

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 LLOYD A. BOOKMAN (State Bar No. 89251)
E-Mail: lbookman@health-law.com
2 **HOOPER, LUNDY & BOOKMAN, P.C.**
1875 Century Park East, Suite 1600
3 Los Angeles, California 90067
Telephone: (310) 551-8111
4 Facsimile: (310) 551-8181

5 JOSEPH R. LAMAGNA (State Bar No. 246850)
E-Mail: jlamagna@health-law.com
6 **HOOPER, LUNDY & BOOKMAN, P.C.**
101 W. Broadway, Suite 1200
7 San Diego, California 92101-3890
Telephone: (619) 744-7300
8 Facsimile: (619) 230-0987

9 JORDAN KEARNEY (State Bar No. 305483)
E-Mail: jkearney@health-law.com
10 **HOOPER, LUNDY & BOOKMAN, P.C.**
575 Market Street, Suite 2300
11 San Francisco, California 94105
Telephone: (415) 875-8500
12 Facsimile: (415) 875-8519

13 Attorneys for Defendants

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
16

17 UNITED STATES OF AMERICA, ex
18 rel. INTEGRA MED ANALYTICS
LLC,

19 Plaintiff,

20 vs.

21 PROVIDENCE HEALTH &
22 SERVICES, et al.,

23 Defendants.
24
25
26
27
28

Case No. 2:17-cv-01694-PSG-SS

**DEFENDANTS' ANSWER TO
SECOND AMENDED COMPLAINT**

The Hon. The Hon. Philip S. Gutierrez

Action Filed: March 2, 2017
Trial Date: None Set

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

Defendants Providence Health & Services, Providence Health System – Southern California, Providence Health & Services – Washington, Providence Health & Services – Oregon, Providence Saint John’s Health Center, Providence Health & Services – Montana, Swedish Health Services, and Swedish Edmonds (collectively, the “Providence Defendants”), for themselves and themselves alone, hereby answer the unverified Second Amended Complaint (the “SAC”) of Relator Integra Med Analytics LLC (“Relator”) as follows:

I. INTRODUCTION

1. The Providence Defendants understand Relator’s definition of “Providence” or the “Providence Defendants” to include Providence Health & Services and the hospitals owned by the Providence Defendants named in Relator’s SAC. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in the first and second sentences of this paragraph, including without limitation allegations pertaining to Relator, Relator’s analyses, Relator’s “multi-faceted investigation,” and any defendants or anyone other than the Providence Defendants, and on this basis deny these allegations. As to remaining allegations in this paragraph pertaining to the Providence Defendants, the Providence Defendants deny these allegations. Without limiting the foregoing, the Providence Defendants deny allegations of unwarranted use of Major Complication and Comorbidity secondary codes (“MCCs”), falsely inflated claims submitted to Medicare, intentional submission of false claims to Medicare, and a systematic effort to boost Medicare revenue. The Providence Defendants admit that Relator has brought this action and seeks to recover over \$188.1 million, but deny the remaining allegations in the last sentence of this paragraph.

2. The Providence Defendants admit that they constitute a large health system in the United States operating 34 hospitals and numerous clinics in at least five states and that they operate a number of wholly-owned and/or controlled entities, including the defendant facilities. The Providence Defendants deny the

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 remaining allegations in this paragraph.

2 3. The Providence Defendants admit that they have a department referred
3 to as “One Revenue Cycle” that monitors and audits the proper coding of services.
4 The Providence Defendants admit that certain of its facilities contracted with JATA
5 during certain time periods to help support compliance with clinical documentation
6 management. The Providence Defendants lack information or knowledge sufficient
7 to form a belief about the truth of the remaining allegations in this paragraph,
8 including without limitation allegations pertaining to any defendant or anyone other
9 than the Providence Defendants, allegations pertaining to Relator, what Relator
10 uncovered, allegations pertaining to interviews, allegations pertaining to
11 “preapproved standards,” and allegations pertaining to the design of JATA’s
12 software, and on this basis deny these allegations. Without limiting the foregoing,
13 the Providence Defendants deny that they created a culture throughout Providence
14 that promoted increasing Medicare billing without regard for accuracy, pushing
15 doctors to make unwarranted diagnoses, and using leading queries to change
16 doctors’ original diagnoses. The Providence Defendants also note that the Court has
17 dismissed Relator’s conspiracy claims as factually and legally unsupported.

18 4. The Providence Defendants lack information or knowledge sufficient
19 to form a belief about to the truth of the allegations in this paragraph, including
20 without limitation allegations pertaining to Relator’s analyses and on that basis deny
21 these allegations. Without limiting the foregoing, the Providence Defendants deny
22 that Relator identified false claims and deny allegations concerning inflated
23 Medicare billings.

24 5. The Providence Defendants deny the allegations in this paragraph.

25 **II. JURISDICTION AND VENUE**

26 6. This paragraph sets forth Plaintiff’s jurisdictional allegations that
27 present legal conclusions and questions of law to be determined by the Court, to
28 which no answer is required. To the extent a response is required, the Providence

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 Defendants admit the allegations of this paragraph.

2 7. This paragraph sets forth Plaintiff's jurisdictional allegations that
3 present legal conclusions and questions of law to be determined by the Court, to
4 which no answer is required. To the extent a response is required, the Providence
5 Defendants admit this Court has personal jurisdiction over them. The Providence
6 Defendants deny the allegations in this paragraph to the extent they alleged that all
7 named Providence Defendants transacted business in this district, submitted claims
8 in this District, and/or reside in this District. The Providence Defendants deny the
9 allegations that the Providence Defendants engaged in wrongdoing and/or caused
10 the submission of false or fraudulent claims in this District or otherwise.

11 8. This paragraph sets forth Plaintiff's venue allegations that present legal
12 conclusions and questions of law to be determined by the Court, to which no answer
13 is required. To the extent a response is required, the Providence Defendants admit
14 the allegations in the first sentence of this paragraph. The Providence Defendants
15 deny the allegations in the second sentence.

16 9. The Providence Defendants deny the allegations in this paragraph.

17 **III. PARTIES**

18 10. The Providence Defendants admit the allegations in this paragraph..

19 11. The Providence Defendants admit that Relator is an associated
20 company of Integra Research Group, LLC and that Integra REC LLC is Integra
21 Research Group LLC's sister company. The Providence Defendants lack
22 information or knowledge sufficient to form a belief about the truth the remaining
23 allegations in this paragraph and on this basis deny these allegations.

24 12. The Providence Defendants admit the allegations in this paragraph.

25 13. The Providence Defendants admit the allegations in this paragraph.

26 14. The Providence Defendants admit the allegations in this paragraph.

27 15. The Providence Defendants admit the allegations in this paragraph.

28 16. The Providence Defendants admit the allegations in this paragraph.

1 17. The Providence Defendants admit the allegations in this paragraph,
2 except that the Providence Defendants deny Business Filing Inc.'s address.

3 18. The Providence Defendants admit the allegations in this paragraph,
4 except that the Providence Defendants deny Business Filing Inc.'s address.

5 19. The Providence Defendants admit the allegations in this paragraph,
6 except that the Providence Defendants deny Business Filing Inc.'s address.

7 20. The Providence Defendants lack information and knowledge sufficient
8 to form a belief about the truth of the allegations in this paragraph and on this basis
9 deny these allegations.

10 **IV. SUBSTANTIVE ALLEGATIONS**

11 **A. Overview of Medicare Reimbursement and Upcoding**

12 21. The Providence Defendants admit the allegations in the first and third
13 sentences of this paragraph. The Providence Defendants deny the second sentence
14 of this paragraph. The Providence Defendants deny that "[t]he DRG is the single
15 most impactful factor in determining the average payment for a claim," but admit
16 the remaining allegations in this sentence concerning the DRG.

17 22. The Providence Defendants admit the allegations in this paragraph,
18 including footnotes 2 and 3.

19 23. The Providence Defendants admit that the Centers for Medicare and
20 Medicaid Services ("CMS") publishes annual lists of CC and MCC codes. The
21 Providence Defendants deny the remainder of the allegations in this paragraph.

22 **B. In Consultation with JATA, Providence Pushed Its Coders, CDI** 23 **Specialists, and Doctors to Apply Unnecessary CCs and MCCs**

24 24. The Providence Defendants deny the allegations in the heading
25 preceding this paragraph. The Providence Defendants admit that they have clinical
26 document improvement programs ("CDI"), that certain Providence Defendants
27 engaged JATA to help with these efforts for some of the time periods relevant to the
28 case, and that JATA is a provider of CDI consulting services. The Providence

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 Defendants lack knowledge or information sufficient to form a belief about the truth
2 of the allegations in this paragraph pertaining to any defendant or anyone other than
3 the Providence Defendants and on this basis deny these allegations. As to remaining
4 allegations specific to the Providence Defendants, if there are any, except as so
5 admitted, the Providence Defendants deny these allegations.

6 25. The Providence Defendants lack knowledge or information sufficient to
7 form a belief about the truth of the allegations in this paragraph pertaining to any
8 defendant or anyone other than the Providence Defendants and on this basis deny
9 those allegations. As to remaining allegations specific to the Providence
10 Defendants, if there are any, the Providence Defendants deny these allegations.

11 1. **Providence, Aided by JATA, Trained Doctors to Upcode**
12 **MCCs**

13 26. The Providence Defendants deny the allegations in the heading
14 preceding this paragraph. The Providence Defendants lack knowledge or
15 information sufficient to form a belief about the truth of the allegations in this
16 paragraph pertaining to any defendant or anyone other than the Providence
17 Defendants and on this basis deny these allegations. Certain allegations of this
18 paragraph constitute Relator's characterization of an excerpt from "Documentation
19 Tips," the contents of which speak for themselves and thus require no answer. The
20 Providence Defendants admit that a Providence hospital provided certain JATA-
21 created documentation guidance on its publicly available website, including one
22 hospital posting the "Documentation Tips" referenced in this paragraph. As to
23 remaining allegations specific to the Providence Defendants, the Providence
24 Defendants deny these allegations. Without limiting the foregoing, the Providence
25 Defendants deny that they aggressively pushed the use of specific language
26 conducive for coding for secondary CCs and MCCs.

27 27. The allegations in the second sentence of this paragraph constitute
28 Relator's characterization of an excerpt from "Documentation Tips," the contents of

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 which speak for themselves and thus require no answer. The Providence
2 Defendants deny the remaining allegations in this paragraph.

3 28. The allegations in the first sentence of this paragraph constitute
4 Relator's characterization of the Office of the Inspector General OIG Work Plan
5 2017, the contents of which speak for themselves and thus require no answer. As to
6 the remaining allegations, the Providence Defendants lack knowledge or
7 information sufficient to form a belief about the truth of these allegations, including
8 without limitation allegations pertaining to Relator's analysis, and on that basis deny
9 these allegations.

10 29. The Providence Defendants lack information or knowledge sufficient to
11 form a belief about the truth of the allegations in this paragraph pertaining to any
12 defendant or anyone other than the Providence Defendants and on that basis deny
13 these allegations. As to remaining allegations, including without limitation
14 allegations specific to the Providence Defendants, the Providence Defendants deny
15 these allegations. The last sentence of this paragraph constitutes Relator's
16 characterization of an excerpt from "Documentation Tips," the contents of which
17 speak for themselves and thus require no answer.

18 30. This paragraph constitutes Relator's characterization of an excerpt from
19 "Documentation Tips," the contents of which speak for themselves and thus require
20 no answer. To the extent the allegations in the first sentence accuse the Providence
21 Defendants of wrongdoing, the Providence Defendants deny such allegations.
22 Without limiting the foregoing, the Providence Defendants deny the allegations
23 pertaining to "little credit."

24 31. The Providence Defendants admit that JATA created publicly available
25 training videos and materials, which a Providence hospital made available to its
26 physicians and the public, in an effort to provide training specific to the United
27 States' transition from ICD-9-CM to ICD-10-CM. The remaining allegations in this
28 paragraph constitute Relator's characterization of a training video, the contents of

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 which speak for themselves and thus require no answer. To the extent any
2 allegation in this paragraph accuses the Providence Defendants of wrongdoing, the
3 Providence Defendants deny such allegations.

4 **2. With the Assistance of JATA, Providence Pressured Doctors**
5 **to Upcode MCC Using Leading Queries**

6 32. The Providence Defendants deny the allegations in the heading
7 preceding this paragraph. The Providence Defendants lack information or
8 knowledge sufficient to form a belief about the truth of the allegations in this
9 paragraph pertaining to any defendant or anyone other than the Providence
10 Defendants and on that basis deny these allegations. The allegations in the second
11 sentence of this paragraph pertaining to what “[h]ospitals are not allowed to”
12 constitute a legal conclusion to which no response is required. The Providence
13 Defendants deny the allegations in the last sentence of this paragraph.

14 33. The Providence Defendants lack information or knowledge sufficient to
15 form a belief about the truth of the allegations in the first sentence of this paragraph
16 and on this basis deny these allegations. The allegation in the first sentence
17 concerning “non-compliant leading queries” is a legal conclusion to which no
18 response is required. Without limiting the foregoing, the Providence Defendants
19 deny that “Providence CDI staff used non-compliant leading queries to direct
20 doctors to a document specific diagnoses, such as severe malnutrition.” The
21 Providence Defendants deny the remaining allegations in this paragraph. The
22 Providence Defendants lack information or knowledge sufficient to form a belief
23 about the truth of the allegations in footnote six pertaining to the two referenced
24 False Claims Act settlements and to the quote from the alleged AHIMA guidelines,
25 and on this basis deny those allegations. The Providence Defendants deny the
26 allegation that AHIMA provides guidelines for CDIs to issue “Medicare-complaint
27 queries” and deny the allegation that AHIMA can prohibit CDI from taking actions,
28 such as “issuing a leading query.”

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 34. The Providence Defendants lack information or knowledge sufficient to
2 form a belief about the truth of the allegations in this paragraph pertaining to any
3 defendant or anyone other than the Providence Defendants and on that basis deny
4 these allegations. As to remaining allegations, including without limitation
5 allegations specific to the Providence Defendants, the Providence Defendants deny
6 these allegations.

7 35. The Providence Defendants lack information or knowledge sufficient to
8 form a belief about the truth of the allegations in this paragraph pertaining to any
9 defendant or anyone other than the Providence Defendants, and on that basis deny
10 the allegations of this paragraph that do not pertain to the Providence Defendants.
11 As to the remaining allegations including without limitation allegations specific to
12 the Providence Defendants, if there are any, the Providence Defendants deny these
13 allegations.

14 36. The Providence Defendants lack information or knowledge sufficient to
15 form a belief about the truth of the allegations in this paragraph.

16 37. The Providence Defendants lack information or knowledge sufficient to
17 form a belief about the truth of the allegations in this paragraph.

18 38. The Providence Defendants lack information or knowledge sufficient to
19 form a belief about the truth of the allegations in this paragraph.

20 39. The Providence Defendants lack information or knowledge sufficient to
21 form a belief about the truth of the allegations in this paragraph pertaining to any
22 defendant or anyone other than the Providence Defendants and on this basis deny
23 these allegations. As to the remaining allegations, including without limitation
24 allegations specific to the Providence Defendants, if there are any, the Providence
25 Defendants deny these allegations. Without limiting the foregoing, the Providence
26 Defendants deny the existence of a fraudulent scheme involving the Providence
27 Defendants that resulted in the excessive coding of MCCs identified by Relator or
28 otherwise.

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

3. **JATA Gave Providence Tips on How to Avoid Audits of Their Upcoding**

40. The Providence Defendants deny the allegations in the heading preceding this paragraph. The Providence Defendants admit that CMS issues the PEPPER report which provides provider-specific Medicare data statistics for discharges/services vulnerable to improper payments. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the remaining allegations in this paragraph and on this basis deny these allegations.

4. **Providence and JATA Incentivized Staff to Upcode MCCs**

41. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in the heading preceding this paragraph and on this basis deny these allegations. Without limiting the foregoing, the Providence Defendants deny the allegation in the preceding heading that they incentivized staff to upcode MCCs. The Providence Defendants deny the allegations in the first sentence of this paragraph. The Providence Defendants admit that a single Providence hospital posted online a monthly newsletter that thanked its medical staff for taking the time to respond to queries. The Providence Defendants admit that it provided CDI specialists with the hospital's monthly "Top 5 Queries" and the "Most Effective Query," but deny that these queries were selected solely based on financial impact, to the extent that is what Relator is alleging. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph stating that the three MCCS identified by Relator frequently appeared in the "Top 5 Queries," particularly as to the term frequently and the time period to which Relator refers and on this basis deny these allegations. The Providence Defendants deny the remaining allegations in this paragraph including without limitation the allegations pertaining to the intent and/or meaning behind the monthly newsletter and the alleged incentives of CDI staff.

42. The Providence Defendants admit that certain JATA's software traced the net effect of both positive and negative queries. The Providence Defendants deny all other allegations in this paragraph.

43. The Providence Defendants admit that physicians were incentivized to respond to CDI queries, but deny that doctor salaries were tied to how they responded to CDI queries or that physicians were incentivized to respond in a certain way. allegations in the first sentence of this paragraph. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations pertaining to the Relator's investigation and what a "Providence CDI specialist" recalls, and on this basis deny the allegations in this paragraph.

5. JATA's Software Promoted Upcoding MCCs

44. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in the heading that precedes this paragraph as to JATA software used by other than the Providence Defendants, and denies the allegations in the heading with respect to the JATA software used by the Providence Defendants. The Providence Defendants admit that some Providence CDI staff used JATA's proprietary software to help design queries. The Providence Defendants admit that certain JATA's software provides immediate feedback upon entry as to whether or not a diagnosis CC or MCC would impact the severity level of a DRG. The Providence Defendants deny any allegation that the JATA software they used provides prompts or suggestions of possible CCs or MCCs. Unless otherwise admitted, the Providence Defendants deny all other allegations in this paragraph.

45. The Providence Defendants admit that JATA clinical documentation software has a reputation for generating additional revenue. The Providence Defendants deny allegations concerning "outsized" additional revenue. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the remaining allegations in this paragraph and on this basis deny

1 these allegations.

2 46. The Providence Defendants deny the allegations in the first sentence of
3 this paragraph. As to the second sentence of this paragraph, the Providence
4 Defendants deny allegations with respect to JATA's software used by the
5 Providence Defendants. The Providence Defendants lack information or knowledge
6 sufficient to form a belief about the truth of the allegations as to other JATA
7 software and on this basis deny these allegations. To the extent any allegation
8 accuses the Providence Defendants of wrongdoing, the Providence Defendants deny
9 such allegations.

10 **6. JATA's Upcoding Strategies Extend Beyond Providence**

11 47. The Providence Defendants lack information or knowledge sufficient to
12 form a belief about the truth of the allegations in the heading preceding this
13 paragraph and on this basis deny the allegations. The Providence Defendants lack
14 information or knowledge sufficient to form a belief about the truth of the
15 allegations in this paragraph, including without limitation allegations pertaining to
16 any defendant or anyone other than the Providence Defendants, and on this basis
17 deny these allegations. As to any allegations pertaining to the Providence
18 Defendants, the Providence Defendants deny these allegations. Without limiting the
19 foregoing, the Providence Defendants deny they were encouraged and enabled to
20 code CCs and MCCs excessively, that they coded CCs and MCCs excessively, and
21 that they submitted false and inflated claims to Medicare.

22 48. The Providence Defendants lack information or knowledge sufficient to
23 form a belief about the truth of the allegations in this paragraph, and on this basis
24 deny these allegations.

25 **C. Relator's Methodology**

26 49. To the extent a response is required to the heading preceding this
27 paragraph, the Providence Defendants lack information or knowledge sufficient to
28 form a belief about the truth of the allegations in this heading and on this basis deny

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 the allegations. The Providence Defendants lack information or knowledge
2 sufficient to form a belief about the truth of the allegations in this paragraph and the
3 allegations in footnote 7, and on this basis deny these allegations. Without limiting
4 the foregoing, the Providence Defendants specifically deny that they submitted false
5 claims, fraudulently inflated revenue on Medicare claims, or fraudulently added
6 MCCs to Medicare claims to increase reimbursements or otherwise.

7 50. The Providence Defendants lack information or knowledge sufficient to
8 form a belief about the truth of the allegations in this paragraph and on this basis
9 deny these allegations, with the exception of footnote 8. The Providence
10 Defendants admit footnote 8, but deny, without limiting the foregoing, that Relator
11 excluded any claims for which adding an MCC did not increase value based on lack
12 of information or knowledge.

13 51. The Providence Defendants agree that some natural variation in usage
14 rates among hospitals is expected. The Providence Defendants lack information or
15 knowledge sufficient to form a belief about the truth of the remaining allegations in
16 this paragraph. Without limiting the foregoing, the Providence Defendants deny
17 they submitted false claims, that there is a fraudulent pattern of coding relative to
18 the Providence Defendants, that the Providence Defendants excessively upcoded
19 and that any MCCs were misstated or false.

20 52. The Providence Defendants lack information or knowledge sufficient to
21 form a belief about the truth of the allegations of this paragraph, with the exception
22 of footnote 9, and on this basis deny these allegations. Footnote nine constitutes
23 Relator's characterization of a section within its SAC and thus requires no answer.

24 53. The Providence Defendants lack information or knowledge sufficient to
25 form a belief about the truth of the allegations in this paragraph, with the exception
26 of footnote 10, and on this basis deny these allegations. The allegations in footnote
27 10 constitutes Relator's characterization of a referenced methodology and its
28 sources, the contents of which speak for themselves and thus require no answer.

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

54. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph and on this basis deny these allegations.

D. Defendants' False Claims

1. The False Claims Made by Providence in Consultation with JATA

55. The Providence Defendants deny the allegation in the headings preceding this paragraph that they made false claims and made false claims in consultation with JATA. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in the first sentence of this paragraph. To the extent any allegation in this paragraph accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations. Without limiting the foregoing, the Providence Defendants deny that any MCCs were misstated or false. The last sentence of this paragraph constitutes Relator's characterization of its allegations and SAC and thus requires no response. The Providence Defendants note that the Court has dismissed Relator's conspiracy claims as factually and legally unsupported.

56. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph and in Figure 3, and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations. Without limiting the foregoing, the Providence Defendants deny that any MCCs were misstated or false.

57. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph and in Figure 4, and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations. Without limiting the foregoing, the Providence Defendants deny that

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 any MCCs were misstated or false.

2 58. The Providence Defendants lack information or knowledge sufficient to
3 form a belief about the truth of the allegations in this paragraph and in Figure 5, and
4 on this basis deny these allegations. To the extent any allegation accuses the
5 Providence Defendants of wrongdoing, the Providence Defendants deny such
6 allegations. Without limiting the foregoing, the Providence Defendants deny that
7 any MCCs were misstated or false and that they excessively and/or consistently
8 upcoded.

9 **a. Encephalopathy**

10 59. The Providence Defendants lack information or knowledge sufficient to
11 form a belief about the truth of the allegations in the first sentence of this paragraph,
12 to the extent they pertain to Relator's analyses and Relator's algorithms and
13 statistical processes (referred to hereinafter as "Relator's Methodology"), and on
14 this basis deny these allegations. The Providence Defendants deny that they
15 fraudulently used MCCs to make false claims. The Providence Defendants admit
16 that the codes listed in Table 1 are codes for encephalopathy. The remaining
17 allegations in this paragraph constitute Relator's characterization of
18 "encephalopathy" and thus require no answer.

19 60. The allegations in this paragraph constitute Relator's characterization
20 of "most common causes of encephalopathy" and various matters pertaining to
21 encephalopathy and thus require no answer.

22 61. The allegations in this paragraph constitute Relator's characterization
23 of "encephalopathy" and thus require no answer.

24 62. The Providence Defendants lack information or knowledge sufficient to
25 form a belief about the truth of the allegations in this paragraph, including Figure 6,
26 and on this basis deny these allegations. To the extent any allegation accuses the
27 Providence Defendants of wrongdoing, the Providence Defendants deny such
28 allegations.

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

i **Specific Patterns of Fraud with Encephalopathy**

63. The Providence Defendants deny the allegations in the heading preceding this paragraph to the extent they pertain to the Providence Defendants. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph and in Table 2, and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations. Without limiting the foregoing, the Providence Defendants deny they upcoded or excessively upcoded with encephalopathy, or that they submitted fraudulent claims.

64. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph and in Figure 7, and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations. Without limiting the foregoing, the Providence Defendants deny allegations of widespread abuse.

65. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph and in Figure 8, and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations. Without limiting the foregoing, the Providence Defendants deny they excessively upcoded encephalopathy.

ii **Specific False Claims with Encephalopathy**

66. The Providence Defendants deny the allegations in the heading preceding this paragraph to the extent they pertain to the Providence Defendants. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in the first sentence of this paragraph and in Table 3, and on this basis deny these allegations. The second sentence of this paragraph constitute Relator's characterization of its table and thus requires no

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 response. The Providence Defendants deny that that they submitted false or
2 fraudulent claims using encephalopathy, and that Table 5 includes examples of false
3 claims.

4 **b. Respiratory Failure**

5 67. The Providence Defendants lack information or knowledge sufficient to
6 form a belief about the truth of the allegations in the first sentence of this paragraph,
7 to the extent they pertain to Relator's analyses and Relator's Methodology, and on
8 this basis deny these allegations. The Providence Defendants deny that they
9 mistated MCCs and used MCCs at an excessive rate. The Providence Defendants
10 admit that the codes listed in Table 4 are codes for respiratory failure. The
11 remaining allegations in this paragraph constitute Relator's characterization of
12 "respiratory failure" and thus require no answer.

13 68. The allegations in this paragraph constitute Relator's characterization
14 of matters pertaining to "respiratory failure" and thus require no answer.

15 69. The allegations in this paragraph constitute Relator's characterization
16 of matters pertaining to "respiratory failure" and thus require no answer.

17 70. The Providence Defendants lack information or knowledge sufficient to
18 form a belief about the truth of the allegations in this paragraph, including Figure 9,
19 and on this basis deny these allegations. To the extent any allegation accuses the
20 Providence Defendants of wrongdoing, the Providence Defendants deny such
21 allegations.

22 **i Specific Patterns of Fraud with Respiratory**
23 **Failure**

24 71. The Providence Defendants deny the allegations in the heading
25 preceding this paragraph to the extent they pertain to the Providence Defendants.
26 The Providence Defendants lack information or knowledge sufficient to form a
27 belief about the truth of the allegations in this paragraph and in Table 5, and on this
28 basis deny these allegations. To the extent any allegation accuses the Providence

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

Defendants of wrongdoing, the Providence Defendants deny such allegations.

Without limiting the foregoing, the Providence Defendants deny they upcoded or excessively upcoded with respiratory failure, or that they submitted fraudulent claims.

72. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph and in Figure 10, and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations. Without limiting the foregoing, the Providence Defendants deny allegations of fraud.

73. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph and in Figure 11, and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations. Without limiting the foregoing, the Providence Defendants deny they excessively upcoded respiratory failure.

ii Specific False Claims with Respiratory Failure

74. The Providence Defendants deny the allegations in the heading preceding this paragraph to the extent they pertain to the Providence Defendants. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in the first sentence of this paragraph and in Table 6, and on this basis deny these allegations. The Providence Defendants deny they submitted false Medicare claims involving respiratory failure, and that table 6 includes examples of false claims. The second sentence of this paragraph constitute Relator's characterization of its table and thus requires no response.

c. Severe Malnutrition

75. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in the first sentence of this paragraph,

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 to the extent they pertain to Relator's analyses and Relator's Methodology, and on
2 this basis deny these allegations. The Providence Defendants deny that they
3 mistated MCCs or used MCCs to commit fraud at a higher rate or to commit fraud.
4 The Providence Defendants admit that the codes listed in Table 7 are codes for
5 malnutrition. The remaining allegations in this paragraph constitute Relator's
6 characterization of "severe malnutrition" and thus require no answer. Without
7 limiting the foregoing, the Providence Defendants deny that any MCCs were
8 misstated or false.

9 76. The allegations in this paragraph constitute Relator's characterization
10 of "severe malnutrition" and thus require no answer.

11 77. The Providence Defendants lack information or knowledge sufficient to
12 form a belief about the truth of the allegations in this paragraph and in Figure 12,
13 and on this basis deny these allegations. To the extent any allegation accuses the
14 Providence Defendants of wrongdoing, the Providence Defendants deny such
15 allegations.

16 **i Specific Patterns of Fraud with Severe**
17 **Malnutrition**

18 78. The Providence Defendants deny the allegations in the heading
19 preceding this paragraph to the extent they pertain to the Providence Defendants.
20 The Providence Defendants lack information or knowledge sufficient to form a
21 belief about the truth of the allegations in this paragraph and in Table 8, and on this
22 basis deny these allegations. To the extent any allegation accuses the Providence
23 Defendants of wrongdoing, the Providence Defendants deny such allegations.
24 Without limiting the foregoing, the Providence Defendants deny they upcoded or
25 excessively upcoded with severe malnutrition, or that they submitted fraudulent
26 claims.

27 79. The Providence Defendants lack information or knowledge sufficient to
28 form a belief about the truth of the allegations in this paragraph and in Figure 13,

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 and on this basis deny these allegations. To the extent any allegation accuses the
2 Providence Defendants of wrongdoing, the Providence Defendants deny such
3 allegations. Without limiting the foregoing, the Providence Defendants deny
4 allegations of widespread abuse.

5 80. The Providence Defendants lack information or knowledge sufficient to
6 form a belief about the truth of the allegations in this paragraph and in Figure 14,
7 and on this basis deny these allegations. To the extent any allegation accuses the
8 Providence Defendants of wrongdoing, the Providence Defendants deny such
9 allegations. Without limiting the foregoing, the Providence Defendants deny that
10 they excessively upcoded encephalopathy or severe malnutrition.

11 **ii Specific False Claims with Severe Malnutrition**

12 81. The Providence Defendants deny the allegations in the heading
13 preceding this paragraph to the extent they pertain to the Providence Defendants.
14 The Providence Defendants lack information or knowledge sufficient to form a
15 belief about the truth of the allegations in the first sentence of this paragraph and in
16 Table 9, and on this basis deny these allegations. The second sentence of this
17 paragraph constitute Relator's characterization of its table and thus requires no
18 response. The Providence Defendants deny that they submitted false or fraudulent
19 claims using severe malnutrition, and that Table 9 includes examples of false claims.

20 **2. Alternative Hypotheses for Excessive Rates of Misstated**
21 **MCCs Do Not Stand and Confirm that Providence**
22 **Fraudulently Billed Medicare**

23 82. The Providence Defendants lack information or knowledge sufficient to
24 form a belief about the truth of the allegations in the heading preceding this
25 paragraph and on this basis denies these allegations. With respect to the allegations
26 in the heading preceding this paragraph pertaining to MCCs, the Providence
27 Defendants deny that any MCCs were misstated or false. The Providence
28 Defendants specifically deny the allegations in the heading preceding this paragraph

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 that the Providence Defendants fraudulently billed Medicare. The Providence
2 Defendants lack information or knowledge sufficient to form a belief about the truth
3 of the allegations in this paragraph and on this basis deny these allegations. To the
4 extent any allegation accuses the Providence Defendants of wrongdoing, the
5 Providence Defendants deny such allegations. Without limiting the foregoing, the
6 Providence Defendants deny allegations of fraud and fraudulent activity, including
7 allegations that the Providence Defendants knew of fraud and that such fraud was
8 intentional, and that any MCCs were misstated or false.

9 a. **Patient Characteristics and Demographics Do Not**
10 **Explain the Excessive Rates of Misstated MCCs at**
11 **Providence**

12 83. The Providence Defendants lack information or knowledge sufficient to
13 form a belief about the truth of the allegations in the heading preceding this
14 paragraph and on this basis deny these allegations. With respect to the allegations in
15 the heading preceding this paragraph pertaining to MCCs, the Providence
16 Defendants deny that any MCCs were misstated or false. The Providence
17 Defendants lack information or knowledge sufficient to form a belief about the truth
18 of the allegations in this paragraph, with the exception of footnotes 12 and 13,
19 including without limitation allegations pertaining to Relator's Methodology and
20 analyses and any defendant or anyone other than the Providence Defendants, and on
21 this basis deny these allegations. To the extent any allegation accuses the
22 Providence Defendants of wrongdoing, the Providence Defendants deny such
23 allegations. Without limiting the foregoing, the Providence Defendants deny
24 allegations that the Providence Defendants committed fraud and that any MCCs
25 were misstated or false. The Providence Defendants deny the allegations in footnote
26 12 as an oversimplified explanation, but admit that the Rural-Urban Continuum
27 Codes form a classification scheme that distinguishes metropolitan counties by the
28 population size of their metro area, and nonmetropolitan counties by degree of

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 urbanization and adjacency to a metro area. Footnote 13 constitutes Relator's
2 characterization of an article from The Journal of Finance, the existence and
3 contents of which speak for themselves and thus require no response.

4 84. The Providence Defendants lack information or knowledge sufficient to
5 form a belief about the truth of the allegations in this paragraph and on this basis
6 deny these allegations. To the extent any allegation accuses the Providence
7 Defendants of wrongdoing, the Providence Defendants deny such allegations.

8 i **Principal Diagnosis Bin-Based Fixed Effect**
9 **Linear Regression**

10 85. The Providence Defendants lack information or knowledge sufficient to
11 form a belief about the truth of the allegations in the heading preceding this
12 paragraph and the allegations in this paragraph and on this basis deny these
13 allegations. To the extent any allegation accuses the Providence Defendants of
14 wrongdoing, the Providence Defendants deny such allegations.

15 86. The Providence Defendants lack information or knowledge sufficient to
16 form a belief about the truth of the allegations in this paragraph and in Equation 1,
17 and on this basis deny these allegations. To the extent any allegation accuses the
18 Providence Defendants of wrongdoing, the Providence Defendants deny such
19 allegations. Without limiting the foregoing, the Providence Defendants deny that
20 any MCCs were misstated or false.

21 87. The Providence Defendants lack information or knowledge sufficient to
22 form a belief about the truth of the allegations in this paragraph and in Figure 15,
23 and on this basis deny these allegations. To the extent any allegation accuses the
24 Providence Defendants of wrongdoing, the Providence Defendants deny such
25 allegations. Without limiting the foregoing, the Providence Defendants deny that
26 any MCCs were misstated or false.

27 88. The Providence Defendants lack information or knowledge sufficient to
28 form a belief about the truth of the allegations in this paragraph and in Figure 15,

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 including without limitation allegations pertaining to Relator's Methodology and
2 analyses, and on this basis deny these allegations. Allegations in the first, second,
3 third and fifth sentences of this paragraph constitute Relator's characterization of its
4 Figure 15, the contents of which speak for themselves and thus require no response.
5 To the extent any allegation accuses the Providence Defendants of wrongdoing, the
6 Providence Defendants deny such allegations.

7 89. The Providence Defendants lack information or knowledge sufficient to
8 form a belief about the truth of the allegations in this paragraph, in Figure 15 and in
9 footnote 14, including without limitation allegations pertaining to Relator's
10 Methodology and analyses, and on this basis deny these allegations. Allegations in
11 the in the first sentence of this paragraph constitute Relator's characterization of its
12 Figure 15, the contents of which speak for themselves and thus require no response.
13 To the extent any allegation accuses the Providence Defendants of wrongdoing, the
14 Providence Defendants deny such allegations. Without limiting the foregoing, the
15 Providence Defendants deny allegations of excessive coding of MCCs and that any
16 MCCs were misstated or false.

17 **ii Aggregate Fixed Effect Regression Model**

18 90. The Providence Defendants lack information or knowledge sufficient to
19 form a belief about the truth of the allegations in the heading preceding this
20 paragraph, in this paragraph and in Equation 1, and on this basis deny these
21 allegations. To the extent any allegation accuses the Providence Defendants of
22 wrongdoing, the Providence Defendants deny such allegations.

23 91. The Providence Defendants lack information or knowledge sufficient to
24 form a belief about the truth of the allegations in this paragraph and in Table 10, and
25 on this basis deny these allegations. To the extent any allegation accuses the
26 Providence Defendants of wrongdoing, the Providence Defendants deny such
27 allegations. Without limiting the foregoing, the Providence Defendants deny that
28 any MCCs were misstated or false.

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

92. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph and in footnote 15, and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations.

**iii System and Hospital Residuals for Misstated
MCCs**

93. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in the heading preceding this paragraph and in this paragraph, and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations. Without limiting the foregoing, the Providence Defendants deny that any MCCs were misstated or false.

94. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph and in Figure 16, including without limitation allegations pertaining to Relator's regression analyses, and on this basis deny these allegations. Allegations in the first and third sentences of this paragraph constitute Relator's characterization of its Figure 16, the contents of which speak for themselves and thus require no response. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations. Without limiting the foregoing, the Providence Defendants deny that any MCCs were misstated or false.

**b. Providence's Merger with St. Joseph Health
Demonstrates that Providence Management Causes the
Excessive MCC Rates**

95. The Providence Defendants deny the allegations in the heading preceding this paragraph. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 paragraph, including without limitation allegations pertaining to Relator's regression
2 analyses, and on this basis deny these allegations. To the extent any allegation
3 accuses the Providence Defendants of wrongdoing, the Providence Defendants deny
4 such allegations. Without limiting the foregoing, the Providence Defendants deny
5 allegations that they engaged in practices that specifically caused excessive rates of
6 MCCs or that any MCCs were misstated or false.

7 96. The Providence Defendants lack information or knowledge sufficient to
8 form a belief about the truth of the allegations in this paragraph, with the exception
9 of footnotes 18 and 19, including without limitation allegations pertaining to "causal
10 methods," "causal econometric methodology, "discontinuity analysis" and
11 "Regression of Discontinuity Design," and on this basis deny these allegations. To
12 the extent any allegation accuses the Providence Defendants of wrongdoing, the
13 Providence Defendants deny such allegations. Without limiting the foregoing, the
14 Providence Defendants deny allegations of fraudulent conduct and influencing the
15 rate of coding MCCs. The Providence Defendants admit that the quote in footnote
16 17 is attributed to the author and book cited, but the Providence Defendants lack
17 information or knowledge sufficient to form a belief about the truth of the
18 allegations in this footnote. Footnotes 18 and 19 constitute the Relator's
19 characterization two publications, the existence and contents of which speak for
20 themselves and thus require no response.

21 97. The Providence Defendants deny the allegations in the first and second
22 sentences of this paragraph. The Providence Defendants lack information or
23 knowledge sufficient to form a belief about the truth of the remaining allegations in
24 this paragraph and the allegations in Figure 17, including without limitation
25 allegations pertaining to anyone other than the Providence Defendants and Relator's
26 analyses, and on this basis deny these allegations. To the extent any allegation
27 accuses the Providence Defendants of wrongdoing, the Providence Defendants deny
28 such allegations. Without limiting the foregoing, the Providence Defendants deny

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 that any MCCs were misstated or false.

2 98. The Providence Defendants lack information or knowledge sufficient to
3 form a belief about the truth of the allegations in this paragraph, in Figure 18 and in
4 Equation 2, and on this basis deny these allegations. To the extent any allegation
5 accuses the Providence Defendants of wrongdoing, the Providence Defendants deny
6 such allegations. Without limiting the foregoing, the Providence Defendants deny
7 that any MCCs were misstated or false.

8 99. The Providence Defendants lack information or knowledge sufficient to
9 form a belief about the truth of the allegations in this paragraph and in Equation 1,
10 and on this basis deny these allegations. To the extent any allegation accuses the
11 Providence Defendants of wrongdoing, the Providence Defendants deny such
12 allegations. Without limiting the foregoing, the Providence Defendants deny that
13 any MCCs were misstated or false.

14 100. The Providence Defendants lack information or knowledge sufficient to
15 form a belief about the truth of the allegations in this paragraph and in Equation 2,
16 and on this basis deny these allegations. To the extent any allegation accuses the
17 Providence Defendants of wrongdoing, the Providence Defendants deny such
18 allegations. Without limiting the foregoing, the Providence Defendants deny that
19 any MCCs were misstated or false.

20 c. **Attending Physicians Are Not Responsible for the**
21 **Excessively High Rates of Misstated MCCs**

22 101. The Providence Defendants lack information or knowledge sufficient to
23 form a belief about the truth of the allegations in heading preceding this paragraph
24 and in this paragraph and on this basis deny these allegations. With respect to the
25 allegations in the heading preceding this paragraph pertaining to MCCs, the
26 Providence Defendants deny that any MCCs were misstated or false. To the extent
27 any allegation in this paragraph accuses the Providence Defendants of wrongdoing,
28 the Providence Defendants deny such allegations.

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

102. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph and in Figure 19, and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations. Without limiting the foregoing, the Providence Defendants deny that any MCCs were misstated or false.

103. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph and in Figure 20, and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations. Without limiting the foregoing, the Providence Defendants deny that any MCCs were misstated or false.

104. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph, in Figure 21 and in footnote 20, and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations. Without limiting the foregoing, the Providence Defendants deny that any MCCs were misstated or false.

105. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph and in Figure 22, and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations.

106. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph, in Figure 23 and in footnote 21, and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations. Without limiting the foregoing, the Providence Defendants deny

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 that any MCCs were misstated or false.

2 107. The Providence Defendants lack information or knowledge sufficient to
3 form a belief about the truth of the allegations in this paragraph and in Figure 24,
4 and on this basis deny these allegations. To the extent any allegation accuses the
5 Providence Defendants of wrongdoing, the Providence Defendants deny such
6 allegations. Without limiting the foregoing, the Providence Defendants deny that
7 any MCCs were misstated or false.

8 108. The Providence Defendants lack information or knowledge sufficient to
9 form a belief about the truth of the allegations in this paragraph, in Figure 25 and in
10 footnote 22, and on this basis deny these allegations. To the extent any allegation
11 accuses the Providence Defendants of wrongdoing, the Providence Defendants deny
12 such allegations.

13 109. The Providence Defendants lack information or knowledge sufficient to
14 form a belief about the truth of the allegations in this paragraph and in Figure 26,
15 and on this basis deny these allegations. To the extent any allegation accuses the
16 Providence Defendants of wrongdoing, the Providence Defendants deny such
17 allegations.

18 110. The Providence Defendants lack information or knowledge sufficient to
19 form a belief about the truth of the allegations in this paragraph, in Table 11 and in
20 footnote 23, and on this basis deny these allegations. To the extent any allegation
21 accuses the Providence Defendants of wrongdoing, the Providence Defendants deny
22 such allegations.

23 111. The Providence Defendants lack information or knowledge sufficient to
24 form a belief about the truth of the allegations in this paragraph, in Table 12 and in
25 footnotes 24 and 25, and on this basis deny these allegations. To the extent any
26 allegation accuses the Providence Defendants of wrongdoing, the Providence
27 Defendants deny such allegations. Without limiting the foregoing, the Providence
28 Defendants deny that any MCCs were misstated or false.

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

112. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations. Without limiting the foregoing, the Providence Defendants deny they engaged in coding practices that cause fraudulent upcoding and that these practices were specifically implemented by the Providence Defendants with the assistance of JATA.

d. Unique Characteristics of Providence's Patients Do Not Account for the Excessively High Rates of Misstated MCCs

113. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in the heading preceding this paragraph and in this paragraph and on this basis deny these allegations. With respect to the allegations in the heading preceding this paragraph pertaining to MCCs, the Providence Defendants deny that any MCCs were misstated or false. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations.

114. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph and in Figure 27 and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence Defendants deny such allegations. Without limiting the foregoing, the Providence Defendants deny that any MCCs were misstated or false.

115. The Providence Defendants lack information or knowledge sufficient to form a belief about the truth of the allegations in this paragraph, in Table 28 and in footnotes 27 and 28, and on this basis deny these allegations. To the extent any allegation accuses the Providence Defendants of wrongdoing, the Providence

1 Defendants deny such allegations.

2 116. The Providence Defendants lack information or knowledge sufficient to
3 form a belief about the truth of the allegations in this paragraph and on this basis
4 deny these allegations. To the extent any allegation accuses the Providence
5 Defendants of wrongdoing, the Providence Defendants deny such allegations.
6 Without limiting the foregoing, the Providence Defendants deny that any MCCs
7 were misstated or false.

8 e. **Regional Factors Do Not Explain Why Providence Has**
9 **Higher Rates of MCCs**

10 117. The Providence Defendants lack information or knowledge sufficient to
11 form a belief about the truth of the allegations in the heading preceding this
12 paragraph, in this paragraph and in footnote 29, and on this basis deny these
13 allegations. To the extent any allegation accuses the Providence Defendants of
14 wrongdoing, the Providence Defendants deny such allegations. Without limiting the
15 foregoing, the Providence Defendants deny that any MCCs were misstated or false.

16 118. The Providence Defendants lack information or knowledge sufficient to
17 form a belief about the truth of the allegations in this paragraph and in Tables 13 and
18 14, and on this basis deny these allegations. To the extent any allegation accuses the
19 Providence Defendants of wrongdoing, the Providence Defendants deny such
20 allegations. Without limiting the foregoing, the Providence Defendants deny that
21 any MCCs were misstated or false.

22 119. The Providence Defendants lack information or knowledge sufficient to
23 form a belief about the truth of the allegations in this paragraph and in Tables 15 and
24 16, and on this basis deny these allegations. To the extent any allegation accuses the
25 Providence Defendants of wrongdoing, the Providence Defendants deny such
26 allegations.

27 120. The Providence Defendants lack information or knowledge sufficient to
28 form a belief about the truth of the allegations in this paragraph. To the extent any

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 allegation accuses the Providence Defendants of wrongdoing, the Providence
2 Defendants deny such allegations. Without limiting the foregoing, the Providence
3 Defendants deny allegations of fraudulent upcoding.

4 f. **Summary of What Caused Excessively High Rates of**
5 **Misstated MCCs at Providence**

6 121. The Providence Defendants lack information or knowledge sufficient to
7 form a belief about the truth of the allegations in heading preceding this paragraph
8 and in this paragraph, and on this basis deny these allegations. With respect to the
9 allegations in the heading preceding this paragraph pertaining to MCCs, the
10 Providence Defendants deny that any MCCs were misstated or false. To the extent
11 any allegation accuses the Providence Defendants of wrongdoing, the Providence
12 Defendants deny such allegations. Without limiting the foregoing, the Providence
13 Defendants deny that they, in consultation with JATA, implemented practices to
14 maximize the amount of revenue it can receive from Medicare by fraudulently
15 upcoding and adding unsubstantiated MCC secondary diagnosis codes to their
16 claims and that any MCCs were misstated or false.

17 3. **Economic Damages**

18 122. The Providence Defendants lack information or knowledge sufficient to
19 form a belief about the truth of the allegations in heading preceding this paragraph
20 and in this paragraph, and on this basis deny these allegations. To the extent any
21 allegation accuses the Providence Defendants of wrongdoing, the Providence
22 Defendants deny such allegations. Without limiting the foregoing, the Providence
23 Defendants deny they committed fraud or fraudulently coded encephalopathy and
24 that any MCCs were misstated or false.

25 123. The Providence Defendants lack information or knowledge sufficient to
26 form a belief about the truth of the allegations in this paragraph and in footnotes 30
27 and 31, and on this basis deny these allegations. To the extent any allegation
28 accuses the Providence Defendants of wrongdoing, or that conduct of the

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 Providence Defendants resulted in damages, the Providence Defendants deny such
2 allegations. Without limiting the foregoing, the Providence Defendants deny that
3 any MCCs were misstated or false.

4 124. The Providence Defendants lack information or knowledge sufficient to
5 form a belief about the truth of the allegations in this paragraph and in Table 17, and
6 on this basis deny these allegations. To the extent any allegation accuses the
7 Providence Defendants of wrongdoing, the Providence Defendants deny such
8 allegations. Without limiting the foregoing, the Providence Defendants deny any
9 false claims, fraudulent MCC upcoding, that it received any additional amount in
10 false claims, and that any MCCs were misstated or false.

11 125. The Providence Defendants lack information or knowledge sufficient to
12 form a belief about the truth of the allegations in this paragraph and on this basis
13 deny these allegations. To the extent any allegation accuses the Providence
14 Defendants of wrongdoing, the Providence Defendants deny such allegations.

15 126. The Providence Defendants lack information or knowledge sufficient to
16 form a belief about the truth of the allegations in this paragraph and in footnote 32,
17 and on this basis deny these allegations. To the extent any allegation accuses the
18 Providence Defendants of wrongdoing, the Providence Defendants deny such
19 allegations. The Providence Defendants deny that their conduct has resulted in
20 damages of \$237.5 million or any other amount.

21 127. The Providence Defendants lack information or knowledge sufficient to
22 form a belief about the truth of the allegations in this paragraph and on this basis
23 deny these allegations. To the extent any allegation accuses the Providence
24 Defendants of wrongdoing, the Providence Defendants deny such allegations.
25 Without limiting the foregoing, the Providence Defendants deny system-wide
26 practices of excessive coding and fraudulent upcoding, that their conduct has
27 resulted in damages in any amount, and that any MCCs were misstated or false.

28 128. The Providence Defendants lack information or knowledge sufficient to

1 form a belief about the truth of the allegations in this paragraph, including without
2 limitation allegations pertaining to any defendant or anyone other than the
3 Providence Defendants, and on this basis deny these allegations. To the extent any
4 allegation accuses the Providence Defendants of wrongdoing, the Providence
5 Defendants deny such allegations. Without limiting the foregoing, the Providence
6 Defendants deny that any MCCs were misstated or false.

7 **CAUSES OF ACTION**

8 **COUNT ONE**

9 **Violation of the False Claims Act arising from falsifying patient diagnoses,
10 complications, and comorbidities (Against All Defendants)**

11 129. Providence repeats and re-alleges its answers to the allegations in
12 paragraphs 1-128.

13 130. The Providence Defendants deny the allegations in this paragraph.

14 131. The Providence Defendants deny the allegations in this paragraph and
15 its subsections (a) and (b). The Court dismissed Relator's reverse FCA claims as
16 factually and legally unsupported and thus the allegations in subsection (c) require
17 no response.

18 132. The Court dismissed Relator's conspiracy claims as factually and
19 legally unsupported and thus the allegations in this paragraph require no response.

20 133. The Providence Defendants deny the allegations in this paragraph.

21 **COUNT TWO**

22 **Violations of the Federal False Claims Act arising from the Defendants'
23 violations of the Anti-Kickback Statute (Against All Defendants)**

24 134. The Providence Defendants repeats and re-alleges its answers to the
25 allegations in paragraphs 1-133.

26 135. The Court dismissed Relator's Anti-Kickback FCA claims as factually
27 and legally unsupported and thus the allegations in this paragraph require no
28 response.

136. The Court dismissed Relator's Anti-Kickback FCA claims as factually

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

1 and legally unsupported and thus the allegations in this paragraph require no
2 response.

3 137. The Court dismissed Relator's Anti-Kickback FCA claims as factually
4 and legally unsupported and thus the allegations in this paragraph require no
5 response.

6 138. The Court dismissed Relator's Anti-Kickback FCA claims as factually
7 and legally unsupported and thus the allegations in this paragraph require no
8 response.

9 139. The Court dismissed Relator's Anti-Kickback FCA claims as factually
10 and legally unsupported and thus the allegations in this paragraph require no
11 response.

12 140. The Court dismissed Relator's Anti-Kickback FCA claims as factually
13 and legally unsupported and thus the allegations in this paragraph require no
14 response.

15 141. The Court dismissed Relator's Anti-Kickback FCA claims as factually
16 and legally unsupported and thus the allegations in this paragraph require no
17 response.

18 142. The Court dismissed Relator's Anti-Kickback FCA claims as factually
19 and legally unsupported and thus the allegations in this paragraph require no
20 response.

21 The Providence Defendants deny each and every allegation in the SAC which
22 has not been specifically admitted or denied above and to which an admission or
23 denial is required.

24 **AFFIRMATIVE DEFENSES**

25 **First Affirmative Defense**

26 **(Failure to State a Claim)**

27 Relator fails to state a claim against the Providence Defendants upon which
28 relief may be granted, and the SAC should be dismissed.

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987

Second Affirmative Defense

(Public Disclosure Bar)

The SAC should be dismissed against the Providence Defendants on the grounds that they are barred by the Public Disclosure Bar. *See* 31 U.S.C. § 3730(e)(4).

Third Affirmative Defense

(Authorized by Law)

Relator's claims are barred, in whole or in part because the Providence Defendants' conduct was in compliance with, or authorized by, laws or regulations administered by a regulatory body or officer acting under state or federal statutory authority.

Fourth Affirmative Defense

(Unclean Hands)

Relator's claims are barred, in whole or in part, by the doctrine of unclean hands.

Fifth Affirmative Defense

(Excessive fines)

To the extent the Relator seeks penalties, any award of such penalties would violate provisions of the United States Constitution, including without limitation the First Amendment, the Due Process Clause of the Fifth and Fourteenth Amendments, and the Excess Fines Clause of the Eighth Amendment, as well as analogous provisions in the Constitutions of any other State whose laws are or become relevant in the course of this lawsuit.

Sixth Affirmative Defense

(Statute of Limitations)

Relator's claims against the Providence Defendants are barred, in whole or in part, to the extent that any statute of limitations has lapsed or by the doctrine of

laches.

Seventh Affirmative Defense

(Good Faith/Compliance with Applicable Law)

Relator's claims against the Providence Defendants fail because the Providence Defendants at all times acted in good faith, with reasonable care and diligence, and in compliance with applicable federal and state laws and regulations.

Eighth Affirmative Defense

(Lack of Injury)

Relator's claims against because the Providence Defendants are barred, in whole or in part, to the extent the United States has not suffered any actual injury or damages.

Ninth Affirmative Defense

(Consent)

Relator's and/or the United States' recovery is barred, in whole or in part, to the extent the United States ratified or otherwise consented to the transactions and occurrences that are the subject of this action.

Tenth Affirmative Defense

(Estoppel)

Relator's claims are barred, in whole or in part, by the doctrine of estoppel.

Eleventh Affirmative Defense

(Failure to Mitigate Damages)

Relator's claims fail, in whole or in part, to the extent the United States failed to take adequate measures to mitigate damages, if any.

Twelfth Affirmative Defense

(Waiver and/or Release)

The Relator's claims against Defendant JATA are barred, in whole or in part, by the doctrines of waiver and/or release.

///

Thirteenth Affirmative Defense

(Mootness)

The Second Amended Complaint contains claims or allegations that this Court has dismissed with prejudice or that have been rendered moot in whole or in part.

Fourteenth Affirmative Defense

(Right to Assert Further Affirmative Defenses)

The Providence Defendants presently lacks sufficient knowledge or information on which to form a belief as to whether it might have additional and as yet unstated affirmative defenses and therefore reserves the right to assert additional affirmative defenses in the event further discovery and/or investigation indicates that such affirmative defenses would be warranted.

DEMAND FOR JURY TRIAL

The Providence Defendants hereby preserve their right to request a jury trial on all disputed issues of fact.

PRAYER FOR RELIEF

Wherefore, the Providence Defendants pray for judgment as follows:

1. The SAC be denied and dismissed with prejudice;
2. That Relator take nothing from this proceeding;
3. That Providence Defendants recover their costs and attorneys' fees in this proceeding; and
4. That the Court provide the Providence Defendants any other relief the Court deems just and proper.

///

///

///

///

1 Dated: August 21, 2019

HOOPER, LUNDY & BOOKMAN, P.C.

2
3
4 By: s/
5 LLOYD A. BOOKMAN
6 JOSEPH R. LAMAGNA
7 JORDAN KEARNEY
8 Attorneys for Defendants
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HOOPER, LUNDY & BOOKMAN, P.C.
101 W. BROADWAY, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-3890
TEL: (619) 744-7300 • FAX: (619) 230-0987