IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE SEALED QUI TAM COMPLAINT

No. 1:96-CV-1258

MOTION TO UNSEAL FILE AND OPPOSITION TO THE ATTORNEY GENERAL'S REQUEST FOR FURTHER EXTENSIONS OF TIME

The Hamilton Securities Group, Inc. ("Hamilton"), a defendant in this *qui tam* action,[1] moves to unseal the file and opposes any requests by the Attorney General for further extensions of time to evaluate whether the government will intervene. Over the past 35 months, multiple agencies of the federal government have "conducted an extensive investigation"[2] of the allegations in the complaint. Yet with approximately 1,000 extra days beyond the standard 60-day evaluation period contemplated by Congress, the Attorney General has not decided whether to intervene. While the False Claims Act allows the Attorney General to move, with good cause shown, for extensions of the 60-day evaluation period, the legislative history of the False Claims Amendments Act of 1986 demonstrates that Congress did not intend the evaluation period to extend indefinitely, nor did Congress intend for the Attorney General to request exorbitant extensions to engage in full-blown, albeit one-sided, discovery. In considering whether to continue maintaining the seal, the Court cannot overlook the

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[1] The Court temporarily lifted the seal in November 1997, authorizing the Department of Justice to inform Hamilton that it was a defendant.

[2] September 30, 1998 letter from Judith Hetherton, Counsel to the HUD Inspector General, to Michael J. McManus, counsel for Hamilton, which is attached as Exhibit A.

interests of defendants and the public, and should not accept the Attorney General's conclusory assertions that she needs additional time.

STATEMENT OF FACTS AND AUTHORITIES

Relators filed the complaint on June 6, 1996, under seal, as required by the False Claims Act. The government sought and received numerous extensions of the evaluation period, thus keeping the complaint under seal while it claims to be conducting "an extensive investigation" into the allegations. During this extended period, the Inspector General of the Department of Housing and Urban Development ("HUD's OIG") has issued a number of subpoenas to companies involved in the loan sales, received hundreds of thousands of paper records (from Hamilton alone, and perhaps millions of documents from all subpoenaed parties), and interviewed many witnesses.[3] Yet with all of this discovery activity for the past three years, the government has not discovered any facts warranting charges against Hamilton or any of its employees. Indeed, the United States Attorneys' Office has reviewed information provided to it by the HUD OIG and declined prosecution.[4]

When proffering reasons to extend seals in *qui tam* cases, the government often states that extending the seal will avoid damaging *qui tam* defendants by publicly disclosing unsubstantiated allegations. Courts typically accept that justification without

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[3] HUD's OIG is spearheading the government's investigation. In a related summary enforcement proceeding (Misc. No. 98-92), Hamilton asserted that the Attorney General may not delegate *qui tam* investigations to the independent Inspectors General. The Honorable Stanley Sporkin rejected Hamilton's position, and Hamilton noticed an appeal, which is pending. In the present motion, Hamilton's arguments about the length of the investigation apply equally to *qui tam* investigations conducted directly by the Attorney General or by a delegee.

[4] Hamilton's undersigned counsel were informed of this decision by Assistant United States Attorney Richard Chapman at a meeting on May 20, 1999.

the benefit of hearing whether defendants actually agree with the government's ostensible motivation. Here, however, public disclosure of the allegations against Hamilton at this time cannot possibly inflict greater damage to the company and its present and former employees than the damage already imposed by the government's investigation, leaks of the unsubstantiated allegations to the media, the threats of civil sanctions and criminal prosecution made by HUD's OIG, and the procedural inability to refute the relators' baseless allegations. The government's never-ending investigation, initiated by a disgruntled competitor, has severely damaged Hamilton. Given the time that the government has had to investigate the allegations, maintaining the seal on this file any longer is unconscionable, and is inconsistent with the statutory intent of the False Claims Act.

The False Claims Act provides that:

> The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

31 U.S.C. § 3730(b)(2). Paragraph (b)(3) allows the government to move, "for good cause shown", for extensions of the period during which the complaint remains sealed. Throughout the original 60 days and any extension period, the defendants do not receive a copy of the complaint and have no opportunity to respond to the allegations. The 60-day period allows the government to investigate the allegations and evaluate whether to intervene in the case. The Act requires the government to either proceed with the action or notify the court that it will not take over the action "[b]efore the expiration of the 60-day period or any extensions." 31 U.S.C. § 3730(b)(4).

In this case, the government has gone 1,000 days beyond the normal 60-day evaluation period permitted by the False Claims Act, and has pursued an ambitious

discovery campaign as if the case was moving forward on its merits, but without the participation of the defendants and without any of the restraints that a public process might ensure. Congress created the evaluation-period provisions to allow the Attorney General to investigate *qui tam* allegations sufficiently to determine whether or not to intervene, not to sentence innocent defendants to a business-ending purgatory. The government is abusing the seal provision of the False Claims Act to conduct unrestrained, one-sided discovery at tremendous costs to defendants such as Hamilton and to the public in general. Hamilton's interests have been entirely ignored, and the seal has kept the public from seeing the tremendous financial waste (and abuse of citizens) resulting from this government investigation. The costs of the investigation alone must run into the millions if not tens of millions of dollars. But the greater loss to U.S. taxpayers, which is largely hidden while the seal remains in force, is the destruction of HUD's award-winning[5] loan sale program, which generated in excess of two billion dollars in credit subsidy savings for the government until it was shut down as a direct result of (a) the bogus allegations raised by the relator and (b) the government's three-year investigation.

Two federal courts recently ruled that government requests for extensions of the seals (and hence, the government's evaluatory period) violated the express terms and spirit of the False Claims Act. *United States ex. rel. Costa and Thornburg v. Baker & Taylor, Inc.*, 955 F. Supp. 1188 (N.D. Calif. 1997); *United States ex. rel. St. John LaCarte v. SmithKline Beecham Clinical Laboratories, Inc.*, 1998 U.S. Dist. LEXIS 19224 (D.E.D. La. 1998). In both cases, the government already had been evaluating

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5 HUD's Mortgage Sales Team received Vice President Gore's "Hammer Award" in 1996 for developing, with Hamilton's assistance, an aggressive program to sell defaulted mortgages that had been placing an astronomical drain on the Department's financial and human resources.

allegations raised in the complaints for many months when the courts denied further extensions and set dates for unsealing the files. The rationales for those decisions are abundantly applicable to the present case, and more so. The government has been evaluating the allegations in this case for 35 months.

In *Baker & Taylor*, after granting some initial extensions, the court ordered the case file unsealed and set a final deadline within which the government was required to make its intervention election. Citing extensively from the legislative history of the 1986 amendments to the False Claims Act, the court observed that the 60-day seal period came about because "the Justice Department had expressed concern that the filing of a *qui tam* lawsuit "might 'tip off' the subject of the criminal investigation." 955 F. Supp. at 1189, *citing* S.Rep. No. 345, 99th Cong., 2d Sess. 23-24 (1986), *reprinted in* 1986 USCCAN 5266, 5288-89.

> The sixty-day period during which the complaint would be sealed was intended as a compromise, allowing the government to complete its investigation and formulate and adopt a litigation strategy without seriously injuring the interests of the defendant.

955 F. Supp. at 1189.

Citing further from legislative history, the court added:

> The legislative history of the False Claims Amendments Act makes abundantly clear that Congress did not intend that the government should be allowed to prolong the period in which the file is sealed indefinitely. The Senate report states:
>
> > Subsection (b)(3) of section 3730 establishes that the Government may petition the Court for extensions of both the 60-day evaluatory period and the time during which the complaint remains under seal. Extensions will be granted, however, only upon a showing of "good cause." The Committee intends that the courts weigh carefully any extensions on the period of time in which the Government has to decide whether to intervene and take over the litigation. The Committee feels that with the vast majority of cases, 60 days is an adequate amount of time to allow Government coordination, review and decision. Consequently, "good cause" would not be established merely upon a showing that the Government was overburdened and had not had a chance to

> address the complaint. While a pending criminal investigation of the allegations contained in the qui tam complaint will often establish "good cause" for staying the civil action, the Committee does not intend that criminal investigations be considered an automatic bar to proceeding with a civil fraud suit.
>
> The Committee believes that if an initial stay is granted based upon the existence of a criminal investigation, the court should carefully scrutinize any additional Government requests for extensions by evaluating the Government's progress with its criminal inquiry. The Government should not, in any way, be allowed to unnecessarily delay lifting of the seal from any civil complaint or processing of the qui tam litigation.

S.Rep. 345, 99th Cong., 2d Sess 24-25 (1986), reprinted in 1986 USCCAN 5266, 5289-90. The "good cause" requirement of the statute is, therefore, a substantive one, which the government can only satisfy by stating a convincing rationale for continuing the seal. In this case, the government has utterly failed to meet the burden.

955 F. Supp. at 1190.

While it was the relator who sought relief in *Baker & Taylor*, the court nonetheless took pains to analyze and articulate the reasons why the defendants' and the public's interests must also be considered:

> There is nothing in the statute or legislative history to suggest that, in evaluating requests for such extensions, the court should disregard the interests of the defendant and the public. Defendants have a legitimate interest in building their defense while the evidence is still fresh. The public has a right to monitor the activities of government agencies and the courts.

955 F. Supp. at 1189-90.

In considering the interests of defendants, Judge Walker compared the myriad discovery activities over 18 months by the government to the defendants' inability to protect their interests during that period.

> In this case, the government appears to be fully engaged in its discovery, without giving the defendants the opportunity even to answer the complaint. The government's return to the order to show cause states that each of the defendants has been served with a subpoena, investigative interviews have been conducted with numerous current and former B & T employees and government personnel have been criss-crossing the country to conduct interviews and audits. The memorandum further

> suggests that the government has engaged in settlement negotiations with B & T. The defendants are proceeding in these matters based on plaintiffs' representations. They are apparently discussing the settlement of a case without knowing with certainty the allegations leveled against them. Each of the plaintiff parties has suggested that keeping the file under seal serves defendants' interests by avoiding unflattering publicity; the court is not, however, convinced that defendants' current state of ignorance is a blissful one.

955 F. Supp. at 1190.

Considering the government's expansive investigation, the Court concluded:

> This practice of conducting one-sided discovery for months or years while the case is under seal was not contemplated by Congress and is not authorized by the statute.

955 F. Supp. at 1191.

The government has been conducting just such one-sided discovery against Hamilton for nearly three years. Beginning in September of 1996, Hamilton produced over 100,000 pages of hard copy documents and over 100 disks containing digital information in response to administrative subpoena served by HUD'S OIG dated August 6 and August 22, 1996. The OIG issued a third set of subpoena in October of 1997, and since that time the government has had access to hundred of thousands of additional documents, both in hard copy and stored digitally. Yet despite repeatedly professing its urgent need for these documents, the production of which has cost Hamilton in excess of $2 million, it appears the government has been remarkably dilatory in both its review and analysis of these documents. For example, on December 18, 1998, the Honorable Stanley Sporkin established a process for the OIG to begin reviewing Hamilton's electronic records.[6] Yet, in the past six months, the OIG has done little more than designate a potential vendor to facilitate accessing the data.[7]

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[6] A copy of the Court's December 18, 1998 Order is attached as Exhibit B.

[7] See Judith Hetherton's February 26, 1999 letter, attached as Exhibit C.

While the government has sporadically spent significant amounts of time reviewing the hard-copy documents at the document depository where Hamilton's responsive documents have been made available for the OIG, sign-in sheets prove that there have been months-long intervals between such sessions, during which the documents gather dust.[8] Thus, the government has had nearly three years of one-sided discovery, while Hamilton is left wondering what precisely are the charges leveled against the company.

Unfortunately, however, the fact that the matter has been under seal has not protected Hamilton from adverse publicity or damages. Hamilton believes that someone within the government has communicated inaccurate, damaging and libelous allegations purported to be contained in the False Claims Act complaint to the national media. For example, the Honorable Stanley Sporkin held a closed hearing in March 1998 in a related proceeding involving Hamilton. The file on that case was also sealed at the time,[9] ostensibly because of its relationship to the False Claims Act case. The day after the hearing, however, *The Washington Times* ran a story about the hearing which was replete with (a) details about the hearing and the *qui tam* allegations, (b) negative accusations and insinuations about Hamilton, and (c) precise quotes from the government's investigative team.[10] It goes without saying that neither *The Washington Times* nor its reporter are parties to the case or have any legitimate basis for having access to (or disseminating) statements made in a closed hearing, and it is without

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8 Copies of the sign-in sheets maintained by the Special Masters, Laurence Storch, Esquire and Irving Pollack, Esquire, are attached as Exhibit D. For the Court's convenience, we highlighted (and placed an asterisk beside) each of the OIG's entries to distinguish them from entries by Hamilton and its counsel.

9 It has since been unsealed with the acquiescence of the government.

10 A copy of the article is attached as Exhibit E.

question that Hamilton was not the source of a leak regarding false and libelous information about itself.

The public also is entitled to know on what basis the government has been spending vast resources over the past three years, and whether or not those resources have been justifiably spent. For example, a team of four OIG and FBI agents served a subpoena on Ms. Fitts' elderly uncle, the owner of a turn-of-the-century farm (the farmhouse does not even have modern heating, insulation or indoor plumbing). These agents were seeking records relating to the farm's ownership and maintenance costs, apparently because Hamilton's president, Catherine Austin Fitts, had one time owned a share of the farm with her uncle. The public has a right to know when the government is wasting its money on such nonsense and abusing its citizens in the process.

Should similar arguments be raised here, the *Baker & Taylor* court rejected the government's arguments that: (a) it had not had a sufficient opportunity to reach a decision about intervening, (b) that lifting the seal could interfere with a related criminal investigation, and (c) that lifting the seal could impede settlement negotiations. 955 F. Supp. at 1191. The court found the first proposition uncompelling in light of the legislative balance of interests encompassed in the 60-day period, and the 18-month evaluation period already permitted by previous extensions. Government concerns about "tipping-off" subjects of criminal investigations also rang hollow:

> The government has issued subpoenas to each of the defendants and has interviewed numerous current and former employees of B & T. The proposition that defendants are currently unaware of the investigation or its general nature, therefore, defies reason.

Id. The court rejected the Government's third justification because of public policy concerns and the court's sense that the government's motives might not be entirely altruistic.

> Finally, the government argues that lifting the seal would interfere with settlement negotiations. In short, the government suggests that the settlement value of the case will decline if the government cannot offer defendant the benefit of never making these charges public. First, one cannot help wondering whether the fact that the defendants must guess about the case filed against them is not the more significant settlement advantage currently enjoyed by the government. Even if the advantages to defendants of maintaining the veil of secrecy were the more important issue, such a concern clearly falls outside of the rationale for the statutory seal provision. Congress enacted the seal provision to facilitate law enforcement, not to provide an extra bargaining chip in settlement negotiations. Moreover, a settlement guaranteeing that the allegations of the complaint would never come to light would utterly frustrate the public's interest in monitoring the workings of government.

Id.

A virtually identical decision was recently rendered in *United States ex. rel. St. John LaCarte v. SmithKline Beecham Clinical Laboratories, Inc.*, 1998 U.S. Dist. LEXIS 19224 (D.E.D. La. 1998) . The court addressed the issue after the Government moved for both an extension of the seal and the evaluatory period, and for partial lifting of the seal (so that it could provide the complaint to defendants in order to discuss the allegations and possible settlement). *SmithKline Beecham*, slip op. at 1-2. The *SmithKline Beecham* court, relying heavily on the compelling analysis of the *Baker & Taylor* court, stated:

> this court is reluctant to grant repeated extensions of time in qui tam actions. The court has already been more than generous to the government in allowing extensions, and the government has had ample time to consider whether it will intervene in the case.

Id., slip op. at 4.

The courts in both *Baker & Taylor* and *SmithKline Beecham* denied further extensions and ordered the seals lifted after the evaluation periods had stretched to approximately 18 months. In the present case, the evaluation period is nearing its third anniversary. The government may be able to cite examples of longer evaluation

periods; however, those examples likely exist for the same unfortunate reasons noted by Judge Walker in *Baker & Taylor*:

> The Court notes with regret that when the earlier extensions were granted in this case, the effects of inertia and the lack of an opposing party may have resulted in a less searching inquiry regarding good cause than is appropriate. Unfortunately, the relative ease of granting, rather than denying, these extensions may too often lead courts to prolong unnecessarily the period of the seal.

955 F. Supp. at 1191-92.

In the present case, Hamilton assumes that the government's previous requests for extensions have gone unopposed because the seal makes it difficult for defendants to effectively question the government's stated justifications. Furthermore, a relator typically will not seek to end the evaluation period particularly when the government/ relator team has been able to conduct extensive one-sided discovery -- funded with tax dollars. Even if a relator's case does not have merit, and the government eventually reaches that conclusion itself, the relator may benefit – as has occurred here – when the endless investigation destroys or critically wounds its business competitors.

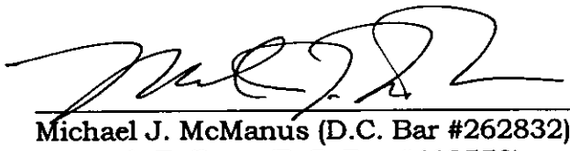
This investigation has gone on for 35 months. The HUD OIG, investigating the allegations for the Attorney General, has interviewed numerous former Hamilton employees, other HUD contractors and HUD employees. Additionally, the government has subpoenaed and reviewed hundreds of thousands of pages of documents produced by Hamilton, all of Hamilton's bank statements and general ledgers, and personal bank records for Hamilton's president, Catherine Austin Fitts. The HUD OIG has had so much time (and apparently, money to burn) that chasing whimsical theories to a turn-of-the-century farmhouse is not beyond their collective sense of reasonableness.

The government has gone far beyond merely evaluating the merits of the *qui tam* complaint and clearly has not been attempting to protect this *qui tam* defendant

from damaging publicity. The HUD OIG has been engaging in all-out discovery for nearly three years – pushing ahead aggressively at times, then virtually suspending activity when it suits its schedule. During those three years, Hamilton has been subjected to a crippling investigation and rampant leaks of unsubstantiated rumors to national media, yet has been precluded from refuting the allegations in the complaint. These actions demonstrate that the government is not meeting its obligations under the False Claims Act and is abusing the seal provision. At this point, the seal only serves to provide cover for an onerous and what appears to be vindictive investigation, which has damaged companies and government employees who were integrally involved in creating HUD's successful loan sales program. Under these circumstances, the court should set an immediate date for lifting the seal and by which the government must make an election in this case.

Respectfully submitted,

DRINKER BIDDLE & REATH LLP



Michael J. McManus (D.C. Bar #262832)
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DRINKER BIDDLE & REATH LLP
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202/842-8800

Counsel for The Hamilton Securities Group, Inc.

Dated: May 20, 1999

CERTIFICATE OF SERVICE

On this 20th day of May, 1999, a copy of the foregoing Motion to Unseal File and Opposition to the Attorney General's Request for Further Extensions of Time was sent via first-class mail, postage prepaid, to:

The Honorable Janet Reno
Attorney General
U.S. Department of Justice
Main Justice Building
10th Street & Constitution Avenue, N.W.
Washington, D.C. 20530

The Honorable Susan Gaffney
Inspector General
U.S. Department of Housing and
Urban Development
451 - 7th Street, S.W.
Washington, D.C. 20410

Judith Hetherton, Esquire
U.S. Department of Housing and
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Office of Legal Counsel
451 – 7th Street, S.W., Room 8260
Washington, D.C. 20410

Daniel F. Van Horn, Esquire
Assistant United States Attorney
555 – 4th Street, N.W.
Room 10-104
Washington, D.C. 20001

Michael J. McManus

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE SEALED QUI TAM COMPLAINT **No. 1:96-CV-1258**

ORDER

UPON CONSIDERATION of Defendant the Hamilton Securities Group, Inc.'s Motion to Unseal File and Opposition to the Attorney General's Request for Further Extensions of Time, and the entire Record herein, it is

ORDERED, that the Department of Justice notify all parties within 10 business days from the date of this Order whether the United States will intervene in the case, and it is

FURTHER ORDERED, that the Clerk of the Court lift the seal from the file within 10 business days from the date of this Order.

IT IS SO ORDERED on this _____ day of _____, 1999.

_____
UNITED STATES DISTRICT JUDGE

COPIES TO BE SENT TO:

The Honorable Janet Reno
Attorney General
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U Department of Housing and Urban D elopment
Office of Inspector General
451 7th St., S.W.
Washington, D.C. 20410

September 30, 1998

VIA FACSIMILE (202-842-8465);
CONFIRMATION BY FIRST CLASS MAIL

Michael J. McManus, Esq.
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901 - 15th Street, N.W., Suite 900
Washington, D.C. 20005-2333

Re: Fitts v. HUD, Misc. No. 98-262 (SS)
Fitts v. HUD, Misc. No. 98-347 (SS)

Dear Mike:

This responds to your letter dated September 29, 1998, faxed to Mr. Van Horn and myself this morning, concerning the adequacy of the notice of the nature of the law enforcement inquiry provided to your client, C. Austin Fitts, in connection with the subpoenas for certain of her personal financial records issued to Citibank, N.A., and Morgan Guaranty Trust Company. These subpoenas are the subject of the above customer challenges under the Right to Financial Privacy Act ("RFPA"), 12 U.S.C. §§ 3401 et seq., pending before Judge Stanley Sporkin.

At the hearing in Misc. No. 98-262 on September 25, 1998, you raised a question as to the adequacy of the notice of the nature of the law enforcement inquiry provided to Ms. Fitts, pursuant to 12 U.S.C. § 3405(2), in connection with the customer notices provided to her with respect to these subpoenas. While we do not agree that as a matter of law the notice provided was inadequate, we nevertheless advised the Court that we would provide additional information. We did so by our letter of September 28, 1998.

Your letter of September 29, 1998, indicates that you do not consider our reference to the detailed description of the inquiry contained in the government's Memorandum in Support of its Petition for Summary Enforcement (pages 2-6), and the accompanying Declaration of James M. Martin (paragraphs 3-9), filed in Misc. No. 98-92 on March 3, 1998, to be sufficient, since that description was not provided to you in connection with these particular subpoenas for certain of Ms. Fitts' personal financial records.

Accordingly, we hereby provide you with the following notice as to the nature of the law enforcement inquiry to which the subpoenas for Ms. Fitts' financial records are related:

1. On June 5, 1996, Ervin and Associates filed a 253-page civil complaint against the United States, HUD, the Secretary of HUD, the Small Business Administration ("SBA"), the SBA Administrator, and Helen Dunlap, the former Deputy Assistant Secretary for Operations within HUD's Office of Housing-Federal Housing Administration, in U.S. District Court for the District of Columbia, Ervin and Associates, Inc. v. Helen Dunlap, U.S Department of Housing and Urban Development, et al., Civil Action No. 1:96-CV-1253 ("Bivens Complaint"), alleging corruption and favoritism in the procurement of services associated with HUD's sale of defaulted mortgage notes. Ms. Dunlap was sued in her individual capacity. The complaint also alleged that HUD, through Ms. Dunlap and its financial advisor, The Hamilton Securities Group, Inc., and Hamilton Securities Advisory Services, Inc., (both collectively, "Hamilton"), used Hamilton's control over the note sales process to embark on a complex scheme to deliver huge blocks of discounted multifamily and single family HUD-owned notes to prominent Wall Street firms.

2. Specifically, it was alleged that Dunlap had "usurped control and exercised unlawful influence over HUD's contract procurement process to confer huge procurements on her favored, hand-picked contractors and personal friends and companions, and to prevent Ervin from winning new contracts or hav[ing] its existing contracts renewed or extended." Bivens Complaint, ¶ 12 (emphasis in original).

3. Among other things, the Bivens complaint alleged that the first financial advisor contract awarded to Hamilton in September 1993 was enormously and illegally expanded, from $5 million dollars to $19 million, through non-competitive modifications, thereby depriving other contractors of the opportunity to compete fairly for the work. The complaint further alleged that the supposed competitive process by which the second financial advisor contract was awarded to Hamilton and three other financial advisors in 1996 was phony. Complaint, ¶¶ 191, 194, 210-221, 278-280, 513. Further, it alleged that the award of a lucrative "crosscutting task order" to Hamilton under the second financial advisor contract (which was ultimately worth $20 million), was rigged for Hamilton by Dunlap, for the specific purpose of ensuring that Hamilton maintained control over all of the other financial advisors and the note sales process. Complaint, ¶¶ 13, 171-174, 190, 543-545.

4. The Bivens complaint also alleged that HUD, through Hamilton and Dunlap, used Hamilton's control over the note sales process to embark on a complex scheme to deliver huge blocks of discounted multifamily and single family HUD-owned notes to a "tag team" of two prominent Wall Street firms, Goldman, Sachs & Co. and BlackRock Capital Finance L.P., with inside knowledge over the note sale process and connections with the Democratic Administration. It was alleged that this was accomplished through disclosure of material, inside information to select bidders, and provision of disinformation to other bidders. Complaint, ¶¶ 50-63, 148, 464, 469, 493-494, 499-500.

5. The Bivens complaint alleged other irregularities in the award of a due diligence contract ultimately worth $30 million to a minority firm, Williams Adley & Company, who was allegedly forced subsequently to sub-contract with Hamilton for $5 million worth of financial advisory services. Complaint, ¶¶ 33, 36-41, 111-114, 181-182, 188, 239-241, 250-265, 313-326, 512. The complaint also alleged that numerous other awards of HUD contracts had been affected by favoritism, discrimination, and political influence. The Bivens complaint further alleged that Dunlap and other HUD employees were using Hamilton and other contractors to perform personal services--acting as their personal staffs, as legislative liaison, and conducting negotiations with the Office of Management and Budget--and were using contractors to engage in lobbying, all in violation of the Federal Acquisition Regulation. Complaint, ¶¶ 104, 169.

6. On June 6, 1996, a qui tam complaint pursuant to 31 U.S.C. §§ 3729 et seq. was filed under seal in United States District Court for the District of Columbia, Civil Action No. 1:96-CV-1258 ("qui tam action"). The Hamilton Securities Group, Inc., and Hamilton Securities Advisory Services, Inc., were among the named defendants in the qui tam action. Hamilton has been apprised of the existence of the qui tam action, but has not been advised of the nature of the allegations or of any other information concerning the qui tam, which remains under seal.

7. During the first week of July 1996, the Civil Division of the United States Attorney's Office contacted the HUD OIG, advised OIG of the existence of the qui tam action, and requested the OIG's assistance in investigating the allegations in the qui tam action. Thereafter, the OIG commenced an investigation of the allegations contained in both the Bivens Complaint and the qui tam action.

8. In August 1996, shortly after the OIG investigation began, the Civil Division of the United States Attorney's Office sought the involvement of the Criminal Division of that Office in the investigation. Since that time, the OIG has been conducting its investigation in consultation with both of those divisions.

9. In the 26 months since the investigation began, the OIG, in coordination with the U.S. Attorney's Office and other law enforcement agencies, has conducted an extensive investigation in an effort to explore methodically the many, complex allegations in both the Bivens Complaint and the qui tam action, as well as many related allegations that have arisen in the course of the investigation, including potential conflicts of interest on the part of Hamilton. These allegations concern the actions not only of Hamilton and HUD employees, but of numerous other entities and individuals. The investigation is aimed at finding the truth in these matters, thereby either refuting the allegations and putting them to rest, or developing evidence for potential administrative, civil, and/or criminal actions and remedies the United States might pursue.

This is the same information that is contained in the government's Memorandum in Support of its Petition for Summary Enforcement (pages 2-6), and the accompanying Declaration of James M. Martin (paragraphs 3-9), filed in Misc. No. 98-92 on March 3, 1998.

Sincerely yours,

Judith Hetherton

Judith Hetherton
Counsel to the Inspector General

cc: VIA FACSIMILE:
(202) 514-8780, -8781
Daniel F. Van Horn, Esq.
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Civil Division
United States Attorney's Office
555 4th Street, N.W.
Washington, D.C. 20001

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Filing Pursuant to the Supplement to Local Rules Ch. II(I)(2), together with the attached proposed Order was served on October 1, 1998, by mailing a copy thereof, first-class postage prepaid, to Movant's counsel at the following address:

MICHAEL J. McMANUS, ESQ.
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