July 22, 2024

VIA ECF

The Honorable Joseph C. Spero
Chief Magistrate Judge
United States District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

Re: ***United States ex rel. Osinek v. Kaiser Permanente, et al.,*** **No. 3:13-cv-03891-EMC**

Dear Judge Spero:

Plaintiff the United States seeks the Court's assistance to resolve a dispute concerning Defendants' production of original medical records. The parties have met and conferred in good faith, through letters and numerous conferences, beginning in February 2024.

The United States' Position. The United States' Complaint alleges that Kaiser pressured its doctors to add hundreds of thousands of false diagnoses by altering medical records via addenda, often long after patient visits, to make it appear that the new diagnoses were part of the care provided during the original visits. Identifying what information was added to Kaiser's medical records after these visits is therefore core to proving the case. The most reliable way to identify new information added to the medical record is also the simplest—print the original medical record, print the amended record, and compare them side-by-side.

The United States has requested medical records for a small subset of the patient visits at issue in this case. The United States has always requested two versions of each record—the standalone original visit note and the amended version. *See* Ex. 1 (Third Set of RFPs served in January 2024) at No. 41 and Ex. 2 (Fourth Set of RFPs served in February 2024) at No. 47. This type of request for different versions of a document is not unusual. Kaiser's own RFPs demand production of all versions of all responsive documents. *See* Ex. 3 (Kaiser RFPs) at Instruction No. 2 ("Each non-identical copy of a Document, whether different from the original because of indications of the recipient(s), handwritten notes, marks, attachments, marginalia, or any other reason, is a separate Document that must be identified."). The United States intends to present these two versions of each medical record to the jury, so the jurors can easily identify what information was added to the record as part of Kaiser's scheme. Notwithstanding that the United States has sought only a fraction of the medical records at issue in this case, Kaiser has refused this simple request, leading to the present dispute.

The original, unaltered medical record has unique evidentiary value. It allows a jury to identify the original record reliably and quickly, rather than guessing what information buried in a lengthy amended record was or was not part of the original. Just as importantly, it avoids disputes regarding the contents of the original record. With thousands of Kaiser's medical records likely to be in evidence, it would be a tremendous waste of time, with many unnecessary

disputes, to prove the contents of the original medical record in each instance, particularly when the original record is maintained by Kaiser and can be pulled separately from Kaiser's system.

Kaiser's own auditors, who presumably had training in medical record review, found it difficult to identify what was added to Kaiser's records. In a 2016 email, a Kaiser employee noted: "when the auditors receive a file . . . with encounters that supposedly had an addendum created within it, *many times it was not obvious which part of the note was an addendum (or which diagnoses were added as part of the addendum)*, and they would have to spend time researching each encounter to identify." Ex. 4 (emphasis added).

Kaiser's amended records are particularly confusing and misleading because they often contain certain fields that display both original and amended information, without distinguishing what was in the original and what was added afterwards. For example, Exhibit 5 is an amended record produced by Kaiser for which Kaiser does not intend to produce a separate original record; page 1 contains a lengthy list of visit diagnoses that makes it appear as if all were addressed at the visit. We believe nearly all of these diagnoses were added long after the fact by someone other than the patient's treating physician. The original medical records will make clear, without dispute, what conditions were or were not part of the care at the visit, but Kaiser refuses to provide that proof.

Obtaining original records is especially important because for years, the parties have had disputes about what was in the original medical record. Exhibit 6 is an amended medical record produced by Kaiser during the United States' investigation. Kaiser insisted that the United States did not need the original medical record to identify any changes made after the visit. Exhibit 7 is the original record produced by Kaiser only after the United States demanded it. The highlighted changes on pages 2-3 of Exhibit 6 are only identifiable by comparing the original record to the amended one. These changes show that the original record was altered after the fact to add information about certain diagnoses. This type of evidence is vital to the United States' case; it shows that Kaiser added information to the record long after the visit to make it appear that the new diagnoses were addressed at the original visit. Given the long history of disputes, Kaiser should not be allowed to deny the United States access to this critical evidence.

Until recently, Kaiser refused to produce any original records, claiming that the amended record alone is always sufficient. *See* Ex. 8 (Kaiser Apr. 5, 2024 Ltr.) at 5 ("Plaintiff does not need a separate, standalone version of the Original Encounter Notes to prove any disputed fact in this case."). Only after months of conferral did Kaiser backtrack slightly and offer a convoluted approach: in one region, Kaiser will never produce the standalone original record (TPMG); in another, Kaiser will produce the original only when Kaiser deems it necessary (SCPMG); in yet another, Kaiser will produce a "revision history" (CPMG). *See* Ex. 9 (Kaiser June 7, 2024 Ltr.) at 4-9. Kaiser has also offered to provide 200 original medical records of the United States' choosing, nearly a year from now, and *after* the deadline for the United States to identify its false claims. This approach is needlessly complicated and serves only to confuse the jury. Defendants' productions to date underscore the problems with Kaiser's position. Instead of the United States' simple and straightforward proposal—which will both avoid future disputes about what was in the original record and provide clear evidence to the jury—Kaiser has produced a hodgepodge of records in different formats. So far, Kaiser has sometimes produced one record for a visit,

sometimes two, and sometimes as many as *nine*, making it needlessly difficult to identify what was in the original medical record. *See* Ex. 10 (U.S. July 10, 2024 Ltr.) at 2. Exhibit 11 is an example of a record for which Kaiser does not intend to produce an original record. As a result, the jury would need to sift through the 21-page record to attempt to identify what was in the original and what was added later—facts that should not be in dispute.

Kaiser admitted during our conferrals that it has no relevance objection to producing the original medical records. Kaiser claims only that the burden of producing the originals would be "tremendous" and "extraordinary." Ex. 9 at 5; Ex. 12 (Kaiser July 8, 2024 Ltr.) at 4. Throughout this case, Kaiser has argued that the United States must present individualized proof of each of the hundreds of thousands of claims at issue, yet it simultaneously claims it is too burdensome to provide requested medical records for even a tiny fraction of those claims. The declarations attached to this letter are the first time Kaiser has provided any specifics about the alleged burden. And they all contain the same boilerplate explanation—to identify relevant medical records, Kaiser would simply have to search for and print them. *See* Ex. 13 at ¶ 10; Ex. 14 at ¶ 12; Ex. 15 at ¶ 11. Given the centrality of this information to the case, Kaiser's vague burden objections do not justify its refusal to produce these critical records. Nor do Kaiser's productions to date support its burden claims. To the contrary, those productions show that Kaiser is able to locate and print thousands of records in days. The vast majority of medical records produced by Kaiser over the past several months appear to have been printed over a small number of days in March (for example, TPMG generated 852 medical records on March 11-14). Kaiser complains that it would have to "reproduce" documents and "launch this entire process again." To be clear, we are not asking Kaiser to reproduce any records. Rather, we are asking Kaiser to produce the original records that Kaiser agrees are relevant, that are distinct records saved in Kaiser's system, and that our RFPs clearly requested from the outset before Kaiser printed a single record.

There is a simple alternative solution to this issue. If Kaiser does not wish to print the records itself, we have offered to obtain the original records directly from Kaiser's databases to avoid any purported burden. Kaiser's Medicare Advantage contracts specifically require that it allow access to HHS or their designee. *See, e.g.*, 42 C.F.R. § 422.504(e)(2); ECF No. 179-1 at 610 (Art. VI(A)(2)(b)). The original medical records are not merely "demonstratives"—they are critical evidence in the United States' case, and Kaiser should not be allowed to deny the United States access under the guise of burden. In sum, Kaiser should either produce the original medical records as requested months ago or grant the government access to retrieve them.

Defendants' Position. While Defendants strongly deny the fraud scheme that Plaintiff has alleged in the Amended Complaint, they have engaged in an enormous and expensive effort to respond to Plaintiff's discovery requests in good faith—not only in the nearly three years of litigation but in the eight-year U.S. Department of Justice ("DOJ") investigation that preceded it. Thus far, Defendants have produced nearly three million documents, over a terabyte of data, and hundreds of pages of interrogatory responses. ECF No. 328-4 ¶ 70. Notably, until now, the parties have resolved all disputes over Plaintiff's discovery requests without burdening this Court. But after extended meet-and-confer discussions, Defendants could not find common ground with Plaintiff here. Plaintiff is demanding that Defendants commence a tremendously burdensome process to ***reproduce*** portions of medical records relating to over 2,300 patient visits for which Defendants have already produced or agreed to produce the full medical records, all because Plaintiff wants that information in a separate document to show the jury. Plaintiff's

request for duplicative information is unduly burdensome and not proportional to the needs of the case under Federal Rule of Civil Procedure 26(b).

To start, there is no need to produce every original progress note[1] separately from the rest of the medical records at issue simply so DOJ can create demonstratives. The Permanente Medical Group ("PMG") defendants are distinct entities, and each uses a bespoke version of the EMR system HealthConnect. Each version stores medical records for a specific geographic region and varies in how medical records can be searched and printed and the format of printed records. Ex. 13 ¶¶ 4, 6-9, 10-11; Ex. 14 ¶¶ 4, 11-13; Ex. 15 ¶¶ 4, 6-8, 10-12. Nonetheless, each PMG is producing the information Plaintiff has requested in a clearly identifiable form:

- ***The Permanente Medical Group ("TPMG")*** already has fully completed its production of 868 medical records. Ex. 9 at 4-5. TPMG produced one document for each of the 868 visits because each document includes every version of every progress note for the relevant patient visit. Every progress note includes a header with the version number and date so the reader can easily distinguish between the original progress note and any additional notes. Addended notes expressly use the phrase "Addendum." *See id.*; Ex. 13 ¶¶ 14-17. For example, in the TPMG medical record Plaintiff cites above, the original note is clearly identified as "Version 1 of 5"; all other versions have fields stating "Status: Addendum." *See* Ex. 11 at 2-3.

- ***Southern California PMG ("SCPMG")*** already has produced medical records for over 600 patient visits. SCPMG's productions will, for the most part, include both the original progress note and amended notes in a single document in which all versions of the progress notes are clearly distinguishable by headers that include the date and time for each note. Ex. 9 at 6-7; Ex. 14 ¶¶ 15-17. In the SCPMG record Plaintiff cites, there is no addended progress note and all added visit diagnoses are marked by date and time in a single section of the document. Ex. 5 at 7 (denoting each "{Addendum}"). SCPMG has identified some responsive medical records where the original progress note is not included in the versions of the medical records it initially planned to produce; for those select records, such as Exhibit 7, SCPMG ***already has agreed*** to produce the original progress note separately. Ex. 9 at 6-7.

- ***Colorado PMG ("CPMG")*** already has produced over 200 responsive medical records. *Id.* at 8-9. Many include all original and amended progress notes clearly delineated by author and date, with addended notes recorded as "Status: Addendum." *Id.*; Ex. 15 ¶ 15. There are some medical records where the original progress note is not present in the printed medical record. For those select records, CPMG ***already has agreed*** to produce a separate "revision history" document that includes the original progress note and all addended notes. Ex. 9 at 8-9. Plaintiff's citation to one email from 2016 about confusion over identifying addenda in CPMG's medical records system during audits, *see* Ex. 4, has no bearing on how records were accessed and produced in this litigation eight years later.

[1] A medical record contains many components, including a progress note, which is a healthcare provider's description of a patient's visit; and a "visit diagnosis" section listing the diagnoses a provider documented in connection with the visit. Providers can amend or addend these components, and the electronic medical record ("EMR") system records those changes. Addenda are part of a patient's overall medical record; they are not distinct medical records.

Plaintiff therefore can publish these records to the jury and clearly illustrate any differences between the original progress notes and any addenda. Nonetheless, to avoid burdening the Court, Defendants offered to produce ***200 standalone and duplicative original progress notes*** of Plaintiff's choosing within 60 days of the April 11, 2025 deadline for Plaintiff to identify the full universe of allegedly false diagnosis codes at issue in this case. Ex. 12 at 4. Defendants' offer of compromise was designed to balance Plaintiff's stated desire to use some duplicates of original progress notes for demonstrative purposes with Defendants' interest in avoiding another massively burdensome medical record extraction and production, a process that cannot be completed by the Court's August 12, 2024 deadline for production of responsive records. Ex. 13 ¶¶ 18-23; Ex. 14 ¶¶ 21-25; Ex. 15 ¶¶ 17-21. Plaintiff rejected that compromise.

Plaintiff's desire for a demonstrative presentation cannot justify the enormous burden that its request for duplicative records would necessarily entail. No version of HealthConnect allows a user to systematically search for and print medical records in batches; rather, a user must search for and print each individual medical record sought by Plaintiff. Ex. 13 ¶¶ 9-12; Ex. 14 ¶¶ 10-14; Ex. 15 ¶¶ 10-13. The attached declarations from Defendants' representatives explain in detail the laborious and challenging process required to locate, extract, and produce responsive medical records from their respective versions of HealthConnect. *Id.* Defendants have already been engaged in this burdensome exercise for many months in order to respond to the relevant document requests by the Court's August deadline, but Plaintiff seeks to require Defendants to launch this entire process again. This time, however, Defendants would also have to locate the full revision history for every medical record, identify the original progress note, and print that note separately. Ex. 13 ¶¶ 18-22; Ex. 14 ¶¶ 21-24; Ex. 15 ¶¶ 17-20. Because of the sensitive patient information in HealthConnect, there is only a small team in each region that is trained and qualified to respond to this type of request. *Id.* This is not a task that can be delegated to lawyers, other employees, or even non-PMG IT contractors. Because printing separate original progress notes is not part of the standard process for printing medical records in any region, most of these personnel would require new training. *Id.* While Plaintiff argues that Defendants produced standalone original progress notes during DOJ's pre-litigation investigation, it neglects to explain that Defendants did not do so for every one of the hundreds of medical records produced to DOJ. Instead, they did so for a very small fraction of produced records and ***only*** when it was necessary due to system limitations, just like they agreed to do here.

Finally, the Court should reject Plaintiff's alternative request for direct access to HealthConnect. There is no justification for such an unprecedented intrusion into Defendants' EMR systems that would give Plaintiff access to wholly irrelevant and sensitive data for more than nine million patients. *See* Ex. 16 ¶¶ 6, 9-12, 16, 33; *In re Ford Motor Co.*, 345 F.3d 1315, 1316-17 (11th Cir. 2003); *Moser v. Health Ins. Innovations, Inc.*, 2018 WL 6735710, at *5-6 (S.D. Cal. 2018). Granting Plaintiff direct access would save no time and impose significant burdens on Defendants, because such direct access would require Plaintiff's representatives to satisfy lengthy and numerous training, certification, and other requirements necessary for anyone accessing HealthConnect. Ex. 16 ¶¶ 13-32. Notably, the regulation that Plaintiff cites above to justify this access, 42 U.S.C. § 422.504(e)(2), does not reference DOJ in litigation. Granting such access also is not the "minimum necessary" disclosure to accomplish the intended purpose of the requests, as required by law. 45 C.F.R. § 164.502(b). There is simply no good justification to expose innocent PMG patients to a risk of improper disclosure here.

Sincerely,

UNITED STATES OF AMERICA

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Exhibit 1

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA ex rel. RONDA OSINEK, Plaintiff, v. KAISER PERMANENTE, Defendants.	Case No. 3:13-cv-03891-EMC **UNITED STATES' THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS**

(captions continued on next page)

UNITED STATES OF AMERICA ex rel. NASER AREFI, AJITH KUMAR, and PRIME HEALTHCARE SERVICES, Plaintiffs, v. KAISER FOUNDATION HEALTH PLAN, INC., et al., Defendants.	Case No. 3:16-cv-01558-EMC **UNITED STATES' THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS**

UNITED STATES OF AMERICA ex rel. MARCIA STEIN AND RODOLFO BONE, Plaintiffs, v. KAISER FOUNDATION HEALTH PLAN, INC., et al., Defendants.	Case No. 3:16-cv-05337-EMC **UNITED STATES' THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS**

UNITED STATES OF AMERICA and STATE OF CALIFORNIA ex rel. GLORYANNE BRYANT and VICTORIA M. HERNANDEZ, Plaintiffs, v. KAISER PERMANENTE, INC., et al., Defendants.	Case No. 3:18-cv-01347-EMC **UNITED STATES' THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS**

(captions continued on next page)

UNITED STATES OF AMERICA and STATE OF CALIFORNIA ex rel. MICHAEL BICOCCA, Plaintiff, v. PERMANENTE MEDICAL GROUP, INC., et al., Defendants.	Case No. 3:21-cv-03124-EMC **UNITED STATES' THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS**

UNITED STATES OF AMERICA ex rel. JAMES M. TAYLOR, Plaintiff, v. KAISER PERMANENTE, INC., et al., Defendants.	Case No. 3:21-cv-03894-EMC **UNITED STATES' THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS**

Plaintiff United States of America, pursuant to Rule 34 of the Federal Rules of Civil Procedure, requests that the defendants produce the following Documents at the Office of the Civil Division, 175 N St., N.E., Washington, D.C., 20002, within thirty (30) days of service hereof.

These Requests are to be answered fully in accordance with the spirit and dictates of Rule 34. Failure to provide full and complete responses in a timely manner will result in a Motion to Compel, for which costs may be sought.

INSTRUCTIONS AND DEFINITIONS

DEFINITIONS

The United States incorporates by reference the Definitions listed in Plaintiff United States' First Set of Written Interrogatories to Defendants (listed as definition number 1) (dated February 25, 2022), the United States' First Set of Requests for Production of Documents to Defendants (listed as definition numbers 1–46) (dated February 25, 2022), the United States' Second Set of Written Interrogatories to Defendants (listed as definition numbers 1–3) (dated October 13, 2023), and the United States' Second Set of Requests for Production of Documents to Defendants (listed as definition numbers 1–4) (dated October 13, 2023). In addition, the following Definitions shall apply to these Document Requests. Each word, term, or phrase defined below and used in these Requests is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure and the Local Rules.

1. "Communication" means any transmission or exchange of information between two or more persons in writing or electronically, including in KP HealthConnect, and including without limitation conversations or discussions whether by chance or by design, and by any means, including by electronic media.

2. "HCC Diagnosis" means any diagnosis that is associated with a Diagnosis Code that maps to an HCC included in the CMS-HCC risk-adjustment model for payment for the applicable Service Year.

3. "Kaiser Providers" means the following individuals: Dr. Chitra Chandran; Dr. James Chang; Dr. David Conant; Dr. Timothy Holcomb; Dr. Amitabh Joglekar; Dr. Patrick Yun Kee Kan; Dr. Jennifer Lam; Dr. Christina Le; Dr. Silvester Lim; Dr. Luu Nguyen; Dr. Steve Olson; Dr. John Pakula; Dr. Donald Perez; Janisse Rears; Bradley Reynolds; Dr. Matthew James Sena; Dr. Sangita Shah; Dr.

Kirk Tamaddon; Dr. Natalia Volkova; Dr. Shih-Chin Wang; Dr. Teresa Welsh; and Dr. Pearl Grace Wu, and any other Medical Care Providers that Kaiser has identified or will identify in disclosures made pursuant to Fed. R. Civ. P. 26(a).

INSTRUCTIONS

1. These Document Requests are continuing in nature, and You must provide supplemental Documents upon obtaining them. If a responsive Document has already been produced during the investigation of this matter, it does not need to be produced again but must be identified as responsive to a particular request by bates number.

2. Unless otherwise specified, the covered time period applicable to these Document Requests shall be January 1, 2009, through the present. These Document Requests include such Documents that predate the specified time period but that are referenced by or incorporated into, directly or indirectly, Documents within the specified time period.

3. The Documents to be produced pursuant to these Document Requests shall include all Documents prepared, sent, dated, received, in effect, or that otherwise came into existence at any time during the covered time.

4. Geographic Scope: Unless otherwise specified, this request refers to all Documents except those that pertain only to the following Kaiser regions: Hawaii; Georgia; Mid-Atlantic States; Northwest; and Ohio. If a Document pertains, even in part, to Your Northern California region, Southern California region, Colorado region, or national operations, it is within the scope of these Requests.

5. All materials identified pursuant to these Requests shall be segregated and labeled so as to identify to which Requests such material responds. Alternatively, Defendants shall identify by bates number range the Documents responsive to each Request.

6. All originals of responsive Documents shall be made available for inspection upon request.

7. All Documents that contain handwriting shall be produced in color scanned copies.

8. Except as otherwise provided in these Instructions, these Requests require production of all Documents in Defendants' possession, custody or control that are responsive to one or more of the

Requests set forth below. All responsive Documents shall be produced to the maximum extent practicable in electronic format in accordance with the specifications described in Attachment A: Specifications for Production of ESI and Digitized ("Scanned") Images, attached to the United States' First Set of Requests for Production of Documents to Defendants.

9. In responding to these Document Requests, you are required to obtain and furnish all information available to you and any of your representatives, employees, agents, servants, or attorneys and to obtain and furnish all information that is in your control or in the possession or under the control of any of your representatives, employees, agents, servants, or attorneys.

10. Any copy of a Document that contains information or markings not contained on the original of the Document should be considered a separate Document. Similarly, any version of an electronically stored information or file that contains a revision not found in other versions of that electronically stored information or file should be considered a separate Document.

11. These Requests for production of Documents call for information and Documents that are within Your possession, custody, or control, whether or not they are currently in Your possession, including information and Documents in possession, custody, or control of Your agents, attorneys, investigators, Your Information Technology ("IT") Department, any IT contractors, any other off-site contractors and/or all other persons acting on your behalf. Documents or information are deemed to be in Your possession, custody, or control if they are in Your physical custody, or in the control of any other person, including persons identified above, and You (a) own such Document or information in whole or in part; (b) have a right by contract, statute, or otherwise to use, inspect, examine, or copy such Document or information, on any terms; or (c) have an understanding, express or implied, that such other person(s) may use, inspect, examine, or copy such Document or information when he/she has sought to do so.

12. When a Document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible. If a privilege is asserted with regard to a part of the material contained in a Document, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a Document has been redacted or altered in any fashion, identify as to each Document the reason for the redaction or alteration, the date of the redaction

or alteration, and the person performing the redaction or alteration. Any redaction must be clearly visible on the redacted Document.

13. If You decline to produce any Document or part thereof based upon a claim of privilege or any other claim of immunity from discovery, then You must provide a statement setting forth, as to each such Document:

a. The name and job title of each author, writer, or sender of the Document;

b. The name and job title of each recipient, addressee, or other person to whom the original or any copy of the Document was sent or furnished;

c. The type of Document (e.g. letter, memorandum, contract, report, etc.);

d. A description of the nature and subject matter of the Document sufficient to permit the plaintiff and the Court to determine whether it is privileged or otherwise immune from discovery;

e. The basis for the claim of privilege or immunity from discovery; and

f. The date of creation or transmittal of the Document, or an estimate of that date, indicated as such, if no date appears on the Document.

14. If You have knowledge of any Document that would be responsive to these Requests but has been lost, destroyed, discarded, or is otherwise not presently in Your possession, custody, or control, You shall identify to the extent possible each such Document and provide an explanation of the loss, destruction, or discarding (including identification of each person authorizing or having knowledge of the loss, destruction, or discarding), and to state to the extent known with respect to each Document:

a. type of Document (e.g. letter, memorandum, contract, report, etc.);

b. date of the Document;

c. title of the Document;

d. identity of the author of the Document and of any person who assisted in its preparation;

e. identity of each addressee or recipient of the Document or any copies of it;

f. general subject matter of the Document;

g. Request(s) to which it is responsive;

h. present location of the Document and identity of its custodian, to the extent known; and

i. if the Document no longer exists, the circumstances of its loss, misplacement, or destruction.

DOCUMENT REQUESTS

40. Data reflecting amendments made to the progress notes portion of Medical Records for each Diagnosis Code listed in KAISER_DOJ2021_0000000073. To the extent the Medical Care Provider copied the original progress notes into the Addendum, please produce only the portion of the progress notes that was amended.

41. All Medical Records where a Kaiser Provider added an HCC Diagnosis through an Addendum to an Outpatient encounter. This request seeks a copy of the original Medical Record for the visit without any amendments; and separately a copy of the Medical Record for the visit with all amendments clearly delineated. This request seeks the production of Medical Records in native Adobe Portable Document Format.

42. All Queries related to a Kaiser Provider's addition of an HCC Diagnosis through an Addendum to an Outpatient encounter.

43. All email Communications involving the Kaiser Providers relating to Medicare Advantage and any of the following:

a. Data Mining;

b. Refresh;

c. Queries;

d. Addenda to Patient Medical Records;

e. Diagnosis Coding;

f. Coding Parties;

g. ICD Guidelines; and,

h. Diagnosing the conditions of aortic atherosclerosis, active vs. history of cancer, protein calorie malnutrition/cachexia, complications of diabetes mellitus, chronic kidney disease, morbid obesity, and major depression for Patients enrolled in Medicare Advantage.

44. All Documents and Communications relating to any training, education, or instruction provided by You to the Kaiser Providers concerning rules, standards, or guidelines for the following:

a. Medical Records documentation;

b. Diagnosis Coding;

c. Risk Adjustment Submissions relating to Outpatient encounters;

d. Adding Addenda for Outpatient encounters;

e. Informing Patients about Addenda to their Medical Records or about any diagnoses in any Addenda to their Medical Records;

f. Providing Patients with care, treatment, or management for any diagnoses in any Addenda to their Medical Records;

g. Receiving or responding to Queries for Outpatient encounters; and,

h. Diagnosing or coding for specific diagnoses for Medicare Advantage Patients, including aortic atherosclerosis, active vs. history of cancer, protein calorie malnutrition/cachexia, complications of diabetes mellitus, chronic kidney disease, morbid obesity, and major depression.

This Request includes any training or educational materials, including presentations and handouts, and any Documents and Communications relating to complaints or concerns about any requirements, rules, standards, or guidelines not being followed or not comporting with any CMS requirement.

45. All Documents and Communications relating to any remuneration, or denial thereof, You offered or provided to the Kaiser Providers associated with Refresh, Data Mining, Risk Adjustment, Refresh Goals, Risk Adjustment Goals, Missed Opportunities, or Diagnosis Coding for Medicare Advantage Patients.

46. All Performance Appraisals or Performance Improvement Plans prepared by, or provided to, the Kaiser Providers where the Performance Appraisal or Performance Improvement Plan referenced Refresh, Data Mining, Risk Adjustment, Refresh Goals, Risk Adjustment Goals, Missed Opportunities, or Diagnosis Coding for Medicare Advantage Patients.

DATED: January 11, 2024

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s/Shiwon Choe
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United States Department of Justice
Civil Division
Commercial Litigation Branch

DAVID MOSKOWITZ
Special Attorney to the U.S. Attorney General

Attorneys for the United States of America

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee of the United States Attorney's Office for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that he is causing a copy of:

UNITED STATES' THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS

to be served this date upon the parties as follows:

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_____ BY FIRST CLASS MAIL, by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

_____ BY PERSONAL SERVICE, (MESSENGER)

_____ BY FEDEX

_____ BY FACSIMILE, (FAX) Telephone No.:

__✓__ BY E-MAIL: I caused each such document to be sent by email to the person or offices of each address above.

_____ BY CERTIFIED MAIL, by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: January 11, 2024

s/Shiwon Choe
SHIWON CHOE
Assistant United States Attorney

Exhibit 2

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Principal Deputy Assistant Attorney General

ISMAIL J. RAMSEY (CABN 189820)
United States Attorney

MICHELLE LO (NYBN 4325163)
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Civil Division
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Special Attorney to the U.S. Attorney General

Attorneys for the United States of America

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA ex rel. RONDA OSINEK, Plaintiff, v. KAISER PERMANENTE, Defendant.	Case No. 3:13-cv-03891-EMC **UNITED STATES' FOURTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS**

UNITED STATES OF AMERICA ex rel. NASER AREFI, AJITH KUMAR, and PRIME HEALTHCARE SERVICES, Plaintiffs, v. KAISER FOUNDATION HEALTH PLAN, INC., et al., Defendants.	Case No. 3:16-cv-01558-EMC **UNITED STATES' FOURTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS**

UNITED STATES OF AMERICA ex rel. MARCIA STEIN AND RODOLFO BONE, Plaintiffs, v. KAISER FOUNDATION HEALTH PLAN, INC., et al., Defendants.	Case No. 3:16-cv-05337-EMC **UNITED STATES' FOURTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS**

UNITED STATES OF AMERICA and STATE OF CALIFORNIA ex rel. GLORYANNE BRYANT and VICTORIA M. HERNANDEZ, Plaintiffs, v. KAISER PERMANENTE, INC., et al., Defendants.	Case No. 3:18-cv-01347-EMC **UNITED STATES' FOURTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS**

(captions continued on next page)

UNITED STATES OF AMERICA and STATE OF CALIFORNIA ex rel. MICHAEL BICOCCA, Plaintiff, v. PERMANENTE MEDICAL GROUP, INC., et al., Defendants.	Case No. 3:21-cv-03124-EMC **UNITED STATES' FOURTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS**

UNITED STATES OF AMERICA ex rel. JAMES M. TAYLOR, Plaintiff, v. KAISER PERMANENTE, INC., et al., Defendants.	Case No. 3:21-cv-03894-EMC **UNITED STATES' FOURTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS**

Plaintiff United States of America, pursuant to Rule 34 of the Federal Rules of Civil Procedure, requests that the defendants produce the following Documents at the Civil Division, Commercial Litigation Branch, 175 N St., N.E., Room 10.114, Washington, D.C., 20002, within thirty (30) days of service hereof.

These Requests are to be answered fully in accordance with the spirit and dictates of Rule 34. Failure to provide full and complete responses in a timely manner will result in a Motion to Compel, for which costs may be sought.

INSTRUCTIONS AND DEFINITIONS

DEFINITIONS

The United States incorporates by reference the Definitions listed in Plaintiff United States' First Set of Written Interrogatories to Defendants (listed as definition number 1) (dated February 25, 2022), the United States' First Set of Requests for Production of Documents to Defendants (listed as definition numbers 1–46, excluding definition number 5 ("Communication")) (dated February 25, 2022), the United States' Second Set of Written Interrogatories to Defendants (listed as definition numbers 1–3) (dated October 13, 2023), and the United States' Second Set of Requests for Production of Documents to Defendants (listed as definition numbers 1–4) (dated October 13, 2023). In addition, the following Definitions shall apply to these Document Requests.

1. "Listed Patient Visits" refers to all patients visits listed on Attachment A to these Requests for Production of Documents.

2. "Communication" means any transmission or exchange of information between two or more persons, orally, in writing or electronically, and including without limitation conversations or discussions whether by chance or by design, and by any means, including by electronic media and/or KP HealthConnect.

INSTRUCTIONS

1. These Document Requests are continuing in nature, and You must provide supplemental Documents upon obtaining them. If a responsive Document has already been produced during the investigation of this matter, it does not need to be produced again but must be identified as responsive to a particular request by bates number.

2. Unless otherwise specified, the covered time period applicable to these Document Requests shall be January 1, 2009, through the present. These Document Requests include such Documents that predate the specified time period but that are referenced by or incorporated into, directly or indirectly, Documents within the specified time period.

3. The Documents to be produced pursuant to these Document Requests shall include all Documents prepared, sent, dated, received, in effect, or that otherwise came into existence at any time during the covered time.

4. Geographic Scope: Unless otherwise specified, this request refers to all Documents except those that pertain only to the following Kaiser regions: Hawaii; Georgia; Mid-Atlantic States; Northwest; and Ohio. If a Document pertains, even in part, to Your Northern California region, Southern California region, Colorado region, or national operations, it is within the scope of these Requests.

5. All materials identified pursuant to these Requests shall be segregated and labeled so as to identify to which Requests such material responds. Alternatively, Defendants shall identify by bates number range the Documents responsive to each Request.

6. All originals of responsive Documents shall be made available for inspection upon request.

7. All Documents that contain handwriting shall be produced in color scanned copies.

8. Except as otherwise provided in these Instructions, these Requests require production of all Documents in Defendants' possession, custody or control that are responsive to one or more of the Requests set forth below. All responsive Documents shall be produced to the maximum extent practicable in electronic format in accordance with the specifications described in Attachment A: Specifications for Production of ESI and Digitized ("Scanned") Images, attached to the United States' First Set of Requests for Production of Documents to Defendants.

9. In responding to these Document Requests, you are required to obtain and furnish all information available to you and any of your representatives, employees, agents, servants, or attorneys and to obtain and furnish all information that is in your control or in the possession or under the control of any of your representatives, employees, agents, servants, or attorneys.

10. Any copy of a Document that contains information or markings not contained on the original of the Document should be considered a separate Document. Similarly, any version of an electronically stored information or file that contains a revision not found in other versions of that electronically stored information or file should be considered a separate Document.

11. Any copy of a Document that contains information or markings not contained on the original of the Document should be considered a separate Document. Similarly, any version of electronically stored information or an electronically stored file that contains a revision not found in other versions of that electronically stored information or file should be considered a separate Document.

12. The Medical Records of each Listed Patient Visit should be produced as the Medical Records would have appeared to the Medical Care Provider at the time the Medical Care Provider signed and closed the Medical Record(s) of the Listed Patient Visit, and should include all amendments to the Medical Records of the Listed Patient Visit following the initial signature and closing of the Medical Records of the Listed Patient Visit.

13. The Medical Records of the Listed Patient Visit should be produced in native Adobe Portable Document Format.

14. Communications contained in KP HealthConnect should be produced in the same format as the document marked KAISER_ADDENDUM_LIST_SAMPLE_0004419.

15. These Requests for production of Documents call for information and Documents that are within Your possession, custody, or control, whether or not they are currently in Your possession, including information and Documents in possession, custody, or control of Your agents, attorneys, investigators, Your Information Technology ("IT") Department, any IT contractors, any other off-site contractors and/or all other persons acting on your behalf. Documents or information are deemed to be in Your possession, custody, or control if they are in Your physical custody, or in the control of any other person, including persons identified above, and You (a) own such Document or information in whole or in part; (b) have a right by contract, statute, or otherwise to use, inspect, examine, or copy such Document or information, on any terms; or (c) have an understanding, express or implied, that such other person(s) may use, inspect, examine, or copy such Document or information when he/she has

sought to do so.

16. When a Document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible. If a privilege is asserted with regard to a part of the material contained in a Document, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a Document has been redacted or altered in any fashion, identify as to each Document the reason for the redaction or alteration, the date of the redaction or alteration, and the person performing the redaction or alteration. Any redaction must be clearly visible on the redacted Document.

17. If You decline to produce any Document or part thereof based upon a claim of privilege or any other claim of immunity from discovery, then You must provide a statement setting forth, as to each such Document:

a. The name and job title of each author, writer, or sender of the Document;

b. The name and job title of each recipient, addressee, or other person to whom the original or any copy of the Document was sent or furnished;

c. The type of Document (e.g. letter, memorandum, contract, report, etc.);

d. A description of the nature and subject matter of the Document sufficient to permit the plaintiff and the Court to determine whether it is privileged or otherwise immune from discovery;

e. The basis for the claim of privilege or immunity from discovery; and

f. The date of creation or transmittal of the Document, or an estimate of that date, indicated as such, if no date appears on the Document.

18. If You have knowledge of any Document that would be responsive to these Requests but has been lost, destroyed, discarded, or is otherwise not presently in Your possession, custody, or control, You shall identify to the extent possible each such Document and provide an explanation of the loss, destruction, or discarding (including identification of each person authorizing or having knowledge of the loss, destruction, or discarding), and state to the extent known with respect to each Document the:

a. type of Document (e.g. letter, memorandum, contract, report, etc.);

b. date of the Document;

c. title of the Document;

d. identity of the author of the Document and of any person who assisted in its preparation;

e. identity of each addressee or recipient of the Document or any copies of it;

f. general subject matter of the Document;

g. Request(s) to which it is responsive;

h. present location of the Document and identity of its custodian, to the extent known; and

i. if the Document no longer exists, the circumstances of its loss, misplacement, or destruction.

DOCUMENT REQUESTS

47. All Medical Records for the Listed Patient Visits, including without limitation:

a. A copy of the original Medical Record(s) for the Listed Patient Visits without any amendments;

b. A copy of the Medical Record(s) for the Listed Patient Visits, with all amendments clearly delineated;

c. All radiology reports or test results ordered or referenced in the Medical Record(s) for the Listed Patient Visits, including within any Addendum to the Medical Record(s) for the Listed Patient Visits;

d. All radiology reports that served as the basis for a diagnosis of aortic atherosclerosis within any Addendum to the Medical Record(s) for the Listed Patient Visits; and,

e. All Documents showing the date and time the radiology reports and test results ordered or referenced in the Medical Record(s) for the Listed Patient Visits were reviewed by the Medical Care Provider, including any result notes and acknowledgements.

48. All Communications and Queries relating to the Listed Patient Visits, including but not limited to Queries, responses to Queries, Addendum notifications, Coding clarifications, and staff messages. This request also covers all Documents relating to such Communications and Queries, including any Communication related to amending the Patient's Medical Record issued prior to an Addendum. Such Documents include but are not limited to (a) direct Communications to Medical Care Providers and Documents referencing such Communications, (b) data compilations relating to such

Communications or (c) any type of prompt to a Medical Care Provider.

49. All email Communications relating to the Listed Patient Visits and any of the following:

a. Data Mining;

b. Refresh;

c. Queries;

d. Addenda;

e. Diagnosis Coding;

f. Coding Parties;

g. ICD Guidelines;

h. Diagnosing the conditions of aortic atherosclerosis, active vs. history of cancer, protein calorie malnutrition/cachexia, complications of diabetes mellitus, chronic kidney disease, morbid obesity, and major depression; and

i. Internal audits relating to topics a-h.

50. All Communications between Kaiser and the Patient related to the Listed Patient Visits that occurred after the Listed Patient Visits.

51. All Documents and Communications relating to the Listed Patient Visits that Kaiser may rely upon as evidence that a Diagnosis added via Addendum required or affected patient care, treatment, or management at the Listed Patient Visits.

DATED: February 14, 2024

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

ISMAIL J. RAMSEY
United States Attorney

s/ Shiwon Choe
SHIWON CHOE
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United States Department of Justice
Civil Division
Commercial Litigation Branch

Attorneys for the United States of America

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee of the United States Attorney's Office for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that he is causing a copy of:

UNITED STATES' FOURTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS

to be served this date upon the parties as follows:

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_____ BY FIRST CLASS MAIL, by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

_____ BY PERSONAL SERVICE, (MESSENGER)

_____ BY FEDEX

_____ BY FACSIMILE, (FAX) Telephone No.:

__✓__ BY E-MAIL: I caused each such document to be sent by email to the person or offices of each address above.

_____ BY CERTIFIED MAIL, by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: February 14, 2024

s/Shiwon Choe
SHIWON CHOE
Assistant United States Attorney

Exhibit 3

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *ex rel.*, RONDA OSINEK

Plaintiffs,

v.

KAISER PERMANENTE,

Defendant.

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

DEFENDANT KAISER FOUNDATION HEALTH PLAN, INC.'S FIRST SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF, UNITED STATES OF AMERICA

(CAPTION CONTINUED)

UNITED STATES OF AMERICA ex rel. MARCIA STEIN and RODOLFO BONE, Plaintiff, v. KAISER FOUNDATION HEALTH PLAN, INC., et al., Defendants.	Case No. 3:16-cv-05337-EMC **DEFENDANT KAISER FOUNDATION HEALTH PLAN, INC.'S FIRST SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF, UNITED STATES OF AMERICA**
UNITED STATES OF AMERICA ex rel. GLORYANNE BRYANT and VICTORIA HERNANDEZ, Plaintiff, v. KAISER PERMANENTE, INC., et al, Defendants.	Case No. 3:18-cv-01347-EMC **DEFENDANT KAISER FOUNDATION HEALTH PLAN, INC.'S FIRST SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF, UNITED STATES OF AMERICA**
UNITED STATES OF AMERICA and STATE OF CALIFORNIA ex rel. MICHAEL BICOCCA, Plaintiffs, v. PERMANENTE MEDICAL GROUP, INC., et al., Defendants.	Case No. 3:21-cv-03124-EMC **DEFENDANT KAISER FOUNDATION HEALTH PLAN, INC.'S FIRST SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF, UNITED STATES OF AMERICA**
UNITED STATES OF AMERICA ex rel. JAMES M. TAYLOR, Plaintiff, v. KAISER PERMANENTE, INC., et al., Defendants.	Case No. 3:21-cv-03894-EMC **DEFENDANT KAISER FOUNDATION HEALTH PLAN, INC.'S FIRST SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF, UNITED STATES OF AMERICA**

PROPOUNDING PARTY: Defendant Kaiser Foundation Health Plan, Inc.

RESPONDING PARTY: Plaintiff United States of America

SET NUMBER: ONE (Numbers 1 – 130)

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Local Rules for the United States District Court for the Northern District of California ("Local Rules"), Defendant Kaiser Foundation Health Plan, Inc. ("Defendant") propounds this First Set of Requests for Production of Documents ("Requests") on Plaintiff, the United States of America ("Plaintiff"). Defendant requests that Plaintiff produce all responses to these Requests to O'Melveny & Myers LLP, Two Embarcadero Center, 28th Floor, San Francisco, California 94111 within thirty (30) calendar days of the date of service, or at such other date and/or location upon which counsel for the parties may agree.

The following definitions and instructions apply to these Requests.

DEFINITIONS

Each word, term, or phrase defined below and used in these Requests is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure and the Local Rules.

1. "Addenda" means "addendum" as used in the Complaint at Paragraph 124.

2. "Beneficiary" or "Beneficiaries" means "beneficiary" or "beneficiaries" as those terms are used in Part C of Title XVIII of the Social Security Act, 42 U.S.C. § 1395w-21 *et seq.*

3. "Bid" means "bid" as that term is used in 42 C.F.R. Part 422 Subpart F.

4. "Calculate," "Calculated", "Calculating," or "Calculation" means "calculate" as that term is used in CMS's Medicare Managed Care Manual Rev. 114, Chapter 7 § 70.

5. "Civil Investigative Demand" or "CID" means "civil investigative demand" as used in 31 U.S. Code § 3733.

6. "CMS" means the U.S. Centers for Medicare and Medicaid Services, its agencies, departments, agents, representatives, contractors, consultants, and all other Persons acting on its behalf.

7. "CMS-HCC Risk Adjustment Model" means the "CMS-HCC model" as used in Paragraphs 59 and 60 of the Complaint.

8. "Coding Intensity Adjustment" means the "coding adjustment" described in 42 U.S.C. § 1395w-23(a)(1)(C)(ii).

9. "Communicate" or "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise) and refers to every manner or means of disclosure, transfer, or exchange of information orally or in writing, and to both actual and attempted communications of any kind.

10. "Complaint" means the complaint-in-intervention that Plaintiff filed in the above-captioned case (Dkt. 110) on October 25, 2021, and any forthcoming amended complaint(s) filed by Plaintiff.

11. "Concerning" or "Concern" means analyzing, containing, dealing with, constituting, defining, describing, discussing, embodying, evidencing, explaining, identifying, referencing, mentioning, reflecting, relating to, referring to, setting forth, showing, stating, summarizing, supporting, or in any way pertaining to the subject matter of the relevant request.

12. "Defendants" means, collectively, Defendant Kaiser Foundation Health Plan, Inc.; Defendant Kaiser Foundation Health Plan of Colorado; Defendant The Permanente Medical Group, Inc.; Defendant Southern California Permanente Medical Group; and Defendant Colorado Permanente Medical Group, P.C.

13. "Developed" means "to create or produce" or "to work out the possibilities of."

14. "Diagnosis Codes" means ICD-9-CM or ICD-10-CM diagnosis codes as used in Paragraph 62 of the Complaint.

15. "Document" or "Documents" means all electronically-stored information ("ESI") and written matter of every type, Including Communications, as the term is broadly defined under Rule 34 of the Federal Rules of Civil Procedure.

16. "False" means "false" or "fraudulent" as those terms are used in the False Claims Act, 31 U.S.C. §§ 3729(a)(1)(A)-(B).

17. "False Claims Act" or "FCA" means the False Claims Act as codified in 31 U.S.C. §§ 3729-3733.

18. "FFS Adjuster" means the Medicare Fee-For-Service adjuster described in the following CMS Documents: *Notice of Final Payment Error Calculation Methodology for Part C Medicare Advantage Risk Adjustment Data Validation Contract-Level Audits* (Feb. 24, 2012) and *Fee for Service Adjuster and Payment Recovery for Contract Level Risk Adjustment Data Validation Audits* (Oct. 26. 2018).

19. "Final RADV Audit Methodology" means the "Final Payment Error Calculation Methodology" described in CMS's *Notice of Final Payment Error Calculation Methodology for Part C Medicare Advantage Risk Adjustment Data Validation Contract-Level Audits* (Feb. 24, 2012),

20. "HHS-OIG" means the Office of the Inspector General for the U.S. Department of Health and Human Services, its departments, components, agents, representatives, contractors, consultants, and all other Persons acting on its behalf.

21. "ICD Guidelines" means "ICD Guidelines" as used in Paragraph 5 of the Complaint.

22. "ICD-9-CM" means the *International Classification of Diseases, Ninth Revision, Clinical Modification, Volumes 1 and 2*, Including the index and tabular list of Diagnosis Codes, for the period from October 16, 2002 through September 30, 2015, as referenced in 45 CFR § 162.1002.

23. "ICD-10-CM" means the *International Classification of Diseases, Tenth Revision, Clinical Modification,* which contains an index and tabular list of Diagnosis Codes, for the period on and after October 1, 2015, as referenced in 45 CFR § 162.1002.

24. 13. "Identify" or "Identified," when referring to the identification of a Person, means to give, to the extent known, the Person's full name, present or last known residence address and telephone number, the present or last known place of employment and the business address and telephone number and email. When referring to the identification of an organization,

"Identify" or "Identified" means the organization's full name and the address of its principal place of business. When referring to the identification of Documents, "Identify" or "Identified" means to give to the extent known the: (a) type of Document; (b) general subject matter; (c) the format in which it is maintained (e.g., written Document, computer file (and filetype), audio or video recording, or any other form); (d) location of the Document; (e) name and address of the custodian of the Document (f) date of the Document; and (g) author(s), addressee(s), and recipient(s).

25. "Implementation" or "Implemented" means "implementation" as used in 42 U.S.C. § 1395w-23(a)(3)(C).

26. "Include" or "Including" means "without limitation" and shall be construed as broadly as possible.

27. "Investigation" means "investigation" as used in Your Civil Investigative Demand no. 20-236, dated August 11, 2020.

28. "Medical Conditions" means "medical conditions" as used in Paragraph 62 of the Complaint.

29. "Medical Record Documentation" means "medical record documentation" as used in Paragraph 61 of the Complaint.

30. "Medicare Advantage Contract" means any contract between an MA Plan or MAO and CMS, Including any contract alleged in Paragraph 74 of the Complaint.

31. "Medicare Advantage" or "MA" means a type of health insurance that provides coverage to Beneficiaries under 42 U.S.C. §§ 1395w-21 through 1395w-29.

32. "Medicare Advantage Organization[s]" or "MAO[s]" means "MA Organizations" as used in Paragraph 55 of the Complaint.

33. "Medicare Advantage Plan[s]" and "MA Plan[s]" means "MA plans" as used in Paragraph 55 of the Complaint.

34. "Medicare Fee-For-Service" or "Medicare FFS" means "traditional Medicare" as used in Paragraph 53 of the Complaint.

35. "Methodology" means "methodology" as used in 42 U.S.C. § 1395w-23(a)(3)(C).

36. "Overpayment" means "overpayment" as defined in 42 U.S.C. §§ 1320a-7k(d)(4).

37. "Overpayment Rule Litigation" means the litigation captioned *UnitedHealthcare Ins. Co., et al. v. Alex M. Azar II, Sec'y of the Dep't of Health and Human Servs., et al.*, D.D.C. No. 16-cv-157-RMC, filed on January 29, 2016.

38. "Person" or "Persons" means any natural person or entity, firm, association, organization, partnership, business, trust, corporation, or public entity Including You, and their officers, directors, members, principals, employees, agents, contractors, representatives, parents, acquisitions, successors or predecessors, all persons acting on their behalf, and any and all persons associated with, affiliated with, or controlled by them.

39. "*Poehling* Litigation" means the case captioned *United States of America ex rel. Benjamin Poehling v. UnitedHealthcare Grp., Inc., et al.*, N.D. Cal. No. 16-cv-08697-FMO-SSx, originally initiated on March 24, 2011 in the United States District Court for the Western District of New York and transferred to the United States District Court for the Central District of California on November 8, 2016.

40. "Presented" means "presented" or "caused to be presented" as those terms are used in Paragraph 349 of the Complaint.

41. "Query" means "query" as used in the Complaint at Paragraph 129.

42. "Reconciliation Payments" means CMS payments made pursuant to the "reconciliation process" described in 42 C.F.R. § 422.310(g)(2).

43. "Relators" means Ronda Osinek, James Taylor, M.D., Naser Arefi, Ajith Kumar, Prime Healthcare Services, Inc., Marcia Stein, Rodolfo Bone, Gloryanne Bryant, Victoria Hernandez, and Michael Bicocca, M.D.

44. "Reporting And Returning" means "reporting and returning" as used in 42 U.S.C. §§ 1320a-7k(d).

45. "Review" means review as used in in 42 C.F.R. §§ 422.22 and 422.311.

46. "Risk Adjustment" means "risk adjustment" as used in Paragraph 58 of the

Complaint.

47. "Risk Adjustment Attestation" means "Risk Adjustment Attestation" as used in Paragraph 79 of the Complaint.

48. "Risk Adjustment Data" means "risk adjustment data" as used in Paragraph 2 of the Complaint.

49. "Risk Adjustment Data Validation Audits" or "RADV Audits" means audits conducted by or on behalf of CMS pursuant to 42 CFR §§ 422.2 and 422.311(a).

50. "Risk Adjustment Error" or "RAE" means "Risk Adjustment Error" as used in CMS's "2011 Medicare Advantage (Part C) Improper Payment Error Rate" Fact Sheet, *available at https://www.cms.gov/newsroom/fact-sheets/2011-medicare-advantage-part-c-improper-payment-error-rate.*

51. "Risk Adjustment Factors" means the factors established pursuant to 42 U.S.C. § 1395w-23(a)(3).

52. "Risk Adjustment Payments" means "risk-adjustment payment" as used in Paragraph 5 of the Complaint.

53. "Standard" or "Standards" means "standard" or "standards" as used in the Complaint, Including in the headings to Sections V.b and VI and in Paragraphs 5-8, 61, 81, 90 130, 148, 160, 190, 191, 193, 200.

54. "Submit" or "Submission" means "submit" and "submission" as used in Paragraphs 57, 79, 87, and 90 of the Complaint.

55. "You" or "Your" means the United States of America and all Persons acting on its behalf.

INSTRUCTIONS

1. Each Request extends to any Documents in the possession, custody, or control of Your employees, agents, or representatives.

2. Each non-identical copy of a Document, whether different from the original because of indications of the recipient(s), handwritten notes, marks, attachments, marginalia, or any other reason, is a separate Document that must be identified.

3. If You object to a Request on the ground of privilege, You must respond to the Request by providing such non-privileged Documents as are responsive.

4. If for any reason You withhold any Document or portion of a Document is responsive to these Requests, you shall provide a log entry describing the document in accordance with the privilege log provisions set forth in the Joint Stipulation and Order Re: Discovery of Electronically Stored Information.

5. If You object to any portion of a Request, You must provide Documents responsive to the remaining portion.

6. If the basis of an objection to any Request, or any portion thereof, is a statute, contract or other agreement, or any other obstacle to production that You assert is based in the law, You must identify that legal obstacle with specificity.

7. These Requests are continuing in nature and You should produce additional Documents as they become known or available to You as required by Rule 26(e).

8. You shall identify, by control number, the Documents responsive to each Request herein.

9. Any noun used in the singular form shall be construed and applied so as to Include the plural form also, and vice versa.

10. The words "and" and "or" shall be construed either conjunctively or disjunctively, as required by the context to bring all information within the scope of these Requests.

11. If You believe the meaning of any term in any Request is unclear, then You must assume a reasonable meaning, state what that assumed meaning is, and respond to the Request according to that assumed meaning.

12. While some Requests may seek Documents from earlier periods, unless otherwise indicated, the relevant time period for these Requests is January 1, 2009 through present.

REQUESTS FOR PRODUCTION

REQUEST NO. 1:

All Documents Identified in Your responses to Defendant's First Set of Interrogatories to Plaintiff, served concurrently herewith.

REQUEST NO. 2:

All Documents that You produced in response to any discovery requests served on You in the *Poehling* Litigation.

REQUEST NO. 3:

Documents sufficient to show all limitations to all discovery requests served on You in the *Poehling* Litigation, Including all Communications to any defendant in the *Poehling* Litigation Concerning Your productions in the *Poehling* Litigation.

REQUEST NO. 4:

All Documents that You produced in the *Poehling* Litigation Concerning Documents or Communications withheld from production in full or in part under an assertion of legal privilege or any other ground, Including any privilege logs that You produced in the *Poehling* Litigation.

REQUEST NO. 5:

All Documents Concerning Standards for Diagnosis Codes in Risk Adjustment Data, Including Standards for Diagnosis Codes.

REQUEST NO. 6:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 5.

REQUEST NO. 7:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 5.

REQUEST NO. 8:

All Documents Concerning Standards for Medical Record Documentation of Medical Conditions.

REQUEST NO. 9:

All Documents Concerning Communications with any Defendant Concerning the Documents produced in response to Request No. 8.

REQUEST NO. 10:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 8.

REQUEST NO. 11:

All Documents Concerning ICD Guidelines.

REQUEST NO. 12:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 11.

REQUEST NO. 13:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 11.

REQUEST NO. 14:

All Documents Concerning Addenda, Including Your Review of Addenda.

REQUEST NO. 15:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 14.

REQUEST NO. 16:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 14.

REQUEST NO. 17:

All Documents Concerning Queries.

REQUEST NO. 18:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 17.

REQUEST NO. 19:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 17.

REQUEST NO. 20:

All Documents Concerning Your allegations in Paragraph 5 of the Complaint.

REQUEST NO. 21:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 20.

REQUEST NO. 22:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 20.

REQUEST NO. 23:

Documents sufficient to show "all relevant national standards" as used in Paragraphs 61 and 81 of the Complaint.

REQUEST NO. 24:

All Documents Concerning "relevant national standards" as used in Paragraphs 61 and 81 Complaint.

REQUEST NO. 25:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 23 and 24.

REQUEST NO. 26:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 23 and 24.

REQUEST NO. 27:

All Documents Concerning Your allegations in Paragraphs 61 and 62 of the Complaint.

REQUEST NO. 28:

All Documents Concerning Communications with any Defendant Concerning Documents

produced in response to Request No. 27.

REQUEST NO. 29:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 27.

REQUEST NO. 30:

All Documents Concerning Your allegations in Paragraphs 68 and 69 of the Complaint.

REQUEST NO. 31:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 30.

REQUEST NO. 32:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 30.

REQUEST NO. 33:

All Documents Concerning Your allegations in Paragraph 75 of the Complaint.

REQUEST NO. 34:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 33.

REQUEST NO. 35:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 33.

REQUEST NO. 36:

All Documents Concerning Your allegations in Paragraph 80 of the Complaint.

REQUEST NO. 37:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 36.

REQUEST NO. 38:

All Documents Concerning Communications with any Person other than a Defendant

Concerning Documents produced in response to Request No. 36.

REQUEST NO. 39:

All Documents Concerning Your allegations in Paragraphs 81 and 82 of the Complaint.

REQUEST NO. 40:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 39.

REQUEST NO. 41:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 39.

REQUEST NO. 42:

All Documents Concerning Your allegations in Paragraph 83 of the Complaint.

REQUEST NO. 43:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 42.

REQUEST NO. 44:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 42.

REQUEST NO. 45:

All Documents Concerning Your allegations in Paragraph 87 of the Complaint.

REQUEST NO. 46:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 45.

REQUEST NO. 47:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 45.

REQUEST NO. 48:

All Documents Concerning Your allegations in Paragraph 125 of the Complaint.

REQUEST NO. 49:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 48.

REQUEST NO. 50:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 48.

REQUEST NO. 51:

All Documents Concerning "data mining," as described in Paragraphs 133 through 150 of the Complaint.

REQUEST NO. 52:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 51.

REQUEST NO. 53:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 51.

REQUEST NO. 54:

All Documents Concerning "refresh," as described in Paragraphs 151 through 165 of the Complaint.

REQUEST NO. 55:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 54.

REQUEST NO. 56:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 54.

REQUEST NO. 57:

Documents sufficient to show all "national standards relating to queries" as used in Paragraph 190 of the Complaint.

REQUEST NO. 58:

All Documents Concerning the "national standards relating to queries" as used in Paragraph 190 of the Complaint.

REQUEST NO. 59:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 57 and 58.

REQUEST NO. 60:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 57 and 58.

REQUEST NO. 61:

All Documents Concerning Your allegations in Paragraph 302 of the Complaint.

REQUEST NO. 62:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 61.

REQUEST NO. 63:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 61.

REQUEST NO. 64:

All Documents Concerning Your allegations at Paragraph 349 of the Complaint that Defendants Presented False Claims, Including each False Claim You allege Defendants Presented.

REQUEST NO. 65:

All Risk Adjustment Attestations Concerning any Defendant.

REQUEST NO. 66:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 65.

REQUEST NO. 67:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 65.

REQUEST NO. 68:

All Documents Concerning Documents produced in response to Request No. 65.

REQUEST NO. 69:

All Risk Adjustment Attestations Concerning any MAO, except for Risk Adjustment Attestations produced in response to Request No. 65.

REQUEST NO. 70:

All Documents Concerning Communications with any Person Concerning Documents produced in response to Request No. 69.

REQUEST NO. 71:

All Documents Concerning Documents produced in response to Request No. 69.

REQUEST NO. 72:

All Documents Concerning the phrase "accurate, complete, and truthful" as used in 42 C.F.R. § 422.504(l).

REQUEST NO. 73:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 72.

REQUEST NO. 74:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 72.

REQUEST NO. 75:

All Medicare Advantage Contracts between CMS and any Defendant.

REQUEST NO. 76:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 75.

REQUEST NO. 77:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 75.

REQUEST NO. 78:

All Documents Concerning Documents produced in response to Request No. 75.

REQUEST NO. 79:

All Bids that any Defendant Submitted to You.

REQUEST NO. 80:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 79.

REQUEST NO. 81:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 79.

REQUEST NO. 82:

All Documents Concerning Documents produced in response to Request No. 79.

REQUEST NO. 83:

All Documents Concerning Your Risk Adjustment Payments to any Defendant, Including Reconciliation Payments.

REQUEST NO. 84:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 83.

REQUEST NO. 85:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 83.

REQUEST NO. 86:

All Documents Concerning RADV Audits of any MAO, Including any Defendant.

REQUEST NO. 87:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 86.

REQUEST NO. 88:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 86.

REQUEST NO. 89:

All Documents Concerning the Final RADV Audit Methodology, Including all "comments received on the draft methodology" as referenced in CMS's Notice of Final Payment Error Calculation Methodology for Part C Medicare Advantage Risk Adjustment Data Validation Contract-Level Audits (Feb. 24, 2012).

REQUEST NO. 90:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 89.

REQUEST NO. 91:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 89.

REQUEST NO. 92:

All Documents Concerning the FFS Adjuster. This Request should be construed to Include the time period January 1, 2004 to the present.

REQUEST NO. 93:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 92.

REQUEST NO. 94:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 92.

REQUEST NO. 95:

All Documents Concerning the Risk Adjustment Error ("RAE"), Including Documents sufficient to show the annual RAE Calculated by You.

REQUEST NO. 96:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 95.

REQUEST NO. 97:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 95.

REQUEST NO. 98:

All Documents Concerning CMS's statement that MAOs "cannot reasonably be expected to know that every piece of data is correct, nor is that the standard that [CMS], the OIG, and DOJ believe is reasonable to enforce." (See, e.g., Medicare Program: Medicare+Choice Program, 65 Fed. Reg. 40,170, 40, 268 (June 2000).)

REQUEST NO. 99:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 98.

REQUEST NO. 100:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 98.

REQUEST NO. 101:

All Documents Concerning MAOs' "exercise of reasonable diligence" Concerning Reporting And Returning Overpayments to CMS as described in 79 Fed Reg. 29,844, 29,923.

REQUEST NO. 102:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 101.

REQUEST NO. 103:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 101.

REQUEST NO. 104:

All Documents Concerning Reporting And Returning Overpayments pursuant to 42 U.S.C. § 1320a-7k(d).

REQUEST NO. 105:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 104.

REQUEST NO. 106:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 104.

REQUEST NO. 107:

Any Documents Concerning the statement in 42 U.S.C. § 1395w-23(a)(1)(C)(i) (2016) that "the Secretary shall adjust the payment amount… to ensure actuarial equivalence."

REQUEST NO. 108:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 107.

REQUEST NO. 109:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 107.

REQUEST NO. 110:

All Documents Concerning the Coding Intensity Adjustment, Including all Documents Concerning Your Calculation of the Coding Intensity Adjustment.

REQUEST NO. 111:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 110.

REQUEST NO. 112:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 110.

REQUEST NO. 113:

Documents sufficient to show the Methodology by which You Developed, Implemented, or Calculated Risk Adjustment Factors. This Request seeks Documents from June 1, 1997 to the present. For the purposes of this Request, "Developed" means "develop" as used in 42 U.S.C. § 1395w-23(a)(3)(A).

REQUEST NO. 114:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 113.

REQUEST NO. 115:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 113.

REQUEST NO. 116:

All Documents provided by the Relator(s) to You that You have not already provided to Defendants.

REQUEST NO. 117:

All Documents Concerning Communications between the Relator(s) and You.

REQUEST NO. 118:

All Documents provided to You by any Person other than Relators or Defendants as part of Your Investigation of Defendants' Submission of Risk Adjustment Data to CMS.

REQUEST NO. 119:

Documents sufficient to Identify the Person who produced each Document to You that You produced in response to Request No. 118.

REQUEST NO. 120:

All CIDs and subpoenas that You issued as part of Your Investigation of Defendants' Submission of Diagnosis Codes, Risk Adjustment Data, and claims for payment to CMS, except for the subpoenas that You issued to Defendants.

REQUEST NO. 121:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 120.

REQUEST NO. 122:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 120.

REQUEST NO. 123:

Documents sufficient to show the Persons that You interviewed or the Persons who provided testimony under oath from August 22, 2013 to present as part of Your Investigation of Defendants' Submission of Risk Adjustment Data to CMS, Including the dates of each interview or testimony.

REQUEST NO. 124:

All Documents shown, summarized, or otherwise described to any Person that You interviewed or Person who provided testimony under oath from August 22, 2013 to present as part of your Investigation of Defendants' Submission of Risk Adjustment Data to CMS.

REQUEST NO. 125:

All recordings of any kind, Including transcripts or other Documents memorializing the contents of such recordings, of Persons who acted or purported to act on Defendants' behalf that were created, transcribed, or produced by any Person in connection with Your Investigation of Defendants' Submission of Risk Adjustment Data to CMS.

REQUEST NO. 126:

Documents sufficient to show CMS employee names, titles, and lines of authority (Including but not limited to organizational charts) within each of the following departments,

units, divisions, sections or groups and their predecessors from January 1, 2010 to present:

(a) Center for Program Integrity;

(b) Medicare Parts C and D Oversight and Enforcement Group;

(c) Medicare Plan Payment Group; and

(d) Offices of the Administrator, Acting Administrator, Director, Acting Director and Deputy Directors of Medicare.

REQUEST NO. 127:

All Documents, Including any drafts or prior versions of Documents, Concerning the following:

a. 42 C.F.R. § 422.308(c);

b. 42 C.F.R. § 422.310(b);

c. 42 C.F.R. § 422.310(d);

d. 42 C.F.R. § 422.310(g);

e. 42 C.F.R. § 422.326;

f. 42 C.F.R. § 422.503(b)(4)(vi);

g. 42 C.F.R. § 422.504(l);

h. CMS 2003 Regional Risk Adjustment Training for Medicare+Choice Organizations Participant Guide;

i. CMS 2004 Regional Risk Adjustment Training For Medicare+Choice Organizations Participant Guide;

j. CMS 2005 Risk Adjustment Data Basic Training For Medicare Advantage Organizations Participant Guide;

k. CMS 2006 Risk Adjustment Data Basic Training For Medicare Advantage Organizations Participant Guide (February 2006);

l. CMS 2006 Risk Adjustment Data Basic Training For Medicare Advantage Organizations Participant Guide (July 2006);

m. CMS 2007 Risk Adjustment Data Training For Medicare Advantage Organizations

Participant Guide;

n. CMS 2008 Risk Adjustment Data Technical Assistance For Medicare Advantage Organizations Participant Guide;

o. CMS 2011 Regional Payment Technical Assistance Participant Guide;

p. CMS 2012 Regional Technical Assistance Encounter Data Participant Guide;

q. CMS 2013 National Technical Assistance Risk Adjustment 101 Participant Guide (July 23, 2013);

r. CMS Risk Adjustment Data Validation (RADV) Medical Record Intake Process and Guidance to Coders, CY2011 Contract Level RADV, Version 4.0 (May 8, 2014);

s. CMS Contract-Level Risk Adjustment Data Validation, Medical Record Reviewer Guidance, As of 09/27/2017;

t. CMS Contract-Level Risk Adjustment Data Validation, Medical Record Reviewer Guidance, In effect as of 03/20/2019;

u. CMS Contract-Level 15 Risk Adjustment Data Validation, Medical Record Reviewer Guidance, In effect as of 01/10/2020, Version 2.0;

v. CMS Documents bearing the titles "Model Calibration Factor" and "Three RADV Policy Issues," available at the Overpayment Rule Litigation docket (ECF Nos. 44-3 and 44-4);

w. Notice of Final Payment Error Calculation Methodology for Part C Medicare Advantage Risk Adjustment Data Validation Contract-Level Audits (Feb. 24, 2012);

x. CMS Electronic Data Interchange (EDI) Enrollment Form, available at https://www.cms.gov/cmsforms/downloads/CMS10164B.pdf;

y. CMS Medicare Managed Care Manual, Chapter 7;

z. CMS Medicare Managed Care Manual, Chapter 21;

aa. The sections of the Medicare Managed Care Manual cited in paragraphs 61, 65, 75, 80 and 81 of the Complaint;

bb. Medicare Program, Contract Year 2015 Policy and Technical Changes to the

Medicare Advantage and the Medicare Prescription Drug Benefit Programs, 79 Fed. Reg. 1918, 2053 (Jan. 10, 2014) (to be codified at 42 C.F.R. § 422.310(e));

cc. Medicare Program, Contract Year 2015 Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs, 79 Fed. Reg. 1918, 2055 (Jan. 10, 2014) (to be codified at 42 C.F.R. § 422.326);

dd. Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program for All-Inclusive Care for the Elderly (PACE), Medicaid Fee-for-Service, and Medicaid Managed Care Programs for Years 2020 and 2021, 83 Fed. Reg. 54982 (proposed Nov. 1, 2018) (to be codified at 42 C.F.R. §§ 422, 423, 438, 498);

ee. Medicare Program, Medicare+Choice Program, 65 Fed. Reg. 40,170, 40,265, 40,268 (June 29, 2000); and

ff. Publication of the Office of the Inspector General's Compliance Program Guidance for Medicare+Choice Organizations Offering Coordinated Care Plans, 64 Fed. Reg. 61,893, 61,900 (Nov. 15, 1999).

REQUEST NO. 128:

Documents sufficient to Identify all Persons (Including their titles) currently or previously employed at, or as contractors for, CMS or HHS-OIG who Developed Documents produced in response to Request No. 127.

REQUEST NO. 129:

All Documents Concerning Communications with any Defendant Concerning Documents produced in response to Request No. 127.

REQUEST NO. 130:

All Documents Concerning Communications with any Person other than a Defendant Concerning Documents produced in response to Request No. 127.

Dated: January 26, 2022

O'MELVENY & MYERS LLP

By: /s/ *David J. Leviss*

K. LEE BLALACK, II
DAVID J. LEVISS
DAVID DEATON
STEPHEN M. SULLIVAN
CAITLIN M. BAIR
DIMITRI D. PORTNOI

Attorneys for Defendant Kaiser Foundation Health Plan, Inc.

PROOF OF SERVICE

I, David J. Leviss, hereby declare:

I am a resident of the District of Columbia and over the age of eighteen years and not a party to the within action. My business address is O'Melveny & Myers LLP, 1625 Eye Street, NW, Washington, DC 20006. I declare that on January 26, 2022, I served a true and complete copy of the following document(s) entitled:

DEFENDANT KAISER FOUNDATION HEALTH PLAN'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF, UNITED STATES OF AMERICA

y	**ELECTRONIC SERVICE:** by causing a true and correct copy of the document(s) listed above to be transmitted via electronic mail (in PDF format) as set forth below.
☐	**U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Washington, D.C. addressed as set forth below. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
☐	**FEDERAL EXPRESS:** by putting a true and correct copy thereof in a sealed envelope designated by the carrier, with delivery fees paid or provided for, for delivery the next business day to the person(s) listed below, and placing the envelope for collection today by the overnight courier in accordance with the firm's ordinary business practices. I am readily familiar with this firm's practice for collection and processing of overnight courier correspondence. In the ordinary course of business, such correspondence collected from me would be processed on the same day, with fees thereon fully prepaid, and deposited that day in a box or other facility regularly maintained by Federal Express, which is an express carrier.

Counsel of Record:

Name and Email	Address
Benjamin Joseph Wolinsky Benjamin.Wolinsky@usdoj.gov	U.S. Attorney's Office Northern District of California

	450 Golden Gate Avenue, 9th Floor San Francisco, CA 94102
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Patricia L. Hanower	United States Department of Justice Civil Division P.O. Box 261 Ben Franklin Station Washington, DC 20044
Shiwon Choe shiwon.choe@usdoj.gov	United States Attorney's Office Northern District of California 450 Golden Gate Avenue, Box 36055 San Francisco, CA 94102
Vanessa I. Reed	United States Department of Justice Civil Division P.O. Box 261 Ben Franklin Station Washington, DC 20044

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 26, 2022 at Washington, D.C.

/s/ *David J. Leviss*
David J. Leviss

Exhibit 4

To	Jamie.Lasswell@nsmtp.kp.org
Cc	
Bcc	
From	Jillian.Deneau@nsmtp.kp.org
Date	02/23/2016 5:37:23 AM
Subject	Re: Brief Update on Addendums
Attachments	

Good morning Jamie,

No worries, the meeting yesterday was short and sweet, so you didn't miss much. Treska had mentioned that in the past there used to be a watermark that called out addendums in the encounters within chart review. She mentioned this because when the auditors receive a file from RCA with encounters that supposedly had an addendum created within it, many times it was not obvious which part of the note was an addendum (or which diagnoses were added as part of the addendum), and they would have to spend time researching each encounter to identify. I noticed the same thing when working with Jonah on the Addendum reporting -- many times I would be looking in the User Log or asking Nick R. to look in record viewer regarding specific diagnoses just to confirm that an addendum did happen.

It sounds like this need is specific to coding/ risk adjustment only because of the audits they will be doing and feedback they will be giving, but I don't think the obviousness of the addendum could hurt in the broader clinical setting. It sounds as though HC is very obvious about the fact that the provider is creating an addendum; it's just not that obvious once the addendum has already been created.

Hope this helps. Let me know if you have any further questions!

Thank you!

Jill Deneau | Business Operations Consultant
Kaiser Permanente Colorado
Revenue Cycle - Risk Adjustment
2500 S Havana Street - Aurora, CO 80014
Jillian.Deneau@kp.org (Preferred)
Office: 303.283.2821
Cell: 303.419.1439

Jamie Lasswell---02/22/2016 05:31:07 PM---Hi Jill, Sorry I wasn't able to make this mornings' meeting as I had a conflict. Is the need that w

From: Jamie Lasswell/PO/KAIPERM
To: Jillian Deneau/CO/KAIPERM@KAIPERM
Date: 02/22/2016 05:31 PM
Subject: Re: Brief Update on Addendums

Hi Jill,

Sorry I wasn't able to make this mornings' meeting as I had a conflict. Is the need that was discussed to be able to identify when an encounter was addended by looking at it in chart review? Is this need specific to coding / risk adjustment staff (not a broader clinical need)?

Thanks,
Jamie

Jamie Lasswell, Ph.D.
Executive Director, Business Operations
Executive Director, Medical Informatics and Technology
Colorado Permanente Medical Group

Desk: 303-344-7428 • Cell: 303-746-8712 • Email: Jamie.Lasswell@kp.org
Assistant: Abbie Muscarella • Abigail.R.Muscarella@kp.org • 303-344-7214

Jillian Deneau---02/22/2016 12:10:24 PM---Hi all -- First off, sorry for this morning. Somehow I've gotten my computer back up and running (ph

From: Jillian Deneau/CO/KAIPERM
To: Hayden P Mallon/CO/KAIPERM@KAIPERM, Jamie Lasswell/PO/KAIPERM@Kaiperm, Laura X Capelo/CO/KAIPERM@KAIPERM, Maegen Leake/CO/KAIPERM@KAIPERM, Treska T Francis/CO/KAIPERM@KAIPERM, Brenda J Marsh/CO/KAIPERM@KAIPERM, Julie A Davis/CO/KAIPERM@KAIPERM
Date: 02/22/2016 12:10 PM
Subject: Brief Update on Addendums

Hi all --

First off, sorry for this morning. Somehow I've gotten my computer back up and running (phew!) and since our meeting, I have received a phone call from Ryan Rosenthal in HC Systems Training. He has notified me that HC will be going through another update in the near future, and is struggling to find resources to fully commit to updating the Provider Manual knowing that another update is on the horizon. Most of the content is the same, though some newer pieces will not be in there just yet (dual screen views for providers was an example he gave).

Also, we discussed the Addendum healthconnect workflow, and he confirmed that the watermark still shows up WHILE a provider is creating the addendum, but that it does not show once you're in chart review. I explained to him that we're trying to find a sure-fire way to call out an addendum within an encounter 100% of the time (instead of having to look in multiple places to confirm). It sounded like he knew what I meant and confirmed that he'll look into that further and get back to me.

If there is anything else you would like me to discuss with Ryan before our next meeting, please let me know.

Attached below is the updated Provider Manual (sorry you didn't get it the first time Julie!).

[attachment "Provider's Guide Version 1.3.pdf" deleted by Jamie Lasswell/PO/KAIPERM]

Thank you,

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Exhibit 5

EXHIBIT FILED UNDER SEAL

Exhibit 6

EXHIBIT FILED UNDER SEAL

Exhibit 7

EXHIBIT FILED UNDER SEAL

Exhibit 8

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April 5, 2024

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VIA EMAIL

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Re: ***United States ex rel. Osinek v. Kaiser Permanente, Case No. 3:13-cv-03891-EMC—Plaintiff United States' First, Third, and Fourth Sets of Requests for Production of Documents to Defendants***

Dear Ms. Oberembt:

I write on behalf of Defendants Kaiser Foundation Health Plan, Inc. ("KFHP"); Kaiser Foundation Health Plan of Colorado ("KFHP-CO"); The Permanente Medical Group, Inc. ("TPMG"); Southern California Permanente Medical Group ("SCPMG"); and Colorado Permanente Medical Group, P.C. ("CPMG") (collectively, "Defendants") in the above-referenced matter in response to your letter dated March 26, 2024 (the "March 26 Letter") regarding Defendants' responses to the United States' First, Third, and Fourth Sets of Requests for Production of Documents to Defendants ("RFPs").

HealthConnect Message Productions

The parties agreed that the HealthConnect messages productions would exclude same-day Addenda and Addenda redacted in the open period.[1] In the March 26 Letter, Plaintiff asked how Defendants defined the open period when extracting the messages.[2] Defendants defined the open period using the plain meaning of the term: using the open period for each Service Year. For example, the open period for 2018 dates of service submissions was from January 1, 2018 to January 31, 2020, so the Addenda that were both added and redacted within that period were excluded from the pull list.

[1] Defs.' May 12, 2023 Ltr. to U.S. at 5 (memorializing the parties' agreement to search for Communications excluding "Addenda created on the same day as the Outpatient medical visit and excluding "'Addenda that did not add diagnoses for which Defendants received Risk Adjustment Payments,' which includes Addenda associated with Diagnosis Codes that were both submitted to CMS and subsequently redacted within the same data collection period").

[2] U.S.' Mar. 26, 2024 Ltr. to Defs. at 1 (asking whether "the exclusions for redactions were limited to diagnosis codes that were redacted during the same calendar year as the date of service").

Plaintiff also asked about Defendants' "criteria" for "querying Clarity" in searching for responsive HealthConnect messages. In our letters dated April 21, 2023 and May 12, 2023, we explained that Defendants agreed to search for responsive Communications in HealthConnect for the Beneficiaries listed in the analysis KFHP cited in response to Interrogatory No. 3 (KAISER_DOJ2021_0000000073); this criteria excluded Beneficiaries associated only with Addenda created on the same day as the Outpatient medical visit and "'Addenda that did not add diagnoses for which Defendants received Risk Adjustment Payments,' which includes Addenda associated with Diagnosis Codes that were both submitted to CMS and subsequently redacted within the same data collection period."[3] The parties also agreed that Defendants would explore if there were other ways to filter the population of produced HealthConnect messages to the relevant Addenda.[4] Consistent with these discussions, for each of these Addenda, Defendants searched for all HealthConnect messages sent to or received by the Medical Care Provider whose encounter was addended between the date of the encounter and the date of the Addendum. Defendants limited these searches to HealthConnect messages specifically designated as being related to the relevant Beneficiaries. Defendants used patient and employee identification numbers to perform these searches: PAT_ID for patients and EMP and SER identification numbers for Medical Care Providers.

In the March 26 Letter, Plaintiff finally[5] shared four examples of HealthConnect messages it believes were "missing" from Defendants' production of HealthConnect messages. Request No. 18 seeks HealthConnect messages related to hundreds of thousands of Addenda. To perform the enormously broad search that Request No. 18 required, Defendants utilized employee and patient identification numbers in Clarity to search for HealthConnect messages to or from the relevant Medical Care Providers and related to the relevant Beneficiaries. Defendants have investigated the four messages Plaintiff identified and determined that those messages were excluded because the Medical Care Provider or Beneficiary identification numbers used to search Clarity for those messages were not present in the relevant fields. Defendants' search methodology was reasonably comprehensive given the massive scope of Request No. 18.

Plaintiff asked whether volumes KFHP_Overlay006, KFHP360, and KFHP365 contain all the HealthConnect messages produced in response to Request No. 18. On April 1, 2024, Plaintiff clarified that it intended to reference KP023-001, KP025-001, and KP-Overlay-005.

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[3] Defs.' Apr. 21, 2023 Ltr. to U.S. at 8-9; Defs.' May 12, 2023 Ltr. to U.S. at 5.

[4] *See, e.g.*, U.S.' Mar. 9, 2023 Ltr. to Defs. at 6 ("As previously agreed, if Defendants are able to further filter such Communications 'to isolate Communications about the Addendum,' we will accept that limitation as well."); Defs.' May 12, 2023 Ltr. to U.S. at 6 ("As requested, Defendants confirm that Defendants may filter Communications in HealthConnect to exclude from their response Communications that are wholly unrelated to any Addenda identified in response to Interrogatory No. 3, assuming Defendants are capable of such filtering and it is possible without undue burden, and that Defendants will include in their response (and will not narrow or filter out) Communications about such Addenda.").

[5] Defendants first requested these examples nearly two months ago and reiterated that request last month. Defs.' Feb. 9, 2024 Ltr. to U.S. at 4; Defs.' Mar. 13, 2024 Ltr. to U.S. at 1. Defendants also requested examples during our March 22, 2024 meet-and-confer.

Defendants confirm that these production volumes contain all the HealthConnect messages produced in response to Plaintiff's Request No. 18.

Plaintiff acknowledged that Defendants have included a "PAT_ID" field in the HealthConnect messages they produced, but said that Plaintiff does "not have a crosswalk to match each MRN associated with the PAT ID."[6] This statement is incorrect. Defendants produced this information over a year ago in the Clarity PATIENT tables found in production volumes CPMG-A, CPMG-B, TPMG-D, TPMG-E, SCPMG-D, and SCPMG-E and in the crosswalks found in production volume KFHP-A.

Plaintiff also asked Defendants to identify the information in Defendants' productions that would allow Plaintiff to "identify the name of each sender" of a produced HealthConnect message.[7] Defendants produced this information to Plaintiff over a year ago in the SER tables contained in production volumes CPMG-A, TPMG-D, and SCPMG-D. The SER tables contain the name information for the sender for the vast majority of HealthConnect messages. In preparing a response to Plaintiff's inquiry, Defendants determined that there are additional tables, EMP tables, with a small amount of supplemental information that can identify the remaining name information for the senders. Defendants will produce that supplemental data soon.

We do not understand Plaintiff's complaint about the burden of having to "stitch" together the different elements of a HealthConnect message, which are stored natively in three different Clarity tables. Plaintiff represented to the Court that it has already completed this "stitching."[8] The rest of the complaints in the March 26 Letter are also unwarranted. Specifically, Plaintiff states that producing the HealthConnect messages as they are stored natively "unnecessarily complicates a simple issue and will waste the Court's time" if Plaintiff needs to "present testimony from a data reconstruction expert just to present HealthConnect messages to the jury."[9] Plaintiff argues that "[t]here is no good reason to have to present evidence about how to piece together a single message spread across multiple spreadsheets."[10] Plaintiff is free to choose how to present admissible evidence at trial. But, as we have explained, Defendants will not agree to manipulate natively stored data to suit Plaintiff's preferences for how it would like to present that evidence. It is Plaintiff's responsibility, not Defendants' responsibility, to prepare and present its own case. We therefore do not agree that there is anything "unnecessary" about Plaintiff having to organize the native messages into its preferred format.

In the March 26 Letter, Plaintiff asked that Defendants reproduce hundreds of thousands of HealthConnect messages in a "usable" format.[11] This is an unreasonable request for two reasons. First, Plaintiff already has the messages in a "usable" format. Plaintiff has

[6] U.S.' Mar. 26, 2024 Ltr. to Defs. at 2.

[7] *Id.*

[8] Decl. of L. Oberembt ¶ 17, Dkt. No. 327-1 (representing that "the United States' data experts stitched these files back together").

[9] U.S.' Mar. 26, 2024 Ltr. to Defs. at 3.

[10] *Id.*

[11] *Id.*

represented to the Court that it was able to pair all the messages together.[12] Plaintiff demonstrated that it was able to review and understand these messages, alleging in its filing to the Court that it "stitched" the messages together and that the messages allegedly include, among other things, "messages pressuring Kaiser doctors to alter medical records to add diagnoses."[13] Based on Plaintiff's representations to the Court, we do not see how it can be true that the HealthConnect messages are not "usable" in their current format. Second, before pulling the HealthConnect messages, we disclosed Defendants' anticipated approach to this production in detail and gave Plaintiff multiple opportunities to object.[14] Defendants made clear that they would not collect and produce this data twice.[15] Plaintiff steadfastly refused to engage with Defendants on the substance of the HealthConnect messages that would be produced, simply insisting that it "is not incumbent on the United States 'to correctly guess which database contains the information [it is] seeking'" and that "it is incumbent on Defendants 'to exercise due diligence in locating, retrieving, and producing the documents that are responsive to the requests for production regardless of which database the documents may be contained in.'"[16] As Defendants stated eight months ago, Defendants will not produce this data twice.[17] This remains true now, particularly because Plaintiff has had "usable" messages in its possession for several months.[18]

During our March 22, 2024 meet-and-confer, Plaintiff expressed that it might be confused about certain fields included in the HealthConnect messages production. We asked that you simply identify those fields and the nature of your confusion. Instead of doing this, in your March 26 Letter, you have asked about every single field in a different file produced during DOJ's Investigation. We do not see how that file is relevant or why Plaintiff has disregarded our request to identify specific fields that it finds confusing in the production of HealthConnect messages. If Plaintiff has specific questions about a data field produced in KP023-001, KP025-001, and KP-Overlay-005, please let us know. Defendants are willing to entertain and address reasonable requests for clarifying information about such data fields. We doubt any clarification is necessary because the fields are self-explanatory and you already have a Clarity data dictionary, but Defendants remain willing to discuss further.

Lastly, Plaintiff asked Defendants to confirm that they "will take steps to ensure that [Defendants] locate and produce" HealthConnect messages responsive to Plaintiff's Third and Fourth Sets of RFPs.[19] Defendants confirm that they have produced HealthConnect messages responsive to Plaintiff's Third Set of RFPs consistent with their objections and responses and

[12] Decl. of L. Oberembt ¶ 17, Dkt. No. 327-1.

[13] *Id.*

[14] *See, e.g.*, Defs.' July 6, 2023 Ltr. to U.S. at 1.

[15] Defs.' July 21, 2023 Ltr. to U.S. at 2-3.

[16] U.S.' July 14, 2023 Ltr. to Defs. at 2; *see also* Defs.' July 21, 2023 Ltr. to U.S. at 2 (pointing out Plaintiff's failure to engage with Defendants on the production parameters for HealthConnect messages).

[17] Defs.' July 6, 2023 Ltr. to U.S. at 1; Defs.' July 21, 2023 Ltr. to U.S. at 2-3.

[18] The files produced during DOJ's Investigation do not reflect the native format of the HealthConnect messages.

[19] U.S.' Mar. 26, 2024 Ltr. to Defs. at 3.

will produce HealthConnect messages responsive to Plaintiff's Fourth Set of RFPs consistent with their objections and responses.

Data Compilations

In Plaintiff's March 26 Letter, you request that Defendants: (1) identify the "original data compilation source" for certain reports used by KFHP-CO and CPMG and (2) produce, in response to Request No. 19, Documents "necessary to understand and use" Data Compilations.[20] First, we have confirmed that KFHP-CO and CPMG did not maintain Refresh databases within Clarity. Clarity data was used to generate point-in-time Documents, but there was no separate Refresh or Data Mining database within Clarity. Second, Defendants will agree to conduct searches for additional Data Compilation instructions and will use the examples you provided to inform those searches.

Plaintiff's Third and Fourth Sets of RFPs

The March 26 Letter reiterates Plaintiff's position that Defendants produce two Medical Records for each of the thousands of patient encounters subject to the Third and Fourth Set of RFPs and also asks how Defendants intend to identify radiology reports and test results responsive to Plaintiff's Fourth Set of RFPs.[21]

Defendants have explained that the Medical Record productions responsive to the Third and Fourth Sets of RFPs will include Original Encounter Notes along with any Addenda. Plaintiff does not need a separate, standalone version of the Original Encounter Notes to prove any disputed fact in this case. Please review the Medical Records already produced; it should be obvious to you upon reviewing those Medical Records that no further productions of Original Encounter Notes are necessary to interpret those Medical Records. Plaintiff's position—that Defendants should also produce duplicative standalone Original Encounter Notes for the thousands of Medical Records that Plaintiff has sought through its Third and Fourth Set of RFPs—is not reasonable. We believe the explanation in this paragraph and the produced Medical Records clearly demonstrate why Defendants' productions will be sufficient. If Plaintiff identifies through its review a Medical Record for which it believes an Original Encounter Note is missing, please let us know.

Plaintiff's March 26 Letter asks for further information about how Defendants plan to identify responsive radiology reports and test results and if any limitations will be applied.[22] Please review Defendants' Responses and Objections to the Fourth Set of RFPs for this information. As explained in those documents, SCPMG, TPMG, and CPMG will produce "radiology reports and test results referenced in the Medical Records" for the respective Defendant's Listed Patient Visits that are "specifically associated with Addended diagnoses that correspond to Diagnosis Codes in KAISER_DOJ2021_0000000073" for the respective

[20] *Id.* at 3-4.

[21] *Id.* at 4.

[22] U.S.' Mar. 26, 2024 Ltr. to Defs. at 4.

Defendant's corresponding Listed Patient Visits.[23] As we explained during the March 22, 2024 meet-and-confer, Defendants are reviewing Medical Records to determine whether any radiology reports or test results were referenced in the relevant Addenda and those Medical Records must provide sufficient information for Defendants to locate the referenced report or test result.[24] If Plaintiff has specific questions about whether a report or test result will be produced in response to the Fourth Set of RFPs based on your review of specific Medical Records, please let us know. That will be much more productive than a hypothetical discussion of what may be referenced in the Addenda.

Please let us know if you wish to meet and confer about the issues addressed herein. We are available on April 10 from 1-2 PT and April 11 from 11-12 PT.

Sincerely,

/s/ *Caitlin M. Bair*

Caitlin M. Bair

cc: (via email only)
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Jonathan Thrope, Esq.
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Rachel Karpoff, Esq.
Shiwon Choe, Esq.
David Deaton, Esq.
Jeffrey Fowler, Esq.

[23] SCPMG's Resps. and Objs. to Pl. U.S.' Fourth Set of Reqs. for Produc. of Docs. at 18; CPMG's Resps. and Objs. to Pl. U.S.' Fourth Set of Reqs. for Produc. of Docs. at 18; TPMG's Resps. and Objs. to Pl. U.S.' Fourth Set of Reqs. for Produc. of Docs. at 18.

[24] Plaintiff's March 26 Letter states that Defendants "explained that no specific time limitation would be applied for the reports and test results." U.S.' Mar. 26, 2024 Ltr. to Defs. at 4. We do not understand what you mean by that statement, but to make the record abundantly clear, Defendants confirm that they will search for the referenced radiology reports or test results as long as they are "specifically associated with Addended diagnoses that correspond to Diagnosis Codes in KAISER_DOJ2021_0000000073" for each Defendant's corresponding Listed Patient Visits and consistent with the date range articulated in Defendants' Responses and Objections to the Instructions to the Fourth Set of RFPs.

Exhibit 9

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June 7, 2024

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Re: ***United States ex rel. Osinek v. Kaiser Permanente, Case No. 3:13-cv-03891-EMC—Plaintiff United States' First, Third, and Fourth Sets of Requests for Production of Documents***

Dear Ms. Oberembt:

I write on behalf of Defendants Kaiser Foundation Health Plan, Inc. ("KFHP"); Kaiser Foundation Health Plan of Colorado ("KFHP-CO"); The Permanente Medical Group, Inc. ("TPMG"); Southern California Permanente Medical Group ("SCPMG"); and Colorado Permanente Medical Group, P.C. ("CPMG") (collectively, "Defendants") in the above-referenced matter. This letter addresses the issues that the parties discussed in the lead counsel meet-and-confer on June 4, 2024 (the "June 4 Meet-and-Confer") regarding Defendants' production of HealthConnect messages and Medical Records.

As detailed below and in prior correspondence, Defendants are willing to make material compromises related to Plaintiff's demand for the supplemental production of HealthConnect messages in response to Request No. 18 and changes in the production format of HealthConnect messages in response to Request Nos. 18, 48, and 50. Defendants' offers of compromise on these two disputes are contingent on Plaintiff's acceptance of Defendants' proposed plan to produce Original Encounter Notes, as outlined below.

Supplemental Productions of HealthConnect Messages (Request No. 18)

As discussed during the June 4 Meet-and-Confer, we appreciate Plaintiff's willingness to provide the information Defendants have been requesting for months[1] to aid them in identifying the narrowed set of Addenda in the Addendum data file (the "Addendum Data File")[2] that Plaintiff has determined are potentially at issue in this case ("Plaintiff's List of Addenda").[3] At the June 4 Meet-and-Confer, you explained for the first time that there are four categories of entries in the Addendum Data File that are not included in the "universe of over 350,000" entries on Plaintiff's List of Addenda. Today, Plaintiff agreed to share a file that you represent identifies Addenda that "can be removed from the Addendum Data File because either: (1) the Addenda is

[1] *See, e.g.*, Defs.' Mar. 8, 2024 Ltr. to U.S. at 10–11.
[2] KAISER_DOJ2021_0000000073.
[3] *See, e.g.*, Dkt. No. 327 at 3 n.4; U.S.' May 8, 2024 Ltr. to Defs. at 3–4.

from the same day as the encounter or (2) [you] have determined that the diagnosis code was submitted to CMS before the Addenda was added."[4] Plaintiff then described two further categories of entries that "do not change the number of Addenda at issue" but do affect how the parties count the number of at-issue entries in the Addendum Data File: (3) entries for multiple Addenda associated with the same encounter, and (4) duplicate entries, which, as we understand from the June 4 Meet-and-Confer, occur when the same Addendum is associated once with a "HICN" identifier and a second time with a "MBI" identifier.[5] Defendants will review the file and confirm whether it contains sufficient information to proceed with making supplemental productions in response to Request No. 18.[6]

Your correspondence today does not mention a fifth category of entries that the parties agreed to exclude from the scope of Request No. 18 over a year ago: "Addenda associated with Diagnosis Codes that were both submitted to CMS and subsequently redacted within the same data collection period."[7] Defendants will also exclude this set of Addenda from any supplemental productions in response to Request No. 18. Subject to the parties' agreement on the other disputed issues addressed in this letter, once we have verification of Plaintiff's List of Addenda, then Defendants will agree to conduct a supplemental production of HealthConnect messages in response to Request No. 18, as revised.

Format of Productions of HealthConnect Messages (Request Nos. 18, 48, and 50)

Plaintiff has asked that Defendants produce and/or reproduce In Basket messages from HealthConnect in the same "usable format" that Defendants utilized during the United States Department of Justice's pre-intervention investigation of Defendants ("DOJ's Investigation").[8] Specifically, Plaintiff's letter dated May 23, 2024 (the "May 23 Letter") sets forth Plaintiff's preferred format for production of HealthConnect messages like so: "All relevant information pertaining to a single message (MRN, date of service, sender, recipients, message type, message ID, date/time sent, subject, message body) should be included in a single spreadsheet, with line breaks and formatting reflecting how the messages actually appeared in HealthConnect."[9] Defendants have previously explained that the production of HealthConnect messages during DOJ's Investigation included work product and that Defendants will not replicate that same production format in litigation. We have also explained that, contrary to your statements, the HealthConnect messages produced in this litigation are currently in a "usable

[4] *See* June 7, 2024 Email from J. Thrope to C. Boucher.
[5] *See id.*
[6] We proposed at the June 4 Meet-and-Confer that, once Defendants have attempted to recreate Plaintiff's List of Addenda, you review Defendants' narrowed file and verify that it exactly replicates Plaintiff's List of Addenda. As we noted, in response to Plaintiff's request, Defendants recently agreed to perform a similar verification process in connection with Plaintiff's Interrogatory No. 10. This exercise would avoid later disagreement between the parties about whether Defendants filtered the file correctly, and ensure that both parties are working from the same set of at-issue Addenda—Addenda that define the scope of multiple discovery requests such as this one. Given that neither side has any interest in conducting discovery based on different lists of disputed Addenda, we said that we hoped Plaintiff would agree with this compromise solution. During the June 4 Meet-and-Confer, you agreed to consider this proposal. In your email today, you stated that, because you have now provided "more information" than you agreed to provide during the June 4 Meet-and-Confer, you believe this proposal is moot. Defendants will review the file and confirm whether they agree with your position.
[7] *See, e.g.*, Defs.' May 12, 2023 Ltr. to U.S. at 5.
[8] June 5, 2024 Email from J. Thrope to C. Boucher.
[9] *See* U.S.' May 23, 2024 Ltr. to Defs. at 3.

format." Indeed, Plaintiff's representations to us and to the Court reflect that Plaintiff has been able to use these messages.[10]

However, in the interest of compromise and reaching agreement, Defendants will agree to join In Basket message tables together for future productions of HealthConnect messages. Under this proposal, Defendants agree to produce data fields for each type of information listed in your May 23 Letter, in "a single spreadsheet," using the style of line breaks requested. To avoid any confusion over this format, Defendants will set forth in detail what they plan to produce for future productions of HealthConnect messages. Please review and confirm that you agree to this proposed production format. Defendants will not agree to produce any of this data again.[11]

As part of a larger compromise with Plaintiff, as reflected in this letter, Defendants agree to produce responsive HealthConnect messages as follows:

- TPMG will produce a single file with HealthConnect messages responsive to Request Nos. 48 and 50 and a separate file with HealthConnect messages responsive to Request No. 18. To prepare this file, TPMG will join output from the relevant Clarity tables.
- SCPMG will produce a single file with HealthConnect messages responsive to Request Nos. 48 and 50 and a separate file with HealthConnect messages responsive to Request No. 18. To prepare this file, SCPMG will join output from the relevant Clarity tables.
- CPMG will produce a single file with HealthConnect messages responsive to Request Nos. 48 and 50 and a separate file with HealthConnect messages responsive to Request No. 18. To prepare this file, CPMG will join output from the relevant Clarity tables.
- TPMG, SCPMG, and CPMG will agree to produce the data in the Clarity fields identified in Appendix A along with the corresponding text description from relational datasets in Clarity. TPMG, SCPMG, and CPMG will produce this data in the format illustrated in Appendix B.
- TPMG, SCPMG, and CPMG will agree to extract the data from Clarity. They will not agree to manipulate, change, supplement, or alter the data extracted from Clarity with data from any other system or file.

[10] Dkt. No. 327-1, Decl. of L. Oberembt ¶ 17.

[11] Plaintiff's May 23 Letter raised a distinct issue that that there may be some HealthConnect messages "for which the sender ID does not match to any individuals" in the SER or EMP tables produced by Defendants. *See* U.S.' May 23, 2024 Ltr. to Defs. at 3. Because the example message you provided in fact contained the name of the sender, we asked for an additional message to illustrate your concern and stated that Defendants would be willing to investigate your concern further. *See* Defs.' May 31, 2024 Ltr. to U.S. at 5. On June 5, 2024, you shared via email correspondence "a list of the HealthConnect Sender IDs that do not appear to match any employee IDs from any of the locations identified by Defendants as having the relevant information." June 5, 2024 Email from J. Thrope to C. Boucher. As promised in our May 31 Letter and as stated in our June 5, 2024 email correspondence, we will proceed with investigating this data and will follow up if we need any additional information to aid our investigation, like the HealthConnect messages associated with these sender IDs. June 5, 2024 Email from C. Boucher to J. Thrope.

Production of Original Medical Records (Request Nos. 41 and 47)

Plaintiff has requested that Defendants produce "[a]ll Medical Records for the Listed Patient Visits, including without limitation[,]" "a. [a] copy of the original Medical Record(s) for the Listed Patient Visits without any amendments" and "b. [a] copy of the Medical Record(s) for the Listed Patient Visits, with all amendments clearly delineated[.]"[12] During the June 4 Meet-and-Confer, you stated Plaintiff's preference that Defendants produce one Document in response to Part (a) of your Request and a separate Document in response to Part (b) of your Request, rather than one Document containing both. You also explained at the June 4 Meet-and-Confer that you need the responsive information in this format in order to present the information "as cleanly as possible" to the jury.

We believe Plaintiff's demand for duplicative Documents largely stems from a misunderstanding of what Medical Records Defendants have agreed to produce, how clearly that information will be presented in the Medical Records, and when multiple files containing different versions of progress notes will be produced related to the Listed Patient Visits. Your confusion seems to be attributable in part to Plaintiff's failure to appreciate that each Defendant has its own version of HealthConnect that varies in important respects, including how Medical Records can be extracted and the format of the Medical Records when they are extracted.

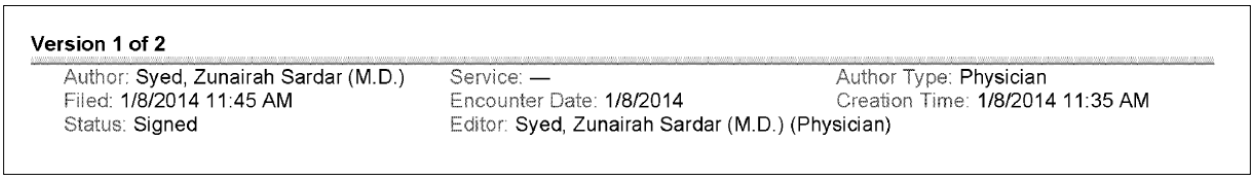
Because these differences are critical to reaching agreement on what is proportional to the needs of the case, Defendants have outlined below explanations on a Defendant-by-Defendant basis. We are confident that if you fully understand this information, including how information is presented differently by each Defendant, we will be able to reach an agreement on these Medical Record productions. The explanations that follow are *directly responsive* to Plaintiff's Request and the concerns that you expressed during the June 4 Meet-and-Confer. Within the Documents that Defendants have produced and will produce, you will find copies "of the original Medical Record(s) for the Listed Patient Visits without any amendments" and you will find copies "of the Medical Record(s) for the Listed Patient Visits, with all amendments clearly delineated."[13]

TPMG

Defendant TPMG has already produced all of the Medical Records responsive to Request Nos. 47(a) and (b). This production includes 868 Medical Records. *Every one* of these Medical Records includes every single version of every single progress note for the relevant patient encounter. These productions are now complete and the relevant Medical Records include all information that is responsive to Request Nos. 47(a) and (b).

Identifying Original Encounter Notes within the TPMG Medical Records is very easy. This is true because every progress note is listed in the "Progress Notes" section of the Medical Record and has a header that clearly distinguishes between the Original Encounter Notes and any Addended notes using text and formatting. Each note is clearly labeled with the version number and how many versions of the note there are. For example, in the Medical Record at Bates No. KP-10039850, you will see on page KP-10039855 the Original Encounter Note, which is clearly identified as the first version of the progress note:

[12] Pl. U.S.' Fourth Set of Reqs. for Produc. of Docs. at 5.
[13] *See id.*



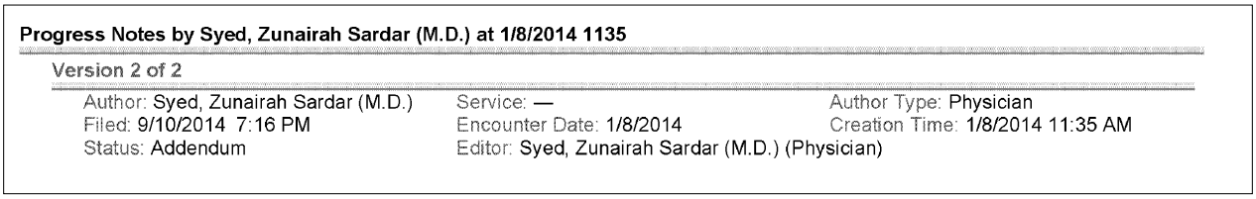
Version 1 of 2

Author: Syed, Zunairah Sardar (M.D.) | Service: — | Author Type: Physician
Filed: 1/8/2014 11:45 AM | Encounter Date: 1/8/2014 | Creation Time: 1/8/2014 11:35 AM
Status: Signed | Editor: Syed, Zunairah Sardar (M.D.) (Physician)

Electronically signed by Syed, Zunairah Sardar (M.D.) at 1/8/2014 11:45 AM

As the screenshot above demonstrates, any layperson can clearly discern that the note that follows is the first version of the note, that it was authored by the treating Medical Care Provider, and that it was signed on January 8, 2014.

On page KP-10039852, the Addended version of the progress note is plainly identifiable as well. It is labeled as "Version 2 of 2" with a status of "Addendum" and again identifies the author and date of signature:



Progress Notes by Syed, Zunairah Sardar (M.D.) at 1/8/2014 1135

Version 2 of 2

Author: Syed, Zunairah Sardar (M.D.) | Service: — | Author Type: Physician
Filed: 9/10/2014 7:16 PM | Encounter Date: 1/8/2014 | Creation Time: 1/8/2014 11:35 AM
Status: Addendum | Editor: Syed, Zunairah Sardar (M.D.) (Physician)

Electronically signed by Syed, Zunairah Sardar (M.D.) at 9/10/2014 7:16 PM

All of the TPMG Medical Records clearly identify the Original Encounter Note. We do not believe any reasonable person who has reviewed the TPMG Medical Records could plausibly assert that the TPMG Medical Records are unclear, let alone so unclear as to justify the tremendous burden associated with searching for and extracting duplicative records for every single one.

TPMG has fully responded to Request Nos. 47(a) and (b) by producing 868 Medical Records that include all original and Addended progress notes. TPMG is now working diligently to collect, identify, search, and produce the thousands of additional Documents and Communications responsive to Request No. 47(c) and Request Nos. 48, 49, and 50 by the Court's August 12, 2024 deadline. TPMG will not agree to revisit the completed Medical Record productions to put Original Encounter Notes into standalone Documents because doing so would be unduly burdensome and completely unnecessary. Identifying and then extracting Original Encounter Notes is a tremendously burdensome undertaking for our client that requires TPMG to review the Medical Record note revision history for every single encounter, locate the Original Encounter Note, and then manually print it. In addition to imposing a significant disruption and cost on our client, undertaking this unduly burdensome exercise would likely

jeopardize TPMG's ability to meet the Court's August 12, 2024 production deadline, which would then have cascading effects on later case management deadlines.

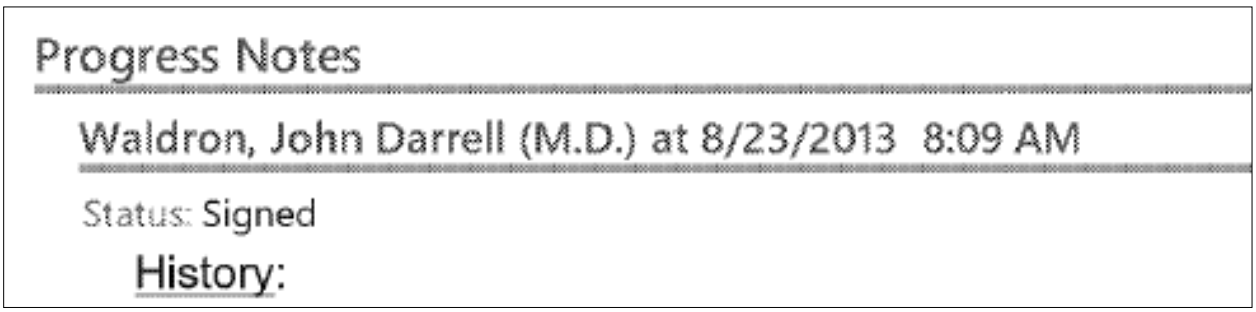
TPMG does not find at all persuasive Plaintiff's argument that it requires standalone Original Encounter Notes because it would prefer to show two separate Documents to a jury instead of one Document with clearly distinguished notes. Producing a separate Document imposes substantial burdens on TPMG, but offers little to no benefit to Plaintiff.

TPMG understands that Plaintiff has taken issue with how a single CPMG Medical Record was produced to Plaintiff.[14] Plaintiff has not taken issue with the format or readability of *any* TPMG Medical Record. Instead, Plaintiff is baselessly asserting that because the one CPMG Medical Record does not include an Original Encounter Note, TPMG's Medical Records must also be problematic in some unidentified way. That is simply not true, as this letter and the Medical Records that TPMG has produced in response to Request No. 47(a) and (b) amply demonstrate.

Again, we are confident that if you review the TPMG Medical Records, you will see that this production completely satisfies Plaintiff's litigation and trial presentation needs.

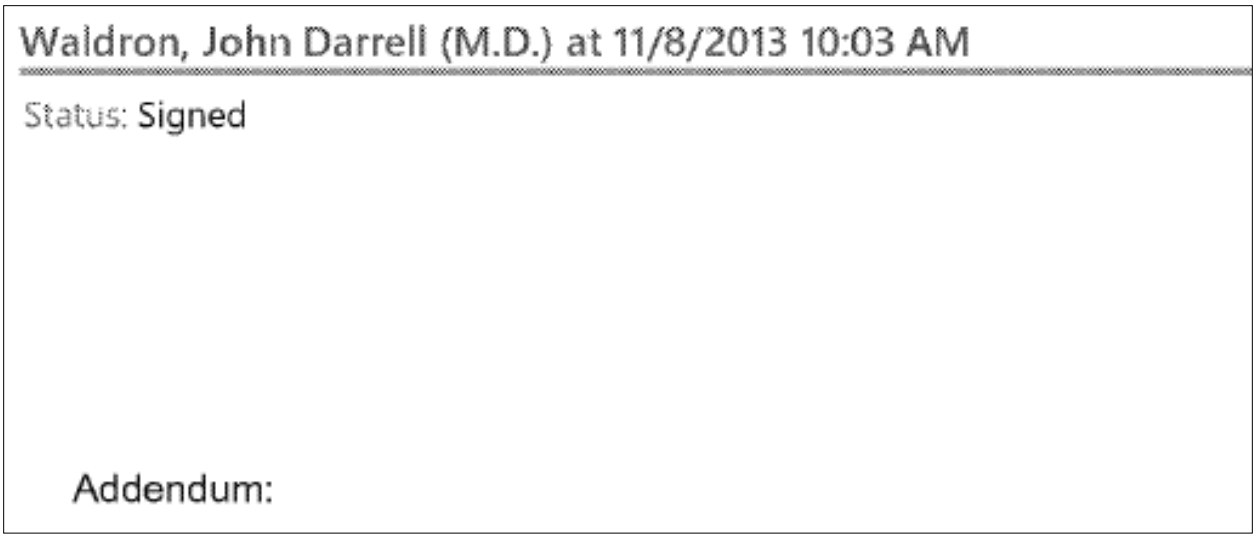
SCPMG

As you know, there are 1,185 SCPMG Listed Patient Visits in Plaintiff's Fourth Set of Requests. Defendant SCPMG is still in the process of collecting and reviewing Medical Records for production to Plaintiff, but has already produced some Medical Records, KP-10078255, KP-10078274, and KP-10078277, that are useful for illustrating its solution to Plaintiff's concerns. SCPMG anticipates that the majority of its Medical Records will include all original and Addended progress notes in a single Document in which all the progress notes will be clearly distinguishable from each other. For example, see KP-10078277, which includes an Original Encounter Note on page KP-10078278. This Original Encounter Note has a clearly identified author and date.



The Addendum to this Medical Record is also easy to identify by simply looking at page KP-10078280. In this instance, the Medical Care Provider added a progress note to the encounter documentation on November 8, 2013 and signed the progress note as follows:

[14] *See* U.S.' May 23, 2024 Ltr. to Defs. at 4.



Extracting the Original Encounter Note from the screenshot above would do nothing to elucidate this Medical Record. SCPMG does not find at all persuasive Plaintiff's argument that it requires standalone Original Encounter Notes simply because it would prefer to show two separate Documents to a jury instead of one. Producing a separate Document imposes substantial burdens on SCPMG, but offers little to no benefit to Plaintiff.

However, there are some Medical Records for which SCPMG will agree to extract Original Encounter Notes into a separate Document. We have determined that SCPMG's HealthConnect functionality sometimes results in the Original Encounter Note not being readily identifiable in the printed Medical Record. In those circumstances, SCPMG is producing the Original Encounter Notes and any interim Addended notes in separate Documents. For example, see KP-10078255 and KP-10078274, in which SCPMG produced a standalone Original Encounter Note in addition to the Medical Record reflecting the Addended note.

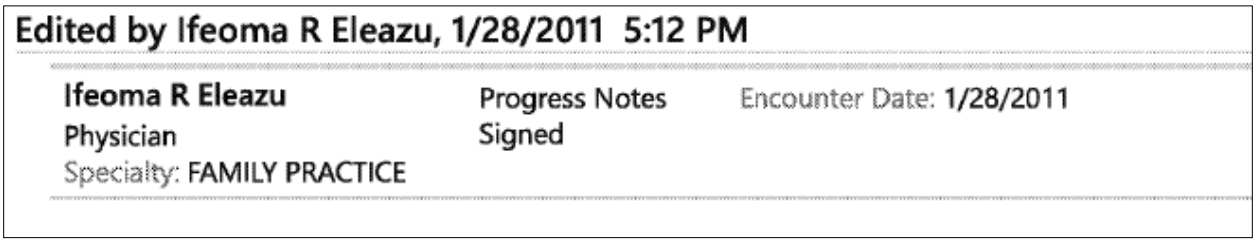
During the June 4 Meet-and-Confer, Plaintiff asserted that it would be better for all Defendants, including SCPMG, to pull the Original Encounter Notes for every single encounter irrespective of whether it is necessary to do so because Plaintiff believes that would be more efficient. SCPMG must review all of these Medical Records to (1) ensure that they are exported properly and (2) identify the diagnostic tests that are responsive to Request No. 47(c). Because SCPMG has been working diligently to meet the Court's August production deadline, this Medical Record review is nearing its completion. Plaintiff's suggestion would therefore save no time whatsoever. Instead, it would impose a significant and undue burden on SCPMG by requiring our client to collect hundreds of Original Encounter Notes for no useful reason. Plaintiff's suggestion is also puzzling because Defendants have already agreed to produce all responsive Documents—and here affirm they will do so—by the August deadline. As a result, SCPMG does not understand why the speed of these productions is of any concern to Plaintiff.

SCPMG is now working diligently to collect, identify, search, and produce the thousands of Documents and Communications responsive to Request Nos. 48, 49, and 50 by the Court's August 12, 2024 deadline. Extracting Original Encounter Notes is a burdensome undertaking that requires SCPMG to review the Medical Record note revision history for every single encounter, locate the Original Encounter Note, and then manually print each one. Undertaking the burdensome exercise of extracting Original Encounter Notes for every single encounter would jeopardize SCPMG's ability to meet the Court's August deadline.

In summary, SCPMG will agree to produce the Original Encounter Notes for encounters when it determines through Medical Record review that the Original Encounter Note is not identifiable in the Medical Record for the relevant SCPMG Listed Patient Visits. SCPMG will not agree to produce duplicative, standalone versions of Original Encounter Notes when that is not necessary for Medical Records that include clearly distinguishable original and Addended progress notes in a single Document.

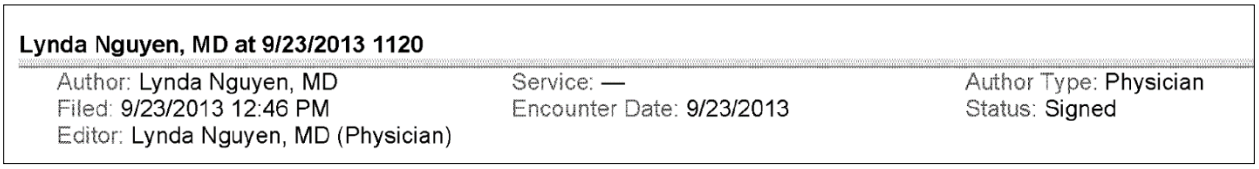
CPMG

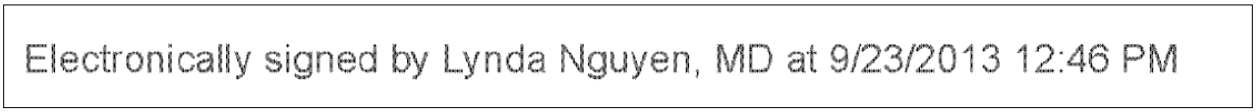
Defendant CPMG has produced 216 Medical Records responsive to Request Nos. 47(a) and (b). As noted in the May 31 Letter, CPMG has not completed its productions and is still working to collect, review, and produce responsive Medical Records.[15] Plaintiff has taken issue with KP-10036840 because it asserts that the Original Encounter Note is not present in that Medical Record.[16] CPMG agrees and subsequently located and produced KP-10078298. As you can observe, this Document includes a full revision history for any and all progress notes for the encounter. The Original Encounter Note is clearly identifiable on page KP-10078299.



We have determined that CPMG's HealthConnect functionality sometimes results in the Original Encounter Note not being readily identifiable in the printed Medical Record. As a result, CPMG will agree to search for and produce revision history Documents for all CPMG Listed Patient Visits where such Documents exist. If a revision history Document does not exist for a particular patient encounter, CPMG will agree to produce the Original Encounter Notes for encounters when it determines through Medical Record review that the Original Encounter Note is not identifiable in the Medical Record for the relevant CPMG Listed Patient Visits.

Please note, however, that many of the CPMG Medical Records will require no such revision history Document to interpret the Medical Record. For example, in KP-10036972, the Original Encounter Note is easily identifiable on page KP-10036975 with a clearly identified author and date:





[15] *See* Defs.' May 31, 2024 Ltr. to U.S. at 7.
[16] *See* U.S.' May 23, 2024 Ltr. to Defs. at 4.

The Addended version of this progress note is also clearly discernable on page KP-10036978 with the date and author clearly identified:

Lynda Nguyen, MD at 10/15/2013 0815

Author: Lynda Nguyen, MD | Service: — | Author Type: Physician
Filed: 10/15/2013 8:16 AM | Encounter Date: 9/23/2013 | Status: Addendum
Editor: Lynda Nguyen, MD (Physician)

Electronically signed by Lynda Nguyen, MD at 10/15/2013 8:16 AM

CPMG will not agree to remove from the revision history Document the standalone versions of the Original Encounter Notes because doing so would be unduly burdensome and completely unnecessary. Extracting Original Encounter Notes is a tremendously burdensome undertaking for our client that requires CPMG to review the Medical Record note revision history for every single encounter, locate the Original Encounter Note, and then manually print each one.

During the June 4 Meet-and-Confer, Plaintiff asserted that it would be better for all Defendants, including CPMG, to pull the Original Encounter Notes for every single encounter irrespective of whether it is necessary to do so because Plaintiff believes that would be more efficient. For the same reasons explained above with respect to SCPMG, this is not the case. Because CPMG has been working diligently to meet the Court's August production deadline, this Medical Record review is nearing its completion. Plaintiff's suggestion would therefore save no time whatsoever. Instead, it would impose a significant burden on CPMG by requiring that our client collect Original Encounter Notes for no good reason.

* * *

In sum, we are hopeful that these explanations and offers of compromise will allow the parties to resolve these pending disputes without need to burden the Court. We look forward to your response.

Sincerely,

/s/ *Caitlin M. Bair*

Caitlin M. Bair

cc: (via email only)
Arthur S. Di Dio, Esq.
Braden Civins, Esq.
David Michael DeVito, Esq.
David Z. Moskowitz, Esq.
Gary R. Dyal, Esq.
Jonathan Thrope, Esq.
Michael Rowe Fishman, Esq.
Rachel Karpoff, Esq.
Shiwon Choe, Esq.

David Deaton, Esq.

Appendix A

Field
MSG_ID
CREATE_TIME
MSG_TYPE_C[17]
REGARDING_TOPIC
PAT_ID[18]
PAT_NAME
PAT_MRN_ID
SENDER_USER_ID[19]
PAT_ENC_CSN_ID[20]
CONTACT_DATE
ACTION_REQUIRED_C[21]
STATUS_C[22]
NOTES
LINE[23]
RECIPIENT_NAME
RECIPIENT_EMP_ID[24]
RECIPIENT[25]
RECEIVE_DATE

[17] Defendants will also provide a text version of this information using corresponding Clarity data.
[18] Defendants will also provide the patient's name and MRN using corresponding Clarity data.
[19] Defendants will also provide the sender name using corresponding Clarity data.
[20] Defendants will also provide the date of the encounter using corresponding Clarity data.
[21] Defendants will also provide a text version of this information using corresponding Clarity data.
[22] Defendants will also provide a text version of this information using corresponding Clarity data.
[23] This refers to the LINE field in the IB_NOTES table.
[24] Defendants will also provide the recipient name using corresponding Clarity data.
[25] Defendants will also provide the recipient name using corresponding Clarity data.

Field
LINE[26]

[26] This refers to the LINE field in the IB_RECEIVER table.

Appendix B[27]

MSG_ID	CREATE_TIME	MSG_TYPE_C		REGARDING_TOPIC	STATUS_C	
216143646001	12/10/2013 13:08	630	MR Coding Query	Action Required: Coding Clarification Request	4	DONE

PAT_ID	PAT_NAME	PAT_MRN_ID	SENDER_USER_ID	
12345678911112	LAST,FIRST M	11111	1234567	LAST, FIRST M

[27] The images included here illustrate the type of format TPMG, SCPMG, and CPMG will utilize for future productions of HealthConnect messages. These images do not include all fields TPMG, SCPMG, and CPMG intend to produce; the full list is in Appendix A.

Exhibit 10

U.S. Department of Justice

Civil Division

JAY:PLH:LAOberembt
DJ No. 46-11-3388

(202) 514-3345

Washington, DC 20530

July 10, 2024

VIA EMAIL

Caitlin Bair, Esq.
O'Melveny & Myers LLP
Two Embarcadero Center
28th Floor
San Francisco, CA 94111-3823

Re: *United States ex rel. Osinek v. Kaiser Permanente*, Case No. 3:13-cv-03891-EMC – Kaiser Defendants' Production of HealthConnect Messages and Original Medical Records

Dear Ms. Bair,

We are writing in response to your July 8, 2024 letter concerning Kaiser's production of HealthConnect messages and medical records. We are disappointed that Kaiser continues to make its proposal to produce HealthConnect messages in a usable format contingent on the United States abandoning its request for standalone original medical records. Given that the parties are *in agreement* on how to produce the HealthConnect messages in a way that avoids many of the previously identified issues, we do not understand Kaiser's insistence on continuing to produce the messages in such a flawed format.

We also wish to respond to Kaiser's latest original medical record proposal and to make a counterproposal. Kaiser has proposed producing 200 standalone original medical records of our choosing almost a year from now. We cannot accept these limitations. Under this proposal, Kaiser would be producing too few records, too late. This is especially true given the centrality of the medical records to this case. This case is *about changes to medical records*; all medical records should therefore be produced in a way that clearly shows what was changed and should be produced immediately.

Kaiser has conceded there is no dispute that the requested original medical records are relevant. From our perspective, the original medical records are some of the most important evidence regarding each false claim. The only dispute is burden, which must be weighed based on the claims and defenses presented. The United States alleges that Kaiser added hundreds of

thousands of false diagnoses by changing the medical record after the visit. ECF No. 240 (Amended Complaint) ¶103. As to their defenses, "Defendants steadfastly maintain—as they have throughout this litigation—that neither statistical sampling nor extrapolation is proper to prove liability or damages here. Defendants insist that Plaintiffs present individualized proof of each allegedly false claim." ECF No. 328 at 4 n.3. Yet, Kaiser refuses to produce the original medical records for even a tiny fraction of the medical records at issue in this case on the grounds that it is too burdensome.

The United States' Third and Fourth RFPs request a small subset of medical records at issue in this case. The Third RFPs, which were served in January 2024, request medical records associated with specific providers, and the Fourth RFPs, which were served in February 2024, request medical records for approximately 2,300 patient visits. Kaiser's offer to allow us to handpick 200 records falls far short of our already narrow requests.

Your letter points to Defendants' productions to date as evidence that our request for standalone original medical records is unwarranted. Your productions, however, underscore the problems with your position. Kaiser has produced a hodgepodge of records. Some visits have one record, some have two, and others up to *nine.* Instead of our simple proposal—produce the original record and amended record for each visit—Kaiser has taken matters into its own hands and produced the records in such a fashion as to create needless difficulty in identifying what was in the original medical record.

Kaiser's proposed production will not only confuse the jury, but also lead to future evidentiary disputes about what information was originally in the medical record and what was added after the fact as a result of Kaiser's scheme. This will be a waste of time that is easily avoidable. There are many issues that will need to be decided by the jury, but what was or was not in the original medical record is a basic fact that should not waste the Court's, the jury's, or the parties' time.

Kaiser's productions to date also undercut its vague burden claims. Based on information contained in the records, it appears that the vast majority of records produced were printed within a span of a few days in early March. For example, over 800 of the 1100 records produced in the last two weeks were printed by Kaiser four months ago on March 5, 6, and 7. Thus, it is apparent that medical records can be readily printed from Kaiser's systems. Kaiser has never articulated specific burden concerns that justify its refusal to provide these obviously relevant documents. Indeed, it appears that the parties' lengthy dispute over this issue, and Kaiser's months-long convoluted process for producing records, is far more burdensome than simply printing the requested original records.

Kaiser claims that the United States is requiring it to produce "duplicative" records. This is not true. Different versions of documents are not duplicates. *See* KFHP's First Set of RFPs to the United States at Instruction No. 2 ("Each non-identical copy of a Document, whether different from the original because of indications of the recipient(s), handwritten notes, marks, attachments, marginalia, or any other reason, is a separate Document that must be identified."). The original medical record is a separate record that can be extracted from Kaiser's databases. There is no legal basis to withhold this distinct record.

Given our agreement that the original medical records are relevant to this case and your insistence that providing them in the format requested is too burdensome, we offer one final counterproposal. We request that Kaiser arrange for our direct limited access to its systems to enable us to print the original medical records. We would then promptly produce these records back to Kaiser so that all sides have immediate access to the same set of medical records that are central to this case.

The parties have been addressing the original medical records through countless letters and meet and confers over the past five months, in addition to issues that we identified during the investigation. We hope that you will accept our final proposal, but if not, we appear to be at an impasse. Please let us know by close of business (Eastern time) tomorrow whether you accept or reject our proposal.

Sincerely,

/s/ Laurie A. Oberembt

Laurie A. Oberembt
Senior Litigation Counsel
DOJ Civil Division

Cc: Assistant U.S. Attorney David DeVito (N.D. Cal.)
Assistant U.S. Attorney David Moskowitz (D. Colo.)

Exhibit 11

EXHIBIT FILED UNDER SEAL

Exhibit 12

O'Melveny

O'Melveny & Myers LLP
Two Embarcadero Center
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San Francisco, CA 94111-3823

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July 8, 2024

Caitlin M. Bair
D: +1 415 984 8704
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VIA EMAIL

Laurie A. Oberembt, Esq.
U.S. Department of Justice
Post Office Box 261
Ben Franklin Station
Washington, D.C. 20044

Re: ***United States ex rel. Osinek v. Kaiser Permanente, Case No. 3:13-cv-03891-EMC—Plaintiff United States' First, Third, and Fourth Sets of Requests for Production of Documents***

Dear Ms. Oberembt:

I write on behalf of Defendants Kaiser Foundation Health Plan, Inc. ("KFHP"); Kaiser Foundation Health Plan of Colorado ("KFHP-CO"); The Permanente Medical Group, Inc. ("TPMG"); Southern California Permanente Medical Group ("SCPMG"); and Colorado Permanente Medical Group, P.C. ("CPMG") (collectively, "Defendants") in the above-referenced matter. This letter responds to your letter dated July 5, 2024 (the "July 5 Letter") regarding the parties' dispute over Defendants' productions of HealthConnect messages and Original Encounter Notes and the offers of compromise that Defendants made in their letter dated June 7, 2024 (the "June 7 Letter").[1]

Plaintiff's July 5 Letter sets forth no new arguments for Plaintiff's unchanging position that Defendants must produce additional, standalone copies of the Original Encounter Notes that Defendants either have already produced or will soon produce as part of Documents containing responsive Addenda to Medical Records. Instead, the July 5 Letter largely regurgitates Plaintiff's complaints about Defendants' productions of HealthConnect messages that the parties have been discussing for over three months. While Defendants disagree with Plaintiff's recounting of that meet-and-confer record, they do not believe the repetitive complaints therein warrant a new response. Rather, Defendants direct Plaintiff to the parties' prior correspondence on these very issues, which clearly detail the record on Defendants' productions of HealthConnect messages and Defendants' arguments in support of those productions.[2]

[1] Capitalized terms in this letter that are not defined herein have the meaning assigned to them in our prior correspondence.

[2] *See, e.g.*, Defs.' Apr. 5, 2024 Ltr. to U.S. at 1–5; Defs.' May 3, 2024 Ltr. to U.S. at 1–4; Defs.' May 31, 2024 Ltr. to U.S. at 2–6; Defs.' June 7, 2024 Ltr. to U.S. at 2–3; Defs.' June 20, 2024 Ltr. to U.S. at 1–4. For example, Plaintiff states that, while it is "generally willing to accept" the HealthConnect message proposal outlined in Defendants' June 7 Letter, it reserves "the right to request screenshots for a small subset of messages, which would show how the messages actually appear in HealthConnect." *See* U.S.' July 5, 2024 Ltr. to Defs. at 2 n.1. Defendants have already explained the undue burden and futility

Disappointingly but not surprisingly, Plaintiff raises for the first time in the July 5 Letter a few new complaints about Defendants' productions of HealthConnect messages. Throughout the parties' extensive negotiations on this topic, Defendants have implored Plaintiff to share examples of the issues Plaintiff contends it has identified in Defendants' prior productions of HealthConnect messages. Plaintiff has inexplicably resisted sharing that information.[3] Only now, in the same letter in which Plaintiff rejects Defendants' proposal of compromise intended to avoid any need to raise this dispute with the Court, Plaintiff identifies entirely new concerns. Specifically, and still without citing examples, Plaintiff contends for the first time in the July 5 Letter that "many messages contain characters that do not appear to accurately reflect the text in the message, such as quotation marks being replaced with random symbols."[4] Plaintiff also raises in the July 5 Letter that the search criteria for Defendants' revised HealthConnect message productions is still an "outstanding issue[]."[5] Defendants are disappointed that Plaintiff has raised these concerns at the eleventh hour. Defendants remind Plaintiff yet again that Plaintiff's failure to fully identify its concerns with Defendants' prior productions of HealthConnect messages, and delay in agreeing to a compromise with respect to the production of such messages in response to Plaintiff's Fourth Set of Requests for Production of Documents (the "Fourth Set of Requests"), puts in jeopardy Defendants' ability to collect and produce responsive HealthConnect messages by the August 12, 2024 production deadline applicable to Request Nos. 48 and 50.[6]

Plaintiff's July 5 Letter also asserts that the parties' disputes regarding Plaintiff's preferred format for the production of HealthConnect messages and Original Encounter Notes "are unrelated," but that assertion is mindboggling since it was Plaintiff who first linked them together when it requested a lead counsel meet-and-confer on June 4, 2024 to discuss just these two issues.[7] More importantly, these issues are both, at their core, about the format of productions—Plaintiff wants Documents responsive to both its Requests for HealthConnect messages and Medical Records to be produced in the formats it would prefer for publication to a jury, regardless of how the responsive information is maintained by Defendants or the additional burden such production would impose on Defendants.

Defendants have agreed to produce and reproduce HealthConnect messages in the format preferred by Plaintiff despite the undue burden of doing so. In return, Defendants simply asked Plaintiff to abandon its unreasonable demand that they *reproduce* Original Encounter Notes in Plaintiff's preferred format. Defendants' June 7 Letter explained in great detail that

---

related to producing screenshots of HealthConnect messages. As we have previously stated, it is highly unlikely that the HealthConnect messages Plaintiff identifies will be present in the HealthConnect In Basket inbox. *See* Defs.' June 20, 2024 Ltr. to U.S. at 3. As Defendants' letter dated June 20, 2024 made clear, Defendants are not willing to attempt to collect screenshots of HealthConnect messages. *See id.*

[3] *See* Defs.' Apr. 5, 2024 Ltr. to U.S. at 2; Defs.' May 3, 2024 Ltr. to U.S. at 3.

[4] *See* U.S.' July 5, 2024 Ltr. to Defs. at 4.

[5] *See id.* at 4 n.3.

[6] Plaintiff notes that Defendants have "offered to reproduce the HealthConnect messages by August 12, 2024 in a format that will resolve many of the issues [Plaintiff has] previously identified[.]" *See id.* at 2. To avoid any confusion or later assertions of uncertainty, Defendants intend to complete their production of HealthConnect messages in response to Request Nos. 48 and 50 by August 12, 2024, using the key search criteria outlined in their letter dated June 20, 2024. *See* Defs.' June 20, 2024 Ltr. to U.S. at 2. Defendants cannot yet provide a timeline for their reproduction of messages in response to Request No. 18 given the parties' outstanding dispute related to the universe of Addenda relevant to that Request. *See id.* at 2–4.

[7] *See* U.S.' July 5, 2024 Ltr. to Defs. at 1.

each Defendant's ability to collect and produce Medical Records varied, how each Defendant proposed to collect and produce Medical Records in response to Request Nos. 47(a) and (b), that the proposed productions would include responsive Original Encounter Notes, and that collecting and producing Medical Records—particularly for the volume of encounters contemplated by Request No. 47—would be incredibly burdensome. Yet Plaintiff's July 5 Letter merely reiterates, without addressing in any way Defendants' June 7 Letter, Plaintiff's many prior assertions that standalone Original Encounter Notes, specifically in Plaintiff's preferred production format, apparently constitute "evidence core to the United States' case."[8] This assertion is nonsense. Plaintiff has never explained why Plaintiff cannot meet Defendants in the middle and accept Defendants' reasonable compromise proposal—a proposal which will result in Defendants producing *all* Documents responsive to the relevant Requests: Defendants will produce responsive HealthConnect messages in Plaintiff's preferred format and produce responsive Medical Records in a format that clearly delineates the Original Encounter Notes. Thus, it is incorrect for Plaintiff to even suggest that, under Defendants' proposal, it would not receive the Original Encounter Notes for all of the patient encounters in question. It has indeed received or will receive Original Encounter Notes for each of those encounters. The only thing that Defendants object to producing is a separate, free-standing version of the Original Encounter Note for each of the over 2,300 patient encounters, particularly when the offered reason is purely demonstrative.

Defendants detailed across more than five pages in the June 7 Letter that Defendants **will produce** responsive Original Encounter Notes, including *standalone* Original Encounter Notes as necessary. In fact, to date, Defendants have **already produced** 381 standalone Original Encounter Notes. Defendants have simply objected to producing *duplicative* Original Encounter Notes when the Original and Addended Encounter Notes are clearly present in the produced Medical Records.[9] Defendants supplemented their detailed explanations with screenshots demonstrating the clarity of the disputed Medical Records.[10]

Plaintiff has essentially ignored these detailed explanations in the June 7 Letter and, apparently, Defendants' productions to date. Instead, Plaintiff has stated that it would prefer that Defendants produce duplicative Original Encounter Notes because Plaintiff would like to present information "as cleanly as possible" to the jury.[11] Defendants are producing the Medical Records in a format that will enable Plaintiff to present the information to the jury "as cleanly as possible" and strongly disagree that producing duplicative information is necessary to establish for the jury what information was contained in the Original Encounter Note. Notably, in response to Defendants' June 7 Letter, Plaintiff has identified *zero* Medical Records for which a duplicative Original Encounter Note would do anything to improve the demonstrative presentation of evidence to a jury.[12]

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[8] *See id.*

[9] *See* Defs.' June 7, 2024 Ltr. to U.S. at 4–9.

[10] *See id.*

[11] *See* June 4, 2024 Meet-and-Confer; *see also* U.S.' July 5, 2024 Ltr. to Defs. at 1. Further, contrary to Plaintiff's suggestion, the district court in *Hahn* makes clear that "Rule 34 does not demand that a responding party produce ESI in the format the requesting party believes is a reasonably useable form." *See Hahn v. Massage Envy Franchising, LLC*, No. 12CV153-DMS (BGS), 2014 WL 12899290 at *8 (S.D. Cal. July 24, 2014).

[12] On May 23, 2024, while Defendants' productions of Medical Records responsive to Request No. 47 were in progress but not complete, Plaintiff identified one example of a CPMG Medical Record for which the Original Encounter Note had not yet been produced. But CPMG produced the Original Encounter Note to Plaintiff on June 7, 2024.

The only portion of the July 5 Letter that even touches on Defendants' proposal with respect to the production of Original Encounter Notes states that Plaintiff "know[s] that Kaiser can produce standalone original records for each visit . . . because it has done so in the past" and that the parties are at an impasse given that Defendants "would prefer not to" produce Original Encounter Notes as standalone Documents.[13] These statements are mystifying and suggest that Plaintiff has either not reviewed or not understood the June 7 Letter: Defendants have never asserted that it is *impossible* to generate duplicative versions of Original Encounter Notes, but instead explained in detail why it would be unnecessary and unduly burdensome to do so.

Consistent with the June 7 Letter—and for the reasons articulated therein—Defendants will not agree to undertake the extraordinary and unnecessary burden of producing every single Original Encounter Note twice.[14] If that demand is Plaintiff's bottom-line position, then we agree that the parties are at an impasse and we should discuss the preparation of briefing this discovery dispute to the Court.

Nevertheless, in the interest of compromise and in order to address Plaintiff's stated concern that it must be able to present standalone Original Encounter Notes to the jury for demonstrative purposes, Defendants TPMG, SCPMG, and CPMG are willing to make one final proposal for your consideration subject to and without waiving their objections: After Plaintiff has fully responded, by April 11, 2025, to KFHP's Interrogatory Nos. 1, 2, and 4 by identifying the Diagnosis Codes that it contends are false, TPMG, SCPMG, and CPMG will collectively produce 200 standalone Original Encounter Notes of Plaintiff's choosing related to those allegedly false Diagnosis Codes. TPMG, SCPMG, and CPMG will complete these productions within 60 days of receipt of Plaintiff's identification of the Diagnosis Codes for which it seeks duplicative standalone Original Encounter Notes, allowing Plaintiff to use the standalone Original Encounter Notes in depositions, expert discovery, at summary judgment, and before the jury. This production would be in addition to the hundreds of standalone Original Encounter Notes Defendants already agreed to produce and/or have produced as outlined in the June 7 Letter.

Defendants' offers of compromise regarding future HealthConnect message productions[15] remains contingent on Plaintiff's acceptance of Defendants' proposed plan to produce Medical Records, as outlined in the June 7 Letter, and to produce selected standalone Original Encounter Notes, as detailed herein.

* * *

In sum, we are hopeful that this final offer of compromise will allow the parties to resolve these pending disputes without the need to burden the Court. We are willing to meet and confer further at your convenience if you have any questions about Defendants' final offer of compromise herein.

[13] *See* U.S.' July 5, 2024 Ltr. to Defs. at 1.
[14] *See* Defs.' June 7, 2024 Ltr. to U.S. at 4.
[15] *See generally* Defs.' June 7, 2024 Ltr. to U.S.; Defs.' June 20, 2024 Ltr. to U.S.

Sincerely,

/s/ *Caitlin M. Bair*

Caitlin M. Bair

cc: (via email only)
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Braden Civins, Esq.
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Exhibit 13

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ex rel. RONDA OSINEK,

Plaintiff,

v.

KAISER PERMANENTE, et al.,

Defendants.

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

DECLARATION OF TERESA GEORGE

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

(CAPTION CONTINUED)

UNITED STATES OF AMERICA and STATE OF CALIFORNIA ex rel. GLORYANNE BRYANT and VICTORIA M. HERNANDEZ, Plaintiff, v. KAISER PERMANENTE, et al., Defendants.	Case No. 3:18-cv-01347-EMC **DECLARATION OF TERESA GEORGE** Judge: Hon. Edward M. Chen Courtroom: 5, 17th Floor

UNITED STATES OF AMERICA ex rel. JAMES M. TAYLOR, Plaintiff, v. KAISER PERMANENTE, et al., Defendants.	Case No. 3:21-cv-03894-EMC **DECLARATION OF TERESA GEORGE** Judge: Hon. Edward M. Chen Courtroom: 5, 17th Floor

DECLARATION OF TERESA GEORGE

Pursuant to 28 U.S.C. § 1746, I, Teresa George, hereby declare and state as follows:

1. I submit this declaration in support of Defendants' opposition to Plaintiff's demand for duplicate original progress notes. This declaration is based upon my personal knowledge and, if called as a witness, I could and would testify to the matters set forth below.

2. I am a Practice Leader for the Release of Medical Information – Northern California and Scanning Services – Northern California departments of The Permanente Medical Group ("TPMG"). I have been in this role for thirteen years.

3. As part of my current role, I advise TPMG employees who collect medical records of patient encounters, diagnostic test results, and other patient information from the electronic medical record ("EMR") system used by TPMG. The EMR system is called HealthConnect.

4. TPMG is headquartered in Oakland, California and provides medical care in the Northern California region to members of the Kaiser Foundation Health Plan. TPMG is managed and operated separately from other Permanente Medical Groups and develops and follows practices and policies separate from other Permanente Medical Groups, including with respect to practices for collecting medical records. The EMR system used by TPMG is composed of separate production instances of HealthConnect, each of which contains health care information for patients who receive medical care in specific geographic regions across Northern California.

5. I have thirteen years of experience collecting medical records in response to release of information requests, regulatory inquiries, government investigations, various types of litigation, internal audits, and other patient inquiries. I also have eighteen years of experience with TPMG's HealthConnect system and two additional years of experience with the prior EMR system used by Kaiser Foundation Hospitals.

6. HealthConnect contains extensive sensitive patient information to which access is protected and restricted by law. Only TPMG medical care providers and employees who need HealthConnect access to perform their jobs can access HealthConnect. Of those, only users who must view medical records as part of their job function receive the type of access necessary to

view medical records. And only those TPMG employees trained in privacy policy and regulations specific to the disclosure of medical records are permitted to access HealthConnect to search for, locate, and collect medical records for disclosure, which includes the collection of medical records for production in litigation.

7. A two-member Northern California Regional Release of Medical Information team, consisting of me and one other TPMG employee who I supervise, handle non-standard medical record requests that we receive from TPMG counsel, like the requests from Plaintiff here. Each member of our team completed six weeks of initial training before we could perform this work. This training includes setting up each employee with access to HealthConnect and training related to the handling of sensitive patient health information, how to access HealthConnect, how to navigate within HealthConnect, how to utilize the HealthConnect release of information module, and what information should be released for different types of requests.

8. To print medical record information from HealthConnect, TPMG must provide members of the Release of Medical Information department with HealthConnect access rights that include the ability to access all patient health information for all TPMG patients, with certain limited exceptions for highly sensitive patient records. With this access, the team can generally view the medical record for any patient encounter for any of the hundreds of thousands of current and former TPMG patients. This access is not limited to Medicare Advantage members; in fact, I am aware of no way to limit HealthConnect access to any subset of patients, like Medicare Advantage members.

9. My team has received several requests from TPMG's outside counsel to retrieve hundreds of medical records related to specific patient encounters and diagnostic test results from HealthConnect, and I understand these documents are intended to respond to Plaintiff's document requests as part of the above-referenced litigation.

10. My team has been working for months to respond to Plaintiff's requests for medical records. HealthConnect's functionalities do not allow us to systematically search for and print medical records all at once. Instead, for every single one of the 868 patient encounters for which Plaintiff requested medical records, my team had to follow TPMG's Release of Medical

Information protocol, which included: (1) finding the correct patient and confirming related identifiers; (2) entering information into HealthConnect's release of information module, like patient identifiers and the timeframe of the requested medical information; (3) verifying that the HealthConnect search found the correct patient encounter medical record; (4) manually removing any patient encounters returned by the search that were not responsive to Plaintiff's document requests; (5) generating the medical record file for the patient encounter in HealthConnect and validating that the file was complete; and (6) transmitting all the PDF files generated through this process securely to outside counsel.

11. In addition to our work to search for, locate, and extract the medical records requested by Plaintiff, our team also has been responsible for searching for, locating, and generating medical records related to the diagnostic test results requested by Plaintiff. This work has included: (1) finding the correct patient and confirming related identifiers; (2) entering information into HealthConnect's release of information module, like patient identifiers and the timeframe of the requested diagnostic test results; (3) verifying that the HealthConnect search found the correct patient diagnostic test results; (4) manually removing any diagnostic test results returned by the search that were not responsive to Plaintiff's document requests; (5) generating the file for the diagnostic test result in HealthConnect and validating that the file was complete; and (6) transmitting all the PDF files generated through this process securely to outside counsel.

12. We typically do not have to respond to requests for this volume of medical record information or for medical record information from such a long time ago. To date, our department has spent roughly 180 hours (or over 22 full work days) responding to Plaintiff's requests for medical records relating to patient encounters and diagnostic test results.

13. I understand that Plaintiff is demanding that we search for, locate, and generate a PDF solely containing the original progress note for *every* one of the 868 TPMG patient encounters included in Plaintiff's document request even though we have already collected that exact information and counsel has produced it to Plaintiff.

14. The patient encounter medical record documents we printed from HealthConnect included all the progress notes—original and addended—for the patient encounter medical

records in one PDF file. Attached as **Exhibit A** is a true and correct copy of a medical record produced by TPMG to Plaintiff. This medical record is representative of the patient encounter medical records produced by TPMG in response to Plaintiff's document request.

15. Identifying original progress notes within the printed TPMG medical records produced to Plaintiff is easy for the reader. This is true because every progress note is listed in the "Progress Notes" section of the medical record and has a header that clearly distinguishes between the original progress note and any addended notes using text and formatting. Each note is clearly labeled with the version number and how many versions of the note there are.

16. For example, in Exhibit A, Bates No. KP-10039850, the original progress note is on page KP-10039855, which is clearly identified as the first version of the progress note, labeled as "Version 1 of 2." It is clear that the text that follows this "Version 1 of 2" header is the first version of the progress note, that it was authored by the treating medical care provider, and that it was signed on January 8, 2014. On page KP-10039852, the addended version of the progress note is plainly identifiable as well. It is labeled as "Version 2 of 2" with a status of "Addendum" and again identifies the author. The date of signature, September 10, 2024, is plainly visible at the end of the note on page KP-10039855.

17. Attached as **Exhibit B** is a true and correct copy of the medical record Plaintiff attached to its letter brief as Exhibit 11. Like Exhibit A, this medical record has an original progress note that is clearly identified on page KP-10044313 as "Version 1 of 5." The entire note is separated by headers that clearly identify the author and the date the progress note was signed. The note was revised multiple times and every version of the note is present in the medical record, including the final version of the note on page KP-10044302, which is labeled as "Version 5 of 5." All revised versions of the note are clearly identified with a "Status: Addendum" indicator. To compare the first and final versions of the progress note, a reader may simply compare Version 1 of 5 with Version 5 of 5.

18. Plaintiff has requested medical records from TPMG for 868 separate patient encounters. All 868 of the medical records we produced to Plaintiff include all original and

addended progress notes and clearly identify the original progress notes and revised versions in the manner described above.

19. Responding to Plaintiff's request for duplicate original progress notes would require that the team again search for every patient encounter one-by-one in HealthConnect, enter information into HealthConnect's release of information module, review the full revision history for every single patient encounter medical record, locate the original progress note, manually generate a file containing only that note, and validate the extracted file. We would need to do this work even though the original progress note is included in the files we have already extracted from HealthConnect in response to Plaintiff's document requests.

20. This type of extraction is not part of TPMG's standard process and none of our analysts is trained to handle this type of request. I would have to train two analysts to perform this work and I estimate it would require the team a total of 360 hours, inclusive of any training time, to identify and extract these documents from HealthConnect. If we were to collect these standalone original progress notes, they would be substantively duplicative of the documents we have already printed and produced to Plaintiff.

21. Our team is stretched very thin at present because we had to put on hold many other medical record disclosure projects to prioritize the burdensome requests from Plaintiff for medical records related to patient encounters and diagnostic test results that are due by the Court's August 12, 2024 deadline. Our team currently has many other pending projects and operational support responsibilities.

22. Responding to Plaintiff's request for duplicate original progress notes would impose significant burdens on our department, not only because we would have to spend approximately 360 hours satisfying these requests for duplicate original progress notes, but also because we have many other requests and operational support responsibilities that we are obligated to satisfy.

23. If ordered to locate and extract duplicate original progress notes, we would not be able to provide those records before the Court's August 12, 2024 deadline.

I declare, under penalty of perjury under the laws of the United States of America, that the

foregoing is true and correct.

Executed this 22nd day of July, 2024 at American Canyon, California.

DocuSigned by:
239D05C82DD24C3...

Teresa George

Exhibit A

EXHIBIT FILED UNDER SEAL

Exhibit B

EXHIBIT FILED UNDER SEAL

Exhibit 14

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ex rel. RONDA OSINEK,

Plaintiff,

v.

KAISER PERMANENTE, et al.,

Defendants.

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

DECLARATION OF RYAN NICHOLS

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

(CAPTION CONTINUED)

UNITED STATES OF AMERICA and STATE OF CALIFORNIA ex rel. GLORYANNE BRYANT and VICTORIA M. HERNANDEZ, Plaintiff, v. KAISER PERMANENTE, et al., Defendants.	Case No. 3:18-cv-01347-EMC **DECLARATION OF RYAN NICHOLS** Judge: Hon. Edward M. Chen Courtroom: 5, 17th Floor

UNITED STATES OF AMERICA ex rel. JAMES M. TAYLOR, Plaintiff, v. KAISER PERMANENTE, et al., Defendants.	Case No. 3:21-cv-03894-EMC **DECLARATION OF RYAN NICHOLS** Judge: Hon. Edward M. Chen Courtroom: 5, 17th Floor

DECLARATION OF RYAN NICHOLS

Pursuant to 28 U.S.C. § 1746, I, Ryan Nichols, hereby declare and state as follows:

1. I submit this declaration in support of Defendants' opposition to Plaintiff's demand for duplicate original progress notes. This declaration is based upon my personal knowledge and, if called as a witness, I could and would testify to the matters set forth below.

2. I am the Director of Clinical Documentation Services at the Southern California Permanente Medical Group ("SCPMG"). I have been in this role for one year. Before this position, I served as an Assistant Director in the Clinical Documentation Services department for seven years.

3. As part of my current role, I oversee the collection of medical records for patient encounters, diagnostic test results, and other patient information from the electronic medical record ("EMR") system used by SCPMG. The EMR system is called HealthConnect.

4. SCPMG is headquartered in Pasadena, California and provides medical services in the Southern California region to members of the Kaiser Foundation Health Plan. SCPMG is managed and operated separately from other Permanente Medical Groups and develops and follows practices and policies separate from other Permanente Medical Groups, including with respect to practices for collecting medical records. The EMR system used by SCPMG is composed of seven separate production instances of HealthConnect, each of which contains health care information for patients who receive medical care in specific geographic regions across Southern California.

5. I have approximately twenty years of experience collecting medical records in response to release of information requests, regulatory inquiries, government investigations, various types of litigation, internal audits, and other patient inquiries. This includes approximately ten years of experience with the HealthConnect system used by SCPMG.

6. Many SCPMG employees cannot access HealthConnect at all because HealthConnect contains extensive sensitive patient information to which access is protected and restricted by law. Only SCPMG medical care providers and employees who need HealthConnect access to perform their jobs can access HealthConnect. Of those, only users who must view

medical records as part of their job function receive the type of HealthConnect access necessary to view medical records.

7. A group of five to seven SCPMG employees on the Clinical Documentation Services team that I supervise handle, among other projects, requests for medical record information related to regulatory audits, litigation, and documentation quality reviews. These team members each completed four to six weeks of initial training before they could perform this work. This training includes setting up each employee with access to HealthConnect and trainings regarding the obligations and responsibilities of employees who access protected health information.

8. To print medical record information from HealthConnect, SCPMG must provide members of my team with HealthConnect access rights that include the ability to access all patient health information for all SCPMG patients, with certain limited exceptions for highly sensitive patient records. With this access, our team can generally view the medical record for any patient encounter for any of the hundreds of thousands of current and former SCPMG patients. This access is not limited to Medicare Advantage members; in fact, I am aware of no way to limit HealthConnect access to any subset of patients, like Medicare Advantage members.

9. Our team has received requests from SCPMG's outside counsel to retrieve well over 1,000 medical records related to specific patient encounters and diagnostic test results from HealthConnect, and I understand these documents are intended to respond to Plaintiff's document requests as part of the above-referenced litigation.

10. Our team has been working for months to respond to Plaintiff's requests for medical records. HealthConnect's functionalities do not allow us to systematically search for and print multiple medical records all at once. Instead, our team must search for and manually print each individual medical record sought by Plaintiff's requests one by one.

11. As an initial step to search for and collect a medical record, my team must first identify the SCPMG geographic region where the patient received medical services, and then access the corresponding production instance of HealthConnect. For purposes of responding to

Plaintiff's document requests, we had to access each of the seven production instances of HealthConnect for the Southern California region.

12. Once we identified and accessed the applicable production instance of HealthConnect, our work to respond to Plaintiff's request for medical records related to 1,185 specific patient encounters included: (1) searching for every single medical record related to each patient encounter one-by-one in HealthConnect; (2) manually printing the relevant medical records to individual PDF files; (3) reviewing the files printed from HealthConnect to confirm they contain all the information requested by Plaintiff; (4) performing follow-up searches and collections for any medical records or progress notes not included in the initial printed versions; (5) printing additional medical records to PDF files based on those follow-up reviews; and (6) transmitting all the collected PDF files securely to outside counsel.

13. In addition to our work to search for, locate, and print the medical records requested by Plaintiff, my team also has been responsible for searching for, locating, and printing medical records related to the diagnostic test results requested by Plaintiff. This work is ongoing and includes: (1) searching for every single patient diagnostic test result one-by-one in HealthConnect; (2) printing diagnostic test results to PDF files; (3) performing follow-up reviews for any diagnostic test results not included in the initial printed versions; (4) printing additional documents for each test result—including documents reflecting medical care providers listed in the "Reviewed by" section of the test result and an order summary that reflects the diagnoses associated with each test order—based on those follow-up reviews; and (5) transmitting all the collected PDF files securely to outside counsel.

14. We typically do not have to respond to requests for this volume of medical record information or for medical record information from such a long time ago. To date, our department has spent roughly 400 hours responding to Plaintiff's requests for medical records and diagnostic test results. And we are continuing to search for, print, and transmit to counsel responsive documents to meet the August 12, 2024 production deadline set by the Court.

15. I understand that Plaintiff is demanding that we search for, locate, and print to PDF a document solely containing the original progress note for *every* one of the 1,185 SCPMG

patient encounters included in Plaintiff's document requests even though we have already collected that exact information and counsel has already produced or is in the process of producing it to Plaintiff.

16. Most of the responsive medical record documents we printed from HealthConnect included all the progress notes—original and addended—for the patient encounter in one PDF file. Indeed, for 804 of the 1,185 patient encounters for which Plaintiff requested medical records, we were able to print a version of the medical record that includes all versions of every progress note for each patient encounter in a single file. All of the original and addended progress notes for every patient encounter are clearly identifiable consistent with the example that follows. Attached as **Exhibit A** is a true and correct copy of one such medical record produced by SCPMG to Plaintiff. This medical record is representative of most of the medical records produced by SCPMG in response to Plaintiff's document requests.

17. Identifying original progress notes within the printed SCPMG medical records is easy for the reader. For example, in Exhibit A, the original progress note is clearly visible on page KP-10078278. This original progress note has a clearly identified author and a clearly identified date of August 23, 2013. The addendum to this medical record is also easy to identify by simply looking at page KP-10078280. In this example, the medical care provider added a progress note to the patient encounter documentation on November 8, 2013 and signed the progress note on that date.

18. For some patient encounters for which Plaintiff has requested medical records, the original progress note was never addended by the provider, and therefore the original progress note included in the medical record our team has already collected is the only version of that note. Attached as **Exhibit B** is a true and correct copy of the medical record Plaintiff attached to its letter brief as Exhibit 5. The original progress note for this encounter is clearly visible on pages KP-10208961 through KP-10208966. There is not, nor has there ever been, an addended version of this progress note in HealthConnect or elsewhere. On page KP-10208966, another provider added a separate progress note to this medical record documenting her agreement with the treating provider's note and without making any changes to the treating provider's original

progress note. Some diagnoses were added to a separate section of the medical record containing "Visit Diagnoses." Those are identified on page KP-10208967 in a "Visit Diagnosis Changes" section with the date and time the diagnoses were added and text stating "{Addendum}" for each one. The "Visit Diagnosis Changes" section also identifies the name of the provider who made the addition. The time, date, and provider who made the addendum stamps are listed in the same order as, and correspond with, the diagnoses listed in the "Visit Diagnoses and Associated Orders" section immediately below that box. For example, "CHF (CONGESTIVE HEART FAILURE)" was added on July 22, 2015 by addendum. The "Visit Diagnoses" section is edited independently of the progress notes and there is no other record of changes to the visit diagnoses.

19. There are some medical records for the identified patient encounters for which SCPMG has already agreed to extract original progress notes into standalone documents because of functionality limitations in HealthConnect. Because some of the patient encounters for which Plaintiff requested medical records date back ten or even fifteen years, the print functionality that our team uses today to print PDFs of medical records does not always include every version of those older medical records. As a result, for some of the medical records requested by Plaintiff, we had to go back, search for, locate, and print earlier versions into separate documents. Attached as **Exhibits C** and **D** are true and correct copies of documents produced by SCPMG for an encounter for which this labor-intensive print methodology was necessary. The final version of the medical record is available as Exhibit C, and Exhibit D includes the original progress note for the patient encounter. The original and addended progress notes for the patient encounter are clearly discernible within Exhibits C and D. Collecting this additional version of the medical record, even just for a portion of SCPMG medical records for which the current print functionality does not work, was very labor intensive for our team.

20. Sometimes medical records contain multiple progress notes and sometimes progress notes are revised multiple times. To make sure Plaintiff had all versions of every progress note for every patient encounter, which is what Plaintiff's request seeks, we sometimes had to print more than two files. For 265 patient encounters, we produced two files containing different versions of progress notes; for 116 patient encounters, we produced three or more files.

Each of these files contains unique information reflecting a revision to one of the progress notes in the medical record. For all of the remaining 804 patient encounters for which Plaintiff requested medical records, we were able to print a version of the medical record that includes all versions of every progress note for each patient encounter in a single file. All of the original and addended progress notes for every patient encounter are clearly identifiable consistent with the examples above.

21. Responding to Plaintiff's request for duplicate original progress notes would require that we again search for every patient encounter one-by-one in HealthConnect, review the full revision history for every single medical record, locate the original progress note, and manually print that note even though it is included in the files we have already printed from HealthConnect in response to Plaintiff's document requests.

22. This type of extraction is not part of SCPMG's standard process and requires an additional burdensome extraction and printing process. I estimate it would require my team a total of 200 hours to identify and extract these documents from HealthConnect. If we were to collect these standalone original progress notes, they would be substantively duplicative of the documents we have already printed and produced, or will soon produce, in response to Plaintiff's document requests.

23. Our department is stretched very thin at present because we had to put on hold many other projects to prioritize the burdensome requests from Plaintiff for medical records related to patient encounters and diagnostic test results that are due by the Court's August 12, 2024 deadline. We are now working very hard to search for, locate, and print the diagnostic test results responsive to Plaintiff's requests.

24. Responding to Plaintiff's request for duplicate original progress notes would impose significant burdens on our department, not only because we would have to spend approximately 200 hours satisfying these requests for duplicate original progress notes, but also because we have many other requests for medical record information that we are obligated to satisfy. To meet the existing August 12, 2024 deadline, our team already has had to work extra hours and pull team members off of other projects.

25. If ordered to extract duplicate original progress notes, we would not be able to provide those records before the Court's August 12, 2024 deadline.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed this 22nd day of July, 2024 at Pomona, California.

Ryan C. Nichols

Ryan Nichols

Exhibit A

EXHIBIT FILED UNDER SEAL

Exhibit B

EXHIBIT FILED UNDER SEAL

Exhibit C

EXHIBIT FILED UNDER SEAL

Exhibit D

EXHIBIT FILED UNDER SEAL

Exhibit 15

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ex rel. RONDA OSINEK,

Plaintiff,

v.

KAISER PERMANENTE, et al.,

Defendants.

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

DECLARATION OF ANNIE LA CRUE

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

(CAPTION CONTINUED)

UNITED STATES OF AMERICA ex rel. GLORYANNE BRYANT and VICTORIA HERNANDEZ, Plaintiff, v. KAISER PERMANENTE, et al., Defendants.	Case No. 3:18-cv-01347-EMC **DECLARATION OF ANNIE LA CRUE** Judge: Hon. Edward M. Chen Courtroom: 5, 17th Floor

UNITED STATES OF AMERICA ex rel. JAMES M. TAYLOR, Plaintiff, v. KAISER PERMANENTE, et al., Defendants.	Case No. 3:21-cv-03894-EMC **DECLARATION OF ANNIE LA CRUE** Judge: Hon. Edward M. Chen Courtroom: 5, 17th Floor

DECLARATION OF ANNIE LA CRUE

Pursuant to 28 U.S.C. § 1746, I, Annie La Crue, hereby declare and state as follows:

1. I submit this declaration in support of Defendants' opposition to Plaintiff's demand for duplicate original progress notes. This declaration is based upon my personal knowledge and, if called as a witness, I could and would testify to the matters set forth below.

2. I am a KP Health Information Manager in the Release Imaging, Release of Information Department at Kaiser Foundation Health Plan of Colorado ("KFHP-CO"). I have been a KFHP-CO employee for thirty-nine years and in this position for more than eighteen years.

3. As part of my current role, I collect medical records for patient encounters, diagnostic test results, and other patient information from the electronic medical record ("EMR") system used by the Colorado Permanente Medical Group ("CPMG"). The EMR system is called HealthConnect.

4. KFHP-CO is headquartered in Denver, Colorado and offers health insurance to residents of Colorado. CPMG is headquartered in Denver, Colorado and provides medical services in Colorado to members of KFHP-CO. CPMG is managed and operated separately from other Permanente Medical Groups and, in collaboration with KFHP-CO, develops and follows practices and policies separate from other Permanente Medical Groups, including with respect to practices for collecting medical records. The Colorado region uses a production instance of HealthConnect that is distinct from those used in other regions and which contains health care information for patients who receive medical care from CPMG.

5. I have thirty-nine years of experience collecting medical records in response to release of information requests, regulatory inquiries, government investigations, various types of litigation, internal audits, and other patient inquiries. This includes approximately twenty years of experience with CPMG's HealthConnect system and approximately ten years of experience with the EMR system CPMG utilized before implementing HealthConnect.

6. Many KFHP-CO and CPMG employees cannot access HealthConnect at all because HealthConnect contains extensive sensitive patient information to which access is

protected and restricted by law. Only CPMG medical care providers and employees who need HealthConnect access to perform their jobs can access HealthConnect. Of those, only users who must view medical records as part of their job function receive the type of access necessary to view medical records.

7. I currently supervise sixteen employees and together we assist with responses to requests for medical record information. These team members each completed approximately six to eight weeks of training before they could perform this work. This training includes setting up each employee with access to HealthConnect and trainings regarding the obligations and responsibilities of employees who access protected health information, how to locate relevant information in HealthConnect, and how to produce requested information from HealthConnect.

8. To print medical record information from HealthConnect, my team members must be given HealthConnect access rights that include the ability to access all patient health information for all CPMG patients, with certain limited exceptions for highly sensitive patient records. With this access, our team can generally view the medical record for any patient encounter for any of the hundreds of thousands of current and former CPMG patients. This type of access is not limited to Medicare Advantage members; in fact, I am aware of no way to limit HealthConnect access to any subset of patients, like Medicare Advantage members.

9. Our team has received requests from outside counsel for CPMG and KFHP-CO to retrieve hundreds of patient medical records related to specific patient encounters and diagnostic test results from HealthConnect, and I understand these documents are intended to respond to Plaintiff's document requests as part of the above-referenced litigation.

10. Our team has been working for months to respond to Plaintiff's requests for medical records. HealthConnect's functionalities do not allow us to systematically search for and print multiple medical records all at once. Instead, our team must search for and manually print each individual medical record sought by Plaintiff's requests one by one.

11. Our work to respond to Plaintiff's requests for medical records related to 269 specific patient encounters has included: (1) searching for every single medical record related to each patient encounter one-by-one in HealthConnect; (2) manually printing the relevant medical

records to individual PDF files; (3) reviewing the files printed from HealthConnect to confirm they contain all information requested by Plaintiff; (4) performing follow-up searches and collections for any medical records or progress notes in revision histories not included in the initial printed versions; (5) printing additional medical records to PDF files based on those follow-up reviews; and (6) transmitting all the collected PDF files securely to outside counsel.

12. In addition to our work to search for, locate, and print the medical records requested by Plaintiff, my team also has been responsible for searching for, locating, and printing medical records related to the diagnostic test results requested by Plaintiff. This work has included: (1) searching for every single patient diagnostic test result one-by-one in HealthConnect; (2) printing diagnostic test results to PDF files; (3) performing follow-up reviews for any diagnostic test results not included in the initial printed versions; (4) printing additional diagnostic test results based on those follow-up reviews; and (5) transmitting all the collected PDF files securely to outside counsel.

13. We typically do not have to respond to requests for this volume of medical record information or for medical record information from such a long time ago. To date, our department has spent roughly 120 hours (or 15 full work days) responding to Plaintiff's requests for medical records and diagnostic tests.

14. I understand that Plaintiff is demanding that we search for, locate, and print to PDF a document solely containing the original progress note for *every* one of the 269 CPMG patient encounters included in Plaintiff's document requests even though we have already collected that exact information and counsel has already produced or is in the process of producing it to Plaintiff.

15. Many of the CPMG medical records we printed from HealthConnect included all progress notes—original and addended—for the patient encounter medical records in one PDF file. Attached as **Exhibit A** is a true and correct copy of one such medical record produced by CPMG. In this document, the original progress note is easily identifiable on page KP-10036975 with a clearly identified author and date. The addended version of this progress note is also

present on page KP-10036978 with the date and author clearly identified. Exhibit A is representative of many of the medical records produced by CPMG to Plaintiff.

16. CPMG's HealthConnect functionality sometimes results in the original encounter note not being readily identifiable in the printed medical record. As a result, we agreed to click on any "Revision History" links associated with the 269 patient encounters in HealthConnect and print each revision history. These documents include the revision history of all progress notes for the patient encounter, clearly distinguished from each other. Collecting these revision histories was an extremely labor-intensive and time-consuming process.

17. Responding to Plaintiff's request for duplicate original progress notes would require that we again search for every patient encounter one-by-one in HealthConnect, review the full revision history for every single medical record, locate the original progress note, and manually print that note even though it is included in the files we have already printed from HealthConnect in response to Plaintiff's document requests.

18. This type of extraction is not part of our standard process and no employee is trained to handle this type of request. I estimate it would require my team a total of 24 to 48 hours (or three to six full work days) to identify and extract these documents from HealthConnect. If we were to collect these standalone original progress notes, they would be substantively duplicative of the documents we have already printed and produced, or will soon produce, in response to Plaintiff's document requests.

19. Our department is stretched very thin at present because we had to put on hold many other regulatory, litigation, patient, and internal medical information requests to prioritize the burdensome requests from Plaintiff for medical records and diagnostic tests that are due by the Court's August 12, 2024 deadline. Our department currently has approximately 350 other pending medical record requests.

20. Responding to Plaintiff's duplicate requests would impose significant burdens on our department, not only because we would have to spend three to six full work days satisfying these requests for duplicate original progress notes, but also because we have these many other requests for medical record information that we are obligated to satisfy. Our team already has had

to work overtime to collect medical records and diagnostic test results responsive to Plaintiff's document requests.

21. If ordered to extract duplicate original progress notes, we likely would not be able to provide those records before the Court's August 12, 2024 deadline.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed this 22th day of July, 2024 at Denver, Colorado.

Annie La Crue

Exhibit A

EXHIBIT FILED UNDER SEAL

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Attorneys for Defendant

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ex rel. RONDA OSINEK,

Plaintiff,

v.

KAISER PERMANENTE, et al.,

Defendants.

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

DECLARATION OF BREEZY CALDWELL

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

(CAPTION CONTINUED)

UNITED STATES OF AMERICA and STATE OF CALIFORNIA ex rel. GLORYANNE BRYANT and VICTORIA M. HERNANDEZ,

Plaintiff,

v.

KAISER PERMANENTE, et al.,

Defendants.

Case No. 3:18-cv-01347-EMC

DECLARATION OF BREEZY CALDWELL

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

UNITED STATES OF AMERICA ex rel. JAMES M. TAYLOR,

Plaintiff,

v.

KAISER PERMANENTE, et al.,

Defendants.

Case No. 3:21-cv-03894-EMC

DECLARATION OF BREEZY CALDWELL

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

DECLARATION OF BREEZY CALDWELL

Pursuant to 28 U.S.C. § 1746, I, Breezy Caldwell, hereby declare and state as follows:

1. I submit this declaration in support of Defendants' opposition to Plaintiff's demand for duplicate original progress notes. This declaration is based upon my personal knowledge and, if called as a witness, I could and would testify to the matters set forth below.

2. I am employed by Kaiser Foundation Health Plan, Inc. ("KFHP") as Interim Director, Kaiser Permanente HealthConnect Change Management and Security Services, with Kaiser Permanente Information Technology ("KPIT"), Care Delivery Technology Services. I have been in this role for over one year. Before I held this position, I was employed by KFHP as Lead Project Manager from 2012 to 2015, Resource Manager, Kaiser Permanente HealthConnect from 2015 to 2017, and Senior Manager, Kaiser Permanente HealthConnect Security Services from 2017 to 2023.

3. I hold a Doctor of Philosophy degree in Industrial and Organizational Psychology and a Master of Business Administration degree. I am a certified Project Management Professional and a Certified Information Security Manager. I also hold credentials in Security Proficiency and Ambulatory Proficiency from Epic.

4. KFHP, Kaiser Foundation Health Plan of Colorado ("KFHP-CO"), The Permanente Medical Group, Inc. ("TPMG"), Southern California Medical Group ("SCPMG"), Colorado Permanente Medical Group, P.C. ("CPMG"), and certain other entities operating under the trade name "Kaiser Permanente" (the "entities operating under the Kaiser Permanente trade name") use an electronic medical record system called HealthConnect. HealthConnect is an implementation of Epic software.

5. HealthConnect comprises many separate implementations of the Epic software known as "production instances," each of which contains data for patients in one region. There are several production instances of HealthConnect for the Northern California region, several production instances of HealthConnect for the Southern California region, and one production instance of HealthConnect for the Colorado region. Entities operating under the Kaiser Permanente trade name use separate production instances of HealthConnect by region, and

sometimes multiple production instances per region, to maximize load balancing and performance due to the immense size of the data maintained on the system.

6. Access rights to HealthConnect are specific to each region's production instances of HealthConnect, and do not govern access to other regions' production instances of HealthConnect. So, personnel who have been granted access to Northern California's production instances of HealthConnect do not necessarily have access to Southern California's production instances of HealthConnect.

7. As part of my current role, I manage access rights for HealthConnect for all eight regions associated with the entities operating under the Kaiser Permanente trade name. I manage all access rights in Northern California, Colorado, and five other regions. I have nine years of experience managing access rights for HealthConnect.

8. I also manage certain access rights for HealthConnect in Southern California. Specifically, I manage elevated access rights for personnel who require the ability to configure the HealthConnect software. Additionally, I have knowledge of how access rights for HealthConnect in Southern California are otherwise managed, because such management follows the same guiding principles used in Northern California and Colorado and because I regularly work with the personnel who manage access rights for HealthConnect in Southern California.

9. HealthConnect contains a massive volume of highly sensitive patient data, including protected health information ("PHI") under the Health Insurance Portability and Accountability Act ("HIPAA") and financial information protected under the Sarbanes-Oxley Act ("SOX") and Payment Card Industry ("PCI") data security standards. Specifically, each region's production instances of HealthConnect together contain medical records for tens of millions of patients, as well as other PHI such as patient-provider communications, treatment information, test results, and sensitive images. Many of these medical records fall in particular categories specifically protected by law or that are otherwise particularly sensitive, including those concerning substance use disorders, reproductive health, mental health, domestic and intimate partner violence, and confidential care provided to teens and young adults. HealthConnect also contains personal identifying information ("PII), such as Social Security Numbers, personal

financial information, such as credit card numbers, and other private information, such as patient gender identity.

10. The various production instances of HealthConnect together store this highly sensitive patient data for 12.7 million active members, including approximately 4.4 million in the Northern California region, 4.6 million in the Southern California region, and 565,000 in the Colorado region. They also contain data for hundreds of thousands of non-member patients that received treatment at one of the many hundreds of medical offices or 40 hospitals operated under the Kaiser Permanente trade name. Each region's production instances of HealthConnect contain information for beneficiaries who maintain coverage from a variety of health plans, including individual and family plans, employer plans, Medicaid plans, and Medicare Advantage plans; they also contain information associated with both inpatient and outpatient settings. To further illustrate the volume of highly sensitive patient data in the various production instances of HealthConnect, entities operating under the Kaiser Permanente trade name conduct an average of 425,000 appointments daily, each of which may result in multiple patient records, including office visit encounter notes, one or more orders, pharmacy encounter notes, laboratory encounter notes, imaging encounter notes, patient follow-up encounter notes, telephone encounter notes, patient-provider communications, and test results. The estimated operational database size for all production instances of HealthConnect is 2,215 terabytes, including 652 terabytes in the Northern California region, 665 terabytes in the Southern California region, and 54 terabytes in the Colorado region. For context, to print 2,215 terabytes of data, you would need approximately 800 billion sheets of paper. The HealthConnect Web Binary Large Object server, which stores images associated with patient medical records, contains 359.77 terabytes of data.

11. In addition to PHI, PII, and other confidential information, access to HealthConnect exposes a user to the confidential business processes of entities operating under the Kaiser Permanente trade name and to the software of these entities and their third-party vendor Epic.

12. While access to HealthConnect is customizable in order to limit a user's exposure to protected data to the minimum necessary to perform their job, it is generally customizable by

function rather than by the particular data that may be accessed. As such, it is not possible to limit a user's viewing rights to only certain patients or to only certain encounters within a patient's chart, with certain limited exceptions such as more highly protected patient records involving substance use disorder. A user that received the access necessary to view medical records would therefore have access to substantially any patient's medical record and any encounter within a given patient's medical record. The user would also have access to sensitive images associated with patient medical records stored in the HealthConnect Web Binary Large Object server.

13. In order to maintain the privacy of the millions of patients who have received care at an entity operating under the Kaiser Permanente trade name and to ensure compliance with HIPAA and SOX, the Kaiser Permanente Application Access Compliance and Engagement team ("AACE") maintains guidelines for provision of access to HealthConnect and other Kaiser Permanente applications. Access rights to HealthConnect are managed according to process documentation that follows AACE guidelines.

14. AACE guidelines establish several roles with responsibility for managing application access control:

- Business Application Owners ("BAOs") and Control Owners design and manage access controls, ensure an effective access provisioning process, and ensure that training exists for users.
- Business Application Owner Designees ("BAODs") and Control Owner Designees maintain key supporting process documents for access, self-monitor adherence to requirements, request new user access via formal user access forms, and ensure that access requests are commensurate with individuals' job responsibilities.
- Authorized access approvers review access requests based on established approval processes and ensure that access is commensurate with individuals' job responsibilities.
- Authorized access grantors grant access after the required approvals have been obtained.

The approvers list, grantors list, and other key process and procedure documents are approved at least annually by the BAO, BAOD, Control Owner, or Control Owner Designee.

15. I am the BAOD for HealthConnect for all regions, including the Northern California, Southern California, and Colorado regions. I am the Control Owner for all regions other than the Southern California region.

16. Because HealthConnect and other applications maintained by entities operating under the Kaiser Permanente trade name contain extensive sensitive data to which access is protected and restricted by law, AACE recommends certain training for BAOs, BAODs, Control Owners, and Control Owner Designees.

17. Under AACE guidelines on "segregation of duties," roles and responsibilities in the provisioning, access review, and account clean-up processes are segregated such that no employees or groups of employees are able to perpetrate or conceal errors or fraud in the normal course of their duties. Specifically, in the provision of access to HealthConnect, segregation of duties must exist between users and approvers and between approvers and grantors.

18. Requests for access to HealthConnect, modifications of existing access to HealthConnect, and reactivation of access to HealthConnect are made using forms in AccessNow, which is an Identify and Access Management tool based on the industry-standard tool SailPoint.

19. Again, because HealthConnect contains extensive sensitive information to which access is protected and restricted by law, only personnel whose job functions necessitate access to HealthConnect may receive access to HealthConnect. Where an individual's job function does necessitate access to HealthConnect, access to HealthConnect is typically customized to the individual's job function using an exponential number of combinations of individual settings to ensure that the user has access to the minimum necessary protected data to perform their job duties. To this end, each region maintains a multitude of access templates tailored to regional job roles. As a basic example, an access template for physicians would permit a user to document patient care but not necessarily to view information about billing. The access template would include access to substantially any patient's medical record and any encounter within a given patient's medical record.

20. The Job Role Matrix ("JRM") is a document that formally identifies the type(s) of appropriate access by job role. The JRM consists of documented rules that map specific access privileges to job titles or job codes that justify assignment to those privileges. Access requests entered in AccessNow are automatically checked against the JRM. The JRM is carefully maintained to ensure data security. Any changes to the JRM must be reviewed and approved by the BAO or BAOD in adherence with change management protocols. The JRM, and exceptions to the JRM, are also reviewed and approved quarterly by the BAO, BAOD, or JRM owner.

21. AACE requires that an access request be approved by an authorized approver. Depending on the type of access request, an access request may require up to three levels of approval. Access requests that exceed privileges outlined in the JRM require a documented business justification and approval from the authorized approver, BAO, or BAOD prior to execution of the access request.

22. To further secure sensitive patient data, account clean-up rules require deprovisioning of access within certain timelines upon user termination or inactivity.

23. Additionally, business data validation audits are performed at least annually to ensure that access rights have been granted in compliance with HIPAA and SOX. A sample of users is reviewed to ensure that those users received the appropriate level of access to HealthConnect.

24. Typically, access to HealthConnect is granted only to internal employees, affiliate providers who render healthcare to members, and contingent workers associated with vendors, contractors, or suppliers with a contractual relationship with an entity operating under the Kaiser Permanente trade name. Almost all HealthConnect accounts are associated with an individual National User ID ("NUID"), which is a personal identification number assigned to personnel by entities operating under the Kaiser Permanente trade name. There are a small number of accounts not associated with any NUID, such as system and service accounts, which must meet particular requirements.

25. Provision of access to external parties must follow particular protocols to ensure that protected data remains secure. For example, if an individual associated with a vendor,

supplier, or contractor has a business need for access to HealthConnect, a management-level employee of an entity operating under the Kaiser Permanente trade name accountable for day-to-day management of the worker or the vendor contract relationship must sponsor that individual's request for access to HealthConnect. Typically, the manager sponsoring the external party's request for access to HealthConnect creates a "contingent worker" account in the AccessNow tool and enters information about the contingent worker's job function. The manager must agree to adhere to certain Principles of Responsibility and a Contingent Workers Policy and attest to accountability for any issues caused by granting inappropriate access rights. The manager must also attend a Kaiser Permanente Contingent Worker Access Termination Training. The contingent worker also must undergo a background check, pre-employment drug testing, and complete multiple attestations. Following multiple levels of approval, the contingent worker receives an NUID to facilitate access to HealthConnect.

26. Vendors, contractors, and suppliers must also agree to follow certain Data Security Requirements in order to provide services to an entity operating under the Kaiser Permanente trade name that involve accessing the entity's protected data. For example, the vendor, contractor, or supplier must establish and maintain certain security controls that adhere to, at a minimum, NIST-800-53 and/or ISO 27001 industry standard controls, and must permit the entity to perform periodic evaluations and/or inspections of service locations and supplier security controls at certain points prior to and during performance of secure services. The vendor, contractor, or supplier also must agree to indemnify the entity against any breach of these requirements. I am not personally responsible for monitoring compliance with these requirements but I am familiar with them as part of my role.

27. In order to protect the privacy of PHI in compliance with HIPAA, entities operating under the Kaiser Permanente trade name also enter Business Associate Agreements ("BAAs") with third parties setting forth the terms and conditions of the use and disclosure of PHI. Under these agreements, third parties must implement and use appropriate safeguards to protect PHI; report and mitigate security incidents; make available PHI for inspection; and maintain sufficient insurance coverage to insure against claims arising under the BAA. I am not

personally responsible for monitoring compliance with these requirements but I am familiar with them as part of my role.

28. A vendor seeking access to HealthConnect must also request access to Epic's software and receive Epic's approval as one step in their request for access to HealthConnect. To do so, I must complete an Epic form verifying that the vendor is supporting an entity operating under the Kaiser Permanente trade name and that the requested access aligns with the services the vendor personnel will provide. Epic then processes the application for access and notifies me when the necessary agreement is in place allowing for the vendor personnel to access HealthConnect. Epic's notification states that the security profile for the vendor must be limited to a particular access type and that the vendor has agreed to access the software only from within certain specified locations to help ensure the security and protection of Epic's intellectual property. Entities operating under the Kaiser Permanente trade name and Epic may run reports to monitor vendor access. The vendor also agrees to keep all Epic-related information on these entities' servers.

29. Like an internal employee, any affiliate provider, vendor, supplier, contractor, or other external party that receives access to HealthConnect receives a customized access commensurate with their business need to ensure exposure to as little protected data as possible.

30. If the U.S. Department of Justice ("DOJ") was granted access to HealthConnect in this litigation to print medical records, I would need to engage the appropriate internal team and the Epic vendor to build a customized access template for its use. Building a customized HealthConnect access template for an external party's unique business need is a time-consuming undertaking. For example, it recently took 100 hours per region and five different product teams to build a new access template for a single vendor.

31. Extraction of medical records would present additional security risk. The Technology Risk Office typically permits printing of medical records only on-site at a facility operated by an entity operating under the Kaiser Permanente trade name, and must grant an exception to print medical records off-site. In order to extract medical records from HealthConnect, the national Electronic Data Exchange team would need to be engaged to

determine the appropriate method for removal of the data beyond the Kaiser Permanente firewall. I am not personally responsible for controlling or monitoring compliance with these requirements for data extraction by external parties but I am familiar with them as part of my role.

32. In circumstances involving extraction of data by third parties—typically vendors—the Technology Risk Office performs vendor risk assessments to ensure appropriate measures are in place to adequately secure protected data. The Technology Risk Office assesses the vendor organization's processes and policies with respect to information security governance, risk management, human resources security, asset management, asset control, business continuity management, incident response, compliance, operations management, physical and environmental security, systems development, and third party management. The Technology Risk Office issues findings identifying the level of risk associated with the engagement and may recommend that the vendor be placed on an ongoing risk monitoring program. I am not personally responsible for conducting these risk assessments but I am familiar with them as part of my role.

33. To my knowledge, no adverse party in litigation has ever received access to HealthConnect during the discovery process in that litigation.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed this ___ day of July, 2024 at _____,_____.

_____

Breezy Caldwell

determine the appropriate method for removal of the data beyond the Kaiser Permanente firewall. I am not personally responsible for controlling or monitoring compliance with these requirements for data extraction by external parties but I am familiar with them as part of my role.

32. In circumstances involving extraction of data by third parties—typically vendors—the Technology Risk Office performs vendor risk assessments to ensure appropriate measures are in place to adequately secure protected data. The Technology Risk Office assesses the vendor organization's processes and policies with respect to information security governance, risk management, human resources security, asset management, asset control, business continuity management, incident response, compliance, operations management, physical and environmental security, systems development, and third party management. The Technology Risk Office issues findings identifying the level of risk associated with the engagement and may recommend that the vendor be placed on an ongoing risk monitoring program. I am not personally responsible for conducting these risk assessments but I am familiar with them as part of my role.

33. To my knowledge, no adverse party in litigation has ever received access to HealthConnect during the discovery process in that litigation.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed this 22 day of July, 2024 at Aurora, Colorado.

Breezy Caldwell

Breezy Caldwell