

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

UNITED STATES OF AMERICA,

v. CRIMINAL ACTION FILE
NO. 4:10-CR-012-01-HLM
GEORGE D. HOUSER.

ORDER

This case came before the Court for a bench trial. This Order memorializes the Court's findings of fact and conclusions of law.

I. Findings of Fact

A. Procedural Background

1. On April 14, 2010, a federal grand jury sitting in the Northern District of Georgia returned an indictment against Defendant and his wife, Rhonda Washington Houser ("Washington"). (Docket Entry No. 1.)

2. On January 18, 2011, the grand jury returned a first superseding indictment against Defendant and Washington. (Docket Entry No. 86.) Count one of the first superseding indictment charged Defendant and Washington with conspiring

to knowingly and willingly execute and attempt to execute a scheme and artifice to defraud the Medicare program and the State of Georgia Department of Community Health, Division of Medical Assistance (“Georgia Medicaid”), . . . and to obtain by means of material false and fraudulent pretenses, representations and promises, money and property owned by, and under the custody and control of, the Medicare program and Georgia Medicaid, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347.

(Id. at 1-2.) Counts two through nine of the first superseding indictment charged Defendant with failing to account for and pay over payroll taxes for various quarters,

in violation of 26 U.S.C. § 7202. (Id. at 30-31.) Count ten of the first superseding indictment charged Defendant with failing to file an individual income tax return for calendar year 2004, in violation of 26 U.S.C. § 7203. (Id. at 31-32.) Count eleven of the first superseding indictment charged Defendant with failing to file an individual income tax return for calendar year 2005, in violation of 26 U.S.C. § 7203. (Id. at 32.) The first superseding indictment also contains a forfeiture provision. (Id. at 33-34.)

3. On May 23, 2011, the Court entered an Order adopting a Non-Final Report and Recommendation issued by United States Magistrate Judge Walter E. Johnson, overruling Defendant's corresponding Objections, and denying Defendant's Motion to Dismiss count one of the first superseding indictment. (Order of May 23, 2011.)

4. On July 5, 2011, the grand jury returned a second superseding indictment against Defendant and Washington. (Docket Entry No. 139.) Count one of the second superseding indictment charges Defendant and Washington with violating 18 U.S.C. § 1349 by conspiring

to knowingly and willfully execute and attempt to execute a scheme and artifice to defraud the Medicare program and the State of Georgia Department of Community Health, Division of Medical Assistance (“Georgia Medicaid”), . . . and to obtain by means of material false and fraudulent pretenses, representations and promises, money and property owned by, and under the custody and control of, the Medicare program and Georgia Medicaid, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347.

(Id. at 1-2.) Count one of the second superseding indictment also alleges:

36. It was part of the conspiracy and scheme and artifice to defraud that, during the course of the conspiracy, the defendants submitted or caused the submission of claims to Medicare and Medicaid that falsely represented that the Nursing Facilities had provided the care, services and environment required by Medicare and Medicaid, when the care, services and environment provided by the Nursing Facilities were so inadequate or deficient as to constitute worthless services.

(Id. at 12-13.) Count one of the second superseding indictment also states:

92. The Nursing Facilities submitted or caused to be submitted, during the course of the conspiracy, false or fraudulent claims to the Medicare and Georgia Medicaid programs for services that were worthless in that they were not provided or rendered, were deficient, inadequate, substandard, and did not promote the maintenance or enhancement of the quality of life of the residents of the Nursing Facilities, and were of a quality that failed to meet professionally recognized standards of health care.

93. Defendants had actual knowledge that the Nursing Facilities were providing inadequate

care during the course of the conspiracy, and that claims for reimbursement were being submitted for services that were so inadequate or deficient as to constitute worthless services.

94. During the course of the conspiracy, the Nursing Facilities perpetrated a fraud on the United States by making materially false representations in the submission of the Medicare and Georgia Medicaid claims.

95. During the course of the conspiracy, [Defendants] fraudulently caused claims to be paid by Medicare and Georgia Medicaid for care and services that were either not rendered or were so inadequate or deficient as to constitute worthless services.

All in violation of Title 18, United States Code, Section 1349.

(Id. at 29-30.)

Counts two through nine of the second superseding indictment charge Defendant with failure to account for, and to pay over, payroll taxes for certain quarters, in violation of

26 U.S.C. § 7202. (Docket Entry No. 139 at 30-31.) Count ten of the second superseding indictment charges Defendant with failing to file an individual income tax return for 2004, in violation of 26 U.S.C. § 7203. (Id. at 31-32.) Count eleven of the second superseding indictment charges Defendant with failing to file an individual income tax return for 2005, in violation of 26 U.S.C. § 7203. (Id. at 32.) The second superseding indictment also contains a forfeiture provision. (Id. at 33-34.)

5. On December 14, 2011, Washington entered a guilty plea to a criminal information in 4:11-CR-047-01-HLM. On January 11, 2012, the Court entered an Order accepting Washington's guilty plea and adjudging Washington guilty of the offense contained in the criminal information. United States v. Rhonda Houser, Criminal Action File No. 4:11-CR-

047-01-HLM (N.D. Ga. Jan. 11, 2012) (unpublished). The Court has not yet imposed sentence in that case.

6. On January 9, 2012, Defendant waived his right to a jury trial, and the Government consented to a bench trial. (Docket Entry No. 209.) The Court approved Defendant's request for a non-jury trial after a hearing on that request. (Docket Entry No. 208.)

7. On January 30, 2012, Defendant proceeded to a non-jury trial. (Docket Entry No. 219.)

8. On February 28, 2012, the non-jury trial concluded. (Docket Entry No. 266.) The Government and Defendant have submitted proposed findings of fact and conclusions of law, and the Court finds that this matter is ripe for resolution. (Docket Entry Nos. 279, 281-83.)

B. Factual Background

1. General Factual Background

9. This case involves the operation of three nursing homes by Defendant and Washington between June 2004 and September 2007. (Docket Entry No. 139.)

10. One of the nursing homes at issue was located at 139 Moran Lake Road in Rome, Georgia, within the Northern District of Georgia ("Moran Lake"). (Trial Tr. Vol. 8 (Testimony of Heather Sheppard) at 1080-85, 1091-92; Gov't Exs. 100, 103.)

11. Another nursing home was located at 2 Three Mile Road in Rome ("Mt. Berry"). (Trial Tr. Vol. 8 (Sheppard) at 1080-85, 1091-92; Gov't Exs. 101, 104.)

12. The third nursing home was located at 2611 Wildwood Drive in Brunswick, Georgia, on the southeastern

Georgia coast ("Wildwood"). (Trial Tr. Vol. 8 (Sheppard) at 1080-85, 1091-92; Gov't Exs. 102, 105.)

13. Moran Lake and Mt. Berry each had approximately 100 beds, and each generally maintained an occupancy rate of approximately ninety percent. (Trial Tr. Vol. 1 (Testimony of Suzanne Stanley) at 7; Trial Tr. Vol. 4 (Testimony of Leslie Austin) at 613; Trial Tr. Vol. 8 (Testimony of Odell Justice) at 1150; Trial Tr. Vol. 11 (Testimony of Lisa Landers) at 1737; Trial Tr. Vol. 15 (Testimony of Mattie Cox) at 2428; Gov't Exs. 76a, 76c, 116-18.)

14. Wildwood had 204 beds, and generally had an occupancy rate of approximately seventy-five percent. (Trial Tr. Vol. 8 (Justice) at 1150; Gov't Exs. 76a, 76c.)

15. Medicare or Medicaid paid the nursing home expenses for the vast majority of the nursing homes' residents. (Trial Tr. Vol. 1 (Testimony of Kay Edwards) at 128; Trial Tr. Vol. 3 (Testimony of Rosa Free) at 398; Trial Tr. Vol. 10 (Testimony of Rhondia Grant) at 1417.) Suzanne Stanley, a former administrator at Mt. Berry, testified that ten percent of Mt. Berry's residents were private-pay, while ten to fifteen percent of the residents were Medicare residents, and the remaining residents were Georgia Medicaid residents. (Trial Tr. Vol. 1 (Stanley) at 8.)

16. During the early 1990s, Defendant operated the two nursing homes in Rome. (Trial Tr. Vol. 8 (Justice) at 1107-10.) Odell Justice, a revenue agent with the Internal Revenue Service ("IRS"), testified that in 1993, the IRS seized the Mt. Berry property due to Defendant's failure to

pay over payroll taxes for employees, and the State of Georgia revoked Defendant's license to operate the Rome nursing homes. (Id.) The IRS imposed tax liens on the Rome nursing homes, which expired after ten years. (Id.)

17. In May 2003, Forum Healthcare Group ("FHG") assumed management of the two Rome nursing homes. (Trial Tr. Vol. 8 (Sheppard) at 1080-85, 1091-92; Gov't Exs. 100-01.)

18. The Medicare Provider Applications for the two Rome nursing homes listed Washington as the owner of FHG. (Trial Tr. Vol. 8 (Sheppard) at 1083-86.)

19. The Georgia Department of Community Health, Division of Medical Assistance Provider Applications ("Medicaid") for the two Rome nursing homes listed Washington as FHG's president, office manager, or officer,

and Denise Wilson as FHG's owner. (Trial Tr. Vol. 4 (Austin) at 639-43; Gov't Exs. 116, 177.) Defendant created FHG in spring 2003 and asked Ms. Wilson, his cousin, to be FHG's president. (Trial Tr. Vol. 4 (Testimony of Denise Wilson) at 589-91, 594-95; Gov't Ex. 133a.) Ms. Wilson declined that offer, stating that she felt that Defendant would control the homes under his proposal and that she would simply be a "figurehead." (Trial Tr. Vol. 4 (Wilson) at 589-91, 594-95; Gov't Ex. 133a.)

20. Defendant and Washington were romantically involved, and eventually married during the time period relevant to this action. (Trial Tr. Vol. 1 (Stanley) at 26.) The Government correctly points out that there is no dispute that Defendant managed the homes with Washington while FHG operated the homes.

21. In September 2003, FHG assumed management of Wildwood. (Trial Tr. Vol. 8 (Sheppard) at 1085-86; Gov't Ex. 102.) Washington signed Wildwood's Medicare Provider Application as president of FHG. (Gov't Ex. 102.) Wildwood's Medicaid Provider Application listed Washington as FHG's office manager and owner, with a corporate office address of 940 Spider Webb Drive, Rome, Georgia. (Trial Tr. Vol. 4 (Austin) at 644-45; Gov't Ex. 118.)

22. On July 1, 2004, Defendant explicitly assumed control of the nursing homes. (Trial Tr. Vol. 8 at 1086-91 (Sheppard), 1150 (Justice); Gov't Exs. 106-08, 110-12.) The Medicare Provider Applications submitted at that time reflected a change of ownership from Washington to Defendant and listed Defendant as president, chief executive, and owner of the nursing homes, and changed

the names of the homes to Forum Healthcare Group at Moran Lake Nursing and Rehabilitation Center, LLC, Forum Healthcare Group at Mt. Berry Nursing and Rehabilitation Center, LLC, and Forum Healthcare Group at Wildwood Park Nursing and Rehabilitation Center, LLC. (Trial Tr. Vol. 8 (Sheppard) at 1086-91, 1150 (Justice); Trial Tr. Vol. 4 (Austin) at 646-50; Gov't Exs. 122-27.) The Medicaid Provider Applications listed the nursing homes' owners as Defendant, Forum Healthcare Corporation, and Louis K. Houser. (Trial Tr. Vol. 4 (Austin) at 649; Gov't Exs. 122-24.) All of the applications listed the same corporate address for the nursing homes: 940 Spider Webb Drive, Rome, Georgia. (Gov't Exs. 110-12, 122-24.)

23. In June 2007, the Georgia Office of Regulatory Services ("ORS") gave notice that it was terminating the

provider agreements for Mt. Berry and Moran Lake, effectively closing the nursing homes, because of numerous problems, including unsatisfactory physical environmental conditions, staffing shortages, and irregularities involving resident trust fund accounts. On June 30, 2007, the last residents were removed from Mt. Berry, and, on July 5, 2007, the last residents were removed from Moran Lake. (Trial Tr. Vol. 9 (Georganna Cannon) at 1307-11; Trial Tr. Vol. 14 (Testimony of Angie Chandler) at 2309-10, 2320-21; Gov't Exs. 254-254a, 293-94, 306, 308, and 361_10.)

In early September 1997, ORS gave notice that it was closing Wildwood for the same reasons, and the last resident was removed from Wildwood on September 7, 2007. (Trial Tr. Vol. 9 (Cannon) at 1307-11; Gov't Exs. 254-254a, 327-28.)

2. Administration

24. Defendant's expert, Karon Goldsmith, testified that the nursing home administrators were the chief executive officers in the nursing homes. (Trial Tr. Vol. 17 (Testimony of Karon Goldsmith) at 2829, 2838.) As such, Ms. Goldsmith indicated that the administrators served as Defendant's "eyes and ears," in the nursing homes and were responsible for informing Defendant of problems in the nursing homes. (Id.)

a. Moran Lake

25. When Defendant resumed managing Moran Lake in spring 2003, Michelle Prince was the administrator of Moran Lake. (Trial Tr. Vol. 4 (Testimony of Michelle Prince) at 600.) Ms. Prince remained the administrator at Moran Lake until November 2003. (Id.) Kim McMichael Knowles

served as the director of nursing for Moran Lake under Ms. Prince. (Trial Tr. Vol. 2 (Testimony of Kim Knowles) at 279.)

26. After Ms. Prince left Moran Lake, Ms. Knowles was promoted to the administrator position at the nursing home. (Trial Tr. Vol. 2 (Knowles) at 279-80.) As conditions at Moran Lake deteriorated, Ms. Knowles began sending letters to Defendant and Washington listing concerns and problems. (Id. at 290-91.) Ms. Knowles kept copies of her faxes as evidence that she had given notice of the problems. (Id.; Gov't Ex. 487.) When Ms. Knowles and other administrators who faxed letters to Defendant's fax machine received no responses, they telephoned FHG Payroll Administrator Laverne Burrell, who worked in the office with Defendant and Washington. (Trial Tr. Vol. 8

(Testimony of Laverne Burrell) at 1244-45.) The administrators also sent faxes to Ms. Burrell, who, in turn, put the faxes on Defendant's desk. (Id.)

27. In mid-May 2007, Ms. Knowles resigned from Moran Lake and FHG. (Trial Tr. Vol. 3 (Knowles) at 340.)

28. After Ms. Knowles' departure, Lisa Garner served as the administrator of Moran Lake. (Trial Tr. Vol. 5 (Testimony of Tamara Primus) at 732.) Ms. Garner remained in that position until ORS closed Moran Lake in July 2007. (Id.)

b. Mt. Berry

29. From January 2000 to January 2005, Suzanne Stanley served as the administrator of Mt. Berry. (Trial Tr. Vol. 1 (Stanley) at 4.) Based on her previous experiences working for the company that took over the management of

Defendant's Rome nursing homes in 1993, Ms. Stanley had concerns about Defendant taking over Mt. Berry. (Id. at 5-7.) According to Ms. Stanley, however, Defendant assured Ms. Stanley and her staff "that he was going to try to do it right and that he was going to try to, . . . do things by the regulations and keep the facilities up and pay the bills; the things he had not been able to do previously." (Id. at 7.)

30. In January 2005, Defendant fired Ms. Stanley, replacing her with Lois Greenway. (Trial Tr. Vol. 1 (Stanley) at 29, 45-46.)

31. Ms. Greenway remained the administrator of Mt. Berry until February 23, 2007, when her resignation became effective. (Trial Tr. Vol. 5 (Testimony of Lois Greenway) at 778; Trial Tr. Vol. 6 (Greenway) at 889.) As conditions at Mt. Berry deteriorated, Ms. Greenway began faxing or

emailing lists of problems to Defendant and Washington, and she printed and retained copies of some of those documents. (Gov't Exs. 800, 805, 807-15, 821-22, 826.)

32. In late March 2007, Defendant hired Angie Chandler to serve as the administrator at Mt. Berry. (Trial Tr. Vol. 14 (Chandler) at 2306-08.) Ms. Chandler remained in that position until July 2007, when ORS closed Mt. Berry. (Id.)

c. Wildwood

33. From August 2003 through July 2005, Rosa Free served as the administrator at Wildwood. (Trial Tr. Vol. 3 (Testimony of Rosa Free) at 394, 420.)

34. From July 2005 until her resignation in April 2007, Rhondia Grant served as the administrator at Wildwood. (Trial Tr. Vol. 9 (Testimony of Rhondia Grant) at 1317-18.)

As conditions at Wildwood deteriorated, Ms. Grant began emailing lists of problems to Defendant and Washington. (Id. at 1334.) Ms. Grant printed and retained copies of some of those emails. (Id.; Gov't Exs. 831.1, 831.3, 831.4, 831.6, 831.7, 831.8, 831.9, 831.11, 831.15, 831.17, 831.18, 831.19, 831.20, 831.23, 831.24, 831.26, 831.27, 831.29, 831.33, 831.35, 831.36, 831.37, 831.38, 831.39, 831.40, 831.41, 831.43, 831.44, 831.45.)

35. From July 12, 2007 until Wildwood's closure in September 2007, Barbara Chal served as Wildwood's administrator. (Trial Tr. Vol. 16 (Testimony of Barbara Chal) at 2654, 2659-60; Gov't Exs. 1088-93, 1097-99, 1100-02, 1104-05.)

3. Medicare and Medicaid

36. Between June 1, 2004 and the date that all three

nursing homes were closed, Medicare and Medicaid paid Defendant's Forum entities a total of \$32,914,304.66 pursuant to the provider applications that Defendant submitted in July 2004. (Trial Tr. Vol. 8 (Sheppard) at 1078-80; Trial Tr. Vol. 9 (Cannon) at 1309; Gov't Exs. 254, 254a, 255a, 255b, 255c, 255d.) Medicaid paid \$25,965,047.29 of that total, while Medicare paid \$6,949,257.37. (Trial Tr. Vol. 9 (Cannon) at 1307-11; Trial Tr. Vol. 8 (Sheppard) at 1078-80; Gov't Exs. 254, 254a, 255a, 255b, 255c, 255d.)

37. All three nursing homes were "skilled nursing facilities," as defined by 42 U.S.C. § 1396r. (Trial Tr. Vol. 2 (Testimony of Bonnie Mauldin) at 135-36.) According to the Government's expert witness, Bonnie Mauldin, the nursing homes were required to care for their residents "in such a manner and in such an environment as will promote

maintenance or enhancement of the quality of life of each resident.” (Id. at 136-37.) Ms. Maudlin further testified that Defendant was required to provide his residents with a clean, safe, and sanitary living environment. (Id. at 137.) Further, according to Ms. Maudlin, Defendant was required to provide dietary meals, snacks, care, supplies, activities, and services that would maintain or support “the highest practicable level of physical, mental, and psychosocial well-being to every resident.” (Id. at 138-39.) Ms. Maudlin testified that providing the “highest practicable level” of well-being for the residents required Defendant to employ sufficient staff to care for the residents, many of whom were incontinent or needed assistance to be turned, bathed, moved, and fed. (Id. at 142-45.) According to Ms. Maudlin, Defendant was required to equip, supply, and maintain the

nursing homes in a manner that would protect the health and safety of the residents, meaning that the nursing homes should have had everything from cups to pest control to intact roofs. (Id. at 145-46, 177-79.) Ms. Mauldin noted that something as simple as a small leak in a nursing home's roof can cause a puddle, which, in turn, could cause a resident to slip, fall, and break a hip. (Id. at 178.) Ms. Mauldin further opined that a leaking roof puts residents at risk every day that the leak remains unrepaired. (Id.)

38. According to Ms. Mauldin, as a provider of skilled nursing facilities, Defendant was required to care for his residents in a dignified and respectful manner, including providing them with the services necessary to attain or maintain their highest practicable levels of living. (Trial Tr. Vol. 2 (Mauldin) at 151-53.) Ms. Mauldin testified that

Defendant was required to protect residents and staff from infection by using special cleaning supplies, by sanitizing laundry and dishes, and by properly storing and removing biohazardous waste from the nursing homes. (Id. at 156-57, 172-73.)

39. According to Ms. Mauldin, as a nursing home provider, Defendant was required to provide for the nutrition of each of his residents, many of whom had different dietary needs. (Trial Tr. Vol. 2 (Mauldin) at 159.) Ms. Mauldin testified that ingredients, preparation methods, and portions must be adjusted to provide nutritional and balanced meals for each resident, and that some residents may need protein supplements or other supplements for their therapeutic diets. (Id. at 159-69.) According to Ms. Mauldin, meals with fellow residents are often the high point

of many residents' days, and once the nursing homes' dieticians planned their menus for the coming week, the homes were required to post their menus and to serve the meals listed in the menus. (Id. at 168-70, 175-77.) Ms. Mauldin testified that Defendant was required to provide nourishing snacks for the residents, noting that such snacks often help residents sleep better through the night, and that snacks are important to helping diabetic residents maintain steady blood sugar levels. (Id. at 170-71, 173-74.)

40. According to Ms. Mauldin, Defendant, as the nursing home provider, was required to furnish residents with pharmaceutical services that would provide the residents with medications in a timely and appropriate manner, as well as with laboratory and x-ray services, which are necessary to follow physicians' orders concerning

monitoring and care of the residents. (Trial Tr. Vol. 2 (Mauldin) at 171-72, 181-82.)

4. Providers' Certification

41. The enrollment applications for Medicare and Medicaid payments provided that, by signing those applications, Washington and Defendant certified that they were aware of all of the applicable federal statutes and regulations governing the operation, staffing, and maintenance of nursing homes, and also certified that they would comply with the statutes and regulations, and that they would not knowingly present, or cause to be presented, false claims for payment. (Trial Tr. Vol. 8 (Sheppard) at 1080-94, 1098; Trial Tr. Vol. 4 (Austin) at 632-50; Gov't Exs. 100-08, 110-12, 116-18, 122-27.)

42. In his Medicare provider application for Moran

Lake, Defendant signed the following certification: "I will not present or cause to be presented a false or fraudulent claim for payment by Medicare, and will not submit claims with deliberate ignorance or reckless disregard of their truth or falsity." (Gov't Ex. 110.)

43. Medicare pays claims on a fee schedule within fourteen days of filing. (Trial Tr. Vol. 8 (Sheppard) at 1076-77.) When paying claims, Medicare relies on the provider's certification that: (1) he knows the applicable rules and regulations, and is operating his nursing homes as required by those rules and regulations; (2) the services being billed for were actually provided; and (3) the provider is not submitting false or fraudulent claims for payment. (Id. at 1099-1101.) Medicare would not knowingly pay a claim that contained false information. (Id. at 1100-01.)

44. When presenting Medicaid claims for payment, Washington, and later Defendant, certified as the provider that the services listed in each claim for payment “were rendered by or under the supervision of the provider.” (Trial Tr. Vol. 4 (Austin) at 635; Gov’t Exs. 116-118, 122-27.) By accepting Medicaid payments, Washington--and later, Defendant--understood as the providers that “payment will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.” (Gov’t Exs. 116-18, 125-27.) Medicaid would not knowingly pay a claim that contained false information. (Trial Tr. Vol. 9 (Cannon) at 2881.)

45. Ms. Goldsmith testified that, when a provider files a claim for payment with Medicare or Medicaid, the provider represents that he provided the service at issue. (Trial Tr.

Vol. 18 (Goldsmith) at 2881.) A provider cannot rely on subordinates to pay for, and provide, services for which the provider seeks payment from Medicare or Medicaid. (Trial Tr. Vol. 15 (Testimony of Mattie Cox) at 2460-61.) The enrollment applications' terms obligate the provider to operate the nursing homes in accordance with the applicable statutes and regulations, and require the provider to provide the services those statutes and regulations require, in the manner they require. (Trial Tr. Vol. 15 (Cox) at 2460-61; Trial Tr. Vol. 2 (Mauldin) at 142-43; Trial Tr. Vol. 8 (Sheppard) at 1080-94, 1098; Trial Tr. Vol. 4 (Austin) at 632-50; Gov't Exs. 100-08, 110-12, 116-18, 122-27.) Medicare and Medicaid pay according to the provider number, pursuant to the provider agreement, and they do not pay staff. (Trial Tr. Vol. 15 (Cox) at 2460-61.) As

witness Mattie Cox phrased it, Medicaid pays funds “to a provider to make payments and to do what we expect to be done with that money. So it is [Medicaid’s] concern if our money is not being used properly as the contract was signed.” (Id. at 2461.)

46. The provider agreements permitted Defendant to bill Medicare and Medicaid for every day that residents were in the nursing homes. (Trial Tr. Vol. 14 (Chandler) at 2322.) Medicaid paid Defendant for claims made for caring for resident in the nursing homes after the nursing homes closed. (Trial Tr. Vol. 9 (Cannon) at 1310-11.) Specifically, Medicaid paid Defendant for claims for residents in Moran Lake until July 5, 2007, for claims for residents in Mt. Berry until June 30, 2007, and for claims for residents in Wildwood until September 7, 2007. (Id.)

5. Physical Environment

47. According to Ms. Mauldin, as the Medicare and Medicaid provider, Defendant was responsible for equipping, supplying, and maintaining the nursing homes in a manner that protected the health and safety of the residents and that provided them with a clean, safe, sanitary living environment to maintain or support “the highest practicable level of physical, mental, and psychosocial well-being [of] every resident.” (Trial Tr. Vol. 2 (Mauldin) at 137-39.)

a. Leaking Roofs

i. Moran Lake

48. When Defendant and Washington assumed management of Moran Lake in 2003, the nursing home’s roof leaked, and the leaks grew increasingly worse during

the time period relevant to this action. (Trial Tr. Vol. 2 (Knowles) at 326-27; Trial Tr. Vol. 10 (Testimony of Linda Dodson) at 1534; Trial Tr. Vol. 11 (Landers) at 171-32, 1753-53, 1757; Trial Tr. Vol. 14 (Testimony of John Thomas) at 2195-96, (Testimony of Stephanie Lee) at 2287-88; Trial Tr. Vol. 16 (Testimony of Yvonne Garrett) at 2700.)

49. Employees placed large trash barrels and buckets throughout Moran Lake to catch the rainwater in the nursing home, but water still spilled on the floors because the staff could not anticipate all of the leaks. (Trial Tr. Vol. 4 (Prince) at 606; Trial Tr. Vol. 11 (Landers) at 1731; Trial Tr. Vol. 14 (Lee) at 2287-88; Trial Tr. Vol. 16 (Garrett) at 2700.)

50. At Defendant's direction, Moran Lake's maintenance staff attempted to patch the roof temporarily, covering portions of the roof with tarps; however, those

attempts did not stop the increasing leaks. (Trial Tr. Vol. 11 (Landers) at 1753-54; Trial Tr. Vol. 14 (Thomas) at 2216; Trial Tr. Vol. 16 (Testimony of Jamie Young) at 2556, 2572.) According to Jamie Young, a former member of the Moran Lake maintenance staff, tarps are ineffective for repairing a flat roof because water may drip into the building twenty or thirty feet from the location of the actual leak. (Trial Tr. Vol. 16 (Young) at 2572.)

51. When it rained, the Moran Lake roof leaked water into residents' rooms and common areas in the nursing home, even flooding one resident's room. (Trial Tr. Vol. 2 (Knowles) at 326-27; Trial Tr. Vol. 11 (Landers) at 1731-32; Trial Tr. Vol. 14 (Lee) at 2287-88; Trial Tr. Vol. 16 (Garrett) at 2700.) Witness Linda Dodson testified: "When it rained, it leaked. They'd have buckets all up and down the hallway,

have the mop buckets out there to keep it mopped up with.”
(Trial Tr. Vol. 10 (Dodson) at 1534.)

52. Moran Lake had a ceiling composed of large fiberglass ceiling tiles that were suspended from the roof. (Trial Tr. Vol. 2 (Knowles) at 326-27.) According to Ms. Knowles, when it rained, ceiling tiles became saturated with water and eventually dropped on the floor or into the trash cans that the staff had placed to catch the rainwater in the nursing home. (Id. at 327.) Another witness, Christy Glymph, testified that saturating ceiling tiles bulged over residents’ beds, in the nursing home’s bathrooms, and in the nursing home’s day room. (Trial Tr. Vol. III (Testimony of Christy Glymph) at 338-52; Gov’t Ex. 350.)

53. Ms. Knowles testified that Moran Lake’s staff moved residents’ beds to keep the residents from getting

wet from the leaks. (Trial Tr. Vol. 2 (Knowles) at 326-28.)

54. Three witnesses testified that, on one occasion, a saturated tile fell on a resident's unoccupied bed. (Trial Tr. Vol. 14 (Thomas) at 2195-96, (Lee) 2287-88; Trial Tr. Vol. 16 (Garrett) at 2700.)

55. Ms. Landers testified that, on one occasion, leaking rainwater destroyed a resident's personal television. (Trial Tr. Vol. 11 (Landers) at 1731-32.)

56. Former employees John Thomas and Mr. Young testified that, on another occasion, rainwater was leaking directly on the center of a resident's bed. (Trial Tr. Vol. 14 (Thomas) at 2195-96, 2215-16; Trial Tr. Vol. 16 (Young) at 2555-56.) Mr. Young fastened a plastic tarp beneath the roof and diverted the water to a trash can placed at the end of the resident's bed. (Trial Tr. Vol. 16 (Young) at 2555-56,

2572.) The resident remained in the bed and the tarp remained over the resident's bed at least until Mr. Young stopped working at Moran Lake in early 2007. (Id.)

57. The evidence demonstrates that the administrators and other employees told Defendant about the leaking roof at Moran Lake. (Trial Tr. Vol. 11 (Landers) at 1731-32.)

58. Ms. Knowles sent several faxes to Defendant to advise him of the leaking roof. (Gov't Ex. 487.)

59. In letters faxed on October 19, 2006, October 23, 2006, October 30, 2006, November 1, 2006, December 11, 2006, and December 13, 2006, Ms. Knowles informed Defendant:

ROOF: I HAVE 2 BEDS THAT I CANNOT TAKE NEW ADMISSIONS FOR BECAUSE OF THE FLOODING AND THE FALLING OF CEILING TILE. THE LEAK IS SPREADING THROUGHOUT THE BUILDING AND I AM

RUNNING OUT OF ROOM TO KEEP RESIDENTS SAFE.

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

60. On December 22, 2006, Ms. Knowles faxed a letter to Defendant stating:

WE HAVE CEILING TILES AND ROOF LEAKS ON RESIDENTS' BEDS AND CLOTHES. I NEED SOME ONE TO EITHER TAKE CARE OF IT OR BRING MONEY FOR JAMIE [Young] TO DO SOMETHING!!!

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

61. In faxes dated March 1, 2007 and March 2, 2007, Ms. Knowles told Defendant: "THE ROOF CONTINUES TO LEAK WHICH CAUSES MORE CEILING TILES TO HAVE TO BE REPLACED." (Gov't Ex. 487 (capitalization in original).)

62. Defendant rejected recommendations to replace

the roof at Moran Lake. (Trial Tr. Vol. 4 (Testimony of Jerry Chisolm) at 527-29.) According to former maintenance supervisor Jerry Chisolm, Defendant had the leaks patched with a material that Mr. Chisolm advised against using. (Id.) Mr. Chisolm testified that he thought the material would eventually make the leaks worse, and stated that the leaks indeed became worse. (Id.)

63. Subacute Services leased the Moran Lake building in fall 2007 and renovated it, and, at that point, the building's roof was so decrepit that it required replacing at a cost of \$129,000. (Trial Tr. Vol. 15 (Testimony of Karen Forrister) at 2346-47.)

ii. Wildwood

64. When Defendant and Washington assumed control of Wildwood in September 2003, the roofs on several wings

and hallways leaked, and the leaks grew increasingly worse during the time period relevant to this action. (Trial Tr. Vol. 7 (Testimony of Winnifred Herrington) at 1036, 1045-47; Trial Tr. Vol. 9 (Testimony of Danny Patrick) at 1272, (Grant) 1327; Trial Tr. Vol. 12 (Testimony of Sonya Brunner) at 1807-08; Trial Tr. Vol. 16 (Chal) at 2656; Dep. of Frances Browning (Gov't Ex. 634a) at 7-9.) According to Ms. Free, the roof was very old, and Defendant was aware that the roof needed to be replaced when he took over Wildwood. (Trial Tr. Vol. 3 (Free) at 415.) Ms. Free testified that, every time the Brunswick area had heavy rain, the roof leaked, causing saturated ceiling tiles to fall. (Id.) Ms. Free recalled that the staff placed large 55-gallon barrels under the leaks to catch the water. (Id.) Ms. Grant testified that several air conditioning units on the roofs of

Wildwood's wings occasionally froze over and leaked into the nursing home. (Trial Tr. Vol. 9 (Grant) at 1327.) According to Ms. Grant, the ceiling tiles were constantly being damaged by water leaking through the roof, and the maintenance staff eventually stopped replacing the tiles and simply left the ceiling open. (Id.) Ms. Free testified that employees constantly had to look up to make sure that nothing was falling. (Trial Tr. Vol. 3 (Free) at 415-16.)

65. Employees at Wildwood placed large trash cans and buckets throughout the nursing home to catch rainwater in the residents' rooms and the common areas, and also attempted to contain the rainwater that fell on the floors with blankets and towels. (Trial Tr. Vol. 7 (Herrington) at 1045-47; Browning Dep. at 7-9.) A former Wildwood employee, Michelle Collins, testified:

When I was working there, when it used to rain, the tile used to fall [to] the floor. And, like, the wall here, you could see the rain come down. And if it rained too hard, you knew that you better move the residents from out of the middle of the floor because the tile was going to fall, and when it fell we used to have to put blankets or buckets to catch the water.

(Trial Tr. Vol. 12 (Testimony of Michelle Collins) at 1871.)

66. Frances Browning, who lived in Wildwood from 2005 until shortly before the nursing home's closure in September 2007, testified that it rains frequently and heavily in Brunswick, and that, when it rained, Wildwood "had a major problem with rain leaking" in the nursing home's common areas and residents' rooms. (Browning Dep. at 8.)

67. Between May 2006 and August 2007, Winifred Herrington visited Wildwood daily to see her aunt, who then resided there. (Trial Tr. Vol. 7 (Herrington) at 1031, 1042.)

According to Ms. Herrington, when it rained, water cascaded down the walls of her aunt's room and behind her aunt's bed. (Id. at 1045-46.) Ms. Herrington testified that, during one rain, a saturated ceiling tile fell on the unoccupied bed belonging to her aunt's roommate. (Id. at 1046.) Ms. Herrington also recalled that, when the air conditioning was used, the ceiling units sometimes froze and leaked water, which, in turn, created puddles on the floor. (Id. at 1036.)

68. Wildwood also had a ceiling made of large fiberglass ceiling tiles suspended beneath the roof. (Trial Tr. Vol. 4 (J. Chisolm) at 529-30; Trial Tr. Vol. 9 (Grant) at 1327.) When it rained, the ceiling tiles would become saturated with water until they dropped on the floor or in the barrels positioned to catch the leaking water. (Trial Tr. Vol.

4 (J. Chisolm) at 529-30; Trial Tr. Vol. 15 (Testimony of Jerry Dunham) at 2491-92; Browning Dep. at 7-9.) The tiles sometimes dropped in residents' rooms. (Trial Tr. Vol. 4 (J. Chisolm) at 529-30.) Staff sometimes spray painted water-stained ceiling tiles to hide the stains. (Trial Tr. Vol. 12 (Brunner) at 1807-08.) The dining room also had leaks, and one witness testified that the dining room "continually" had containers set up to catch the leaking water. (Id. (Testimony of Reba Usher) at 1782.)

69. Some witnesses testified that the leaks in the north wing were "horrendous" and filled the barrels positioned to catch the rainwater as it leaked into the building. (Trial Tr. Vol. 9 (Testimony of Danny Patrick) at 1272; Trial Tr. Vol. 16 (Chal) at 2656; Trial Tr. Vol. 4 (Testimony of Tonia Hamilton) at 674-75.) In early August 2007, the State ORS

directed Ms. Chal to close Wildwood's north wing because of the leaking roof and the mold that was growing in the building. (Trial Tr. Vol. 16 (Chal) at 2667-68, 2690; Gov't Ex. 1099.)

70. Defendant rejected Mr. Chisolm's recommendation to replace the roof at Wildwood. (Trial Tr. Vol. 4 (J. Chisolm) at 530-31.) Defendant instead had the leaks patched with a material that Mr. Chisolm advised against, because Mr. Chisolm thought the material would eventually make the leaks worse, and Defendant directed the maintenance staff to cover some portions of the roof with a tarp. (Id. at 530-31.) Ms. Chal testified that, in July 2007, after receiving notices from Ms. Chal and demands from the State, Defendant sent workers to put some tarps on the roof. (Trial Tr. Vol. 16 (Chal) at 2656-57, 2674; Gov't Ex.

1105.) According to Ms. Chal, those workers were not licensed roofers and smelled of alcohol, and the State ultimately prohibited the workers from working on the roof. (Trial Tr. Vol. 16 (Chal) at 2656-57, 2674; Gov't Ex. 1105.)

71. In August 2007, Herman Sloan, a roofer, recommended that Defendant replace the roof on the north wing. (Trial Tr. Vol. 12 (Testimony of Herman Sloan) at 1765-77.) Defendant rejected that idea and instead contracted with Mr. Sloan for patching and repair work. (Id.) Mr. Sloan, however, stopped the work mid-project after Defendant gave him a bad check. (Id. at 1766-71; Govt. Ex.756a.) Mr. Sloan testified that, while he was on the roof, he observed that “a good bit of work had been done on the roof, but it was improperly done.” (Trial Tr. Vol. 12 (Sloan) at 1773; Trial Tr. Vol. 13 (Testimony of Dennis

Johnson) at 2034-37.)

72. Dennis Johnson walked through Wildwood on September 10, 2007, three days after the last resident was removed, and observed that between the “multitude of blown out ceiling tiles” and the holes in the roof, it was possible to look up through the roof and see the sky. (Trial Tr. Vol. 13 (Johnson) at 2034-35.) Mr. Johnson found mold throughout the Wildwood building, either on the floors and walls or beneath the vinyl wallpaper, and in one wing, he observed that mold had grown in the sheet rock, which ultimately had to be removed. (Id. at 2034-36.) According to Mr. Johnson, such mold growth reflected an inability to control the humidity within the nursing home. (Id. at 2036.)

73. During a walk-through of Wildwood on September 20, 2007, Mr. Johnson took several photographs of the

facility, including a photograph showing a funnel that was duct-taped to a roof girder beneath a large hole in the roof. (Gov't Ex. 758a.) The photograph showed a garden hose clamped to the funnel, with the hose dropping to a barrel on the floor below. (Trial Tr. Vol. 13 (Johnson) at 2056; Gov't Ex. 758a.) During fall 2007, Mr. Johnson's employer, Southeast Georgia Health Systems, began renovating Wildwood, and Mr. Johnson's crew had to replace the roofs on all the wings, hallways, and common areas, with the exception of the roof on the south wing. (Trial Tr. Vol. 13 (Johnson) at 2033-39.)

b. Heating and Air Conditioning

74. Ms. Mauldin testified that Medicare and Medicaid providers are required to provide their nursing home residents with an environment that protects the residents'

health and safety, which includes functioning air conditioning and heat. (Trial Tr. Vol. 2 (Mauldin) at 145-46, 174-75; Trial Tr. Vol. 2 (Knowles) at 339.) According to Ms. Mauldin, climate control is important throughout the nursing home, including the dining room. (Trial Tr. Vol. 2 (Mauldin) at 175.) Ms. Mauldin and other witnesses testified that the nursing home's dining room is important because community meals are essential for the residents' socialization. (Id. at 175; Trial Tr. Vol. 3 (Knowles) at 346; Trial Tr. Vol. 10 (Testimony of Dr. Keith Hannay) at 1436-37; Trial Tr. Vol. 16 (Testimony of Pamela Davis) at 2588.)

i. Moran Lake

75. The residents' rooms and the dining room in Moran Lake were heated and cooled with "PTAC" units that fit into openings in the walls that were beneath the windows and

close to ground level. (Trial Tr. Vol. 15 (Forrister) at 2348, 2353-54, 2356-57; Gov't Ex. 765.) When Defendant became the Medicare and Medicaid provider in July 2004, the PTAC units in Moran Lake were old and many malfunctioned, and the units continued to malfunction until the home closed. (Trial Tr. Vol. 16 (Young) at 2568-69, 2575.)

76. When units failed in residents' rooms, Jamie Young, a maintenance worker for Moran Lake, replaced the units with a unit from the nursing home's dining room. (Trial Tr. Vol. 16 (Young) at 2552-53.) By fall 2006, none of the PTAC units in Moran Lake's dining room worked, and, as a result, there was no heat in the nursing home's dining room from November 2006 until the weather turned with the arrival of spring in 2007. (Trial Tr. Vol. 3 (Knowles) at 365;

Trial Tr. Vol. 16 (Young) at 2553-54, 2569; Trial Tr. Vol. 14 (Testimony of Stephanie Lee) at 2300.) According to Ms. Knowles, during the fall and winter of 2006-2007, Moran Lake's dining room was so cold that residents eventually chose to eat in their rooms, alone, on either a chair or a bed. (Trial Tr. Vol. 3 (Knowles) at 346, 366.) Stephanie Lee, a former Moran Lake employee, testified that, at times during the winter months, Moran Lake residents were dressed in coats and bundled in blankets so they could eat their meals in the dining room, and the staff had to wear coats to work in the dining room. (Trial Tr. Vol. 14 (Lee) at 2289.)

77. According to Ms. Knowles' testimony, she faxed Defendant continually between January and March 2007, asking for heat for the dining room, to no avail. (Trial Tr.

Vol. 3 (Knowles) at 339-346, 365; Gov't Ex. 487.) In letters faxed to Defendant and Washington on January 31, 2007, Ms. Knowles stated: "HEATERS: MY DINING ROOM HAS NO HEATERS. I NEED 6 HEATERS ASAP. THIS HAS BEEN NOTED BY THE SURVEYORS AND OMBUDSMAN ON THIS VISIT." (Gov't Ex. 487 (emphasis and capitalization in original).) Ms. Knowles testified that she stopped working at Moran Lake in mid-May 2007, and that there was no heat in the nursing home's dining room for the last four to six months that she worked there. (Trial Tr. Vol. 3 (Knowles) at 349, 365; Gov't Ex. 487.)

78. Mr. Young testified that he was unable to keep every unit working in every resident's room at Moran Lake. (Trial Tr. Vol. 16 (Young) at 2554, 2563-64.) According to Mr. Young and former Moran Lake employee John Thomas,

residents at Moran Lake might go weeks or a month without having heat or air conditioning in their rooms. (Trial Tr. Vol. 16 (Young) at 2568-69; Trial Tr. Vol. 14 (Thomas) at 2191.) The residents were not moved from their rooms during times of no heat or no air conditioning. (Trial Tr. Vol. 16 (Young) at 2568.)

79. The central air unit that cooled approximately one-half of the Moran Lake building, the “B Unit,” stopped working in July 2006, and was never repaired. (Trial Tr. Vol. 2 (Knowles) at 297-98, 304.) On July 11, 2006, Ms. Knowles faxed a letter to Defendant that stated: “AC UNIT ON B-SIDE: I UNDERSTAND THAT THE UNIT HAS BEEN PUT IN, BUT I CONTINUE TO NOT HAVE AIR ON THAT SIDE. I CONTINUE TO GET RESIDENT, STAFF, AND FAMILY COMPLAINT AS TO THE HEAT.” (Gov’t Ex. 487

(emphasis and capitalization in original.)

80. Former Moran Lake employees and family members of residents testified that some residents' rooms and the dining room were frigid in the winter and sweltering in the summer, and that the dining room became too hot for the residents to use. (Trial Tr. Vol. 10 (Testimony of Linda Dodson) at 1532; Trial Tr. Vol. 11 (Testimony of Tammy Edwards) at 1588-89; Trial Tr. Vol. 14 (Thomas) at 2191, (Lee) at 2289-90, 2300; Trial Tr. Vol. 15 (Cox) at 2431.) Dr. Keith Hannay, a former medical director for Moran Lake, also testified about a lack of air conditioning in the therapy room at Moran Lake. (Trial Tr. Vol. 10 (Hannay) at 1455.) According to witness Christy Glymph, when she surveyed Moran Lake in January 2007, she immediately noticed that the facility was cold when she entered the building. (Trial

Tr. Vol. 3 (Glymph) at 446.) Ms. Glymph testified that a resident in the Moran Lake day room also told her that he was cold. (Id. at 552.)

81. Witness Caren Kelley testified that she took her mother home from Moran Lake for baths because there was no heat in the shower rooms. (Trial Tr. Vol. 10 (Testimony of Caren Kelley) at 1498.)

82. When Subacute Services renovated the Moran Lake building, it found that none of the PTAC units worked in the dining room, and the majority of units in the residents' rooms did not work and had to be replaced. (Trial Tr. Vol. 15 (Forrister) at 2348, 2356.)

ii. Mt. Berry

83. Mt. Berry also had problems keeping the PTAC units working in residents' rooms and the dining room.

(Trial Tr. Vol. 5 (Greenway) at 796.) Ms. Greenway testified that there were times when the Moran Lake dining room had no heat or air conditioning. (*Id.*) Residents cannot use a nursing home dining room when its temperature exceeds 88 degrees. (Trial Tr. Vol. 11 (Testimony of Tammy Edwards) at 1587.) Witnesses testified that, at times, the temperature in the Moran Lake dining room exceeded that limit, forcing the residents to eat in their rooms. (Trial Tr. Vol. 10 (Testimony of Ylaunda Dixon) at 1566; Trial Tr. Vol. 5 (Greenway) at 796.)

iii. Wildwood

84. The residents' rooms in Wildwood were heated and cooled with individual units that fit in openings in the walls that were beneath the windows and close to ground level. (Trial Tr. Vol. 9 (Patrick) at 1274-76.)

85. Wildwood also had several central air conditioning units on the roof that served the common areas in the wings and hallways. (Trial Tr. Vol. 9 (Patrick) at 1274-76.)

86. In July 2004, when Defendant became the Medicare and Medicaid provider at Wildwood, the units in the residents' rooms were old and many malfunctioned, and the units continued to malfunction until the nursing home closed. (Trial Tr. Vol. 9 (Patrick) at 1274-76.) According to witness Danny Patrick, some of the units in the residents' rooms were wired directly into the wall for power, with the wiring exposed. (Id. at 1275.)

87. From May 2006 until August 2007, Winifred Herrington's aunt lived in Wildwood. (Trial Tr. Vol. 7 (Herrington) at 1031-32.) According to Ms. Herrington, the living conditions at Wildwood prompted her to visit her aunt

nearly every day. (Id. at 1041-42.) Ms. Herrington testified that there was frequently no heat in the room or in the common areas in the wing where her aunt lived. (Id. at 1034-36.) According to Ms. Herrington, at times, her aunt stayed in her bed all day, saying it was too cold in the home to get out of bed. (Id. at 1035-36.) Ms. Herrington testified that her aunt developed pneumonia twice while she lived in Wildwood, and that her aunt's doctor attributed those illnesses to the change in temperatures between leaving the nursing home's warm shower rooms and returning to the unheated hallways and residential rooms. (Id. at 1036-1037.)

88. The air conditioning did not work in Wildwood kitchen. (Browning Dep. at 10.) Ms. Browning, a former Wildwood resident, testified that she became very ill once

because the heat in the kitchen spoiled the meat on her sandwich. (Id. at 20.) According to Ms. Browning, afterward, she always made sure to check the milk before drinking any. (Id. at 30.)

89. In July 2007, when Ms. Chal became the administrator of Wildwood, she found that the air conditioning in the nursing home worked intermittently. (Trial Tr. Vol. 16 (Chal) at 2695.) “Intermittent” air conditioning is not acceptable in a nursing home in Brunswick, where the temperatures regularly exceed ninety degrees and the humidity regularly exceeds ninety percent during four months of the year. (Id. at 2695; Trial Tr. Vol. 13 (Johnson) at 2035.)

90. On July 12, 2007, when Ombudsman Kathy Gaulin visited Wildwood, Ms. Gaulin found that the air conditioning

was not working in the nursing home, and the maintenance man told her that “it had been out for three months and that there were several individual units in the [residents’] rooms that were out, too.” (Trial Tr. Vol. 12 (Testimony of Kathy Gaulin) at 1925; Gov’t Ex. 361.41.) Ms. Gaulin found that, on that date, it was eighty-one degrees in Wildwood’s south wing and ninety degrees in the nursing home’s north wing. (Trial Tr. Vol. 13 (Gaulin) at 1925; Gov’t Ex. 361.41.) Ms. Gaulin testified that she was especially concerned because the residents’ rooms did not have any fresh water, which they needed while living in such hot conditions. (Trial Tr. Vol. 13 (Gaulin) at 1925; Gov’t Ex. 361.41.)

91. According to Mr. Johnson, when Southeast Georgia Health Systems began renovating the Wildwood building in the fall of 2007, it found that all of the PTAC units

in the residents' rooms were corroded and had to be replaced. (Trial Tr. Vol. 13 (Johnson) at 2037-38.) Mr. Johnson further testified that all of the air conditioning units on the roof that served the nursing home's common areas had to be replaced due to lack of maintenance. (Id.)

c. Lack of Maintenance

92. Moran Lake was an older building that required substantial maintenance. (Trial Tr. Vol. 16 (Young) at 2552.) The building at Wildwood was fifteen to twenty years old. (Trial Tr. Vol. 9 (Patrick) at 1292.)

93. Approximately six or seven months after Houser took over the homes, maintenance men Jamie Young, at Moran Lake, and Danny Patrick, at Wildwood, found that they had no maintenance budget, and they testified that the Home Depot would not let them charge parts and supplies

because of unpaid bills. (Trial Tr. Vol. 9 (Patrick) at 1267-69, 1281-82; Trial Tr. Vol. 16 (Young) at 2550-51; Trial Tr. Vol. 14 (Testimony of Christie Fuqua) at 2173-74.)

94. Mr. Young occasionally obtained money from his administrator, Ms. Knowles. (Trial Tr. Vol. 16 (Young) at 2551-52.) Mr. Young also bought needed parts and supplies with his money, for which he testified that was not reimbursed, or when possible, he would obtain needed parts and supplies from relatives. (Id.) On January 22, 2007, Ms. Knowles faxed a letter to Defendant stating: **“THERE ARE SEVERAL THINGS THAT MAINTENANCE NEEDS TO FIX BUT HE CAN’T BECAUSE HE HAS NO SUPPLIES.”** (Gov’t Ex. 487 (capitalization and emphasis in original).)

95. Ms. Knowles frequently notified Defendant of the

need to repair and maintain the fire alarm and door alarms at Moran Lake, which fell out of repair after the vendor refused to provide maintenance services because of unpaid bills. (Trial Tr. Vol. 2 (Knowles) at 295-96; Gov't Ex. 487.)

96. Ms. Greenway testified that the sprinkler system, fire extinguishers, and kitchen hood at Mt. Berry were not inspected because the inspection services refused service based on unpaid bills. (Trial Tr. Vol. 5 (Greenway) at 795-797; Gov't Ex. 800.)

97. Ms. Chal also testified that the sprinkler system at Wildwood was not inspected between January and August 2007 because of unpaid bills. (Trial Tr. Vol. 16 (Chal) at 2673; Gov't Ex. 1102.)

d. Filth and Mold

98. Ms. Maulding testified that Medicare and Medicaid

require providers to provide their nursing home residents with a clean, safe environment, and to protect the residents and staff from infection by using special cleaning supplies and sanitizing laundry and dishes. (Trial Tr. Vol. 2 (Mauldin) at 156-57, 172-73.)

99. Witnesses testified that all three nursing homes suffered from shortages or a complete lack of cleaning supplies because the cleaning supply vendors would stop delivering to the nursing homes due to unpaid bills. According to the witnesses, sometimes Defendant paid the vendors to restore deliveries, and, on other occasions, Defendant persuaded other vendors to service the nursing homes. (Trial Tr. Vol. 1 (Stanley) at 13; Trial Tr. Vol. 9 (Patrick) at 1278; Trial Tr. Vol. 14 (Thomas) at 2190-91, 2203-05, (Lee) 2299; Trial Tr. Vol. 16 (Testimony of Lynn

Terhune) at 2640, (Chal) 2663.) Ms. Knowles frequently complained to Defendant about Moran Lake's cleaning supply vendors refusing to deliver needed cleaning and sanitizing supplies. (Trial Tr. Vol. 3 (Knowles) at 308-09; Gov't Ex. 487.)

100. Former Moran Lake employee John Thomas testified that employees went to retail stores to purchase cleaning supplies, but that the employees could not buy enough to clean and sanitize the homes. (Trial Tr. Vol. 14 (Thomas) at 2212-13.) Ms. Greenway testified that employees bought bleach, which is not the type of sanitizing cleaner that the regulations require. (Trial Tr. Vol. 5 (Greenway) at 812.) Ms. Grant testified that the use of bleach is not allowed in long-term care facilities. (Trial Tr. Vol. 9 (Grant) at 1400.)

i. Moran Lake

101. Witnesses testified that Moran Lake always had a strong odor of urine and feces. (Trial Tr. Vol. 14 (Thomas) at 2190-91, 2203-05, (Lee) 2299; Trial Tr. Vol. 16 (Terhune) at 2640.)

102. Linda Dodson's brother, Austin Locklear, lived in Moran Lake from November 2006 until the home closed in July 2007. (Trial Tr. Vol. 10 (Testimony of Linda Dodson) at 1526, 1536.) Ms. Dodson visited her brother daily, and testified that she frequently had to clean feces from his bathroom walls. (Id. at 1531.) Ms. Dodson also testified that, on one occasion, she thought that the wall behind the toilet was rusting, but upon cleaning it, she found that mold was actually growing out of urine stains. (Id.) Ms. Dodson stated that she bought and installed deodorizers "so [her

brother's] room wouldn't smell so bad." (Id. at 1531.)

103. Witnesses testified that it was common in Moran Lake for residents' toilets to overflow onto the bathroom floor. (Trial Tr. Vol. 14 (Lee) at 2288; Trial Tr. Vol. 16 (Terhune) at 2618.) Caren Kelley's mother, Helen Hart, lived in Moran Lake from 2003 until July 2007. (Trial Tr. Vol. 10 (Kelly) at 1497.) Ms. Kelley testified that, during the last six months that her mother lived at Moran Lake, her mother frequently told her that the residents were instructed not to flush their toilets. (Id. at 1501.)

104. During a January 29, 2007 visit to Moran Lake, state surveyor Christy Glymph found that the nursing home "had dirty toilets in there that were smeared with feces, stool on the toilet seat and there's no way to determine how long it had been like that." (Trial Tr. Vol. 3 (Glymph) at 452-53.)

Ms. Glymph stated that she could not imagine “that anybody would have been able to go in there and use it. And if it was there, it means somebody was able to go to the bathroom and use it. They just may not have had help to get cleaned back up.” (Id.)

105. Ann Wells testified that, when she inspected Moran Lake from May 20 to May 23, 2007, she found the entire building to be so filthy that it was “horrendous.” (Trial Tr. Vol. 14 (Testimony of Ann Wells) at 2075, 2087; Gov’t Ex. 361.) According to Ms. Wells, the residents’ shower room was “horrendous.” (Trial Tr. Vol. 14 (Wells) at 2085; Gov’t Ex. 361.) Ms. Wells testified that the shower room had a constant strong, stale, moldy odor. (Trial Tr. Vol. 14 (Wells) at 2085.) According to Ms. Wells, the toilets were covered in feces and attracting flies. (Id.) Ms. Wells further

testified that the shower room remained filthy after housekeeping purported to clean it. (Id. at 2086; Gov't Ex 361.) Ms. Wells further stated that odor of urine in the residents' bathrooms was overpowering. (Trial Tr. Vol. 14 (Wells) at 2088.) According to Ms. Wells, there were puddles of urine on the floor and the bases of the toilets were yellowed and sticky. (Id.) Ms. Wells noted that, in her career, she has never used words like "appalling" and "horrendous" to describe a nursing home, except for Moran Lake. (Id. at 2096.)

106. When Subacute Services leased and renovated the Moran Lake home in the fall of 2007, it replaced the majority of the toilets in the home. (Trial Tr. Vol. 15 (Forrister) at 2358-59.) Subacute Services found that the tile in many residents' bathrooms was stained from

underneath, because the toilets leaked, which, in turn, caused the tiles to become stained and saturated, and also damaged the floors and baseboard. (Id.)

ii. Wildwood

107. According to Defendant's expert witness, Karon Goldsmith, mold growing on interior walls is an indication of poor housekeeping. (Trial Tr. Vol. 18 (Goldsmith) at 2890-91.) Ms. Goldsmith acknowledged that the proper way to deal with mold is to eliminate it, not merely cover it up. (Id.) Danny Patrick testified that, when he showed Defendant the mold that was growing in the shower rooms and producing a terrible odor, Defendant instructed him to paint over the mold. (Trial Tr. Vol. 9 (Patrick) at 1273-74.)

108. Sonya Brunner was an LPN who worked at Wildwood for approximately twelve years, from before the

time that Defendant became the provider there until the nursing home closed in September 2007. (Trial Tr. Vol. 12 (Brunner) at 1805-06.) Ms. Brunner testified that, as the roof leaks went unrepaired under Defendant's management, mold became a problem throughout the nursing home. (Id. at 1807-1809.) According to Ms. Brunner: "The walls were molded. There was mold throughout, mold in the ice machines. It was – it was just a look. I mean, you could see mold throughout. . . . [you could see mold] on the walls, patient rooms, in corners, ice machine." (Id. at 1808-09.) Ms. Brunner testified that, under Defendant's management, the mold was "pacified," meaning that it was not removed, but "brushed up." (Id.)

109. Ms. Browning, a former Wildwood resident, recalled that the mold caused the wallpaper to bubble, and

that, when the maintenance men stripped the wallpaper from the wall, the mold beneath it became visible. (Browning Dep. at 9.)

110. In February 2005, Ms. Gaulin, the Ombudsman, reported that “[d]uring routine visits to facility, shower rooms are often observed dirty. Feces on floor and toilet. Dirty towels and clothing on floor.” (Trial Tr. Vol. 12 (Gaulin) at 1894; Gov’t Ex. 361.29.)

111. On August 17, 2007, Gerry Dunham, who was then a Special Agent of the Department of Health & Human Services Office of Inspector General, toured Wildwood and took photographs. (Trial Tr. Vol. 15 (Testimony of Gerry Dunham) at 2486-88; Gov’t Ex. 626.) Mr. Dunham’s photographs depicted mold on the walls, feces and a cockroach in the showers, numerous barrels and buckets

placed in the common areas to catch water from the leaking roof, an obviously used diaper in one of the bath tubs, soiled linens and bed pads piled up with robes and gowns, exposed wiring, and numerous inoperable air conditioning units. (Trial Tr. Vol. 15 (Dunham) at 2488-2500; Gov't Ex. 626.)

112. When Mr. Johnson walked through Wildwood on September 10, 2007, three days after the last resident had been removed from the nursing home, Mr. Johnson saw and photographed black mold growing on walls throughout the nursing home. (Trial Tr. Vol. 13 (Johnson) at 2033-36, 2045; Gov't Ex. 758a.) Mr. Johnson opined that vinyl wallpaper should not be used in Brunswick because it is a warm, humid, coastal area, and the glue used to apply vinyl wallpaper is an excellent growth medium for mold. (Trial Tr.

Vol. 13 (Johnson) at 2035.) Mr. Johnson testified that the growing mold turns the glue black and causes the wallpaper to bubble and peel. (Id.) Mr. Johnson recalled that, “every place we encountered the vinyl wallpaper we encountered the mold” (Id. at 2035-36.) According to Mr. Johnson, the mold was so pervasive that the sheet rock had to be removed from the hallways of an entire wing because the mold had grown into the sheet rock. (Id.; Gov’t Ex. 758a.)

113. Mr. Johnson saw, and photographed, an air supply diffuser that blew air across mold-covered ceiling tiles at Wildwood. (Trial Tr. Vol. 13 (Johnson) at 2050-51; Gov’t Ex. 758a.) Mr. Johnson also found that in many areas of Wildwood, water had stood for so long on the floor tiles that the corners of the tiles were coming up, and water squirted up when the tiles were stepped on. (Trial Tr. Vol.

13 (Johnson) at 2045.) Mr. Johnson also found that, in September 2007, the majority of the toilets at Wildwood were inoperable and badly rusted. (Id. at 2040.)

e. Laundry

114. Many nursing home residents are incontinent and, consequently, much of the laundry consists of bed linens that are soiled with feces or soaked with urine, or both. (Trial Tr. Vol. 14 (Fuqua) at 2146.)

115. Nursing home laundry must be washed at sufficiently high temperatures, with sanitizing chemicals, to protect residents and staff from the spread of infection and from cross-contamination. (Trial Tr. Vol. 14 (Fuqua) at 2146; Trial Tr. Vol. 13 (Wells) at 2093-95; Trial Tr. Vol. 18 (Goldsmith) at 2880.)

i. Moran Lake

116. The laundry facilities at Moran Lake were located in a building that was behind the main nursing home facility. (Trial Tr. Vol. 2 (Knowles) at 304-05.)

117. Ms. Knowles and other witnesses testified that the laundry facilities at Moran Lake became inoperable after Georgia Power discontinued service to the laundry building because Defendant failed to pay the power bill. (Trial Tr. Vol. 2 (Knowles) at 304-05; Trial Tr. Vol. 3 (Testimony of Kristi Barker) at 385-87; Trial Tr. Vol. 16 (Young) at 2563.)

118. Witnesses also testified that the laundry facilities at Moran Lake became inoperable when the washing machines or the soap- and sanitizer-dispensing equipment broke down and the company that serviced that equipment refused to make repair calls due to Defendant's failure to

pay outstanding bills. (Trial Tr. Vol. 2 (Knowles) at 301-02, 306, 315-16; Trial Tr. Vol. 16 (Young) at 2563.) On July 11, 2006, Ms. Knowles faxed a letter to Defendant stating: **“SOUTHERN LAUNDRY REPAIR: WE HAVE A WASHING MACHINE AND DRYER THAT NEEDS TO BE FIXED. THIS IS NOT DONE BECAUSE WE CANNOT GET THEM OUT TO DO REPAIRS.”** (Gov’t Ex. 487 (emphasis and capitalization in original).)

119. In a January 22, 2007 letter that Ms. Knowles faxed to Defendant, Ms. Knowles stated: **“SOUTHEASTERN LAUNDRY: THE WASHER IS NOT RUNNING CORRECTLY. IT NEEDS TO BE RE-SET. THEY WILL NOT COME OUT UNTIL PAYMENT IS MADE.”** (Gov’t Ex. 487 (emphasis and capitalization in original).)

120. At times when the laundry facilities at Moran Lake

were inoperable, employees washed the laundry at laundromats until the laundromats banned them from bringing the soiled nursing home linens to their facilities. (Trial Tr. Vol. 14 (Thomas) at 2221-22.) On August 21, 2006, Ms. Knowles faxed a letter to Defendant stating: **WASHERS: CASH IS NEEDED. THERE IS NO LINEN AVAILABLE FOR STAFF TO USE THIS MORNING.** (Gov't Ex. 487 (emphasis and capitalization in original).)

121. At times, the Moran Lake employees took the soiled linens to Mt. Berry and used its laundry facilities when those facilities were operating. (Trial Tr. Vol. 2 (Knowles) at 316; (Trial Tr. Vol. 16 (Young) at 2571.)

122. Former Moran Lake employee John Thomas testified that, despite the employees' efforts, the sheer amount of laundry from a 100-bed nursing home sometimes

overwhelmed the employees' efforts at the laundromats or Mt. Berry. (Trial Tr. Vol. 14 (Thomas) at 2207-09.) Christie Fuqua and Mr. Thomas testified that, at times, dirty linens and soiled cloth diapers sat for a day or longer before they could be cleaned. (Trial Tr. Vol. 14 (Fuqua) at 2169, (Thomas) 2192.) Mr. Thomas stated that, at those times, residents went periods of a day or longer before receiving clean linens for their beds. (Trial Tr. Vol. 14 (Thomas) at 2209.) Mr. Thomas and Ms. Landers testified that, given the amount of laundry that must be done in a nursing home with more than ninety residents, many of whom were incontinent, there was no way that Moran Lake could always furnish resident with clean linens during the times when its laundry facilities were inoperable. (Trial Tr. Vol. 11 (Landers) at 1733-34, 1744-45; Trial Tr. Vol. 14 (Thomas)

at 2192, 2207-09.)

ii. Mt. Berry

123. The laundry facilities at Mt. Berry had the same problems as at Moran Lake, with the exception that those facilities were housed within the nursing home itself, where Georgia Power would not terminate service. Mt. Berry employees took soiled linens to laundromats when the home's washing machines had broken down and the maintenance service refused service because of unpaid bills. (Trial Tr. Vol. 1 (Stanley) at 33-34; Trial Tr. Vol. 5 (Greenway) at 816-819.)

iii. Wildwood

124. The laundry facilities at Wildwood became inoperable when the washing machines or the soap- and sanitizer-dispensing equipment broke down, and the

company that serviced that equipment refused to make repair calls due to Defendant's failure to pay outstanding bills. (Trial Tr. Vol. 7 (Herrington) at 1047-48; Trial Tr. Vol. 9 (Patrick) Tr. at 1271, (Grant) 1338-39, 1343; Gov't Ex. 831.23.) Ms. Grant testified that laundromats in Brunswick banned Wildwood employees from bringing the soiled linens from a 204-bed nursing home to their facilities. (Trial Tr. Vol. 9 (Grant) at 1338-39, 1343.) Mr. Patrick testified that, when the washing machines were inoperable at Wildwood, the piles of soiled linens stank. (Trial Tr. Vol. 9 (Patrick) at 1271.)

125. In August 2007, the Wildwood laundry was inoperable because of "electrical issues, safety issues, [and] fire issues," and employees had to take laundry to laundromats. (Trial Tr. Vol. 16 (Chal) at 2675; Gov't Ex.

361.51.)

f. Hot Water Shortages

126. Linda Dodson visited her brother in Moran Lake daily, and she testified that she frequently took her brother's clothes and washed them at her home because Moran Lake often did laundry in water that was not sufficiently warm to clean her brother's soiled clothes thoroughly. (Trial Tr. Vol. 10 (Dodson) at 1531.)

127. When Mattie Cox inspected Moran Lake in early May 2007, she was told that the home had been without hot water for laundry and housekeeping for months. (Trial Tr. Vol. 15 (Cox) at 2430; Gov't Ex. 355.)

128. Wildwood had undependable boilers that needed to be replaced, but that never were replaced. (Trial Tr. Vol. 9 (Patrick) at 1270-71, 1275.) According to Mr. Patrick,

Defendant never provided Wildwood with the money needed to fix the boilers. (Id.) Mr. Patrick and Ms. Grant recalled that, on one occasion, plumbers came to work on the boilers, but they left before they finished because Defendant did not pay them. (Id. at 1288, (Grant) at 1346.) Ms. Grant testified that the boilers were not serviced afterward because Defendant failed to pay the vendor. (Trial Tr. Vol. 9 (Grant) at 1346.)

129. According to Ms. Grant, Wildwood was without hot water in the east and west wings for two weeks in March 2006. (Trial Tr. Vol. 9 (Grant) at 1329-30; Gov't Ex. 831.1.)

130. Mr. Johnson testified that, when Southeast Georgia Health Systems renovated Wildwood in fall 2007, all the water heaters in the nursing home had to be replaced because the coils were corroded and unusable. (Trial Tr.

Vol. 13 (Johnson) at 2039.)

131. Several witnesses testified that residents had to take cold baths or showers, or receive sponge baths, because of the lack of hot water. (Trial Tr. Vol. 4 (Testimony of Lurette McPherson) at 699-700 (discussing Wildwood); Trial Tr. Vol. 6 (Greenway) at 874 (relating to Mt. Berry); Trial Tr. Vol. 10 (Kelley) at 1500-01 (pertaining to Moran Lake), (Dodson) 1536 (same), (Testimony of Pete Peyton) 1546 (relating to Mt. Berry); Trial Tr. Vol. 12 (Testimony of Reba Usher) at 1795-96 (addressing Wildwood); Trial Tr. Vol. 14 (Thomas) at 2193, 2219 (relating to Moran Lake); Trial Tr. Vol. 16 (Terhune) at 2638 (same).)

132. According to Christie Fuqua, the dishwasher at Moran Lake did not heat the water hot enough to sanitize

the dishes. (Trial Tr. Vol. 14 (Fuqua) at 2145-46.) Ms. Knowles testified that, when the dishwashing equipment was broken down, the staff at Moran Lake washed the dishes by hand, which would necessarily be at temperatures too low to sanitize the dishes. (Trial Tr. Vol. 2 (Knowles) at 314-15.) On October 23, 2006, Ms. Knowles faxed a letter to Defendant stating: "**DISHWASHER: THE SANITIZER IS NOT WORKING. ECOLAB HAS TO FIX IT, AS WE CANNOT □ GET THE PARTS FROM ANYONE ELSE. OUTSTANDING BALANCE: \$1697.89.****SURVEY ITEMS ******" (Gov't Ex. 487(emphasis and capitalization in original).)

133. Ms. Grant testified that the kitchen at Wildwood often was without hot water to wash dishes because the boiler was broken, and stated that the repair service would not make a repair call because Defendant had not paid its

previous bills. (Trial Tr. Vol. 9 (Grant) at 1346.)

g. Shower Rooms

i. Wildwood

134. According to former Wildwood employee Danny Patrick, the shower rooms in Wildwood stank because they were filled with mold, bugs and roaches, and black, raw sewage often backed up through the drains. (Trial Tr. Vol. 9 (Patrick) at 1273-74, 1289-90.) As previously noted, Mr. Patrick testified that, when he showed Defendant mold growing in the shower rooms, Defendant ordered him to paint over the mold. (Id. at 1273-74.) According to Mr. Patrick, painting over mold temporarily improves the appearance, but does not eliminate the mold. (Id. at 1273.) Wildwood had five shower rooms or bath houses, two of which had working showers, but, according to Mr. Patrick,

all of the shower rooms had mold problems and backed up sewage and none were clean enough to use. (Id. at 1273-74, 1289-95.)

135. Photographs of Wildwood taken on August 17, 2007 by Special Agent Gerry Dunham depicted mold growing on the walls, feces and a cockroach in the showers, and a used and soiled diaper dropped in one of the bath tubs. (Trial Tr. Vol. 15 (Dunham) at 2486-2500; Gov't Ex. 626.)

ii. Moran Lake

136. Ann Wells inspected Moran Lake from May 20 to May 23, 2007, and testified that she found that the residents' shower room was so filthy that it was "horrendous." (Trial Tr. Vol. 13 (Wells) at 2075, 2085; Gov't Ex. 361.) According to Ms. Wells, the shower room had a

constant strong, stale, moldy odor. (Id. at 2085.) Ms. Wells recalled that the shower room remained filthy even after housekeeping purported to have cleaned it. (Id. at 2086; Gov't Ex 361.)

h. Garbage Pickup

137. 42 C.F.R. § 483.35(i)(3) provides that a nursing home must “dispose of garbage and refuse properly.” 42 C.F.R. § 483.35(i)(3).

138. Trash service at all three of Defendant’s nursing homes was frequently stopped due to Defendant’s failure to pay the waste removal services’ bills. (Trial Tr. Vol. 1 (Stanley) at 13-14; Trial Tr. Vol. 2 (Knowles) at 321-22; Trial Tr. Vol. 4 (J. Chisolm) at 533; Trial Tr. Vol. 5 (Greenway) at 787; Trial Tr. Vol. 9 (Grant) at 1322, 1343; Trial Tr. Vol. 12 (Brunner) at 1811-12, (Gaulin) at 1895; Gov’t Exs. 361.30,

487.)

139. Nursing homes of 100 and 200 residents generate large amounts of garbage within a short time period. (Trial Tr. Vol. 2 (Knowles) at 321-22; Trial Tr. Vol. 4 (J. Chisolm) at 533.)

140. When the waste removal services refused to empty the dumpsters at the nursing homes, employees left garbage near the dumpster, which attracted flies and other insects, rodents, and dogs, and generated odors. (Trial Tr. Vol. 2 (Knowles) at 321-22; Trial Tr. Vol 4 (J. Chisolm) at 533; Trial Tr. Vol. 9 (Grant) at 1324; Trial Tr. Vol. 11 (Testimony of Tammy Edwards) at 1590-91, (Landers) at 1732; Trial Tr. Vol. 14 (Thomas) at 2193-94, (Lee) at 2288.)

i. Moran Lake

141. Moran Lake had four dumpsters, and between

early 2006 and June 2007, garbage service at Moran Lake was stopped at least four or five times for non-payment. (Trial Tr. Vol. 11 (Testimony of William Mitchell) at 1615-18; Trial Tr. Vol. 2 (Knowles) at 321-22.) On October 4, 2006, Ms. Knowles faxed a letter to Defendant that stated: **“ALLIED WASTE: THEY HAVE STOPPED PICKING UP GARBAGE. OUTSTANDING BALANCE: \$3965.60.”** (Gov’t Ex. 487 (emphasis and capitalization in original).)

142. On January 15, 2007, Ms. Knowles faxed Defendant a letter stating: **“ALLIED WASTE: MY GARBAGE IS OVERFLOWING AGAIN.”** (Gov’t Ex. 487 (emphasis and capitalization in original).)

143. On February 21, 2007, Ms. Knowles faxed another letter to Defendant that stated: **“ALLIED WASTE: THE GARBAGE NEEDS TO BE EMPTIED ASAP. IT**

LOOKS AWFUL IN THE BACK.” (Gov’t Ex. 487 (emphasis and capitalization in original).)

144. Witness William Mitchell testified that, when the Moran Lake garbage service was cut off for nonpayment, the cutoff usually lasted a week. (Trial Tr. Vol. 11 (Mitchell) at 1618, 1623.) Mr. Mitchell, however, testified that, at one point during late winter or early spring 2007, Moran Lake’s garbage service was cut off for three weeks. (Id. at 1619, 1625.) When the waste removal company resumed pickup, the garbage was piled so high on the dumpsters that the waste removal driver could barely see the dumpsters when he first arrived. (Id. at 1619-20.) According to Mr. Mitchell, bags of garbage were ripped open, dogs were eating the garbage, and the garbage smelled horrible. (Id.)

145. The dumpsters at Moran Lake were located near

the end of a residential hall, and witnesses testified that employees and residents of that hall could smell the stench whenever waste removal service was cut off and the garbage piled up around the dumpsters. (Trial Tr. Vol. 11 (T. Edwards) at 1590-91, (Landers) 1732; Trial Tr. Vol. 14 (Thomas) at 2193-94, (Lee) 2288.) The trash attracted flies, roaches, other insects, mice, rats, and snakes. (Trial Tr. Vol. 11 (Edwards) at 1590-91, (Landers) at 1732; Trial Tr. Vol. 14 (Thomas) at 2193-94, (Lee) at 2288.)

146. Lisa Landers, who served a social worker at Moran Lake until the nursing home closed in 2007, testified: “The dumpsters would be overflowing with, maybe, sometimes, three times the amount the dumpster would hold. Of course, the dogs would come and drag the trash out because there were dirty diapers in there. It would be all

over in the yard, and the smell would be horrible.” (Trial Tr. Vol. 11 (Landers) at 1732.)

ii. Mt. Berry

147. Garbage frequently piled up around the dumpsters at Mt. Berry after trash service was cut off due to Defendant’s failure to pay the waste service company. (Trial Tr. Vol. 1 (Stanley) at 13-14; Trial Tr. Vol. 5 (Greenway); Gov’t Ex. 800.) The garbage piles around the dumpsters attracted insects and rats. (Trial Tr. Vol. 1 (Stanley) at 13-14; Trial Tr. Vol. 5 (Greenway) at 787; Gov’t Ex. 800.)

148. When Mt. Berry’s waste management service was stopped due to unpaid bills, Jerry Chisolm made frequent trips to the dump to haul away the nursing home’s trash using the same truck that he used to haul the residents’