

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA)	
<i>ex rel.</i> DALISA BELL,)	
)	
)	
Plaintiff,)	
)	
)	
vs.)	01-CV-1248 MV/KBM
)	
DR. ALI M. GHAFARI, Individually,)	
LINDA ROSE GHAFARI, Individually,)	
BUENA VISTA RETIREMENT CENTER,)	
INC., and ALI M. GHAFARI, SR.,)	
M.D., P.A., a New Mexico for profit)	
corporation,)	
)	
Defendants.)	
-----)	

FIRST AMENDED COMPLAINT IN INTERVENTION

The United States of America, by and through the United States Attorney for the District of New Mexico, files this First Amended Complaint in Intervention against Defendants, jointly and severally, for damages under the False Claims Act, 31 U.S.C. §§ 3729-3733, and the common law or equitable theory of unjust enrichment.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345, 1367(a) and 31 U.S.C. § § 3730, 3732.
2. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1395(a), and

31 U.S.C. § 3732(a) because the acts alleged in this complaint occurred in the District of New Mexico.

PARTIES

3. The United States brings this action to recover losses incurred by its agency, the Department of Health and Human Services (HHS), and its operating division, the Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration (HCFA).

4. HHS provides funding for, and regulates payment and participation of, long term care nursing facilities in the Medicaid program.

5. Defendants Ali M. Ghaffari, M.D., and Linda R. Ghaffari (Ghaffaris) are residents of the State of New Mexico, and at material times were spouses.

6. At material times Ghaffaris were the sole shareholders, owners, officers and directors of Defendant Buena Vista Retirement Center, Inc. (Buena Vista). Buena Vista was at material times a New Mexico corporation doing business as a nursing facility, with its facility located at 1501 West 7th Street, Clovis, New Mexico. Buena Vista at material times was assigned New Mexico Medicaid provider number I-0746.

7. Ghaffaris, individually and/or through their joint ownership of Defendant Ali M. Ghaffari, Sr., M.D., P.A. (MDPA) owned the real estate and facility occupied by Buena Vista, including equipment therein. Ghaffaris personally directed and managed the operations of Buena Vista. Buena Vista's New Mexico Medicaid Provider Agreements bearing effective dates of January 8, 1998, February 9, 1999, March 14, 2000, December 7, 2000, December 18, 2001, and

January 23, 2003 identified Ali M. Ghaffari, Sr., Linda R. Ghaffari and MDPA as persons or entities with ownership and/or controlling interest in Buena Vista for each of the respective years. In addition, MDPA and Ghaffari's Medical Pharmacy were organizations reported by Defendants as parties related to Buena Vista in their Financial and Statistical Reports to the State of New Mexico, including but not necessarily limited to those dated June 30, 1997, June 30, 1998, June 30, 1999, June 30, 2000, and June 30, 2001. In their Financial and Statistical Report for the period ending June 30, 2001, Ghaffaris reported that each of them had a 50% ownership interest in MDPA, Buena Vista and Ghaffari Medical Pharmacy.

GENERAL ALLEGATIONS

8. Except as otherwise specifically noted, the allegations herein describe the New Mexico Medicaid Program and other facts during the period relevant to this action, i.e., from January 1, 1999 to April 30, 2004.

9. Ghaffaris personally supervised, directed and controlled the daily management and operations of Buena Vista, including but not limited to exercising sole control over financial expenditures. Ali M. Ghaffari was at material times the Medical Director of Buena Vista, and Linda Ghaffari was at material times the Administrator of Buena Vista. In addition, Linda R. Ghaffari, at material times a licensed pharmacist, was the in-house pharmacist at Buena Vista. The Ghaffaris collectively had ownership and management control over Buena Vista and MDPA. As such, the Ghaffaris controlled the operation and management, including but not limited to the facility budget, compensation, and hiring and firing decisions at Buena Vista. The Ghaffaris both individually participated in and directed the acts and omissions set forth herein.

10. At all relevant times, Buena Vista, Ghaffaris, and MDPA caused the conditions, practices and incidents at Buena Vista set out in this Complaint. More specifically, Defendants caused egregious and ongoing resident harm, abuse, and neglect, and the grossly deficient living conditions at Buena Vista. At all relevant times, Defendants “knowingly,” as defined in 31 U.S.C. § 3729(b), directed and approved of the billings by Buena Vista to New Mexico Medicaid and knowingly accepted and approved of the receipt by Buena Vista of New Mexico Medicaid funds, all despite the failure to provide services, the extremely substandard care and living conditions, and the egregious and ongoing resident harm, abuse and neglect. At all material times, Defendants knowingly caused Buena Vista to submit bills to New Mexico Medicaid for providing qualified nursing home services, despite knowing that in fact Buena Vista was not doing so. At all material times, Defendants knowingly assisted one another in submitting the false claims and accepting the payments received therefor, all as is more fully described herein. The Ghaffaris personally benefitted from the payments received from the New Mexico Medicaid program.

11. Defendants caused advertising about Buena Vista to be disseminated to the public, including the beneficiaries of the New Mexico Medicaid program, falsely stating that Buena Vista provided, *inter alia*: the best services possible by team work; personalized atmosphere for comfortable living; activity therapies to challenge individual residents to create and continue their knowledge and skills; a highly capable and caring staff of licensed nurses and certified nursing assistants to provide quality care to residents 24 hours a day; and qualified laundry, housekeeping and maintenance departments that maintain the sanitary and mechanical operations

of the facility. Defendants utilized these false advertisements to attract and solicit new residents.

12. Buena Vista was at material times enrolled as a nursing facility under the Medicaid program, 42 U.S.C. §§ 1383, 1395-1396v, and the Federal Social Security Act, Titles XVIII and XIX of 42 U.S.C. Ali M. Ghaffari, Linda R. Ghaffari, and MDPA caused Buena Vista to enter into provider agreements with the State of New Mexico, the latest of which were effective on January 8, 1998, February 9, 1999, March 14, 2000, December 7, 2000, December 18, 2001, and January 23, 2003. Pursuant to those provider agreements, Defendants caused Buena Vista to agree *inter alia* to abide by Federal, State and local laws, regulations, and policies applicable to providers of medical services under the Medicaid program and other health care programs administered by the State of New Mexico Human Services Department; and to render covered services to eligible clients in the same scope, quality, and manner as provided to the general public.

13. On or about October 29, 1997, Defendants also caused Buena Vista to enter into an Electronic Claim Submission Agreement Authorization with the New Mexico Human Services Department or its fiscal agent, in which Defendants caused Buena Vista to agree to abide by the policies for electronic claims submission; that electronically transmitted claims would contain true, accurate, and complete information; that the cashing of each check attached to each remittance advice would be a representation and certification that the services were rendered by the provider; that the submitter was solely responsible for the accuracy of all electronically transmitted claims submitted to the New Mexico Medicaid fiscal agent for payment by the New Mexico Medicaid program; that the submitter acknowledged that the claims would be paid from Federal and State funds; that the submission of an electronic claim is a claim for New

Mexico Medicaid payment; and that anyone who falsifies or causes to be misrepresented or falsified any record or other information relating to that claim or that is required pursuant to the agreement may, upon conviction, be subject to fine and imprisonment under applicable Federal and State law.

14. The provider agreements and Electronic Claim Submission Agreement Authorization were entered into to allow participation in, and payment from, the New Mexico Medicaid program. By causing Buena Vista to enter into the provider agreements and Electronic Claims Submission Agreement Authorization, and causing Buena Vista to bill the New Mexico Medicaid program, Defendants represented *inter alia* that Buena Vista would provide care, services and a healthy environment for the residents of Buena Vista in accordance with applicable Federal and State laws and regulations. Instead, Defendants did not intend to provide, and failed to provide, the level of care, services or environmental conditions which they represented would be provided to the residents of Buena Vista.

15. Nursing facilities that participate in the Medicaid program must meet specific requirements in order to qualify for participation and receive taxpayer dollars. See, e.g., 42 C.F.R. § 442.200; *Caton Ridge Nursing Home, Inc. v. Califano*, 447 F. Supp. 1222 (D. Md. 1978), affirmed 596 F.2d 608 (4th Cir. 1979). The Nursing Home Reform Act, 42 U.S.C. §§ 1396r *et seq.*, requires that nursing facilities such as Buena Vista comply with Federal requirements relating to the provision of services for residents.

16. Medicaid is a Federal program funded under Title XIX of the Social Security Act, and is funded by a combination of state funds and federal matching funds.

States may accept responsibility for administering the Medicaid program. The State of New Mexico has accepted the responsibility for administering the New Mexico Medicaid program. Claims for payment made on the New Mexico Medicaid Program are made to the State of New Mexico through its fiscal agent, also known as a claims processing contractor. New Mexico Human Services Department, Medical Assistance Division (“MAD”) §8.312.25 BI.

17. The New Mexico Medicaid Program in turn submits claims for payment to the United States government. The State of New Mexico received federal matching funds for services covered by the Medicaid program. Quarterly, the State of New Mexico receives an advance of funds from CMS (formerly HCFA). That advance is based on the State’s estimate of Medicaid expenditures for that quarter, and is obtained through the State’s submission to CMS of that estimate along with the State’s certification that state and local matching funds are or will be available for that quarter. To officially receive the federal matching funds, the State of New Mexico is required to submit to CMS documentation of actual Medicaid expenditures after the end of each quarter. CMS then reviews reported Medicaid expenditures to ensure that they are allowable under the Medicaid program, and reconciles the documented expenditures to the State’s quarterly estimate. Therefore, false claims for payment made on the New Mexico Medicaid program in turn cause false claims for payment of federal funds to be presented to an officer or employee of the federal government.

18. Under the New Mexico Medicaid Program, the United States pays a majority of the costs, while the State of New Mexico pays the balance of the costs. The Federal share of New Mexico Medicaid costs for each of the following years was: 1999, 72.98%; 2000,

73.32%; 2001, 73.80%; 2002, 73.04%; 2003, 76.04%; 2004 (1st 3 quarters), 77.51%.

THE LEGAL AND REGULATORY FRAMEWORK

Medicaid Requirements For Nursing Homes

19. Nursing home facilities that participate in the Medicaid program must meet specific requirements in order to qualify for participation in and to bill for and receive taxpayer dollars from the Medicaid program.

20. A New Mexico Medicaid provider is any individual, corporation, partnership, or other association who provides treatment, goods and services to beneficiaries of, and bills such items to, the New Mexico Medicaid Program. NMSA 1978 § 30-44-2K, M. and N.

21. Buena Vista's pre-2000 New Mexico Medicaid provider agreements provided, *inter alia*, that the following conditions would be fulfilled as prerequisites to enrolling in and receiving payment from the New Mexico Medicaid program:

- a. To keep such records as necessary to fully disclose the extent of services provided;
- b. To assume full and total responsibility for claims submitted on behalf of the provider and under the provider's number;
- c. To abide by Federal regulations and State policies concerning providers of medical services under Title XIX (Medicaid) of the Social Security Act;
- d. To swear under penalty of perjury that the information given was true and accurate, and to acknowledge that the provider's activities are subject to the provisions of the New Mexico Medicaid Fraud Control Act.

22. From 2000 forward, New Mexico Medicaid provider agreements into which Defendants entered or caused Buena Vista to enter with the State of New Mexico provided, *inter alia*, that the following conditions would be fulfilled as prerequisites to enrolling in and receiving payment from the New Mexico Medicaid program:

- a. To abide by all Federal, State and local laws, regulations, and policies applicable to providers of medical services under New Mexico Medicaid and other health care programs administered by the State of New Mexico Human Services Department;
- b. To comply with all billing instructions, reimbursement, audit, recoupment, and withholding provisions distributed by the New Mexico Human Services Department;
- c. To render covered services to eligible clients in the same scope, quality, and manner as provided to the general public;
- d. To assume responsibility for any and all claims submitted on behalf of Buena Vista and under Buena Vista's provider number;
- e. To assume sole responsibility for all applicable taxes, insurance, licensing, and other costs of doing business;
- f. To maintain and keep updated program policies, instructions on billing and utilization review, and other pertinent material distributed by the New Mexico Human Services Department;
- g. To retain any and all original medical or business records as are necessary

to verify the treatment or care of any client for which Buena Vista received New Mexico Medicaid payment from the New Mexico Human Services Department; and

h. To abide by and be held to all Federal, State and local laws, rules, and regulations, and to swear under penalty of perjury that the information given was true and accurate.

23. Once enrolled as a New Mexico Medicaid nursing facility, providers, including Defendants, receive a packet of information, including Medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from the State of New Mexico's Medicaid fiscal agent. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from the State of New Mexico Human Services Department, Medical Assistance Division ("MAD"). MAD-731.1.

24. Pertinent to this case, the State of New Mexico by regulation imposes requirements regarding the operation of nursing homes, which *inter alia* provide:

a. Providers who furnish services to New Mexico Medicaid recipients must comply with all specified Medicaid participation requirements, including compliance with all relevant Federal and State laws and regulations. § 8.302.1.11 NMAC (see also former MAD-701, 731.2); and

b. Providers must maintain records which are sufficient to fully disclose the extent and nature of the services furnished to recipients. § 8.302.1.17 NMAC (see also MAD-731.2).

25. Federal Medicaid requirements for nursing facilities are set out in 42

U.S.C. §§ 1396r et seq., and in 42 C.F.R. §§ 483.1 et seq. Pertinent to this case, these requirements specify that:

- a. A nursing facility must care for its residents in a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident. 42 U.S.C. § 1396r(b)(1) (Nursing Home Reform Act, part of the Omnibus Budget Reconciliation Act of 1987);
- b. A resident has the right to be free from verbal, sexual, physical and mental abuse. 42 C.F.R. § 483.13(b);
- c. The nursing facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property are investigated, timely reported to the administrator of the facility and to other officials in accordance with State law (including the State survey and certification agency) through established procedures, and if the alleged violation is verified, the facility must take appropriate corrective action. 42 C.F.R. § 483.13(c)(2-4);
- d. The facility must provide a safe, clean, comfortable and homelike environment, including housekeeping and maintenance services necessary to maintain a sanitary, orderly and comfortable interior, and clean bed and bath linens that are in good condition. 42 C.F.R. § 483.15(h)(1-3);
- e. Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and

psychosocial well-being, in accordance with the comprehensive assessment and plan of care, including among other things maintenance of good hygiene, and provision of appropriate nutrition and hydration. 42 C.F.R. § 483.25;

f. The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. 42 C.F.R. § 483.30;

g. The facility must maintain clinical records on each resident in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible and systematically organized. 42 C.F.R. § 483.75(l)(1); and

h. The facility must provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility. 42 C.F.R. § 483.75 (b).

26. Defendants frequently failed to comply with these regulations and other legal requirements, engaged in acts that caused the non-compliance, and/or negligently caused or allowed such non-compliance. Defendants were under a duty to provide care and facilities to Buena Vista's residents which complied with the applicable standards of care, including but not limited to the obligations they undertook in the Provider Agreements and Electronic Claim Submission Agreement Authorization. Defendants knowingly failed to comply with applicable

standards of care in relation to the care of residents at Buena Vista, including but not limited to providing worthless or substandard care and facilities. As a result of Defendants' conduct, not only were the residents at Buena Vista exposed to foreseeable risk of harm and suffering, but the United States foreseeably sustained financial harm by paying for substandard, non-compliant and/or non-existent goods and services. Defendants' conduct caused suffering, injury, and death to some of Buena Vista's residents.

**ABUSE AND NEGLECT OF, AND PROVISION OF SUBSTANDARD, INADEQUATE OR
NON-EXISTENT CARE TO THE RESIDENTS OF BUENA VISTA**

27. Defendants knowingly, systematically and routinely failed and/or refused to provide, or caused the failure to provide, the billed-for services for which Defendants knowingly submitted and/or caused to be submitted claims to New Mexico Medicaid and to the United States. Among other things, Defendants knowingly failed and refused to provide, or caused the failure to provide, for the safe transportation of residents, sufficient nutrition and/or hydration, residents' medications, cleaning wounds and changing bandages, timely medical attention, the changing of incontinent residents who often were left in dirty diapers and left for hours lying in urine and feces, and a safe environment for the residents, all of which caused injuries to residents. Defendants thereby caused and/or knowingly allowed there to be a systemic failure to provide adequate or appropriate care to the residents of Buena Vista.

28. As a result of these failures, some Buena Vista residents suffered among other things the following:

- a. Skin breakdowns and pressure sores (decubitus ulcers);

- b. Dehydration;
- c. Fractures and other traumatic injuries;
- d. Increased risk of infection, discomfort and depression resulting from unsanitary conditions and not being bathed regularly, exposing residents and staff to increased risk of disease and infection;
- e. Discomfort and risk of injury from bathing in water either too hot or too cold;
- f. Preventable infections and incidents of sepsis;
- g. Complications and discomfort resulting from failure to properly administer medications; and
- h. Inadequate nutrition.

29. The abuse and neglect suffered by the residents was the result of violations of the statutes, regulations and other requirements with which Defendants had caused Buena Vista to agree to comply in order to be entitled to bill and receive payments from the New Mexico Medicaid program. Examples of this abuse and neglect include:

- a. According to the State of New Mexico Long-Term Care Ombudsman, in March, 2002, a female resident died two months after a hooyer lift fell on her at Buena Vista. The facility did not take the woman to the doctor and failed to report the incident.
- b. The Ombudsman also reported that In November, 2002, a male resident was dropped and injured his knee, but Buena Vista did not take this resident to the

doctor and failed to report the incident.

c. Resident 77¹ sustained serious injuries at various times during her residency at Buena Vista, including broken bones and teeth, she fell numerous times, suffered from pneumonia and other infections, dehydration and malnutrition, stage 2 decubitus ulcers, and inappropriate medication.

d. On January 4, 2000, Resident 58 was treated at the emergency room at Plains Regional Medical Center, having been taken there from Buena Vista, dehydrated, without food or fluid intake for 2 days. Resident 58 was also admitted and treated at Plains Regional Medical Center on December 28, 2000, with pneumonia and hyponatremia; and on August 3, 2001, with pneumonia, urinary tract infection, a myocardial infarction and renal failure. Resident 58 died during that 2001 hospital admission.

e. Resident 56 was treated in the Plains Regional Medical Center emergency room for left shoulder pain and soft tissue swelling on July 31, 2001; on December 21, 2001, with pressure sores that required debridement; and on January 9, 2002 with a pressure sore down to the bone, sepsis and a urinary tract infection.

f. Resident 50 was admitted to Plains Regional Medical Center from Buena Vista on April 11, 2000, with hyponatremia, dehydration and urosepsis; on February 14, 2001, with renal failure and hyponatremia; on February 21, 2001,

¹ Information regarding the individual identity of the residents is not included here or in subsequent subparagraphs but, subject to an appropriate protective order from this Court, such information will be made available to the other parties herein and their respective counsel.

with pneumonia, renal failure and dehydration; on March 2, 2001, with hypoglycemia and anemia, and a decubitus ulcer; on March 31, 2001, with a mispositioned feeding tube that had been outside the stomach for an extended period, and pneumonia and dehydration. Resident 50 later died in the hospital.

30. Between at least January 1, 1999 through May 20, 2004, Defendants systematically, knowingly and routinely engaged in a pattern and practice of providing substandard, inadequate, worthless or non-existent care to the residents of Buena Vista, non-compliance with Federal and State regulations, and failure and refusal to permanently correct deficiencies.

31. Most of Buena Vista residents were frail and/or elderly persons, who were vulnerable and completely or partially dependent on Buena Vista staff for their activities of daily living such as transferring from bed to a wheelchair, turning in bed to prevent pressure sores, toileting, eating, brushing their teeth, dressing, and bathing. At all relevant times, each Defendant knew of the deficient care and abuse, neglect and mistreatment of the residents at Buena Vista, and of the unsafe, dangerous and unsanitary conditions at Buena Vista. Each Defendant knew that these circumstances made it improper to bill the New Mexico Medicaid program for these residents. From at least January 1, 1999 through May 20, 2004, when Buena Vista was ordered into receivership by court order due to imminent danger of death or significant mental or physical harm to Buena Vista's residents, Defendants abused and neglected the vulnerable residents of Buena Vista, and exposed them to unsafe and unsanitary conditions.

32. At least between January 1, 1999 and April 30, 2004, Defendants

knowingly presented or caused to be presented claims for payment to the New Mexico Medicaid program and thereby to an officer or employee of the United States, for care, goods or services not rendered, that were inadequate or worthless, or that were rendered in violation of applicable statutes, regulations, and guidelines that are prerequisites to participation in the Medicaid program and therefore payment by New Mexico Medicaid, all in violation of the False Claims Act, 31 U.S.C. §§ 3729 et seq., and the common law.

33. The State of New Mexico's Health Facility Licensing and Certification Bureau conducts Federally mandated on-site investigations and surveys of long-term care facilities to determine whether a facility should continue to be certified to receive government funding. Findings resulting from surveys of Buena Vista conducted by the New Mexico Health Facility Licensing Bureau from 1995 to 2004 reveal, by way of example:

- a. At Buena Vista, there were numerous verified significant quality of care issues regarding medication errors, and failure to provide a continuous restorative program. As a result of an inspection on April 16, 2004, Buena Vista was cited for failure to keep residents free from chemical hazards and accidents. Evidence presented in receivership proceedings (No. D-0905-CV-0200400202, Ninth Judicial District Court, State of New Mexico) also showed that Buena Vista was repeatedly cited for substandard nursing services, was cited for failure to have a registered nurse on duty (once at the severe level of "immediate jeopardy"), and twice for inadequate staff on duty (once to the severe level of "immediate jeopardy");
- b. Pharmacy services at Buena Vista were cited (including at least once to

the severe level of “immediate jeopardy”) for failures to follow physician’s orders, giving medications late, failure to monitor residents’ blood pressures and pulse rates when required for the administration of certain medications, nurses leaving medications without ensuring that residents took them, failure to properly label medications, failure to properly refrigerate and preserve perishable medications, such as insulin, and leaving medication drawers and carts unlocked, including those containing narcotics;

c. Buena Vista was found to have had inadequate dietary services on multiple occasions including leaving nourishments left at nursing stations without proper date and labeling, failure to prepare and store food in a sanitary environment, failure to properly sanitize kitchen and dinnerware, serving food at improper temperatures, special diets that were not properly prepared and monitored and failure to regularly employ a food services director;

d. Buena Vista failed to maintain an adequate infection control program, including failure to sanitize the whirlpool bath, failure properly to dispose of hazardous waste, failure of personnel to wear gloves when performing procedures on residents and to wash hands between assisting different residents, and improper transport and processing of linens;

e. Citations were issued for substandard cleanliness, including cockroaches in residents’ rooms, extensive water damage to the facility and failure to insulate hot water pipes to prevent burn injury to residents and staff.

The Receivership Proceedings and the Court's Findings in Those Proceedings

34. In receivership litigation brought by the New Mexico Department of Health (No. D-0905-CV-0200400202, Ninth Judicial District Court, State of New Mexico), the Court found that among other things:

- a. Buena Vista has demonstrated a pattern and practice of substandard care over years of non-compliance with State and Federal regulations and has failed to correct those deficiencies;
- b. Buena Vista was financially insolvent, had liens placed against it, had lost its line of credit, and owed substantial back taxes;
- c. There was pervasive growth of toxic black mold in the facility;
- d. The floors throughout facility were filthy, and there were no cleaning supplies on the premises;
- e. The kitchen was very dirty and infested with cockroaches;
- f. There were numerous leaks in the roof throughout the facility;
- g. All food was on a C.O.D. basis, and there was little food in the pantry and freezer;
- h. Resident rooms were unclean;
- I. Problems with the hot water heater and mixing valves caused the water temperature at one end of the building to be too low, 85-90 degrees, and too hot on the other side, with temperatures up to 116 degrees;
- j. There was no back-up oxygen for residents of the facility and

mobility for several residents was seriously limited because there were no portable oxygen tanks;

k. A review of individual pharmacy reports for 29 residents found multiple problems;

l. At the time of the receivership, 9 employees of Buena Vista were without required criminal background checks;

m. There were no laundry facilities;

n. The only van at Buena Vista was unsafe;

o. There were inadequate tracking and trending records, and the Buena Vista staff did not know how to make reportable or required incident reports to the State and had never been involved in incident reporting;

p. The accounting and bookkeeping records of Buena Vista were incomplete and inaccurate.

35. The Court in the above-referenced receivership litigation concluded that as a matter of law, the method of operations of Buena Vista presented a situation of imminent danger of death or significant mental or physical harm to its residents. Based on the foregoing, the Court granted receivership of Buena Vista to the State of New Mexico. The Court's decision in the receivership litigation was appealed and affirmed, and is final. Ghaffaris actively participated in the receivership proceedings, as the owners and operators of Buena Vista, and Defendants are bound by the doctrines of *res judicata* and/or collateral estoppel from challenging

or relitigating the issues that were determined in the receivership litigation.

**DEFENDANTS KNOWINGLY SUBMITTED AND/OR CAUSED TO BE SUBMITTED
FALSE CLAIMS TO NEW MEXICO'S MEDICAID PROGRAM**

36. Health care providers must assure *inter alia* that all services for which they submit claims for payment to Medicaid are of a quality which meets professionally recognized standards of health care. 42 U.S.C. § 1320c-5(a)(2).

37. A health care provider that fails in a substantial number of cases substantially to comply with any obligations imposed by 42 U.S.C. §1320c-5(a) or “grossly and flagrantly violates” an obligation imposed by 42 U.S.C. §1320c-5(a) including the obligation to provide care that is of a quality which meets professionally recognized standards of health care may be excluded from receiving reimbursement from the Medicaid program. “Grossly and flagrantly” is defined as a violation that has occurred in one or more instances which presents an imminent danger to the health, safety, or well-being of a beneficiary. 42 C.F.R. § 1004.1(b). See also 42 U.S.C. §1396r(h).

38. For at least the period from January 1, 1999 through April 30, 2004, Defendants knowingly submitted and/or caused to be submitted to the claims processing contractor (fiscal agent) for New Mexico Medicaid (and thereby to the United States) claims for payment on Form UB-92 or its equivalent, for the care of the residents who were covered by the New Mexico Medicaid program, even though these claims for payment were for goods and services that were not provided, were worthless or substandard, or were provided at times when Defendants' actions had forfeited their rights to claim or receive payments because the services were provided in violation of statutory and regulatory requirements that are prerequisites to

payment under the New Mexico Medicaid program. Defendants received payments, and/or caused payments to be made from the New Mexico Medicaid program by making claims for payment as if they had fully performed the promises they made or caused to be made to the New Mexico Medicaid program, when in fact they knowingly had breached the promises they made or caused to be made to the New Mexico Medicaid program.

39. These claims were processed for payment, and then payments were made to Buena Vista. At least since October 29, 1997, when Defendants caused Buena Vista to enter into an Electronic Claim Submission Agreement Authorization with the New Mexico Human Services Department, Defendants caused Buena Vista to electronically submit claims for payment from the New Mexico Medicaid program.

40. Ghaffaris, as managers and/or owners of Buena Vista and MDPA, knew of and were responsible for the financial and management decisions which as alleged herein caused the failure to provide care to the residents at Buena Vista.

41. Attached as Exhibit 1 hereto is a listing of the false and fraudulent claims which Defendants knowingly submitted and/or caused to be submitted to the New Mexico Medicaid program, and the payments they received therefor, for the period January 1, 1999 through April 30, 2004. These claims were presented or caused to be presented to the United States and the State of New Mexico.

FIRST CLAIM FOR RELIEF

**False Claims Act - 31 U.S.C. § 3729(a)(1)
Submission, or Causing the Submission, of False Claims**

42. The United States re-alleges and incorporates by reference the foregoing

allegations.

43. During the Period January 1, 1999 through April 30, 2004, Defendants knowingly presented or caused to be presented false or fraudulent claims for reimbursement to the New Mexico Medicaid program, which in turn sought and obtained reimbursement or payment of federal funds from the United States, in violation of the False Claims Act, for goods and services that they claimed to have provided but that they either did not provide, were worthless or substandard, or were provided at times when Defendants' actions had forfeited their rights to claim or receive payments because they were provided in violation of statutory and regulatory requirements that are prerequisites to payment under the New Mexico Medicaid program. Defendants' false claims on the New Mexico Medicaid program caused false claims to be submitted to an officer or employee of the United States, and caused such false claims to be paid with federal funds. Defendants knowingly assisted one another in presenting, or causing the presentment, of these false claims and receiving the payments therefor. These claims, and the payments made as a result of these claims, are set forth in Exhibit 1.

44. As a result of Defendants' false claims for payment on the New Mexico Medicaid program thereby causing false claims to be made on an officer or employee of the United States, the New Mexico Medicaid program made payments, and Defendants received, in excess of \$4.9 million paid to Buena Vista for the period from January 1, 1999 through April 30, 2004, as shown in Exhibit 1, and summarized below:

Year	# of Claims	Beg DOS	End DOS	Allowed Amt	Billed Amt	Net Paid Amt
1999	831	1/1/1999	12/31/1999	\$1,218,075.16	\$1,976,990.53	\$1,073,568.43

2000	714	1/1/2000	12/31/2000	\$1,311,811.71	\$1,848,725.43	\$1,191,312.45
2001	958	1/1/2001	12/31/2001	\$1,152,831.62	\$2,792,009.05	\$981,933.78
2002	587	1/1/2002	12/31/2002	\$1,088,183.16	\$1,323,971.83	\$707,774.65
2003	657	1/1/2003	12/31/2003	\$1,373,856.94	\$1,756,864.46	\$695,017.87
2004	162	1/1/2004	4/30/2004	\$385,661.62	\$474,401.32	\$259,982.52
	3,909			\$6,530,420.21	\$10,172,962.62	\$4,909,589.70

The Federal share of such payments is set forth in paragraph 18, above, and the United States thereby sustained damages because of the acts of Defendants.

45. All this was done in violation of 31 U.S.C. 3729(a)(1).

SECOND CLAIM FOR RELIEF

Unjust Enrichment

46. The United States re-alleges and incorporates by reference the foregoing allegations.

47. As a result of Defendants' conduct, Defendants knowingly benefitted at the expense of the United States, in a manner such that allowing Defendants to retain the payments referred to herein would be unjust. Defendants' conduct has unjustly enriched them with monies which in good conscience they should not be allowed to retain.

48. Defendants have been unjustly enriched to the detriment of the United States.

49. By reason of the overpayments described above, the United States is entitled to damages in an amount to be determined at trial exclusive of interest and costs.

WHEREFORE, the United States prays for relief as follows:

a. On the first claim for relief (False Claims Act), judgment for the United States against

Defendants, jointly and severally, for statutory damages sustained by the United States in an amount to be determined at trial, plus civil penalties assessed against Defendants as are allowed by law, and post-judgment interest, costs, and other proper relief;

b. On the second claim for relief (unjust enrichment), judgment for the United States against Defendants for the damages sustained by the United States in an amount to be determined at trial, plus pre-judgment and post-judgment interest, costs and other proper relief; and

c. All other legal and equitable relief which the Court finds to be just and proper.

DATED: June 1, 2007

Respectfully Submitted,

LARRY GOMEZ
Acting United States Attorney
HOWARD R. THOMAS
Assistant United States Attorney
Filed Electronically on June 1, 2007

By: /s/ _____
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*On June 1, 2007, the above pleading
was filed Electronically through the CM/ECF system,
which caused counsel of record to be served by*

electronic means, as more fully reflected on
the Notice of Electronic Filing

/s/

HOWARD R. THOMAS
ASSISTANT UNITED STATES ATTORNEY

EXHIBIT 1

Resident ID	Beg DOS	End DOS	# of Claims	Allowed Amt	Billed Amt	Net Paid Amt
Resident #1	10/15/2003	4/30/2004	11	\$22,625.73	\$25,751.90	\$15,348.51
Resident #2	1/1/1999	10/22/1999	11	\$22,183.61	\$26,177.86	\$12,246.66
Resident #3	1/1/1999	4/30/2004	92	\$194,999.52	\$241,764.96	\$91,196.63
Resident #4	1/1/1999	5/9/1999	10	\$15,165.32	\$29,055.23	\$12,282.23
Resident #5	1/1/2002	7/31/2003	24	\$12,382.80	\$55,359.09	\$1,351.50
Resident #6	6/8/2000	4/30/2004	97	\$148,240.70	\$261,678.06	\$125,034.17
Resident #7	4/1/2001	7/31/2003	35	\$47,253.47	\$82,137.40	\$19,883.50
Resident #8	1/1/1999	9/3/1999	12	\$21,556.59	\$26,905.61	\$20,902.29
Resident #9	1/1/1999	4/30/2001	37	\$69,262.64	\$119,726.22	\$59,331.54
Resident #10	3/1/1999	3/31/1999	1	\$0.00	\$4,750.41	\$0.00
Resident #11	1/11/2004	4/30/2004	9	\$8,379.90	\$24,959.54	\$6,453.46
Resident #12	1/1/1999	4/30/2004	42	\$119,448.54	\$150,047.64	\$29,448.20
Resident #13	12/28/1999	1/10/2000	3	\$586.69	\$1,311.95	\$592.19
Resident #14	10/1/2002	7/31/2003	55	\$27,710.86	\$168,184.62	\$8,505.75
Resident #15	1/1/1999	7/31/2003	80	\$163,306.63	\$202,241.54	\$116,600.18

Resident ID	Beg DOS	End DOS	# of Claims	Allowed Amt	Billed Amt	Net Paid Amt
Resident #16	1/18/2000	4/30/2001	23	\$39,908.18	\$80,587.51	\$40,300.17
Resident #17	1/1/1999	11/18/2001	50	\$96,976.47	\$140,745.69	\$80,723.75
Resident #18	3/1/1999	12/27/1999	17	\$16,365.09	\$27,624.66	\$16,508.80
Resident #19	1/5/2001	7/31/2003	43	\$54,994.20	\$118,286.60	\$24,555.15
Resident #20	3/11/1999	4/30/2001	32	\$29,010.02	\$77,574.95	\$29,278.06
Resident #21	1/1/1999	7/31/1999	10	\$15,414.11	\$30,566.05	\$10,299.77
Resident #22	2/8/2000	4/30/2004	84	\$153,314.08	\$212,062.46	\$89,283.90
Resident #23	2/23/1999	3/31/1999	2	\$0.00	\$5,355.68	\$0.00
Resident #24	1/1/1999	7/31/2003	60	\$103,547.75	\$150,935.56	\$66,593.69
Resident #25	2/28/2004	3/31/2004	4	\$0.00	\$6,537.02	\$0.00
Resident #26	1/1/1999	4/8/2002	60	\$104,171.95	\$146,226.24	\$104,193.20
Resident #27	1/1/1999	4/30/2004	89	\$190,903.07	\$234,191.26	\$169,540.07
Resident #28	5/15/2000	5/31/2000	18	\$11,369.60	\$92,227.42	\$9,278.67
Resident #29	1/1/1999	7/19/1999	20	\$21,884.62	\$42,776.03	\$18,274.88
Resident #30	1/1/1999	8/31/2001	33	\$64,052.86	\$93,392.77	\$55,775.00
Resident #31	1/6/1999	5/31/1999	18	\$0.00	\$21,359.61	\$0.00
Resident #32	4/21/2003	4/30/2004	23	\$52,524.74	\$56,841.73	\$25,693.38
Resident #33	2/23/2004	4/30/2004	4	\$0.00	\$9,706.48	\$0.00
Resident #34	4/26/2001	8/31/2001	5	\$0.00	\$5,254.93	\$0.00
Resident #35	1/1/1999	4/6/2002	58	\$109,928.50	\$156,277.75	\$95,271.37
Resident #36	3/1/1999	5/25/1999	9	\$2,005.20	\$14,314.08	\$2,022.81
Resident #37	11/19/2001	11/30/2001	1	\$0.00	\$0.00	\$0.00
Resident #38	8/1/2001	9/30/2003	68	\$79,922.83	\$176,718.81	\$27,508.86
Resident #39	1/1/1999	2/20/1999	2	\$4,177.50	\$5,043.90	\$3,758.18
Resident #40	12/24/2003	4/30/2004	6	\$14,897.60	\$15,847.33	\$11,391.36
Resident #41	1/1/1999	4/30/2001	48	\$51,505.09	\$130,843.63	\$43,756.54
Resident #42	12/21/2000	1/31/2001	6	\$4,601.72	\$20,594.20	\$4,650.33
Resident #43	11/30/1999	10/31/2001	37	\$65,159.78	\$100,282.58	\$46,976.29
Resident #44	1/1/1999	4/29/2000	17	\$39,874.57	\$45,704.84	\$25,034.91
Resident #45	1/1/1999	9/2/1999	12	\$17,670.61	\$21,083.53	\$13,518.62
Resident #46	6/6/2001	7/31/2003	56	\$71,764.08	\$148,619.40	\$27,750.84
Resident #47	1/1/1999	9/25/1999	18	\$9,392.78	\$59,658.88	\$9,475.26
Resident #48	4/18/2001	1/29/2002	25	\$11,288.72	\$60,674.44	\$9,479.59
Resident #49	1/1/1999	3/8/1999	9	\$5,388.98	\$13,008.30	\$4,480.72
Resident #50	12/16/1999	8/31/2001	50	\$25,548.00	\$124,143.60	\$23,092.31
Resident #51	1/1/1999	9/9/1999	12	\$21,119.06	\$28,338.46	\$17,021.91
Resident #52	3/1/2002	3/4/2002	4	\$0.00	\$871.68	\$0.00
Resident #53	1/1/1999	5/29/2000	17	\$42,537.24	\$48,934.78	\$33,481.39

Resident ID	Beg DOS	End DOS	# of Claims	Allowed Amt	Billed Amt	Net Paid Amt
Resident #54	12/5/2003	4/30/2004	22	\$30,260.75	\$54,772.33	\$7,680.49
Resident #55	1/1/1999	4/30/2004	97	\$191,197.52	\$231,711.86	\$132,596.23
Resident #56	6/26/2001	7/31/2003	39	\$49,594.30	\$107,428.11	\$43,431.26
Resident #57	10/24/2002	7/31/2003	11	\$12,072.69	\$20,433.55	\$3,537.68
Resident #58	1/1/1999	8/31/2001	55	\$101,222.64	\$182,074.22	\$95,486.71
Resident #59	1/1/1999	4/30/2004	100	\$202,049.13	\$276,131.03	\$183,633.48
Resident #60	1/1/1999	3/19/2000	24	\$35,864.14	\$53,245.77	\$26,895.74
Resident #61	1/1/1999	8/31/2001	41	\$64,774.82	\$114,964.01	\$60,506.93
Resident #62	11/18/2003	3/31/2004	10	\$13,221.62	\$16,540.65	\$8,926.80
Resident #63	1/1/1999	4/30/2004	93	\$190,070.07	\$245,088.94	\$152,473.09
Resident #64	1/1/1999	3/19/1999	7	\$6,266.25	\$7,565.86	\$6,321.28
Resident #65	1/1/1999	1/31/1999	7	\$1,671.00	\$2,971.26	\$1,685.68
Resident #66	6/26/2003	4/30/2004	19	\$31,127.99	\$48,609.12	\$23,280.33
Resident #67	1/1/1999	8/31/2001	45	\$93,434.32	\$140,619.00	\$86,805.71
Resident #68	3/1/2003	4/25/2004	26	\$52,053.01	\$67,581.64	\$28,951.97
Resident #69	4/15/2002	7/31/2003	14	\$14,891.35	\$44,216.14	\$0.00
Resident #70	1/1/1999	4/28/1999	16	\$9,357.61	\$11,550.55	\$9,439.80
Resident #71	3/26/1999	4/22/2004	19	\$0.00	\$27,613.91	\$0.00
Resident #72	1/1/1999	8/31/2001	40	\$62,462.82	\$101,318.03	\$63,051.26
Resident #73	1/1/1999	4/30/2004	88	\$131,772.37	\$177,117.92	\$57,299.71
Resident #74	2/1/2000	2/2/2000	1	\$0.00	\$329.38	\$0.00
Resident #75	10/22/1999	9/9/2001	51	\$60,782.87	\$106,507.40	\$56,459.51
Resident #76	1/1/1999	9/20/2001	65	\$120,949.31	\$181,587.26	\$122,136.90
Resident #77	1/1/1999	8/31/2001	46	\$87,566.11	\$144,791.18	\$88,379.86
Resident #78	5/7/2001	4/30/2004	65	\$138,827.06	\$156,785.02	\$71,731.52
Resident #79	1/1/1999	4/30/2004	92	\$191,990.61	\$235,707.23	\$145,551.25
Resident #80	10/22/1999	8/31/2001	44	\$54,565.88	\$94,550.26	\$46,815.76
Resident #81	4/1/2003	4/30/2004	36	\$62,121.66	\$97,952.73	\$20,418.00
Resident #82	1/1/1999	4/30/2001	35	\$57,429.50	\$86,320.96	\$50,100.61
Resident #83	1/1/1999	3/4/1999	12	\$0.00	\$14,251.21	\$0.00
Resident #84	1/1/1999	4/30/2004	92	\$193,868.39	\$234,771.58	\$143,552.82
Resident #85	12/20/2001	12/21/2001	1	\$0.00	\$0.00	\$0.00
Resident #86	8/1/2001	8/31/2001	1	\$0.00	\$3,132.74	\$0.00
Resident #87	1/1/1999	4/30/2004	87	\$189,049.60	\$241,279.90	\$170,886.10
Resident #88	1/1/1999	4/30/2004	147	\$155,287.41	\$276,561.52	\$149,879.30
Resident #89	1/1/1999	11/27/2003	108	\$214,621.39	\$349,110.92	\$187,371.46
Resident #90	12/4/2001	4/30/2004	59	\$99,988.15	\$122,029.24	\$58,909.22
Resident #91	1/1/1999	4/30/2004	97	\$197,776.94	\$244,727.09	\$173,445.61

Resident ID	Beg DOS	End DOS	# of Claims	Allowed Amt	Billed Amt	Net Paid Amt
Resident #92	4/1/2003	4/30/2004	17	\$37,799.36	\$31,298.45	\$22,864.71
Resident #93	4/1/2001	4/9/2001	6	\$0.00	\$44,081.80	\$0.00
Resident #94	2/1/2000	4/30/2004	76	\$157,423.52	\$196,109.57	\$141,370.36
Resident #95	2/20/2001	2/29/2004	61	\$114,900.64	\$138,763.86	\$63,831.23
Resident #96	2/15/2002	5/24/2002	7	\$11,187.68	\$15,907.86	\$0.00
Resident #97	1/1/1999	4/30/2004	93	\$191,224.70	\$240,955.14	\$113,549.29
Resident #98	3/1/1999	7/31/2003	91	\$171,560.65	\$311,926.51	\$166,623.50
Resident #99	2/1/2001	3/27/2002	26	\$50,768.62	\$97,158.46	\$48,825.65
Resident #100	12/12/2000	8/31/2001	27	\$27,927.68	\$107,396.20	\$27,513.97
Resident #101	3/1/1999	6/9/2000	31	\$50,116.56	\$79,334.75	\$50,570.36
Resident #102	1/1/1999	4/30/2004	90	\$194,999.52	\$235,808.16	\$138,651.98
Resident #103	7/1/2003	7/31/2003	3	\$0.00	\$9,007.47	\$0.00
			3,909	\$6,530,420.21	\$10,172,962.62	\$4,909,589.70