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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

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CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

v.

TODD FARHA, PAUL BEHRENS, AND  
THADDEUS BEREDAY,

Defendants.

Civil Action No. \_\_\_\_\_

8:12 CV 47 T 237 AB

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission ("Commission"),  
alleges for its Complaint as follows:

SUMMARY

1. From 2003 through 2007, Todd Farha ("Farha"), former chief executive officer ("CEO") of WellCare Health Plans, Inc. ("WellCare" or the "Company"), Paul Behrens ("Behrens"), WellCare's former chief financial officer ("CFO"), and Thaddeus Bereday ("Bereday"), WellCare's former general counsel, (collectively, the "Defendants"), devised and carried out a fraudulent scheme that deceived the Florida Agency for Health Care Administration ("AHCA"), Florida Healthy Kids Corporation ("Healthy Kids"), and WellCare investors by improperly retaining over \$40 million in health care premiums the Company was statutorily and contractually obligated to reimburse to the state agencies, and recording this amount as revenue, which materially inflated the Company's net income and diluted earnings per share ("EPS") in the Company's public financial statements.

2. Under its contracts with AHCA, WellCare's health maintenance organizations ("HMOs"), Staywell Health Plan of Florida ("Staywell") and HealthEase of Florida ("HealthEase"), received funds, or premiums, from AHCA to be used to provide medical and health benefits to qualified participants. A portion of those premiums were for outpatient behavioral health benefits. To ensure a proper balance between cost savings and quality health care, the State of Florida required Staywell and HealthEase to spend at least 80% of the outpatient behavioral health premiums on eligible medical expenses, pursuant to a statute adopted in 2002 (the "80/20 Statute"). If Staywell and HealthEase spent less than 80% of premiums on eligible expenses, they were required to refund the difference to AHCA. AHCA also established an annual reporting mechanism for the 80/20 Statute that required Staywell and HealthEase, among others, to accurately report premiums they received, the amount of eligible medical expenses, and any refund due to AHCA.

3. While the Defendants' scheme was ongoing, Staywell and HealthEase did not follow AHCA guidance governing how the Company was required to calculate refunds under the 80/20 Statute. Instead, Staywell and HealthEase fraudulently included ineligible expenses in its refund calculations, such as payments to Harmony Behavioral Health ("Harmony"), a WellCare subsidiary created in part to help conceal the scheme, and administrative expenses clearly disallowed by AHCA guidelines. For certain refunds under the 80/20 Statute, Staywell and HealthEase calculated a range of arbitrary amounts to refund to AHCA, and then reverse-engineered a methodology to arrive at a particular refund target. By doing so, Staywell and HealthEase fraudulently retained approximately \$35 million that should have been refunded to AHCA. The Defendants knew, or were reckless in not knowing, that Staywell and HealthEase

repeatedly reported false, misleading and incomplete information to AHCA in order to conceal the scheme.

4. Another element of the scheme involved manipulation of refunds to Healthy Kids by Defendants Farha and Behrens. Beginning in 2003, Staywell and HealthEase contracted with Healthy Kids and received premiums to be used to provide medical and health benefits to qualified participants. Under these contracts, and according to Florida law, Staywell and HealthEase were obligated to spend at least 85% of total premiums on eligible medical expenses. If they spent less than the minimum amount on eligible expenses, they were required to refund 50% of the difference to Healthy Kids. Once again, Defendants Farha and Behrens chose not to follow Healthy Kids guidelines governing how Staywell and HealthEase were required to calculate refunds. Instead, Staywell and HealthEase fraudulently understated refunds to Healthy Kids by padding medical expenses and by agreeing to pay certain hospitals higher reimbursement rates in exchange for lower rates under Medicare and Medicaid contracts – a “rate-swapping” arrangement. By understating required refunds to Healthy Kids, Defendants Farha and Behrens ultimately defrauded Healthy Kids of approximately \$6 million in premiums that should have been spent on health care services for low-income children or returned to the State of Florida.

5. Through the fraudulent scheme devised and implemented by the Defendants, Staywell and HealthEase reduced the refunds paid to AHCA by approximately \$35 million and to Healthy Kids by approximately \$6 million. These excess premiums improperly withheld from AHCA and Healthy Kids went directly to WellCare’s bottom line. As a result of the Defendants’ scheme, WellCare fraudulently overstated behavioral health care premium revenues and, in turn, materially overstated net income and diluted earnings per share (“EPS”) in reports filed with the

Commission and in quarterly and annual earnings releases for fiscal years (“FY”) 2004 through 2006 and the first quarter of FY 2007. The overstated financial results also appeared in three registration statements signed by Defendants Farha and Behrens through which all the Defendants sold hundreds of thousands of shares of WellCare stock. The Defendants knew, or were reckless in not knowing, that WellCare’s financial statements, Commission filings, and registration statements were materially false and misleading.

6. Defendants Farha and Behrens also made materially false and misleading statements and omissions about WellCare’s reported financial results during quarterly and annual earnings conference calls with analysts and investors during the same period.

7. As the Defendants knew, or were reckless in not knowing, as a result of fraudulent recognition of revenue for premiums that WellCare was not entitled to retain, WellCare’s financial statements during this period were not reported in conformity with Generally Accepted Accounting Principles (“GAAP”).

8. After setting the fraudulent scheme in motion, the Defendants sold more than \$91 million worth of WellCare stock into the public market on the basis of material, nonpublic information that they were conducting a fraudulent scheme that impacted WellCare’s financial results, caused false and misleading statements, and imperiled the Company’s business relationship with the state of Florida. The Defendants sold their stock through trading plans which they established after they began lying to AHCA and Healthy Kids and inflating WellCare’s net income and EPS. Moreover, as the Defendants continued to defraud the State of Florida by improperly retaining unspent behavioral health care premiums, they amended their trading plans to increase the amount of stock they could sell. The Defendants also sold WellCare stock into the market through three public stock offerings via registration statements. As

WellCare insiders, and active participants in the scheme to defraud AHCA and Healthy Kids, the Defendants knew, or were reckless in not knowing, that the registration statements incorporated materially false and misleading information based on WellCare's inaccurate financial statements, and other false and misleading statements related to WellCare's dealings with the State of Florida.

9. Significantly, the Defendants understood that the AHCA and Healthy Kids contracts, and the enabling statutes under which each agency operated, required accurate reporting of expenditures on certain types of behavioral health care services, and accurate reimbursement of premiums not spent on provision of behavioral health care services. They also understood how AHCA and Healthy Kids' defined the types of behavioral health care services that constituted allowable expenditures. WellCare never formally challenged the state agencies' authority, or their statutory or contractual interpretations. The Defendants never sought, nor were they granted, permission from either agency to deviate from agency guidelines, interpretations or instructions. Instead, the Defendants merely ignored the agencies' definitions and interpretations, and falsely represented, or caused to be represented, that Staywell and HealthEase were in compliance with AHCA and Healthy Kids guidelines.

10. As the Defendants knew, or were reckless in not knowing, WellCare failed to establish and maintain a system of internal accounting controls sufficient to prevent material misstatements in its books, records, accounts, and financial statements, and to provide reasonable assurances that the Company's financial statements were prepared in conformity with GAAP. The Defendants' fraudulent scheme caused WellCare to violate the internal control provisions of the federal securities laws, and to falsify its books, records, and accounts.

11. On October 24, 2007, federal and state agents executed a search warrant on WellCare's headquarters. The New York Stock Exchange halted trading in the Company's stock that same day. The following day, WellCare's stock price plummeted 63%, from \$115 to approximately \$42. As of January 4, 2012, WellCare trading closed at approximately \$52.

12. Shortly after the search warrant was executed and trading was halted, a Special Committee of WellCare's Board of Directors (the "Special Committee") began an internal investigation. On January 26, 2009, based on the Special Committee's findings, WellCare filed its Form 10-K for FY 2007 and restated its financial results for FYs 2004 through 2006 and the first two quarters of FY 2007 (the "Restatement"). The Restatement reduced WellCare's reported net income and EPS by approximately 14% for FY 2004, 9% for FY 2005, 13% for FY 2006, and 9% for the first quarter of FY 2007. In addition to correcting accounting errors based on the Company's failure to comply with the AHCA and Healthy Kids contracts and related statutory requirements, WellCare reported material weaknesses in its internal controls, the Company's information and communication system, and the Company's financial reporting. The Company concluded that these material weaknesses "caused significant accounting errors" which required restatement of WellCare's financial statements. WellCare also reported that "former senior management" had "set an inappropriate tone" in connection with the Company's relationships with state agencies.

13. Pursuant to an August 2008 agreement with AHCA, the U.S. Attorney's Office for the Middle District of Florida ("USAO") and the Florida Attorney General's Medicaid Fraud Control Unit, Staywell and HealthEase paid \$35.2 million – "the total potential amount of

Medicaid behavioral health capitation refunds” owed to AHCA for calendar years 2002 through 2006.<sup>1</sup>

14. By engaging in the conduct described above, the Defendants violated the antifraud, internal controls, and books and records provisions of the federal securities laws, and aided and abetted WellCare’s violations of the internal controls, books and records, and reporting provisions of the federal securities laws. Defendants Farha and Behrens further violated the federal securities laws by making false certifications in connection with WellCare’s periodic filings, making materially false and misleading statements and omissions to WellCare’s external auditors, and failing to reimburse to WellCare, after the Restatement, certain incentive-based and equity-based compensation they received and certain profits they realized from the sale of the Company’s stock.

#### **JURISDICTION AND VENUE**

15. The Commission brings this action pursuant to Section 20(b) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §77t(b)] and Section 21(d) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §78u(d)].

16. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)], Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(e) and 78aa], and Section 3(b) of the Sarbanes Oxley Act of 2002 (“Sarbanes-Oxley”) [15 U.S.C. §7202(b)]. The Defendants, directly and indirectly, used the means or instrumentalities of transportation, interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices, and courses of business described in this Complaint.

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<sup>1</sup> “Capitation” is a method of paying health care service providers a set amount for each enrolled person for a given period of time. Here, the usage is similar to “premium.”

17. Certain of the acts, practices, and courses of conduct constituting the violations of law alleged in this Complaint occurred within this judicial district and, therefore, venue is proper pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa]. The Defendants, directly and indirectly, engaged in, and unless restrained and enjoined by this Court will continue to engage in, transactions, acts, practices, and courses of business that violate Section 17(a) of the Securities Act [15 U.S.C. §77q(a)], Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§78j(b), 78(m)(b)(5)], and Exchange Act Rules 10b-5 and 13b2-1 [17 C.F.R. §§240.10b-5, 240.13b2-1]. Defendant Bereday also aided and abetted violations of Section 10(b) of the Exchange Act [15 U.S.C. §§78j(b)] and Exchange Act Rule 10b-5(b) [17 C.F.R. §§240.10b-5(b)] and unless restrained and enjoined by this Court will in the future aid and abet violations of these provisions. In addition, Defendants Farha and Behrens violated Exchange Act Rules 13a-14 and 13b2-2 [17 C.F.R. §§240.13a-14, 240.13b2-2], and Section 304(a) of Sarbanes-Oxley [15 U.S.C. §7243(a)] and unless restrained and enjoined by this Court will in the future violate such provisions. The Defendants also aided and abetted WellCare's violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§78m(a), 78m(b)(2)(A), and 78m(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] and unless restrained and enjoined by this Court will in the future aid and abet violations of these provisions.

## **DEFENDANTS**

18. Farha was WellCare's President and CEO from May 2002 until his resignation on January 25, 2008. Farha was also a director of WellCare from May 2002 until his resignation, and he served as Chairman of the Board from October 2006 until his resignation.

19. Behrens was WellCare's Senior Vice President and CFO from September 2003 until his resignation on January 25, 2008. Behrens is a Certified Public Accountant, and he previously held accounting licenses in Wisconsin and Florida.

20. Bereday was WellCare's Senior Vice President and General Counsel from November 2002 until his resignation on January 25, 2008. Bereday was licensed to practice law in the State of Ohio, but his bar status is currently inactive.

## **RELEVANT ENTITIES**

21. WellCare, a Fortune 500 company, is a Delaware corporation, headquartered in Tampa, Florida. WellCare's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and it trades on the New York Stock Exchange. At all times relevant to this Complaint, WellCare provided managed care services to government-sponsored healthcare programs, focusing on Medicaid and Medicare. The Company offered a variety of Medicaid and Medicare plans and, through subsidiaries, operated these plans in all 50 states. WellCare's fiscal year ends on December 31.

22. Staywell and HealthEase are HMOs wholly owned by WellCare. At all times relevant to this Complaint, WellCare provided Medicaid services in Florida through Staywell and HealthEase, the two largest Medicaid managed care plans in the state, which operate in 15 counties and 30 Florida counties, respectively. Staywell and HealthEase contracted with and accepted behavioral health care premiums from AHCA and Healthy Kids. Defendant Farha

served as President and CEO of Staywell and HealthEase. Defendant Bereday served as General Counsel of Staywell and Secretary of HealthEase.

23. Harmony Behavioral Health (“Harmony”), a Delaware corporation, is a subsidiary of WellCare. Certain of the premiums received from AHCA by Staywell and HealthEase passed through Harmony. Defendant Farha served as CEO and Chairman of Harmony, Defendant Behrens served as CFO of Harmony, and Defendant Bereday served as Secretary of Harmony.

### **FACTUAL ALLEGATIONS**

#### **The 80/20 Statute**

24. In 2002, Florida passed the 80/20 Statute, which required managed care plans, including HMOs, to spend at least 80% of behavioral health premiums “for the provision of behavioral health care services.” Florida Statute §409.912(4)(b). If a managed care plan spent less than 80% of total premiums on eligible expenses, the 80/20 Statute required the plan to refund the difference to AHCA. Thus, Staywell and HealthEase were required to refund money to AHCA if their Medical Loss Ratios (“MLRs”), actual expenditures for allowable expenses divided by total premiums received, were below 80%.

#### **WellCare’s 2002 Contracts With AHCA**

25. Staywell and HealthEase entered into contracts with AHCA in 2002, 2004 and 2006 to provide behavioral health care services, each of which was governed by the 80/20 Statute. In July 2002, for example, Staywell and HealthEase entered into contracts with AHCA (the “2002 Contracts”), under which Staywell and HealthEase received a flat or “capitated” rate for each person enrolled in their health plans. The contracts required the HMOs to provide “community mental health” and “mental health targeted case management” services in certain

geographical areas of Florida. These services were defined by particular codes listed in handbooks published by AHCA. Pursuant to the 2002 Contracts, Staywell and HealthEase were required to provide a breakdown of behavioral health care expenditures “using the spreadsheet template provided by the agency.” The 2002 Contracts also provided that all statewide policy decision-making or contract interpretation would be made by AHCA, that AHCA was responsible for the interpretation of all federal and state laws, rules and regulations governing or in any way affecting the contract, that any dispute concerning the contract would be decided by AHCA, and that AHCA’s decisions would be final and conclusive. In the 2002 Contracts, Staywell and HealthEase agreed to comply with all applicable federal and state laws, rules and regulations, including the 80/20 Statute.

26. Between September 2002 and April 2004, Defendant Farha signed eight amendments to Staywell’s 2002 contract with AHCA, and nine amendments to HealthEase’s 2002 contract with AHCA. In July 2003 amendments signed by Farha for both HMOs, Staywell and HealthEase agreed that the accuracy, completeness, and truthfulness of data provided to AHCA under the contract’s reporting requirements must be certified by the CEO, CFO or someone with delegated authority, based on “best knowledge, information, and belief.”

27. In or about October 2002, AHCA determined that only expenditures for services defined as “community mental health” and “targeted case management” were allowable expenditures under the 80/20 Statute. AHCA also concluded that no portion of inpatient or pharmacy expenses could be included in an HMO’s 80% expenditure of behavioral health care premiums. AHCA reiterated this position in April 2004.

### **Harmony Behavioral Health**

28. On or about November 1, 2003, WellCare incorporated Harmony, and Harmony entered into contracts with Staywell and HealthEase. Defendant Farha signed each contract on behalf of the Staywell and HealthEase. Each contract provided that the HMOs would pay Harmony a flat, capitated rate. Neither contract differentiated between inpatient and outpatient rates or expenses, even though only outpatient services were allowable expenditures under AHCA guidelines.

50. A November 2003 Powerpoint presentation received by Defendants Farha, Behrens and Bereday revealed that WellCare established the capitated rates to be paid to Harmony in order to ensure that Staywell and HealthEase paid Harmony 85% of the behavioral health premiums they received from AHCA. The Powerpoint presentation also revealed that Staywell and HealthEase planned to have an MLR of only 60%, well below the 80% mark set by the statute.

51. As the Defendants knew, or were reckless in not knowing, Staywell and HealthEase categorized capitation payments from the HMOs to Harmony as behavioral health care service expenses, rather than the actual payments to frontline providers, for purposes of the refund calculation under the 80/20 Statute. Thus, the Powerpoint presentation demonstrates that the contractual relationship between Harmony and Staywell and HealthEase was designed to allow WellCare to fraudulently retain an additional 20% of the total behavioral health premiums received from AHCA.

52. In each submission to AHCA during the relevant period, Staywell and HealthEase added a footnote at the bottom of the Financial Worksheet: "Targeted Case Management and Community Mental Health are contracted on a comprehensive basis; amounts are not broken out by vendor contracts." The footnote was designed to indicate to AHCA that the HMOs could not,

and did not, differentiate expenses between Targeted Case Management and Community Mental Health. Staywell and HealthEase did not disclose to AHCA that they based their refund payments on capitation payments to Harmony, which was not a behavioral health care provider; nor did the Defendants disclose this information to AHCA.

53. As explained in more detail below, by improperly including payments to Harmony, as well as other ineligible expenses, in the Staywell and HealthEase' refund calculations, the Defendants substantially reduced the Company's annual refunds to AHCA under the 80/20 Statute. Between 2004 and 2007, the Defendants intentionally understated WellCare's refunds to AHCA by approximately \$35 million.

#### **WellCare's 2004 Contracts With AHCA**

29. In June 2004, Staywell and HealthEase executed contracts with AHCA to provide health care services to Medicaid beneficiaries ("2004 Contracts") substantially similar to the 2002 Contracts. Again, AHCA agreed to pay Staywell and HealthEase a capitated rate for each person enrolled in their health plans, and the HMOs agreed to provide community mental health and targeted case management services in certain areas of Florida. Defendant Farha signed the 2004 Contracts on behalf of the HMOs.

30. The 2004 Contracts provided that the HMOs must provide a breakdown of behavioral health care expenditures "using the spreadsheet template provided by the agency." The contracts further provided that, pursuant to the 80/20 Statute, 80% of the premiums paid to the HMOs must be spent on behavioral health care services, and that, if the plan spent less than 80%, the difference must be returned to AHCA.

31. The 2004 Contracts provided that data submitted under the reporting requirements must be certified by the CEO, CFO, or someone with delegated authority, attesting to the

accuracy, completeness and truthfulness of the information provided, based on “best knowledge, information, and belief.” The HMOs also agreed to comply with all applicable federal and state laws, rules and regulations, including the 80/20 Statute.

32. The 2004 Contracts defined “behavioral health services” as those listed in AHCA’s Community Mental Health and the Targeted Case Management handbooks. The contract also defined “expended” to mean the total amount, in dollars, paid directly or indirectly to behavioral health providers solely for the provision of behavioral health care services, not including administrative expenses or overhead of the plan. The contracts also provided that AHCA would make all policy decision-making or contract interpretation, and would be responsible for the interpretation of all federal and state laws, rules and regulations governing or in any way affecting the contracts.

33. In January 2005, WellCare adopted a corporate policy entitled “Behavioral Health Medicaid Reports.” The policy, which Defendant Farha approved, stated that WellCare would adhere to Section 60.3.6 of the 2004 Contracts, which states that “behavioral health service” is defined as services listed in the Community Mental Health and Targeted Case Management handbooks, and that “expended” means dollars paid for such behavioral health services, not including administrative expenses or overhead. The corporate policy, which a WellCare employee sent to AHCA, also provided that WellCare would provide information as required by AHCA. WellCare reiterated this corporate policy in August 2006, and Defendant Farha again approved the policy.

#### **WellCare’s 2006 Contracts With AHCA**

34. In or about August 2006, Staywell and HealthEase again entered into contracts with AHCA (the “2006 Contracts”), under which Staywell and HealthEase received a capitated

rate for each person enrolled in their health plans. Defendant Behrens signed these contracts, which were substantially similar to the 2004 Contracts, on behalf of Staywell and HealthEase.

#### **WellCare's 2004 Refunds to AHCA**

54. On or about June 6, 2004, pursuant to the 2002 Contracts, AHCA sent cover letters to Staywell and HealthEase enclosing "Financial Worksheets" to be used to report the percentage of behavioral health care premiums actually expended on behavioral health care services for calendar year 2003 and part of 2002. The cover letters explained that if Staywell and HealthEase had expended less than 80% of the premiums paid for behavioral health care services during the relevant period, the difference must be refunded to AHCA. The letters defined "behavioral health care services" as those listed in AHCA's Community Mental Health and Targeted Case Management handbooks. The letters also advised Staywell and HealthEase that AHCA's Office of the General Counsel had concluded that AHCA's definition of behavioral health care services, which included only Targeted Case Management and Community Mental Health, was "an appropriate interpretation." Finally, AHCA requested certification by a company officer, attesting to the accuracy of information provided.

55. The attached worksheets provided the HMOs with the total amount of capitation or premiums paid by AHCA for Community Mental Health and Targeted Case Management during the covered period, and reiterated that if less than 80% of the premiums had been expended on behavioral health care services, the difference must be refunded to AHCA. The worksheets also provided blanks for eligible "Expenses," in two categories -- "Targeted Case Management" and "Community Mental Health"; the HMO's "Actual Loss Ratio" (or MLR); the "Difference" between the Actual Loss Ratio and 80% of the total capitation; and the "Refund," if any, owed to AHCA. The worksheets also provided space for the "CEO/President" to "swear (or

affirm) that the expenditure information reported is true and correct to the best of my knowledge and belief.”

56. In June 2004, Defendant Farha sought updates from Defendants Behrens and Bereday regarding the status of the refund calculation. Defendant Bereday responded that a team was working on achieving “the most favorable reporting possible,” and that Defendant Behrens would “serve as the overall project lead.”

57. Tasked by the Defendants with finding ways to reduce the 2004 refund to AHCA, a WellCare financial analyst prepared spreadsheets illustrating how the Company could substantially reduce its refund under the 80/20 Statute by improperly including expenses that did not qualify as behavioral health care services under AHCA guidelines. On or around June 27, 2004, Defendant Farha emailed a group of WellCare employees who were working on the refund that he wanted to “engage with the team” before WellCare submitted a refund payment. On or around July 19, 2004, WellCare’s Vice President of Finance emailed Defendants Behrens and Bereday spreadsheets reflecting the refund calculations and stated that Defendant Farha intended to have a call about the issue the next day. On or around July 20, 2004, Defendant Bereday forwarded the spreadsheets to Defendant Farha.

58. In July 2004, Staywell and HealthEase refunded a total of \$6,147,700 to AHCA – \$3,764,302 for calendar year 2003, and \$2,383,398 for a portion of calendar year 2002. Defendant Farha signed the 2004 refund submissions for Staywell and HealthEase, swearing that the information submitted was true and correct to the best of his knowledge and belief.

59. As the Defendants knew from reviewing internal spreadsheets, or were reckless in not knowing, Staywell and HealthEase understated their 2004 refund to AHCA by approximately \$6 million by improperly including capitation payments to Harmony, administrative costs related

to one of WellCare's HMO offices and other ineligible expenses. None of these were allowable expenditures under AHCA guidelines. Thus, the Defendants knew, or were reckless in not knowing, that the expenditure information reported to AHCA in 2004 was false.

#### **WellCare's 2005 Refunds to AHCA**

60. Pursuant to the 2004 Contract, AHCA provided Staywell and HealthEase with substantially similar cover letters and financial worksheets in February 2005 (for calendar year 2004), in April 2006 (for calendar year 2005), and in April 2007 (for calendar year 2006). AHCA generally advised Staywell and HealthEase that they were subject to the 80/20 Statute and that, if they expended less than 80% of the capitation for behavioral health care services, they must return the difference to AHCA. AHCA directed the HMOs to use the attached worksheet for calculating behavioral health loss ratio (or MLR). AHCA advised that, for reporting purposes, behavioral health care services were defined as only those listed in AHCA's Community Mental Health and Targeted Case Management handbooks, and that "expended" meant the total amount, in dollars, paid directly or indirectly to behavioral health providers. AHCA also provided the HMOs with the capitation amounts paid by AHCA for community mental health and targeted case management services. Finally, AHCA requested the HMOs obtain certification from an officer, attesting to the accuracy of the information.

61. The financial worksheets accompanying the February 2005, April 2006, and April 2007 cover letters reiterated that if Staywell and HealthEase spent less than 80% of the premiums they received, they must return the difference to AHCA. The 2006 and 2007 worksheets specified that behavioral health services had been defined as "community mental health and targeted case management services only." The financial worksheets provided the total amount of behavioral health care capitation paid by AHCA. The forms also provided blank

amounts for “Targeted Case Management” and “Community Mental Health;” the HMO’s “Actual Loss Ratio” (or MLR); the “Difference” between the Actual Loss Ratio and 80% of the total capitation; and the “Refund” owed to AHCA, if any. The worksheets also provided space for the CEO or President to swear that “the expenditure information reported is true and correct to the best of my knowledge and belief.” The 2006 and 2007 worksheets required the signing officer to swear that the expenditure information “for the provision of community mental health and targeted case management services” was true and correct.

62. In February 2005, at the direction of WellCare’s Vice President of Finance, who reported to Defendant Behrens, a WellCare financial analyst tailored refund calculations to arrive at specific refund targets in the \$1 to \$1.5 million range.

63. For calendar year 2004, Staywell ultimately refunded approximately \$713,000 to AHCA, and HealthEase refunded approximately \$65,000. These amounts were understated by approximately \$8.9 million.

64. As the Defendants knew, or were reckless in not knowing, the amounts refunded by Staywell and HealthEase were calculated by improperly including the capitation amount paid to Harmony and subtracting that number from 80% of the premiums received from AHCA. This approach ignored AHCA guidelines regarding allowable behavioral health care expenses. Thus, the representations in the financial worksheets – that the expenditure information was related to Targeted Case Management and Community Mental Health – were false.

65. In an April 2005 letter to Staywell and HealthEase, which each Defendant received, AHCA questioned the substantial difference in the HMOs’ MLRs from calendar year 2003, which were approximately 50%, to calendar year 2004, which were approximately 75%. Moreover, AHCA concluded that the HMOs’ MLRs from 2003 should have been around 21%

according to AHCA's calculations, not 50%. The agency requested a detailed explanation from the HMOs for this variance.

66. In or around May 27, 2005, Defendants Behrens and Bereday reviewed a draft response to AHCA, which attributed the discrepancy to the Harmony capitation arrangement:

"Our submission is based on capitated payments to Harmony Behavioral Health, Inc. for the provision of covered outpatient services under the contract. Your calculation is based on capitated payments, fee for services claims, and other monthly fixed fees for the same services paid by our contracted behavioral health provider Harmony Behavioral Health, Inc. to their contracted 'downstream' providers."

The letter was never sent in this form. Instead, Defendant Bereday approved a very different and misleading draft of the letter, which did not disclose the role of capitation payments to Harmony in calculating the refund, stating only that: "We believe the discrepancy in calculations is due to a difference in the interpretation of the statute in question." This version of the letter, which is the only version actually sent to AHCA, was silent as to what that "difference in the interpretation of the statute" was (e.g. the capitation to Harmony), or how Staywell and HealthEase actually calculated their MLRs. Defendant Behrens also received a copy of this letter around the time it was sent to AHCA.

67. In June 2005, Defendant Farha received a summary from Defendant Bereday entitled, "Florida Behavioral Health 80/20 MLR Issue." At Defendant Farha's request, a meeting was held in his office on or around June 30, 2005 to review the information contained in the summary. Under a heading called "AHCA's Position," the summary explained that AHCA guidelines limited eligible behavioral health care services to those found in the Community Mental Health and Targeted Case Management handbooks. The summary further stated that Staywell and HealthEase calculated their 2005 refunds for calendar year 2004 by subtracting capitated payments to Harmony. Finally, the summary revealed that the HMOs' MLRs would

have been 19.9%, if calculated pursuant to AHCA's guidelines. Neither Farha nor Bereday provided this information to AHCA, nor was it disclosed to investors.

#### WellCare's 2006 Refunds to AHCA

68. On or about March 10, 2006, the Defendants learned that AHCA had reached a "final determination" on what expenses were allowable for reporting under the 80/20 Statute. AHCA concluded that it would "maintain" its position that "behavioral health services" applied "only to targeted case management and community mental health" for purposes of reporting under the 80/20 Statute, and that such a position was "appropriate." WellCare did not formally object to AHCA's determination, which was consistent with AHCA's previous statements on the issue.

69. In an email to the three Defendants, sent one hour after receiving AHCA's "final determination," a WellCare employee wrote that WellCare "ha[d] never yet argued the Staywell/HE [HealthEase] perspective which is we capped our sub, took BHIP [behavioral health inpatient expenses] out of the MLR calculation and reported." After receiving that email, Defendant Farha asked to be briefed "on Ahca [sic] issues."

70. On March 22, 2006, Defendant Bereday sent an email to a WellCare employee advising that, as to the "80/20 Behavioral Health Issue," Defendant Farha wants "fewer opinions rather than more," and wants "to rely mostly on me [Defendant Bereday] and [Defendant] Paul [Behrens] for this one." Farha also instructed WellCare employees, including Defendant Behrens, that he wanted a "payback" of \$1 million to AHCA.

71. In or about June 2006, AHCA provided a cover letter and worksheet that incorrectly stated that total behavioral health care premiums paid to Staywell and HealthEase were approximately \$24.8 million for calendar 2005, although AHCA had actually paid

approximately \$30.3 million in total premiums to the HMOs. In an email to Defendant Behrens on June 13, 2005, a WellCare executive characterized the \$5.4 million discrepancy as “material.” Defendant Behrens was aware of the discrepancy, and that it had not been reported to AHCA, but did nothing to correct AHCA’s mistake. The smaller total premium amount reported by AHCA reduced the 80% MLR required by the 80/20 Statute.

72. Staywell and HealthEase again calculated their refund to AHCA using capitation payments to Harmony, added certain ineligible fee-for-service costs to outside providers, and subtracted the \$5.4 million premium discrepancy. Defendant Farha understood that Staywell and HealthEase were relying on the capitation to Harmony as a basis for calculating refunds to AHCA, and he knew that AHCA was unaware of the implications of the arrangement between Harmony and Staywell and HealthEase. The Defendants approved this method of calculation.

73. On or about June 13, 2006 – just two days before the HMOs submitted their refunds to AHCA – Defendant Behrens received an email and a spreadsheet illustrating various refund calculation scenarios, ranging from zero to more than \$11 million. The email laid out the worst case scenario from WellCare’s perspective: “If we took ACHA [sic] payments [i.e., the \$24.8 million premium figure] and ACHA [sic] definitions of eligible care we would owe them \$6.9 million.” In fact, even the \$6.9 million figure is artificially low, since it ignores the fact that AHCA under-reported the total amount of premiums paid to Staywell and HealthEase, thus lowering the 80% threshold.

74. The email and spreadsheet also reported other refund scenarios:

If we took ACHA [sic] payments and our definition and added ALL Harmony admin expense (something I do not support) we would owe \$874,234.

...

If we took ACHA [sic] payments and our definition and added ALL Harmony admin expense and all Inpatient care (I do not support this either) we would owe \$0.

75. On or about June 15, 2006, with Defendant Farha's approval and Defendant Behrens' knowledge, Staywell and HealthEase refunded a total of \$1.4 million to AHCA, understating their refund obligation for calendar year 2005 by approximately \$6.7 million. WellCare's CFO for Florida operations signed the worksheets at Defendant Behrens' direction and in Defendant Bereday's presence. As the Defendants knew, or were reckless in not knowing, Staywell and HealthEase again disregarded AHCA guidelines by basing the refund amounts on capitated payments to Harmony. The HMOs also changed their approach to calculating the refunds – for the third time in three years – in order to meet a predetermined internal goal.

76. On or about June 15, 2006, Defendants Bereday and Behrens received a copy of what the HMOs submitted to AHCA, and Defendant Bereday forwarded the submissions to Defendant Farha. Notwithstanding their knowledge that the submissions by Staywell and HealthEase did not follow AHCA guidelines, none of the Defendants took any action to correct or amend the submissions.

#### **WellCare's 2007 Refunds to AHCA**

77. In April 2007, Staywell and HealthEase refunded only \$1.1 million, thereby understating their 2007 refund to AHCA by approximately \$13.5 million, or 90%. As the Defendants knew, or were reckless in not knowing, the HMOs again disregarded AHCA's pronouncement for calculating the refund amount, and changed their approach to calculating their refunds – for the fourth time in four years – in order to meet a predetermined internal goal.

78. Defendant Behrens assumed responsibility for coordinating the HMOs' submissions to AHCA, and Defendant Bereday admonished WellCare employees not to submit information to AHCA until he and Behrens had "signed off."

79. Defendant Behrens considered various scenarios to calculate the refund in order to meet a predetermined internal refund goal between \$1 million and \$1.5 million.

80. As each of the Defendants knew, or were reckless in not knowing, Staywell and HealthEase ultimately derived their 2007 refunds by determining that 85% of the behavioral health care expenses Harmony paid to providers fell within AHCA's eligible codes. They then took 85% of the capitation amount Staywell and HealthEase paid Harmony and subtracted that figure from 80% of the total premiums received from AHCA. This calculation was deceptive, because 85% of every dollar paid to Harmony was not used to provide behavioral health care services as defined by AHCA. Moreover, by WellCare's own calculations, which Defendant Behrens saw, the HMOs only spent about \$18 million on payments to providers. Thus, if 85% of those expenses met AHCA's interpretation of eligible codes, then the HMOs would have had an MLR of approximately 47% and a payback of more than \$12 million. This information appeared in a spreadsheet reviewed by Defendant Behrens, among others, in a column entitled "Prem[ium] from AHCA Using AHCA Proc[edure] Codes & Outside Cap." This spreadsheet highlights the fact that Defendant Behrens, among others, understood how Staywell and HealthEase should have calculated the refunds under AHCA guidelines, and that following the guidelines would have resulted in much higher refunds to AHCA than those ultimately made by the HMOs.

77. After WellCare submitted its refund to AHCA in April 2007 (for calendar year 2006), AHCA pressed the Company for a detailed explanation as to how the refund was calculated. AHCA requested "encounter data," visits to fee-for-service providers, or the number of visits paid for by WellCare pursuant to capitated arrangements with service providers. AHCA also requested reimbursement amounts for each eligible behavioral health expense code.

78. Knowing that WellCare could not comply with AHCA's request, Defendant Behrens directed a WellCare financial analyst to submit encounter data to AHCA without the requested reimbursement amounts for each code. Shortly thereafter, AHCA informed WellCare that its submission included ineligible codes, and did not include reimbursement amounts paid for each code. AHCA instructed the Company to resubmit the encounter data with reimbursement amounts.

79. In order to conceal the fraudulent approach taken by Staywell and HealthEase in calculating the refunds to AHCA, Defendant Behrens instructed the financial analyst to price encounters by spreading their cost across the capitation paid to Harmony, which Defendant Behrens referred to as an "allocation method" in a June 25, 2007 email. As Defendant Behrens knew, or was reckless in not knowing, this approach fraudulently inflated WellCare's encounter data expenses, so that the reported expenses would match the costs Staywell and HealthEase had reported in their earlier 80/20 refund submissions. At Defendant Behrens' direction, the financial analyst resubmitted the data to AHCA, calculating the amounts so that, in aggregate, they equaled or exceeded the capitation paid to Harmony.

#### **Attempts to Mislead AHCA**

78. At the direction of Defendants Behrens and Bereday, WellCare also misled AHCA by submitting false data in response to a January 2007 request for behavioral health encounter data. As the Defendants knew, or were reckless in not knowing, AHCA planned to use the encounter data to determine future capitation payments to Staywell and HealthEase. As Defendants Behrens and Bereday understood, if WellCare submitted encounter expenses based on the amounts Harmony actually paid to frontline providers – which were significantly less than what Staywell and HealthEase had previously reported – AHCA would know that refund

payments by Staywell and HealthEase were understated. Defendants Behrens and Bereday therefore decided to price encounters based on capitation rates paid by Staywell and HealthEase to Harmony, which was 250% more than the actual amounts paid to providers. With the approval of Defendants Behrens and Bereday, Staywell and HealthEase submitted this data to AHCA in February 2007 and falsely certified its accuracy.

79. In February 2007, AHCA made a follow-up request for additional behavioral health encounter data. In March 2007, with the approval of Defendants Behrens and Bereday, WellCare submitted the encounter data to AHCA without any pricing information. WellCare also falsely represented to AHCA that it was not submitting the pricing information due to “system issues” and the limited time frame provided for submission. As Defendants Behrens and Bereday knew, or were reckless in not knowing, WellCare omitted the pricing information in order to conceal the fact that expenses were much lower than AHCA had been led to believe. As Defendants Behrens and Bereday further knew, or were reckless in not knowing, WellCare again falsely certified the accuracy of the data submitted.

#### **Healthy Kids – Padding of Expenses**

82. Defendants Farha and Behrens also defrauded Healthy Kids, a federal and state-funded program that provides health insurance to uninsured children whose families are ineligible for Medicaid.

83. On or about September 5, 2003, Defendant Farha signed a contract between Healthy Kids and Staywell and HealthEase. Defendant Bereday also signed the contract as a witness. Also, on or about September 28, 2005, Defendant Farha signed another contract between Healthy Kids and Staywell and HealthEase.

84. As Defendants Farha and Behrens knew, or were reckless in not knowing, Florida Statute §624.91 required that all Healthy Kids contracts have a minimum MLR of 85%. As they further knew, or were reckless in not knowing, Staywell and HealthEase's contract with Healthy Kids, required that if Staywell and HealthEase did not spend 85% of the premiums they received from Healthy Kids on eligible medical expenses, they were obligated to return one-half of the difference to Healthy Kids.

85. Defendants Farha and Behrens manipulated this provision of the Healthy Kids contract by padding Staywell's and HealthEase's medical expenses in order to understate the Company's 2005 refund to Healthy Kids for contract year 2004. As a result of their actions, Staywell and HealthEase fraudulently underpaid Healthy Kids by approximately \$5.3 million.

86. In February 2005, WellCare's actuaries informed Defendant Behrens that they preliminarily estimated Staywell's and HealthEase's combined 2005 Healthy Kids refund obligation to be approximately \$5.8 million. Defendants Farha and Behrens approved the inclusion of administrative expenses in the Healthy Kids refund, thereby reducing the estimated refund to \$333,346. As Defendants Farha and Behrens knew, or were reckless in not knowing, Staywell and HealthEase refunded this amount to Healthy Kids in June 2005.

87. Under its Healthy Kids contract, Staywell and HealthEase were required to provide documentation to Healthy Kids explaining how they calculated their refund. In July 2005, with the approval of Defendant Behrens, WellCare provided misleading documentation to Healthy Kids to support its understated reimbursement amount. Defendant Behrens reviewed an internal spreadsheet which included separate columns for medical expenses of \$43 million, and administrative expenses of \$11 million. With Behrens' knowledge, WellCare consolidated the medical and administrative expense column in the version of the spreadsheet provided to Healthy

Kids, thereby falsely representing that total medical expenses for Staywell and HealthEase were \$54 million.

### **Healthy Kids - Rate-Swapping**

88. As Defendants Farha and Behrens knew, or were reckless in not knowing, in at least two instances, Staywell and HealthEase further defrauded Healthy Kids by improperly agreeing to pay higher reimbursement rates to certain hospitals under its Healthy Kids contracts in exchange for lower Medicaid and Medicare rates. In 2005, Staywell and HealthEase entered negotiations with two large hospital networks in Florida regarding its Medicare, Medicaid, and Healthy Kids contracts. Generally, Staywell and HealthEase sought the lowest hospital reimbursement rates possible in its contracts with provider networks. In these two instances, however, with the approval of Defendants Farha and Behrens, Staywell and HealthEase agreed to pay higher reimbursement rates to the hospitals for its Healthy Kids contracts in exchange for paying lower rates for its Medicare and Medicaid contracts, without disclosure to Healthy Kids.

89. As Defendants Farha and Behrens knew, or were reckless in not knowing, WellCare traded these rates because each dollar of cost increase in Staywell and HealthEase Medicare or Medicaid business would be borne entirely by WellCare, whereas each dollar increase under the Healthy Kids business would be borne 50% by Staywell or HealthEase and 50% by Healthy Kids. By paying higher Healthy Kids rates, Staywell and HealthEase reduced the amount they had to refund to Healthy Kids and diverted funds to Medicare and Medicaid that otherwise would have been shared with Healthy Kids.

90. Defendants Farha and Behrens failed to disclose the rate-swapping scheme to Healthy Kids, which lowered Staywell's and HealthEase's payments to Healthy Kids by approximately \$700,000.

### **WellCare's Materially Misstated Financial Results**

91. By defrauding AHCA and Healthy Kids, WellCare materially misstated its financial results in periodic and current reports filed with the Commission from FY 2004 through the first quarter of FY 2007. Defendants Farha and Behrens knew, or were reckless in not knowing, that WellCare's financial statements reflected premiums received from state and federal agencies as "premium revenues" on the Company's income statement and that amounts WellCare refunded to these agencies pursuant to contractual or statutory provisions reduced premium revenues.

92. As Defendants Farha and Behrens further knew, or were reckless in not knowing, WellCare's financial statements throughout this period did not conform with GAAP, because the Company improperly recognized revenue for premiums that it was not entitled to retain pursuant to statutory or contractual provisions.

93. In the Restatement, WellCare disclosed that it had overstated its net income by 14% in FY 2004, 9% in FY 2005, 13% in FY 2006, and 9% for the first quarter of FY 2007 and had overstated its EPS for these periods by essentially the same percentages. The Company restated its net income and EPS by these amounts and admitted material weaknesses in its internal controls during the years at issue. WellCare acknowledged that the Restatement was due to "accounting errors" in connection with its compliance and refund requirements to AHCA and Healthy Kids and that the Company's "former senior management" had "set an inappropriate tone" in connection with the regulatory requirements of the AHCA and Healthy Kids contracts.

94. As alleged in detail above, Defendants Farha and Behrens knew, or were reckless in not knowing, that, as a result of the fraudulent scheme carried out by Defendants, WellCare materially misstated its publicly reported financial results from FY 2004 through the first quarter

of FY 2007. Defendants Farha and Behrens each made statements disseminating materially false and misleading financial results to investors, and, as described herein in detail, Defendant Bereday knowingly provided substantial assistance to those efforts.

**Materially False and Misleading Statements in Forms 10-Q and 10-K**

95. Throughout the relevant period, Defendants Farha and Behrens signed and certified WellCare's periodic reports filed with the Commission on Forms 10-Q and 10-K, which they knew, or were reckless in not knowing, reported materially inflated net income and EPS. Defendants Behrens also served on WellCare's Disclosure Committee, which met prior to the filing of each periodic report to discuss any issues that should be disclosed.

96. As Defendants Farha and Behrens knew, or were reckless in not knowing, in its periodic reports, WellCare repeatedly attributed increases in premium revenue and net income to various business factors, such as increases in membership, premium rate increases, and maintaining a consistent ratio of medical benefits to costs. As Defendants Farha and Behrens further knew, or were reckless in not knowing, WellCare failed to disclose in its periodic reports that it artificially and materially increased net income and EPS by fraudulently retaining money that should have been refunded to AHCA and Healthy Kids.

97. In its periodic reports, WellCare also consistently disclosed the significance of its relationship to federal and state governments, including the consequences of violating the various statutes and rules applicable to its business. As the Defendants knew, or were reckless in not knowing, government-sponsored healthcare contracts were critical to WellCare's financial performance, especially in Florida. During the relevant period, WellCare provided managed care exclusively to government-sponsored health care programs. In FY 2005 and 2006, Florida accounted for as much as 48% of the Company's total premium revenues and as much as 64% of

its total Medicaid and Medicare membership. During that time, WellCare was “the largest operator of Medicaid managed care plans in Florida,” and Staywell and HealthEase represented “the two largest Medicaid managed care plans in the state.” WellCare’s Medicaid plans collectively had 52% and 31% of market share based on membership in Florida, for FY 2005 and 2006, respectively. Between 2002 and 2006, WellCare received approximately \$100 million in premiums from AHCA.

98. WellCare’s periodic filings highlighted the importance of WellCare’s relationship with the State of Florida, disclosing among other things that:

- a. If the Company was unable to continue to operate in Florida, or if its current operations in Florida were significantly curtailed, WellCare’s revenues would decrease materially; and
- b. The Company’s reliance on its Medicaid operations in Florida could cause revenue and profitability to change suddenly and unexpectedly, depending on legislative or regulatory actions.

99. WellCare’s periodic filings also highlighted the risk inherent in the Defendants’ ongoing scheme to defraud the State of Florida, disclosing among other things that.

- a. The Company’s health care operations were highly regulated by both state and federal government agencies;
- b. Federal and state governments made a priority of investigating and prosecuting health care fraud and abuse;
- c. Medicaid and Medicare contracts are terminable for breaches of a material provision or violations of relevant laws or regulations;
- d. If the Company was unable to renew a contract, or if any contract was terminated, its business could be substantially impaired and its revenues would decrease materially; and
- e. Government agencies have broad latitude to enforce health care laws and regulations, and that violations could result in forfeiture or recoupment of amounts paid to the Company, imposition of significant civil or criminal penalties, fines or other sanctions, loss of the right to participate in Medicaid and Medicare programs, or suspension or loss of licenses to act as an HMO.

100. However, as Defendants Farha and Behrens knew, or were reckless in not knowing, WellCare never disclosed that the Company failed to comply with regulatory and contractual requirements, that if Staywell and HealthEase calculated their eligible health care expenses according to AHCA's and Healthy Kids' guidelines, WellCare would have been required to refund millions of dollars to AHCA and Healthy Kids, or that the Company's behavior threatened its relationship with the State of Florida and jeopardized its ability to conduct business there.

**Materially False Statements in Earnings Releases and Forms 8-K**

101. Between August 2004 and May 2007, Defendant Farha also signed 12 current reports filed with the Commission on Forms 8-K, which attached as exhibits quarterly and annual earnings releases. Defendant Farha knew, or was reckless in not knowing, that these earnings releases materially misstated WellCare's net income and EPS. Moreover, Defendant Farha knew, or was reckless in not knowing, these earnings releases falsely attributed WellCare's financial success to factors other than the Defendants' fraudulent conduct. Instead, Defendant Farha repeatedly emphasized WellCare's strong partnerships with its government regulators, and attributed WellCare's strong financial performance to factors such as WellCare's efforts to achieve cost-savings for its government partners, effective management of costs and utilization, and membership growth. Farha failed to disclose that WellCare's net income and EPS had been artificially inflated by a fraudulent scheme to defraud AHCA and Healthy Kids.

102. For example, on or about August 11, 2004, Defendant Farha signed a Form 8-K attaching a press release announcing WellCare's results of operations for the second quarter of 2004. WellCare issued the release less than one month after the Defendants underpaid AHCA for 2002 and 2003 by approximately \$6 million. In the release, Defendant Farha stated, "Our

continued strong growth results from the partnerships we have established with federal and state governments. Our government partners increasingly rely on managed care plans to deliver high quality care along with cost savings.”

103. On or about May 7, 2007, Defendant Farha signed a Form 8-K attaching a press release announcing WellCare’s results of operations for the first quarter of 2007. In the release, WellCare reported net income of \$25 million, and Defendant Farha stated that “WellCare’s earnings and revenue growth resulted from solid performance in all our business segments.” WellCare’s net income for the period was overstated by nearly 9%.

104. On or about August 2, 2007, Defendant Farha announced that WellCare’s net income for the second quarter of 2007 was \$54.6 million, an increase of 146% over the same period in 2005. Defendant Farha attributed WellCare’s operating results to “[WellCare’s] commitment to providing quality service to our members, providers and government partners.”

#### **Materially False Statements in Earnings Conference Calls**

105. Between August 2004 and August 2007, Defendants Farha and Behrens made additional materially false and misleading statements and omissions in each of the twelve earnings conference calls that occurred during that period. On each call, Defendants Farha and Behrens reported inflated net income and EPS figures, and repeatedly falsely attributed WellCare’s strong revenue and earnings growth trends to various business factors, while omitting to make any disclosure to analysts and investors regarding the material impact of the Company’s fraudulent failure to refund premiums to AHCA and Healthy Kids.

106. For example, on a conference call with investors and analysts on or about November 2, 2006, Defendants Farha and Behrens reported inflated net income and earnings per share figures for the third quarter of 2006. On the call, Defendant Behrens reported net income

as \$43.3 million. Defendant Farha attributed the Company's performance in the third quarter of 2006 to the "underlying health of core operations." According to the Company's restatement, the net income reported on this call was inflated by approximately 8%.

#### **Materially False Statements in Registration Statements**

107. During the relevant period, WellCare filed at least three registration statements with the Commission that included, or incorporated by reference, materially false and misleading financial information and periodic reports, and Defendants sold Wellcare stock pursuant to these registration statements. As a result of the fraudulent acts and omissions alleged above, the Defendants knew, or were reckless in not knowing, that the registration statements contained materially false and misleading statements and omissions, since they incorporated financial results and periodic reports, among other things, that materially overstated WellCare's net income and EPS, and made false statements about the reasons for WellCare's strong financial performance. Defendants Farha and Behrens signed all three registration statements.

108. The registration statements including or incorporating materially false and misleading data and periodic reports included filings WellCare made in or about:

- a. December 2004 to register, among other things, a secondary offering of 6 million shares;
- b. June 2005 to register a secondary offering of 6.5 million shares; and
- c. March 2006 to register, among other things, a secondary offering of 4.4 million shares.

#### **Aiding and Abetting by Defendant Bereday**

109. Defendant Bereday knowingly provided substantial assistance to Defendants Farha and Behrens in their making of false and misleading statements and omissions in current and periodic reports, earnings releases and earnings conference calls. As alleged in detail above, Defendant Bereday was an active participant in the scheme to reduce refunds to AHCA, and he

actively participated in efforts to conceal the scheme from AHCA. In addition to serving as WellCare's senior vice president and general counsel from November 2002 until his resignation on January 25, 2008, Bereday served as General Counsel of Staywell, Secretary of HealthEase, and Secretary of Harmony.

110. As alleged in detail above, Defendant Bereday was aware of the details of the scheme to use Harmony to improperly retain premiums, including based on the November 2003 Powerpoint presentation he received, along with others. Among other things, the Powerpoint presentation revealed that Staywell and HealthEase planned to have an MLR of only 60%, well below the requirements of the 80/20 Statute.

111. As alleged in detail above, Defendant Bereday played an active role in monitoring the progress of the 2004 refund submission to AHCA, reviewing the spreadsheets used to calculate the refunds and communicating with Farha and others regarding the status of the submissions. In 2005, Bereday reviewed and approved a letter to AHCA that helped to conceal the ongoing scheme. Later that year, he provided Defendant Farha with a summary of issues related to the 80/20 Statute and refunds to AHCA. In 2006, Bereday positioned himself and Behrens as Farha's advisors with respect to the AHCA refund submissions. In 2007, Bereday again helped to conceal the ongoing scheme, and facilitate continued misrepresentations by Farha and Behrens, by coordinating WellCare's effort to provide AHCA with misleading encounter data.

112. As a member of WellCare's Disclosure Committee, Defendant Bereday should have served as a gatekeeper. The Disclosure Committee met prior to the filing of each periodic report to discuss any issues that should be disclosed. In this role, he had ample opportunity to disclose the fraudulent scheme, and its impact on WellCare's financial statements, to WellCare's

internal accountants, outside auditors, Board of Directors, and Audit Committee. By failing to do so, Bereday provided cover for the scheme, and facilitated Defendants Farha and Behrens' repeated material misrepresentations to AHCA, Healthy Kids, and WellCare's investors.

### **Stock Sales by Defendants**

113. After setting the fraudulent scheme in motion, the Defendants sold approximately 1.6 million WellCare shares into the public market, realizing gross proceeds of approximately \$91 million. The Defendants sold these shares on the basis of the material, nonpublic information that they were conducting a fraudulent scheme that impacted WellCare's financial results, caused false and misleading statements, and imperiled the Company's business relationship with the State of Florida.

114. WellCare's initial public offering was on July 1, 2004, and its first public issuance of financial results for which the Company later restated was in its current report and earnings release on August 11, 2004, for the quarter ended June 30, 2004. WellCare instituted an insider trading policy on July 1, 2004, which Defendants Bereday and Farha approved. The policy provided that a WellCare director, officer, or associate may not trade in the Company's securities "at any time that he or she possesses material, non-public information about WellCare." The policy listed "earnings" as information that is material.

115. WellCare revised the insider trading policy in November 2005, roughly one month before the Defendants each established a trading plan. Defendants Bereday and Farha approved the 2005 policy, which generally reiterated the guidance from the 2004 policy, but also specifically provided for transactions made pursuant to a Rule 10b5-1 trading plan.

116. WellCare's 2005 insider trading policy stated that a person was permitted to trade WellCare securities, pursuant to a Rule 10b5-1 trading plan, provided that such person "advises

the General Counsel of the facts demonstrating compliance with such rule and receives approval from the General Counsel prior to entering into such a trading plan.” During the relevant period, WellCare’s general counsel was Defendant Bereday. The 2005 policy generally reiterated the discussion from the 2004 policy regarding what is “material,” but added information concerning “significant changes in financial results” and “transactions with officers and directors.”

WellCare revised its insider trading policy in 2006 and 2007, and Defendant Bereday and Farha approved each revision. The policies provided essentially the same information concerning the Rule 10b5-1 trading plans and what information was “material.”

117. In October 2004, Defendants Farha, Behrens and Bereday certified that, among other things, they had read and understood the company’s insider trading policy, had complied with the policy, and would continue to comply with the policy.

118. As officers and directors of WellCare, Defendants Farha, Behrens and Bereday each owed fiduciary duties, or other similar duties of trust and confidence, to Company shareholders. Each Defendant breached these duties.

119. During the relevant period, Defendant Farha sold approximately 1.1 million WellCare shares for gross proceeds of \$57.3 million; Defendant Behrens sold approximately 280,000 shares for gross proceeds of \$15.8 million, and Defendant Bereday sold approximately 283,000 shares for gross proceeds of \$17.8 million. The Defendants, whose sales violated WellCare’s insider trading policy, sold their shares in secondary offerings and through individual trading plans. The Defendants’ sales represented significant portions of their holdings, and were material to their overall compensation.

### Stock Sales Pursuant to Registration Statements

120. The Defendants sold stock in the following amounts pursuant to the registration statements described in detail above:

<i>Seller</i>	<i>Date</i>	<i>Shares Sold</i>	<i>% of Holdings Sold</i>	<i>Proceeds</i>
Farha	12/2004	165,000	10%	\$5,016,000
	6/2005	219,000	13%	\$7,405,200
	3/2006	193,000	13%	\$7,310,589
Behrens	12/2004	25,000	5%	\$760,000
	6/2005	64,000	14%	\$2,164,077
	3/2006	49,000	13%	\$1,856,056
Bereday	12/2004	20000	6%	\$608,000
	6/2005	48000	15%	\$1,623,058
	3/2006	35000	13%	\$1,325,755

121. In sum, the Defendants sold a combined total of approximately 855,550 WellCare shares for gross proceeds of approximately \$29.6 million through the registration statements, thereby obtaining money or property by means of the misleading information contained in the registration statements.

122. The timing of Defendants' actions in connection with the fraudulent scheme demonstrates that they sold their shares in the secondary offerings on the basis of material, nonpublic information. Before the first offering, in or about December 2004, none of the Defendants had sold any WellCare stock into the public market. By the time the Defendants participated in the first offering, around December 2004, their fraudulent scheme to withhold

refunds from AHCA had been underway for at least a year. As the Defendants knew, or were reckless in not knowing, on July 2004, just a few months before the December 2004 offering, Staywell and HealthEase submitted their 2004 refunds to AHCA, underpaying the state by \$6 million. As they knew, or were reckless in not knowing, in March 2005, less than three months before the June 2005 offering, Staywell and HealthEase submitted their 2005 refund to AHCA, underpaying the state by \$8.9 million. As Defendants Farha and Behrens knew, or were reckless in not knowing, on or about the same day as the June 2005 offering, Staywell and HealthEase submitted the 2005 refund to Healthy Kids that underpaid Healthy Kids by \$5.3 million. The Defendants knew, or were reckless in not knowing, that these underpayments contributed directly to WellCare's inflated net income and EPS.

#### **Stock Sales Through 10b5-1 Trading Plans**

123. The Defendants sold hundreds of thousands of WellCare shares on the basis of material, nonpublic information through Rule 10b5-1 trading plans they established months after the scheme to defraud the state agencies and inflate net income began. The Defendants also amended the Rule 10b5-1 trading plans more than two years after the scheme to defraud the State of Florida began. Through their trading plans, the Defendants sold a combined total of 777,426 WellCare shares during the relevant period, for gross proceeds of approximately \$61.3 million.

124. Defendants Farha, Behrens and Bereday each established a Rule 10b5-1 trading plan on December 1, 2005, through a broker-dealer. Each Defendant represented to the broker-dealer: "As of the date hereof, Seller is not aware of any material nonpublic information concerning the Issuer [WellCare] or its securities. Seller is entering into this Sales Plan in good faith and not as part of a plan or scheme to evade compliance with the federal securities laws." The Defendants further represented to the broker-dealer that the transactions contemplated by

their trading plans “will not contravene any provision of applicable law” and that the Defendants will, at all times during the trading plans sales period, “comply with all applicable laws....” These representations were critical to the broker-dealer, which would not have opened the plans without the representations, and they were false.

125. In connection with establishing the Defendants’ trading plans, WellCare provided an “Issuer Acknowledgement Letter” to the broker-dealer. The letter represented that WellCare’s insider trading policies permit officers and directors to open trading plans “as long as the person establishing the Rule 10b5-1 trading plan is not in possession of material, nonpublic information regarding the Issuer or its securities at the time of the establishment of the plan” and that the determination of whether the officer or director is in possession of material, nonpublic information “is solely the responsibility” of that person. The broker-dealer required this document in order to establish the trading plan. Defendant Bereday signed these letters, on behalf of WellCare, for the trading plans of Defendants Farha and Behrens.

126. The Defendants’ trading plans provided for sales between December 2005 and December 2007 in the following amounts: Farha, 405,725 shares; Behrens, 84,510 shares; and Bereday, 68,513 shares.

127. Contrary to their representations to the broker-dealer and to WellCare, and in violation of WellCare’s insider trading policy, Defendants established their trading plans while in possession of the material, nonpublic information that they were conducting a fraudulent scheme that materially impacted WellCare’s financial results and imperiled the Company’s contractual and licensing relationship with the State of Florida.

128. By the time the Defendants established their individual trading plans on December 1, 2005, the fraudulent scheme to withhold refunds from the State of Florida had been

underway for nearly two years and WellCare, through the Defendants' actions, had already improperly withheld millions of dollars from AHCA and Healthy Kids which was fraudulently included in WellCare's publicly reported earnings.

129. From December 2005 through October 2006, Defendants Farha, Behrens and Bereday sold 97,514, 42,599 and 65,647 shares, respectively, in their Rule 10b5-1 trading plans.

130. On November 14, 2006, less than a year after establishing their trading plans – and with more than one year left on the plans – the Defendants each amended their plans to sell even more shares. In their amendments, each Defendant again represented to the broker-dealer that they were not aware of any material, nonpublic information concerning WellCare or its securities, and that they were entering the amendments in good faith and not as part of a plan or scheme to evade compliance with the federal securities laws. These representations were critical to the broker-dealer, and they were false.

131. For each amendment, WellCare again supplied an "Issuer Representation" that stated, "The sales to be made by [broker-dealer] for the account of Seller pursuant to the Sales Plan, as amended, will not violate the Issuer's insider trading policies." These documents were signed by corporate counsel for WellCare, who relied on the Defendants' representations that they were not aware of any material, nonpublic information. These representations were critical to the corporate counsel and to WellCare, and they were false.

132. Defendant Farha amended his trading plan to sell an additional 565,285 shares – more than doubling his potential sales to a total of 971,010 shares – and extended the sales period for another year, through December 31, 2008. Defendant Behrens amended his trading plan to sell an additional 81,185 shares – nearly doubling his potential sales to a total of 165,695 shares – and extended the sales period for another year, through December 31, 2008. Defendant

Bereday amended his trading plan to sell an additional 120,230 shares – nearly tripling his potential sales to a total of 188,743 shares – and extended the sales period for another year, through December 31, 2008.

133. By the time they amended their trading plans, Staywell and HealthEase, through the Defendants, had deceived the Florida agencies for approximately three years, and had cheated them out of approximately \$27 million, which was included in WellCare's publicly reported earnings.

134. On June 7, 2007, Defendant Bereday amended his trading plan a second time, to sell an additional 34,932 shares by the end of 2007. Defendant Bereday again affirmed his representations that he was not aware of any material, nonpublic information concerning WellCare or its securities and that he was entering the amendment in good faith and not as part of a plan or scheme to evade compliance with the federal securities laws. These representations were false.

135. During the relevant period, and on the basis of material, nonpublic information, Defendant Farha sold at least 467,070 WellCare shares through his trading plan, for gross proceeds of approximately \$36.5 million; Defendant Behrens sold at least 134,921 shares through his trading plan, for gross proceeds of approximately \$10.8 million; and Defendant Bereday sold at least 175,435 shares through his trading plan, for gross proceeds of approximately \$14.1 million.

#### **Material Misrepresentations To Auditors**

136. From 2004 to 2007, Defendants Farha and Behrens signed at least 13 management representation letters to WellCare's external auditor, which they knew, or were reckless in not knowing, were materially false and misleading. Among other things, the letters

represented that they had no knowledge of any fraud affecting WellCare and that WellCare's financial statements fairly presented the Company's financial position.

137. Defendants Farha and Behrens also signed certifications to all of WellCare's periodic filings from FY 2004 through the first quarter of FY 2007, which they knew, or were reckless in not knowing, falsely certified the accuracy of the financial statements and disclosures contained in those reports and falsely represented that they had disclosed to WellCare's auditors and board of directors any material weaknesses in the Company's internal controls over financial reporting and any fraud, whether or not material, involving WellCare employees who had a significant role in the Company's internal controls over financial reporting.

#### **Failure to Reimburse WellCare**

138. WellCare's Forms 10-Q and 10K for FY 2004, 2005, 2006, and the first quarter of FY 2007 were in non-conformity with GAAP and the financial reporting requirements under the securities laws. WellCare's material non-compliance was the result of the scheme orchestrated by the Defendants to defraud the State of Florida by failing to properly reimburse behavioral health care premiums to AHCA and Healthy Kids as described in detail above. This fraudulent scheme was designed to allow WellCare to retain excess premiums, which had the effect of materially inflating WellCare's net income and EPS. The inflation of net income and EPS resulted in fraudulent misrepresentations in WellCare's financial statements, filings to the Commission, and conference calls.

139. Due to WellCare's non-conformity with GAAP and financial reporting requirements under the securities laws, and as a result of the misconduct described above, WellCare was required to prepare a Restatement for FY 2004, 2005, 2006, and the first quarter

of FY 2007. The Restatement materially reduced WellCare's net income and earnings per share from FY 2004 through the first quarter of FY 2007.

140. WellCare's initial public offering was on July 1, 2004, and its first public issuance of financial results for which the Company later restated was in its current report and earnings release on August 11, 2004, for the quarter ended June 30, 2004. The Company's first public issuance of financial results for the last quarter for which it materially restated its results was in its current report and earnings release on April 30, 2007, for the quarter ended March 31, 2007.

141. As WellCare's CEO and CFO, respectively, during the periods for which WellCare was required to restate its financial results, Defendants Farha and Behrens are obligated under Section 304(a) of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley") to reimburse WellCare for all incentive and equity-based compensation they received and any profits they realized from the sale of the Company's stock between August 11, 2004, the date of the first public issuance of financial results for which WellCare restated, and April 20, 2008, one year from the date of the last public issuance of financial results for which WellCare materially restated.

142. Between August 11, 2004 and April 30, 2008, Defendant Farha received at least \$1.4 million in bonuses, at least \$57.3 million in gross stock sale proceeds, at least 240,000 restricted shares with a grant date value of \$8.3 million, at least 240,279 performance shares with a grant date value of \$8.4 million, and at least 520,000 stock options with a grant date value of \$10.1 million. During the same period, Defendant Behrens received at least \$530,000 in bonuses, at least \$15.8 million in gross stock sale proceeds, at least 29,519 restricted shares with a grant date value of \$2.1 million, and at least 57,597 stock options with a grant date value of \$1.1 million.

143. To date, neither Farha nor Behrens has reimbursed any funds to WellCare.

**CLAIMS FOR RELIEF**

**FIRST CLAIM**

**Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) Thereunder by  
Defendants Farha and Behrens  
(Fraud in Connection with the Purchase or Sale of Securities)**

144. The foregoing paragraphs are realleged and incorporated herein by reference.

145. Defendants Farha and Behrens, directly or indirectly, by use of the means or instruments of interstate commerce, or of the mails, or of a facility of a national securities exchange, knowingly or recklessly, in connection with the purchase or sale of securities, each made untrue statements of a material fact or omitted to state a material fact, necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

146. Farha and Behrens knew, or were reckless in not knowing, that statements made by them in the Company's periodic reports filed with the Commission, earnings releases, conference calls, and registration statements were materially false and misleading.

147. By reason of the foregoing, Defendants Farha and Behrens each violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Exchange Act Rule 10b-5(b) [17 C.F.R. §240.10b-5(b)].

## SECOND CLAIM

**Violations of Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c)  
Thereunder by Defendants Farha, Behrens, and Bereday  
(Fraud in Connection with the Purchase or Sale of Securities)**

148. The foregoing paragraphs are realleged and incorporated herein by reference.

149. The Defendants, directly or indirectly, by use of the means or instruments of interstate commerce, or of the mails, or of a facility of a national securities exchange, knowingly or recklessly, in connection with the purchase or sale of securities, have each: (a) employed devices, schemes and artifices to defraud; and (c) engaged in acts, practices, and courses of business which operated or would operate as a fraud or deceit upon any person.

150. The Defendants knowingly or recklessly caused WellCare to retain over \$40 million it was statutorily and contractually obligated to reimburse to agencies of the State of Florida, resulting in a material overstatement of WellCare's net income and EPS.

151. By reason of the foregoing, the Defendants each violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Exchange Act Rule 10b-5(a) and (c) [17 C.F.R. §240.10b-5(a) and (c)].

## THIRD CLAIM

**Violations of Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c)  
Thereunder by Defendants Farha, Behrens and Bereday  
(Fraud in Connection with the Purchase or Sale of Securities)**

152. The foregoing paragraphs are realleged and incorporated herein by reference.

153. The Defendants, directly or indirectly, by use of the means or instruments of interstate commerce, or of the mails, or of a facility of a national securities exchange, knowingly or recklessly, in connection with the purchase or sale of securities, have each: (a) employed

devices, schemes and artifices to defraud; and (c) engaged in acts, practices, and courses of business which operated or would operate as a fraud or deceit upon any person.

154. The Defendants knowingly or recklessly sold shares of WellCare stock, both through registration statements and through Rule 10b5-1 trading plans that were not established or amended in good faith, on the basis of material, nonpublic information, in breach of a fiduciary or a similar duty of trust or confidence that each Defendant owed to WellCare shareholders.

155. By reason of the foregoing, the Defendants each violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Exchange Act Rule 10b-5(a) and (c) [17 C.F.R. §240.10b-5(a) and (c)].

#### **FOURTH CLAIM**

##### **Violations of Section 17(a)(1) and (3) of the Securities Act by Defendants Farha, Behrens and Bereday (Fraud in the Offer or Sale of Securities)**

156. The foregoing paragraphs are realleged and incorporated herein by reference.

157. The Defendants, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails, have each: (a) employed devices, schemes, or artifices to defraud; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

158. The Defendants knowingly or recklessly caused WellCare to retain over \$40 million it was statutorily and contractually obligated to reimburse to agencies of the state of Florida, resulting in a material overstatement of WellCare's net income and EPS.

159. The Defendants knowingly, recklessly, or negligently sold shares of WellCare stock through registration statements on the basis of material, nonpublic information, in breach of a fiduciary or a similar duty of trust or confidence that each Defendant owed to WellCare shareholders.

160. By reason of the foregoing, the Defendants each violated Section 17(a)(1) and (3) of the Securities Act of 1933 [15 U.S.C. §77q(a)(1) and (3)].

#### **FIFTH CLAIM**

#### **Violations of Section 17(a)(2) of the Securities Act by Defendants Farha, Behrens and Bereday (Fraud in the Offer or Sale of Securities)**

161. The foregoing paragraphs are realleged and incorporated herein by reference.

162. The Defendants, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails, have each obtained money or property by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

163. The Defendants knowingly, recklessly, or negligently sold shares of WellCare stock through registration statements that incorporated materially false and misleading statements contained in the Company's financial statements and periodic reports filed with the Commission.

164. By reason of the foregoing, the Defendants each violated Section 17(a)(2) of the Securities Act of 1933 [15 U.S.C. §77q(a)(2)].

## SIXTH CLAIM

### **Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) Thereunder by Defendant Bereday (Fraud in Connection with the Purchase or Sale of Securities)**

165. The foregoing paragraphs are realleged and incorporated herein by reference.

166. As described in detail above, Defendants Farha and Behrens, directly or indirectly, by use of the means or instruments of interstate commerce, or of the mails, or of a facility of a national securities exchange, knowingly or recklessly, in connection with the purchase or sale of securities, each made untrue statements of a material fact or omitted to state a material fact, necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

167. In connection with the above described fraudulent acts and omissions, Defendant Bereday knowingly provided substantial assistance to and thereby aided and abetted Farha and Behrens as they made the misrepresentations and omissions described in detail above with respect to the Company's periodic reports filed with the Commission, earnings releases, conference calls, and registration statements.

168. By reason of the foregoing, Defendant Bereday knowingly provided substantial assistance to and thereby aided and abetted Defendants Farha's and Behrens' violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Exchange Act Rule 10b-5(b) [17 C.F.R. §240.10b-5(b)].

## SEVENTH CLAIM

### **Violations of Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-1 by Defendants Farha, Behrens and Bereday (Internal Controls and Books and Records Violations)**

82. The foregoing paragraphs are realleged and incorporated herein by reference.

83. The Defendants knowingly circumvented or knowingly failed to implement a system of internal controls over WellCare's statutory and contractual refund obligations to Florida health care agencies or knowingly falsified books, records or accounts subject to Section 13(b)(2) of the Exchange Act by directing and approving fraudulent refund and encounter data submissions to the state, thereby causing WellCare's books, records, or accounts to understate its liabilities and overstate its net income.

84. The Defendants, directly or indirectly, falsified or caused to be falsified books, records, or accounts subject to Section 13(b)(2) of the Exchange Act by directing and approving fraudulent refund and encounter data submissions to the State of Florida, thereby causing WellCare's books, records, or accounts to understate its liabilities and overstate its net income.

85. By reason of the foregoing, the Defendants each violated Section 13(b)(5) of the Exchange Act [15 U.S.C. §78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. §240.13b2-1].

## EIGHTH CLAIM

### **Violations by Defendants Farha and Behrens of Exchange Act Rule 13b2-2 (Lying to Auditors Violations)**

86. The foregoing paragraphs are realleged and incorporated herein by reference.

87. Defendants Farha and Behrens each signed at least 13 representation letters to WellCare's external auditors, in which they stated, among other things, that they had no knowledge of any fraud affecting WellCare and that WellCare's financial statements fairly presented the Company's financial position. They thereby, directly or indirectly, (i) made or

caused to be made materially false or misleading statements or (ii) omitted to state, or caused others to omit to state, material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to an accountant in connection with an audit, review, or examination of financial statements or the preparation or filing of a document or report required to be filed with the Commission.

88. By reason of the foregoing, Defendants Farha and Behrens violated Exchange Act Rule 13b2-2 [17 C.F.R. §240.13b2-2].

### **NINTH CLAIM**

#### **Violations by Defendants Farha and Behrens of Exchange Act Rule 13a-14 (False Certification Violations)**

89. The foregoing paragraphs are realleged and incorporated herein by reference.

90. Defendants Farha and Behrens each falsely certified in all of WellCare's periodic filings from FY 2004 through the first quarter of FY 2007 that, among other things, they reviewed each of these reports and, based on their knowledge, these reports: (i) did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; (ii) included financial statements and other financial information that fairly presented, in all material respects, WellCare's financial condition, results of operations, and cash flows. Defendants Farha and Behrens further falsely certified in each of these filings that they had disclosed to WellCare's auditors and board of directors any material weaknesses in the Company's internal controls over financial reporting and any fraud, whether or not material, involving WellCare employees who had a significant role in the Company's internal controls over financial reporting.

91. By reason of the foregoing, Defendants Farha and Behrens violated Exchange Act Rule 13a-14 [17 C.F.R. §240.13a-14].

## **TENTH CLAIM**

### **Violations by Defendants Farha and Behrens of Section 304(a) of Sarbanes-Oxley (Failure to Reimburse Issuer Violations)**

92. The foregoing paragraphs are realleged and incorporated herein by reference.

93. Section 304(a) of Sarbanes-Oxley [15 U.S.C. §7243(a)] requires the CEO and CFO of an issuer that is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, to reimburse the issuer for any bonus or other incentive-based or equity-based compensation they received during the 12-month period following the first public issuance or filing of the financial document embodying such financial reporting requirement and any profits realized from the sale of the issuer's stock during that 12-month period.

94. The Commission has not exempted Farha or Behrens, pursuant to Section 304(b) of Sarbanes-Oxley [15 U.S.C. §7243(b)] from the application of Section 304(a) of Sarbanes-Oxley [15 U.S.C. §7243(a)].

95. By reason of the foregoing, Defendants Farha and Behrens have each violated Section 304(a) of Sarbanes-Oxley [15 U.S.C. §7243(a)].

## **ELEVENTH CLAIM**

### **Aiding and Abetting by Defendants Farha, Behrens, and Bereday of WellCare's Violations of Section 13(a) of the Exchange Act And Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 (Reporting Violations)**

96. The foregoing paragraphs are realleged and incorporated herein by reference.

97. Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Exchange Act Rules 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§240.13a-1, 140.13a-11, and 240.13a-13] require issuers of registered securities to file with the Commission factually accurate annual, current, and

quarterly reports. Exchange Act Rule 12b-20 [17 C.F.R. §240.12b-20] provides that, in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

98. As alleged above, as a result of the Defendants' fraudulent acts and omissions, WellCare filed with the Commission periodic and current reports from FY 2004 through the first quarter of FY 2007, that were materially false and misleading and failed to include material information necessary to make the required statements in those reports, in light of the circumstances under which they were made, not misleading. WellCare therefore violated Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§240.12b-20, 240.13a-1, 140.13a-11, and 140.13a-13].

99. By reason of the foregoing, the Defendants knowingly provided substantial assistance to and thereby aided and abetted WellCare in its violations of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]. Therefore, each Defendant is liable pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)].

#### **TWELFTH CLAIM**

##### **Aiding and Abetting by Defendants Farha, Behrens, and Bereday of WellCare's Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act (Books and Records and Internal Controls Violations)**

100. The foregoing paragraphs are realleged and incorporated herein by reference.

101. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §78m(b)(2)(A)] requires issuers to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the issuer's transactions and dispositions of its assets. Section 13(b)(2)(B) of

the Exchange Act [15 U.S.C. §78m(b)(2)(B)] requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain accountability for the issuer's assets.

102. As alleged above, as a result of the Defendant's above described fraudulent acts and omissions, WellCare failed to make or keep books, records, and accounts that in reasonable detail accurately and fairly reflected its transactions and disposition of its assets. WellCare therefore violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §78m(b)(2)(A)]. Likewise, as a result of the Defendant's above described fraudulent acts and omissions, WellCare failed to devise and maintain a system of internal accounting controls sufficient to ensure that its financial statements were prepared in accordance with GAAP, and therefore violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. §78m(b)(2)(B)].

103. WellCare admitted in the Restatement that there were material weaknesses in the Company's internal controls over financial reporting, based in part on former senior management's establishment of an inappropriate tone in connection with the Company's regulatory compliance requirements related to contractual relationships with AHCA and Healthy Kids, and former senior management's failure to ensure effective communications regarding those contracts with, among others, the Company's board of directors and certain regulators.

104. By reason of the foregoing, the Defendants knowingly provided substantial assistance to WellCare in its violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§78m(b)(2)(A) and 78m(b)(2)(B)]. Therefore, each Defendant is liable pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)].

## PRAYER FOR RELIEF

WHEREFORE, The Commission respectfully requests that this Court enter a final judgment which:

### I.

Permanently restrains and enjoins each Defendant from further violations of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)], Sections 10(b), and 13(b)(5) of the Exchange Act [15 U.S.C. §§78j(b), 78m(b)(5)], and Exchange Act Rules 10b-5 and 13b2-1 [17 C.F.R. §§240.10b-5, 240.13b2-1], and from further aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§78m(a), 78m(b)(2)(A), and 78m(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13];

### II.

Permanently restrains and enjoins Defendant Bereday from further aiding and abetting violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Exchange Act Rule 10b-5(b) [17 C.F.R. §§ 240.10b-5(b)].

### III.

Permanently restrains and enjoins Defendants Farha and Behrens from further violations of Exchange Act Rules 13b2-2 and 13a-14 [17 C.F.R. §§240.13b2-2 and 240.13a-14] and Section 304 (a) of Sarbanes-Oxley [15 U.S.C. §7243(a)];

### IV.

Orders each Defendant to disgorge any ill-gotten gains, together with prejudgment interest thereon;

**V.**

Orders each Defendant to pay civil penalties, pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Sections 21(d)(3) and 21A(a) of the Exchange Act [15 U.S.C. §§78u(d)(3) and 78u-1(a)];

**VI.**

Permanently prohibits each Defendant, pursuant to Section 20(e) of the Securities Act [15 U.S.C. §77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. §78u(d)(2)], from acting as an officer or director of an issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. §781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. §78o(d)];

**VI.**

Orders Defendants Farha and Behrens, pursuant to Section 304(a) of Sarbanes-Oxley [15 U.S.C. §7243(a)], each to reimburse WellCare for any bonus or other incentive-based or equity based compensation they received from WellCare or profits they realized from the sale of WellCare stock from August 11, 2004 through April 30, 2008;

**VII.**

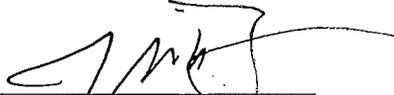
Retains jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of the Court; and

**VIII.**

Grants such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: January 9, 2012

Respectfully submitted,



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