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June 30, 2009

Mr. Steve Stella  
Chief Operating Officer  
Jzanus Home Care, Inc.  
170 Jericho Turnpike  
Floral Park, NY 11001

Re: Limited Audit of Jzanus Home Care, Inc. Compliance with the Nassau County Living Wage Law

Dear Mr. Stella:

A limited compliance audit was performed of contract # CQSS07000131 between Jzanus Home Care, Inc. ("JHC") and Nassau County. The objective of this audit was to determine whether JHC was in compliance with the Nassau County Living Wage Law ("the Law") and the related Rules. The period of review was calendar year 2007, the term of the contract. Certain tests were performed to review subsequent transactions. To accomplish our objective, we reviewed JHC's pertinent books and records and interviewed key personnel.

Based on our limited audit, our findings and recommendations are as follows:

**Audit Finding (1):**

**Compensated Days Off**

JHC did not comply with the Law's requirement for compensated days off for its covered employees. The Law mandates that employers shall provide employees "no fewer than twelve paid days off per year for sick leave, vacation or personal necessity at the employee's request. Full-time employees shall accrue such leave at a rate of one day per month of full-time employment. Part-time employees who work twenty or more hours per week shall accrue such leave in increments proportional to the rate of accrual for full-time employees. Any employee shall be eligible to begin using such accrued leave six months following his or her start date of

employment, or consistent with company policy, whichever is sooner.”<sup>1</sup>

JHC’s policy violated the Law’s requirement that it provide 12 compensated days off per year for full-time employees, accruing at a rate of one day per month. Instead, JHC’s policy provided for one week of vacation for employees who had been with the company at least three years and completed 1950 hours of work.

JHC’s policy was deficient because:

- it did not provide compensated days off to all full-time and eligible part-time employees in accordance with the Law; and
- the years of service requirement implemented by Jzanus imposes an additional requirement not contemplated by the Law.

We advised JHC that its policy is in violation of the Law and provided JHC’s management with a copy of the Law. In response, JHC provided us with a revised policy on April 23, 2008. This revised policy had an effective date of January 1, 2008. The revised policy still does not clearly state that the mandated leave shall accrue at the rate of one day per month for full-time employees or that part-time employees who work 20 or more hours per week shall accrue leave in increments proportional to the rate of accrual for full-time employees.

JHC provided us with a report showing leave time that should have been made available to covered employees in order to comply with the law for 2007. According to that report, 132 covered employees earned 3,465 hours of leave. Employees either used or were paid for 200 hours, leaving a balance of 3,265 hours still owed. By JHC’s own calculation, their covered employees are owed \$34,059. Once we reviewed these calculations, we found that JHC had under-calculated the dollar amount owed to four employees by a total of \$1,870. In dollar amounts, the year-end hours owed were equivalent to \$35,925. The amounts owed averaged \$272 per employee and ranged from \$1029 down to \$10. We brought these discrepancies to the attention of JHC and management agreed with our finding.

We then tested the hours used by JHC as a basis for calculating accrued leave time. We compared payroll records to accrued leave calculations for a sample of five employees for test periods of three or four weeks. Our results found discrepancies in the number of hours worked for two of the five employees. One employee’s hours worked were understated by seven hours for one week, and then overstated by 2.65 hours the following week. The second employee’s hours were overstated by 0.8 hours for one week, an over accrual of \$0.50. While these discrepancies were minor, the discrepancy rate in our test sample causes concern about the overall accuracy of JHC’s calculation of accrued days.

In an e-mail dated October 28, 2008, JHC advised us that all 2007 Compensated Time Off would be paid in full. We will include a review of these payments as part of the scope of our audit of JHC’s 2008 compliance.

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<sup>1</sup> Nassau County Living Wage Law, Nassau Co. Misc. Laws, Title 57, § 3 (2007). The Law and the Comptroller’s Rules can be found on the Comptroller’s website at: <http://www.nassaucountyny.gov/agencies/Comptroller/LivingWage/index.html>.

### **Audit Recommendations:**

JHC should:

- implement policies and procedures regarding compensated days off that are in conformity with the Law and the related Rules;
- provide covered employees with a copy of the new policy in accordance with the Comptroller's Rules so that they are aware of benefits afforded them under the Law. A January 2009 amendment to the Comptroller's Rules requires that copies of the policy be provided to each employee within thirty (30) days of the employee's start date; any amendments to the policy must be communicated to employees within thirty (30) days of the amendment;
- set up adequate procedures to accurately calculate leave accruals and make any necessary adjustments in a timely fashion;
- inform each employee of all leave time accrued and owed to them for the year 2007 and make it available immediately;
- immediately compensate employees for the leave days owed, either through paid time off or additional cash compensation; and
- provide documentation to the Nassau County Comptroller's Office of the company's accrued time calculation and evidence that payments were made to employees for leave time owed.

In light of these recalculations, JHC should document its recalculation of accrued hours owed to each employee, as well as the payments made. An audit of these calculations and correcting payments will be included in the scope of our compliance audit of their 2008 contract.

### **Response from Jzanus Home Care:**

This is in reference to your letter dated on March 5, 2009 concerning vacation accrual for the year 2007. We completed a self-audit for 2007 and are reporting our findings. We concluded that we do in fact owe vacation time for our employees for the year 2007. In order to rectify this matter and avoid any problems in the future, we have created a spreadsheet with each employee's name, which includes all of the vacation time that was accumulated for that year. Once all of the information was entered in our system, we then deducted the vacation hours that were paid to the employees using a report from our payroll system, EZA.

We will provide our employees with the new policy in accordance with the Comptroller's rules so that all of our employees are aware of the benefits they are entitled to by law. In addition all employees that are owed vacation time will be notified by mail and we will render payment of the amount owed to each employee. All employees that are owed vacation time will be paid in full by June 15, 2009. Our office will also provide the comptroller's office with documentation that establishes all vacation time of 2007 was indeed paid in full at that time.

### **Auditor's Follow-Up Response:**

*During the course of our audit, as stated above, we were advised by JHC in their e-mail of October 28, 2008 that the 2007 payments will be made by October 31, 2008. We note with*

*significant concern that these payments have not yet been made and that JHC now intends to make payments by June 15, 2009. We strongly recommend that JHC make the required payments without any further delay and that JHC provide us with supporting documentation showing calculations of the amounts due and evidence of the amounts paid.*

**Audit Finding (2):**

**Living Wage Law Rate**

During the audit period, the living wage hourly rate was \$9.50. The Law also provided for a \$1.50 supplemental health benefit if the employer does not provide employees with health benefits. JHC did not provide health benefits or pay its covered employees \$11.00 as required under the Law.

We tested ten employees' payroll records for four weeks during the audit period and found three instances, totaling 47 hours, where the employees were paid less than the living wage. From January through May 2007, Jzanus met the living wage requirement with respect to overtime hours because its calculation of compensation was based on time and one-half for overtime worked. This overtime calculation resulted in hourly compensation that met the Law's requirement. Beginning in June 2007, JHC changed its procedure and paid its employees only \$10.73 per hour for overtime worked. This amount was no longer in compliance with the Law. Under the Law, since JHC did not provide health benefits to its employees, it was required to pay covered employees \$11.00 per hour regardless of whether or not the employee was working overtime. As such, the covered employees tested were underpaid by \$0.27 per hour, or a total of \$12.93, while working overtime.

**Audit Recommendations:**

JHC should identify all of the wage payments made below the required rate of \$11.00 per hour, calculate the amount owed to each employee, and make the necessary payments. It should also inform covered employees of their entitlement to the mandated wage rate.

Verification of JHC's payment of undercompensated overtime hours will be included in the scope of our compliance audit of their 2008 contract.

**Response from Jzanus Home Care:**

We reviewed our payroll records and determined that all of our employees were paid at the \$10.73 overtime rate. Therefore, we completed an in-house audit and have issued all employees the remaining \$0.27 cents per hour of the overtime they were owed. All employees were paid the full amount owed on April 14, 2009.

**Auditor's Follow-Up Response:**

*We concur with the corrective actions taken by JHC. JHC should provide us with the supporting documentation showing calculations of the amounts due and evidence of the amounts paid.*

Sincerely,

*/Aline Khatchadourian/*

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