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 11 *Hospitals*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 14. Paragraph 14 contains legal conclusions and/or argument, which require no  
5 response. To the extent any response to such allegations is necessary, Defendant admits that  
6 paragraph 14 references portions of 31 U.S.C. § 3729(b)(1). Defendant denies each and every other  
7 allegation in paragraph 14.

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

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

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

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

22 **JURISDICTION**

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

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

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

4 **VENUE AND INTRADISTRICT ASSIGNMENT**

5 21. Paragraph 21 contains legal conclusions and/or argument, which require no  
6 response. To the extent any response to such allegations is necessary, Defendant denies each and  
7 every allegation in paragraph 21. Defendant denies each and every other allegation in paragraph  
8 21.

9 **PARTIES**

10 **I. PLAINTIFFS**

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

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

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

19 **II. THE DEFENDANTS**

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

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

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

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

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

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

16 30. Answering paragraph 30, Defendant admits that Defendant is a California  
17 corporation with its principal place of business in Oakland, California within this judicial district.

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

24 32. Paragraph 32 contains reference to dismissed allegations, for which Defendant  
25 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.  
26 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 32  
27 contains allegations that do not reference Defendant, which require no response. To the extent any  
28 response to such allegations is necessary, Defendant admits that Southern California Permanente

1 Medical Group (“SCPMG”) is a California partnership with its principal place of business in  
2 Pasadena, California and that SCPMG provides health care services to members who enroll in  
3 health plans in Southern California. Defendant denies each and every other allegation in paragraph  
4 32.

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

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

21 35. Paragraph 35 contains reference to dismissed allegations, for which Defendant  
22 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.  
23 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 35  
24 contains allegations that do not reference Defendant, which require no response. To the extent any  
25 response to such allegations is necessary, Defendant admits that the Hawaii Permanente Medical  
26 Group, Inc. (“Hawaii PMG”) is a Hawaii corporation with its principal place of business in  
27 Honolulu, Hawaii and that Hawaii PMG provides health care services to members who enroll in  
28 health plans in Hawaii. Defendant denies each and every other allegation in paragraph 35.

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

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

16           38. Paragraph 38 contains reference to dismissed allegations, for which Defendant  
17 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.  
18 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 38  
19 contains allegations that do not reference Defendant, which require no response. To the extent any  
20 response to such allegations is necessary, Defendant admits that the Washington Permanente  
21 Medical Group, P.C. (“Washington PMG”) is a Washington professional corporation with its  
22 principal place of business in Washington, and that Washington PMG provides health care services  
23 to members who enroll in health plans in covered parts of Washington. Defendant denies each and  
24 every other allegation in paragraph 38.

25           39. Paragraph 39 contains reference to dismissed allegations, for which Defendant  
26 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.  
27 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 39  
28 contains allegations that do not reference Defendant, which require no response. To the extent any

1 response to such allegations is necessary, Defendant admits that during at least some of the relevant  
2 period: the Permanente Medical Groups had a national leadership and consulting organization, The  
3 Permanente Federation LLC; and that the leadership of the Permanente Federation included  
4 employees of some Permanente Medical Groups. Paragraph 39 contains Relators' characterization  
5 of the SAC, which requires no response. To the extent any response to such allegations is  
6 necessary, Defendant denies each and every such allegation. Defendant denies each and every  
7 other allegation in paragraph 39.

8 40. Paragraph 40 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. Paragraph 40  
11 contains allegations that do not reference Defendant, which require no response. To the extent any  
12 response to such allegations is necessary, Defendant admits that Kaiser Foundation Health Plan of  
13 Colorado is a Colorado corporation with its principal place of business in Colorado; that Kaiser  
14 Foundation Health Plan of Georgia, Inc. is a Georgia corporation with its principal place of business  
15 in Georgia; that Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. is a Maryland  
16 corporation with its principal place of business in Maryland; that Kaiser Foundation Health Plan of  
17 the Northwest ("KFHP-NW") is an Oregon corporation with its principal place of business in  
18 Oregon; that Kaiser Foundation Health Plan of Washington is a Washington corporation with its  
19 principal place of business in Washington; and that KFHP wholly owns each of these subsidiary  
20 Health Plans. Paragraph 40 contains Relators' characterization of the SAC, which requires no  
21 response. To the extent any response to such allegations is necessary, Defendant denies each and  
22 every such allegation. Defendant denies each and every other allegation in paragraph 40.

### 23 THE LAW

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

25 41. Paragraph 41 contains legal conclusions and/or argument, which require no  
26 response. To the extent any response to such allegations is necessary, Defendant admits that, upon  
27 information and belief, under Medicare Part C, CMS pays each MAO a predetermined base  
28 monthly amount for each enrollee in their MA plans; that this monthly payment varies for each MA

1 plan depending on various factors, including the plan's bid submitted to CMS; that CMS adjusts  
2 the monthly payment amount for each MA beneficiary based on various factors such as age, gender,  
3 and health status; and that CMS uses a risk adjustment model known as the CMS Hierarchical  
4 Condition Category ("HCC") risk adjustment model that takes into account various factors,  
5 including diagnoses. Defendant denies each and every other allegation in paragraph 41.

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

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

27 44. Paragraph 44 contains legal conclusions and/or argument, which require no  
28 response. To the extent any response to such allegations is necessary, Defendant admits that the

1 CMS-HCC model is prospective in the sense that it uses diagnosis codes from a given year, along  
2 with demographic information, to estimate predicted medical costs to the MAO to provide  
3 Medicare benefits to beneficiaries in the following year. Defendant denies each and every other  
4 allegation in paragraph 44.

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

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

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

24 48. Paragraph 48 contains legal conclusions and/or argument, which require no  
25 response. To the extent any response to such allegations is necessary, Defendant denies each and  
26 every such allegation. Paragraph 48 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 48 references portions of CMS's 2008 Risk

1 Adjustment Data Technical Assistance for Medicare Advantage Organizations Participant Guide  
2 (“2008 RA Participation Guide”) § 6.4.1. Defendant denies each and every other allegation in  
3 paragraph 48.

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

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

## 17 **II. AFFORDABLE CARE ACT**

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

26 52. Paragraph 52 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 52.

2 53. Answering paragraph 53, Defendant admits that the ACA defines four levels of  
3 health insurance coverage: bronze, silver, gold, and platinum; and that the ACA created refundable  
4 tax credits for certain individuals. Defendant denies each and every other allegation in paragraph  
5 53.

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

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

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

19 57. Paragraph 57 contains legal conclusions and/or argument, which require no  
20 response. To the extent any response to such allegations is necessary, Defendant denies each and  
21 every allegation in paragraph 57.

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

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

1 allegation in paragraph 59.

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

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

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

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

15 63. Paragraph 63 contains allegations that do not reference Defendant, which require no  
16 response. To the extent any response to such allegations is necessary, Defendant admits that  
17 Congress has directed HHS to operate ACA risk-adjustment programs where states do not do so.  
18 Defendant denies each and every other allegation in paragraph 63.

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

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

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

27 66. Paragraph 66 contains legal conclusions and/or argument, which require no  
28 response. To the extent any response to such allegations is necessary, Defendant admits that

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

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

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

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

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

19 71. Paragraph 71 contains legal conclusions and/or argument, which require no  
20 response. To the extent any response to such allegations is necessary, Defendant denies each and  
21 every such allegation. Defendant denies each and every other allegation in paragraph 71.

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

26 Paragraph 72 footnote 2 contains legal conclusions and/or argument, which require no  
27 response. To the extent any response to such allegations is necessary, Defendant admits that  
28 paragraph 72 footnote 2 references portions of 86 Fed. Reg. 24140, 24195-95. Defendant denies

1 each and every other allegation in paragraph 72 footnote 2.

2 73. Paragraph 73 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 73 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 73 references portions of a document. Defendant  
7 denies each and every other allegation in paragraph 73.

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

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

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

17 76. Paragraph 76 contains legal conclusions and/or argument, which require no  
18 response. To the extent any response to such allegations is necessary, Defendant denies each and  
19 every such allegation. Paragraph 76 contains reference to a document, which requires no response  
20 because the referenced document speaks for itself. To the extent that response is necessary,  
21 Defendant admits that paragraph 76 references portions of a document. Defendant denies each and  
22 every other allegation in paragraph 76.

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

28 78. Paragraph 78 contains legal conclusions and/or argument, which require no

1 response. To the extent any response to such allegations is necessary, Defendant admits that  
2 paragraph 78 references portions of 45 C.F.R. § 154.21I), (e) and (f). Defendant denies each and  
3 every other allegation in paragraph 78.

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

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

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

12 81. Paragraph 81 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 81 references portions of 26 C.F.R. § 1.36B-3(f). Defendant denies each and every other  
15 allegation in paragraph 81.

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

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

22 Answering paragraph 83 footnote 3, Defendant admits that the Inflation Reduction Act caps  
23 the expected contribution that individuals must apply to health insurance premiums under the ACA  
24 to 8.5% from 2021 through 2025. Defendant denies each and every other allegation in paragraph  
25 83 footnote 3.

26 84. Answering paragraph 84, Defendant admits that the ACA created refundable tax  
27 credits for certain individuals; that the ACA defines four levels of health insurance coverage:  
28 bronze, silver, gold, and platinum; and that the tax credit cannot be more than the premium for the

1 plan in which the individual enrolls. Defendant denies each and every other allegation in paragraph  
2 84.

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

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

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

12 87. Paragraph 87 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 87 references portions of 45 C.F.R. part 153. Defendant denies each and every other  
15 allegation in paragraph 87.

16 **THE FACTS**

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

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

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

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

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

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

91. Answering paragraph 91, Defendant admits that atherosclerosis is sometimes

1 referred to as “hardening of the arteries” and that atherosclerosis can describe a thickening and loss  
2 of elasticity in the arterial wall. Defendant denies each and every other allegation in paragraph 91.

3 92. Answering paragraph 92, Defendant admits that the American Hospital Association  
4 (“AHA”) Coding Clinic website describes the AHA “Central Office” as the “clearinghouse” for  
5 issues related to the use of ICD-9-CM. Paragraph 92 contains reference to a document, which  
6 requires no response because the referenced document speaks for itself. To the extent any response  
7 to such allegations is necessary, Defendant admits that paragraph 92 references portions of Exhibit  
8 1 to the SAC. Defendant denies each and every other allegation in paragraph 92.

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

## 16 2. Kaiser’s scheme

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

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

28 96. Paragraph 96 contains allegations that do not reference Defendant, which require no

1 response. To the extent any response to such allegations is necessary, Defendant lacks sufficient  
2 knowledge to admit or deny such allegations and, on that basis, denies each and every such  
3 allegation. Defendant denies each and every other allegation in paragraph 96.

4 97. Paragraph 97 contains allegations that do not reference Defendant, which require no  
5 response. To the extent any response to such allegations is necessary, Defendant lacks sufficient  
6 knowledge to admit or deny such allegations and, on that basis, denies each and every such  
7 allegation. Defendant denies each and every other allegation in paragraph 97.

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

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

15 **3. Chronology and evidence**

16 100. Paragraph 100 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 100 references portions of Exhibit 2 to the SAC.  
19 Defendant denies each and every other allegation in paragraph 100.

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

26 102. Paragraph 102 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 102 references portions of Exhibit 4 to the SAC.

1 Defendant denies each and every other allegation in paragraph 102.

2 103. Paragraph 103 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 103 references portions of Exhibit 5 to the SAC.  
5 Defendant lacks sufficient knowledge to admit or deny each and every other allegation in paragraph  
6 103 and, on that basis, denies each and every such allegation. Defendant denies each and every  
7 other allegation in paragraph 103.

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

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

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

23 Paragraph 106 footnote 4 contains reference to a document, which requires no response  
24 because the referenced document speaks for itself. To the extent any response to such allegations  
25 is necessary, Defendant admits that paragraph 106 footnote 4 references portions of Exhibits 8 and  
26 9 to the SAC. Defendant denies each and every other allegation in paragraph 106 footnote 4.

27 107. Answering paragraph 107, Defendant admits that presentations about AA were  
28 made in 2013, 2014 and 2015. Paragraph 107 contains reference to a document, which requires no

1 response because the referenced document speaks for itself. To the extent any response to such  
2 allegations is necessary, Defendant admits that paragraph 107 references portions of Exhibits 10  
3 and 11 to the SAC. Paragraph 107 contains allegations that do not reference Defendant, which  
4 require no response. To the extent any response to such allegations is necessary, Defendant lacks  
5 sufficient knowledge to admit or deny such allegations and, on that basis, denies each and every  
6 such allegation. Defendant denies each and every other allegation in paragraph 107.

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

17 109. Paragraph 109 contains reference to a document, which requires no response  
18 because the referenced document speaks for itself. To the extent any response to such allegations  
19 is necessary, Defendant admits that paragraph 109 references portions of Exhibit 13 to the SAC.  
20 Defendant lacks sufficient knowledge to admit or deny the allegation that “Ms. Bryant was later  
21 told by Nancy Anderson of Kaiser’s NCO group that the question was never submitted to AHA  
22 Coding Clinic based upon a decision by Kaiser leadership, yet another Kaiser decision that caused  
23 Ms. Bryant and Ms. Hernandez significant concern,” and, on that basis, denies each and every such  
24 allegation. Defendant denies each and every other allegation in paragraph 109.

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

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

7           112. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph  
8 112 regarding the meeting between Relator Bryant and Dr. Cohn and, on that basis, denies each  
9 and every such allegation. Defendant denies each and every other allegation in paragraph 112.

10           113. Paragraph 113 contains reference to a document, which requires no response  
11 because the referenced document speaks for itself. To the extent any response to such allegations  
12 is necessary, Defendant admits that paragraph 113 references portions of Exhibit 16 to the SAC.  
13 Paragraph 113 contains allegations that do not reference Defendant, which require no response. To  
14 the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to  
15 admit or deny such allegations and, on that basis, denies each and every such allegation. Defendant  
16 denies each and every other allegation in paragraph 113.

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

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

22           115. Answering paragraph 115, Defendant lacks sufficient knowledge to admit or deny  
23 the allegations that “In early 2016, Ms. Bryant discovered in the course of ICD-10-CM/PCS  
24 national coding quality monitoring and coding validation that Kaiser was still coding AA based  
25 upon it being a systemic condition, notwithstanding the August 2015 conclusion of Kaiser NCO  
26 rejecting AA as a ‘chronic, systemic condition,’” and “Both Ms. Bryant and Ms. Hernandez were  
27 disturbed and troubled,” and, on that basis, denies each and every such allegation. Defendant denies  
28 each and every other allegation in paragraph 115.

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

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

13           **B. Mechanical Ventilation Dependence Status (“Vent Dependence”)**

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

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

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

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

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

26           121. Paragraph 121 contains allegations that do not reference Defendant, which require  
27 no 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 121.

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

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

4 **3. Chronology and evidence**

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

6 124. Answering paragraph 124, Defendant lacks sufficient knowledge to admit or deny  
7 the allegations that “Ms. Hernandez and Ms. Bryant were first made aware of Kaiser’s vent  
8 dependence status documentation and coding practices in the context of newborns that are placed  
9 on ventilators temporarily in Kaiser Foundation Hospitals before being discharged home,” and “Ms.  
10 Bryant, Ms. Hernandez and Ms. Toews were extremely concerned with the direction that TPMG  
11 wanted to take with the V46.11 status code,” and, on that basis, denies each and every such  
12 allegation. Paragraph 124 contains allegations that do not reference Defendant, which require no  
13 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 124.

16 125. Paragraph 125 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 125 references portions of Exhibit 20 to the SAC.  
19 Paragraph 125 contains allegations that do not reference Defendant, which require no response. To  
20 the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to  
21 admit or deny such allegations and, on that basis, denies each and every such allegation. Defendant  
22 denies each and every other allegation in paragraph 125.

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

27 127. Paragraph 127 contains allegations that do not reference Defendant, which require  
28 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient

1 knowledge to admit or deny such allegations and, on that basis, denies each and every such  
2 allegation. Defendant denies each and every other allegation in paragraph 127.

3 **(b) December 2013**

4 128. Paragraph 128 contains allegations that do not reference Defendant, which require  
5 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient  
6 knowledge to admit or deny such allegations and, on that basis, denies each and every such  
7 allegation. Defendant denies each and every other allegation in paragraph 128.

8 129. Paragraph 129 contains allegations that do not reference Defendant, which require  
9 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient  
10 knowledge to admit or deny such allegations and, on that basis, denies each and every such  
11 allegation. Paragraph 129 contains reference to a document, which requires no response because  
12 the referenced document speaks for itself. To the extent any response to such allegations is  
13 necessary, Defendant admits that paragraph 129 references portions of Exhibit 21 to the SAC.  
14 Defendant lacks sufficient knowledge to admit or deny the allegation, “Both Ms. Hernandez and  
15 Ms. Bryant were in Dr. Bliss’ ‘line of fire,’ and were very distressed,” and, on that basis, denies  
16 each and every such allegation. Defendant denies each and every other allegation in paragraph 129.

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

21 131. Paragraph 131 contains allegations that do not reference Defendant, which require  
22 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient  
23 knowledge to admit or deny such allegations and, on that basis, denies each and every such  
24 allegation. Paragraph 131 contains reference to a document, which requires no response because  
25 the referenced document speaks for itself. To the extent any response to such allegations is  
26 necessary, Defendant admits that paragraph 131 references portions of Exhibit 22 to the SAC.  
27 Defendant denies each and every other allegation in paragraph 131.

28 132. Paragraph 132 contains allegations that do not reference Defendant, which require

1 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient  
2 knowledge to admit or deny such allegations and, on that basis, denies each and every such  
3 allegation. Paragraph 132 contains reference to a document, which requires no response because  
4 the referenced document speaks for itself. To the extent any response to such allegations is  
5 necessary, Defendant admits that paragraph 132 references portions of Exhibit 20 to the SAC.  
6 Defendant denies each and every other allegation in paragraph 132.

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

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

27 135. Paragraph 135 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 135  
2 contains allegations that do not reference Defendant, which require no response. To the extent any  
3 response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny  
4 such allegations and, on that basis, denies each and every such allegation. Paragraph 135 contains  
5 reference to a document, which requires no response because the referenced document speaks for  
6 itself. To the extent any response to such allegations is necessary, Defendant admits that paragraph  
7 135 references portions of Exhibit 24 to the SAC. Defendant denies each and every other allegation  
8 in paragraph 135.

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

#### 16 **4. Impact of Kaiser’s vent dependence practices**

17 137. Paragraph 137 contains reference to dismissed allegations, for which Defendant  
18 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.  
19 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 137  
20 contains reference to documents, which require no response because the referenced documents  
21 speak for themselves. To the extent any response to such allegations is necessary, Defendant admits  
22 that paragraph 137 references portions of Exhibits 25 and 18 to the SAC. Due to the non-specific  
23 and vague nature of Relators’ allegations, Defendant lacks sufficient information to admit or deny  
24 the allegations in paragraph 137, and, on that basis, denies each and every allegation. Paragraph  
25 137 contains allegations that do not reference Defendant, which require no response. To the extent  
26 any response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or  
27 deny such allegations and, on that basis, denies each and every such allegation. Defendant denies  
28 each and every other allegation in paragraph 137.

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

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

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

22           141. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph  
23 141, and, on that basis, denies each and every allegation in paragraph 141.

24           **C. Malnutrition**

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

28           143. Paragraph 143 contains allegations that do not reference Defendant, which require

1 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient  
2 knowledge to admit or deny such allegations and, on that basis, denies each and every such  
3 allegation. Defendant lacks sufficient knowledge to admit or deny the allegations that “Ms.  
4 Hernandez addressed the issue with TPMG CDI’s Quality Assurance manager in the hope that it  
5 would be communicated to the CDI management team” and “Nevertheless, to Ms. Hernandez’s  
6 knowledge, the leading queries were not discontinued nor were the documentation requirements  
7 changed,” and, on that basis, denies each and every such allegation. Defendant denies each and  
8 every other allegation in paragraph 143.

9 144. Defendant lacks sufficient knowledge to admit or deny the allegation, “Ms. Bryant  
10 is aware of another concern regarding protein-calorie malnutrition documentation and coding in  
11 Kaiser’s Northwest Region relating specifically to the Kaiser’s ACA program in that region” and,  
12 on that basis, denies each and every such allegation. Paragraph 144 contains reference to a  
13 document, which requires no response because the referenced document speaks for itself. To the  
14 extent any response to such allegations is necessary, Defendant admits that paragraph 144  
15 references portions of a document. Defendant denies each and every other allegation in paragraph  
16 144.

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

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

28 147. Paragraph 147 contains allegations that do not reference Defendant, which require

1 no response. To the extent any response to such allegations is necessary, Defendant lacks sufficient  
2 knowledge to admit or deny such allegations and, on that basis, denies each and every such  
3 allegation. Due to the non-specific and vague nature of Relators' allegations, Defendant lacks  
4 sufficient information to admit or deny the allegation that "These issues continued at Kaiser long  
5 after these interactions," and, on that basis, denies each and every such allegation. Paragraph 147  
6 contains reference to a document, which requires no response because the referenced document  
7 speaks for itself. To the extent any response to such allegations is necessary, Defendant admits that  
8 paragraph 147 references portions of Exhibit 35 to the SAC. Defendant denies each and every  
9 other allegation in paragraph 147.

10 148. Paragraph 148 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 "Moderate and Severe PCM in hospital  
15 inpatient records at Kaiser Foundation Hospitals were a focus of Kaiser's dietary staff once the  
16 patient met some specific clinical criteria," and, on that basis, denies each and every such allegation.  
17 Defendant lacks sufficient knowledge to admit or deny the allegation, "Ms. Bryant believes and  
18 therefore alleges, however, that use of the leading query language had been ongoing for a year or  
19 more before it was identified and changed, and has no knowledge of corrective actions taken by the  
20 NCAL Region or any other Kaiser region on prior medical records for all risk-based payers,  
21 including both the MA program and the ACA program," and, on that basis, denies each and every  
22 such allegation. Defendant denies each and every other allegation in paragraph 148.

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

1 denies each and every other allegation in paragraph 149.

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

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

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

27 152. Paragraph 152 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 152  
2 contains allegations that do not reference Defendant, which require no response. To the extent any  
3 response to such allegations is necessary, Defendant denies each and every such allegation.  
4 Paragraph 152 contains reference to a document, which requires no response because the referenced  
5 document speaks for itself. To the extent any response to such allegations is necessary, Defendant  
6 admits that paragraph 152 references portions of Exhibit 10 to the SAC. Defendant lacks sufficient  
7 knowledge to admit or deny the allegation, “Ms. Hernandez believes that this practice also took  
8 place within TPMG,” and, on that basis, denies each and every such allegation. Defendant denies  
9 each and every other allegation in paragraph 152.

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

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

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

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

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

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

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

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

22 **1. Query templates**

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

28 160. Paragraph 160 contains reference to documents, which requires no response because

1 the referenced documents speak for themselves. To the extent any response to such allegations is  
2 necessary, Defendant admits that paragraph 160 references portions of Exhibit 29 to the SAC,  
3 AHIMA's practice briefs, "Guidelines for Achieving a Compliant Query Practice" and "Managing  
4 an Effective Query Process." Defendant denies each and every other allegation in paragraph 160.

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

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

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

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

22 165. Paragraph 165 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 165.

26 166. Defendant lacks sufficient information to admit or deny the allegation about Relator  
27 Bryant's recollection and, on that basis, denies the allegation. Paragraph 166 contains allegations  
28 that do not reference Defendant, which require no response. To the extent any response to such

1 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations  
2 and, on that basis, denies each and every such allegation. Defendant denies each and every other  
3 allegation in paragraph 166.

4 167. Paragraph 167 contains reference to documents, which requires 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 167 references portions of Exhibits 31 and 32 to the  
7 SAC. Defendant denies each and every other allegation in paragraph 167.

8 168. Paragraph 168 contains reference to documents, which requires no response because  
9 the referenced documents speak for themselves. To the extent any response to such allegations is  
10 necessary, Defendant admits that paragraph 168 references portions of AHIMA's practice brief,  
11 "Guidelines for Achieving a Compliant Query Practice." Paragraph 168 contains allegations that  
12 do not reference Defendant, which require no response. To the extent any response to such  
13 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations  
14 and, on that basis, denies each and every such allegation. Defendant denies each and every other  
15 allegation in paragraph 168.

## 16 2. Inquiries to AHA Coding Clinic

17 169. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph  
18 169, and, on that basis, 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 lacks sufficient knowledge to admit or deny the allegations in paragraph  
8 175, and, on that basis, denies each and every allegation in paragraph 175.

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

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

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

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

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

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

27 180. Paragraph 180 contains reference to a document, which requires no response  
28 because the referenced document speaks for itself. To the extent any response to such allegations

1 is necessary, Defendant admits that paragraph 180 references portions of Exhibit 29 to the SAC.  
2 Defendant denies each and every other allegation in paragraph 180.

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

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

6 183. Paragraph 183 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 183 references portions of Exhibit 33 to the SAC.  
9 Defendant denies each and every other allegation in paragraph 183.

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

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

16 185. Answering paragraph 185, Defendant admits that, during at least some of the  
17 relevant period: the RRG included personnel from KFHP, the Permanente Medical Groups, and  
18 Revenue Cycle; that the RRG discussed MA risk adjustment and the ACA program; that Dr. Simon  
19 Cohn, who retired in 2015, led certain parts of some RRG meetings; and that Dr. Annette Guido of  
20 Northwest Permanente and Hovannes Daniels led certain parts of some RRG meetings during at  
21 least some of the relevant period. Defendant denies each and every other allegation in paragraph  
22 185.

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

27 187. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph  
28 187 about Relator Bryant's interactions with Janet Franklin, and, on that basis, denies each and

1 every such allegation. Defendant denies each and every other allegation in paragraph 187.

2 188. Paragraph 188 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. Defendant denies  
5 each and every allegation in paragraph 188.

6 **3. Employee and management bonuses.**

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

8 **4. Kaiser's regional medical groups dominate over Kaiser's compliance**  
9 **function.**

10 190. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph  
11 190 and, on that basis, denies each and every allegation in paragraph 190.

12 **C. Kaiser improperly employs technology to further its HCC and revenue**  
13 **capture.**

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

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

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

23 193. Paragraph 193 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 the allegations and, on that basis, denies each and every such allegation.  
26 Defendant denies each and every other allegation in paragraph 193.

27 194. Answering paragraph 194, Defendant admits that, during at least some of the  
28 relevant period: TPMG and Northwest PMG employees developed tracking mechanisms to

1 monitor data mining activities; and that some tracking mechanisms tracked data mining data for  
2 the MA program and ACA program, including for various medical conditions. Defendant denies  
3 each and every other allegation in paragraph 194.

4 195. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph  
5 195 and, on that basis, denies each and every such allegation. Defendant denies each and every  
6 other allegation in paragraph 195.

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

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

12 197. Paragraph 197 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 allegation in  
15 paragraph 197. Defendant denies each and every other allegation in paragraph 197.

## 16 **3. Computer Assisted Coding**

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

22 199. Paragraph 199 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 allegation in  
25 paragraph 199. Defendant denies each and every other allegation in paragraph 199.

26 200. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph  
27 200 and, on that basis, denies each and every allegation in paragraph 200.  
28

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

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

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

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

7           **E. Kaiser Submitted or Caused to be Submitted False Claims to the ACA  
8 Program**

9           204. Paragraph 204 contains legal conclusions and/or argument, which require no  
10 response. To the extent any response to such allegations is necessary, Defendant denies each and  
11 every such allegation. Defendant denies each and every other allegation in paragraph 204.

12                   **1. Risk Adjustment Payments**

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

17           206. Paragraph 206 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 206.

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

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

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

          210. Paragraph 210 contains legal conclusions and/or argument, which require no

1 response. To the extent any response to such allegations is necessary, Defendant denies each and  
2 every such allegation. Defendant denies each and every other allegation in paragraph 210.

3 **2. Tax Credits**

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

7 212. Paragraph 212 contains legal conclusions and/or argument, which require no  
8 response. To the extent any response to such allegations is necessary, Defendant denies each and  
9 every such allegation. Defendant denies each and every other allegation in paragraph 212.

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

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

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

19 216. Paragraph 216 contains a hypothetical example containing no factual assertions,  
20 which requires no response. To the extent any response to such allegations is necessary, Defendant  
21 denies each and every such allegation. Paragraph 216 contains legal conclusions and/or argument,  
22 which require no response. To the extent any response to such allegations is necessary, Defendant  
23 denies each and every such allegation. Defendant denies each and every other allegation in  
24 paragraph 216.

25 217. Paragraph 217 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 217.

28 218. Paragraph 218 contains legal conclusions and/or argument, which require no

1 response. To the extent any response to such allegations is necessary, Defendant denies each and  
2 every such allegation. Defendant denies each and every other allegation in paragraph 218.

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

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

7 220. Paragraph 220 contains legal conclusions and/or argument, which require no  
8 response. To the extent any response to such allegations is necessary, Defendant denies each and  
9 every such allegation. Defendant denies each and every other allegation in paragraph 220.

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

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

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

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

22 225. Paragraph 225 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 225.

25 226. Paragraph 226 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 226.

28 227. Paragraph 227 contains legal conclusions and/or argument, which require no

1 response. To the extent any response to such allegations is necessary, Defendant denies each and  
2 every such allegation. Defendant denies each and every other allegation in paragraph 227.

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

6 229. Paragraph 229 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 229.

9 230. Paragraph 230 contains legal conclusions and/or argument, which require no  
10 response. To the extent any response to such allegations is necessary, Defendant denies each and  
11 every such allegation. Defendant denies each and every other allegation in paragraph 230.

12 231. Paragraph 231 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 231.

16 232. Paragraph 232 contains legal conclusions and/or argument, which require no  
17 response. To the extent any response to such allegations is necessary, Defendant denies each and  
18 every such allegation. Defendant denies each and every other allegation in paragraph 232.

19 **FIRST CLAIM FOR RELIEF**

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

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

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

24 234. Paragraph 234 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 234.

27 235. Paragraph 235 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 235.

2 236. Paragraph 236 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 236.

5 237. Paragraph 237 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 237.

8 **SECOND CLAIM FOR RELIEF**

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

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

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

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

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

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

22 242. Paragraph 242 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 242.

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**THIRD CLAIM FOR RELIEF**

**False Claims Act: Conspiracy**

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

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

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

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

246. Paragraph 246 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 246.

247. Paragraph 247 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 247.

**FOURTH CLAIM FOR RELIEF**

**False Claims Act: Reverse False Claims**

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

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

249. Paragraph 249 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 249.

250. Paragraph 250 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 250.

1 every such allegation. Defendant denies each and every other allegation in paragraph 250.

2 251. Paragraph 251 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 251.

5 252. Paragraph 252 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 252.

8 253. Paragraph 253 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 253.

11 **FIFTH CLAIM FOR RELIEF**

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

13 **U.S.C. § 3730(h)**

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

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

19 256. Paragraph 256 contains legal conclusions and/or argument, which require no  
20 response. To the extent any response to such allegations is necessary, Defendant denies each and  
21 every such allegation. Defendant denies each and every other allegation in paragraph 256.

22 257. Paragraph 257 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 257.

25 258. Paragraph 258 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 258.  
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1 every such allegation. Defendant denies each and every other allegation in paragraph 267.

2 268. Paragraph 268 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 268.

5 269. Paragraph 269 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 269.

8 **SEVENTH CLAIM FOR RELIEF**

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

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

12 271. Paragraph 271 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 271.

15 272. Paragraph 272 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 272.

18 273. Paragraph 273 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 273.

21 274. Paragraph 274 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 274.

24 **PRAYER**

25 Answering the Prayer, Defendant denies that Relators are entitled to the relief they seek in  
26 this paragraph.  
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**DEMAND FOR JURY TRIAL**

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

**AFFIRMATIVE DEFENSES**

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

276. During the period at issue in the SAC, the American Health Information Management Association (“AHIMA”) was a private professional organization that, among other things, issued guidance on diagnosis coding practices, including about physician query practices. This guidance was updated from time to time. Defendant never agreed to comply with AHIMA guidance in any binding contract with the United States, nor did any statutes or regulations require Defendant to comply with AHIMA guidance. Relators nonetheless allege Defendant’s diagnostic

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

13  
14 Dated: September 14, 2023

Respectfully submitted,

15  
16 By: /s/ K. Lee Blalack, II  
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20  
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