

FOR IMMEDIATE RELEASE:

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July 11, 2017

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AG Balderas Files Lawsuit Against Presbyterian Health Plan, Presbyterian Network, and Presbyterian Insurance Co. for Fraud

Santa Fe, NM - Today, Attorney General Hector Balderas announced that he has filed a lawsuit against Presbyterian Health Plan, Presbyterian Network, and Presbyterian Insurance Co. for fraud based on the systematic, deliberate underpayment of taxes on premiums received or written. The Office of the Attorney General's complaint alleges that between 2001 and 2015, Presbyterian routinely filed false claims for premium tax deductions and credits, thereby defrauding the people of New Mexico and evading its legal duty to pay these taxes. The Presbyterian lawsuit is the first action brought by the Attorney General as part of his independent civil and criminal review, which is ongoing, and this lawsuit is limited to Presbyterian's alleged false claims for reductions related to the Medicaid program.

"New Mexicans deserve a healthcare system they can trust," said Attorney General Balderas. "When insurance providers break the rules, they must face consequences. My office is working with the State Auditor to make sure that Presbyterian—and any other companies that engaged in similar fraudulent conduct—are held responsible for the serious injuries imposed on New Mexican taxpayers."

Under New Mexico law, every insurer doing business in New Mexico is required to pay a premium tax and surcharge. According to the Office of the Attorney General's complaint, Presbyterian falsified its Medicaid deductions and credits, thereby evading tens of millions of dollars in premium taxes and surcharges.

The complaint includes counts for violation of the Fraud Against Taxpayers Act, violation of the New Mexico Insurance Code, unjust enrichment, fraud, and negligent misrepresentation. In addition to seeking millions of dollars in unpaid taxes, the complaint seeks civil penalties and punitive damages. The Office of the Attorney General, as chief prosecutor in the State of New Mexico, is taking control of a lawsuit previously filed by whistleblowers in the Office of the Superintendent of Insurance.

The New Mexico Office of the Attorney General is a statewide law enforcement and oversight agency with both criminal and civil jurisdiction. In November 2016, the Legislative Finance Committee, the Department of Finance and Administration, and the Office of the State Auditor requested the Attorney General's assistance in reviewing potential underpayments of premium tax by major healthcare companies.

The Attorney General's comprehensive civil and criminal review of allegations related to potential underpayment by Presbyterian and other healthcare companies is ongoing. The Office of the Attorney General remains open to further actions and prosecutions as more evidence comes to light.

Please see attached for a copy of the complaint.

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STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

ENDORSED
First Judicial District Court

JUL 11 2017

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

STATE OF NEW MEXICO ex rel.
MONICA GALLOWAY,
SHAWNA MAESTAS, and
JOLENE GONZALES,

Plaintiff and Qui Tam Plaintiffs,

vs.

No. D-101-cv-2016-01596

PRESBYTERIAN HEALTH PLAN, INC.,
PRESBYTERIAN NETWORK, INC., and
PRESBYTERIAN INSURANCE CO, INC.,

Defendants.

COMPLAINT IN INTERVENTION

COMES NOW Plaintiff the State of New Mexico ("Plaintiff"), and hereby files this Complaint in Intervention against Presbyterian Health Plan, Inc. ("PHP"), Presbyterian Network, Inc. ("PNI"), and Presbyterian Insurance Company, Inc. ("PIC"), alleging as follows:

INTRODUCTION

1. This case involves Defendants' obligation under New Mexico law to pay taxes to the State of New Mexico, Office of the Superintendent of Insurance ("OSI") on certain insurance premiums it collects in New Mexico.

2. In particular, the case focuses on Defendants' systematic and deliberate underpayment of such tax obligations between 2001 and 2015. Presbyterian repeatedly and systematically skirted its duty to pay tens-of-millions of dollars in taxes to the State. Presbyterian executed its scheme through the filing of premium tax returns signed knowingly by

company executives that plainly contravened the insurer's duty to pay. By routinely filing these false claims, Presbyterian filled its coffers, reaping benefits upon its management and shareholders at the expense of the public fisc and to the detriment of New Mexico taxpayers.

3. As set forth in greater detail below, PHP executed its scheme through invocation of myriad impermissible tax deductions, primarily claimed for payments received from the State Medicaid program, in which PHP participated as an insurer. PHP brazenly claimed these deductions despite receiving reimbursement from the State for the very taxes it endeavored to underpay.

4. Not content to benefit from the baseless deductions it sought in filing its annual returns, as OSI was in the throes of transitioning to an independent agency in early 2013, PHP doubled down, filing additional false claims in the form of amended versions of returns for the years 2003 – 2011, seeking millions of dollars in additional premium tax credits and new deductions on top of the millions already claimed. Because PHP had already succeeded in eliminating its liability for some years through its previous deductions, it sought to roll over the new credits to avoid future tax liability, creating yet more false claims submitted to the State. PHP then sought to avoid accountability for its misdeeds by pursuing an omnibus consideration-free settlement with OSI, seeking to bind the agency to Presbyterian's serial false claims.

5. All told, and as set forth herein, PHP has engaged in a 15+ year fraudulent enterprise to avoid responsibility for tens of millions of dollars to which New Mexico taxpayers are entitled.

PARTIES

6. Plaintiff the State of New Mexico is a sovereign state of the United States and brings this action under New Mexico statutes and the common law.

7. Shawna Maestas, Monica Galloway and Jolene Gonzales originally filed this action and are the qui tam plaintiffs (the “**Qui Tam Plaintiffs**” or the “**Relators**”) with respect to this action as defined by the Fraud Against Taxpayers Act (or “**FATA**”), NMSA 1978, Section 44-9-5(A). Because the Attorney General has intervened in this matter on behalf of the State, this action is now brought by and subject to prosecution by the Attorney General, as set forth at Section 44-9-6(A). The Relators retain all rights appurtenant thereto under FATA, Sections 44-9-1 through 44-9-14.

8. Defendant PHP is a for-profit domestic corporation with its principal place of business and registered agent in Albuquerque. At all times material to this Complaint, PHP transacted business as a health insurance provider in the State of New Mexico.

9. Defendant PIC is a for-profit domestic insurance corporation with its principal place of business and registered agent in Albuquerque. At all times material to this Complaint, PIC transacted business in the State of New Mexico.

10. Defendant PNI is a for-profit domestic corporation with its principal place of business and registered agent in Albuquerque. PNI owns the common stock of PHP and PIC. At all times material to this Complaint, PNI transacted business in the State of New Mexico.

JURISDICTION & VENUE

11. This Court’s jurisdiction is founded upon Article VI, Section 13 of the New Mexico Constitution.

12. This Court has personal jurisdiction over Defendants because they are New Mexico corporations and do business in New Mexico.

13. Venue is proper in Santa Fe County, New Mexico, under NMSA 1978, Section 38-3-1, because Plaintiff and Qui Tam Plaintiffs reside in Santa Fe County and the causes of action set forth herein arise in Santa Fe County.

PHP'S OBLIGATION TO PAY PREMIUM TAXES IN NEW MEXICO

14. Under Section 59A-6-2 of the New Mexico Insurance Code, Chapter 59A, NMSA 1978, each insurer authorized to transact business in New Mexico is obligated to pay a premium tax of 3.003% of the gross premiums and membership and policy fees received or written by it ("**Premium Tax**"). Prior to the 2003 tax/calendar year, the Premium Tax rate was a flat 3%. Effective July 1, 2004, insurers are also obligated to pay an additional 1% surcharge to the State of the gross premiums and membership and policy fees received or written by it ("**Premium Tax Surcharge**" or "**Surcharge**"). See § 59A-6-2(C).

15. Insurers subject to Premium Tax liability are obligated to make quarterly estimated payments of Premium Tax based on specified statutory criteria and file an annual return. See 59A-6-2(D). All taxes for a given calendar year are due on April 15 of the next year.

16. PHP is subject to the obligation and duty to adhere to New Mexico's Premium Tax and Surcharge provisions.

17. Under the Insurance Code, Section 59A-6-5(B), in the event that an insurer pays Premium Tax in any given year that exceeds the insurer's Premium Tax liability, that insurer may only request a refund or credit within three years of the purported error. In the event an insurer elects to receive a credit, such credit may only be applied to a Premium Tax return filed within three years of the erroneous or excess payment.

18. Only two deductions from payment of Premium Tax obligations are currently permitted under New Mexico law. The two deductions from the tax are expressly enumerated in

Section 59A-6-2(E) and are limited to (1) premiums attributable to insurance or contracts purchased by the State or a political subdivision for the State's or political subdivision's active or retired employees and (2) premiums received by a health maintenance organization from the federal secretary of health and human services pursuant to a contract under the provisions of 42 U.S.C. Section 1395 mm(g), which pertains to certain contracts arising under the federal Medicare program.

19. The current language clarifying the scope of Premium Tax exemptions was adopted by the Legislature during the 2003 legislative session in Senate Bill 331 ("**SB 331**"), effective retroactively to January 1, 2003. Prior to January 1, 2003, as set forth in Senate Bill 557 which was enacted during the 1993 legislative session, the exemption governing "premiums attributable to insurance contracts purchased by the state or political subdivision" did not include the language "for the state's active or retired employees."

20. Also during the 2003 legislative session, prior to the adoption of SB 331, the Legislature enacted House Bill 420 ("**HB 420**"), which increased the rate for Premium Tax assessments by three-thousandths of a percent from a flat 3% to the current 3.003% rate. HB 420 was not enacted to revise the Insurance Code; rather, its purpose was to adopt the Voter Action Act (the "**VAA**"), which is now codified at NMSA 1978, Sections 1-19A-1 to -17. To wit, in considering and promulgating HB 420, the Legislature did not contemplate changes to the deductions language in Section 59A-6-2, which was the subject of SB 331. The increase to the Premium Tax was included in the legislation because the Legislature acted to offset Premium Tax monies it diverted from the general fund in HB 420 to fund new earmarks established under the VAA.

21. In the 2004 session, when the Legislature enacted additional changes to the Premium Tax provisions in Section 59A-6-2 in Senate Bill 502, it left intact the exemptions language it adopted in SB 331 during the 2003 session, again clarifying its intent to only exempt State and local government purchases of health care for “active or retired employees.”

22. Thus, by the plain language of Section 59A-6-2(E), all other gross premiums and membership and policy fees are subject to the duty to pay Premium Tax.

23. As an authorized insurer in New Mexico, PHP was – and remains – obligated to remit Premium Tax payments to the State as required under the Insurance Code.

24. As set forth in this Complaint, PHP systematically and falsely claimed deductions and credits against its Premium Tax and Surcharge obligations not permitted under Section 59A-6-2. PHP additionally falsely claimed deductions and credits outside the three year limitations imposed under the law. In both instances, PHP’s actions were contrary to Section 59A-6-2, which lacked a reasonable basis for its conduct.

PHP’S PARTICIPATION IN MEDICAID

25. Included among the premium revenue subject to the Premium Tax levy are any and all premium payments made to insurers pursuant to participation in the State’s Medicaid program, which provides health coverage to certain eligible New Mexico residents.

26. The Medicaid program is a product of federal law, but is jointly funded by a combination of State and federal monies; the relative share of State versus federal funds is dependent upon certain criteria developed by the federal government, such as per capita income in a given state.

27. In New Mexico, the majority of Medicaid funding is derived from the federal government.

28. State Medicaid programs, including New Mexico's, are administered by the State, subject to federal regulations and oversight by the federal Centers for Medicare and Medicaid Services.

29. In New Mexico, the State government agency responsible for administering the Medicaid program is the Human Services Department ("**HSD**"). See NMSA 1978, §27-2-12.6.

30. HSD contracts with private health care providers and insurers to provide health coverage to eligible New Mexicans.

31. In calculating payments made to Medicaid insurers like PHP, HSD adds additional revenue to offset insurer's Premium Tax and Surcharge obligations. Thus, insurers are effectively compensated, dollar for dollar, for the obligation to remit Premium Tax and Surcharge payments to the State. Insurers participating in Medicaid need not tap into premium and other revenues to satisfy Premium Tax and Surcharge obligations.

32. During the relevant period, PHP contracted annually with HSD to provide Medicaid managed care coverage and benefitted from the additional 3 to 4.003% it received (depending upon the applicable taxes in any given calendar year) to offset Premium Tax and Surcharge tax liability.

33. For example, under the Medicaid "managed care" contract between HSD and "Presbyterian Salud" in place for July 2001 to June 2003, the State was obligated to compensate Defendants to the extent that the "performance of [the] [a]greement is subject to taxation." In turn, the agreement provided that the contractor was "responsible for reporting and remitting all applicable taxes to the appropriate taxing agency."

PHP'S FIRST ROUND OF BASELESS MEDICAID DEDUCTIONS

34. Through the filing of false claims with the State, PHP has systematically and knowingly sought baseless exemptions for the premiums it received through the State's Medicaid program, contrary to the Premium Tax and Surcharge laws described supra.

35. For the 2001 calendar year, PHP filed an annual premium tax return with OSI dated on or about April 12, 2002 (the "**2001 Return**"). Among other deductions claimed, PHP improperly claimed \$331,412,202 for Medicaid premiums. This deduction caused PHP's Premium Tax obligation for 2001 to be reduced by approximately \$9,942,366. As a result of these false claims, the State incurred a commensurate loss in revenue to which it was entitled under state law. By claiming this unlawful deduction through the 2001 Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. To wit, the 2001 Return included a signed statement from PHP President David R. Scrase, MD and Secretary Dale Maxwell falsely attesting on behalf of PHP's Board of Directors that "they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct..."

36. For the 2002 calendar year, PHP filed an annual premium tax return with OSI dated on or about April 10, 2003 (the "**2002 Return**"). Among other deductions claimed, PHP improperly claimed \$385,198,859 for Medicaid premiums. This deduction caused PHP's Premium Tax obligation for 2002 to be reduced by approximately \$11,555,966. As a result of these false claims, the State incurred a commensurate loss in revenue to which it was entitled under state law. By claiming this unlawful deduction through the 2002 Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate

ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. To wit, the 2002 Return included a signed statement from PHP President David R. Scrase, MD and Secretary Dale Maxwell falsely attesting on behalf of PHP's Board of Directors that "they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct..."

37. For the 2003 calendar year, PHP filed an annual premium tax return on or about April 14, 2004 (the "**2003 Return**"). Among other deductions claimed, PHP improperly claimed \$4,886,829 for "Medicaid Gross IHS Revenue." The State believes that the reference to "IHS" means the federal Indian Health Service, all subsequent references to that acronym herein refer to the Indian Health Service. This deduction caused PHP's Premium Tax obligation for 2003 to be reduced by approximately \$146,751. As a result of these false claims, the State incurred a commensurate loss in revenue to which it was entitled under State law. By claiming this unlawful deduction through the 2003 Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. To wit, the 2003 Return included a signed statement from PHP President David R. Scrase, MD and Secretary Dale Maxwell falsely attesting on behalf of PHP's Board of Directors that "they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct..."

38. PHP falsely, through former company official John Brackbill, in May of 2011, contended to OSI that IHS Medicaid revenues are subject to the exemption at Section 59A-6-2(E)(1) for "premiums...purchased by the state or a political subdivision for the state's or political subdivision's employees." To the contrary, such premiums are paid to provide

insurance to indigent populations, not employees of the State or a political subdivision. This false assertion, knowingly made, constitutes a false claim in addition to the false attestations made in PHP's returns wherein it claimed specific "IHS Medicaid" or other "IHS" exemptions.

39. For the 2004 calendar year, PHP filed an annual premium tax return on April 14, 2004 (the "**2004 Return**"). Among other Premium Tax deductions claimed, PHP falsely claimed \$4,551,280 for "Medicaid Gross IHS Revenue," and an additional deduction of \$5,088,839 for "Medicaid Dual Eligible Pharmacy." The sum total of these two improper deductions equals \$9,640,119. These deduction caused PHP's Premium Tax obligation for 2004 to be reduced by approximately \$289,493. As a result of these false claims, the State incurred a commensurate loss in revenue to which it was entitled under State law.

40. 2004 also marked the first year where the 1% Surcharge (described in paragraph 14) went into effect, beginning July 1, 2004. PHP improperly deducted portions of "Medicaid Gross IHS Revenue" from the premiums amount subject to the Surcharge levy. In particular, PHP claimed approximately \$2,062,773 of such revenues from the premiums it reported as subject to the Surcharge levy. This deduction caused PHP's Surcharge obligation for 2004 to be reduced by approximately \$20,628. As a result of these false claims, the State incurred a commensurate loss in revenue to which it was entitled under State law.

41. In total, these improper Medicaid deductions claimed in the 2004 Return caused PHP's Premium Tax and Surcharge obligations to the State for 2004 to be reduced by approximately \$310,121. By claiming these unlawful deductions through the 2004 Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. To wit, the 2004 Return included a signed

statement, dated April 15, 2005, from PHP “CFO” Dale Maxwell attesting falsely on behalf of PHP’s Board of Directors that “[he] [] examined the contents [of the return]; and that to the best of [his] knowledge, and belief [the contents of the return] are true and correct...” The 2004 Return included only the attestation and signature of Maxwell, and left blank a signature line on the Return for the filer’s “Secretary/Treasurer.”

42. For the 2005 calendar year, PHP filed an annual premium tax return on or about April 18, 2006 (the “**2005 Return**”). Among other deductions improperly claimed, PHP claimed \$2,041,277 for “Medicaid Gross IHS Revenue” and \$12,280 “Medicaid Dual Eligible Pharmacy.” The sum total of these improper Medicaid deductions equals approximately \$2,053,557. These deductions caused PHP’s Premium Tax obligation for 2005 to be reduced by approximately \$61,668, and PHP’s Surcharge obligation for 2005 to be reduced by approximately \$20,536, for a total of \$82,204. As a result of these false claims, the State incurred a commensurate loss in revenue to which it was entitled under State law. By claiming unlawful deductions through the 2005 Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. To wit, the 2005 Return included a signed statement from PHP President David R. Scrase, MD and Secretary Lisa Farrell falsely attesting on behalf of PHP’s Board of Directors that “they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct...”

43. For the 2006 calendar year, PHP filed an annual premium tax return in April of 2007 (the “**2006 Return**”). Among other deductions claimed, PHP improperly claimed \$2,623,504 for “Medicaid Gross IHS Revenue.” This deduction caused PHP’s Premium Tax

obligation for 2006 to be reduced by approximately \$78,784, and PHP's Surcharge obligation for 2006 to be reduced by approximately \$26,235, for a total of \$105,119. As a result of this false claim, the State incurred a commensurate loss in revenue to which it was entitled under State law. By claiming this unlawful deduction through the 2006 Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. To wit, the 2006 Return included a signed statement from PHP President David R. Scrase, MD and Secretary Lisa Farrell falsely attesting on behalf of PHP's Board of Directors that "they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct..."

44. For the 2007 calendar year, PHP filed an annual premium tax return with OSI dated April 15, 2008 (the "**2007 Return**"). Among other deductions claimed, PHP improperly claimed \$2,771,852 for "Medicaid Gross IHS Revenue." This deduction caused PHP's Premium Tax obligation for 2007 to be reduced by approximately \$83,239, and PHP's Surcharge obligation for 2007 to be reduced by approximately \$27,719, for a total of \$110,958. As a result of this false claim, the State incurred a commensurate loss in revenue to which it was entitled under State law. By claiming this unlawful deduction through the 2007 Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. To wit, the 2007 Return included a signed statement from PHP President Dennis Alan Batey, MD and Secretary Lisa Farrell falsely attesting on behalf of PHP's Board of Directors that "they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct..."

45. For the 2008 calendar year, PHP filed an annual premium tax return with OSI dated April 6, 2009 (the “**2008 Return**”). Among other deductions claimed, PHP improperly claimed approximately \$3,732,336 for “Gross IHS Revenue.” This deduction caused PHP’s Premium Tax obligation for 2008 to be reduced by approximately \$112,082, and PHP’s Surcharge obligation for 2008 to be reduced by approximately \$37,323, for a total of \$149,405. As a result of this false claim, the State incurred a commensurate loss in revenue to which it was entitled under State law. By claiming this unlawful deduction through the 2008 Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. To wit, the 2008 Return included a signed statement from PHP President Dennis Alan Batey, MD and Secretary Lisa Farrell falsely attesting on behalf of PHP’s Board of Directors that “they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct...”

46. For the 2009 calendar year, PHP filed an annual premium tax return with OSI on or about April 15, 2010 (the “**2009 Return**”). Among other deductions claimed, PHP improperly claimed approximately \$2,905,610 for “Gross IHS Revenue.” This deduction caused PHP’s Premium Tax obligation for 2009 to be reduced by approximately \$87,255, and PHP’s Surcharge obligation for 2009 to be reduced by approximately \$29,056, for a total of \$116,311. As a result of this false claim, the State incurred a commensurate loss in revenue to which it was entitled under State law. By claiming this unlawful deduction through the 2009 Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity

of the information contained therein. To wit, the 2009 Return included a signed statement from PHP President Dennis Alan Batey, MD and Secretary Lisa Farrell falsely attesting on behalf of PHP's Board of Directors that "they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct..."

47. For the 2010 calendar year, PHP filed an annual premium tax return with OSI dated on or about April 13, 2011 (the "**2010 Return**"). Among other deductions claimed, PHP improperly claimed approximately \$2,180,903 for "Gross IHS Revenue." This deduction caused PHP's Premium Tax obligation for 2010 to be reduced by approximately \$65,493, and PHP's Surcharge obligation for 2010 to be reduced by approximately \$21,809, for a total of \$87,302. As a result of this false claim, the State incurred a commensurate loss in revenue to which it was entitled under State law. By claiming this unlawful deduction through the 2010 Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. The 2010 Return included a signed statement from PHP President Dennis Alan Batey, MD and Secretary/Treasurer Gabriel Parra falsely attesting on behalf of PHP's Board of Directors that "they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct..."

48. For the 2011 calendar year, PHP filed an annual premium tax return with OSI dated April 11, 2012 on or about April 13, 2012 (the "**2011 Return**"). Among other deductions claimed, PHP improperly claimed approximately \$5,213,481 for "Gross IHS." This deduction caused PHP's Premium Tax obligation for 2011 to be reduced by approximately \$156,561, and PHP's Surcharge obligation for 2011 to be reduced by approximately \$52,135, for a total of

\$208,696. As a result of this false claim, the State incurred a commensurate loss in revenue to which it was entitled under State law. By claiming this unlawful deduction through the 2011 Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. The 2011 Return included a signed statement from PHP President Dennis A. Batey, MD and Secretary/Treasurer David Field falsely attesting on behalf of PHP's Board of Directors that "they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct..."

49. Taken together, PHP claimed at least \$754,682,025 in unlawful deductions for calendar years 2001-2011 through the filing of Premium Tax returns enumerated above in Paragraphs 35-48. As set forth supra, the deductions were precluded under the Insurance Code throughout the relevant period, and were knowingly procured by PHP without a valid or reasonable basis. The net effect of these false claims made knowingly by Defendants has been to deprive the State of millions of dollars in Premium Tax and Surcharge revenue.

**OSI's INITIATION OF ADMINISTRATIVE ACTION AND PHP'S CLAIMS FOR
ADDITIONAL MEDICAID DEDUCTIONS AND CREDITS**

50. On May 23, 25 and 26 of 2011, following an audit of PHP's 2010 and other Premium Tax returns, OSI demanded payment via letter for certain past due Surcharge amounts for certain tax years. In particular, OSI sought additional payments related to PHP's filing of its regular (as opposed to amended) annual and quarterly Premium Tax returns in 2006, 2008, 2009, 2010 and 2011. In a letter from PHP's counsel dated June 6, 2011, PHP disputed the alleged underpayments and demanded a hearing with respect to the demands set forth in the May 25 and 26 letters. Superintendent of Insurance John Franchini appointed himself as hearing officer, and

an administrative proceeding was initiated to hear PHP's challenge (the "**Administrative Proceeding**"). The subject matter of the Administrative Proceeding is different from the allegations and claims advanced in this Complaint.

51. During the pendency of the Administrative Proceeding, between November 8, 2012 and June 28, 2013, PHP filed a series of amended returns with the State, for the years 2003-2011. As set forth in greater detail below, PHP claimed two new massive deductions for years 2003 and 2004. Both deductions were claimed for hundreds of millions of dollars in Medicaid premiums paid to PHP by the State for those two years. In PHP's original filings for those years, and as detailed in paragraphs 37-41, it had claimed only certain Medicaid premiums as deductible, which constituted a small proportion of PHP's Medicaid premiums.

52. In support of filing the amended 2003 and 2004 returns, PHP Finance Director Amor Brannin falsely asserted, in a letter to OSI personnel dated November 7, 2012, with knowledge of the falsity of the claim, that PHP was entitled to these massive additional deductions because of the Legislature's actions on Section 59A-6-2 in the 2003 and 2004 sessions, which are detailed above in paragraphs 19-21. To the contrary, PHP's apparent discovery of this purported loophole, nearly a decade after the Legislature's action, constituted another false claim to the State, through which PHP secured a massive multi-million dollar windfall. The Brannin letter was just one occasion of multiple instances where PHP advanced its phony legislative argument to claim and preserve the massive 2003 and 2004 deductions.

53. OSI personnel, such as auditor Maria Soto, who was assigned to the PHP "file" and directly responsible for review and oversight of PHP's Premium Tax and Surcharge compliance during the time the period where the amended 2003-2011 returns were filed, relied upon PHP's representations (including, but not limited to, the Brannin letter) in accepting PHP's

amended returns on behalf of the State. During subsequent OSI/State auditing actions directed at PHP's Premium Tax practices, PHP has continued to cling to these misrepresentations.

54. Because PHP had long ago filed its 2003 and 2004 returns and settled its Premium Tax account for those years, it sought to carry forward the value of the 2003 and 2004 deductions to subsequent tax years, as is set forth in greater detail below. Through this scheme, PHP has maneuvered to avoid liability for millions of dollars in future premium taxes, compounding the injury on New Mexico taxpayers.

55. Once again, when OSI personnel, including Maria Soto, raised concerns in objection to this "carry forward" scheme, PHP represented that its acts were lawful, prompting reliance on the part of OSI. During subsequent OSI/State auditing actions directed at PHP's Premium Tax practices, PHP has continued to cling to these misrepresentations.

56. During that same period, in late 2012 through the spring and summer of 2013, the Insurance Division, which was then responsible for the collection of Premium Tax, was in the midst of transitioning to becoming an independent state agency, the Office of the Superintendent of Insurance ("OSI"). Prior to becoming an independent agency on July 1, 2013, the Superintendent and the regulation of insurance were housed within the organizational structure of the Public Regulation Commission ("PRC"). The transition involved a variety of challenges for OSI, including the need to hire significant new staff.

57. The particulars regarding each fraudulent amended filing for the 2003-2011 period are set forth below in paragraphs 58-74. The amended returns are false in at least three respects. First, PHP falsely and knowingly claimed improper deductions that were expressly precluded under applicable law. Second, PHP falsely and knowingly claimed credits more than three years outside of the statutorily permitted window. See § 59A-6-5(B). And third, PHP

falsely and knowingly carried forward deduction credits in a manner that is plainly violative of the three-year limitation on such credits imposed under Section 59A-6-5(B). Thus, the mere act of filing these amended returns was per se precluded under applicable Insurance Code provisions. On each amended return, at least one PHP corporate officer attested that, “to their best knowledge and belief,” the contents and representations contained in the returns were “true and correct,” despite the lack of any reasonable basis under the Insurance Code for claiming the deductions and credits and carrying forward and applying those financial benefits.

58. PHP filed an amended Premium Tax return for the 2003 calendar year with OSI on or about November 8, 2012 (the “**2003 Amended Return**”), approximately eight and a half years after filing the original 2003 Return. In addition to the Medicaid deductions set forth above in paragraph 37 of this Complaint, PHP claimed an additional \$356,245,998 as “Addition [sic] Credit: Salud Premiums.” Salud is a reference to the program name utilized at that time for the State Medicaid program. As the result of this additional credit, PHP caused its Premium Tax liabilities for the 2003 year to be reduced by approximately \$10,698,067. In the 2003 Amended Return, PHP falsely claimed that the amendments thereto, caused a negative Premium Tax balance of approximately \$10,782,110 (the “**2003 Carryover**”). By claiming this unlawful deduction through the 2003 Amended Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. The 2003 Amended Return included a signed statement from PHP President Dennis Batey, MD and Secretary/Treasurer David Field falsely attesting on behalf of PHP’s Board of Directors that “they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct...” See 2003 Am. Return.

59. PHP filed an amended Premium Tax return with OSI for the 2004 calendar year on or about March 4, 2013 (the “**2004 Amended Return**”), approximately eight years after filing the original 2004 Return. In addition to the Medicaid deductions set forth above in paragraphs 39-41 of this Complaint, PHP claimed an additional \$258,344,980 as “Additional Credit Salud Premiums.” As the result of this additional credit, PHP caused its Premium Tax liability for the 2004 year to be reduced by approximately \$7,758,100, resulting in claimed Premium Tax liability of approximately \$12,080,538. However, PHP transferred as a “credit carryover” the 2003 Carryover of \$10,782,110, which had just been claimed through the 2003 Amended Return. In calculating the amount of Premium Tax revenue due for 2004, PHP applied the 2003 Carryover, coupled with quarterly and annual Premium Tax payments it made in 2004, netting a negative amount due (i.e. credit) totaling \$14,831,720 (the “**2004 Carryover**”). By claiming this unlawful deduction and carrying over credits from the 2003 Amended Return through the 2004 Amended Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. The 2004 Amended Return included a signed statement from PHP President Dennis Batey, MD and Secretary/Treasurer David Field falsely attesting on behalf of PHP’s Board of Directors that “they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct...”

60. PHP filed an amended Premium Tax return with OSI for the 2005 calendar year on or about February 28, 2013 (the “**2005 Amended Return**”), approximately seven years after filing the original 2005 Return. While Presbyterian did not invoke additional deductions, it nevertheless carried over the entire 2004 Carryover in the 2005 Amended Return. Unlike in the

2004 Amended Return, where PHP expressly identified the 2003 Carryover as a “credit carryover” from the 2003 Amended Return, PHP merely incorporated (and thereby concealed) the \$14,831,720 2004 Carryover as “quarterly taxes paid” – without identifying that the amounts were carryover amounts from the prior year’s amended return. By falsely claiming the 2004 Carryover amount on the 2005 Amended Return, coupled with a claimed overpayment from the original 2004 Return, PHP claimed a net negative amount due (i.e. credit) of \$15,517,121 (the “**2005 Carryover**”). By claiming and carrying over these unlawful credits through the 2005 Amended Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. The 2005 Amended Return included a signed statement from PHP President Dennis Batey, MD and Secretary/Treasurer David Field falsely attesting on behalf of PHP’s Board of Directors that “they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct...”

61. HP filed an amended Premium Tax return with OSI for the 2006 calendar year on or about March 6, 2013 (the “**2006 Amended Return**”), approximately six years after filing the original 2006 Return. While PHP did not invoke additional noteworthy deductions, it nevertheless carried over the entire 2005 Carryover in the 2005 Amended Return. As on the 2004 Amended Return, the 2005 Carryover is not explicitly identified. Rather, PHP generically labelled and concealed the 2005 Carryover as “credit[s] taken,” divided the 2005 Carryover into four sub-amounts, and listed those sub-amounts as follows: (1) as a “credit taken” in the 1st quarter of 2006 in the amount of \$4,448,735; (2) as a “credit taken” in the 2nd Quarter of 2006 in the amount of \$4,448,735; (3) as a “credit taken” in the 3rd quarter of 2006 in the amount of

\$4,448,735; and (4) as a “credit taken” in the 4th quarter of 2006 in the amount of \$2,170,917.

The total value of these four “credits taken” equals approximately \$15,517,122, approximately the same amount as the 2005 Carryover. These “credit[s] taken” were not included in the original 2006 Return.

62. PHP also claimed new deductions in the 2006 Amended Return for political subdivision premium revenue that were not claimed in the original 2006 Return. While this type of deduction is valid if timely claimed, PHP plainly sought these deduction far beyond the three-year window permitted under the Insurance Code. In particular, PHP falsely claimed an additional \$3,586,734 in these deductions, resulting in a new Premium Tax credit amount of \$107,710 and a new Surcharge excess equaling approximately \$35,867, for a total of \$143,577.

63. By falsely claiming the 2005 Carryover amount on the 2006 Amended Return, and the new deductions described in paragraph 62, PHP claimed a net negative amount due (i.e. credit) of \$15,660,780 (the “**2006 Carryover**”). By claiming these new unlawful deductions and carrying over credits from the 2005 Amended Return through the 2006 Amended Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. The 2006 Amended Return included a signed statement from PHP President Dennis Alan Batey, MD and Secretary/Treasurer David Field falsely attesting on behalf of PHP’s Board of Directors that “they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct...”

64. PHP filed an amended Premium Tax return with OSI for the 2007 calendar year on or about March 13, 2013 (the “**2007 Amended Return**”), approximately five years after

filing the original 2007 Return. As with the amended returns for previous years, PHP once again applied the entire 2006 Carryover to the 2007 Amended Return. As with the 2006 Amended Return, PHP divided the 2006 Carryover into four sub-amounts, and listed those sub-amounts as follows: (1) as “credit[s] taken” in the 1st quarter of 2007 in the amounts of \$4,282,033 and \$35,867 (this second amount is apparently attributable to the Surcharge credit claimed for the first time in the 2006 Amended Return – see supra ¶ 58); (2) as a “credit taken” in the 2nd Quarter of 2007 in the amount of \$4,238,899; (3) as a “credit taken” in the 3rd quarter of 2007 in the amount of \$4,519,175; and (4) as a “credit taken” in the 4th quarter of 2007 in the amount of \$2,584,806. The total value of these “credits taken” equals approximately \$15,660,780, the same amount as the 2006 Carryover. These “credit[s] taken” were not included in the original 2007 Return.

65. PHP also claimed new deductions in the 2007 Amended Return for political subdivision premium revenue that were not claimed in the 2007 Return. PHP plainly sought these deduction far beyond the three-year window permitted under the Insurance Code. In particular, PHP falsely claimed an additional \$5,332,488 in deductions, resulting in a new Premium Tax credit amount of \$160,135 and a new Surcharge credit for 2007 equaling approximately \$53,225, for a total of \$213,460. These new credits were incorporated into the credit PHP claimed in the 2007 Amended Return, which credit is described and set forth in the next paragraph.

66. By falsely claiming the 2006 Carryover amount on the 2007 Amended Return, and the new deductions described in paragraph 65, PHP claimed a net negative amount of Premium Tax and Surcharge due (i.e. credit) of \$14,973,737 (the “**2007 Carryover**”). By claiming this unlawful deduction and carrying over credits from the 2006 Amended Return

through the 2007 Amended Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. The 2007 Amended Return included a signed statement from PHP President Dennis Alan Batey, MD and Secretary/Treasurer David Field falsely attesting on behalf of PHP's Board of Directors that "they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct..."

67. PHP filed an amended Premium Tax return with OSI for the 2008 calendar year on or about March 6, 2013 (the "**2008 Amended Return**"), approximately four years after filing the original 2008 Return. PHP continued its practice of applying the previous year's carryover amount (the 2007 Carryover) to the Amended 2008 Return. PHP applied the 2007 Carryover to the 2008 Amended Return in three sub-amounts, and listed those sub-amounts as follows: (1) as "credit[s] taken" in the 1st quarter of 2008 in the amounts of \$4,944,130 and \$89,192 (Surcharge credit); (2) as a "credit taken" in the 2nd Quarter of 2008 in the amount of \$5,034,532; and (3) as a "credit taken" in the 3rd quarter of 2008 in the amount of \$4,905,884. The total value of these "credits taken" equals approximately \$14,973,737, the same amount as the 2007 Carryover. These "credit[s] taken" were not included in the original 2008 Return.

68. PHP also claimed new deductions in the 2008 Amended Return for political subdivision premium revenue that were not claimed in the 2008 Return. PHP plainly sought these deduction far beyond the three-year window permitted under the Insurance Code. In particular, PHP falsely claimed an additional \$6,479,151 in deductions, which it incorporated into the credit it claimed in the 2008 Amended Return, which credit is described and set forth in the next paragraph.

69. By falsely claiming the 2007 Carryover amount on the Amended 2008 Return, and the new premium deductions described in paragraph 68, and accounting for other previously claimed deductions, PHP claimed a net negative amount of Premium Tax and Surcharge due (i.e. credit) of \$19,851,120 (the “**2008 Carryover**”). By claiming this unlawful deduction and carrying over credits from the 2007 Amended Return through the 2008 Amended Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. The 2008 Amended Return included a signed statement from PHP President Dennis Alan Batey, MD and Secretary/Treasurer David Field falsely attesting on behalf of PHP’s Board of Directors that “they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct...”

70. PHP filed an amended Premium Tax return with OSI in the spring of 2013 for the 2009 calendar year dated on or about March 27, 2013 (the “**2009 Amended Return**”). PHP continued its practice of applying the previous year’s carryover amount (the 2008 Carryover) to the Amended 2009 Return. PHP applied the 2008 Carryover to the 2009 Amended Return in four sub-amounts, and listed those sub-amounts as follows: (1) as “credit[s] taken” in the 1st quarter of 2009 in the amounts of \$5,006,575 and \$126,723 (Surcharge credit); (2) as a “credit taken” in the 2nd Quarter of 2009 in the amount of \$4,990,983; (3) as a “credit taken” in the 3rd quarter of 2009 in the amount of \$5,423,195; and (4) as a “credit taken” in the 4th quarter of 2009 in the amount of \$4,303,329. The total value of these “credits taken” equals approximately \$19,850,805. These “credit[s] taken” were not included in the original 2009 Return.

71. PHP also claimed new deductions in the 2009 Amended Return for political subdivision premium revenue that were not claimed in the 2009 Return. PHP plainly sought these deduction far beyond the three-year window permitted under the Insurance Code. In particular, PHP falsely claimed an additional \$1,870,903 in deductions, which it incorporated into the credit it claimed in the 2009 Amended Return, which credit is described and set forth in the next paragraph.

72. By falsely claiming nearly the entire 2008 Carryover amount on the 2009 Amended Return, and the new premium deductions described in paragraph 71, among other deductions, PHP claimed a net negative amount of Premium Tax and Surcharge due (i.e. credit) of \$24,815,493 (the “**2009 Carryover**”). By claiming this unlawful deduction and carrying over credits from the 2008 Amended Return through the 2009 Amended Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. The 2009 Amended Return included a signed statement from PHP President Dennis Alan Batey, MD and Secretary/Treasurer Dale Maxwell attesting on behalf of PHP’s Board of Directors that “they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct...”

73. PHP filed an amended Premium Tax return with OSI for the 2010 calendar year on or about April 1, 2013 (the “**2010 Amended Return**”). PHP continued its practice of applying the previous year’s carryover amount (the 2009 Carryover) to the Amended 2010 Return. PHP applied a portion of the 2009 Carryover to the 2010 Amended Return in four sub-amounts, and falsely claimed those sub-amounts as follows: (1) as a “tax credit” in the 1st quarter of 2010 in the amounts of \$5,271,674 (Premium Tax) and \$55,787 (Surcharge); (2) as a “tax

credit” in the 2nd Quarter of 2010 in the amount of \$4,714,612; (3) as a “tax credit” in the 3rd quarter of 2010 in the amount of \$4,983,498; and (4) as a “tax credit” in the 4th quarter of 2010 in the amount of \$4,224,993. PHP also claimed an additional \$5,609,929 as a “year 2010 remaining credit.” The total value of the “credits taken” and the “remaining credit” equals approximately \$24,860,493. These credits were not included in the original 2010 Return. By falsely claiming the 2009 Carryover amount on the 2010 Amended Return, among other deductions, PHP claimed a net negative amount of Premium Tax and Surcharge due (i.e. credit) of \$26,202,996 (the “**2010 Carryover**”). By claiming and carrying over these unlawful credits through the 2010 Amended Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. The 2010 Amended Return included a signed statement from PHP President Dennis Alan Batey, MD and Secretary/Treasurer Dale Maxwell attesting on behalf of PHP’s Board of Directors that “they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct...”

74. PHP filed an amended Premium Tax return with OSI for the 2011 calendar year dated on or about March 27, 2013 (the “**2011 Amended Return**”). PHP continued its practice of applying the previous year’s carryover amount (the 2010 Carryover) to the Amended 2010 Return. PHP applied a portion of the 2010 Carryover to the 2011 Amended Return in four sub-amounts, and falsely claimed those sub-amounts as deductions as follows: (1) as a “tax credit” in the 1st quarter of 2011 in the amount of \$4,064,072; (2) as a “tax credit” in the 2nd Quarter of 2011 in the amount of \$4,505,627; (3) as a “tax credit” in the 3rd quarter of 2011 in the amount of \$4,310,008; and (4) as a “tax credit” in the 4th quarter of 2011 in the amount of \$4,323,271.

PHP also claimed an additional \$8,476,097 as a “year 2011 remaining credit.” The total value of the “credits taken” and the “remaining credit” equals approximately \$25,679,075. PHP also falsely claimed an additional Surcharge credit in the amount of \$524,282, which it purported to carryover from the “09 Final Return.” Only a portion of these credits were apparently included in the original 2011 Return. By falsely claiming the 2010 Carryover amount on the 2011 Amended Return, among other deductions, PHP falsely claimed a net negative amount of Premium Tax and Surcharge due (i.e. credit) of \$25,574,064 (the “**2011 Carryover**”).

75. By claiming and carrying over these unlawful credits through the 2011 Amended Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. The 2011 Amended Return included a signed statement from PHP President Dennis Alan Batey, MD and Secretary/Treasurer Dale Maxwell attesting on behalf of PHP’s Board of Directors that “they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct...”

**PHP APPLIES IMPROPER CREDITS FROM 2003 AND 2004 TO EVADE
PREMIUM TAX AND SURCHARGE LIABILITY**

76. After claiming a succession of credits in the 2003 through 2011 amended returns for its claimed 2003 and 2004 overpayments, in its regular annual Premium Tax filings thereafter, PHP applied the falsely claimed deductions to improperly offset and evade payment of Premium Tax and the Surcharge. By claiming these credits without a reasonable basis, and attesting to the State that these credits were lawful, PHP’s actions, as set forth below, constitute false claims.

77. PHP filed a Calendar Year 2012 Premium Tax Return on or about April 1, 2013 (the “**2012 Return**”). The 2012 Return was the first filed by PHP after the filing of the amended returns for years 2003 to 2011 as described above, including the 2011 Amended Return, which provided for the 2011 Carryover. As set forth below, PHP falsely claimed the impermissible Medicaid deductions it carried over from the Amended 2003 and 2004 Returns – plus the improper political subdivision premium credits – to eliminate its yearend Premium Tax liability to the State.

78. To wit, in the 2012 Return, after taking a variety of discounts and deductions, PHP reported a 2012 Premium Tax obligation of \$8,699,958, and a Surcharge obligation of \$6,899,567. PHP also reported making just one (as opposed to the typical four) quarterly Premium Tax payments in 2012, \$4,024,877 in the 4th quarter of that year. Otherwise, PHP falsely claimed Premium Tax “[t]ax credits” for each quarter, equaling \$4,174,322 in the 1st quarter, \$4,134,926 in the 2nd quarter, \$4,108,773 in the 3rd quarter, and \$4,036,131 in the 4th quarter. The sum total of these “tax credits” equals \$16,454,152. In the 2012 Return, PHP added the “tax credits” to the 4th quarter payment resulting in a 2012 Premium Tax “total payments” figure of \$20,479,029. PHP then falsely claimed an additional “2012 remaining credit” of \$9,119,912 in figuring its 2012 Premium Tax obligation. Taken together, the “2012 remaining credit” plus the 2012 quarterly “tax credits” equaled the 2011 Carryover. The net result: PHP applied the 2012 “total payments,” plus the “2012 remaining credit,” to eliminate the \$8,699,958 Premium Tax obligation it had reported, and falsely claim a Premium Tax credit for 2012 of \$20,898,982. By falsely claiming the 2011 Carryover amount on the 2012 Return, and eliminating the \$8,699,958 Premium Tax obligation PHP reported, the State incurred a commensurate loss in revenue to which it was entitled under state law.

79. PHP also falsely claimed on the 2012 Return a 1st quarter Surcharge credit in the amount of \$781,268, which was attributable (in part) to the improper political subdivision premium deductions claimed in the 2006, 2007, 2008 and 2009 Amended Returns. Coupling this Surcharge credit with the \$20,898,982 and Premium Tax credit described in the preceding paragraph, PHP falsely claimed a carryover credit of \$21,680,250 (the “**2012 Carryover**”).

80. By claiming and carrying over these unlawful credits through the 2012 Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. The 2012 Return included a signed statement from PHP President Dennis A. Batey, MD and Secretary/Treasurer Dale Maxwell falsely attesting on behalf of PHP’s Board of Directors that “they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct...”

81. PHP filed a Calendar Year 2013 Premium Tax Return on or about April 17, 2014 (the “**2013 Return**”). As set forth below, PHP falsely claimed the impermissible Medicaid deductions it carried over from the Amended 2003 and 2004 Returns (in the form of the 2012 Carryover), plus the impermissible political subdivision premium deductions, to eliminate its yearend Premium Tax liability to the State.

82. In the 2013 Return, after taking a variety of discounts and deductions, PHP reported a 2013 Premium Tax obligation of \$7,863,979, and a Surcharge obligation of \$7,506,615. As with the 2012 Return, PHP reported making just one (as opposed to the typical four) quarterly Premium Tax payments in 2013, just \$614,240 in the 4th quarter of that year. Otherwise, PHP applied a portion of the 2012 Carryover and falsely claimed Premium Tax “[t]ax

credit[s]” for each quarter, equaling \$4,200,135 in the 1st quarter, \$4,822,511 in the 2nd quarter, \$4,231,340 in the 3rd quarter, and \$4,195,212 in the 4th quarter. The sum total of these “tax credits” equals \$17,449,198. In the 2013 Return, PHP added the “tax credits” to the 4th quarter payment resulting in a 2013 Premium Tax “total payments” figure of \$18,063,438. The net result: PHP applied the 2013 “total payments” to eliminate the \$7,863,979 Premium Tax obligation it had reported, and falsely claim a Premium Tax credit for 2013 of \$10,199,459. PHP also falsely claimed and carried forward the Surcharge credit from 2012, resulting in a “credit” on the 2013 Return equaling \$10,806,506 (the “**2013 Carryover**”).

83. By falsely claiming the 2012 Carryover amount on the 2013 Return, and eliminating the \$7,863,979 Premium Tax obligation PHP reported, the State incurred a commensurate loss in revenue to which it was entitled under state law. By claiming and carrying over these unlawful credits through the 2013 Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. The 2013 Return included a signed statement from a PHP signatory identified as the firm’s President and Gabriel Parra, Secretary/Treasurer falsely attesting on behalf of PHP’s Board of Directors that “they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct...”

84. PHP filed a Calendar Year 2014 Premium Tax Return on or about April 20, 2015 (the “**2014 Return**”). As set forth below, PHP falsely claimed the impermissible Medicaid deductions it carried over from the Amended 2003 and 2004 Returns (in the form of the 2013 Carryover) to eliminate its yearend Premium Tax liability to the State.

85. In the 2014 Return, after taking a variety of discounts and deductions, PHP reported a 2014 Premium Tax obligation of \$19,922,059, and a Surcharge obligation of \$11,605,263. PHP reported making three quarterly payments in 2014, for a total of \$17,474,382. Otherwise, PHP applied a portion of the 2013 Carryover and falsely claimed Premium Tax “[t]ax credit[s]” for two quarters: \$6,980,482 in the 2nd quarter and \$369,152 in the 3rd quarter. The sum total of these “tax credits” equals \$7,349,634. In the 2014 Return, PHP added the “tax credits” to the quarterly payments resulting in a 2014 Premium Tax “total payments” figure of \$24,824,016. The net result: PHP applied the 2014 “total payments” to eliminate the \$19,922,059 Premium Tax obligation it had reported, and falsely claim a Premium Tax credit for 2014 of \$4,901,957 (the “**2014 Carryover**”). By falsely claiming a portion of the 2013 Carryover amount on the 2014 Return, PHP eliminated its obligation to make a yearend Premium Tax payment, and the State incurred a loss in revenue commensurate to the “tax credits” claimed. By claiming and carrying over these unlawful credits through the 2014 Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. The 2014 Return included a signed statement from PHP executives Lisa Farrell and Brandon Fryar falsely attesting on behalf of PHP’s Board of Directors that “they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct...”

86. PHP filed a Calendar Year 2015 Premium Tax Return in April of 2016 (the “**2015 Return**”). In the 2015 Return, PHP falsely claimed a portion of the 2014 Carryover, in the form of one credit for \$1,481,375 in the 1st quarter. This unlawful deduction resulted in a diminution of PHP’s Premium Tax obligation for 2015 by a commensurate amount, money to which the

State was entitled under Section 59A-6-2. By claiming and carrying over these unlawful credits through the 2015 Return, Defendants acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. The 2015 Return included a signed statement from PHP executives Lisa Farrell and Brandon Fryar falsely attesting on behalf of PHP's Board of Directors that "they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct..."

87. Each of the returns – amended and original – set forth in paragraphs 35-48 and 58-86 of this Complaint constitute individual false claims that deprived the State of millions of dollars in Premium Tax revenue and/or constitute impermissible carrying forward of falsely claimed Premium Tax and Surcharge deductions/credits.

88. After filing the amended returns for calendar years 2003-2011 during the PRC/OSI transitional period described in paragraph 56, PHP sought to immunize itself against any liability flowing from the amended returns filed during that period and to dispose of the pending Administrative Proceeding (see supra paragraph 50). Namely, it sought a written settlement with the PRC/OSI through which the State would "agree that the [2003-2012] amended returns are complete and accurate as to both the material financial information reported and the [t]ax liabilities and credits calculated on the basis of that financial information" (the "**Draft Settlement**"). The Draft Settlement agreement went on to propose the stipulation that "PHP has no outstanding liability for either the premium tax or the premium surtax for any reporting period [between 2003-2012], and that as a result of overpayment of the health

insurance premium tax [between 2003-2012] is entitled to credits which have been applied as reflected in the [amended 2003-2012 returns].”

89. The Draft Settlement was drafted by PHP, and signed by Gabriel M. Parra, an attorney at PHP who was identified as PHP’s corporate secretary on the Draft Settlement. Mr. Parra’s signature block incorporated the attestation that “I declare I have examined this [a]greement, and all related attachments, and to the best of my knowledge and belief, it is true, correct and complete as to every material matter.” The Draft Settlement was apparently countersigned by PRC attorney Patrick L. Lopez, but never enacted because the agreement failed to include the endorsement of Superintendent of Insurance John Franchini, which was required under the terms of the agreement. The Draft Settlement was dated June 28, 2013, just three days before OSI split from PRC to become an independent agency. The agreement set forth in the Draft Settlement was never enacted, but Mr. Parra’s representations to the State/PRC constitute a separate false claim through which PHP sought to achieve a financial benefit through baselessly legitimizing its unlawful Premium Tax scheme – a scheme it executed as set forth in this Complaint.

**PHP’S FAILURE TO REPORT ADDITIONAL MEDICAID “ENHANCED”
PREMIUM PAYMENTS FROM THE STATE**

90. In a separate scheme, PHP failed to report and pay Premium Tax and Surcharge revenue on certain taxable “enhanced payments” made by HSD to PHP pursuant to the latter’s participation in New Mexico’s Medicaid program. These enhanced payments are made by the State to Medicaid providers to compensate for lower allowable rates of reimbursement under Medicaid versus the federal Medicare program. The payments equalize the Medicaid reimbursement paid by HSD with the higher allowable rates under Medicare. In addition, HSD adds an additional 4.003% to such payments in recognition of the taxable nature of these

payments under Section 59A-6-2. Thus, when PHP received such “enhanced payments,” it was reimbursed 4.003% of the enhanced payment amount to enable PHP to pay Premium Tax and Surcharge on those payments.

91. PHP received such payments from the State in at least 2014-2016. In 2014, PHP received approximately \$6,130,939, in 2015 PHP received \$11,153,818, and in 2016, PHP received \$3,627,950 in enhanced payments. The sum total of these payments equals \$20,912,707. PHP did not report these amounts as subject to Premium Tax and the Surcharge in filing its annual Premium Tax return with the State. Through this omission, PHP submitted Premium Tax returns to the State that were false, misleading and fraudulent. As a result of this omission, PHP falsely decreased its obligation to the State to pay Premium Tax and Surcharge. Assessed at the applicable 4.003% Premium Tax and Surcharge rate in effect during this period, these omissions resulted in a loss of \$837,136 in funds due the State of New Mexico.

92. By claiming this unlawful deduction through the 2011 Return, PHP acted with actual knowledge of the falsity of the information contained therein, with deliberate ignorance of the truth or falsity of the information, or in reckless disregard for the truth or falsity of the information contained therein. In each of the three years set forth in Paragraph 91, in the Premium Tax forms submitted by PHP to the State, two PHP executives provided the signed attestation that “they have examined the contents [of the return]; and that to the best of their knowledge, and belief [the contents of the return] are true and correct...” In 2014 and 2015, this attestation was made by Brandon Fryar and Lisa Farrell. In 2016, this attestation was apparently made by Amor Brannin and Mr. Fryar.

COUNT I

(Violation of the New Mexico Fraud Against Taxpayers Act, NMSA 1978, §§ 44-9-1 to -14)

93. The State hereby incorporates by reference, as if fully set forth herein, each and every allegation in the preceding paragraphs of this Complaint.

94. The State seeks treble damages and civil penalties for PHP's violations of FATA, NMSA 1978, §§ 44-9-1 to 14.

95. By virtue of the acts described and alleged herein, PHP knowingly made or used, or caused to be made or used false, misleading, or fraudulent records or statements to conceal, avoid or decrease its obligations to pay or transmit money to the State.

96. By virtue of the acts described and alleged herein, PHP knowingly presented or caused to be presented, and made, used, or caused to be made or used, false, misleading or fraudulent records and statements to obtain and support the approval of a false or fraudulent claim.

97. By virtue of the acts described and alleged herein, PHP was alternatively the beneficiary of an inadvertent submissions of false claims, and having subsequently discovered the falsity of the claims, failed to disclose such false claims to the State within a reasonable period of time.

98. As is more particularly alleged above, PHP violated FATA through the filing of Premium Tax returns and amendments wherein it falsely claimed baseless deductions against Premium Tax and Surcharge liability, thereby decreasing an obligation to pay money due the State, with actual knowledge of the falsity of the information, in deliberate ignorance of the falsity of the information, or in reckless disregard of the falsity of the information. Namely, by claiming deductions and credits not permitted under Section 59A-6-2, and lacking a reasonable

basis for those actions, PHP violated FATA. Each submission made to the State by PHP, in the form of original and amended Premium Tax returns, contains signatures of PHP executives attesting that the forms are “true and correct” to the “best” of the signatory’s knowledge.

99. PHP committed a series of additional false claims by amending past returns, claiming credits unlawfully, and then applying those credits years later without a reasonable basis under the law. PHP committed these acts knowingly through its agents, as detailed above, or with actual knowledge of the falsity of the information, or in deliberate ignorance of the falsity of the information, or in reckless disregard of the falsity of the information. Each of these submissions, in the form of original and amended Premium Tax returns, contains signatures of PHP executives attesting that the forms are “true and correct” to the “best” of the signatory’s knowledge.

100. PHP authorized and ratified all the violations of the FATA committed by its officers, agents and employees acting within the course and scope of its employment, agency or other relationship.

101. As a direct and proximate result of PHP’s acts, the State has been damaged and continues to be damaged in a substantial amount to be determined at trial.

102. Additionally, the State is entitled to the maximum civil penalty of \$10,000 for each and every violation by PHP alleged herein.

COUNT II

(Violation of the New Mexico Insurance Code)

103. The State hereby incorporates by reference, as if fully set forth herein, each and every allegation in the preceding paragraphs of this Complaint.

104. Under the Insurance Code, as set forth supra, Defendant PHP was obligated to remit between 3 and 4.003% annually to the State on premiums collected. This duty was applicable to all Medicaid monies collected by PHP unless those revenues were subject to the statutory exceptions set forth in Section 59A-6-2(E). At no time during the relevant period (2000-2015) were Medicaid premiums exempt from the duty to pay. Nevertheless, through its Premium Tax returns (original and amended), PHP underpaid and sought to avoid its obligation to pay such taxes.

105. Under the Insurance Code, in the event an insurer pays the state Premium Tax in any given year that exceed the insurer's Premium Tax liability, that insurer may only request a refund or credit within three years of the purported error. In the event an insurer elects to receive a credit, such credit may only be applied to a Premium Tax return filed within three years of the erroneous or excess payment. PHP routinely violated this provision by (1) filing in 2013 a series of amended returns for the 2003-2011 tax years; (2) applying those unlawfully claimed credits to PHP's 2012-2015 Premium Tax and Surcharge liabilities; and (3) claiming untimely new deductions in certain amended returns for premiums collected from political subdivisions.

106. With respect to the State's allegations, PHP authorized and ratified all actions committed by its officers, agents and employees acting within the course and scope of its employment, agency or other relationship.

107. The State is entitled to recover all monies due the State flowing from Defendants' unlawful scheme, in an amount to be determined at trial.

COUNT III

(Unjust Enrichment)

108. The State hereby incorporates by reference, as if fully set forth herein, each and every allegation in the preceding paragraphs of this Complaint.

109. By virtue of the acts described and alleged herein, PHP has knowingly benefited at the expense of the State of New Mexico. In particular, by claiming unlawful deductions against Premium Tax and Surcharge liability on original and amended Premium Tax returns, PHP has achieved a substantial windfall, which the State is entitled to disgorge.

110. Because the Legislature has determined that insurers are obligated to pay Premium Tax and the Surcharge to the State, and the State and taxpayers are entitled to that benefit, it would be unjust (and unlawful) for PHP to retain this benefit. The equities are particularly clear here, where the vast majority of the unjust benefit was derived from a series of unlawful Medicaid deductions – despite PHP having been compensated by another arm of the State – HSD – to remit those very taxes back to the State via OSI.

111. With respect to the State's allegations, PHP authorized and ratified all actions committed by its officers, agents and employees acting within the course and scope of its employment, agency or other relationship.

112. As a result of PHP's wrongful conduct, the State has suffered and continues to suffer damages, and the State is entitled to payment of all monies benefitting and enriching Defendants from the unlawful scheme set forth supra.

COUNT IV

(Fraud)

113. The State hereby incorporates by reference, as if fully set forth herein, each and every allegation in the preceding paragraphs of this Complaint.

114. By virtue of the acts described and alleged herein, PHP knowingly and intentionally made misrepresentations of fact, through its Premium Tax returns and other communications to the State, regarding its Premium Tax and Surcharge obligations.

115. PHP made these misrepresentations of fact with the intention that the State would rely on such misrepresentations in reviewing PHP's submission of Premium Tax returns, thereby inducing the State to accept PHP's unlawful deductions and credits.

116. The State justifiably relied on these misrepresentations in vetting and considering PHP's Premium Tax returns. For example, as set forth in paragraph 38, State officials relied upon the claims of a PHP official that IHS premiums were deductible – reliance that PHP exploited for years thereafter. And further, as set forth in paragraphs 52-55, OSI relied upon PHP's representations in accepting the amended returns for 2003-2011.

117. With respect to the State's allegations, PHP authorized and ratified all actions committed by its officers, agents and employees acting within the course and scope of its employment, agency or other relationship.

118. As a result of PHP's wrongful conduct, the State has suffered and continues to suffer damages in an amount to be determined at trial.

119. In addition to compensatory damages, the State is entitled to recover punitive damages against Defendants as a result of their bad faith and/or malicious, willful, wanton, reckless or fraudulent conduct in submitting false claims, and making false representations to the

State, in an amount to be determined by the trier of fact, but in at least an amount sufficient to punish Defendants and deter similar conduct.

COUNT V

(Negligent Representation)

120. The State hereby incorporates by reference, as if fully set forth herein, each and every allegation in the preceding paragraphs of this Complaint.

121. PHP made numerous and repeated misrepresentations of material fact including, but not limited to, the unlawful deductions and credits enumerated herein it claimed on Premium Tax returns, spanning more than a decade, and various communications to the State wherein PHP defended its Premium Tax and Surcharge avoidance scheme.

122. PHP plainly intended for the State to rely on these misrepresentations, which it made repeatedly – both in various communications to OSI and through the (mis)representations in its tax returns. And as set forth herein, those misrepresentations did induce reliance: Prompting the State to accept PHP's fraudulent claims through the company's stream of annual and quarterly Premium Tax filings – both original and amended.

123. PHP knew that its representations were false, or recklessly disregarded the falsity of the representations it made, regarding the deductions and credits it claimed on its Premium Tax returns. Particularly telling is PHP's nearly decade-long delay in claiming millions of dollars in deductions flowing from the Legislature's 2003 changes to the Insurance Code.

124. With respect to the State's allegations, PHP authorized and ratified all actions committed by its officers, agents and employees acting within the course and scope of its employment, agency or other relationship.

125. As a direct and proximate result of PHP's misrepresentations, the State has been damaged and continues to be damaged in a substantial amount to be determined at trial.

126. In addition to compensatory damages, the State is entitled to recover punitive damages against Defendants as a result of their bad faith and/or malicious, willful, wanton, reckless or fraudulent conduct in submitting false claims, and making false representations to the State, in an amount to be determined by the trier of fact, but in at least an amount sufficient to punish Defendants and deter similar conduct.

COUNT VI

(Constructive Fraud)

127. The State hereby incorporates by reference, as if fully set forth herein, each and every allegation in the preceding paragraphs of this Complaint.

128. PHP had legal duties to the State under the Insurance Code to (1) remit all Premium Tax and Surcharge amounts it owed or owes the State of New Mexico; and (2) to provide accurate representations and reporting on its annual and quarterly Premium Tax returns.

129. In failing to pay Premium Tax and Surcharge obligations due the State, in addition to a multitude of false representations and claims made to reduce said obligations, PHP breached its duty to the State. PHP's actions in this regard are contrary to statute, public policy, and sound morals.

130. With respect to the State's allegations, PHP authorized and ratified all actions committed by its officers, agents and employees acting within the course and scope of its employment, agency or other relationship.

131. As a direct, natural, and foreseeable result of Defendants' misconduct, the State has suffered substantial harm and is entitled to recover all monies due the State pursuant to PHP's legal duties under the Insurance Code.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendants as follows:

A. As to Count I (FATA), judgment against Defendants in an amount equal to three times the amount of damages the State has sustained as a result of PHP's violations of the Fraud Against Taxpayers Act, Section 44-9-3(C)(1);

B. As to Count I, judgment against Defendants for a civil penalty of not less than five thousand dollars (\$5,000.00) and not more than ten thousand dollars (\$10,000.00) for each violation pursuant to Section 44-9-3(C)(2);

C. As to Count II (Insurance Code), judgment against Defendants for at least the full amount of credits improperly claimed and Premium Tax and Surcharge amounts underpaid;

D. As to Count III (Unjust Enrichment), judgment against Defendants of at least the amount of all credits improperly claimed and Premium Tax and Surcharge amounts underpaid;

E. As to Count IV (Fraud), judgment against Defendants in an amount equal to all damages proximately caused by Defendants' misconduct in an amount to be determined at trial, in addition to punitive damages;

F. As to Count V (Negligent Misrepresentation), judgment against Defendants in an amount equal to all damages proximately caused by Defendants' misconduct in an amount to be determined at trial, in addition to punitive damages;

G. As to Count VI (Constructive Fraud), judgment against Defendants in an amount equal to all damages proximately caused by Defendants' misconduct in an amount to be determined at trial;

H. Any and all available pre- and post-judgment interest;

I. Reasonable attorneys' fees and costs of litigation; and

J. Any and all other relief to which Plaintiffs may be entitled to at law or in equity.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: This 11th day of July, 2017.

**HECTOR BALDERAS
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