SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORLEANS
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PEOPLE OF THE STATE OF NEW YORK by
LETITIA JAMES, Attorney General of the
State of New York,

Petitioner, Index No. _____

-against-

COMPREHENSIVE AT ORLEANS LLC d/b/a
THE VILLAGES OF ORLEANS HEALTH AND
REHABILITATION CENTER, TELEGRAPH REALTY
LLC, CHMS GROUP LLC, VILLAGES OF ORLEANS
LLC, ML KIDS HOLDINGS LLC, BERNARD FUCHS,
JOEL EDELSTEIN, ISRAEL FREUND,
GERALD FUCHS, TOVA FUCHS, DAVID GAST,
SAM HALPER, EPHRAM LAHASKY,
BENJAMIN LANDA, JOSHUA FARKOVITS,
TERESA LICHTSCHEIN, and DEBBIE KORNGUT,

Respondents.
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**MEMORANDUM OF LAW IN SUPPORT OF
THE VERIFIED PETITION**

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Petitioner, the People of the State of New York, by Letitia James, Attorney General of the State of New York (the "State"), submits this Memorandum of Law in support of the Verified Petition pursuant to, *inter alia*, Executive Law § 63(12), the Public Health Law, the Social Services Law, and the False Claims Act against Respondents Comprehensive at Orleans LLC d/b/a The Villages of Orleans Health and Rehabilitation Center ("The Villages"), Telegraph Realty LLC ("Telegraph"), CHMS Group LLC ("CHMS Group"), Villages Of Orleans LLC, ML Kids Holdings LLC, Bernard Fuchs, Joel Edelstein, Israel Freund, Gerald Fuchs, Tova Fuchs, David Gast, Sam Halper, Ephram Lahasky, Benjamin Landa, Joshua Farkovits, Teresa Lichtschein, and Debbie Korngut (collectively "Respondents"). To protect The Villages' vulnerable residents from Respondents' ongoing fraudulent and illegal conduct and persistent violations of their duties as nursing home operators, leading to unnecessary death, illness, suffering and humiliation of nursing home residents in their care, the Attorney General seeks an order: (a) permanently enjoining Respondents from engaging in the illegal, fraudulent, and deceptive conduct alleged in the Petition; (b) directing Respondents to pay restitution; (c) directing Respondents to fully account for and disgorge all monies wrongfully received; (d) appointing a receiver and financial monitor to oversee The Villages' financial operations and a healthcare monitor to oversee The Villages' healthcare operations; (e) enjoining The Villages from accepting any admissions of new residents until such time as The Villages meets its obligations to ensure sufficient care and staffing for all existing residents and any new residents; (f) directing all Respondents except The Villages to pay for the expenses of the receivers and monitors; (g) directing Respondents to pay civil penalties to the State; (h) directing all Respondents except The Villages to reimburse the State and the United States for the costs of this investigation; and (i) removing Respondents David Gast ("Gast"), Sam Halper ("Halper")

and Ephram Lahasky ("Lahasky") immediately and permanently from any role at The Villages or any related entity. Rather than operating The Villages as a healthcare facility and hoping it would be a profitable venture through quality of outcomes and diligent management, Respondents created a financial machine to guarantee large profits out of government-funded healthcare, and repeatedly disregarded many laws specifically designed to protect the individuals for whom The Villages is "home."

PRELIMINARY STATEMENT

This special proceeding under Executive Law § 63(12) seeks, *inter alia*, injunctive relief to expose and stop the repeated and persistent fraud and illegality of the persons who have operated, owned and controlled The Villages, a for-profit 120-bed nursing home located at 14012 Route 131 in Albion, New York, whose residents are all vulnerable, frail, elderly, or disabled individuals, and primarily Medicaid and/or Medicare beneficiaries whose care is funded by New York and federal taxpayers. New York law imposes on nursing home operators a "special obligation" to care for their residents, including ensuring that each nursing home provides each resident with the care, treatment, diet, and health services that they need to attain their "highest practical level of well-being" under 10 NYCRR § 415.1(a)(1)-(2). Nursing homes are also required to provide the clinical care in each resident's individualized Care Plan pursuant to 10 NYCRR § 415.11 and to provide sufficient staffing to provide required care pursuant to 10 NYCRR § 415.13.

New York law also requires nursing home operators to make accurate disclosures of financial fact and ownership and control to the New York State Department of Health ("DOH"), and to comply with the State's equity disclosure laws governing extraction of equity from nursing homes. (Petition ¶¶ 305, 322.) DOH relies on nursing home operators' disclosures and

their certifications of compliance with their legal duties. From the very beginning of their involvement with The Villages, Respondents submitted documents to DOH that misrepresented who owned and controlled The Villages. (Petition ¶¶ 321-333.) Among several individuals whose control over the Villages was concealed from DOH is Respondent Sam Halper ("Halper")[1], a person under federal indictment for fraud in connection with nursing homes in the Commonwealth of Pennsylvania. (*Id.* at ¶¶ 54-57, 354-357.)

In violation of these obligations, Respondents repeatedly and persistently engaged in fraud and illegality from January 1, 2015 to the present in the operation of The Villages through repeated shocking neglect and inhumane mistreatment of many of The Villages residents who have suffered and died under its care and a long history of insufficient and unqualified staffing and poor quality of care in violation and in reckless disregard of numerous New York State rules, regulations, and laws, caused by the unconscionable fraudulent and hidden wrongful conversion of millions of dollars in "up front profit" taken from The Villages by its owner, his family members and Telegraph, The Villages' landlord, and its owners and their family members – all while The Villages received over $59 million from Medicaid and Medicare for resident care.

The pain and humiliation experienced by those who have lived at The Villages can be prevented in the future if Respondents are stopped—voluntarily or by court action— from converting such substantial amounts of Medicaid and Medicare funds from The Villages as "up front profit," and instead required to retain and expend substantially more of those funds for direct care staffing at The Villages and to improve care to The Villages residents, deferring "profit-taking" until after services are rendered in accordance with law. This practice of making payments from the nursing home to Respondents in the guise of pre-determined and self-

[1] Halper refused to testify in the course of this investigation, on the grounds that his testimony would tend to incriminate himself.

negotiated "expenses," such as "rent," and other transfers of funds, as a priority over, and without regard to, ensuring that the nursing home has used the public funds it receives to meet the nursing home's duty to provide required care, with sufficient staffing to render such care, to its residents is referred to herein as "up-front profit." To illustrate how the residents' pain and humiliation are preventable, if Respondents paid themselves just $360,000 less in 2020, The Villages could have provided over 15,000 additional hours of direct care to residents in that year during the first wave of the COVID-19 pandemic. (Petition ¶¶ 280-290.)

To protect The Villages' vulnerable residents, judicial intervention is required now to enjoin Respondents' repeated persistent and fraudulent and illegal conduct. In January 2021, the Attorney General's Nursing Home Report put Respondents on clear notice that the practice of taking of substantial "up front profit" from for-profit nursing homes with below-average-staffing, increased risks of harm and death to vulnerable residents. For years before that, Respondents were aware of serious and redressable problems at The Villages through DOH surveys, consultant reports, media reports, Resident family complaints, and, dating back to the spring of 2020, Petitioner's investigation. (Petition ¶¶ 207-237, 358.) Nonetheless, Respondents have refused to remedy the root cause of the residents' suffering: Respondents' continued operation of the nursing home with insufficient staffing while Respondents continue to take exorbitant "up-front" profit from The Villages, depriving it of funds needed to deliver required resident care and disregarding many laws designed to protect residents. Respondents have persisted in repeatedly violating New York law.[2] Even as recently as November 2022, Petitioner's investigation found that The Villages continues to neglect residents and operate with inadequate staffing.

[2] Harm and neglect to Villages residents is detailed in Petition at ¶¶ 64-237; Chronically low staffing is detailed in Petition at ¶¶ 238-290; Respondents' failure to maintain The Villages' physical property is detailed in Petition at ¶¶ 291-303; and Respondents' use of their up-front profit model to siphon money from The Villages and its residents is detailed in the Petition at ¶¶ 304-320.

Respondents' persistent illegal practices in operating The Villages' must change forthwith to prevent further unnecessary human suffering.

Moreover, as a result of Respondents' repeated and persistent disregard for and violation of the laws and regulations that seek to protect residents, not only are residents suffering and at risk of harm, but if another deadly wave of the pandemic or another highly contagious infectious disease were to hit, the same dangerous for-profit nursing home conditions described in the Attorney General's Report would likely cause the same wide-scale harm, if not worse. Justice demands that Respondents' repeated illegal practices end now.

In addition to enjoining Respondents' persistent fraud and illegality in their operations of The Villages, Petitioner also seeks restitution in an amount to be determined by the Court, as disgorgement of the illegally converted taxpayer-funded healthcare dollars that Respondents fraudulently transferred to themselves while disregarding and violating The Villages' duty to provide required care to and staffing for its residents, and retained without right under Executive Law § 63-c.

Accordingly, for the reasons stated herein, the Attorney General respectfully asks the Court to issue promptly an order imposing injunctive relief to bring an end to Respondents' repeated, persistent, fraudulent, and illegal conduct that exploits the vulnerable residents at The Villages, the Medicaid program, the Medicare program, other payors, and the direct healthcare workers who are working under the poor conditions at The Villages that Respondents have created through their ownership and control of it since 2015. In support of the Verified Petition, the State submits substantial evidence, including but not limited to the following: Ten Resident Family Caregiver Affidavits; the Affidavit from MFCU Detective Jaimie Krzyskoski ("Detective Aff."), reporting statements of witnesses who were unavailable to execute affidavits or whose

statements were cumulative to affidavits submitted herewith; the Affidavit of MFCU Auditor-Investigator Milan Shah ("Auditor Aff."), performing financial and Medicaid and Medicare claims analysis; the Affidavit of MFCU Medical Analyst Jennifer Cronkhite, Registered Nurse (RN) ("Medical Analyst Aff."), describing the healthcare duties of nursing homes and the impact on resident care when those duties are not fulfilled; and the affirmation of Special Assistant Attorney General Soo-young Chang, appending all other supporting affidavits and exhibits ("SAAG Aff.").

FACTS

I. Respondents Gast, Halper, and Lahasky Are De-Facto Owners of The Villages and Abdicated Their Responsibility to Provide Adequate Care; Other Respondents Contributed Nothing and Made Millions.

From the outset of their involvement with The Villages, Respondents falsely listed Bernard Fuchs as 100% owner of The Villages in submissions to DOH and on corporate organizing documents in an intentional scheme to mislead DOH about the identities of the individuals who planned to, and did in fact, exercise control over The Villages–all in an effort to evade DOH scrutiny and obtain licensing as soon as possible. (Petition ¶¶ 49, 321-333.) In reality, Fuchs played the role of a silent, minority partner, with little inclination or authority to interfere in The Villages' operations and has never even visited the facility. (*Id.* at ¶ 49.) On the other hand, Respondents Gast, Halper, and Lahasky saw themselves as the "Three Musketeers," sharing responsibility for finances, staffing, budgeting, and high-level decision making at The Villages. (*Id.*) Meanwhile, Respondents Edelstein, Freund, G. Fuchs, T. Fuchs, Landa, Farkovits, Lichtschein, and Korngut made money from The Villages despite contributing nothing and abdicating their duties to the residents. (Petition ¶¶ 49-63.)

II. Respondents' Decision to Funnel Money Out of the Facility Causes The Villages' Residents to Suffer Harm and Neglect.

After Respondents took control of The Villages in 2015, its Centers for Medicare & Medicaid Services ("CMS") ratings dropped in every category and its specific quality measure became among the worst in the State. (Petition ¶¶ 65-74.) CMS rates each nursing facility on a sliding scale from one to five stars, with one star being the worst rating. Since 2015, The Villages' "Overall," "Staffing" and "Health Inspections" ratings have never been higher than 1-Star. (*Id.*) From March 2021 to April 2022, CMS designated The Villages as a Special Focus Facility for having more serious problems than other nursing homes, including harm or injury experienced by residents, and a pattern of serious problems that has persisted over a long period of time. (*Id.* at ¶ 68.)

MFCU found significant evidence that long before the COVID-19 pandemic hit New York in March 2020, The Villages was understaffed and failed to create comprehensive and timely plans of care, failed to follow residents' plans of care, and that care plans were not updated with vital health and safety information identifying resident care needs. (Petition ¶¶ 75-92.) These failures resulted in physical and emotional harm to residents and stripped them of their right to dignity. (*See., e.g.,* Petition ¶ 79 [discussing resident found walking alone out of facility late at night because care plan was not updated to account for his elopement risk], ¶ 80 [detailing lack of checks conducted on a suicidal resident who died].)

Likewise, long before the pandemic and continuing through 2022, Respondents failed to provide basic resident healthcare needs and violated their rights to "adequate and appropriate medical care" by failing to hire a qualified medical team and sufficient staff. (Petition ¶¶ 93-140.) The Villages' lack of staff led to repeated incidents of resident abuse and neglect, such as residents not receiving their medication, not being fed, and not being cleaned. (*Id.* at ¶¶ 93-140.)

Additionally, The Villages' staff does not adequately manage prescription medications, does not monitor medical conditions, and does not order medical tests as directed. (*Id.* at ¶¶ 93-103.)

By diverting the resources needed to run the facility, Respondents encouraged a culture where employees maintained unreliable, falsified health documentation and hid true conditions at The Villages. (Petition ¶¶ 141-154.) In its investigation, MFCU found a troubling culture of cover up in numerous areas of operation at The Villages, including a failure to report required events to DOH and last-minute whitewashing of conditions at the facility before DOH visits. (*Id.* at ¶¶ 150-154.)

Before and throughout the pandemic, Respondents increased revenue by seeking more admissions without regard for The Villages' inability to care for its current residents. (Petition ¶¶ 155-169.) Multiple sources confirm Respondents' desire to keep beds full in order to increase revenue, no matter the human cost and potential harm to residents. (*Id*.)

Family members of The Villages' residents frequently had difficulty getting vital health information about their loved ones, either because there simply was not the staff to keep track of issues and communicate them as appropriate under the law or staff lacked accountability to treat the residents and their families with the respect they deserved. (Petition ¶¶ 170-180.) For example, the daughter of a resident described how she was not notified when her mother fell at The Villages and only learned of it because she called The Villages to check on her mother. The daughter brought her mother to the hospital, where it was determined that the resident had broken her hip during the fall and required surgery. (Petition ¶ 176.)

When the Individual Respondents obtained ownership and control of The Villages, they implemented their intentional short-staffing model, which harmed the residents and created and maintained poor working conditions for its staff. (Petition ¶¶ 181-206.) Respondents' intentional

short staffing model snapped when the COVID-19 pandemic increased the demands on already overburdened staff and required more time and attention to avoid spreading infection. (*Id.* at ¶¶ 181, 207.) MFCU found that management at The Villages attempted to keep COVID-19 infections secret, delayed or failed to cohort symptomatic residents, failed to observe proper sanitation protocols, and failed to follow basic infection control procedures during the height of the COVID-19 pandemic, likely causing greater deaths at the facility. (*Id.* at ¶¶ 182-188.) Additionally, The Villages staff were working while sick with COVID-19, failed to screen themselves and visitors for signs of illness, and failed to provide sufficient personal protective equipment. (*Id.* at ¶¶ 189-206.)

III. DOH Inspections Dating Back to 2015 Show Respondents' Disregard for Resident Welfare – DOH Issues Multiple Citations to The Villages.

The findings of DOH surveys and inspections since 2015 illustrate Respondents' disregard for the well-being of The Villages' residents and demonstrate the persistent inadequacy of its staffing levels. Each of the findings in the DOH surveys from July 2015 to October 2021 were communicated to one or more of the Individual Respondents, who failed to make any meaningful effort or expenditure to resolve the well-documented problems at The Villages. (Petition ¶¶ 207-230.)

IV. Multiple Consultants Warned Respondents Prior to COVID-19 That The Villages Was "At Risk" and Respondents Ignored Them.

In 2019, Quality In-cite, LLC ("In-cite") performed an "on-site risk management assessment" of The Villages. In-cite deemed The Villages to be "At Risk" and made recommendations to improve staffing and ensure proper care to residents. (Petition ¶¶ 231-235.) In 2020, another third-party healthcare consulting company, Polaris Health, LLC, d/b/a Polaris Group ("Polaris"), provided Respondents with a risk management assessment report that scored

The Villages as "high risk" and found that facility lacked appropriate systems to monitor and adhere to regulatory standards and to provide proper care to residents. (*Id.* at ¶¶ 235-236.) Rather than using the reports as a springboard for corrections and improvements to benefit Residents, Respondents ignored their consultants' findings, and continued prioritizing their financial interests, including those of the Telegraph owners. (Petition ¶ 237.)

V. Respondents Intentionally Maintain The Villages at Chronically Inadequate Staffing Levels, Without Regard for Resident Harm.

As soon as they acquired The Villages in 2015, Respondents cut staffing to unacceptable levels in order to cut costs and increase their up-front profit-taking. MFCU found that Respondents refused to increase pay rates to maintain or attract staff, failed to pay staff what they were owed, worked employees to "burn out" levels, and failed to fill important vacancies. (Petition ¶¶ 238-290.) Numerous witnesses informed MFCU that The Villages forced CNAs to perform work they were not licensed or qualified to perform because of its persistent inadequate staffing of LPNs and RNs. (*Id.* at ¶¶ 242-245.) Witnesses told MFCU that there were times when The Villages was dangerously understaffed. (*Id.* at ¶¶ 246-257.)

Respondents increasingly utilized short-term agency staff instead of hiring fulltime direct-care employees. (Petition ¶¶ 258-263.) Thus, residents do not receive care from knowledgeable staffers who know them as individuals and who can interpret and solve healthcare problems and communicate effectively with known patients, known colleagues, and known physicians. (*Id.*)

MFCU found that The Villages provided its residents with approximately 71% fewer hours of RN care and less Total Nursing Care (RN, LPN, & CNA) hours per resident day than the state average, leading to a dangerous environment for residents before and after the COVID-19 pandemic. (Petition ¶¶ 280-290.) Staffers informed MFCU that, not only do such ratios

deprive residents of required care, but such conditions demoralize and defeat the staffers who need their paychecks but do not have enough colleagues. (Petition ¶ 281.)

VI. Respondents Cut Costs and Fail to Maintain The Villages' Physical Property—"It's A Disgusting Place."

MFCU's Investigation found that Respondents failed to maintain a clean and safe physical environment at The Villages for its residents and staff. Evidence acquired by MFCU demonstrates unsanitary conditions such as dirt, mold, and insects in the facility, routinely broken medical and HVAC equipment, and inadequate levels of cleaning and hygiene supplies. (Petition ¶¶ 291-303.)

VII. From 2015 through June 2022, Respondents Siphoned Over $18.6 Million From The Villages, a Profit of Nearly 22% From a Primarily Government-Funded Facility.

Since purchasing The Villages in 2015, Respondents secretly siphoned millions of dollars from the nursing home, leaving behind insufficient financial resources to safely provide care for residents. Since 2015, Respondents forced The Villages to pay exorbitant "rent," the majority of which has gone into Respondents' pockets. Respondents also obtained a sequence of overvalued mortgages and took significant portions of the loan proceeds as profit, rather than reinvesting the loan proceeds into the facility. Per its collusive "lease" agreement, The Villages—not Respondents or Telegraph—is obligated to make the increased mortgage payments out of its operating accounts, to the detriment of residents. In addition, Respondents Gast, Halper and Lahasky extracted management fees through CHMS Group, and transferred funds to themselves directly from The Villages' operating account. Respondents did not seek written permission from DOH to transfer any of these assets at any time during the period from 2015 through 2021, in violation of Public Health Law § 2808(5)(c). (Petition ¶¶ 304-320.)

VIII. **Respondents Made Affirmative Misrepresentations to DOH to Hide Pattern of Looting.**

Respondents repeatedly lied to DOH on multiple required disclosures to nursing home regulators and protect their illegal looting. Respondents fraudulently misrepresented who owned and controlled The Villages and submitted deliberately misleading documentation to support ownership. Respondents likewise submitted a sham "lease" agreement that failed to disclose the true nature of their profit taking and they have annually falsely represented to DOH that all The Villages' expenses were incurred to provide patient care in the facility. (Petition ¶¶ 321-340.)

IX. **Respondents Flagrantly Disregarded Their Obligations to Assure The Villages Was in Compliance With State and Federal Laws by Failing to Have a Defined Governing Body.**

All pertinent testimony, documentation and subpoena responses reflect that Respondents failed to create a governing body, pursuant to 10 NYCRR § 415.26(b) which specifies that a nursing home shall "have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility." As such, Respondents receive significant financial benefit from the facility but skirt direct responsibility for The Villages, its employees, and its residents. (Petition ¶¶ 341-353.)

X. **Respondent Sam Halper, Currently Under Federal Indictment, Is Unfit to Operate The Villages and Must be Removed.**

On August 5, 2022, an Indictment was filed in the U.S. District Court for the Western District of Pennsylvania, charging Respondent Halper with various crimes in connection with skilled nursing facilities located in Beaver and Pittsburgh, Pennsylvania, where he was responsible for operations. Halper has been charged with conspiring to falsify staffing surveys to make it appear as though staffing met acceptable state and federal guidelines and conspiracy to

commit healthcare fraud. (Petition ¶¶ 354-357.) As Halper holds a similar position with The Villages, he must be removed for its management.

STATUTORY FRAMEWORK

I. Summary Proceedings.

Executive Law § 63(12) empowers the Attorney General to bring a special proceeding for permanent injunctive relief, restitution, and damages whenever a person or business engages in "repeated or persistent fraud or illegality." (*See* Exec. Law § 63[12] ["[w]henever any person shall engage in repeated fraudulent or illegal acts…the attorney general may apply…on notice of five days" for relief].) A special proceeding as authorized under Executive Law § 63(12) is "as plenary as an action, culminating in a judgment, but is brought on with the ease, speed and economy of a mere motion." (Siegel & Connors, *N.Y. Practice* § 547, at 1054 [6th ed 2018].) The legislative purpose for allowing a special proceeding under Section 63(12) is to further the public interest by giving the Attorney General an expeditious means to enjoin fraudulent or illegal activity and to obtain relief for its victims, including *ex parte* relief. (*People v. B.C. Assocs., Inc.*, 22 Misc 2d 43, 44 - 46 [Sup Ct, N.Y. Cnty. 1959].)

A special proceeding goes directly to the merits. The Court is required to make a summary determination upon the pleadings, papers, and admissions to the extent that no triable issues of fact are raised. (*See* CPLR § 409.) To the extent factual issues are raised, then they must be tried "forthwith." (CPLR § 410.) It is the very purpose of a special proceeding to provide a summary remedy, "so summary, indeed, as to dispense with the need or occasion for the application of summary judgment." (*Council of City of New York v. Bloomberg*, 6 NY3d 380, 401 [2006] [internal citation omitted].)

II. Statutory Authority.

The Medicaid Fraud Control Unit ("MFCU") in the Office of the Attorney General ("OAG") of the State of New York is responsible for investigating and prosecuting healthcare providers and associated persons engaged in civil and criminal fraud against the Medicaid and Medicare programs and for protecting the State's vulnerable nursing home residents from exploitation, abuse, and neglect by providers.

The investigation leading to this proceeding was undertaken pursuant to the well-established authority vested in OAG by the Executive Law, New York Medicaid rules and regulations, and MFCU's federal grant of authority under the Social Security Act and its Medicaid program and Medicare program regulations to investigate and prosecute provider fraud and nursing home resident abuse and neglect. (*See* Executive Law § 63[12]; 42 § USC 1396b[q]; 42 CFR § 1007.11[a].)[3] The Attorney General is authorized by the Inspector General of the United States Department of Health and Human services to recover federal Medicare funds in this proceeding. (SAAG Aff. ¶ 5; s*ee People* v. *Miran*, 107 AD3d 28 [4th Dept 2013][federal Medicare recovery within MFCU jurisdiction].)

[3] Under Federal law, "(a) The Unit will conduct a statewide program for investigating and prosecuting (or referring for prosecution) violations of all applicable State laws, including criminal statutes as well as civil false claims statutes or other civil authorities, pertaining to the following: (1) Fraud in the administration of the Medicaid program, the provision of medical assistance, or the activities of providers. (2) Fraud in any aspect of the provision of health care services and activities of providers of such services under any Federal health care program (as defined in section 1128B[f][1]of the Act), if the Unit obtains the written approval of the Inspector General of the relevant agency and the suspected fraud or violation of law in such case or investigation is primarily related to the State Medicaid program. (b)(1) The Unit will also review complaints alleging abuse or neglect of patients or residents in health care facilities receiving payments under Medicaid and may review complaints of the misappropriation of funds or property of patients or residents of such facilities." (42 CFR § 1007.11; *see also* 42 USC § 1396b(q).)

A claim under Executive Law § 63(12) can seek relief for repeated or persistent fraud – or repeated or persistent illegality. Here, the Attorney General brings claims on both grounds, as the Respondents persistently and illegally neglect nursing home residents entrusted to their care and the Respondents repeatedly and persistently obtained millions of dollars in public funds by engaging in the fraudulent financial practices that bring about such neglect.

Executive Law § 63(12) defines the terms "fraud" or "fraudulent" as "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions." Consistent with this language and the legislative intent, courts have consistently applied an extremely broad view of what constitutes fraudulent and deceptive conduct in proceedings brought by the Attorney General under Executive Law § 63(12). (*See Lefkowitz v. Bull Inv. Group*, 46 AD2d 25, 28 [3d Dept 1974]["It is well settled that the definition of fraud under subdivision 12 of section 63 of the Executive Law is extremely broad and proof of scienter is not necessary"] [internal citations omitted].) It is not necessary to establish the traditional elements of common law fraud, such as intent to deceive and reliance, to establish liability for fraud under Executive Law § 63(12). (*See People v. Apple Health & Sports Clubs, Ltd.*, 206 AD2d 266, 267 [1st Dept 1994][noting that Executive Law § 63(12) broadly construes the definition of fraud so as to include acts characterized as dishonest or misleading and eliminating the necessity for proof of an intent to defraud]; *see also State v. Ford Motor Co.*, 136 AD2d 154, 158 [3d Dept 1988].) Instead, the test of fraudulent conduct under Executive Law § 63(12) is whether the act "has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." (*People v. Applied Card Sys., Inc.*, 27 AD3d 104, 107 [3d Dept 2005].)

Here the Respondents have created a scheme and "artifice" in the core sense of the words – a structure designed from the outset to obtain a Certificate of Need ("CON") and to take money out of The Villages and away from resident care in a manner that ensures that the Respondents take profit immediately, automatically, and repeatedly, regardless of the quality of care the nursing home provides or whether it complies with its legal duties. Respondents designed a structure to obscure their fraudulent financial transactions behind a web of related companies, shell entities and complicit individuals, and created a fictional narrative that The Villages is a money-losing operation that simply cannot deliver quality care or hire and retain sufficient staff to provide it.

As to the "illegality" prong of the statute, courts have repeatedly found that a violation of state, federal, or local law constitutes illegality within the meaning of Executive Law § 63(12). (*See, e.g., State v. Princess Prestige*, 42 NY2d 104, 107 [1977]; *People v. Empyre Inground Pools, Inc.*, 227 AD2d 731, 733 [3d Dept 1996]; *Lefkowitz v. E.F.G. Baby Products*, 40 AD2d 364, 366 [3d Dept 1973]; *State v. Mgmt. Transition Res.*,115 Misc 2d 489, 491 [Sup Ct, New York County 1982] [career counseling service that operated as an employment agency without a license and improperly took up-front fees violated Executive Law § 63[12] prohibition on illegality].)

Both fraud and illegality must be repeated or persistent, each of which are also defined in the statute. "Repeated" is defined as "repetition of any separate and distinct fraudulent or illegal act or conduct which affects more than one person." (Exec. Law § 63[12]; *see, e.g.*, *People v. Wilco Energy Corp*, 284 AD2d 469, 471 [2d Dept 2001]; *Empyre*, 227 AD2d at 733 [citing directly to Exec. Law § 63[12]].) "Persistent" is defined as "continuance or carrying on of any fraudulent or illegal act of conduct." (Exec. Law § 63[12].)

Further, the Attorney General is empowered under the Tweed Law to investigate the misappropriation and misuse of any government funds. (*See* Exec. Law § 63-c; *see also, Cuomo v. Ferran*, 77 AD3d 698, 701 [2nd Dept 2010]; *State of New York v. Franklin Nursing Home*, 65 AD2d 788, 788 [2d Dept 1978] [Attorney General on behalf of State may recover Medicaid overpayments].)

In this matter, as shown in the supporting affidavits, there is no question that fraud and illegality are embedded in Respondents' business model, and that hundreds of nursing home residents are repeatedly and persistently neglected. (*See., e.g.*, Medical Analyst Aff. ¶¶ 8-116 [describing repeated and persistent neglect and mistreatment]; Auditor Aff. ¶¶ 171-199.) For every one of those hundreds of nursing home residents since Respondents took control of The Villages, the Respondents submitted claims to Medicaid and Medicare and other insurers for payment, certifying services for which they were paid were in compliance with the law.

ARGUMENT

I. Respondents Have Engaged in Repeated and Persistent Illegality Within the Meaning of Executive Law § 63(12).

A violation of any state, federal or local law constitutes "illegality" within the meaning of Executive Law § 63(12) and is actionable thereunder when persistent or repeated. (*Princess Prestige*, 42 NY2d at 106; *Empyre*, 227 AD2d at 732-33; *E.F.G. Baby Prods.*, 40 AD2d at 366; *State v. Scottish Am. Ass'n*, 52 AD2d 528, 528 [1st Dept 1976].) Respondents' repeated and persistent violations of the Public Health Law and Social Services Law, and federal Social Security Act and Medicare counterparts, are all actionable under Executive Law § 63(12).

As demonstrated in the Petition and supporting Affidavits, Respondents repeatedly and persistently violated the following statutory provisions of Article 28 of the Public Health Law:

PHL § 2801, requiring a Certificate of Need application to include, inter alia, "information as to the character, competence and standing in the community of every individual and entity of the applicant and specify the identity of every nursing home in which each of those individuals and entities is, or in the preceding seven years has held a controlling interest or has been a controlling person, principal stockholder or principal member; and the nature of that interest (*see* Petition ¶¶ 322-333);

PHL § 2803-c(3), establishing rights of patients in certain medical facilities, aka the "Patient's Bill of Rights," which include the following rights:

e. Every patient shall have the right to receive adequate and appropriate medical care…

g. Every patient shall have the right to receive courteous, fair, and respectful care and treatment…(*see* Petition ¶¶ 4, 373);

PHL § 2803-d, establishing the duty of reporting to the Department of Health both by the facility and almost all staffers whenever there is "reasonable cause to believe that a person receiving care or services in a residential health care facility has been abused, mistreated, neglected or subjected to the misappropriation of property by other than a person receiving care or services in the facility" (*see* Petition ¶¶ 5, 151, 373); and

PHL § 2808(5)(c) – requiring nursing home operators to obtain written permission from DOH prior to withdrawing equity or transferring assets in excess of 3% of a nursing home's annual revenue for patient care for the prior year (*see* Petition ¶¶ 305, 311, 317, 369, 378).

Respondents also repeatedly and persistently violated the following regulations of the Department of Health adopted under Public Health Law Article 28:

10 NYCRR § 415.3: Fulfill each resident's right to adequate and appropriate medical care (*see* Petition ¶¶ 4, 75, 91, 231, 373);

10 NYCRR § 415.3(e): Provide regular access to the private use of a telephone. (*see* Petition ¶¶ 177, 373);

10 NYCRR § 415.3(f)(2)(ii): Except in a medical emergency, consult with the resident immediately if the resident is competent, and notify the resident's physician and designated representative within 24 hours when there is an accident involving the resident which results in injury requiring professional intervention; a significant improvement or decline in the resident's physical, mental, or psychosocial status in accordance with generally accepted standards of care and services and a need to alter treatment significantly (*see* Petition ¶¶ 93, 224, 373);

10 NYCRR 415.4(a)(1): Assure that the resident is free "from any psychotropic drug administered for purposes of discipline or convenience, and not required to treat the resident's medical conditions or symptoms" (*see* Petition ⁋⁋ 72 fn 19, 373);

10 NYCRR § 415.5(h): Provide "a safe, clean, comfortable and homelike environment", "housekeeping and maintenance services necessary to maintain a sanitary, orderly and comfortable interior" and "comfortable and safe temperature levels" (*see* Petition ⁋⁋ 291, 373);

10 NYCRR § 415.11(a)-(d): Create comprehensive and timely care plans, provide services in accordance with comprehensive care plans and revise care plans as necessary to assure the continued accuracy of a resident's health assessment (*see* Petition ⁋⁋ 75 fn 20, 89, 91, 373);

10 NYCRR §§ 415.12-(a)(1): Provide the necessary quality of care and services to attain and maintain the "highest practicable physical, mental, and psychosocial well-being," of each resident, including but not limited to failing to ensure that the residents' activities of daily living "do not diminish" (*see* Petition ⁋⁋ 123, 373);

10 NYCRR§ 415.12(a)(3): Ensure a resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene (*see* Petition ⁋⁋ 123, 373);

10 NYCRR§ 415.12(c): Ensure that (1) a resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable despite every reasonable effort to prevent them; and (2) a resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing (*see* Petition ⁋⁋ 115 fn 30, 231, 373);

10 NYCRR § 415.12(h)(2): Provide adequate assistance and supervision to residents to prevent accidents (*see* Petition ⁋⁋ 231, 373);

10 NYCRR § 415.12(i): Ensure that a resident maintains acceptable parameters of nutritional status, such as body weight and protein levels and receives a therapeutic diet when there is a nutritional problem (*see* Petition ⁋⁋ 123, 373);

10 NYCRR § 415.13: Timely administer treatments, medications, diets, and other health services (*see* Petition ⁋⁋ 4, 98, 100, 231, 373);

10 NYCRR § 415.13(a): Maintain sufficient personnel on a 24-hour basis to provide nursing care to all residents in accordance with each resident's needs as set forth in a comprehensive care plan that the nursing facility is required to develop (*see* Petition ⁋⁋ 87, 241, 373);

10 NYCRR § 415.14: Provide each resident with a nourishing, palatable, well-balanced and medically appropriate diet that meets residents' daily nutritional and special dietary needs, employ sufficient competent staff to carry out the functions of the dietary service, provide assistance with eating and special eating equipment and utensils for residents who need them and store, prepare, distribute and serve food under sanitary conditions (*see* Petition ⁋⁋ 104, 373);

10 NYCRR § 415.15: Develop and implement medical services to meet the needs of its residents (*see* Petition ⁋⁋ 93, 373);

10 NYCRR § 415.19: Maintain an effective infection control program designed to provide a safe, sanitary, and comfortable environment (*see* Petition ⁋⁋ 189 fn 38, 224, 373);

10 NYCRR § 415.20: Ensure that laboratory services meet the needs of the nursing home residents, including by failing to ensure the quality and timeliness of such services (*see* Petition ⁋⁋ 100, 373);

10 NYCRR § 415.22: Maintain clinical records for each resident in accordance with accepted professional standards (*see* Petition ⁋⁋ 141, 231, 373);

10 NYCRR § 415.26(a)(4)(i): Have an administrator that reports to the facility's governing body at regular intervals (*see* Petition ⁋⁋ 345, 373);

10 NYCRR § 415.26(b): Have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility (*see* Petition ⁋⁋ 342, 343, 346, 373);

10 NYCRR § 415.26(c): Employ on a full-time, part-time or consultant basis a sufficient number of professional staff members who are educated (*see* Petition ⁋⁋ 231, 373);

10 NYCRR § 415.26(i)(1)(ii): Limit resident admissions, and "accept and retain only those nursing home residents for whom [they] can provide adequate care" (*see* Petition ⁋⁋ 155, 373);

10 NYCRR § 415.27(b): Maintain a quality assessment and assurance committee consisting of at least the administrator or his or her designee, the director of nursing services, a physician designated by the facility, one member of the governing body who is not otherwise affiliated with the nursing home in an employment or contractual capacity, and three other members of the facility's staff (*see* Petition ⁋⁋ 352, 353, 373);

10 NYCRR § 415.29: Maintain a safe, healthy, functional, sanitary, and comfortable environment for residents (*see* Petition ¶¶ 291, 373);

10 NYCRR § 415.30(f): Maintain accident and incident records necessary to permit the production of such records immediately upon request (*see* Petition ¶¶ 84 fn 28, 236, 373);

18 NYCRR § 515.2: Refrain from engaging in unacceptable practices (*see* Petition ¶¶ 361, 365, 369, 378); and

10 NYCRR § 86-2.2: File complete and accurate annual financial and statistical reports (Medicaid Cost Reports) to DOH (*see* Petition ¶¶ 47 fn 13, 338, 369, 378).

Respondents also violated the following Federal regulations that require nursing facilities participating in Medicaid to meet certain requirements:

42 CFR § 483.10(a): The facility must protect and promote the rights of the resident, treat each resident in an environment that promotes maintenance or enhancement of his or her quality of life, recognizing each resident's individuality, and provide equal access to quality care regardless of diagnosis, severity of condition, or payment source (*see* Petition ¶¶ 4, 93, 373);

42 C.F.R § 483.10(g)(14)(i): the facility must immediately inform the resident; consult with the resident's physician; and notify, consistent with his or her authority, the resident representative(s), when there is:

(A) An accident involving the resident which results in injury and has the potential for requiring physician intervention;

(B) A significant change in the resident's physical, mental, or psychosocial status (that is, a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) A need to alter treatment significantly (that is, a need to discontinue or change an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the resident from the facility (*see* Petition ¶¶ 170, 373);

42 CFR § 483.24(b): The facility must provide care and services relating to a resident's activities of daily living, including bathing, dressing, grooming, oral care, transfer and ambulation, walking, toileting, eating and communication (*see* Petition ¶¶ 123, 373);

42 CFR § 483.25: Based on the comprehensive assessment of a resident, the facility must ensure that residents receive treatment and care in accordance with professional standards of practice, the comprehensive person-centered care plan, and the resident's choices (*see* Petition ⁋⁋ 4, 241, 373);

42 CFR § 483.25(b): The facility must ensure that (1) a resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable despite every reasonable effort to prevent them; and (2) a resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing (*see* Petition ⁋⁋ 115, 373);

42 CFR § 483.35: The facility must have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment (*see* Petition ⁋⁋ 4, 240, 373);

42 CFR § 483.70(d)(2)(iii): The facility must have an administrator that reports to the facility's governing body at regular intervals (*see* Petition ⁋⁋ 343, 345);

42 CFR § 483.70(e): The facility must conduct and document a facility-wide assessment to determine what resources are necessary to care for its residents competently during both day-to-day operations and emergencies. The facility must review and update that assessment, as necessary, and at least annually. The facility must also review and update this assessment whenever there is, or the facility plans for, any change that would require a substantial modification to any part of this assessment (*see* Petition ⁋⁋ 240, 373);

42 CFR § 483.75(f): The facility must develop, implement, and maintain an effective, comprehensive, data-driven QAPI program that focuses on indicators of the outcomes of care and quality of life. The governing body and/or executive leadership (or organized group or individual who assumes full legal authority and responsibility for operation of the facility) is responsible and accountable for ensuring that an ongoing QAPI program is defined, implemented, and maintained and addresses identified priorities; that the QAPI program is sustained during transitions in leadership and staffing, is adequately resourced, identifies and prioritizes problems and opportunities that reflect organizational process, functions, and services provided to residents and that corrective actions address gaps in systems and are evaluated for effectiveness. The governing body and/or executive leadership is also responsible and accountable for ensuring that clear expectations are set around safety, quality, rights, choice, and respect (see Petition ⁋⁋ 232, 373);

> **42 CFR § 483.75(g):** The facility must maintain a quality assessment and assurance committee consisting at a minimum of: (i) The director of nursing services; (ii) The Medical Director or his or her designee; (iii) At least three other members of the facility's staff, at least one of who must be the administrator, owner, a board member or other individual in a leadership role; and (iv) The infection preventionist. The quality assessment and assurance committee reports to the facility's governing body, or designated person(s) functioning as a governing body regarding its activities, including implementation of the QAPI program required under paragraphs (a) through (e) of this section. The committee must: (i) Meet at least quarterly and as needed to coordinate and evaluate activities under the QAPI program, such as identifying issues with respect to which quality assessment and assurance activities, including performance improvement projects required under the QAPI program, are necessary; and (ii) Develop and implement appropriate plans of action to correct identified quality deficiencies; and (iii) Regularly review and analyze data, including data collected under the QAPI program and data resulting from drug regimen reviews, and act on available data to make improvements (see Petition ⁋⁋ 352, 353, 373); and
>
> **42 CFR § 483.80**: The facility must establish and maintain an infection prevention and control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of communicable diseases and infections (*see* Petition ⁋⁋ 182, 373).

Additionally, Respondents repeatedly and persistently violated Medicaid financial regulations, including 18 NYCRR § 515.2, which is promulgated under the Social Services Law and is subject to injunction under CPLR Art. 63 and Executive Law §63(12). (*See* Petition ⁋⁋ 361, 365, 369, 378.) 18 NYCRR § 515.2(b)(12) states that "[f]ailure to meet recognized standards in furnishing medical care, services or supplies that meet professionally recognized standards for health care" is an unacceptable practice constituting fraud and abuse under the medical assistance program.

Respondents are also liable for violation of federal Medicare payment statutes and regulations, including 42 USC § 1320a-7k, which defines an overpayment as "any funds that a person receives or retains under title XVIII or XIX [of the Social Security Act] to which the person, after applicable reconciliation, is not entitled" and requires that overpayments of

Medicare funds be repaid within 60 days. (*See* Petition ¶ 379; s*ee also* 42 CFR §§ 401.303, 401.305.)

Respondents are also jointly and severally liable for violation of the fundamental Medicaid payment regulations, which require repayment to the state "from the person submitting an incorrect or improper claim, or the person causing such claim to be submitted, or the person receiving payment for the claim" and also require repayment of Medicaid funds for:

> inappropriate, improper, unnecessary or excessive care, services or supplies from the person furnishing them, or the person under whose supervision they were furnished, or the person causing them to be furnished. … Medical care, services or supplies ordered or prescribed will be considered excessive or not medically necessary unless the medical basis and specific need for them are fully and properly documented in the client's medical record.

(18 NYCRR §§ 518.3 (a)-(c).) (*See* Petition ¶ 378.)

A. Respondents Have Repeatedly and Persistently Violated PHL § 2801, Requiring Certain Ownership Information in a Certificate of Need Application.

Under New York law, The Villages was required to submit a CON application to DOH seeking approval for a CON to assume operations from the former operator, in this case Orleans County. Public Health Law § 2801-a requires that a CON application must include, *inter alia*, "information as to the character, competence and standing in the community of every individual and entity of the applicant and specify the identity of every nursing home in which each of those individuals and entities is, or in the preceding seven years has held a controlling interest or has been a controlling person, principal stockholder or principal member; and the nature of that interest." (PHL § 2801-a.) Per the statute, DOH "shall not" approve an applicant "unless it finds that each individual and entity, in relation to ownership of a nursing home located in the United States, for at least the previous seven years, demonstrated satisfactory character, competence and standing in the community and the nursing home provided a consistently high level of care." At a

minimum, the "consistently high level of care" inquiry includes consideration of CMS ratings, repeated or severe violations of federal and state nursing home regulations, licensure revocations, and involuntary termination from the Medicare of Medicaid program. Further, the statute is clear that bootstrapping new owners is not allowed – individuals that seek to acquire ownership shares *after* the operator entity is formally approved must themselves go through DOH approval.

On or around March 31, 2014, Respondents submitted The Villages' CON application to DOH, dated March 19, 2014 ("2014 CON Application"). (Auditor Aff., Ex. 51, 2014 CON Application, Schedule 1.) The 2014 CON Application states that Bernard Fuchs is the sole member and 100% owner of The Villages. (*Id*.) As such, Schedule 2 of the 2014 CON application only provides information about Fuchs' ownership of other nursing homes, as well as information about his education, experience, and assets. (*Id*., Ex. 52, 2014 CON Application, Schedule 2.)

However, despite the fact that Respondents Gast, Halper and Lahasky control business operations at The Villages and always intended to, they did not disclose their involvement to DOH to avoid the scrutiny called for by PHL § 2801-a and to seamlessly acquire the CON. (See Petition ¶¶ 322-329.) Respondents Fuchs, Gast, Halper, and Lahasky agreed to name Fuchs as the 100% owner of The Villages on corporate organizing documents and in formal submissions to DOH. (*Id*.) Respondents did so despite the fact that Fuchs never intended to (and never did) meaningfully contribute to managing The Villages – nor was Fuchs ever the only (or even majority) investor, as would be consistent with a 100% ownership stake. (*Id*.)

Additionally, the fact that Respondents abandoned their 2016 effort to expand the ownership of The Villages to include Respondents Gast, Halper and Lahasky, *inter alia*, due to DOH scrutiny pursuant to PHL § 2801-a, reflects Respondents' fraudulent intent and motives

during their initial application for a CON to intentionally skirt and violate PHL § 2801-a. (*See* Petition ¶¶ 330-333.)

B. Respondents Have Repeatedly and Persistently Violated PHL § 2808(5)(c).

Public Health Law § 2808(5)(c) prohibits the withdrawal of equity or transfer of assets in an aggregate amount exceeding 3% of a nursing home's most recently reported annual revenue from patient care services without the prior approval of DOH's Commissioner. (*See Brightonian Nursing Home v. Daines*, 21 NY3d 570, 575-579 [2013] [declaring Public Health Law § 2808(5)(c) constitutional]; *see also* 10 NYCRR § 400.19.) The legislature enacted the "Three Percent Rule," Public Health Law § 2808(5), to prevent the "precipitous withdrawals of substantial facility equity or assets for non-facility purposes…" as such withdrawals "may impair facility operations and thus occasion detriment to the welfare of an utterly reliant resident population." (*Brightonian*, 21 N.Y.3d at 574 [2013].) This limit applies to all nursing homes because the Legislature recognized that "the liquidity of even . . . facilities [with positive net worth] may be rendered insufficient to meet their day-to-day operating expenses thus impairing the satisfaction of institutional care and treatment obligations." (*Id.* at 576.) The statute and its associated regulations merely impose a delay so that DOH can review the "financial condition of the facility and its quality of care record" before deciding whether the withdrawal should be allowed. (*See id.* at 578-79.) As the Court of Appeals observed when upholding the constitutionality of the statute, excess withdrawals of equity could "occasion irreparable harm within an especially fragile and dependent resident population" at nursing homes. (*Id.* at 578.)

Respondents repeatedly violated PHL § 2808(5) by failing to seek DOH consent for massive transfers of funds out of the facility. They made such transfers for "non-facility

purposes" in the guise of inflated rent, redundant "management" and "consulting" fees, and outright transfers of cash. (*See* Petition ¶¶ 306 – 320.) From January 1, 2015 to January 30, 2022, Respondents transferred nearly 22% of the revenue of The Villages to themselves. (*See* Auditor Aff. ¶ 198.) During that time, they never submitted any request to DOH for such approval. (*Id*. at ¶¶ 204-205.)

An analysis of The Villages' financial records reveal that the Individual Respondents collectively received over $18,600,000 in cash payments in connection with The Villages. (*See id.* at ¶ 199.) These cash transfers are comprised of: $15,750,360 in purported "rent" payments to Telegraph, which in turn transferred this amount to the Individual Respondents; $4,394,388 from the mortgage refinancing scheme to the Individual Respondents; $3,600,000 from the collateral-blocked account that arose from the refinancing scheme to the Individual Respondents; $116,761 in management fee payments to CHMS Group and then transferred to Respondents Gast, Halper and Lahasky; and $594,542 transferred directly from The Villages to Gast, Halper and Lahasky as "salary," et al. (*Id*. at ¶¶ 179-199.)

Respondent's failure to comply with these requirements constitutes repeated and persistent illegal conduct under Executive Law § 63(12).

C. Respondents Have Repeatedly and Persistently Violated PHL § 2803-c, a/k/a the "Patient's Bill of Rights."

As discussed *infra*, Respondents repeated violations of Section 415 of Title 10 of the New York Codes, Rules and Regulations is a violation of PHL § 2803-c. PHL § 2803-c(2) states that every nursing home shall adopt and make public a statement of the rights and responsibilities of the patients who are receiving care in such facilities and shall treat such patients in accordance with the provisions of such statement. PHL § 2803-c(3) states that such statement of rights and responsibilities shall include:

(e) Every patient shall have the right to receive adequate and appropriate medical care, to be fully informed of his or her medical condition and proposed treatment unless medically contraindicated, and to refuse medication and treatment after being fully informed of and understanding the consequences of such actions.

(g) Every patient shall have the right to receive courteous, fair, and respectful care and treatment and a written statement of the services provided by the facility, including those required to be offered on an as-needed basis.

(PHL § 2803-c(3)(e) and (g).)

As amply evidenced in ten Resident and Family Caregiver Affidavits, the Affidavit from Detective Krzyskoski, the Affidavit of Auditor-Investigator Shah and the Affidavit of Medical Analyst Cronkhite submitted herewith, Respondents repeatedly provided residents of The Villages with inadequate medical treatment and violated residents' rights to "adequate and appropriate medical care" by taking money for themselves, rather than hiring a qualified medical team for The Villages with enough staff to attend to basic resident healthcare needs. (*See, e.g.,* Medical Analyst Aff. ¶¶ 9-10, Auditor Aff. ¶¶ 82-95, 193-199.) During the relevant period, residents were not receiving their medications, were not being fed, were left in their own feces and urine for hours, received inadequate wound care and not followed through on medical orders, *inter alia*. The Villages forced CNAs to perform work they are not licensed or qualified to perform because of its persistent inadequate staffing of LPNs and RNs. (*See* Petition ¶¶ 242 – 245.) Further, instead of hiring additional staff and increasing pay rates to hire and retain sufficient staff, Respondents resorted to scare tactics, pressure, and bullying to keep overburdened staff working. (*See* Petition ¶ 256.)

These violations, reported in dismal detail in the Petition, have violated all of the healthcare laws, rules and regulations cited above, and all of the Medicaid and Medicare payment regulations cited above.

II. Respondents Have Engaged in Repeated and Persistent Fraudulent Conduct in Violation of Executive Law § 63(12).

Executive Law § 63(12) defines "fraud" and "fraudulent" broadly to include "any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise, or unconscionable contractual provisions." As noted above, fraud under Executive Law § 63(12) extends beyond the reach of common law fraud. (*See, e.g., Lefkowitz,* 46 AD2d at 28; *People v. 21st Century Leisure Spa Int'l, Ltd.,* 153 Misc. 2d 938, 943-44 [Sup Ct, New York County 1991].) The test of fraudulent conduct under Executive Law § 63(12) is whether the act "has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud." (*Applied Card Sys.*, 27 AD3d at 105 [quoting *People v. Gen. Elec. Co.*, 301 AD2d 314, 314 [1st Dept 2003].)

A. Respondents' Fraudulent Conduct in Operating The Villages.

For the reasons discussed *supra*, Respondents' violations of PHL § 2801 and PHL 2808(5) constitute repeated fraudulent conduct within the meaning of Executive Law § 63(12). Respondents misrepresented to DOH about who owned and controlled The Villages, submitted false documentation to support ownership, submitted a false lease agreement that failed to disclose the true nature of their profit taking, and annually misrepresent that all of The Villages' expenses pertain to patient care. Moreover, Respondents repeatedly and fraudulently pilfered the facility in the form of inflated "rent," under a collusive "lease" designed to ensure automatic and unjustified profit, bogus "mortgages," fees to management companies owned by Respondents, and outright transfers to the Respondents. (*See* Petition ¶¶ 304-340.)

B. Halper's Admission Through Fifth Amendment Refusal to Self-Incriminate.

Respondent Halper's invocation of his right against self-incrimination under the Fifth Amendments of the Federal and State Constitutions preserves his protection against use of such

information in a criminal case. However, by doing so, he has invited an adverse inference to be taken by the Court, as trier of fact, from his silence. (*See Marine Midland Bank v. Russo*, 50 NY2d 31, 45 [1980][finding that a jury can consider refusals to answer in evaluating evidence]; *see also Brink's Inc. v City of New York*, 717 F2d 700, 709 [2d Cir. 1983][*citing Baxter v Palmigiano*, 425 US 308, 320 [1976] for assertion that "Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them".) As Halper is a de facto owner/operator of The Villages who performed a high-level managerial role and a principal of Respondent CHMS Group (managing member and 33.34% owner) and Respondent Telegraph (12.33% owner), his knowledge and actions are imputable to them as well. Halper refused to testify as to any question put to him, including all of the topics within the scope of the Petition. (*See* Petition ¶¶ 73, 75, 102, 117, 132, 140, 160, 222, 357.) His sworn testimony properly invites adverse inferences for each of these questions on all of the topics, further supporting the extensive findings set forth in the Petition.

III. Respondents CHMS Group LLC, Fuchs, Gast, Lahasky and Halper Are Also Liable for the Repeated and Persistent Illegal and Fraudulent Acts Alleged in the Petition.

A. Respondent Management Company Is Liable.

CHMS Group, was and still is a domestic limited liability company formed in January 2015 under the laws of the State of New York, with offices for the transaction of business located at 600 Broadway, Lynbrook, New York. CHMS Group provides administrative services to The Villages, including purchasing, accounting, insurance billing and payroll services. At all relevant times herein, per its Operating Agreement, control, and ownership interest of CHMS Group was as follows: David Gast has a 33.33% ownership interest, Sam Halper has a 33.34%

ownership interest, and Ephram Lahasky has a 33.33% ownership interest. Sam Halper is CHMS Group's managing member. (Auditor Aff. ¶14.)

Respondents Gast, Halper and Lahasky extracted management fees through CHMS Group and withdrew those fees as direct profit. From January 1, 2015, to January 31, 2021, The Villages paid approximately $1,534,856 to CHMS Group as purported management fees. (*Id.* at ¶195.) Respondents received $116,761 in profit distributions from The Villages' share of this so-called management fee, while additionally taking salaries directly from The Villages itself. (*Id.* at ¶196.)

B. Respondents Fuchs, Gast, Halper and Lahasky Are Personally Liable.

Executive Law § 63(12) is directed against "any person" who "shall engage in repeated fraudulent or illegal acts."

It is well-settled that individuals, including corporate officers and directors, are liable for illegal or fraudulent acts in violation of Executive Law § 63(12) if they personally participate in the illegal or fraudulent acts or have actual knowledge of them. Where such liability is found, relief that can be obtained against a corporate entity can also be obtained against the officers or directors of the corporation. (*See, e.g., Apple Health & Sports Clubs*, 206 AD2d 266 [president of health club liable for its fraudulent and illegal conduct under Executive Law § 63[12] where he had actual knowledge of and participated in such conduct]; *People v. Frink Am., Inc.*, 2 AD3d 1379, 1381-82 [4th Dept 2003] [president and chief executive officer liable for unlawful conduct under Executive Law § 63[12]]; *People v. Court Reporting Inst.*, 245 AD2d 564 [2d Dept 1997] [officers and directors who have actual knowledge of, or participate in business' fraudulent and illegal dealings may be held personally liable under Executive Law § 63[12]]; *Empyre*, 227 AD2d at 734 [personal liability found under Executive Law § 63[12] where corporate officer participated in fraudulent and illegal activity and consumers regularly complained to him];

People v. Concert Connection Ltd., 211 AD2d 310, 320 [2d Dept 1995] [president of the corporation who was aware that the corporation was reselling and offering to resell entertainment tickets for more than the maximum premium price allowable under state law was properly found personally liable under Executive Law § 63[12]]; *People v. Am. Motor Club, Inc.*, 179 AD2d 277, 284-85 [1st Dept 1992] [officer liable under Executive Law § 63[12] for violations of insurance where "he personally participated in the illegal insurance business"]; *State v. Daro Chartours, Inc.*, 72 AD2d 872, 872-73 [3d Dept 1979] [officer of corporation held personally liable for his fraudulent conduct]; *21st Century Leisure Spa Int'l Ltd.*, 153 Misc 2d at 944 [officer and manager of health club found personally liable where he was advised by NYAG that the club was operating in violation of law and continued to enroll members when the business' closing was imminent]; *State v. Mgmt. Transition Res., Inc.*, 115 Misc 2d at 491 [principals of business found personally liable] [Sup Ct, New York County 1982].)

Officers and directors of a corporation will also be held liable for the fraudulent or illegal practices of their corporations if they: "directed and guided the corporation in matters of policy" (*Consumer Sales Corp. v. F.T.C.*, 198 F2d 404, 407-08 (2d Cir 1952)); "occupied policy making or directing positions during the period of the violations charged" (*Benrus Watch Co. v. F.T.C.*, 352 F2d 313, 325 (8th Cir 1965)); or controlled the financial affairs of the corporation (*F.T.C. v. Amy Travel Service, Inc.*, 875 F2d 564, 574 (7th Cir 1989)).

Here, the State has clearly established that Respondents Fuchs, Gast, Halper and Lahasky are aware of and participated in The Villages' fraudulent conduct. In Halper's case, he invited an adverse inference to be taken by the Court by refusing to answer questions about his and the others' conduct. Accordingly, Fuchs, Gast, Halper and Lahasky are liable for The Villages' deceptive, fraudulent and illegal conduct.

IV. Medicaid Payments Must Be Repaid Under the Tweed Law as They Were Without Right Obtained, Received, Converted, or Disposed of by Respondents.

The State seeks to recover Medicaid payments obtained by Respondents under N.Y. Exec. Law § 63-c. That provision allows the State to recover funds that were "without right obtained, received, converted, or disposed of." N.Y. Exec. Law § 63-c, the "Tweed Law", vests the Attorney General with the discretionary authority to seek the recovery of money or property (other than real property) belonging to the State, or to recover damages or other compensation, or both, pursuant to any viable action or proceeding at law or in equity available to the State," and the statute applies to Medicaid funds. (*Ferran*, 77 AD3d at 701.)

The *Ferran* case is instructive. The trial court found, on summary judgment, that the Medicaid funds paid to two LLCs called "Dental Wagon" and "Dental Wheels" that operated dental offices on converted buses were "without right obtained" in violation of the Tweed Law because they were paid in violation of New York and federal regulations, which prohibit persons who were previously sanctioned by "exclusion from federal healthcare programs" for earlier fraudulent conduct from being involved in any way in the provision of healthcare services paid for by a healthcare program. The dentists who owned the LLCs, who actually performed many of the services and who were not the excluded persons, had received Medicaid payments due to the recruiting and management efforts of an excluded non-dentist, even though the dentists disclaimed knowledge of the exclusion. The Appellate Division affirmed, holding that, "A provider reimbursed on a fee-for-services basis also may not submit any claim and cannot be reimbursed for any medical care, services, or supplies furnished in violation of any condition of participation in the Medicaid program . . .." (*Ferran*, 77 AD3d at 701.)

Here, in addition to the extensive list of violations of the healthcare regulations described above, and very similarly to *Ferran*, the Respondents also engaged in subterfuge to obtain the

license to operate The Villages using Respondent Fuchs as a front man and submitting a false lease agreement to avoid DOH scrutiny.

V. Violations of the Public Health Law and Regulations Are Subject to Damages.

Under section 2801-d of the Public Health Law, a nursing home is liable if it "deprives any patient of said facility of any right or benefit, as hereinafter defined, shall be liable to said patient for injuries suffered as a result of said deprivation," and those rights and benefits are explicitly:

> any right or benefit created or established for the well-being of the patient by the terms of any contract, by any state statute, code, rule or regulation or by any applicable federal statute, code, rule or regulation, where noncompliance by said facility with such statute, code, rule or regulation has not been expressly authorized by the appropriate governmental authority.

VI. The Court Should Grant Permanent Injunctive Relief Against Respondents' Illegal and Fraudulent Conduct.

Violations of the Public Health Law are subject to injunction under the explicit terms of the Public Health Law. Section 2801-c provides that:

> The supreme court may enjoin violations or threatened violations of any provisions of this article [Art. 28]; and it may enjoin violations of the regulations of the department adopted thereunder. Upon request of the public health council or the commissioner, the attorney general shall maintain an action in the supreme court in the name of the people of the state to enjoin any such violation. Notwithstanding any limitation of the civil practice law and rules, such court may, on motion and affidavit, and upon proof that such violation is one which reasonably may result in injury to any person, whether or not such person is a party to such action, grant a temporary injunction upon such terms as may be just, pending the determination of the action.

Respondents repeatedly and persistently violated regulations concerning financial requirements, healthcare requirements and filings with the DOH, each of which was adopted pursuant to Public Health Law Article 28. (*See* pp. 18-21, *supra*.) The Commissioner of Health has specifically

requested that the Attorney General seek such injunctive relief pursuant to Section 2801-c in this action, in addition to any other remedies available by law.[4]

This Court has broad statutory equitable authority to grant injunctive relief, restitution, disgorgement, rescission, civil penalties and costs in proceedings brought pursuant to Executive Law § 63(12). (*See Princess Prestige*, 42 NY2d at 107; *Daro Chartours*, 72 AD2d at 872-23; *Scottish-Am Ass'n*, 52 AD2d at 528.) In this case, Respondents' repeated and persistent fraudulent and illegal acts warrant the imposition of injunctive relief under Executive Law § 63(12), as well as restitution to the Medicaid and Medicare programs, disgorgement, civil penalties, and costs.

Given the widespread nature of The Villages' fraudulent and illegal conduct, which permeates every aspect of its business, The Villages should be permanently enjoined from (i) engaging in the illegal, fraudulent, and deceptive practices alleged herein, including further violation of state and federal nursing home regulations, and fraudulent and illegal acts and practices relating to reimbursement by the New York State Medicaid Program and (ii) accepting any admissions of new residents until such time as The Villages meets its obligations to ensure sufficient care and staffing for all existing residents and any new residents. In addition, Respondents Gast, Halper, and Lahasky should be immediately and permanently removed from any role at The Villages and any related entity. Courts routinely grant permanent injunctive relief in addition to other forms of relief. (*See, e.g., State v. Midland Equities of New York, Inc.*, 117 Misc 2d 203, 208 [permanent injunction issued against engaging in foreclosure consulting

[4] On October 18, 2022, pursuant to Public Health Law Section 2801-c, the Commissioner of Health specifically requested that the Attorney General seek injunctive relief in this action, in addition to any other remedies available by law. (SAAG Aff., Ex. 40.)

services]; *see also People v. Helena VIP Pers. Introduction Servs. of N.Y., Inc.*, 199 AD2d 186, 186 [1st Dept 1993] [permanent injunction issued against engaging in social referral business].) [5]

VII. The Court Should Order Respondents to Pay Restitution.

In addition to injunctive relief, the Court should order Respondents to pay restitution to New York taxpayers, through the tax-funded Medicaid and Medicare programs, which have paid many millions of dollars. Executive Law § 63(12) explicitly provides for restitution to affected persons as a "means to make the victims of past fraud whole again." Governor's Approval Mem, 1970 McKinney's Session Laws of NY, at 3074. The scope of the relief granted "is addressed to the sound judicial discretion of the court." (*Princess Prestige*, 42 NY2d at 108; *see Gen. Electric*, 302 A.D.2d at 316-17.)

VIII. The Court Should Order Respondents to Disgorge Their Ill-gotten Profits.

Respondents should be required to disgorge their ill-gotten gains. In a proceeding brought by the Attorney General under Executive Law § 63(12), this Court may order "disgorgement – an equitable remedy distinct from restitution – of profits that [the] respondents derived . . ." (*Applied Card*, 27 AD3d 104 [3rd Dept 2005]; *see People v. Ernst & Young, LLP*, 114 AD3d 569, 569 [1st Dept 2014] [finding disgorgement may be available as an equitable remedy, notwithstanding the absence of loss to individuals or independent claims for restitution].) The primary purpose of disgorgement is to deter law violations by depriving violators of their ill-gotten gains. (*See Ernst & Young*, 114 AD3d at 569; *see also People v. Greenberg*, 2014 WL 2442813 at *2, 2014 NY Slip Op 50840[U] (Sup Ct, New York County 2014)]; *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. S.E.C.*, 467 F3d 73, 81 [2d Cir 2006].) Therefore, the size of the disgorgement order "need not be tied to the [amount of] the losses suffered." *Id.*

[5] The State and Attorney General are exempt from undertakings pursuant to CPLR § 2512(1).

Respondents should be ordered to disgorge all profits they received from their deceptive or fraudulent conduct.

Those profits were massive. The "savings" from staffing cuts instead paid the Respondents' "up front profits", which were drained from the facility in the form of inflated rent, bogus "mortgages," fees to management companies owned by Respondents and outright transfers to the Respondents. (*See* Auditor Aff. ¶¶ 179-199.) From January 1, 2015 to the present, Respondents took either directly or through related-party transactions, over $14.7 million from The Villages that should have been spent on resident care, but was instead used to enrich themselves at the expense of The Villages' residents. (*See* Petition ¶ 3.)

IX. The Court Should Order Respondents to Return Medicaid and Medicare Overpayments To The State.

Respondents are also liable for unjust enrichment. An unjust enrichment claim is equitable in nature and depends upon "broad considerations of equity and justice." (*Columbia Mem'l Hosp. v. Hinds*, 38 N.Y.3d 253, 275 [2022].) To recover under a theory of unjust enrichment, a litigant must show that: "(1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered." (*Id.*) The "essential inquiry" is whether it would be against "equity and good conscience" to permit the respondents to retain what is sought to be recovered. (*Id.*)

Here, the State is entitled to recoup the Medicaid and Medicare overpayments made to Respondents to which they were not entitled because the services they claimed to have performed for such payments were either not provided or were so deficient as to be tantamount to neglect and mistreatment and wholly failed to conform with applicable laws and regulations. The Respondents were enriched through their receipt of Medicaid and Medicare funds at the

State's and federal government's expense. It would be against equity and good conscience for the Respondents to retain these funds—the quality of services, including the fact that they be provided and conform to applicable laws and regulations, is undeniably material to the State: the provision of health care consistent with professional standards is a condition of participation in the Medicaid Program. (18 NYCRR §§ 504.6(d), 515.2(a)(3), 515.2(b)(12), 515.2(b)(1)(i)(a).) Neglect and mistreatment of residents reaches the very heart of the bargain struck with the Respondents to provide services to elderly, frail and/or disabled Medicaid beneficiaries.

Moreover, it would promote equity and good conscience to permit the State to recover Medicaid and Medicare overpayments from Respondents. Privity is not required for an unjust enrichment claim, as long as there is a connection between the plaintiff and the respondent that is "not too attenuated": "that is, the parties must have something akin to specific knowledge of one another's existence." (*Bashian & Farber, LLP v. Syms*, 173 A.D.3d 659, 662 [2d Dep't 2019].) "[T]he requirement of a connection between plaintiff and defendant is a modest one." (*Myun-Uk Choi v. Tower Research Capital LLC*, 890 F.3d 60, 69 [2d Cir. 2018] [interpreting New York law].) Through their relationship with The Villages, Telegraph, and other related entities, Respondents knew that The Villages was a Medicaid and Medicare provider and therefore received reimbursement from the State and federal governments, and, knew or should have known that The Villages was not entitled to payment due to its repeated and persistent neglect and inhumane treatment of its residents, and repeated and persistent understaffing of The Villages. Respondents nonetheless disregarded their commitment to the State and federal governments and withdrew said Medicaid and Medicare funds for themselves, rather than adequately funding The Villages.

X. The Court Should Appoint a Receiver, Financial Monitor and Healthcare Monitor.

The Court should Appoint a receiver, financial monitor and healthcare monitor to oversee The Villages' financial operations, healthcare operations and to ensure that The Villages ceases collusive and self-dealing payments, loans and other transfers of value to the Respondents, with plenary powers visitation and inspection, and specific authority to withhold any payments to any Respondent or related person. A receiver is necessary because Respondents have created related companies, shell entities, and complicit individuals to conceal their activity and drain revenue from The Villages. Only a financial expert with plenary authority can counteract such deceptive practices and determine who among the staff of the management company are complicit in the harms.

In its investigation, MFCU found a troubling culture of cover up in numerous areas of operation at The Villages, including a failure to report required events to DOH and last-minute whitewashing of conditions at the facility before DOH visits. MFCU found multiple instances in which The Villages' leadership did not report incidents to DOH as required, or reported them late; these include a failure to report a probable resident suicide, a resident-on resident assault, and resident-to-resident sexual incidents, in violation of PHL § 2803-d. (*See* Petition ¶¶ 80, 151.)

Additionally, Respondent Halper is under federal indictment in connection with his role with two nursing homes in Pennsylvania, one of which is also owned by Respondents Gast, Halper, Lahasky, Farkovits, Freund, Gerald Fuchs and Tova Fuchs. On September 1, 2022, when Halper had the opportunity to testify and explain his conduct regarding The Villages, he declined to respond to every single inquiry other than his name and present location, and instead invoked his right against self-incrimination on all topics of inquiry.

XI. The Court Should Order Respondents to Pay Penalties for Their Repeated Violations of the Public Health Law and Medicaid Regulations.

The Public Health Law and Social Services Law provides multiple grounds for the assessment of a civil penalty for violation of its provisions. 10 NYCRR 81.7(a) provides that "In addition to any other penalties prescribed by law, any person who commits an act of physical abuse, mistreatment or neglect or who fails to report such an act may be liable for a penalty pursuant to section 12 of the Public Health Law after an opportunity to be heard."

Monetary penalties may also be imposed for violation of Medicaid payment rules. (*See* 18 NYCRR Part 516.)

Courts routinely award penalties in civil enforcement cases brought by the New York Attorney General. (*See, e.g., Wilco*, 284 AD2d at 474 [2d Dept 2001]; *Allied Mktg. Group*, 220 AD2d at 370.)

XII. The Court Should Order Respondents to Pay Costs.

CPLR § 8303(a)(6) provides that the court may award the Attorney General "a sum not exceeding two thousand dollars against each defendant" in a special proceeding pursuant to Executive Law § 63(12). Courts have routinely granted these costs. (*See, e.g., Daro Chartours*, 72 AD2d at 873; *Midland Equities*, 117 Misc 2d at 208; *People v. Therapeutic Hypnosis Inc.*, 83 Misc 2d 1068, 1071-72 [Sup Ct, Albany County 1975]; *State of New York v. Hotel Waldorf-Astoria Corp.*, 67 Misc 2d 90, 92 [Sup Ct, New York County 1971].) Therefore, an award of additional costs in the amount of $2,000 against each Respondent should also be granted.

XIII. The Court Should Order Respondents to Pay Interest.

New York CPLR § 5001(a) provides that prejudgment interest is mandatory on "a sum awarded because of . . . an act or omission depriving or otherwise interfering with title to, or possession or enjoyment of, property." Interest runs at a rate of 9% per year. (CPLR § 5004(a).)

Prejudgment interest is mandatory in an action for conversion. (*Scotti v. Barrett*, 166 A.D.3d 698, 699 [2d Dep't 2018].) In this action, prejudgment interest is thus mandatory on Petitioner's 63-c claim, which sounds in conversion. (*See State v. Lower Esopus River Watch, Inc.*, 39 Misc. 3d 1241(A), at 1, 28 [Sup. Ct. Ulster Cty. 2013] [granting prejudgment interest on Executive Law § 63-c claims]; *cf. State v. Seventh Regiment Fund, Inc.*, 98 N.Y.2d 249, 259 (2002) [explaining that Executive Law § 63-c "did not create a new cause of action, but merely gave an additional remedy" and observing that the Executive Law § 63-c claim in that case "is in substance one for conversion"].) Ordering prejudgment interest, the rate of interest, and the date from which it runs, is within the Court's discretion on equitable claims. (*See* CPLR § 5001(a).) Where, as here, "damages were incurred at various times," the Court may order "interest [to] be computed upon each item from the date it was incurred or upon all of the damages from a single reasonable intermediate date." (*Id.* at § 5001(b).) "[T]he purpose of awarding interest is to make an aggrieved party whole" by compensating them for the loss of use of the money when the wrongdoer possessed it. (*Spodek v. Park Property Dev. Assocs.*, 96 N.Y.2d 577, 581 [2001].)

The Court must order pre-decision interest on Petitioner's claim for conversion. (*See Scotti*, 166 A.D.3d at 699.) In this case, given Respondents' extended pattern of fraud to hide and further the conversion, the Court should also order pre-decision interest on the equitable claims, at the statutory rate of 9%. Ordering full pre-decision interest is necessary to compensate the Medicaid and Medicare programs for the loss of use of millions of dollars for resident care. Interest should run on the funds that Respondents fraudulently and illegally withdrew from The Villages.

The Court should further order post-judgment interest at the statutory rate of 9%. (*See* CPLR §§ 5003; 5004.)

CONCLUSION

For the reasons set forth in this memorandum, the Court should make a summary determination in the State's favor on all causes of action and grant injunctive relief, restitution, disgorgement, civil penalties and costs, as requested in the Verified Petition.

Dated: November 29, 2022

Respectfully submitted,

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_____

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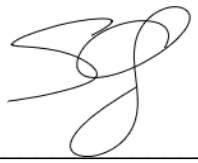
CERTIFICATION PURSUANT TO RULE 202.8-b

I, Soo-young Chang, an attorney duly admitted to practice law before the Courts of the State of New York, hereby certify that this Memorandum of Law contains 13,208 words, excluding the parts of the Memorandum explicitly exempted by Rule 202.8-b, and that Petitioner's request for permission to file an oversize submission as provided in Rule 202.8-b(f) is forthcoming.

Dated: New York, New York
November 29, 2022

Respectfully submitted,

Letitia James
Attorney General of the State of New York

By: 

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