

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

United States of America ex rel.

J. Stephen Nail
7538 Old Canton Road
Madison, MS 39110

Civil Action No. ____

and

Michael Frye
101 Raider St.
Kemah, Texas 77565

Bringing this action on Behalf
of the United States of America

c/o
Hon. Dunn Lampton
U. S. Attorney
Southern District of Mississippi
188 East Capital Street, Ste. 500
Jackson, Mississippi 39201

and

c/o
Hon. John Ashcroft
Attorney General of
the United States
U.S. Department of Justice
Washington, D.C. 20530

Plaintiffs,

versus

FIRST AMENDED COMPLAINT AND JURY DEMAND

For their complaint, J. Stephen Nail and Michael Frye ("Relators"), whose Declarations are attached hereto as Exhibits 2 and 3, collectively "Plaintiffs," allege as follows:

I. NATURE OF ACTION

1. Relators bring this action, in the name of the United States, to recover treble damages and civil penalties under the False Claims Act, 31 U.S.C. §§ 3729-33, and all available damages and other monetary relief under the common law or equitable theories of fraud, unjust enrichment, recoupment of overpayments and disgorgement of illegal profits.
2. Due to a sharp increase in interest rates, the tax exempt bonds used to finance low-income multifamily housing between 1979 and 1984 had very high coupon rates. The United States Department of Housing and Urban Development ("HUD") had to pay a Financing Adjustment Factor ("FAF") to the owners of such low-income multifamily properties so they could afford to service the debt.
3. In 1987, HUD instituted a program to refund the high coupon bonds with the proceeds from lower coupon bonds. "HUD's first priority . . . is to assure that monies are set aside from any refunding transaction to assure the physical soundness of the project, both in the immediate future and through the period through the expiration of the HAP Contract, and to fully fund all project reserves." HUD Notice 95-97, at 15, attached hereto as Exhibit 1.

4. HUD had promulgated regulations and directives limiting the transaction costs to be paid in a refunding so that the maximum amount possible could be realized from the refunding and invested in low-income multifamily housing either by HUD or a housing agency.
5. The bond underwriters, underwriters' counsel, bond counsel, and National Banks, which served as trustees, made fraudulent misstatements to HUD and obtained waivers from HUD without the required documentation, that the transaction costs were so great that HUD should waive those portions of its regulations that would otherwise limit those costs and preserve those funds necessary to repair and improve the property in order to provide the tenants with high quality housing.
6. By regulation and, later, by statute, Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), regulations could only be waived by an Assistant Secretary, or above. Each such waiver must be in writing and supported by a statement of the facts and grounds forming the basis for the waiver and supported by documentation of the pertinent facts and grounds.
7. In addition, the required certifications of sources and uses of funds were routinely not submitted to HUD or falsified. Hence, Defendants were able to divert illegally over \$500 million from low-income multifamily housing properties to themselves.
8. Pursuant to the Stewart B. McKinney Homeless Assistance Act (P.L. 100-

77) (July 22, 1987), local housing agencies ("Housing Agencies") were allowed to share in the savings resulting from the issuance of refunding bonds; however, the local agencies were required to certify to HUD as to the physical and financial condition of each property refinanced and to submit annually to the local HUD Office project financial statements and physical inspection reports. This was designed to address HUD's primary concern that refinancing not be accomplished at the expense of the living conditions of existing tenants.

9. HUD announced that, "Although the McKinney Act confers on [Housing] Agencies' wide discretion in the use of their 50 percent share of savings, HUD believes it fair and reasonable, and a concern of high priority, that [Housing] Agencies consider first the needs of the projects which generate those savings and the importance of preservation of low-income housing stock." HUD Notice 94-95, at 4. Exhibit 1, Appendix C.

10. A standard provision in the McKinney Act Refunding Agreement executed by HUD and Housing Agencies requires each Housing Agency to certify to HUD as to the physical and financial condition of the projects refunded and to submit annually to the local HUD Office project financial statements and physical inspection reports. HUD Notice 94-95, at 4. Exhibit 1, Appendix C.

11. Housing Agencies routinely certified falsely to HUD that properties were in satisfactory or good condition and/or any reserve funds released from the Trust Indenture to it would be used for project purposes or in support of low

income housing programs. These certifications were made in order to induce HUD to approve refinancing transactions.

12. As a result of Defendants' actions, low-income multifamily properties with deferred maintenance were not rehabilitated, tenants were forced to live in undesirable conditions, property owners lost their properties, the FHA insurance fund was unnecessarily depleted, and funds were illegally paid to the local agencies.
13. A HUD study "estimated that the 10,000 projects had physical improvement needs estimated to cost \$1.1 billion and that the projects had only about \$145 million in project reserves to fund the needed repairs. This equates to a shortfall of \$955 million." TESTIMONY OF SUSAN GAFFNEY, HUD INSPECTOR GENERAL, BEFORE THE SUBCOMMITTEE ON EMPLOYMENT, HOUSING AND AVIATION OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS, JULY 26, 1994.
14. HUD has also reported that the number of rental units affordable to extremely low income households dropped by 750,000, and the total number of units affordable to very low income households fell by 1.14 million between 1997 and 1999.
15. But for the fraudulent scheme perpetrated by Defendants, hundreds of low-income multifamily properties would have their equity intact, be economically viable and would still be available to low-income tenants.
16. But for the fraudulent scheme perpetrated by Defendants, hundreds of thousands of families would still have decent, safe, and sanitary housing.

17. But for But for the fraudulent scheme perpetrated by Defendants, over 1,000 foreclosures would not have occurred, each foreclosure costing the FHA Insurance Fund, on the average, \$3.3million.
18. This case is brought to recoup these illegal gains and recover damages resulting from Defendants' false claims.

II. JURISDICTION

19. This Court possesses subject matter jurisdiction to entertain this action under 28 U.S.C. §§ 1331 and 1345. The Court possesses supplemental jurisdiction to entertain the common law and equitable causes of action pursuant to 28 U.S.C. § 1367(a). The Court may exercise personal jurisdiction over the Defendants pursuant to 31 U.S.C. § 3732(a) and because at least one of the Defendants resides or transacts business in this District.

III. VENUE

20. Venue is proper in this District under 31 U.S.C. § 3732 and 28 U.S.C. § 1391(b) and (c) because at least one of the Defendants resides, can be found, or transacts business in this District.

IV. PARTIES

21. Plaintiff and Relator, Michael Frye is an investment banker who has participated in HUD refundings and other HUD related transactions for over 20 years.
22. Plaintiff and Relator, J. Stephen Nail, is a resident of Jackson, Mississippi and is the Managing General Partner of Eastover Apartments, Ltd.

23. Defendants are local housing authorities, bond underwriters, underwriters' counsel, bond counsel, and National Banks, who serve as trustees..

V. FALSE CLAIMS ACT

24. The False Claims Act ("FCA") provides, in pertinent part that:

(a) Any person who (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; . . . or (7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

* * *

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person

(b) For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

31 U.S.C. § 3729.

VI. THE FEE EXPLOSION

25. HUD intended that parties should be reimbursed for their legitimate, actual, and reasonable expenses in refunding FAF bonds. HUD never envisioned the massive fraud on the public that would threaten HUD's low-income multifamily housing program and cause both the quality and the availability of low-income housing to decline precipitously.

26. According to HUD:

The issuance/underwriting spread should allow for such expenses. In order to assure latitude for coverage of transaction expenses, and recognizing the small size of most of the outstanding FAF bond issues, HUD will accept inclusion of expenses according to the following sliding scale percentages of total refunding bond principal. . .

Percentage Ceiling	Refunding Bond Principal
3.5%	\$ 0 - \$ 5,000,000
3.0%	\$ 5,000,000 - \$10,000,000
2.5%	\$10,000,000 - \$15,000,000
2.0%	\$15,000,000 - \$25,000,000
1.5%	\$25,000,000 - \$75,000,000
1.0%	Over \$75,000,000

For refunding of less than \$5 million, the ceiling is the greater of (1) \$100,000 or (2) 4.5 percent of the first \$1.5 million and 3.5 percent of the balance. For refunding above \$5 million, the ceiling allowance on the first \$5 million is 3.5 percent.

Within these limits, the Agency and private parties to the transaction may negotiate fees to pay their costs of cooperating in the refunding.

HUD Notice H 94-95 (12/07/94) at 2-3. Appendix C to Exhibit 1.

27. HUD's regulations reaffirmed that:

[T]ransaction costs [could only be paid] as approved by HUD according to a sliding scale ceiling based on par amount of refunding bond principal. (emphasis added).

24 C.F.R § 811.110 (d)(1) (1999).

28. Defendants fraudulently misrepresented that individual items of the transaction costs were necessary and reasonable in relation to the cost of servicing similar obligations.

29. The costs and fees allowed for these refundings were never as high as those for default refundings, which entailed much more "time, effort, and risk" than refunding the FAF bonds. Exhibit 1 at 25.
30. Yet, Defendants consistently falsely represented to HUD that the FAF Refundings involved greater risk, effort, and complexity -- and, hence more costly -- than reflected by the sliding scale. Based on that misrepresentation, they falsely sought and illegally obtained a waiver of the transaction cost limit. Default refundings involved considerable risk and effort. Yet, the Defendants falsely sought and obtained transaction costs that substantially exceeded those allowed for default refundings, set forth below:

0 - \$ 2,000,000	5.0%
2,000,001 - 5,000,000	4.0%
5,000,001 - 15,000,000	3.5%
15,000,001 - 25,000,000	3.0%
25,000,001 - 35,000,000	2.5%
35,000,001 -	2.0%

HUD Directive 4350.1 REV-1, at p. 15-16

31. In contrast, the original issue of bonds which involved far greater risk and effort seldom, if ever, required waivers.

VII. DEBT SERVICE RESERVES TAKEN BY DEFENDANTS

32. The owner funded a debt service reserve account to insure that portion of the old debt uninsured by the Federal Housing Administration -- usually one percent plus six months principal and interest. This amount would usually equal six to seven percent of the face amount of the debt.

33. HUD required that excess reserves be used only for project purposes. HUD waived this requirement to accommodate refundings which use reserves for other purposes, provided that HUD found no need for physical repairs. 41 Fed. Reg. 14456-14457 (April 1, 1996). Defendants fraudulently represented to HUD that the properties subject to the refundings did not require physical repairs.
34. Defendants also fraudulently misrepresented to HUD that the debt service reserve was needed to pay legitimate, actual transaction costs.
35. By the time of the bond refundings, conservatively, the debt service reserve accounts had doubled in size. The total amount of the debt service accounts fraudulently obtained was at least \$360 million.

VIII. "TAXABLE TAILS"

36. **"Exceptions [to the costs allowed by HUD's sliding scale] may be approved by HUD, if consistent with applicable statutes, in the event that an additional issue amount is required for project purposes."**
(emphasis added). 24 C.F.R § 811.110 (d)(1) (1999).
37. Pursuant to the tax laws, the amount of the non-taxable bonds could not exceed the amount of the bonds they were refunding.
38. Defendants represented to HUD that the actual and reasonable costs and project needs were such as to require the issuance of taxable bonds, in addition to the non-taxable bonds. The taxable issue is referred to as the "taxable tail."

39. Thus, typically, the FAF Refundings would consist of a series A (non-taxable) and a series B ("taxable tail").
40. "Taxable tails" would only be allowed if HUD believed them to be relatively small and necessary to cover transaction costs because the amount of the bonds being refunded -- the limit of the non-taxable refunding bonds -- was insufficient to refund the bonds and pay the underwriting discount, credit enhancement fees, any call premium on the prior bonds, and other transaction costs.
41. Thus, in 1996, when HUD codified the procedures that it had been following, it provided that transaction costs beyond those allowed by the "sliding scale" could be paid and an additional issue amount approved, but only as an "exception." "**Exceptions may be approved by HUD, if consistent with applicable statutes, in the event that an additional issue amount is required for project purposes.**" (emphasis added). 24 C.F.R 811.110 (d)(1) (1999).
42. The Defendants represented -- or knowingly allowed HUD to proceed on the false assumption -- that "taxable tails were "required for project purposes."
43. Defendants pocketed the proceeds from the "taxable tail."

IX. DEBENTURE LOCK

44. Based on the fraudulent representations of Defendants, HUD agreed to a Debenture Rate Lock on the refunding bonds. Under the Debenture Rate Lock Agreement, in the event of a default, HUD would be required to pay the

insurance proceeds in high-interest rate government debentures rather than cash.

45. The owner of the bonds is entitled to receive the coupon rate of interest until the bonds reach maturity.

X. TRUSTEE SWEEP

46. Under a "Trustee Sweep" the Owner would continue to receive rent subsidies at the agreed upon level and pay the mortgage as before. Neither the mortgage nor the Section 8 contract rents are reduced. The trustee receives the original mortgage payments -- based on the higher yield bonds -- from the property owners. The trustee then makes the monthly payments on the lower yield bonds. The lower bond payments result in savings that are then accumulated in the trust account.
47. When the Trustee Sweep is used the property owner does not realize that the bonds on the property have been refunded and the equity taken.
48. Most refundings utilized a Trustee Sweep for paying the new bonds and accumulating the savings on a monthly basis.
49. A waiver was needed to use this method, which was fraudulently obtained by Defendants.

XI. "PREMIUM SKIMMING"

50. The bonds used to refund the older, higher interest debt, were guaranteed by the FHA insurance on the project. Gaps in the FHA coverage were insured by MBIA. In addition, the bonds were secured by the HAP Contract

between HUD and the owner, through which HUD agreed to make monthly Section 8 payments to the owner.

51. As a result of being fully secured, the new bonds had a very high rating -- AAA or better by Moody's and Standard & Poor's.
52. The underwriter customarily gave the bonds an interest rate that was at least 50 to 100 basis points higher than the average of the Bond Buyer's Index. However, the average of the Bond Buyer's Index is computed using both AA and AAA bonds. Therefore, the interest rates on the new bonds -- which are AAA or better -- should in no case have been higher than the average of the Bond Buyer's Index, and, in fact, should have been lower: the new bonds had a lower "credit risk" and "liquidity risk" than most of those with which they were compared; the new bonds paid principal and interest monthly, in contrast with most of the bonds with which they were compared, which paid interest annually or semi-annually, and all of the principal at maturity; and, at least until the expiration of the underlying HAP Contracts, the new bonds had no "call" option, unlike many of the bonds with which they were compared and which would have greatly limited the bond holder's potential profit if the value of the bonds increased.
53. By giving the bonds higher interest rates than what was necessary to attract investors willing to buy the bonds at par value, the underwriters were able to collect premiums from the purchasers. The premium on a particular sale would reflect the portion of the value added by the inflated interest rate on the bond. This amount would go into the underwriter's pocket rather than the

U.S. Treasury. Neither this practice nor these amounts were ever disclosed to HUD.

54. HUD never imagined that the stated yield on the bonds would exceed the 6.5% to 7.0% range. In November and December 1994 and January 1995, the Bond Buyer index was at a level never attained in the following years (6.53% for January 1995 and 6.80% and 6.97% for November and December 1994). In a notice issued January 18, 1995, HUD explained that after refunding the old bonds with the new bonds:

the interest rate of the loan is reduced to a rate slightly in excess of the tax exempt refunding bond rate (i.e., an end loan rate of around 7.0% - 7.50% in the current bond market; or higher in the case of a state agency override) from the date of expiration of the HAP Contract for the remaining 20 years of a typical loan.

Exhibit 1, Appendix B, at B-1.

55. Under HUD's regulations:

The financing agency may issue the obligations at a **yield that it certifies is reasonable in relation to prevailing costs in the tax-exempt market for comparable obligations: Provided, That the field office has no substantial reason to object to the accuracy of this certification and the yield does not exceed the 20 Bond Index published by the Daily Bond Buyer** for the week immediately preceding the sale of the obligations by more than the number of basis points set quarterly or more frequently by the Assistant Secretary

24 C.F.R. § 811.109 (1995).

56. The underwriters and their colleagues falsely stated to the financing agencies that the excessive interest rates on the refunding bonds were "reasonable in relation to prevailing costs in the tax-exempt market for comparable obligations. . ." The financing agencies relied on these false statements when they certified that the yields on the refunding bonds were "reasonable in relation to prevailing costs in the tax-exempt market for

comparable obligations . . ."

XII. EQUITY TAKEN AND FORECLOSURE VIRTUALLY ASSURED

57. The property owner instantly loses his entire equity in the property. The total equity sucked out of these properties by Defendants is conservatively calculated to be in excess of \$600,000,000 nationwide.
58. The property owner is faced with a property in need of repairs, no reserves to pay for capital items, and no equity to use to refinance the mortgage.
59. The property owner, in effect, must start all over. The security interest in his property exceeds the value of the property and extends beyond the term of his HAP Contract with HUD.
60. Barring extraordinary, supervening events, the note on the property will be called and the owner will lose the property.
61. Experience has shown that others are not eager to acquire the property at a foreclosure sale. The property will decline and the tenants evicted.

XIII. THE LOCAL AGENCIES

62. The first priority in all tax exempt refunding transactions **"is to assure the physical soundness of the project that is the subject of the refunding, both in the immediate future and through the period through the expiration of the HAP Contract, and to fully fund all project reserves."**

(emphasis added) Exhibit 1 at 15. "HUD . . . generally insists that any unusual project physical needs be addressed and that all project reserves be fully funded before approving the structure of a proposed refunding." Id. at 10.

63. HUD announced that providing first for the physical needs of the particular project accomplishes the following goals:

First, it provides tenants with a higher quality of housing, while also providing the owner with a more valuable project at the end of the HAP Contract. Second, it further reduces the risk to the federal government on any FHA-insured loan which might exceed the life of the HAP Contract and should reduce the cost to the federal government of providing further incentives following the expiration of the HAP contract to enable the owner to maintain the housing for persons of very low income without incurring the cost of substantial unfunded additional repairs and rehabilitation, which would inevitably be reflected in any further HUD subsidy. The provision of a high quality of housing also fulfills a primary goal of state and local housing finance agencies. (emphasis added)

Id. at 16.

64. In order to receive compensation or to receive 50 percent of the savings, local agencies routinely, either: falsely certified to the sound physical and financial condition of properties being refinanced; or, failed to disclose to HUD that these properties were not in sound physical and financial condition.
65. Specifically, in the examples referenced below, the properties were not in sound physical and financial condition, and their actual condition was not disclosed by Defendants.
66. In general, a HUD study found that from 1989 to 1995, the total physical needs backlog in multifamily housing increased from \$2.2 billion to \$4.2 billion. "Status of HUD-Insured (or Held) Multifamily Rental Housing in 1995 Final Report," HC-5964, May 1999.

XIV. DOCUMENTATION

67. Each FAF refunding is given its own FAF number. Each transaction is documented with a series of letters to and from HUD and the issuer, the underwriter, underwriter's counsel, bond counsel, and the National banks that served as Trustees. From this correspondence one is able to pinpoint the amount of the fraudulent proceeds siphoned off by the underwriter, and its colleagues, in each transaction.
68. The scope of Defendants' nationwide scheme, involving over one thousand properties, is illustrated by Exhibit 4. The properties in Mississippi that qualified for refunding are listed in Exhibit 5.
69. All these transactions utilize the same modus operandi, as demonstrated by the examples described below in ¶¶ 70-117. The examples span a decade of FAF refundings.

XV. SPECIFIC EXAMPLES

A. Eastover

70. Eastover Apartments is a 56 unit Section 8 project in Indianola, Mississippi owned by Eastover Apartments, Ltd. In 1995, the bonds originally issued to finance Eastover were refunded. In 1995, tax exempt bonds in the amount of \$1.3 million were issued to accomplish the refunding.
71. The interest rate on the tax-exempt bonds issued used for the refund of the high interest rate bonds was 6.2 %. The Bond Buyer's Index at that time was 5.35 %. See Exhibit 1. Thus, the interest rate on the bonds was inflated by at least 85 basis points, and probably more. This inflated the yield on these bonds by \$90,000. The inflated yield was reflected in an undisclosed

premium collected by the underwriter when the bonds were sold.

72. The lawful ceiling of the transactions costs was \$100,000. Even if it is assumed that all of the costs comprising the \$100,000 were somehow justified, Defendants recovered over \$ 200,000 in illegal profits from the transaction. These include the debt service reserve of approximately \$122,000, a premium on the sale of the bonds of approximately \$90,000, and a "taxable tail" of \$90,000.
73. Even the transaction costs included in the \$100,000 are excessive. In the case of Eastover, the transaction costs included: \$100,000 (involving five different law firms and numerous financial organizations) and a credit enhancement fee of \$43,500 (involving one more law firm plus Standard & Poor's and an insurance premium) for the issuance of these low-risk bonds. In addition, approximately \$53,000 was realized from the difference in the current outstanding mortgage balance of \$1,257,000 and the refunded bond amount of \$1,310,000.
74. The total payment of \$302,000 -- which includes both the inflated \$100,000, the maximum allowed, and the additional \$202,000 illegal profit -- to the underwriters and their colleagues was over 30 percent of the bond proceeds.
75. Nail is the Managing General Partner of Eastover Apartments, Ltd. and had in June 1994 sought HUD approval for refinancing Eastover. Nail's application was rejected.
76. The South Delta Housing Authority had arranged a refunding of the original

bonds issued to finance the project. Eastover was entitled to at least \$50,000.00 from the proceeds of the refinancing to pay for repairs. This was to be paid to Eastover in January 1996, but was never paid.

77. Ironically, under Nail's June 1994 proposal, the transaction costs would have been roughly \$50,000 and the amount available to the project roughly \$400,000. The refunding that was part of the fraudulent scheme was the opposite: it was supposed to provide \$50,000 to the project and cost over \$300,000.
78. HUD had reported that as of March 1995 there were \$113,000 in "urgent" repairs needed at Eastover. Yet, Eastover received no money to pay for any of these repairs.
79. Typical of the refunded properties Eastover received no money for repairs to the property. Eastover did not even receive the \$50,000 token amount allowed it for repairs. Moreover, Eastover was left with no reserves to pay for future capital needs.
80. Dennis Smith of the South Delta Regional Housing Authority falsely certified to HUD that Eastover was in sound financial and physical condition, when in fact, funds were needed for repairs.
81. In the fraudulent refunding of the Eastover FAF bonds Andrew M. Alexander, III, was counsel to the housing authority; Wilton J. Johnson, III, was co-bond counsel; Kurt Breitenstein was the trustee; and Stephen P. Waterman was bond counsel and disclosure counsel.

B. Cen-Miss Housing Development Corporation ("Cen-Miss")

82. The Cen-Miss bonds were refunded by an issuance of \$1,335,000 in tax exempt bonds. The "taxable tail" of \$155,000 was paid to Defendants. This amount was obtained through the Defendants' submission of false statements and claims.
83. The interest on the tax-exempt bonds was 8.0%, and price to yield was 6.75%, as stated on the front of the official offering statement. This resulted in a premium of at least \$130,000, which was not disclosed to HUD.
84. The underwriter submitted false statements and claims regarding transaction costs and, as a result, received approval to take the debt service reserve account of approximately \$180,000.

C. Greenwood-Leflore Projects

85. The Greenwood-Leflore Projects consists of four properties: Ivory Apartments, Jones Apartments, Bishop Apartments, and McNeace Apartments. The Greenwood-Leflore Projects bonds were refunded by an issuance of \$9,060,000 in tax exempt bonds and a "taxable tail" of \$1,225,000.
86. The stated yield on the tax-exempt bonds was 7.95%. This amount was inflated, thus enabling the underwriter to collect a premium of approximately \$800,000 based on the inflated interest rate and yield of these bonds. The premium amount was either not disclosed to HUD or fraudulently represented to be necessary.
87. The Greenwood-Leflore Projects were in need of repair at the time of the

refunding and received no money from the refunding for this or any other purpose.

88. The debt-service reserves for the Greenwood-Leflore Projects were paid to the underwriter and others involved in the transaction. The debt service reserve was approximately \$1,255,000.

D. Apple Manor

89. Steve Nail is the general managing partner for the owner of Apple Manor Apartments.
90. Apple Manor is a 56 unit apartment complex in Jackson, Mississippi, with a mortgage insured by HUD under Section 221(d)(4) of the National Housing Act and assisted by HUD under Section 8.
91. Apple Manor had a 40 year mortgage of \$1,680,200.00 at 10.73 percent. The mortgage would have matured on November 1, 2022.
92. The property owner lost \$104,562 in equity as a direct result of the refunding. The owner had planned to use this equity, and other refinancing proceeds from his proposal, to pay for repairs to the property and improvements that would enhance the living conditions of the tenants.
93. Stephen P. Waterman, bond counsel, requested, and later obtained, a waiver of the otherwise applicable regulations as he had for the Eastover refunding.
94. On March 15, 1996, Non-taxable Refunding Bonds in the amount of \$1,680,000 were issued.

95. A debt service reserve account of \$250,000 was taken as part of the refunding.
96. The transaction costs that were in excess of those allowed by the regulations were \$262,200.

E. Canton Estates

97. Canton Estates is a 121 unit apartment complex in Canton, Mississippi, with a mortgage insured by HUD under Section 221(d)(4) of the National Housing Act and assisted by HUD under Section 8.
98. Canton Estates had a 40 year mortgage of \$3,396,800 at 11.74 percent. The mortgage would have matured on November 1, 2024.
99. The property owner lost \$63,349 in equity as a direct result of the refunding. This equity could have been used to pay for repairs to the property and improvements that would enhance the living conditions of the tenants.
100. On December 1, 1990, Non-taxable Refunding Bonds in the amount of \$4,145,000 were issued.
101. A debt service reserve account of \$545,000 was taken as part of the refunding.
102. The transaction costs that were in excess of those allowed by the regulations were \$1,211,100.

F. Sandidge Hills

103. Steve Nail is a general managing partner for the owner of Sandidge Hills Apartments.

104. Sandidge Hills Apartments is a 48 unit apartment complex in Olive Branch, Mississippi, with a mortgage insured by HUD under Section 221(d)(4) of the National Housing Act and assisted by HUD under Section 8.
105. Sandidge Hills Apartments had a 40 year mortgage of \$1,117,100.00 at 10.73 percent. The mortgage would have matured on August 1, 2022.
106. The property owner lost \$42,965 in equity as a direct result of the refunding. This equity could have been used to pay for repairs to the property and improvements that would enhance the living conditions of the tenants.
107. A debt service reserve account of \$235,000 was taken as part of the refunding.
108. The transaction costs that were in excess of those allowed by the regulations were \$370,375.

G. Rolling Hills

109. Steve Nail is the general managing partner for the owner of Rolling Hills Apartments.
110. Rolling Hills Apartments is a 50 unit apartment complex in Olive Branch, Mississippi, with a mortgage insured by HUD under Section 221(d)(4) of the National Housing Act and assisted by HUD under Section 8.
111. Rolling Hills Apartments had a 40 year mortgage of \$1,092,400.00 at 10.73 percent. The mortgage would have matured on August 1, 2022.
112. The property owner lost \$42,015 in equity as a direct result of the refunding. This equity could have been used to pay for repairs to the property and improvements that would enhance the living conditions of the tenants.

113. In July 2000, non-taxable Refunding Bonds in the amount of \$1,015,000 and Taxable Bonds in the amount of \$215,000.00 were issued.

114. A debt service reserve account of \$212,000 was taken as part of the refunding.

115. The transaction costs in excess of those allowed by the regulations were \$351,130.

116. The transaction costs for Rolling Hills and Sandidge Hills are summarized in the following table:

FAF #	643	644
TAXABLE TAIL	\$160,000	\$175,000
SUBORDINATED TAX EXEMPT	\$55,000	\$50,000
DEBT SERVICE RESERVE	\$211,851	\$234,836
TOTAL FUNDS AVAILABLE	\$426,851	\$459,836
LESS PROJECT REPAIRS	\$(54,345)	\$(70,050)
TRANSACTION COSTS	\$372,506	\$389,786
ORIGINAL ISSUE AMOUNT	\$1,070,000	\$1,085,000
TRANSACTION COSTS AS A % OF ORIGINAL ISSUE	34.76	35.85
TRANSACTIONAL COSTS OF ORIGINAL ISSUE	~\$40,000	~\$40,000

117. The excess costs for the seven refundings in ¶¶ 69-116 are summarized in the following table:

TRANSACTION	AMOUNT OF TAX-EXEMPT BONDS	AMOUNT OF PREMIUM "SKIMMED"	AMOUNT IN DEBT SERVICE RESERVE	AMOUNT OF "TAXABLE TAIL"	ILLEGAL COSTS*	TOTAL COSTS
EASTOVER	\$1,310,000	\$90,000	\$122,000	\$90,000	\$202,000	\$302,000
CEN-MISS	\$1,335,000	\$130,000	\$180,000	\$155,000	\$365,000	\$465,000
GREENWOOD-LEFLORE	\$9,060,000	\$800,000	\$1,255,000	\$1,225,000	\$2,983,200	\$3,280,000
CANTON ESTATES	\$4,145,000	\$899,433	\$545,000		\$2,110,553	\$2,193,433
APPLE MANOR	\$1,680,000		\$250,000		\$262,200	\$321,000
ROLLING HILLS	\$1,015,000		\$212,000	\$215,000	\$351,130	\$386,655
SANDIDGE HILLS	\$1,045,000		\$235,000	\$225,000	\$370,375	\$406,950
TOTAL AMOUNT FOR THESE PROPERTIES	\$18,280,000					\$7355,038 (>40% of par value of bonds)

* In the case of Rolling Hills and Sandidge Hills nominal amounts, \$54,345 and \$70,050 were used to pay for some project repairs.

DAMAGES

118. As set forth above, Defendants knowingly submitted or caused to be submitted untruthful, incorrect or incomplete requests and reports to HUD. The United States did not know and could not reasonably have known, before August 1999, of the facts material to the causes of action pled in this complaint.

CLAIMS

FIRST CAUSE OF ACTION

(False Claims Act: Presentation of False Claims)

119. Plaintiffs repeat and reallege each allegation in ¶¶ 1 through 118, as if fully set forth herein.

120. Defendants knowingly presented or caused to be presented false or fraudulent claims for payment or approval to the United States.

121. By virtue of the false or fraudulent claims made by the Defendants, the United States suffered damages and therefore is entitled to multiple damages under the False Claims Act, to be determined at trial, plus a civil penalty of \$5,000 to \$10,000 for each violation.

SECOND CAUSE OF ACTION

(False Claims Act: Making or Using False Record or Statement)

122. Plaintiffs repeat and reallege each allegation in ¶¶ 1 through 118, as if fully set forth herein.

123. Defendants knowingly made, used, or caused to be made or

used, false records or statements to get false or fraudulent claims paid or approved by the United States.

124. By virtue of the false records or statements made by the Defendants, the United States suffered damages and therefore is entitled to multiple damages under the False Claims Act, to be determined at trial, plus a civil penalty of \$5,000 to \$10,000 for each violation.

THIRD CAUSE OF ACTION

(False Claims Act: Reverse False Claims)

125. Plaintiffs repeat and reallege each allegation in ¶¶ 1 through 118, as if fully set forth herein.

126. Defendants knowingly made, used or caused to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the United States.

127. By virtue of the false records or statements made by the Defendants, the United States suffered damages and therefore is entitled to multiple damages under the False Claims Act, to be determined at trial, plus a civil penalty of \$5,000 to \$10,000 for each violation.

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

128. Plaintiffs repeat and reallege each allegation in ¶¶ 1 through 118, as if fully set forth herein.

129. This is a claim for the recovery of monies by which all Defendants have been unjustly enriched. By directly or indirectly obtaining Government funds to which they were not entitled, all Defendants were unjustly enriched, and are liable to account and pay such amounts, or the proceeds there from, which are to be determined at trial, to the United States.

FIFTH CAUSE OF ACTION

(Disgorgement of Illegal Profits)

130. Plaintiffs repeat and reallege each allegation in ¶¶ 1 through 118, as if fully set forth herein.

131. By this claim, Plaintiffs request a full accounting of all revenues (and interest thereon) and costs incurred by HUD's Section 8 programs as a result of Defendants' actions alleged herein, disgorgement of all profits so obtained by Defendants, and/or imposition of a constructive trust in favor of the United States upon those profits.

SIXTH CAUSE OF ACTION

(Common Law Fraud)

132. Plaintiffs repeat and reallege each allegation in ¶¶ 1 - 118, as if fully set forth herein.

133. Defendants made material and false representations with knowledge of their falsity or reckless disregard for their truth, with the intention that the Government act upon the misrepresentations to its detriment. The Government acted in justifiable reliance upon Defendants' misrepresentations.

134. Had the facts been known to the United States, no Defendant would have received payment of the inflated amounts. As a result, the United States has been damaged in an as yet undetermined amount.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand and pray that judgment be entered in favor of them as follows:

1. On the Causes of Action under the False Claims Act, as amended, for the amount of the United States' damages, multiplied as required by law, and such civil penalties as are required by law; and all such further relief as may be just and proper.

WHEREFORE, Plaintiffs further demand and pray that judgment be entered in favor of the United States as follows:

2. On the Causes of Action, for unjust enrichment and common law recoupment, for the damages sustained and/or amounts by which Defendants were unjustly enriched together with costs and interest;

3. On the Cause of Action, for disgorgement of illegal profits, for an accounting of all revenues unlawfully obtained by Defendants, the imposition of a

constructive trust upon such revenues, and the disgorgement of the illegal profits obtained by Defendants;

4. On the Cause of Action, for common law fraud, for compensatory and punitive damages in an undetermined amount, together with costs and interest;

and

5. On all causes of action, all such further relief as may be just and proper.

Respectfully submitted,

E. Grey Lewis
Law Offices of E. Grey Lewis
1825 I St., N.W.,
Suite 400
Washington, D.C. 20006
(202) 429-2082; fax: (202) 857-5202

PLAINTIFFS DEMAND A TRIAL BY JURY

E. Grey Lewis

February 23, 2003