

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between and among the State of New York (the “State”), acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit (“MFCU”), Relator Deborah Yannicelli (the “Relator”) and Friendly Home Care, Inc. (“Friendly”) (hereafter collectively referred to as the “Parties”), through their authorized representatives.

WHEREAS, Friendly, a corporation organized under the laws of the State of New York, is a Licensed Home Care Services Agency (“LHCSA”) as defined in Article 36 of the New York Public Health Law Section 3602 with its principal place of business located at 1811 Kings Highway, Brooklyn, New York, and under license number 10711001 provides home health aides to Certified Home Health Care Agencies (“CHHA”) as defined in Article 36 of the Public Health Law Section 3602 (3), who provide services to Medicaid recipients in New York; and

WHEREAS, on November 5, 2007, Relator Deborah Yannicelli filed a complaint under the qui tam provisions of the federal False Claims Act, 31 U.S.C. §§ 3730 (b) – (h) and the New York False Claims Act, N.Y. State Fin. Law § 190(2), captioned United States of America and the State of New York ex rel. Jane Doe v. Extended Nursing Personnel CHHA, LLC, et al., in the United States District Court for the Eastern District of New York (Civil Action No. 07-4621) (Block, J.) (the “Yannicelli Action”); and

WHEREAS, Friendly caused to be submitted Medical Assistance Program (“Medicaid”) claims for home health aide services (“Medicaid Claims”) by CHHAs to fiscal agents of the State of New York pursuant to the Social Services Law and the Public Health Law of the State of New York during the period from January 1, 2006 through December 31, 2008 (“Claims Period”); and

WHEREAS, the aforesaid Medicaid Claims were relied upon by the State to pay the CHHAs which, in turn, paid Friendly, during the Claims Period; and

WHEREAS, MFCU has conducted an industry-wide investigation into the provision of services by home health aides in New York during the Claims Period (“the MFCU Investigation”) and the United States and New York State have jointly investigated the allegations in the Yannicelli Action; and

WHEREAS, as a result of the MFCU Investigation, MFCU determined that certain home health aide training schools (“Suspect Training Schools”) furnished to certain individuals false certificates that certified that those individuals were qualified to provide home health aide services to Medicaid recipients when the individuals were not given the required training or valid certification and therefore such services were not reimbursable by Medicaid; and

WHEREAS, MFCU determined that home health aides who received certificates from Suspect Training Schools were subsequently employed by LHCSAs, including Friendly, and assigned to Medicaid recipients; and

WHEREAS, CHHAs entered into contracts with Friendly to furnish home health aides to Medicaid recipients, and thereafter billed Medicaid for services provided by these home health aides; and

WHEREAS, New York State contends that it has certain civil claims against Friendly under the New York False Claims Act, N.Y. State Fin. Law §§ 189 et seq., other New York statutes and the common law, as specified in paragraph 8 below, for engaging in the following conduct during the Claims Period:

During the period January 1, 2006 through December 31, 2008, Friendly knowingly caused to be submitted claims to Medicaid to fiscal agents of the State of New York, and received payment thereon, for home health aide services purportedly provided by individuals who presented certificates from certain home

health aide training schools that falsely indicated satisfactory completion of a home health aide training course when such individuals had never received the required training or valid certification (the "Covered Conduct"); and

WHEREAS, Friendly is contemporaneously herewith entering into an agreement with the United States to resolve the United States' claims arising from the Covered Conduct (the "United States Agreement");

WHEREAS, this Agreement is neither an admission of facts or liability by Friendly, nor a concession by the State that its claims are not well founded; and

WHEREAS, to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties mutually desire to reach a full and final settlement pursuant to the terms and conditions set forth below.

#### **TERMS AND CONDITIONS**

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this Agreement, the Parties agree as follows:

1. Friendly agrees to pay to the United States and the State a total of Eight Hundred Fifty Thousand dollars (\$850,000.00) (the "Total Medicaid Settlement Amount").
2. From this amount, Friendly shall pay to the State the sum of Five Hundred Ten Thousand (\$510,000.00) (the "Friendly New York State Settlement Amount") plus interest on the Friendly New York State Settlement Amount at a rate of 1.5% from May 18, 2012 through the date of execution of this Agreement by Friendly. No later than five (5) days after the Effective Date of this Agreement, Friendly shall pay the Friendly New York State Settlement Amount plus interest in full by certified bank check made payable to "Medicaid Fraud Restitution."

3. Contingent upon the State receiving the Friendly New York State Settlement Amount as set forth in paragraph 2 above, within thirty (30) days after the State's receipt of such payment, the State agrees to pay Yannicelli a sum of money equal to fifteen percent (15%) of such payment. The State's obligation to pay Yannicelli pursuant to this paragraph is conditioned upon the State's actual receipt of the payment due from Friendly, as set forth in Paragraph 2. Such payment shall be made by check payable to Deborah Yannicelli and her counsel, the Law Offices of Timothy J. McInnis.

4. Under no circumstances shall the State have any liability to Yannicelli or Yannicelli's attorneys except as set forth in Paragraph 3. The State in no way promises or guarantees, nor is liable, to Yannicelli for the collection or payment of any funds pursuant to this Agreement or the payment of any relator's share, except as provided herein, for funds actually collected and received by the State. Under no circumstances shall the State be required to exercise any authority under this Agreement or any other power for the benefit of Yannicelli.

5. Subject to the exceptions in Paragraph 8 below (concerning excluded claims), in consideration of the obligations of Friendly set forth in this Agreement, conditioned upon payment in full by Friendly of the Friendly New York State Settlement Amount, and subject to Paragraph 23 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the State agrees to release Friendly and all of its current and former officers, directors and employees, attorneys, members, managers, or shareholders from any civil or administrative monetary claim arising from the Covered Conduct that the State has or may have against Friendly under the New York False Claims Act, N.Y. State Fin. Law §§ 189 et seq., Executive Law § 63(12), Social Services

Law § 145-b, or any other state law, or common law or equity, including equitable theories of payment by mistake, disgorgement, unjust enrichment, breach of contract and fraud.

6. Subject to the exceptions in Paragraph 8 below (concerning excluded claims), in consideration of the obligations of Friendly set forth in this Agreement, conditioned upon payment in full by Friendly of the Friendly New York State Settlement Amount, Yannicelli, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release Friendly and all of its current and former officers, directors, employees, attorneys, members, managers, or shareholders from any civil monetary claim the State has or may have for the Covered Conduct against Friendly under the New York False Claims Act, N.Y. State Fin Law §§ 189 et seq., provided, however, that Yannicelli's release does not release Friendly for any claims for attorneys' fees, expenses and costs under the New York False Claims Act, N.Y. State Fin. Law §190 (7).

7. Nothing in this Agreement shall be construed to limit the right of the New York State Department of Health (DOH) to take any action within the scope of its authority.

8. Notwithstanding any term of this Agreement, including the releases provided in Paragraphs 5-6 above, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are the following claims of the State:

- a. Any civil, criminal or administrative claims arising under New York Tax Law;
- b. Any criminal liability;
- c. Any administrative liability;
- d. Any liability to the State (or its agencies) for any conduct other than the Covered Conduct; and

e. Any liability based upon obligations created by this Agreement.

9. Friendly fully and finally releases the State, its agencies, current and former employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Friendly has asserted, could have asserted, or may assert in the future against the State, its agencies, current and former employees, servants, and agents, related to the matters covered by the Covered Conduct, the Yannicelli Action, the MFCU Investigation, any prosecution related thereto, and this Agreement.

10. Friendly fully and finally releases Yannicelli and her heirs, successors, attorneys, agents, and assigns from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Friendly has asserted, could have asserted, or may assert in the future against Yannicelli and her heirs, successors, attorneys, agents, and assigns related to the Yannicelli Action and Yannicelli's investigation and prosecution thereof.

11. Yannicelli and her heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to N.Y. State Fin. Law § 190(5)(b)(ii) and, Yannicelli, for herself and for her heirs, successors, attorneys, agents, and assigns, fully and finally releases, waives, and forever discharges the State, its officers, agents, and employees, from any claims arising from or relating to N.Y. State Fin. Law § 190, from any claims arising from the filing of the Yannicelli Action, from any other claims for a share of the Friendly New York State Settlement Amount, and in full settlement of any claims Yannicelli may have against the State under this Agreement. This Agreement does not resolve nor in any manner affect any claims that the State has or may have against Yannicelli arising under the State's tax laws and as otherwise specified in paragraph 8, or any claims arising under this Agreement.

12. In the event that Friendly fails to pay any or all of the Friendly New York State Settlement Amount when due, as set forth in Paragraph 2 above, Friendly hereby agrees not to offer or accept an offer to sell all or any part of its business operations without giving thirty (30) days prior notice to the Attorney General, who, in his sole discretion, may require a security mechanism to ensure payments due under this Agreement. Should all or any portion of Friendly's business be sold on or before full payment to the State of the Friendly New York State Settlement Amount pursuant to Paragraph 2 above, payment of the Friendly New York State Settlement Amount shall be accelerated and shall be paid upon closing of such sale. Further, no current or former officer, director, employee, member, manager or shareholder of Friendly may accept or receive any remuneration or consideration relating to any such sale, including, but not limited to, any portion of the proceeds of such sale, directly or indirectly, until the Friendly New York State Settlement Amount is paid in full.

13. In the event that Friendly fails to pay any or all of the Friendly New York State Settlement Amount when due, as set forth in Paragraph 2 above, the State will provide written notice of the default to be sent by first-class mail to the undersigned attorney for Friendly. In the event of default, the Friendly New York State Settlement Amount shall be immediately due and payable, and interest shall accrue at the rate of 4.5% per annum compounded daily on the remaining unpaid principal balance, beginning seven (7) business days after delivery of the notice of default. If the Friendly New York State Settlement Amount, with all accrued interest, is not paid in full within seven (7) business days after delivery of the notice of default, the State, at its option, may:

- a. Rescind this Agreement and reinstate the Complaint;
- b. Seek specific performance of the Agreement; or

c. Exercise any other rights granted by law, or under the terms of this Agreement, or recognizable at common law or in equity.

14. In the event that the State seeks remedies for collection or enforcement of Friendly's obligations hereunder, and the State substantially prevails in its collection or enforcement action, Friendly shall be responsible for all costs and expenses incurred by the State in connection with that action.

15. In the event the State opts to rescind this Agreement pursuant to paragraph 13 (a), Friendly expressly agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that relate to the Covered Conduct, except to the extent such defense was available on November 5, 2007.

16. In the event the State reinstates an action concerning the Covered Conduct, Friendly further waives and will not assert any defenses it may have to any action relating to the Covered Conduct to the extent that such defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the United States Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, this Agreement bars a remedy sought in such action.

17. Friendly agrees that this Agreement is not punitive in purpose or effect.

18. Friendly agrees that all costs incurred by or on behalf of itself and any associated person or entity in connection with (1) the MFCU Investigation; (2) Friendly's investigation and defense of this matter (including attorney's fees and expenses); (3) the negotiation and performance of this Agreement; (4) the payment pursuant to this Agreement; and (5) preparing and submitting any reports required under this Agreement, are unallowable costs on government



contracts and under the Medicaid Program. Friendly will not charge such unallowable costs directly or indirectly to the Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by any Medicaid Provider to the Medicaid Program.

19. This Agreement is intended to be for the benefit of the Parties to this Agreement only, and by this instrument the Parties to this Agreement do not release any claims against any other person or entity, including without limitations CHHAs, except as expressly provided by this Agreement.

20. Friendly agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

21. Friendly shall maintain custody of, or make arrangements to have maintained, all documents and records related to the Covered Conduct for a period of six years after completion of the payment of the Friendly New York State Settlement Amount or the period required by 18 N.Y.C.R.R. § 504.3 and any applicable provider manual, whichever is later.

22. Friendly expressly warrants that it has reviewed its own financial situation and that it is currently solvent within the meaning of 11 U.S.C. § 547(b)(3), and that it currently believes it will remain solvent following its payment of the Friendly New York State Settlement Amount. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Friendly, within the meaning of 11 U.S.C. § 547(c) (1) and; (b) have concluded that these mutual promises,

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

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

- a. Friendly shall provide the MFCU Special Deputy Attorney General immediate notice by hand delivery, express courier followed by postage prepaid mail at the address contained in paragraph herein.
- b. Payment of the Friendly New York State Settlement Amount shall be accelerated and the full amount deemed due and owing.
- c. Friendly's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Friendly will not argue or otherwise take the position in any such case, proceeding or other action that: (i) its obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Friendly was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payments made to the State hereunder; or (iii) the mutual promises,

covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Friendly.

- d. If any of Friendly's obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action or proceeding against Friendly for the claims that would otherwise be covered by the releases provided in Paragraphs 5-6, above. Friendly agrees that (i) any such claims, actions or proceedings brought by the State (including any proceedings to exclude Friendly from participation in Medicaid) or Yannicelli are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and Friendly shall not argue or otherwise contend that the State's claims, actions, or proceedings are subject to an automatic stay; (ii) Friendly shall not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceedings which are brought by the State within thirty (30) calendar days of written notification to Friendly that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the date the earliest complaint against such defendant in the Yannicelli Action was filed; and (iii) the State has a valid secured claim against Friendly in the amount of \$510,000.00, and the State may pursue its claims in the case, action

or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

- e. Friendly acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

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

25. This Agreement is governed by the laws of New York State without regard to choice of law or conflict of laws principles. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement, including any dispute regarding Friendly's payment of Yannicelli's attorney's fees, expenses, and costs, will be the United States District Court for the Eastern District of New York. The State does not waive any objection it may have that a claim against Friendly for payment by the State is properly vested in the New York State Court of Claims.

26. Any failure by the State to insist upon the strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the State, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

27. If any part of this Agreement shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction other than payment of the Total Medicaid Amount or the Friendly New York State Settlement Amount, such invalidity or unenforceability shall not affect the remainder of this Agreement, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

28. The terms of this Agreement shall remain effective notwithstanding the death or incapacity of any person, or any appeal, collateral attack, or any challenge to any criminal charge, conviction, plea or sentencing of any person, including but not limited, to the reversal, modification, or dismissal of all or any portion of such charge, conviction, plea or sentence, or the charging, conviction, plea or sentencing of any other person.

29. This Agreement constitutes the complete agreement between the Parties with respect to the Covered Conduct only. This Agreement may not be amended, changed, modified or waived except in writing signed by the Party or Parties affected by said amendment, change or modification.

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

31. Yannicelli acknowledges and represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever, and that the Relator has entered into this Agreement upon due deliberation with the advice of counsel.

32. The undersigned individuals signing this Agreement on behalf of Friendly and Yannicelli represent and warrant that they are authorized, respectively, by Friendly and Yannicelli, to execute this Agreement. The undersigned Special Deputy Attorney General represents that she is signing this Agreement in her official capacity and that she is authorized to execute this Agreement.

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

34. The captions in this Agreement are provided for reference only and are not

operative terms of this Agreement.

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

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

37. Friendly agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects Friendly's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the State is not a party.

38. Pursuant to paragraph 14 of the United States Agreement, and after receipt of the Friendly New York State Settlement Amount described in Paragraph 2 above, the State, the United States and Yannicelli shall file a Joint Notice of Dismissal pursuant to Fed. R. Civ. P. 41(a) (i) dismissing their claims for the Covered Conduct in the Yannicelli Action against Friendly with prejudice as to the State, United States and Yannicelli, and (ii) dismissing all remaining allegations against Friendly without prejudice as to the State and United States and with prejudice as to Yannicelli.

39. Any notices pursuant to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery, express courier, followed by postage prepaid mail, and shall be addressed as follows:

**IF TO THE ATTORNEY GENERAL and the STATE:**

New York State Attorney General  
Medicaid Fraud Control Unit  
Attn: Special Deputy Attorney General, Civil Enforcement Division  
120 Broadway  
New York, New York 10271

**IF TO FRIENDLY:**

Jerome Levy, Esq.  
Duane Morris  
1540 Broadway  
New York, NY 10036-4086

**IF TO YANNICELLI:**


Timothy J. McInnis, Esq.  
Law Office of Timothy J. McInnis  
521 5<sup>th</sup> Avenue, Suite 1700  
New York, NY 10175-0038

THE STATE OF NEW YORK

ERIC T. SCHNEIDERMAN  
Attorney General of the  
State of New York

DATED: <sup>NOV.</sup> ~~October~~ 14, 2012

By:



\_\_\_\_\_  
Monica Hickey-Martin  
Special Deputy Attorney General  
Medicaid Fraud Control Unit  
120 Broadway - 13th Floor  
New York, NY 10271  
Telephone: (212) 417-5261  
Facsimile: (212) 417-5335



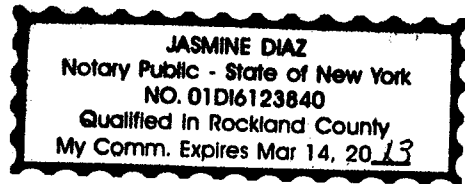
FRIENDLY HOME CARE, INC.

DATED: ~~October~~ <sup>November</sup> \_\_, 2012

By: [Signature]  
Owner  
Friendly Home Care, Inc.

Subscribed and sworn to before me this  
12<sup>th</sup> day of November, 2012.

[Signature]  
Notary Public



My commission expires: \_\_\_\_\_

DATED: ~~October~~ <sup>November 12</sup> \_\_, 2012

By: [Signature]  
Jerome Levy, Esq.  
Duane Morris  
1540 Broadway  
New York, NY 10036-4086  
Counsel for Friendly Home Care, Inc.  
Telephone: (212) 692-1013  
Facsimile: (212) 202-7596

**RELATOR DEBORAH YANNICELLI**

DATED: October 9<sup>th</sup>, 2012

By: *Deborah Yannicelli*  
Deborah Yannicelli  
Relator

Subscribed and sworn to before me this  
9<sup>th</sup> day of OCTOBER, 2012.

TIMOTHY J. McINNIS  
Notary Public

TIMOTHY J. McINNIS, ESQ.  
Notary Public, State of New York  
No. 02MC6094226  
Qualified in Queens County  
Commission Expires December 68, 2013

My commission expires: 12/6/2013

DATED: October 9, 2012

By: *TJ McInnis*  
Timothy J. McInnis, Esq.  
Law Office of Timothy J. McInnis  
521 5<sup>th</sup> Avenue, Suite 1700  
New York, NY 10175-0038  
Counsel for the Relator  
Telephone: (212) 292-4573  
Facsimile: (212) 292-4574

DATED: October \_\_, 2012

By: \_\_\_\_\_  
Mike Bothwell, Esq.  
Bothwell, Bracker & Vann  
304 Macy Drive  
Roswell, GA 30076  
Counsel for the Relator  
Telephone: (678) 578-7462  
Facsimile: (678) 578-7472

**RELATOR DEBORAH YANNICELLI**

DATED: October \_\_, 2012

By: \_\_\_\_\_  
Deborah Yannicelli  
Relator

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2012.

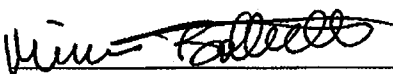
\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

DATED: October \_\_, 2012

By: \_\_\_\_\_  
Timothy J. McInnis, Esq.  
Law Office of Timothy J. McInnis  
521 5<sup>th</sup> Avenue, Suite 1700  
New York, NY 10175-0038  
Counsel for the Relator  
Telephone: (212) 292-4573  
Facsimile: (212) 292-4574

DATED: October 9, 2012

By:   
Mike Bothwell, Esq.  
Bothwell, Bracker & Vann  
304 Macy Drive  
Roswell, GA 30076  
Counsel for the Relator  
Telephone: (678) 578-7462  
Facsimile: (678) 578-7472