UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-23601

CIV - HUCK

UNITED STATES OF AMERICA,

Plaintiff,

v.

KAREN KALLEN-ZURY,

Defendant.

FILED UNDER SEAL

MAGISTRATE JUDGE
BANDSTRA

UNITED STATES' *EX PARTE* COMPLAINT FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND PERMANENT INJUNCTION

Plaintiff, the United States of America, by and through the undersigned attorneys, hereby alleges as follows:

JURISDICTION AND VENUE

1. The United States brings this action for a temporary restraining order, preliminary and permanent injunction, and other equitable relief pursuant to 18 U.S.C. § 1345.

2. This Court has subject matter jurisdiction over this action pursuant to 18 U.S.C. § 1345, and 28 U.S.C. §§ 1331 and 1345.

3. This Court has personal jurisdiction over Defendant and venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1391(c) because Defendant resides in this District or transacts business in this District and Defendant's actions that gave rise to this case occurred in this District.

PARTIES

4. Plaintiff is the United States of America. At all times material to this action, the Department of Health and Human Services ("HHS") was an agency and instrumentality of the United States, and the Centers for Medicare and Medicaid Services ("CMS") was the component agency of HHS that administers and supervises the Health Insurance Program for the Aged and Disabled established by Title XVIII of the Social Security Act ("Act"), 42 U.S.C. §§ 1395 *et seq.* ("Medicare").

5. Defendant KALLEN-ZURY is a resident of Broward County, Florida. At all times relevant to this Complaint, KALLEN-ZURY has been the Chief Executive Officer of Hollywood Pavilion, LLC, a Florida corporation headquartered in Hollywood, Florida, that purports to offer both in-patient and outpatient psychiatric treatment.

A. The Medicare Program

6. Medicare is a federally funded and administered health insurance program for certain groups, primarily elderly and disabled persons. The Medicare program is divided into several "parts." Among other services, "Part A" covers in-patient psychiatric hospitalization and "Part B" covers outpatient psychiatric treatment. In the Southern District of Florida, CMS has contracted with First Coast Service Options ("FCSO") to process and pay all Part A and Part B claims, including those related to in-patient and outpatient psychiatric services.

7. In order to be eligible to receive payment under the Medicare program, a healthcare provider must submit an enrollment application, which provides, in part:

> I agree to abide by the Medicare laws, regulations, and program instructions that apply to [me] . . . . I understand that payment of a claim by Medicare is conditioned upon the claims and the underlying transaction complying with such laws, regulations and program instructions (including, but not limited to the Federal anti-kickback statute and the Stark law), and on the

> [provider's] compliance with all applicable conditions of participation in Medicare.

See 42 U.S.C. § 1395cc; CMS Form 855A (07/11).

8. In addition to an enrollment application, psychiatric hospitals must also submit annual cost reports, which include the following notice:

> Misrepresentation or falsification of any information contained in this cost report may be punishable by criminal, civil and administrative action, fine and/or imprisonment under federal law. Furthermore, if services identified in this report were provided or procured through the payment directly or indirectly of a kickback or were otherwise illegal, criminal, civil and administrative action, fines and/or imprisonment may result.

See CMS Form 2552-96. As part of the cost report, the responsible provider official or administrator must certify, in pertinent part:

> . . . to the best of my knowledge and belief, it [the cost report] is a true, correct and complete report prepared from the books and records of the provider in accordance with applicable instructions, except as noted.
>
> I further certify that I am familiar with the laws and regulations regarding the provision of health care services, and that the services identified in this cost report were provided in compliance with such laws and regulations.

See id.

9. In addition, when a provider submits or causes to be submitted a claim to Medicare, the provider certifies that the contents of the claim are correct and complete. See, e.g., CMS Form UB-92, HCFA 1450.

B. The Kickback Scheme

10. The federal Anti-Kickback Statute ("AKS") proscribes any remuneration given in exchange for referring an individual for healthcare services in the context of Federal health care programs. 42 U.S.C. § 1320a-7b(b). Specifically, the AKS prohibits:

> (1) . . . . knowingly and willfully solicit[ing] or receiv[ing] any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—

> (a) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program.

Id. When a provider submits claims to a federal healthcare program, the provider makes an implied representation that the claims are being submitted in compliance with the AKS. *United States ex rel. McNutt v. Haleyville Med. Supplies, Inc.*, 423 F.3d 1256, 1259-60 (11th Cir. 2005). Thus, when an entity knowingly submits or causes the submission of claims resulting from an illegal remunerative arrangement, it has presented or caused the submission of a false or fraudulent claim to the United States in violation of the FCA.

11. In this case, Hollywood Pavilion, through KALLEN-ZURY and others, paid kickbacks and bribes to individuals ("Patient Brokers") to obtain Medicare patients. KALLEN-ZURY and others at Hollywood Pavilion created false, fictitious, and phony contracts with these Patient Brokers in order to make the relationship appear legitimate. The contracts purported to require the Patient Brokers to provide marketing or case management services. However, the payments to the Patient Brokers were not for legitimate marketing or case management services, but for the referral of Medicare beneficiaries to Hollywood Pavilion.

12. KALLEN-ZURY and others at Hollywood Pavilion also instructed the Patient Brokers to create false, fictitious, and phony invoices for services that were not rendered in order to make the relationship appear legitimate. The Patient Brokers faxed these invoices to the attention of KALLEN-ZURY and others. Many of the invoices – for different months of the year – were substantively identical. In some cases, the invoices state that Patient Brokers were allegedly working 20 to 23 hours per day on case management work.

13. One of the Patient Brokers was Keith Humes, an individual who operated transitional housing in or near Hollywood, Florida. On April 27, 2010, Humes pleaded guilty to

knowingly and willfully conspiring and agreeing with other to commit health care fraud, in violation of 18 U.S.C. § 1349, and was sentenced to 7 years imprisonment. See United States v. Humes, 1:09-cr-21019-UU (S.D. Fla.) ("Humes"). In connection with his guilty plea, Humes admitted that:

> [T]he defendant [Humes] conspired to violate the federal anti-kickback statute in connection with the following entities: American Therapeutics, Inc. and Hollywood Pavilion, which were mental health facilities. The defendant engaged in a kickback scheme involving the referral of Medicare beneficiaries to these facilities. This scheme allowed these facilities to submit claims to Medicare in an amount between $2.5 million and $7 million.

Agreed Factual Basis for Guilty Plea, Humes (Docket No. 117).

14. Another of the Patient Brokers was Jean-Luc Veraguas, an individual who operated several transitional houses in Plantation, Florida. On September 24, 2012, Veraguas pleaded guilty to knowingly and willfully conspiring and agreeing with others to commit health care fraud, in violation of 18 U.S.C. § 1349, and was sentenced to 18 months of imprisonment followed by three years of supervised release. See United States v. Veraguas, 1:12-cr-20287-FAM (S.D. Fla.) ("Veraguas"). In connection with his guilty plea, Veraguas admitted that:

> VERAGUAS also agreed with operators of Hollywood Pavilion ("HP") to refer his residents [residents of transitional houses operated by Veraguas] to HP for purported mental health services in exchange for illegal health care kickbacks. VERAGUAS knew that receiving such kickbacks for referring his residents for services that would be billed to Medicare was illegal. VERAGUAS also knew that many of his residents did not need those services.

Agreed Factual Basis for Guilty Plea, Veraguas (Docket No. 19).

15. On cost reports sent to Medicare, Hollywood Pavilion, through KALEN-ZURY and others, concealed the kickbacks and bribes paid to Patient Brokers by listing them as reimbursable expenses.

C. Unnecessary Psychiatric Services

16. Medicare coverage is limited to medical services that are reasonable and necessary.

See 42 U.S.C. § 1395(a)(1)(A).

17. For inpatient hospitalization at a psychiatric hospital such as Hollywood Pavilion, Medicare specifies, among other things, that:

- The patient must not be able to be actively managed at a lower level of care and must require 24-hour, active treatment;
- The treatment must be structured and intensive, administered on a 24-hour basis, and tailored to the specific needs of the individual patient;
- The treating physician must certify (and, if necessary, recertify) to the medical necessity for the services, develop an individualized plan of treatment or diagnosis, evaluate the therapeutic program at least weekly, and regularly see the patient; and
- The documentation must include the physician certification(s), the initial psychiatric evaluation, progress notes from treating personnel, including the treating physician, physician's orders, and a treatment plan.

See Medicare Benefit Policy Manual, Chapter 2 ("In-patient Psychiatric Hospital Services");

FCSO Local Coverage Determination L28950 ("Psychiatric Hospitalization").

18. For outpatient treatment at a psychiatric hospital such as Hollywood Pavilion, Medicare specifies, among other things, that:

- The patient must have a qualifying psychiatric diagnosis:
- The treatment must be tailored to the individual patient;
- The treating physician must establish and periodically review the treatment plan, review the patient's medical records, supervise and direct the treating therapists, and periodically see the patient; and
- The documentation must state the patient's symptoms and medical history, the results of procedures and tests, and the patient's ability to participate in, and benefit from, treatment.

See Medicare Benefit Policy Manual, Chapter 6 ("Hospital Services Covered Under Part B").

19. In this case, Hollywood Pavilion, through KALLEN-ZURY and others, billed Medicare for patients that did not qualify for mental health treatment. Many of the patients referred to Hollywood Pavilion by the Patient Brokers did not suffer from mental problems, thereby rendering bills to Medicare purporting to provide in-patient and outpatient treatment for these patients false.

20. In addition, the patients admitted to Hollywood Pavilion's in-patient facility did not receive in-patient psychiatric care under Medicare's standards. These patients were treated almost exclusively by therapists, with little or no involvement by physicians. When the Hollywood Pavilion medical director saw patients, he did so primarily to adjust their medications, not to provide individualized psychiatric counseling and treatment, and Hollywood Pavilion's medical director rarely engaged in periodic consultations with patients' treating therapists and staff.

D. Dissipation of Assets

21. From April 2003 through September 2012, Medicare paid Hollywood Pavilion over $39 million in fraud proceeds. However, Hollywood Pavilion and KALLEN-ZURY do not have assets sufficient to account for the fraud proceeds received from Medicare.

22. KALLEN-ZURY maintains assets in the form of monies in at least 20 bank accounts over which she has signing authority (collectively, the "Bank Accounts"). The Bank Accounts include KALLEN-ZURY's personal accounts and other accounts over which she has signing authority. The assets in these accounts are being dissipated. For example:

- KALLEN-ZURY has signing authority for an account at Wachovia under the name: "Karen Kallen-Zury (Trust under Lenore Kallen 2007 Dynasty Trust)." On August 31, 2012, this account had a balance of $1.22 million. However, in the last three weeks, over $800,000 has been removed from the account. As of September 17, 2012, the account had only $423,367.53.

- KALLEN-ZURY has signing authority for an account at Bank Atlantic under the name: "High Ridge Management Corp. DBA Hollywood Pavilion or Hollywood Pavilion, LLC." In July 2011, this account had a balance of $454,658.09. However, nearly $400,000 has been removed from the account. As of September 26, 2012, the account had only $60,893.54.

- KALLEN-ZURY and her husband have a joint bank account at Wells Fargo. On July 10, 2012, the account balance was $71,964. However, in one month, nearly $20,000 has been removed from the account. As of August 8, 2012, the account had only $51,984.54.

23. The total amount currently in all of the Bank Accounts is approximately $2.46 million.

24. In addition to the Bank Accounts, KALLEN-ZURY also owns at least two cars, two boats, and one home (collectively, the "Real Properties"). The total equity in the Real Properties is approximately $740,000.

25. There are currently no restraints on the Bank Accounts or the Real Properties. Thus, there exists the substantial possibility that these funds will be transferred or otherwise dissipated.

COUNT I
(Injunctive Relief)
(18 U.S.C. § 1345)

26. The United States realleges and incorporates by reference paragraphs 1 through 25 of this Complaint as though fully set forth herein.

27. Among other things, KALLEN-ZURY committed a Federal health care offense, as defined in 18 U.S.C. § 24, by attempting to execute and actually executing a scheme or artifice to defraud a health care benefit program (as defined by 18 U.S.C. § 24(b)) – specifically, Medicare – in connection with the delivery of or payment for health care benefits, items, or services, in violation of 18 U.S.C. § 1347.

28. KALLEN-ZURY has already dissipated or caused the dissipation of substantial proceeds of that fraud, and intends to continue dissipating or causing the dissipation of the remainder of the proceeds of the fraud.

29. KALLEN-ZURY's fraud upon Medicare is a fraud against the United States and constitutes a continuing and substantial injury to the United States and its citizens.

30. The United States brings this action to protect Medicare and other funds by restraining KALLEN-ZURY's unlawful fraudulent conduct and to protect and restrain the transfer of funds and assets now in the hands or control of KALLEN-ZURY as ill-gotten gains from her fraud upon the Medicare program.

31. Upon a showing that KALLEN-ZURY is committing or about to commit a Federal health care offense, the United States is entitled, under 18 U.S.C. § 1345(a)(1), to a temporary restraining order, a preliminary injunction, and a permanent injunction, restraining all future fraudulent conduct and any other action that this Court deems just in order to prevent a continuing and substantial injury to the United States.

32. Upon a showing that KALLEN-ZURY is alienating or disposing, or intends to alienate or dispose, property obtained as the result of a Federal health care offense, the United States is entitled, under 18 U.S.C. § 1345(a)(2), to a temporary restraining order, a preliminary injunction, and a permanent injunction, enjoining defendants from alienating, disposing, withdrawing, transferring, removing, dissipating, or disposing of any property obtained as a result of a Federal health care offense, property traceable to such violation, or property of equivalent value.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that this Court issue a Temporary Restraining Order and Preliminary Injunction in this matter against KALLEN-ZURY to include all assets in her possession or control, and that a permanent injunction shall be issued forthwith, that orders that KALLEN-ZURY, her agents, servants, employees, attorneys, and all persons acting in concert and participation with her, including all corporations over which she exercises control and all banking and other financial institutions at which she does business, be enjoined as follows:

1. From withdrawing or transferring any moneys or sums presently deposited, or held on behalf of KALLEN-ZURY and all corporations and other entities over which she exercises control by any financial institution, trust fund, or other financial agency, public or private, that are proceeds from false, fictitious, or fraudulent claims made or caused to be made by KALLEN-ZURY, or any moneys of an equivalent value to those taken through false, fictitious, or fraudulent claims;

2. From transferring, selling, assigning, dissipating, concealing, encumbering, impairing or otherwise disposing of, in any manner, assets, real or personal;

3. To preserve all business, financial, and accounting records, including bank records, that detail KALLEN-ZURY's business operation and disposition of any payment made on behalf of the Medicare Program to KALLEN-ZURY and all corporations and other entities over which exercises control;

4. To preserve all medical records, including patient records, which relate to KALLEN-ZURY's business operation(s) and/or to services for which claims were submitted to the Medicare Program; and

5. For such other and further relief as the Court shall deem just and proper.

Dated: October 2, 2012

Respectfully submitted,

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Acting Assistant Attorney General
Civil Division

WIFREDO A. FERRER
United States Attorney
Southern District of Florida

By: _____
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Attorneys for the United States

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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

DEFENDANTS

KAREN KALLEN-ZURY

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mark Lavine, Assistant United States Attorney, US Dept. of Justice, USAO
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Miami, FL 33132 (305) 961-9303

Attorneys (If Known)

FILED by ____ D.C.
OCT 03 2012
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

(d) Check County Where Action Arose: ☒ DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☒ 1 U.S. Government Plaintiff
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

MAGISTRATE JUDGE
O'SULLIVAN

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

PERSONAL INJURY
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☐ 365 Personal Injury - Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
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☐ 442 Employment
☐ 443 Housing/ Accommodations
☐ 444 Welfare
☐ 445 Amer. w/Disabilities - Employment
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☐ 440 Other Civil Rights

PRISONER PETITIONS
☐ 510 Motions to Vacate Sentence
Habeas Corpus:
☐ 530 General
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☐ 555 Prison Condition

FORFEITURE/PENALTY
☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
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☐ 660 Occupational Safety/Health
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LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt.Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
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☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 810 Selective Service
☐ 850 Securities/Commodities/ Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 890 Other Statutory Actions
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause **(Do not cite jurisdictional statutes unless diversity)**:

LENGTH OF TRIAL via ____ days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23 **DEMAND $**

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 10/2/12

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____