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 11 *Health Plan, Inc.*

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

UNITED STATES OF AMERICA ex rel.  
 RONDA OSINEK,  
  
 Plaintiff,  
  
 v.  
 KAISER PERMANENTE, et al.,  
  
 Defendants.

Case No. 3:13-cv-03891-EMC  
  
**DEFENDANT KAISER FOUNDATION  
 HEALTH PLAN, INC.'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, Inc. (“Defendant”) hereby files its Answer and  
2 Affirmative Defenses (“Answer”) to Relators Gloryanne Bryant and Victoria Hernandez’s  
3 (“Relators”) Second Amended Complaint (the “SAC”). Each numbered response in this Answer  
4 is made subject to the following limitations. First, unless specifically admitted, Defendant denies  
5 each and every allegation in the SAC. Second, to the extent the SAC includes headings, a table of  
6 contents, or other impertinent material that is inappropriate under Federal Rules of Civil Procedure  
7 8, 10, or 12(f), no response is necessary and such material should be stricken. To the extent any  
8 headings, table of contents, or impertinent material is deemed to require a response, Defendant  
9 denies each and every allegation. Any headings from the SAC that are reproduced herein are  
10 reproduced for convenience of reading only.

11 First unnumbered paragraph contains 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. Answering paragraph 10, Defendant admits that, prior to her retirement in 2017,  
18 Defendant employed Relator Gloryanne Bryant as Director National Revenue Cycle Coding &  
19 Education. Paragraph 10 contains allegations that do not reference Defendant, which require no  
20 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 10.

23 11. Paragraph 11 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 allegation in paragraph 11.

26 12. Paragraph 12 contains legal conclusions and/or argument, which require no  
27 response. To the extent any response to such allegations is necessary, Defendant admits that the  
28 FCA was passed by Congress during the Civil War and subsequently amended. Defendant denies

1 each and every other allegation in paragraph 12.

2 13. Paragraph 13 contains legal conclusions and/or argument, which require no  
3 response. To the extent any response to such allegations is necessary, Defendant admits that  
4 paragraph 13 references portions of 31 U.S.C. §§ 3729(a)(1)(A)-(C), and (G) and 31 U.S.C. §  
5 3729(a)(1). Defendant denies each and every other allegation in paragraph 13.

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

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

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

18 17. Paragraph 17 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 allegation in paragraph 17. Defendant denies each and every other allegation in paragraph  
21 17.

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

24 **JURISDICTION**

25 19. Paragraph 19 contains legal conclusions and/or argument, which require no  
26 response. To the extent any response to such allegations is necessary, Defendant admits that  
27 paragraph 19 references portions of 28 U.S.C. § 1331, 31 U.S.C. § 3732(a), and 31 U.S.C. § 3730.  
28 Defendant denies each and every other allegation in paragraph 19.



1 each and every other allegation in paragraph 25.

2 26. Answering paragraph 26, Defendant admits that Defendant and certain other health  
3 plans operate MA plans, including Medicare Advantage health maintenance organization (“HMO”)  
4 plans called “Senior Advantage.” Defendant denies each and every other allegation in paragraph  
5 26.

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

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

18 29. Answering paragraph 29, Defendant admits that Defendant is a California  
19 corporation with its principal place of business in Oakland, California within this judicial district.

20 30. Paragraph 30 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 Kaiser  
22 Foundation Hospitals (“KFH”) is a California corporation with its principal place of business in  
23 Oakland, California within this judicial district.

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

1 every other allegation in paragraph 31.

2 32. Paragraph 32 contains reference to dismissed allegations, for which Defendant  
3 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.  
4 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 32  
5 contains allegations that do not reference Defendant, which require no response. To the extent any  
6 response to such allegations is necessary, Defendant admits that Southern California Permanente  
7 Medical Group (“SCPMG”) is a California partnership with its principal place of business in  
8 Pasadena, California and that SCPMG provides health care services to members who enroll in  
9 health plans in Southern California. Defendant denies each and every other allegation in paragraph  
10 32.

11 33. Paragraph 33 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 33  
14 contains allegations that do not reference Defendant, which require no response. To the extent any  
15 response to such allegations is necessary, Defendant admits that Colorado Permanente Medical  
16 Group (“CPMG”) is a Colorado professional corporation with its principal place of business in  
17 Denver, Colorado and that CPMG provides health care services to members who enroll in health  
18 plans in Colorado. Defendant denies each and every other allegation in paragraph 33.

19 34. Paragraph 34 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 34  
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 Southeast Permanente Medical  
24 Group, Inc. (“Southeast PMG”) is a Georgia corporation with its principal place of business in  
25 Atlanta, Georgia and that Southeast PMG provides health care services to members who enroll in  
26 health plans in Georgia. Defendant denies each and every other allegation in paragraph 34.

27 35. Paragraph 35 contains reference to dismissed allegations, for which Defendant  
28 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.

1 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 35  
2 contains allegations that do not reference Defendant, which require no response. To the extent any  
3 response to such allegations is necessary, Defendant admits that the Hawaii Permanente Medical  
4 Group, Inc. (“Hawaii PMG”) is a Hawaii corporation with its principal place of business in  
5 Honolulu, Hawaii and that Hawaii PMG provides health care services to members who enroll in  
6 health plans in Hawaii. Defendant denies each and every other allegation in paragraph 35.

7 36. Paragraph 36 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 36  
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 the Mid-Atlantic Permanente  
12 Medical Group, PC (“Mid-Atlantic PMG”) is a Maryland corporation with its principal place of  
13 business in Rockville, Maryland and that Mid-Atlantic PMG provides health care services to  
14 members who enroll in health plans in parts of Maryland, Virginia, and Washington, D.C.  
15 Defendant denies each and every other allegation in paragraph 36.

16 37. Paragraph 37 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 the  
18 Northwest Permanente, P.C. (“Northwest PMG”) is an Oregon professional corporation with its  
19 principal place of business in Portland, Oregon and that Northwest PMG provides health care  
20 services to members who enroll in health plans in Oregon and Southwest Washington. Defendant  
21 denies each and every other allegation in paragraph 37.

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

1 to members who enroll in health plans in covered parts of Washington. Defendant denies each and  
2 every other allegation in paragraph 38.

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

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

**THE LAW**

**I. MEDICARE ADVANTAGE (MEDICARE PART C)**

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

12 42. Paragraph 42 contains legal conclusions and/or argument, which require no  
13 response. To the extent any response to such allegations is necessary, Defendant admits that the  
14 CMS-HCC model is prospective in the sense that it uses diagnosis codes from a given year, along  
15 with demographic information, to estimate predicted medical costs to the MAO to provide  
16 Medicare benefits to beneficiaries in the following year; that HCCs are disease groupings consisting  
17 of diagnosis codes currently from the International Classification of Diseases, Tenth Revision,  
18 Clinical Modification ("ICD-10-CM") and previously from the International Classification of  
19 Diseases, Ninth Revision, Clinical Modification ("ICD-9-CM"); that HCCs include groupings for  
20 major, severe/acute, and chronic illnesses; that paragraph 42 references portions of 42 C.F.R. §  
21 422.2; that, between 2004 and 2013, the CMS-HCC model included 70 HCCs; and that in 2014,  
22 the CMS-HCC model included 79 HCCs. Defendant denies each and every other allegation in  
23 paragraph 42.

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

1 program; and that, upon information and belief, CMS assigns higher coefficients to HCCs that  
2 include disease groupings with greater predicted costs associated with treatment based on CMS's  
3 data from administering the traditional Medicare fee-for-service program. Defendant denies each  
4 and every other allegation in paragraph 43.

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

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

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

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

1 allegation in paragraph 47.

2 48. Paragraph 48 contains legal conclusions and/or argument, which require no  
3 response. To the extent any response to such allegations is necessary, Defendant denies each and  
4 every such allegation. Paragraph 48 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 48 references portions of CMS's 2008 Risk  
7 Adjustment Data Technical Assistance for Medicare Advantage Organizations Participant Guide  
8 ("2008 RA Participation Guide") § 6.4.1. Defendant denies each and every other allegation in  
9 paragraph 48.

10 49. Paragraph 49 contains legal conclusions and/or argument, which require no  
11 response. To the extent any response to such allegations is necessary, Defendant denies each and  
12 every such allegation. Paragraph 49 contains reference to documents, which require no response  
13 because the referenced documents speak for themselves. To the extent any response to such  
14 allegations is necessary, Defendant admits that paragraph 49 references portions of the International  
15 Classification of Diseases (ICD) Clinical Modification Guidelines for Coding and Reporting ("ICD  
16 Guidelines") and the 2008 RA Participation Guide § 7.2.4.1. Defendant denies each and every  
17 other allegation in paragraph 49.

18 50. Paragraph 50 contains legal conclusions and/or argument, which require no  
19 response. To the extent any response to such allegations is necessary, Defendant admits that  
20 paragraph 50 references portions of 42 U.S.C. § 1320a-7k(d), 31 U.S.C. § 3729, 42 U.S.C. 1320a-  
21 7k(d)(4)(B), 42 C.F.R. § 422.326(e), and 42 C.F.R. § 422.326(c). Defendant denies each and every  
22 other allegation in paragraph 50.

## 23 **II. AFFORDABLE CARE ACT**

24 51. Paragraph 51 contains legal conclusions and/or argument, which require no  
25 response. To the extent any response to such allegations is necessary, Defendant admits that under  
26 the Affordable Care Act ("ACA"), health plans can no longer set premium rates for health insurance  
27 coverage offered in the individual or small group market based on preexisting medical conditions;  
28 and that the ACA created refundable tax credits for certain individuals. Due to the non-specific

1 and vague nature of Relators' allegations, Defendant lacks sufficient information to admit or deny  
2 each and every other allegation in paragraph 51, and, on that basis, denies each and every such  
3 allegation in paragraph 51. Defendant denies each and every other allegation in paragraph 51.

4 52. Answering paragraph 52, Defendant admits that it offers health plans on Covered  
5 California. Paragraph 52 contains allegations that do not reference Defendant, which require no  
6 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, denies each and every such  
8 allegation. Defendant denies each and every other allegation in paragraph 52.

9 53. Answering paragraph 53, Defendant admits that the ACA defines four levels of  
10 health insurance coverage: bronze, silver, gold, and platinum; and that the ACA created refundable  
11 tax credits for certain individuals. Defendant denies each and every other allegation in paragraph  
12 53.

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

18 55. Paragraph 55 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 55 references portions of 77 Fed. Reg. 17220, 17221. Defendant denies each and every  
21 other allegation in paragraph 55.

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

26 57. Paragraph 57 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 allegation in paragraph 57.

1           58. Paragraph 58 contains a hypothetical example containing no factual assertions,  
2 which requires no response. To the extent any response to such allegations is necessary, Defendant  
3 denies each and every such allegation. Defendant denies each and every other allegation in  
4 paragraph 58.

5           59. Paragraph 59 contains legal conclusions and/or argument, which require no  
6 response. To the extent any response to such allegations is necessary, Defendant admits that  
7 paragraph 59 references portions of 42 U.S.C. § 18063(a). Defendant denies each and every other  
8 allegation in paragraph 59.

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

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

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

18           62. Paragraph 62 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 62 references portions of 42 C.F.R. §§ 153.310(a)(2) and (a)(3). Defendant denies each  
21 and every other allegation in paragraph 62.

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

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

1 every such allegation. Defendant denies each and every other allegation in paragraph 64.

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

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

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

11 67. Paragraph 67 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 67 references portions of 45 C.F.R. § 162.1002(a)-(c) and 45 C.F.R. § 153.610.  
14 Defendant denies each and every other allegation in paragraph 67.

15 68. Paragraph 68 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 68 references portions of 45 C.F.R. § 153.700(a). Defendant denies each and every other  
18 allegation in paragraph 68.

19 69. Paragraph 69 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 69 references portions of 45 C.F.R. § 153.630(b)(7). Defendant denies each and every  
22 other allegation in paragraph 69.

23 70. Paragraph 70 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 70 references portions of portions of 45 C.F.R. § 153.710(a). Defendant denies each and  
26 every other allegation in paragraph 70.

27 71. Paragraph 71 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 71.

2 72. Paragraph 72 contains legal conclusions and/or argument, which require no  
3 response. To the extent any response to such allegations is necessary, Defendant admits that  
4 paragraph 72 references portions of 45 C.F.R. §§ 153.710(d) and (e). Defendant denies each and  
5 every other allegation in paragraph 72.

6 Paragraph 72 footnote 2 contains legal conclusions and/or argument, which require no  
7 response. To the extent any response to such allegations is necessary, Defendant admits that  
8 paragraph 72 footnote 2 references portions of 86 Fed. Reg. 24140, 24195-95. Defendant denies  
9 each and every other allegation in paragraph 72 footnote 2.

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

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

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

21 75. Paragraph 75 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 75 references portions of 45 C.F.R. § 154.103 and 45 C.F.R. § 154.215. Defendant  
24 denies each and every other allegation in paragraph 75.

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

1 Defendant admits that paragraph 76 references portions of a document. Defendant denies each and  
2 every other allegation in paragraph 76.

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

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

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

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

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

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

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

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

1 other allegation in paragraph 83.

2 Answering paragraph 83 footnote 3, Defendant admits that the Inflation Reduction Act caps  
3 the expected contribution that individuals must apply to health insurance premiums under the ACA  
4 to 8.5% from 2021 through 2025. Defendant denies each and every other allegation in paragraph  
5 83 footnote 3.

6 84. Answering paragraph 84, Defendant admits that the ACA created refundable tax  
7 credits for certain individuals; that the ACA defines four levels of health insurance coverage:  
8 bronze, silver, gold, and platinum; and that the tax credit cannot be more than the premium for the  
9 plan in which the individual enrolls. Defendant denies each and every other allegation in paragraph  
10 84.

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

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

16 86. Paragraph 86 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 86 references portions of 45 C.F.R. § 156.200. Defendant denies each and every other  
19 allegation in paragraph 86.

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

24 **THE FACTS**

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

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

28 89. Answering paragraph 89, Defendant admits that every year, certain of the

1 Defendants transmit an attestation pursuant to 42 C.F.R. § 422.504. Defendant denies each and  
2 every other allegation in paragraph 89.

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

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

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

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

11 92. Answering paragraph 92, Defendant admits that the American Hospital Association  
12 (“AHA”) Coding Clinic website describes the AHA “Central Office” as the “clearinghouse” for  
13 issues related to the use of ICD-9-CM. Paragraph 92 contains reference to a document, which  
14 requires no response because the referenced document speaks for itself. To the extent any response  
15 to such allegations is necessary, Defendant admits that paragraph 92 references portions of Exhibit  
16 1 to the SAC. Defendant denies each and every other allegation in paragraph 92.

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

24 **2. Kaiser's scheme**

25 94. Paragraph 94 contains allegations that do not reference Defendant, which require no  
26 response. To the extent any response to such allegations is necessary, Defendant admits that, during  
27 at least some of the relevant period: TPMG’s employees performed activities to document the  
28 presence of the condition AA. Defendant denies each and every other allegation in paragraph 94.

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

8           96. Answering paragraph 96, Defendant admits that, during at least some of the relevant  
9 period: Relator Bryant was employed as Director National Revenue Cycle Coding & Education.  
10 Paragraph 96 contains reference to documents, which requires no response because the referenced  
11 documents speak for themselves. To the extent any response to such allegations is necessary,  
12 Defendant admits that Relator Bryant sent a written inquiry to AHA Coding Clinic to request  
13 clarification regarding whether it is appropriate to report AA as a chronic systemic condition and  
14 that AHA Coding Clinic provided a response. Defendant denies each and every other allegation in  
15 paragraph 96.

16           97. Paragraph 97 contains allegations that do not reference Defendant, which require no  
17 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, denies each and every such  
19 allegation. Defendant denies each and every other allegation in paragraph 97.

20           98. Answering paragraph 98, Defendant admits that Relator Bryant corresponded with  
21 the National Compliance Office to recommend inquiring with Coding Clinic about the proper way  
22 to code AA. Paragraph 98 contains reference to a document, which requires no response because  
23 the referenced document speaks for itself. To the extent any response to such allegations is  
24 necessary, Defendant admits that paragraph 98 references portions of a document. Defendant  
25 denies each and every other allegation in paragraph 98.

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

1                   **3. Chronology and evidence**

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

6           101. Paragraph 101 contains reference to a document, which requires no response  
7 because the referenced document speaks for itself. To the extent any response to such allegations  
8 is necessary, Defendant admits that paragraph 101 references portions of Exhibit 3 to the SAC.  
9 Defendant lacks sufficient knowledge to admit or deny every other allegation in paragraph 101 and,  
10 on that basis, denies each and every such allegation. Defendant denies each and every other  
11 allegation in paragraph 101.

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

16           103. Paragraph 103 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 103 references portions of Exhibit 5 to the SAC.  
19 Defendant lacks sufficient knowledge to admit or deny each and every other allegation in paragraph  
20 103 and, on that basis, denies each and every such allegation. Defendant denies each and every  
21 other allegation in paragraph 103.

22           104. Paragraph 104 contains allegations that do not reference Defendant, which require  
23 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient  
24 knowledge to admit or deny such allegations and, on that basis, denies each and every such  
25 allegation. Paragraph 104 contains reference to a document, which requires no response because  
26 the referenced document speaks for itself. To the extent any response to such allegations is  
27 necessary, Defendant admits that paragraph 104 references portions of Exhibit 6 to the SAC.  
28 Defendant denies each and every other allegation in paragraph 104.

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

5           106. Paragraph 106 contains reference to a document, which requires no response  
6 because the referenced document speaks for itself. To the extent any response to such allegations  
7 is necessary, Defendant admits that paragraph 106 references portions of Exhibits 8 and 9 to the  
8 SAC. Defendant denies each and every other allegation in paragraph 106.

9           Paragraph 106 footnote 4 contains reference to a document, which requires no response  
10 because the referenced document speaks for itself. To the extent any response to such allegations  
11 is necessary, Defendant admits that paragraph 106 footnote 4 references portions of Exhibits 8 and  
12 9 to the SAC. Defendant denies each and every other allegation in paragraph 106 footnote 4.

13           107. Answering paragraph 107, Defendant admits that presentations about AA were  
14 made in 2013, 2014 and 2015. Paragraph 107 contains reference to a document, which requires no  
15 response because the referenced document speaks for itself. To the extent any response to such  
16 allegations is necessary, Defendant admits that paragraph 107 references portions of Exhibits 10  
17 and 11 to the SAC. Paragraph 107 contains allegations that do not reference Defendant, which  
18 require no response. To the extent any response to such allegations is necessary, Defendant lacks  
19 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every  
20 such allegation. Defendant denies each and every other allegation in paragraph 107.

21           108. Paragraph 108 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 108 references portions of Exhibit 12 to the SAC.  
24 Defendant lacks sufficient knowledge to admit or deny allegations that “On behalf of NCAL HIM  
25 Regional Leadership, Ms. Bryant remained deeply concerned and continued to pursue direction and  
26 guidance from Janet Franklin of Kaiser’s National Compliance Office, but received none,” and  
27 “Due to her continued concern, Ms. Bryant went so far as to submit a question to AHA Coding  
28 Clinic, the recognized authority on ICD-9 and ICD-10 coding, on the issue in December 2012,”

1 and, on that basis, denies each and every such allegation. Defendant denies each and every other  
2 allegation in paragraph 108.

3 109. Paragraph 109 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 109 references portions of Exhibit 13 to the SAC.  
6 Defendant lacks sufficient knowledge to admit or deny the allegation that “Ms. Bryant was later  
7 told by Nancy Anderson of Kaiser’s NCO group that the question was never submitted to AHA  
8 Coding Clinic based upon a decision by Kaiser leadership, yet another Kaiser decision that caused  
9 Ms. Bryant and Ms. Hernandez significant concern,” and, on that basis, denies each and every such  
10 allegation. Defendant denies each and every other allegation in paragraph 109.

11 110. Paragraph 110 contains reference to a document, which requires no response  
12 because the referenced document speaks for itself. To the extent any response to such allegations  
13 is necessary, Defendant admits that paragraph 110 references portions of Exhibit 14 to the SAC.  
14 Defendant denies each and every other allegation in paragraph 110.

15 111. Paragraph 111 contains reference to a document, which requires no response  
16 because the referenced document speaks for itself. To the extent any response to such allegations  
17 is necessary, Defendant admits that paragraph 111 references portions of Exhibit 15 to the SAC.  
18 Paragraph 111 contains allegations that do not reference Defendant, which require no response. To  
19 the extent any response to such allegations is necessary, Defendant denies each and every such  
20 allegation. Defendant denies each and every other allegation in paragraph 111.

21 112. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph  
22 112 regarding the meeting between Relator Bryant and Dr. Cohn and, on that basis, denies each  
23 and every such allegation. Defendant denies each and every other allegation in paragraph 112.

24 113. Paragraph 113 contains reference to a document, which requires no response  
25 because the referenced document speaks for itself. To the extent any response to such allegations  
26 is necessary, Defendant admits that paragraph 113 references portions of Exhibit 16 to the SAC.  
27 Paragraph 113 contains allegations that do not reference Defendant, which require no response. To  
28 the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to

1 admit or deny such allegations and, on that basis, denies each and every such allegation. Defendant  
2 denies each and every other allegation in paragraph 113.

3 **4. Impact of Kaiser's HCC AA "missed opportunity" directive**

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

8 115. Answering paragraph 115, Defendant lacks sufficient knowledge to admit or deny  
9 the allegations that "In early 2016, Ms. Bryant discovered in the course of ICD-10-CM/PCS  
10 national coding quality monitoring and coding validation that Kaiser was still coding AA based  
11 upon it being a systemic condition, notwithstanding the August 2015 conclusion of Kaiser NCO  
12 rejecting AA as a 'chronic, systemic condition,'" and "Both Ms. Bryant and Ms. Hernandez were  
13 disturbed and troubled," and, on that basis, denies each and every such allegation. Defendant denies  
14 each and every other allegation in paragraph 115.

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

19 117. Answering paragraph 117, Defendant lacks sufficient knowledge to admit or deny  
20 the allegations that "Ms. Bryant's and Ms. Hernandez believe and therefore allege that Kaiser has  
21 never gone back to validate the accuracy of AA documentation and coding for years prior to 2016,  
22 and has never repaid, restated, or otherwise reimbursed amounts falsely obtained during this period  
23 from over-diagnosing and over-coding AA," and "Moreover, they believe and therefore allege that  
24 there was no specific AA validation of documentation and coding or discussion regarding rebilling  
25 or resubmission of corrected claims or data," and, on that basis, denies each and every such  
26 allegation. Defendant denies each and every other allegation in paragraph 117.

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

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

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

6 119. Paragraph 119 contains reference to a document, which requires no response  
7 because the referenced document speaks for itself. To the extent any response to such allegations  
8 is necessary, Defendant admits that paragraph 119 references portions of Exhibit 19 to the SAC.  
9 Defendant denies each and every other allegation in paragraph 119.

10 120. Defendant denies each and every allegation in paragraph 120.

11 **2. Kaiser's scheme originated with ACA newborns**

12 121. Paragraph 121 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. Defendant denies each and every other allegation in paragraph 121.

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

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

18 **3. Chronology and evidence**

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

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

1 allegation. Defendant denies each and every other allegation in paragraph 124.

2 125. Paragraph 125 contains reference to a document, which requires no response  
3 because the referenced document speaks for itself. To the extent any response to such allegations  
4 is necessary, Defendant admits that paragraph 125 references portions of Exhibit 20 to the SAC.  
5 Paragraph 125 contains allegations that do not reference Defendant, which require no response. To  
6 the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to  
7 admit or deny such allegations and, on that basis, denies each and every such allegation. Defendant  
8 denies each and every other allegation in paragraph 125.

9 126. Paragraph 126 contains reference to a document, which requires no response  
10 because the referenced document speaks for itself. To the extent any response to such allegations  
11 is necessary, Defendant admits that paragraph 126 references portions of Exhibit 20 to the SAC.  
12 Defendant denies each and every other allegation in paragraph 126.

13 127. Paragraph 127 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. Defendant denies each and every other allegation in paragraph 127.

17 **(b) December 2013**

18 128. Paragraph 128 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 such allegations and, on that basis, denies each and every such  
21 allegation. Defendant denies each and every other allegation in paragraph 128.

22 129. Paragraph 129 contains allegations that do not reference Defendant, which require  
23 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient  
24 knowledge to admit or deny such allegations and, on that basis, denies each and every such  
25 allegation. Paragraph 129 contains reference to a document, which requires no response because  
26 the referenced document speaks for itself. To the extent any response to such allegations is  
27 necessary, Defendant admits that paragraph 129 references portions of Exhibit 21 to the SAC.  
28 Defendant lacks sufficient knowledge to admit or deny the allegation, “Both Ms. Hernandez and

1 Ms. Bryant were in Dr. Bliss’ ‘line of fire,’ and were very distressed,” and, on that basis, denies  
2 each and every such allegation. Defendant denies each and every other allegation in paragraph 129.

3 130. Paragraph 130 contains allegations that do not reference Defendant, which require  
4 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient  
5 knowledge to admit or deny such allegations and, on that basis, denies each and every such  
6 allegation. Defendant denies each and every other allegation in paragraph 130.

7 131. Paragraph 131 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 131 references portions of Exhibit 22 to the SAC.  
10 Defendant lacks sufficient knowledge to admit or deny the allegation, “Ms. Bryant and Ms.  
11 Hernandez believed this instruction to be clear error and unethical, a sentiment echoed by their  
12 colleague in the Regional HIM group, Dawna Toews, who questioned how the company could  
13 proceed ‘when it is clearly out of compliance.... I am not inclined to continue working for a  
14 company that blatantly ignores guidelines I have promised to follow, and that put me in jeopardy  
15 of losing my professional licensing,’” and, on that basis, denies each and every such allegation.  
16 Defendant denies each and every other allegation in paragraph 131.

17 132. Answering paragraph 132, Defendant admits that for at least some of the relevant  
18 period: Anita Rapier’s title was Senior Coding Consultant, American Hospital Association.  
19 Paragraph 132 contains reference to a document, which requires no response because the referenced  
20 document speaks for itself. To the extent any response to such allegations is necessary, Defendant  
21 admits that paragraph 132 references portions of Exhibit 20 to the SAC. Defendant denies each  
22 and every other allegation in paragraph 132.

23 133. Paragraph 133 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. Paragraph 133 contains reference to documents, which require no response because the  
27 referenced documents speak for themselves. To the extent any response to such allegations is  
28 necessary, Defendant admits that paragraph 133 references portions of Exhibits 19 and 20 to the

1 SAC. Defendant denies each and every other allegation in paragraph 133.

2 134. Paragraph 134 contains allegations that do not reference Defendant, which require  
3 no response. To the extent any response to such allegations is necessary, Defendant denies each  
4 and every such allegation. Defendant lacks sufficient knowledge to admit or deny the allegation,  
5 “Contemporaneously, Ms. Bryant and Ms. Hernandez continued to have deep concern and  
6 investigated Kaiser’s coding practices for vent dependence status both inside and outside of the  
7 newborn care context, including for patients in the MA program and the ACA program,” and, on  
8 that basis, denies each and every such allegation. Due to the non-specific and vague nature of  
9 Relators’ allegations, Defendant lacks sufficient information to admit or deny the allegation, “They  
10 quickly confirmed that they were similar,” and, on that basis, denies each and every such allegation.  
11 Paragraph 134 contains reference to a document, which requires no response because the referenced  
12 document speaks for itself. To the extent any response to such allegations is necessary, Defendant  
13 admits that paragraph 134 references portions of Exhibit 23 to the SAC. Defendant denies each  
14 and every other allegation in paragraph 134.

15 135. Paragraph 135 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 135  
18 contains reference to a document, which requires no response because the referenced document  
19 speaks for itself. To the extent any response to such allegations is necessary, Defendant admits that  
20 paragraph 135 references portions of Exhibit 24 to the SAC. Defendant denies each and every  
21 other allegation in paragraph 135.

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

**4. Impact of Kaiser's vent dependence practices**

137. Paragraph 137 contains reference to dismissed allegations, for which Defendant cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No. 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 137 contains reference to documents, which require no response because the referenced documents speak for themselves. To the extent any response to such allegations is necessary, Defendant admits that paragraph 137 references portions of Exhibits 25 and 18 to the SAC. Due to the non-specific and vague nature of Relators' allegations, Defendant lacks sufficient information to admit or deny the allegations in paragraph 137, and, on that basis, denies each and every allegation. Paragraph 137 contains allegations that do not reference Defendant, which require no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every such allegation. Defendant denies each and every other allegation in paragraph 137.

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

139. Due to the non-specific and vague nature of Relators' allegations, Defendant lacks sufficient information to admit or deny the allegation that "Data from all Kaiser Regions confirms that the vent dependence coding volume skyrocketed across Kaiser," and, on that basis, denies each and every such allegation. Paragraph 139 contains reference to documents, which require no

1 response because the referenced documents speak for themselves. To the extent any response to  
2 such allegations is necessary, Defendant admits that paragraph 139 references portions of Exhibits  
3 28 and 18 to the SAC. Defendant denies each and every other allegation in paragraph 139.

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

7 141. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph  
8 141, and, on that basis, denies each and every allegation in paragraph 141.

9 **C. Malnutrition**

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

13 143. Paragraph 143 contains allegations that do not reference Defendant, which require  
14 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient  
15 knowledge to admit or deny such allegations and, on that basis, denies each and every such  
16 allegation. Defendant lacks sufficient knowledge to admit or deny the allegations that "Ms.  
17 Hernandez addressed the issue with TPMG CDI's Quality Assurance manager in the hope that it  
18 would be communicated to the CDI management team" and "Nevertheless, to Ms. Hernandez's  
19 knowledge, the leading queries were not discontinued nor were the documentation requirements  
20 changed," and, on that basis, denies each and every such allegation. Defendant denies each and  
21 every other allegation in paragraph 143.

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

26 145. Answering paragraph 145, Defendant admits that for at least some of the relevant  
27 period, Defendant employed Sherry Davis. Paragraph 145 contains reference to a document, which  
28 requires no response because the referenced document speaks for itself. To the extent any response

1 to such allegations is necessary, Defendant admits that paragraph 145 references portions of Exhibit  
2 34 to the SAC. Defendant denies each and every other allegation in paragraph 145.

3 146. Paragraph 146 contains allegations that do not reference Defendant, which require  
4 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient  
5 knowledge to admit or deny such allegations and, on that basis, denies each and every such  
6 allegation. Defendant lacks sufficient knowledge to admit or deny the allegation, “Ms. Bryant was  
7 gravely concerned with and deeply troubled by these warnings and with the barrier placed on her  
8 pursuing the issue further,” and, on that basis, denies each and every such allegation. Defendant  
9 denies each and every other allegation in paragraph 146.

10 147. Paragraph 147 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. Due to the non-specific and vague nature of Relators’ allegations, Defendant lacks  
14 sufficient information to admit or deny the allegation that “These issues continued at Kaiser long  
15 after these interactions,” and, on that basis, denies each and every such allegation. Paragraph 147  
16 contains reference to a document, which requires no response because the referenced document  
17 speaks for itself. To the extent any response to such allegations is necessary, Defendant admits that  
18 paragraph 147 references portions of Exhibit 35 to the SAC. Defendant denies each and every  
19 other allegation in paragraph 147.

20 148. Answering paragraph 148, Defendant admits that for at least some of the relevant  
21 period: Defendant employed Jan Villarante as Director, National Nutrition and Svitlana  
22 Ozhyndovskyy as Compliance Program Manager. Paragraph 148 contains allegations that do not  
23 reference Defendant, which require no response. To the extent any response to such allegations is  
24 necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that  
25 basis, denies each and every such allegation. Due to the non-specific and vague nature of Relators’  
26 allegations, Defendant lacks sufficient information to admit or deny the allegation that “Moderate  
27 and Severe PCM in hospital inpatient records at Kaiser Foundation Hospitals were a focus of  
28 Kaiser’s dietary staff once the patient met some specific clinical criteria,” and, on that basis, denies

1 each and every such allegation. Paragraph 148 contains reference to documents, which require no  
2 response because the referenced documents speak for themselves. To the extent any response to  
3 such allegations is necessary, Defendant admits that paragraph 148 references portions of  
4 documents. Defendant lacks sufficient knowledge to admit or deny the allegation, “Ms. Bryant  
5 believes and therefore alleges, however, that use of the leading query language had been ongoing  
6 for a year or more before it was identified and changed, and has no knowledge of corrective actions  
7 taken by the NCAL Region or any other Kaiser region on prior medical records for all risk-based  
8 payers, including both the MA program and the ACA program,” and, on that basis, denies each and  
9 every such allegation. Defendant denies each and every other allegation in paragraph 148.  
10 Defendant denies each and every other allegation in paragraph 148.

11 149. Due to the non-specific and vague nature of Relators’ allegations, Defendant lacks  
12 sufficient information to admit or deny the allegation that “Kaiser data compiled by Ms. Bryant  
13 through her national coding quality monitoring work establishes that malnutrition continued to have  
14 a high frequency of being coded in Kaiser’s MA and ACA populations,” and, on that basis, denies  
15 each and every such allegation. Defendant lacks sufficient knowledge to admit or deny every other  
16 allegation in paragraph 149, and, on that basis, denies each and every such allegation. Defendant  
17 denies each and every other allegation in paragraph 149.

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

19 150. Paragraph 150 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. Answering paragraph  
22 150, Defendant admits that management for certain types of arrhythmias may involve a pacemaker.  
23 Paragraph 150 contains allegations that do not reference Defendant, which require no response. To  
24 the extent any response to such allegations is necessary, Defendant denies each and every such  
25 allegation. Defendant lacks sufficient knowledge to admit or deny the allegation, “Near the end of  
26 her employment with Kaiser, Ms. Bryant was informed and believes, and therefore alleges, that at  
27 least Kaiser’s NCAL and Colorado regions (TPMG and CPMG), and perhaps other Kaiser regions,  
28 were instructing doctors to diagnose and document so that Kaiser’s coders would code heart

1 arrhythmia for members even after the members receive pacemakers to correct their arrhythmia for  
2 all risk-based payers, including both the MA program and the ACA program,” and, on that basis,  
3 denies each and every such allegation. Defendant denies each and every other allegation in  
4 paragraph 150.

5 151. Paragraph 151 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. Paragraph 151  
8 contains allegations that do not reference Defendant, which require no response. To the extent any  
9 response to such allegations is necessary, Defendant denies each and every such allegation.  
10 Defendant lacks sufficient knowledge to admit or deny the allegation, “Ms. Bryant was first made  
11 aware of the issue in 2014 with respect to Kaiser’s Colorado PMG, but later (in the fall of 2017)  
12 was informed by Ms. Andersen of Kaiser NCO that it was also evidence in Kaiser’s NCL region  
13 operated by TPMG,” and, on that basis, denies each and every such allegation. Defendant denies  
14 each and every other allegation in paragraph 151.

15 152. Paragraph 152 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 152  
18 contains allegations that do not reference Defendant, which require no response. To the extent any  
19 response to such allegations is necessary, Defendant denies each and every such allegation.  
20 Paragraph 152 contains reference to a document, which requires no response because the referenced  
21 document speaks for itself. To the extent any response to such allegations is necessary, Defendant  
22 admits that paragraph 152 references portions of Exhibit 10 to the SAC. Defendant lacks sufficient  
23 knowledge to admit or deny the allegation, “Ms. Hernandez believes that this practice also took  
24 place within TPMG,” and, on that basis, denies each and every such allegation. Defendant denies  
25 each and every other allegation in paragraph 152.

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

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

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

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

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

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

5 157. Defendant denies each and every allegation in paragraph 157.

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

7 **1. Query templates**

8 159. Paragraph 159 contains reference to a document, which requires no response  
9 because the referenced document speaks for itself. To the extent a response to such allegations is  
10 necessary, Defendant admits that paragraph 159 references portions of the American Health  
11 Information Management Association’s (“AHIMA”) Standards of Ethical Coding. Defendant  
12 denies each and every other allegation in paragraph 159.

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

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

23 162. Paragraph 162 contains reference to a document, which requires no response  
24 because the referenced document speaks for itself. To the extent a response to such allegations is  
25 necessary, Defendant admits that paragraph 162 references portions of *Health Information*  
26 *Management Compliance: A Model Program for Healthcare Organizations*. Defendant denies  
27 each and every other allegation in paragraph 162.

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

1 164. Answering paragraph 164, Defendant admits that some hospital coding staff utilized  
2 diagnosis-specific query templates; and that query templates were designed not to lead providers  
3 to a specific response. Defendant denies each and every other allegation in paragraph 164.

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

5 166. Defendant lacks sufficient information to admit or deny the allegation about Relator  
6 Bryant's recollection and, on that basis, denies the allegation. Defendant denies each and every  
7 other allegation in paragraph 166.

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

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

17 **2. Inquiries to AHA Coding Clinic**

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

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

23 171. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph  
24 171, and, on that basis, denies each and every allegation in paragraph 171.

25 172. Paragraph 172 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 172 references portions of Exhibit 22 to the SAC.  
28 Defendant lacks sufficient knowledge to admit or deny the other allegations in paragraph 172, and,

1 on that basis, denies each and every such allegation. Defendant denies each and every other  
2 allegation in paragraph 172.

3 173. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph  
4 173, and, on that basis, denies each and every allegation in paragraph 173.

5 174. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph  
6 174, and, on that basis, denies each and every allegation in paragraph 174.

7 175. Defendant denies each and every allegation in paragraph 175.

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

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

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

11 177. Paragraph 177 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  
14 177, Defendant admits that a Clinical Documentation Improvement (“CDI”) program was launched  
15 in Northern California in 2009; that a purpose of the program was to provide and sustain accurate  
16 clinical documentation in support of patient safety and quality of care; and CDI programs were  
17 adopted in hospital settings in Southern California and the Northwest. Defendant denies each and  
18 every other allegation in paragraph 177.

19 178. Defendant lacks sufficient knowledge to admit or deny the allegations about  
20 “AHIMA’s guidance on CDI programs,” and, on that basis, Defendant denies each and every such  
21 allegation. Defendant denies each and every other allegation in paragraph 178.

22 179. Answering paragraph 179, Defendant admits that the Northern California CDI  
23 program was under the executive sponsorship of David Nyburg by the beginning of 2011.  
24 Defendant lacks sufficient knowledge to admit or deny the other allegations in paragraph 179, and,  
25 on that basis, denies each and every such allegation.

26 180. Paragraph 180 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 180 references portions of Exhibit 29 to the SAC.

1 Defendant denies each and every other allegation in paragraph 180.

2 181. Answering paragraph 181, Defendant admits that, during at least some of the  
3 relevant period: Relator Hernandez received inquiries from members of the CDI team about  
4 whether they could query healthcare providers based on information from previous encounters; and  
5 that Relator Hernandez responded to at least one inquiry noting that querying based on information  
6 from previous encounters was not appropriate. Defendant lacks sufficient knowledge to admit or  
7 deny the allegation that “But the repeated nature of the inquiries gave rise to Ms. Hernandez’s belief  
8 that the CDI program was routinely looking backwards,” and, on that basis, denies such allegation.  
9 Defendant denies each and every other allegation in paragraph 181.

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

11 183. Paragraph 183 contains reference to a document, which requires no response  
12 because the referenced document speaks for itself. To the extent any response to such allegations  
13 is necessary, Defendant admits that paragraph 183 references portions of Exhibit 33 to the SAC.  
14 Defendant denies each and every other allegation in paragraph 183.

15 184. Paragraph 184 contains reference to a document, which requires no response  
16 because the referenced document speaks for itself. To the extent any response to such allegations  
17 is necessary, Defendant admits that paragraph 184 references portions of Exhibit 11 to the SAC.  
18 Defendant denies each and every other allegation in paragraph 184.

19 **2. Kaiser’s RRG meetings and Regional Competitions for Revenue/HCC**  
20 **Capture.**

21 185. Answering paragraph 185, Defendant admits that, during at least some of the  
22 relevant period: the RRG included personnel from Defendant, the Permanente Medical Groups,  
23 and Revenue Cycle; that the RRG discussed MA risk adjustment and the ACA program; that Dr.  
24 Simon Cohn, who retired in 2015, led certain parts of some RRG meetings; that Defendant  
25 employed Hovannes Daniels as Vice President of Defendant’s National Medicare Finance  
26 department; and that Dr. Annette Guido of Northwest Permanente and Hovannes Daniels led certain  
27 parts of some RRG meetings during at least some of the relevant period. Defendant denies each  
28 and every other allegation in paragraph 185.

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

5           187. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph  
6 187 about Relator Bryant's interactions with Janet Franklin, and, on that basis, denies each and  
7 every such allegation. Defendant denies each and every other allegation in paragraph 187.

8           188. Paragraph 188 contains reference to dismissed allegations, for which Defendant  
9 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.  
10 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Defendant denies  
11 each and every allegation in paragraph 188.

12                           **3. Employee and management bonuses.**

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

14                           **4. Kaiser's regional medical groups dominate over Kaiser's compliance**  
15 **function.**

16           190. Answering paragraph 190, Defendant admits that, for at least some of the relevant  
17 period, Defendant employed Nancy Andersen as Compliance Manager. Defendant lacks sufficient  
18 knowledge to admit or deny the other allegations in paragraph 190 and, on that basis, denies each  
19 and every other allegation in paragraph 190. Defendant denies each and every other allegation in  
20 paragraph 190.

21                           **C. Kaiser improperly employs technology to further its HCC and revenue**  
22 **capture.**

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

24           191. Defendant denies each and every allegation in paragraph 191.

25           192. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph  
26 192 about what Relator Hernandez witnessed and, on that basis, denies each and every such  
27 allegation. Defendant denies each and every other allegation in paragraph 192.

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

1 193 about Relator Hernandez’s interactions with Anne Cadwell, and, on that basis, denies each and  
2 every such allegation. Defendant denies each and every other allegation in paragraph 193.

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

8 195. Answering paragraph 195, Defendant admits that, for at least some of the relevant  
9 period, Defendant employed Rod Madamba as Managing Director. Defendant lacks sufficient  
10 knowledge to admit or deny each and every other allegation in paragraph 195 and, on that basis,  
11 denies each and every such allegation.

## 12 **2. Improper Carry-Over From Prior Years.**

13 196. Answering paragraph 196, Defendant lacks sufficient knowledge to admit or deny  
14 the allegation that “In 2014-2015, Ms. Hernandez discovered that in Kaiser’s NCAL TPMG region,  
15 Kaiser’s ‘Business Intelligence Team’ (‘BIT’) generated questionable ‘block’ files and ‘add’ files  
16 for resubmission to CMS based on algorithms,” and, on that basis, denies each and every such  
17 allegation. Defendant denies each and every other allegation in paragraph 196.

18 197. Answering paragraph 197, Defendant admits that, during at least some of the  
19 relevant period: Relator Hernandez was a member of the TPMG EIO Director email distribution  
20 list; that the distribution list would receive emails requesting approvals for “add” or “block” files;  
21 and that Relator Hernandez did not approve such files. Defendant denies each and every other  
22 allegation in paragraph 197.

## 23 **3. Computer Assisted Coding**

24 198. Answering paragraph 198, Defendant admits that Computer Assisted Coding  
25 (“CAC”) is a software tool that generates a set of medical codes for review based on clinical  
26 documentation provided by healthcare practitioners; that CAC reviews the electronic medical  
27 record including signs, symptoms, diagnoses, and CPT procedure codes; and that CAC was used  
28

1 to increase coding accuracy. Defendant denies each and every other allegation in paragraph 198.

2 199. Answering paragraph 199, Defendant admits that, for at least some of the relevant  
3 period, Defendant employed Ms. Sheryl Roy. Defendant denies each and every other allegation in  
4 paragraph 199.

5 200. Answering paragraph 200, Defendant admits that, for at least some of the relevant  
6 period, Defendant employed Gina Sandler as Revenue Cycle Director. Defendant lacks sufficient  
7 knowledge to admit or deny every other allegation in paragraph 200 and, on that basis, denies each  
8 and every other allegation in paragraph 200.

9 201. Answering paragraph 201, Defendant admits that in 2014, CAC was used on  
10 hospital outpatient and inpatient encounters. Defendant denies each and every other allegation in  
11 paragraph 201.

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

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

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

15 **E. Kaiser Submitted or Caused to be Submitted False Claims to the ACA  
16 Program**

17 204. Paragraph 204 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 204.

20 **1. Risk Adjustment Payments**

21 205. Due to the non-specific and vague nature of Relators' allegations, Defendant lacks  
22 sufficient information to admit or deny the allegations in paragraph 205, and, on that basis, denies  
23 each and every allegation in paragraph 205. Defendant denies each and every other allegation in  
24 paragraph 205.

25 206. Paragraph 206 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 206.

28 207. Paragraph 207 contains legal conclusions and/or argument, which require no  
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 207.

2 208. Paragraph 208 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 208.

5 209. Paragraph 209 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 209.

8 210. Paragraph 210 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 210.

11 **2. Tax Credits**

12 211. Paragraph 211 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 211.

15 212. Paragraph 212 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 212.

18 213. Paragraph 213 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 213.

21 214. Paragraph 214 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 214.

24 215. Paragraph 215 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 215.

27 216. Paragraph 216 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. Paragraph 216 contains legal conclusions and/or argument,  
2 which require no response. To the extent any response to such allegations is necessary, Defendant  
3 denies each and every such allegation. Defendant denies each and every other allegation in  
4 paragraph 216.

5 217. Paragraph 217 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 217.

8 218. Paragraph 218 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 218.

11 219. Paragraph 219 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 219.

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

15 220. Paragraph 220 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 220.

18 221. Paragraph 221 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 221.

21 222. Paragraph 222 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 222.

24 223. Paragraph 223 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 223.

27 224. Paragraph 224 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 224.

2 225. Paragraph 225 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 225.

5 226. Paragraph 226 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 226.

8 227. Paragraph 227 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 227.

11 228. Paragraph 228 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 228.

14 229. Paragraph 229 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 229.

17 230. Paragraph 230 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 230.

20 231. Paragraph 231 contains allegations that do not reference Defendant, which require  
21 no response. To the extent a response to such allegations is necessary, Defendant lacks sufficient  
22 knowledge to admit or deny such allegations and, on that basis, denies each and every such  
23 allegation. Defendant denies each and every other allegation in paragraph 231.

24 232. Paragraph 232 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 232.

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28

**FIRST CLAIM FOR RELIEF**

**False Claims Act: Presentation of False or Fraudulent Claims**

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

233. Answering paragraph 233, Defendant reasserts its answers to the above paragraphs as if fully set forth herein.

234. Paragraph 234 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 234.

235. Paragraph 235 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 235.

236. Paragraph 236 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 236.

237. Paragraph 237 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 237.

**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.



1 as if fully set forth herein.

2 249. Paragraph 249 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 249.

5 250. Paragraph 250 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 250.

8 251. Paragraph 251 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 251.

11 252. Paragraph 252 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 252.

14 253. Paragraph 253 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 253.

17 **FIFTH CLAIM FOR RELIEF**

18 **False Claims Act: Relief From Retaliatory Actions Against Defendant TPMG**

19 **U.S.C. § 3730(h)**

20 254. Answering paragraph 254, Defendant reasserts its answers to the above paragraphs  
21 as if fully set forth herein.

22 255. Paragraph 255 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 255.

25 256. Paragraph 256 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 256.  
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1 as if fully set forth herein.

2 266. Paragraph 266 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 266.

5 267. Paragraph 267 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 267.

8 268. Paragraph 268 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 268.

11 269. Paragraph 269 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 269.

14 **SEVENTH CLAIM FOR RELIEF**

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

16 270. Answering paragraph 270, Defendant reasserts its answers to the above paragraphs  
17 as if fully set forth herein.

18 271. Paragraph 271 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 271.

21 272. Paragraph 272 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 272.

24 273. Paragraph 273 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 273.

27 274. Paragraph 274 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 denies each and  
2 every such allegation. Defendant denies each and every other allegation in paragraph 274.

3 **PRAYER**

4 Answering the Prayer, Defendant denies that Relators are entitled to the relief they seek in  
5 this paragraph.

6 **DEMAND FOR JURY TRIAL**

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

11 **AFFIRMATIVE DEFENSES**

12 275. A person liable under the False Claims Act “is liable to the United States  
13 Government for civil penalties of not less than \$5,000 and not more than \$10,000 [as adjusted for  
14 inflation], plus 3 times the amount of damages which the Government sustains because of the act  
15 of that person.” 31 U.S.C. § 3729(a)(1). Relators seek hundreds of millions of dollars in damages,  
16 which are subject to trebling if awarded. *See* SAC ¶ 11 (alleging “Kaiser Defendants have  
17 defrauded the United States of hundreds of millions—and likely billions—of dollars for more than  
18 nine years”). In addition, Relators contend that each diagnosis code at issue is a claim for payment,  
19 such that each allegedly false diagnosis code could result in mandatory civil penalties ranging from  
20 \$5,000 to \$10,000.<sup>1</sup> While Relators have not yet disclosed in discovery all of the diagnosis codes  
21 that they may allege are false, Defendant alleges that many thousands of diagnosis codes may be at  
22 issue. Accordingly, upon information and belief, Defendant alleges that the civil penalties and  
23 damages that Relators seek would result in an unconstitutionally excessive fine under the Eighth  
24 Amendment to the United States Constitution because any award would be grossly disproportional  
25 to the gravity of Defendant’s offense, if any.

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

1           276. During the period at issue in the SAC, the American Health Information  
2 Management Association (“AHIMA”) was a private professional organization that, among other  
3 things, issued guidance on diagnosis coding practices, including about physician query practices.  
4 This guidance was updated from time to time. Defendant never agreed to comply with AHIMA  
5 guidance in any binding contract with the United States, nor did any statutes or regulations require  
6 Defendant to comply with AHIMA guidance. Relators nonetheless allege Defendant’s diagnostic  
7 practices violated AHIMA guidance.” *See, e.g.*, SAC ¶ 136 (alleging that Defendant reported vent  
8 dependence diagnosis codes “notwithstanding the coding guidance from [the American Hospital  
9 Association’s] Coding Clinic and AHIMA”). The American Hospital Association (“AHA”) is a  
10 private professional organization that represents hospitals, healthcare systems, and other healthcare  
11 organizations. Defendant never agreed to comply with AHA guidance in any binding contract with  
12 the United States, nor did any statutes or regulations require Defendant to comply with AHA  
13 guidance. Relators nonetheless argue that Defendant’s diagnostic practices violated AHA  
14 guidance. *See, e.g., id.* (alleging that Defendant reported vent dependence diagnosis codes  
15 “notwithstanding the coding guidance from [AHA’s] Coding Clinic and AHIMA”). To the extent  
16 that Relators premise their claims for relief on allegations that Defendant violated guidance or an  
17 interpretation of guidance issued by a private, non-governmental entity, such as AHIMA or AHA,  
18 Relators’ claims for relief are barred by the nondelegation doctrine.

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20 Dated: September 14, 2023

Respectfully submitted,

21  
22 By: /s/ K. Lee Blalack, II  
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