STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, *ex rel.* FRANK C. FOY, JOHN CASEY, AND SUZANNE B. FOY,

Qui tam Plaintiffs,

v.

No. D-101-CV-2008-1895

VANDERBILT CAPITAL ADVISORS, LLC; VANDERBILT FINANCIAL, LLC; VANDERBILT FINANCIAL TRUST; OSBERT M. HOOD, RON D. KESSINGER; ROBERT P. NAULT; JAMES R. STERN; PATRICK A. LIVNEY; STEPHEN C. BERNHARDT; KURT W. FLORIAN, JR.; ANTHONY J. KOENIG, JR.; MARK E. BRADLEY; PIONEER INVESTMENT MANAGEMENT U.S.A., INC.; PIONEER GLOBAL ASSET MANAGEMENT S.P.A.; UNICREDITO ITALIANO, S.P.A.; KATTEN MUCHIN ROSENMAN LLP; RICHARDS, LAYTON & FINGER, P.A.; CLIFFORD CHANCE US, LLP; ERNST & YOUNG LLP; PRICE WATERHOUSE COOPERS; BRUCE MALOTT; MEYNERS + CO; MARLA WOOD; GARY BLAND; SUSAN O. BLAND; CITIGROUP; CITIGROUP GLOBAL MARKETS INC.; BEAR, STEARNS & CO. INC.; JP MORGAN SECURITIES, INC.; UBS INVESTMENT BANK; UBS SECURITIES LLC ; CALYON SECURITIES (USA), INC.;CALYON CREDIT AGRICOLE CIB; CREDIT AGRICOLE SA; JEFFERIES CAPITAL MANAGEMENT, INC.; FORTIS SECURITIES LLC; FORTIS NV; ACA MANAGEMENT, L.L.C.; ABN AMRO, INC.; STONECASTLE SECURITIES, L.L.C.; NEPC; ALLAN C. MARTIN; MERRILL LYNCH & CO., INC.; LINDA CONTARINO; CLAUDIA CORRERA; GAETANA CORRERA; AND JOHN DOE #1; DAVID CONTARINO (JOHN DOE #2); MARC CORRERA (JOHN DOE #3); ANTHONY CORRERA (JOHN DOE #4); and JOHN DOE #5 THROUGH #100,

Defendants.

FIRST AMENDED AND SUPPLEMENTAL COMPLAINT

GL

A. INTRODUCTION AND SUMMARY

1. Pursuant to Rules 1-015(A) and 1-015(D) of the New Mexico Rules of Civil Procedure, the Plaintiff State of New Mexico and the *qui tam* plaintiffs (Frank Foy, John Casey, and Suzanne Foy) submit the following supplemental and amended complaint. This supplemental complaint adds to the original complaint filed July 14, 2008. This revision of the complaint sets forth additional events and information which have occurred or been discovered since the original complaint was filed. For example, the bribes and kickbacks to Marc Correra were uncovered after the filing of the original complaint.

2. This is an interim amended and supplemental complaint. Further amendments will be filed to incorporate information obtained through discovery, which defendants have thus far refused to provide.

3. This complaint describes events as they are known now, based on the best available current information. Most of the information in this complaint was not known to the Plaintiffs at the time the events occurred.

4. This is an action to recover damages for the State of New Mexico under the Fraud Against Taxpayers Act, NMSA 1978, § 44-9-1 through -14. This action seeks to recover three times the amount of damages sustained by the State of New Mexico because of the violations of the Fraud Against Taxpayers Act, along with civil penalties, costs, and reasonable attorney fees, including the fees of the Attorney General, all as provided in § 44-9-3(C), plus pre- and post-judgment interest. In total, the amounts recoverable under the Fraud Against Taxpayers Act are in excess of $864 million.

5. This action also seeks to recover damages and other relief under other provisions of the common law and statutes of New Mexico.

6. As a result of defendants' violations of the Fraud Against Taxpayers Act, the State of New Mexico lost the $90 million which it invested in Vanderbilt Financial Trust: $40 million from the Educational Retirement Board and $50 million from the State Investment Council. The Educational Retirement Board ("ERB") provides retirement benefits to public school teachers in New Mexico, and college professors, and employees of public schools and colleges. As of June 30, 2007, the ERB had 122,598 members, of whom 62,697 were active members, and 29,969 were retirees or beneficiaries. The State Investment Council ("SIC") invests the State's permanent funds for the benefit of public schools and colleges, and for the operations of the state. The ERB and the SIC lost substantially all of the $90 million they invested in CDO-related products offered by Vanderbilt Capital, Citigroup, Bear Stearns, UBS, Calyon, and others.

7. The State of New Mexico also lost substantial amounts which the State in invested in other Vanderbilt CDO products, such as Vanderbilt Streeterville. The total amount invested in the other Vanderbilt CDOs was approximately $153,000,000. *See* Part F.

8. The proceeds from this action should be returned to the ERB and the SIC and the State in accordance with § 44-9-7(D) and (E).

9. The defendants knowingly presented, or caused to be presented, to the State a false or fraudulent claim for payment or approval, in violation of § 44-9-3(A)(1).

10. The defendants knowingly made or used, or caused to be made or used, a false and misleading or fraudulent record or statement to obtain or support the approval of the payment on a false or fraudulent claim, in violation of § 44-9-3(A)(2).

11. The defendants conspired to defraud the State by obtaining approval or payment on a false or fraudulent claim, in violation of section § 44-9-3(A)(3).

12. The defendants conspired to make, use or cause to be made or used, a false, misleading or fraudulent record restatement to conceal, avoid or decrease an obligation to pay out or transmit money or property to the State, in violation of § 44-9-3(A)(4).

13. When in possession, custody or control of property or money to be used by the State, the defendants knowingly delivered or caused to be delivered less property or money than the amount indicated on a certificate or receipt, in violation of § 44-9-3(A)(5).

14. When authorized to make or deliver a document certifying receipt of property used by the State, the defendants knowingly made or delivered a receipt that falsely represented a material characteristic of the property, in violation of § 49-9-3(A)(6).

15. The defendants knowingly made or used, or caused to be made or used, a false, misleading or fraudulent record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the State, in violation of § 44-9-3(A)(8).

16. As beneficiaries of an inadvertent submission of a false claim and having subsequently discovered the falsity of the claim, the defendants failed to disclose a false claim to the State within a reasonable time after discovery, in violation of § 44-9-3(A)(9). In 2008 or 2009, the defendants learned that they were beneficiaries of the kickbacks to Marc Correra, but all of them failed to disclose this fraud claims to the State. All of the

defendants falsely claim that the kickbacks to Marc Correra were legitimate bona fide third-party fees.

17. As used in this complaint, "claim" means a request or demand for money, property or services when all or a portion of the money, property or services requested or demanded issues from or is provided or reimbursed by the State. In this case all or some of the money issued from the State of New Mexico, or was provided or reimbursed by it.

18. As used in this complaint, "knowingly" (or related words like "knew" or "knowledge") has the meaning provided in § 44-9-2(C): that a person, with respect to information, acted: (1) with actual knowledge of the truth or falsity of the information; (2) in deliberate ignorance of the truth or falsity of the information; or (3) in reckless disregard of the truth or falsity of the information.

19. As used in this complaint, "CDO" or "CDO-related" refers to collateralized debt obligations and related products, including ABS (asset-backed securities), CLO (collateralized loan obligations), synthetic CDOs, and including all tranches or levels thereof, from the most senior to the most junior, including the so-called "equity tranche," and including such features as leverage (borrowing), repurchase agreements, total return swaps, credit default swaps, warehouse facilities, and hedging and interest rate strategies, and related services. Credit default swaps are a form of insurance.

20. As set forth in this complaint, the defendants engaged in a conspiracy which effectively transformed the State Investment Council and the Educational Retirement Board into a slush fund for Bill Richardson. The leading participants in the conspiracy were Gary Bland, Anthony Correra, Marc Correra, David Contarino, Bruce Malott, and John Doe #1

(who has not yet been identified). In addition to the leading conspirators, there were many other conspirators who were willing to participate, including persons who paid kickbacks to obtain business from the SIC and the ERB, like the Vanderbilt/Pioneer/Unicredito defendants.

B. PARTIES

21. The plaintiff is the State of New Mexico. The real party plaintiffs in interest are the State of New Mexico and State educational institutions and educational employees or retirees covered by the Educational Retirement Board and/or the State Investment Council. The *qui tam* plaintiffs and relators are Frank C. Foy, John Casey, and Suzanne B. Foy. They are citizens and taxpayers of New Mexico. Frank C. Foy and Suzanne Foy are residents of Bernalillo County. John Casey is a resident of Valencia County. John Casey is added as a *qui tam* plaintiff because Frank Foy is suffering from colon cancer. Mr. Foy had surgery to remove a segment of his colon in October 2009. Mr. Foy is currently undergoing chemotherapy. His prognosis is uncertain.

22. Vanderbilt Financial Trust (the "Trust") is a Delaware Statutory Trust organized by Vanderbilt Capital Advisors, LLC ("Vanderbilt Capital"), to own substantially all of the common membership interests of Vanderbilt Financial, LLC ("Vanderbilt Financial").

23. Patrick A. Livney is or was the Chief Executive Officer and a director of Vanderbilt Financial, and Senior Managing Partner of the Structured Finance Group of Vanderbilt Capital.

24. Osbert M. Hood is or was a director of Vanderbilt Financial, and the President and Chief Executive Officer and a director of Pioneer Investment Management USA; and a Director of Pioneer Global Asset Management S.P.A. (the Italian parent company of Pioneer).

25. Stephen C. Bernhardt is or was Chief Investment Officer of Vanderbilt Financial and Senior Portfolio Manager of the Structured Finance Group of Vanderbilt Capital.

26. Ron D. Kessinger, Robert P. Nault, and James R. Stern are or were independent directors of Vanderbilt Financial.

27. Kurt W. Florian, Jr. is or was the Chief Operating Officer and Counsel of Vanderbilt Financial, and the Chief Operating Officer and Counsel of the Structured Finance Group of Vanderbilt Capital.

28. Anthony J. Koenig Jr is or was the Interim Chief Financial Officer of Vanderbilt Financial.

29. Mark E. Bradley is or was the Interim Chief Accounting Officer of Vanderbilt Financial.

30. Pioneer Investment Management U.S.A., Inc is the parent of Vanderbilt Financial and Vanderbilt Capital.

31. Pioneer Global Asset Management S.P.A. is the immediate parent of Pioneer Investment Management U.S.A.

32. Unicredito Italiano, S.P.A. is the parent of Pioneer Investment and Pioneer Global Asset Management.

33. The above defendants are referred to collectively as "the Vanderbilt defendants" or "Vanderbilt/Pioneer/Unicredito."

34. Katten Muchin Rosenman LLP; Richards, Layton & Finger, P.A.; and Clifford Chance U.S. LLP are law firms that acted on behalf of the Vanderbilt defendants.

35. Ernst & Young LLP; and Price Waterhouse Coopers are accountants who acted on behalf of the Vanderbilt defendants.

36. Citigroup and Citigroup Global Markets Inc. are entities that provided CDO products and banking, investment banking, insurance, and other services and products to the State of New Mexico. Citigroup and Citigroup Global Markets Inc. acted as "Joint Book-Running Managers" on the Vanderbilt Financial investment, along with Bear, Stearns & Co. Inc. UBS acted as Co-Manager. All of them acted as initial purchasers/placement agents.

37. UBS Investment Bank and UBS Securities LLC are entities that provided CDO products, banking, investment banking, and other services and products to the State. These entities are subsidiaries or affiliates of UBS AG, formerly known as Union Bank of Switzerland. UBS AG also provided banking, investment banking, insurance, and other services and products. UBS acted as a Co-Manager on the Vanderbilt Financial Trust transactions, and also as an initial purchaser and as a placement agent.

38. JPMorgan Securities, Inc., formerly Bear, Stearns & Co. Inc., ("Bear Stearns") is a corporation organized under the laws of Delaware. Bear Stearns provided CDO products, investment banking and other services and products to the State. Bear Stearns acted as the lead manager on the Fort Dearborn CDO. Bear Stearns acted as one of

the "joint book running managers" on the Vanderbilt Financial investment, along with Citigroup. Bear Stearns also acted as initial purchasers and placement agent on the Vanderbilt Financial investment.

39. Merrill Lynch & Co., Inc. is a corporation organized in Delaware. Merrill Lynch acted as the lead manager on the following CDOs: Dunhill; Tudor Place; Sky River, Lakeside, and Streeterville. Merrill Lynch is now owned by the Bank of America Corporation group.

40. Calyon Credit Agricole CIB, is a subsidiary of Credit Agricole SA. Calyon Securities (USA), Inc. is a corporation which has its principal place of business in New York, NY. These entities are referred to as "Calyon." Calyon provided CDO products, banking, investment banking, insurance, and other services and products to the State. Calyon acted as lead manager on the Monroe Harbor CDO.

41. ACA Management, L.L.C. is a wholly-owned subsidiary of ACA Risk Solutions, L.L.C. ("Risk Solutions") and Risk Solutions is wholly-owned by ACA Service L.L.C. ("ACA Services"), the holding company for the structured finance businesses of ACA Capital Holdings, Inc. ("ACA Capital Holdings"). ACA Services is wholly-owned by ACA Financial Guaranty Corporation ("ACA Guaranty"), and ACA Guaranty is wholly-owned by ACA Holding, L.L.C., a wholly-owned subsidiary of ACA Capital Holdings, Inc. These entities ("ACA") provided CDO products, investment banking, banking, insurance, and other services and products to the State. ACA is now owned by Merrill Lynch, Calyon, and Canadian Imperial Bank of Commerce.

42. ABN AMRO Incorporated is a subsidiary or affiliate of Fortis NV, which is a Belgian holding company. Fortis Securities, L.L.C. is also a subsidiary or affiliate of Fortis NV. These entities provided CDO products, investment banking, banking, insurance, and other services and products to the State, including CDOs which were included in the Vanderbilt Financial portfolio.

43. StoneCastle Securities L.L.C. is a subsidiary or affiliate of StoneCastle Partners LLC. These entities provided CDO products, investment banking, banking, insurance, and other services and products to the State, including CDOs which were included in the Vanderbilt Financial portfolio.

44. Most of the defendants are out-of-state persons or entities that have not appointed registered agents in the State of New Mexico.

45. Some of the defendants are subsidiaries or affiliates of other defendants, or are effectively controlled by, or are under common control or ownership with other defendants. The purported distinctions between these entities should be disregarded for purposes of this case, for the following reasons: The subordinate or affiliate entities acted as the mere alter ego or instrumentality of the superior or controlling entity. The subordinate or affiliate entities were mere shells, without actual independent management or governance of their own. The subordinate or affiliate entities were used by the other defendants for their own purposes, not the purposes of the subordinate or affiliate entities. The subordinate or affiliate entities were not adequately capitalized, did not hold proper meetings, did not establish proper management structures and committees, did not maintain proper records, and did not act through the entity's own officers, employees, and directors. The subordinate

or affiliate entities did not act as independent and separate entities. The superior or controlling entities disregarded the separate existence and purpose of the subordinate or affiliate entities. The management and employees of the superior or controlling entities participated in, directed, ordered, approved, or ratified the wrongful conduct of the subordinate or affiliate entities, and of the other defendants.

46. All of the defendants have transacted or presently transact and conduct business within New Mexico. All of the defendants have committed wrongful and tortious acts within New Mexico. All of the defendants benefitted from and were unjustly enriched by the false claims made by other defendants and co-conspirators.

47. All of the foreign defendants named above participated in offering CDO products in which the ERB and SIC invested.

48. All of the defendants are jointly and severally liable for any act in violation of the Fraud Against Taxpayers Act committed by other defendants, or other persons not yet named as defendants, as provided in § 44-9-13.

49. Bruce Malott is a Certified Public Accountant who lives and works in New Mexico. He is or was the Managing Principal of Meyners + Co., a public accounting firm with its principal place of business in Albuquerque, New Mexico. Meyners + Co. is a member of the BDO Seidman Alliance.

50. Marla Wood is the wife of Bruce Malott. She is named as a defendant because her husband committed community torts which benefitted her. The extent of her involvement in the wrongful acts described herein is unknown at this time.

51. Governor Richardson appointed or reappointed Malott to the New Mexico Educational Retirement Board, to the New Mexico Retiree Health Care Authority, and to the New Mexico Board of Accountancy.

52. Malott acted as treasurer for Governor Richardson's 2002 primary campaign. Meyners or Meyners employees (including Reta D. Jones) have acted as campaign officers or accountants for other Richardson campaign organizations.

53. Malott and Meyners are also the accountants for Moving American Forward Political Action Committee, a political action committee established to benefit Governor Richardson and his campaigns.

54. Malott and Meyners are also the accountants for Moving America Forward Foundation, Inc. This is a sham charitable foundation established to benefit Governor Richardson and his campaigns.

55. Malott and Meyners are also the personal accountants for Governor Richardson and his wife.

56. Gary Bland was the State Investment Officer, until he was forced to resign in October, 2009. He acted as the chief staff executive of the State Investment Council. Bland was chosen by Governor Richardson, with advice from Anthony Correra, Marc Correra, David Contarino and others. He also acted a Trustee of the ERB. He is a citizen of New Mexico. He is a friend of Marc Correra and Anthony Correra.

57. Susan O. Bland is the wife of Gary Bland. She is named as a defendant because her husband committed community torts which benefitted her. The extent of her involvement in the wrongful acts is unknown at this time. Upon information and belief, Mr.

and Mrs. Bland are attempting to arrange their affairs to avoid collection of any judgment that might be rendered against them.

58. David Contarino (formerly John Doe #2) is a citizen of New Mexico. At various times he has been a campaign manager and fundraiser for Bill Richardson. At various times prior to April 16, 2006 he was an employee of the State of New Mexico, and served as Chief of Staff to Governor Richardson. At various times prior to April 16, 2006, he served simultaneously as a state employee, Chief of Staff, and campaign manager and fundraiser for Governor Richardson. His employment with the State of New Mexico ended on April 16, 2006. Upon information and belief, Mr. Contarino has left the state, and Mr. and Mrs. Contarino are attempting to arrange their affairs to avoid collection of any judgment that might be rendered against them.

59. Linda M. Contarino is the wife of David Contarino. She is named as a defendant because her husband committed community torts which benefitted her. The extent of her involvement and participation in the wrongful acts described herein is unknown at this time. Governor Richardson appointed her as a member of the New Mexico Real Estate Commission, but this lawsuit does not arise out of her position on that Commission.

60. Concerning the matters described in this complaint, Contarino, Bland, and Malott acted as agents for Governor Richardson's campaigns, not as agents of the State of New Mexico. Their actions – defrauding the State and arranging bribes and kickbacks – were not within the scope of their official duties. Their actions were directly contrary to their public duties and their fiduciary duties.

61. Defendant John Doe #3 is Marc Correra. Marc Correra is the son of Anthony Correra. Marc Correra is a citizen of New Mexico. He is a close associate of Governor Richardson, and an active supporter of the Governor, the Governor's campaigns, the Governor's political causes, and the Governor's lavish personal life style. Marc Correra is a close associate of Gary Bland, and an associate of Bruce Malott. Marc Correra is one of the main conspirators in the pay-to-play scheme that infected the SIC and the ERB. Marc Correra personally has received or shared in more than $22 million in kickbacks on SIC and ERB investments. Marc Correra received approximately $5.6 million in kickbacks or bribes on Vanderbilt CDO investments. Marc Correra also arranged or participated in kickbacks to others.

62. Claudia Correra is the wife of Marc Correra. She is a citizen of New Mexico. She is named as a defendant because her husband committed community torts which benefitted her. The extent of her involvement and participation in the wrongful acts described herein is unknown at this time.

63. Marc Correra and Claudia Correra have fled the State of New Mexico to avoid service of process and subpoenas. Upon information and belief, Marc Correra and Claudia Correra are living in Paris, France. Upon information and belief, Mr. and Mrs. Correra are attempting to arrange their affairs to avoid collection of any judgment that might be rendered against them.

64. Defendant John Doe #4 is Anthony Correra. Anthony Correra is Marc Correra's father. Anthony Correra is a citizen of New Mexico. Anthony Correra is a close associate of Governor Richardson, and an active supporter of the Governor, the Governor's

campaigns, the Governor's political causes, and the Governor's lavish personal lifestyle. Anthony Correra is a close associate of Gary Bland and Bruce Malott. Anthony Correra is one of the main conspirators in the pay-to-play scheme that infected the SIC and the ERB. Anthony Correra arranged for his son Marc Correra to receive more than $22 million in kickbacks on SIC and ERB investments. Anthony Correra also arranged or participated in kickbacks to others. Anthony Correra is listed as a trustee of the Moving America Forward Foundation ["MAFF"], a sham charitable foundation which collected $1.7 million to benefit Governor Richardson's political objectives.

65. Gaetana Correra is the wife of Anthony Correra. She is named as a defendant because her husband committed community torts which benefitted her. The extent of her involvement and participation in the wrongful acts described herein is unknown at this time.

66. Anthony Correra and Gaetana Correra have fled the State of New Mexico to avoid service of process and subpoenas. Upon information and belief, Mr. and Mrs. Correra are attempting to arrange their affairs to avoid collection of any judgment that might be rendered against them.

67. Anthony Correra and Marc Correra and David Contarino were instrumental in selecting Gary Bland to become State Investment Officer, so that Bland could arrange kickbacks to the Correras (and others) from persons who were willing to "pay-to-play" with SIC and ERB funds, including the Vanderbilt defendants.

68. NEPC, also known as New England Pension Consultants, is a limited liability company with its principal place of business in Massachusetts.

69. Allan Martin is an executive with NEPC.

70. NEPC and Martin provided investment advisory services to the SIC and the ERB. NEPC and Martin were fiduciaries for the SIC and the ERB.

71. Defendants John Doe #1 and John Does #5 through #100 are additional individuals or entities who have participated and conspired with the defendants to perform the unlawful acts or omissions alleged herein, but their identities and actions are unknown or inadequately known at this time. These defendants are referred to in the masculine, although they may be feminine or artificial persons. Discovery in this case will provide information about these unidentified defendants, so that they can then be identified as named defendants. There are probable additional defendants whose identity is known to plaintiffs at this time, but discovery is needed to provide additional corroboration about their involvement in the matters herein, because the named defendants and the Doe defendants have denied and concealed their involvement in the fraud against the State.

72. This lawsuit at present only seeks relief against the defendants identified in the caption of this case. However, plaintiffs may amend this complaint, or file separate complaints, to seek relief against other defendants, or for other instances of pay-to-play which have not yet been discovered.

73. As regards the defendants who may have been public officials at various times, the State of New Mexico seeks to recover damages from them personally, only from their personal assets, not from any state or public agency. In this lawsuit the State of New Mexico does not seek to recover damages from any state or public agency, directly or indirectly. In this action, the State is asserting its rights as sovereign, and its proprietary

rights as well. No private defendant and no present or former official may claim immunity as against the State itself.

C. FALSE AND MISLEADING CLAIMS BY THE DEFENDANTS

74. In order to obtain $90,000,000 in funds from the State of New Mexico for investment in CDO-related securities issued by Vanderbilt, the defendants made, or caused to be made, numerous false or misleading or fraudulent statements about the investments, including but not limited to:

– 1. That the investment would have a high level of risk adjusted earnings;

– 2. That the interests of Vanderbilt and the other defendants were closely aligned with the interests of the ERB and SIC as equity investors;

– 3. That they had eliminated any conflicts of interests between their interests and the interests of the ERB and the SIC as investors;

– 4. That the CDOs were backed by high quality residential mortgages;

– 5. That Vanderbilt would throw out problem mortgages before they bought them from the CDO originators, so that Vanderbilt would invest in the very best quality loans;

– 6. That the value of the shares was demonstrated by the fact that Vanderbilt, Citigroup, Bear Sterns and UBS were buying shares along with the ERB and SIC;

– 7. That the investment provided strong collateral performance, attractive spreads, experienced collateral managers, consistent returns, and improved liability and transparency in a variety of market and economic conditions;

– 8. That the defendants had the expertise and proprietary methods to understand and control and minimize the risks of the investment;

– 9. That the shares in Vanderbilt Financial would be listed on European exchanges within 2 weeks after the State bought them, so that the State would have the ability to sell the shares sooner than had been expected;

– 10. That Vanderbilt would register the shares with the SEC within 190 days so that the State would be able to resell the shares, and that Vanderbilt Financial shares would be registered and traded on the New York Stock Exchange within 1.3 years at most so that the State could easily sell its shares. This false claim originated with Citigroup.

– 11. That Vanderbilt had special computer programs and expertise to spot problem mortgages before they became a problem;

– 12. That the investment is protected by regular on-site due diligence of ABS issuers and servicers and of the issuers origination channels;

– 13. That the CDOs will be protected by numerous criteria for credit quality, and that Vanderbilt's ability to source opportunities distinguishes it from its competitors;

– 14. That the investment would use only high quality CDO managers;

– 15. That the investment was designed to minimize defaults;

– 16. That the default rate on Vanderbilt since 1999 was zero.

- 17. That the Vanderbilt financial investment was a fixed income investment.

– 18. That the risks were adequately covered by insurance or credit swaps or hedges with solid insurers or counterparties;

– 19. That Citigroup and Bear Stearns would waive their fees and commissions on this investment;

– 20. That other outside investors would also be investing in these securities;

– 21. That the investment is protected by a proprietary collateral enhancement risk database;

– 22. That the investment is protected by an understanding of the underlying collateral;

– 23. That each CDO portfolio will be constructed with strict sector and diversification parameters and rigorous credit processes, focusing on principal preservation;

– 24. That Vanderbilt re-underwrites everything to meet its own specifications.

– 25. That the State would receive a particularly good deal from Citibank and Bear Stearns and Vanderbilt because they considered the SIC and ERB as "friends and family."

26. That the information about the investment had been obtained from independent sources;

– 27. That the expectations and projections for the investment were based on reasonable assumptions;

– 28. That the promoters of the investment had special core competencies and resources and skill and expertise;

– 29. That the investment would implement a business strategy differentiated from others;

– 30. That the investment in Vanderbilt was protected by appropriate safeguards;

– 31. That the investment was based on diversification;

– 32. That the investment was based on rigorous analysis of credit and credit fundamentals;

– 33. That Vanderbilt was backed by Pioneer and Unicredito, its parent companies;

– 34. That Vanderbilt was a research driven firm;

– 35. That the investment was based on an ability to identify opportunities;

– 36. That the investment would benefit from a large and diverse group of investment banks and mortgage loan originators;

– 37. That the managers had a depth of experience with the targeted asset classes;

– 38. That the investment would be managed by a board of directors with an independent majority;

– 39. That the directors would owe fiduciary duties to the equity investors;

40. That the directors would fulfill their fiduciary duties;

– 41. That the directors will supervise the activities of the investment;

– 42. That the directors will establish an audit committee, compensation committee, and a nominating and corporate governance committee;

– 43. That the directors will implement and carry out a code of ethics;

– 44. That the State could rely on the diligence and skill of the managers and servicers selected by Vanderbilt Capital;

– 45. That the investment would benefit from special steps taken to minimize the potential for misrepresentation of loan quality or terms by the loan originators, or misrepresentation of the nature and quality of the assets;

– 46. That the investment vehicle was bankruptcy remote;

– 47. That the investment will maximize for the State the spread between cost of borrowing, and the return on the underlying investments;

– 48. That the defendants understood how these investments would behave under all market conditions, due to their sophisticated computer modeling techniques;

– 49. That the investment is protected by the independent directors, and a compliance department, and Vanderbilt's conflict resolution system;

– 50. That the managers and servicers would provide adequate credit review and scrutiny to the underlying portfolio of mortgages, loans, and other investments;

– 51. That the value of the CDOs and the underlying loans and assets was substantially greater than it actually was;

– 52. That the Vanderbilt investment would yield a return of 20% per annum, and perhaps more.

– 53. That the business conducted by Vanderbilt and the other defendants complied with all applicable state and federal laws and regulations.

– 54. That this was a legitimate bona fide business deal, when in fact it was a scam to defraud the State.

– 55. That this was a legitimate deal, when in fact the deal was accomplished through a $2,000,000 kickback to Marc Correra, a fact which the defendants concealed.

– 56. That the defendants used mathematical models that accurately predicted and reflected the performance of the CDO portfolios and tranches under all scenarios.

– 57. That their mathematical models were valid.

– 58. That the defendants understood their mathematical models.

– 59. That the use of insurance (such as credit default swaps) would reduce the risks.

75. These claims, statements, and representations were false or misleading or fraudulent.

76. In reality, the Vanderbilt investment was not backed by high-quality underlying assets that had been carefully analyzed and screened by the defendants, and defendants knew this.

77. Defendants had a mutual agreement, or understanding, or course of conduct to tout the other defendants' CDO products and jointly promote each others' products and include them in their own CDOs and portfolios. The defendants jointly acted to conceal the falsity of their claims about the products they jointly promoted, as they all profited from the

sale of these unsound products. The defendants jointly acted to inflate the prices of these products.

78. All of the financial defendants made false claims about their products that were substantially similar to the false claims listed above. These misrepresentations were standard in the CDO industry.

79. Although the defendants falsely claimed that their interests were closely aligned with the interests of the State, in reality the defendants' interests were not aligned with the State's. The defendants had a strong interest in unloading these overvalued securities on the ERB and SIC. The defendants concealed and failed to disclose the conflicts between their interests and the State's interest as an investor.

80. Through their false claims and representations, the defendants sold the State of New Mexico a worthless combination of liars' loans, lethal leverage, and toxic waste.

81. "Toxic waste," as the term is used in the CDO trade, refers to the first loss position or equity tranche in a CDO. The holder of toxic waste suffers the first loss, because the equity tranche receives funds only after all of the senior tranches have been paid in full. It is called toxic waste because it is the riskiest position, and because it is the residue left over after investment banks assemble and securitize a CDO. Toxic waste is a byproduct of the lucrative process whereby the defendants and others in the CDO business assemble assets and securitize them, taking large fees and commissions in the process. The defendants wanted to rid themselves of this toxic waste, and they made false and misleading statements in order to peddle it to the ERB and SIC. The Vanderbilt toxic waste was worthless, but the defendants managed to sell it to the State of New Mexico for $90 million,

thereby enriching themselves at the expense of the State and ridding themselves of toxic risks associated with this first loss tranche. In order to accomplish this, the defendants told the State of New Mexico that it would be protected by the fact that the defendants would also invest in the equity tranche, while concealing the fact that their investments in this equity tranche is far outweighed by the revenue they made from selling most of nonexistent "equity" to the State. In fact, there was no "equity" in the Vanderbilt shares; these securities were virtually worthless from the beginning.

82. "Liars' loans," as the term is used in the CDO trade, refers to loans, usually residential mortgage loans, made to borrowers who provide little or no documentation or verification of the statements they made on their loan applications, including their income, assets, ability to repay, and whether they are actually residing in the home as their primary residence, or acquiring their second or third property, or a speculative investment. The defendants represented that they carefully screened the loan applications to weed out liars, but in fact they knew that many of these borrowers were making false statements on their applications, and did not have the ability to repay the loans. Indeed, the defendants or their loan originators actively encouraged and solicited persons to borrow money based on false representations, because the defendants made huge profits from packaging the loans, while passing the underlying risk of default on to the CDO investors.

83. "Exception loans," as the term is used in the CDO trade, refers to loans that do not even meet the minimal documentation requirements or lending standards set by the loan originator or lender. The defendants knew that many of the underlying CDO assets were exception loans, but they misrepresented and concealed this fact. The defendants

made huge sums from packaging and securitizing these exception loans while passing the risks on to the CDO investors, like the State of New Mexico.

84. The defects in the Vanderbilt CDO product were compounded by leverage. The defendants made repeated misrepresentations about the amounts of leverage in this investment, and the increased risks created by leverage. They falsely stated that they had the special expertise and ability to control the adverse effects of leverage. In reality, these securities were designed in such a way that they were destined to fail if there were any adverse movements in interest rates on the borrowings which had to be paid before the ERB and SIC received anything on their investment.

85. The defendants also misrepresented and concealed the nature of the underlying mortgages. Many of them were adjustable rate mortgages that forced the borrowers to pay much higher interest rates after a short introductory period. The defendants knew that many of these borrowers would not be able to meet their mortgages after the interest rates reset, but they falsely stated otherwise in order to induce the State to invest.

86. Without these false claims, statements, omissions, and representations, the State of New Mexico would not have made this investment.

87. Because they occupied the first loss position, the ERB and the SIC were especially dependent on having high-quality underlying assets with low default rates. The ERB and the SIC were especially vulnerable to liars' loans, exception loans, and lethal leverage, and losses on credit default swaps, counterparty risk, and mistaken hedging strategies. Holders of the more senior position could still be paid in full if the CDOs did not

perform as well as expected, because they had a greater cushion if the assets and strategies were as good as the defendants represented.

88. Vanderbilt Capital breached its management agreement with Vanderbilt Financial. Vanderbilt Capital acted in bad faith or in reckless disregard toward the State of New Mexico. It committed wilful misconduct. It acted with gross negligence.

89. On numerous occasions after the State invested in Vanderbilt, the defendants knowingly made false statements about the investment and the underlying assets and liabilities. These false statements were designed to conceal and misrepresent the fact that the State's investment was virtually worthless, and the fact that the value of the CDOs was grossly overstated, and the fact that many of the mortgage borrowers were in default on their loans.

90. In August 2007, Vanderbilt issued a financial report to investors on the second quarter of 2007. The report included the following statements: "The performance of the CDOs owned by Vanderbilt Financial has been good from a cash flow point of view. . . ." "Vanderbilt Financial's CLOs are likely to continue their positive performance . . . ." "[W]e expect to build cash at Vanderbilt Financial, and will reinstate dividend payments as soon as our cash levels and outlook for future cash flows are at levels that allow us to pay dividends." "Our return on equity continues to exceed previous expectations." These statements were false and misleading, and known to be false and misleading.

91. In December 2007, Vanderbilt issued audited financial statements for the period since inception to December 31, 2006. These financial statements were audited and certified by PriceWaterhouseCoopers. These financial reports stated that Vanderbilt

Financial had assets of $ 6, 265,419,000 and liabilities of $6,109,452,000, for a net worth or net equity of $140,281,000. These statements were false and misleading, and known to be false. In reality, Vanderbilt Financial's net worth was zero or almost zero.

D. FRANK FOY AND HIS FIGHT AGAINST PAY-TO- PLAY AND KICKBACKS.

92. The *qui tam* plaintiff Frank Foy joined the ERB in 1992 as the Manager of the Fixed Income Portfolio, after working more than 20 years in banking and investment in the private sector in New Mexico. In 1996 he became the ERB's Chief Investment Officer, and continued in that position until the events stated below. While he was Chief Investment Officer, he had overall responsibility for all of ERB's investments. In July 2006 he was demoted to Deputy Chief Investment Officer, and his authority and responsibilities were restricted.

93. Mr. Foy's professional experience concentrated on traditional fixed income investments, such as treasury bills and high-grade corporate bonds. Mr. Foy had little experience in so-called "alternative investments," such as hedge funds, private equity, and CDOs. Mr. Foy was involved in those areas only temporarily during 2006, lending transition assistance on alternative investments (like the Vanderbilt Financial CDO) while the management of the alternative investment portfolio was being set up. After Evalynne Hunemuller was fired in December 2006 and Bob Jacksha was appointed Chief Investment Officer beginning in January 2007, Mr. Foy had no involvement with alternative investments. It is now known that the bribes and kickbacks occurred primarily in alternative investments, beginning at the SIC, and spreading to the ERB after Mr. Foy was demoted.

94. As Chief Investment Officer at the ERB, Frank Foy had two strict policies for investment managers: no political contributions and no third party fees. These policies were necessary to fulfill strict fiduciary duties which the ERB owed to educational retirees.

95. **Frank Foy's prohibition against political contributions.** The policy against political contributions was also necessary to ensure that the ERB made investments and awarded contracts for investment services to the best, most competent, and most honest contractors, not the ones who paid off people in power. Further, the policy was necessary so that New Mexico could attract the most competent investment advisors, because a reputation for "pay-to-play" discourages the honest advisers from competing vigorously for the State's business, since they believe that the business will be awarded to less qualified advisors who are willing to provide illegal or improper inducements and kickbacks in order to obtain the State's business.

96. **Frank Foy's prohibition against third-party fees.** Frank Foy was adamantly opposed to the payment of finder's fees or third-party placement fees on ERB investment business, whether those fees were paid by the investment manager or the ERB itself. Foy had several good reasons for opposing third-party marketing fees:

a. Third-party fees are an open invitation to pay-to-play, payola, kickbacks, and political influence peddling.

b. If the investment manager can afford to pay a third-party placement fee, it can afford to reduce its fees to the ERB by an equivalent amount.

c. The payment of third-party fees, whether by investment manager or the ERB, reduces the amount available for investment on behalf of ERB beneficiaries.

d. Third-party fees were unnecessary at the ERB, because the ERB used an open and competitive RFP process which was widely publicized.

e. Anyone could compete in the RFP process without paying a fee.

f. The ERB already paid fees to consultants who were hired to publicize the ERB's requests for investment managers, and to find investment managers smaller and less well known.

g. Third-party fees result in the selection of less qualified investment managers, and poorer investment results.

h. When investment managers pay kickbacks in the form of third-party fees, they have the ability to make misrepresentations with impunity, to peddle junk, and to make higher profits for themselves.

I. Third-party fees are a breach of the strict fiduciary duties owed by the ERB and the SIC.

j. The value, if any, of third-party placement fees is impossible to quantify.

k. In some instances third-party fees may violate criminal and civil laws.

97. Since Frank Foy was a man of integrity who took his fiduciary duties very seriously, he was an obstacle to the conspirators' corrupt practices. So Bland, Malott, Contarino and other conspirators began maneuvering to sideline Frank Foy.

E. THE SECRET KICKBACK SCHEME BY THE RICHARDSON ADMINISTRATION.

98. Beginning in 2003, when the Richardson administration took office, the ERB was pressured to award contracts and make investments with persons or entities based upon

political considerations. These pressures were exerted by Bruce Malott and Gary Bland on instructions from David Contarino, Anthony Correra, Marc Correra (and others).

99. This was a plain violation of the strict fiduciary duties owed by the ERB to its members under N.M. Const. art. XX, § 22, which provides in pertinent part:

> A. All funds, assets, proceeds, income, contributions, gifts and payments from any source whatsoever paid into or held by a public employees retirement system or an educational retirement system created by the laws of this state shall be held by each respective system in a trust fund to be administered and invested by each respective system for the sole and exclusive benefit of the members, retirees and other beneficiaries of that system. Expenditures from a system trust fund shall only be made for the benefit of the trust beneficiaries and for expenses of administering the system. A system trust fund shall never be used, diverted, loaned, assigned, pledged, invested, encumbered or appropriated for any other purpose. To the extent consistent with the provisions of this section, each trust fund shall be invested and the systems administered as provided by law.
>
> B. The retirement board of the public employees retirement system and the board of the educational retirement system shall be the trustees for their respective systems and have the sole and exclusive fiduciary duty and responsibility for administration and investment of the trust fund held by their respective systems.

100. Similar pressures were exerted on the SIC, the Board of Finance and other state agencies. Gary Bland and others at the SIC carried out instructions from David Contarino and others, including Anthony Correra and Marc Correra, to invest State money in exchange for political contributions or other illegal or improper inducements. This was a plain violation of the strict fiduciary duties owed by SIC board members and staff to the State of New Mexico. It is now known that the conspirators succeeded in corrupting the SIC at least as early as 2004, as evidenced by the kickbacks which were uncovered after the original complaint was filed.

101. Anthony Correra and Marc Correra, along with David Contarino, were instrumental in Governor Richardson's selection of Gary Bland to be State Investment Officer. Gary Bland was selected in part because he was willing to take instructions on the placement of investment business from Anthony Correra, Marc Correra, David Contarino, and Governor Richardson. Gary Bland was selected in part because he was willing to participate in arranging kickbacks, or to look the other way while kickbacks were being arranged, in deliberate disregard or ignorance of the graft and corruption at the SIC and ERB. Gary Bland personally benefitted from his participation or facilitation of the pay-to-play schemes at the SIC and ERB.

102. **The SIC's mass firing of investment managers.** Shortly after Governor Richardson took office, he appointed Gary Bland to be State Investment Officer. At about this time the SIC fired many of its investment managers. One reason, although not the only reason, was to create more opportunities to award state businesses to people who were willing to pay-to-play, also known as "players."

103. In order to steer the State's investments to "players" who were willing to make kickbacks, bribes, or other illegal inducements, Contarino, Bland and Malott often worked together. In some instances, the SIC would invest with those who were willing to "pay-to-play," and then Bland and Malott would press the ERB to make the same investments. Bland would vouch for the quality of the investment manager. And Bland and Malott would argue that the ERB could rely on the SIC's due diligence. Frank Foy vigorously opposed this notion, for several reasons.

104. First, the ERB as a fiduciary is required by the Constitution and by statute to conduct its own due diligence. Second, the SIC and ERB have different investment objectives, so that an investment that might be appropriate for the SIC would not necessarily be appropriate for the ERB. Third, if the SIC and ERB make the same investments and use the same investment managers, this reduces the diversification of the State's investment portfolio and increases its risk. Fourth, twin investments by the SIC and ERB will create a conflict of interest in some situations, for example when the ERB wants to withdraw its funds from an investment manager, but the SIC wants to leave its funds to prevent the investment manager from collapsing.

105. Although Frank Foy and others pointed out the problems with dual investing by the SIC and ERB, their warnings were ignored or overridden by Bland and Malott and NEPC and Martin.

106. NEPC and Martin violated their fiduciary duties to the State by undertaking this dual advisory role. They did so in order to obtain larger fees, despite the problems that were pointed out by Foy and others. NEPC and Martin earned larger fees from the SIC, so they went along with Gary Bland, in order to protect their fees from the SIC, even when they knew that the investments were imprudent or inferior. On several occasions Martin and NEPC acquiesced in actions which they considered imprudent and not in the best interests of the SIC or the ERB. On several occasions Martin privately voiced his misgivings about certain investments, but failed to state them in writing or at meetings of the Board or Investment Committee. Martin and NEPC knowingly failed to give their best professional advice and judgment to the ERB and the SIC.

107. When Bland and/or Malott recommended an investment, they would be supported by the Governor's other appointees on the SIC and ERB, and by those appointees who were effectively controlled by the Governor although not appointed by him. They included Bland, Malott, State Treasurer Robert Vigil, Veronica Garcia (Secretary of Education), Annadelle Sanchez (Vice Chairperson of the New Mexico Democratic Party), and Doug Brown (Acting State Treasurer after Robert Vigil).

108. **A pattern and practice of pay-to- play**. Until 2003, the ERB Board had a majority of directors who took their fiduciary duties seriously, and acted in the best interests of the educational retirees who depend on the ERB for their retirement benefits. After 2003, the situation began to change, and the Board came to be controlled by persons who were willing to make investments and award contracts for political or other improper reasons, following the lead of Gary Bland, Bruce Malott and the instructions of David Contarino, Anthony Correra, Marc Correra, and others.

109. **The push for an ERB Investment Advisory Committee.** Shortly after the 2005 Legislature, Chairman Malott suggested the creation of an ERB investment advisory committee consisting of Guy Riordan (a prominent friend and contributor to Governor Richardson); Mark Canavan (an investment officer at the State Treasurer's Officer who purchased securities from Riordan); and John Ulrich. (All three were political contributors to Richardson. Richardson had appointed both Ulrich and Malott to the New Mexico State Board of Accountancy.) This proposal was vigorously opposed by Foy and ERB Trustees Pauline Turner and Delman Shirley. They and others considered Guy Riordan to be corrupt, dishonest, and incompetent. Malott's proposal was not adopted. One purpose of

this proposal was to place Guy Riordan in a position of influence over ERB investments, so that he could fix the award of ERB contracts. Another purpose was to sideline Frank Foy.

110. Foy was warned to be a "team player." In June 2005, Gary Bland approached Frank Foy and said "Don't worry, I've got your back." Foy asked what Bland was talking about, and Bland explained that the fourth floor was trying to get Foy fired again. (The fourth floor is a reference to the Governor and his staff, which are located on the fourth floor in the State Capitol.) Bland specifically identified David Contarino, the Governor's Chief of Staff. Bland subsequently said he thought Foy was being targeted because he wouldn't do business with Guy Riordan, and Foy wasn't being "locally friendly," or words to that effect. This meant that Foy was being targeted because he was an opponent of pay-to-play, and an obstacle to the players and the fixers.

111. Foy was informed that Bland and Malott had worked out a plan to send Foy to the SIC and to replace him with Bob Jacksha, who was deputy State Investment Officer at the SIC. In conversations with Foy, Malott said that he had talked to Contarino about the switch. Malott said that Foy was the scapegoat although Foy's performance numbers were better than Jacksha's. Malott also said that Guy Riordan was mad at Foy, because a number of years ago Riordan had approached Foy about doing business with the ERB, but Foy had refused. Apparently Guy Riordan may have confused Frank Foy with Frank Ready, who was the executive director of the ERB at the time. Additionally, Riordan was angry at Foy for opposing the creation of an investment advisory committee which would allowed Riordan to influence the placement of ERB investment business.

112. The next day, Malott told Foy that he had called David Contarino and explained that this might be a case of mistaken identity. Contarino told Malott that Foy could keep his job, but that Foy had better be "a team player" in the future. This meant that Foy was supposed to do business with the players and fixers favored by the fourth floor.

113. The Richardson administration engaged in a pattern and practice of awarding, or attempting or conspiring to award, state investment business to persons who were willing to offer illegal inducements. In this pattern and practice, the Richardson administration was aided and abetted by various players and fixers who held no public positions, or who held public positions in non-investment areas.

114. It is now known that the awards to Vanderbilt/Pioneer/Unicredito were part of this pattern and practice. Other examples of this pattern and practice are set forth in the *Austin Capital* complaint, which was filed in this case on June 30, 2009. *See* "Notice of Related Proceeding." *See also* "Latest Available Tabulation of Third-Party Fees on SIC and ERB Business," filed in this case on October 26, 2006. The kickbacks uncovered so far amount to $40 million, of which about $22 million went to Marc Correra or his associates, including $5,574,132 in bribes and kickbacks to Correra on the Vanderbilt deals.

115. While he was employed at the ERB, Frank Foy did not know about any of the kickbacks. Most of the kickbacks occurred at the SIC, not the ERB. Frank Foy thought that he had been successful in preventing any kickbacks at the ERB as long as he had the authority to stop them. While he was at the ERB, Mr. Foy had never seen or heard of Marc Correra. *See* "Plaintiffs' Filing of Affidavit of Frank C. Foy Concerning Concealment of Kickbacks," filed November 16, 2009.

F. FALSE CLAIMS AND KICKBACKS ON OTHER VANDERBILT CDO INVESTMENTS.

116. To obtain investment funds from the SIC for the Vanderbilt Dunhill Fund, the Vanderbilt defendants and their co-conspirators (including Merrill Lynch) paid or arranged a $866,000 kickback or bribe to Marc Correra. The amount of the SIC commitment was $15,500,000.

117. To obtain investment funds from the SIC for the Vanderbilt Streetervillle Fund, the Vanderbilt defendants and their co-conspirators (including Merrill Lynch) paid or arranged a kickback or bribe to Marc Correra in the amount of $950,000. The amount of the SIC commitment was $25 million.

118. To obtain investment funds from the SIC for the Vanderbilt Lakeside II Fund, the Vanderbilt defendants and other co-conspirators (including Merrill Lynch) paid or arranged a kickback or bribe to Marc Correra and the amount of $645,000. The amount of the SIC commitment was $27,600,000.

119. To obtain funds from the SIC for the Vanderbilt Monroe Harbor Fund, the Vanderbilt defendants and other co-conspirators (including Calyon) paid or arranged a kickback or bribe to Marc Correra in the amount of $438,750. The amount of the SIC commitment was $11,399,753.

120. To obtain funds from the SIC for the Vanderbilt Fort Dearborn Funds, the Vanderbilt defendants and other co-conspirators (including Bear Stearns) paid or arranged kickback or bribe to Marc Correra and the amount of $674,382. The amount of the SIC commitment was $27,632,747.

121. To obtain funds from the SIC and the ERB for Vanderbilt Financial Trust, the Vanderbilt defendants and their co-conspirators paid or arranged a kickback or bribe to Marc Correra in the amount of $2 million. The SIC invested $50 million in the Vanderbilt Financial Trust, and the ERB invested $40 million.

122. To obtain funds from the SIC for the Vanderbilt Sky River Fund, the Vanderbilt/Pioneer/Unicredito defendants and other co-conspirators paid or arranged kickbacks or bribes to Marc Correra. The amount of the bribes is currently unknown, and the bribes may have been combined with the other bribes that the Vanderbilt defendants paid to Correra. The amount of the SIC commitment was $21,375,000.

123. To obtain funds from the SIC for the Vanderbilt Tudor Place Fund, the defendants paid or arranged kickbacks or bribes to Marc Correra. The amount of the bribes is currently unknown, and the bribes may have been combined with the other bribes that the Vanderbilt defendants paid to Correra. The amount of the SIC commitment was $25 million.

124. In total, the Vanderbilt/Pioneer/Unicredito defendants and their co-conspirators obtained $243,507,500 in State funds by paying or arranging bribes to Marc Correra. Most of this money has been lost, along with the investment income that these funds were supposed to generate.

125. In total, the Vanderbilt/Pioneer/Unicredito defendants and their co-conspirators paid or arranged at least $5,574,132 in bribes and kickbacks to Marc Correra.

126. Upon information and belief, there were other bribes and kickbacks in addition to the ones listed here. The kickbacks shown for one investment may have served as

kickbacks or improper consideration for the other investments where a kickback has not yet been exposed.

127.

TABULATION OF KICKBACKS BY VANDERBILT/PIONEER/UNICREDITO AND OTHER CO-CONSPIRATORS TO MARC CORRERA			
Issue	Manager	Amount of kickback	Amount of SIC Investment
Vanderbilt Dunhill	Merrill Lynch	866,000	15,500,000
Vanderbilt Financial Trust	Citigroup, Bear Stearns, UBS	2,000,000	* 90,000,000
Vanderbilt Fort Dearborn	Bear Stearns	674,382	27,632,747
Vanderbilt Monroe Harbor	Calyon	438,750	11,399,753
Vanderbilt Streeterville	Merrill Lynch	950,000	25,000,000
Vanderbilt Tudor Place			25,000,000
Vanderbilt Sky River			21,375,000
Vanderbilt Lakeside II	Merrill Lynch	645,000	27,600,000
TOTAL		$ 5,574,132	$ 243,507,500

* Includes $40,000,000 from ERB

128. But for these bribes and kickbacks, the Vanderbilt defendants and the other defendants would not have obtained these funds from the State of New Mexico.

129. In order to obtain these investments from the State of New Mexico, the Vanderbilt/Pioneer/Unicredito defendants and other co-conspirators expressly or tacitly agreed to make political contributions that would benefit Governor Richardson and his campaigns, or to provide other improper considerations that are still concealed.

130. In order to obtain these investments from the State of New Mexico, the Vanderbilt/Pioneer/Unicredito defendants and their co-conspirators made numerous false statements, promises, and representations about the nature of the investments and the assets which supposedly supported them. In substance, these false statements were very similar to the false statements about the Vanderbilt Financial investment, which were typical of the CDO industry. The exact nature of these false statements, promises, and representations cannot be set forth in this complaint because, *inter alia*, the defendants and the SIC and the ERB have not provided the offering circulars, sales materials, and records relating to these investments. This concealment is part of the ongoing cover-up by the defendants and the SIC and the ERB and the Richardson administration. *See below.* This information is not readily available from public sources, because these investments were private placements.

131. The false statements about all the Vanderbilt CDOs were rather standardized, because deceit was generic in the CDO trade.

132. The Vanderbilt/Pioneer/Unicredito defendants and other co-conspirators knew of the kickbacks, or they acted with reckless disregard or deliberate ignorance concerning their fraudulent acts. In other words, all of the Vanderbilt/Pioneer/Unicredito defendants and their co-conspirators knew of the kickbacks, or avoided knowing about them. The Vanderbilt/Pioneer/Unicredito defendants and other co-conspirators deliberately avoided management controls that would have prevented these fraudulent practices, because the Vanderbilt/Pioneer/Unicredito defendants and the other co-conspirators were making too much money from these fraudulent practices.

133. The Vanderbilt/Pioneer/Unicredito defendants and the other co-conspirators knew that their statements, promises, omissions, and representations about these investments were false or misleading, or they acted with reckless disregard or deliberate ignorance for the truth or falsity of their statements, promises, omissions, and representations. In other words, all of the Vanderbilt/Pioneer/Unicredito defendants and their co-conspirators knew of their false statements, or avoided knowing about them. The Vanderbilt/Pioneer/ Unicredito defendants and the other co conspirators deliberately avoided management controls that would have prevented these fraudulent statements, promises and representations, because the conspirators were making too much money from these fraudulent statements.

134. The defendants failed to make adequate disclosures about their actual roles in these investments, and their conflicts of interest concerning these investments.

135. After the initial investments in the Vanderbilt CDOs, until the present time, the defendants have continued to make false and misleading statements about the investments. *Inter alia*, the defendants issued periodic performance reports which knowingly overstated the real current value of the investments. The defendants made these periodic false statements in order to avoid an obligation to return money to the State, in violation of § 44-9-3(A)(8).

136. From the beginning of the Vanderbilt CDO investments until the present time, the defendants have made multiple false statements to conceal the true extent of losses on these investments, and the defects in these investments. The defendants have made these false statements to avoid their obligation to return money to the State.

137. Until the present time, the defendants have made false statements to conceal the true extent of losses on these investments.

138. The defendants have conspired among themselves and with Gary Bland to conceal the defects in the products which they sold to the State of New Mexico

139. All of the defendants are beneficiaries of an inadvertent or deliberate submission of a false claim. All the defendants have subsequently discovered the falsity of the claim, and all of the defendants have failed to disclose the false claim to the State within a reasonable time after discovery, in violation of § 44-9-3(A)(9). All of the defendants have violated this provision of the False Claims Act since June 30, 2007, and all of the defendants continue to violate this provision .

140. Some of the wrongful acts occurred before June 30, 2007, and many of them continued after that date. All the defendants have committed violations of the Fraud Against Taxpayers Act after June 30, 2007.

G. CONTINUING FRAUD AND CONCEALMENT BY THE DEFENDANTS.

141. **Rewarding Malott and Meyners.** Malott's actions were intended to gain business and political favor for himself and Meyners, as part of Meyners' efforts to develop its accounting business. Malott's actions were a deliberate breach of the strict fiduciary duties which he owed to the ERB and ERB retirees. Malott's actions were not within the scope of his duties as an ERB board member. His duties at the ERB do not include raising political contributions or developing business for his CPA firm.

142. The Richardson administration rewarded Malott and Meyners + Co. for carrying out the pay-to-play instructions that were given by Contarino, Bland and perhaps

others. Prior to the Richardson administration, Meyners received a relatively small amount of accounting work for the State of New Mexico: approximately $274,000 in the five years prior to 2003. Once the Richardson administration took office, it drastically increased the amount of public money awarded to Meyners for accounting work. According to recently published figures, which may be incomplete, Meyners' contracts have increased dramatically:

Fiscal year 03	$ 131,585
Fiscal year 04	$ 403,966
Fiscal year 05	$ 1,091,515
Fiscal year 06	$ 1,751,378
Fiscal year 07	$ 2,086,011
Fiscal year 08	$ 2,327,997

143. Upon information and belief, one purpose of these contracts was to reward Malott and Meyners for helping to arrange pay-to-play schemes like these described in this complaint and the *Austin Capital* complaint. Another purpose of these contracts was to reward Malott, Meyners, and Meyners' employees for their political contributions and services to Richardson.

144. Upon information and belief, Malott was also rewarded by the advancement of Marla Wood, his girlfriend, fiancée, and then wife. In July 2009 Ms. Wood was promoted to "Director of Community Affairs" in the Office of President David Schmidly at the University of New Mexico.

145. **Rewarding Doug Brown.** In February 2009, Doug Brown was appointed Dean of the Business School at the University of New Mexico, although he did not apply for the position. The appointment was made in secret, by a committee which signed confidentiality agreements. One purpose of this appointment, although not the only purpose, was to reward

Mr. Brown for supporting the selection of the investment managers favored by Contarino, Bland, and Malott.

146. **Rewarding Marc and Anthony Correra.** As a reward for his services to Governor Richardson, Marc Correra was included in the syndicate that was awarded the lucrative franchise for a racetrack/casino ("racino") in Raton, New Mexico, near the Colorado border. Upon information and belief, Governor Richardson insisted or suggested that Marc Correra be included in a syndicate bidding on the franchise, and then Governor Richardson instructed the State Racing Commission to award the franchise to Correra's syndicate. Upon information and belief, Governor Richardson has used this method in the past to reward his supporters and contributors, by suggesting or insisting that they be included in a syndicate which is then awarded a racino franchise. For example, upon information and belief Governor Richardson insisted or suggested that Paul Blanchard be included in a syndicate that was competing for the racino franchise in Hobbs, New Mexico, near the Texas border. Upon information and belief Governor Richardson then instructed the State Racing Commission to award the franchise to Mr. Blanchard's syndicate. Upon information and belief, Governor Richardson also suggested or insisted that Paul Blanchard be included in a syndicate for the proposed racino in Tucumcari, New Mexico, near the Texas border. However, upon information and belief, Mr. Blanchard was unable to negotiate satisfactory terms for his inclusion in the Tucumcari syndicate, and this is one reason why the Governor awarded the franchise to the Raton syndicate (and Correra) rather than to Tucumcari.

147. Upon information and belief, after the news media began to report on Marc and Anthony Correra, the Governor instructed the State Racing Commission to delay or deny the final award of the Raton franchise to Marc Correra's syndicate. Upon information and belief, these instructions are part of the efforts by the Richardson administration to cover up the corruption involving Marc Correra and Anthony Correra.

148. **Moving America Forward Foundation.** Anthony Correra served as a trustee of the purported charitable foundation called Moving America Forward Foundation ("MAFF"). Upon information and belief, MAFF was a sham; its main purposes were to serve as a vehicle for kickbacks to Richardson, and to make those kickbacks tax deductible in the process. Upon information and belief, MAFF records will reveal kickbacks by some of the defendants named herein. The State of New Mexico served a subpoena duces tecum in February, 2009 to obtain these records. However MAFF and it's executive director objected to the subpoena, and the court has been unable to schedule a hearing on the State's motion to compel. Richardson's presidential campaign has paid the Sandler, Reiff & Young law firm of Washington DC to resist the subpoena.

149. Kickbacks were also made through, *inter alia*, Moving America Forward PAC; Si Se Puede 2004! the Democratic Governors' Association; and Richardson's gubernatorial and presidential campaigns.

150. Over the years during the Richardson administration, Frank Foy and the professional staff of ERB and the independent trustees of ERB began to suspect that in some instances the decisions of the ERB and the SIC and the State Board of Finance were being tainted by political considerations and contributions. Frank Foy was particularly outspoken

in his attempts to prevent this possibility from happening. He insisted on enforcing the ERB prohibition on political contributions by vendors and advisors.

151. As a result, Bruce Malott and David Contarino and perhaps others wanted to get rid of Mr. Foy, and they looked for excuses, pretexts, and opportunities to do so. As Chief Investment Officer, Mr. Foy was an exempt employee who could be terminated without cause, and without civil service protections. Because it was clear that he was being targeted for elimination, Mr. Foy was forced to try to protect himself by taking a demotion to Deputy Chief Investment Officer, a classified position. He arranged this with the ERB's Executive Director, Evalynne Hunemuller. The demotion was effective in July 2006.

152. **Firing Evalynne Hunemuller.** On December 7, 2006, the ERB held a retreat at the Los Poblanos estate in Albuquerque. At the end of the meeting, Malott asked Hunemuller to come into the kitchen, where he demanded her immediate resignation prior to the next day's board meeting. Malott said that she was being fired because she had arranged the retreat without consulting him on the agenda. (This reason was a pretext for the real reason, which Malott disclosed the next day.) Prior to demanding her immediate resignation, Malott had not consulted with the entire board, although he had secretly conferred with the Governor's supporters on the ERB board to make sure that he had enough votes.

153. At the beginning of the board meeting on December 8, Dr. Hunemuller submitted her resignation as demanded by Malott, since she had no choice in the matter. After the board meeting, Malott told Dr. Hunemuller that the real reason she was fired was

because she would not fire Frank Foy. When Dr. Hunemuller observed that Mr. Foy did have a tendency to speak out, Mr. Malott completely lost his temper.

154. **Exporting graft from the SIC to the ERB.** After Foy's demotion and Hunemuller's firing, it became easier for Bland, Malott, Contarino, and the Correras to carry out fraudulent schemes at the ERB, in conspiracy with the other defendants. In January 2007, Bob Jacksha was appointed Chief Investment Officer at the ERB, thus completing the plan which had been hatched in 2005 to replace Foy with Jacksha. At the SIC, Jacksha had been instrumental in facilitating the pay-to-play schemes, because he was in charge of the portfolios for private equity – national ("PEN") and credit structured finance ("CSF"). Once Jacksha was transferred from the SIC to the ERB in early 2007, he was able to implement the same corrupt practices at the ERB, in conspiracy with Bland, Malott, Contarino, the Correras, and the other defendants, especially Aldus Equity. By this time Foy had been effectively sidelined and marginalized, so the defendants now had a free hand to use the ERB as a slush fund, as demonstrated by the explosion in third-party fees that occurred in 2007 and 2008 at the ERB.

155. **Retaliation.** In December 2007, Frank Foy was falsely accused of "sexual harassment"and "hostile work environment." These accusations were plainly pretextual and clearly contrived to force Mr. Foy to retire. He was demoted from Deputy Investment Officer to Portfolio Manager. He was ordered to move his office from Albuquerque, a few minutes from his home, to Santa Fe, so that he was forced to commute hours each day without being reimbursed for mileage. In Santa Fe he was given very little to do, and no

office. In March 2008, Mr. Foy was instructed that he could no longer attend meetings of the ERB Board or the ERB Investment Committee.

156. All these actions were taken because Mr. Foy stood as an obstacle to "pay-to-play." Malott and others retaliated against Mr. Foy because he had vigorously resisted investments that might be based on improper and illegal considerations, such as bribes, kickbacks, and other illegal inducements. As a fiduciary for the ERB, Mr. Foy always insisted that the ERB and other agencies act solely in the best interests of the fund beneficiaries and the State, rather than the interests of Contarino, Bland, Malott, Meyners, or Richardson.

157. During Mr. Foy's employment at the ERB, there were no procedures in existence for reporting false claims under the Fraud Against Taxpayers Act.

158. Even if there had been such procedures, it would have been futile to follow them, because the wrongdoers were thoroughly in control of the ERB, as demonstrated by the retaliation against Foy and the firing of Dr. Hunemuller. Nevertheless, out of a stubborn sense of duty, Foy did speak up repeatedly, and he was punished for doing so.

159. The conspirators succeeded in sidelining Mr. Foy and concealing their fraud from him while he was employed at the ERB. Mr. Foy suspected that something improper might have been going on, but he was not able to find proof to substantiate his concerns. Mr. Foy did report his concerns, both verbally and in writing. This motivated the conspirators to redouble their efforts to get rid of him. (The ERB has refused to produce the records in which Mr. Foy expressed his concerns.)

160. Ultimately the harassment and retaliation forced Mr. Foy to retire in March 2008.

161. The foregoing actions were violations of § 44-9-11 (A), (B), and (C), which prohibit retaliation against employees who attempt to investigate violations of the Fraud Against Taxpayers Act.

162. After he "retired," Mr. Foy spent months gathering and analyzing information about Vanderbilt. That is when some of the false claims began to emerge.

163. Mr. Foy filed the *Vanderbilt* complaint on July 14, 2008. Pursuant to statute, the complaint was filed under seal. Mr. Foy sought and obtained a court order allowing him to provide the complaint and other materials to the SEC and other law enforcement authorities. The Attorney General's Office declined to intervene in the case, because the Attorney General does not have enough resources or staff to prosecute complex *qui tam* cases. The Attorney General has one attorney who is handling more than 125 *qui tam* cases, in addition to cases in other areas. However, the Attorney General did agree that it was in the best interests of the State to unseal the case and allow it to proceed with Mr. Foy and the undersigned firm acting on behalf of the State.

164. The *Vanderbilt* complaint was unsealed on January 14, 2009, with the exception of Exhibit A (the identity of John Doe #2), which was unsealed on February 3, 2009. Bland, Malott, Meyners, and Contarino joined with the ERB and the SIC in attacking Mr. Foy both publicly and behind the scenes. *Inter alia* they have called him a "sexual predator," "a disgruntled former employee," "a boldface [sic] liar," and accused him of engaging in a "McCarthy-style political witchhunt."

165. **Conflict of interest.** Mr. Bland and Mr. Malott continued to serve as ERB trustees, and refused to recuse themselves, despite the plain conflict of interest between their personal interests and the best interests of the ERB. Because Bland and Malott are implicated in behavior which may subject them to civil and/or criminal liability, Mr. Bland and Mr. Malott have a personal interest in obstructing the *Vanderbilt* and *Austin Capital* lawsuits. On the other hand, these lawsuits are in the best interests of the State, no matter who was involved in the wrongdoing, because the State stands to recover the money it lost. The ERB has refused to cooperate with Mr. Foy in recovering the money which the SIC lost to Vanderbilt.

166. The same conflicts of interest apply to the SIC, but Mr. Bland refused to recuse himself. The SIC has refused to cooperate with Mr. Foy in recovering the money which the SIC lost to Vanderbilt.

167. There are many honest employees at the ERB and the SIC, and these employees have tried to do the right thing and carry out their fiduciary responsibilities under the most adverse circumstances. However, the ERB and the SIC have been, and continue to be, under the corrupt control and adverse domination of Gary Bland, Bruce Malott, David Contarino and Governor Richardson. Governor Richardson exercises *de facto* control over the SIC and the ERB, even though these agencies are supposed to be under the independent control of disinterested fiduciaries. Governor Richardson, Mr. Bland, Mr. Malott, and Mr. Contarino continue to exercise their direct or indirect control over the ERB and the SIC to try to insulate themselves from civil and/or criminal liability, rather than to recover funds for the ERB and the SIC, because any effort to recover funds will uncover corruption which they

wish to cover up. Thus the ERB and the SIC cannot be trusted to act in the best interests of the State of New Mexico. The same is true of any state agency which is controlled directly or indirectly by Governor Richardson.

168. **Ongoing breaches of fiduciary duties.** These actions constitute a breach of the fiduciary duties which Malott, Bland, the ERB, and the SIC owe to the State of New Mexico and to the beneficiaries of the ERB and the SIC. Upon information and belief, these breaches of fiduciary duty have been caused by improper influence from Contarino, Bland, Malott, persons in the Governor's office, and attorneys who have been hired to resist the Foy lawsuits.

169. **Stonewalling.** As a result of these improper influences, the ERB and the SIC have even refused to produce public documents as required by the Inspection of Public Records Act. Upon information and belief, the ERB and the SIC are acting on instructions from the Governor's office, which reviews all IPRA requests to state agencies.

170. As a result of these improper influences, the ERB and the SIC have also refused to comply with subpoenas served on them in the *Vanderbilt* case.

171. Bland, Malott, Contarino, the Governor's office, and the ERB and the SIC have refused to provide evidence pertinent to the *Vanderbilt* lawsuit, because that evidence would tend to corroborate the allegations in that lawsuit, and because the evidence might subject them to civil or criminal liability.

172. Bland, Malott, Contarino, the Governor's office, and the ERB and the SIC have refused to provide evidence pertinent to the other pay-to-play situations described

above, because that evidence would tend to corroborate the allegations in this lawsuit, and because the evidence might subject them to civil or criminal liability.

173. Misuse of the Risk Management Division. At the direction of Governor Richardson and other wrongdoers within the Richardson administration, the Risk Management Division is spending taxpayer money to cover up the fraud against the State. Risk Management is spending State money to defend some of the conspirators who defrauded the State, and to resist the State's efforts to recover money for the State treasury. The Risk Management Division is defending Gary Bland in this litigation, and also defending Bland and Malott in related litigation by Mr. Foy under the Inspection of Public Records Act. The actions of the Risk Management Division are part of the ongoing cover-up and obstruction of justice described in this supplemental complaint.

174. To justify its participation in the cover-up, the Risk Management Division is making the absurd argument that the Risk Management Division is required to defend people who steal from the State. Risk Management cites the Tort Claims Act as a pretext for its actions, but the Tort Claims Act only applies to suits where a plaintiff is attempting to obtain money from the public treasury, directly or indirectly. That is the opposite of the present suit, where the State itself is seeking to recover money from the persons who defrauded the State. The Tort Claims Act only applies to lawsuits which seek to take money from the public treasury, whereas this lawsuit seeks to recover money for the public treasury. Thus the Tort Claims Act is utterly irrelevant.

175. This misuse of the Risk Management Division is a simply a pretext for tapping the public treasury to benefit persons who have cheated the state. Prior to this lawsuit, the

Risk Management Division has never defended or indemnified public officials who stole from the state, when the state itself is seeking damages. Such actions are *ultra vires* and beyond the authority of the Risk Management Division or any other state agency. *See* Exhibit A hereto.

176. Furthermore, the actions by the Risk Management Division are in direct violation of the strict fiduciary duties imposed by Art. XX of the New Mexico Constitution, which cannot be overridden by any statute or the interpretation thereof by an agency. The plaintiffs intend to seek injunctive relief against this ongoing misuse of state funds to thwart recoveries by the State.

177. Unless this conduct is enjoined by the Court, the ERB, the SIC, the Risk Management Division and other state agencies will continue to act in the personal interests of the persons named above, and against the best interests of the State of New Mexico, and in violation of the strict fiduciary duties imposed on the SIC and ERB.

178. Upon information and belief, Bland, Malott, Contarino and others have attempted to intimidate witnesses and to suppress or spoliate evidence pertinent to this case and the *Austin Capital* case. Although there are many honest employees at the ERB and the SIC, they have been intimidated into silence by Bland, Malott, Contarino and others in the Richardson administration.

179. In October 2009 Gary Bland was forced to resign when it was discovered that he had coerced investment firms to pay kickbacks to Marc Correra, ostensibly in the form of "third party fees." Behind the scenes, the Richardson administration (including Katherine Miller, a SIC member and Secretary of the Department of Finance and Administration) tried

to coerce and threaten the members of the SIC to keep Gary Bland as State Investment Officer, but failed. Frank Foy has asked for the records showing this coercion, but the Richardson administration has refused to provide them.

180. Governor Richardson has appointed Bob Jacksha to act as interim State Investment Officer, Mr. Jacksha is the person who had responsibility for the CSF (credit structured finance) portfolios at the SIC where the Vanderbilt kickbacks occurred. He is also the person who was pushed in 2005 by Contarino, Bland, Malott, and the Correras as a replacement for Mr. Foy. In early 2007 Mr. Jacksha did replace Frank Foy at the ERB, and the ERB kickbacks began after Mr. Jacksha's arrival.

181. Mr. Jacksha's appointment as interim State Investment Officer is a breach of fiduciary duty, especially the duty of prudence, because at a minimum Mr. Jacksha has demonstrated a willingness "to look the other way" while kickbacks were being arranged at the SIC and then at the ERB, even though it is not yet clear how much Mr. Jacksha might have actually known about the kickbacks.

182. The civil wrongs described in this complaint are repeated and continuing, and will continue unless injunctive relief is granted.

H. DAMAGES SUFFERED BY THE STATE OF NEW MEXICO ON THE VANDERBILT INVESTMENTS.

183. The State of New Mexico has suffered substantial damages as a result of the false claims and fraudulent conduct of the defendants. The precise amount of damages cannot be ascertained at this time, for several reasons. First, the defendants are refusing to produce relevant records, including public records, relating to the Vanderbilt transactions. Second, the defendants are minimizing or delaying the release of accurate information and

valuations for the Vanderbilt investments. Third, the SIC and the ERB are concealing or downplaying the true extent of their losses overall, and in specific investments such as the Vanderbilt investments. Fourth, there is no market for many of the assets in the Vanderbilt portfolio, or only a distressed and illiquid market. Fifth, the losses from some of the Vanderbilt investments are not yet known, and have not been liquidated. Sixth, the defendants are continuing to provide false information about the real value of the Vanderbilt investments and assets. In particular, the defendants are falsely claiming values which are far higher than actual value, that is, the amount that a willing buyer would pay to purchase the investment from the State.

184. On the Vanderbilt Financial investment, the actual damages for loss of principal and investment earnings are $143,200,229, calculated as of February 28, 2010.

185. On the other Vanderbilt CDO investments, the actual damages for loss of principal and investment earnings are $144,821,639 calculated as of February 28, 2010.

186. Total actual damages on the Vanderbilt investments are $288,021,858, calculated as of February 28, 2010. This figure is exclusive of trebling under the Fraud Against Taxpayers Act, or punitive or exemplary damages under the common law or other statutes.

187. The damages suffered by the State of New Mexico include, but are not limited to, the fees and other compensation charged by the defendants. In addition, the State of New Mexico was charged for direct expenses, including but not limited to organizational expenses, investment expenses and charges, and legal and accounting fees. All of these fees, compensation and expenses should be disgorged and returned to the State of New Mexico.

188. The damages suffered by the State of New Mexico also include, but are not limited to, the kickbacks on the investments by the State of New Mexico. All of these "fees," "finder's fees," "third-party marketing fees," "placement fees," no matter what they are called, should be disgorged and returned to the State of New Mexico.

189. This complaint does not assert any claims arising under federal law.

I. CLAIMS FOR RELIEF

Count #1– Violations of the Fraud Against Taxpayers Act.

190. The defendants have violated, and continue to violate, the Fraud Against Taxpayers Act;

Additional and Alternative Counts.

191. Pursuant to § 44-9-14 and Rule 1-008(E)(2), the plaintiffs assert the following additional or alternative claims for relief:

Count #2 – Breach of fiduciary duties.

192. The defendants breached the fiduciary duties which they owed to the State of New Mexico, the State Investment Council, and the Educational Retirement Board.

Count # 3– Constructive fraud.

193. The defendants committed constructive fraud against the State of New Mexico, the SIC, and the ERB.

Count #4 – Fraud and deceit.

194. The defendants committed fraud and deceit against the State of New Mexico, the SIC, and the ERB.

Count #5 – Misrepresentation.

195. The defendants committed misrepresentation against the State of New Mexico, the SIC, and the ERB. These misrepresentations were made with actual knowledge that the representations were untrue, or with deliberate ignorance or reckless disregard of the truth or falsity of the information.

Count #6 – Breach of contract.

196. The defendants breached the contracts which they had with the SIC, the ERB, and the State of New Mexico or the State's agents.

Count #7 – Breach of third-party beneficiary contracts.

197. The defendants breached the contracts which they had for the benefit of the SIC, the ERB, and the State of New Mexico as third-party beneficiaries.

Count #8 – Negligence and failure to use ordinary care.

198. The defendants acted negligently and failed to use ordinary care, thereby damaging the State of New Mexico, the SIC, and the ERB.

Count #9 – Breach of trust responsibilities.

199. The defendants breached the trust responsibilities which they owed to the State of New Mexico, the SIC, and the ERB.

Count # 10 – Unjust enrichment/restitution/quasi-contract.

200. The defendants unjustly enriched themselves individually, jointly, and severally at the expense of the State of New Mexico, the SIC, and the ERB. The defendants are liable for restitution to the State of New Mexico, the SIC, and the ERB. The defendants

are liable in implied contract or quasi-contract to the State of New Mexico, the SIC, and the ERB.

Count #11– Breach of duties of prudence, loyalty, and skill.

201. The defendants breached the duties of prudence, loyalty, and skill which they owed to the State of New Mexico, the ERB, and the SIC. These duties are imposed by, *inter alia*: Art. XX, § 22; § 22-11-53; UPIA § 22-11-13; and § 45-7-601.

Count #12 – Breach of duties to act as prudent investor using reasonable care, skill, and caution.

202. The defendants violated their duties by failing to act as a prudent investor using reasonable care, skill, and caution.

Count #13 – Violations of New Mexico Securities Act.

203. The defendants have violated the New Mexico Securities Act, including the following sections: § 58-13B-30 (fraud or deceit, untrue statement); § 58-13B-31 (market manipulation, quoting a fictitious price); § 58-13B-32 (inside information); § 58-13B-33 (fraud or deceit by investment adviser); § 58-13B-40 (civil liability).

Count #14 – Liability for violations of statutes and constitutional provisions.

204. The defendants are subject to liability for violating numerous statutes and constitutional provisions which protect the State, including but not limited to: New Mexico Constitution art. 20, § 22; New Mexico Constitution, art. 20 §9 (state officers limited to salaries); 30-23-1 (demanding illegal fees); § 30-23-2 (paying or receiving public money for services not rendered); 30-23-3 (making or permitting false public vouchers); § 30-23-5 (unlawful speculation and claims against the state); § 30-23-6 (unlawful interest in a public

contract); § 30-23-7 (civil damages for engaging in illegal acts); § 30-24-1 (bribery of public officer or public employee); § 30-24-3 (bribery or intimidation of the witness; retaliation against the witness); § 30-24-3.1 (acceptance of a bribe by witness); § 30-25-1 (perjury); § 30-26-1 (tampering with public records); § 30-26-2 (refusal to surrender public records); § 30-28-1 (attempt to commit a felony); § 30-28-2 (conspiracy); § 30-28-3 (criminal solicitation); § 30-16-1 (larceny); § 30-16- 6 (fraud); § 30-16-8 (embezzlement); § 30-16-nine (extortion); § 30-22-4 (harboring or aiding a felon); § 45-7-601 through -12 (Uniform Prudent Investor Act); § 30-22-5 (tampering with evidence); § 30-22-6 (compounding a crime); § 30-42-3 (racketeering); § 59A-1-13 and -14; § 59A-1-5; (definition of insurance,); § 59A-15-1 (transacting insurance without a license); § 59A-7-6 (A)(9); (transacting credit and mortgage guaranty insurance); § 59A-7-8; (transacting surety insurance); § 59AA-16-1 (insurance trade practices and frauds; UJI 13-1706), including § 59A-16-3 (unfair or deceptive or fraudulent practices); -4 (misrepresentation), -5, (false information); -8 (falsification and omission of records, misleading financial statements); -20 (unfair claims practices); -25 (knowledge of insurer of prohibited acts); -30 (private right of action); § 57-12-1, et seq. (Unfair Practices Act, UJI 13-1707); §55-1- 106 (liberal remedies under UCC; any right may be enforceable by action); § 55-1-203 (obligation of good faith); § 55-1-103 (supplementary general principles of law -- the principles of law equity including the law merchant, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake); § 55-8-101, et seq. (investment securities); §55-9-101, et seq. (secured transactions); see also UJI 13-150 and 13-1421; (This civil lawsuit cannot, and does not seek to, impose criminal penalties or prove that crimes have been

committed. This complaint references possible crimes only in order to assert civil claims for the related or analogous torts. *See, e.g.* UJI 13-501.)

Count #15 – Loyalty.

205. The defendants violated the duties of loyalty imposed on them by the common law.

Count # 16– Vested property rights.

206. The defendants deprived the SIC, the ERB and the State of vested property and property rights.

Count # 17– Exclusive benefit rule.

207. The defendants breached their duty to act for the sole and exclusive benefit of the State, the SIC, and the ERB.

Count # 18 – Concealment.

208. The defendants concealed, and continue to conceal, material information which they had a duty to disclose to the State of New Mexico.

Count #19 – Negligent misrepresentation.

209. The defendants negligently misrepresented the products and services which they provided to the State of New Mexico.

Count #20 – Innocent misrepresentation.

210. The defendants innocently misrepresented the products and services which they provided to the State of New Mexico.

Count #21 – Failure to disclose.

211. The defendants failed to disclose material information which they had a duty to disclose to the State of New Mexico.

Count # 22– Constructive or resulting trust.

212. The defendants are subject to a constructive trust, or a resulting trust, in favor of the State of New Mexico.

Count # 23– Conspiracy.

213. The defendants conspired among themselves to commit the wrongful acts described in this complaint, and to injure the State of New Mexico.

Count # 24– Aiding and abetting all of the wrongful act described herein.

214. The defendants aided and abetted the commission of the wrongful acts described herein, even if they did not commit the wrongful acts themselves.

Count #25 – Inducing breach of contract.

215. The defendants induced breaches of the contracts that benefitted the State of New Mexico.

Count #26 – Interference with contractual relations.

216. The defendants interfered with the contractual relations of the State of New Mexico.

Count #27 – Interference with prospective advantage.

217. The defendants interfered with the State of New Mexico's prospective advantage.

Count #28 – Prima facie tort.

218. The defendants are liable to the State of New Mexico for *prima facie* torts.

Count #29 – Conversion.

219. The defendants are liable in conversion to the State of New Mexico, the SIC, and the ERB.

Count #30 – Spoliation of evidence.

220. The defendants have engaged, and continue to engage, in spoliation of evidence.

Count #31 – Bad faith.

221. The defendants acted, and continue to act, in bad faith.

Count # 32– Good faith, honesty, and fair dealing .

222. The defendants have breached their duties of good faith, honesty, and fair dealing that arise by operation of New Mexico law.

Count # 33– Deprivation of honest services.

223. The defendants deprived the State, the SIC, and the ERB of the intangible right to honest public services which arises by operation of New Mexico law.

Count #34 – Extortion.

224. The defendants Gary Bland, David Contarino, Marc Correra, Anthony Correra, and Bruce Malott engaged in extortion. It is probable that other defendants and co-conspirators also engaged in extortion, but they cannot be identified without discovery.

Count #35– Bribery.

225. The defendants engaged in bribery, or benefitted from bribery.

Count #36 – Transacting insurance without a license.

226. The defendants transacted and engaged in insurance without a license, in violation of the New Mexico Insurance Code, particularly but not exclusively as regards credit default swaps related to the Vanderbilt CDOs.

Count #37 – Entrustments.

227. The State of New Mexico entrusted the defendants with property belonging to the State, and defendants breached the duties arising from those entrustments.

Count #38 – Joint venture.

228. The defendants engaged in joint ventures in their dealings with the State of New Mexico, and therefore each defendant is liable for the acts of any of the joint ventures.

Count #39 – Agency.

229. The defendants are liable for the wrongful acts or omissions of their agents.

Count # 40– Violation of agent's duties toward the State.

230. The defendants acted as agents for the State of New Mexico, and violated the duties owed by an agent to his principal.

Count #41 – Failure to perform in workmanlike manner .

231. The defendants failed to perform in workmanlike manner.

Count #42 – Failure to use reasonable skill.

232. The defendants failed to use reasonable skill.

Count #43 – Duress.

233. Using Bland, Contarino, Malott, Marc Correra, Anthony Correra and others, the defendants exerted duress on the SIC and the ERB to invest with Vanderbilt and the other defendants.

Count #44 – Undue influence.

234. The defendants exercised, and continue to exercise, undue and improper influence over the SIC, the ERB, and the State of New Mexico.

Count # 45– Defamation [as improper means].

235. As part of their efforts to conceal their wrongdoing, the defendants defamed Frank Foy.

Count #46 – Duty of specialist.

236. The defendants breached the duties which they owed as specialists in their areas of finance.

Count #47 – Breach of duties owed by supplier of intangible products and services.

237. The defendants breached the duties which they owed as suppliers of intangible products and services to the State of New Mexico, including the duty of ordinary care, the duty to inspect, and the duty to warn.

Count #48 - Breach of duties owed by manufacturer or assembler of intangible products.

238. The defendants manufactured or assembled intangible products such as CDOs, which were purchased by the State of New Mexico. The defendants breached the duties which they owed as manufacturers or assemblers of these products. They are liable for

defects in the component parts, such as mortgages, credit default swaps, and warehouse loans, which they assembled into the CDO products bought by the State of New Mexico.

Count #49 – Ordinary care.

239. The defendants breached their duty of ordinary care as suppliers of the intangible products sold to the State of New Mexico.

Count #50 – Strict products liability.

240. The defendants are strictly liable for the defective intangible products which they produced or supplied to the State of New Mexico.

Count #51 – Breach of express and implied warranties.

241. The defendants breached express or implied warranties to the state of New Mexico.

Count #52 – Implied warranty of merchantability.

242. The defendants breached the implied warranty of merchantability.

Count #53 – Implied warranty of fitness for particular purpose.

243. The defendants breached the implied warranty of fitness for particular purpose.

Count #54 – Good faith, honesty and fair dealing [insurer].

244. The defendants acted as insurers in connection with the Vanderbilt CDOs, and breached the duties of good faith honesty and fair dealing owed by insurers.

Count #55 – Nominal damages.

245. The defendants are liable to the State of New Mexico, the SIC, and the ERB for nominal damages.

Count #56 – Punitive or exemplary damages.

246. The defendants are liable to the State of New Mexico, the SIC, and the ERB for punitive or exemplary damages.

Count #57 – Other relief under Rule 1-054(C).

247. Pursuant to Rule 1-054(C), the Plaintiffs State of New Mexico and the *qui tam* plaintiffs are entitled to other relief against defendants, even if the plaintiffs have not demanded such relief in this complaint.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff State of New Mexico and the *qui tam* plaintiffs pray for:

A. An award of actual damages in the amount of $ 90,000,000 in lost principal on the Vanderbilt Financial Trust investment;

B. An award of actual damages for lost principal on each of the State's investments with Vanderbilt, including but not limited to, Vanderbilt Dunhill, Vanderbilt Fort Dearborn, Vanderbilt Monroe Harbor, Vanderbilt Streeterville, Vanderbilt Tudor Place, Vanderbilt Sky River, and Vanderbilt Lakeside II.

C. Actual damages for lost income on each of the state's investments with Vanderbilt

D. Disgorgement of all bribes, kickbacks, third-party fees, and fees of any kind.

E. Pre- and post-judgment interest under §§ 56-8-4 and 56-8-3, and as otherwise provided by law;

F. Trebling of the foregoing amounts as provided in § 44-9-3(C)(1).

G. A civil penalty of not less than five thousand dollars ($ 5,000) and not more than ten thousand dollars ($ 10,000) for each violation;

H. The costs of this civil action;

I. Reasonable attorney fees, including the fees of the attorney general and counsel for the *qui tam* plaintiffs;

J. Awards distributing the proceeds of this action or any related settlement or lawsuit in accordance with § 44-9-7;

K. Judgment that each of the defendants is jointly and severally liable to the State of New Mexico;

L. Equitable, declaratory, and injunctive decrees requiring the ERB and the SIC to implement and enforce policies against third party fees and political contributions, direct or indirect, by any person doing business with the ERB or the SIC;

M. Disqualification of all members of the SIC and the ERB who have conflicts of interest as regards the subject matter of this lawsuit;

N. Damages and other relief as may be available under the statutes and other law described in this complaint;

O. Punitive or exemplary damages;

P. Injunctive and declaratory relief against any expenditure of public funds to oppose this action to recover funds for the State; and

Q. Such other and further relief as may be necessary or appropriate.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By_____

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I hereby certify that a true and correct copy of the foregoing was emailed to all counsel of record this 8th day of March, 2010.

_____

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STATE PRINTING & GRAPHIC SERVICES BUREAU
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TRANSPORTATION SERVICES DIVISION
(505) 476-1902

March 4, 2010

Via facsimile
Frank Foy
c/o Victor R. Marshall & Associates, P.C.
12509 Oakland NE
Albuquerque, NM 87122
505-332-3793 fax

Mr. Marshall,

Concerning your public records request dated February 17, 2010 for any and all records relating to:

1. Every instance, if there are any, where the Risk Management Division (or any other agency if applicable) has provided a defense to any public official or employee, in a case where the State of New Mexico or any state agency was seeking to recover money from that official or employee personally.

2. Every instance, if there are any, where the Risk Management Division (or any other agency if applicable) has provided indemnity to any public official or employee, in a case where the State of New Mexico or any state agency obtained a judgment or settlement recovering money from that official or employee personally.,

be advised we have not located any files at GSD/RMD which would be responsive to your request and therefore consider this request closed.

Regards,

Alex Cuellar

Alex Cuellar
Public Information Officer/Records Custodian
NM General Services Department
(505) 977-9911 (mobile)
(505) 242-3070 (fax)

EXHIBIT
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