

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between and among: (A) the State of New York (the "State"), acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit ("MFCU"); (B) Deborah Yannicelli ("Yannicelli") and Maurice Keshner ("Keshner") (collectively the "Relators"); and (C) B&H Healthcare Services, Inc. doing business as Nursing Personnel Home Care ("Nursing Personnel"), a New York corporation (collectively, the "Parties").

WHEREAS, Nursing Personnel is a Licensed Home Care Services Agency as defined in Article 36 of the New York Public Health Law Section 3602(13) ("LHCSA") with its principal place of business located at 175 South Ninth Street, Brooklyn, New York, and provides home health aide services in New York; and

WHEREAS, on November 5, 2007, Relator Deborah Yannicelli filed a complaint under the qui tam provisions of the federal False Claims Act, 31 U.S.C. §§ 3729-3733 and the New York State False Claims Act, N.Y. Fin. Law § 190(6), captioned United States of America and the State of New York ex rel. Jane Doe v. Extended Nursing Personnel CCHA, LLC, et al., in the United

States District Court for the Eastern District of New York (Civil Action No. 07-4621) (Bloch, J.) (the "Yannicelli Action"); and

WHEREAS, on approximately November 12, 2007, Keshner filed a complaint under the qui tam provisions of the New York State False Claims Act, N.Y. Fin. Law § 190(6), captioned State of New York ex rel. Maurice Keshner v. Nursing Personnel Home Care, et al., in the Supreme Court of the State of New York, County of New York (Index No. 115453/07) (the "Keshner State Court Action"); and

WHEREAS, on March 9, 2006, Keshner filed a complaint under the qui tam provisions of the federal False Claims Act, 31 U.S.C. §§ 3729-3733, captioned United States ex rel. Maurice Keshner v. Nursing Personnel Home Care, et al., in the United States District Court for the Eastern District of New York (Civil Action No. 06-1067) (Bloch, J.) (the "Keshner Federal Action"); and

WHEREAS, on approximately April 30, 2008, the State filed a complaint under CPLR Art. 13-A, the New York State False Claims Act, N.Y. Fin. Law § 189, N.Y. Soc. Serv. Law § 145-b, and the common law, captioned State of New York v. B&H Healthcare Services, Inc. d/b/a Nursing Personnel Home Care, et al., in the

Supreme Court of the State of New York, Kings County (Index No. 13253/2008) (the "State Action"); and

WHEREAS, Nursing Personnel caused to be submitted Medical Assistance Program ("Medicaid") claims for home health aide services ("Medicaid Claims") by Certified Home Health Agencies as defined in Article 36 of the Public Health Law Section 3602(3) ("CHHA"), including defendants Extended Nursing Personnel CHHA, LLC, doing business as Extended Home Care ("Extended HC"), and Excellent Home Care Services, LLC ("Excellent HC"), to fiscal agents of the State of New York pursuant to the Social Services Law and the Public Health Law of the State of New York during the period from at least March 1, 2004 through February 28, 2007 ("Claims Period"); and

WHEREAS, the aforesaid Medicaid Claims were relied upon by the State to pay the CHHAs which, in turn, paid Nursing Personnel, during the Claims Period; and

WHEREAS, MFCU has conducted an industry-wide investigation into the provision of services by home health aides in New York during the Claims Period ("the MFCU Investigation") and the United States and New York State have jointly investigated the allegations in the Yannicelli Action, the Keshner Federal Action, and the Keshner State Court Action; and

WHEREAS, as a result of the MFCU Investigation, MFCU determined that certain home health aide training schools ("Suspect Training Schools") furnished to certain individuals false certificates that certified that those individuals were qualified to provide home health aide services to Medicaid recipients when the individuals were not given the required training or valid certification and therefore such services were not reimbursable by Medicaid; and

WHEREAS, MFCU determined that home health aides who received certificates from Suspect Training Schools were subsequently employed by LHCSAs, including Nursing Personnel, and assigned to Medicaid recipients; and

WHEREAS, CHHAs, including Extended HC and Excellent HC, entered into contracts with Nursing Personnel to furnish home health aides to Medicaid recipients, and thereafter billed Medicaid for services provided by these home health aides; and

WHEREAS, New York State contends that it has certain civil claims against Nursing Personnel under the New York State False Claims Act (N.Y. Fin. Law §§ 189 et seq.), other New York statutes and the common law, as specified in Paragraph 9 below, for engaging in the following conduct during the Claims Period:

a) Nursing Personnel caused to be submitted claims to Medicaid, and received payment thereon, for home health aide services purportedly provided by individuals who presented certificates from Suspect Training Schools that falsely indicated satisfactory completion of a home health aide training course when such individuals had never received the required training or valid certification; and

b) Nursing Personnel caused to be submitted claims to Medicaid for reimbursement for home health aide services that were not rendered

(collectively, the "Covered Conduct"); and

WHEREAS, this Agreement is neither an admission of facts or liability by Nursing Personnel, nor a concession by the State that its claims are not well founded; and

WHEREAS, Nursing Personnel denies the contentions of the State and the relators as set forth herein and in the Yannicelli Action, the Keshner Federal Action, the Keshner State Court Action, and the State Action; and

WHEREAS, to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties mutually desire to reach a full and final settlement pursuant to the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, the Parties agree as follows:

**A. SETTLEMENT PAYMENTS**

1. Nursing Personnel agrees to pay to the United States and the State a total of Ten Million Seven Hundred Fifty-Two Thousand Five Hundred dollars (\$10,752,500.00) with interest at three percent (3%) per annum compounded annually commencing January 5, 2010 through the date of payment (the "Total Medicaid Settlement Amount"). In accordance with 42 U.S.C. § 1396b(d) (2) (C) and 42 C.F.R. § 433.316, payment to the State shall be made as specified in paragraph 2 herein, and payment to the United States shall be made as agreed upon between Nursing Personnel and the United States.

2. In settlement of the Covered Conduct, Nursing Personnel shall pay the State Nine Million Four Hundred Seven Thousand Four Hundred Sixty dollars (\$9,407,460.00), plus three percent (3%) interest per annum compounded annually on the outstanding balance, beginning January 5, 2010 ("Nursing Personnel State Settlement Amount"), pursuant to the following schedule:

Payment	Due on or Before
One Million Four Thousand Nine Hundred Sixty dollars (\$1,004,960.00)	January 5, 2010
One Million Fifty Thousand Three Hundred Twelve dollars and Fifty cents (\$1,050,312.50), plus interest in the amount of Two Hundred Fifty-Two Thousand Seventy-Five dollars (\$252,075.00)	January 5, 2011
One Million Fifty Thousand Three Hundred Twelve dollars and Fifty cents (\$1,050,312.50), plus interest in the amount of One Hundred Ten Thousand Two Hundred Eighty-Two dollars and Eighty-One cents (\$110,282.81)	July 5, 2011
One Million Fifty Thousand Three Hundred Twelve dollars and Fifty cents (\$1,050,312.50), plus interest in the amount of Ninety-Four Thousand Five Hundred Twenty-Eight dollars and Thirteen cents (\$94,528.13)	January 5, 2012
One Million Fifty Thousand Three Hundred Twelve dollars and Fifty cents (\$1,050,312.50), plus interest in the amount of Seventy-Eight Thousand Seven Hundred Seventy-Three dollars and Forty-Four cents (\$78,773.44)	July 5, 2012
One Million Fifty Thousand Three Hundred Twelve dollars and Fifty cents (\$1,050,312.50), plus interest in the amount of Sixty-Three Thousand Eighteen dollars and Seventy-Five cents (\$63,018.75)	January 5, 2013

One Million Fifty Thousand Three Hundred Twelve dollars and Fifty cents (\$1,050,312.50), plus interest in the amount of Forty-Seven Thousand Two Hundred Sixty-Four dollars and Eighty-Three cents (\$47,264.83)	July 5, 2013
One Million Fifty Thousand Three Hundred Twelve dollars and Fifty cents (\$1,050,312.50), plus interest in the amount of Thirty-One Thousand Five Hundred Nine dollars and Thirty-Eight cents (\$31,508.38)	January 5, 2014
One Million Fifty Thousand Three Hundred Twelve dollars and Fifty cents (\$1,050,312.50), plus interest in the amount of Fifteen Thousand Seven Hundred Fifty-Four dollars and Sixty-Nine cents (\$15,754.69)	July 5, 2014

Nursing Personnel shall make each such installment payment of the Nursing Personnel State Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by MFCU.

3. Payment of the Nursing Personnel Settlement Amount shall be secured by a lien pursuant to the New York Uniform Commercial Code on Nursing Personnel's accounts receivable. Nursing Personnel hereby represents and warrants that there are no other liens on its accounts receivable and

that as of the Effective Date of this Agreement the value of its accounts receivable is in excess of Ten Million Three Hundred Thousand dollars (\$10,300,000.00). If, at any time, Nursing Personnel's receivables are valued at an amount less than Eight Million dollars (\$8,000,000.00), Nursing Personnel agrees that the State may execute the lien.

**Payments to Relators**

4. Contingent upon the State receiving the Nursing Personnel State Settlement Amount as set forth in Paragraph 2, within thirty (30) days after the State's receipt of each of these payments, the State agrees to pay Keshner a sum of money equal to eighteen percent (18%) of each of these installment payments. The State's obligation to pay Keshner pursuant to this paragraph is conditioned upon the State's actual receipt of each payment due from Nursing Personnel, as set forth in Paragraphs 2. Each such payment shall be made by wire transfer pursuant to instructions to be provided by Keshner's counsel.

5. Relator Yannicelli agrees that she has no claim against the State for a share of the Nursing Personnel State Settlement Amount.

6. Under no circumstances shall the State have any liability to Relators or Relators' attorneys except as set forth

in Paragraph 4. The State in no way promises or guarantees Relators, nor is liable to Relators for, the collection or payment of any funds pursuant to this Agreement or the payment of any relator's share except as provided herein for funds actually collected and received by the State. Under no circumstances shall the State be required to exercise any authority under this Agreement or any other power or authority for the benefit of Relators.

**B. INDEPENDENT MONITOR**

7. Nursing Personnel will retain, at its own expense and on terms acceptable to the Attorney General, a Monitor in the form of an Independent Review Organization with the responsibilities to review, audit, investigate, and issue reports, as set forth in the Corporate Integrity Agreement Between the New York State Office of the Medicaid Inspector General ("OMIG") and Nursing Personnel being executed contemporaneously herewith.

**C. PROHIBITION AGAINST VIOLATING THIS AGREEMENT**

8. Nursing Personnel shall comply fully with the terms of this Agreement. The Attorney General may make any appropriate application to enforce or interpret the provisions of this Agreement or, in the Attorney General's sole discretion,

commence any action or proceeding, for such other and further relief as the Attorney General deems proper and necessary for the enforcement of this Agreement or to remedy any breach thereof. Prior to bringing any action to enforce or to interpret the provisions of this Agreement, the Attorney General will provide Nursing Personnel with written notice of the alleged failure and a reasonable opportunity to cure the alleged failure or to otherwise respond. However, should the Attorney General deem that immediate action is necessary to protect the State's interest, the Attorney General may act to preserve the status quo without providing notice and an opportunity to cure, provided that the Attorney General gives Nursing Personnel timely notice of the action.

D. **RELEASES**

9. Subject to the exceptions in Paragraph 12 below (concerning excluded claims), in consideration of Nursing Personnel's obligations set forth in this Agreement, conditioned upon payment in full by Nursing Personnel of the Nursing Personnel State Settlement Amount, and subject to Paragraph 31 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the State agrees to release Nursing

Personnel and all of its current and former officers, directors and employees, attorneys, members, managers, and shareholders from any civil or administrative monetary claim arising from the Covered Conduct that the State has or may have against Nursing Personnel under the New York State False Claims Act, N.Y. Fin. Law §§ 189 et seq., Executive Law § 63(12), Social Services Law § 145-b, or any other state law, or common law or equity, including equitable theories of payment by mistake, disgorgement, unjust enrichment, breach of contract and fraud.

10. Subject to the exceptions in Paragraph 12 below, in consideration of the obligations of Nursing Personnel in this Agreement, conditioned upon payment in full by Nursing Personnel of the Nursing Personnel State Settlement Amount, Yannicelli, for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release Nursing Personnel and all of its current and former officers, directors, employees, attorneys, members, managers, and shareholders from any civil monetary claim (including attorneys' fees, costs, and expenses of every kind and however denominated) the State has or may have for the Covered Conduct against Nursing Personnel under the New York State False Claims Act, N.Y. Fin. Law §§ 189 et seq.

11. Subject to the exceptions in Paragraph 12 below, in consideration of the obligations of Nursing Personnel in this Agreement, conditioned upon payment in full by Nursing Personnel of the Nursing Personnel State Settlement Amount, Keshner, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release Nursing Personnel and all of its current and former officers, directors, employees, attorneys, members, managers, and shareholders from any civil monetary claim the State has or may have for the Covered Conduct against Nursing Personnel under the New York State False Claims Act, N.Y. Fin. Law §§ 189 et seq., provided, however, that Keshner's release does not release Nursing Personnel for any claims for attorneys' fees, expenses and costs under the Federal False Claims Act 31 U.S.C. § 3730(d) and the New York False Claims Act, N.Y. State Finance Law § 190(7).

12. Notwithstanding any term of this Agreement, including the releases provided in Paragraph 9-11 above, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are the following claims of the State:

(a) Any civil, criminal or administrative claims arising under the State tax laws;

(b) Any civil, criminal, or administrative claims against individuals, including current or former directors, officers, employees, agents or shareholders of Nursing Personnel who have been criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Covered Conduct;

(c) Any liability to the State (or its agencies) for any conduct other than the Covered Conduct; and

(d) Any claims based upon such obligations as are created by this Agreement.

13. Subject to the exceptions in Paragraph 12 (concerning excluded claims), in consideration of the obligations of Nursing Personnel in this Agreement, conditioned upon payment in full by Nursing Personnel of the Nursing Personnel State Settlement Amount, Keshner, for himself individually, and for his heirs, successors, attorneys, agents, and assigns, agrees to release Nursing Personnel and all of its current and former officers, directors, employees, attorneys, members, managers, and shareholders from any claim Keshner has asserted, could have asserted or may assert in the future for any reason or for any acts or omissions from the beginning of time through the date of this Agreement, provided, however, that

Keshner's release does not release Nursing Personnel for Keshner's claims for attorneys' fees, expenses and costs under the Federal False Claims Act 31 U.S.C. § 3730(d) and the New York False Claims Act, N.Y. State Finance Law § 190(7).

14. Subject to the exceptions in Paragraph 12 (concerning excluded claims), in consideration of the obligations of Nursing Personnel in this Agreement, conditioned upon payment in full by Nursing Personnel of the Nursing Personnel State Settlement Amount, Yannicelli, for herself individually, and for her heirs, successors, attorneys, agents, and assigns, agrees to release Nursing Personnel and all of its current and former officers, directors, employees, attorneys, members, managers, and shareholders from any claim Yannicelli has asserted, could have asserted or may assert in the future for any reason or for any acts or omissions from the beginning of time through the date of this Agreement.

15. Nursing Personnel fully and finally releases the State, its agencies, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Nursing Personnel has asserted, could have asserted, or may assert in the future against the State, its agencies, employees, servants, and

agents, related to the matters covered by the Yannicelli Action, the Keshner State Court Action, the Keshner Federal Action, the State Action, the MFCU Investigation, any prosecution related thereto, and this Agreement.

16. Nursing Personnel fully and finally releases Yannicelli and her heirs, successors, attorneys, agents, and assigns from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Nursing Personnel has asserted, could have asserted, or may assert in the future against Yannicelli or her heirs, successors, attorneys, agents, and assigns for any acts or omissions from the beginning of time through the date of this Agreement.

17. Nursing Personnel fully and finally releases Keshner and his heirs, successors, attorneys, agents, and assigns from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Nursing Personnel has asserted, could have asserted, or may assert in the future against Keshner or his heirs, successors, attorneys, agents, and assigns for any acts or omissions from the beginning of time through the date of this Agreement.

18. Yannicelli and her heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and

agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to N.Y. Fin. Law § 190(5)(b)(ii) and, Yannicelli, for herself and for her heirs, successors, attorneys, agents, and assigns, fully and finally releases, waives, and forever discharges the State, its officers, agents, and employees, from any claims arising from or relating to N.Y. Fin. Law § 190; from any claims arising from the filing of the Yannicelli Action, the Keshner Federal Action, the Keshner State Action, or the State Action against the Settling Defendants; from any other claims for a share of the Settlement Amount; and in full settlement of any claims Yannicelli may have against the State under this Agreement. This Agreement does not resolve or in any manner affect any claims that the State has or may have against Yannicelli arising under the State's tax laws, or any claims arising under this Agreement.

19. Keshner and his heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to N.Y. Fin. Law § 190(5)(b)(ii) and, conditioned upon receipt of the payments described in Paragraph 4, Keshner, for himself and for

his heirs, successors, attorneys, agents, and assigns, fully and finally releases, waives, and forever discharges the State, its officers, agents, and employees, from any claims arising from or relating to N.Y. Fin. Law § 190; from any claims arising from the filing of the Yannicelli Action, the Keshner Federal Action, the Keshner State Action, or the State Action against the Settling Defendants; from any other claims for a share of the Settlement Amount; and in full settlement of any claims Keshner may have against the State under this Agreement. This Agreement does not resolve or in any manner affect any claims that the State has or may have against Keshner arising under the State's tax laws, or any claims arising under this Agreement.

**E. OTHER PROVISIONS**

20. Nursing Personnel hereby agrees not to offer or accept an offer to sell all or any part of its business operations without giving prior notice to the Attorney General, who, in his sole discretion, may require a security mechanism to ensure payments due under this Agreement. Should all or any portion of Nursing Personnel's business be sold on or before full payment to the State of the Nursing Personnel State Settlement Amount pursuant to Paragraph 2 above, payment of the Nursing Personnel State Settlement Amount shall be accelerated

and shall be paid upon closing of such sale. Further, no officer, director, employee, member, manager or shareholder of Nursing Personnel may accept or receive any remuneration relating to any such sale, including, but not limited to, any portion of the proceeds of such sale, directly or indirectly, until the Nursing Personnel State Settlement Amount is paid in full.

21. In the event that the State seeks remedies for collection or enforcement of Nursing Personnel's obligations hereunder, and the State substantially prevails in its collection or enforcement action, Nursing Personnel shall be responsible for all costs and expenses incurred by the State in connection with that action.

22. In the event that Nursing Personnel fails to pay any or all of the Nursing Personnel State Settlement Amount when due as set forth in Paragraph 2 above, the State, in its sole discretion, may declare any or all of the following:

(a) any dismissals as to Nursing Personnel shall be null and void, and the State may file a confession of judgment against Nursing Personnel in the form attached hereto as Exhibit A;

(b) rescind its agreement to this Agreement and pursue all available remedies; or

(c) reinstate an action or actions against Nursing Personnel.

23. In the event the State reinstates an action, Nursing Personnel expressly agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that (A) are filed by the State within thirty (30) calendar days of written notification to Nursing Personnel that this Agreement has been rescinded, and (B) relate to the Covered Conduct, except to the extent such defense was available on the date the earliest complaint in the Yannicelli Action, the Keshner State Court Action, the Keshner Federal Action, or the State Action, was filed.

24. In the event the State reinstates an action, Nursing Personnel further waives and will not assert any defenses it may have to any action relating to the Covered Conduct to the extent that such defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the United States Constitution, or under the Excessive Fines Clause in the Eighth Amendment of

the United States Constitution, this Agreement bars a remedy sought in such action.

25. Nursing Personnel agrees that this Agreement is not punitive in purpose or effect.

26. Nursing Personnel agrees that all costs incurred by or on behalf of itself and any associated person or entity in connection with (1) the MFCU Investigation; (2) the Settling Defendants' investigation and defense of this matter (including attorneys' fees); (3) the negotiation and performance of this Agreement; (4) the payment pursuant to this Agreement; and (5) preparing and submitting any reports required under this Agreement, are unallowable costs on government contracts and under the Medicaid Program. Nursing Personnel will not charge such unallowable costs directly or indirectly to the Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by any Medicaid Provider to the Medicaid Program.

27. This Agreement is intended to be for the benefit of the Parties to this Agreement only, and by this instrument the Parties to this Agreement do not release any claims against

any other person or entity, except as expressly provided by this Agreement.

28. Nursing Personnel agrees that it will not seek payment for any health care services covered by this Agreement from any health care beneficiaries or their parents or insurers.

29. Nursing Personnel shall maintain custody of, or make arrangements to have maintained, all documents and records related to the Covered Conduct for a period of two years after completion of the payment of the Nursing Personnel State Settlement Amount or the period required by 18 N.Y.C.R.R. § 504.3 and any applicable provider manual, whichever is later.

30. Nursing Personnel expressly warrants that it has reviewed its own financial situation and that it is currently solvent within the meaning of 11 U.S.C. § 547(b)(3), and that it currently believes it will remain solvent following its payment of the Nursing Personnel State Settlement Amount. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Nursing Personnel, within the meaning of 11 U.S.C. § 547(c)(1) and (b) have concluded that these mutual promises, covenants and

obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Nursing Personnel was or became indebted to on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

31. If, within ninety-one (91) days of the Effective Date of this Agreement or of any payment made under this Agreement, Nursing Personnel commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization or relief of debtors (a) seeking to have any order for relief of any of Nursing Personnel's debts, or seeking to adjudicate Nursing Personnel as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Nursing Personnel or for all or any substantial part of its assets, Nursing Personnel agrees as follows:

a. Payment of the Nursing Personnel State Settlement Amount shall be accelerated and the full amount deemed due and owing.

b. Nursing Personnel's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Nursing Personnel will not argue or otherwise take the position in any such case, proceeding or other action that: (i) its obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Nursing Personnel was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payments made to the State hereunder; or (iii) the mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Nursing Personnel.

c. If any of Nursing Personnel's obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action or proceeding against Nursing Personnel for the claims that would otherwise be covered by the releases provided in Paragraphs 9-14, above. Nursing Personnel agrees that (i) any such claims, actions or proceedings brought by the State (including any proceedings to exclude the Settling Defendants from participation in Medicaid) are not subject to an

"automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and Nursing Personnel shall not argue or otherwise contend that the State's claims, actions, or proceedings are subject to an automatic stay; (ii) Nursing Personnel shall not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceedings which are brought by the State within thirty (30) calendar days of written notification to Nursing Personnel that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the date the earliest complaint against such defendant in the Yannicelli Action, the Keshner State Court Action, the Keshner Federal Action, or the State Action, was filed; and (iii) the State has a valid secured claim against Nursing Personnel in the amount of Fourteen Million Four Hundred Twenty-Six Thousand Two-Hundred Fifty dollars (\$14,426,250.00), and the State may pursue its claims in the case, action or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

d. Nursing Personnel acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

32. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

**Choice of Law and Venue**

33. This Agreement is governed by the laws of New York State without regard to choice of law or conflict of laws principles. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement, including any dispute regarding Nursing Personnel's payment of Keshner's attorneys' fees, expenses, and costs, will be the United States District Court for the Eastern District of New York. The Parties waive any objection that any of them may now have or hereafter may have to this venue and agree to accept and acknowledge service in any such suit, action or proceeding.

**No Waiver by the State; Survivability**

34. Any failure by the State to insist upon the strict performance of any of the provisions of this Agreement

shall not be deemed a waiver of any of the provisions hereof, and the State, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

35. If any part of this Agreement shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Agreement, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

36. The terms of this Agreement shall remain effective notwithstanding the death or incapacity of any person, or any appeal, collateral attack, or any challenge to any criminal charge, conviction, plea or sentencing of any person, including but not limited to the reversal, modification, or dismissal of all or any portion of such charge, conviction, plea or sentence, or the charging, conviction, plea or sentencing of any other person.

**Complete Agreement**

37. This Agreement constitutes the complete agreement between the Parties with respect to the issues covered herein only. This Agreement may not be amended, changed, modified or

waived except in writing signed by the Party or Parties affected by said amendment, change or modification.

38. Nursing Personnel acknowledges and represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever and upon due deliberation with the advice of counsel.

39. Yannicelli and Keshner each acknowledge and represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever, and that each Relator has entered into this Agreement upon due deliberation with the advice of counsel.

40. The undersigned individuals signing this Agreement on behalf of Nursing Personnel, Yannicelli, and Keshner represent and warrant that they are authorized, respectively, by Nursing Personnel, Yannicelli, and Keshner to execute this Agreement. The undersigned Deputy Attorney General represents that she is signing this Agreement in her official capacity and that she is authorized to execute this Agreement.

41. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

42. The captions in this Agreement are provided for reference only and are not operative terms of this Agreement.

43. The effective date of this Agreement is the date upon which the last signatory to the Agreement signs ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for the purposes of this Agreement.

44. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

45. Nursing Personnel agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects Nursing Personnel's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the State is not a party.

#### **Notices**

46. Any notices pursuant to this Agreement shall be in writing and shall, unless expressly provided otherwise

herein, be given by hand delivery, express courier, or facsimile transmission followed by postage prepaid mail, and shall be addressed as follows:

IF TO THE ATTORNEY GENERAL and the STATE:

New York State Attorney General  
Medicaid Fraud Control Unit  
Attn: Chief, Civil Enforcement Division  
120 Broadway  
New York, New York 10271

IF TO NURSING PERSONNEL:

Isaac Schwartz, President  
B&H Healthcare Services, Inc.  
175 South Ninth Street  
Brooklyn, New York 11211

With a copy to:

Gerald B. Lefcourt, Esq.  
Gerald B. Lefcourt, P.C.  
148 E. 78<sup>th</sup> Street  
New York, NY 10075

IF TO YANNICELLI:

Timothy J. McInnis, Esq.  
Law Office of Timothy J. McInnis  
521 5<sup>th</sup> Avenue, Suite 1700  
New York, NY 10175-0038

IF TO KESHNER:

Brian P. Kenney, Esq.  
Kenney Egan McCafferty & Young  
3031C Walton Road, Suite 202  
Plymouth Meeting, PA 19462

Irwin G. Klein, Esq.  
Hein, Waters & Klein

825 East Gate Blvd., Suite 308  
Garden city, NY 11530

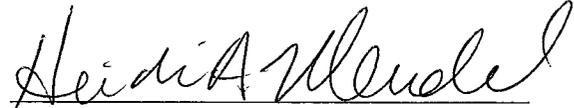
**Dismissal of Action**

47. Within 30 days after receipt of the initial payments described in Paragraph 2 above, (a) the State and Yannicelli shall file a Joint Notice of Dismissal pursuant to Fed. R. Civ. P. 41(a) dismissing their claims for the Covered Conduct in the Yannicelli Action against Nursing Personnel with prejudice as to the State and relator, and dismissing all remaining allegations against Nursing Personnel without prejudice as to the State and with prejudice as to the relator; (b) Keshner shall file a Notice of Dismissal pursuant to Fed. R. Civ. P. 41(a) dismissing his claims for the Covered Conduct in the Keshner Federal Action against Nursing Personnel with prejudice as to the State and the relator, and dismissing all remaining allegations against Nursing Personnel without prejudice as to the State and with prejudice as to the relator; (c) the State and Keshner shall file a notice of dismissal of the Keshner State Court Action as against Nursing Personnel; and (d) the State shall file a notice of dismissal of the State Action as against Nursing Personnel.

**THE STATE OF NEW YORK**

ANDREW M. CUOMO  
Attorney General of the  
State of New York

DATED: December 15, 2009 By:



Heidi Wendel  
Special Deputy Attorney General  
Medicaid Fraud Control Unit  
120 Broadway - 13<sup>th</sup> Floor  
New York, NY 10271  
Telephone: (212) 417-5300  
Facsimile: (212) 417-5335

**B&H HEALTHCARE SERVICES, INC. d/b/a**  
**NURSING PERSONNEL HOME CARE**

DATED: December \_\_, 2009 By:

\_\_\_\_\_  
Isaac Schwartz  
President

DATED: December \_\_, 2009 By:

\_\_\_\_\_  
Gerald B. Lefcourt, Esq.  
Gerald B. Lefcourt, P.C.  
148 E. 78<sup>th</sup> Street  
New York, NY 10075  
Counsel for Nursing Personnel

THE STATE OF NEW YORK

ANDREW M. CUOMO  
Attorney General of the  
State of New York

DATED: December \_\_, 2009 By:

\_\_\_\_\_  
Heidi Wendel  
Special Deputy Attorney General  
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B&H HEALTHCARE SERVICES, INC. d/b/a  
NURSING PERSONNEL HOME CARE

DATED: December 15, 2009 By:

\_\_\_\_\_  
Isaac Schwartz  
President

DATED: December 16, 2009 By:

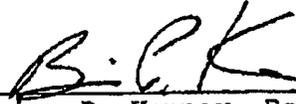
\_\_\_\_\_  
Gerald B. Lefcourt, Esq.  
Gerald B. Lefcourt, P.C.  
148 E. 78<sup>th</sup> Street  
New York, NY 10075  
Counsel for Nursing Personnel

RELATOR MAURICE KESHNER

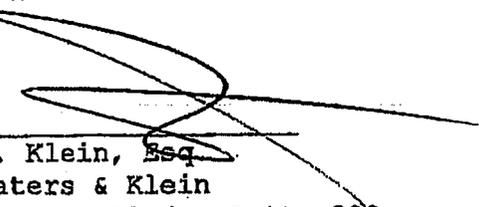
DATED: December \_\_, 2009 By: \_\_\_\_\_

Maurice Keshner  
Relator

DATED: December <sup>15<sup>th</sup></sup>, 2009 BY: \_\_\_\_\_

  
Brian P. Kenney, Esq.  
Kenney Egan McCafferty & Young  
3031C Walton Road, Suite 202  
Plymouth Meeting, PA 19462  
Counsel for Relator Maurice  
Keshner

DATED: December <sup>15</sup>, 2009 BY: \_\_\_\_\_

  
Irwin G. Klein, Esq.  
Hein, Waters & Klein  
825 East Gate Blvd., Suite 308  
Garden City, NY 11530  
Counsel for Relator Maurice  
Keshner

**RELATOR MAURICE KESHNER**

DATED: December \_\_, 2009 By:

\_\_\_\_\_  
Maurice Keshner  
Relator

DATED: December <sup>15<sup>th</sup></sup>, 2009 BY:

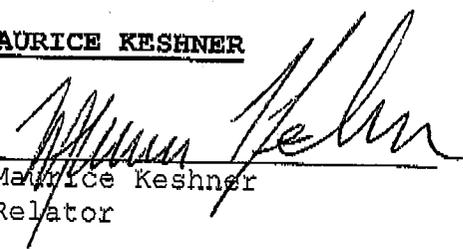
  
\_\_\_\_\_  
Brian P. Kenney, Esq.  
Kenney Egan McCafferty & Young  
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Plymouth Meeting, PA 19462  
Counsel for Relator Maurice  
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DATED: December \_\_, 2009 BY:

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Counsel for Relator Maurice  
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RELATOR MAURICE KESHNER

DATED: December 15, 2009 By:

  
Maurice Keshner  
Relator

DATED: December \_\_, 2009 BY:

\_\_\_\_\_  
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Garden City, NY 11530  
Counsel for Relator Maurice  
Keshner

RELATOR DEBORAH YANNICELLI

DATED: December 15, 2009 By: Deborah Yannicelli  
Deborah Yannicelli  
Relator

DATED: December \_\_, 2009 By: \_\_\_\_\_  
Timothy J. McInnis, Esq.  
Law Office of Timothy J. McInnes  
521 5<sup>th</sup> Avenue, Suite 1700  
New York, NY 10175-0038

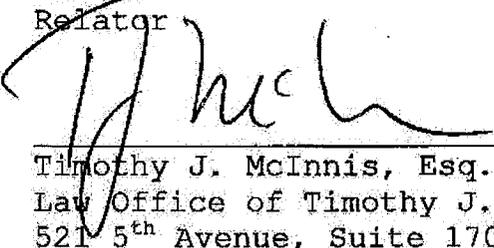
DATED: December \_\_, 2009 By: \_\_\_\_\_  
Mike Bothwell, Esq.  
Bothwell, Bracker & Vann  
304 Macy Drive  
Roswell, GA 30076

**RELATOR DEBORAH YANNICELLI**

DATED: December \_\_, 2009 By:

\_\_\_\_\_  
Deborah Yannicelli  
Relator

DATED: December 15, 2009 By:

  
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Law Office of Timothy J. McInnes  
521 5<sup>th</sup> Avenue, Suite 1700  
New York, NY 10175-0038

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Mike Bothwell, Esq.  
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304 Macy Drive  
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RELATOR DEBORAH YANNICELLI

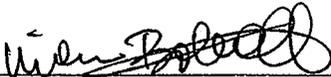
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Relator

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521 5<sup>th</sup> Avenue, Suite 1700  
New York, NY 10175-0038

DATED: December 15, 2009 By:

  
\_\_\_\_\_  
Mike Bothwell, Esq.  
Bothwell, Bracker & Vann  
304 Macy Drive  
Roswell, GA 30076

# **Exhibit A**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
STATE OF NEW YORK,

Plaintiff,

-against -

B&H HEALTHCARE SERVICES, INC. doing  
business as NURSING PERSONNEL HOME CARE,

Defendant.  
-----X

Index No.

AFFIDAVIT OF  
CONFESSION  
OF JUDGMENT

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF KINGS            )

ISAAC SCHWARTZ, being duly sworn, deposes and says:

I am the President of B&H HEALTHCARE SERVICES, INC. doing business as NURSING PERSONNEL HOME CARE (“NURSING PERSONNEL”).

NURSING PERSONNEL is a corporation duly organized and existing under the laws of the State of New York. Its principal place of business is located at 175 South Ninth Street, Brooklyn, New York 11211.

Acting within the scope of my authority and on behalf of the corporation, I hereby confess judgment against NURSING PERSONNEL and authorize entry thereof in favor of the Plaintiff, the State of New York, in the sum of Nine Million Four Hundred Seven Thousand Four Hundred Sixty dollars (\$9,407,460.00) in Kings County or in any other county of the State in which property owned by NURSING PERSONNEL may be located.

This confession of judgment is for a debt justly due the plaintiff State of New York arising out of NURSING PERSONNEL’S participation in the New York State Medicaid

Program. As set forth in the Settlement Agreement, dated December 16, 2009, attached hereto as Exhibit A, during the period from at least March 1, 2004 through February 28, 2007, NURSING PERSONNEL was enrolled in the Medicaid Program as a provider of home health services. NURSING PERSONNEL caused to be submitted claims for reimbursement to the Medicaid Program that were not reimbursable and the New York State Medicaid Program was thereby overbilled in the amount of Nine Million Four Hundred Seven Thousand Four Hundred Sixty dollars (\$9,407,460.00).

I expressly authorize entry of judgment based on this Affidavit of Confession of Judgment against NURSING PERSONNEL at any time without notice.

B&H HEALTHCARE SERVICES, INC. doing  
business as NURSING PERSONNEL HOME CARE

By:

\_\_\_\_\_  
ISAAC SCHWARTZ

Sworn to before me this  
\_\_\_ day of December 2009

\_\_\_\_\_  
Notary Public