

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”), (collectively, the “United States”), Evercare Hospice, Inc., now known as Optum Palliative and Hospice Care, Inc. (“Evercare”), and Terry Lee Fowler, Lyssa Towl, and Sharlene Rice (“Relators”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Evercare is a Delaware corporation with its principal place of business in Minnesota that provides hospice care to patients, including patients who are beneficiaries of the federal Medicare Program (“Medicare”). As of 2011, Evercare operated hospice programs in thirteen states: Alabama, Arizona, California, Colorado, Georgia, Illinois, Ohio, Maryland, Massachusetts, Missouri, Pennsylvania, Texas, and Virginia.

B. On March 15, 2011, Relators Terry Lee Fowler and Lyssa Towl filed a *qui tam* action in the United States District Court for the District of Colorado captioned *United States of America ex rel. Terry Lee Fowler and Lyssa Towl v. Evercare Hospice, Inc., et al.*, No. 11-cv-00642-PAB-NYW (D. Colo.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Fowler and Towl Civil Action”). Relators Fowler and Towl alleged that Evercare and its parent companies Oventions, Inc., OptumHealth Holdings, LLC, United HealthCare Services, Inc., and UnitedHealth Group Incorporated, violated the False Claims Act by knowingly submitting or causing to be submitted false claims to Medicare for hospice care for Medicare beneficiaries who were not eligible for the Medicare hospice benefit.

C. On November 16, 2012, Relators Sara Curtis-Hicks, Leah Broderick, and Debbie Turner filed a *qui tam* action in the United States District Court for the Southern District of Ohio captioned *United States of America ex rel. Sara Curtis-Hicks, Leah Broderick, and Debbie Turner v. Evercare Hospice, Inc., et al.*, No. 1:12-cv-887 (S.D. Ohio), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Curtis-Hicks Civil Action”). On September 9, 2014, the United States filed its notice of election to partially intervene in the Curtis-Hicks Civil Action on the allegations that Evercare violated the False Claims Act by knowingly submitting or causing the submission of false claims to Medicare for hospice care for Medicare beneficiaries who were not eligible for the Medicare hospice benefit (the “Curtis-Hicks Eligibility Claims”). The United States declined to intervene in the Curtis-Hicks Civil Action on the allegations that Evercare knowingly submitted or caused the submission of false claims to Medicare for continuous hospice care for patients who did not medically need continuous care or were not provided that level of care (the “Curtis-Hicks Continuous Care Claims”). On June 9, 2014, Relators Curtis-Hicks, Broderick, and Turner filed an Amended Complaint adding retaliation claims under 37 U.S.C. § 3730(h). On October 10, 2014, the United States filed a motion to dismiss the Curtis-Hicks Eligibility Claims on the grounds that the Curtis-Hicks Eligibility Claims were barred by the first-to-file provision in the False Claims Act. 31 U.S.C. § 3730(b)(5). On February 3, 2015, the United States District Court for the Southern District of Ohio dismissed the Curtis-Hicks Eligibility Claims.

D. On June 5, 2013, Relator Sharlene Rice filed a *qui tam* action in the United States District Court for the Northern District of Illinois captioned *United States of America ex rel. Sharlene Rice v. Evercare Hospice, Inc.*, No. 13-cv-4191 (N.D. Ill.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Rice Civil Action”). Relator Rice alleged that Evercare violated the False Claims Act by knowingly submitting or causing to be

submitted false claims to Medicare for hospice care for Medicare beneficiaries who were not eligible for the Medicare hospice benefit.

E. On June 5, 2014, the Rice Civil Action was transferred from the United States District Court for the Northern District of Illinois to the United States District Court for the District of Colorado. On June 24, 2014, the Rice Civil Action was consolidated with the Fowler and Towl Civil Action (the “Consolidated Civil Action”).

F. The United States intervened in the Consolidated Civil Action on August 25, 2014, and filed the United States’ Consolidated Complaint in Intervention on November 10, 2014 (the “United States’ Complaint”). The United States’ Complaint alleged that Evercare violated the False Claims Act by knowingly submitting or causing to be submitted false claims to Medicare for unnecessary hospice care for Medicare beneficiaries who were not eligible for the Medicare hospice benefit because Evercare’s medical records did not support that they were terminally ill.

G. On February 24, 2015, Relators Fowler and Towl filed a Second Amended Complaint in the Consolidated Civil Action asserting a claim as to which the United States did not intervene, namely, that Ovations, Inc. and OptumHealth Holdings, LLC violated the False Claims Act by knowingly submitting or causing to be submitted false claims to Medicare for hospice care for Medicare beneficiaries who were not eligible for the Medicare hospice benefit.

H. The United States contends that Evercare submitted or caused to be submitted claims for payment to Medicare, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1.

I. As alleged in the United States’ Complaint, the United States contends that it has certain civil claims against Evercare for knowingly submitting or causing to be submitted false claims to Medicare for hospice care from January 1, 2007, through December 31, 2013, for

Medicare beneficiaries who were not eligible for the Medicare hospice benefit because Evercare's medical records did not support that they were terminally ill. That conduct is hereinafter referred to as the "Covered Conduct."

J. This Settlement Agreement is neither an admission of liability by Evercare nor a concession by the United States that its claims are not well founded.

K. The Relators claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relators' reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Evercare agrees to pay the United States eighteen million dollars (\$18,000,000.00) ("Settlement Amount") no later than ten (10) business days after the later of each of the following: (i) the Effective Date of this Agreement, and (ii) receipt by Evercare's counsel of payment instructions in writing from the U.S. Attorney's Office for the District of Colorado. Evercare shall pay to the United States the Settlement Amount by electronic funds transfer, pursuant to written instructions to be provided by the U.S. Attorney's Office for the District of Colorado.

2. Evercare agrees to pay Relators Fowler and Towl four hundred thousand dollars (\$400,000) ("Relators Fowler and Towl Settlement Amount") no later than ten (10) business days after the later of each of the following: (i) the Effective Date of this Agreement, and (ii) receipt by Evercare's counsel of payment instructions in writing from counsel for Relators Fowler and Towl. The Relators Fowler and Towl Settlement Amount is in full satisfaction of

any attorney's fees, costs, expenses allowable under 31 U.S.C. § 3730(d) arising from the filing of the Fowler and Towl Civil Action. Other than the amounts specified in this Paragraph 2, Evercare shall have no obligation to make any additional payments to Relators Fowler and Towl or to their attorneys with respect to the matters covered by this Agreement or otherwise.

3. Evercare agrees to pay Relator Rice fifty thousand dollars (\$50,000) ("Relator Rice Settlement Amount") no later than ten (10) business days after the later of each of the following: (i) the Effective Date of this Agreement, and (ii) receipt by Evercare's counsel of payment instructions in writing from counsel for Relator Rice. The Relator Rice Settlement Amount is in full satisfaction of any attorney's fees, costs, expenses allowable under 31 U.S.C. § 3730(d) arising from the filing of the Rice Civil Action. Other than the amounts specified in this Paragraph 3, Evercare shall have no obligation to make any additional payments to Relator Rice or to her attorneys with respect to the matters covered by this Agreement or otherwise.

4. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Evercare's full payment of the Settlement Amount, the United States releases Evercare, together with its current and former parent corporations; direct and indirect subsidiaries; affiliates (brother or sister corporations and other entities controlling, controlled by or under common control); divisions; current or former corporate owners; and the corporate successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Notwithstanding the release given in Paragraph 4 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability for the Curtis-Hicks Continuous Care Claims, and no setoff related to amounts paid under this Agreement shall be applied to any recovery in connection with the Curtis-Hicks Civil Action;
- f. Any liability based upon obligations created by this Agreement;
- g. Any liability of individuals;
- h. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- i. Any liability for failure to deliver goods or services due; and
- j. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

6. The Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). In connection with this Agreement and the Consolidated Civil Action, Relators and their heirs, successors, attorneys, agents, and assigns agree that neither this Agreement, nor any dismissal of the

Consolidated Civil Action, shall waive or otherwise affect the ability of the United States to contend that provisions in the False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), bar any Relator from sharing in the proceeds of this Agreement. Moreover, the United States and Relators and their heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that any Relator should receive of any proceeds of the settlement of his or her claims.

7. Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, fully and finally releases, waives, and forever discharges, and will be deemed to have released and forever discharged, Evercare, together with its current and former parent corporations; direct and indirect subsidiaries; affiliates (brother or sister corporations and other entities controlling, controlled by or under common control); divisions; current or former corporate owners; and the corporate successors and assigns of any of them, from any claim or cause of action that Relators may now have or claim to have against Evercare, its current and former parent corporations; direct and indirect subsidiaries; affiliates (brother or sister corporations and other entities controlling, controlled by or under common control); divisions; current or former corporate owners; and the corporate successors and assigns of any of them, of any kind, character or nature whatsoever, whether known or unknown, fixed or contingent, in law or in equity, in contract or tort, or under any state or federal statute or regulation, including, but not limited to, claims arising in any way out of or connected in any way with their employment with Evercare; the facts, claims, and circumstances alleged in, arising under, or arising from the filing of the Fowler and Towl Civil Action, the Rice Civil Action, or the Consolidated Civil Action; any past activities and actions of Evercare; and any civil monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. § 3730(b) and (d) or any similar federal or state statute.

8. Evercare waives and shall not assert any defenses Evercare may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

9. Evercare fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Evercare has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. Evercare fully and finally releases Relators, for themselves and for their heirs, successors, attorneys, agents, and assigns, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Evercare has asserted, could have asserted, or may assert in the future against Relators or their heirs, successors, attorneys, agents, and assigns, related to the Covered Conduct and the investigation and prosecution thereof by Relators.

11. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Evercare agrees not to resubmit to any Medicare contractor or any state payer any

previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

12. Evercare agrees to the following:

- a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Evercare, its present or former officers, directors, employees, shareholders, and agents in connection with:
 - i. the matters covered by this Agreement;
 - ii. the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
 - iii. Evercare's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
 - iv. the negotiation and performance of this Agreement; and
 - v. the payment Evercare makes to the United States pursuant to this Agreement and any payments that Evercare may make to any Relator, including costs and attorneys' fees.

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

- b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Evercare, and Evercare shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Evercare or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Evercare further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Evercare or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Evercare agrees that the United States, at a minimum, shall be entitled to recoup from Evercare any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United

States reserves its rights to disagree with any calculations submitted by Evercare or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Evercare or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

- d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Evercare's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

13. Evercare agrees to cooperate fully and truthfully with the United States' investigation of individuals not released in this Agreement for the Covered Conduct. Upon reasonable notice, Evercare shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Evercare further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

14. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 15 (waiver for beneficiaries paragraph), below.

15. Evercare agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents,

sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

16. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Consolidated Civil Action a Joint Stipulation of Dismissal of the Consolidated Civil Action pursuant to Rule 41(a)(1)(A)(ii).

17. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

19. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement, including determination of relator's share, is the United States District Court for the District of Colorado. For purposes of construing this Agreement, 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.

20. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

21. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

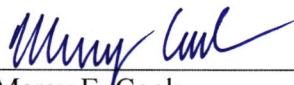
22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

23. This Agreement is binding on Evercare's successors, transferees, heirs, and assigns.

24. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.
25. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.
26. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 7/13/16

BY: 

Marcy E. Cook
Edwin G. Winstead
Assistant United States Attorneys
1225 Seventeenth Street, Suite 700
Denver, Colorado 80202

DATED: _____

Michael D. Granston
Renée Brooker
Holly H. Snow
Olga Yevtukhova
Kelly E. Phipps
Attorneys, Civil Division
United States Department of Justice
601 D Street, NW
Washington, DC 20004

Shana T. Mintz
Attorney, Civil Division
United States Department of Justice
700 Stewart Street, Suite 5220
Seattle, WA 98101

Counsel for the United States

24. This Agreement is binding on Relators' successors, transferees, heirs, and assigns.

25. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

26. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

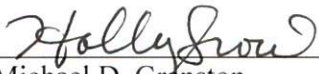
THE UNITED STATES OF AMERICA

DATED: _____

BY:

Marcy E. Cook
Edwin G. Winstead
Assistant United States Attorneys
1225 Seventeenth Street, Suite 700
Denver, Colorado 80202

DATED: 7/13/16



Michael D. Granston
Renée Brooker
Holly H. Snow
Olga Yevtukhova
Kelly E. Phipps
Attorneys, Civil Division
United States Department of Justice
601 D Street, NW
Washington, DC 20004

Shana T. Mintz
Attorney, Civil Division
United States Department of Justice
700 Stewart Street, Suite 5220
Seattle, WA 98101

Counsel for the United States

DATED: 7/13/16

BY: Robert K. DeConti
Robert K. DeConti
Assistant Inspector General for Legal
Affairs
Office of Counsel to the Inspector
General
Office of Inspector General
United States Department of Health and
Human Services

EVERCARE – DEFENDANT

Optum Palliative and Hospice Care, Inc.

DATED: _____

By: _____
Name:
Title:

Hogan Lovells US LLP

DATED: _____

Michael C. Theis
1200 Seventeenth Street
Suite 1500
Denver, CO 80202
Counsel for Evercare

DATED: _____

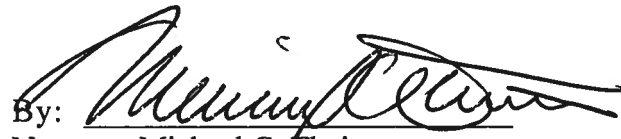
BY: _____

Robert K. DeConti
Assistant Inspector General for Legal
Affairs
Office of Counsel to the Inspector
General
Office of Inspector General
United States Department of Health and
Human Services

EVERCARE – DEFENDANT

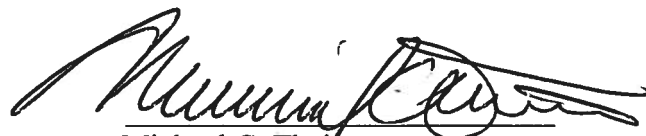
Optum Palliative and Hospice Care, Inc.

DATED: July 12, 2016

By: 
Name: Michael C. Theis
Title: Partner, Hogan Lovells US LLP
Counsel for Optum Palliative and Hospice
Care, Inc.

Hogan Lovells US LLP

DATED: July 12, 2016


Michael C. Theis
1200 Seventeenth Street
Suite 1500
Denver, CO 80202
Counsel for Evercare

FOWLER AND TOWL - RELATORS

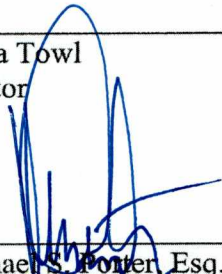
DATED: 7/14/2016



Terry Fowler
Relator

DATED: _____

Lyssa Towl
Relator



Michael S. Potter, Esq.
4465 Kipling Street
Wheat Ridge, CO 80033

Counsel for Relators Fowler and Towl

RICE - RELATOR

DATED: _____

Sharlene Rice
Relator

DATED: _____

James F. Barger, Jr.
Frohsin & Barger, LLC
100 Main Street
St. Simons Island, GA 31522

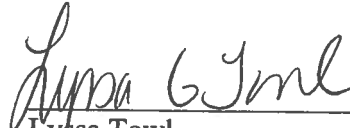
Counsel for Relator Rice

FOWLER AND TOWL - RELATORS

DATED: _____

Terry Fowler
Relator

DATED: 7/11/16



Lyssa Towl
Relator

Michael S. Porter, Esq.
4465 Kipling Street
Wheat Ridge, CO 80033

Counsel for Relators Fowler and Towl

RICE - RELATOR

DATED: _____

Sharlene Rice
Relator

DATED: _____

James F. Barger, Jr.
Frohsin & Barger, LLC
100 Main Street
St. Simons Island, GA 31522

Counsel for Relator Rice

FOWLER AND TOWL - RELATORS

DATED: _____

Terry Fowler
Relator

DATED: _____

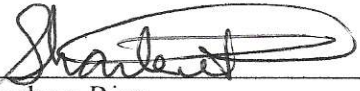
Lyssa Towl
Relator

Michael S. Porter, Esq.
4465 Kipling Street
Wheat Ridge, CO 80033

Counsel for Relators Fowler and Towl


RICE - RELATOR

DATED: 7-9-14



Sharlene Rice
Relator

DATED: _____



James F. Barger, Jr.
Frohsin & Barger, LLC
100 Main Street
St. Simons Island, GA 31522

Counsel for Relator Rice