 262 contains legal conclusions and/or argument, which require no
28 response. To the extent any response to such allegations is necessary, Defendant denies each and

1 every such allegation. Defendant denies each and every other allegation in paragraph 262.

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

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

8 **SIXTH CLAIM FOR RELIEF**

9 **Violation of Cal. Lab. Code § 1102.5, *et seq.* Against Defendant TPMG**

10 265. Answering paragraph 265, Defendant reasserts its answers to the above paragraphs
11 as if fully set forth herein.

12 266. Paragraph 266 contains legal conclusions and/or argument, which require no
13 response. To the extent any response to such allegations is necessary, Defendant denies each and
14 every such allegation. Defendant denies each and every other allegation in paragraph 266.

15 267. Paragraph 267 contains legal conclusions and/or argument, which require no
16 response. To the extent any response to such allegations is necessary, Defendant denies each and
17 every such allegation. Defendant denies each and every other allegation in paragraph 267.

18 268. Paragraph 268 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 268.

21 269. Paragraph 269 contains legal conclusions and/or argument, which require no
22 response. To the extent any response to such allegations is necessary, Defendant denies each and
23 every such allegation. Defendant denies each and every other allegation in paragraph 269.

24 **SEVENTH CLAIM FOR RELIEF**

25 **Violation of Cal. Lab. Code § 98.6 Against Defendant TPMG**

26 270. Answering paragraph 270, Defendant reasserts its answers to the above paragraphs
27 as if fully set forth herein.
28

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

9 276. During the period at issue in the SAC, the American Health Information
10 Management Association (“AHIMA”) was a private professional organization that, among other
11 things, issued guidance on diagnosis coding practices, including about physician query practices.
12 This guidance was updated from time to time. Defendant never agreed to comply with AHIMA
13 guidance in any binding contract with the United States, nor did any statutes or regulations require
14 Defendant to comply with AHIMA guidance. Relators nonetheless allege Defendant’s diagnostic
15 practices violated AHIMA guidance. *See, e.g.*, ¶ 168 (alleging that Defendant’s practices
16 “contravene AHIMA’s guidance”). To the extent that Relators premise their claims for relief on
17 allegations that Defendant violated guidance or an interpretation of guidance issued by a private,
18 non-governmental entity, such as AHIMA, Relators’ claims for relief are barred by the
19 nondelegation doctrine.

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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).

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Dated: September 14, 2023

Respectfully submitted,

By: /s/ K. Lee Blalack, II
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