

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 A Limited Liability Partnership
 2 Including Professional Corporations
 CHARLES L. KREINDLER, Cal. Bar No. 119933
 3 BARBARA E. TAYLOR, Cal. Bar No. 166374
 MATTHEW LIN, Cal. Bar No. 328852
 4 333 South Hope Street, 43rd Floor
 Los Angeles, California 90071-1422
 5 Telephone: 213.620.1780
 Facsimile: 213.620.1398
 6 E mail ckreindler@sheppardmullin.com
 btaylor@sheppardmullin.com
 7 mlin@sheppardmullin.com

8 Attorneys for Defendants KAISER
 FOUNDATION HEALTH PLAN, INC.
 9 and KAISER FOUNDATION
 HOSPITALS, INC. and proposed
 10 Defendants THE PERMANENTE
 MEDICAL GROUP, INC., SOUTHERN
 11 CALIFORNIA PERMANENTE
 MEDICAL GROUP, and COLORADO
 12 PERMANENTE MEDICAL GROUP,
 P.C.
 13

14 UNITED STATES DISTRICT COURT
 15 EASTERN DISTRICT OF CALIFORNIA
 16

17 UNITED STATES *et al. ex rel.*
 18 JEFFREY MAZIK,
 19 Plaintiffs,
 20 v.
 21 KAISER FOUNDATION HEALTH
 22 PLAN, INC., KAISER FOUNDATION
 23 HOSPITALS, INC., and THE
 PERMANENTE MEDICAL GROUPS,
 24 Defendants.
 25
 26

Case No. 2:19-cv-0559 JAM-KJN

**JOINT STIPULATION AND
 ORDER RE:
 (1) AMENDMENT OF FIRST
 AMENDED COMPLAINT AND
 SERVICE; AND
 (2) STAY OF CASE**

Judge: Hon. John A. Mendez

Complaint Filed: April 1, 2019
 First Amended
 Complaint Filed: April 2, 2021
 Trial Date: None Set

1 **JOINT STIPULATION**

2 Pursuant to Local Rule 143, *Qui Tam* Plaintiff-Relator Jeffrey Mazik
3 (“Relator”), Defendants Kaiser Foundation Health Plan, Inc. (“KFHP”) and Kaiser
4 Foundation Hospitals, Inc. (“KFH”), and proposed Defendants The Permanente
5 Medical Group, Inc., Southern California Permanente Medical Group, and Colorado
6 Permanente Medical Group, P.C. (collectively, with KFHP and KFH, the “Kaiser
7 Defendants”), by and through their attorneys of record, hereby stipulate and request
8 as follows:

9 WHEREAS this *qui tam* False Claims Act (“FCA”) action was filed under
10 seal on April 1, 2019, and on April 2, 2021, Relator filed, under seal, the First
11 Amended Complaint (“FAC”);

12 WHEREAS on December 1, 2021, the FAC was ordered unsealed after the
13 United States declined to intervene in this action and the Court ordered Relator to
14 serve the Defendants;

15 WHEREAS the FAC has not yet been served on Defendants KFHP and KFH;

16 WHEREAS in the FAC, Relator named as Defendants The Permanente
17 Medical Groups, which was intended to include three related but distinct medical
18 group entities: The Permanente Medical Group, Inc., Southern California
19 Permanente Medical Group, and Colorado Permanente Medical Group, P.C.;

20 WHEREAS there are six consolidated *qui tam* FCA cases, filed from 2013
21 through 2020, pending in the Northern District of California, in which the
22 Government has partially intervened: (1) *U.S. ex rel. Osinek v. Kaiser Permanente*,
23 No. 3:13-cv-03891-EMC; (2) *U.S. ex rel. Arefi v. Kaiser Foundation Health Plan,*
24 *Inc.*, No. 3:16-cv-01558-EMC (originally filed in 2015); (3) *U.S. ex rel. Stein v.*
25 *Kaiser Foundation Health Plan, Inc.*, No. 3:16-cv-05337-EMC; (4) *U.S. ex rel.*
26 *Bryant v. Kaiser Permanente*, No. 3:18-cv-1347-EMC; (5) *U.S. ex rel. Bicocca v.*
27 *Permanente Medical Group, Inc.*, No. 3:21-cv-03124-EMC (originally filed in
28

1 2020); and (6) *U.S. ex rel. Taylor v. Kaiser Permanente*, No. 3:21-cv-03894
2 (originally filed in 2014) (collectively, the “Consolidated Cases”);

3 WHEREAS the Consolidated Cases all allege that various combinations of
4 the Kaiser Defendants and other Kaiser entities “submitted claims to the Medicare
5 Advantage Program . . . for risk-adjustment payments for diagnoses that . . . patients
6 did not actually have and/or that were not actually addressed by the treating
7 physician during a patient encounter” (*see U.S. ex rel. Osinek v. Kaiser Permanente*,
8 No. 3:13-cv-03891-EMC, Dkt. No. 61 at 5);

9 WHEREAS on December 29, 2021, the presiding judge in the Consolidated
10 Cases, Hon. Edward M. Chen, ordered that the defendants in the Consolidated Cases
11 may file motions to dismiss under the FCA’s “first-to-file” provision (31 U.S.C.
12 §3730(b)(5)), a bar that provides that after a relator brings a *qui tam* action “no
13 person other than the government may intervene or bring a related action based on
14 the facts underlying the pending action,” and following the court’s ruling on such
15 motions, may then file any remaining Rule 12(b) motions to dismiss forty-five days
16 after entry of an order on all first-to-file motions (*see U.S. ex rel. Osinek v. Kaiser*
17 *Permanente*, No. 3:13-cv-03891-EMC, Dkt. No. 129);

18 WHEREAS the first-to-file motions in the Consolidated Cases will be heard
19 on March 31, 2022 (*see id.*);

20 WHEREAS Defendants KFHP and KFH and proposed Defendants The
21 Permanente Medical Group, Inc., Southern California Permanente Medical Group,
22 and Colorado Permanente Medical Group, P.C. believe that this action is vulnerable
23 to a first-to-file motion, as Relator also claims that Kaiser Defendants violated the
24 FCA and includes allegations regarding submissions to the Medicare Advantage
25 Program;

26 WHEREAS, Relator believes that this non-consolidated action is not
27 vulnerable to a first-to-file motion in connection with the Consolidated Cases, in
28 part because this case involves diagnoses and claims by “outside providers” rather

1 than treating physicians during patient “encounters,” and he intends to vigorously
2 oppose any such motion; but Relator nevertheless does not object to the Kaiser
3 Defendants’ position that it would serve the interests of the Parties and this Court to
4 stay proceedings in this action until a ruling in the Consolidated Cases on the first-
5 to-file motions;

6 WHEREAS a stay of this action for several months until a ruling in the
7 Consolidated Cases on all first-to-file motions will result in relatively minimal delay
8 and will not serve to alter the date of any event or deadline fixed by this Court to
9 date.

10 NOW THEREFORE, it is hereby stipulated by and between Relator and the
11 Kaiser Defendants that:

- 12 1. Defendants KFHP and KHF accept service of the FAC.
- 13 2. The Permanente Medical Group, Inc., Southern California Permanente
14 Medical Group, and Colorado Permanente Medical Group, P.C. will accept service
15 of the FAC as a substitute for the parties erroneously named as “The Permanente
16 Medical Groups,” and references in the FAC to the “Permanente Medical Groups”
17 will be deemed amended to refer to The Permanente Medical Group, Inc., Southern
18 California Permanente Medical Group, and Colorado Permanente Medical Group,
19 P.C.
- 20 3. This action is stayed, and no response to the pleadings is required, until
21 thirty days after the court in the Consolidated Cases rules on all first-to-file motions.

22 **IT IS SO STIPULATED.**

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1 Dated: January 28, 2022

2 SHEPPARD, MULLIN, RICHTER & HAMPTON
3 LLP

4
5 By /s/ Charles L. Kreindler
6 CHARLES L. KREINDLER

7 Attorneys for Defendants KAISER
8 FOUNDATION HEALTH PLAN, INC. and
9 KAISER FOUNDATION HOSPITALS, INC.
10 and proposed Defendants THE
11 PERMANENTE MEDICAL GROUP, INC.,
12 SOUTHERN CALIFORNIA PERMANENTE
13 MEDICAL GROUP, and COLORADO
14 PERMANENTE MEDICAL GROUP, P.C.

15 Dated: January 28, 2022 POLLOCK COHEN LLP

16
17 By: [as authorized on January 28, 2022]
 /s/ Adam L. Pollock
18 ADAM L. POLLOCK

19 Attorneys for Plaintiff-Relator JEFFREY
20 MAZIK

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22 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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26 Dated: January 28, 2022 /s/ John A. Mendez
27 THE HONORABLE JOHN A. MENDEZ
28 UNITED STATES DISTRICT COURT JUDGE