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**APPENDIX A**

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**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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No. 20-11624  
Non-Argument Calendar  
[DO NOT PUBLISH]

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D.C. Docket No. 4:16-cv-00290-WTM-BKE

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ESTATE OF DEBBIE HELMLY, ET AL.,  
*Plaintiffs-Appellants,*

*v.*

BETHANY HOSPICE AND PALLIATIVE CARE OF  
COASTAL GEORGIA, LLC, F.K.A. BETHANY HOSPICE  
OF COASTAL GEORGIA, LLC (BETHANY COASTAL),  
BETHANY HOSPICE AND PALLIATIVE CARE,  
LLC, F.K.A. BETHANY HOSPICE, LLC (BETHANY  
HOSPICE), BETHANY BENEVOLENCE FUND, INC.,  
AVA BEST, ET AL.,  
*Defendants-Appellees.*

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Appeal from the United States District Court for the  
Southern District of Georgia

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April 26, 2021

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Before MARTIN, NEWSOM, and BRANCH, Circuit  
Judges.

## PER CURIAM:

In this *qui tam* action, Debbie Helmly and Jolie Johnson (the “Relators”) appeal the dismissal of their complaint. Relators sued Bethany Hospice and Palliative Care, LLC (“Bethany Hospice”) on behalf of the United States and the State of Georgia,<sup>1</sup> alleging that Bethany Hospice violated the False Claims Act (“FCA”), 31 U.S.C. §§ 3729–3733, and the Georgia False Medicaid Claims Act, O.C.G.A. § 49-4-168.1. In particular, Relators alleged that Bethany Hospice violated the so-called Anti-Kickback Statute (“AKS”), 42 U.S.C. § 1320a-7b(b),<sup>2</sup> by paying physicians remuneration for Medicare and Medicaid patient referrals. According to Relators, Bethany Hospice submitted false claims when it billed the government for services provided to illegally-referred patients. Relators further allege that Bethany Hospice falsely certified compliance with the AKS. Under Rule 9 of the Federal Rules

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<sup>1</sup> See 31 U.S.C. § 3730(b)(1) (“A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government.”); *id.* § 3732(b) (“The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.”).

<sup>2</sup> An entity violates the AKS when it:

knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person . . . to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program.

42 U.S.C. § 1320a-7b(b)(2).

of Civil Procedure, Relators were required to plead with particularity the submission of an actual false claim to the government. Because Relators failed to do so, the district court properly dismissed their complaint. Accordingly, we affirm.

### I. Background<sup>3</sup>

Bethany Hospice provides for-profit hospice care in Georgia. It operates care facilities in four cities: Douglas, Thomasville, Waycross, and Valdosta. In 2014, Bethany Hospice opened Bethany Hospice and Palliative Care of Coastal Georgia, LLC (“Bethany Coastal”). Relators are former employees of Bethany Coastal. Helmly was employed as the administrator of Bethany Coastal from December 2014 until July 2015. Johnson was employed as a marketer during the same period.

Although Bethany Coastal was organized as a separate company from Bethany Hospice and obtained a different business license number, the two entities are both owned and operated by Ava Best and Mac Mackey and share personnel, resources, and management software. According to Relators, Best and Mackey operated Bethany Coastal “as if it were another facility office of Bethany Hospice.” For that reason, Relators allege that they were “effectively . . . corporate insiders of Bethany Hospice.”

Relators allege that, as corporate insiders, they learned that Bethany Hospice operated an illegal kick-back referral scheme in which Bethany Hospice paid

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<sup>3</sup> Relators’ original complaint was filed under seal. After the United States and the State of Georgia declined to intervene, the complaint was unsealed. The following facts are taken from Relators’ third amended complaint (the “operative complaint”).

doctors in exchange for referring Medicare beneficiaries<sup>4</sup> to Bethany Hospice. Relators further allege that, after rendering services to the illegally referred patients, Bethany Hospice submitted claims to Medicare for reimbursement.

In particular, Helmly alleged that when she and Best were negotiating the terms of Helmly's employment as administrator of Bethany Coastal, Best offered her compensation based on the kickback scheme. During those negotiations, Best allegedly told Helmly that Best "would follow the same protocol to add compensation for . . . Helmly that [Best] used to pay referring doctors for their referrals." Under that "protocol," Helmly could make a below-market ownership investment in Bethany Coastal that would provide "huge returns" based on the number of referred patients. Helmly further alleged that Best said that she "paid all the medical directors who owned shares in Bethany Hospice according to this same formula, and the payments varied depending on the volume of referrals."

Relators also alleged that, on other occasions, Best acknowledged to them that the compensation structure was designed to avoid getting caught for FCA violations. Best was formerly employed by Odyssey Hospice—a predecessor to Bethany Hospice. Relators alleged that Odyssey also employed a kickback compensation scheme, Odyssey's owner was eventually convicted of Medicare Fraud, and Odyssey agreed to a \$25 million settlement with the U.S. Department of Justice. According to Relators, Best acknowledged that

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<sup>4</sup> Relators allege that the referral scheme involved Medicare and Medicaid beneficiaries. For simplicity, we will refer only to Medicare.

kickbacks were improper but, because they were “the most effective way to get referrals,” Best “tried to have the best of both worlds: paying the kickbacks to referring physicians but hiding or masking them as compensation to medical directors and part owners of Bethany Hospice.”

Relators alleged that several doctors purchased ownership interests in Bethany Hospice and were paid kickbacks for referrals through “a monthly salary, dividends, and/or monthly bonuses.”<sup>5</sup> According to Relators, that compensation was not paid for the fair market value of their work but, rather, “as inducement for or reward for referrals of patients, which constitute kickbacks.” Relators’ complaint points to Dr. Tanner as an example: In 2007, he purchased a 5% interest in Bethany Hospice for \$20,000 and, seven years later, he sold that interest for \$300,000. Relators’ complaint identifies at least four other doctors (the “Bethany Hospice doctors”) who are allegedly the primary participants in this compensation scheme.

Relators point to other facts to show that the scheme was operational and successful. They allege that, after purchasing an investment in Bethany Hospice, the Bethany Hospice doctors made “nearly all” or “around 95%” of their patient referrals to Bethany Hospice. Relators also allege that they were able to access Bethany Hospice’s internal billing software, Consolo, to confirm that Bethany Hospice tracked each patient admission and the doctor who referred that patient for the purpose of paying those doctors kickbacks. Relators claim that other Bethany Hospice employees

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<sup>5</sup> Relators also allege that, on at least one occasion, Bethany Hospice offered its doctors a paid family vacation as a kickback.

confirmed that Bethany Hospice ran “weekly and monthly reports” tracking referrals and that “Best use[d] these reports to determine how much to pay referral sources.”

Relators further alleged that, as a result of the kickback scheme, Bethany Hospice submitted false claims for Medicare reimbursement to the government. Relators alleged that “all or nearly all of Bethany Hospice’s patients put under service received coverage from Medicare.” Johnson “had access to the census reports documenting each site’s patients and which payor paid for the patients’ care.” By accessing these records, and speaking to some of Bethany Hospice’s billing employees, Johnson allegedly “was able to find out about the billing and collection from Medicare of the illicit referrals and the submission of bills for other inappropriate patients.” For her part, Helmly alleged that she also had access to all billing information and “attended meetings with Ms. Best where Bethany Hospice and Bethany Coastal management discussed site productivity and census numbers for all Bethany Hospice’s and Bethany Coastal’s sites.” And, relevant here, Relators claim to have discovered that “all (or nearly all) the hospice patients referred by [the Bethany Hospice doctors] were Medicare or Medicaid patients and that Bethany Hospice submitted claims to the Government for per diem payments for those patients knowing that they were false.”

Relators’ complaint included government Medicare claims data that showed that “Bethany Hospice derive[d] nearly all of its revenue from the Medicare program monies,” and it provided a breakdown of Medicare referrals from the Bethany Hospice doctors.

Finally, Relators alleged that five other Bethany Hospice employees confirmed that Bethany Hospice submitted Medicare reimbursement claims for patients referred by the Bethany Hospice doctors. At bottom, Relators alleged that “all or nearly all” of Bethany Hospice’s business was derived from Medicare beneficiaries and that Bethany Hospice submitted claims for Medicare reimbursement for those patients. Combined with Relators’ access to the billing systems and confirmation from other employees that Bethany Hospice submitted Medicare reimbursement claims, Relators alleged that Bethany Hospice submitted false claims to the government.

As noted, Relators’ operative complaint alleged two causes of action. Relators alleged that Bethany Hospice made false or fraudulent claims for reimbursement based on illegal kickbacks, in violation of 31 U.S.C. § 3729(a)(1)(A) and O.C.G.A. § 49-4-168.1(a)(1). Relators also alleged that Bethany Hospice made false statements by certifying compliance with the AKS, in violation of 31 U.S.C. § 3729(a)(1)(B) and O.C.G.A. § 49-4-168.1(a)(2).<sup>6</sup>

Bethany Hospice eventually moved to dismiss the operative complaint. Bethany Hospice argued that Relators’ complaint contained primarily conclusory assertions and failed to plead its claims with sufficient particularity, as required by Fed. R. Civ. P. 9(b). The Relators opposed the motion, arguing that the operative complaint satisfied the requirements of Rule 9(b).

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<sup>6</sup> Relators also alleged that Best and Bethany Hospice retaliated against them for their investigations into the alleged FCA violations, in violation of 31 U.S.C. § 3730(h) and O.C.G.A. § 49-4-168.4. The parties agreed to settle that claim.

The district court granted Bethany Hospice's motion to dismiss with prejudice. First, the district court concluded that Relators did not plead sufficiently particular facts to allege that Bethany Hospice violated the AKS. Although it acknowledged that the Relators had put forth some facts to support their allegations about a kickback scheme, the district court determined that Relators failed to allege particular facts about the precise nature of the kickback incentives and how much Best paid for referrals. The district court then noted that, despite Relators' access to billing reports, they failed to "provide specific dates that Bethany Hospice paid doctors, the amounts doctors were paid, or any specific patient in the reports." The district court added that Relators failed to provide enough background for the district court to infer that Dr. Tanner's ownership shares were so inflated as to constitute remuneration. Finally, the district court concluded that Relators' claim that 95% of Bethany Hospice's referrals came from the Bethany Hospice doctors lacked factual support.

Second, the district court concluded that the Relators failed to plead the submission of a false claim with particularity. The district court began by observing that Relators' complaint did not present an example of a Medicare reimbursement claim that Bethany Hospice submitted to the government on behalf of an illegally referred patient. Next, the district court addressed the Relators' argument that their inside knowledge and Bethany Hospice's Medicare referral rates were sufficient indicia of reliability to meet Rule 9(b)'s pleading standard. Relying on our FCA precedent, the district court concluded that Relators' complaint lacked sufficient indicia of reliability because

Relators: (1) failed to describe Bethany Hospice’s billing operations in sufficient detail, (2) failed to describe a single example of when Relators observed a false claim being submitted, (3) did not themselves participate in the submission of false claims. Lastly, the district court explained that, under our precedent, courts may not rely on mathematical probability to conclude that a defendant submitted a false claim.

Finally, the district court dismissed Relators’ false statements claim. The district court noted that Relators’ complaint contained only one paragraph describing the allegedly false statements. In the district court’s view, that lone paragraph lacked the factual support necessary to plead the claim with sufficient particularity.

Relators timely appealed.

## II. Standard of Review

“We review a dismissal with prejudice for failure to state a claim under the False Claims Act *de novo*.” *Urquilla-Diaz v. Kaplan Univ.*, 780 F.3d 1039, 1050 (11th Cir. 2015). We take the allegations in the complaint as true and draw all reasonable inferences in Relators’ favor. *Id.*

## III. Discussion

Relators argue that the district court erred when it concluded that their complaint failed to plead with particularity Bethany Hospice’s kickback scheme, submission of a false claim, and certification of a false statement. We agree with the district court that Relators failed to plead with particularity the submission of an actual false claim, and that shortcoming is fatal to Relators’ case. Accordingly, we affirm the district court’s dismissal of Relators’ complaint.

“The FCA imposes liability on any person who ‘knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; [or] knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim.’” *United States ex rel. Phalp v. Lincare Holdings, Inc.*, 857 F.3d 1148, 1154 (11th Cir. 2017) (quoting 31 U.S.C. § 3729(a)(1)(A)–(B)). The AKS “makes it a felony to offer kickbacks or other payments in exchange for referring patients ‘for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program.’” *McNutt ex rel. United States v. Haleyville Med. Supplies, Inc.*, 423 F.3d 1256, 1259 (11th Cir. 2005) (quoting 42 U.S.C. § 1320a-b7(b)(1)). And, relevant here, “a claim that includes items or services resulting from a violation of [the AKS] constitutes a false or fraudulent claim for purposes of [§ 3729(a)(1)].” 42 U.S.C. § 1320a-7b(g).

Nevertheless, the FCA “does not create liability merely for a health care provider’s disregard of Government regulations or improper internal policies unless, as a result of such acts, the provider knowingly asks the Government to pay amounts it does not owe.” *United States ex rel. Clausen v. Lab. Corp. of Am.*, 290 F.3d 1301, 1311 (11th Cir. 2002). A violation of the AKS is a separate criminal offense. *See United States v. Sosa*, 777 F.3d 1279, 1293 (11th Cir. 2015). But a relator in a *qui tam* action must plead that a defendant “both violated the [AKS] when it unlawfully recruited a patient and then billed the government for the services provided to that patient.” *Carrel v. AIDS Healthcare Found., Inc.*, 898 F.3d 1267, 1277 (11th Cir. 2018). Thus, the “act of submitting a fraudulent

claim to the government is the ‘*sine qua non* of a False Claims Act violation.’” *Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1012 (11th Cir. 2005) (quoting *Clausen*, 290 F.3d at 1311). Put differently, “[l]iability under the False Claims Act arises from the submission of a fraudulent claim to the government, not the disregard of government regulations or failure to maintain proper internal policies.” *Id.*

Furthermore, complaints alleging violations of the FCA must meet the heightened pleading standard of Rule 9(b). *Id.*; *United States ex rel. Atkins v. McInteer*, 470 F.3d 1350, 1357 (11th Cir. 2006). Under Rule 9(b), a party “alleging fraud or mistake . . . must state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). To meet this standard, we have explained that a complaint “must allege actual ‘submission of a false claim,’” and that it must do so with “some indicia of reliability.” *Carrel*, 898 F.3d at 1275 (quoting *Clausen*, 290 F.3d at 1311) (alteration adopted). It is not enough to “point to ‘improper practices of the defendant’ to support ‘the inference that fraudulent claims were submitted’ because ‘submission . . . cannot be inferred from the circumstances.’” *Id.* (quoting *Corsello*, 428 F.3d at 1013) (alterations adopted). In short, a relator must “allege the ‘who,’ ‘what,’ ‘where,’ ‘when,’ and ‘how’ of fraudulent submissions to the government.” *Corsello*, 428 F.3d at 1014.

Although Relators concede that their complaint did not include any details about specific claims submitted to the government, they argue that they have met Rule 9(b)’s pleading threshold because their complaint contains sufficient indicia of reliability to support their claim that Bethany Hospice submitted false claims to the government. First, Relators rely on their

complaint's allegations that they had access to and knowledge of Bethany Hospice's billing practices. For example, Relators alleged that they attended meetings in which Best "discussed site productivity and census numbers for all Bethany Hospice's and Bethany Coastal's sites." Relators further alleged that they reviewed billing data that showed that Bethany Hospice submitted Medicare reimbursement claims for patients referred by the Bethany Hospice doctors. And Relators alleged that five other Bethany Hospice employees confirmed that such claims were submitted. Second, Relators draw our attention to the numbers. They alleged that the Bethany Hospice doctors referred significant numbers of Medicare recipients to Bethany Hospice and that "all or nearly all" of Bethany Hospice's patients received coverage from Medicare. In short, Relators argue that their knowledge and access, coupled with data about Bethany Hospice's Medicare claims submissions, lends sufficient indicia of reliability to survive Bethany Hospice's motion to dismiss. We disagree.

To begin, Relators have failed to allege any specifics about actual claims submitted to the government. Despite alleging intimate familiarity with and access to Bethany Hospice's billing practices, Relators' complaint fails to identify even a single, concrete example of a false claim submitted to the government. *See Clausen*, 290 F.3d at 1306 ("[N]o copies of a single actual bill or claim or payment were provided. No amounts of any charges by LabCorp were identified. No actual dates of claims were alleged. Not a single completed Form 1500 was provided."); *Carrel*, 898 F.3d at 1277 (noting that the plaintiff failed to allege

facts about a specific claim submitted for reimbursement).

To be sure, we do not always require a sample fraudulent claim because “we are more tolerant toward complaints that leave out some particularities of the submissions of a false claim if the complaint also alleges personal knowledge or participation in the fraudulent conduct.” *United States ex rel. Matheny v. Medco Health Sols., Inc.*, 671 F.3d 1217, 1230 (11th Cir. 2012). But Relators do not even attempt to provide any particular facts about a representative false claim. Moreover, Relators do not have the personal knowledge or level of participation that can give rise to some indicia of reliability. In *Carrel*, the relators “highlighted their managerial positions” at the defendant company and their attendance “at monthly financial review meetings.” 898 F.3d at 1277. But we found this kind of senior insider knowledge insufficient because “the relators failed to explain how their access to possibly relevant information translated to knowledge of actual tainted claims presented to the government.” *Id.* at 1278. Relators’ complaint suffers from the same flaw. The complaint alleged that at least one Relator (Helmly) attended meetings that discussed the productivity of various Bethany Hospice sites and that both Relators had access to Bethany Hospice’s billing systems and confirmed from their review of those systems and conversations with other employees that Bethany Hospice submitted false claims. Those allegations are insufficient to satisfy Rule 9(b)’s particularity requirement because even with “direct knowledge of the defendants’ billing and patient records,” Relators have “failed to provide any specific details regarding either the dates on or the

frequency with which the defendants submitted false claims, the amounts of those claims, or the patients whose treatment served as the basis for the claims.” *United States ex rel. Sanchez v. Lymphatx, Inc.*, 596 F.3d 1300, 1302 (11th Cir. 2010). Additionally, Relators did not claim to have observed the submission of an actual false claim; nor did they personally participate in the submission of false claims. *See Matheny*, 671 F.3d at 1230 (crediting the complaint’s allegations when one of the relators was intimately involved in a department of the defendant company that was responsible for creating the alleged false claims.); *United States v. R&F Props. of Lake Cnty., Inc.*, 433 F.3d 1349, 1356–58 (11th Cir. 2005) (crediting a complaint’s allegations because one of the relators was a nurse practitioner who personally used incorrect billing codes). In sum, Relators’ access and knowledge are not sufficient indicia of reliability.

Relators’ reliance on Bethany Hospice’s business model and Medicare claims data lends no credence to their allegation that Bethany Hospice submitted a false claim. Relators alleged that Bethany Hospice doctors referred significant numbers of Medicare recipients, that “all or nearly all” of Bethany Hospice’s patients were Medicare recipients, and that Medicare claims data shows that Bethany Hospice billed the government for their patients. Therefore, Relators contend, their complaint contains sufficient indicia of reliability to allege plausibly that Bethany Hospice submitted a false claim. But we have explained that relators cannot “rely on mathematical probability to conclude that [a defendant] surely must have submitted a false claim at some point.” *Carrel*, 898 F.3d at 1277; *see also Corsello*, 428 F.3d at 1012–13

(explaining that it is insufficient to “describe[] in detail a private scheme to defraud” and then speculate that claims “must have been submitted, were likely submitted or should have been submitted to the Government”). Thus, numerical probability is not an indicium of reliability. Relators attempt to distinguish *Clausen* and *Carrel* by pointing out that neither defendant in those cases billed the government for almost all its business. That distinction is unpersuasive. Under the FCA and Rule 9(b), a false claim cannot be “inferred from the circumstances.” *Corsello*, 428 F.3d at 1013. Whether a defendant bills the government for some or most of its services, the burden remains on a relator alleging the submission of a false claim to “allege ‘specific details’ about false claims to establish ‘the indicia of reliability necessary under Rule 9(b).’” *Carrel*, 898 F.3d at 1276 (quoting *Sanchez*, 596 F.3d at 1302). Here, Relators have failed to allege any specific details about the submission of an actual false claim.<sup>7</sup>

In sum, Relators’ complaint fails to contain some indicia of reliability to meet Rule 9(b)’s particularity requirement. Although we construe all facts in favor of Relators, we “decline to make inferences about the submission of fraudulent claims because such an assumption would ‘strip[] all meaning from Rule 9(b)’s requirements of specificity.” *Corsello*, 428 F.3d at 1013 (quoting *Clausen*, 290 F.3d at 1312 n.21); *Atkins*, 470 F.3d at 1359 (“The particularity requirement of

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<sup>7</sup> Relators also rely on two other decisions that they argue support their case. See *United States ex rel. Mastej v. Health Mgmt. Assocs., Inc.*, 591 F. App’x 693, 695 (11th Cir. 2014); *Hill v. Morehouse Med. Assocs.*, 2003 WL 22019936, at \*3–4 (11th Cir. Aug. 15, 2003) (per curiam). We do not read those nonprecedential decisions to be contrary to our analysis.

Rule 9 is a nullity if Plaintiff gets a ticket to the discovery process without identifying a single claim.” (quotation omitted); *id.* at 1360 (“Requiring relators to plead FCA claims with particularity is especially important in light of the quasi-criminal nature of FCA violations (i.e., a violator is liable for treble damages).”).

Because Relators have failed to plead the submission of an actual false claim with particularity, their false statement claim also fails. The “submission of a [false] claim is . . . the *sine qua non* of a False Claims Act violation.” *Clausen*, 290 F.3d at 1311. And as Relators acknowledge, “[i]f Bethany Hospice’s claims were false or fraudulent, it follows that when Bethany Hospice certified its compliance with the AKS” it made false statements under § 3729(a)(1)(B). But Relators have failed to plead a false claim with particularity, so their false statement claim must also be dismissed. *See, e.g., United States ex rel. Grant v. United Airlines Inc.*, 912 F.3d 190, 199–200 (4th Cir. 2018) (dismissing a false statement claim because relators’ complaint failed to allege a false claim); *United States ex rel. Strubbe v. Crawford Cnty. Mem’l Hosp.*, 915 F.3d 1158, 1166 (8th Cir. 2019) (rejecting a false statement claim because the complaint “fail[ed] to connect the false records or statements to any claim made to the government”).

#### IV. Conclusion

Because Relators failed to allege the submission of an actual false claim with particularity, the district court properly dismissed their complaint. Accordingly, we affirm.

**AFFIRMED.**

**APPENDIX B**

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**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION**

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Case No. CV416-290

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UNITED STATES OF AMERICA EX REL.  
JOLIE JOHNSON AND DEBBIE HELMLY, AND  
STATE OF GEORGIA EX REL. JOLIE JOHNSON AND  
DEBBIE HELMLY,  
*Plaintiffs-Relators,*

*v.*

BETHANY HOSPICE AND PALLIATIVE  
CARE, LLC,  
*Defendant.*

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March 31, 2020

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**ORDER**

Before the Court is Defendant Bethany Hospice and Palliative Care, LLC's Motion to Dismiss Relators' Third Amended Complaint. (Doc. 100.) For the following reasons, Defendant Bethany Hospice and Palliative Care, LLC's Motion to Dismiss (Doc. 100) is **GRANTED**. Accordingly, Relators' claims against Defendant Bethany Hospice and Palliative Care, LLC are **DISMISSED WITH PREJUDICE**. The Clerk is **DIRECTED** to close this case.

**BACKGROUND<sup>1</sup>**

Relators Debbie Helmly and Jolie Johnson bring this case on behalf of the United States and the State of Georgia.<sup>2</sup> (Doc. 98.) Relators claim that Bethany Hospice and Palliative Care, LLC (“Bethany Hospice”) violated the False Claims Act (“FCA”), 31 U.S.C. § 3729, and the Georgia False Medicaid Claims Act (“GFMCA”), O.C.G.A. § 49-4-168.1. (*Id.* at 35-36.) As the basis of their FCA claims, Relators allege that Bethany Hospice violated the Anti-Kickback Statute (“AKS”), 42 U.S.C. § 1320a-7b, by providing physicians remuneration in exchange for referrals—“kickbacks.” (*Id.* at 5.) Relators’ contend that because Bethany Hospice allegedly violated the AKS, any claims filed with Medicare or Medicaid for reimbursement for hospice services rendered by Bethany Hospice were in violation of the FCA and GFMCA.<sup>3</sup> (*Id.* at 26.)

Relators filed this case under seal on November 4, 2016. (Doc. 1.) Their original complaint named forty-nine (49) defendants. (*Id.*) On June 5, 2017, the United States notified the Court that it was declining to

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<sup>1</sup> For the purposes of this Order, the Court will accept all factual allegations in the Third Amended Complaint as true and construe all allegations in the light most favorable to Plaintiff. *Timson v. Sampson*, 518 F.3d 870, 872 (11th Cir. 2008).

<sup>2</sup> In their Third Amended Complaint, Relators state that after Debbie Helmly’s death on March 27, 2018, her estate was substituted as a party in this action. (Doc. 98 at 3.) The Clerk is **DI-RECTED** to amend the caption of this case accordingly. For purposes of this Order, the Court will refer to the Estate of Debbie Helmly as “Relater Helmly.”

<sup>3</sup> For purposes of this Order, there is no meaningful distinction between Medicare and Medicaid; thus, the Court will use Medicare as a reference to both federal healthcare programs.

intervene in this matter. (Doc. 10.) Subsequently, on March 12, 2018, the State of Georgia also notified the Court that it was also declining to intervene in this matter. (Doc. 14.) After these declinations, the Court ordered the complaint unsealed and that Defendants be served with copies of the complaint. (Doc. 17.)

Relators have amended their complaint three times since filing this case. (Doc. 18; Doc. 45; Doc. 98.) Relators filed their Third Amended Complaint (“complaint”) on May 13, 2019 and it forms the basis of this Order. (Doc. 98.) After numerous dismissals, only two defendants are named in the complaint: Bethany Hospice and Bethany Hospice and Palliative Care of Coastal Georgia, LLC (“Bethany Coastal”). (*Id.*) However, after filing the complaint, Relators dismissed Bethany Coastal as a defendant. (Doc. 128.) As a result, Defendant Bethany Hospice is the only defendant remaining in this case.<sup>4</sup>

Bethany Hospice is a for-profit provider of hospice care in Georgia. (*Id.* at 2. ) Bethany Hospice operates offices in four cities—Douglas, Thomasville, Waycross, and Valdosta. (*Id.*) In October 2014, Bethany Hospice opened Bethany Coastal in Claxton, Georgia. (*Id.* at 5.) Unlike Bethany Hospice’s other locations, Bethany Coastal was organized as a separate company and obtained a different hospice license number. (*Id.* at 7.)

Relators are former employees of Bethany Coastal. (*Id.* at 3.) Relator Johnson worked as a marketer for Bethany Coastal from December 2014 until

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<sup>4</sup> Relators brought their retaliation claim against Bethany Coastal. (Doc. 98 at 36.) Because Relators dismissed Bethany Coastal from this action, Relators’ retaliation claim is **DISMISSED**.

July 2015, and Relator Helmly worked as an administrator for Bethany Coastal from December 2014 until July 2015. (*Id.*) Relators allege that during their brief employment with Bethany Coastal, they discovered evidence that Bethany Hospice was operating an illegal referral scheme in violation of the FCA and GFMCA. (*Id.*)

According to Relators, although Bethany Hospice and Bethany Coastal are licensed as separate entities, Bethany Coastal operated “as if it were another [ ] office of Bethany Hospice.” (*Id.* at 31.) Specifically, the two entities used the same hospice management software—Consolo—to organize patient information, site productivity, and patient census. (*Id.* at 32.) Additionally, Relators allege that the two entities were owned and operated by the same individuals—Ava Best and Mac Mackey. (*Id.* at 31.) Ms. Best served as the President and Chief Executive Officer (“CEO”) of Bethany Hospice and Bethany Coastal, and Mr. Mackey served as Chief Financial Officer (“CFO”) of Bethany Hospice and Bethany Coastal. (*Id.*) Relators also allege that Ms. Best and Mr. Mackey both owned “substantial investment interests in Bethany Hospice and Bethany Coastal . . . .” (*Id.* at 32.) Because of Bethany Hospice and Bethany Coastal’s “significant overlap in personnel, resources, and operations,” Relators allege that they were “effectively . . . corporate insiders of Bethany Hospice.” (*Id.* at 31.)

Relators’ claim that their status as “corporate insiders” allowed them to acquire personal knowledge of Bethany Hospice’s allegedly fraudulent activity. Specifically, Relators allege that Bethany Hospice operated an illegal referral scheme in which Bethany Hospice paid doctors in exchange for patient referrals. (*Id.*

at 10.) Once Bethany Hospice rendered services to these illegally referred patients, Bethany Hospice allegedly submitted claims for reimbursement for those services to Medicare.<sup>5</sup> (*Id.* at 10.) Relators identify several pieces of evidence in their complaint they claim support their allegation that Bethany Hospice operated an illegal kickback scheme. (*Id.*)

To begin, Relators claim that Ms. Best admitted to operating an illegal kickback scheme. (*Id.* at 10.) According to Relators, Ms. Best sold ownership interest in Bethany Hospice to doctors and hired doctors as medical directors of several of the Bethany Hospice locations. (*Id.* at 10-11.) After a doctor became a part-owner or medical director, Ms. Best paid the doctor for each patient he referred to Bethany Hospice. (*Id.*) Bethany Hospice allegedly disguised these kickbacks as monthly dividends, bonuses, or salaries. (*Id.* at 12.) According to Dr. Marshall Tanner, his payments ranged from “approximately \$10,000 to \$20,000 annually . . . .” (*Id.* at 14.)

Relators also allege that Bethany Hospice paid doctors kickbacks by allowing the doctors to purchase

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<sup>5</sup> Although Relators allege various other FCA violations in their complaint, such as “failure to perform the services required by hospice . . .,” failure to employ a social worker with a master’s degree, and “discharging patients if they were going to the hospital . . .,” the Court will not address these allegations. (Doc. 98 at 23-24.) Relators very briefly discuss these circumstances in reference to other things they investigated at Bethany Hospice. (*Id.* at 23.) Without more than a couple of sentences, the Court cannot address these allegations as violations of the FCA. *See United States v. Cross Garden Care Cntr., LLC*, No. 8:16-cv-961-T-27AEP, 2019 WL 6493972, at \*6 (M.D. Fla. Dec. 3, 2019). Therefore, only the illegal referral scheme will be discussed as the basis for Bethany Hospice’s alleged FCA violations.

ownership interest at a below fair-market-value price and then, after the doctors referred patients to Bethany Hospice, “[the doctors] can ‘cash out’ for an unbelievably higher rate.” (*Id.*) Relators identify Dr. Tanner as an example of this type of remuneration. (*Id.*) According to Relators, in 2007, Dr. Tanner purchased a 5% share in Bethany Hospice for \$20,000. (*Id.*) Seven years later, Dr. Tanner allegedly sold his shares for \$330,000. (*Id.*)

Another form of remuneration allegedly paid by Bethany Hospice to doctors was an all-expense paid vacation in exchange for patient referrals. (*Id.* at 18.) Relators allege that, in May 2015, Ms. Best offered several doctors a trip in exchange for patient referrals. (*Id.*) The trip was to occur in August 2015, but Relators do not indicate whether the doctors actually went on the trip. (*Id.*)

The complaint also identifies the four doctors that Relators allege are primarily involved in the illegal kickback scheme: (1) Dr. David Arnett; (2) Dr. Justin Harrell; (3) Dr. Stan Sinclair; and (4) Dr. Conrad Harper. (*Id.* at 15.) Relators refer to these doctors as the “Bethany Hospice doctors.” (*Id.*) Each of the Bethany Hospice doctors served as medical directors for various Bethany Hospice offices, however, none of the doctors served as medical directors for Bethany Coastal. (*Id.*)

In addition, Relators allege that, based on mathematical probability, Bethany Hospice must be operating an illegal kickback scheme. Specifically, Relators allege that, at various times, “around 95% of Bethany Hospice’s” patients were referred from Bethany Hospice doctors and that those doctors referred “nearly

all” of their hospice patients to Bethany Hospice.<sup>6</sup> (*Id.* at 15-16.)

In conjunction with the suspected kickback scheme, Relators also allege that Bethany Hospice submitted claims for reimbursement from Federal Health Care Programs—such as, Medicare and Medicaid—for services rendered to the unlawfully referred patients. (*Id.*) Relators allege that they know claims tainted by the kickback scheme were actually submitted because, during their employment with Bethany Coastal, Relators “gained intimate knowledge of Bethany Hospice’s and Bethany Coastal’s billing protocols and operations.” (*Id.* at 24.) Relators point to several pieces of evidence that they claim support their contention that Bethany Hospice submitted claims to Medicare for reimbursement.

First, Relators describe several conversations they had with Bethany Hospice employees about Medicare patients being unlawfully referred by doctors. (*Id.* at 24-25.) One such conversation was with Shonda Jowers, Clinical Director of Bethany Hospice’s Douglas office. (*Id.* at 24.) Ms. Jowers allegedly told Relators that Medicare patients were referred to Bethany Hospice from Bethany Hospice doctors and, in turn, Bethany Hospice billed the government for the services provided to the patients. (*Id.*) Relators also claim that Robert Clements, the former Bethany Hospice Community Education Representative, told them that

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<sup>6</sup> Relators do not specify whether this percentage includes the patients referred to Bethany Coastal, however, because the Court must construe all facts in the light most favorable to Relators, the Court will consider that the patients referred to Bethany Coastal were included in the calculations.

“every single referral from [the Bethany Hospice doctors] was for a Medicare . . . beneficiary.” (*Id.* at 25.) Mr. Clements allegedly learned this information from other Bethany Hospice employees. (*Id.* at 26.)

Second, Relators claim that they had personal access to Bethany Hospice’s “aggregate billing and referral data for Medicare beneficiaries.” (*Id.* at 27.) In fact, Relator Johnson and Relator Helmly claim that they each had individual access to information about Bethany Hospice’s Medicare claims. Relator Johnson “interacted with administration at every Bethany Hospice and Bethany Coastal location” and “had access to the census reports documenting each [hospice] site’s patients and [who paid] for the patients’ care.” (*Id.* at 30.) Relator Helmly “had access to all of the billing information and census reports for every Bethany office” and “attended meetings with Ms. Best where Bethany Hospice and Bethany Coastal management discussed site productivity . . . .” (*Id.*) Relator Helmly also claims that the former Vice President of Bethany Hospice, Jeneen Cliett, taught her how to create reports documenting the number of patients referred to Bethany Hospice by each doctor. (*Id.* at 12-13.) According to Ms. Cliett, Ms. Best used “these reports to determine how much to pay referral sources.” (*Id.* at 13.)

Lastly, Relators allege that, based on “Medicare claims data,” Bethany Hospice doctors referred “the vast majority of their Medicare patients to Bethany Hospice.” (*Id.* at 27.) Using this data, Relators contend that from the third quarter of 2016 to the second quarter of 2018 the Bethany Hospice doctors referred 100% of their eligible Medicare patients to Bethany Hospice. (*Id.* at 28-29.) Relators insist that “Bethany Hospice

derives nearly all of its revenue from” Medicare reimbursement. (*Id.* at 27.)

Based on these allegations, Relators brought two claims pursuant to the FCA against Bethany Hospice: (1) false or fraudulent claims, under 31 U.S.C. § 3729(a)(1)(A); and (2) false statements material to a false or fraudulent claim, under 31 U.S.C. § 3729(a)(1)(B).<sup>7</sup> (*Id.* at 35-36.) In the first claim, Relators allege that Bethany Hospice’s kickback scheme led to the submission of false claims tainted by illegal remuneration. (*Id.* at 35.) In the second claim, Relators allege that Bethany Hospice knowingly created false statements certifying compliance with the AKS and the FCA in order to receive reimbursement from Medicare, and, in fact, did receive reimbursement. (*Id.* at 35-36.)

Bethany Hospice has now moved to dismiss Relators’ complaint. (Doc. 100.) Bethany Hospice contends that Relators have failed to plead facts in the complaint with the particularity required by Federal Rule of Civil Procedure 9(b), and therefore, the entire complaint should be dismissed. (*Id.* at 9.) Relators have responded in opposition to this motion. (Doc. 121.) Bethany Hospice filed a Reply in Support of its Motion to

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<sup>7</sup> In the complaint, Relators assert two claims under the GFMCA that are based on the same allegations as Relators’ FCA claims. (Doc. 98 at 35-36.) In its motion to dismiss, Bethany Hospice cites authority for the proposition that a relater who fails to state a claim under the FCA necessarily fails to state a claim under the GFMCA. *See Cade v. Progressive Cmty. Healthcare, Inc.*, No. 1:09-cv-3522-WSD, 2011 WL 2837648, at \*3 (N.D. Ga. July 14, 2011). Relators do not challenge this proposition. As a result, the Court’s analysis applies to Relators’ claims brought under the FCA and the GFMCA.

Dismiss (Doc. 130), to which Relators filed a Sur-Reply in Opposition (Doc. 134). Bethany Hospice's Motion to Dismiss Relators' Third Amended Complaint is now ripe for review.

### STANDARD OF REVIEW

Federal Rule of Civil Procedure 8(a)(2) requires a complaint to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "[T]he pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964, 167 L. Ed. 2d 929 (2007)). "A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555, 127 S. Ct. at 1965). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557, 127 S. Ct. at 1966) (alteration in original).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Twombly*, 550 U.S. at 570, 127 S. Ct. at 1974). For a claim to have facial plausibility, the plaintiff must plead factual content that "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009) (quotations omitted). Plausibility does not require probability, "but it asks for more than a sheer possibility that

a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949. “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557, 127 S. Ct. at 1966). Additionally, a complaint is sufficient only if it gives “fair notice of what the . . . claim is and the grounds upon which it rests.” *Sinaltrainal*, 578 F.3d at 1268 (quotations omitted).

When the Court considers a motion to dismiss, it accepts the well-pleaded facts in the complaint as true. *Id.* at 1260. However, this Court is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1950. Moreover, “unwarranted deductions of fact in a complaint are not admitted as true for the purpose of testing the sufficiency of [plaintiff’s] allegations.” *Sinaltrainal*, 578 F.3d at 1268 (citing *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1248 (11th Cir. 2005)). That is, “[t]he rule ‘does not impose a probability requirement at the pleading stage,’ but instead simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary element.” *Watts v. Fla. Int’l Univ.*, 495 F.3d 1289, 1295-96 (11th Cir. 2007) (quoting *Twombly*, 550 U.S. at 545, 127 S. Ct. at 1959).

In addition to Rule 8(a)(2), the heightened pleading standard of Federal Rule of Civil Procedure 9(b) applies to causes of actions brought under the FCA. *Hopper v. Solvay Pharm., Inc.*, 588 F.3d 1318, 1324 (11th Cir. 2009). Rule 9(b) states that “in alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.” Fed.

R. Civ. P. 9(b). However, “[m]alice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.” *Id.*

Despite the heightened standard, the purpose of Rule 9(b) remains that a complaint must provide the defendant with “enough information to formulate a defense to the charges.” *United States ex rel. Clausen v. Lab. Corp. of Am., Inc.*, 290 F.3d 1301, 1313 n.24 (11th Cir. 2002). The Eleventh Circuit has emphasized that “[t]he application of Rule 9(b) . . . ‘must not abrogate the concept of notice pleading.’” *Tello v. Dean Witter Reynolds, Inc.*, 494 F.3d 956, 972 (11th Cir. 2007) (quoting *Ziamba v. Cascade Int’l, Inc.*, 256 F.3d 1194, 1202 (11th Cir. 2001)). Furthermore, Rule 9(b)’s standard “should not be conflated with that used on a summary judgment motion.” *United States ex rel. Rogers v. Azmat*, No. CV507-092, 2011 WL 10935176, at \*3 (S.D. Ga. May 16, 2011).

Rule 9(b) serves to ensure that a FCA claim has “some indicia of reliability . . . to support the allegation of an actual false claim for payment being made to the Government.” *Clausen*, 290 F.3d at 1311. This is because “[t]he [FCA] does not create liability merely for a health care provider’s disregard of Government regulations or improper internal policies unless, as a result of such acts, the provider knowingly asks the Government to pay amounts it does not owe.” *Id.* As a result, an FCA complaint must plead not only the “who, what, where, when, and how of improper practices,” but also the “who, what, where, when, and how of fraudulent submissions to the government.” *Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1014 (11th Cir. 2005). The question of whether a complaint satisfies Rule 9(b) is decided on a case-by-case basis, but even

detailed portrayals of fraudulent schemes followed by conclusions that false claims must have been submitted is insufficient. *See United States ex rel. Atkins v. McInteer*, 470 F.3d 1350, 1358 (11th Cir. 2006). In other words, the complaint must allege with particularity both “the details of the defendant[’s] allegedly fraudulent acts” and that claims tainted by the defendant’s fraud were actually submitted to the government. *Clausen*, 290 F.3d at 1311.

### ANALYSIS

In its Motion to Dismiss, Bethany Hospice argues that Relators’ complaint should be dismissed because Relators failed to allege FCA violations with the particularity required by Rule 9(b). (Doc. 100.) As an initial matter, Bethany Hospice argues that Relators failed to plead the facts surrounding Bethany Hospice’s alleged kickback scheme with particularity. (*Id.* at 10.) Alternatively, Bethany Hospice argues that Relators do not plead with particularity their assertions that Bethany Hospice actually submitted false claims to the government. (*Id.* at 15.) Bethany Hospice contends that Relators’ complaint could be dismissed on either of these grounds. The Court will now consider Bethany Hospice’s arguments in turn.

#### I. ANTI-KICKBACK STATUTE VIOLATIONS

“The [AKS] makes it a felony to offer kickbacks or other payments in exchange for referring patients ‘for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program.’” *McNutt ex rel. v. Haleyville Med. Supplies, Inc.*, 423 F.3d 1256, 1259 (11th Cir. 2005) (quoting 42 U.S.C. § 1320a-7b(b)(2)(A)). “A violation of the [AKS] occurs when a defendant:

(1) knowingly and willfully, (2) ‘offers of pays any remuneration,’ directly or indirectly, (3) to induce a person to refer individuals to the defendant[] for the furnishing of medical services, (4) paid for by Medicare.”<sup>8</sup> *United States v. Choudhry*, No. 8:13-cv-2603-T-27AEP, 2017 WL 2604930, at \*4 (M.D. Fla. June 14, 2017) (citing *United States ex rel. Mastej v. Health Mgmt. Assocs., Inc.*, 591 F. App’x 693, 705 (11th Cir. 2014)).

The AKS provides that “a claim [to Medicare for reimbursement] that includes items or services resulting from a violation of [the AKS] constitutes a false or fraudulent claim for purposes of [the FCA].” 42 U.S.C. § 1320a-7b(g). In this case, Relators allege that Bethany Hospice violated the AKS and, therefore, any claims resulting from Bethany Hospice’s violations are fraudulent under the FCA. *See United States ex rel. Schaengold v. Mem’l Health, Inc.*, No. 4:11-cv-58, 2014 WL 7272598, at \*3 (S.D. Ga. Dec. 18, 2014) (finding that violations of the AKS “can provide the basis of FCA liability”). As the basis of Bethany Hospice’s FCA liability, Relators must plead the circumstances constituting Bethany Hospice’s alleged AKS violations with particularity. *Mastej*, 591 F. App’x at 705. Violations of the AKS are pled with particularity when the complaint provides “the names of the doctors who received the incentives, the names of the defendant[’s] employees who negotiated the incentives with the doctors, precisely what the incentives were, when they

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<sup>8</sup> The AKS does include statutory and regulatory exceptions to the prohibitions against payments for referrals, but Bethany Hospice does not argue that any of the exceptions apply. Therefore, the Court will not address the exceptions.

were provided, why they were provided, and why they were illegal.” *Id.* at 705; *United States ex rel. Matheny v. Medco Health Sols., Inc.*, 671 F.3d 1217, 1222 (11th Cir. 2012) (“The particularity requirement of Rule 9(b) is satisfied if the complaint alleges facts as to time, place, and substance of the defendant’s alleged fraud, specifically the details of the defendant[s] allegedly fraudulent acts, when they occurred, and who engaged in them.”) (internal citations omitted).

In its Motion to Dismiss, Bethany Hospice argues that Relators have not sufficiently pled the existence of a compensation arrangement that violates the AKS. (Doc. 100 at 10.) Specifically, Defendant Bethany Hospice argues that Relators provide only “conclusory assertions” and fail to “provide facts to support” allegations that doctors received payment from Bethany Hospice as inducement for patient referrals. (*Id.* at 13.) The Court agrees.

To their credit, Relators provide some facts to support their allegation of an illegal kickback scheme. For example, Relators named several doctors—the “Bethany Hospice doctors”—that they claim Bethany Hospice paid for referrals. (Doc. 98 at 15.) Relators also named one doctor that allegedly benefitted from an unfair investment in Bethany Hospice—Dr. Tanner. (*Id.* at 14-15.) Additionally, Relators named the individual who allegedly organized the illegal kickback scheme—Ms. Ava Best. (*Id.* at 13.) Relators’ also allege that Ms. Best admitted that she “mask[ed] payments to doctors for referrals.” (*Id.* at 17.)

Despite these factual allegations, Relators’ do not allege enough facts with particularity to support their contention that Bethany Hospice violated the AKS. Specifically, Relators fail to allege with particularity

“precisely what the incentives were, when they were provided . . .,” and how they were provided to the doctors. *Mastej*, 591 F. App’x at 705. Although Relators claim that “Ms. Best told Relator Helmly that she would follow the same protocol to add compensation for Relator Helmly that she used to pay referring doctors for their referrals,” Relators provide no details as to how much Ms. Best paid for referrals. (Doc. 98 at 10.) In fact, Relators provide contradictory factual allegations about payments to doctors. Relators claim that Ms. Best admitted to paying doctors on a monthly basis (Doc. 98 at 12) and also claim that Dr. Tanner was paid annually (Doc. 98 at 14).

Moreover, Relators assert that they created reports for Ms. Best that tracked referrals, but, even with their alleged access to these reports, Relators cannot provide specific dates that Bethany Hospice paid doctors, the amounts doctors were paid, or any specific patient in the reports.<sup>9</sup> (*Id.* at 12.) Relators only state “[e]ach of these physicians receive dividends based on how many patients their site puts under census.” (*Id.* at 15.) Relators’ purported access to these reports should have afforded them more specific information. Without more specific facts supporting Relators’ allegations about Bethany Hospice’s alleged AKS violations, the complaint does not meet the particularity requirement of Rule 9(b). *See Ga. ex rel. Hunter Labs., LLC v. Quest Diagnostics Inc.*, No. 1:13-cv-01838-SCJ, 2014 WL 12543888, at \*4 (N.D. Ga. Mar. 17, 2014) (finding “the kickback scheme . . . obviously deficient” because plaintiffs failed “to articulate any

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<sup>9</sup> In fact, Relators do not contend they actually made a report for Ms. Best, rather, that they learned how to make the reports.

specific kickback at issue” such as when the defendant offered inducements and what the specific rates were).

Relators also fail to plead their allegation that Bethany Hospice paid doctors illegal kickbacks by selling doctors shares in Bethany Hospice at below fair-market-value with particularity. In their complaint, Relators highlight Dr. Tanner as an example of this type of remuneration. (Doc. 98 at 14.) Relators allege the purchase and sale price of Dr. Tanner’s ownership interest of Bethany Hospice; however, Relators overlook the fact that Dr. Tanner purchased additional shares before he sold his interest. (*Id.* at 14.) Therefore, it is reasonable to assume that Dr. Tanner’s sale price would be higher than his purchase price. Moreover, “[w]ithout alleging a benchmark of fair market value, it is impossible for the Court to infer whether” Bethany Hospice’s offer “falls sufficiently below the benchmark so as to constitute remuneration.” *United States ex rel. Osheroff v. Tenet Healthcare Corp.*, No. 09-22253-CIV, 2012 WL 2871264, at \*7 (S.D. Fla. July 12, 2012); *see also United States v. All Children’s Health Sys., Inc.*, No. 8: 11-cv-01687-T-27EAJ, 2013 WL 6054803, at \*11 (M.D. Fla. Nov. 15, 2013) (finding relator satisfied Rule 9(b) because she alleged “a fair market value benchmark for” competitive salaries of doctors nationwide).

Lastly, Relators suggest that the high percentage of patients referred to Bethany Hospice indicates that Bethany Hospice was paying doctors for referrals. To support this suggestion, Relators allege that “[i]n certain periods, around 95% of Bethany Hospice’s referrals came from doctors with a financial interest in Bethany Hospice.” (Doc. 98 at 15.) In addition, Relators allege that “while nearly none of their referrals

went to Bethany Hospice before their financial arrangements, afterwards, nearly all of the ‘Bethany Hospice doctors’ referrals for hospice services have gone to Bethany Hospice.” (*Id.* at 16.) However, Relators do not support these contentions with any evidence. Relators do not explain what numbers were used to calculate the percentages and do not provide the Court with the source of this data.

Because Relators have failed to plead the circumstances of an illegal kickback scheme with particularity and this scheme forms the basis of Relators’ FCA claims, the Court finds that Relators’ claims should be dismissed.<sup>10</sup> Nevertheless, the Court will address Relators’ allegations regarding the submission of false claims to Medicare.

## II. SUBMISSION OF FALSE CLAIMS TO THE GOVERNMENT

Even if Relators had pled the circumstances of Bethany Hospice’s AKS violations with particularity, “[m]erely alleging a violation of the [AKS] does not sufficiently state a claim under the FCA.” *Mastej*, 591 F. App’x at 706. “[T]he Eleventh Circuit has clearly articulated a complaint that simply alleges an illegal scheme is insufficient to satisfy the pleading standard of Rule 9(b) if said complaint fails to particularize the existence of a single actual false claim in relation to the fraudulent scheme.” *Hunter Labs., LLC*, 2014 WL

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<sup>10</sup> Relators’ also alleged that Bethany Hospice offered the Bethany Hospice doctors a free trip. (Doc. 98 at 18.) However, Relators do not allege that the doctors actually went on this trip and Relators were not employed by Bethany Coastal at the time the trip was supposed to occur. (*Id.*) Therefore, this allegation also does not plead enough facts with particularity to satisfy Rule 9(b).

12543888, at \*4. “It is the submission and payment of a false Medicare claim and false certification of compliance with the law that creates FCA liability.” *Mastej*, 591 F. App’x at 706. In other words, Relators cannot simply describe an illegal kickback scheme and then state that claims “must have been submitted, were likely submitted[,] or should have been submitted.” *Carrel v. AIDS Healthcare Found., Inc.*, 898 F.3d 1267, 1275 (11th Cir. 2018) (internal citation omitted).

In their complaint, Relators allege that Bethany Hospice violated the “false claim” and “make or use” provisions of the FCA by submitting claims to Medicare for services rendered as a result of an illegal referral scheme and accepting payment from the government for those claims. The “false claim” provision imposes liability on anyone who “knowingly presents or causes to be presented a false or fraudulent claim for payment or approval[.]” 31 U.S.C. § 3729(a)(1)(A). Similarly, the “make or use” provision imposes liability on anyone who “knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim[.]” 31 U.S.C. § 3729(a)(1)(B). To successfully plead a claim under either provision, Relators must provide particularized allegations “that [Bethany Hospice] actually submitted a false claim, and by extension, that the government actually paid” Bethany Hospice for the claim. *United States ex rel. Aguino v. Univ. of Miami*, 250 F. Supp. 3d 1319, 1329 (S.D. Fla. 2017). Because, under either provision, Relators must first establish that Bethany Hospice submitted a false or fraudulent claim, the Court will address Relators’ claims under the “false claim” and “make or use” provisions

together.<sup>11</sup> See, e.g., *United States ex rel. Klusmeier v. Bell Constructors, Inc.*, 469 F. App'x 718, 721 n.5 (11th Cir. 2015) (addressing claims under the false claim and make or use provisions together).

In its motion to dismiss, Bethany Hospice argues that “Relators . . . fail to allege any facts showing the actual presentment of a claim to the government.” (Doc. 100 at 15.) Additionally, Bethany Hospice argues that Relators cannot support their conclusory allegations because, even without an example claim, Relators provide insufficient “indicia of reliability” that

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<sup>11</sup> Relators contend that Bethany Hospice violated 31 U.S.C. § 3729(a)(1)(B) by certifying compliance with the AKS on claims submitted to the government for reimbursement. (Doc. 98 at 5.) Notwithstanding that the Court found that Relators’ did not particularly allege the facts surrounding an alleged kickback scheme, the Court notes that Relators only mention false statements in violation of 31 U.S.C. § 3729(a)(1)(B) once in their complaint. (*Id.* at 5.) Specifically, Relators state that “[e]ach of the billing forms [certified] that Bethany Hospice had not violated the AKS in conjunction with the submission of the bills” and “[t]hese certifications (and the billing certifications) were false, and Bethany Hospice knew they were false.” (*Id.* at 5.) Relators provide no facts to support when Bethany Hospice created false statements or if Bethany Hospice was paid in connection with any false statements. As a result, the Court finds that Relators have failed to plead this claim with the particularity required by Rule 9(b). See *Thornton v. Nat’l Compounding Co., Inc.*, No. 8:15-cv-2647-T-36JSS, 2019 WL 2744623, at \*19 (M.D. Fla. July 1, 2019) (dismissing a claim under § 3729(a)(1)(B) because the relater provided “[n]o factual allegations support [the] conclusion” that false certifications were made where the relater only mentioned false certifications in one paragraph of the complaint); *Garden Care Cntr.*, 2019 WL 6493972, at \*6 (dismissing a claim under § 3729(a)(1)(B) because “there [was] no indication of when the false narratives were provided or for which services or patients”).

false claims were submitted to Medicare. (*Id.* at 17.) The Court agrees.

“Because it is the submission of a fraudulent claim that gives rise to liability under the [FCA], that submission must be pleaded with particularity and not inferred from the circumstances.” *Corsello*, 428 F.3d at 1013. Generally, the submission of a false claim is pled with particularity by “attach[ing] a representative sample claim” that includes “exact billing data (name, date, amount, and services rendered) . . . .” *Mastej*, 591 F. App’x at 704; see also *United States ex rel. Chase v. HPC Healthcare, Inc.*, 723 F. App’x 783, 789 (11th Cir. 2018) (“One way to satisfy this requirement is by alleging the details of false claims by providing specific billing information—such as dates, times, and amounts of actual false claims or copies of bills.”).

Relators did not present specific details of false claims or example claims that were allegedly submitted to the government by Bethany Hospice. (Doc. 121 at 4.) Rather, Relators argue that their personal knowledge of Bethany Hospice’s internal operations and Medicare referral rates provide sufficient “indicia of reliability” to support their allegations that Bethany Hospice actually submitted false claims. (*Id.*)

Relators are correct that the Eleventh Circuit has “allowed FCA claims to proceed where clear ‘indicia of reliability’ support the actual submission of a false claim, even if the relator cannot offer particularized allegations about a specific false claim.” *Aquino*, 250 F. Supp. 3d at 1332 (quoting *Clausen*, 290 F.3d at 1311). The Eleventh Circuit is “more tolerant towards complaints that leave out some particularities of the submissions of a false claim if the complaint also alleges personal knowledge or participation in the

fraudulent conduct.” *Matheny*, 671 F.3d at 1230. “[A] relator’s firsthand knowledge of a defendant’s actual submission of false claims may, where supported by appropriate factual allegations, provide ‘sufficient indicia of reliability’ to substitute for the particularized allegations that Rule 9(b) generally requires.” *Aquino*, 250 F. Supp. 3d at 1332 (quoting *Clausen*, 290 F.3d at 1311); see also *Mastej*, 591 F. App’x at 704 (“[R]elators with direct, first-hand knowledge of the defendant[’s] submission of false claims gained through her employment with the defendant[] may have a sufficient basis for asserting that the defendant[] actually submitted false claims.”).

Bethany Hospice argues that Relators have failed to “supply sufficient ‘indicia of reliability’ to support Relators’” allegation that Bethany Hospice actually submitted claims to the government. (Doc. 100 at 20.) Specifically, Bethany Hospice argues that Relators cannot support their allegations with personal knowledge and rely only on mathematical probability that Bethany Hospice submitted claims to Medicare that were tainted by the alleged kickback scheme. (*Id.*) In response, Relators contend that they pled more reliable allegations, based on their personal knowledge, than the relators in *Hill v. Morehouse Med. Assocs., Inc.*, No. 02-14429, 2003 WL 22019936 (11th Cir. 2003), *United States ex rel. Walker v. R&F Props. Of Lake Cty., Inc.*, 433 F.3d 1349 (11th Cir. 2005), and *Mastej*, 591 F. App’x 693. (Doc. 121.) However, the Court finds that Relators do not meet the “relatively high bar for ‘indicia of reliability’ . . .” established by these cases. *Aquino*, 250 F. Supp. 3d at 1332. Specifically, Relators “cannot rely on their ‘personal knowledge or participation’ in the alleged fraud” to

provide sufficient indicia of reliability. *Carrel*, 898 F.3d at 1277 (citing *Matheny*, 671 F.3d at 1227).

As a starting point, Relators' did not describe Bethany Hospice's billing operations in as much detail as the relator in *Hill*. The relator in *Hill*, a former employee of the defendant's billing department, alleged that the defendant was submitting fraudulent bills to the government for reimbursement. 2003 WL 22019936, at \*1-2. To support her allegations, the relator described in detail the defendant's billing process, who engaged in the fraud, and the frequency fraudulent bills were submitted to the government. *Id.* Additionally, the relator described three specific instances in which she personally observed employees change codes on bills to fraudulently secure reimbursement from Medicare. *Id.* Although the relator could not identify specific patients associated with false claims, the Eleventh Circuit found that the relator's "factual allegations provide[d] the indicia of reliability" necessary because the relator pled that she "was an employee within the billing and coding department and witnessed firsthand the alleged fraudulent submissions . . ." *Id.* at \*4. Moreover, the relator "supported her legal theory with facts describing [the defendant's] billing process, the specific . . . codes that were altered for each of the five billing schemes, and the frequency of submission of each type of claim." *Id.*

The details alleged in *Hill* highlight the relator's personal knowledge that the defendant submitted false claims and exceed the factual allegations offered by Relators in this case. Relators conclusively state that they "gained intimate knowledge of Bethany Hospice's and Bethany Coastal's billing protocols and operations" without providing any details of these

operations. (Doc. 98 at 24.) Although Relator Helmly claims that she “had full access to all billing and referral data for all patients . . .” and “she attended meetings with Ms. Best where . . . management discussed site productivity . . .,” Relators do not describe even one specific instance they observed a Bethany Hospice employee submit a false claim. (*Id.* at 30.) “It is not enough for the [relators] to state baldly that [they were] aware of the defendants’ billing practices . . .” *Mastej*, 591 F. App’x at 704-705.

Relators case is also distinguishable from *Walker*. In *Walker*, the relator, a former nurse practitioner for the defendant, claimed that the defendant “filed false claims for Medicare reimbursement by billing Medicare for services rendered by nurse practitioners . . . as if those services were rendered ‘incident to the service of a physician’ . . .” 433 F.3d at 1353. Specifically, the relator alleged that she personally participated in the fraudulent billing because she was instructed to bill her time as a physician. *Id.* Additionally, the relator had a conversation with an administrator of the defendant where the administrator admitted that “[the defendant] billed all nurse practitioner and physician assistant services as rendered ‘incident to the services of a physician.’” *Id.* at 1360. Because of the relator’s participation in the fraudulent billing, the Eleventh Circuit found that her “allegations [were] sufficient to explain why [she] believed [the defendant] submitted false or fraudulent claims.” *Id.* at 1360.

In contrast, Relators in this case do not allege that they participated in the submission of fraudulent claims to the government. Although Relators do allege that they had conversations about fraudulent claims with Bethany Hospice employees, including Ms.

Jowers and Ms. Cliett, these conversations were not had in conjunction with Relators' participation in the fraud. Relators' vague and conclusory details about their conversations with Bethany Hospice employees do not amount to the participation and detailed conversation alleged in *Walker*.

Lastly, Relators' argument that their allegations are "nearly identical" to those in *Mastej* is misplaced. The relator in *Mastej* was the vice president of the defendants' company and, at one time, the CEO of a hospital operated by the defendants. 591 F. App'x at 708-09. While the relator was CEO, another CEO asked him to split the cost of "on-call coverage in exchange for Medicare/Medicaid referrals." *Id.* at 707. Additionally, the relator frequently attended case management meetings in which every patient was discussed, "including how the services were being billed to each patient." *Id.* Because the relator was "actively and heavily engaged in the [d]efendants' business and revenue operations . . ." and because the relator had "first-hand knowledge of the [d]efendants' submission of false interim claims to the government," the Eleventh Circuit determined that the relator provided the necessary indicia of reliability to support his allegations that false claims were submitted. *Id.*

In contrast to the relator in *Mastej*, Relators in this case do not allege facts indicating that they were "actively and heavily engaged" in Bethany Hospice's billing operations. Although Relator Helmly allegedly attended meetings where "site productivity" was discussed, she does not assert that she gained knowledge of how "services were billed to each patient." *Mastej*, 591 F. App'x at 707. Additionally, Relators' status as former employees of Bethany Coastal, not Bethany

Hospice, further indicates that they were not actively engaged in Bethany Hospice’s billing operations. Even if the Court accepts Relators’ argument that Bethany Coastal operated as merely another office of Bethany Hospice (Doc. 98 at 31), Relators did not work in the other Bethany Hospice offices and cannot rely on their personal knowledge of those offices’ billing operation.

As a final attempt to provide some indicia of reliability to support Relators’ contention that Bethany Hospice submitted false claims to the government, Relators highlight the number of Medicare patients that doctors have allegedly referred to Bethany Hospice. (Doc. 98 at 27.) Specifically, Relators allege that “[f]rom the [third] quarter of 2016 through the [second] quarter of 2018,” the Bethany Hospice doctors referred 100% of their Medicare patients to Bethany Hospice. (*Id.* at 28-29.) From this “Medicare claims data,” Bethany Hospice infers that “Bethany Hospice billed government health programs for the services rendered to Medicare . . . patients referred by [the Bethany Hospice doctors].” (*Id.* at 26.) In response, Bethany Hospice argues that “[a]lthough Relators’ . . . alleged ‘Medicare claims data’ may be more specific” than Relators’ other allegations, Relators still fail to plead that a false claim was submitted with particularity. (Doc. 100 at 8.) The Court agrees.

As an initial matter, the Court cannot “make assumptions about a . . . defendant’s submission of actual claims to the Government . . .” *Clausen*, 290 F.3d at 1312 n.21. By claiming that, based on the number of Medicare referrals from doctors, Bethany Hospice must have submitted a false claim to the government, Relators are asking the Court to assume claims were submitted. However, the Court cannot rely on

“mathematical probability to conclude that” Bethany Hospice “surely must have submitted a false claim at some point.” *Carrel*, 898 F.3d at 1277.

Moreover, Relators have provided no facts as to how they acquired this “Medicare claims data.” Relators did not offer public filings to support the data. *See Osheroff*, 2012 WL 2871264, at \*5-6 (finding a relator’s allegation that the defendant actually submitted false claims based on the defendant’s number of Medicare patients was sufficient indicia of reliability because the relator attached public filings that showed “thousands of sample claims that [the defendant] presented to Medicaid for reimbursement”). Again, the Court cannot “make unwarranted inferences about the submission of claims.” *Id.* Therefore, Relators have also failed to provide the necessary indicia of reliability using alleged “Medicare claims data.”

In summary, Relators cannot plead “a mosaic of circumstances that are perhaps consistent with their accusation[]” that Bethany Hospice submitted false claims without pleading any of those circumstances with particularity. *Carrel*, 898 F.3d at 1277. Accordingly, the Court finds that Relators have failed to plead their allegations that Bethany Hospice submitted false claims to the government for reimbursement with the particularity required by Rule 9(b). As a result, Relators’ claims pursuant to the FCA are **DISMISSED**.

### CONCLUSION

For the foregoing reasons, the Court finds that Relators’ have failed to plead their claims under the FCA and the GFMCA with the particularity required by Rule 9(b). Relators have had numerous opportunities

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to correct the deficiencies in their complaint and have failed to do so. As a result, Relators' Third Amended Complaint (Doc. 98) is **DISMISSED WITH PREJUDICE**. The Clerk of Court is **DIRECTED** to close this case.

SO ORDERED this 31st day of March 2020.

s/\_\_\_\_\_

WILLIAM T. MOORE, JR.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA

**APPENDIX C**

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

Civil Action No. 4:16-cv-290-WTM-JEG

[May 13, 2019]

UNITED STATES OF AMERICA ex rel. JOLIE  
JOHNSON et al.,

Relators,

v.

BETHANY HOSPICE AND PALLIATIVE CARE OF  
COASTAL GEORGIA, LLC. Et al.,

Defendants.

**THIRD AMENDED COMPLAINT**

The United States of America and the State of Georgia, by and through Relators Jolie Johnson and the Estate of Debbie Helmly, bring this action under 31 U.S.C. §§ 3729-3732 (“False Claims Act”) and O.C.G.A. § 49-4-168.1, *et seq.* (“Georgia False Medicaid Claims Act”) to recover all damages, penalties, and other remedies established by the False Claims Act on behalf of the United States and Relators, and the State False Medicaid Claims Act on behalf of the State of Georgia and Relators, and would show the following:

## I. JURISDICTION AND VENUE

1. This action arises under the False Claims Act, 31 U.S.C. § 3729, *et seq.* and Georgia False Medicaid Claims Act, O.C.G.A. § 49-4-168.1, *et seq.*

2. This court has personal jurisdiction over the Defendants pursuant to 31 U.S.C. § 3732(a) in that Defendants do or transact business in this jurisdiction and portions of the violations of the False Claims Act described herein were carried out in this district.

3. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1345 and 31 U.S.C. § 3732(a) and (b).

4. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and under 31 U.S.C. § 3732(a) and O.C.G.A. § 49-4-168.6.

## II. THE PARTIES

5. Defendant Bethany Hospice and Palliative Care of Coastal Georgia, LLC (f/k/a Bethany Hospice of Coastal Georgia, LLC) (“Bethany Coastal”) is a for profit provider of hospice care. Bethany Coastal has one office in Claxton, Georgia, which is located at 109 South Duval Street, Claxton, Georgia. Bethany Coastal exclusively (or nearly exclusively) funds its operations through receipt of Medicare/Medicaid dollars. Bethany Coastal’s Medicare National Program Identifier (“NPI”) is 1548501000. Bethany Coastal has retaliated against Relators in violation of the law.

6. Bethany Hospice and Palliative Care, LLC (f/k/a Bethany Hospice, LLC) (“Bethany Hospice”) is a for profit provider of hospice care. Bethany Hospice has four locations in Georgia with offices in Douglas, Thomasville, Waycross, and Valdosta. At various times, Bethany Hospice and Palliative Care, LLC also

maintained an office in Quitman, Georgia. The Douglas office is located at 1400 Peterson Avenue North, Suite 12, Douglas, Georgia. The Thomasville office is located at 2012 East Pinetree Boulevard, Suite A, Thomasville, Georgia. The Waycross office is located at 411 Lister Street, Waycross, Georgia. The Valdosta office is located at 2700 North Oak Street, Building B, Valdosta, Georgia. Bethany Hospice exclusively (or nearly exclusively) funds its operations through receipt of Medicare/Medicaid dollars. Its Medicare NPI is 1972709160. Bethany Hospice is responsible for submitting and causing false claims to be submitted to the Government for the per diem reimbursement for patients whose referrals were tainted by kickbacks. It is also responsible for making, using, or causing to be made or used, a false record or statement material to a false or fraudulent claim tainted by kickbacks.

7. Relator Jolie Johnson began working for Bethany Coastal in December 2014 as a marketer and was terminated July 2015.

8. Relator Debbie Helmly began working for Bethany Coastal in December 2014 as an administrator and was terminated July 2015. Relator Helmly passed away on March 27, 2018. Her estate has substituted as a party to this litigation.

### **III. FACTUAL ALLEGATIONS**

9. Hospices are paid a per diem rate based on the number of days and level of care provided for a hospice patient. Medicare Benefit Policy Manual, Chapter 9, § 40; 42 C.F.R. § 418.302. The United States reimburses Medicare providers with payments from the Medicare Trust Fund, through CMS, as supported by American taxpayers. Payments are typically made by Medicare

directly to health care providers like Bethany Hospice and Bethany Coastal rather than to the patient. The Medicare provider submits its bill directly to Medicare for payment.

10. In particular because any hospice patient automatically generates daily payments from the Government, absolutely no remuneration of any kind (kickbacks) can be exchanged for referrals of hospice patients. “The prohibition against kickbacks is a core requirement whose violation eviscerates the value of the service the Government has bargained for: an unbiased determination by a medical provider that a certain medical procedure, device, or drug is ‘reasonable and necessary’ for the treatment of a patient.” Statement of Interest of the United States of America in Response to Defendants’ Motion to Dismiss, *U.S. ex rel. Wood v. Allergan, Inc.*, Civil Action No. 10-CV-5645, at 4 (Oct. 19, 2016).

11. The Medicare and Medicaid Fraud and Abuse Statute 42 U.S.C. § 1320a-7b(b) or Anti-Kickback Statute (“AKS”) was enacted under the Social Security Act in 1977. The AKS arose out of Congressional concern that payoffs to those who can influence health care decisions will result in goods and services being provided that are medically inappropriate, unnecessary, of poor quality, or even harmful to a vulnerable patient population. To protect the integrity of federal health care programs from these difficult to detect harms, Congress enacted a prohibition against the payment of kickbacks in any form, regardless of whether the particular kickback actually gives rise to overutilization or poor quality of care. The AKS also specifies that “a claim that items or services resulting from a violation of this section constitutes a false or

fraudulent claim for purposes of [the FCA].” 42 U.S.C. § 1320a-7b (2013). This includes any claim submitted for a patient who was referred by someone receiving a kickback. The statute ascribes liability equally to both sides of an impermissible kickback relationship.

12. The AKS prohibits any person or entity from making or accepting payment to induce or reward any person for referring, recommending, or arranging for the purchase of any item for which payment may be made under a federally-funded health care program. 42 U.S.C. § 1320a-7b(b). Essentially, if just one purpose of the payment was to reward referrals or to induce future referrals, the AKS has been violated. This is true even if the doctor performs some medical service for the money. It is not even required that it be the primary purpose—just one purpose of the payment. In other words, a defendant can have 99 lawful reasons to enter a relationship, but if one other reason is to expect referrals or reward referrals, it is illegal. It is irrelevant if the funds would have been spent anyway or that Medicare funds were not used to make the illegal payment.

13. Hospice providers are reimbursed based upon their submission of a single electronic or hard-copy form known as CMS Form 1500 to the appropriate fiscal intermediary or Medicare claims processor. Each time it submits a claim for payment by Medicare, a provider certifies that the claim is true, correct, and complete, and complies with all Medicare laws and regulations.

14. Bethany Hospice is a Medicare institutional service provider, and as such, certified compliance with the AKS prior to any claim submissions upon executing CMS Form 855A. Entities that execute CMS

Form 855A make the following certification: “I agree to abide by the Medicare laws, regulations and program instructions that apply to this provider. The Medicare laws, regulations, and program instructions are available through the Medicare contractor. I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations, and program instructions (including, but not limited to, the Federal anti-kickback statute and the Stark law), and on the provider’s compliance with all applicable conditions of participation in Medicare.” Bethany Hospice’s Medicare certification date occurred on August 08, 2000. Its unique CMS hospice identification number is 111587. Each of the billing forms echoed these certifications that Bethany Hospice had not violated the AKS in conjunction with the submission of the bills. These certifications (and the billing certifications) were false, and Bethany Hospice knew they were false.

15. Relators came to Bethany Coastal from another hospice—Spanish Oaks. From 2011 through October 2014, Relator Helmly ran the Claxton office of Spanish Oaks Hospice and Relator Johnson worked for that office. By October 2014, Relators were looking for a different hospice to work for. Around that time, Ms. Ava Best and Mr. Berkley M. “Mac” Mackey were looking to open a Bethany Hospice location in the Claxton area.

16. Ava Best is an owner and the president and CEO of both Bethany Hospice and Bethany Coastal.

17. Berkley M. “Mac” Mackey, III is an owner and officer in Bethany Hospice and Bethany Coastal.

18. Around October/November 2014, Ms. Best and Relator Helmly agreed that Relator Helmly would become the administrator of what would become Bethany Coastal and get a 2.5% ownership. During these negotiations, Ms. Best explained to Relator Helmly that since opening Bethany Hospice in 2007, she had offered each of her medical directors and administrators an ownership stake in Bethany Hospice and Bethany Coastal. Once they were owners, Ms. Best explained that Bethany Hospice or Bethany Coastal would issue dividends to each owner/investor based on how many patients were put under service at the owner/investor's site as reflected in the site's annual census report. Ms. Best further explained that if the owner/investor's site made the company enough money through patient enrollment, then the owner/investor stood to receive substantially more in dividends. According to Ms. Best, meeting revenue benchmarks also enabled part-owners to acquire additional ownership shares in subsequent years. Ms. Best also hired Relator Johnson as a marketer.

19. Relator Helmly had a prescheduled operation that would occupy her through December 2014, so she and Ms. Best agreed she would start to open Bethany Coastal after that. Mr. Mackey put both Relators under the insurance of his company starting December 1, 2014 and paid initial salaries to Relators for work at Bethany Coastal. Everyone worked to open Bethany Coastal in January 2015.

20. Because of dissatisfaction with their time at Spanish Oaks and the way their employment was terminated, Relators Helmly and Johnson sought legal assistance to deal with Spanish Oaks. Because Ms. Best insisted that Relators approach her for

permission to take any time off, in January 2015, Relators asked for one day off. Before she gave her permission, Ms. Best peppered them with questions on why they needed a day off. For Relators, it was a very uncomfortable topic to discuss. Eventually, Ms. Best figured that it had something to do with their former employment and said yes. This was the first time Relators had encountered Ms. Best's paranoia and interrogative style of management. However, it was not out of character for Ms. Best as she was an extremely demanding boss who required immediate attention to whatever was on her mind at the time. A good example of her overbearing paranoia came a few years later when an employee was interrogated by Ms. Best about the fact that he had opened his door seven times on a particular day and asked whether he was seeing patients each of those seven times. Ms. Best had a practice of engaging in surveillance of the office and attached tracking devices on all the cars (which included tracking the number of times the door opened).

21. The first attorney Relators interviewed did not do the type of work they needed and referred them to another attorney. The second time they needed a day off to meet with an attorney, Ms. Best again peppered them with questions. Relators did not know enough about their putative meeting at that time to provide any details. However, the day after they met with this attorney, Ms. Best became relentless with her questions and continued to pepper Ms. Helmly with questions through the end of January. Over this time, Relator Helmly shared with Ms. Best that they were meeting with an attorney in Atlanta and that this matter had to do with their prior employment and long-term hospice patients.

22. The Medicare identification number used for Bethany Coastal was one Ms. Best purchased from Alex Patterson who owned Presbyterian Hospice. Initially, she used this number for the Bethany Hospice office in Quitman, Georgia. Then, once Ms. Best decided to open the office in Claxton, she transferred the number over to Bethany Coastal. Once a number is purchased, the purchaser is required to do a CHOW (Change of Ownership). It is unclear whether or when Ms. Best did a CHOW for Bethany Coastal, which she opened on January 1, 2015, because it appears that she was operating as Presbyterian Hospice for some time after that.

23. Part of Relator Helmly's responsibilities entailed overseeing all the billing at Bethany Coastal. When Relator Helmly or employees under her supervision would pull up any of the billing that was needed before signing up a new patient, it would still show up as the Presbyterian Hospice in Quitman. Bethany Coastal never had permission to work in Claxton, Georgia. The Presbyterian number issue continued for at least two months after Bethany Coastal was up and running. Relators contacted Ms. Best about this, but she just told them not to worry about it.

24. In February of 2015, Relators left work for a day to meet with their attorney in Atlanta. Relators had received information concerning their case from a former co-worker and kept it in a locked drawer in Relator Helmly's office. They also kept correspondence with their attorney, Mike Bothwell, in that locked drawer. While Relator Helmly was out of her office, Ava Best had an employee search Relator Helmly's office including the locked drawers in her desk. From this search, Ms. Best learned about their

whistleblower attorney, Mike Bothwell, and much of the basis of their lawsuit. However, Ms. Best did not confront Ms. Helmly about this information until the end of March 2015. At the end of March, Ava Best told Relator Helmly that she did not want “whistleblowers affiliated with [her] business.” She mentioned the whistleblower attorney, Mike Bothwell, by name even though Relators had not told her that was the name of the attorney. Ms. Best insisted that Ms. Helmly not be a part of the whistleblower lawsuit because Ms. Best “did not want a whistleblower as [her] administrator.” Relator Helmly relented and promised Ms. Best that her name would not be on any pleadings, but told her Relator Johnson would still be a whistleblower against their former employer.

25. Ms. Best never reprimanded either Relator for work-related issues or performance issues. Relators were never approached about any negative aspect of their work and were never written up or disciplined in any way. In fact, the time between the January 2015 opening and May 2015 was characterized by high praise from both Ava Best and Mac Mackey. Some of the praise from Mac Mackey was his delight that Relators had opened an office where Bethany Hospice was an unknown entity and had made it so profitable so quickly. Mr. Mackey would text Relator Helmly saying how much he liked the numbers he was seeing (and similar comments).

26. However, as much as Ava Best and Mac Mackey were thrilled with Relators’ performance, there were battles bubbling up with how Ava Best and Mac Mackey grew the rest of Bethany Hospice by providing remuneration to referral sources and potential referral sources in exchange for or as a reward for

referrals. Ms. Best first provided insight into her practice of providing referral sources remuneration when she explained to Relator Helmly during salary negotiations that she issued her medical directors and administrators dividends that fluctuated according to how many patients (including Medicare and Medicaid beneficiaries) were put under service at the owner/investor's site and how much money the site made for the company that year. This conversation, coupled with subsequent ones focused on owner/investor compensation and referral practices, led Relators to conclude that these were kickbacks, they violated the AKS, and were illegal. In fact, the impetus for this FCA lawsuit is that Ms. Best and Mr. Mackey determined to grow and maintain their business through kickbacks.

27. Prior to forming Bethany Hospice, Ms. Best worked for Odyssey Hospice ("Odyssey"). In fact, Bethany Hospice rose out of the local ashes of Odyssey. Odyssey asked a national hospice owner to buy some of the Georgia hospice locations Odyssey was seeking to divest from. He bought the Valdosta office, and renamed it Bethany Hospice. He brought Ava Best on (from Odyssey in Valdosta, Georgia) to work for Bethany Hospice, but disagreements with Ava Best and Mac Mackey over business practices prompted the original buyer to have them buy him out.

28. From conversations with Ms. Best, Relators knew Ms. Best was well aware that the way Odyssey was operated was illegal. At one point, she acknowledged to Relators that she knew Odyssey got referrals by giving medical directors kickbacks. She was aware that Odyssey was under local HHS-OIG scrutiny for providing illicit kickbacks to medical directors, and

that Odyssey was hit with a \$25 million settlement by DOJ for FCA violations. Relators also talked to Ms. Best about her prior work for another company near Brunswick that was raided by the DOJ. She told Relators they came into her office with guns and demanded billing records and charts. She said that the DOJ convicted the owner of that company for Medicare or Medicaid fraud. Ms. Best said she knew how these things went, having been a party to a DOJ Medicare fraud investigation.

29. However, Ms. Best's experience with these companies provided her with conflicting conclusions. On the one hand, Ms. Best and Mr. Mackey knew that paying for referrals was the most effective way to get referrals, but, on the other hand, they knew that the Government did not like remuneration for referrals. Ms. Best and Mr. Mackey tried to have the best of both worlds: paying the kickbacks to referring physicians, but hiding or masking them as compensation to medical directors and part owners of Bethany Hospice. From conversations Realtors had with Ms. Best, it was clear they were sure they would never get caught.

30. Ms. Best revealed the terms of the kickbacks when negotiating ownership with Relator Helmly prior to December 2014. At the outset of the negotiation for employment, Ms. Best told Relator Helmly that she would follow the same protocol to add compensation for Relator Helmly that she used to pay referring doctors for their referrals. The offer concerned a below market investment for a percentage of the company and huge returns when referrals came pouring in. Focused on census and referrals as she was, Ms. Best indicated that she would determine the amount of return based on the number of patients put under

service. Ms. Best informed Relator Helmly that her formulas for compensation always related to the number of referrals or the census because that is what Ms. Best wanted to incentivize. Ms. Best paid all the medical directors who owned shares in Bethany Hospice according to this same formula, and the payments varied depending on the volume of referrals. Relators thought this discussion was odd, but Relators did not address this issue at the time because it required more investigation.

31. In February of 2015, after Relators had opened Bethany Coastal from scratch and had started to see success (for which Ms. Best and Mr. Mackey complimented them), an issue came up with regard to needing a medical director for the Claxton office. Relators referred Ava Best and Mac Mackey the name of Dr. Thomas Miller, a family physician, as the potential medical director.

32. When informed that Ava Best would give an interest in the company to all her medical directors, and this interest would provide them with “a large amount of money” for maintaining a high census and a lot of referrals, Dr. Miller indicated that this arrangement was unethical and he would not participate. Dr. Miller said that he did not think it was ethical for him to have ownership in a business for which he was also the medical director. He said he felt that would be a conflict of interest. Relator Helmly was influenced by Dr. Miller's reaction and concluded that Bethany Hospice was giving illegal kickbacks to doctors for referrals.

33. Even after Dr. Miller pointed out the unethical nature of these payouts, Bethany Hospice continued to distribute investment income to referring physicians.

Bethany Hospice's decision to proceed with these financial arrangements—even after a clinician with whom they vested medical director privileges voiced his concerns—demonstrates their continued intent to provide kickbacks.

34. According to conversations Relators had with Ms. Best, Bethany Hospice had compensation arrangements with numerous medical directors and doctors that gave rise to kickbacks. These arrangements contained the following forms of payment: a monthly salary, dividends, and/or monthly bonuses. The doctors would receive payments as inducement for or reward for referrals of patients, which constitute kickbacks. Even the payment of the salary was not done after a fair market value (“FMV”) analysis and was made to doctors for referrals rather than for the obligation of an appropriate amount of actual work for the hospice. The schedule or interval of work is not written and not followed. The compensation is not consistent with FMV or an arms-length transaction and takes the volume or value of referrals into account. Bethany Hospice has more “medical directors” than is commercially reasonable for their census, in part because they are paying for referrals. For a period, while most hospices listed their medical directors, Bethany Hospice did not. It knew it had too many medical directors and that it needed to keep a low profile to avoid detection and ensure continued revenue streams.

35. Ms. Best uses Bethany Hospice and Bethany Coastal's Electronic Medical Record (“EMR”) system, Consolo, to track referrals from the various doctors so she can determine how much she is paying for each referral. Ms. Best requires staff to record every new admission, the date, and the physician who referred

the patient on a white board. This information is also added to the Consolo program. At the Douglas office, Tonya Smith, the admissions coordinator, inputs the referral source for each admission into Consolo. Once entered, Ms. Best generates weekly and monthly reports detailing how many referrals each physician has made. Jeneen Cliett (at various times, the Vice President of Bethany Hospice and the Clinical Director of Bethany Hospice's Douglas office) and Monica Jones (Head of Quality Assurance for both Bethany Hospice and Bethany Coastal) showed Relator Helmly how to run these reports and informed her that Ms. Best uses these reports to determine how much to pay referral sources. According to Ms. Cliett and Ms. Jones, Ms. Best and Mr. Mackey routinely reviewed the return on investment ("ROI") for their kickbacks. According to Ava Best, physicians who referred the most patients receive the largest payments.

36. As Ms. Best explained to Relators, Bethany Hospice cloaks some payments to its medical directors as investment interests. Instead of providing these individuals with payments directly, Ms. Best first has them purchase an ownership stake in Bethany Hospice without obtaining a proper valuation and without assessing a commercially viable buy-in. Once they are partial owners in Bethany Hospice, Ms. Best issues dividends to these individuals. According to Ms. Best, these amounts fluctuate according to how many patients are put under service at the owner/investor's site and are not proportional to the amount invested. The terms of the investment are related to the expected volume of referrals or the amount of business that could be generated by the owner/investor. Ms. Best said the "owner/investors" are required to make

referrals to Bethany Hospice and only those who are in a position to make referrals are considered or offered an investment opportunity. This is a sham device to hide the payment for referrals.

37. The Dr. Daly situation makes it clear that this was a kickback scheme and was never intended as a legitimate investment. Dr. Daly is a sleep medicine specialist based in Savannah, Georgia (with another office in Douglas). His practice focuses on performing sleep studies on patients to diagnose them with disorders such as obstructive sleep apnea. Early on in their tenure, Relators found out that Dr. Daly had been continuously approaching Ms. Best and Mr. Mackey about becoming an investor in Bethany Hospice or Bethany Coastal because Mr. Mackey asked Relators about him as a potential investor. Mr. Mackey discussed this with Relators because Relator Johnson knew Dr. Daly from when she worked at Hospice Advantage. Dr. Daly had been the medical director during Relator Johnson's tenure with Hospice Advantage. When Relators informed Mr. Mackey that Dr. Daly never referred patients to Hospice Advantage because of his niche practice, Mr. Mackey said "Forget it. We do not need him if he does not and will not refer patients to Bethany [Hospice]." These remarks highlighted the fact that Bethany Hospice and Bethany Coastal's primary objective in obtaining investors was to lock up referral streams rather than investment streams. Mr. Mackey and Ms. Best wanted to look like they complied with the law, while intending to make payments based on the volume of referrals from these doctors.

38. The value of Bethany Hospice's ownership interest is part of the remuneration. Referring physicians are allowed to pay below market value for their

ownership, but, after their referrals grow the company, they can “cash out” for an unbelievably higher rate. Accordingly, there is remuneration in the initial value and the subsequent value that is inappropriate, and there is the fact that referrals make the business more profitable and the investing doctors profit by their referrals. For example, Dr. Marshall Tanner purchased a 5% share in Bethany Hospice for approximately \$20,000 in 2007. Other doctors bought similar percentages later. In exchange for Dr. Tanner’s contribution, he along with Drs. Justin Harrell, David Arnett, Stan Sinclair, Conrad Harper, and Richard Wheeler received intermittent dividend distributions from Bethany Hospice (sometimes monthly and sometimes annually). These ranged from approximately \$10,000 to \$20,000 annually according to Dr. Tanner. By the time Dr. Tanner sold his shares in 2014 (then at 10%), he was paid approximately \$330,000 (the sale price)—an 825% increase in value.

39. There are a number of medical directors for Bethany Hospice or other doctors who are “owner/investors” and get extra money from Bethany Hospice. Dr. David Arnett has at various times served as Bethany Hospice’s medical director for its Douglas site. He stepped down from this role to become Bethany Hospice’s Chief Medical Officer, and in his place, Drs. Justin Harrell and Conrad Harper became Medical Directors for Bethany Hospice’s Douglas site. Drs. Richard Wheeler and Stan Sinclair serve as medical directors for Bethany Hospice’s Valdosta site. Notably, Dr. Sinclair serves in this capacity despite the fact his entire practice is located in Douglas, Georgia. Each of these physicians receive dividends based on how many patients their site puts under census. The vast majority

of revenue for Bethany Hospice comes from “owner/investor” referrals. In certain periods, around 95% of Bethany Hospice’s referrals came from doctors with a financial interest in Bethany Hospice.

40. Bethany Hospice’s Douglas location has a large concentration of these doctors, and they are linked with the county hospital. “Bethany Hospice doctors” include Drs. Arnett, Sinclair, Harrell, and Harper. They work or have worked at Coffee Regional Medical Center (“CRMC”). In fact, these doctors sit on or have sat on the Coffee County Hospital Board. Each of these “Bethany Hospice doctors” refers every single patient they control to Bethany Hospice. Other than outlier occasions, such as the family demanding another hospice, or the patient being located outside Bethany Hospice’s geographic area, every single patient is referred to Bethany Hospice. “Bethany Hospice doctors” (Arnett, Sinclair, Harrell, and Harper) also bought out the company that provides hospitalists to CRMC and direct referrals from them as well. After they bought out the hospitalist company, Bethany Hospice became CRMC’s number one referral of hospice patients (with around 90% of its referrals). This statistic is even more profound when the referrals to home health agencies that refer to Bethany Hospice are taken into account. It is as if payments to these doctors alone has the power to direct 80-90% of the county’s hospice patients to Bethany Hospice (and it does).

41. Bethany Hospice’s kickbacks have worked as intended. Bethany Hospice’s Medical Directors and part-owners did not refer any patients to Bethany Hospice prior to establishing a financial relationship. Once established, however, those physicians with a

financial interest in Bethany Hospice began referring every Medicare and Medicaid patient they could to Bethany Hospice. Dr. Harper, for instance, only referred two such patients to Bethany Hospice prior to receiving kickbacks from Bethany Hospice. However, once his affiliation began, all of Dr. Harper's referrals for hospice care that he could send to Bethany Hospice were sent to Bethany Hospice.

42. In fact, while nearly none of their referrals went to Bethany Hospice before their financial arrangements, afterwards, nearly all of the "Bethany Hospice doctors'" referrals for hospice services have gone to Bethany Hospice. Coffee County is a perfect example of the effectiveness of these kickbacks. Using referral information housed in the Consolo program and comparing it to the total deaths in the county, it is clear that Bethany Hospice has almost all the hospice business in Coffee County. In 2015, for example, 381 people died in Coffee County, and of those, 327 were patients of Bethany Hospice. Nearly all of these came from Drs. Arnett, Harrell, Harper, and Sinclair. Even assuming that all the deaths that year were preceded by hospice care, Bethany Hospice would have had at least 86% of all hospice patients that year. Making a reasonable adjustment to account for non-hospice deaths would push that percentage to almost 100%. Whether it is 86% or 99%, no one could argue the effectiveness of Bethany Hospice's kickbacks or the loyalty it has bought from the "Bethany Hospice doctors." During their investigation, Relators confirmed all the facts about the "Bethany Hospice doctors" with Bethany Hospice former employees who worked in Douglas and confirmed the referral patterns from CRMC and the "Bethany Hospice doctors" from

data obtained from Medicare claims. Therefore, the referral data mentioned in this complaint tracks Medicare patients that have been referred to Bethany Hospice by the “Bethany Hospice doctors”, and Bethany Hospice has submitted claims to Medicare for these referred patients and been paid the hospice per diem by Medicare.

43. In March 2015, Relator Johnson actually engaged Ms. Best in a conversation about doctor ownership in Bethany Hospice. Before the conversation, Relator Johnson had been looking into this matter and found that Odyssey had a similar scheme to pay directors through their retirement rather than directly. Relators knew that Ms. Best would know that because she worked there. She reminded Ms. Best that South-Coast Medical in Savannah had an agreement with Odyssey Hospice like the Bethany Hospice agreement, but when Odyssey was bought out, the new company deemed the agreement to be “illegal” and dissolved the agreement. Ms. Best said she had “found a way around this issue.” Ms. Best said that she had found a way to do it so she would not get caught. She indicated that she could create a (sham) agreement that would mask the payment to doctors for referrals. She said that by making potential referral sources medical directors and medical directors “part owners” she would not get caught. Ms. Best mentioned several times that her medical directors were “part owners” in Bethany Hospice. These remarks not only illuminate the scheme employed, but also demonstrate Ms. Best’s clear intent to funnel kickbacks through a sham device. This conversation made it clear to Relators that they had to continue to investigate and continue conversations

like this to persuade Ava Best and Mac Mackey to stop their illegal behavior.

44. Continued investigations revealed that physicians receiving kickbacks from Bethany Hospice cut regulatory corners when referring Medicare and Medicaid beneficiaries to Bethany Hospice, ostensibly to maximize their bonuses and dividends. For instance, Relators learned through a contact with Atkinson Visiting Nurses Services, Inc. that a fellow employee in charge of receiving all physician orders for home health and hospice care had discovered that physicians with a financial interest in Bethany Hospice, including Drs. Arnett, Sinclair, and Harper, referred patients to Bethany Hospice without informing the patient (including Medicare and Medicaid beneficiaries) of alternate facilities that could provide hospice care. While all other physician orders would denote that the physician had discussed treatment and facility options with the patient, orders from providers linked to Bethany Hospice lacked this information. Their orders, by contrast, would merely state “refer to hospice” with the understanding that the patient would be sent to Bethany Hospice. Similarly, Jeneen Cliett instructed former Bethany Hospice nurse Tabitha Castillo to admit automatically any Medicare or Medicaid beneficiary referred by Dr. Sinclair for General Inpatient (“GIP”) care without evaluating whether the patient qualified for GIP (and the corollary increase in reimbursement).

45. Ms. Best was already paranoid and concerned about the existence of “whistleblowers” in her employ. Unbeknownst to Relators, she had previously raided Ms. Helmly’s personal, locked office areas to make sure Relators were not blowing the whistle on Bethany Hospice. The results of the raid showed that the

whistleblowing was confined to Spanish Oaks, but Ms. Best remained uneasy.

46. A few more related incidents played into Ms. Best's paranoia about Relators blowing the whistle on Bethany Hospice. One of these incidents involved a series of additional kickback offers to referring physicians (including Drs. Arnett, Harrell, Harper, Sinclair, and Wheeler) to take their wives on a paid vacation and having food, hotels, and expenses and such paid by Bethany Hospice. The offers to doctors went out in May 2015 for a trip in August 2015. Bethany Hospice sent the top referring doctors and their wives on a trip, and paid airfare, hotel, and food for both the doctors and their wives. Relators tried to persuade Ms. Best that this was inappropriate, but she didn't listen. The only physician to decline this offer was Dr. Thomas Miller, the same physician who declined Ms. Best's offer for an ownership stake in Bethany Coastal. Again, he stated that this type of remuneration represented a conflict of interest. Although Ms. Best felt this offer would ingratiate her referral sources to Bethany Hospice, her conversations about it with Relators also increased Ms. Best's paranoia about Relators blowing the whistle on her kickback schemes.

47. Unbeknownst to Relators, they played right into Ms. Best's whistleblower paranoia. In the same timeframe as the discussions about doctor trips, in May, Relators went on vacation to Florida. During that trip, Relator Helmly called Ava Best and, for the first time since their January agreement, broached the issue of putting Relator Helmly's name on the lawsuit to be filed against Spanish Oaks. Ms. Best agreed saying that she was not going to ask Relator Helmly to forego the money she could possibly get from the case.

However, after Relators came back from Florida, Ava Best's attitude toward them markedly changed.

48. Apparently, the last whistleblower straw came when Relators had to take time off in June to meet with the Government. Ms. Best again peppered Relators with questions about this time off. However, this time was different and they responded that they could not tell her about it. At this time, contrary to prior discussions, a case had been filed and a federal judge had entered a seal order gagging Relators from discussing the case.

49. After the June meeting with the DOJ that Relators could not discuss, Ms. Best and all employees "loyal" to Ms. Best started a harassment campaign against Relators trying to get them to quit so she would be "protected" from a retaliation claim. When Ms. Best realized that Relators were not so easily going to quit, the harassment got worse. Ms. Best and those "loyal" employees started fabricating things about Relators to "justify" the retaliatory discrimination and possible future termination if the harassment did not work. Even though Ms. Best tried to create a pretext for termination, she failed to create a contemporary record. Neither Relator was ever written up for anything nor officially disciplined in any way—just harassed. In creating this fake pretext, Bethany Coastal did not even follow its own policy manual.

50. Part of the escalation of harassment and discrimination resulted in an unmerited demotion. Shortly after the visit with the Government that Relators could not discuss, Ava Best and Mac Mackey demoted Relator Helmly to field nurse without explanation or reason. A few weeks later, Ava Best escalated things again by threatening to tell Relator Helmly's

old boss (at Spanish Oaks) “everything,” including telling him about the lawsuit Ms. Best assumed had been filed. She also threatened to out the Spanish Oaks employee who had helped Relators with their lawsuit. This was the same week Relator Helmly finally found out that Ava Best and Ms. Best’s “loyal” employees had been going through Relator Helmly’s personal information in her locked room and her locked desk on a regular basis. Whenever Relator Helmly was gone, she locked her door and only she and Ava Best had a key to her office. Yet, on a regular basis, someone who had a key had been in Relator’s office and gone through her personal things.

51. Relators were stressed and mortified by this conduct and these threats. Then, on July 28, 2015, Ms. Best called Relator Helmly and told her to come into the office. Relator Helmly called Relator Johnson to tell her she was worried about possible retaliation at the proposed meeting—especially in light of Ava Best’s most recent threats. Relator Johnson was very concerned Ava Best was going to do something to retaliate for their standing up to her for her illegal activities. To protect against possible whistleblower retaliation, Relator Johnson texted Relator Helmly at around noon on July 28, 2015 to tell her to have their whistleblower attorney on the line during the conversation (or to at least to record the conversation). However, Relator Johnson accidentally sent the text to the Bethany Coastal group text, which included Ava Best herself. Within minutes of finding out that Relators were trying to protect themselves against whistleblower discrimination by including their whistleblower attorney (about whom Ms. Best learned by ransacking Relator Helmly’s desk), Ava Best had called both of them and

told them they could claim to resign to save face or they could be fired, but, either way, she was firing them that day.

52. Ms. Best and other Bethany Hospice and Bethany Coastal managers told Bethany Coastal employees that Relator Helmly resigned because of her health. They also told others that Relator Helmly resigned to pursue her education. Ms. Best never told anyone (including Relator Helmly) that she was being fired for any lack of productivity or for any improper behavior. Ms. Best never told Relator Johnson that she was being fired for lack of productivity or any improper behavior. Ms. Best also never indicated that to anyone else at Bethany Hospice or Bethany Coastal. Ironically, Relator Johnson had three referrals for Bethany Coastal in her hand at the time Ms. Best fired her. In fact, she had averaged about 14 patients a month for the several months prior to July 28<sup>th</sup>. That did not matter to Ava Best, as she wanted their investigation of illegal activities to stop, she wanted their questioning of her illegal policies to stop, she did not want a whistleblower as her administrator or at her companies, and she was concerned that Relators had or might blow the whistle on Bethany Hospice. Over time, Ms. Best has tried to fabricate excuses and pretexts for Relators sudden disappearance from Bethany Coastal after they started and built the entire office from scratch. However, Bethany Coastal's history undermines this revisionist history as other employees who actually engaged in the type of behavior Ms. Best later ascribed to Relators were never disciplined.

53. The harassment and discrimination continued after the termination. Additional discrimination for protected activity included not allowing Relators to

clean out their offices. Ms. Best went through their things and gave them back what she wanted to give back to them. In addition, knowing that Relators had used information from then current employees of their former employer in their reporting to the Government, Ms. Best forbade anyone working for Bethany Hospice and Bethany Coastal from having any contact with Relators for any reason. Bethany Coastal also blackballed Relators and did what it could to prevent them from obtaining subsequent employment in the area and the industry. Ms. Best, the head of Bethany Coastal's HR department, and others, would give bad references and badmouth Relators to potential employers.

54. After the termination, in an effort to undermine any potential whistleblower case against Bethany Hospice and Bethany Coastal, Ava Best and Monica Jones tried to ferret out any employees who might help Relators or provide them with information. They would call employees in to talk to them and accuse the employees of "talking to Debbie" or "talking to Jolie" and then tell them they needed to "resign." If they did not chose to "resign," Bethany Coastal management would cut their hours and harass them until they quit. Ms. Best fired at least one Bethany Coastal employee for the false accusation that she had had contact with Relators.

55. Then, in a final act of harassment and discrimination and to scare Relators from talking to the Government about Bethany Hospice, Ms. Best actually provided information to Relators' former boss at Spanish Oaks about who was helping them report that company to the Government for FCA violations. That person was immediately fired from Spanish Oaks—

sending the message that Ms. Best would retaliate against anyone involved in reporting FCA violations to the Government and warning Relators not to do it to Bethany Hospice.

56. Undermining the façade and the plethora of made up excuses, the termination of Relators' employment was not well planned because Bethany Coastal management wanted to get Relators away from Bethany Hospice and Bethany Coastal before they could gather evidence of false claims to give to the Government. After Relator Helmly, Bethany Coastal's administrator on file with the state, was terminated, the Claxton office went off the rails.

57. Ms. Best started with what she called an "interim clinical director," who was an employee of Bethany Hospice Valdosta office. Of course, the interim clinical director from Bethany Hospice in Valdosta did not actually come in to the Claxton office every day. Even when the "interim director" did come to the site, she would arrive between 10:00-10:30 a.m. and then leave by 1:00 or 2:00 p.m. Ms. Best later made the clinical director of the Bethany Hospice Douglas location, Jeneen Cliett, the administrator for Bethany Coastal (which is 1.5 hours away). After Ms. Cliett "became" the administrator of Bethany Coastal, she remained the director of the Douglas location, and she never visited the Claxton facility. She would merely "call in." Both of these actions are illegal. There must be an administrator on site all day every day.

58. Ms. Best also made Bridget Thornton the clinical director of Bethany Coastal, even though she was the only RN working there, and she did not meet the qualifications to be a clinical director. There are also two LPNs that were then being used in place of RNs,

so there was a chain reaction of regulatory violations simply because Ms. Best was unprepared to fire her administrator for protected activity.

59. While Relators were at Bethany Coastal, kick-backs were not the only thing they were investigating. Ms. Best did not have a social worker with a master's degree in social work seeing patients. This is a prerequisite to billing for the visit. Relator Johnson was told about this by the very person seeing the patients who did not have her masters.

60. In addition, Ms. Best would discharge patients if they were going into the hospital (also against regulations). An example is patient P in Savannah, Georgia. Relator Johnson was told this in person by the nurse that had to meet patient P at the hospital to have him sign revocation papers. Some of the patients that went directly into the hospital and were also picked up that very same day include IC, JP, HK, and ST. Patient AQ also went to the doctor for aggressive treatment, and Bethany Coastal did not pay for this even though he was a full Medicaid patient. Ms. Best also discharged patients once they ran out of their Medicare payments. If they were on Medicaid, she would keep them because they do not have a monetary limit.

61. There are also issues of neglect and failure to perform the services required by hospice. A patient by the name of SB ended up dying unnecessarily due to negligence on Bethany Coastal's part of not treating a urinary tract infection. TT is a patient who had passed away two days before any nurse went out to check on him. The neighbors actually found him as they had not seen him out. It was said he had been dead for days,

but because the nurse said he would not answer the phone, she did not go by and check on him.

62. During their investigation of Medicare and Medicaid fraud at Bethany Hospice and Bethany Coastal, Relators gained intimate knowledge of Bethany Hospice's and Bethany Coastal's billing protocols and operations. This familiarity apprised them to the types of patients Bethany Hospice and Bethany Coastal endeavored to put under service, who the primary referral sources for each entity were, and the specific entities that reimbursed Bethany Hospice for hospice services.

63. During their investigation, Relators confirmed several facts with the former Clinical Director of Bethany Hospice (Douglas), Ms. Shanda Jowers including that the referrals from the "Bethany Hospice doctors" were Medicare and Medicaid and that Bethany Hospice billed the government for these patients. In her capacity as Clinical Director, Ms. Jowers oversaw the patient care operations of the Douglas office and acted as a liaison with management staff, particularly Ms. Ava Best and Ms. Jeneen Cliett. Ms. Jower's position necessarily apprised her to Bethany Hospice's patient and payor mix, and she shared this knowledge with Relators. She confirmed for Relators that Bethany Hospice's Douglas facility received the vast majority of its patient referrals from the "Bethany Hospice doctors." She confirmed that Bethany Hospice's policy was to admit patients only if they had Medicare or Medicaid coverage. She confirmed that she knew about the fact that the patients referred by the "Bethany Hospice doctors" were Medicare and Medicaid and that Bethany billed (and collected) for them from conversations with Ms. Best and Ms. Cliett both in

management meetings and during day-to-day operations that Bethany Hospice. They also made it clear to her that employees needed to ensure patients had Medicare and Medicaid eligibility so that Bethany Hospice could continue to receive money from these government programs. If a patient did not have eligibility from a government program, Bethany Hospice employee Robby Carr would work with the patient to try and get them either Medicare or Medicaid coverage. Ms. Jowers confirmed for Relators that if that did not work, the patients were not admitted, because Bethany Hospice only admitted and billed for Medicare or Medicaid patients with eligibility.

64. During their investigation, Relators confirmed several facts with the former Bethany Hospice community education representative, Robert Clements. As a community education representative for Bethany Hospice, Mr. Clements had access to all of Bethany Hospice's referral data, including information housed in the Consolo program. In this capacity, he also received referrals for Medicare and Medicaid beneficiaries from the Bethany Hospice doctors Arnett, Sinclair, Harrell, and Harper. Mr. Clements confirmed that every single referral from these physicians was for a Medicare or Medicaid beneficiary. Mr. Clements knew this because each time he retrieved referrals from these physicians, the physician orders and patient paperwork would denote the payor. During his employment with Bethany Hospice (2014 through March 30, 2018), Mr. Clements would tender his referrals from the "Bethany Hospice doctors" to Ms. Tonya Smith (Bethany Hospice's admissions coordinator) so that she could process them in Consolo which would bill their per diem on a CMS Form 1500. No patient was admitted to Bethany

Hospice in Douglas until Ms. Smith certified that they had Medicare eligibility and she logged the referral source into Consolo. Mr. Clements confirmed with Ms. Smith as well as Bethany Hospice's Clinical Director and Vice President, Ms. Jeneen Cliett, that Bethany Hospice billed and received payment from the government for the "Bethany Hospice doctor" referrals. Ms. Smith, Ms. Cliett, and Ms. Best were a core of the Bethany Hospice billing apparatus. Ms. Best made and the others executed the Bethany Hospice policy of confirming a patient's Medicare eligibility for hospice care prior to admitting the patient and billing Medicare. Mr. Clements confirmed that he learned all this information about billing and collecting from conversations with Ms. Smith, Ms. Cliett, and Bethany Hospice's accountant, Elnita Ginn, who worked in Valdosta. Ms. Ginn also confirmed that Bethany Hospice received payments from Medicare for referrals made by Dr. Wheeler. Through conversations with Ms. Ginn, Ms. Cliett, and Ms. Smith, Mr. Clements learned that Bethany Hospice submitted and received payments for hospice care claims for those patients referred by the "Bethany Hospice doctors," throughout his tenure with Bethany Hospice. Mr. Clements has confirmed many of Relators' allegations regarding Bethany Hospice's kickback scheme, including that Bethany Hospice receives nearly all of its referrals from area physicians with a financial interest in Bethany Hospice, that these physicians always referred every Medicare and Medicaid patient to Bethany Hospice that they controlled, and that Bethany Hospice billed government health programs for the services rendered to Medicare and Medicaid patients referred by these physicians.

65. As part of their investigation, Relators have accessed Bethany Hospice's and its physician-owners' aggregate billing and referral data for Medicare beneficiaries. This information only tracks Medicare patients for which Bethany Hospice has billed Medicare and received payment. The only patients tracked from doctor referrals to Bethany Hospice are Medicare patients that have been billed and collected. The data details how many Medicare referrals a particular physician makes to a particular hospice facility, as well as how many total patient days the hospice received Medicare reimbursement for as a result of that physician's referrals.

66. As stated, Bethany Hospice is a for-profit hospice enrolled in the Medicare program. Bethany Hospice derives nearly all of its revenue from the Medicare program monies. In 2014, Bethany Hospice provided hospice services to 312 Medicare beneficiaries for a total of 24,791 patient days. In exchange for providing these services, Medicare reimbursed Bethany Hospice \$3,318,134. In 2015, Bethany Hospice received \$4,529,028.23 for Medicare services rendered to 422 Medicare beneficiaries for a total of 33,077 total patient days. In 2016, Bethany Hospice provided hospice services for 510 Medicare beneficiaries for which it received a total Medicare payment amount of \$6,483,714 for 47,126 total patient days.

67. All of Bethany Hospice's Medical Directors and part-owner physicians referred the vast majority of their Medicare patients to Bethany Hospice. In fact, from Medicare claims data, Bethany Hospice's top three referral sources from the 4<sup>th</sup> Quarter of 2016 through the 3<sup>rd</sup> quarter of 2018 are Dr. Sinclair (97 total Medicare patients referred to Bethany Hospice),

Dr. Harper (91 total Medicare patients referred to Bethany Hospice), and Dr. Harrell (68 total Medicare patients referred to Bethany Hospice). Dr. Arnett—who is preceded only by the other “Bethany Hospice doctors”, the head of the hospitalist program at CRMC, and a cardiologist affiliated with CRMC—ranked sixth highest in referral sources with 40 total Medicare patient referrals to Bethany Hospice over the same period.

68. From the 3<sup>rd</sup> Quarter of 2016 through the 2<sup>nd</sup> quarter of 2018, Dr. Harrell treated at least 76 Medicare hospice patients. Of these 76 patients, Dr. Harrell referred 62 to Bethany Hospice, making his referral rate to Bethany Hospice (i.e., the percentage of referrals to a specific provider out of total referrals made) 81.6%. Bethany Hospice received reimbursement for Medicare for 6,513 patient days as a result of these referrals. Notably, Dr. Harrell referred at least eight of the remaining fourteen patients to providers in counties where Bethany Hospice does not operate. Thus, by adjusting for patients that Dr. Harrell could not have referred to a Bethany Hospice facility and unenumerated referrals, his referral rate to Bethany Hospice is 100%.

69. Similarly, Dr. Arnett referred at least 63 Medicare beneficiaries for hospice services from the 3<sup>rd</sup> Quarter of 2016 through the 2<sup>nd</sup> Quarter of 2018. Of these 63 patients, 38 were referred to Bethany Hospice for a total of 4,155 patient days billed to Medicare. Dr. Arnett referred the vast majority of his remaining patients to providers operating in counties where Bethany Hospice does not own a facility. When adjusting for these patients and unenumerated referrals, Dr. Arnett’s referral rate to Bethany Hospice is 100%.

70. From the 3<sup>rd</sup> Quarter of 2016 through the 2<sup>nd</sup> Quarter of 2018, Dr. Harper referred at least 112 Medicare hospice patients to various providers. Of these 112 patients, 57 were referred to Bethany Hospice for a total of 2,763 patient days billed to Medicare. When adjusting for patients referred to counties lacking a Bethany Hospice presence and unenumerated referrals, Dr. Harper's referral rate to Bethany Hospice is 100%.

71. From the 3<sup>rd</sup> Quarter of 2016 through the 2<sup>nd</sup> quarter of 2018, Dr. Sinclair referred at least 159 Medicare beneficiaries to various hospice destinations for a total of 5,779 patient days billed to Medicare. Over this period of time, Dr. Sinclair referred 96 patients to Bethany Hospice. When adjusting for referrals made to providers operating in counties where Bethany Hospice does not and unenumerated referrals, Dr. Sinclair's referral rate to Bethany Hospice is 100%.

72. One of the key protocols at Bethany Hospice and Bethany Coastal was to immediately check all potential patients for Medicare coverage. Ava Best insisted that Bethany Hospice and Bethany Coastal patients have either Medicare or Medicaid coverage. This is one of the ways Relators found out about the issues concerning Presbyterian Hospice.

73. As a marketer, part of Relator Johnson's job duties entailed visiting patients in their homes and collecting their social security numbers to see if these patients had any Medicare eligibility left. In doing so, Relator Johnson interacted with administration at every Bethany Hospice and Bethany Coastal location. Billing personnel would take the information from the marketers and run it through the system to assure coverage before a patient could be admitted. This

protocol was heavily emphasized in Relator Johnson's mandatory marketer training. Her trainer was Bethany Hospice employee Robert Clements in Douglas, Georgia.

74. During this training, Mr. Clements and Relator Johnson also visited the offices of the "Bethany Hospice doctors" for Bethany Hospice in Douglas, which is where she picked up a great deal of information about the kickback/referral process. Mr. Clements explained to Relator Johnson that Bethany Hospice had doctors with financial ties to Bethany Hospice who would refer all their patients to Bethany Hospice. During these visits, Mr. Clements would ask the "Bethany Hospice doctors" if they had any patients that needed to be referred to Bethany Hospice and whether these patients were covered by Medicare or Medicaid. Drs. Arnett, Sinclair, Harper, and Harrell provided Mr. Clements with names of patients eligible for Medicare and Medicaid coverage.

75. Afterwards, Mr. Clements and Relator Johnson would visit those patients referred by the "Bethany Hospice doctors" in the patients' homes. Mr. Clements explained to Relator Johnson that she needed to collect each patient's social security number. This allowed Ms. Best to see whether a patient had previously been under hospice, how long they had been under hospice, and their certification period. Mr. Clements told Relator Johnson that Bethany Hospice and Bethany Coastal collected this information to determine if patients were eligible for Medicare and Medicaid coverage. He further explained that Bethany Hospice and Bethany Coastal's unwritten policy was to acquire more Medicare patients because "Medicare paid more." Relator Johnson also found out about the

percentage of the census that came from referrals tainted by kickbacks and that all the patients were billed to the Government until their benefits ran out.

76. Relator Johnson had access to the census reports documenting each site's patients and which payor paid for the patients' care. These reports revealed that federal health care programs covered the hospice expenses for a substantial majority of patients (100% or nearly 100%). Relator Johnson also had the opportunity to meet with billers at the Bethany Hospice Valdosta office. These individuals informed her that they too entered patient's social security information into the billing system to make sure the patient was eligible for Medicare coverage before putting the patient under service. From all of her contacts with billers, Relator Johnson was able to find out about the billing and collection from Medicare of the illicit referrals and the submission of bills for other inappropriate patients.

77. As the administrator at Bethany Coastal, Relator Helmly had access to all of the billing information and census reports for every Bethany office. In fact, Relator Helmly had full access to all billing and referral data for all patients at Bethany Hospice and Bethany Coastal. She also attended meetings with Ms. Best where Bethany Hospice and Bethany Coastal management discussed site productivity and census numbers for all Bethany Hospice's and Bethany Coastal's sites. Through these sources, Relator Helmly learned that all or nearly all of Bethany Hospice's patients put under service received coverage from Medicare and Medicaid. She shared this knowledge with Relator Johnson. In investigating this case, Relators found that all (or nearly all) the hospice patients

referred by Drs. Arnett, Sinclair, Wheeler, Harper, and Harrell, were Medicare or Medicaid patients and that Bethany Hospice submitted claims to the Government for the per diem payments for those patients knowing that they were false. The patients that were illegally referred (that Relators found) were not only billed to the Government, but also paid for by the Government.

78. Instead of treating Bethany Coastal as a separate corporate entity, Ms. Best and Mr. Mackey ran it as if it were another facility office of Bethany Hospice. Thus, while Bethany Hospice did not officially employ Relators, the significant overlap in personnel, resources, and operations between Bethany Hospice and Bethany Coastal effectively made Relators corporate insiders of Bethany Hospice.

79. As a preliminary matter, Bethany Hospice and Bethany Coastal do not even attempt to differentiate between themselves when advertising hospice services to the general public. The two corporate entities advertise their services from the same website, "bethanyhospice.com." The website informs visitors that "[Bethany Hospice] has five locations throughout South Georgia." Similarly, Bethany Hospice's non-discrimination policy and notice of privacy practices fail to draw a distinction between Bethany Hospice and Bethany Coastal. Instead, both policies refer to the provider as "Bethany Hospice."

80. The same cadre of individuals shared control and ownership over both Bethany Hospice and Bethany Coastal. At various times, Ava Best has served as the President and CEO of both Bethany Hospice and Bethany Coastal. Similarly, Mac Mackey has served as CFO of both Bethany Hospice and Bethany Coastal.

Ms. Best and Mr. Mackey (individually and through his holding company ECM Coastal, LLC) both own substantial investment interests in Bethany Hospice and Bethany Coastal, as do Drs. Richard Wheeler and John Arnett. Dr. Arnett serves as the only other manager of Bethany Coastal, and Dr. Wheeler is the only other manager for Bethany Hospice. Relator Helmly attended joint leadership meetings where Bethany Hospice and Bethany Coastal site productivity and census numbers were discussed.

81. Bethany Hospice and Bethany Coastal commingled funds and assets without properly accounting for each corporate entity's separate use. For instance, all of the offices across both Bethany Hospice and Bethany Coastal used the same product license for its hospice practice management software, Consolo. Employees from Bethany Coastal could access information on patients receiving hospice care at any of the Bethany Hospice offices, and vice versa. For instance, marketers at Bethany Coastal could access all of the physician notes entered by other marketing representatives employed by Bethany Hospice. For the first four months that Relator Johnson worked at Bethany Coastal, she had to enter Bethany Coastal's information manually into the Consolo program when uploading her marketing pieces because the program did not have presets for Bethany Coastal. It only had presets for Bethany Hospice.

82. Two company cars owned by Bethany Hospice were driven up from Valdosta to Claxton to be used by the Bethany Coastal marketers. Relator Johnson drove one such car. Ms. Best had outfitted the car with GPS so a Bethany Hospice employee in Valdosta could

track the movements of the Bethany Coastal employees.

83. Ms. Best also sent extra office equipment owned by Bethany Hospice to Bethany Coastal without charging Bethany Coastal. This office equipment included filing cabinets, desks, and office supplies.

84. Marketers like Relator Johnson received pre-paid company cards to subsidize their gas and meal expenses incurred while in the field. The card issued to Relator Johnson read “Bethany Hospice,” suggesting that the card connected to a Bethany Hospice account rather than a Bethany Coastal account.

85. Bethany Hospice issued Bethany Coastal employees company cell phones. These phones had a 223 area code because Bethany Hospice’s operations were centrally located in Valdosta, Georgia. Of note, the area code for Claxton, Georgia is 912. Bethany Hospice and Bethany Coastal also shared the same email server. All employees’ email addresses featured the same domain name “@bethanyhospice.com.”

86. Ms. Best routinely sent Bethany Hospice employees to work at Bethany Coastal without contracting out their services so that she could avoid hiring staff to work at Bethany Coastal. Starting in May 2015 and continuing on and off throughout Relators’ tenure at Bethany Coastal, Ms. Best sent a nurse, several social workers, and the office chaplain from Bethany Hospice’s Douglas office to work at Bethany Coastal despite the fact that these individuals were employed and paid by Bethany Hospice.

87. In the wake of Ms. Best’s decision to terminate Relators’ employment for engaging in protected activity, Ms. Best named a Bethany Hospice employee at

the Valdosta office the “Interim Clinical Director” of Bethany Coastal. Later, Ms. Best named Jeneen Clieff, an employee of Bethany Hospice and the Clinical Director of its Valdosta office, the Administrator of Bethany Coastal.

88. Bethany Hospice and Bethany Coastal shared common business departments. Despite only being employed by Bethany Hospice, Monica Jones served as the Head of Quality Assurance for both Bethany Hospice and Bethany Coastal. Only one human resources department existed for the two companies.

89. Ms. Best operated both Bethany Hospice and Bethany Coastal from a singular location in Valdosta, Georgia. When Relator Johnson needed to have her company card reloaded (it had a \$200 limit), she would call Ms. Best in Valdosta, and Ms. Best would place another \$200 on the card. Bills submitted by third parties to Bethany Coastal often fell into delinquency in part because the third parties sent the bill to Bethany Coastal’s office instead of Bethany Hospice’s headquarters in Valdosta. For instance, after Ms. Best terminated Relators’ employment with Bethany Coastal, Joe Lucky, the Administrator for Eagle Health and Rehabilitation of Statesboro, Georgia, called Relator Johnson regarding a patient bill for room and board that had not been paid by Bethany Coastal despite having been sent to its physical address. Relator Johnson informed Ms. Lucky that she would need to submit the bill to Bethany Hospice’s Valdosta office because Ms. Best worked from there.

90. Bethany Hospice and Bethany Coastal also share the same principal office address at P.O. Box 4720, Valdosta, Georgia, 31604, USA.

91. Bethany Hospice did not promulgate policies and/or protocols to its staff. To the extent it did, the same policies and/or protocols applied universally across Bethany Hospice and Bethany Coastal. However, employees at Bethany Coastal received and were beholden to the Bethany Hospice Employee Handbook. Additionally, all marketing forms given to Relator Johnson during the first half of her tenure with Bethany Coastal referred to the hospice provider as Bethany Hospice and only displayed contact information for the Valdosta office. Because Bethany Hospice and Bethany Coastal were essentially the same company and shared all resources and management, Relators knew as much about Bethany Hospice as any other “insider.”

92. All of the conduct alleged in this Complaint is alleged to have occurred “knowingly” meaning with reckless disregard, as that is defined in the False Claims Act, 31 U.S.C. § 3729 and related case law.

### **FIRST CAUSE OF ACTION**

#### **(False or Fraudulent Claims)**

(False Claims Act 31 U.S.C. § 3729(a)(1)(A))

(Georgia False Medicaid Claims Act O.C.G.A. § 49-4-168.1(a)(1))

93. Relators hereby incorporate and re-allege paragraphs 9-19, 22-23, 26-46, 54, and 56-92 as if fully set forth herein.

94. As set forth above, Defendant Bethany Hospice and Palliative Care, LLC, by and through its agents, officers, and employees, knowingly presented, or caused to be presented to the United States Government and the State of Georgia numerous false or fraudulent claims for payment or approval, in

violation of the False Claims Act, 31 U.S.C. § 3729(a)(1)(A) and/or the Georgia False Medicaid Claims Act O.C.G.A. § 49-4-168.1(a)(1).

95. Due to Defendant Bethany Hospice's conduct, the United States and the State of Georgia have suffered substantial damages.

96. The United States and the State of Georgia are entitled to treble damages based upon the amount of damage sustained by them in an amount that will be proven at trial.

97. The United States and the State of Georgia are entitled to the largest civil penalty allowed by law for each of the false claims.

98. Relators are also entitled to their attorney's fees and litigation expenses.

## **SECOND CAUSE OF ACTION**

### **(False Statements)**

(False Claims Act 31 U.S.C. § 3729(a)(1)(B))

(Georgia False Medicaid Claims Act O.C.G.A. § 49-4-168.1(a)(2))

99. Relators hereby incorporate and re-allege paragraphs 19, 22-23, 26-46, 54, and 56- 92 as if fully set forth herein.

100. As set forth above, Defendant Bethany Hospice and Palliative Care, LLC, by and through its agents, officers, and employees, knowingly made, used, or caused to be made or used, a false record or statement material to a false or fraudulent claim, in violation of the False Claims Act, 31 U.S.C. § 3729(a)(1)(B) and or the Georgia False Medicaid Claims Act, O.C.G.A. § 49-4- 168.1(a)(2).

101. Due to Defendant Bethany Hospice's conduct, the United States and the State of Georgia have suffered substantial damages.

102. The United States and the State of Georgia are entitled to treble damages based upon the amount of damage sustained by them in an amount that will be proven at trial.

103. The United States and the State of Georgia are entitled to the largest civil penalty allowed by law for each of the false claims.

104. Relators are also entitled to their attorney's fees and litigation expenses.

**THIRD CAUSE OF ACTION  
(Retaliation Against Relators)**

(False Claims Act-31 U.S.C. § 3730(h))

(Georgia False Medicaid Claims Act O.C.G.A. § 49-4-168.4)

105. Relators hereby incorporate and re-allege paragraphs 9-92 as if fully set forth herein.

106. Defendant Bethany Coastal directly violated Relators' rights pursuant to 31 U.S.C. § 3730(h) and O.C.G.A. § 49-4-168.4 by retaliating against them for lawful acts done by them in furtherance of efforts to stop one or more violations alleged in this action and other protected activities.

107. As a result of Defendant's actions, Relators have suffered damages in an amount to be shown at trial.

108. Relators are entitled to two times back pay, interest, (Relator Johnson) reinstatement, and make whole damages as well as all attorney's fees and litigation expenses.

**PRAYER FOR RELIEF**

**WHEREFORE**, Relators Jolie Johnson and the Estate of Debbie Helmly pray for judgment:

- a. awarding the United States and the State of Georgia damages sustained by them for each of the false claims;
- b. awarding the United States and the State of Georgia treble damages sustained by them for each of the false claims;
- c. awarding the United States and the State of Georgia the largest civil penalty allowed by law for each of the false claims;
- d. awarding Relators 30% of the proceeds of this action and any alternate remedy or the settlement of any such claim;
- e. awarding Relators two times back pay, interest, (Relator Johnson) reinstatement, and make whole damages resulting from retaliation;
- f. awarding Relators their litigation costs and reasonable attorney's fees; and
- g. granting such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Mike Bothwell

Mike Bothwell

Ga Bar No. 069920

Mike@WhistleblowerLaw.com

Attorney for Relators

**APPENDIX D**

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**Federal Rule of Civil Procedure 9 provides in relevant part:**

**Rule 9. Pleading Special Matters**

\* \* \*

**(b) Fraud or Mistake; Conditions of Mind.** In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

\* \* \*

**The False Claims Act provides in relevant part:**

**31 U.S.C. § 3729. False claims**

**(a) Liability for Certain Acts.—**

(1) In general.—Subject to paragraph (2), any person who—

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

\* \* \*

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties

Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410<sup>1</sup>), plus 3 times the amount of damages which the Government sustains because of the act of that person.

\* \* \*

**The Anti-Kickback Statute provides in relevant part:  
42 U.S.C. § 1320a-7b. Criminal penalties for acts  
involving Federal health care programs**

\* \* \*

(b) Illegal remunerations

(1) Whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—

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

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$100,000 or imprisoned for not more than 10 years, or both.

(2) Whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or

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<sup>1</sup> So in original. Probably should read “Public Law 101-410”.

91a

rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

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

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$100,000 or imprisoned for not more than 10 years, or both.

\* \* \*