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 11 *Inc.*

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 13
 14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

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

19 Plaintiff,

20 v.

21 KAISER PERMANENTE, et al.,

22 Defendants.

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

**DEFENDANT THE PERMANENTE
 MEDICAL GROUP, INC.'S ANSWER
 AND AFFIRMATIVE DEFENSES TO
 RELATORS BRYANT AND
 HERNANDEZ'S SECOND AMENDED
 COMPLAINT**

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

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

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

16 INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

17 10. Answering paragraph 10, Defendant admits that, from 1995 to 2015, Defendant
18 employed Relator Victoria Hernandez in various positions, including Director Documentation
19 Quality & Training, Director Health Information Management Coding Services, Regional Coding
20 Review Manager, and Health Information Coder II. Paragraph 10 contains allegations that do not
21 reference Defendant, which require no response. To the extent any response to such allegations is
22 necessary, Defendant lacks sufficient knowledge to admit or deny such allegations and, on that
23 basis, denies each and every such allegation. Defendant denies each and every other allegation in
24 paragraph 10.

25 11. Paragraph 11 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 allegation in paragraph 11.

28 12. Paragraph 12 contains legal conclusions and/or argument, which require no

1 response. To the extent any response to such allegations is necessary, Defendant admits that the
2 FCA was passed by Congress during the Civil War and subsequently amended. Defendant denies
3 each and every other allegation in paragraph 12.

4 13. Paragraph 13 contains legal conclusions and/or argument, which require no
5 response. To the extent any response to such allegations is necessary, Defendant admits that
6 paragraph 13 references portions of 31 U.S.C. §§ 3729(a)(1)(A)-(C), and (G) and 31 U.S.C. §
7 3729(a)(1). Defendant denies each and every other allegation in paragraph 13.

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

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

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

20 17. Paragraph 17 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 allegation in paragraph 17. Defendant denies each and every other allegation in paragraph
23 17.

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

26 **JURISDICTION**

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

3 20. Paragraph 20 contains legal conclusions and/or argument, which require no
4 response. To the extent any response to such allegations is necessary, Defendant admits that, for
5 purposes of personal jurisdiction, at least one of the Defendants named in the SAC can be found in,
6 resides in or transacts business in the Northern District of California. Defendant denies each and
7 every other allegation in paragraph 20.

8 VENUE AND INTRADISTRICT ASSIGNMENT

9 21. Paragraph 21 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 allegation in paragraph 21. Defendant denies each and every other allegation in paragraph
12 21.

13 PARTIES

14 **I. PLAINTIFFS**

15 22. Defendant lacks sufficient information to admit or deny each and every allegation
16 in paragraph 22, and, on that basis, denies each and every such allegation. Defendant denies each
17 and every other allegation in paragraph 22.

18 23. Answering paragraph 23, Defendant admits that Defendant employed Relator
19 Victoria Hernandez during the period from January 2000 through October 2015 in various
20 positions, including Director Documentation Quality & Training, Director Health Information
21 Management Coding Services, Regional Coding Review Manager, and Health Information Coder
22 II. Defendant lacks sufficient information to admit or deny the other allegations, and, on that basis,
23 denies each and every such allegation. Defendant denies each and every other allegation in
24 paragraph 23.

25 24. Paragraph 24 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 24.

28 **II. THE DEFENDANTS**

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

5 26. Answering paragraph 26, Defendant admits that KFHP and certain other health
6 plans operate MA plans, including Medicare Advantage health maintenance organization (“HMO”)
7 plans called “Senior Advantage.” Defendant denies each and every other allegation in paragraph
8 26.

9 27. Answering paragraph 27, Defendant admits that Defendant and certain other health
10 plans, physician medical groups, and hospitals maintain a business relationship with one another
11 under the trade name “Kaiser Permanente.” Paragraph 27 contains reference to documents, which
12 require no response because the referenced documents speak for themselves. To the extent any
13 response to such allegations is necessary, Defendant admits that paragraph 27 references portions
14 of documents. Paragraph 27 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 allegation in paragraph 27. Defendant denies each and every other allegation in
17 paragraph 27.

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

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

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

1 31. Answering paragraph 31, Defendant admits that Defendant is a California
2 corporation with its principal place of business in Oakland, California within this judicial district
3 and that Defendant provides health care services to members who enroll in health plans in Northern
4 California. Defendant denies each and every other allegation in paragraph 31.

5 32. Paragraph 32 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 32
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 Southern California Permanente
10 Medical Group (“SCPMG”) is a California partnership with its principal place of business in
11 Pasadena, California and that SCPMG provides health care services to members who enroll in
12 health plans in Southern California. Defendant denies each and every other allegation in paragraph
13 32.

14 33. Paragraph 33 contains reference to dismissed allegations, for which Defendant
15 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
16 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 33
17 contains allegations that do not reference Defendant, which require no response. To the extent any
18 response to such allegations is necessary, Defendant admits that Colorado Permanente Medical
19 Group (“CPMG”) is a Colorado professional corporation with its principal place of business in
20 Denver, Colorado and that CPMG provides health care services to members who enroll in health
21 plans in Colorado. Defendant denies each and every other allegation in paragraph 33.

22 34. Paragraph 34 contains reference to dismissed allegations, for which Defendant
23 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
24 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 34
25 contains allegations that do not reference Defendant, which require no response. To the extent any
26 response to such allegations is necessary, Defendant admits that the Southeast Permanente Medical
27 Group, Inc. (“Southeast PMG”) is a Georgia corporation with its principal place of business in
28 Atlanta, Georgia and that Southeast PMG provides health care services to members who enroll in

1 health plans in Georgia. Defendant denies each and every other allegation in paragraph 34.

2 35. Paragraph 35 contains reference to dismissed allegations, for which Defendant
3 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
4 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 35
5 contains allegations that do not reference Defendant, which require no response. To the extent any
6 response to such allegations is necessary, Defendant admits that the Hawaii Permanente Medical
7 Group, Inc. (“Hawaii PMG”) is a Hawaii corporation with its principal place of business in
8 Honolulu, Hawaii and that Hawaii PMG provides health care services to members who enroll in
9 health plans in Hawaii. Defendant denies each and every other allegation in paragraph 35.

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

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

25 38. Paragraph 38 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 38
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 the Washington Permanente
2 Medical Group, P.C. (“Washington PMG”) is a Washington professional corporation with its
3 principal place of business in Washington, and that Washington PMG provides health care services
4 to members who enroll in health plans in covered parts of Washington. Defendant denies each and
5 every other allegation in paragraph 38.

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

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

1 principal place of business in Washington; and that KFHP wholly owns each of these subsidiary
2 Health Plans. Paragraph 40 contains Relators' characterization of the SAC, which requires 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 40.

5 THE LAW

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

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

16 42. Paragraph 42 contains legal conclusions and/or argument, which require no
17 response. To the extent any response to such allegations is necessary, Defendant admits that the
18 CMS-HCC model is prospective in the sense that it uses diagnosis codes from a given year, along
19 with demographic information, to estimate predicted medical costs to the MAO to provide
20 Medicare benefits to beneficiaries in the following year; that HCCs are disease groupings consisting
21 of diagnosis codes currently from the International Classification of Diseases, Tenth Revision,
22 Clinical Modification ("ICD-10-CM") and previously from the International Classification of
23 Diseases, Ninth Revision, Clinical Modification ("ICD-9-CM"); that HCCs include groupings for
24 major, severe/acute, and chronic illnesses; that paragraph 42 references portions of 42 C.F.R. §
25 422.2; that, between 2004 and 2013, the CMS-HCC model included 70 HCCs; and that in 2014,
26 the CMS-HCC model included 79 HCCs. Defendant denies each and every other allegation in
27 paragraph 42.

28 43. Paragraph 43 contains legal conclusions and/or argument, which require no

1 response. To the extent any response to such allegations is necessary, Defendant admits that each
2 HCC has an associated coefficient within the CMS-HCC risk adjustment model that aims to
3 correlate with the marginal predicted cost of medical expenditures for that set of medical disease
4 groupings based on CMS's data from administering the traditional Medicare fee-for-service
5 program; and that, upon information and belief, CMS assigns higher coefficients to HCCs that
6 include disease groupings with greater predicted costs associated with treatment based on CMS's
7 data from administering the traditional Medicare fee-for-service program. Defendant denies each
8 and every other allegation in paragraph 43.

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

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

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

26 47. Paragraph 47 contains legal conclusions and/or argument, which require no
27 response. To the extent any response to such allegations is necessary, Defendant admits that, during
28 at least some of the relevant period: MAOs transmitted risk adjustment data to CMS through

1 CMS's Risk Adjustment Processing System ("RAPS"); and that a RAPS submission includes,
2 among other things, the Medicare enrollee's identification number, the date of medical service, the
3 provider type, and the diagnosis code; medical encounters can include physician office visits,
4 hospital outpatient visits, and hospital inpatient visits. Defendant denies each and every other
5 allegation in paragraph 47.

6 48. Paragraph 48 contains legal conclusions and/or argument, which require no
7 response. To the extent any response to such allegations is necessary, Defendant denies each and
8 every such allegation. Paragraph 48 contains reference to a document, which requires no response
9 because the referenced document speaks for itself. To the extent any response to such allegations
10 is necessary, Defendant admits that paragraph 48 references portions of CMS's 2008 Risk
11 Adjustment Data Technical Assistance for Medicare Advantage Organizations Participant Guide
12 ("2008 RA Participation Guide") § 6.4.1. Defendant denies each and every other allegation in
13 paragraph 48.

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

22 50. Paragraph 50 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 50 references portions of 42 U.S.C. § 1320a-7k(d), 31 U.S.C. § 3729, 42 U.S.C. 1320a-
25 7k(d)(4)(B), and 42 C.F.R. § 422.326(c). Defendant denies each and every other allegation in
26 paragraph 50.

27 **II. AFFORDABLE CARE ACT**

28 51. Paragraph 51 contains legal conclusions and/or argument, which require no

1 response. To the extent any response to such allegations is necessary, Defendant admits that under
2 the Affordable Care Act (“ACA”), health plans can no longer set premium rates for health insurance
3 coverage offered in the individual or small group market based on preexisting medical conditions;
4 and that the ACA created refundable tax credits for certain individuals. Due to the non-specific
5 and vague nature of Relators’ allegations, Defendant lacks sufficient information to admit or deny
6 each and every other allegation in paragraph 51, and, on that basis, denies each and every such
7 allegation. Defendant denies each and every other allegation in paragraph 51.

8 52. Paragraph 52 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 52.

12 53. Answering paragraph 53, Defendant admits that the ACA defines four levels of
13 health insurance coverage: bronze, silver, gold, and platinum; and that the ACA created refundable
14 tax credits for certain individuals. Defendant denies each and every other allegation in paragraph
15 53.

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

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

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

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

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

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

12 60. Paragraph 60 contains legal conclusions and/or argument, which require no
13 response. To the extent any response to such allegations is necessary, Defendant admits that
14 paragraph 60 references portions of 42 U.S.C. § 18063(a). Defendant denies each and every other
15 allegation in paragraph 60.

16 61. Paragraph 61 contains legal conclusions and/or argument, which require no
17 response. To the extent any response to such allegations is necessary, Defendant admits that
18 paragraph 61 references portions of 77 Fed. Reg. 17220 and 78 Fed. Reg. 15410. Defendant denies
19 each and every other allegation in paragraph 61.

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

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

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

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

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

5 65. Paragraph 65 contains legal conclusions and/or argument, which require no
6 response. To the extent any response to such allegations is necessary, Defendant admits that
7 paragraph 65 references portions of 78 Fed. Reg. 15410, 15420. Defendant denies each and every
8 other allegation in paragraph 65.

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

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

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

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

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

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

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

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

12 73. Paragraph 73 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. Paragraph 73 contains reference to a document, which requires no response
15 because the referenced document speaks for itself. To the extent that any response to such
16 allegations is necessary, Defendant admits that paragraph 73 references portions of a document.
17 Defendant denies each and every other allegation in paragraph 73.

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

19 74. Paragraph 74 contains legal conclusions and/or argument, which require no
20 response. To the extent any response to such allegations is necessary, Defendant admits that
21 paragraph 74 references portions of 45 C.F.R. § 154.103 and 45 C.F.R. § 154.215. Defendant
22 denies each and every other allegation in paragraph 74.

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

27 76. Paragraph 76 contains legal conclusions and/or argument, which require no
28 response. To the extent any response to such allegations is necessary, Defendant denies each and

1 every such allegation. Paragraph 76 contains reference to a document, which requires no response
2 because the referenced document speaks for itself. To the extent that response is necessary,
3 Defendant admits that paragraph 76 references portions of a document. Defendant denies each and
4 every other allegation in paragraph 76.

5 77. Paragraph 77 contains legal conclusions and/or argument, which require no
6 response. To the extent any response to such allegations is necessary, Defendant admits that
7 paragraph 77 references portions of 45 C.F.R. § 156.80(d)(1)(ii) and 42023 Unified Rate Review
8 Instructions, OMB Control No. 0938-1141, at 18. Defendant denies each and every other allegation
9 in paragraph 77.

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

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

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

19 80. Answering paragraph 80, 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 80.

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

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

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

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

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

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

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

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

13 92. Answering paragraph 92, Defendant admits that the American Hospital Association
14 (“AHA”) Coding Clinic website describes the AHA “Central Office” as the “clearinghouse” for
15 issues related to the use of ICD-9-CM. Paragraph 92 contains reference to a document, which
16 requires no response because the referenced document speaks for itself. To the extent any response
17 to such allegations is necessary, Defendant admits that paragraph 92 references portions of Exhibit
18 1 to the SAC. Defendant denies each and every other allegation in paragraph 92.

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

26 **2. Kaiser’s scheme**

27 94. Answering paragraph 94, Defendant admits that, during at least some of the relevant
28 period: Defendant’s employees performed activities to document the presence of the condition

1 AA. Defendant denies each and every other allegation in paragraph 94.

2 95. Paragraph 95 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 95 references portions of the ICD Guidelines. Defendant denies each and every
5 allegation in paragraph 95.

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

13 97. Defendant denies each and every allegation in paragraph 97.

14 98. Answering paragraph 98, Defendant admits that Relator Bryant corresponded with
15 the National Compliance Office to recommend inquiring with Coding Clinic about the proper way
16 to code AA. Paragraph 98 contains reference to a document, which speaks for itself. To the extent
17 any response to such allegations is necessary, Defendant admits that paragraph 98 references
18 portions of a document. Defendant denies each and every other allegation in paragraph 98.

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

22 **3. Chronology and evidence**

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

27 101. Paragraph 101 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 101 references portions of Exhibit 3 to the SAC.
2 Defendant lacks sufficient knowledge to admit or deny every other allegation in paragraph 101 and,
3 on that basis, denies each and every such allegation. Defendant denies each and every other
4 allegation in paragraph 101.

5 102. Paragraph 102 contains reference to a document, which requires no response
6 because the referenced document speaks for itself. To the extent any response to such allegations
7 is necessary, Defendant admits that paragraph 102 references portions of Exhibit 4 to the SAC.
8 Defendant denies each and every other allegation in paragraph 102.

9 103. Paragraph 103 contains reference to a document, which requires no response
10 because the referenced document speaks for itself. To the extent any response to such allegations
11 is necessary, Defendant admits that paragraph 103 references portions of Exhibit 5 to the SAC.
12 Defendant lacks sufficient knowledge to admit or deny each and every other allegation in paragraph
13 103 and, on that basis, denies each and every such allegation. Defendant denies each and every
14 other allegation in paragraph 103.

15 104. Answering paragraph 104, Defendant admits that, for at least some of the relevant
16 period, a SmartPhrase was available to clinicians in Northern California that read: “Aortic
17 Atherosclerosis noted on review of the radiology exam associated with chart review and this visit.
18 Will follow longitudinally as an independent risk factor for CVD and CVA, with management per
19 standard risk factor controls over time by PCP or appropriate specialist.” Due to the non-specific
20 and vague nature of Relators’ allegations, Defendant lacks sufficient information to admit or deny
21 the allegation that “In the meantime, Ms. Bryant and Ms. Hernandez made repeated but futile
22 attempts to help TPMG’s leadership understand the compliant and appropriate documentation for
23 the coding of AA,” and, on that basis, denies each and every such allegation. Paragraph 104
24 contains reference to a document, which requires no response because the referenced document
25 speaks for itself. To the extent any response to such allegations is necessary, Defendant admits that
26 paragraph 104 references portions of Exhibit 6 to the SAC. Defendant denies each and every other
27 allegation in paragraph 104.

28 105. Paragraph 105 contains reference to a document, which requires no response

1 because the referenced document speaks for itself. To the extent any response to such allegations
2 is necessary, Defendant admits that paragraph 105 references portions of Exhibit 7 to the SAC.
3 Defendant denies each and every other allegation in paragraph 105.

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

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

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

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

1 allegation in paragraph 108.

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

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

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

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

23 113. Paragraph 113 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 113 references portions of Exhibit 16 to the SAC.
26 Paragraph 113 contains allegations that do not reference Defendant, which require no response. To
27 the extent any response to such allegations is necessary, Defendant lacks sufficient knowledge to
28 admit or deny such allegations and, on that basis, denies each and every such allegation. Defendant

1 denies each and every other allegation in paragraph 113.

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

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

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

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

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

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

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

28 118. Answering paragraph 118, Defendant admits that, during at least some of the

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

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

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

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

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

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

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

17 **3. Chronology and evidence**

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

19 124. Answering paragraph 124, Defendant lacks sufficient knowledge to admit or deny
20 the allegations that “Ms. Hernandez and Ms. Bryant were first made aware of Kaiser’s vent
21 dependence status documentation and coding practices in the context of newborns that are placed
22 on ventilators temporarily in Kaiser Foundation Hospitals before being discharged home,” and “Ms.
23 Bryant, Ms. Hernandez and Ms. Toews were extremely concerned with the direction that TPMG
24 wanted to take with the V46.11 status code,” and, on that basis, denies each and every such
25 allegation. Defendant denies each and every other allegation in paragraph 124.

26 125. Answering paragraph 125, Defendant admits that Relator Bryant and Relator
27 Hernandez emailed Nelly Leon-Chisen and Sue Bowman. Paragraph 125 contains reference to a
28 document, which requires no response because the referenced document speaks for itself. To the

1 extent any response to such allegations is necessary, Defendant admits that paragraph 125
2 references portions of Exhibit 20 to the SAC. Defendant denies each and every other allegation in
3 paragraph 125.

4 126. Paragraph 126 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 126 references portions of Exhibit 20 to the SAC.
7 Defendant denies each and every other allegation in paragraph 126.

8 127. Answering Paragraph 127, Defendant admits that the HIM's Regional Coding
9 Review Managers met onsite on November 25, 2013 and agreed that V46.11 would not be
10 appropriate to report at an initial newborn visit. Defendant denies each and every other allegation
11 in paragraph 127.

12 **(b) December 2013**

13 128. Answering paragraph 128, Defendant admits that, during at least some of the
14 relevant period: Defendant employed Anne Cadwell as Managing Director; that Ms. Cadwell led
15 Defendant's Encounter Information Operations Group ("EIO"); and that Relator submitted an
16 inquiry to AHA Coding Clinic. Defendant denies each and every other allegation in paragraph 128.

17 129. Paragraph 129 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 129 references portions of Exhibit 21 to the SAC.
20 Defendant lacks sufficient knowledge to admit or deny the allegation, "Both Ms. Hernandez and
21 Ms. Bryant were in Dr. Bliss' 'line of fire,' and were very distressed," and, on that basis, denies
22 each and every such allegation. Defendant denies each and every other allegation in paragraph
23 129.

24 130. Defendant denies each and every allegation in paragraph 130.

25 131. Paragraph 131 contains reference to a document, which requires no response
26 because the referenced document speaks for itself. To the extent a response is required, Defendant
27 admits that paragraph 131 references portions of Exhibit 22 to the SAC. Defendant lacks sufficient
28 knowledge to admit or deny the allegation, "Ms. Bryant and Ms. Hernandez believed this

1 instruction to be clear error and unethical, a sentiment echoed by their colleague in the Regional
2 HIM group, Dawna Toews, who questioned how the company could proceed ‘when it is clearly out
3 of compliance.... I am not inclined to continue working for a company that blatantly ignores
4 guidelines I have promised to follow, and that put me in jeopardy of losing my professional
5 licensing,’” and, on that basis, denies each and every such allegation. Defendant denies each and
6 every other allegation in paragraph 131.

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

13 133. Paragraph 133 contains reference to documents, which require no response because
14 the referenced documents speak for themselves. To the extent any response to such allegations is
15 necessary, Defendant admits that paragraph 133 references portions of Exhibits 19 and 20 to the
16 SAC. Defendant denies each and every other allegation in paragraph 133.

17 134. Defendant lacks sufficient knowledge to admit or deny the allegation,
18 “Contemporaneously, Ms. Bryant and Ms. Hernandez continued to have deep concern and
19 investigated Kaiser’s coding practices for vent dependence status both inside and outside of the
20 newborn care context, including for patients in the Medicare Advantage program and the ACA
21 program,” and, on that basis, denies each and every such allegation. Due to the non-specific and
22 vague nature of Relators’ allegations, Defendant lacks sufficient information to admit or deny the
23 allegation, “They quickly confirmed that they were similar,” and, on that basis, denies each and
24 every such allegation. Paragraph 134 contains reference to a document, which requires no response
25 because the referenced document speaks for itself. To the extent any response to such allegations
26 is necessary, Defendant admits that paragraph 134 references portions of Exhibit 23 to the SAC.
27 Defendant denies each and every other allegation in paragraph 134.

28 135. Paragraph 135 contains reference to dismissed allegations, for which Defendant

1 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
2 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 135
3 contains allegations that do not reference Defendant, which require no response. To the extent any
4 response to such allegations is necessary, Defendant lacks sufficient knowledge to admit or deny
5 such allegations and, on that basis, denies each and every such allegation. Paragraph 135 contains
6 reference to a document, which requires no response because the referenced document speaks for
7 itself. To the extent any response to such allegations is necessary, Defendant admits that paragraph
8 135 references portions of Exhibit 24 to the SAC. Defendant denies each and every other allegation
9 in paragraph 135.

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

17 4. Impact of Kaiser’s vent dependence practices

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

27 138. Paragraph 138 contains reference to documents, which require no response because
28 the referenced documents speak for themselves. To the extent any response to such allegations is

1 necessary, Defendant admits that paragraph 138 references portions of Exhibits 26 and 27 to the
2 SAC. Due to the non-specific and vague nature of Relators' allegations, Defendant lacks sufficient
3 information to admit or deny the allegation that "The coding data includes a high volume of cases
4 in which patients were successfully weaned from ventilation and routinely discharged home or to
5 self-care, including after just a day or two in the hospital," and, on that basis, denies each and every
6 such allegation. Defendant denies each and every other allegation in paragraph 138.

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

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

17 141. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
18 141, and, on that basis, denies each and every allegation in paragraph 141.

19 **C. Malnutrition**

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

23 143. Due to the non-specific and vague nature of Relators' allegations, Defendant lacks
24 sufficient information to admit or deny the allegation that "TPMG CDI targeted protein-calorie
25 malnutrition HCC as one of the top risk-adjustment opportunities," and, on that basis, denies each
26 and every such allegation. Defendant lacks sufficient knowledge to admit or deny the allegations
27 that "Ms. Hernandez addressed the issue with TPMG CDI's Quality Assurance manager in the hope
28 that it would be communicated to the CDI management team" and "Nevertheless, to Ms.

1 Hernandez's knowledge, the leading queries were not discontinued nor were the documentation
2 requirements changed," and, on that basis, denies each and every such allegation. Defendant denies
3 each and every other allegation in paragraph 143.

4 144. Paragraph 144 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 144.

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

12 146. Paragraph 146 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 lacks sufficient knowledge to admit or deny the allegation, "Ms. Bryant was
16 gravely concerned with and deeply troubled by these warnings and with the barrier placed on her
17 pursuing the issue further," and, on that basis, denies each and every such allegation. Defendant
18 denies each and every other allegation in paragraph 146.

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

26 148. Due to the non-specific and vague nature of Relators' allegations, Defendant lacks
27 sufficient information to admit or deny the allegation that "Moderate and Severe PCM in hospital
28 inpatient records at Kaiser Foundation Hospitals were a focus of Kaiser's dietary staff once the

1 patient met some specific clinical criteria,” and, on that basis, denies each and every such allegation.
2 Defendant lacks sufficient knowledge to admit or deny the allegation, “Ms. Bryant believes and
3 therefore alleges, however, that use of the leading query language had been ongoing for a year or
4 more before it was identified and changed, and has no knowledge of corrective actions taken by the
5 NCAL Region or any other Kaiser region on prior medical records for all risk-based payers,
6 including both the MA program and the ACA program,” and, on that basis, denies each and every
7 such allegation. Defendant denies each and every other allegation in paragraph 148. Defendant
8 denies each and every other allegation in paragraph 148.

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

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

17 150. Paragraph 150 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. Answering paragraph
20 150, Defendant admits that management for certain types of arrhythmias may involve a pacemaker.
21 Paragraph 150 contains allegations that do not reference Defendant, which require no response. To
22 the extent any response to such allegations is necessary, Defendant denies each and every such
23 allegation. Defendant lacks sufficient knowledge to admit or deny the allegation, “Near the end of
24 her employment with Kaiser, Ms. Bryant was informed and believes, and therefore alleges, that at
25 least Kaiser’s NCAL and Colorado regions (TPMG and CPMG), and perhaps other Kaiser regions,
26 were instructing doctors to diagnose and document so that Kaiser’s coders would code heart
27 arrhythmia for members even after the members receive pacemakers to correct their arrhythmia for
28 all risk-based payers, including both the MA program and the ACA program,” and, on that basis,

1 denies each and every such allegation. Defendant denies each and every other allegation in
2 paragraph 150.

3 151. Paragraph 151 contains reference to dismissed allegations, for which Defendant
4 cannot be liable and which require no response. *See* Case No. 3:13-cv-03891 (N.D. Cal.), Dkt. No.
5 277, June 15, 2023 Order at 29; Dkt. No. 306, September 13, 2023 Order at 1. Paragraph 151
6 contains allegations that do not reference Defendant, which require no response. To the extent any
7 response to such allegations is necessary, Defendant denies each and every such allegation.
8 Defendant lacks sufficient knowledge to admit or deny the allegation, “Ms. Bryant was first made
9 aware of the issue in 2014 with respect to Kaiser’s Colorado PMG, but later (in the fall of 2017)
10 was informed by Ms. Andersen of Kaiser NCO that it was also evidence in Kaiser’s NCL region
11 operated by TPMG,” and, on that basis, denies each and every such allegation. Defendant denies
12 each and every other allegation in paragraph 151.

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

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

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

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

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

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

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

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

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

8 **1. Query templates**

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

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

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

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

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

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

8 165. Paragraph 165 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 165.

12 166. Defendant lacks sufficient information to admit or deny the allegation about Relator
13 Bryant’s recollection and, on that basis, denies the allegation. Paragraph 166 contains allegations
14 that do not reference Defendant, which require no response. To the extent any response to such
15 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
16 and, on that basis, denies each and every such allegation. Defendant denies each and every other
17 allegation in paragraph 166.

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

22 168. Paragraph 168 contains reference to documents, which requires no response because
23 the referenced documents speak for themselves. To the extent any response to such allegations is
24 necessary, Defendant admits that paragraph 168 references portions of AHIMA’s practice brief,
25 “Guidelines for Achieving a Compliant Query Practice.” Paragraph 168 contains allegations that
26 do not reference Defendant, which require no response. To the extent any response to such
27 allegations is necessary, Defendant lacks sufficient knowledge to admit or deny such allegations
28 and, on that basis, denies each and every such allegation. Defendant denies each and every other

1 allegation in paragraph 168.

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

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

4 170. Answering paragraph 170, Defendant admits that, during at least some of the
5 relevant period: Defendant employed Dr. Bliss as Regional Director of Documentation and Coding
6 and Anne Cadwell as Managing Director. Defendant lacks sufficient knowledge to admit or deny
7 the other allegations in paragraph 170, and, on that basis, denies each and every other allegation in
8 paragraph 170.

9 171. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
10 171, and, on that basis, denies each and every allegation in paragraph 171.

11 172. Paragraph 172 contains reference to a document, which requires no response
12 because the referenced document speaks for itself. To the extent any response to such allegations
13 is necessary, Defendant admits that paragraph 172 references portions of Exhibit 22 to the SAC.
14 Defendant lacks sufficient knowledge to admit or deny the other allegations in paragraph 172, and,
15 on that basis, denies each and every such allegation. Defendant denies each and every other
16 allegation in paragraph 172.

17 173. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
18 173, and, on that basis, denies each and every allegation in paragraph 173.

19 174. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
20 174, and, on that basis, denies each and every allegation in paragraph 174.

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

22 **B. Kaiser's emphasis on financial outcomes**

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

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

25 177. Paragraph 177 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. Answering paragraph
28 177, Defendant admits that a Clinical Documentation Improvement (“CDI”) program was launched

1 in Northern California in 2009; that a purpose of the program was to provide and sustain accurate
2 clinical documentation in support of patient safety and quality of care; and CDI programs were
3 adopted in hospital settings in Southern California and the Northwest. Defendant denies each and
4 every other allegation in paragraph 177.

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

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

12 180. Paragraph 180 contains reference to a document, which requires no response
13 because the referenced document speaks for itself. To the extent any response to such allegations
14 is necessary, Defendant admits that paragraph 180 references portions of Exhibit 29 to the SAC.
15 Defendant denies each and every other allegation in paragraph 180.

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

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

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

1 184. Paragraph 184 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 184 references portions of Exhibit 11 to the SAC.
4 Defendant denies each and every other allegation in paragraph 184.

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

7 185. Answering paragraph 185, Defendant admits that, during at least some of the
8 relevant period: the RRG included personnel from KFHP, the Permanente Medical Groups, and
9 Revenue Cycle; that the RRG discussed MA risk adjustment and the ACA program; that Dr. Simon
10 Cohn, who retired in 2015, led certain parts of some RRG meetings; and that Dr. Annette Guido of
11 Northwest Permanente and Hovannes Daniels led certain parts of some RRG meetings during at
12 least some of the relevant period. Defendant denies each and every other allegation in paragraph
13 185.

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

18 187. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
19 187 about Relator Bryant's interactions with Janet Franklin, and, on that basis, denies each and
20 every such allegation. Defendant denies each and every other allegation in paragraph 187.

21 188. Paragraph 188 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. Defendant denies
24 each and every allegation in paragraph 188.

25 **3. Employee and management bonuses.**

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

27 **4. Kaiser's regional medical groups dominate over Kaiser's compliance**
28 **function.**

1 190. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
2 190 and, on that basis, denies each and every allegation in paragraph 190.

3 **C. Kaiser improperly employs technology to further its HCC and revenue**
4 **capture.**

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

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

7 192. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph
8 192 about what Relator Hernandez witnessed and, on that basis, denies each and every such
9 allegation. Defendant denies each and every other allegation in paragraph 192.

10 193. Answering paragraph 193, Defendant admits that, for at least some of the relevant
11 period, Defendant employed Anne Cadwell as Managing Director. Defendant lacks sufficient
12 knowledge to admit or deny the other allegations in paragraph 193 about Relator Hernandez's
13 interactions with Anne Cadwell, and, on that basis, denies each and every such allegation.
14 Defendant denies each and every other allegation in paragraph 193.

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

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

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

24 196. Answering paragraph 196, Defendant lacks sufficient knowledge to admit or deny
25 the allegation that "In 2014-2015, Ms. Hernandez discovered that in Kaiser's NCAL TPMG region,
26 Kaiser's 'Business Intelligence Team' ('BIT') generated questionable 'block' files and 'add' files
27 for resubmission to CMS based on algorithms," and, on that basis, denies each and every such
28 allegation. Defendant denies each and every other allegation in paragraph 196.

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

6 **3. Computer Assisted Coding**

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

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

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

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

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

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

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

21 **E. Kaiser Submitted or Caused to be Submitted False Claims to the ACA
22 Program**

23 204. Paragraph 204 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 204.

26 **1. Risk Adjustment Payments**

27 205. Due to the non-specific and vague nature of Relators’ allegations, Defendant lacks
28 sufficient information to admit or deny the allegations in paragraph 205, and, on that basis, denies

1 each and every such allegation. Defendant denies each and every other allegation in paragraph
2 205.

3 206. Paragraph 206 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 206.

6 207. Paragraph 207 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 207.

9 208. Paragraph 208 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 208.

12 209. Paragraph 209 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 209.

15 210. Paragraph 210 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 210.

18 **2. Tax Credits**

19 211. Paragraph 211 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 211.

22 212. Paragraph 212 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 212.

25 213. Paragraph 213 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 213.

28 214. Paragraph 214 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 214.

3 215. Paragraph 215 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 215.

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

12 217. Paragraph 217 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 217.

15 218. Paragraph 218 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 218.

18 219. Paragraph 219 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 219.

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

22 220. Paragraph 220 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 220.

25 221. Paragraph 221 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 221.

28 222. Paragraph 222 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 222.

3 223. Paragraph 223 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 223.

6 224. Paragraph 224 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 224.

9 225. Paragraph 225 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 225.

12 226. Paragraph 226 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 226.

15 227. Paragraph 227 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 227.

18 228. Paragraph 228 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 228.

21 229. Paragraph 229 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 229.

24 230. Paragraph 230 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 230.

27 231. Paragraph 231 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 231.

3 232. Paragraph 232 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 232.

6 **FIRST CLAIM FOR RELIEF**

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

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

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

11 234. Paragraph 234 contains legal conclusions and/or argument, which require no
12 response. To the extent any response to such allegations is necessary, Defendant denies each and
13 every such allegation. Defendant denies each and every other allegation in paragraph 234.

14 235. Paragraph 235 contains legal conclusions and/or argument, which require no
15 response. To the extent any response to such allegations is necessary, Defendant denies each and
16 every such allegation. Defendant denies each and every other allegation in paragraph 235.

17 236. Paragraph 236 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 236.

20 237. Paragraph 237 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 237.

23 **SECOND CLAIM FOR RELIEF**

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

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

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

28 239. Paragraph 239 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 239.

3 240. Paragraph 240 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 240.

6 241. Paragraph 241 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 241.

9 242. Paragraph 242 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 242.

12 **THIRD CLAIM FOR RELIEF**

13 **False Claims Act: Conspiracy**

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

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

17 244. Paragraph 244 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 244.

20 245. Paragraph 245 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 245.

23 246. Paragraph 246 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 246.

26 247. Paragraph 247 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

1 every such allegation. Defendant denies each and every other allegation in paragraph 247.

2 **FOURTH CLAIM FOR RELIEF**

3 **False Claims Act: Reverse False Claims**

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

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

7 249. Paragraph 249 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 249.

10 250. Paragraph 250 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 250.

13 251. Paragraph 251 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 251.

16 252. Paragraph 252 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 252.

19 253. Paragraph 253 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 253.

22 **FIFTH CLAIM FOR RELIEF**

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

24 **U.S.C. § 3730(h)**

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

27 255. Paragraph 255 contains legal conclusions and/or argument, which require no
28

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 255.

3 256. Paragraph 256 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 256.

6 257. Paragraph 257 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 257.

9 258. Paragraph 258 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 258.

12 259. Paragraph 259 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 259.

15 260. Paragraph 260 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 260.

18 261. Paragraph 261 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 261.

21 262. Paragraph 262 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 262.

24 263. Paragraph 263 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 263.

27 264. Paragraph 264 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 264.

2 **SIXTH CLAIM FOR RELIEF**

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

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

6 266. Paragraph 266 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 266.

9 267. Paragraph 267 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 267.

12 268. Paragraph 268 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 268.

15 269. Paragraph 269 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 269.

18 **SEVENTH CLAIM FOR RELIEF**

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

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

22 271. Paragraph 271 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 271.

25 272. Paragraph 272 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 272.
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1 issue. Accordingly, upon information and belief, Defendant alleges that the civil penalties and
2 damages that Relators seek would result in an unconstitutionally excessive fine under the Eighth
3 Amendment to the United States Constitution because any award would be grossly disproportional
4 to the gravity of Defendant's offense, if any.

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

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Dated: September 14, 2023

Respectfully submitted,

By: /s/ K. Lee Blalack, II
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