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March 3, 2014

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

Hon. Melissa Mark-Viverito
Speaker of the City Council
City Hall
New York, NY 10007

Re: New York City False Claims Act

Dear Mayor de Blasio and Speaker Mark-Viverito:

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 2013.

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"), which after reviewing them 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 proposed civil complaint and the allegations contained therein, and determines whether it will commence a civil enforcement action, or designate the person who submitted it to commence such action, or decline to commence such an action. If an action is commenced based on a person's proposed complaint, such person 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 the proposed civil complaints that would be submitted pursuant 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; hazardous product claims; civil racketeering and fraud claims; nuisance and restitution claims; antitrust claims; intellectual property claims; and challenges to state and federal government decisions affecting funding for public benefit programs and education.

The text of the Act and the aforementioned Rules are posted on the websites of both the Law Department and DOI (<http://www.nyc.gov/html/law/html/fca/fca.shtml>) and http://nyc.gov/html/doi/html/false_claims_home.html) in order to make them more accessible to the public, and the City's "311" hotline supervisory staff have been briefed about the Act in order to make appropriate referrals.

Calendar Year 2013

As discussed above, the Act provides that members of the public can submit proposed civil complaints that are investigated for purposes of determining whether they should be filed by the City as civil complaints. Set forth below is the information pertaining to such submissions for calendar year 2013.

There were nine proposed matters submitted pursuant to Section 7-804 that this office received in 2013. No proposed civil complaints resulted in this office commencing a civil enforcement action. The Corporation Counsel did not designate any person, or his or her attorney, to act as a Special Assistant Corporation Counsel for purposes of commencing a civil enforcement action. However, in conjunction with the Attorney General's office, the Law Department continues to litigate a civil enforcement claim under the state and local statutes in a

case first brought by a relator under the New York False Claims Act against the Bank of New York Mellon. There are no dispositions to report of suits based on proposed civil complaints.


Of the nine matters referred to above that were submitted pursuant to Section 7-804 in 2013, one proposed complaint was rejected because it did not involve any City funds. In four instances, this office determined in 2013 pursuant to §7-804(b)(3)(ii) not to commence a civil enforcement action because the complaints were “based upon an interpretation of law or regulation which, if adopted, would result in significant cost to the city.” These four proposed civil complaints presented claims for Medicaid funds, and in the absence of express state approval, the City receives no benefit from successfully litigating such 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. The proposed Medicaid civil complaints had either already been filed as Federal False Claims Act cases of which the federal government was fully aware, or were under consideration by the Office of the New York Attorney General.

Of the nine matters referred to above, four matters submitted pursuant to Section 7-804 in 2013 remained pending at the end of 2013, two of which were Medicaid cases. Seven cases submitted pursuant to Section 7-804 in earlier years were closed in 2013, of which six were Medicaid cases and one raised tax issues that are excluded under the local law. Six matters submitted pursuant to Section 7-804 in years prior to 2013 remain pending.

In 2013, this office also received notification of sixteen additional matters that were not submitted pursuant to Section 7-804 of the City’s False Claims Act, but were nonetheless considered by this office. Of these sixteen matters of which we were notified, several were filed pursuant to the New York False Claims Act; eight were Medicaid cases. Of the sixteen matters presented to this office in 2013, six were closed in 2013, of which four were Medicaid cases; ten remain pending. Four cases brought to our attention in earlier years were closed in 2013, and nine remain pending.

Sincerely yours,

ZACHARY W. CARTER
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By: 
Gail Rubin
Chief, Affirmative Litigation

cc: Hon. Mark G. Peters