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March 1, 2020

Hon. Bill de Blasio  
Mayor  
City Hall  
New York, NY 10007

Hon. Corey Johnson  
Speaker of the City Council  
City Hall  
New York, NY 10007

Re: New York City False Claims Act

Dear Mayor de Blasio and Speaker Johnson:

Local Law No. 53 of 2005, the "New York City False Claims Act" (the "Act") was signed into law on May 19, 2005 and went into effect on August 17, 2005. On June 20, 2012, Local Law No. 34 was enacted, which extended the Act past the June 1, 2012 sunset date and brought the City's law into closer conformance with the New York False Claims Act, New York State Finance Law §§187 et seq. The purpose of the Act was to establish for New York City a statute modeled on the federal "False Claims Act" and to provide an additional tool to assist in the recovery of monetary damages from parties who have filed fraudulent claims for payment of City funds.

In addition to the requirements and procedures described below, Section 7-808 of the Act requires that the Law Department annually report to the Mayor and the Speaker certain specified information regarding experience under the Act in the previous calendar year. This letter provides such information for calendar year 2019.

Under the Act, individuals who claim to have knowledge of false or fraudulent claims are empowered to submit proposed civil complaints to the City's Department of Investigation ("DOI"). DOI, after reviewing the submissions to ascertain whether an on-going investigation exists or whether one is warranted, forwards them to the Law Department. The Corporation Counsel has assigned responsibility for false claims matters to the Affirmative Litigation Division. The Division undertakes a careful review of the submission and determines whether to commence a civil enforcement action, or designate the person who submitted the information to commence such action, or decline to commence such an action. If such an action is successful based on a person's proposed complaint, such person, known as a "relator," may be eligible to receive a percentage of proceeds ultimately recovered in the action or settlement of the action. Rules regarding a protocol for processing proposed civil complaints submitted pursuant to the Act appear in Title 46 of the Rules of the City of New York.

The Act calls upon two agencies that are experienced in the areas addressed by the Act and are well positioned to collaborate to utilize this tool for recovering money damages. A major mission of DOI is to investigate and refer for prosecution cases of fraud, corruption and unethical conduct by City employees, contractors and others who receive City funds. DOI is also charged with studying agency procedures to identify corruption hazards and recommending improvements in order to reduce the City's vulnerability to fraud, waste and corruption. The Affirmative Litigation Division of this office represents the City as plaintiff in a wide range of litigated issues in federal and state court and before administrative agencies. Some of the Division's lawsuits seek to recover money for the City in areas including commercial disputes; civil racketeering and fraud claims; nuisance and restitution claims; property damage claims; intellectual property claims; and challenges to state and federal government decisions affecting funding for City programs.

The text of the Act and the aforementioned Rules are posted on the Law Department website in order to make them more accessible to the public. <https://www1.nyc.gov/site/law/public-resources/new-york-city-false-claims-act.page>.

#### Calendar Year 2019

As discussed above, the Act provides that members of the public can submit proposed civil complaints to DOI that are forwarded to the Law Department for purposes of determining whether they should be filed by the City as civil complaints. Set forth below is the information pertaining to such matters for calendar year 2019.

There were two proposed matters forwarded by DOI to the Law Department that this office received in 2019, neither of which has resulted in this office commencing a civil enforcement action, or designating any person, or his or her attorney, to act as a Special Assistant Corporation Counsel for purposes of commencing a civil enforcement action. Both remained open at the end of 2019.

Six cases forwarded by DOI to the Law Department in earlier years were closed in 2019. One case involved tax allegations that failed to state a claim, and a second case, involving an alleged overcharge, was voluntarily withdrawn. Three cases involved Medicaid

claims.<sup>1</sup> In the remaining case, the City negotiated a partial settlement, and the case remains under court-ordered seal.

Seven matters forwarded by DOI to the Law Department in years prior to 2019 remained open in 2019. In two of these cases, the Corporation Counsel is litigating a civil enforcement action under state and/or local law. In two further matters, the Corporation Counsel declined to commence a civil enforcement action, and the relators are pursuing claims under state and/or local law. The remaining three cases are under investigation. Of the seven open cases, two raise tax claims, and five raise overcharge/underpayment claims.

In 2019, this office also received notification of fifteen additional matters from sources other than DOI that were considered by this office. Of these fifteen matters, all were filed in court pursuant to the state statute, the New York False Claims Act, with eight matters alleging tax claims; three alleging Medicaid overpayments; and four alleging overcharges/underpayments. Six of the complaints received from sources other than DOI also alleged claims under the Act. All remained open at the end of 2019.

Four cases brought to our attention from sources other than DOI in earlier years were closed in 2019. All were tax claims under the state statute, and not actionable under the City Act. Two cases were settled and the Corporation Counsel declined to pursue two other cases.

Twenty-nine cases brought to our attention from sources other than DOI in earlier years remained open in 2019. Of these twenty-nine cases, eighteen are tax claims and eleven are claims for overcharges/underpayments.

Sincerely yours,

JAMES E. JOHNSON  
Corporation Counsel of the City of New York

By:



Gail Rubin  
Chief, Affirmative Litigation

cc: Hon. Margaret Garnett

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<sup>1</sup> In the absence of express state approval, the City receives no monetary benefit from successfully litigating Medicaid claims, as all Medicaid recoveries go to the State of New York pursuant to Part C of Chapter 58 of the Laws of 2005 (the "Medicaid cap statute") and the subsequent reenactments of that law. Proposed Medicaid claims submitted to our office have already been filed as federal False Claims Act cases, and/or are under consideration by the Office of the New York Attorney General.

