

without Sysco's knowledge, leaving Sysco without payment. (Id.) Mr. Birke testified that, by the time the nursing homes closed, Defendant owed Sysco approximately \$53,000, which he never paid. (Id.)

386. When Defendant fell behind in his payments to Sysco, Mr. Birke telephoned the administrators in the nursing homes to warn them that the nursing homes would not receive their food deliveries. (Trial Tr. Vol. 4 (Birke) at 570-571.) Mr. Birke testified that, occasionally, the administrators "would find a way to have the check" and pay for a delivery. (Id. at 571.) Mr. Birke noted that, on one occasion, an employee paid for a delivery, which typically cost between \$1,200 and \$1,600, and, on other occasions, Sysco never sent trucks to the nursing homes at all. (Id. at 569, 571; Trial Tr. Vol. 3 (Knowles) at 338.)

387. The administrators communicated frequently with Defendant about their nursing homes' needs for food and the interruption of Sysco deliveries. In a February 16, 2007, fax to Defendant, Ms. Knowles stated:

SYSCO: WE DID NOT GET A FOOD DELIVERY YESTERDAY. THERE IS NOT ENOUGH FOOD TO GET PAST LUNCH TODAY. I NEED TO KNOW WHAT IS GOING TO BE DONE TO RECTIFY THIS ASAP."

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

388. Ms. Grant and Ms. Chal testified that they telephoned, faxed letters, and sent emails to Defendant urging him to pay Sysco so that Sysco would send food to Wildwood. (Trial Tr. Vol. 9 (Grant) at 1335; Trial Tr. Vol. 16 (Chal) at 2663, 2668-69; Gov't Exs. 831.7, 1092, 1097.)

389. Ms. Stanley and Ms. Greenway testified that food shortages were an ongoing problem at Mt. Berry. (Trial Tr.

Vol. 1 (Stanley) at 14-15; Trial Tr. Vol. 6 (Greenway) at 858, 928.) Ms. Greenway stated that, at times, Mt. Berry residents did not get all the nutrition that they needed because of the food shortages. (Trial Tr. Vol. 6 (Greenway) at 971.) According to Ms. Greenway, Mt. Berry once went one week without a food delivery because Defendant would not pay Sysco. (Id. at 928.)

g. Employees Bought Food and Milk

390. When the Sysco truck did not deliver food to the nursing homes, the administrators and other employees went shopping and bought food for the residents to eat. (Trial Tr. Vol. 1 (Stanley) at 33-35; Trial Tr. Vol. 2 (Knowles) at 287, 312-13; Trial Tr. Vol. 3 (Knowles) at 340, 352, 358, (Free) 408-12, 437; Trial Tr. Vol. 5 (Primus) at 740, 748, (Greenway) 810; Trial Tr. Vol. 6 (Greenway) at 859-60,

877-78, 881; Trial Tr. Vol. 9 (Grant) at 1321-23, 1401; Trial Tr. Vol. 11 (Williamson) at 1579-83; Trial Tr. Vol. 12 (Collins) at 1871, (Gaulin) 1899; Trial Tr. Vol. 14 (Lee) at 2285, (Chandler) 2338; Trial Tr. Vol. 15 (Zackary) at 2389, (Williams) 2524-25; Trial Tr. Vol. 16 (Chal) at 2660-61; Browning Dep. at 11-13; Gov't Exs. 361.32; 487.)

391. Witnesses testified that, on many occasions when the administrators and employees bought food for the residents, Defendant did not reimburse them. (Trial Tr. Vol. 1 (Stanley) at 33-35; Trial Tr. Vol. 2 (Knowles) at 287, 301, 313; Trial Tr. Vol. 3 (Free) at 410; Trial Tr. Vol. 5 (Primus) at 740 (testifying that Ms. Knowles, not Defendant, reimbursed her); Trial Tr. Vol. 6 (Greenway) at 859-60, 877-78, 881; Trial Tr. Vol. 9 (Grant) at 1321-22, 1401; Trial Tr. Vol. 11 (Williamson) at 1580 (stating that Ms. Knowles,

rather than Defendant, reimbursed him); Trial Tr. Vol. 12 (Collins) at 1871, (Gaulin) 1899; Trial Tr. Vol. 14 (Lee) at 2285, (Chandler) 2338; Trial Tr. Vol. 15 (Zackary) at 2389, (Williams) 2524-25; Trial Tr. Vol. 16 (Chal) at 2660; Browning Dep. at 12-13; Gov't Ex. 361.22 ("Employees are not reimbursed.").

392. The Moran Lake and Mt. Berry nursing homes each generally had between ninety and 100 residents, and Wildwood's population was typically between 140 and 190 residents. (Trial Tr. Vol. 1 (Stanley) at 7; Trial Tr. Vol. 3 (Free) at 394, 398 (stating that Wildwood had 187 residents in July 2005); Trial Tr. Vol. 4 (Austin) at 631; Trial Tr. Vol. 8 (Justice) at 1150; Trial Tr. Vol. 11 (Landers) at 1737; Trial Tr. Vol. 15 (Cox) at 2428 (stating that Moran Lake had 95 residents in late May 2007); Gov't Exs. 76a, 76c, 116, 117

& 118.)

393. Ms. Knowles testified that, during the last few months that she served as Moran Lake's administrator, the employees "made sure [the residents] received food. We were not able, though, to follow the therapeutic diets and that sort of thing. So if they were diabetic or had CHS that had therapeutic diets, once [the employees] were buying food, it was like we were buying what we could afford and what we could get in bulk to feed them." (Trial Tr. Vol. 3 (Knowles) at 358.)

394. Tamara Primus testified: "Well, everybody got the same thing. So if it was bologna and biscuits, everybody got bologna and biscuits." (Trial Tr. Vol. 5 (Primus) at 748.)

395. When the Moran Lake employees bought food, patients sometimes received vanilla pudding or applesauce

instead of the protein shakes and nutritional supplements prescribed for them. (Trial Tr. Vol. 11 (Williamson) at 1581.) Larrious Williamson, a former cook at Moran Lake, stated, “we couldn’t make sure that, you know, all the vitamins and everything was met to the requirements because we didn’t have everything. But we always [made] sure that [the residents] got something.” (Id. at 1831.)

396. Stephanie Lee, a former LPN at Moran Lake, testified:

One thing is milk; a lot of times we wouldn’t have any milk. So a lot of the staff would put money together to go buy, you know, a couple of gallons. Things like snacks, bread to make sandwiches for snacks. We didn’t have any bread, so we would buy loaves of bread. And then, a lot of times, we would just buy Little Debbie cakes or something, anything to give them a snack. And at mealtimes, like I said, the bread and milk were a big issue. The portions were smaller than what they should have been at meals. . . . [the portions were smaller

even when the employees bought the food] because 100 residents you can't supply that much.

(Trial Tr. Vol. 14 (Lee) at 2286.)

397. Tatum Zackary, a former CNA at Moran Lake, testified that diabetic residents did not receive therapeutic diets because the staff "fed them what we had to feed them. We couldn't go by what their menu was supposed to be because we didn't have the supplies to give them." (Trial Tr. Vol. 15 (Zackary) at 2397.)

398. At Mt. Berry, as a result of irregular food deliveries and dependance on employees' purchases, the nursing home did not serve the menus that its nutritionist had approved. (Trial Tr. Vol. 6 (Greenway) at 858-59; Gov't Ex. 517.) Ylaunda Dixon, a former CNA at Mt. Berry, testified that, during the last months that she worked at the

nursing home, food portions were half-sized and many residents who wanted second helpings could not receive any more food because there was no more to serve. (Trial Tr. Vol. 10 (Dixon) at 1562-64.) Residents with special dietary needs and therapeutic diets did not receive the food and supplements they required; instead, all the residents received the “same exact food.” (Id. at 1564.)

399. Ms. Free testified that Wildwood could not serve full, balanced, nutritious and therapeutic meals, or offer seconds to hungry residents, when she had to go grocery shopping for nearly 200 nursing home residents. (Trial Tr. Vol. 3 (Free) at 408-412, 437.) According to Ms. Free: “Lots of times we didn’t have milk to offer [the residents], which was very important because, you know, being elderly, they need their nutrients. Of course, we were more careful,

too, of the portions we were giving because we knew we were short of food.” (Id. at 409.) Ms. Free testified as follows concerning portion size: “We were very careful to not put any more than we had to, at least try to meet the regulation, but there were times when we didn’t because there wasn’t enough food.” (Id. at 410.) According to Ms. Free, portions were small because she “didn’t have that kind of money” to buy the full menu for 187 residents. (Id.)

h. Cost-cutting

400. Defendant also instructed his administrators and kitchen staffs to cut costs. For example, Defendant told Mary Alice Cunningham, the kitchen supervisor at Mt. Berry, to keep food costs to a minimum, and Ms. Cunningham told Ms. Stanley that she would follow those orders. (Trial Tr. Vol. 1 (Stanley) at 16-17.) Ms. Cunningham served the

residents spaghetti sauce over instant mashed potatoes instead of noodles, because the instant mashed potato flakes were less expensive than pasta. (Id. at 17.) Ms. Stanley testified that, as a result of Defendant's orders to cut food costs, residents received small portions and inadequate amounts of food. (Id. at 17, 42.)

401. In April 2007, Defendant asked Mr. Birke to help him cut his food costs from Sysco. (Trial Tr. Vol. 4 (Birke) at 572.) To calculate Defendant's food costs, Mr. Birke obtained the census data for the three nursing homes for January, February and March 2007. (Id. at 573-74; Gov't Exs. 76a, 76c.) Mr. Birke then divided the total amount that Defendant spent with Sysco for those months by the nursing homes' bed counts, or numbers of occupied beds, to calculate the amount per resident that FHC spent with

Sysco. (Trial Tr. Vol. 4 (Birke) at 573-78.) At that time, seventy-five percent of the nursing homes in the country were spending more than \$5.60 per day on residents' daily food costs. (Id. at 576.) Based on Mr. Birke's calculations, Defendant spent the following:

(1) for Moran Lake, \$3.07 per resident per day with Sysco during January 2007, \$5.75 per resident per day with Sysco during February 2007, and \$4.39 per resident per day with Sysco during March 2007, (id. at 575-76; Gov't Ex. 76d); and

(2) for Mt. Berry, \$3.50 per day per resident at Sysco in January 2007, \$1.83 per resident per day in February 2007, and \$4.25 per resident per day in March 2007, (Trial Tr. Vol. 4 (Birke) at 576; Gov't Ex. 76d).

Mr. Birke told Defendant that the food costs at Moran

Lake and Mt. Berry for January, February, and March 2007 were “very low.” (Trial Tr. Vol. 4 (Birke) at 577.) Mr. Birke informed Defendant that he knew of no way for Defendant to lower his food costs. (Id. at 577-78.)

402. Ms. Chal testified that she resigned as the Wildwood administrator on August 3, 2007, because, under Defendant’s management, the nursing home was incapable of providing the care and services needed to meet the needs of the residents. (Trial Tr. Vol. 16 (Chal) at 2677-78; Gov’t Exs. 361.47, 1104.) Ms. Chal testified that Wildwood did not provide residents with a safe environment or balanced, nutritional meals. (Trial Tr. Vol. 16 (Chal) at 2678.)

i. No Freezer at Moran Lake

403. In September 2006, Moran Lake’s freezer stopped

working, eliminating the nursing home's ability to store frozen food. (Trial Tr. Vol. 2 (Knowles) at 312-313.) On September 5, 2006, Ms. Knowles faxed a letter to Defendant stating:

FREEZER: RASEEN IS WORKING ON THIS TODAY. HE HAS WRITTEN THE EQUIPMENT HE NEEDS TO FIX AND WILL TALK TO YOU ABOUT THE MONEY HE NEEDS. NORTH GEORGIA EQUIPMENT LOOKED AT THIS ALSO AND SAID IT WOULD BE ROUGHLY \$2500 FOR THEM TO FIX.

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

The freezer was repaired and worked intermittently for a few months after September 2006, but it eventually stopped working altogether, and Defendant never replaced it. (Trial Tr. Vol. 2 (Knowles) at 312-13, 324-25; Trial Tr. Vol. 3 (Knowles) at 338; Gov't Ex. 486 (consisting of letters faxed to Defendant about freezer and dated October 4, 2006,

November 1, 2006, January 15, 2007, January 16, 2007, and March 2, 2007).)

404. Nursing homes must keep a three-day supply of food on site. (Trial Tr. Vol. 2 (Knowles) at 324-25.) According to Ms. Knowles, however, when the freezer at Moran Lake did not work, the kitchen staff had to go to commercial grocery stores and shop meal-by-meal for the residents. (Id. at 312-13, 324-25.) Shopping meal-by-meal made it impossible for Moran Lake to serve its menu, and made it impossible for the nursing home to serve therapeutic meals to the residents who needed them. (Id. at 324-25.) Specifically, Ms. Knowles testified:

Because we were not able to store the food, and when we'd go and buy food you're not able to -- you're supposed to have a three-day supply of food and also to just -- when we're buying the meals like that, we're not able to follow, like, a

therapeutic diet. People that's on no concentrate sweet, no added salt. When we're buying the food, we're buying it in bulk to feed everybody. You know, we're not able to differentiate and make different menus for those folks for therapeutic diets.

(Id. at 324-25.) Ms. Knowles stated: "We were not utilizing the freezer because we didn't have anything to put in the freezer." (Id. at 317.)

21. Employees' Issues

405. Defendant's own expert, Ms. Goldsmith, testified that a nursing home's success depends on its ability to maintain an adequate staff of compassionate, dedicated employees. (Trial Tr. Vol. 17 (Goldsmith) at 2872-73.) According to Ms. Goldsmith, a nursing home provider should seek to maximize staff stability, because continuity of care is important for the residents. (Id. at 2873.) Ms.

Goldsmith agreed that, in turn, employees need to feel that the provider “is preparing for the future and will stay in the business of giving healthcare.” (Id. at 2877.)

a. Bouncing Paychecks

406. During the time period relevant to this action, FHG paid its employees biweekly, and employees received checks every other Friday. (Trial Tr. Vol. 15 (Testimony of Marrie Franke) at 2467.) Moran Lake and Mt. Berry each had approximately 100 employees, while Wildwood had approximately 150 employees. (Trial Tr. Vol. 8 (Burrell) at 1251-52.)

407. During the latter portion of the last half of 2004, employees’ paychecks began bouncing, and some paychecks bounced every pay period afterward until the homes closed. (Trial Tr. Vol. 8 (Burrell) at 1224-25; Trial Tr.

Vol. 2 (Knowles) at 302-03, 309, 311; Trial Tr. Vol. 5 (Greenway) at 790; Trial Tr. Vol. 16 (Chal) at 2663; Gov't Exs. 487, 1092.)

408. After employees' paychecks began bouncing, check-cashing businesses and convenience stores refused to cash FHG checks. (Trial Tr. Vol. 2 (Knowles) at 302-03; Trial Tr. Vol. 5 (Greenway) at 790-93; Trial Tr. Vol. 15 (Zackary) at 2384.) Local businesses posted signs stating that they would not cash FHG checks. (Trial Tr. Vol. 2 (Knowles) at 302-03; Trial Tr. Vol. 5 (Greenway) at 790-93.) FHG employees then had to go to the bank on which the paychecks were issued to cash the checks. (Trial Tr. Vol. 2 (Knowles) at 302; Trial Tr. Vol. 5 (Greenway) at 790-93; Trial Tr. Vol. 15 (Zackary) at 2384, 2394-95.)

409. By July 2006, banks in Rome would no longer do

business with Defendant, and Defendant moved the FHG bank accounts to Bank of America. (Trial Tr. Vol. 2 (Knowles) at 302; Trial Tr. Vol. 5 (Greenway) at 790-93.) Bank of America did not have a branch in Rome, and the closest Bank of America branch was in Cartersville, approximately twenty-five miles away from the nursing homes. (Trial Tr. Vol. 2 (Knowles) at 302-03; Trial Tr. Vol. 5 (Greenway) at 790-93; Trial Tr. Vol. 12 (Landers) at 1735-36; Trial Tr. Vol. 15 (Zackary) at 2384, 2394-95.)

410. Witnesses testified that paychecks bounced because Defendant did not deposit enough money in the bank to cover the entire payroll. (Trial Tr. Vol. 2 (Knowles) at 303; Trial Tr. Vol. 11 (Landers) at 1735.) Employees knew that the employees who cashed their checks later would not be able to cash their checks on payday. (Trial Tr.

Vol. 2 (Knowles Tr.) at 303; Trial Tr. Vol. 11 (T. Edwards) at 1595-98; Trial Tr. Vol. 12 (Landers) at 1735-36, (Brunner) 1820-22; Trial Tr. Vol. 13 (Testimony of Audrey Easterling) at 2018; Trial Tr. Vol. 14 (Thomas) at 2196, (Lee) at 2280-81; Trial Tr. Vol. 15 (Zackary) at 2384, 2394-95.)

411. Most employees who could not cash their paychecks on payday would have to wait until the following Tuesday or Wednesday to cash their checks. (Trial Tr. Vol. 2 (Knowles) at 303; Trial Tr. Vol. 14 (Thomas) at 2196; Trial Tr. Vol. 15 (Zackary) at 2384.) Some employees, however, were never able to cash some of their paychecks. (Trial Tr. Vol. 12 (Brunner) at 1838-39; Trial Tr. Vol. 15 (Zackary) at 2394; Trial Tr. Vol. 16 (Chal) at 2663; Gov't Exs. 487, 831.45, 1092. Former CNA Tatum Zackary testified that if she did not get to the bank or the money van soon enough,

“I just had a check that I couldn’t do nothing with because stores wouldn’t cash ’em.” (Trial Tr. Vol. 15 (Zackary) at 2394.)

412. As a result of the payroll shortages, many employees chose to drive to the bank as quickly as possible on payday. (Trial Tr. Vol. 2 (Knowles) at 303; Trial Tr. Vol. 5 (Greenway) at 792-95; Trial Tr. Vol. 11 (Landers) at 1735-36; Trial Tr. Vol. 12 (Brunner) at 1820-22; Trial Tr. Vol. 14 (Thomas) 2196; Trial Tr. Vol. 15 (Zackary) at 2384, 2394-95.) Consequently, employees who were supposed to be caring for residents were away from the homes when they went to the bank. (Trial Tr. Vol. 1 (Stanley) at 79; Trial Tr. Vol. 3 (Free) at 400; Trial Tr. Vol. 5 (Greenway) at 793-95; Trial Tr. Vol. 11 (Landers) at 1735-36; Trial Tr. Vol. 12 (Brunner) at 1820-22, 1839, 1852; Trial Tr. Vol. 14 (Lee) at

2281; Trial Tr. Vol. 15 (Zackary) at 2384.) Administrators and other supervisors tried to fill in for missing employees, but they could not provide the timely care that a staff of CNAs could give. (Trial Tr. Vol. 3 (Greenway) at 793-95; Trial Tr. Vol. 11 (Landers) at 1735-36; Trial Tr. Vol. 12 (Brunner) at 1820-22, 1839, 1852; Trial Tr. Vol. 14 (Lee) at 2281-82; Trial Tr. Vol. 15 (Zackary) at 2384.) Former employee Christie Fuqua testified that, at those times, the staffing levels did not comply with the Medicare and Medicaid regulations. (Trial Tr. Vol. 14 (Fuqua) at 2145, 2186.) Sonya Brunner, a former LPN at Wildwood, testified:

Q: And was your ability to give timely care affected by people running off to get their paychecks cashed?

A: Yes, because not only -- yes. I couldn't -- the supervisors that come to the floor, we only had a handful of even that -- the

few people that was there was not enough to meet the needs of those people after 2:00 o'clock. Turning people in the bed, giving snacks, hydration, toileting. There was too much.

(Trial Tr. Vol. 12 (Brunner) at 1852.)

413. On two occasions, employees left the nursing homes during business hours and went to the FHG office to confront Defendant about their inability to cash their paychecks. (Trial Tr. Vol. 8 (Burrell) at 1227-28.) On the first occasion, approximately twenty employees came to the FHG office. (Id.) During the second visit, which occurred in summer 2006 and lasted several hours, approximately 100 employees came to the FHG office to confront Defendant. (Id.)

414. As conditions in the nursing homes deteriorated, supervisors could not fire or discipline employees who left

the nursing homes to cash their paychecks because they could not hire replacements. (Trial Tr. Vol. 14 (Fuqua) at 2188.)

414. In July 2006, Defendant hired Marrie Franke's mobile check-cashing service to drive to the Rome homes and cash the employees' checks. (Trial Tr. Vol. 15 (Franke) at 2463-2467.) Employees tried to be first in line when the check cashing van arrived. (Trial Tr. Vol. 5 (Greenway) at 794; Trial Tr. Vol. 11 (T. Edwards Tr. at 1595-98); Trial Tr. Vol. 14 (Lee) at 2281; Trial Tr. Vol. 15 (Zackary) at 2384.) Employees started lining up hours before the van arrived, and sat in the cold or under the hot sun until the van came. (Trial Tr. Vol. 11 (T. Edwards) at 1595-98; Trial Tr. Vol. 15 (Franke) at 2468-69, 2471-72, 2483, 2485.) Some of the employees waiting in line to cash their checks were

supposed to be on duty in the nursing homes caring for patients. (Trial Tr. Vol. 5 (Greenway) at 793-95; Trial Tr. Vol. 6 (Greenway) at 843-45; Trial Tr. Vol. 14 (Lee) at 2281; Trial Tr. Vol. 15 (Zackary) at 2384.)

416. In mid-December 2006, after an entire payroll totaling approximately \$120,000 bounced and Defendant failed to repay the Frankes, the Frankes began requiring Defendant to supply the currency to use to cash the employees' checks. (Trial Tr. Vol. 15 (Franke) at 2469-2473.) Ms. Franke recalled that Defendant was late every pay period. (Id. at 2483.) Ms. Franke testified that, because the Frankes had to wait for Defendant to obtain the currency to cash the payroll, the employees "had to stand in line for hours waiting." (Id.) Defendant signed a promissory note for \$117,500 to cover the payroll that bounced, and he

later told Ms. Franke that he never intended to pay back the Frankes. (Id. at 2469-74.) Ms. Franke, however, testified that she and her husband eventually recovered approximately \$86,000 of that amount from Defendant, leaving a balance of \$31,000. (Id.)

417. Although Medicare and Medicaid paid Defendant for every day the residents were in his nursing homes, Defendant did not pay the Moran Lake and Wildwood employees for their last month of work. (Trial Tr. Vol. 9 (Cannon) at 1310-11; Trial Tr. Vol. 11 (T. Edwards) at 1598-99; Trial Tr. Vol. 14 (Lee) at 2280-83, (Chandler) at 2322, 2339.)

b. Insurance and Garnishments

418. Although Defendant deducted insurance premiums from the employees' paychecks, he did not pay

the premiums over to the insurance company, leaving employees with medical bills due to lack of insurance. (Trial Tr. Vol. 1 (Stanley) at 37-38; Trial Tr. Vol. 3 (Knowles) at 349, 369-70, (Free) at 403-04; Trial Tr. Vol. 5 (Hinkley) at 756, (Greenway) at 789; Trial Tr. Vol. 8 (Burrell) at 1242-43; Trial Tr. Vol. 9 (Grant) at 1323; Trial Tr. Vol. 12 (Brunner) at 1826-27, (Collins) 1878; Trial Tr. Vol. 13 (Easterling) at 2019; Trial Tr. Vol. 14 (Fuqua) at 2146-49, (Chandler) at 2324-26; Trial Tr. Vol. 15 (Williams) at 2525-27; Trial Tr. Vol. 16 (Chal) at 2665.)

419. On one occasion, Defendant had the insurance reinstated for a period of time, but only a few employees were able to file claims retroactively during that period. (Trial Tr. Vol. 3 (Knowles) at 369-70; Trial Tr. Vol. 9 (Burrell) at 1263; Trial Tr. Vol. 12 (Brunner) at 1851-52.) Other than

that period of reinstatement, employees received no reimbursement for their premiums or medical costs. (Trial Tr. Vol. 3 (Knowles) at 369-70; Trial Tr. Vol. 9 (Burrell) at 1263; Trial Tr. Vol. 12 (Brunner) at 1851-52, (Collins) 1878.)

420. Defendant told Ms. Free that she should terminate Wildwood employees who used too much health insurance. (Trial Tr. Vol. 3 (Free) at 404.)

421. Employees who were injured at work learned that they had no disability insurance, even after having premiums for the coverage deducted from their paychecks. (Trial Tr. Vol. 8 (Burrell) at 1243-44; Trial Tr. Vol. 9 (Grant) at 1341; Gov't Exs. 831.17, 831.18, 831.19, 831.45.)

422. Employees who were injured at work learned that FHG had no worker's compensation insurance. (Trial Tr. Vol. 8 (Burrell) Tr. at 1244; Trial Tr. Vol. 9 (Grant) at 1353-

54; Gov't Ex. 831.38.)

423. Ylaunda Dixon, a former Mt. Berry, CNA, testified that she broke her ankle at work. (Trial Tr. Vol. 10 (Dixon) at 1560-62.) Ms. Dixon was pregnant at the time, and she gave birth the day after receiving treatment at the hospital for her broken ankle. (Id.) She later learned that FHG had no worker's compensation insurance. (Id.) Ms. Dixon gave her medical bills to Defendant and Washington, who said they would pay them; however, Defendant and Washington never paid the bills. (Id.) Ms. Dixon's medical bills totaled more than \$5,000, and twenty percent of her current paycheck goes toward a garnishment to pay those bills. (Id.)

424. Defendant paid no unemployment taxes. (Trial Tr. Vol. 1 (Stanley) at 45; Gov't Ex. 462.)

425. Laverne Burrell testified that she prepared the garnishments every payroll, and that she included the garnishments with the paychecks and tax payment coupons in the file that she gave to Defendant. (Trial Tr. Vol. 8 (Burrell) at 1240-41.) Defendant, however, did not pay over the garnishments to the intended recipients, and Ms. Burrell received telephone calls every pay period from employees, child support offices, and magistrate judges. (Id. at 1241.)

426. John Thomas served as a CNA at Moran Lake from 2004 until 2007. (Trial Tr. Vol. 14 (Thomas) at 2190.) While Mr. Thomas worked at Moran Lake, \$144 was deducted from his paycheck every payroll for child support. (Id. at 2197.) Defendant, however, failed to pay over the \$144 to the child support office. (Id. at 2197-2200.) Mr. Thomas began receiving letters from the child support office

threatening to have his driver's license suspended due to nonpayment of child support. (Id. at 2197-2200.) Mr. Thomas testified that his driver's license was suspended for two years as Defendant continued to withhold the child support payments from his check, but failed to pay over the money to the child support office. (Id. at 2197-2200.)

427. Defendant's failure to pay Mr. Thomas' child support created a strain between Mr. Thomas and his children. (Trial Tr. Vol. 14 (Thomas) at 2199-2200.) Mr. Thomas testified that he had to show his children his paychecks to prove to them that the money was being taken out of his pay. (Id. at 2199-2200.)

428. Mr. Thomas was arrested for failure to pay child support. (Trial Tr. Vol. 14 (Thomas) at 2197-98.) According to Mr. Thomas, the officer who arrested him said that it was

Mr. Thomas' responsibility to pay his child support, not Defendant's responsibility. (Id. at 2198.)

429. Mr. Thomas testified that he spoke with Defendant concerning his child support payments four times, and that, each time, Defendant stated that he would "take care" of the matter. (Trial Tr. Vol. 14 (Thomas) at 2198.) Defendant did not take care of the matter, and Mr. Thomas ultimately had to pay an additional \$900 to cover the amount that Defendant had taken from his paycheck and failed to pay over to child support enforcement. (Id. at 2198-99.) Defendant gave Mr. Thomas a check, ostensibly to reimburse Mr. Thomas, but the check bounced. (Id. at 2218.)

430. Larrious Williamson served as a cook at Moran Lake for eight years, and he worked there until the nursing

home closed in July 2007. (Trial Tr. Vol. 11 (Williamson Tr. at 1575-76.) Mr. Williamson's child support was \$188 every paycheck. (Id. at 1579.) Mr. Williamson testified that, when Sunbridge managed Moran Lake, his child support was properly paid over to the child support office. (Id. at 1577.) In approximately 2005, however, Mr. Williamson began receiving calls from the child support office threatening to suspend his driver's license because he was \$900 behind in his payments. (Id. at 1576-77.) Mr. Williamson testified that he complained to Defendant, who paid the child support office at the last minute to avoid suspension of Mr. Williamson's driver's license. (Id. at 1578.)

431. Mr. Williamson testified that Defendant resumed keeping his child support payments, at one point allowing Defendant to fall behind by \$1,200. (Trial Tr. Vol. 11

(Williamson) at 1578.) Mr. Williamson stated that Defendant generally paid the money over at the last minute to avoid suspension of Mr. Williamson's driver's license. (Id.) According to Mr. Williamson, this happened several times. (Id.) Mr. Williamson testified that, when Moran Lake closed in June 2007, he was behind in his child support payments by \$800, and he had to sue Defendant to obtain that amount from him. (Id.) Defendant never compensated Mr. Williamson for the penalties and interest he had to pay to the child support office. (Id.)

432. Witnesses testified that a Wildwood employee also was threatened with arrest for nonpayment of child support. (Trial Tr. Vol. 8 (Burrell) at 1241-42; Trial Tr. Vol. 9 (Grant) at 1320.) Witnesses also testified that a few Wildwood employees had money withheld from their

paychecks for various reasons, and that Defendant failed to pay over those employees' garnishments. (Trial Tr. Vol. 8 (Burrell) at 1241-42; Trial Tr. Vol. 9 (Grant) at 1320.) As a result, one CNA, a single mother of two children, had her car repossessed. (Trial Tr. Vol. 8 (Burrell) at 1242; Trial Tr. Vol. 9 (Grant) at 1319.) Ms. Burrell testified that she reported to Defendant all of the arrests and other problems that resulted from failures to pay over garnishments. (Trial Tr. Vol. 8 (Burrell) at 1242-43.)

c. Supplying the Nursing Homes

433. Numerous witnesses testified that employees spent their own money, without receiving reimbursement from Defendant, to buy food, nursing supplies, cleaning supplies, and maintenance parts and equipment. (Trial Tr. Vol. 1 (Stanley) at 33-35; Trial Tr. Vol. 2 (Knowles) at 287;

Trial Tr. Vol. 3 (Knowles) at 340, 352, (Free) 410; Trial Tr. Vol. 4 (J. Chisolm) at 520; Trial Tr. Vol. 5 (Greenway) at 810; Trial Tr. Vol. 6 (Greenway) at 876-78, 881; Trial Tr. Vol. 9 (Patrick) at 1269-70, 1278, (Grant) 1321-22, 1401; Trial Tr. Vol. 11 (Williamson) at 1580, (T. Edwards) 1589, 1595; Trial Tr. Vol. 12 (Brunner) at 1846, (Gaulin) 1899; Trial Tr. Vol. 14 (Lee) at 2285, 2303, (Chandler) 2338; Trial Tr. Vol. 15 (Zackary) at 2389, (Williams) at 2524-25; Trial Tr. Vol. 16 (Young) at 2552, 2567, (Chal) at 2660-61; Browning Dep. at 12-13; Gov't Exs. 361.32, 587, 588, 822.)

434. On June 27, 2006, Ms. Grant faxed a letter to

Defendant stating:

Housekeeping supplies – please contact Suncoast paper regarding payment schedule. I have been charging supplies to my personal credit card today, more than \$1,000.00 worth of supplies is needed.

(Gov't Ex. 831.7 (emphasis in original).)

435. On December 28, 2006, FHG Office Manager Cheryl Dawson told Ms. Greenway to stop spending her personal money to operate Mt. Berry, and to stop allowing her employees to spend their own money on the nursing home. (Gov't Ex. 587.) Ms. Greenway responded to Ms. Dawson and Defendant:

OF COURSE WE SHOULD NOT HAVE TO SPEND OUR OWN MONEY TO OPERATE THE BUSINESS!!!!!! HOW WELL WE KNOW IT.....!!!!!! BUT WHEN WE ARE IN NEED, THERE IS OFTEN NO OTHER SOLUTION.

WE MAKE EVERY EFFORT NOT TO SPEND OUR OWN MONEY, BUT I HAD TO WRITE A PERSONAL CHECK FOR THE FIRST PART TO THE WATER HEATER IN ORDER TO GET IT. WE THEN HAD TO GET CASH FROM GEORGE FOR THE SECOND PART AND NOW WE HAVE A THIRD PART ON ORDER WHICH GEORGE GAVE ME A BLANK, UNSIGNED CHECK TO PAY FOR IT WITH. THE PLUMBER PROBABLY

WILL NOT ACCEPT IT.

BUT THE STATE SURVEY OFFICE, THE OMBUDSMAN PROGRAM AND THE FAMILIES ARE GIVING US MORTAL HELL OVER THE HOT WATER BEING OUT. THE STAFF IS TOTING WARM WATER FROM THE KITCHEN..... TO BATHE OUR RESIDENTS!!!!!!!!!!!!!!

* * *

THE ADMINISTRATORS HAVE ALL PUT LARGE SUMS OF MONEY OUT OF POCKET TO KEEP THESE BUILDINGS GOING FOR GEORGE.

WITHOUT THIS HELP, WHERE WOULD WE BE?

(Gov't Ex. 588 (emphasis and capitalization in original).)

436. Jamie Young and Jerry Chisolm testified that they performed maintenance work at the nursing homes for free after Defendant fired them because their friends at the nursing homes needed their help and could not otherwise have the maintenance work performed. (Trial Tr. Vol. 4 (J.

Chisolm) at 540-41; Trial Tr. Vol. 16 (Young) at 2561; Gov't Ex. 589a.)

437. Additionally, members of the Moran Lake management team made baked goods or blankets and sold those items to staff members at bake sales to raise money to buy food and supplies for the nursing home. (Trial Tr. Vol. 5 (Primus) at 740-41.)

d. Staff Turnover and Loss of Staff

438. All of the above problems destroyed employee morale and led to high staff turnover, absenteeism, and difficulty in recruiting new employees. (Trial Tr. Vol. 1 (Stanley) at 12; Trial Tr. Vol. 2 (Knowles) at 294; Trial TR. Vol. 3 (Free) at 404; Trial Tr. Vol. 5 (Hinkley) at 757, (Greenway) 788; Trial Tr. Vol. 6 (Greenway) at 827, 845-50, 853, 887; Trial Tr. Vol. 7 (Herrington) at 1042-43; Trial Tr.

Vol. 9 (Grant) at 1358; Trial Tr. Vol. 10 (Hannay) at 1429, (Lynch) at 1520; Trial Tr. Vol. 12 (Brunner) at 1820.)

439. Witnesses testified that some of the nursing homes' best employees left because of the payroll problems. (Trial Tr. Vol. 6 (Greenway) at 847; Trial Tr. Vol. 7 (Herrington) at 1042-43; Trial Tr. Vol. 10 (Hannay) at 1429; Gov't Ex. 809.)

440. On July 11, 2006, Ms. Knowles faxed a letter to Defendant stating that making the employees race to Cartersville to try to cash their paychecks was "A SLAP IN THE FACE FOR ALL OF THEIR HARD WORK." (Govt' Ex. 487 (capitalization in original).) On January 15, 2007, Ms. Knowles faxed a letter to Defendant that stated:

PAYROLL CHECKS: I HAVE SEVERAL THAT WERE NOT ABLE TO BE CASHED. I HAVE SEVERAL EMPLOYEES TO QUIT THIS

WEEKEND OVER THIS.

(Id. (emphasis and capitalization in original).) Ms. Knowles testified that the payroll problems caused employees to “quit without notice, not come back.” (Trial Tr. Vol. 2 (Knowles) at 294.)

441. According to Ms. Stanley, the loss of experienced staff left the nursing homes “unable to really manage.” (Trial Tr. Vol. 1 (Stanley) at 12.) Witnesses testified that recruiting replacement staff “was very difficult because a lot of people in the community knew about the difficulties with the payroll checks and didn’t want to” work at a FHG home. (Id.; Trial Tr. Vol. 11 (T. Edwards) at 1591, (Landers) 1737 (stating that she resigned because Moran Lake’s reputation was so bad in the community that she was embarrassed to say she worked there).) Ms. Greenway testified that she

lost many key employees at Mt. Berry and that she could never hire “adequate replacements.” (Trial Tr. Vol. 6 (Greenway) at 853.)

442. Witnesses testified that recruiting replacement staff was made more difficult because Defendant would not pay for help-wanted advertisements in the local newspaper and the newspaper stopped accepting Defendant’s checks. (Trial Tr. Vol. 2 (Knowles) at 294; Trial Tr. Vol. 3 (Knowles) at 359; Trial Tr. Vol. 5 (Greenway) at 799; Trial Tr. Vol. 6 (Greenway) at 853, 856; Gov’t Exs. 487, 810, 812.) On July 6, 2006, Ms. Greenway faxed a letter to Defendant and Washington stating:

**I HAVE LOST 5 MANAGEMENT PEOPLE AND I
NEED TO RUN AN AD IN THE PAPER ASAP
!!!!!!!!!!!! THEY WILL NOT SEND IT WITHOUT THE
BILL BEING PAID.**

(Gov't Ex. 810 (capitalization in original).) On August 7, 2006, Ms. Knowles faxed a letter to Defendant and Washington providing:

ROMAN NEWS TRIBUNE: THEY HAVE SEVERAL BOUNCED CHECKS TOTALING >\$600. ALL ADS WILL HAVE TO BE PAID IN CASH BEFORE BEING PLACED IN PAPER. CURRENTLY I NEED AN AD PLACED FOR NURSING AND HOUSEKEEPING. **NEED STAFF ASAP!!!**

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

443. Witnesses testified that resident care suffered because the payroll issues, absenteeism, and low morale made it impossible to have adequate staff. (Trial Tr. Vol. 6 (Greenway) at 843-48, 887, 907; Trial Tr. Vol. 11 (T. Edwards) at 1591; Trial Tr. Vol. 14 (Lee) at 2281, 2302.)

444. The high staff turnover and absenteeism troubled the residents, who saw the employees lining up to cash their

paychecks and heard the employees talking among themselves about their payroll problems. (Trial Tr. Vol. 3 (Free) at 404-05; Trial Tr. Vol. 6 (Greenway) at 845, 852-55, 883, 887-88; Trial Tr. Vol. 7 (Herrington) at 1042-43; Trial Tr. Vol. 10 (Kelley) at 1501-02, (Lynch) at 1520-22, (Peyton) 1546-48; Trial Tr. Vol. 12 (Gaulin) at 1908, 1911, 1919; Trial Tr. Vol. 14 (Fuqua) at 2184-85; Gov't Ex. 361.35.) Residents and family members also missed their favorite employees when those employees sought work elsewhere. (Trial Tr. Vol. 5 (Hinkley) at 756-57; Trial Tr. Vol. 6 (Greenway) at 872; Trial Tr. Vol. 7 (Herrington) at 1042-43; Trial Tr. Vol. 10 (Kelley) at 1501-02, (Lynch) at 1520-22; Trial Tr. Vol. 15 (Cox) at 2445.) High staff turnover is difficult for residents, who miss their favorite employees when they leave. (Trial Tr. Vol. 6 (Greenway) at 847-48.)

Witnesses testified that the high staff turnover deprived residents of the continuity of care they needed. (Trial Tr. Vol. 3 (Free) at 404-05; Trial Tr. Vol. 6 (Greenway) at 883, 909, 967-78; Trial Tr. Vol. 10 (Hannay) at 1429-30, 1446-47, (Kelley) 1502; Trial Tr. Vol. 17 (Goldsmith) at 2873.)

22. Resident Trust Fund

445. Nursing home providers must protect their residents' personal funds by depositing those funds in a separate, interest-bearing account commonly referred to as a Resident Trust Fund ("RTF"). 42 C.F.R. § 483.10(c); Trial Tr. Vol. 2 (Mauldin) at 192-93; Trial Tr. Vol. 1 (Stanley) at 21-22; Trial Tr. Vol. 3 (Knowles) at 341, (Free) at 407. Nursing home providers must have a separate accounting system for the RTF that "precludes any commingling of resident funds with facility funds or with the funds of any

person other than another resident.” 42 C.F.R. § 483.10(c)(4)(i). Resident funds include the thirty dollars per month that Social Security provided residents for personal spending money during the time period relevant to this action. (Trial Tr. Vol. 1 (Stanley) at 21-22; Trial Tr. Vol. 4 (Testimony of Heidi Ingram) at 724; Trial Tr. Vol. 5 (Primus) at 733-35, (Greenway) at 804; Trial Tr. Vol. 16 (Davis) at 2587, 2596-97.)

446. Taking money from the RTF for any purpose other than a resident’s needs constitutes stealing. (Trail Tr. Vol. 17 (Goldsmith) at 2881-82.) Prohibited uses of the RTF include using RTF funds for operating purposes, such as payroll. (Id. at 2881-82; Trial Tr. Vol. 1 (Stanley) at 74; Trial Tr. Vol. 11 (Landers) at 1730-31, 1741-42.) Ms. Stanley testified that Defendant used the RTF to pay FHG

payroll. (Trial Tr. Vol. 1 (Stanley) at 74; Gov't Exs. 282 (showing \$33,532 transferred from RTF to FHG payroll account), 299 (consisting of checks drawn on RTF payable to FHG payroll).) Defendant directed Ms. Free to use the RTF to pay the Wildwood's Georgia Power bill. (Trial Tr. Vol. 3 (Free) at 407.) Defendant also told his business manager, Heidi Ingram, that the money in the RTF was his. (Trial Tr. Vol. 4 (Ingram) at 708.)

447. Only the nursing home administrator and the business manager should have access to the RTF. (Trial Tr. Vol. 3 (Knowles) at 341.) During the time period relevant to this action, Defendant had access to the RTF and spent the money in the account. (Trial Tr. Vol. 1 (Stanley) at 21-30, 74-75; Trial Tr. Vol. 3 (Knowles) at 341, 367-68, (Free) 407, 418-19, (Glymph) at 457-58; Trial Tr.

Vol. 5 (Greenway) at 803-04; Trial Tr. Vol. 6 (Greenway) at 849, 855-56, 862, 957, 987-88; Trial Tr. Vol. 11 (Landers) at 1728-30; Trial Tr. Vol. 14 (Chandler) at 2309, 2311-12, 2318-19; Gov't Exs. 298, 451, 452, 453, 459, 465, 518, 809, 811.) On occasion, Defendant removed himself from the RTF, but he eventually gave himself access to the fund again. (Trial Tr. Vol. 3 (Knowles) at 341; Trial Tr. Vol. 5 (Greenway) at 804; Trial Tr. Vol. 6 (Greenway) at 849, 855-56, 988.) Ms. Greenway testified that, when she reminded Defendant that he was not supposed to have access to the RTF after being removed from the account, he responded, "Well, I'm on it now." (Trial Tr. Vol. 6 (Greenway) at 849.)

448. Several times a month, every month, Defendant withdrew large amounts of money from the RTF. (Trial Tr. Vol. 4 (Ingram) at 707.) Defendant later made deposits into

the RTF; however, Ms. Ingram could never balance the account. (Id. at 707-08, 724.) Similarly, Angie Chandler could never balance the RTF at Mt. Berry. (Trial Tr. Vol. 14 (Chandler) at 2311-12.) On some occasions, Defendant did not deposit money into the RTF until after state surveys discovered his withdrawals. (Trial Tr. Vol. 1 (Stanley) at 56; Trial Tr. Vol. 11 (Landers) at 1729-30.) Defendant never hired an independent accounting firm to account for the RTF. (Trial Tr. Vol. 14 (Chandler) at 2318-19.)

449. State surveyors repeatedly cited Defendant's nursing homes for misappropriating RTF funds and for failing to establish an accounting system to protect the residents. Specifically, Moran Lake received the following survey citations: (1) on June 23, 2004, a citation for failing to manage the RTF according to generally accepted

accounting principles, (Gov't Ex. 275); (2) a January 1, 2005 citation for multiple withdrawals by Defendant from the RTF totaling approximately \$41,725 and \$30,522, which were not for residents or their needs,² (Gov't Ex. 276); (3) an August 16, 2005 citation for \$33,532 transferred from the RTF to the FHG payroll account, an \$11,931 check drawn on the RTF by corporate staff for unknown reasons, an \$1,885 check drawn on the RTF to Forum Management Services for an unknown reason, and the failure to have an accounting system to prevent commingling, (Gov't Ex. 282); (4) a February 5, 2007 citation for improperly depositing a resident's Veteran's Administration benefit checks into the corporate operating account, transferring \$16,000 from the

²The Court has rounded all dollar figures in survey summaries to the nearest dollar.

RTF for an unknown reason, and failing to have an accounting system to prevent commingling and protect residents' funds, (Gov't Ex. 286); and (5) a May 23, 2007, citation for failure to ensure that money taken from the RTF was used for residents, for failure to deposit residents' funds in an interest-bearing account, for failure to purchase a surety bond to cover the RTF, and for failure to have an accounting system to prevent commingling and protect residents' funds, (Gov't Ex. 292). Mt. Berry received the following survey citations: (1) a January 12, 2005 citation for withdrawals from the RTF of \$11,287, \$4,272, \$7,201, and \$19,000 that were not for residents or their needs, and for failure to have an accounting system to prevent commingling and protect residents' funds, (Gov't Ex. 296); (2) an August 17, 2005 citation for several checks drawn on

RTF that were not for residents' needs, including checks of \$20,735, \$25,112, \$14,683 and \$17,327 made payable to "cash" and checks of \$6,880, \$4,036, \$6,110, and \$1,059 made payable to FHG payroll, failure to prevent commingling, and failure to purchase a surety bond as required to cover the RTF, (Gov't Ex. 299); (3) a March 19, 2007 citation for failure to prohibit misappropriation of residents' RTF funds, (Gov't Ex. 304); (4) a May 23, 2007 citation for failure to protect residents' funds, (Gov't Ex. 306); and (5) a June 14, 2007 citation for failure to protect residents' funds, (Gov't Ex. 309). Wildwood received the following survey citations relating to the RTF: (1) a January 27, 2005 citation for withdrawals of \$4,422, \$9,101, \$9,101, \$9,101, \$32,000, \$28,500, \$25,729, \$54,870 and \$10,000 made for unknown purposes, (Gov't Ex. 310); (2) an August

24, 2005 citation for failure to credit interest to the residents' accounts and failure to manage the RTF according to generally accepted accounting principles, (Gov't Ex. 314); and (3) a February 15, 2007 citation for unauthorized withdrawals from the RTF that were not made for residents, (Gov't Ex. 320).

450. Defendant fired Ms. Stanley soon after she reported his unauthorized withdrawals from the RTF. (Trial Tr. Vol. 1 (Stanley) at 21-32; Trial Tr. Vol. 3 (Free) at 418-19; Trial Tr. Vol. 10 (Hannay) at 1432-33; Gov't Exs. 451, 452, 453, 459.) Ms Free testified that she did not report Defendant's improper use of RTF funds because she was afraid she would lose her job. (Trial Tr. Vol. 3 (Free) at 418-19.)

451. On June 27, 2006, Ms. Grant faxed a letter to

Defendant stating that the RTF at Wildwood was “still on hold with Bank of America.” (Gov’t Ex. 831.7.) Ms. Grant stated: **“George, this resident trust issue is critical, if we can’t get this money today, we will have to contact ORS. Wildwood has not had access to cash since last Thursday.”** (Id. (emphasis in original).) On February 21, 2007, Ms. Knowles faxed a letter to Defendant stating that state surveyors had cited Moran Lake for commingling RTF funds and operating funds, and that the surveyors had again demanded that no one have access to the fund except Ms. Knowles and the FHG business manager. (Gov’t Ex. 487.)

452. The money in the RTF belongs to the residents, and FHG consequently should have transferred the residents’ RTF funds to their new nursing homes when the

state closed the FHG nursing homes. (Trial Tr. Vol. 16 (Davis) at 2585-87, 2595-97.) Pamela Davis, however, testified that, when twenty-one residents were transferred from Moran Lake to Cedar Springs Healthcare in June 2007, FHG kept the RTF funds for those residents. (Id.) In August 2007, state surveyors cited Wildwood for failing to transfer a resident's RTF funds after he transferred to another nursing home. (Trial Tr. Vol. 16 (Chal) at 2671-72.)

453. Witnesses testified that Defendant's depletion of the RTF caused residents or residents' family members to unknowingly write worthless checks, to incur bad check penalties, and to lose the use of their money. (Trial Tr. Vol. 1 (Stanley) at 21-27; Trial Tr. Vol. 5 (Primus) at 736-37.)

454. Witnesses testified that theft and misappropriation of the RTF negatively impacts residents. (Trial Tr. Vol. 6

(Greenway) at 957; Trial Tr. Vol. 14 (Fuqua) at 2182-83, (Lee) at 2283.) Ms. Greenway testified that nursing home residents, like anyone else, “worry about their money.” (Trial Tr. Vol. 6 (Greenway) at 957.) Residents use their RTF money to buy snacks and personal items, or to have their hair cut. (Trial Tr. Vol. 1 (Stanley) at 21; Trial Tr. Vol. 4 (Ingram) at 724; Trial Tr. Vol. 11 (Landers) at 1730-31; Trial Tr. Vol. 14 (Lee) at 2283.) Witnesses testified that, for many residents, buying a snack or getting a hair cut is the highlight of the day. (Trial Tr. Vol. 14 (Fuqua) at 2182-83; Trial Tr. Vol. 16 (Davis) at 2590.)

455. On several occasions, Defendant depleted the RTF and residents could not obtain to their money to buy a snack. (Trial Tr. Vol. 11 (Landers) at 1741-42; Trial Tr. Vol. 14 (Fuqua) at 2182-83, (Lee) at 2283.) Witnesses testified

that residents would begin to gather at the “bank” window after breakfast, and that some residents became very upset when employees told them that “there was no money in the bank” or “the bank was closed.” (Trial Tr. Vol. 11 (Landers) at 1741-42; Trial Tr. Vol. 14 (Fuqua) at 2182-83, (Lee) at 2283.) Stephanie Lee, a former Moran Lake LPN, testified:

[The residents] were very upset. They didn’t understand why. I mean, it’s their money, why don’t they have it. And then they’re used to being able to get a snack or an extra drink and, you know, they weren’t able to. So very upset and then some of them became very agitated.

(Trial Tr. Vol. 14 (Lee) at 2283.) Christie Fuqua testified that the unavailability of RTF money had “a huge impact” on the residents. (Trial Tr. Vol. 14 (Fuqua) at 2182-83.) Ms. Fuqua testified that, on one occasion, a Moran Lake resident became so upset when he could not access his

RTF money that he threw a chair across a room filled with residents. (Id. at 2181.) Fortunately, the chair did not hit anyone. (Id.)

23. Diversion of Funds

a. Medicare and Medicaid Paid What FHG Billed

456. During the time period relevant to this action, Medicare and Medicaid paid a combined total of \$32,914,304.66 for the claims submitted by Defendant's three nursing homes. (Gov't Exs. 254a, 255d.) Witnesses testified that FHG had no problems getting paid by Medicare and Medicaid. (Trial Tr. Vol. 4 (Ingram) at 705-06, 721; Trial Tr. Vol. 2 (W. Chisolm) at 260-61, 268; Trial Tr. Vol. 1 (K. Edwards) at 127.) Witnesses testified that, to the extent that Defendant had any problems getting paid by

Medicare and Medicaid, those problems occurred because FHG had trouble keeping the billing current, requiring FHG to do a lot of back-billing. (Trial Tr. Vol. 2 (W. Chisolm) at 260-61.) Ms. Ingram noted that, occasionally, Defendant failed to pay the vendor for the software that was used to bill Medicare and Medicaid, which, in turn, delayed billing. (Trial Tr. Vol. 4 (Ingram) at 705-06.) Other witnesses testified that the power at the FHG corporate office was frequently shut off for hours at a time because Defendant failed to pay the power bill, and that, when that happened, FHG could not use the internet or bill Medicaid and Medicare. (Trial Tr. Vol. 2 (W. Chisolm) at 263, 270; Trial Tr. Vol. 11 (McFadin) at 1717; Gov't Ex. 1500.)

b. Different Corporate Entities

457. Odell Justice, a revenue agent for the Internal

Revenue Service (“IRS”) testified that his research revealed that Defendant was associated with approximately forty different entities. (Trial Tr. Vol. 8 (Justice) at 1138-39.) When Mr. Justice asked Defendant why he had created so many entities with similar names, Defendant stated that he created those companies to confuse, and to hide assets from, people who might want to sue him. (Id. at 1151.)

458. The evidence indicated that Defendant controlled at least sixty-two bank accounts, including a number of personal accounts in Defendant’s or Washington’s name, and that Defendant moved the nursing home funds from and to those accounts during the time period relevant to this action. (Trial Tr. Vol. 11 (Testimony of A.J. Singh) at 1654-55; Trial Tr. Vol. 1 (K. Edwards) at 105-06; Gov’t Ex. 105-06.) According to Ms. Ingram, Defendant believed that the

nursing home money belonged to him, and that he could do whatever he wanted with it. (Trial Tr. Vol. 4 (Ingram) at 712-13.)

c. Failure to Account

459. Defendant's expert, Ms. Goldsmith, acknowledged that it is important for a nursing home to have an accounting system in place, and to have an accountant who can create financial statements that trace the purposes for which the nursing home uses its funds. (Trial Tr. Vol. 17 (Goldsmith) at 2882.) Ms. Goldsmith acknowledged that, without accurate financial statements, the nursing home owner could improperly spend the nursing home's funds on anything the owner wants, without worrying about having to account for expenses and profits. (Id.)

460. During Mr. Justice's meetings with Defendant and

Washington, Defendant did not provide Mr. Justice with financial statements prepared by Defendant's accountants, although Defendant indicated that the accountants were working on those statements. (Trial Tr. Vol. 8 (Justice) at 1126, 1145, 1181-82; Gov't Ex. 1231_13.) Mr. Justice testified that Washington indicated that financial statements had not been prepared for the corporation, and that she and Defendant maintained, and had access to, the books and records of the corporation. (Trial Tr. Vol. 8 (Justice) at 1144-45; Gov't Ex. 1231_4.) Washington indicated that Defendant was responsible for dealing with the outside accountants, while Defendant stated that both he and Washington dealt with the accountants. (Gov't Exs. 1231_4, 1231_13.) Defendant provided Mr. Justice with a personal financial statement indicating that Defendant's total net

worth exceeded \$20 million. (Trial Tr. Vol. 8 (Justice) at 1174, 1178; Gov't Ex. 182.) Defendant's personal financial statement stated that Defendant's only source of income was the money he received from operating the three FHG nursing homes. (Trial Tr. Vol. 8 (Justice) at 1178; Gov't Ex. 182.) Mr. Justice testified that his investigation indicated that, although Defendant was associated with forty corporate entities, the nursing homes were Defendant's only source of income, noting: "[The entities] were all somehow related to the nursing homes and the nursing homes' stream of cash." (Trial Tr. Vol. 8 (Justice) at 1185.)

461. According to FBI Agent A.J. Singh, Defendant was not entitled to take money out of FHG as "profit" before he accounted for the nursing homes' expenses. (Trial Tr. Vol. 11 (Singh) at 1655.) Agent Singh noted that the cost of

running a business must first be deducted from revenues to determine whether there is any profit to take. (Id.) Agent Singh stated: “By definition, profit is a residual. It’s what remains after expenses.” (Id.) Mr. Justice testified that Defendant did not deny that he was commingling funds of his personal and business assets. (Trial Tr. Vol. 8 at 1204-05.) According to Mr. Justice, it was obvious that this was Defendant’s way of hiding his assets. (Id. at 1205)

462. Defendant’s employees, along with several accountants, advised Defendant that it important for Defendant to take a salary and to account for profit and expenses properly. (Trial Tr. Vol. 4 (Ingram) at 712-713; Trial Tr. Vol. 8 (Burrell) at 1233-34; Trial Tr. Vol. 1 (K. Edwards) at 95-97.) Mr. Justice testified that, “when you are a corporation, you are required under law to take

wages.” (Trial Tr. Vol. 8 (Justice) at 1204.) Ms. Burrells, FHG’s former payroll manager described a 2004 meeting with accountants in Atlanta that she attended, during which the accountants told Defendant that he was not to take any money out of the nursing homes as profit until after the nursing homes’ expenses were paid. (Trial Tr. Vol. 8 (Burrell) at 1233-34.) Ms. Ingram testified that Defendant refused to take a salary, and that Defendant stated, “It’s all my money. I can do whatever I want to with it.” (Trial Tr. Vol. 4 (Ingram) at 712-13.)

463. Witnesses testified that Defendant operated FHG as if all the money belonged to Defendant, and that Defendant consistently used nursing home funds to pay for his personal expenses without properly accounting for that use of funds. (Trial Tr. Vol. 4 (Ingram) at 712; Trial Tr. Vol.

1 (K. Edwards) at 95-97.) FHG had no accounting system in place to track bills or accounts payable. (Trial Tr. Vol. 10 (Testimony of Cheryl Dawson) at 1514.) Defendant and Washington used debit cards paid for by FHG to cover personal charges, including trips to California, Martha's Vineyard and the Hamptons, as well as expenses for restaurants, toys, furniture, purses, perfumes, and chocolates. (Trial Tr. Vol. 4 (Ingram) at 709-11; Trial Tr. Vol. 1 (K. Edwards) at 96-97.) According to Kay Edwards, Defendant provided no invoices or receipts for those personal purchases. (Trial Tr. Vol. 1 (K. Edwards) at 97.)

464. Kay Edwards had an extremely difficult time balancing the books, and, to do so, she categorized the personal purchases as "loans to the shareholder." (Trial Tr. Vol. 1 (K. Edwards at 97, 104.) When Kay Edwards asked

Washington about grocery store purchases coming through the corporate account, Washington told her to use the loan to shareholder category for those purchases. (Id. at 102.)

Kay Edwards assigned any personal purchases that had no supporting documentation to that category. (Id. at 97.)

Defendant, however, never signed any loan documentation or paperwork. (Id.)

d. Moving Money

465. Defendant spent or transferred slightly more than \$8 million, or nearly twenty-five percent, of the approximately \$33 million in Medicare and Medicaid money paid to him for his personal use. (Trial Tr. Vol. 11 (Singh) at 1708-1709.) During a June 29, 2005 meeting with Mr. Justice, Defendant stated that he had spent money on real estate and other things that he should have used for the

nursing homes. (Trial Tr. Vol. 8 (Justice) at 1183-84, 1198; Gov't Ex. 1231_1.) During a previous civil trial, Defendant testified that he "moved" the nursing home money from account to account. (Defendant's Prior Testimony at 2722.) During that trial, Defendant claimed that he did not have personal funds or a personal account and that he just used the company's account. (Id.)

466. At first, the nursing home administrators could see the Medicare and Medicaid money that was deposited into their nursing homes' operating accounts being transferred out immediately to other accounts. (Trial Tr. Vol. 1 (Stanley) at 20-21; Trial Tr. Vol. 3 (Free) at 398.) When FHG employees asked Defendant about the transfers, Defendant said that he needed the money for something else. (Trial Tr. Vol. 3 (Free) at 399.) On some

occasions, Defendant left enough money in the accounts to pay the bills, but sometimes he did not. (Trial Tr. Vol. 1 (K. Edwards) at 106.) On June 27, 2005, Dr. Hannay wrote a letter to the state complaining that Defendant was “siphoning profits” from the nursing homes by writing himself checks and leaving the nursing homes with inadequate funds for payroll. (Trial Tr. Vol. 10 (Hannay) at 1431; Gov’t Ex. 1234.)

467. During the time period relevant to this action, \$2,282,439 was deposited or transferred directly into Defendant’s personal banking accounts, and \$467,949 was deposited or transferred directly into Washington’s personal banking accounts, mostly from a Forum source. (Trial Tr. Vol. 11 (Singh) at 1678-88; Gov’t Exs. 950a, 950b, 950c, 950d.) During the course of the conspiracy, \$1,745,620

was deposited or transferred into The Guild's operating account, mostly from a Forum source. (Trial Tr. Vol. 11 (Singh) at 1688-95; Gov't Exs. 950e, 950g.) This amount includes three Medicaid checks, one for each nursing home, dated October 5, 2005, and totaling \$192,520.30, including: (1) a check for \$48,497.79 payable to Mt. Berry in the amount of \$48,497.79; (2) a check for \$97,071.55 payable to Wildwood; and (3) a check for \$46,950.96 payable to Moran Lake, which were deposited directly into The Guild's account on the following day, October 6, 2005. (Trial Tr. Vol. 11 (Singh) at 1692-93; Gov't Exs. 950e, 950g.) Three more Medicaid checks dated October 12, 2005 and totaling \$27,487.02 were deposited directly into The Guild's account on October 13, 2005. (Trial Tr. Vol. 11 (Singh) at 1693-94; Gov't Exs. 950e, 950g.) Those checks included: (1) a

check for \$2,192.14 payable to Mt. Berry; (2) a check for \$15,396.68 payable to Wildwood; and (3) a check for \$9,998.20 payable to Moran Lake. (Trial Tr. Vol. 11 (Singh) at 1693-94; Gov't Exs. 950e, 950g.)

e. The Guild

468. The Guild was a construction company that Defendant owned and managed. (Trial Tr. Vol. 1 (Stanley) at 20; Trial Tr. Vol. 4 (J. Chisolm) at 520, (Ingram) 705, 722; Trial Tr. Vol. 8 (Burrell) at 1235; Gov't Ex. 1231_14.) The Guild never had any revenue. (Trial Tr. Vol. 4 (Ingram) at 716.) Money was transferred to the Guild from the nursing homes' accounts. (Trial Tr. Vol. 4 (Ingram) at 716, 726; Gov't Exs. 950e, 950g.) Defendant showed Ms. Stanley some of the plans for his construction projects to be done through The Guild, and told her that the money that the

administrators were making for him at the nursing homes would be used for “the ventures he had with The Guild.” (Trial Tr. Vol. 1 (Stanley) at 21.)

469. A number of employees worked for the Guild but were paid through the nursing homes’ payroll. (Trial Tr. Vol. 4 (Ingram) at 716, 725; Trial Tr. Vol. 8 (Burrell) at 1247-48.) The Guild employees reported to Ms. Burrell how many hours they worked. (Trial Tr. Vol. 8 (Burrell) at 1247.) Ms. Burrell then keyed that information into FHG’s system, which calculated how much the Guild employees were supposed to be paid and the applicable deductions for taxes. (Id. at 1247-48.) Defendant told Ms. Burrell that she could use FHG’s system to calculate the wages owed, but that she should delete the information afterward to keep the FHG payroll system from saving it. (Id. at 1248.)

470. Mr. Chisolm, a former maintenance worker for Mt. Berry, spent time working for The Guild, doing general agricultural cleanup or cutting grass at the properties that Defendant had purchased. (Trial Tr. Vol. 4 (J. Chisolm) at 520-22.) Mr. Chisolm also spent some of his time working as Defendant's personal mechanic or fixing things at the home that Defendant purchased for his ex-wife, Pamela Houser. (Id. at 521-24.) Mr. Chisolm estimated that he spent eighty percent of his time on those things, rather than doing the maintenance work at Mt. Berry for which he received a paycheck. (Id. at 521-22.) According to Mr. Chisolm, he was rarely at Mt. Berry unless a survey had just happened and the staff there needed him. (Id. at 522.) FHG, however, paid Mr. Chisolm during that time. (Id.)

471. Jamie Young, a former maintenance employee at

Moran Lake, testified that he occasionally did work for The Guild with Mr. Chisolm during his normal working hours, but that FHG paid him for that work. (Trial Tr. Vol. 16 (Young) at 2556-57, 2572-73.) Mr. Young stated that his work for The Guild took him away from work that he should have been performing at Moran Lake. (Id. at 2573.) Mr. Young also performed some work at Pamela Houser's house, and did not receive a separate paycheck for that work. (Id. at 2557-58.) Joseph Pearson, another nursing home maintenance employee, worked for The Guild with Mr. Chisolm. (Id.) Mr. Pearson spent a lot of time cutting grass at Defendant's properties. (Id.)

472. Ms. Burrell recalled that two or three other individuals worked for The Guild, surveying and clearing property. (Trial Tr. Vol. 8 (Burrell) at 1235-36.) Defendant

also instructed Ms. Burrell to pay those individuals through FHG. (Id.) According to Ms. Ingram, Margaret Hilliard and Dorothy worked upstairs at the FHG corporate office for The Guild, and received their paychecks through FHG. (Trial Tr. Vol. 4 (Ingram) at 716, 725.) Ms. Ingram testified that “quite a few ladies” worked for The Guild, who were paid with FHG funds. (Id. at 725.)

f. Property Purchases

i. Marriott Hotel Development

473. In February 2005, Defendant expressed interest in building and owning a Marriott hotel by sending a presentation to Norman Jenkins, a Senior Vice President of Marriott International, proposing a 154-acre mixed-use development in Rome, Georgia, on property that Defendant had already purchased and was planning to purchase.

(Trial Tr. Vol. 7 (Testimony of Norman Jenkins) at 1010-13; Gov't Ex. 1066.) The proposed development would include a Marriott Courtyard hotel, residential housing, retail establishments, and office space. (Trial Tr. Vol. 7 (Jenkins) at 1010-13; Gov't Ex. 1066.) Defendant signed the letter to Mr. Jenkins as President and chief executive of Forum Group Corporation. (Trial Tr. Vol. 7 (Jenkins) at 1013; Gov't Ex. 1066.) Defendant's proposal listed Washington as Vice-President and Director of Human Resources and Marketing at the Forum Group. (Gov't Ex. 1066.) The letter did not mention Washington's position, role, or experience in the nursing homes, but stated that Washington was a licensed real estate broker and executive who had developed, constructed, and sold residential and commercial properties in the Rome and Atlanta markets for

the past twelve years. (Id.) According to Mr. Jenkins, Defendant never told him whether Washington had any role at the nursing homes. (Trial Tr. Vol. 7 (Jenkins) at 1012.)

474. On May 17, 2005, Defendant sent Mr. Jenkins an email giving an update on Defendant's land development in Rome, which Defendant called ROMA. (Trial Tr. Vol. 7 (Jenkins) at 1014-18; Gov't Ex. 1067.) In that email, Defendant stated that the new Marriott hotel would cost between seven and eight million dollars. (Trial Tr. Vol. 7 (Jenkins) at 1015; Gov't Ex. 1067.) Defendant's proposal would not require Marriott to put forth cash. (Trial Tr. Vol. 7 (Jenkins) at 1016.) Mr. Jenkins testified that he was thrilled when Defendant indicated that he planned to capitalize the venture himself, including a \$2.5 million contribution from refinancings and cash flow and another

\$1.5 to \$2 million to reduce the debt. (Id. at 1015-16; Gov't Ex. 1067.) Defendant attached a Cash Flow Analysis for the three nursing homes for the preceding four months. (Trial Tr. Vol. 7 (Jenkins) at 1019-20; Gov't Ex. 1068.) The analysis reflected that the nursing homes had a positive cash flow of \$1,300,486.08 for the period from January 2005 to April 2005. (Trial Tr. Vol. 7 (Jenkins) at 1020; Gov't Ex. 1068.) Defendant's email also stated that Defendant had an interesting prospect for a hotel in Brunswick, Georgia, and that Defendant was investigating the possibility of acquiring a \$9.2 million site for that potential hotel, as well as a third potential site in Atlanta at the Atlanta University Center. (Trial Tr. Vol. 7 (Jenkins) at 1018; Gov't Ex. 1067.)

475. On July 12, 2005, Defendant sent another letter

to Mr. Jenkins indicating that Forum Group would capitalize with \$4.9 million, or fifty percent equity, a new lodging company that would build the Marriott hotel at the development that Defendant called "Waterplace in Roma." (Trial Tr. Vol. 7 (Jenkins) at 1020-1022; Gov't Ex. 1069.) Defendant projected the total cost of the hotel at \$9.8 million, and indicated that he would contribute four acres of property. (Trial Tr. Vol. 7 (Jenkins) at 1021; Gov't Ex. 1069.) Mr. Jenkins testified that, soon after he received Defendant's letter, he also received inquiries from law enforcement officials about Defendant. (Trial Tr. Vol. 7 (Jenkins) at 1023.) Marriott never entered into a contract with Defendant. (Id. at 1022, 1025.)

ii. Real Estate Purchases

476. The evidence in the record indicates that, from

June 30, 2004, through July 12, 2005, Defendant purchased a substantial amount of property in six separate transactions, with a total cost of \$4,232,609. (Gov't Ex. 1112a.) On November 17, 2005, the Government executed a federal search warrant at the FHG corporate office located at 940 Spider Webb Drive in Rome, Georgia. (Trial Tr. Vol. 16 (Rotti) at 2542.) Defendant purchased no property with FHG funds after the execution of the search warrant. (Gov't Ex. 1112a.) During a previous civil action, Defendant testified that he bought the property at the beginning because he was "stupid" and "euphoric." (Houser Prior Testimony at 2724.)

aa. 427 Chulio Road

477. On June 30, 2004, Defendant purchased property located at 427 Chulio Road, Rome, Georgia for \$650,000.

(Trial Tr. Vol. 11 (Singh) at 1657; Gov't Exs. 1112a, 1035.) The borrower listed on the settlement statement was The Guild, Defendant's construction and development company. (Gov't Ex. 1035.) Defendant signed as the Buyer and as president of The Guild. (Trial Tr. Vol. 11 (Singh) at 1657; Gov't Ex. 1035.) The Guild paid \$353,000 at closing toward the purchase, using a cashier's check from SunTrust drawn on The Guild account. (Trial Tr. Vol. 11 (Singh) at 1657; Gov't Exs. 1035, 1113.) The settlement statement listed Washington as the Re/Max broker representing The Guild in the transaction, and stated that Washington received a commission of \$24,824. (Trial Tr. Vol. 11 (Singh) at 1658; Gov't Ex. 1042.) A number of checks, signed by Defendant and Washington and dated from October 2004 through May 2005, were drawn on FHG or Forum Group Management

Services' accounts to pay for the balance of the property transaction and any interest owed to the seller. (Trial Tr. Vol. 11 (Singh) at 1658-1660; Gov't Exs. 1112a, 1114-1123.)

bb. 110 Cross Roads Court

478. On July 29, 2004, Defendant purchased a house for his ex-wife, Pamela Houser, in the Atlanta, Georgia metropolitan area for approximately \$1.4 million. (Trial Tr. Vol. 11 (Singh) at 1660-65; Gov't Exs. 1112a, 1046.) To pay for the transaction, Defendant borrowed \$700,000 from Roswell Holdings, and also contributed approximately \$741,000. (Trial Tr. Vol. 11 (Singh) at 1661-65; Gov't Exs. 1112a, 1046, 1125-28.) The settlement statement listed Washington as the Re/Max designated agent representing Defendant, and Washington received a commission of

\$39,660. (Trial Tr. Vol. 11 (Singh) at 1664; Gov't Ex. 1048.)

479. On June 15, 2004, approximately six weeks earlier, Defendant transferred \$1.4 million from the FHG bank account to a personal account in Defendant's name.

(Trial Tr. Vol. 11 (Singh) at 1662-62; Gov't Exs. 1030-32.)

During a previous civil trial, Defendant testified that his withdrawal of funds from the nursing homes' account to pay for Pamela Houser's residence was a "big mistake," that this action "occurred in the euphoria of finally starting to be paid by Medicaid," and stating that, at the time, he "was like a kid in a candy store." (Defendant's Prior Testimony at 2721-23.)

cc. Highway 411

480. On December 21, 2004, Defendant purchased property located at Highway 411 in Rome, Georgia for

\$1,040,000. (Trial Tr. Vol. 11 (Singh) at 1665-1668; Gov't Exs. 1112a, 1051.) The settlement statement listed Roma Development Company, another company owned by Defendant, as the borrower, and Defendant signed as the Buyer. (Trial Tr. Vol. 11 (Singh) at 1665; Gov't Ex. 1051.) Defendant borrowed \$766,604 from Roswell Holdings and \$25,000 from Jacque Houser, his ex-wife, to fund part of the purchase. (Trial Tr. Vol. 11 (Singh) at 1667-68; Gov't Exs. 1112a, 1129-1134.) The settlement statement listed Washington as the Re/Max broker, and Washington received a commission of \$31,200. (Trial Tr. Vol. 11 (Singh) at 1666; Gov't Exs. 1051, 1054.)

dd. 553/555 Chulio Road

481. On November 30, 2004, Defendant purchased property located at 553 and 555 Chulio Road in Rome,

Georgia for \$150,920. (Trial Tr. Vol. 11 (Singh) at 1668-70; Gov't Exs. 1112a, 1147.) The settlement statement listed Roma Development Company as the borrower, and Roma Development Company funded the entire purchase. (Trial Tr. Vol. 11 (Singh) at 1669; Gov't Ex. 1147.) The settlement statement listed Washington as the Re/Max broker, and she received a commission of \$1,372. (Trial Tr. Vol. 11 (Singh) at 1669; Gov't Ex. 1063.5.)

ee. 209 Tuckawana Drive

482. On February 7, 2005, Defendant purchased property located at 209 Tuckawana Drive in Rome, Georgia for \$500,000. (Trial Tr. Vol. 11 (Singh) at 1670-74; Gov't Exs. 1112a, 1056.) The borrower was Roma Development. (Trial Tr. Vol. 11 (Singh) at 1671; Gov't Ex. 1056.) Defendant signed as the buyer. (Trial Tr. Vol. 11 (Singh) at

1671; Gov't Ex. 1056.) Defendant borrowed \$205,063 from Roswell Holdings and \$50,000 from Jacque Houser to fund part of the purchase. (Trial Tr. Vol. 11 (Singh) at 1672-74; Gov't Exs. 1112a, 1136, 1139.) The settlement documents listed Washington as the Re/Max broker, and she received a commission of \$6,000. (Trial Tr. Vol. 11 (Singh) at 1672; Gov't Ex. 1058.)

ff. 147 Tuckawana Drive

483. On July 12, 2005, Defendant purchased property located at 147 Tuckawana Drive in Rome, Georgia for \$360,000. (Trial Tr. Vol. 11 (Singh) at 1674-78; Gov't Exs. 1112a, 1060.) The settlement statement listed the borrower as Roma Development Company. (Trial Tr. Vol. 11 (Singh) at 1674; Ex. 1060.) Defendant signed as the buyer. (Trial Tr. Vol. 11 (Singh) at 1674; Gov't Ex. 1060.)

484. Defendant borrowed \$280,400.40 from Roswell Holdings to fund part of the purchase. (Trial Tr. Vol. 11 (Singh) at 1675; Gov't Exs. 1112a, 1141.) Defendant also used two Medicaid checks totaling \$71,617.10 as earnest money for the purchase, signing the checks directly over to the sellers, Paul and Donna Hibbets, who deposited the checks. (Trial Tr. Vol. 5 (Testimony of Donna Hibbets) at 768-69, 771-73; Trial Tr. Vol. 11 (Singh) at 1675-76; Gov't Exs. 1142, 1062a.) One of the Medicaid checks, in the amount of \$34,309.54, was made payable to the Forum Group at Moran Lake. (Gov't Ex. 1142.) The other Medicaid check, in the amount of \$37,307.56, was payable to Forum Group at Mt. Berry. (Id.) Ms. Hibbets testified that she was concerned about receiving those checks because it did not appear that the checks were intended for

her and her husband. (Trial Tr. Vol. 5 (Hibbets) at 772.)
The settlement documents listed Washington as the
Re/Max broker, and she received a commission of \$8,635.
(Trial Tr. Vol. 11 (Singh) at 1675; Gov't Ex. 1063.)

iii. Roswell Holdings

485. Roswell Holdings (“Roswell”) is a “hard-money”
lender that lends money to individuals who cannot obtain
conventional loans through a bank because of their lower
credit rating. (Trial Tr. Vol. 11 (Testimony of Woody Alpern)
at 1628-29.) Roswell uses the actual property as collateral
for the loan, rather than relying on creditworthiness. (Id.)
Roswell charges a higher interest than banks would charge,
because the loans Roswell enters into are higher risk loans.
(Id. at 1629.)

486. During the time period relevant to this action,

Defendant entered into several loan transactions with Roswell to help finance his real estate purchases. (Trial Tr. Vol. 11 (Alpern) at 1629; Gov't Ex. 1147a.) Specifically, Defendant borrowed a total of \$2,509,000 from Roswell during the relevant time period. (Trial Tr. Vol. 11 (Alpern) at 1631; Gov't Ex. 1147a.) During the time period relevant to this action, Defendant made payments on the Roswell loans in the total amount of \$1,055,826, mostly drawn from the various Forum Healthcare entities or Defendant's personal accounts, all of which represented interest payments and fees on the loans, except for payoffs that Defendant made for the Chulio Road property. (Trial Tr. Vol 11 (Alpern) at 1634-41; Gov't Ex. 1164a.) Defendant still owes Roswell approximately \$6 million, \$4 million of which relates to a loan that Roswell made to Defendant in 2008 after the

nursing homes closed. (Trial Tr. Vol. 11 (Alpern) at 1643, 1650-51.)

g. Washington's Salary

487. Washington instructed Ms. Burrell to pay Washington money through the nursing homes' payroll accounts. (Trial Tr. Vol. 8 (Burrell) at 1229-30.) Ms. Burrell, however, did not withhold federal payroll taxes from Washington's checks. (Id. at 1230.) Washington told Ms. Burrell that she would pay her own taxes. (Id.) Ms. Burrell testified that Defendant was aware that Washington was being paid through the nursing homes' payroll. (Id.) Witnesses testified that Washington was in the FHG office infrequently, and that she did not act as the president of the company, which was her title. (Trial Tr. Vol. 4 (Ingram) at 714; Trial Tr. Vol. 2 (W. Chisolm) at 261; Trial Tr. Vol. 1 (K.

Edwards) at 95.) From 2004-2007, a total of \$467,949 was deposited into Washington's personal account. (Trial Tr. Vol. 11 (Singh) at 1687; Gov't Ex. 950c.) Most of the money came from the FHG corporate account and the three nursing homes' operating accounts. (Gov't Ex. 950c.) More than \$88,000 of the deposits into Washington's account were from cash transfers. (Id.)

h. Pamela Houser's Salary

488. Although Pamela Houser was not an employee of the nursing homes, she was paid every two weeks from the nursing homes' payroll account. (Defendant's Prior Testimony at 2722; Trial Tr. Vol. 1 (Stanley) at 21, 39; Trial Tr. Vol. 8 (Burrell) at 1231-32.) In a previous civil lawsuit, Defendant testified that Pamela Houser was not an employee of FHG and that the payments to her were for

alimony. (Defendant's Prior Testimony at 2722.) Washington signed most of the payroll checks to Pamela Houser. (Gov't Exs. 960, 961.) On a nursing home check dated November 15, 2004 and made payable to Pamela Houser in the amount of \$3,552.15, Washington wrote in the memo portion of the check that the payment was for "Payroll for week ending October 11th, 2004." (Trial Tr. Vol. 11 (Singh) at 1704; Gov't Ex. 961.)

489. As of October 2005, Pamela Houser had received \$71,490.85 from the nursing home account. (Trial Tr. Vol. 11 (Singh) at 1703-05; Gov't Ex. 960.) Pamela Houser continued to receive payroll checks after October 2005. (Trial Tr. Vol. 11 (Singh) at 1705; Trial Tr. Vol. 8 (Burrell) at 1231-32.) According to Ms. Burrell, in late 2006, Richard Rose, Defendant's accountant, told Houser that Pamela

could not be on the payroll. (Trial Tr. Vol. 8 (Burrell) at 1231-32.) Ms. Burrell testified that Defendant “just stuck his hands in his pockets and walked out the door.” (Id.) Ms. Burrell further testified that, during the first year that FHG paid Pamela Houser, she sent a W-2 form to Pamela because Pamela Houser received payroll checks. (Id. at 1232.) According to Ms. Burrell, when Defendant found out, he told her that she was not supposed to send Pamela Houser a W-2 form, and that Pamela Houser should not have payroll taxes taken out of her payroll checks. (Id.)

i. Nannies

490. Mamie Carroll and Dorothy Askew received FHG paychecks for their work as the Housers’ nannies. (Trial Tr. Vol. 8 (Burrell) at 1234-35.) From December 2004 to approximately May 2005, Ms. Carroll worked as a nanny for