UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at FRANKFORT

CIVIL ACTION NO. _____ *ELECTRONICALLY FILED*

UNITED STATES OF AMERICA PLAINTIFF

vs. **COMPLAINT**

VILLASPRING HEALTH CARE CENTER, INC. d/b/a VILLASPRING OF ERLANGER HEALTH CARE CENTER AND REHABILITATION; CARESPRING HEALTH CARE MANAGEMENT, LLC; and BARRY N. BORTZ DEFENDANTS

* * * * * * *

The Defendants have failed to provide adequate care for the medically fragile and vulnerable elderly residents of the Villaspring nursing facility, resulting in egregious harm and even death to some of those residents. In the process, Defendants have defrauded the United States and the Commonwealth of Kentucky by seeking, and receiving, substantial reimbursement from the Medicare and Kentucky Medicaid programs for care purportedly provided to these residents, despite knowing that such "care" was either non-existent or so inadequate as to be worthless.

The United States of America, by and through the United States Attorney for the Eastern District of Kentucky, therefore files this Complaint against Defendants, jointly and severally, for damages under the False Claims Act, 31 U.S.C. §§ 3729-3733, the common law theory of fraud, and the common law or equitable theory of unjust enrichment. In support thereof, the United States alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, 1345, 1367(a) and the False Claims Act, 31 U.S.C. §§ 3730, 3732.

2. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1395(a), and 31 U.S.C. § 3732(a) because the acts alleged in this Complaint occurred in the Eastern District of Kentucky.

3. This court has personal jurisdiction over each Defendant based upon the transaction of business within this judicial district.

PARTIES

4. The United States brings this action to recover losses incurred by its agency, the Department of Health and Human Services (HHS), and its operating division, the Centers for Medicare & Medicaid Services (CMS). HHS provides funding for, and regulates payment and participation of skilled nursing care facilities in the Medicare and Medicaid program.

5. Defendant Villaspring Health Care Center, Inc., d/b/a Villaspring of Erlanger Health Care Center and Rehabilitation ("Villaspring") is an Ohio for-profit corporation that was incorporated in 1998. Villaspring does business as a nursing facility, located at 630 Viox Drive, Erlanger, Kentucky 41048, and submitted claims for reimbursement to Medicare and the Kentucky Medicaid programs. At all material times, Villaspring was assigned Kentucky Medicaid provider number 12504171 and Medicare provider number 185447.

6. Defendant Carespring Health Care Management, LLC ("Carespring") is a limited liability company organized under the laws of Ohio in 2007. Carespring is the parent company of at least two nursing facilities in Kentucky, including Villaspring, and owns additional nursing

facilities in Ohio. At all material times, Villaspring has been wholly-owned by Carespring or Carespring's predecessors in interest. Pursuant to Villaspring's Medicare Provider Agreement dated August 16, 2000, payments made by Medicare on account of services provided by Villaspring would be sent to Carespring.

7. Defendant Barry Bortz ("Bortz") is an individual who resides in Ohio. Bortz has been a majority owner of Villaspring since its organization in 1998, and serves as chief executive officer ("CEO") of the company. In addition, at all material times Bortz has owned a majority interest in and served as CEO of Villaspring's parent company, Carespring, or Carespring's predecessors in interest. In his capacity as majority owner and CEO of Villaspring, and as majority owner and CEO of Carespring, Bortz has exercised direct and indirect control of Villaspring's nursing facility at all material times.

SUMMARY OF ALLEGATIONS

8. From July 1, 2004 until on or about December 31, 2008 (hereinafter the "relevant period"), Defendants Villaspring, Carespring and Bortz submitted or caused to be submitted false or fraudulent claims to the Medicare and Kentucky Medicaid programs for services that were worthless, in that they were not provided or rendered, were deficient, inadequate, substandard, and did not promote the maintenance or enhancement of the quality of life of the residents of Villaspring, and were of a quality that failed to meet professionally recognized standards of health care (hereinafter "fraudulent claims").

9. During the relevant period, Defendants caused egregious resident harm, abuse and neglect, and grossly deficient living conditions at Villaspring. During the relevant period, Defendants knowingly directed and approved of the billings by Villaspring to the Medicare and

Kentucky Medicaid programs, and knowingly accepted and approved of the receipt by Villaspring of Medicare and Kentucky Medicaid funds, despite knowing that the services provided to Villaspring patients were so deficient or inadequate as to be worthless.

10. During the relevant period, Defendants perpetrated a fraud on the United States by making materially false representations in the submission of the Medicare and Kentucky Medicaid claims.

11. All of the Defendants were unjustly enriched by the improper payments from the Medicare and Kentucky Medicaid programs. All of the Defendants should be required to account for and disgorge their unlawful profits.

MEDICARE AND MEDICAID REIMBURSEMENT

12. Through Medicare, the United States pays for certain medical care for the elderly and the disabled. Through Kentucky Medicaid, the United States and the Commonwealth of Kentucky pay for certain medical care for the disabled and those who meet certain income requirements.

13. At all relevant times, HHS, through CMS, administered the Medicare program.

14. In administering the Medicare program, CMS retains private insurance companies to act as fiscal intermediaries or agents of CMS and, pursuant to written agreements, make payments on behalf of the program's beneficiaries.

15. Various fiscal intermediaries processed claims that were submitted by Defendants for medical care purportedly provided at Villaspring.

16. Medicare Part A paid Defendants under the prospective payment system. Under this system, a nursing facility is required to classify its residents into one of approximately 53

Resource Utilization Groups ("RUGs"), based on certain factors that are assessed for each resident. This RUG, in turn, is factored into the "per diem" reimbursement provided by Medicare to the nursing facility.

17. "Per diem" means that the nursing facility is paid a set rate for each date that it provides care to the resident.

18. Medicare Part B paid Defendants for doctors' services and certain outpatient services such as x-rays.

19. Medicaid is a joint federal-state program funded under Title XIX of the Social Security Act. The Kentucky Cabinet for Health and Family Services, Department of Medicaid Services, administers the Medicaid program in Kentucky ("Kentucky Medicaid").

20. Payments from Kentucky Medicaid to nursing facilities are also made on a per diem basis.

MEDICARE AND KENTUCKY MEDICAID LEGAL AND REGULATORY FRAMEWORK

21. Statutes and regulations governing the Medicare and Kentucky Medicaid programs require health care providers to maintain – as a prerequisite to receiving payment under the programs – substantial compliance with all the pertinent rules and regulations governing the programs.

22. Amongst other things, health care providers must assure that all services for which they submit claims for Medicare payment are "of a quality which meets professionally recognized standards of health care." 42 U.S.C. § 1320c-5(A)(2).

23. As part of the Omnibus Reconciliation Act of 1987 ("OBRA '87"), Congress enacted the Nursing Home Reform Act, 42 U.S.C. §§ 1395i-3, 1396r *et seq.* ("the Act"), which

took effect on October 1, 1990.

24. A nursing facility is defined in the Act at 42 U.S.C. § 1396r(a) as an institution which:

> (1) is primarily engaged in providing to residents -
>
> > (A) skilled nursing care and related services to residents who require medical or nursing care;
> >
> > (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or
> >
> > (C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, and is not primarily for the care and treatment of mental diseases . . . .

25. Villaspring is a nursing facility as that term is defined by the Act.

26. Carespring and Bortz managed nursing facilities, including Villaspring, as that term is defined by the Act.

27. The Act mandates that nursing facilities comply with federal and state requirements relating to the provision of services, and with professional standards and principles applicable to nursing facilities. 42 U.S.C. § 1396r(b); 42 U.S.C. § 1396r(d)(4)(A) ("A nursing facility must operate and provide services in compliance with all applicable federal, state and local laws and regulations . . . and with accepted professional standards and principles which apply to professionals providing services in such a facility.").

28. Specifically, with respect to quality of life for residents of nursing facilities, the Act provides: "A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident."

42 U.S.C. § 1396r(b)(1)(A).

29. Additionally, nursing facilities "must provide services and activities to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident in accordance with a plan of care which . . . describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met." 42 U.S.C. § 1396r(b)(2)(A).

30. A manager of a nursing facility must fulfill the residents' plans of care by providing, or arranging for the provision of, nursing and related services and medically-related services that attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, pharmaceutical services, and dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident. 42 U.S.C. § 1396r(b)(4)(A)(i)-(iv).

31. The specific requirements that a nursing facility must meet in order to qualify for participation in and receive taxpayer dollars from the Medicare and Kentucky Medicaid programs are set forth at 42 C.F.R. § 483. These requirements "serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements for participation in Medicare and Medicaid." 42 C.F.R. § 483.1(b).

32. States are responsible for certifying the compliance of nursing facilities with the requirements of the Act and regulations enacted pursuant thereto. Compliance is determined through periodic surveys. 42 U.S.C. § 1396r(g)(1)(A).

33. The Kentucky Cabinet For Health And Family Services is responsible for surveying nursing facilities in Kentucky, including Villaspring, on a periodic basis to ensure compliance with federal and state law and regulations. These surveys may occur more

frequently where there are complaints or other triggering events.

34. Facilities that are not in compliance with the applicable federal and state laws and regulations are subject to sanctions, including but not limited to denial of payment or termination of the right to provide services.

35. Federal regulations mandate that "[e]ach resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment [of the resident] and plan of care." 42 C.F.R. § 483.25.

36. Specifically, the federal regulation provides, in relevant part:

a. **Pressure sores.** Based on the comprehensive assessment of a resident, the facility must ensure that --

(1) A resident who enters a facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(2) A resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

42 C.F.R. § 483.25(c).

b. **Nutrition.** Based on a resident's comprehensive assessment, the facility must ensure that a resident --

(1) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and

(2) Receives a therapeutic diet when there is a nutritional problem.

42 C.F.R. § 483.25(i).

c. **Hydration.** The facility must provide each resident with sufficient fluid intake to maintain proper hydration and health.

42 C.F.R. § 483.25(j).

d. **Activities of Daily Life.** Based on the comprehensive assessment of the resident, the facility must ensure that – A resident's abilities in activities of daily life do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the resident's ability to -

(1) Bathe, dress, and groom;
(2) Transfer and ambulate;
(3) Toilet;
(4) Eat; and
(5) Use speech, language or other functional communication systems.

42 C.F.R. § 483.25(a).

e. **Medication Errors.** The facility must ensure that --

(1) It is free of medication error rates of five percent or greater; and

(2) Residents are free of any significant medication errors.

42 C.F.R. § 483.25(m).

f. **Accidents.** The facility must ensure that --

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(2) Each resident receives adequate supervision and assistance devices to prevent accidents.

42 C.F.R. § 483.25(h).

g. **Urinary Incontinence.** Based on the resident's comprehensive assessment, the facility must ensure that --

(1) A resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary; and

(2) A resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible.

42 C.F.R. § 483.25(d).

37. Federal regulations require that nursing facilities maintain sufficient nursing staff "to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care." 42 C.F.R. § 483.30.

MEDICARE/MEDICAID PROVIDER AGREEMENTS

38. At all relevant times, Villaspring was a "provider" with written agreements with the Medicare and Kentucky Medicaid programs. Those agreements are attached hereto as Exhibits 1 (Medicare) and 2 (Medicaid).

39. Defendant Bortz signed the Medicare and Medicaid provider agreements on behalf of Villaspring.

40. In Villaspring's Medicare provider agreement, as a prerequisite to enrolling in and receiving payment from the Medicare program, Villaspring expressly certified the following:

> "I am familiar with and agree to abide by the Medicare or other federal health care program laws, regulations and program instructions that apply to my provider/supplier type. . . . I understand that payment of a claim by Medicare or other federal health care programs is conditioned on the claim and the underlying transaction complying with such laws, regulations and program instructions (including the anti-kickback statute and the Stark law), and on a provider/supplier being in compliance with any applicable conditions of participation in any federal health care program."

Exhibit 1, § 18(4).

41. Villaspring's Medicaid provider agreement contains similar certifications, including the following:

a. "The provider agrees to provide covered services to Medicaid recipients in accordance with all applicable federal and state laws, regulations, policies and procedures relating to the provision of medical services according to

Title XIX [of the Social Security Act] . . . .";[1]

Exhibit 2, ¶ 3.

b. The provider "[a]ssures awareness of the provisions of 42 U.S.C. § 1320a-7b," which provides for criminal penalties for false statements or representations made in connection with federal health care programs;

Exhibit 2, ¶ 4(5).

c. The provider agrees "to assume responsibility for appropriate, accurate, and timely submission of claims," and that "payment and satisfaction of claims will be from federal and state funds and that any false claims, statements, or documents or concealment or falsification of a material fact, may be prosecuted under applicable federal and state law."

Exhibit 2, ¶ 7(7)(a),(c).

42. Upon information and belief, in addition to the provider agreements, Villaspring also completed an Electronic Data Interchange ("EDI") Enrollment Form in order to bill Medicare electronically.

43. In the EDI Enrollment Form, the provider agrees to "be responsible for all Medicare claims submitted to CMS by itself, its employees, or its agents," and that it would "submit claims that are accurate, complete and truthful."

44. Through the EDI Enrollment Form, the provider also acknowledges "that all claims will be paid from Federal funds, that the submission of such claims is a claim for payment under the Medicare program, and that anyone who misrepresents or falsifies or causes to be misrepresented or falsified any record or other information relating to that claim as required by this Agreement may, upon conviction be subject to a fine and/or imprisonment under applicable Federal law."

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[1] Title XIX of the Social Security Act includes 42 U.S.C. § 1396r.

45. Villaspring submitted its claims for payment to Medicare electronically on a form known as a "UB-92 HCFA-1450" (between July 1, 2004 and May 2007) or a "UB-04 CMS-1450" (between May 2007 and December 31, 2008). The 1450 forms, which are substantively identical, contain various certifications on their reverse side, including the certification that "This claim, to the best of my knowledge, is correct and complete . . . ."

46. Each year Villaspring is required to submit an annual cost report to a fiscal intermediary. The signature page of the cost report for the years 2004 through 2008 (which are typically submitted about six months after the end of the year at issue) requires the signing officer to certify that "I am familiar with the laws and regulations regarding the provision of health care services, and that the services identified in this cost report were provided in compliance with such laws and regulations." The signee must also certify familiarity with the statement that "misrepresentation or falsification of any information contained in the cost report may be punishable by criminal, civil or administrative action, fine and/or imprisonment under federal law."

47. Defendant Bortz signed the cost reports for fiscal years 2004 and 2005. David Eppers, Carespring's Chief Financial Officer, signed the costs reports for fiscal years 2006, 2007 and 2008.

48. In order to qualify for Medicare and/or Medicaid payments, a nursing home must sign a Health Insurance Benefit Agreement, Form CMS-1561 ("CMS-1561). 42 U.S.C. § 1395cc.

Through the CMS-1561, a provider expressly agrees to conform with the applicable Code of Federal Regulations within Title 42, including the standard of care regulations that implement

the

Nursing Home Reform Act, 42 C.F.R. § 483, as a ***pre-requisite*** to payment. The following language of the Health Insurance Benefit Agreement expressly makes compliance with Federal regulations a pre-requisite for payment:

> ***In order to receive payment*** under title XVIII of the Social Security Act [42 U.S.C. § 1395cc], [Name of the nursing home inserted here] as the provider of services, agrees to conform to the provisions of section of [sic] 1866 of the Social Security Act ***and applicable provisions in 42 CFR*** [which includes the NHRA's implementing regulations on quality of care].
> (Emphasis added).

49. Upon information and belief, Villaspring signed a Form CMS-1561.

50. Additionally, nursing homes must complete a Medicare Enrollment Application for Institutional Providers, which requires providers to certify the following:

> I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations and program instructions (including, but not limited to, the Federal anti-kickback statute and the Stark law), and on the provider's compliance with all applicable conditions of participation in Medicare.

51. As a result of the representations made in its Medicare and Medicaid provider agreements, including its certifications of present and future compliance with applicable federal health care laws, and the certifications made in its annual cost reports, Villaspring was permitted to participate in those programs. That participation resulted in Medicare payments alone to Villaspring of $15,983,983.83 for the years 2004 through 2008.

STAFFING SHORTAGES

52. Villaspring was required to have "sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial

well-being of each resident, as determined by resident assessments and individual plans of care." 42 C.F.R. § 483.30.

53. Amongst other things, "sufficient nursing staff" means that at a minimum, Villaspring was required to have at least one registered nurse on duty for eight consecutive hours, seven days a week. 42 C.F.R. § 483.30(b).

54. Villaspring did not maintain nursing staff sufficient to provide the level of services necessary for its residents to attain or maintain their highest practicable physical, mental and psychosocial well-being.

55. Following at least one survey conducted by the Kentucky Cabinet for Health and Family Services, CMS found that Villaspring had failed to comply with 42 C.F.R. § 483.30, and that this failure placed Villaspring residents in immediate jeopardy of harm. Such harm consisted of, *inter alia*, a failure to treat pressure sores and administer medications and treatments as prescribed.

56. Villaspring also did not consistently maintain a registered nurse on duty for eight consecutive hours each day of the week.

57. By way of example only, from approximately 7:30 am on February 10, 2005 until 11:00 pm on February 12, 2005, a period of more than 63 consecutive hours, Villaspring did not have a registered nurse on duty. See Daily Staffing Record attached hereto as Exhibit 3.

58. By way of further example, Villaspring's daily staffing records for February 19, 2005 indicate that Donna Ferrell was the registered nurse on duty for that date. See Daily Staffing Record attached hereto as Exhibit 4. However, Donna Ferrell resigned from Villaspring on or about February 5, 2005, two weeks prior to the date of this record. Thus, not only did

Villaspring fail to comply with 42 C.F.R. § 483.30(b), it falsified its records to create the false appearance of compliance.

59. Registered nurses and licensed professional nurses employed by Villaspring, as well as family members of Villaspring residents, complained to Villaspring administrators and management about inadequate staffing levels at the facility during the relevant period. Villaspring did not act upon those complaints to increase its staffing to a level sufficient to provide adequate care to its residents.

60. The lack of nursing staff at Villaspring directly caused and contributed to care at Villaspring that failed to meet professionally recognized standards of health care and that was so deficient, inadequate, and substandard as to constitute worthless services.

DEFENDANTS' FAILURE TO CARE FOR ITS ELDERLY RESIDENTS

61. Throughout the relevant time period, Defendants failed to provide adequate care to the elderly and vulnerable residents of Villaspring.

62. On numerous occasions, Villaspring residents did not receive their medication as prescribed or ordered. Medication errors were prevalent, and Villaspring residents suffered and were harmed by not receiving the medication they needed and had been prescribed. By way of example only, residents suffered from extremely high and low blood sugar levels – including to the point of lapsing into a hypoglycemic coma – when medication to regulate blood sugar levels was not administered as ordered.

63. In addition, wound care was often not provided at Villaspring. As a result, residents often developed preventable pressure ulcers. In cases where mild pressure ulcers existed at the time of a resident's admission to Villaspring, residents often suffered unnecessary

pain because those existing ulcers deteriorated and/or failed to heal properly.

64. Medical records and state survey reports also evidence repeated failures to provide nutrition to residents in accordance with their plans of care; failures to promptly respond when residents turned their call light on, often resulting in a humiliating inability to reach the restroom on time; failures to revise or update resident plans of care to account for pressure sores, increased pain, or other changes in condition; and placement of adult diapers on patients who were deemed continent or had no history of bowel or bladder problems.

65. The following claims for payment for the residents set forth below were submitted, or caused to be submitted, by the Defendants to Medicare or Kentucky Medicaid.

66. Other false claims for payment for other residents that are not specifically set forth in the paragraphs below were also submitted or caused to be submitted by the Defendants to Medicare or Kentucky Medicaid.

67. The claims were false and fraudulent because the services purportedly provided were so lacking in quality as to be essentially worthless, in that they (i) were not provided or rendered at all, (ii) were deficient, inadequate and substandard when provided, (iii) did not promote the maintenance or enhancement of the quality of life of the residents of Villaspring, and (iv) were of a quality that failed to meet professionally recognized standards of care.

Resident #1

68. Resident #1 was admitted to Villaspring on July 2, 2004. His nursing notes upon admission state that he is oriented at all times, has no limitations on mobility, and uses the toilet with the assistance of one staff member. Resident #1's admission orders state that he is “likely to improve.”

69. Although Resident #1 was found to be continent upon admission to Villaspring, nursing notes dated July 3, 2004 indicate that he was quickly placed in adult diapers. The use of adult diapers on continent patients can lead to an increased risk of urinary infection, skin breakdown and incontinence.

70. On July 19, 2004, Resident #1 was assessed for bruises and red marks, and was asked by the Assistant Director of Nursing at Villaspring if anyone had verbally mistreated or threatened him. Villaspring's records do not indicate whether physical mistreatment caused Resident #1's bruising and red marks, or whether the possibility of physical mistreatment was investigated.

71. Beginning on August 3, 2004, a "lap buddy" restraint was used on Resident #1. A "lap buddy" is a device that fits over the arms of a wheelchair to prevent the patient from standing up. On August 13, 2004, a physician order was issued to discontinue use of Resident #1's lap buddy. Villaspring nursing staff ignored this order and continued to apply the lap buddy to Resident #1 throughout August, September, October and early November of 2004. On February 8, 2005, Resident #1 was placed in a Geri Chair, another type of restraint device. There was no restraint assessment, physician's order or family consent for the restraint.

72. There were numerous instances of Resident # 1 not receiving a bath for six to ten days. For example, from October 21 through October 29, 2004, and again from November 4 through November 9, 2004, Resident #1 did not receive a bath.

73. Throughout Resident #1's stay at Villaspring, his daily fluid intake averaged less than half of what had been recommended by the dietician.

74. While staying at Villaspring, Resident #1 developed a number of severe pressure

ulcers – by February 20, 2005, he was noted to have nine pressure ulcers, the worst of which was an un-stageable ulcer on his left buttock measuring 13.2 cm by 6.2 cm. This wound was noted to be undermining, tunneling and draining. The other eight wounds were all characterized as Stage II pressure ulcers and measured up to 5 cm. Photographs of Resident #1's wounds are attached hereto as Exhibit 5 (sealed).

75. On February 22, 2005, an indwelling Foley cathether was placed in Resident #1.[2] Later that day, he was noted to have decreased respirations and a very low blood pressure. He was sent to the hospital emergency room and admitted with diagnoses of acute urosepsis, dehydration, and a large decubitus ulcer. Resident #1 underwent surgery to remove his coccyx bone and another bone from the site of his most severe pressure sore.

76. On March 15, 2005, Resident #1 was transferred to a rehabilitation hospital, where he refused food and medication. He requested comfort measures only, and died on March 23, 2005.

77. From the date of Resident #1's admission to Villaspring on July 2, 2004 until his discharge from Villaspring on February 22, 2005, there were 188 days in which no nursing notes were entered to chart his care.

78. For the care purportedly provided to Resident #1 from July 2, 2004 to February 22, 2005, Defendants submitted electronic claims for payment to Kentucky Medicaid, and Kentucky Medicaid paid claims totaling $21,249.57.

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[2] Medicare was billed for a catheter insertion tray with bag on January 5, 2005. There is no documentation in Resident #1's medical record concerning the placement of this catheter. This would indicate that a catheter was placed in Resident #1 long before Villaspring received physician orders to do so.

79. For the care purportedly provided to Resident #1 from July 2, 2004 to February 22, 2005, Defendants submitted electronic claims for payment to Medicare, and Medicare paid claims totaling $9,902.04.

Resident #2

80. Resident #2 was admitted to Villaspring on November 23, 2004 following a fall and subsequent surgery for a broken hip. Her initial assessment upon admission stated that she "takes initiative," was alert, had clear speech and had no history of incontinence. Resident #2 had a 3 cm. by 4 cm. Stage IV pressure ulcer on her right heel upon admission to Villaspring.

81. Although Resident #2 was found to be continent upon admission to Villaspring, nursing notes dated November 25, 2004 indicate that she was quickly placed in adult diapers. The use of adult diapers on continent patients can lead to an increased risk of urinary infection, skin breakdown and incontinence.

82. Resident #2 was a diabetic. Her plan of care stated that she was to receive a meal replacement if she consumed less than 75% of each meal, and a bed-time snack daily.

83. Over an eight-day period in November 2004, there were three occasions on which Resident #2 consumed less than 50% of her meal but was not offered a meal replacement, three other occasions on which meal intake was not documented at all, and four occasions on which a bed-time snack was not offered. Similarly, in December 2004, Resident #2 was not offered a bed-time snack on twelve days in a twenty-four day period.

84. On December 1, 2004, a "blood blister" was noted on Resident #2's right buttock. On December 6, 2004, a second blister was noted on the same buttock. By December 16, 2004, both blisters had ruptured and joined, forming one large wound. It measured 4.2 cm. by 2 cm.

and was covered with black tissue.

85. On December 16, 2004, Resident #2 began experiencing symptoms of diarrhea. Despite these symptoms, Villaspring nursing staff continued to administer a laxative to Resident #2 for the next four days.

86. The diarrhea progressed and interfered with Resident #2's therapies. However, no anti-diarrhea medication was administered, and no stool sample was obtained to determine potential causes. On December 24, 2004, Resident #2 became weak and complained of nausea. Her physician was contacted at 10:35 am, and ordered that she be sent to the emergency room. Villaspring did not call an ambulance until 11:45 am. Upon admission to the hospital, Resident #2 was diagnosed with clostridium difficile.[3]

87. Resident #2 was re-admitted to Villaspring on January 4, 2005. She was noted to have a Stage IV pressure ulcer on her left buttock, a Stage II pressure ulcer on her left hip, Stage I pressure ulcers on her left bunion and her mid-left foot, unstageable wounds on both heels, and excoriation to her entire buttocks. With the exception of the pressure ulcer on her right heel, Resident #2 acquired all of these wounds during her first admission at Villaspring.

88. On January 6, 2005, Villaspring finally secured a prealbumin level for Resident #2 that indicated severe protein depletion. The test showed a prealbumin value of 6.3, in contrast to the normal range of 20 to 40.

89. On January 24, 2005, Resident #2 was transferred to the hospital and admitted to the Intensive Care Unit with severe septic shock. She appeared malnourished and had an

[3] Clostridium difficile is a bacterium that can cause symptoms ranging from diarrhea to life-threatening inflammation of the colon.

unexplained wound to her face. A photograph of this facial wound is attached hereto as Exhibit 6 (sealed).

90. On January 26, 2005, Resident #2 underwent surgery to remove gangrenous and diseased tissue from multiple areas on her lower body. Her wounds ranged in size from 6 cm. to 12 cm.; one wound was described as "necrotic with foul drainage" and extended in depth down to the underlying bone. Photographs of Resident #2's wounds are attached hereto as Exhibit 7 (sealed). The surgeon noted that Resident #2 could respond to her name but otherwise could not communicate.

91. On February 4, 2005, Resident #2 underwent a colostomy procedure in order to prevent her from becoming incontinent of bowel due to her sacral pressure ulcers.

92. By that same date, 80% of Resident #2's left heel bone was exposed, and it was apparent that the wound could not heal. Resident #2's left leg was amputated above the knee on February 4, 2005. Resident #2 died of sepsis on March 31, 2005.

93. For the care purportedly provided to Resident #2 from November 23, 2004 to January 24, 2005, Defendants submitted electronic claims for payment to Medicare, and Medicare paid claims totaling $12,896.93.

Resident #3

94. Resident #3, a diabetic, was admitted to a hospital on August 1, 2006 following a hypoglycemic episode at home. An evaluation at the hospital found that Resident #3's primary impairment was decreased activity tolerance, and that he had a "good rehab potential to return home." On August 4, 2006, Resident #3 was discharged from the hospital to Villaspring "for therapy then return home with wife."

95. Upon admission to Villaspring, Resident #3's physician orders stated that he was to have his blood glucose levels checked before each meal and at bedtime, and that he was to receive measured doses of insulin four times daily.

96. From August 5, 2006 through September 1, 2006, Resident #3's blood glucose readings fluctuated greatly on a daily basis and reached as high as 447 milligrams per deciliter ("mg/dl").[4] Resident #3's physician was not notified about these fluctuations during this time period. Nursing notes indicate that the treatments administered conflicted with medication logs and physician orders.

97. On September 2, 2006, Resident #3's blood glucose level was recorded as 522 mg/dl at 9:00 pm and 430 mg/dl at 10:30 pm. Nursing notes indicate that Resident #3's physician was called twice with no return call. No other action was taken and Resident #3's blood sugar was not checked again until 8:30 am the next day.

98. In addition to displaying very high blood glucose levels, Resident #3 also exhibited signs of hypoglycemia when his blood sugar levels plummeted. Villaspring nursing notes indicate that this occurred on September 4, 2006.

99. Beginning on September 5, 2006, Resident #3's physician ordered a sliding scale administration of insulin medication, pursuant to which the amount of medication increased as Resident #3's blood sugar levels increased. The order instructed that for blood sugar levels of 400 mg/dl or higher, the physician should be called.

100. From September 5, 2006, through September 24, 2006, Resident #3's blood glucose readings continued to fluctuate. Between September 5 and September 14 alone,

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[4] A normal blood glucose level is in the 70 to 120 mg/dl range.

Resident #3 had seven documented episodes of blood sugar in excess of 400 mg/dl, and two glucometer readings of "HI," meaning that the level was too high to be measured by the glucometer (which typically measures up to 600 mg/dl). In all but one of these instances, a nurse administered 10 units of insulin in response to the high blood sugar reading. However, there is no documentation of a physician order for that treatment, and in most instances, no documentation that the physician was even contacted by Villaspring regarding the excessive blood sugar levels.

101. On September 19 and 21, there are no nursing notes documenting treatment of Resident #3 for the entire day.

102. Beginning on September 22, Villaspring recorded low blood sugar levels for Resident #3 when measured at 7:00am. A laboratory blood test was collected from Resident #3 at 5:15am on September 25 for unknown reasons. That test indicated that his blood sugar was less than 20 mg/dl, which is indicative of severe hypoglycemia and is considered a medical emergency. Villaspring did not contact Resident #3's physician to inform him of this extremely low blood sugar reading.

103. At 4:00 pm on September 25, Resident #3's blood sugar was 443 mg/dl, but his physician was not contacted. At 9:00 pm that same day, his blood sugar was 556 mg/dl. Villaspring contacted Resident #3's physician at some point that night and received an order from a physician's assistant to administer additional insulin; Villaspring's records are insufficiently clear to know when the physician was contacted and when the insulin was administered.

104. At 2:00 am on September 26, 2006, Resident #3 displayed signs of hypoglycemia,

including intermittent jerking movements of his left arm. He was given Glucagon and his blood sugar level rose slightly.

105. A short time later that same morning, Resident #3 was found "unresponsive to verbal and tactile stimuli . . . scant amount brownish colored secretion noted around mouth." His blood sugar level was 48 mg/dl. Resident #3 was transported to the hospital at 5:40 am. Testing revealed that he was in a hypoglycemic coma. Resident #3 did not respond to treatment and on October 11, 2006, he was transferred to hospice care. Resident #3 died of hypoglycemic encephalopathy on October 15, 2006.

106. For the care purportedly provided to Resident #3 from August 4, 2006 to September 26, 2006, Defendants submitted electronic claims for payment to Medicare, and Medicare paid claims totaling $11,004.64.

Resident #4

107. Resident #4 was admitted to Villaspring on November 7, 2006 following hospitalization for a fall and hypoglycemic episode at home. She was an insulin-dependent diabetic with limited mobility. Upon admission, Resident #4 was assessed to have a great potential for skin breakdown to her heels and the peri-rectal area, and a skin care plan was written for her by Villaspring.

108. On numerous occasions throughout Resident #4's stay at Villaspring, including the very day she was admitted, her blood glucose was recorded at critically high levels without her physician being notified. For instance, on November 10, 2006, Resident #4's blood glucose level was recorded at 577 mg/dl, on November 20, 2006, her blood glucose level was measured to be 599 mg/dl, and on December 18, 2006, her blood glucose level was too high to be recorded

by the machine. Villaspring did not contact her physician regarding any of these dangerously high blood glucose levels.

109. On November 16, 2006, Resident #4 was noted to have pink skin indicative of early pressure sores on both heels. By November 18, fluid-filled blisters were present on both heels. By November 19, the blister on the left heel had broken, leaving a dried black area; the right heel blister was still intact but its color was black.

110. On November 20, 2006, for the first time Resident #4 was noted to have a pressure wound to her peri-rectal area on this date.

111. On November 28, 2006, Resident #4 was noted to have an open pressure wound with serosanguinous drainage on her coccyx, measuring 1.8 by 1.0 cm. This is the first documented reference to the coccyx wound since November 20, 2006. A wound specialist evaluated the wounds to Resident #4's heel on this date; however, the wound care nurse did not evaluate the coccyx wound. This evaluation was the first wound care assessment made of Resident #4 since admission twenty-one days prior, even though she was noted to be at high risk of skin breakdown.

112. On November 30, 2006, Resident #4's pressure wounds were fully assessed for the first time. Her heel wounds were unstageable, and the wound on her coccyx, which now measured 3.5 cm by 1.3 cm, was Stage II.

113. On December 6, 2006, Resident #4's pressure wounds had deteriorated and were now characterized as Stage III, measuring 3 cm by 3.8 cm on her right heel, 4.5 cm by 4.4 cm on her left heel, and 5.1 cm by 2.7 cm on her coccyx.

114. On December 20, 2006, Villaspring measured Resident #4's pressure wounds as

follows: coccyx, 4 cm x. 3.5 cm x 3.4 cm in depth; left heel, 4 cm x 4.9 cm; and right heel, 4 cm x 4.5 cm. She was sent to the hospital emergency room for further evaluation. Upon admission to the hospital, the pressure wound to Resident #4's coccyx was determined to be significantly larger than what Villaspring recorded hours before: 8 cm x 10 cm x 5 cm in depth, extending down to the bone. Photographs of Resident #4's pressure wounds are attached hereto as Exhibit 8 (sealed). Resident #4 did not return to Villaspring.

115. On December 22, 2006, Villaspring staff recorded a wound assessment on Resident #4's Wound Progress Note. Resident #4 was discharged from Villaspring two days prior to this "assessment."

116. Villaspring's nursing notes indicate that during Resident #4's 43-day stay at Villaspring, she received only four showers. She was assessed by the wound care nurse only four times as well. There is no documentation indicating that she was turned and repositioned every two hours as required by her plan of care dated November 15, 2006.

117. During Resident #4's 43-day stay at Villaspring, there were seven days for which no daily nursing care was documented.

118. For the care purportedly provided to Resident #4 from November 7, 2006 to December 20, 2006, Defendants submitted electronic claims for payment to Kentucky Medicaid, and Kentucky Medicaid paid claims totaling $376.57.

119. For the care purportedly provided to Resident #4 from November 7, 2006 to December 20, 2006, Defendants submitted electronic claims for payment to Medicare, and Medicare paid claims totaling $12,858.83.

Resident #5

120. Resident #5 was admitted to Villaspring on October 14, 2003 in a highly vulnerable state: she had a history of stroke with right side weakness and expressive aphasia; she was unable to pull herself from side to side; needed assistance with feeding; was incontinent and was at high risk for falls.

121. On September 10, 2006, Resident #5's perineal area was noted to be excoriated due to incontinence. In addition, on September 17, 2006, she was noted to have an "open area to gluteal cleft" with minimal drainage and reddened color.

122. On October 11, 2006 skin breakdown was reported on Resident #5's left heel. By October 18, 2006 the heel wound had progressed in size to 4.5 cm by 3 cm by .2 cm with black edges and a "green/blue" wound bed.

123. On November 30, 2006, Resident #5 was noted to have an unstageable pressure wound on her left heel, measuring 4 cm x 1.8 cm, and a Stage II pressure wound on her gluteal cleft,[5] which was measured at 2.1 cm x .6 cm. This is the first time the two wounds were completely assessed by a nurse.

124. On January 10, 2007, a physician note stated that Resident #5's "skin breakdown is continuing."

125. On February 28, 2007, a Foley catheter was placed in Resident #5 to prevent contamination to her sacral wound. The treatment records indicate that catheter care was not provided consistently.

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[5] The terms "gluteal", "sacral", and "perineal" are used interchangeably throughout the record to refer to the location of the most serious wound.

126. On March 1, 2007, a physician examined the pressure wounds on Resident #5's legs and stated that she was in overall decline. Three weeks later, the physician examined her wounds again and saw no improvement. He stated that her overall condition was deteriorating and recommended that she be placed in hospice care.

127. On March 23, 2007, Resident #5's heel wound was measured to be 4.3 cm by 5.7 cm by .3 cm with eschar and foul odor. On March 30, 2007, Villaspring's records reflect that the wound had deteriorated such that the bone was exposed.

128. On April 6, 2007, urinary and culture lab work revealed that Resident #5 had a urinary tract infection. The microorganisms present in the urine culture indicated that the catheter had been contaminated with feces.

129. On April 23, 2007, Resident #5 was placed in hospice care while still residing at Villaspring. The physician stated "she went out secondary to increasing problems with dehydration....sepsis probably from the urinary tract, as well as wounds." Resident #5 died at Villaspring on May 28, 2007.

130. From August 1, 2006, through the time of Resident #5's death on May 28, 2007, there were 95 days for which no nursing care was charted by Villaspring nursing staff.

131. From the time of Resident #5's first complete skin assessment on November 30, 2006, until the time of her death on May 28, 2007, there were 44 days for which there was no skin assessment documented in her daily nursing care. This means that 48% of her daily skin assessments were either not rendered or not documented during this time frame.

132. For the care purportedly provided to Resident #5 from August 1, 2006 to May 28, 2007, Defendants submitted electronic claims for payment to Kentucky Medicaid, and Kentucky

Medicaid paid claims totaling $40,295.24.

133. For the care purportedly provided to Resident #5 from August 1, 2006 to May 28, 2007, Defendants submitted electronic claims for payment to Medicare, and Medicare paid claims totaling $218.50.

Resident #6

134. Resident #6 was first admitted to Villaspring on December 22, 2006. She was discharged for a nine-day hospitalization beginning on December 27, 2006.

135. On January 5, 2007, Resident #6 was re-admitted to Villaspring. Upon re-admission she was noted to have Stage II pressure ulcers on her right ankle, right buttock, and coccyx.

136. On January 30, 2007, Villaspring noted that Resident #6's coccyx pressure ulcer was draining serosanguinous drainage and was becoming "larger and deeper," although Villaspring did not measure the ulcer.

137. The next day, January 31, Resident #6 was admitted to the hospital with a urinary tract infection, necrotic Stage IV pressure wounds to her coccyx and right heel, and osteomyelitis, an infection of the bone, beneath the coccyx and heel wounds. The wounds required immediate excisional debridement.

138. In addition to suffering from these pressure wounds, Resident #6 ran a fever in excess of 101degrees for a period of three days before being admitted to the hospital on January 31. By the time Resident #6 was admitted, she exhibited low oxygen levels, decreased consciousness and limited verbal ability. She died of septicemia twelve days later.

139. From January 5 through January 31, 2007, no nursing notes were recorded for

Resident #6's care on 11 of those 26 days, or 42% of the time.

Other Residents

140. The substandard, inadequate and/or non-existent care rendered to Resident #s 1 through 6 is reflective of the systemically poor care given to numerous other Villaspring residents during the relevant time period.

141. By way of example only, the Kentucky Cabinet for Health and Family Services investigated and substantiated allegations of resident abuse or neglect concerning at least 25 additional Villaspring residents during the relevant time period. The medical records of Resident #s 1 through 6, and the investigative records of the Kentucky agency, demonstrate a clear pattern of inadequate medical care marked by, *inter alia*, failure to medicate patients as prescribed or ordered, failure to prevent or treat pressure wounds, and failure to notify residents' physicians of negative health events.

142. Upon information and belief, consistent with this pattern of inadequate care, Villaspring regularly submitted or caused to be submitted claims for per diem reimbursements from Medicare or Kentucky Medicaid for similar worthless services rendered to numerous presently-unidentified residents.

143. Upon information and belief, Villaspring's failure to maintain adequate nursing staff levels directly contributed to the inadequate care provided to its residents.

DEFENDANTS' KNOWLEDGE OF POOR CONDITIONS AND INADEQUATE CARE AT VILLASPRING

144. From many sources, including but not limited to wrongful death and injury claims brought by former residents and their family members, employee complaints, and survey activity by the Kentucky Cabinet for Health and Family Services, Defendants had knowledge within the

meaning of 31 U.S.C. § 3729(b)(1)-(3) that the Medicare and Kentucky Medicaid claims they submitted were false or fraudulent. Defendants knew that the services for which they billed Medicare and Kentucky Medicaid were not provided or rendered, or were so deficient, inadequate and substandard as to be worthless.

145. Between January 27, 2006 and November 5, 2008, former residents of Villaspring and/or their family members filed at least three lawsuits against Villaspring alleging that the residents failed to receive proper care, which failure in some instances led to the residents' death.

146. During the relevant time period, CMS imposed civil monetary penalties on Villaspring on at least two occasions for noncompliance with program participation requirements, pursuant to its authority under 42 U.S.C. §§ 1395i-3(h), 1396r(h) and 42 C.F.R. Part 488. The notices of the civil monetary penalties received by Villaspring, one of which detailed nearly 200 pages worth of deficiencies in care at Villaspring, stated that the conditions at the nursing facility placed its residents in immediate jeopardy of harm.

147. In response to the imposition of civil monetary penalties, Villaspring represented to CMS that the deficiencies would be corrected.

148. In addition to the surveys that provided a basis for the imposition of monetary penalties, multiple surveys conducted by the Kentucky state agencies placed Villaspring on notice that it was not providing care in compliance with 42 C.F.R. § 483. For example, a survey completed on April 5, 2005, with receipt acknowledged by Villaspring on April 22, 2005, notifies Villaspring that it is failing to promptly notify patients' physicians and family members of significant changes in patients' conditions, particularly with respect to pressure sores; that it is failing to conduct skin assessments in accordance with patients' plans of care; that it is failing to

implement plans of care with respect to hydration; and that it is not preventing the occurrence of pressure sores or adequately treating pressures sores that develop.

149. Villaspring represented that it was providing additional training to staff regarding pressure sores in response to these findings, and assured the regulators that it had a comprehensive, proactive and aggressive Skin Integrity Team program.

150. In September 2006, Villaspring was notified of problems with its pharmacy services, in that there were numerous instances of medications being taken from some residents to be provided to other residents, with no evidence that the "borrowed" medications were ever replaced.

151. A survey completed on October 25, 2007 informed Villaspring that it was failing to meet professional standards of quality and care, that it was failing to provide services in accordance with patients' plans of care, and that it had placed indwelling catheters in patients without justification.

152. Nurses and other staff at Villaspring complained to Villaspring's administrators and managers that the staffing levels at the facility were inadequate to provide sufficient care to its residents.

153. In addition to the state surveys, federal notices of deficient care, imposition of civil monetary penalties, and complaints of staff, Villaspring knew or should of known of the ongoing inadequate care at its facility because of numerous complaints of patient neglect and abuse that were investigated, and in many instances substantiated, by state investigators. During the relevant time period, at least 25 such investigations took place.

CLAIMS AGAINST DEFENDANTS

Count I: False Claims Act, 31 U.S.C. § 3729(a)(1)

154. The United States restates and incorporates by reference paragraphs 1 through 153 of the Complaint as if fully set forth herein.

155. By virtue of the acts described above, and as specifically set forth in paragraphs 1 through 153, Defendants knowingly presented or caused to be presented to the United States false or fraudulent claims for payment or approval by Medicare or Kentucky Medicaid in violation of the False Claims Act, 31 U.S.C. § 3729(a)(1), as amended.

156. The Defendants represented that the claims were true and correct and that the services identified in the claims were provided in compliance with applicable laws and regulations.

157. However, the claims were false in that they were submitted for services that were essentially worthless, inasmuch as they were not rendered or were deficient, inadequate, substandard, did not promote the maintenance or enhancement of the quality of life of the resident of the facility, and failed to meet professionally recognized standards of health care.

158. Pursuant to the False Claims Act, Defendants are liable to the United States for statutory damages as allowed by law and civil penalties for each of these false or fraudulent claims in an amount to be determined at trial.

Count II: Common Law Fraud

159. The United States restates and incorporates by reference paragraphs 1 through 153 of the Complaint as if fully set forth herein.

160. The Defendants submitted claims for reimbursement for care purportedly

provided to residents of Villaspring to the Medicare and Kentucky Medicaid programs, or their agents and fiscal intermediaries, for services that were not rendered or were deficient, inadequate, substandard, did not promote the maintenance or enhancement of the quality of life of those residents, were of a quality that failed to meet professionally recognized standards of health care, and were worthless. The Defendants represented that the claims were true and correct and that the services identified in the claim were provided in compliance with applicable laws and regulations.

161. The Defendants knew that the claims were materially false and the Defendants intended to deceive Medicare and Kentucky Medicaid through the submission of those claims.

162. Medicare and Kentucky Medicaid relied upon the representations made by the Defendants and took action in reliance upon those claims, including payment of the claims.

163. As a result, the United States is entitled to compensatory damages consisting of the total amount paid by Kentucky Medicaid and Medicare for the fraudulent claims, plus interest, and other compensatory and punitive damages to be determined at trial.

Count III: Unjust Enrichment

164. The United States restates and incorporates by reference paragraphs 1 through 153 of the Complaint as if fully set forth herein.

165. During the relevant period, Defendants received and retained the benefit of federal monies paid from the Medicare and Kentucky Medicaid programs and intended to reimburse Defendants for care provided to Villaspring residents, including but not limited to the residents specifically identified in paragraphs 68 through 139.

166. The care and services for which the Medicare and Kentucky Medicaid programs

paid Defendants were not rendered, or were deficient, inadequate, substandard, did not promote the maintenance or enhancement of the quality of life of those residents, were of a quality that failed to meet professionally recognized standards of health care, and were worthless.

167. In light of the failure of care at Villaspring, Defendants have been unjustly enriched with federal monies from the Medicare and Kentucky Medicaid programs which they should not in good conscience be permitted to retain. The amount of those monies is to be determined at trial.

CLAIM FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, demands judgment against Defendants as follows:

a. With respect to Count I brought pursuant to the False Claims Act, joint and several judgment against the Defendants and in favor of the United States, and a determination by the Court for an appropriate award of statutory damages allowed by law, specifically including treble damages, plus civil penalties of $5,500 to $11,000 for each of the false claims presented or caused to be presented;

b. With respect to Count II, judgment against the Defendants and in favor of the United States for the amounts paid by Medicare and Kentucky Medicaid for all erroneous, inflated or improper claims that were obtained by or resulted from the Defendants' fraudulent scheme during the relevant period, plus punitive damages;

c. With respect to Count III, a judgment in equity against Defendants for the amount by which the Defendants were unjustly and unlawfully enriched; and

d. With respect to each Count, interest, attorney's fees and costs as allowed by law,

and any and all further relief as the Court deems just and proper.

Pursuant to Federal Rule of Civil Procedure 38, the United States demands a trial by jury on all issues raised in its Complaint.

Respectfully submitted,

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