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12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
15

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

18 Plaintiff,

19 vs.

20 PROVIDENCE HEALTH &
21 SERVICES, et al.,

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

**DEFENDANT J.A. THOMAS AND
ASSOCIATES, INC.'S ANSWER TO
RELATOR'S SECOND AMENDED
COMPLAINT**

Complaint Filed: March 2, 2017
FAC Filed: March 28, 2017
SAC Filed: Aug. 10, 2018
Trial Date: None set

Honorable Philip S. Gutierrez

INTRODUCTION

Subject to its affirmative defenses set forth below, and without waiver of any rights, privileges, or defenses, Defendant J.A. Thomas and Associates, Inc. (“JATA”) hereby submits its Answer to the Second Amended Complaint [Dkt. 38] (the “Complaint”) filed by Relator Integra Med Analytics LLC (“Relator” or “Integra”). Each numbered response in this Answer is made subject to the following limitations as if fully set forth herein.

First, any responses in this Answer do not constitute acknowledgement or admission of the validity or relevance of any allegation.

Second, this Answer is made subject to the Court’s Order dated July 16, 2019 [Dkt. 82], which addressed Defendants’ motions to dismiss the Complaint. To the extent the Complaint contains allegations regarding claims, theories, or facts that have been dismissed, mooted, or otherwise rendered immaterial by the Order or any other orders issued by the Court, no response is required to such allegations.

Third, the unenumerated paragraph on page 1 of the Complaint, Table of Contents on pages ii-iii, and the corresponding section headings and subheadings throughout the Complaint, contain characterizations of the Complaint to which no response is required. To the extent a response is deemed required, Defendant JATA denies any allegations in the unenumerated paragraph on page 1, the Table of Contents, and the section headings and subheadings in the Complaint.

Fourth, where Defendant JATA states that it lacks knowledge or information sufficient to form a belief about the truth of a certain allegation, Defendant JATA reserves the right to argue that the allegation is true or false based on the evidence. Similarly, where Defendant JATA denies a certain allegation on the basis that the allegation pertains to claims, theories, or facts that have been dismissed, mooted, or otherwise rendered immaterial by the Court’s Order of July 16, 2019, Defendant JATA reserves the right to argue that the allegation is true or false based on the evidence.

ANSWER

Except to the extent expressly admitted in this Answer, Defendant JATA denies each and every allegation in the Complaint. The numbered paragraphs in this Answer correspond to the numbered paragraphs of the Complaint.

1. Defendant JATA is without knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 1 and therefore denies the allegations.

2. Defendant JATA admits that Providence Health & Services describes itself as a diverse family of organizations that includes a number of hospitals. Defendant JATA is without knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in Paragraph 2 and therefore denies the allegations.

3. Defendant JATA admits that there are statutes, regulations, agency guidance, and industry standards pertaining to coding and billing for patient services rendered by healthcare providers to Medicare beneficiaries, and those statutes, regulations, agency guidance, and industry standards speak for themselves. JATA also admits that it has one or more agreements with certain Providence hospitals regarding certain services and/or products provided by JATA, and those agreements speak for themselves. JATA is without knowledge or information sufficient to form a belief about Relator's characterizations regarding Providence's "One Revenue Cycle" department and on that basis denies those allegations. JATA denies the remaining allegations in Paragraph 3.

4. Defendant JATA is without knowledge or information sufficient to form a belief about Relator's purported analysis, and therefore denies the allegations regarding that analysis contained in Paragraph 4. JATA denies the remaining allegations contained in Paragraph 4.

5. Defendant JATA is without knowledge or information sufficient to form a belief about Relator's determination, and therefore denies the allegations

1 regarding that determination contained in Paragraph 5. JATA denies the remaining
2 allegations contained in Paragraph 5.

3 6. The allegations contained in Paragraph 6 assert legal conclusions to
4 which no response is required.

5 7. Defendant JATA admits that this Court has personal jurisdiction over
6 JATA and that JATA transacted business in this District. The remaining
7 allegations contained in Paragraph 7 assert legal conclusions to which no response
8 is required. To the extent that a response may be deemed to be required, JATA
9 denies the remaining allegations contained in Paragraph 7.

10 8. Defendant JATA admits that venue is proper in this District. The
11 remaining allegations contained in Paragraph 8 assert legal conclusions to which no
12 response is required. To the extent that a response may be deemed to be required,
13 JATA denies the remaining allegations contained in Paragraph 8.

14 9. The allegations contained in Paragraph 9 assert legal conclusions to
15 which no response is required. To the extent that a response may be deemed to be
16 required, Defendant JATA denies the allegations contained in Paragraph 9.

17 10. Defendant JATA admits the allegations in Paragraph 10.

18 11. Defendant JATA is without knowledge or information sufficient to
19 form a belief about the truth of the allegations contained in Paragraph 11 and
20 therefore denies the allegations.

21 12. Defendant JATA admits the allegations in Paragraph 12.

22 13. Defendant JATA admits the allegations in Paragraph 13.

23 14. Defendant JATA admits the allegations in Paragraph 14.

24 15. Defendant JATA admits the allegations in Paragraph 15.

25 16. Defendant JATA admits the allegations in Paragraph 16.

26 17. Defendant JATA admits the allegations in Paragraph 17.

27 18. Defendant JATA admits the allegations in Paragraph 18.

28 19. Defendant JATA admits the allegations in Paragraph 19.

1 20. Defendant JATA admits the allegations in Paragraph 20 were accurate
2 at the time the Complaint was filed.

3 21. To the extent the allegations in Paragraph 21 are Relator's
4 characterizations of a MedPac document listed in footnote 1, the document speaks
5 for itself, and JATA denies any allegations inconsistent with that source. The
6 remaining allegations contained in Paragraph 21 assert legal conclusions to which
7 no response is required. To the extent that a response may be deemed to be
8 required, Defendant JATA avers that statutes, regulations, agency guidance, and
9 industry standards regarding the MS-DRG system speak for themselves and denies
10 any allegations not consistent with those sources.

11 22. To the extent the allegations in Paragraph 22 are Relator's
12 characterizations of a Centers for Disease Control document listed in footnotes 2
13 and 3, the document speaks for itself, and on that basis Defendant JATA denies any
14 allegations that are inconsistent with that source. The remaining allegations
15 contained in Paragraph 22 assert legal conclusions to which no response is required.
16 To the extent that a response may be deemed to be required, Defendant JATA avers
17 that statutes, regulations, agency guidance, and industry standards regarding the
18 MS-DRG system speak for themselves and denies any allegations not consistent
19 with those sources.

20 23. Defendant JATA denies the allegations in the last sentence of
21 Paragraph 23. The remaining allegations contained in Paragraph 23 assert legal
22 conclusions to which no response is required. To the extent that a response may be
23 deemed to be required to the remaining allegations in Paragraph 23, JATA avers
24 that statutes, regulations, agency guidance, and industry standards regarding the
25 MS-DRG system speak for themselves and denies any allegations not consistent
26 with those sources.

27 24. With regard to the first, second, third, and fifth sentences of Paragraph
28 24, Defendant JATA admits that (a) it provides products and services to health care

1 providers designed to improve clinical documentation of treatment provided to
2 patients, so that it accurately reflects the level of care provided and the severity of
3 each patient's condition, (b) JATA has been a leading provider of such products
4 and services for more than 20 years; (c) one or more Providence hospitals has
5 programs, practices, or procedures related to clinical documentation improvement,
6 and (d) JATA has one or more agreements with certain Providence hospitals
7 regarding certain services and/or products provided by JATA. JATA is without
8 knowledge or information sufficient to form a belief about the truth of the
9 allegations contained in Paragraph 24 regarding most hospital groups' use of
10 clinical documentation improvement ("CDI") programs and Relator's generalized
11 characterization of programs the named Providence defendants may have, and
12 therefore denies those allegations. The third and fifth sentences of Paragraph 24
13 purport to characterize marketing materials, which are publicly available and speak
14 for themselves. *See, e.g.*, RJN Ex. 13 at 202, 203 (Nuance website). JATA denies
15 the remaining allegations in the first, second, third, and fifth sentences of Paragraph
16 24 and denies the allegations in the fourth sentence of Paragraph 24.

17 25. Defendant JATA admits that the second sentence of Paragraph 25
18 quotes one line from a publicly available presentation, which speaks for itself. *See*
19 RJN Ex. 14 at 207, 227 (An 'Outside the Box' Case Study: How Clinical
20 Documentation Helped Baptist Health Realize Improved Financial Performance).
21 JATA otherwise denies the allegations contained in Paragraph 25.

22 26. Defendant JATA admits that "Document Tips" are publicly available.
23 RJN Exs. 15-18 at 256, 259, 262, 265 ("*Documentation Tips*" posted on Providence
24 California website). Defendant JATA otherwise denies the allegations contained in
25 Paragraph 26.

26 27. Defendant JATA denies the allegations contained in Paragraph 27.

27 28. The first sentence of Paragraph 28 contains Relator's characterization
28 of the Office of the Inspector General (OIG) Work Plan listed in footnote 5, which

1 speaks for itself, and Defendant JATA denies any allegations not consistent with
2 that source. With regard to the second sentence of Paragraph 28, Defendant JATA
3 is without knowledge or information sufficient to form a belief about the truth of
4 the allegations about Relator's analysis and therefore denies the allegations in the
5 second sentence.

6 29. Defendant JATA denies the allegations contained in Paragraph 29.

7 30. Defendant JATA denies the allegations contained in Paragraph 30.

8 31. Defendant JATA admits that Paragraph 31 quotes from a publicly
9 available video, which speaks for itself. *See* RJN, Ex. 20 at 275, 276 (Providence
10 California YouTube video). JATA otherwise denies the allegations in this
11 paragraph.

12 32. Paragraph 32 contains legal conclusions regarding coding
13 requirements and "queries" to which no response is required. To the extent
14 Paragraph 32 contains factual allegations to which a response may be deemed to be
15 required, Defendant JATA is without knowledge or information sufficient to form a
16 belief about the truth of the allegations contained in Paragraph 32 and therefore
17 denies the allegations.

18 33. To the extent Paragraph 33 contains legal conclusions regarding
19 "queries," no response is required. To the extent Paragraph 33 contains factual
20 allegations to which a response may be deemed to be required, Defendant JATA is
21 without knowledge or information sufficient to form a belief about the truth of the
22 allegations contained in Paragraph 33 and therefore denies the allegations.
23 Footnote 6 contains Relator's characterizations of two False Claims Act settlements
24 by the United States Department of Justice and American Health Information
25 Management Association guidelines, which speak for themselves, and JATA denies
26 any allegations that are inconsistent with those sources.

27 34. With regard to the purported quote in the third sentence of Paragraph
28 34, Defendant JATA is without knowledge or information sufficient to form a

1 belief about the truth of the allegations regarding the recollections of an unnamed
2 “former staff” at an unidentified “JATA hospital.” JATA therefore denies those
3 allegations. Defendant JATA denies the remaining allegations contained in
4 Paragraph 34.

5 35. Defendant JATA denies the allegations contained in Paragraph 35.

6 36. Defendant JATA denies the allegations contained in the first sentence
7 of Paragraph 36. With regard to the second, third, fourth, and fifth sentences in
8 Paragraph 36, Defendant JATA admits that this paragraph quotes from publicly
9 available website postings. *See* RJN, Exs. 21 at 278, 279; 22 at 284, 286; 23 at 292,
10 293; 24 at 295, 296; 25 at 298, 299 (postings on ACDIS Forum pages).

11 JATA is without knowledge or information sufficient to form a belief about
12 the remaining allegations contained in the second, third, fourth, and fifth sentences
13 and the allegations contained in the sixth sentence of Paragraph 36 and therefore
14 denies those allegations.

15 37. Defendant JATA denies the allegation contained in the first sentence
16 of Paragraph 37. With regard to the second and third sentences in Paragraph 37,
17 Defendant JATA admits that this paragraph quotes from publicly available website
18 postings. *See* RJN, Exs. 21 at 278, 279; 22 at 284, 286; 23 at 292, 293; 24 at 295,
19 296; 25 at 298, 299 (postings on ACDIS Forum pages). JATA is without
20 knowledge or information sufficient to form a belief about the remaining
21 allegations contained in the second and third sentences in Paragraph 37 and
22 therefore denies those allegations.

23 38. Defendant JATA denies the allegations contained in the first two
24 sentences of Paragraph 38. JATA is without knowledge or information sufficient to
25 form a belief about the remaining allegations contained in Paragraph 38 and
26 therefore denies those allegations.

27 39. Defendant JATA denies the allegations contained in Paragraph 39.
28

1 40. The second sentence of Paragraph 40 contains Relator's
2 characterization of a JATA presentation, which speaks for itself. Defendant JATA
3 admits the presentation is publicly available. *See* RJN Ex. 26 at 304, 305
4 (presentation from 2012 ACDIS Conference). Except as expressly admitted,
5 Defendant JATA denies the allegations contained in Paragraph 40.

6 41. The second and third sentence of Paragraph 41 quote phrases in a
7 publicly available newsletter, which speaks for itself. *See* RJN Ex. 19 at 268, 271
8 (*Vital Signs* newsletter). Except as expressly admitted, Defendant JATA is without
9 knowledge or information sufficient to form a belief about the truth of the
10 allegations contained in Paragraph 41 and therefore denies the allegations.

11 42. Defendant JATA is without knowledge or information sufficient to
12 form a belief about the allegations contained in the first sentence of Paragraph 42
13 and therefore denies those allegations. The second, third, and fourth sentences of
14 Paragraph 42 contain legal arguments and vague allegations, for which Defendant
15 JATA is without knowledge or information sufficient to form a belief about the
16 truth of the allegations; JATA therefore denies those allegations. JATA denies the
17 allegations contained in the last sentence of Paragraph 42.

18 43. Defendant JATA is without knowledge or information sufficient to
19 form a belief about the truth of the allegations contained in Paragraph 43 and
20 therefore denies the allegations.

21 44. Defendant JATA admits that (a) it has one or more agreements with
22 certain Providence hospitals regarding certain services and/or products provided by
23 JATA, the agreements for which speak for themselves; (b) certain JATA software
24 can tell the user whether a diagnosis may affect the severity of the level of the
25 DRG; and (c) certain JATA software can identify other potentially applicable
26 diagnoses. JATA denies the remaining allegations in Paragraph 44.

27 45. Defendant JATA admits that Paragraph 45 quotes statements from
28 publicly available website postings. *See* RJN, Exs. 21 at 278, 279; 22 at 284, 286;

23 at 292, 293; 24 at 295, 296; 25 at 298, 299 (postings on ACDIS Forum pages). Defendant JATA is without knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in Paragraph 45 and therefore denies the allegations.

46. Defendant JATA denies the allegations contained in Paragraph 46.

47. Defendant JATA denies the allegations contained in the first sentence of Paragraph 47. JATA is without knowledge or information sufficient to form a belief about the truth of the allegations pertaining to Relator's investigation, and therefore denies those allegations. JATA denies the remaining allegations in the second sentence of Paragraph 47.

48. Defendant JATA is without knowledge or information sufficient to form a belief about the truth of the allegations pertaining to Relator's analysis and therefore denies those allegations. JATA denies the remaining allegations in Paragraph 48.

49. Defendant JATA is without knowledge or information sufficient to form a belief about the truth of the allegations pertaining to Relator's analysis and therefore denies those allegations. JATA denies the remaining allegations in Paragraph 49.

50. Paragraph 50 contains legal arguments, to which no response is required, and Relator's characterization of its analysis, for which Defendant JATA is without knowledge or information sufficient to form a belief about the truth of the allegations; JATA therefore denies the allegations in Paragraph 50.

51. Paragraph 51 contains legal arguments, to which no response is required, and Relator's characterization of its analysis, for which Defendant JATA is without knowledge or information sufficient to form a belief about the truth of the allegations; JATA therefore denies the allegations in Paragraph 51.

52. Paragraph 52 contains legal arguments, to which no response is required, and Relator's characterization of its analysis, for which Defendant JATA

1 is without knowledge or information sufficient to form a belief about the truth of
2 the allegations; JATA therefore denies the allegations in Paragraph 52.

3 53. Paragraph 53 contains legal arguments, to which no response is
4 required, and Relator's characterization of its analysis, for which Defendant JATA
5 is without knowledge or information sufficient to form a belief about the truth of
6 the allegations; JATA therefore denies the allegations in Paragraph 53.

7 54. Paragraph 54 contains legal arguments, to which no response is
8 required, and Relator's characterization of its analysis, for which Defendant JATA
9 is without knowledge or information sufficient to form a belief about the truth of
10 the allegations; JATA therefore denies the allegations in Paragraph 54.

11 55. Paragraph 55 contains legal arguments, to which no response is
12 required, and Relator's characterization of its analysis, for which Defendant JATA
13 is without knowledge or information sufficient to form a belief about the truth of
14 the allegations; JATA therefore denies the allegations in Paragraph 55. Defendant
15 JATA specifically denies that any MCCs were "misstated" or any way made false
16 "in consultation with JATA."

17 56. Paragraph 56 contains legal arguments, to which no response is
18 required, and Relator's characterization of its analysis, for which Defendant JATA
19 is without knowledge or information sufficient to form a belief about the truth of
20 the allegations; JATA therefore denies the allegations in Paragraph 56.

21 57. Paragraph 57 contains legal arguments, to which no response is
22 required, and Relator's characterization of its analysis, for which Defendant JATA
23 is without knowledge or information sufficient to form a belief about the truth of
24 the allegations; JATA therefore denies the allegations in Paragraph 57.

25 58. Paragraph 58 contains legal arguments, to which no response is
26 required, and Relator's characterization of its analysis, for which Defendant JATA
27 is without knowledge or information sufficient to form a belief about the truth of
28 the allegations; JATA therefore denies the allegations in Paragraph 58.

1 59. Paragraph 59 contains legal arguments, to which no response is
2 required, and Relator's characterization of its analysis, for which Defendant JATA
3 is without knowledge or information sufficient to form a belief about the truth of
4 the allegations; JATA therefore denies the allegations in Paragraph 59.

5 60. Paragraph 60 contains legal arguments, to which no response is
6 required, and Relator's characterization of its analysis, for which Defendant JATA
7 is without knowledge or information sufficient to form a belief about the truth of
8 the allegations; JATA therefore denies the allegations in Paragraph 60.

9 61. Paragraph 61 contains legal arguments, to which no response is
10 required, and Relator's characterization of its analysis, for which Defendant JATA
11 is without knowledge or information sufficient to form a belief about the truth of
12 the allegations; JATA therefore denies the allegations in Paragraph 61.

13 62. Paragraph 62 contains legal arguments, to which no response is
14 required, and Relator's characterization of its analysis, for which Defendant JATA
15 is without knowledge or information sufficient to form a belief about the truth of
16 the allegations; JATA therefore denies the allegations in Paragraph 62.

17 63. Paragraph 63 contains legal arguments, to which no response is
18 required, and Relator's characterization of its analysis, for which Defendant JATA
19 is without knowledge or information sufficient to form a belief about the truth of
20 the allegations; JATA therefore denies the allegations in Paragraph 63.

21 64. Paragraph 64 contains legal arguments, to which no response is
22 required, and Relator's characterization of its analysis, for which Defendant JATA
23 is without knowledge or information sufficient to form a belief about the truth of
24 the allegations; JATA therefore denies the allegations in Paragraph 64.

25 65. Paragraph 65 contains legal arguments, to which no response is
26 required, and Relator's characterization of its analysis, for which Defendant JATA
27 is without knowledge or information sufficient to form a belief about the truth of
28 the allegations; JATA therefore denies the allegations in Paragraph 65.

1 66. Paragraph 66 contains legal arguments, to which no response is
2 required, and Relator's characterization of its analysis, for which Defendant JATA
3 is without knowledge or information sufficient to form a belief about the truth of
4 the allegations; JATA therefore denies the allegations in Paragraph 66.

5 67. Paragraph 67 contains legal arguments, to which no response is
6 required, and Relator's characterization of its analysis, for which Defendant JATA
7 is without knowledge or information sufficient to form a belief about the truth of
8 the allegations; JATA therefore denies the allegations in Paragraph 67.

9 68. Paragraph 68 contains legal arguments, to which no response is
10 required, and Relator's characterization of its analysis, for which Defendant JATA
11 is without knowledge or information sufficient to form a belief about the truth of
12 the allegations; JATA therefore denies the allegations in Paragraph 68.

13 69. Paragraph 69 contains legal arguments, to which no response is
14 required, and Relator's characterization of its analysis, for which Defendant JATA
15 is without knowledge or information sufficient to form a belief about the truth of
16 the allegations; JATA therefore denies the allegations in Paragraph 69.

17 70. Paragraph 70 contains legal arguments, to which no response is
18 required, and Relator's characterization of its analysis, for which Defendant JATA
19 is without knowledge or information sufficient to form a belief about the truth of
20 the allegations; JATA therefore denies the allegations in Paragraph 70.

21 71. Paragraph 71 contains legal arguments, to which no response is
22 required, and Relator's characterization of its analysis, for which Defendant JATA
23 is without knowledge or information sufficient to form a belief about the truth of
24 the allegations; JATA therefore denies the allegations in Paragraph 71.

25 72. Paragraph 72 contains legal arguments, to which no response is
26 required, and Relator's characterization of its analysis, for which Defendant JATA
27 is without knowledge or information sufficient to form a belief about the truth of
28 the allegations; JATA therefore denies the allegations in Paragraph 72.

1 73. Paragraph 73 contains legal arguments, to which no response is
2 required, and Relator's characterization of its analysis, for which Defendant JATA
3 is without knowledge or information sufficient to form a belief about the truth of
4 the allegations; JATA therefore denies the allegations in Paragraph 73.

5 74. Paragraph 74 contains legal arguments, to which no response is
6 required, and Relator's characterization of its analysis, for which Defendant JATA
7 is without knowledge or information sufficient to form a belief about the truth of
8 the allegations; JATA therefore denies the allegations in Paragraph 74.

9 75. Paragraph 75 contains legal arguments, to which no response is
10 required, and Relator's characterization of its analysis, for which Defendant JATA
11 is without knowledge or information sufficient to form a belief about the truth of
12 the allegations; JATA therefore denies the allegations in Paragraph 75.

13 76. Paragraph 76 contains legal arguments, to which no response is
14 required, and Relator's characterization of its analysis, for which Defendant JATA
15 is without knowledge or information sufficient to form a belief about the truth of
16 the allegations; JATA therefore denies the allegations in Paragraph 76.

17 77. Paragraph 77 contains legal arguments, to which no response is
18 required, and Relator's characterization of its analysis, for which Defendant JATA
19 is without knowledge or information sufficient to form a belief about the truth of
20 the allegations; JATA therefore denies the allegations in Paragraph 77.

21 78. Paragraph 78 contains legal arguments, to which no response is
22 required, and Relator's characterization of its analysis, for which Defendant JATA
23 is without knowledge or information sufficient to form a belief about the truth of
24 the allegations; JATA therefore denies the allegations in Paragraph 78.

25 79. Paragraph 79 contains legal arguments, to which no response is
26 required, and Relator's characterization of its analysis, for which Defendant JATA
27 is without knowledge or information sufficient to form a belief about the truth of
28 the allegations; JATA therefore denies the allegations in Paragraph 79.

1 80. Paragraph 80 contains legal arguments, to which no response is
2 required, and Relator's characterization of its analysis, for which Defendant JATA
3 is without knowledge or information sufficient to form a belief about the truth of
4 the allegations; JATA therefore denies the allegations in Paragraph 80.

5 81. Paragraph 81 contains legal arguments, to which no response is
6 required, and Relator's characterization of its analysis, for which Defendant JATA
7 is without knowledge or information sufficient to form a belief about the truth of
8 the allegations; JATA therefore denies the allegations in Paragraph 81.

9 82. Paragraph 82 contains legal arguments, to which no response is
10 required, and Relator's characterization of its analysis, for which Defendant JATA
11 is without knowledge or information sufficient to form a belief about the truth of
12 the allegations; JATA therefore denies the allegations in Paragraph 82.

13 83. Paragraph 83 contains legal arguments, to which no response is
14 required, and Relator's characterization of its analysis, for which Defendant JATA
15 is without knowledge or information sufficient to form a belief about the truth of
16 the allegations; JATA therefore denies the allegations in Paragraph 83.

17 84. Paragraph 84 contains legal arguments, to which no response is
18 required, and Relator's characterization of its analysis, for which Defendant JATA
19 is without knowledge or information sufficient to form a belief about the truth of
20 the allegations; JATA therefore denies the allegations in Paragraph 84.

21 85. Paragraph 85 contains legal arguments, to which no response is
22 required, and Relator's characterization of its analysis, for which Defendant JATA
23 is without knowledge or information sufficient to form a belief about the truth of
24 the allegations; JATA therefore denies the allegations in Paragraph 85.

25 86. Paragraph 86 contains legal arguments, to which no response is
26 required, and Relator's characterization of its analysis, for which Defendant JATA
27 is without knowledge or information sufficient to form a belief about the truth of
28 the allegations; JATA therefore denies the allegations in Paragraph 86.

1 87. Paragraph 87 contains legal arguments, to which no response is
2 required, and Relator's characterization of its analysis, for which Defendant JATA
3 is without knowledge or information sufficient to form a belief about the truth of
4 the allegations; JATA therefore denies the allegations in Paragraph 87.

5 88. Paragraph 88 contains legal arguments, to which no response is
6 required, and Relator's characterization of its analysis, for which Defendant JATA
7 is without knowledge or information sufficient to form a belief about the truth of
8 the allegations; JATA therefore denies the allegations in Paragraph 88.

9 89. Paragraph 89 contains legal arguments, to which no response is
10 required, and Relator's characterization of its analysis, for which Defendant JATA
11 is without knowledge or information sufficient to form a belief about the truth of
12 the allegations; JATA therefore denies the allegations in Paragraph 89.

13 90. Paragraph 90 contains legal arguments, to which no response is
14 required, and Relator's characterization of its analysis, for which Defendant JATA
15 is without knowledge or information sufficient to form a belief about the truth of
16 the allegations; JATA therefore denies the allegations in Paragraph 90.

17 91. Paragraph 91 contains legal arguments, to which no response is
18 required, and Relator's characterization of its analysis, for which Defendant JATA
19 is without knowledge or information sufficient to form a belief about the truth of
20 the allegations; JATA therefore denies the allegations in Paragraph 91.

21 92. Paragraph 92 contains legal arguments, to which no response is
22 required, and Relator's characterization of its analysis, for which Defendant JATA
23 is without knowledge or information sufficient to form a belief about the truth of
24 the allegations; JATA therefore denies the allegations in Paragraph 92.

25 93. Paragraph 93 contains legal arguments, to which no response is
26 required, and Relator's characterization of its analysis, for which Defendant JATA
27 is without knowledge or information sufficient to form a belief about the truth of
28 the allegations; JATA therefore denies the allegations in Paragraph 93.

1 94. Paragraph 94 contains legal arguments, to which no response is
2 required, and Relator's characterization of its analysis, for which Defendant JATA
3 is without knowledge or information sufficient to form a belief about the truth of
4 the allegations; JATA therefore denies the allegations in Paragraph 94.

5 95. Defendant JATA denies the allegations contained in Paragraph 95.

6 96. Paragraph 96 contains legal arguments, to which no response is
7 required, and Relator's characterization of its analysis, for which Defendant JATA
8 is without knowledge or information sufficient to form a belief about the truth of
9 the allegations; JATA therefore denies the allegations in Paragraph 96.

10 97. Paragraph 97 contains legal arguments, to which no response is
11 required, and Relator's characterization of its analysis, for which Defendant JATA
12 is without knowledge or information sufficient to form a belief about the truth of
13 the allegations; JATA therefore denies the allegations in Paragraph 97.

14 98. Paragraph 98 contains legal arguments, to which no response is
15 required, and Relator's characterization of its analysis, for which Defendant JATA
16 is without knowledge or information sufficient to form a belief about the truth of
17 the allegations; JATA therefore denies the allegations in Paragraph 98.

18 99. Paragraph 99 contains legal arguments, to which no response is
19 required, and Relator's characterization of its analysis, for which Defendant JATA
20 is without knowledge or information sufficient to form a belief about the truth of
21 the allegations; JATA therefore denies the allegations in Paragraph 99.

22 100. Paragraph 100 contains legal arguments, to which no response is
23 required, and Relator's characterization of its analysis, for which Defendant JATA
24 is without knowledge or information sufficient to form a belief about the truth of
25 the allegations; JATA therefore denies the allegations in Paragraph 100.

26 101. Paragraph 101 contains legal arguments, to which no response is
27 required, and Relator's characterization of its analysis, for which Defendant JATA
28

1 is without knowledge or information sufficient to form a belief about the truth of
2 the allegations; JATA therefore denies the allegations in Paragraph 101.

3 102. Paragraph 102 contains legal arguments, to which no response is
4 required, and Relator's characterization of its analysis, for which Defendant JATA
5 is without knowledge or information sufficient to form a belief about the truth of
6 the allegations; JATA therefore denies the allegations in Paragraph 102.

7 103. Paragraph 103 contains legal arguments, to which no response is
8 required, and Relator's characterization of its analysis, for which Defendant JATA
9 is without knowledge or information sufficient to form a belief about the truth of
10 the allegations; JATA therefore denies the allegations in Paragraph 103.

11 104. Paragraph 104 contains legal arguments, to which no response is
12 required, and Relator's characterization of its analysis, for which Defendant JATA
13 is without knowledge or information sufficient to form a belief about the truth of
14 the allegations; JATA therefore denies the allegations in Paragraph 104.

15 105. Paragraph 105 contains legal arguments, to which no response is
16 required, and Relator's characterization of its analysis, for which Defendant JATA
17 is without knowledge or information sufficient to form a belief about the truth of
18 the allegations; JATA therefore denies the allegations in Paragraph 105.

19 106. Paragraph 106 contains legal arguments, to which no response is
20 required, and Relator's characterization of its analysis, for which Defendant JATA
21 is without knowledge or information sufficient to form a belief about the truth of
22 the allegations; JATA therefore denies the allegations in Paragraph 106.

23 107. Paragraph 107 contains legal arguments, to which no response is
24 required, and Relator's characterization of its analysis, for which Defendant JATA
25 is without knowledge or information sufficient to form a belief about the truth of
26 the allegations; JATA therefore denies the allegations in Paragraph 107.

27 108. Paragraph 108 contains legal arguments, to which no response is
28 required, and Relator's characterization of its analysis, for which Defendant JATA

1 is without knowledge or information sufficient to form a belief about the truth of
2 the allegations; JATA therefore denies the allegations in Paragraph 108.

3 109. Paragraph 109 contains legal arguments, to which no response is
4 required, and Relator's characterization of its analysis, for which Defendant JATA
5 is without knowledge or information sufficient to form a belief about the truth of
6 the allegations; JATA therefore denies the allegations in Paragraph 109.

7 110. Paragraph 110 contains legal arguments, to which no response is
8 required, and Relator's characterization of its analysis, for which Defendant JATA
9 is without knowledge or information sufficient to form a belief about the truth of
10 the allegations; JATA therefore denies the allegations in Paragraph 110.

11 111. Paragraph 111 contains legal arguments, to which no response is
12 required, and Relator's characterization of its analysis, for which Defendant JATA
13 is without knowledge or information sufficient to form a belief about the truth of
14 the allegations; JATA therefore denies the allegations in Paragraph 111.

15 112. Defendant JATA denies the allegations contained in Paragraph 112.

16 113. Paragraph 113 contains legal arguments, to which no response is
17 required, and Relator's characterization of its analysis, for which Defendant JATA
18 is without knowledge or information sufficient to form a belief about the truth of
19 the allegations; JATA therefore denies the allegations in Paragraph 113.

20 114. Paragraph 114 contains legal arguments, to which no response is
21 required, and Relator's characterization of its analysis, for which Defendant JATA
22 is without knowledge or information sufficient to form a belief about the truth of
23 the allegations; JATA therefore denies the allegations in Paragraph 114.

24 115. Paragraph 115 contains legal arguments, to which no response is
25 required, and Relator's characterization of its analysis, for which Defendant JATA
26 is without knowledge or information sufficient to form a belief about the truth of
27 the allegations; JATA therefore denies the allegations in Paragraph 115.
28

1 116. Defendant JATA denies the allegation contained in the last sentence of
2 Paragraph 116. The remaining allegations in Paragraph 116 contain legal
3 arguments, to which no response is required, and Relator's characterization of its
4 analysis, for which Defendant JATA is without knowledge or information sufficient
5 to form a belief about the truth of the remaining allegations; JATA therefore denies
6 the remaining allegations in Paragraph 116.

7 117. Paragraph 117 contains legal arguments, to which no response is
8 required, and Relator's characterization of its analysis, for which Defendant JATA
9 is without knowledge or information sufficient to form a belief about the truth of
10 the allegations; JATA therefore denies the allegations in Paragraph 117.

11 118. Paragraph 118 contains legal arguments, to which no response is
12 required, and Relator's characterization of its analysis, for which Defendant JATA
13 is without knowledge or information sufficient to form a belief about the truth of
14 the allegations; JATA therefore denies the allegations in Paragraph 118.

15 119. Paragraph 119 contains legal arguments, to which no response is
16 required, and Relator's characterization of its analysis, for which Defendant JATA
17 is without knowledge or information sufficient to form a belief about the truth of
18 the allegations; JATA therefore denies the allegations in Paragraph 119.

19 120. Defendant JATA denies the allegations contained in Paragraph 120.

20 121. Defendant JATA denies the allegations contained in the last sentence
21 of Paragraph 121. The remaining allegations in Paragraph 121 contain legal
22 arguments, to which no response is required, and Relator's characterization of its
23 analysis, for which Defendant JATA is without knowledge or information sufficient
24 to form a belief about the truth of the remaining allegations; JATA therefore denies
25 the remaining allegations in Paragraph 121.

26 122. Paragraph 122 contains legal arguments, to which no response is
27 required, and Relator's characterization of its analysis, for which Defendant JATA
28

1 is without knowledge or information sufficient to form a belief about the truth of
2 the allegations; JATA therefore denies the allegations in Paragraph 122.

3 123. Paragraph 123 contains legal arguments, to which no response is
4 required, and Relator's characterization of its analysis, for which Defendant JATA
5 is without knowledge or information sufficient to form a belief about the truth of
6 the allegations; JATA therefore denies the allegations in Paragraph 123.

7 124. Defendant JATA denies the allegations contained in Paragraph 124.

8 125. Defendant JATA denies the allegations contained in the first sentence
9 of Paragraph 125. The remaining allegations in Paragraph 125 contain legal
10 arguments, to which no response is required, and Relator's characterization of its
11 analysis, for which Defendant JATA is without knowledge or information sufficient
12 to form a belief about the truth of the remaining allegations; JATA therefore denies
13 the remaining allegations in Paragraph 125.

14 126. Paragraph 126 contains legal arguments, to which no response is
15 required, and Relator's characterization of its analysis, for which Defendant JATA
16 is without knowledge or information sufficient to form a belief about the truth of
17 the allegations; JATA therefore denies the allegations in Paragraph 126.

18 127. Defendant JATA denies the allegation contained in the last sentence of
19 Paragraph 127. The remaining allegations in Paragraph 127 contain legal
20 arguments, to which no response is required, and Relator's characterization of its
21 analysis, for which Defendant JATA is without knowledge or information sufficient
22 to form a belief about the truth of the remaining allegations; JATA therefore denies
23 the remaining allegations in Paragraph 127.

24 128. Defendant JATA denies the allegations contained in Paragraph 128.

25 129. Defendant JATA incorporates and reasserts its responses to each of the
26 preceding numbered paragraphs as if fully set forth herein.

27 130. No response is required to Paragraph 130 because it contains only
28 legal conclusions and arguments. To the extent this paragraph contains any

1 allegations that require a response, Defendant JATA denies the allegations
2 contained in Paragraph 130.

3 131. No response is required to Paragraph 131(a) and 131(b) because they
4 contain only legal conclusions and arguments. To the extent Paragraphs 131(a) and
5 131(b) contain any allegations that require a response, Defendant JATA denies the
6 allegations. With regard to the allegations in Paragraph 131(c), pursuant to the
7 Court's Order Granting in part and Denying in part Defendants' motions to dismiss
8 dated July 16, 2019 [Dkt. 82], Relator's reverse FCA claim has been dismissed
9 without prejudice to amendment, but Relator has not amended the Complaint;
10 JATA denies the allegations on that basis.

11 132. With regard to the allegations in Paragraph 132, pursuant to the
12 Court's Order Granting in part and Denying in part Defendants' motions to dismiss
13 dated July 16, 2019 [Dkt. 82], Relator's conspiracy claim has been dismissed
14 without prejudice to amendment, but Relator has not amended the Complaint;
15 JATA denies the allegations on that basis.

16 133. No response is required to Paragraph 133 because it contains only
17 legal conclusions and arguments. To the extent this paragraph contains any
18 allegations that require a response, Defendant JATA denies the allegations
19 contained in Paragraph 133.

20 134. Defendant JATA incorporates and reasserts its responses to each of the
21 preceding numbered paragraphs as if fully set forth herein.

22 135. With regard to the allegations in Paragraph 135, pursuant to the
23 Court's Order Granting in part and Denying in part Defendants' motions to dismiss
24 dated July 16, 2019 [Dkt. 82], Relator's Anti-Kickback Statute claims have been
25 dismissed with prejudice; JATA denies the allegations on that basis.

26 136. With regard to the allegations in Paragraph 136, pursuant to the
27 Court's Order Granting in part and Denying in part Defendants' motions to dismiss
28

1 dated July 16, 2019 [Dkt. 82], Relator's Anti-Kickback Statute claims have been
2 dismissed with prejudice; JATA denies the allegations on that basis.

3 137. With regard to the allegations in Paragraph 137, pursuant to the
4 Court's Order Granting in part and Denying in part Defendants' motions to dismiss
5 dated July 16, 2019 [Dkt. 82], Relator's Anti-Kickback Statute claims have been
6 dismissed with prejudice; JATA denies the allegations on that basis.

7 138. With regard to the allegations in Paragraph 138, pursuant to the
8 Court's Order Granting in part and Denying in part Defendants' motions to dismiss
9 dated July 16, 2019 [Dkt. 82], Relator's Anti-Kickback Statute claims have been
10 dismissed with prejudice; JATA denies the allegations on that basis.

11 139. With regard to the allegations in Paragraph 139, pursuant to the
12 Court's Order Granting in part and Denying in part Defendants' motions to dismiss
13 dated July 16, 2019 [Dkt. 82], Relator's Anti-Kickback Statute claims have been
14 dismissed with prejudice; JATA denies the allegations on that basis.

15 140. With regard to the allegations in Paragraph 140, pursuant to the
16 Court's Order Granting in part and Denying in part Defendants' motions to dismiss
17 dated July 16, 2019 [Dkt. 82], Relator's Anti-Kickback Statute claims have been
18 dismissed with prejudice; JATA denies the allegations on that basis.

19 141. With regard to the allegations in Paragraph 141, pursuant to the
20 Court's Order Granting in part and Denying in part Defendants' motions to dismiss
21 dated July 16, 2019 [Dkt. 82], Relator's Anti-Kickback Statute claims have been
22 dismissed with prejudice; JATA denies the allegations on that basis.

23 142. With regard to the allegations in Paragraph 142, pursuant to the
24 Court's Order Granting in part and Denying in part Defendants' motions to dismiss
25 dated July 16, 2019 [Dkt. 82], Relator's Anti-Kickback Statute claims have been
26 dismissed with prejudice; JATA denies the allegations on that basis.

27 143. The "Wherefore" clause and other unenumerated clauses or sentences
28 under the heading "Prayer for Relief" on page 96 of the Complaint set forth legal

1 conclusions and Relator's characterization of the relief sought in this action, which
2 require no response. To the extent a response is required, Defendant JATA denies
3 any wrongdoing or liability, in any form or amount, to Relator or the United States
4 in connection with this action.

5 144. With regard to the sentence under the heading "Jury Trial Demanded,"
6 Defendant JATA admits that Relator purports to demand a trial by jury pursuant to
7 Federal Rule of Civil Procedure 38.

8
9
10 **AFFIRMATIVE DEFENSES**

11 Defendant JATA, based on the facts and information known to date and
12 subject to amendment following further investigation of the facts and proceedings
13 in this action, and without waiver of any rights, privileges, or defenses, states its
14 affirmative defenses as follows:

15 **FIRST AFFIRMATIVE DEFENSE**

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

17 1. The Second Amended Complaint, and each purported claim contained
18 therein, fails to state a claim upon which relief may be granted against Defendant
19 JATA, or at all.

20 **SECOND AFFIRMATIVE DEFENSE**

21 **(No Factually False Claim)**

22 2. Relator's claims against Defendant JATA fail, in whole or in part,
23 because Defendant JATA did not knowingly or recklessly present or cause to
24 present a false or fraudulent claim for payment or approval to the government or for
25 the receipt of federal funds.

THIRD AFFIRMATIVE DEFENSE

(Lack of Causation)

3. Relator's claims against Defendant JATA fail, in whole or in part, to the extent any alleged injuries and/or damages, if any, were not caused in fact or were not proximately caused by acts and/or omissions of Defendant JATA or its employees.

FOURTH AFFIRMATIVE DEFENSE

(Mootness)

4. 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.

FIFTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

5. Relator's claims against Defendant JATA are barred, in whole or in part, to the extent that any statute of limitations has lapsed or by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Plead with Particularity)

6. Relator's claims against Defendant JATA fail to the extent they are not pled with sufficient particularity under the Federal Rules of Civil Procedure.

SEVENTH AFFIRMATIVE DEFENSE

(Good Faith/Compliance with Applicable Law)

7. Relator's claims against Defendant JATA fail because Defendant JATA 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)

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

NINTH AFFIRMATIVE DEFENSE

(Vicarious Liability)

9. Defendant JATA is not vicariously liable for the acts alleged in the Second Amended Complaint.

TENTH AFFIRMATIVE DEFENSE

(Consent)

10. 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.

ELEVENTH AFFIRMATIVE DEFENSE

(Public Disclosure Bar)

11. Relator's claims are barred, in whole or in part, because the claims, allegations, and transactions described in the Second Amended Complaint were publicly disclosed and Relator is not an original source of the information, for purposes of 31 U.S.C. § 3730(e)(4).

TWELFTH AFFIRMATIVE DEFENSE

(Responsibility of Others)

12. Damages and claims for which Relator seeks relief in the Second Amended Complaint, if any, were caused by the acts, omissions, or fault of persons or entities over which Defendant JATA exercised no control and for whose acts, omissions, or fault Defendant JATA cannot be held liable. Recovery against Defendant JATA, if any, must be reduced or precluded entirely by such activities of such other parties, persons, entities, or corporations.

THIRTEENTH AFFIRMATIVE DEFENSE

(Learned Intermediary)

13. Relator's claims are barred, in whole or in part, by the learned intermediary doctrine.

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

14. 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.

FIFTEENTH AFFIRMATIVE DEFENSE

(Waiver and/or Release)

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

SIXTEENTH AFFIRMATIVE DEFENSE

(Estoppel)

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

SEVENTEENTH AFFIRMATIVE DEFENSE

(Materiality)

17. Relator's claims against Defendant JATA are barred, in whole or in part, to the extent that Defendant JATA's alleged conduct, misrepresentations, and/or omissions were not material to the United States' decision to pay claims.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Scienter)

18. Relator's claims against Defendant JATA are barred, in whole or in part, because Defendant JATA lacked the requisite scienter, including knowledge, specific intent, and/or willfulness necessary to establish "fraud," nondisclosure, and/or misrepresentation.

NINETEENTH AFFIRMATIVE DEFENSE

(Obligations Inconsistent with Existing Law)

19. Relator's claims are barred, in whole or in part, to the extent that they seek to impose upon Defendant JATA obligations that are inconsistent with, or in excess of, those imposed by existing law.

TWENTIETH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

20. Relator's claims are barred, in whole or in part, because any recovery would result in unjust enrichment.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

21. The services and products reimbursed by the United States under Medicare were worth what the government paid.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(No Justifiable Reliance)

22. Relator's claims are barred, in whole or in part, to the extent that the United States, or any state government on behalf of which any claims are or may be asserted, did not justifiably rely on any of the alleged representations or conduct set forth in the Second Amended Complaint, or on any specific act or omission attributed to Defendant JATA.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Alleged Damages and Penalties Not Recoverable)

23. The alleged damages are speculative, uncertain, or contingent and are not recoverable, and are otherwise barred to the extent that they could exceed those permitted under applicable federal or state statutes, rules or regulations.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Fees, Costs, and Expenses Not Recoverable)

24. Relator is not entitled to attorneys' fees, costs, or other expenses under any act or theory upon which its claims are based.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Treble Damages, Civil Penalties, and Punitive Damages Barred)

25. Relator's claims are barred, in whole or in part, to the extent that they seek treble damages, civil penalties, or punitive damages because the allegations of the Second Amended Complaint are legally insufficient to support the imposition of such damages and penalties against Defendant JATA. Relator's request for treble damages and penalties against Defendant JATA also cannot be sustained because the imposition of such damages 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.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Other Affirmative Defenses)

26. Defendant JATA reserves the right (a) to rely upon such other affirmative defenses as may be supported by the facts, circumstances and legal theories that may or will be determined through full and complete discovery and/or further legal analysis of Relator's or the United States' position in this litigation, and (b) to amend this Answer to add, delete, and/or modify any affirmative defense.

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DEFENDANT JATA'S PRAYER FOR RELIEF

WHEREFORE, Defendant JATA prays for relief as follows:

1. Judgement dismissing Relator's Second Amended Complaint with prejudice and denying all relief requested by Relator;
2. Judgment granting Defendant JATA's fees and costs in defending against Relator's Complaint; and
3. For other such and further relief as this Court may deem just and proper.

Dated: August 21, 2019

HOGAN LOVELLS US LLP

/s/ Michael M. Maddigan

Michael M. Maddigan

David W. Skaar

Jonathan Diesenhaus (*pro hac vice*)

Jessica L. Ellsworth (*pro hac vice*)

Attorneys for J.A. Thomas and Associates, Inc.