

JUDGE DANIELS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

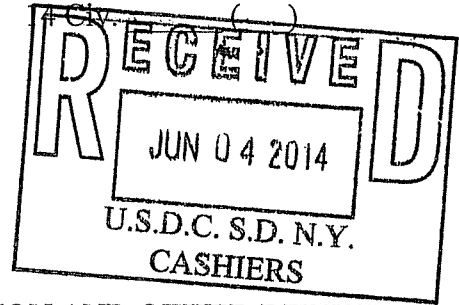
Plaintiff,

v.

HAROLD LEVINE,

Defendant.

14 CV 4057



**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

Plaintiff, United States of America, for its complaint against defendant Harold Levine, states as follows:

**PRELIMINARY STATEMENT**

1. Defendant Harold Levine, an experienced tax attorney who has served as head of the tax practice groups at both the New York City offices of Herrick, Feinstein LLP (“Herrick Feinstein”) and Moritt Hock & Hamroff LLP, has promoted, implemented and/or participated in at least 90 unlawful tax schemes designed to cheat the Government out of hundreds of millions of dollars in tax liability. As set forth more fully below, in many of these illegal tax schemes, Levine, operating together with other known tax-shelter promoters, used companies with phony losses on their books to shield millions of dollars of income garnered by other companies disposing of their assets. In an attempt to disguise the illegitimacy of these transactions, Levine knowingly told lies or caused the corporations involved in these unlawful transactions to tell lies concerning the supposed tax benefits of the transactions. Levine also attempted to conceal the unlawful tax schemes from the Internal Revenue Service (the “IRS”) by structuring certain transactions to evade IRS notices advising the public about the potential tax ramifications of

these transactions. Levine also failed to disclose information regarding these illicit transactions to the IRS, despite his obligations under the Internal Revenue Code to disclose such information. As a result of Levine's illegal tax schemes, the IRS has made or will make federal tax assessments totaling approximately \$130 million, not including penalties or interest, virtually all of which may be uncollectible. At the expense of the IRS, Levine profited handsomely, acquiring over \$5 million in fees for his role in these unlawful transactions.

2. The United States brings this complaint pursuant to 26 U.S.C. §§ 7402 and 7408 of the Internal Revenue Code ("IRC") to enjoin Levine, and all those in active concert or participation with him, from directly or indirectly:

i. Organizing, promoting or selling any plan or arrangement – including but not limited to the intermediary transaction tax schemes and the state tax credit transaction tax schemes described in this complaint or any similar plans or arrangements – that advises or assists others in violating or attempting to violate the internal revenue laws or unlawfully evading the assessment or collection of their federal tax liabilities;

ii. Engaging in conduct subject to penalty under IRC § 6700, including, but not limited to, making, in connection with the organization or sale of any plan or arrangement, any statement about the securing of any tax benefit that Levine knows or has reason to know is false or fraudulent as to any material matter;

iii. Engaging in conduct subject to penalty under IRC § 6707, including, but not limited to, failing to file a return or statement with the IRS that identifies and describes any reportable or listed transaction, any potential tax benefits expected to result from that transaction, and other information required by statute;

iv. Engaging in conduct subject to penalty under IRC § 6708, including, but not limited to, failing to furnish the IRS with a list that identifies all customers who have participated in listed or reportable transactions when the IRS requests such a list and the list is required to be maintained pursuant to statute; and

v. Engaging in any other conduct that interferes with the administration or enforcement of the internal revenue laws, including but not limited to implementing and participating in the intermediary transactions and state tax credit transactions or any similar tax schemes.

### **JURISDICTION AND VENUE**

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and by IRC §§ 7402 and 7408.

4. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial portion of the events giving rise to this action took place in this judicial district and because the defendant Harold Levine resides in this judicial district as of the time this action is filed.

### **AUTHORIZATION**

5. This action for injunctive relief is brought at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to IRC §§ 7401, 7402 and 7408.

### **DEFENDANT**

6. Defendant Harold Levine is an attorney who is licensed to practice law in the State of New York. He received a Juris Doctor from Benjamin N. Cardozo School of Law in 1983, and he received an LL.M. in Taxation from New York University School of Law in 1984.

7. Levine currently practices law at Moritt Hock & Hamroff, LLP, located at 450 Seventh Avenue, 15th Floor, New York, New York, 10123. According to Moritt Hock & Hamroff's website, Levine "concentrates his practice in all aspects of complex tax law."

8. Earlier in his career, Levine practiced law at several other law firms. Between 2002 and 2012, Levine practiced at Herrick Feinstein. During his tenure at Herrick Feinstein, Levine served as a Partner, Co-Chair of the law firm's Tax and Personal Planning Department, and head of the Tax Group. According to Herrick Feinstein's website, Levine "concentrate[d] his practice in all aspects of tax law, particularly tax planning with respect to partnerships, limited liability companies, C corporations and Subchapter S corporations."

#### **ADDITIONAL PLAYERS INVOLVED IN LEVINE'S TAX SCHEMES**

9. John P. "Sean" McNabola ("McNabola") is a chartered accountant who resides in Dublin, Ireland. Each of the five Promoter Corporations (defined *infra* in paragraphs 15 to 20 herein) was formed on behalf of McNabola, four of them with assistance from Herrick Feinstein. The Promoter Corporations were owned by a series of entities controlled by McNabola, including Green Isle Property Holdings Limited, Green Isle Trust, and Earlsfort Trust, the ultimate owner. Earlsfort Trust was established in Dublin, Ireland, for the benefit of McNabola's wife and children.

10. McNabola signed operative documents for some of the tax shelter transactions described herein on behalf of the Promoter Corporations for which he served as an officer. McNabola netted millions of dollars of profit from these tax shelter transactions.

11. Ron Katz ("Katz") is a certified public accountant and close associate of Levine. Entities owned by Katz alone, or co-owned with Levine, received millions of dollars of profit from the intermediary transactions described herein. These entities, including King Louie

Enterprises LLC and HRK Real Estate Holdings LLC, are believed to have received these profits on behalf of Levine.

12. Timothy Conn Vu (“Conn Vu”) is a tax practitioner who, in or around 2006, was hired to serve as an officer and/or director of the five Promoter Corporations involved in the intermediary transactions and state tax credit transactions described herein. Conn Vu signed many of the operative documents for the tax shelter transactions described herein, on behalf of the Promoter Corporations for which he served as an officer and/or director.

13. Fred Forster (“Forster”), co-founder of the promoter firm Fortrend International LLC, provided financing to Promoter Corporations controlled by McNabola in connection with certain of the intermediary transaction tax schemes described herein.

14. Graham Taylor (“Taylor”) is a tax attorney in San Francisco who provided advice to McNabola regarding the abusive distressed asset debt (“DAD”) and distressed asset trust (“DAT”) tax shelters that were used to offset taxable income from the abusive tax shelter transactions described herein. While Taylor was indicted in November 2005 for unrelated tax fraud, and pled guilty in November 2008 to tax evasion, he continued to practice law and provide advice to McNabola through at least 2008.

#### **COMPANIES USED TO PERPETRATE LEVINE’S TAX SCHEMES**

15. Levine, through his law firm Herrick Feinstein, formed and/or used five entities – First Active Capital Inc.; ILP Capital, Inc.; Anglo Capital Inc.; BOI Capital Inc. and AIB Capital Inc. (collectively, the “Promoter Entities” or “Promoter Corporations”) – in promotion of illegal tax shelters. The Promoter Entities reported bad debt losses on their tax returns, and used these purported losses to offset the gains and income generated from asset sales made by the target companies they acquired, as well as from state credit transactions and other transactions.

**A. First Active Capital Inc.**

16. First Active Capital Inc. ("First Active") was incorporated on August 19, 2005, in the State of Delaware by attorney Graham Taylor. McNabola was the initial director and officer of First Active, and maintains control of the company. On August 10, 2006, Tim Conn Vu was elected president, secretary, and treasurer of First Active, and on February 27, 2008, became its director. First Active participated in at least five intermediary transactions, and via Agate LLC ("Agate"), a company in which First Active is the sole member, participated in numerous state tax credit transactions between 2005 and 2010. In addition, First Active also acquired a target company in which Levine was an investor, and which had income from a lawsuit settlement. Levine served as the Vice President of First Active on several occasions in connection with First Active's promoter activities, and represented Agate in connection with state tax credit transactions.

**B. ILP Capital, Inc.**

17. ILP Capital, Inc. ("ILP Capital") was incorporated on July 25, 2006, in the State of Delaware by an attorney at Herrick Feinstein. As of the date of incorporation, McNabola was the sole director of ILP Capital. Beginning August 2, 2006, Timothy Conn Vu served as president, secretary and treasurer of ILP Capital. Beginning August 30, 2006, McNabola served as vice president of ILP Capital. ILP Capital participated in one intermediary transaction, and Levine served as the attorney for ILP Capital in connection with this transaction.

**C. Anglo Capital Inc.**

18. Anglo Capital Inc. ("Anglo Capital") was incorporated on February 14, 2006, in the State of Delaware by an attorney at Herrick Feinstein. McNabola was the initial president, secretary, treasurer and director of Anglo Capital. Beginning in or around August 2006,

Timothy Conn Vu served as the president, secretary, and treasurer of Anglo Capital, and became its director in 2008. Between 2006 and 2008, Anglo Capital participated in at least seven intermediary transactions, at least one state tax credit transaction, and at least one other tax avoidance transaction involving the sheltering of income from a partnership investment. Levine participated as an investor in at least one of the aforementioned transactions involving Anglo Capital. Levine also represented Anglo Capital or the target companies in connection with the aforementioned transactions.

**D. BOI Capital Inc.**

19. BOI Capital Inc. ("BOI Capital") was incorporated on August 2, 2007, in the State of Delaware by an attorney at Herrick Feinstein. Conn Vu served as the president of BOI Capital. McNabola served as the director of BOI Capital until 2008, when Conn Vu became the director. BOI Capital participated in state tax credit transactions, and Levine served as the attorney for BOI Capital in connection with these transactions.

**E. AIB Capital Inc.**

20. AIB Capital Inc. ("AIB Capital") was incorporated on August 2, 2007, in the State of Delaware, by an attorney at Herrick Feinstein. Conn Vu served as president of AIB Capital. McNabola served as the director of AIB Capital until 2008, when Conn Vu became the director. AIB Capital participated in state tax credit transactions after First Active ran out of bad debt losses to offset income from Agate, and Levine served as the attorney for AIB Capital in connection with these transactions.

**DEFENDANT'S INTERMEDIARY TRANSACTION TAX SCHEME**

21. An intermediary transaction tax shelter is a method of avoiding corporate level taxes from the transfer of ownership of a corporation and its assets. Ordinarily, a company's

shareholders wishing to dispose of either the entire company or the majority of its assets will face two levels of taxation: first at the corporate level arising from the sale of the company's assets, and second at the individual shareholder level when the company distributes the proceeds of the asset sale to the shareholders in a liquidating distribution. While a shareholder would thus prefer to sell his/her stock rather than have the company first sell its assets, the competing interest of the asset buyer – to obtain a tax basis in the purchased assets equal to the price paid for them – means that the selling shareholder must often settle for an asset purchase transaction.

22. The intermediary transaction enables the selling shareholders to obtain most of the tax benefits of the stock sale while the buyers obtain the tax benefits of an asset purchase. In a typical transaction, a so-called “intermediary” corporation acquires the stock of the target company with the potential tax bill shortly before or after selling off the company's appreciated assets to the asset purchaser. The intermediary may then act to eliminate the corporate tax liability by, for example, merging the target company with a company that has questionable losses to offset the target's gain. Because the intermediary intends to shelter the taxable gain arising from the asset sale, all parties to the transaction benefit: the selling shareholders receive a premium price for their stock (higher than what they would have received had they simply sold the company's assets and liquidated), the intermediary receives a portion of the tax savings in the form of a fee, and the asset purchaser obtains the stepped-up basis in the asset purchased.

*IRS Notices Regarding Intermediary Transactions*

23. In 2001, the IRS issued Notice 2001-16, which describes intermediary transaction tax shelters and advises taxpayers and their representatives of certain responsibilities that may arise from participating in these transactions.



24. As described in Notice 2001-16, intermediary transactions typically involve four parties: (1) a corporation owned by shareholders and owning assets (the “Target Corporation”); (2) a seller (the “Seller”) who desires to sell his or her stock in the Target Corporation; (3) an intermediary corporation, or promoter entity; and (4) a buyer (the “Buyer”) who wants to purchase the assets of the corporation. In the transaction, the Seller sells the stock of the Target Corporation to the promoter entity, and the Target Corporation sells its assets to the Buyer. After the stock purchase, the Target Corporation will avoid paying any tax on the gain from the asset sale. In one variation of the tax shelter, the Target Corporation is included as a member of the promoter entity’s affiliated group. The promoter entity files a consolidated return and reports losses that offset the capital gain taxes that result from the Target Corporation’s sale of its assets to the Buyer.

25. Notice 2001-16 states that the IRS may challenge the tax results of an intermediary transaction, and may assert penalties on individuals who promote or participate in these transactions. Notice 2001-16 also identifies intermediary transactions as “listed transactions” under 26 C.F.R. § 1.6011-4. This means that the intermediary transactions are the “same or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction.” *See* 26 C.F.R. § 1.6011-4.

26. In 2008, the IRS issued Notice 2008-111, clarifying Notice 2001-16. Notice 2008-111, which is effective as of January 19, 2001, provides, in part, that a transaction must include the following four components to be treated as an intermediary transaction tax shelter described in Notice 2001-16:

a. First, the Target Corporation, directly or indirectly, owns assets the sale of which would result in a taxable gain (the “Built-In Gain Asset”). As of the date of the sale of its

stock to the promoter entity, the Target Corporation does not have sufficient tax benefits to eliminate or offset the taxable gain.

b. Second, at least 80 percent of the Target Corporation's stock is disposed of by the Seller in one or multiple transactions within a 12-month period.

c. Third, within 12 months before or after the disposal of 80 percent of the Target Corporation's stock, at least 65 percent of the Target Corporation's Built-In Gain Assets are disposed of to one or more Buyers in one or more transactions in which a gain is recognized.

d. Fourth, at least half of the tax resulting from the sale of the Target Corporation's Built-In Gain Assets is offset, avoided or not paid.

27. The Internal Revenue Code and the Treasury Regulations require that taxpayers who participate in listed transactions disclose their participation by filing disclosure statements with their federal income tax returns. *See* IRC § 6111.

28. A material advisor as to a listed transaction also is required to file a report with the IRS identifying and describing the listed transaction and the potential tax benefits expected to result from the transaction. A material advisor must furnish the IRS with this information as to each occurrence of each listed transaction that s/he promotes. If a material advisor fails to provide the IRS with this information, s/he is subject to penalties. *See* IRC §§ 6111, 6707(a).

29. In addition, a material advisor as to a listed transaction also is required to maintain a list of all customers who participate in a listed transaction that must be furnished to the IRS upon request. *See* IRC §§ 6112, 6708.

*Levine's Promotion of and Participation in Intermediary Transactions*

30. Starting as early as 2005, Levine promoted, implemented, and/or participated in at least 13 intermediary transaction tax schemes that enabled corporations to illegally avoid paying

corporate income taxes on the gains received from the sale of corporate assets, while generating a profit for Levine equal to some portion of the sheltered gains. Levine promoted, implemented, and/or participated in each of these schemes through use of three of the Promoter Entities: First Active, Anglo Capital and ILP Capital.

31. The intermediary transactions that Levine promoted generally included three primary steps.

32. In step one of the intermediary transaction tax scheme, the Target Corporation sold some or all of its assets to a Buyer, in exchange for cash.

33. In step two of the intermediary transaction tax scheme, the promoter entity (here, First Active Capital, Anglo Capital, or ILP Capital) purchased the shares of the Target Corporation less than 12 months before or after the asset sale, purportedly for investment purposes. In exchange, the shareholders of the Target Corporation received cash from the promoter entity. The promoter entity purchased the shares using acquisition loans it secured. Pursuant to the stock purchase agreement, the promoter entity agreed to be responsible for the Target Corporation's income taxes and capital gains taxes after it acquired the Target Corporation.

34. In step three of the intermediary transaction tax scheme, the promoter entity generally reported the Target Corporation's income or capital gains on its tax return. The promoter entity offset all of the income or gain using bad debt deductions. As a result, the Target Corporation did not pay any tax on the gains from the sale of its assets.

35. The cash received by the Target Corporation from the asset sale was used to repay the loan secured by the promoter entity to purchase the Target Corporation's stock. The remaining

proceeds from the asset sale constituted the profits earned by the promoter entity, Levine, and other participants in the intermediary transaction.

36. In each of the Intermediary Transactions that Levine promoted, Levine represented either the promoter entity and/or the Target Corporation selling its shares. Funds from each of the intermediary transactions were generally placed under Levine's control and distributed through Herrick Feinstein's escrow accounts.

37. In certain of the intermediary transaction tax shelters that Levine promoted, steps were taken to alter the transaction structure so as to make them superficially appear different from the transactions listed in Notice 2001-16 and Notice 2008-111.

38. For example, in one intermediary transaction promoted by Levine involving Knatten Inc. as the target corporation, the transaction structure was changed so that the promoter entity purchased the shares of the foreign entity that owned Knatten Inc. instead of purchasing the shares of Knatten Inc. itself.

39. In other intermediary transactions promoted by Levine, involving target corporations PAF Trading Corp., ROQO Equities, Inc., and 691 Eighth Avenue, each target corporation sold real estate assets to a Buyer under a like-kind, tax deferred exchange agreement pursuant to IRC § 1031 (the "1031 agreement"). The proceeds from the asset sale were placed in an escrow account, to be used to purchase replacement property pursuant to IRC § 1031. However, after the asset sale and the stock purchase, the sale proceeds in the escrow account were distributed to the promoter entity and other participants in the transaction, thereby cancelling the 1031 agreement.

40. And in yet another intermediary transaction promoted by Levine, involving VMH Equities Corp., the structure of the transaction was changed so that the stock sale took place in

two steps rather than one, as an attempt to avoid Notice 2008-111, which had just recently been issued by the IRS.

41. Each one of the intermediary transaction tax schemes promoted by Levine was the same as, or superficially disguised to avoid, the listed transactions described in IRS Notice 2001-16 and Notice 2008-111.

### **SPECIFIC EXAMPLES OF THE INTERMEDIARY TRANSACTION TAX SCHEMES**

42. First Active, Anglo Capital and ILP Capital were formed to engage in intermediary tax schemes that Levine promoted, implemented, or otherwise participated in.

#### **First Active: The PAF Trading Corporation (“PAF”) Transaction**

43. Beginning in late 2005, Levine promoted an intermediary tax transaction scheme using First Active to a private real estate investor firm (the “Investor Firm”), which was a longstanding client of his law firm, Herrick Feinstein. The transaction involved multiple steps, some of which were inserted in an attempt to disguise the true nature of the transaction as an unlawful intermediary tax transaction.

#### **The PAF Transaction**

44. The Investor Firm, which invests in large real estate projects, was interested in acquiring the Manhattan commercial property owned by PAF at 148 Lafayette Street.

45. To accomplish this, first, the Investor Firm formed two entities, which they controlled: Ball 148 Acquisition, LLC (“Ball 148”), and 148 Lafayette, LLC (“148 Lafayette”). Ball 148 was formed to purchase PAF’s stock, while 148 Lafayette was formed to purchase PAF’s Manhattan property. Levine advised the Investor Firm regarding tax issues pertaining to this structure.

46. PAF's shareholders sold their PAF stock to Ball 148, as planned, on January 9, 2006, for \$30,000,000.

47. Approximately two weeks later, on January 24, 2006, PAF entered into an agreement to exchange the Manhattan property in a like-kind, tax deferred exchange pursuant to IRC § 1031 (the "PAF 1031 agreement"). Levine represented PAF in connection with this agreement, and executed the agreement. The PAF 1031 agreement obligated PAF to identify replacement property within 45 days of the exchange.

48. The parties, however, never completed and never intended to complete a like-kind, tax deferred exchange pursuant to IRC § 1031.

49. On January 25, 2006, one day after PAF entered into the PAF 1031 agreement, PAF sold the Manhattan property to 148 Lafayette for \$33,425,303, and deposited those proceeds in an escrow account, in accordance with the 1031 agreement (the "1031 escrow account"). Levine again represented PAF in connection with PAF's sale of the Manhattan property and executed the asset purchase agreement on PAF's behalf.

50. On January 27, 2006, Ball 148 sold the PAF stock it had purchased a few weeks earlier to First Active for \$29,825,000. The stock sale closed at the law offices of Herrick Feinstein. At this time, PAF had cash of \$33,425,303, held in the 1031 escrow account, and a 2006 tax liability arising from the sale of the Manhattan property. PAF had no other assets.

51. First Active financed the purchase of PAF stock by securing a loan of \$29,800,000 from a bank (the "Bank").

52. The stock purchase agreement governing the stock sale to First Active represented that the proceeds from the sale of the Manhattan property, which resided in the 1031 escrow account (*see supra* ¶ 49), were deposited there "for the express purpose of purchasing

replacement property in a manner consistent with Section 1031 of the [Internal Revenue] Code and the Treasury Regulations promulgated thereunder.” The stock purchase agreement was signed by McNabola as President of First Active.

53. This representation was false. In fact, on January 27, 2006 – the same day the sale of PAF stock to First Active closed – the PAF 1031 agreement was cancelled. The proceeds from the sale of the Manhattan property – \$33,425,303 – which were purportedly maintained in the 1031 escrow account for the express purpose of purchasing replacement property pursuant to IRC § 1031, were instead used to repay the Bank’s loan immediately after the stock purchase closing on January 27, 2006, with the remaining proceeds distributed to First Active and its associates as its profit for participating in the transaction. In other words, cash was simply exchanged for cash. Indeed, even prior to the cancellation of the PAF 1031 agreement, First Active used the money held in the 1031 escrow account as collateral for the loan it received to purchase PAF’s stock.

54. McNabola, with Levine’s assistance, directed the distribution of profits from this transaction from the 1031 escrow account, and did so as follows: (1) \$32,147,803 to the Bank; (2) \$1,242,500 to HRK Real Estate Holdings, a company controlled by Levine and Ron Katz; and (3) \$25,000 to the attorney who purportedly represented First Active in this transaction. McNabola further directed the Bank to distribute profits from this transaction as follows: (1) \$298,250 to the Bank as a loan facility fee; (2) \$687,941 to McNabola via two foreign entities; and (3) \$1,336,612 to DAC Management China for First Active’s use of bad debt losses to offset the gains from this transaction and thus unlawfully avoid corporate income tax, as described below.

55. On February 14, 2006, PAF purportedly merged into First Active pursuant to IRC § 368(a)(1)(F). The real estate activities of PAF were not continued following this merger. Levine's associate at Herrick Feinstein prepared the merger documents for both PAF and First Active, and those documents were executed by McNabola on behalf of both companies. Levine assisted in gathering financial information for purposes of preparing and presenting First Active's tax return.

56. Levine knew that the real estate activities of PAF would not continue following the merger, and further knew that First Active intended to offset the gains acquired from the sale of the Manhattan property with losses so as to avoid payment of corporate income tax.

57. First Active's 2006 tax return reflected long-term capital gains totaling \$32,911,053 from the sale of PAF's Manhattan property. However, as Levine knew, the full amount of the gain was offset by First Active's bad debt losses, which consisted of a portfolio of distressed, nonperforming commercial loans located in the People's Republic of China (the "Chinese bad debt"). First Active had acquired the Chinese bad debt from DAC Management, a foreign entity, for approximately \$927,000, yet claimed the debt had an adjusted basis at the time of the transfer in excess of \$57 million. Levine knew or should have known that the Chinese bad debt could not lawfully supply losses against which First Active's gains could be offset.

58. The PAF transaction should have been disclosed to the IRS because it was in fact an intermediary transaction superficially disguised to avoid resemblance to the unlawful transactions set forth in IRS Notices 2001-16 and 2008-111. However, the PAF transaction was not disclosed to the IRS on any tax return. Nor did Levine disclose this transaction in response to the IRS's request pursuant to IRC § 6112, which was issued to him on or about February 14, 2012.



Levine's False Tax Opinion Letter

59. Levine also knowingly furnished false tax advice concerning whether the PAF transaction needed to be reported to the IRS. As head of the tax department at Herrick Feinstein, Levine approved an opinion letter issued by Herrick Feinstein on March 26, 2006 (the "Herrick Feinstein opinion letter"), which concluded that the PAF transaction was not substantially similar to IRS Notice 2001-16 and thus need not be disclosed to the IRS. The opinion letter was prepared at the request of a potential investor in 148 Lafayette (the "Investor").

60. The Herrick Feinstein opinion letter advised, among other things, that the transaction was not substantially similar to IRS Notice 2001-16 because "[t]he transaction does not aim to avoid the tax on the sale of the [Manhattan] [p]roperty, but instead, gain on the sale of the [p]roperty is merely deferred through the means of a like-kind exchange afforded to taxpayers pursuant to Code Section 1031."

61. But as Levine knew, the § 1031 component of the PAF transaction had been cancelled at the time PAF's stock was sold to First Active back on January 27, 2006, and was never otherwise accomplished. Indeed, Levine had arranged for and directed the disbursement of funds from the 1031 escrow account to First Active and associates profiting on the deal, including over one million dollars to a company that he co-owned – funds that were supposedly intended for purchase of a replacement property. (*See supra* ¶ 54).

62. The Herrick Feinstein opinion letter also falsely advised that "the abuses described in Notice 2001-16 were not involved in the Transaction. It is our understanding that [PAF] will not have its gains offset with losses from its affiliated group and that no entity will contribute loss assets to [PAF] to offset the gain." But again, Levine knew this was false. As described above,

Levine knew that the gain resulting from the sale of PAF's Manhattan property would be offset by First Active's losses upon merger of the two companies. (*See supra* ¶¶ 56-57).

**First Active: The VMG Equities Corp. ("VMG") Transaction**

63. Beginning late 2005, Levine promoted an unlawful intermediary tax transaction scheme using First Active to the owner of the sole shareholder of the target corporation, VMG (the "VMG Owner").

*The VMG Transaction*

64. VMG was a New York corporation formed on February 6, 2004.

65. VMG was a single purpose entity that had invested as the majority member of a company engaged in the development of a residential condominium building in New York City (the "Real Estate Development Company"). All units in the building were completed and sold as of November 30, 2005, generating a gain of approximately \$5,666,625 to VMG. VMG subsequently sold its interest in the Real Estate Development Company to another company controlled by the VMG Owner. As a result, VMG's only asset was cash of \$6,907,524.

66. On December 7, 2005, the VMG Owner entered into a stock purchase agreement to sell its stock in VMG to First Active for \$6,200,000, which represented approximately 90% of the cash that was VMG's only asset. VMG also held a 2005 tax liability of over \$1.6 million from, among other things, the sale of partnership property.

67. Levine introduced the VMG Owner to First Active and told him that, in exchange for selling VMG's shares to First Active, First Active was willing to pay approximately \$6,200,000 (notwithstanding that VMG had \$6,907,524 and a tax liability of over \$1,600,000). Levine advised the VMG Owner to sell the VMG shares to First Active and represented the VMG Owner in the stock sale transaction, including assisting in gathering financial information to be

included on First Active's tax returns. The VMG Owner signed the stock purchase agreement, and McNabola signed the stock purchase agreement on behalf of First Active.

68. First Active, controlled by McNabola, paid the VMG Owner for the VMG shares in part by obtaining financing from Prime Asset Business Trust ("PABT"), also controlled by McNabola, in the amount of \$5,870,000. McNabola signed the credit agreement as President of both First Active and PABT. First Active paid the VMG Owner the remaining \$330,000 owed for the shares from a sub-account of Herrick Feinstein's escrow account attributable to another Target Corporation (*see infra* ¶ 70).

69. First Active repaid PABT using the proceeds VMG received from the sale of the condominium building. Notably, the repayment of the PABT loan also occurred on December 7, 2005 – the very same day the PABT loan was made. In other words, cash was simply exchanged for cash, and the remaining proceeds – approximately \$707,524 – were distributed to First Active and others as profit for participating in the transaction.

70. The money transfers were completed through Herrick Feinstein's escrow account, which was under the control of Levine, and the profits from the VMG transaction were distributed as follows: (1) \$305,000 to King Louie Enterprises, LLC (owned by Ron Katz), a portion of which was then sent to companies owned in whole or in part by Levine; (2) \$351,710 to DAC Management China for First Active's use of bad debt losses to offset the gains from this transaction and thus unlawfully avoid corporate income tax; (3) \$137,300 to McNabola via a foreign entity; and (4) \$49,900 to Graham Taylor, via his employer, for legal services on behalf of First Active. After these distributions, there was \$152,789 remaining in the Herrick Feinstein escrow account, which includes funds commingled with the proceeds of a substantially similar intermediary transaction promoted by Levine involving another Target Corporation.

71. Following the stock sale to First Active, Levine was appointed Vice President of both First Active and VMG. As had been intended at the time the transaction was concocted, on December 27, 2005, VMG purportedly merged into First Active pursuant to IRC § 368(a)(1)(F). Levine signed both the Agreement and Plan of Merger and the Certificate of Merger, on behalf of both First Active and VMG, as Vice President of both companies.

72. As Levine knew, the purpose of the merger between First Active and VMG was to offset VMG's income with losses so as to avoid payment of corporate income tax.

73. First Active's 2005 tax return reflected flow-through income of \$5,666,625 resulting from VMG's majority share of the company engaged in condominium development. However, as Levine knew, the full amount of this gain was offset by inflated Chinese bad debt held by First Active. Levine knew or should have known that there was no reasonable likelihood that the inflated Chinese bad debt could lawfully be used to offset First Active's gains.

74. The sale of stock in VMG to First Active was, in substance, a diversionary tactic, lacking economic substance, to save the VMG Owner from corporate tax liability resulting from the gain on the sale of its real estate investment. The only "profit" generated by this transaction was the elimination of federal tax liability, which "profit" was then split amongst the participants in the transaction. For example, by engaging in the intermediary transaction with First Active, the VMG Owner received significantly more cash than he would have received if VMG had liquidated and distributed its assets directly to him as the shareholder. The promoters and their affiliates in turn received a premium of approximately \$707,524 for participating in the transaction. Absent the preplanned elimination of the corporate tax on the gain from the sale of VMG's assets, there would be no economic benefit or business purpose in engaging in the intermediary transaction.

75. This intermediary transaction was the same as or substantially similar to the unlawful transactions set forth in IRS Notices 2001-16 and 2008-111, and should have been disclosed to the IRS. However, it was not disclosed on VMG's tax return, First Active's tax return, or any other tax return, for the year ending December 31, 2005. Nor did Levine disclose this transaction in response to the IRS's request pursuant to IRC § 6112, which was issued to him on or about February 14, 2012.

*False Representations Contained in the Stock Purchase Agreement*

76. The stock purchase agreement governing the VMG transaction, negotiated by Levine on behalf of the VMG Owner and signed by the VMG Owner and McNabola, contained several material representations with respect to securing tax benefits that Levine knew or should have known were false.

77. For example, the stock purchase agreement included the representation and warranty – made by both the seller and purchaser – that the “execution, delivery, and performance” of the stock purchase agreement “does not and will not . . . require . . . mak[ing] any filing with, or notification to, any . . . Governmental Authority.” In fact, as Levine knew or should have known, the participants in this transaction were obligated to disclose the transaction to the IRS as a reportable transaction pursuant to IRS Notices 2001-16 and 2008-111.

78. The stock purchase agreement also included the false representation that no person or entity is entitled to any fee or commission in connection with the transaction “based upon arrangements made by or on behalf of” Eclogue or VMG. In fact, as described *supra*, ¶ 70, First Active's associates, including Levine, received fees in connection with this transaction.

79. Similarly false was First Active's representation that it was acquiring VMG's shares “for investment.” Instead, as Levine knew or should have known, First Active did not intend and

did not in fact continue any business activities with respect to VMG and did not invest any VMG shares. Rather, First Active caused VMG to merge into First Active, distributed VMG's cash to the promoters, and then offset the taxable gains from the transaction using the Chinese bad debt.

80. First Active also represented in the stock purchase agreement that it would "pay all . . . Taxes of [VMG] that are due." To the contrary, as Levine knew or should have known, First Active never intended to pay taxes to the IRS and in fact never paid taxes to the IRS; rather, it intended to and did purportedly eliminate taxes owed by unlawfully offsetting VMG's gains, which were reported by First Active, with the Chinese bad debt losses.

#### **Other Intermediary Transactions Involving First Active**

81. Using First Active, Levine also promoted, implemented, and participated in similar intermediary schemes involving the following target corporations: NOF, LLC on or about December 7, 2005; 254 W. 54th Street, Inc. on or about December 13, 2005; and UNO Estates Limited on or about February 9, 2006. In addition, again using First Active, Levine also promoted, implemented, and participated in a transaction involving 63 Wall, Inc. on or about January 1, 2007, which generated taxable corporate income that was also set off by the Chinese bad debt, thus also allowing evasion of corporate income taxes.

82. With respect to each of the intermediary transactions listed in paragraph 81, and the transaction involving 63 Wall, Inc., Levine assisted in gathering financial information for purposes of preparing and presenting First Active's tax returns.

83. Each of the intermediary transactions listed in paragraph 81 should have been disclosed by Levine to the IRS in response to the IRS's request pursuant to IRC § 6112, which was issued to him on or about February 14, 2012. Levine disclosed none of the transactions.

84. Levine failed to file with the IRS a return or statement that identifies or describes any of the intermediary transaction tax schemes that he organized and/or promoted using First Active.

**Anglo Capital: The ROQO Transaction**

85. Beginning on or around May 2005, Levine promoted an unlawful intermediary transaction tax scheme to another Herrick Feinstein client, which owns, develops and manages real estate (the “Real Estate Developer”).

86. The Real Estate Developer was interested in purchasing a rental apartment building owned by ROQO Equities, Inc. (“ROQO”). However, the owners of ROQO were unwilling to sell the building asset, and insisted that the Real Estate Developer purchase the shares of ROQO in order to acquire the building.

87. A representative from the Real Estate Developer consulted with Levine, the attorney for the Real Estate Developer for tax matters, regarding the Real Estate Developer’s interest in purchasing ROQO and its asset. Levine informed the representative that he had a pool of purchasers that buy C corporations and are able to absorb the built-in gain with their own losses. Levine advised the Real Estate Developer’s representative that he could acquire the building “free of gains problem,” and described the transaction as an accepted structure.

88. The Real Estate Developer understood from Levine’s conversation with its representative that Levine’s clients could legally absorb the built-in gains.

89. Levine also advised the representative of the Real Estate Developer that a like-kind, tax deferred exchange structure could be used for the ROQO transaction.

90. Levine advised the Real Estate Developer that, although he was not in control of the fee for use of Anglo Capital to buy the stock of ROQO, the fee likely would be between 12.5 to

15 percent of the gain. Levine later introduced the Real Estate Developer to McNabola and, upon information and belief, arranged a telephone call in which the Real Estate Developer and McNabola negotiated the fee amount.

91. On December 21, 2006, 22 East 31<sup>st</sup> Street LLC, an entity created by the Real Estate Developer, acquired all of the shares of ROQO. Levine, through Herrick Feinstein, represented 22 East 31<sup>st</sup> Street LLC in connection with this stock purchase.

92. On August 8, 2007, ROQO sold the rental apartment building to another entity related to the Real Estate Developer, for \$5,650,000.

93. On August 8, 2007, ROQO entered into an exchange agreement to exchange the rental apartment building in a like-kind, tax deferred exchange pursuant to IRC § 1031 (the "ROQO 1031 agreement"). Herrick Feinstein represented ROQO in connection with the ROQO 1031 agreement; an associate at Herrick Feinstein is listed as the attorney to whom notices should be sent on behalf of ROQO.

94. Under the ROQO 1031 agreement, the rental apartment building was transferred to the purchaser, 22 East 31<sup>st</sup> Owner LLC. The ROQO 1031 agreement further provided that the proceeds from the sale of the rental apartment building would be held in a qualified exchange account under § 1031 (the "1031 exchange account") until ROQO has located suitable replacement property to exchange for the rental apartment building. The 1031 agreement stated that ROQO must identify replacement property within 45 days of the date that the rental apartment building was transferred.

95. The proceeds from the sale of the rental apartment building were placed in a 1031 exchange account for the purported purpose of purchasing replacement property pursuant to IRC § 1031.



96. The Real Estate Developer (who created 22 East 31<sup>st</sup> Street LLC, the owner of ROQO) did not want to exchange the rental apartment building for replacement property under § 1031. As early as June 2007, Levine knew that the Real Estate Developer did not want to participate in a § 1031 exchange.

97. On October 10, 2007, Anglo Capital acquired from 22 East 31<sup>st</sup> Street all of the shares of ROQO, for \$5,280,000. Levine represented 22 East 31<sup>st</sup> Street in connection with this stock purchase, and another law firm represented Anglo Capital. Conn Vu executed the stock purchase agreement on behalf of Anglo Capital. That same day, signature authority of ROQO under the ROQO 1031 agreement was transferred to Conn Vu as officer of Anglo Capital.

98. In a letter dated October 10, 2007, 22 East 31<sup>st</sup> Street stated that all signatory authority for ROQO should be transferred to Conn Vu.

99. After Anglo Capital acquired the ROQO shares, Levine returned to representing Anglo Capital in connection with this transaction. Despite the fact that Conn Vu held signatory authority for ROQO, on November 9, 2007, Levine directed the holder of the 1031 exchange account to send all of the funds in the 1031 exchange account to Herrick Feinstein's escrow account. In his instructions, Levine stated that "we have decided not to do a 1031 exchange[.]"

100. On or around November 9, 2007, \$5,711,779.38 was transferred from the 1031 exchange account to the Herrick Feinstein escrow account. A portion of the profits from the ROQO transaction was transferred to the law firm that represented Anglo Capital in the stock purchase. Specifically, on or around December 3, 2007, a transfer of \$21,889.20 was made from the Herrick Feinstein escrow account to that law firm. The remaining profit of \$409,890.18 was left in the Herrick Feinstein escrow account.

101. On its tax return for tax year 2007, Anglo Capital reported a capital gain of approximately \$5,506,110 from the ROQO transaction, which was fully offset with bad debt losses reported by Anglo Capital. Absent the preplanned elimination of the corporate tax on the gain from the sale of the rental apartment building in the ROQO transaction, there would be no economic benefit or business purpose in engaging in the intermediary transaction.

102. The sale of ROQO's stock to Anglo Capital lacked economic substance or a business purpose and unlawfully allowed 22 East 31<sup>st</sup> Street to avoid paying corporate tax liabilities resulting from the gain on the sale of ROQO's rental apartment building. Levine knew or should have known that the sale of ROQO's stock to Anglo Capital lacked economic substance and a business purpose. Notwithstanding this knowledge, Levine promoted the ROQO transaction as an unlawful tax avoidance intermediary transaction at the expense of the United States Treasury.

*False Representations Contained in the Stock Purchase Agreement*

103. The stock purchase agreement entered between 22 East 31<sup>st</sup> Street and Anglo Capital, which was negotiated on behalf of 22 East 31<sup>st</sup> Street by Levine, contained several material representations with respect to securing tax benefits that Levine knew or should have known were false.

104. For example, the stock purchase agreement included the representation and warranty – made by both 22 East 31<sup>st</sup> Street and Anglo Capital – that the “execution, delivery, and performance” of the stock purchase agreement “does not and will not . . . require . . . mak[ing] any filing with, or notification to, any . . . Governmental Authority.” In fact, as Levine knew or should have known, the participants in this transaction were obligated to disclose the transaction to the IRS as a reportable transaction pursuant to IRS Notices 2001-16 and 2008-111.

105. The stock purchase agreement also included the false representation that no person or entity is entitled to any fee or commission in connection with the transaction “based upon arrangements made by or on behalf of” Anglo Capital. In fact, as described *supra* in paragraph 100, a portion of the profits from this transaction were retained in the Herrick Feinstein escrow account.

106. Similarly false was Anglo Capital’s representation that it was acquiring ROQO’s shares “for investment.” Instead, as Levine knew or should have known, Anglo Capital did not intend to and did not in fact continue any business activities with respect to ROQO and did not invest in the ROQO shares. Rather, Anglo Capital purchased ROQO’s shares for the purpose of (a) retaining a portion of the profits from ROQO’s sale of the rental apartment building, and (b) offsetting the taxable gains from the transaction using bad debt.

107. Anglo Capital also represented in the stock purchase agreement that it would “pay all . . . Taxes of [ROQO] that are due.” To the contrary, as Levine knew or should have known, Anglo Capital never intended to pay taxes to the IRS and in fact never paid taxes to the IRS; rather, it intended to and did purportedly eliminate taxes owed by unlawfully offsetting ROQO’s gains with bad debt losses.

#### **Other Intermediary Transactions Involving Anglo Capital**

108. Using Anglo Capital, Levine also promoted, implemented, and/or participated in similar intermediary schemes involving the following target corporations: H.F. Allen Estate Co. on or about April 24, 2006; Sandbay Investments, Inc. on or about July 12, 2006; Triester Orange Realty Corporation on or about November 1, 2006; Technical Solutions of New York on or about December 20, 2006; 691 Eighth Avenue Corp. on or about August 9, 2007; and QQQ Corp./VMH Equities Corp. on or about December 24, 2008. In addition, again using Anglo

Capital, Levine also promoted, implemented, and/or participated in a tax avoidance scheme involving Queenswood Investments LLC (“Queenswood”) on or about July 1, 2006, in which taxable income traceable to Queenswood was offset with purported bad debt deductions reported by Anglo Capital.

109. With respect to each of the intermediary transactions and the Queenswood transaction listed and/or described *supra* in paragraphs 108, Levine assisted in gathering financial information for purposes of preparing and presenting Anglo Capital’s tax returns.

110. Each of the intermediary transactions listed and/or described *supra* in paragraphs 108 should have been disclosed by Levine to the IRS in response to the IRS’s request pursuant to IRC § 6112, which was issued to him on or about February 14, 2012. However, Levine failed to disclose the transactions involving H.F. Allen Estate Co. and Sandbay Investments, Inc.

111. While Levine provided an incomplete response to the IRC § 6112 letter dated February 14, 2012, as described *infra* in paragraph 232 to 234, Levine failed to file with the IRS a return or statement that identifies or describes any of the intermediary transaction tax schemes that he organized and/or promoted using Anglo Capital.

**ILP Capital: Knatten Transaction**

112. Beginning on or around December 2005, Levine promoted an unlawful intermediary tax transaction scheme using ILP Capital that was designed to offset gains from the sale of assets by Knatten Inc. (“Knatten”).

113. Knatten is a company that held appreciated real estate investments, including units in an umbrella partnership real estate investment trust, or UPREIT. The UPREIT units held by Knatten were convertible into cash or shares of certain real estate investment trusts, or REITs.

114. Attachez Pty (“Attachez”) was the parent corporation of Knatten. Attachez was owned by Siftco Pty (“Siftco”).

115. In or before 2005, the shareholders of Knatten contemplated selling its assets and/or its stock. Graham Taylor initially acted on behalf of McNabola in connection with the anticipated transaction, but in light of his indictment on unrelated tax fraud in November 2005, Siftco insisted that Taylor not be involved. As a result, McNabola brought Levine in to replace Taylor. Levine represented First Active, and later ILP Capital, in connection with the Promoter Entities’ contemplated involvement in the asset or stock purchase transactions.

116. In or around December 2005, Levine prepared, on behalf of McNabola and First Active, a term sheet that contemplated the sale of the shares of Knatten’s stock to First Active. An attorney for Siftco reviewed this term sheet and informed Levine that the transaction appeared very similar to a “midco transaction,” another term for an intermediary transaction. The attorney for Siftco informed Levine that, because the transaction was very similar to a midco transaction, he could not recommend it to his client. Around January 2006 Levine acknowledged that several midco companies were being audited but noted that the IRS has not “gone after the seller of the stock[.]” This was false. In fact, as Levine knew or should have known, the IRS was examining stock sellers engaged in similar transactions, as reflected in an IRS directive dated January 12, 2006, and entitled “Examination of Multiple Parties in Intermediary Transaction Tax Shelters as described in Notice 2001-16.”

117. Months later, the Knatten transaction resurfaced in a different form, in which ILP Capital was the purchaser of the stock and the company being acquired was Knatten’s Australian parent Attachez.

118. An attorney for Siftco asked Levine how ILP Capital planned to reduce the tax liabilities attributable to Knatten. Levine falsely represented that he did not know how ILP Capital planned to reduce the tax liabilities, that he did not generally represent McNabola and that he did not intend to represent McNabola after this transaction. Levine, whose law firm incorporated ILP Capital, knew that ILP Capital was controlled by McNabola. Levine also knew or should have known that ILP Capital would be used, like the other Promoter Entities, to offset the tax liabilities with bad debt losses.

119. The Knatten intermediary transaction was accomplished in four steps. First, Knatten sold a number of partnership and membership interests in real estate companies. Second, ILP Capital purchased the stock of Attachez, the parent corporation of Knatten. Third, Knatten sold its remaining assets, including the UPREIT units. Fourth, ILP Capital reported Knatten's capital gains on its income tax return, and offset these gains with its purported bad debt losses.

120. In step one of the Knatten transaction, Knatten (while it was still owned by Attachez) sold a number of partnership and membership interests in companies (the "Equity Interests") to Trak Associates LLC ("Trak Associates") and VIC-GP LLC, which had the same beneficial owner as Knatten. In the purchase and sale agreements dated October 12, 2006, these entities purchased the Equity Interests for over \$30 million. After selling the Equity Interests, the only assets held by Knatten were the UPREIT units and cash.

121. In step two, ILP Capital acquired Attachez by entering into a stock share sale agreement with Siftco dated October 11, 2006. Under the share sale agreement, ILP Capital purchased Siftco's stock in Attachez for \$40,203,000.00, and also "loaned" \$25,245,000 to Attachez, for a total of \$65,448,000.

122. Levine represented ILP Capital in the stock purchase transaction. In the share sale agreement, Levine is named as the attorney to whom notices should be sent on behalf of ILP Capital.

123. Levine also handled arrangements for the financing received by ILP Capital for the stock purchase. Several lenders, including entities affiliated with McNabola and Forster, loaned approximately \$63,348,000 to ILP Capital for the stock purchase.

124. After ILP Capital purchased the stock of Attachez, Knatten also converted its UPREIT units into marketable securities, and then sold the marketable securities. The cash received by Knatten from the sale of the UPREIT units and Equity Interests was transferred into a Herrick Feinstein escrow account.

125. Levine's involvement with ILP Capital changed around the time of the stock purchase. Effective September 26, 2006, Levine became one of two signatories to one of Knatten's bank accounts. Levine was also appointed as the Vice President of Knatten, effective October 13, 2006.

126. Money received from the sale of Knatten's assets was used to repay the loans secured by ILP Capital to purchase the stock of Attachez. The profits from the Knatten transaction – approximately \$13,588,480.48 – were then distributed to various law firms and entities, including but not limited to Herrick Feinstein (\$400,000), King Louie Enterprises (\$150,000), and entities affiliated with McNabola (\$4,173,700).

127. Knatten filed a tax return for tax year 2006, in which it stated that Attachez merged into Knatten. The tax return stated that the merger “constitutes a reverse acquisition and merger under IRC Section 368(a)(1)(B) and Reg Section 1.1502-75(d)(3),” and that “[a]ccordingly, this

consolidated return is filed under Reg Section 1.1502-75(d)(3) with Knatten Inc. . . . continuing as the reporting parent and ILP Capital Inc. . . . included as a subsidiary.”

128. On its tax return for tax year 2006, Knatten reported the taxable gains generated from its sale of the Equity Interests and the gains generated from the sale of the UPREIT units. Knatten offset these gains with bad debt deductions from ILP Capital.

129. The sale of Attachez’s stock to ILP Capital lacked economic substance or a business purpose and unlawfully allowed Knatten to avoid paying corporate tax liabilities resulting from the gain on the sale of the Equity Interests and the UPREIT units. Levine knew or should have known that the sale of Attachez’s stock to ILP Capital lacked economic substance and had no business purpose. Notwithstanding this knowledge, Levine promoted the Knatten transaction to Attachez as an unlawful intermediary transaction to avoid paying taxes upon the sale of Knatten’s assets. Without this transaction, Knatten would incur a tax liability of over \$53 million resulting from the sale of its assets. Instead, Levine promoted and assisted in the execution of a transaction to avoid payment of those taxes, and received a portion of the profits, *i.e.*, the tax savings, which was divided amongst his firm and other individuals and entities involved in the transaction.

130. Levine failed to file with the IRS a return or statement that identifies or describes any portion of the Knatten intermediary transaction tax scheme that he organized and/or promoted. Notably, Levine failed to do so notwithstanding being advised by Siftco’s counsel that it would file a protective disclosure in light of the possibility that the IRS would determine that the Knatten transaction was substantially similar to an intermediary transaction.



## DEFENDANT'S STATE TAX CREDIT TRANSACTIONS

131. State low income housing tax credits ("LIH tax credits") and state historic tax credits ("historic tax credits") are state tax credits earned by real estate project owners who are rehabilitating qualified property. *See, e.g.*, Mo. Ann. Stat. §§ 135.352, 253.550; Iowa Code § 404A.2. The tax credits may be sold or transferred to other persons and/or entities in order to raise money for the real estate construction projects. *See, e.g.*, Mo. Ann. Stat. §§ 135.363, 253.557; Iowa Code § 404A.4(5).

132. Between 2005 and 2011, Levine unlawfully promoted three types of abusive tax shelter transactions involving LIH tax credits and historic tax credits. These schemes are abusive transactions, and were designed to enable real estate project owners to evade taxes arising from the sale of these state tax credits to third-party purchasers, thus enhancing the value of their tax credits to the real estate developer. Levine perpetrated the scheme using corporations controlled by McNabola, including First Active, AIB Capital, Anglo Capital, and BOI Capital, and in turn Levine and the Promoter Entities garnered a profit. Altogether, Levine and the Promoter Entities participated in approximately 75 abusive state tax credit transactions, which garnered Levine fees of approximately \$1,755,410.

133. Attached as Exhibit A is a list of the 75 abusive state tax credit transactions in which Levine and the Promoter Entities participated, including the name of the promoter entity involved in each abusive transaction, the name of the entity that held or received the state tax credits and the approximate date on which the abusive transaction commenced.

### **The Loss Partner Scheme**

134. In one type of scheme promoted by Levine, the Promoter Entities Agate and then AIB Capital served as the "loss partner" for real estate projects utilizing LIH tax credits or historic tax

credits (the “loss partner scheme” or “loss partner transaction”) to fund property development. Many of these real estate projects occurred in Missouri. Levine represented Agate and AIB Capital, while another law firm often represented the real estate project developer.

135. Typically, in this scheme, prior to the real estate project’s sale of LIH tax credits or historic tax credits, the promoter firm entered into a structure whereby it became a 99%-plus member of a specially-created LLC in exchange for a capital contribution of \$1,000.00. This entity was typically referred to as a “state member” entity. It held an indirect interest in the real estate project owner, and its purposes included receiving, allocating, and distributing tax credits, and selling or transferring tax credits.

136. Tax credits were sold following the establishment of the promoter firm’s specially-created LLC. The income from the sale of these credits was allocated to this entity.

137. Next, the promoter firm would report the income and use losses from either DAD, such as the Chinese bad debt, or DAT to offset the income. This increased the value of the tax credits for the real estate project owner, as virtually all the income derived from the sale of those tax credits was sheltered.

138. The promoter firm would then exit the specially-created partnership structure, never intending to retain its interest in the real estate project for investment purposes. In exchange for its participation in the transaction, the promoter firm would receive a fee, which was calculated as a percentage of the amount of gain to be sheltered. Usually the promoter firm would obtain approximately 8 to 9% of the gains sheltered. Levine generally took 20% of Agate’s fee, via his company, LL Real Estate.

139. Typically, the profits resulting from the loss partner transactions were distributed to Agate through Herrick Feinstein’s escrow account. Levine would forward the entire amount

from the Herrick Feinstein escrow account to Agate at a bank account in California, under the control of Tim Conn Vu, another First Active associate and promoter. Once Agate received the monies, 20% of it was then sent to LL Real Estate for the benefit of Levine. Conn Vu prepared invoices from LL Real Estate to Agate for those payments.

140. Between 2005 and 2011, the Promoter Entities participated in approximately 44 loss partner transactions resulting in profits of about \$6.5 million, of which Levine received about \$1.3 million.

141. Levine initially ran the loss partner schemes using Agate, which was formed on March 15, 2000, in Delaware by Fred Forster, the co-founder of Fortrend International LLC. Fortrend was a promoter firm that completed approximately one hundred intermediary transactions in the 1990s through 2003. The Millenium Recovery Fund, an entity controlled by McNabola, was listed as the sole member of Agate on Agate's tax returns between 2003 and 2005. On August 19, 2005, the Millenium Recovery Fund sold its interest in Agate to First Active for \$10. From that point forward, all of Agate's income and losses were reported on First Active's returns. Agate was transferred to First Active because the Millenium Recovery Fund had run out of bad debt losses to offset taxable income, and First Active still had such losses that it planned to claim on its return.

142. After being sold to First Active, Agate participated in approximately 42 loss partner transactions, all of which were arranged by Levine.

143. Each of Agate's 42 loss partner transactions were structured similarly to the "411 State Member Transaction," described immediately below. (*See infra* ¶¶ 144-153).

144. The 411 State Member transaction involved the sale of Missouri historic tax credits earned in connection with the rehabilitation of several properties located in St. Louis, Missouri (the “St. Louis properties”).

145. The key players in this loss partner transaction include:

a. 411 Landlord, LLC (the “411 Landlord” or the “Project Entity”). 411 Landlord owned the St. Louis properties.

b. The real estate project manager (the “Project Manager”).

c. 411 State Member, LLC (“411 State Member”). 411 State Member was an entity formed on September 8, 2008, for purposes of the loss partner investment. The Project Manager, the managing member, contributed capital of \$100 for a .01% interest in 411 State Member. Agate, the investment member, contributed \$1,000 for a 99.99% interest in 411 State Member.

d. Agate. Agate functioned as the “loss partner.” Levine represented Agate in connection with the 411 State Member transaction (as well as the other 41 loss partner transactions using Agate as the “loss partner”).

146. Several documents set forth the structure of the 411 State Member transaction, including (but not limited to) the Operating Agreement of 411 State Member (the “411 Operating Agreement”), the letter agreement concerning the sale of Missouri historic preservation tax credits and other matters (the “Side Letter Agreement”), and the Purchase Option Agreement concerning 411 State Member (the “Purchase Option Agreement”).

147. The 411 Operating Agreement. In December 2008, the Project Manager and Agate entered into the 411 Operating Agreement, which provided, among other things, for 411 State Member to receive, allocate, and distribute net proceeds from the sale of the Missouri tax credits.

Specifically, among other things, the 411 Operating Agreement confirms that, pursuant to the applicable Project Entity Agreement, 100% of the Missouri historic tax credits were allocated to 411 State Member, with the proceeds from the sale of the Missouri tax credits allocated to its members. Thus, 99.99% of the gain from the sale of the Missouri tax credits was allocated to Agate.

148. The Side Letter Agreement. On or about the same day the 411 Operating Agreement was entered, 411 State Member and Agate also entered the Side Letter Agreement. The Side Letter Agreement specified the fees and transaction costs to be paid by 411 State Member from the proceeds of the Missouri tax credit sales. Pursuant to the Side Letter Agreement, upon admission of Agate into 411 State Member, 411 State Member agreed to pay \$5,000 in attorney's fees to Herrick Feinstein with the following paid to Agate:

- a. 8.75% of the gain from the sale, to be paid within 10 days of receipt of the Missouri tax credit sales proceeds;
- b. 8.75% of any other taxable income of 411 State Member that is allocated to Agate, to be paid within the earlier of several specified time periods.

149. The Purchase Option Agreement. Finally, also on or around the same date that the 411 Operating Agreement and Side Letter Agreement were entered, 411 State Member and Agate entered into the Purchase Option Agreement. Pursuant to this agreement, Agate granted an option to the Project Manager to purchase Agate's member interest in 411 State Member for fair market value plus the amount of any fees due to Agate. The term of the option began on January 1, 2011 – approximately two years following execution of the Purchase Option Agreement – and expired in June, 2013.

150. The law firm that served as special counsel to 411 State Member in this transaction learned about Agate from Levine. Typically, when that law firm found a real estate developer, such as 411 Landlord, in need of a “loss partner,” it contacted Levine to ask if Agate was interested in the particular project.

151. Levine, in turn, negotiated the loss partner transactions, including the 411 State Member transaction, on behalf of Agate and provided the terms and approval for Agate to enter the deals as the “loss partner.”

152. The 411 State Member transaction was expected to generate approximately \$2.3 million of reportable income for Agate from the sale of the Missouri tax credits, which were sold in 2009.

153. Typically, First Active, as Agate’s owner, would report the income that Agate earned as a member of the specially-created state member entity, as reported on the K-1 forms that it received. It would then completely offset that income using the Chinese bad debt. However, it does not appear that First Active reported income earned by Agate with respect to the 411 State Member transaction on its federal tax returns.

Levine Substitutes AIB Capital for Agate as the “Loss Partner” in State Credit Transactions Because First Active Runs Out of Losses

154. In late 2009, Levine began substituting and using AIB Capital instead of Agate as the “loss partner” in the loss partner transactions. Levine switched to using AIB Capital as the “loss partner” because First Active was out of losses. In addition, the State of New York opened an examination of First Active, Agate’s parent, in June, 2009, and McNabola was concerned that the IRS would soon follow suit.

155. The loss partner transactions involving AIB Capital as the loss partner were structured similarly to the Agate loss partner transactions. AIB Capital participated in approximately ten loss partner transactions, eight of which originated with Agate.

156. The money flow for the AIB Capital loss partner transactions worked similarly to the Agate loss partner transactions. AIB Capital's fee for serving as a loss partner would be paid to Herrick Feinstein's escrow account, and Levine would then forward the entire amount to a bank account in California, under Conn Vu's control. Once the fee was received by AIB Capital, approximately 20% was sent to LL Real Estate for the benefit of Levine.

157. Between 2010 and 2011, AIB Capital generated profits of more than \$1.1 million for participating in the loss partner scheme. Levine received \$116,000 of this amount.

#### Loss Partner Scheme: False Statements

158. The transactional documents negotiated and approved by Levine in connection with the 411 State Member transaction and other loss partner schemes utilizing Agate and AIB Capital included a number of material statements with respect to securing a tax benefit that Levine knew or had reason to know were false.

159. For example, typically, the operating agreements for the loss partner schemes included a representation and warranty that the promoter entity – Agate or AIB Capital – was acquiring its interest in the state member “for its own account and for investment only and not for the purpose of, or with a view to, the resale or distribution of all or any part thereof, nor with a view to selling or otherwise distributing said interests or any part thereof at any particular time or under any predetermined circumstances.” In fact, as Levine knew or should have known, at the time Agate and AIB Capital entered into these operating agreements, it was known that the membership interests acquired by them would be sold back – for a nominal amount – to the real

estate developer or its affiliated entities after the tax credit recapture period expired. Neither Agate nor AIB Capital ever intended to hold the interests as an investment.

160. In addition, both Agate and AIB Capital represented and warranted that they had “total assets in excess of \$5,000,000” and that their investment constituted “less than 10%” of their net worth. In fact, these promoter entities were thinly capitalized, and any cash they received was distributed to the promoters or their associates. The majority of assets reflected on their balance sheets were investments in the state member entities, which they later sold back for nominal amounts.

161. Levine also made material false representations to business associates. For example, in mid-2007 Levine falsely represented to the law firm representing the real estate developer in the loss partner transactions that Agate was conducting ongoing business operations and had very substantial assets.

#### **The Corporate Acquisition Scheme**

162. The second type of tax credit scheme promoted by Levine involved corporations that owned LIH tax credits and that were acquired by Missouri real estate developers or their companies (the “Missouri Real Estate Developers”). The Missouri Real Estate Developers met with Levine in or around 2007 at a business meeting, in which they discussed a new business structure involving the sale of state tax credits.

163. In this second type of tax credit scheme, BOI, which served as the promoter entity in these transactions, acquired the corporations holding the LIH tax credits through a series of stock purchase and merger transactions (the “corporate acquisition scheme”). Levine represented the promoter firm BOI in connection with these transactions.



164. In the first step of this corporate acquisition scheme, BOI acquired the stock of the corporations in exchange for promissory notes. These acquired corporations are partners in lower tiered partnership entities that generate LIH tax credits. Based on collateral pledges and limited partnership agreements between the acquired corporation and the lower tier entity, BOI was allocated 100% of the state tax credits.

165. Next, BOI claimed on its tax returns that the newly acquired corporations were merged into BOI pursuant to IRC § 368(a)(1)(C).

166. After the purported mergers, BOI sold the LIH tax credits to third parties. To accomplish this, BOI entered into a remarketing agreement with an entity owned by the Missouri Real Estate Developers, under which the entity provided remarketing services relating to the LIH tax credits and acted as BOI's agent to identify purchasers of the tax credits.

167. BOI reported the gain from the sale of the LIH tax credits on its 2008 income tax return. BOI used bad debt losses to offset the gains from the sale of the LIH tax credits. Even though BOI sold state tax credits during the taxable years 2009 and 2010, no sales of state tax credits were reported on either return.

168. The proceeds from the sale of the LIH tax credit were transferred to an escrow account with a law firm, for distribution under the direction of the original shareholders. A portion of the proceeds from the sale of the LIH tax credits was used to repay the promissory note to the original shareholders. A portion of the sale proceeds was distributed to the remarketing agents (the Missouri Real Estate Developers) and to the law firm holding the escrow account, for accounting and legal services. A portion of the sale proceeds was also transferred to a bank to repay loans for the underlying real estate project.

169. The net remaining proceeds, which equaled approximately six percent of the proceeds from the sale of the LIH tax credits, were transferred to the Herrick Feinstein escrow account under Levine's control. Levine then distributed the fees to the participants in the transaction, including fees to King Louie in the amount of \$378,238.

170. Between 2008 and 2010, the Promoter Entities participated in approximately 30 corporate acquisition schemes and Levine earned fees totaling approximately \$378,238.

171. One example of a corporate acquisition scheme is the SCS II Fund transaction, which involved the sale of Missouri LIH tax credits generated from the rehabilitation of low-income housing projects in Missouri (the "Missouri projects").

172. The key players in this scheme included:

a. Brookfield Village Apartments LP ("Brookfield"). Brookfield owned, operated and/or developed the Missouri projects that received LIH tax credits.

b. State Credit Syndicators II, LLC ("State Credit Syndicators"). State Credit Syndicators held a 0.01 percent limited partner interest in Brookfield.

c. LIHTC Partners, LLC ("LIHTC Partners"). LIHTC Partners owned a 99.94 percent interest in State Credit Syndicators.

d. SCS II Fund. SCS Fund II was formed in January 2008.

e. BOI. BOI served as the promoter entity.

f. The Missouri Real Estate Developers. The Missouri Real Estate Developers served as the real estate investors. As of around December 31, 2007, the Missouri Real Estate Developers owned 100% interest in LIHTC Partners. Beginning in January 2008, they both also served as directors and officers of SCS II Fund.

173. The SCS II Fund transaction primarily involved four steps.

174. First, in January 2008, LIHTC Partners transferred its interest in State Credit Syndicators to SCS II Fund, pursuant to 26 U.S.C. § 351. Under section 351, a transferor (such as LIHTC Partners) can transfer property (such as its interest in State Credit Syndicators) to a corporation in exchange for stock in that corporation. Thus, immediately upon the transfer of its interest in State Credit Syndicators to SCS II Fund, LIHTC Partners obtained stock sufficient to give it a controlling interest in SCS II Fund.

175. Second, on or around February 13, 2008, BOI purchased the stock of SCS II Fund from LIHTC Partners in exchange for a promissory note in the amount of \$1,085,000. Effective February 13, 2008, the Missouri Real Estate Developers resigned as directors and officers of SCS II Fund.

176. Levine represented BOI in connection with the stock purchase agreement. The stock purchase agreement states that all notices should be sent to Timothy Conn Vu as President of BOI, with a copy to Harold Levine of Herrick Feinstein.

177. The stock purchase agreement represented, falsely, that BOI was acquiring the stock of SCS II Fund “for investment.” The stock purchase agreement also falsely represented that no person was entitled to any fee or commission in connection with the transaction contemplated in the stock purchase agreement.

178. The stock purchase agreement also provided, falsely, that BOI agreed to cause SCS II Fund “to prepare and file on a timely basis all federal, state and local tax returns of SCS II Fund for periods commencing on and after the Closing Date, and to pay all federal, state and local Taxes of SCS II Fund that are due.”

179. In the third step of the transaction, as set forth in BOI’s tax return for tax year 2008, SCS II Fund was merged into BOI purportedly pursuant to IRC § 368(a)(1)(C). As a result of

the merger, the LIH tax credits held by SCS II Fund, which were to be allocated to SCS II Fund, were allocated to BOI.

180. Fourth, in 2008, BOI sold the LIH tax credits to third parties. The Missouri Real Estate Developers arranged these sales. BOI reported on its tax return for tax year 2008 the income from the sale of the LIH tax credits (\$218,583.95), and used bad debt losses to offset this income.

181. BOI received in 2009 approximately \$44,000 in income from LIH tax credits sold in 2008. However, BOI did not report on its tax return for tax year 2009 any of the income it received from the sale of LIH tax credits.

182. The proceeds received by BOI for the sale of the LIH tax credits were allocated among the parties involved in the transaction. Approximately \$12,036.59 was allocated to BOI, and approximately \$66,642.91 was allocated to LIHTC Partners.

183. On or around January 1, 2011, BOI sold its interest in State Credit Syndicators to LIHTC Partners.

### **The Refundable Credit Scheme**

184. Levine also promoted a third type of state credit transaction, which involved refundable state tax credits (the “refundable credit scheme”). Anglo Capital served as the Promoter Corporation. Levine represented Anglo Capital in the refundable credit scheme.

185. The refundable credit scheme involved State of Iowa refundable historic tax credits held by Kirkwood Commons, LLC (“Kirkwood”). The Missouri Real Estate Developers were the real estate investors in Kirkwood. The Missouri Real Estate Developers formed SCS Iowa and transferred ownership interest in the project to SCS Iowa, resulting in SCS Iowa holding a 99.99% interest in Kirkwood.

186. In the first step of the refundable credit scheme, SCS Iowa filed a corporate tax return with the State of Iowa for fiscal year ending October 31, 2007, in which it requested a refund of the refundable historic tax credits in the amount of approximately \$2,380,608. Pursuant to Kirkwood's second amended operating agreement, SCS Iowa was required to use \$1.8 million of the refund to make a capital contribution to Kirkwood, to repay a bank loan. Pursuant to the Escrow Agreement, the tax refund was sent directly to the bank, and SCS Iowa received the cash remaining after repayment of the bank loan, approximately \$580,608. This cash was combined with \$1,000 in capital and was later transferred into Herrick Feinstein's escrow account for the benefit of Anglo Capital.

187. In the second step of the refundable credit scheme, Anglo Capital acquired the stock of SCS Iowa for \$25,000. Two days later, SCS Iowa was merged into Anglo Capital. The purpose of these two transactions was to allow Anglo Capital to absorb the income generated from the refundable historic tax credit refund. The business activities of SCS Iowa were not continued after its merger with Anglo Capital.

188. In the third step of the refundable credit scheme, Anglo Capital reported SCS Iowa's income on its tax return for tax year 2007. However, Anglo Capital incorrectly reported only \$581,608 as income attributable to SCS Iowa's receipt of the refund for its refundable historic tax credits. Anglo Capital did not report the remaining \$1.8 million that was refunded to SCS Iowa and used to repay the bank loan. Anglo Capital then offset all of SCS Iowa's reported income using bad debt losses.

189. The stock purchase agreement between Anglo Capital and SCS Iowa acknowledges that SCS Iowa has not made any estimated tax payments, that SCS Iowa will receive a tax refund of \$2,380,608, and that the refund "shall create a tax liability for the tax year beginning

November 1, 2007.” However, as set forth *supra* in paragraph 188, Anglo Capital did not report on its return the entire refund received by SCS Iowa.

190. Approximately \$345,000 of the approximately \$581,608 cash received by Anglo Capital was returned to the Missouri Real Estate Developers. The remaining net profit – approximately \$211,608 – was left in Herrick Feinstein’s escrow accounts and commingled with other funds held for Anglo Capital.

#### **DEFENDANT’S TAX SCHEMES ARE UNLAWFUL**

191. Paragraphs 1 to 190 are realleged and incorporated herein.

192. The tax schemes described herein in paragraphs 30 to 190 constitute illegal tax arrangements under at least four separate judicial doctrines: (1) the substance-over-form doctrine; (2) the doctrine of economic substance; (4) the sham transaction doctrine; and (4) the step-transaction doctrine.

193. In addition, the tax schemes described herein in paragraphs 30 to 190 violate a number of provisions of the Internal Revenue Code, including but not limited to IRC §§ 269, 482 and 165.

#### **INJUNCTION UNDER IRC § 7408**

194. Paragraphs 1 to 193 are realleged and incorporated herein.

195. IRC § 7408(a) authorizes a district court to, *inter alia*, enjoin persons and entities who have engaged in conduct subject to penalty under IRC §§ 6700, 6707, or 6708. As further described herein, Levine has engaged in conduct prohibited by IRC §§ 6700, 6707, and 6708.

##### **A. 26 U.S.C. § 6700**

196. IRC § 6700 imposes a civil penalty on any person who (1) either organizes or assists in the organization of a plan or arrangement or participates in the sale of any interest in a plan or

arrangement; and (2) makes or furnishes, or causes another to make or furnish, in connection with such organization or sale, a statement with respect to the securing of a tax benefit by reason of holding an interest in an entity or participating in the plan or arrangement that the person knows or has reason to know is false or fraudulent as to any material matter.

197. Levine violated IRC § 6700 by organizing, promoting and participating in plans or arrangements (the intermediary transaction, state tax credit transaction, and other tax avoidance schemes), and by making or furnishing, or causing others to make or furnish, false or fraudulent statements with respect to those schemes' purported tax benefits, which were material and which Levine knew or had reason to know were false or fraudulent.

**(1) Levine's tax schemes are plans or arrangements**

198. Any plan or arrangement "having some connection to taxes" falls under IRC § 6700.

199. The intermediary transaction, state tax credit transaction and other tax avoidance schemes were executed to avoid the payment of taxes on gains or income generated by the target entity. Accordingly, these tax schemes are plans or arrangements within the meaning of IRC § 6700.

**(2) Levine organized and/or assisted in the organization of intermediary transaction tax schemes, state tax credit transaction tax schemes, and other tax avoidance schemes**

200. Levine organized, or assisted in the organization of, the intermediary transaction, state tax credit transaction and other tax avoidance schemes.

201. Levine's organization of the schemes included, *inter alia*, (a) Levine's introduction of clients to the Promoter Entities to participate in certain intermediary transaction tax shelters; (b) Levine's proposing state tax credit transaction tax shelter structures to potential participants in the schemes; (c) Levine's service as an officer for at least two of the Promoter Entities during the

execution of certain intermediary transaction tax shelters; (d) Levine's use of the escrow accounts of Herrick Feinstein to hold and distribute funds relating to the tax shelter transactions; (e) Levine's representation of the selling shareholder or the Promoter Entities in connection with the promoter entity's purchase of the target corporation's stock in the intermediary transaction tax shelters; (f) Levine's participation in the negotiations of the stock purchase agreements in certain intermediary transaction tax shelters; (g) Levine's use of Queenswood Investments LLC ("Queenswood") to acquire partnership units in One CityPlace LP ("One CityPlace") for himself and his business partners as part of a tax avoidance scheme; and (h) Levine's representation of the Promoter Entities in connection with their participation in the state tax credit transaction tax shelters and other tax avoidance schemes.

**(3) Levine participated in the sale of an interest in the intermediary transaction tax schemes, state tax credit transaction tax schemes, and other tax-avoidance schemes**

202. Levine participated in the sale of an interest in the transactions central to the intermediary transaction, state tax credit transaction, and other tax-avoidance schemes.

203. Levine's participation included, *inter alia*, (a) Levine's representation of the Promoter Entities or the target corporations in the intermediary transaction tax schemes; (b) Levine's representation of the Promoter Entities in the state tax credit transaction tax schemes; (c) Levine's participation in the negotiations of the stock purchase price in at least one intermediary transaction tax shelters; (d) Levine's service as an officer for at least two of the Promoter Entities during the execution of certain intermediary transaction tax shelters; (e) Levine's use of Queenswood to acquire partnership units in One CityPlace for himself and his business partners as part of a tax avoidance scheme; (f) Levine's approval of the Herrick Feinstein opinion letter regarding whether a transaction was reportable as an intermediary transaction; and (g) Levine's



facilitation of the target corporation's use of the Promoter Entities in the intermediary transaction tax schemes and the state tax credit transaction tax schemes.

**(4) Levine made or furnished, or caused others to make or furnish, false or fraudulent statements with respect to the securing of tax benefits**

204. Through his representation of the selling shareholder or the Promoter Entities in each of the intermediary transactions and state tax credit transactions identified in this complaint, Levine made false statements with respect to tax benefits and caused the parties to make false statements in the stock purchase agreements and operating agreements with respect to tax benefits.

205. These false statements included, *inter alia*, that (a) the parties to the agreements need not make any filing with, or notification to, any government entity regarding the performance of the stock purchase agreement; (b) the Promoter Entities were acquiring the shares for investment purposes; (c) no person would be entitled to a fee or commission in connection with the transaction; and (d) the Promoter Entities would cause the target corporation to pay all of its federal, state and local taxes that were due.

206. Levine also made false statements to owners and shareholders of the target corporations involved in the intermediary transactions and the entities involved in the state tax credit transactions. These false statements included, *inter alia*, representations regarding (a) the validity of the Promoter Entities' reported losses; (b) the legitimacy of the Promoter Entities' business purpose; (c) the amount or significance of the Promoter Entities' assets; (d) Levine's work history with McNabola; (e) Levine's knowledge of the means by which the Promoter Entities would handle the capital gains taxes generated by the target corporation's asset sale; (f) whether a particular transaction constituted a "reportable" transaction subject to disclosure to the IRS; and (g) the IRS's enforcement efforts.

207. Levine also caused certain entities, namely PAF, ROQO, and 691 Eighth Avenue Corp., to enter into 1031 agreements in which they falsely represented their intent to engage in a like-kind exchange of real estate property pursuant to IRC § 1031. However, as was known from the outset, the proceeds from the asset sale were not used to purchase like-kind property, were never intended to be used to purchase like-kind property, and ultimately were distributed to a Herrick Feinstein escrow account.

208. In addition, with respect to the tax avoidance scheme involving Queenswood, in an attempt to acquire additional units for Queenswood's investment, Levine approved material sent to owners of partnership units in One CityPlace which falsely stated that Queenswood had net operating losses available to legally offset income from the partnership.

**(5) Levine knew or had reason to know that the statements were false or fraudulent**

209. Levine knew or had reason to know that the statements he made in connection with his intermediary transaction and state tax credit transaction tax schemes were false or fraudulent, for numerous reasons.

210. First, Levine knew or had reason to know that statements he made or caused others to make in connection with his tax schemes were false or fraudulent based on his education and experience.

211. Levine, an experienced tax attorney, was familiar with Notices 2001-16 and 2008-111, and therefore knew or should have known that the intermediary transaction tax schemes were the same as or superficially disguised to avoid resemblance to the listed transactions described in those Notices.

212. In the past, Levine has represented at least one client that was involved in an IRS examination concerning an intermediary transaction. Through his representation of this client,

Levine was or should have been aware of the listed transactions described in Notice 2001-16 and 2008-111. Therefore, Levine knew or should have known that intermediary transaction tax schemes may be viewed by the IRS as substantially similar to the listed transactions described in Notice 2001-16 and 2008-111.

213. Second, Levine knew or had reason to know that statements he made or caused others to make in connection with his intermediary transaction tax schemes were false because he approved the Herrick Feinstein opinion letter, which concluded that the PAF transaction did not constitute an intermediary transaction tax shelter because the parties planned to enter into a like-kind exchange transaction. Levine knew that the like-kind exchange was a fiction. Levine also knew, at a minimum, that his participation in similar intermediary transactions that did not include a like-kind exchange transaction constituted unlawful intermediary transaction tax shelters that should have been disclosed pursuant to the Treasury Regulations and the Internal Revenue Code.

214. Third, Levine knew or had reason to know that statements he made or caused others to make in connection with the intermediary transactions and certain state tax credit transactions were false because he worked with McNabola and Forster on a number of transactions involving First Active, Anglo Capital, BOI Capital and ILP Capital involving the acquisition of corporations for non-investment purposes. In the intermediary and state tax credit transactions, the assets of the acquired corporation were sold prior to or immediately after the stock purchase, the corporation was merged into one of the Promoter Entities, and in the case of BOI, were sold back to the original shareholders after purportedly being merged into BOI.

215. Fourth, Levine knew or had reason to know that statements he made or caused others to make in connection with the intermediary transaction and state tax credit transaction tax

schemes were false because he knew or should have known that the Promoter Entities were thinly capitalized. Levine knew or should have known that the Promoter Entities were thinly capitalized because the funds for the transactions flowed through his law firm's escrow account. Levine also knew or should have known that the Promoter Entities were not on-going businesses and did not have legitimate losses.

216. Fifth, Levine knew or had reason to know that statements he made or caused others to make in connection with the intermediary transaction and state tax credit transaction tax schemes were false because he knew or should have known that fees or commissions were paid in connection with the transactions. Levine approved the transfer of fees and commissions to Herrick Feinstein and to entities owned by Levine and/or Katz, McNabola, and others. The fees and commissions were paid from the escrow accounts of Levine's law firm, Herrick Feinstein.

217. Sixth, Levine knew or had reason to know that statements he made or caused others to make in connection with the intermediary transaction and state tax credit transaction tax schemes were false because he knew or should have known that the Promoter Entities intended to avoid payment of capital gains taxes and income taxes due from the corporations they acquired or partnered with. Levine received reports and emails showing that McNabola, using trusts and partnerships, acquired foreign debt that was reported on the Promoter Entities' tax returns as deductions to offset the income and gains reported on the Promoter Entities' tax returns. Levine also knew or should have known from these reports and emails that the debts were acquired not for a business purpose, but were acquired for the purpose of giving the Promoter Entities deductions to report on their tax returns. For example, Levine made statements to at least one shareholder of a target corporation indicating that the Promoter Entities used losses or assets with high basis and low value. In addition, as head of the Tax Group at

Herrick Feinstein, Levine knew or should have known about news releases from the IRS pertaining to DAD and DAT transactions. Combined with his past experience with Fortrend and McNabola, Levine knew or should have known that the debts used by the Promoter Entities should and would be disallowed by the IRS.

218. Seventh, Levine knew or had reason to know that statements he made or caused others to make in connection with the intermediary transaction tax schemes were false because he knew or should have known that the 1031 agreements would be cancelled at a later date. Levine knew or should have known that the target corporations he purportedly represented were not interested in entering into a like-kind exchange of real estate pursuant to IRC § 1031. Levine also knew or should have known that the cancellation of the 1031 agreements would result in the generation of a material amount of capital gains and income that would be offset by bad debt losses.

**(6) Levine's false statements were material**

219. If a particular statement has a substantial impact on the decision-making process or produces a substantial tax benefit to a taxpayer, the matter is properly regarded as "material" within the meaning of IRC § 6700.

220. The intermediary transaction, state tax credit transaction, and other tax avoidance schemes produced substantial tax benefits for the Promoter Entities and Levine's clients, as well as significant benefits for Levine personally.

221. The false statements in Levine's transactional documents and Opinion Letter were material because they substantially impacted the decision-making process and produced a substantial tax benefit to the target corporations and the Promoter Entities. The tax shelters were executed through transactional documents – including but not limited to the stock purchase

agreements, the 1031 agreements, and the operating agreements – that contained false statements regarding important elements of the transaction including the purpose of the transactions, the fees paid as part of the transactions and the Promoter Entities’ intent to comply with their tax obligations.

222. The false statements made by Levine to the shareholders and/or principals and agents of the target corporations were material because they had a substantial impact on the target corporations’ decision-making process.

**B. 26 U.S.C. § 6707**

223. IRC § 6707 penalizes any person who is a material advisor and either (1) fails to file with the IRS a return or statement that identifies and describes any reportable or listed transaction, any potential tax benefits expected to result from that transaction, and any other information required by statute if that person is required to file this information with the IRS, or (2) files false or incomplete information with the IRS with respect to such transaction.

224. A material advisor is defined in IRC § 6111(b)(1)(A) as “any person (i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and (ii) who directly or indirectly derives gross income in excess of the threshold amount (or such other amount as may be prescribed by the Secretary) for such aid, assistance, or advice.”

225. A reportable transaction is defined in IRC § 6707A(c)(1) as “any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.”

226. A listed transaction is defined in IRC § 6707A(c)(2) as “a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary of the Department of Treasury as a tax avoidance transaction for purposes of section 6011.”

227. The “threshold amount” is defined in IRC § 6111(b)(1)(B) as “\$50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and . . . \$250,000 in any other case.”

228. Levine is a material advisor because he provided assistance for, participated in, organized and/or promoted the execution of the intermediary transaction tax schemes using the Promoter Entities, and received fees totaling over \$3.3 million for his assistance and participation in these tax schemes.

229. The intermediary transaction tax schemes constitute listed and reportable transactions because, as set forth in Notices 2001-16 and 2008-111, these transactions have been identified as tax avoidance transactions.

230. Levine failed to file with the IRS a return or statement that identifies or describes any of the reportable or listed transactions that he has organized and/or promoted. At all relevant times, Levine was required to provide to the IRS the information required under IRC § 6111. Accordingly, Levine has engaged in conduct subject to penalty under IRC § 6707, and should be enjoined from engaging in any further conduct that violates IRC § 6707.

**C. 26 U.S.C. § 6708**

231. IRC § 6708 penalizes any person who fails to furnish to the IRS within 20 business days of a request a list that identifies all taxpayers for whom that person served as a material advisor concerning any reportable transaction, including any listed transaction.

232. On February 12, 2012, the IRS issued to Levine a Request for Production Under Internal Revenue Code Section 6112 (the “6112 letter”). In the 6112 letter, the IRS stated that it identified Levine as a material advisor obligated to maintain a list or lists under IRC § 6112, and requested that Levine produce, within 20 business days, such list and all other required information that he is obligated to maintain under IRC § 6112.

233. In a letter dated February 29, 2012, Levine responded to the 6112 letter and enclosed a “Transaction List” identifying only six reportable transactions executed by promoter entity Anglo Capital.

234. Levine failed to identify the five intermediary transaction tax schemes he organized and/or promoted using First Active (involving target companies VMG; NOF, LLC; 254 W. 54<sup>th</sup> Street; PAF; and UNO Estates Limited), the Knatten intermediary transaction tax scheme he organized and/or promoted using ILP Capital, and two of the intermediary transaction tax schemes he organized and/or promoted using Anglo Capital (involving target companies H.F. Allen Estate Co. and Sandbay Investments, Inc.). Levine was required to maintain a list that included these intermediary transaction tax schemes because he was a material advisor as to these transactions that he organized and/or promoted. Accordingly, Levine has engaged in conduct subject to penalty under IRC § 6708, and should be enjoined from engaging in any further conduct that violates IRC § 6708.

**D. Necessity of Injunction**

235. The IRS has identified at least 13 intermediary transaction tax schemes, at least 75 state tax credit transaction tax schemes, and at least 2 other tax avoidance schemes that were organized, promoted and/or executed by Levine. Levine has assisted and participated in these tax avoidance tax schemes for at least five years. The Promoter Entities improperly deducted



approximately \$515,405,153 in bad debt losses for tax years 2005 through 2010. The intermediary transaction, state tax credit transaction, and other tax avoidance tax schemes have thus generated federal income tax liabilities of over \$129 million.

236. Levine, a knowledgeable tax attorney with over 25 year of experience in the tax law sector, is knowledgeable about Notices 2001-16 and 2008-111 and the disclosure requirements under § 6707 and § 6708. However, Levine's intricate knowledge of tax law did not deter him from organizing, promoting and/or executing the intermediary transaction tax schemes, state tax credit tax schemes, and other tax avoidance schemes. Indeed, Levine used his knowledge of tax law to try to disguise certain intermediary transactions as dissimilar from the tax avoidance schemes set forth in Notices 2001-16 and 2008-111.

237. Levine continues to practice as a tax attorney at Moritt Hock & Hamroff LLP and is in a position to continue to organize, promote and execute intermediary transactions and state tax credit transactions. According to the law firm's website, Levine's practice "includes tax planning with respect to real estate, corporate and securities transactions." Levine currently "serves as counselor to a wide variety of business entities with respect to partnership and limited liability company operating agreements, shareholder agreements and other corporate structures."

#### **INJUNCTION UNDER IRC § 7402**

238. Paragraphs 1 to 237 are realleged and incorporated herein.

239. IRC § 7402(a) authorizes a district court to issue orders of injunction as necessary and appropriate for the enforcement of the internal revenue laws. The remedies provided under IRC § 7402(a) are in addition to and not exclusive of any and all other remedies the United States may have to enforce the internal revenue laws.

240. Levine engaged in numerous activities that interfered with the enforcement of the internal revenue laws.

241. Levine interfered with the enforcement of the internal revenue laws by arranging and participating in intermediary transactions that thwarted the Government's efforts to collect taxes due from corporations selling built-in gain assets. Because the Promoter Entities acquiring the target corporations were ultimately rendered insolvent, there was nothing for the Government to collect once the bad debt deductions claimed by the Promoter Entities were disallowed. Levine continued to promote or recommend intermediary transactions to his clients even after having been made aware of the IRS's position regarding intermediary transactions in the course of representing a client involved in an IRS examination of an intermediary transaction.

242. Levine also interfered with the enforcement of the internal revenue laws by arranging and participating in state tax credit transactions that thwarted the Government's efforts to collect taxes due from corporations selling state-issued tax credits. Because the Promoter Corporations reporting the income from the sale of state tax credits were ultimately rendered insolvent, there was nothing for the Government to collect once the bad debt deductions claimed by the Promoter Corporations were disallowed.

243. Levine further authorized payments to U.S. persons and entities from the escrow accounts of Herrick Feinstein on behalf of the Promoter Entities, but failed to obtain Forms W-9 and to issue Forms 1099 for those payments. As a result, these payments were not reported among the income of the persons and entities receiving the payments and were not identified by the IRS prior to the expiration of the statute of limitations, including hundreds of thousands of dollars in payments to entities in which Levine or his close associate Ron Katz held an interest at the time of the payment.

244. Levine also authorized payments to foreign persons and entities from the escrow accounts of Herrick Feinstein on behalf of the Promoter Entities, but failed to obtain Forms W-8 and to file Forms 1042 for those payments. As a result, no withholding tax was collected on the payments to these foreign entities controlled by McNabola. Levine knew of the obligation to provide and file these forms, as he was copied on correspondence from a return preparer notifying Tim Conn Vu of this obligation.

245. Levine also interfered with the enforcement of the internal revenue laws by assisting and participating in a scheme to acquire partnership units in One CityPlace LP without paying taxes on the taxable income generated by One CityPlace LP. Levine assisted Queenswood in acquiring the partnership units in One CityPlace LP, which owned a commercial real estate building. Anglo Capital, which owned Queenswood beginning in or around June 2006, offset Queenswood's income with bad debt deductions. Shortly before One CityPlace LP sold the commercial real estate building, Levine arranged and participated in the transfer of the partnership units to himself and other participants in the tax avoidance scheme. This tax avoidance scheme was profitable for Levine and the other participants because Anglo Capital absorbed the tax liabilities related to Queenswood's ownership of the partnership units using bad debt losses. The IRS incurred costs associated with making a jeopardy assessment against Anglo Capital for tax year 2006 and issuing and serving Notices of Levy to seize the proceeds to be paid to the participants in this tax avoidance scheme.

246. WHEREFORE, the United States demands judgment against Defendant as follows:

a. That this Court find that Levine has engaged in conduct subject to penalty under IRC § 6700 and that injunctive relief under IRC § 7408 is appropriate to prevent a recurrence of that conduct;

b. That this Court find that Levine has engaged in conduct subject to penalty under IRC § 6707 and that injunctive relief under IRC § 7408 is appropriate to prevent a recurrence of that conduct;

c. That this Court find that Levine has engaged in conduct subject to penalty under IRC § 6708 and that injunctive relief under IRC § 7408 is appropriate to prevent a recurrence of that conduct;

d. That this Court find that Levine engaged in conduct substantially interfering with the administration and enforcement of the internal revenue laws and that injunctive relief under IRC § 7402 is appropriate to prevent recurrence of that conduct;

e. That this Court, pursuant to IRC §§ 7402 and 7408, enter a permanent injunction prohibiting Levine (individually and through any other name or entity) and those persons acting in concert with him, from directly or indirectly:

i. Establishing, organizing, promoting, selling, advising with respect to, or assisting or participating in any intermediary transaction, any arrangement or plan that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy of an intermediary transaction, or any other plan or arrangement that involves the acquisition of shares of corporate stock and the sale of corporate assets and is designed to reduce or eliminate tax liabilities;

ii. Establishing, organizing, promoting, selling, advising with respect to, or assisting or participating in any state tax credit transaction, any arrangement or plan that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy of a state tax credit transaction, or any

other plan or arrangement that involves the sale or acquisition of state tax credits and is designed to reduce or eliminate tax liabilities;

iii. Organizing, promoting or selling any plan or arrangement for a fee or anticipated fee that would have the effect of securing any tax benefit for the participants in that plan or arrangement;

iv. Establishing, organizing, advising with respect to, or assisting or participating in any plan or arrangement for a fee that has a substantial purpose of securing a tax benefit, or unlawfully evades the assessment or collection of correct federal tax liabilities;

v. Engaging in conduct subject to penalty under IRC § 6700, including, but not limited to, making, in connection with the organization or sale of any plan or arrangement, any statement about the securing of any tax benefit that Levine knows or has reason to know is false or fraudulent as to any material matter;

vi. Engaging in conduct subject to penalty under IRC § 6707, including but not limited to, failing to file a return or statement with the IRS that identifies and describes any reportable or listed transaction, any potential tax benefits expected to result from that transaction, as well as other information required by statute;

vii. Engaging in conduct subject to penalty under IRC § 6708, including but not limited to, failing to furnish the IRS with a list that identifies all customers who have participated in a listed transaction when the IRS requests such a list and the list is required to be maintained pursuant to statute; and

viii. Engaging in any other conduct that interferes with the administration or enforcement of the internal revenue laws, including but not limited to implementing and

participating in the intermediary transactions, state tax credit transactions, or any similar tax schemes.

f. That this Court, pursuant to IRC §§ 7402 and 7408, enter an injunction requiring Levine to contact all persons whom he has assisted or advised with respect to any tax scheme, including but not limited to those schemes described in this Complaint or identified through further discovery, and inform these persons of the Court's findings and attach a copy of the permanent injunction, and to file with the Court, within thirty days of the date on which the permanent injunction is entered, a declaration signed under penalty of perjury certifying that he has contacted all such persons;

g. That this Court, pursuant to IRC § 7402, enter an injunction requiring Levine to produce to counsel for the United States a list identifying (by name, address, e-mail address, phone number, and Social Security or other tax identification number) all of the persons and entities who have participated in any tax scheme with Levine for any of the tax years 2005 to the present;

h. That this Court order that the United States is permitted to engage in post-injunction discovery to monitor and ensure compliance with the permanent injunction;

i. That this Court retain jurisdiction over this action for purposes of implementing and enforcing the final judgment and any additional orders necessary and appropriate to the public interest; and

j. That this Court grant the United States such other and further relief, including costs, as this Court deems appropriate.

Dated: New York, New York  
June 4, 2014

PREET BHARARA  
United States Attorney for the  
Southern District of New York

By:



ALICIA M. SIMMONS  
TARA M. La MORTE  
Assistant United States Attorneys  
86 Chambers Street, Third Floor  
New York, New York 10007  
Telephone: (212) 637-2697/2746  
Fax: (212) 637-2686  
Email: alicia.simmons@usdoj.gov  
tara.lamorte2@usdoj.gov

# **Exhibit A**



<u>No.</u>	<u>Promoter Entity</u>	<u>Entity Holding or Receiving State Tax Credits</u>	<u>Approx Date Transaction Commenced</u>
1	Agate/First Active Capital	411 State Member	12/2008
2	Agate/First Active Capital	1205 State Historic, LLC	2005
3	Agate/First Active Capital	1329, LLC	6/1/2003
4	Agate/First Active Capital	1601 State Historic Investor LLC/1601 Washington	2004
5	Agate/First Active Capital	1801 Delmar, LLC (Franklin School project)	5/1/2006
6	Agate/First Active Capital	1891 Locust State Member, LLC	12/2008
7	Agate/First Active Capital	1911 Locust State Member, LLC	5/12/2009
8	Agate/First Active Capital	2004 Historic Credit Investors, LLC	2004
9	Agate/First Active Capital	2005 Historic Credit Investors, LLC	2005
10	Agate/First Active Capital	2006 Historic Credit Investors, LLC	2006
11	Agate/First Active Capital	2635 West Paseo LLC	2006
12	Agate/First Active Capital	3630 Grandel Square, LLC	11/19/2004
13	Agate/First Active Capital	ACG Development LLC	2004
14	Agate/First Active Capital	ACG Drake Development LLC	2005
15	Agate/First Active Capital	ACG Oaks Development, LLC	2006
16	Agate/First Active Capital	Adler State Member	2/12/2009
17	Agate/First Active Capital	Alanson State Partner, LLC	1/2008
18	Agate/First Active Capital	Armour Boulevard State Credit Fund, LLC	5/11/2006
19	Agate/First Active Capital	Atlas Life State Member, LLC	03/2009
20	Agate/First Active Capital	CGA Investors LLC	12/1/2003
21	Agate/First Active Capital	Down by the River State Member LLC	07/2009
22	Agate/First Active Capital	Downtown Hutch State Credit Partner, LLC	2008
23	Agate/First Active Capital	Ford Building State Member, LLC	2/17/2009
24	Agate/First Active Capital	FPL, LLC	6/22/2005
25	Agate/First Active Capital	Grand & Olive State Credit Investors, LLC	6/27/2007
26	Agate/First Active Capital	Grant Historic, LLC	2006
27	Agate/First Active Capital	HD Lee State Member, LLC	04/2008
28	Agate/First Active Capital	KBS Manager, LLC	11/2005
29	Agate/First Active Capital	LIHTC Partners, LLC	2004
30	Agate/First Active Capital	LisArt Stratford LIHTC Fund II LLC	5/8/2008
31	Agate/First Active Capital	Locust Historic LLC	2006
32	Agate/First Active Capital	Mayo H&L State Member, LLC	3/19/2008
33	Agate/First Active Capital	MCLI State, LLC	2006
34	Agate/First Active Capital	MEF Drake Investors 2005, LLC	2005
35	Agate/First Active Capital	MEF Investors 2004, LLC	2005
36	Agate/First Active Capital	Moose State Partners, LLC	2006
37	Agate/First Active Capital	Parkland State Member, LLC	12/2006
38	Agate/First Active Capital	Paul Brown State Cr Invest LLC	11/20/2003
39	Agate/First Active Capital	RCDA State Member LLC	5/6/2008

40 Agate/First Active Capital	SMI State HTC Investor, LLC	8/4/2009
41 Agate/First Active Capital	South Pier Managing Member, LLC	07/2008
42 Agate/First Active Capital	Spring Street Lofts State Member, LLC	12/23/2008
43 AIB Capital	City Hospital Laundry State Member LLC	10/2009
44 AIB Capital	New Holdings State Member, LLC	06/2009
45 BOI Capital	Boonville Credit Fund, LP	10/30/2009
46 BOI Capital	Century Tower State Credit Fund, LP	2/13/2008
47 BOI Capital	Countryview Estates State Credit Fund I, LP	2/13/2008
48 BOI Capital	Divine Estates Credit Fund, LP	2/13/2008
49 BOI Capital	Drake Hotel Credit Fund, LP	2/13/2008
50 BOI Capital	Ely-Walker Credit Fund, LP	10/1/2008
51 BOI Capital	Franciscan Villa Credit Fund, LP	2/13/2008
52 BOI Capital	Frisco Station Credit Fund, LP	2/13/2008
53 BOI Capital	Mark Twain Credit Fund, LP	12/17/2007
54 BOI Capital	Missouri LIHTC Fund, LP	2/13/2008
55 BOI Capital	Oaks Credit Fund, LP	12/17/2007
56 BOI Capital	Perryville Manor Credit Fund, LP	2/13/2008
57 BOI Capital	Plainview Estates Credit Fund, LP	2/13/2008
58 BOI Capital	San Regis Credit Fund, LP	10/1/2008
59 BOI Capital	SCS Breezeway I Fund (American Equity Fund)	12/21/2009
60 BOI Capital	SCS Cape Meadows, LLC	11/15/2008
61 BOI Capital	SCS Jamison, LLC	10/30/2009
62 BOI Capital	SCS Jessica Estates III, LLC	11/15/2008
63 BOI Capital	SCS Messenger, LLC	12/7/2009
64 BOI Capital	SCS Northwood MF, LLC	11/15/2008
65 BOI Capital	SCS Nu Elm, LLC	10/30/2009
66 BOI Capital	SCS Park Ridge, LLC	11/15/2008
67 BOI Capital	SCS Sand Hills LLC	12/21/2009
68 BOI Capital	SCS Schultz Fund - GP Interest	2/22/2010
69 BOI Capital	SCS Trinity Village, LLC	12/21/2009
70 BOI Capital	SCS Tudor Fund - /Warepool 2A, LLC	12/11/2009
71 BOI Capital	Springfield Commons Credit Fund, LP	2/13/2008
72 BOI Capital	St. Joseph Housing Credit Fund, LP	2/13/2008
73 BOI Capital	State Credit Syndicators II, LLC	2/13/2008
74 BOI Capital	Zahn Credit Fund, LP	12/17/2007
75 Anglo Capital	SCS Iowa, Inc.	12/12/2007