

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff,

v.

MANUEL DURAN a/k/a
MANUEL R. DURAN a/k/a
MANNY DURAN a/k/a
MANUEL DURAN OVIEDO,
Defendant,

and

BOSTON PRIVATE a/k/a BOSTON PRIVATE
BANK AND TRUST COMPANY,
EASTERN BANK,
ENTERPRISE BANK AND TRUST COMPANY,
and FIRST REPUBLIC BANK,
Trustee Defendants.

COMPLAINT

RECEIVED

SEP 27 2021

SUPERIOR COURT-CIVIL
MICHAEL JOSEPH DONOVAN
CLERK/MAGISTRATE

Introduction

1. The Commonwealth of Massachusetts (the "Commonwealth"), by and through its Attorney General, Maura Healey, brings this enforcement action pursuant to the Massachusetts False Claims Act, G.L. c. 12, § 5A *et seq.* ("MFCA") against Manuel Duran ("Mr. Duran"), the long-time and now former Executive Director, Chief Executive Officer and President of Casa Nueva Vida, Inc. ("CNV"), a charitable corporation that has a contract with the Commonwealth to provide shelter, transitional housing and housing search/stabilization services.

2. This action arises from Mr. Duran's repeated false statements and material omissions on documents submitted to state agencies, in which he certified that CNV was not engaging in related party transactions and was complying with relevant laws and regulations.

3. In reality, Mr. Duran himself entered into at least five material related party transactions with CNV, using shell companies that he established and owned, and did so on unfair terms that allowed him to inappropriately profit at the expense of the Commonwealth.

4. From Fiscal Year¹ 2014 to 2019, Mr. Duran's false statements and material omissions enabled CNV to receive over \$33 million in state funding under a contract it held with the Department of Housing and Community Development ("DHCD"). DHCD is a state agency that pays contractors to provide shelter and transitional housing services for individuals and families who would otherwise experience homelessness.

5. To carry out his fraud, Mr. Duran, on CNV's behalf, signed leases for properties owned by shell companies that he himself wholly owned and controlled. The leases charged CNV a monthly rent that was substantially more than the rent it otherwise would have paid for comparable properties on the open market, resulting in over a million dollars in unfair overpayments.

6. In some instances, Mr. Duran directed CNV to pay hundreds of thousands of dollars in funding it had received from the Commonwealth to make improvements and repairs to properties he owned. Mr. Duran is currently trying to sell one of these properties at a substantial profit. Mr. Duran failed to disclose to the Commonwealth that its funds were being utilized to improve properties which he owned.

¹ The Commonwealth's fiscal year runs from July 1st of the prior calendar year through June 30th of a given year. For example, FY 2014 runs from July 1, 2013 to June 30, 2014.

7. Mr. Duran's false statements and material omissions led the Commonwealth to believe that CNV was engaging in fair and competitive transactions.

8. As a result of his false statements and fraudulent omissions, Mr. Duran built significant personal wealth off serial non-disclosed related party transactions at the expense of the Commonwealth, claiming in October 2019 bank financing documents that his collection of real properties had a fair market value in excess of \$22 million dollars.

Jurisdiction and Venue

9. The Attorney General is authorized to bring this action pursuant to G.L. c. 12, § 5C.

10. This Court has jurisdiction over the persons and subject matter of this action pursuant to G.L. c. 12, § 5C and G.L. c. 223A, § 3.

11. Venue is proper in Suffolk County pursuant to G.L. c. 12, § 5C and G.L. c. 223, § 5.

Parties

12. Plaintiff is the Commonwealth of Massachusetts, represented by the Attorney General, who brings this action in the public interest pursuant to G.L. c. 12, § 5C.

13. Defendant, Manuel Duran, also known as Manuel R. Duran, also known as Manny Duran, also known as Manuel Duran Oviedo ("Mr. Duran"), is an individual residing at 274 LaGrange Street, West Roxbury, Massachusetts 02132.

14. Trustee Defendant, Boston Private, also known as Boston Private Bank and Trust Company ("Boston Private"), is a financial institution that, among other things, is a depository for funds and the trustee of financial accounts for customers, with a principal office address of

10 Post Office Square, Boston, Massachusetts 02109. Upon information and belief, Mr. Duran maintains one or more accounts at Boston Private.

15. Trustee Defendant, Eastern Bank, is a financial institution that, among other things, is a depository for funds and the trustee of financial accounts for customers, with a principal office address of 265 Franklin Street, Boston, Massachusetts 02110. Upon information and belief, Mr. Duran maintains one or more accounts at Eastern Bank.

16. Trustee Defendant, Enterprise Bank and Trust Company ("Enterprise Bank"), is a financial institution that, among other things, is a depository for funds and the trustee of financial accounts for customers, with a principal office address of 222 Merrimack Street, Lowell, Massachusetts 01852. Upon information and belief, Mr. Duran maintains one or more accounts at Enterprise Bank.

17. Trustee Defendant, First Republic Bank, is a financial institution that, among other things, is a depository for funds and the trustee of financial accounts for customers, with a principal office address of 160 Federal Street, Boston, Massachusetts 02110. Upon information and belief, Mr. Duran maintains one or more accounts at First Republic Bank.

Facts

18. CNV is a charitable corporation organized and existing under the laws of the Commonwealth with a principal place of business at 53 Glen Road, Jamaica Plain, Massachusetts. CNV was originally formed on June 6, 1988 under the name "Andrews Family Shelter, Inc." The charitable corporation underwent a name change to "Casa Nueva Vida, Inc." on March 2, 1993. CNV is a homeless service provider organization and receives state funding to provide shelter, transitional housing and housing search/stabilization services.

19. Starting in or about March 2003 and continuing through in or about March 2021, Mr. Duran served in a variety of leadership capacities at CNV, including Executive Director, Chief Executive Officer, President and Board Member. Mr. Duran directly managed and oversaw the daily operations of CNV during this same time period. Although CNV maintained a Board of Directors, Mr. Duran controlled CNV's day-to-day operations, as well as its real estate investments and leases, and Mr. Duran purposefully did not disclose all of his actions to the Board.

20. On July 9, 2008, the Operational Services Division of the Commonwealth ("OSD") issued a Request for Response ("RFR") titled "2008 Temporary Emergency Shelter RFR" ("2008 TES RFR").

21. CNV responded to the 2008 TES RFR and was thereafter awarded a contract by DHCD for the provision of emergency and homeless shelter services and housing search/stabilization services ("the Contract").

22. The Contract became effective on July 1, 2009 and was between CNV and DHCD. Mr. Duran was responsible for administrative aspects of the contract with DHCD on behalf of CNV.

23. Between July 1, 2009 and March 31, 2021, CNV and DHCD frequently renewed and amended the Contract, and the Contract remained in effect at all times during that period.

24. OSD and DHCD are Political Subdivisions as defined by the MFCA.

25. DHCD is the state agency responsible for procuring and managing contracts with human and social services contractors ("Contractors") such as CNV. As of February 2020, DHCD held 47 contracts for the provision of emergency and homeless shelter services and housing search/stabilization services in the Commonwealth, including the Contract with CNV.

26. Under state law, Contractors are required to submit to OSD financial statements and filings demonstrating contract compliance.

27. Compliance with the Contract is governed by OSD regulation, 808 CMR 1.00 *et seq.*, titled “Compliance, Reporting and Auditing for Human and Social Services” (“OSD Regulations”) and a compliance manual published by OSD (the “OSD manual”) which provides an in-depth explanation of OSD Regulations.² These OSD Regulations are the primary regulations covering contract compliance, financial reporting and auditing requirements for Contractors.

28. Both the OSD Regulations and the OSD manual contain requirements for disclosure of Related Party relationships or transactions.

29. A “Related Party” (“Related Party”) is defined in Section 1.02 of the OSD Regulations as “[a]ny person or organization satisfying the criteria for a Related Party published by the Financial Accounting Standards Board in Statement of Financial Accounting Standards No. 57 (FASB 57), Codification 850-10-20.”

30. The FASB 57 definition of Related Party provides examples of entities which are a Related Party, including: “. . . principal owners of the enterprise; its management; members of the immediate families of principal owners of the enterprise and its management; and other parties with which the enterprise may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.”³

² See generally MASSACHUSETTS OPERATIONAL SERVICES DIVISION, UFR AUDIT AND PREPARATION MANUAL UNDER 808 CMR 1.00 (2020), <https://www.mass.gov/doc/ufr-audit-and-preparation-manual-for-fy2020/download>.

³ FINANCIAL ACCOUNTING STANDARDS BOARD, STATEMENT OF FINANCIAL ACCOUNTING STANDARD NO. 57 (1982), https://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1218220127001&acceptedDisclaimer=true.

31. Pursuant to Section 1.04(2) of the OSD Regulations, on an annual basis, every Contractor must submit “a [Uniform Financial Report (“UFR”)] or a certification of exemption, to OSD in accordance with the standards and instructions contained in the UFR.” The UFRs and all related materials submitted to OSD are required to be certified under the penalties of perjury as true and accurate and signed by a Massachusetts independent public accountant engaged by the Contractor or by an authorized signatory for the Contractor’s Board of Directors.

32. The UFR requires Contractors to sign an Acknowledgement “certify[ing] under the penalty of perjury that to the best of the members of the Board of Directors’ knowledge, all material related party relationships and transactions, as defined by [Section 1.02 of the OSD Regulations] and generally accepted accounting standards, and other representations made by management are accurate and have been correctly and completely disclosed as required in the notes to the financial statements and schedules of the UFR” for each fiscal year at issue (“Acknowledgement”).

33. Section 1.04(4) of the OSD Regulations imposes a separate Related Party disclosure obligation on Contractors. That provision states: “Notice of all Related Party transactions (including the relationship of the Related Party and a description of the nature and amount of the transaction) shall be made in writing to OSD and the Department(s) prior to their execution.”

34. The OSD manual for the OSD Regulations also requires Contractors subject to UFR filing requirements to disclose Related Party relationships and transactions in the notes to the financial statements contained in their UFRs.⁴ The OSD manual provides that, in the event

⁴ UFR AUDIT AND PREPARATION MANUAL UNDER 808 CMR 1.00 at 66.

the Contractor encounters a Related Party relationship or transaction, the Contractor must disclose the following information with regard to that Related Party relationship or transaction:

“(a) the nature of related party relationship;

(b) the receivables or payables associated with related party transactions for each period the Balance Sheet (Statement of Position) or program budget is presented and, if not clearly determinable, the conditions and methods of settlement;

(c) for each period that an income statement or program budget is presented, the following is required: (1) A description of transactions and other necessary information needed for an understanding of the impact of the transactions; and (2) dollar amounts assigned to transactions, and the impact of determining the terms of the transactions, if different from prior periods;

(d) if two or more companies are under common control via ownership or management, the disclosure in a. above is required, even though no transactions occurred, if the existence of that control could result in operating results or a financial position significantly different from that which would have been obtained if the enterprises were autonomous.”⁵

35. The Acknowledgement and other Related Party disclosure obligations are necessary because all transactions and events reported by Contractors to OSD are presumed to be completed on an arm’s length basis. When Related Party transactions exist, this presumption of an arm’s length relationship no longer applies and the Contractor needs to identify such transactions to avoid unreliable accounting and misleading the Commonwealth.

36. Because CNV was a Contractor with the Commonwealth, the OSD Regulations and OSD manual applied to the Contract and CNV was required to disclose any and all material Related Party relationships and transactions – both on an annual basis in the UFRs and prior to each and every transaction it entered into with a Related Party. Mr. Duran was responsible for

⁵ *Id.*

making these disclosures prior to entering into any Related Party transactions, particularly transactions from which he stood to personally benefit.

37. In each of the Fiscal Years 2014 through 2019, Mr. Duran caused CNV to submit UFRs to OSD with the Acknowledgement set forth in paragraph 32 above, or a substantially similar Acknowledgment, certifying that all material Related Party relationships or transactions were correctly and completely disclosed.

38. Mr. Duran failed to disclose any of the Related Party relationships or transactions in the UFRs submitted by CNV to OSD during Fiscal Years 2014 through 2019.

39. Mr. Duran's certifications in the Acknowledgements were knowingly false and fraudulent.

40. Mr. Duran also failed to disclose his Related Party transactions to OSD in the notes to CNV's financial statements in its UFRs or through a separate written disclosure as required by Section 1.04(4) of the OSD Regulations.

41. On a monthly basis during Fiscal Year 2014 through 2020, CNV submitted invoices to DHCD. On invoices CNV submitted for payment to DHCD, Mr. Duran knowingly and falsely certified under pains and penalties of perjury "that all laws of the Commonwealth of Massachusetts governing disbursements of public funds and the regulations thereof have been complied with and observed."

42. In reliance on Mr. Duran's fraudulent statements and material omissions in the UFRs, failure to provide written disclosures pursuant to Section 1.04(4) of the OSD Regulations, and false certifications on invoices, DHCD continued to renew the Contract with CNV and, during Fiscal Years 2014 through 2020, provided the following funding to CNV to run programs to provide emergency and homeless shelter services and housing

search/stabilization services to families in the Commonwealth:

FY 2014	\$694,764.42
FY 2015	\$1,556,695.92
FY 2016	\$4,954,993.49
FY 2017	\$6,148,376.71
FY 2018	\$6,658,980.34
FY 2019	\$6,676,622.34
<u>FY 2020</u>	<u>\$6,676,622.34</u>
TOTAL	\$33,367,055.56.

43. During Fiscal Years 2015 to 2019, CNV received approximately 92% of its budget from the Commonwealth. And in some years during that period, state funding accounted for 99% of CNV's budget.

44. With CNV under Mr. Duran's control and with millions of dollars of state funding in CNV's coffers, Mr. Duran carried out multiple schemes to misappropriate those funds for his own personal benefit. Upon information and belief, CNV's Board was unaware of Mr. Duran's deceptive self-dealing.

45. Mr. Duran created multiple corporate entities to perpetuate a scheme of using undisclosed Related Party transactions to improperly extract money from the Commonwealth through CNV's contract with DHCD. Mr. Duran formed the following corporate entities in the Commonwealth:

2 & 4 Mark Street LLC;
7 Mark Street, LLC;
8 Brookside Avenue, LLC;

49 Thorndike Street Property Management, LLC;

70 Peter Parley Road, LLC;

126 Day Street, LLC

282 Walnut Avenue, LLC;

284 Essex Street, LLC;

Duvern Real Estate Group, LLC;

Durosa LLC;

Duveido Contracting Services, Inc.;

Duveido Properties, LLC;

Duveido Property Management, LLC;

Gloluz Realty LLC;

Luzrosa Realty, LLC;

Mangela Realty LLC; and

Mayoya Realty Management, LLC.

46. If Mr. Duran had properly disclosed the material Related Party relationships and transactions he engaged in with CNV, OSD and DHCD would not have entered into or extended contracts with CNV, CNV would not have received millions of dollars in funding from the Commonwealth, and Mr. Duran would not have had the opportunity to misappropriate state funds for his own personal benefit.

47. These repeated material false statements and omissions by Mr. Duran violated Massachusetts law and regulations governing the disbursement of public funds to Contractors.

48. As set forth more fully below, contrary to Mr. Duran's representations, he had engaged in at least five material Related Party transactions with CNV during the Fiscal Years at issue.

49. Mr. Duran's material Related Party transactions involved, but were not limited to, leases of the following parcels of Massachusetts real property to CNV: 6 Ware Street, Dorchester; 133 Essex Street, Lawrence; 49 Thorndike Street, Lawrence; 86-88 Howland Street, Roxbury; and 117 Howland Street, Roxbury, and are more fully described below.

6 Ware Street, Dorchester

50. On October 5, 2015, Mr. Duran filed Articles of Organization with the Secretary of the Commonwealth to form a new limited liability company, Gloluz Realty LLC, also known as GloLuz Realty LLC ("Gloluz Realty LLC"). Mr. Duran registered as the company's agent, managing member, and contract signatory. In the Articles of Organization, the general character of Gloluz Realty LLC was "to operate, manage, maintain, acquire, rent and sell real estate....."

51. In its Articles of Organization, the address of 19 Moraine Street, Jamaica Plain, Massachusetts was provided for Gloluz Realty LLC. Mr. Duran and his wife are the 100% owners of 19 Moraine Street, Jamaica Plain, Massachusetts.

52. Mr. Duran is the 100% owner of Gloluz Realty LLC.

53. Gloluz Realty LLC is a Related Party to CNV, as that term is defined by Section 1.02 of the OSD Regulations, because Mr. Duran is the 100% owner of Gloluz Realty LLC. Therefore, in order to comply with Sections 1.04(2) and 1.04(4) of the OSD Regulations, any and all transactions between Gloluz Realty LLC and CNV were required to be disclosed to OSD.

54. On October 15, 2015, Gloluz Realty LLC purchased 6 Ware Street, Dorchester, Massachusetts (“6 Ware Street”). The purchase was financed with a \$325,000 loan from Eastern Bank which was secured by a mortgage on 6 Ware Street.

55. In or about August 2015, as part of Eastern Bank’s financing approval process for the \$325,000 loan, Mr. Duran presented Eastern Bank with a lease agreement between Gloluz Realty LLC and CNV for 6 Ware Street. The lease, dated August 28, 2015, provided for a term of ten years, commencing on October 1, 2015 and terminating on September 30, 2026, at a monthly rent of \$7,000. The August 28, 2015 lease was not the actual lease that CNV entered into.

56. As part of the loan approval process, Mr. Duran also provided Eastern Bank with Minutes from a CNV Board of Directors meeting held on August 26, 2015. As set forth in the Minutes, on August 26, 2015, CNV’s Board of Directors purportedly approved the execution of a lease for 6 Ware Street. The Minutes state that Mr. Duran “mentioned that he wanted to informed [sic] the Board that he had a vested interest in the property and that they should take that into account in any decision made.” The Minutes do not reflect any further discussion of Mr. Duran’s “vested interest” or of the reasonableness of the monthly rent amount associated with 6 Ware Street.

57. Mr. Duran’s certification in the Acknowledgement respecting CNV’s UFR for Fiscal Year 2016 did not disclose this relationship or transaction as a Related Party transaction.

58. As part of its loan approval process, Eastern Bank utilized a Senior Appraiser and Environmental Officer to determine, *inter alia*, the fair rental value of 6 Ware Street as of December 19, 2014 (the “Ware Street Appraisal”).

59. The Ware Street Appraisal compared the monthly rent reflected in the purported August 28, 2015 lease between CNV and Gloluz Realty LLC to that of comparable properties in the area. Under a chart titled "Rental Comparables - Single Family Rentals Dorchester," the Ware Street Appraisal provides: "Comparable rents were between \$3,000 and \$3,800 for a three to five bedroom house each in a superior location and in superior condition to the subject property. Monthly rent for the subject property is significantly above market at \$7,000/month. Mitigating this concern is in-place lease with [CNV] that is co-terminus with the loan."

60. Eastern Bank's written approval of the loan provides: "In the event [CNV] terminates the lease, the Borrower [Mr. Duran] would unlikely be able to attain rents at the same level."

61. On January 1, 2016, Gloluz Realty LLC and CNV entered into a new lease for 6 Ware Street for a term of five years, commencing on February 1, 2016 and ending on January 31, 2021, with rental payments of \$6,800 per month. In the new lease, 6 Ware Street is described as "consisting of 7 bedrooms, kitchen, dining room, living room, four (4) bathrooms, basement, foyer, porch, front and back yard, together with the right to use in common, with others entitled thereto, the hallways, stairways necessary to said leased premises."

62. Mr. Duran, in his dual role as sole manager/100% owner of Gloluz Realty LLC and Executive Director, Chief Executive Officer and President of CNV, caused CNV to enter the 6 Ware Street lease at a monthly rent significantly above the monthly rent CNV otherwise could have obtained on the open market for similar space at a comparable property.

63. For the period of February 1, 2016 through January 31, 2021, CNV paid at least \$3,000 per month more in rent than it otherwise would have paid for comparable properties in the area, and Mr. Duran received at least \$3,000 per month in rent from CNV in excess of the

rent 6 Ware Street would otherwise have garnered had it been rented to a disinterested party on the open market. This overage paid by CNV to Mr. Duran totaled at least \$180,000 during the five-year rental term.

64. Neither Mr. Duran nor CNV ever disclosed to OSD that the lease of 6 Ware Street by Gloluz Realty LLC to CNV was a Related Party transaction because that property was owned by Gloluz Realty LLC, an entity of which Mr. Duran was the sole manager and 100% owner.

65. Mr. Duran's undisclosed self-dealing enabled him to inappropriately profit in regard to 6 Ware Street at the expense of the Commonwealth.

133 Essex Street, Lawrence

66. The real property known as and numbered 131-137 Essex Street, Lawrence, Massachusetts, of which 133 Essex Street is a part ("133 Essex Street"), is titled in the name of the Maggio Realty Trust u/d/t dated January 22, 1997. As is set forth in the Declaration of Trust, the original Trustee of the Maggio Realty Trust was Juan Canessa of 1 Lockman Place, Staten Island, New York. However, the address of the Maggio Realty Trust was disclosed as 17 Moraine Street, Jamaica Plain, Massachusetts. Mr. Duran and his wife have been the 100% owners of the real property known as and numbered 17-19 Moraine Street, Jamaica Plain, Massachusetts since 1994.

67. The current Trustees of the Maggio Realty Trust, Oscar Lozano, Mabel Lozano and Meishan Cosmo, are, upon information and belief, Mr. Duran's cousins.

68. On May 9, 2014, the Maggio Realty Trust and Marchen Property Managing, LLC entered into a lease for 133 Essex Street for a term of five years, commencing on

July 1, 2014 and ending on June 30, 2019, with required rental payments of \$11,750 per month. In the lease, the property is described as “27 rooms.”

69. On August 1, 2019, Maggio Realty Trust leased 133 Essex Street to Marchen Property Managing, LLC for a second term of five years, commencing on August 1, 2019 and ending on July 31, 2024, with rental payments of \$12,102.50 per month. In this later lease, the property is again described as “27 rooms.”

70. Marchen Property Managing, LLC was created to serve as a sham corporation to shield Mr. Duran’s identity in regard to his real property ownership, and to allow Mr. Duran to perpetrate fraud.

71. Marchen Property Managing, LLC is a limited liability company organized under the laws of the Commonwealth on May 5, 2014. The Certificate of Organization for Marchen Property Managing, LLC filed with the Secretary of the Commonwealth was signed by Ramon Marchena (“Mr. Marchena”) and listed Mr. Marchena’s address as 282 Walnut Avenue, Number 7, Roxbury, Massachusetts. Mr. Duran, through 282 Walnut Avenue, LLC, is the 100% owner of the real property known as and numbered 282 Walnut Avenue, Roxbury, Massachusetts.

72. In its Certificate of Organization, the general character of Marchen Property Managing, LLC was “to provide property management services to landlords who need rent collection, maintenance services and representation on their behalf.”

73. Since its formation, Mr. Duran has maintained pervasive control over Marchen Property Managing, LLC, disregarding its corporate existence. For example, when a bank account for Marchen Property Managing, LLC was opened at Eastern Bank on May 7, 2014, Mr. Marchena listed the mailing address for the company as Post Office Box 301433,

Jamaica Plain, Massachusetts (the "Post Office Box"). The Post Office Box does not belong to Mr. Marchena or Marchen Property Managing, LLC, and instead has been owned by Mr. Duran since at least January 1, 2013.

74. As the ultimate indicator of Mr. Duran's nonobservance of corporate formalities, on June 30, 2018, Marchen Property Managing, LLC was involuntarily dissolved by the Secretary of the Commonwealth and it has not been reinstated.

75. Both Mr. Marchena and Mr. Duran have consistently intermingled their own personal assets and expenses with those of Marchen Property Managing, LLC. Marchen Property Managing, LLC has paid over \$44,000 to Qualita Constructora SRL, a construction company located in the Dominican Republic, which, upon information and belief, has built or is building a home for Mr. Duran in the Dominican Republic, Mr. Duran's birth place and a country to which he has strong ties.

76. On April 1, 2014, despite the fact that Marchen Property Managing, LLC had not yet entered into the lease for 133 Essex Street with Maggio Trust Realty, Marchen Property Managing, LLC and CNV nonetheless entered into a lease for 133 Essex Street for a term of five years, commencing on June 1, 2014 and terminating on May 31, 2019, with rental payments of \$25,000 per month.

77. Upon information and belief, CNV continues to utilize 133 Essex Street as a shelter and/or transitional housing and makes monthly payments of \$25,000 to Marchen Property Managing, LLC.

78. For the period of July 1, 2014 through June 30, 2019, Mr. Duran, using his various limited liability companies, was the paid the difference between the lease amount of \$11,750 per month paid by Marchen Property Managing, LLC for 133 Essex Street and the lease

amount of \$25,000 per month paid by CNV for that same property, totaling \$13,250 per month, or \$795,000 for the lease term.

79. For the period of July 1, 2019 to date, Mr. Duran, using his various limited liability companies, was paid the difference between the lease amount of \$12,102.50 per month paid by Marchen Property Managing, LLC for 133 Essex Street and the lease amount of \$25,000 per month paid by CNV for that same property, totaling \$11,750 per month, or \$317,250 through August 31, 2021.

80. Marchen Property Managing, LLC and Mr. Duran are Related Parties to CNV as that term is defined by Section 1.02 of the OSD Regulations, because Mr. Duran is the true principal owner of Marchen Property Managing, LLC and controls all of its activities. Therefore, in order to comply with Section 1.04(2) and 1.04(4) of the OSD Regulations, any and all transactions between Marchen Property Managing, LLC and CNV were required to be disclosed to OSD.

81. Neither Mr. Duran nor CNV ever disclosed to OSD that Mr. Duran was the true principal owner of Marchen Property Managing, LLC and that any transactions between Marchen Property Managing, LLC and CNV respecting 133 Essex Street were Related Party transactions.

82. Mr. Duran's undisclosed self-dealing enabled him to inappropriately profit in regard to 133 Essex Street at the expense of the Commonwealth.

49 Thorndike Street, Lawrence

83. On February 26, 2015, Mr. Duran, individually, entered into a Purchase and Sale Agreement to acquire the real property known as and numbered 49 Thorndike Street, Lawrence, Massachusetts ("49 Thorndike Street").

84. On March 18, 2015, CNV's Board of Director's held a meeting. As reflected in the Minutes from that meeting, Mr. Duran informed the Board as follows:

“...DHCD ha[s] approved CNV for another site in Lawrence and that we were talking to a landlord that was considering renting to [CNV] a single home located at 49 Thorndike Street. . . .”

85. As Mr. Duran, individually, had entered into a Purchase and Sale Agreement on February 26, 2015 to acquire 49 Thorndike Street, his representation to the CNV Board about “talking to a landlord that was considering renting to [CNV] a single home located at 49 Thorndike Street” was knowingly false as Mr. Duran, himself, was the potential landlord. Mr. Duran made this false representation in an effort to conceal his then-potential Related Party transaction from CNV's Board of Directors.

86. On April 1, 2015, despite the fact that Mr. Duran had not yet completed the purchase of 49 Thorndike Street, Mr. Duran signed a lease for that property on behalf of CNV for a term of five years, commencing on July 1, 2015 and ending on June 30, 2021, with rental payments of \$6,000 per month. In the lease, the property is described as “7 bedrooms, living room, dining room, closed [sic] porch, 3½ bathrooms, basement, garage, kitchen.”⁶

87. On April 29, 2015, Mr. Duran filed Articles of Organization with the Secretary of the Commonwealth to form a new limited liability company, 49 Thorndike Street Property Management, LLC. Mr. Duran registered as the company's agent, manager, and contract signatory. In the Articles of Organization, the general character of 49 Thorndike Street Property Management, LLC was “to manage, own and rent residential real estate.”

⁶ The lessor listed in the lease is Marchen Property Managing, LLC, the same company involved with 133 Essex Street, rather than the property's true owner. Upon information and belief, this was done to further conceal Mr. Duran's ownership of 49 Thorndike Street.

88. Mr. Duran is the 100% owner of 49 Thorndike Street Property Management, LLC.

89. 49 Thorndike Street Property Management, LLC is a Related Party to CNV, as that term is defined by Section 1.02 of the OSD Regulations, because Mr. Duran is the 100% owner of 49 Thorndike Street Property Management, LLC. Therefore, in order to comply with Sections 1.04(2) and 1.04(4) of the OSD Regulations, any and all transactions between 49 Thorndike Street Property Management, LLC and CNV were required to be disclosed to OSD.

90. On April 30, 2015, the day after the limited liability company was formed, 49 Thorndike Street Property Management, LLC purchased 49 Thorndike Street for consideration of \$170,000.

91. CNV's lease of 49 Thorndike Street from Marchen Property Managing, LLC, an entity controlled by Mr. Duran, was a Related Party transaction. Mr. Duran was required to disclose this lease as a Related Party transaction on each UFR filed with OSD for every year of the lease, Fiscal Year 2015 through Fiscal Year 2022.

92. Starting over three months before the lease began until November 18, 2020, CNV, under the direction of Mr. Duran, paid in excess of \$77,000 to repair and improve 49 Thorndike Street, using funds obtained pursuant to the Contract, which repairs and improvements greatly benefitted the property's owner, 49 Thorndike Street Property Management, LLC, and thus Mr. Duran.

93. In addition to the substantial sums paid to repair and improve 49 Thorndike Street, the monthly rental payments CNV made for the benefit of 49 Thorndike Street Property Management, LLC, an entity owned 100% by Mr. Duran, were, upon information and belief,

double the fair market rental value of that property. Thus, for the five-year term of the lease, CNV paid, using funds obtained pursuant to the Contract, at least \$3,000 per month more in rent than it otherwise would have paid for comparable properties in the area, and Mr. Duran received at least \$3,000 per month in rent in excess of the rent 49 Thorndike Street otherwise would have commanded had it been rented to a disinterested party on the open market. This overage paid to Mr. Duran totaled at least \$180,000 during the five-year rental term.

94. As the ultimate indicator of Mr. Duran's nonobservance of corporate formalities, on June 30, 2021, 49 Thorndike Street Property Management, LLC was involuntarily dissolved by the Secretary of the Commonwealth and it has not been reinstated.

95. Neither Mr. Duran nor CNV ever disclosed to OSD the nature of 49 Thorndike Street Property Management, LLC's transactions with CNV with respect to the lease of 49 Thorndike Street.

96. Mr. Duran's undisclosed self-dealing enabled him to inappropriately profit in regard to 49 Thorndike Street at the expense of the Commonwealth.

86-88 Howland Street and 117-119 Howland Street, Roxbury

97. Mr. Duran is the registered agent, managing member, and contract signatory of Gloluz Realty LLC.

98. Mr. Duran is the 100% owner of Gloluz Realty LLC.

99. Gloluz Realty LLC is a Related Party to CNV, as that term is defined by Section 1.02 of the OSD Regulations, because Mr. Duran is the 100% owner of Gloluz Realty LLC. Therefore, in order to comply with Sections 1.04(2) and 1.04(4) of the OSD Regulations, any and all transactions between Gloluz Realty LLC and CNV were required to be disclosed to OSD.

100. On December 14, 2017, Mr. Duran filed Articles of Organization with the Secretary of the Commonwealth to form a new limited liability company, Mayoya Realty Management, LLC. Mr. Duran registered as the company's agent, manager, and contract and real estate signatory. In the Articles of Organization, the general character of Mayoya Realty Management, LLC was listed as "real estate ownership and management."

101. Mr. Duran is the 100% owner of Mayoya Realty Management, LLC.

102. Mayoya Realty Management, LLC is a Related Party to CNV, as that term is defined by Section 1.02 of the OSD Regulations, because Mayoya Realty Management, LLC is owned 100% by Mr. Duran. Therefore, in order to comply with Sections 1.04(2) and 1.04(4) of the OSD Regulations, any and all transactions between Mayoya Realty Management, LLC and CNV were required to be disclosed to OSD.

103. At a CNV Board of Directors meeting held on September 20, 2017, Mr. Duran informed the Board that he was in the process of signing a lease on behalf of CNV for two new properties, which were identified in the meeting's Minutes as 86-88 Howland Street, (86-88 Howland Street") and 117-119 Howland Street ("117-119 Howland Street"), both located in Roxbury, Massachusetts. As set forth in the Minutes, "[Mr. Duran] requested an approval for the board of directors to lease those two properties for [CNV] from Gloluz Realty, LLC [sic], once they became available, sometime in December [of 2017]." Mr. Duran did not disclose the fact that he was the 100% owner of both Gloluz Realty LLC and Mayoya Realty Management, LLC, and that CNV's lease of both 86-88 Howland Street and 117-119 Howland Street would be Related Party transactions.

104. On January 8, 2018, Gloluz Realty LLC purchased 86-88 Howland Street for consideration of \$780,000.

105. On January 1, 2018, despite the fact that Gloluz Realty LLC had not yet purchased 86-88 Howland Street, CNV entered into a lease for that property with Mayoya Realty Management, LLC, for a term of ten years, commencing on January 1, 2018 and ending on December 31, 2028, with rental payments of \$9,200 per month. In the lease, the property is described as “consisting of 4 family units.” Mr. Duran signed the lease on behalf of CNV.

106. During the period from March 9, 2018 through November 9, 2020, CNV, under the direction of Mr. Duran, expended over \$139,600 to repair and improve 86-88 Howland Street, which repairs and improvements greatly benefitted the property’s owner, Gloluz Realty LLC, and thus Mr. Duran.

107. During the period from February 21, 2018 through February 18, 2021, CNV made monthly rental payments respecting 86-88 Howland Street to Mayoya Realty Management, LLC totaling \$340,400.

108. Despite CNV’s expenditures for repairs, improvements and rent at 86-88 Howland Street, totaling \$480,000, upon information and belief, CNV never opened a shelter at that location or otherwise meaningfully used the property.

109. As the ultimate indicator of Mr. Duran’s nonobservance of corporate formalities, on June 30, 2021, Mayoya Realty Management, LLC, the listed lessor on the lease respecting 86-88 Howland Street, was involuntarily dissolved and it has not been reinstated.

110. As of August 2021, Mr. Duran had listed 86-88 Howland Street for sale at a price of \$1.2 million dollars.

111. On March 26, 2018, Gloluz Realty LLC purchased 117-119 Howland Street for consideration of \$725,000. The purchase was financed with a \$850,000 loan from Enterprise

Bank and Trust Company (“Enterprise Bank”) which was secured by a mortgage on 117-119 Howland Street.

112. As part of its loan approval process, Enterprise Bank utilized an independent appraiser (the “Appraiser”) to determine, *inter alia*, the fair rental value of 117-119 Howland Street as of January 28, 2018 (the “117-119 Howland Street Appraisal”).

113. In a section titled “Opinion of Market Rent,” the Appraiser surveyed six other properties in the area which she deemed comparable to 117-119 Howland Street. Based on this comparison, the Appraiser opined that 117-119 Howland Street had a fair market rental value of \$6,600 per month.

114. On May 25, 2018, CNV entered into a lease for 117-119 Howland Street with Mayoya Realty Management, LLC, for a term of ten years, commencing on June 1, 2018 and ending on May 30, 2029, with rental payments of \$9,000 per month, and with rent to commence on November 1, 2018. In the lease, the property is described as “consisting of 5 bedrooms, kitchen, two bathrooms, living room, front and back porch, a back yard and a large side lot as well as a full basement.” Mr. Duran signed the lease on behalf of CNV.

115. During the period from January 1, 2019 through October 2, 2020, CNV, under the direction of Mr. Duran, expended over \$184,000 to repair and improve 117-119 Howland Street, which repairs and improvements greatly benefitted the property’s owner, Gloluz Realty LLC, and thus Mr. Duran.

116. During the period November 6, 2018 through August 31, 2021, CNV made rental payments respecting 117-119 Howland Street of \$9,000 per month, totaling \$306,000, to Mayoya Realty Management, LLC, an entity wholly owned and controlled by Mr. Duran.

117. As determined in the 117-119 Howland Street Appraisal, at the time the 117-119 Howland Street lease was executed by Mayoya Realty Management, LLC and CNV, that real property's fair monthly rental value was \$6,600. However, CNV entered into a ten year lease for 117-119 Howland Street at a monthly rent of \$9,000.

118. Mr. Duran, in his dual role as sole manager/100% owner of Gloluz Realty LLC and Executive Director, Chief Executive Officer and President of CNV, caused CNV to enter the 117-119 Howland Street lease at a monthly rent significantly above the monthly rent CNV otherwise could have obtained on the open market for similar space at a comparable property.

119. For the period of November 6, 2018 through August 31, 2021, CNV paid \$2,400 per month more in rent than it otherwise should have paid for 117-119 Howland Street, and Mr. Duran received at least \$2,400 per month in rent from CNV in excess of the rent 117-119 Howland Street would otherwise have commanded had it been rented to a disinterested party on the open market. This overage paid by CNV to Mr. Duran totaled at least \$81,600 during the period of November 6, 2018 through August 31, 2021.

120. Neither Mr. Duran nor CNV ever disclosed to OSD the nature of Gloluz Realty LLC's and Mayoya Realty Management, LLC's transactions with CNV with respect to 86-88 Howland Street and 117-119 Howland Street.

121. Mr. Duran's undisclosed self-dealing enabled him to inappropriately profit in regard to 86-88 Howland Street and 117-119 Howland Street at the expense of the Commonwealth.

Causes of Action

Count I

Violations of the False Claims Act, G.L. c. 12, § 5B(a)(1)

122. The Commonwealth re-alleges the allegations contained above and incorporates them herein by reference.

123. In connection with the Contract, Mr. Duran violated G.L. c. 12, §5B(a)(1) by knowingly presenting, or causing to be presented, false or fraudulent claims for payment or approval by the Commonwealth.

124. The false claims for payment included, without limitation, invoices submitted to the Commonwealth by CNV wherein Mr. Duran falsely certified compliance with the laws and regulations of the Commonwealth governing the disbursement of public funds.

125. Mr. Duran's conduct was knowing because he possessed actual knowledge of relevant information, acted with deliberate ignorance of the truth or falsity of information, and/or acted with reckless disregard of the truth or falsity of the information.

126. Mr. Duran's MFCA violations caused damage to the Commonwealth.

Count II

Violations of the False Claims Act, G.L. c. 12, § 5B(a)(2)

127. The Commonwealth re-alleges the allegations contained above and incorporates them herein by reference.

128. In connection with the Contract, Mr. Duran violated G.L. c. 12, §5B(a)(2) by knowingly making, using, or causing to be made or used, false records or statements material to a false or fraudulent claim.

129. The false records and statements included, without limitation, falsely certifying in Acknowledgments required by CNV's UFRs that CNV had not entered into any Related Party transactions.

130. Mr. Duran's conduct was knowing because he possessed actual knowledge of relevant information, acted with deliberate ignorance of the truth or falsity of information, and/or acted with reckless disregard of the truth or falsity of the information.

131. Mr. Duran's MFCA violations caused damage to the Commonwealth.

PRAYERS FOR RELIEF

WHEREFORE, the Commonwealth requests that this Court:

1. Enter judgment in favor of the Commonwealth and against Mr. Duran as to Counts I and II and award the Commonwealth:
 - a. three times the amount of damages, including consequential damages, that the Commonwealth and its Political Subdivisions sustained because of Mr. Duran's conduct, pursuant to G.L. c. 12, § 5B;
 - b. an appropriate civil penalty for each violation of G.L. c. 12, § 5B; and
 - c. the expenses of this action including, without limitation, the Commonwealth's reasonable attorneys' fees, reasonable expert fees, and the costs of investigation for the Attorney General.
2. Enter an order approving attachment by trustee process of the monies, funds and credits standing in the name of Mr. Duran entrusted to or deposited with Trustee Defendants,

Boston Private, Eastern Bank, Enterprise Bank and First Republic Bank, up to the sum of \$2 million dollars.

3. Grant such other and further relief as the Court deems appropriate.

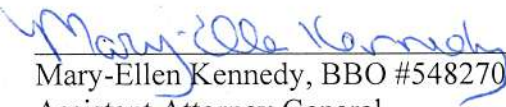
JURY DEMAND

The Commonwealth demands a trial by jury.

Respectfully Submitted,

Commonwealth of Massachusetts

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Date: September 27, 2021