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1/20/12

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

STATE OF NEW MEXICO, plaintiff, ex rel. FRANK FOY
AND SUZANNE FOY, qui tam plaintiffs

v.

No. D-101-CV-2009-01189

AUSTIN CAPITAL MANAGEMENT, LTD;
AUSTIN CAPITAL MANAGEMENT GP CORPORATION;
CHARLES W. RILEY; BRENT A. MARTIN;
DAVID E. FRIEDMAN; WILL JASON ROTTINGER;
VICTORY CAPITAL MANAGEMENT, INC.;
KEYCORP; BEREAN CAPITAL; DUDLEY BROWN; TREMONT
PARTNERS, INC.; TREMONT CAPITAL MANAGEMENT, INC.;
TREMONT GROUP HOLDINGS, INC.; OPPENHEIMER FUNDS, INC.;
GARY BLAND; DAVID CONTARINO; BRUCE MALOTT; MEYNER +
COMPANY; MARC CORRERA; ANTHONY CORRERA; SANDIA ASSET
MANAGEMENT; ALFRED JACKSON; DAVIS HAMILTON AND
JACKSON; GUY RIORDAN; JUNIPER CAPITAL; EILEEN KOTECKI;
DAN HEVESI; HENRY "HANK" MORRIS; JULIO RAMIREZ; PAUL CROSS;
CROSSCORE MANAGEMENT; SDN INVESTORS; PSILOS GROUP;
ALBERT WAXMAN; JEFFREY KRAUSS; STEPHEN KRUPA;
DAVID EICHLER; DARLENE COLLINS; WETHERLY CAPITAL GROUP;
DAN WEINSTEIN; VICKY SCHIFF; QUADRANGLE GROUP;
ALDUS EQUITY; SAUL MEYER; MARCELLUS TAYLOR;
MATTHEW O'REILLY; RICHARD ELLMAN; DEUTSCHE BANK;
DIAMOND EDGE CAPITAL; MARVIN ROSEN; CARLYLE MEZZANINE
PARTNERS; CARLYLE GROUP; DB INVESTMENT MANAGERS;
TOPIARY TRUST; PARK HILL GROUP; DAN PRENDERGAST;
CATTERTON PARTNERS; BLACKSTONE GROUP; GOLD BRIDGE
CAPITAL; DARIUS ANDERSON; KIRK ANDERSON; ARES MANAGEMENT;
INROADS GROUP; CAMDEN PARTNERS; HFV; BARRETT WISSMAN;
TAG; AJAX INVESTMENTS; CLAYTON DUBILIER AND RICE;
INTERMEDIA; LEO HINDERY; WILLIAM R. HOWELL; CABRERA
CAPITAL; MARTIN CABRERA; CRESTLINE INVESTORS;
JOHN DOE #1; AND JOHN DOE #3 THROUGH #50,

Defendants.

ADDITIONAL EVIDENCE BY PLAINTIFFS
IN OPPOSITION TO ATTORNEY GENERAL'S
MOTION FOR PARTIAL DISMISSAL

The plaintiffs State of New Mexico ex rel. Frank Foy and Suzanne Foy submit herewith a partial transcript of a meeting of the managers of Aldus Equity, a defendant herein. TAB A. This evidence is submitted in opposition to the Attorney General's Motion for Partial Dismissal. The partial transcript provides evidence against various defendants in this case, including the ones whose names are underlined on TAB B for the convenience of the Court. The evidence demonstrates that there are good grounds for denying the AG's motion for partial dismissal, so that the entire Aldus pay-to-play conspiracy can be tried in this one case.

This Aldus management meeting occurred in September 2006. The participants include the defendants Saul Meyer (CEO of Aldus), Richard Ellman, Matthew O'Reilly, and Marcellus Taylor. It was taped because the other partners in Aldus had discovered that Saul Meyer was using pay-to-play schemes to obtain business for Aldus. To obtain evidence against Saul Meyer, the other partners recorded the meeting without Saul Meyer's knowledge, in an effort to oust Meyer from the firm. That effort was unsuccessful, until Meyer was indicted in New York in April of 2009.

During the meeting, Saul Meyer describes pay-to-play schemes in New Mexico and elsewhere, including the pay-to-play scheme orchestrated by Anthony and Marc Corraera which victimized the New Mexico State Investment Council (SIC) and the New Mexico Educational Retirement Board (ERB). Saul Meyer excluded the other partners from being involved in Aldus's dealings with the Corraeras, so the other partners were largely in the dark about Meyer's pay-to-play arrangements.

During the meeting, Saul Meyer pulls out a list of funds from Anthony and Marc Corraera for the SIC and ERB to invest in. See TAB A, transcript segment #1. These funds

would pay third-party fees to Marc Correra, Julio Ramirez, or other pay-to-play conspirators. So the recording provides detailed proof to corroborate the pay-to-play conspiracy which is described in the First Amended Complaint.

During the meeting, Saul Meyer describes his efforts to have Frank Foy fired from the ERB, along with ERB Director Evalynne Hunnemuller. See TAB A, transcript segments #2 and #5. Meyer wanted Foy and Hunnemuller fired because they were resisting the hiring of Aldus by the ERB. Frank Foy and others believed that it was a bad idea for the ERB to have the same advisors and to make the same investments as the SIC, as explained in paragraphs 74, 75, 98, and 99 of the First Amended Complaint. As further explained in paragraphs 121 through 123, Meyers' efforts succeeded in December 2006: ERB chairman Bruce Malott fired Evelyn Hunnemuller after she refused to fire Frank Foy. Frank Foy was shunted aside and ultimately forced to retire, and this allowed the Correras and the other conspirators a free hand to export graft from the SIC to the ERB. As a result, the pay-to-play conspiracy continued and flourished at the ERB and SIC through 2007 and 2008.¹

During the meeting, Saul Meyer also describes the working relationships between Marc and Anthony Correra, Julio Ramirez, State Investment Officer Gary Bland, and then Governor Bill Richardson. See TAB A, transcript segments #3 and #4. All of these persons are named as defendants in the First Amended Complaint, except for Mr. Richardson. Saul Meyer tells his partners:

SAUL: [T]o not think that Anthony and Marc don't have a stranglehold over this thing is crazy. Because the Governor runs this sh*t and they run the Governor.

¹ It should be noted that the defendant Bruce Malott was Gary King's campaign treasurer. By itself, this is sufficient grounds to deny Gary King's motion to dismiss.

RICHARD: How does Gary fit into this mess?

MATT: He listens to Marc, . . . or Anthony. . . . He does what Anthony says.

RICHARD: So when they want to put 25 million dollars or however much money in Carlyle, Mexico, who precipitates that decision?

SAUL: Anthony. . . . Sometimes the Governor can get cute and go around him to a trustee. . . . Now none of this leaves this room. . . . The Governor has no involvement officially, or unofficially. Okay?

Note: Saul Meyer says that Bill Richardson sometimes uses a trustee to direct the placement of pay-to-play investments. This reference is unclear, and it might refer to one or more persons, such as Gary Bland (then a member of the SIC and the ERB), Bruce Malott (then chairman of the ERB), or Doug Brown (then a member of the SIC and the ERB). Concerning Msrs. Malott and Brown, see paragraphs 75 and 135 through 138 of the First Amended Complaint.

In addition to the attached transcript, plaintiffs are mailing an audio CD of these excerpts to the Court for filing as an exhibit.

For ease of reference by the Court, plaintiffs are attaching some of the pertinent paragraphs from the First Amended Complaint as TAB B.

This evidence should be considered in opposition to the AG's motion for partial dismissal. This transcript shows that the pay-to-play corruption at the ERB was simply an extension of the corruption at the SIC. Therefore it makes no sense to chop this case into pieces as the AG suggests. At the appropriate time, after the interlocutory stay is lifted, this evidence should also be considered in opposition to the other motions to dismiss, and in support of the plaintiffs' long-pending motions to move forward with discovery.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By /s/ Victor R. Marshall

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Qui Tam Plaintiffs Frank Foy and Suzanne Foy
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I hereby certify that a true and correct
copy of the foregoing was e-filed and served
via Odyssey File and Serve to
all counsel of record this 20th day of
January, 2012.

/s/ Victor R. Marshall

Victor R. Marshall

KEY PARTS OF ALDUS EQUITY MANAGEMENT MEETING
September 2006

Identifications:

SAUL: Saul Meyer, defendant in Foy v. Austin Capital case
RICHARD: Richard Ellman, defendant in Foy v. Austin Capital case
MATT: Mathew O'Reilly, defendant in Foy v. Austin Capital case
THOMAS: Thomas Henley, partner in Aldus Equity
MARCELLUS: Marcellus Taylor, defendant in Foy v. Austin Capital case

ANTHONY CORRERA, defendant in Foy v. Austin Capital case
MARC CORRERA, defendant in Foy v. Austin Capital case
JULIO RAMIREZ, defendant in Foy v. Austin Capital case
THE GOVERNOR, former Governor Bill Richardson
GARY BLAND, defendant in Foy v. Austin Capital case
WILLIAM (Bill) HOWELL, defendant in Foy v. Austin Capital case
CATTERTON PARTNERS, defendant in Foy v. Austin Capital case
PARK HILL GROUP, defendant in Foy v. Austin Capital case
CARLYLE GROUP, defendant in Foy v. Austin Capital case
HALYARD CAPITAL, private equity firm in New York City
DAN WEINSTEIN, defendant in Foy v. Austin Capital case

FRANK FOY, former Chief Investment Officer of the Educational Retirement Board (ERB)
EVALYNNE HUNNEMULLER, former Executive Director of the ERB

Segment #1

SAUL: New Mexico. You have to tell let's just start filling in what I have here, what we have and then what we've got to take out. And I'm going to pull the list that the Correras gave me... Ready for this? ... Fun, man, fun...

Segment #2

SAUL: And by the way, if we get to the discretion thing, we can make it smaller and f**k with them.

? : When are we going to find out on that?

SAUL: I'm pushing to have him fired before the October meeting. Alright. We'll call that Marc Correr, Marc Correr, Julio, nobody, nobody, nobody, Bill Howell, Marc Correr.

? : That's where you do a Weinstein here...

Julio's only got one.

SAUL: That's a problem. Just so you know the politics, Julio got Marc this.

TAB A

Segment #3

SAUL: Halyard. I wish we wouldn't have to do it but that's the deal. I don't think we have a choice on that one. Everyone agree with me on that one?

MARCELLUS: I mean I agree that Halyard is not a good fund.

[laughter]

SAUL: And we agree we are going to be doing a couple of funds that aren't good funds.

RICHARD: You know part of the question is, if you want to help out Julio, then what other funds does Julio have?

SAUL: It's really not that anymore because, you know, this is one that's been, and Richard can attest to this, f**king going crazy. Like this is super important to him. He's been pushing these guys, he's got the Governor, and there's been a deal cut, because these guys... How many people own this f**king Mexican paper, this Hispanic paper that we got us stuck with? I mean this is like the third group now? They own all the largest standing periodicals in both LA and New York and there is some f**ked up thing going on there with them. That's why Halyard hadn't got the traction that Park Hill wanted, and it is really important to Julio to do it and he cut a deal with Anthony and Marc, that they give them things and specific funds that he wanted above all others is Halyard. And that means, I know it is not very good, but we've done, you know, this list to me it looks pretty f**king good versus last year so far, so I'm not really bent out of shape about it. So unless anyone's got a massive objection

Segment #4

MATT: Okay. And you have to put them in New Mexico versus ERB.

SAUL: Yes.

MATT: Both?

SAUL: Yes.

THOMAS: You going to put them in both?

MATT: Well I don't see why we have to.

SAUL: Dude, because we've got ERB is why

MATT: No, no, no. I agree, but that's Julio though.

SAUL: For you not to think, Dude, Julio and Anthony and Marc, Julio feeds Anthony and Marc good deals. Okay? So that we don't have heartburn and don't get fired, so that we can then go and get other mandates. And in return, in this ecosystem.

Anthony and Marc give Julio the ability to do a couple of deals a year...

? : Whew.

SAUL: That's it... That's the whole way it runs. Okay? So outside of this little ecosystem, they will let me do stuff, but just so you are aware, I got f**ked over because we did Catterton. People were pissed at me for like three months. Because it was a barker they didn't know who came in there, they were pissed. So you have to do these, but the person who knows the client, we have to remember, we got to manage our clients, you know. To not think that Anthony and Marc don't have a stranglehold over this thing is crazy. Because the Governor runs this sh*t and they run the Governor.

RICHARD: How does Gary fit into this mess?

this typo will be corrected - UKM

SAUL

~~MATT~~: He listens to Marc, ...or Anthony... He does what Anthony says.

RICHARD: So when they want to put 25 million dollars or however much money in Carlyle, Mexico, who precipitates that decision?

SAUL: Anthony... Sometimes the Governor can get cute and go around him to a trustee..Now none of this leaves this room.. .The Governor has no involvement officially, or unofficially. Okay?

Segment #5

RICHARD: Yeah, and plus, I got to be honest, I'm a little concerned about having everything mirror SIC.

SAUL: That's right, we've got to pull some of those away. So, some of these we can't, and that's a good reason I can use to kill it, I can just say we've got to find something else. I can use it as something if Marc pushes back on me, where I can say okay.

MARCELLUS: Every one of those except for two is in SIC.

SAUL: But you know, that's another good reason, what we're going to have to do is, at the beginning, until Evalynne and Frank are fired, we're going to have to do new funds, or do just a couple of them.

Victor R. Marshall & Associates, P.C.
Attorneys for State of New Mexico ex rel.
Frank Foy

TAB A

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

FILED UNDER SEAL

STATE OF NEW MEXICO, plaintiff, *ex rel.* FRANK FOY
AND SUZANNE FOY, *qui tam* plaintiffs

v.

No. D-101-CV-2009-01189

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JOHN DOE #1; AND JOHN DOE #3 THROUGH #50.

ENDORSED
First Judicial District Court

JUN 16 2009

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2266
Santa Fe, NM 87504-2266

CORRECTED FIRST AMENDED COMPLAINT
UNDER THE FRAUD AGAINST TAXPAYERS ACT

(This is a corrected version of the First Amended Complaint
filed June 9, 2009.)

TAB B

Pursuant to Rule 1-015(A), NMRA 2009, the plaintiff State of New Mexico and *qui tam* plaintiffs Frank and Suzanne Foy hereby amend and supplement the original complaint which was filed on April 17, 2009 at approximately 8:30 AM, as follows:

I. INTRODUCTION AND SUMMARY

1. This is one of several lawsuits to recover damages for the State of New Mexico under the Fraud Against Taxpayers Act, NMSA 1978, §§ 44-9-1 through -14. The plaintiff is the State of New Mexico. The *qui tam* plaintiffs and relators are Frank C. Foy and Suzanne B. Foy. 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.

2. This complaint expands upon, and sets forth in greater detail, the allegations first set forth in the original complaint filed by Frank Foy. On July 14, 2008, Mr. Foy filed a complaint relating to the loss of \$90 million which the Educational Retirement Board (“ERB”) and State Investment Counsel (“SIC”) invested in Vanderbilt Financial Trust. *State ex rel. Foy v. Vanderbilt*, No. D-101-CV-2008-1895 (N.M. 1st Jud. Dist. Ct.). The Vanderbilt complaint alleged that the Vanderbilt investment was influenced by kickbacks and other illegal inducements. The complaint also alleged that there were other instances in which ERB and SIC investments were based upon kickbacks and other illegal inducements. *See Vanderbilt Complaint ¶¶ 63, 64, 67, 70, and 73.* This complaint explains the other instances of “pay to play” at the ERB and the SIC.

continued in that position until the events stated below. As Chief Investment Officer, he had overall responsibility for all of ERB's investments.

69. As Chief Investment Officer, Frank Foy instituted a strict policy against political contributions by persons doing business with the ERB. This policy was necessary to fulfill strict fiduciary duties which the ERB owed to educational retirees. This policy against political contributions was also necessary to ensure that the ERB awarded contracts for investment services to the best, most competent, and most honest contractors, not the ones who paid 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.

70. 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 on instructions from David Contarino (and perhaps others). 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.

71. 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 Herrera and Marc Herrera, 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.

72. Anthony Herrera and Marc Herrera, 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 Herrera, Marc Herrera, 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.

73. **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.”

74. 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. 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. (This conflict of interest has actually occurred with Austin Capital.)

75. 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. 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

defendants are not named in this complaint, because they are already defendants in the Vanderbilt litigation.

94. In order to obtain \$90 million from the State of New Mexico, Vanderbilt and others made numerous false statements and representations about the nature of the investment and the assets which supposedly supported it. In order to obtain the \$90 million from the State of New Mexico, Vanderbilt 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.

95. Through these fraudulent means, Vanderbilt sold the State of New Mexico a worthless combination of liars' loans, lethal leverage, and toxic waste. The State of New Mexico lost the entire principal amount of its investment – \$90 million, plus the income it would have received from the investment.

96. The Vanderbilt investment is the subject of a separate lawsuit: *State of New Mexico ex rel. Foy v. Vanderbilt, et al.*, No. D-101-CV-2008-1895 (N.M. 1st Jud. Dist. Ct.). Bland, Malott, Meyners, and Contarino (formerly known as “John Doe #2”) are defendants in the Vanderbilt case. The plaintiffs ask the Court to take judicial notice of the pleadings and proceedings in that case.

97. **Foy's demotion.** By mid-2006 it had become quite apparent to Frank Foy that Bruce Malott was attempting to get rid of him because of his opposition to suspicious investments. As Chief Investment Officer at the ERB, Foy was an exempt employee, meaning that he could be terminated almost at will by Malott and the Richardson administration. In order to protect himself and his retirement and his ability to speak out, Foy decided, under duress, that he should seek a demotion to Deputy Chief Investment Officer, which is a non-exempt or protected position. Foy discussed this with the ERB's

executive director, Evalynne Hunemuller and she agreed to do this in order to protect him from retaliation. His demotion was effective on July 29, 2006.

98. Aldus Equity. In May 2006, the ERB was in the process of an RFP to hire a private equity consultant. Bruce Malott injected himself into the early stages of the selection process and began pushing to hire Aldus Equity. The SIC had already hired Aldus as SIC's private equity consultant. Foy pointed out that it was not a good idea for the ERB and the SIC to have the same investment consultants and managers, for the reasons stated above. Furthermore, none of the ERB's staff had rated Aldus Equity among the top five finalists. Nevertheless, Malott insisted that Aldus be invited as a finalist to interview with the ERB investment committee.

99. On May 25, 2006 the Investment Committee met and voted to hire Aldus Equity. The ERB staff members argued vigorously against hiring Aldus, citing its poor references, higher fees, and lack of diversification.

100. Upon information and belief, Aldus Equity committed a fraud on the State of New Mexico by paying, or promising contributions, kickbacks, or other improper considerations to third persons, in exchange for the award of these contracts. One such contribution was a \$3,000 contribution solicited by State Treasurer Robert Vigil to a fund controlled by Manny Aragon at New Mexico Highlands University. Both Robert Vigil and Manny Aragon have been convicted of political corruption charges. See *United States v. Vigil*, No. 05CR2051 JB (D.N.M.); *United States v. Martinez*, No. 07CR615 WJ (D.N.M.). Upon information and belief, Aldus also paid other improper consideration disguised as finder's fees or third-party marketing fees.

101. Many of the kickbacks on SIC and ERB business occurred in the "private equity" portfolios managed by Aldus Equity.

102. **The New Mexico - New York connection.** Aldus used New Mexico money to pay bribes and kickbacks in New York State, so that Aldus could obtain more business there. The New York State common fund is the pension fund for state employees in New York. The fund was controlled by the longtime New York State comptroller, Alan Hevesi, and his deputy David J. Loglisci. Saul Meyer and Aldus agreed to pay or arrange kickbacks to Loglisci; to Henry "Hank" Morris, a close associate of Alan Hevesi; and to Dan Hevesi, the son of Alan Hevesi. Henry "Hank" Morris received a kickback of \$150,000 from Carlyle on \$20 million of New Mexico business. Also, Quadrangle paid a kickback (of undisclosed amount) to Morris on \$20,000,000 which the SIC invested with Quadrangle. Catterton Partners paid a kickback of \$250,000 to Dan Hevesi, the son of Alan Hevesi, on a \$25 million investment by the New Mexico SIC. There was no legitimate reason to pay these New Yorkers – Hevesi and Morris – a finder's fee on New Mexico's business.

103. In addition, there is another kickback connection between New York and New Mexico: the movie "Chooch." This was a low-budget movie being produced by David Loglisci's brother. As part of the efforts to buy influence with the New York common fund, one of the Quadrangle funds agreed to pay approximately \$88,000 for the DVD distribution rights to "Chooch." This was a thinly disguised kickback, and it was authorized by Stephen Rattner, a senior executive at Quadrangle. The movie "Chooch" was partly produced in New Mexico, and it received New Mexico film tax credits. Upon information and belief, Rattner may have played a role in arranging tax credits for "Chooch." Upon information and belief, these New Mexico film tax credits may have been arranged by persons in the Richardson administration, including some of the defendants, as part of the illegal inducements that were being swapped and traded by various participants in the New York-New Mexico kickback

scheme. Upon information and belief, Rattner also approved the kickback paid to Morris from New Mexico's \$20,000,000 investment with Quadrangle.

104. In a recent indictment, the Attorney General of New York has identified Aldus Equity as making and arranging pay-to-play payments and kickbacks to obtain business from the Common Retirement Fund of the State of New York. *People v. Henry "Hank" Morris and David Loglisci*, Supreme Court of New York, New York County, Indictment No. 25/2009.

105. The Securities and Exchange Commission has also identified Aldus Equity as making and arranging pay-to-play payments and kickbacks for business from the New York Common Retirement Fund. *SEC v. Henry Morris, David J. Loglisci, Nosemote LLC, Pantigo Emerging LLC, and Purpose, LLC*, No. 09-CV-2518 (S.D.N.Y. Mar. 19, 2009).

106. **Austin Capital.** In August 2006, the ERB was engaged in the process of selecting finalists to manage hedge fund of funds for the ERB. One candidate was Crestline Investors, Inc., but they were eliminated when it was discovered that Crestline had paid a "commission" to Guy Riordan, allegedly as a finder's fee of some kind.

107. The ERB's outside consultant and the ERB staff recommended that the ERB should hire a maximum of four managers. However, Bruce Malott began insisting that the ERB should hire six managers, and that it should hire some of the same managers who already had contracts with the SIC. This led to heated arguments, but Malott had the votes from the Governor's faction to force the selection of six managers, four of whom already managed money for the SIC. Austin Capital was one of those selected.

108. **HFV and TAG.** On August 23, 2006, the ERB Investment Committee began two days of meetings to select hedge fund of funds managers. During the deliberations Bruce Malott began pushing the ERB to hire six hedge funds managers, even though Frank Foy and Allan Martin of NEPC had recommended that the ERB hire no more than four managers.

Mr. Foy felt that it was overkill to hire more than four managers, especially since Mr. Malott wanted to hire some of the same managers already managing hedge funds for the SIC. At the time, Mr. Foy also suspected, although he could not prove, that the selection of six managers was intended to allow room for managers who were willing to pay kickbacks. Mr. Foy and Mr. Malott got into a very heated argument about hiring six managers rather than four.

109. During the discussions Gary Bland spoke up in favor of HFV, TAG, Deutsche Bank/Topiary Trust, and Austin Capital. All four of them were awarded contracts, and all four of them paid or arranged kickbacks on ERB or SIC business. Austin Capital paid or arranged kickbacks through Alfred Jackson and Berean Capital. HFV paid kickbacks to Marc Correra through Cabrera Capital, and also through Barrett Wissman. TAG paid kickbacks to Marc Correra (among others) through Cabrera Capital. Deutsche Bank Topiary Trust also paid kickbacks through Cabrera Capital.

110. 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, such as:

- 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.

111. In October or November 2006 Foy finally received copies of schedules A and B from Austin Capital's contract with the SIC. Schedule B provided that an annual fee of 50 basis points (50 hundredths of one percent, or 1/2%) was paid to a firm called Berean Capital. *See Exhibit 1*, attached to the original complaint. Foy told Austin Capital that he didn't think it was right to pay a finder's fee to a company he'd never heard of, and that if Austin was to pay this type of fee, the ERB should have its fees reduced. At Foy's insistence, Austin provided a new schedule showing no third-party marketing or finder's fees being paid. However, the fee was paid to Berean on the SIC contract. On the ERB contract, Austin made kickbacks by other means, to conceal them from Foy and other honest ERB employees.

112. Foy subsequently learned that Berean Capital was a brokerage firm in Chicago. The firm and its founder and president, Mr. Dudley Brown, had been fined \$250,000 by the SEC for making improper campaign contributions in the State of Illinois, including to Governor Rod Blagoyovich.

113. Austin Capital, ACM-GP and KeyCorp committed fraud on the State of New Mexico by paying kickbacks or other illegal inducements, or promising to pay such illegal inducements, to Berean Capital and Dudley Brown in order to obtain contracts to manage hedge fund of funds for the SIC and/or the ERB.

114. Berean Capital and Dudley Brown committed fraud on the State of New Mexico by providing nothing of any substantial value to the State in return for the fees paid to Berean. Upon information and belief, Berean and Dudley Brown engaged in some sort of political bartering, see below, rather than providing legitimate and valuable services as regards the Austin investment.

115. Deutsche Bank. In August 2006, ERB was in the process of selecting hedge fund of funds managers for a \$400 million portfolio. During the selection process, Malott again insisted that the ERB hire six managers rather than four, contrary to the recommendations of the ERB staff and outside adviser. Deutsche Bank was one of the six firms that were ultimately hired.

116. On November 21, 2006 Foy participated in a telephone conference call with Deutsche Bank staff to discuss the final documents for the Topiary Trust, the hedge fund of funds managed by Deutsche Bank. During a telephone call, Foy noticed that schedule B in the documentation called for a finder's fee to be paid by Deutsche Bank to Cabrera Capital. Cabrera Capital is a broker dealer based in Chicago (with an office in Santa Fe). The fee was 50 basis points, or one half of 1%, per annum. Foy told the Deutsche Bank people that this

finder's fee was "a deal killer." Foy's position was that a public request for proposals had been sent out, and that Deutsche Bank should and could have responded to the RFP without going through a third party. Foy told Deutsche Bank people to get rid of the finder's fee or he would recommend that ERB not sign the documents.

117. On November 22 Foy had another conference call with the people from Deutsche Bank, who informed him that the Deutsche Bank lawyers were insisting that the third party marketing fee would have to remain in schedule B. Deutsche Bank also pressed to close the deal and have the money wired to it by November 30. Foy did not agree. He suggested that they talk again on November 27, the Monday after Thanksgiving.

118. On November 27, Foy received a phone call from an executive at Deutsche Bank. The executive told Foy that Deutsche Bank did engage Cabrera Capital and that Deutsche Bank was going to pay the fee as set forth in schedule B. Foy responded by saying "I do not want any of my fees going to a third-party marketer."

119. On November 29, Foy had several conversations concerning the Cabrera Capital finder's fee. Foy refused to wire the money to Deutsche Bank for the November 30 closing.

120. In early December, Foy was informed that Deutsche Bank agreed to drop the finder's fee to Cabrera Capital. After checking with Evalynne Hunemuller, Foy agreed to wire the funds to Deutsche Bank in early January, 2007. However, unbeknownst to Foy, Deutsche Bank paid kickbacks by other means, without disclosing this to Foy.

121. **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.

122. 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.

123. **Exporting graft from the SIC to the ERB.** After Foy's demotion and Hunnemuller'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 carrying out 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 Carreras, 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.

129. As part of their efforts to disguise and conceal the fraudulent inducements, the players and the fixers tended to avoid expressing their agreements in writing, like contracts, letters, or e-mails.

130. As part of their efforts to conceal and disguise the fraudulent inducements, the players and the fixers also tended to avoid expressing their agreements verbally, even in private, for fear of wiretaps or hidden tape recorders. For example, Gary Bland expressed fear that the FBI was listening to his conversations.

131. The players and the fixers also tended to avoid expressing their agreements clearly, even in private, for fear that some of the other participants or witnesses to the conversation might be honest.

132. The players and the fixers also tended to avoid expressing their agreements clearly, even in private, for fear that some of the other participants or witnesses to the conversation might be “turned” by law enforcement authorities, so that they might testify against the other participants.

133. Additional information about the kickbacks is shown on Exhibits 1 and 2, attached and incorporated as part of this complaint. These are listings of “third-party fees” prepared by the SIC and the ERB. These exhibits are admittedly incomplete; there are many additional kickbacks which have not yet been uncovered or disclosed.

134. But for these illegal and fraudulent inducements, the investments set forth above would not have been made.

135. **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.

136. 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 |

137. Upon information and belief, one purpose of these contracts was to reward Malott and Meyners for helping to arrange pay-to-play schemes, including (but not limited to) the schemes described in this complaint and in *State ex rel. Foy v. Vanderbilt*. Upon information and belief, another purpose of these contracts was to reward Malott, Meyners, and Meyners' employees for their political contributions and services to Richardson.

138. 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.