UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

[UNDER SEAL],

Plaintiffs,

vs.

Case No. ______________________

[UNDER SEAL],

Defendants.

<u>COMPLAINT</u>

FILED IN CAMERA AND UNDER SEAL

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA EX REL. DIANA STEPAN, Plaintiffs, v. CHRISTUS ST. VINCENT REGIONAL MEDICAL CENTER CORPORATION; CHRISTUS HEALTH CORPORATION, Defendants.	Case No. __________________ Jury Trial Demanded

COMPLAINT OF QUI TAM PLAINTIFF DIANA STEPAN FOR VIOLATION OF FEDERAL FALSE CLAIMS ACT [31 U.S.C. § 3729 et seq.]

FILED IN CAMERA AND UNDER SEAL

Qui tam plaintiff Diana Stepan, through her attorneys Phillips & Cohen LLP and the Law Offices of James P. Lyle, P.C., on behalf of the United States of America, for her Complaint against defendants Christus St. Vincent Regional Medical Center Corporation ("St. Vincent") and Christus Health Corporation ("Christus") alleges as follows:

I. INTRODUCTION

1. This is an action to recover damages and civil penalties on behalf of the United States of America arising from false and/or fraudulent statements, records, and claims made and caused to be made by Christus St. Vincent Regional Medical Center Corporation, Christus Health

Corporation and/or their subsidiaries, agents, and employees in violation of the Federal False Claims Act, 31 U.S.C. §§ 3729 et seq.

2. This case involves Defendants' pursuit of Medicaid payments from the Federal Government through improper manipulation of the New Mexico's Sole Community Provider Fund and Sole Community Provider Supplemental Payments programs.[1] By fraudulently arranging with Santa Fe County authorities to self-finance "county" contributions that are required for St. Vincent to participate in support of such programs, Defendants have been able to transform non-bona fide "donations" to Santa Fe County into discretionary supplemental Medicaid payments that both refund St. Vincent in full for its so-called donations and pay St. Vincent additional amounts of unwarranted federal funding that total approximately three times the amount of the hospital's investment in such refunded "donations." As a result, since at least 2001 and continuing to date, and in violation of federal Medicaid statutes and regulations, Defendants have knowingly claimed and received increases in discretionary Medicaid payments through those programs that they knew they were not properly eligible to receive.

3. Defendants have also knowingly and fraudulently failed to use the majority of the funding they have obtained through the Sole Community Provider programs to deliver care to patients, indigent or otherwise, as required by both Federal and New Mexico Law. Instead of using the tens of millions of dollars in Sole Community Provider funding it received on patient care, St. Vincent instead spent the vast majority of the money on other aspects of its facility,

[1] Among state officials, county officials, and hospital personnel, references to the Sole Community Provider Fund and the programs associated with it that are discussed herein often substitute "Hospital" for "Provider" when referring to the same Fund or its associated programs. Any such variations in references that occur in this Complaint should thus also be understood to be synonymous.

including developing physician practices, improving the physical plant, and covering administrative expenses and salaries. St. Vincent did not try to justify this misallocation of the funding to the Counties that helped it obtain its funding and readily admitted that only a small portion of the Sole Community Provider funding was used on patient care.

4. As a direct and intended result of Defendants' improper practices, the United States has made Federal Financial Participation ("FFP") payments, through its Medicaid contributions to quarterly and annual supplemental expenditures of New Mexico Medicaid's Sole Community Provider Fund for amounts benefitting St. Vincent that would not have been paid but for Defendants' false and fraudulent schemes.

II. BACKGROUND REGARDING THE FALSE CLAIMS ACT

5. The federal False Claims Act was originally enacted during the Civil War. Congress substantially amended the Act in 1986 – and, again, in May 2009 and March 2010 – to enhance the ability of the United States Government ("Government") to recover losses sustained as a result of fraud against the United States after finding that fraud in federal programs was pervasive and that the Act, which Congress characterized as the primary tool for combating government fraud, was in need of modernization. Congress intended that the amendments create incentives for individuals with knowledge of fraud against the Government to disclose the information without fear of reprisals or Government inaction, and to encourage the private bar to commit legal resources to prosecuting fraud on the Government's behalf.

6. The Act provides that any person who knowingly submits, or causes the submission of, a false or fraudulent claim to the Government for payment or approval is liable for a civil penalty of up to $11,000 for each such claim, plus three times the amount of the damages sustained by

the Government. Liability attaches when Defendants "knowingly" seek payment, or cause others to seek payment, from the Government that is unwarranted. Requisite "knowledge" can include not only actual knowledge as to the impropriety or ineligibility for federal payment of the claim or information but also acts taken in deliberate ignorance or in reckless disregard of the truth or falsity of such claim or information.

7. The Act allows any person having knowledge about a false or fraudulent claim against the Government to bring an action for himself and the Government, to share in any recovery, and to recover reasonable costs, expenses, and attorney's fees from the Defendants if the action is successful. The Act requires that the complaint be filed under seal for a minimum of 60 days (without service on the Defendants during that time) to allow the Government time to conduct its own investigation and to determine whether to join the suit.

III. PARTIES

8. Plaintiff/relator Diana Stepan is a resident of Los Alamos, New Mexico. From 2002 until 2011, Stepan was the Indigent Health Care Administrator for Los Alamos County. During her employment there, Stepan learned of the non-bona fide "donations" that are at issue in this complaint. By exploring the circumstances in which these payments were made by Santa Fe County and the relevant standards governing connection of such donations to supplemental Medicaid payments, Stepan came to realize that Defendants' "donations" to Santa Fe County were sham transactions designed and implemented specifically to bilk the federal treasury. Stepan also came to understand that St. Vincent was not using the supplemental Medicaid payments it received to fund indigent patient care, even though it was required to do so by

Federal and state law. She left the employ of Los Alamos County in 2011 for reasons unrelated to this litigation.

9. Christus Health Corporation ("Christus") is a Texas non-profit health care company. Its headquarters are located in Irving, Texas. It is the product of the 1999 merger of Houston's Sisters of Charity Health Care System and San Antonio's Incarnate Word Health System. Christus is privately owned and does not publicly report its financials. Christus owns 40 hospitals and other health care facilities in Texas, New Mexico, Louisiana, Arkansas, Utah, Oklahoma, Missouri, and Georgia. The Christus healthcare system has 30,000 employees and 9,000 physicians on staff.

10. Christus St. Vincent Regional Medical Center Corporation ("St. Vincent") is a 265-bed acute care hospital in Santa Fe, New Mexico, located at 455 St. Michaels Dr. It is the oldest hospital in the State of New Mexico and was purchased by Christus in 2008. The hospital has a staff of 280 doctors and provides services to approximately 300,000 residents of New Mexico. Joseph Alex Valdez is the current CEO of St. Vincent.

IV. <u>JURISDICTION AND VENUE</u>

11. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367 and 31 U.S.C. § 3732, the last of which specifically confers jurisdiction on this Court for actions brought pursuant to 31 U.S.C. §§ 3729 and 3730.

12. Whether or not there has been a statutorily relevant public disclosure of the "allegations or transactions" alleged in this case under 31 U.S.C. § 3730(e), Relator would qualify under that section of the False Claims Act as an "original source" of the allegations in this Complaint. Relator has voluntarily provided the material information she possesses about Defendants'

violations of the health care laws to the United States government before filing this action. To the extent that there has been a public disclosure under 31 U.S.C. § 3732(e)(4)(A), Relator possesses information that is independent of and materially adds to any publicly disclosed allegations or transactions.

13. This Court has personal jurisdiction and venue over the Defendants pursuant to 28 U.S.C. § 1391(b) and 31 U.S.C. § 3732(a), because that section authorizes nationwide service of process and because all Defendants have minimum contacts with the United States. Moreover, the Defendants can be found in, reside in, and/or transact business in the District of New Mexico.

14. Venue is proper in this District pursuant to 31 U.S.C. § 3732(a) because one or more of the Defendants can be found in and transacts business in the District of New Mexico. At all times relevant to this Complaint, all Defendants regularly conducted substantial business within the District of New Mexico. In addition, statutory violations, as alleged herein, occurred in this district.

V. MEDICAID PROGRAM BACKGROUND

15. Title XIX of the Social Security Act (the "Medicaid Act") authorizes federal grants to the States for Medicaid programs to provide medical assistance to persons with limited income and resources. Medicaid programs are administered by the States in accordance with Federal regulations. State Medicaid agencies conduct their programs according to a Medicaid State plan approved by the Center for Medicare & Medicaid Services ("CMS"). To carry out the mandates of the Medicaid program, the State agency pays providers for medical care and services provided to eligible Medicaid recipients. Providers that wish to participate in the Medicaid program must agree to comply with certain requirements specified in a provider agreement.

16. While Medicaid programs are administered by the States, they are jointly financed by the Federal and State governments. The Federal Government pays its share of medical assistance expenditures to the State on a quarterly basis according to statements of expenditures submitted by the State and a formula used to calculate how much of the total reported expenditures the Federal Government will reimburse the State, as described in sections 1903 [42 U.S.C. § 1396b] and 1905(b) [42 U.S.C. § 1396d(b)] of the Medicaid Act. The amount of the federal share of medical assistance expenditures is called Federal Financial Participation ("FFP"). The State pays its share of medical assistance expenditures from state and local government funds in accordance with the requirements of section 1902(a)(2) [42 U.S.C. § 1396a(a)(2)] of the Medicaid Act.

17. Different levels of federal funding are provided to different States, depending on need. The minimum federal matching rate share is 50% of total program costs. The precise level of federal funding for each State calculated by the Federal Government each federal fiscal year. In New Mexico, the annual federal share of Medicaid expenditures during the period relevant to this Complaint has approached or exceeded 75% of total program costs.

A. State-Funding Abuses – Non-Bona Fide Provider Donations

18. Because of past abuses that have undermined the proper balance in Medicaid financing actually provided respectively by the State and Federal Governments, since 1991, federal Medicaid regulations have excluded from FFP State medical assistance expenditures for which the States' and/or its local government entities' share of Medicaid costs are obtained from provider donations or revenues generated by certain health-care-specific taxes. See 42 C.F.R. §§ 433.50 et seq.

19. Under section 1903(w) [42 U.S.C. § 1396b(w)] of the Medicaid Act and its implementing regulations, see 42 C.F.R. § 433.52, a reduction in FFP will occur if a State receives "provider-related donations" (in cash or kind) made by, or on behalf of, health care providers unless the donations either are "bona fide" donations or meet out-stationed eligibility worker donation requirements (that are not relevant here). The law also specifies the types of health care-related taxes a State is permitted to receive without a reduction in FFP.

20. For purposes of federal Medicaid regulations, a provider-related donation made to a State or unit of local government is considered "bona fide" only if it has no direct or indirect relationship to Medicaid payments to the health care provider, any related entity providing health care items and services, or other providers furnishing the same class of items or services as the provider or related entity. Provider-related donations will be determined to have no direct or indirect relationship to Medicaid payments only if those donations are not returned to the individual provider, the provider class, or any related entity under a "hold harmless provision or practice" as those terms are described in the regulations. See 42 C.F.R. § 433.54(a) & (b).

21. Under the regulations, a "hold harmless practice" exists, inter alia, if "[a]ll or any portion of the payment made under Medicaid to the donor, the provider class, or any related entity, varies based only on the amount of the total donation received" or "the State or other unit of local government provides for any payment . . . that guarantees to return any portion of the donation to the provider." Id., at § 433.54(c). Moreover, while CMS (formerly "HCFA") generally will "presume" provider-related donations by a health care organizational entity to a local unity of government to be bona fide if they do not exceed $50,000 per year, to the extent that even such small annual donations actually contain a hold harmless provision as described in

42 C.F.R. § 433.54(c), they will not be considered a bona fide donations. Id., at § 433.54(d) & (e).

22. "Donations" from privately-owned and operated health-care providers to State or local governments that are used, directly or indirectly, for the purpose of fulfilling State matching-fund obligations to the Medicaid program for the benefit of the "donating" provider thus do not meet the definition of "bona fide" donations that are exempt from reductions in FFP. The result of such arrangements is that there is no true State-or-local-government-funded match of federal funds used to pay such Medicaid expenditure. Rather, there is only a non-bona fide "donation" of funds by the provider hospital itself, which is ultimately returned to the hospital through hold harmless agreements and practices – along with additional "matching" funds from the Federal Government – within the year of the so-called "donation" (usually within weeks).

23. Under such improper arrangements, providers make it possible for State or local government officials to substantially increase federal Medicaid payments to the providers at no commensurate cost increase to State or local government. Such arrangements thus undermine the safeguards Congress designed into the Medicaid program to condition certain categories of federal Medicaid spending (up to established overall limits) on the willingness of State and local governments to bear a defined, fair portion of the extra costs in exchange for the additional benefits such payments provide Medicaid participants within their jurisdiction.

24. Such arrangements can also undermine the incentive for State and local governments to properly monitor the actual use of, and genuine program-related need for, claimed funds. This risk arises when, as in this case, escalating claims for program funds are approved at no actual additional cost to the State or local governments due to the private entity's assumption of

responsibility for the State's share of expenses, eroding State and local governments' incentives to monitor the program and leading to increased fraud, waste, and abuse.

25. Federal law thus mandates that all such donations be reported to the Federal Government and documented. 42 C.F.R. § 433.74. Federal law also mandates that Federal Financial Participation in Medicaid funding be reduced in proportion to the amount of all provider-related donations that are neither (a) bona fide within the meaning of the regulations nor (b) donations made by a hospital or similar entity for direct costs of State or local agency personnel stationed at such a facility to determine the eligibility of individuals for Medicaid or to provide outreach services to eligible or potentially eligible Medicaid individuals (as noted above, a class of donations that is not relevant to the current case). 42 C.F.R. §§ 433.66 and 433.74(d). No discretionary exceptions exist.

B. New Mexico Indigent Health Care Funding

26. In furtherance of the Sole Community Provider and Upper Payment Limit programs described below, New Mexico maintains an Indigent Hospital and County Health Care Act, NMSA 1978, §§ 27-5-1 to -18, designed to provide funding for care of indigent patients, i.e., those patients whose incomes are high enough to disqualify them from Medicaid, but not high enough to allow them to meet the full cost of their treatment.

27. The purpose of the Indigent Hospital and County Health Care Act is to recognize that individual counties have a duty to provide for ambulance transport and hospital care for indigent patients. NMSA 1978, § 27-5-2.

28. The Indigent Hospital and County Health Care Act provides that each county shall create an indigent care board composed of members of the county commission or council. NMSA

1978, § 27-5-5. The board or its designee approves the payment of claims for services provided under the Act and contracts with health care providers for the provision of those services. NMSA 1978, § 27-5-6(Q).

29. The Indigent Hospital and County Health Care Act also provides for the creation of a "county indigent hospital claims fund." NMSA 1978, § 27-5-7. The fund takes its revenue from a levy specified in the Act and "shall be budgeted and expended only for the purposes specified in the Indigent Hospital and County Health Care Act." NMSA 1978, §§ 27-5-9 and 27-5-7(B). "Money may be transferred to the fund from other sources, but no transfers may be made from the fund for any purpose other than those specified in the Indigent Hospital and County Health Care Act." NMSA 1978, § 27-5-7(E).

30. The relevant authorized uses of the fund are laid out at NMSA 1978, § 27-5-7.1:

> A. The fund shall be used
> (1) to meet the county's contribution for support of sole community provider payments as calculated by the department for that county;
> (2) to pay for expenses of burial or cremation of an indigent person; and
> (3) to pay all claims that have been approved by the board that are not matched with federal funds under the state Medicaid program.

31. The Indigent Hospital and County Health Care Act anticipates that Sole Community Provider hospitals will provide care to indigent patients and subsequently be compensated for that care via Sole Community Provider payments that are adjusted based on the cost of care provided.

C. <u>New Mexico's Sole Community Provider Fund and Sole Community Provider Hospital Payments</u>

32. In New Mexico, one supplemental source of Medicaid funding to hospitals is the Sole Community Provider Fund ("SCPF"), which was created in 1993 by the New Mexico State

Legislature. The Sole Community Provider Fund is administered by the Human Services Department/ Medical Assistance Division ("MAD") and is funded – for purposes of fulfilling the State's obligation to share in Medicaid expenditures with the Federal Government – by county and local governments. Those locally-generated funds are then used by the State to draw down matching federal funds, which are sent directly to participating hospitals.

33. The Sole Community Provider Fund was created to provide greater care to the indigent population in counties that are willing to contribute state-share dollars for sole community hospitals servicing their region. Through "Sole Community Provider Payments" New Mexico hospitals serving counties and local communities that contribute to the fund (for the benefit of hospitals serving those communities) receive a federal match of approximately $3 for every $1 the county or local government contributes.

34. The Sole Community Provider Payments are designed to benefit eligible hospitals that, because of isolated location, weather or travel conditions, or absence of other area hospitals, are the only source of inpatient hospital services reasonably available in a geographic area. Working with other government entities, these hospitals provide access to hospital services to Medicaid-eligible clients. Federal payments for these purposes are contingent upon the State and/or local governments' commitment to fund the State share of such Medicaid expenditures.

35. There are several steps that must be completed in order for a hospital to participate in Sole Community Provider Payments from the SCPF. Each year, hospitals must first request financial support, up to specific maximum amounts for that hospital, from the county (or counties) in which the hospital is located and/or serves. Hospitals serving multiple counties must request financial support for the upcoming year from each such county. The maximum amount

for which a particular hospital is eligible depends on its past reported history of providing care to Medicaid eligible indigent patients, anticipated future needs for similar or increased levels of such hospital-provided care, and prior-year levels of funding to which supporting counties have previously committed and paid.

36. The counties then approve a dollar amount that they will contribute in that State fiscal year to the SCPF program in support of the hospitals and send the approval back to the hospital. The approval can be at levels at or below the maximum level for which the hospital is presumptively eligible. Counties send their approvals back to the hospitals for submission by the hospitals to MAD.

37. Hospitals must submit the local-funding commitments they have received from the counties to MAD not later than February 15th of each year.

38. Once all local-funding commitments have been provided by the hospitals to the Medical Assistance Division, MAD calculates the Market Basket Increase ("MBI") (the annual inflation increase due the hospitals) and informs the hospitals how much they will be paid that year in quarterly Sole Community Provider Payments. The Medical Assistance Division also informs the participating counties on or before July 1st of the total dollar amount they will be required to pay as the state-share of such payments for the year in question. Reminder letters are sent by MAD to participating counties prior to the end of each quarter, identifying the amount that is due to be paid MAD by the county before the end of the quarter.

39. Quarterly payments are made by MAD to the hospitals only after all monies from the counties have been received by the Medical Assistance Division.

40. Funds hospitals receive for the Sole Community Provider Fund must be used for direct patient care or services related to direct patient care.

D. New Mexico's Sole Community Supplemental Payments

41. In addition to the quarterly Sole Community Provider Payments described above, MAD also administers a second-tier Medicaid program that provides hospitals that obtain additional county funding commitments with Sole Community Supplemental Payments. These payments are made by MAD only if, and to the extent, other Medicaid funding has not exceeded the annual federal funding limit.

42. Each year, MAD calculates the Medicare Upper Payment Limit (UPL) for New Mexico and determines how much federal money remains available for possible distribution. MAD then notifies hospitals of the amount of funds available. To gain a share of these additional federal funds, the hospitals must secure county commitments to fund the "state" share of these Medicaid payments in essentially the same manner as is done with respect to Sole Community Provider Payments: The hospitals are responsible for making requests to the counties for local funding and for forwarding approvals from the counties to MAD. If certain hospitals are not able to secure commitments for county funding of the "state" share of such supplemental payments, funds that might have gone to those hospitals are made available to hospitals whose county governments are willing to make matching contributions for those additional amounts.

43. Once all county commitments have been received, MAD notifies the hospitals what the final amount of their supplemental payments will be, and the counties are told what final amount they must forward to the state to match and draw down the federal contribution. As with Sole Community Provider Payments, the federal share of these Sole Community Supplemental

Payments matches the Federal Government's routine share of New Mexico Medicaid expenditures, or about $3 federal funds for every $1 of committed local funding.

44. Because the amounts of these supplemental payments are tied to annual federal spending limits, all county checks must be received by MAD by the deadline it sets so that such payments can be deposited and processed in time for MAD to issue checks for the combined local and federal payments to the hospitals before the September 30 end of the Federal Government's fiscal year.

45. In September, 1999, based on the calculation of the Medicare Upper Payment Limit (UPL) and county commitments, a supplemental amount of approximately $4.2 million was available to distribute to the sole community hospitals in New Mexico. Similarly, approximately $33 million became available for distribution in September, 2000; approximately $7.5 million became available in September, 2001; approximately $13.4 million became available in September, 2002; approximately $15.9 million became available in September, 2003; approximately $24.2 million became available in September, 2004; approximately $30.9 million in September of 2005; approximately $45.5 million in September, 2006; approximately $53 million in September, 2007; approximately $61.8 million in September, 2008; and $92.3 million in September 2009.

46. As with all Medicaid funding, the Federal Government relies principally upon State and local government authorities to administer and police the above programs. Participating hospitals deal directly with State and local authorities, knowing that payments made through the program ultimately are funded about 75% on average by the Federal Government.

47. Because Medicaid funding pursuant to the above programs is intended to compensate hospitals only a fair and reasonable amount for care actually rendered to patients who are Medicaid eligible or indigent uninsured, hospitals that seek to participate in these programs are required fairly to present to county and State officials administering such program funds a fair accounting of what it is costing the hospitals to provide such care to Medicaid eligible and indigent uninsured patients and to submit claims information regarding all patients deemed eligible for such benefits to the administering county for claims review and processing.

48. Because the counties in New Mexico are required to fund the State share of such Medicaid payments through their allocated share of State Gross Receipts Sales taxes and/or other legitimate county revenue sources, a fundamental premise of the oversight structure of these programs is that the counties' investment interest in the endeavor will give them incentive both to carefully scrutinize the actual economic need for any program payment increases hospitals seek and to engage in sound evaluation of how to prioritize such budgetary demands against any and all competing demands for county funding.

VI. ALLEGATIONS ABOUT DEFENDANTS' SPECIFIC MISCONDUCT

A. Relator's Discovery of Defendants' Scheme

i. Agreement between St. Vincent and Los Alamos County

49. Relator Stepan was hired in 2001 as the Administrative Services Department Director of Los Alamos County. Because Los Alamos is a small county, its employees had many responsibilities. One of Relator's duties was to serve as the Indigent Health Care Administrator. In that capacity, Stepan had some contact with St. Vincent Hospital. In particular, she was

responsible for presenting St. Vincent's Sole Community Provider funding request to the Los Alamos County Council.

50. During the first few years of Relator's tenure with the County, these Sole Community provider allocations were fairly minimal. Los Alamos is a small, affluent community, and its need for indigent care is correspondingly diminutive. For example, for the period between July 2005 and June 2006, Los Alamos approved $59,811.60 in Sole Community Provider funding for St. Vincent. From July 2006 to June 2007, Los Alamos approved $62,144 in Sole Community Provider funding for St. Vincent.

51. However, in 2006, Los Alamos County received a windfall of gross receipts taxes when the management of the Los Alamos National Laboratory was privatized, and thus became subject to taxation. Because Los Alamos County is an island of relative affluence in the midst of a very impoverished region, the County was pressured by New Mexico State officials to contribute some of its newfound revenue towards the Sole Community Provider program on behalf of neighboring counties (including Santa Fe County). At Relator's suggestion, Los Alamos County obtained an opinion from the New Mexico Attorney General confirming the legality of such contributions as a basic concept.

52. Los Alamos derived the money for its Sole Community Provider payments from the fund it established pursuant to the Indigent Hospital and County Health Care Act, NMSA 1978, § 27-5-7 ("the indigent fund"). Using the indigent fund to make Sole Community provider contributions is statutorily permissible. Id. at § 27-5-7.1(A)(1). However, to the extent that indigent funds are used to obtain additional Medicaid funding, those funds are to be used to provide health care to indigent patients, and not for any other purpose. Id. at § 27-5-2.

53. The first of Los Alamos's enhanced payments was made in September of 2006, when the county approved an allocation of approximately $80,000 of its indigent fund to be used to obtain Sole Community Provider funding for St. Vincent. That contribution by the county resulted in a return of $275,000 to the hospital after federal matching funds. In January of 2007, Los Alamos provided approximately $100,000 more in funding, resulting in a payment of $353,256 to the hospital after federal matching. Then, in September of 2007, Los Alamos provided $400,000 in additional funding to St. Vincent, which returned approximately $1.4 million to the hospital after the federal match.

54. After St. Vincent CEO Valdez realized that Los Alamos was able to contribute significantly more in matching funds than it had in previous years, he approached the County in March 2007 to discuss possible donations from Defendants to Los Alamos County. As Valdez proposed to Relator, these donations would cover services that Los Alamos currently paid for out of its general fund (e.g., mental health and other social services) in order to free up other county funding to increase the amount of Sole Community Provider Payments. Valdez made similar requests to "donate" money to the county in a phone call with Relator on September 15, 2008 and in a meeting with Relator and other State and County officials on July 13, 2010.

55. During their conversations, Valdez explained to Relator that his hospital had a similar arrangement with Santa Fe County, and that it had proven lucrative for both Santa Fe County and the Defendants. Valdez made similar representations to the Los Alamos County Councilors during private meetings with them.

56. Concerned about the propriety of such an agreement, Relator repeatedly asked Valdez for a legal opinion or other evidence that St. Vincent could donate money to Los Alamos County in

exchange for enhanced Sole Community Provider funding. Valdez was never able to produce any such documentation. As a result, Relator advised the Los Alamos County Council against accepting any donations from St. Vincent, and the County declined St. Vincent's offer.

57. Despite refusing to participate in a "donation" scheme with the hospital, Los Alamos continued to make significant contributions from its indigent fund towards St. Vincent's Sole Community Provider allocations, in response to requests from New Mexico State Officials. After 2007, Los Alamos established a regular schedule under which it provided St. Vincent Hospital with $100,000 in base funding in January of a given year and then another $400,000 in supplemental funding in September of that year. That same payment arrangement was followed from 2008 to January of 2011 and Relator expects that the County will make another $400,000 payment in September of 2011. As discussed above, each January payment of $100,000 brings St. Vincent $353,256 in total funding after the federal match. The September $400,000 payment returns approximately $1.4 million.

58. Thus, the $500,000 a year that Los Alamos allocates towards St. Vincent's Sole Community Provider funding generates more than $1.7 million dollars in revenue for St. Vincent Hospital. However, little to none of that funding is actually used for the care of indigent patients, as contemplated by the Indigent Hospital and County Health Care Act, NMSA 1978, §§ 27-5-1 to -18. The improper use of these funds is discussed in greater detail below.

59. In an attempt to justify the indigent care funding it was receiving from Los Alamos County, St. Vincent provided annual reports of the "costs" it was incurring to treat indigent patients from Los Alamos County. Despite the fact that Los Alamos County's indigent population remained stable between 95 and 140 patients between 2005 and 2010, St. Vincent

reported a rise in indigent costs from $64,533 in 2005-2006 to $489,045 in 2009-2010.[2] This increased reporting of costs was used by St. Vincent as a prima facie justification for the fact that Los Alamos was now contributing approximately $500,000 per year to the SCP program on behalf of St. Vincent from the County's own funds, leading to approximately $1.7 million in revenue being returned to the hospital after the federal match. In fact, however, such expenditures far exceeded the actual cost to St. Vincent in providing such indigent care for patients from Los Alamos County.

60. As egregious as Defendants' misuse of Los Alamos County indigent funds may be, it pales in comparison to the fraudulent conduct that Relator discovered in neighboring Santa Fe County.

ii. St. Vincent's Agreement with Santa Fe County

61. In Santa Fe County, Defendants have established a donation scheme that results in their illegally obtaining tens of millions of dollars a year in federal funding and then failing to use that money to provide care to the patient population that the Sole Community Provider Program was intended to benefit. This conduct is distinct from the situation in Los Alamos County, where St. Vincent properly obtained the matching funds, but then misspent them. As shown below, Defendants had no right to any of the funds obtained via their arrangement with Santa Fe County and, after improperly obtaining such funds, failed to allocate them toward indigent care.

62. In the fall of 2007, as Relator and Los Alamos County were being solicited by Defendants to participate in a donation scheme, Relator contacted Steve Shepherd, the Director

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[2] A portion of Los Alamos County's contribution was ostensibly allocated to indigent care for other counties in Northern New Mexico. However, St. Vincent never provided an explanation of how it used the funds provided by Los Alamos County to serve patients from other counties or why so much additional funding was needed.

of Santa Fe County's Health and Human Services Department, to discuss the then-pending acquisition of St. Vincent Hospital by Christus. Their conversation quickly turned to the donation agreements between Santa Fe County and St. Vincent Hospital that Relator had learned of from Valdez. Shepherd provided Relator with an extensive description of the arrangement and eventually gave Relator several memoranda of agreement showing that Santa Fe had received "donations" from St. Vincent dating back to 2001 in exchange for using the donated funds to enhance the Sole Community Provider funding that would be received by St. Vincent.

63. The memoranda calculated a total "donation" payment that St. Vincent would make to Santa Fe County. The hospital allocated the money to various categories that the County would otherwise have been required to pay for out of other sources of revenue, including "Emergency Medical Services," "Indigent Care Funding," "Medical Care for Residents in Custody," "Coordination of Health and Human Services," "Maternal Child Health Community Infant Project," and many others.

64. The memoranda date back to 2000 (for donations beginning in 2001) and show a total payment of more than $62 million in "donations" to Santa Fe County. They are each signed by the President of St. Vincent (either Valdez or his predecessor John Lucas), the Santa Fe County attorney at the time, and two Santa Fe County Commissioners.

65. The memoranda show that for 2008-2009, St. Vincent agreed to pay Santa Fe County $12,165,687, ostensibly to assume responsibility for county public health services, but may have contributed only $11,551,850.[3] For 2007-2008, St. Vincent gave the County $10,992,500. For

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[3] There is a discrepancy between the memoranda of agreement and the amount Santa Fe County recorded as receiving on its own worksheets in the years of 2008-2009, 2006-2007, and 2005-2006. It is possible that in those years St. Vincent did not pay the full amount provided for by the Memoranda of Agreement to Santa Fe County.

2006-2007, the agreed upon contribution to Santa Fe County was $9,971,659. For 2005-2006, the hospital agreed to provide $9,936,659, but St. Vincent may have contributed only $5,712,000. For 2004-2005, the agreed upon contribution was $8,569,434, but St. Vincent may have contributed only $5,712,000. For 2000-2002, the agreed upon contribution was $11,827,923 (divided over the three year period). Relator does not have the memoranda of agreement for 2002-2003 or 2004-2005. As previously noted, each of these contributions from St. Vincent to Santa Fe returned approximately 3 times as much money in federal matching funds to the hospital.

66. Concerned about potential liability for their conduct, Santa Fe County officials proposed that St. Vincent stop entering into written agreements with the County starting in Fiscal Year 2009-2010. St. Vincent agreed to stop doing so. However, the St. Vincent still made a "donation" to the County in both fiscal years 2009-2010 and 2010-2011. The exact amount of St. Vincent's 2009-2010 and 2010-2011 "donations" are not known to Relator. St. Vincent secured funding of $33,691,274.94 from the Sole Community Provider program for 2009-2010, suggesting that the 2009-2010 donation was similar in size to those made in 2008-2009 and 2007-2008. Santa Fe County contributed $6.65 million to the SCPF match for 2010-2011 on behalf of St. Vincent hospital, which indicates that the 2010-2011 donation was likely at least that amount.

67. The amount of the "donations" from St. Vincent to Santa Fe County closely corresponded to the amount needed for Santa Fe County to maximize its Sole Community Provider payment. For example, for 2008-2009, Santa Fe County spent at least $5,101,672 on its Sole Community Provider contribution and another $550,000 on an Upper Payment Limit contribution after

receiving a "donation" of at least $11,551,850 from St. Vincent. In exchange for that donation, St. Vincent received up to $32,867,362 in Sole Community Provider funding and $1,888,736 in Upper Payment Limit matching funds, almost tripling its initial "donation."

68. From 2007-2008, Santa Fe County contributed at least $9,235,436 to the Sole Community Provider match and another $750,000 Upper Payment Limit contribution and, in return, received a $10,992,500 donation from St. Vincent Hospital. That "donation" returned $31,817,378 in Sole Community Provider matching funds and $2,671,891 in Upper Payment Limit funds to St. Vincent, again more than tripling the Hospital's investment.

69. From 2006-2007, Santa Fe County contributed at least $9,235,436 to the Sole Community Provider match and $1,282,744 in Upper Payment limit funds and received a $9,971,659 donation from St. Vincent Hospital. That "donation" returned $31,787,615 in Sole Community Provider matching funds and $4,446,252 in Upper Payment Limit funds to the Hospital.

70. The "donations" made by Defendants to Santa Fe County are directly in contravention of the federal prohibitions on provider donations to states for purposes of matching Sole Community Provider funding. See 42 U.S.C. § 1396b(w); 42 C.F.R. § 433.52; 42 C.F.R. § 433.54(a) and (b).

iii. St. Vincent Did Not Use its Sole Community Provider Funding to Provide Patient Care

71. As discussed, *supra*, the Sole Community Provider fund is to be used to fund patient care exclusively. It is not an all-purpose subsidy to hospital corporations, but rather designed to promote care for the neediest and poorest populations in the country. However, as in Los Alamos County, Defendants failed to use the Sole Community Provider funding they obtained to

provide that care. Instead, Defendants exploited the Sole Community Provider program to maximize their revenues, far beyond any costs that could even conceivably be tied to the program.

72. In addition to the memoranda of agreement between St. Vincent and Santa Fe County, Relator also obtained a worksheet prepared by Steve Shepherd of Santa Fe County or his staff, comparing the value of indigent patient care provided by St. Vincent to the total amount of Sole Community Provider funding received by the hospital. The cost figures on the documents are purely based on St. Vincent's representations and may be inflated or otherwise inaccurate.

73. On the document, the discrepancy between the cost of care and the amount of Sole Community provider funding is described as the surplus (i.e., excess funds received by St. Vincent beyond its costs of providing care) or the deficit (i.e., a shortfall in SCP funding relative to the cost of providing care).

74. The document covers the years 2004-2011. In none of these years did St. Vincent run a deficit. Indeed, in many years, it earned a tremendous surplus from the Sole Community Provider program. In 2004-2005, the surplus was $11.8 million. In 2005-2006, the surplus was $19.3 million. In 2006-2007, the surplus was $31.8 million. In 2007-2008, the surplus was $18.7 million. In 2008-2009, the surplus was $29.6 million. The amount of surplus for 2009-2011 cannot be calculated because Santa Fe stopped accounting for St. Vincent's donations on the form in those years. However, the forms provide enough information about the Sole Community Provider allocation and the value of claims approved to suggest that the surplus is likely around $25-30 million in each year.

75. In just the period between 2004 and 2009, St. Vincent received more than $111 million dollars in funding from the Sole Community Provider program based principally on provision of non-bona fide donations and which funding, by the hospital's own admission, was not used to fund patient care in any form. Approximately 75% of that funding was provided by the federal government based on fraudulent promises by Defendants that it would be used for patient care. The $111 million dollar figure excludes similar improperly obtained funds in the years of 2000-2004 and 2009-2011 that can be estimated at approximately $75 million in additional money received by St. Vincent that was never spent on patient care.

76. From 2007-2010, St. Vincent also received approximately $1.7 million per year in Sole Community Provider funds as a result of the use of Los Alamos County's indigent fund to fund the Sole Community Provider program. St. Vincent made a de minimis attempt to justify the cost of care it provided to Los Alamos indigents, but even its grossly inflated estimates never exceeded $500,000 per year. Thus, the $1.2 million in annual excess Sole Community Provider funding that St. Vincent received represents additional money wrongfully appropriated from the federal government that was not allocated toward patient care.

B. Additional Allegations Regarding Defendants' Wrongful Acts, Knowledge and Intent

77. Based on her discussions with St. Vincent's representatives and her review of documents relating to this issue, Relator believes and therefore alleges that, at all times relevant to this complaint and dating back to at least September 2000, the misconduct described herein has been done and continues to be done knowingly and intentionally.

78. Defendants have known since at least September 2000 what federal and state regulations provided with respect to non-bona fide donations to counties in order to inflate Sole Community

Provider payments. At all times thereafter, Defendants have known that all of the purported "donations" and other voluntary payments that they have made to Santa Fe County since at least September 2000 – however couched by Defendants in their efforts to evade the reach those regulations – were not then, and are not now, "bona fide" within the plain meaning and intent of those federal regulations.

79. Defendants likewise have known since at least September 2000 that "hold harmless" provisions and practices have been associated with each and every such donation they have made to the Santa Fe County since that time.

80. At all such times, Defendants also have known within the meaning of the False Claims Act that their "donations" are not now and never were a proper way of helping counties finance state share contributions to the program.

81. At all such times, Defendants also have known that they were required to use the funding received from County indigent funds to provide care to indigent patients.

82. Defendants likewise have known within the meaning of the False Claims Act at all such times that the federal matching payments they have sought and collected through the State of New Mexico were not properly claimed, received, or retained within the letter or intent of federal law.

83. Defendants likewise have known and intended at all relevant times that their conduct would result – quarter after quarter, and year after year – in the submission, approval and payment of claims by New Mexico to the Untied States for federal matching Medicaid funds in amounts greater than were properly payable under federal law.

84. Defendants have made each and every one of their purported "donations" (and other such payments, however labeled by Defendant) to Santa Fe County specifically so that the county would continue to pledge and provide contributions on behalf of Defendants to the SCPF that would result in maximum federal disbursements to Defendants from those funds. Defendants have communicated to Santa Fe County what the specific purpose of these donations is and what Defendants seek and expect from Santa Fe County regarding county SCPF contributions as a result of Defendants making those donations.

85. County managers and other county officials involved in administering SCPF programs at the county level, moreover, have at all times understood that future such donations would be paid by Defendants' only if Santa Fe County first actually pledged to New Mexico to make, and then actually did make, the Sole Community Provider quarterly and supplemental payments to the State on behalf of St. Vincent that Defendants sought and expected Santa Fe County to make in consideration for the donations.

86. Without fail, Santa Fe County pledged and made the expected levels of payments to New Mexico's SCPF each time such donated payments have been authorized by the Defendants. Consequently, Defendants also have continued to pledge and make donations whenever the timing of notifications made it possible to process such "donations" within program deadlines, and in ever-increasing amounts in order to maximize Defendants' profits from the scheme.

87. In so doing, Defendants also understood, intended and expected that – as a result of Defendants approving and/or making such donated payments – Santa Fe County would provide for payments to New Mexico's SCPF that would guarantee to return to the Defendants' hospitals

both some or all of the those hospital's donations plus the approximately three-fold return on that investment that equaled the FFP in such Medicaid payments.

88. Defendants likewise understood, intended and expected that the amount of SCPF quarterly and supplemental funding Defendants' hospitals would receive varied very substantially upward from the much smaller amount (if any) that Santa Fe County would have been willing and able to fund themselves in the absence such donations and that such upward variance was based only on the total amount of such donations that the county received.

89. Donations were thus made by Defendants with the specific intent of paying whatever amount was necessary to Santa Fe County to maximize total quarterly and supplemental SCPF awards to which Defendants were potentially eligible (absent the misconduct set forth above and any testing of the true costs to Defendants of providing care for which such funds were intended to provide cost-based reimbursement).

90. Santa Fe County has been willing to cooperate with Defendants' ruse because the scheme funnels millions of dollars of additional federal funding to St. Vincent and provides some degree of healthcare to people in Santa Fe County without the net outlay of County funds that would be required if federal regulations and the rules of SCPF program participation were followed.

91. Because Defendants' donations have relieved Santa Fe County of any actual net cost that would otherwise have resulted from the exponential growth of SCPF program expenditures spawned by Defendants' fraudulent scheme, the county has had less incentive to carefully scrutinize Defendants' escalating demands for SCPF funding in relation to actual growth in the amount, the cost of program-eligible care Defendants actually have been supplying, or competing county budget priorities. If, as intended under the Medicaid and SCPF program

designs, Santa Fe County had been required to bear the real State-share cost of the increased SCPF spending that Santa Fe County has approved since 2001, the county would not have been able to supply such extraordinary levels of funding and would have realized, upon further analysis, that the extreme levels to which such funding and Defendants resultant program profits have now grown are not warranted and not consistent with prudent utilization of limited county, state and federal Medicaid resources.

92. Furthermore, with respect to the indigent funding received by St. Vincent from Los Alamos County, Defendants have misused this funding by not directing it towards indigent care, as was required by both the New Mexico Indigent Hospital and County Health Care Act, NMSA 1978, §§ 27-5-1 to -18, and by the County resolutions or motions providing for the funding to St. Vincent.

93. At all relevant times, Defendants knew and intended that they would receive far larger contributions from Los Alamos County than were necessary to cover the minimal cost of actual care provided to Northern New Mexico's indigent population. However, Defendants continued to request ever escalating funding from Los Alamos County to contribute to the Sole Community Provider program so that they could retain the federal matching funds and misdirect them to illegal and unapproved purposes.

C. Examples of False Claims Caused by Defendants' Misconduct

94. Claims that were improperly submitted to the United States and paid as a result or Defendants' conduct include, for example, the $24,174,441 in Sole Community Provider matching federal funds that were paid to St. Vincent in fiscal year 2006-2007 as a result of the total annual payment of $9,235,436 contributed by Santa Fe County (paid in quarterly

increments of approximately $2.4 million dollars) for St. Vincent. That contribution amount almost exactly corresponds with the non-bona fide donation of $9,971,659 agreed to by St. Vincent to Santa Fe County in December 2006, as discussed above.

95. As a result of that non-bona fide donation and the payment from Santa Fe County to MAD that the donation financed, St. Vincent received back from Sole Community Provider Fund payments that matched the amount of the hospital's donation plus approximately three times the amount of the non-bona fide donation (approximately $32,367,352) in matching funds representing the unwarranted FFP that New Mexico then claimed and was repaid by the Federal Government. Defendants knew that such FFP funds would be claimed from the United States and received by New Mexico as a result of St. Vincent's conduct and thus that St. Vincent was receiving federal program funding that it was not lawfully entitled to receive.

96. In the twelve-month period ending on June 30, 2009, Defendant St. Vincent paid Santa Fe County non-bona fide donations totaling $11,551,850. Such "donations" were made in order to help fund Santa Fe County contributions to the Sole Community Provider Program in the amount of at least $5,101,672. Those investments by the hospital returned to St. Vincent an annual total of approximately $32,867,352 paid in equal quarterly installments at or near the end of September 2008, December 2008, March 2009, and June 2009. Approximately three quarters of each such program payment to St. Vincent represented the amount of the federal matching contribution to program.

97. Christus was aware of, approved, and arranged funding for St. Vincent Hospital's improper payment to Santa Fe County, knowing that such non-bona fide donation would result in an unwarranted federal payment.

98. As a result of the payments from Los Alamos County's indigent fund to MAD, St. Vincent received back from the Sole Community Provider Fund in the period from July 2007 to June 2008 state funds that matched the amount of Los Alamos County's donation plus approximately three times the amount of the non-bona fide donation in matching funds (approximately $353,256) representing the unwarranted FFP that New Mexico then claimed and was repaid by the Federal Government. Defendants knew that such FFP funds would be sought from the United States and recovered by New Mexico as a result of St. Vincent's conduct and thus that St. Vincent was receiving federal program funding that it was not lawfully entitled to receive because it did not plan to use that funding to provide patient care.

99. Christus was aware of and approved of St. Vincent's receipt of funding derived from the Los Alamos County indigent fund, knowing that such funding would not be used to treat indigent patients as required by New Mexico and Federal law.

100. As a result of the payments from Los Alamos County's indigent fund to MAD, St. Vincent received back from the Sole Community Provider Fund in the period from July 2009 to June 2010 state funds that matched the amount of Los Alamos County's donation plus approximately three times the amount of the non-bona fide donation in matching funds (approximately $344,531) representing the unwarranted FFP that New Mexico then claimed and was repaid by the Federal Government. Defendants knew that such FFP funds would be sought from the United States and recovered by New Mexico as a result of St. Vincent's conduct and thus that St. Vincent was receiving federal program funding that it was not lawfully entitled to receive because it did not plan to use that funding to provide patient care.

101. Christus was aware of and approved of St. Vincent's receipt of funding derived from the Los Alamos County indigent fund, knowing that such funding would not be used to treat indigent patients as required by New Mexico and Federal law.

102. As a result of the payments from Los Alamos County's indigent fund to MAD, St. Vincent will receive back from the Sole Community Provider Fund in the period from July 2010 to June 2011 state funds that match the amount of Los Alamos County's donation plus approximately three times the amount of the non-bona fide donation in matching funds (approximately $355,128.21) representing the unwarranted FFP that New Mexico then claimed and was repaid by the Federal Government. Defendants knew that such FFP funds would be sought from the United States and recovered by New Mexico as a result of St. Vincent's conduct and thus that St. Vincent was receiving federal program funding that it was not lawfully entitled to receive.

103. Christus was aware of and approved of St. Vincent's receipt of funding derived from the Los Alamos County indigent fund, knowing that such funding would not be used to treat indigent patients as required by New Mexico and Federal law.

104. As a result of all of the Defendants' knowing misconduct, false claims for federal matching funds have been submitted to the federal government by New Mexico for payment and approval, such claims have been improperly approved and paid, and the United States Treasury has been damaged in an amount that cannot yet be finally determined but which amounts to over one hundred million dollars.

COUNT I

False Claims Act
31 U.S.C. §3729(a)(1) (1986)
31 U.S.C. §3729(a)(1)(A) (2009)

105. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1-104.

106. This is a claim for treble damages and penalties under the False Claims Act, 31 U.S.C. §§3729 *et seq.,* as amended in 1986 and 2009 (for any acts that have occurred since the effective date of those amendments).

107. Through the acts described above, every federal fiscal quarter since at least September 2000 Defendants have knowingly caused to be presented to the United States Government for approval and payment false or fraudulent claims by New Mexico for federal matching funds on New Mexico's Medicaid Sole Community Provider payments and Supplemental Sole Community Provider Payments. Such claims that have submitted by New Mexico to the United States in the form of quarterly CMS Form 64 for approval and payment of FFP funds were false and fraudulent within the meaning of the False Claims Act because, as a result of Defendants' knowing misconduct and in accordance with Defendants' intent, the amounts claimed, approved and paid were higher than properly due under federal law.

108. Defendants actions that caused such false and fraudulent claims to be made, approved, and paid included, among other things:

(a) entering into agreements with Santa Fe County for funding some or all of the county share of such payments due to be paid to MAD directly or indirectly through donations that Defendants knew, within the meaning of the False Claims Act, were not bona fide within the meaning of federal law;

(b) applying to Santa Fe County for both quarterly Sole Community Provider Fund county payments to MAD and for annual Supplemental Sole Community Provider county payments to MAD at levels Defendants knew would be supplemented by the non-bona fide donations St. Vincent agreed to make for that known purpose and effect;

(c) writing checks or otherwise making payments to Santa Fe County for non-bona fide donations, knowing, expecting and intending that such payments would result in Defendants receiving repayment through the SCPF program that not only refunded the amounts Defendants purportedly donated but also FFP-reimbursed funds amounting to approximately three times St. Vincent's short-term investment in such non-bona fide donations;

(d) accepting and retaining profits from SCPF program payments that included unwarranted FFP amounts that Defendants knew, expected, and intended for the State to then claim and be reimbursed by the United States through New Mexico's quarterly claims for Medicaid FFP payments;

(e) failing to utilize the federal funding improperly obtained through Defendants' rebate scheme with Santa Fe County to provide care for indigent patients, as required by the Sole Community Provider program;

(f) applying to Los Alamos County for both quarterly Sole Community Provider Fund County payments and for annual Supplemental Sole Community Provider County Payments the Defendants knew were not needed to pay for indigent patient care and that Defendants intended to spend on non-eligible uses;

(g) failing to utilize the contributions received from Los Alamos County indigent fund to provide care for indigent patients, as required by statute and by the terms of Defendants' agreement with Los Alamos County; and

(h) continuing the cycle of deception at ever-increasing levels of non-bona fide donations from St. Vincent to Santa Fe County and misusing program funds each time a new application process was required for either the quarterly or supplemental SCPF program payments and thus escalating the amount of unwarranted FFP claims and reimbursement that resulted from each of Defendants' prior wrongful acts.

109. As a result of these false claims, the United States has been damaged and continues to be damaged, in an amount that cannot yet be finally determined but which amounts to more than a hundred million dollars.

COUNT II
False Claims Act
31 U.S.C. §3729(a)(2)
31 U.S.C. §3729(a)(1)(B) (2009)

110. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1- 104.

111. This is a claim for treble damages and penalties under the False Claims Act, 31 U.S.C. §§3729 *et seq.,* as amended in 1986 and 2009 (for any acts that have occurred since the effective date of those amendments).

112. Through the acts described above, since at least September 2000 Defendants have knowingly made, used, and caused to be made and used false records and statements material to false or fraudulent claims for federal matching funds on New Mexico's Medicaid Sole Community Provider payments and Supplemental Sole Community Provider Payments or, in the

alternative, knowingly made, used, and caused to be made and used false records and statements to get paid and approved false or fraudulent claims for federal matching funds on New Mexico's Medicaid Sole Community Provider payments and Supplemental Sole Community Provider Payments. Such false records and statements include, among other things:

(a) Creating non-bona fide "memoranda of agreement" between Santa Fe County and St. Vincent to keep available on file for potential review by MAD or federal officials that attempt to create the false impression that such donations were for charitable purposes when they were not and that falsely suggested by implication that such a distinction, if true, would somehow take outside the purview of federal regulatory restrictions on FFP payments;

(b) Each federal fiscal quarter since at least September 2000 causing New Mexico to submit CMS Form 64 and statements of state Medicaid spending that, because they included amounts funded by Defendants' non-bona fide donations, are inaccurate as to the proper amount of such spending entitled to FFP payments.

113. As a result of these prohibited acts, the United States has been damaged and continues to be damaged, in an amount that cannot yet be finally determined but which amounts to more than a hundred million dollars.

PRAYER FOR RELIEF

WHEREFORE, plaintiff/relator Diana Stepan prays for judgment against the Defendants as follows:

1. that Defendants cease and desist from violating 31 U.S.C. § 3729 et seq.;

2. that this Court enter judgment against Defendants in an amount equal to three times the amount of damages the United States has sustained because of Defendants' actions, plus a civil penalty of not less than $5,500 and not more than $11,000 for each violation of 31 U.S.C. § 3729;

3. that plaintiff/relator be awarded the maximum amount allowed pursuant to §3730(d) of the False Claims Act;

4. that plaintiff/relator be awarded all costs of this action, including attorneys' fees and expenses; and

5. that the United States and plaintiff/relator be granted all such other relief as the Court deems just and proper.

Dated: June 28, 2011

/s/ James P. Lyle

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