

1 SHAWN N. ANDERSON  
United States Attorney  
2 MIKEL W. SCHWAB  
JESSICA F. CRUZ  
3 Assistant U.S. Attorneys  
WILLIAM M. DOOLITTLE  
4 Special Assistant U.S. Attorney  
Sirena Plaza, Suite 500  
5 108 Hernan Cortez Avenue  
Hagåtña, Guam 96910  
6 PHONE: (671) 472-7332  
FAX: (671) 472-7215  
7 *Attorneys for the United States of America*

8 **IN THE UNITED STATES DISTRICT COURT**  
**FOR THE TERRITORY OF GUAM**

9 UNITED STATES OF AMERICA *ex rel.*  
10 RAY SANCHEZ TOPASNA,

11 Plaintiff,

12 vs.

13 MARK S. SMITH (in both his official and  
14 personal capacities),

15 Defendant.

CASE NO. 15-CV-00040

**UNITED STATES OF AMERICA'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF ITS  
MOTION FOR SUMMARY  
JUDGMENT**

**TABLE OF CONTENTS**

1

2 I. INTRODUCTION ..... 1

3

4 II. STATEMENT OF FACTS ..... 2

5

6 III. ARGUMENT AND AUTHORITY ..... 21

7     A. Legal Standards..... 21

8     B. Smith is Liable for all Forty-Nine Violations of the FCA. .... 23

9         *i. Covered Individual – Falsity and Knowledge* ..... 24

10         *ii. Undisclosed Direct and Indirect Interests – Falsity and Knowledge*..... 29

11         *iii. Presenting Claims and Causing Claims to be Presented* ..... 33

12         *iv. Claims Supported by False Record or Statements* ..... 33

13         *v. Conspiracies to Violate the FCA*..... 34

14     C. The Government is Entitled to Treble Damages and Civil Penalties under the FCA..... 35

15 IV. CONCLUSION..... 37

16

17

18

19

20

21

22

23

24

**TABLE OF AUTHORITIES**

**Cases**

*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986)..... 21

*Brinson v. Linda Rose Joint Venture*, 53 F.3d 1044 (9th Cir. 1995) ..... 21

*Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)..... 21, 24

*Dawson v. Pension Plan for the Office Emples. of the IBEW*,  
107 F. Supp. 3d 15 (D.D.C. 2015)..... 21

*Hendrix ex rel. United States v. J-M Mfg. Co., Inc.*, 76 F.4th 1164 (9th Cir. 2023) ..... 22, 37

*In re Varrasso*, 37 F.3d 760 (1st Cir. 1994) ..... 21

*Kousisis v. United States*, 145 S. Ct. 1382 (2025) ..... 2

*Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871 (1990) ..... 21

*Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)..... 21

*United States ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739 (2023)..... 23, 25

*United States v. Bruchhausen*, 977 F. 2d 464 (9th Cir. 1992)..... 2

*United States v. Mackby*, 339 F.3d 1013 (9th Cir. 2003)..... 22, 23, 37

*United States v. Diebold, Inc.*, 369 U.S. 654 (1962)..... 21

**Statutes**

12 U.S.C. § 5105..... 4

31 U.S.C. § 3729..... 22, 23, 34, 35

42 U.S.C. § 1437f..... 2

**Rules**

Fed. R. Civ. P. 56..... 21

**Regulations**

24 C.F.R. § 982.159..... 19

24 C.F.R. § 982.161 ..... 2, 19, 20, 23, 24, 32, 37

24 C.F.R. § 982.4..... 3

24 C.F.R. § 982.54..... 3, 4

1 24 C.F.R. Part 982..... 2  
2 28 C.F.R. § 85.3 ..... 35  
3 **Other Authorities**  
4 15A C.J.S. Conspiracy § 52 ..... 34

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1           **I.       INTRODUCTION**

2           HUD’s Housing Choice Voucher (HCV, informally known as Section 8) program has an  
3 immune system that protects it from abuse and corruption. Relevant here, a HCV landlord who  
4 receives federal housing assistance payments (HAP) from a public housing agency (PHA) may not  
5 also be a contractor or agent of the PHA who influences, or is in a position to influence, the PHA’s  
6 decisions with respect to the HCV program.

7           The claims at issue were for forty (40) HAP payments, which are funds of the United States  
8 Department of Housing and Urban Development (HUD) administered by the Guam Housing and  
9 Urban Renewal Authority (GHURA), and for seven (7) bills for legal fees Smith received as  
10 GHURA’s contracted legal counsel, which GHURA also paid with HUD funds. These claims were  
11 false and fraudulent because Smith’s role as legal counsel, by law and by contract, disqualified  
12 him from having any direct or indirect interest in HAP contracts or HAP payments, either directly  
13 as a landlord himself or, later, through his strawman, Glenn Wong. Smith twice conspired with  
14 Wong to conceal Smith’s conflict through deceptive property transfers.

15           The claims for HAP totaled \$378,873,<sup>1</sup> and the claims for legal fees totaled \$197,777—  
16 together that’s \$576,650. The False Claims Act (FCA) provides for treble damages, which is  
17 \$1,729,950. Due to, *inter alia*, the egregious nature of Smith’s fraudulent conduct, the United  
18 States seeks the maximum penalty amount for each of the 47 false and fraudulent claims and for  
19 each of the two conspiracy violations, for a total of 49 penalties of \$11,000—that’s \$539,000. In  
20 total, the United States respectfully asks the Court to enter judgment in its favor in the amount of  
21 \$2,268,950, with costs and pre- and post-judgment interest.

22  
23  
24 <sup>1</sup> The total in the government’s Complaint, \$379,849, was reduced by \$976 to remove four \$244 adjustments  
for rents that preceded the period of Smith’s conflict of interest. ECF No. 55 at ¶12; Concise Statement (referred  
hereinafter as “CS”) Ex. 1 at 1; CS Ex. 84 at 4.

1           **II.       STATEMENT OF FACTS<sup>2</sup>**

2           1. HUD, through the HCV program, provides PHAs with federal funds to make HAP  
3 payments on behalf of tenants to rent qualified privately-owned housing of their own selection.  
4 *See* 42 U.S.C. § 1437f, as implemented by 24 C.F.R. Part 982.

5           2. Under the terms of each HAP contract, the owner does not have a right to receive HAP  
6 payments “[u]nless the owner has complied with all provisions of the HAP contract[.]” *See e.g.*  
7 CS Ex. 2 at 6.

8           3. The HCV program prohibits conflicts of interest at 24 C.F.R. § 982.161 and Part B ¶13 of  
9 each HAP contract signed by a property owner. CS Ex. 2 at 8; *see generally* CS Exs. 3-20 (Part B  
10 ¶13 cite in each HAP contract); *see also* CS Ex. 21 at ¶8. Specifically, persons in certain roles at  
11 PHAs, including agents or contractors who formulate policy or influence decisions with respect to  
12 the HCV program (covered individuals) are prohibited from having any direct or indirect interest  
13 in HAP contracts or HAP payments while they are in those roles and for one year thereafter. 24  
14 C.F.R. § 982.161 (2011); CS Ex. 22 at 103 (both direct and indirect interests are prohibited).

15           4. If a person is a covered individual, they are not eligible to become a Section 8 landlord. CS  
16 Ex. 23 at 842. GHURA Section 8 staff were trained to stop all payments when a possible conflict  
17 of interest was discovered, and, if there was a conflict of interest, terminate the HAP contract. *Id.*  
18 at 844.

19  
20  
21  
22 <sup>2</sup> The facts herein parallel those in *United States v. Smith*, No. 17-CR-00020 (D. Guam). In that case, a jury  
23 convicted Smith of multiple counts of wire fraud, theft of government property, and money laundering. This  
24 Court then acquitted Smith based primarily on its interpretation of *United States v. Bruchhausen*, 977 F. 2d  
464 (9th Cir. 1992), which was recently abrogated in *Kousisis v. United States*, 145 S. Ct. 1382 (2025). The  
facts herein also parallel those in two consolidated administrative cases, *U.S. HUD v. Smith*, Nos. 17-JM-0135-  
PF-004, 18-JM-0208-PF-010 (U.S. Dep’t of HUD). HUD’s Office of Hearings and Appeals (OHA) granted  
summary judgment in the agency’s favor, which was affirmed by the Office of HUD’s Secretary. Smith seeks  
judicial review of that agency action in *Smith v. HUD*, No. 25-CV-00016 (D. Guam).

1 5. When GHURA officials or staff were determined to have a conflict of interest, they were  
2 not allowed to become HCV landlords, or, if they or a family member were already a landlord, the  
3 contracts were cancelled. *Id.*; CS Exs. 24 at 1, 4; 25 at 1118, 1152; 26 at 1194-95; 27 at 1693-94.

4 6. When determining whether a person is a covered individual, HUD considers not only  
5 whether the person *in fact* influenced program decisions, but primarily whether their role puts them  
6 *in a position* to influence program decisions. CS Ex. 28 at 584-85; 29 at 3096-98.

7 7. HUD does not consider an otherwise covered individual not to be covered if the person  
8 voluntarily adopts a “screen”—agreeing not to participate in Section 8 matters—because that  
9 would allow the individual to make their own decision about whether they have a conflict. CS Ex.  
10 29 at 3073-74. A covered individual who is not a landlord, or has sold units with Section 8 tenants,  
11 may nevertheless have prohibited indirect interests, if, for example, their brother is a HCV  
12 landlord, if their family member serves as a Power of Attorney (POA) for a HCV landlord, or if  
13 they own, have access to, garnish, or have a security interest in another landlord’s HAP payments.  
14 CS Exs. 28 at 584; 30 at 2027, 2064; 22 at 164-65.

15 8. The conflict-of-interest prohibition is important to HUD because it ensures program  
16 integrity and public confidence by guarding against the improper influence of those with inside  
17 information or access. CS Ex. 21 at ¶ 9, 13, 14; *see also* CS Ex. 22 at 97, 104 (conflict of interest  
18 prohibitions prevent perceptions of unfairness in program administration).

19 9. A PHA like GHURA must set local policies for administering the HCV program in a  
20 Section 8 Administrative Plan. CS Ex. 21 at ¶ 7; *see also* 24 C.F.R. § 982.4 (the Administrative  
21 Plan “describes PHA policies for administration of the HCV program”); 24 C.F.R. § 982.54  
22 (setting forth requirements for the content of the Administrative Plan). Those policies cover, for  
23 example, conflicts of interest, owner recruitment and retention, owner responsibilities, owner  
24 qualifications, breaches of HAP contracts, issuance of HCV vouchers to tenants, and property

1 inspections. CS Ex. 21 at ¶ 7; *see* 24 C.F.R. § 982.54. CS Ex. 31 at 3 (“GHURA’s administrative  
2 plan is applicable to the operation of the Housing Choice Voucher program”); *Id.* at 9 (“The  
3 purpose of the administrative plan is to establish policies for carrying out the programs in a manner  
4 consistent with HUD requirements and local goals and objectives contained in GHURA’s Agency  
5 Plan.”); *see also* CS Ex. 28 at 639; 32 at 5.

6 10. GHURA is a PHA whose responsibilities include administering the HCV program in  
7 compliance with all applicable rules and conditions imposed by HUD. 12 U.S.C. § 5105(a), (b)(3);  
8 *compare* CS Ex. 265 at ¶ 18 *with* CS Ex. 33 at ¶1. The HCV program is GHURA’s largest program  
9 by revenue and expenses and is entirely federally funded. CS Ex. 23 at 840; 34 at 2487; 35 at 1  
10 (“GHURA administered 2,515 vouchers for its Section 8 – Housing Choice Voucher Program and  
11 received \$35M [from HUD] to fund the monthly rental assistance paid to property owners on  
12 behalf of eligible participants.”); *see also* CS Exs. 36 at 2653; 28 at 610; 37; 38; 39 (showing HCV  
13 Program has been largest GHURA program for years).

14 11. From May 2000 until at least May 2002, Mark Smith served as principal legal counsel to  
15 GHURA. CS Exs. 40 at 2; 41 at 72. At that time, Mark Smith was not a Section 8 owner.

16 12. In 2003, GHURA’s subsequent legal counsel, David Lujan,<sup>3</sup> disclosed that he had an  
17 ownership interest in Section 8 rental units. *See* CS Ex. 42. Lujan and GHURA’s Board of  
18 Commissioners (BOC) determined this presented a conflict of interest. *Id.*; CS Ex. 43 at 10. Lujan  
19 asked HUD for a waiver and attempted to obviate the conflict by transferring his Section 8  
20 properties to his wife and to corporate entities she controlled, but HUD concluded Lujan  
21 nevertheless was a covered individual with an impermissible conflict. GHURA terminated Lujan’s  
22  
23

---

24 <sup>3</sup> Lujan’s partner, Anthony Perez, was primary counsel on GHURA matters. *See* CS Ex. 26 at  
1215; *see also* CS Ex. 44 at 3.

1 HAP contracts as directed by HUD. CS Exs. 44 at 2; 45; 46 at 2; 47; 48; 49; 50 at 3; 51 at 1; 52;  
2 30 at 2073.

3 13. In June 2004, Mark Smith became a Section 8 landlord. *See* CS Exs. 53 at 2; 41 at 134 (“At  
4 the time of my submission in response to the RFP [March 2011], I had been an owner under the  
5 HAP contracts for at least six years.”).

6 14. In March of 2011, GHURA issued a “Request for Proposal Legal Services” (RFP),  
7 soliciting proposals for legal services to replace Lujan’s firm.

8 15. On March 11, 2011, Mark Smith submitted an application, noting his prior experience as  
9 GHURA counsel and stating that he would work on “all matters involving GHURA” and would  
10 work “with each division manager.” CS Exs. 41 at 61-62, 69; 40 at 1. Mr. Smith noted in his  
11 application, “[f]urther adding to my experience and capabilities in serving as legal counsel for  
12 GHURA, I served as previous legal counsel for GHURA. ... Although the GHURA contract was  
13 awarded to my previous law firm ..., I was the principal attorney working on all GHURA matters.”  
14 CS Exs. 41 at 62; 40 at 1; 41 at 70. The HCV program is one of GHURA’s eight divisions. CS Ex.  
15 37.

16 16. As part of his application, Smith hand-delivered a letter to GHURA titled “Conflict of  
17 Interest,” in which he stated, “[p]ursuant to the requisites for the RFP, I hereby certify that there  
18 is no conflict of interest with regard to me providing legal services to GHURA.” CS Exs. 54-55;  
19 41 at 70, 128. Smith did not notify any of those who interviewed him that he was a Section 8  
20 landlord. CS Exs. 41; 27 at 1867-69, 1871 (“I don’t recall him making that disclosure.”); 36 at  
21 2657; 28 at 606, 625.

22 17. Smith personally signed multiple new or updated HAP contracts containing the conflict-  
23 of-interest prohibition between May 2010 and August 2011. CS Exs. 16 at 1; *id.* at 3 (August  
24 2010); 10 at 1 (October 2010); 15 at 3 (October 2010); 6 at 1 (January 2011); 8 at 3, 14 at 2

1 (February 2011); 16 at 13, 17 at 2 (March 2011); 4 at 1, 13 at 1 (April 2011); 9 at 1, 4 (May 2011);  
2 18 at 14 (August 2011). Smith's mother and Power of Attorney (POA), Rosita Owen, executed  
3 HAP contracts on Smith's behalf in October 2010 and August 2011 and specifically initialed the  
4 conflict-of-interest prohibition. *See* CS Exs. 12 at 7; 2 at 8.

5 18. On March 11, 2011, Smith signed an Attorney-Client Fee Agreement ("Legal Services  
6 Contract") with GHURA. CS Exs. 57; 58; 28 at 617. The Legal Services Contract prescribed the  
7 duties Smith would perform for GHURA, which included acting as counsel; preparing opinions,  
8 resolutions, and reports; undertaking legal research; advising the Board and the Executive Director  
9 on all legal matters; representing GHURA in litigation; reviewing and preparing contracts, leases,  
10 bid invitations and other documents; providing legal assistance and advice during negotiations  
11 with tenants and contractors; and attending all Board meetings. CS Exs. 57 at 1-2; 59 at 1.

12 19. On March 14, 2011, Smith personally executed a HAP contract and initialed each page of  
13 the agreement, including the specific page of Part B containing the conflict-of-interest prohibition  
14 in ¶13. *See* CS Ex. 17 at 6.

15 20. On April 28, 2011, GHURA's BOC approved Smith as GHURA counsel. CS Ex. 60 at 3,  
16 4; *see also* CS Exs. 61-62. GHURA understood that Smith's legal work would include providing  
17 legal advice regarding the Section 8 program. CS Ex. 28 at 617. GHURA's BOC relied on Smith's  
18 legal advice, which could influence the BOC's decisions. CS Ex. 36 at 2660. GHURA's BOC  
19 Chairman would not have contracted with a legal counsel if their opinions could not have  
20 influenced his decisions. *Id.*

21 21. As GHURA's legal counsel, Smith, among other things, provided legal opinions to  
22 GHURA's BOC and executive management, reviewed and analyzed GHURA's Section 8  
23 Administrative Plan, and drafted and signed a memorandum dated August 23, 2011, addressed to  
24 GHURA's Deputy Director regarding potential consequences to GHURA for any failures to

1 comply with HUD regulations, including Section 8 requirements, and billed GHURA for work  
2 regarding the Section 8 program. CS Ex. 36 at 2659; CS Ex. 63 (billing records for October 2011);  
3 CS Exs. 64; 28 at 639; 27 at 1876-77; 65; 30 at 2081; 64 at 1.

4 22. On January 31, 2012, GHURA's BOC Chairman asked Smith to review GHURA's  
5 conflict-of-interest disclosure form, which was used by GHURA to disclose all conflicts of  
6 interest, including those relevant to the HCV program. CS Exs. 66 at 5; 67 (legal counsel to review  
7 local/federal laws and suggest how to incorporate the necessary language in the current disclosure  
8 form); 28 at 642 (use of the conflict of interest form for participants in the Section 8 program); 68;  
9 66 at 5; 28 at 642; 69 (BOC Minutes) (noting that the Chairman "instructed Legal Counsel to  
10 review the form and make recommendations on the revisions to include clarifications on  
11 disclosures"); 70 ("Chairman Sablan stated that the Board requested for Legal Counsel to review  
12 all local/federal laws and provide all indications on how to incorporate the necessary language in  
13 the current disclosure forms that we are all required to sign and submit."). GHURA's BOC  
14 Chairman considered this a request for legal advice that could relate to the Section 8 program. CS  
15 Ex. 36 at 2688, 2699.

16 23. At a BOC meeting on February 21, 2012, Smith discussed his proposed changes noting  
17 that the disclosure language was broad enough to cover both direct and indirect interests and that  
18 step- and half-sibling relationships would be covered. *See* CS Exs. 67 (direct and indirect  
19 interests); 36 at 2694, 2697-98 (step siblings); 71; 72 at 32; 67 at 3; 70 at 3. The Board then  
20 approved the new conflict of interest disclosure form, as revised by Smith. CS Ex. 70 at 4.

21 24. During 2012 and 2013, Mark Smith billed GHURA for 39.5 hours of legal services  
22 involving research and analysis of conflicts of interest, including work related to GHURA's  
23 handling of Smith's own conflict issues. CS Ex. 73 (billing records for 2012 and 2013); 64.

1 25. On July 14, 2011, GHURA's procurement manager saw Smith in the hallway at GHURA  
2 attending a HAP contract signing and recognized him as GHURA's new legal counsel. CS Exs.  
3 23 at 845; 26 at 1161.

4 26. The procurement manager directly reported Smith's landlord status to GHURA executive  
5 management, who reviewed Smith's legal counsel file and found the March 2011 "no conflict"  
6 letter and noted Smith's file did not contain a disclosure that he was a Section 8 landlord. CS Ex.  
7 34 at 2489.

8 27. The same day, GHURA's Section 8 Administrator sent an email to management titled  
9 "Conflict of Interest" stating, "Mark Smith is a landlord under the Section 8 program, which is a  
10 direct conflict of interest. Mr. Smith must disclose his interest. Please be advise[d] that we would  
11 have to terminate any existing contracts with Mr. Smith unless his participation is approved by  
12 HUD." *Id.*; CS Ex. 74; 75; 41 at 177-178.

13 28. The Executive Director then instructed his staff to forward the email to Smith. The  
14 Executive Director also talked to Smith about the conflict and told him to review HUD's actions  
15 regarding David Lujan's request for a conflict waiver. CS Ex. 28 at 630-31 ("[w]e had repeatedly  
16 told [Smith] about [Lujan's conflict of interest.]").

17 29. In a separate proceeding, Smith submitted an affidavit to HUD stating, "Mr. Camacho [the  
18 Executive Director] advised me that I must seek a waiver of the potential conflict, unless I  
19 determine to transfer ownership interests in the rental properties." CS Exs. 41 at 135; 76. Smith  
20 further stated, "I informed [the Executive Director] that I determined to transfer my ownership  
21 interests in the properties...." CS Ex. 41 at 135; *see also* CS Ex. 28 at 635 (Smith told the Executive  
22 Director "he was going to relinquish ownership" of the assisted properties).

23 30. And yet, Smith had not resolved the conflict of interest as of August 2, 2011, when  
24 GHURA staff noted Smith was scheduled to sign a new HAP contract. CS Ex. 77. GHURA staff

1 asked management if they should cancel the contract signing and serve contract cancellation  
2 notices to Smith's existing tenants. CS Ex. 77. Based on Smith's representation that he was  
3 "working on" resolving the conflict, management approved the contract signing. CS Exs. 77-78;  
4 28 at 635. GHURA's BOC Chairman had a "basis of trust in [Smith's] opinion and his advice"  
5 because Smith was a "licensed attorney, operating under certain ethical standards and [acting as  
6 GHURA's] legal counsel" such that he trusted Smith would "take care of" the conflict identified  
7 by Section 8 staff. CS Ex. 36 at 2680.

8 31. Smith still had not resolved the conflict of interest as of September 9, 2011, when GHURA  
9 staff noted Smith was scheduled to sign yet another HAP contract and alerted management. CS  
10 Ex. 79.

11 32. Between April 2011 and June 2012, Smith received HAP payments as an owner of thirteen  
12 (13) units in four different properties, known informally as the Smith Apartments, Marigold,  
13 Kayen Pution, and the Sunrise D Condo. CS Exs. 80-81; 2-20 (HAP Contracts).

14 33. Each HAP contract included a prohibition on conflicts of interest. Specifically, "the owner  
15 certifies and is responsible for assuring that no person or entity has or will have a prohibited  
16 interest" and agrees to "promptly and fully disclose [any] such interest to the PHA and HUD." CS  
17 Exs. 80; 82 at ¶ 7; 21 at ¶ 8; *see generally* 2-20 (HAP Contracts).

18 34. Between April 2011 and June 2012, Mark Smith received into his personal bank account  
19 fourteen (14) HAP payments from GHURA totaling \$98,239. CS Exs. 1; 83-84. Smith did not  
20 report his conflict of interest to HUD. *See supra* at ¶¶ 16, 26. A PHA like GHURA may submit a  
21 written request asking HUD to waive a conflict of interest for good cause, primarily the impact  
22 cancelling the contract during the academic year would have on school-aged children in the tenant  
23 family. Neither Smith nor GHURA requested a waiver for Smith at that time, and no such waiver  
24 was granted. CS Exs. 21 at ¶¶ 9-12, 15.

1 35. In November 2011, Smith transferred titular ownership of his Section 8 rental properties  
2 to Glenn D. Wong via quitclaim deed. CS Ex. 86 at 1 (summary chart referencing property transfer  
3 document exhibits). Smith and Wong executed other property transfer agreements, including a  
4 purchase agreement, promissory note, and mortgage, which gave Smith a security interest<sup>4</sup> in the  
5 properties. Smith and Wong recorded only the quitclaim deed and submitted only that document  
6 to GHURA. CS Exs. 87; 58; 88; 81.

7 36. Under the terms of the promissory note, Wong was obligated to pay Smith a \$10,000  
8 deposit and make \$10,000 monthly payments by check. CS Ex. 89. Wong was a flight attendant  
9 and had no source of income, other than the HAP and tenant rent from the rental properties  
10 themselves, with which he could attempt to make the required payments. As security or collateral,  
11 Wong executed a “reverse” quitclaim deed that transferred Wong’s interests in the rental properties  
12 back to Smith. CS Exs. 90 at 3; 26 at 1361-62.

13 37. At the time Smith transferred properties to Wong, Smith characterized Wong as his  
14 business partner when communicating with GHURA. *See* CS Ex. 36 at 2699. In contrast, Smith  
15 described Wong as his “half-brother” to the person who prepared some of Smith’s tax returns. CS  
16 Ex. 91 at 2110, 2141. Section 8 staff later came to understand that Wong was the informally  
17 adopted child of Rosita Owen, Smith’s own mother. CS Ex. 30 at 1996-97. Although there is no  
18 blood relationship, Wong considered Smith’s mother Rosita Owen to be “his mom also.” CS Exs.  
19 92;93; 27 at 1814 (“I guess she raised him.”). Wong designated Owen as his “Mother” on a  
20 Depositor Agreement he submitted to a bank in 1997. CS Ex. 94 at 2.

---

21  
22 <sup>4</sup> *See* CS Ex. 90 (purchase agreement); 95 (mortgage); 89 (promissory note). Smith and Wong did not  
23 provide these other documents to GHURA or publicly record them at the time. *See* CS Ex. 87  
24 (submission of quitclaim deed alone); CS Ex. 26 at 1366 (Smith told her not to record the mortgage  
because it would cost a lot of money). Smith and Wong did not disclose the security interests Smith  
received under these additional agreements. *See* CS Ex. 81; 30 at 2069. None of the agreements  
authorized a subsequent adjustment to the purchase price. *See* CS Ex. 90.

1 38. On November 14, 2011, Wong executed a Special Power of Attorney giving Owen  
2 authority to operate and manage the rental properties on Wong's behalf, as she had for Smith. CS  
3 Exs. 2-20; 97. Owen signed multiple HAP contract documents on Wong's behalf. *See* CS Ex. 2 at  
4 14; 3 at 3; 6 at 14; 7 at 2; 9 at 14; 11 at 1; 13 at 13; 14 at 12; 15 at 14, 17; 20 at 2. GHURA's Section  
5 8 Administrator considered this arrangement to present a conflict of interest for Smith. CS Ex. 23  
6 at 871; 25 at 921-22. HUD generally considers this to be "the kind[] of relationship[] that could  
7 give rise to a conflict of interest." CS Ex. 98 at 2982.

8 39. Wong eventually executed amendments to the relevant HAP contracts to make himself the  
9 new landlord. *See generally* CS Ex. 2-20. Wong's physical address as a landlord in GHURA's  
10 system was the address for Smith's law office, and his email address in GHURA's system was the  
11 email address of Smith's legal secretary, who received landlord statements from GHURA for  
12 Wong. CS Ex. 99 at 14, 16.

13 40. On February 14, 2012, Smith's legal secretary sent GHURA direct deposit information for  
14 a First Hawaiian Bank (FHB) account (ending in -1317) that Wong wanted to use for HAP fund  
15 deposits. CS Exs. 96; 23 at 862. GHURA rejected that account after it obtained an account  
16 certification that revealed Smith was a joint account owner. CS Exs. 96; 25 at 1129 ("Attorney  
17 Smith shouldn't be on anything if he gave ownership to Glenn Wong."); *id.* at 921.

18 41. On March 8, 2012, Smith's legal secretary submitted a new FHB account (ending in -8369)  
19 for which Wong was the sole owner. CS Ex. 100. Shortly thereafter, on March 26, 2012, Wong  
20 executed a debit authorization on that account for Smith, which Smith used to withdraw HAP  
21 funds on multiple occasions. CS Exs. 101; 27 at 1816 (debit authorization gave Smith the "rights  
22 to withdraw on this specific account..."); 102 at 4; 103 at 7-8; 104. Wong did not revoke this debit  
23 authorization until April 13, 2013. CS Ex. 105. Neither Smith nor Wong disclosed the existence  
24 of this debit authorization to GHURA or HUD at any time. CS Ex. 30 at 2069.

1 42. On March 27, 2012, GHURA Section 8 staff noted Smith’s mother signed a HAP contract  
2 amendment as Wong’s POA. CS Ex. 106; 107; 72 at 37. Based on this POA relationship and the  
3 prior bank account issue, GHURA staff placed a hold on payments to Wong. *See* CS Exs. 96 at 1;  
4 106 at 1 (Payments on hold as of February 15, 2012, and April 2012 payment held). On March 28,  
5 2012, GHURA’s BOC Chairman emailed Smith about the staff’s concerns and referred Smith to  
6 the previous David Lujan conflict matter. CS Ex. 109 at 1. In response, Smith wrote, *inter alia*, “I  
7 do not own the units. I transferred them upon request . . . .” *Id.*

8 43. On April 12, 2012, Smith signed a copy of the GHURA conflict-of-interest form, stating  
9 that he had “no direct or indirect interest.” CS Ex. 110 at 3.

10 44. That same day, at a GHURA BOC meeting, Smith disclosed that he owned<sup>5</sup> “a few units  
11 that are being rented at GHURA” and had approximately 15 tenants. Smith argued he did not  
12 decide policy or make decisions with respect to his units and, accordingly, should not be  
13 considered to have a conflict. CS Ex. 111 at 1-2; 53 at 34; 112 at 14-17; 41 at 196; 104. He noted  
14 that he had other apartments, the Lauren Rose Apartments in the village of Agat, which he wanted  
15 to rent out to HCV tenants but did not want to have to “circumvent the whole ownership process  
16 or anything of that sort[,]” even though he said the restrictions were “easy to get around” and noted  
17 that if HUD “want[s] to be legal, we can be legal... .” CS Ex. 111 at 2, 8. In response, GHURA’s  
18 BOC Chairman pointed out that Smith, “do[es] provide legal advice on issues arising from...

---

19  
20 <sup>5</sup> Smith has contended that he used the past tense—“I owned a few units”—as opposed to the present  
21 tense—“I own a few units,” such that his statement cannot, he argues, be read as Smith saying he  
22 *presently* owns the properties previously transferred to Wong. There is no genuine issue of fact on  
23 this point. The audio recording of the meeting, meeting minutes, and transcript all use the present  
24 tense. CS Exs. 111; 112 at 14. Moreover, it is clear that this statement refers to the units transferred  
to Wong in 2011 because he notes there are fifteen (15) tenants in those units; later in the same  
meeting Smith discusses the Lauren Rose Apartments and notes there are eight (8) tenants there. CS  
Ex. 111 at 13. Fundamentally, any issue on the tense of that verb is not material as Smith did not  
accurately and fully disclose his ongoing interests in the properties transferred, or about to be  
transferred, to Wong.

1 Section 8” and encouraged Smith to “fall back on” Smith’s professional and legal ethical  
2 obligations. CS Ex. 111 at 7. GHURA’s BOC Vice Chairman directed Smith to review David  
3 Lujan’s conflict matter, noting HUD’s conclusion that Lujan had a conflict even though a local  
4 attorney had submitted a contrary legal opinion to the agency. CS Ex. 112 at 14.

5 45. At the same meeting, GHURA’s BOC Chairman noted Smith’s name had been on the joint  
6 account with Wong. CS Ex. 111 at 11. Smith responded, “[i]t’s changed... . It’s changed already[,]”  
7 but did not disclose that he had obtained a debit authorization on the new account that his legal  
8 secretary submitted in the place of the joint account. *Id.*

9 46. GHURA’s BOC Chairman directed Smith to prepare a letter to HUD describing his  
10 interests. CS Ex. 111 at 5-8. No one at GHURA told Smith he could not contact HUD directly or  
11 that he should not provide any information to HUD. CS Ex. 36 at 2796.

12 47. As of the April 30, 2012, BOC meeting, Smith had not yet prepared the letter, but promised  
13 to work with the Executive Director to do so. CS Exs. 113 at 12-13; 36 at 2745.

14 48. Smith had not prepared the letter or disclosed his interests as of May 3, 2012, when  
15 GHURA’s Executive Director issued an email, and then a separate memorandum, to Section 8  
16 staff, claiming the BOC’s “position” was that Smith was not a covered individual because he did  
17 not formulate policy or influence decisions.” CS Exs. 114; 115; 116 at 1. There is no record of  
18 any such conclusion in the BOC’s minutes or the recordings of its meetings. *See generally* CS Exs.  
19 68; 71; 111; 113; 179; 181; 183; 191. In fact, the BOC had not made any such decision and still  
20 expected to send HUD the letter Smith would prepare with the Executive Director. CS Ex. 36 at  
21 2748-50. The views expressed in the Executive Director’s email and memorandum had not been  
22 his position in 2011, and they echoed two positions Smith had proposed at the April 12, 2012,  
23 meeting of the BOC, when he argued that (1) legal counsel does not “formulate policy or influence  
24

1 decisions with respect to” Section 8 and that (2) Smith “will not handle legal opinions on matters  
2 that pertain to Section 8.” CS Exs. 30 at 1925; 115.

3 49. On May 24, 2012, GHURA’s Executive Director directed Section 8 staff to release all  
4 suspended payments “relative to our legal counsel” pending the issuance of a legal opinion from  
5 GHURA’s conflicts counsel on the issue. CS Exs. 108; 117.

6 50. In August 2012, Smith executed another quitclaim deed transferring his interests in a  
7 separate property, the Lauren Rose Apartments in the village of Agat, to Wong. CS Exs. 118; 119;  
8 *see also* 86 at 2.

9 51. Smith and Wong executed but did not record or provide to GHURA or HUD a purchase  
10 agreement, promissory note, and mortgage for this 2012 transaction. CS Ex. 120; 121; 122. Wong  
11 agreed to pay a \$10,000 deposit and, thereafter, to make \$10,000 monthly payments by check.  
12 Wong again provided a “reverse” quitclaim deed as collateral for Smith. *Id.* None of their  
13 agreements contemplated a subsequent adjustment to the purchase price. *Id.*

14 52. Smith told his legal secretary that the property needed to be transferred “because he was  
15 legal counsel for GHURA and there was a conflict.” CS Ex. 27 at 1726.

16 53. Smith and Wong leased units at this property to HCV tenants and received HAP payments  
17 for them. CS Exs. 124 at 3-5 (Arnott, Bermudes, Fejeran); 5.

18 54. Smith’s and Wong’s original 2011, 2012, and 2013 individual income tax returns did not  
19 reflect any rental income or sale of rental properties. CS Ex. 125; 126; 127; 128; 129; 130; 91 at  
20 2111-2118, 2106-2110, 2136, 2182-83 (“Q Looking at the original returns . . . could someone tell  
21 Mr. Smith had transferred rental properties to Mr. Wong? A No.”); 125 at Line 17 and at Schedule  
22 E Line 13.

23 55. In 2015, Smith hired Certified Public Accountant (CPA) Michael Tomita to assist Smith  
24 with a Department of Revenue and Taxation (DRT) audit for tax years 2008-2013. CS Ex. 242 at

1 70, 161; 91 at 2186-88; 132 at 1453 (Smith engaged Tomita due to a “situation” with OTR); *see*  
2 *generally* CS Exs. 125-127 and 227-243 (Tomita Files and Working Papers); 128-130, 133, 137,  
3 153, 211-226 (Tax records for Smith and Wong). As part of that work, Tomita prepared amended  
4 tax returns for Smith to account for rental property information. CS Exs. 227-230.

5 56. Smith also asked CPA Patrick Heinz to help amend Wong’s 2011-13 tax returns, which he  
6 did. CS Exs. 221-223; 91 at 2120, 2123-27. Heinz primarily communicated with Smith, not Wong,  
7 about the amendments to Wong’s tax returns. CS Ex. 91 at 2120 (“I believe all the rental property  
8 information came from Mr. Smith.”). Heinz also prepared Wong’s original 2014 tax return, which  
9 reflected some, but not all of Wong’s rental property activity. CS Ex. 219; *see also* 150; 245; 246.

10 57. In 2015, Smith and Wong retroactively changed the purchase price and terms of the  
11 property transactions. CS Exs. 90; 134; 135; 136; 131 at 114, 115; 26 at 1360-61, 1377; 91 at 2124-  
12 26, 2130; 241 at 31. Tomita assisted with this task, which included creating retroactive schedules  
13 of payments Wong made to Smith, at least some of which had been created after-the-fact and  
14 backdated by Smith’s legal secretary. CS Exs. 239 at 1; 91 at 2254; 132 at 1423. Even assuming  
15 the payment documentation is accurate, it shows that Wong did not make required deposit  
16 payments or full monthly payments. CS Exs. 241 at 1 (payments for 2012 transfers); 239 at 40  
17 (payments for 2011 transfers); *id.* at 39 (payments for 2011 transfer); *id.* at 37. Although Smith  
18 and Wong’s agreements obligated Wong to make separate \$10,000 monthly payments for the 2011  
19 and 2012 transfers respectively, *i.e.*, \$20,000 total per month after the 2012 transfer, in the  
20 recalculation Tomita attributed portions of each of Wong’s payments to each transaction. CS Ex.  
21 91 at 2233; *compare* 239 at 39 *and* 239 at 40 *with* 241 at 1; 239 at 37, 45-47; 91 at 2220, 2255  
22 (asked if Wong was complying with the terms of the promissory note, “I don’t think he was, no.”);  
23 91 at 2258 (“No record of any deposit.”). Nevertheless, Smith did not exercise his rights in default.

1 58. Heinz and Tomita's work resulted in new promissory notes and mortgages for both the  
2 2011 and 2012 transactions. CS Ex. 239 at 17; 140 (replacing (CS Ex. 95); 141; 142; 239 at 1, 4,  
3 37, 38, 123; 143 at 7-8; 241 at 32; 144; 145.

4 59. Five and a half years later, Smith recorded the replacement mortgage for the 2012  
5 transaction on June 4, 2021, shortly after Wong passed away. CS Exs. 146 (recorded mortgage);  
6 147 (receipt for mortgage filing); 26 at 1395-96.

7 60. In 2014, when Smith needed funding for a separate development, Wong sold the Smith  
8 Apartments and paid the \$687,098.72 in sales proceeds to Smith. *See* CS Exs. 148; 149; 150 at 19;  
9 239 at 39 (entry dated October 22, 2014).

10 61. At roughly the same time and for the same purpose, Smith directed Wong to take out a  
11 mortgage<sup>6</sup> with the Bank of Guam for \$350,000 on three of the properties (Kayen Pution, Sunrise  
12 D Condo, and Marigold) and sent the mortgage proceeds to Smith. CS Exs. 151; 152; 92; 154; *see*  
13 CS Ex. 239 at 39 (\$337,428 of the mortgage proceeds with entry dated October 30, 2014); 143 at  
14 169 (mortgage).

15 62. Smith and his legal secretaries managed Wong's rental properties, but did not charge Wong  
16 for this work. CS Exs. 26 at 1305, 1353, 1356. Among other tasks, Smith's legal secretaries acted  
17 as Wong's POA, collected tenant payments, and even conducted a property inspection. CS Exs.  
18 139; 97; 26 at 1344, 1350-51; *id.* at 1306 (tenants paid their rent portion in cash or check at Smith's  
19 law office); 155 at 1-2 (Quintanilla receipts); 156 (Taliman receipts); 26 at 1311-15. Smith fired  
20 one of his secretaries for failing to follow through with one of Wong's tenants. CS Ex. 26 at 1323-  
21 25. Smith's secretaries did not observe Wong performing any tasks in relation to the rental  
22 properties and had only heard from Smith that Wong cleaned an A/C unit on one occasion and, on  
23

---

24 <sup>6</sup> In applying for this mortgage, Wong did not disclose his debt and obligations to Smith for the Lauren Rose Apartments. *See* CS Exs. 143 at 169; 121.

1 another, cut the grass. CS Ex. 26 at 1307, 1354, 1355. Tenants did not interact with Wong as their  
2 landlord. CS Ex. 26 at 1282-83 (nothing “about [her] payment or property management  
3 relationship changed after” Wong became the titular owner).; 132 at 1491-92, 1494, 1498-1500,  
4 1544-46 (started renting from Wong in June 2012, but had no interaction with Wong other than  
5 possibly seeing him with Smith at a hearing in eviction proceedings Smith filed against Cruz on  
6 behalf of Wong); 132 at 1517-18 (tenant who performed maintenance on Smith’s rental properties  
7 continued in his role after transfer to Wong, saw Wong’s name on some paperwork, but Smith told  
8 him Smith was still the owner; “[f]rom my understanding, there’s no Glenn Wong.”). Smith even  
9 complained that a tenant, in her use of utilities, was “taking advantage of *me!*,” not of Wong. CS  
10 Ex. 157 at 1 (emphasis added).

11 63. The purchase agreements provided that all utility accounts would be transferred from Smith  
12 to Wong within one year of the purchase dates, but none were. CS Ex. 90 at 5; 120.

13 64. During the entire period of Smith’s conflict of interest, only two (2) of the power and water  
14 accounts of the seventeen units for which there are records were transferred into Wong’s name—  
15 one unit only for a matter of weeks—but all payments were made either with a credit card  
16 attributed to Mark Smith or, less frequently, with a credit card of unknown ownership. No  
17 payments were attributed to Glenn Wong. CS Exs. 158; 159; 160 (summary chart); 161 at 88; 162;  
18 163; 164 (summary chart).

19 65. Between March of 2012 and May of 2014, GHURA deposited a total of \$281,184 in  
20 twenty-six (26) HAP payments to Wong’s FHB account ending in -8369 (Wong FHB-8369  
21 Account). All of those funds ultimately were paid to Smith or paid to other accounts on his behalf  
22 or for his benefit. CS Exs. 165; 99; 124; 166; 167; 168 (summary chart with reference to specific  
23 bank records); *see generally* 169 (banking records for prior joint account); 101-103; 105; 170; 250  
24 (banking records for Wong FHB Account); 171; 248-256; 172 (banking records for other accounts

1 referenced in GE191); *see also* CS Exs. 102 at 27, 31 (cash withdrawn from Wong FHB-8369  
2 Account for \$6,000 and \$9,500); 27 at 1745-46 (\$6,000 and \$9,500 cash given to Smith per  
3 Wong's instructions).

4 66. On September 9, 2012, HUD learned that GHURA's legal counsel, *i.e.*, Smith, might have  
5 a conflict of interest. CS Ex. 173. On September 20, 2012, HUD reminded GHURA that "if there  
6 is a conflict of interest, it must stop immediately" and demanded an accounting of relevant HAP  
7 contracts and payments. CS Exs. 174; 175; 176; 72 (GHURA response, dated October 3, 2012).  
8 GHURA suspended payments to Wong that same day. CS Exs. 177; 72 at 42.

9 67. GHURA's executive management notified the BOC of HUD's investigation at a meeting  
10 on September 27, 2012, and pointed out that, despite multiple follow-ups, Smith had never  
11 prepared the letter describing his interests in the rental properties transferred to Wong that the BOC  
12 Chairman had directed Smith to prepare in April 2012. CS Ex. 178 at 14-16; 179; 36 at 2519 ("we  
13 felt that there was a delay in producing this form."); 179 at 2 (M. Taitano to D. Sablan, "back in  
14 April when the board met . . . you had instructed your legal counsel" to prepare the letter, but  
15 "[y]our legal counsel failed you in that sense, then."); 36 at 2574 (Testimony of M. Taitano); *see*  
16 180 (email discussing when Smith disclosed information regarding his conflict, no reference to  
17 letter).

18 68. At the October 25, 2012, meeting of GHURA's BOC, when discussing HUD's  
19 investigation, Smith stated he has no conflict and does not "own any property," but did not disclose  
20 his relationship with Wong or his on-going interests in the rental properties and HAP payments.  
21 CS Exs. 181; 182 at 9-13.

22 69. In November 2012, Smith opined to GHURA's BOC about how to "frame" his conflict of  
23 interest with HUD. Smith also sent GHURA a legal opinion from another attorney regarding  
24

1 conflicts of interest; the attorney told GHURA's management he would "confirm with Mark  
2 [Smith] my recommendations on how to proceed." CS Exs. 183 at 21-23; 184; 185; 186.

3 70. On December 10, 2012, despite the concerns of GHURA's Section 8 staff and HUD's  
4 Honolulu Field Office, before GHURA had submitted any waiver request to HUD regarding  
5 Smith, and despite HUD's unrescinded prior direction to withhold payments, GHURA's Executive  
6 Director told staff to release payments to Wong while the anticipated waiver request was pending.  
7 CS Exs. 187; 188; 189 at 7; 185; 190; 191.

8 71. On December 28, 2012, HUD's Honolulu Field Office relayed the concerns of HUD's  
9 Regional Administrator that Wong's "contracts continue to receive money without this matter  
10 coming to a head." CS Ex. 186.

11 72. Like all PHAs, GHURA is required to engage and pay an independent public accountant  
12 to conduct annual audits in accordance with HUD requirements. 24 C.F.R. § 982.159. GHURA's  
13 auditor for the Fiscal Year ending September 30, 2012, reviewed Smith's conflict of interest and  
14 concluded that GHURA did not comply with § 982.161 or Part B ¶ 13 of the HAP contracts. CS  
15 Exs. 53 at 4, 34 et seq.; *see also* 192; 193; 194; 132 at 1645.

16 73. After HUD followed up, GHURA asked for a waiver request to be submitted no later than  
17 December 31, 2012, but Smith never did. CS Ex. 186.

18 74. On April 23, 2013, GHURA submitted a waiver request *for Smith* to HUD, dated April 15,  
19 2013, with a legal opinion from GHURA counsel Anthony Perez that Smith was not a covered  
20 individual. CS Ex. 195; 110; 44; 196; 202; 138; 131. HUD's Honolulu Field Office forwarded the  
21 waiver request to HUD headquarters, recommending that the request be denied because "[n]either  
22 [Mr. Perez] nor Mr. Smith has provided satisfactory evidence that the conflict of interest has been  
23 resolved . . . ." CS Ex. 197 at 1. The Field Office concluded Smith was a covered individual  
24 because "he is a subcontractor under a legal services contract with GHURA [and] is involved in

1 providing legal counsel and interpretation and advice to GHURA regarding program regulations,  
2 rules, processes, and policy.” CS Ex. 197 at 4. The Field Office noted Wong’s use of Smith’s  
3 mother as POA and Smith’s “access to Wong’s bank account where Section 8 monies are  
4 deposited.” *Id.*

5 75. In late May 2013, an advisor to Guam’s Governor met with Smith and GHURA’s Chairman  
6 to address Smith’s conflict of interest; Smith agreed to let the Chairman look at the property  
7 transfer documents in Smith’s office. CS Ex. 98 at 2806, 2808.

8 76. Smith resigned as legal counsel within twenty-four (24) hours of the Chairman’s review of  
9 those documents. GHURA’s BOC accepted Smith’s resignation on May 21, 2013. CS Ex. 98 at  
10 2813, 2816-17; 198; 199 at 3.

11 77. During Smith’s tenure as GHURA’s legal counsel, he submitted seven (7) invoices for  
12 legal fees to GHURA, for a total of \$197,777. *See* CS Exs. 64 (redacted invoices); 200 at 3, 5  
13 (amount of attorney fees calculated by HUD’s Departmental Enforcement Center).

14 78. GHURA notified HUD of Smith’s resignation on May 22, 2013. HUD still wanted the  
15 waiver request because of the one-year “tail” in the conflict-of-interest provisions, and GHURA  
16 resubmitted the request in June 2013. CS Ex. 98 at 2978; 201; 202; 203.

17 79. HUD’s Departmental Enforcement Center (DEC) conducts compliance reviews of HUD  
18 program participants. At the request of HUD’s Honolulu Field Office, the DEC conducted a review  
19 of Smith’s conflict-of-interest case. The DEC recommended Smith’s debarment and concluded  
20 that Smith was a covered individual and that the payments Smith received violated § 982.161 and  
21 Part B ¶13 of the HAP contracts. CS Exs. 204; 205 at 3, 5; 200 at 3; 29 at 3070-71; *see* 206; 76.

22 80. On May 15, 2017, in the related criminal proceeding, Glenn Wong, via counsel,  
23 represented to the court that he owned the property involved in the 2012 transfer “free and clear,”  
24 but did not disclose the replacement mortgage executed in December 2015. CS Ex. 207 at 18.

1           **III.    ARGUMENT AND AUTHORITY**

2           **A. Legal Standards**

3           Under Fed. R. Civ. P. 56(a), a party may timely move for summary judgment on all or part  
4 of the claim. This Court “shall grant summary judgment if the movant shows that there is no  
5 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”  
6 *Id.* A fact is material only if it is capable of affecting the outcome of the case under governing law.  
7 *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). An issue is genuine only if the  
8 evidence is such that a reasonable fact finder could rule in favor of either party. *Id.* at 248. If “there  
9 can be but one reasonable conclusion as to the outcome[,]” summary judgment is appropriate.  
10 *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986); *see also In re Varrasso*, 37 F.3d 760, 764 (1st  
11 Cir. 1994) (summary judgment warranted if undisputed facts point unerringly to a single,  
12 inevitable conclusion).

13           Rule 56(c) requires parties to provide evidentiary support for facts asserted in support of  
14 or opposition to a motion for summary judgment. The Court views the record in a light most  
15 favorable to the opposing party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.  
16 574, 587-88 (1986); *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

17           However, the nonmoving party “must do more than simply show that there is some  
18 metaphysical doubt as to the material facts.” *Matsushita*, 475 U.S. at 586 (citations omitted). Such  
19 a party “may not rest upon the mere allegations or denials of [the party’s] pleadings, but ... must  
20 set forth specific facts showing that there is a genuine issue for trial.” *Brinson v. Linda Rose Joint*  
21 *Venture*, 53 F.3d 1044, 1049 (9th Cir. 1995). Nor may a party rely on conclusory affidavits. *See*  
22 *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888 (1990)). Avoiding summary judgment requires  
23 more than a “mere... scintilla of evidence... .” *Dawson v. Pension Plan for the Office Empl. of*  
24 *the IBEW*, 107 F. Supp. 3d 15, 18 (D.D.C. 2015) (quoting *Liberty Lobby*, 477 U.S. at 252).

1           The False Claims Act, codified at 31 U.S.C. §§ 3729 *et seq.*, provides the federal  
2 government with a civil remedy for false claims. The statute imposes civil liability on any person  
3 who “knowingly presents, or causes to be presented, a false or fraudulent claim for payment[.]”  
4 who “knowingly makes, uses, or causes to be made or used, a false record or statement material to  
5 a false or fraudulent claim,” or who conspires to do so. *See* § 3729(a)(1)(A)-(C). A “claim”  
6 includes “any request or demand, whether under a contract or otherwise, for money or property  
7 and whether or not the United States has title to the money or property that is... made to a  
8 contractor, grantee, or other recipient, if the money or property is to be spent or used on the  
9 Government’s behalf or to advance a Government program or interest, and if the United States  
10 Government” provides “any portion” of the money or will reimburse the recipient for any money  
11 or property requested or demanded. § 3729(b)(2). Each individual request for money—in this  
12 case, each monthly HAP payment<sup>7</sup> or invoice for attorney fees—constitutes a separate claim. *See*  
13 *United States v. Mackby*, 339 F.3d 1013, 1016-17 (9th Cir. 2003) (each of 8499 claims for  
14 Medicare reimbursement “constitute[d] violations of the FCA”).

15           A defendant is liable for false claims regardless of whether the claim is paid. 31 U.S.C.  
16 § 3801(b)(2). When a defendant lies “about a fact that would have prevented the government from  
17 paying for a product or service had it known the truth, the damages include the entire amount paid  
18 even if the defendant provided a valuable good or service,” especially when the United States was  
19 “legally barred from paying anything for [the] service.” *Hendrix ex rel. United States v. J-M Mfg.*

---

20  
21 <sup>7</sup> Although Smith and Wong’s aggregate monthly HAP payments reflected three hundred and twenty-  
22 five (325) separate amounts for individual tenants, the United States seeks the imposition of only one  
23 FCA penalty for each of the forty (40) aggregate HAP payments. *See Hendrix ex rel. United States*  
24 *v. J-M Mfg. Co., Inc.*, 76 F.4th 1164, 1172-73 (9th Cir. 2023) (“courts applying the federal [False  
Claims Act] have awarded penalties based on the number of contracts or invoices but not on each  
good.”). Because the tenants renewed their HAP contracts each year, the payments were made under  
a total of forty (40) individual contracts. As a result, whether the Court groups the three hundred and  
twenty-five (325) individual payments by contract or by aggregate HAP payments, the result is the  
same.

1 Co., Inc., 76 F.4th 1164, 1174-75 (9th Cir. 2023) (citing *United States v. Mackby*, 339 F.3d 1013,  
2 1017 (9th Cir. 2003)).

3 Under the FCA, a person acts “knowingly” with respect to information, when they (i) have  
4 “actual knowledge of the information,” (ii) act “in deliberate ignorance of the truth or falsity of  
5 the information, or (iii) act “in reckless disregard of the truth or falsity of the information.”  
6 § 3729(b)(1)(A). No proof of specific intent to defraud is required. § 3729(b)(1)(B). A person acts  
7 with “deliberate ignorance” when they are “aware of a substantial risk that their statements are  
8 false, but intentionally avoid taking steps to confirm the statement’s truth or falsity.” *United States*  
9 *ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739, 751 (2023) (citations omitted). The term “reckless  
10 disregard” similarly captures defendants who are “conscious of a substantial and unjustifiable risk  
11 that their claims are false but submit the claims anyway.” *Id.* (citations omitted).

12 **B. Smith is Liable for all Forty-Nine Violations of the FCA.**

13 Smith submitted or caused the submission of forty (40) false claims for HAP payments  
14 from April 2011 to May 2014. These claims were false because Smith was, as GHURA’s  
15 contracted legal counsel, prohibited from having direct or indirect interests in the HAP contracts  
16 on his rental properties, even after he transferred title of those properties to Wong. And yet, Smith  
17 obviously had direct interests in the HAP contracts and HAP payments when he was the titular  
18 owner and landlord, *i.e.*, the fourteen (14) claims listed in Statement of Fact 34, *supra*. After the  
19 property transfers, Smith had both direct and indirect interests in the HAP contracts and HAP  
20 payments that made the twenty-six (26) payments to Wong false, *i.e.*, the claims listed in Statement  
21 of Fact 65, *supra*. The combination of Smith’s role and interests violated the conflict-of-interest  
22 prohibition of the HAP contracts and the HCV regulation at 24 C.F.R. § 982.161. Compliance with  
23 those requirements was a mandatory provision of the HAP contracts; Smith’s failure to disclose  
24 his interests, as expressly required, made all the claims for HAP payments false.

1 Smith's seven (7) invoices for attorney fees as GHURA's legal counsel were also false  
2 claims. Due to Smith's interests in HAP contracts and payments, GHURA was prohibited by  
3 § 982.161 from entering into a legal counsel contract with Smith and, *a fortiori*, from making  
4 payments under such a contract.

5 Smith conspired with Wong to conceal Smith's improper interests and to violate the FCA  
6 twice, *i.e.*, in two deceptive property transfers the men effected in 2011 and 2012, respectively.

7 There is no genuine dispute of the material facts set forth above, and those facts lead to  
8 only "one reasonable conclusion," that Smith is liable for all forty-nine (49) violations of the FCA.  
9 *See Celotex Corp.*, 477 U.S. at 327.

10 ***i. Covered Individual – Falsity and Knowledge***

11 In light of the evidence, there is no genuine dispute that Smith was a "covered individual"  
12 and *knew* he was under the FCA. Smith was a contractor and agent that was in a position to  
13 influence, and in fact influenced, Section 8 program decisions at GHURA for purposes of  
14 § 982.161 and Part B, ¶13 of the HAP contracts. Smith was legal counsel to GHURA's Board, and  
15 the RFP and his legal service contract both clearly state he was to provide legal advice on *all* of  
16 GHURA's programs. Smith, having previously served as GHURA's counsel, knew that the  
17 Section 8 HCV program was one of those programs. On the evidence, he cannot dispute that he  
18 was in a position to influence Section 8 program decisions as legal counsel. That was clearly  
19 enough to qualify him as a "covered individual" under HUD's analysis of Smith's predecessor,  
20 David Lujan.

21 Smith has previously argued it was unclear to him, and could not have been clear to anyone,  
22 that HUD considered GHURA's legal counsel to be a "covered individual." This clearly erroneous,  
23 self-serving claim, even in an affidavit, does not create a genuine dispute of material fact.

24 Smith knew the scope of his work as legal counsel no later than March 11, 2011, when he

1 signed the legal services contract, and was aware of the terms of the conflict-of-interest provision  
2 in the agreements he signed prior to that date and, obviously, on the page he initialed in the HAP  
3 contract he signed three days later. At best, before any of the claims at issue in this case were  
4 submitted, Smith was aware that there was a “substantial” and “unjustifiable” risk that he was a  
5 “covered individual.” Smith did not ask GHURA or HUD, *or anyone else for that matter*, if he  
6 was a covered individual before submitting or causing the submission of claims for HAP payments  
7 or attorney fees.

8 Even if Smith was, as he has argued, unaware of any “formal guidance” from HUD making  
9 it clear that he was a “covered individual,” his ignorance could only be deliberate, and his disregard  
10 for the truth of the matter was inescapably reckless. At the very least, he intentionally avoided  
11 finding out whether they were false, acting with deliberate ignorance. *See SuperValu Inc.*, 598  
12 U.S. at 751. Smith needed only to read HUD’s letter rejecting the Rawlen Mantanona legal opinion  
13 about David Lujan that Smith has often relied on; he needed only to pick up the phone and call  
14 HUD’s Honolulu Field Office - he barely needed to lift a finger to know, actually and conclusively,  
15 that he was a covered individual, making his claims for HAP and attorney fees false. That’s  
16 enough to show there is no real dispute as to Smith’s status as a covered individual or as to his  
17 scienter under the FCA.

18 Moreover, Smith had *actual* knowledge of his covered status no later than July 14, 2011,  
19 when GHURA expressly told Smith that GHURA *and HUD* had concluded David Lujan was a  
20 covered individual. Smith was repeatedly referred to the Lujan matter by those at GHURA who  
21 remembered it, on no fewer than three separate occasions. Indeed, a review of GHURA’s and  
22 HUD’s actions regarding the Lujan matter would show Smith was more obviously a covered  
23 individual than Lujan. Lujan had merely been a partner at the firm that got the GHURA contract;  
24 the day-to-day legal work was done by Lujan’s partner, Anthony Perez. Smith, by contrast, was a

1 solo practitioner actively involved in GHURA work.

2 When there were questions at GHURA regarding the nature of the 2011 transfer to Wong  
3 and whether Smith still had a conflict of interest, Smith pushed his interpretation of what a  
4 “covered individual” would be on GHURA management, proving his influence over them.<sup>8</sup> And  
5 still, when Smith vocally argued his interpretation to the GHURA BOC on April 12, 2012, Vice-  
6 Chairman Ric Calvo repeatedly rejected Smith’s arguments, noting they contradicted HUD’s  
7 actions in the Lujan matter.

8 Thus, Smith either had *actual* knowledge of the falsity of the five (5) claims for HAP  
9 payments he submitted from April 2011 to July 2011, or, at least, acted with deliberate ignorance  
10 or reckless disregard for their falsity. Smith had actual knowledge of falsity before he submitted  
11 the nine (9) claims for HAP payments from August 2011 to June 2012, before he caused the  
12 submission of the twenty-six (26) claims for HAP payments to Wong, and before he submitted  
13 any of the seven (7) claims for attorney fees. Even if, as Smith argues, he believed the definition  
14 of “covered individual” could be read not to apply to him, or that HUD and GHURA were wrong  
15 to reject a “screen” approach in the Lujan matter, or that transferring title to Wong would “get  
16 around” Smith’s conflict of interest, Smith at least knew there was a “substantial and unjustifiable”  
17 risk that he was wrong. He still submitted the claims. His attempts to cloud the issue at GHURA,  
18 at HUD, and in these proceedings all rest on legal interpretations HUD had definitively rejected.

19 Smith has previously relied on a June 2013 email exchange between HUD counsel and  
20 officials regarding the later-supplemented April 2013 waiver request. *See* CS Exs. 208; 209. The  
21 authors of those emails were unaware of the scope of Smith’s role as counsel, unaware of the Lujan  
22 precedent, and obviously unaware of Smith’s undisclosed security and financial interests—they

23 \_\_\_\_\_  
24 <sup>8</sup> To understand Smith’s power at GHURA, simply contrast his experience with the fates of GHURA  
staff who were found to have conflicts of interest and the immediacy with which the corresponding  
HAP contracts were terminated.

1 considered only the interests of which GHURA was aware at the time, like Smith's mother serving  
2 as Wong's POA. The author of those emails, HUD program counsel, Attorney Hugh Lutz, when  
3 he had more information, concluded Smith plainly had a conflict of interest. In any event, the  
4 preliminary musings of HUD counsel and officials in 2013 is immaterial to Smith's knowledge  
5 that he was a covered individual. Smith, *knowing what he knew*, could not have been misled by  
6 those uninformed emails if he had seen them in real time; as it was, he did not receive any copies  
7 of those emails until *well after* he had submitted the last of the false claims at issue here. The June  
8 2013 emails, like the other legal opinions on which Smith has relied,<sup>9</sup> not only fail to establish a  
9 disputed material fact, they prove Smith has mischaracterized HUD's interpretation. CS Ex. 210  
10 (Lutz); 26 at 1236 (Perez); 44 at 4 (Mantanona 2004).

11 Smith cannot argue he was not in a position to influence HCV Program decisions, so he  
12 has to change the subject. He has repeatedly argued that he did not *in fact* influence any HCV  
13 decisions by GHURA. Under the clear precedent of HUD's decision in the Lujan matter, those  
14 arguments are irrelevant and immaterial, and Smith had reason to know that before any of the  
15 claims in this case were submitted. Still, a review of Smith's various interpretative arguments  
16 makes their immateriality plain.

17 Some of Smith's arguments suggest he thinks a legal counsel hired to offer legal advice on  
18 matters *including* the HCV program, but who does not *happen to* work on Section 8 matters during  
19 a particular time period, cannot be a "covered individual" for that time period. Testimony of HUD  
20 officials, cited above, explained why that interpretation is neither plausible nor workable; the  
21 individual could decide whether to be a covered individual on a daily or hourly basis.

---

22  
23 <sup>9</sup> Smith has relied on attorney opinions by Rawlen Mantanona in 2004 and 2012, Anthony Perez in  
24 2013, Cynthia Ecube in 2014, and Hugh Lutz in 2013. Those opinions were either retracted by the  
attorney when they learned more detail about Smith's situation (Lutz, Perez) were expressly rejected  
by HUD, addressed only local law (Mantanona 2004, Ecube), or never went to HUD because the  
conflicted attorney resigned (Mantanona 2012).

1 But ultimately, there is no real dispute of material fact as to whether Smith worked on HCV  
2 matters while at GHURA; he did. Among other things, Smith obviously influenced GHURA’s  
3 handling of his and other conflicts of interest by making legal arguments in emails and at BOC  
4 meetings. Smith also prepared at least one legal memorandum to GHURA’s Deputy Director  
5 providing legal advice regarding the Section 8 HCV Program and the consequences of not  
6 following its requirements.<sup>10</sup>

7 Lastly, Smith has acknowledged he reviewed GHURA’s Section 8 Administrative Plan in  
8 2011 and relevant legal authorities, but has argued most of the work was done by another law firm.  
9 There is no dispute that Smith, as legal counsel, worked on Section 8 matters. Smith had reason to  
10 know that was not *required* to meet HUD’s definition of “covered individual,” but even if he had  
11 adopted that position in good faith at the time, he knew his actual work nevertheless qualified him  
12 as a “covered individual.”

13 Smith cannot retreat to another definition of “covered individual,” under which an  
14 otherwise covered individual who worked on HCV Program matters would be exempted if the  
15 PHA did not actually *follow their advice*. Smith can offer no legal authority that might have  
16 supported an attorney’s good faith belief in that position. Again, Smith knew or had reason to  
17 know that was not HUD’s interpretation; at best, he acted with deliberate ignorance or reckless  
18 disregard. There is no dispute that GHURA took Smith’s advice on Section 8 matters when it, *inter*  
19 *alia*, accepted his edits and comments on the conflict-of-interest disclosure form in early 2012 and  
20 when it haltingly followed his bad legal advice about the nature of Section 8 conflicts—advice that  
21 consistently promoted Smith’s undisclosed financial interests—for which GHURA received an

---

22  
23 <sup>10</sup> Smith has previously pointed to an email from GHURA counsel Cynthia Ecube stating that  
24 GHURA could not find any Section 8 legal memoranda drafted by Smith. Fortunately, document  
productions related to the criminal case against Smith revealed the memo referenced here. Thus, there  
is no dispute of fact, *i.e.*, the Court can fully credit a representation that GHURA did not find this  
memo during its earlier searches. The memo, and Smith’s signature thereon, speak for themselves.

1 audit finding and condemnation from the DEC.

2 In sum, the undisputed evidence shows Smith had actual knowledge that he was a “covered  
3 individual” or, at least acted with reckless disregard or deliberate ignorance, which is sufficient for  
4 FCA liability.

5 ***ii. Undisclosed Direct and Indirect Interests – Falsity and Knowledge***

6 The undisputed evidence shows Smith knew, when he became GHURA counsel in 2011,  
7 that direct and indirect interests in HAP contracts and payments posed impermissible and illegal  
8 conflicts of interest. He had already served as GHURA counsel and signed multiple HAP contracts.  
9 His mother and POA specifically initialed the conflict-of-interest prohibition in two HAP  
10 contracts, roughly five months before and after, respectively, Smith became GHURA counsel.  
11 Smith himself initialed the terms of the HAP contract, including specifically initialing the page  
12 with the conflict-of-interest prohibition, only *three days* after executing the contract to become  
13 GHURA counsel in March 2011. *See* Statement of Fact 19.

14 Moreover, Smith does not, and could not, dispute that, as a landlord participating in the  
15 HCV program, *he had* direct interests in his HAP contracts and HAP payments and knew he had  
16 those interests. Accordingly, there is no real dispute of material fact that Smith’s claims for HAP  
17 paid directly to him and for attorney fees were false and knowingly false.

18 As to the HAP payments Smith caused Wong to submit, there is no real dispute of material  
19 fact that Smith retained direct and indirect interests in the HAP contracts and HAP payments;  
20 despite the change in ownership, Smith’s interests were unaffected. Given Smith and Wong’s  
21 actions to prevent disclosure of the details of their relationship and transactions, the authenticity  
22 of some of the property transfer documents and later records—*e.g.*, default notice correspondence,  
23 backdated receipts, a backdated amended promissory note—were questioned during Smith’s  
24 criminal trial. However, one can accept, *arguendo* at summary judgment, all of those documents

1 and records at face value and nevertheless reach “only one reasonable conclusion,” that Smith had,  
2 and knew he had, direct and indirect interests in HAP contracts and HAP funds for the entire time  
3 period of the claims at issue here.

4 Under the terms of the purchase agreements, mortgages, and promissory notes Smith and  
5 Wong executed in 2011 and 2012, Wong was obligated to pay Smith thousands of dollars each  
6 month. As shown by the default notice and ensuing correspondence between Smith and Wong,  
7 dated in 2013, the two understood Wong would be making whatever payments he made using the  
8 rental income from the properties, which Smith knew overwhelmingly comprised HAP funds.  
9 Those documents gave Smith a security interest in the rental properties and an obvious financial  
10 interest in the HAP contracts and HAP payments. Smith had authority to access Wong’s HAP  
11 funds directly *via* debit authorization and used that authority to direct those funds to himself or his  
12 accounts. There is no dispute that 100% of the HAP funds paid to Wong ultimately went to Smith  
13 or to payments made on Smith’s accounts.

14 Smith did not disclose his security and on-going financial interests to GHURA or HUD.  
15 Smith only showed GHURA the quitclaim deeds showing that he was no longer the titular owner,  
16 but he did not disclose the other documents creating his financial and security interests. He showed  
17 those documents only to GHURA’s BOC Chairman briefly when directed to do so by the  
18 Governor’s office in May 2013, and even then, he persuaded the Chairman his arrangement with  
19 Wong was an arms-length transaction, which was obviously false. Smith nevertheless resigned  
20 within twenty-four hours.

21 Smith’s failure to disclose all of his direct and indirect interests cannot be blamed on a lack  
22 of opportunity. Smith repeatedly told GHURA that he was no longer the owner of the property and  
23 that he had sold the property, in emails and at GHURA BOC meetings. He had every chance to  
24 tell the rest of the story; he was even directed by GHURA’s BOC Chairman to do so in writing,

1 but he never did.

2 Smith and Wong only disclosed details of their arrangement *after* Smith's conflict-of-  
3 interest period ended in May 2014 and, even then, only as necessary to further Smith's financial  
4 interests. Wong noted his outstanding debt to Smith for the 2011 transaction when applying for  
5 the supplemental Bank of Guam mortgage in October 2014, but did not disclose, *on the same form*,  
6 his outstanding debt for the 2012 transaction. Wong's titular ownership of the Smith Apartments  
7 was revealed when Smith arranged for the sale of that property in 2014, but nothing more. Neither  
8 Smith nor Wong reported any of the relevant financial information related to their arrangement on  
9 their tax returns until pending audits by the Guam Department of Revenue and Taxation forced  
10 Smith to amend the previously filed returns. Wong did not disclose that Smith had a mortgage on  
11 the property for the 2012 transaction when using that property as collateral in the criminal  
12 proceeding to secure the release of his passport; his attorney represented to the court that Wong  
13 owned the property free and clear. Tellingly, Smith and Wong executed a Second Mortgage for  
14 the 2012 transaction, but Smith did not record it publicly until Wong had passed away and Smith  
15 had no other choice if he wanted to reclaim the property from Wong's estate.

16 Moreover, there is no real dispute that Smith's failure to disclose the debit authorization he  
17 obtained on the Wong FHB Account was knowing, intentional, and fraudulent. GHURA officials  
18 had told Smith *only weeks before* that he could not jointly own the account in which Wong's HAP  
19 payments would be deposited. Smith's secretary submitted a different account that showed only  
20 Wong as the owner, but Smith's debit authorization gave him *the same access* to the HAP funds  
21 that a joint account would have provided. And he never disclosed the existence of the debit  
22 authorization to GHURA, HUD, or anyone else.

23 Other undisputed facts show that Smith effectively maintained the same relationship with  
24 the properties and the HAP funds as he had prior to the transfers. As noted in the undisputed facts

1 above, Wong sold and mortgaged those properties at Smith’s direction; Smith orchestrated a  
2 renegotiation of *the sales price* of the 2011 transaction on terms not provided in their original  
3 agreement *four years later*; Smith enforced none of the default provisions of their agreement,  
4 including especially those that would revert title to Smith, despite Wong’s persistent non-  
5 compliance with the terms of their agreements—*e.g.*, failure to pay either \$10,000 deposit and  
6 failure to make full and timely payments thereafter; Smith retained control of and made payments  
7 on the utility accounts well beyond the period contemplated in their agreements; Smith’s law office  
8 continued to manage the properties and receive payments from tenants just as before; and the  
9 tenants continued to interact with Smith as the effective owner.

10 Smith knew and had reason to know he was obligated to disclose these interests to GHURA  
11 and HUD under the HAP contracts and regulations. Smith had an obligation to make those  
12 disclosures under § 982.161(b) and, separately, under his professional obligations as GHURA’s  
13 counsel. His failure to do so made the HAP payments he caused Wong to submit false.

14 The applicable regulation made it illegal for Smith’s client GHURA to enter into “any  
15 contract or arrangement” with Smith. Accordingly, Smith’s undisclosed interests made not only  
16 his HAP contracts, but also his legal services contract with GHURA, illegal. Moreover, by failing  
17 to disclose his interests, Smith caused GHURA to unwittingly and illegally enter into an  
18 “arrangement” with him by contracting with Wong as a landlord when Wong ostensibly had  
19 contractual obligations requiring him to give Smith all HAP payments Wong received from  
20 Smith’s client GHURA. Thus, Wong’s HAP contracts were also illegal. And, *a fortiori*,  
21 payments made under these contracts were illegal. In the case of the HAP payments, this  
22 conclusion finds additional support in the text of the HAP contracts, under which an owner “does  
23 not have a right to receive [HAP] under the HAP contract... [u]nless the owner has complied with  
24 all provisions of the HAP contract,” HAP Contract, Part B, ¶7(b), which includes the provision

1 requiring the owner to “promptly and fully disclose [any] prohibited interest” to HUD and  
2 GHURA, *id.* at ¶13(e). In sum, the undisputed evidence shows Smith had, and knew he had, direct  
3 and indirect interests in HAP contracts and HAP payments, making the claims for HAP and  
4 attorney fees that he submitted or caused to be submitted, false.

5 ***iii. Presenting Claims and Causing Claims to be Presented***

6 There is no real dispute that Smith presented false claims, or caused false claims to be  
7 presented. As a landlord himself, Smith directly requested and received the fourteen (14) claims  
8 for HAP payments from April 2011 to June 2012. He also directly requested and received the  
9 seven (7) claims for attorney fees. After Smith transferred his rental properties to Wong, he caused  
10 Wong to present twenty-six (26) claims for HAP payments. To make even partial payment under  
11 the contracts, Wong gave Smith direct access to all HAP funds received, and all HAP funds were  
12 taken by Smith, given to Smith, or used to make payments on Smith’s accounts. Indeed, Smith’s  
13 legal secretaries, acting as Smith’s employees, managed the request, receipt, and related  
14 documentation and correspondence with GHURA for the HAP payments during the period that  
15 Wong was the titular owner. There is no real dispute that Smith either presented, or caused the  
16 presentation of all forty-seven (47) false claims at issue here.

17 ***iv. Claims Supported by False Record or Statements***

18 Smith supported all of the claims at issue in this case with the written statement submitted  
19 with his response to GHURA’s RFP in March 2011 that “I hereby certify that there is no conflict  
20 of interest with regard to me providing legal services to GHURA.” That written statement asserted  
21 a material fact—GHURA, by regulation and its own contracts with HUD, could not award Smith  
22 the legal counsel contract if it knew he had a conflict of interest. And Smith, who knew he was a  
23 covered individual—or, at the very least, was conscious of a “substantial and unjustifiable risk”  
24 that he was a covered individual—also knew his written statement was false, both before, and

1 obviously after, GHURA expressly told him he had a conflict of interest.

2 Smith also supported twenty-six (26) claims for HAP payments and three (3) claims for  
3 attorney fees with an additional certification to GHURA, signed on April 12, 2012, in which Smith  
4 certified he had no “direct or indirect interests” presenting a conflict of interest. Again, that  
5 statement asserted a material fact—GHURA was legally obligated not to permit a conflict of  
6 interest. But Smith knew what no one else at GHURA or HUD knew, that he had direct and indirect  
7 interests—a security interest, direct and indirect financial interests, and direct access—in Wong’s  
8 payments. Note that Smith obtained the obviously improper debit authorization just weeks before  
9 making that false certification, which itself came well before Smith caused Wong to present any  
10 of his twenty-six (26) false claims. Smith knew and had reason to know his April 12, 2012, written  
11 statement was false, fictitious, and fraudulent.

12 Accordingly, Smith is liable for all forty-seven (47) false claims in this case, under both 31  
13 U.S.C. § 3729(a)(1)(A) (false claims) and § 3729(a)(1)(B) (false record or statement material to  
14 false or fraudulent claims).

15 ***v. Conspiracies to Violate the FCA***

16 The elements of a civil FCA conspiracy claim are “(1) that the defendant knowingly  
17 conspires with one or more persons to get a claim paid, (2) that one or more of the conspirators  
18 perform any act to effect the objects of the conspiracy, and (3) that United States suffers damages  
19 as a result of the fraudulent claim.” 15A C.J.S. Conspiracy § 52 (citing cases).

20 Smith and Wong twice conspired to commit violations of § 3729(a)(1)(A)&(B). The  
21 undisputed evidence shows that the two men worked together to effect two property transfer  
22 schemes in 2011 and 2012. The terms of the agreements plainly preserve Smith’s improper  
23 interests in HAP contracts and HAP payments; indeed, that is the only plausible purpose of their  
24 arrangement. And neither man disclosed those improper interests to GHURA or HUD or anyone

1 else, even though both were required to do so. Each of these two property transfer schemes enabled  
2 Smith to continue drawing an improper double-dip of HUD funds in the form of HAP payments  
3 and legal fees. The undisputed evidence shows Smith and Wong conspired to get those false claims  
4 paid by setting up a classic strawman scheme. Both Smith and Wong performed acts to effect the  
5 objects of their conspiracy. Among other acts, both men signed the property transfer documents,  
6 both men helped set Wong up as the new landlord with GHURA, and both men filed tax returns  
7 that did not reveal the illicit arrangement. The United States suffered damages as a result of the  
8 fraudulent claims, making illegal payments to Smith and Wong. There is no genuine dispute that  
9 Smith is liable for two violations of § 3729(a)(1)(C).

10 **C. The Government is Entitled to Treble Damages and Civil Penalties under the FCA.**

11 As established above, Smith is liable for all forty-seven (47) claims at issue here and for  
12 two (2) conspiracy violations. The United States is entitled to a civil penalty for each violation,  
13 plus three (3) times the amount of damages which the Government sustains.

14 The minimum penalty for a violation of the FCA occurring on or before November 2, 2015,  
15 is \$5,500; the maximum is \$11,000. *See* 28 C.F.R. § 85.3(a)(9). Several considerations support the  
16 imposition of the maximum penalty amount for Smith's violations, *i.e.*, a total penalty of \$539,000.  
17 Smith made or caused forty-seven (47) false claims and effected two (2) conspiracies in a course  
18 of conduct spanning more than three (3) years. Through these violations, Smith obtained \$378,873  
19 in HAP payments and \$197,777 in attorney fees, for a total of \$576,650, a large sum of ill-gotten  
20 federal funds.

21 In addition, the degree of Smith's culpability is hard to overstate. He had already been in  
22 a position of trust as GHURA's prior counsel. He lied in his application to become counsel again  
23 in 2011, talking about other types of conflicts with the selection panel, but never disclosing his  
24 status as a landlord. In fact, Smith never affirmatively disclosed *anything* to GHURA or HUD that

1 they had not already learned on their own, other than the existence of units Smith wanted to lease  
2 up in the HCV program *in the future*. GHURA confronted him with the realities he was  
3 misrepresenting several times, but Smith used his position as counsel to delay and frustrate  
4 GHURA's handling of his conflict of interest, when other people with less influence were forced  
5 to cancel contracts and move tenants out. Smith lied when he said he was selling the properties,  
6 misleading everyone at GHURA into thinking his arrangement with Wong was an arms-length  
7 release of all of his reportable interests when he clearly knew better. Smith brazenly took out a  
8 debit authorization on Wong's account only weeks after being explicitly told by GHURA he could  
9 not be a joint account holder. Smith persisted in his fraud, wielding his influence and skills as an  
10 attorney to fleece his own client and the federal fisc, violating not only the False Claims Act but  
11 his professional ethical obligations as an attorney.

12         The Government's direct loss, \$576,650, is large enough, but the foreseeable consequential  
13 damages and costs of investigation have been enormous. Smith knew GHURA could lose federal  
14 funding for violating Section 8 requirements; indeed, he wrote the memo on it. And Smith's client,  
15 GHURA, was, due to Smith's misconduct, subjected to a DEC recommendation that it forfeit all  
16 moneys it had paid to Smith. The investigation of Smith's misconduct has consumed hundreds, if  
17 not thousands, of federal man-hours by dozens of individuals at the DEC, HUD, HUDOIG, DOJ,  
18 FBI, and IRS-CI.

19         Smith's misconduct has been widely publicized on Guam due to press coverage of the  
20 related criminal trial and has resulted in actions against GHURA and past BOC members, directly  
21 threatening public confidence in the management of HUD-funded programs and operations.

22         Smith's schemes clearly constitute a pattern of misconduct, and the cartoonish lengths he  
23 went to in order to conceal his fraud are damaging to GHURA and its housing assistance program.  
24 Smith involved in his schemes, among others, his legal secretaries, his tax preparer, his accountant,

1 his near-brother Glenn Wong, and his own mother, Rosita Owen. Smith fostered the contributions  
2 of all of these individuals. Smith has never cooperated in any investigation of his misconduct and  
3 did not assist in identifying Wong, Owen, or anyone else as participants in his schemes.

4 The transactions between Smith and Wong, in their original form, and certainly in their  
5 chaotic amendment over the ensuing years, were highly complex and showed Smith's  
6 sophistication as an attorney. Smith also showed legal sophistication when making misleading but  
7 persuasive characterizations of HUD's requirements to GHURA officials. Conflicts of interest  
8 historically have presented a difficult challenge for GHURA and for HUD's efforts to support  
9 assisted housing on Guam, which has a tight rental housing market. Smith's egregious disrespect  
10 for GHURA should be fully penalized to deter other conflicts of interest in the future.

11 Smith's conflict of interest made GHURA's payments illegal, violating both the HAP  
12 contracts and § 982.161. That was the conclusion of HUD's DEC, which, again, recommended  
13 Smith's client be forced to repay HUD all monies illegally paid to Smith. Accordingly, the  
14 measure of the United States's damages is the full amount of the payments to Smith, *i.e.*, \$576,650.  
15 *See Hendrix.*, 76 F.4th at 1174-75 (citing *Mackby*, 339 F.3d at 1017). The United States is entitled  
16 to three times that amount, *i.e.*, \$1,729,950. Together with penalties, the United States is entitled  
17 to, and respectfully requests summary judgment in the total amount of \$2,268,950 under the FCA,  
18 plus costs and post-judgment interest.

#### 19 **IV. CONCLUSION**

20 There is no real dispute of any material fact; the evidence can support only one reasonable  
21 conclusion, that Mark Smith knowingly presented or caused the presentation of forty-seven (47)  
22 false claims for funds administered by GHURA and funded by HUD. These claims were false  
23 because Smith was prohibited from having a direct or indirect interest in HAP contracts or  
24 payments when he accepted the role of legal counsel for GHURA, where he was in a position to

1 influence, and did in fact influence, HCV Program decisions. Smith knew he had a conflict of  
2 interest because the text of the conflict-of-interest prohibitions plainly applied to him and had been  
3 applied to the legal counsel position by his then-incumbent predecessor, by GHURA, and by HUD.  
4 At best, he acted with deliberate ignorance or reckless disregard for the falsity of his claims, which  
5 is sufficient for FCA liability. Among other acts, he twice conspired to conceal his illegal interests  
6 in strawman schemes with Glenn Wong. There is no evidence that can support viable defenses for  
7 Smith and no excuse for his serious misconduct. Smith's egregious cover-up and abuse of his  
8 position of trust as GHURA's counsel, *inter alia*, support treble damages and maximum penalties  
9 for all the Government's claims.

10 RESPECTFULLY SUBMITTED this 29th day of July, 2025.

11 SHAWN N. ANDERSON  
12 United States Attorney  
13 Districts of Guam and the NMI

14 By: /s/ William M. Doolittle  
15 WILLIAM M. DOOLITTLE  
16 Special Assistant U.S. Attorney  
17 MIKEL W. SCHWAB  
18 JESSICA F. CRUZ  
19 Assistant U.S. Attorneys  
20  
21  
22  
23  
24