

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General of the United States Department of Health and Human Services (“OIG-HHS”) (collectively the “United States”); Maurice Keshner (“Keshner”) and Deborah Yannicelli (“Yannicelli”) (collectively the “Relators”); and B&H Healthcare Services, Inc. d/b/a Nursing Personnel Home Care (“Nursing Personnel”) (hereinafter referred to collectively as “the Parties”), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

- A. Nursing Personnel, a New York corporation, is a Licensed Home Care Services Agency (“LHCSA”) as defined in Article 36 of the New York Public Health Law Section 3602(13), with its principal place of business located at 175 South Ninth Street, Brooklyn, New York. Nursing Personnel provides home health aide services in New York.
- B. Relator Maurice Keshner is an individual resident of the State of New York. On March 9, 2006, Keshner filed a complaint against Nursing Personnel under the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3730(b)-(h), in the United States District Court for the Eastern District of New York captioned United States ex rel. Maurice Keshner v. Nursing

Personnel Home Care, et al. (Civil Action No. 06-1067) (Block, J.) (the “Keshner Action”).

Relator subsequently amended his complaint on June 10, 2008.

C. Relator Deborah Yannicelli is an individual resident of the State of New York. On November 5, 2007, Yannicelli filed a complaint against Nursing Personnel under the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3730(b)-(h) and the New York State False Claims Act, N.Y. Fin. Law § 190(6) in the United States District Court for the Eastern District of New York captioned United States of America and the State of New York ex rel. Jane Doe v. Extended Nursing Personnel CHHA, LLC, et al. (Civil Action No. 07-4621) (Block, J.) (the “Yannicelli Action”).

D. The United States contends that the owners of two home health aide training schools – Small’s Training and Counseling School and On Time Home Care Agency (hereafter referred to collectively as the “Training Schools”) – furnished to certain individuals false certificates that certified that those individuals were qualified to provide home health aide services to New York Medicaid recipients when, in fact, the individuals had never received the required training or valid certification, and therefore such services were not reimbursable by New York Medicaid.

E. As part of its business, Nursing Personnel, a LHCSA, enters into contracts to provide home health aides to Certified Home Health Agencies (“CHHAs”), as defined in Article 36 of the New York Public Health Law Section 3602(3).

F. New York State licenses two types of home health agencies – licensed and certified. Licensed Home Care Services Agencies (“LHCSAs”), as defined in Article 36 of the

New York Public Health Law Section 3602(13), are licensed by the New York State Department of Health (“DOH”) under New York Public Health Law Section 3605 and provide directly, or through contract arrangement, nursing services, home health aide services, or personal care services. CHHAs are licensed by DOH under New York Public Health Law Section 3608. CHHAs are required to provide, directly or through contract arrangement, nursing services and home health aide services, and at least one other related service, including, but not limited to, physical therapy, occupational therapy, speech pathology, nutritional services and medical social services. New York Public Health Law Section 3602(3). CHHAs are qualified to participate as home health agencies in the Medicare and New York Medicaid programs under the provisions of Titles XVIII and XIX of the Social Security Act and may submit claims to the Medicare and New York Medicaid programs for their services. 42 U.S.C. §§1395x(m),1395x(o), 1395bbb and 42 U.S.C. §§1396(a). However, New York State law, N.Y. Pub. Health Law §3614(1), limits reimbursement by New York Medicaid for services provided by a home care services agency to those agencies with a valid certificate of approval, namely, CHHAs. Thus, LHCSAs may not bill New York Medicaid directly for home health services provided to Medicaid beneficiaries and may not receive a home health provider number for billing Medicare. 42 U.S.C. §§1395(o), 42 C.F.R. §§409.41, 440.2(b), 440.70 and 484.12. CHHAs, however, may bill Medicare and New York Medicaid for services provided by LHCSA personnel to the CHHA under contract arrangement. N.Y. Pub. Health Law §3614(1).

G. From at least March 1, 2004 through February 28, 2007, Nursing Personnel provided home health aides to several CHHAs including, but not limited to, Extended Nursing

Personnel CHHA, LLC, doing business as Extended Home Care (“Extended”), and Excellent Home Care Services, LLC (“Excellent”).

H. Each CHHA that contracts with Nursing Personnel to provide it with home health aides assigns each aide to work with one or more New York Medicaid and/or Medicare beneficiaries or other CHHA clients.

I. Each CHHA that bills New York Medicaid and/or Medicare is required to determine whether each of the home health aides whom it assigns to New York Medicaid and/or Medicare beneficiaries meets the requirements of the New York Medicaid and Medicare programs with regard to, *inter alia*, each aide’s training and qualifications. This requirement applies to home health aides whom the CHHA contracts with LHCSAs to provide as well as to aides employed directly by the CHHA. 42 C.F.R. §§ 440.70(a)(2) & (d), 484.4, and 484.36(b)(1) and (d)(4).

J. Under the terms of its contracts with Extended, Nursing Personnel was required to supply Extended with home health aides who met all the requirements of the applicable DOH regulations and other directives of DOH and other governmental authorities. This obligation included verification that each aide met the minimum training requirements for home health aides established by DOH.

K. Nursing Personnel was also required by the terms of its contracts with Extended to maintain personnel records which included verifications of qualifications and references for each aide assigned to Extended. Further, Nursing Personnel was required by the terms of its contracts with Extended to provide copies of each aide’s personnel file to Extended as each aide

was assigned to work for Extended.

L. Under the terms of its contracts with Extended, every Nursing Personnel home health aide assigned to Extended worked under the direction and supervision of Extended's registered nurses or other personnel.

M. Under the terms of its contract with Excellent, Nursing Personnel was required to supply Excellent with home health aides who met the CHHA training and competency evaluation requirements specified in the New York State Health and Hospital Code and the Code of Federal Regulations, and/or any other relevant provisions of state and federal statutes and regulations.

N. Nursing Personnel was also required by the terms of its contract with Excellent to maintain personnel files on all aides provided to Excellent which met all state and federal requirements, and to send via facsimile to Excellent supporting documentation of the assigned aide's qualifications prior to the aide's initial placement with Excellent.

O. Under the terms of its contract with Excellent, every Nursing Personnel home health aide assigned to Excellent worked under the supervision of Excellent's registered nurses or other professional supervisory personnel.

P. Nursing Personnel was also required by the terms of its contracts with the other CHHAs to which it supplied home health aides to ensure that those aides met all training and qualification requirements of the New York Medicaid and Medicare programs.

Q. The United States contends that from March 1, 2004 through February 28, 2007 Nursing Personnel caused CHHAs including, but not limited to Extended and Excellent, to

submit claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§1395-1395hhh, and the New York Medical Assistance Program (“Medicaid”), Title XIX of the Social Security Act, 42 U.S.C. §§1396-1396v for home health aide services provided by Nursing Personnel aides.

R. The United States contends that it has certain civil claims, as specified in Paragraph 7 below, against Nursing Personnel for engaging in the following conduct during the period from March 1, 2004 through February 28, 2007:

(a) Nursing Personnel knowingly – as defined in 31 U.S.C. § 3729(b) -- caused CHHAs, including but not limited to Extended and Excellent, to submit claims to New York Medicaid, for which the CHHAs received payment and from which funds the CHHAs paid Nursing Personnel, for home health aide services provided by individuals who presented certificates from the Training Schools indicating satisfactory completion of a home health aide training course when, in fact, such individuals had never received the required training or valid certification;

(b) Nursing Personnel knowingly – as defined in 31 U.S.C. § 3729(b) -- caused to be submitted false claims to Medicare for reimbursement for home health aide services not rendered for the claims listed on Attachment A hereto;

(collectively, the contentions of the United States set forth in paragraphs R (a) and (b) are referred to as the “Covered Conduct”).

S. The United States also contends that it has certain administrative claims, as specified in Paragraph 7 below, against Nursing Personnel for engaging in the Covered Conduct.

T. This Agreement is neither an admission of liability by Nursing Personnel nor a concession by the United States that its claims are not well founded.

U. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions set forth below.

III. TERMS AND CONDITIONS

1. Nursing Personnel shall pay the United States a total of One Million Three Hundred Ninety-Five Thousand Forty Dollars (\$1,395,040) (the "Settlement Amount") for the Covered Conduct. Nursing Personnel shall pay the United States via electronic funds transfer, pursuant to instructions to be provided by the Office of the United States Attorney for the Eastern District of New York, within five (5) business days of the Effective Date of this Agreement.

2. Contingent upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States, pursuant to 31 U.S.C. §3730(d), agrees to pay relator Keshner Two Hundred Fifty-One Thousand, One Hundred and Seven Dollars and Twenty Cents (\$251,107.20) in settlement of his claims against the United States for a relator's share. Payment shall be made by electronic funds transfer. The United States in no way promises or guarantees, nor is liable, to relator for the collection or payment of any funds pursuant to this Agreement or the payment of any relator's share except as provided herein for funds actually collected and received by the United States.

3. Relator Yannicelli agrees that she has no claim against the United States for a

share of the Settlement Amount.

4. Subject to the exceptions in Paragraph 8 (concerning excluded claims), in consideration of the obligations of Nursing Personnel set forth in this Agreement, conditioned upon payment in full by Nursing Personnel of the Settlement Amount, and, subject to Paragraph 21 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Nursing Personnel and all of its current and former officers, directors, employees and shareholders from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§3729-3733, the Civil Monetary Penalties Law, 42 U.S.C. §1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 8 (concerning excluded claims), in consideration of the obligations of Nursing Personnel in this Agreement, conditioned upon full payment by Nursing Personnel of the Settlement Amount, and subject to Paragraph 21, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), relator Keshner, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release Nursing Personnel and all of its current and former officers, directors, employees and shareholders from any civil monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§3729-3733, provided, however, that Keshner's release does not release Nursing

Personnel for any claims for attorneys' fees, expenses and costs under the False Claims Act, 31 U.S.C. §3730(d).

6. Subject to the exceptions in Paragraph 8 (concerning excluded claims), in consideration of the obligations of Nursing Personnel in this Agreement, conditioned upon payment in full by Nursing Personnel of the Settlement Amount, as outlined in Paragraph 1 above, and subject to Paragraph 21, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), relator Yannicelli, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release Nursing Personnel and all of its current and former officers, directors, employees and shareholders from any civil monetary claim the United States has or may have for the Covered Conduct against Nursing Personnel under the False Claims Act, 31 U.S.C. §§3729-3733.

7. In consideration of the obligations of Nursing Personnel in this Agreement and the Corporate Integrity Agreement entered into between Nursing Personnel and the Office of the Medicaid Inspector General of the State of New York ("OMIG") in December 2009, conditioned upon Nursing Personnel's full payment of the Settlement Amount, and subject to Paragraph 21 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, any Medicaid program, and other Federal health care programs (as defined in 42 U.S.C. §13201-7b(f)) against Nursing Personnel under 42 U.S.C. §13201-7a (Civil Monetary

Penalties Law) or 42 U.S.C. §1320a-7(b)(7)(permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 8 (concerning excluded claims), below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Nursing Personnel from Medicare, any Medicaid program, and other Federal health care programs under 42 U.S.C. §1320a-7(a)(mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct or practices, for which claims have been reserved in Paragraph 8 (concerning excluded claims).

8. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Nursing Personnel and Relators Keshner and Yannicelli) are the following claims of the United States:

- a) Any civil, criminal or administrative liability arising under the Internal Revenue Code, Title 26 of the United State Code;
- b) Any criminal liability;
- c) Any civil, criminal, or administrative liability of individuals (including current or former directors, officers, employees, agents or shareholders of Nursing Personnel) who have received or receive in the future written notification from either the Attorney General of the State of New York or the United States Attorney for the Eastern District of New York that they are the target of a criminal investigation, or who are indicted,

charged, convicted, or who enter into a criminal plea agreement related to the Covered Conduct;

- d) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- e) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- f) Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and
- g) Any liability based upon such obligations as are created by this Agreement.

9. Relator Keshner and his heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. §3730(c)(2)(B) and, conditioned upon receipt of the relator's share described in Paragraph 2, Keshner, for himself individually, and for his heirs, successors, attorneys, agents, and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. §§3730 against Nursing Personnel; from any claims arising from the filing of the Keshner Action against Nursing Personnel; from any other claims for a share of the Settlement Amount; and in full settlement of any claims Keshner may have against

the United States under this Agreement. This Agreement does not resolve or in any manner affect any claims that the United States has or may have against Keshner arising under the Internal Revenue Code, or any claims arising under this Agreement.

10. Relator Yannicelli and her heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. §§ 3730(c)(2)(B). Yannicelli, for herself individually, and for her heirs, successors, attorneys, agents, and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. §3730 against Nursing Personnel; from any claims arising from the filing of the Yannicelli Action against Nursing Personnel; from any claims for a share of the Settlement Amount; and in full settlement of any claims Yannicelli may have against the United States under this Agreement. This Agreement does not resolve or in any manner affect any claims that the United States has or may have against Yannicelli arising under the Internal Revenue Code, or any claims arising under this Agreement.

11. In consideration of the obligations of Nursing Personnel in this Agreement, conditioned upon payment in full by Nursing Personnel of the Settlement amount, Keshner, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release Nursing Personnel and all of its current and former officers, directors, employees, attorneys, members, managers, or shareholders from any claim Keshner has asserted, could have asserted or may assert in the future for any reason for any acts or omissions from the beginning of time through

the date of this Agreement, provided, however, that Keshner's release does not release Nursing Personnel for Keshner's claims for attorneys' fees, expenses and costs pursuant to the federal False Claims Act, 31 U.S.C. §3730(d) and the New York False Claims Act, N.Y. State Finance Law §190(7).

12. In consideration of the obligations of Nursing Personnel in this Agreement, conditioned upon payment in full by Nursing Personnel of the Settlement amount, Yannicelli, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release Nursing Personnel and all of its current and former officers, directors, employees, attorneys, members, managers, or shareholders from any claim Yannicelli has asserted, could have asserted or may assert in the future for any reason for any acts or omissions from the beginning of time through the date of this Agreement.

13. Nursing Personnel waives and will not assert any defenses that it may have to any criminal prosecution or any administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the United States Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of the Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Code, Title 26 of the United States Code.

14. Nursing Personnel fully and finally releases the United States, its agencies,

employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Nursing Personnel has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the matters covered by the Keshner and Yannicelli Actions, and the investigation, or any prosecution thereof.

15. In consideration of the obligations of Keshner in this Agreement, conditioned upon dismissal with prejudice as to Keshner of the claims made in the Keshner action against Nursing Personnel, Nursing Personnel agrees to release Keshner, his heirs, successors, attorneys, agents, and assigns, from any claim that Nursing Personnel could have asserted or may assert in the future for any reason for any acts or omissions from the beginning of time through the date of this Agreement.

16. In consideration of the obligations of Yannicelli in this Agreement, conditioned upon dismissal with prejudice as to Yannicelli of the claims made in the Yannicelli action against Nursing Personnel, Nursing Personnel agrees to release Yannicelli, her heirs, successors, attorneys, agents, and assigns, from any claim that Nursing Personnel could have asserted or may assert in the future for any reason for any acts or omissions from the beginning of time through the date of this Agreement.

17. Nursing Personnel agrees to the following:

- a. Unallowable Costs Defined: that all costs (as defined in Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§1395-1395hhh and 1396-

1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Nursing Personnel, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "Unallowable Costs" on government contracts and under the Medicare Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (collectively, "the federal programs") and any Medicaid Program ("the State programs"):

- (1) the matters covered by this Agreement;
- (2) the United States' and the State's audits and civil and criminal investigations of the matters covered by this Agreement;
- (3) Nursing Personnel's investigation, defense, and corrective actions undertaken in response to the United States' and the State's audits and civil and criminal investigations in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payments made by Nursing Personnel to the United States pursuant to this Agreement and to the State relating to the Covered Conduct, and any payments that Nursing Personnel may make to Relator Keshner, including costs and attorneys fees;
- (6) the negotiation of, and obligations undertaken pursuant to the CIA

entered into between Nursing Personnel and the OMIG to:

- (I) retain an independent review organization to perform annual reviews as described in Section 6 of the CIA; and
- (ii) prepare and submit reports to the OMIG;

However, nothing in this Paragraph 17 that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Nursing Personnel. (All costs described or set forth in this Paragraph 17 are hereafter "Unallowable Costs.")

- b. Future Treatment of Unallowable Costs (if applicable): These Unallowable Costs shall be separately determined and accounted for in non-reimbursable cost centers by Nursing Personnel, and Nursing Personnel shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Nursing Personnel or its subsidiaries or affiliates to the federal or State programs.
- c. Treatment of Unallowable Costs Previously Submitted for Payment (if applicable): Nursing Personnel further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare Administrative Contractors (MACs), carriers and/or fiscal

intermediaries, TRICARE fiscal intermediaries, carriers, and/or contractors, and any Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any state Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Nursing Personnel or its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Nursing Personnel agrees that the United States and the State of New York, at a minimum, shall be entitled to recoup from it any overpayment plus applicable interest and penalties, if any, as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due to the federal programs after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. Any payments due to the State of New York Medicaid program after the adjustments have been made shall be paid to DOH pursuant to the direction of the MFCU and/or DOH. The United States reserves its rights to disagree with any calculations submitted by Nursing Personnel or its subsidiaries or affiliates, if any, on the effect of the

inclusion of Unallowable Costs (as defined in this Paragraph) on Nursing Personnel's or its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine the books and records of Nursing Personnel to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

18. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except as expressly provided for in Paragraph 19 (waiver of beneficiaries) below.

19. Nursing Personnel agrees that it will not seek payment for any health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as the Covered Conduct.

20. Nursing Personnel expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following its respective payments to the United States of the Nursing Personnel Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants and obligations set forth constitute a contemporaneous exchange for new value given to Nursing Personnel, within the meaning of 11 U.S.C. § 547(c)(1); and (b) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous

exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Nursing Personnel was or became indebted on or after the date of these transfers, all within the meaning of 11 U.S.C. § 548(a)(1).

21. If, within ninety-one (91) days of the Effective Date of this Agreement or of any payment made under this Agreement, Nursing Personnel commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization or relief of debtors (a) seeking to have any order for relief of Nursing Personnel's debts, or seeking to adjudicate Nursing Personnel as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Nursing Personnel or for all or any substantial part of its assets, Nursing Personnel agrees as follows:

a) Nursing Personnel's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Nursing Personnel will not argue or otherwise take the position in any such case, proceeding or other action that: (i) Nursing Personnel's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Nursing Personnel was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payments made to the United States hereunder; or (iii) the mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Nursing Personnel.

b) If Nursing Personnel's obligations hereunder are avoided for any reason,

including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action or proceeding against Nursing Personnel for the claims that would otherwise be covered by the releases provided in Paragraphs 4 and 7 above. Nursing Personnel agrees that (I) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude Nursing Personnel from participation in Medicare, any Medicaid program, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and Nursing Personnel shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Nursing Personnel shall not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceedings that are brought by the United States within thirty (30) calendar days of written notification to Nursing Personnel that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on March 9, 2006 with respect to Nursing Personnel; and (iii) the United States has a valid claim against Nursing Personnel in the amount of Two Million Ninety-Two Thousand Five Hundred Sixty Dollars (\$2,092,560.00), and the United States may pursue its claims in the case, action or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c) Nursing Personnel acknowledges that its agreements in this Paragraph

are provided in exchange for valuable consideration provided in this Agreement.

22. Within 30 days of receipt of the payment described in Paragraph 1, above, the United States shall file its Notice of Intervention and (a) the United States and Keshner shall file a Joint Notice of Dismissal pursuant to Fed. R. Civ. P. 41(a)(1) dismissing their claims for the Covered Conduct in the Keshner Action against Nursing Personnel with prejudice as to the United States and Keshner, and dismissing all remaining allegations against Nursing Personnel without prejudice as to the United States and with prejudice as to Keshner; and (b) the United States and Yannicelli shall file a Joint Notice of Dismissal pursuant to Fed. R. Civ. P. 41(a)(1) dismissing their claims for the Covered Conduct in the Yannicelli Action against Nursing Personnel with prejudice as to the United States and Yannicelli, and dismissing all remaining allegations against Nursing Personnel without prejudice as to the United States and with prejudice as Yannicelli.

23. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

24. Nursing Personnel represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever and upon due deliberation with the advice of counsel.

25. Relators Keshner and Yannicelli each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever, and that each Relator has entered into this Agreement upon due deliberation with the advice of counsel.

26. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement, including any dispute regarding Nursing Personnel's payment of Keshner's attorneys' fees, expenses and costs, will be the United States District Court for the Eastern District of New York, except that disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions of the CIA.

27. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute

28. This Agreement constitutes the complete agreement between the Parties with respect to the issues covered herein only. Excepted from the scope of this Agreement are Relator Keshner's claims for attorneys' fees, expenses and costs under 31 U.S.C. §3730(d). This Agreement may not be amended except by written consent of the Party or Parties affected.

29. The individuals signing this Agreement on behalf of Nursing Personnel, Keshner and Yannicelli represent and warrant that they are authorized, respectively, by Nursing Personnel, Keshner and Yannicelli to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

30. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

31. This Agreement is binding on Nursing Personnel's successors, transferees,

heirs, and assigns.

32. This Agreement is binding on Relators Keshner and Yannicelli's respective successors, transferees, heirs, and assigns.


33. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

34. The effective date of this Agreement is the date upon which the last signatory to the Agreement signs ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

BENTON J. CAMPBELL
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

DATED: 12/17/09

BY: 
Assistant U.S. Attorney Erin Argo

DATED: _____

BY: _____
Marie V. Bonkowski
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 261 Ben Franklin Station
Washington, D.C. 20044

DATED: _____

BY: _____
GREGORY E. DEMSKE
Assistant Inspector General for
Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

THE UNITED STATES OF AMERICA

BENTON J. CAMPBELL
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

DATED: _____

BY: _____
Assistant U.S. Attorney Erin Argo

DATED: 12/17/09

BY: Marie V. Bonkowski
Marie V. Bonkowski
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 261 Ben Franklin Station
Washington, D.C. 20044

DATED: _____

BY: _____
GREGORY E. DEMSKE
Assistant Inspector General for
Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

THE UNITED STATES OF AMERICA

BENTON J. CAMPBELL
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201


DATED: _____

BY: _____
Assistant U.S. Attorney Erin Argo

DATED: _____

BY: _____
Marie V. Bonkowski
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 261 Ben Franklin Station
Washington, D.C. 20044

DATED: 12/16/09

BY: 
GREGORY E. DEMSKE
Assistant Inspector General for
Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

**B&H HEALTHCARE SERVICES, INC. d/b/a
NURSING PERSONNEL HOME CARE**

DATED: 12-15-09

BY: 

Isaac Schwartz
c/o B&H Healthcare Services, Inc.
175 South Ninth Street
Brooklyn, New York 11211

GERALD B. LEFCOURT, P.C.


DATED: 12/16/09

BY: 

Gerald Lefcourt
148 E. 78th Street
New York, N.Y. 10075
Counsel for B&H Healthcare
Services, Inc. d/b/a
Nursing Personnel Homecare

RELATOR MAURICE KESHNER

DATED: 12/15/09

BY: 
Maurice Keshner

DATED: _____

BY: _____
Brian P. Kenney, Esq.
Kenney & McCafferty
3031C Walton Road, Suite 202
Plymouth Meeting, PA 19462
Counsel for Relator Maurice
Keshner

DATED: _____

BY: _____
Irwin G. Klein, Esq.
Hein, Waters & Klein
825 East Gate Blvd, Suite 308
Garden City, N.Y. 11530
Counsel for Relator Maurice
Keshner

RELATOR MAURICE KESHNER

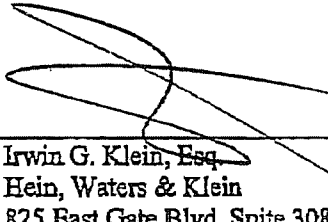
DATED: _____

BY: _____
Maurice Keshner

DATED: 12/15/09

BY: B.P.K.
Brian P. Kenney, Esq.
Kenney & McCafferty
3031C Walton Road, Suite 202
Plymouth Meeting, PA 19462
Counsel for Relator Maurice
Keshner

DATED: 12/15/09

BY: 
Irwin G. Klein, Esq.
Hein, Waters & Klein
825 East Gate Blvd, Suite 308
Garden City, N.Y. 11530
Counsel for Relator Maurice
Keshner

RELATOR DEBORAH YANNICELLI

DATED: December 15, 2009

BY: Deborah Yannicelli
Deborah Yannicelli

DATED: _____

BY: _____

Timothy J. McInnis, Esq.
Law Office of Timothy J. McInnis
521 5th Avenue, Suite 1700
New York, N.Y. 10175-0038

DATED: _____

BY: _____

Mike Bothwell, Esq.
Bothwell, Bracker & Vann
304 Macy Drive
Roswell, Georgia 30076

RELATOR DEBORAH YANNICELLI

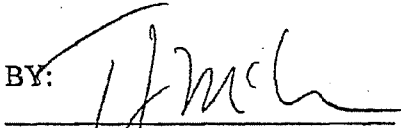
DATED: _____

BY:

Deborah Yannicelli

DATED: 12/15/09

BY:



Timothy J. McInnis, Esq.
Law Office of Timothy J. McInnis
521 5th Avenue, Suite 1700
New York, N.Y. 10175-0038

DATED: _____

BY:

Mike Bothwell, Esq.
Bothwell, Bracker & Vann
304 Macy Drive
Roswell, Georgia 30076

RELATOR DEBORAH YANNICELLI

DATED: _____

BY:

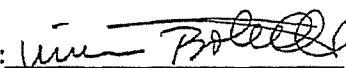
Deborah Yannicelli

DATED: _____

BY:

Timothy J. McInnis, Esq.
Law Office of Timothy J. McInnis
521 5th Avenue, Suite 1700
New York, N.Y. 10175-0038

DATED: 12.15.09

BY: 
Mike Bothwell, Esq.
Bothwell, Bracker & Vann
304 Macy Drive
Roswell, Georgia 30076

Attachment A
Medicare Claims for Home Health Aide Services Not Rendered

U.S.- Nursing Personnel
Settlement Agreement

Medicare DCN	CHHA	LHCSA
20612200405902	Excellent	NP
20620017222904	Excellent	NP
20713401517302	Excellent	NP
20715502404702	Excellent	NP
20715502404802	Excellent	NP
20431600425202	Extended	NP
20434104341202	Extended	NP
20514604287902	Extended	NP
20531201674802	Extended	NP
20534102535602	Extended	NP
20600402046002	Extended	NP
20609301958402	Extended	NP
20609301958502	Extended	NP
20616603209602	Extended	NP
20622702786402	Extended	NP
20712202010802	Extended	NP
20712202010902	Extended	NP