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

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

GLENN HUTTON, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

WELLCARE HEALTH PLANS, INC.,  
TODD S. FARHA and PAUL L.  
BEHRENS,

Defendants.

Case No. *8:07-CV-01993-T-30 TBM*

CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF FEDERAL  
SECURITIES LAWS

DEMAND FOR JURY TRIAL

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Plaintiff has alleged the following based upon the investigation of Plaintiff's counsel, which included a review of United States Securities and Exchange Commission ("SEC") filings by WellCare Health Plans, Inc. ("WellCare" or the "Company"), as well as regulatory filings and reports, securities analysts' reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company, and Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. This is a federal class action on behalf of purchasers of the common stock of WellCare between November 4, 2004 and October 25, 2007, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

### **JURISDICTION AND VENUE**

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. §§78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by the SEC [17 C.F.R. §240.10b-5].

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 27 of the Exchange Act.

4. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. §1391(b). Many of the acts charged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District.

5. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

### **PARTIES**

6. Plaintiff Glenn Hutton, as set forth in the accompanying certification and incorporated by reference herein, purchased the common stock of WellCare at artificially inflated prices during the Class Period and has been damaged thereby.

7. Defendant WellCare provides managed care services exclusively for government-sponsored healthcare programs, focusing on Medicaid and Medicare in the United States.

8. (a) Defendant Todd S. Farha (“Farha”) is, and was at all relevant times, Chairman, President and Chief Executive Officer (“CEO”) of WellCare.

(b) Defendant Paul L. Behrens (“Behrens”) is, and was at all relevant times, Senior Vice President and Chief Financial Officer (“CFO”) of WellCare.

(c) Defendants Farha and Behrens are collectively referred to herein as the “Individual Defendants.”

9. During the Class Period, the Individual Defendants, as senior executive officers and/or directors of WellCare, were privy to confidential and proprietary information concerning WellCare, its operations, finances, financial condition and present and future business prospects. The Individual Defendants also had access to material adverse non-public information concerning WellCare, as discussed in detail below. Because of their

positions with WellCare, the Individual Defendants had access to non-public information about its business, finances, products, markets and present and future business prospects via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and/or board of directors meetings and committees thereof, and via reports and other information provided to them in connection therewith. Because of their possession of such information, the Individual Defendants knew or recklessly disregarded that the adverse facts specified herein had not been disclosed to, and were being concealed from, the investing public.

10. The Individual Defendants are liable as direct participants in the wrongs complained of herein. In addition, the Individual Defendants, by reason of their status as senior executive officers and/or directors, were “controlling persons” within the meaning of Section 20(a) of the Exchange Act and had the power and influence to cause the Company to engage in the unlawful conduct complained of herein. Because of their positions of control, the Individual Defendants were able to and did, directly or indirectly, control the conduct of WellCare’s business.

11. The Individual Defendants, because of their positions with the Company, controlled and/or possessed the authority to control the contents of its reports, press releases and presentations to securities analysts and through them, to the investing public. The Individual Defendants were provided with copies of the Company’s reports and press releases, alleged herein to be misleading, prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Thus, the Individual Defendants had the opportunity to commit the fraudulent acts alleged herein.

12. As senior executive officers and/or directors and as controlling persons of a publicly traded company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was, and is, traded on the NASDAQ National Market (“NASDAQ”) and governed by the federal securities laws, the Individual Defendants had a duty to promptly disseminate accurate and truthful information with respect to WellCare’s financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, and to correct any previously issued statements that had become materially misleading or untrue, so that the market price of WellCare’s common stock would be based upon truthful and accurate information. The Individual Defendants’ misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

13. The Individual Defendants are liable as participants in a fraudulent scheme and course of conduct which operated as a fraud or deceit on purchasers of WellCare’s common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding WellCare’s business, operations, management and the intrinsic value of WellCare’s securities; (ii) enabled the Company and certain insiders to complete an offering of 7.5 million shares of the Company’s stock in December 2004 for gross proceeds of \$240 million; (iii) enabled the Company and certain insiders to complete an offering of 6.5 million shares of the Company’s stock in June 2005 for gross proceeds of more than \$230 million; (iv) enabled the Company and certain insiders to complete an offering of 4.85 million shares of the Company’s stock in March 2006 for gross proceeds of more than \$220 million; (v)

allowed the Individual Defendants and other Company insiders to sell approximately 2 million shares of their personally-held WellCare common stock for gross proceeds in excess of \$108.5 million; and (vi) caused Plaintiff and members of the Class (defined below) to purchase WellCare's common stock at artificially inflated prices.

#### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

14. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all those who purchased the common stock of WellCare between November 4, 2004 and October 25, 2007, inclusive, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

15. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, WellCare common stock was actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by WellCare or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

16. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law complained of herein.

17. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action and securities litigation.

18. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business and operations of WellCare;

(c) whether the price of WellCare common stock was artificially inflated during the Class Period; and

(d) to what extent the members of the Class have sustained damages and the proper measure of damages.

19. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class

to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

### **SUBSTANTIVE ALLEGATIONS**

20. Defendant WellCare “provides managed care services exclusively for government-sponsored healthcare programs, focusing on Medicaid and Medicare.”

21. The Company offers health plans for families, children, the aged, blind and disabled and has more than 2.3 million members nationwide. The Company’s members are divided between the Medicaid program, for low income Americans, and Medicare, which covers the elderly and the disabled.

22. The Class Period begins on November 4, 2004. On that date, WellCare issued a press release announcing its financial results for the third quarter of 2004, the period ended September 30, 2004. For the quarter, the Company reported total revenues of \$374.6 million and net income of \$16.8 million, or \$0.45 per diluted share. Moreover, the Company raised its earnings guidance for 2004 and 2005. Defendant Farha commented on the results, stating, in pertinent part, as follows:

Delivering quality care to our members with cost-savings for our government partners drives our success and continued growth. Our strong performance in the third quarter was a direct result of the continuing value we add for our Medicaid and Medicare beneficiaries in the markets we serve. During the third quarter, we grew membership in all five of our state markets, a validation of the healthy partnerships we are building throughout the communities we serve.

With regard to the Company’s outlook, the press release stated, in pertinent part, as follows:

#### **Guidance**

The Company is raising its revenue guidance for full year 2004 to the range of \$1.37 to \$1.38 billion from previous guidance of \$1.33 to \$1.35 billion and

is raising net income guidance to the range of \$1.27 to \$1.28 per diluted share. For 2005, the Company is raising its net income guidance from \$55 to \$58 million to \$57 to \$60 million, based on anticipated revenues of \$1.70 billion, and earnings per diluted share of \$1.50 to \$1.58 assuming 38 million average shares outstanding.

In closing, Mr. Farha added, "Since becoming a public company in July of this year, we have made steady progress, demonstrating the effectiveness of our operations and the increasing demand for our services. We have achieved solid growth through our ability to increase membership organically, complemented by our disciplined acquisition strategy. In addition, we are executing on our strategy of leveraging our Medicaid operations to expand our Medicare business. Our strong performance in 2004 gives us a high degree of confidence about the remainder of the year and our ability to continue our strong momentum in 2005."

23. In response to the Company's earnings announcement, the price of WellCare common stock rose 12%, to close at \$26.65 per share, on heavy trading volume.

24. On December 17, 2004, the Company issued a press release announcing that it priced its previously announced follow-on public offering at \$32.00 per share. A total of 6,000,000 shares were sold by certain Company insiders and 1,500,000 shares were sold by WellCare.

25. On February 14, 2005, WellCare issued a press release announcing its financial results for the fourth quarter and year end of 2004, the period ended December 31, 2004. For the quarter, the Company reported total revenues of \$397 million and net income of \$17.7 million, or \$0.46 per diluted share. Defendant Farha commented on the results, stating, in pertinent part, as follows:

We continue to grow by arranging for quality care for our members while helping to achieve cost savings for our government partners. Our strong performance in the fourth quarter was a direct result of our ability to manage effectively the healthcare needs of our Medicaid and Medicare beneficiaries in the markets we serve. During the quarter, we grew membership in all five

of our Medicaid markets, a validation of the healthy partnerships we are building throughout the communities we serve.

With regard to the Company's outlook, the press release stated, in pertinent part, as follows:

#### Guidance

The Company confirmed its 2005 net income guidance in the range of \$57 to \$60 million, based on anticipated revenues of \$1.7 billion, and earnings per fully diluted share of \$1.43 to \$1.50 assuming 40 million weighted average shares outstanding. WellCare also issued first quarter earnings per share guidance of \$0.23 to \$0.25 on revenues of \$403 to \$408 million.

In closing, Mr. Farha stated, "We are pleased with our results in 2004. We have achieved many milestones, including our initial public offering and the acquisition of Harmony Health Plans. We continue to execute on our strategy emphasizing strong organic growth. In addition, during the second half of 2004, we successfully leveraged our Medicaid operations to expand our Medicare business. Our momentum in 2004 provides confidence in our ability to continue our strong performance in 2005 and beyond."

26. On May 9, 2005, WellCare issued a press release announcing its financial results for the first quarter of 2005, the period ended March 31, 2005. For the quarter, the Company reported revenues of \$418.9 million and net income of \$10.6 million, or \$0.27 per diluted share. Moreover, the Company raised its 2005 net income guidance. Defendant Farha commented on the results, stating, in pertinent part, as follows:

Strong membership growth in both our Medicare and Medicaid segments continues to drive our financial performance. Our Medicare growth has exceeded our expectations, and with 23% membership growth through May, we have nearly achieved our full year Medicare growth target. During the quarter, we have continued to advance our mission of improving the health and well-being of our members, strengthening our relationships with healthcare providers and providing savings to our government partners in the seven states we serve, including Georgia as our newest addition.

With regard to the Company's outlook, the press release stated, in pertinent part, as follows:

#### Guidance

The Company raised its 2005 net income guidance from the range of \$57 to \$60 million to the range of \$60 to \$62 million, based on anticipated revenues of \$1.72 to \$1.75 billion, and earnings per fully diluted share of \$1.50 to \$1.55 assuming 40 million weighted average shares outstanding. WellCare also issued second quarter earnings per share guidance of \$0.32 to \$0.34 on revenues of \$430 million to \$435 million. This guidance excludes future costs associated with the Company's participation as a standalone prescription drug plan.

27. In response to the Company's earnings announcement, the price of WellCare common stock rose 5%, to close at \$33.40 per share, on heavy trading volume.

28. On June 30, 2005, the Company issued a press release announcing that it priced its previously announced secondary public offering at \$35.50 per share. A total of 6,500,000 shares were sold by certain Company insiders.

29. On August 3, 2005, WellCare issued a press release announcing its financial results for the second quarter of 2005, the period ended June 30, 2005. For the quarter, the Company reported revenues of \$453.7 million and net income of \$14.2 million, or \$0.36 per diluted share. Defendant Farha commented on the results, stating, in pertinent part, as follows:

Our excellent financial results are driven by our strong organic growth and our effective management of costs and utilization. We are leveraging our unique position in both the Medicaid and Medicare markets to continue our rapid growth. We continue to successfully execute our Medicare expansion strategy, driving industry-leading growth. We are also very pleased to have won contracts in all six regions of the state of Georgia for participation in the Healthy Families program.

With regard to the Company's outlook, the press release stated, in pertinent part, as follows:

#### Guidance

The Company is raising its guidance due to the continued strong performance of its business. For calendar year 2005, the Company now expects revenues of \$1.82 to \$1.84 billion. On a pro forma basis, excluding the \$0.02 per share

in expenses incurred during the second quarter for our PDP opportunity and future 2005 expenses related to the Georgia and PDP opportunities, the Company expects net income for calendar year 2005 in the range of \$63 to \$64 million and pro forma earnings per fully diluted share of \$1.61 to \$1.63, assuming 39.2 million weighted average shares outstanding. WellCare also announced that it expects third quarter revenues of \$470 to \$480 million and on a pro forma basis, excluding expenses related to the Georgia and PDP opportunities, net income to be in the range of \$18.25 to \$18.75 million and earnings per share to be in the range of \$0.47 to \$0.48, based on 39.0 million shares outstanding. The Company expects to report its earnings per share on a pro forma basis excluding expenses incurred for the Georgia and PDP opportunities and will report each of these investments separately.

The Company expects to spend \$8 to \$10 million on the Georgia implementation in the second half of this year, with spending more heavily weighted in the fourth quarter. The Company expects to incur approximately one-third of these expenses in the third quarter, with the remainder expected in the fourth quarter of this year.

Due to the uncertainties associated with the PDP opportunity, described above, the Company is not issuing guidance at this time with respect to the expenses expected to be incurred related to the PDP business in the second half of 2005. The Company will issue guidance with respect to the PDP opportunity at a future time.

30. On November 1, 2005, WellCare issued a press release announcing its financial results for the third quarter of 2005, the period ended September 30, 2005. For the quarter, the Company reported revenues of \$495.5 million and net income from core operations of \$19.7 million. Moreover, the Company increased its fourth quarter and full year 2005 guidance and established 2006 earnings per share guidance of \$2.50. Defendant Farha commented on the results, stating, in pertinent part, as follows:

We are very pleased with our third quarter performance, and we are proud to deliver superior results in the key growth, earnings and cash flow measures for our business. Our Medicaid business is vibrant with membership growth and medical cost trends in line with our expectations. Our Medicare business continues to expand with 41% growth in the first nine months of the year. While we are preparing for significant new business resulting from our

Georgia and PDP initiatives, we are committed to sound execution across all of our operations.

With regard to the Company's outlook, the press release stated, in pertinent part, as follows:

#### Guidance

The Company is raising its 2005 guidance due to the continued strong performance of its business.

For the fourth quarter of 2005, the Company expects:

- revenues of \$495 million;
- net income from core operations of \$20 to \$21 million; and
- net income from core operations per diluted share of \$0.50 to \$0.53, based on 39.8 million weighted average shares outstanding.

For calendar year 2005, the Company now expects:

- revenues of \$1.86 billion;
- net income from core operations of \$65 to \$66 million; and
- net income from core operations per diluted share of \$1.65 to \$1.67, assuming 39.5 million weighted average shares outstanding.

. . . For the fourth quarter of 2005, the Company expects GAAP results ranging from a net loss of \$1.3 million to net income of \$5.8 million, or a loss of \$0.03 per diluted share to earnings of \$0.15 per diluted share. For the full year of 2005, the Company expects GAAP net income to range from \$39.7 million to \$46.7 million, or \$1.00 per diluted share to \$1.18 per diluted share.

The Company is also formally establishing full-year 2006 guidance, which replaces all previously issued 2006 guidance and includes the Company's Georgia and PDP new business initiatives. This guidance does not include the impact of FAS 123(R) on the Company's 2006 net income and earnings per share.

For calendar year 2006, the Company expects:

- revenues of \$3 billion;

- net income of \$100 million; and
- net income per diluted share of \$2.50, based on 40.0 million weighted average shares outstanding.

“While 2005 has been a year of significant progress for our Company, we look forward to new opportunities in 2006,” said Mr. Farha. “The strong performance in our core operations, along with the PDP and Georgia initiatives, leads us to expect 50% growth in our overall business.”

31. In response to the Company’s earnings announcement, the price of WellCare common stock rose 11%, to close at \$35.33 per share, on heavy trading volume.

32. On February 13, 2006, WellCare issued a press release announcing its financial results for the fourth quarter and year end of 2005, the period ended December 31, 2005. For the quarter, the Company reported revenues of \$511.5 million and net income from core operations of \$21.5 million, or \$0.54 per diluted share. Moreover, the Company raised its guidance for full-year 2006 earnings per share. Defendant Farha commented on the results, stating, in pertinent part, as follows:

The strong performance of our core business in 2005, led by 50% growth in our Medicare membership, provides an excellent foundation for our new Georgia and PDP opportunities in 2006. We have surpassed the million member milestone, currently serving over 1.4 million members, including approximately 620,000 new members from the successful launch of our Medicare Part D plans across the country. We are pleased by the strong acceptance of our plan offerings among Medicare beneficiaries.

With regard to the Company’s outlook, the press release stated, in pertinent part, as follows:

#### Guidance

The Company previously issued 2006 guidance of: revenues of \$3 billion; net income of \$100 million; and net income per diluted share of \$2.50, based on 40.0 million weighted average shares outstanding and excluding the negative impact of implementing FAS 123(R).

Based on its continued strong financial performance and the successful launch of the Company’s Medicare Part D plans, the Company is updating its

2006 GAAP guidance. The following guidance includes a \$0.13 negative impact to EPS from implementing FAS 123(R) and a \$0.10 negative EPS impact resulting from a two-month delay in Georgia:

- Revenues of approximately \$3.1 billion;
- Net income of \$95 million to \$97 million; and
- Net income per diluted share in a range of \$2.37 to \$2.42, based on 40.0 million weighted average shares outstanding.

For the first quarter of 2006, including the impact of FAS 123(R), the Company is providing the following GAAP guidance:

- Revenues of \$700 million;
- Net income of \$14 million; and
- Net income per diluted share of \$0.35, based on 39.7 million weighted average shares outstanding.

33. In response to the Company's earnings announcement, the price of WellCare common stock rose 6%, to close at \$41.50 per share, on heavy trading volume.

34. On March 8, 2006, the Company issued a press release announcing that it completed the offering of 4.85 million shares of the Company's stock at \$39.56 per share, whereby 500,000 shares were sold by WellCare and 4,350,000 were sold by Company insiders.

35. On April 6, 2006, the Company issued a press release announcing that the underwriters of the secondary offering exercised their option to purchase an additional 727,500 shares from WellCare and certain Company insiders.

36. On May 8, 2006, WellCare issued a press release announcing its financial results for the first quarter of 2006, the period ended March 31, 2006. For the quarter, the Company reported revenues of \$730.4 million and net income of \$16.8 million, or \$0.42 per

diluted share. Moreover, the Company raised its earnings per share guidance for 2006.

Defendant Farha commented on the results, stating, in pertinent part, as follows:

We continue to achieve industry-leading growth through new product and geographic expansions. We are pleased to participate in the federal government's groundbreaking effort to extend prescription drug coverage to our nation's seniors, and we now rank among the top five PDPs nationally. Our focus on execution and operating discipline remains a competitive advantage, differentiating WellCare from other providers of government-sponsored managed care programs.

With regard to the Company's outlook, the press release stated, in pertinent part, as follows:

#### Guidance

The Company is raising its previously issued 2006 guidance of revenues of \$3.1 billion and earnings per diluted share in the range of \$2.37 to \$2.42, based on 40.0 million weighted average shares outstanding. The Company is providing the following updated guidance for the full year 2006:

- Revenues of \$3.4 billion; and
- Earnings per diluted share of \$2.52 to \$2.57, based on 40.4 million weighted average shares outstanding for the full year.

For the second quarter of 2006, the Company is providing the following guidance:

- Revenues of \$770 million; and
- Earnings per diluted share of \$0.48, based on 40.6 million weighted average shares outstanding.

37. In response to the Company's earnings announcement, the price of WellCare common stock rose 8%, to close at \$44.50 per share, on heavy trading volume.

38. On August 2, 2006, WellCare issued a press release announcing its financial results for the second quarter of 2006, the period ended June 30, 2006. For the quarter, the Company reported revenues of \$853 million and net income of \$22.2 million, or \$0.55 per diluted share. Moreover, the Company reported that its overall membership more than

doubled to over 2,000,000 and that it was raising its previously issued earnings guidance for 2006. Defendant Farha commented on the results, stating, in pertinent part, as follows:

WellCare associates are proud to serve over 2,000,000 members nationwide. We are pleased with our transformation into a leading national government healthcare company. Our operating discipline and focus on execution continue to drive our strong growth.

With regard to the Company's outlook, the press release stated, in pertinent part, as follows:

#### Guidance

The Company is raising its previously issued 2006 guidance of revenues of \$3.4 billion and earnings per diluted share in the range of \$2.52 to \$2.57, based on 40.4 million weighted average shares outstanding. The Company is providing the following updated guidance for the full year 2006:

- Revenues of \$3.55 billion; and
- Earnings per diluted share of \$2.85 to \$2.90, based on 40.4 million weighted average shares outstanding for the full year.

For the third quarter of 2006, the Company is providing the following guidance:

- Revenues of \$975.0 million; and
- Earnings per diluted share of \$0.95, based on 40.6 million weighted average shares outstanding.

39. In response to the Company's earnings announcement, the price of WellCare common stock rose 3%, to close at \$51.45 per share, on heavy trading volume.

40. On November 1, 2006, WellCare issued a press release announcing its financial results for the third quarter of 2006, the period ended September 30, 2006. For the quarter, the Company reported revenues of \$1 billion and net income of \$43.3 million, or \$1.06 per diluted share. Moreover, the Company raised its previously issued 2006 earnings guidance. Defendant Farha commented on the results, stating, in pertinent part, as follows:

We doubled the size of the Company over the past year and retained our focus on execution and operational discipline. We continue our focus on the needs of seniors, families and underserved populations to deliver higher quality healthcare at lower cost to our government partners. In 2007, we will continue our growth by launching Medicare private fee-for-service plan offerings and our Medicaid expansion in the northeast region of Ohio.

With regard to the Company's outlook, the press release stated, in pertinent part, as follows:

#### Guidance

The Company is raising its previously issued 2006 guidance of revenues of \$3.55 billion and earnings per diluted share in the range of \$2.85 to \$2.90, based on 40.4 million weighted average shares outstanding. The Company is providing the following updated guidance for the full year 2006:

- Revenues of \$3.7 billion; and
- Earnings per diluted share of \$3.33 to \$3.38, based on 40.7 million weighted average shares outstanding for the full year.

For the fourth quarter of 2006, the Company is providing the following guidance:

- Revenues of \$1.1 billion; and
- Earnings per diluted share of \$1.30 to \$1.35, based on 41.2 million weighted average shares outstanding.

The Company is also establishing initial guidance for the full year 2007:

- Revenues of \$4.8 billion; and
- Earnings per diluted share of \$3.95 to \$4.05, based on 42.1 million weighted average shares outstanding for the full year.

41. In response to the Company's earnings announcement, the price of WellCare common stock rose 8%, to close at \$61.39 per share, on heavy trading volume.

42. On February 13, 2007, WellCare issued a press release announcing its financial results for the fourth quarter and year end of 2006, the period ended December 31, 2006. For the quarter, the Company reported revenues of \$1.2 billion and net income of

\$57.0 million, or \$1.38 per diluted share. Moreover, the Company increased its previously issued full-year 2007 earnings guidance. Defendant Farha commented on the results, stating, in pertinent part, as follows:

2006 was a transformative year for WellCare. We added over 1.4 million members and doubled our revenue without losing focus on delivering high service levels to our providers and members. We look forward to building on our strong 2006 results in 2007 and in future years.

With regard to the Company's outlook, the press release stated, in pertinent part, as follows:

#### Guidance

The Company is increasing its previously issued full-year 2007 guidance with new expectations of revenues of \$4.95 billion and earnings per diluted share of \$4.10 to \$4.20, based on 41.8 million weighted average shares outstanding. In addition, the Company is raising its previously issued first quarter guidance to:

- Revenues of \$1.2 billion; and
- Earnings per diluted share of \$0.53, based on 41.4 million weighted average shares outstanding.

43. On April 11, 2007, in an article entitled *Medicaid HMO Payments Too High*,

*Analysts Say*, the *Tampa Tribune* reported:

Just as the Florida Legislature begins considering an 11.7 percent increase in Medicaid HMO rates, two leading Wall Street analysts have issued written warnings that the state's payments already are too high.

They say overpayments help explain the meteoric rise of WellCare Health Plans Inc., which has two Florida HMOs that account for about half of the state's Medicaid managed-care enrollment. Its \$90-a-share stock price has doubled in the past year.

CIBC World Markets and Goldman, Sachs & Co. both say WellCare has been able to give state regulators the impression that its profits are slim by shifting money to a WellCare subsidiary in the Cayman Islands in the form of reinsurance premiums.

While legal, the analysts say, this WellCare arrangement masks the true picture of the plans' profits. As CIBC's Carl McDonald put it, "Florida appears to be overpaying its Medicaid plans, and it would seem to be only a matter of time before the state figures this out."

Goldman, Sachs and another firm, CCI Healthcare Partners, have teams examining the April 1 WellCare filings with state insurance commissioners in Florida and New York, trying to figure out what enables the Tampa-based company to be so much more profitable than its competitors.

"They're making tons of money," said Oliver Marti, a partner and portfolio manager at CCI, a Stamford, Conn., investment firm. "How does the government allow that?"

The answer, according to CIBC's McDonald and Matthew Borsch, vice president of Goldman, Sachs, is that WellCare is able to shift millions in profit to a sister company, Comprehensive Reinsurance Ltd., in the Cayman Islands.

WellCare's Florida plans sent \$62.8 million to the Caymans company, which paid out \$31.7 million, the filings show. Most managed-care plans have reinsurance margins of zero to 4 percent, Borsch said, but WellCare's was many orders of magnitude higher. The Florida plans would have reported earnings 66 percent higher than they did if they had kept reinsurance payments in line with the industry, Borsch said.

WellCare questioned both Borsch's motives and math.

"Analysts often sensationalize routine information to generate trading volume and profit," wrote spokeswoman Carol Cassara in the first of several e-mails to The Tampa Tribune in response to claims made by Borsch and others.

Not only is it legal for WellCare to conduct business with an affiliated company, she wrote, the arrangement was approved by Florida regulators in advance.

Jonathon Kees, spokesman for the Florida Office of Insurance Regulation, confirmed that an actuary there approved WellCare's Cayman reinsurance affiliate. Kees noted that his agency's main duty is to make sure insurers have sufficient assets to cover their risk.

The decision to seek the 11.7 percent rate increase for Medicaid HMOs came from Florida's Agency for Health Care Administration. Dyke Snipes, assistant deputy secretary for Medicaid finance with the AHCA, said the managed-care payments are pegged to the traditional Medicaid fee-for-

service plan. Snipes said he found the suggestion that HMO payments were too generous “surprising” and said he would have his staff study the Goldman, Sachs analysis.

Medicaid pays HMOs monthly payments to cover medical treatment for enrollees. If the plan spends more on a member, it loses money, and if it spends less, it makes a profit. Most Medicaid beneficiaries are healthy children, but the program has high costs for some disabled children and adults.

Florida Medicaid HMO payments, which vary by gender, age and geography, average \$199.40 per member per month this year, Snipes said. If the AHCA budget passes as submitted, that rate will rise to \$222.73.

WellCare set up its reinsurance arrangement with a trigger of \$50,000. A member who has more medical costs than that will be taken over by Comprehensive Reinsurance Ltd.

Cassara, the WellCare spokeswoman, said the Goldman, Sachs report errs by applying Wall Street-style analysis to a Medicaid arena.

“The report uses aggregate data to make assumptions that are not reflective of our multiple lines of business,” she wrote in an e-mail to the Tribune.

The company says its 2006 net income margin was only 3.7 percent, “lower than many of our competitors in the industry,” Cassara wrote.

But Goldman, Sachs and CIBC World Markets say they calculate the company’s income in double digits.

“The issue is that Florida relies primarily on data regarding cost-trend increases to determine rate increases, rather than profitability,” McDonald wrote in his analysis for CIBC investors in March.

“Therefore, it will likely take some kind of external influence to convince the legislature in the state that Medicaid managed care payment rates could be a source of savings,” McDonald said in the report.

The state doesn’t take related entities into account in figuring the margins for Medicaid HMOs, but Wall Street analysts do. McDonald and Borsch used GAAP analysis - generally accepted accounting principles - to determine that Florida plans are making more profit than it appears and spending less on medical treatment: 81 cents of the premium dollar.

WellCare deals exclusively with government clients. About half of its members are Medicare beneficiaries in prescription drug plans. The beneficiaries are scattered across the nation. The other half are in state Medicaid plans.

In Florida, WellCare is by far the largest Medicaid plan, with more than 450,000 enrolled. AmeriGroup is second, with about 200,000. Of the \$1.7 billion the state paid HMOs last year, WellCare's two plans took in half, almost \$850 million.

44. On April 27, 2007, in an article entitled *WellCare's Money Transfer*

*Investigated By State CFO*, the *Tampa Tribune* reported, in pertinent part, as follows:

Florida's chief financial officer, Alex Sink, is reviewing ties between WellCare Health Plans' Medicaid HMOs in Florida and a WellCare subsidiary in the Cayman Islands, her office confirmed on Thursday.

Sink's review began after the relationship among the companies was described April 11 in *The Tampa Tribune*, said her spokeswoman, Nina Banister. Sink released a written statement to the *Tribune* turning down a request for an interview on the matter until she has time to review the report and allegations.

Marc Ryan, vice president of policy at Tampa-based WellCare, said that when Sink completes her review she will find that there were no overpayments to the affiliate.

"If you look at the Medicaid premiums paid by WellCare Florida to the reinsurer for 2006, the claim recoveries equal the payments," Ryan said.

It is not illegal to use an affiliated reinsurance company, which provides stop-loss coverage. And other insurers have affiliates in the Cayman Islands.

The company submitted the request to start the reinsurance company to the Office of Insurance Regulation after an independent actuary determined the appropriate rates, WellCare's Ryan said.

Actuary Nathan Tan, with the regulatory office, reviewed the request and determined there was nothing wrong with it, spokesman Jonathon Kees said. He said he doesn't know who in the office ultimately signed off on it.

The CFO's review of the WellCare arrangement comes a week after Sink rebuked Insurance Commissioner Kevin McCarty for sponsoring a fundraiser for a friend's campaign, requesting contributions from the insurance industry.

McCarty spokesman Bob Lotane, whose wife was the candidate, resigned after disclosures that he had used a state-owned computer to work on the invitation.

McCarty apologized, and Gov. Charlie Crist said this week that he supports the commissioner. Crist said the industry could be trying to darken McCarty's reputation because he is a strong advocate for consumers.

The April 11 Tribune story quoted three Wall Street analysts who said WellCare's Florida HMOs sent far more money than necessary to the unregulated subsidiary, Comprehensive Reinsurance Ltd. The WellCare HMOs sent \$73 million and recovered \$38 million, a difference of \$35 million.

The analysts said that because the shift made no difference in the overall company income, they speculated the move was meant to keep WellCare's margins slim before the Legislature debated the Medicaid managed-care rate increase for next year. The debate is going on now.

Ryan noted that the analysts erred by lumping the Medicaid and Medicare premiums together. Only \$19 million of the shift was for Medicaid because the risk for Medicare beneficiaries was much greater. After end-of-year claims came in, the claim recoveries for Medicaid patients equaled \$19 million, he said.

The Medicare premiums and recoveries also matched up, he said. The confusion may have arisen because the reinsurer was created in late 2005. "It's a new entity," he said.

In Florida, WellCare is by far the largest Medicaid plan, with more than 450,000 enrolled. Of the \$1.7 billion the state paid HMOs last year, WellCare's two plans took in half, almost \$850 million.

WellCare operated Medicaid plans in seven states last year, and Florida was its main market. The Florida Medicaid program provided about one-third of the company's total premium revenue, according to WellCare's year-end report to the Securities and Exchange Commission.

Wall Street researchers have been speculating for months over WellCare's astonishing growth in enrollment and stock value. That led three firms to plow through the company's April 1 Florida filings and discuss their conclusions.

All three concluded that the state was overpaying its Medicaid HMOs and warned about political backlash that could adversely affect WellCare,

AmeriGroup and other publicly traded companies that have Medicaid contracts in the state.

45. In response to the *Tampa Tribune* article, the Company issued a press release announcing that Wellcare “received a letter from Florida Chief Financial Officer Alex Sink stating the company is NOT under investigation by the Florida Department of Financial Services.”

46. On April 30, 2007, WellCare issued a press release announcing its preliminary financial results for the first quarter of 2007, the period ended March 31, 2007. For the quarter, the Company reported revenues of \$1.24 billion and net income of \$25.0 million, or \$0.60 per diluted share. Defendant Farha commented on the results, stating, in pertinent part, as follows:

WellCare continues to deliver excellent results. I continue to be very optimistic about WellCare’s future. We expect our full year performance to exceed our previously issued guidance. We will revise our 2007 guidance on May 7, when we report our detailed results for the first quarter.

47. On May 7, 2007, WellCare issued a press release announcing its financial results for the first quarter of 2007, the period ended March 31, 2007. With regard to the Company’s outlook, the press release stated, in pertinent part, as follows:

#### Financial Guidance

WellCare is increasing its full-year 2007 guidance as follows:

- Diluted EPS of \$4.65 to \$4.75, based on 41.8 million weighted average shares outstanding; and
- Total revenues of \$5.2 billion.

The Company’s previous guidance was diluted EPS of \$4.10 to \$4.20 based on 41.8 million weighted average shares outstanding and revenue of \$4.95 billion.

For the second quarter, the Company is providing the following guidance:

- Diluted EPS of \$1.20 to \$1.25; and
- Total revenues of \$1.3 billion.

48. In response to the Company's earnings guidance, the price of WellCare common stock rose 9%, to close at \$90.16 per share, on heavy trading volume.

49. On August 2, 2007, WellCare issued a press release announcing its financial results for the second quarter of 2007, the period ended June 30, 2007. For the quarter, the Company reported net income of \$54.6 million, diluted earnings per share of \$1.30 and total revenues of \$1.34 billion. Defendant Farha commented on the results, stating, in pertinent part, as follows:

Our operating results demonstrate our commitment to providing quality service to our members, providers and government partners. We will continue our focus on delivering high quality healthcare tailored to the communities we serve.

With regard to the Company's outlook, the press release stated, in pertinent part, as follows:

#### Financial Guidance

WellCare is updating its full-year 2007 guidance as follows:

- Diluted EPS of \$5.00 to \$5.05, based on 42.1 million weighted average shares outstanding; and
- Total revenues of \$5.2 to \$5.3 billion.

For the third quarter, the Company is providing the following guidance:

- Diluted EPS of \$1.48 to \$1.51; and
- Total revenues of \$1.35 billion.

50. The statements referenced above in ¶¶22, 25, 26, 29, 30, 32, 36, 38, 40, 42, 46, 47, and 49 were materially false and misleading when made because they misrepresented

and failed to disclose that the Company was operating its business in a potentially illegal and improper manner in violation of applicable federal guidelines and regulations while it depended in large part, upon the federal government for payment and other state governments for its reserves.

51. On October 24, 2007, the Company issued a press release announcing that its Tampa headquarters were raided. According to many news outlets, it was reported that about 200 federal and Florida state agents seized computers and files from corporate, marketing and human resources offices.

52. In response to this announcement, shares of the Company's common stock fell \$7.10 per share, or 6%, to close at \$115.17 per share, on heavy trading volume.

53. On October 25, 2007, as investors continued to digest the news that the Company was under investigation, shares of the Company's stock fell an additional \$72.50 per share, or 63%, to close at \$42.67 per share, on extremely heavy trading volume.

54. On October 26, 2007, in response to news that the Company was under investigation by Connecticut's Attorney General, Richard Blumenthal, and that Moody's was reviewing the firm's debt ratings, shares of the Company's stock continued to tumble, falling an additional \$11.31 per share or 27%, to close at \$31.36 per share, on extremely heavy trading volume.

55. On October 26, 2007, the Company also learned that the SEC had requested information from WellCare.

56. On October 30, 2007, in an article entitled *Florida Health Care Agency Pauses WellCare Expansion Plans As Investigation Continues*, the Associated Press reported

that the Florida Agency for Health Care Administration health agency will halt WellCare's plans to expand into new counties while the federal government investigates the Company.

57. On October 30, 2007, in an article entitled *N.Y. state regulators probing WellCare*, Reuters reported that New York State regulators were looking into WellCare activities as they relate to the state's Medicaid program.

58. In response to these announcements, shares of the Company's stock fell an additional \$6.58 per share, or 23%, to close at \$22.04 per share, on heavy trading volume.

59. The markets for WellCare common stock were open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, WellCare's securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired WellCare's common stock relying upon the integrity of the market price of WellCare's common stock and market information relating to WellCare, and have been damaged thereby.

60. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of WellCare's common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

61. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused, or were a substantial contributing cause of, the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false or misleading statements about WellCare's business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of WellCare and its business, prospects and operations, thus causing the Company's common stock to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's common stock at artificially inflated prices, thus causing the damages complained of herein.

#### **Additional Scienter Allegations**

62. As alleged herein, Defendants acted with scienter in that Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding WellCare, their control over, and/or receipt and/or modification of WellCare's allegedly materially misleading misstatements, and/or their associations with the Company which made them

privity to confidential proprietary information concerning WellCare, participated in the fraudulent scheme alleged herein.

63. Defendants were further motivated to engage in this course of conduct in order to allow the Individual Defendants and other Company insiders to sell more than 2 million shares of their personally-held WellCare common stock for gross proceeds in excess of \$108.5 million. Specifically, Defendant Farha sold 976,834 shares for gross proceeds of more than \$49.3 million and Defendant Behrens sold 249,495 shares for gross proceeds of more than \$13 million.

#### **Loss Causation/Economic Loss**

64. During the Class Period, as detailed herein, Defendants engaged in a scheme to deceive the market and a course of conduct which artificially inflated the prices of WellCare's common stock and operated as a fraud or deceit on Class Period purchasers of WellCare's common stock by failing to disclose that the Company was operating their business in a potentially illegal manner in violation of applicable federal guidelines while depending on the federal government for payment. When Defendants' prior misrepresentations and fraudulent conduct were disclosed and became apparent to the market, the price of WellCare's common stock fell precipitously as the prior artificial inflation came out. As a result of their purchases of WellCare's common stock during the Class Period, Plaintiff and the other Class members suffered economic loss, i.e., damages, under the federal securities laws.

65. By failing to disclose that the Company was operating their business in a potentially illegal manner in violation of applicable federal guidelines while depending on

the federal government for payment, among other things, Defendants presented a misleading picture of WellCare's business and prospects. Defendants' false and misleading statements had the intended effect and caused WellCare's common stock to trade at artificially inflated levels throughout the Class Period, reaching as high as \$122.27 per share on October 23, 2007.

66. As a direct result of disclosures on October 24, 2007, October 25, 2007, October 26, 2007 and October 30, 2007, the price of WellCare common stock fell precipitously, falling by a collective \$100.23 per share, or approximately 82%. These drops removed the inflation from the price of WellCare common stock, causing real economic loss to investors who had purchased WellCare common stock during the Class Period.

67. The 82% decline in the price of WellCare common stock after these disclosures came to light was a direct result of the nature and extent of Defendants' fraud finally being revealed to investors and the market. The timing and magnitude of the price decline in WellCare common stock negates any inference that the loss suffered by Plaintiff and the other Class members was caused by changed market conditions, macroeconomic or industry factors or Company-specific facts unrelated to the Defendants' fraudulent conduct. The economic loss, i.e., damages, suffered by Plaintiff and the other Class members was a direct result of Defendants' fraudulent scheme to artificially inflate the prices of WellCare common stock and the subsequent significant decline in the value of WellCare common stock when Defendants' prior misrepresentations and other fraudulent conduct were revealed.

**Applicability of Presumption of Reliance:  
Fraud on the Market Doctrine**

68. At all relevant times, the market for WellCare's common stock was an efficient market for the following reasons, among others:

(a) WellCare common stock met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) as a regulated issuer, WellCare filed periodic public reports with the SEC and the NASDAQ;

(c) WellCare regularly communicated with public investors via established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) WellCare was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

69. As a result of the foregoing, the market for WellCare common stock promptly digested current information regarding WellCare from all publicly available sources and reflected such information in the prices of the stock. Under these circumstances, all purchasers of WellCare common stock during the Class Period suffered similar injury through their purchase of WellCare common stock at artificially inflated prices and a presumption of reliance applies.

### **No Safe Harbor**

70. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as “forward-looking statements” when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements were made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of WellCare who knew that those statements were false when made.

### **COUNT I**

#### **Violation of Section 10(b) of the Exchange Act Against and Rule 10b-5 Promulgated Thereunder Against All Defendants**

71. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

72. During the Class Period, Defendants disseminated or approved the materially false and misleading statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose

material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

73. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's common stock during the Class Period.

74. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for WellCare common stock. Plaintiff and the Class would not have purchased WellCare common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by Defendants' misleading statements.

75. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their purchases of WellCare common stock during the Class Period.

## **COUNT II**

### **Violation of Section 20(a) of the Exchange Act Against the Individual Defendants**

76. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

77. The Individual Defendants acted as controlling persons of WellCare within the meaning of Section 20(a) of the Exchange Act as alleged herein. By reason of their positions as officers and/or directors of WellCare, and their ownership of WellCare stock,

the Individual Defendants had the power and authority to cause WellCare to engage in the wrongful conduct complained of herein. By reason of such conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act.

**WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as a Class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

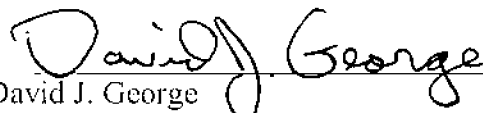
D. Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: November 1, 2007

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Attorneys for Plaintiff

CERTIFICATION OF NAMED PLAINTIFF  
PURSUANT TO FEDERAL SECURITIES LAWS

Glenn Hutton (" plaintiff ") declares, as to the claims asserted under the Federal Securities Laws, that:

1. Plaintiff has reviewed the complaint prepared by counsel and is willing to serve as a lead or named plaintiff in the Action on the basis of the allegations in that complaint or a substantively similar complaint or amended complaint to be filed. Plaintiff retains the Law Offices of Marc S. Henzel and such co-counsel it deems appropriate to associate with to pursue such action on a contingent fee basis.

2. Plaintiff did not purchase the Security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under the Federal Securities Laws.

3. Plaintiff is willing to serve as a lead or representative party, either individually or as part of a group on behalf of a class, including providing testimony at deposition and trial, if necessary.

4. Plaintiff has made the following transactions during the Class Period in the stock of WellCare Health Plans, Inc. (NYSE: WCG) that are subject of this action:

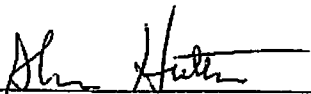
DATE	BUY OR SALE	AMOUNT OF SHARES	PRICE PER SHARE
10-23-2007	BOUGHT	10	120.15
8-3-2007	BOUGHT	10	104.80
7-13-2006	BOUGHT	22	51.78

5. In the past three years, plaintiff has not sought to serve as a representative party on behalf of a class.

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6. Plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

7. I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of October 2007.

  
\_\_\_\_\_  
Signature