

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General of the United States Department of Health and Human Services (“OIG-HHS”) (collectively the “United States”); Deborah Yannicelli (“Yannicelli” or “relator”); and Excellent Home Care Services, LLC (“Excellent”) (hereinafter referred to collectively as “the Parties”), through their authorized representatives.

### II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Excellent, a New York limited liability company, is a Certified Home Health Agency (“CHHA”) as defined in Article 36 of the New York Public Health Law Section 3602(3), with its principal place of business located at located at 91-93 S. 3<sup>rd</sup> Street, Brooklyn, New York. Excellent provides home health aide services and nursing services in New York.

B. Relator Deborah Yannicelli is an individual resident of the State of New York. On November 5, 2007, Yannicelli filed a complaint against Excellent Home Care Services, LLC, *et al.* under the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3730(b)-(h) and the New York State False Claims Act, N.Y. Fin. Law § 190(6), in the United States District Court for the Eastern District of New York captioned United States of America and the State of New York ex rel. Jane Doe v. Excellent Home Care Services, LLC, et al., (Civil Action No. 07-4621) (Block, J.) (the “Civil Action”).

C. The United States contends that the owners of two home health aide training schools – Small’s Training and Counseling School and On Time Home Care Agency (hereafter referred to collectively as the “Training Schools”) – furnished to certain individuals false certificates that certified that those individuals were qualified to provide home health aide services to New York Medicaid recipients when, in fact, the individuals had never received the required training or valid certification, and therefore such services were not reimbursable by New York Medicaid.

D. New York State licenses two types of home health agencies – licensed and certified. Licensed Home Care Services Agencies (“LHCSAs”), as defined in Article 36 of the New York Public Health Law Section 3602(13), are licensed by the New York State Department of Health (“DOH”) under New York Public Health Law Section 3605 and provide directly, or through contract arrangement, nursing services, home health aide services, or personal care services. CHHAs are licensed by DOH under New York Public Health Law Section 3608. CHHAs are required to provide, directly or through contract arrangement, nursing services and home health aide services, and at least one other related service, including, but not limited to, physical therapy, occupational therapy, speech pathology, nutritional services and medical social services. New York Public Health Law Section 3602(3). CHHAs are qualified to participate as home health agencies in the Medicare and New York Medicaid programs under the provisions of Titles XVIII and XIX of the Social Security Act and may submit claims to the Medicare and New York Medicaid programs for their services. 42 U.S.C. §§1395x(m),1395x(o), 1395bbb and 42 U.S.C. §§1396(a). However, New York State law, N.Y. Pub. Health Law §3614(1), limits

reimbursement by New York Medicaid for services provided by a home care services agency to those agencies with a valid certificate of approval, namely, CHHAs. Thus, LHCSAs may not bill New York Medicaid directly for home health services provided to Medicaid beneficiaries and may not receive a home health provider number for billing Medicare. 42 U.S.C. §§1395(o), 42 C.F.R. §§409.41, 440.2(b), 440.70 and 484.12. CHHAs, however, may bill Medicare and New York Medicaid for services provided by LHCSA personnel to the CHHA under contract arrangement. N.Y. Pub. Health Law §3614(1).

E. As part of its business as a CHHA, Excellent enters into contracts with LHCSAs to provide Excellent with home health aides to provide services to Excellent's patients under Excellent's supervision.

F. At various times between November 12, 2004 and December 31, 2007, LHCSAs provided home health aides to Excellent under terms of contracts that each firm entered into with Excellent.

G. Under the terms of its contracts with each of the LHCSAs, Excellent would contact a LHCSA to request one or more qualified home health aide(s) for specific assignment(s) to perform designated professional or paraprofessional services. As the contracts were non-exclusive, Excellent reserved the right to contract with other vendors for home health aides as well.

H. The home health aides assigned by the LHCSAs to Excellent were frequently assigned to work with New York Medicaid beneficiaries and/or Medicare beneficiaries.

I. Each CHHA that bills New York Medicaid and/or Medicare is required to

determine whether each of the home health aides for whom it bills New York Medicaid and/or Medicare meets the requirements of the New York Medicaid and Medicare programs with regard to, *inter alia*, each aide's training and qualifications. This requirement applies to home health aides that the CHHA contracts with LHCSAs to provide as well as to aides employed directly by the CHHA. 42 C.F.R. §§440.70(a)(2) & (d), 484.4, and 484.36(b)(1) and (d)(4).

J. Under the terms of their contracts with Excellent, the LHCSAs were required to supply Excellent with home health aides who met the CHHA training and competency evaluation requirements specified in the New York State Health and Hospital Code and the Code of Federal Regulations, and/or any other relevant provisions of state and federal statutes and regulations, and the policies and procedures of the CHHA. This obligation included verification that each aide met the minimum training requirements for home health aides established by the DOH.

K. Under the terms of their contracts with Excellent, the LHCSAs were required, prior to placing an aide with Excellent, to obtain documentation of the aide's qualifications, including, but not limited to, documentation of compliance with training and evaluation requirements and records of certification. This pre-placement documentation had to be made available to Excellent upon request. Under the terms of its contracts with each LHCSA, Excellent retained "the right to approve or disapprove, at its sole discretion, the assignment of any personnel to its patient(s)."

L. The contracts further required the LHCSAs to maintain complete personnel records for each aide assigned to Excellent, which files had to meet all state and federal

requirements and be made available to Excellent and any authorized governmental or accrediting agency upon request.

M. Under the terms of the LHCSAs' contracts with Excellent, every aide supplied by a LHCSA to Excellent worked under the professional supervision of Excellent's registered nurses or other professional supervisory personnel.

N. The United States contends that from November 12, 2004 through December 31, 2007 Excellent submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§1395-1395hhh, and the New York Medical Assistance Program ("Medicaid"), Title XIX of the Social Security Act, 42 U.S.C. §§1396-1396v, for home health aide services provided through contract arrangement by home health aides employed by the LHCSAs.

O. The United States contends that it has certain civil claims, as specified in Paragraph 5 below, against Excellent for engaging in the following conduct during the period from November 12, 2004 through December 31, 2007:

a) Excellent knowingly – as defined in 31 U.S.C. § 3729(b) -- submitted or caused to be submitted false claims to New York Medicaid, and received payment thereon, for home health aide services provided under contract arrangement by individuals who were actually or purportedly employed by the LHCSAs and who presented certificates from the Training Schools that falsely indicated satisfactory completion of a home health aide training course when, in fact, such individuals had never received the required training or valid certification;

b) Excellent knowingly – as defined in 31 U.S.C. § 3729(b) -- submitted or

caused to be submitted false claims to Medicare for reimbursement for home health aide services not rendered for the claims listed on Attachment A hereto;

(collectively, the contentions of the United States set forth in paragraphs O a) and b) are hereafter referred to as the "Covered Conduct").

P. The United States also contends that it has certain administrative claims, as specified in Paragraph 5 below, against Excellent for engaging in the Covered Conduct.

Q. This Agreement is neither an admission of the truth of the allegations of the United States nor of liability by Excellent nor a concession by the United States that its claims are not well founded.

R. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions set forth below.

### **III. TERMS AND CONDITIONS**

1. Excellent shall pay the United States the sum of One Million Five Hundred Seventeen Thousand Dollars (\$1,517,000) ("Settlement Amount") for the Covered Conduct. Payment to the United States shall be made as follows:

a) Excellent authorizes the State of New York Office of the Attorney General's Medicaid Fraud Unit ("MFCU") to distribute to the United States One Million Four Hundred Ninety-two Thousand Dollars (\$1,492,000) from withheld Medicaid reimbursement claims due to Excellent under an existing DOH administrative claims withholding procedure. The One Million Four Hundred Ninety-two Thousand Dollars (\$1,492,000) in DOH withheld

funds already have been transferred to MFCU by DOH. The payment on Excellent's behalf shall be made to the United States by the MFCU of One Million Four Hundred Ninety-two Thousand Dollars (\$1,492,000) by electronic funds transfer, in accordance with instructions to be provided by the Office of the United States Attorney for the Eastern District of New York, no later than five (5) business days from the Effective Date of this Agreement.

b) Excellent shall pay the remaining balance of Twenty-Five Thousand Dollars (\$25,000) by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of New York, by the later of five (5) business days from the Effective Date of this Agreement or five (5) business days from Excellent's receipt of written instructions.

2. Contingent upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States, pursuant to 31 U.S.C. §3730(d), agrees to pay relator Yannicelli Three Hundred and Three Thousand Four Hundred Dollars (\$303,400) in settlement of her claims against the United States for a relator's share. Payment shall be made by electronic funds transfer. The United States in no way promises or guarantees, nor is liable, to relator 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 United States.

3. Excellent shall pay counsel for relator Yannicelli the sum of Fifty Thousand Dollars (\$50,000) in full satisfaction of relator's claim for statutory fees and costs pursuant to 31 U.S.C. § 3730(d)(1) and (h), and New York False Claims Act §§ 189.3, 190.7 and 191.1(e). The payment shall be made by electronic funds transfer pursuant to written instructions provided by counsel for Yannicelli, Mike Bothwell, Esq., by the later of ten (10) business days from the

Effective Date of this Agreement or ten (10) business days from Excellent's receipt of written instructions.

4. Excellent shall pay counsel for relator Yannicelli on her behalf the sum of Fifty Thousand Dollars (\$50,000), in full settlement of her claim against it for liability and damages under 31 U.S.C. § 3730(h) and New York False Claims Act §191.1. The payment shall be made by electronic funds transfer pursuant to written instructions provided by counsel for Yannicelli, Mike Bothwell, Esq., by the later of ten (10) business days from the Effective Date of this Agreement or ten (10) business days from Excellent's receipt of written instructions.

5. Subject to the exceptions in Paragraph 8 (concerning excluded claims), in consideration of the obligations of Excellent set forth in this Agreement, conditioned upon payment in full by Excellent of the Settlement Amount, and, subject to Paragraph 19 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Excellent and all of its current and former officers, directors, employees and shareholders from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§3729-3733, the Civil Monetary Penalties Law, 42 U.S.C. §1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

6. Subject to the exceptions in Paragraph 8 (concerning excluded claims), in consideration of the obligations of Excellent in this Agreement, conditioned upon payment in full by Excellent of the Settlement Amount, as outlined in Paragraph 1 above, and subject to Paragraph 19, below (concerning bankruptcy proceedings commenced within 91 days of the



Effective Date of this Agreement or any payment made under this Agreement), relator Yannicelli, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release Excellent and all of its current and former officers, directors, employees and shareholders from any civil monetary claim the United States has or may have for the Covered Conduct against Excellent under the False Claims Act, 31 U.S.C. §§3729-3733.

7. In consideration of the obligations of Excellent in this Agreement and the Corporate Integrity Agreement ("CIA") entered into between Excellent and the Office of the Medicaid Inspector General of the State of New York ("OMIG") in December 2009, conditioned upon Excellent's full payment of the Settlement Amount, and subject to Paragraph 19 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. §1320a-7b(f)) against Excellent under 42 U.S.C. §1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. §1320a-7(b)(7)(permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 8 (concerning excluded claims), below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Excellent from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. §1320a-7(a)(mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct or practices, for which claims have been reserved in Paragraph 8 (concerning excluded claims).

8. Notwithstanding any term of this Agreement, specifically reserved and

excluded from the scope and terms of this Agreement as to any entity or person (including Excellent and Relator Yannicelli) are the following claims of the United States:

- a) Any civil, criminal or administrative liability arising under the Internal Revenue Code, Title 26 of the United State Code;
- b) Any criminal liability;
- c) Any civil, criminal, or administrative liability of individuals (including current or former officers, directors, employees, or shareholders of Excellent) who have received or receive in the future written notification from either the Attorney General of the State of New York or the United States Attorney for the Eastern District of New York that they are the target of a criminal investigation, or who have been or are in the future indicted, charged, convicted, or who have entered or enter into in the future a criminal plea agreement related to the Covered Conduct;
- d) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- e) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- f) Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and
- g) Any liability based upon such obligations as are created by this Agreement.

9. Relator 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 31 U.S.C. § 3730(c)(2)(B). Conditioned upon receipt of the relator's share described in Paragraph 2, Yannicelli, for herself individually, and for her heirs, successors, attorneys, agents, and assigns, fully and finally releases, waives, and forever discharges the United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. §3730 against Excellent; from any claims arising from the filing of the Civil Action against Excellent; from any other claims for a share of the Settlement Amount; and in full settlement of any claims Yannicelli may have against the United States under this Agreement. This Agreement does not resolve or in any manner affect any claims that the United States has or may have against Yannicelli arising under the Internal Revenue Code, or any claims arising under this Agreement.

10. Subject to the exceptions in Paragraph 8 (concerning excluded claims), in consideration of the obligations of Excellent in this Agreement, conditioned upon receipt of the payments described in Paragraphs 2, 3 and 4 of this Agreement, and subject to Paragraph 19 (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), relator Yannicelli, for herself individually, and for her heirs, successors, attorneys, agents, and assigns, agrees to release Excellent and all of its current and former officers, directors, employees and shareholders from any liability to Yannicelli arising from the filing of the Civil Action, from any liability under 31 U.S.C. §3730(d) and (h) and New York False Claims Act §§189.3, 190.7 and 191.1(e) for expenses or attorney's fees and costs, and from any liability under 31 U.S.C. §3730(h) and New York False Claims Act §191.1 for retaliatory discharge.

11. Excellent waives and shall not assert any defenses that it may have to any criminal prosecution or any administrative action relating to the Covered Conduct that 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 criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of the Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Code, Title 26 of the United States Code.

12. Excellent fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Excellent has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the matters covered by the Civil Action, and the United States' investigation and prosecution thereof.

13. Excellent fully and finally releases Relator Yannicelli, her heirs, successors, attorneys, agents, and assigns from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Excellent has asserted, could have asserted, or may assert in the future against Relator Yannicelli, her heirs, successors, attorneys, agents, and assigns related to the Civil Action and Yannicelli's investigation and prosecution thereof. In addition, Excellent agrees to release relator Yannicelli from all liability, damages and attorney's fees and costs arising from her claims against it under 31 U.S.C. § 3730(h) and New York False Claims Act §191.1, as described in Paragraph 4 above.

14. Excellent agrees to the following:

- a. Unallowable Costs Defined: that all costs (as defined in Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Excellent, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be “Unallowable Costs” on government contracts and under the Medicare Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (collectively, “the federal programs”) and any Medicaid Program (“the State programs”):
- (1) the matters covered by this Agreement;
  - (2) the United States’ and the State’s audits and civil and criminal investigations of the matters covered by this Agreement;
  - (3) Excellent’s investigation, defense, and corrective actions undertaken in response to the United States’ and the State’s audits and civil and criminal investigations in connection with the matters covered by this Agreement (including attorney’s fees);
  - (4) the negotiation and performance of this Agreement;
  - (5) the payments made by Excellent to the United States and Relator Yannicelli and her counsel pursuant to this Agreement and to the State relating to the Covered Conduct;
  - (6) the negotiation of, and obligations undertaken pursuant to the CIA

entered into between Excellent and the OMIG to:

- (I) retain an independent review organization to perform annual reviews as described in Section 6 of the CIA; and
- (ii) prepare and submit reports to the OMIG.

However, nothing in this Paragraph 14 that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Excellent. (All costs described or set forth in this Paragraph 14 are hereafter "Unallowable Costs.")

- b. Future Treatment of Unallowable Costs: These Unallowable Costs shall be separately determined and accounted for in non-reimbursable cost centers by Excellent, and Excellent shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Excellent or its subsidiaries or affiliates to the federal or State programs.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Excellent further agrees that within 90 days of the Effective Date of this Agreement that it shall identify to applicable Medicare Administrative Contractors (MACs), carriers and/or fiscal intermediaries, TRICARE fiscal intermediaries, carriers, and/or contractors, and any Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United

States, or any state Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Excellent or its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Excellent agrees that the United States and the State of New York, at a minimum, shall be entitled to recoup from it any overpayment plus applicable interest and penalties, if any, as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due to the federal programs after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. Any payments due to the State of New York Medicaid program after the adjustments have been made shall be paid to DOH pursuant to the direction of the MFCU and/or DOH. The United States reserves its rights to disagree with any calculations submitted by Excellent or its subsidiaries or affiliates on the effect of the inclusion of Unallowable Costs (as defined in this Paragraph) on Excellent's or its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine the books and records of Excellent to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

15. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or New York Medicaid or any other state payer, related to the Covered Conduct; and Excellent agrees not to resubmit to any Medicare carrier or intermediary or New York Medicaid or any other state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

16. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except as expressly provided for in Paragraph 17 (waiver of beneficiaries), below.

17. Excellent agrees that it will not seek payment for any 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 the Covered Conduct.

18. Excellent expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following its payment to the United States of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants and obligations set forth constitute a contemporaneous exchange for new value given to Excellent, 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 Excellent was or became indebted to on or after the date of these transfers, all within the meaning of 11 U.S.C. § 548(a)(1).

19. If, within ninety-one (91) days of the Effective Date of this Agreement or of any payment made under this Agreement, Excellent 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 Excellent's debts, or seeking to adjudicate Excellent as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Excellent or for all or any substantial part of its assets, Excellent agrees as follows:

a) Excellent's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Excellent will not argue or otherwise take the position in any such case, proceeding or other action that: (I) Excellent's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Excellent was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payments made to the United States 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 Excellent.

b) If Excellent'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 United States, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action or proceeding against Excellent for the claims that would otherwise be covered by the releases provided in Paragraphs 5 and 7 above. Excellent agrees that (I) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude Excellent from participation in Medicare,

any Medicaid program, or other Federal health care programs) 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 Excellent shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Excellent 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 that are brought by the United States within thirty (30) calendar days of written notification to Excellent that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on November 5, 2007; and (iii) the United States has a valid claim against Excellent in the amount of Two Million, Two Hundred Seventy-Five Thousand, Five Hundred Dollars (\$2,275,500), and the United States 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.

c) Excellent acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

20. Within thirty (30) days of receipt of the payment described in Paragraph 1, above, the United States shall file its Notice of Intervention and the United States and Yannicelli shall file a Joint Notice of Dismissal pursuant to Fed. R. Civ. P. 41(a)(1) dismissing their claims for the Covered Conduct in the Civil Action against Excellent with prejudice as to the United States and Yannicelli, and dismissing all remaining allegations against Excellent without prejudice as to the United States and with prejudice as to Yannicelli. In addition, relator agrees to dismiss with prejudice her claims against Excellent under 31 U.S.C. § 3730(h) and New York False Claims Act §191.1, as described in Paragraph 4 above.

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

22. Excellent 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.

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

24. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Eastern District of New York.

25. 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.

26. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Party or Parties affected.

27. The individuals signing this Agreement on behalf of Excellent and Yannicelli represent and warrant that they are authorized, respectively, by Excellent and Yannicelli to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

29. This Agreement is binding on Excellent's successors, transferees, heirs, and assigns.

30. This Agreement is binding on Relator Yannicelli's successors, transferees, heirs, and assigns.


31. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

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

**THE UNITED STATES OF AMERICA**

BENTON J. CAMPBELL  
United States Attorney  
Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201

DATED: 12/17/09

BY:   
Assistant U.S. Attorney Erin Argo

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Marie V. Bonkowski  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice  
P.O. Box 261 Ben Franklin Station  
Washington, D.C. 20044

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
GREGORY E. DEMSKE  
Assistant Inspector General for  
Legal Affairs  
Office of Counsel to the  
Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

**THE UNITED STATES OF AMERICA**

BENTON J. CAMPBELL  
United States Attorney  
Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Assistant U.S. Attorney Erin Argo

DATED: 12/17/09

BY: Marie V. Bonkowski  
Marie V. Bonkowski  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice  
P.O. Box 261 Ben Franklin Station  
Washington, D.C. 20044

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
GREGORY E. DEMSKE  
Assistant Inspector General for  
Legal Affairs  
Office of Counsel to the  
Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

THE UNITED STATES OF AMERICA

BENTON J. CAMPBELL  
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Brooklyn, New York 11201


DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Assistant U.S. Attorney Erin Argo


DATED: \_\_\_\_\_

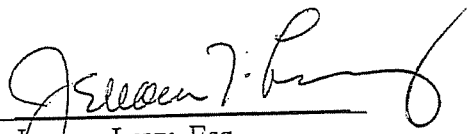
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Washington, D.C. 20044

DATED: 12/16/09

BY:   
GREGORY E. DEMSKE  
Assistant Inspector General for  
Legal Affairs  
Office of Counsel to the  
Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

**EXCELLENT HOME CARE SERVICES, LLC**

DATED: December 15, 2009 BY:   
Ben Landa  
Managing Member

DATED: December 15, 2009 BY:   
Jerome Levy, Esq.  
Duane Morris LLP  
1540 Broadway  
New York, N.Y. 10036-4086  
  
Counsel for Excellent Home Care  
Services, LLC



RELATOR DEBORAH YANNICELLI

DATED: December 15, 2009

BY: Deborah Yannicelli  
Deborah Yannicelli

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Timothy J. McInnis, Esq.  
Law Office of Timothy J. McInnis  
521 5<sup>th</sup> Avenue, Suite 1700  
New York, N.Y. 10175-0038

Counsel for Relator

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Mike Bothwell, Esq.  
Bothwell, Bracker & Vann  
304 Macy Drive  
Roswell, Georgia 30076

Counsel for Relator

**RELATOR DEBORAH YANNICELLI**

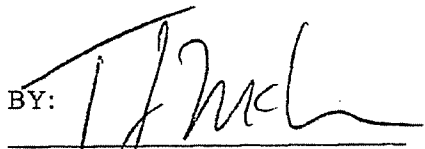
DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Deborah Yannicelli

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Timothy J. McInnis, Esq.  
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304 Macy Drive  
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Deborah Yannicelli

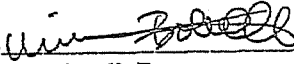
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Mike Bothwell, Esq.  
Bothwell, Bracker & Vann  
304 Macy Drive  
Roswell, Georgia 30076

Counsel for Relator

Attachment A  
Medicare Claims for Home Health Aide Services Not Rendered

U.S.- Excellent  
Settlement Agreement

Medicare DCN	CHHA	LHCSA
20612200405902	Excellent	NP
20620017222904	Excellent	NP
20713401517302	Excellent	NP
20715502404702	Excellent	NP
20715502404802	Excellent	NP