

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

07

4621

THE UNITED STATES OF AMERICA, and  
THE STATE OF NEW YORK;

*ex rel.* JANE DOE,

Plaintiffs,

v.

EXTENDED NURSING PERSONNEL CHHA,  
LLC, EXTENDED CARE HEALTH SERVICES,  
EXTENDED HOME CARE, EXCELLENT  
HOME CARE SERVICES, LLC, IMMEDIATE  
HOME CARE, INC., IMMEDIATE HOME  
CARE I, LLC, BORINA HOME CARE AGENCY,  
INC., FRIENDLY HOME CARE, INC., and  
NURSING PERSONNEL HOME CARE,

Defendants.

CIVIL ACTION NO.

COGAN, J.

*FILED IN CAMERA  
and UNDER SEAL*

MATSUMOTO, M.J. \*

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
NOV 05 2007 \*  
BROOKLYN OFFICE

**FALSE CLAIMS ACTS *QUI TAM* and ANTI-RETALIATION COMPLAINT**

**INTRODUCTORY STATEMENT**

1. Part of this action is brought on behalf of the United States of America and on behalf of the State of New York by Plaintiff JANE DOE (hereafter referred to as "Relator") against Defendants Extended Nursing Personnel CHHA, LLC, Extended Care Health Services, Extended Home Care, Excellent Home Care Services, LLC, Immediate Home Care, Inc., Immediate Home Care I, LLC, Borina Home Care Agency, Inc., Friendly Home Care, Inc., and Nursing Personnel Home Care (referred to collectively in this complaint as "Defendants"), pursuant to the *qui tam* provisions of the Federal Civil False Claims Act, 31 U.S.C. §§ 3729-33 ("Federal FCA"), and the New York State False Claims Act, NYS Fin. Ch. 56, Art. XIII, §§187, *et seq.* ("NYS FCA") (together referred

to in this complaint as the “*Qui Tam* Action”). Additionally, part of this action is brought on Relator’s own behalf against Defendant Excellent Home Care Services, LLC, pursuant to the anti-relation provisions in the Federal and NYS FCAs, 31 U.S.C. § 3730(h), and §191.1, respectively. This action is brought *in camera* and under seal, as required by both the Federal and NYS FCAs, 31 U.S.C. § 3730(b)(2) and § 190.2(b).

2. Relator is a former employee of Defendants Extended Nursing Personnel CHHA and Excellent Home Care Services, LLC. Relator’s allegations arise from her independent, unique and first-hand knowledge of certain unlawful practices, as well as, from general knowledge she obtained working in the home health care industry in the State of New York.

3. Defendants have engaged in numerous unlawful and fraudulent activities in connection with wrongfully obtaining Medicaid, and to a lesser extent, Medicare reimbursements, for home health care services to consumers in New York State, including residents of New York City. Such unlawful conduct has gone on for a number of years, beginning at least as early as in or about 2002, and, upon information and belief, in some cases, continuing through to the present.

4. Defendants’ unlawful activities include principally, but without limitation, submitting claims for reimbursement to Medicaid for unqualified, un-credentialed or falsely credentialed home health aides.

5. The purpose of these unlawful activities is, and has been, to wrongly obtain health care insurance reimbursements from the Federal government and the New York State and New York City governments.

6. Additionally, Defendant Excellent Home Care Services, LLC wrongfully terminated Relator's employment because of her cooperation with a criminal investigation by the New York State Attorney General's Office concerning Medicaid fraud in the home health aide industry. She was wrongfully discharged in or about April 2005. Relator was discharged immediately after Defendant Excellent Home Care Services, LLC came to believe that she was the reason grand jury subpoenas had been issued to Defendant Excellent Home Care Services, LLC and other entities.

7. Defendants' unlawful billing practices as well as Defendant Excellent Home Care Services, LLC's additional unlawful retaliatory conduct are set forth in detail below.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over the Federal *qui tam* claims alleged in this complaint under 28 U.S.C. §§ 1331 (Federal question) and 1345 (United States as plaintiff), and the jurisdictional provisions of the Federal False Claims Act, 31 U.S.C. § 3739(e). The Court also has subject matter jurisdiction over the Federal anti-retaliation claims in this complaint under 31 U.S.C. § 3730(h). Subject matter jurisdiction over the New York False Claims Act causes of action arises under 28 U.S.C. § 1367 (supplemental jurisdiction).

9. Venue is proper in this district pursuant to 31 U.S.C. §§ 3732(a) and 1391 because at least one of the Defendants can be found, resides, and transacts business in the Eastern District of New York; an act proscribed by 31 U.S.C. § 3729 occurred within this District; and a substantial part of the events or omissions giving rise to the claims

occurred in this district. Section 3732(a) further provides for nationwide service of process.

### **THE PARTIES**

10. The United States, through its agency the United States Department of Health and Human Services, and the State of New York, through its agency the New York State Department of Health, are the real plaintiffs-parties in interest in the Federal and New York State False Claims Acts *qui tam* causes of action alleged in this complaint. Relator is the plaintiff-party in interest with respect to both the Federal and New York State False Claims Acts anti-retaliation causes of action.

11. HHS is located at 200 Independence Avenue, SW, Washington, DC 20201. The Centers for Medicare and Medicaid Services (“CMS”), which was formerly known as the Health Care Financing Administration (“HCFA”), is the HHS office responsible for administering Medicaid on the Federal level. CMS is located at 7500 Security Boulevard, Baltimore, Maryland, 21244-1850.

12. The New York State Department of Health (“NYDOH”) is the agency chiefly responsible for administering Medicaid health care claims and payments in the State of New York. It does this through its Office of Medicaid Management (“OMM”). Medicaid billing is handled through a management information system known as the Medicaid Management Information System (“MMIS”). Computer Sciences Corporation (“CSC”) is a private subcontractor for the NYDOH; it operates the MMIS and is responsible for, among other things, receiving Medicaid claims for reimbursement and paying Medicaid reimbursements to service providers. NYDOH and OMM are located at

Corning Tower, Empire State Plaza, Albany, New York, 12237. MMIS is located at 121 State Street, 3d Floor, Albany, New York, 12207 and its mailing address is P. O. Box 1935, Albany, New York, 12201. CSC is located at 800 North Pearl Street, 3d Floor, Albany, New York, 12204 and its mailing address is P.O. Box 4401, Albany, New York, 12204-0401.

13. The United States and the State of New York jointly fund the New York Medicaid Program. The United States and the State of New York share the costs of Medicaid expenses equally and the State of New York, in turn, recovers a portion of its expenses from various municipalities and local political subdivisions. In the case of New York City, the percentage recovered by the State of New York from the City of New York ranges from 10% to 25%, depending on the type of services being provided.

14. Relator is a citizen of the United States, a resident of the State of New York and a former employee of Defendants Extended Care Health Services and Excellent Home Care Services, LLC, who also performed work on behalf of, or involving, Defendants Immediate Home Care, Inc. and Borina Home Care Agency, Inc. Relator brings this *Qui Tam* action based upon direct and unique information obtained as a result of such employment. Relator's identity and employment information are provided in a disclosure statement being produced to the United States and the State of New York pursuant to the Federal and NYS False Claims Acts. In addition, Relator is known to the State of New York because she has actively assisted the New York State Attorney General in connection with criminal grand jury investigations that relate to, and overlap with, the allegations in this complaint.

15. Defendant Extended Nursing Personnel CHHA, LLC, is an active New York limited liability company. Its DOS Process address is Extended Home Care, 360 West 31<sup>st</sup> Street, New York, New York, 10001, and it does not have a registered agent. Defendant Extended Nursing Personnel CHHA, LLC is a Certified Home Health Agency (“CHHA”) authorized by the New York State Department of Health to provide services, including home health aides, to developmentally disabled persons (Office of Mental Retardation Developmental Disabilities “OMRDD” population) in New York City and Nassau and Suffolk Counties. Its operating certificate number is 7002653. Defendant Extended Nursing Personnel CHHA, LLC is a Medicaid Provider and its provider number is 1973037. It maintains offices at 360 W. 31 Street, 3<sup>rd</sup> Floor, New York, New York, 10001-2727 and its telephone number is (212) 563-9639. Upon information and belief, Defendant Extended Nursing Personnel CHHA, LLC is owned or operated by Joseph Ruggiero.

16. Defendant Extended Care Health Services is, by its own description, a Home Health Care Agency licensed by the New York State Department of Health which, since 1978, has been providing nursing and paraprofessional services, including home health aides and personal care aides, to homebound patients residing in Nassau and Suffolk Counties and is a Medicaid Provider. See <http://www.extendedcarehealth.com/pages/2/index.htm>. Defendant Extended Care Health Services has offices located at 1 Rabro Drive, Suite 104, Hauppauge, New York, 11788-4270 and its telephone number is (631) 234-2000. Upon information and belief, Defendant Extended Care Health Services is owned or operated by Joseph Ruggiero.

17. Defendant Extended Home Care is, by its own description, Extended Care Health Services' Affiliated Certified Agency and is a Medicare Provider. See <http://www.extendedcarehealth.com/pages/2/index.htm>. Defendant Extended Home Care has offices at 2617 E. 16<sup>th</sup> Street, Brooklyn, New York 11235, with telephone number (718) 891-0808; and 360 W. 31<sup>st</sup> Street, New York, New York, 10001, with telephone number (212) 356-4200. Upon information and belief, Defendant Extended Home Care is owned or operated by Joseph Ruggiero.

18. For purposes of this complaint Defendants Extended Nursing Personnel CHHA, LLC, Extended Care Health Services and Extended Home Care will be referred to collectively as "Defendant Extended Home Care."

19. Defendant Excellent Home Care Services, LLC, is an active New York State limited liability company. Its DOS Process address is Excellent Home Care Services, LLC, 204 Broadway, Brooklyn, New York, 11211, and its registered agent is Benjamin Landa, 204 Broadway, Brooklyn, New York, 11211. Defendant Excellent Home Care Services, LLC is a Certified Home Health Agency ("CHHA") authorized by the New York State Department of Health to provide services, including home health aides, to developmentally disabled persons (Office of Mental Retardation Developmental Disabilities "OMRDD" population) in New York City and Nassau County. Its operating certificate number is 7001634. Upon information and belief, Defendant Excellent Home Care Services, LLC is a Medicaid Provider. It maintains offices at 535 Kent Avenue, Apt. BD, Brooklyn, New York, 11211-6635 with telephone numbers (718) 387-5303, (718) 387-5311 and (718) 387-1800; 3010 West 33rd Street, Brooklyn, NY 11224 with telephone number (718) 333-0773; and 6180 Woodhaven Boulevard, Rego Park, New

York, 11374 with telephone number (718) 779-2966. Upon information and belief, Defendant Excellent Home Care Services, LLC., is owned or operated by Benjamin Landa, Jeno Guttman and Joseph Goldberger. Defendant Excellent Home Care Services, LLC has been named in grand jury subpoenas issued by the New York Attorney General's Office in connection with fraudulent Medicaid billing for home health aides.

20. Defendant Immediate Home Care, Inc., is an active New York State domestic business corporation. Its DOS Process address is Immediate Home Care, Inc., 305 Broadway, New York, New York, 10007, and it does not have a registered agent. Defendant Immediate Home Care Inc. maintains offices at 204 Broadway, Brooklyn, NY 11211 and its telephone number is (718) 302-1000. Upon information and belief, Defendant Immediate Home Care, Inc., is owned or operated by Brooklyn residents Nachem Singer and Ervin Rubenstein. Since in or about 1994, Defendant Immediate Home Care, Inc., has been licensed by the State of New York as a Licensed Home Care Services Agency ("LHCSA"). Upon information and belief, Defendant Immediate Home Care, Inc., has received more than \$50 million in Medicaid reimbursement for home health aide services. On or about August 28, 2007, Defendant Immediate Home Care, Inc., as well as Singer and Rubenstein pleaded guilty in New York State court to grand larceny in connection with a scheme to defraud the New York Medicaid Program out of more than \$12 million. Defendant Immediate Home Care, Inc. has agreed to pay restitution to New York State in the amount of \$12.5 million. Singer and Rubenstein have also agreed to pay restitution to New York State.

21. Defendant Immediate Home Care I, LLC, is an active New York State limited liability company. Its DOS Process address is Immediate Home Care I, LLC, 204



Broadway, Brooklyn, New York 11211, and it does not have a registered agent. Upon information and belief, Immediate Home Care I, LLC, is owned or operated by Brooklyn residents Nachem Singer and Ervin Rubenstein.

22. For purposes of this complaint Defendants Immediate Home Care, Inc. and Immediate Home Care I, LLC will be referred to as “Defendant Immediate Home Care.”

23. Defendant Borina Home Care Agency, Inc. is an active New York State domestic business corporation. Its DOS Process address is Borina Home Care Agency, Inc., 95-20 63 Road #E, Rego Park, New York, 11374 and its registered agent is Galina Babayeva, 95-20 63 road #E, Rego Park, New York, 11374. Upon information and belief, Defendant Borina Home Care Inc. has been licensed by the State of New York as a Licensed Home Care Services Agency (“LHCSA”). Defendant Borina Home Care Agency, Inc. maintains offices at 95-20 63 Road #E, Rego Park, New York, 11374, and its telephone numbers are (718) 997-7070 and (718) 275-1071. Upon information and belief, Defendant Borina Home Care Agency, Inc., is owned or operated by Galina Babayeva, Aaron Inu, Oleg Inu. In or about December 2006, law enforcement officials arrested managers, nurses and more than 20 health aides associated with Defendant Borina Home Care Inc., on criminal and civil charges in connection with fraudulent Medicaid billing for home health aides.

24. Defendant Friendly Home Care, Inc., is an active New York domestic not-for-profit corporation. Its DOS Process address is Friendly Home Care Inc., 3290 Harold Street, Oceanside, New York, 11572, and it does not have a registered agent. Upon information and belief, Defendant Friendly Home Care, Inc., has been licensed by the

State of New York as a Licensed Home Care Services Agency (“LHCSA”). Defendant Friendly Home Care maintains offices at 1811 Kings Highway, Brooklyn, NY 11229 and its telephone number is (718) 998-4700. Upon information and belief, Defendant Friendly Home Care, Inc., is owned or operated by fnu Pustilnik.

25. Defendant Nursing Personnel Home Care is located at 175 S. Ninth Street, Brooklyn, New York and its telephone number is (718) 307-7100. Upon information and belief, Defendant Nursing Personnel has been licensed by the State of New York as a Licensed Home Care Services Agency (“LHCSA”). Upon further information and belief, Defendant Nursing Personnel Home Care is own and operated by Isaac Schwartz.

26. There are interweaving professional and personal connections among the Defendants. Yelena Pustilnik is the wife of fnu Pustilnik, the owner or operator of Defendant Friendly Home Care, Inc., and is also an administrator for Extended Home Care. Isaac Schwartz is on the Board of Directors of Defendant Extended Home Care, as well as the owner or operator of Defendant Nursing Personnel. Defendants Nursing Personnel, Immediate Home Care and Friendly Home Care, Inc., are vendors to Extended Home Care. Defendants Nursing Personnel, and Immediate Home Care are vendors to Excellent Home Care Services, LLC. Defendant Borina Home Care Agency, Inc., supplied home health aides (primarily undocumented Russian nationals) to Defendant Immediate Home Care. Defendant Immediate Home Care was instrumental in creating Defendant Excellent Home Care Services, LLC and Immediate Home Care was the payer on many of Relator’s paychecks when she was nominally employed by Defendant Excellent Home Care Services, LLC, where her job was to get it qualified as Certified Home Health Agency (“CHHA”) in New York State. Defendants Excellent Home Care

Services, LLC and Immediate Home Care I, LLC, both list their DOS process address as 204 Broadway, Brooklyn, New York 11211.

## **FEDERAL AND STATE FALSE CLAIMS ACTS**

### **The Federal Act**

27. The Federal FCA, 31 U.S.C. § 3729(a)(1), makes “knowingly” presenting or causing to be presented to the United States any false or fraudulent claim for payment, a violation of Federal law for which the United States may recover three times the amount of the damages the government sustains and a civil monetary penalty of between \$5,500 and \$11,000 per claim for claims made on or after September 29, 1999.

28. The Federal FCA, 31 U.S.C. § 3729(a)(2), makes “knowingly” making, using, or causing to be used or made, a false record or statement to get a false or fraudulent claim paid or approved by the Government, a violation of Federal law for which the United States may recover three times the amount of the damages the Government sustains and a civil monetary penalty of between \$5,500 and \$11,000 per claim for claims made on or after September 29, 1999.

29. For purposes of 31 U.S.C. §§ 3729(a)(1) and (2), the terms “knowing” and “knowingly” mean that a person, with respect to information . . . (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

30. The Federal FCA, 31 U.S.C. § 3729(a)(3), makes any person, who conspires to defraud the United States by getting a false or fraudulent claim allowed or paid, liable for three times the amount of the damages the Government sustains and a

civil monetary penalty of between \$5,500 and \$11,000 per claim for claims made on or after September 29, 1999.

31. The Federal FCA defines a “claim” to include any request or demand, whether under contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested.

32. The Federal False Claims Act provides, in pertinent part, that:

(a) Any person who . . . (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; or (3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

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is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000,<sup>1</sup> plus 3 times the amount of damages which the Government sustains because of the act of that person . . .

(b) For purposes of this section, the terms “knowing” and “knowingly” mean that a person, with respect to information . . . (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

31 U.S.C. § 3729.

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<sup>1</sup> **Error! Main Document Only.** The minimum and maximum penalties were increased in September 1999 to \$5,500 and \$11,000, respectively, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321).

33. The Federal FCA, 31 U.S.C. §§ 3729, *et seq.*, applies, *inter alia*, to the Federal portion of Medicaid fraud losses caused by false Medicaid claims to the jointly Federal-state funded Medicaid program. The Federal FCA, § 3730(b), contains *qui tam* provisions governing, *inter alia*, a Relators' right to claim a share of the Federal government's recovery.

34. The Federal FCA, 31 U.S.C. § 3730(h) makes any employer who takes an adverse employment action against an employee in retaliation for engaging in protected conduct under the Federal FCA liable for all relief necessary to make the aggrieved employee whole.

35. The Federal False Claims Act provides, in pertinent part, that:

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

31 U.S.C. § 3730(h).

### **The New York State Act**

36. The NYS FCA, §189.1(a), makes "knowingly" presenting or causing to be presented to be presented, to any employee, officer or agent of the state or a local government, a false or fraudulent claim for payment or approval liable for three times the amount of the damages the state or local government sustains and a civil monetary penalty of between \$6,000 and \$12,000 per claim.

37. The NYS FCA, §189.1(b), makes “knowingly” making, using or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the state or a local government liable for three times the amount of the damages the state or local government sustains and a civil monetary penalty of between \$6,000 and \$12,000 per claim.

38. For the purposes of §§ 189.1(a) and (b) under the NYS FCA, “knowing and knowingly” mean that with respect to a claim, or information relating to a claim, a person: (a) has actual knowledge of such claim or information; (b) acts in deliberate ignorance of the truth or falsity of such claim or information; or (c) acts in reckless disregard of the truth or falsity of such claim or information. Proof of specific intent to defraud is not required, provided, however that acts occurring by mistake or as a result of mere negligence are not covered by the NYS FCA. §188.3.

39. The NYS FCA, §189.1(c), makes any person, who conspires to defraud the state or a local government by getting a false or fraudulent claim allowed or paid, liable for three times the amount of the damages the state or local government sustains and a civil monetary penalty of between \$6,000 and \$12,000 per claim.

40. Under the NYS FCA "claim" means any request or demand, whether under a contract or otherwise, for money or property which is made to any employee, officer, or agent of the state or a local government, or to any contractor, grantee or other recipient, if the state or a local government provides any portion of the money or property which is requested or demanded or will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded, and

"false claim" means any claim which is, either in whole or part, false or fraudulent. §§ 188.1 and .2.

41. The New York False Claims Act provides, in pertinent part, that:

[A]ny person who: (a) knowingly presents, or causes to be presented, to any employee, officer or agent of the state or a local government, a false or fraudulent claim for payment or approval; (b) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the state or a local government; [or] (c) conspires to defraud the state or a local government by getting a false or fraudulent claim allowed or paid;...shall be liable: (i) to the state for a civil penalty of not less than six thousand dollars and not more than twelve thousand dollars, plus three times the amount of damages which the state sustains because of the act of that person; and (ii) to any local government for three times the amount of damages sustained by such local government because of the act of that person.

The New York State False Claims Act, § 189.1.

42. The New York State False Claims Act applies, *inter alia*, to the New York State and New York City portions of Medicaid fraud losses caused by false Medicaid claims to the jointly Federal-state funded New York Medicaid program. The NYS FCA, § 190.2, contains *qui tam* provisions governing, *inter alia*, a Relators' right to claim a share of any Medicaid fraud recovery on behalf of the State of New York or City of New York.

43. The New York State FCA, § 191.1 makes any employer who takes an adverse employment action against an employee in retaliation for engaging in protected conduct under the New York State FCA liable for all relief necessary to make the aggrieved employee whole.

44. The New York State False Claims Act provides, in pertinent part, that:

Any employee of any private or public employer who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in

the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employer or others in furtherance of an action brought under this article, including the investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include but not be limited to:

- (a) an injunction to restrain continued discrimination;
- (b) reinstatement to the position such employee would have had but for the discrimination or to an equivalent position;
- (c) reinstatement of full fringe benefits and seniority rights;
- (d) payment of two times back pay, plus interest; and
- (e) compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

NYS FCA §191.1.

### **NEW YORK'S MEDICAID PROGRAM**

45. The Medicaid Program, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v (hereafter "Medicaid"), is a Health Insurance Program administered by the Government of the United States and the various individual States and is funded by State and Federal taxpayer revenue. The Medicaid Program is overseen by the United States Department of Health and Human Services. Medicaid was designed to assist participating states in providing medical services, durable medical equipment and prescription drugs to financially needy individuals that qualify for Medicaid.

46. Title XIX authorizes Federal financial participation to approved State plans for Medicaid. Each State implements its version of Medicaid according to a State Plan that has been approved by HHS. Within broad Federal regulatory and policy guidelines, the States determine who is Medicaid eligible, what services are covered and how much to reimburse health care providers.



47. The Medical Assistance Program in New York State (i.e., the NYS Medicaid Program) is administered by the New York State Department of Social Services (“NYDSS”) in cooperation with the New York State Department of Health, the New York State Education Department, and the New York State Office of Mental Retardation and Developmental Disabilities (“OMRDD”).

48. The NYS Medicaid Program reimburses providers of home health care services, as long as the provider, beneficiary and service satisfy New York State laws, regulations, policies and guidelines.

#### **OTHER FEDERAL HEALTH CARE INSURANCE PROGRAMS**

49. The Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395, *et seq.*, (hereinafter “Medicare”), is a Health Insurance Program administered by the Government of the United States that is funded by taxpayer revenue. The program is overseen by the United States Department of Health and Human Services. Medicare was designed to be a health insurance program and to provide for the payment of hospital services, medical services and durable medical equipment to persons over sixty-five (65) years of age and others that qualify under the terms and conditions of the Medicare Program. Medicare covers many of the services provided by Certified Home Health Agencies (“CHHAs”), including, Defendants Excellent Home Care Services, LLC and Extended Home Care

50. The Civilian Health and Medical Program of the Uniformed Services (“CHAMPUS”) (now known as “TRICARE”), 10 U.S.C. §§ 1071-1106, provides benefits for health care services furnished by civilian providers, physicians, and suppliers to members of the Uniformed Services and to spouses and children of active duty, retired

and deceased members. The program is administered by the Department of Defense and funded by the Federal Government.

51. The Federal Employees Health Benefits Program (“FEHBP”) provides health care benefits for qualified Federal employees and their dependents.

### **NYS HOME HEALTH CARE REGULATIONS**

52. Chapter 895 of the New York Laws of 1977 established and regulates the home health care system in New York. Its goal was to de-institutionalize nursing home care and allow elderly and incapacitated persons to receive health care services in their own homes rather than in a nursing home setting. Approximately 54,000 residents of New York City receive Medicaid-funded “home health services” (sometimes also referred to as “community-based services”).

53. The New York State Department of Health issues and promulgates regulations governing home health care services, including through the publication of the Home Health Manual Policy Guidelines.

54. The Commissioner of the New York State Department of Health also promulgates rules and regulations governing home health care, including through the Commissioner’s Administrative Rules and Regulations for Certified Home Health Agencies (CHHA).

55. The New York State Department of Health, Bureau of Long Term Care Reimbursement (Division of Health Care Financing), 943 Corning Tower, Building, Albany, New York, 12237-0709, is responsible for establishing Medicaid reimbursement policies and rates for home health care services, including nursing, physical therapy, speech therapy, occupational therapy, home health aides and personal care aides.

56. Personal care aides assist clients with the following services: bathing, grooming, dressing, toileting, walking, transporting, feeding and using medical supplies and durable medical equipment.

57. In addition to the foregoing services, home health aides also help clients with: using prescribed medicine and medical equipment, supplies and devices, such as catheters and colostomy devices; changing dressings of stable surface wounds; taking routine health measurements and tests, such as, monitoring vital signs; caring for an ostomy; and performing a maintenance exercise program.

58. In order to qualify for Medicaid reimbursement for such services, home health aides must, among other things, successfully complete a training program from a facility licensed by the New York State Department of Health or the New York State Department of Education. The training program requires a minimum of 75 hours of training, including 16 hours of supervised practical training under the auspices of a registered nurse and must pass a written test conducted in English.

59. Examples of schools issuing certificates for home health aides in the New York City area are Bronx Institute for Vocational Training and Development (“IVTD Bronx”), whose owner or operator is Ronald Kehinde; Smalls Training and Counseling School, whose owner or operator is Mary Smalls; and On Time Home Care Agency, whose owner or operator is Laurette Escarment. Upon information and belief, these schools and others have been providing bogus certificates to home health aides who did not successfully complete the required training program.

60. Under New York State laws, regulations, policies and guidelines, home health aides must also satisfy other criteria, including: being a United States citizen or a

documented alien worker; having no criminal history; being proficient in English; providing a valid social security card; and providing a set of finger prints.

61. New York State has established a bi-furcated licensing structure for the home health aide industry. Qualified home health aides are employed by Licensed Home Care Services Agencies (“LHCSAs”), which function similar to temporary employment agencies. Frequently, these “licensed” agencies use brokers to sign up home health aides on their rosters. The “licensed” agencies are also the only entities permitted to solicit patients.

62. The “licensed” agencies in turn act as vendor and provide the home health aides to Certified Home Health Agencies (“CHHAs”). It is the “certified” agencies that actually place the home health aides with clients. Only the “certified” agencies are qualified to bill the Medicaid Program for home health aide services and to receive Medicaid reimbursement for such services.

63. The Certified Home Health Agencies (“CHHAs”), including Defendants Excellent Home Care Services, LLC and Extended Home Care, submit claims for Medicaid reimbursement to, and receive Medicaid payments from, CSC, the private contractor that administers Medicaid reimbursements on behalf of the New York Medicaid Program. The claims are submitted on a Form UB-92, also known as the HCFA Form 1500.

64. Home health aide services are also part of New York State’s managed Medicare reimbursement program. Care Plus Health Plan (whose owner or operator, Bart Larson, is a member of Defendant Excellent Home Care Services, LLC’s board of

directors) and Guild Net (which contracts with Immediate Home Care) are involved in some of the Medicare billing implicated in this action.

65. The “certified” agencies remit part of the Medicaid reimbursements they receive to the referring “licensed” agencies, who in turn, pay the home health aides.

66. The New York State Department of Health limits the number of Certified Home Health Agencies (“CHHAs”) in defined geographic localities and they are few in number. Prospective “certified” agencies must apply for certification on a Form 855 (certification agency application).

67. Because of their limited number and indispensable role in the home health aide industry, at least in terms of obtaining Medicaid reimbursements, the “licensed” agencies and their rosters of home health aides cluster around “certified” agencies like multitudes of satellites surrounding a planet.

68. Excellent Home Care Services, LLC and Extended Home Care are among the limited number of certified agencies in the New York downstate region.

69. Certified Home Health Agencies (“CHHAs”) and Licensed Home Care Services Agencies (“LHCSAs”) are responsible for ensuring that the home health aides they employ, and for whose services they bill Medicaid, have the proper credentials and are otherwise compliant with New York State laws, regulations, policies and guidelines governing home health aides.

70. Under New York State laws, regulations, policies and guidelines, Certified Home Health Agencies (“CHHAs”) can only lawfully bill the NYS Medicaid Program for qualified services provided to qualified beneficiaries. Among other things, it is unlawful to bill Medicaid for: services provided by an un-credentialed, falsely

credentialed or otherwise unqualified home health aide; services not provided; unnecessary services; and services provided to a family member of the home health aide.

71. It is also unlawful to share home health aide reimbursements with the client who received the services.

72. Home health aide services can only be billed lawfully if a licensed medical doctor has prescribed such care. The doctor's prescription is to be done on a Form 485 (doctor letter of medical necessity form).

73. New York laws, regulations, policies and guidelines also impose limits on the type of patient who can receive home health aide services and the duration during which he or she can receive such services, as well as, the circumstances under which the services can be renewed.

74. Certified Home Health Agencies ("CHHAs"), Licensed Home Care Services Agencies ("LHCSAs") and home health aides must contemporaneously make and maintain records containing specified information concerning the provision of home health aide services, such as the place, date and time of service, the patient's name, the type of service rendered and patient progress notes.

### **FACTUAL ALLEGATIONS**

75. Relator was employed by Defendant Extended Home Care from in or about August 1997 to in or about January 1999, and again from in or about May 2006 to in or about October 2006. She was also employed as Acting Chief Operating Officer by Defendant Excellent Home Care Services, LLC from in or about October 2002 to in or about June 2005. During her employment on behalf of Defendant Excellent Home Care

Services, LLC, Relator used offices that were also occupied by Immediate Home Care and for most of her employment her paycheck was drawn on a bank account in the name of Defendant Immediate Home Care. Through the aforementioned employment, Relator has acquired direct, unique and first hand information about fraudulent billing practices in the home health aide industry.

### **The Defendants' Unlawful Practices**

76. Among her other responsibilities for Defendants Excellent Home Care Services, LLC and Immediate Home Care, Relator performed quality control analyses to assess their compliance with New York State laws, regulations, policies and guidelines governing home health aide services.

77. One of the steps Relator undertook for quality control purposes was to see if proper documentation was being created and maintained.

78. Another step she undertook was to see if the home health aides were properly qualified and credentialed. She did this by, among other things, reviewing their personnel files to determine if they had provided certifications from qualified training programs, finger prints, proof of citizenship or green cards, and so on.

79. What Relator found through either her own quality audits or learned more generally through her experience in the home health care industry, is that Licensed Home Care Services Agencies (“LHCSAs”), including, Defendants Immediate Home Care, Borina Home Care Agency, Inc., Friendly Home Care, Inc., and Nursing Personnel, were supplying unqualified and/or un-credentialed and/or falsely credentialed home health aides and that Certified Home Health Agencies (“CHHAs”), including, Defendants

Extended Home Care and Excellent Home Care Services, LLC were supplying such persons to Medicaid beneficiaries and billing the Medicaid Program for their services.

80. Relator also suspected or discovered that certain schools, including, but not limited to, IVTD Bronx, were selling bogus home health aide certificates to home health aides employed by Licensed Home Care Services Agencies (“LHCSAs”), including, Defendants Immediate Home Care, Borina Home Care Agency, Inc., Friendly Home Care, Inc., and Nursing Personnel, and used by Certified Home Health Agencies (“CHHAs”), including, Defendants Extended Home Care and Excellent Home Care Services, LLC.

81. As part of her quality control audit, Relator also called clients of Excellent Health Care Services, LLC and was told on a number of occasions that the home health aide who reported providing services to that client on particular dates did not in fact see the client as reported.

82. While at Excellent Care Services, LLC/Immediate Home Care, Relator also observed that on Thursdays there were large amounts of cash in the office which, upon information and belief, were used to pay home health aides “off the books” and at below prevailing wage rates.

83. Based on her specific observations while at Excellent Care Services, LLC/Immediate Home Care, as well as general information she obtained from being involved in the home health care industry, Relator is aware and/or reasonably believes that Defendants were committing various unlawful practices, including, but not limited to the following:



- a. Hiring and using people who wanted to work as home health aides, but who could not meet the NYS DOE qualifications (because they were illegal immigrants, had criminal histories, or simply did not want to go through the required training program);
- b. Hiring home health aides who bought certificates from schools or certificate mills;
- c. Hiring home health aides who had no certificates;
- d. Recruiting of unqualified home health aides by LHCSAs who farmed them out to CHHAs who placed them with patients;
- e. CHHAs billing Medicaid for home health aide services not rendered
- f. Billing for more than 24 hours in a day or at too many locations in too short a period of time;
- g. Not documenting services with progress notes;
- h. Copying information from prior progress notes to falsify the provision of services and visits.
- i. Billing for home based services when the ostensible provider was in fact working at hospital at same time as the claimed home service;
- j. Billing Medicaid for unnecessary services (sometimes in conspiracy with the patients who got a share of the Medicaid reimbursement);
- k. Billing for skilled-level care (e.g., nursing, rehabilitation) when such services were not required;
- l. Billing for excessive weeks and/or months of home health aide care;

- m. Engaging in “abusive recertification” of need for home health aide services;
- n. Causing patients to demand “split shift” coverage to allow over billing of time;
- o. Conspiring with doctors to create bogus Letters of Medical Necessity;
- p. Billing Medicaid for ineligible services, including, but not limited to, services provided by home health aides to family members and relatives; billing for services to patients with “special needs”(e.g., OMRDD/mentally retarded persons), who are supposed to use other Medicaid programs for such services.
- q. Underpaying home health aides and paying them in cash.
- r. Employing home health aides who had certificates from schools that were not themselves duly licensed by the State of New York;
- s. Committing various books and records violations, including, but not limited to: missing progress notes, phony progress notes, incomplete home health aide personnel files (e.g., no proof of criminal history checks, no finger prints on file, no proof of United States citizenship or immigration/work authorization documentation)

84. In or about February 2005, Relator contacted the New York State Attorney General’s Office (Medicaid Fraud Control Unit or “MFCU”) about the unlawful conduct she became aware of in the home health aide industry. Since that time she has on numerous occasions provided documentary and testimonial information and evidence in support of Operation: Home Alone.

85. Upon information and belief, as a result of information provided by Relator, the New York State Attorney General issued grand jury subpoenas to various participants in the home health aide industry, including, in or about March 2005, upon Defendants Excellent Home Care Services, LLC and Immediate Home Care.

86. Relator re-joined Defendant Extended Home Care after being fired by Defendant Excellent Home Care Services, LLC. Her motivation to do that was to gain access to information at Defendant Extended Home Care and to provide it to the New York Attorney General's Office, at its request.

87. While at Defendant Extended Home Care, Relator observed various unlawful practices, including, but not limited to the following:

- a. Home care nurses submitting nursing notes for visits and services that were not provided;
- b. Nurses falsifying progress notes (copying prior notes with minimal changes) without seeing patients;
- c. Nurses who would have been logistically unable to attend to and visit the patients they had claimed to have seen;
- d. Accepting patients without a skilled nursing need and providing unnecessary services;
- e. Using home health aides supplied by Immediate Home Care despite Relator's warning to the principals and administrator of Extended Home Care that Immediate Home Care was employing undocumented, unqualified, un-credentialed and falsely credentialed home health aides.

f. Disguising ownership interests in Extended Home Care's CHHA application as well as in other documents filed with the State of New York.

88. Relator provided documentary and testimonial information and evidence to the New York State Attorney General in support of the above-listed unlawful practices by Extended Home Care.

89. The illegal activity described above involved Medicaid and Medicare claims for reimbursement for services provided, or purportedly provided, to residents of the State of New York, including residents of the City of New York.

**Defendant Excellent Home Care Services, LLC's Unlawful Retaliation**

90. Relator was terminated from employment at Excellent Home Care on or about April 21, 2005.

91. She was fired by Excellent Home Care Services, LLC in retaliation for her role and assistance in Operation: Home Alone.

92. Excellent Home Care Services, LLC CEO Annette Horvath terminated Relator's employment immediately after Singer told her that Relator was the cause of New York State grand jury subpoenas being served on Immediate Home Care and Excellent Home Care Services, LLC, among other home health aide entities that had overlapping business operations and interests, in connection with Operation: Home Alone.

93. Relator has suffered economic and other injuries as a result of her employment termination.

**LEGAL CLAIMS FOR RELIEF**

94. Relator alleges that Defendants' conduct detailed above violates the Federal and the NYS False Claims Acts. She brings these claims on behalf of the United States and the New York State Plaintiffs, as well as on her own behalf. Relator on her own behalf also alleges that the conduct detailed above concerning her termination from Defendant Excellent Home Care Services, LLC violates the anti-retaliation provisions of the Federal and NYS FCAs.

### **COUNT ONE**

#### **[False and/or Fraudulent Claims, 31 U.S.C. § 3729 (a)(1)]**

95. Relator restates and realleges the allegations in paragraphs 1 through 94 above as if each were stated herein in their entirety and said allegations are incorporated herein by reference.

96. This is a claim for treble damages and monetary penalties pursuant to the False Claims Act, 31 U.S.C. §§ 3729-3733, as amended.

97. Through the above-described acts and omissions, and from at least in or before 2002 to the present, Defendants knowingly presented and caused to be presented for payment and approval false and/or fraudulent claims (e.g., Forms UB-92, also known as, HCFA Forms 1500) to officers of the United States Government, in that they submitted claims for Medicaid and Medicare reimbursement for home health care services when the Defendants knew and should have known that such claims were not eligible for reimbursement or not eligible in part. As a result of this illegal activity, these claims were improper in whole pursuant to 31 U.S.C. § 3729(a)(1).

98. Federal Medicaid and Medicare Program officials, and their contractors, carriers, intermediaries and agents, paid and approved claims for payment for home health care services that should not have been paid or approved.

99. Federal Medicaid and Medicare Program officials, and their officials and their contractors, carriers, intermediaries and agents, would not have paid the aforementioned claims for the home health care services had they known the truth about their ineligibility.

100. By reason of the above-described presentment of false and fraudulent claims, the United States has suffered significant losses in an amount to be determined.

## **COUNT TWO**

### **[False and/or Fraudulent Statements, 31 U.S.C. § 3729 (a)(2)]**

101. Relator restates and realleges the allegations in paragraphs 1 through 94 above as if each were stated herein in their entirety and said allegations are incorporated herein by reference.

102. This is a claim for treble damages and monetary penalties pursuant to the False Claims Act, 31 U.S.C. §§ 3729-3733, as amended.

103. Through the above-described acts and omissions, and from in or before at least 2002 to the present, Defendants knowingly made and used, and caused to be made and used, false records and statements (e.g., home health aide certificates and personnel information, CHHA applications, patient charts and progress notes, letters of medical necessity) for the purpose of having false and fraudulent claims for home health care services paid and approved by Federal Medicaid and Medicare Program officials, and their contractors, carriers, intermediaries and agents.

104. Such claims for home health care services would not have been presented but for the unlawful activities of Defendants.

105. As a result of these false and fraudulent records and statements, the corresponding claims for reimbursement were improper in whole pursuant to 31 U.S.C. § 3729(a)(2).

106. By reason of the above-described presentment of false records and statements, the United States has suffered significant losses in an amount to be determined.

### **COUNT THREE**

#### **[Conspiracy to Defraud, 31 U.S.C. § 3729 (a)(3)]**

107. Relator restates and realleges the allegations in paragraphs 1 through 94 above as if each were stated herein in their entirety and said allegations are incorporated herein by reference.

108. This is a claim for treble damages and monetary penalties pursuant to the False Claims Act, 31 U.S.C. §§ 3729-3733, as amended.

109. Through the above-described acts and omissions, and from in or before at least 2002 to the present, Defendants, with each other and with persons known and unknown, knowingly agreed and conspired to defraud the Federal government by having false and fraudulent claims for home health care services presented to, and approved and paid by, Federal Medicaid and Medicare Program officials, their contractors, carriers, intermediaries and agents and by making false and fraudulent records and statements in connection with such claims.

110. As a result of this illegal activity, these claims and records and statements were contrary to 31 U.S.C. §§ 3729(a)(1)-(2) and in violation of 31 U.S.C. § 3729(a)(3).

111. By reason of the above-described unlawful conspiracy, the United States has suffered significant losses in an amount to be determined.

#### **COUNT FOUR**

##### **[False and/or Fraudulent Claims, NYS FCA §189.1(a)]**

112. Relator restates and realleges the allegations in paragraphs 1 through 94 above as if each were stated herein in their entirety and said allegations are incorporated herein by reference.

113. This is a claim for treble damages and monetary penalties pursuant to the New York False Claims Act, 2007 New York Laws 58, Section 39, Article XIII, §187 *et seq.*

114. Through the above-described acts and omissions, and from at least in or before 2002 to the present, Defendants knowingly presented and caused to be presented for payment and approval false and/or fraudulent claims (e.g., Forms UB-92, also known as, HCFA Forms 1500) to officers of the New York State and City of New York governments, in that they submitted claims for Medicaid reimbursement for home health care services when the Defendants knew and should have known that such claims were not eligible for reimbursement or not eligible in part. As a result of this illegal activity, these claims were improper in whole pursuant to NYS FCA §189.1(a).

115. New York State and New York City Medicaid Program officials, and their contractors, carriers, intermediaries and agents, paid and approved claims for payment for home health care services that should not have been paid or approved.



116. New York State and New York City Medicaid Program officials, and their officials and their contractors, carriers, intermediaries and agents, would not have paid the afore-mentioned claims for the home health care services had they known the truth about their ineligibility.

117. By reason of the above-described presentment of false and fraudulent claims, the State of New York and City of New York have suffered significant losses in an amount to be determined.

### **COUNT FIVE**

#### **[False and/or Fraudulent Statements, NYS FCA §189.1(b)]**

118. Relator restates and realleges the allegations in paragraphs 1 through 94 above as if each were stated herein in their entirety and said allegations are incorporated herein by reference.

119. This is a claim for treble damages and monetary penalties pursuant to the New York State False Claims Act, §189.1(b).

120. Through the above-described acts and omissions, and from in or before at least 2002 to the present, Defendants knowingly made and used, and caused to be made and used, false records and statements (e.g., home health aide certificates and personnel information, CHHA applications, patient charts and progress notes, letters of medical necessity) for the purpose of having false and fraudulent claims for home health care services paid and approved by New York State and City of New York Medicare Program officials, and their contractors, carriers, intermediaries and agents.

121. Such claims for home health care services would not have been presented but for the unlawful activities of Defendants.

122. As a result of these false and fraudulent records and statements, the corresponding claims for reimbursement were improper in whole pursuant to NYS FCA §189.1(b).

123. By reason of the above-described presentment of false records and statements, the State of New York and City of New York have suffered significant losses in an amount to be determined.

### **COUNT SIX**

#### **[Conspiracy to Defraud, NYS FCA §189.1(c)]**

124. Relator restates and realleges the allegations in paragraphs 1 through 94 above as if each were stated herein in their entirety and said allegations are incorporated herein by reference.

125. This is a claim for treble damages and monetary penalties pursuant to the New York State False Claims Act, §189.1(c).

126. Through the above-described acts and omissions, and from in or before at least 2002 to the present, the Defendants, with each other and with persons known and unknown, knowingly agreed and conspired to defraud the New York State and New York City governments by having false and fraudulent claims for home health care services presented to, and approved and paid by, New York State and City of New York Medicaid Program officials, their contractors, carriers, intermediaries and agents and by making false and fraudulent records and statements in connection with such claims.

127. As a result of this illegal activity, these claims and records and statements were improper in whole pursuant to NYS FCA §§189.1(a) and (b) and in violation of § 189.1(c).

128. By reason of the above-described unlawful conspiracy, the State of New York and City of New York have suffered significant losses in an amount to be determined.

**COUNT SEVEN**

**[Anti-retaliation, 31 U.S.C. § 3730(h)]**

129. Relator restates and realleges the allegations in paragraphs 1 through 94 above as if each were stated herein in their entirety and said allegations are incorporated herein by reference.

130. From at least as early as in or about February 2005, while employed by Defendant Excellent Home Care Services, LLC, Relator was engaging in conduct protected under the Federal False Claims Act, 31 U.S.C. § 3730(h).

131. Defendant Excellent Home Care Services, LLC, learned of or suspected that Relator was engaging in such protected conduct.

132. On or about April 21, 2005, Defendant Excellent Home Care Services, LLC, terminated Relator's employment.

133. Relator was terminated because Defendant Excellent Home Care Services, LLC believed or suspected that she had been engaging in conduct protected by 31 U.S.C. § 3730(h).

134. Relator has significant suffered economic and non-economic damages as a result of her wrongful termination in an amount to be determined.

**COUNT EIGHT**

**[Anti-retaliation, NYS FCA §191.1(e)]**

135. Relator restates and realleges the allegations in paragraphs 1 through 94 above as if each were stated herein in their entirety and said allegations are incorporated herein by reference.

136. From at least as early as in or about February 2005, while employed by Defendant Excellent Home Care Services, LLC, Relator was engaging in conduct protected under the New York State False Claims Act, §191.1(e).

137. Defendant Excellent Home Care Services, LLC, learned of or suspected that Relator was engaging in such protected conduct.

138. On or about April 21, 2005, Defendant Excellent Home Care Services, LLC, terminated Relator's employment.

139. Relator was terminated because Defendant Excellent Home Care Services, LLC believed or suspected that she had been engaging in conduct protected by §191.1(e).

140. Relator has significant suffered economic and non-economic damages as a result of her wrongful termination in an amount to be determined.

**PRAYER FOR RELIEF**

WHEREFORE, Relator, on behalf of herself individually, and on behalf, and in the name, of the Government of the United States and the State of New York, respectively, demands and prays that judgment be entered against the Defendants as follows:

- A. Ordering Defendants to cease and desist from violating the False Claims

Act, 31 U.S.C. §§ 3729-3732 and the New York State False Claims Act, §§ 187 *et seq.*

B. On the Federal FCA Qui Tam Causes of Action (Counts One through Three), against Defendants in the amount of three times the amount of damages the United States has sustained because of Defendants' actions, plus a civil penalty of \$11,000 for each act in violation of the False Claims Act, as provided by 31 U.S.C. § 3729(a), and other applicable law, with interest.

C. Awarding Relator the maximum amount available under the False Claims Act, 31 U.S.C. § 3730(d) for bringing the Qui Tam Causes of Action, namely, 25 percent of the proceeds of the action by judgment or settlement of the claim if the Government intervenes in the matter (or pursues its claim through any alternate remedy available to the Government, 31 U.S.C. § 3730(c)(5)), or, alternatively, 30 percent of the proceeds of the action by judgment or settlement of the claim, if the Government declines to intervene.

D. On New York State FCA Qui Tam Causes of Action (Counts Four through Six), against the Defendants in the amount of three times the amount of damages which the State of New York has sustained because of Defendants' actions, plus a civil penalty of twelve thousand dollars for violation of the New York False Claims Act, as provided by § 189.1(g)(i).

E. Pursuant to the New York False Claims Act §§ 190.6(a) and (b), awarding Relator the maximum amount available under the New York False Claims Act for bringing the Qui Tam Causes of Action, namely, 25 percent of the proceeds of the action by judgment or settlement of the claim if New York attorney general elects to commence a civil enforcement action (or pursues its claim through any alternate action), or,

alternatively, 30 percent of the proceeds of the action by judgment or settlement of the claim, if the New York attorney general designates Relator or his attorneys to commence a civil enforcement action, based on this complaint.

G. On the Federal FCA Anti-retaliation Cause of Action (Count Seven), against Defendant Excellent Home Care Services, LLC, for all damages sustained by Relator as a result its unlawful retaliation, including, but not necessarily limited to, compensatory damages, lost income, damage to reputation and punitive damages.

H. On New York State FCA Anti-retaliation Cause of Action (Count Eight), against Defendant Excellent Home Care Services, LLC, damages including, but not necessarily limited to, two times the amount of back pay, interest on back pay, front pay, and compensatory damages suffered by Relator, as provided by the New York False Claims Act § 191.1.

I. As to all Causes of Action in this Complaint, awarding Relator all reasonable expenses that were necessarily incurred in prosecution of this action, plus all reasonable attorneys' fees and costs, as provided by 31 U.S.C. §§ 3730(d) and (h) and the New York False Claims Act §§ 189.3, 190.7 and 191.1(e). And,

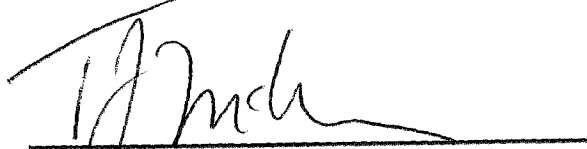
J. For such other relief for the United States, the State of New York and Relator as this Court deems just and proper.

### **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Relator hereby demands trial by jury on all counts.

Dated: November 5, 2007

Respectfully submitted,



Timothy J. McInnis

[TM7151]

Law Office of Timothy J. McInnis

521 Fifth Ave, Suite 1700

New York, NY 10175-0038

Tel: (212) 292-4573

Fax: (212) 292-4574

Mike Bothwell

Bothwell & Harris

Attorneys at Law

304 Macy Drive

Roswell, GA 30076

Tel. 770-643-1606

Fax 678-578-7472

Mike@BothwellHarris.com

(Pro hac vice application to be filed)

Sara Vann, Esq.

Bothwell & Harris

Attorneys at Law

304 Macy Drive

Roswell, GA 30076

Tel. 770-643-1606

Fax 678-578-7472

Sarah@BothwellHarris.com

(Pro hac vice application to be filed)