

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO  
(Southern Division, Las Cruces)**

United States of America, ex rel. [UNDER SEAL]	)	Case No:
	)	
Relator,	)	<b>COMPLAINT FOR VIOLATION OF</b>
	)	<b>FEDERAL FALSE CLAIMS ACT [31</b>
v.	)	<b>U.S.C. § 3729 et seq.]</b>
	)	
[UNDER SEAL]	)	JURY TRIAL DEMANDED
	)	
Defendants.	)	<b>FILED UNDER SEAL PURSUANT TO</b>
	)	<b>31 U.S.C. § 3730(b)(2)</b>
	)	
_____	)	

**DOCUMENT TO BE KEPT UNDER SEAL**

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15 **UNITED STATES DISTRICT COURT**  
16 **DISTRICT OF NEW MEXICO**  
**(Southern Division, Las Cruces)**

17 United States of America, ex rel. Margaret ) Case No. 20-cv-00031 CG/KRS  
18 McGuinn )  
19 Relator, ) **FIRST AMENDED COMPLAINT FOR**  
20 v. ) **VIOLATION OF FEDERAL FALSE**  
21 ) **CLAIMS ACT [31 U.S.C. § 3729 et seq.]**  
22 ) **JURY TRIAL DEMANDED**  
The J.L. Gray Company; Logan Estates )  
23 2017, LLLP; Parkside Manor Limited ) **FILED UNDER SEAL PURSUANT TO**  
Partnership; and JLG Properties LLC; ) **31 U.S.C. § 3730(b)(2)**  
24 Defendants. )

1 **FIRST AMENDED COMPLAINT**

2 **INTRODUCTION**

3 1. Relator Margaret McGuinn (“McGuinn” or “Relator”) brings this action against  
4 The J.L. Gray Company (“Gray”) and a number of related entities (collectively, the  
5 “Defendants”), under the False Claims Act, 31 U.S.C. § 3729 et seq., to recover federal funds  
6 Defendants have received from the U.S. Department of Agriculture’s Rural Development  
7 (“USDA/RD”) program through the use of knowingly false statements, records and certifications  
8 with respect to the physical accessibility of at least seventy (70) apartment complexes in New  
9 Mexico, Texas, Colorado, Utah and Arizona, and subsequent knowingly false requests for  
10 payment of loan proceeds and rental subsidy funds. She has direct and independent knowledge  
11 concerning many of these developments.  
12

13  
14 2. For the past seventy years, Congress has authorized and appropriated federal  
15 funding to support the development of affordable rental housing for lower-income households in  
16 the nation’s rural areas. Those programs, administered by USDA/RD, provide loans, loan  
17 guarantees and rental subsidies to private entities—such as Defendants—who promise to strictly  
18 comply with statutory, regulatory and contractual provisions prescribed by USDA/RD  
19 concerning the development and operation of the resulting rental properties.  
20

21  
22 3. Among those provisions are the requirements to build and operate USDA/RD  
23 multifamily apartment complexes in a manner that is accessible to people with disabilities.  
24 Since at least 1973, such complexes built with federal funds have been required to comply with  
25 specific architectural and programmatic accessibility standards under Section 504 of the  
26

1 Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Section 504”). Through the Fair Housing Act  
2 (“FHA”), 42 U.S.C. § 3601 et seq., as amended by the Fair Housing Amendments Act of 1988,  
3 and the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12101 et seq., as  
4 amended by the ADA Amendments Act of 2008, Congress imposed additional accessibility  
5 obligations on Gray and other USDA/RD housing providers. USDA/RD, the U.S. Department  
6 of Housing and Urban Development (“HUD”), and the U.S. Department of Justice (“DOJ”) have  
7 promulgated accessibility regulations to clarify and amplify those obligations. Collectively,  
8 these accessibility provisions of Section 504, the FHA and the ADA are identified herein as the  
9 “Federal Accessibility Requirements.”  
10

11  
12 4. Gray has extensive knowledge of this history and of these requirements, and has  
13 been a recipient of USDA/RD funds since at least 1978. Defendants are required, as a material  
14 condition of receiving loans, loan guarantees and rental subsidy funds from USDA/RD, to certify  
15 compliance with the Federal Accessibility Requirements and to actually comply with those  
16 Requirements in the management and administration of properties operated with USDA/RD  
17 funds.  
18

19  
20 5. With its involvement in the development, ownership or management of at least 70  
21 affordable rental communities in New Mexico, Texas, Colorado, Utah and Arizona, Gray is one  
22 of the region’s largest and most frequent recipients of USDA/RD funds. During the ten-year  
23 period preceding the filing of the original Complaint (the “False Claims Period”), Gray received  
24 approximately \$90 million in such funds. As pled below, other Defendants also received  
25 USDA/RD funds during the False Claims Period.  
26





1 certifications.

2 15. Because the statement includes attorney work product of Relator’s counsel, and  
3 was submitted to the Attorney General and to the United States Attorney in their capacity as  
4 potential co-counsel in this litigation, the Relator understands this statement to be confidential.  
5

6 PARTIES

7 16. Margaret McGuinn is a resident of Las Cruces, New Mexico, who has worked as  
8 an Area Loan Specialist with USDA/RD since March 2009. Between then and October 2018,  
9 her primary responsibilities in that job were to ensure compliance with Federal Accessibility  
10 Requirements and other federal obligations by owners and managers of USDA/RD multifamily  
11 residential communities.  
12

13 17. The United States of America (“United States”), as the real party in interest in this  
14 litigation and through USDA/RD, provides housing-related funding to a variety of private  
15 entities so that they may provide housing to very-low-, low-, and moderate-income households<sup>1</sup>  
16 in rural areas throughout the United States. Receipt of the funds relevant to this action is  
17  
18

19 \_\_\_\_\_  
20  
21 <sup>1</sup> The USDA defines very-low, low, and moderate income by reference to standards established  
22 by HUD, which provide (generally) that a household with an income that does not exceed 50  
23 percent of the Area Median Income (“AMI”), adjusted for household size in the applicable  
24 county, is very-low income; a household with an income that does not exceed 80 percent of the  
25 AMI is low income; and a household with an income that does exceed 80 percent of the AMI,  
26 but not by more than \$5,500, is moderate income. 7 C.F.R. § 3560.11. For context, the U.S.  
27 Census Bureau’s American Community Survey reports that median household income for New  
28 Mexico in 2017 was \$46,744. As such, very-low-income households in New Mexico would  
29 have annual incomes less than around \$23,372, and are expected to contribute 30% of that  
income toward rent and utilities, with USDA/RD rental subsidies making up the gap between  
household contribution and the market rent demanded by the owner.

1 contingent on certifications that the recipient has met and will meet a variety of federal  
2 obligations concerning the accessibility of that housing.

3 18. Defendant Gray describes itself as “a fully integrated company that acquires,  
4 develops, and manages multi-family residential communities in the Southwest.” It owns,  
5 develops and/or manages 70 USDA/RD multifamily residential communities (comprising  
6 roughly 2,300 units) in New Mexico, Texas, Colorado, Utah and Arizona, including 35  
7 properties which McGuinn regularly monitored for compliance with the Federal Accessibility  
8 Requirements. Attached as Appendix A to this Complaint is a list of properties owned,  
9 developed and/or managed by Gray identified to date.

10 19. Defendant Logan Estates 2017, LLLP is a New Mexico limited liability limited  
11 partnership, and owner of the multifamily property known as Logan Estates Apartments in  
12 Logan, New Mexico. According to the New Mexico Secretary of State, its general partner is  
13 JLG Properties LLC, whose address is listed as 2407 West Picacho, Suite A1 in Las Cruces,  
14 New Mexico, which is one of the business addresses used by Defendant Gray. Defendant Logan  
15 Estates 2017, LLLP is a 2017 recipient of a USDA/RD Section 515 loan.

16 20. Defendant Parkside Manor Limited Partnership is a New Mexico limited  
17 partnership, and is the owner of the multifamily property known as Sierra Vista in Deming, New  
18 Mexico. According to the New Mexico Secretary of State, its general partners are JLG  
19 Properties LLC and Sierra Vista Deming LLC. The former of these entities has a business  
20 address of 1816 East Mojave Street in Farmington, New Mexico, which is one of the business  
21 addresses used by Defendant Gray. Defendant Parkside Manor Limited Partnership is a 2013  
22





1 to make housing available to low-income occupants (“Section 521” subsidy payments,  
2 codified at 42 U.S.C. § 1490a).<sup>2</sup>

3 24. During the False Claims Period, Gray and its agents have received each kind of  
4 federal funding described in ¶ 23, above, for the construction of new multifamily residential  
5 communities, rehabilitation of existing multifamily residential communities, or rental subsidies  
6 for low-income households living in those communities.  
7

8 25. This includes at least \$7 million in Section 514/515 construction loan funds for  
9 the new construction or rehabilitation of 8 of the 70 properties in its USDA/RD portfolio: El  
10 Camino Real Apartments, Logan Estates Apartments, Paseo Del Oro Apartments, Presidio  
11 Dolores Apartments, Sierra Vista, Valle Del Sol Apartments, Vista Rita Blanca Apartments and  
12 Mountain View Apartments.  
13

14 26. This also includes USDA/RD rental subsidies for approximately 82% of the 2,300  
15 units in Appendix A that Gray owns and/or manages, in the total amount of between \$4 million  
16 and \$9 million each year during the False Claims Period.  
17

18 27. When acting as a manager of USDA/RD-supported developments, Gray also  
19 received funds, including a management fee, through borrowers who were receiving the above  
20 USDA/RD funds.  
21

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25 <sup>2</sup> The Secretary is also authorized to provide loan guarantees to support multifamily rental  
26 housing in rural areas (“Section 538” loans, codified at 42 U.S.C. § 1490p-2). One Gray  
27 managed property, Falcon Ridge in Hatch, NM, received a Section 538 guaranteed loan of  
\$1,332,000 in 2011.





1 Federal Accessibility Requirements

2 38. As a recipient of federal funds, Gray must certify compliance with the Federal  
3 Accessibility Requirements, and *actually comply* with the same.

4 39. The Federal Accessibility Requirements mandate that apartment buildings be  
5 built so that they are accessible to people with mobility impairments (e.g., people who use  
6 wheelchairs, walkers or canes, or who have breathing or heart problems that make it hard to walk  
7 significant distances).

8 40. When federal funding is involved, the law goes a step further, requiring that  
9 certain apartment units have enhanced features in bathrooms, kitchens and other rooms that  
10 make them accessible to people with significant mobility disabilities, and that specified common  
11 areas be accessible to them.

12 41. The laws are specific, providing detailed measurements for compliance, because a  
13 door that is too narrow, a threshold that is too high, or a sink that cannot be approached in a  
14 wheelchair can each render an entire apartment unit or common area entirely inaccessible.  
15 Permitting Defendants to violate the Federal Accessibility Requirements deprives the  
16 Government of the accessibility benefits sought under USDA/RD funding programs.

17 42. As the Judiciary Committee recognized when enacting the Fair Housing  
18 Amendments Act of 1988, “a person using a wheelchair is just as effectively excluded from the  
19 opportunity to live in a particular dwelling by the lack of access into a unit and by too narrow  
20 doorways as by a posted sign saying ‘No Handicapped People Allowed.’” H.R. REP. 100-711, at  
21 25, 1988 U.S.C.C.A.N. 2173, 2186.

1           43. Congress enacted Section 504 in 1973, pursuant to the authority of the U.S.  
2 Constitution's Spending Clause, to ensure that entities receiving federal funds were bound by the  
3 material requirement that they not discriminate on the basis of disability. Applicants for, and  
4 recipients of, federal funds from any federal department or agency are obligated to certify their  
5 prospective and ongoing compliance with Section 504 and the funding agency's regulations  
6 adopted to implement the requirements of the statute.  
7

8           44. As Gray and its agents knew and were fully aware, the USDA promulgated  
9 regulations implementing Section 504 in 1982, requiring Gray and other recipients of USDA/RD  
10 loan or rental assistance funds to comply with the accessibility requirements of Section 504. *See*  
11 7 C.F.R. pt. 15b. The regulations mandate that facilities constructed by recipients of federal  
12 funds built for first occupancy after June 10, 1982, or substantially altered, are subject to certain  
13 design and construction requirements. These requirements include that common areas and at  
14 least five percent (5%) of apartment units in each building (or a minimum of one unit) comply  
15 with the heightened accessibility requirements defined by the Uniform Federal Accessibility  
16 Standards ("UFAS"),<sup>3</sup> 7 C.F.R. §§ 15b.19, 15b.41, simply to satisfy the minimum standards the  
17 Government is paying Defendants to meet under these programs.  
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21           45. Pursuant to the USDA/RD regulations and UFAS, accessible units must include  
22 elements such as:  
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26 <sup>3</sup> Available at [https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-](https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/ufas)  
27 [the-aba-standards/ufas](https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/ufas).

1 a. Lever hardware, a 36-inch-wide accessible route, and a minimum of 32-  
2 inch door openings;

3 b. Accessible kitchens, which are required to have a sufficiently wide clear  
4 workspace, 34-inch maximum counter heights, open or removable sink fronts, and front  
5 control knobs on stoves;  
6

7 c. Accessible bathrooms, which must have knee clearance under sinks with  
8 insulated pipes, toilet grab bars behind and beside the toilet, and an in-tub seat.  
9

10 46. In addition, USDA/RD regulations and UFAS have detailed requirements  
11 governing accessibility of the multifamily housing development as a whole, including:

12 a. Parking, with a minimum number of accessible spaces, and slopes not to  
13 exceed 2%;

14 b. Accessible routes, which must be at least 36 inches wide, linking parking,  
15 units, and all common elements;  
16

17 c. Ramps, which cannot have slopes exceeding 5%, and requirements for  
18 handrails for ramps of a certain rise or length;

19 d. Common areas, with a requirement that doorways have a clear opening of  
20 32 inches and thresholds not exceeding ½ inch height;  
21

22 e. Accessible mailboxes, dumpsters, switches, outlets, and thermostats for  
23 common areas;

24 f. Common area laundry, which must have sufficient space in front of  
25 washer/dryers, at least one front load washer, and counter top heights between 28 to 34  
26  
27

1 inches.

2 47. And as Gray and its agents also know, pursuant to the FHA, as amended, all  
3 common areas and all ground floor units (and any units served by an elevator) in multifamily  
4 apartment buildings containing four (4) or more units, built for first occupancy after March 13,  
5 1991, must contain the following design and construction elements:  
6

- 7 a. Public-use and common-use areas that are readily accessible to, and  
8 usable by, people with disabilities;
- 9 b. Doors into and within covered units that are sufficiently wide to allow  
10 passage by people in wheelchairs;
- 11 c. An accessible route into and through the dwelling;
- 12 d. Light switches, electrical outlets, thermostats and other environmental  
13 controls that are placed in accessible locations;
- 14 e. Reinforcements in bathroom walls that allow for the later installation of  
15 grab bars; and
- 16 f. Kitchens and bathrooms that are usable, such that an individual in a  
17 wheelchair can maneuver about the space. 42 U.S.C. § 3604(f)(3)(c).

18 48. FHA design and construction requirements are further fleshed out in HUD  
19 regulations. HUD promulgated final FHA design and construction regulations in January 1989,  
20 *see* 24 C.F.R. §100.205, and published the final Fair Housing Accessibility Guidelines on March  
21 6, 1991. *See* 56 Fed. Reg. 9,472.

22 49. Congress enacted the ADA in 1990. In pertinent part, it requires that places of  
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1 public accommodation—such as rental offices, visitor parking spaces and other amenities held  
2 out to the general public—comply with stated accessibility requirements. Pursuant to  
3 Congressional authority, the DOJ first promulgated regulations on July 26, 1991, *see* 28 C.F.R.  
4 pt. 36, and subsequently revised them, with the purpose of prohibiting discrimination on the  
5 basis of disability by mandating certain design and construction requirements.  
6

7         50. The ADA and its implementing regulations require that public areas of  
8 multifamily apartment buildings built for first occupancy or rehabilitated after January 26, 1993,  
9 be subject to the design and construction requirements contained in the Americans with  
10 Disabilities Act/Accessibility Guidelines (“ADA/AG”). *See* 42 U.S.C. § 12183; 28 C.F.R. §§  
11 36.401, 36.402, 36.406.  
12

13         51. Further, as a recipient of funds from the USDA/RD through Section 514/515  
14 loans, and Section 521 subsidy payments, Gray and the other Defendants also know they are  
15 subject to USDA/RD regulations, codified at 7 C.F.R. pt. 3560, which describe the requirements,  
16 policies, and procedures for those programs, including that design and construction of covered  
17 properties must be in conformance with the Federal Accessibility Requirements mentioned  
18 above, and all other federal, state and local requirements.  
19

20         52. The properties listed in Appendix A, which fall under the above-described  
21 parameters, are subject to Federal Accessibility Requirements listed above and are described  
22 herein as the “Covered Properties”.  
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1 the units to common areas, such as laundry rooms, common bathrooms, and office areas;

2 c. Thresholds at property office entrances that are too high for a wheelchair  
3 user to roll over;

4 d. Parking access aisles that are too narrow for wheelchair users, lack of  
5 designated accessible parking spaces, and excessive slopes in accessible parking spaces;

6 e. Lack of levered faucet or door handles in common area restrooms and  
7  
8 kitchens;

9 f. Lack of accessible laundry machines and too high counter tops in laundry  
10 area;

11 g. Common area bathroom sinks lacking sufficient height, knee/reach  
12 clearance, and sufficient floor space;

13 h. Inaccessible ramp routes;

14 i. Mailboxes, dumpster openings and common restroom mirrors that are too  
15  
16 high for wheelchair users; and

17 j. Lack of visual or tactile signage in common areas.

18  
19 55. The following specific examples are illustrative, and not exhaustive, of  
20 Defendant's pattern and practice of violating the Federal Accessibility Requirements across the  
21 35 properties that McGuinn observed during the False Claims Period, and which McGuinn has  
22 reason to believe is true of Gray's entire portfolio of at least 70 developments:  
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1 **Sierra Vista Apartments (Deming, NM)**

2 56. Sierra Vista, in Deming, New Mexico, is a covered multifamily complex  
3 consisting of 25 units that was completed in 2013, and is owned by Defendant Parkside Manor  
4 Limited Partnership, whose general partner is JLG Properties, LLC. Since it began operations,  
5 this Defendant and Defendant Gray have received Section 521 rental subsidy payments for as  
6 many as 19 units.  
7

8 57. During visits to the property on two occasions over the course of two years,  
9 McGuinn observed continuing violations of the Federal Accessibility Requirements including,  
10 but not limited to, the following:  
11

- 12 a. Common area kitchen lacks an accessible sink;
- 13 b. Laundry room has too high a threshold, acting as a barrier for persons in a  
14 wheelchair;
- 15 c. Laundry room has too high a counter top;
- 16 d. Units designated as accessible lack kitchen cabinetry and hardware at an  
17 accessible height, meaning a person in a wheelchair cannot even reach the bottom shelf  
18 of a cabinet to retrieve or put away items;
- 19 e. Units designated as accessible lack 30” of clear workspace in the kitchen,  
20 leaving wheelchair users without required counter prep space;
- 21 f. Units designated as accessible lack an accessible refrigerator, meaning a  
22 person in a wheelchair cannot reach to put away or retrieve food items without the  
23 possibility of being hurt;  
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1 g. Units designated as accessible lack an open under-counter sink area with  
2 covered plumbing in the bathroom, making it inaccessible to wheelchair users;

3 h. Medicine cabinets in designated units are mounted too high, rendering  
4 them inaccessible to persons in a wheelchair.  
5

6 **Logan Estates Apartments (Logan, NM)**

7 58. Logan Estates Apartments in Logan, New Mexico, is a covered multifamily  
8 complex consisting of 7 units that was acquired in 2017 with the assistance of a USDA/RD loan.  
9 It is owned by Defendant Logan Estates 2017, LLLP, whose general partner is JLG Properties  
10 LLC. Since it began operations, this Defendant and Defendant Gray have received Section 521  
11 rental subsidy payments for all of the units.  
12

13 59. On information and belief, continuing violations of the Federal Accessibility  
14 Requirements exist at Logan Estates Apartments, including, but not limited to, the following:  
15

- 16 a. Kitchens do not appear to have the UFAS required 30" of counter workspace that  
17 is open and free of cabinetry underneath;
- 18 b. Kitchens do not appear to have the UFAS required under-sink area open and free  
19 of cabinetry or have removable cabinetry underneath;
- 20 c. The water control in the tub area does not appear to be mounted toward the front  
21 of the tub so it is within reach from outside the tub;
- 22 d. The access aisle in between the two accessible parking spaces does not appear to  
23 be the UFAS required minimum of 60" wide.  
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1 fall danger.

2 **Valley View Apartments (Silver City, NM)**

3 64. Valley View, in Silver City, New Mexico, is a covered multifamily complex  
4 consisting of 32 units that was completed in 1995. Since it began operations, Defendant Gray has  
5 received Section 521 rental assistance payments on as many as 31 units.  
6

7 65. During visits to the property on two occasions over the course of eight years,  
8 McGuinn observed continuing violations of the federal accessibility standards including, but not  
9 limited to, the following:  
10

11 a. Lack of an accessible route from the parking lot and other arrival points to  
12 individual units and other common areas of the property;

13 b. Property does not meet the 5% accessible unit requirement, causing  
14 accessible units to not be available to tenants and applicants in need;  
15

16 c. Parking access aisles are too narrow, and therefore prevent a wheelchair  
17 user from parking and having sufficient room to set up and transfer to a wheelchair to  
18 enter a dwelling or the leasing office;

19 d. Parking spaces designated as accessible are at an overly steep slope,  
20 raising the dangerous possibility that a person in a wheelchair could roll into traffic;  
21

22 e. Sidewalks have many unbeveled trip points throughout the property,  
23 creating impediments on paths of travel that are required to be accessible to people with  
24 disabilities;  
25

26 f. Ramps in parking lot have too steep a slope, making it dangerous for a  
27



1 person in a wheelchair to use;

2 g. Dumpster opening is too high, rendering the dumpster inaccessible to  
3 wheelchair users;

4 h. Staircases do not have cane blocking, causing a head injury danger for  
5 sight impaired persons;

6 i. Handrails on staircases are too high;

7 j. Staircases have open risers, causing a trip hazard for elderly people and  
8 people with reduced or limited mobility;

9 k. Visual and tactile signage is missing from the interior of the office  
10 building, preventing a vision-impaired person from being able to distinguish between the  
11 office, closets, and restrooms;

12 l. Laundry room sink lacks proper height, knee and reach clearance,  
13 rendering it inaccessible to wheelchair users;

14 m. Units designated as accessible have environmental controls placed at  
15 heights beyond the reach of a person in a wheelchair;

16 n. Kitchen clearances are insufficient to allow a person in a wheelchair to  
17 maneuver about the space;

18 o. Units designated as accessible lack kitchen cabinetry at an accessible  
19 height, meaning a person in a wheelchair cannot even reach the bottom shelf of a cabinet  
20 to retrieve or put away items;

21 p. Units designated as accessible lack an open under-counter sink area with  
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1 covered plumbing in the kitchen, making it inaccessible to wheelchair users;

2 q. Units designated as accessible lack 30” of clear workspace in the kitchen,  
3 leaving wheelchair users without required counter prep space;

4 r. Units designated as accessible lack an accessible stove, meaning a person  
5 in a wheelchair cannot use the stove without the possibility of being burned;

6 s. Units designated as accessible lack a separate switch for a range hood fan  
7 and a light at an accessible height, as such these functions are inaccessible to a person in  
8 a wheelchair;

9 t. Units designated as accessible lack an accessible refrigerator, meaning a  
10 person in a wheelchair cannot reach to put away or retrieve food items without the  
11 possibility of being hurt;

12 u. Units designated as accessible lack an open under-counter sink area with  
13 covered plumbing in the bathroom, making it inaccessible to wheelchair users;

14 v. Units designated as accessible lack grab bars in the tub, causing a slip and  
15 fall danger.

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19 **Franklin Vista VII (Anthony, NM)**

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21 66. Franklin Vista VII Apartments in Anthony, New Mexico, is a covered  
22 multifamily complex consisting of 24 units that was completed in 2008. Since it began  
23 operations, Defendant Gray has received Section 521 rental assistance payments on as many as  
24 24 units.

25  
26 67. During visits to the property on three separate occasions over the course of eight

1 years, McGuinn observed continuing violations of the Federal Accessibility Requirements  
2 including, but not limited to, the following:

- 3 a. Sidewalks are in need of repair throughout the property, creating  
4 impediments on paths of travel that are required to be accessible to people with  
5 disabilities;
- 6 b. Designated accessible parking spaces have too steep a slope, raising the  
7 potential for a person in a wheelchair to roll into traffic;
- 8 c. Parking ramp near office has an overly steep slope, making it dangerous  
9 for a person in a wheelchair;
- 10 d. Units designated as accessible lack 32” clear width in a bathroom  
11 doorway, rendering the bathroom inaccessible to wheelchair users;
- 12 e. Units designated as accessible lack an accessible stove, meaning a person  
13 in a wheelchair cannot use the stove without the possibility of being burned;
- 14 f. Units designated as accessible lack an accessible counter height, meaning  
15 current heights are beyond the reach of a person in a wheelchair;
- 16 g. Units designated as accessible lack 30” of clear workspace in the kitchen,  
17 leaving wheelchair users without required counter prep space;
- 18 h. Units designated as accessible lack an accessible refrigerator, meaning a  
19 person in a wheelchair cannot reach to put away or retrieve food items without the  
20 possibility of being hurt;
- 21 i. Units designated as accessible lack kitchen cabinetry at an accessible  
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1 height, meaning a person in a wheelchair cannot even reach the bottom shelf of a cabinet  
2 to retrieve or put away items;

3 j. Mailboxes for accessible units are too high, rendering the mailboxes  
4 inaccessible to wheelchair users.  
5

6 **Inspiration Heights (Ruidoso Downs, NM)**

7 68. Inspiration Heights in Ruidoso Downs, New Mexico, is a covered multifamily  
8 complex consisting of 48 units that was completed in 1995. Since it began operations, Defendant  
9 Gray has received Section 521 rental assistance payments on as many as 40 units.  
10

11 69. During visits to the property on five separate occasions over the course of eight  
12 years, McGuinn observed continuing violations of the Federal Accessibility Requirements  
13 including, but not limited to, the following:

14 a. Lack of an accessible route from the parking lot and other arrival points to  
15 individual units and common areas of the property due to the unmitigated steep slopes  
16 on the property, making it hazardous to a person using a wheelchair or walker;

17 b. While federal law requires the property to have at least three (3) units  
18 complying with the Uniform Federal Accessibility Standards (UFAS), the property has  
19 only two (2) units that purport to meet those standards, but do not in fact do so;

20 c. Sidewalks are in poor repair throughout the property, creating  
21 impediments on paths of travel that are required to be accessible to people with  
22 disabilities;

23 d. Thresholds at entrance of units designated as accessible are too high and  
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1 act as barriers to wheelchair users;

2 e. Threshold at entrance of the property office is too high and acts as a  
3 barrier to wheelchair users;

4 f. Parking access aisles are too narrow, preventing a wheelchair user from  
5 parking and having sufficient room to set up and transfer to a wheelchair to enter a  
6 dwelling or the leasing office;

7 g. Parking lot lacks the required number of accessible parking spaces;

8 h. Designated accessible parking spaces have too steep a slope, raising the  
9 potential for a person in a wheelchair to roll into traffic;

10 i. Ramp outside property office has an overly steep slope, making it  
11 dangerous for a person in a wheelchair;

12 j. Ramps that change direction on the property do not level off at a 5' x 5'  
13 landing, causing a dangerous condition for wheelchair users;

14 k. Stairs at the property have open risers, causing a trip and fall hazard;

15 l. Route to the laundry area is not accessible; threshold to the laundry room  
16 is too high, rendering it inaccessible to wheelchair users;

17 m. Environmental controls are placed at heights beyond the reach of a person  
18 in a wheelchair;

19 n. Kitchen clearances are insufficient to allow a person in a wheelchair to  
20 maneuver about the space;

21 o. Units designated as accessible lack an accessible stove, meaning a person  
22

1 in a wheelchair cannot use the stove without the possibility of being burned;

2 p. Units designated as accessible lack grab bars in the tub, causing a slip and  
3 fall danger.  
4

#### 5 Transition Plans

6 70. Pursuant to USDA/RD internal procedures, upon finding instances of  
7 noncompliance, such as those described above, McGuinn, as the designated agent of USDA/RD  
8 and the United States, issued a letter to Gray within thirty (30) days of her inspection, providing  
9 Gray details concerning the noncompliance.  
10

11 71. USDA/RD regulations in effect during the False Claims Period required Gray to  
12 conduct a self-evaluation of each Covered Property to determine whether it was in compliance  
13 with the Federal Accessibility Requirements. 7 C.F.R. § 15b.8(c).  
14

15 72. When “structural changes to facilities are necessary to meet” the Federal  
16 Accessibility Requirements, Gray is obligated to develop a “transition plan setting forth the steps  
17 necessary to complete such changes.” 7 C.F.R. § 15.b.18(g). Each plan must “[i]dentify physical  
18 obstacles . . . that limit the accessibility to [people with disabilities]”; “[d]escribe in detail the  
19 methods that will be used to make the facilities accessible”; and “[s]pecify the schedule for  
20 taking the steps necessary to achieve full accessibility . . . and if the time period of the transition  
21 plan is longer than one year, identify steps that will be taken each year of the transition period.”  
22

23 *Id.*

24 73. Pursuant to 7 C.F.R. § 15b.8(c), McGuinn, as the designated agent of USDA/RD  
25 and the United States, directed Gray to conduct a self-evaluation on each Covered Property, and  
26

1 to enter into a Transition Plan for each Covered Property not in compliance with the Federal  
2 Accessibility Requirements. For instance, on April 25, 2011, McGuinn, as the designated agent  
3 of USDA/RD and the United States, sent letters to Bobby Griffith and other senior leadership at  
4 Defendant Gray, specifying 23 properties for which Gray was obligated to conduct self-  
5 evaluations and develop Transition Plans to document compliance with the Federal Accessibility  
6 Requirements.  
7

8 74. To create Transition Plans, Gray hired R.H. Zeffert & Associates, Inc. (“Zeffert”).  
9

10 75. Zeffert found multiple instances of noncompliance with the Federal Accessibility  
11 Requirements within Gray properties, which it reported to Gray, and which were listed in the  
12 Transition Plans that Gray submitted to McGuinn’s office.  
13

14 76. The following specific examples are illustrative, and not exhaustive, of the  
15 failings Zeffert documented in Transition Plans across the 35 properties that Relator observed  
16 during the False Claims Period:  
17

18 a. On October 9, 2012, Zeffert inspected Rio Mimbres I, a Covered Property  
19 in Deming, New Mexico, consisting of 36 units, ready for first occupancy on January 6,  
20 1983. The Transition Plan described the following:  
21

22 i. Multiple instances of noncompliance with Federal Accessibility  
23 Requirements related to accessible units, including insufficient clearance under  
24 the kitchen sinks, insufficient work space in the kitchens, and breaker panels too  
25 high to be reachable by a person in a wheelchair. As such, neither of the units  
26 designated as UFAS-accessible actually complied with the Federal Accessibility  
27

1 Requirements.

2 ii. Multiple instances of common area noncompliance with Federal  
3 Accessibility Requirements, including noncompliant curb cuts, ramps that were  
4 too steep, inaccessible mail and laundry facilities, and conditions that posed risk  
5 of injury to residents with visual impairments.  
6

7 b. On October 9, 2012, Zeffert inspected Rio Mimbres II, a Covered  
8 Property in Deming, New Mexico, consisting of 24 units, ready for first occupancy on  
9 January 3, 1992. The Transition Plan described the following:  
10

11 i. Multiple instances of noncompliance with Federal Accessibility  
12 Requirements related to accessible units, including wall cabinets that were too  
13 high, refrigerators placed in inaccessible locations and bathtubs without proper  
14 grab bars. As such, neither of the units designated as UFAS-accessible actually  
15 complied with the Federal Accessibility Requirements.  
16

17 ii. Multiple instances of common area noncompliance Federal  
18 Accessibility Requirements, including noncompliant curb cuts, ramps that were  
19 too steep and conditions that posed risk of injury to residents with visual  
20 impairments.  
21

22 c. On June 9, 2011, Zeffert inspected Valley View, a Covered Property in  
23 Silver City, New Mexico, consisting of 32 units, ready for first occupancy on January 1,  
24 1996. The Transition Plan described the following:  
25

26 i. Multiple instances of noncompliance with Federal Accessibility  
27



1 Requirements related to accessible units, including inaccessible kitchen sinks,  
2 doors that provide insufficient clearance, and breaker panels too high to be  
3 reachable by a person in a wheelchair. As such, neither of the two units  
4 designated as UFAS-accessible actually complied with the Federal Accessibility  
5 Requirements.  
6

7 ii. Ten apartments needed to be modified to meet the FHA's  
8 adaptability requirements.  
9

10 iii. Multiple instances of common area noncompliance with the  
11 Federal Accessibility Requirements, including landings and parking spaces that  
12 are not level, a noncompliant washing machine, and conditions that posed risk of  
13 injury to residents with hearing impairments.  
14

15 d. On June 9, 2011, Zeffert inspected Central Apartments, Covered Property  
16 in Santa Clara, New Mexico, consisting of 22 units, ready for first occupancy on October  
17 29, 1998. The Transition Plan described the following:

18 i. Multiple instances of noncompliance with Federal Accessibility  
19 Requirements related to its accessible unit, including a toilet without accessible  
20 clearance, inaccessible cabinets in the kitchen and a bathtub without proper grab  
21 bars. As such, the unit designated as UFAS-accessible did not actually comply  
22 with the Federal Accessibility Requirements.  
23

24 ii. Twelve apartments needed to be modified to meet the FHA's  
25 adaptability requirements.  
26  
27



1 Gray has not facially made the required number of apartments accessible. And while it claims to  
2 maintain the required number of UFAS-accessible apartment units in 28 of the USDA/RD-  
3 assisted properties under McGuinn's review, both McGuinn and Zeffert determined that many of  
4 the designated units do not comply with Federal Accessibility Requirements; a non-exhaustive  
5 list of such examples includes: Central Apartments, Desert Sun Apartments, Desert Sun  
6 Apartments II, Falcon Ridge Apartments, Franklin Vista I Apartments, Franklin Vista III  
7 Apartments, Franklin Vista V Apartments, Franklin Vista VI Apartments, Las Rosas  
8 Apartments, Mesquite Village, Mountain View Apartments, Ruth Visage Apartments,  
9 Sacramento Apartments, Sierra Vista Apartments, Valle Verde II Apartments, and Valley View  
10 Apartments.  
11  
12

13 Gray's Knowingly False Certifications  
14 Regarding Compliance with Federal Accessibility Requirements

15 79. As a precondition for receiving the funds mentioned in ¶ 23, Gray must certify  
16 compliance with the Federal Accessibility Requirements, other civil rights laws protecting  
17 people with disabilities, and the regulations pursuant to which USDA/RD administers its funding  
18 programs.  
19

20 80. Those certifications include, but are not limited to, the following:

21 a. Throughout the False Claims Period, Gray applied for USDA/RD loan or  
22 rental subsidy funds, and completed Form SF-424 and its attachments (Form SF-424D  
23 for construction projects and Form SF-424B for non-construction projects). For each  
24 such application, an agent for Gray made specific certifications of compliance with the  
25 Federal Accessibility Requirements, and certified that the statements in the application  
26  
27

1 were true and that Gray agreed, subject to criminal, civil or administrative penalties, to  
2 comply with any resulting terms if it accepted USDA/RD funds.

3 b. During the False Claims Period, when Gray entered into loan agreements  
4 with USDA/RD for purposes of new construction or substantial rehabilitation, it used  
5 Form RD 3560-33 or RD 3560-34. ¶¶ 3 and 7 each contain explicit certifications  
6 requiring Gray to comply with the Federal Accessibility Requirements.  
7

8 c. As part of the inducement to USDA/RD to make each Section 514 or  
9 Section 515 loan during the False Claims Period, Gray also submitted a Form RD 1924-  
10 25, pursuant to which its architect certified that construction plans fully complied with  
11 the Federal Accessibility Requirements.  
12

13 d. During the False Claims Period, when Gray acted as a manager of a  
14 property with a USDA/RD loan agreement or monthly rental subsidies, it was required to  
15 complete a Form RD 3560-13 which, at ¶ 10, contains a certification that Gray will  
16 comply with Federal Accessibility Requirements.  
17

18 e. Throughout the False Claims Period, in order to secure monthly rental  
19 subsidy funds for very low-, low- and moderate-income households living in  
20 approximately 1,888 units receiving USDA/RD assistance, Gray was required to provide  
21 certifications of compliance with Federal Accessibility Requirements related to annual  
22 project budgets, utility allowances and calculation of individual household incomes  
23 (upon which rent subsidy amounts are determined). The system through which Gray  
24 made explicit and implied certifications regarding its compliance is called the  
25  
26  
27

1 Management Interactive Network Connection (“MINC”). To register for MINC, Gray  
2 certified that it understood and agreed to abide by the management plan and certifications  
3 for each project, in compliance with 7 C.F.R § 3560.102—which provides that borrowers  
4 have final responsibility for ensuring that operations comply with the terms of all loan  
5 and grant documents, Agency requirements and applicable laws.

7 81. During the False Claims Period, Gray executed the certifications in applications  
8 for construction loans, loan agreements and architect certifications for the following properties  
9 that were newly constructed or substantially rehabilitated with Section 514 or Section 515 loans:  
10 El Camino Real, Falcon Ridge Apartments, Mountain View Apartments, Paseo Del Oro  
11 Apartments LLP, Sierra Vista Apartments, Valle Del Sol Apartments, Presidio Dolores  
12 Apartments, Logan Estates Apartments and Vista Rita Blanca Apartments.

14 82. During the False Claims Period, Gray executed the certifications in management  
15 agreements for all 70 properties listed in Appendix A. Each such management agreement  
16 covered a period of three years, at the end of which Gray was required to execute a new  
17 management agreement and certification.

19 83. During the False Claims Period, Gray repeatedly executed certifications related to  
20 monthly rental subsidies for 66 properties listed in Appendix A.

22 84. During the False Claims Period, Gray provided the express and implied civil  
23 rights certifications mentioned in ¶ 82, in furtherance of its applications for the federal housing  
24 funds mentioned in ¶ 23.

26 85. Compliance with the accessibility requirements set forth is not tangential to what

1 Defendants agreed to provide, nor mere window dressing to what was expected. Instead,  
2 compliance with these requirements goes to the very essence of what the Government bargained  
3 for in its loans, contracts, and payments for housing and common areas for the disabled. And its  
4 materiality is plain and obvious on its face with no excuse for contractors to protest that they did  
5 not know that the accessibility requirements, with which they with knowing falsity certified  
6 compliance, were material to that for which the Government had bargained and had or would  
7 pay.  
8

9  
10 86. As described in ¶¶ 53-69, 76 & 78, contrary to Gray’s certifications of civil rights  
11 compliance, many of these 70 multifamily projects do not contain the minimum number of units  
12 accessible to people with mobility impairments that are required by the Federal Accessibility  
13 Requirements, and/or contain common use elements that do not comply with those requirements.  
14

15 87. As described in ¶¶ 53-69, 76 & 78, contrary to Gray’s certifications of civil rights  
16 compliance made during the False Claims Period, Gray maintained neither policies nor practices  
17 to ensure that multifamily housing projects assisted with federal funds contained the minimum  
18 number of units accessible to people with mobility impairments that is required by the Federal  
19 Accessibility Requirements.  
20

21 Gray’s Knowingly False Certifications Regarding Compliance with USDA/RD Regulations and  
22 Section 521 Rental Subsidy Representations

23 88. In addition to compliance with the Federal Accessibility Requirements, the forms  
24 described in ¶ 82 also require Gray to certify that it is complying with USDA/RD regulations.

25 89. As described above in ¶¶ 71-72, USDA/RD requires Gray to conduct a self-  
26 evaluation and create Transition Plans when a development is not in compliance with the Federal  
27

1 Accessibility Requirements.

2 90. An important part of those requirements is that Gray “take...appropriate remedial  
3 steps” to eliminate the discrimination uncovered as part of the self-evaluation. 7 C.F.R. §  
4 15b.8(c)(1)(iii).  
5

6 91. Throughout the False Claims Period, Gray did not take appropriate steps to  
7 address the discriminatory conditions in its developments within the three-year timeframe  
8 contemplated by the Transition Plan, and thereafter.  
9

10 92. By way of example, the Transition Plans for the properties listed in ¶ 76, included  
11 a three-year timetable for remediation and estimated costs of remediation, which were as  
12 follows: Rio Mimbres I, \$31,733.12; Rio Mimbres II, \$46,706.22; Valley View, \$33,487.37;  
13 Central Apartments, \$34,407.94; Mesquite Village, \$16,364.95.  
14

15 93. On information and belief, the inaccessible conditions noted in the Transition  
16 Plans described in ¶ 76 remain in existence as of the filing of this Complaint.

17 94. As such, for Rio Mimbres I, Rio Mimbres II, Valley View and Central  
18 Apartments, Gray has not updated its Transition Plan or remediated the issues described in the  
19 Transition Plan in over eight years. For Mesquite Village, Gray has maintained the same  
20 Transition Plan without remediation since 2006, nearly fourteen years ago.  
21

22 95. Per 7 C.F.R. § 3560.303, borrowers must submit a proposed annual housing  
23 project budget to USDA/RD prior to the start of the housing project's fiscal year. The capital  
24 budget section of the annual project budget must include anticipated expenditures on the  
25 project’s long-term capital needs as specified in 7 C.F.R. § 3560.103. This includes an  
26  
27

1 accounting of “Section 504 and other Fair Housing compliance modifications and maintenance.”  
2 7 C.F.R. § 3650.303(b)(1)(v)(H). All requests for increases in rents or reserve account use is  
3 documented on the budget form RD 3560-7.  
4

5 96. Gray submitted annual budget documents to USDA/RD, seeking USDA/RD  
6 approval of expenditures from its reserve account to remediate specific areas of noncompliance  
7 noted in its Transition Plans, as well as other instances of noncompliance.  
8

9 97. Gray also sought increases in Section 521 rental assistance funds to cover the  
10 costs of remediating their noncompliance.  
11

12 98. However, upon information and belief, the Section 521 funds, which Gray  
13 represented to USDA/RD that it would use to make the necessary repairs at multiple properties,  
14 were not used for that purpose.  
15

16 99. The continuing existence of noncompliance at Gray properties, illustrated above  
17 in Mesquite Village, Rio Mimbres I, Rio Mimbres II, Valley View and Central Apartments, is  
18 testament to this practice.  
19

20 100. As such Gray’s representations in its budget, submitted through the MINC  
21 system, were false and caused USDA/RD to pay out additional Section 521 subsidy monies  
22 which were not used for the purposes Gray represented.  
23

#### 24 Gray’s Knowledge

25 101. As a “a fully integrated company that acquires, develops, and manages multi-  
26 family residential communities in the Southwest,” Gray knows or should know about the Federal  
27 Accessibility Requirements and USDA/RD regulations.  
28





1 Requirements and its demonstrated practice not to take future actions to come into compliance,  
2 as described in ¶¶ 53-78.

3  
4 108. In her position, McGuinn, as the designated agent of USDA/RD and the United  
5 States, reviewed Gray's files, which included the certifications referenced in ¶ 82, and saw the  
6 signatures of agents for Gray on those documents. Those agents included President J. Scot  
7 Fishburn.

8  
9 109. In doing the acts or in omitting to act as alleged herein, each employee or officer  
10 of Gray was acting in the course and scope of his or her actual or apparent authority pursuant to  
11 such agencies, or the alleged acts or omissions of each employee or officer as agent were  
12 subsequently ratified and adopted by Gray as principal.

13 Gray's Certifications of Compliance are Knowingly False Records or Statements on Which  
14 Subsequent Claims for Payment Are Based

15  
16 110. As set forth herein, and supported by her good faith investigation, McGuinn  
17 alleges that Gray knowingly has caused, and continues to cause, the submission of false or  
18 fraudulent claims for payment to USDA/RD for support of the properties mentioned in Appendix  
19 A.

20  
21 111. Through its multiple certifications of compliance, Gray caused USDA/RD and the  
22 public to believe that it was complying with the Federal Accessibility Requirements and  
23 USDA/RD regulations and, as a consequence, USDA/RD continued to pay Gray in response to  
24 its requests for payment.

25  
26 112. Relator recommended to her superiors in the office of the USDA/RD State  
27 Director for New Mexico that Gray be sanctioned, up to the point of withholding USDA/RD

1 funds. As such, the accessibility requirements were material to Relator, in that they were capable  
2 of influencing her payment decisions, as the designated agent of USDA/RD and the United  
3 States.

4  
5 113. Contrary to USDA/RD regulations and internal operating procedures, Arthur  
6 Garcia—the then USDA/RD State Director for New Mexico—failed to consult the National  
7 Office concerning Relator’s findings and recommendations concerning the Gray properties.

8  
9 114. While Garcia was aware of Gray’s lack of accessibility, the actions of the Office  
10 of the State Director do not render the Federal Accessibility Requirements immaterial. Garcia’s  
11 actions reflect his personal agenda, rather than the Agency’s policies.

12  
13 115. In response to a series of complaints from a Gray executive—who was also a  
14 personal friend—Garcia stripped Relator and other loan servicers of their ability to continue to  
15 issue servicing letters in New Mexico, telling Relator to “ease up” enforcement of the  
16 regulations, and ultimately removing Relator from her position.

17  
18 116. When Relator advised Garcia she would not “ease up” without written  
19 instructions from him, Garcia refused to put his instructions in writing, and then retaliated  
20 against her by reassigning her to another position that would not involve oversight of Gray’s  
21 noncompliant developments.

22  
23 117. Garcia lacked the authority to approve of regulatory and contract violations, or to  
24 waive Defendants’ obligations to comply. It was Relator’s job, as the designated agent of  
25 USDA/RD and the United States, to monitor compliance, and where noncompliance is found, the  
26 State Director is to consult the Office of General Counsel if a borrower cannot be brought into  
27

1 compliance. U.S. Dep't of Agric., HB-3-3560, Project Servicing Handbook, Ch.10, p. 1-3.

2 Garcia never did so. Further, USDA regulations do not permit a State Director to authorize the  
3 violation of federal laws or regulations.  
4

5 118. Garcia acted outside the scope of his authority if he took any action to imply  
6 approval by USDA/RD of modifications to Gray's contracts—which are with, and bargained for  
7 by, the National Office of USDA/RD. *See* 48 C.F.R. § 43.102. He had no authority to execute  
8 such contract modifications. *Id.* Nor did he have authority, as a matter of law, to cause Gray to  
9 believe that he had authority to bind USDA/RD, if they ever believed that he did.  
10

11 119. As a longtime experienced USDA/RD contractor, Gray knew or should have  
12 known that Garcia lacked authority to waive or modify federal regulations and Agency guidance  
13 concerning the Federal Accessibility Requirements, and was aware that it had a continuing  
14 obligation to comply with same.  
15

16 120. Garcia's actions on behalf of Defendants subverted the enforcement mechanisms  
17 that USDA/RD had established to enforce strict compliance with the Federal Accessibility  
18 Requirements such contractors are expressly paid to follow, and which make the housing the  
19 Government has paid for usable by its intended tenants with disabilities.  
20

21 121. Because of Garcia's actions, USDA/RD's National Office did not have the  
22 requisite knowledge of Gray's noncompliance, thus its actions are not relevant for purposes of  
23 assessing materiality. Therefore, it was not in possession of all the pertinent facts when it  
24 approved Section 514/515 loan funds, and when it allowed Rental Assistance to continue to flow  
25 to Gray. As such, its actions regarding Gray are not reflective of the materiality of the  
26  
27

1 accessibility regulations.

2           122. Even if the USDA/RD National Office would not have clawed back loan funds or  
3 ceased payments to Defendants of monthly rental subsidies, if it had been fully apprised of  
4 Relator’s findings and recommendations, it could have conditioned Defendants’ retention or  
5 continued receipt of such funds and payments on compliance with Federal Accessibility  
6 Requirements. It could also have reduced any management fee received by Defendant Gray to  
7 reflect its noncompliance with those Requirements.  
8

9           123. Now, through Relator’s efforts, the Agency can fully apprise itself of the extent of  
10 Gray’s false claims, and make a determination of appropriate remedial action, including through  
11 intervention in this FCA litigation.  
12

13                           The Materiality of the Federal Accessibility Requirements  
14

15           124. In addition to being integral to the federal government’s commitment to non-  
16 discrimination on the basis of disability, compliance with the Federal Accessibility Requirements  
17 is a material condition of the federal government’s decision whether to disburse loan or rent  
18 subsidy funds to private entities like Defendants. The very essence of what the Government was  
19 purchasing is affordable housing units and common areas that comply with strict and specific  
20 accessibility requirements calibrated to ensure that people with disabilities would be able to use  
21 and enjoy rental housing in rural communities. Defendants’ provision of inaccessible rental  
22 communities is as useless to USDA/RD as are malfunctioning weapons to the Department of  
23 Defense. Defendants’ failure to provide accessible housing is “plain and obvious” in its  
24 materiality, as defined by multiple federal courts. That materiality is evidenced by the  
25  
26  
27

1 following:

2 a. Congress's enactment of Section 504, pursuant to the authority of the U.S.  
3 Constitution's Spending Clause, to ensure recipients of federal funds were bound by the  
4 material requirement that they not discriminate on the basis of disability.  
5

6 b. USDA/RD's promulgation of regulations underscoring the importance of  
7 the Federal Accessibility Requirements to recipients of funds from the USDA. Starting in  
8 1982, and continuing for over thirty years, USDA/RD promulgated regulations holding  
9 recipients of its funds accountable for meeting Federal Accessibility Requirements, and  
10 strengthened those regulations on multiple occasions, including in 1990, 1996, 1999 and  
11 2004. The USDA/RD regulations at 7 C.F.R. pt. 3560 are specifically aimed at recipients  
12 of loan and rental subsidy programs, and explicitly reiterate the need to comply with the  
13 Federal Accessibility Requirements. By way of example: 7 C.F.R. § 3560.60(d) requires  
14 that all properties meet the Federal Accessibility Requirements; 7 § C.F.R. 3560.102(j)  
15 requires that all management agents execute a management certification agreeing to  
16 follow all federal laws; and 7 C.F.R. § 3560.104 requires borrowers to follow fair  
17 housing laws in project operations, including specific accommodation requirements.  
18  
19  
20

21 c. USDA/RD regulations which specify that compliance is a condition of  
22 payment. In addition to compliance being required by the Federal Accessibility  
23 Requirements, USDA/RD has made clear that lack of compliance prohibits receipt of  
24 further USDA/RD funds. At 7 C.F.R. § 3560.55(b)(2), USDA/RD provides that  
25 recipients of Section 514/515 loans must be in compliance with, inter alia, Section 504 in  
26  
27

1 order to be eligible to receive additional loan funds. The USDA/RD handbook also  
2 describes the Federal Accessibility Requirements, and states that noncompliance can  
3 result in “ineligibility to receive further loan funds,” in addition to “penalties, liabilities,  
4 or loss of tax credits that may result from legal action brought against [recipients of  
5 USDA/RD assistance] by third parties.” U.S. Dep’t of Agric., HB-2-3560, Asset  
6 Management Handbook, App. 5, p. 8. The quoted language is included in Agency letters  
7 notifying borrowers of their non-compliance. *See id.*

8  
9  
10 d. USDA/RD regulations also set up a robust system for monitoring  
11 compliance with Federal Accessibility Requirements. USDA/RD staff work with  
12 developers to ensure compliance with the Federal Accessibility Requirements, and the  
13 other requirements of the program. This includes conducting on-site reviews of  
14 developments receiving USDA/RD funds to assess compliance. USDA/RD regulations  
15 are clear that, while the system is meant to use Agency resources to help ensure  
16 compliance, it does not absolve USDA/RD recipients of the need to comply with all  
17 Federal Accessibility Requirements and USDA/RD regulations. 7 C.F.R. § 3560.352(c)  
18 (“Agency monitoring activities do not diminish borrower operation and management  
19 responsibilities and do not relieve borrowers from any Agency requirements including . .  
20 . [t]he terms of all agreements with the Agency . . . [and] Title VIII of the Civil Rights  
21 Act of 1968 [“FHA”]. . . section 504 of the Rehabilitation Act of 1973, . . . [and]  
22 Americans with Disabilities Act of 1990”). The Agency is also permitted to offer  
23 incentives to borrowers, including additional rental assistance payments, but any  
24  
25  
26  
27

1 deficiencies in project compliance with Section 504 must be addressed as part of the  
2 development of the incentive and must be completed as part of an acceptance agreement  
3 of any incentive. 7 C.F.R. § 3560.656(e).  
4

5 e. The USDA/RD forms described above at ¶ 82, which require  
6 certifications of compliance with the Federal Accessibility Requirements.

7 f. Related USDA/RD regulations which make clear the Agency's focus on  
8 accessibility. For example, USDA/RD requires that all leases between eligible occupants  
9 and borrowers must contain certain required items and provisions, including that the  
10 housing project is subject to the FHA and Section 504. 7 C.F.R. § 3560.156(c)(6).  
11

12 g. McGuinn, as the agency official charged with overseeing Gray's  
13 properties on behalf of USDA/RD and the United States, reiterated the importance of  
14 compliance on countless occasions, including specifically telling Gray to update their  
15 Transition Plans and do the work listed in them to bring the property into compliance,  
16 and recommended the termination of payments when Defendants still did not comply.  
17

18 h. Beginning in 2017, the USDA/RD National Office has increased its  
19 oversight role, thereby reducing the discretion of State Directors and ensuring greater  
20 uniformity in oversight with USDA/RD regulations concerning rural rental housing  
21 programs.  
22

23 i. On June 20, 2017, the Acting Administrator of the Rural Housing Service  
24 for the USDA, Richard Davis issued a letter emphasizing the need to recommit to  
25 compliance with accessibility requirements. The letter described the Federal Accessibility  
26



1 Requirements applicable to recipients of USDA/RD rural housing loans in detail, and  
2 noted that, while USDA approves budgets necessary to accomplish Transition Plans, the  
3 USDA (except for the Secretary of Agriculture) cannot waive accessibility requirements  
4 because of financial impracticability. As of the date of that letter, no Secretary of  
5 Agriculture has ever waived an accessibility item due to “undue financial burden.”  
6

7 j. The National Office issued an Unnumbered Letter on January 10, 2020,  
8 articulating the obligations of owners and managers, such as Defendants, “strongly  
9 emphasiz[ing] the importance of making sure that all borrowers of Rural Development  
10 properties are in compliance with their civil rights obligations” under the Federal  
11 Accessibility Requirements. *See* Appendix B. That Unnumbered Letter specifies the  
12 accessibility standards and reiterates Defendants’ obligations to conduct self-evaluations  
13 and establish Transition Plans (“SE/TP”), and makes clear that “MFH field office staff  
14 shall not accept a previous or existing SE/TP that has been re-dated and presented by  
15 borrowers as ‘revised.’” The Unnumbered Letter also makes clear that “[i]f a date for  
16 completion of an accessibility item [in a SE/TP] is missed, the property is no longer in  
17 compliance with Civil Rights requirements[.]” In such circumstances, the onus is on the  
18 owner to prove—within 90 days—that it will achieve compliance with the Federal  
19 Accessibility Requirements. If a borrower “does not complete the accessibility work as  
20 scheduled and agreed, standard servicing actions must be followed, including  
21 coordinating the next actions with the Rural Development Civil Rights Office and  
22 seeking Civil Monetary penalties.”  
23  
24  
25  
26

1 k. Over the past several years, the National Office has sought to reduce the  
2 influence of State Directors and improve the consistent enforcement of programmatic and  
3 civil rights obligations against owners and managers of RD properties such as the  
4 Defendants. Most recently, it published a proposed rule to remove State Directors from  
5 oversight roles with respect to important elements of the Section 514 and 515 loan  
6 programs and the Section 521 rental assistance program. *See* Appendix C.  
7

8 l. Additional evidence that USDA/RD considers compliance with the  
9 Federal Accessibility Requirements to be a material condition of Defendants' eligibility  
10 to receive USDA/RD funds can be found in a document retention notice sent to Relator  
11 and other USDA/RD employees in October 2020. The notice was issued by USDA's  
12 Office of General Counsel, and instructed recipients to preserve agency records  
13 concerning loans, loan guarantees, rent subsidies, and servicing of loans made in  
14 connection with properties owned or managed by Defendant Gray, as well as payments  
15 made to—and complaints concerning—Defendant Gray.  
16  
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18 m. In July 2019, HUD announced that it would withhold \$80 million in  
19 federal funding from the City of Los Angeles because of its failure to comply with  
20 federal accessibility laws. After negotiations, Los Angeles and HUD agreed to a historic  
21 voluntary compliance agreement, in which the City agreed to retrofit 3,100 accessible  
22 housing units for persons with disabilities, among other relief.  
23

24 n. On November 4, 2019, the DOJ settled a lawsuit it brought against the  
25 Housing Authority of the City of Bridgeport, CT ("HACB"), for failure to ensure its  
26  
27

1 affordable housing program was compliant with the Federal Accessibility Requirements.  
2 Specifically, the DOJ alleged that the HACB violated Section 504, the FHA and the  
3 ADA by, inter alia, failing to provide a sufficient number of public housing units that are  
4 accessible to tenants with disabilities. The settlement requires HABC to implement  
5 changes to its housing facilities, programs, policies and practices; develop an inventory  
6 of accessible units; and pay \$1,500,000 to those hurt by its discriminatory practices and a  
7 \$25,000 civil penalty to the United States in damages. The lawsuit arose from a  
8 compliance review initiated by HUD. After issuing a determination of noncompliance  
9 and attempting resolution, HUD referred the case to the Justice Department.  
10

11  
12 125. Acting in the scope of her employment as the designated agent of USDA/RD and  
13 the United States, Relator deemed the violations to be material and recommended that Gray be  
14 sanctioned including with the withholding of USDA/RD funds.  
15

16 126. No other person at USDA/RD, acting with requisite authority and knowledge, has  
17 ever determined the violations to be immaterial or acted to override Relator's determination of  
18 materiality.  
19

20 127. As a consequence of Gray's false statements, records, certifications and requests  
21 for payment, the federal government has been cheated out of hundreds of highly accessible  
22 apartment units that federal law requires be made available to people with mobility impairments.  
23

24 128. Moreover, people in need of the highly accessible units have also been deprived  
25 of the opportunity to live in apartment complexes owned or managed by Gray, and many of  
26 these people have been relegated to living in inaccessible or inappropriate institutional settings  
27

1 because of Gray’s failure to comply with the Federal Accessibility Requirements.

2 129. In essence, Gray lied to the federal government in order to secure the federal  
3 funds mentioned above. That is precisely the conduct Congress sought to prevent in passing and  
4 strengthening the False Claims Act.  
5

6 INJURY TO THE UNITED STATES

7 130. As a result of Defendants’ actions described above, the United States has been  
8 directly and substantially injured in that USDA/RD has paid as much as \$90 million to  
9 Defendants and it has not received—for its own benefit and that of low-income people with  
10 disabilities who live (or seek to live) in affordable housing developments financed with capital or  
11 monthly rental subsidy funds from USDA/RD—the accessibility features required by federal law  
12 and expected in exchange for payment as the very essence of what the Government had  
13 bargained for.  
14

15 131. By failing to provide the accessibility required by federal law, Defendants have  
16 delivered a product that effectively excludes many people with disabilities from living in its  
17 affordable rental housing units, which the Government expressly intended for people with  
18 disabilities.  
19

20 132. Each time Defendants designed and constructed covered dwellings that did not  
21 comply with the Federal Accessibility Requirements, and did not remedy that noncompliance,  
22 they shortchanged the Government, and deprived individuals with disabilities of the opportunity  
23 to live in accessible rental properties.  
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1 plus the maximum civil penalty permitted for each violation of the False Claims Act;

2           141. That Relator be awarded the maximum amount allowed pursuant to § 3730(d) of  
3 the False Claims Act;

4           142. That Relator be awarded all fees, costs and expenses incurred in connection with  
5 this action, including attorneys' fees, costs and expenses; and  
6

7           143. That Relator recover such other relief as the Court deems just and proper.  
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1 DEMAND FOR JURY TRIAL

2 144. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Relator hereby  
3 demands a trial by jury.  
4

5 Dated this 21st day of December, 2020.  
6

7 Respectfully Submitted,

8 /s/ Michael Allen

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29

1 **CERTIFICATE OF SERVICE**

2 I, Michael Allen, hereby certify that I filed the above and foregoing on the 21st Day of  
3 December, 2020 with the Court's CM/ECF system, which will send notice of the filing to:

4 Nelson Wagner  
5 Trial Attorney  
6 Commercial Litigation Branch, Fraud Section  
7 U.S. Department of Justice  
8 Washington, D.C.  
9 Nelson.Wagner2@usdoj.gov

10 Ruth F. Keegan  
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15 */s/ Michael Allen*  
16 Michael Allen