

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

*ex rel.*

SALLYJO ROBINS, KATHLEEN  
DUNLAP, GERMANO LIMA, and  
ROBERTO RABASSA,

Plaintiffs/Relators

v.

LINCARE, INC. and LINCARE  
HOLDINGS, INC.,

Defendants.

Civil Action No.  
1:10-cv-12256-DPW

PLAINTIFFS DEMAND A TRIAL  
BY JURY ON ALL COUNTS

**SECOND CONSOLIDATED AND AMENDED COMPLAINT**  
**(LEAVE TO AMEND GRANTED ON 3.19.14)**

Plaintiff, the United States of America *ex rel.* SallyJo Robins, Kathleen Dunlap, Roberto Rabassa, and Germano Lima (collectively, “Relators”) alleges as its Second Consolidated and Amended Complaint against Defendants Lincare, Inc.(“Lincare”) and Lincare Holdings, Inc. (“Holdings”) as follows:

**Introduction**

1. This action is a consolidation of the following separate actions pending in the District of Massachusetts: *United States ex rel. SallyJo Robins and Kathleen D. Marie*,<sup>1</sup> Civil No. 12-cv-11707, and *United States ex rel. Germano Lima and Roberto Rabassa*, Civil No. 10-

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<sup>1</sup> Since the filing of her original complaint, Relator Marie married and changed her surname to Dunlap. She will referred to as “Kathleen Dunlap” in this Second Consolidated and Amended Complaint.

cv-12256. Upon the request of the parties, these actions have been consolidated by Order of the Court, dated July 12, 2013.

2. This action seeks recovery of damages, treble damages, and penalties on behalf of the United States of America on account of false and fraudulent claims made or caused to be made by Lincare, its agents, employees, and co-conspirators, in violation of the Federal Civil False Claims Act, 31 U.S.C. § 3729, *et seq.*, as amended (the “Act”). These violations involve the intentional and systematic submission of false claims to the United States of America, including several of its agencies and/or departments, for the purpose of getting payments in excess of those to which Lincare was lawfully entitled to receive for oxygen and other respiratory equipment and related services provided to its customers.

3. Specifically, Lincare falsely and fraudulently billed the government for services and equipment that were non-reimbursable, were not medically necessary, were never provided, or were provided in direct violation of the applicable standards and regulations governing Lincare’s provision of oxygen equipment and services. As a result of these knowingly false and fraudulent claims, Lincare received payments from the United States of America that were inflated, excessive, unearned, and improper.

4. As described more fully below, Lincare generally engaged in the following wrongful acts and practices:

- Billing for oxygen equipment after receiving notice that the customer was no longer using the equipment;
- Billing for portable oxygen tanks when the customer did not require them;

- Fabricating evidence to support false claims that customers had ordered refills of oxygen they had never requested;
- Improperly waiving customer co-payments and deductible payments to obtain more business;
- Testing potential customers and providing oxygen to Medicare beneficiaries without physician orders;
- Providing kickbacks to physicians' offices to influence referrals; and
- Failing to return overpayments received from government payors.

5. The Act provides, in part, that any person who knowingly presents or causes to be presented, or conspires to present, a false or fraudulent claim to the United States of America for payment or approval is liable for a civil penalty of between \$5,500 and \$11,000 for each false or fraudulent claim presented or paid, plus three times the amount of damages sustained by the United States of America from the payment of such fraudulent claims. The Act's *Qui Tam* provisions further allow any persons having information regarding a false or fraudulent claim against the United States of America to bring an action for themselves (as the "relators") and for the United States of America, and to share in any recovery.

6. Based on these provisions of the Act, the Relators seek to recover damages, treble damages, and civil penalties arising from false claims made to the United States of America that were knowingly presented or caused to be presented to, and were paid by, the United States of America as a result of the acts of Lincare and its agents, employees, and co-conspirators.

7. The frauds at issue here violate the Act both before and after its May 2009 amendments.

**Parties**

8. Relator SallyJo Robins is and was, at all times relevant to this Second Consolidated and Amended Complaint, a resident of Buffalo, New York.

9. Robins was employed by Lincare for approximately 17 years at its Amherst, New York billing facility. Her most recent position was as a Direct Pay Accounts Receivable Supervisor. She also trained junior employees, and was Relator Dunlap's supervisor when Dunlap was employed at Lincare. Robins also previously worked in the Medicare/Medicaid billings area. Robins was unlawfully terminated by Lincare and Holdings in June 2013.

10. Relator Kathleen Dunlap is and was, at all times relevant to this Second Consolidated and Amended Complaint, a resident of Tonawanda, New York.

11. Dunlap was a Lincare Direct Pay Customer Account Representative from 2003 to 2010, and she worked with Relator Robins in the Amherst, New York billing office. Dunlap was unlawfully terminated by Lincare and Holdings in June 2010.

12. Relator Germano Lima is and was, at all times relevant to this Second Consolidated and Amended Complaint, a resident of Marlborough, Massachusetts.

13. Lima was a Lincare employee from 2006 to 2010, and he worked in Lincare's Marlborough, Massachusetts service center. Lima was wrongfully terminated by Lincare and Holdings in June 2010.

14. Relator Roberto Rabassa is currently a resident of Boylston, Massachusetts. At the times relevant to this Second Consolidated and Amended Complaint, he was a resident of Worcester, Massachusetts.

15. Rabassa was a Lincare employee from 2004 to 2009, and he worked in Lincare's Worcester and Townsend service centers and also with Relator Lima in the Marlborough service center. Rabassa was wrongfully terminated by Lincare and Holdings in October 2009.

16. Because the Relators worked at both the billing and service centers, their knowledge of Lincare's business practices spans the company's organizational structure.

17. Relators are the original sources of the factual allegations of this Second Consolidated and Amended Complaint within the meaning of 31 U.S.C. § 3730(e)(4)(B).

18. Relators bring this action for violations of the Act on behalf of themselves and the United States of America pursuant to 31 U.S.C. § 3730(b)(1).

19. The allegations in this action are based upon the personal knowledge of the Relators unless otherwise indicated as being made on information and belief.

20. Defendant Lincare Holdings, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a principal office for the transaction of business located at 19387 U.S. 19 North, Clearwater, Florida, 33764.

21. Holdings is a holding company for Lincare and related subsidiaries. Holdings executives also hold positions within Lincare, and direct Lincare's human resources

policies and practices. Holdings employees are responsible for directing and overseeing Lincare's treatment of whistleblowers, such as the Relators, within Lincare. Further, certain Lincare human resource professionals central to this Complaint held themselves out as Holdings employees.

22. In July 2012, Holdings was acquired by The Linde Group.

23. Defendant Lincare, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a principal office for the transaction of business located at 1490 North Belcher Road, Suite L, Clearwater, Florida 33765 and/or at 19387 U.S. 19 North, Clearwater, Florida, 33764.

24. Upon information and belief, Lincare, Inc. is a wholly-owned subsidiary of Holdings. Lincare is the operational arm of Holdings and is the corporate entity that bills relevant services to Medicare and other federal and state health programs.

25. Lincare is a Medicare durable medical equipment supplier that provides medical equipment and home health services to Medicare beneficiaries across the country, including in Massachusetts and other parts of New England, and Lincare has multiple full-time offices that conduct business in Massachusetts. This case covers Lincare's conduct across the country.

### **Jurisdiction and Venue**

26. Lincare and Holdings are doing business in this District. Lincare has offices in this District. Both Lincare and Holdings are subject to this Court's jurisdiction.

27. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 31 U.S.C. § 3732, both of which confer jurisdiction on this Court for actions brought under the Act.

28. Venue is proper in this district pursuant to 31 U.S.C. § 3732(a) because Lincare and Holdings both can be found and/or transact business in Massachusetts and because wrongful acts proscribed by the Act occurred in Massachusetts. Venue is also proper pursuant to 28 U.S.C. §§ 1391(b) and (c).

### **Procedural History**

29. Relators Robins and Dunlap filed their False Claims Act action against Lincare and Holdings in the Western District of New York on August 24, 2009.

30. Relators Rabassa and Lima filed their False Claims Act action against Lincare and Holdings, as well as their claims arising under Massachusetts law, in the District of Massachusetts on December 29, 2010.

31. After discovering that the two separate actions shared common factual and legal issues, Relators Robins and Dunlap obtained a transfer of their case to the District of Massachusetts, where Rabassa's and Lima's case was pending.

32. Relators Robins and Dunlap filed an amended complaint in their case on May 20, 2013.

33. Holdings was served with the amended complaint in the Robins and Dunlap action and the complaint in the Rabassa and Lima action on May 21, 2013.

34. Lincare was served with the amended complaint in the Robins and Dunlap action and the complaint in the Rabassa and Lima action on May 23, 2013.

35. The Relators and Lincare then jointly moved for consolidation of the two cases, with the contemplation of a consolidated amended complaint on behalf of all of the Relators. The Court granted this request and consolidated the cases by Order dated July 12, 2013.

### **Factual Allegations**

36. Lincare is one of the largest providers of oxygen and respiratory therapy services and equipment in the United States. Lincare specializes in providing oxygen and related equipment in its customer's homes.

37. Approximately 63% of Lincare's customers have primary coverage under Medicare Part B, and it generates over 60% of its revenues from Medicare and Medicaid payments. Lincare also receives payments from other government health benefits programs, including Medicaid and Tricare.

38. Millions of Medicare beneficiaries require oxygen use at home. In many cases, oxygen is not "delivered" to these customers. For these cases, individuals use a machine known as a "concentrator," which takes air from the atmosphere, strips away most of the non-oxygen gases, and then delivers an air flow that is 85% oxygen or greater.

39. Lincare provides oxygen concentrators to Medicare beneficiaries and other customers. It also provides various other respiratory devices, such as liquid oxygen systems

(containers of liquid oxygen generally consisting of a stationary unit and a portable unit) and nebulizers (used to provide aerosol therapy).

40. Lincare is organized by centers, areas, and regions. Each local office is considered a “service center” and approximately 8 to 10 service centers comprise an “area”. Lincare services about 800,000 customers in 48 states from approximately 1,000 service centers.

41. Each service center has a center manager who reports to an area manager. The service centers assigned to an area are not necessarily geographically contiguous, and areas may cross state lines. Area managers report to a regional or district manager, and the regional and district managers report to officials at Lincare’s corporate headquarters in Clearwater, Florida. During the relevant time period, Holdings was also headquartered in Clearwater, Florida.

42. Center managers manage the service center and receive a compensation package that is substantially dependent on their ability to meet oxygen revenue and profitability targets established by senior Lincare executives.

43. Only sales and profits derived from oxygen revenue are considered in determining a center manager’s incentive compensation, which can exceed the manager’s base salary by more than 100%.

44. With its heavy emphasis on oxygen sales, Lincare’s compensation system provides substantial incentives for the center manager to encourage other employees to violate federal Medicare rules and regulations, as well as Lincare’s own policies, to increase oxygen

sales (and the manager's compensation). At all times, Lincare was aware of these incentives. It designed the compensation system precisely to maximize oxygen revenues.

45. In addition to the center manager, the service center is also generally staffed by two or three service representatives, a sales representative, two customer service representatives, and a respiratory therapist.

46. Service representatives are responsible for the delivery, maintenance, and retrieval of equipment and the delivery of disposable equipment, including oxygen tanks.

47. Sales representatives are responsible for Lincare's sales activities.

48. Lincare acquires many of its new customers through referrals. Sources of referrals are physicians, hospital discharge planners, prepaid health plans, and clinical case managers. Lincare's sales representatives maintain continual contact with these medical professionals.

49. Customer service representatives obtain Medicare/Medicaid (or other insurance) information and coordinate the delivery of care when, for example, a physician refers an individual to one of Lincare's service centers.

50. After the customer service representative obtains the necessary information, Lincare delivers the prescribed therapy at the customer's home, and Lincare's service representatives provide customers with instruction and training regarding equipment use and maintenance, as well as compliance with the prescribed therapy.

51. Following the initial setup, Lincare's service representatives are required to make periodic visits to the customer's home.

52. Relators Rabassa and Lima were service representatives who worked in Lincare's Northeast Region in the Marlborough, Massachusetts service center in Area 33. Area 33 also includes Lincare's Townsend, Worcester, Dudley, Milford, Swansea, Hingham, Brockton, and South Boston service centers.

53. Relator Rabassa started work in 2004 at Lincare's Worcester and Townsend centers. In 2005, he transferred to Lincare's Marlborough center. He was promoted in 2006 to a Senior Service Representative.

54. Relator Lima joined Lincare as a service representative in 2006. He was assigned to the Marlborough service center.

55. Relators Rabassa and Lima had extensive contacts with other Lincare employees, particularly other service representatives located in various centers in their area, including centers in Dudley, Townsend, Swansea, Worcester, and Hingham. They also had regular contact with service representatives from the four other areas in the Northeast Region.

56. Lincare's service centers are supported by several dozen regional billing and collection offices ("RBCOs"), which perform Lincare's billing and reimbursement functions. Each RBCO is responsible for service centers in several areas.

57. The RBCOs are composed of separate departments, all tasked with ensuring that Lincare is billing appropriately. The "Direct Pay" unit is responsible for processing billings to customers, as in the case of co-insurance or deductible payments, and there

are separate departments that specialize in billing Medicare, Medicaid, and private insurance payors. There is also a department that functions as the liaison between the RBCO and the service centers, called the “Up Front Review” department, and a general billing department that physically processes the bills to the various payors.

58. Through its RBCOs, Lincare electronically bills Medicare on a daily basis from Lincare’s central computer system. For various state Medicaid agencies and other payors that do not accept electronic billing, Lincare generates paper claims and invoices.

59. At all relevant times, the RBCOs relied on receiving information from the service centers as to when a customer should be “inactivated,” which would halt billing to the customer and to third-party payors, including Medicare and other government programs.

60. Before they were terminated, Relators Robins and Dunlap both worked in Lincare’s Amherst, New York RBCO.

61. The Amherst RBCO bills approximately \$20-\$30 million per year and is responsible for the billings of numerous Lincare service centers located in New Jersey, Pennsylvania, Maryland, Delaware, and Virginia. Relators Robins and Dunlap worked in the billing office’s Direct Pay unit. At other times, Robins also worked in the Medicare/Medicaid billing unit.

62. While they were employed by Lincare, Relators Robins and Dunlap spoke with service center representatives on a daily basis in all of the states listed above, and they also spoke with and observed office-mates who billed Medicare, Medicaid, and private insurance.

63. Moreover, Relator Robins trained billing personnel in a number of states, including Connecticut, Washington, Colorado, and Wyoming. She kept in touch with these individuals occasionally while she was still an employee at Lincare.

64. Based on numerous conversations with service representatives and billing personnel who worked in other centers and RBCOs, the Relators believe that all of the schemes to obtain excessive reimbursement from Medicare and other government payors, which are described in this Second Consolidated and Amended Complaint, were also carried out in the other centers and RBCOs.

65. Lincare employees who worked in other centers, areas, and regions across the country have informed the Relators that the same types of unlawful, revenue-producing conduct described herein regularly occurred at their own centers, areas and regions. These conversations confirm that the unlawful practices described here were conducted on a national level.

#### **Medicare and the Reimbursement of Oxygen**

66. Medicare is a federally-funded health insurance program primarily benefitting the elderly. It was created in 1965 when Title XVIII of the Social Security Act was adopted. Medicare is the nation's largest health insurance program and provides health insurance to people age 65 and over, those who have end-stage kidney failure, and certain people with disabilities. Medicare Part B (the Voluntary Supplemental Insurance Plan) covers the costs of physician services, certain pharmaceutical products, diagnostic tests, and covered medical supplies, such as durable medical equipment, prosthetics, and orthotics. *See* 42 U.S.C. § 1395j, *et. seq.*

67. As a general matter, *Medicare pays only for services or equipment that are reasonable and medically necessary.* 42 U.S.C. § 1395y(a)(1)(A).

68. Suppliers must also provide economical services and ensure that the services provided are not substantially in excess of the needs of the beneficiaries. 42 U.S.C. §§ 1320a-7(b)(6), (8); 1320c-5(a)(1).

69. Durable Medical Equipment (“DME”) is defined as equipment furnished by a supplier or a home health agency that (1) can withstand repeated use; (2) with respect to items after January 1, 2012, has an expected life of at least 3 years; (3) is primarily and customarily used to serve a medical purpose; (4) generally is not useful to an individual in the absence of an illness or injury; and (5) is appropriate for use in the home. 42 C.F.R. § 414.202.

70. Stationary and portable oxygen supplies for individuals suffering from respiratory diseases are included within the definition of DME and payments for such are made under Part B, the Voluntary Supplemental Insurance Plan.

71. To become a Medicare Part B DME supplier and, thus, to supply oxygen equipment and services to Medicare beneficiaries, an entity must complete an Enrollment Application, known as CMS Form 855S, which states that the entity “agree[s] to abide by the Social Security Act and all applicable Medicare laws, regulations and program instructions that apply to this supplier” and that they “understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations and program instructions (including, but not limited to, the Federal anti-kickback statute and the Stark law), and on the supplier’s compliance with all applicable conditions of participation in Medicare.”

72. For a Medicare beneficiary to qualify to receive oxygen equipment and supplies, oxygen therapy must be ordered by the beneficiary's physician, there must be independent laboratory testing performed to demonstrate the beneficiary's need for oxygen, and alternative therapy must have been attempted.

73. Laboratory testing of the beneficiary's blood oxygen level can be performed in a hospital. However, a home test has been developed too, and beneficiaries can be provided with a pulse oximetry unit that will measure their blood gases while they are sleeping. The unit records their oxygen levels, and the results are downloaded from the device after the unit is retrieved from their home.

74. But Medicare has rigorous rules relating to the independent testing of a beneficiary's blood oxygen levels. These rules were specifically designed to prevent oxygen suppliers, like Lincare, from submitting unnecessary claims or influencing physicians to submit such claims.

75. The rules provide that the oxygen supplier may not perform the necessary testing, and any home self-testing by the beneficiary must be done under the direction of a qualified Independent Diagnostic Testing Facility ("IDTF"). If home testing is performed using an overnight pulse oximetry unit, that testing must be under the direction of an IDTF. An oxygen provider, such as Lincare, may *deliver* the pulse oximetry unit to a beneficiary's home, *but only if the beneficiary's physician has first contacted the IDTF to order the testing*. Further, the IDTF must direct the testing and transmit the test results to the physician.

76. Once a physician has determined that oxygen is necessary for a beneficiary, he or she must sign a Certificate of Medical Necessity. Every Medicare claim for

oxygen must be supported by a Certificate of Medical Necessity, and Medicare has a special form, CMS-484, for this purpose.

77. Form CMS-484 explicitly states that the section of the form containing information regarding the oxygen testing (Section B) may *not* be completed by the oxygen supplier. The form also requires the name of the person filling out Section B, and the form must be signed by the beneficiary's physician who certifies that the statements in the medical necessity portion of the form are "true, accurate and complete." The form also identifies the supplier who will be providing the necessary equipment for the oxygen therapy.

78. Additionally, Medicare beneficiaries must, in most cases, pay a portion of the cost of the oxygen therapy. Medicare and most other government payors that provide coverage to Lincare's customers require that the customer pay a 20 percent co-payment provision in addition to a deductible. Lincare generally does not collect co-payments at the time of service; rather, they are invoiced to the customer or applicable secondary payor (supplemental providers of insurance coverage) on a monthly billing cycle as products are provided.

79. An oxygen supplier cannot waive co-payment and deductible payments. Under 42 U.S.C. § 1320a-7a, any person or entity that offers or gives "remuneration" to a beneficiary, knowing that such remuneration is likely to influence the beneficiary to order or receive from a particular supplier any item or service for which a Medicare payment may be made, is subject to a civil monetary penalty. "Remuneration" includes the waiver of coinsurance and deductible amounts, unless the waiver was not offered as part of an advertisement or solicitation, the person does not routinely waive coinsurance or deductible amounts, and the person waived the coinsurance and deductible amounts "after determining in good faith that the

individual is in financial need” or because the person could not collect the coinsurance or deductible amounts after making reasonable collection efforts.

80. With respect to Medicare reimbursement to suppliers such as Lincare for oxygen and related equipment, prior to 2009, Medicare made continuous monthly rental payments for oxygen contents and oxygen equipment as long as it was medically necessary.

81. Prior to 2009, providing oxygen to Medicare beneficiaries was extremely profitable. New concentrators cost suppliers approximately \$600 and had an expected useful life of 60 months of service. Medicare reimbursement, which varies by state, averaged approximately \$200 a month, not including the co-payment owed by the Medicare beneficiary. Thus, after only three or four months of use, a supplier received full recoupment for the cost of the equipment, but could still expect to receive \$200 per month for another 56 months, or roughly \$11,200. Moreover, because limited maintenance was necessary (and Medicare paid for any non-routine maintenance), upkeep costs for the equipment were minimal.

82. In addition to providing concentrators, Lincare also obtained substantial profits by providing portable oxygen tanks. These small tanks contained a limited supply of oxygen which patients might take when they left their homes. If a Medicare beneficiary’s physician ordered portable oxygen in addition to a concentrator, oxygen providers such as Lincare received an additional monthly fee of approximately \$77. Also prior to 2009, once Medicare approved portable oxygen for a beneficiary, Medicare routinely made the additional monthly payments to the oxygen supplier without any evidence that the beneficiary’s portable tanks had been refilled or even used.

83. Thus, once Medicare approved a beneficiary's need for continuing oxygen, Lincare would receive monthly checks for a concentrator that required minimal maintenance, and additional reimbursement for portable oxygen which many beneficiaries never used until the beneficiary was inactivated.

84. To eliminate excessive Medicare payments to oxygen providers such as Lincare, in 2006 Congress changed the rules for oxygen reimbursement. Commencing in 2009, Medicare limited the amounts oxygen suppliers could be reimbursed for a concentrator, capping the supplier's reimbursement for a concentrator rental to 36 months over the average life expectancy of the unit. And it only permitted monthly reimbursement for portable oxygen if the oxygen provider had actually provided new portable oxygen tanks to the beneficiary. Additionally, in the 2006 legislation, Congress made it clear that Medicare would only reimburse supplier for oxygen that was truly therapeutic for the beneficiary. As a result of these statutory changes oxygen suppliers could no longer bill Medicare for oxygen equipment *if the customer was not actually using it*.

85. Moreover, in 2010, Congress enacted the Patient Protection and Affordable Care Act. *See* 42 U.S.C. § 1320a-7k(d). Under this Act, Medicare suppliers that receive overpayments, or funds to which they are not entitled, must report and return the overpayment by the later of 60 days after the overpayment was identified or the date that any corresponding cost report is due. Any overpayment retained by an entity after the deadline constitutes an "obligation" under the False Claims Act.

86. Regardless of any changes in the regulatory scheme governing the payment and reimbursement of oxygen, at no time was Lincare ever entitled to receive and keep

any Medicare payments unless the service or equipment provided was “reasonable and necessary for the diagnosis or treatment of illness or injury.” 42 U.S.C. § 1395y(a)(1)(A).

87. By submitting monthly claims for its oxygen customers to Medicare, Lincare implicitly certified that the provision of oxygen and related equipment and services was reasonable and necessary for the beneficiary’s treatment. Conversely, Lincare could not bill Medicare for oxygen if it knew the service was not needed by the beneficiary or if it knew that the beneficiary was not using the service.

88. Medicare and other government payors would not have paid or reimbursed Lincare had it known that Lincare was providing equipment and services that Medicare beneficiaries did not need, require, or request.

89. The following paragraphs detail numerous schemes by Lincare to improperly increase its receipt of revenue from Medicare and other government payors. For each of these schemes, the Relators have examples of false claims being presented to Medicare and being paid on behalf of actual beneficiaries. The specific claims identified below are only by way of example, and are not intended to be a statement of all the false claims presented or caused by Lincare at issue in this action. Instead, upon information and belief, the frauds are extensive and wide-reaching.

**Billing for Equipment Rental During Periods of Customer Non-Use**

90. Medicare payment for oxygen equipment is tied to its “use;” suppliers may only bill, and Medicare is only allowed to pay, if the beneficiary is actually using the oxygen provided. But Lincare routinely billed, and continues to bill, Medicare and other government payors for oxygen equipment rental fees long after Lincare receives notice that the

equipment is no longer in use due to death, recovery, a move into a skilled nursing facility, non-use, or some other reason.

91. Although Lincare's stated policy is to stop billing upon account inactivation, which is to be immediately triggered by a physician's discontinuance order, date of death, pick-up request, or other similar notification, this policy is routinely and fraudulently ignored in practice.

92. Service centers are responsible for sending inactivation information for customers to the RBCO and, once that information reaches the RBCO, billing is expected to be stopped by the RBCO. But because service center employees are paid monthly and quarterly commissions based on the number of active customers they have, many inactive customers are deliberately not reported to the billing centers as "inactive" until *after* the end of the month.

93. Specifically, Lincare service center representatives, who work in the field, communicate with the billing office about deliveries, equipment status, and customer terminations by using "tickets." In this way, the RBCO is supposed to learn about customers who die, leave their homes for hospitals or nursing homes, or otherwise cease use and/or terminate service.

94. Thus, a service representative is supposed to fill out a ticket, in triplicate, stating, for example, that equipment has been picked-up, and then forward the ticket to his or her service center.

95. Sometime later, a copy of the ticket makes its way to the RBCO for data entry. Information from the ticket is entered into Lincare's computer system and, at the time of data entry – a.k.a. the “batch date” – billing is to be stopped for the customer.

96. But there is frequently a lengthy lag between the date of the ticket discontinuing or inactivating all or a portion of the customer's equipment and the date of billing cessation, which often leads to continued billing during periods of non-use.

97. This occurs because Lincare has no effective procedures in place to ensure timely and correct communication of customer use information between its service centers and the RBCO. There are no checks to ensure that service centers send tickets to the RBCO on a timely basis, nor are there any procedures to ensure that Medicare (or other payors) are refunded for continued billing resulting from delays in communicating customer information. In other words, Lincare does not systematically attempt to prevent, identify, and reverse improper billing, notwithstanding the fact that Lincare is aware that due to the incentives created by its compensation system, such improper billing occurs on a routine basis.

98. On occasion, Lincare service center representatives have even asked RBCO personnel to allow billings to continue until month's end to enable them to earn additional commissions. Indeed, Deborah Dillon-Sarra, a Lincare compliance investigator based at its corporate headquarters in Clearwater, Florida, expressly acknowledged to Relator Robins on November 17, 2009 that Lincare compliance “know[s] that [service centers failing to inactivate accounts in a timely manner] is a problem.”

99. Service representatives would also sometimes create “dummy tickets” to hide additional billing to Medicare after equipment was picked-up or the customer account was

inactivated by making it look as though the customer had the equipment longer than he or she actually did. Scott Traylor, a Lincare Regional Vice President, recognized that some centers use “dummy tickets” to take “things off the radar screen that need to be there.”

100. Relators Robins and Dunlap often received complaints from customers regarding improper billing when their equipment had already been picked-up or their account should have been inactivated.

101. For example, Lincare billed Medicare for customer CB of Georgetown, DE (account no. 212-549-708) on February 19, 2007,<sup>2</sup> August 19, 2007, and August 20, 2008. Each bill was for \$12.88,<sup>3</sup> and Medicare paid Lincare the entire amount of each bill. The customer, however, called Lincare in March 2009, stating that she returned her equipment *three years ago*. As of May 2009, Lincare issued no refunds to Medicare and, in fact, Lincare employees created a false, “dummy” ticket showing that CB’s equipment was picked-up on March 30, 2009. Upon information and belief, the dummy ticket was created to hide the fact that Lincare had overbilled Medicare.

102. In addition, Lincare inactivated customer HSS of Atlantic City, N.J. (account no. 018-530-002 954) on July 23, 2008 and picked-up the customer’s equipment on the same date. But it billed Medicare on:

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<sup>2</sup> The dates of the bills used in this Second Consolidated and Amended Complaint are the dates of the invoices submitted by Lincare to Medicare or another payor. One invoice may have multiple payments for several dates of service. The date of service is either the date Lincare provided the service to the customer or the monthly rental date for the payment of the oxygen equipment for which Lincare was billing.

<sup>3</sup> This amount is the Medicare allowable amount for the item or service. It is set forth in the furthest column of the line item denoting a bill in the billing history (called a “Customer Select”) for each customer.

- August 14, 2008 for \$159.42, \$9.66, and \$25.43;
- August 24, 2008 for \$9.66;
- September 12, 2008 for \$184.85;
- September 24, 2008 for \$9.66;
- October 12, 2008 for \$184.85,
- October 24, 2008 for \$9.66;
- November 12, 2008 for \$184.85; and
- November 23, 2008 for \$9.66.

Medicare paid Lincare the entire amount of each bill and, as of May 2009, Lincare issued no refunds to Medicare.

103. Lincare also billed New Jersey's Medicaid program for this customer on:

- August 14, 2008 for \$2.42 and \$46.22;
- August 24, 2008 for \$2.42;
- September 12, 2008 for \$46.22;
- September 24, 2008 for \$2.42;
- October 12, 2008 for \$46.22;
- October 24, 2008 for \$2.42;

- November 12, 2008 for \$46.22; and
- November 23, 2008 for \$2.42.

Medicaid paid Lincare all, or a portion, of the amount in each bill and, as of May 2009, Lincare issued no refunds to Medicaid.

104. Lincare picked-up the portable equipment for customer CJ of Leesburg, VA (account no. 003-140-007 517) on February 18, 2009. Lincare, however, billed Medicare for this equipment on March 10, 2009 and April 10, 2009. Each bill was for \$23.02. Medicare paid the entire amount of each bill and, as of May 2009, Lincare issued no refunds to Medicare.

105. Lincare inactivated customer RR, of Baltimore, MD (account no. 004-760-002 067) on April 18, 2006 and picked-up the equipment on April 25, 2006. But Lincare billed Medicare for this customer on:

- September 24, 2006 for \$67.02;
- October 25, 2006 for \$67.02; and
- May 25, 2007 for \$89.37.

Medicare paid Lincare the entire amount of each bill and, as of May 2009, Lincare issued no refunds to Medicare.

106. Lincare inactivated customer LM, of Wall, N.J. (account no. 004-430-002 691) and picked-up her equipment on September 21, 2007 because she went into the hospital, but

Lincare billed Medicare on September 29, 2007 for \$158.72. Medicare paid Lincare for this bill and, as of May 2009, Lincare issued no refunds to Medicare.

107. Lincare inactivated the account of customer MG of Moorefield, W.V. (account no. 033-700-001 093) on August 18, 2008 because his condition had improved.

Lincare, however, continued to bill Tricare on:

- August 20, 2008 for \$7.39;
- September 20, 2008 for \$7.39;
- October 20, 2008 for \$7.39; and
- November 20, 2008 for \$7.39.

Tricare paid Lincare the entire amount of each of the bills and, as of May 2009, Lincare issued no refunds to Tricare.

108. Lincare picked-up the equipment of customer RB, of West Milford, N.J. (account no. 000-370-001 595) on August 23, 2008, but did not inactivate the account until October 28, 2008. Lincare continued to bill Medicare on August 30, 2008, October 1, 2008, October 31, 2008, November 30, 2008, and December 31, 2008. Each bill was in the amount of \$159.42. Medicare paid Lincare the entire amount of each of the bills and, as of May 2009, Lincare issued no refunds to Medicare.

109. Lincare picked-up the equipment for customer EC of Nokomis, FL (account no. 004-280-001 123) on February 6, 2009. Lincare, however, billed Medicare on February 20, 2009, March 20, 2009, April 19, 2009, May 20, 2009, June 20, 2009, and July 19,

2009. Each bill was in the amount of \$163.65. Medicare paid Lincare the entire amount of each of the bills and, as of August, 2009, Lincare issued no refunds to Medicare.

110. With respect to Lincare customer HB of Milford, DE (account no. 041-730-000 166), the customer was disconnected from oxygen on April 21, 2009, and the equipment was picked-up by Lincare on April 22, 2009. But Lincare continued to bill Medicare on:

- May 17, 2009 for \$10.14;
- May 28, 2009 for \$37.92;
- June 17, 2009 for \$10.14;
- July 15, 2009 for \$32.40;
- July 17, 2009 for \$10.14;
- July 18, 2009 for \$140.63;
- August 1, 2009 for \$140.63;
- August 19, 2009 for \$10.14;
- September 1, 2009 for \$140.63;
- September 17, 2009 for \$10.14;
- October 2, 2009 for \$140.63;
- October 17, 2009 for \$10.14;

- October 21, 2009 for \$23.02 and \$69.06;
- October 31, 2009 for \$140.63 and \$23.02;
- December 2, 2009 for \$140.63 and \$23.02; and
- January 3, 2010 for \$138.54 and \$23.02.

Medicare paid all, or a portion, of the above bills and, as of January 29, 2010, Lincare issued no refunds to Medicare.

111. Upon information and belief, the improper billings in these examples were a result of the service centers' failures to provide timely notice to the RBCOs of equipment pick-up or other reasons for customer inactivation, leading to continued billing.

112. Delays in receiving this information from service centers result from internal pressures to continue improper billing. For example, Lincare requires its service centers to perform periodic "concentrator checks" for all of its oxygen customers using concentrators. A concentrator check involves a site visit by a Lincare service representative who checks the condition of the concentrator, examines the unit's filters, and measures the flow of oxygen coming out of the unit to make sure it is generating the proper oxygen concentration.

113. Prior to 2009, concentrator checks were performed every 90 days. Thereafter, Lincare did checks once every six months. At the start of each month, Lincare's billing system would generate a list of active oxygen customers whose units needed to be checked during the month.

114. Every individual on each center's concentrator checklist was, according to Lincare's own internal database, an active customer who (along with their insurer) was being billed monthly for Lincare's services, unless some independent notification, such as a customer complaint, resulted in the cessation of the billing.

115. Month after month, service representatives (including Relators Rabassa and Lima) would attempt to perform the checks on the customers identified as active by Lincare's billing software. Each month, however, between 10-15% of the units could not be checked. For example, in making their rounds, the service representatives would discover that a number of individuals had died, moved away, or returned their units. In each of these cases, Lincare was no longer entitled to bill Medicare for that customer's oxygen services. But Lincare routinely continued to bill Medicare for those customers.

116. For example, Relators Rabassa and Lima learned that Lincare picked-up the concentrators from customers JJ of Marlborough and LS of Holliston in February 2007. Lincare also picked-up concentrators from AP of Wayland and AP of Framingham in March 2007. And in April 2007, it picked-up a concentrator from JD of Marlborough. Yet as late as July 2007 – months after Lincare reclaimed their equipment – Relators Rabassa and Lima learned that Lincare was still billing Medicare on a monthly basis for providing oxygen to these beneficiaries.

117. In fact, Lincare would often ignore customer requests for a pick-up of their equipment to enable further billings.

118. The official Lincare policy with regard to customers' requests to pick-up equipment while a valid prescription for oxygen was still in place was for a Lincare employee,

often a service representative, to advise the customer that he or she needed to be discharged from oxygen by his or her physician *or* sign a Refusal of Treatment form.

119. But service centers would frequently and intentionally delay providing customers with Refusal of Treatment forms or otherwise put them off so that they could continue to count the customer as an “active” customer.

120. And as early as 2006, Relator Robins told Jenna Pederson, an employee in Lincare’s Compliance Department, that service centers were not giving customers the option of signing the Refusal of Treatment forms and, instead, were continuing to charge for the equipment.

121. For example, on December 6, 2012, Robins had a conversation with a customer GW of Westminster, MD (account no. 026-200-003 854) who said that she had asked for her equipment to be picked-up the year before. She told Robins that the service center refused to pick it up and told her to contact her physician. She said she was never offered a Refusal of Treatment form and, if she was, she would have signed it.

122. In another example, Lincare charged Medicare from February 2008 to February 2009 even though customer ME, of Bowie, MD (account no. 024-370-001 594) requested a pick-up of her equipment on December 21, 2007. Specifically, the customer requested a pick-up on December 21, 2007, but was told by Lincare that she needed a sign-off from her physician before Lincare could pick-up the equipment. The customer called Lincare again on April 1, 2008, referenced the December 2007 call, and informed Lincare that her physician had faxed “numerous” orders to Lincare to disconnect treatment. Lincare, however, did not pick-up the equipment until November 3, 2008, and the customer signed a Refusal of

Treatment form on that date, as well. Then, on June 5, 2009, the customer spoke with Lincare and again said that she had been trying to get the equipment picked-up since 2007, that her physician sent a disconnect order in early 2008, and that the equipment was not picked-up until the end of 2008. Lincare even had the physician's disconnect order, dated July 31, 2008, in the customer's file. Despite having this information, Lincare billed Medicare on:

- February 5, 2008 for \$184.85;
- February 13, 2008 for \$184.85;
- March 13, 2008 for \$184.85;
- April 13, 2008 for \$184.85;
- May 13, 2008 for \$184.85;
- June 13, 2008 for \$184.85; and
- February 6, 2009 for \$159.42, \$25.43, and \$739.40.

Medicare paid Lincare all, or a portion, of each of the bills and, as of July 30, 2009, Lincare issued no refunds to Medicare.

123. In yet another case, Relator Robins spoke with customer WS, of Baltimore Farms, MD (account no. 000-982-351) on January 28, 2013, and he told her that he had called the service center at least five times since October 2012 to request a pick-up of his equipment. He told Robins that he even got a discharge form from his physician, which he then faxed to the service center the week before. No one at the center ever followed-up with him. Instead, he told

Robins that the employee at the service center kept telling him that someone would call him back, but no one ever did.

124. In addition, Lincare also routinely presented, and continues to present, false claims for oxygen purportedly supplied to deceased Medicare beneficiaries.

125. For example, Lincare learned on February 8, 2008 that customer CV of Mt. Laurel, N.J. (account no. 148-221-145 A) died on January 12, 2008. Lincare, however, billed Medicare on January 16, 2008 for \$184.85, and Medicare paid \$122.58 on January 31, 2008. As of May 2009, Lincare had not refunded Medicare for this payment.

126. Lincare customer JB of Lewes, DE (account no. 024-250-003 253) had insurance through Medicare and Tricare. Lincare was aware by October 9, 2008 that the customer had died on September 10, 2008. Lincare billed Medicare on September 13, 2008 for \$159.42 and \$25.43, but Lincare refunded Medicare these amounts on October 17, 2008. Lincare billed Tricare on September 12, 2008 for \$39.86 and \$6.36, and Tricare paid Lincare those amounts. As of July 2009, Lincare issued no refunds to Tricare.

127. Similarly, Relator Robins came across an example of customer AN, of Baltimore, MD (account no. 000-848-994) who passed away in June 2012 and whose equipment was picked-up around that time, as well. But, Lincare did not inactivate the account until January 25, 2013.

128. Moreover, every month, in every center in Area 33 and the Northeast Region, the service representatives were instructed to perform concentrator checks on equipment provided to customers who Lincare knew to be deceased.

129. Relators Rabassa and Lima, and other service representatives in the Northeast region, repeatedly informed their superiors of the customers on the concentrator checklist who were dead. Yet, the deceased customers' names would not be removed from the concentrator checklist, and in the succeeding month the service representatives would again be instructed to perform a concentrator check on the deceased customers' equipment.

130. As described above, the concentrator lists were generated from Lincare's billing database, so, upon information and belief, all accounts on the concentrator list, including the deceased customers, were accounts through which Lincare was billing government and private insurance payors.

131. The large number of deceased customers on the concentrator checklist made it impossible for the service representatives to meet their monthly performance goals. Relators Rabassa and Lima and other service representatives in the region regularly complained to center managers and area managers that dead customers were not being removed from the active billing list. Frequently, they were told that the supervisor would "take care of it," but the next month the deceased customers' names would still be on the active list.

132. In October 2008, Marie Ambrosino, a sales representative at Lincare's Worcester center, took the initiative to remove 70 deceased customers from that center's active list. Her supervisors were enraged at this action, and Ms. Ambrosino became concerned that she would be fired because she had inactivated dead customers. All or most of these customers were Medicare beneficiaries, and when Ms. Ambrosino inactivated the customers, Lincare could no longer submit claims to Medicare for providing oxygen to these customers.

133. In November 2008, Relator Rabassa told his supervisor, Heather Walker, the manager of the Marlborough center, that he and the two service representatives under him would no longer attempt to meet the monthly concentrator check goal unless the deceased customers were taken off the active list.

134. Relator Rabassa confronted Walker and told her that he knew that billing monthly oxygen for deceased customers was illegal. Walker told Rabassa that she would discuss his concerns with the area manager, Tarrah Filo-Loos, and the regional manager, Steven Bauer.

135. After talking with these Lincare officials, Walker was instructed to discipline Rabassa formally for refusing to meet the monthly concentrator check goal. Walker told Rabassa that she did not agree with the discipline and that it was not her idea. She admitted that the pressure to keep deceased and other customers who no longer qualified for benefits on the active billing list came from corporate officials, including the officials at Lincare's Florida headquarters, and she also admitted that she was pressured by her superiors to keep deceased customers on the active billing list. She told Rabassa, however, that she could not be a party to fraud and she inactivated the improper customers, including the deceased customers. Walker took this action just before Rabassa went on vacation.

136. When Rabassa returned a week later, Walker had resigned. Relators Rabassa and Lima understand that Walker was forced to resign by her superiors.

137. Also when performing periodic concentrator checks, Relators Rabassa and Lima and other service representatives routinely observed that as many as 10% of their customers no longer used their oxygen equipment. This was obvious when unused units had to

be hauled out of the back of customers' closets or when the representatives discovered that they were not installed.

138. Even when the units were operational, service representatives knew when the concentrators were not being used because they would record the number of hours the unit had been used on the work ticket filled out for each service visit. Additionally, service representatives made notes of non-use on the individual tickets and would also make notes in the computer entry for the assignment. Thus, at all times, Lincare could monitor which oxygen customers actually used and needed oxygen.

139. Relators Robins and Dunlap at the RBCO would also learn about Lincare billing Medicare during periods of non-usage through phone calls from customers or their family members after they received a bill, informing Robins and Dunlap that the customer no longer used the equipment and, in many cases, had not used the equipment for years.

140. The below examples are illustrative of Lincare's practice of billing Medicare during periods of customer non-use.

141. Between 2007 and 2009, Lincare regularly billed for oxygen provided to PP of Bellingham, Massachusetts. In 2008 and 2009, when service representatives went to his home to perform concentrator checks, they learned from his relatives that although PP's concentrator was in the house, PP had moved. Yet PP remained on Lincare's active list, and it billed for his oxygen monthly. Sometime in 2008, PP returned to Bellingham. However, he still did not use the concentrator previously provided to him by Lincare. But Lincare continued to bill Medicare or PP's Medicare Advantage plan, despite the fact that Lincare knew that PP no longer used oxygen.

142. Lincare billed Medicare for an oxygen concentrator for customer IA of Waynesboro, PA (account no. 025-270-000 983) from September 2007 through at least August 2008. Specifically, Lincare billed Medicare on:

- September 29, 2007 for \$158.72;
- October 31, 2007 for \$158.72;
- November 30, 2007 for \$158.72;
- December 31, 2007 for \$158.72;
- February 1, 2008 for \$159.42;
- March 1, 2008 for \$159.42;
- March 31, 2008 for \$159.42;
- May 1, 2008 for \$159.42;
- May 31, 2008 for \$159.42;
- July 1, 2008 for \$159.42; and
- August 1, 2008 for \$159.42.

Medicare paid Lincare all, or a portion, of each bill. But between a September 2007 Lincare concentrator check and one done again in June 2008, zero additional hours were logged by the concentrator's measuring device. As of September 2009, Lincare issued no refunds to Medicare.

143. Customer MS, of Burkittsville, MD (account no. 266-888-407) stopped using her equipment in 2003, as evidenced by the fact that the hours-of-use on her equipment remained constant during concentrator checks from September 2003 to March 2008. Lincare, however, billed Medicare for the equipment on:

- September 24, 2006 for \$185.99;
- October 24, 2006 for \$185.99;
- November 24, 2006 for \$185.99;
- December 25, 2006 for \$185.99;
- January 24, 2007 for \$184.15 ;
- February 24, 2007 for \$184.15;
- March 24, 2007 for \$184.15;
- April 24, 2007 for \$184.15;
- May 24, 2007 for \$184.15;
- June 24, 2007 for \$184.15;
- July 24, 2007 for \$184.15 ;
- August 24, 2007 for \$184.15;
- September 23, 2007 for \$184.15;

- October 24, 2007 for \$184.15;
- November 23, 2007 for \$184.15;
- December 23, 2007 for \$184.15;
- January 24, 2008 for \$184.85;
- February 24, 2008 for \$184.85; and
- March 23, 2008 for \$184.85.

Medicare paid Lincare all or a portion of each bill. Lincare refunded only one month, March 2008, to Medicare and, as of May 2009, Lincare issued no further refunds to Medicare.

144. Lincare billed Tricare for an oxygen concentrator for customer RD, of Capitol Heights, MD (account no. 013-790-003 428) from January 2007 through at least October 2008. But between an August 2007 Lincare concentrator check and ones done again in December 2007, March 2008, June 2008, and August 2008, zero additional hours were logged by the concentrator's measuring device. In fact, an October 2008 notation in the customer's file states that "conc[entrator] check hours have not changed since 8-2007." Despite this knowledge, Lincare billed Tricare on:

- September 14, 2007 for \$126.98 and \$20.34;
- October 13, 2007 for \$147.32;
- November 14, 2007 for \$147.32;

- December 14, 2007 for \$147.32;
- May 23, 2008 for \$554.56;
- June 14, 2008 for \$138.64;
- July 14, 2008 for \$138.64;
- August 14, 2008 for \$138.64; and
- September 15, 2008 for \$138.64.

Tricare paid Lincare all, or a portion, of each bill and, as of October 22, 2008, Lincare issued no refunds to Tricare.

145. Lincare billed Medicare for customer LS of Brick, N.J. (account no. 010-410-001 033) from April 13, 2008 through June 13, 2008. But concentrator checks show that the hours-of-usage for this customer changed by only 9 hours from January 31, 2006 to August 4, 2008. And, between April 7, 2008 and August 4, 2008, the hours-of-use had not changed at all. Despite this knowledge, Lincare billed Medicare on April 13, 2008, May 14, 2008, and June 14, 2008. Each bill was in the amount of \$159.42, and Medicare paid Lincare the entire amount of each bill. As of September 2008, Lincare issued no refunds to Medicare.

146. Concentrator checks for Lincare customer NC of Doylestown, PA (account no. 018-530-002 038) showed that the customer had not used the equipment since January 2006, as the hours-of- usage remained constant between checks done in January 2006 and October 2008. But Lincare billed Medicare on:

- September 29, 2007 for \$184.15;
- March 30, 2008 for \$184.85;
- May 1, 2008 for \$184.85;
- May 31, 2008 for \$184.85;
- July 1, 2008 for \$184.85;
- July 31, 2008 for \$184.85;
- August 30, 2008 for \$184.85;
- October 1, 2008 for \$184.85;
- October 31, 2008 for \$184.85;
- November 30, 2008 for \$184.85;
- December 31, 2008 for \$184.85; and
- January 31, 2009 for \$184.85.

Medicare paid Lincare the entire amount of each bill and, as of March 2010, Lincare issued no refunds to Medicare.

147. Lincare billed Medicare for customer ME of Cristfield, MD (account no. 039-580-000 339) on December 29, 2009 for \$140.63. The customer's equipment, however, was picked-up on December 7, 2009, and the account was inactivated on that date, as well. Medicare

paid Lincare the entire amount of each bill and, as of February 2010, Lincare had issued no refunds to Medicare. Relator Dunlap brought this customer to the attention of Melissa Hite, an employee in Lincare's Compliance Department, on February 4, 2010.

148. Thus, notwithstanding notice from the service representatives and RBCO employees, written notice on the physical tickets and the computer entries, and usage data that definitively established that numerous customers no longer used oxygen, Lincare refused to notify Medicare and other government payors that its services were no longer necessary. Instead, it filed claims for payment for such customers month after month.

149. In fact, in recent history, Lincare representatives were required to review the equipment of 90% of their customers annually, which practice revealed numerous instances of idle equipment for which the government was continuously paying.

150. In an attempt to avoid having anyone discover that Lincare knew that Medicare was paying for unnecessary oxygen, Lincare instructed Relators Rabassa and Lima, as well as other service representatives, to stop writing about customers' non-use of their oxygen equipment on the physical tickets, and instructed them not to place any text in the "Notes" section of the customers' computerized records. Lincare officials told Relators Rabassa and Lima that these steps were necessary to avoid compliance problems.

151. In some instances, Lincare service representatives actually falsified hours-of-use tallies to ensure that the fraudulent billing continued. And, upon information and belief, Lincare's service representatives have also, on occasion, deliberately delayed picking up idle equipment to enable further billings to be processed.

152. For example, Lincare customer JM of Norfolk, VA (account no. 035-960-000 211) called Lincare on November 10, 2009 and stated that he had not used the oxygen for 5 months, and the Concentrator Check Inquiries, dated February 11, 2008, December 3, 2009, and December 10, 2009, show the same number of hours-of-usage of the equipment, indicating that the customer had not used the oxygen since February 11, 2008. Despite the evidence of non-usage from February 11, 2008, Lincare billed Medicare on:

- April 8, 2008 for \$184.85; and
- June 27, 2009 for \$739.40.

Medicare paid Lincare all, or a portion, of each bill and, as of January 2010, Lincare issued no refunds to Medicare.

153. Moreover, because oxygen usage levels can only go up or remain the same from month-to-month, the previous Concentrator Check Inquiry for customer JM, dated October 15, 2007, is false, as it shows hours-of-usage that are higher than those found on the next check date, February 11, 2008, and lower than those found on the previous check date, April 13, 2007.

154. Lincare customer WA of Timberville, VA (account no. 036-250-000 044) went into a nursing facility in April 2009 and died on February 11, 2010. But this customer's file contains a Concentrator Check Inquiry dated February 11, 2010. Upon information and belief, given that the customer had been in a nursing facility for almost a year prior to this date and, in fact, was deceased on the date of this alleged concentrator check, the veracity of this concentrator check is doubtful. Indeed, a service center employee named "Robin" admitted to Relator Robins that she fabricated the hours-of-usage on the Concentrator Check Inquiry.

155. And even though customer WA went into a skilled nursing facility in April 2009, Lincare billed Medicare on May 8, 2009, June 7, 2009, July 8, 2009, August 8, 2009, September 10, 2009, October 8, 2009, November 8, 2009, and December 8, 2009. Each of the bills was in the amount of \$163.65, and Medicare paid Lincare the entire amount of each bill. As of February 2010, Lincare had issued no refunds to Medicare.

156. Lincare customer HL of Pikesville, MD (account no. 372-682-439 A) called Lincare in January 2004 to request that her equipment be picked-up. She called again on March 9, 2004 to have the equipment picked-up. Then, in 2010, the customer's husband called Lincare and said that he had called many times before about wanting the equipment picked-up because his wife, the customer, did not use it any longer. But Lincare billed Medicare on:

- August 24, 2008 for \$12.88;
- February 24, 2009 for \$13.53; and
- August 23, 2009 for \$13.53.

Medicare paid Lincare the entire amount of each bill and, as of May 2010, Lincare issued no refunds to Medicare.

157. Indeed, Lincare also recklessly billed, and continues to bill, the government for customers as to whom Lincare had not confirmed equipment usage.

158. For example, Lincare billed Medicare between October 4, 2007 and August 4, 2008 for customer TM, of Howell, N.J. (account no. 004-430-003 898). But, on July

31, 2008, Relator Dunlap told Lincare that there had not been a concentrator check for this customer since October 4, 2007. Lincare, however, billed Medicare on:

- December 31, 2007 for \$368.30;
- January 5, 2008 for \$184.85;
- February 5, 2008 for \$184.85;
- March 5, 2008 for \$184.85;
- April 5, 2008 for \$184.85;
- May 5, 2008 for \$184.85;
- June 5, 2008 for \$184.85;
- July 6, 2008 for \$184.85; and
- August 5, 2008 for \$184.85.

Medicare paid Lincare all, or a portion, of each bill and, as of September 2008, Lincare issued no refunds to Medicare.

159. Also, with respect to customer TM, Relator Dunlap spoke with an employee at the service center named Devon, who asked Dunlap if she was going to inactivate the account and expressed concern that, because it was the end of the month, it would affect Devon's "numbers."

160. Lincare also has the ability to run a report, called the Concentrator Service Exception Report, which shows the next scheduled concentrator check for customers who are “active” in Lincare’s internal database. By looking at the “last service date” entry compared with the “scheduled service date” column, Lincare can identify customers for whom concentrator checks have not been done on their scheduled basis.

161. One customer on this list, which Relators Robins and Dunlap printed out on September 3, 2008, EL of Clarksville N.H. (account no. 024-670-001) had his concentrator checked on February 28, 2008. His next check was scheduled for May 28, 2008. But, because the list was run on September 2008 and EL remained on it, Lincare had not checked his concentrator in six months. Thus, even without evidence of EL’s use of his equipment, and upon information and belief based on the fact that the customer was identified as “active” in Lincare’s database, Lincare was billing the customer and the third-party payor for the equipment.

162. Similarly, for customer JM of Arundel, ME (account no. 025-720-000 021), Lincare’s last concentrator check for this customer was in November 21, 2007, and the next scheduled concentrator check was for February 19, 2008. Again, because the list was run in September 2008 and JM remained on it, Lincare had not checked the concentrator for approximately 10 months. Notwithstanding its complete lack of any evidence that JM was using his equipment, Lincare maintained JM as an “active” customer in its database, and billed for the equipment.

163. Relators Robins and Dunlap even came across a number of instances where Lincare was billing Medicare for customers *whom Lincare could not even locate*.

164. In the case of customer WS of Seaford, DE (account no. 024-250-000-548), all mail had been returned from the customer's address since January 2007. Lincare, however, billed Medicare for this customer on:

- December 25, 2007 for \$174.48;
- June 26, 2008 for \$174.48;
- December 25, 2008 for \$174.48; and
- June 26, 2009 for \$157.90.

Medicare paid Lincare the entire amount of each bill and, as of January 2010, Lincare issued no refunds to Medicare.

165. Customer JG of Harrisonburg, VA (account no. 018-820-000 564) last had a concentrator check on October 22, 2008. As of November 20, 2008, Lincare started receiving returned mail from the customer's address and could not locate a new address for the customer. Throughout 2009 and 2010, Lincare employees attempted to locate this customer, without success. But Lincare continued to bill Medicare during this time on:

- November 12, 2008 for \$159.42;
- December 12, 2008 for \$159.42;
- January 11, 2009 for \$140.63;
- February 12, 2009 for \$140.63;

- March 12, 2009 for \$140.63; and
- April 13, 2009 for \$140.63.

Medicare paid Lincare all, or a portion, of each bill and, as of June 2010, Lincare issued no refunds to Medicare.

166. In 2010, Relator Robins came across a situation involving Lincare customer LP of Richmond, VA (account no. 004-010-000 426). Robins was told by a service center employee that the center could not locate the customer. Robins asked William Hardin, a service center employee, to please update her on the status of the center's efforts to locate LP. In an email dated March 12, 2010, Robins asks Hardin if Lincare should "stop the billing to medicare?" Hardin responds: "I don't really want to yet."

#### **Billing for Medically Unnecessary Portable Oxygen Tanks**

167. Many Lincare oxygen patients also had prescriptions for portable oxygen. Most patients who regularly used their portable oxygen ordered multiple tanks a month. Portable oxygen tanks do not store much oxygen, and if such customers left their homes on a regular basis, they would need to replace the tanks on a regular basis. However, many patients who had been prescribed portable oxygen rarely left their homes and only used a portable tank infrequently. These patients could go several months or even years without needing portable tank refills. These patients had no need to receive new oxygen tanks because the oxygen in their existing tanks did not go bad. For these patients, there was no need to order new portable oxygen except in the rare occasions when they extinguished their existing supply.

168. Prior to January 2009, Lincare received monthly payments from Medicare for its customers who had been prescribed portable oxygen, regardless of whether or not it supplied the patient with new portable tanks. Thus, Lincare service representatives only provided customers with new portable oxygen tanks upon request. There was no need for customers to order, or Lincare to deliver, tanks the customer did not need. Similarly, prior to January 2009, Lincare did not issue reports to its centers identifying those customers who had not recently ordered portable oxygen tanks. Although its computer system had such capability, there was no need for such tracking.

169. Under the new portable oxygen rules that became effective January 1, 2009, however, Lincare was no longer reimbursed monthly for portable oxygen unless it actually *delivered* new oxygen tanks. Lincare recognized that these and other changes in Medicare reimbursement policies represented a serious threat to its revenues and profits. To evade the cuts mandated by Congress, Lincare concocted a scheme to maximize oxygen revenue improperly and evade the anticipated cutbacks.

170. Lincare's scheme, which was developed at its corporate offices in Florida and implemented across the country, focused on maximizing portable oxygen revenue by soliciting portable oxygen patients who did not need new portable supplies to swap out their portable tanks. If patients who did not usually order new oxygen could be convinced to accept three new tanks every quarter, Lincare could bill Medicare for portable oxygen service, at approximately \$77 per patient, for three more months.

171. The core of Lincare's scheme was the generation and circulation of a new report from Lincare's corporate offices to its regions, areas and centers. Sometimes called a

Center Fill Management Report, this report identified Medicare beneficiaries whose oxygen payments had been capped under the 2009 Medicare reimbursement changes, but for whom Lincare could receive portable oxygen payments if oxygen was delivered. The reports informed regional managers, area managers and center managers when to deliver a portable oxygen tank to each patient so Lincare could bill Medicare monthly for portable oxygen.

172. Reimbursement specialists from Lincare's corporate offices held regional conferences across the country to instruct area managers and center managers how to use these reports. One such conference was held for Lincare managers in the Northeast Region in New Hampshire in Fall 2008, just before the effective date of the reimbursement changes. Similar conferences were held in all other Lincare regions, including one hosted by Lincare Regional Vice President Scott Traylor for area managers and center managers in Virginia. In these conferences, area managers and center managers were told to use the new reports to identify customers who could be pressured into ordering portable oxygen they did not need. Among other tactics, managers were told to send their service representatives to the listed homes to get the customers to accept the new portable oxygen tanks they never ordered. Additional tactics, described below, were discussed for reluctant customers who did not initially accept the replacement tanks.

173. Therefore, starting in January 2009, when capped periods started to mature, for each center across the country Lincare generated and distributed reports that identified those customers who had prescriptions for portable oxygen but who had not recently received new tank deliveries. The only reason for Lincare's corporate headquarters to distribute these reports to each and every center was to have the centers solicit the listed customers for deliveries of portable oxygen which those customers did not otherwise need or require. After the

reports were received at the local service centers, center managers instructed service representatives to get the customers on the list to accept new oxygen tanks.

174. The ultimate result of Lincare's generation of Center Fill Management Reports and Lincare's solicitation of all Medicare beneficiaries whose names appeared on the list was the systematic presentation of false claims across the country. The only reason to generate the reports and to provide customer lists to area managers, center managers and service representatives was to convince patients who had no need for new oxygen tanks to order. Prior to the creation of the reports, Lincare customers were perfectly competent to order portable oxygen when they needed it. Lincare's hard sell marketing campaign only fabricated medically unnecessary orders that could not properly be reimbursed by Medicare. Lincare was aware it was delivering unnecessary medical equipment, but went forward anyway to minimize the impact of the reimbursement cuts Congress had mandated.

175. An overwhelming majority of the beneficiaries identified on the Center Fill Management Reports were capped Medicare beneficiaries. After a Lincare employee delivered portable oxygen to a customer identified in the reports, the employee would complete a delivery ticket in triplicate. One copy would be left with the Lincare customer, and the remaining two copies would be returned to the Lincare service center with the delivery driver. The customer service staff at the service center would file a copy of the ticket at the center, and the other copy would be forwarded to the appropriate Lincare RBCO. Data entry staff at the RBCO would enter the pertinent information from the invoice to prepare electronic billing submissions to Medicare.

176. In the Northeast Region, the new policy required the service representatives to visit each portable oxygen customer and offer him or her a new filled portable tank, even if the customer did not order it and even if the customer had not used portable oxygen since the last service visit. The service representative's most important task was to ensure that customers signed the work ticket, so that Lincare could claim that its customers accepted the service for which it could now bill. The visits were called "cap fills" because the service representative were filling orders for customers whose oxygen benefits would have otherwise been capped.

177. Although billing Medicare for unnecessary portable oxygen tanks or tank fills was unquestionably unlawful, the service representatives, including Relators Rabassa and Lima, were instructed to do everything possible to make sure that the customers accepted the tanks – or at least signed the work ticket. These instructions were given to Lincare service representatives across the country, including Relators Rabassa and Lima and their colleagues in the Northeast Region.

178. Some customers, however, resisted Lincare's efforts to perform "cap fills" they never ordered. These customers informed Relators Rabassa and Lima and other Lincare service representatives that they did not order new tanks and did not need any more oxygen. For these customers, Lincare's management instructed the service representatives to first threaten the customers that if they refused to accept new portable tanks, they might lose their portable oxygen benefit entirely. Many patients who rarely used their portable oxygen tanks did not want to lose the option of having them.

179. When threats that a customer might lose their portable oxygen were unsuccessful, the service representatives were instructed to replace the backup tank for the customer's stationary system. Specifically, the representatives were told to insist on checking whether the customer's back-up tank had "expired," even though Lincare knew that these back up tanks were likely not expired. The service representatives could then "swap out" a perfectly good back up tank for a new one.. Despite the fact that no portable oxygen was delivered, representatives were still instructed to then obtain a signed ticket certifying the receipt of portable oxygen. The ticket was then used to bill Medicare for a portable oxygen fill that was not performed, and for which reimbursement was, thus, unavailable. Backup tanks for oxygen concentrators are supposed to be provided for free, and Medicare does not reimburse providers for changing them, especially not when such a charge is misrepresented as the provision of necessary portable oxygen.

180. In situations where customers would not permit a Lincare service representative to replace the backup tank (and some would not, particularly when the Lincare representatives had just replaced the tank the month before), Lincare management instructed the service representatives to perform a concentrator check and then still have the customer sign a work ticket that falsely stated that replacement portable oxygen had been delivered. This ticket would then be used as a basis for billing Medicare for a portable oxygen fill. All such claims, of course, falsely represented to Medicare what services Lincare had actually provided.

181. The Marlborough service representatives (and the representatives of the other centers in Area 33) could not service many of the customers on the "cap fill" list because the customers refused the unnecessary oxygen. Relators Rabassa and Lima and the other service representatives in their Area repeatedly told their supervisors to eliminate customers who did not

use or want portable oxygen. The center managers refused and instructed the service representatives to try harder and come up with new ploys to get the reluctant customers to accept oxygen. Lincare instructed its service representative to get, at the very least, the customers to sign a work ticket that Lincare could represent as evidence of a “cap fill.” For example, Lincare customer SS was deceived into signing a work ticket after she had refused to permit Lincare to replace portable oxygen tanks that she did not need.

182. In May 2009, AT, a Medicare customer from Framingham, Massachusetts confronted Relator Lima when he attempted to get her to accept new portable oxygen tanks. AT told Lima that what he was doing was illegal and that he was defrauding Medicare. She repeatedly stated that Lincare was committing fraud and would not allow Lima into her house. Other customers had suggested that Lincare was not acting properly, but Lima had never been verbally abused before. Lima then discussed the incident with Rabassa, and they both knew that AT was right; Lincare was not acting in accordance with Medicare rules when Lincare charged the government for unnecessary and unwanted oxygen. Relators Rabassa and Lima discussed their concerns with their center manager, Mary Sweet, but Sweet ordered them to continue to attempt to deliver portable oxygen tanks to customers who had not ordered it

183. Claims for the following deliveries, among many others, were falsely billed to Medicare beneficiaries in the Massachusetts area under this scheme:

- JB, Marlborough, MA
- PD, Sudbury, MA
- CD, Wayland, MA
- LH, Framingham, MA

- DH, Westborough and Shrewsbury, MA
- MM, Natick, MA
- HS, Marlborough, MA
- SS, Westborough, MA
- PS, Framingham, MA
- DT, Milford, MA
- AT, Framingham, MA
- RW, Northborough, MA
- JW, Medway, MA
- MZ, Natick, MA

184. Areas and centers in Virginia experienced the same pressure from Lincare corporate officials to deliver portable tanks to Medicare beneficiaries who had never requested or needed them. Scott Traylor, Lincare Regional Vice President, informed each of his 14 area managers that he was keeping track of how many portable fills were being completed on every area manager's monthly Center Fill Management Report, and that he expected every area manager to meet with each of their center managers to insure that all listed portable customers received new oxygen tanks.

185. One of Traylor's area managers, Molly Wiseman, who was responsible for nine centers in Virginia, demanded that her center managers insure that portable tanks be delivered to each and every Medicare beneficiary whose name appeared on the monthly Center Fill Management report or be able to document why delivery was not accomplished. In writing, Wiseman informed one of her center managers that every single patient on the lists had to receive tanks even if the center's service representatives had to swap out back up tanks. And if

that did not work, Wiseman informed her manager, the manager should have his service representative do a concentrator check as an excuse to swap out tanks. Wiseman's written instructions to her center manager in Virginia are identical to the instructions Relators Lima and Rabassa received from their center manager in Marlborough, MA. This is not a coincidence—the Lincare managers were only repeating instructions on how to maximize cap fills which they received from corporate executives within Lincare.

186. As a result of this scheme, in 2010, Lincare presented, among many other false claims, these representative claims on behalf of Medicare beneficiaries, all of whom resided in Harrisonburg, VA or the surrounding area:

- a. On or about January 4, 2010, for a delivery of portable oxygen to Medicare beneficiary A.L.;
- b. On or about June 7, 2010, for a delivery of portable oxygen to Medicare beneficiary R.W.;
- c. On or about June 8, 2010, for a delivery of portable oxygen to Medicare beneficiary M.T.;
- d. On or about July 16, 2010, for a delivery of portable oxygen to Medicare beneficiary V.R.;
- e. On or about July 16, 2010, for a delivery of portable oxygen to Medicare beneficiary R.D.;

f. On or about July 16, 2010, for a delivery of portable oxygen to Medicare beneficiary D.H.;

g. On or about July 26, 2010, for a delivery of portable oxygen to Medicare beneficiary H.M.;

h. On or about August 2, 2010, for a delivery of portable oxygen to Medicare beneficiary C.C.;

i. On or about August 2, 2010, for a delivery of portable oxygen to Medicare beneficiary YE;

j. On or about August 3, 2010, for a delivery of portable oxygen to Medicare beneficiary M.A.;

k. On or about August 4, 2010, for a delivery of portable oxygen to Medicare beneficiary H.D.;

l. On or about August 4, 2010, for a delivery of portable oxygen to Medicare beneficiary H.D.

187. The Massachusetts and Virginia claims identified above are representative claims known to the Relators. Upon information and belief, however, because the Massachusetts and Virginia claims were generated in response to a national scheme promoted by Lincare and overseen by Lincare executives who gave instructions to Lincare regional officials across the country, comparable claims in comparable numbers were presented by almost every Lincare center across the country.

**Improperly Waiving Co-Payments and Deductibles**

188. Lincare improperly waived customers' Medicare deductible and co-payment requirements. In this way, Lincare obtained and retained more customers and can continue billing Medicare and generating revenues.

189. Under 42 U.S.C. § 1320a-7a, Lincare is not allowed to waive Medicare deductibles and co-payments unless the waiver is not offered as part of an advertisement or solicitation, the person does not routinely waive coinsurance or deductible amounts, and the person waives the coinsurance and deductible amounts "after determining in good faith that the individual is in financial need" or because the person could not collect the coinsurance or deductible amounts after making reasonable collection efforts.

190. Thus, as a general matter, co-payments and deductibles are waivable only if Lincare has determined, in good faith, that the individual is in financial need or because Lincare could not collect the amounts owed after making reasonable collection efforts.

191. Routine waivers of co-pays and deductibles are unlawful because the practice misrepresents Lincare's actual charge for the service at issue, which results in Medicare overpayments. Lincare's own training manual recognizes the illegality of the practice because it causes overutilization of items and services paid for by the government.

192. With respect to financial hardship waivers, the OIG Compliance Guidance for Durable Medical Equipment suppliers, located at 64 Fed. Reg. 36368 (July 6, 1999), recommends that the supplier "develop and maintain written criteria documenting its policy for determining financial need and consistently apply this criteria to all cases."

193. But, upon information and belief based on Relators Robins's and Dunlap's interactions with service center employees, Lincare routinely waives co-payments and deductibles without making good faith determinations as to a customer's financial hardship.

194. Instead, upon information and belief, service center employees waive these payments for referral sources and others for whom they want to provide favorable treatment.

195. For example, Kendale Soldano, a service center employee, asked Relator Robins on June 8, 2012 if there was a way to ensure that customer ER of Marlboro, NJ (account no. 004-430-006 451) did not receive any correspondence from Lincare. Soldano was specifically concerned that the customer was getting bills, as this customer was referred by a referral source. Robins responded that the customer had to pay a Medicare deductible and Soldano asked, "how do I get that removed and the mail kicked back to you?" Robins inquired further as to whether the customer had a financial hardship, to which Soldano responded "YES." Robins has confirmed that this customer has no financial hardship information on file. Thus, it appears that this customer's deductible was waived to keep a referral source happy.

196. Lincare also manipulates the collection or waiver of these payments based on whether Lincare can generate additional revenues from the customer.

197. Specifically, if a customer's balance is over 150 days overdue and the customer is *inactive* such that Lincare is not receiving revenue for the customer, Lincare will send the customer to a collections agency. By contrast, if the balance is less than 150 days overdue and the customer is *active* such that Lincare continues to receive revenue for the

customer, Lincare will not send the customer to a collections agency. Instead, Lincare will waive the co-payment and/or deductible amount.

198. Lincare treats inactive and active customers differently because it is in Lincare's interest to treat the active customers more favorably, so that they continue to use Lincare for their oxygen equipment needs and Lincare can continue to bill Medicare and other government payors for the customer.

199. For example, Lincare waived the deductible of customer JW, of Rockville, MD (account no. 021-210-003 851) because the customer had not responded to calls or letters. Significantly, this customer had an active account when the deductible was waived and there was no financial hardship information on file for this customer.

200. By contrast, Lincare sent customer ME, of Bowie, MD (account no. 024-370-001 594) to a collections agency in January 2009 because the customer owed Lincare a deductible. But by this time Lincare had already inactivated the customer on November 12, 2008 such that Lincare was no longer receiving any revenue from her.

201. Thus, upon information and belief, Lincare waives co-payments and deductibles not according to a customer's financial hardship or after making reasonable collection efforts, but depending on whether Lincare can obtain more revenues for the customer in question.

### **Improper Oximetry Testing of Medicare Beneficiaries**

202. Lincare improperly initiated oximetry testing of non-oxygen customers. As described above, Medicare regulations and reimbursement rules prohibit oxygen suppliers

from conducting the testing – known as pulse oximetry – used to determine if customers require oxygen therapy. Such testing has to be ordered by a licensed physician and must be administered or overseen by an IDTF that has been qualified by Medicare.

203. Nonetheless, between 2004 through 2009, Lincare routinely initiated and conducted oximetry testing to discover new oxygen customers.

204. As an authorized DME provider, Lincare was frequently retained to provide DME equipment, such as hospital beds, commodes, wheelchairs, and other ambulatory equipment, to Medicare beneficiaries. Routinely, Lincare performed oximetry testing on its non-oxygen customers.

205. Service representatives were given a pulse oximetry overnight testing device and instructed, as part of their daily routes, to provide it to the non-oxygen customers and to instruct the customer how to use the device. The service representative told the customers that a simple overnight test needed to be performed as part of their treatment. Lincare service representatives were trained to tell customers, when they asked who had ordered the testing, that their physician had ordered it. In fact, Lincare had initiated the testing; the customer's physician was unaware that it was being conducted.

206. The morning after the customer had used the device, the service representatives picked-up the units and the results were downloaded to Lincare's computer. If the results showed that a customer's oxygen level was low enough to justify oxygen therapy, the center's sales representative took the results to the customer's physician and tried to convince the physician to prescribe oxygen. If the physician agreed to order oxygen, Lincare was selected as

the oxygen supplier. Lincare then prepared and submitted a CMS-484 form that falsely stated that an IDTF had conducted the test and that Lincare had no involvement with it.

207. Most work days, each of the Marlborough center service representatives dropped off at least one pulse oximetry device to their non-oxygen customers. Service representatives in the other centers within Area 33 were also instructed to engage in this conduct on a routine basis. When the test results indicated that a customer required oxygen, the Marlborough center's sales representative and the center manager used to do a little dance and hold a small celebration.

208. In Fall 2009, after Relator Rabassa was unlawfully terminated by Lincare, a compliance officer from Florida came to Area 33 to audit the Area's centers and investigate Relator Rabassa's claims. She discovered that centers in the Area had improperly initiated oximetry testing. Such conduct not only violated Medicare's reimbursement rules, but was also a direct violation of the terms of a Corporate Integrity Agreement Lincare and Holdings executed in 2006 to resolve an investigation by the HHS Office of Inspector General. The compliance officer ordered the immediate cessation of Lincare-initiated oximetry testing. It also required, among other things, that Lincare and Holdings form a compliance committee and appoint a compliance officer.

#### **Paying "Kickbacks" to Referring Physicians**

209. Lincare pays kickbacks to referring physicians and their families by providing them services and equipment free of charge.

210. Federal law prohibits any Medicare provider from making any transfer of value to a referral source for the purpose of encouraging or rewarding referrals. Such payments violate Medicare's anti-kickback laws. Notwithstanding the impropriety, Lincare regularly delivered kickbacks to its most frequently referring physicians.

211. The provision of oxygen is a fungible service. The concentrators provided by one oxygen supplier are no different than the concentrators provided by a competitor. Nor can there be much differentiation between suppliers due to price or service. Prices for the majority of customers are set by Medicare. Service is virtually non-existent, because, once installed, the machines require minimal servicing. Providing kickbacks to referral sources is one of the few ways an oxygen supplier can differentiate itself from its competitors.

212. Referring physicians would receive, without charge, extensive free materials from Lincare including nebulizers, cannulae, masks, respiratory ventilation devices (BiPAP and CPAP), and portable oxygen. These supplies were dropped off as frequently as once or twice a week.

213. Under Lincare's policies and procedures, oxygen and related supplies could not be provided to a physician's office without a billing account. But Relators Rabassa and Lima and other service representatives, on the instruction of their supervisors, provided oxygen and supplies without billing it to an account to at least three physicians who regularly referred oxygen customers to Lincare: Dr. Richard Masson (Metrowest Medical Center in Framingham, Massachusetts); Dr. Clifford Risk (Marlborough Center for Sleep in Marlborough, Massachusetts); and Dr. Sew-Leong Kwa (Metrowest Medical Center). These physicians were given thousands of dollars of equipment each year between 2006 and the current date.

214. Dr. Masson's secretary, AJ, who was responsible for arranging oxygen therapy for Dr. Masson's customers, was considered a particularly important referral source. When her mother became ill during the summer of 2008, Mary Sweet, the Marlborough center manager, arranged to have a wheelchair delivered to AJ for her mother's use at no charge. Relator Lima delivered the wheelchair to AJ who signed a work ticket for the equipment. However, when Mr. Lima presented the ticket to Mary Sweet at the end of the day, Ms. Sweet tore up the ticket and told Mr. Lima it was not necessary. Without a signed work ticket, Lincare could not bill for the wheelchair and, in fact, never billed AJ or her mother.

215. A few months later, AJ's sister became very ill and required hospice equipment. Lincare did not ordinarily provide this type of DME, but Sweet told AJ that Lincare would provide it for her sister. Lincare employees frantically searched through company resources to try to locate the necessary equipment. When one employee told Sweet that the employee assigned to obtain the equipment was having a difficult time, Sweet commented that the employee better find the necessary material because AJ "was an important referrer." The equipment was ultimately located.

216. Bolton Manor Nursing Home, in Marlborough, Massachusetts, was another important referral source. Cheryl Burgess was a full-time employee of Bolton Manor and was responsible for obtaining oxygen for Bolton Manor customers who required it. Burgess was also on the payroll of Lincare. She was supposed to be a therapist. But unlike the other therapists who worked for Lincare, Burgess performed no services at Lincare's offices. The only times she appeared at Lincare's offices were to pick-up paychecks. Yet, there is no evidence that Burgess performed any work for Lincare other than directing oxygen customers to Lincare. Burgess did not perform sufficient services to merit the receipt of compensation, and the

amounts she received from Lincare were, upon information and belief, rewards for directing oxygen business to Lincare. Such actions violated Medicare's anti-kickback rules.

217. This practice was not limited to Massachusetts. For example, Relators Robins and Marie discovered that Lincare provided free services to Dr. Ronald Gelzunas, a physician in New Jersey. Handwritten notes at the bottom of the delivery ticket for this particular physician state that "O2 will be free if we get O2 pts from office."

218. Relator Robins discovered that service center employees sometimes did a "cash sale" for equipment to medical facilities, so these facilities only paid a discounted, one-time cash price for what should be a monthly rental. In this way, the service center employees could ensure that the facility did not appear on Lincare's automated billing system.

219. Robins also discovered a number of kickbacks to facilities in the Baltimore area. These facilities were, and continue to be, important referral sources for Lincare.

220. Specifically, in December 2012, Relator Robins discovered that Lincare was providing free equipment to the Baltimore Washington Medical Center. Robins learned about this scheme when she saw delivery tickets dated November 8, 2012 and November 26, 2012 for liquid oxygen reservoirs for the facility showing that the equipment was "convenienced" to the facility, meaning that the facility was not charged for the equipment.

221. Robins also spoke with Christina Winger, a service center employee, who confirmed that the facility was not charged for bi-weekly fills of oxygen.

222. To fix this, Robins created an account for the facility and charged it for all the equipment it had received from Lincare. Then, Maureen White, Robins' supervisor, learned what Robins had done and directed Robins to reverse each of the charges to the facility.

223. Robins even came across an email dated August 14, 2012 from Val Wollenweber, an employee of Family Medical Respiratory, a company Lincare acquired, to White in which she confirmed that "[w]e didn't bill BWMC for anything."

224. Thus, despite knowing of the kickbacks to this facility, White continued to allow this unlawful practice to occur.

225. Robins told Vanessa Hager, an Investigator in Lincare's Compliance Department, about the free equipment this facility was receiving. As far as Robins is aware, Hager has taken no action to stop this conduct.

226. In another example, Robins learned that Lincare was not charging the Bravo Health Advanced Care Center in Baltimore for equipment. Robins spoke with the Lincare service center employee servicing this facility, Christina Winger, on May 9, 2013, who told Robins that "we don't charge" this facility for equipment. According to Winger, this scheme to provide free equipment has been occurring since, at least, November 2012. Robins also came across a delivery ticket for this facility, dated March 22, 2013, showing that two regulators were "convenienced" to this facility.

227. Similarly, Robins learned that Lincare was not charging the Maria Healthcare Center in Baltimore for equipment when Robins came across pick-up tickets for this facility, dated November 7, 2013, November 13, 2012, and November 16, 2012, showing that

equipment was delivered and picked-up, but could find no record of Lincare ever billing the facility for any of the equipment it provided. Robins again informed Hager of this problem. As far as Robins is aware, Hager has taken no action to stop this conduct.

228. Robins was also told by Christine Winger that the service center also did not charge Stella Maris, a nursing facility in Lutherville, Maryland, for press pads, nebulizers, and suction machines. Robins informed Hager of this problem. As far as Robins is aware, Hager has taken no action to stop this conduct.

229. Upon information and belief based on Relator Robins' interactions with service center employees, the problem with Lincare providing kickbacks to medical facilities is widespread in the Baltimore area, involving additional facilities such as St. Joseph's Medical Center, Presbyterian Home, Shore Memorial Hospital, and Glen Meadows.

230. During her September 4, 2012 compliance disclosure, Robins disclosed to Lincare's Compliance Department that facilities were receiving "convenienced" equipment at "no charge."

231. Lincare and Holdings entered into a Corporate Integrity Agreement with the Inspector General of the Department of Health and Human Services in 2006 arising from alleged kickbacks to physicians for referrals. The practice, however, as shown by the above examples, continues.

**Failing to Timely Refund Improper Overcharges to Government Payers**

232. Lincare has the ability to run reports of its internal database that provide information about potential overbilling to government payors. Lincare, however, does not run

these reports on a regular basis and does not make any systematic attempt to ensure that overpayments are identified and repaid. Instead, overpayments are identified – if at all – on an *ad hoc* basis resulting from an external event, such as a customer phone call or complaint.

233. For example, Lincare's A/R Write-Off Report shows all recognized instances of Medicare or Medicaid overbilling for various reasons, including the fact that the customer was in a nursing home or hospital at the time of the bill, or there was a bill after the customer was inactivated, or there was a bill after the date when the customer's equipment was capped (meaning that Lincare should have not have received payment for it).

234. This report can be used by Lincare to isolate instances of overbilling third-party payors such that Lincare could refund any overpayments made.

235. Lincare can also run a report called the Active Customers Without Equipment report to identify customers who are active in the billing system (and, presumably, for whom Lincare is billing Medicare or another payor for these customers' equipment), but the customers do not, in fact, have any equipment.

236. Lincare can use this report to isolate instances of billing third-party payors when the customer has no equipment.

237. Another report that Lincare can run is called the Inactive With Equipment report (possibly also known as the Inactive Customer Equipment Listing), showing the dates of customer inactivation and the dates of equipment pick-up.

238. By comparing the inactive date to the pick-up date, Lincare can identify instances where it has continued to bill Medicare and other payors for a customer's equipment when the equipment has already been picked-up.

239. Despite having the capability, Lincare does not routinely run these reports to identify instances of overpayments received from the government and does not routinely refund such overpayments.

**False Written Statements and Certifications Submitted,  
or Caused to be Submitted, to Medicare by Lincare**

240. As a result of the conduct described above, Lincare routinely presented and caused to be presented to Medicare and other government payors false claims, statements, and certifications.

241. First, before Medicare will pay for oxygen for any beneficiary, a Certificate of Medical Necessity must be submitted on Form CMS-484. If someone other than the beneficiary's treating physician performs the oximetry testing, that person must be identified on the form along with the testing information. The physician certifies that the information contained in the form, including the identification of the person who completed the section of the form concerning the results of oxygen testing, is true, accurate, and complete.

242. On each occasion that Lincare initiated oximetry testing for one of its customers, it caused the treating physician who submitted the Certificate of Medical Necessity to falsify his or her certification. As a result of Lincare's routine oximetry testing of Medicare beneficiaries, Lincare caused false claims to be submitted to Medicare between 2003 and 2009.

243. Second, each time Lincare submitted a claim to Medicare in connection with its provision of oxygen or portable oxygen, it either submitted a claim on Form CMS-1500 or provided the information required on Form CMS-1500 electronically. Each such claim, whether filed on paper or electronically, certified that the services and supplies billed for “were medically indicated and necessary for the health of the customer.”

244. Lincare’s claims for oxygen or portable oxygen contained false certifications that the services and supplies provided by Lincare were medically necessary in each instance where the customer was no longer using or had returned the equipment or where the customer did not request or require a portable oxygen refill. Each of these claims constituted false claims and, upon information and belief, between 2003 and continuing until today, Lincare routinely presented hundreds of thousands of such false claims to Medicare for payment.

245. Third, as a supplier of durable medical equipment, Lincare routinely filed enrollment applications with Medicare on CMS-855S. Form CMS-855S is initially filed with the Centers for Medicare and Medicaid Services (CMS), the governmental body that oversees Medicare, when a supplier seeks initial entry into the Medicare system. However, every time a Medicare supplier has to report changes to its business or adds additional business locations, it must file a revised Form CMS-855S. Between 2004 and 2009, Lincare increased the number of centers it operated from 727 to over 1000 and acquired dozens of small independent operators. It also expanded its business operations. Due to these changes, Lincare routinely revised its Form CMS-855S filings.

246. Each time Lincare filed or revised the information in its Form CMS-855S filing it made the following certifications to the United States:

[Lincare] agree[s] to abide by the Social Security Act and all applicable Medicare laws, regulations and program instructions that apply to this supplier... [Lincare] understand[s] that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations and program instructions (including, but not limited to, the Federal anti-kickback statute and the Stark law), and on the supplier's compliance with all applicable conditions of participation in Medicare...[Lincare] will not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare and will not submit claims with deliberate ignorance or reckless disregard of their truth or falsity.

247. Each of these certifications was false at the time they were made. Lincare was presenting, and continues to present, claims to Medicare and other government payors for services that it had not provided, for customers who were deceased, for customers who had turned in or were not using their equipment, for services that were not medically indicated or necessary, for customers for whom it had improperly waived co-payments and deductibles, and for services for which it had knowingly and deliberately paid kickbacks.

248. Each of these false certifications caused the presentation and payment of false claims by the United States.

**Relators' Efforts to Stop the Fraudulent  
Conduct, and Lincare's Retaliation Against Relators**

249. Relators have made numerous attempts to stop the unlawful practices occurring at Lincare and described here, but they have all been unsuccessful.

250. In fact, the Relators independently disclosed many of the same issues they were encountering – for example, billing government payors for customers who were no longer using their equipment or after their equipment had been picked-up – to the same Lincare employees in charge of the company's compliance with applicable federal rules and regulations.

251. Specifically, the Relators independently expressed their concerns to Deborah Dillon-Sara and Jolanda Makey, both employees, at the time, in Lincare's Compliance Department. Lincare was, therefore, well aware of the ongoing wrongful conduct described here.

252. With respect to Relator Dunlap, Lincare fired her twice for her frequent disclosures of the fraudulent practices occurring at Lincare.

253. Specifically, on December 29, 2007, Lincare fired Relator Dunlap for the first time. Upon information and belief, Lincare took this action in retaliation for Dunlap's bringing several frauds to the attention of Melissa Hite (now Gibson), a Lincare Compliance Officer located at its Clearwater, Florida headquarters.

254. This termination was triggered by Dunlap faxing of examples of the frauds described here to Gibson. A few weeks after Dunlap's faxes, Maureen White, Lincare's Amherst, New York Regional Billing Manager, fired Dunlap. In Dunlap's termination notice, White specifically references "a fax [that] was sent to the Compliance Department that was part of a file [Dunlap] ha[d] been holding on substandard workmanship and other issues with Center employees" as a basis for her termination.

255. Dunlap contacted Sheila Dilley, a Holdings employee who had been assigned significant HR responsibilities for Lincare to complain about her termination. Dilley instructed Dunlap to contact Phil Phenis, a director of finance at Holdings, who called Dunlap, apologized, and ultimately rehired her beginning in January 2008.

256. After she was re-hired, Dunlap continued to report instances of fraud to Lincare's Compliance Department, both in connection with Lincare's required periodic compliance survey and on her own, apart from her normal job responsibilities, in an effort to identify and stop further violations of the Act. Examples that Dunlap sent to Gibson included instances of Lincare billing Medicare after a customer's equipment was picked-up; Lincare billing Medicare when the customer was in a nursing facility; and Lincare billing Medicare after a customer had requested a pick-up of equipment.

257. Moreover, in 2009, Dunlap told Gibson that she received almost one call per day about instances of billing past a customer's inactivation date. Dunlap said that she believed this was a company-wide problem.

258. But employees in Lincare's Compliance Department were becoming increasingly frustrated at Dunlap's frequent disclosures and, in or around April 2010, they began telling her that she should limit the information she reported to examples of "intentional and malicious" overcharges to third-party payors, including the government.

259. Specifically, on April 13, 2010, Dunlap met with Maureen White and Deborah Dillon-Sarra, a Lincare employee in the Compliance Department. Dillon-Sarra and White attempted to convince Dunlap that the examples she had been sending to the Compliance Department were simply innocent mistakes.

260. Dunlap then had another meeting with Maureen White on April 14, 2010. She asked White if she should have sent the example of Lincare customer TM (account no. 004-430-003 898) to the Compliance Department. As described previously, TM involved a situation where the center manager asked Dunlap not to inactivate the customer because it would

affect the center manager's numbers. White said that Dunlap should not have sent this example and, moreover, White said that Dunlap should never determine if accounts should be inactivated nor should she try to figure out if there is an overbilling. White ended the meeting by saying that this job may not be for Dunlap.

261. The next day, Dunlap had a phone call with Deborah Dillon-Sarra, who said that, in the future, Dunlap should send only "intentional and malicious" errors to the Compliance Department. When Dunlap brought up the TM example, Dillon-Sarra said that it should not have been sent to compliance because "that's heard all the time." She also said that it is not Dunlap's place to decide whether an account should be inactivated.

262. Then, on April 22, 2010, Dunlap attended a meeting with Relator Robins, White, and Jenna Pedersen, a Compliance Officer in Lincare's Compliance Department. The purpose of the meeting was to discuss Dunlap's frequent disclosures to the Compliance Department.

263. During the meeting, Dunlap informed White and Pedersen that there was significant overbilling at Lincare, and she tried to explain that there were so many instances of billing problems that she did not know how she could appropriately limit the information she reported.

264. On July 15, 2010, in a further effort to identify and stop violations of the Act, Dunlap went to White for the purpose of addressing specific examples of what Dunlap believed to be fraudulent activity at Lincare.

265. White became extremely frustrated at Dunlap's request and refused to address the examples of overbilling that Dunlap had identified, saying only that they constituted "process issues," as opposed to "compliance issues."

266. Dunlap again told White that overbilling was pervasive throughout the company and that employees were not being held accountable for their improper actions. White, however, refused to listen to Dunlap and then terminated her in retaliation for continuing to identify and stop instances of Lincare's fraudulent billing of third-party payors, including the government, pursuant to the frauds identified above.

267. After Dunlap was terminated, she informed Phil Phenis and Sheila Dilley, both of whom were Holdings employees, that she had been terminated after trying to discuss instances of non-compliance and billing issues with White. She also expressed to Phenis her frustration in coming across numerous instances of continuous overbilling of government agencies, private insurance, and customers.

268. Phenis dismissed her concerns, telling Dunlap that she did not understand the "realities of how high volume operations like [Lincare's] in the billing centers or even in the [service] centers that everything doesn't run to perfection to meet what every policy would be." He also acknowledged that, while Dunlap was trying to do the right thing, she was not "very flexible in [her] thoughts." Phenis refused to reverse Dunlap's termination. Dilley also refused to take any action to reinstate Dunlap.

269. Dunlap has suffered significant economic harm as a result of Lincare's termination of her employment.

270. Like Relator Dunlap, Relator Robins would routinely inform Lincare about flaws in the customer inactivation process, including the “lack of responsibility the centers are held accountable for when it comes to stopping the billing when a customer calls for a pickup for non[-]usage.” She also noted that “per phone calls received by customer and family members, it is evidence [sic] [that] centers do no[t] notify us timely when a customer asks for a pick up and/or offer the refusal of [treatment] form when appropriate.” Robins also made clear to Lincare that she was “seeing overbillings and/or situations that may expose us to overbilling issues.”

271. Lincare required employees to disclose compliance issues in a Semi-Annual Training Disclosure, and Robins disclosed through this process that service centers were not inactivating accounts in a timely manner. She even suggested to Deborah Dillon-Sarra, a compliance investigator, that she run a “220/63” report (a version of the A/R Write-Off Report), in which she would be able to see the accounts where the last bill was after the date the account should have been inactivated, meaning that Lincare had possibly overbilled Medicare or another payor for the customer’s equipment.

272. In 2010, after Relator Dunlap was terminated, Vanessa Hager, Lincare’s Compliance Investigator, and Jolanda Makey, Lincare’s then-National Compliance Manager, asked Relator Robins to send them examples of non-compliance as she came across them.

273. In accordance with their instructions, Relator Robins sent numerous examples of non-compliance to Lincare’s Compliance Department, including instances of failing to respond timely to a customers’ requests for a pick-up of their equipment, failing to inactivate on a timely basis accounts of customers who had been transferred to a nursing facility, and

failing to inactivate accounts after the equipment had actually been picked-up. Upon information and belief, no remedial steps have been taken to fix these problems, on an individual or company-wide basis.

274. During a phone conversation on October 26, 2010 with Makey, Robins told her that customers have called her because the service center did not pick-up their equipment when they had asked for a pick-up. Pursuant to that conversation, Robins sent Makey an example of an account where the customer requested a pick-up on April 28, 2010 but, as of October 27, 2010, the billing had not been stopped.

275. In October 2010, Robins also sent Makey spreadsheets corresponding to the months from June 2010 to October 2010 for Robins' region to illustrate the significant number of days where the service centers simply did not communicate with the RBCOs about customer inactivations.

276. On June 8, 2012, Robins sent Hager the example of customer AR (account no. 013-790-006 903) where the service center did not pick-up the equipment until June 5, 2012, even though the customer had asked for a pick-up at the end of May. As of June 8, 2012, Robins noted that the customer's account was still active.

277. In an email to Hager on July 6, 2012, Robins sent the example of customer RR (account no. 003-140-011 258) where the customer's equipment was picked-up on June 28, but the customer wasn't inactivated until July 5, 2012. Robins noted to Hager that this customer is "an example of where they [pick-up] equip [sic] before month end and then no innact acct [sic] until the next month. [N]ot mcr [sic] so no refunds due but it is not uncommon that they do not use [the] correct date to inactivate the acct [sic]."

278. In another e-mail communication with Hager on July 30, 2012, Robins stated that “[t]he centers are still not inactivating accounts when they should or sometimes for the correct date when they discover the acct [sic] should have been previously inactivated.”

279. In an email dated October 2, 2012, Robins sent Hager the example of customer CM (account no. 013-770-004 226) where the customer’s daughter told a Lincare employee that she had been trying to get the customer’s equipment picked-up since 2009, without success.

280. In an email dated October 19, 2012, Robins sent Hager the example of customer ER (account no. 000-492-097) where the service center received the physician’s discharge order on December 28, 2011, but no one communicated this information to the RBCO until October 2012.

281. Robins also noted that the customer’s wife told her that she had an appointment with Lincare to pick-up the equipment, but no one came and they called at least 3 times and no one returned the calls.

282. Despite having concrete examples of improper conduct, Hager was not addressing the issues illustrated by the examples that Robins was sending her. On July 2, 2012, Robins sent Hager an example of customer FH (account no. 004-010-004 430). Robins noted that the customer asked for a pick-up on February 22, 2011 and August 11, 2011, but no one had inactivated her account. Then, on July 12, 2012, Robins again send this customer to Hager, noting that the account was still active.

283. Robins even disclosed to Hager that service centers were not giving customer's Advance Beneficiary Notices ("ABNs") in circumstances where they were required.

284. ABNs are required by Medicare where a supplier believes that Medicare will not pay for an item or service. The ABN lists the items or services for which Medicare isn't expected to pay, an estimate of the costs for the items and services, and the reasons why Medicare may not pay. This notice is important because it allows the customer to make an informed choice as to whether to get the items or services.

285. Robins provided Hager with specific names of customers for whom service centers were getting cash payments, to ensure that Lincare would be paid for the equipment in the event that Medicare did not pay for it, without providing ABNs.

286. While Robins was disclosing and attempting to stop the unlawful conduct described above, she was also copying and/or printing out documents from Lincare reflecting examples of such conduct.

287. These documents showed Lincare's billing history for the customer, as well as pertinent details relating to the customer's relationship with Lincare, such as the date Lincare picked-up the customer's equipment and Concentrator Check Inquiries. The documents also contained customer-specific health information, such as details of the customer's prescription for oxygen therapy.

288. Robins believed that the documents she copied or printed were evidence of Lincare's submission and presentation of false claims to the government. And the sole

purpose for making the copies and/or print-outs from Lincare was so that Robins could further the instant *qui tam* action against Lincare.

289. Many of the copied documents or print-outs removed by Robins were directly incorporated into Robins' *qui tam* complaint against Lincare.

290. Lincare terminated Robins on June 20, 2013. Significantly, Lincare had just been served with Robins' complaint in the *qui tam* action on May 21 & 23, 2013.

291. Upon information and belief, Lincare learned about Robins' use of its customer information when it was served with the complaint in Robins' action, which set forth specific examples of Lincare's unlawful conduct in relation to specific customers.

292. Thus, Lincare, after being served with the complaint, learned that Robins had engaged in protected conduct.

293. The purported basis for the termination was that Robins had removed protected health information from Lincare in violation of the Health Insurance Portability and Accountability Act ("HIPAA").

294. But HIPAA contains an exception to the general requirement of non-disclosure of protected health information. This exception allows an employee of a "covered entity" (such as Lincare) to disclose protected health information if the employee believes in good faith that the covered entity engaged in conduct that is unlawful and if the disclosure is to an attorney retained on behalf of the employee or to a government agency authorized to investigate the covered entity. *See* 45 C.F.R. § 164.502(j).

295. Robins' copying and printing of Lincare's documents fits within this exception.

296. Thus, Lincare's purported basis for termination was simply a pretext, and Lincare terminated Robins solely in retaliation for bringing this litigation and for acting in furtherance of it.

297. On June 25, 2013, Robins' attorneys contacted Lincare's attorneys and advised that Lincare had unlawfully terminated Robins for her actions in furtherance of the litigation and demanded that she be reinstated, with back-pay. Robins' attorneys specifically referenced the HIPAA exception for whistleblowers.

298. Despite Robins' demand for relief, Lincare has refused to reinstate her or otherwise compensate her for her wrongful termination.

299. Robins has suffered significant economic harm as a result of Lincare's termination of her employment..

300. With respect to Relators Lima and Rabassa, after the incident where Arlene Thompson confronted Relator Lima, Relator Rabassa informed the Marlborough center manager, Mary Sweet, that the service representatives would no longer attempt to deliver portable oxygen to customers that had not ordered it because they believed that forcing unnecessary oxygen on individuals defrauded Medicare. Sweet initially responded by trying to flatter Rabassa, telling him that she would be leaving the center shortly and she would recommend him as the next center manager. Rabassa, however, still refused to require the other service representatives to force unordered oxygen on Medicare customers and, therefore, Sweet

changed her tactics. She put more pressure on the service representatives to perform unnecessary cap fills.

301. In July 2009, Rabassa complained to Sweet's superior, area manager Tarrah Filo-Loos, and described the improper practices being routinely conducted, including improper "cap fills," failing to inactivate dead customers or customers not otherwise using Lincare equipment, improper oximetry testing, and improper kickbacks. Rabassa told Filo-Loos that he was considering going to Lincare's Compliance Department. Filo-Loos informed Rabassa that she would come to the Marlborough center the next day to discuss Rabassa's complaints and any other concerns of the Marlborough service representatives.

302. Fila-Loos arrived the next day. Instead of meeting with Rabassa and Lima, she brought each of them certificates of commendation congratulating them for their superior dedication and service to the company. After receiving his certificate, Rabassa had to make a service call, but Filo-Loos told Rabassa that when he returned they would meet with Sweet to discuss his concerns. When Rabassa returned, Filo-Loos had already left. He learned from the other Lincare employees that Filo-Loos met only with Sweet, and never discussed Rabassa's concerns with any of the other employees, as had been promised. After this incident, Rabassa recognized that the company had no intention of addressing his concerns in a serious manner.

303. After the meeting with Fila-Loos, Sweet's attitude towards Rabassa changed dramatically. She assigned Rabassa to all of the most demeaning and difficult jobs in the warehouse. She also changed compensation policies, refusing to pay Rabassa for time that the company had previously reimbursed and docking him if he handled service calls in his

personal vehicle, even though the Lincare vehicles during much of this time were in an unsafe condition. At one point, Sweet told Rabassa that if he was going to take money out of her pocket – by refusing to pressure Medicare beneficiaries to accept oxygen tanks they did not order – she would respond by taking money out of his. True to her word, she refused to authorize reimbursements to Rabassa that had been routinely paid to him before.

304. During the week of September 28, 2009, Sweet was out of the office on a short leave. During that week, Rabassa took a call from an irate Lincare customer, a Medicare beneficiary, who reported that he was being billed a co-payment for medical equipment that had been returned to Lincare. The customer accused Lincare of committing Medicare fraud by billing for unused equipment and told Rabassa that he intended to report Lincare to Medicare's anti-fraud division. After trying to calm the customer down, Rabassa realized that the customer was right: pursuant to Lincare's regional policies, Lincare had intentionally kept the customer on the billing list and was trying to obtain improper revenue from Medicare. Rabassa called Medicare himself to report Lincare and its repeated improper billing of Medicare, which included billing for items that had already been picked-up.

305. After he got off the phone with the Medicare anti-fraud hotline, Rabassa called Lincare's own human relations department to inform them of what he had told Medicare. Rabassa spoke with Sheila Dilley, who is an employee or agent of Holdings, and has an office in Lincare's and Holdings' corporate offices in Clearwater, FL. Emails sent by Dilley state that they originate from Holdings. Rabassa told Dilley about Lincare's illegal billing for deceased customers and other customers who had returned equipment or requested returns, about improper oximetry testing and kickbacks to referring physicians. He also told Dilley that he had provided the same information to the Medicare anti-fraud hotline. Dilley listened to all of Rabassa's

concerns and told him that she would commence an investigation and would be back in touch with him.

306. Dilley did not commence an investigation. Instead, she took steps to terminate Rabassa's employment. As part of Lincare's retaliatory conduct against the Marlborough service representatives who refused to force cap fills on customers who did not order portable oxygen, Lincare officials in Clearwater initiated a review of the fuel records Rabassa and Lima kept with regard to their Lincare vehicles. These records were not in good order, in large part because the billing system and cards Lincare used to track mileage was poor and the fleet was in poor operating condition. This condition was well known, but the records had been badly kept for years. Nonetheless, corporate and regional management at Lincare viewed the fuel reports as a pretext to take disciplinary action against Rabassa.

307. After reviewing the situation, both the area manager, Tarrah Fila-Loos, and the regional manager, Steven Bauer, thought Rabassa should receive a Final Warning. Under Lincare's policies and procedures for almost all offenses, the employee was supposed to receive a warning before the employee could be terminated. On October 6, 2009, in an e-mail to Fila-Loos and Bauer, Dilley overrode their recommendation and instructed them to fire Rabassa. "Roberto needs to go," she wrote.

308. Upon information and belief, Dilley never would have ordered Rabassa's termination had he not informed Dilley of the misconduct at Lincare and the information he reported to Medicare.

309. Rabassa had no idea that Lincare was considering taking disciplinary action due to the fuel records. No one had ever informed him that the records were not being

properly kept or were unsatisfactory. Rabassa took October 5th and 6th off for personal reasons. On October 7th, he spent most of his workday making service calls on Lincare customers. At the end of the day, he returned to the office where he met Mary Sweet. She advised Rabassa that she was terminating him, effective immediately. Rabassa asked Sweet if he was being terminated because of his phone calls to Medicare and to Lincare's corporate offices. Sweet indicated that it was precisely for that reason. She also said that she had been instructed to terminate him by area manager Tarrah Filo-Loos.

310. On Tuesday, October 13, 2009, Rabassa contacted Lincare's corporate offices in Florida to make an internal complaint of wrongful and retaliatory termination. He spoke with Sheila Dilley again, who transferred him to Jolanda Makey in Lincare's Compliance Department. He was unaware that Sheila Dilley had ordered his termination, and Dilley never indicated that she knew the reasons he had been fired. In these conversations, Rabassa described the unlawful Lincare conduct described above. Makey informed Rabassa that she would investigate his allegations and get back to him within two days. Makey never contacted him again. Rabassa was unemployed for more than a year after he was wrongfully terminated by Lincare.

311. Relator Lima also received complaints from customers about bills they received after he had replaced backup oxygen tanks. He realized that Lincare was improperly billing its Medicare beneficiaries for portable oxygen that the beneficiaries never ordered and did not need. Lima reported his concerns to his superior, Relator Rabassa, who suggested that Lima contact Medicare to disclose the fraud. Before contacting Medicare, Lima spoke to Mary Sweet and informed her of his concerns as well as Rabassa's advice that he should contact Medicare. Sweet told Lima that she was the boss of the center, not Rabassa, and that if he had a problem, he

should take the problem to her, not to Rabassa. Sweet refused to address Lima's concerns or explain why charging Medicare beneficiaries for unordered portable oxygen was proper.

312. When Lima learned that Rabassa had been discharged, he believed it was imperative that Lincare's corporate offices learn of the efforts to defraud Medicare going on in the field. He called Lincare's Compliance Department and spoke with Jolanda Makey, the woman in compliance who had spoken to Rabassa. Lima told Makey what he knew about the improper billing for portable equipment and the improper billing of deceased beneficiaries and customers who had returned their equipment, as well as Lincare's payment of kickbacks.

313. Days after Lima called Makey, Lincare's Regional Vice President, Greg McCarthy, and the Northeast Regional Manager, Steven Bauer, met with Mary Sweet at the Marlborough center. Lima and a co-worker observed the three Lincare superiors pulling individual customer files and reviewing claims. They were pulling files due to the allegations made by Rabassa. Lima asked to meet the three Lincare officials. He told them that he thought the action taken against Rabassa was retaliatory and described the various methods Lincare used to defraud Medicare that are set forth in this Complaint. He also described how customers and physicians reacted negatively to these ploys.

314. After speaking for 15 to 20 minutes, Greg McCarthy stopped Lima and asked him if he was describing these matters "because you are having a financial hardship." McCarthy told Lima not to worry because they could pay him what he needed. Lima immediately realized that he had been offered cash for silence and that the Lincare officials assumed that he was causing trouble in order to get paid. Lima told McCarthy and Steven Bauer that he was not looking for money; rather he was simply reporting serious compliance problems

and Lincare's failures to comply with Medicare laws. Lima became disgusted and severely anxious and tried to leave the meeting. As he left, McCarthy and Bauer followed him and told him not to discuss any of the matters they had just discussed with anyone else.

315. After he left the meeting, Lima tried to return to work, but he was too sick to his stomach and his heart was racing. He called Jolanda Makey to describe what had just occurred and also called the Medicare anti-fraud hotline to report Lincare's improper practices. Still disgusted and severely anxious after these phone calls, he went to the emergency room that evening, where he was diagnosed as having suffered from a panic attack.

316. After the meeting with Bauer and McCarthy, Lincare's attitude towards Lima changed dramatically. Prior to the incident, Lincare had considered Lima an outstanding employee, and he had always received excellent reviews. After the October 15th meeting, Lincare commenced a campaign designed to force Lima to leave or, alternatively, to create the conditions where Lincare could justify his termination.

317. The day after he returned to work following his panic attack, Mary Sweet delivered a "written warning" to him concerning his purported failure to keep accurate records relating to refueling the Lincare truck he used. The warning informed Lima that if there were any further instances of "this nature," he "would be subject to further corrective action, up to and including employment termination." The notice was placed in his personnel file. In fact, Lima had not been trained with regard to the proper way to account for refueling his truck, and in October 2009, he was following the same practices regarding refueling that he had always followed, openly and without any criticism, since the day he was hired in 2006. The difference,

of course, was that before Lima's conversation with Sweet, Bauer, and McCarthy, Lincare was now trying to create a record to justify Lima's termination.

318. A week later, during the week of October 26, 2009, Deborah Dillon-Sarra, a Compliance Investigator, came to investigate the allegations made by Rabassa. Lima sent Dillon-Sarra a four-page letter outlining Lincare's improper actions. Once Mary Sweet and Tarah Fila-Loos realized that Dillon-Sarra was investigating allegations of wrongdoing in the region, it became clear to them that Lima had blown the whistle on improper conduct and was trying to stop profitable, but unlawful, practices that routinely resulted in Medicare's payment of false claims. Dillon-Sarra collected extensive information from Lima. As a result of Dillon-Sarra's investigation, service representatives no longer delivered oximetry testing equipment to new customers on a regular basis, and Lima stopped delivering free medical equipment to medical physicians' offices.

319. Before it terminated Rabassa, Lincare had always required that there be three service representatives at the Marlborough center. After it fired Rabassa, Lincare decided not to fill Rabassa's position, leaving only two service representatives. And despite the fact that Lima was the least experienced of the remaining representatives, Lincare at roughly the same time also transferred the more experienced service representative to another center and replaced him with an individual who had no experience. Overnight, Lima became the most experienced representative and was required to perform the most difficult tasks, including liquid oxygen refills. Lima had received minimal training on liquid oxygen. Only a few months earlier, Rabassa had submitted a formal evaluation stating that Lima was not qualified to handle liquid oxygen deliveries and required more training before being given such assignments. Lima realized that he could not handle the assignment competently and told his superiors that he

needed additional training. His superiors ignored him and required him to service the liquid oxygen customers while still performing his other service representative duties. Because of his unfamiliarity and lack of training with liquid oxygen, Lima had difficulty completing his route assignments and needed much more time to handle his work. Yet there was no one to assist him or take on the overflow. In fact, there was much more work than before because two men had to do the work previously done by three, and the new service representative was so inexperienced that he could not handle many types of assignments.

320. Due to the reduction in manpower, the service representatives had to work overtime hours, and one service representative was always on call. Lima took college classes on Monday and Tuesday nights, a fact of which his supervisors were aware because he sought tuition reimbursement from Lincare. Knowing that he could not work those nights, his supervisors repeatedly assigned him to be on call the nights he had class. When Lima protested and said he could not work those nights, his supervisors noted his unwillingness to work additional hours and claimed that he was not interested in helping the organization.

321. Under Lincare's protocols, when the service representatives were too busy to make all of their service calls, the center manager was supposed to be available to handle the overflow. In fact, the Lincare job description for a center manager required that they be trained and capable of handling all service representative responsibilities. When Lincare replaced Mary Sweet, however, the new center manager was not trained and could not perform many of the functions Lima handled. This put additional pressure on Lima; there was no one else who could do many of the functions that he was required to do, leaving him with insufficient time to perform all of his responsibilities.

322. By reducing the workforce by a third and replacing an experienced representative with a representative who was barely qualified, Lincare intentionally made Lima's job much more difficult. Lincare took these actions either to force Lima to quit or to stretch him so thin that it would be impossible for him to perform his job effectively, thereby giving Lincare a basis to dismiss him. Indeed, because he had far more to do than he had before and much more responsibility (without any more compensation), Lima's job performance fell.

323. In the spring of 2010, Lincare kept placing warnings in Lima's personnel file. These warnings were simply to provide a paper record to justify firing Lima and they were not accurate or legitimate. On May 12, 2010, Lima purportedly received a "Final Written Warning." The warning claimed that Lima had refused to deliver oxygen to a new customer after he had committed to making the delivery. The warning stated that "unless there is an immediate and sustained improvement in your actions and behavior, further disciplinary action up to and including termination will occur." The warning was supposedly written and delivered by Lima's then supervisor, Misty Moscoffian.

324. The May 12, 2010 Final Warning is completely false and a forgery. The incident that it purports to document never occurred. Nor did Lima receive an oral, or written, warning. Lincare disciplinary warnings are supposed to be formally delivered. At the time of delivery, the employee receiving the warning, and the supervisor delivering it, are supposed to sign the formal document. Although there are signature lines for both Moscoffian and Lima on the May 12th Final Warning that Lima purportedly received, neither of them signed it. Moreover, Moscoffian's name is misspelled "Moscoffien." It is clear that she did not create the document. It was, however, inserted in Lima's file and used as an additional pretext to fire him.

325. Lincare is supposed to review its employees annually, on the anniversary of their hiring. Lima was hired on August 9, 2006, and he received excellent reviews in August 2007 and August 2008. For some reason, no review was conducted in August 2009. In 2010, he was reviewed in June, two months earlier than in prior years. Moscoffian had quit a week or two earlier, so his review was conducted by his new supervisor, who had barely worked with him. When Lima asked how she could review him and why the review was being conducted earlier, the supervisor told him that it was Tarrah Fila-Loos's idea and that she had already told the supervisor what to write. The review was mediocre. However, the review made no reference to the "Final Warning" that had supposedly been issued two weeks earlier. The June review was another piece of paper Lincare created as a pretext for firing Lima.

326. On June 18, 2010, Lima received a call to set up a hospital bed late in the afternoon. Lincare did not have a complete bed at the Marlborough center that could be delivered to the customer, so Lima contacted the customer's son to see if the customer minded if he delivered the bed after-hours. The son told Lima that there was no place to set up the bed until he got his mother's home ready and told Lima to have Lincare deliver the bed on Monday. On Monday, Lima was busy with liquid oxygen deliveries, so he asked the new service representative to handle the call; he reluctantly complied. Lima's supervisor had taken the week off and was not at the center when these events occurred.

327. The supervisor returned on Monday, June 28, 2010. When Lima arrived for work that day, the supervisor was present along with Tarrah Fila-Loos. Fila-Loos said that they were going to terminate Lima. When he asked why, Fila-Loos refused to give him a reason, and his supervisor would not provide a reason either. He was told to gather his personal

possessions and leave. When Lima went to the door, his supervisor, out of Fila-Loos's hearing range, apologized to him.

328. After he was terminated, Lima requested his personnel file. He received it in July 2010. For the first time, he saw the May 12, 2010 Warning. It was the first time he had been informed that he had been "warned" of an incident that never occurred. He also saw a memo stating his grounds for termination. It claimed that Lima had refused to deliver the bed to the customer on June 18th and that he had refused to perform a concentrator check he was supposed to do on June 24, 2010. The events as described in the termination memo did not occur, and Lincare never asked Lima what had happened. They never investigated. Nor could Lima's superior have investigated either of these incidents. She was on vacation when they occurred.

329. Shortly after Lima was fired, the senior service representative who had previously been at the Marlborough center was transferred back. An additional person was also assigned to act as a service representative at the center, bringing the number of representatives back up to three. The only time it was down to two was when Lincare took retaliatory action against Lima because he had reported its unlawful conduct.

330. Lima was terminated due to his effort to report and disclose Lincare's fraudulent practices. When Lincare learned that Lima would not condone these practices and believed they needed to be reported to the appropriate authorities, it took retaliatory action by making his work conditions as difficult as possible and creating incidents that could be used as a pretext for disciplinary actions and ultimately termination. But for Lima's efforts to report and reform Lincare's fraudulent conduct, Lima would not have been discharged. Lima was

unemployed for two years after he was wrongfully discharged from Lincare. Moreover, although he is now employed, he is currently making much less money than he did when he was working for Lincare.

**FIRST CAUSE OF ACTION**  
**Violation of 31 U.S.C. § 3729(a)(1)(A) (and predecessor version of the Act)**  
**(Against Lincare)**

331. The Relators repeat and re-allege the allegations set forth in Paragraph 1 through 329 as though set forth herein.

332. From at least 2003 to the present, Lincare, together with its agents, employees, and co-conspirators, routinely and knowingly presented, and/or caused to be presented, false and fraudulent claims for oxygen and respiratory equipment to Medicare and other government payors for the purpose of getting such false and fraudulent claims paid or approved by the United States.

333. These false claims, as described above, were presented in the following circumstances:

- When Lincare intentionally billed Medicare for oxygen services for customers who were not using oxygen and related equipment (either because of death, non-use, a move into a hospital or skilled nursing facility, a physician's disconnect order, the equipment had already been picked-up or returned, or some other reason);
- When Lincare intentionally billed Medicare for portable oxygen when the customers had no need for portable oxygen and did not use or request it;
- When Lincare intentionally billed Medicare for portable oxygen fills when Lincare did not provide any such fills;
- When Lincare intentionally billed Medicare for oxygen services after improperly waiving a customer's co-payments or deductible; and

- When Lincare billed Medicare for oxygen for customers referred by physicians and other Medicare providers to whom it had paid kickbacks.

334. When each of the claims described in the preceding paragraph was presented to Medicare or other government payors, Lincare knew the claim was false, or acted in reckless disregard of the claim's truth or falsity.

335. Lincare was informed on numerous occasions that the conduct above was continuing and ongoing and would result in the presentation of false claims to the United States. Regardless, its supervisory personnel deliberately chose not to take action to halt such conduct.

336. As a result of the presentation of the false claims identified above, the United States, through the Medicare and other government payor programs, has paid numerous false claims and has sustained millions of dollars in damages.

**WHEREFORE**, the Relators, on behalf of the United States of America, request that this Court:

- a. Enter judgment holding Lincare liable for a civil penalty, in excess of \$11,000 for each violation of the False Claims Act committed by Lincare;
- b. Enter a judgment against Lincare for three times the amount of damages, plus interest, sustained by the United States because of the acts of Lincare;
- c. Award the Relators a percentage of the proceeds of the action in accordance with 31 U.S.C. § 3730;
- d. Award the Relators their expenses, costs, and reasonable attorneys' fees, plus interest, for prosecuting this action; and

e. Enter such other relief which the Court finds just and equitable.

**SECOND CAUSE OF ACTION**  
**Violation of 31 U.S.C. § 3729(a)(1)(B) (and predecessor versions of the Act)**  
**(Against Lincare)**

337. The Relators repeat and re-allege the allegations set forth in Paragraph 1 through 335 as though set forth herein.

338. From at least 2003 through the present, Lincare has routinely and knowingly made false records and/or statements material to false or fraudulent claims and/or to get a false or fraudulent claim paid or approved by the United States.

339. The false records and statements, which have been described above, were made in the following circumstances:

- When Lincare intentionally billed Medicare for oxygen services and related equipment for customers who it knew were not using it (either because of death, non-use, a move into a hospital or skilled nursing facility, a physician's disconnect order, the equipment had already been picked-up or returned, or some other reason), it falsely claimed it had delivered medically indicated and medically necessary services;
- When Lincare intentionally billed Medicare for portable oxygen for customers who had no need for portable oxygen and did not use or request it, it falsely claimed it had delivered medically indicated and medically necessary services;
- When Lincare filed claims with Medicare for refilling portable oxygen tanks, when it had not performed such services, but had performed concentrator checks or replaced spare oxygen tanks, and obtained the customers' signatures by subterfuge;
- When Lincare filed and signed Forms CMS 855S that falsely stated that it would comply with all Medicare requirements of participation, but it was improperly waiving Medicare co-payments and deductibles; and
- When Lincare filed and signed Forms CMS 855S that falsely stated that it would comply with all Medicare requirements of participation, including the

anti-kickback provisions, but in fact was paying and continued to pay kickbacks to referring physicians and other providers.

340. Lincare has also routinely and knowingly caused others to make false records and/or statements to the United States that were material to false or fraudulent claims or to get false or fraudulent claims paid or approved by the United States.

341. Specifically, in those cases when Lincare improperly initiated and conducted oximetry testing on Medicare beneficiaries, it caused the beneficiaries' physicians to file false Certificates of Medical Necessity on Form CMS-484, which falsely stated who had initiated and conducted the oximetry testing.

342. At the time it made, used, or caused to be made or used the materially false and fraudulent records and statements identified above, Lincare knew that they were false and fraudulent, or acted in reckless disregard of the records and/or statements truth or falsity.

343. At all relevant times, Lincare had information which would have allowed its supervisory personnel to discover the false and fraudulent nature of the above records and statements, but declined to take action to prevent their submission or use in connection with getting claims presented to Medicare and other government payors paid or approved.

344. Each of the false and fraudulent records and statements identified above were material to the decision of Medicare and other government payors to pay the claims.

345. And, but for the making or use of the false and fraudulent records and statements, Medicare and other government payors would not have paid numerous claims which resulted in Lincare's receipt of millions of dollars of revenue which was both excessive and unearned.

**WHEREFORE**, the Relators, on behalf of the United States of America, request that this Court:

a. Enter judgment holding Lincare liable for a civil penalty, in excess of \$11,000 for each violation of the False Claims Act committed by Lincare;

b. Enter a judgment against Lincare for three times the amount of damages, plus interest, sustained by the United States because of the acts of Lincare;

c. Award the Relators a percentage of the proceeds of the action in accordance with 31 U.S.C. § 3730;

d. Award the Relators their expenses, costs, and reasonable attorneys' fees, plus interest, for prosecuting this action; and

e. Enter such other relief which the Court finds just and equitable.

**THIRD CAUSE OF ACTION**  
**Violation of 31 U.S.C. § 3729(a)(1)(G) (and predecessor versions of the Act)**  
**(Against Lincare)**

346. The Relators repeat and re-allege the allegations set forth in Paragraph 1 through 344 as though set forth herein.

347. Lincare has numerous methods through which it can identify improper billing to Medicare and other government payors and corresponding overpayments received from them.

348. Through reports such as the A/R Write-Off Report, the Active Without Equipment Report, and the Inactive With Equipment Report, Lincare has the ability to isolate

and review billing and payments recognized by its own employees as being made and received in error.

349. Each individual overpayment received by Lincare constitutes an “obligation” to pay or transmit money or property to the government.

350. Upon information and belief, Lincare does not ensure that the overpayments received by it are timely refunded to the government, as required by the Patient Protection and Affordable Care Act.

351. As a result, upon information and belief, Lincare knowingly and improperly avoids its obligation to repay money to government payors.

**WHEREFORE**, the Relators, on behalf of the United States of America, request that this Court:

a. Enter judgment holding Lincare liable for a civil penalty, in excess of \$11,000 for each violation of the False Claims Act committed by Lincare;

b. Enter a judgment against Lincare for three times the amount of damages, plus interest, sustained by the United States because of the acts of Lincare;

c. Award the Relators a percentage of the proceeds of the action in accordance with 31 U.S.C. § 3730;

d. Award the Relators their expenses, costs, and reasonable attorneys’ fees, plus interest, for prosecuting this action; and

e. Enter such other relief which the Court finds just and equitable.

**FOURTH CAUSE OF ACTION**  
**Violation of 31 U.S.C. § 3730(h)**  
**(By Relator Dunlap Against Lincare and Holdings)**

352. Relator Dunlap repeats and re-alleges the allegations set forth in Paragraph 1 through 350 as though set forth herein.

353. Dunlap was an employee at Lincare, and she engaged in protected conduct under the Act, namely, the identification of false claims and efforts to expose and stop fraudulent conduct occurring at Lincare, as described above.

354. Lincare knew of Dunlap's protected conduct through her frequent reporting of fraudulent activity to her supervisors and directly to Lincare's Compliance Department – actions that were above and beyond the normal job responsibilities of a Direct Pay Customer Account Representative, which was Dunlap's position when she was employed by Lincare.

355. Lincare with the active involvement and approval of Holdings terminated Dunlap in retaliation for engaging in the protected conduct.

356. All non-retaliatory grounds claimed by Lincare for their treatment of Relator Dunlap is pretextual. She was terminated due to her attempts within the company to stop fraud and improper billings to government payors.

357. As a result of Lincare and Holdings' retaliatory actions, Relator Dunlap suffered significant economic harm.

358. As such, Dunlap is entitled to all of the relief available from Lincare, under Section 3730(h) of the Act, on account of its retaliation against her.

**WHEREFORE**, Relator Dunlap requests that this Court:

a. Award her two times the amount of back pay and benefits she lost as a result of Lincare's retaliatory conduct;

b. Order Lincare to reinstate her to her former position with full seniority as if she had never been dismissed, or equivalent relief such as front pay;

c. Award her compensation for the special damages she suffered due to Lincare's unlawful actions;

d. Award the Relators their costs and reasonable attorneys' fees for prosecuting this action; and

e. Enter such other relief which the Court finds just and equitable.

**FIFTH CAUSE OF ACTION**  
**Violation of 31 U.S.C. § 3730(h)**  
**(By Relator Robins Against Lincare and Holdings)**

359. Robins repeats and re-alleges the allegations set forth in Paragraph 1 through 357 as though set forth herein.

360. Robins was an employee at Lincare, and she engaged in protected conduct under the Act, namely, the identification of false claims in furtherance of the instant *qui tam* action.

361. Lincare learned of Robins' protected conduct when it was served with the complaint in her *qui tam* action.

362. Upon learning of Robins' protected conduct, and as a direct result thereof, Lincare and Holdings terminated Robins in retaliation for engaging in the protected conduct, namely, the investigation and furtherance of the instant *qui tam* litigation.

363. All non-retaliatory grounds claimed by Lincare and Holdings for their treatment of Relator Robins is pretextual. She was terminated due to her attempts within and without the company to stop fraud and improper billings to government payors.

364. As a result of Lincare and Holding's retaliatory action, Relator Robins suffered significant economic harm.

365. As such, Robins is entitled to all of the relief available from Lincare and Holdings, under Section 3730(h) of the Act, on account of its retaliation against her.

**WHEREFORE**, Relator Robins requests that this Court:

a. Award her two times the amount of back pay and benefits she lost as a result of Lincare and Holding's retaliatory conduct;

b. Order Lincare and Holdings to reinstate her to her former position with full seniority as if she had never been dismissed, or equivalent relief such as front pay;

c. Award her compensation for the special damages she suffered due to Lincare' and Holding's unlawful actions;

d. Award the Relators their costs and reasonable attorneys' fees for prosecuting this action; and

e. Enter such other relief which the Court finds just and equitable.

**SIXTH CAUSE OF ACTION**  
**Violation of 31 U.S.C. § 3730(h)**  
**(By Relator Rabassa Against Lincare and Holdings)**

366. Relator Rabassa repeats and re-alleges the allegations set forth in Paragraph 1 through 364 as though set forth herein.

367. Relator Rabassa was an employee of Lincare who took numerous actions to prevent Lincare from engaging in conduct that resulted in the presentation of false claims to Medicare and to prevent Lincare from making or using or causing others to make or use false statements that were material to the payment of false claims. These actions included:

- Informing his supervisors of conduct and billing practices that defrauded Medicare, payment of unlawful kickbacks to referring physicians and other providers, and conduct that violated Medicare's rules regarding oximetry testing;
- Informing regional and corporate officials within Lincare of conduct and billing practices that defrauded Medicare, payment of unlawful kickbacks to referring physicians and other providers, and conduct that violated Medicare's rules regarding oximetry testing;
- Informing compliance personnel within Lincare of conduct and billing practices that defrauded Medicare, payment of unlawful kickbacks to referring physicians and other providers, and conduct that violated Medicare's rules regarding oximetry testing; and
- Informing the Medicare anti-fraud hotline of conduct and billing practices that defrauded Medicare, payment of unlawful kickbacks to referring physicians and other providers, and conduct that violated Medicare's rules regarding oximetry testing.

368. Corporate officials and Relator Rabassa's supervisors at Lincare were aware that Relator Rabassa had engaged in such conduct. In retaliation against his efforts to stop Lincare's violations of the False Claims Act, his supervisors and superiors harassed and wrongfully discharged him. The Marlborough center manager, due to her displeasure over his decision not to refill portable oxygen tanks without a customer order, changed historic reimbursement policies to the service representatives, so he was no longer reimbursed for expenses for which he had been reimbursed for years. When this was unsuccessful, Relator Rabassa was terminated on instructions from Holdings.

369. All non-retaliatory grounds claimed by Lincare for their treatment of Relator Rabassa was pretextual. In fact, all actions were taken to drive him from Lincare due to his attempts within and without the company to stop Medicare fraud.

370. As a result of Lincare and Holdings' retaliatory action, Relator Rabassa was unemployed for more than one year and suffered other damages.

**WHEREFORE**, Relator Rabassa requests that this Court:

- a. Award him two times the amount of back pay and benefits he lost as a result of Lincare's retaliatory conduct;
- b. Order Lincare to reinstate Relator Rabassa to his former position with full seniority as if he had never been dismissed, or equivalent relief such as front pay;
- c. Award him compensation for the special damages he has suffered due to Lincare's unlawful actions;

- d. Award him his costs and reasonable attorneys' fees for prosecuting this action; and
- e. Enter such other relief which the Court finds just and equitable.

**SEVENTH CAUSE OF ACTION**  
**Violation of 31 U.S.C. § 3730(h)**  
**(By Relator Lima Against Lincare and Holdings)**

371. Relator Lima repeats and re-alleges the allegations set forth in Paragraph 1 through 369 as though set forth herein.

372. While a Lincare employee, Relator Lima took numerous actions to prevent Lincare from engaging in conduct that resulted in the presentation of false claims to Medicare and to prevent Lincare from making or using or causing others to make or use false statements that were material to the payment of false claims. The actions he took included:

- Informing his supervisors of conduct and billing practices that defrauded Medicare, payment of unlawful kickbacks to referring physicians and other providers, and conduct that violated Medicare's rules regarding oximetry testing;
- Informing regional and corporate officials within Lincare of conduct and billing practices that defrauded Medicare, payment of unlawful kickbacks to referring physicians and other providers, and conduct that violated Medicare's rules regarding oximetry testing; and
- Informing compliance personnel within Lincare of conduct and billing practices that defrauded Medicare, payment of unlawful kickbacks to referring physicians and other providers, and conduct that violated Medicare's rules regarding oximetry testing.

373. Lincare corporate officials and Relator Lima's supervisors were aware that Relator Lima had engaged in such conduct. In retaliation against his efforts to stop Lincare's violations of the False Claims Act, his supervisors and superiors harassed and wrongfully

discharged him. The Marlborough center manager and her superiors intentionally took actions to make Relator Lima's working conditions more difficult for the purpose of getting him to quit or to make his job performance look substandard. They ultimately fired him for an entirely false basis.

374. All non-retaliatory grounds claimed by Lincare for their treatment of Relator Lima were pretextual. In fact, all actions were taken to drive him from Lincare due to his attempts within and without the company to stop Medicare fraud.

375. As a result of Lincare's retaliatory action, Relator Lima was unemployed for more than two years, lost tuition reimbursement benefits that he had been using to obtain a college degree, and is still not earning as much money as he made when he was employed by Lincare.

**WHEREFORE**, Relator Lima requests that this Court:

- a. Award him two times the amount of back pay and benefits he lost as a result of Lincare and Holding's retaliatory conduct;
- b. Order Lincare to reinstate him to his former position with full seniority as if he had never been dismissed, or equivalent relief such as front pay;
- c. Award him compensation for the special damages he has suffered due to Lincare and Holding's unlawful actions;
- d. Award him his costs and reasonable attorneys' fees for prosecuting this action; and

e. Enter such other relief which the Court finds just and equitable.

**EIGHTH CAUSE OF ACTION**  
**Unlawful Termination**  
**(By Relators Rabassa and Lima Against Lincare and Holdings)**

376. Relators Rabassa and Lima repeat and re-allege the allegations set forth in Paragraph 1 through 374 as though set forth herein.

377. Massachusetts Law protects all employees from being terminated for reasons that violate public policy. Employer retaliation against employees due to those employees' attempts to halt illegal conduct by the employer is against public policy and is unlawful.

378. As set forth above, Relators Rabassa and Lima were discharged from their positions and suffered harassment and other workplace retaliation solely because they reported to both their superiors and Medicare Lincare's routine practices that were intended to defraud Medicare and which violated Medicare's rules and regulations. All non-retaliatory grounds advanced by Lincare in support of its disciplinary actions against them are pretextual; Relators Rabassa and Lima were dismissed because they attempted to halt illegal, but highly lucrative, practices at Lincare.

379. As a result of Lincare and Holdings' retaliatory actions, Relator Rabassa was unemployed for more than one year. As a result of Lincare's retaliatory action, Relator Lima was unemployed for more than two years, lost tuition reimbursement benefits that he had been using to obtain a college degree, and is still not earning as much money as he made when he was employed by Lincare.

**WHEREFORE**, Relators Rabassa and Lima request that this Court:

a. Award each of them full compensation for all damages they have suffered due to Lincare's wrongful termination, including but not limited to an award of front pay and an award of back pay, and full compensation for all medical and emotional distress damages that they suffered;

b. Award them their costs and reasonable attorneys' fees for prosecuting this action; and

c. Enter such other relief which the Court finds just and equitable.

**PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL COUNTS**

Respectfully submitted

**RELATORS SALLYJO ROBINS,  
KATHLEEN DUNLAP, ROBERTO  
RABASSA, and GERMANO LIMA,**

Dated: March 20, 2014

By their attorneys,

**GREENE LLP**

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Dated: March 20, 2014

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**CERTIFICATE OF SERVICE**

I hereby certify that, on March 20, 2014, this document (filed through the ECF system) was sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: March 20, 2014

/s/ Michael Tabb  
Michael Tabb