

laundry. (Trial Tr. Vol. 4 (J. Chisolm) at 533-34.)

iii. Wildwood

149. From January 2004 to May 2007, Southland Waste Systems picked up the trash at Wildwood. (Trial Tr. Vol. 9 (Testimony of Tiffany Tillery) at 1299-1300, (Grant) 1324-26; Gov't Ex. 666a.) Wildwood had one garbage dumpster and a dumpster for cardboard, and it contracted to have those containers emptied three times a week at a cost of \$420 per month. (Trial Tr. Vol. 9 (Tillery) at 1298, 1303.) Southland Waste cut off service for customers who fell more than ninety days behind in their payments. (Id. at 1298-99.) In the forty months that Southland serviced Wildwood, Southland stopped service for nonpayment at least twenty-five times, usually for five to six days at a time. (Id. at 1300-1301.) When the dumpsters were not emptied,

employees piled garbage bags around and on the dumpsters, and, when Southland Waste resumed service, the drivers complained that the bags were split open and teeming with maggots. (Id. at 1304-05.) Southland Waste received complaints from the county code enforcement office when the trash piled up at Wildwood. (Id. at 1302.)

150. Witnesses testified that, when Wildwood's waste removal service was cut off, the garbage piled high around the overflowing dumpster and emitted a strong odor. (Trial Tr. Vol. 3 (Free) at 412; Trial Tr. Vol. 4 (McPherson) at 700-01; Trial Tr. Vol. 9 (Grant) at 1322, 1343; Trial Tr. Vol. 12 (Brunner) at 1811-12; Dep. of Hazel Evans (Gov't Ex. 633a) at 13-15, 48.) The garbage piled up around the building, extending fifteen feet from the dumpster. (Trial Tr. Vol. 9 (Patrick) at 1276.)

151. The dumpster was close to the back of Wildwood's west wing, and employees also piled garbage on the back porch of the west wing. (Evans Dep. at 14-15.) Witness Hazel Evans testified that some of the garbage on the nursing home's porch was in plastic bags, while some was in open buckets and used food containers. (Id. at 14-15.) Witnesses testified that the garbage attracted flies, insects, rats, and cats. (Trial Tr. Vol. 3 (Free) at 412; Trial Tr. Vol. 4 (McPherson) at 700-01; Trial Tr. Vol. 9 (Patrick) at 1276; Trial Tr. Vol. 9 (Grant) at 1324; Trial Tr. Vol. 12 (Brunner) at 1811-12, (Gaulin) 1895; Gov't Ex. 361.30.)

152. Ombudsman Kathy Gaulin testified that, when she visited Wildwood on July 19, 2005, "[t]he dumpster lid was full, and it was all over the ground spewing out onto the ground, probably, three or four feet from the dumpster.

Piled maybe a foot.” (Trial Tr. Vol. 12 (Gaulin) at 1895; Gov’t Ex. 361.30.) Witnesses testified that, because the waste management bill was not paid, trash was overflowing, which created a bad situation with flies, rodents, roaches, and other animals digging through the trash. (Trial Tr. Vol. 3 (Free) at 412-13; Trial Tr. Vol. 9 (Grant) at 1324; Trial Tr. Vol. 12 (Brunner) at 1811-12.)

i. Biohazardous Waste

153. According to Ms. Mauldin, Medicare and Medicaid require that nursing homes properly store and regularly remove biohazardous waste. (Trial Tr. Vol. 2 (Mauldin) at 172-73.) Ms. Mauldin testified that biohazardous waste poses a great risk of infection and cross-contamination. (Id. at 173.)

154. Biohazardous waste often accumulated in

Defendant's nursing homes because Defendant failed to pay the biohazard removal services, which, in turn, cut off service to the homes. (Trial Tr. Vol. 1 (Stanley) at 14 (relating to Mt. Berry); Trial Tr. Vol. 2 (Knowles) at 322-23 (pertaining to Moran Lake); Trial Tr. Vol. 3 (Free) 413 (describing situation at Wildwood); Trial Tr. Vol. 5 (Greenway) at 820, 830 (stating that Mt. Berry's biohazard waste was not picked up for months at a time); Trial Tr. Vol. 9 (Patrick) at 1271-72, 1289 (stating Wildwood biohazardous waste was stored in unlocked shower room when storage trailer was full); Trial Tr. Vol. 14 (Lee) at 2289 (describing piled-up containers on floor at Moran Lake); Trial Tr. Vol. 15 (Cox) at 2431, 2435; Gov't Ex. 355 (stating biohazardous waste not stored or removed properly at Moran Lake).) Ann Wells testified that, when she inspected

Moran Lake on May 20-23, 2007, she found biohazardous waste, including dirty, used syringes and test tubes, improperly left in an unlocked cabinet in the medical supply room. (Trial Tr. Vol. 13 (Wells) at 2075, 2092; Gov't Ex 361.)

j. Flies, Rodents, and Other Pests

155. The regulations require Medicare and Medicaid providers are required to “maintain an effective pest control program so that the facility is free of pests and rodents.” 42 C.F.R. § 483.70(h)(4); 42 C.F.R. § 483.25(h)(4); Trial Tr. Vol. 2 (Mauldin) at 178-79. Ms. Mauldin testified that effective pest control is necessary for infection control as well as for helping residents maintain the highest practicable quality of life. (Trial Tr. Vol. 2 (Mauldin) at 178-79.)

156. The Moran Lake, Mt. Berry and Wildwood homes

all experienced fly infestations. Witnesses described seeing flies in the residents' rooms, in the dining rooms, on the residents' food, and physically on the residents and their sores. (Trial Tr. Vol. 2 (Knowles) at 296, 304; Trial Tr. Vol. 5 (Greenway) at 788-89; Trial Tr. Vol. 6 (Greenway) at 875-76; Trial Tr. Vol. 4 (Prince) at 606; Trial Tr. Vol. 12 (Brunner) at 1811-13; Trial Tr. Vol. 13 (Wells) at 2081-82; Trial Tr. Vol. 14 (Lee) at 2288-89.)

157. The uncollected trash piled up around the dumpsters attracted flies that entered the nursing homes, which contributed to the fly problems. This occurred at Moran Lake, (Trial Tr. Vol. 11 (T. Edwards) at 1589-91 (Landers) 1732; Trial Tr. Vol. 14 (Thomas) at 2193-94, (Lee) at 2288-89; Trial Tr. Vol. 16 (Testimony of Yvonne Garrett) at 2699), Mt. Berry (Trial Tr. Vol. 1 (Stanley) at 13-

14; Trial Tr. Vol. 5 (Greenway) at 787), and Wildwood (Trial Tr. Vol. 3 (Free) at 412; Trial Tr. Vol. 4 (McPherson) at 700-01; Trial Tr. Vol. 9 (Patrick) at 1276, (Grant) 1324; Trial Tr. Vol. 12 (Brunner) at 1811-12, (Gaulin) 1895; Gov't Ex. 361.30.)

158. Pest control services also stopped serving the nursing homes because Defendant did not pay them, contributing to the fly and pest problems. (Trial Tr. Vol. 2 (Knowles) at 296-97, 304, 307, 315.) On July 11, 2006, Ms. Knowles faxed a letter to Defendant that stated:

BIOTECH: THIS ISSUE IS STILL NOT RESOLVED. I HAVE NOT HAD PEST SERVICE COMPLETED IN 6 MONTHS. WE HAVE SPIDERS, FLIES, BUGS, ETC. THROUGHOUT THE FACILITY. THIS IS ALSO A SURVEY TAG.

(Gov't Ex. 487 (emphasis and capitalization in original).)

159. Almost two months later, on September 5, 2006,

Ms. Knowles faxed Defendant a letter stating:

BIOTECH: THIS ISSUE IS STILL NOT RESOLVED. I HAVE NOT HAD PEST SERVICE COMPLETED IN 6 MONTHS. WE HAVE SPIDERS, FLIES, BUGS, ETC. THROUGHOUT THE FACILITY. THIS IS ALSO A SURVEY TAG. I HAVE SENT YOU THE CONTRACT AND F469 [the survey deficiency] PER YOUR REQUEST. **OUTSTANDING BILL DUE \$7,223.22.**

(Gov't Ex. 487 (emphasis and capitalization in original));
(Trial Tr. Vol. 4 (Prince) at 616; Trial Tr. Vol. 10 (Dodson) at 1532.)

160. Caren Kelley testified that she found mice feces in her mother's room in Moran Lake. (Trial Tr. Vol. 10 at 1502-03.)

161. Rather than paying a pest control service, Defendant equipped the nursing stations at Moran Lake with flyswatters. (Trial Tr. Vol. 14 (Lee) at 2288.)

162. Defendant also failed to pay for the pest service at Mt. Berry. (Trial Tr. Vol. 5 (Greenway) at 788-89; Gov't Ex. 800.) Ms. Greenway testified that employees bought insecticide spray to kill the flies, which is an improper means to address a fly infestation in a nursing home. (Trial Tr. Vol. 6 (Greenway) at 875-76.)

163. Rats also were a problem at Mt. Berry. (Trial Tr. Vol. 10 (Dixon) at 1565-66.) Former employee Ylaunda Dixon testified that one resident used to complain to the employees that she heard rats running in the suspended ceiling. (Id.) According to Ms. Dixon, on one occasion, a saturated ceiling tile fell on a resident's bed, and when the tile dropped, rats fell onto the bed with the tile. (Id.)

164. The lack of pest control was an on-going problem at Wildwood despite family complaints. (Trial Tr. Vol. 9

(Patrick) at 1276 (describing rats, roaches and ants at Wildwood), (Grant) at 1324-26, 1342-43; Gov't Ex. 831.23 (stating "pest control continues to be an issue".) Former employee Danny Patrick testified that the garbage at Wildwood attracted rats, which nested in the nursing home kitchen. (Trial Tr. Vol. 9 (Patrick) at 1276.)

165. Winifred Herrington testified that ants entered the residents' rooms at Wildwood around or through the floor-level, through-the-wall air conditioning units. (Trial Tr. Vol. 7 (Herrington) at 1049.) According to Ms. Herrington, although employees sprayed insecticide in the residents' rooms to kill the ants, the ants returned the next day. (Id.)

166. Ms. Herrington testified that she decided to move her aunt out of Wildwood after her aunt was hospitalized for dehydration. (Trial Tr. Vol. 7 (Herrington) at 1048.)

According to Ms. Herrington, a doctor examined her aunt in the hospital and found that a roach had crawled deep into one of her aunt's ears. (Id. at 1048-49.)

167. Residents at Mt. Berry complained about the amount of flies in the home, and Ms. Greenway asked Defendant to pay the pest service bill for pest control at the nursing home. (Trial Tr. Vol. 5 (Greenway) at 819-20; Gov't Ex. 492.)

168. At Moran Lake, the windows were kept open to vent the foul odor in the home and to provide relief from the heat inside the home due to the lack of working air conditioners, but many windows lacked screens, had torn screens, or had screens that did not fit tightly. (Trial Tr. Vol. 13 (Wells) at 2080-82; Trial Tr. Vol. 14 (Thomas) at 2191, 2193-94; Gov't Ex. 361.) Additionally, some doors did not

fit well, or were missing knobs, and the seals around many air conditioning units had rotted away, leaving gaps that allowed flies, roaches, ants, and other insects to enter the home. (Trial Tr. Vol. 15 (Forrister) at 2353-54, 2357, 2359-60; Gov't Ex. 765.)

169. Other witnesses testified that Moran Lake's septic tank regularly clogged, which caused raw sewage to pour on the ground and down the hill into a neighboring yard. (Trial Tr. Vol. 2 (Knowles) at 305-06; Trial Tr. Vol. 16 (Young) at 2554-55.) The raw sewage had a powerful odor. (Trial Tr. Vol. 2 (Knowles) at 305-06; Trial Tr. Vol. 11 (Landers) Tr. at 1732; Trial Tr. Vol. 16 (Young) at 2554-55.)

170. When Ann Wells inspected Moran Lake on May 20 through May 23, 2007, she found that many window screens had holes and were so bent out of shape that they

did not fit the windows. (Trial Tr. Vol. 13 (Wells) at 2075, 2080-81; Gov't Ex. 361.) The windows were open because it was so hot in the home because of the lack of air conditioning. (Trial Tr. Vol. 13 (Wells) at 2082.) Consequently, the nursing home had flies everywhere. (Id. at 2081.) Ms. Wells testified that the flies landed on residents, and that she saw one resident who had to bat away a fly as she was receiving treatment for pressure sores. (Id. at 2081-82.) According to Ms. Wells, because flies are drawn to wounds, that resident was in danger of the fly laying eggs inside her pressure sore and causing an infestation of maggots. (Id.)

k. Utilities

i. Georgia Natural Gas

171. Georgia Natural Gas ("GNG") negotiated for

months with Defendant and Washington about their failure to pay for the natural gas service at Moran Lake and Wildwood. (Trial Tr. Vol. 11 (Testimony of Patricia McFadin) at 1713-1715.) According to GNG employee Patricia McFadin, Defendant and Washington agreed to several payment plans with GNG, but then failed to keep their promises. (Id. at 1715-1716, 1721-23.)

172. Ms. McFadin testified that, between July 2003 and August 2007, GNG sent sixteen disconnection notices to Moran Lake for falling more than forty-five days behind on its account. (Trial Tr. Vol. 11 (McFadin) at 1717-1722; Gov't Ex. 1500.) On May 18, 2006, GNG cut gas service to Moran Lake. (Trial Tr. Vol. 11 (McFadin) at 1720-23; Gov't Ex. 1500.) According to Ms. McFadin, GNC restored service later that day, based on Washington's promise to

make payments. (Trial Tr. Vol. 11 (McFadin) at 1720-23.) Ms. McFadin testified that, after Washington defaulted on that payment plan, GNG authorized an Atlanta Gas Light representative to cut off the gas at the home on June 1, 2006. (Id.) Ms. McFadin testified that Moran Lake's staff and residents convinced the representative not to carry out the cutoff order. (Id.) Defendant owes a balance of \$4,349.86 on the GNG account for Moran Lake. (Id. at 1723; Gov't Ex. 1500.)

173. Between August 2003 and October 2007, GNG sent eighteen disconnection notices to Wildwood. (Trial Tr. Vol. 11 (McFadin) 1723-25; Gov't Ex. 1500.) GNG cut off gas service at Wildwood for nonpayment on three occasions: June 13, 2006, August 6, 2006, and October 23, 2007. (Trial Tr. Vol. 11 (McFadin) at 1723-25; Trial Tr. Vol.

9 (Grant) at 1329-33; Gov't Exs. 1500, 831.8.) Ms. McFadin testified that, after the June 13, 2006, cut off, GNG reconnected service on that same day, and that, after the August 6, 2006, cut off, GNG reconnected service after two days. (Trial Tr. Vol. 11 (McFadin) at 1723-25; Gov't Ex. 1500.) Defendant owes a balance of \$6,107.58 on the GNG account for Wildwood. (Trial Tr. Vol. 11 (McFadin) at 1724; Gov't Ex. 1500.)

ii. Georgia Power

174. Although Georgia Power sent numerous disconnection notices to the three nursing homes, it would not stop service to the buildings in which the residents lived. (Trial Tr. Vol. 3 (Testimony of Kristi Barker) at 385-86.) Georgia Power cut service to the laundry building at Moran Lake and to FHG's corporate office on Spider Webb Drive

in Rome. (Id.; Trial Tr. Vol. 4 (J. Chisolm) Tr. at 533.) According to Georgia Power representative Kristi Barker, Defendant negotiated numerous payment plans with Georgia Power and defaulted on each one. (Trial Tr. Vol. 3 (Barker) at 386-87.)

175. Ms. Barker testified that, after the three homes and corporate offices were closed, Defendant owed Georgia Power approximately \$291,000. (Trial Tr. Vol. 3 (Barker) at 389.) Specifically, Defendant owed a balance of \$40,172.34 at Moran Lake, \$77,271.26 at Mt. Berry, and \$173,022.17 at Wildwood. (Id.; Gov't Exs. 706_2, 706_3 & 706_4.)

I. Other Services

176. Witnesses testified that telephone service was interrupted at Wildwood because Defendant failed to pay for it. (Trial Tr. Vol. 7 (Herrington) at 1032-33; Trial Tr. Vol. 9

(Grant) at 1325-26, 1339-40, 1347, 1405-06.) Witnesses also testified that Defendant failed to pay for lawn services at Mt. Berry and Wildwood, which interrupted service and, in turn, affected residents' ability to go outside in the fresh air and created a potentially hazardous environment around the home. (Trial Tr. Vol. 5 (Greenway) at 786-87, 818; Trial Tr. Vol. 9 (Grant) at 1326, 1335; Gov't Ex. 800.) Further, witnesses testified that Defendant failed to pay for cable television for the Wildwood residents, which interrupted service. (Trial Tr. Vol. 7 (Herrington) at 1034; Trial Tr. Vol. 9 (Grant) at 1348-49; Trial Tr. Vol. 16 (Chal) at 2669.)

177. Ann Wells testified that, when she first arrived at Moran Lake on May 20, 2007, the lot was so overgrown and the home so unkempt that it appeared to her to be abandoned. (Trial Tr. Vol. 13 (Wells) at 2073.)

178. Witnesses testified that, at various times, water service at Wildwood was cut off for nonpayment. (Trial Tr. Vol. 7 (Herrington) at 1034, 1070-71; Trial Tr. Vol. 12 (Gaulin) at 1926; Gov't Ex. 361.41; Browning Dep. at 18-19.)

m. Chaos

179. Former administrators testified that the frequency of the cut off notices, the interruption of utilities, supplies, and services, the lack of maintenance, the leaking roofs, the lack of air conditioning and heat, the infestations of flies and other pests all contributed to an atmosphere of chaos in the homes during the conspiracy period, and a physical environment that did not provide for the residents' highest practicable standard of living. (Trial Tr. Vol. 1(Stanley) at 32-34, 40; Trial Tr. Vol. 6 (Greenway) at 852, 856; Trial Tr.

Vol. 9 (Grant) at 1355-56.)

180. Ms. Grant testified that, at one point, Wildwood lacked hot water, and employees could not sanitize the residents' dishes and silverware and the kitchen pots and pans. (Trial Tr. Vol. 9 (Grant) at 1346.) As a result, Wildwood had to serve the residents' meals using disposable plates and cups, which, in turn, increased the amount of garbage the home produced. (Id.) The waste removal service, however, was not picking up Wildwood's garbage at the time because Defendant had again fallen behind in his payments. (Id.; see also Trial Tr. Vol. 9 (Tillery) at 1300-1301 (stating that Southland Waste service cut service to Wildwood for nonpayment twenty-five times during a forty-month period, and that each service cut off usually lasted one week).)

181. Ms. Greenway stated the impact from not having the necessary resources and services to run a facility was chaos, because administrators spent all or nearly all their time dealing with unpaid vendors and upset employees and family members, rather than attending to the residents' needs. (Trial Tr. Vol. 6 (Greenway) at 852, 856.) Ms. Free testified that, while she served as the administrator at Wildwood, she spent most of her time dealing with the fallout from unpaid bills. (Trial Tr. Vol. 3 (Free) at 411.)

182. Many employees and family members reported that the conditions in the nursing homes took an obvious downward turn after Defendant took control of the facilities in 2004. (Trial Tr. Vol. 4 (Testimony of Tonia Hamilton) at 674-75; Trial Tr. Vol. 5 (Testimony of Kenneth Hinkley) at 751-54; Trial Tr. Vol. 7 (Herrington) at 1032); Trial Tr. Vol.

9 (Patrick) at 1282; Trial Tr. Vol. 10 (Hannay) at 1429, (Peyton) at 1546-48; Trial Tr. Vol. 12 (Brunner) at 1807-08; Trial Tr. Vol. 14 (Fuqua) at 2141-45.)

6. The Survey Process

183. The Government commonly uses surveys performed by state agencies to monitor nursing homes. (Trial Tr. Vol. 2 (Mauldin) at 182-83.) Surveyors are not federal criminal investigators, and that claims submitted for reimbursement and payments made for a resident are not paid based on survey performance or based on a facility passing a survey. (Id. at 193-94; Trial Tr. Vol. 17 (Goldsmith) at 2883.) Ms. Mauldin testified: “If you file that claim, as long as you have a provider agreement that has been signed, your survey results don’t have anything to do with whether or not the [provider] receives payment for

services.” (Trial Tr. Vol. 2 (Mauldin) at 237.)

184. Annual surveys are generally performed once a year. (Trial Tr. Vol. 2 (Mauldin) at 183.) A typical annual survey for a 100-bed facility would involve three or four surveyors coming into the facility for two, three, or four days. (Id.) Ms. Mauldin described the annual surveys as “snapshots in time.” (Id.) A complaint survey, on the other hand, occurs when the state receives a complaint about the facility. (Id.) Ombudsman Kathy Gaulin described a complaint survey as a very small snapshot of that facility. (Trial Tr. Vol. 13 (Gaulin) at 1961.) Witnesses testified that an unsubstantiated complaint does not mean that the complaint was not true. (Trial Tr. Vol. 17 (Goldsmith) at 2864; Trial Tr. Vol. 3 (Glymph) at 460; Trial Tr. Vol. 2 (Mauldin) at 183.) Indeed, on many occasions, complaints

may be unsubstantiated, but the situation complained of actually exists. (Trial Tr. Vol. 17 (Goldsmith) at 2864.)

185. From June 2004 to September 2007, state surveyors conducted annual surveys at Moran Lake on June 23, 2004, July 21, 2005, September 13, 2006, and May 23, 2007. (Gov't Exs. 275, 280, 284, 292.)

186. Between June 2004 and September 2007, state surveyors conducted annual surveys at Mt. Berry on September 22, 2004, October 19, 2005, September 13, 2006, and May 23, 2007. (Gov't Exs. 295, 301, 303, 306.)

187. Between June 2004 and September 2007, state surveyors conducted annual surveys at Wildwood on February 24, 2005, March 23, 2006, and February 15, 2007. (Gov't Exs. 312, 316, 319.) Wildwood was closed based on complaint surveys conducted in August and September

2007. (Gov't Exs. 323, 324, 325, 326, 327, 328.)

188. The surveyors in this case found that the three nursing homes were out of substantial compliance on every annual survey conducted during the time period relevant to this action--meaning the facilities did not meet the requirements for participation in the program at those particular times. (Trial Tr. Vol. 2 (Mauldin) at 219; Trial Tr. Vol. 17 (Goldsmith) at 2851, 2871; Gov't Exs. 275, 275a, 280, 284, 292, 295, 301, 303, 312, 316, 319.) The surveyors also substantiated several of the complaints made against the three facilities during the course of the conspiracy. (Trial Tr. Vol. 17 (Goldsmith) at 2853-56.)

189. Surveyors give an immediate jeopardy tag in a situation in which the "provider's noncompliance with one or more requirements of participation has caused, or is likely

to cause, serious injury, harm, impairment, or death to a resident.” (Trial Tr. Vol. 2 (Mauldin) at 185; Gov’t Ex. 29.)

A May 23, 2007, survey performed at Moran Lake identified five “immediate jeopardies” and several other deficiencies.

(Gov’t Ex. 292.) A May 23, 2007 survey conducted at Mt.

Berry identified two immediate jeopardies tags, for nutrition and administration, and nineteen other deficiencies. (Gov’t

Ex. 306.) In August and September 2007, surveyors placed

Wildwood in immediate jeopardy. (Trial Tr. Vol. 16 (Chal)

at 2680-2683, 2694-95; Gov’t Exs. 136, 323, 328.)

Specifically, an August 3, 2007 survey performed at

Wildwood found that the Wildwood facility was not in

substantial compliance with participation requirements and

that conditions in the facility constituted immediate jeopardy

to resident health and safety. (Gov’t Ex. 323.) An August

20, 2007 revisit survey at Wildwood determined that the facility was not in substantial compliance but that the immediate jeopardy had been removed. (Gov't Ex. 136.)

A complaint survey conducted at Wildwood from September 4 to September 6, 2007 found that Wildwood was not in substantial compliance with participation requirements and that conditions in the facility constituted immediate jeopardy to resident health and safety. (Id.)

190. On June 15, 2007, Medicare sent letters to Moran Lake and Mt. Berry, notifying each administrator of the involuntary mandatory termination of their respective facility, effective immediately. (Gov't Ex. 134, 361_10.) On September 13, 2007, Medicare sent a letter to Wildwood's administrator, notifying her of the involuntary mandatory termination of the Wildwood facility, effective immediately.

(Gov't Ex. 136.) The September 13, 2007 termination letter to Wildwood noted that the immediate jeopardy at Wildwood was considered ongoing since September 4, 2007. (Id.)

191. Ms. Mauldin testified that surveyors are extremely reluctant to close down nursing facilities, and that involuntary closure is an extremely rare occurrence. (Trial Tr. Vol. 2 (Mauldin) at 190.) Ms. Goldsmith, Defendant's expert, testified that she was not aware of any nursing facilities in Georgia, other than Defendant's three nursing homes, that were involuntarily closed in the last five years. (Trial Tr. Vol. 17 (Goldsmith) at 2884.) Ann Wells testified that she was not aware of any nursing homes that had been closed in Georgia during the last eight years. (Trial Tr. Vol. 13 (Wells) at 2126.) Witnesses testified that closing a nursing home is always the very last resort. (Id. at 2131;

Trial Tr. Vol. 17 (Goldsmith) at 2884.) As witness Karen Forrister stated: “Decertification is something that just doesn't happen in [the nursing home] industry. You can, probably, count on one hand in the last 30 years, since they began issuing provider numbers and licenses, how many facilities have been decertified. It's just not something you hear of.” (Trial Tr. Vol. 15 (Forrister) at 2376.) According to Ms. Mauldin, the main reason for this reluctance is the adverse impact that such a move has on the residents' well-being and continuity of care. (Trial Tr. Vol. 2 (Mauldin) at 191.) Ms. Mauldin stated that moving residents out of their homes can have significant negative consequences for the residents and their families. (Id. at 190-92.) The term “transfer trauma” is sometimes used to describe the negative impact on a resident's physical, mental, and

psychosocial well-being that occurs when a resident in a nursing home is transferred to another nursing home as a result of a closure or a sudden event. (Trial Tr. Vol. 2 (Mauldin) at 190; Trial Tr. Vol. 17 (Goldsmith) at 2835.)

a. Employee Fear

192. Witnesses testified that, when surveyors enter a facility to conduct an annual survey or investigate a complaint, the surveyors review records and interview employees, residents and family members. (Trial Tr. Vol. 12 (Gaulin) at 1902; Trial Tr. Vol. 13 (Wells) at 2118.) Ms. Wells acknowledged that employees may be afraid of being fired if they talk to the surveyors. (Trial Tr. Vol. 13 (Wells) at 2128.)

193. In November 2004, Suzanne Stanley, Mt. Berry's administrator discovered that Defendant and Washington

had withdrawn money from the resident trust fund improperly. (Trial Tr. Vol. 1 (Stanley) at 21-29; Gov't Ex. 451.) On December 1, 2004, Ms. Stanley filed a complaint letter with the state, reporting the theft. (Gov't Ex. 451.) Ms. Stanley requested that her letter be kept confidential. (Id.) The surveyors investigated Ms. Stanley's complaint and determined that money had been removed inappropriately from the resident trust fund account, and cited Mt. Berry for this violation. (Trial Tr. Vol. 1 (Stanley) at 29.) Defendant discovered that Ms. Stanley had reported him to the state, and fired Ms. Stanley the day after that citation. (Id.) According to Ms. Stanley, when Defendant fired her, he stated that the firing was because of the complaint that she had filed with the state, and told her that she had not been loyal to him. (Id.) Specifically,

Ms. Stanley testified: “His exact statement to me was that he had paid me good money for my loyalty, and I had not been loyal.” (Id. at 46.)

194. From March 2004 until August 2004, Kay Edwards worked at the FHG corporate office doing accounting work. (Trial Tr. Vol. 1 (Testimony of Kay Edwards) at 92-93, 101, 112.) When Ms. Edwards first arrived at FHG, she determined that the facilities were receiving “massive amounts” of overpayments from Medicaid. (Id. at 97-98.) According to Ms. Edwards, Medicaid was sending FHG two payments each week for every Medicaid resident in all three facilities for the resident’s care for the same period of time--one payment came electronically and the other was a printed check that came through the mail. (Id. at 98, 127-28.) Ms. Edwards

testified that the duplicate payments continued during the entire time that she worked for FHG. (Id.)

195. Ms. Edwards testified that she told Defendant that keeping the extra payment Medicaid made for each resident constituted fraud and was stealing money from the Government. (Trial Tr. Vol. 1 (K. Edwards) at 108.) Ms. Edwards suggested that FHG write up a plan of correction to pay the money back to Medicaid. (Id. at 108-09.) According to Ms. Edwards, Defendant specifically instructed her not to do so. (Id.) Soon afterward, Defendant asked Ms. Edwards if she knew any accountants who did nursing home work. (Id. at 109.) Ms. Edwards found an accountant and had him come in and look at FHG's financial records. (Id.) According to Ms. Edwards, when Defendant found out about that occurrence, he terminated both Ms. Edwards and

her husband, who was doing maintenance work for the company. (Id. at 110-11.) Ms. Edwards testified that, when Defendant fired her, he accused her of jeopardizing his business, and threatened her and her husband that he would sue them if they ever discussed how he ran his business. (Id. at 110, 116.)

196. Tamara Primus testified that she was fired because she was cooperating with the state. (Trial Tr. Vol. 5 (Testimony of Tamara Primus) at 739.) Laverne Burrell testified that Defendant fired her after Defendant requested that she provide false testimony to the police about an incident that she had not witnessed, and she refused to do so. (Trial Tr. Vol. 8 (Testimony of Laverne Burrell) at 1249-50.)

197. Ms. Free, the Wildwood administrator, indicated

that, as a result of Ms. Stanley's firing, she believed that she would lose her job if she reported any issues to the surveyors. (Trial Tr. Vol. 3 (Free) at 419.) Ms. Free consequently did not report issues out of fear of losing her job, and she instructed employees not to talk to the surveyors. (Trial Tr. Vol. 3 (Free) at 419; Trial Tr. Vol. 9 (Patrick) at 1291.) Defendant's expert, Ms. Goldsmith, acknowledged that an employee would be more afraid to complain if he or she knew that an administrator was fired after filing a complaint. (Trial Tr. Vol. 17 (Goldsmith) at 2848-49.)

198. Dr. Hannay, the former medical director for Moran Lake and Mt. Berry and the attending physician for a majority of the residents at those nursing homes, testified that many of the employees at those nursing homes did not

report issues to the surveyors for fear of being fired. (Trial Tr. Vol. 10 (Hannay) at 1439-40.) Dr. Hannay testified that he encouraged employees at both facilities to report the terrible conditions, but the employees consistently told him that they would be fired if they said anything. (Id.) According to Dr. Hannay, employees told him, “[i]f we say anything about Mr. Houser, we say anything of the bad stuff that's going on here, we'll get fired.” (Id. at 1440.) Dr. Hannay wrote a letter to the state dated July 18, 2005, in which he stated that he could not live with the level of fraud at the nursing homes, and that the Director of Nursing at Moran Lake told him that if employees said anything about Defendant to the surveyors, they would be “immediately terminated.” (Id. at 1438-39; Gov't Ex. 1235.)

199. Ms. Gaulin was the ombudsman for the Wildwood

facility, and, in that position, served as an advocate for the residents of a nursing home. (Trial Tr. Vol. 12 (Gaulin) at 1899-91.) An ombudsman is not a part of the survey team and is not involved in the individual investigations conducted by the surveyors. (Trial Tr. Vol. 13 (Gaulin) at 1943, (Wells) at 2112; Trial Tr. Vol. 2 (Mauldin) at 255.)

200. Ms. Gaulin began visiting Wildwood on a monthly basis, but, during the last two years of Wildwood's operation, Ms. Gaulin's visits increased to every week because the complaints that Ms. Gaulin received increased while the quality of care at the nursing home decreased. (Trial Tr. Vol. 12 (Gaulin) at 1891.) According to Ms. Gaulin, the Wildwood employees "begged" her not to say anything to the surveyors because the employees feared that they would lose their jobs. (Id. at 1899.) Ms. Gaulin

testified that employees called her office and said, "I'm a staff person, but I don't care to give my name." (Id. at 1892.) Ms. Gaulin testified that her "hands were tied" because she could not give specific names of employees to the surveyors. (Id. at 1900.)

201. On July 31, 2006, Ms. Gaulin filed a complaint with the state, stating that employees were being told that, if "they talk to the state, go to a lawyer, or make any similar action they will lose their jobs." (Trial Tr. Vol. 12 (Gaulin) at 1899; Gov't Ex. 361.32.) Ms. Gaulin's complaint also stated that, if an employee chose to leave Wildwood, the employee would be "blackballed" and would not get a good reference. (Trial Tr. Vol. 12 (Gaulin) at 1900; Gov't Ex. 361.32.) Sonya Brunner, a former Wildwood employee, testified: "I was -- I was afraid, fearful of my job, yes. I knew things were not as

they should be. But, again, that's something I, personally, I guess, have to give an account for because I didn't complain to them [the surveyors] because I knew I would lose my job and that's my livelihood, and I didn't complain to them." (Trial Tr. Vol. 12 (Brunner) at 1825.)

b. Administrators' Conduct

202. Surveyors rely on what the administrators tell them. (Trial Tr. Vol. 13 (Gaulin) at 1989.) Ms. Greenway, the administrator at Mt. Berry, sent multiple faxes to Defendant and Washington concerning problems with lab work being completed and informed Defendant and Washington that, if the surveyors found out about the situation, Mt. Berry would be placed in immediate jeopardy. (Gov't Ex. 800 ("Doctor's lab did not come to draw labs today . . . will be an immediate jeopardy!! If they come in

and find it!! And I am sure someone will report it to the State.”); Gov’t Ex. 565 (“the lab will not do ammonia levels . . . if the surveyors find out we are in trouble—jeopardy!!”); Gov’t Ex. 471 (“the lab did not come yesterday . . . this puts me out of compliance with the surveyors and it will be an immediate jeopardy if they find it!!!”); Gov’t Exs. 512, 563, 809.) Ms. Greenway, however, did not provide the surveyors with the constant updates that she was faxing to Defendant. (Trial Tr. Vol. 6 (Greenway) at 964.)

203. Ms. Knowles, the administrator at Moran Lake, sent faxes to Defendant and Washington concerning immediate jeopardy situations at that facility. (Gov’t Ex. 487, Dec. 20, 2006, and December 13, 2006 faxes (“We are in a jeopardy situation being unable to draw the ammonia levels . . . George we are going to be in big trouble for this

if someone calls the state. This has dragged on for a while and it is really making me nervous!!!”), July 31, 2006 fax (“They are not coming [to do] X-rays. This is an immediate jeopardy . . .”), October 19, 2006, fax (“Housekeeping supplies are needed. We did receive a housekeeping tag and if they walked in today we would get another one...the floors look horrible. ***Survey Items***”).) Several of the faxes that Ms. Knowles sent to Defendant also identified issues that Ms. Knowles believed were other “survey” or “jeopardy” issues. (Gov’t Ex. 487.)

c. Residents

204. Witnesses testified that residents often are afraid to report problems at nursing homes for fear of retaliation or based on concerns that the facility may be closed as a result of their complaints, requiring them to move. (Trial Tr.

Vol. 3 (Glymph) at 452; Trial Tr. Vol. 17 (Goldsmith) at 2848; Trial Tr. Vol. 13 (Gaulin) at 1964, 1991, (Wells) at 2128-29; Trial Tr. Vol. 15 (Cox) at 2443.) According to Ms. Cox and Ms. Glymph, this fear impacts the effectiveness of the surveys. (Trial Tr. Vol. 15 (Cox) at 2443; Trial Tr. Vol. 3 (Glymph) at 452.) Ms. Glymph testified that, when the residents fear retaliation it is extremely difficult to get an accurate survey, noting, “if your residents are afraid, they don’t want to tell you what’s going on. It makes it real hard to get to the bottom of things, if they’re fearful.” (Trial Tr. Vol. 3 (Glymph) at 452.) Ms. Gaulin, the Ombudsman, testified that, based on her actual observations, the surveyors at Wildwood were not getting an accurate reflection of what was going on because residents and staff feared retaliation. (Trial Tr. Vol. 13 (Gaulin) at 1991.)

205. Ms. Glymph testified that, during a January 2007 survey of Moran Lake, she interviewed a resident named John, who complained that he was cold and that the heat was not working, and then also told her not to “tell anyone I said that.” (Trial Tr. Vol. 3 (Glymph) at 452; Gov’t Ex. 350.) Ms. Cox testified that, during her May 2007 investigation visit at Moran Lake, her investigative team spoke with a resident who complained about the amount of food served at the nursing home and also described the lack of empathy and professionalism of the nursing aides. (Trial Tr. Vol. 15 (Cox) at 2445; Gov’t Ex. 354.) According to Ms. Cox, the resident stated that he had notified the nursing staff about his concerns and that, although the staff’s performance might improve for a few weeks after a complaint, it always reverted back. (Trial Tr. Vol. 15 (Cox)

at 2445; Gov't Ex. 354.) Ms. Cox testified that the resident was "emphatic" about not wanting to identify a specific person, and that the resident even stated that his care was "generally" good." (Trial Tr. Vol. 15 (Cox) at 2445; Gov't Ex. 354.)

d. Family Members

206. Witnesses also testified that family members are reluctant to complain, even to facility staff, because the family members fear that their loved ones may suffer mistreatment if they complain or that nursing home might be closed, in which case the family members may not be able to visit their residents often. (Trial Tr. Vol. 15 (Cox) at 2443; Trial Tr. Vol. 2 (Mauldin) at 254; Trial Tr. Vol. 13 (Wells) at 2129; Trial Tr. Vol. 17 (Goldsmith) at 2845.) According to the surveyor witnesses, this reluctance to complain also

impacts the accuracy of surveys, making it difficult for the surveyors to make an adequate assessment. (Trial Tr. Vol. 3 (Glymph) at 452; Trial Tr. Vol. 13 (Wells) at 2129; Trial Tr. Vol. 15 (Cox) at 2443.)

e. Anonymity

207. Ms. Wells testified that, although surveyors try to assure employees, residents and family members that their complaints will remain anonymous, the surveyors cannot always allay the fear of retaliation those individuals have. (Trial Tr. Vol. 13 (Wells) at 2128.) According to Ms. Wells, sometimes an administrator will tell a surveyor that he or she knows exactly who made the complaint, despite all the efforts that the surveyor may have made to keep that complainant anonymous. (Id. at 2130-31.) Defendant's own expert, Ms. Goldsmith, acknowledged that, even after

being told about anonymity, residents are sometimes afraid to complain. (Trial Tr. Vol. 17 (Goldsmith) at 2848.) Ms. Goldsmith acknowledged that the system is not working well if residents are still afraid to complain even after being told that their complaint will remain anonymous. (Id. at 2845.)

208. Former employee Sonya Brunner testified that many employees who called the complaint hotline anonymously were identified. (Trial Tr. Vol. 12 (Brunner) at 1849.) According to Ms. Brunner, as a result, the credibility of, and trust in, the anonymity hotline was adversely impacted. (Id.) Dr. Hannay testified that, in his opinion, anonymity did not exist at Moran Lake and Mt. Berry: “Well, there’s no anonymity if people are fired. I mean, I saw people leaving right and left. I don’t know where this anonymity is, but it didn’t exist most of the time that I saw.”

(Trial Tr. Vol. 10 (Hannay) at 1482.)

f. Records

209. The survey process depends on nursing home records being complete and accurate. (Trial Tr. Vol. 13 at 1902-03 (Gaulin), (Wells) at 2129.) Those records include staffing, weight loss, and menu records. (Trial Tr. Vol. 12 (Gaulin) at 1902-03.) According to Ms. Gaulin, if the nursing home records that the surveyors rely on are not accurate and honest, then the survey process has been corrupted from the start. (Id.) Ms. Gaulin testified that, if the surveyors receive false records, then the surveyors do not see “the real picture.” (Id.) Ms. Wells acknowledged that a surveyor cannot control someone failing to tell the truth or falsifying evidence. (Trial Tr. Vol. 13 (Wells) at 2122.)

210. Former employee Ylaunda Dixon testified: “I was a record CNA for a short period of time, and a lot of the residents was losing a whole bunch of weight, yeah . . . We started off recording it. And then after they start losing so much weight and, you know, they told us -- well, we had a supervisor, Barbara Hamilton, she told us to stop recording it per George Houser.” (Trial Tr. Vol. 10 (Dixon) at 1564.) Defendant’s expert, Ms. Goldsmith, acknowledged that the surveyors cannot effectively do their jobs if the weight loss records in a facility are inaccurate because the owner has directed that weight loss should not be recorded. (Trial Tr. Vol. 17 (Goldsmith) at 2843.) Another witness testified that employees could not monitor residents’ weight properly or perform proper assessments of residents because the scales did not work. (Trial Tr. Vol. 14 (Chandler) at 2324,

2338.)

211. Ms. Stanley testified that, on several occasions, medications were not available for residents because Defendant had not paid the pharmacy bill. (Trial Tr. Vol. 1 (Stanley) at 65; Gov't Ex. 1239a.) On some occasions, the nurses "borrowed" the medications from one resident and gave those to another resident, an improper procedure that was necessary to helping the resident. (Trial Tr. Vol. 10 (Hannay) at 1455-56; Trial Tr. Vol. 14 (Lee) at 2284; Trial Tr. Vol. 11 (T. Edwards) at 1593-94.) On other occasions, the residents never received the medications that they were supposed to have. (Trial Tr. Vol. 1 (Stanley) at 65; Trial Tr. Vol. 14 (Lee) at 2284.) Sonya Brunner testified that, when this happened, nurses did not always record it in the residents' charts, noting, "there were many times that

nurses did not document such in the fear of they've been programmed not to circle medications indicating that they were not delivered." (Trial Tr. Vol. 12 (Brunner) at 1832.) According to Ms. Brunner, nurses told her that they did so under the direction of the administration and the Director of Nursing at Wildwood. (Id.)

212. Family member Tonia Hamilton testified that, because she was so concerned about understaffing at Wildwood, she actually compared the staffing numbers physically posted by the nursing home with the number of staff who she actually observed were physically present, at different times of the day and night. (Trial Tr. Vol. 4 (Hamilton) at 667-68.) According to Ms. Hamilton, "they had always a list of how many nurses were on staff, how many CNAs were on staff, but I never seen that many

there.” (Id.) Ms. Brunner testified: “Just because it’s posted on this schedule does not mean those people were present.” (Trial Tr. Vol. 12 (Brunner) at 1865.)

213. Menu postings are used to determine whether the residents are being fed properly. (Trial Tr. Vol. 12 (Gaulin) at 1902-03.) According to Ms. Gaulin, the listings on the menu at Wildwood did not usually match what the Wildwood employees fed the residents. (Id. at 1903.) Ms. Gaulin testified: “If they’re telling you that they had beef stew, if it’s on the menu that they had beef stew, and the resident’s telling you they had peanut butter sandwiches, you have no way to prove that without seeing it yourself. When you go in to do a survey, you’re taking -- you’re there a very short time, three days. So it’s a very short -- you have a picture, a very small picture of that facility in those three days.” (Id.

at 1904.)

g. Advance Knowledge

214. Former FHG employee Wanda Chisolm testified that, many times, Defendant knew in advance that the surveyors were coming. (Trial Tr. Vol. 2 (Testimony of Wanda Chisolm) at 264-65.) Ms. Chisolm, who worked at FHG's corporate office with Defendant as the business manager, testified: "[Defendant] would tell us . . . come in earlier or be aware that surveyors would probably be in Mt. Berry next week or Moran Lake, but he knew when they were coming. I don't know if someone called -- a family member called, and that's how he knew. I don't know, but he would know a lot when they were coming." (Id. at 264-65.) Ms. Chisolm testified that, when Defendant told them that the surveyors were coming, it was related to a

complaint survey, rather than to a plan of correction or to a followup survey. (Id. at 273.) In contrast, Ms. Chisolm testified that, during her last seven years working at another nursing home company, she has never received similar advance information about the surveyors coming. (Id. at 274.)

215. Witnesses testified that the nursing homes took extra measures as soon as the staff found out that the surveyors or the ombudsman were coming. (Trial Tr. Vol. 13 (Gaulin) at 1987; Trial Tr. Vol. 9 (Patrick) at 1278-79; Trial Tr. Vol. 12 (Brunner) at 1850.) According to Ms. Gaulin, the staff and residents at Wildwood told her that things were always different when she arrived. (Trial Tr. Vol. 13 (Gaulin) at 1987.) One resident told Ms. Gaulin that, whenever Ms. Gaulin came, the residents had tapioca

pudding. (Id.) Ms. Gaulin stated, “we all know that things are different in the facility when the state is doing a survey.” (Trial Tr. Vol. 12 (Gaulin) at 1904.)

216. According to former employee Danny Patrick, employees at Wildwood received notice when the surveyors were coming and changed what they would do when the surveyors arrived. (Trial Tr. Vol. 9 (Patrick) at 1278.) Mr. Patrick testified: “Well, they gave notice that [the surveyors] were coming, I don’t know how much in advance, but it would be -- as soon as [the surveyors] walked in the building, it was, like, everybody was scattering around trying to do their job.” (Id. at 1278-79.) According to Mr. Patrick, the attitude was “just do whatever it takes to get through this inspection, and we’ll go from there.” (Id. at 1279.) Ms. Brunner testified: “A lot of times a quick fix occurs prior to

[the surveyors'] arrival.” (Trial Tr. Vol. 12 (Brunner) at 1850.)

217. Yvonne Garrett, a former certified nursing assistant (“CNA”) at Moran Lake, testified that the surveyors came into Moran Lake one weekend when she was working and that extra people were called in when the surveyors arrived to make it seem as though Moran Lake had more staff at work than it actually had. (Trial Tr. Vol. 16 (Testimony of Yvonne Garrett) at 2701-03.) According to Ms. Garrett, the weekend supervisor told her that, if the surveyors asked her anything about staffing, Ms. Garrett should “‘just make it seem like’ . . . ‘we’ve got enough help and all that.’” (Id. at 2702.) Defendant’s expert, Ms. Goldsmith, acknowledged that calling in extra staff when the surveyors arrive can corrupt the survey process. (Trial Tr.

Vol. 17 (Goldsmith) at 2849.)

218. Hazel Evans testified that, on one occasion, she saw the surveyors come into Wildwood on a complaint, and she believed that somebody had told the staff in advance that the surveyors were coming. (Evans Dep. at 31-32.) Ms. Evans said that, although nurses and aides often showed up without even being in uniforms, on the day that the surveyors came, “everything was spick and span” and “everybody was dressed to the hilt in their uniforms.” (Id. at 31.) Ms. Evans testified that the meal served to the residents “was great looking” when the surveyors came. (Id. at 32.) Ms. Evans asked a nurse whom she liked whether someone had notified the employees that the surveyors were coming. (Id.) According to Ms. Evans, the nurse just looked up at her and grinned. (Id.)

219. Tonia Hamilton, Ms. Evans' daughter, was present on the same day and gave similar testimony. (Trial Tr. Vol. 4 (Hamilton) at 671-72, 682-84.) Ms. Hamilton testified that, on the night before the surveyors came in the food was inedible, but that, when the surveyors came, the food was like a "Thanksgiving dinner." (Id. at 671.) According to Ms. Hamilton, on the very next day, the facility went back to serving "slop." (Id.) Ms. Hamilton noted: "There was plenty of staff on that day we went. Instead of there being very few people working, it was fully staffed. Instead of seeing the atrocious food, it was wonderful. The appearances was not there for them [the surveyors] to see the negative." (Id. at 683.) Ms. Hamilton opined that Wildwood's staff must have known that the surveyors were coming, noting: "When I see rotten food one day and

wonderful Thanksgiving food the next and then rotten food the day afterward, and Thanksgiving day everybody shows up that's for the state, how else did they know if the state did not tell them?" (Id. at 682.)

220. Ms. Gaulin testified that surveyors arrived at Wildwood at 9:00 a.m., and the staff prepared meals afterward, noting: "I know what I saw during my visits. So I think that when the state is there they prepare the meals differently." (Trial Tr. Vol. 13 (Gaulin) at 1972.)

h. Frustration

221. Ms. Gaulin stated that the survey process:

was frustrating to me . . . Because I had seen it with my own eyes. The residents would tell me these things, and I knew that it was true. I would see it myself. I didn't, generally, go by hearsay. When someone said, "The dumpster is full and overflowing," I would make sure I got out there to look at that. If someone said there was flies, I'd go

to the rooms and I would look at the dining -- see if there were flies. I didn't ever go on hearsay. I always followed up on those complaints and concerns. So I saw it.

(Trial Tr. Vol. 12 (Gaulin) at 1901.) Ms. Gaulin and her supervisor, Becky Kurtz, who was the state ombudsman, sent an email to ORS asking why the surveyors were unable to validate Ms. Gaulin's complaints. (Gov't Ex. 361.42.) Ms. Gaulin testified: "It didn't seem like anyone was hearing what was going on. We were seeing these items, these things that were happening, and nobody was doing anything about it. That was my frustration." (Trial Tr. Vol. 12 (Gaulin) at 1928-29.) Ms. Gaulin said that she was "very surprised" that the surveyors were not citing what she saw. (Id. at 1929.) Ms. Gaulin further testified that, although she covered approximately seventy-five other

facilities between the Brunswick and Savannah territory, she never had to get her supervisor involved with any of those facilities. (Trial Tr. Vol. 13 (Gaulin) at 1960.)

222. Dr. Hannay testified:

On that moment in time, they [the surveyors] did the best job they probably could. It still is frustrating to me that what is so apparent to me, the staff, the CNAs, my nurse practitioners, and a lot of families, they couldn't see what we could see I think you can now see my frustration These things that everybody knew were true, they couldn't see. This is the frustration."

(Trial Tr. Vol. 10 (Hannay) at 1473, 1480.) Dr. Hannay further stated, "I talked one-on-one -- these are from people who were afraid to lose their jobs. Definitely and probably -- you know, I was there hours and hours. That's what's so frustrating about this, when you know something is true and you get a report like this, you just want -- this [survey] isn't

worth the paper plane that you could make out of it.” (Id. at 1481.)

223. Family member Reba Usher testified that

The things that I took to the -- the things that I took directly to them [the surveyors], you know, about what it was that I was complaining to them about, you know, wasn't satisfied with -- they made me look like I -- you know, I was a liar, and that's the reason I went through the administrator and give her that letter. I had -- I had read that letter, I know -- I think, for a couple weeks and went over it and re-read it and re-read it. I said, "This is just not right. It makes me look like a liar." And I was very unsatisfied and unhappy with it. And then at that moment, after I seen I'm not getting nowheres with this, I said -- you know, I'm like, well, I'm going to just keep on coming. And I didn't feel like that it would do any good to go to them anymore and say anything to them or the staff anymore. I just started taking -- tried to take even better care of Aunt Bertha and keeping my eyes open more that she was being taken care of because, you know, I'm like, I didn't give up hope. But I'm like, what's the use?"

(Trial Tr. Vol. 12 (Testimony of Reba Usher) at 1798-99.)

224. Sonya Brunner stated that she “was very much surprised [that the nursing homes passed surveys] because I was expecting them to see that there wasn’t proper equipment. I was expecting them -- I was passing the buck on my behalf. I was expecting them to identify these obvious things that I saw.” (Trial Tr. Vol. 12 (Brunner) at 1857.) Tammy Edwards testified that she did not understand how the surveyors could permit Moran Lake to remain open when the residents were obviously so cold and hungry. (Trial Tr. Vol. 11 (T. Edwards) at 1611.)

7. Resident Care

225. Medicare and Medicaid require skilled nursing facilities to provide a level of nursing care that enables residents to attain and maintain the highest practicable level of physical, mental, and psychosocial well-being. (Trial Tr.

Vol. 2 (Mauldin) at 139, 153; see also 42 C.F.R. §§ 483.25 (addressing quality of care), 483.30 (discussion nursing services).) The required nursing care includes helping residents eat, bathe, groom and clean themselves, turn in their beds, keeping residence hydrated, and providing other, similar care, such as incontinence care. (Trial Tr. Vol. 2 (Mauldin) at 153-56.) Further, providers must have a medical director, and must provide services that are essential to furnishing physician-ordered care, including laboratory services, x-ray, and pharmaceutical services. (Id. at 160-67.) Ms. Mauldin testified that a nursing home provider must “follow the doctor’s orders. That’s not – that’s not even a question.” (Id. at 161.)

226. By signing the enrollment applications to seek Medicare and Medicaid payments for their residents,

Defendant and Washington certified that they were aware of all the applicable federal statutes and regulations governing the operating, staffing, and maintenance of nursing homes, and also certified that they would comply with those statutes and regulations and would not knowingly present or cause to be presented false claims for payment. (Trial Tr. Vol. 8 (Sheppard) at 1080-94, 1098; Trial Tr. Vol. 4 (Austin) at 632-650; Gov't Exs. 100-108, 110-12, 116-18, 122-27.)

227. During the time period relevant to this action, Defendant and Washington were paid more than \$32.9 million, based on claims for payment that they filed with Medicare and Medicaid. (Trial Tr. Vol. 8 (Sheppard) at 1078-1080; Trial Tr. Vol. 9 (Testimony of Georgeanna Canon) at 1309; Gov't Exs. 254, 254a, 255a, 255b, 255c,

and 255d.) When filing those claims, Defendant and Washington represented that they provided the nursing care services that Medicare and Medicaid required at the level that Medicaid and Medicare require. (Trial Tr. Vol. 17 (Goldsmith) at 2881; Trial Tr. Vol. 15 (Cox) at 2460-61; Trial Tr. Vol. 2 (Mauldin) at 142-43.)

8. Nursing Supply Shortages

228. Numerous witnesses testified that all three nursing homes frequently ran out of diapers, wound care supplies, and basic nursing supplies. (Trial Tr. Vol. 1 (Stanley) at 17-19; Trial Tr. Vol. 2 (Knowles) at 313-14, 320; Trial Tr. Vol. 3 (Knowles) at 342; Trial Tr. Vol. 5 (Testimony of Kenneth Hinkley) at 754-55; Trial Tr. Vol. 6 (Greenway) at 830-31; Trial Tr. Vol. 7 (Herrington) at 1043-44; Trial Tr. Vol. 9 (Grant) at 1323; Trial Tr. Vol. 10 (Hannay) at 1454-55,

(Dodson) 1529-30, (Peyton) 1555-56, (Dixon) 1564-65; Trial Tr. Vol. 11 (T. Edwards) at 1592-93, (Landers) 1733-34, 1758; Trial Tr. Vol. 12 (Brunner) at 1816, 1846, (Testimony of Michelle Collins) 1870-71, (Gaulin) at 1899; Trial Tr. Vol. 14 (Fuqua) at 2141-43, 2165, (Thomas) at 2194, (Lee) 2284-85; Trial Tr. Vol. 15 (Testimony of Tatum Zackary at 2382); Trial Tr. Vol. 16 (Testimony of Yvonne Garrett) at 2698-99; Gov't Exs. 361.32, 487 (faxes dated September 5, 2006, October 4, 2006, November 1, 2006, and March 2, 2007), 517.)

229. Those shortages impacted resident care, because a nursing home staff cannot provide quality care to residents without a sufficient and steady supply of supplies required for incontinence care and infection control. (Trial Tr. Vol. 16 (Testimony of Joyia Williams) at 2650-51.) As

witness Joyia Williams testified, a nursing home cannot adequately take care of a person without the necessary supplies. (Id. at 2651.)

230. Frances Browning, a former Wildwood resident, testified that Wildwood, ran out of diapers “quite often,” and that she bought her own diapers every month because she could go to the drugstore in her wheelchair. (Browning Dep. at 13-14.) Ms. Browning testified that family members and friends also supplied her with diapers, and that she shared her supply with other residents who needed diapers. (Id.) Ms. Browning also testified that she developed pressure sores at Wildwood, and that, because the nursing staff rarely had the zinc ointment necessary to treat the sores, she bought her own ointment on several occasions. (Id. at 14-15.) Ms. Browning further testified that other fellow

Wildwood residents had to depend on family members and friends to bring them food, nursing supplies, shampoo, and soap. (Id. at 17-18.)

231. Hazel Evans, whose mother resided at Wildwood while Ms. Browning lived there, testified that, six to eight months before Wildwood closed, the nursing home seemed to run out of diapers, medications, linens, wash cloths, and towels. (Evans Dep. at 20-21, 24.) Ms. Evans began to bring all of those things when she visited her mother, rather than take the chance of finding the nursing home without them. (Id. at 24.)

232. Winifred Herrington bought diapers, latex gloves and other nursing supplies for her aunt at Wildwood because of frequent shortages at the nursing home. (Trial Tr. Vol. 7 (Herrington) at 1043-1044.)

233. Several witnesses also testified that family members supplied residents with diapers, wound care supplies, and other basic nursing supplies. (Trial Tr. Vol 1 (Stanley) at 17-18, 68; Trial Tr. Vol. 5 (Hinkley) at 754-55; Trial Tr. Vol. 6 (Greenway) at 830-31; Trial Tr. Vol. 10 (Dodson) at 1530, (Peyton) at 1555-56; Trial Tr. Vol. 12 (Gaulin) at 1899.)

234. Pete Peyton, while testifying concerning his mother's experience in Mt. Berry, stated: "The only reason my mother got took care [of] every day is that we were there every day. We made sure Mother had her own snacks. We also made sure that she had her own diapers that she had to wear because of a lot of times at that nursing home they didn't have any. We, physically, bought 'em ourselves." (Trial Tr. Vol. 10 (Peyton) at 1555.) Ylaunda Dixon, a

former CNA at Mt. Berry, testified that “[w]e didn’t have diapers. . . . No ointments, no sheets.” (Id. (Dixon) at 1565.)

235. Kenneth Hinkley brought diapers for his mother-in-law while she resided at Mt. Berry, and he later discovered that her diapers were being used by other residents. (Trial Tr. Vol. 5 (Hinkley) at 754-55.) Ms. Greenway testified that family members like Mr. Hinkley brought diapers to Mt. Berry because the family members knew that diapers were in short supply in the nursing home. (Trial Tr. Vol. 6 (Greenway) at 831.)

236. Linda Dodson testified that, on several occasions, she visited her brother at Moran Lake and found him sitting in his wheelchair, soaking wet with urine. (Trial Tr. Vol. 10 (Dodson) at 1530.) Ms. Dodson recalled that her brother did not have a diaper on, and that the nursing staff advised

her on those occasions that the nursing home was out of diapers in her brother's size. (Id.) Ms. Dodson then drove to a store to buy diapers for her brother. (Id.)

237. Lisa Landers testified that, while she served as the social worker at Moran Lake from November 2005 to May 2007, she telephoned residents' family members and asked them to supply residents with diapers. (Trial Tr. Vol. 11 (Landers) at 1733.) Specifically, Ms. Landers stated, "I was, at one point, trying to get diapers from the families. You know, when they had run out of diapers, we was trying to get some of the families to purchase diapers." (Id. at 1758.) At Moran Lake, CNAs used socks to bathe residents because they did not have wash cloths. (Trial Tr. Vol. 14 (Thomas) at 2194; Trial Tr. Vol. 16 (Garrett) at 2698.)

236. Tammy Edwards, who served as an LPN and

charge nurse at Moran Lake for several years until the home closed in July 2007, testified that the nursing staff had to compromise in treating wounds and pressure sores because of the lack of supplies. (Trial Tr. Vol. 11 (T. Edwards) at 1587, 1593.) Specifically, Ms. Edwards testified: “We just tr[ied] to use what we could. We did not have everything we needed.” (Id. at 1593.) Tatum Zackary, a former CNA at Moran Lake, said that, when the staff had no gauze and tape to cover pressure sores, they cleaned the sores and leave them open and vulnerable to infestation by flies, of which Moran Lake had many. (Trial Tr. Vol. 15 (Zackary) at 2382; Trial Tr. Vol. 13 (Wells) at 2081-82.) Ms. Edwards testified:

Q: Now, you mentioned you had a problem with -- there was a shortage of blankets in the winter. Other than the blankets, did you have

enough linens and supplies for the people in your hall?

A: No. No, we did not. We didn't have enough diapers so people would -- we would pool together, buy diapers, buy milk. We'd go get a loaf of bread, each one of us bring a loaf of bread in. You know, whatever we could help up out -- make sure everybody's belly was full and they were dry and warm and that's what we tried to do.

Q: Were you able to always do that?

A: Well, I mean, when you don't get paid sometimes, not always, no.

(Trial Tr. Vol. 11 (T. Edwards) at 1592.)

239. Sonya Brunner, a former LPN at Wildwood, also testified:

We did [pay for things out of our own pockets] but that was not enough. We could not provide for their needs. Our paycheck could not cover us and those patients. We just do what we could. But it was not providing them quality services; it wasn't giving them what they needed.

(Trial Tr. Vol. 12 (Brunner) at 1846.)

9. Laboratory Testing Services

240. Medicare and Medicaid providers must have laboratory services so that staff can follow physicians' orders for monitoring blood work and medication levels. (Trial Tr. Vol. 2 (Mauldin) at 162, 180-81, (Knowles) 318-19; Trial Tr. Vol. 3 (Knowles) at 333-34; Trial Tr. Vol. 5 (Greenway) at 785-86; Trial Tr. Vol. 10 (Hannay) at 1443-46; Trial Tr. Vol. 12 (Gaulin) at 1896; Trial Tr. Vol. 14 (Chandler) at 2323-24; 42 C.F.R. § 483.75(j).) Many medications that nursing home residents take require lab results, such as blood and urine analysis, so that physicians can monitor the residents for possible complications or for changing levels of blood chemistry. (Trial Tr. Vol. 3 (Free) at 405-06; Trial Tr. Vol. 5 (Greenway) at 785; Trial Tr. Vol.

10 (Hannay) at 1443-46; Trial Tr. Vol. 12 (Gaulin) at 1896; Trial Tr. Vol. 14 (Chandler) at 2323-24.) Lab work must be done in a timely manner, as the physician directs. (Trial Tr. Vol. 1 (Mauldin) at 162, 180-81; Trial Tr. Vol. 10 (Hannay) at 1443-46.) The unavailability of lab work puts residents in immediate jeopardy of serious harm or death. (Trial Tr. Vol. 3 (Free) at 405-06; Trial Tr. Vol. V (Greenway) at 785; Trial Tr. Vol. 10 (Hannay) at 1443-46; Trial Tr. Vol. 12 (Gaulin) at 1896; Trial Tr. Vol. 14 (Chandler) at 2323-24.)

a. Moran Lake

241. The Moran Lake nursing home went without lab testing for weeks at a time because Defendant did not pay for the laboratory services. (Trial Tr. Vol. 2 (Knowles) at 292-94, 303-04, 318-19, 325; Trial Tr. Vol. 3 (Knowles) at 333-34, 341-42; Trial Tr. Vol. 10 (Hannay) at 1443-46.) On

July 24, 2006, Ms. Knowles faxed a letter to Defendant stating that the lack of lab service “continue[d] to be an unresolved issue.” (Gov’t Ex. 487.) Ms. Knowles stated that Mt. Berry could not draw labs as quickly as the physicians ordered, which put Mt. Berry out of compliance with Medicare and Medicaid regulations requiring prompt and appropriate lab services. (Id.) Ms. Knowles warned Defendant that the lack of lab services could lead to Mt. Berry being cited for putting residents in immediate jeopardy of harm or death. (Id.; Trial Tr. Vol. 2 (Knowles) at 318-19.) In a letter faxed August 21, 2006, Ms. Knowles repeated the same warning. (Gov’t Ex. 487.)

242. On July 11, 2006, Ms. Knowles faxed a letter to Defendant that stated:

CLINICAL LAB SERVICE: THIS CONTINUES TO

BE AN UNRESOLVED ISSUE. WHILE I HAVE A STAFF MEMBER DRAWING [LABS], AT TIMES WE ARE NOT ABLE TO COMPLETE LAB ORDERS AS QUICKLY AS PHYSICIANS WOULD LIKE WHICH PUTS US OUT OF COMPLIANCE. THIS CAN PLACE US IN AN IMMEDIATE JEOPARDY TAG.

(Gov't Ex. 487 (emphasis and capitalization in original).)

243. On September 5, 2006, Ms. Knowles faxed a letter to Defendant stating that Redmond Regional Hospital was no longer processing labs for Moran Lake residents.

(Gov't Ex. 487.)

244. On October 4, 2006, October 30, 2006, and November 1, 2006, Ms. Knowles warned Defendant that "WE ARE IN A JEOPARDY SITUATION BEING UNABLE TO DRAW THE AMMONIA LEVELS" for the residents who were on dialysis. (Gov't Ex. 487 (capitalization in original); Trial Tr. Vol. 2 (Knowles) at 318-19.)

245. On December 13, 2006, Ms. Knowles faxed a letter to Defendant stating:

LABS: WE ARE IN A JEOPARDY SITUATION BEING UNABLE TO DRAW THE AMMONIA LEVELS FOR THE [RESIDENTS] EXPERIENCING KIDNEY PROBLEMS, SOME ON DIALYSIS. THERE HAS GOT TO BE SOME RESOLUTION ASAP ON THIS. GEORGE WE ARE GOING TO BE IN BIG TROUBLE FOR THIS IF SOMEONE CALLS THE STATE. THIS HAS DRAGGED ON FOR A WHILE AND IT IS REALLY MAKING ME NERVOUS!!!!

(Gov't Ex. 487 (emphasis and capitalization in original).)

246. On March 2, 2007, Ms. Knowles faxed a letter to Defendant stating: "LABS HAVE NOT BEEN DONE FOR THE PAST 2 DAYS. WHEN IS THIS GOING TO BE DONE?" (Gov't Ex. 487 (capitalization in original).)

247. Ms. Knowles testified that, "probably weeks" before she left Moran Lake in mid-May 2007, labs were not

being done at the nursing home because Redmond Regional Hospital had refused to process the labs. (Trial Tr. Vol. 3 (Knowles) at 363.)

b. Mt. Berry

248. Ms. Stanley, who served as the administrator at Mt. Berry while Defendant and Washington operated the nursing home from 2003 to January 2005, testified that, during her tenure at Mt. Berry, there were times when residents' labs could not be processed because Defendant had failed to pay the laboratory service. (Trial Tr. Vol. 1 (Stanley) at 4, 19.)

249. Ms. Greenway, who was the administrator of Mt. from January 2006 until late February 2007, testified that the interruption of lab services because of Defendant's failure to pay the bills for the lab services was a problem

that plagued her throughout her tenure. (Trial Tr. Vol. V (Greenway) at 785-86, 805-06, 821; Trial Tr. Vol. VI (Greenway) at 845-46, 851-55, 869-72, 891-92, 951; Gov't Exs. 800 (letter faxed July 13, 2005), 471 (letter faxed September 14, 2005), 497 (letter faxed May 16, 2006), 512 (letter faxed June 26, 2006), 809 (letter faxed July 5, 2006), 811 (letter faxed July 11, 2006); 791 (letter sent September 12, 2006), 563 (letter faxed November 28, 2006), and 565 (email dated November 28, 2006).)

250. On July 13, 2005, Ms. Greenway faxed a letter to Defendant stating that the lab service did not draw labs that day, and nothing that, if the state surveyors discovered that Mt. Berry was not complying with federal law, the surveyors would cite Mt. Berry for putting the health and lives of the residents in "immediate jeopardy." (Trial Tr. Vol. 5

(Greenway) at 785-86; Gov't Ex. 800.) Ms. Greenway further stated: "AND I AM SURE SOMEONE WILL REPORT IT TO THE STATE." (Gov't Ex. 800 (capitalization in original).)

251. On September 14, 2005, Ms. Greenway faxed a letter to Defendant stating that the lab service had not drawn labs, and noting: "IT WILL BE AN IMMEDIATE JEOPARDY IF [the state surveyors] FIND IT!!!!!!!!!!!!!!!" (Gov't Ex. 497 (capitalization in original); Trial Tr. Vol. 2 (Greenway) at 805-06.)

252. On May 16, 2006, Clinical Laboratory Services notified Ms. Greenway that it was terminating lab service to Mt. Berry because of nonpayment. (Trial Tr. Vol. 2 (Greenway) at 821; Gov't Ex. 497.) Defendant had not paid the lab service in eight months and owed \$8,531.14. (Trial

Tr. Vol. 2 (Greenway) at 821; Gov't Ex. 497.) Ms. Greenway forwarded the cut off notice to Washington. (Gov't Ex. 497.)

253. On Monday, June 26, 2006, Ms. Greenway faxed a letter to Defendant and Washington stating that Mt. Berry had gone three days without being able to have labs drawn and analyzed as the residents' doctors had ordered. (Trial Tr. Vol. 6 (Greenway) at 845-46; Gov't Ex. 512.) Ms. Greenway stated: "WE CANNOT BE WITHOUT THE ABILITY TO HAVE LAB WORK DONE PER DR'S ORDERS!!!!!!!!!!!!!!!" (Gov't Ex. 512.) Ms. Greenway cautioned Defendant that the lack of lab service would merit an "immediate jeopardy" tag if the state surveyors discovered it. (Id.) Ms. Greenway testified that she was able to have Redmond Regional hospital process only a few

labs. (Trial Tr. Vol. 6 (Greenway) at 846.)

254. On July 5, 2006, Ms. Greenway faxed a letter to Defendant stating that Mt. Berry still had no lab service and that Redmond Regional refused to run any more labs for Mt. Berry. (Trial Tr. Vol. 3 (Greenway) at 871; Gov't Ex. 809.)

Ms. Greenway stated that some nurses at Mt. Berry had persuaded the laboratory at Floyd Medical Center to process labs for the home, but indicated that she did not expect that service to last long, in part because those nurses were leaving Mt. Berry because they were nervous and worried about the harm that could result from the lack of lab work. (Trial Tr. Vol. 6 (Greenway) at 850; Gov't Ex. 809.) Ms. Greenway also informed Defendant that Dr. Hannay, Mt. Berry's former medical director, was "very upset" by the lack of lab service, because it was his

responsibility to see that his patients were cared for properly, and lab work was necessary for proper patient care. (Trial Tr. Vol. 3 (Greenway) at 850-51; Gov't Ex. 809; Trial Tr. Vol. 10 (Hannay) at 1443-46.)

255. On July 11, 2006, Ms. Greenway faxed a letter to Defendant and Washington stating that Mt. Berry still lacked lab services. (Trial Tr. Vol. 3 (Greenway) at 854-55; Gov't Ex. 811.)

256. In an agreement dated August 1, 2006, Floyd Medical Center agreed to provide lab testing services to Mt. Berry. (Gov't Ex. 791.) On September 12, 2006, Floyd Medical Center notified Ms. Greenway that it was terminating that agreement, and that it would no longer process lab testing for the home. (Trial Tr. Vol. 6 (Greenway) at 891-92; Gov't Ex. 791.)

257. Ms. Greenway testified that one of her residents had to be hospitalized for problems that arose when his ammonia levels were unmonitored. (Trial Tr. Vol. 6 (Greenway) at 871; Gov't Ex. 565.) On November 28, 2006, Ms. Greenway faxed a letter to Defendant and Washington stating that the lack of lab services had resulted in the resident having to be hospitalized "hopefully to prevent any more damage to him." (Trial Tr. Vol. 6 (Greenway) at 869-71; Gov't Ex. 563.) Ms. Greenway stated:

WE HAVE NO WAY TO DO AMMONIA LEVELS AT ALL. WE HAVE HAD A RESIDENT WITH AN AMMONIA LEVEL WHICH DID NOT GET DONE.

HE HAS ENDED UP IN THE HOSPITAL WITH THESE PROBLEMS!!!!!!!!!!!!

THIS CAN BE AN IMMEDIATE JEOPARDY WHICH WILL STOP PAYMENTS AND

**ADMISSIONS!!!! !!!!! IT IS A BAD OUTCOME
FOR A SERVICE WE DID NOT PROVIDE!!!!!!!!!!!!**

**WE WERE INFORMED AND I FAXED ONTO
YOU THAT IF THE LAB IS NOT TAKEN CARE
OF BEFORE DECEMBER 1, 2006 THEY WILL
NOT BE BACK!!!!!!!!!!!!**

**THESE LEVELS ARE CRUCIAL TO MANAGE
RESIDENTS WITH RENAL DISEASE.**

(Gov't Ex. 563 (capitalization in original).)

258. On November 28, 2006, Ms. Greenway advised Washington and Cheryl Dawson, the FHG Office Manager, that Ms. Knowles at Moran Lake had six ammonia levels that had not been tested as doctors had ordered, and stated that failure to provide lab testing for renal patients puts them in immediate jeopardy to their health and lives. (Trial Tr. Vol. 6 (Greenway) at 870-872; Gov't Ex. 565.)

259. Ms. Greenway testified that lab testing services

were not available every day at Mt. Berry. (Trial Tr. Vol. 6 (Greenway) at 785-86.) Ms. Greenway testified, “I tried everything that I could do to have it [the lab work] done, but I was unsuccessful to get them all done . . . [i]n the time they were ordered by the physician for proper evaluation.” (Id. at 900-01.)

260. Lab testing remained intermittently unavailable under Mt. Berry’s next administrator, Angie Chandler. (Trial Tr. Vol. 14 (Chandler) at 2306-07.) Ms. Chandler testified that she “had a hard time” retaining lab testing, stating, “the companies wouldn’t come because the facility owed them bills, and we would have to try to take them to the hospital or something like that, an alternate route.” (Id. at 2323.) Despite Ms. Chandler’s efforts to find “alternate routes,” some residents’ lab work was never done. (Id.)

According to Ms. Chandler, the lack of lab testing put residents in jeopardy of harm or death. (Id. at 2323-24.)

c. Wildwood

261. Ms. Free was the administrator of Wildwood from August 2003 until July 2005. (Trial Tr. Vol. 3 (Free) at 394.) Ms. Grant served as the administrator at Wildwood from July 2005 until her resignation in April 2007. (Trial Tr. Vol. 9 (Grant) at 1317-18.) During both administrators' time at Wildwood, lab testing was interrupted because Defendant failed to pay the laboratory services. (Trial Tr. Vol. 3 (Free) at 405-06, 436-37; Trial Tr. Vol. 9 (Grant) at 1353, 1392; Trial Tr. Vol. 10 (Grant) at 1414; Trial Tr. Vol. 12 (Gaulin) at 1894, 1896; Gov't Exs. 361.30, 831.37.)

262. Ms. Free testified that it is "critical" to have labs drawn and tested, because many nursing home residents

are “very brittle” and must have the effects of their medications monitored. (Trial Tr. Vol. 3 (Free) at 405.) Ms. Free stated: “We have to know – a lot of the medications require labs, and we need to know the results that the medication’s having on that body.” (Id.) If a resident’s labs are not being drawn and tested, the resident’s doctor will not know whether to increase or decrease the resident’s medications. (Id.; Trial Tr. Vol. 10 (Hannay) at 1443-46.) The lack of information caused by a lack of lab testing could lead to a resident bleeding to death, suffering a stroke, or having other “long-range problems.” (Trial Tr. Vol. 3 (Free) at 405; Trial Tr. Vol. 10 (Hannay) at 1443-46.) Wildwood had periods where its residents’ labs were not drawn and tested because Defendants defaulted on his payment plans with the laboratory services companies. (Trial Tr. Vol. 3

(Free) at 405-06, 436-37; Trial Tr. Vol. 9 (Grant) at 1353; Gov't Ex. 831.37.)

263. Ms. Grant testified that she sometimes could obtain lab testing results because she was personal friends with a lab manager. (Trial Tr. Vol. 9 (Grant) at 1392.) According to Ms. Grant, the manager gave the results to her after "a lot of pleading and begging," not because of any action on the part of Defendant. (Id.) Ms. Grant testified that it is unacceptable to go any length of time without being able to have residents' lab work tested. (Trial Tr. Vol. 10 (Grant) at 1414.) Ms. Grant stated, however, that the situation occurred at Wildwood at times because Defendant did not pay the laboratory service company. (Trial Tr. Vol. 9 (Grant) at 1353; Gov't Ex. 831.37.)

10. Medication Shortages

264. Nursing homes must provide residents with pharmaceutical services, including procedures that ensure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals to meet the needs of each resident. 42 U.S.C. § 1396r(a)(4)(iii); 42 C.F.R. § 483.60; Trial Tr. Vol. 2 (Mauldin) at 138, 171-72.) Ms. Mauldin testified that, whenever a doctor orders a medicine for a resident, the medicine must be available in the nursing home, and must be given as ordered. (Trial Tr. Vol. 2 (Mauldin) at 138.) The nursing home owner bears the responsibility to contract for, and to pay for, pharmacy services. (Id. at 172.)

265. In July 2003, PharMerica, Inc. agreed to provide pharmacy services and healthcare products to Moran Lake,

Mt. Berry, and Wildwood. (Trial Tr. Vol. 14 at 2311-13; PharMerica, Inc. v. Forum Healthcare Group, Inc., Civil Action File No. 4:05-CV-275-HLM. PharMerica filed a lawsuit alleging that all three nursing homes became severely delinquent on their accounts, failed to comply with payment schedules when they were put on C.O.D. status, and owed a total of \$322,305 when PharMerica terminated service. (Trial Tr. Vol. 14 at 2311-13.) On November 27, 2006, the Court granted PharMerica's motion for summary judgment, and entered summary judgment against the nursing homes for more than \$537,000, plus interest and court costs. (Id.) The nursing homes did not appeal the judgment, permitting it to become a final judgment by the end of December 2006. (Id.; see also Fed. R. App. P. 4(a)(1) (stating that notice of appeal in a civil matter must be

filed within thirty days of the entry of the judgment being appealed.)

266. Administrators and nursing home employees testified about occasions when the nursing homes had no pharmaceutical services. (Trial Tr. Vol. 1 (Stanley) at 18, 65; Trial Tr. Vol. 11 (T. Edwards) at 1593-94; Trial Tr. Vol. 12 (Brunner) at 1818-19, 1831-32; Trial Tr. Vol. 14 (Lee) at 2284; Gov't Ex.1239a (consisting of letter from Dr. Hannay to state surveyors providing, "I was informed that [Mt. Berry had] **No** pharmacy services!"(emphasis in original)). During those times, some residents had to go without their prescribed medicines until Defendant paid the pharmacy bill. (Trial Tr. Vol. 1 (Stanley) at 65; Trial Tr. Vol. 12 (Brunner) at 1831-32 (stating, "there were times when they didn't get their medicines."); Trial Tr. Vol. 14 (Lee) at 2284.)

267. At times, nurses attempted to handle the shortages by “borrowing” medications for residents, because interrupting some residents’ medications would endanger the residents. (Trial Tr. Vol. 11 (T. Edwards) at 1593. Witnesses testified that, if Resident “A” was out of medicine, and Resident “B” took the same medicine at the same dosage, the nurses would “borrow” Resident B’s medicine and give it to Resident A. (Id. at 1593-94; Trial Tr. Vol. 12 (Brunner) at 1818-19, 1831-32; Trial Tr. Vol. 14 (Lee) at 2284.) When pharmaceutical service was restored and Resident A was resupplied, the nurses would try to pay back Resident B; however, if the medication did not come in, then Resident B simply came up short. (Trial Tr. Vol. 11 (T. Edwards); Trial Tr. Vol. 12 (Brunner) at 1818-19, 1830.) Tammy Edwards testified that insulin and pharmaceutical