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Electronically FILED by
Superior Court of California,
County of Los Angeles
5/09/2023 3:15 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By E. Galicia, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

NATIONAL ASIAN AMERICAN
COALITION, a California 501(c)(3) nonprofit
public benefit corporation,

Plaintiff,

vs.

FAITH BAUTISTA, an individual,
JOSEFINA BAUTISTA, an individual,
NORA PENAFLO, an individual,
BING CROSBY BAUTISTA, an individual,
MARISSA SAMACO, an individual,
FLORADEMA LLC, a California limited
liability company; and DOES 1-50, inclusive,

Defendants.

CASE NO. **23STCV10387**

COMPLAINT FOR:

- 1. BREACH OF FIDUCIARY DUTY AND
AIDING AND ABETTING BREACH OF
FIDUCIARY DUTY;**
- 2. FRAUD;**
- 3. DECEIT;**
- 4. CONSTRUCTIVE FRAUD;**
- 5. RECEIPT OF STOLEN PROPERTY,
TREBLE DAMAGES, AND
ATTORNEYS' FEES
(PENAL CODE § 496(c));**
- 6. CONVERSION; AND**
- 7. NEGLIGENT MISREPRESENTATION**

DEMAND FOR TRIAL BY JURY

INTRODUCTION

1. Plaintiff National Asian American Coalition (“NAAC”) is a certified nonprofit California-based Housing Counseling Agency. NAAC’s mission is to serve low- and moderate-income families and communities, and to advocate for Asian American and other under-represented communities in the areas of small business development and affordable housing. Founded in 2004 by defendant Faith Bautista (“Faith”),¹ NAAC has a long and successful history of providing lending and related activities to small businesses in under-served communities as well as comprehensive, government-sponsored rental, mortgage and homeownership counseling. Through these counseling services, NAAC assists members of these communities with critical advice, especially in the area of responsibly obtaining and maintaining home ownership.

2. In approximately December 2020, after the State of California allocated \$50 million (later increased to \$91.5 million) toward renter and home-ownership counseling services statewide, the State partnered with NAAC and other counseling organizations to provide these counseling services to California residents. That program—known as the “National Mortgage Settlement” or “NMS” program—remains in place today. Each time a participating counseling organization provides an approved counseling service, the organization receives a flat fee of \$750. These payments are subject to strict documentation requirements, and the individual counselors are each required to be certified by meeting certain requirements and passing a related exam. From the program’s inception, NAAC has been an active participant and, to date, has been paid over \$12 million from these state funds.

3. Defendant Faith was NAAC’s Chief Executive Officer and was primarily responsible for managing the NMS program along with NAAC’s Chief Financial Officer, defendant Josefina Bautista (“Josefina”), and NAAC’s Director of Housing, defendant Nora Penaflor (“Penaflor”). Over the nearly two years NAAC operated the counseling program, Faith, Josefina, and Penaflor regularly communicated to NAAC’s Board of Directors that the

¹ Where individuals involved in this case have the same last name, for clarity, we use their first names.

1 National Mortgage Settlement program was an unqualified success and was positively
2 impacting these underserved communities. Given the number of California residents these
3 defendants reported NAAC was assisting, as well as the sheer volume of state grant money the
4 program was generating, defendants' representations regarding the success of the program
5 seemed not only valid but self-evident. Unbeknownst to NAAC's Board of Directors,
6 however, defendants' management of the NMS program at NAAC was in reality an enormous
7 fraud on the State of California perpetrated to greatly increase Faith, Josefina and Penaflor's
8 own compensation and industry recognition, while simultaneously enriching their family
9 members and friends.

10 4. The genesis of this scheme was in 2016, when California was awarded \$410
11 million from settlements with banks over predatory lending practices leading to the 2008
12 mortgage crisis. When the State of California initially earmarked these funds to fill a hole in
13 the State's budget, Faith spearheaded NAAC's effort to sue the State of California to force it to
14 allocate some or all of these funds to mortgage and home-ownership counseling services. In
15 2019, the State finally made an initial allocation. Faith saw this as her deserved opportunity to
16 cash-in on her effort to secure these funds. She then embarked on a plan to do exactly that.

17 5. Her first step was to convince NAAC's Board of Directors to modify her
18 compensation package. While at the time, Faith received modest bonuses from NAAC (in
19 2019, it was \$5,000), in anticipation of NAAC's participation in the NMS program, Faith
20 pinned her bonus to NAAC's revenues and quietly removed a significant limitation on how her
21 bonus was calculated. With the limitation removed, Faith could easily earn hundreds of
22 thousands of dollars or even over a million dollars in bonus compensation each year, a figure
23 that dwarfed her salary. But to make that happen, Faith had to devise a way to drive up
24 revenue while keeping NAAC's costs fixed. To meet that objective, Faith launched a scheme
25 to submit thousands of fake or otherwise ineligible counseling sessions for payment, each of
26 which generated revenues for NAAC at little to no cost.

27 6. To make the scheme work, Faith needed the assistance of Josefina (NAAC's
28 CFO) and Penaflor (NAAC's Director of Housing). To entice them into the conspiracy, Faith

1 threw additional cash incentives their way—such as higher salaries and back-door kickbacks.
2 To keep the rest of the employees quiet, Faith—now joined by Josefina and Penaflor—offered
3 and overpaid employee incentive bonuses while simultaneously dismissing any concerns
4 employees raised about counseling sessions that did not appear legitimate. To further insulate
5 themselves from scrutiny, Faith, Josefina and Penaflor recruited and relied upon as many
6 friends and relatives as possible to execute their scheme.

7 7. As the money flowed in, Faith and her team became more brazen and started
8 using outside businesses they owned to skim more money for themselves, claiming these
9 companies were providing valuable services to NAAC when in reality the work was at best
10 clerical and easily could have been done by NAAC at minimal cost. Their plan worked to
11 perfection, at least initially, as NAAC’s revenues skyrocketed.

12 8. But in Summer 2022, the defendants’ scheme began to unravel. Each year,
13 NAAC uses an outside auditing firm to audit its books and records. As part of the auditor’s
14 review of NAAC’s 2021 financial statements and related discussions with NAAC’s personnel,
15 the auditor uncovered numerous procedural and substantive red flags and deficiencies, both
16 with Faith and her team’s administration of the counseling program and its disproportionately
17 high impact on Faith’s bonus compensation. The auditor presented its concerns to the Board
18 of Directors. To ensure a full and fair review of these issues, the Board immediately hired a
19 well-respected, national law firm to assist them in conducting a thorough investigation.

20 9. Faith, Josefina and Penaflor responded by aggressively attempting to cover
21 their tracks. They started by obstructing NAAC’s investigators from accessing NAAC’s client
22 management system and refusing to produce important documents. When NAAC requested
23 that they cooperate and sit for interviews, they made excuses for why they could not attend.
24 Their misdirection efforts were done to buy time. Over a weekend where Penaflor claimed she
25 was going to be out of town, she and Faith secretly ordered several staff members to join them
26 at NAAC’s Daly City, California office where Faith and Penaflor attempted to systematically
27 alter, manufacture and destroy documents. Upon learning of these efforts in real time,
28 NAAC’s Board sent investigators to the Daly City office to preserve the evidence Faith and

her co-conspirators were in the process of altering or destroying. Shortly thereafter, NAAC's Board placed all three—Faith, Josefina and Penaflor—on administrative leave pending completion of NAAC's investigation. By the end of 2022, all three either voluntarily resigned or "retired." One of them—Penaflor—refused to be interviewed entirely. Another—Josefina—quickly moved to the Philippines.

10. By the time NAAC's Board of Directors was able to uncover Faith, Josefina and Penaflor's conspiracy to steal from NAAC and the State of California, significant damage was done. According to the records defendants themselves created, summarized and sent to the State of California, over the course of the entire counseling program, NAAC submitted approximately 15,672 counseling sessions to the State, resulting in payments to NAAC of \$11,754,000 plus \$581,288 in "capacity fees," for a total of \$12,356,288.

11. To date, NAAC only has been able to verify a small percentage of these sessions as valid and properly documented. While the full extent of defendants' fraud is currently unquantified, NAAC expects the damages to be substantial. For example, NAAC has already identified the following fraudulent transactions, amongst others:

- Faith caused NAAC to pay over \$1.5 million out of funds received from the NMS program to her personally owned corporation, defendant Floradema, LLC, ostensibly for assistance with counseling services. But Floradema did not render any legitimate and reimbursable counseling services. Defendants' submission of these sessions to NAAC for payment from the NMS program was fraudulent.
- Josefina specifically acknowledged that she never performed a single counseling session, yet defendants submitted and obtained payment for 1,346 sessions listing Josefina as the counselor. These submissions—which resulted in NAAC receiving \$1,009,500 from the NMS program—were fraudulent.

- Defendants submitted 1,447 counseling sessions where the listed counselor was not authorized to counsel. These submissions, which resulted in NAAC receiving \$1,085,250 from the NMS program, were also fraudulent.

12. The subterfuges used to justify the defendants' fraudulent and otherwise improper submissions are now coming to light, such as defendants' wholesale use of unrelated caller and voting lists to generate names of counseled clients. Faith, Josefina and Penaflor became so arrogant in their actions that they did not even bother to check whether the number of sessions they submitted for payment was even possible—and as it turns out, the number of counseling sessions NAAC counselors supposedly conducted is absurdly *impossible*. For example, despite the fact that a counseling session and related work generally took at least one hour, for one counselor, defendants' records claim that she conducted 35 counseling sessions in a single day. Another counselor is credited with conducting 45 counseling sessions in a single day. A third counselor supposedly conducted 80 sessions in a single five-day work week, meaning the counselor would have had to conduct 16 sessions each day. This counselor—defendant Marissa Samaco—was paid over \$900,000 for these counseling sessions, yet her reported numbers were simply not possible.

13. Defendants' actions are especially egregious given that Faith, Josefina and Penaflor were officers or high-level and trusted employees of a 501(c)(3) charitable entity established to benefit low- and moderate-income families, the Asian American community, and similarly under-represented communities in California. The defendants' actions grossly violated their strict fiduciary duties owed to NAAC, and at a more basic level, violated the trust of the Asian American and other deserving communities they were supposed to be serving. These communities needed and expected the long-delayed funds from the National Mortgage Settlement program to directly benefit their communities. Instead, substantial portions of the funds were spent to fuel defendants' egos and quench their thirst for money.

14. When all payments from the State of California are included, the named defendants, along with unnamed DOE defendants who assisted their conspiracy, collectively caused NAAC to receive over \$12 million in state funds, but NAAC now owes back to the

State of California all of the money received from any of these counseling sessions that were unlawful and fraudulent. In embarking on this shameless conspiracy to defraud NAAC and the State of California, defendants profited handsomely at the expense of NAAC and ultimately at the expense of California's taxpayers. To protect the charity from further harm, NAAC now takes the unfortunate but necessary step of suing its own founder and her coconspirators to force them to return every penny they selfishly siphoned from this charitable organization and to help NAAC resolve its repayment obligation to the State of California.

THE PARTIES

A. National Asian American Coalition

15. Plaintiff NAAC is a California nonprofit public benefit corporation, a 501(c)(3) charitable organization, and a certified nonprofit California-based Housing Counseling Agency. Founded in 2004 by defendant Faith, NAAC has operated out of numerous offices, including in Daly City, California (near San Francisco), Marina Del Rey, California, and in Manhattan Beach, California.

16. When Faith founded NAAC, she did so under the guidance and mentorship of Robert Gnaizda, a well-known and respected advocate for social justice. Mr. Gnaizda served as NAAC's General Counsel. With Mr. Gnaizda's guidance, Faith grew NAAC into a well-respected organization known for economic empowerment for minority communities. As it grew, NAAC became a U.S. Department of Treasury certified Community Development Financial Institution and a HUD-approved nonprofit housing counseling agency. Faith was the face of NAAC and Mr. Gnaizda its heart and conscience. Together, they proved to be a powerful, effective, and conscientious leadership team. Due to health reasons, Mr. Gnaizda retired as General Counsel in 2019, and he passed away in July 2020. NAAC does not believe it is a coincidence that his retirement coincides with the commencement of Faith and her co-conspirator's fraudulent conspiracy described below.

B. The Defendants

17. During the period the program was in place, defendant Faith Bautista was a California resident residing in Marina Del Rey, California, and was NAAC's President and

Chief Executive Officer. She generally worked out of her home office, as well as NAAC's office in Manhattan Beach, California.

18. Defendant Floradema LLC is a California limited liability company operating in Marina Del Rey, California, at the same address where Faith resides and has a home office. NAAC is informed and believes that Faith established Floradema in 2015 and that Faith (a) is and was the sole owner; (b) has control over it and uses that control to dominate and manipulate it for her own purposes; (c) used it to engage in the fraudulent and illegal activity alleged herein; and (d) comingled her personal assets with Floradema's assets, failed to adequately maintain separate books and records, and otherwise ignored the legal formalities required to maintain the separation between her and Floradema. For all of these reasons, Floradema is the alter ego of Faith such that it would be unjust to allow Faith to use Floradema as a vehicle to shelter assets or otherwise avoid personal liability in this case.

19. During the period the program was in place, defendant Josefina Bautista was a California resident residing in an apartment in San Bruno, California, and generally telecommuting from her apartment. Josefina was NAAC's Chief Financial Officer. She is married to Faith's brother, defendant Bing Crosby Bautista ("Bing Crosby"). Currently, she is believed to be residing in the Philippines.

20. During the period the program was in place, defendant Nora Penaflor was a California resident living in Danville, California, working mostly out of her home office at her Danville residence. Penaflor was NAAC's Director of Housing.

21. During the period the program was in place, defendant Bing Crosby was a California resident residing in an apartment in San Bruno, California. Bing Crosby is married to Josefina and is Faith's brother. He was an independent contractor for Floradema but provided services ostensibly for the benefit of NAAC. Currently, he also is believed to be residing in the Philippines.

22. During the period the program was in place, defendant Marissa Samaco ("Samaco") was a California resident residing in San Jose, California. Samaco was an independent contractor for NAAC and served as one of NAAC's certified counselors.

23. Plaintiff is ignorant of the true names and capacities of other defendants sued herein as DOES 1 through 50, and, therefore, sues these defendants by such fictitious names pursuant to Section 474 of the California Code of Civil Procedure. Such DOE defendants may be other NAAC employees who participated in the scheme, other entities that defendants used to siphon funds from NAAC, and other participants in this tortious conspiracy. Plaintiffs will seek leave to amend this Complaint to allege the true names and capacities of such DOES 1 through 50, when ascertained. All references herein to the “defendants,” includes the defendants named herein as DOES.

AGENCY AND CONSPIRACY ALLEGATIONS

24. Plaintiff is informed and believes, and based thereon alleges, that except as may otherwise be alleged, each defendant referred to herein, including DOES 1 through 50, is and at all times material herein was, the agent, employee, partner, joint venturer, subsidiary or affiliate of each of the other defendants and, in doing the things alleged herein, was acting within the course and scope of such position with the permission, knowledge and consent of each of the other defendants.

25. In addition to each being the agent of the other, each defendant also knowingly and intentionally participated in a conspiracy to do the acts alleged herein, and either intentionally or recklessly took actions that actually and materially assisted that conspiracy.

JURISDICTION AND VENUE

26. Jurisdiction and venue are proper in this county and judicial district because, among other reasons, NAAC has an office and substantial operations in this district and at least some of the defendants resided in this district, worked in this district, and took actions in this district with the intent of furthering the conspiracy alleged herein.

FACTUAL ALLEGATIONS

A. The National Mortgage Settlement Counseling Program

27. In 2008, the United States experienced a nationwide mortgage crisis caused in part by aggressive and unethical lending practices that disproportionately impacted under-represented communities. In 2012, the United States government and 49 state attorneys

1 general reached a landmark agreement with the nation's five largest mortgage providers. The
2 service providers collectively contributed \$25 billion into a settlement fund known as the
3 National Mortgage Settlement. The purpose of the settlement, in part, was to provide funds to
4 assist the individuals and communities negatively affected by the mortgage crisis. The State of
5 California was allocated \$410 million from that fund.

6 28. Rather than earmark any of these funds toward borrower relief and homeowner
7 services, the State of California used these funds to help fill a hole in the State's budget. In
8 response, in 2014, NAAC (led by Faith) and two other community groups sued the State of
9 California to compel the State to instead allocate these funds for their intended purpose. The
10 case was entitled *National Asian American Coalition, et al. v. Edmund G. Brown, Jr., et al.*
11 The State of California lost, with the California Court of Appeal affirming the trial court's
12 conclusion that the funds had been wrongly used for general state expenses, and ordering the
13 State of California to reallocate the funds to their intended purpose. As part of that
14 reallocation process, California paid \$331 million into a special fund earmarked to help
15 homeowners and communities negatively impacted by the mortgage crisis.

16 29. In her role as President and CEO of NAAC, Faith took an active role in the
17 National Mortgage Settlement process, which she viewed as "her" project. In the initial phase
18 of litigation against the five mortgage services providers, Faith became a member of the
19 California Monitor Committee. In the later phase of litigation against the State of California,
20 Faith was the person at NAAC who took the lead in working with NAAC's counsel on the
21 case. The lawsuit's goal was to create a fund where community-based entities could utilize
22 state funds to counsel under-served communities in tenancy and mortgage issues, with the goal
23 of responsibly increasing and maintaining home ownership.

24 30. Based on the California Court of Appeal's ruling, this goal was achieved, at
25 least in concept. Of the \$331 million repayment, \$300 million was allocated to California's
26 Housing Finance Agency (CalHFA). Effective November 2020, CalHFA started the National
27 Mortgage Settlement Counseling Program. CalHFA describes the program as "offering free
28 housing counseling to help Californians concerned about their housing situation." The

counseling is designed to help with many different stages of tenancy and home ownership, but especially to assist tenants and homeowners struggling to keep up with rent and mortgage payments. CalHFA made an initial allocation of \$50 million (later increased to \$91.5 million) earmarked for use by non-profit Housing Counseling Agencies (HCAs) certified by the federal Department of Housing and Urban Development (HUD) to provide such counseling services.

31. CalHFA administers the program through HUD-approved regional “intermediaries.” CalHFA contracts with a regional intermediary and allocates a specific “award” to that intermediary (a portion of the earmarked fund). The intermediary separately subcontracts with community-based HCAs and issues them “sub-awards” from the allocated fund. The HCAs conduct the actual counseling. The money to pay for these services comes directly from the earmarked fund and flows from CalHFA to the intermediary to the individual HCAs.

32. The program has a strictly-enforced service-fee schedule under which the HCAs are eligible to receive funds from the program for three types of services: (a) for a first approved counseling service of a client, \$750; (b) for a second approved counseling service of that same client, \$750; and (c) if an HCA wants to build additional counselor capacity and/or market and coordinate the program, for documented costs of such “capacity building” expenses.

33. Because the program is HUD-approved, its participants are required to follow strict record keeping and staffing requirements set forth in the United States Code of Federal Regulations. For example, the federal regulations require each HCA to establish detailed recordkeeping and reporting requirements with an automated client management system utilizing trained and “HUD certified” housing counselors. Then, when an HCA submits this HUD-required information to an intermediary from payment, the intermediary is separately charged with monitoring and reviewing the submission to ensure compliance with the federal regulations.

34. In addition to the federal regulations, written contracts between CalHFA and the intermediaries separately require the intermediaries to provide CalHFA with a “narrative

description of their processes for maintaining oversight of affiliated HCAs which includes but is not limited to trainings conducted, technical assistance, reviewing the client files, and data collection records.” The written contracts also require the intermediaries to conduct site visits to “ensure the HCAs are meeting the requirements of the Program, collecting the necessary authorization forms from clients, vetting the clients for potential eligibility for the Program and adequately documenting relevant client information.” For providing these oversight services, the intermediary receives a fee of 10% of all sub-awards the intermediary makes to participating HCAs.

35. Thus, upon the initiation of the program and the State of California’s initial \$50 million funding, HCAs now had the means to substantially increase their housing counseling programs, all subject to significant checks and balances to ensure the programs were conducted in compliance with federal regulations.

36. NAAC is a HUD-approved HCA. Since NAAC’s founding in 2004, it has provided tenancy and housing counseling service. This is why the Board fully supported Faith’s efforts in pursuing the state funds and then supported NAAC’s participation in the NMS program. But what the Board did not realize at the time was that Faith’s efforts were stained with more self-serving goals—self-aggrandizement and personal greed.

B. NAAC’s Administration of the Program

37. When the National Mortgage Settlement program funded in November 2020, NAAC was one of the first HCAs to apply. NAAC immediately contracted with approved intermediary HomeFree USA. HomeFree is a non-profit organization whose stated mission is helping individuals achieve the dream of home ownership. HomeFree was founded by Marcia Griffin (“Marcia”), who also serves as its President. Marcia’s daughter, Simone Griffin (“Simone”), also works for HomeFree. Faith approached HomeFree in part because Marcia and Faith are close personal friends—so close that Marcia is the godmother of Faith’s daughter, Ariel McCarty (“McCarty”). Faith also approached HomeFree because NAAC and

HomeFree had cohosted events since at least 2011 and the two entities had a long-standing relationship.

38. HomeFree immediately agreed to serve as NAAC's intermediary with CalHFA. To allow NAAC to access the \$50 million that the State of California had provided to CalHFA, HomeFree and NAAC signed a contract dated November 20, 2020, through which HomeFree (via CalHFA) agreed to provide NAAC an initial sub-award of \$4,456,537.50 for counseling services, plus \$581,287.50 in fees for capacity building. HomeFree earmarked the sub-award for NAAC and paid NAAC from that sub-award as NAAC submitted counseling sessions and capacity building expenses for payment. Both Marcia and her daughter Simone helped administer this contract for HomeFree, and Marcia and Faith are the signatories to the contract. When that initial sub-award was exhausted, HomeFree authorized additional sub-awards. In total, NAAC received \$11,754,000 in counseling fees plus \$581,288 in capacity building expenses, for a total award of \$12,356,288.

39. From November 20, 2020, through October 2022, NAAC provided counseling services through the National Mortgage Settlement program. HomeFree served as the intermediary the entire time. HomeFree was thus another layer of protection and was charged with ensuring that NAAC complied with all applicable rules and regulations. HomeFree appears to have taken this role seriously, as correspondence suggests that when Faith began implementing the program, HomeFree insisted that all of NAAC's counselors be HUD certified and on at least one occasion, questioned how part-time employees were able to conduct so many counseling sessions. Likely relying at least in part on the trust Faith and NAAC had generated with HomeFree and its president over the years, however, Faith, Josefina and Penaflor were able to convince HomeFree that NAAC was in fact in compliance. As a result, each time NAAC submitted counseling sessions for payment, HomeFree was required to and did separately certify to CalHFA that HomeFree had "verified the information provided herein [from NAAC] and the work being invoiced has been completed." Thus, from the perspective of NAAC's Board of Directors, NAAC had a smoothly operating, well-funded, properly monitored program that was directly fulfilling NAAC's mission of providing valuable

1 and much-needed counseling services to thousands of renters and homeowners across
2 California.

3 **C. Defendants' Fraudulent Scheme Unravels**

4 40. What NAAC and its Board did not know was that Faith and her confidants,
5 including defendants Josefina and Penaflor (and almost certainly others), had created an
6 illusion. The program was *not* the picture of success that Faith and her team had carefully
7 drawn. Instead, as NAAC and its Board would soon find out, much of that success was faked.

8 41. In the first half of 2022, NAAC's outside auditor commenced its regular yearly
9 audit. As part of that audit, the auditor identified numerous red flags, including potential fraud
10 in the counseling program, inappropriate executive compensation, and management self-
11 dealing. In Summer 2022, the auditor brought its preliminary findings to the Board of
12 Directors, who immediately launched a full-scale investigation. The evidence is damning.
13 The primary facets of defendants' scheme are described more fully below.

14 **The Counseling Scheme**

15 42. The most brazen and shocking part of defendants' scheme was their
16 submissions of fake counseling sessions to HomeFree and ultimately CalHFA as part of the
17 National Mortgage Settlement program. Apparently, Faith believed that she—not NAAC—
18 was the reason why the State of California funded this counseling program. She viewed the
19 program as *her* reward and felt she was entitled to the benefits of that program not only
20 professionally in terms of raising her stature in the community, but personally in terms of
21 financially benefiting from this program.

22 43. Thus, when the funds were finally available to be awarded to HCAs, Faith
23 pounced on the opportunity to access the funds by immediately contracting with HomeFree.
24 At the time, the Board applauded Faith's efforts and felt HomeFree was a natural fit, especially
25 given Faith's apparent, above-board relationship with HomeFree's founder, Marcia Griffin,
26 and the two entities' years of collective advocacy efforts.

27 44. But in retrospect, Faith's close relationship with HomeFree and Marcia Griffin
28 may have been a liability. Presumably as a result of the trust that had developed between Faith

1 and Marcia, Faith and her team were able to consistently convince HomeFree to accept
2 NAAC's submission of documentation supporting its requests for payment under the sub-
3 awards, and it is not clear that HomeFree ever conducted any site visits.

4 45. Faith and her co-conspirators then took full advantage of this pre-existing
5 relationship with HomeFree. While NAAC has not yet identified any discernable pattern of
6 misconduct in the first few months of the program, by the second quarter of 2021, the records
7 confirm that Faith's team was already submitting false and fraudulent billings to HomeFree.
8 For example, while in the first quarter of 2021, Faith's team submitted 502 files for counseling
9 sessions for which NAAC was seeking \$750 each, in the second quarter of 2021, that number
10 had increase by more than 150% to 1,261 files despite no material increase in resources or
11 personnel.

12 46. Over subsequent quarters, the amount of submitted counseling sessions
13 continued to balloon, yet the number of counselors remained largely the same. Some
14 employees confirmed that they rarely handled counseling sessions, yet the records submitted to
15 HomeFree show them engaging in hundreds of sessions from late 2021 to early 2022. For one
16 employee, the records show that, for a significant period, she counseled so many clients that
17 she averaged 8 per day, including Saturdays and Sundays. This level of counseling was far
18 beyond anything these counselors ever could reasonably do. As for Josefina, despite expressly
19 admitting prior to her resignation that she never performed *any* counseling services, over the
20 course of the entire program, her name is listed as the HUD-certified counselor 1,346 times.
21 Each of these billing entries is undeniably fraudulent.

22 47. Also problematic was the manner the related forms and paperwork were
23 completed, and the overall way in which NAAC tracked and submitted its counseling sessions
24 to HomeFree. Internal forms were often blank or incomplete. Missing signatures for clients
25 and/or counselors were common. Under the federal regulations and contractual requirements,
26 these problems, alone, rendered these counseling sessions ineligible for reimbursement. Yet
27 Faith's team submitted them and received payment anyway.

28

1 48. Staff members sometimes noticed that their names were on client files for
2 which they had done no work, and sometimes even their signatures were forged. Other staff
3 members were asked to sign files for which they had done no work. In fact, on the weekend in
4 October 2022 where Faith and Penaflor ordered staff to assist them in manipulating files, Faith
5 specifically instructed at least one staff member to sign such files, but that staff member
6 refused. Many other files were signed only with initials, yet NAAC has not been able to locate
7 any counselor who followed this practice. Some records listed counselors who had stopped
8 providing counseling services for NAAC well before the supposed counseling session
9 occurred.

10 49. Far from hidden mistakes, NAAC's employees brought at least some of these
11 issues to the attention of Faith, Josefina and Penaflor, including during at least one staff
12 meeting. But as the perpetrators of the scheme, defendants used their power and authority to
13 legitimize these practices, including by claiming the use of wrong counselor names was
14 common practice to ensure that no single counselor was submitting too many clients.

15 50. Further, under CalHFA and HomeFree requirements, reimbursable counseling
16 sessions must involve a HUD-certified NAAC employee or independent contractor, which the
17 billing entry must reflect. While NAAC's billings listed a NAAC employee's name along
18 with each counseling session, on closer review, the entries often do not list a HUD-certified
19 counselor. Each of these billing entries is therefore at least ineligible for submission, if not
20 entirely fraudulent.

21 51. Further, the related records in NAAC's contractually-required client
22 management system, CounselorMax, should match the records in the bills submitted to
23 HomeFree. But they don't. For example, the records in both CounselorMax and in the bills to
24 HomeFree should list the same HUD-certified counselor who performed the counseling
25 session. NAAC has submitted over 15,000 counseling sessions, but for over 10,000 of them,
26 the CounselorMax record and corresponding bill to HomeFree list *different* counselors.
27 Penaflor was responsible for these submissions. The sheer volume of non-matching counselor
28 names demonstrates that these discrepancies were not simple errors.

52. One of the safeguards against a scheme like this is that the forms required listing the names of real people, otherwise the intermediary may be able to quickly uncover the fraud. To circumvent this safeguard, Faith, Josefina and Penaflor came up with numerous clever ways to find names of real people. Staff members have acknowledged that it was common practice to “find” client information from other areas of NAAC’s work. In addition, NAAC often held workshops where staff would have attendees fill out intake forms. NAAC’s counselors often conducted follow-up calls to these individuals offering counseling sessions and asking for required documents. But if the person did not answer the phone, or declined housing counseling, the protocol was to keep the intake form and submit the counseling session for reimbursement anyway.

53. But the sheer volume of fake counseling services required ever more clever ways to produce the names of real people to list on the forms. Faith, Josefina and Penaflor’s answer, at least in part, was to use unrelated caller and voting lists that NAAC obtained relating to other services NAAC provided, and to use the names on those lists as supposedly counseled clients. For example, Faith’s team purchased a “Filipino Under 50” list and used nearly 200 names from that list on its intake forms. To make sure nobody actually contacted these people, the listed addresses and telephone numbers were changed. Another list NAAC purchased for an entirely different purpose had over 1,800 names that cross-over with the names submitted in support of counseling sessions. NAAC currently believes that most, if not all, of these submissions are fraudulent.

54. In some instances, defendants gathered names in even more disturbing ways. For example, NAAC held a program at Camp Pendleton called Marine Counseling Workshops. In this program, NAAC personnel counseled United States Marines on financial literacy, but this counseling was not in any way part of the National Mortgage Settlement program. NAAC is particularly proud of its Marine Counseling program and the opportunity to help these servicemen and women achieve financial independence. Faith and her daughter, Ariel McCarty, attended and administered these sessions, yet they despoiled the program and dishonored these Marines by tricking over 100 of them into signing intake forms for the NMS

1 Program despite providing no counseling services that would qualify under that program.
2 They then used these forms as part of their effort to falsify and fraudulently document
3 compensable counseling sessions to obtain counseling fees.

4 55. In other instances, Faith would take the Marines' names and contact
5 information obtained as part of the Marine Counseling Workshops and use them, instead, to
6 submit fraudulent counseling sessions for payment in the NMS program. In one instance, to
7 obtain the required signature of an NMS certified counselor, Faith bribed defendant Marissa
8 Samaco \$50 each time Samaco would sign-on as counselor for a Marine. Samaco signed 66 of
9 them.

10 56. From discussions with staff members, NAAC has confirmed that Faith, Josefina
11 and Penaflor all were aware of these activities and each participated in some or all of them. In
12 total, Faith's team submitted approximately 15,694 counseling sessions, receiving payments
13 totaling \$11,754,000. To date, NAAC has only been able to verify a small percentage as valid
14 and supported by the required documentation. A substantial portion of the remaining
15 submitted sessions are fraudulent, with an additional substantial percentage, at a minimum, not
16 properly documented or otherwise not eligible for payment.

17 **The Incentive Fees and Kickback Schemes**

18 57. As part of Faith, Josefina and Penaflor's scheme, Faith instituted an "Incentive
19 Program." This program paid counselors a predetermined amount of money per file submitted
20 for payment. Counselors were instructed to track and submit each quarter a list of how many
21 files they completed. Faith's team caused NAAC to pay the counselors an incentive fee
22 usually of \$100 per file and, for at least one counselor, defendant Samaco, \$148.75 per file
23 (later increased to \$200).

24 58. There were at least two problems with this Incentive Program. First, consistent
25 with the discrepancies identified above, the lists submitted by the counselors generally did not
26 match the list Penaflor submitted to HomeFree. Instead, the list submitted to HomeFree
27 reflected *more* counseling sessions than the counselors submitted themselves. The counselors
28 were then paid their incentive fee based on the inflated figure. The counselors were often

1 aware of this overpayment but interpreted the additional money as a bonus. The program thus
2 appears to have been operated in a manner designed to allow for inflation of the counseling
3 sessions and to separately discourage employees from questioning any observed discrepancies
4 or errors.

5 59. Second, some of NAAC's staff also received incentive fees at the direction of
6 Faith's team even though they could not submit billable files. For example, Faith's daughter,
7 Ariel McCarty, could no longer provide counseling services effective August 1, 2021, but she
8 engineered an agreement with another certified counselor to submit certain counseling service
9 claims through that counselor and then split the fee. Faith also found other ways to funnel
10 money to her daughter. To get around the problem of McCarty no longer being certified to
11 counsel, Faith separately hired McCarty through her wholly owned company, Floradema, and
12 then had McCarty submit files through Floradema. When NAAC paid Floradema for this
13 service, Floradema then paid McCarty effectively the same incentive fee McCarty would have
14 earned if she had been able to submit the file directly at NAAC.

15 60. Faith also funneled money to her brother (and Josefina's husband), Bing
16 Crosby. Through Floradema, Faith hired Bing Crosby ostensibly to provide services for the
17 benefit of NAAC. But Bing Crosby was not certified to provide counseling services either.
18 Nonetheless, whenever he provided even basic tasks such as filling out internal intake forms
19 and photocopying, Faith (through Floradema) paid Bing Crosby a per-file fee anyway.

20 61. In fact, to further profit off the NMS program, Faith directed Josefina to sign a
21 contract between NAAC and Floradema (and later directed Penaflor to sign a contract
22 addendum). Per the contract, NAAC hired Floradema to assist NAAC in providing counseling
23 services. However, Floradema did not have any HUD-certified counselors and, in any event,
24 NAAC's contract with HomeFree did not allow NAAC to use non-NAAC counselors.

25 62. Moreover, a review of the files Floradema submitted for payment strongly
26 suggests that many, if not all, of the listed counseling sessions never even occurred. For
27 example, at least 700 of the individuals listed on Floradema's submitted files were the same
28 individuals who participated in NAAC's business loan program. The evidence suggests that

1 Floradema simply took these individuals' information from their business loan applications
2 and used it to fill out fraudulent applications for the NMS program. In some instances,
3 HomeFree or NAAC's regular auditor would ask to review a sampling of some Floradema
4 files. Faith and her team, including Bing Crosby and Josefina, would then scramble to
5 fraudulently fill out by hand the necessary NMS intake forms and other documentation, and
6 then submit these files to the auditor for review.

7 63. Under the direction of Faith, NAAC paid Floradema \$225-\$250 for each client
8 Floradema supposedly "submitted" to NAAC. Over the life of the National Mortgage
9 Settlement program at NAAC, NAAC made payments to Floradema totaling over \$1.5 million.
10 NAAC believes most, if not all, of these payments were not legitimately earned and, instead,
11 were another subterfuge to line the pockets of Faith, her brother, Bing Crosby, and her
12 daughter, McCarty.

13 64. Josefina also profited from these schemes. When NAAC questioned Josefina
14 why her husband, Bing Crosby, received over \$100,000 from NAAC through Floradema, she
15 could not justify the benefit that NAAC received for these payments.

16 65. As for Penaflor, she also manufactured ways to profit off this scheme. At the
17 start of the Incentive Program, Penaflor declined to participate in that program in exchange for
18 a higher salary. But that was not good enough for her, so she then surreptitiously submitted
19 her counseling files to other counselors who then claimed Penaflor's sessions as their own.
20 Then, when these counselors received their incentive fee payments for Penaflor's files, they
21 kicked back Penaflor's portion to her. As a result, Penaflor was paid *both* a higher salary and
22 an incentive fee.

23 66. Through these efforts, Faith, Josefina and Penaflor were able to siphon off to
24 themselves, their relatives, and their coworkers as much as \$325-\$350 of the \$750 fee earned
25 on each file—\$100 as an incentive fee, and \$225-\$250 as a submission fee. To the extent the
26 counseling sessions were legitimate, all of that money was the rightful property of NAAC and
27 should have been used to further its mission.

28

67. Before their resignations, both Faith and Josefina were questioned about these incentive fees and kickback schemes. They both either denied any wrongdoing or deferred to the other. Again, Penaflor refused to be interviewed altogether. Although NAAC does not yet know the full extent to which these bogus schemes drained NAAC of its revenues, NAAC expects the total to be substantial.

The Executive Compensation Scheme

68. In 2016, Faith presented the Board of Directors with an amendment to her employment contract. The amended contract paid Faith an annual salary of \$180,000, plus numerous additional benefits, including \$23,000 per year into her retirement account, an \$18,000 per year housing allowance, and a \$6,000 car allowance, as well as payment of other costs such as medical insurance, life insurance, a cell phone, a club membership, a timeshare, media support and a travel per diem. When all forms of compensation were included, her salary calculated to more than \$280,000 per year.

69. In addition, the employment contract provided Faith with the opportunity to earn an incentive bonus calculated at 25% of NAAC's net income. But there was an important limitation. Her bonus calculation excluded the first \$550,000 of NAAC's net income. As a charity, NAAC often operated with little-to-no profit and even at a loss. Thus, NAAC did not generally earn net income over \$550,000, so any bonus actually paid to Faith was typically small. For example, for 2019, Faith was paid a bonus of just \$5,000.

70. Despite working for a non-profit, Faith frequently complained that her salary and bonus compensation were low relative to her peers. Her perceived under-compensation continuously irked her and she frequently sought to adjust her salary. Her dissatisfaction with her compensation appears to be at least one of the reasons Faith embarked on this scheme—because she felt she deserved more money and had been underpaid for years.

71. Thus, when in 2019 it became apparent that, because of the lawsuit against the State of California, CalHFA was soon going to be funded, Faith viewed this as her payday. In response, Faith approached the Board and sought to renegotiate her compensation package and especially her bonus, and she presented a new compensation package to the Board. The most

1 important change was to eliminate the \$550,000 net income exclusion from her bonus
2 calculation. If the Board accepted the change, Faith would now be entitled to a bonus of 25%
3 of *every dollar* of net income earned.

4 72. When presented to the Board, Faith characterized the changes to her
5 compensation as a relatively modest bump in salary which merely put in writing changes to
6 her employment agreement that had been reached at previous Board meetings. She made no
7 mention of the elimination of the \$550,000 net income exclusion, and instead simply slipped
8 in that change to the definition of net income without highlighting it or discussing it in any
9 way. Nor did she suggest that the changes would meaningfully change her overall
10 compensation package, which would have required her to present a salary survey or some
11 other market data to justify such a change. Because the Board understood that, at best, the
12 change would only modestly increase Faith's overall compensation, after a brief discussion,
13 they approved the change.

14 73. But as Faith well knew, this revised contract term now gave her a perverse
15 incentive to inflate revenues without increasing expenses, which is exactly what she did. As
16 Faith anticipated, the revenues from the counseling program quickly shot through the roof, and
17 since most of the revenues were based on fraudulent counseling sessions, there was no
18 associated expense. Thus, through the expedient of the fraudulent counseling session scheme
19 and the deletion of a few words from Faith's employment contract, Faith was able to transform
20 her modest 2019 bonus calculation of \$5,000 into a 2020 bonus calculation of \$597,060.

21 74. When the Board saw Faith's \$597,060 bonus calculation, it recoiled and refused
22 to approve such a large amount. In response, Faith agreed to reduce her bonus to \$215,000.
23 Still, this bonus was 4,300% higher than her bonus from just the previous year.

24 75. In early 2022, Faith presented the Board with her bonus calculation for 2021.
25 Due to the inflated income from the counseling scheme, her bonus now calculated to
26 \$953,259. The Board balked at this bonus too. In response, Faith insisted that her
27 compensation package was reasonable. To prove it, she hired a compensation company to
28 provide a report to the Board about the reasonableness of Faith's compensation.

1 76. The compensation review company was supposed to be independent, but in fact
2 it was not. Consistent with Faith's general pattern, she hired obviously conflicted friends and
3 relatives. Here, Faith hired an accounting firm that specializes in compensation surveys,
4 Zuehls, Legaspi & Company (ZLCO). But what Faith did not tell the Board is that she
5 personally knew one of the partners—Susan Legaspi. Not surprisingly, ZLCO largely
6 deferred to Faith's factual representations and assumptions, and concluded that Faith's
7 compensation was reasonable. Conveniently, ZLCO's analysis is not signed by any one
8 individual. Instead, the analysis is signed under the name of the firm itself.

9 77. But the report suffers from at least two glaring errors. First, Faith's
10 representations to the company were wrong. The report is premised on Faith's representation
11 that NAAC's revenues for 2022 were projected to be "in excess of \$30 million for the annual
12 period ending December 31, 2022." The report then compares Faith's compensation to other
13 non-profits generating between \$5 million and \$60 million in yearly revenue. But that \$30
14 million projected figure for NAAC is blatantly wrong. It is nearly five and a half times larger
15 than NAAC's 2019 pre-scheme yearly revenue figure, and still over three times NAAC's
16 revenue for 2021 (which was significantly bloated from Faith's fraudulent scheme).

17 78. Second, the report defines "compensation" to include bonuses and then purports
18 to compare Faith's compensation in 2021 to industry standard compensation. But the
19 compensation figures the report uses are also wrong—they do not include *any* bonus for Faith.
20 If, instead, the report included Faith's calculated 2021 bonus of nearly \$1 million, her
21 compensation literally was off the report's tiered compensation charts. ZLCO later issued an
22 addendum to try to rectify the obvious error, but even the addendum does not address Faith's
23 full requested bonuses or their impact on the reasonableness of her compensation.

24 79. NAAC's Board is made up of individuals who volunteer their time and are not
25 experts in executive compensation. Still, they did not accept the salary survey and refused to
26 sign-off on Faith's calculated \$1 million bonus. After negotiation, Faith agreed to accept a
27 bonus of "only" \$530,000, an increase in bonus from 2019 of 10,600%. NAAC paid \$300,000
28 of the bonus before Faith's fraudulent scheme was uncovered and she resigned. Shockingly,

1 upon her resignation, she still demanded that she be paid her “commissions” earned for the
2 year 2022.

3 80. Thus, in less than two years, Faith’s overall fraud scheme was already paying
4 her substantial illicit dividends. If Faith’s bonus calculation was the same as 2019, Faith
5 would have earned a combined bonus of \$10,000 for 2020 and 2021. But based on NAAC’s
6 false revenues that Faith’s team created, Faith parlayed that \$10,000 into \$745,000, and she
7 knew an even bigger payday was coming her way for 2022. And she was also skimming more
8 money through Floradema’s profits and the illegal kickback scheme.

9 **Faith’s Other Conflicts, Self-Dealing and Attempted Schemes**

10 81. Faith engaged in other forms of self-dealing, conflicts of interest, and breaches
11 of fiduciary duties that are only now beginning to surface. For example, in June 2021, NAAC
12 entered into a Marketing and Outreach Services Agreement with Floradema for \$100,000. The
13 agreement is signed by Faith for NAAC, an obvious conflict of interest as she also owns
14 Floradema. To date, NAAC has not been able to determine what incremental services
15 Floradema was actually supposed to render to NAAC, let alone services that would justify a
16 \$100,000 payment. Based on NAAC’s current information, NAAC believes this payment was
17 also fraudulently induced.

18 82. As another example, in May 2022, Faith directed NAAC to pay her personal
19 contractor, Jose Castillo, \$36,575. Faith claimed the payment was for appraisals for 19
20 properties that NAAC was purportedly interested in purchasing. Then in June 2022, Faith
21 directed NAAC to pay another \$36,000 to that same contractor for another nine appraisal
22 reports. But NAAC was only exploring purchasing just a few of these properties and, in any
23 event, Mr. Castillo never provided NAAC with copies of any appraisals. When challenged,
24 Faith’s rationale for these payments changed, and she claimed these payments were actually
25 compensation to her because NAAC had not completely paid her the bonus she believed she
26 was owed, and that NAAC’s auditor told her she could true-up her compensation in this
27 manner. NAAC is informed and believes that these payments were not a justifiable expense to
28

1 NAAC or an advance against any monies actually owed to her and, instead, were used to pay
2 her personal expenses.

3 83. Faith also used NMS funds for personal use. For example, Faith had NAAC
4 pay for a \$510 designer laptop cover, and then directed NAAC to seek reimbursement from
5 HomeFree under the guise that these were “capacity building” expenses unique to the NMS
6 program. To state the obvious, the designer cover had nothing to do with NMS program and
7 was instead a vanity purchase by Faith.

8 84. Faith also pushed NAAC to participate in other transactions not appropriate for
9 a charity and that served to benefit Faith personally. For example, with the money from the
10 NMS rolling in and NAAC now flush with cash, Faith pushed NAAC to buy a 20% stake in
11 her company called Faith7, Inc. Faith was the majority owner of Faith7, which owned a
12 fledgling television network called Chime TV. Faith founded Chime TV to target the Asian
13 American and Pacific Islander audience, similar in style and concept to how Black
14 Entertainment Television (BET) was established to target the African American community.
15 Chime TV was one of Faith’s passion projects—and one for which she expected to make
16 substantial profits as well as greatly elevate herself in the eyes of the Asian American
17 community.

18 85. Faith did make some progress with founding this network, and, by late January
19 2022, was poised to enter an “Affiliation Agreement” with an affiliate of Charter
20 Communications (which owns Spectrum Networks). What Faith lacked, however, was the
21 funding for such a network. Faith attempted to use NAAC’s newfound financial strength by
22 soliciting the Board to agree to have NAAC participate in Chime TV, and by April 2022, she
23 was already asking the Board to have NAAC amend its bylaws to specifically authorize
24 NAAC to own and invest in a media network.

25 86. By July 2022, Faith had her personal counsel draft the legal documents
26 necessary for NAAC to purchase a 20% interest in Faith7 and Chime TV for \$2.5 million,
27 which placed the valuation of this fledgling network at \$12.5 million. Faith then submitted
28 some form of financial statements and/or projections to a bank at which she had a longstanding

relationship—First Republic Bank (the same bank recently seized by federal regulators)—and requested that the bank fund a loan to NAAC of \$2.5 million, the purpose of which was to fund the fledgling network. Remarkably, First Republic Bank approved the loan.

87. When the Board began to question the propriety of the entire transaction, Faith rushed to complete it, and even convinced First Republic Bank to fund the loan without final signatures from anyone at NAAC. However, the Board found out about this inappropriate funding and immediately demanded that Faith return the money to the bank. Faith backed down and returned the funds, but not before NAAC was forced to pay \$4,499 in interest. Faith initially agreed to reimburse NAAC for the interest payment, but then reneged. The Board has since completely disassociated NAAC from Chime TV.

88. NAAC's Board has also taken other steps to disassociate NAAC from Faith, including notifying HomeFree and CalHFA of the problems the Board has uncovered regarding Faith, Josefina and Penaflor's management of the NMS program at NAAC. Also, due to NAAC's close relationship with another charity Faith founded (and for which Faith also serves as Chief Executive Officer), the National Diversity Coalition ("NDC"), NAAC gave notice to and had a discussion with NDC's board of directors informing them of the serious nature of the allegations against Faith. NAAC also formally withdrew from what was at the time a joint NAAC-NDC Economic Development & Empowerment Summit scheduled for October 28th, 2022.

Marissa Samaco

89. Defendant Samaco's role at NAAC is illustrative of how Faith, Josefina and Penaflor enlisted others to assist in their scheme. Samaco was a former NAAC employee and someone whom these defendants trusted. As a result, when Faith, Josefina and Penaflor started to implement the NMS program at NAAC, one of the first things they did was hire Samaco as an independent contractor, and she is listed in CounselorMax as having counseled for NAAC on its first day participating in the NMS program (December 1, 2020). Initially, the number of Samaco's counseling sessions appear facially reasonable, and during the month of December 2020, ranged from between 0 and 3 counseling sessions each day. But by April

2021, her role in the fraud was already blossoming, with her reported counseling sessions spiking to as many as 13 per day. By March 2022, Samaco registered in CounselorMax as many as 27 sessions in a single day. This level of counseling is simply not possible.

90. Samaco also submitted to Penaflor quarterly spreadsheets detailing her counseling sessions, but these reports do not add up either. For example, her reports sometimes included counseling sessions conducted by other counselors, and sometimes included counseling sessions for a counselor who had stopped performing counseling services for NAAC well before the listed counseling session supposedly occurred. Obviously, these sessions could not have happened either. Yet Samaco submitted them anyway.

91. In fact, over the course of the entire NMS program at NAAC, Samaco was NAAC's most prolific individual counselor—at least on paper. Samaco is listed as the counselor-of-record for over 5,500 of the 15,000+ counseling sessions, for which she was paid over \$900,000. Again, this level of counseling is simply not possible. Nor can Samaco claim that she subcontracted some of this work to others because such subcontracting was not allowed under the strict NMS guidelines. Samaco's work was clearly fraudulent. And because her "work" allowed NAAC to request and ultimately obtain well over \$4 million from HomeFree for counseling sessions, Faith, Josefina and Penaflor gleefully accepted and submitted these fake counseling sessions.

This Lawsuit

92. Based on the above actions, NAAC now sues its own founder, Faith Bautista, her co-conspirators, Josefina and Penaflor, and other related persons and entities for their gross violation of the trust the entire organization placed in them. While NAAC details some of the fraud and improper dealings above, to the extent NAAC uncovers even more instances of fraud and self-dealing, NAAC will amend this Complaint to add these additional instances of wrongdoing. For example, Faith directed certain payments of nearly \$150,000 to another entity with whom she is associated, the Epicenter Foundation. To the extent some or all of those payments were fraudulent (and there was at least a conflict of interest relating to them), NAAC will either amend or serve Epicenter as a Doe defendant.

93. To help address and rectify defendants' substantial monetary and reputational damage to NAAC, NAAC immediately self-reported the fraud scheme to the California Attorney General, Corporate Fraud Section, False Claims Unit. NAAC's cooperation and discussions with the Attorney General are ongoing, and NAAC and its Board are committed to working with the Attorney General's Office to remedy the harm defendants have caused to NAAC and, ultimately, the residents of the State of California. As NAAC advised the Attorney General, NAAC is filing this lawsuit to recover for the benefit of the State of California every penny Faith, Josefina, Penaflor and their co-conspirators took or directed out of NAAC, to seize any and all assets these defendants have obtained as a result of their fraudulent conspiracy, and to seek punitive and treble damages for their egregious and reprehensible misconduct.

FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty and Aiding and Abetting Breach of Fiduciary Duty)

(Against All Defendants)

94. NAAC hereby incorporates the above allegations by reference as if fully set forth herein.

95. Defendants Faith and Josefina, as officers of NAAC, and Penaflor, as a high-ranking employee and agent to whom NAAC gave significant control and decision-making authority and in whom NAAC placed considerable trust and confidence, each owed NAAC strict fiduciary duties, including the duties of care, loyalty and obedience.

96. All remaining defendants were aware that defendants Faith, Josefina and Penaflor owed NAAC these strict fiduciary duties.

97. By engaging in the conduct described herein, defendants Faith, Josefina and Penaflor intentionally or recklessly breached those fiduciary duties.

98. By knowingly participating in the conduct described herein, defendants Faith, Josefina and Penaflor knowingly or recklessly aided and abetted the breaches of each other's fiduciary duties, and all remaining defendants knowingly or recklessly aided and abetted the breaches of fiduciary duty that Faith, Josefina and Penaflor each committed.

SECOND CAUSE OF ACTION

(Fraud)

(Against All Defendants)

102. Plaintiffs hereby incorporate the above allegations by reference as if fully set forth herein.

103. As alleged herein, defendants, either individually or as a result of their role as a co-conspirator, intentionally made material representations of fact to NAAC regarding the National Mortgage Settlement program as administered by NAAC. These intentional misrepresentations were designed to lead NAAC to believe that the National Mortgage Settlement program was being managed in compliance with all legal and contractual obligations, that all payments made under that program were duly obligated to be made, and that each and every payment made under the program to persons or entities was appropriate and in furtherance of the legal requirements of the program.

104. These representations were either intentionally false or made with reckless disregard for the truth. In fact, defendants were illegally manipulating the National Mortgage Settlement program to increase their personal net worth; to obtain bonuses, cash incentive payments, and other benefits; and to otherwise further their personal and professional self-interests at NAAC's expense.

1 105. NAAC reasonably relied to their detriment on defendants' false representations
2 in that they allowed defendants to continue to operate the program and continued to pay them
3 compensation and other benefits on the mistaken belief that defendants were operating the
4 program ethically and consistent with all laws and contractual obligations.

5 106. NAAC's reasonable reliance on defendants' materially misleading
6 misrepresentations was a substantial factor in causing damage to NAAC.

7 107. NAAC is thus entitled to damages from defendants for the harm caused by their
8 wrongful conduct. While these damages are still being determined, they at least include (a) the
9 amount of money NAAC now owes the State of California; (b) the amount of compensation
10 these defendants received based on their wrongful conduct; and (c) the attorneys' fees,
11 accountant fees, and other professional fees and cost NAAC has and will incur as a result of its
12 investigation into defendants' fraudulent conduct and the ramifications of defendants'
13 wrongful conduct.

14 108. Defendants' actions were intentional, reckless, wanton, and oppressive,
15 entitling NAAC to exemplary and punitive damages in an amount sufficient to make an
16 example of and punish each defendant for their intentional, reckless and highly damaging acts.
17 The actions were especially reprehensible and egregious as they were intended to and did
18 cause harm to a non-profit organization and used funds that the State of California earmarked
19 to assist under-represented communities in this State.

20 **THIRD CAUSE OF ACTION**

21 **(Deceit)**

22 **(Against All Defendants)**

23 109. Plaintiffs hereby incorporate the above allegations by reference as if fully set
24 forth herein.

25 110. As alleged herein, defendants, either individually or as a result of their role as a
26 co-conspirator, made material omissions of fact to NAAC regarding the National Mortgage
27 Settlement program as administered by NAAC. The material omissions of fact were designed
28 to lead NAAC to believe that the National Mortgage Settlement program was being managed

1 in compliance with all legal and contractual obligations, that all payments made under that
2 program were duly obligated to be made, and that each and every payment made under the
3 program to persons or entities was appropriate and in furtherance of the legal requirements of
4 the program.

5 111. These material omissions served to hide material information from NAAC
6 including that defendants were illegally manipulating the National Mortgage Settlement
7 program to increase their personal net worth; to obtain bonuses, cash incentive payments, and
8 other benefits; and to otherwise further their personal and professional self-interests at
9 NAAC's expense.

10 112. NAAC reasonably relied to their detriment on defendants' material omissions
11 in that they allowed defendants to continue to operate the program and continued to pay them
12 compensation and other benefits on the mistaken belief that defendants were operating the
13 program ethically and consistent with all laws and contractual obligations.

14 113. NAAC's reasonable reliance on defendants' material omissions was a
15 substantial factor in causing damage to NAAC.

16 114. NAAC is thus entitled to damages from defendants for the harm caused by their
17 wrongful conduct. While these damages are still being determined, they at least include (a) the
18 amount of money NAAC now owes the State of California; (b) the amount of compensation
19 these defendants received based on their wrongful conduct; and (c) the attorneys' fees,
20 accountant fees, and other professional fees and cost NAAC has and will incur as a result of its
21 investigation into defendants' fraudulent conduct and the ramifications of defendants'
22 wrongful conduct.

23 115. Defendants' actions were intentional, reckless, wanton, and oppressive,
24 entitling NAAC to exemplary and punitive damages in an amount sufficient to make an
25 example of and punish each defendant for their intentional, reckless and highly damaging acts.
26 The actions were especially reprehensible and egregious as they were intended to and did
27 cause harm to a non-profit organization and used funds that the State of California earmarked
28 to assist under-represented communities in this State.

FOURTH CAUSE OF ACTION

(Constructive Fraud)

(Against Defendants Faith, Josefina and Penaflor)

116. NAAC hereby incorporates the above allegations by reference as if fully set forth herein.

117. As alleged herein, defendants, either individually or as a result of their role as a co-conspirator, made material representations of fact to NAAC regarding the National Mortgage Settlement program as administered by NAAC. The representations lead NAAC to believe that the National Mortgage Settlement program was being managed in compliance with all legal and contractual obligations, that all payments made under that program were duly obligated to be made, and that each and every payment made under the program to persons or entities was appropriate and in furtherance of the legal requirements of the program.

118. Because defendants Faith, Josefina and Penaflor owed NAAC strict fiduciary duties, they had a duty of full disclosure and to otherwise ensure that NAAC properly understood the true state of affairs, and had this duty regardless of whether they intended to deceive NAAC. Nevertheless, these defendants made representations that were not accurate. In truth, defendants were illegally manipulating the National Mortgage Settlement program to increase their personal net worth; to obtain bonuses, cash incentive payments, and other benefits; and to otherwise further their personal and professional self-interests at NAAC's expense.

119. NAAC reasonably relied to their detriment on these defendants' false representations in that they allowed defendants to continue to operate the program and continued to pay them compensation and other benefits on the mistaken belief that these defendants were operating the program ethically and consistent with all laws and contractual obligations.

120. NAAC's reasonable reliance on these defendants' materially misleading misrepresentations was a substantial factor in causing damage to NAAC.

121. NAAC is thus entitled to damages from these defendants for the harm caused by their wrongful conduct. While these damages are still being determined, they at least include (a) the amount of money NAAC now owes the State of California; (b) the amount of compensation these defendants received based on their wrongful conduct; and (c) the attorneys' fees, accountant fees, and other professional fees and cost NAAC has and will incur as a result of its investigation into defendants' fraudulent conduct and the ramifications of defendants' wrongful conduct.

122. These defendants' actions were intentional, reckless, wanton, and oppressive, entitling NAAC to exemplary and punitive damages in an amount sufficient to make an example of and punish each defendant for their intentional, reckless and highly damaging acts. The actions were especially reprehensible and egregious as they were intended to and did cause harm to a non-profit organization and used funds that the State of California earmarked to assist under-represented communities in this State.

FIFTH CAUSE OF ACTION

(Receipt of Stolen Property, Treble Damages and Attorneys' Fees, Penal Code § 496(c)) (Against Defendants Faith, Josefina, Penaflor, Bing Crosby, Samaco and Floradema)

123. Plaintiffs hereby incorporate the above allegations by reference as if fully set forth herein.

124. As alleged herein, these defendants paid to themselves, or were paid by other defendants, monies, compensation and bonuses they knew were not legally due them, and therefore knowingly were in receipt of stolen property and absconded with it.

125. As a direct and proximate result of these defendants' receipt of this stolen property and failure to return it immediately, NAAC has been damaged by the amounts they each wrongfully stole and absconded. Under Penal Code § 496(c), NAAC is entitled to three times the amount of its actual damages, plus costs and attorneys' fees.

SIXTH CAUSE OF ACTION

(Conversion)

(Against All Defendants)

126. Plaintiffs hereby incorporate the above allegations by reference as if fully set forth herein.

127. By virtue of its ongoing operations, NAAC had the right to own and possess monies for NAAC's use to support its non-profit mission.

128. Defendants intentionally interfered with NAAC's right to possess these monies by paying themselves or to their agents monies, compensation and bonuses they knew were not legally due them.

129. Defendants' interference was without NAAC's consent.

130. As a direct and proximate result of defendants' interference with NAAC's use of its monies, NAAC has been damaged by the amount of money each defendant wrongfully received.

131. Defendants' actions were intentional, reckless, wanton, and oppressive, entitling NAAC to exemplary and punitive damages in an amount sufficient to make an example of and punish each defendant for their intentional, reckless and highly damaging acts. The actions were especially reprehensible and egregious as they were intended to and did cause harm to a non-profit organization and used funds that the State of California earmarked to assist under-represented communities in this State.

SEVENTH CAUSE OF ACTION

(Negligent Misrepresentation)

(Against Defendants Faith, Josefina and Penaflor)

132. NAAC hereby incorporates the above allegations by reference as if fully set forth herein.

133. Because defendants Faith, Josefina and Penaflor owed NAAC strict fiduciary duties, they each had a special duty of full disclosure and to otherwise ensure that NAAC

properly understood the true state of affairs, and had this duty regardless of whether they intended to deceive NAAC.

134. As alleged herein, defendants, either individually or as a result of their role as a co-conspirator, breached that special duty by making material representations of fact to NAAC regarding the National Mortgage Settlement program as administered by NAAC that were false and were made without a reasonable basis to believe them to be true. The negligent misrepresentations included but are not limited to, that (a) the National Mortgage Settlement program was being managed in compliance with all legal and contractual obligations, (b) all payments made under that program were duly obligated to be made, and (c) each and every payment made under the program to persons or entities was appropriate and in furtherance of the legal requirements of the program.

135. These representations were false. In fact, defendants were illegally manipulating the National Mortgage Settlement program to increase their personal net worth; to obtain bonuses, cash incentive payments, and other benefits; and to otherwise further their personal and professional self-interests at NAAC's expense.

136. NAAC reasonably relied to their detriment on defendants' false representations in that they allowed defendants to continue to operate the program and continued to pay them compensation and other benefits on the mistaken belief that defendants were operating the program ethically and consistent with all laws and contractual obligations.

137. NAAC's reasonable reliance on defendants' materially misleading representations was a substantial factor in causing damage to NAAC.

138. NAAC is thus entitled to damages from defendants for the harm caused by their wrongful conduct. While these damages are still being determined, they at least include (a) the amount of money NAAC now owes the State of California; (b) the amount of compensation these defendants received based on their wrongful conduct; and (c) the attorneys' fees, accountant fees, and other professional fees and cost NAAC has and will incur as a result of its investigation into defendants' fraudulent conduct and the ramifications of defendants' wrongful conduct.

PRAYER FOR RELIEF

Wherefore, plaintiff National Asian American Coalition prays for relief against defendants for:

1. compensatory damages;
2. disgorgement of unlawfully obtained monies;
3. a temporary restraining order, preliminary injunction, and a permanent injunction barring defendants from transferring or otherwise disposing of any NAAC assets in their possession, or any assets purchased with assets wrongfully obtained from NAAC, while this lawsuit is pending, and then transferring such assets to NAAC upon this lawsuit's completion;
4. for a constructive trust over any NAAC assets wrongfully in defendants' possession, or any assets defendants purchased with cash or other assets that these defendants wrongfully obtained from NAAC;
5. attorneys' fees, accountant fees, and related costs incurred investigating defendants' tortious conspiracy under the doctrine of Tort of Another;
6. on the First, Second, Third, Fourth and Fifth Causes of Action, punitive damages;
7. on the Sixth Cause of Action, treble damages and attorneys' fees under Penal Code § 496(c);
8. prejudgment interest in an amount to be proven at trial;
9. costs of suit; and
10. such other relief as the Court deems just and proper.

DATED: May 9, 2023

MURPHY ROSEN LLP

By: _____

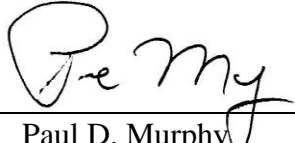

Paul D. Murphy
Daniel N. Csillag
Attorneys for Plaintiff
National Asian American Coalition

DEMAND FOR TRIAL BY JURY

Plaintiff National Asian American Coalition demands a trial by jury on all causes of action.

DATED: May 9, 2023

MURPHY ROSEN LLP

By: 
Paul D. Murphy
Daniel N. Csillag
Attorneys for Plaintiff
National Asian American Coalition