

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA	:	No. _____
	:	
	:	
	:	
VS.	:	
	:	15 U.S.C. § 77q(a)
	:	15 U.S.C. § 77x
	:	18 U.S.C. § 2
SHERRY L. GIBSON	:	18 U.S.C. § 371

INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

COUNT 1

1. From on or before May 17, 1995, and continuing thereafter up to and including July 24, 2002, in the Southern District of Ohio and elsewhere, SHERRY L. GIBSON, the defendant, and other persons, whose identities are known and unknown to the United States but who are not named as defendants herein, did unlawfully, willfully, and knowingly conspire, combine, confederate, and agree together and with each other to use means and instruments of transportation and communication in interstate commerce for the purpose of fraud and deceit in the offer and sale of securities, in violation of 15 U.S.C. §§ 77q(a) and 77x and 18 U.S.C. § 2.

PARTIES TO THE CONSPIRACY, PERSONS AND ENTITIES

2. At all relevant times,

2A. National Century Financial Enterprises, Inc., hereinafter referred to as NCFE, was an Ohio corporation, headquartered in Dublin, Ohio, that operated as a financial service holding company which, through its subsidiary corporations, purchased accounts receivable from hospitals, nursing homes, and other health care providers and medical concerns, hereinafter individually

referenced without further identification as Seller.

2B. SHERRY L. GIBSON, the defendant, was employed by NCFE in several management and executive-level positions.

2C. NPF VI, Inc., hereinafter referred to as NPF VI, was an Ohio corporation and a wholly-owned subsidiary of NCFE. NPF VI was formed for the stated purpose of purchasing health care receivables and funding such purchases with proceeds from the offer and sale of securities, that is, health care receivables securitization program notes.

2D. NPF XII, Inc., hereinafter referred to as NPF XII, was an Ohio corporation and a wholly-owned subsidiary of NCFE. NPF XII was formed on February 22, 1999, as the successor entity to NPF VIII, Inc., for the stated purpose of purchasing health care receivables and funding such purchases with proceeds from the offer and sale of securities, that is, health care receivables securitization program notes.

2E. National Premier Financial Services, Inc. was an Ohio corporation and a wholly-owned subsidiary of NCFE that purportedly acted as an agent providing administrative services for the health care receivables purchased by NPF VI and NPF XII.

2F. The Chase Manhattan Bank, and its successor entity also known after November 10, 2001 as JP Morgan Chase Bank, was a financial institution that acted as a trustee for investors holding health care receivables securitization program notes issued by NPF VI.

2G. Bank One, NA, hereinafter referred to as Bank One, was a financial institution that acted as a trustee for investors holding health care receivables securitization program notes issued by NPF XII.

2H. Fitch IBCA, Inc., hereinafter referred to as Fitch, and Duff & Phelps Credit Rating Co., hereinafter referred to as DCR, were companies that each rated for investors one or more of the several series of health care receivables securitization program notes issued by NPF VI or NPF XII.

2I. Several individuals, among others, identified respectively herein as Conspirator A through Conspirator G, were executives at and/or owners of NCFE.

2J. Coopers & Lybrand, and its successor entity known as PricewaterhouseCoopers, was a national auditing firm engaged by NCFE to perform audits and agreed upon procedures.

2K. Deloitte & Touche LLP, hereinafter referred to as Deloitte & Touche, was a national auditing firm engaged by NCFE to perform audits.

MANNER AND MEANS BY WHICH
THE CONSPIRACY WAS CARRIED OUT

3. The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

3A. Inclusion of untrue statements of material facts in reports, which untrue statements were designed to and operated to deceive, mislead and defraud investors in the offer and sale of securities, that is, health care receivables securitization program notes.

3B. Creation of false and fraudulent documents relating to the financial condition of NCFE, and related parties and entities, which false and fraudulent documents were designed to deceive and mislead auditors and to defraud investors in the offer and sale of securities, that is, health care receivables securitization program notes.

3C. Transfer of money between and among bank accounts of NPF VI and NPF XII, to project an appearance that reserve accounts possessed required funds, which transfers of money were designed to deceive and mislead trustees and to defraud investors in the offer and sale of securities, that is, health care receivables securitization program notes.

3D. Execution of a scheme and artifice to defraud in the offer and sale of securities, that is, health care receivables securitization program notes, by using proceeds from the offer and sale of such notes for purposes other than for financing purchases of health care receivables.

OVERT ACTS

4. In furtherance of the conspiracy, and to effect the objects thereof, at least one of the following overt acts, among others, was committed in the Southern District of Ohio:

4A. On or about June 21, 1995, an investor report was prepared for NPF VI,

Determination Date May 31, 1995, the first such report for NPF VI, which contained false financial information.

4B. On or before August 21, 1995, SHERRY L. GIBSON, the defendant, wrote Conspirator A that arbitrary numbers were included on an investor report for NPF VI. Conspirator A responded to SHERRY L. GIBSON, the defendant, with a handwritten: "OK."

4C. On or before September 22, 1995, SHERRY L. GIBSON, the defendant, wrote Conspirator A and advised that certain numbers included on an investor report for NPF VI were arbitrary and not correct and other numbers were fabricated. Conspirator A responded to SHERRY L. GIBSON, the defendant, with a handwritten: "OK."

4D. On or before October 23, 1995, SHERRY L. GIBSON, the defendant, advised Conspirator A that certain numbers to be included on an investor report for NPF VI were arbitrary and not correct. Conspirator A responded to SHERRY L. GIBSON, the defendant, with handwritten: "OK" and "OK with notes," which notes suggested a method for manipulating data.

4E. On or about November 24, 1997, SHERRY L. GIBSON, the defendant, caused to be prepared, and Conspirator A did sign, an Investor Report for NPF VI, Determination Date October 31, 1997, which contained false financial information.

4F. On or about January 20, 1998, an employee of NCFE wrote a memorandum to SHERRY L. GIBSON, the defendant, and Conspirator D, which memorandum was copied to Conspirator A, Conspirator B, Conspirator C, and several employees of NCFE, not identified herein, in which the writer confirmed both that NCFE had created a Special Location "99" in its accounting system for accounts receivable that were purchased but which were not eligible for its programs and that Special Location "99" numbers would be incorporated into monthly investor reports.

4G. On or about January 23, 1998, SHERRY L. GIBSON, the defendant, caused to be prepared, and Conspirator A did sign, an Investor Report for NPF VI, Determination Date December 31, 1997, which contained false financial information.

4H. On or about August 13, 1998, at 10:07 a.m., SHERRY L. GIBSON, the defendant,

caused to be transmitted by facsimile from Dublin, Ohio to DCR in Chicago, Illinois, a copy of the NPF VI Investor Report for May, 1998, and the following promotional statement on the facsimile cover sheet:

Tid Bit: NCFE has been the Program Sponsor on receivable purchasing programs totaling over \$1 billion. With our 1997 transactions, we exceeded the \$1 billion mark in assets which clearly establishes us as the nations leading supplier of working capital to the medical industry.

4I. On or about August 21, 1998, SHERRY L. GIBSON, the defendant, caused to be prepared, and Conspirator A did sign, an Investor Report for NPF VI, Determination Date July 31, 1998, which contained false financial information.

4J. On August 21, 1998, SHERRY L. GIBSON, the defendant, caused to be transmitted by facsimile from Dublin, Ohio to The Chase Manhattan Bank in New York, the NPF VI Investor Report for July, 1998, which contained false financial information.

4K. On or about September 21, 1998, SHERRY L. GIBSON, the defendant, caused to be prepared, and Conspirator A did sign, an Investor Report for NPF VI, Determination Date August 31, 1998, which contained false financial information.

4L. On or about September 23, 1998, at 1:10 p.m., SHERRY L. GIBSON, the defendant, caused to be transmitted by facsimile from Dublin, Ohio to DCR in Chicago, Illinois, copies of the NPF VIII Investor Report for July, 1998, and the NPF VI Investor Report for August, 1998, which contained false financial information.

4M. On or about September 23, 1998, at 1:19 p.m., SHERRY L. GIBSON, the defendant, caused to be transmitted by facsimile from Dublin, Ohio to The Chase Manhattan Bank in New York a copy of the NPF VI Investor Report for August, 1998, which contained false financial information.

4N. On or about October 22, 1998, SHERRY L. GIBSON, the defendant, caused to be prepared, and Conspirator A did sign, an Investor Report for NPF VI, Determination Date September 30, 1998, which contained false financial information.

4O. On or about October 22, 1998, at 7:55 p.m., SHERRY L. GIBSON, the defendant,

caused to be transmitted by facsimile from Dublin, Ohio to Fitch in New York, a copy of the NPF VI Investor Report for September, 1998, which contained false financial information.

4P. On or about October 22, 1998, at 8:04 p.m., SHERRY L. GIBSON, the defendant, caused to be transmitted by facsimile from Dublin, Ohio to The Chase Manhattan Bank in New York, a copy of the NPF VI Investor Report for September, 1998, which contained false financial information.

4Q. On or about December 2, 1998, an employee of NCFE, not identified as a conspirator herein, sent an email message to Conspirator B, with copies to Conspirators A and D, which provided, in pertinent part:

I would like to meet with you to discuss strategies for presenting Location 99 A/R to the auditors. It would be optimal if we could provide the auditors with specific information as to what each Practice's Location 99 represents (Financial Class/Aging) and why we believe it to be collectable. In the event that Location 99 is deemed uncollectible, we will need to have a strategy in place for replacing that A/R with good A/R or reducing our exposure in some other manner. Please let me know when you would be available to discuss this.

On or about December 7, 1998, Conspirator B responded to the email message with a handwritten note, with copies to SHERRY L. GIBSON, the defendant, and an employee of NCFE not named herein, and scheduled a meeting for December 15, 1998, at 2:00 p.m.

4R. On or about December 21, 1998, SHERRY L. GIBSON, the defendant, caused to be prepared, and Conspirator A did sign, an Investor Report for NPF VI, Determination Date November 30, 1998, which contained false financial information.

4S. On or about February 11, 1999, SHERRY L. GIBSON, the defendant, sent a memorandum on paper watermarked "For Internal Use Only" to Conspirator B, with copies to Conspirator A, Conspirator C, and Conspirator E, regarding random audit of investor reports. The memorandum provided, in pertinent part:

For 1998, PriceWaterhouseCoopers auditors have selected the following months for random audit of the investor reports:

NPF VIII

February 1998 . . .

Attached is a copy of the February 1998 investor report for NPF VIII. Please note how the sections in the report are divided; each section's data is tested by the auditors. I have also provided a copy of the agreed upon procedures performed by the auditors for this random audit (titled "Exhibit I"). Each section heading within the agreed upon procedures directly corresponds to a section within the investor report.

I know that the random audit is a necessary requirement for the securitization(s); however, due to our business practices, it takes several weeks of preparation before the audit can be scheduled. The preparation time is not due to gathering copies of reports, obtaining file copies, etc., the delay is due to the necessity of CREATING the backup that matches the investor report.

It has been necessary to modify/edit/change the original receivables data from the AS400 for investor reporting. Due to advances with no collateral and high volumes of defaulted, the amount of eligible receivables aged 0-180 days varies significantly from the Outstanding Purchase amount (the amount actually funded to our clients). This means that we are UNDERcollateralized in all portfolios and the investor report numbers are adjusted in order to meet the default triggers.

Therefore, whenever the investor reports are audited we have to create special reports that reflect the numbers reported which again differ significantly from the receivables activity actually posted and housed within the AS400.

4T. On or about February 17, 1999, SHERRY L. GIBSON, the defendant, sent a memorandum to Conspirator B, in which she stated:

4. Status of NPF VI reserves is dismal. Seller Credit Reserve should be approximately \$38.8 million, actual balance is approximately \$10.6 million. Best estimate of the closing for NPF VI Series 1999-1 is March 31, 1999 -- this means problems with February 1999 investor reports due to continued pillage of reserves for funding. I have attached an example of a "compliance alert" that I plan to send -- OK?

4U. On or about February 17, 1999, SHERRY L. GIBSON, the defendant, sent a document, captioned "NPF VI **Compliance Alert** Seller Credit Reserve is NON-COMPLIANT," to Conspirator B, and maintained a file copy that contained the following handwritten note:

FOR INTERNAL USE ONLY

DISTRIBUTION: [Conspirator A], [Conspirator C], [Conspirator B], [Conspirator E], S. Gibson
* * DO NOT COPY * *

4V. On February 22, 1999, Conspirator B and Conspirator C caused to be filed in the

Office of the Secretary of State of Ohio a Certificate of Amendment to Articles of Incorporation of NPF VIII, Inc., by which the name of the corporation was changed to NPF XII, Inc., thus creating NPF XII.

4W. On or about February 25, 1999, SHERRY L. GIBSON, the defendant, sent a memorandum on paper watermarked "Confidential" to Conspirator A, Conspirator B, and Conspirator C, with copies to Conspirator E and an employee of NCFE, not identified herein, which provided, in pertinent part:

1. NPF VI is \$45,000,000 SHORT in reserves. This shortage is due to the funding of [Seller] from reserves as well as funding to [Seller] and to [Seller].

We are unable to move monies between the books to "fix" this problem. NPF VI Series 1999-1 is not scheduled to close until month end March 1999. Another reason for the shortage is due to the lack of collections from [Seller] and/or [Seller] even though we continue proforma funding on a weekly basis.

Please advise -- how can we have an investor report (the one we will have to distribute right before the next series) with \$45,000,000 shortage in reserves? . . .

We are creative with month end and the investor reports -- but this is beyond our capability to create. This is a crisis -- we need help!

4X. On or about March 10, 1999, Conspirator A, acting as an officer of both NPF XII and National Premier Financial Services, Inc., entered into an agreement with Bank One, acting as Trustee, by executing a NPF XII Health Care Receivables Securitization Program Notes Master Indenture.

4Y. On or about March 18, 1999, Conspirator A directed SHERRY L. GIBSON, the defendant, not to forward information on "advance funding" to PricewaterhouseCoopers.

4Z. On March 22, 1999, SHERRY L. GIBSON, the defendant, transmitted by facsimile to Conspirator A, at a location in Florida, and to Conspirator B, at a location in Arizona, a draft NPF VI Investor Report for February, 1999, and a memorandum, also copied to Conspirator C, that explained problems with the draft report, which problems were specifically described, in pertinent

part, as:

4. The Specified Equity Account Balances are NOT in compliance. The actual balances are \$40,064,228 whereas the specified balance is calculated as \$56,788,096. (*see Section Six on page 3*)

The shortages in the Equity Account and the Seller Credit Reserve account are due primarily to using reserve dollars for funding throughout the month of February 1999 for special funding circumstances such as the release of the initial funding for [Seller] from reserves. The cash shortage in NPF VI can also be attributed to lack of cash collections on the [Seller] and [Seller] and the advance fundings for [Seller] and [Seller].

During our telephone conversation this morning, you requested that the investor report be modified to show "in transit" cash for the Equity account and the Seller Credit Reserve; you had also requested that the amount of purchases be decreased. If we add \$29,000,000 to the Seller Credit Reserve and \$14,000,000 to the Equity account along with a \$69,000,000 reduction to the new purchases for February 1999, we will be in compliance. I have attached the revised investor report for your review.

This report will not be forwarded to the Rating Agency or the Trustee until requested; I have counseled with [Conspirator F] and we believe this to be the most prudent action to take based on the pending closing of the NPF VI Series 1999-1 notes.

4AA. On or about April 7, 1999, Conspirator A wrote a letter to Fitch and offered an explanation for problems with the NPF VI Investor Reports for February and March. The explanation was not consistent with the memorandum written by SHERRY L. GIBSON, the defendant, on March 22, 1999.

4BB. On April 22, 1999, SHERRY L. GIBSON, the defendant, transmitted by facsimile to Bank One a copy of the Investor Report for NPF XII for March, 1999, the first such report for NPF XII, which contained false financial information.

4CC. On or about May 21, 1999, SHERRY L. GIBSON, the defendant, caused to be prepared, and Conspirator A did sign, an Investor Report for NPF VI, Determination Date April 30, 1999, which contained false financial information.

4DD. On or about May 21, 1999, at 4:20 p.m., Conspirator E caused to be transmitted by facsimile from Dublin, Ohio to The Chase Manhattan Bank in New York, a copy of the NPF VI

Investor Report for April, 1999, which contained false financial information.

4EE. On or about May 28, 1999, at 11:37 a.m., SHERRY L. GIBSON, the defendant, caused to be transmitted by facsimile from Dublin, Ohio to Credit Suisse First Boston in New York, a copy of the NPF VI Investor Report for April, 1999, which contained false financial information.

4FF. On or about June 22, 1999, SHERRY L. GIBSON, the defendant, caused to be prepared, and Conspirator A did sign, an Investor Report for NPF XII, Determination Date May 31, 1999, which contained false financial information.

4GG. On June 22, 1999, at 4:47 p.m., Conspirator E caused to be transmitted by facsimile to Bank One a copy of the Investor Report for NPF XII for May, 1999, which contained false financial information.

4HH. On or about July 15, 1999, Conspirator E advised in a memorandum, on the subject of NPF Balances, to Conspirator A, Conspirator B, and Conspirator C that the accounts receivable balances for several NPF programs, including NPF VI and NPF XII, were short in required reserves and equity in an aggregate amount of \$19,000,000.00.

4II. On or about July 15, 1999, Conspirator A replied to the July 15, 1999 memorandum from Conspirator E, indicating, "We will correct after NPF LP is funded on or about June 22, 1999. We are on top of this as is [Conspirator G] and [Conspirator D]." The reply was copied to Conspirator B, Conspirator C, and SHERRY L. GIBSON, the defendant.

4JJ. On or about July 19, 1999, SHERRY L. GIBSON, the defendant, wrote a memorandum to Conspirator B, with copies to Conspirator A, Conspirator C, Conspirator E, and two employees of NCFE, not named herein, which provided, in pertinent part:

For June 1999 month end, NPF XI was short in reserves, so the \$5.0 million liability was transferred to [Seller] in NPF XII. This was done in order to bring NPF XI into compliance for month end testing - - and since the \$5.0 million would be repaid, there should be no problem.

On July 8, 1999, the initial funding for [Seller] took place. The Funding Department inquired about the \$5.0 million repayment from the initial funding. Attached is an e-mail documenting the result, namely that the \$5.0 million would NOT be recovered from funding,

but would be “alleviated by a Letter of Credit.”

As of July 19, 1999, the \$5.0 million is shown on the balance for [Seller] in NPF XII - - which is admittedly a problem. Unfortunately, while [Seller] is a Seller in NPF VI and NPF XI, neither securitization has the available funds to purchase this liability from NPF XII.

As this \$5.0 million issue was supposed to be temporary, no receivables have been created to substantiate the amount in the AS400. Now that we are looking at a long-term situation, how do you wish to proceed?

4KK. On or about July 19, 1999, Conspirator B wrote a handwritten note to Conspirator A and Conspirator C, with copies to Conspirator G, about the \$5.0 million loan to a seller, and advised such procedure should be reviewed from an audit perspective.

4LL. On or about July 22, 1999, SHERRY L. GIBSON, the defendant, caused to be prepared an investor report for NPF VI, Determination Date June 30, 1999, which contained false financial information. The report was kept in a file folder labeled, “NPF VI June 1999 Random Sampling/AUP.” The front inside cover of the folder contained the words “FILE COPY = Given to the Auditors” and “CONFIDENTIAL = for internal use only NOT distributed.” A spreadsheet maintained in the file folder detailed the false entries made to the June 1999 cash activity report and was stamped “CONFIDENTIAL.” On this spreadsheet the handwritten note specified, “These sellers were removed from the June cash activity report for audit purposes.” The cash activity report served as a basis for some of the dollar amounts reported in the investor reports.

4MM. On or before July 23, 1999, SHERRY L. GIBSON, the defendant, received from an employee of NCFE, not identified herein, a summary of adjustments to the June, 1999 Investor Report for NPF XII, which summary of adjustments was also sent to Conspirator A, Conspirator B, Conspirator C, Conspirator E, and another employee of NCFE, not identified herein, and which summary of adjustments detailed financial entries that were overstated and financial entries that were understated, and which contained the following topic header, “To insure compliance, the following adjustments were made to the respective sections of the NPF XII Investor Report.”

4NN. On or about July 26, 1999, Conspirator E wrote a confidential memorandum to

Conspirator A, Conspirator B, and Conspirator C, with copies to Conspirator D, Conspirator G, and SHERRY L. GIBSON, the defendant, which memorandum provided, in pertinent part:

Attached please find the status of the A/R portfolios as of July 23, 1999.

As of now, we plan to wire funds from NPF VI to NPF XII to fill the shortfall in NPF XII. This will be a partial reversal of last month's transfer from NPF XII to NPF VI.

4OO. On or about August 20, 1999, Conspirator E caused to be prepared an investor report for NPF VI, Determination Date July 31, 1999, which contained false financial information. Conspirator E maintained, as business records of NPF VI, a file copy of the false investor report captioned "NPF VI - Reported," that stated false financial information and a file copy of an investor report captioned "NPF VI - Actual" that stated accurate financial information for NPF VI.

4PP. On or about August 20, 1999, Conspirator E caused to be transmitted by facsimile to Fitch in New York copies of the Investor Report for NPF VI for July, 1999, which contained false financial information.

4QQ. On or about August 23, 1999, Conspirator E caused to be transmitted by facsimile to The Chase Manhattan Bank in New York copies of the Investor Report for NPF VI for July 1999, which contained false financial information. The report sent to The Chase Manhattan Bank had previously been signed by Conspirator A.

4RR. On or about August 29, 1999, Conspirator B transmitted a memorandum to Conspirator E that provided, in pertinent part:

"VERY CONFIDENTIAL"

GREETINGS FROM HAWAII!

PLEASE GIVE ME SOME TYPE OF REVIEW ON A MONTHLY BASIS OF THE SPECIFIC PROBLEMS YOU'RE HAVING WITH THE INVESTOR REPORT. OBVIOUSLY MAKE IT CONFIDENTIAL ----- I WOULD LIKE TO GET AS MANY OF THESE PROBLEMS CLEANED UP AT THE "SOURCE" AND NOT ALLOW THEM TO CONTINUE MONTH AFTER MONTH. - - - BUT I NEED TO KNOW MORE OF WHAT THEY ARE. SPECIFICALLY, WHAT ARE YOU HAVING TO CHANGE BEFORE THE REPORT GOES OUT THE DOOR?

4SS. On or about September 8, 1999, Conspirator E sent a memorandum to Conspirator B, with copies to SHERRY L. GIBSON, the defendant, and two employees of NCFE, not identified herein, to which Conspirator E attached “Actual” and “Reported” versions of the July, 1999 NPF VI investor report, and in which Conspirator E provided a synopsis of the changes made to the “Reported” investor report.

4TT. On or about October 6, 1999, Conspirator B wrote a memorandum to the CEO of a Seller, in which Conspirator B confirmed that NCFE continued to advance funds to the Seller, even though the Seller did not have accounts receivable to support the advances.

4UU. On or about October 15, 1999, Conspirator E wrote a confidential memorandum to Conspirator A, Conspirator B, Conspirator C, Conspirator D, Conspirator G, and two employees of NCFE, not identified herein, in which Conspirator E advised: (1) certain reserve accounts of NPF XII were collectively short by \$13,882,456.00 on September 30, 1999; (2) the September, 1999 Investor Report for NPF XII would show an event of default; and, (3) as of October 15, 1999, the cash position of accounts receivable portfolios were deficient by \$43,776,972.00.

4VV. On or about the period October 15, 1999, through October 19, 1999, Conspirator A sent a handwritten note to Conspirator E and an employee of NCFE, not identified herein, advising that Conspirator A had “a number of ways to correct [the] problem” with the September, 1999 Investor Report for NPF XII.

4WW. On or about October 19, 1999, Conspirator A sent a memorandum to Conspirator B, Conspirator C, Conspirator E, Conspirator G, SHERRY L. GIBSON, the defendant, and an employee of NCFE, not identified herein, in which Conspirator A stated, in pertinent part:

As a follow up to [Conspirator E]’s memo, I did meet with [an employee of NCFE] to review with her the kinds of things that we need to do before the end of the month to insure our Investor reports are O.K. The September problem has been handled by adjusting downward the accounts receivable, and we will be within compliance on our reporting area. Any of you who wish to review that methodology with me on an individual basis may do so.

On a go-forward basis, it is no secret that we have three problem areas that are contributing to our fall for the month. This is not a

circumstance in which none of us are not aware of the problem. All of us are doing actions which should lend appreciable support to correcting these problems during the course of the month. The purpose of this memorandum is just reviewing briefly the actions steps that each of us individually have taken which hopefully in concert will end up with the desired result. . . .

In addition to these activities we are pulling out all stops to monazite NCFE corporate cash as a result of book X transactions. [Two employees of NCFE] have been following this project. Under their tutelage, they anticipate before October 31st to net \$5.9 million from the sale of Notes to Provident and Huntington existing lines. This will be in addition to those funds that we would receive during the month. There's a lot of containerized information within this memorandum, should anyone have any questions, please feel free to call. On this subject, let's keep the memo's to a minimum.

4XX. On or about October 25, 1999, Conspirator E sent a confidential memorandum to Conspirator A, with copies to Conspirator B, Conspirator C, Conspirator D, Conspirator G, and SHERRY L. GIBSON, the defendant, in which Conspirator E advised the NPF portfolios, including NPF VI and NPF XII, were short by a total of \$55,164,209.

4YY. On or about October 25, 1999, Conspirator B sent an interoffice memorandum to an employee of NCFE, not identified herein, by which Conspirator B instructed that any additional ineligible accounts receivable were to be booked in Location 99.

4ZZ. On or about October 26, 1999, Conspirator E sent a confidential memorandum to Conspirator A, with copies to Conspirator B, Conspirator C, Conspirator D, Conspirator G, and SHERRY L. GIBSON, the defendant, which provided, in pertinent part:

In an effort to meet the compliance requirements in the A/R portfolios despite a considerable cash shortage projected at month end October, 1999, I have calculated the *minimum* cash required in the portfolios to avoid an event of default, which would result in early amortizations of the portfolio(s). Events of default include failing the Equity Requirement or the Collateral Coverage Test. Reporting the Credit and Offset Reserve balances below their required percentages is not an event of default. Therefore, the balances in these reserves have been reduced to the amount needed to meet the collateral coverage test only. *Calculated at this level, the shortage is reduced from \$51,500,00 to \$36,200,000.*

One of the following options may be used to remedy this situation:

1. On Thursday, October 28, 1999, NCFE will meet the minimum

compliance requirements in NPF VI and NPF XI, for which the Trustee is Chase Manhattan, by wiring approximately \$36,000,000 from NPF XII to NPF VI and NPF XI. . . .The cut off for investor reporting for October, 1999, in NPF VI and NPF XI (Chase Manhattan) will then be October 28, 1999 instead of October 29, 1999.

On Friday, October 29, 1999, NCFE will wire the \$36,000,000 from NPF VI and NPF XI back to NPF XII. It will also be necessary to wire approximately \$5,800,000 from NPF WL to NPF XII and \$1,100,000 from NPF WL to NPF LP on that day. The cut off for investor reporting of October, 1999, in NPF XII, NPF LP and NPF WL will then be the regular date of October 29, 1999. These three portfolios are managed by the same Trustee, Bank One.

This option is probably the best one, although there is a concern that the Trustee(s) will question such a large amount of cash leaving/coming in to the portfolio(s).

2. The majority of the problem (\$34,000,000) is in NPF VI. NCFE allows NPF VI to remain noncompliant in anticipation of one or more of the following: 1) a new series in NPF VI anticipated later in November; 2) funds from sources outside the a/r portfolios. . . All other portfolios would meet minimum compliance requirements through intercompany wires much as described in Option 1; however, the amount of cash that would need to be moved would be considerably less and it is doubtful that the Trustee would question it. The fact that NPF VI would technically be in default as of October 29, 1999 would have to be addressed in some manner with the investors/trustees.

4AAA. On or about October 27, 1999, Conspirator E sent a memorandum to Conspirator A and Conspirator G, with copies to Conspirator B, Conspirator C, Conspirator D, and SHERRY L. GIBSON, the defendant, which referenced Conspirator E's confidential memorandum of October 26, 1999, and which stated, in pertinent part: "DUE TO THE MAGNITUDE AND NATURE OF THE PROBLEM, WE WILL NOT TAKE ANY FURTHER ACTION REGARDING MONTH END UNTIL WE RECEIVE SPECIFIC INSTRUCTIONS."

4BBB. On or about October 28, 1999, Conspirator E sent a memorandum to Conspirator A, Conspirator B, and Conspirator C with copies to Conspirator D, Conspirator G and SHERRY L. GIBSON, the defendant, and stated: "After conversations with [Conspirator A] and [Conspirator G], Compliance has been instructed to hold over the month end tests through Monday, November 1, 1999. This means that we need to abstain from future advances until at least Tuesday,

November, 2, 1999.”

4CCC. On or about November 15, 1999, Conspirator E sent a memorandum to SHERRY L. GIBSON, the defendant, with copies to Conspirator A, Conspirator B, Conspirator C, Conspirator D, Conspirator F, and Conspirator G, which provided, in pertinent part:

Currently, across all NPF funding programs, the reserve and equity balances are deficient by over \$100 million. The funds required to meet all the test equals \$286 million while the sum of funds available as of November 15, 1999, is \$185 million.

The proposed solution for the cash shortfall is the \$200 million Series 1999-3 securitization scheduled to close in NPF XII, Inc. during November 1999. However, it needs to be noted that this solution will be a short-term at best. With the increased reserve requirements associated with Series 1999-3 plus with the projected initial fundings and advances, all of the \$200 million will be used by the end of November 1999. Listed below is the scheduled use of the \$200 million.

\$72,000,000	-Shortage in NPF VI reserves and equity
24,000,000	-Shortage in NPF XII reserves and equity
5,000,000	-Shortage in NPF XI reserves and equity
34,000,000	-Additional reserves required for NPF XII 1999-3
50,000,000	-Initial Fundings
<u>15,000,000</u>	-November advances and trustee fees
\$200,000,000	

4DDD. On or about November 22, 1999, Conspirator E caused to be transmitted by facsimile to The Chase Manhattan Bank in New York and to Fitch in New York copies of the Investor Report for NPF VI for October, 1999, which had previously been signed by Conspirator A and contained false financial information.

4EEE. On or about December 13, 1999, Conspirator A sent a memorandum to Conspirator B, Conspirator D, Conspirator E, Conspirator G, SHERRY L. GIBSON, the defendant, and several employees of NCFE, not identified herein, in which Conspirator A outlined a new coding procedure for internal tracking of advances made to clients while NCFE waited for collateral to support the advances, and in which Conspirator A explicitly stated: “This category should not be confused with proforma funding, nor should it have the same account number.”

4FFF. On or about January 17, 2000, Conspirator E sent a memorandum to SHERRY

L. GIBSON, the defendant, with copies to Conspirator A, Conspirator D, Conspirator F and Conspirator G, in which Conspirator E advised reserve and equity accounts across NPF Funding Programs were collectively deficient by more than \$31 million.

4GGG. On or about January 27, 2000, Conspirator E sent a memorandum to Conspirator A, Conspirator B, and Conspirator C, with copies to Conspirator D, Conspirator F, Conspirator G, and SHERRY L. GIBSON, the defendant, in which Conspirator E stated:

As of January 26, 2000, the NPF Funding Programs are deficient of cash reserves by over \$40 million. In order to pass the collateral, reserve and equity tests in each Funding Program, the testing will be held on two separate days for Monthend January 2000. For NPF VI and NPF XI, the accounts will be tested on January 31, 2000. Then, on February 1, 2000, the accounts will be tested for NPF XII, NPF WL, and NPF LP. This will allow NCFE to shift the necessary cash between Funding Programs. Therefore, is it important to stop advancing cash until February 2, 2000.

4HHH. On or about January 31, 2000, Conspirator B sent a memorandum to Conspirator A and Conspirator C, in which Conspirator B advised, in pertinent part, "Right now, it looks like we are at least \$100M off from the A/R [accounts receivable] booked, the collateral and the outstanding."

4III. On or about February 23, 2000, Conspirator E sent a memorandum to Conspirator A, Conspirator B, and Conspirator C, with copies to Conspirator D, Conspirator F, Conspirator G, and SHERRY L. GIBSON, the defendant, which provided in pertinent part:

As of February 22, 2000, the Funding Programs are collectively short by over \$72 million. Additionally, it is now evident that the NPF XII Series 2000-01 \$100 million notes will not fund before the end of February. Taking these two issues into account and the fact that the programs are losing about \$11.0 million a week; the programs will be short by \$85 to 90 million by the end of February.

In recent months, NCFE has cured the shortages by wiring funds between the Chase programs (NPF VI and XI) and the Bank One programs (NPF XII, LP and WL) and testing the requirements on different days. Previously, the maximum amount needed to cure the shortages has not exceeded \$45 million; this month will require more than double that amount. It concerns me that the Trustees may questions these large wires. They already questioned the accuracy of the lesser wires during the previous months. I would appreciate any thoughts or feedback concerning this issue.

On a related topic, after the interest, trustee fees, and NCFE's income are withdrawn from the Funding Programs during the first week of March, they will be short by over \$100 million. Would it be possible to increase the NPF XII Series 2000-01 to \$150 or \$200 million to offset the advances that will be made in March and the months ahead?

4JJJ. On or about May 31, 2000, Conspirator E sent a memorandum to SHERRY L. GIBSON, the defendant, which listed as its subject: "WE ARE OUT OF MONEY," and in which memorandum Conspirator E stated:

On June 1, 2000, after NCFE pays the monthly interest, trustee fees and withdraws income from the Funding Programs; there will be a total of \$230 million left in the Funding Programs which is over \$113 million short. Even with splitting the month end tests on the first and last business days of the month, a minimum of \$190 million is needed to pass the tests. Based on last few months, the programs collectively fund \$50 million more than they collect. With this trend holding true, we will not have enough cash in the trust accounts to pass the June month end Compliance test. Please advise?

4KKK. On or about June 29, 2000, Conspirator A and Conspirator G signed and caused to be delivered to Deloitte & Touche a letter provided in connection with an audit, in which Conspirator A and Conspirator G stated, in pertinent part, "There have been no fraud involving management or employees who have significant roles in the internal control."

4LLL. On or about July 19, 2000, SHERRY L. GIBSON, the defendant, advised Conspirator A, Conspirator B, and Conspirator C by memorandum, copied by handwritten notation to Conspirator E and Conspirator G and an employee not identified herein, that all NPF funding programs had a \$152.2 million net shortage in cash reserves. In an attachment to the memorandum, the actual reported shortages for NPF VI was \$68,069,369 and NPF XII was \$74,116,509.

4MMM. On or about July 24, 2000, SHERRY L. GIBSON, the defendant, caused to be prepared an investor report captioned "NPF VI - For Internal Purposes Only - Do Not Distribute," for determination date June 30, 2000, which contained correct financial information, and caused to be prepared another investor report captioned only "NPF VI" for determination date June 30, 2000, which contained false financial information.

4NNN. On or about July 25, 2000, SHERRY L. GIBSON, the defendant, caused to

be prepared an investor report captioned “NPF XII - For Internal Purposes Only - Do Not Distribute,” for determination date July 1, 2000, which contained correct financial information, and caused to be prepared another investor report captioned only “NPF XII” for determination date July 1, 2000, which contained false financial information.

4000. On or about July 8, 2001, SHERRY L. GIBSON, the defendant, sent a memorandum to Conspirator A, with copies to Conspirator D and an employee of NCFE, not identified herein, regarding a request from Fitch for certain financial data, in which memorandum SHERRY L. GIBSON, the defendant, stated, in pertinent part, “To say we have been non-compliant in the past is probably not what Fitch wants to hear– and I do not know how this responds to their data request of July 3, 2001.”

4PPP. On or about July 16, 2001, SHERRY L. GIBSON, the defendant, confirmed in a confidential memorandum to Conspirator A, with copies to Conspirator F, Conspirator G, and an employee of NCFE, not identified herein, a telephone conversation in which SHERRY L. GIBSON, the defendant, and Conspirator A discussed the status of reserve accounts in NPF VI and NPF XII causing problems with investor reports, and the resulting questions about investor reports raised by Fitch.

4QQQ. On or about July 23, 2001, SHERRY L. GIBSON, the defendant, caused to be prepared, and Conspirator A did sign, an Investor Report for NPF VI, Determination Date June 30, 2001, which contained false financial information.

4RRR. On or about July 24, 2001, SHERRY L. GIBSON, the defendant, caused to be prepared, and Conspirator A did sign, an Investor Report for NPF XII, Determination Date June 30, 2001, which contained false financial information.

4SSS. On or about August 29, 2001, SHERRY L. GIBSON, the defendant, sent a confidential memorandum to Conspirator A regarding NPF XII Series 2001-3, which provided:

As you may expect, we are having problems generating the pool statistics for the new series in NPF XII. Here’s the problem:

1. To pass the collateral coverage test in NPF XII, we have been

adding receivables to the calculation in the investor report. The dollar amounts in the reserve accounts are fixed, so without cash, the only other way to pass the test is additional receivables.

2. Due to the continual shortage of cash in the reserves, the investor reports, therefore, have **OVERSTATED** the receivables compared to the actual balances in the AS400 and/or funding systems.
3. The static pool information roughly matches the investor report data for the last eighteen (18) month period. We attempt to have the static pool data reflect each monthly receivables balance in the investor report.

OK, so now we have a reported receivables balance we have to match in the static pool data. While the actual balances in NPF XII are closer to \$1.489 billion, the receivables balance in the current investor report for NPF XII is \$2,000,382,873. This means we have to add receivables on a Seller-by Seller basis in the static pool in order to match the current investor report for NPF XII.

After some work, we have added receivables in a somewhat arbitrary fashion to the current Sellers in NPF XII - and we have a total receivables balance of \$1,916,636,111. We are still short approximately \$84,000,000.

One of the attached reports provides the Sellers with their **reported** and **actual** balances. The second report lists the Sellers that have funded (using the last series funds).

Until we can distribute the receivables across all Sellers, we cannot complete the static pool data for NPF XII Series 2001-3.

Any ideas? Please advise.

4TTT. On or about September 25, 2001, SHERRY L. GIBSON, the defendant, caused to be prepared, and Conspirator A did sign, an Investor Report for NPF XII, Determination Date September 4, 2001, which contained false financial information.

4UUU. On or about the period October 31, 2001 through November 1, 2001, SHERRY L. GIBSON, the defendant, directed an employee of NCFE, not named herein, to prepare wire instructions for month end reserve transfers between bank accounts for NPF VI and NPF XII.

4VVV. On November 1, 2001, SHERRY L. GIBSON, the defendant, caused to be transferred by wire \$152,052,003.00 from an NPF VI Purchase Account at The Chase Manhattan Bank to an NPF XII Collection Account at Bank One.

4WWW. On November 2, 2001, SHERRY L. GIBSON, the defendant, caused to be transferred by wire \$139,876,544.02 from an NPF XII Purchase Account at Bank One to an NPF VI Collection Account at The Chase Manhattan Bank.

4XXX. On or about November 30, 2001, SHERRY L. GIBSON, the defendant, directed an employee of NCFE, not identified herein, to prepare wire instructions for month end reserve transfers between bank accounts for NPF VI and NPF XII.

4YYY. On November 30, 2001, SHERRY L. GIBSON, the defendant, caused to be transferred by wire \$17,812,004.50 from an NPF XII Purchase Account at Bank One to an NPF VI Collection Account at The Chase Manhattan Bank.

4ZZZ. On December 3, 2001, SHERRY L. GIBSON, the defendant, caused to be transferred by wire \$121,499,220.02 from an NPF VI Purchase Account at The Chase Manhattan Bank to an NPF XII Collection Account at Bank One.

4AAAA. On or about December 28, 2001, SHERRY L. GIBSON, the defendant, directed an employee of NCFE to prepare wire instructions for month end reserve transfers between bank accounts for NPF VI and NPF XII.

4BBBB. On December 31, 2001, SHERRY L. GIBSON, the defendant, caused to be transferred by wire \$115,075,036.00 from an NPF XII Purchase Account at Bank One to an NPF VI Collection Account at The Chase Manhattan Bank.

4CCCC. On or about January 2, 2002, SHERRY L. GIBSON, the defendant, directed an employee of NCFE, not identified herein, to prepare wire instructions for month end reserve transfers between bank accounts for NPF VI and NPF XII.

4DDDD. On January 2, 2002, SHERRY L. GIBSON, the defendant, caused to be transferred, with the approval of Conspirator D, a wire of \$148,048,000.00 from an NPF VI Purchase Account at The Chase Manhattan Bank to an NPF XII Collection Account at Bank One.

4EEEE. On or about January 3, 2002, SHERRY L. GIBSON, the defendant, directed an employee of NCFE, not identified herein, to prepare wire instructions for month end reserve

transfers between bank accounts for NPF VI and NPF XII.

4FFFF. On January 3, 2002, SHERRY L. GIBSON, the defendant, caused to be transferred, with the approval of Conspirator D, a wire of \$148,048,000.00 from an NPF XII Purchase Account at Bank One to an NPF VI Collection Account at The Chase Manhattan Bank.

4GGGG. On or about January 23, 2002, SHERRY L. GIBSON, the defendant, caused to be prepared, and Conspirator A did sign, an Investor Report for NPF VI and a Revised Investor Report for NPF VI, Determination Date December 31, 2001, which contained false financial information, and both of which noted on page 1, "If you would like to view this report online, please visit our website at www.ncfe.com."

4HHHH. On March 1, 2002, SHERRY L. GIBSON, the defendant, caused to be transferred by wire \$145,985,828.99 from an NPF VI Purchase Account at The Chase Manhattan Bank to an NPF XII Collection Account at Bank One.

4IIII. On or about March 4, 2002, SHERRY L. GIBSON, the defendant, supervised an employee of NCFE, not identified herein, in the preparation of wire instructions for month end reserve transfers between bank accounts for NPF VI and NPF XII.

4JJJJ. On March 4, 2002, SHERRY L. GIBSON, the defendant, caused to be transferred by wire \$128,589,681.01 from an NPF XII Purchase Account at Bank One to an NPF VI Collection Account at The Chase Manhattan Bank.

4KKKK. On or about June 3, 2002, SHERRY L. GIBSON, the defendant, supervised an employee of NCFE, not identified herein, in the preparation of wire instructions for month end reserve transfers between bank accounts for NPF VI and NPF XII to occur on June 3, 2002.

4LLLL. On June 3, 2002, SHERRY L. GIBSON, the defendant, caused to be transferred by wire \$50,969,827.00 from an NPF VI Purchase Account at The Chase Manhattan Bank to an NPF XII Collection Account at Bank One.

4MMMM. On or about June 3, 2002, SHERRY L. GIBSON, the defendant, supervised an employee of NCFE, not identified herein, in the preparation of wire instructions for month end

reserve transfers between bank accounts for NPF VI and NPF XII to occur June 4, 2002.

4NNNN. On June 4, 2002, SHERRY L. GIBSON, the defendant, caused to be transferred, with the approval of Conspirator D, a wire of \$42,245,749.00 from an NPF XII Purchase Account at Bank One to an NPF VI Collection Account at The Chase Manhattan Bank.

4O000. On or about July 24, 2002, Conspirator A sent a letter to Chase Manhattan Bank, with copies to Conspirator F and Conspirator G, in which Conspirator A stated, in pertinent part:

Please find attached the consolidated financial statements for National Century Financial Enterprises for the period ending December 31, 2001. These statements are sent to you in accordance with the indenture requirement for each of the respective portfolios for which you are trustee. The financial statements sent to you are in final form and detail, they lack only the auditors' cover letter, which will be coming to you shortly under separate cover. There should be no material changes to the financial statements or footnotes as outlined in the attached.

when in truth and fact, as Conspirator A then well knew, the documents attached to the letter were spurious.

In violation of 18 U.S.C. § 371.

GREGORY G. LOCKHART (0007791)
United States Attorney