

ANSWER

I. NATURE OF THE ACTION¹

1. Dr. Donovan denies the allegations of paragraph 1 of the FAC except that he admits that Relator purports to assert claims for damages and civil penalties to which he denies that Relator is entitled. To the extent that paragraph 1 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

2. Dr. Donovan denies the allegations of paragraph 2 of the FAC.

3. Dr. Donovan denies the allegations of paragraph 3 of the FAC.

4. Dr. Donovan denies the allegations of paragraph 4 of the FAC.

5. Dr. Donovan denies the allegations of paragraph 5 of the FAC except that he admits that Relator purports to assert claims for damages, civil penalties and other relief to which he denies that Relator is entitled. To the extent that paragraph 5 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

II. PARTIES

6. Dr. Donovan denies the allegations of paragraph 6 of the FAC except that he denies knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 6, to the extent that the allegations concern Relator's current residence and professional position and except that he admits the allegations of paragraph 6, to the extent that Relator received her Doctorate in Podiatric Medicine in 2010 from the New York College of Podiatric Medicine, was a graduate podiatric resident at Coney Island Hospital ("CIH") from

¹ Headings are copied from the FAC and are included herein for organizational purposes only. Dr. Donovan denies any and all allegations in such headings. To the extent that such headings contain conclusions of law to which no response is required, Dr. Donovan makes no response.

July 2010 until her termination, had a limited residency permit issued under New York State law throughout that time and became licensed to practice podiatry in New York State.

7. Dr. Donovan denies the allegations of paragraph 7 of the FAC except that he admits that he is a licensed podiatrist in the State of New York, was the Program Director of the PMSR Program at CIH until March 2017 and lives in Staten Island, New York.

8. Dr. Donovan denies knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the FAC except that he admits the allegations of the first sentence of paragraph 8.

9. Dr. Donovan denies knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the FAC except that he admits the allegations of paragraph 9, to the extent that CIH is a municipal hospital operated by defendant HHC, located at 2601 Ocean Parkway, Brooklyn, New York.

10. Dr. Donovan denies the allegations of paragraph 10 of the FAC except that he denies knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 10, to the extent that the allegations concern the corporate status, principal address and responsibilities of PAGNY at HHC hospitals.

III. JURISDICTION AND VENUE

11. Dr. Donovan denies the allegations of paragraph 11 of the FAC. To the extent that paragraph 11 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

12. Dr. Donovan denies the allegations of paragraph 12 of the FAC. To the extent that paragraph 12 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

13. Dr. Donovan denies the allegations of paragraph 13 of the FAC. To the extent that paragraph 13 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

IV. APPLICABLE LAW

A. The False Claims Act

14. Paragraph 14 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

15. Paragraph 15 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

16. Paragraph 16 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

17. Paragraph 17 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

18. Paragraph 18 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

19. Paragraph 19 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

20. Paragraph 20 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

21. Paragraph 21 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

B. The Federal Health Care Programs

22. Paragraph 22 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

23. Paragraph 23 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

24. Paragraph 24 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

25. Paragraph 25 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

26. Paragraph 26 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

27. Paragraph 27 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

28. Paragraph 28 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

C. Reimbursement for Physician Services Rendered in Teaching Settings

29. Paragraph 29 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

30. Paragraph 30 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

31. Paragraph 31 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

32. Paragraph 32 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

33. Paragraph 33 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

34. Paragraph 34 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

D. Reimbursement for Hospital Services Rendered by Podiatry Residents

35. Paragraph 35 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

36. Paragraph 36 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

37. Paragraph 37 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

E. Medicare and Medicaid Funding for Approved GME Programs

38. Paragraph 38 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

39. Paragraph 39 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

40. Paragraph 40 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

41. Paragraph 41 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

42. Paragraph 42 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

43. Paragraph 43 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

44. Paragraph 44 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

45. Paragraph 45 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

V. FACTS UNDERLYING THE FRAUD SCHEMES

A. The Fraudulent Scheme to Submit Claims for Non-Reimbursable Teaching Physician and Podiatry Resident Services

1. Outpatient Podiatry Clinic Claims

46. Dr. Donovan denies the allegations of paragraph 46 of the FAC.

47. Dr. Donovan denies the allegations of paragraph 47 of the FAC.

48. Dr. Donovan denies the allegations of paragraph 48 of the FAC except that he admits that residents participating in the PMSR Program saw patients in the CIH Outpatient Podiatry Clinic.

49. Dr. Donovan denies the allegations of paragraph 49 of the FAC.

50. Dr. Donovan denies knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 50 of the FAC except he admits that he attended the medical conference described in the fourth sentence of paragraph 50.

51. Dr. Donovan denies the allegations of paragraph 51 of the FAC.

52. Dr. Donovan denies the allegations of paragraph 52 of the FAC.

53. Dr. Donovan denies the allegations of paragraph 53 of the FAC.

54. Dr. Donovan denies the allegations of paragraph 54 of the FAC.

2. Inpatient Podiatry Claims

55. Dr. Donovan denies the allegations of paragraph 55 of the FAC.

56. Dr. Donovan denies the allegations of paragraph 56 of the FAC except he admits that residents in the PMSR Program participated in inpatient encounters.

57. Dr. Donovan denies the allegations of paragraph 57 of the FAC.

58. Dr. Donovan denies the allegations of paragraph 58 of the FAC.

59. Dr. Donovan denies the allegations of paragraph 59 of the FAC.

3. Emergency Room Podiatry Claims

60. Dr. Donovan denies the allegations of paragraph 60 of the FAC.

61. Dr. Donovan denies the allegations of paragraph 61 of the FAC except that he admits that residents participating in the PMSR Program saw patients in the CIH emergency room.

62. Dr. Donovan denies the allegations of paragraph 62 of the FAC.

63. Dr. Donovan denies the allegations of paragraph 63 of the FAC.

64. Dr. Donovan denies the allegations of paragraph 64 of the FAC.

4. Claims Based on Treatment by Legally Unauthorized Residents

65. Paragraph 65 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

66. Paragraph 66 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

67. Paragraph 67 of the FAC contains statements and conclusions of law to which no response is required, thus, Dr. Donovan makes no response.

68. Dr. Donovan denies knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 68 of the FAC except he admits the allegations of the first sentence of paragraph 68 and admits that Dr. Yeldell participated in the treatment of patients as part of his residency training at CIH.

69. Dr. Donovan denies the allegations of paragraph 69 of the FAC.

70. Dr. Donovan denies the allegations of paragraph 70 of the FAC except that he denies knowledge and information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 70 of the FAC and except that he admits that Dr. Yeldell participated in the treatment of patients as part of his residency training in the Clinic and Emergency Room and on an inpatient basis during the period July 2011 through March 2012.

71. Dr. Donovan denies the allegations of paragraph 71 of the FAC.

72. Dr. Donovan denies knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 72 of the FAC except that he admits the allegations of the first sentence of paragraph 72, admits that Dr. Walters participated in the treatment of patients as part of his residency training at CIH and admits that Dr. Walters was Chief Resident for a period of time.

73. Dr. Donovan denies knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 73 of the FAC.

74. Dr. Donovan denies the allegations of paragraph 74 of the FAC except that he admits the allegations of the last sentence of paragraph 74.

75. Dr. Donovan denies the allegations of paragraph 75 of the FAC except that he denies knowledge and information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 75 and except that he admits that Dr. Walters participated in the

treatment of patients as part of his residency training in the Clinic and Emergency Room and on an inpatient basis.

76. Dr. Donovan denies the allegations of paragraph 76 of the FAC.

B. The Fraudulent Scheme to Conceal Material Defects in the PMSR Program in Order to Maintain “Approved” Status and Ensure Continued GME Funding

77. Dr. Donovan denies the allegations of paragraph 77 of the FAC except that he denies knowledge and information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 77.

78. Dr. Donovan denies the allegations of paragraph 78 of the FAC. To the extent that paragraph 78 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

79. Dr. Donovan denies the allegations of paragraph 79 of the FAC except that he admits that he made himself available to supervise surgical procedures performed by residents in the CIH operating rooms.

80. Dr. Donovan denies the allegations of paragraph 80 of the FAC.

81. Dr. Donovan denies the allegations of paragraph 81 of the FAC.

82. Dr. Donovan denies the allegations of paragraph 82 of the FAC.

83. Dr. Donovan denies the allegations of paragraph 83 of the FAC except that he denies knowledge and information sufficient to form a belief as to the truth of the allegations of the second and third sentences of paragraph 83. To the extent that paragraph 83 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

84. Dr. Donovan denies the allegations of paragraph 84 of the FAC except that he admits that the Chief Podiatry Resident in the PMSR Program had certain responsibilities.

85. Dr. Donovan denies the allegations of paragraph 85 of the FAC except that he denies knowledge and information sufficient to form a belief as to the truth of the allegations of the third sentence of paragraph 85. To the extent that paragraph 85 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

86. Dr. Donovan denies the allegations of paragraph 86 of the FAC except that he admits that Relator was provided with a policy statement.

87. Dr. Donovan denies knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 87 of the FAC. To the extent that paragraph 87 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

88. Dr. Donovan denies the allegations of paragraph 88 of the FAC.

89. Dr. Donovan admits the allegations of paragraph 89 of the FAC except that he denies that he was supposed to verify patient interactions that residents were required to enter into the PRR data base.

90. Dr. Donovan denies the allegations of paragraph 90 of the FAC except that he admits that CPME notified him that there were deficiencies in Dr. Walters' patient encounters.

91. Dr. Donovan denies the allegations of paragraph 91 of the FAC.

92. Dr. Donovan denies the allegations of paragraph 92 of the FAC.

93. Dr. Donovan denies knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 93 of the FAC.

94. Dr. Donovan denies the allegations of paragraph 94 of the FAC.

95. Dr. Donovan denies the allegations of paragraph 95 of the FAC. To the extent that paragraph 95 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

96. Dr. Donovan denies the allegations of paragraph 96 of the FAC except that he admits that Relator brought her allegations to the attention of CPME.

97. Dr. Donovan denies the allegations of paragraph 97 of the FAC. To the extent that paragraph 97 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

C. **The Scheme to Terminate Relator's Employment in Retaliation for Her Complaints About Donovan's Fraudulent Conduct**

98. Dr. Donovan denies the allegations of paragraph 98 of the FAC.

99. Dr. Donovan denies the allegations of paragraph 99 of the FAC except that he denies knowledge and information sufficient to form a belief as to the truth of the allegations of the second and third sentences of paragraph 99 and except that he admits that Relator was on maternity leave in March and April of 2012.

100. Dr. Donovan denies the allegations of paragraph 100 of the FAC except that he admits the allegations of the first, second and third sentences of paragraph 100 and admits that he refused Relator's request to modify hundreds of discrepancies and falsified entries in her PRR logs.

101. Dr. Donovan denies the allegations of paragraph 101 of the FAC except that he denies knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 101 concerning what surprised Relator and except that he admits the allegations of the first sentence of paragraph 101 and admits that Relator was co-Chief Resident for a period of time.

102. Dr. Donovan denies the allegations of paragraph 102 of the FAC except that he denies knowledge and information sufficient to form a belief as to the truth of the allegations of the first, second and third sentences of paragraph 102 and what Relator came to realize and except that he admits that Relator submitted a letter to CIH's Human Resources Department dated June 5, 2012 and submitted a report to HHC's Compliance Department on June 6, 2012.

103. Dr. Donovan denies knowledge and information sufficient to form a belief as to the truth of the allegations of paragraph 103 of the FAC.

104. Dr. Donovan denies the allegations of paragraph 104 of the FAC except that he denies knowledge and information sufficient to form a belief as to the truth of the allegations of the first, second and third sentences of paragraph 104.

105. Dr. Donovan denies the allegations of paragraph 105 of the FAC except that he denies knowledge and information sufficient to form a belief as to the truth of the allegations of the first and second sentences of paragraph 105.

106. Dr. Donovan denies the allegations of paragraph 106 of the FAC.

VI. CAUSES OF ACTION

**COUNT ONE
(Federal False Claims Act)
31 U.S.C. § 3729(a)(1)(A)**

107. Dr. Donovan repeats, realleges and reiterates each and every answer as set forth in paragraphs 1 through 106 of this Answer with the same force and effect as if set forth at length herein.

108. Dr. Donovan denies the allegations of paragraph 108 of the FAC except that he admits that Relator purports to assert claims for damages and civil penalties to which he denies

that Relator is entitled. To the extent that paragraph 108 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

109. Dr. Donovan denies the allegations of paragraph 109 of the FAC.

110. Dr. Donovan denies the allegations of paragraph 110 of the FAC.

111. Dr. Donovan denies the allegations of paragraph 111 of the FAC.

112. Dr. Donovan denies the allegations of paragraph 112 of the FAC.

COUNT TWO
(Federal False Claims Act)
31 U.S.C. § 3729(a)(1)(B)

113. Dr. Donovan repeats, realleges and reiterates each and every answer as set forth in paragraphs 1 through 112 of this Answer with the same force and effect as if set forth at length herein.

114. Dr. Donovan denies the allegations of paragraph 114 of the FAC except that he admits that Relator purports to assert claims for damages and civil penalties to which he denies that Relator is entitled. To the extent that paragraph 114 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

115. Dr. Donovan denies the allegations of paragraph 115 of the FAC.

116. Dr. Donovan denies the allegations of paragraph 116 of the FAC.

117. Dr. Donovan denies the allegations of paragraph 117 of the FAC.

118. Dr. Donovan denies the allegations of paragraph 118 of the FAC.

COUNT THREE
(Federal False Claims Act)
31 U.S.C. § 3729(a)(1)(G)

119. Dr. Donovan repeats, realleges and reiterates each and every answer as set forth in paragraphs 1 through 118 of this Answer with the same force and effect as if set forth at length herein.

120. Dr. Donovan denies the allegations of paragraph 120 of the FAC except that he admits that Relator purports to assert claims for damages and civil penalties to which he denies that Relator is entitled. To the extent that paragraph 120 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

121. Dr. Donovan denies the allegations of paragraph 121 of the FAC.

122. Dr. Donovan denies the allegations of paragraph 122 of the FAC.

123. Dr. Donovan denies the allegations of paragraph 123 of the FAC.

124. Dr. Donovan denies the allegations of paragraph 124 of the FAC.

COUNT FOUR
(Federal False Claims Act)
31 U.S.C. § 3729(a)(1)(C)

125. Dr. Donovan repeats, realleges and reiterates each and every answer as set forth in paragraphs 1 through 124 of this Answer with the same force and effect as if set forth at length herein.

126. Dr. Donovan denies the allegations of paragraph 126 of the FAC except that he admits that Relator purports to assert claims for damages and civil penalties to which he denies that Relator is entitled. To the extent that paragraph 126 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

127. Dr. Donovan denies the allegations of paragraph 127 of the FAC.

128. Dr. Donovan denies the allegations of paragraph 128 of the FAC.

129. Dr. Donovan denies the allegations of paragraph 129 of the FAC.

COUNT FIVE
(New York False Claims Act)
N.Y. Finance Law § 189(1)(a)

130. Dr. Donovan repeats, realleges and reiterates each and every answer as set forth in paragraphs 1 through 129 of this Answer with the same force and effect as if set forth at length herein.

131. Dr. Donovan denies the allegations of paragraph 131 of the FAC except that he admits that Relator purports to assert claims for damages and civil penalties to which he denies that Relator is entitled. To the extent that paragraph 131 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

132. Dr. Donovan denies the allegations of paragraph 132 of the FAC.

133. Dr. Donovan denies the allegations of paragraph 133 of the FAC.

134. Dr. Donovan denies the allegations of paragraph 134 of the FAC.

135. Dr. Donovan denies the allegations of paragraph 135 of the FAC.

COUNT SIX
(New York False Claims Act)
N.Y. Finance Law § 189(1)(b)

136. Dr. Donovan repeats, realleges and reiterates each and every answer as set forth in paragraphs 1 through 135 of this Answer with the same force and effect as if set forth at length herein.

137. Dr. Donovan denies the allegations of paragraph 137 of the FAC except that he admits that Relator purports to assert claims for damages and civil penalties to which he denies that Relator is entitled. To the extent that paragraph 137 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

138. Dr. Donovan denies the allegations of paragraph 138 of the FAC.

139. Dr. Donovan denies the allegations of paragraph 139 of the FAC.

140. Dr. Donovan denies the allegations of paragraph 140 of the FAC.

141. Dr. Donovan denies the allegations of paragraph 141 of the FAC.

COUNT SEVEN
(New York False Claims Act)
N.Y. Finance Law § 189(1)(g)

142. Dr. Donovan repeats, realleges and reiterates each and every answer as set forth in paragraphs 1 through 141 of this Answer with the same force and effect as if set forth at length herein.

143. Dr. Donovan denies the allegations of paragraph 143 of the FAC except that he admits that Relator purports to assert claims for damages and civil penalties to which he denies that Relator is entitled. To the extent that paragraph 143 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

144. Dr. Donovan denies the allegations of paragraph 144 of the FAC.

145. Dr. Donovan denies the allegations of paragraph 145 of the FAC.

146. Dr. Donovan denies the allegations of paragraph 146 of the FAC.

147. Dr. Donovan denies the allegations of paragraph 147 of the FAC.

COUNT EIGHT
(New York False Claims Act)
N.Y. Finance Law § 189(1)(c)

148. Dr. Donovan repeats, realleges and reiterates each and every answer as set forth in paragraphs 1 through 147 of this Answer with the same force and effect as if set forth at length herein.

149. Dr. Donovan denies the allegations of paragraph 149 of the FAC except that he admits that Relator purports to assert claims for damages and civil penalties to which he denies

that Relator is entitled. To the extent that paragraph 149 contains statements and conclusions of law to which no responsive pleading is required, Dr. Donovan makes no response.

150. Dr. Donovan denies the allegations of paragraph 150 of the FAC.

151. Dr. Donovan denies the allegations of paragraph 151 of the FAC.

152. Dr. Donovan denies the allegations of paragraph 152 of the FAC.

PRAYER FOR RELIEF

153. Dr. Donovan denies the allegations in the paragraph of the FAC entitled “PRAYER FOR RELIEF” and in subparagraphs 1 through 6 of that paragraph that relate to him. To the extent that that paragraph contains statements and conclusions of law to which no response is required, Dr. Donovan makes no response.

GENERAL DENIALS

154. To the extent that they have not been responded to above, Dr. Donovan denies each and every one of the allegations in the FAC.

155. To the extent the FAC purports to characterize documents, statutes, rules, regulations, policies, standards, legislative history, web sites and other sources of information, Dr. Donovan respectfully refers to those sources of information for their complete and accurate contents, and denies any characterization thereof.

DEFENSES AND RESERVATION OF RIGHTS

156. Dr. Donovan asserts the following affirmative and other defenses in opposition to the FAC. In asserting the following defenses, Dr. Donovan does not concede that matters designated herein as “defenses” are not elements of Relator’s prima facie case on any of the Relator’s purported claims or that they are not matters as to which the Relator bears the burden of proof. Dr. Donovan specifically reserves his right to assert additional defenses to the FAC that become available as a result of discovery or other proceedings in this matter.

FIRST DEFENSE

157. The FAC is barred, in whole or in part, because it fails to state a claim against Dr. Donovan upon which relief may be granted.

SECOND DEFENSE

158. The FAC is barred, in whole or in part, because it fails to state a claim of fraud with particularity pursuant to Rule 9(b) of the Federal Rules of Civil Procedure.

THIRD DEFENSE

159. The FAC is barred, in whole or in part, by the doctrines of laches, waiver or estoppel.

FOURTH DEFENSE

160. The FAC is barred, in whole or in part, by the doctrine of accord and satisfaction.

FIFTH DEFENSE

161. The FAC is barred, in whole or in part, by the statute of limitations.

SIXTH DEFENSE

162. The FAC is barred, in whole or in part, because Relator is not a proper relator pursuant to the federal or New York State False Claims Act.

SEVENTH DEFENSE

163. The FAC is barred, in whole or in part, by the doctrine of unclean hands.

EIGHTH DEFENSE

164. The FAC is barred, in whole or in part, because the claims or medical records about which Relator complains were not presented, or caused to be presented, to the government for payment or approval and otherwise were not material to the payment of a claim.

NINTH DEFENSE

165. The FAC is barred, in whole or in part, because Dr. Donovan did not make or cause to be made express misrepresentations in claims for reimbursement.

TENTH DEFENSE

166. The FAC is barred, in whole or in part, because Dr. Donovan did not make or cause to be made implied misrepresentations relating to conditions of payment in claims for reimbursement.

ELEVENTH DEFENSE

167. The FAC is barred, in whole or in part, because Dr. Donovan did not make or cause to be made specific representations about goods or services in conjunction with a failure to disclose non-compliance with material statutory, regulatory, or contractual requirements in claims for reimbursement.

TWELFTH DEFENSE

168. The FAC is barred, in whole or in part, because any inaccuracies in claims submitted to the government were not material to the governments' reimbursement decisions.

THIRTEENTH DEFENSE

169. The FAC is barred, in whole or in part, because Dr. Donovan did not omit, or cause the omission of, any material fact in connection with any claims, records or statements submitted to the government that are alleged to be the subject of this action.

FOURTEENTH DEFENSE

170. The FAC is barred, in whole or in part, because Dr. Donovan did not knowingly, with reckless disregard or with deliberate ignorance cause, or conspire to cause, the submission of false claims, records or statements.

FIFTEENTH DEFENSE

171. The FAC is barred, in whole or in part, because Dr. Donovan did not make, use or cause to made or used, a false record or statement material to an obligation to pay or transmit money or property to the governments.

SIXTEENTH DEFENSE

172. The FAC is barred, in whole or in part, because Dr. Donovan did not conceal or improperly avoid or decrease an obligation to pay or transmit money or property to the governments.

SEVENTEENTH DEFENSE

173. The FAC is barred, in whole or in part, because Dr. Donovan at all times acted in good faith.

EIGHTEENTH DEFENSE

174. The FAC is barred, in whole or in part, because at all relevant times, PAGNY and HHC had in place compliance plans to prevent false claims.

NINETEENTH DEFENSE

175. The FAC is barred, in whole or in part, because any inaccurate claims submitted to the government were submitted by mistake.

TWENTIETH DEFENSE

176. The FAC is barred or limited, in whole or in part, by the Eighth Amendment to the United States Constitution.

TWENTY-FIRST DEFENSE

177. The FAC is barred or limited, in whole or in part, by the doctrine of substantive due process.

TWENTY-SECOND DEFENSE

178. The FAC is barred, in whole or in part, because Relator Gelman, the United States of America and New York State suffered no damages.

PRAYER FOR RELIEF OF DR. DONOVAN

WHEREFORE, Dr. Donovan demands judgment dismissing the First Amended Complaint, and awarding him attorneys' fees and costs and granting such other relief as the Court deems just and proper.

JURY DEMAND

Dr. Donovan demands a trial by jury for any and all issues triable of right by a jury.

Dated: December 15, 2017

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