

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

UNITED STATES OF AMERICA,	§	
<i>ex rel.</i> ALEX DOE, Relator,	§	
	§	
THE STATE OF TEXAS,	§	
<i>ex rel.</i> ALEX DOE, Relator,	§	
	§	
THE STATE OF LOUISIANA,	§	
<i>ex rel.</i> ALEX DOE, Relator,	§	
	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 2:21-CV-00022-Z
	§	
PLANNED PARENTHOOD	§	
FEDERATION OF AMERICA, INC.,	§	
PLANNED PARENTHOOD GULF	§	
COAST, INC., PLANNED	§	
PARENTHOOD OF GREATER	§	
TEXAS, INC., PLANNED	§	
PARENTHOOD SOUTH	§	
TEXAS, INC., PLANNED	§	
PARENTHOOD CAMERON	§	
COUNTY, INC., PLANNED	§	
PARENTHOOD SAN ANTONIO,	§	
INC.,	§	
	§	
Defendants.	§	

PLAINTIFFS’ RESPONSE TO PPFA’S MOTION TO STAY

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INTRODUCTION

As a desperate attempt to avoid trial, Defendants have made (at least) their *sixth* attempt to delay the case. Now PPFA insists that it can appeal an interlocutory order, that this Court therefore lacks jurisdiction, and that the case must be stayed pending appeal. But PPFA's appeal is frivolous. Even assuming the immunity defenses apply here (and they do not), PPFA forfeited them by not pleading them. PPFA previously argued that it could not be liable for the actions of attorney-employees, but this was only briefly presented in response to Plaintiffs' summary judgment arguments as one of several arguments against liability, not as an affirmative defense on which PPFA bears the burden of proof, nor as immunity from suit. And it is established law that only where a defendant asserts immunity from suit is there any basis at all for an interlocutory appeal. The Court should deny this motion to stay. And because PPFA's appeal is frivolous, the Court should certify it as such and retain jurisdiction.

LEGAL STANDARD

A "stay is an intrusion into the ordinary processes of administration and judicial review, and accordingly is not a matter of right, even if irreparable injury might otherwise result to the appellant." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (citations omitted). "The proponent of a stay bears the burden of establishing its need." *Clinton v. Jones*, 520 U.S. 681, 708 (1997). PPFA requests a stay pending appeal but does not provide analysis under the *Nken* factors. Dkt. 569. Neither do the Affiliates. Dkt. 572. Defendants' sole justification for the stay is PPFA's incorrect claim that the Court no longer has jurisdiction over PPFA. *Id.* But as explained below, PPFA's appeal is frivolous. A "district court is permitted to maintain jurisdiction over an interlocutory appeal of an immunity denial after certifying that the appeal is

frivolous or dilatory.” *BancPass, Inc. v. Highway Toll Admin., L.L.C.*, 863 F.3d 391, 400 (5th Cir. 2017). The Court must “expressly certify, in writing, that [the] defendant forfeited the right to a pretrial appeal” if an immunity defense is waived. *Id.*

ARGUMENT

I. The Court Should Retain Jurisdiction and Certify the Appeal as Frivolous.

PPFA’s appeal is from an order largely denying summary judgment, which is not a final judgment. But interlocutory appellate jurisdiction is the exception rather than the rule. Congress has given the courts of appeals jurisdiction over interlocutory appeals only in certain, limited circumstances. *Dardar v. Lafourche Realty Co., Inc.*, 849 F.2d 955, 957 (5th Cir. 1988). Interlocutory appeals are not favored and the statutes allowing them must be strictly construed. *E.E.O.C. v. Kerrville Bus Co., Inc.*, 925 F.2d 129, 131 (5th Cir. 1991). Courts must “approach this . . . somewhat gingerly lest a floodgate be opened that brings into the exception many pretrial orders.” *Switzerland Cheese Ass’n, Inc. v. E. Hornes Market, Inc.*, 385 U.S. 23, 24 (1966) (citation omitted).

A. PPFA forfeited any immunity defense by not pleading it.

“Absolute immunity”—such as immunity given to statements made in judicial or quasi-judicial proceedings—“is an affirmative defense that is waived if it is not pleaded.” *Cozzo v. Tangipahoa Par. Council--President Gov’t*, 279 F.3d 273, 283 (5th Cir. 2002). Under Texas law, “[a]ttorney immunity is an affirmative defense.” *Bethel v. Quilling, Selander, Lownds, Winslett & Moser, P.C.*, 595 S.W.3d 651, 654 (Tex. 2020).¹ Affirmative defenses are generally waived unless they are raised in the

¹ PPFA does not cite any case suggesting that attorney immunity is a defense under federal law or the False Claims Act. “A state law immunity, though perhaps helpful in deriving an historical practice relevant to determining whether absolute immunity should be extended against a federal claim, is far from dispositive.” *Ray v. Recovery Healthcare Corp.*, No. 3:19-CV-3055-G, 2021 WL 1102081, at *6 (N.D. Tex. Mar. 22, 2021), *reconsideration denied*, No. 3:19-CV-3055-G, 2021 WL 3603339 (N.D. Tex.

defendant's pleading. Fed. R. Civ. P. 8(c); Tex. R. Civ. P. 94; La. Code Civ. P. art. 1005; *accord Lebouef v. Island Operating Co., Inc.*, 342 F. App'x 983, 984 (5th Cir. 2009); *see also* Dkt. 184 at 4 n.1, Dkt. 316 at 4. Defendants never requested dismissal of the case based on attorney immunity or litigation privilege. Dkt. 49, 51. Defendants did not plead attorney immunity or litigation privilege as an affirmative defense in their Answers, nor even in their proposed Amended Answers. Dkt. 80, 81, 226-2, 226-3. Having not pleaded them, these defenses are forfeited. *Cozzo*, 279 F.3d at 283. Nor can Defendants argue that they nevertheless raised these defenses at a proper time because months before they requested leave to amend in October 2022, they knew that Plaintiffs contended that PPFA lawyers' involvement was one aspect of PPFA's liability. *See* Ex. A (Relator's Objections and Responses to PPFA's First Set of Interrogatories, served in July 2022); Ex. B (Relator's Supplemental Objections and Responses to PPFA's First Set of Interrogatories, served in August 2022).

Permitting Defendants to assert these affirmative defenses at this late date despite their waiver would also be highly prejudicial to Plaintiffs. If Defendants had pleaded attorney immunity or litigation privilege as an affirmative defense, they would have had the burden to establish that it applies, and Plaintiffs could have moved for summary judgment on the defenses. Plaintiffs also would have been entitled to more discovery to probe the extent of PPFA's attorneys' involvement in the Affiliates' actions and to what extent those actions were germane to legal representation of the Affiliates or were in furtherance of their employer PPFA's interests. *See Kelly v. Nichamoff*, 868 F.3d 371, 375 (5th Cir. 2017) (determining the

Aug. 13, 2021) (citing *Howlett By and Through Howlett v. Rose*, 496 U.S. 356, 375-76 (1990) (concluding that state law immunities have no force in § 1983 suits "over and above" those provided by § 1983 because "[t]he elements of, and the defenses to, a federal cause of action are defined by federal law")). In Louisiana, it does not appear that there is a specific immunity defense. Rather, under Louisiana law, attorneys can be liable if they exceed the limits of their agency and may be liable for malpractice even to third parties in cases of fraud or collusion. *St. Paul Ins. Co. of Bellaire, Tex. v. AFIA Worldwide Ins. Co.*, 937 F.2d 274, 279 (5th Cir. 1991).

scope of representation is necessary because “[t]he mere fact that an attorney was representing a client at the time of alleged fraudulent activity is not enough to warrant immunity.”).

But Defendants claimed privilege over thousands of documents involving communications between the Affiliates and the PPFA attorneys. Dkt. 390-12. Defendants cannot use privilege as a “shield and a sword. In practical terms, this means that parties in litigation may not abuse the privilege by asserting claims the opposing party cannot adequately dispute unless it has access to the privileged materials.” *Jolivet v. Compass Group USA, Inc.*, 340 F.R.D. 7, 24 (N.D. Tex. 2021) (quoting *Charalambopoulos v. Grammer*, No. 3:14-CV-2424-D, 2017 WL 1094394, at *4 (N.D. Tex. Mar. 8, 2017)). If Defendants wanted to hide behind the PPFA attorneys’ involvement to avoid liability, they needed to produce those documents. *Cf. United States v. Crinel*, No. CR 15-61, 2016 WL 6441249, at *11 (E.D. La. Nov. 1, 2016) (“Where a party asserts reliance on advice of counsel as an essential element of his defense, that party waives the attorney-client privilege with respect to all communications, whether written or oral, to or from counsel concerning the transaction for which counsel’s advice was sought.” (citation omitted)); *see also* Dkt. 569 (asserting that Relator’s claims turn on attorney advice). Defendants’ refusal to produce these materials thus also waives these defenses. *Jolivet*, 340 F.R.D. at 24 (quoting *Charalambopoulos*, 2017 WL 1094394, at *4) (“a privilege ‘may implicitly be waived when [a] defendant asserts a claim that in fairness requires examination of protected communications.”). Defendants cannot raise these defenses at this late date to try to avoid trial.

B. There is no appellate jurisdiction over interlocutory orders regarding mere arguments against liability, and PPFA forfeited any assertion of attorney or litigation immunity as immunity from suit.

The collateral order doctrine permits appeals from orders that are deemed final under 28 U.S.C. § 1291 because they “(1) conclusively determine the disputed question; (2) resolve an issue that is completely separate from the merits of the action; and (3) would be effectively unreviewable on appeal from a final judgment.” *Walker v. U.S. Dep’t of Hous. & Urban Dev.*, 99 F.3d 761, 766 (5th Cir. 1996). The Court’s summary judgment order did not “conclusively determine” PPFA’s liability on Relator’s implied false certification and conspiracy claims—it merely held that there are issues of disputed fact that must be resolved by a jury. And PPFA’s liability is directly involved in the “merits of the action.” *Id.*

To be sure, “orders denying certain immunities are strong candidates for prompt appeal under § 1291.” *Dig. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 871 (1994). That is because some immunities protect a defendant from *suit*, not just liability. Thus, it is well-established that government officials asserting absolute or qualified immunity may appeal the denial of a motion to dismiss. *See Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985). But even those defendants have only a limited right to appeal an order denying their motion for summary judgment—they may appeal only the determination of legal issues. The Fifth Circuit recently held so while granting a motion to dismiss an appeal in which the defendant sought to have the “court resolve the very factual disputes that the district court found to be genuine and properly submitted for trial on the merits, which we do not have jurisdiction to do.” *Oliver v. Arnold*, 3 F.4th 152, 155 (5th Cir. 2021); *accord Carter ex rel. Carter v. Butler*, No. 21-30216, 2022 WL 72730, at *4 (5th Cir. Jan. 7, 2022).

Thus, whether the summary judgment order here “would be effectively unreviewable on appeal from final judgment” for purposes of the collateral order doctrine depends on whether attorney or litigation immunity as asserted here

“provides a true immunity from suit and not a simple defense to liability.” *Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 345 (5th Cir. 2016) (citation omitted). “The critical question ... is whether ‘the essence’ of the claimed right is a right not to stand trial.” *Van Cauwenberghe v. Biard*, 486 U.S. 517, 524 (1988). There is no interlocutory appeal when a defendant loses on a “mere defense to liability.” *Swint v. Chambers Cnty. Comm’n*, 514 U.S. 35, 43 (1995). And “[a]n erroneous ruling on liability may be reviewed effectively on appeal from final judgment.” *Id.* Thus, the Court must “view claims of a ‘right not to be tried’ with skepticism, if not a jaundiced eye.” *Digital Equipment Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 873 (1994).

PPFA’s claim to an interlocutory appeal fails here. Even if PPFA had not waived attorney immunity as a defense, PPFA has *never* asserted it as an immunity to suit or a “right not to stand trial,” not even in its motion to stay. In fact, PPFA does not even address the issue. But in *Troice*, the case PPFA relies on to establish their entitlement to a pretrial appeal, the attorney-defendants moved to dismiss the case based on the defense and were explicitly asserting it as an immunity to suit. 816 F.3d at 345. Here, the first time the issues were raised was in summary judgment briefing, and only in response to Plaintiffs’ arguments as two of many arguments against liability, not as affirmative defenses nor as immunities from suit. *See* Dkt. 385 (PPFA MSJ not mentioning either immunity argument); Dkt. 414 at 19-22 (PPFA’s response to Plaintiffs’ MSJ arguing only defensively that an attorney cannot be held liable for actions undertaken during representation of a client, and shifting the burden to Plaintiffs, pointing out that Plaintiffs “cited no case”); Dkt. 435 at 9-12 (making identical argument in MSJ reply brief). A party cannot raise a defense it has the burden of proof on for the first time in reply. And if Defendants have never presented these arguments as an immunity to suit before, they cannot do so now to delay trial.

Additionally, even if PPFA had properly asserted attorney immunity as an immunity from suit, Fifth Circuit precedent still demonstrates that there is no jurisdiction over the interlocutory appeal of the summary judgment order. PPFA disputes the facts outlined in Part I.C below regarding the PPFA attorney-employees, which is why the Court held that they must be resolved by the jury. As in *Oliver*, PPFA would be asking the Fifth Circuit to resolve a factual dispute this Court sent to trial. 3 F.4th at 155; *Carter*, 2022 WL 72730, at *4. Thus, the interlocutory appeal is improper for this additional reason, and this Court retains jurisdiction.

C. Attorney immunity does not apply here because PPFA's attorney-employees are not being sued personally.

PPFA is correct that the Fifth Circuit has held that orders denying immunity to lawyers for conduct an attorney engages when discharging his duties to his client may be appealable under the collateral order doctrine. But every single case that PPFA cites involving the issue,² and indeed, every case Plaintiffs have seen applying attorney immunity, involves direct claims against lawyers or law firms.³ That is because “[a]ttorney immunity is an affirmative defense that ‘stem[s] from the broad declaration over a century ago that attorneys are authorized to practice their profession, to advise their clients and interpose any defense or supposed defense, without making *themselves* liable for damages.’” *Haynes & Boone, LLP v. NFTD, LLC*, 631 S.W.3d 65, 73 (Tex. 2021) (emphasis added) (quoting *Cantey Hanger LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015)). Attorney immunity is a “comprehensive affirmative defense protecting *attorneys* from liability to non-clients.” *Kelly*, 868 F.3d at 374

² See *Troice*, 816 F.3d 341 (law firm defendant) (cited by PPFA); *Duke v. Wells Fargo Bank N.A.*, No. 4:17-CV-987-A, 2018 WL 1157957, at *1 (N.D. Tex. Mar. 2, 2018) (law firm defendant) (cited by PPFA).

³ There is a case with a nonprofit organization defendant in addition to an attorney defendant, but the Texas Supreme Court held that attorney immunity did not apply because the actions at issue (media statements) were not germane to legal representation, even if it could be applied to the nonprofit. *Landry's, Inc. v. Animal Legal Def. Fund*, 631 S.W.3d 40, 51 (Tex. 2021). Plaintiffs have identified no case that applies attorney immunity outside the context of direct claims against lawyers or a law firm.

(emphasis added); *accord Wesner as Tr. of Charles Wesner, Jr. Living Tr. v. Southall*, No. 3:22-CV-0927-B, 2023 WL 3000623, at *3 (N.D. Tex. Apr. 18, 2023) (“*Attorneys and law firms* in Texas are generally immune from third party liability for legal services provided in the representation of a client.” (emphasis added)). As the Court correctly pointed out in the summary judgment order, Plaintiffs are not suing PPFA’s attorney-employees personally—they are suing PPFA, which is not a law firm. Those attorneys therefore fear no “liabil[ity] for damages,” which is the very purpose behind the defense. *Id.* The identity of the party asserting an immunity from suit matters—for instance, a government entity may not assert qualified or good-faith immunity, only individual government officials can. *Fairchild v. Coryell Cnty., Tex.*, 40 F.4th 359, 367 (5th Cir. 2022); *see also Sanchez v. Oliver*, 995 F.3d 461, 472 (5th Cir. 2021) (“an employee of a large firm ‘systematically organized to perform a major administrative task for [a governmental entity for] profit,’ is categorically ineligible to assert the defense of qualified immunity”).

Additionally, the facts that will be presented to the jury in this case demonstrate that PPFA’s attorney-employees did not act as lawyers advising clients with no other interests in mind other than the clients’, as a normal law firm or lawyer would be. Instead, PPFA’s Litigation & Law attorneys are employed by PPFA, report to a non-lawyer PPFA executive, have duties and responsibilities to PPFA, work to further PPFA’s mission, and advised the Affiliates in a manner that was contrary to their interests but was in their employer PPFA’s interest. *See, e.g.*, Dkt. 440 at 42-47. PPFA’s liability in this case simply does not implicate the concern that justifies attorney immunity in the first place. If defendants could escape Medicaid fraud liability just because an in-house lawyer was involved at some point in their actions (which would frequently be the case—or certainly would become so if the immunity

doctrine were applied in the fashion PPFA urges), it would turn Medicaid fraud statutes on their head. Thus, the cases PPFA cites applying the attorney immunity defense do not apply here.

D. Litigation immunity does not apply because Plaintiffs contend that PPFA is liable for actions well beyond statements made in judicial proceedings.

The immunity asserted by the defendant in *Shanks v. AlliedSignal, Inc.*, cited by PPFA, “attaches only to a limited and select number of situations which involve the administration of the functions of the branches of government, such as statements made during legislative and judicial proceedings.” 169 F.3d 988, 993 (5th Cir. 1999). Such immunity commonly arises in cases where a claim centers on harm caused by those statements, *i.e.* defamation (as in *Shanks*). Here, Plaintiffs never alleged that particular statements made by PPFA in judicial proceedings were how it caused the Affiliates to submit false claims. Rather, PPFA’s conduct representing the Affiliates in litigation is part of a broader pattern of conduct (outlined in Plaintiffs’ MSJ briefing) that demonstrates PPFA’s control over, knowledge of, and participation in the Affiliates’ actions. *See* Dkt. 391 at 76-99, 440 at 42-49. Litigation privilege or immunity is therefore inapposite, even if PPFA had not waived it.

II. Even if PPFA’s interlocutory appeal were proper, the Court has jurisdiction over PPFA.

The Court also retains jurisdiction over PPFA as the involvement of PPFA’s attorney-employees in the Affiliates’ violation of the FCA, TMFPA, and LMAPIL is only one of many reasons PPFA should be held liable. “A notice of appeal from an interlocutory order does not produce a complete divestiture of the district court’s jurisdiction over the case; rather, it only divests the district court of jurisdiction over those aspects of the case on appeal.” *Alice L. v. Dusek*, 492 F.3d 563, 564 (5th Cir. 2007). Fifth Circuit case law “makes this point clearly . . . where an appeal is allowed

from an interlocutory order, the district court may still proceed with matters not involved in the appeal.” *Id.* at 564–65 (citation omitted).

As the Court recognized, Plaintiffs “chiefly argued” that PPFA’s liability arises out of its extensive control over the Affiliate Defendants’ business operations and Medicaid operations. Dkt. 554 at 39. And it also recognized that a reasonable juror could conclude that PPFA caused Affiliate Defendants’ submission of false claims “through various means.” Dkt. 554 at 43. Thus, PPFA’s liability does not hinge solely on whether the Court accepts its argument that it cannot be liable for acts of attorney-employees—rather, there are many other reasons the jury could find PPFA liable. Thus, even if that were a valid defense here, the Court retains jurisdiction over PPFA. Whether or not it makes practical sense to go to trial while one of Defendants’ many arguments as to why they should not be liable is being determined (assuming the Fifth Circuit even entertains this appeal, which as discussed above, it likely will not) is another question. But PPFA claims only that the Court must stay the case because it totally lacks jurisdiction over PPFA, which is wrong.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court deny Defendant PPFA’s motion to stay pending appeal, find that PPFA forfeited the defenses now asserted, and certify PPFA’s appeal as frivolous and retain jurisdiction.

Respectfully submitted.

/s/ Heather Gebelin Hacker

Heather Gebelin Hacker

Texas Bar No. 24103325

Andrew B. Stephens

Texas Bar No. 24079396

HACKER STEPHENS LLP

108 Wild Basin Road South, Suite 250

Austin, Texas 78746

(512) 399-3022
heather@hackerstephens.com
andrew@hackerstephens.com

Attorneys for Relator

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

RALPH MOLINA
Deputy Attorney General for Legal Strategy

/s/ Amy S. Hilton
Amy S. Hilton
Special Counsel
Special Litigation Division
Texas Bar No. 24097834
Amy.Hilton@oag.texas.gov

William D. Wassdorf
Texas Bar No. 24103022
Assistant Attorney General
General Litigation Division
Will.Wassdorf@oag.texas.gov

Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120 / Fax (512) 320-0667

Attorneys for State of Texas

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2023, this document was electronically filed and served via the Court's CM/ECF system.

/s/ Heather Gebelin Hacker
Heather Gebelin Hacker

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

UNITED STATES OF AMERICA <i>EX REL.</i>	§	
DOE, <i>et al.</i> ,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	Civil Action No. 2:21-CV-00022-Z
	§	
PLANNED PARENTHOOD FEDERATION	§	
OF AMERICA, INC., <i>et al.</i> ,	§	
	§	
<i>Defendants.</i>	§	

**RELATOR’S OBJECTIONS AND RESPONSES TO PLANNED PARENTHOOD FEDERATION
OF AMERICA, INC.’S FIRST SET OF INTERROGATORIES TO RELATOR**

To: Leah Godesky, O’Melveny & Myers LLP, 1999 Avenue of the Stars, 8th Floor, Los Angeles, California 90067, Amanda Santella, O’Melveny & Myers LLP, 1625 Eye Street NW, Washington, DC 20006, Danny S. Ashby, Justin R. Chapa, O’Melveny & Myers LLP, 2501 North Harwood Street, Suite 1700, Dallas, Texas 75201, Attorneys for Defendant Planned Parenthood Federation of America, Inc.

Relator Alex Doe serves these Objections and Responses to Planned Parenthood Federation of America, Inc.’s First Set of Interrogatories to Relator.

OBJECTIONS

1. Relator objects to the Interrogatories, including the “Definitions” and “Instructions,” where they exceed the requirements imposed by Federal Rule of Civil Procedure (FRCP) 33, other FRCPs, or elsewhere. Relator will respond to the Interrogatories in accordance with FRCP 33, other FRCPs, and applicable law.

2. Relator objects to the Interrogatories where they seek disclosure of information protected by the attorney-client privilege, the work-product doctrine, the investigative-communications privilege, the common-interest privilege, and/or any other privileges and exemptions set forth in applicable law.

3. Relator objects to the Interrogatories where they seek information not within Relator's possession, custody, or control.

4. Relator objects to the Interrogatories where they call for information to be disclosed that is protected by the HIPAA Privacy Rule or is confidential by law.

5. Relator objects to the Interrogatories where they are not properly limited to an appropriate time period. Answering Interrogatories outside of an appropriate time period will be overly broad, unduly burdensome, and neither relevant to any party's claim or defense, nor proportional to the needs of the case, under FRCP 26(b)(1).

6. Defendants' definition of the term "Communication" is overly broad, vague, and answering Interrogatories by using this definition would be unduly burdensome. Defendants' definition of the term includes "the transmission or expression of any thought, word, statement, fact, thing, idea, opinion, document, instruction, demand, or question, whether written or oral, whether made in person, by telephone, in a meeting, transmitted electronically or telegraphically, or transmitted in any other fashion." Relator will interpret the terms "communication" consistent with applicable FRCPs, rules, law, and common usage.

7. Defendants' definition of the term "Describe" is overly broad, vague, and answering Interrogatories by this definition or searching for and identifying "any document or communication" with this definition would be unduly burdensome. Defendants' definition of the term includes "to identify any document or communication concerning the item in question and to provide a complete factual summary chronologically setting forth the substance of, and identifying any person participating in, witnessing, or having knowledge of, whether firsthand or otherwise, any fact, action, occurrence, conduct, event, condition, or circumstance concerning the information in question." Relator will interpret the terms "describe" consistent with applicable FRCPs, rules, law, and common usage.

8. Defendants' definition of the term "Document" is overly broad, vague, and answering Interrogatories using that definition would be unduly burdensome where the definition departs from the FRCPs and other applicable law; including but not limited to, for example, adding "any designated tangible things," to the definition of "document." Relator will interpret the term "document" consistent with FRCP 33 and other applicable FRCPs, rules, and law.

9. Defendants' definition of the terms "Regarding," "relating to," "related to," "in relation to," or "relates to" is overly broad, vague, and answering Interrogatories using that definition would be unduly burdensome. Defendants' definition of the terms includes these unlimited descriptions: "relating in any way to, referring to, arising from, dealing with, consisting of, mentioning, discussing, describing, reflecting, concerning, memorializing, supporting, constituting,

evidencing, comprising, recording, or in any other way pertaining to the subject, either in whole or in part, whether directly or indirectly.” Relator will interpret the terms “Regarding,” “relating to,” “related to,” “in relation to,” or “relates to” consistent with applicable FRCPs, rules, law, and common usage.

10. Defendants’ definition and use of the terms “Relator,” “You,” and “Your” is overly broad and neither relevant to any party’s claim or defense, nor proportional to the needs of the case, under FRCP 26(b)(1). Answering Interrogatories using that definition would be unduly burdensome. These terms as defined by Defendants include persons and entities with no relation to this matter. The terms’ vagueness and overbreadth make any Interrogatory with the terms as defined by Defendants exceed the scope of the specific claims and issues in this case and therefore makes those Interrogatories objectionable. Relator will interpret and respond to Interrogatories consistent with applicable FRCPs, rules, law, and common usage.

11. Relator objects to all of Defendants’ Instructions which exceed the requirements of FRCP 33, or other applicable Rules or law. Relator will answer the Interrogatories as required by FRCP 33, and other applicable Rules and law.

12. The answers made at this time are without prejudice to Relator’s rights to amend or supplement its answers as appropriate under the FRCPs or other rules or law.

13. By answering these Interrogatories, Relator does not concede the relevance or admissibility of the information. Relator further does not waive, but instead, expressly preserves, the objections here.

14. Relator incorporates by reference the objections above into the answers set forth below. The failure to repeat any of the objections above does not waive any objection to the specific Interrogatory.

15. Relator intends to not produce documents which are privileged under the attorney-client, common interest, work-product, and government investigative privileges and protections. Any production of documents which are covered by the attorney-client, common interest, work product and government investigative privileges and protections is inadvertent under Federal Rule of Evidence (FRE) 502.

INTERROGATORIES

INTERROGATORY NO. 1

Identify each person with knowledge of the facts relevant to the allegations in the Relator's Complaint. Your response should identify the facts about which each person has knowledge.

ANSWER:

Relator refers Defendants to the persons listed in the parties' Initial Disclosures and the facts set forth therein.

INTERROGATORY NO. 2:

For each 2010-to-present Texas Medicaid claim submitted by an Affiliate Defendant that You contend was a false or fraudulent claim, identify all facts that

You contend demonstrate PPFA's knowledge of, involvement in, or control over the claim.

ANSWER:

Relator refers Defendants to the Expert Reports of Donald Lochabay and the documents cited therein and produced to Defendants, and further refers Defendants to the documents contained in the trial and appellate record in the federal court litigation involving Defendants referenced in Relator's Complaint, including but not limited to documents and facts regarding the control and relationship between PPFA and PPFA Affiliates. Relator further states that PPFA provides medical services through approximately 50 affiliates nationwide, including the PPFA Affiliates. PPFA Affiliates pay dues to PPFA and in exchange for these payments and provided that PPFA Affiliates comply with PPFA's policies, PPFA Affiliates can hold themselves out to the public using the named "Planned Parenthood" and receive other benefits like monetary support and legal representation. PPFA provided legal representation to the PPFA Affiliates in federal court litigation involving the PPFA Affiliates termination from Medicaid. PPFA also exercises functional control over the PPFA Affiliates. It sets medical and operational standards for PPFA Affiliates and requires all PPFA Affiliates to provide certain core medical services. PPFA must review and approve all PPFA Affiliate research projects and PPFA sets policies that govern their medical practices, mandates certain informed consent forms to be used by PPFA Affiliates, and works with PPFA Affiliates to share best practices and industry information. PPFA Affiliates' medical services, including their enrollment and participation in Medicaid, are

controlled by PPFA through PPFA's mandatory medical standards and guidelines, financial support, PPFA's counsel providing representation to the PPFA Affiliates in litigation over their termination from Medicaid, PPFA's leadership and managerial influence and control of the PPFA Affiliates, and PPFA's organizational structure.

INTERROGATORY NO. 3:

For each 2010-to-present Texas Medicaid overpayment received by an Affiliate Defendant that You contend the Affiliate Defendant was obligated to report and repay, identify all facts that You contend demonstrate PPFA's knowledge of, involvement in, or control over the nonpayment of the claim, as well as all facts that You contend demonstrate that PPFA directed or controlled the Affiliate Defendant's alleged concealment of any overpayment or decision to not report or repay an overpayment.

ANSWER:

Relator refers Defendants to the Expert Reports of Donald Lochabay and the documents cited therein and produced to Defendants, and further refers Defendants to the documents contained in the trial and appellate record in the federal court litigation involving Defendants referenced in Relator's Complaint, including but not limited to documents and facts regarding the control and relationship between PPFA and PPFA Affiliates. Relator further states that PPFA provides medical services through approximately 50 affiliates nationwide, including the PPFA Affiliates. PPFA Affiliates pay dues to PPFA and in exchange for these payments and provided that PPFA Affiliates comply with PPFA's policies, PPFA Affiliates can hold themselves out to the

public using the named “Planned Parenthood” and receive other benefits like monetary support and legal representation. PPFA provided legal representation to the PPFA Affiliates in federal court litigation involving the PPFA Affiliates termination from Medicaid. PPFA also exercises functional control over the PPFA Affiliates. It sets medical and operational standards for PPFA Affiliates and requires all PPFA Affiliates to provide certain core medical services. PPFA must review and approve all PPFA Affiliate research projects and PPFA sets policies that govern their medical practices, mandates certain informed consent forms to be used by PPFA Affiliates, and works with PPFA Affiliates to share best practices and industry information. PPFA Affiliates’ medical services, including their enrollment and participation in Medicaid, are controlled by PPFA through PPFA’s mandatory medical standards and guidelines, financial support, PPFA’s counsel providing representation to the PPFA Affiliates in litigation over their termination from Medicaid, PPFA’s leadership and managerial influence and control of the PPFA Affiliates, and PPFA’s organizational structure.

INTERROGATORY NO. 4:

For each 2010-to-present Louisiana Medicaid claim submitted by an Affiliate Defendant that You contend was a false or fraudulent claim, identify all facts that You contend demonstrate PPFA’s knowledge of, involvement in, or control over such claim.

RESPONSE:

Relator refers Defendants to the Expert Reports of Donald Lochabay and the documents cited therein and produced to Defendants, and further refers Defendants to

the documents contained in the trial and appellate record in the federal court litigation involving Defendants referenced in Relator's Complaint, including but not limited to documents and facts regarding the control and relationship between PPFA and PPFA Affiliates. Relator further states that PPFA provides medical services through approximately 50 affiliates nationwide, including the PPFA Affiliates. PPFA Affiliates pay dues to PPFA and in exchange for these payments and provided that PPFA Affiliates comply with PPFA's policies, PPFA Affiliates can hold themselves out to the public using the named "Planned Parenthood" and receive other benefits like monetary support and legal representation. PPFA provided legal representation to the PPFA Affiliates in federal court litigation involving the PPFA Affiliates termination from Medicaid. PPFA also exercises functional control over the PPFA Affiliates. It sets medical and operational standards for PPFA Affiliates and requires all PPFA Affiliates to provide certain core medical services. PPFA must review and approve all PPFA Affiliate research projects and PPFA sets policies that govern their medical practices, mandates certain informed consent forms to be used by PPFA Affiliates, and works with PPFA Affiliates to share best practices and industry information. PPFA Affiliates' medical services, including their enrollment and participation in Medicaid, are controlled by PPFA through PPFA's mandatory medical standards and guidelines, financial support, PPFA's counsel providing representation to the PPFA Affiliates in litigation over their termination from Medicaid, PPFA's leadership and managerial influence and control of the PPFA Affiliates, and PPFA's organizational structure.

INTERROGATORY NO. 5:

For each 2010-to-present Louisiana Medicaid overpayment received by an Affiliate Defendant that You contend the Affiliate Defendant was obligated to report and repay, identify all facts that You contend demonstrate PPFA's knowledge of, involvement in, or control over the nonpayment of the claim, as well as all facts that You contend demonstrate that PPFA directed or controlled the Affiliate Defendant's alleged concealment of any overpayment or decision to not report or repay an overpayment.

RESPONSE:

Relator refers Defendants to the Expert Reports of Donald Lochabay and the documents cited therein and produced to Defendants, and further refers Defendants to the documents contained in the trial and appellate record in the federal court litigation involving Defendants referenced in Relator's Complaint, including but not limited to documents and facts regarding the control and relationship between PPFA and PPFA Affiliates. Relator further states that PPFA provides medical services through approximately 50 affiliates nationwide, including the PPFA Affiliates. PPFA Affiliates pay dues to PPFA and in exchange for these payments and provided that PPFA Affiliates comply with PPFA's policies, PPFA Affiliates can hold themselves out to the public using the named "Planned Parenthood" and receive other benefits like monetary support and legal representation. PPFA provided legal representation to the PPFA Affiliates in federal court litigation involving the PPFA Affiliates termination from Medicaid. PPFA also exercises functional control over the PPFA Affiliates. It sets

medical and operational standards for PPFA Affiliates and requires all PPFA Affiliates to provide certain core medical services. PPFA must review and approve all PPFA Affiliate research projects and PPFA sets policies that govern their medical practices, mandates certain informed consent forms to be used by PPFA Affiliates, and works with PPFA Affiliates to share best practices and industry information. PPFA Affiliates' medical services, including their enrollment and participation in Medicaid, are controlled by PPFA through PPFA's mandatory medical standards and guidelines, financial support, PPFA's counsel providing representation to the PPFA Affiliates in litigation over their termination from Medicaid, PPFA's leadership and managerial influence and control of the PPFA Affiliates, and PPFA's organizational structure.

INTERROGATORY NO. 6:

Identify the first date on which the Relator communicated with the State of Texas regarding any of the Affiliate Defendants' submission of claims to Texas Medicaid that You contend were false or fraudulent, and describe, in detail, the Relator's communication with the State of Texas regarding such claims (including without limitation the nature, circumstances, participants, and contents of the communication).

RESPONSE:

This Interrogatory is overbroad because of the objectionably very broad definition of "communications." This Interrogatory asks for communications between Relator and the State of Texas and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and

protections. This is especially true with the broad definition of “communications.” Subject to Relator’s objections and statements of privileges, Relator states that Relator disclosed the material facts alleged in Relator’s Complaint to the State of Texas on February 5, 2021 prior to filing Relator’s Complaint.

INTERROGATORY NO. 7:

Identify the first date on which the Relator communicated with the State of Texas regarding PPFA’s alleged knowledge of, involvement in, or control over any claim that You contend was false or fraudulent, and describe, in detail, the Relator’s communication with the State of Texas regarding such claim (including without limitation the nature, circumstances, participants, and contents of the communication).

RESPONSE:

This Interrogatory is overbroad because of the objectionably very broad definition of “communications.” This Interrogatory asks for communications between Relator and the State of Texas and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. This is especially true with the broad definition of “communications.” Subject to Relator’s objections and statements of privilege, Relator states that Relator disclosed the material facts alleged in Relator’s Complaint to the State of Texas on February 5, 2021 prior to filing Relator’s Complaint.

INTERROGATORY NO. 8:

Identify the first date on which the Relator communicated with the State of Louisiana regarding any of the Affiliate Defendants' submission of claims to Louisiana Medicaid that You contend were false or fraudulent, and describe, in detail, the Relator's communication with the State of Louisiana regarding such claims (including without limitation the nature, circumstances, participants, and contents of the communication).

RESPONSE:

This Interrogatory is overbroad because of the objectionably very broad definition of "communications." This interrogatory asks for communications between Relator and the State of Louisiana and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. This is especially true with the broad definition of "communications." Subject to Relator's objections and statements of Privilege, Relator states that Relator disclosed the material facts alleged in Relator's Complaint to the State of Louisiana on February 5, 2021 prior to filing Relator's Complaint.

INTERROGATORY NO. 9:

Identify the first date on which the Relator communicated with the State of Louisiana regarding PPFA's alleged knowledge of, involvement in, or control over any claim that You contend was false or fraudulent, and describe, in detail, the Relator's communication with the State of Louisiana regarding such claim (including without

limitation the nature, circumstances, participants, and contents of the communication).

RESPONSE:

This Interrogatory is overbroad because of the objectionably very broad definition of “communications.” This Interrogatory asks for communications between Relator and the State of Louisiana and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. This is especially true with the broad definition of “communications.” Subject to Relator’s objections and statements of privilege, Relator states that Relator disclosed the material facts alleged in Relator’s Complaint to the State of Louisiana on February 5, 2021 prior to filing Relator’s Complaint.

INTERROGATORY NO. 10:

Identify the first date on which the Relator communicated with the United States regarding any of the Affiliate Defendants’ submission of claims to Texas or Louisiana Medicaid that You contend were false or fraudulent, and describe, in detail, the Relator’s communication with the United States regarding such claims (including without limitation the nature, circumstances, participants, and contents of the communication).

RESPONSE:

This Interrogatory is overbroad because of the objectionably very broad definition of “communications.” This interrogatory asks for communications between Relator and the United States and seeks information which is covered by the attorney-

client, common interest, work product, and government investigative privileges and protections. This is especially true with the broad definition of “communications.” Subject to Relator’s objections and statements of privilege, Relator states that Relator disclosed the material facts alleged in Relator’s Complaint to the United States on February 5, 2021 prior to filing Relator’s Complaint.

INTERROGATORY NO. 11:

Identify the first date on which the Relator communicated with the United States regarding PPFA’s alleged knowledge of, involvement in, or control over any claim that You contend was false or fraudulent, and describe, in detail, the Relator’s communication with the United States regarding such claim (including without limitation the nature, circumstances, participants, and contents of the communication).

RESPONSE:

This Interrogatory is overbroad because of the objectionably very broad definition of “communications.” This Interrogatory asks for communications between Relator and the United States and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. This is especially true with the broad definition of “communications.” Subject to Relator’s objections and statements of privilege, Relator states that Relator disclosed the material facts alleged in Relator’s Complaint to the United States on February 5, 2021 prior to filing Relator’s Complaint.

INTERROGATORY NO. 12:

Identify all facts in Texas's Complaint of which You contend the State of Texas did not have knowledge before February 5, 2021, and describe, in detail, why the State of Texas could not have obtained knowledge of those facts before February 5, 2021.

RESPONSE:

This Interrogatory seeks information that is within the knowledge, custody or control of the State of Texas and calls for speculation regarding how or why another person or party could or could not have obtained knowledge. This Interrogatory asks for communications between Relator and the State of Texas and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Relator stands on Relator's objections to this Interrogatory.

INTERROGATORY NO. 13:

Identify all facts in Texas's Complaint of which You contend the State of Louisiana did not have knowledge before February 5, 2021, and describe, in detail, why the State of Louisiana could not have obtained knowledge of those facts before February 5, 2021.

RESPONSE:

This Interrogatory seeks information that is within the knowledge, custody or control of the State of Louisiana and calls for speculation regarding how or why another person or party could or could not have obtained knowledge. This Interrogatory asks

for communications between Relator and the State of Louisiana and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Relator stands on Relator's objections to this Interrogatory.

INTERROGATORY NO. 14:

Identify all facts in Texas's Complaint of which You contend You had knowledge and the United States had no knowledge before February 5, 2021, and describe, in detail, why the United States could not have obtained knowledge of those facts before February 5, 2021.

RESPONSE:

This Interrogatory seeks information that is within the knowledge, custody or control of the United States and calls for speculation regarding how or why another person or party could or could not have obtained knowledge. This Interrogatory asks for communications between Relator and the United States and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Relator stands on Relator's objections to this Interrogatory.

INTERROGATORY NO. 15:

Identify all facts in the Relator's Complaint of which You contend the State of Texas did not have knowledge before February 5, 2021, and describe, in detail, why the State of Texas could not have obtained knowledge of those facts before February 5, 2021.

RESPONSE:

This Interrogatory seeks information that is within the knowledge, custody or control of the State of Texas and calls for speculation regarding how or why another person or party could or could not have obtained knowledge. This Interrogatory asks for communications between Relator and the State of Texas and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Relator stands on Relator's objections to this Interrogatory.

INTERROGATORY NO. 16:

Identify all facts in the Relator's Complaint of which You contend the State of Louisiana did not have knowledge before February 5, 2021, and describe, in detail, why the State of Louisiana could not have obtained knowledge of those facts before February 5, 2021.

RESPONSE:

This Interrogatory seeks information that is within the knowledge, custody or control of the State of Louisiana and calls for speculation regarding how or why another person or party could or could not have obtained knowledge. This Interrogatory asks for communications between Relator and the State of Louisiana and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Relator stands on Relator's objections to this Interrogatory.

INTERROGATORY NO. 17:

Identify all facts in the Relator's Complaint of which You contend You had knowledge and the United States had no knowledge before February 5, 2021, and describe, in detail, why the United States could not have obtained knowledge of those facts before February 5, 2021.

RESPONSE:

This Interrogatory seeks information that is within the knowledge, custody or control of the United States and calls for speculation. This Interrogatory asks for communications between Relator and the United States and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator's objections and statements of privilege, Relator states that Relator disclosed the material facts alleged in Relator's Complaint to the United States prior to filing Relator's Complaint and that the United States did not have knowledge of those material facts prior to Relator's disclosure.

INTERROGATORY NO. 18:

If you contend that PPFA had or has an obligation to repay 2010-to-present Texas or Louisiana Medicare overpayments made to any Affiliate Defendant, describe all facts (and identify all statutes, regulations and judicial decisions) supporting Your contention, including all facts supporting Your belief that PPFA should have made such payments despite the injunctions against the termination of provider status that are described in Texas's Complaint and the Relator's Complaint.

RESPONSE:

This Interrogatory calls for a legal conclusion and is an improper contention interrogatory. This Interrogatory asks for communications between Relator and the State of Texas and the State of Louisiana and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator's objections and statements of privilege, Relator refers Defendants to the facts alleged in Relator's Complaint.

INTERROGATORY NO. 19:

Identify all 2010-to-present facts demonstrating PPFA's alleged involvement in or knowledge of the alleged provision of fetal tissue by Defendant Planned Parenthood Gulf Coast, Inc. to the University of Texas Medical Branch.

RESPONSE:

This Interrogatory seeks information that is within the knowledge, custody or control of Defendants and calls for speculation. This Interrogatory asks for communications between Relator and the United States, the State of Texas, and the State of Louisiana, and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator's objections and statements of privilege, Relator refers Defendants to the documents contained in the trial and appellate record in the federal court litigation involving Defendants referenced in Relator's Complaint, including statements by Melissa Farrell. Relator further states that all fetal tissue research had to be reviewed and approved by PPFA so PPFA was aware of the PPFA Affiliates'

research projects.

INTERROGATORY NO. 20:

Identify all 2010-to-present facts demonstrating PPFA's alleged knowledge of, involvement in, or control of any alleged violation of medical and ethical standards or state or federal law by any Affiliate Defendant in connection with the provision of fetal tissue to any third parties, including without limitation:

- i. the date of any alleged knowledge of, involvement in, or control by PPFA;
- ii. the specific persons that You allege acted on behalf of PPFA; and
- iii. the medical and/or ethical standard or state or federal law that You allege was violated by the Affiliate Defendant.

RESPONSE:

This Interrogatory seeks information that is within the knowledge, custody or control of Defendants. This Interrogatory asks for communications between Relator and the United States, the State of Texas, and the State of Louisiana, and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator's objections and statements of privilege, Relator refers Defendants to the documents contained in the trial and appellate record in the federal court litigation involving Defendants referenced in Relator's Complaint, including but not limited to documents and facts in the record regarding the organizational structure and relationship between PPFA and PPFA Affiliates. Relator further states that all fetal tissue research had to be approved by PPFA, so the date of alleged knowledge of, involvement in, or

control by PPFA was the date research projects were reviewed and approved by PPFA, Johanna Morfesis was in charge of research at PPFA during the relevant time period, and the numerous medical and ethical standards and state or federal laws that were violated are described in trial and appellate record in the federal court litigation involving Defendants' termination from Medicaid.

INTERROGATORY NO. 21:

Identify and describe all facts demonstrating that PPFA knowingly and improperly avoided or decreased an obligation to pay money under the Texas Medicaid program.

RESPONSE:

This Interrogatory seeks information that is within the knowledge, custody or control of Defendants and calls for a legal conclusion. This Interrogatory asks for communications between Relator and the United States, the State of Texas, and the State of Louisiana, and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator's objections and statements of privilege, Relator refers Defendants to the documents contained in the trial and appellate record in the federal court litigation involving Defendants referenced in Relator's Complaint, including but not limited to documents and facts regarding the control and relationship between PPFA and PPFA Affiliates. Relator further states that PPFA provides medical services through approximately 50 affiliates nationwide, including Defendants PPFA Affiliates. PPFA Affiliates pay dues to PPFA and in exchange for these payments and provided

that PPFA Affiliates comply with PPFA's policies, PPFA Affiliates can hold themselves out to the public using the named "Planned Parenthood" and receive other benefits like monetary support and legal representation. PPFA provided legal representation to the PPFA Affiliates in federal court litigation involving the PPFA Affiliates termination from Medicaid. PPFA also exercises functional control over the PPFA Affiliates. It sets medical and operational standards for PPFA Affiliates and requires all PPFA Affiliates to provide certain core medical services. PPFA must review and approve all PPFA Affiliate research projects and PPFA sets policies that govern their medical practices, mandates certain informed consent forms to be used by PPFA Affiliates, and works with PPFA Affiliates to share best practices and industry information. PPFA Affiliates' medical services, including their enrollment and participation in Medicaid, are controlled by PPFA through PPFA's mandatory medical standards and guidelines, financial support, PPFA's counsel providing representation to the PPFA Affiliates in litigation over their termination from Medicaid, PPFA's leadership and managerial influence and control of the PPFA Affiliates, and PPFA's organizational structure.

INTERROGATORY NO. 22:

Identify and describe all facts demonstrating that PPFA knowingly and improperly avoided or decreased an obligation to pay money under the Louisiana Medicaid program.

RESPONSE:

This Interrogatory seeks information that is within the knowledge, custody or control of Defendants and calls for a legal conclusion. This Interrogatory asks for

communications between Relator and the United States, the State of Texas, and the State of Louisiana, and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator's objections and statements of privilege, Relator refers Defendants to the documents contained in the trial and appellate record in the federal court litigation involving Defendants referenced in Relator's Complaint, including but not limited to documents and facts regarding the control and relationship between PPFA and PPFA Affiliates. Relator further states that PPFA provides medical services through approximately 50 affiliates nationwide, including Defendants PPFA Affiliates. PPFA Affiliates pay dues to PPFA and in exchange for these payments and provided that PPFA Affiliates comply with PPFA's policies, PPFA Affiliates can hold themselves out to the public using the named "Planned Parenthood" and receive other benefits like monetary support and legal representation. PPFA provided legal representation to the PPFA Affiliates in federal court litigation involving the PPFA Affiliates termination from Medicaid. PPFA also exercises functional control over the PPFA Affiliates. It sets medical and operational standards for PPFA Affiliates and requires all PPFA Affiliates to provide certain core medical services. PPFA must review and approve all PPFA Affiliate research projects and PPFA sets policies that govern their medical practices, mandates certain informed consent forms to be used by PPFA Affiliates, and works with PPFA Affiliates to share best practices and industry information. PPFA Affiliates' medical services, including their enrollment and participation in Medicaid, are controlled by PPFA through PPFA's mandatory medical standards and guidelines,

financial support, PPFA's counsel providing representation to the PPFA Affiliates in litigation over their termination from Medicaid, PPFA's leadership and managerial influence and control of the PPFA Affiliates, and PPFA's organizational structure.

INTERROGATORY NO. 23:

For each false or fraudulent claim that You allege PPFA had knowledge of, involvement in, or control over, state the damages that You contend are associated with such claim, the basis for calculating those damages, and the amount of any penalties that You contend should be assessed for the claim.

RESPONSE:

This Interrogatory seeks information that is within the knowledge, custody or control of Defendants and calls for a legal conclusion. This Interrogatory asks for communications between Relator and the United States, the State of Texas, and the State of Louisiana, and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator's objections and statements of privilege, Relator refers Defendants to the Expert Reports of Donald Lochabay and the documents cited therein and produced to Defendants.

Respectfully submitted.

/s/ Andrew B. Stephens

Andrew B. Stephens

Texas Bar No. 24079396

Heather Gebelin Hacker

Texas Bar No. 24103325

HACKER STEPHENS LLP

108 Wild Basin Road South, Suite 250

Austin, Texas 78746

(512) 399-3022

andrew@hackerstephens.com

heather@hackerstephens.com

Attorneys For Relator

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2022, a true and correct copy of the foregoing document was sent by electronic mail to Defendants' counsel to the e-mail addresses below:

Leah Godesky
Danny Ashby
Justin Chapa
Amanda Santella
O'MELVENY & MYERS LLP
lgodesky@omm.com
dashby@omm.com
jchapa@omm.com
asantella@omm.com

**Attorneys for Defendant Planned Parenthood
Federation of America, Inc.**

Craig Margolis
Murad Hussain
Tirzah Lollar
Christopher Odell
ARNOLD PORTER KAY SCHOLER LLP
Craig.Margolis@arnoldporter.com
Murad.Hussain@arnoldporter.com
Tirzah.Lollar@arnoldporter.com
Christopher.Odell@arnoldporter.com

**Attorneys for Defendants Planned Parenthood
Federation of America, Inc., Planned Parenthood
Gulf Coast, Inc., Planned Parenthood of Greater
Texas, Inc., Planned Parenthood South Texas,
Inc., Planned Parenthood Cameron County, Inc.,
and Planned Parenthood San Antonio, Inc.**

/s/ Andrew B. Stephens
Andrew B. Stephens

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

UNITED STATES OF AMERICA *EX REL.*
DOE, *et al.*,

Plaintiffs,

V.

PLANNED PARENTHOOD FEDERATION
OF AMERICA, INC., *et al.*,

Defendants.

Civil Action No. 2:21-CV-00022-Z

**RELATOR’S SUPPLEMENTAL OBJECTIONS AND RESPONSES TO PLANNED
PARENTHOOD FEDERATION OF AMERICA, INC.’S FIRST SET OF INTERROGATORIES
TO RELATOR**

To: Leah Godesky, O'Melveny & Myers LLP, 1999 Avenue of the Stars, 8th Floor, Los Angeles, California 90067, Amanda Santella, O'Melveny & Myers LLP, 1625 Eye Street NW, Washington, DC 20006, Danny S. Ashby, Justin R. Chapa, O'Melveny & Myers LLP, 2501 North Harwood Street, Suite 1700, Dallas, Texas 75201, Attorneys for Defendant Planned Parenthood Federation of America, Inc.

Relator Alex Doe serves these Supplemental Objections and Responses to Planned Parenthood Federation of America, Inc.'s First Set of Interrogatories to Relator.

OBJECTIONS

1. Relator objects to the Interrogatories, including the “Definitions” and “Instructions,” where they exceed the requirements imposed by Federal Rule of Civil

Procedure (FRCP) 33, other FRCPs, or elsewhere. Relator will respond to the Interrogatories in accordance with FRCP 33, other FRCPs, and applicable law.

2. Relator objects to the Interrogatories where they seek disclosure of information protected by the attorney-client privilege, the work-product doctrine, the investigative-communications privilege, the common-interest privilege, and/or any other privileges and exemptions set forth in applicable law. Relator will provide Defendants with a privilege log for any responsive relevant information withheld for privilege.

3. Relator objects to the Interrogatories where they seek information not within Relator's possession, custody, or control.

4. Relator objects to the Interrogatories where they call for information to be disclosed that is protected by the HIPAA Privacy Rule or is confidential by law.

5. Relator objects to the Interrogatories where they are not properly limited to an appropriate time period. Answering Interrogatories outside of an appropriate time period will be overly broad, unduly burdensome, and neither relevant to any party's claim or defense, nor proportional to the needs of the case, under FRCP 26(b)(1).

6. Defendants' definition of the term "Communication" is overly broad, vague, and answering Interrogatories by using this definition would be unduly burdensome. Defendants' definition of the term includes "the transmission or expression of any thought, word, statement, fact, thing, idea, opinion, document, instruction, demand, or question, whether written or oral, whether made in person,

by telephone, in a meeting, transmitted electronically or telegraphically, or transmitted in any other fashion.” Relator will interpret the terms “communication” consistent with applicable FRCPs, rules, law, and common usage.

7. Defendants’ definition of the term “Describe” is overly broad, vague, and answering Interrogatories by this definition or searching for and identifying “any document or communication” with this definition would be unduly burdensome. Defendants’ definition of the term includes “to identify any document or communication concerning the item in question and to provide a complete factual summary chronologically setting forth the substance of, and identifying any person participating in, witnessing, or having knowledge of, whether firsthand or otherwise, any fact, action, occurrence, conduct, event, condition, or circumstance concerning the information in question.” Relator will interpret the terms “describe” consistent with applicable FRCPs, rules, law, and common usage.

8. Defendants’ definition of the term “Document” is overly broad, vague, and answering Interrogatories using that definition would be unduly burdensome where the definition departs from the FRCPs and other applicable law; including but not limited to, for example, adding “any designated tangible things,” to the definition of “document.” Relator will interpret the term “document” consistent with FRCP 33 and other applicable FRCPs, rules, and law.

9. Defendants’ definition of the terms “Regarding,” “relating to,” “related to,” “in relation to,” or “relates to” is overly broad, vague, and answering Interrogatories using that definition would be unduly burdensome. Defendants’

definition of the terms includes these unlimited descriptions: “relating in any way to, referring to, arising from, dealing with, consisting of, mentioning, discussing, describing, reflecting, concerning, memorializing, supporting, constituting, evidencing, comprising, recording, or in any other way pertaining to the subject, either in whole or in part, whether directly or indirectly.” Relator will interpret the terms “Regarding,” “relating to,” “related to,” “in relation to,” or “relates to” consistent with applicable FRCPs, rules, law, and common usage.

10. Defendants’ definition and use of the terms “Relator,” “You,” and “Your” is overly broad and neither relevant to any party’s claim or defense, nor proportional to the needs of the case, under FRCP 26(b)(1). Answering Interrogatories using that definition would be unduly burdensome. These terms as defined by Defendants include persons and entities with no relation to this matter. The terms’ vagueness and overbreadth make any Interrogatory with the terms as defined by Defendants exceed the scope of the specific claims and issues in this case and therefore makes those Interrogatories objectionable. Relator will interpret and respond to Interrogatories consistent with applicable FRCPs, rules, law, and common usage.

11. Relator objects to all of Defendants’ Instructions which exceed the requirements of FRCP 33, or other applicable Rules or law. Relator will answer the Interrogatories as required by FRCP 33, and other applicable Rules and law.

12. The answers made at this time are without prejudice to Relator's rights to amend or supplement its answers as appropriate under the FRCPs or other rules or law.

13. By answering these Interrogatories, Relator does not concede the relevance or admissibility of the information. Relator further does not waive, but instead, expressly preserves, the objections here.

14. Relator incorporates by reference the objections above into the answers set forth below. The failure to repeat any of the objections above does not waive any objection to the specific Interrogatory.

15. Relator intends to not produce documents which are privileged under the attorney-client, common interest, work-product, and government investigative privileges and protections. Any production of documents which are covered by the attorney-client, common interest, work product and government investigative privileges and protections is inadvertent under Federal Rule of Evidence (FRE) 502.

INTERROGATORIES

INTERROGATORY NO. 1

Identify each person with knowledge of the facts relevant to the allegations in the Relator's Complaint. Your response should identify the facts about which each person has knowledge.

ANSWER:

Relator refers Defendants to the persons listed in the parties' Initial Disclosures and the facts set forth therein.

INTERROGATORY NO. 2:

For each 2010-to-present Texas Medicaid claim submitted by an Affiliate Defendant that You contend was a false or fraudulent claim, identify all facts that You contend demonstrate PPFA's knowledge of, involvement in, or control over the claim.

ANSWER:

Relator refers Defendants to the Expert Reports of Donald Lochabay and the documents cited therein and produced to Defendants, and further refers Defendants to the documents contained in the trial and appellate record in the s Defendants referenced in Relator's Complaint, including but not limited to documents and facts regarding the control and relationship between PPFA and PPFA Affiliates. The Expert Reports of Donald Lochabay and the documents and information cited and provided to PPFA and the PPFA Affiliates with those Expert Reports identify the Medicaid payments that PPFA and the PPFA Affiliates were obligated to repay to the government, as well as the civil penalties owed by PPFA and the PPFA Affiliates for violations of the False Claims Act, Texas Medicaid Fraud Prevention Act, and Louisiana Medical Assistance Program Integrity Law. In addition, if PPFA's new lawyers have questions or are unable to locate documents or information in the trial or appellate record from the prior federal court litigation referenced in Relator's Complaint, that information is available from their client PPFA. Jennifer Sandman, one of PPFA's in-house lawyers, was trial and appellate counsel for the PPFA Affiliates in the prior federal court litigation. Ms. Sandman handled a multi-day evidentiary

hearing in the trial court and twice argued the case to the Fifth Circuit Court of Appeals and can provide PPFA's new lawyers with information or documents to answer any questions they may have about the prior litigation. Relator will also supplement this Response to include reference to specific documents contained in Relator's document production as soon as practicable, as well as additional documents produced by PPFA and the PPFA Affiliates in response to Relator's discovery requests and pending Motion to Compel PPFA's production of documents concerning Medicaid, Texas Medicaid, and Louisiana Medicaid.

Relator further states that PPFA provides medical services through approximately 50 affiliates nationwide, including the PPFA Affiliates. PPFA Affiliates pay dues to PPFA and in exchange for these payments and provided that PPFA Affiliates comply with PPFA's policies, PPFA Affiliates can hold themselves out to the public using the named "Planned Parenthood" and receive other benefits like monetary support and legal representation. PPFA provided legal representation to the PPFA Affiliates in federal and state court litigation involving the PPFA Affiliates' termination from Medicaid. PPFA also exercises functional control over the PPFA Affiliates. It sets medical and operational standards for PPFA Affiliates and requires all PPFA Affiliates to provide certain core medical services. PPFA must review and approve all PPFA Affiliate research projects, including Planned Parenthood Gulf Coast's (PPGC) participation in the University of Texas Medical Branch study involving fetal tissue.

PPFA sets policies that govern their medical practices, mandates certain

informed consent forms to be used by PPFA Affiliates, and works with PPFA Affiliates to share best practices and industry information. PPFA Affiliates' medical services, including their enrollment and participation in Medicaid, are controlled by PPFA through PPFA's mandatory medical standards and guidelines, financial support, PPFA's counsel providing representation to the PPFA Affiliates in litigation over their termination from Medicaid and other matters, PPFA's leadership and managerial influence and control of the PPFA Affiliates, and PPFA's organizational structure. PPFA accordingly exerts extensive control over its Affiliates' participation in state Medicaid programs, including the Texas Medicaid program. A Medicaid provider who signs the Texas Provider Agreement "certifies its understanding of a willingness to comply with the terms of the Agreement," including that "any falsification, omissions, or misrepresentation in connection with the application for enrollment or with claims filed may result in all paid services declared as an overpayment." Complaint, ECF No. 2 at 16, ¶ 38. By signing this Agreement, a provider further "agrees that it has an affirmative duty to refund any overpayments, duplicate payments, and erroneous payments that are paid to the provider by Medicaid as soon as such payment is discovered or reasonably should have been known." *Id.* PPFA was aware or should have been aware of these statements and certifications to which Defendant Affiliates agreed.

The Texas Medicaid Provider Procedures Manual states that providers must be enrolled to participate in the Texas Medicaid Program and to receive reimbursement for services provided to Medicaid recipients, meet all program

requirements and licensing and certification requirements, and comply with all other requirements in accordance with all federal and state laws and rules and regulations. In addition, the Texas Provider Manual states that a provider agrees to comply with all state and federal laws and regulations and policies established by the federal Centers for Medicare and Medicaid Services and the Texas Health & Human Services Commission. The Texas Provider Manual also informs providers of their responsibility for knowing the terms of the Texas Provider Agreement, program standards, statutes and penalties for violations. PPFA was aware or should have been aware of these Texas Medicaid program requirements.

Federal regulations require that all Medicaid-provider claim forms be imprinted with the statements: “This is to certify that the foregoing information is true, accurate, and complete,” and “I understand that payment of this claim will be from Federal and State funds, and that any falsification, or concealment of a material fact, may be prosecuted under Federal and State laws.” 42 C.F.R. § 455.18. Alternatively, the check for payment of a claim may be imprinted with the statement: “I understand in endorsing or depositing this check that payment will be from Federal and State funds and that any falsification, or concealment of a material fact, may be prosecuted under Federal and State laws.” *Id.* At § 455.19. PPFA was aware or should have been aware of these statements and certifications to which Defendant Affiliates agreed.

PPFA’s documents concerning Medicaid, Texas Medicaid, and Louisiana Medicaid will provide further evidence to prove the extent of PPFA’s control, oversight, and liability for the illegal acts alleged by Relator. Relator has moved to

compel PPFA to produce those documents and will further supplement its answer with the requested documents and information.

INTERROGATORY NO. 3:

For each 2010-to-present Texas Medicaid overpayment received by an Affiliate Defendant that You contend the Affiliate Defendant was obligated to report and repay, identify all facts that You contend demonstrate PPFA's knowledge of, involvement in, or control over the nonpayment of the claim, as well as all facts that You contend demonstrate that PPFA directed or controlled the Affiliate Defendant's alleged concealment of any overpayment or decision to not report or repay an overpayment.

ANSWER:

Relator refers Defendants to the Expert Reports of Donald Lochabay and the documents cited therein and produced to Defendants, and further refers Defendants to the documents contained in the trial and appellate record in the federal court litigation involving Defendants referenced in Relator's Complaint, including but not limited to documents and facts regarding the control and relationship between PPFA and PPFA Affiliates. The Expert Reports of Donald Lochabay and the documents and information cited and provided to PPFA and the PPFA Affiliates with those Expert Reports identify the Medicaid payments that PPFA and the PPFA Affiliates were obligated to repay to the government, as well as the civil penalties owed by PPFA and the PPFA Affiliates for violations of the False Claims Act, Texas Medicaid Fraud Prevention Act, and

Louisiana Medical Assistance Program Integrity Law. In addition, if PPFA's new lawyers have questions or are unable to locate documents or information in the trial or appellate record from the prior federal court litigation referenced in Relator's Complaint, that information is available from their client PPFA. Jennifer Sandman, one of PPFA's in-house lawyers, was trial and appellate counsel for the PPFA Affiliates in the prior federal court litigation. Ms. Sandman handled a multi-day evidentiary hearing in the trial court and twice argued the case to the Fifth Circuit Court of Appeals and can provide PPFA's new lawyers with information or documents to answer any questions they may have about the prior litigation. Relator will also supplement this Response to include reference to specific documents contained in Relator's document production as soon as practicable, as well as additional documents produced by PPFA and the PPFA Affiliates in response to Relator's discovery requests and pending Motion to Compel PPFA's production of documents concerning Medicaid, Texas Medicaid, and Louisiana Medicaid.

Relator further states that PPFA provides medical services through approximately 50 affiliates nationwide, including the PPFA Affiliates. PPFA Affiliates pay dues to PPFA and in exchange for these payments and provided that PPFA Affiliates comply with PPFA's policies, PPFA Affiliates can hold themselves out to the public using the named "Planned Parenthood" and receive other benefits like monetary support and legal representation. PPFA provided legal representation to the PPFA Affiliates in federal and state court litigation involving the PPFA Affiliates' termination from Medicaid. PPFA also exercises functional control over the PPFA

Affiliates. It sets medical and operational standards for PPFA Affiliates and requires all PPFA Affiliates to provide certain core medical services. PPFA must review and approve all PPFA Affiliate research projects, including PPGC's participation in the University of Texas Medical Branch study involving fetal tissue.

PPFA sets policies that govern their medical practices, mandates certain informed consent forms to be used by PPFA Affiliates, and works with PPFA Affiliates to share best practices and industry information. PPFA Affiliates' medical services, including their enrollment and participation in Medicaid, are controlled by PPFA through PPFA's mandatory medical standards and guidelines, financial support, PPFA's counsel providing representation to the PPFA Affiliates in litigation over their termination from Medicaid and other matters, PPFA's leadership and managerial influence and control of the PPFA Affiliates, and PPFA's organizational structure. PPFA accordingly exerts extensive control over its Affiliates' participation in state Medicaid programs, including the Texas Medicaid program. A Medicaid provider who signs the Texas Provider Agreement "certifies its understanding of a willingness to comply with the terms of the Agreement," including that "any falsification, omissions, or misrepresentation in connection with the application for enrollment or with claims filed may result in all paid services declared as an overpayment." Complaint, ECF No. 2 at 16, ¶ 38. By signing this Agreement, a provider further "agrees that it has an affirmative duty to refund any overpayments, duplicate payments, and erroneous payments that are paid to the provider by Medicaid as soon as such payment is discovered or reasonably should have been known." *Id.* PPFA was aware or should

have been aware of these statements and certifications to which Defendant Affiliates agreed.

The Texas Medicaid Provider Procedures Manual states that providers must be enrolled to participate in the Texas Medicaid Program and to receive reimbursement for services provided to Medicaid recipients, meet all program requirements and licensing and certification requirements, and comply with all other requirements in accordance with all federal and state laws and rules and regulations. In addition, the Texas Provider Manual states that a provider agrees to comply with all state and federal laws and regulations and policies established by the federal Centers for Medicare and Medicaid Services and the Texas Health & Human Services Commission. The Texas Provider Manual also informs providers of their responsibility for knowing the terms of the Texas Provider Agreement, program standards, statutes and penalties for violations. PPFA was aware or should have been aware of these Texas Medicaid program requirements.

Federal regulations require that all Medicaid-provider claim forms be imprinted with the statements: “This is to certify that the foregoing information is true, accurate, and complete,” and “I understand that payment of this claim will be from Federal and State funds, and that any falsification, or concealment of a material fact, may be prosecuted under Federal and State laws.” 42 C.F.R. § 455.18. Alternatively, the check for payment of a claim may be imprinted with the statement: “I understand in endorsing or depositing this check that payment will be from Federal and State funds and that any falsification, or concealment of a material fact, may be prosecuted

under Federal and State laws.” *Id.* At § 455.19. PPFA was aware or should have been aware of these statements and certifications to which Defendant Affiliates agreed.

PPFA’s documents concerning Medicaid, Texas Medicaid, and Louisiana Medicaid will provide further evidence to prove the extent of PPFA’s control, oversight, and liability for the illegal acts alleged by Relator. Relator has moved to compel PPFA to produce those documents and will further supplement its answer with the requested documents and information.

INTERROGATORY NO. 4:

For each 2010-to-present Louisiana Medicaid claim submitted by an Affiliate Defendant that You contend was a false or fraudulent claim, identify all facts that You contend demonstrate PPFA’s knowledge of, involvement in, or control over such claim.

ANSWER:

Relator refers Defendants to the Expert Reports of Donald Lochabay and the documents cited therein and produced to Defendants, and further refers Defendants to the documents contained in the trial and appellate record in the federal court litigation involving Defendants referenced in Relator’s Complaint, including but not limited to documents and facts regarding the control and relationship between PPFA and PPFA Affiliates. The Expert Reports of Donald Lochabay and the documents and information cited and provided to PPFA and the PPFA Affiliates with those Expert Reports identify the Medicaid payments that PPFA and the PPFA Affiliates were obligated to repay to

the government, as well as the civil penalties owed by PPFA and the PPFA Affiliates for violations of the False Claims Act, Texas Medicaid Fraud Prevention Act, and Louisiana Medical Assistance Program Integrity Law. In addition, if PPFA's new lawyers have questions or are unable to locate documents or information in the trial or appellate record from the prior federal court litigation referenced in Relator's Complaint, that information is available from their client PPFA. Jennifer Sandman, one of PPFA's in-house lawyers, was trial and appellate counsel for the PPFA Affiliates in the prior federal court litigation. Ms. Sandman handled a multi-day evidentiary hearing in the trial court and twice argued the case to the Fifth Circuit Court of Appeals and can provide PPFA's new lawyers with information or documents to answer any questions they may have about the prior litigation. Relator will also supplement this Response to include reference to specific documents contained in Relator's document production as soon as practicable, as well as additional documents produced by PPFA and the PPFA Affiliates in response to Relator's discovery requests and pending Motion to Compel PPFA's production of documents concerning Medicaid, Texas Medicaid, and Louisiana Medicaid.

Relator further states that PPFA provides medical services through approximately 50 affiliates nationwide, including the PPFA Affiliates. PPFA Affiliates pay dues to PPFA and in exchange for these payments and provided that PPFA Affiliates comply with PPFA's policies, PPFA Affiliates can hold themselves out to the public using the named "Planned Parenthood" and receive other benefits like monetary support and legal representation. PPFA provided legal representation to the PPFA

Affiliates in federal and state court litigation involving the PPFA Affiliates' termination from Medicaid. PPFA also exercises functional control over the PPFA Affiliates. It sets medical and operational standards for PPFA Affiliates and requires all PPFA Affiliates to provide certain core medical services. PPFA must review and approve all PPFA Affiliate research projects, including Planned Parenthood Gulf Coast's participation in the University of Texas Medical Branch study involving fetal tissue.

PPFA sets policies that govern their medical practices, mandates certain informed consent forms to be used by PPFA Affiliates, and works with PPFA Affiliates to share best practices and industry information. PPFA Affiliates' medical services, including their enrollment and participation in Medicaid, are controlled by PPFA through PPFA's mandatory medical standards and guidelines, financial support, PPFA's counsel providing representation to the PPFA Affiliates in litigation over their termination from Medicaid, PPFA's leadership and managerial influence and control of the PPFA Affiliates, and PPFA's organizational structure. PPFA accordingly exerts extensive control over its Affiliates' participation in state Medicaid programs, including the Louisiana Medicaid program. A Medicaid provider who signs the Louisiana Provider Agreement "certifies its understanding and willingness to comply with the terms of the Agreement and all policies in regulations," and further certifies its understanding "that any false claims, statements or documents, or concealment of a material fact, may be prosecuted under applicable federal and state laws including the provisions of the federal FCA and any Louisiana laws and rules pertaining to civil or

criminal penalties for false claims and statements.” Complaint, ECF No. 2 at 17–18, ¶ 43. PPFA was aware or should have been aware of these statements and certifications to which Defendant Affiliates agreed.

The Louisiana Medicaid Services Manual provides that—in order to receive reimbursement for healthcare services provided to Medicaid recipients—the provider must be enrolled to participate in the Louisiana Medicaid Program, meet all licensing and/or certification requirements inherent to the healthcare profession, and comply with all other requirements in accordance with all federal and state laws and Louisiana Bureau of Health Services Financing policies. The Louisiana Provider Manual further provides that when enrolled in the Louisiana Medicaid Program, a provider agrees to abide by all applicable state and federal laws and regulations and policies established by the federal Centers for Medicare and Medicaid Services and the Louisiana Department of Health. It also informs providers that they are responsible for knowing the terms of the Louisiana Provider Agreement, program standards, statutes and penalties for violations. PPFA was aware or should have been aware of these Louisiana Medicaid provider requirements.

Federal regulations require that all Medicaid-provider claim forms be imprinted with the statements: “This is to certify that the foregoing information is true, accurate, and complete,” and “I understand that payment of this claim will be from Federal and State funds, and that any falsification, or concealment of a material fact, may be prosecuted under Federal and State laws.” 42 C.F.R. § 455.18. Alternatively, the check for payment of a claim may be imprinted with the statement: “I understand

in endorsing or depositing this check that payment will be from Federal and State funds and that any falsification, or concealment of a material fact, may be prosecuted under Federal and State laws.” *Id.* At § 455.19. PPFA was aware or should have been aware of these statements and certifications to which Defendant Affiliates agreed.

PPFA’s documents concerning Medicaid, Texas Medicaid, and Louisiana Medicaid will provide further evidence to prove the extent of PPFA’s control, oversight, and liability for the illegal acts alleged by Relator. Relator has moved to compel PPFA to produce those documents and will further supplement its answer with the requested documents and information.

INTERROGATORY NO. 5:

For each 2010-to-present Louisiana Medicaid overpayment received by an Affiliate Defendant that You contend the Affiliate Defendant was obligated to report and repay, identify all facts that You contend demonstrate PPFA’s knowledge of, involvement in, or control over the nonpayment of the claim, as well as all facts that You contend demonstrate that PPFA directed or controlled the Affiliate Defendant’s alleged concealment of any overpayment or decision to not report or repay an overpayment.

ANSWER:

Relator refers Defendants to the Expert Reports of Donald Lochabay and the documents cited therein and produced to Defendants, and further refers Defendants to the documents contained in the trial and appellate record in the federal court litigation

involving Defendants referenced in Relator's Complaint, including but not limited to documents and facts regarding the control and relationship between PPFA and PPFA Affiliates. The Expert Reports of Donald Lochabay and the documents and information cited and provided to PPFA and the PPFA Affiliates with those Expert Reports identify the Medicaid payments that PPFA and the PPFA Affiliates were obligated to repay to the government, as well as the civil penalties owed by PPFA and the PPFA Affiliates for violations of the False Claims Act, Texas Medicaid Fraud Prevention Act, and Louisiana Medical Assistance Program Integrity Law. In addition, if PPFA's new lawyers have questions or are unable to locate documents or information in the trial or appellate record from the prior federal court litigation referenced in Relator's Complaint, that information is available from their client PPFA. Jennifer Sandman, one of PPFA's in-house lawyers, was trial and appellate counsel for the PPFA Affiliates in the prior federal court litigation. Ms. Sandman handled a multi-day evidentiary hearing in the trial court and twice argued the case to the Fifth Circuit Court of Appeals and can provide PPFA's new lawyers with information or documents to answer any questions they may have about the prior litigation. Relator will also supplement this Response to include reference to specific documents contained in Relator's document production as soon as practicable, as well as additional documents produced by PPFA and the PPFA Affiliates in response to Relator's discovery requests and pending Motion to Compel PPFA's production of documents concerning Medicaid, Texas Medicaid, and Louisiana Medicaid.

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who signs the Louisiana Provider Agreement “certifies its understanding and willingness to comply with the terms of the Agreement and all policies in regulations,” and further certifies its understanding “that any false claims, statements or documents, or concealment of a material fact, may be prosecuted under applicable federal and state laws including the provisions of the federal FCA and any Louisiana laws and rules pertaining to civil or criminal penalties for false claims and statements.” Complaint, ECF No. 2 at 17–18, ¶ 43. PPFA was aware or should have been aware of these statements and certifications to which Defendant Affiliates agreed.

The Louisiana Medicaid Services Manual provides that—in order to receive reimbursement for healthcare services provided to Medicaid recipients—the provider must be enrolled to participate in the Louisiana Medicaid Program, meet all licensing and/or certification requirements inherent to the healthcare profession, and comply with all other requirements in accordance with all federal and state laws and Louisiana Bureau of Health Services Financing policies. The Louisiana Provider Manual further provides that when enrolled in the Louisiana Medicaid Program, a provider agrees to abide by all applicable state and federal laws and regulations and policies established by the federal Centers for Medicare and Medicaid Services and the Louisiana Department of Health. It also informs providers that they are responsible for knowing the terms of the Louisiana Provider Agreement, program standards, statutes and penalties for violations. PPFA was aware or should have been aware of these Louisiana Medicaid provider requirements.

Federal regulations require that all Medicaid-provider claim forms be imprinted

with the statements: “This is to certify that the foregoing information is true, accurate, and complete,” and “I understand that payment of this claim will be from Federal and State funds, and that any falsification, or concealment of a material fact, may be prosecuted under Federal and State laws.” 42 C.F.R. § 455.18. Alternatively, the check for payment of a claim may be imprinted with the statement: “I understand in endorsing or depositing this check that payment will be from Federal and State funds and that any falsification, or concealment of a material fact, may be prosecuted under Federal and State laws.” *Id.* At § 455.19. PPFA was aware or should have been aware of these statements and certifications to which Defendant Affiliates agreed.

PPFA’s documents concerning Medicaid, Texas Medicaid, and Louisiana Medicaid will provide further evidence to prove the extent of PPFA’s control, oversight, and liability for the illegal acts alleged by Relator. Relator has moved to compel PPFA to produce those documents and will further supplement its answer with the requested documents and information.

INTERROGATORY NO. 6:

Identify the first date on which the Relator communicated with the State of Texas regarding any of the Affiliate Defendants’ submission of claims to Texas Medicaid that You contend were false or fraudulent, and describe, in detail, the Relator’s communication with the State of Texas regarding such claims (including without limitation the nature, circumstances, participants, and contents of the communication).

ANSWER:

This Interrogatory is overbroad because of the objectionably very broad definition of “communications.” This Interrogatory asks for communications between Relator and the State of Texas and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. This is especially true with the broad definition of “communications.” Subject to Relator’s objections and statements of privileges, Relator states that Relator provided information and evidence concerning the material facts and allegations set forth in Relator’s Complaint to the State of Texas beginning in May 2015 and including on February 5, 2021 before filing Relator’s Complaint. Relator disclosed to the government all of the material facts and information concerning Planned Parenthood’s alleged violations of the Federal False Claims Act, the Texas Medicaid Fraud Prevention Act, and the Louisiana Medical Assistance Program Integrity Law as set forth in Relator’s Complaint to the Louisiana Attorney General at 11:07 AM on February 5, 2021, to the United States Attorney for the Northern District of Texas at 11:10 AM on February 5, 2021, and to the Texas Attorney General at 11:13 AM on February 5, 2021. Non-privileged documents reflecting these disclosures to the government are being produced by Relator. Additional non-privileged emails and documents evidencing the dates of Relator’s disclosures of material facts and allegations in Relator’s Complaint are also being produced by Relator. Relator will provide Defendants with a privilege log for any additional responsive relevant documents withheld for privilege.

INTERROGATORY NO. 7:

Identify the first date on which the Relator communicated with the State of Texas regarding PPFA's alleged knowledge of, involvement in, or control over any claim that You contend was false or fraudulent, and describe, in detail, the Relator's communication with the State of Texas regarding such claim (including without limitation the nature, circumstances, participants, and contents of the communication).

ANSWER:

This Interrogatory is overbroad because of the objectionably very broad definition of "communications." This Interrogatory asks for communications between Relator and the State of Texas and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. This is especially true with the broad definition of "communications." Subject to Relator's objections and statements of privilege, Relator states that Relator provided information and evidence concerning the material facts and allegations set forth in Relator's Complaint to the State of Texas beginning in May 2015 and including on February 5, 2021 before filing Relator's Complaint. Relator disclosed to the government all of the material facts and information concerning Planned Parenthood's alleged violations of the Federal False Claims Act, the Texas Medicaid Fraud Prevention Act, and the Louisiana Medical Assistance Program Integrity Law as set forth in Relator's Complaint to the Louisiana Attorney General at 11:07 AM on February 5, 2021, to the United States Attorney for the Northern District of Texas at

11:10 AM on February 5, 2021, and to the Texas Attorney General at 11:13 AM on February 5, 2021. Non-privileged documents reflecting these disclosures to the government are being produced by Relator. Additional non-privileged emails and documents evidencing the dates of Relator's disclosures of material facts and allegations in Relator's Complaint are also being produced by Relator. Relator will provide Defendants with a privilege log for any additional responsive relevant documents withheld for privilege.

INTERROGATORY NO. 8:

Identify the first date on which the Relator communicated with the State of Louisiana regarding any of the Affiliate Defendants' submission of claims to Louisiana Medicaid that You contend were false or fraudulent, and describe, in detail, the Relator's communication with the State of Louisiana regarding such claims (including without limitation the nature, circumstances, participants, and contents of the communication).

ANSWER:

This Interrogatory is overbroad because of the objectionably very broad definition of "communications." This interrogatory asks for communications between Relator and the State of Louisiana and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. This is especially true with the broad definition of "communications." Subject to Relator's objections and statements of Privilege, Relator

states that Relator provided information and evidence concerning the material facts and allegations set forth in Relator's Complaint to the State of Louisiana beginning in May 2015 and including on February 5, 2021 before filing Relator's Complaint. Relator disclosed to the government all of the material facts and information concerning Planned Parenthood's alleged violations of the Federal False Claims Act, the Texas Medicaid Fraud Prevention Act, and the Louisiana Medical Assistance Program Integrity Law as set forth in Relator's Complaint to the Louisiana Attorney General at 11:07 AM on February 5, 2021, to the United States Attorney for the Northern District of Texas at 11:10 AM on February 5, 2021, and to the Texas Attorney General at 11:13 AM on February 5, 2021. Non-privileged documents reflecting these disclosures to the government are being produced by Relator. Additional non-privileged emails and documents evidencing the dates of Relator's disclosures of material facts and allegations in Relator's Complaint are also being produced by Relator. Relator will provide Defendants with a privilege log for any additional responsive relevant documents withheld for privilege.

INTERROGATORY NO. 9:

Identify the first date on which the Relator communicated with the State of Louisiana regarding PPFA's alleged knowledge of, involvement in, or control over any claim that You contend was false or fraudulent, and describe, in detail, the Relator's communication with the State of Louisiana regarding such claim (including without

limitation the nature, circumstances, participants, and contents of the communication).

ANSWER:

This Interrogatory is overbroad because of the objectionably very broad definition of “communications.” This Interrogatory asks for communications between Relator and the State of Louisiana and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. This is especially true with the broad definition of “communications.” Subject to Relator’s objections and statements of privilege, Relator states that Relator provided information and evidence concerning the material facts and allegations set forth in Relator’s Complaint to the State of Louisiana beginning in May 2015 and including on February 5, 2021 before filing Relator’s Complaint. Relator disclosed to the government all of the material facts and information concerning Planned Parenthood’s alleged violations of the Federal False Claims Act, the Texas Medicaid Fraud Prevention Act, and the Louisiana Medical Assistance Program Integrity Law as set forth in Relator’s Complaint to the Louisiana Attorney General at 11:07 AM on February 5, 2021, to the United States Attorney for the Northern District of Texas at 11:10 AM on February 5, 2021, and to the Texas Attorney General at 11:13 AM on February 5, 2021. Non-privileged documents reflecting these disclosures to the government are being produced by Relator. Additional non-privileged emails and documents evidencing the dates of Relator’s disclosures of material facts and allegations in Relator’s Complaint are also being produced by Relator. Relator will

provide Defendants with a privilege log for any additional responsive relevant documents withheld for privilege.

INTERROGATORY NO. 10:

Identify the first date on which the Relator communicated with the United States regarding any of the Affiliate Defendants' submission of claims to Texas or Louisiana Medicaid that You contend were false or fraudulent, and describe, in detail, the Relator's communication with the United States regarding such claims (including without limitation the nature, circumstances, participants, and contents of the communication).

ANSWER:

This Interrogatory is overbroad because of the objectionably very broad definition of "communications." This interrogatory asks for communications between Relator and the United States and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. This is especially true with the broad definition of "communications." Subject to Relator's objections and statements of privilege, Relator states that Relator provided information and evidence concerning the material facts and allegations set forth in Relator's Complaint to the United States beginning in May 2015 and including on February 5, 2021 before filing Relator's Complaint. Relator disclosed to the government all of the material facts and information concerning Planned Parenthood's alleged violations of the Federal False Claims Act, the Texas Medicaid Fraud

Prevention Act, and the Louisiana Medical Assistance Program Integrity Law as set forth in Relator's Complaint to the Louisiana Attorney General at 11:07 AM on February 5, 2021, to the United States Attorney for the Northern District of Texas at 11:10 AM on February 5, 2021, and to the Texas Attorney General at 11:13 AM on February 5, 2021. Non-privileged documents reflecting these disclosures to the government are being produced by Relator. Additional non-privileged emails and documents evidencing the dates of Relator's disclosures of material facts and allegations in Relator's Complaint are also being produced by Relator. Relator will provide Defendants with a privilege log for any additional responsive relevant documents withheld for privilege.

INTERROGATORY NO. 11:

Identify the first date on which the Relator communicated with the United States regarding PPFA's alleged knowledge of, involvement in, or control over any claim that You contend was false or fraudulent, and describe, in detail, the Relator's communication with the United States regarding such claim (including without limitation the nature, circumstances, participants, and contents of the communication).

ANSWER:

This Interrogatory is overbroad because of the objectionably very broad definition of "communications." This Interrogatory asks for communications between Relator and the United States and seeks information which is covered by the attorney-

client, common interest, work product, and government investigative privileges and protections. This is especially true with the broad definition of “communications.” Subject to Relator’s objections and statements of privilege, Relator states that Relator provided information and evidence concerning the material facts and allegations set forth in Relator’s Complaint to the United States beginning in May 2015 and including on February 5, 2021 before filing Relator’s Complaint. Relator disclosed to the government all of the material facts and information concerning Planned Parenthood’s alleged violations of the Federal False Claims Act, the Texas Medicaid Fraud Prevention Act, and the Louisiana Medical Assistance Program Integrity Law as set forth in Relator’s Complaint to the Louisiana Attorney General at 11:07 AM on February 5, 2021, to the United States Attorney for the Northern District of Texas at 11:10 AM on February 5, 2021, and to the Texas Attorney General at 11:13 AM on February 5, 2021. Non-privileged documents reflecting these disclosures to the government are being produced by Relator. Additional non-privileged emails and documents evidencing the dates of Relator’s disclosures of material facts and allegations in Relator’s Complaint are also being produced by Relator. Relator will provide Defendants with a privilege log for any additional responsive relevant documents withheld for privilege.

INTERROGATORY NO. 12:

Identify all facts in Texas’s Complaint of which You contend the State of Texas did not have knowledge before February 5, 2021, and describe, in detail, why the

State of Texas could not have obtained knowledge of those facts before February 5, 2021.

ANSWER:

This Interrogatory seeks information that is within the knowledge, custody or control of the State of Texas and calls for speculation regarding how or why another person or party could or could not have obtained knowledge. This Interrogatory asks for communications between Relator and the State of Texas and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator's objections and statements of privilege, Relator states that Relator disclosed the material facts alleged in Relator's Complaint to the State of Texas prior to filing Relator's Complaint and that the State of Texas did not have knowledge of those material facts prior to Relator's disclosure.

INTERROGATORY NO. 13:

Identify all facts in Texas's Complaint of which You contend the State of Louisiana did not have knowledge before February 5, 2021, and describe, in detail, why the State of Louisiana could not have obtained knowledge of those facts before February 5, 2021.

ANSWER:

This Interrogatory seeks information that is within the knowledge, custody or control of the State of Louisiana and calls for speculation regarding how or why another

person or party could or could not have obtained knowledge. This Interrogatory asks for communications between Relator and the State of Louisiana and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator's objections and statements of privilege, Relator states that Relator disclosed the material facts alleged in Relator's Complaint to the State of Louisiana prior to filing Relator's Complaint and that the State of Louisiana did not have knowledge of those material facts prior to Relator's disclosure.

INTERROGATORY NO. 14:

Identify all facts in Texas's Complaint of which You contend You had knowledge and the United States had no knowledge before February 5, 2021, and describe, in detail, why the United States could not have obtained knowledge of those facts before February 5, 2021.

ANSWER:

This Interrogatory seeks information that is within the knowledge, custody or control of the United States and calls for speculation regarding how or why another person or party could or could not have obtained knowledge. This Interrogatory asks for communications between Relator and the United States and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator's objections and statements of privilege, Relator states that Relator disclosed the material facts

alleged in Relator's Complaint to the United States prior to filing Relator's Complaint and that the United States did not have knowledge of those material facts prior to Relator's disclosure.

INTERROGATORY NO. 15:

Identify all facts in the Relator's Complaint of which You contend the State of Texas did not have knowledge before February 5, 2021, and describe, in detail, why the State of Texas could not have obtained knowledge of those facts before February 5, 2021.

ANSWER:

This Interrogatory seeks information that is within the knowledge, custody or control of the State of Texas and calls for speculation regarding how or why another person or party could or could not have obtained knowledge. This Interrogatory asks for communications between Relator and the State of Texas and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator's objections and statements of privilege, Relator states that Relator disclosed the material facts alleged in Relator's Complaint to the State of Texas prior to filing Relator's Complaint and that the State of Texas did not have knowledge of those material facts prior to Relator's disclosure.

INTERROGATORY NO. 16:

Identify all facts in the Relator's Complaint of which You contend the State of Louisiana did not have knowledge before February 5, 2021, and describe, in detail, why the State of Louisiana could not have obtained knowledge of those facts before February 5, 2021.

ANSWER:

This Interrogatory seeks information that is within the knowledge, custody or control of the State of Louisiana and calls for speculation regarding how or why another person or party could or could not have obtained knowledge. This Interrogatory asks for communications between Relator and the State of Louisiana and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator's objections and statements of privilege, Relator states that Relator disclosed the material facts alleged in Relator's Complaint to the State of Louisiana prior to filing Relator's Complaint and that the State of Louisiana did not have knowledge of those material facts prior to Relator's disclosure.

INTERROGATORY NO. 17:

Identify all facts in the Relator's Complaint of which You contend You had knowledge and the United States had no knowledge before February 5, 2021, and describe, in detail, why the United States could not have obtained knowledge of those facts before February 5, 2021.

ANSWER:

This Interrogatory seeks information that is within the knowledge, custody or control of the United States and calls for speculation. This Interrogatory asks for communications between Relator and the United States and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator's objections and statements of privilege, Relator states that Relator disclosed the material facts alleged in Relator's Complaint to the United States prior to filing Relator's Complaint and that the United States did not have knowledge of those material facts prior to Relator's disclosure.

INTERROGATORY NO. 18:

If you contend that PPFA had or has an obligation to repay 2010-to-present Texas or Louisiana Medicare overpayments made to any Affiliate Defendant, describe all facts (and identify all statutes, regulations and judicial decisions) supporting Your contention, including all facts supporting Your belief that PPFA should have made such payments despite the injunctions against the termination of provider status that are described in Texas's Complaint and the Relator's Complaint.

ANSWER:

This Interrogatory calls for a legal conclusion and is an improper contention interrogatory. This Interrogatory asks for communications between Relator and the State of Texas and the State of Louisiana and seeks information which is covered by the attorney-client, common interest, work product, and government investigative

privileges and protections. Subject to Relator's objections and statements of privilege, Relator refers Defendants to the facts alleged in Relator's Complaint. In addition, this is a contention interrogatory seeking essentially all facts and evidence that support Relator's allegations as well as every legal basis and legal theory for those claims and allegations. Relator will supplement the answer to this interrogatory at a reasonable time with any additional facts or information produced by Defendants in discovery, deposition testimony provided by Defendants, and documents and information produced by PPFA in response to Relator's pending Motion to Compel the production of all of PPFA's documents and information concerning Medicaid, Texas Medicaid, and Louisiana Medicaid.

INTERROGATORY NO. 19:

Identify all 2010-to-present facts demonstrating PPFA's alleged involvement in or knowledge of the alleged provision of fetal tissue by Defendant Planned Parenthood Gulf Coast, Inc. to the University of Texas Medical Branch.

ANSWER:

This Interrogatory seeks information that is within the knowledge, custody or control of Defendants and calls for speculation. This Interrogatory asks for communications between Relator and the United States, the State of Texas, and the State of Louisiana, and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator's objections and statements of privilege, Relator refers

Defendants to the documents contained in the trial and appellate record in the federal court litigation involving Defendants referenced in Relator's Complaint, including statements by Melissa Farrell. In addition, if PPFA's new lawyers have questions or are unable to locate documents or information in the trial or appellate record from the prior federal court litigation referenced in Relator's Complaint, that information is available from their client PPFA. Jennifer Sandman, one of PPFA's in-house lawyers, was trial and appellate counsel for the PPFA Affiliates in the prior federal court litigation. Ms. Sandman handled a multi-day evidentiary hearing in the trial court and twice argued the case to the Fifth Circuit Court of Appeals and can provide PPFA's new lawyers with information or documents to answer any questions they may have about the prior litigation. Relator will also supplement this Response to include reference to specific documents contained in Relator's document production as soon as practicable, as well as additional documents produced by PPFA and the PPFA Affiliates in response to Relator's discovery requests and pending Motion to Compel production of all of PPFA's documents concerning Medicaid, Texas Medicaid, and Louisiana Medicaid.

Relator further states that all fetal tissue research had to be reviewed and approved by PPFA so PPFA was aware of the PPFA Affiliates' research projects. In addition, several of PPFA's most senior executives and physicians were involved in oversight and control of the PPFA Affiliates' fetal tissue research activities.

PPFA's documents concerning Medicaid, Texas Medicaid, and Louisiana Medicaid will provide further evidence to prove the extent of PPFA's control,

oversight, and liability for the illegal acts alleged by Relator. Relator has moved to compel PPFA to produce those documents and will further supplement its answer with the requested documents and information.

INTERROGATORY NO. 20:

Identify all 2010-to-present facts demonstrating PPFA's alleged knowledge of, involvement in, or control of any alleged violation of medical and ethical standards or state or federal law by any Affiliate Defendant in connection with the provision of fetal tissue to any third parties, including without limitation:

- i. the date of any alleged knowledge of, involvement in, or control by PPFA;
- ii. the specific persons that You allege acted on behalf of PPFA; and
- iii. the medical and/or ethical standard or state or federal law that You allege was violated by the Affiliate Defendant.

ANSWER:

This Interrogatory seeks information that is within the knowledge, custody or control of Defendants. This Interrogatory asks for communications between Relator and the United States, the State of Texas, and the State of Louisiana, and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator's objections and statements of privilege, Relator refers Defendants to the documents contained in the trial and appellate record in the federal court litigation involving Defendants referenced in Relator's Complaint, including but not limited to documents

and facts in the record regarding the organizational structure and relationship between PPFA and PPFA Affiliates. In addition, if PPFA's new lawyers have questions or are unable to locate documents or information in the trial or appellate record from the prior federal court litigation referenced in Relator's Complaint, that information is available from their client PPFA. Jennifer Sandman, one of PPFA's in-house lawyers, was trial and appellate counsel for the PPFA Affiliates in the prior federal court litigation. Ms. Sandman handled a multi-day evidentiary hearing in the trial court and twice argued the case to the Fifth Circuit Court of Appeals and can provide PPFA's new lawyers with information or documents to answer any questions they may have about the prior litigation. Relator will also supplement this Response to include reference to specific documents contained in Relator's document production as soon as practicable, as well as additional documents produced by PPFA and the PPFA Affiliates in response to Relator's discovery requests and pending Motion to Compel PPFA's production of documents concerning Medicaid, Texas Medicaid, and Louisiana Medicaid.

Relator further states that all fetal tissue research had to be approved by PPFA, so the date of alleged knowledge of, involvement in, or control by PPFA was the date research projects were reviewed and approved by PPFA, and the numerous medical and ethical standards and state or federal laws that were violated are described in trial and appellate record in the federal court litigation involving Defendants' termination from Medicaid. In addition, several of PPFA's most senior executives and physicians were involved in oversight and control of the PPFA Affiliates' fetal tissue research

activities. Further discovery will reveal that PPFA senior executives promoted fetal tissue research as a means to increase the PPFA Affiliates' revenue and profits.

PPFA's documents concerning Medicaid, Texas Medicaid, and Louisiana Medicaid will provide further evidence to prove the extent of PPFA's control, oversight, and liability for the illegal acts alleged by Relator. Relator has moved to compel PPFA to produce those documents and will further supplement its answer with the requested documents and information.

INTERROGATORY NO. 21:

Identify and describe all facts demonstrating that PPFA knowingly and improperly avoided or decreased an obligation to pay money under the Texas Medicaid program.

ANSWER:

This Interrogatory seeks information that is within the knowledge, custody or control of Defendants and calls for a legal conclusion. This Interrogatory asks for communications between Relator and the United States, the State of Texas, and the State of Louisiana, and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator's objections and statements of privilege, Relator refers Defendants to the documents contained in the trial and appellate record in the federal court litigation involving Defendants referenced in Relator's Complaint, including but not limited to documents and facts regarding the control and relationship between

PPFA and PPFA Affiliates. In addition, if PPFA's new lawyers have questions or are unable to locate documents or information in the trial or appellate record from the prior federal court litigation referenced in Relator's Complaint, that information is available from their client PPFA. Jennifer Sandman, one of PPFA's in-house lawyers, was trial and appellate counsel for the PPFA Affiliates in the prior federal court litigation. Ms. Sandman handled a multi-day evidentiary hearing in the trial court and twice argued the case to the Fifth Circuit Court of Appeals and can provide PPFA's new lawyers with information or documents to answer any questions they may have about the prior litigation. Relator will also supplement this Response to include reference to specific documents contained in Relator's document production as soon as practicable, as well as additional documents produced by PPFA and the PPFA Affiliates in response to Relator's discovery requests and pending Motion to Compel PPFA's production of documents concerning Medicaid, Texas Medicaid, and Louisiana Medicaid.

Relator further states that PPFA provides medical services through approximately 50 affiliates nationwide, including the PPFA Affiliates. PPFA Affiliates pay dues to PPFA and in exchange for these payments and provided that PPFA Affiliates comply with PPFA's policies, PPFA Affiliates can hold themselves out to the public using the named "Planned Parenthood" and receive other benefits like monetary support and legal representation. PPFA provided legal representation to the PPFA Affiliates in federal court litigation involving the PPFA Affiliates termination from Medicaid. PPFA also exercises functional control over the PPFA Affiliates. It sets medical and operational standards for PPFA Affiliates and requires all PPFA Affiliates

to provide certain core medical services. PPFA must review and approve all PPFA Affiliate research projects, including PPGC's participation in the University of Texas Medical Branch study. In addition, several of PPFA's most senior executives and physicians were involved in oversight and control of the PPFA Affiliates' fetal tissue research activities. Further discovery will reveal that PPFA senior executives promoted fetal tissue research as a means to increase the PPFA Affiliates' revenue and profits.

PPFA sets policies that govern their medical practices, mandates certain informed consent forms to be used by PPFA Affiliates, and works with PPFA Affiliates to share best practices and industry information. PPFA Affiliates' medical services, including their enrollment and participation in Medicaid, are controlled by PPFA through PPFA's mandatory medical standards and guidelines, financial support, PPFA's counsel providing representation to the PPFA Affiliates in litigation over their termination from Medicaid, PPFA's leadership and managerial influence and control of the PPFA Affiliates, and PPFA's organizational structure. PPFA accordingly exerts extensive control over its Affiliates' participation in state Medicaid programs, including the Texas Medicaid program. A Medicaid provider who signs the Texas Provider Agreement "certifies its understanding of a willingness to comply with the terms of the Agreement," including that "any falsification, omissions, or misrepresentation in connection with the application for enrollment or with claims filed may result in all paid services declared as an overpayment." Complaint, ECF No. 2 at 16, ¶ 38. By signing this Agreement, a provider further "agrees that it has an affirmative duty to

refund any overpayments, duplicate payments, and erroneous payments that are paid to the provider by Medicaid as soon as such payment is discovered or reasonably should have been known.” *Id.* PPFA was aware or should have been aware of these statements and certifications to which Defendant Affiliates agreed.

The Texas Medicaid Provider Procedures Manual states that providers must be enrolled to participate in the Texas Medicaid Program and to receive reimbursement for services provided to Medicaid recipients, meet all program requirements and licensing and certification requirements, and comply with all other requirements in accordance with all federal and state laws and rules and regulations. In addition, the Texas Provider Manual states that a provider agrees to comply with all state and federal laws and regulations and policies established by the federal Centers for Medicare and Medicaid Services and the Texas Health & Human Services Commission. The Texas Provider Manual also informs providers of their responsibility for knowing the terms of the Texas Provider Agreement, program standards, statutes and penalties for violations. PPFA was aware or should have been aware of these Texas Medicaid program requirements.

Federal regulations require that all Medicaid-provider claim forms be imprinted with the statements: “This is to certify that the foregoing information is true, accurate, and complete,” and “I understand that payment of this claim will be from Federal and State funds, and that any falsification, or concealment of a material fact, may be prosecuted under Federal and State laws.” 42 C.F.R. § 455.18. Alternatively, the check for payment of a claim may be imprinted with the statement: “I understand

in endorsing or depositing this check that payment will be from Federal and State funds and that any falsification, or concealment of a material fact, may be prosecuted under Federal and State laws.” *Id.* At § 455.19. PPFA was aware or should have been aware of these statements and certifications to which Defendant Affiliates agreed.

PPFA’s documents concerning Medicaid, Texas Medicaid, and Louisiana Medicaid will provide further evidence to prove the extent of PPFA’s control, oversight, and liability for the illegal acts alleged by Relator. Relator has moved to compel PPFA to produce those documents and will further supplement its answer with the requested documents and information.

INTERROGATORY NO. 22:

Identify and describe all facts demonstrating that PPFA knowingly and improperly avoided or decreased an obligation to pay money under the Louisiana Medicaid program.

ANSWER:

This Interrogatory seeks information that is within the knowledge, custody or control of Defendants and calls for a legal conclusion. This Interrogatory asks for communications between Relator and the United States, the State of Texas, and the State of Louisiana, and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator’s objections and statements of privilege, Relator refers Defendants to the documents contained in the trial and appellate record in the federal

court litigation involving Defendants referenced in Relator's Complaint, including but not limited to documents and facts regarding the control and relationship between PPFA and PPFA Affiliates. In addition, if PPFA's new lawyers have questions or are unable to locate documents or information in the trial or appellate record from the prior federal court litigation referenced in Relator's Complaint, that information is available from their client PPFA. Jennifer Sandman, one of PPFA's in-house lawyers, was trial and appellate counsel for the PPFA Affiliates in the prior federal court litigation. Ms. Sandman handled a multi-day evidentiary hearing in the trial court and twice argued the case to the Fifth Circuit Court of Appeals and can provide PPFA's new lawyers with information or documents to answer any questions they may have about the prior litigation. Relator will also supplement this Response to include reference to specific documents contained in Relator's document production as soon as practicable, as well as additional documents produced by PPFA and the PPFA Affiliates in response to Relator's discovery requests and pending Motion to Compel PPFA's production of documents concerning Medicaid, Texas Medicaid, and Louisiana Medicaid.

Relator further states that PPFA provides medical services through approximately 50 affiliates nationwide, including PPFA Affiliates. PPFA Affiliates pay dues to PPFA and in exchange for these payments and provided that PPFA Affiliates comply with PPFA's policies, PPFA Affiliates can hold themselves out to the public using the named "Planned Parenthood" and receive other benefits like monetary support and legal representation. PPFA provided legal representation to the PPFA Affiliates in federal court litigation involving the PPFA Affiliates termination from

Medicaid. PPFA also exercises functional control over the PPFA Affiliates. It sets medical and operational standards for PPFA Affiliates and requires all PPFA Affiliates to provide certain core medical services. PPFA must review and approve all PPFA Affiliate research projects, including PPGC's participation in the University of Texas Medical Branch study.

PPFA sets policies that govern their medical practices, mandates certain informed consent forms to be used by PPFA Affiliates, and works with PPFA Affiliates to share best practices and industry information. PPFA Affiliates' medical services, including their enrollment and participation in Medicaid, are controlled by PPFA through PPFA's mandatory medical standards and guidelines, financial support, PPFA's counsel providing representation to the PPFA Affiliates in litigation over their termination from Medicaid, PPFA's leadership and managerial influence and control of the PPFA Affiliates, and PPFA's organizational structure. PPFA accordingly exerts extensive control over its Affiliates' participation in state Medicaid programs, including the Louisiana Medicaid program. A Medicaid provider who signs the Louisiana Provider Agreement "certifies its understanding and willingness to comply with the terms of the Agreement and all policies in regulations," and further certifies its understanding "that any false claims, statements or documents, or concealment of a material fact, may be prosecuted under applicable federal and state laws including the provisions of the federal FCA and any Louisiana laws and rules pertaining to civil or criminal penalties for false claims and statements." Complaint, ECF No. 2 at 17–18, ¶ 43. PPFA was aware or should have been aware of these statements and

certifications to which Defendant Affiliates agreed.

The Louisiana Medicaid Services Manual provides that—in order to receive reimbursement for healthcare services provided to Medicaid recipients—the provider must be enrolled to participate in the Louisiana Medicaid Program, meet all licensing and/or certification requirements inherent to the healthcare profession, and comply with all other requirements in accordance with all federal and state laws and Louisiana Bureau of Health Services Financing policies. The Louisiana Provider Manual further provides that when enrolled in the Louisiana Medicaid Program, a provider agrees to abide by all applicable state and federal laws and regulations and policies established by the federal Centers for Medicare and Medicaid Services and the Louisiana Department of Health. It also informs providers that they are responsible for knowing the terms of the Louisiana Provider Agreement, program standards, statutes and penalties for violations. PPFA was aware or should have been aware of these Louisiana Medicaid provider requirements.

Federal regulations further require that all Medicaid-provider claim forms be imprinted the statements: “This is to certify that the foregoing information is true, accurate, and complete,” and “I understand that payment of this claim will be from Federal and State funds, and that any falsification, or concealment of a material fact, may be prosecuted under Federal and State laws.” 42 C.F.R. § 455.18. Alternatively, the check for payment of a claim may be imprinted with the statement: “I understand in endorsing or depositing this check that payment will be from Federal and State funds and that any falsification, or concealment of a material fact, may be prosecuted

under Federal and State laws.” *Id.* At § 455.19. PPFA was aware or should have been aware of these statements and certifications to which Defendant Affiliates agreed.

PPFA’s documents concerning Medicaid, Texas Medicaid, and Louisiana Medicaid will provide further evidence to prove the extent of PPFA’s control, oversight, and liability for the illegal acts alleged by Relator. Relator has moved to compel PPFA to produce those documents and will further supplement its answer with the requested documents and information.

INTERROGATORY NO. 23:

For each false or fraudulent claim that You allege PPFA had knowledge of, involvement in, or control over, state the damages that You contend are associated with such claim, the basis for calculating those damages, and the amount of any penalties that You contend should be assessed for the claim.

ANSWER:

This Interrogatory seeks information that is within the knowledge, custody or control of Defendants and calls for a legal conclusion. This Interrogatory asks for communications between Relator and the United States, the State of Texas, and the State of Louisiana, and seeks information which is covered by the attorney-client, common interest, work product, and government investigative privileges and protections. Subject to Relator’s objections and statements of privilege, Relator refers Defendants to the Expert Reports of Donald Lochabay and the documents cited therein and produced to Defendants. The Expert Reports of Donald Lochabay and the

documents and information cited and provided to PPFA and the PPFA Affiliates with those Expert Reports identify the Medicaid payments that PPFA and the PPFA Affiliates were obligated to repay to the government, as well as the civil penalties owed by PPFA and the PPFA Affiliates for violations of the False Claims Act, Texas Medicaid Fraud Prevention Act, and Louisiana Medical Assistance Program Integrity Law.

Respectfully submitted.

/s/ Andrew B. Stephens

Andrew B. Stephens

Texas Bar No. 24079396

Heather Gebelin Hacker

Texas Bar No. 24103325

HACKER STEPHENS LLP

108 Wild Basin Road South, Suite 250

Austin, Texas 78746

(512) 399-3022

andrew@hackerstephens.com

heather@hackerstephens.com

Attorneys For Relator

VERIFICATION

I hereby certify under penalty of perjury that the foregoing answers are true and correct to the best of my knowledge, information and belief.

A handwritten signature in black ink, appearing to read 'Alex Doe', is written above a horizontal line.

Alex Doe

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2022, a true and correct copy of the foregoing document was sent by electronic mail to Defendants' counsel to the e-mail addresses below:

Leah Godesky
Danny Ashby
Justin Chapa
Amanda Santella
O'MELVENY & MYERS LLP
lgodesky@omm.com
dashby@omm.com
jchapa@omm.com
asantella@omm.com

**Attorneys for Defendant Planned Parenthood
Federation of America, Inc.**

Craig Margolis
Murad Hussain
Tirzah Lollar
Christopher Odell
ARNOLD PORTER KAY SCHOLER LLP
Craig.Margolis@arnoldporter.com
Murad.Hussain@arnoldporter.com
Tirzah.Lollar@arnoldporter.com
Christopher.Odell@arnoldporter.com

**Attorneys for Defendants Planned Parenthood
Federation of America, Inc., Planned Parenthood
Gulf Coast, Inc., Planned Parenthood of Greater
Texas, Inc., Planned Parenthood South Texas,
Inc., Planned Parenthood Cameron County, Inc.,
and Planned Parenthood San Antonio, Inc.**

/s/ Andrew B. Stephens
Andrew B. Stephens