

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)

v.)

Case No.: 4:03CV01090-HEA)

CATHEDRAL ROCK CORPORATION;)
CATHEDRAL ROCK MANAGEMENT LP;)
CATHEDRAL ROCK INVESTMENTS, INC.,)
CATHEDRAL ROCK MANAGEMENT I, INC.,)
CATHEDRAL ROCK OF MISSOURI, INC.;)
CATHEDRAL ROCK OF ST. LOUIS, INC.)
d/b/a SPRINGPLACE CARE CENTER;)
CATHEDRAL ROCK OF BADEN)
d/b/a McLARAN CARE CENTER;)
CATHEDRAL ROCK OF BALLWIN)
d/b/a OAK FOREST SKILLED CARE;)
CATHEDRAL ROCK OF NORTH ST. LOUIS, INC.)
d/b/a CATHEDRAL GARDENS CARE CENTER;)
CATHEDRAL ROCK OF ST. CHARLES INC.)
d/b/a BLANCHETTE PLACE CARE CENTER;)
CATHEDRAL ROCK OF ROLLA, INC. d/b/a)
HERITAGE PARK SKILLED CARE;)
and)
C. KENT HARRINGTON,)
Defendants.)

JURY TRIAL DEMANDED)

THIRD AMENDED COMPLAINT IN
INTERVENTION OF THE UNITED STATES

The United States of America files this Third Amended Complaint In Intervention for damages under the False Claims Act, 31 U.S.C. §§ 3729-3733, federal common law, and equitable theories of unjust enrichment and disgorgement of profits. The United States alleges as follows:

JURISDICTION AND VENUE

1. Jurisdiction is based on the False Claims Act, 31 U.S.C. §§ 3730 & 3732; 28 U.S.C. § 1367(a) (supplemental jurisdiction); 28 U.S.C. § 1331 (federal question); § 1345 (United States as plaintiff), and § 1355 (fines and penalties).
2. Venue is proper in the Eastern District of Missouri under 28 U.S.C. § 1391(b) and (c), 28 U.S.C. § 1395(a), and 31 U.S.C. § 3732(a).
3. This court has personal jurisdiction over each Defendant based upon the transaction of business within this judicial district.
4. Except as otherwise specifically noted, the allegations in this Complaint describe the Medicare and the Missouri Medical Assistance Program (more commonly known as Missouri Medicaid, MO HealthNet, or Medicaid) programs and other facts as they existed throughout the period relevant to this action.

THE PARTIES

5. Plaintiff United States of America (United States) brings this action to recover losses by its agency, the Department of Health and Human Services (HHS), and its operating division, the Centers for Medicare & Medicaid Services (CMS). HHS provides funding for, and regulates payment and participation of, long term nursing facilities in the Medicare and Medicaid programs.
6. Defendant Cathedral Rock Corporation (Cathedral Rock) is a Texas for-profit corporation that was incorporated in 1998. Cathedral Rock is the holding company for Cathedral Rock of Missouri, Inc. (Cathedral Rock of Missouri). Cathedral Rock maintains its principal offices at 306 West 7th Street, Fort Worth, Texas 76102.

7. Defendant Cathedral Rock of Missouri is the holding company for various nursing facilities, including Defendants Cathedral Rock of St. Louis, Inc. d/b/a SpringPlace Care Center (SpringPlace); Cathedral Rock of Baden, Inc. d/b/a McLaran Care Center (McLaran); Cathedral Rock of Ballwin, Inc. d/b/a Oak Forest Skilled Care (Oak Forest); Cathedral Rock of North St. Louis, Inc. d/b/a Cathedral Gardens Care Center (Cathedral Gardens); Cathedral Rock of St. Charles, Inc. d/b/a Blanchette Place Care Center (Blanchette); and Cathedral Rock of Rolla, Inc. d/b/a Heritage Park Skilled Care.

8. Defendant Cathedral Rock Management LP (Cathedral Rock Management) is a partnership that manages the nursing facilities held by Cathedral Rock of Missouri pursuant to individual management agreements.

9. Defendant Cathedral Rock Investments, Inc. is the limited partner of Cathedral Rock Management. Cathedral Rock owns 100% of Cathedral Rock Investments, Inc.

10. Defendant Cathedral Rock Management I, Inc. is the general partner of Cathedral Rock Management. Cathedral Rock owns 100% of Cathedral Rock Management I, Inc.

11. Defendant C. Kent Harrington (Harrington) is an individual who resides in Texas and as set forth below, has been an officer and direct or indirect owner of each of the other Defendants.

THE DEFENDANT NURSING FACILITIES

12. From July 1, 2001 through June 30, 2004, SpringPlace operated as a skilled nursing facility located at 3450 Russell Boulevard, St. Louis, Missouri 63104. SpringPlace submitted claims for reimbursement to the Medicare and Missouri Medicaid programs. At all material

times, SpringPlace was assigned Medicare provider number 26-5567 and Missouri Medicaid provider number 101451201

13. From July 1, 2001 through May 31, 2005, McLaran operated as a skilled nursing facility located at 1265 McLaran, St. Louis, Missouri 63147. McLaran submitted claims for reimbursement to the Medicare and Missouri Medicaid programs. At all material times, McLaran was assigned Medicare provider number 26-5585 and Missouri Medicaid provider number 101490100.

14. From July 1, 2001 through the present, Oak Forest operated a skilled nursing facility located at 1441 Charic Drive, Ballwin, Missouri 63021. Oak Forest submitted claims for reimbursement to the Medicare and Missouri Medicaid programs. At all material times, Oak Forest was assigned Medicare provider number 26-5539 and Missouri Medicaid provider number 103733606.

15. From July 1, 2001 through the present, Cathedral Gardens operated a skilled nursing facility located at 2600 Redman Road, St. Louis, Missouri 63136. Cathedral Gardens submitted claims for reimbursement to the Medicare and Missouri Medicaid programs. At all material times, Cathedral Gardens was assigned Medicare provider number 26-5586 and Missouri Medicaid provider number 107645004.

_____16. From July 1, 2001 through the present, Blanchette operated a skilled nursing facility located at 2840 West Clay, St. Charles, Missouri 63301. Blanchette submitted claims for reimbursement to the Medicare and Missouri Medicaid programs. At all material times, Blanchette was assigned Medicare provider number 26-5118 and Missouri Medicaid provider number 101484004.

17. From July 1, 2001 through the present, Heritage Park operated a skilled nursing facility located at 1200 McCutchen Drive, Rolla, Missouri 65401. Heritage Park submitted claims for reimbursement to the Medicare and Missouri Medicaid programs. At all material times, Heritage Park was assigned Medicare provider number 26-5487 and Missouri Medicaid provider number 101475408.

18. Hereinafter, SpringPlace, McLaran, Oak Forest, Cathedral Gardens, Blanchette and Heritage Park will jointly be referred to as the "Defendant Nursing Facilities."

OWNERSHIP AND CONTROL

19. From Cathedral Rock's initial date of incorporation through the present, Harrington has been employed as the president and chief executive officer of Cathedral Rock.

20. Harrington has been the majority stockholder in Cathedral Rock from its date of incorporation to the present. Harrington currently owns approximately sixty-five percent (65%) of Cathedral Rock, however his ownership percentage was higher in previous years. By virtue of his direct ownership of the majority of the stock of Cathedral Rock, Harrington is an indirect owner of all of the other named Defendant entities.

21. During the relevant period, Harrington served as the president of Cathedral Rock Management I, Inc. as well as the president of each of the Defendant Nursing Facilities.

22. During the relevant period, Cathedral Rock Corporation, Cathedral Rock Management I, Cathedral Rock Investments, Cathedral Rock of Missouri, and the Defendant Nursing Facilities operated their financial affairs on a consolidated basis, including but not limited to, filing tax returns on a consolidated basis.

23. Through the Cathedral Rock corporate structure that Harrington established, he controls, either through his direct or indirect ownership, all of the Defendants and thus benefits from the profitability of those entities.

SUMMARY OF THE ALLEGATIONS

24. From July 1, 2001 until on or about the present date (hereinafter the “relevant period”), Defendants Cathedral Rock, Cathedral Rock Management, Harrington, and the Defendant Nursing Facilities, submitted or caused to be submitted false or fraudulent claims to the Medicare and Missouri 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 Defendant Nursing Facilities, and were of a quality that failed to meet professionally recognized standards of health care (hereinafter “fraudulent claims”).

25. During the relevant period, Defendants Cathedral Rock, Cathedral Rock Management, and the Defendant Nursing Facilities, knowingly made, used, or caused to be made or used, false records or statements to get the fraudulent claims paid.

26. During the relevant period, the Defendant Nursing Facilities perpetrated a fraud on the United States by making materially false representations in the submission of the Medicare and Missouri Medicaid claims and in the submission of false documents to the surveyors at the facilities.

27. All of the Defendants were unjustly enriched by the improper payments from the Medicare and Missouri Medicaid programs.

28. All of the Defendants should be required to account for and disgorge their unlawful profits.

MEDICARE AND MEDICAID REIMBURSEMENT

29. Through Medicare, the United States pays for certain medical care for the elderly and the disabled. Through Missouri Medicaid, the United States and the State of Missouri pay for certain medical care for the disabled and those who meet certain income requirements.

30. Beginning on June 14, 2001, HHS, through CMS, administered the Medicare Program.

31. In administering the Medicare program, private insurance companies act as fiscal intermediaries or agents of CMS and pursuant to written agreements make payments on behalf of program beneficiaries.

32. Various fiscal intermediaries processed claims that were submitted by the Defendant Nursing Facilities.

33. Medicare paid the Defendant Nursing Facilities under the prospective payment system. Under this system, the facility is required to classify each resident into one of 44 Resource Utilization Groups (RUGs) based on certain factors that are assessed for each resident. This RUG, in turn, is factored into the "per diem" reimbursement provided by Medicare.

34. "Per diem" means that the nursing facility is paid a set rate for each date that it provides care to the resident.

35. Medicaid is a joint federal-state program funded under Title XIX of the Social Security Act. The Missouri Department of Social Services, Division of Medical Services, administers the Medicaid Program in Missouri ("Missouri Medicaid").

36. Payments from Missouri Medicaid to nursing facilities were made on a per diem basis.

MEDICARE AND MISSOURI MEDICAID
LEGAL AND REGULATORY FRAMEWORK

37. Statutes and regulations governing the Medicare and Missouri Medicaid programs require health care providers to maintain substantial compliance with all the rules and regulations governing the programs as a prerequisite to receiving payment under the programs.

38. Health care providers must assure that all services for which they submit claims for Medicare payment are not “of a quality which fails to meet professionally recognized standards of health care.” 42 U.S.C. § 1320c-5(A)(2); 42 U.S.C. § 1320a-7b(a)(1)(3) (criminal penalties for submitting claims when provider knows it has no continued right to receive payment); 42 U.S.C. § 1320a-7(b)(6)(B) (provider can be excluded from participation in Medicare for submitting claims for inadequate care); 42 C.F.R. §§ 489.53 and 489.57.

39. Congress, in the Omnibus Reconciliation Act of 1987 (“OBRA ‘87”), enacted the Nursing Home Reform Act, 42 U.S.C. § 1396r *et seq.*, (“the Act”), which took effect on October 1, 1990.

40. A nursing facility is defined in the Act at 42 U.S.C. § 1396r(a) as “an institution . . . which –

(1) is primarily engaged in providing to residents –

(A) skilled nursing care and related services for residents who require medical or nursing care,

(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or

(C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, and is not primarily for the care and treatment of mental diseases

41. The Defendant Nursing Facilities were nursing facilities as that term is defined by the Act.

42. Defendants Cathedral Rock, Cathedral Rock Management LP, and Harrington managed nursing facilities as that term is defined by the Act.

43. The Act mandates that nursing facilities comply with federal requirements relating to the provision of services. 42 U.S.C. § 1396r(b).

44. Specifically, in terms of quality of life for residents of nursing facilities, the Act states that: “A nursing facility must care for its residents in such 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)(A).

45. “A nursing facility must operate and provide services in compliance with all applicable federal, state and local laws and regulations ... and with accepted professional standards and principles which apply to professionals providing services in such a facility.” 42 U.S.C. §§1396r(d)(4)(A).

46. Additionally, nursing facilities “must provide services and activities to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident in accordance with a plan of care which – ... describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met; . . .” 42 U.S.C. § 1396r(b)(2)(A).

47. A manager of a nursing facility must fulfill the residents' care plans by providing, or arranging for the provision of, nursing and related services and medically-related social services that attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, pharmaceutical services, and dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident. 42 U.S.C. § 1396r(b)(4)(A)(i-iv).

48. The Social Security Act mandates that nursing facilities that participate in the Medicare and Missouri Medicaid programs meet certain specific requirements in order to qualify for participation and receive taxpayer dollars from these programs. These requirements are set forth at 42 C.F.R. § 483.1 et seq. and "serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements for participation in Medicare and Medicaid." 42 C.F.R. § 483.1.

49. The Nursing Home Reform Act mandates that the state shall be responsible for certifying, in accordance with periodic surveys conducted by the state, the compliance of nursing facilities. 42 U.S.C. § 1396r(g)(1)(A).

50. Nursing homes, including the Defendant Nursing Facilities, are periodically surveyed by the Missouri Department of Health and Senior Services, formerly known as the Missouri Division of Aging, ("hereinafter DHSS") on behalf of HHS to ensure compliance with federal and state regulations. DHSS is responsible for performing the survey function of long-term care facilities in Missouri on a periodic basis, and more frequently when there are complaints or other triggering events.

51. Facilities that are not in compliance with the applicable federal and state rules and regulations are subject to sanctions including but not limited to denial of payment or termination of the right to provide services.

52. Federal regulations mandate that “[e]ach 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.” 42 C.F.R. § 483.25. Specifically, the federal regulation provides, in relevant part, as follows:

a. **Pressure sores.** Based on the comprehensive assessment of a resident, the facility must ensure that--

(1) A resident who enters the facility without pressure sores does not develop pressure sores unless the individual’s clinical condition demonstrates that they were unavoidable; and

(2) A resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

42 C.F.R. § 483.25(c).

b. **Nutrition.** Based on a resident’s comprehensive assessment, the facility must ensure that a resident--

(1) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident’s clinical condition demonstrates that this is not possible; and

(2) Receives a therapeutic diet when there is a nutritional problem.

42 C.F.R. § 483.25(i).

c. **Hydration.** The facility must provide each resident with sufficient fluid intake to maintain proper hydration and health.

42 C.F.R. § 483.25(j).

- d. **Activities of Daily Life.** Based on the comprehensive assessment of a resident, the facility must ensure that -- A resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the resident's ability to--

- (1) Bathe, dress, and groom;
- (2) Transfer and ambulate;
- (3) Toilet;
- (4) Eat; and
- (5) Use speech, language or other functional communication systems.

42 C.F.R. § 483.25(a).

- e. **Special Needs.** The facility must ensure that residents receive proper treatment and care for the following special services:

* * *

- (4) Tracheostomy care;
- (5) Tracheal suctioning;

* * *

- (7) Foot care.

42 C.F.R. § 483.25(k)

- f. **Medication Errors.** The facility must ensure that --

- (1) It is free of medication error rates of five percent or greater; and
- (2) Residents are free of any significant medication errors.

42 C.F.R. § 483.24(m).

- g. **Accidents.** The facility must ensure that --

- (2) Each resident receives adequate supervision....

42 C.F.R. § 483.25(h)

h. **Sanitation.** The facility must provide—

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;

42 C.F.R. § 483.15(h).

53. Missouri state regulations also mandate certain standards of care for residents of nursing facilities.

54. State regulations require that facilities provide nursing services that meet the needs of residents. 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. 13 C.S.R. § 15-14.042(37); 13 C.S.R. § 15-042(71).

55. The State regulations also require that facilities meet the daily nutritional needs of patients. 13 C.S.R. 15-14-042 (72).

HEALTH INSURANCE BENEFIT AGREEMENTS
(MEDICARE PROVIDER AGREEMENTS)

56. At all times relevant to this action, each of the Defendant Nursing Facilities was a “provider” with a written agreement with the Missouri Medicaid and Medicare programs.

57. As a prerequisite to enrolling in and receiving payments from the Medicare Program, the Defendant Nursing Facilities agreed to numerous provisions in the Health Insurance Benefit Agreement entered into between the Secretary of HHS and each facility.

58. Cathedral Rock Management LP was also responsible for complying with the provisions in the Health Insurance Benefit Agreement pursuant to management agreements that it entered into with each of the Defendant Nursing Facilities.

59. Defendant Harrington, as president of each of the Defendant Nursing Facilities, signed the Health Insurance Benefit Agreements on their behalf.

60. The Health Insurance Benefit Agreements state that “[i]n order to receive payment under Title XVIII of the Social Security Act,” the facility “agrees to conform to the provisions of Section 1866 of the Social Security Act and applicable provisions in 42 CFR.”

61. In addition to the Health Insurance Benefit Agreements, the Defendant Nursing Facilities completed an Electronic Data Interchange (EDI) Enrollment Form in order to bill Medicare electronically.

62. In the EDI Enrollment Form, the Defendant Nursing Facilities agreed to “be responsible for all Medicare claims submitted to CMS by itself, its employees, or its agents” and that they would “submit claims that are accurate, complete, and truthful.” The Defendant Nursing Facilities also acknowledged “that all claims will be paid from Federal funds, that the submission of such claims is a claim for payment under the Medicare program, and that anyone who misrepresents or falsifies or causes to be misrepresented or falsified any record or other information relating to that claim as required pursuant to this Agreement may, upon conviction be subject to a fine and/or imprisonment under applicable Federal law.”

63. The Defendant Nursing Facilities submitted their claims for payment to Medicare electronically on a form known as a “UB-92 HCFA-1450.” The UB-92 HCFA-1450 states on its reverse side, in relevant part, as follows:

Certifications relevant to the Bill and Information Shown on the Face Hereof:

* * *

6. This claim, to the best of my knowledge, is correct and complete. . . .

TITLE XIX NURSING HOME PROVIDER AGREEMENTS
(MISSOURI MEDICAID PROVIDER AGREEMENTS)

64. To be eligible to receive Missouri Medicaid payments, the Defendant Nursing Facilities each entered into, through an assignment, a Title XIX Nursing Home Provider Agreement with the Missouri Department of Social Services, Division of Medical Services (“Missouri DMS”) (hereinafter “Missouri Medicaid Provider Agreements”).

65. The Missouri Medicaid Provider Agreements state that the provider “will maintain full compliance with all certification requirements established by the Secretary of the Department of Health and Human Services and the state survey agency” and “will maintain full compliance with the requirements of Title XIX of the Social Security Act and the regulations promulgated thereunder relating to skilled and/or intermediate care facilities, whichever is applicable.”

66. Attached to each Missouri Medicaid Provider Agreement is a Title XIX Nursing Home Provider Agreement Electronic Billing Supplement (“Electronic Billing Supplement”) which permits the provider to submit its Missouri Medicaid claims electronically.

67. Through an assignment, each of the Defendant Nursing Facilities entered into an Electronic Billing Supplement with Missouri DMS.

68. The Electronic Billing Supplement states as follows: “I certify that the claim information provided is true, accurate and complete to my best knowledge, information and belief” and “I understand that payment and satisfaction of any claim submissions will be from

federal and/or state funds, and that any false claims, statement, or documents, or concealment of any material fact may be prosecuted under applicable federal and/or state law.”

MANAGEMENT BY CATHEDRAL ROCK MANAGEMENT LP

69. Oak Forest, Cathedral Gardens, Blanchette and Heritage Park were and are licensed long-term care nursing facilities under federal and state law and were certified to participate in the Medicare and Missouri Medicaid programs.

70. From July 1, 2001 through June 30, 2004, SpringPlace was a licensed long-term care nursing facility under federal and state law and was certified to participate in the Medicare and Missouri Medicaid programs.

71. From July 1, 2001 to May 31, 2005, McLaran was a licensed long-term care nursing facility under federal and state law and was certified to participate in the Medicare and Missouri Medicaid programs.

72. Beginning on July 1, 2001, and ending at various times, Cathedral Rock Management LP operated the Defendant Nursing Facilities pursuant to a written Management Agreement with each facility.

73. As set forth in the Management Agreement with each of the Defendant Nursing Facilities, Cathedral Rock Management agreed to “do all things necessary to manage and administer the day-to-day operations of the Facility consistent with the Approved Budget.”

74. As set forth in the Management Agreement with each facility it managed, Cathedral Rock Management LP was responsible for “recruiting, hiring, training, promoting, assignment, supervising and discharging the personnel of the Facility” and was “responsible for the formulation, implementation, modification and administration of wage scales, rates of

compensation, employee insurance, employee taxes, in-service training, attendance at seminars or conferences, [and] staffing schedules.”

75. Pursuant to the Management Agreement with each facility it managed, the facility paid Cathedral Rock Management compensation for services based upon a percentage of the facility's gross revenue.

**CATHEDRAL ROCK AND CATHEDRAL ROCK MANAGEMENT'S
CONTROL OF THE DEFENDANT NURSING FACILITIES**

Staffing

76. The Defendant Nursing Facilities were required to 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.

77. Pursuant to the Management Agreements, the Defendant Nursing Facilities themselves did not control the level of staffing. Rather, staffing was determined by Cathedral Rock Management, Cathedral Rock, or both, and was not based on the acuity of the residents.

78. Cathedral Rock Management, Cathedral Rock, or both, set budgets for nurse staffing by setting a budget for a daily “per patient day” of nursing hours, also known as PPD.

79. The nursing PPD budget was a measure of how many hours of total direct nursing care were budgeted for each resident to receive on a given day.

80. Cathedral Rock Management, Cathedral Rock, or both, consistently set the nursing staffing budgets at levels that resulted in PPDs that were: not adequate to provide nursing care to all residents in accordance with the residents' care plans; were not sufficient 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; and were below both the state and national averages.

81. In setting the budget for nursing staff, Cathedral Rock Management, Cathedral Rock, or both, included personnel whose primary duties were not patient care and who are not traditionally included in the category of nursing staff, such as medical records personnel.

82. Efforts to comply with the budgets set by Cathedral Rock and Cathedral Rock Management resulted in staffing shortages at the Defendant Nursing Facilities.

83. The DHSS surveyors often cited SpringPlace for staffing deficiencies. On May 7, 2004, the DHSS surveyors cited SpringPlace for failing to provide sufficiently qualified staff to address the care needs of the residents. Moreover, the surveyor's office received numerous complaints regarding the shortage of staff at SpringPlace.

84. The Missouri Long Term Care Ombudsman ("Missouri LTC Ombudsman") program provides nursing home residents support and assistance with problems and complaints. On August 21, 2002, August 8, 2003, November 14, 2003 and January 2, 2004, residents at SpringPlace complained to the Missouri LTC Ombudsman that there was not enough staff to attend to their needs.

85. On August 12, 2002, the Missouri LTC Ombudsman noted "short staff" at SpringPlace and further noted that there was only "one staff for 31 residents."

86. An e-mail dated September 27, 2002 from an employee at SpringPlace to Cathedral Rock's Executive Vice-President discusses the employees at SpringPlace, which she refers to as "The Place," and states that, "The employees there are the worst that I have seen in years. I believe, out of the entire nursing staff, we only have 2 good nurses."

87. Short staffing was also prevalent at the other Defendant Nursing Facilities and, as set forth below, was cited in the DHSS surveys.

88. A Minimum Data Set (“MDS”) is part of the federally mandated process for clinical assessment of all residents in Medicare or Medicaid certified nursing facilities. This document provides a comprehensive assessment of each resident’s status in various areas (e.g., psychosocial, physical, disease) and is required to be completed at certain intervals. 42 C.F.R. § 483.315.

89. Due to staffing shortages in approximately 2003 and 2004 at McLaran, MDSs were not completed as required. Prior to a DHSS survey, in an effort to avoid deficiency citations from the surveyors, staff at McLaran completed past due MDSs in a manner that did not truthfully assess the status of the residents.

90. The results of an internal mock survey conducted at SpringPlace on October 28, 2003 found that many MDS care plans were not up to date and found that there was “some question” about the accuracy of the completed ones.

91. The lack of nursing staff at the Defendant Nursing Facilities directly caused and contributed to care at the Defendant Nursing Facilities that failed to meet professionally recognized standards of health care and that was so deficient, inadequate, and substandard as to constitute worthless services.

**Cathedral Rock Management’s Failure to Pay
Vendors Of The Nursing Facilities**

92. As set forth in the Management Agreements with the facilities, Cathedral Rock Management was responsible for paying vendors that served the nursing facilities. The Management Agreement states that Cathedral Rock Management “shall be responsible for

collecting all revenues and fees billed to Residents and for paying Facility Expenses as agreed in the Approved Budget....”

93. At times relevant to this Complaint, Cathedral Rock Management failed to pay the expenses of the Defendant Nursing Facilities as they became due.

94. At times relevant to this Complaint, the elevator at SpringPlace was not operational because Cathedral Rock Management failed to pay the elevator service bills. SpringPlace was located in a seven-story building, thus, elevator use for transportation and evacuation of non-ambulatory residents was critical.

95. At times relevant to this Complaint, trash would accumulate at Blanchette and Oak Forest when Cathedral Rock Management would not pay the trash vendor and, as a result, the trash vendor would no longer pick up the trash.

96. At times relevant to this Complaint, a variety of critical services at the Defendant Nursing Facilities were suspended or threatened to be suspended for non-payment. These included physical therapy and pharmacy, as well as the service for wound VAC (a medical device that promotes healing of open areas such as pressure ulcers), a mattress supplier, and the gas company.

97. At times relevant to this Complaint, Cathedral Rock Management failed to pay the Wanderguard® bill for all of its Missouri properties. Wanderguard® is an electronic monitoring system normally consisting of wristbands or anklebands to aid in preventing elopements (residents wandering away). Because of the non-payment, Wanderguard® would not send any additional wristbands or ankle bands for residents. As a result, not all residents that should have been monitored through this system were monitored. An internal e-mail dated July 8, 2002, on

which Defendant Harrington was copied, discusses the fact that because the corporation “owed too much,” “Wanderguard has shut off supplies.” The e-mail further states that, “[n]ot having Wanderguard bracelets is a major concern at Springplace.”

98. At times relevant to this Complaint, Cathedral Rock Management did not pay the pager bill at SpringPlace and as a result pagers, including that of the Director of Nursing, were turned off in SpringPlace in May of 2003.

99. At times relevant to this Complaint, necessary repairs were not made at SpringPlace. In March of 2003, Cathedral Rock was put on notice by the St. Louis Fire Marshal to repair the sprinklers at SpringPlace within 60 days. As of June of 2003, the sprinklers were still not repaired. Internal documents reflect that “lawyers have the information about the previous inspections that were passed when they should not have been.” The administrator at SpringPlace stated on June 19, 2003, “I am hiding from the Fire Marshall.”

100. At times relevant to this Complaint, property taxes were not paid at Blanchette. Specifically, in January of 2004 the St. Charles tax office threatened to shut down the building at Blanchette if the tax bill was not paid.

101. At times relevant to this Complaint, Cathedral Rock Management did not pay other vendors. For example, the vendor that provided forms for charting, stickers for code status, and other forms at SpringPlace was not paid resulting in a shortage of these supplies in May of 2003.

102. The medical director for many of the facilities managed by Cathedral Rock Management resigned in April of 2003 over “failure to pay his fee.”

103. Defendants' failure to pay vendors directly caused and contributed to care at the Defendant Nursing Facilities that failed to meet professionally recognized standards of health care and that was so deficient, inadequate, or substandard as to constitute worthless services.

Defendants' Focus On Medicare and Medicaid Patients

104. Over 80% of the residents at the Defendant Nursing Facilities were Medicare or Missouri Medicaid recipients, meaning that Medicare and Missouri Medicaid were paying for approximately 80% of the per diem revenue that the Defendant Nursing Facilities were collecting.

105. For the care purportedly provided at the Defendant Nursing Facilities, Medicare paid over \$20 million and Missouri Medicaid paid over \$60 million.

Defendants' Focus On Census

106. The nursing home administrators of the Defendant Nursing Facilities were pressured by Harrington, Cathedral Rock vice presidents, and the Cathedral Rock regional management team to increase the census at the facilities without regard to whether the facility had the requisite quantity or quality of staff to care for the residents as required by state and federal regulations.

107. In December of 2001, Defendant Harrington stated in a corporate newsletter known as "From The Rock" or "The Rock" that:

to retain just one resident that one employee may consider inappropriate, it would mean another \$835,000 per year in income. When you consider that we have asked each Administrator to increase his/her census by an average of six residents next year, you can see the impact that each and every resident has. The combined total of \$5 million makes the difference between profitability and non-profitability, or, put another way, between being able to pay bonuses or no bonuses.

108. Employees who were successful at increasing the census were recognized as “Rock Stars” in the newsletter.

109. Rewards were put in place for those who met census growth goals.

110. In March of 2002, at a time when there were severe problems with failure of care at SpringPlace, Defendant Harrington praised those involved in increasing the census at SpringPlace from 88 residents on the day of opening to the then current level of 107 residents.

111. The focus on census was persistent and greatly outweighed any efforts to ensure a corresponding quality of care for either the current residents or the additional residents. An e-mail dated January 1, 2004 sent from a Cathedral Rock Regional Vice President to Cathedral Rock’s then Vice-President of Operations, and others, states that “FTB [fill the beds] is everything” and “[w]hereas compliance is important and cost control is as well, CENSUS is to be your primary focus.”

112. At various times relevant to the complaint, Defendant Harrington was personally receiving, via e-mail, weekend updates on the census of each facility.

113. Because of the focus on increasing census, management exerted pressure on the nursing facilities to admit and retain residents regardless of their ability to care for those residents. Admission decisions were driven by corporate marketing rather than by clinical considerations.

114. Specifically, on June 22, 2004, the nursing facility administrators were notified via e-mail from the Regional Director of Business Development, who was also a member of Cathedral Rock’s regional management team, that they were to notify her and their regional vice president before denying any referral. The Regional Director of Business Development went on

to state: “Unfortunately, today we heard about denials made at the facility level from a physician. As you can imagine, this could cause problems with our marketing efforts.”

115. Defendant Harrington was listed as a recipient of the June 22, 2004 e-mail.

116. Defendants’ terminated a medical director because of his failure to refer patients to Cathedral Rock facilities. An e-mail from Defendant Harrington to Cathedral Rock’s then Vice-President of Operations dated October 18, 2003 stated:

we ‘fired’ [Medical Director #1] and hired [Medical Director #2] at SpringPlace because we simply didn’t [get] the bang for our buck. [Medical Director #1] charged \$3K per month, was not that active and sent all referrals to LifeCare. In 18 months we got 1 Medicaid and 9 Medicare referrals from him.

PROFITS BEFORE PATIENTS

117. Defendants Cathedral Rock, Cathedral Rock Management, and Harrington made decisions based on profitability rather than on meeting the needs of the residents.

Eloperments

118. A resident who suffered from bipolar disorder eloped from McLaran on or about October 27, 2001.

119. A resident with a history of schizophrenia, drug abuse and elopements eloped from McLaran on or about November 2, 2001 and was found a few days later near a shelter.

120. On or about June 24, 2002, a resident at McLaran eloped via the service elevator with staff on the elevator.

121. On or about August 13, 2002, a resident at McLaran eloped from a second floor window out onto the roof.

122. On September 26, 2002, a resident attempted to elope from the third floor window at McLaran. He died as a result of his fall.

123. In the fall of 2002, the maintenance staff at McLaran obtained bids for protective window screens. The screens were never purchased, upon information and belief because they were "too expensive." Other elopements followed.

Resident Transfers

124. Residents were transferred from one of the Defendant Nursing Facilities to another facility in Missouri that was managed by Cathedral Rock Management in order to avoid denial of payments that were put in place by the state or by CMS. These patient transfers were completed to generate revenue, regardless of the potential risk to the residents as a result of the move and regardless of whether they met the regulatory guidelines on resident transfers. 42 C.F.R. § 483.12 (setting forth a resident's transfer rights).

125. Specifically, after SpringPlace was placed on CMS denial of payment status in 2003, SpringPlace residents were transferred from SpringPlace to Scenic View, another Missouri facility managed by Cathedral Rock Management. An e-mail dated January 24, 2003 from a Cathedral Rock regional vice-president sent to Cathedral Rock's Chief Financial Officer and to Cathedral Rock's Executive Vice-President refers to the transfer of residents and states, "Now they will become income generating."

126. Similarly, when McLaran was placed on CMS denial of payment status in 2003, Cathedral Rock Management gave directions via e-mail to "move as many people (that we are not getting paid for) as you can to SpringPlace or to any of our other communities ASAP."

CONTROLLED SUBSTANCES AT SPRINGPLACE:
LACK OF CONTROL AND
FALSIFICATION OF RECORDS

127. In accordance with state and federal laws, the Defendant Nursing Facilities are required to store all drugs in locked compartments and to permit only authorized personnel to have access to the keys. Additional safety precautions are necessary for storage and dispensing of controlled substances. 42 C.F.R. § 483.60.

128. Numerous drugs and controlled substances were found, unlocked, throughout the office of the Director of Nursing during a federal search of SpringPlace in 2004.

129. Under the applicable regulations, controlled substance dispensing logs should contain, among other things, the date the medication is given, the name of the medication, and signature of the employee who dispensed the controlled substance in question.

130. At SpringPlace, controlled substances were “borrowed” from one resident to give to another.

131. SpringPlace records reflect that on numerous instances, an employee signature appears in the controlled substance dispensing log when that employee was not in the building and thus, could not have dispensed the medication.

132. In February of 2003, the state ombudsman noted that staff members who had failed drug tests at SpringPlace were still employed there.

FALSIFICATION OF MEDICATION
ADMINISTRATION RECORDS AT SPRINGPLACE

133. The failure to provide care at SpringPlace was followed by conduct designed to hide that failure.

134. Medication administration records (“MARS”) are used to document the administration of medication to residents. A staff member who administers the medication in question is required to initial in the appropriate box on the MARS to indicate that the medication was given.

135. SpringPlace residents often did not receive their medication as prescribed or ordered. Medication errors were prevalent and the MARS at SpringPlace often contained numerous blanks for long periods of time. Residents of SpringPlace suffered and were harmed by not receiving the medication they needed and had been prescribed. For example, residents had seizures when their anti-seizure medication was not given and residents suffered from extremely high blood sugar levels when insulin was not administered appropriately.

136. In 2001, the SpringPlace Administrator sent an e-mail to all SpringPlace department heads about “revisit readiness” in anticipation of the next survey. She gave the following instruction: “All MARS have been checked for gaps.”

137. In 2003, prior to a survey, there was a wholesale “charting party” at SpringPlace to “fill in the gaps” in the MARS. The “charting party” consisted of several employees filling in employee initials on blank MARS for dates that had passed so it appeared that all medication had been properly given, regardless of whether the medication was given or not.

138. For certain time periods, the MARS at SpringPlace reflect false entries, e.g., records that purportedly document care provided to a resident who was out of the building and records that contain initials of staff members who were not on duty and in the building on the date and time in question.

FALSIFICATION OF MEDICARE NON-COVERAGE NOTICES

139. A Medicare notice of non-coverage, sometimes known as a Medicare denial letter, informs a resident of the date that his or her Medicare coverage at the facility will end and describes the process for appealing that decision. The letter must be countersigned by the Medicare beneficiary or his or her designee.

140. In April of 2002, DHSS surveyors cited SpringPlace for failure to maintain its Medicare notices of non-coverage.

141. In May of 2003, in an effort to avoid another state citation, the Medicare Coordinator at SpringPlace forged signatures of Medicare beneficiaries and/or their designees on Medicare notices of non-coverage that were provided to the DHSS surveyors, falsely indicating that the letters had been sent. This conduct resulted in federal criminal prosecution of the Medicare Coordinator.

**WOUND CARE AND SKIN CHECKS
AT BLANCHETTE AND SPRINGPLACE**

142. Wound care was often not provided at the Defendant Nursing Facilities. As a result, residents often developed preventable pressure ulcers.

143. On October 7, 2002, an e-mail from Cathedral Rock's Director of Risk Management and Quality Assurance to Cathedral Rock's Executive Vice-President states that, "[t]he state may be focusing on skin issues as they asked to see the decubitus report and the last current one was at the end of August."

144. On March 14, 2005, an e-mail from the Regional Nurse Consultant to the Regional Administrator and the Corporate Director of Nursing for Cathedral Rock states that the Regional Nurse Consultant reviewed the "wound program" at Blanchette and concluded that

“skin checks are not being done” and “care plans [are] not consistently updated with new wounds.”

**DEFENDANTS’ KNOWLEDGE OF THE POOR CONDITIONS
AT THE DEFENDANT NURSING FACILITIES**

145. From many sources, including but not limited to wrongful death and injury claims brought by former residents and their family members and survey activity by DHSS, Defendants had knowledge within the meaning of 31 U.S.C. § 3729(b)(1) - (3) that the Medicare and Missouri Medicaid claims they submitted, as set forth below, were false or fraudulent. Defendants knew that the services were not provided or rendered, or were so deficient, inadequate, and substandard as to be worthless.

Defendants' Knowledge Derived From Repeated Civil Litigation

146. Defendants had knowledge of the numerous problems at the Defendant Nursing Facilities because the facilities entered into numerous civil settlements with family members of residents who had been residing in these facilities and had filed lawsuits because the residents had failed to receive proper care.

Defendants’ Knowledge Derived From Civil Money Penalties

_____147. The Social Security Act provides that the Secretary of HHS may impose civil money penalties (“CMPs”) against nursing facilities for noncompliance with program participation requirements. That authority has been delegated to CMS. 42 U.S.C. §§ 1395i-3(h) and 1396r(h) and 42 C.F.R. Part 488.

148. As set forth below, at relevant times, DHSS recommended that CMS impose CMPs at the Defendant Nursing Facilities.

149. As set forth below, at relevant times, CMS accepted the state's recommendations and imposed CMPs at McLaran, Oak Forest, Cathedral Gardens, and Springplace.

**Defendants' Knowledge Derived From
DHSS Surveys and Other Third Parties**

150. Defendants had knowledge of the numerous problems at the nursing facilities because DHSS repeatedly cited numerous deficiencies and failures at the Defendant Nursing Facilities including but not limited to the following:

- a. failure to ensure that a resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable;
- b. failure to assess residents in a timely manner;
- c. failure to develop a comprehensive care plan for each resident;
- d. failure to provide services that meet professional standards of quality;
- e. failure to ensure that its facilities were free of medication errors (less than 5%);
- f. failure to provide a safe, clean, comfortable, and homelike environment;
- g. failure to provide the necessary care and services to attain or maintain the highest practical physical, mental, and psychosocial well-being of each resident;
- h. failure to ensure that the residents' environments remain free of accident hazards as much as possible;
- i. failure to ensure that each resident receives adequate supervision and assistance devices to prevent accidents;
- j. failure to ensure that a resident maintains acceptable parameters of nutritional status such as body weight and protein levels unless the resident's clinical condition demonstrates that this is not possible;
- k. failure to ensure that each resident's drug regimen remains free from unnecessary drugs; and

1. failure to store, prepare, distribute, and serve food under sanitary conditions.

151. After DHSS cited each deficiency, the cited Defendant Nursing Facility represented to DHSS, through a plan of corrections, that the deficiency or deficiencies would be corrected.

152. Often times the deficiency would re-occur and DHSS would again cite the Defendant Nursing Facility which had either temporarily corrected the deficiency or promised that the deficiency would be corrected but failed to make the correction.

153. Defendants had knowledge of the failure of care at the Defendant Nursing Facilities because the facilities were periodically warned by DHSS, CMS, or both, that their repeated violations of the requirements to be certified for participation under Titles XIX and XIX of the Social Security Act ("Participation Requirements") could result in: denial of new Medicare and/or Medicaid admissions; denial of payment from Medicare and/or Medicaid; the imposition of CMPs; and/or the termination of their provider agreements.

154. Per Cathedral Rock's instructions, the Defendant Nursing Facilities sent to Cathedral Rock's corporate offices in Texas all survey materials, including the correspondence from DHSS and CMS.

155. DHSS and others, including the Fire Marshal and the Missouri Department of Mental Health, repeatedly put SpringPlace on notice of its deficiencies:

- a. a survey on July 5, 2001 found that SpringPlace was not in substantial compliance with the Participation Requirements;

- b. an abbreviated survey on July 30, 2001 found that SpringPlace was not in substantial compliance with the Participation Requirements; a recommendation was made for the imposition of a \$10,000 CMP to be effective July 30, 2001; CMS imposed a \$10,000 per day CMP for July 29, 2001 and imposed a \$200 per day CMP from July 30, 2001 through October 2, 2001; SpringPlace ultimately paid the \$23,000 CMP in March of 2002;
- c. SpringPlace was placed on denial of payment on July 27, 2001; CMS recommended termination of SpringPlace's Provider Agreement effective November 19, 2001;
- d. on October 17, 2001, SpringPlace failed a fire safety inspection conducted by the St. Louis Fire Department;
- e. on May 15, 2003, July 9, 2003 and July 25, 2003, DHSS found that SpringPlace was not in substantial compliance with the Participation Requirements;
- f. on July 30, 2003, the state recommended that a CMP of \$10,000 be imposed at SpringPlace and that a denial of payment become effective on July 12, 2003; at this time the state also recommended termination of SpringPlace's Provider Agreement to be effective November 15, 2003; CMS ultimately imposed the \$10,000 CMP which was reduced by 35% after SpringPlace waived its right to a hearing;
- g. a letter dated July 23, 2003 was sent from the Missouri Department of Mental Health to SpringPlace indicating that the Department would no longer be referring residents to SpringPlace because of issues of immediate jeopardy to residents;
- h. a survey on August 28, 2003 noted an elopement of a resident from SpringPlace who left unescorted for a doctor's visit and was found three days later; the state recommended termination of SpringPlace's Provider Agreement effective September 20, 2003 and a continuation of SpringPlace's denial of payment that had gone into effect on July 12, 2003;
- i. a letter dated November 14, 2003 to SpringPlace from the state indicated that the state was suspending SpringPlace's nurse's aide training program because of negative survey results;

- j. a survey on September 17, 2003 and again on February 17, 2004, found that SpringPlace was not in substantial compliance with the Participation Requirements;
- k. a survey revisit to SpringPlace on March 31, 2004 found that SpringPlace “failed to provide sufficient staff to provide care and supervision for the residents during the night shift”;
- l. a letter from CMS dated April 2, 2004, imposed a denial of payment for all new admissions to be imposed effective on April 4, 2004, and recommended termination of SpringPlace’s Provider Agreement effective April 23, 2004;
- m. a survey on May 7, 2004 found that SpringPlace was not in substantial compliance with the Participation Requirements and the denial of payments continued; termination of SpringPlace’s Provider Agreement was recommended for May 30, 2004; and
- n. SpringPlace voluntarily terminated its participation in the Medicare and Medicaid programs on May 30, 2004.

156. DHSS repeatedly put McLaran on notice of its deficiencies:

- a. a survey on March 1, 2002 found that McLaran was not in substantial compliance with the Participation Requirements, and the state recommended that CMS impose a denial of payment for new Medicare and Medicaid admissions;
- b. at a revisit on April 24, 2002, the surveyors found that McLaran was not in substantial compliance with the Participation Requirements, and the state recommended that CMS continue the denial of payment that was imposed on March 28, 2002;
- c. CMS imposed a \$10,000 per instance CMP with a December 14, 2002 survey;
- d. a survey on March 11, 2003 found that McLaran was not in substantial compliance with the Participation Requirements; based on that survey, CMS imposed a \$10,000 per instance CMP;
- e. a survey on June 16, 2004, and revisits on both March 3, 2004 and April 20, 2004, found that McLaran was not in substantial compliance with the Participation Requirements;

- f. a letter dated May 6, 2004 from CMS to McLaran stated that it would continue McLaran's denial of payment that was put in place on January 28, 2004 and further stated that from January 1, 2004 through May 6, 2004 McLaran had only been in substantial compliance for two weeks; and
- g. after a complaint survey in July of 2004, CMS imposed a \$4,050 per day CMP from July 5, 2004 through July 21, 2004, for a total CMP of \$68,850.

157. DHSS repeatedly put Blanchette on notice of its deficiencies:

- a. a survey on October 30, 2001 found that Blanchette was not in substantial compliance with the Participation Requirements;
- b. a survey on October 8, 2002 found that Blanchette was not in substantial compliance with the Participation Requirements and, at that time, DHSS recommended a denial of payment to take effect on December 26, 2002;
- c. an abbreviated survey on July 18, 2003 and a subsequent survey on August 25, 2003, found that Blanchette was not in substantial compliance with the Participation Requirements;
- d. on September 5, 2003, the state notified Blanchette in writing that it was not in substantial compliance with the Participation Requirements and recommended a denial of payment effective October 18, 2003; after a survey on September 10, 2003, CMS agreed with the state's recommendation for denial of payment;
- e. a survey on May 17, 2004 found Blanchette was not in substantial compliance with the Participation Requirements and recommended denial of payment effective June 10, 2004;
- f. on June 24, 2004, the state cited a deficiency at Blanchette regarding an elopement by a resident who was using a walker;
- g. on June 25, 2004, the state notified Blanchette in writing that it recommended denial of payment effective June 25, 2004 and that it further recommended that CMS terminate Blanchette's Provider Agreement effective July 17, 2004;

- h. a survey on December 5, 2005 found Blanchette was not in substantial compliance with the Participation Requirements;
- i. DHSS cited Blanchette for deficiencies at each of its revisits on January 25, 2006, February 9, 2006, and March 8, 2006 and, based on those findings, found that Blanchette was not in substantial compliance with the Participation Requirements and recommended a denial of payment for new admissions to be effective March 12, 2006;
- j. on March 15, 2006, CMS agreed with the state's recommendation for denial of payment and instituted a denial of payment effective March 30, 2006 until necessary corrections were made;
- k. on July 25, 2006, the state found that Blanchette was not in substantial compliance with the Participation Requirements and indicated that based upon Blanchette's deficiencies and history of non-compliance it was recommending denial of payment effective in 15 days;
- l. on August 15, 2006, CMS agreed with the state's recommendation for denial of payment and stated that the denial would be effective August 30, 2006; and
- m. a survey on December 19, 2006 found Blanchette was not in substantial compliance with the Participation Requirements.

158. DHSS repeatedly put Oak Forest on notice of its deficiencies:

- a. a survey on February 7, 2005 found that Oak Forest was not in substantial compliance with the Participation Requirements; a recommendation was made for a \$10,000 civil monetary penalty, termination of Oak Forest's Provider Agreement on March 2, 2005, and the imposition of a denial of payment effective on February 10, 2005; and
- b. a survey on April 22, 2005 and again on May 4, 2006 found that Oak Forest was not in substantial compliance with the Participation Requirements.

159. DHSS repeatedly put Cathedral Gardens on notice of its deficiencies:

- a. CMS imposed numerous CMPS in 2001 and 2002; CMS imposed a CMP of \$4,050 per day from July 28, 2001 through July 31, 2001; CMS imposed a CMP of \$1,750 per day from August 1, 2001 through November 27, 2001; CMS imposed a CMP of \$150 per day from November 28, 2001 through January 2, 2002; the total CMP amount was negotiated and Cathedral Gardens paid \$79,392;
- b. after a survey on July 22, 2003 the state found Cathedral Gardens was not in substantial compliance with the Participation Requirements and stated that based on the deficiencies cited and history of noncompliance, it was recommending a denial of payment and termination of Cathedral Garden's Provider Agreement effective January 22, 2004;
- c. in a July 28, 2003 letter from the state, Cathedral Gardens was notified that its noncompliance "regarding care and service to residents with pressure sores has been determined to constitute substandard quality of care as defined at 42 CFR 488.301";
- d. a letter from CMS to Cathedral Gardens dated July 30, 2003 recommended denial of payment effective August 13, 2003;
- e. a survey on February 26, 2004 found Cathedral Gardens was not in substantial compliance with the Participation Requirements and recommended denial of payment;
- f. a letter from CMS to Cathedral Gardens on March 4, 2004 stated that CMS agreed with the state's recommendation for denial of payment, stating that the denial of payment would be effective March 19, 2004;
- g. because Cathedral Gardens could not demonstrate to the state that it was in substantial compliance with the Participation Requirements, the denial of payment went into effect on March 18, 2004;
- h. at a revisit to Cathedral Gardens on April 21, 2004, the state found that the facility was still not in substantial compliance, thus, the denial of payment continued and the state recommended that CMS terminate Cathedral Gardens' Provider Agreement;
- i. at an abbreviated survey on July 28, 2004, the state found that Cathedral Gardens was not in substantial compliance with the Participation Requirements and recommended denial of payment if not corrected by October 28, 2004;

- j. at a survey on August 20, 2004, the state found Cathedral Gardens was not in substantial compliance with the Participation Requirements, found that some of the same deficiencies cited on July 28, 2004 remained, and that new deficiencies also existed;
- k. on September 7, 2004, CMS wrote to Cathedral Gardens that a denial of payment would be effective on October 28, 2004;
- l. at a revisit on October 26, 2004, the state found that Cathedral Gardens was still not in substantial compliance with the Participation Requirements, thus, the denial of payment became effective until all corrections were made;
- m. at a survey on March 17, 2005, the state found that Cathedral Gardens was not in substantial compliance with the Participation Requirements and recommended denial of payment;
- n. on April 6, 2005, CMS informed Cathedral Gardens in writing that the denial of payment would be effective April 21, 2005 unless compliance was achieved prior to that time;
- o. on April 15, 2005, the state found that Cathedral Gardens remained not in substantial compliance with the Participation Requirements and a denial of payment again went into effect;
- p. at a survey on July 29, 2005, the state found Cathedral Gardens was not in substantial compliance with the Participation Requirements;
- q. at a survey on May 3, 2006, the state found Cathedral Gardens was not in substantial compliance with the Participation Requirements; and
- r. at a survey on July 14, 2006, the state found Cathedral Gardens was not in substantial compliance with the Participation Requirements.

160. DHSS recently put Heritage Park on notice of its deficiencies:

- a. at a survey completed on September 21, 2009, the state found that Heritage Park was not in substantial compliance with Participation Requirements and that the conditions in the facility constituted immediate jeopardy to resident health and safety. DHSS recommended that CMS impose a civil monetary penalty. CMS imposed a \$10,000 CMP and stated, in a letter dated October 8, 2009, that if substantial compliance was not achieved by March 21, 2010, CMS would terminate Heritage Park's provider agreement.

161. To avoid more severe penalties such as denial of payment and termination of the Provider Agreement, the Defendant Nursing Facilities repeatedly provided the state with Plans of Correction indicating that various deficiencies would be corrected. However, the survey histories set forth above show a pattern of repeated periods of failure to comply with the Participation Requirements and misrepresentation about correcting deficiencies.

**Defendants' Knowledge As Evidenced
By Actual Discussions Of The Failures**

162. Defendants had knowledge of the numerous problems at the Defendant Nursing Facilities because the problems were discussed both orally among employees and in e-mail communications.

163. Defendant Harrington had personal knowledge of the deficiencies at the Defendant Nursing Facilities because he personally observed many of the problems during his many visits to the Defendant Nursing Facilities. Defendant Harrington was also personally kept informed via e-mail communication of the failure to provide care.

164. On December 8, 2002, the Cathedral Rock Corporate Director of Nursing sent an e-mail to a regional vice president that was forwarded to Cathedral Rock's Executive Vice-President. In the e-mail, the corporate nurse stated that eight residents had decided not to return to McLaran because of "care issues." She further stated that "there are still big issues" at SpringPlace, including the lack of MARs charting. She also commented on the "lack of R.N.'s" at Blanchette and stated that "[t]hey don't have any on the day shift staff."

165. On May 6, 2004, a Vice-President of Cathedral Rock's Operations sent an e-mail to a DHSS Program Manager, Pam Clark, stating:

I am writing while sitting at Spring Place. You must have an idea of what your surveyors and the Federal surveyors are finding here. I can only imagine the outcome of this particular survey process, which I believe will not be good, to say the least.

This e-mail was forwarded to others, including Cathedral Rock's Executive Vice-President and Defendant Harrington.

166. In the same e-mail chain, on May 10, 2004, Cathedral Rock's Executive Vice-President, when referring to McLaran and SpringPlace, wrote: "I don't think these two facilities can be cleaned up by anyone at this point."

167. In May of 2003, an internal e-mail was sent from a Cathedral Rock regional employee to Cathedral Rock's Executive Vice-President, who forwarded the e-mail to Defendant Harrington. When referring to a DHSS survey and potential sanctions and penalties at SpringPlace, the regional employee wrote: "We'll know in a week how the survey goes, but anything short of denial of payment will be a winner for us."

168. In May of 2003, an e-mail was sent from a regional Vice President who had been at SpringPlace. The e-mail was forwarded to Cathedral Rock's Executive Vice-President, and the chain ended in an "FYI" to Defendant Harrington. The e-mail stated, in part:

I have discovered multiple items at Spring Place, that I feel require attention. Yesterday afternoon a resident on the sixth floor acquired a razor and slashed his wrist, he was sent out to the hospital 911. [The Administrator] instructed the DON not to report the incident because it happens all the time and if they keep reporting it, it will be too frequent. On Monday, the DON office was full of narcotics dating back to 2002, the medication rooms were not locked, nor were the storage areas and oxygen rooms. When i [sic] locked these areas it became apparent that no none had keys, so they were leaving these areas unlocked.

* * *

On Monday the building was smeared with food and feces in too many areas to list, chemicals were out in the open in restricted areas, razors were prevalent throughout the building.

169. A corporate site report from SpringPlace in May of 2003 reflects numerous problems including understaffing.

170. On April 26, 2005, Kent Harrington wrote an e-mail to Cathedral Rock's Regional Director of Marketing, which reflected his awareness of the failure to provide care: "For instance, we should have closed our new line of credit with the last lender, except they turned us down because of the clinical performance. Try as we did to sweet talk them...we were unsuccessful. Clinical performance let us down."

PROFITABILITY

Cathedral Rock Management's Income and Balance In the Partners' Capital Accounts

171. While resident care suffered, and while bills to vendors were not being paid, Cathedral Rock Management was collecting large management fees from the Defendant Nursing Facilities and at the same time earning a profit.

172. As set forth in the cost reports submitted to Medicare and Missouri Medicaid, the Defendant Nursing Facilities paid management fees to Cathedral Rock Management between 2001 and 2005 totaling \$6,812,487 – broken down by facility as follows:

- a. from July 1, 2001 through its closing in 2004, SpringPlace paid management fees to Cathedral Rock Management totaling \$637,493;
- b. from July 1, 2001 through 2005, McLaran paid management fees to Cathedral Rock Management totaling \$2,966,627;
- c. from July 1, 2001 through 2005, Oak Forest paid management fees to Cathedral Rock Management totaling \$554,992;

- d. from July 1, 2001 through 2005, Cathedral Gardens paid management fees to Cathedral Rock Management totaling \$1,005,950; and
- e. from July 1, 2001 through 2005, Blanchette paid management fees to Cathedral Rock Management totaling \$1,647,425.

173. Cathedral Rock Management earned substantial sums of money. In 2004 alone, Cathedral Rock Management earned income of over \$1.6 million. During 2004, the two partners' capital account balances at Cathedral Rock Management grew from \$4,048,578 to \$5,735,174. Rather than use this income to pay the obligations due to the vendors of the Defendant Nursing Facilities, Cathedral Rock Management used this income to support other Cathedral Rock businesses and related entities as evidenced by numerous intercompany transfers of funds.

174. As set forth above, the two partners in Defendant Cathedral Rock Management are Defendant Cathedral Rock Management I, Inc. (the general partner holding 1%) and Defendant Cathedral Rock Investments, Inc. (the limited partner holding 99%). Defendant Cathedral Rock owns 100% of Cathedral Rock Management I, Inc. and Cathedral Rock Investments, Inc. Defendant Harrington owns the majority of Cathedral Rock.

Defendant Harrington's Salary

175. In addition to being the ultimate beneficiary of the large majority of the funds in the Partners' Capital Accounts of Cathedral Rock Management, Defendant Harrington benefitted from a salary from Cathedral Rock Management.

176. Harrington earned an annual salary from Cathedral Rock Management as follows:
- a. \$167,250 in 2000;
 - b. \$168,000 in 2001;

- c. \$146,520 in 2002;
- d. \$164,134.28 in 2003;
- e. \$178,792.12 in 2004; and
- f. \$213,744.52 in 2005.

SPECIFIC INSTANCES OF THE FAILURE OF CARE

177. The following claims for payment for the residents set forth below were submitted by the Defendant Nursing Facilities to Medicare or Missouri Medicaid.

178. Other false claims for payment for other residents that are not specifically set forth in the paragraphs below were also submitted by the Defendant Nursing Facilities to Medicare or Missouri Medicaid.

179. The claims were false and fraudulent because the services purportedly provided 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 Defendant Nursing Facilities, and were of a quality that failed to meet professionally recognized standards of health care.

Resident #1 (D.H.)¹
SpringPlace

180. Resident #1 was admitted to SpringPlace on May 3, 2000. At that time, he had already undergone a left above-the-knee amputation.

181. While at SpringPlace, from the fall of 2000 through the spring of 2002, the monthly summaries for Resident #1 noted that his skin condition and skin turgor were “good.”

¹For privacy reasons, specific residents have been identified only by initials. The United States will provide full identification of the residents to counsel for the Defendants.

182. SpringPlace did not provide any nursing notes for Resident #1 from March 24, 2002 through January 5, 2003. During this same period, the former Social Service Director of SpringPlace recalls that an extremely foul stench emitted from Resident #1's room.

183. Resident #1 was admitted to the hospital on September 21, 2002 and stayed through October 1, 2002. He was admitted to the hospital again on October 9, 2002 and stayed through October 21, 2002.

184. On January 5, 2003, Resident #1 was admitted to Saint Louis University Hospital with a diagnosis that included "a 2-week history of foul-smelling necrotic right great toe." Hospital records state: "The right great toe was noted to be malodorous with necrotic tissue to the level of the metatarsal head, and the heel was also noted to have a large necrotic area on the right heel." The clinical impression was a "gangreneous great toe."

185. On January 6, 2003, Resident #1 underwent surgery for a right above-the-knee amputation.

186. For the care purportedly provided to Resident #1 from March 24, 2002 through January 4, 2003, SpringPlace, under its Missouri Medicaid provider number, submitted electronic claims for payment to Missouri Medicaid and Missouri Medicaid paid those claims as follows:

- a. the per diem rate from March 24, 2002 through September 21, 2002;
- b. the per diem rate from October 1, 2002 through October 8, 2002; and
- c. the per diem rate from October 21, 2002 through January 4, 2003.

**Resident #2 (P. G.)
Blanchette**

187. Resident #2 became a resident at Blanchette on February 21, 2003. She was transferred to Blanchette from Barnes Hospital where she had undergone several surgeries as a result of an infection in her hip and knee.

188. Resident #2 was to receive antibiotic therapy at Blanchette.

189. While at Blanchette, Resident #2 was not provided with adequate pain relief, she suffered from poor hygiene, and her diabetes was not properly monitored.

190. Resident #2 lost 14 pounds during her approximately one month stay at Blanchette.

191. Resident #2 was admitted to St. Joseph's Hospital on March 25, 2003 with sepsis. Although Blanchette records suggest that she received a PICC line in order to receive her antibiotics, the hospital ER could not find a functional PICC line. Thus, Resident #2 could not have received her antibiotics as ordered.

192. Resident #2 died from sepsis on March 26, 2003.

193. For the care purportedly provided to Resident #2 from February 21, 2003 through March 24, 2003, Blanchette, under its Missouri Medicaid provider number, submitted electronic claims to Missouri Medicaid and Missouri Medicaid paid those claims as follows:

a. the per diem rate from February 21, 2003 through March 24, 2003.

**Resident #3 (W. G.)
Cathedral Gardens**

194. Resident #3, a 61-year old male, was admitted to Oak Forest North in June of 1998. On July 1, 2001, Oak Forest North became Cathedral Gardens.

195. March 2001 records show a left lateral stage II pressure ulcer with necrotic tissue.

196. A wound consultant examined Resident #3 on November 26, 2001 and reported that the "resident needs more attention to positioned, heel protectors are not on and donut pad is not in place."

197. On December 27, 2001, Resident #3 was admitted to Forest Park Hospital following outpatient G tube placement. He was seen for an appointment at the wound center and was directly admitted to the hospital due to the status of his wound on his left foot.

198. Forest Park Hospital records document visible bone and tendons, necrosis, drainage and odor from the wound. Amputation was recommended and later performed. Other pressure ulcers not previously mentioned in the Cathedral Gardens records were also found.

199. Resident #3 suffered as a result of the lack of a repositioning schedule and malnutrition while at Cathedral Gardens.

200. For the care purportedly provided to Resident #3 from November 25, 2001 through December 26, 2001, Cathedral Gardens, under its Missouri Medicaid provider number, submitted electronic claims to Missouri Medicaid and Missouri Medicaid paid those claims as follows:

- a. the per diem rate from November 25, 2001 through November 30, 2001;
- b. December 1, 2001 through December 15, 2001 Cathedral Gardens submitted claims for the per diem rate, however, the actual payment was reduced, in part, by payment from other sources; and
- c. the per diem rate from December 16, 2001 through December 26, 2001.

Resident #4 (G.B.)
Cathedral Gardens

201. Resident #4 was 58 years of age when he was admitted to Cathedral Gardens on September 20, 2002.

202. Resident #4's assessment upon admission to Cathedral Gardens noted scar tissue on his sacrum and scrotum and a scabbed right knee. The assessment noted no pressure ulcers or open areas and stated "good skin turgor."

203. The Cathedral Gardens notes contain entries for only eight days from September 20, 2002 through December 26, 2002.

204. Resident #4 was admitted to Christian Hospital Northeast on December 26, 2002 for aspiration pneumonia.

205. Christian Hospital Northeast admission records and photographs note numerous pressure ulcers for Resident #4 on December 26, 2002, including a gangrenous right leg and the following: (i) a stage 2 ulcer on the coccyx measuring 3 x 10 cm with drainage; (ii) a stage 2 ulcer on the posterior scrotum with drainage; (iii) a stage 1 and a stage 2 (measuring 2 x 2 cm) ulcer on the left lower extremity with drainage; (iv); a stage 2 ulcer on the left ear measuring 1 x ½ cm; (v) a stage 2 ulcer on the nose measuring 1 ½ x 1 ½ cm; and (iv) a stage 2 ulcer on the right side of the mouth measuring 2 x 2 cm.

206. On January 7, 2003, Resident #4 underwent a right above-the-knee amputation for his gangrenous right leg.

207. For the care purportedly provided to Resident #4 from October 1, 2002 through December 25, 2002, Cathedral Gardens, under its Missouri Medicaid provider number, submitted electronic claims to Missouri Medicaid and Missouri Medicaid paid those claims as follows:

- a. the per diem rate from October 1, 2002 through December 25, 2002.

**Resident #5 (E.C.)
Cathedral Gardens**

208. Resident #5 was 66 years old when admitted to Cathedral Gardens on May 30, 2003. His admission diagnoses included hypertension, depressive disorder, diabetes and weakness.

209. Prior to the fall of 2004, Residents #5's assessments at Cathedral Gardens noted no skin ulcers.

210. The MDS Assessment prepared on August 12, 2004 noted no skin ulcers and no skin problems or lesions.

211. On August 16, 2004, the nursing note reflects a "duoderm to L anterior leg." On September 8, 2004, the nursing note reflects a small opening of the left anterior leg.

212. There are no notes regarding treatment for several weeks. On November 24, 2004, the nursing notes reflect a 6.7 x 6.7 cm left knee abrasion. The next nursing note entry, on December 1, 2004, notes an open area to the left knee with a moderate amount of drainage. Notes reflect that resident #5 received treatment for his wounds on December 1 and December 5.

213. On December 7, 2004, Resident #5 was admitted to Forest Park Hospital with a decreased level of consciousness and with a joint exposed in his gangrenous left leg. Hospital photographs reveal the exposed joint.

214. Resident #5 underwent an above-the-knee amputation on his left leg on December 17, 2004.

215. For the care purportedly provided to Resident #5 from August 12, 2004 through December 6, 2004, Cathedral Gardens, under its Missouri Medicaid provider number, submitted electronic claims to Missouri Medicaid and Missouri Medicaid paid those claims as follows:

- a. from August 12, 2004 through August 15, 2004, Cathedral Gardens submitted claims for the per diem rate, however the actual Missouri Medicaid payments were reduced, in part, by payment from other sources;
- b. the per diem rate from August 16, 2004 through August 31, 2004;
- c. from September 1, 2004 through September 15, 2004, Cathedral Gardens submitted claims for the per diem rate, however, the actual Missouri Medicaid payments were reduced, in part, by payment from other sources;
- d. the per diem rate from September 16, 2004 through September 30, 2004;
- e. from October 1, 2004 through October 15, 2004, Cathedral Gardens submitted claims for the per diem rate, however, the actual Missouri Medicaid payments reduced, in part, by payment from other sources;
- f. the per diem rate from October 16, 2004 through October 31, 2004;
- g. from November 1, 2004 through November 15, 2004, Cathedral Gardens submitted claims for the per diem rate, however, the actual Missouri Medicaid payments were reduced, in part, by payment from other sources;
- h. the per diem rate from November 16, 2004 through November 30, 2004; and
- i. from December 1, 2004 through December 6, 2004 Cathedral Gardens submitted claims for the per diem rate, however, the actual Missouri Medicaid payments were reduced based on payment from other sources.

Resident #6 (I.L.)
Cathedral Gardens

216. Resident #6 was admitted to Cathedral Gardens on October 9, 2003 with a diagnosis that included dementia and chronic renal failure. At the time, she was 83 years of age.

217. Resident #6's resident assessment on October 9, 2003 noted that her general skin condition was dry, warm, and contained no open areas.

218. Resident #6's skin was noted to be intact on October 18, 2003, November 14, 2003, December 6, 2003, and December 9, 2003.

219. In December of 2003, notes reflect that Resident #6 developed blister-like fluid on her left heel.

220. On January 30, 2004, Resident #6 was admitted to Christian Hospital Northeast and was found to be dehydrated and anemic. Hospital records reflect a stage III-IV pressure ulcer on Resident #6's left heel.

221. Resident #6 underwent a left above-the-knee amputation because of her gangrenous left foot.

222. For the care purportedly provided to Resident #6 from January 1, 2004 through January 30, 2004, Cathedral Gardens, under its Missouri Medicaid provider number, submitted electronic claims to Missouri Medicaid and Missouri Medicaid paid those claims as follows:

a. from January 1, 2004 through January 30, 2004 Cathedral Gardens, submitted claims for the per diem rate, however, the actual Missouri Medicaid payments were reduced, in part, by payment from other sources.

Resident #7 (M.M.)
Cathedral Gardens

_____223. Resident #7 was admitted to Oak Forest North in 1999. Oak Forest North became Cathedral Gardens on July 1, 2001.

224. With no noted prior history of skin ulcers, on September 6, 2002, a doctor's note reflects a stage II ulcer on Resident #7's buttocks. __

225. On September 10, 2002, nursing notes reflect two stage 2 ulcers on Resident #7's buttocks. Another necrotic area was noted on her left heel on December 31, 2002.

226. On January 7, 2003, nursing notes reflect that Resident #7 weighs 125.8, a decrease from the prior month's weight of 164.4.

227. Resident #7's progress notes in January of 2003 note a foul odor from her left heel and a moderate amount of drainage.

228. Resident #7 was admitted to Christian Hospital Northeast on January 28, 2003 with acute osteomyelitis and a gangrenous left heel ulcer. Hospital notes reflect that resident #7 would benefit from an amputation because of "severely diminished arterial circulation and failure of the medical management, wound treatment and because of the poor functional status."

229. Resident #7 underwent a left above-the-knee amputation on January 30, 2003.

230. For the care purportedly provided to Resident #7 from January 7, 2003 through January 27, 2003, Cathedral Gardens, under its Missouri Medicaid provider number, submitted electronic claims to Missouri Medicaid and Missouri Medicaid paid those claims as follows:

a. from January 1, 2003 through January 15, 2003 Cathedral Gardens submitted claims for the per diem rate, however, the actual Missouri Medicaid payments were reduced, in part, by payment from other sources; and

- b. the per diem rate from January 16, 2003 through January 27, 2003.

Resident #8 (C.R.)

McLaran

231. Resident #8 was 71 years of age when he was admitted to Lutheran Care Center on June 29, 2001. Lutheran Care Center became McLaran on July 1, 2001.

232. During 2001 and early 2002, Resident #8 weighed approximately 145 pounds and had no skin ulcers.

233. On June 12, 2002, notes state that Resident #8 was found to have an open blister on his right heel.

234. By July 3, 2002, Resident #8 had an unstageable pressure ulcer on his right heel and weighed only 121 pounds.

235. Resident #8 was admitted to Forest Park Hospital on July 18, 2002 and was found to have bilateral infected heels. Hospital records reflect that Resident #8 had lost almost 25 pounds within the last three weeks while at McLaran.

236. Resident #8 underwent a bi-lateral above the knee amputation on July 30, 2002. He subsequently died on August 9, 2002.

237. For the care purportedly provided to Resident #8 from June 12, 2002 through July 18, 2002, McLaran, under its Missouri Medicaid provider number, submitted electronic claims to Missouri Medicaid and Missouri Medicaid paid those claims as follows:

- a. the per diem rate from June 12, 2002 through July 18, 2002.

Resident #9 (A.T.)
McLaran

238. Resident #9 was admitted to McLaran on December 31, 2003. At that time, she was 55 years of age.

239. Hospital records reflect no skin breakdowns on January 7, 2004.

240. Nursing records from McLaran on January 23, 2004 note an open area to Resident #9's coccyx measuring 4.5 cm x 3 cm. x .2 cm.

241. Resident #9 was admitted to St. Alexius Hospital on January 29, 2004 as hypoxic with respiratory distress. The Emergency Department Triage Note states that Resident #9 was malnourished, unkept, and smells of bowel/stool and wound. A stage III pressure ulcer is noted on Resident #9's sacrum coccygeal measuring approximately 2.6 cm to 7.5 cm.

242. Resident #9 was diagnosed with sepsis and pneumonia and admitted to the intensive care unit.

243. For the care purportedly provided to Resident #9 from January 9, 2004, through January 28, 2004, McLaran, under its Missouri Medicaid provider number, submitted electronic claims to Missouri Medicaid and Missouri Medicaid paid those claims as follows:

a. January 9, 2004 through January 28, 2004 McLaran submitted claims for the per diem rate, however, the actual Missouri Medicaid payments were reduced, in part, by payment from other sources.

Resident #10 (L.K.)
McLaran

244. On November 14, 2002, Resident #10 was admitted to the facility. Upon admission, he was mentally disabled and was to receive 24-hour supervision.

245. On November 16, 2003, Resident #10 eloped from the third floor window and suffered a broken leg as a result of his fall.

246. For the care purportedly provided to Resident #10 on November 16, 2003, McLaran, under its Medicare provider number, submitted an electronic claim on an electronic version of a UB-92 HCFA-1450 to Medicare and Medicare paid as follows:

a. McLaran submitted a claim for the per diem RUG rate, however, the actual Medicare payment was reduced, in part, by payment from other sources.

Resident #11 (E.L.)
Cathedral Gardens

247. Resident #11 was admitted to Cathedral Gardens on June 22, 2005. He had no diagnosis of pressure ulcers upon admission.

248. On August 9, 2005, a pathology report from St. Alexius Hospital indicated that the wound on Resident #11's infected left foot was debrided and that the debridement was complicated by the finding of maggots measuring 1.2 cm in length in the wound.

249. On January 4, 2006, the wound care notes from St. Alexius Hospital identify eight separate pressure ulcers on Resident #11.

250. In January of 2006, Resident # 11 was admitted to St. Alexius with sepsis, and a gangrenous left foot. His wounds showed evidence of abdominal bacteria.

251. Resident #11 underwent an above-the-knee amputation of his left leg.

252. Subsequently, on February 13, 2006, Resident #11 underwent an amputation of his right gangrenous second toe.

253. For the care purportedly provided to Resident #11 from August 9, 2005 through January 17, 2006, Cathedral Gardens, under its Missouri Medicaid provider number, submitted electronic claims to Missouri Medicaid and Missouri Medicaid paid those claims as follows:

a. from October 7, 2005 through October 31, 2005 Cathedral Gardens submitted claims for the per diem rate, however, the actual Missouri Medicaid payments were reduced, in part, by payment from other sources;

b. from November 8, 2005 through November 15, 2005 Cathedral Gardens submitted claims for the per diem rate, however, the actual Missouri Medicaid payments were reduced, in part, by payment from other sources; and

c. the per diem rate from November 16, 2005 through November 30, 2005;

d. from December 1, 2005 through December 15, 2005 Cathedral Gardens submitted claims for the per diem rate, however, the actual Missouri Medicaid payments were reduced, in part, by payment from other sources; and

e. the per diem rate from December 16, 2005 through December 31, 2005;

f. from January 1, 2006 through January 15, 2006 Cathedral Gardens submitted claims for the per diem rate, however, the actual Missouri Medicaid payments were reduced, in part, by payment from other sources; and

g. the per diem rate from January 16, 2006 through January 17, 2006.

Resident #12 (M.H.)
Blanchette

254. Resident #12 was admitted to Blanchette, formerly Claywest, in 2002.

255. In March of 2006, Resident #12 suffered a fall in which she broke her ankle. Her ankle required a cast. Due to the cast, Resident #12 was no longer able to toilet herself.

256. Resident #12 suffered from dehydration and in June of 2006 she developed three pressure ulcers on her buttocks.

257. Resident #12 was admitted to St. Joseph's Health Center on June 25, 2006. She was dehydrated and suffering from significant, infected pressure ulcers – including a stage IV ulcer on her right hip. She was discharged with instructions for wound care.

258. Resident #12 was readmitted to St. Joseph's Health Center on July 16, 2006. The emergency room record reflects ants found on Resident #12 while she was residing at Blanchette.

259. Resident #12 did not return to Blanchette.

260. For the care purportedly provided to Resident #12 from June 1 through June 15, 2006 and July 5 through July 16, 2006, Blanchette, under its Medicare provider number, submitted electronic claims on an electronic version of a UB-92 HCFA 1450 to Medicare and Medicare paid those claims as follows:

- a. the per diem rate from June 1, 2006 through June 15; and
- b. the per diem rate from July 5 through July 16.

Resident #13 (M.W.)
McLaran

261. Resident #13 was admitted to McLaran on September 14, 2001 and at that time was assessed as a low risk of developing pressure ulcers.

262. On October 9, 2001, Resident #13 was admitted to Forest Park Hospital with a stage IV sacral ulcer, a stage II ulcer on her right knee and bilateral ulcers on the heels.

263. Resident #13 underwent a surgical debridement on October 15, 2001. She was readmitted to McLaran on October 19, 2001.

264. On November 6, 2001, Resident #13 was transported via ambulance to St. Louis University Hospital and was admitted with a diagnosis of sepsis and malnutrition. Seventeen separate pressure ulcers were identified at that time.

265. Resident #13 died on November 26, 2001.

266. For the care purportedly provided to Resident #13 from September 14, 2001 through October 8, 2001 and from October 19, 2001 through November 6, 2001, McLaran, using its Missouri Medicaid provider number, submitted electronic claims to Missouri Medicaid and Missouri Medicaid paid those claims as follows:

- a. the per diem rate from September 14, 2001 through September 30, 2001; and
- b. from October 19, 2001 through November 5, 2001 McLaran submitted claims for the per diem rate, however, the actual Missouri Medicaid payments were reduced, in part, by payment from other sources.

Resident #14 (J.R.)
Blanchette

_____267. Resident #14 was a resident of Blanchette in June of 2004.

268. At approximately 1:00 a.m. on June 13, 2004, Resident #14 eloped from Blanchette using a walker. He was found in the middle of the street when a passing automobile almost struck him.

269. For the care purportedly provided to Resident #14 on June 13, 2004, Blanchette, under its Missouri Medicaid provider number, submitted an electronic claim to Missouri Medicaid and Missouri Medicaid paid the claim as follows:

- a. Blanchette submitted a claim for the per diem rate for June 13, 2004, however, the actual Missouri Medicaid payment was reduced, in part, by payment from other sources.

Resident #15 (H.C.)
Oak Forest

_____ 270. Resident #15 resided at Oak Forest in January of 2005.

271. In the early morning hours of January 31, 2005, Resident #15 eloped from Oak Forest. The outdoor temperature was approximately 29 degrees Fahrenheit and the resident was wearing only a nightgown and slipper socks. Resident #15 was found behind the facility down a muddy hill that was dense with brush. Resident #15 sustained scratches and bruises. When she was found, Resident #15's body temperature was 95.2 degrees fahrenheit. _____

_____ 272. For the care purportedly provided to Resident #15 on January 31, 2005, Oak Forest, under its Missouri Medicaid provider number, submitted an electronic claim to Missouri Medicaid and Missouri Medicaid paid the claim as follows:

- a. the per diem rate for January 31, 2005.

Resident #16 (T.T.)
Blanchette

_____ 273. Resident #16 was a resident of Blanchette in 2006. He was admitted to St. Joseph Hospital on October 2, 2006 for dehydration and acute renal failure. At that time he had a small pressure ulcer on his back.

274. On December 5, 2006, Resident #16 was readmitted to the hospital with an unstageable pressure sore to his back area and malnutrition.

275. The pressure sore, according to hospital records and photographs, measured 10x6x4 cm with bony exposure.

276. For the care purportedly provided to Resident #16 from October 5, 2006 through December 4, 2006, Blanchette, under its Medicare and Missouri Medicaid provider numbers,

submitted claims to Medicare and Missouri Medicaid and the claims were paid as follows:

- a. Blanchette submitted claims to Medicare for the RUG rate from October 5, 2006 through November 6, 2006, and Medicare paid the applicable RUG rate reduced by any applicable co-insurance amount;
- b. from November 7, 2006 through November 15, 2006, Blanchette submitted claims to Missouri Medicaid for the per diem rate, however, the actual Missouri Medicaid payments were reduced, in part, by payments from other sources;
- c. Medicaid paid the per diem rate from November 16, 2006 through November 30, 2006; and
- d. from December 1, 2006 through December 4, 2006, Blanchette submitted claims to Missouri Medicaid for the per diem rate, however, the actual Missouri Medicaid payments were reduced by payments from other sources.

Resident #17 (S.S.)
Blanchette

277. Resident #17 was admitted to Blanchette on July 6, 2006 with cancer.

278. The nursing notes from Resident #17's admission note that she was morbidly obese, but that she had no skin ulcers at that time, however, there was redness on her coccyx.

279. On July 18, 2006, Resident #17 was admitted to St. Joseph Health Center with a decreased level of consciousness and skin ulcers.

280. The Emergency Room notes for Resident #17 on July 18, 2006 note a sacral pressure ulcer with "packing that looks as if it had not been changed in day." _____

_____281. St. Joseph Health Center telephoned a complaint to the Missouri elder abuse hot-line based upon Resident #17's severe ulcers and excoriation on the buttocks and abdomen. The

hospital complained that the pressure ulcers were a result of neglect by Blanchette.

282. For the care purportedly provided to Resident #17 from July 6, 2006 through July 18, 2006, Blanchette, under its Medicare provider number, submitted electronic claims on an electronic version of a UB-92 HCFA-1450 to Medicare and Medicare paid as follows:

- a. twelve days at the applicable Medicare daily RUG rate.

Resident #18 (C.A.)
Cathedral Gardens

283. Resident #18 was a resident of Cathedral Gardens from December 2, 2005 through December 23, 2008.

284. During his residency at Cathedral Gardens, Resident #18 sustained six (6) reported falls.

285. Resident #18 suffered a fractured right wrist as a result of a fall on June 27, 2007.

286. Resident #18 complained of left hip pain after a fall on December 25, 2007. The follow-up x-ray taken on December 27, 2007, revealed an impacted left femoral neck fracture. A nurse documented that Resident #18 had multiple bruises on December 28, 2007.

287. On January 3, 2008, Resident #18 weighed 110 pounds. The weight represented a loss of 23 pounds in three months, and a total loss of 46 pounds since his admission weight of 156 pounds.

288. Resident #18 did not have any pressure ulcers documented upon his admission to Cathedral Gardens. On January 17, 2008, blisters were noted on his right ankle and left knee.

289. On January 18, 2008, a nurse documented the initial discovery of a left inner knee pressure ulcer and the presence of the two previously noted pressure ulcers/blisters.

290. On January 22, 2008, Resident #18 was less responsive and was admitted to Christian Hospital Northeast. Resident #18's admitting diagnosis included severe sepsis, urinary tract infection, acute renal insufficiency, exacerbation of congestive heart failure, and the presence of six pressure ulcers, three of which had not been noted by Cathedral Gardens: (i) a stage IV pressure ulcer on the left medial knee, MRSA infected; (ii) a pressure ulcer on the right hip; (iii) a pressure ulcer on the left lateral foot; (iv) a pressure ulcer on left medial foot; (v) a pressure ulcer on the right heel; and (vi) a pressure ulcer on the right medial ankle.

291. Blood cultures that the hospital obtained upon admission of Resident #18 were positive for MRSA. The hospital admission notes also noted poor oral hygiene.

292. Resident #18 was discharged on February 1, 2008 back to Cathedral Gardens with six pressure ulcers.

293. On February 22, 2008, Resident #18 was documented to have 28 pressure ulcers. He died the following day.

294. For the care purportedly provided to Resident #18 from December 25, 2007, through January 21, 2008, and from February 2, 2008, through February 22, 2008, Cathedral Gardens, under its Missouri Medicaid provider number, submitted electronic claims to Missouri Medicaid and Missouri Medicaid paid the claims as follows:

- a. the per diem rate from December 25, 2007 through January 21, 2008; and
- b. the per diem rate from February 2, 2008 through February 22, 2008

Resident #19 (D.S.)
Blanchette Place

_____295. Resident #19 was admitted to Blanchette on August 1, 2008.

296. Resident #19 had a tracheostomy that required suctioning several times a day. She also required respiratory metered dose inhalation treatments every six hours.

297. When she was admitted to Blanchette, Resident #19 was alert and oriented, could stand with assistance, and was quick to comprehend. She was, however, totally dependent upon the staff to receive her activities of daily living. When admitted to Blanchette, Resident #19's oxygen saturation was 92%.

298. Upon admission, Blanchette failed to properly assess Resident #19. By August 3, 2008, her oxygen saturation had fallen, at one point, to 22%. Resident #19 had not been receiving her required respiratory inhalation treatments from August 1, 2008 through August 3, 2008.

299. The hospital records for the August 3, 2008 admission reflect that Resident #19 had a urinary tract infection, a clogged feeding tube, and anemia that required a blood transfusion.

300. Resident #19 was readmitted to Blanchette on August 8, 2008. By August 10, 2008, Resident #19 was suffering from shortness of breath. The Blanchette staff failed to properly intervene.

301. Resident #19 was readmitted to the hospital on August 11, 2008 to have her tracheostomy tube replaced. She was readmitted to Blanchette on August 13, 2008.

302. From August 13, 2008 to September 24, 2008, Resident #19 repeatedly suffered from shortness of breath. No appropriate care plan was developed at Blanchette. Resident #19 was exhibiting signs and symptoms of hypoxia, a compromised airway, and respiratory distress, however, Blanchette staff failed to intervene.

303. Blanchette staff failed to administer Resident #19 her physician ordered respiratory inhalation treatments on at least 100 different occasions. Blanchette staff falsified the Medication Administration Records to indicate that treatments had been given to Resident #19. It is not possible that the treatments were given because Blanchette had not purchased, and did not possess, the respiratory medication to administer to Resident #19.

304. Resident #19's condition deteriorated through September of 2008 in that she was suffering from increased respiratory distress. Resident #19 was often anxious and teary eyed. Blanchette failed to properly assess Resident #19, blatantly failed to administer her medication, and then falsified the records to make it appear as if the medication had been administered.

305. Resident #19 died on September 24, 2008.

306. For the care purportedly provided to Resident #19 from August 1 through August 3, 2008; from August 8, 2008 through August 11, 2008; and from August 13, 2008 through September 24, 2008, Blanchette, under its Medicare provider number, submitted electronic claims on an electronic version of a UB-92 HCFA-1450 to Medicare and Medicare paid as follows:

- a. forty-nine (49) days at the applicable Medicare daily RUG rate.

Resident #20 (W.E)
Heritage Park

307. Resident #20 was a long-term resident of Heritage Park.

308. Resident #20 suffered from short term memory problems, required assistance with eating, but was generally aware of her surroundings. She suffered from diabetes and had a history of a stroke.

309. On September 3, 2009, Resident #20 had decreased responsiveness, periods of unresponsiveness, and a slightly elevated body temperature. On that date, Resident #20's physician directed that Heritage Park staff collect a urine sample, check for an infection due to Resident #20's altered mental status, obtain a chest x-ray due to rattling in Resident #20's lungs, and immediately administer an antibiotic injection of Rocephin.

310. On September 4, 2009, Heritage Park staff noted in Resident #20's chart that antibiotics had been started, but that Resident #20 now required maximum assistance with transfers and was not able to feed herself. Resident #20's physician was not notified.

311. On September 5, 2009, staff at Heritage Park noted that Resident #20 would open her eyes, but did not verbally respond to staff. No complete assessment of Resident #20 was done on September 5, 2009. Resident #20's physician was not notified.

312. On September 6, 2009, at 4:00 a.m., Resident #20 suffered from an elevated temperature and increased respirations. Resident #20's physician was not notified.

313. On September 6, 2009, at some unknown time later than 4:00 a.m., Heritage Park staff notified Resident #20's physician that the left side of her mouth and tongue dropped and the right side of her body was "drawn up." Staff at Heritage Park recorded that they thought Resident #20 may have suffered a stroke. Resident #20 was sent to the hospital at 5:50 a.m. on September 6, 2009.

314. Resident #20 was treated at the hospital for pneumonia, a urinary tract infection, and a possible stroke. She was discharged from the hospital and returned to Heritage Park on September 11, 2009, with orders for intravenous antibiotics.

315. The staff at Heritage Park did not administer the antibiotics. The staff at Heritage Park did not notify Resident #20's physician, rather, the staff indicated that they could not start the antibiotics because they were unable to obtain a blood draw from Resident #20.

316. Resident #20 suffered from the lack of antibiotics to treat her serious medical conditions.

317. For the care purportedly provided to Resident #20 from September 11, 2009 through September 15, 2009, Heritage Park, under its Medicare provider number, submitted electronic claims on an electronic version of a UB-92 HCFA-1450 to Medicare and Medicare paid as follows:

- a. five (5) days at the applicable Medicare daily RUG rate.

Resident #21 (D.H.)
Heritage Park

_____ 318. Resident #21 was a resident of Heritage Park who suffered from impaired cognitive skills and was totally dependent upon staff for activities of daily living.

319. On September 11, 2009, Resident #21's physician indicated that Resident #21 was suffering from an active seizure. The resident was transferred to the hospital and returned to Heritage Park later that same day with new physician orders.

320. The physician order for Resident #21 dated September 11, 2009 directed Heritage Park staff to administer Resident #21 Dilantin three times daily to prevent seizures.

321. Nursing notes for Resident #21 for September 12, 2009, show that Resident #21 drank small sips of thickened liquid but had no food consumption. The staff did not notify the physician that Resident #21 did not take her medications due to "not swallowing."

322. On September 12, 2009, Resident #21's physician ordered that Resident #21 receive an injection of an antibiotic (Rocephin) immediately. Heritage Park staff failed to administer the injection. Again, the staff records show that Resident #21 did not receive her Dilantin due to "not swallowing." Resident #21's physician was not notified.

323. Records show that on September 12, 2009, Resident #21 consumed no food and only 120 cc of fluids. Ultimately, the physician was notified and Resident #21 received fluid via an IV.

324. On September 13, 2009, Resident #21 was again ordered an IV antibiotic, but it was not given. On September 13, 2009, Resident #21 did not eat or drink all day.

_____ 325. On September 14, 2009, Resident #21 did not eat or drink all day.

326. The Medication Administration Records for Resident #21 show that she did not received Dilantin as ordered on multiple occasions from September 12, through September 14, 2009.

_____ 327. Resident #21 suffered from dehydration due to the failure of the staff at Heritage Park to administer fluids. She also suffered from the staff's failure to administer her medication as ordered. She subsequently died.

_____ 328. For the care purportedly provided to Resident #21 from September 1, 2009 through September 17, 2009, Heritage Park, under its Missouri Medicaid provider number, submitted electronic claims to Missouri Medicaid and Missouri Medicaid paid the claims as follows:

- a. the per diem rate from September 1, 2009 through September 17, 2009.

CLAIMS AGAINST DEFENDANTS

Count I: False Claims Act, 31 U.S.C. §§ 3729(a)(1)

**Defendants Cathedral Rock; Cathedral Rock Management;
SpringPlace; McLaran; Oak Forest Skilled Care;
Cathedral Gardens Care Center; Blanchette;
Heritage Park; and C. Kent Harrington**

329. The United States restates and incorporates by reference paragraphs 1 through 328 of the complaint as if fully set forth herein.

330. By virtue of the acts described above, and as specifically set forth in paragraphs 1 through 328, the above-named Defendants knowingly presented or caused to be presented to the United States false or fraudulent claims for payment or approval by Medicare and Missouri Medicaid in violation of the False Claims Act, 31 U.S.C. § 3729(a)(1), as amended.

331. The claims were false in that they were submitted for services not rendered or were deficient, inadequate, substandard, did not promote the maintenance or enhancement of the quality of life of the resident of the facility, failed to meet professionally recognized standards of health care, and were worthless.

332. Pursuant to the False Claims Act, Defendants are liable to the United States for statutory damages as allowed by law and civil penalties for each of these false or fraudulent claims in an amount to be determined at trial.

Count II: False Claims Act, 31 U.S.C. §§ 3729(a)(2)

**Defendants Cathedral Rock; Cathedral Rock Management;
SpringPlace; McLaran; Oak Forest Skilled Care;
Cathedral Gardens Care Center; Heritage Park; and Blanchette**

333. The United States restates and incorporates by reference paragraphs 1 through 328 of the complaint as if fully set forth herein.

334. By virtue of the acts described above, the above-named Defendants knowingly made, used, or caused to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government in violation of the False Claims Act, 31 U.S.C. § 3729(a)(2), as amended.

335. As described above, the false records consist of documents contained in patient records including false MARS, false controlled substance logs, and false MDSs.

336. As described above, the false claims consist of the claims for payments submitted to Medicare and Missouri Medicaid.

337. Pursuant to the False Claims Act, Defendants are liable to the United States for statutory damages allowed by law and civil penalties for these false or fraudulent claims in an amount to be determined at trial.

Count III: Common Law Fraud

**SpringPlace; McLaran; Oak Forest Skilled Care;
Cathedral Gardens; Heritage Park; and Blanchette**

338. The United States restates and incorporates by reference paragraphs 1 through 328 of the complaint as if fully set forth herein.

339. The above-named Defendants submitted claims for reimbursement for care purportedly provided to residents to the Medicare and Missouri Medicaid programs for services that were not rendered or were deficient, inadequate, substandard, did not promote the maintenance or enhancement of the quality of life of the resident of the facility, and were of a quality that failed to meet professionally recognized standards of health care and were worthless. The Defendants represented that the claims were true and correct and that the services identified in the claim were provided in compliance with applicable laws and regulations.

340. The above-named Defendants knew that the claims were materially false and the Defendants intended to deceive Medicare and Missouri Medicaid through the submission of those claims.

341. Medicare and Missouri Medicaid relied upon the representations made by the Defendants and took action in reliance upon those claims which included payment of the claims.

342. As a result, the United States is entitled to compensatory damages consisting of the total amount paid by Missouri Medicaid and Medicare for the fraudulent claims, plus interest, and other compensatory and punitive damages to be determined at trial.

Count IV: Unjust Enrichment

**Defendants Cathedral Rock; Cathedral Rock Management;
Cathedral Rock Management I, Inc.; Cathedral Rock Investments, Inc.;
Cathedral Rock of Missouri, Inc.; Springplace; McLaran; Oak Forest Skilled Care;
Cathedral Gardens; Blanchette; Heritage Park; and C. Kent Harrington**

343. The United States restates and incorporates by reference paragraphs 1 through 328 of the complaint as if fully set forth herein.

344. For payments received for both the residents specifically identified in paragraphs 1 through 328, and for other residents identified herein by reference to the overall failure of care at the Defendant Nursing Facilities, Defendants have been unjustly enriched with federal monies from both Medicare and Missouri Medicaid which they should not in good conscience be permitted to retain. The amount of those monies is to be determined at trial.

Count V: Disgorgement of Profits

Defendants Cathedral Rock; Cathedral Rock Management; Cathedral Rock Management I, Inc.; Cathedral Rock Investments, Inc.; Cathedral Rock of Missouri, Inc.; Springplace; McLaran; Oak Forest Skilled Care; Cathedral Gardens; Blanchette; Heritage Park; and C. Kent Harrington

345. The United States restates and incorporates by reference paragraphs 1 through 328 of the complaint as if fully set forth herein.

346. The United States requests a full accounting of all profits earned by the Defendants from the Medicare and Missouri Medicaid revenues paid to the Defendant Nursing Facilities during the relevant period and distributed to the various Defendants.

347. The United States seeks the imposition of a constructive trust in favor of the United States on those profits.

CLAIM FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, demands judgment against Defendants as follows:

a. With respect to Counts I and II, brought pursuant to the False Claims Act, joint and several judgment against the specified Defendants and in favor of the United States and a determination by the Court for an appropriate award of statutory damages allowed by law and civil penalties for each of the false claims presented or caused to be presented;

b. With respect to Count III, judgment against the specified Defendants and in favor of the United States for the amounts paid by Medicare and Missouri Medicaid for erroneous, inflated or improper claims that were obtained by or resulted from the fraudulent scheme perpetrated by the specified Defendants, plus punitive damages;

c. With respect to Counts IV and V, a judgment in equity against the specified Defendants for the amount which each such specified Defendant unlawfully obtained, received, or profited; and

d. With respect to each Count, interest as allowed by law for any and all relief that the Court deems just and proper.

Respectfully submitted,

MICHAEL W. REAP
Acting United States Attorney

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CERTIFICATE OF SERVICE

A copy of the foregoing Third Amended Complaint was served, as an attachment to the Motion for Leave to File Third Amended Complaint, via the Court's electronic filing system upon the attorneys of record on this 30th day of December, 2009:

/s/Suzanne J. Moore
SUZANNE J. MOORE