

IN THE IOWA DISTRICT COURT FOR SOUTH LEE COUNTY

STATE OF IOWA ,  
(99AG4251120)  
Plaintiff

vs.

ALAN HARVEY ISRAEL,  
JASON FARRELL ISRAEL,  
LEXINGTON SQUARE LLC,  
LEXINGTON SQUARE REAL  
ESTATE LLC,  
DAVE'S PLACE LLC,  
Defendants.

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NO. LALA 006108

PETITION

- LAW -

FILED  
2013 MAR -1 AM 11:43  
DISTRICT COURT  
LEE COUNTY, IOWA  
CLERK

The State of Iowa, through the undersigned, states as follows for its cause of action:

INTRODUCTION

1. This action is brought on behalf of the State of Iowa against Defendants for treble damages and civil penalties arising from Defendants' false statements and false claims in violation of the Iowa False Claims Act, Iowa Code § 685 *et seq.*, and in violation of the Iowa Money Laundering statute, Iowa Code § 706B *et seq.* The violations include various and repeated false or fraudulent claims for reimbursements from the Iowa Medicaid program through the use of false or fraudulent cost reports.

2. The Iowa False Claims Act provides that any person is liable to the State for damages and penalties who "knowingly presents or causes to be presented, a false or fraudulent claim for payment or approval" or "knowingly makes uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim." Iowa Code §

685.2(1)(a)-(b). These damages and penalties include civil penalties of up to \$11,000 for each unlawful act committed, plus a penalty equal to three times the amount of the damages that the State sustained as a result of the fraudulent acts. *Id.*

### VENUE

3. Venue is proper in South Lee County because Defendants Lexington Square LLC and Dave's Place LLC operate in Keokuk, South Lee County, Iowa. The actions giving rise to this case occurred in South Lee County. Iowa Code Section §685.5(1) (2013). Lee County is divided into two divisions, North and South. Venue is proper in the South division. Iowa Code Section § 607A.23 (2013).

### PARTIES

4. The Iowa Department of Human Services administers the Medical Assistance program known as Medicaid.

5. The Iowa Attorney General is authorized to bring this action on behalf of the State of Iowa.

6. Defendant Alan Harvey Israel is an owner of and is the managing member of Lexington Square LLC, Lexington Square Real Estate LLC and Dave's Place LLC. Alan Israel resides in Phoenix, Arizona.

7. Defendant Jason Farrell Israel is the son of Alan Israel. Jason Israel is a minority owner of Lexington Square LLC and Dave's Place LLC. Based on information and belief, Jason Israel resides in Phoenix, Arizona.

8. Defendant Lexington Square LLC ('Lexington Square') operates a nursing facility in Keokuk, South Lee County, Iowa. Lexington Square is an Iowa limited liability company.

9. Defendant Lexington Square Real Estate LLC is the real estate holding company for the Lexington Square nursing facility operated by Lexington Square LLC. Lexington Square Real Estate LLC is an Iowa limited liability company with its principal place of business in Keokuk, South Lee County, Iowa.

10. Defendant Dave's Place LLC ('Dave's Place') operates a specialized nursing facility in Keokuk, Iowa. Dave's Place is an Iowa limited liability company with its principal place of business in Keokuk, South Lee County, Iowa.

## **LEGAL AND REGULATORY BACKGROUND**

### **A. Iowa's Medicaid Program**

11. Medicaid is a publicly funded medical care program administered and financed jointly through state and federal funds under Title XIX of the Social Security Act. Iowa has implemented the Medicaid program through Iowa Code Chapter 249A.

12. The Iowa Department of Human Services has created the Iowa Medicaid Enterprise ('IME') to operate the Medicaid program and to implement its policies and procedures.

### **B. Nursing Facility Rules**

13. In exchange for caring for Iowa Medicaid patients, nursing facilities are reimbursed for reasonable and proper costs in a system known as prospective reimbursement with an upper limit:

Providers are reimbursed on the basis of a per diem rate calculated prospectively for each participating provider based on reasonable and proper costs of operation. The rate is determined by establishing a base year per diem rate to which an annual index is applied.

Iowa Admin. Code 441-79.1.

14. As a prerequisite to payment by Medicaid, nursing facilities must submit annual cost reports.

15. Every nursing facility cost report contains a certification that must be signed by an officer or director of the provider or a responsible designee.

16. At all relevant times the nursing home cost report certification page included the following notice:

**CERTIFICATION STATEMENT**

Misrepresentation or falsification of any information contained in this cost report may be punishable by fine and imprisonment under state or federal law. I CERTIFY that I have read the above statement and that I have examined the accompanying cost report and supporting schedules. To the best of my knowledge and belief, it is a true and complete statement prepared from the records of the provider in accordance with applicable instructions. I further certify that costs have been properly allocated between or among programs and that no cost has been reported more than once as a reimbursable cost.

17. Lexington Square and Dave's Place submitted cost reports at all times material to this petition. Defendants caused the cost reports to be submitted and signed by the company controller, administrator as well as Certified Public Accountants, who attested to, among other things, the certification quoted above.

18. As a part of the cost report, nursing homes are required to declare whether or not they conducted business with companies to whom they are related.

19. Providers can only properly charge Medicaid for the actual cost of providing the service.

### **C. False Claims Act**

20. The Iowa False Claims Act (FCA), Iowa Code Chapter 685, was enacted to protect the State treasury. The Act establishes a number of specific acts related to the submission of false claims or false information in support of claims for payment by or obligations to the State, each of which constitutes a basis for liability.

21. In pertinent part the FCA states that a person who “knowingly presents or causes to be presented, a false or fraudulent claim for payment or approval” or “knowingly makes uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim” is liable to the State of Iowa. Iowa Code § 685.2(1)(a)-(b). These damages and penalties include civil penalties of up to \$11,000 for each unlawful act committed, plus a penalty equal to three times the amount of the damages that the State sustained as a result of the fraudulent acts. *Id.*

### **D. Money Laundering**

22. Money laundering can be committed by making property available by transaction knowing that it is intended to be used for the purpose of committing or furthering the commission of specified unlawful conduct. Iowa Code § 706B.2(1)(b).

23. A ‘transaction’ includes a pledge of property. Iowa Code § 706B.1(4).

24. A ‘specified unlawful act’ is any act, including preparatory or completed offense, committed for financial gain on a continuing basis punishable by confinement of one year or more. Iowa Code § 706B.1(3).

25. The Civil Penalty shall be three times the value of the property involved. Iowa Code § 706B.2(3).

26. The civil remedies of the Iowa Money Laundering statute are supplemental and not mutually exclusive. Iowa Code § 706B.3(1).

### **THE FRAUD SCHEME**

#### **Lexington Square**

27. Alan Israel owns ninety-nine percent of Lexington Square.

28. Jason Israel owns one percent of Lexington Square.

29. Defendants Alan Israel and Jason Israel caused fraudulent cost reports to be submitted to the Iowa Medicaid Enterprise.

#### **Payment of expenses unrelated to the operations of Lexington Square**

30. Alan Israel directed the Lexington Square controller to have Lexington Square pay for personal expenses that were not connected with the operation of Lexington Square. When the controller for Lexington Square would question Alan Israel as to placing it on the cost report, Alan Israel responded the controller, 'just try to get it on the cost report.'

#### **Travel expenses to Lexington Square**

31. During 2008 Lexington Square paid for and claimed as expenses on the 2008 cost report the following trips:

<b>Ticketholder</b>	<b>Trip to/ from</b>	<b>Airline / Railway/ hotel</b>	<b>Date in 2008</b>	<b>Amount paid</b>	<b>Ledger 73820 'general administrative travel' Transaction</b>
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					<b>ID #</b>
Alan Israel	Change fee for flight	United		\$141	121104
Alan Israel	Change fee for Chicago to Phoenix		Jan. 5	\$125	122287
Alan Israel		Fairfield Inn	Jan. 3	\$66.08	122910
Alan Israel	Phoenix – DM	US Air	April 8	\$264.50	128002
Alan Israel	Change fee for above flight	US Air	April 9	\$315	129091
Alan Israel	Cedar Rapids - Phoenix	United	April 14	\$519	130470
Alan Israel	Boston	American	May 26- 28	\$636	132753
Alan Israel	Phoenix – Chicago Cedar Rapids – Phoenix	US Air	June 25- 27	\$1,231.50	134513
Alan Israel		Fairfield Inn	June 26	\$66.08	135199
Alan Israel	Phoenix – Chicago Cedar Rapids- Phoenix	American	August 9 – August 15	\$571.50	137743
Alan Israel	Chicago- Macomb	Amtrak	August 10	\$71	137743
Alan Israel		Fairfield Inn	August 10	\$66.08	140872

Alan Israel		Fairfield Inn	Aug. 12-13	\$132.06	140873
Alan Israel	Phoenix - Chicago Des Moines-Phoenix	United	Oct. 12 - 13	\$389	146098
Alan Israel	Phoenix -Des Moines - Chicago Des Moines-Phoenix	United	Oct. 18 - 30	\$912	146096
Alan Israel		Fairfield Inn	Oct. 20	\$66.08	147312
Alan Israel		Fairfield Inn	Dec. 13	\$66.08	151970
Alan Israel		Fairfield Inn	Dec. 17	\$66.08	151972
<b>TOTAL</b>				\$5704	

32. During 2009 Lexington Square paid for and claimed as an expense on the 2009 cost report the following trips:

Ticketholder	Trip to from	Airline/ Hotel	Date in 2009	Amount paid	Ledger 73820 'general administrative travel' Transaction ID #
Alan and Shanna Israel	Cedar Rapids to Phoenix		Jan. 15	\$940.30	158037
Alan Israel		Fairfield Inn	March 3	\$66.08	158962
	Travel	Bank of		\$2000	160127

	expenses Arizona	America			
Alan Israel	Phoenix to DM	US Air Gemini	April 27- 30	\$533.20	161869
Alan Israel		Fairfield Inn	May 26- 27	\$132.16	165386
Alan Israel	Phoenix to Cedar Rapids	Gemini	June 23	\$305.60	167136
Alan Israel	Chicago to Las Vegas	United through Gemini travel	June 12 paid June 23	\$545.60	167148
Alan Israel		Fairfield Inn	May 30 – June 11	\$859.04	167467
Alan Israel	Chicago & St Louis to Phoenix -	Gemini		\$214.85	171478
Alan Israel	Phoenix to Des Moines one way	US Air through Gemini	July 21	\$314.60	171480
Alan Israel	Amtrak Macomb to Chicago	Gemini	July 24	\$86	171482
Alan Israel	One way St Louis to Phoenix	Southwest through Gemini	August 12	\$459.60	171484
Alan Israel	Phoenix to Des Moines one way	US Air Through Gemini	Aug. 9	\$405	171486
Alan Israel	Phoenix to Chicago Chicago to Phoenix	Southwest and Untied through Gemini	August 24 August 28	\$387.20	171488
Alan Israel	Phoenix To Chicago Amtrak To Keokuk	Southwest through Gemini	August 29 and 30	\$130.19	171724

Alan Israel		Fairfield Inn	Aug. 11	\$66.08	171963
Alan Israel		Fairfield Inn	April 24	\$264.32	171967
Alan Israel	Des Moines to Phoenix	United through Gemini	Sept. 4	\$325.20	175622
Alan Israel	Phoenix to Chicago Amtrak to Macomb & return flight	United & Southwest through Gemini	Oct. 5 and Oct. 9	\$610.05	175624
Alan Israel	Phoenix to O'Hare And Amtrak	Southwest through Gemini	Oct. 5	\$196	175627
Alan Israel		Fairfield Inn	Oct. 5-7	\$198.24	176769
Alan Israel	Chicago to Phoenix	American through Gemini	Oct. 29	\$35 Includes refund	177187
Alan Israel & Jason Israel	Southwest	Southwest through Gemini	Oct. 30	\$50	177189
Alan Israel	Cedar Rapids to Phoenix	United Gemini	Dec. 4	\$663.20	180550
Alan Israel	Los Angeles to Cedar Rapids	United through Gemini	Nov. 30	\$585.20	180554
Alan Israel	Phoenix to Des Moines	US Air Gemini	Oct. 26	\$524.60	180556
Alan Israel		Fairfield Inn	Nov. 30	\$66.08	181293
Alan Israel	Cedar Rapids to Phoenix	United through Gemini	Dec. 18	\$252.20	181436
Alan Israel	Phoenix to Cedar Rapids	Allegiant Through Gemini	Dec. 13	\$137.97	181676

Alan Israel		Fairfield Inn	Dec. 3	\$66.08	182561
<b>TOTAL</b>				\$11,419.64	

33. During 2010 Lexington Square paid for and claimed as an expense on the 2010 cost report the following trips:

Ticketholder	Trip to/ from	Airline / Railway/ hotel	Date in 2010	Amount paid	Ledger 73820 'general administrative travel' Transaction ID #
Jason Israel		Southwest through Gemini	March 9 -10	\$184.40	188366
Alan Israel		Fairfield Inn	May 28	\$198.24	197358
Alan Jason and Shanna Israel & Lisa Sajda		Gemini	June 16	\$3,684.53	197977
Alan Israel		Fairfield Inn	June 21	\$384.80	199686
Alan Israel  for SH development		For travel expenses		\$1500	203461
Alan Israel	Des Moines to Phoenix	Continental and US Air through Gemini	July 1 Travel June 28-29	\$781.20	203593
Jason Israel	Des Moines	Gemini	July 1	\$740.40	203597

Alan Israel		Hampton Inn	Aug. 5-6	\$154.56	204155
Alan Israel		Hampton Inn		\$386.40	206551
Alan Israel		Fairfield Inn	Oct 30	\$66.08	210564
Alan Israel		Fairfield Inn	Oct 29	\$132.16	210566
Alan Israel	Phoenix to Omaha St Louis to Phoenix	US Air and Southwest through Gemini	Oct 5 Travelled Oct 24 Nov 1	\$368.40	215616
		Fairfield Inn	Dec 5 - 6	\$136.20	217094
		Fairfield Inn	Dec 1 -10	\$396.48	217096
<b>TOTALS</b>				\$9,293.85	

34. Commuter travel by the owner of a nursing facility is not an allowable cost (from private residence to facility and return to residence). Lexington Square repeatedly paid for round trip transportation cost and hotel costs for owner Alan Israel from his home in Phoenix, Arizona to Keokuk, Iowa.

35. The improper claim of personal travel expenses of the owner had the effect of fraudulently boosting the Medicaid *per diem* rates of Lexington Square.

**Placing costs in 'other administrative costs'**

36. The Iowa Department of Inspections and Appeals, the state regulators of nursing facilities, did an annual survey of Lexington Square in January of 2010.

37. Terri Abell, Lexington Square Director of Nursing, was responsible for helping

Lexington Square pass the annual survey.

38. Alan Israel told Terri Abell that if she was able to get Lexington Square to pass the survey that Lexington Square would make the payments for Abell's camper trailer which was financed through US Bank.

39. After Lexington Square passed the annual survey, Alan Israel directed the controller to start making the monthly payments of \$203.71 to US Bank on Abell's 2009 Rockwood Ultralite camper trailer with Iowa license, 'Lee County 8265 CO.'

40. The twelve monthly payments, totaling \$2,444.52, to US Bank were claimed as expenses (line 82 of Schedule C of the 2010 cost report) as support care costs.

41. The inclusion of these unallowable expenses had the effect of improperly boosting the *per diem* Medicaid rate.

#### **Fraud through refinancing of Lexington Square's debt**

42. Through debt refinancing of Lexington Square, Defendants Alan Israel and Jason Israel were able to withdraw cash proceeds out of the excess and then hide the unrelated interest costs in the 2010 Cost report resulting in a fraudulent inflation of the *per diem* rate Iowa Medicaid paid Lexington Square.

#### **May 2008 State Central Bank debt reconsolidation**

43. In May 2008 the State Central Bank of Keokuk, Iowa consolidated some of the Lexington Square debt with a \$500,000 loan. \$355,031.44 of the proceeds was distributed to Alan Israel for personal activities unrelated to the operation of the Lexington Square facility in Keokuk, Iowa.

#### **September 2008 State Central Bank mortgage refinancing**

44. On September 15, 2008 the State Central Bank of Keokuk, Iowa refinanced Lexington Square's mortgage with a loan of \$3,550,000. \$311,389.80 of the loan proceeds were paid directly to Durrant architects for work performed on an assisted living project in Ankeny Iowa. The Ankeny project was unrelated to the operation of the Lexington Square facility in Keokuk, Iowa.

45. Of the \$3.55 million from the September 15, 2008 loan from State Central, \$35,932.36 was used to pay off Jason Israel's personal loan to State Central and \$60,684.32 was used to pay off Alan Israel's personal loan to State Central. Additionally the May 2008 \$500,000 consolidation loan was rolled into the refinancing of the mortgage.

#### **December of 2009 Cedar Rapids Bank & Trust mortgage refinancing**

46. On December 18, 2009 Lexington Square and Lexington Square Real Estate LLC refinanced the mortgage loan with a \$4.3 million loan from the Cedar Rapids Bank and Trust ("CRB&T"). Of the \$4.3 million loan, \$3.47 million was used to pay off the loan at State Central. An additional \$258,581 was used to pay off a State Central Bank loan for the development of Israel's Sienna Hills ("SH") project in Ankeny, Iowa which was unrelated to the operation of the Lexington Square facility in Keokuk, Iowa.

47. Of the \$4.3 million in loan proceeds, \$480,118 was paid directly to the borrower. Of the \$480,118, some was legitimately used to pay operating expenses of Lexington Square but \$134,395, at the direction of Alan Israel, was diverted to a contra account by a journal entry dated December 31, 2009.

48. The \$134,395 in the contra account was then used to secretly pay for expenses unrelated to the operation of the Lexington Square facility in Keokuk, Iowa.

49. Of the \$4.3 million loan from CRB&T, at least 26.88% was unrelated to the operation of Lexington Square (\$355,031 cash out in May 2008 plus \$311,389 payment of the Durrant architect bill in September 2008 plus \$35,932.36 pay-off of Jason Israel's personal loan plus \$60,684.32 pay-off of Alan Israel's personal loan plus \$134,395 in contra funds plus \$258,581 Sienna Hills loan pay off equals \$1,156,012). Over 99.8% of the interest on the \$4.3 million loan was expensed on the Lexington Square's Medicaid 2010 cost report with the effect of raising the Iowa Medicaid *per diem* rate.

50. The Defendants continued the misrepresentation on the 2011 cost report by purporting that the allowable interest was \$218,195.

#### **EACO accounts**

51. To conceal owner equity withdrawals Alan Israel directed the Lexington Square controller to create 'Notes receivable' on the balance sheet to make it appear that money was borrowed from Lexington Square and that the note was an asset. The note receivable would appear on the balance sheet of Lexington Square which would have the additional fraudulent effect of deceiving banks which were lending money to Lexington Square that the 'notes receivable' were actual assets of the company. The invented accounts were called EACO accounts, which is short for "Expense Adjustment Cash Out."

52. On the balance sheet of Lexington Square for December 31, 2008 the notes receivable were as follows:

EACO #1 Y/E 2006	\$52,736.15
EACO #1 Y/E 2007	\$269,460.00
EACO #1 Y/E 2008	\$952,527.85

53. The EACO accounts were then manipulated through a series of journal entries to make it appear that the 'note receivable' was being paid off and reduced when in fact no payments were made to Lexington Square on the note receivable.

**Dave's Place**

54. Alan Israel created an Iowa limited liability company, Dave's Place LLC, to operate the specialized nursing facility at 3140 Plank Road, Keokuk, South Lee County, Iowa.

55. Dave's Place was opened in March of 2011.

56. On July 1, 2011 the Department of Human Services granted an 'Exception to Policy' to Dave's Place because the facility was designated to serve a unique resident population. The 'Exception to Policy' set the *per diem* rate of \$386.20 for those who met the NF/MI level of care.

57. On April 12, 2012 Dave's Place submitted a cost report to the Iowa Medicaid Enterprise for the period of May 7, 2011 through December 31, 2011 ("2011 Cost Report").

58. An operating agreement was created for Dave's Place which memorialized the ownership interests.

59. The ownership interests disclosed in the Dave's Place 2011 Cost Report were listed as follows: ninety-nine percent Alan Israel and one-percent Jason Israel. Dr. Donald Berg, M.D. of Ottumwa, Iowa was not listed on the cost report as having any ownership interest in Dave's Place.

60. In a civil lawsuit in Lee County, Alan Israel submitted an affidavit to the

opposing party in July 2011 stating, 'I am a 20% owner of Dave's Place, LLC.'

61. In the 2011 Dave's Place cost report the only related parties disclosed were Alan Israel, Jason Israel and Financial Healthcare Associates.

62. Dr. Donald Berg created an Iowa Limited liability company known as Oak Creek Ventures LLC ('Oak Creek') to invest in Dave's Place.

63. Oak Creek contributed \$775,000 to Dave's Place as capital contribution in exchange for a 19% interest in Dave's Place.

64. In 2011 the return on Dr. Berg's Oak Creek investment in Dave's Place accrued to \$98,981.

65. Interest claimed as an expense on the Dave's Place 2011 cost report was \$202,727 of which \$98,981, or 48.8%, was not proper.

#### **Disregard of Kathy Gabel's warning**

66. In December of 2009 Lexington Square Administrator Kathy Gabel sent a letter attached to an email to Alan Israel regarding the financial situation of Lexington Square complaining about the removal of money by Alan Israel and Jason Israel. Gabel stated, in part:

There should be plenty of money to operate Lexington Square, pay bills on time and still have money left over to venture into Dave's Place and Prime Nursing and Rehabilitation. The fact that we don't have money is NOT because the management team does not work hard at making money. Since Susan, Marc and I took over the business in 2005, Lexington Square has realized \_1,280,000—(1.2 million) \_\_\_ in profits!!!

### **Disregard of Litman's Warning**

67. Lawrence Litman is the owner and chief executive officer of Healthcare Systems and Services of Glendale, Arizona. Litman provided accounting and consulting services to Alan Israel and Israel's companies for approximately one year.

68. On August 13, 2010 Littman emailed Alan Israel explaining why the Littman had decided to stop working with the Israel companies. Litman stated in part (emphasis added):

I am not saying that what has been done was illegal, just messy in every aspect from temporarily expensing credit card payments, potentially miscoding personal loans, shifting money between entities to continue to make personal loans, and even operating two separate tax ID entities in one set of books. All of this is fixable but the one most undesirable problem that is not fixable through correct accounting processes is preventing these facilities from being operated as the family personal check book. Perhaps you really don't know that is not allowed and perhaps the bank covenants are not being enforced but I can tell you that I have seen this practice in the past and it did not end well for the local family. In fact people did some significant jail time by the time Medicare, Medicaid and the IRS were done with them.

### **Use of Lexington Square to fund other projects**

69. Anne Menke is a Certified Public Accountant with offices in West Point, Iowa. Menke provided certified public accounting services to companies managed by Alan Israel and Jason Israel, i.e., Lexington Square and Dave's Place. Menke had frequent discussions with Alan Israel about cash shortfalls of Lexington Square because Lexington Square's funds

were being used to pay the debt of SH Development.

### **False and Fraudulent Claims and Statements**

70. The Defendants caused Dave's Place and Lexington Square to submit cost reports to IME seeking unallowable expenses as follows:

Dave's Place 2011 cost report, submitted April 12, 2012

Lexington Square 2010 cost report, submitted April 19, 2011

Lexington Square 2010 revised cost report, submitted February 3, 2012.

By making or causing to be submitted cost reports containing false records and statements, which are material to establishing Medicaid *per diem* claims, the Defendants have violated Iowa Code Chapter § 685.2(1)(b).

71. The Defendants caused Lexington Square to submit monthly claims to IME for payment seeking full unallowable expenses from July 1, 2010 to the present. By knowingly presenting or causing to be presented these false or fraudulent claims for payment, the Defendants have violated Iowa Code Chapter § 685.2(1)(a).

### **Amount of Medicaid Payments**

72. As a result of Defendant's inclusions of false and fraudulent claims for reimbursement expenses on the cost reports listed above, Medicaid reimbursed Lexington Square at least \$44,524.77 more than it was entitled from July 1, 2010 to the present.

73. In doing so, Defendants presented or caused to be presented these claims with the actual knowledge of their falsity or in deliberate ignorance or reckless disregard that such claims were false and fraudulent.

### **Money laundering**

74. In April and May of 2009 State Central Bank Vice President Scott Piper suggested to Alan Israel that Israel refinance the Lexington Square debt to “cash out” equity and use the proceeds to pay down the debt owed to State Central on the Sienna Hills project in Ankeny, Iowa.

75. On December 18, 2009 Lexington Square and Lexington Square Real Estate LLC refinanced the State Central debt with a loan of \$4.3 million from Cedar Rapids Bank & Trust (“CRB&T”).

76. In exchange for the loan from CRB&T, Lexington Square Real Estate, LLC pledged by mortgage the Lexington Square property at 500 Messenger Road, Keokuk, Iowa. The mortgage was signed by Alan Israel on December 18, 2009.

77. As the majority owner and managing member of Lexington Square and Lexington Square Real Estate LLC, Alan Israel was a high managerial agent of the both limited liability companies.

78. The \$4.3 million loan from the CRB&T was guaranteed by the United States Department of Agriculture (“USDA”) under the Business and Industry Guarantee program.

79. As a condition for the USDA loan guarantee, Alan Israel signed an agreement on December 18, 2009. One of the conditions of the loan was to refinance a debt of \$3.725 million owed to State Central Bank of Keokuk.

80. The closing statement for the CRB&T loan, signed by Alan Israel, noted that the prior mortgage loan with State Central of \$3,468,717.53 was paid off as well as another loan with State Central of \$255,973. The amount of proceeds delivered directly to the borrower was \$485,918.

81. Of the \$4.3 million loaned to Lexington Square at least \$1,156,012 (i.e., 26.88%) was for payment for financing unrelated debt and owner equity withdrawals, all of which was unrelated to the operation of a Medicaid funded nursing facility.

82. To service the \$4.3 million loan Lexington Square set up automatic payments of \$27,355.56 per month via electronic funds transfer from the Lexington Square business account.

83. In the 2010 Lexington Square cost report over 99.95% of the interest related to the CRB&T \$4.3 million loan was expensed to Iowa Medicaid.

84. The *per diem* rate in the previous base year rate of 2008 was \$119.32. In the base rate year of 2010 the *per diem* increased to \$131.58.

85. The new *per diem* rate became effective July 1, 2011. Of the total *per diem* of \$131.58, \$5.36 was attributable to the cost of interest.

86. Of the \$5.36 of interest cost that the Iowa Medicaid allowed, at least 23%, or \$1.23, was not properly an expense of the operation of the Lexington Square nursing facility.

87. Each month after the new rate went on July 1, 2011 the Iowa Medicaid program was falsely billed an additional \$1.23 *per diem*.

88. On August 2, 2011 Defendants presented a claim to IME for 1,878 patient days which resulted in an overcharge of at least \$2,309.94 (1,878 days times \$1.23/day overcharge = \$2,309.94; remittance advice #4974516 dated August 8, 2011).

89. On September 1, 2011 Defendants presented a claim to IME for 2,047 patient days which resulted in an overcharge of at least \$2,517.81 (2,047 days times \$1.23/day overcharge = \$2,517.81; remittance advice #5004783 dated September 5, 2011).

90. On October 3, 2011 Defendants presented a claim to IME for 2,021 patient days, of which 2,010 were allowed, which resulted in an overcharge of at least \$2,472.30 (2,010 days times \$1.23/day overcharge = \$2,472.30; remittance advice #5045673 dated October 10, 2011).

91. On November 1, 2011 Defendants presented a claim to IME for 2,010 patient days, of which 2,000 were allowed, which resulted in an overcharge of at least \$2,460 (2,000 days times \$1.23/day overcharge = \$2,460; remittance advice #5076841 dated November 7, 2011).

92. On December 1, 2011 Defendants presented a claim to IME for 1,928 patient days, of which 1,878 were allowed, which resulted in an overcharge of at least \$2,309.94 (1,878 days times \$1.23/day overcharge = \$2,309.94; remittance advice #5106205 dated December 5, 2011).

93. On January 3, 2012 Defendants presented a claim to IME for 2,077 patient days, of which 2,039 were allowed, which resulted in an overcharge of at least \$2,840.07 (2,039 days times \$1.23/day overcharge = \$2,840.07; remittance advice #5145329 dated January 9, 2012).

94. On February 1, 2012 Defendants presented a claim to IME for 2,017 patient days, of which 1,990 were allowed, which resulted in an overcharge of at least \$2,447.70 (1,990 days times \$1.23/day overcharge = \$2,447.70; remittance advice #5174984 dated February 6, 2012).

95. On March 1, 2012 Defendants presented a claim to IME for 2,067 patient days which resulted in an overcharge of at least \$2,542.41 (2,067 days times \$1.23/day overcharge

= \$2,542.41; remittance advice #5205144 dated March 5, 2012).

96. On April 2, 2012 Defendants presented a claim to IME for 1,955 patient days which resulted in an overcharge of at least \$2,404.65 (1,955 days times \$1.23/day overcharge = \$2,404.65; remittance advice #5245322 dated April 9, 2012).

97. On May 2, 2012 Defendants presented a claim to IME for 2,293 patient days, of which 2,215 were allowed, which resulted in an overcharge of at least \$2,724.45 (2,215 days times \$1.23/day overcharge = \$2,724.45; remittance advice #5276356 dated May 7, 2012).

98. On June 1, 2012 Defendants presented a claim to IME for 2,293 patient days which resulted in an overcharge of at least \$2,820.39 (2,293 days times \$1.23/day overcharge = \$2,820.39; remittance advice #5307220 dated June 4, 2012).

99. On July 2, 2012 Defendants presented a claim to IME for 2,049 patient days, of which 2,019 were allowed, which resulted in an overcharge of at least \$2,483.37 (2,019 days times \$1.23/day overcharge = \$2,483.37; remittance advice #5346117 dated July 9, 2012).

100. On August 1, 2012 Defendants presented a claim to IME for 2,327 patient days, of which 2,313 were allowed, which resulted in an overcharge of at least \$2,844.99 (2,313 days times \$1.23/day overcharge = \$2,844.99; remittance advice #5377036 dated August 6, 2012).

101. On September 5, 2012 Defendants presented a claim to IME for 2,203 patient days which resulted in an overcharge of at least \$2,709.69 (2,203 days times \$1.23/day overcharge = \$2,709.69; remittance advice #5415669 dated September 10, 2012).

102. On October 1, 2012 Defendants presented a claim to IME for 2,191 patient days, of which 2,179 were allowed, which resulted in an overcharge of at least \$2,680.17

(2,179 days times \$1.23/day overcharge = \$2,680.17; remittance advice #5447627 dated October 8, 2012).

103. On November 2, 2012 Defendants presented a claim to IME for 2,365 patient days, of which 2,364 were allowed, which resulted in an overcharge of at least \$2,907.72 (2,364 days times \$1.23/day overcharge = \$2,907.72; remittance advice #5479345 dated November 5, 2012).

104. On December 3, 2012 Defendants presented a claim to IME for 2,502 patient days, of which 2,479 were allowed, which resulted in an overcharge of at least \$3,049.17 (2,479 days times \$1.23/day overcharge = \$3,049.17; remittance advice #5519849 dated December 10, 2012).

105. It is a Fraudulent Practice in Iowa to make or caused to be made a false statement or misrepresentation of material facts or knowingly fail to disclose material facts in application for payment of services to the Iowa Medicaid program. Iowa Code § 249A.8 and § 714.8(10).

106. If the amount of money obtained in a Fraudulent Practice exceeds \$1,000 it is a Second Degree Fraudulent Practice which is a Class D felony. Iowa Code § 714.10.

107. Fraudulent Practices in the Second Degree is a Class D felony which is punishable by imprisonment not to exceed five years. Iowa Code § 902.9(5).

108. The effect of boosting the *per diem* cost resulted in a Second Degree Fraudulent Practices for the months of July 2011 through the present. Each monthly claim resulted in a Fraudulent Practice in the Second Degree, specified unlawful conduct under Iowa Code § 706B.1(3).

**COUNT I**

**False Claims Act - Iowa Code 685.2(1)(a)**

**Presentation of False Claims**

109. Paragraphs 1 through 108 are incorporated by reference.

110. Defendants knowingly or recklessly made, used or caused to be made or used false or fraudulent claims for reimbursement to the State of Iowa through its funding of the Medicaid program in violation of the False Claims Act by submitting false claims for payment by Lexington Square since July 1, 2010.

111. By virtue of the false records or false statements made by Defendants the State of Iowa has suffered damages and therefore is entitled to treble damages under the False Claims Act in an amount to be determined at trial, plus a civil penalty of \$5,500 to \$11,000 for each violation.

**COUNT II**

**False Claims Act - Iowa Code 685.2(1)(b)**

**Use of False Statements**

112. Paragraphs 1 through 108 are incorporated by reference.

113. Defendants knowingly or recklessly made, used or caused to be made or used false records or statements in the Lexington Square and Dave's Place cost reports identified above, in order to inflate the *per diem* rates paid by the State of Iowa through its Medicaid program.

114. By virtue of the false records or false statements made by Defendants the State of Iowa has suffered damages and therefore is entitled to treble damages under the False Claims Act in an amount to be determined at trial, plus a civil penalty of \$5,500 to \$11,000 for each violation.

### **COUNT III**

#### **Money Laundering - Iowa Code 706B.2(1)(b)**

115. Paragraphs 1 through 108 are incorporated by reference.

116. Defendants Lexington Square LLC, Lexington Square Real Estate LLC and Alan Israel made property available by transaction knowing that it was intended to be used for the purpose of committing or furthering the commission of specified unlawful activity.

117. The value of the property pledged was \$5,800,000.

118. By virtue of making the Lexington Square property available by transaction through a pledge of a mortgage and then using the property for the furthering of specified unlawful conduct, the State of Iowa is entitled to three times the value of the Lexington Square property.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff State of Iowa requests that judgment be entered in its favor against Defendants jointly and severally as follows:

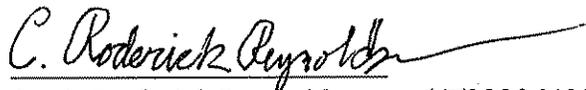
On Counts I and II, judgment for the State of Iowa against Defendants in the amount of damages to be determined at trial, trebled, and such civil penalties as are required

by law, and post-judgment interest, together with all such further relief as may be just and proper.

On Count III, judgment for the State of Iowa against Defendants Lexington Square LLC, Lexington Square Real Estate LLC and Alan Israel in the amount of \$17,400,00, the value of the property involved trebled, and post-judgment interest, together with all such further relief as may be just and proper.

Respectfully submitted

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