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8 Urban Renewal Authority

9 **IN THE SUPERIOR COURT OF GUAM**

10 GOVERNMENT OF GUAM,  
11 BY GUAM HOUSING AND  
12 URBAN RENEWAL AUTHORITY,  
13 A Public Body Corporate and Politic

14 Plaintiffs,

15 vs.

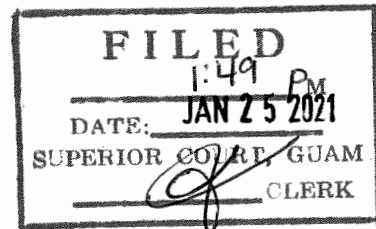
16 MICHAEL F. Q. SAN NICOLAS,  
17 MIGUEL B. SAN NICOLAS,

18 Defendants.

Civil Case No. **0087-21**

**FILED UNDER SEAL (5 GCA § 37202)**

**COMPLAINT**



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I. Introduction

1. Plaintiff **GUAM HOUSING AND URBAN RENEWAL AUTHORITY** (“**GHURA**”) brings this Action, on its own behalf, for false claims against Defendants Michael F. Q. San Nicolas (“**MFQSN**”) and Miguel B. San Nicolas (“**MBSN**”), pursuant to the False Claims and Whistleblowing Act, 5 GCA § 37101 *et seq.* (the “**FCA**”), to recover damages and penalties resulting from Defendants’ undisclosed prohibited interests (conflicts of interest) in their own and each other’s Housing Assistance Payments (“**HAP**”) Contracts. Defendants’ prohibited interests violated federal regulations and materially breached their contracts for rental payments that are paid to Owners of residential property under the United States Department of Housing and Urban Development’s (“**HUD**’s”) Section 8 Program, which is administered in Guam by **GHURA**.

2. **GHURA**, through its attorneys, brings this Action for the government of Guam, against **MFQSN** and **MBSN**, pursuant to the **FCA**, to recover damages and penalties resulting from Defendants’ undisclosed prohibited interests.

3. **GHURA** bases the claim on knowledge, relevant documents and information and belief and is an original source of the information.

4. Express language in standard form Housing Assistance Payments (“**HAP**”) Contracts prohibits “Covered Individuals”, which include public officials and their immediate family members, from having an interest in any **HAP** contract. In executing **HAP** contracts, Covered Individuals certify and take responsibility for assuring that no person or entity has or will have a prohibited interest, at execution of the **HAP** contract, or at any time during the contract term. If a prohibited interest occurs, the owner is required to promptly and fully

1 disclose it to GHURA and HUD. A waiver from HUD is an express condition to continuing  
2 under the HAP Contract.

3 5. In April 2011, MFQSN executed a HAP contract as Owner of residential  
4 property in Chalan Pago. In January 2013, MFQSN was made a senator in Guam's legislature  
5 and thus became a Covered Individual in his HAP Contract. He did not seek waiver of his  
6 prohibited interest. Despite MFQSN's status as a Covered Individual, MBSN in September  
7 2013 executed a HAP contract as Owner of residential property in Talofofo. MBSN thus  
8 violated federal law and regulation from the onset of that HAP contract. Neither MFQSN,  
9 MBSN promptly and fully disclosed their prohibited interest to HUD and GHURA. Their  
10 failure to disclose is cognizable as a false implied certification false claim. *Univ. Health Serv.,*  
11 *Inc. v. United States*, 136 S.Ct. 1989 (2018).  
12

13 6. The primary purpose of conflict of interest prohibitions in federal contracts is to  
14 protect the public from the corrupting influences that might be brought to bear in business  
15 transactions involving the government. *United States v. Miss. Valley Generating Co.*, 364 U.S.  
16 520, 563 (1961). GHURA is concerned that the failure of Covered Individuals to obtain waiver  
17 of their prohibited interests may result in the loss of significant amounts of federal program  
18 funding to the great detriment of the government of Guam. GHURA was instructed by HUD to  
19 return monies paid to MBSN during the time that he had a prohibited interest and is  
20 commencing this action to claw back monies paid to MBSN, MFQSN because of their  
21 prohibited interests in HAP contracts.  
22

## 23 II. Jurisdiction

24 7. The Superior Court, as a court in the Unified Judiciary of Guam, has jurisdiction  
25 to hear this matter. 5 GCA § 37102 (d).  
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1           8.     The Superior Court has original jurisdiction over all causes of action, except for  
2 those causes exclusively vested in the Supreme Court. 7 GCA § 3105.

3           9.     Because the FCA has not been exclusively vested in the Supreme Court, the  
4 Superior Court has jurisdiction over this Action.

5           10.    The FCA empowers a person to bring a civil action before the court. 5 GCA  
6 § 37202 (a).

7           11.    Corporations are persons lawfully vested with the power to sue. *Bank of the*  
8 *United States v. Devereaux*, 5 Cranch 61 (1809) (seminal case recognizing that public  
9 corporations enjoy the right to sue). *See also Citizens United v. Federal Election Commission*,  
10 558 US 310 (2010) (nonprofit corporations enjoy constitutional rights to the same extent as  
11 natural persons and can sue for them).  
12

13           12.    GHURA, by bringing this Action, bars persons other than the government of  
14 Guam from intervening or bringing a related action based on the facts underlying this Action.  
15 5 GCA § 37202 (e).  
16

17           13.    This Court is not barred under 5 GCA § 37205 from exercising jurisdiction over  
18 this Action.

19           14.    The allegations or transactions at issue in this Action are not the subject of a civil  
20 suit or an administrative civil money penalty proceeding in which the government of Guam is  
21 already a party.  
22

### 23                                   III. The Parties

24           15.    GHURA is organized as a Guam public body corporate and politic, 12 GCA  
25 §§ 5103 (a), authorized by statute to sue and be sued. 12 GCA § 5104 (b).

26           16.    GHURA is a public housing agency ("PHA") within the meaning of the United  
27 States Housing Act of 1937 pursuant to 12 GCA § 5103 (a).  
28

17. GHURA, as a PHA administers HUD's Housing Choice Voucher Program ("HCV"; also "Section 8") in Guam. The federal program provides rental payments to landlords to subsidize the cost of housing for low income, elderly, and disabled individuals. *See* 12 GCA § 5105 (b).

18. At all times relevant herein, MFQSN was a resident of Guam.

19. MFQSN was a senator in Guam's legislatures from on or around January 2013 to on or around January 2019.

20. MFQSN is presently Guam's congressman at the U.S. House of Representatives.

21. On information and belief, MFQSN is MBSN's son.

22. From April 7, 2011 to at least April 30, 2017, MFQSN was Owner in a HAP contract for residential housing at 117 C Speaker Franklin Quitugua Court, Chalan Pago, Guam.

23. On information and belief, MBSN is a resident of Guam and is MFQSN's father.

24. From at least October 1, 2013 to September 30, 2017, MBSN was Owner in a HAP contract for residential housing at 225B Enrique San Nicolas Lane, Talofofo, Guam.

#### IV. Law

25. An FCA complaint “. . . shall be filed in camera, shall remain under seal for at least sixty (60) days, and shall not be served on the defendant until the court so orders.” 5 GCA § 37202 (b) (1).

26. Any person who "knowingly presents, or causes to be presented, a false or fraudulent claim for approval ... is liable to the government of Guam for a civil penalty of not less than Five Thousand Dollars (\$5,000) and not more than Ten Thousand Dollars (\$10,000), plus three (3) times the amount of damages which the government of Guam sustains because of the act of that person." 5 GCA § 37102 (a) (1), (7).

1           27. Any person who “knowingly makes, uses, or causes to be made or used, a false  
2 record or statement material to a false or fraudulent claim ... is liable to the government of  
3 Guam for a civil penalty of not less than Five Thousand Dollars (\$5,000) and not more than Ten  
4 Thousand Dollars (\$10,000), plus three (3) times the amount of damages which the government  
5 of Guam sustains because of the act of that person.” 5 GCA § 37102 (a) (2), (7).

6           28. A person acts knowingly or with knowledge under the FCA when he has actual  
7 knowledge, acts in deliberate ignorance of truth or falsity, or acts in reckless disregard of truth  
8 or falsity. 5 GCA § 37101 (b). The FCA does not require a specific intent to defraud. *Id.*

9           29. “[I]n defining knowingly, Congress attempted ‘to reach what has become known  
10 as the ‘ostrich’ type situation where an individual has ‘buried his head in the sand’ and failed to  
11 make simple inquiries which would alert him that false claims are being submitted.  
12 *United States v. United Healthcare Ins. Co.*, 848 F.3d 1161 (9th Cir. 2016) citing S. Rep. No.  
13 99-345, at 21 (1986), *as reprinted in* 1986 U.S.C.C.A.N. 5266, 5286. “Congress adopted ‘the  
14 concept that individuals and contractors receiving public funds have some duty to make a  
15 limited inquiry so as to be reasonably certain they are entitled to the money they seek.’ ”  
16 *Id.* (citations omitted) (discussing the importance of individual responsibility because the  
17 government has limited resources to police fraud). “While the Committee intends that at least  
18 some inquiry be made, the inquiry need only be ‘reasonable and prudent under the  
19 circumstances.’ ” *Id.* (citations omitted).

20           30. When a defendant makes representations in submitting a claim but omits  
21 violations of his or her statutory, regulatory, or contractual requirements, those omissions render  
22 the defendant’s representations misleading with respect to the goods or services provided, and  
23 the defendant is liable for false claims act violations when making such implied certifications  
24 where two conditions are satisfied: first, the claim does not merely request payment, but also  
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1 makes specific representations about the goods or services provided; and second, the  
2 defendant's failure to disclose noncompliance with material statutory, regulatory, or contractual  
3 requirements makes those representations misleading half-truths. *Univ. Health Serv., Inc. v.*  
4 *United States*, 136 S.Ct. 1989, 2001 (2018).

5 31. A person that violates the FCA is liable for the costs of a civil action that must be  
6 brought to recover penalties or damages. 5 GCA § 37102 (c).

7 32. A person bringing the action shall receive an amount the court decides is  
8 reasonable which shall not be less than twenty-five percent (25%) and not more than thirty  
9 percent (30%) of the proceeds of the action or any settlement plus reasonable expenses,  
10 attorneys fees and costs. 5 GCA § 37204 (b).

11 33. If the government of Guam proceeds with an action brought by a person under  
12 § 37202 of the FCA, the person bringing the action will receive no less than fifteen percent  
13 (15%) but no more than twenty-five percent (25%) of the proceeds of the action or settlement of  
14 the claim, depending upon his or her contribution to the prosecution of the action. 5 GCA §  
15 37204 (a).

16 34. Neither the PHA nor any of its contractors or subcontractors may enter into any  
17 contract or arrangement in connection with the HCV program in which *inter alia* any covered  
18 person has any interest, direct or indirect, during tenure or for one year thereafter. 24 CFR  
19 982.161 (a). *See also Curved Electrotpe Co. of NY v. United States*, 50 Ct. Cl. 258 (1915)  
20 (prohibiting direct or indirect interests in commercial contracts with the United States).

21 35. Covered Individuals under HUD HCV regulations include public officials,  
22 members of a governing body, or State or local legislator, who exercise functions or  
23 responsibilities with respect to the programs. *Id.*  
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36. HUD regulations provide that, an Owner's violation of any obligation under the HAP contract for the dwelling unit, an Owner's violation of any obligation under any other HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f), an Owner's fraud, bribery or any other corrupt or criminal act in connection with any federal housing program are each a breach of the HAP contract. 24 CFR 982.453(a).

37. PHA rights and remedies against Owners who breach HAP contracts include recovery of overpayments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.

24 CFR 982.453(b).

38. Where a plaintiff confers a benefit on defendant, who has knowledge of a benefit; the defendant accepts and retains the conferred benefit; and, under the circumstances, it would be inequitable for the defendant to retain the benefit, an action for unjust enrichment lies for which the plaintiff is entitled to restitution. *Duncan v. Kasim, Inc.*, 810 So.2d 968 (Fl. Dist. Ct. App. 2002).

## V. Defendants' HAP Contracts

39. Every Owner in the HCV program must accurately, candidly, and thoroughly complete and submit an application and execute a Housing Assistance Payments Contract.

40. Pursuant to 24 CFR § 982.162, each HAP contract must contain precise language which includes a Conflict of Interest clause, specifically prohibiting any owner from having any direct or indirect interest in the HAP Contract, including the interest of an immediate family member or such covered individual, while such person is a covered individual and for one year thereafter. See "**Exhibit 1**", HUD form 52641 (07/2019).

1           41.     Upon signing the HAP Contract, the Owner must certify and is responsible for  
2 assuring that no person has a prohibited interest when the contract is signed or at any time  
3 during the term of the contract.

4           42.     Moreover, the Owner is specifically required to promptly and fully disclose any  
5 prohibited interest to HUD and GHURA (as HUD's PHA) if such interest arises during the term  
6 of the contract.  
7

8           43.     If a prohibited interest arises, the Owner must request for a waiver of the  
9 prohibited interest from HUD or terminate the contract.

10          44.     Upon a full disclosure of the prohibited interest—or for any breach of the  
11 contractual obligations in the HAP Contract—GHURA may terminate the HAP  
12 Contract and recover for any overpayments.  
13

14          45.     The Conflict of Interest Clause is a material condition for an Owner's entering  
15 into the HAP Contract and receiving rents from the HCV program.

16          46.     Title 24 C.F.R. § 982.161—"Conflicts of Interest" strictly prohibits GHURA (as  
17 HUD's PHA) or any of its contractors or subcontractors from entering into any Section 8  
18 contracts where a prohibited interest exists.  
19

20          47.     On or about April 7, 2011, MFQSN entered into a HAP Contract as Owner  
21 for rental payments for lease of property located at 117C Speaker Franklin Quitugua  
22 Court, Chalan Pago. *See "Exhibit 2"* (hereinafter the "2011 HAP Contract").

23          48.     The 2011 HAP Contract provided the following, in part:

24                   A covered individual may not have any direct or indirect interest in  
25 the HAP contract or in any benefits or payments under the contract  
26 (including the interest of an immediate family member of such  
27 covered individual) while such person is a covered individual or  
28 during one year thereafter.

...

1 The owner **certifies** and is **responsible for assuring** that no  
2 person or entity has or will have a prohibited interest, at  
3 execution of the HAP contract, or **at any time during the HAP**  
4 **contract term**. If a prohibited interest occurs, the owner shall  
5 **promptly and fully disclose such interest to the PHA and**  
6 **HUD**.

7 *Id.*, §§ 13 (b), (d) (emphasis added).

8 49. Removing all ambiguity, the 2011 HAP Contract defines a Covered  
9 Individual:

10 “Covered Individual” means a person or entity who is a member of any of  
11 the following classes:

12 (1) Any present or former member or office of the PHA (except a  
13 PHA commissioner who is a participant in the program);

14 (2) Any employee of the PHA, or any contractor, sub-contractor or  
15 agent of the PHA, who formulates policy or who influences  
16 decisions with respect to the program;

17 (3) **Any public official, member of a governing body, or State**  
18 **or local legislator, who exercises functions or responsibilities**  
19 **with respect to the program; or**

20 (4) Any member of the Congress of the United States.

21 *Id.* ¶13 (a) (emphasis added).

22 50. Defendants were put on actual notice of HUD’s conflict of interest requirements  
23 because their standard HAP Contracts contained clear, written language which specifically  
24 required the Defendants to certify that no prohibited interest exists and conferred on them the  
25 responsibility for assuring that no prohibited interest exists and for fully disclosing any  
26 prohibited interest should one arise at any time during the term of the contract.

27 51. MFQSN affixed his signature to the 2011 HAP Contract, thereby pledging and  
28 affirmatively representing that he would faithfully and continually abide by its terms.

52. GHURA relied upon the truth of MFQSN’s certifications and statements when it

1 paid housing assistance payments to him under the Section 8 program during the term of the  
2 2011 HAP Contract.

3 53. The 2011 HAP Contract was initially effective from May 1, 2011 through April  
4 30, 2012 and required annual re-certification.

5 54. On information and belief, from the date of execution of the 2011 HAP Contract  
6 to on or around December 2012, MFQSN received housing assistance rental payments from  
7 GHURA under HUD's HCV program.

8 55. In January 2013 MFQSN was installed as a senator in Guam's 32nd Legislature.

9 56. MFQSN failed to promptly and fully disclose his prohibited interest in the 2011  
10 HAP Contract to GHURA and HUD.

11 57. MFQSN failed to seek a waiver of his prohibited interest for good cause from  
12 HUD.

13 58. MFQSN knowingly presented or caused to be presented, a false or fraudulent  
14 claim for payment or approval by his failure to certify and assure that he did not at any time  
15 have a prohibited interest in the 2011 HAP Contract.

16 59. MFQSN's failure to seek a waiver of his prohibited interest from HUD was  
17 unreasonable.

18 60. MFQSN knew, was deliberately ignorant, or acted in reckless disregard of the  
19 truth or falsity of his certifications and assurances that no person or entity would have a  
20 prohibited interest in the 2011 HAP Contract at execution or at any time during its term.

21 61. MFQSN, in certifying his compliance with the 2011 HAP Contract's Conflict of  
22 Interest ("COI") provision does not merely request payment, but also makes specific  
23 representations about the goods or services he was to provide under the contract.

24 62. MFQSN's failure to disclose noncompliance with the COI provision and HUD  
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1 regulations made those representations misleading half-truths.

2 63. From the moment MFQSN was installed as a senator in January 2013 up to the  
3 time that the 2011 HAP Contract was terminated with effect on April 30, 2017, MFQSN took  
4 federal housing assistance payments from GHURA despite having a prohibited interest in the  
5 2011 HAP Contract.

6 64. More specifically, MFQSN received \$54,041, more or less, for housing  
7 assistance payments under the 2011 HAP Contract for the contract term of January 2013 to  
8 April 2017. *See* “**Exhibit 2.1.**”

10 65. When dealing with GHURA as PHA program administrator for the HCV,  
11 MFQSN is charged with knowledge of the laws and regulations of the United States  
12 Government including specifically as they pertain to HUD’s Housing Choice Voucher  
13 Program.

14 66. Despite his knowledge, MFQSN violated and caused GHURA to violate HUD’s  
15 conflict of interest regulations by contracting for federal Housing Assistance Payments while a  
16 senator in Guam’s legislature.

17 67. On or about April 17, 2012, MFQSN made, used, or caused to be made or used,  
18 a Re-certification Amendment to the 2011 Contract. *See* “**Exhibit 3**”, the “2012 Re-  
19 certification Amendment.”

20 68. The 2012 Re-certification Amendment was effective from May 1, 2012 with  
21 another re-certification being due by May 1, 2013.

22 69. The 2012 Re-certification Amendment also contained the following preservation  
23 clause (hereinafter, the “Preservation Clause”), preserving of all other original terms and  
24 conditions of the HAP Contract:  
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1 This Amendment is prepared in accordance with the terms and  
2 conditions of both the HAP Contract between the Owner and the  
3 Housing Authority, and the current Lease between the Tenant and  
4 the Owner, and this Amendment is made a part of the HAP  
5 Contract and the current Lease. **All other covenants, terms, and  
6 conditions in the HAP Contract and the current Lease shall  
7 remain the same.** (Emphasis added).

8 70. Under the terms of the 2012 Re-certification Amendment, more particularly,  
9 MFQSN received \$3,600 from January, 2013 through April, 2013.

10 71. On or about March 11, 2013, MFQSN made, used or caused to be made or  
11 used a Re-certification Amendment to the 2011 HAP Contract. See "**Exhibit 4**" (hereinafter,  
12 the "2013 Re-certification Amendment").

13 72. The 2013 Re-certification Amendment was effective May 1, 2013 with  
14 another re-certification being due by May 1, 2014.

15 73. The 2013 Re-certification Amendment also contained the Preservation Clause,  
16 preserving all the other original terms and conditions of the 2011 HAP Contract.

17 74. Under the terms of the 2013 Re-certification Amendment, MFQSN received  
18 \$861 monthly for the months of May 2013 through September 2013, \$897 in October, 2013,  
19 \$873 monthly for the months of November 2013 through March 2014, and \$822 for the month  
20 of April, 2014 from GHURA as HUD's PHA.

21 75. On or about March 5, 2014, MFQSN made, used, or caused to be made or  
22 used a Re-certification Amendment to the 2011 Contract. See "**Exhibit 5**" (hereinafter, the  
23 "2014 Re-certification Amendment").

24 76. The 2014 Re-certification Amendment was effective May 1, 2014 with  
25 another re-certification being due by May 1, 2015.

26 77. The 2014 Re-certification Amendment also contained the Preservation Clause,  
27 preserving all the other original terms and conditions of the 2011 HAP Contract.  
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1           78.       Under the terms of the 2014 Recertification Amendment, MFQSN received  
2 \$873 for the month of May, 2014, \$822 monthly for the months of June, 2014 through  
3 September, 2014, \$779 monthly for the months of October, 2014 through January, 2015, and  
4 \$1,233 monthly for the months of February, 2014 through April, 2014 from GHURA as HUD's  
5 PHA.

6           79.       On or about March 24, 2015, MFQSN made, used, or caused to be made or  
7 used a Re-certification Amendment to the 2011 HAP Contract. See "**Exhibit 6**" (hereinafter,  
8 the "2015 Re-certification Amendment").  
9

10          80.       The 2015 Re-certification Amendment was effective from May 1, 2015 with  
11 another re-certification being due by May 1, 2016.

12          81.       The 2015 Re-certification Amendment also contained the Preservation Clause,  
13 preserving all the other original terms and conditions of the 2011 HAP Contract.

14          82.       Under the terms of the 2015 Re-certification Amendment, MFQSN received  
15 \$1,130 monthly for the months of May 1, 2015 through April 30, 2016, from United States  
16 Government, and, specifically, from GHURA as HUD's PHA.  
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18          83.       On or about March 1, 2016, MFQSN made, used, or caused to be made or  
19 used a Re-certification Amendment to the 2011 Contract. See "**Exhibit 7**" (hereinafter, the  
20 "2016 Re-certification Amendment").

21          84.       The 2016 Re-certification Amendment was effective May 1, 2016 with  
22 another re-certification being due by May 1, 2017.

23          85.       The 2016 Re-certification Amendment also contained the Preservation Clause,  
24 preserving all the other original terms and conditions of the 2011 HAP Contract.  
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26          86.       Under the terms of the 2016 Re-certification Amendment, MFQSN received  
27 \$1,070 monthly for the months of May 1, 2016 and February 1, 2017, and \$1,204 monthly for  
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1 the months of March, 2017 and April, 2017 from United States Government, and, specifically,  
2 from GHURA as HUD's PHA.

3 87. MFQSN received the sum of \$54,041, more or less, under the 2011 HAP  
4 Contract from the time-period of January 2013 and May 2017.

5 88. In 2012, MFQSN ran for Senator in the Guam Legislature.

6 89. On information and belief MFQSN placed fifth in his race and was sworn into  
7 office as a Guam senator in the 32nd Guam legislature on or about January 7, 2013, where he  
8 continued to serve as a Guam Senator until January 7, 2019.

10 90. As a Senator, MFQSN could at any time exercise, or participate in the  
11 exercise, of legislative power and or authority, as defined in Guam's Organic Act, over  
12 GHURA.

13 91. On information and belief, while in the Guam legislature, MFQSN served as  
14 the Chairperson of the Committee on Finance, Taxation, General Government Operations, and  
15 Youth Development.

16 92. As Senator, MFQSN maintained broad powers over GHURA and the  
17 Section 8 program and exercised responsibilities or functions concerning GHURA and the  
18 Section 8 program.

20 93. On information and belief, as a Senator, MFQSN voted on the appointments  
21 to the GHURA board of commissioners and on legislation affecting GHURA.

22 94. On information and belief, MBSN was closely involved with MFQSN's  
23 political career. MBSN had actual knowledge of MFQSN's status as senator at all times  
24 relevant to this Complaint.

26 95. Specifically, on or before July 3, 2012, MBSN had knowledge that  
27 MFQSN was running for public office when he, as Deputy Campaign Treasurer, and  
28



1 MFQSN as Candidate, submitted MFQSN's Organizational Report to the Guam Election  
2 Commission ("GEC"). See "**Exhibit 8**" (hereinafter, "MFQSN's 2012 Election  
3 Organization Report").

4 96. Additionally, MBSN continued to be involved in MFQSN's political  
5 career and knew of MFQSN's status as a senator as he was promoted from Deputy  
6 Treasurer to Campaign Chairperson, as shown by MFQSN's Organizational Report filed  
7 with the GEC on or around December 7, 2015. See "**Exhibit 9**" (hereinafter, "MFQSN's  
8 2014 Election Organization Report").

10 97. Moreover, MBSN continued to be involved in MFQSN's political career  
11 and knew of MFQSN's status as a senator, as he served as Campaign Chairperson, as  
12 shown by MFQSN's Organizational Report filed with the GEC on or around December 7,  
13 2015. See "**Exhibit 10**" (hereinafter, "MFQSN's 2015 Election Organization Report").

14 98. MBSN is MFQSN's father. (Previously alleged)

15 99. As MFQSN's father, MBSN was an immediate family member of a Covered  
16 Individual, and is himself a Covered Individual, who is prohibited from having a direct or  
17 indirect interest in any HAP contract under the Conflicts of Interest clause.  
18

19 100. MBSN, as an immediate family member of a Covered Individual, is himself a  
20 Covered Individual who is prohibited from having a direct or indirect interest in any HAP  
21 contract under HUD regulations.

22 101. MFQSN is MBSN's son. Previously alleged.

23 102. MFQSN, as an immediate family member of a Covered Individual, is  
24 prohibited from having an interest in any HAP contract under the Conflicts of Interest clause,  
25 including the 2013 HAP Contract.  
26

27 103. MFQSN, as an immediate family member of a Covered Individual, is  
28

1 prohibited from having an interest in any HAP contract under HUD regulations, including the  
2 2013 HAP Contract.

3 104. On or about September 23, 2013, MBSN entered into a HAP Contract for  
4 Section 8 rents in connection with property located at 225B Enrique San Nicolas Lane,  
5 Talofofo, Guam 96915. See "**Exhibit 11**" (hereinafter, the "2013 HAP Contract").

6 105. The 2013 HAP Contract provided the same prohibition, obligations,  
7 and requirements related to Conflicts of Interest as the 2011 HAP Contract.

8 106. MBSN affixed his signature to the 2013 HAP Contract, thereby pledging and  
9 affirmatively representing he would continuously and faithfully abide by the terms of the  
10 contract.

11 107. MBSN failed to timely seek from HUD a waiver for good cause of his  
12 prohibited interest in the 2013 HAP Contract.

13 108. MBSN failed to seek from HUD a waiver for good cause of his  
14 prohibited interest in the 2011 HAP Contract.

15 109. MFQSN failed to seek from HUD a waiver for good cause of his  
16 prohibited interest in the 2013 HAP Contract.

17 110. Defendants' failures to seek waivers from HUD were unreasonable.

18 111. At the time that MBSN entered into the 2013 HAP Contract, his  
19 certifications and assurances that no Covered Individual would have a prohibited  
20 interest in any HAP contract were false.

21 112. MBSN knowingly presented or caused to be presented a false or fraudulent  
22 claim for payment or approval by his failure to certify and assure no prohibited interest in the  
23 2011 HAP Contract.

24 113. MBSN knew, was deliberately ignorant, or acted in reckless disregard of the  
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1 truth or falsity of his certifications and assurances to GHURA and HUD that no person or entity  
2 would have a prohibited interest in the 2011 HAP Contract at execution or at any time during its  
3 term.

4 114. MBSN knowingly presented or caused to be presented a false or fraudulent  
5 claim for payment or approval by his failure to certify and assure no prohibited interest in the  
6 2013 HAP Contract.

7 115. MBSN knew, was deliberately ignorant, or acted in reckless disregard of the  
8 truth or falsity of his certifications and assurances to GHURA and HUD that no person or entity  
9 would have a prohibited interest in the 2013 HAP Contract at execution or at any time during its  
10 term.  
11

12 116. MFQSN knowingly presented or caused to be presented a false or fraudulent  
13 claim for payment or approval by his failure to certify and assure no prohibited interest in the  
14 2013 HAP Contract.

15 117. MFQSN knew, was deliberately ignorant, or acted in reckless disregard of the  
16 truth or falsity of his certifications and assurances to GHURA and HUD that no person or entity  
17 would have a prohibited interest in the 2013 HAP Contract at execution or at any time during its  
18 term.  
19

20 118. MBSN, in certifying his compliance with the 2013 HAP Contract's Conflict of  
21 Interest ("COI") provision does not merely request payment, but also makes specific  
22 representations about the goods or services he was to provide under the contract.  
23

24 119. MBSN, in certifying his compliance with the 2013 and separately the 2013 HAP  
25 Contract COI provisions does not merely request payment, but also makes specific  
26 representations about the goods or services he was to provide under the 2013 HAP Contract.

27 120. MBSN's failure to disclose noncompliance with the COI provision and HUD  
28

1 regulations made those representations misleading half-truths.

2 121. When dealing with GHURA as PHA program administrator for the HCV, MBSN  
3 is charged with knowledge of the laws and regulations of the United States Government  
4 including specifically as they pertain to HUD's Housing Choice Voucher Program.

5 122. Despite his knowledge, MBSN violated and caused GHURA to violate HUD's  
6 conflict of interest regulations by contracting for federal Housing Assistance Payments while  
7 his son was a Covered Individual by virtue of his status as a Senator in Guam's legislature.  
8

9 123. GHURA relied upon the truth MBSN's certifications and statements in the  
10 contract to pay rental payments under the 2013 HAP Contract.

11 124. The 2013 HAP Contract was effective from October 1, 2013 through  
12 September 30, 2014 and required annual re-certification.

13 125. Between October 1, 2013 and September 30, 2014, MBSN received \$1,538  
14 monthly for the months for those months from GHURA as HUD's PHA.

15 126. On or about August 25, 2014 MBSN made, used, or caused to be made or used a  
16 Re-certification Amendment to the 2013 Contract. See "Exhibit 12" (hereinafter, the "2014  
17 Re-certification Amendment").  
18

19 127. The 2014 Re-certification Amendment was effective October 1, 2014 with  
20 another re-certification being due by October 1, 2015.

21 128. The 2014 Re-certification Amendment also contained the Preservation Clause,  
22 preserving all the other original terms and conditions of the 2013 HAP Contract.  
23

24 129. Under the terms of the amended 2014 Re-certification Amendment, MBSN,  
25 received \$1,538 monthly for the months of October 1, 2014 through September, 2015 from  
26 GHURA as HUD's PHA.

27 130. On or about August 27, 2015, MBSN made, used, or caused to be made or used a  
28

1 Re-certification Amendment to the 2013 Contract. See "**Exhibit 13**", the 2015 Re-certification  
2 Amendment.

3 131. The 2015 Re-certification Amendment was effective October 1, 2015 with  
4 another re-certification being due by October 1, 2016.

5 132. The 2015 Re-certification Amendment also contained the Preservation Clause,  
6 preserving all the other original terms and conditions of the 2013 HAP Contract.

7 133. Under the terms of the 2015 Re-certification Amendment, MBSN received  
8 \$1,538 monthly for the months of October 1, 2015 through September, 2016 from GHURA as  
9 HUD's PHA.  
10

11 134. On or about August 23, 2016, MBSN made, used, or caused to be made or used a  
12 Re-certification Amendment to the 2013 Contract. See "**Exhibit 14**" (hereinafter, the "2016 Re-  
13 certification Amendment").

14 135. The 2016 Re-certification Amendment was effective October 1, 2016 with  
15 another re-certification being due by October 1, 2017.

16 136. The 2016 Re-certification Amendment also contained the Preservation Clause,  
17 preserving all the other original terms and conditions of the 2013 HAP Contract.

18 137. Under the terms of the 2016 Re-certification Amendment, MBSN received  
19 \$1,538 monthly for the months of October 1, 2016 through October 31, 2017 from GHURA as  
20 HUD's PHA.  
21

22 138. MBSN received the sum of \$76,186 more or less under the 2013 HAP Contract  
23 from the time-period of October 1, 2013 and October 31, 2017. See "**Exhibit. 14.1.**"

24 139. Contrary to the above-referenced HAP Contract obligations, and contrary to  
25 the numerous above-referenced certifications, re-certifications, and statements that he was  
26 not a Covered Individual as defined by the 2011 HAP Contract and federal law, MFQSN  
27  
28

1 received monthly rental payments from GHURA during the time he was a party to the 2011  
2 HAP Contract.

3 140. MFQSN knowingly made false certifications, re-certifications, and  
4 statements to GHURA to the effect that he was not a Covered Individual and had no prohibited  
5 interest, in violation of the 2011 HAP Contract and in violation of federal law and the 2013  
6 HAP Contract.

7 141. MFQSN had a duty to ensure that he had no prohibited interest in the 2011  
8 HAP Contract and the 2013 HAP Contract, he failed that duty, and his failure was  
9 unreasonable.  
10

11 142. MBSN operated contrary to his 2013 HAP Contract obligations. Contrary to  
12 his numerous certifications, re-certifications, and statements that he was not a parent or  
13 immediate family member to a Covered Individual as defined by the 2013 HAP Contract  
14 and federal law, MBSN received monthly rental payments from GHURA during the time he  
15 was a party to the 2013 HAP Contract.  
16

17 143. MBSN knowingly made false certifications, re-certifications, and statements  
18 to the effect he was not a parent or other immediate family member to a Covered Individual and had  
19 no prohibited interest in violation of federal law, the 2013 HAP Contract and in violation of  
20 the 2011 HAP Contract.

21 144. MBSN had a duty to ensure that he did not have a prohibited interest in the  
22 2013 HAP Contract and the 2011 HAP Contract, he failed that duty, and his failure was  
23 unreasonable.  
24

25 145. On or about January 2017, GHURA discovered MFQSN's prohibited  
26 interest.

27 146. On or about February 2, 2017, the 2011 HAP Contract was terminated,  
28

1 effective April 30, 2017, due to MFQSN's prohibited interest and his failure to disclose the  
2 same.

3 147. On or about April 20, 2017, after receiving nearly four years of GHURA  
4 housing subsidies, while concealing, from the date of execution, his conflict of interest in  
5 violation of his 2013 HAP Contract, in violation of the 2011 HAP Contract, and in  
6 violation of federal regulation, and only after the 2011 HAP Contract was terminated due to  
7 MFQSN's prohibited interest, MBSN submitted a Conflicts of Interest Disclosure to  
8 GHURA and/or HUD and requested a waiver of his conflict. *See "Exhibit 15", MIGUEL*  
9 *B. SAN NICOLAS Disclosure and Request for Waiver (including later submissions as part*  
10 *of application).*

12 148. Included in MBSN's Disclosure and Request for Waiver was a certification  
13 of no conflicts. *See "Exhibit 16", MIGUEL B. SAN NICOLAS (AND EVANGELINE*  
14 *SAN NICOLAS) Certification of No Existing Conflict.*

15 149. By presenting the certification to GHURA, MBSN knowingly presented a  
16 false statement for payment or approval of a false claim.

18 150. By presenting the certification to GHURA, MBSN knowingly made, used, or  
19 caused to be made or used, a false record or statement material to a false claim.

20 151. On or about June, 2017, the 2013 HAP Contract was terminated, effective  
21 October 31, 2017, due to prohibited interests, and MBSN's failure to disclose the same.  
22 MBSN's failures resulted in breaches of the HAP Contracts and violation of federal  
23 regulation, and HUD did not grant a waiver on a timely request from MBSN.

24 152. From at least January 7, 2013 through October 31, 2017, Defendants  
25 knowingly made, used, or caused to be made or used false statements material to their false  
26 claims for Section 8 government assistance under the 2011 and 2013 HAP Contracts. The  
27  
28

1 government of Guam has been harmed because during the period, Defendants failed to  
2 promptly provide a full disclosure of their Conflicts of Interest to HUD and GHURA,  
3 which caused over \$129,000 in overpayments to be paid to Defendants.

4 153. Relying to its detriment on the false certifications, re-certification, and  
5 statements from the Defendants, GHURA paid the Defendants monthly rental subsidies it  
6 would not have otherwise paid had the Defendants not knowingly concealed their  
7 prohibited interests and violations of the 2011 and 2013 HAP Contracts.  
8

9 154. GHURA has been further damaged by having a Guam Senator shaping  
10 GHURA Section 8 housing programs, voting on GHURA board of commissioner  
11 appointments, and otherwise using his broad powers over GHURA and the Section 8 program  
12 and exercising responsibilities or functions concerning GHURA and the Section 8 program  
13 while having a personal, pecuniary interest in the program. Such unethical and unscrupulous  
14 behavior compromised the integrity of the public housing assistance program, compromised  
15 GHURA's administration of the HCV Program and its ability to protect low-income tenants  
16 from abuse, and rendered the Section 8 program less effective.  
17

18 VI. Claims

19 **COUNT I: False or Fraudulent Claims**

20 **5 G.C.A. § 37102(a)(1)**

21 **(as to Defendant, MICHAEL F. Q. SAN NICOLAS)**

22 155. The preceding paragraphs are realleged as though fully set forth herein.

23 156. Defendant, MICHAEL F. Q. SAN NICOLAS, knowingly presented, or  
24 caused to be presented, to an officer or employee of the government of Guam, false or  
25 fraudulent claims for payment or approval, in violation of the False Claims and  
26 Whistleblower Act, 5 G.C.A. § 37102(a)(1), specifically, he (1) affirmatively certified that  
27 no person had a prohibited interest in any HAP Contract at its execution or at any time  
28



1 during the 2011 HAP Contract term; (2) affirmatively certified that he would promptly and  
2 fully disclose such interest to the PHA and HUD once it occurred; (3) was responsible for  
3 assuring that no person including himself would have a prohibited interest in the 2011 HAP  
4 Contract; and (4) made said certifications and assurances in order to receive payments  
5 under the 2011 HAP Contract after the prohibited interest arose.

6 157. The 2011 HAP Contract requirement to promptly and fully disclose his  
7 prohibited interest was material to entering into and continuing the HAP Contract. But for  
8 MFQSN's failure to timely and completely disclose his prohibited interest and seek a COI  
9 waiver from HUD, GHURA would have promptly terminated the 2011 HAP Contract the day  
10 the senator was sworn into the Guam Legislature, and no subsequent payments would have been  
11 made to him for subsidized rents. MFQSN's conflict of interest was fatal to the 2011 HAP  
12 Contract, a violation of federal law, and HUD did not waive it.

13 158. MFQSN was contractually required to disclose his prohibited interest to GHURA  
14 as well as directly to HUD, and his omissions were a continuing material contractual violation  
15 that converted subsequent material representations made to GHURA misleading half-truths.

16 159. Because of Defendant, MICHAEL F. Q. SAN NICOLAS' acts and  
17 omissions, the government of Guam incurred damages through payment of false claims,  
18 including payments to Covered Individuals, in an amount to be proved at trial.

19  
20  
21  
22 **COUNT II: False or Fraudulent Claims**

23 **5 G.C.A. § 37102(a)(1)**  
24 **(as to Defendant, MIGUEL B. SAN NICOLAS)**

25 160. The preceding paragraphs are realleged as though fully set forth herein.

26 161. Defendant, MIGUEL B. SAN NICOLAS, knowingly presented, or caused to  
27 be presented, to an officer or employee of the government of Guam, false or fraudulent  
28 claims for payment or approval, in violation of the False Claims and Whistleblower Act, 5

1 G.C.A. § 37102(a)(1), specifically, he (1) affirmatively certified that no person had a  
2 prohibited interest at the execution of or at any time during the 2013 HAP Contract term;  
3 (2) affirmatively certified that he would promptly and fully disclose such interest to the  
4 PHA and HUD if a prohibited interest occurred; (3) was responsible for assuring that no  
5 person would have a prohibited interest in the 2013 HAP Contract; and (4) made said  
6 certifications, re-certifications, and assurances in order to receive payments under the 2013  
7 HAP Contract after the conflicting relationships arose.  
8

9 162. MBSN's failure to disclose his prohibited interest was material to entering into  
10 and continuing the HAP Contract, was an illegal act under federal regulations, and continued  
11 until payments stopped. But for MBSN's failure to timely and completely disclose his  
12 prohibited interest and seek a COI waiver from HUD, GHURA would not have entered into the  
13 2013 HAP Contract and no rental payments would have been made to the Defendant. The  
14 Defendant's conflict of interest was fatal to the 2013 HAP Contract, a violation of federal law,  
15 and HUD did not timely waive it.  
16

17 163. Defendant was contractually required to disclose his prohibited interest to  
18 GHURA as well as directly to HUD, and his omissions were a continuing material contractual  
19 violation that converted other material representations made to GHURA misleading and half-  
20 truths.  
21

22 164. Because of Defendant, MIGUEL B. SAN NICOLAS' acts and omissions, the  
23 government of Guam incurred damages through payment of false claims, including  
24 payments to Covered Individuals, in an amount to be proved at trial.  
25

26 **COUNT III: False or Fraudulent Claims**

27 **5 G.C.A. § 37102(a)(2)**  
**(as to Defendant, MICHAEL F. Q. SAN NICOLAS)**

28 165. The preceding paragraphs are realleged as though fully set forth herein.

1           166. Defendant, MICHAEL F. Q. SAN NICOLAS knowingly made, used, or  
2 caused to be made or used, a false record or statement material to a false or fraudulent  
3 claim, in violation of the False Claims and Whistleblower Act, 5 G.C.A. § 37102(a)(2),  
4 specifically, he (1) affirmatively certified that no person had a prohibited interest at the  
5 execution of or at any time during the 2011 HAP Contract term; (2) affirmatively certified  
6 that he would promptly and fully disclose such interest to the PHA and HUD if it occurred;  
7 (3) was responsible for assuring that no person would have a prohibited interest in the 2011  
8 HAP Contract; and (4) made said certifications and assurances in order to receive payments  
9 under the 2011 HAP Contract after his prohibited interest arose.

11           167. Defendant's failure to disclose his prohibited interest was material to entering  
12 into and continuing the 2011 HAP Contract. But for his concealment and omissions related to  
13 his conflict of interest, HUD and GHURA would have promptly terminated the 2011 HAP  
14 Contract the day the senator was sworn into the Guam Legislature, and no subsequent payments  
15 would have been made to the Defendant in government subsidies. The Defendant's prohibited  
16 interest was fatal to the 2011 HAP Contract, and HUD did not waive such interest.

18           168. Defendant was contractually required to disclose his conflict of interest to  
19 GHURA as well as directly to HUD, and his omissions were a continuing material contractual  
20 violation that converted other material representations made to GHURA misleading and half-  
21 truths.

22           169. Because of Defendant, MICHAEL F. Q. SAN NICOLAS' acts and  
23 omissions, the government of Guam incurred damages through payment of false claims,  
24 including payments to Covered Individuals, in an amount to be proved at trial.

26                           **COUNT IV: False or Fraudulent Claims**

27                                   **5 G.C.A. § 37102(a)(2)**  
28                                   **(as to Defendant, MIGUEL B. SAN NICOLAS)**

1           170. The preceding paragraphs are realleged as though fully set forth herein.

2           171. Defendant, MIGUEL B. SAN NICOLAS, knowingly made, used, or caused  
3 to be made or used, a false record or statement material to a false or fraudulent claim, in  
4 violation of the False Claims and Whistleblower Act, 5 G.C.A. § 37102(a)(2), specifically,  
5 (1) affirmatively certified that no person had a prohibited interest at the execution of or at  
6 any time during the 2013 HAP Contract term; (2) affirmatively certified that he would  
7 promptly and fully disclose such interest to the PHA and HUD if a prohibited interest  
8 occurred; (3) was responsible for assuring that no person would have a prohibited interest  
9 in the 2013 HAP Contract; and (4) made said certifications, re-certifications, and  
10 assurances in order to receive payments under the 2013 HAP Contract.

11           172. Defendant's failure to disclose his conflict of interest was material to entering  
12 into and continuing the HAP Contract and was a continuing violation throughout the entire term  
13 of the contract. But for his concealment and omissions related to their conflict of interest, HUD  
14 and GHURA would not have approved the 2013 HAP Contract and no rental payments would  
15 have been made to the Defendant. The Defendant's prohibited interest was fatal to the 2013  
16 HAP Contract, a violation of federal law, and HUD did not waive it.

17           173. Defendant was contractually required to disclose his prohibited interest to  
18 GHURA as well as directly to HUD, and his omissions were a continuing material contractual  
19 violation that converted other material representations made to GHURA misleading and half-  
20 truths.

21           174. Because of Defendant, MIGUEL B. SAN NICOLAS' acts and omissions, the  
22 government of Guam incurred damages through payment of false claims, including  
23 payments to Covered Individuals, in an amount to be proved at trial.

**COUNT V: Breach of Contract**

**(as to Defendant, MICHAEL F. Q. SAN NICOLAS)**

175. The preceding paragraphs are realleged as though fully set forth herein.

176. On or about April 7, 2011, GHURA and the Defendant, MICHAEL F. Q. SAN NICOLAS, entered into a written contract, the 2011 HAP Contract, whereby the Defendant was required to provide residential housing to a HUD-approved tenant and abide by all of the terms of the 2011 HAP Contract in consideration rental payments under the HCV Program.

177. Specifically, Defendant, MICHAEL F. Q. SAN NICOLAS, had a continuing requirement to certify and assure that he did not have a prohibited interest in any HAP contract, as defined by the 2011 HAP Contract and as prohibited by federal regulations.

178. This provision against prohibited interest and affirmative requirement to promptly and fully disclose any conflicts that may arise during the term of the contract was a material, fundamental requirement of the contract and a condition to receiving government subsidy payments under the contract.

179. Contrary to his responsibility to assure no conflict exists and to promptly and fully disclose any prohibited that arises, MICHAEL F. Q. SAN NICOLAS ran for and was an elected a public office that wielded broad powers over GHURA and the Section 8 program and exercised responsibilities or functions concerning GHURA and the Section 8 program during the term of the 2011 HAP Contract. In his role as a Guam Senator and during the term of the 2011 HAP Contract, Defendant, MICHAEL F. Q. SAN NICOLAS exercised legislative power, participated in the exercise of legislative power, voted on the appointments to the GHURA board of commissioners and on legislation affecting GHURA.

1           180. Defendant, MICHAEL F. Q. SAN NICOLAS, breached his material and  
2 fundamental obligations under the 2011 HAP Contract by enjoying a prohibited interest under  
3 the terms of the 2011 HAP Contract.

4           181. Even worse, once the Defendant was sworn into office, MICHAEL F. Q. SAN  
5 NICOLAS breached his obligation to promptly and fully disclose his conflict of interest to  
6 GHURA and HUD, instead choosing to conceal his prohibited interest and or omitting to  
7 disclose his public office on all subsequent certifications, re-certification, statements,  
8 submissions and correspondences with the Plaintiff.

9  
10           182. Defendant, MICHAEL F. Q. SAN NICOLAS, violated federal law, causing  
11 nonenforcement of the 2011 HAP Contract.

12           183. As a result of MFQSN's material breach of the contract and concealment of his  
13 breach, GHURA overpaid rental payments in an amount to be determined by a jury at trial.

14           184. MFQSN's requirement to promptly and fully disclose his prohibited interest was  
15 material to entering into and continuing with the 2011 HAP Contract. But for his concealment  
16 and omissions related to his conflict of interest, HUD and GHURA would have promptly  
17 terminated the 2011 HAP Contract the day the senator was sworn into the Guam Legislature,  
18 and no subsequent payments would have been made to the Defendant. MFQSN's prohibited  
19 interest was fatal to the 2011 HAP Contract, and HUD did not waive it.

20  
21           185. The 2011 HAP Contract grants the Plaintiff the right to recover all overpayments  
22 made to the Owner should the Owner breach the contract.

23  
24           186. Federal regulation grants the Plaintiff the right to recover all overpayments made  
25 to the Owner should the Owner breach the contract.

26                           **COUNT VI: Unjust Enrichment**

27                           **(as to Defendant Michael F. Q. San Nicolas)**

187. The preceding paragraphs are realleged as though fully set forth herein.

188. On or about January 2013 to April 2017, Plaintiff Guam Housing and Urban Renewal Authority conferred a benefit, that is sums of money, to the Defendant, MICHAEL F. Q. SAN NICOLAS, who had knowledge of the benefit.

189. The Defendant, MICHAEL F. Q. SAN NICOLAS, accepted and retained the benefit.

190. Under the circumstances, including that it is against federal law for a covered person to have a direct or indirect interest in a Housing Assistance Program contract without first having received a waiver of the conflict from HUD, it would be inequitable for the Defendant, MICHAEL F. Q. SAN NICOLAS, to retain the benefit.

**COUNT VII: Breach of Contract**

**(as to Defendant, MIGUEL B. SAN NICOLAS)**

191. The preceding paragraphs are realleged as though fully set forth herein.

192. On or about October 1, 2013, GHURA and the Defendant, MIGUEL B. SAN NICOLAS, entered into a written contract, the 2013 HAP Contract, whereby the Defendant was required to provide residential housing to a HUD-approved tenant and abide by all of the terms of the 2013 HAP Contract in consideration of rental payments under the HCV Program.

193. Specifically, Defendant, MIGUEL B. SAN NICOLAS had a continuing requirement to certify and assure that he did not have a prohibited interest, as defined by the 2013 HAP Contract and as prohibited by federal regulations.

194. This provision against conflicts of interest and affirmative requirement to promptly and fully disclose any conflicts that may arise during the term of the contract was a material, fundamental requirement of the contract and a condition to receiving government subsidy payments under the contract.

1           195. Contrary to his contractual requirement to certify and assure no person or entity  
2 has or will have a prohibited interest at the execution of the 2013 HAP Contract or at any time  
3 during the GAP contract term, Defendant, MIGUEL B. SAN NICOLAS concealed his  
4 prohibited interest, failed to disclose to HUD that he was the parent of a sitting Guam Senator  
5 who wielded broad powers over GHURA and the Section 8 program and exercised  
6 responsibilities or functions concerning GHURA and the Section 8 program, and whose role as  
7 a Guam Senator actually voted on the appointments to the GHURA board of commissioners and  
8 on legislation affecting GHURA.  
9

10           196. Defendant, MIGUEL B. SAN NICOLAS, violated federal law and was not  
11 allowed to obtain sums of money under the 2013 HAP Contract.

12           197. Defendant, MIGUEL B. SAN NICOLAS, breached his material and fundamental  
13 obligations under the 2013 HAP Contract by enjoying a prohibited interest under the terms of  
14 the 2013 HAP Contract.  
15

16           198. As a result of Defendant's material breach of contract and concealment of his  
17 material breach, every single rental payment paid to the Defendant was an overpayment under  
18 the 2013 HAP Contract.

19           199. Defendant's requirement to promptly and fully disclose his prohibited interest  
20 was material to entering into and continuing the HAP Contract. But for his concealment and  
21 omissions related to his conflict of interest, GHURA would never have entered into a contract  
22 with the Defendant, MIGUEL B. SAN NICOLAS, or made any rent payments. MBSN's  
23 prohibited interest was fatal to the 2013 HAP Contract, and HUD did not waive it.  
24

25           200. The 2013 HAP Contract grants the Plaintiff the right to recover all overpayments  
26 made to the Owner should the Owner breach the contract.  
27  
28



201. Federal regulation grants the Plaintiff the right to recover all overpayments made to the Owner should the Owner breach the contract.

**COUNT VIII: Unjust Enrichment**

**(as to Defendant Miguel B. San Nicolas)**

202. The preceding paragraphs are realleged as though fully set forth herein.

203. On or about October 2013 to August 2017, Plaintiff Guam Housing and Urban Renewal Authority conferred a benefit, that is sums of money, to the Defendant, MIGUEL B SAN NICOLAS, who had knowledge of the benefit.

204. The Defendant, MIGUEL B. SAN NICOLAS, accepted and retained the benefit.

205. Under the circumstances, including that it is against federal law for a covered person to have a direct or indirect interest in a Housing Assistance Program contract, it would be inequitable for the Defendant to retain the benefit.

**VII. Prayer for Relief**

WHEREFORE, Plaintiff, GHURA, on behalf of itself and the government of Guam prays:

(a) As to Counts I – IV, that this Court enter a judgment against Defendants in an amount equal to three times the amount of damages, including investigative costs, plus a civil penalty of \$5,000 to \$10,000 for each action in violation of the False Claims Act, and the costs of this action with interest, including the government's costs for expenses related to this action;

(b) As to Counts V and VII, that this Court enter judgment against Defendants for a sum equal to the amount of overpayments made under the respective contracts;

(c) As to Counts VI and VIII, that this Court enter judgment ordering restitution for a sum equal to the amount of overpayments made under the respective contracts;

- 1 (d) That GHURA be awarded all costs incurred in bringing this action, including  
2 attorney's fees;
- 3 (e) That the government of Guam be awarded all costs and attorney's fees;
- 4 (f) That the government of Guam be awarded all consequential damages;
- 5 (g) That in the event the government of Guam proceeds with this Action without  
6 it, GHURA be awarded an amount for bringing this Action of at least 15% but  
7 not more than 25% of the proceeds of the action or settlement of the claims  
8 under the False Claims Act;
- 9
- 10 (h) That in the event the government of Guam does not proceed with this Action,  
11 GHURA be awarded an amount that the Court decides is reasonable for  
12 collecting the civil penalty and damages, which shall be not less than 25% nor  
13 more than 30% of the proceeds of the action or settlement of the claims under  
14 the False Claims Act;
- 15 (i) That GHURA be awarded prejudgment interest, costs and attorney's fees;
- 16 (j) That the Court order restitution of sums of money paid to Defendants;
- 17 (k) That GHURA be granted any and all preliminary and injunctive relief the  
18 Court deems appropriate;
- 19
- 20 (l) That GHURA be granted any and all other relief available under the False  
21 Claims Act that was not specifically referenced above;
- 22 (m) That GHURA be granted any and all other relief the Court deems  
23 appropriate.  
24

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VIII. Demand for jury trial

Pursuant to 7 GCA § 22104, GHURA hereby demands a trial by jury of six (6).

Respectfully submitted this 22 day of January, 2021.

By: \_\_\_\_\_

Joseph B. McDonald, Esq.  
McDonald Law Office LLC  
Attorneys for Plaintiff Guam Housing  
and Urban Renewal Authority

**VERIFICATION**

I, Ray Sanchez Topasna, am the Executive Officer for the Plaintiff, Guam Housing Renewal Authority, in the above-captioned matter and I declare under penalty of perjury that the foregoing statements are true and correct and to the best of my knowledge, except as to those matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

Executed this 21 day of January, 2021.

  
\_\_\_\_\_  
RAY SANCHEZ TOPASNA