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6 STATE OF NEW MEXICO

7 COUNTY OF SANTA FE FIRST JUDICIAL DISTRICT

8 ZACH DEGREGORIO,

9 Plaintiff,

10 vs.

11 STATE OF NEW MEXICO

12 Defendant

Case No.: D-101-CV-2022-00001

COMPLAINT FOR VIOLATIONS OF THE NEW
MEXICO WHISTLEBLOWER PROTECTION ACT
AND MALFEASANCE BY THE STATE AUDITOR

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1 Plaintiff Zach DeGregorio ("ZD"), alleges, with knowledge with respect to its own acts and on
2 information and belief as to other matters, as follows:

3 **OVERVIEW OF THE COMPLAINT**

4 1. The Defendants have violated the NM Whistleblower Protection Act (NMSA 10-16C-1)
5 and are liable to the Plaintiff, ZD, for damages based on the following facts:

6 2. **The employee made protected communications.** For six months prior to ZD's
7 constructive discharge at the NM Spaceport Authority, ZD made multiple communications to his employer that the
8 Defendants were engaging in unlawful and improper acts related to ethical violations, procurement violations,
9 abuse of power, mismanagement, and fraud.

10 3. **The employee suffered adverse employment consequences.** Over the period of ZD's
11 communications at the NM Spaceport Authority, ZD was threatened with termination by his supervisor Executive
12 Director, Daniel Hicks. ZD was threatened with termination by Board Chair, Alicia Keyes. ZD was threatened with
13 termination by fellow managers at the NM Spaceport Authority. These threats all came from Defendants implicated
14 in wrongdoing in ZD's whistleblower complaints. Additionally, the Defendants' words and actions after the
15 whistleblower complaints showed that criminal activity by the Defendants was imminent. ZD was presented with
16 the choice of committing crimes or resigning his position as CFO. The Defendants forced ZD to resign in a
17 constructive discharge because ZD refused to break the law. The fears that forced ZD's resignation were justified
18 because after the constructive discharge, the Defendants committed over \$200 million of fraud including violating
19 multiple Federal laws. To silence and discredit ZD, the Defendants continued to retaliate post-employment by
20 threatening the whistleblower. The Defendants engaged in a targeted investigation and smear campaign against ZD
21 for over a year after the constructive discharge. To aid in understanding the timeline of this case, a summary of
22 important dates is included in Exhibit 2.

23 4. **The adverse employment consequences were in retaliation for the protected**
24 **communications.** ZD notified the Defendants about his complaints on multiple occasions showing there was a
25 direct causal connection between the constructive discharge and ZD's protected communications. In fact, after
26 ZD's constructive discharge, the Defendants proceeded to commit criminal activity related to the same violations
27 ZD warned about in his whistleblower complaints. Further, the Defendants have publicly admitted in the press that
28 their actions against ZD were in response to ZD's communications.

5. NM State Auditor Brian Colon committed malfeasance and neglect of duty by an auditor or treasurer (NMSA 8-6-6). Brian Colon participated in a conspiracy with the other Defendants to commit procurement fraud, commit securities fraud, break multiple Federal laws, and commit violations of the NM Whistleblower Protection Act. The Defendants are liable to the Plaintiff, ZD, for damages.

NATURE OF THE ACTION

6. Whistleblowers provide an important role in society and must be protected. It is essential for the public to have access to accurate financial and operational reporting for a properly functioning government. Whistleblowers often provide that function by shining a light on waste, fraud, and abuse. State government employees who come forward with whistleblower complaints should be celebrated as an important part of good governance. In fact, New Mexico supports this social policy and enacted NMSA 10-16C-1 to 10-16C-6 “The NM Whistleblower Protection Act.” This legislation establishes employee communications about unlawful or improper acts as protected disclosures. The law protects and encourages whistleblowers.

7. From January 2020 to June 2020, ZD communicated multiple times about serious ethical concerns at the NM Spaceport Authority directly to NM State leadership including the NM Governor's Office. ZD's complaints culminated on June 12, 2020, when ZD submitted a whistleblower complaint against his supervisor, Daniel Hicks, the Executive Director of the NM Spaceport Authority. ZD's complaint revealed Daniel Hicks showed gross mismanagement and abuse of authority. ZD's complaint also revealed ongoing ethical issues, procurement violations, and named multiple other staff members involved.

8. Contrary to the NM Whistleblower Protection Act, ZD faced intense retaliation following his whistleblower complaints. ZD was treated as a problem that needed to be silenced and removed. Government officials at the highest levels including the Governor, the Cabinet Secretary of Economic Development, the NM State Auditor, the NM Attorney General, and others conspired together and took actions to retaliate against ZD. The Defendants forced ZD to resign in a constructive discharge. The Defendants were afraid that ZD's communications exposed over \$200 million of securities fraud they were about to commit. The Defendants fraudulently procured consulting services of The McHard Firm to conduct a deeply flawed investigation. Even after ZD's constructive discharge, ZD did the right thing and tried to stop the ongoing violations at the NM Spaceport Authority by providing additional communications to The McHard Firm investigators and the NM State Auditor's office. In retaliation, The McHard Firm produced a report full of false

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1 allegations and tampered with evidence to frame ZD for crimes he did not commit. This retaliation continued for
2 months, reaching the extreme level that, six months after ZD's constructive discharge, the Defendants issued a
3 press release containing the false allegations against ZD in a smear campaign against his reputation.

4 9. After ZD's constructive discharge, the Defendants committed over \$200 million in
5 securities fraud. The Governor and her staff used excessive government control and abuse of power during the
6 COVID-19 pandemic to cover up their fraud and benefit themselves at the expense of the NM taxpayers. The
7 Defendants used the NM Spaceport Authority to refinance Spaceport Gross Receipts Tax Bonds with the NM
8 Finance Authority under false pretenses. They knowingly misled NM Taxpayers to refinance at higher interest rates
9 than was necessary and poor loan terms which needlessly cost the taxpayers millions of dollars, all for the benefit
10 of the Defendants. The Defendants then used the fraudulent NM Spaceport Authority bonds to issue \$234,310,000
11 of fraudulent PPRF bonds through the NM Finance Authority while failing to disclose material information to
12 investors.

13 10. These government officials were sending a bad message to all government employees
14 that they will destroy the life of anyone who speaks out about corruption in the State of New Mexico. The
15 Defendants used the example of ZD to threaten others to go along with the fraud. The employees at the NM
16 Spaceport Authority are too scared to speak up out of fear of retaliation. If they did not comply, they would be
17 maliciously attacked, just like the board member Rick Holdridge, who was illegally removed from the board by
18 Governor Michelle Lujan Grisham when he objected to the investigation. This is the worst form of government
19 corruption which should have been prevented by ZD's whistleblower complaints. Instead, government officials at
20 the highest levels of state government threatened ZD with a false criminal investigation to silence and discredit
21 him. This is the type of criminal actions you would expect from leaders in unjust tyrannies like Russia or North
22 Korea, not in the United States.

23 11. The Defendants in this case have made serious allegations against ZD. These allegations
24 are false. In fact, the evidence in this complaint shows the Defendants are corrupt politicians that lie, cheat and
25 steal. In contrast, ZD is a Certified Public Accountant who stood up for what is right to protect the NM taxpayers at
26 great personal cost to himself. This complaint will show with a preponderance of evidence that the Plaintiff, ZD,
27 was retaliated against and the Defendants are liable for damages.

12. Whistleblower requests should be taken seriously. This is exactly the type of situation the NM Whistleblower Protection Act was supposed to prevent. If the Defendants had followed the law and worked with the whistleblower, over \$200 million of dollars of fraud committed by the Defendants would have been avoided. Instead, the Defendants intentionally ignored their responsibility and, after removing the whistleblower, proceeded to commit fraud. The NM taxpayers deserve better than this. The Defendants' horrible actions in this case should never happen again.

PARTIES

13. Plaintiff is ZD. ZD is a licensed Certified Public Accountant (CPA). ZD was Chief Financial Officer (CFO) of the NM Spaceport Authority for four and a half years, from December 21, 2015 to June 21, 2020. ZD has an extensive 20-year work experience. ZD completed an undergraduate degree from the University of Southern California, an MBA in Finance from Arizona State University, and a Master of Accounting from University of New Mexico. ZD is a well-known accountant worldwide, receiving 1.6 million views on his YouTube channel where he teaches accounting and ethics.

14. Defendant is the State of New Mexico. The State of New Mexico employed ZD in the position as CFO of the NM Spaceport Authority. The NM Spaceport Authority is an Agency of the State of New Mexico. Defendants in this case include the following employees and contractors working for the State of New Mexico. This complaint names twenty-one individuals and potentially others as well. All these Defendants took actions to retaliate against the whistleblower, ZD, as well as actions to commit fraud.

- a. Governor Michelle Lujan Grisham, NM Governor's Office
- b. Lieutenant Governor Howie Morales, NM Office of the Lieutenant Governor
- c. Alicia Keyes, Cabinet Secretary, NM Economic Development Department and Board Chair, NM Spaceport Authority
- d. Jon Clark, NM Economic Development Department, Deputy Director
- e. Brian Colon, NM State Auditor, NM Office of the State Auditor
- f. Hector Balderas, NM Attorney General, NM Office of the Attorney General
- g. Matt Baca, Chief Counsel, NM Office of the Attorney General
- h. Marquita Russel, Chief Executive Officer, NM Finance Authority
- i. Janet McHard, Owner of the The McHard Firm, contractor for New Mexico

- j. Beth Mohr, Managing Partner, The McHard Firm, contractor for New Mexico
- k. Anne Layne, Partner, The McHard Firm, contractor for New Mexico
- l. Chris Lopez, NM Spaceport Authority, Director Site Operations
- m. Melissa Force, General Counsel, NM Spaceport Authority and former acting Executive Director, NM Spaceport Authority
- n. Scott McLaughlin, Current Executive Director, NM Spaceport Authority
- o. Guillermo Blacker, Business Operations Staff, NM Spaceport Authority
- p. Jeremy Perea, Budget Analyst, NM Department of Finance and Administration
- q. Ethan Epstein, Board Member, NM Spaceport Authority
- r. Peggy Johnson, Board Member, NM Spaceport Authority
- s. Eric Schindwolf, Board Member, NM Spaceport Authority
- t. Laura Conniff, Board Member, NM Spaceport Authority
- u. Michelle Coons, Board Member, NM Spaceport Authority
- v. and potentially others as well.

JURISDICTION AND VENUE

15. The NM State Capital and most NM State Government offices are in Santa Fe County.

16. While employed by the State of New Mexico, ZD was a citizen of the State of New Mexico and a resident of Dona Ana County. ZD is currently a citizen of the State of Arizona and a resident of Maricopa County.

17. ZD was employed by the State of New Mexico at the NM Spaceport Authority located in Sierra County, with ZD's primary office location in Dona Ana County.

18. The multiple Defendants in this case work in various agencies in various locations across the State of New Mexico including Santa Fe County, Bernalillo County, Dona Ana County, and Sierra County.

19. ZD is a public employee, as defined at NMSA 1978, Section 10-16C-2(B) of the New Mexico Whistleblower Protection Act.

20. The State of New Mexico is a public employer as defined at NMSA 1978, Section 10-16C-2(C).

21. ZD's cause of action arises directly out of his employment with the State of New Mexico.

22. The venue and jurisdiction are proper in this court.

RELEVANT FACTS

I. ZD made multiple protected communications between January 2020 and June 2020

23. ZD was pressured by the Defendants to commit ethical violations while performing his job as Chief Financial Officer (CFO) of the NM Spaceport Authority. This complaint provides evidence that the Defendants' actions towards ZD during his employment involved retaliation, attempted procurement violations, abuse of power, mismanagement, and attempted fraud.

24. The following facts provide evidence that Alicia Keyes, Cabinet Secretary of the NM Economic Development Department, attempted to falsify financial reports.

25. Several NM state legislators had requested that the NM Spaceport Authority present an Economic Impact Study during the legislative session in January 2020 to support the annual budget request. In a Request for Proposal (RFP) process, the NM Spaceport Authority selected an accounting firm, Moss Adams, to perform the study. The independent study used rigorous methods and well documented data such as economic statistics and financial forecasts that Spaceport America customer Virgin Galactic had filed with the US Securities and Exchange Commission (SEC). Unless Virgin Galactic was providing false statements in their filings to the SEC, the Economic Impact Study had strong basis for its findings. The study resulted in promising financial metrics, and predicted if the agency followed its financial plans, that it could generate \$1B in economic impact over the next five years. The NM Spaceport Authority had prepared to present the findings of the report in a joint press conference with Governor Michelle Lujan Grisham.

26. During the legislative session, state legislators made comments to ZD that Alicia Keyes was having a challenging legislative session due to her requests for additional funding for economic development funding for the film industry.

27. The state legislators' comments to ZD are evidence that state funding for the film industry was highly controversial. New Mexico provided a large amount of taxpayer dollars for the film industry and the return on the investment to New Mexico was questionable, as film jobs are temporary. In contrast, funding

1 requests for the NM Spaceport Authority were seen as promising because the return on the investment was long-
2 term, high paying aerospace jobs.

3 28. Alicia Keyes had previously worked as the Director of the Albuquerque Film,
4 Television and Media Office and had multiple connections with the Film Industry. Before working for the City of
5 Albuquerque, Alicia Keyes was the Executive Director of Worldwide Acquisitions and Co-production for the Walt
6 Disney Company.

7 29. Alicia Keyes' prior work history is evidence of her conflict of interest. Alicia Keyes was
8 competing for economic development funding for the film industry against the NM Spaceport Authority. In the
9 NM State budget process, there are limited funds to be spent on economic development. Alicia Keyes was deciding
10 between funding programs to benefit the film industry friends she knew from her previous jobs or provide funding
11 to the NM Spaceport Authority.

12 30. A few days before the press conference, ZD was called to a meeting with Jon Clark,
13 Deputy Director for the Economic Development Department who reported directly to Alicia Keyes. Jon Clark
14 instructed ZD to modify the economic impact study. Specifically, Jon Clark's request was for ZD to take the PDF
15 file of the study, import it into Microsoft Word, alter the financial results to make the NM Spaceport Authority
16 look worse, and then save the file back as a PDF to hand out at the press conference.

17 31. ZD was shocked at the request to falsify a financial report. Any manipulation of the data
18 would invalidate the study's findings. The study was being used by State Legislators who were deciding the NM
19 State Budget. Despite the negative potential impact to ZD's future career, ZD refused to go along with the scheme
20 in a direct email to the Governor's office. ZD's email complaint was sent to Dominic Gabello, who worked in the
21 Governor's office as Senior Advisor to Governor Michelle Lujan Grisham. In the email ZD explains that he stands
22 behind Moss Adams' results in the economic report, and the report needs to be presented without any changes.

23 32. ZD is aware that Jon Clark's instructions were at the request of Alicia Keyes, because
24 following ZD's email, Alicia Keyes placed a phone call to ZD's supervisor, NM Spaceport Authority Executive
25 Director Daniel Hicks. In that phone call, Alicia Keyes was angry that ZD refused to follow orders.

26 33. Alicia Keyes actions are evidence she was attempting to cover up the NM Spaceport
27 Authority's economic impact report and ensure the NM taxpayers never found out about the financial results.

1 Alicia Keyes took these actions even though her own EDD staff had been involved in the entire process of
2 developing the economic report, meeting with the economic study team, and approving the methodology.

3 34. Following ZD's email, the Governor's office met with the head economist for the study.
4 After evaluating the methods and results of the study, the Governor's office agreed the study was sound, and
5 proceeded with the press conference. The study was well received by the legislators and the public and received
6 front page coverage in the Albuquerque journal (Exhibit 3).

7 35. Since the Economic Impact Report was released, the NM Spaceport Authority has not
8 achieved the positive financial results forecasted by Moss Adams due to restrictions during the COVID-19
9 pandemic, Virgin Galactic's failure to meet the promises they made to investors in their SEC filings, the NM
10 Spaceport Authority's failure to follow ZD's financial plan after his constructive discharge from the Agency, and
11 Alicia Keyes' ongoing efforts to sabotage the NM Spaceport Authority. The assumptions used in the economic
12 impact study were based on ZD's financial plan which had been reviewed and approved by both the NM
13 Department for Finance and Administration and the NM State Legislature as part of the annual budget submission.
14 Since ZD's departure, Alicia Keyes changed the approved financial plan and implemented dramatic decreases in
15 the Agency's plans for staffing, dramatic decreases in capital investment, and dramatic decreases in business
16 development activities, all which resulted in lower economic impact.

17 36. Alicia Keyes continued to work against the interest of the NM Spaceport Authority with
18 regards to the Spaceport Gross Receipts Tax bonds. At the request of the NM Spaceport Authority board, ZD had
19 been researching alternatives to refinance the bonds (last reported value of \$47M in FY20). The date the Agency
20 could exercise their option to refinance the bonds was 12/1/2020. ZD had been a vocal critic of refinancing with the
21 current bond holders, the New Mexico Finance Authority, as there were many alternative options that would save
22 the NM taxpayers millions of dollars.

23 37. ZD had provided the NM Spaceport Authority board side-by-side financial comparisons
24 and testimonials from firms in the public markets that were willing to offer significantly lower interest rates than
25 NM Finance Authority saving millions of dollars for the NM taxpayer over the next ten years. Additionally,
26 refinancing in the public market would eliminate NM Finance Authority's abusive loan terms, including eliminating
27 the requirement for a large unnecessary reserve fund (last reported value of \$7M in FY19). Refinancing in the public
28 market would not require any reserve funds, saving millions of dollars for the NM taxpayer.

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1 38. ZD's emails to the board are evidence the Defendants knew that there were other
2 refinance options that would save the NM taxpayers millions of dollars, and they were obligated to perform a public
3 Request For Proposal (RFP) to let others bid on the refinance. If NM Finance Authority wanted the business, they
4 could compete alongside everyone else, and ensure the NM taxpayers received the best deal possible.

5 39. Instead of performing an RFP, Alicia Keyes actions are evidence she was attempting to
6 perform a sole source refinance directly with the NM Finance Authority. This is what is known as a "private
7 placement" of the bonds.

8 40. During the recent Internal Revenue Service (IRS) audit of the Spaceport Gross Receipts
9 Tax Bonds, the IRS informed ZD the reason the IRS had flagged the Spaceport bonds for audit was because they
10 were originally "private placement" bonds with the NM Finance Authority ten years ago. The IRS explained to ZD
11 they were concerned the process the NM Finance Authority used to issue private placement bonds lacks
12 transparency and is susceptible to fraud.

13 41. The revenue used to pay the bonds was collected from a Gross Receipts Tax in Dona
14 Ana and Sierra Counties. These two counties voted to tax themselves with the "County Regional Spaceport Gross
15 Receipts Tax" (NMSA 7-20E-25). These taxes were used to pay the annual bond payments to the NM Finance
16 Authority. The NM Finance Authority is a bank operated by New Mexico as a lender of last resort. Small
17 municipalities that do not have good enough credit to get loans can receive financing through the NM Finance
18 Authority. Ten years ago, when the NM Spaceport Authority was just being created, it made sense to finance bonds
19 through the NM Finance Authority because there was no credit history. However, today the NM Spaceport
20 Authority is in a different position. The NM Spaceport Authority has ten years of excellent credit history, the tax
21 revenue is well understood, and there are many different options for refinancing besides the NM Finance Authority.
22 If the bonds were refinanced in the public markets, NM Finance Authority would be required to give back the
23 millions of dollars in reserve funds and would not receive any future Spaceport tax revenues. This would result in
24 under-capitalizing the NM Finance Authority and they would be required to reduce the amount of loans they give
25 out.

26 42. As a Cabinet Secretary for the whole state, it would negatively impact Alicia Keyes to
27 lose the roughly \$6M in annual Spaceport tax revenue to the State of New Mexico. The NM Finance Authority
28 collected the tax revenue from the two counties and repackaged it into low interest loans to provide to other
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1 projects in other locations around New Mexico. NM Finance Authority loans are commonly used as incentives by
2 Alicia Keyes in her role as the Cabinet Secretary of Economic Development. Multiple examples are advertised on
3 the NM Economic Development Department's website including one for "New Mexico MainStreet" (Exhibit 4).

4 43. These facts are evidence Alicia Keyes had a conflict of interest. It would benefit Alicia
5 Keyes to charge unnecessarily high interest to the taxpayers in Dona Ana and Sierra County and then use the
6 revenue to fund low interest loans for projects in other parts of New Mexico, which Alicia Keyes would control.

7 44. Governor Michelle Lujan Grisham during this period was experiencing a drop in
8 approval ratings. During this period, a joint report was released by Harvard University, Northeastern University,
9 Rutgers University, and Northwestern University on Governor approval ratings ("The State of the Nation: A 50-
10 State COVID-19 Survey. Report #12: Executive Approval Update. September 2020"). Governor Michelle Lujan
11 Grisham's approval ratings had declined from 64% in April 2020 to 42% in June 2020 due to the Covid-19
12 pandemic. Governor Michelle Lujan Grisham was under pressure and benefitted from using the Spaceport tax
13 revenue from Dona Ana and Sierra County to fund investment projects in other parts of New Mexico to influence
14 voters.

15 45. Additionally, the NM Finance Authority was not adequately disclosing the risk of losing
16 the NM Spaceport Gross Receipts Bonds to their own investors for their PPRF bond issuances. the NM Finance
17 Authority included the NM Spaceport Authority Gross Receipts Tax Bonds as part of their Public Project
18 Revolving Fund (PPRF). The NM Finance Authority would then package the interest revenues from this fund and
19 issue their own bonds on the public market at better interest rates. To understand the impact of this, the NM
20 Spaceport Authority was listed as the fourth largest borrower in a list of the largest senior borrowers in the PPRF
21 Fund on 6/30/19 (Exhibit 5). If the NM Finance Authority lost refinancing with the NM Spaceport Authority, it
22 would be a significant setback to the NM Finance Authority's credit rating and the ability to operate the PPRF.

23 46. The New Mexico Finance Authority functioned as an unnecessary intermediary,
24 charging the NM Spaceport Authority a higher interest rate, so that the NM Finance Authority could profit off a
25 lower interest rate in the public market. The evidence shows the NM Finance Authority was unnecessary because
26 ZD had provided evidence to the board they could issue bonds on the public markets themselves. In essence, the
27 taxpayers in Dona Ana and Sierra County thought their money was going to the spaceport, but instead the
28

1 Defendants were using the Spaceport Tax as their own personal funding source by laundering millions of dollars
2 through the NM Finance Authority and then using the money to invest in other communities across the state.

3 47. The NM Finance Authority knew that if the RFP occurred, they would not be able to
4 compete against private businesses, essentially guaranteeing that they would lose the Spaceport Gross Receipts Tax
5 Bonds. The NM Finance Authority needed to do everything possible to keep the RFP from happening, as well as to
6 keep the information about this risk hidden from their current investors of the PPRF bonds, which were backed by
7 the revenue from the Spaceport Gross Receipts Tax Bonds.

8 48. On June 1, 2020 (20 days before ZD's constructive discharge), ZD sent Alicia Keyes an
9 email about the Gross Receipts Tax Bonds refinance. Alicia Keyes then forwarded ZD's email to the NM Finance
10 Authority Chief Executive Officer Marquita Russel. When ZD realized Alicia Keyes' was including the NM
11 Finance Authority in the discussions, ZD emailed a complaint to both Alicia Keyes and Jon Clark (Exhibit 6). ZD
12 strongly requested Alicia Keyes stop her actions and explained how the NM Finance Authority would cost the NM
13 taxpayers millions of dollars.

14 49. These emails are evidence of Alicia Keyes' intent to commit fraud. Alicia Keyes knew
15 about the other refinance options that would save millions of dollars and continued to work with the NM Finance
16 Authority anyway. Alicia Keyes knew she could not commit the fraud while ZD was CFO, because ZD knew about
17 the millions of dollars she was attempting to steal from the taxpayers of Dona Ana and Sierra County.

18 50. The fact that ZD had provided the board with evidence of multiple firms eager to
19 perform the refinance of the Gross Receipts Tax Bonds is evidence the options that ZD advocated were in no way
20 unusual. In fact, it is quite common for government entities to issue their own bonds. This occurs all the time
21 without the assistance of the NM Finance Authority. ZD was advocating to follow industrywide best practices in
22 the handling of government debt. In contrast, it would be unusual for a government agency with the revenue of the
23 NM Spaceport Authority to refinance through the NM Finance Authority and cost the NM taxpayers millions of
24 dollars. Further, the Agency powers listed in the Spaceport Development Act explicitly gives the Agency the
25 ability to issue their own bonds (NMSA 58-31-5(B)(7)). No rational evaluation of the NM Spaceport Authority's
26 options would decide to refinance with the NM Finance Authority, unless there was malicious intent to commit
27 fraud.

1 51. In an unexpected appointment, Governor Michelle Lujan Grisham appointed Alicia
2 Keyes as board chair of the NM Spaceport Authority at the beginning of 2020. She did not hold a board meeting
3 for seven months from January 2020 to July 9, 2020. Board meetings are required to be held quarterly, but Alicia
4 Keyes waited to conduct any agency business until after she replaced three board members, giving herself a
5 majority over any board votes. Meanwhile, she consistently handled agency decisions on her own without
6 consulting the board, including the handling of ZD's whistleblower complaints during this same period.

7 52. Alicia's actions as board chair are evidence that Alicia Keyes violated the Spaceport
8 Development Act and her responsibility as board chair to conduct business in open meetings with input from all
9 board members and the public.

10 53. Since Alicia Keyes took over as board chair of the NM Spaceport Authority, her
11 unethical actions put added pressure on the staff of the Agency, including Executive Director Daniel Hicks. Daniel
12 Hicks made repeated requests to ZD to bend the accounting rules since he started in November 2016, but these
13 requests increased over the six-month period from January 2020 to June 2020. Daniel Hicks requested that ZD find
14 a way for him to approve RFPs without bringing them to the board for a vote. ZD consistently refused that request
15 as against the Spaceport Development Act (58-31-5(A)(5)) which says the board executes all contracts. This was a
16 common complaint from ZD to Daniel Hicks that was made approximately twenty times.

17 54. Daniel Hicks also requested that ZD approve purchases without sending them to the NM
18 Department of Finance and Administration (DFA) for review and approval. Currently DFA reviews any purchase
19 made by the NM Spaceport Authority over \$5,000. Daniel Hicks often mentioned that NM Spaceport Authority
20 funds were his money, and he should have the sole authority to approve. ZD would remind Daniel Hicks that it is
21 the State of New Mexico's money and the board's authority, and the Agency must follow DFA's process. If Daniel
22 Hicks wanted to be able to approve his own purchases, legislation would have to be passed by the State Legislature
23 to change the Spaceport Development Act granting Daniel Hicks sole approval authority. ZD went as far as to write
24 a piece of draft legislation and submit it to Daniel Hicks to show the legislative changes that would be necessary to
25 allow Daniel Hicks' requests to approve his own purchases without oversight. Daniel Hicks never took this request
26 to the Governor or the legislature and instead continued to pressure ZD and other accounting staff to break the law.

27 55. Daniel Hicks would argue against internal controls. As CFO, ZD maintained internal
28 controls, which were the accounting processes the Agency followed. Daniel Hicks was unhappy that accounting
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1 processes slowed down operations, even though they are necessary to ensure NM taxpayer dollars are properly
2 handled. It was common for Daniel Hicks to argue with accounting staff against requirements like providing
3 adequate receipts for travel reimbursements, sending contracts to NM Department of Tax & Revenue for review,
4 acquiring multiple quotes for large purchases, following the contracting process, and board review. Daniel Hicks
5 would also make constant requests for unnecessary exceptions from other state agencies on state regulations.

6 56. Daniel Hicks directly confronted ZD in a meeting with all the Managers on 03/16/2020.
7 Daniel Hicks again questioned why he needed board approval of RFPs. Daniel Hicks tasked General Counsel,
8 Melissa Force to double check ZD's determination of the procurement code. Melissa Force provided her own
9 analysis on 03/19/2020 which supported ZD's determination that board approval was necessary.

10 57. Daniel Hicks's actions are evidence he was using the peer pressure of all the managers
11 to try to force ZD to break the law. The direction from Daniel Hicks to ignore and undermine the guidance of the
12 CFO was unethical. Daniel Hicks request to General Counsel Melissa Force in front of the other managers to
13 undermine the CFO was also unethical. Daniel Hicks performed these actions despite ZD's multiple
14 communications that what Daniel Hicks was requesting from the accounting department was a violation of the law.

15 58. Daniel Hicks' actions created an unethical environment at the NM Spaceport Authority.
16 Other staff members followed Daniel Hicks' example. They also began to challenge the accounting staff's internal
17 controls. Chris Lopez, Director of Site Operations and Manager of IT, had repeated incidents of failing to follow
18 accounting internal controls, previously ordering a vendor to perform road work without increasing the contract in
19 order to meet deadlines. Chris Lopez was extremely slow to process any accounting related paperwork and often let
20 vendor invoices sit on his desk unpaid for over a month without review. Chris Lopez' animosity towards the
21 accounting department went so far that he directed his operations staff to start tracking the work duties of the
22 accounting team to show that accounting was ineffective and slow, and to advocate to change the internal controls
23 to emphasize speed of operations over financial management. Chris Lopez created a spreadsheet of accounting
24 activities to use against ZD. ZD went directly to Daniel Hicks and complained that Chris Lopez' actions were
25 inappropriate. Daniel Hicks said that he would talk to Chris Lopez, but it did not appear that anything was done and
26 Chris Lopez' unethical behaviors did not change.

27 59. Melissa Force, General Counsel, was under pressure to deliver on the mounting legal
28 issues surrounding operations at the NM Spaceport Authority. To meet the workload, Melissa Force requested an
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1 RFP for Legal Services. Melissa Force wanted multiple legal contracts without specifying specific duties,
2 establishing a “blank check” to purchase services as needed. In several confrontational meetings, ZD complained
3 how Melissa Force’ request for multiple legal contracts would be controversial, and that the Spaceport
4 Development Act required Melissa Force to go before the board and the NM public in an open meeting and argue
5 why this purchase was necessary. The RFP process was properly started, but never completed as the board did not
6 want to hear the proposal and did not place it on the agenda for a board meeting.

7 60. Scott McLaughlin was a new hire as NM Spaceport Authority Business Development
8 Manager. Even though he was new, Scott McLaughlin quickly followed the other Managers’ example and argued
9 with accounting that the travel request process was too difficult, and that it was too difficult to get multiple quotes
10 for purchases to show the Agency was getting the best obtainable price.

11 61. ZD responded to Daniel Hicks, Chris Lopez, Melissa Force, and Scott McLaughlin with
12 clear communications that all staff were required to follow the accounting rules. ZD’s consistent message was that
13 1) the Manager’s requests were violations of the Spaceport Development Act and the NM procurement code 2)
14 accounting internal controls were important to protect the interests of the NM taxpayers, and 3) they needed to stop
15 challenging the accounting department’s instructions to follow the procurement code. Despite ZD’s protests, the
16 hostile work environment of ethical violations and the attempts at criminal activity became worse. Chris Lopez was
17 vocal in manager meetings responding to ZD’s complaints about procurement violations by explaining that no one
18 should disclose information to leadership in Santa Fe and “loyalty” to the team must be maintained above all else.

19 62. The attacks against accounting became worse when Guillermo Blacker joined the NM
20 Spaceport Authority staff in 2019. At the time, there was an unfilled business operations position reporting to ZD
21 in the accounting department that was desperately needed to handle the increasing accounting workload. Daniel
22 Hicks changed the organizational chart. ZD’s vacant position would now report to Daniel Hicks as an assistant
23 instead of ZD, and Daniel Hicks began interviewing applicants. With the growing tensions between Daniel Hicks
24 and accounting, the changes in the organizational chart allowed Daniel Hicks to reduce accounting’s effectiveness.
25 ZD was on the interview panel and had agreed to the organizational changes because Daniel Hicks assured ZD that
26 the position would still be able to provide support to accounting.

27 63. Guillermo Blacker was a personal friend of Daniel Hicks and they had worked together
28 in Daniel Hick’s previous job working at US Army White Sands Missile Range (WSMR). The choice to interview
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Guillermo Blacker was puzzling because Guillermo Blacker's extensive work experience was greatly overqualified for an entry level business operations position. In the interview with Daniel Hicks, Melissa Force, and ZD, Guillermo Blacker was asked directly whether he understood the job description and was willing to perform low-level accounting job duties such as opening mail, processing travel requests, and answering phones. Guillermo Blacker agreed.

64. After Guillermo Blacker's hire, it became obvious Guillermo Blacker's statement was a lie, because he refused to perform any of the low-level duties, stating "let people do their own travel requests." It was apparent Daniel Hicks and Guillermo Blacker had planned this all along, because Daniel Hicks never objected to Guillermo Blacker's refusal to perform his job description despite Guillermo Blacker's promise during his interview. In fact, Daniel Hicks then rewrote Guillermo Blacker's job description to perform manager duties including attend manager meetings, lead projects, and perform strategic planning. Daniel Hick's changes are a dramatic change from the original assistant job description Guillermo Blacker accepted. Guillermo Blacker started attending manager meetings where he would be a staunch advocate for Daniel Hicks' attempts to pressure ZD to break the law. To make matters worse, accounting was now short a staff member making ZD's job more difficult to perform financial management.

65. At this time Daniel Hicks had made multiple requests to hire more staff. In response, Alicia Keyes requested The NM State Personnel Office perform a review of job classifications at the NM Spaceport Authority. Daniel Hicks assigned Guillermo Blacker to work with the NM State Personnel Office in their study. The Human Resources review was led by Heather Vigil Clark, the Human Resources staff member who reported directly to Alicia Keyes.

66. The evidence shows that Alicia Keyes was directing Heather Vigil Clark to undermine Daniel Hick's leadership, by using the Human Resources process to change the organizational structure without Daniel Hicks' approval. In this situation, Daniel Hicks wanted to promote Guillermo Blacker, but not the accounting staff. Also, Alicia Keyes was retaliating against ZD for his previous complaint about her to the Governor's office. Both Alicia Keyes and Daniel Hicks used the Human Resources process to target and marginalize the accounting staff.

1 67. Heather Vigil Clark's interactions with ZD during the review were confrontational and
2 threatening. On one phone call Heather Vigil Clark told ZD if he did not go along with the study, he would be
3 sorry.

4 68. The results of the study came back that Guillermo Blacker should receive a promotion
5 due to his increased scope of work. In contrast, the study was also recommending three female staff members
6 would get demotions: Sales Agent Susan Raitt, Accountant Sandra Franco, and Accountant Belinda Benavidez.
7 The study had looked at all staffing positions in the Agency, but the negative results were targeted at accounting
8 positions.

9 69. ZD complained directly to Daniel Hicks that his promotion of Guillermo Blacker was
10 wrong and a direct attack on the accounting staff. After the accounting staff begged in tears to the NM State
11 Personnel Office to not take away their jobs, the NM State Personnel Office decided not to take further action.

12 70. The human resources actions related to Guillermo Blacker is evidence of blatant sexism,
13 where the male friend of Daniel Hicks was hired by lying in his interview, then was getting a massive promotion
14 from assistant to Business Manager, while the female accounting staff were getting demoted. The female staff had
15 no opportunity to apply for the newly created Business Manager position, even though they had seniority. To this
16 day, the NM Spaceport Authority is still engaging in sexism, as Guillermo Blacker is still performing higher level
17 duties than the other female business staff, even though he was hired for a lower job classification.

18 71. One example of the blatant sexism is that Guillermo Blacker, a man, has his own private
19 office, even though he has a low-level business operations job description. Sandra Franco, a woman, has a higher
20 business job description and sits in a cubicle. Guillermo Blacker's office is a visual daily reminder of the
21 discrimination faced by the women at the NM Spaceport Authority.

22 72. ZD complained about the sexism of Guillermo Blacker's position directly to his
23 supervisor Daniel Hicks. ZD specifically mentioned Guillermo Black in his written complaint on 06/12/2020 that
24 was sent to the board chair Alicia Keyes, Human Resources, and the NM Department of Finance and
25 Administration. ZD further explained his comments from the 06/12/2020 complaint about Guillermo Blacker in
26 detail to The McHard Firm investigators and pointed out the Agency's problems with sexism.

27 73. The former Director of the NM State Personnel Office, Pam Coleman, was personally
28 involved. Pam Coleman is currently the Associate Director for Performance Management within the Office of
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1 Management and Budget for the Biden administration. Pam Coleman knew exactly what ZD's 06/12/2020
2 complaint referenced, as she had just completed the review of the Agency job classifications where she attempted
3 to demote the women. After Pam Coleman heard complaints directly from Belinda Benavidez and Sandra Franco
4 about the unfairness of the situation, Pam Coleman reversed the results of the review. However, Pam Coleman still
5 did nothing to address the sexism that was created by Daniel Hicks at the NM Spaceport Authority. The State of
6 New Mexico continues to allow this blatant sexism to continue at the NM Spaceport Authority, even after ZD's
7 multiple complaints.

8 74. During this same period, illegal drug use was reported at the NM Spaceport Authority.
9 NM Spaceport Authority Project Lead David Bushman sent an email to the entire management team that
10 construction contractors on-site at Spaceport America had complained to him that an aerospace customer was using
11 drugs illegally on the property at Spaceport America including LSD and marijuana. The complaint originated from
12 a local contractor who did not like that the out-of-state company was bringing drugs into the local community. The
13 COVID-19 pandemic had already started, and personnel for this aerospace company was quarantined and living on
14 the property at Spaceport America. It is not legal for people to live on NM State Trust land, but Daniel Hicks had
15 granted an exception to the customer due to the pandemic. The customer had made changes to the site at Spaceport
16 America to accommodate their living conditions including building a recreational shooting range and a bar serving
17 alcohol.

18 75. The managers met to determine how to respond to the David Bushman's notification. As
19 there was no direct proof the allegations of drug use were true besides the complaints, the other managers besides
20 ZD were more concerned about covering up the allegations to prevent losing a customer than addressing the drug
21 use. ZD was vocal in this meeting that decisive action needed to be taken including removing the customer from
22 the property. ZD communicated in the meeting his frustration with the other managers' complacency by saying
23 "Have you lost your minds?" Daniel Hicks and Chris Lopez decided in the meeting that they would investigate the
24 allegations and respond.

25 76. Following that meeting, it does not appear much investigation occurred other than Chris
26 Lopez walking around the site. The allegations were not reported to law enforcement or other state agencies. There
27 does not appear to have been any attempt to determine whether the customer's multiple plane flights in and out of
28 Spaceport America's airfield were trafficking illegal drugs. ZD followed up with Daniel Hicks and Chris Lopez,
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1 but they would not describe in detail the steps they took to investigate the allegations. They only explained they
2 had determined the allegations were false and the matter was considered closed.

3 77. At the end of April 2020, ZD communicated a direct complaint to Daniel Hicks. ZD told
4 Daniel Hick to stop his attempts to process RFPs without board approval and stop his dishonesty with the board.
5 The Agency was preparing to issue an RFP for Master Planning on 04/29/2020. The board chair Alicia Keyes and
6 the Governor's office had hired an airport consultant, Jim Hinde, to help with this RFP. Jim Hinde had previously
7 worked in leadership at the Albuquerque International Sunport. Jim Hinde had prepared a Scope of Work for the
8 RFP that had been approved by board chair Alicia Keyes and Dominic Gabello from the Governor's Office. Daniel
9 Hicks had made significant changes to Jim Hinde's Scope of Work and instructed ZD to issue the RFP to the public
10 with his changes. Daniel Hicks explained in a manager meeting that he wanted to keep this information secret from
11 Alicia Keyes and issue the RFP without notifying her of the changes. In the meeting, ZD called out Daniel Hicks'
12 actions to hide information from the board as wrong and urged Daniel Hicks to notify Alicia Keyes about the
13 changes. To Daniel Hicks' frustration, several managers agreed with ZD. Daniel Hicks tasked ZD with getting the
14 RFP ready to post to the public and Daniel Hicks said he would contact Alicia Keyes and convince her that the
15 RFP should be released with his changes instead of Jim Hinde's original Scope of Work.

16 78. At this point, several situations had occurred where Daniel Hicks had lied about his
17 conversations with Alicia Keyes and Dominic Gabello. Specifically, ZD attended a meeting with Daniel Hicks in
18 Albuquerque in March 2020 with Alicia Keyes, Dominic Gabello, and several other leaders from State
19 government. In this meeting, ZD learned that these state leaders had been giving Daniel Hicks numerous requests
20 and action items that Daniel Hicks had never communicated as issues to the NM Spaceport Authority management.
21 Rather, Daniel Hicks had consistently communicated to ZD and his fellow managers that there were no major
22 concerns with Spaceport operations and that Alicia Keyes and Dominic Gabello were in support of things as they
23 were. Daniel Hicks had consistently communicated that his ongoing meetings with state government leadership
24 were merely informational. The evidence shows Daniel Hicks statements were dishonest.

25 79. In the current situation, ZD was unsure if Daniel Hicks was being honest about
26 contacting Alicia Keyes about the changes to the RFP. With a few days to go before public release, in order to
27 double check, ZD sent Alicia Keyes an email to see if Daniel Hicks had notified her of the changes to the Scope of
28

1 Work. In fact, Daniel Hicks had lied again. Daniel Hicks had not spoken to Alicia Keyes, and Alicia Keyes
2 requested additional time to review the changes.

3 80. Alicia Keyes' response occurred on 4/27/2020. That night, Daniel Hicks called ZD and
4 instructed him to carbon copy (cc) him on all correspondence with all board members and leadership in Santa Fe.
5 ZD's email had revealed Daniel Hicks' deception and Daniel Hicks appeared frustrated on the call. Daniel Hicks
6 wanted all future correspondence with the board to go through him. However, in this situation, Daniel Hicks had
7 shown multiple attempts where he hid information from the board, attempted to approve RFPs without board
8 approval, and lied to ZD about board directions. With ZD's knowledge that Daniel Hicks had that same day tried to
9 commit procurement fraud and was attempting to commit procurement fraud with several future RFPs as well, it
10 was unacceptable to cut off ZD's communication with the board. ZD refused. ZD recorded this phone conversation
11 and later included it in his whistleblower complaint on 6/12/2020 (Exhibit 7). You can still listen to this phone call
12 by using the hyperlink in the complaint.

13 81. These facts are evidence that a CFO's ability to communicate directly with the board is
14 an important internal control, and in this case, prevented Daniel Hicks' attempt at procurement fraud.

15 82. After this phone conversation, Daniel Hicks called Melissa Force and the two started
16 working on efforts to terminate ZD for refusing to break the law. Melissa Force admitted her conversations with
17 Daniel Hicks about attempting to terminate ZD in a later interrogation she had with Accountant Sandra Franco
18 following ZD's whistleblower complaint on 6/12/2020.

19 83. The actions of Daniel Hicks and Melissa Force are evidence of a violation of the NM
20 Whistleblower Protection Act. It is a violation to terminate a CFO for standing up for what is right and opposing
21 procurement fraud.

22 84. During this same period, Virgin Galactic was under significant financial pressure to
23 prepare for their first spaceflight from Spaceport America. Virgin Galactic staff had made several comments to ZD
24 that they were frustrated with the NM Spaceport Authority. Virgin Galactic staff told ZD they wanted to get around
25 the "red-tape" of government mandated processes.

26 85. From January 2020 to June 2020, Virgin Galactic made requests to Daniel Hicks for
27 NM Spaceport Authority funds for expenses like additional security and helicopter support, which were not
28 provided to their satisfaction. Virgin Galactic also made requests to reduce agency staff supporting other customers
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1 in business development, so the Agency could provide more support to Virgin Galactic at the Horizontal Launch
2 Area. Virgin Galactic had also been informed that the business consultant Jim Hinde, recently hired by the
3 Governor's Office, was writing a new staffing plan for the Agency. The pending staffing changes had the potential
4 to greatly benefit Virgin Galactic. Virgin Galactic executives bypassed Daniel Hicks and met with the Governor's
5 office in secret multiple times about topics that included 1) diverting the NM Spaceport Authority's operations
6 budget to expenses that directly supported Virgin Galactic (the previously mentioned security expenses), and 2)
7 staffing changes at the NM Spaceport Authority (the previously mentioned staffing plan by Jim Hinde).

8 86. These meetings were secret in that they took place without the knowledge of the NM
9 Spaceport Authority staff. ZD and Daniel Hicks only found out about these meetings and the topics of conversation
10 after the fact when the Governor's Chief Operating Officer, Theresa Casados, admitted to holding the secret
11 meetings with Virgin Galactic. Theresa Casados admitted to these facts during a meeting with ZD, Daniel Hicks,
12 and other leadership members in the Governor's Office in Santa Fe. It is also relevant that Theresa Casados was
13 Deputy Chief of Staff under former Governor Bill Richardson when the original deal with Virgin Galactic was
14 formed.

15 87. One important reason for including NM Spaceport Authority staff in the meetings with
16 Virgin Galactic, was that the Agency staff was experienced in upholding the Anti-Donation Clause of the NM
17 Constitution. This law makes it illegal for a state agency to give a private business free or reduced rate services at
18 the expense of other customers and the NM taxpayers. While it is within the NM Spaceport Authority's statute for
19 the Agency to negotiate with aerospace companies, pursue business development opportunities, and respond to
20 customer requests for support, customers should not receive preferential treatment or direct the use of taxpayer
21 dollars. Having agency staff attend customer meetings is an important internal control. The NM Spaceport
22 Authority has multiple stakeholders including other customers and the public, and the Agency staff follows internal
23 controls to ensure no customers receive preferential treatment.

24 88. Virgin Galactic employees were under pressure to perform. On July 9, 2019, Virgin
25 Galactic filed a prospectus with the SEC with aggressive financial projections to investors for their upcoming IPO
26 (stock ticker SPCE). Many of the claims made to investors in these filings did not come true, including the
27 prediction Virgin Galactic would fly 646 passengers to space in 2021. As time passed, it was proving that the flight
28 projections Virgin Galactic gave to investors were false. The projections were not off by small margins of error, but
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1 rather by enormous amounts. The stock debuted on the NYSE in Oct 28, 2019. This was during the same time
2 period of the secret meetings and roughly eight months prior to ZD's constructive discharge as a whistleblower on
3 06/21/2020. The IPO and prospectus are evidence of Virgin Galactic employees' and the Defendants' motivation to
4 retaliate, suppress, cover up, and discredit ZD and his whistleblower complaints.

5 89. The following facts are evidence that the secret meetings resulted in violations of the
6 Anti-donation clause and bribery of a public officer (NMSA 30-24-1). 1) The secret meetings occurred shortly
7 before the Governor's actions to make changes to the NM Spaceport Authority board, 2) the secret meetings
8 occurred shortly before the Governor's actions to make staffing changes at the NM Spaceport Authority, and 3) the
9 secret meetings occurred shortly before the Governor's actions to make operational changes at the NM Spaceport
10 Authority that benefited Virgin Galactic at the expense of other customers and the NM taxpayers. These facts are
11 evidence that Virgin Galactic made inappropriate requests during these secret meetings. In this case, Virgin
12 Galactic had shown they were interested in receiving security and other services for free or at a reduced rate. By
13 receiving secret meetings with the Governor's office, Virgin Galactic was already receiving preferential treatment.
14 There is no indication the Governor's Office provided this preferential treatment to any of the other customers at
15 Spaceport America. The only reasonable explanation about why Virgin Galactic would hold these secret meetings
16 was to circumvent Agency internal controls. By holding secret meetings, Virgin Galactic was improperly
17 attempting to influence the use of the Spaceport's operational budget for their own benefit in exchange for benefits
18 to the Governor during upcoming space operations. Virgin Galactic's intent is shown through the secrecy of the
19 meetings and by not following normal Agency procedures to make their requests. If these meetings were harmless
20 status updates, it would have been reasonable to include an Agency staff member who could report on operations.
21 If the meetings were for planning, it also would have been reasonable to have included an Agency staff member
22 who would have been carrying out the planning. Since no Agency staff was allowed to attend the secret meetings,
23 the only way to verify that bribery did not occur is to take the Governor's word for it.

24 90. As further evidence of bribery and preferential treatment, during the same period the
25 secret meetings occurred, during the COVID-19 pandemic, the Governor's office announced that Virgin Galactic's
26 operations to provide space travel to rich people was deemed an "essential business." So, while most New Mexico
27 small businesses were required to shut down, Virgin Galactic employees were allowed to continue to go into the
28 office to work.

1 91. As further evidence of bribery and preferential treatment, it was reported in the press
2 that Governor Michelle Lujan Grisham received exclusive access and promotion during Richard Branson's first
3 spaceflight with Virgin Galactic on July 11, 2021. This launch was not open to the public except for the Governor
4 and her VIP guests including former Governor Bill Richardson. This is evidence of a quid pro quo. Governor
5 Michelle Lujan Grisham gave Virgin Galactic the designation of "essential business" and in return she got to attend
6 a party with Richard Branson.

7 92. These secret meetings were admitted again by Alicia Keyes in an email she later sent to
8 Daniel Hicks claiming that Virgin Galactic executives had told her in private meetings that they had lost confidence
9 in Daniel Hicks' leadership. ZD was concerned that Virgin Galactic's actions were violations of the Anti-donation
10 clause and improper bribery of public officer. Shortly prior to ZD's constructive discharge, ZD called board
11 member Rick Holdridge and forwarded Alicia Keyes's email as evidence. ZD complained to Rick Holdridge
12 directly that 1) Alicia Keyes' actions as board chair were improper 2) Daniel Hicks had lost control of the Agency
13 and 3) Virgin Galactic was making inappropriate requests in secret meetings with the Governor's Office.

14 93. These facts are evidence that everyone around ZD was attempting to violate the law and
15 ZD was attempting to maintain Agency internal controls and protect the NM taxpayers. It was apparent to ZD that
16 the secret meetings between the Governor's office and Virgin Galactic were improper. ZD provided his complaints
17 about the crisis of leadership at the NM Spaceport Authority to Rick Holdridge with the reasonable expectation
18 they would be addressed at the next board meeting. But the opportunity never came. ZD does not know if Rick
19 Holdridge contacted Alicia Keyes to follow up on ZD's complaint, but no response was given to ZD, and no board
20 meeting was ever called. Shortly after ZD's request to Rick Holdridge to stand up to Alicia Keyes' unethical
21 behavior, Rick Holdridge was suddenly removed from the board by Governor Michelle Lujan Grisham.

22 94. Daniel Hicks continued to pressure ZD to break the law. Daniel Hicks expressed his
23 frustration to ZD that Virgin Galactic was bypassing him and going directly to the Governor's Office and Alicia
24 Keyes. In June 2020, there were four outstanding RFPs that ZD would not process without board approval and
25 discussion in a public meeting: the previously mentioned RFP for legal services, the previously mentioned RFP for
26 master planning, an RFP for ambulance and helicopter services, and a fourth RFP for photography services. All
27 four RFPs together totaled more than \$1 Million.

1 95. Alicia Keyes had communicated to Daniel Hicks and ZD that the board did not want to
2 vote on the RFPs and would not put them on the agenda. Alicia Keyes voiced concerns that the RFPs were not
3 justifiable because of the high dollar amount. In a meeting on 06/09/2020, Daniel Hicks continued to pressure ZD
4 to approve these contracts without board approval, and to stop all communication with the board. When ZD
5 communicated his refusal again, Daniel Hicks called a meeting with ZD and Melissa Force to discuss ZD's
6 conduct.

7 96. Daniel Hicks and Melissa Force met with ZD on 06/10/20. Melissa Force later admitted
8 to accountant Sandra Franco that the purpose of this meeting was that it was part of the effort with Daniel Hicks to
9 terminate ZD. The entire hour-long meeting was about 1) ZD's refusal to approve RFPs without board approval,
10 and 2) ZD's refusal to stop all communication with the board. This was an hour-long meeting about ethics and
11 whether the Agency should break the law.

12 97. The topics covered in this meeting is evidence that the goal of the meeting was for
13 Melissa Force and Daniel Hicks to force ZD to comply with their request to commit over \$1 Million in
14 procurement fraud.

15 98. In the meeting, Melissa Force announced that she sided with Daniel Hicks and
16 instructed ZD that he needed to follow Daniel Hicks' orders.

17 99. Melissa Force's actions are evidence of her intent of wanting her legal contracts
18 approved and that she saw ZD as a roadblock. Melissa Force took this unethical position, even though she knew
19 from her own previous legal analysis on 03/19/2020 that board approvals were required.

20 100. In the meeting, ZD was clear in his response: 1) their requests were against the law 2)
21 accounting internal controls were important to protect the interests of the NM taxpayers, and 3) if they continued
22 their requests, ZD would escalate his complaints to Santa Fe leadership. ZD communicated that the meeting itself
23 was an ethical violation and that it was wrong for the Executive Director and General Counsel to attempt to
24 intimidate ZD into breaking the law.

25 101. Two days later on 06/12/2020, Daniel Hicks presented ZD with an ultimatum. Daniel
26 Hicks scheduled a meeting with ZD to discuss how to respond to an email from Jon Clark about refinancing the
27 Spaceport Gross Receipts Tax bonds. As previously mentioned, ZD had already confronted Alicia Keyes about her
28 attempts to refinance directly with the NM Finance Authority. Daniel Hicks requested ZD forward all his emails so
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1 Daniel Hicks could communicate with the board directly and cut ZD out of the conversation. Daniel Hicks
2 ultimatum to ZD was to send him the emails or he would take action against ZD. This was a threat of termination.

3 102. Given Daniel Hicks' previous attempts at fraud, Alicia Keyes' previous attempts at
4 fraud, and the millions of dollars at stake in the Spaceport Gross Receipts Tax bond refinance, ZD did not agree to
5 Daniel Hick's request. ZD did not want his information filtered or distorted by Daniel Hicks.

6 103. Daniel Hicks responded to ZD's refusal in an angry and threatening tone and told ZD to
7 get out of his office and shut the door behind him. As ZD was walking back to his office, he heard Daniel Hicks
8 open his door and yell down the hall for Chris Markham, the IT staff member. Melissa Force was listening to this
9 conversation via video call.

10 104. ZD was aware that Daniel Hicks was attempting to break into his email account. In a
11 previous situation, Daniel Hicks had broken into the previous Business Development Manager Karen Barker's
12 email account right before Daniel Hicks terminated her in 2019. Karen Barker later sued Daniel Hicks for sex
13 discrimination and workplace retaliation.

14 105. It was clear at this point that criminal activity was imminent. Breaking into someone's
15 email is a violent act, and ZD did not know what Daniel Hicks was capable of next. It was clear that Daniel Hicks,
16 Alicia Keyes, and the other managers were attempting to commit fraud, and ZD could no longer prevent it without
17 help. Daniel Hicks was going to do whatever was necessary to accomplish his scheme, including forcibly accessing
18 ZD's email. Once in ZD's email, Daniel Hicks would be able to send himself messages and approvals for his
19 actions.

20 106. ZD fled the building. Once home, ZD emailed another complaint. Since no one had yet
21 been responsive to any of ZD's previous complaints, the email was clearly marked "This complaint is covered
22 under the NM Whistleblower Protection Act (10-16C-1)." The complaint alleged gross mismanagement and abuse
23 of power by Daniel Hicks and was supported by the previously mentioned voice recording of a phone conversation
24 between ZD and Daniel Hicks. The voice recording supported ZD's claims in the complaint. The complaint
25 includes the information that Daniel Hicks asked ZD to hide financial information from the board, pressured ZD to
26 not follow accounting rules, was attempting to break into ZD's email account, and lied to the board about Agency
27 purchases. ZD was performing his job as Chief Financial Officer by submitting these concerns to internal
28 leadership. The complaint was submitted via email to multiple parties internal to the state including the board chair
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1 Alicia Keyes, Human Resources, and the NM Department of Finance and Administration (Exhibit 7). As of this
2 court filing, ZD has made no statements to the press about his complaint or released any information to the public.
3 The complaint contained the specific attempts of Daniel Hicks to commit procurement fraud, but also explained the
4 ongoing ethical problems at the NM Spaceport Authority and named other staff members involved. The email
5 states “This has created a toxic environment where there is no longer adequate internal controls at the NM
6 Spaceport Authority, which could lead to fraud.” After six months of communicating to his employer his
7 complaints without any resolution, ZD pleads for assistance by writing to everyone on the email chain “I need
8 help.”

9 **II. The Defendants forced ZD to resign in a Constructive Discharge**

10 107. After ZD left the office on 06/12/2020, Daniel Hicks succeeded in breaking into ZD’s
11 email account. The last email ZD received was at 9:02am that morning. It is unclear how this was accomplished,
12 either with the help of Chris Lopez, who oversaw the IT department, or the IT staff members Chris Markham or
13 Kari Fresquez. ZD noticed his email was no longer working. At 12:28pm ZD called Chris Markham and requested
14 an explanation. Chris Markham said that he did not know what was going on, explained he was driving and could
15 not solve the problem, but he would try to fix it later. ZD was locked out of his email account until the following
16 Monday at 2:50pm. During the period ZD had no access to email, someone had logged into ZD’s account and
17 forwarded three emails to Daniel Hicks. These emails are time stamped at 11:24pm. These were all emails of direct
18 correspondence between ZD and board chair Alicia Keyes.

19 108. To ZD’s surprise, there was no immediate response to ZD’s 6/12/2020 complaint. ZD
20 submitted the complaint at 11:13am. ZD emailed Alicia Keyes directly at 11:34pm to ensure she had received the
21 complaint. Alicia Keyes responded at 12:06pm with a one-line response “We received your emails and will be in
22 touch.” ZD did not hear anything from anyone until the following Monday morning, three days later.

23 109. On Monday morning 06/15/2020, Alicia Keyes called ZD and lied to him. Alicia Keyes
24 told ZD they had put Daniel Hicks on administrative leave, and they would be starting an investigation and asked
25 ZD to be available as someone would be in touch with ZD within 48 hours. In response to Alicia Keyes’ request for
26 48 hours, ZD requested two days of vacation. ZD could return to the office on Wednesday, 6/17/2020 and meet
27 with the investigators. The meeting with investigators that Alicia Keyes requested never occurred.

1 110. ZD was also shocked to learn in the 06/15/2020 conversation with Alicia Keyes, that
2 while he had been waiting since 06/12/2020 for a response from Alicia Keyes, Alicia Keyes had been
3 communicating with Melissa Force since 06/12/2020, appointed Melissa Force acting CEO, and was working on
4 the investigation without communicating with ZD.

5 111. On ZD's first day returning to work on 06/17/2020, instead of meeting with
6 investigators, ZD was surprised to be instructed by the Acting CEO, Melissa Force to attend a meeting with all the
7 managers. In this meeting, ZD was threatened with termination by Alicia Keyes. Instead of getting the help and
8 relief the accounting team desperately needed, Alicia Keyes and the other Managers increased the pressure against
9 ZD. In the meeting, Melissa Force told ZD that she had just finished a phone call with Alicia Keyes. Alicia Keyes
10 had told Melissa Force that they were going to investigate ZD as part of the response to his complaint. Specifically,
11 they were going to look at purchases going back three years looking for errors. It was made clear they would use
12 the investigation to find anything they could use against the whistleblower, ZD. This was a threat of termination.
13 The threat was to investigate ZD's financial records, which was threatening ZD with false criminal prosecution.
14 There was no reason for this targeted investigation other than as retaliation for ZD's complaints. Then Scott
15 McLaughlin explained that he was also working with Alicia Keyes on a plan to deal with the negative press from
16 ZD's complaint (even though ZD never released it to the press). In the same meeting, Guillermo Blacker
17 confronted ZD about specific language from the contents of ZD's personal emails Daniel Hicks had retrieved while
18 breaking into ZD's email account the week before. The only way Guillermo Blacker would have known the
19 contents of the emails would have been if he, and potentially other staff members, were involved in the attempt to
20 break into ZD's email account. It was clear from Guillermo Blacker's comments that Daniel Hicks was not acting
21 alone in his attempts to violate the procurement rules. Guillermo Blacker's comments prove he was one of multiple
22 managers working together against ZD to commit over \$1 million dollars in procurement fraud on the outstanding
23 four RFPs. ZD's 06/12/2020 complaint had stopped the procurement fraud from occurring, exposed the ongoing
24 procurement violations and named several managers. From the comments made by Melissa Force, Scott
25 McLaughlin, and Guillermo Blacker, it was clear the managers were working with Alicia Keyes against the
26 whistleblower in the investigation to terminate ZD. This was a threat of termination from the other managers and
27 the acting CEO, Melissa Force. These facts are evidence the managers had personal motivation to retaliate, lie, and
28 discredit the whistleblower, ZD.

1 112. After this manager meeting and Alicia Keyes' blatant dishonesty, it was clear that no
2 matter ZD's actions, fraud by Alicia Keyes and the other managers was imminent. Further, it became apparent to
3 ZD there were changes made to ZD's IT devices which significantly slowed down due to tracking software
4 installed. Nothing changed for any other staff members' IT devices, another indication that ZD was being targeted.
5 ZD waited 48 hours as he had promised Alicia Keyes, waiting for investigators or anyone to reach out. No call ever
6 came. In fact, contrary to Alicia Keyes' promise to ZD, no one would reach out and contact ZD and there was no
7 sign anyone wanted to work with ZD in the investigation. ZD waited another three days, but the harassment and
8 hostile work environment was so extreme that ZD was forced to resign in a constructive discharge on 06/21/2020.

9 113. ZD included the State Controller Donna Trujillo and her Deputy Director Mark Melhoff
10 on the 06/12/2020 complaint and pleaded that Donna Trujillo put additional internal controls and financial
11 oversight in place. Instead, the State Controller did nothing. In fact, after ZD's constructive discharge, the NM
12 Spaceport Authority has not hired a CFO to replace ZD for over a year. There has been no CPA on staff and no one
13 providing financial management. During this period, the Defendants used the opportunity to commit millions of
14 dollars of fraud. These Defendants still work at the NM Spaceport Authority today.

15 114. In ZD's forced resignation letter to the NM Spaceport Authority board (Exhibit 8), he
16 once again communicates the ongoing ethical issues at the NM Spaceport Authority and emphasizes the Agency's
17 failure to respond to ZD's complaints. After ZD's constructive discharge, ZD was contacted by the State Auditor's
18 Office and The McHard Firm who had been hired to perform the investigation. ZD wanted to do the right thing and
19 continue to help if he could, and so ZD agreed to meet with them. ZD spoke with the NM State Auditor's office via
20 phone call with Shawn Beck, Director Special Investigations Division on 06/22/2020. ZD met with the
21 investigation team from The McHard Firm which included Janet McHard, Beth Mohr, and Anne Layne on
22 06/24/2020. In both these meetings, ZD explained Alicia Keyes' dishonesty, the attempt to target the whistleblower
23 ZD, and the other managers involvement in the attempted fraud. In both meetings, ZD made it clear that Alicia
24 Keyes' conduct to target the investigation at ZD was wrong, it was retaliation, and he asked them to stop. ZD only
25 agreed to meet with the investigators from The McHard Firm because they promised there was no investigation
26 targeting ZD. This was a lie because that is exactly what The McHard Firm did.

27 **III. The Defendants committed \$79,000.00 in procurement fraud**

1 115. During these events, the investigation team was changed. ZD had filed the 06/12/2020
2 complaint, and then spoke with Alicia Keyes on 06/15/2020. In the 06/15/2020 conversation, Alicia Keyes told ZD
3 that the NM Risk Management Division would internally perform the investigation. When ZD met with
4 investigators on 06/24/2020, the investigators had been changed to an external business consulting firm. Alicia
5 Keyes selected The McHard Firm who had a significant economic incentive to deliver the investigation report that
6 Alicia Keyes wanted.

7 116. The investigation by The McHard Firm was fraudulently procured by the Defendants.
8 There is a well-known accounting fraud called “piggy-backing.” In a piggy-backing fraud, someone splits a
9 contract into multiple smaller contracts in order to avoid the procurement rules. In this case, the Defendants split
10 the payments to The McHard Firm into two separate contracts, one paid out of the NM Economic Development
11 Department, and one paid out of the NM Spaceport Authority. These contracts were for the same investigation and
12 the same final report. These transactions were issued under PO #0000010083 for \$34,000.00 and PO #0000002654
13 for \$45,000.00 (Exhibit 9) and are both labeled with the same description “Conduct a forensic audit for the New
14 Mexico Spaceport Authority.” The Defendants performed these transactions as a piggybacking scheme and
15 committed fraud.

16 117. The payments to The McHard Firm totaling \$79,000.00 were abnormally high compared
17 to market rates. In comparison, the contract for external auditors at Patillo, Brown and Hill, LLP for the entire
18 annual financial audit for the NM Spaceport Authority is only \$22,849.00. The McHard Firm was being paid more
19 than three times that rate. It is clear The McHard Firm was significantly overpaid, and the Defendants did not select
20 a vendor using best obtainable price.

21 118. New Mexico has laws to prevent paying out large sums to business consultants without
22 proper due diligence. The NM Procurement Code 13-1-125 establishes the threshold at \$60,000.00 to qualify as a
23 small purchase. Otherwise, a purchase for professional services would require a competitive sealed Request for
24 Proposals (RFP) according to the NM Procurement Code 13-1-120 and NMAC 1.4.1.48. Additionally, the
25 Governor’s own guidance posted on the General Services Department (GSD) website under the document “The
26 Governor’s Guidelines for Contract Review and Re-evaluation” states “Contracts must be scrutinized to determine
27 whether they have been divided to avoid competitive bidding or avoid proper administrative review.” (Exhibit 10 -
28 section 3.g).

1 119. These facts are evidence the defendants violated the NM Procurement Code and issued a
2 false public voucher to The McHard Firm for \$79,000.00. This exceeds the threshold for a small purchase, and the
3 Defendants were required to issue a public RFP for this purchase. By splitting the contracts up, the Defendants kept
4 the purchase hidden from the safeguards in place by the Department of Finance and Administration to stop these
5 types of purchases. The fact that the Defendants performed the extra effort to write two separate contracts for what
6 would normally have been one contract, shows the Defendants' malicious intent to cover up their actions. This
7 allowed the Defendants to hire the consultant they wanted, that they knew would write the retaliatory report they
8 wanted. NMSA 30-23-3 Making or Permitting a False Public Voucher states "Whoever commits making or
9 permitting false public voucher is guilty of a fourth degree felony."

10 120. Given the facts: (1) that there was coordination between the Defendants in making this
11 purchase forming a conspiracy; (2) that the resulting investigation by The McHard Firm was not independent, since
12 Alicia Keyes was paying the investigators of her own agency; (3) that Alicia Keyes threatened to target ZD before
13 the investigation even started; (4) that the investigation was illegally procured through a piggybacking fraud; and
14 (5) that the report is full of easily disproved false statements; it is clear that the resulting report was an intentional
15 effort to retaliate against ZD and not a credible investigation. Additionally, it is not a justifiable purchase for the
16 Defendants to use taxpayer dollars to target a whistleblower.

17 **IV. The Defendants continued retaliation against ZD after his constructive discharge**

18 121. Alicia Keyes' threats against ZD came true. The investigation targeted the
19 whistleblower ZD, instead of investigating other staff members' involvement, despite the clear evidence that others
20 were involved. The report singles out ZD, Daniel Hicks, and one board member, Rick Holdridge, and remains
21 silent on the ongoing ethical concerns at the NM Spaceport Authority. The report communicates the extremely
22 misleading idea that if these three people are removed, then the concerns raised by ZD's whistleblower complaints
23 will be resolved. Despite ZD's complaints against Alicia Keyes directly to the State Auditor's Office, the NM State
24 Auditor Brian Colon, allowed Alicia Keyes to manage her own investigation and hire an external firm, The
25 McHard Firm. This creates an obvious conflict of interest in the investigation results. Under any reasonable
26 assessment of the situation, it would have been inappropriate to respond with an investigation targeting the
27 whistleblower, ZD. The clear bias in the investigation and final report reveals the Defendants' intent to retaliate
28

1 against the whistleblower and cover up for other staff members' involvement with Daniel Hicks. The evidence
2 shows the Defendants were willing to lie and commit fraud to silence ZD and remove him from the Agency.

3 122. The investigation resulted in a 362-page report addressed to Alicia Keyes and Brian
4 Colon. The McHard Firm report contained false criminal allegations against ZD, the whistleblower. The report also
5 reaches the absurd conclusion that ZD was colluding with Daniel Hicks, the same person he was blowing the
6 whistle against. No reasonable person who listened to the voice recording provided with the 06/12/2020
7 whistleblower complaint would have concluded that ZD was colluding with Daniel Hicks. In fact, the voice
8 recording shows that ZD was taking the brave action to stand up for what was right and protect the New Mexico
9 taxpayers. Rather than question the absurd findings in the report, Brian Colon worked with Alicia Keyes to issue a
10 public press release containing the false allegations against ZD. The press release was widely covered by the global
11 press as shown in the Las Cruces Sun News article on 11/24/2020 (Exhibit 11) Other publications that covered the
12 news story include Space.com, Space News, KVIA El Paso, and Albuquerque Business First. The Defendants
13 actions smeared ZD's reputation, damaging his future career opportunities.

14 123. Brian Colon's actions are especially disturbing, because the investigative report does not
15 contain credible evidence of a crime. The criminal allegations against ZD involve three transactions totaling
16 \$5,996.34 that the investigation falsely alleges ZD improperly approved for other people. There is no explanation
17 of criminal intent or any evidence that ZD benefited in any way from these transactions. These are baseless
18 allegations designed to smear and discredit the whistleblower ZD. Brian Colon decided to issue a press release with
19 obviously baseless criminal accusations attacking a whistleblower. As State Auditor, Brian Colon is supposed to
20 work with and encourage whistleblowers to come forward. The result of the press release was not only devastating
21 for ZD, but harmful for New Mexico in discouraging other whistleblowers from coming forward.

22 124. It is also troubling that the NM State Auditor, Brian Colon, had in his possession five
23 audits that contradict the findings of the McHard report. The results of these other audits were extremely positive to
24 ZD. Under ZD's tenure as CFO, the NM Spaceport Authority underwent four independent audits on the Annual
25 Financial statements. These all resulted in clean audit opinions. The most recent of these audits was presented to
26 the NM Spaceport Authority board on 07/09/2020 (four months before Brian Colon's press release) according to
27 board meeting minutes (Exhibit 12). In the presentation, the auditor explained the audit resulted in no findings.
28 When asked whether this was a good result, the auditor explained "I would say 90% of audits that we do have
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1 adjustments that we come up with and probably 80% have findings. When comparing Spaceport financial situation
2 to others– this was really good [top 10% of agencies].” Additionally, not long before the whistleblower complaint,
3 the agency underwent a separate Special Audit by the State Auditor’s Office looking specifically at Agency travel
4 purchases. The auditors reviewed all travel requests for all employees of the agency for a six-month period. The
5 audit did not find a single accounting mistake. Additionally, ZD passed an IRS audit specifically over the handling
6 of the Spaceport Gross Receipts Tax Bonds with no findings. In shocking contrast to these recent audits, Brian
7 Colon chose to ignore the positive audits, and rely entirely on the fraudulent report from The McHard Firm to issue
8 the press release attacking ZD.

9 125. There is no excuse for Brian Colon not knowing about the other positive audits that
10 contradicted The McHard Firm report, as they were specifically mentioned in ZD’s forced resignation letter
11 (Exhibit 8).

12 126. Brian Colon’s work history is evidence of his malicious intent. Brian Colon is not an
13 accountant or a CPA. Brian Colon worked as a lawyer in the same law firm that NM Attorney General Hector
14 Balderas used to work, Robles, Rael & Anaya, P.C. Brian Colon is the former chairman of the Democratic Party of
15 New Mexico. Brian Colon also has political aspirations as shown by his recent announcement to run for NM
16 Attorney General in May 2021 (Exhibit 13). This is evidence that Brian Colon’s actions to participate with
17 Governor Michelle Lujan Grisham in the conspiracy to retaliate against the whistleblower ZD and commit millions
18 of dollars of fraud were motivated by Brian Colon receiving political favors and support from the Governor during
19 his upcoming political campaign.

20 127. The relationship between Brian Colon, NM Attorney General Hector Balderas, and their
21 former law firm Robles, Rael & Anaya, P.C is related to a formal complaint filed on July 15, 2021, to the State
22 Auditor Brian Colon. The complaint alleges that Hector Balderas improperly provided business to their former law
23 firm from 2016 to the present resulting in “Conflicts of Interest/Favored Treatment” and “Procurement &
24 Contracting Improprieties.” (Exhibit 14) The complaint shows the ongoing relationship between Brian Colon and
25 Hector Balderas through their former law firm related to potentially ongoing criminal activity involving millions of
26 taxpayer dollars. Brian Colon investigated the Attorney General, but found his friend, Hector Balderas, committed
27 no wrongdoing as reported by the Santa Fe New Mexican on Nov 17, 2021 (Exhibit 15). This is an example of the
28 dramatically different treatment given by the State Auditor’s Office to Hector Balderas as opposed to the
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1 whistleblower, ZD. Brian Colon has provided no explanation as to why the methods used to investigate Hector
2 Balderas showed favoritism compared to the retaliatory methods used against ZD.

3 128. These facts are evidence Brian Colon violated his duty as the NM State Auditor, Audit
4 Rule (NMAC 2.2.2), and the NM Audit Act (NMSA 12-6-1) that establishes the State Auditor's Office as an
5 independent and nonpartisan oversight agency. Brian Colon failed to exercise the skill, care, and diligence required
6 in his position as NM State Auditor. His biased selection of audit results while ignoring the obvious faults in The
7 McHard Firm report reveals the malicious intent of the press release was retaliation against the whistleblower.
8 Brian Colon used threats of criminal prosecution in an unjust investigation in order to protect the Defendants at the
9 expense of the whistleblower and the NM taxpayers. It is in violation of the Audit Act for Brian Colon to
10 participate in a conspiracy with the other members of his political party within the Executive Branch to retaliate
11 against a whistleblower.

12 129. The Defendants' actions to address this issue in the press shows their malicious intent.
13 As of this filing, ZD has made no statements to the press about his complaint or released any information to the
14 public. ZD's whistleblower complaint was only sent internally to New Mexico. ZD provided the Defendants the
15 opportunity to deal with Daniel Hick's Human Resources issue internally. In contrast, the Defendants (1) provided
16 ZD's whistleblower complaint to the press and (2) issued a press release attacking the whistleblower ZD. If the
17 Defendants intended to resolve an internal Human Resources issue, they would have proceeded differently.
18 However, instead the Defendants smeared ZD's reputation in the press, which can only be explained by their
19 intention to cause maximum damage to the whistleblower. In contrast, ZD's actions show a thoughtful, responsible,
20 professional approach.

21 130. The Defendants' actions destroyed ZD's life. ZD found himself jobless during a global
22 pandemic and economic recession. The Defendants' smear campaign against ZD's reputation has been so effective
23 that it will continue to impact ZD's earning potential for the rest of his career. ZD had to move out of state to find
24 work. ZD has been unable to secure employment at a CFO level. ZD was unemployed for seven months. ZD had to
25 explain in job interviews that he was not a criminal, and the false negative news stories about him were based on
26 retaliation. ZD even received an email from an interviewer explicitly stating they could not hire him after reading
27 the negative news stories generated by the Defendants' false claims (Exhibit 16). Most companies just did not
28 return ZD's phone calls after learning about the negative news stories. ZD depleted his savings from

1 unemployment and legal fees. After applying to forty-two jobs, ZD found the only company willing to hire him
2 was for an entry-level accounting job. ZD continues to apply for CFO jobs but has not received any job offers. The
3 retaliation impacts ZD's day-to-day life as people will randomly find the negative news articles and ask ZD about
4 the criminal allegations. ZD suffers from emotional distress due to retaliation in a hostile work environment and
5 humiliating false allegations in the press causing ZD depression, rage, and fear. The Defendants in this complaint
6 are liable for ZD's damages which are itemized in Exhibit 1.

7 **V. The Defendants committed over \$200 million of securities fraud**

8 131. The facts in this complaint are evidence that the Defendants engaged in extreme levels of
9 retaliation against ZD because they were about to commit millions of dollars of securities fraud using the same
10 violations that ZD had exposed in his complaints. After ZD's constructive discharge, the Defendants proceeded to
11 refinance the NM Spaceport Authority's Gross Receipts Tax Bonds (last reported value of \$47M in FY20). The
12 Defendants failed to disclose to the taxpayers that they knew there were multiple firms that would refinance the
13 bonds with better terms that would save the taxpayers millions of dollars. The Defendants failed to perform a public
14 RFP. Instead, the Defendants performed a private placement of the bonds with the current bond holder, the NM
15 Finance Authority. In taking this action, the Defendants cost the taxpayers millions of dollars, all for the
16 Defendants' own benefit. This is fraud and the same issue ZD had confronted Alicia Keyes about previously.

17 132. Fraud in an amount greater than \$20,000 is guilty of a third degree felony (NMSA 30-16-
18 6(F)) with a fine of up to \$10,000 as well as up to 9 years in prison. The elements of the fraud are as follows.

- 19 a. **The board made a material representation that was false.** The board claimed in a board
20 meeting to the public that refinancing with the NM Finance Authority was beneficial to the
21 taxpayers when it was actually costing the taxpayers millions of dollars. The Defendants failed to
22 disclose that they knew of multiple other options to refinance that would be cheaper. The
23 Defendants released The McHard Firm report to the public with false statements about the Gross
24 Receipts Tax refinance to discredit ZD and the cheaper options.
- 25 b. **The board knew the representation was false.** The board knew there were cheaper options to
26 refinance the Spaceport Gross Receipts Tax bonds. This is supported by the evidence of multiple
27 emails to board members, board meeting minutes, and the emails between ZD and Alicia Keyes.

The board also knew there were false statements in The McHard Firm report. The report contained false statements about the board's own actions that they would have known were untrue.

c. **The board made the representation intending to induce another to act upon the representation.** The fact that ZD complained to Alicia Keyes, and Alicia Keyes continued to act to commit fraud, shows intent. The Defendants intended to use the false representations to mislead the public about the available options and allow the board to refinance with the NM Finance Authority for the Defendants' own benefit at the expense of the taxpayers of Dona Ana and Sierra County.

d. **The person to whom the representation was made actually and justifiably relied on the presentation, which caused injury.** The public relied on the board members to act in the public's best interest. If the board had cheaper alternatives that would save the taxpayers millions of dollars, they had a duty to disclose them.

133. There is a preponderance of evidence that shows the actions by the Defendants were dishonest in dealing with millions of NM taxpayer dollars causing harm to the NM taxpayers and ZD. The actions by the Defendants are a violation of SEC regulations regarding the issuance of government bonds, a violation of the Fraud Against Taxpayers Act, a violation of NM statute regarding the use of Spaceport Tax Revenues, a violation of the IRS regulations regarding the issuance of tax-free government bonds, and a violation of the NM Whistleblower Protection Act. Additionally, because the private placement interfered with inter-state commerce, the Defendants are in violation of multiple Federal laws including Wire Fraud, Extortion, Bank Fraud, Obstruction of Justice, Retaliation against a witness or informant, Money Laundering, Securities Fraud, and Racketeering.

134. Additionally, the fraud also corrupts the NM Finance Authority's PPRF loan portfolio. The NM Finance Authority released bond disclosure documents stating the PPRF bonds were backed by the revenue from The Spaceport Gross Receipts Tax bonds, without disclosing the material risks of the bonds or the fraudulent actions of the Defendants which involved the CEO of the NM Finance Authority Marquita Russel. The Spaceport Gross Receipts Tax bonds should be removed from the PPRF, and the PPRF restructured. This means that NM Finance Authority also has been issuing fraudulent statements in over \$200 Million of their own PPRF bond issuances. Investors justifiably relied on the NM Finance Authority's false statements which would have impacted the bond ratings from S&P and Moody's.

1 135. The facts in this complaint are evidence that Governor Michelle Lujan Grisham was
2 personally involved in the conspiracy with the Defendants to use the NM Spaceport Authority to commit millions
3 of dollars of securities fraud. This was admitted by The NM Economic Development Department to the press. The
4 Economic Development Department released a statement about the investigation targeting the whistleblower ZD
5 stating “Gross Receipts Tax earmarked for capital improvements was being commingled with the general
6 operations budget at Spaceport America, the practice was investigated by [the Economic Development
7 Department] with Gov. Michelle Lujan Grisham 's support and stopped,” as reported in the Las Cruces Sun News
8 on 12/10/2020 (Exhibit 17). This was one of the false allegations the Defendants used to target and smear the
9 whistleblower ZD. This was also one of the false statements the Defendants used to mislead the NM taxpayers in
10 the fraud. It is clear from the statement that Governor Michelle Lujan Grisham was knowledgeable and active in
11 the fraud.

12 136. The fraud relied on board member appointments that only the Governor herself could
13 approve. In early 2020, the Governor appointed Alicia Keyes as Board Chair of the NM Spaceport Authority. The
14 former board chair, Rick Holdridge, was reappointed to the board when the Governor re-appointed three board
15 members and replaced three other board members with new board members as reported in the Las Cruces Sun
16 News on 06/12/2020 (Exhibit 18).

17 137. This action gave Alicia Keyes control over any future board votes because the three new
18 members had only known Alicia Keyes as board chair and had no prior experience with Rick Holdridge as board
19 chair.

20 138. The new board members were announced on 06/12/2020 (8 days prior to ZD’s
21 constructive discharge on 06/21/2020). However, only four months later the Governor illegally removed Rick
22 Holdridge from the NM Spaceport Authority board after he objected to the fraudulent investigation, as reported in
23 the Las Cruces Sun News on 10/16/2020 (Exhibit 19). Even though ZD’s whistleblower complaints had nothing to
24 do with the board, The McHard Firm report singled out Rick Holdridge and falsely alleged numerous violations of
25 the Open Meetings Act.

26 139. The false allegations against Rick Holdridge reveals the political motivation of the
27 McHard report, as no other board members were mentioned. The McHard report falsely alleges Rick Holdridge
28 held secret meetings, but the report fails to mention any other board member who attended those meetings. The
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McHard report makes the absurd allegation that only Rick Holdridge is somehow guilty of attending these board meetings without any other board member attending. The other board members would have known this was a false statement, as no meetings ever took place.

140. Rick Holdridge went on record in the press saying the claims in the investigator's report were false. As Rick Holdridge was the former board chair, he previously held a position of leadership that was relied upon by the other board members. However, the Governor removed Rick Holdridge, before the board had a chance to hear his opinions. Rick Holdridge was removed prior to the meeting on 10/16/20 where the board had scheduled to discuss the results of the investigation and vote to terminate Daniel Hicks.

141. The Governor's actions are evidence of her intent to change board appointments until she received the board votes she wanted, which allowed the Defendants to commit fraud.

142. The Governor's actions to remove a board member is a violation of NM Constitutional Law. In this case, the Governor's right to remove as described in the NM Constitution is limited by the statutes regarding board member appointment in the Spaceport Development Act NMSA 58-31-4(C). The statute states "The members appointed by the governor shall be residents of the state and shall serve for terms of four years." The Governor cannot remove a board member simply because they disagree, especially on an investigation that targets a whistleblower. For the statute to give the Governor the authority to remove a board member at will, the statute would have to explicitly state the term length and then follow it with the disclaimer "unless sooner removed by the Governor" which it does not. The Governor's authority to remove board members is described in the NM Constitution, Article 5, Section 5 which states "The governor shall nominate and, by and with the consent of the senate, appoint all officers whose appointment or election is not otherwise provided for and may remove any officer appointed by him unless otherwise provided by law." The NM Constitution limits the Governor's powers by 1) requiring consent of the senate, and 2) unless otherwise provided by law. In this case, the Governor's actions violate both these limitations, by acting on appointments without involving the NM legislature, and violating the law in the Spaceport Development Act. The NM State Legislature is required by the NM Constitution to provide oversight over the Governor's actions with board members through confirmation, and in the case of the NM Spaceport Authority, the legislature specified the additional restriction in law of four-year terms in statute 58-31-4(C). While NM courts have applied strict constructionism in past cases and have been unwilling to adjudicate the Governor's removal authority (STATE JUDICIAL STANDARDS COM'N v. Espinosa, 73 P. 3d 197 - NM: COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO WHISTLEBLOWER PROTECTION ACT - 38

1 Supreme Court 2003), the courts have not seen a case with such extreme abuse of power by a sitting Governor. In
2 this case, strict constructionism in interpreting the law cannot be applied in a situation where NM taxpayers are
3 being hurt for whom the law was intended to protect. In this case the doctrine of absurdity would apply in that
4 commonsense interpretations should be used. Unlike the case previously mentioned, the issue at hand is not
5 whether the Governor has the executive power to remove, but whether the Governor can repeatedly appoint and
6 remove board members creating undue influence upon the board's votes.

7 143. In this case the Governor's actions are in clear violation of NMSA 58-31-4(C) which
8 establishes an independent board with four-year terms. The legislature wrote the Spaceport Development Act to
9 establish a board with independent voting. Contrary to the law, the Governor committed extortion by forcing the
10 board members to vote to commit fraud by appointing Rick Holdridge to a four-year term and then removing him
11 four months later. This threat of removal and retaliation influenced the remaining board members to vote to commit
12 fraud. The Governor's actions led to millions of dollars of fraud against the NM taxpayers.

13 144. The idea that Rick Holdridge should retain his board seat is not without precedent in
14 NM law, and in a similar case of removal of a NM Police Captain without cause the court opinion states "the
15 conclusion that we have reached is consonant with due process, for any doubt as to the right to procedural
16 safeguards should be resolved in the officer's favor unless the right to remove at will or pleasure is clearly
17 expressed." (State ex rel. Williamson v. Wannamaker, 213 S.C. 1, 48 S.E.2d 601, 607 (1948). Tafoya v. New
18 Mexico State Police Board, 472 P. 2d 973 - NM: Supreme Court 1970). The courts must apply this precedent in
19 this case as well, otherwise the courts are interpreting the law in a way that is hurting NM taxpayers which is
20 clearly not what the legislature intended when writing the statutes.

21 145. In this situation, the Governor may remove a board member of the NM Spaceport
22 Authority for cause, but the board member is entitled to proper notice and a chance to defend themselves in a hearing
23 conforming to the constitutional requirements of due process. Neither proper notice nor due process was provided
24 to Rick Holdridge. The Governor's office has never publicly explained the reason for removal of Rick Holdridge
25 from the board, but assuming it was related to the false allegations in the fraudulent McHard Firm report, Rick
26 Holdridge deserved the right to defend himself. The evidence shows the Governor's actions were part of a
27 conspiracy and directly resulted in millions of dollars of fraud against the NM taxpayers. The checks and balances
28 of the NM Constitution are in place to prevent this exact type of abuse of authority and fraud. If the Governor had

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1 followed the rule of law, allowed independent actions by the board, allowed Rick Holdridge due process, and
2 involved the NM legislature in oversight of board appointments, the fraud in this case would not have occurred.

3 146. The absurdity of Governor Michelle Lujan Grisham's actions of appointing a board
4 member to a four-year term and then removing him four months later, can only be explained as part of the
5 conspiracy to commit fraud against the NM taxpayers. The Governor does not have executive powers to commit
6 fraud and therefore the action to remove Rick Holdridge from the board is invalid. Given these facts, Rick
7 Holdridge is still the legal holder of the board member position of the NM Spaceport Authority, and he must be re-
8 instated immediately.

9 147. Further, the Governor's removal of Rick Holdridge is evidence of extortion. The
10 Governor's actions intimidated the other board members into voting to support the claims in the fraudulent McHard
11 report. The Governor's actions sent a message to the board members that what unjustly happened to Rick
12 Holdridge could happen to them. If they opposed the Governor and voted against committing fraud, the Governor
13 could also remove and replace them, without notice, without due process, issue smear campaigns against them in
14 the press, and threaten them with malicious prosecution based on false allegations. Following the Governor's
15 removal of Rick Holdridge, the vote by the board members to commit fraud was unanimous.

16 148. The coordination between the defendants is evidence Governor Michelle Lujan Grisham
17 was part of a conspiracy. In order to commit fraud with multiple state agencies, it was necessary to coordinate all
18 the Defendants' efforts. The Secretary of Economic Development, the NM Attorney General, and the NM State
19 Auditor all coordinated their actions through the Governor's office, as shown by the Governor's actions to change
20 board members.

21 149. Governor Michelle Lujan Grisham's actions with the board are evidence that the
22 Governor knew about the conspiracy to commit millions of dollars of fraud and took illegal actions to further the
23 conspiracy.

24 150. Governor Michelle Lujan Grisham's actions are an impeachable offense. The NM
25 Constitution provides that state officials may be impeached for "crimes, misdemeanors, and malfeasance in office"
26 (NM Constitution Art IV section 36). The evidence in this complaint shows that Governor Michelle Lujan Grisham
27 knew about ZD's complaints, knew about the effort to refinance the Spaceport Gross Receipts Tax bonds without
28 an RFP, coordinated efforts among the Defendants to accomplish millions of dollars of fraud, illegally removed
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1 board members in order to achieve the fraud, and acted against the interests of the NM taxpayers. Additionally, the
2 Governor's decision to support an investigation targeting a whistleblower is especially troubling, since ZD had
3 previously emailed the Governor's office standing up against Alicia Keyes' attempt to falsify financial reports at
4 the beginning of 2020. The Governor knew about ZD's complaints and proceeded to retaliate against ZD and
5 commit fraud showing the Governor's criminal intent for both the violations of the NM Whistleblower Protection
6 Act and the fraud. The serious consequence of impeachment provides motive for the Governor to take the extreme
7 retaliatory actions against the whistleblower ZD.

8 151. The retaliation against ZD is a continuation of Governor Michelle Lujan Grisham's
9 failed policy on responding to whistleblower complaints. (1) The Governor has no official guidelines for
10 responding to whistleblower complaints, (2) the Governor provides no training to state employees on the NM
11 Whistleblower Protection Act, (3) there are no safeguards in place to prevent retaliation against whistleblowers,
12 and (4) there is no independently operated hotline to report whistleblower complaints, other than for people to
13 contact the State Auditor's office who was involved in this conspiracy to commit fraud.

14 152. The amount of lost taxpayer dollars caused by this portion of the fraud is somewhere in
15 the range of \$10 Million that the Defendants have tricked the taxpayers of Dona Ana and Sierra County into
16 overpaying to refinance the Spaceport Gross Receipts Tax Bonds in a private placement with the NM Finance
17 Authority. Since the Defendants failed to perform a public Request for Proposal (RFP) to refinance the Gross
18 Receipts Tax bonds in the public markets, there are no exact quotes to compare against the NM Finance Authority
19 refinance terms. However, any reasonable assumptions of the results of a public RFP would have generated
20 millions of dollars in savings to the NM taxpayers. The release of the reserve funds alone was approximately \$7M.
21 Additionally, the difference between market rates and the NM Finance Authority rates are significant. The excess
22 compounding interest over ten years plus the release of all the reserve funds would be around \$10 Million. The
23 Defendants stole this money from the NM taxpayers, then laundered it through the NM Finance Authority, so they
24 can then use it for any project they want.

25 153. During the McHard Firm investigation, the McHard Firm's admissions in the report
26 show that they knew about ZD's emails and the millions of dollars at stake. ZD's email to Alicia Keyes and Jon
27 Clark was included in the McHard report as Exhibit 33 (renumbered as Exhibit 6 in this complaint). However, the
28 McHard Firm instead only writes about the email as an accusation that ZD was wrongfully attempting to influence
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1 the RFP process and accused him of “bid-rigging.” The McHard firm alleges that by ZD talking to vendors, he was
2 attempting to influence the outcome of the RFP. This accusation is false. It is not bid-rigging to encourage vendors
3 to participate in a public RFP. The McHard Firm report fails to mention the multiple emails ZD sent to the board to
4 explain the ongoing efforts to coordinate a public RFP with multiple firms. The McHard Firm fails to mention the
5 many reasons it was beneficial to refinance the bonds outside of the NM Finance Authority. The investigators knew
6 they were misrepresenting ZD's email, because they would have found the multiple other emails about multiple
7 vendors all sent by ZD in the same time frame as the email they attached in their own report.

8 154. In fact, ZD had spoken with three different investment firms, all who were willing and
9 able to compete in an RFP to refinance the Spaceport bonds. Any one of these three options would have required
10 no reserve fund and would have resulted in lower interest rates than the NM Finance Authority. ZD told all three
11 firms specifically that if they wanted the business, they would have to compete in a fair and impartial RFP process
12 to ensure the NM Spaceport Authority received the best price. Any one of these three options would have saved
13 NM taxpayers millions of dollars.

14 155. Additionally, ZD communicated directly with Alicia Keyes that he wanted to work with
15 the Board of Finance [which is a part of the Department of Finance and Administration, not the NM Finance
16 Authority] to issue the RFP. ZD voluntarily involving other agencies in the RFP process is the opposite course of
17 action if ZD was attempting to influence the RFP.

18 156. The McHard Firm acknowledges that ZD prepared an unofficial estimate of fees totaling
19 \$820,000 but argues that this is evidence that ZD was proposing refinance options that would result in excessive
20 fees. However, The McHard Firm report fails to mention that \$820,000 in fees would have been less than the fees
21 the NM Finance Authority charged the NM Spaceport Authority ten years ago. Additionally, these fees would have
22 been more than covered by the release of the unnecessary reserve funds held by the NM Finance Authority. ZD's
23 communications show he was working hard to protect the taxpayer's interests and save millions of dollars, while
24 Alicia Keyes was attempting to enter a deal with the NM Finance Authority under false pretenses.

25 157. The board was required to disclose this information to the public. The McHard Firm
26 read these emails, knew the facts about multiple firms, knew that there were cheaper options, and covered it up
27 with baseless allegations against ZD. The report was then released to the public by NM State Auditor Brian Colon

on 11/24/2020 to discredit and silence ZD. These facts are evidence the NM Spaceport Authority board ignored at least three other options that would have saved the NM taxpayers millions of dollars.

158. The Defendants' malicious intentions are revealed by the fact that so much of the McHard Firm report focused on the Gross Receipts Tax bonds, which have nothing to do with the original whistleblower complaint. It is clear from the email included in the McHard Firm report as Exhibit 37 (renumbered as Exhibit 20 in this complaint) that on 08/02/2020 both Budget Analyst Jeremy Perea and Alicia Keyes guided the McHard Firm to devise the false allegations against ZD about the Gross Receipts Tax bonds to include in the report.

159. ZD and Jeremy Perea had previously worked closely on the Spaceport Gross Receipts Tax Bonds through multiple conversations, meetings, and emails. Jeremy Perea previously had reviewed this issue and agreed with ZD's handling of the Spaceport Gross Receipts Tax Bonds. Jeremy Perea previously had submitted budgets to the NM State Legislature with a specific line item for the Spaceport Gross Receipts Tax. Jeremy Perea previously approved, not only ZD's financial plans for the NM Spaceport Authority, but the specific handling of Spaceport Gross Receipts Tax Bonds and Excess Pledged Revenue.

160. Jeremy Perea's emails to The McHard Firm show his dramatic change in opinion, Jeremy Perea changed from agreeing with ZD to the opposite opinion. Jeremy Perea's emails are evidence he knowingly submitted false information to The McHard Firm during the investigation. Jeremy Perea's emails are evidence he was working under orders from the NM Spaceport Authority board chair Alicia Keyes. Jeremy Perea's emails are also evidence the Defendants retaliated against the whistleblower ZD. There is a direct causal connection between Jeremy Perea's emails and the Defendants later committing over \$200M in fraud.

161. On 12/02/2020, during the very first NM Spaceport Authority board meeting following the release of the McHard report, the board committed securities fraud by recommending to refinance the bonds in a private placement with the NM Finance Authority under false pretenses. The facts in this complaint are evidence the board members knew there were other refinance options available that would have saved the taxpayers millions of dollars. In fact, a short time before ZD's constructive discharge, ZD had emailed the same information a second time to board member Michelle Coons with the side-by-side financial comparison between the NM Finance Authority and the public markets and the millions of dollars it would save.

1 162. The board members also knew there were false statements in The McHard Firm report.
2 Specifically, The McHard Firm report contained accusations about board member conduct, falsely alleging the
3 board members participated in secret meetings. The board members knew these allegations were false because
4 none of them had participated in secret meetings. The board knew it was wrong to submit a press release containing
5 The McHard Firm report which they knew contained false statements. The board knew it was wrong to retaliate
6 against the whistleblower, ZD. The board knew it was wrong for the Governor to remove Rick Holdridge from the
7 board to influence the board vote and intimidate the other board members. The board knew it was wrong to
8 refinance the bonds when they knew there were multiple cheaper options. The board had an obligation to perform a
9 public RFP to ensure they received the best refinance terms for the NM taxpayers. Instead, the board only pursued
10 a private placement with the NM Finance Authority.

11 163. According to the publicly posted meeting agenda, on 12/02/2020, the NM Spaceport
12 Authority board took a vote on the bond refinance at this meeting. However, there are no meeting notes posted on
13 the NM Spaceport Authority's website, so the public has no way of knowing what was discussed. It appears the
14 incorrect file was uploaded to the website (a violation of the NM Open Meetings Act). However, reporting by the
15 Las Cruces Sun News on 12/03/2020 (Exhibit 22) explains that only the refinance with the NM Finance Authority
16 was discussed. No other refinance alternatives were presented to the public.

17 164. Lieutenant Governor Howie Morales is a non-voting member of the Spaceport Authority
18 Board of Directors. Howie Morales did not vote on the bond refinance, however he did attend board meetings and
19 would have been aware of the retaliation against the whistleblower, ZD.

20 165. As further evidence the NM Spaceport Authority board was aware of other refinance
21 options, it was discussed at a previous board meeting two years prior on 04/04/2018 and recorded in the meeting
22 notes (Exhibit 23). Board Member Michelle Coons says, "We have been pretty vocal telling [the NM Finance
23 Authority] that at our window period we will probably refinance." Executive Director Daniel Hicks responds, "We
24 will be coming to the board as soon as that magic date passes to look at refinancing... The reason why we went
25 with the NM Finance Authority years ago in such a risky venture as a state agency, I don't think there was anybody
26 that wanted to take on that. But now, there's probably many banking institutions that would love to help finance."
27 The NM Spaceport Authority board was aware of options about refinancing the Gross Receipts Tax bonds with
28

1 other banks and was actively discussing them in 2018. This is also evidence that the NM Finance Authority was
2 aware of the NM Spaceport Authority considering refinancing with another bank.

3 166. ZD's actions to explore Gross Receipts Tax bond options have been at the direction of
4 the NM Spaceport Authority board since 2018 and had been discussed in open meetings with the public. This
5 approach from the board changed after Alicia Keyes took over as board chair in 2020, but the change in direction
6 on the Spaceport Gross Receipts Tax bonds was never discussed in an open meeting. Instead, the facts in this
7 complaint are evidence the refinance with the NM Finance Authority was handled with deception by covering up
8 the Defendants' true intention to commit fraud.

9 167. The recommendation during the 12/02/2020 board meeting (and the following
10 02/11/2021 board meeting) to refinance with the NM Finance Authority was provided by NM Spaceport Authority
11 Executive Director Scott McLaughlin and staff member Guillermo Blacker. Scott McLaughlin was promoted as the
12 new Executive Director of the NM Spaceport Authority on 03/02/2021 only three months later. The fact that the
13 board did not select an Executive Director from a nation-wide search with extensive work experience shows intent
14 to give the position to Scott McLaughlin as a reward for participating in the fraud. The board's decision is also
15 flawed because in comparison to potential internal candidates for the position, Scott McLaughlin is the least senior
16 of all the managers with the least experience. For instance, Dr. Bill Gutman is a manager who had been working on
17 the Spaceport America project since its inception and had previously submitted his resume to the board for
18 consideration for Executive Director. This is evidence that the Defendants did not want someone external or
19 someone with experience as Executive Director who would question their fraudulent actions. The evidence shows
20 the board hired Scott McLaughlin because he had proved to the board that he would go along with the fraud.

21 168. The facts in this complaint show that both Scott McLaughlin and Guillermo Blacker
22 knew the board's actions were wrong. They knew it was wrong to submit a press release containing The McHard
23 Firm report which they knew contained false statements. They knew it was wrong to retaliate against the
24 whistleblower, ZD. They knew it was wrong for the Governor to remove Rick Holdridge from the board to
25 influence the board vote and intimidate the other board members. They knew it was wrong to refinance the bonds
26 when they knew there were multiple cheaper options. They knew they had an obligation to perform a public RFP to
27 ensure they received the best refinance terms for the NM taxpayers. Instead, both Scott McLaughlin and Guillermo
28

1 Blacker recommended to the board to participate in the fraud and refinance the Spaceport Gross Receipts Tax
2 bonds with the NM Finance Authority, costing the NM taxpayers millions of dollars.

3 169. Marquita Russel, the CEO of the NM Finance Authority, played an active role in the
4 fraud. As mentioned earlier, Michelle Coons stated she had been vocal with the NM Finance Authority that the NM
5 Spaceport Authority would be exercising the option to refinance. The NM Finance Authority did not want to lose a
6 customer to refinancing with another bank. As shown in the email from ZD to Alicia Keyes and Jon Clark, Alicia
7 Keyes had been communicating with Marquita Russel about refinancing the Spaceport Gross Receipts Tax bonds.
8 ZD was very vocal about his opposition against refinancing with the NM Finance Authority because it would
9 needlessly cost the NM taxpayers millions of dollars. But instead of letting the NM Finance Authority lose the
10 refinance, the facts in this complaint are evidence the Defendants framed the whistleblower, ZD, with crimes he did
11 not commit, forced ZD into a constructive discharge, and threatened ZD with false criminal prosecution to discredit
12 and silence him. The Defendants issued The McHard Firm report full of false statements to the public to retaliate
13 against ZD, cover up the fraud, and deceive the NM taxpayers.

14 170. At the following board meeting on 02/11/2021, the board meeting notes (Exhibit 24)
15 state that a letter from Attorney General Hector Balderas was presented to the NM Spaceport Authority board. The
16 letters from the Attorney General have not been released to the public. Attorney General opinion letters are
17 normally posted to the Attorney General's website, but for some reason the letters to the NM Spaceport Authority
18 were not posted. It was not mentioned during the board meeting, but it was later reported by the Las Cruces Sun
19 News on 02/13/2021, that the letter was signed by Chief Counsel Matt Baca (Exhibit 25).

20 171. At the 02/11/2021, the NM Spaceport Authority board voted to perform a private
21 placement of the bonds with the NM Finance Authority. The board meeting notes (Exhibit 24) identifies each board
22 member by name, providing evidence of every board member's involvement in the fraud.

23 172. The NM Spaceport Authority board failed to disclose that the signatory of the letter was
24 not Hector Balderas and instead Alicia Keyes announced the letter came from the Attorney General. This is a
25 significant misrepresentation by the board.

26 173. Reporting by the Sierra County Sun on 02/19/2021 (Exhibit 26) explains there were
27 actually two letters written by Mike Baca. The first letter was written on 02/10/2021 and the second letter was
28 written one day later on 02/11/2021.

1 174. The first letter states with regards to the criminal allegations against the whistleblower
2 ZD that The McHard Firm findings “do not indicate any particular individual criminal conduct or violation of law.”
3 However, the second letter dramatically changes the Attorney General’s position to state “No conclusion has been
4 reached by our office regarding the potential violations stated by the auditing firm” indicating the Attorney General
5 was continuing to threaten criminal prosecution against the whistleblower ZD.

6 175. The Attorney General has not provided any explanation of the dramatic change in
7 opinion on the whistleblower ZD. However, the change between the two letters is evidence of collusion between
8 the Defendants in this case. Someone influenced the Attorney General to change his opinion within the 24 hours
9 between the two letters. The Attorney General changed his opinion to do what the other Defendants wanted, which
10 was to threaten to bring false criminal charges against the whistleblower ZD in malicious prosecution. The timing
11 of the letters is also evidence of interference given that it is not reasonable the Attorney General could make such a
12 significant change in opinion within 24 hours.

13 176. The timing of the letters is also evidence of criminal intent in that the second letter
14 arrived on the same day as the NM Spaceport Authority board meeting where the board was voting on the
15 Spaceport Gross Receipts Tax bond refinance. Also, the NM Finance Authority board, and the Spaceport Tax
16 District board also voted on the Spaceport Gross Receipts Tax bond refinance only two weeks later. The timing of
17 the Attorney General issuing the letter at the same time all three boards were voting on the bond refinance is
18 evidence of coordination between the Defendants.

19 177. The Attorney General’s letter also criticizes the handling of bond finances during ZDs
20 employment and supports the findings in The McHard Firm report related to the Spaceport Gross Receipts Tax
21 Bonds. Specifically, the letter determined that revenue from the Spaceport Gross Receipts Tax could not be used
22 for “operational expenses.” To be clear, the letter is referring to use of the tax revenues, not draws against bond
23 funds.

24 178. The Attorney General Hector Balderas’ and Matt Baca’s statements in this letter are
25 false. In fact, the statutes are broadly written and clearly indicate a variety of activities. The Spaceport Gross
26 Receipts Tax is established by NMSA 7-20E-25 which states the taxes are to be used “for the financing, planning,
27 designing and engineering and construction of a spaceport **or for projects or services of the district pursuant to**
28 **the Regional Spaceport District Act.**” [emphasis added] The Spaceport Regional District Act NMSA 5-16-3
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1 defines "project" to mean "any land, building or other improvements acquired as part of a spaceport or associated
2 with a spaceport or to aid commerce in connection with a spaceport and all real and personal property deemed
3 necessary in connection with the spaceport." The purposes stated in the Spaceport Regional District Act NMSA 5-
4 16-2 describe a broad range of activities include "development of a southwest regional spaceport," "promotion,"
5 and "foster tourism." NMSA 5-16-10 defines cooperative powers which includes entering "joint operating
6 contracts" clearly indicating that funds would be used for operations.

7 179. As reported in the Las Cruces Sun News on 02/13/2021 (Exhibit 25), the Attorney
8 General includes a quote of only the first part of the statute in his letter but leaves out the second part of the same
9 sentence (marked in bold above). The part of the sentence that was removed was the language that directly
10 contradicts the Attorney General's determination. It is blatantly false and misleading for the Attorney General to
11 leave out a part of the sentence when quoting a statute in order to determine that these statutes are narrowly
12 defined, and that spaceport tax revenue was somehow misused.

13 180. These facts are evidence the Attorney General wrote a letter containing a significant
14 misrepresentation. The board used the Attorney General's letter to give themselves credibility on their management
15 of the Gross Receipts Tax bonds, discredit the whistleblower ZD and the other refinance options, mislead the NM
16 taxpayers, and commit fraud. These actions show that Attorney General Hector Balderas and Chief Counsel Matt
17 Baca did not act in the best interests of their clients within state government or the NM taxpayers, were not
18 objective and independent in their actions, and acted in a way that was unreasonable, resulting in legal malpractice.

19 181. The statement in the Attorney General's letter is so misleading it shows the criminal
20 intent to mislead the public about millions of dollars in bond funds. It shows that Attorney General Hector Balderas
21 knew about the attempt to refinance the Spaceport Gross Receipts Tax bonds and he took intentional action to
22 mislead the public about the bonds.

23 182. The fact that Alicia Keyes has publicly stated on multiple occasions that she was in
24 direct contact with the Attorney General's office on the issue of the Spaceport Gross Receipts Tax bonds is
25 evidence that the letter from the Attorney General's office was an intentional participation in the conspiracy with
26 the Defendants to commit millions of dollars in fraud. Alicia Keyes emails to the Attorney General Hector Balderas
27 was confirmed in the Las Cruces Sun News article on 09/09/2020 (Exhibit 26).

1 183. The McHard Firm report contained an extensive section on false allegations of
2 mismanagement of the Gross Receipts Tax bonds. However, in this section the only legal expert The McHard Firm
3 provides to support their false allegations is the General Counsel of the NM Economic Development Department
4 (who is not a bond expert). The report admits that this allegation is opposed by Melissa Force, the NM Spaceport
5 Authority General Counsel, who would be much more familiar with the legal issues regarding the Spaceport Gross
6 Receipts Tax bonds. The McHard Firm report makes no effort to obtain a legal opinion from the NM Spaceport
7 Authority's own bond lawyers.

8 184. Any attorney reviewing The McHard Firm report would find their legal analysis weak.
9 So, it is troubling that the Attorney General issued a letter supporting the findings in the McHard Firm report. It is
10 absurd that the Attorney General would issue a public opinion on the McHard Firm false allegations without any
11 communication with the whistleblower ZD.

12 185. The Attorney General has not provided an explanation of what research he performed to
13 overturn the legal guidance of the NM Spaceport Authority's bond attorneys from the last ten years.

14 186. The Attorney General's specific allegations regarding misuse of funds deals with a
15 financial concept called "Excess Pledged Revenue."

16 187. Contrary to the Attorney General's opinion, Excess Pledged Revenue is a well-
17 understood part of issuing government bonds. In fact, ZD was following industry best practices that many
18 government entities use when dealing with Excess Pledged Revenue. During his employment, ZD received legal
19 guidance from some of the most well-respected bond lawyers in the Southwestern US including the Rodey Law
20 Firm in Albuquerque and Sherman and Howard in Colorado. ZD passed an IRS audit reviewing Gross Receipts
21 Tax bonds with no findings. ZD also received guidance from the legal counsel of the bond holder themselves, the
22 NM Finance Authority. Additionally, the use of Gross Receipts Tax funds was specifically identified as a separate
23 line item each year in the official NM Spaceport Authority budget and reviewed and approved by both the NM
24 Department of Finance and Administration and voted on by the NM state legislature. The use of these funds has
25 been well known and understood by all these parties for years. All these facts contradict the dramatically different
26 new guidance provided in the Attorney General's letter.

27 188. The facts in this complaint are evidence the Attorney General's letter was motivated by
28 the Defendants' desire to commit fraud. This is shown by the timeline of events. ZD confronted Alicia Keyes about
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her attempt to commit fraud on 06/01/2020 (20 days before ZD's constructive discharge). ZD's constructive discharge occurred on 06/21/2020 (six months before the option date to refinance the Spaceport Gross Receipts Tax bonds allowing enough time for the NM Finance Authority to draft refinance documents). On 08/02/2020, Alicia Keyes and Jeremy Perea sent the email to The McHard Firm to include the false allegations about alleged misuse of the Spaceport Gross Receipts Tax bonds (Exhibit 20). On 09/09/2020, Hector Balderas released a statement to the press saying that Alicia Keyes had specifically requested that he review the NM Spaceport Authority's handling of the Spaceport Gross Receipts Tax bonds (Exhibit 27). This statement was made **BEFORE** the outcome of The McHard Firm investigative report which was dated 10/14/2020. Brian Colon issued the press release with the fraudulent investigation report on 11/24/2020 (four days before the option date to refinance the Gross Receipts Tax bonds), and the board voted to commit fraud and refinance the Spaceport Gross Receipts Tax bonds with the NM Finance Authority on 12/02/2020 (one day after the option date to refinance the Spaceport Gross Receipts Tax bonds). At the same board meeting, the NM Spaceport Authority board used the Attorney General's letter to give their actions credibility as they committed fraud.

189. Hector Balderas' statement to the press on 09/09/2020 is evidence the Defendants were working together and they all knew the goal was to retaliate against ZD and mislead the public about the Spaceport Gross Receipts Tax bonds. The Attorney General somehow knew beforehand that the false statements about the Spaceport Gross Receipts Tax bonds would be included in The McHard Firm report, even though it was completely unrelated to ZD's whistleblower complaint. This is evidence the false allegations in The McHard Firm report was a predetermined outcome.

190. In Hector Balderas' statement to the press he states, "The spaceport receives public funding and must be legally accountable to New Mexican taxpayers, and we are reviewing this matter to ensure funding was lawfully spent as the Legislature intended." In a great contradiction to this statement, he would later release his letter to the NM Spaceport Authority board, blindly supporting the false statements in The McHard Firm Report. Hector Balderas' own statements to the press admit he was working with Alicia Keyes on the letter which was part of the conspiracy to commit fraud.

191. ZD has since reached out to the Attorney General's office. In a meeting on 12/18/2020, between ZD's attorney and the head of the Criminal section of the Attorney General's office, ZD offered to help

1 and assist in the Attorney General's investigations. Since that meeting, ZD has received no response from the
2 Attorney General.

3 192. The Defendants committed over \$200 Million of securities fraud when Marquita Russel,
4 CEO of the NM Finance Authority, issued public securities using fraudulent disclosure documents. As previously
5 discussed, the NM Finance Authority included the NM Spaceport Authority Gross Receipts Tax Bonds as part of
6 the Public Project Revolving Fund (PPRF). That means that PPRF Bonds were issued backed by the anticipated
7 revenue the NM Finance Authority would receive from the NM Spaceport Authority refinance. Between the dates
8 of 06/21/2020 and 08/30/2021, approximately one year following ZD's constructive discharge on 06/21/2020, the
9 NM Finance Authority issued five PPRF bonds on June 23, 2020 for \$81,000,000, September 22, 2020 for
10 \$38,860,000, February 25, 2021 for \$39,535,000, June 17, 2021 for \$31,305,000, and August 30, 2021 for
11 \$43,610,000. This accounts for total bond issues of \$234,310,000 which the NM Finance Authority failed to
12 disclose required material information in the disclosure documents.

13 193. In the largest bond issuance on June 23, 2020, the NM Finance Authority includes in
14 page A-4 of the official statement a section titled "Largest Repayment Obligations" about the NM Spaceport
15 Authority (Exhibit 28). The document states "As of the date of initial delivery of the Series 2020B Bonds, the
16 Spaceport Authority Securities are projected to be outstanding in the aggregate principal amount of \$45,985,000
17 and are scheduled to mature on June 1, 2029."

18 194. All the official statements for each bond issuance include a table that lists the NM
19 Spaceport Authority as one of the largest "State Loans Receivable" that the bond issuance is based on (Exhibit 29).

20 195. In the official statement of the February 25, 2021 bond issue, it includes an additional
21 footnote on page eight that states "Agreement revenues... have been adjusted to account for the effect of the
22 anticipated refunding of two loans to the New Mexico Spaceport Authority which are currently outstanding... such
23 refunding is expected to occur before June 30, 2021" (Exhibit 30).

24 196. These statements are fraudulent because they fail to disclose material facts. They failed
25 to disclose:

- 26 a. The NM Finance Authority was notified multiple times starting in 2018 that the NM Spaceport
27 Authority was considering other options, which would have removed one of the largest
28

1 receivables from the PPRF, not continuing the liability until 2029 as stated in the disclosure
2 documents.

3 b. The NM Finance Authority issued the PPRF bonds with misstatements guaranteeing the revenue
4 to investors **before** the Spaceport Gross Receipts Tax Bonds were refinanced (see timeline in
5 Exhibit 2). This was deceptive in that if the Defendants told the truth to the NM people, it would
6 not have made financial sense to refinance with NMFA.

7 c. The NM Spaceport Authority became in default on their bond documents on December 2020.
8 The bond documents require the Agency to produce a timely annual audited financial report
9 which would normally have occurred in December 2020. Since ZD's constructive discharge, the
10 Defendants did not hire a replacement CFO, did not perform the required year-end accounting
11 procedures in a timely manner, and did not issue an annual financial report as required in
12 December of 2020. As of 12/01/2021 (over one year later) the Agency still had not released an
13 annual financial report on the State Auditor's website, making the Agency in default on their
14 obligations in the bond documents.

15 d. The NM Finance Authority was involved in a conspiracy to commit fraud in order to give
16 themselves the bond refinancing in a private placement.

17 e. The pending refinance between the NM Finance Authority and the NM Spaceport Authority was
18 fraudulent and made under false pretenses. Therefore, the bond documents submitted to the IRS
19 contain false statements, putting the bonds at risk of losing their tax-free status.

20 197. The fact that the footnote about the NM Spaceport Authority was included in the
21 February 25, 2021 disclosure documents is evidence the Defendants were aware of their obligation to disclose
22 information to investors about the Spaceport bond refinance. But the footnote that was included is grossly
23 inadequate in communicating material information to investors. These investors may not have chosen to invest
24 their money if the Defendants had told the truth about what was happening at the NM Spaceport Authority.

25 198. The NM Finance Authority was obligated to disclose this information as investors have
26 the right to know that it significantly affects the risk of the investment. The statements provided in the official
27 statements of each bond failed to state material facts making the statements misleading in connection with the sale
28 of securities. These facts were material because there is a substantial likelihood that their disclosure would be
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1 considered significant by a reasonable investor. The threshold of materiality is met in this case because there is a
2 substantial likelihood that the information would have been viewed by the reasonable investor as having
3 significantly altered the “total mix” of information available.

4 199. The facts in this complaint are evidence that the NM Finance Authority was at risk of
5 losing the NM Spaceport Authority revenue for the PPRF, the Defendants engaged in a conspiracy to commit fraud
6 to perform a private placement of the bond refinance with the NM Finance Authority, and the NM Finance
7 Authority failed to disclose any of these facts to investors resulting in \$234,310,000 of fraudulent securities. The
8 NM Spaceport Authority board had an obligation to the taxpayers to perform a public RFP for the bond refinance
9 as they knew of cheaper options, and the NM Finance Authority had an obligation to their investors not to issue
10 bonds based on the NM Spaceport Authority revenues until they had achieved the bond refinance fairly and without
11 engaging in fraud.

12 200. The email communication between Marquita Russel and Alicia Keyes is evidence of
13 Marquita Russel’s knowledge and involvement in the conspiracy to commit fraud as well as the Defendants’
14 criminal intent.

15 201. The \$234,310,000 of fraudulent bond issues by the Defendants are evidence that ZD’s
16 whistleblower complaints were based on a good faith belief that the Defendants’ actions constituted an unlawful or
17 improper act. The serious actions of committing securities fraud provides motive for the Defendants to take the
18 extreme retaliatory actions against the whistleblower ZD.

19 202. Since the NM Spaceport Authority bond refinance and the PPRF bond sales were
20 promoted as Tax-Free government bonds, the Defendants’ actions are in violation of IRS code section 6700
21 because the bond documents contained fraudulent statements. The IRS can impose a promoter misconduct penalty
22 on organizers or participants to a bond transaction who make fraudulent statements regarding the tax benefit in any
23 bond transaction. The promoter penalty is generally 50 percent of the gross income derived.

24 203. The Defendants fraudulent actions put the NM Spaceport Authority bond refinance and
25 the PPRF bond sales at risk of action from the IRS and potentially losing the securities’ tax-free status. The
26 Defendants’ actions are contrary to the statements made in the official statements issued by the NM Finance
27 Authority which state “The NM Finance Authority covenants and agrees to and for the benefit of the Owners of
28 Bonds that the NM Finance Authority (i) will not take any action that would cause interest on the Bonds to become
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1 subject to federal income taxation, (ii) will not omit to take or cause to be taken in timely manner, any action,
2 which omission would cause the interest on the Tax-exempt Bonds to become subject to federal income taxation,
3 and (iii) will, to the extent possible, comply with any other requirements of federal tax law applicable to the Bonds
4 in order to preserve the exemption from federal income taxation of interest on the Bonds.”

5 204. For further clarity on the implications of the Defendants’ criminal actions, the result of
6 the fraud is that anyone who purchased some of the over \$200M in fraudulent bonds is at risk of losing their money
7 and they are not aware of this risk. A large amount of the tax revenue backing the bonds must be removed from the
8 PPRF and given back to the Spaceport, of whom it rightfully belongs. Once the tax revenue is returned, there will
9 not be enough money remaining to pay investors. NM Finance Authority CEO, Marquita Russel knew of this risk
10 because she received ZD’s email, and then she issued disclosure documents without disclosing those risks. She lied
11 to those investors who may now lose their money because of the fraud.

12 205. Shortly after the NM Spaceport Authority board vote on 12/02/2020, the NM Finance
13 Authority board voted to approve the NM Spaceport Authority bond refinance on 02/25/2021 according to the
14 publicly posted meeting minutes (Exhibit 31). The NM Spaceport Authority officially voted unanimously to accept
15 the NM Finance Authority’s vote on the Bond Refunding Resolution on 05/06/2021 according to the publicly
16 posted meeting minutes (Exhibit 32).

17 206. Also, at the 05/06/2021 NM Spaceport Authority board meeting, the board reviewed the
18 financial audit FY20 performed by the external auditor Chris Garner from the independent firm Patillo, Brown, and
19 Hill, LLP. The audit results supported the findings of The McHard Firm report and issued findings related to 2020-
20 001 Travel and Per Diem, 2020-002 Compliance over Open Meetings, 2020-003 Anti Donation, 2020-004 Code of
21 Conduct, 2020-005 Cash Disbursements, and 2020-006 Procurement.

22 207. The six audit findings from auditor Chris Garner are repeating the false claims made in
23 the fraudulent report issued by The McHard Firm and they are not true. These findings are not credible as it is an
24 abrupt change from Chris Garner’s audit the previous year that resulted in no findings. In fact, as previously
25 mentioned, less than a year prior, Chris Garner presented in a NM Spaceport Authority board meeting on 07/09/20
26 praising ZD’s financial leadership while presenting the prior year’s financial report. In that meeting, Chris Garner
27 said ZD produced financial statements that were in the top ten percent of NM state agencies. In fact, some of the
28

1 documents referred to in The McHard Firm report are the same documents that were reviewed by the previous
2 year's audit by Chris Garner where they found no findings.

3 208. It is clear from Chris Garner's audit report that NM Spaceport Authority management
4 failed to disclose any of the evidence of the Defendants' criminal activities that is presented in this complaint.
5 Instead, management only provided the false statements from The McHard Firm report. ZD never had the
6 opportunity to communicate with Chris Garner before he issued these findings and Chris Garner only received
7 information supporting the position of the NM Spaceport Authority management. When Chris Garner was writing
8 the audit opinion, he did not know the truth about what happened at the NM Spaceport Authority. The actions of
9 NM Spaceport Authority management to withhold information from Chris Garner during the audit is a violation of
10 the NM State Audit rule NMAC 2.2.2.10.D(2) which requires that the Agency "provide complete, accurate, and
11 timely information to the Independent Public Accountant (IPA)." The facts presented in this complaint is evidence
12 the Defendants lied to the financial auditors in violation of the NM State Audit rule.

13 209. In addition, during the NM Spaceport Authority board meeting on 05/06/2021, board
14 member Ethan Epstein asked, "What are we doing to ensure these issues don't happen again?" Scott McLaughlin,
15 NM Spaceport Authority Executive Director responded with "The appropriate policies are already in place." This is
16 an absurd response. NM Spaceport Authority management is admitting they are not changing any internal controls
17 as a result of these six findings. The reason they are not changing any internal controls is because ZD did not do
18 anything wrong and there is nothing to fix. Scott McLaughlin also mentions he is "implementing intranet process
19 for certain financial aspects of Spaceport America." But Scott McLaughlin fails to disclose that the intranet was
20 something ZD setup and implemented during his tenure as CFO. This is another lie told by Scott McLaughlin to the
21 board and the NM public.

22 210. In addition, the evidence provided in this complaint shows the findings in the FY20
23 audit by Chris Garner are the same violations the Defendants were committing. The evidence shows the Defendants
24 were committing procurement violations, and failing to disclose information in public meetings, and committing
25 securities fraud. The Defendants continue to use false allegations against the whistleblower ZD to cover up their
26 own criminal activity.

27 211. In addition, ZD's constructive discharge happened prior to fiscal year end. It is
28 extremely misleading for the NM Spaceport Authority management to blame ZD for audit findings, when ZD was
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1 not even employed at fiscal year-end. The NM Spaceport Authority management is responsible for not hiring a
2 replacement CFO and not properly performing the closing of the accounting books. If ZD had been allowed to
3 close the books, it is likely that the result would have been excellent audit results as he had received in the previous
4 four years. In fact, it was current NM Spaceport Authority management that is responsible for the mismanagement
5 of the finances, which they are trying to blame on ZD more than a year after his constructive discharge when ZD is
6 not present to defend himself.

7 212. Chris Garner's audit findings are also not credible as they are entirely targeted at ZD.
8 ZD had issued multiple whistleblower complaints, and the audit by Chris Garner one year later is completely silent
9 on ZD's complaints about the NM Spaceport Authority board, the NM Spaceport Authority management, or the
10 ongoing ethical issues at the NM Spaceport Authority. Instead, the six audit findings are entirely focused on
11 discrediting the whistleblower ZD instead of addressing any of the other people involved.

12 213. The release of these findings against ZD in a public board meeting is another example of
13 the ongoing retaliation against ZD for his whistleblower complaints. This release occurred more than one year after
14 ZD's constructive discharge, and the Defendants are still spreading false claims attempting to discredit ZD.
15 According to the meeting notes, Scott McLaughlin states in the meeting "The policies were violated by the
16 previous Executive Director and Chief Financial Officer." The timing of these statements is evidence of the
17 Defendants' criminal intent, as they were made directly before the board voted on the bond refinance resolution.
18 This is the second public board meeting where the board members smear ZD's reputation while at the same time
19 taking an action on the Bond Refinance. This was an attempt by the Defendants once again to discredit ZD's
20 previous complaints against the refinance with the NM Finance Authority.

21 214. The Defendants acted to smear the reputation of the whistleblower ZD and negatively
22 affect his future employment opportunities. These actions are retaliation against ZD after ZD's constructive
23 discharge. These actions include multiple public statements, false reports posted on the New Mexico website,
24 statements to the press, and a press release to the global press. These actions are persistent, ongoing, and
25 coordinated by the Defendants. The Defendants are retaliating because ZD's complaints exposed their wrongdoing,
26 and the Defendants are attempting to prevent ZD from speaking out about the Defendants' ongoing criminal
27 activity.

1 215. In addition to the board's attempt to refinance the bonds under false pretenses, the
2 actions they have taken are not the legally required steps to refinance. Changing the terms of a bond requires
3 properly advertised and documented public meetings so the public has a chance to comment. The initial funding of
4 the Spaceport Gross Receipts Tax Bonds required public votes of approval by three separate boards: The NM
5 Spaceport Authority board, the NM Finance Authority board, and the NM Spaceport District Tax Board. The NM
6 Spaceport District Tax Board's approval is required by statute [5-16-7 NMSA 1978]. There are no meeting notices,
7 agendas, or meeting minutes posted on the NM Spaceport Authority's website for any meeting of the NM
8 Spaceport District Tax Board discussing a refinance the of Spaceport Gross Receipts Tax Bonds. While it has been
9 reported in the Sierra County Sun that the Spaceport Tax District Board met on 02/25/2021 (Exhibit 26), there does
10 not appear to have been proper notice or the opportunity for the public to attend and debate the actions on the
11 bonds. There are no meeting minutes posted so the public has no way of knowing 1) if the meeting occurred 2) if a
12 vote was properly handled or 3) if fraudulent information was presented to the board. The NM Spaceport Authority
13 board and the NM Finance Authority board cannot change the terms of the bonds in a refinance without proper
14 approval of one of the original approvers.

15 216. Without allowing the public the opportunity to participate in a properly performed
16 public vote of the NM Spaceport District Tax Board, any bond refinance is invalid. The facts in this complaint are
17 evidence the Defendants acted to cover up material information from the public and the NM Spaceport District Tax
18 Board and did not provide proper notice to the public to allow them to comment on the refinance. It is also
19 evidence the Defendants knew about the deception and acted with criminal intent to defraud investors. It is also
20 evidence that the current agreement with the NM Finance Authority on the Spaceport Gross Receipts Tax bonds is
21 invalid. It is also evidence the NM Finance Authority has fraudulently issued PPRF bonds backed by revenue
22 bonds that are invalid. It is also evidence the NM Finance Authority failed to disclose to investors of the PPRF
23 bonds that one of the largest revenue sources backing the bonds was invalid.

24 217. The NM Finance Authority has a history of unethical behavior. In 2012, the controller of
25 the NM Finance Authority pled guilty to three felony counts for forging an audit report and committing securities
26 fraud. Also in 2012, a NM Finance Authority accountant pled guilty for stealing \$59,000 from the agency. The
27 evidence in this complaint shows that the NM Finance Authority has not improved the ethical behavior of the
28 Agency's staff.

1 218. In summary, the facts of the securities fraud are as follows:

- 2 a. The bond refinance between NM Spaceport Authority and the NM Finance Authority was
3 entered into under false pretenses
- 4 b. The Defendants coordinated their actions forming a conspiracy
- 5 c. The NM Spaceport Authority board entered into a private placement with the NM Finance
6 Authority when they were obligated to perform a public RFP, since they were aware there were
7 other refinance options that would have saved the NM taxpayers millions of dollars
- 8 d. The NM Spaceport Authority board covered up the facts and failed to disclose the other refinance
9 options in a public board meeting
- 10 e. The Defendants made large payments to The McHard Firm to issue a report which contained
11 false allegations against the whistleblower ZD despite having evidence that showed their
12 statements to be false.
- 13 f. The Defendants then used The McHard Firm report to issue false statements to the public about
14 the Spaceport Gross Receipts Tax bonds
- 15 g. The NM State Auditor Brian Colon issued a public press release which threatened the
16 whistleblower ZD with false criminal prosecution in order to discredit and silence him
- 17 h. Governor Michelle Lujan Grisham illegally removed board member Rick Holdridge following
18 his objection to The McHard Firm investigation
- 19 i. The Defendants removed opposition to the fraud by making an example of the whistleblower
20 through ZD's constructive discharge and Rick Holdridge's illegal removal from the board.
- 21 j. The Attorney General Hector Balderas wrote two letters containing false statements about the
22 Gross Receipts Tax Bonds
- 23 k. The NM Spaceport Authority board then used Attorney General Hector Balderas' letter to give
24 themselves credibility and further mislead the NM taxpayers in committing the fraud, and
- 25 l. The NM Finance Authority issued \$234,310,000 of bonds where they failed to disclose material
26 information to investors.

27 219. The result of the securities fraud is the Defendants wrongfully retain control over
28 roughly \$6M in annual tax revenue collected from Sierra and Dona Ana County. By law, this tax revenue should go
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1 to the Spaceport. The Defendants' actions have locked the NM taxpayers into this fraudulent arrangement for the
2 next ten years.

3 **VI. The Defendants have violated multiple Federal laws**

4 220. The Defendants' actions are evidence of violations of multiple Federal laws. This is
5 evidence that ZD's whistleblower complaints were based on a good faith belief that the Defendants' actions
6 constituted an unlawful or improper act. The serious actions of committing multiple Federal crimes provides
7 motive for the Defendants to take the extreme retaliatory actions against the whistleblower ZD. This complaint
8 provides evidence that the Defendants violated the following Federal laws.

9 221. **18 U.S.C. 1343 – Wire Fraud for Procurement Violations.** The Defendants
10 knowingly participated in a scheme to defraud by means of procurement fraud in the amount of \$79,000. They
11 committed a piggy backing fraud to fraudulently obtain business consulting services of The McHard Firm to write
12 the report used to retaliate against the whistleblower ZD. The Defendants knowingly obtained \$79,000 from the
13 State of New Mexico in violation of the State Procurement Code. The Defendants' activities in some way affected
14 commerce between one state and another state. The McHard Firm report was used as part of the conspiracy to
15 commit securities fraud of the refinance of Gross Receipts Tax Bonds, by using a private placement with the NM
16 Finance Authority instead of a public RFP. Three firms from Texas, Colorado, and New Mexico had
17 communicated to ZD their intention to participate in a public RFP to refinance the NM Spaceport Authority Gross
18 Receipts Tax Bonds. The Defendants' fraudulent private placement refinance with the NM Finance Authority
19 obstructed interstate commerce. The Defendants took substantial steps to commit the crime as shown by the
20 Purchase Orders generated for the payments to The McHard Firm. The Defendants' actions are evidence of intent,
21 in that they performed extra work to generate two separate contracts, rather than the proper method of creating one
22 contract. The Defendants used wire communication (emails) to carry out an essential part of the scheme.

23 222. **18 U.S.C. 1951 – HOBBS Act – Extortion by Nonviolent Threat.** The Defendants
24 threatened ZD with false criminal prosecution to intimidate and silence him regarding ZD's multiple whistleblower
25 complaints. The press release issued by Brian Colon contained false allegations in coordination with the
26 Defendants. The press release was a threat against ZD to ruin his career and reputation. The evidence presented in
27 this complaint show the Defendants acted with intent. The Defendants' activities in some way affected commerce
28 between one state and another state. The press release was used as part of the conspiracy to commit securities fraud
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1 of the refinance of Gross Receipts Tax Bonds, by using a private placement with the NM Finance Authority instead
2 of a public RFP. Three firms from Texas, Colorado, and New Mexico had communicated to ZD their intention to
3 participate in a public RFP to refinance the NM Spaceport Authority Gross Receipts Tax Bonds. The Defendants'
4 fraudulent private placement refinance with the NM Finance Authority obstructed interstate commerce. The
5 Defendants took steps to commit a crime. The extortion against ZD was in coordination with the Defendants' fraud
6 to steal millions of dollars from the NM Taxpayers. The threat is wrongful in that it was unlawful. The Defendants
7 also knew the statements in the report containing allegations against ZD were false. The Defendants knew it was
8 wrong to use the report against ZD to accomplish the fraud of millions of dollars against the NM taxpayers which
9 they knew they were not entitled. ZD's email complaint to Alicia Keyes about the attempted fraud, and the fact that
10 the Defendants proceeded to commit the fraud anyway, shows the Defendants' intent.

11 223. **18 U.S.C. 1951 – HOBBS Act – Extortion Under Color of Official Right.** The
12 Defendants include Public Officials. The Defendants threatened ZD with false criminal prosecution to intimidate
13 and silence him regarding ZD's multiple whistleblower complaints. The press release issued by Brian Colon
14 contained false allegations in coordination with the Defendants. The press release was a threat against ZD to ruin
15 his career and reputation and discredit his whistleblower complaints. The Defendants' threats against ZD were
16 performed in coordination with the official action of the fraudulent refinancing the Gross Receipts Tax Bonds of
17 the NM Spaceport Authority. The threats intimidated and silenced ZD, allowing the Defendants to commit fraud
18 without responding to ZD's whistleblower complaints. The Defendants' activities in some way affected commerce
19 between one state and another state. The press release was used as part of the conspiracy to commit securities fraud
20 of the refinance of Gross Receipts Tax Bonds, by using a private placement with the NM Finance Authority instead
21 of a public RFP. Three firms from Texas, Colorado, and New Mexico had communicated to ZD their intention
22 participate in a public RFP to refinance the NM Spaceport Authority Gross Receipts Tax Bonds. The Defendants
23 fraudulent private placement refinance with the NM Finance Authority obstructed interstate commerce. The
24 Defendants took steps to commit a crime. The extortion against ZD was in coordination with the Defendants' fraud
25 to steal millions of dollars from the NM Taxpayers. The Defendants acted with intent. ZD's email complaint to
26 Alicia Keyes about the attempted fraud, and the fact that the Defendants' proceeded to commit the fraud anyway,
27 shows the Defendants' intent.

1 **224. 18 U.S.C. 1343 – Wire Fraud for Fraudulent Bond Refinance.** The Defendants
2 knowingly participated in a scheme to defraud by means of false and fraudulent pretenses, representations,
3 promises, and omitted facts. The Defendants made statements which were false and omitted facts as part of the
4 scheme which were material, that is, they had a natural tendency to influence, and were capable of influencing, a
5 person to part with money or property. The Defendants acted with the intent to defraud, deceive, and cheat. The
6 Defendants used wire communication to carry out an essential part of the scheme. In this case, Brian Colon issued
7 an electronic press release which was received and acted on by global press outlets.

8 **225. 18 U.S.C. 1343 – Wire Fraud for Fraudulent Bond Issuance.** The Defendants
9 knowingly participated in a scheme to defraud by means of false and fraudulent pretenses, representations,
10 promises, and omitted facts. The Defendants made statements which were false and omitted facts as part of the
11 scheme which were material, that is, they had a natural tendency to influence, and were capable of influencing, a
12 person to part with money or property. The Defendants acted with the intent to defraud, deceive, and cheat. The
13 Defendants used wire communication to carry out an essential part of the scheme. In this case, issuing false
14 statements in the bond documents for the bond issuance of \$234,310,000 of bonds for the NM Finance Authority
15 PPRF.

16 **226. 18 U.S.C. 1344 – Bank Fraud – Scheme to Defraud by False Promises.** The
17 Defendants knowingly carried out a scheme to obtain money from the NM Finance Authority by making false
18 statements or promises and by failing to disclose material information. In this case, staff members of the NM
19 Finance Authority were involved in carrying out the Bank Fraud. The Defendants knew that the statements or
20 promises were false. The statements or promises were material; that is, they had a natural tendency to influence,
21 and were capable of influencing, a financial institution to part with money or property. The Defendants acted with
22 the intent to defraud. The NM Finance Authority holds funds in accounts that are insured by the Federal Deposit
23 Insurance Corporation

24 **227. 18 U.S.C. 1503 – Obstruction of Justice.** The Defendants influenced, obstructed, and
25 impeded the due administration of justice. ZD came forward with multiple whistleblower complaints about the
26 Defendants' attempted criminal activities. The Defendants threatened ZD with false and malicious criminal
27 prosecution to intimidate and silence ZD. The Defendants acted corruptly, using threats and threatening
28 communication, with the intent to obstruct justice.

1 228. **18 U.S.C. 1513 – Retaliating against a witness, victim, or an informant.** The
2 Defendants performed actions with intent to retaliate. The Defendants’ actions were harmful to ZD including
3 interference with the lawful employment and livelihood of ZD, in retaliation for ZD providing multiple
4 whistleblower complaints to the authorities related to the commission of multiple Federal offenses.

5 229. **18 U.S.C. 1957 – Money Laundering – Defendants committed fraud.** The
6 Defendants took NM Taxpayer funds which were restricted to the NM Spaceport Authority, redirected them to NM
7 Finance Authority to pay unnecessary high interest rates, then had NM Finance Authority use those funds to issue
8 low interest loans on other projects in NM, eliminating the restriction on the money for its original purpose. The
9 defendants knowingly engaged or attempted to engage in a monetary transaction. The defendants knew the
10 transaction involved criminally derived property. The property had a value greater than \$10,000. The property was
11 derived from fraud. The transaction occurred in the United States.

12 230. **15 U.S.C. 78j(b) Securities Fraud.** The Defendants willfully used a scheme to defraud
13 the NM Taxpayers, made an untrue statement of a material fact, failed to disclose a material fact that resulted in
14 making the Defendants’ statements misleading, engaged in acts that operate as a fraud and deceit upon a person.
15 The Defendants’ acts were undertaken, they made false statements, and they failed to disclose material information
16 in connection with the refinance of Spaceport Gross Receipts Tax Bonds. The Defendants directly and indirectly
17 used the deception to refinance the Spaceport Gross Receipts Tax Bonds without performing a public RFP, instead
18 issuing a private placement to the NM Finance Authority and costing the NM Taxpayers millions of dollars. The
19 Defendants acted knowingly.

20 231. **18 U.S.C. 1959 – Participating in a Racketeering Enterprise.** The Defendants meet
21 the definition of Racketeering Enterprise. The Defendants are a group of people engaging in a course of conduct
22 which resulted in millions of dollars of fraud. The association of these people was an ongoing formal organization
23 as employees of the State of New Mexico. The group was engaged in or had an effect upon interstate or foreign
24 commerce. In the course of the fraud, the Defendants obstructed interstate commerce. Three firms from Texas,
25 Colorado, and New Mexico had communicated to ZD their intention to participate in a public RFP to refinance the
26 Spaceport Gross Receipts Tax Bonds. The Defendants’ fraudulent private placement refinance with the NM
27 Finance Authority obstructed interstate commerce. The Defendants were engaged in Racketeering Activity defined
28 in 18 US Code 1961 to include:

- a. Section 1343. Wire Fraud for Procurement Fraud
- b. Section 1961(A) Extortion
- c. Section 1343. Wire Fraud for Fraudulent Bond Refinance
- d. Section 1344. Bank Fraud
- e. Section 1503. Obstruction of Justice
- f. Section 1513. Retaliation against a witness, victim, or an informant
- g. Section 1951. HOBBS Act. Interference with commerce, robbery or extortion
- h. Section 1952. Racketeering
- i. Section 1957. Money laundering
- j. Section 1961(D) Fraud in the sale of securities

232. The Defendants' actions show a pattern of racketeering activity. All of these actions were committed within a period of a few years of each other. The acts of racketeering were related to each other, meaning there was a relationship between and among the acts of racketeering. The acts of racketeering amounted to and pose a threat of continued criminal activity. The Defendants' actions are ongoing. They are still retaliating against the whistleblower ZD over a year after his constructive discharge and the fraudulent refinance is expected to continue for another 10 years.

233. **18 U.S.C. 1962(a) RICO – Using or Investing Income from Racketeering Activity.** The Defendants received millions of dollars from fraudulently refinancing the Spaceport Gross Receipts Tax Bonds with the NM Finance Authority. The Defendants used and invested, directly and indirectly, part of that income to benefit the enterprise. The Defendants used the money to fraudulently operate the NM Finance Authority, launder the money, and then issue loans to other projects around NM. The Defendants' activities in some way affected commerce between one state and another state. Three firms from Texas, Colorado, and New Mexico had communicated to ZD their intention to participate in a public RFP to refinance the Spaceport Gross Receipts Tax Bonds. The Defendants' fraudulent private placement refinance with the NM Finance Authority obstructed interstate commerce.

234. **18 U.S.C. 1962(c) – RICO – Conducting Affairs of Commercial Enterprise or Union.** The Defendants were employed by or associated with the Enterprise. The Defendants conducted and participated in the affairs of the enterprise through a pattern of racketeering activity. The Defendants were involved

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1 in the operation or management of the enterprise. The Defendants' activities in some way affected commerce
2 between one state and another state. Three firms from Texas, Colorado, and New Mexico had communicated to ZD
3 their intention to participate in a public RFP to refinance the Spaceport Gross Receipts Tax Bonds. The
4 Defendants' fraudulent private placement refinance with the NM Finance Authority obstructed interstate
5 commerce.

6 **235. 15 US Code 77q (a)(1), (2), and (3) - Use of Interstate Commerce for Purpose of**
7 **Fraud or Deceit.** The Defendants issued disclosure documents during the issuance of \$234,310,000 of bonds that
8 contained misrepresentations and failed to disclose material facts necessary in order to make the statements not
9 misleading. The Defendants employed devices, schemes and artifices to defraud, and engaged in acts, practices and
10 a course of business that operated as a fraud upon investors. The Defendants acted with scienter in that they knew
11 the public documents and statements issued were materially false and misleading, knew that the public documents
12 and statements would be issued to the public, and knowingly and substantially participated in the issuance or
13 dissemination of such statements or documents as primary violations of the securities laws. The investors
14 justifiably relied on the public documents when purchasing the bonds. The investors have suffered damages in that
15 they purchased bonds that were riskier than described by the Defendants, meaning that the investors are entitled to
16 receive lost interest that would reflect higher levels of risk incurred.

17 **236. 17 CFR 240.10b-5 – Making Material Misstatements or Omissions and Fraud in**
18 **Connection with the Purchase or Sale of a Security.** The Defendants issued disclosure documents during the
19 issuance of \$234,310,000 of bonds that contained misrepresentations and failed to disclose material facts necessary
20 in order to make the statements not misleading. The Defendants employed devices, schemes and artifices to
21 defraud, and engaged in acts, practices and a course of business that operated as a fraud upon investors. The
22 Defendants acted with scienter in that they knew the public documents and statements issued were materially false
23 and misleading, knew that the public documents and statements would be issued to the public, and knowingly and
24 substantially participated in the issuance or dissemination of such statements or documents as primary violations of
25 the securities laws. The investors justifiably relied on the public documents when purchasing the bonds. The
26 investors have suffered damages in that they purchased bonds that were riskier than described by the Defendants,
27 meaning that the investors are entitled to receive lost interest due that would reflect higher levels of risk incurred.

1 237. **26 US Code 6700 – Making Fraudulent Statements to the IRS related to the sale of**
2 **securities – NM Spaceport Authority Gross Receipts Tax Bond Refinance.** The Defendants issued disclosure
3 documents related to the refinance of the Spaceport Gross Receipts Tax bonds by the NM Spaceport Authority. The
4 disclosure documents state the bonds are tax-exempt. The disclosure documents contained misrepresentations and
5 failed to disclose material facts necessary in order to make the statements not misleading. The Defendants knew or
6 had reason to know the statements were false or fraudulent. The Defendants engaged in conduct subject to penalty
7 under IRC 6700.

8 238. **26 US Code 6700 – Making Fraudulent Statements to the IRS related to the sale of**
9 **securities – NM Finance Authority PPRF Bonds.** The Defendants issued disclosure documents related to the
10 issuance of \$234,310,000 of PPRF bonds by the NM Finance Authority. The disclosure documents state the bonds
11 are tax-exempt. The disclosure documents contained misrepresentations and failed to disclose material facts
12 necessary in order to make the statements not misleading. The Defendants knew or had reason to know the
13 statements were false or fraudulent. The Defendants engaged in conduct subject to penalty under IRC 6700.

14 239. **15 US Code 45(a) - Conducting unfair and deceptive acts and practices in or**
15 **affecting commerce.** The Defendants made false, misleading, and/or unsubstantiated representations. The
16 Defendants failed to issue a public RFP for the Spaceport Gross Receipts Bond refinance when they were aware
17 there were firms interested in bidding, and instead issued a private placement to themselves. In the process, they
18 made material misrepresentations in bond disclosure documents. To accomplish the fraud, the Defendants retaliated
19 against the whistleblower ZD to silence his complaints. These actions cause substantial injury to customers,
20 competition, and the public. The taxpayers lost approximately \$10M in cost savings, other firms lost approximately
21 \$45M in lost business, and the NM Finance Authority issued \$234,310,000 of fraudulent PPRF bonds to investors
22 containing material misrepresentations. Consumers were unable to avoid the injury due to the Defendants' failure
23 to disclose information. Additionally, the Defendants' actions violated legislated public policy by retaliating
24 against the whistleblower, ZD, a violation of the NM Whistleblower Protection Act. The NM Spaceport Authority
25 and the NM Finance Authority holds funds in accounts that are federally insured by the FDIC. The Defendants'
26 actions were deceptive because the representations, omissions, and business practices misled or likely misled
27 consumers, the consumer's interpretation of the representations, omissions, or business practices are reasonable
28 under the circumstances, and the misleading representation, omission, or business practices are material.

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1 240. The Defendants' actions are also evidence of a violation of the Municipal Securities
2 Rulemaking Board fair-dealing requirement (Rule G-17) and fair pricing requirement (Rule G-30). The NM
3 Finance Authority charged the NM Spaceport Authority and the NM Taxpayers unfair, unreasonable, and excessive
4 mark-ups, and failed to disclose that they were charging excessive mark-ups that the NM Spaceport Authority
5 could receive better interest rates, no reserve fund requirement, and better bond terms by financing directly with
6 public markets in an RFP. The Defendants were working against the interests of the NM taxpayers in order to
7 enrich themselves.

8 **VII. The Defendants have no defense**

9 241. The Defendants have no evidence to support a defense in this civil matter. NMSA 10-
10 16C-4 provides that "an affirmative defense to a civil action brought pursuant to this section that the action taken
11 by a public employer against a public employee was due to the employee's misconduct, the employee's poor job
12 performance a reduction in work force or other legitimate business purpose unrelated to conduct prohibited
13 pursuant to the Whistleblower Protection Act and that retaliatory action was not a motivating factor."

14 242. There is no evidence that the Defendants' actions were in response to employee
15 misconduct by ZD. There is evidence that Melissa Force and Daniel Hicks were working on terminating ZD,
16 however there is no evidence that this was for any other reason than retaliation against ZD for protected
17 communications under the NM Whistleblower Protection Act. All the threats of termination made towards ZD by
18 Alicia Keyes, Daniel Hicks, and the other Managers at the NM Spaceport Authority were in response to ZD's
19 whistleblower complaints.

20 243. In fact, ZD did not even know the full extent of the attempts to terminate him until after
21 Daniel Hicks' final day in the office. This was confirmed while ZD was taking two days vacation after his
22 6/12/2020 complaint. The acting CEO Melissa Force interrogated Accountant Sandra Franco on ZD's
23 whistleblower complaint. During this conversation, Melissa Force revealed to Sandra Franco the efforts to
24 terminate ZD. Sandra Franco later disclosed this information to ZD.

25 244. It was never communicated to ZD that there was any reason to terminate him other than
26 the threats made in response to ZD's whistleblower complaints. There was no notice, no complaints filed against
27 him, no warning, no employee improvement plan, no negative employee review, and no negative record in ZD's
28 human resource file. There is no evidence indicating any employee misconduct.

1 245. In contrast, there are many pieces of evidence to support that ZD's job performance was
2 excellent. In June 2020, the same month as ZD's constructive discharge, Daniel Hicks signed and submitted to the
3 Department of Finance and Administration (DFA) an annual CFO certification request for ZD. DFA then approved
4 the request. This is a letter the Executive Director submits every year reviewing and approving the CFO to continue
5 in the role for another year. DFA instituted this policy to remove CFO's that were underperforming in state
6 agencies. Neither Daniel Hicks nor DFA provided any negative feedback at all about ZD's job performance. If
7 there were any concerns about ZD, this was the Defendants' opportunity to mention them.

8 246. Additionally, financial performance of the agency was stellar during ZD's tenure as
9 CFO, with revenues more than doubling during this period. Even with rapidly expanding Agency demands, ZD
10 managed a changing budget and cash flow while maintaining positive cash balances in Agency funds.

11 247. Additionally, there were five independent external audits that all concluded that ZD's
12 performance as CFO was excellent, with the most recent auditor, Chris Garner, quoted in the board meeting
13 minutes as describing ZD's financial management within the top 10% of Agencies they audit.

14 248. And as mentioned earlier, Governor Michelle Lujan Grisham performed a joint press
15 conference with the NM Spaceport Authority in January 2020 about the great financial performance of the Agency
16 resulting in glowing reviews in the press.

17 249. After ZD's constructive discharge, The McHard Firm investigation did produce a
18 fraudulent report that makes allegations against ZD of misconduct. Besides the fact that the allegations against ZD
19 are false, these complaints are an invalid defense because they arose after ZD was no longer employed by the
20 Agency. Additionally, the report admits these allegations came as a result of the fraudulent investigation itself. The
21 report states "During our investigation of Mr. DeGregorio's complaint, we found other issues of concern which
22 required inclusion in this investigation... We found issues of concern regarding Mr. DeGregorio himself...
23 Numerous individuals came forward with complaints and information relevant to this matter." The report never
24 reveals the identities of the individuals who came forward with lies against ZD, or whether these were the same
25 individuals who were implicated in ZD's whistleblower complaints who had personal motivations to lie. The report
26 admits that the actions against ZD are direct retaliation from ZD's whistleblower complaint.

1 250. There is no evidence that there was a reduction in workforce. In fact, the NM Spaceport
2 Authority was growing in staff size. Additionally, a reduction in workforce would not have resulted in terminating
3 the CFO position.

4 251. There is no legitimate business purpose for the retaliation against ZD. It is clear from
5 these facts that there is no basis for an affirmative defense of the Defendants' retaliatory treatment of ZD. To the
6 contrary, the evidence shows the retaliation was related to ZD's protected disclosures.

7 **VIII. The Defendants made false allegations against ZD**

8 252. The 362-page report produced by The McHard Firm contains many false allegations
9 against ZD. The following paragraphs in this section (Section VIII) show how these false statements are easily
10 disproven, and that The McHard Firm knew statements in the report were false. The evidence shows The McHard
11 Firm knowingly made the false statements, misrepresented the facts, tampered with evidence, and knowingly
12 omitted relevant information to attack the whistleblower, ZD. These facts are evidence The McHard Firm
13 intentionally acted with the other Defendants in a conspiracy to cover up more than \$200 Million of securities
14 fraud. The McHard Firm committed these acts for an unusually large payment of taxpayer funds from the other
15 Defendants. This violates the professional standards of a CPA Firm and shows malice by the Defendants.

16 253. The investigation report by The McHard Firm contains false criminal allegations against
17 the whistleblower, ZD. The allegations relate to three travel reimbursements for other employees totaling
18 \$5,996.34. These allegations are false. The report falsely alleges ZD processed these travel reimbursements using
19 incorrect approval procedures and therefore violated NMSA 30-23-3, Making or Permitting a False Public
20 Voucher.

21 254. The McHard Firm's allegations are not only incorrect, but they are also deceptive. The
22 McHard Firm took single pages from the travel files, removed the backup documentation that explained the pages,
23 then presented the single pages out of context as errors and accused the whistleblower ZD of criminal activity.
24 There are pages of the files that are missing. There are memos, backup emails, and receipts that are not included.
25 The pages that were presented as evidence in The McHard Firm report even reference other documents that are not
26 included. The missing pages are evidence the McHard Firm report intentionally tampered with evidence to frame
27 the whistleblower ZD for crimes he did not commit. The McHard Firm never explains that there are missing pages
28 or what they did with the rest of the records.

1 255. In one example, the report falsely alleges one of Daniel Hicks' travel requests for an
2 industry function by Vice President Pence had no justification for ZD to approve the request. The report states "Mr.
3 Hicks traveled numerous times to the site of Space Council meetings... However, some witnesses told us that they
4 doubted that he actually was able to attend the Space Council meetings... There is no evidence that Mr. Hicks'
5 Statement to Mr. Piatek that he was invited by Vice President Pence's Office is true."

6 256. In fact, there was a history of emails directly between Daniel Hicks and Vice President
7 Pence's Office seen by multiple members of NM Spaceport Authority staff. Additionally, there is photographic
8 evidence of Daniel Hicks attending one of these regular meetings displayed on NASA's website (Exhibit 33). This
9 photographic evidence contradicts The McHard Firm's allegations.

10 257. Additionally, the NM Spaceport Authority board and staff also knew these allegations
11 were incorrect as this photograph was included in numerous past NM Spaceport Authority presentations. One of
12 these meetings was a public NM Spaceport Authority board meeting that occurred on Dec 6, 2017 (with the board
13 and staff present). This meeting is documented in the meeting notes in detail with Daniel Hicks showing everyone
14 present the photograph while stating, "On October 5th, I was invited up to Chantilly, Virginia. Vice President
15 Pence's office invited about sixty of the industry leaders to come join him on the inaugural Space Council Meeting.
16 He had all of his cabinet secretaries there that are on the council: the Secretary of State, Secretary of Commerce,
17 Secretary of Transportation, the Department of Defense."

18 258. To be clear, the NM Spaceport Authority board and staff knew there was photographic
19 evidence that contradicted the criminal allegations against the whistleblower ZD, and they said nothing. In
20 addition, the Defendants released a press release stating the opposite of what they knew to be true, falsely claiming
21 that ZD was a criminal. The photograph is evidence the Defendants knowingly lied to the public in order to destroy
22 the life of the whistleblower ZD. The photograph is not only evidence that the allegations in the report against ZD
23 were false, it is evidence that the Defendants were knowledgeable and active in the cover-up and fraud.

24 259. The other two false criminal allegations accuse ZD of using improper procedure and
25 "back-dating" travel requests by claiming forms were not signed and dated properly. The allegations relate to a
26 form called the "Travel Request" form. The McHard Firm fails to mention that these forms were not the only forms
27 used for approval. Other documentation such as emails could be used as approval as well. The McHard Firm uses
28

1 these one-page forms as evidence of these false allegations but does not include the backup paperwork. The
2 McHard Firm only presented the pages that support their false allegations.

3 260. Additionally, The McHard Firm fails to explain how these forms are used in situations
4 when physical signatures in person are not possible, like electronic email authorizations. In fact, other approvals
5 besides the “Travel Request” form can be used, like emails. Two examples of email approvals from the Governor’s
6 office were even included in other parts of the report, but The McHard Firm never addresses the blatant
7 contradiction with the allegations against ZD and the Governor’s own email approvals.

8 261. Additionally, the “Travel Request” form is not required by law. It is unclear which law
9 ZD is even accused of violating. The NM Department of Finance and Administration (DFA) publishes accounting
10 guidelines for travel in FIN 5.8 “Travel Reimbursement for Per Diem, Actual Expenses, and Mileage.” There is no
11 mention of the “Travel Request” form, only the Itemized Schedule of Travel Expenses (ISTE) form completed after
12 the trip. It is clear the McHard Firm is providing incomplete and false information to smear ZD’s reputation. In
13 fact, the “Travel Request” form is not an official approval, but internal Agency backup documentation. Once again,
14 The McHard Firm report presents the documents out of context.

15 262. ZD followed all proper approval procedures related to these transactions. SHARE is the
16 electronic accounting system used by the State of New Mexico. All approvals must be recorded in SHARE as the
17 official book of record. Each travel reimbursement request undergoes two approvals: Level 1 and Level 2. In both
18 these cases, Level 1 and Level 2 approvals were properly performed by Zach DeGregorio, CFO and Sandra Franco,
19 Accountant and recorded in SHARE in full compliance of the NM State Audit Rule NMAC 2.2.2.12.A.5(a). The
20 allegation that these travel vouchers were not properly approved is absurd.

21 263. The evidence shows that The McHard Firm invented a set of procedures and invented
22 laws regarding the “Travel Request” form, and then falsely accused ZD of breaking those fake procedures and fake
23 laws. There is no actual evidence to support the criminal allegations against ZD.

24 264. Further, as mentioned previously, there is no explanation of criminal intent or any
25 evidence that ZD benefited in any way from these transactions. The three travel transactions identified by The
26 McHard Firm as the basis of the criminal allegations against ZD were for other employees’ travel, not ZD’s travel.
27 It is troubling that The McHard Firm would make such damaging allegations against a whistleblower without
28 evidence to prove an actual crime.

1 265. An objective evaluation of the criminal allegations against ZD must evaluate them in the
2 context that there was another recent audit over travel requests that did not find a single error in the travel files. In
3 comparison to the fraudulent report from The McHard Firm, where there are obviously missing backup pages, the
4 reasonable conclusion is that the fraudulent report from The McHard Firm was an attempt by the Defendants to
5 frame ZD for crimes he did not commit.

6 266. Further evidence that The McHard Firm's report contained false criminal allegations
7 against the whistleblower ZD, is the Attorney General's own letter responding to The McHard Firm report. As
8 previously mentioned, the first letter issued by the Attorney General states that The McHard Firm findings "do not
9 indicate any particular individual criminal conduct or violation of law." Even though the Attorney General
10 suspiciously reversed this opinion in his second letter, the Defendants' contradiction of their own report destroys
11 the credibility of The McHard Firm's allegations.

12 267. These facts are evidence the Defendants worked together to frame the whistleblower ZD
13 with false criminal allegations. The NM Spaceport Authority staff lied to cover up their own criminal activity. NM
14 Economic Development Secretary Alicia Keyes and NM State Auditor Brian Colon hired The McHard Firm to
15 deliver a report that supported a predetermined outcome to target the whistleblower ZD. The McHard Firm
16 tampered with evidence so they could receive unusually high fee payments from the Defendants.

17 268. The investigation report by The McHard Firm also contains false allegations against ZD
18 of general financial mismanagement. These allegations are absurd. It is hard to justify allegations of
19 mismanagement, given the stellar financial performance of the NM Spaceport Authority during ZD's tenure.
20 Customer revenue more than doubled in amount. ZD managed this rapid growth within budget while maintaining
21 available cash on hand as reported in the independently audited annual financial reports, including over \$4 Million
22 in cash on hand at the end of FY19 (Exhibit 34).

23 269. The McHard Firm wrote an entire section in the report about "Lack of control of
24 Spaceport budget" including the statement, "Spaceport always seemed to be out of money." The McHard Firm
25 wrote this section despite all evidence to the contrary. The McHard Firm never mentions the \$4M in cash available
26 in the NM Spaceport Authority's bank account.

27 270. The McHard Firm knew these allegations were false, as they would have looked at the
28 financial results while writing a section on the budget.

271. Additionally, the NM State Auditor Brian Colon also knew these allegations were absurd, as the NM Office of the State Auditor reviews the NM Spaceport Authority financial statements every year.

272. The McHard Firm report also falsely alleges ZD misused agency funds, specifically excess pledged revenue from the issuance of Spaceport Gross Receipts Tax bonds. These allegations are false. The use of excess pledged revenue is a common part of issuing government bonds and there is nothing unusual about the NM Spaceport Authority using these funds.

273. As discussed previously, the investigators base their false allegation on a legal opinion from the general counsel of the NM Economic Development Department (EDD), but EDD General Counsel is not a bond expert. The McHard Firm report does not include a legal opinion from the NM Spaceport Authority's own bond lawyers who were involved in issuing the Spaceport Gross Receipts Tax bonds.

274. Additionally, the use of funds for these specific purposes was authorized directly by the bond holder the NM Finance Authority.

275. The investigators also admit in the report to reading the minutes of board meetings, and they would have known that the exact use of these funds was discussed and voted on in many public meetings.

276. The report falsely alleges "It is unclear if this [Spaceport Gross Receipts Tax funds] was included in the approved budget for Spaceport." This allegation is also false as Spaceport Gross Receipts Tax funds were specifically identified as a separate line item each year in the official NM Spaceport Authority budget and reviewed and approved by both the NM Department of Finance and Administration and the NM state legislature. The use of these funds has been well known and understood by all these parties for years.

277. Given these facts, it is absurd for The McHard Firm report to allege that these funds were misused in any way.

278. The McHard Firm would have known their statements about the NM Spaceport Authority budget were false, as they would have looked at the budget when writing a section about the budget. The McHard Firm would have seen the separate line item identified and authorized for the use of Spaceport Gross Receipts Tax funds. These facts are evidence the false allegations by The McHard Firm are intentionally written to misrepresent the facts to retaliate against the whistleblower ZD.

1 279. The McHard Firm report also falsely alleges ZD “contributed to, and in some cases
2 instigated violations of the New Mexico Open Meetings Act.” These allegations are false. There is no evidence
3 presented to support these conclusions. In fact, the board meetings and procedures are thoroughly documented.

4 280. The McHard Firm report relies on comments made during a board meeting and taken
5 out of context. Daniel Hicks said, “We can do it [Board votes and approvals] on a phone or video-conference type
6 of thing.” The McHard Firm uses that statement to allege that ZD, Daniel Hicks, and board member Rick
7 Holdridge were holding secret meetings and rolling quorums by phone. However, the statement is completely taken
8 out of context.

9 281. It is clear in reading the full context of the meeting notes that Daniel Hicks made that
10 statement referring to board members using a phone to call into the next properly scheduled board meeting open to
11 the public. Board members were asking if they could attend public meetings by phone rather than attend in person
12 due to the lengthy travel times.

13 282. There is no actual evidence presented by The McHard Firm that secret meetings or
14 rolling quorums occurred because those events never happened. In fact, The McHard Firm cannot identify a single
15 board decision or purchase that was discussed in any of these alleged secret meetings. This is another example of
16 the many false and misleading statements included in the report.

17 283. The McHard Firm would have known their statements about the board meetings were
18 false, because they would have read the rest of the board meeting minutes they excluded from their report which
19 provide the additional context showing their allegations are false. These facts are evidence the false allegations by
20 The McHard Firm are intentionally written to misrepresent the facts to retaliate against the whistleblower ZD.

21 284. Another obvious false statement in the report is the allegation that ZD “negotiated with
22 them [the auditors] to subject the Spaceport to a less rigorous audit.” These allegations are false. It is common
23 knowledge that the events of this case occurred during the same period that New Mexico was switching from paper
24 files to electronic files. Of course, this resulted in efficiencies during accounting audits, where auditors could spend
25 more time accessing files remotely through the internet rather than review paper files in the physical NM Spaceport
26 Authority office location.

27 285. The McHard Firm report misrepresents ZD’s statement in an email about efficiencies
28 into an obvious false allegation of negotiating with the auditors, when there is a simple and obvious explanation:
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1 The auditors were planning their audit to take advantage of efficiencies from New Mexico switching to electronic
2 records. In fact, in reviewing the context of the entire email, which contains a task list by ZD, it shows that ZD is a
3 credible and hard-working accountant.

4 286. The McHard Firm report goes on to state that ZD should lose his CPA license, which
5 would keep him from obtaining future accounting work in New Mexico, causing obvious harm, damages, and
6 retaliation.

7 287. The evidence presented in this complaint shows with a preponderance of evidence that
8 The McHard Firm's allegations against the whistleblower ZD are not consistent with the facts. Further, the
9 evidence shows that the McHard Firm acted improperly and in violation of professional standards for a Certified
10 Public Accountant (CPA).

11 288. Additionally, there was no effort by The McHard Firm or any of the Defendants to
12 contact ZD to validate any of these false criminal allegations prior to releasing the report to the press. ZD met with
13 The McHard Firm at the beginning of their investigation, but never heard from them again.

14 289. It is absurd that Brian Colon would issue a press release containing criminal allegations
15 against the whistleblower, ZD, without any attempt at all to contact ZD and verify the allegations, especially when
16 Brian Colon knew numerous facts that contradicted The McHard Report's allegations.

17 290. The fact that there was no effort to clarify any of these easily explainable allegations,
18 shows that the intention of the report was to retaliate against the whistleblower ZD and not uncover the truth.

19 291. The McHard Firm report includes a disclaimer that states, "If documents or other
20 information later becomes available which supersede, update, or correct the documents and information we relied
21 on, we reserve the right to examine the new documentation and information to inform and potentially revise
22 relevant facts and our opinions as stated here."

23 292. This disclaimer does not remove liability from The McHard Firm or the State of New
24 Mexico from gross negligence throughout this investigation that produced a report full of easily disproved false
25 statements.

26 293. It is absurd that the Defendants claimed in a public press release that they relied on The
27 McHard Firm's report as a basis for their retaliation against ZD. The facts in this complaint are evidence that the
28 Defendants, including the NM State Auditor and the NM Spaceport Authority board and staff, knew a large amount
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1 of information that directly contradicted the false allegations in The McHard Firm report. For example, the voice
2 recording ZD provided in his 06/12/2020 whistleblower complaint clearly shows ZD is not colluding with Daniel
3 Hicks. Any reasonable person in the Defendants' position would have found The McHard Firm report absurd.

4 294. The facts in this complaint are evidence The McHard Firm knowingly made false
5 statements, misrepresentations, withheld information, tampered with evidence, and showed unreasonable bias that
6 far exceeds any acceptable professional standards. The McHard Firm's false allegations were weaponized and used
7 to retaliate against the whistleblower, ZD, and cover up the Defendants actions to commit over \$200 Million of
8 securities fraud.

9
10
11 **COUNT 1: Violations of the NM Whistleblower Protection Act (NMSA 10-16C-1 to 10-16C-6)**

12 295. ZD restates, re-alleges, and incorporates by reference each of the allegations set forth in
13 the rest of this Complaint as if fully set forth herein.

14 296. The Defendants violated both NMSA 10-16C-3(A) and NMSA 10-16C-3(C) of the NM
15 Whistleblower Protection Act which states "A public employer shall not take any retaliatory action against a public
16 employee because the public employee:

- 17 a. communicates to the public employer or a third party information about an action or a failure to
18 act that the public employee believes in good faith constitutes an unlawful or improper act;
19 b. provides information to, or testifies before, a public body as part of an investigation, hearing or
20 Inquiry into an unlawful or improper act; or
21 c. objects to or refuses to participate in an activity, policy or practice that constitutes an unlawful or
22 improper act."

23 297. ZD is a public employee, as defined at NMSA 1978, Section 10-16C-2(B) of the NM
24 Whistleblower Protection Act.

25 298. The State of New Mexico is a public employer as defined at NMSA 1978, Section 10-
26 16C-2(C) of the NM Whistleblower Protection Act.

27 299. ZD communicated to his employer on multiple occasions about unlawful and improper
28 acts and objected to participating in unlawful and improper acts. This complaint describes ten specific incidents
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1 that all meet the definition of protected action under the NM Whistleblower Protection Act. Taken as a whole, the
2 incidents together establish a complaint against the ongoing violations from ZD's employer, meeting the definition
3 of protected action under the NM Whistleblower Protection Act. The protected communications include:

- 4 a. ZD communicated with the Governor's office about Alicia Keyes' attempt to falsify financial
5 reports.
- 6 b. ZD communicated with Alicia Keyes about her attempt to commit fraud in directly refinancing
7 with NM Finance Authority through a private placement.
- 8 c. ZD communicated with Daniel Hicks about his attempts to commit fraud by approving contracts
9 without board approval.
- 10 d. ZD communicated with Daniel Hicks about his attempts to commit fraud by approving contracts
11 without DFA approval.
- 12 e. ZD communicated with other NM Spaceport Authority Managers including Chris Lopez, Melissa
13 Force, and Scott McLaughlin about their attempts to violate procurement code.
- 14 f. ZD communicated with Daniel Hicks about his attempt to violate State Personnel Office
15 regulations in Guillermo Blacker's promotion.
- 16 g. ZD communicated with Daniel Hicks and the other Managers about the improper response to
17 allegations of illegal drug use at Spaceport America.
- 18 h. ZD communicated with Rick Holdridge about the secret meetings between the Governor's Office
19 and Virgin Galactic.
- 20 i. ZD communicated with the NM Authority Board, the NM State Personnel Office, and the
21 Department of Finance and Administration, about the ongoing violations at the NM Spaceport
22 Authority.
- 23 j. After ZD's constructive discharge, ZD communicated with The McHard Firm investigators, the
24 State Auditor's Office, and the NM Attorney General's office about the ongoing violations at the
25 NM Spaceport Authority.

26 300. ZDs complaints were a matter of public concern because they dealt with the handling of
27 taxpayer funds, and the Defendants' attempts at criminal activity.

1 301. ZD's good faith belief that the Defendants' actions constituted an unlawful or improper
2 act is justified, because following ZD's constructive discharge the evidence shows the Defendants proceeded to
3 commit over \$200 Million of fraud.

4 302. Constructive Discharge is a method of retaliation. To establish constructive discharge
5 occurred, the employee must allege facts sufficient to find that the employer made working conditions so
6 intolerable, when viewed objectively, that a reasonable person would be compelled to resign (Derr v. Gulf Oil Corp.,
7 796 F.2d 340, 344 (10th Cir. 1986)). This complaint shows the Defendants took the following actions against ZD: 1)
8 threatened termination, 2) reduced accounting staff, 3) threatened a false criminal investigation, 4) created a toxic work
9 environment by ignoring the ongoing ethical issues around procurement violations from ZD's complaints 5) refused
10 ZD's multiple requests to resolve the ongoing ethical issues and procurement violations, 5) coordinated among the
11 Defendants creating a conspiracy to retaliate against ZD, and 6) forced ZD to choose between his job and
12 committing a crime. These conditions created a hostile work environment sufficiently severe that a reasonable
13 person would resign.

14 303. ZD's communications to his employer occurred over a six-month period in multiple
15 methods to multiple parties, allowing ZD's employer a reasonable opportunity to resolve the ongoing and escalating
16 issues. Instead, every request from ZD was met with increased retaliation.

17 304. The Defendants retaliation against ZD continued post-employment for over a year in an
18 attempt to smear ZD and discredit ZD's communications about the Defendants' ongoing illegal activities. Even
19 though ZD was no longer employed, the Defendants:

- 20 a. continued a targeted false investigation against him
- 21 b. issued a press release containing false criminal allegations
- 22 c. falsely accused ZD of mishandling Spaceport Gross Receipts Tax bond funds in a letter issued by
23 the NM Attorney General and discussed in a public board meeting.
- 24 d. issued false audit results with the FY20 financial statement that repeated the false criminal
25 allegations

26 305. There is legal precedent for this court to find in favor of the whistleblower ZD. In Smith
27 v. LHC Grp., Inc. (Smith v. LHC GROUP, INC., Court of Appeals, 6th Circuit 2018) the Sixth Circuit Court
28 analyzed the meaning of constructive discharge in relation to "whistleblowing" under the False Claims Act. In that
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1 case, Director of Nursing, Smith was aware other employees regularly bypassed proper procedures. Given her
2 knowledge that her employers were perpetuating health care fraud regardless of her complaints, the plaintiff felt she
3 could either quit or continue to participate in a scheme she believed was defrauding the government. Therefore,
4 Smith quit her job to avoid implication in fraud, which the Sixth Circuit found any reasonable person in the
5 circumstances would have done to protect her nursing license and reputation. ZD, like Smith, could not distance
6 himself from the fraud taking place and was left to worry about being charged with fraud by the government if he
7 were to continue his everyday activities and duties. ZD's complaint is also consistent with the Peterman principle
8 (Petermann v. Int'l Brotherhood of Teamsters, 344 P. 2d 25 - Cal: Court of Appeal, 2nd Appellate Dist., 2nd Div.
9 1959). This is a well-established concept in employment law that an employee should not be faced with the dilemma
10 of violating the law or losing his job.

11 306. There is a direct causal connection between the retaliation and ZD's protected
12 communications under the NM Whistleblower Protection Act. ZD had notified the Defendants about his complaints
13 on multiple occasions showing a direct causal connection. Further, the Defendants have publicly admitted in the
14 press that their actions against ZD were in response to ZD's whistleblower complaint. Also, there is no evidence of
15 poor job performance, other than from the fraudulent investigation. In fact, every indication shows that ZD's job
16 performance was excellent. The McHard Firm investigation documents themselves admit the criminal allegations
17 against ZD were not existing prior to his constructive discharge but were discovered during the fraudulent
18 investigation itself.

19 307. The timeline corroborates the direct causal connection between the retaliation and ZD's
20 protected communications under the NM Whistleblower Protection Act. In the example of the securities fraud
21 involving the refinance of the Spaceport Gross Receipts Tax bonds, ZD confronted Alicia Keyes about her attempt
22 to commit fraud on 06/01/2020 (20 days before ZD's constructive discharge). ZD's constructive discharge occurred
23 on 06/21/2020 (six months before the option date to refinance the Spaceport Gross Receipts Tax bonds and enough
24 time for the NM Finance Authority to draft refinance documents), Brian Colon issued the press release with the
25 fraudulent investigation report on 11/24/2020 (four days before the option date to refinance the Spaceport Gross
26 Receipts Tax bonds), and the board voted to commit fraud and refinance the Spaceport Gross Receipts Tax bonds
27 with the NM Finance Authority on 12/02/2020 (one day after the option date to refinance the Spaceport Gross
28

1 Receipts Tax bonds). All ZD's complaints show similar temporal nexus that the protected action that occurred was
2 closely followed by the adverse action.

3 308. ZD's complaint provides evidence of all elements required for civil action under the NM
4 Whistleblower Protection Act. 1) ZD was engaged in a protected activity by issuing multiple protected
5 communications to the Defendants to prevent and stop violations and fraud 2) ZD faced retaliation through
6 constructive discharge and post-employment retaliation, and 3) There was a direct causal connection between the
7 retaliation and ZD's whistleblower complaint. Many of the facts in this case have been covered in the global press
8 and are undisputed.

9 309. There is a preponderance of evidence that shows the defendants are in violation of the
10 NM Whistleblower Protection Act and ZD must be compensated for damages. Preponderance of evidence simply
11 means to prove that something is more likely than not. Preponderance of evidence is the burden of proof in a civil
12 trial, meaning that if there is a greater than 50% chance that ZD's claim is true, then the case must be decided in the
13 ZD's favor. Given that evidence presented in this complaint contains public documents and facts that are undeniably
14 true, and have been widely reported in the media, ZD's complaint meets the standard of preponderance of evidence.

15 310. The Defendants' actions in this complaint are so egregious that they are liable for
16 Punitive Damages. The Defendants' actions are malicious, willful, reckless, wanton, fraudulent, and in bad faith.
17 The evidence shows the Defendants retaliated against the whistleblower ZD, and once they removed ZD through a
18 constructive discharge, the Defendants proceeded to commit over \$200 Million dollars in fraud against the NM
19 taxpayers. The Defendants' actions were malicious because the evidence shows there was intent to harm. The
20 Defendants were knowledgeable, as ZD had previously complained about their actions, and they proceeded to
21 commit fraud anyway. ZD's complaints show the Defendants knew their actions were wrong, and they knew their
22 actions would cause both ZD harm and the NM taxpayers harm. The Defendants' actions were reckless. For
23 example, the Defendants knew there were multiple options to refinance the Gross Receipts Tax bonds and they acted
24 with utter indifference to the consequences to others in order to achieve their fraud. The Defendants' actions were
25 wanton conduct in that as government leaders, they have a responsibility to act in the best interest of their
26 constituents, and instead they committed fraud in utter indifference and conscious disregard for ZD and the NM
27 taxpayers. All the evidence presented in this complaint justifies awarding punitive damages.

1 311. NMSA 10-16C-4 provides that “an affirmative defense to a civil action brought pursuant
2 to this section that the action taken by a public employer against a public employee was due to the employee’s
3 misconduct, the employee’s poor job performance a reduction in work force or other legitimate business purpose
4 unrelated to conduct prohibited pursuant to the Whistleblower Protection Act and that retaliatory action was not a
5 motivating factor.” In this complaint, the Defendants have no meaningful defense. There is no evidence of any
6 negative employee performance, no negative human resource records, and ZD had not had any disciplinary actions.
7 To the contrary, there is every indication that ZD’s job performance was excellent. The evidence in this complaint
8 has also shown that the Defendants criminal allegations made after ZD’s constructive discharge are biased and false.
9 Additionally, this complaint provides a preponderance of evidence linking the retaliatory actions of the Defendants
10 to the protected communications of ZD. It is clear from these facts that there is no basis for an affirmative defense.

11 312. NMSA 10-16C-6 requires that the action be filed within two years from the date on
12 which the retaliatory action occurred. ZD’s constructive discharge occurred on 6/21/2020 within the statute of
13 limitations.

14 313. NMSA 10-16C-4 provides that the public employer shall be liable for damages “in
15 addition to any other remedies provided for in any other law or available under common law.”

16 314. As a direct result of the Defendants’ actions in violation of the NM Whistleblower
17 Protection Act, ZD has suffered damages. Damages are listed in Exhibit 1. The Defendants are liable for all
18 damages.

19 **COUNT 2: Malfeasance and neglect of duty by auditor or treasurer (NMSA 8-6-6)**

20 315. ZD restates, re-alleges, and incorporates by reference each of the allegations set forth in
21 the rest of this Complaint as if fully set forth herein.

22 316. NMSA 8-6-6 provides “If the auditor or treasurer shall wilfully [willfully] neglect or
23 refuse to perform any duty enjoined by law, or shall be guilty of any oppression or extortion in the performance of
24 any legal duty, or shall receive any fee or reward for the performance of any legal duty not allowed by law, or by
25 color of his office shall knowingly do any act not authorized by law, or in any other manner than is required by
26 law, he shall, upon conviction upon indictment, be adjudged guilty of a misdemeanor in office and be fined any
27 sum not exceeding one thousand dollars [(\$1,000)]. The state or any person injured, in the name of the state, may
28

1 sue, either before or after an indictment found, upon the bonds of the auditor and treasurer, for any damages
2 suffered by reason of any of the acts of the auditor or treasurer in this section mentioned.”

3 317. NMSA 8-6-1 provides “The state treasurer and the state auditor shall keep their offices
4 at the seat of government of the state. They shall, before entering upon the discharge of their duties, respectively,
5 execute, and deliver to the secretary of state a bond to the state in the sum of three hundred thousand dollars
6 [(\$300,000)] for the treasurer, and twenty-five thousand dollars [(\$25,000)] for the auditor, with good and
7 sufficient sureties to be approved by the governor and conditioned for the faithful discharge of the duties required
8 or which may be required of them by law. The approval of the governor and the date thereof shall be endorsed on
9 the bond.”

10 318. ZD qualifies under NMSA 8-6-6 as “any person injured.”

11 319. NM State Auditor Brian Colon’s actions show willful neglect. Brian Colon participated
12 in \$79,000 of procurement fraud in the purchase of Business Consulting services from The McHard Firm to
13 perform the investigation responding to ZD’s whistleblower complaint. The two POs issued to The McHard Firm is
14 evidence this was a piggy-backing fraud. Brian Colon was involved in the process to hire The McHard Firm and
15 the final investigation report was addressed to both Alicia Keyes and Brian Colon. Brian Colon allowed Alicia
16 Keyes to run her own investigation despite ZD’s complaints directly to the Office of the State Auditor that Alicia
17 Keyes was targeting him.

18 320. Brian Colon participated in over \$200 Million of securities fraud to mislead the NM
19 taxpayers and refinance the Spaceport Gross Receipts Tax bonds with the NM Finance Authority. Brian Colon
20 coordinated activities with the Defendants to issue a press release containing the fraudulent report from The
21 McHard Firm and false statements about the Spaceport Gross Receipts Tax Bonds. Brian Colon issued the
22 fraudulent report from The McHard Firm despite having conflicting evidence that the statements in the report were
23 false including five separate audits that contradicted The McHard Firm’s allegations.

24 321. The voice recording included in ZD’s whistleblower complaint also clearly contradicts
25 The McHard Firm’s conclusion that ZD was colluding with Daniel Hicks. The Defendants used the false statements
26 to mislead the NM taxpayers and refinance with the NM Finance Authority in a private placement costing the
27 taxpayers millions of dollars.

1 322. NM State Auditor Brian Colon’s actions show refusal to perform his duty required by
2 law. Brian Colon’s actions to coordinate activities with the Executive branch in a conspiracy to commit fraud is in
3 direct violation of the Audit Rule (NMAC 2.2.2), and the NM Audit Act (NMSA 12-6-1) that establishes the State
4 Auditor’s Office as an independent and nonpartisan oversight agency. Brian Colon’s partisan actions with the
5 Executive Branch are evidence of his refusal to act in a nonpartisan manner as required by statute.

6 323. NM State Auditor Brian Colon’s actions show oppression and extortion. Brian Colon
7 issued the fraudulent report from The McHard Firm. The report not only contained false allegations against the
8 whistleblower ZD, but it also contained direct threats against ZD including recommendations for false criminal
9 prosecution and threats to take away ZD’s CPA license. Brian Colon’s threats are evidence of oppression and
10 extortion by discrediting and silencing ZD’s opposition to the Defendants’ plans to commit fraud.

11 324. NM State Auditor Brian Colon acted in a manner other than is required by law and
12 improper for his office. Brian Colon intentionally targeted a whistleblower. The result of the false press release was
13 not only devastating for ZD, but harmful for New Mexico in discouraging other whistleblowers to come forward.

14 325. NMSA 8-6-6 provides that ZD may sue for “any damages suffered by reason of any of
15 the acts of the auditor.” As a direct result of the Defendants’ actions in violation of NMSA 8-6-6, ZD has suffered
16 damages. Damages are listed in Exhibit 1. The Defendants are liable for all damages.

17
18 **JURY DEMAND**

19 326. ZD demands a trial by jury on all issues so triable.
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff ZD respectfully requests that the Court enter judgment in favor of ZD
3 and against the Defendants:

- 4 A. Instruct the Defendants not to destroy any documents or emails from the last five years to stop
5 destruction of evidence and allow the parties to conduct discovery.
- 6 B. Decree that the Defendants are in violation of the NM Whistleblower Protection Act;
- 7 C. Award ZD damages to include, but are not limited to:
- 8 a. Loss of Back Pay from the date of constructive discharge to the date of the end of this civil
9 action,
- 10 b. Loss of Future Earning Capacity,
- 11 c. Damages to Personal Property, and
- 12 d. Emotional Distress and Medical Expenses;
- 13 D. Award ZD Punitive Damages;
- 14 E. Award ZD Attorney's Fees and reimbursement of any legal expense related to this legal proceeding;
- 15 F. Award any other equitable relief necessary to prevent and remedy New Mexico's conduct;
- 16 G. Order the Defendants to pay back the \$79,000 acquired through procurement fraud plus interest to
17 compensate the New Mexico taxpayers;
- 18 H. Order Governor Michelle Lujan Grisham to reinstate Rick Holdridge to the board of the NM
19 Spaceport Authority effective immediately;
- 20 I. Decree that the fraudulent refinance agreement between the NM Spaceport Authority and the NM
21 Finance Authority of the Spaceport Gross Receipts Tax Bonds is invalid, and order the Defendants to
22 release the taxpayers of Dona Ana and Sierra Country from the refinance agreement;
- 23 J. Issue an injunction prohibiting further retaliation against ZD and mandate that New Mexico take all
24 necessary steps to cease unlawful conduct including, but not limited to, a restraining order against the
25 Defendants from making any further negative public statements about ZD;
- 26 K. Order New Mexico to remove the The McHard Firm report containing the allegations against ZD
27 from the New Mexico website;
- 28

- 1 L. Order New Mexico to issue a new press release apologizing to ZD for retaliation. (Press release
2 attached to this complaint as Exhibit 35);
- 3 M. Order the NM Attorney General to issue a letter to the NM Spaceport Authority board of directors
4 retracting the previous opinion letters regarding the Spaceport Gross Receipts Tax bonds. (Letter
5 attached to this complaint as Exhibit 36)
- 6 N. Order the Attorney General to communicate to ZD that the Attorney General's office will stop its
7 malicious prosecution of the whistleblower ZD and not pursue the false criminal allegations against
8 ZD related to this case.
- 9 O. Order the audit firm Patillo, Brown, and Hill LLP to issue a public letter retracting their previous
10 audit opinion for the FY20 NM Spaceport Authority Financial audit, as the audit findings clearly did
11 not take into consideration all the facts.
- 12 P. Order the NM State Auditor's office to remove the FY20 NM Spaceport Authority financial statement
13 audit report from New Mexico's website, only to post a revised financial statement with a new audit
14 opinion, and only if the new financial statement and audit opinion does not mention ZD's name.
- 15 Q. Order the State of New Mexico to cease and desist from issuing any new securities until they can
16 provide evidence showing reduction of government corruption and improvement in the treatment of
17 whistleblowers; and
- 18 R. Grant such other and further relief as the Court deems just and proper.

19
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21 Dated the 28th of December 2021.

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Zach DeGregorio, CPA

1 **EXHIBIT 1**

2 **DAMAGES**

3 327. The total damages the Defendants are liable are \$11,244,322.00 with some amounts
4 increasing as this civil action continues, plus attorney fees which are to be determined.

5 328. NMSA 10-16C-4(A) [Count 1] states “A public employer that violates the provisions of
6 the Whistleblower Protection Act shall be liable to the public employee for actual damages, reinstatement with the
7 same seniority status that the employee would have had but for the violation, two times the amount of back pay
8 with interest on the back pay and compensation for any special damage sustained as a result of the violation. In
9 addition, an employer shall be required to pay the litigation costs and reasonable attorney fees of the employee.”
10 NMSA 8-6-6 [Count 2] states “The state or any person injured, in the name of the state, may sue, either before or
11 after an indictment found, upon the bonds of the auditor and treasurer, for any damages suffered by reason of any
12 of the acts of the auditor or treasurer in this section mentioned.” In this case, the Defendants are liable to the
13 employee, Zach DeGregorio (ZD) the following damages.

14 329. **Back pay.** As provided in NMSA 10-16C-4(A), the Defendants are liable for two times
15 the amount of back pay with interest on the back pay. ZD provides a copy of his paycheck at the time of his
16 constructive discharge at a bi-weekly wage of \$3,366.22 (Exhibit 37). Given the circumstances, it is reasonable to
17 calculate back pay using ZD’s rate of pay at the time of his constructive discharge on 6/21/2020. It is reasonable to
18 calculate the time period from the date of ZD’s constructive discharge on 6/21/2020 to the date of the conclusion of
19 the legal action related to this complaint. Damages should continue to increase until the civil matter is resolved. It
20 is reasonable to charge 20.24% annual interest using the same interest rate on ZD’s credit card which was used to
21 pay expenses during ZD’s period of unemployment (Exhibit 38). It is reasonable to double the amount of damages
22 per the statutes in NMSA 10-16C-4(A). Plaintiff ZD respectfully requests the court award damages for back pay of
23 \$434,393, assuming a period of two years with damages increasing as this civil action continues.

24 330. **Reinstatement.** As provided in NMSA 10-16C-4(A), the Defendants are liable for
25 reinstatement of ZD with the same seniority status. In this case, ZD was forced to move out-of-state due to the
26 Defendants’ retaliation and forcing ZD to return to NM for employment is an unreasonable accommodation.
27 Instead, it is appropriate to calculate backpay from the time of constructive discharge to the conclusion of this civil
28 action, as that would have been the date of reinstatement.

1 331. **Special Damages.** NMSA 10-16C-4(A) provides for “any special damage sustained as a
2 result of the violation.”

3 332. **Loss of Earning Capacity.** It is reasonable for there to be compensation for ZD’s lost
4 future wages due to the Defendants’ retaliation. ZD has been unable to find employment at a CFO level. Attached
5 in Exhibit 16 is an email from a job interview stating the reason they cannot interview ZD is because “a quick
6 Google search led me to the reality of the situation at the Spaceport and the report issued on the subject in
7 November.” This is evidence of the false report and the false negative news coverage harming ZD’s chances at
8 future employment. It is also evidence that people often assume official reports issued by government entities are
9 trustworthy, accepting the false statements without further investigation or analysis. It also is evidence of a direct
10 causal connection between the Defendants’ retaliation and ongoing damages to ZD. This email is similar to the
11 other negative interactions ZD faced during his job interviews. Anyone evaluating whether to hire ZD performs an
12 internet search and finds the false negative news articles with false criminal allegations. Given the nature of the
13 internet, these false negative news articles will follow ZD for the rest of his career. Since ZD’s constructive
14 discharge, he applied to forty-two jobs at various types of accounting jobs including CFO, senior accountant, and
15 entry-level accountant positions. ZD found the only company willing to hire him was for an entry-level accounting
16 job. ZD continues to apply for CFO jobs but has not received any job offers. The Defendants’ actions destroyed a
17 promising career. ZD’s resume is attached in Exhibit 39 as evidence that there were no previous blemishes on ZD’s
18 work history. If it were not for the Defendants’ retaliation, the next two decades should have resulted in high
19 earnings due to ZD’s previous significant career accomplishments. Exhibit 40 provides a copy of ZD’s paycheck
20 from his new position as an entry-level accountant at a bi-weekly wage of \$1,923.08. This provides evidence of the
21 negative financial impact of the Defendants’ retaliation against ZD, resulting in a 43% decrease in compensation.
22 Since the false criminal allegations against ZD will stay online forever, it is reasonable to expect that ZD has no
23 hope of increasing beyond an entry-level position. Given these facts, it is reasonable to calculate damages for lost
24 wages for the rest of ZD’s career over the next twenty years. It is reasonable to assess the difference between ZD’s
25 ending wage at the time of constructive discharge on 6/21/2020, and ZD’s current lower annual salary. It is
26 reasonable to assume that without the Defendants’ retaliation, that ZD’s wages would have improved over time.
27 For the next twenty years, it is reasonable to increase the annual wages by 4% per year to account for inflation and
28

1 wage increases. Plaintiff ZD respectfully requests the court award damages for loss of earning capacity of
2 \$1,117,322.

3 333. **Damages to Personal Property.** It is reasonable that civil damages include the value of
4 property damaged by the Defendants' actions. In this case, the Defendants have destroyed the career ZD has built
5 over the previous 20 years. ZD obtained an undergraduate degree from University of Southern California, an MBA
6 in Finance from Arizona State University and a Master of Accounting from University of New Mexico. ZD
7 invested heavily in education expenses at some of the best universities to prepare to work in CFO jobs. The
8 Defendants have destroyed ZD's investments. With the Defendants' false criminal allegations against ZD on the
9 internet forever, ZD will be unable to secure CFO level employment. The Defendants' actions have put ZD in the
10 tragic situation that he is now paying off student loans for a vocation that he will never be able to achieve. This is
11 deeply unjust, and the Defendants need to make ZD whole financially for their violations. It is reasonable that the
12 Defendants should compensate ZD for his education investment that is now worthless. An itemization of education
13 expenses is included in Exhibit 41. Plaintiff ZD respectfully requests the court award damages to personal property
14 (educational investment) of \$197,148.70.

15 334. **Medical Expenses.** The Defendants' actions have caused intense and sustained
16 suffering which have resulted in real medical expenses for ZD for emotional distress. ZD cannot afford the ongoing
17 treatment he desperately needs because of the economic hardship caused by the Defendants' retaliation. The
18 Defendants acted with intent and maliciously harassed, threatened, and intimidated ZD. The Defendants threatened
19 ZD's livelihood and humiliated ZD with false statements in the press. ZD faced rejections from job interviews due
20 to the Defendants' false statements. Not only did the Defendants destroy ZD's life, ZD must constantly relive the
21 experience. As ZD looks for work, ZD must explain to prospective employers how he is not a criminal. People
22 randomly find the false news stories and question ZD on the false allegations. ZD describes the experience as
23 "every day I am living a nightmare." Before the retaliation, ZD's life was happy and fulfilled. After the retaliation,
24 ZD experiences intense emotional distress through the inability to sleep, nightmares, depression, anxiety, stress,
25 anger, loss of appetite, weight loss, loss of strength and physical ability, loss of productivity, inability to focus, and
26 inability to perform daily tasks. ZD is faced with an impossible situation of being framed for a crime he did not
27 commit by the most powerful government officials in the state who were committing millions of dollars of fraud.
28 The stress of the situation has caused immense emotional devastation impacting all aspects of ZD's life. ZD will be
COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO WHISTLEBLOWER PROTECTION ACT - 87

1 dealing with the mental trauma into the future which will require ongoing therapy. Plaintiff ZD respectfully
2 requests the court award damages for medical expenses and emotional distress of \$500,000.00.

3 **335. Punitive Damages.** The Defendants' actions in this complaint are so egregious that they
4 are liable for Punitive Damages. The Defendants' actions are malicious, willful, reckless, wanton, fraudulent, and
5 in bad faith. The evidence shows the Defendants retaliated against the whistleblower ZD, and once they removed
6 ZD through a constructive discharge, the Defendants proceeded to commit millions of dollars in fraud against the
7 NM taxpayers. The Defendants' actions were malicious because the evidence shows there was intent to harm and
8 the Defendants were knowledgeable, as ZD had previously complained about their actions, and they proceeded to
9 commit fraud anyway. ZD's complaints show the Defendants knew their actions were wrong, and they knew their
10 actions would cause both ZD harm and the NM taxpayers harm. The Defendants' actions were reckless. For
11 example, the Defendants knew there were multiple options to refinance the Gross Receipts Tax bonds and they
12 acted with utter indifference to the consequences to others to achieve their fraud. The Defendants' actions were
13 wanton conduct in that as government leaders, they have a responsibility to act in the best interest of their
14 constituents, and instead they committed fraud in utter indifference and conscious disregard for ZD and the NM
15 taxpayers. The fact that they would destroy the life of ZD, an innocent bystander, all so they could steal from the
16 taxpayers, shows not only utter indifference but also gross abuse of power. All the evidence presented in this
17 complaint justifies awarding punitive damages. It is reasonable to award four times the previous damages in the
18 amount of \$8,995,458 and increasing as this civil action continues.

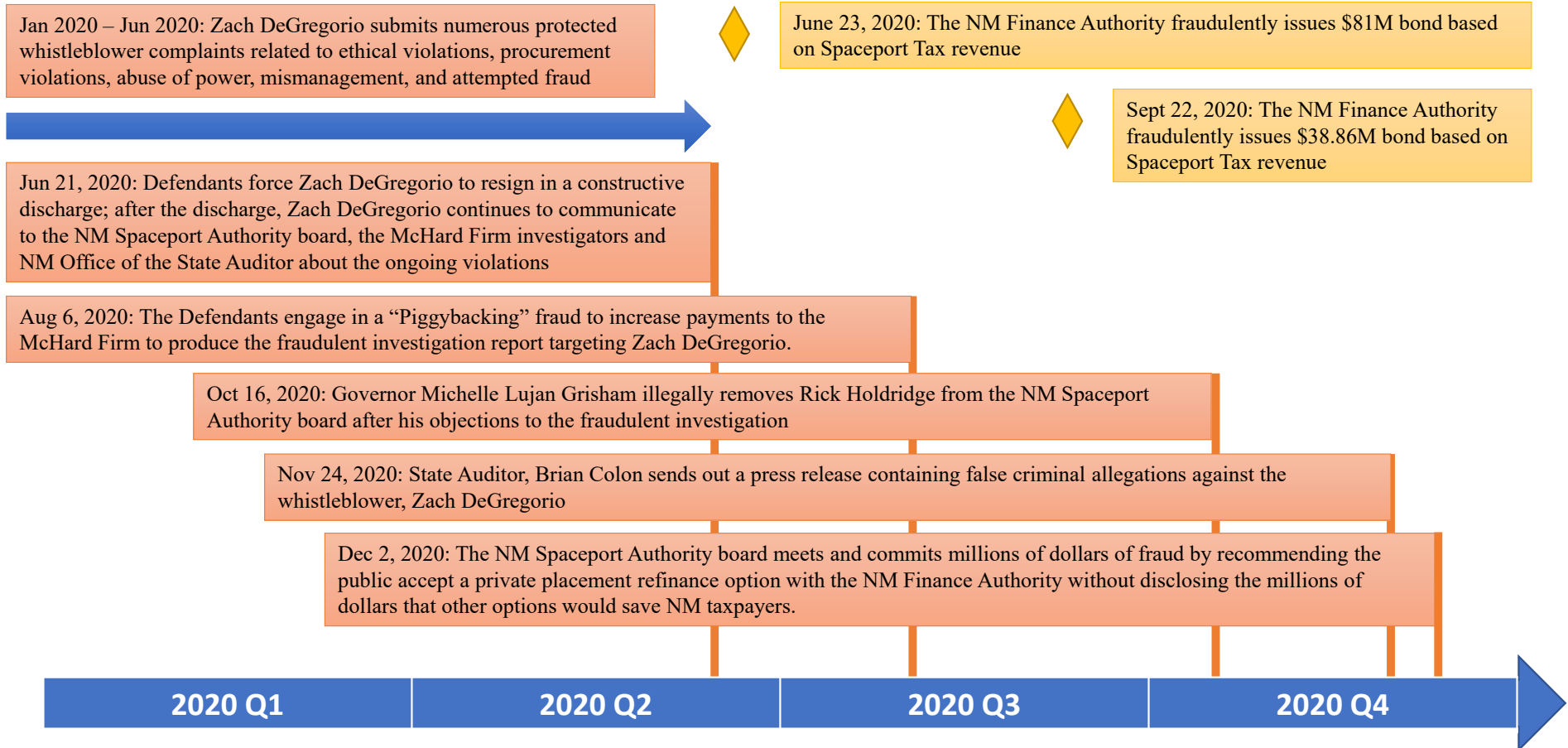
19 **336. Attorney Fees.** NMSA 10-16C-4 provides that "an employer shall be required to pay
20 the litigation costs and reasonable attorney fees of the employee." The method for calculating Attorney fees is to be
21 determined. In one example of this method in another civil case regarding the NM Whistleblower Protection Act,
22 the Defendant was ordered to pay \$1,050,353.80 for attorney fees, costs, and gross receipts tax in Vinyard v. New
23 Mexico Human Services Department, NM: Court of Appeals 2019. ZD is submitting this complaint pro se
24 (representing himself), but ZD is still incurring legal expenses and court fees. Plaintiff ZD respectfully requests the
25 court award reimbursement of all legal expenses and court fees related to this case plus interest to be determined at
26 the conclusion of this legal matter.

27 **337.** A detailed spreadsheet of all damage calculations is included in Exhibit 42.

Exhibit 2

Timeline of Fraud

Timeline of Fraud



Timeline of Fraud

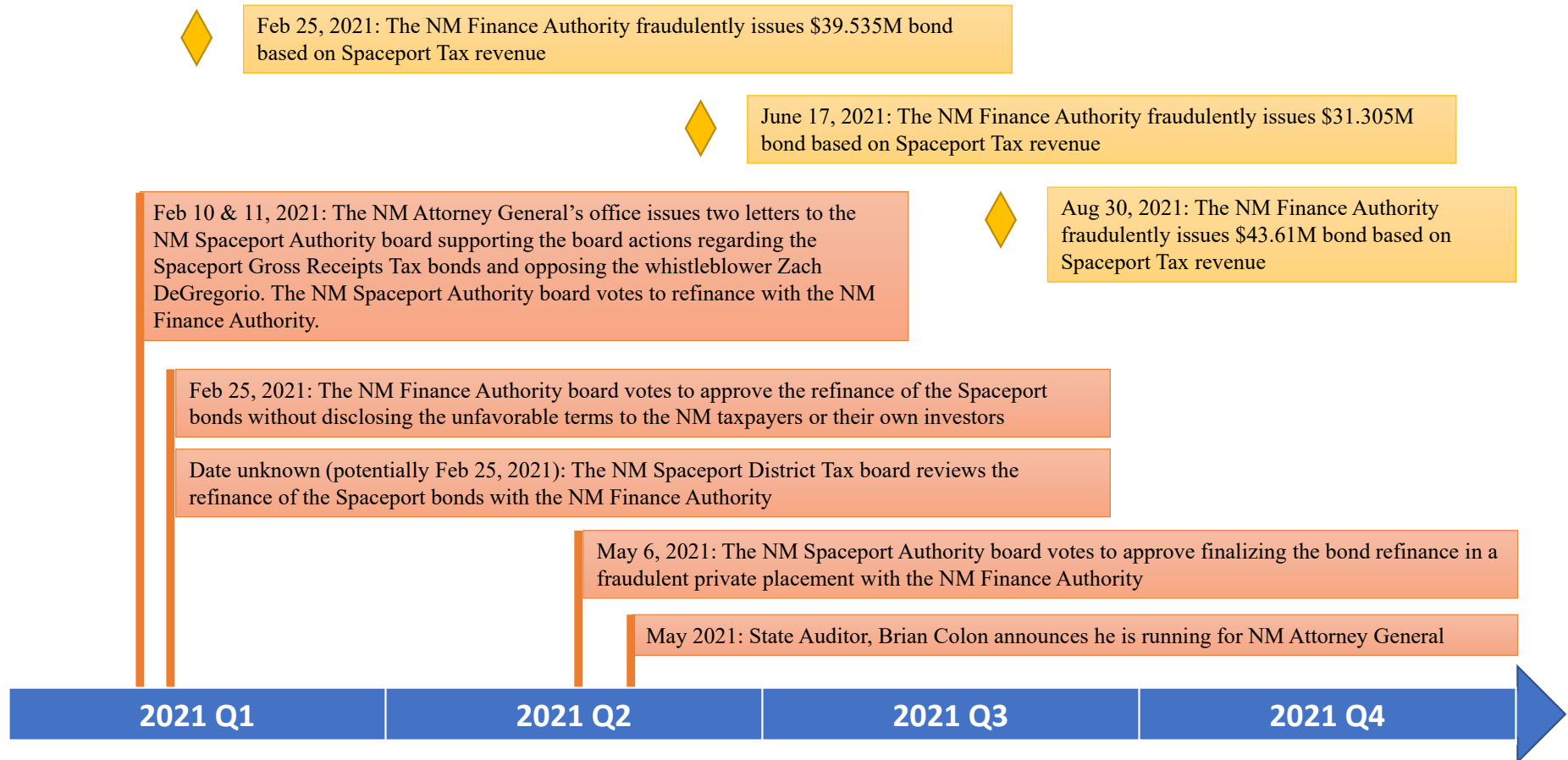


Exhibit 3

Albuquerque Journal, January 31, 2020

News Coverage of Press Conference of Spaceport
Economic Impact Study



NOT GIVING UP

Weir, depleted Lobos squad press on despite struggles of late

SPORTS >> B1

'Endearing' musical

'The Book of Mormon' playing at Popejoy Hall
VENUE



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FINAL ****

\$1B projected in Spaceport's impact

Report finds facility bringing positive returns

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BY KEVIN ROBINSON-AVILA
JOURNAL STAFF WRITER

Spaceport America is poised to become a major economic engine in southern New Mexico with nearly \$1 billion in accumulated economic benefits for the state by fiscal year 2024, according to a

new report unveiled at the Legislature on Thursday morning.

The study, prepared by accounting firm Moss Adams under contract with the NM Spaceport Authority, says the Spaceport has already achieved positive returns on the state's \$220 million investment, with \$33 million in direct economic impacts in FY 2019 alone, and \$141.5 million in total accumulated impacts between FY 2016 and FY 2019.

Apart from such direct benefits as new high-wage jobs, the totals include "indirect" impacts from increased spending at local businesses, plus "induced" ben-

efits from increased economic activity in general as more money circulates through the local economy.

Taking all those things together, the report projects \$956 million in total accumulated economic impacts for the nine-year period between FY 2016 and FY 2024.

That reflects an expected ramp up in activities as Virgin Galactic begins commercial spaceflights this year and as other companies increase their operations at the Spaceport, said Moss Adams

See \$1B EYED >> A16

Economic impacts in three study scenarios

In millions of dollars

Fiscal year	2019	2024	2029
Baseline	\$33.16	\$103.38	\$118.64
Optimistic	\$33.16	\$164.92	\$240.76
Pessimistic	\$33.16	\$64.70	\$74.42

Source: Moss Adams, Spaceport America Economic and Fiscal Impact Analysis

JOURNAL

City tries new response to 'down-and-out' calls

Security

Exhibit 4

NM Economic Development Department Website
New Mexico Finance Authority (NMFA) Incentives



 > [Our Work](#) > Partners & Supporters

Our Partners & Supporters

The success of New Mexico MainStreet (NMMS) and its related community economic development programs relies on partnerships and unique collaborations with the Historic Preservation Division and New Mexico Arts Division of the Department of Cultural Affairs and the New Mexico Tourism Department to leverage resources, skills, contacts, and services to bring a comprehensive program to our Revitalization Partners and local organizations

NMMS can help organizations access other funding opportunities through program partners including support for seed and matching grants to local organizations. Critical partnerships help NMMS match our professional services to Federal, State, Foundation, and other resources for downtown development to ensure project success.

Program Partners:

New Mexico Gas Company An Emera Company

As a company that has grown up with our communities and a shared heritage, they deliver the energy that powers our communities. They contribute to the economic and cultural vitality of the places they work and are investing in initiatives and causes that are important to local team members. New Mexico Gas Company has provided funding for Frontier Community Projects, and Historic Theater Projects. Support from New Mexico Gas Company has supported economic development projects in the rural communities of Mora, Mountainair, Raton, and the Village of Santa Clara.

New Mexico Finance Authority

[The New Mexico Finance Authority](#) (NMFA) provides low cost or low interest financing for infrastructure and capital projects for New Mexico government agencies. New Mexico MainStreet works in partnership with the NMFA to fund economic development revitalization plans for eligible MainStreet, Arts & Cultural Districts, and Frontier communities through their “Local Government Planning Fund” grant Program

New Mexico Resiliency Alliance

[The New Mexico Resiliency Alliance](#) (NMRA) supports the revitalization of historic commercial centers and underserved neighborhood districts by organizing resources and supporting policy for community development projects throughout the state. NMRA offers seed grants to New Mexico MainStreet communities through their Resilient Communities Fund.

PNM

PNM's commitment to local New Mexico MainStreet programs has been an example of public/private partnership offering PNM Corporate Grants to local MainStreet Programs in their service area. In addition, the [PNM Foundation](#) have offered "Power Up" Grants to MainStreet organizations. PNM has sponsored building rehabilitations, renovations, and upgrades, mural projects, and community gardens.

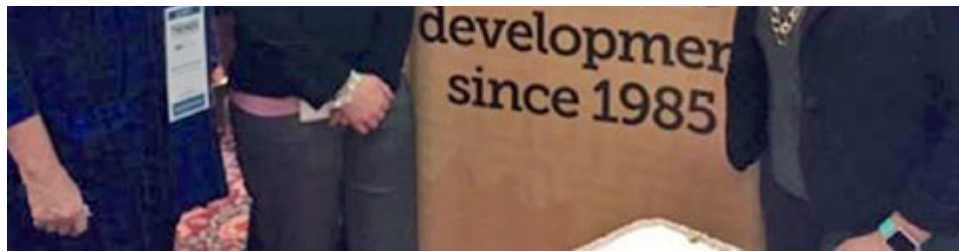
The New Mexico Partnership

Comprised of the New Mexico Resiliency Alliance, the [New Mexico Coalition of Main Street Communities](#), and the New Mexico Main Street MainStreet Program, the mission of the partnership is to advocate for and leverage resources to support asset-based economic development and ensure the vitality of New Mexico Communities. The New Mexico MainStreet Partnership supports education, advocacy, and funding of asset-based economic development initiatives. The Partnership is committed to community-driven economic revitalization and provides technical assistance to ensure the success of local projects and increased impacts on local communities. Advocacy efforts focus on increasing capital outlay funds, developing increased private support, and working to position asset-based economic development in a diverse and vital economy.

New Mexico Coalition of MainStreet

The New Mexico Coalition of MainStreet Communities provides support for local MainStreet organizations through program and policy development and lobbying for resources. The Coalition works in collaboration with New Mexico MainStreet, [New Mexico Economic Development Department](#), and other partners.





**New Mexico MainStreet**

NM Economic Development Department

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Santa Fe, NM 87504-5003

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info@nmmainstreet.org

A program of the New Mexico Economic Development Department



A Main Street America™ Coordinating Program



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Exhibit 5

NM Finance Authority Public Project Revolving Fund
(PPRF) Largest Senior Borrowers on 06/30/2019

New Mexico Finance Authority
Public Project Revolving Fund
Largest Borrowers Outstanding by Entity

06/30/19

		1,071,846,088	
		2020	
Senior Borrowers		O/S Principal	
Maximum		187,573,065	17.50%
1	Rio Rancho, City of	93,500,662	8.72%
2	General Services Department - State of	77,365,080	7.22%
3	Santa Fe, City of	56,464,604	5.27%
4	New Mexico Spaceport Authority	49,410,000	4.61%
5	Farmington, City of	41,544,830	3.88%
6	Jicarilla Apache Nation	33,390,000	3.12%
7	Taos County	32,990,955	3.08%
8	Albuquerque Bernalillo County Water L	28,200,000	2.63%
9	Sierra Vista Hospital	25,375,547	2.37%
10	Lincoln County	24,519,494	2.29%
11	Las Cruces, City of	24,100,076	2.25%
12	New Mexico Highlands University	23,985,000	2.24%
13	Alamogordo, City of	22,325,139	2.08%
14	Board of Regents of Eastern New Mexic	20,803,072	1.94%
15	Albuquerque, City of	20,365,000	1.90%
16	Los Alamos County	17,710,000	1.65%
17	University of New Mexico Health Scienc	17,510,000	1.63%
18	Gallup-McKinley County School District	17,320,000	1.62%
19	Farmington Municipal School District N	15,695,000	1.46%
20	The Regents of Western New Mexico U	14,175,000	1.32%

Exhibit 6

Zach DeGregorio's Email to Alicia Keyes and Jon Clark
(6/1/2020)

From: [DeGregorio, Zach, NMSA](#)
To: [Clark, Jon, EDD](#); [Keyes, Alicia, EDD](#)
Subject: RE: Spaceport board meeting
Date: Tuesday, June 2, 2020 1:35:59 PM
Attachments: [image002.png](#)

This is something Dan Hicks wants as well. I thought Dan had already talked with Alicia about it. The process takes about 6 months, so if we start now we could refinance by the call date.

Zach De Gregorio, CPA
Chief Financial Officer
zach.degregorio@spaceportamerica.com
Office [+1 575 267 8510](#)
Mobile [+1 575 386 6221](#)



New Mexico Spaceport Authority
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From: Clark, Jon, EDD <Jon.Clark@state.nm.us>
Sent: Tuesday, June 2, 2020 11:45 AM
To: DeGregorio, Zach, NMSA <zach.degregorio@spaceportamerica.com>; Keyes, Alicia, EDD <Alicia.Keyes@state.nm.us>
Subject: RE: Spaceport board meeting

Hi, Zach.

Thanks for that information; that's helpful. Sorry I wasn't able to take your call, but I've been in back-to-back meetings.

Is this refinancing idea still in an early stage of being contemplated, or is this something Dan definitely wants to move forward with?

Jon Clark
Deputy Cabinet Secretary
New Mexico Economic Development Department
505-476-3747
Jon.Clark@state.nm.us

From: DeGregorio, Zach, NMSA
Sent: Monday, June 1, 2020 6:38 PM

To: Keyes, Alicia, EDD <Alicia.Keyes@state.nm.us>

Cc: Clark, Jon, EDD <Jon.Clark@state.nm.us>

Subject: RE: Spaceport board meeting

Hello Alicia,

I have removed NMFA from this email chain. NMFA is trying to take advantage of Spaceport.

NMFA already gave us their refinance offer for the bonds and it was very bad. That is why I started looking at different options, which there are many. Interest rates in the market are very low right now, which means we can reduce the outrageously high interest payment we are currently making to NMFA.

Additionally, NMFA is holding \$9M of Spaceport cash in "reserve funds." A refinance with a different bank would immediately release these funds to be used on either capital projects or to use directly for funding Spaceport operations. This should be a firm requirement for any refinance offer, and would solve all of Spaceport's funding issues.

The bonds are callable on Dec 1, 2020. The call date is 10 years into the 20 year bonds. I would recommend refinancing the existing debt and extending it an additional 10 years. I would recommend increasing it to account for growing tax revenue while still allowing for a conservative buffer of excess pledged revenue.

We would not know the exact values until we get the responses of the RFPs, but in my initial conversations with investment bankers and muni bond advisors, the savings is significant.

If you have questions, you can also talk with Michelle Coons. She has stayed involved in the process with our bonds.

Zach De Gregorio, CPA

Chief Financial Officer

zach.degregorio@spaceportamerica.com

Office [+1 575 267 8510](tel:+15752678510)

Mobile [+1 575 386 6221](tel:+15753866221)



SPACEPORTAMERICA

New Mexico Spaceport Authority

4605 Research Park Circle Suite A

Las Cruces, NM 88001

Shop.SpaceportAmerica.com

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From: Keyes, Alicia, EDD <Alicia.Keyes@state.nm.us>

Sent: Monday, June 1, 2020 4:23 PM

To: DeGregorio, Zach, NMSA <zach.degregorio@spaceportamerica.com>

Cc: MRussel@nmfa.net; Clark, Jon, EDD <Jon.Clark@state.nm.us>

Subject: RE: Spaceport board meeting

Zach,

Thanks for flagging me to the outstanding agenda items.

Looping in Jon Clark (EDD) and Marquita Russel from NMFA. A few questions below regarding the Bonds:

- Are the bonds callable?
- What is the current expiration date of the bonds? Would the expiration date stay the same?
- Would the new bond issuance be for the same level of revenue, or would the intent be to issue them for a higher level of revenue to capture some of the current "excess" GRT revenue?
- What is the projected net present value of this? (given the current and projected interest rates, premium to call the current bonds, and administrative cost to issue new bonds)

Many thanks,

Alicia



ALICIA J. KEYES • CABINET SECRETARY ECONOMIC DEVELOPMENT • STATE OF NEW MEXICO • 505-827-0300

From: DeGregorio, Zach, NMSA

Sent: Monday, June 1, 2020 2:28 PM

To: Keyes, Alicia, EDD <Alicia.Keyes@state.nm.us>

Subject: Spaceport board meeting

Hello Alicia,

Dan Hicks mentioned we will be holding a board meeting soon. I just wanted to make you aware of a few items that need to be on the agenda.

1. Board meeting notes – There are two sets of board meeting notes that need board approval (Dec 2, 2019 special meeting, Sept 11, 2019 regular meeting). The older board members should be able to validate these notes to support a board vote. (draft notes are attached)
2. Open Meetings Act – The OMA resolution needs to be voted on (with a roll call vote) the first board meeting after January. (draft is attached)
3. Financial Plan – The board needs to vote to approve the next fiscal year operating budget (based on legislation), the updated Capital Improvement Plan (due to DFA July 1), and the assignment of available cash to operations (required every year). We have typically done this all in one resolution that approves the agency's financial plan. (draft is attached)
4. Our financial audit firm is required by the state auditor to give a presentation to the full board at the first meeting after January each year to give you the results of the annual audit

Additionally, I would like the opportunity to present to the board options to refinance our current Gross Receipts Tax Bonds. We have been approached by investment banks wanting to give us this additional capital money at significantly better terms than we have today (estimated at \$30M new capital funds). I have drafted RFPs for the refinance process but would like to work with the board of finance to review the documents. Given the large amount of money, I would like acknowledgement from the board before we proceed. I have mentioned this to the board in the past and they are likely curious on my progress in drafting the RFP documents.

Zach De Gregorio, CPA

Chief Financial Officer

zach.degregorio@spaceportamerica.com

Office [+1 575 267 8510](tel:+15752678510)

Mobile [+1 575 386 6221](tel:+15753866221)



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Exhibit 7

Zach DeGregorio's Whistleblower Complaint



Zach De Gregorio [REDACTED]

Formal Complaint

Zach De Gregorio [REDACTED]

Fri, Jun 12, 2020 at 10:13 AM

To: Alicia.Keyes@state.nm.us, Jon.Clark@state.nm.us, Dorella.Molina@state.nm.us, donnam.trujillo@state.nm.us, marks.melhoff@state.nm.us, debbie.romero@state.nm.us, jeremy.perea@state.nm.us, pamela.coleman@state.nm.us

Subj Formal Complaint

Submitted by Zach DeGregorio, CFO, NM Spaceport Authority. This is sent from my personal email, because I am afraid Daniel Hicks is attempting to forcibly monitor my email communications through the IT department.

As Chief Financial Officer of the NM Spaceport Authority, I am submitting a formal complaint against Daniel Hicks, Executive Director of the NM Spaceport Authority. This complaint is covered under the NM Whistleblower Protection Act (10 16C 1)

My complaint is that Daniel Hicks has shown gross mismanagement and abuse of authority. He has consistently applied pressure to the CFO and the accounting staff to bend the rules. This pressure has reached the point where I feel like my ethical ability to act as a check and balance for financial decisions in the Agency is compromised. This has created a toxic environment where there is no longer adequate internal controls at the NM Spaceport Authority, which could lead to fraud.

The current accounting environment is compromised to the point that I recommend DFA remove Level 2 approval authority in the SHARE financial system from both myself and Daniel Hicks, and assign Level 2 authority with the CFO of the Economic Development Department, Dorella Molina. The State Controller has authority to do this under statute 6-5-2. This would restore internal controls and provide needed improved oversight of Agency funds.

For the sake of clarity, I am saying no laws or regulations have been broken yet. The accounting team has worked hard to prevent any activities that would be unethical up to this point. But regular pressure from Daniel Hicks on the CFO, Zach DeGregorio has reached the point of compromising internal controls, segregation of duties, and the proper implementation of accounting procedures.

I feel like I have been battling with Daniel Hicks since he started in Nov 2016 over requests to bend the accounting rules. These arguments have increased within the last six months with pressure over the new board. I feel like I am about to start losing these battles over following accounting procedures. I need help.

Background:

The NM Spaceport Authority operates with an oversight board of directors. Recent events have resulted in increased conflict between Daniel Hicks and the new board of directors. Daniel Hicks has made repeated requests to Zach DeGregorio, to keep financial information from the board of directors. Zach has denied these requests. Specifically, Daniel Hicks has argued against the board's involvement in the RFP process. Daniel Hicks has requested that Zach DeGregorio find a way for him to approve RFPs without bringing them to the board for a vote. Zach DeGregorio has consistently refused that request as inappropriate with the requirements of the Spaceport Development Act (58-31-5(A)(5)). RFPs are for purchases of tax payer money with large dollar amounts. This is a common argument that has occurred between Zach DeGregorio and Daniel Hicks approximately 20 times.

Daniel Hicks' common tactic when he doesn't receive a response he likes from accounting is to repeatedly follow up on the argument in subsequent meetings to attempt to pressure someone to give the response he wants. In a recent Manager meeting (Mon 3/16/2020) Dan brought up the argument again. After Zach DeGregorio explained his determination again, Daniel Hicks tasked Agency General Counsel, Melissa Force to double check Zach DeGregorio's determination of the procurement code. This direction from Daniel Hicks was out-of-line as ignoring the guidance from the CFO, Zach DeGregorio. Melissa Force provided her own analysis on Thurs 3/19/20 which supported Zach DeGregorio's determination.

Daniel Hicks has shown a history of applying pressure to the accounting team (Zach DeGregorio, Chief Financial Officer, Belinda Benavidez, Chief Procurement Officer, and Sandra Franco, Accountant) to bend the rules for the sake of operational efficiency. Internal controls are important, but can seem to slow down processes while ensuring tax payer dollars are properly handled. It is common for Daniel Hicks to argue with accounting staff against requirements like providing adequate receipts for travel reimbursements, getting DFA review and approval over contracts, sending contracts to Tax & Revenue for review, acquiring multiple quotes for large purchases, making constant requests for unnecessary exceptions from other state agencies on state regulations, following the contracting process, and allowing the board to review and approve purchases. In these arguments with accounting, Daniel Hicks often talks about that it

is his money and his authority and he should be able to do what he wants. Zach DeGregorio reminds him that it is the State of New Mexico's money and the board's authority and the Agency has to follow the process.

At the end of April, the Agency was preparing to issue an RFP for Master Planning on 4/29/2020. The Agency had significantly changed the Scope of Work from one that was previously prepared by an airport consultant, Jim Hinde and reviewed by the Board Chair, Alicia Keyes, and Governor's office, Dominic Gabello. In discussing the pending RFP issuance in a Manager meeting, Daniel Hicks wanted to keep this information from Alicia Keyes and issue the RFP without notifying her of the changes. Zach DeGregorio and several managers urged Daniel Hicks to notify Alicia Keyes about the changes. Daniel Hicks tasked Zach DeGregorio with getting the RFP ready to post to the public and Daniel Hicks said he would contact Alicia Keyes.

At this point, several instances had come to light where Daniel Hicks had been dishonest and incomplete with communicating conversations with Alicia Keyes and Dominic Gabello back to the management team. Specifically, in a meeting Zach DeGregorio attended with Daniel Hicks in Albuquerque in March, with Santa Fe leadership, there had been numerous ongoing requests and action items from Santa Fe leadership to Daniel Hicks that had never been communicated as issues to the Agency management team. Rather, Daniel Hicks had consistently communicated to management that there were no major concerns with Spaceport operations and that Alicia Keyes and Dominic Gabello were in support of things as they were. Daniel Hicks had consistently communicated that these ongoing meetings with Santa Fe leadership were merely informational. This was untrue, especially over requested changes in the org chart.

In the current situation, Zach DeGregorio was unsure if Daniel Hicks was being honest with him about contacting Alicia Keyes about the changes to the RFP. With a few days to go before public release, in order to double check, Zach DeGregorio sent Alicia Keyes an email to see if Daniel Hicks had notified her of the changes to the Scope of Work. Daniel Hicks had not spoken to Alicia Keyes, and Alicia Keyes requested additional time to review the changes.

Alicia Keyes' response occurred on 4/27/20. That night, Daniel Hicks called Zach DeGregorio and instructed him to cc him on all correspondence with all board members and leadership in Santa Fe. This was a continuation of the consistent argument by Daniel Hicks directing Zach DeGregorio to limit information and access to the board.

A recording of this phone call is attached to this complaint. It is highly unusual for Zach DeGregorio, CFO to ever record a phone call, but Daniel Hicks was applying so much pressure on accounting at this point, that it forced this level of documentation. Due to the large file size of the audio file (143MB), you can listen to the audio file from the cloud through this link http://drive.google.com/file/d/1G5Y_D6a_a_reMl1Aj3KnLArLoSiA9EdC/view?u_p_haring

With multiple examples of Daniel Hicks' dishonesty over communications with Alicia Keyes, Zach DeGregorio cannot trust if Daniel Hicks is telling the truth. If Daniel Hicks comes to Zach DeGregorio with a request for a large purchase, or increase in staffing, or issuing an RFP, Daniel Hicks may say he has received approval from Alicia Keyes, Debbie Romero, or Pam Coleman. But the only method Zach DeGregorio has to verify Daniel Hicks is not lying is to double check directly with the correct person that the appropriate oversight did actually approve and is aware of the purchase.

This same argument occurred again in a meeting between Daniel Hicks and Zach DeGregorio on 6/9/20, after which Daniel Hicks requested a meeting with Zach DeGregorio and Melissa Force, Agency General Counsel.

Daniel Hicks, Zach DeGregorio, and Melissa Force met on 6/10/20. In all these three meetings, Daniel Hicks has ordered Zach DeGregorio to cc him on all emails with board members and Santa Fe leadership. Each time, Zach DeGregorio has refused that request on ethical reasons. The CFO should always have the uncompromised ability to communicate with the agency oversight board, without having communications monitored, especially in the situation where Daniel Hicks has shown a pattern of unethical behavior. This is an important internal control. Zach DeGregorio's role as CFO requires frequent communication with the board to ensure the board performs certain actions (resolutions by certain accounting deadlines) to avoid any audit findings by the agency. Zach DeGregorio objected to the ethics of this meeting itself as continued pressure on accounting and an attempt to minimize his communication with the board. Zach DeGregorio also informed Daniel Hicks that if he continues to pressure the CFO with ethically compromising requests, Zach DeGregorio will report Daniel Hicks. Daniel Hicks concluded the meeting by stating that he has never pressured accounting to bend the rules in his entire career.

At the conclusion of this meeting, Daniel Hicks called Guillermo Blacker to discuss the disagreements with Zach DeGregorio. Guillermo Blacker, technically reports to Zach DeGregorio, but because of unusual HR changes, he reports directly to Daniel Hicks in practice. Guillermo Blacker is currently undergoing a position reclass with a substantial increase in salary. The result of this meeting was a phone call later the same day from the General Counsel, Melissa Force with a request from Guillermo Blacker to meet with Zach DeGregorio with the goal of convincing Zach DeGregorio to follow Daniel Hicks' orders. Zach DeGregorio found that this disclosure to another employee of the arguments, and the meeting request as inappropriate and refused the meeting request.

On 6/12/20, Dan Hicks scheduled another meeting with Zach DeGregorio to discuss how to respond to an inquiry from Jon Clark about the NMFA bonds. Zach DeGregorio had already been reaching out to Jon Clark about the bonds and had already sent emails containing analysis of the bonds to Alicia Keyes and Jon Clark. Zach DeGregorio had already previously disclosed the content and purpose of those emails to Daniel Hicks in previous conversations. Zach DeGregorio and Daniel Hicks again discussed the Agency's preferred outcome with the NMFA bond refinance and the

responses to Jon Clark's email. Zach DeGregorio was going to respond to Jon Clark with an email response. Daniel Hicks ended the meeting by requesting Zach DeGregorio again send Daniel Hicks the email correspondence between Zach DeGregorio and Alicia Keyes regarding the conversation about the NMFA bonds. Zach DeGregorio agreed and went to look for the emails. Zach DeGregorio located the emails in his office and determined that the NMFA content was mixed in with other correspondence that Zach DeGregorio wanted to keep private as direct communication between Zach DeGregorio and Alicia Keyes. Specifically, this included recommendations to the board on board actions that were required to avoid accounting audit violations. Zach DeGregorio did not want this information filtered or distorted by Daniel Hicks. Zach DeGregorio immediately returned to Daniel Hicks office. Daniel Hicks was on a video conference call with Melissa Force, Agency General Counsel. Melissa Force remained on the line. Zach DeGregorio informed Daniel Hicks that Zach DeGregorio was not going to forward the email correspondence between Alicia Keyes and Zach DeGregorio. Zach DeGregorio was not comfortable with sharing that direct correspondence. Zach DeGregorio had already communicated the information Daniel Hicks was requesting verbally in the previous meeting. This was another attempt to pressure Zach DeGregorio to limit communication with the board. Daniel Hicks told Zach DeGregorio to leave and shut the door. Zach DeGregorio left the office building due to feeling uncomfortable and unsafe.

Recommendation:

The NM Spaceport Authority is a high pressure environment driven by high customer demands, high levels of understaffing, and conflict between the Executive Director and the board. Given Zach DeGregorio's ethical concerns about a compromised environment, it is important that the accounting internal controls remain strong, independent, and with proper oversight. Daniel Hicks' continued arguments with the accounting staff and the CFO to bend the rules show an improper use of authority. It is a requirement for an Executive Director to follow proper accounting guidelines in order to perform their duties with a standard of care and competence. Zach DeGregorio should be allowed to continue to send emails to the board and staff in Santa Fe without monitoring from Daniel Hicks. Given the recent conflicts, and Daniel Hicks' continued pressure on accounting, Level 2 approval in SHARE should be transferred to the Economic Development Department CFO, Dorella Molina, as an additional safeguard.

--

Zach De Gregorio, CPA

[REDACTED] personal cell phone

Exhibit 8

Zach DeGregorio's Forced Resignation (Constructive Discharge)

June 21, 2020

Dear NM Spaceport Authority Board,

On Friday, June 12, 2020, I submitted a complaint regarding ethics concerns at Spaceport America. I am disheartened by the board's response so far on this matter. This is an important moment for Spaceport America, where the board decides how the Agency will treat whistleblowers. What happens to someone who speaks up when they have a concern about ethics or safety? Will the whistleblower be attacked as disloyal and insubordinate? Will the individual feel threatened? Will the individual be investigated? Or will the Agency embrace a system of checks and balances for concerns about waste, fraud, and abuse.

In 1986, the Space Shuttle Challenger had a fatal accident, killing all seven astronauts onboard. The findings of the Presidential Commission report on the cause of the accident states, "*The Commission is troubled by what appears to be a propensity of management at Marshall to contain potentially serious problems and to attempt to resolve them internally rather than communicate them forward. This tendency is altogether at odds with the need for Marshall to function as part of a system working toward successful flight missions, interfacing and communicating with the other parts of the system that work to the same end.*" The same systemic ethical issues exist at Spaceport America today.

With the board's actions, I cannot continue to perform my duties in this environment. The greatest responsibility of a Chief Financial Officer is to serve the public interest and honor the public trust. This takes a strong commitment to ethics. Without ethics, everything in accounting falls apart. Please accept this as my letter of resignation, effective immediately. I am performing my professional responsibility by forwarding this letter to the State Auditor's Office and the Agency's external financial audit firm.

I am very humbled at the opportunity to have served as Chief Financial Officer of Spaceport America for the last four and a half years. I have written four sets of financial statements which have all passed four independent audits with clean audit opinions. I am honored to have served with great team members and I am confident they will continue this great work in the future. Additionally, I must acknowledge the stellar performance of my incredible accounting team, of which none of these accomplishments would have been possible.

I will forever be grateful to have been a part of Spaceport America, and I continue to believe in the importance of its mission to generate economic development for New Mexico.

Sincerely,



Zach DeGregorio, CPA

Exhibit 9

Purchase Orders (POs) for The McHard Firm Contracts

PO Details:

PO ID:	PO DATE:	AGENCY:	VENDOR:
0000010083	Jul 9, 2020	Economic Development Dept.	MCHARD ACCOUNTING CONSULTING LLC
CONTRACT ID:	DIVISION:	VENDOR ID:	PO STATUS:
20 419 P526 00042		0000088185	Dispatched
BUYER:	ORIGIN:	CANCEL STATUS:	
CHRIS.ROME	CRB	Approved	

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LINE ITEM	CATEGORY	DESCRIPTION	DATE	TOTAL AMOUNT	AMOUNT EXPENDED	BALANCE
				\$34,000.00	\$34,000.00	\$0.00
1	Audit Services	Conduct a forensic audit for New Mexico Spaceport Authority.	Jul 9, 2020	\$34,000.00	\$34,000.00	\$0.00

PO Details:

PO ID:	PO DATE:	AGENCY:	VENDOR:
0000002654	Aug 6, 2020	Spaceport Authority	MCHARD ACCOUNTING CONSULTING LLC
CONTRACT ID:	DIVISION:	VENDOR ID:	PO STATUS:
21-495-P770-21006		0000088185	Dispatched
BUYER:	ORIGIN:	CANCEL STATUS:	
SANDRA.FRA	CRB	Approved	

Quick Search

LINE ITEM	CATEGORY	DESCRIPTION	DATE	TOTAL AMOUNT	AMOUNT EXPENDED	BALANCE
				\$45,000.00	\$45,000.00	\$0.00
1	Professional Services	Conduct a forensic audit for the New Mexico Spaceport Authority	Aug 6, 2020	\$45,000.00	\$45,000.00	\$0.00

Exhibit 10

The Governor's Guidelines for Contract Review and Re-evaluation

GOVERNOR'S GUIDELINES FOR CONTRACT REVIEW AND RE-EVALUATION

In order to balance the fiscal interests of the State of New Mexico, a set of guidelines is necessary to ensure appropriate management of contracts between the State of New Mexico and vendors. The Governor strongly encourages all agencies to review and re-evaluate existing and prospective contracts to save taxpayer money while improving the service provided by each agency. Each executive agency is hereby instructed to follow the following guidelines until further notice:

1. **Existing Contracts** – Agencies must evaluate the essential need for existing procurement commitments. A clear distinction must be made between those contracts providing essential services and those providing non-essential services. The Governor's Office recognizes that some services are essential to the operation of the agency, however, not all contracts are essential and those contracts need to be identified and suspended or terminated.
 - a. **Non-Essential Contracts** – Contracts for non-essential services must be reviewed to determine whether they can be terminated without incurring legal liability. After review, agencies shall advise the Governor's office as to each contract and whether each non-essential contract should be continued or terminated. The listing shall include the contractor, the scope of services, contract amount and term.
 - b. **Essential Contracts** – Contracts for essential services must be reviewed to determine need for re-negotiation. After review, agencies shall advise the Governor's office as to each contract and whether each essential contract may or may not be negotiated. The listing shall include the contractor, the scope of services, contract amount and term, the timeline for renegotiation or a brief basis for no negotiation.
 - c. **Encumbered Funds** – Agencies must review all existing contracts to determine whether they are "obsolete" and whether the agencies actually contemplates "using" the contractor or merely wants to keep the funds encumbered in case they decide to use the contractor in the future. After review, agencies shall advise the Governor's office as to each instance in which a contract is maintained solely for encumbering funds. The listing shall include the contractor, the scope of services, contract amount and term and brief basis for keeping or eliminating the encumbrance.
 - 1) Agencies should disencumber funds and allow them to revert at the end of each fiscal year rather than procure non-essential equipment upgrades.
2. **Prospective Contracts** – Agencies must evaluate the essential need for new procurement.
 - a. Agencies must evaluate whether procurement can be delayed or the scope of work reduced or modified to reduce the expense.
 - b. When practicable, services must be performed in-house and upgrades avoided unless truly necessary.
 - c. When applicable, services and property in GSD master price agreements must be used.
 - 1) Master price agreements must be reviewed by GSD to ensure that it is getting the best current price (e.g. technology equipment prices may have decreased in the last 6 months due to wider availability/competition).
 - d. Consulting contracts should be strictly scrutinized to see whether the services are truly essential or whether existing staff can provide the input and review desired.

- e. Temporary employment services contracts must be strictly scrutinized. Such contracts may not be used to circumvent standard employment policies. Temporary contractual help may only be used if cost-benefit analysis indicates a need for such services and upon prior approval from the Governor's Office.
3. **Continual Guidelines for Contracts and Contracting –**
- a. Each agency must designate active and involved contract managers who are personally aware of every agency contract. Managers can be assigned professional service contracts, tangible personal property contracts, and other service contracts respectively. Managers must provide timely written reports of all prospective contracts or procurement to their Cabinet Secretaries or agency heads.
 - 1) Cabinet Secretaries or agency heads must personally review all proposed RFP's, Requests for Bids, and major contracts for professional services, services, and procurement of tangible personal property in excess of \$20,000.00.
 - b. Agencies must refrain from contracting for systems that replace existing operational systems, unless replacement is essential to the operation of the agency and/or the provision of cost-effective services. This paragraph is not intended to prevent long term savings from the replacement of obsolete or inefficient systems.
 - c. Contracts with former employees must be reviewed to ensure that they are essential, and the work required cannot in fact be performed in-house.
 - d. Agencies should consider limiting the term of their contracts to one year, with an option to renew, as opposed to agreeing to maximum terms allowed by the Procurement Code. This will allow annual performance and price review.
 - e. All contract extensions, within 90 days of contract expiration, must undergo the same scrutiny as new contracts prior to extension.
 - f. Minor procurement through purchase documents must be scrutinized to determine whether the property, equipment, or services are truly essential.
 - g. Contracts must be scrutinized to determine whether they have been divided to avoid competitive bidding or avoid proper administrative review.
 - h. Agencies must scrutinize their periodical, legal, and other subscriptions to ensure that they are not duplicated and are truly needed.
 - i. When considering sole source contracts, the agency must keep in mind the presumption in favor of competitive bidding, both from an economical view and one of fairness to the public. Competitive bidding may result in lower costs to the agency.
 - 1) Sole source property contracts must match the contractor's unique qualifications to the work needed. The contractor must truly be the only available source for the services or property required by the agency. The work contracted and paid for should be limited to the "sole source" scope of work. Otherwise, the agency should go out for bid or RFP for additional services required.
 - j. For emergency contracts, a true "emergency" must exist (i.e. a threat to the function of government, lives, health, or property). Emergencies do not exist simply from a need to procure the services "now", or from time pressure to implement a new contract.
 - k. Reports of all sole source and emergency contracts shall be provided to the Governor's Office immediately.

Exhibit 11

News Article, Las Cruces Sun News 11/24/2020

Audit report blasts Spaceport America's former director

Investigators also recommend investigation into conduct by former CFO

Algernon D'Ammassa

Las Cruces Sun-News



SANTA FE - Spaceport America's former director, Dan Hicks, is described as an incompetent and bullying boss who intercepted staff email, manipulated procurement rules and backdated authorization requests for travel using taxpayer funds, among other allegations, in a scathing 362-page forensic audit report released Tuesday by New Mexico State Auditor Brian Colón.

The audit concludes that Hicks may have violated criminal and administrative statutes over the years he served as the spaceport's CEO.

“It is critical that management at all levels of government support ethical behavior. Setting an honorable tone at the top by establishing and following internal controls is essential,” Colón stated in a news release, adding: "The tone at the top must be transparent and committed to honesty, integrity, and accountability.”

Hicks was fired in October by the board of the New Mexico Spaceport Authority, the agency governing New Mexico's spaceport, after being placed on administrative leave in June.

The spaceport's business development director, Scott McLaughlin, presently serves as interim CEO.

The investigation followed a complaint by Zach De Gregorio, the spaceport's chief financial officer, who resigned after accusing Hicks of circumventing internal financial controls and accounting protocols as well as interfering with communications involving the board's chairman, state Economic Development Secretary Alicia Keyes.

On the same day Hicks was fired, Gov. Michelle Lujan Grisham removed board member Rick Holdridge, the former chairman.



The report opens by characterizing Hicks as "an extremely dysfunctional manager" who alternately bullied and charmed staff, and was "seemingly unable to hear or absorb negative news or reviews, and would hold his beliefs in the face of overwhelming evidence to the contrary."

Dan Hicks did not comment when reached by the Las Cruces Sun-News, but seemed unaware that the audit report had been released.

The report was prepared by investigators with the McHard Firm following a three-month investigation that included interviews with Hicks, Holdridge and spaceport staff and reviews of public records. The investigators' findings go beyond De Gregorio's complaint and detail "issues of concern" involving the former CFO's conduct as well.

"Witnesses told us that (Hicks) liked to put out big (requests for proposals) to ensure that all of his budget was encumbered, so that he could then move the

money around, and spend it however he wanted," the audit reports. "Mr. Hicks spent this money on unbudgeted travel, as well as contracts with questionable purposes and deliverables of limited value."

The audit states that Hicks spent hundreds of thousands of taxpayer dollars on travel and promotion of the spaceport as a site for orbital launches even though the Federal Aviation Administration has not licensed Spaceport America for that; and that he attempted to attract federal defense contracts for military launches —despite the spaceport's proximity to the U.S. Army installation, White Sands Missile Range, where Hicks worked for decades before being hired at the spaceport in 2016.

Spaceport America, initially constructed between 2006 and 2012 with \$220 million in public funding, is located in New Mexico's Sierra County close to WSMR, where it benefits from the installation's restricted air space.

Employee interviews described Hicks as frustrated with board governance and insisting "that there had to be a 'waiver' for virtually every rule or statute," covering up violations of rules including travel for which he backdated and falsified required documents, the audit states.

Alleged improprieties over travel

Audit records found that Hicks was reimbursed more than \$60,000 for travel on top of "likely thousands of dollars" billed directly to the state, enlisting De Gregorio's help in obtaining approvals after the fact.

The audit also questions the legitimate business purposes of some of Hicks' trips, some of which were described as "essentially tourist events," such as commemorations of the Apollo 11 mission in Colorado and Florida.



Hicks also allegedly spent tens of thousands of dollars traveling to locations of National Space Council meetings, claiming he had been appointed to the body by Vice President Mike Pence or invited by Pence to gatherings, although no evidence was found that Hicks ever belonged to the group or attended meetings.

Witnesses told investigators that Hicks "was never able to substantively report back anything other than what appeared in the popular press."

Instead, investigators found evidence that Hicks accepted invitations from industry groups to sponsor receptions in violation of the New Mexico Constitution's anti-donation clause, and that De Gregorio knowingly processed backdated and falsified voucher requests for the trips.

The audit also found that Hicks would frequently book or rearrange travel at the last minute, inflating costs, often without a clear business purpose.

Improper hires and other allegations

The McHard report also alleges that Hicks acted improperly in the hiring of space systems engineer Karen Barker (who is suing the spaceport authority over alleged sex discrimination and workplace retaliation prior to her departure in 2019) and business operations specialist Guillermo Blacker.

In both cases, the audit alleges Hicks circumvented competitive hiring processes in order to extend jobs to Barker and Blacker, both of whom "had a personal and/or professional relationship" with Hicks previously.

In Blacker's case, the audit states that Hicks rewrote the job description so that the position reported directly to him instead of De Gregorio.

In 2019, the audit states that De Gregorio and Holdridge were both involved in efforts to secure a pay raise for Hicks, whose salary was \$153,000 at the time, but without formal approval by the full board. The raise, however, "never came to fruition," according to the report.

Hicks is also accused by investigators of falsely telling Keyes that Spaceport America had a strategic plan in place when no such document existed even in "viable" draft form.



Witnesses reportedly told the auditors "Mr. Hicks discussed with staff the fact that no strategic plan existed, but stated that if they really needed one, he could simply write it over a weekend."

The audit also found evidence that Hicks had intercepted email communications, and recommended further investigation into possible violations of the New Mexico Code of Conduct.

Soon after De Gregorio submitted his complaint regarding Hicks' management last June, he reportedly lost access to his email account for a couple of days.

The auditors determined that Hicks had asked an IT specialist at the spaceport to access De Gregorio's email account and forward some items to Hicks. Further, the auditors state that when Barker left her job at the spaceport last year, Hicks intercepted her emails "for some time" and responded to industry contacts who attempted to reach her.

Without access to Barker's emails, the audit stated, "we could not determine whether Mr. Hicks responded to any of Ms. Barker's emails while representing himself as Ms. Barker. We suggest this be further investigated."

Former finance officer under scrutiny

Whistleblower Zach De Gregorio came under scrutiny by the auditors as well. McHard's report implicates him in aiding Hicks in some of the very activities his complaint helped bring to light.

The auditors further state that De Gregorio was improperly involved in bidding on a construction accounting contract in 2018 which allowed him to "outsource" key functions of his own job.

In particular, auditors noted that De Gregorio was on the selection committee for the contract despite being a reference for one bidder, Fiore Industries, which won the contract. De Gregorio reportedly later expanded the contract's scope (and cost) without subsequent approvals.

Auditors also discovered a communication from De Gregorio to Hicks in 2019 claiming he had negotiated with an external auditing firm to reduce the scope of the agency's annual financial statement audit, because a previous accounting firm had been "overly aggressive."

If the negotiation actually occurred, the report states that it would be a violation of professional standards for certified public accountants, and recommends further investigation.

Additionally, the report states that De Gregorio actively assisted Hicks in circumventing the state procurement code and sought, as he stated in a 2019 email, to "distance the agency from GSD," the New Mexico General Services Department.

The Sun-News has reached out to De Gregorio for a response.

The audit reports that Hicks attempted to approve more than \$1 million in contracts personally last spring, but was blocked from doing so by Keyes, who assumed the chair in May 2020. Hicks and De Gregorio also allegedly got into a "screaming match" when Hicks wanted to award a contract for an economic impact report to an out-of-state firm of his choosing without going through the bidding process.

Investigators also turned up a document, evidently authored by De Gregorio, offering an opinion that he and Hicks could lawfully approve purchases under \$60,000 without going through the NMSA board. "At best, this document is a severe misinterpretation of the statutes," the audit states, "at worst, it is deceptively written as a legal opinion, which Mr. De Gregorio would not be qualified to provide."

As a result, the audit found that "literally hundreds of violations of purchasing and contracting rules" had taken place, as well as dozens of "improper and probably illegal purchases," which the NMSA board permitted on the basis of De Gregorio's written opinion.

The document also allegedly stated that Hicks was authorized to approve his own travel and that of agency staff.

Additional instances of waste around awarding of contracts was found, such as notifying bidders they had won before the process was complete and, in some cases, awarding consulting contracts to multiple bidders.

For example, in 2018 the spaceport requested proposals for an aerospace consulting contract (characterized in the audit as lobbying), and received bids from three qualified firms. According to the audit, Hicks awarded contracts to all three, including "friends and former colleagues," leading to approvals of invoices and travel expenses with little supervision or work product.

Moreover, the audit characterized those consultants as unregistered lobbyists, while paying "two or three times the cost" for a service that could have been provided by a single contractor.

One of those consultants, Chris Andrews, invoiced the spaceport for \$10,000 to attend the Spaceport America Cup collegiate rocketry competition, an event that primarily draws university students and recruiters to the facility. Taxpayers also footed part of the bill for consultant Peter Bythrow to attend a conference in Hawaii in 2019.

A combined \$671,429 is documented as spent in a three-year period on consultants and public relations firms approved personally by Hicks, with \$281,793 spent on two PR firms and \$13,000 spent on billboards that were later removed as inappropriate lobbying activity.

Auditors said Hicks, and staff members he supervised, would determine the scope of work, put out requests for proposals, interview vendors, make selections and notify winners "all without involving the Board," which was later brought in to "rubber-stamp" the award.

The audit implicates Hicks and De Gregorio in circumventing procurement processes and board approvals to award sole-source contracts; moving funds from approved purchase orders for other purposes; and possible inappropriate use of gross receipts tax funding (meant for design, construction and engineering) to pay for salaries and operational costs.

The interpretation of statute is under dispute, the audit notes, stating that the final opinion should come from the New Mexico Attorney General's Office. However, the audit reports that an analysis by the state Department of Finance and Administration showed GRT funds were essentially keeping the spaceport afloat.

Lack of board oversight

The state of Spaceport America's budget was, according to McHard, compounded by a lack of oversight by the board, including Holdridge as chairman. A rubber stamp with Holdridge's signature may have been used to execute documents without his knowledge, the audit states.

It also lays out several instances of suspected violations, directed by Hicks, of the state's Open Meetings Act, including conducting business by telephone outside of quarterly public meetings, which investigators said may have constituted a "rolling quorum."

Holdridge declined to respond on record except to deny he had engaged or attempted any wrongdoing.

"Their accusations against me on rolling quorums, violating the Open Meetings Act, and trying to sneak in a raise for Dan are absolutely incorrect," he said Tuesday.

A retired U.S. Air Force officer from Deming with a background in space technology, Holdridge has been involved with the spaceport since the project's inception. He served on the NMSA board from 2007 to 2009 under Gov. Bill Richardson's appointment, and was named as chairman of the board in 2011 by Gov. Susana Martinez, serving in that position until Keyes took his place. Lujan Grisham removed him as a board member at large the same day Hicks was fired.



Keyes on spaceport's next steps

Secretary Keyes said the spaceport would move forward with an executive search and that McLaughlin "has not missed a beat" as interim director in the meantime. In addition, she said the NMSA board has established an advisory committee to establish bylaws and procurement procedures.

"We feel confident that we can get that done sooner rather than later," she said, "and then we are looking into procedures for an open search for a new executive director."

Meanwhile, the spaceport's anchor tenant, Virgin Galactic, aims to launch its first commercial passengers into space on a suborbital flight from the spaceport early in 2021, although the COVID-19 pandemic has caused delays in the final test phase.

"We have high hopes for the future," Keyes said. "We still feel that the spaceport is one of our biggest assets here in New Mexico."

Read the Spaceport America special audit report here:

Exhibit 12

NM Spaceport Authority Board Meeting Minutes
7/9/2020

NEW MEXICO SPACEPORT AUTHORITY

Board Meeting

July 9, 2020 09:00 AM – 11:45 AM

Time: Jul 9, 2020 09:00 AM Mountain Time (US and Canada)

Via Zoom

<https://us02web.zoom.us/j/87842186783?pwd=MIJBTGxVFXRUMHkvRStJV3EzZHFEdz09>

Meeting ID: 878 4218 6783

Password: 3PH7qX

1. Call to Order

- a. Meeting called to order by Secretary Keyes on July 9, 2020 at 9:15AM
- b. Attendees
 - i. Lt. Governor Howie Morales – non-voting – present
 - ii. Acting Spaceport America CEO Melissa Force – non-voting – present
 - iii. Cabinet Secretary Alicia J. Keyes - present
 - iv. Eric Schindwolf -present
 - v. Ethan Epstein – present
 - vi. Laura Conniff – present
 - vii. Michelle Coons - present
 - viii. Peggy Johnson – present
 - ix. Rick Holdridge - present
- c. Quorum Recognized

2. Introduction of New Board Members

- a. Lt. Gov. Howie Morales
- b. Peggy Cookie Johnson
- c. Rick Holdridge – involved since 98
- d. Michelle Coons – Board since '05
- e. Ethan Epstein
- f. Eric Schindwolf
- g. Melissa (Acting CEO – nonmember)

3. Approval of Open Meetings Act

- a. Motion requested – Sec Keyes
- b. Motion to approve OMA made by Ethan Epstein

- c. Seconded by Michelle Coons / Eric Schindwolf
 - d. Roll call
 - e. Eric Schindwolf – aye
 - f. Ethan Epstein– aye
 - g. Laura Conniff - aye
 - h. Michelle Coons – aye
 - i. Peggy Johnson – aye
 - j. Rick Holdridge - aye
 - k. Secretary Keyes – aye
 - l. Motion passes unanimously
- 4. Approval of the Agenda**
- a. Motion to approve agenda made by – Peggy Johnson
 - b. Second – Eric Schindwolf
 - c. Voting
 - i. Eric Schindwolf – aye
 - ii. Ethan Epstein - aye
 - iii. Laura Conniff – aye
 - iv. Michelle Coons – aye
 - v. Peggy Johnson - aye
 - vi. Rick Holdridge - aye
 - vii. Secretary Keyes - aye
 - d. Motion passes unanimously
- 5. Approval of Meeting Notes – (Dec 2, 2019 Special Meeting, Sept 11, 2019 Regular Meeting)**
- a. Minutes from last 2 meeting were distributed, new member can abstain
 - b. Motion to approve minutes –Michelle Coons
 - c. Second- Eric Schindwolf
 - i. Cabinet Secretary Alicia J. Keyes – abstain
 - ii. Eric Schindwolf –abstain
 - iii. Ethan Epstein – abstain
 - iv. Laura Conniff – abstain
 - v. Michelle Coons - aye
 - vi. Peggy Johnson – abstain
 - vii. Rick Holdridge - aye

6. Spaceport Authority Overview (slides)

a. Melissa Force, Acting CEO & Staff

- i. Melissa – Welcome remarks
- ii. Reviewed order of presentation and staff positions.

b. Chris Lopez, Director of Site Operations (presentation attached)

- i. Reviewed footprint of Spaceport America
- ii. Overview of Customer Base
- iii. Attractive Air Space next to White Sands Missile Range
 1. Airspace 6k sq. mi
- iv. Customer activity
 1. Sugarhouse launch
 2. UAV first flights
 3. Virgin Galactic glide flights success
 4. Spaceport America Cup
 - a. Trying to foster future development etc. Growing future students, building rocketry bridges, showing students the ability they can have. Growing aerospace in NM

v. Operations Overview

c. Dr. Bill Gutman, Director of Aerospace Operations (presentation attached)

i. Launch and Flight Safety

d. Scott McLaughlin, Director of Business Development (presentation attached)

i. Business Development - Spaceport America Cup

e. Jeremy Perea, DFA Analyst (presentation attached)

i. Operating Budget FY21

f. Questions from board

i. Michelle Coons

1. Regarding budget. Asked DFA to relabel other revenue.
 - a. Point of Action -Jeremy will adjust slide, will be sent to board.

ii. Rick Holdridge:

1. Scott how many NDAs?

About 20 or 30 NDAs a lot of small companies, quite a few in hopper

2. Is staff up to handling 20-30 other customers while dealing with biggies?
 - a. McLaughlin – small co.'s are understanding. In last 18 months, we went from episodic launches now on low side. Covid has somewhat helped to slow requests.
3. For Chris – concerned with VG people from CA, are you guys keeping up with Ops tempo, or burning people out?
 - a. We handle burn out actively. It is a challenge
4. For Melissa/Alicia – we have 26 we can hire, is it going to 30? We only have 20 or 21 current staff What push do we have going to avoid burnout? Point of discussion
 - a. Melissa/Secretary Keyes – EDD and SPO are working on filling positions.
5. CFO replacement Status –
 - a. EDD/SPO will post CFO Gov Ex position
6. Comment – when Jeremy showed pie chart, 16% is General Fund- if it were not from GF the others cannot grow. If we do not have our own people then the other pieces of pie cannot grow. Kudos that EDD recognizes and is trying to grow.
7. Rick recommended the most recent economic impacts study be distributed to the Authority members.

g. Presentation of Financial Audit – Chris Garner, Patillo, Brown & Hill

i. **Presentation Attached**

ii. Findings – None

iii. Questions –

1. Rick Holdridge – how does this compare to other state agencies?
 - a. Garner - I would say 90% of audits that we do have adjustments that we come up with and probably 80% have findings. When comparing Spaceport financial situation to others– this was really good.
 - b. Garner - I will also add that orgs do not always draft accounting statements to our standards. But Spaceport for

last several years has put together their own financial statements

- c. Comment Rick Holdridge – kudos to staff for clean report

7. Approval of Financial Resolution – FY21 Operating Budget, Updated Capital Improvement Plan

- a. Review no approval or voting due to Special Session/COVID-19/DFA/State budget changes for FY21 appropriations

8. Public Comment

Joseph Cervantes

Shani Harvie

Karina Drees

Casey DeRaad

Mike Moses

Ethan Epstein, Authority Member – Suggested a facility tour in the future.

Representative Rebecca Dow

9. Closed Segment – Investigative Complaint and Personnel Issues

- a. Motion to close meeting made by Rick Holdridge
- b. Second - Eric Schindwolf
- c. Voting
 - i. Lt. Governor Howie Morales – non-voting
 - ii. Acting Spaceport America CEO Melissa Force – non-voting
 - iii. Cabinet Secretary Alicia J. Keyes - aye
 - iv. Eric Schindwolf - aye
 - v. Ethan Epstein - aye
 - vi. Laura Conniff - aye
 - vii. Michelle Coons - aye
 - viii. Peggy Johnson – aye
 - ix. Rick Holdridge – aye
- d. Vote to confirm matters discussed in the closed meeting segment were limited to those stated in the motion above.
 - i. Lt. Governor Howie Morales – non-voting

- ii. Acting Spaceport America CEO Melissa Force – non-voting
- iii. Cabinet Secretary Alicia J. Keyes - aye
- iv. Eric Schindwolf - aye
- v. Ethan Epstein - aye
- vi. Laura Conniff - aye
- vii. Michelle Coons - aye
- viii. Peggy Johnson – aye
- ix. Rick Holdridge – aye

10. Adjourn

- a. Motion made to Adjourn– Eric Schindwolf
- b. Second – Peggy Johnson
- c. Voting
 - i. Lt. Governor Howie Morales – non-voting
 - ii. Acting Spaceport America CEO Melissa Force – non-voting
 - iii. Cabinet Secretary Alicia J. Keyes – aye
 - iv. Eric Schindwolf – aye
 - v. Ethan Epstein – aye
 - vi. Laura Conniff – aye
 - vii. Michelle Coons – aye
 - viii. Peggy Johnson – aye
 - ix. Rick Holdridge – aye
- d. Motion passes unanimously
- e. Adjourned at 11:45am

Minutes approved by Board on 7.31.2020 at Special Meeting



Board Chair

Cabinet Secretary Alicia J. Keyes

7/31/2020

Date

Exhibit 13

Brian Colon's announcement to run for NM Attorney
General

News Article, AP News May 13, 2021

<https://apnews.com/article/new-mexico-business-government-and-politics-a264586c17f76578402371f7019ca790>

New Mexico Auditor Colón to run for state attorney general

By SUSAN MONTOYA BRYAN May 13, 2021



ALBUQUERQUE, N.M. (AP) — New Mexico State Auditor Brian Colón announced his candidacy Thursday for the office of state attorney general.

The Democrat wants to follow in the footsteps of friend Hector Balderas, who is wrapping up his second term as New Mexico's top prosecutor and consumer

advocate. Balderas also served as state auditor before being elected attorney general and the two previously worked for the same law firm.

Colón, 51, is the first person to enter the race for the open seat that has been dominated by Democrats for the better part of a century. Republicans have held the office only three times in the state's nearly 110-year history.

Colón sees the campaign as an opportunity to “take the next step,” saying his motivation is rooted in his experience growing up in New Mexico and his desire to serve his community. He recalled the struggle of being poor and as a teenager having to take on the role of caring for his mother and siblings when his father died at a young age.

He described himself as a fighter, saying he wants to protect New Mexico families and that public safety will be among his top priorities.

“We can't have prosperous communities until we have safe communities. We are limiting our potential in New Mexico,” he said in an interview with The Associated Press. “We've enjoyed some great success but I'm convinced that success has still been limited. I want to make sure that New Mexico is known as a place where consumer protection is important and that public safety is No. 1.”

A former chairman of the New Mexico Democratic Party, Colón won the race for auditor in 2019, ending a political drought for him. Campaigns for lieutenant governor in 2010 and for Albuquerque mayor in 2017 were unsuccessful.

As auditor, Colón has been in charge of ensuring that the finances of government agencies, school districts, universities and other public organizations that receive tax dollars are examined annually. That work is often done by independent auditors overseen by the state auditor.

The office also promotes transparency and conducts special investigations. Its mantra has been to stamp out fraud, waste and abuse.

The office has been involved in the state's overhaul of its guardianship and conservator program, investigated management issues at hospital in McKinley County at the height of the pandemic and reviewed claims of alleged financial wrongdoing at Spaceport America.

Colón said he believes his work as an attorney over two decades and his time at the auditor's office have prepared him for the kind of work done by the attorney general's office.

That will include consumer protections as the state moves forward with its energy transition plans, a lawsuit against the federal government over contamination at military bases and the battle before the U.S. Supreme Court with Texas over management of the Rio Grande.

Colón acknowledged that water resources are shrinking across the arid West and that the best option would be to work with others to come up with a strong water-sharing plan rather than spending more money on litigation. Still, he said if agreements can't be reached, he will fight for New Mexico's interests.

He said his overall mission would be giving people access to justice.

"There are 2.1 million New Mexicans who deserve to have faith in their community and the idea that they can raise their families in a safe space," he said, "but so many families are suffering and they're scared and they need a fighter and I'm that guy."

Colón earned an undergraduate degree in finance from New Mexico State University in Las Cruces and graduated from law school at the University of New Mexico.

This version corrects that Colón and Balderas worked at the same law firm but did not at the same time.

Exhibit 14

Formal Complaint Against

NM Attorney General Hector Balderas

Brian S. Colon
New Mexico Office of the State Auditor
2540 Camino Edward Ortiz, Suite A
Santa Fe, NM 87505

To: Brian S. Colon, Office of the State Auditor

From:

Mariel Nanasi, Executive Director, **New Energy Economy**
Maria Perez, Co-Director, **Democracy Rising**
Tiffany Stevens, Board Member, **Indivisible Nob Hill**
Daniel Pritchard and Robert Bresnahan, Directors, **Renewable Taos**
Paul Gibson and Roxanne Barber, Co-Founders, **Retake Our Democracy**

Date: July 15, 2021

We are writing to make a formal complaint against New Mexico Attorney General (“NMAG”) Hector Balderas for his questionable awarding of contracts and approval of what appear to be improper invoices submitted to the NMAG by Attorney Marcus Rael and his firm, Robles, Rael and Anaya P.C. from 2016 to the present. We are calling for a full investigation into what may be fraud and corruption in violation of the Governmental Conduct Act, NMSA 1978 Section 10-16-1 *et seq.*, and the Fraud Against Taxpayers Act, NMSA 1978 Section 44-9-1 *et seq.* We ask you to use your authority under the Audit Act, NMSA 1978 Section 12-6-1 *et seq.*, to audit and investigate the billing records described below and attached, and report violations consistent with your duties under the Audit Act.¹ A complaint has also been filed with the NM Ethics Commission and the NM Disciplinary Board.

Applicable Law

New Mexico’s Governmental Conduct Act provides for ethical principles of public service and states that public officers “shall treat [their] government position as a public trust” and “shall use the powers and resources of public office only to advance the public interest.”² This duty means that public officers “shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the

¹ The Audit Act provides the State Auditor with the power to audit state agencies (NMSA 12-6-3(C)), imposes a duty to report violations of criminal statutes (NMSA 12-6-6), and provides the power to sue to enforce repayment of funds “for which an agency is accountable under law.” (NMSA 12-6-8).

² NMSA 10-16-3(A)

integrity and discharging ethically the high responsibilities of public service.”³ Furthermore, public officials must use “full disclosure of real or potential conflicts of interest” as a “guiding principle for determining appropriate conduct” and must take “reasonable efforts [] to avoid undue influence and abuse of office in public service.”⁴

It is also the duty of the attorney general to enforce the provisions of the Fraud Against Taxpayers Act. That statute prohibits a person from knowingly presenting a fraudulent claim for payment to a state agency. The attorney general must “diligently investigate suspected violations”⁵ of the Fraud Against Taxpayers Act.

Despite these duties, the facts outlined below demonstrate likely violations of these statutes and the attorney general’s apparent failures to both enforce the Fraud against Taxpayers Act and uphold his obligations under the public trust placed upon him by the people of New Mexico.

The issues and evidence presented herein warrant a full and independent investigation as to whether the attorney general is guilty of the following violations that fall within the statutory authority of the office of the state auditor:

- 1) **Conflicts of Interest/Favored Treatment:** A Conflict of Interest exists when the employee (or organization) has some personal kinship, friendship, financial or political interest that may cause the employee (or organization) to place personal and/or organizational interests above this duty.
 - a) Expending public resources on a business owned by the employee or one in which the employee has an interest in, personally or through association
 - b) Intentional violations of State Procurement regulations and related good business practices, thereby subverting fair and open competition; resulting in a specific vendor and/or individual(s) gaining unfair advantage.⁶
- 2) **Procurement & Contracting Improprieties**
 - a) Contract administration that enables vendors to be paid for services or goods not provided; individual who authorize or otherwise decides a contract award and, at the same time, has a vested interest in the company receiving the award. Potential conflicts of interest stemming from less-than-arms-length dealings are also a concern—where the individual influencing the contract award or administering the contract is either related to or has such a close association with one or more of the

³ NMSA 10-16-3(B)

⁴ NMSA 10-16-3(C)

⁵ NMSA 44-9-4 (A).

⁶<https://www.saonm.org/auditing/special-audits-and-investigations/issues-we-handle/>

company's principals as to create reasonable doubt as to his/her ability to place fiduciary duty above personal bias.⁷

This complaint is based on evidence obtained through an Inspection of Records Act (IPRA) request with the NMAG on April 9, 2021⁸ to try and determine the extent of the relationship between the NMAG and Mr. Rael and his law firm. The IPRA was filed after Mr. Rael's entry into case Case No. 20-00222-UT at the NMPRC appeared to correspond with the Attorney General withdrawing his opposition to the PNM/Avangrid merger despite the NMAG's own expert witnesses' position that the merger was not in the public interest.

We have included troubling highlights from IPRA and interrogatory requests as well as the proffered evidence that indicate conflicts of interest/favored treatment in the awarding of legal contracts as well as procurement and contracting improprieties through overbilling and duplicative billing approved by the attorney general. Further it appears as though the attorney general's relationship to this contractor may also have influenced the office's legal position in a high profile case currently pending before the NMPRC.

In your capacity to prevent fraud and corruption and protect against the waste of taxpayer funds we ask that your office investigate Marcus Rael and his firm, and the New Mexico Attorney General and his decisions to hire his friend and former law partner rather than have his in-house counsel prosecute these cases for the State and the people of New Mexico. In addition, we ask that you investigate why the Rael firm was selected to represent the State of New Mexico in the critically important case pending in the Supreme Court regarding allocation of water resources, given that the Rael firm lacked expertise in water law.

We understand that you had a prior professional relationships with Mr. Balderas and Mr. Rael that may make it impossible for you to be involved. We appreciate that this may require the hiring of an independent auditor.

Thank you in advance for investigating this very important matter.

⁷ Ibid

⁸ Exhibit A, New Energy Economy's IPRA to the NMAG, April 9, 2021.

Conflicts of Interest/Favored Treatment

The New Mexico Attorney General, Hector Balderas, awarded cases to Attorney Marcus Rael and his law firm, despite lack of expertise or experience in the relevant legal specialties.

Evidence received thus far suggests that the NMAG has improperly retained Attorney Marcus Rael, a personal friend and former law partner, and his law firm, Robles, Rael and Anaya P.C., to represent the State in important cases, regardless of whether they had expertise in that particular arena or not and whether they had experience before the US Supreme Court.⁹ These contracts give the appearance of favored treatment and contracting improprieties, and billing records indicate that the firm may have wasted and/or improperly collected many millions of taxpayer dollars.

The relationship between Attorney Marcus Rael and the Attorney General is established and documented. Corporate documents confirm that Rael was an officer in the AG's law firm Balderas & Associates, LLC.,¹⁰ prior to Mr. Balderas's election to public office. When asked about his retaining his friend and law firm colleague for the *Texas v NM* water case, the AG stated: "This was the first time I had ever been associated with hiring that firm. In over 10 years of public service ... I'd never retained them".¹¹ That assertion, made in 2018, is false. In response to our IPRA request, a request that received a less than fulsome response, we counted 11 separate contracts with Robles, Rael and Anaya P.C., or partners of the firm, including two contracts prior to the *Texas v. NM* contract. See, Exhibit B. Of the 24 private attorneys or law firms reportedly retained by the NMAG's office, Robles, Rael and Anaya P.C. was awarded the highest number of contracts. Even that number remains suspect. We are aware of at least three additional contracts Marcus Rael has been awarded that are not reflected in the IPRA response from the NMAG's office, *State of New Mexico et al v. Volkswagen Group of America, Inc. et al.*, filed March 1st, 2016,¹² *The State of New Mexico v. Sterigenics U.S., LLC et al.*, filed December 28th, 2020,¹³ and *The State of New Mexico v. Gilead Sciences, Inc.*, filed March 22nd, 2021.¹⁴ If three such omissions exist, there are potentially more. Unfortunately, request for total amounts actually paid by the State of New Mexico to Marcus Rael or to Robles, Rael and Anaya P.C. is incomplete.

⁹ <https://www.sfreporter.com/news/coverstories/2018/01/09/in-deep-water/>

¹⁰ https://opencorporates.com/companies/us_nm/2406999

¹¹ <https://www.sfreporter.com/news/coverstories/2018/10/03/the-peoples-attorney/>

¹² <https://dockets.justia.com/docket/new-mexico/nmdce/1:2016cv00147/337233>

¹³ <https://dockets.justia.com/docket/new-mexico/nmdce/2:2020cv01355/456210>

¹⁴ <https://dockets.justia.com/docket/new-mexico/nmdce/1:2021cv00255/458909>

Our search of the New Mexico Sunshine Portal also revealed that the attorney general's office has not disclosed all contracts with Robles, Rael, and Anaya P.C., which violates the Sunshine Portal Act.¹⁵

Procurement & Contracting Improprieties as evidenced in billing discrepancies that were signed off and paid for by the Attorney General

In the case of *Texas vs NM*, the invoices, the case record and Marcus Rael's contemporaneous prosecution of other cases give the appearance of waste and abuse of taxpayer many millions of dollars of funds. According to the results of the IPRA request, Robles, Real and Anaya P.C. was first retained to represent the State in *Texas v. NM* in February of 2016.

Invoices Paid and Hours Billed in the *Texas v. NM* Case:

File Name	Invoice Date	Matter	Amount	Marcus Rael	David Roman	Luis Robles	Susan Barela (€ Pilomena Hause	Lance Hough
	2/29/16		3324	\$53,593.75				
	9/30/16	3935 as of 9/30		\$133,160.25				
	4/14/17	Q4		\$118,207.20				
	6/30/17	4539		\$121,037.77				
	6/30/17	4540		\$99,666.08				
81700365	12/18/17			\$132,689.98	not provided			
81700616	12/31/17	Texas v. New Mexico		\$159,992.89	409.3	271.3		15.9
81700872	3/31/18	Texas v. New Mexico		\$105,494.19	164.2	307.2		
81700906	3/31/18	Texas v. New Mexico		\$101,822.94	not provided			
91700534	9/30/18	Texas v. New Mexico		\$195,386.69	not provided			
91700660	1/30/19	Texas v. New Mexico		\$165,251.33	not provided			
91700969	3/31/19	Texas v. New Mexico		\$183,827.80	not provided			
91701065	6/30/19	Texas v. New Mexico		\$196,094.86	not provided			
01700734	9/30/19	Texas v. New Mexico		\$207,612.79	146.1	815.4	100.4	
01700892	12/31/19	Texas v. New Mexico		\$194,078.04	not provided			
01701024	3/31/20	Texas v. New Mexico		\$222,345.50	113.7	609.3	23.7	346.7
01701144	6/30/20	Texas v. New Mexico		\$420,396.07	320.6	103.2	278.1	499.5
11700177	7/31/20	Texas v. New Mexico		\$185,083.48	54.7		173.5	215.1
11700331	8/31/20	Texas v. New Mexico		\$194,050.27				41.3
11700376	9/30/20	Texas v. New Mexico		\$141,116.59	29.9		131.8	243.8
11700378	10/31/20	Texas v. New Mexico		\$127,458.63	22.8		53.9	207.8
11700594	11/30/20	Texas v. New Mexico		\$96,564.60	90.1		33.6	144.3
11700595	12/31/20	Texas v. New Mexico		\$117,543.48	54.6		18.1	174
				\$3,672,475.18	572.7	2106.4	689	1484.5
								129.9
								15.9

Source: Exhibit B.

Though most billable hours were not provided, some examples of the invoices that raise doubts include:

- In Invoice 81700616, 409.3 hours were billed by Marcus Rael for a period from 10/1/2017 to 12/31/2017 at \$200 to \$225 per hour. The total number of working hours in a 12 week period, assuming an eight hour work day, equals 480. In this

¹⁵ See *NMSA 1978* Section 10-16D-3(d)

example, Marcus Rael billed NM taxpayers for 409 out of 480 regular (40-hour week) working hours in a three-month period. Marcus Rael reported working on other cases during this same time period.

- b. In the same invoice, 81700616, every email sent or received was billed at least .10 hours, or six minutes, regardless of content, suggesting an automated billing system to the invoice. This single invoice contains over 300 such .10 email items billed at a minimum of \$20 each, regardless of content.
- c. In Invoice 01700734, partner David Roman billed for 815.40 hours at \$200 per hour. Given a 9 hour work day for the workable week days (excluding holidays and weekends) totaling 576 available work hours, Mr. Roman would have to have worked nearly 12 hours a day, every week, every month on ONLY this case for a three-month period from 7/1/2019 to 9/26/2019. This does not appear reasonable and/or credible.
- d. The above invoices represent many hundreds of hours billed *every* three-month period for more than three years. For the “smaller” invoiced amounts there was an alleged four to six hundred hours worked by the firm, but there were certain other invoices that the Rael firm billed taxpayers, and the NMAG paid, for over a thousand hours in just one three-month period.

A detailed review of all invoices provided in Exhibit B, may yield further questionable billing practices. However, beyond wasting taxpayer dollars, the case record provides evidence that these billable hours did not reflect substantial or zealous representation for the State. The name Marcus Rael and his law firm, the supposed lead attorney, is missing from multiple pleadings in the case.

In transcripts from a March 19th, 2020 teleconference between parties, attached as Exhibit C, in the *Texas v. NM* case to discuss New Mexico’s emergency motion for a six month stay, opposing counsel objected, stating:

“I believe that much of New Mexico’s current problem -- aside from the [Covid] virus issue which I’ll address in a minute -- has been a result of their own decisions. They are the ones that decided who and how many people to put on the litigation of this very important case and they are the ones who decided not to take depositions early in the case, not to zealously and vigorously take depositions.... Those were decisions that we found curious.” See, Exhibit E, Transcript of Proceedings, March 19, 2020, pg. 28.

And further:

“They have done very little in terms of keeping on schedule...You're hearing the frustration in my voice because this is just exactly what we've experienced since

way back when Mr. Rael said they weren't ready, that the schedule had to accommodate them, that they needed six more months than Texas did before they could issue their expert reports. This is a refrain we've heard from day one of this litigation and it continues and it continues today.” *Id.*, pg. 30-31

And further:

“They had one deposition scheduled -- one deposition scheduled before all of this occurred before the deadline for when they were to file the report, so the fact that they somehow now need months of depositions before they can file their report is not even at best -- it's just disingenuous.” *Id.*, pg. 51.

The ostensible reason for this requested stay was the planned replacement of Attorney David Roman as counsel, upon which the judge rightfully questioned why that was a problem when the named lead attorney, Marcus Rael remained. David Roman responded to the judge:

“Your Honor, that is true that he has been designated on the captions as lead counsel. I have been the one who has had the bulk of all of the day-to-day operations of the case whether it be issuing and responding to discovery, taking and preparing for a number of depositions, coordinating all of the case coordination with state agencies, even working on the day-to-day strategy, meeting with the other parties and that's been the role that new lead counsel would have to step in and fill. Because of competing cases of large stature Mr. Rael has not been involved to the extent that may have been thought otherwise.” *Id.*, pg. 12.

From fall 2019 to the end of 2020 Marcus Rael had billed the state more than 800 hours at \$250 per hour (excluding those hours not provided on the majority of invoices). This despite the fact that he was listed as the lead attorney but was not acting in that capacity, despite the fact that he had “competing cases of large stature” and despite the fact that after more than two years of discovery his law firm had accomplished so little work. The request for an extension of discovery was denied.

All of this evidence begs the question: What was Marcus Rael working on? If he was not actually the lead attorney, why was he billing at the rate of \$225 or more per hour, and what did he spend upward of 800 hours doing? Clearly, based on the evidence, his attention was focused elsewhere, and New Mexico’s representation at the Supreme Court suffered as a result.

The New Mexico Attorney General also appointed a Denver firm, Trout, Raley, Montano, Witwer & Freeman, P.C. to the *Texas vs NM* case, that according to the internet has an expertise in water law. We do not have their billing records, but their name appears on most pleadings. Their billing records may put the real firm's billing in context.

Rael's other pending cases

During the relevant time period, Marcus Rael was also lead attorney, appointed by the NMAG in the class action suit against Volkswagen; the Volkswagen case was filed in January of 2016 and was settled in December of 2019. Litigation of both cases took place simultaneously.

In the Volkswagen case, Robles, Rael and Anaya P.C. submitted an Unopposed Motion for Attorney Fees on December 20th, 2019 that stated:

“Counsel committed to this case knowing that doing so would likely preclude them from accepting other matters. As noted above, the full-scale litigation of this case would have required an extraordinary commitment to discovery, not to mention the time-consuming motion practice and argument-preparation that comes with high-stakes litigation involving sophisticated counsel... Counsel was prepared to turn away other employment to meet the needs of this litigation.”
See, Exhibit D.

Robles, Rael and Anaya P.C. asked for and received \$4,050,000 in compensation, 30% of the settlement amount approved to compensate the Volkswagen owners in New Mexico, plus expenses of \$129,928 for their work on the Volkswagen case, an amount approved in a declaration filed by Cholla Khoury, Assistant AG to Hector Balderas. *See*, Exhibit E.

By itself these attorney fees in the Volkswagen case are unremarkable for a case that lasted well over three years. However, the contemporaneous billing invoices for *Texas v. NM* cast doubt on their accuracy and the oversight provided by the NMAG's office. During this same time period, in which Rael's firm was “committed” to the Volkswagen case and “prepared to turn away other employment to meet the needs of this litigation,” the firm was billing taxpayers for millions of dollars in fees in the *Texas v. NM* case.

Simultaneously with the alleged work on the *Texas v. NM* case, Mr. Rael and other counsel in his firm were also working for the NMAG, and other clients on many other cases, making it doubtful that they could have spent the time and hours they claimed in the *Texas v. NM* case, the Volkswagen class action and perhaps others.

New Mexico's Governmental Conduct Act and the Appearance of a Conflict of Interest that Gave Rise to this Complaint .¹⁶

New Energy Economy (“NEE”) is an intervenor in NM PRC Case No. 20-00222-UT. On March 10, 2021, Iberdrola retained Marcus Rael for \$400 per hour. *See*, Exhibit F.¹⁷ On April 2, 2021, Assistant Attorney General Gideon Elliot filed the expert testimonies of Andrea Crane and Scott Hempling, stating among other things that merger was “*not* in the public interest”, the legal standard, and if the Commission were to approve the merger a number of conditions would have to be included. On April 20, 2021, after the NMAG had been involved in settlement discussions with Marcus Rael, a stipulation was announced.¹⁸ There was a huge chasm between the “benefits” offered in the NMAG/Avangrid/PNM stipulation and the required conditions suggested in the NMAG expert witnesses’ testimonies.¹⁹

On June 24, 2021, in NMPRC Case No. 20-00222-UT, Joint Applicants’ filed their 1st Supplemental Objections and Responses to New Mexico Affordable Reliable Energy Alliance’s 4th Set of Interrogatories and Requests for Production of Documents. Iberdrola/Avangrid testified, in NM AREA 4-1, that “Mr. Rael is retained by Iberdrola, S.A., on behalf of Avangrid to provide legal advice in this case and to assist in settlement negotiations with various parties.” The first meeting Mr. Rael had with the NMAG was on 2/26/2021 and had a number of successive meetings with the NMAG for a total of 18 meetings, the last meeting occurring on 4/5/2021. This contradicts the Joint Applicants’ Response to NEE, that stated that Mr. Rael was hired by Iberdrola, S.A., on 3/10/2021. Joint Applicants’ state further that “Additionally, Mr. Rael attended a scheduled meeting with Ken Martinez, the County Attorney for Bernalillo County, on March 10, 2021. Mr. Rael also had a number of telephone conferences with Mr. Martinez. Mr. Martinez was advised of and aware of his right to have his regulatory counsel present for the discussions.” ABA Model Rule 4.2; N.M.R. Prof'l. Cond. 16-402.

Given the close relationship between the NMAG and Mr. Rael and the appearance of a conflict of interest that appeared to influence the NMAG’s ability to perform its duty to protect the rights of ratepayers in the case, NEE filed an Inspection of Records Act

¹⁶ The NM PRC added Iberdrola, parent company of Avangrid, as a party, on June 8, 2021.

¹⁷ NMPRC Case No. 20-00222-UT, Joint Applicants’ 1st Supplemental Objections and Responses to NEE-7, April 22, 2021, NEE 7-1. “Iberdrola S.A. has retained Mr. Rael as legal counsel. Mr. Rael was retained on March 10, 2021. His rate is \$400 per hour. Iberdrola S.A. is paying this expense.”

¹⁸ *See*, Exhibit G, NMPRC Case No. 20-00222-UT, Joint Applicants’ filed their 1st Supplemental Objections and Responses to New Mexico Affordable Reliable Energy Alliance’s 4th Set of Interrogatories and Requests for Production of Documents, June 24, 2021.

¹⁹ *See*, Exhibit H, a cursory inspection of the expert testimony provided by Andrea Crane and Scott Hempling on behalf of the AG’s office and the stipulation signed by the Attorney General.

(IPRA) request with the NMAG²⁰ to try and determine the extent of the relationship between the NMAG and Mr. Rael and his law firm. The responses received from the NMAG was organized into an Excel spreadsheet, to facilitate review. *See*, Exhibit B.

The response received thus far warrants your office's further investigation.

Attachments

Exhibit A: New Energy Economy's IPRA to the NMAG, April 9, 2021.

Exhibit B: Responses received from the NMAG to NEE's IPRA organized into an Excel spreadsheet.

Exhibit C: *Texas v. NM*, Transcript of Proceedings, March 19, 2020.

Exhibit D: Unopposed Motion for Attorney Fees on December 20th, 2019.

Exhibit E: Declaration filed by Cholla Khoury, Assistant AG to Hector Balderas

Exhibit F: NMPRC Case No. 20-00222-UT, Joint Applicants' 1st Supplemental Objections and Responses to NEE-7, April 22, 2021.

Exhibit G: NMPRC Case No. 20-00222-UT, Joint Applicants' filed their 1st Supplemental Objections and Responses to New Mexico Affordable Reliable Energy Alliance's 4th Set of Interrogatories and Requests for Production of Documents, June 24, 2021.

Exhibit H: a cursory inspection of the expert testimony provided by Andrea Crane and Scott Hempling on behalf of the AG's office and the stipulation signed by the Attorney General.

²⁰ Exhibit A, New Energy Economy's IPRA to the NMAG, April 9, 2021.

Exhibit 15
News Article,
Santa Fe New Mexican 11/17/2021

https://www.santafenewmexican.com/news/local_news/new-mexico-attorney-generals-office-cleared-of-ethics-violations/article_fa4cbdaa-47f2-11ec-94ef-af1786294cf6.html

New Mexico Attorney General's Office cleared of ethics violations

The New Mexican

Nov 17, 2021

The state Attorney General's Office announced Wednesday it has been cleared of alleged ethics violations filed in the summer.

The office said in a news release accusations against Attorney General Hector Balderas were unfounded before the State Ethics Commission and the Office of the State Auditor. Previously the state Supreme Court Disciplinary Board rejected the allegations.

The complaints were made by New Energy Economy of Santa Fe and some other organizations. One accusation involved the fact that a friend of Balderas, attorney Marcus Rael of Albuquerque, has won numerous contracts for work for the Attorney General's Office.

Another involved Rael's hiring at \$400 an hour this year by Iberdrola, a Spanish company with which Public Service Company of New Mexico hopes to merge. Balderas gave his support for the merger in the spring. The Public Regulation Commission's hearing examiner found Rael's hiring by Iberdrola was a conflict and said Rael should cease that work.

Rick Ruggles

Reporter

Exhibit 16

Zach DeGregorio Email from Potential Employer
(12/9/2020)



Zach De Gregorio <[redacted]>

Thanks for your time today

1 message

Wed, Dec 9, 2020 at 3:43 PM

TO: [redacted]

Hi Zach,

Thanks for taking the time today. Unfortunately we can't proceed with your candidacy at this time. A quick Google search led me to the reality of the situation at the Spaceport and the report issued on the subject in November. I wish you the best of luck in continuing your career.

[redacted]

[redacted]

[redacted]

Exhibit 17

News Article, Las Cruces Sun News 12/10/2020

County wants state to repay allegedly misspent spaceport tax revenue, cover future costs

Michael McDevitt

Las Cruces Sun-News



LAS CRUCES - The county is calling on the state to provide “adequate funding” to operations at Spaceport America and to stop relying on excess gross receipts tax revenue to cover its operational costs. The move comes on the heels of a forensic audit report which accused the spaceport’s former director, Dan Hicks, of misusing tax dollars among other allegations of violating criminal and administrative statutes.

At its Dec. 8 meeting, the Doña Ana County Commission unanimously approved a resolution that calls on the state to stop allowing excess GRT revenue to pay for spaceport expenses the county argues it had not pledged to cover.

“The chutzpah that these people used with public funds is quite amazing,” said Commission Chair Lynn Ellins of District 1, who brought forth the resolution, in response to the audit's findings.

The resolution also demands the state pay back the funds that the county argues have been misused for years.

Spaceport America, located in Sierra County near White Sands Missile Range with administrative offices in Las Cruces, was constructed between 2006 and 2012 using \$220 million in public funding. Doña Ana and Sierra counties have pledged special GRT money to pay off bonds used to construct it.

Hicks was fired in October by the board of the New Mexico Spaceport Authority, which governs the Spaceport, after he was placed on administrative leave. The three-month investigation into Hicks' conduct was triggered by a whistleblower complaint filed in June by former chief financial officer Zach De Gregorio, who was later implicated in the alleged wrongdoing.

The audit report, released in November, characterized Hicks as a dysfunctional and bullying boss and alleged he had improperly used public money for personal travel expenses that did not appear to have legitimate business purposes. The report also alleged he spent tax dollars to travel, lobby for and advertise the spaceport as a site for orbital launches, even though the Federal Aviation Administration hadn't licensed it for such.

The report concluded Hicks' behavior cost hundreds of thousands of dollars in tax funds.

Hicks was alleged to have backdated authorization requests for travel, improperly accessed email accounts of employees and allegedly violated procurement and hiring rules. The audit also said De Gregorio assisted Hicks in skirting purchasing and contracting rules.

The audit also raised the potential misuse of county GRT revenue.

Audit findings 'appalling'

The audit concludes the statute which authorized the county's regional spaceport gross receipts tax precludes the revenue from being used for anything other than bond debt repayment, infrastructure projects and improvements and spaceport-related projects approved by the counties. For example, 25 percent of the revenue has been used to fund local spaceport-related education.

The GRT revenue meant to pay off the bonds went directly to the New Mexico Finance Authority but exceeded the amount needed to make bond payments, the audit stated.

Despite its apparent limitations, De Gregorio told investigators that GRT revenue was "one of the most flexible sources" to spend from. Excess revenue was used starting in 2012 to cover operations and salaries.

The state claimed it has since stopped.

The NMFA and the tax district board for the Spaceport America Regional Spaceport District's decisions to allow the spaceport to use excess funds has been controversial with some state and county elected officials for years.

“Over many years, the Spaceport applied for, and received, the transfer of these excess revenues, which were then used for many purposes, some of which may not have been appropriate,” the audit stated.

“In Doña Ana County, we’ve provided quite a bit of funds specifically for spaceport operations,” said District 5 Commissioner Manuel Sanchez in response to the audit findings. “To find out that's what it was used for is appalling.”

The audit report said the statute is and has been interpreted differently and said the state attorney general would be the most appropriate to make a final call. But the report also said a state Department of Finance and Administration analysis found the excess revenue was being used to keep the spaceport financially afloat.

The audit partly blamed Hicks' alleged improper spending for the spaceport's financial woes.

When reached, Hicks said the allegations of misusing GRT revenue weren't true and that everything had been done appropriately.

Seeking payback

The county’s resolution notes the excess tax revenue could be better served as funding for other capital projects and infrastructure associated with the spaceport, which could serve as a way to improve the facility.

“Proceeds from the spaceport gross receipts tax in excess of the amount required to service the bonds have been redirected to the operations of the spaceport rather than being used for further infrastructure improvements,” the resolution states.

With the passage of the resolution, the commission is requesting the tax district board convene to vote on ending the usage of excess tax revenue “for operational purposes.”

The board is made up of Ellins, District 3 Commissioner Shannon Reynolds, Sierra County commissioners Travis Day and Frances Luna and gubernatorial appointees Wayne Savage and Sidney Bryan.

The resolution also says the state should reimburse the tax district for GRT revenue which was inappropriately used. The exact amount of allegedly misused GRT revenue is not clear.

The audit report said since the excess revenue was combined with appropriated funds, it was unable to determine if GRT revenue was used for operations and salaries.

Reynolds said in an email to the Sun-News Doña Ana County commissioners have opposed the use of excess revenue for years and have been "outvoted by the other board members ... each time" in the approval of excess funds.

"We have contributed a lot of money over the years with the operational funds of the spaceport and it's probably too late to get those refunded to us," Ellins said. "But we do want to have the state take over any operational funding."

State Economic Development Department spokesman Bruce Krasnow said in a statement that after it was brought to EDD's attention in 2019 that "GRT earmarked for capital improvements was being commingled with the general operations budget at Spaceport America," the practice was investigated by EDD with Gov. Michelle Lujan Grisham's support and stopped.

"The state continues to explore the issue of past GRT allocations and is working toward an accounting of the spending," Krasnow said. "The Economic Development Department and the Spaceport Authority are committed to work with local government partners to determine the best options going forward."

De Gregorio was unable to be reached for comment.

Exhibit 18

News Article, Las Cruces Bulletin 6/12/2020

SPACEPORT AMERICA

Governor appoints Spaceport Authority board members



Aerial view of Spaceport America with the Virgin Galactic WhiteKnightTwo carrier aircraft, VMS Eve, on tarmac.

COURTESY PHOTO

Posted Friday, June 12, 2020 10:00 am

By Elva K. Österreich

Gov. Michelle Lujan Grisham has appointed three new members to the New Mexico Spaceport Authority and re-appointed three other members.

The new appointees are Ethan Epstein of Los Rancho, Peggy S. Johnson of Williamsburg and Eric J. Schindwolf of Tijeras.

Johnson is a native of Truth or Consequences and has served both as mayor and city commissioner for the city. She said she is excited about the appointment and is a big spaceport supporter.

“I supported the [Spaceport] gross receipts tax way back when,” she said. “With everything going on with NASA and Elon Musk, it’s just all happening right now.”

She said the first board meeting is coming up in a few weeks. The date has yet to be determined. Some of the most respected companies are already operating at the spaceport, she said.

Living in the Las Palomas neighborhood on top of a mesa, Johnson said her yard looks over a gap in the Caballo Mountains where Spaceport America is on the other side, “so it’s like the spaceport is in my back yard.”

In terms of economic development, she said some of the companies bring their families in, buy homes and put their children in schools. Johnson said she would like to encourage southern New Mexico residents to check out the facility and the area around T or C.

“It’s just a wonderful place,” she said. “I hope everyone gets to see it. You can go in the office in T or C and book a tour. It’s really important for people to get onto the spaceport site, and [the tour] pretty much explains everything, and the building downtown is like a mini museum.

“We have got to stay positive because it is going to be wonderful,” she said.

Reappointed members include Michelle Coons, who has a long career in banking and finance in New Mexico, most recently with First National Santa Fe and Strategic Growth Bancorp; Laura Conniff, a real estate broker in Las Cruces and owner of Leveldale Farms and Conniff Cattle Company; and Richard Holdridge, a retired Air Force Officer with a PhD in Astronautical Engineering from Stanford University.

Conniff has been on the board for four years.

“I think it is a great organization,” she said. “There were many who were not in support, but the state approved a \$200 million deal. So, what I think is that we need to make it work and do it well.”

Since her tenure on the board Spaceport Authority, CEO Dan Hicks has been hired and a variety of tenants have moved to the spaceport.

“And I think very soon we will have a lift off with Virgin Galactic,” she said.

The board provides oversight, Conniff said, managing contracts with various groups that have dealings with the spaceport, like security.

“It’s a very interesting board,” she said. “I do think it’s going to make a huge difference in this community. It’s an extraordinary facility. There is a lot going on out there. Everybody should take some time and go out there.”

The Spaceport Authority is administratively attached to the New Mexico Economic Development Department. It consists of eight members; six are appointed by the governor and confirmed by the State Senate. The lieutenant-governor (or designee) and the cabinet secretary of the Economic Development Department also are members. By statute, no more than three of the appointed members can belong to the same political party.

Cabinet Secretary Alicia Keyes is the chair of the Spaceport Authority.

“The New Mexico Spaceport Authority is transitioning into a new era of operations and I look forward to invigorating the Board to support current clients and to recruit additional aerospace companies to the state and grow this exciting economic sector,” Keyes said.

Spaceport America is an FAA-licensed launch complex, situated on 18,000 acres adjacent to the U.S. Army White Sands Missile Range. It currently hosts flight testing and operations with Virgin Galactic, Boeing, UP Aerospace, EXOS Aerospace, HyperSciences and SpinLaunch.

Exhibit 19

News Article, Las Cruces Sun News 10/16/2020

Spaceport America board fires Executive Director Dan Hicks

Rick Holdridge removed from the spaceport authority board by Gov. Michelle Lujan Grisham

Algernon D'Amassa

Published 6:13 p.m. MT Oct. 16, 2020 | Updated 9:06 a.m. MT Oct. 17, 2020

Las Cruces Sun-News

This story was updated at 7:18 p.m.

SPACEPORT AMERICA - Dan Hicks was terminated as Spaceport America's executive director and CEO with little public discussion on Friday afternoon.

The governing board of the New Mexico Spaceport Authority met in special session via video conference Friday afternoon. The board went into closed executive session for about an hour to discuss an investigation into the conduct of Spaceport America Executive Director Dan Hicks.

Returning to open session, the board voted to terminate Hicks on a 5-1 vote. Ethan Epstein, Eric Schindwolf, Peggy Johnson, Michelle Coons and state Economic Development Secretary Alicia Keyes, who chairs the board, all voted yes on the motion.

Board member Laura Conniff of Las Cruces, a former New Mexico State University Regent, was the only vote against firing Hicks.

Additionally, longtime board member and former chairman Richard Holdridge was removed Friday by Gov. Michelle Lujan Grisham, the state Economic Development Department announced following the board meeting. The governor's office and the EDD declined further comment.



Holdridge, a retired U.S. Air Force officer from Deming with a background in space technology, was first appointed to the board from 2007 to 2009 by Gov. Bill Richardson, and named as chairman of the board in 2011 by Gov. Susana Martinez.

Holdridge did not immediately respond to phone calls from the Las Cruces Sun-News.

Hicks, the spaceport's CEO since 2016, has been on administrative leave since June while allegations of mismanagement and abuse of authority have been under investigation by the New Mexico State Auditor and the New Mexico Spaceport Authority, the public body governing the spaceport.

The McHard Accounting Consulting firm, a forensic accounting firm based in Albuquerque, conducted an investigation which was then referred to the state auditor. Keyes informed a state legislative committee this summer the allegations included potential criminal activity.

Meanwhile, an unrelated lawsuit by former spaceport space systems engineer Karen Barker alleges Hicks and other spaceport staff engaged in gender-based discrimination and retaliation against her.



Hicks completed a 34-year career at White Sands Missile Range before moving to the spaceport in 2016. The Las Cruces native graduated from Las Cruces High School and finished a Bachelor's degree in mechanical engineering from New Mexico State University plus an honorary selection to NMSU's Mechanical and Aerospace Engineering Academy.

Hicks' salary was \$159,120, per the [New Mexico Sunshine Portal](#), an online database maintained by the state.

In June, former CFO Zach De Gregorio submitted a four-page complaint that did not allege any legal violations but said Hicks had created "a toxic environment where there is no longer adequate internal controls at the NM Spaceport Authority."

Spaceport America business development director Scott McLaughlin, who has been serving as interim CEO, will continue as acting director pending an executive search for a new CEO, Keyes said after the vote.

"The investigative report has gone to the state auditor, so in terms of releasing that, it's really up to the state auditor as to when he wants to do that," Keyes said before the board adjourned without further discussion.



Earlier Friday, the State Auditor's Office said the matter was still under review and no further information was available.

Hicks did not immediately respond to phone calls or text messages.

"This administration's priority is that the Spaceport becomes an economic driver for job growth in Southern New Mexico," Keyes wrote in a statement Friday evening. "The State is committed to further investment in the Spaceport, and to the employees, people and communities who depend on it. We thank them for their patience during this investigation and I will continue to reach out so we can move forward together."

The FAA-licensed commercial spaceport was built between 2006 and 2012 in Sierra County near Upham, outside of Truth or Consequences, with approximately \$220 million in public funding. Its anchor tenant, Virgin Galactic, aims to initiate its first space flights for commercial passengers early in 2021.

Exhibit 20

Emails between Alicia Keyes and Jeremy Perea
08/02/2020

Janet McHard

From: Perea, Jeremy, DFA <Jeremy.Perea@state.nm.us>
Sent: Sunday, August 2, 2020 2:57 PM
To: Keyes, Alicia, EDD
Cc: Janet McHard; Beth Mohr; Clark, Jon, EDD; Romero, Debbie, DFA
Subject: Re: [External] GRT Funds and Spaceport

Hello all,

Here is breakdown of what NMSA has received in GRT (account 405601) and was then placed in Fund 87100 (NMSA Operational Account)

Ledger Group	Fund	Dept	Bud Ref	Class	Fiscal Year	Period	Revenue GF	Revenue GRT	PSEB Budget	AC
REVENUE	87100	P770	117	A0000	2017	1	419,600.00	322,149.00	1,548,400.00	
REVENUE	87100	P770	118	B0000	2018	1	375,900.00	585,000.00	1,614,000.00	
REVENUE	87100	P770	119	C0000	2019	1	975,900.00	700,000.00	2,047,300.00	
REVENUE	87100	P770	120	D0000	2020	1	985,400.00	1,300,000.00	2,254,400.00	

In the chart you can see in the far right yellow column which is the difference between their GF appropriation and their actual 200 category expenditures. In Red you can see what they put from GRT into operations, we can assume some if not all of the short fall in the 200 category from the GF appropriation was covered by RT.

Again, I emphasize once GRT hits fund 87100 we lose how it is spent in detail... therefore we can confidently say they use GRT in operations... but we cannot say X amount was used for salaries due to the commingling.

NMSA uses all General Fund for salaries and then has to make up the reminder and in past conversations with the prior NMSA CFO it was mentioned multiple times that the shortfall was covered in part or in full by GRT depending on how much "excess" they were allowed to use from the total GRT funds.

Please feel free to contact me at anytime.

Thank you,

Jeremy.

From: Keyes, Alicia, EDD
Sent: Thursday, July 30, 2020 4:19 PM
To: Perea, Jeremy, DFA
Cc: Janet McHard (Jmchard@themchardfirm.com); Beth Mohr; Clark, Jon, EDD; Romero, Debbie, DFA
Subject: GRT Funds and Spaceport

Jeremy,

Can you forward the McHard Firm your findings on the usage of GRT funds at the Spaceport. We will also need to share this information with the State Auditor, which McHard can do in their report. Particularly, we need to know how much money was used for salaries over the past 5 years.

Many thanks,
Alicia



ALICIA J. KEYS • CABINET SECRETARY ECONOMIC DEVELOPMENT • STATE OF NEW MEXICO • 505-827-0300

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Ledger Group	Fund	Dept	Bud Ref	Class	Fiscal Year	Period	Revenue GF	Revenue GRT	PSEB Budget	ACTUAL PSEB Expense	Gen Fund/PSEB Expenses Diff
REVENUE	87100	P770	117	A0000	2017	1	419,600.00	322,149.00	1,548,400.00	1,474,657.14	-1,055,057.14
REVENUE	87100	P770	118	B0000	2018	1	375,900.00	585,000.00	1,614,000.00	1,465,588.64	-1,089,688.64
REVENUE	87100	P770	119	C0000	2019	1	975,900.00	700,000.00	2,047,300.00	1,890,360.10	-914,460.10
REVENUE	87100	P770	120	D0000	2020	1	985,400.00	1,300,000.00	2,254,400.00	2,331,618.97	-1,346,218.97

Exhibit 21

NM Spaceport Authority Board Meeting Agenda
12/02/2021

NEW MEXICO SPACEPORT AUTHORITY

Board Meeting

December 2, 2020 03:00 PM – 05:00 PM

Topic: Spaceport Authority Regular Meeting

Time: Dec 2, 2020 03:00 PM Mountain Time (US and Canada)

<https://us02web.zoom.us/j/89608338041?pwd=MU9jeFUwZTJxM25CRmdOQIuNmIEQT09>

Meeting ID: 896 0833 8041 Passcode: 706787

Find your local number: <https://us02web.zoom.us/u/kcisl61rhK>

- 1) Call to Order**
- 2) Approval of Agenda**
- 3) Approval of Meeting Minutes**
 - a) July 31, 2020 (Regular Meeting)**
 - b) October 16, 2020 (Special Meeting)**
- 4) Investigation Status**
- 5) Advisory Committees Updates**
 - a) Purchase Threshold and Formal Bylaws**
 - i) Purchases Threshold for Approval – Action Item**
 - ii) Formal Bylaws - Discussion**
 - b) Executive Director Search – Action Item**
- 6) Bond Refinance Discussion – Action Item**
- 7) Spaceport Activities Review**
 - a) Safety Discussion Report – Eric Schindwolf**
 - b) Activities Review**
- 8) Statement of Work (SOW) Summaries for Approval – Action Item**
 - a) SOC Repairs**
 - b) STARC Building**
 - c) Vertical Launch Rail**
 - d) VLA Improvements**
- 9) Public Comments**
- 10) Adjourn**

Exhibit 22

News Article, Las Cruces Sun News 12/03/2020

Spaceport America board approves selection process for next director, bids for projects

New Mexico Spaceport Authority's directors meet for first time since investigative audit into previous director

Algernon D'Ammassa

Las Cruces Sun-News

Dec 3, 2020



SPACEPORT AMERICA - The board of directors governing the New Mexico Spaceport Authority began turning the page Wednesday on a recent third-party audit that alleged hundreds of thousands of taxpayer dollars were wasted during the tenure of fired Spaceport America director Dan Hicks.

During a board meeting conducted by video conference, the seven-member body (minus Laura Conniff, who was absent) agreed to a recommendation by state Economic Development Secretary Alicia Keyes, who serves as board chair, to have

the state Attorney General's office review draft bylaws currently under development to assure their sufficiency under New Mexico statutes.

Spaceport general counsel Melissa Force said the draft version presented to the board Wednesday clarified the board's authority to hire and fire the spaceport's director and addressed requirements under the Open Meetings Act, which were one of the concerns raised by the special audit.

The board approved a job description and process for selecting candidates for spaceport director. Hicks, who had served as director since 2016, was fired at a special meeting of the board in October. The spaceport's business development director, Scott McLaughlin, is serving as interim director.

McLaughlin sought the board's approval to apply for bond refinancing through the New Mexico Finance Authority in an effort to reduce debt service costs by a projected \$9 million, but the board postponed action for further analysis.

At the spaceport facility in Sierra County, Virgin Galactic is preparing for suborbital test flight around Dec. 11 which McLaughlin said will make New Mexico just the third state to launch a crewed flight into space. With the addition of more air- and spacecraft, he said the commercial spaceliner company foresees 400 flights annually.

The final test phase precedes the company's first flight into space with commercial passengers on board, most recently projected to take place during the first quarter of 2021.

Additionally tenants at the facility HAPSMobile AeroVironment, UP Aerospace and SpinLaunch. McLaughlin operations at the spaceport had been affected by the COVID-19 pandemic and public health restrictions, with many vertical launches and other revenue-producing uses of the facility canceled. Additionally, McLaughlin lamented the cancellation this year's Spaceport America Cup — an annual international rocketry competition that draws 1,500 visitors to Las Cruces and the spaceport facility — as "sad" but necessary.



The board authorized McLaughlin to proceed with requests for proposals on four capital projects funded by the state legislature at its 2019 regular session.

The projects include up to \$750,000 for repairs to the spaceport's operations center, which McLaughlin said has been affected by poor drainage work at the time of the building's construction in 2012, with damage to the building caused by the center's dome and building frame-shifting in opposing directions.

Another capital project would invest up to \$9 million in a new technology and reception center near the spaceport's public entrance that would house the spaceport's information technology instead of in the main hangar building used for Virgin Galactic's operations.

The two other projects would bring infrastructure improvements to the spaceport's vertical launch area, currently accessible by dirt roads with no facilities for restrooms or electric power service. Up to \$8 million was approved for those improvements, which would be awarded to vendors through a series of procurements.

McLaughlin also received the board's approval to seek a sole-source proposal from UP Aerospace to design and construct a new launch rail for the spaceport, after a previous request for proposals drew no responses. The project was approved for up to \$2.2 million.

Spaceport America was initially constructed between 2006 and 2012 with \$220 million in public money. It is located near Upham in the Jornada del Muerto desert basin near White Sands Missile Range, outside of Truth or Consequences.

Exhibit 23

NM Spaceport Authority Board Meeting Minutes
04/04/2018

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SPACEPORT AMERICA MEETING

MEETING MINUTES

April 11, 2018
8:30 a.m.

1 is that included in --

2 ZACH DE GREGORIO: I don't think it is.

3 RICK HOLDRIDGE: I don't think it's --

4 DAN HICKS: No.

5 RICK HOLDRIDGE: Probably not.

6 DAN HICKS: It's not.

7 MICHELLE COONS: [INAUDIBLE] some of the
8 questions, like, who are your tenants, and have they
9 increased or decreased? And which really tied directly
10 back to our financial statements. And those were just
11 some points that we had to think, you know --

12 DAN HICKS: Yeah. I can't really answer
13 what, after four years of distributing to us, would
14 cause them to see that clause. But we're on a good
15 path now. We don't think there's anything else in
16 those bond documents that'll pop up and hit us.

17 UNIDENTIFIED FEMALE SPEAKER: [INAUDIBLE].

18 DAN HICKS: That's right.

19 RICK HOLDRIDGE: Yeah.

20 DAN HICKS: Okay.

21 MICHELLE COONS: And, Mr. Chair, one thing
22 that I would say: We have been pretty vocal telling
23 them that at our window period we will probably
24 refinance, and I can't remember what those dates are,
25 but there is more a more attractive bond, even in an

1 accrued [INAUDIBLE] for us to refinance at one of these
2 windows.

3 DAN HICKS: We will be coming to the board
4 as soon as that magic date passes to look at
5 refinancing because that would be super. The neat
6 thing about the authority that the law that established
7 us 10 years ago does give us authority to go bond.

8 The reason why we went with NMFA years ago
9 in such a risky venture as a state agency, I don't
10 think there was anybody that wanted to take on that.
11 But now, there's probably many banking institutions
12 that would love to help finance.

13 MICHELLE COONS: Well, the fact that instead
14 of being in a 20-year amortization or a 10-year
15 amortization at the next window. And we can decide if
16 we want to spread that out, and you can get a better
17 rate and different things. There's less risk.

18 RICK HOLDRIDGE: Do the GRTs have a sunset
19 clause? I forgot.

20 ZACH DE GREGORIO: There's no sunset clause.

21 RICK HOLDRIDGE: Okay.

22 DAN HICKS: I think going forward in time,
23 that's something that we want to keep is no sunset
24 clause. Also going forward in time what we want to
25 look at is what is -- as a state agency, what is the

1 right mix to support a Spaceport. And I notice in my
2 18, 16 months having been on board, there's positions
3 all over the map on that, you know, if we should be
4 totally self-sustained, which doesn't exist in any
5 Spaceport in the world, or should we be, you know,
6 totally funded by the state, which isn't good either.

7 There's probably a happy medium where you
8 have a good customer base, which gives you reimbursable
9 that funds all of your operations team. But then your
10 life cycle replacement sustainment cost really is more
11 of an agency, a state kind of overhead, you know,
12 similar to airports or similar to the transportation
13 highway thing.

14 You know, you build highways to get
15 economies growing. You build airports to get economy.
16 You build spaceports. Not all of the operation's
17 future growth of the Spaceport in one or two or three
18 or five six companies there when we start looking at
19 putting other facilities and welcome centers and really
20 grow and to get to where the infrastructure's needed to
21 be just like Kennedy Space Center. Has anybody been to
22 Kennedy Space Center? What a cool facility that is,
23 but it's got six decades of federal and state spending.

24 REBECCA LATHAM: It's the first time I had
25 astronaut ice cream. I'll always remember that.

**State of New Mexico
New Mexico Spaceport Authority
Meeting Minutes Approval**

The attached meeting minutes from the Regular Board Meeting on April 11, 2018 are APPROVED by the New Mexico Spaceport Authority Board of Directors this 30th day of August, 2018.



Rick Holdridge, Board Chair

30 Aug 18

Date

Exhibit 24

NM Spaceport Authority Board Meeting Minutes
02/11/2021

NEW MEXICO SPACEPORT AUTHORITY

Board Meeting

February 11, 2021 03:00 PM – 05:00PM

Topic: Spaceport Authority Board Meeting

Time: Dec 2, 2020 03:00 PM Mountain Time (US and Canada)

Via Zoom

Video Conference Link:

<https://us02web.zoom.us/j/83040124105?pwd=ODBhbXBEdGRWMMV2NHYva1FaRFFQQT09>

Meeting ID: 830 4012 4105 Passcode: 752105

1. Call to Order

- a. Meeting called to order by Secretary Keyes on February 11, 2021 at 03:05PM

2. Roll Call

a. Attendees

- i. Lt. Governor Howie Morales designee Martina C'de Baca – non-voting – present
- ii. Interim Executive Director Scott McLaughlin – non-voting – present
- iii. Cabinet Secretary Alicia J. Keyes – present
- iv. Ethan Epstein – present
- v. Peggy Johnson – present
- vi. Eric Schindwolf – present
- vii. Laura Conniff – present
- viii. Michelle Coons – present

b. Quorum recognized

3. Approval of Agenda

- a. Are there any items on this agenda that could cause a potential conflict of interest by any Governing Board Member?
 - i. No
- b. Motion to approve agenda made by – Michelle Coons
- c. Second – Ethan Epstein
- d. Roll Call
 - i. Ethan Epstein – are
 - ii. Peggy Johnson – aye
 - iii. Eric Schindwolf – aye
 - iv. Laura Conniff – aye
 - v. Michelle Coons – aye
 - vi. Secretary Keyes – aye
- e. Motion passed

4. Approval of Meeting Minutes

- a. December 02, 2020 (regular meeting)
 - i. Motion to approve minutes made by – Peggy Johnson
 - ii. Second – Michelle Coons
 - iii. Roll Call
 - 1. Ethan Epstein – aye
 - 2. Peggy Johnson – aye
 - 3. Eric Schindwolf – aye
 - 4. Laura Conniff - aye
 - 5. Michelle Coons – aye
 - 6. Secretary Keyes – aye
 - iv. Motion passed

5. Open Meetings Act Resolution

- a. Motion to pass resolution – Eric Schindwolf
- b. Second – Peggy Johnson
- c. Roll Call
 - i. Ethan Epstein – aye
 - ii. Peggy Johnson – aye
 - iii. Eric Schindwolf – aye
 - iv. Laura Conniff - aye
 - v. Michelle Coons – aye
 - vi. Secretary Keyes – aye
- d. Motion passed

6. Bond Refinance Resolution

- a. Scott McLaughlin
 - i. Guillermo Blacker worked with NMFA to refinance bonds
 - ii. Michelle Coons participated
 - iii. Resolution to refinance will reduce interest rate
- b. Michelle Coons
 - i. Comprehensive meeting that answered questions
 - ii. It is in the best interest of the spaceport
 - iii. The rate that the bonds will be refinanced at is lower than the rate we will see the benefit of, it is sub 2%
 - iv. The exact structure of the bonds can be tweaked during the process of financing, there are still some questions about the details
 - v. The resolution today gets us moving forward, we can resolve additional issues during the refunding process
- c. Scott McLaughlin
 - i. The main reason for financing is to drop the balloon payment at the end, this reduces the required reserves
- d. Guillermo Blacker
 - i. NMFA distributed a detailed timetable
 - ii. There will be several instances for the parties to conduct reviews of the new structure of the terms

- iii. The process is lengthy, expected the closing of the new terms would not occur until the first of June
 - e. Michelle
 - i. Support the resolution and moving forward, must do a deeper dive as we progress
 - ii. Will remain involved in the process
 - f. Motion to pass resolution – Michelle Coons
 - g. Second – Ethan Epstein
 - h. Roll Call
 - i. Ethan Epstein – aye
 - ii. Peggy Johnson – aye
 - iii. Eric Schindwolf – aye
 - iv. Laura Conniff - aye
 - v. Michelle Coons – aye
 - vi. Secretary Keyes – aye
 - i. Motion passed
- 7. Spaceport Activities Review (presentation attached)**
- a. Scott McLaughlin
 - i. Provided a review of current spaceport activities
 - b. Michelle Coons
 - i. Are all of the funds available to meet our Cap Ex requirements?
 - ii. Scott – yes, it has all been approved by the legislature
 - c. Eric Schindwolf
 - i. Is the strategic plan a capital expenditure?
 - ii. Guillermo – it was funded through the legislature
 - iii. Scott – it is not cap ex by definition
 - d. Peggy Johnson
 - i. What can we spend the GRT on?
 - ii. Alicia – received a letter from AG, we cannot use on operational expenses, allowable uses are in statute
- 8. Advisory Committee Updates**
- a. Formal Bylaws
 - i. AG letter will be distributed to all board members
 - ii. AG recommends we adopt the bylaws and then pass administrative rules
 - iii. AG letter discusses what GRT funds can be used on, board will be working on adopting new procedures for the funds to be used
 - b. Executive Director Search
 - i. Closed segment interviews
 - ii. Authority to close – NMSA 1978, § 10-15-1 (H)(2) Limited Personnel Matters
 - iii. Subjects to be discussed – Executive Director search, interviews, and discussion
 - iv. Motion to close meeting – Peggy Johnson
 - v. Second – Eric Schindwolf

- vi. Roll Call
 - 1. Ethan Epstein – aye
 - 2. Peggy Johnson – aye
 - 3. Eric Schindwolf – aye
 - 4. Laura Conniff – aye
 - 5. Michelle Coons – aye
 - 6. Secretary Keyes – aye
 - vii. Motion passed
 - viii. The matters discussed during the closed meeting were limited only to those specified in the motion for closure
 - 1. Personnel matters, hiring of Executive Director
 - ix. Announcement will be made once the candidate is vetted by the Governor's Office
 - c. Motion to open the meeting – Peggy Johnson
 - d. Second – Ethan Epstein
 - e. Roll Call
 - i. Ethan Epstein – aye
 - ii. Peggy Johnson – aye
 - iii. Eric Schindwolf – aye
 - iv. Laura Conniff – aye
 - v. Michelle Coons – aye
 - vi. Secretary Keyes – aye
 - f. Motion passed
- 9. Public Comment**
- a. No comment
- 10. Adjourn**
- a. Motion to adjourn made by – Eric Schindwolf
 - b. Second – Michelle Coons
 - c. Roll Call
 - i. Ethan Epstein – aye
 - ii. Peggy Johnson – aye
 - iii. Eric Schindwolf – aye
 - iv. Laura Conniff – aye
 - v. Michelle Coons – aye
 - vi. Secretary Keyes – aye
 - d. Motion passed
 - e. Meeting adjourned at 05:20PM



Board Chair

4/30/2021

Date

Cabinet Secretary Alicia J. Keyes

Exhibit 25

News Article, Las Cruces Sun News 02/13/2021

Local spaceport taxes were not properly spent, Attorney General's office says

New Mexico's spaceport authority had requested input on reforms following termination of its executive director

Algernon D'Ammassa

Las Cruces Sun-News

Feb 13, 2021



SIERRA COUNTY - Elected officials who have argued for years that excess revenues generated from local gross receipts taxes for Spaceport America got some backup this week from the New Mexico Attorney General's Office.

In December, the board of directors governing Spaceport America agreed to ask the state Attorney General's office to review proposed changes to its bylaws, as well as the tax controversy, following the termination of the spaceport's director last fall.

Without providing a formal legal opinion, the office on Wednesday offered some advice to the Economic Development Department, which oversees the New Mexico Spaceport Authority.

Chief Counsel Matt Baca addressed the letter to Economic Development Secretary Alicia Keyes, who also chairs the Spaceport Authority.

The letter affirms that procurement of goods and services falls under the authority of the NMSA —rather than the executive director —whose duties under New Mexico's Spaceport Development Act are "limited to the hiring of staff and day to day operation" of the spaceport.

That includes managing the procurement process and reporting to the board as the decision-making authority, Baca wrote.

An investigative audit report in November concluded that former director Dan Hicks had exceeded his authority, evading internal controls and expending his budget as he pleased. Hicks was terminated by the board in October.



Baca also addressed the use of local gross receipts tax funds, an issue flagged in the investigative audit.

The statutes addressing spaceport tax districts made clear, Baca wrote, that 75 percent of local GRT (currently collected by Sierra and Doña Ana counties) must be used for "the financing, planning, designing, engineering and construction of a regional spaceport," while the other 25 percent may be retained by the local government for its use.

Nowhere in statute or tax code, Baca wrote, "did the Legislature state permission to use gross receipts taxes collected by local governments for the operational costs of running the Authority itself."

The spaceport's regional tax entity consists of two commissioners each from Doña Ana and Sierra counties and two appointees by the governor. The local spaceport tax was approved by Doña Ana County voters in 2007 and Sierra County in 2008.

Since 2009, 75 percent of the revenue was directed by the tax authority toward repaying bond debt for the construction of the spaceport and 25 percent for "local spaceport-related education."

The letter states that spaceport's current-year operating budget, appropriated by the state Legislature, is \$12.7 million. However, the spaceport's interim director, Scott McLaughlin, said that an early estimate of the budget of more than \$12 million was subsequently reduced and the actual appropriation is considerably smaller, thanks in part to revenue from leases and fees he said comprises 60 percent of the spaceport's funding.

"After a more detailed analysis was performed using more realistic revenue predictions and with significant cost-savings, the working budget was forecast at \$9.7M for FY21 and \$10.6M for FY22," he wrote, adding that the general fund appropriation for the current fiscal year was \$1.9 million.

The tax has generated an excess of several hundred thousand dollars annually that until recently went to spaceport operations instead, to the dismay of some elected officials.

In December, the Doña Ana County Board of Commissioners unanimously approved a resolution decrying the use of excess funds, calling on the state to fund the operations with state dollars and pay the county back.



Doña Ana County Commissioner Shannon Reynolds, who represents the county on the tax board, said the Attorney General Office's advice vindicates the county's position that the diversion of excess revenue violates the law creating the regional spaceport district.

"There was kind of a violation by the previous (tax) board to allow them to use that money," he said, "and we believe that we need to put checks and balances in place now in order to ensure that future boards don't make this mistake."

Sierra County Chairman James Paxon, who also sits on the tax authority, said he was seeking a legal opinion from the county attorney.

Baca also recommended that provisions of the draft bylaws spelling out the NMSA's policies, including the powers of its chief executive, should be promulgated as administrative rules, as called for in the Spaceport Development Act.

On Thursday, Baca sent a follow-up letter to Keyes stating the Attorney General's Office had not yet reached any conclusions about potential criminal violations flagged by investigators.

Spaceport America, located in the desert basin of Sierra County near Upham, was initially constructed with \$220 million in public funding between 2006 and 2012.

Exhibit 26

News Article, Sierra County Sun 02/19/2021

[ORDER ALERTS SUBSCRIPTION](#)[BECOME A SUPPORTER](#)[HELP US REPORT](#)**FREE TO ALL****NEW MEXICO GOVERNMENT**

Legality of GRT spending on Spaceport operations and other financial irregularities left unsettled by AG

by Kathleen Sloan | February 19, 2021

10 min read

The New Mexico Attorney General's much-anticipated opinion on the possible criminality of management and spending irregularities at Spaceport America was delivered to the requestor, state Economic Development Department Secretary Alicia Keyes, on Feb. 10. Emphatically described by the AG's Office as *not* a legal ruling, that opinion was followed the next day by a second letter from the AG's Office that further watered down statements in the first.

The AG's decision not to offer clear legal guidance leaves the two public boards that oversee Spaceport expenditures struggling to redefine their fiduciary powers and responsibilities largely on their own.

Keyes, who sits on the Spaceport America Authority board by virtue of her EDD position, asked the Attorney General for a formal opinion last September on various financial issues raised by a forensic audit of the tenure of Dan Hicks, fired as Spaceport America director in October. The audit was conducted by The McHard Firm of Albuquerque.

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Got it!



Alicia Keyes, Spaceport America Authority board chair, asked AG Hector Balderas for a formal opinion last September about the findings of a forensic audit of the Spaceport. The AG's Office finally issued a response this month that it said "should not be construed as legal advice."
Source: New Mexico Economic Development Department

The audit issues included a question about the legality of spending gross receipts tax revenues on Spaceport operations that has stymied the Regional Spaceport District tax board for years. The McHard audit cited the opinion of EDD attorneys interpreting state laws as prohibiting GRT spending on anything but capital projects. The McHard report states the AG's Office was also to rule on this particular issue.

The AG's first letter, written by Chief Counsel Matt Baca, warns that "this response is not a formal Attorney General Opinion pursuant to New Mexico Statutes Annotated 1978 Section 8-5-2 (D), nor should it be construed as legal advice to the Authority pursuant to our office's authority to represent public bodies under the same chapter."

This response, which is neither legal advice nor legal opinion, suggests that Hicks, former chief financial office and whistleblower Zach De Gregorio, former Spaceport Authority Board Chairman Rick Holdridge and the other

members of the two oversight boards will not be held accountable for failing to perform their fiduciary duties, as charged by the McHard report. The report was replete with exhibits and other evidence of individual and group misconduct that McHard said cost taxpayers. The amount was left untallied, but it likely totaled several millions of dollars.

After examining the evidence, the AG's Office reached a different conclusion, conveyed in the first letter. It states the McHard findings "do not indicate any particular individual criminal conduct or violation of law." Chief Counsel Baca did concede "they demonstrate the obvious and immediate need for clarity . . .," which the AG's Office declined to provide.

The AG's second letter again stated: "No conclusion has been reached by our office regarding the potential violations stated by the auditing firm." The letter provides no date when such a conclusion might be reached. The AG's Office has been in possession of the McHard report for nearly six months.

The New Mexico Office of the State Auditor, which also reviewed the McHard report and was the entity that released it to the public last November, also appears to be dropping further involvement. "The Office of the State Auditor (OSA) is not currently investigating Spaceport," Benadette Martinez

the matter to the Attorney General's Office, however, that referral is confidential audit documentation and excepted from disclosure."

The AG's Office confirmed that state law prohibits the expenditure of 75 percent of the Spaceport-dedicated GRT on anything but capital projects. Since 2011, \$6.4 million in so-called "excess" GRT not needed to pay off the Spaceport's bond debt has been funneled into the facility's operations, according to the bonds' issuer/holder, the New Mexico Finance Authority. But the AG's Office declined to render a clear opinion about the legality of that practice, stating: "Those funds are likely to have been spent in violation of the provisions of the Regional Spaceport District Act and the Tax Code."

KEYES'S ATTEMPT TO OBTAIN LEGAL CLARITY

Keyes has been a member of the Spaceport Authority Board since early 2019, when she became EDD cabinet secretary. Her membership is required in accordance with the Spaceport Development Act. She became chairperson May 2020.

As the parent state agency of Spaceport America, the EDD ordered a forensic audit after the Spaceport's then CFO Zach De Gregorio submitted a whistleblower complaint in June 2020 accusing then director Dan Hicks of financial mismanagement.

That month, The McHard Firm was hired to conduct the investigation, which expanded as more violations and irregularities were uncovered. In October, following state administrative code, McHard reported its findings to the New Mexico State Auditor's Office, as well as to EDD.

Keyes was obviously privy to the McHard findings before the report was finalized. On Sept. 8, 2020, she wrote Attorney General Hector Balderas, asking for "final advisory opinion" on the misconduct that would be documented in the McHard report.

While awaiting the AG opinion, in the intervening months, both the Spaceport Authority board and the Regional Spaceport District tax board have delayed making decisions, primarily about refinancing bonds and settling how excess gross receipts tax revenues should be spent.

The Regional Spaceport District is comprised of Sierra and Doña Ana Counties, which since 2009 have been collecting a 1/4 cent tax on every dollar spent in their jurisdictions for goods and services for Spaceport-dedicated purposes. As allowed by law, both counties divided the tax-revenue income stream into two parts: 25 percent goes to their school districts to promote student learning in science, technology, engineering and mathematics and 75 percent goes to funding Spaceport capital projects. Both counties have representation on the tax district board that oversees the expenditure of these GRT revenues.

Most of the 75 percent portion goes to paying off two bonds totaling about \$77 million that were issued by the tax district board in 2009 and 2010 to pay for the Spaceport's construction. The bonds, which

as December 2019, but for a dispute over excess GRT spending that has crippled the proper functioning of the tax district board.

Since 2015, Doña Ana County Commissioners have been protesting, via resolutions sent to various state officials, the use of excess GRT revenue for Spaceport operations. On the other hand, the Sierra County Commissioners, who have pinned their economic development hopes on the Spaceport's success, approve of spending excess GRT on its operations.

During the Spaceport Authority board meeting Feb. 11, Keyes and board member Michelle Coons downplayed the refinancing of the bond debt, with Keyes limiting discussion and Coons revealing little about her negotiations with NMFA. Keyes did not relate the contents of the AG's letter to board members, merely mentioning that she had sent it to them. Neither she nor Coons said anything about GRT revenues.

At the last Spaceport tax district board meeting, NMFA staff said refinancing will save the two counties more than \$8 million in interest through 2029, when the bonds will be paid off. Each month the refinancing is delayed costs \$150,000 in avoidable interest payments.

Without presenting any details, Coons introduced a resolution that permitted the Spaceport Authority board to "further negotiate" the refinancing deal with NMFA, and the board approved the resolution unanimously, with no discussion.

The Sun asked Keyes to identify state laws or policies that granted the Spaceport Authority board the power to refinance the tax district board's bonds. EDD Public Information Officer Bruce Krasnow, who reports to Keyes, responded on Feb. 12, explaining that Keyes was following directions from the New Mexico Department of Finance and Administration.

DFA Public Information Officer Henry Valdez said that was not the case. "I spoke with our Board of Finance Director (they handle our bonds)," Valdez told the Sun on Feb. 17, "and DFA doesn't consult with Spaceport on the negotiations or related refinancing for their bonds. Please speak with NMFA."

NMFA Communications and Outreach Manager Lynn Taulbee gave the Sun a definitive answer as to why the Spaceport Authority board was handling the refinancing of bonds supposedly issued by the tax district board, which supposedly has oversight over how Spaceport-dedicated GRT revenue is spent. It turns out the bonds were issued by both boards.

EXPLANATION OF JOINT AUTHORITY TO REFINANCE SPACEPORT BONDS

For the record, the explanation provided by NMFA is as follows:

1. The Spaceport Authority issued the original bonds under its power to 'enter into contracts with

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Got it!

financing the purchase, construction, renovation, equipping or furnishing of a regional spaceport or a spaceport-related project,' NMSA Section 58-31-5(A)(8).

"The Spaceport Authority 'may issue revenue bonds on its own behalf or on behalf of a regional spaceport district . . .,' NMSA Section 58-31-6.

'The [Regional Spaceport] District 'may enter into contracts with the authority [Spaceport Authority] pursuant to which the authority may issue bonds under the Spaceport Development Act . . .,' NMSA Section 5-16-7.

"The district may also pledge its revenues to bonds issued by the Spaceport Authority. See NMSA Section 5-16-6.

"The refunding bonds will likewise be issued by the Spaceport Authority under its power to 'refinance a project,' NMSA Section 58-31-5(A)(9). The Spaceport Authority 'may issue refunding revenue bonds for the purpose of refinancing . . . outstanding authority revenue bonds,' NMSA Section 58-31-13(A). Furthermore, the Spaceport Authority 'may pledge irrevocably for the payment of interest and principal on refund bonds the appropriate pledged revenues that may be pledged to an original issue of bonds,' NMSA Section 58-31-13(B).

"The NMFA will be the purchaser of the Spaceport Authority refunding bonds pursuant to the provisions of NMSA Section 58-31-6(C)(7) in a negotiated sale."

The Regional Spaceport District tax board is to consider a resolution regarding bond refinancing at its Feb. 25 meeting.

HOW WILL THE EXCESS GRT DISPUTE BE SETTLED?

Doña Ana Commissioner Shannon Reynolds, who sits on the district tax board, declined to comment in a Feb. 11 interview with the Sun either on the Spaceport Authority board's resolution to negotiate the bond refinancing or the AG Office's non-ruling on GRT spending.

Jim Paxon, Sierra County Commission chairperson and member of tax district board, has said publicly that he does not consider the AG letter definitive on the issue of excess GRT spending on Spaceport operations. Paxon is seeking his own legal opinion from Sierra County Attorney Dave Pato, according to a Feb. 13 **article** in the Las Cruces Sun-News.

Scott McLaughlin, interim Spaceport America director since last June, when Hicks was put on administrative leave, is acting on the possibility that the Spaceport will be cut off from excess GRT revenue factored into the budget passed for this fiscal year, which began in July 2020. The budgetary shortfall is going to be about \$2 million, McLaughlin told the Spaceport Authority board at its Feb. 11 meeting.

McLaughlin said he will, as a remedy, seek operations money from the state during this legislative session to cover this and future years' operations budgets.

McLaughlin may soon be replaced by a permanent Spaceport America director. During the Feb. 11 meeting, the board went into executive session to discuss applicants for the position. Returning to open session, the board took no action, but Keyes announced the viable candidates will undergo further vetting and background checks.

State law permits Spaceport operations to be paid for by the state. This provision was something the AG's Office cited in its first letter. The Spaceport Authority, "as an independent state agency, receives an operational appropriation from the Legislature," Chief Counsel Baca stated, "which should be used to cover such things as staff salaries . . . or other operating expenses of the Authority."

TAGS: LAW | PUBLIC BOARDS | SPACEPORT AMERICA

AUTHOR

Kathleen Sloan is the Sun's founder and chief reporter. She can be reached at kathleen.sloan@gmail.com or 575-297-4146.

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Exhibit 27

News Article, Las Cruces Sun News 09/09/2020

New Mexico economic development officials ask AG for opinion on spaceport policies, taxes

Susan Montoya Bryan

Associated Press

Sep 9, 2020



ALBUQUERQUE —The state's top economic development officials are asking the New Mexico attorney general to review policies and procedures that govern spending and contracts at Spaceport America as part of an ongoing investigation into the conduct of the spaceport's chief executive officer.

Economic Development Secretary Alicia J. Keyes made the request in an email sent Tuesday to Attorney General Hector Balderas. She said her agency's

investigation has raised questions and concerns regarding the interpretation of statutory governance and procedures under the state Spaceport Development Act.

Balderas confirmed Wednesday that his office will be looking at whether state law requires the New Mexico Spaceport Authority to approve all procurement and requests for proposals and whether tax revenues meant to support the launch facility are limited to specific projects.

“The spaceport receives public funding and must be legally accountable to New Mexican taxpayers, and we are reviewing this matter to ensure funding was lawfully spent as the Legislature intended,” Balderas said in a statement to The Associated Press.

Hicks, who was appointed by Spaceport Authority board members in 2016, was placed on administrative leave after former financial officer Zach De Gregorio accused him of circumventing internal financial controls and accounting procedures. De Gregorio later resigned, and Hicks has declined to comment on the allegations, citing the ongoing investigation.

The state Economic Development Department hired an outside accounting firm to review procurement procedures as well as agreements governing the use of gross receipts tax revenues.



The state auditor's office is reviewing financial aspects related to the spaceport, and the spaceport's interim chief executive told lawmakers last week that all capital projects at Spaceport America also are being assessed because of the open investigation.

Keyes said her agency's interpretation of state statutes suggests that gross receipts tax revenues shouldn't be used for spaceport operations or employee salaries.

Located in a remote stretch of southern New Mexico, Spaceport America is billed as the world's first installation built specifically for the burgeoning commercial space industry to ferry paying passengers to the lower fringes of space and launch other payloads into orbit.

Spaceport officials say they have landed some new tenants and that anchor tenant Virgin Galactic is on track to start flights next year following a round of final testing that is scheduled for this fall.

Exhibit 28

NM Finance Authority

Excerpt from PPRF Official Statement June 23, 2020

Largest Repayment Obligations

Information regarding the Agreements representing the five largest repayment obligations and their obligors is provided below.

City of Rio Rancho

The Finance Authority has previously entered into various obligations with the City of Rio Rancho (“Rio Rancho”), secured by a senior lien on the pledged revenues of Rio Rancho, of which 22 obligations are still outstanding in an original issue amount of \$122,799,301. As of the date of initial delivery of the Series 2020B Bonds, these 22 obligations are projected to be outstanding in the amount of \$102,253,389 and are scheduled to mature on May 15, 2041. The senior lien obligations are secured by revenue pledges of State Fire Protection Funds, State Gross Receipts Tax, Law Enforcement Protection Funds, Local Special Tax (Water Rights Acquisition Fee), Special Assessment and Enterprise System Revenues. Enterprise System Revenue is Rio Rancho’s largest senior lien revenue pledge with seven loans issued and still outstanding in the amount of \$72,471,583.

General Services Department-State of New Mexico

The Finance Authority issued a series of Bonds and used a portion of the proceeds thereof to purchase bonds for the benefit of the General Services Department-State of New Mexico (the “GSD Bonds”). The General Services Department applied proceeds from the sale of the GSD Bonds to fund building projects in Santa Fe for use by the state government. The GSD Bonds are payable from and secured by a portion of gross receipts tax revenues received by the State and appropriated by the State Legislature or transferred to the State Building Bond Fund. As of the date of initial delivery of the Series 2020B Bonds, the GSD Bonds are projected to be outstanding in the aggregate principal amount of \$71,548,907 and are scheduled to mature on June 1, 2036.

City of Las Cruces

The Finance Authority has previously entered into various obligations with the City of Las Cruces (the “City of Las Cruces Bonds and Loans”) secured by a senior lien on the pledged revenues of the City. As of the date of initial delivery of the Series 2020B Bonds, the City of Las Cruces Bonds and Loans are projected to be outstanding in the approximate aggregate principal amount of \$77,001,076 and are scheduled to mature as of June 1, 2041. The City of Las Cruces Bonds and Loans are secured by revenue pledges of Gross Receipts Tax, Enterprise System Revenues, and State Fire Protection Funds.

City of Santa Fe

The Finance Authority has previously entered into various obligations with the City of Santa Fe (the “City of Santa Fe Bonds and Loans”) secured by a senior lien on the pledged revenues of the City. As of the date of initial delivery of the Series 2020B Bonds, the City of Santa Fe Bonds and Loans are projected to be outstanding in the aggregate principal amount of \$48,356,112 and are scheduled to mature as of June 1, 2039. The City of Santa Fe Bonds and Loans are secured by revenue pledges of Gross Receipts Tax, Local Special Tax (Lodgers Tax), State Fire Protection Funds and Enterprise System Revenues.

New Mexico Spaceport Authority

The Finance Authority has previously issued a series of bonds and has applied certain Prepayments of Loans for the purpose of purchasing securities from the New Mexico Spaceport Authority (the “Spaceport Authority Securities”), the proceeds from which have been used to finance the costs of planning, designing, engineering and constructing a regional spaceport. The Spaceport Authority Securities are payable from and secured by a portion of the county regional spaceport gross receipts tax revenues received by the New Mexico Regional Spaceport District from gross receipts taxes imposed by Dona Áña and Sierra Counties which are pledged by the Regional Spaceport District and the Spaceport Authority to pay the Spaceport Authority Securities. As of the date of initial delivery of the Series 2020B Bonds, the Spaceport Authority Securities are projected to be outstanding in the aggregate principal amount of \$45,985,000 and are scheduled to mature on June 1, 2029. The PPRF Series 2009C Bonds, which were the only PPRF bonds issued specifically to fund the New Mexico Spaceport project, were redeemed in full on September 1, 2019. However, such redemption does not affect the outstanding principal balance of the Spaceport Authority Securities.

Exhibit 29

NM Finance Authority

Excerpt from PPRF Official Statement June 23, 2020

NEW MEXICO FINANCE AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2019 AND 2018

State Loans Receivable

NMFA has agreements with various state entities relating to the issuance of bonds. Pursuant to the underlying legislation and resolutions, the bond proceeds financed various State projects in the PPRF. Pursuant to the legislation, the debt service on these bonds is payable solely from pledged future revenues from the State and state entities. The following activity represents amounts due to NMFA under these agreements as of June 30, 2019. These loans are included in the PPRF loans above.

Loan Number	Project Name	State Entity	Balance at June 30, 2019
PPRF-3268	METROCRT4	Administrative Office of the Court	\$ 19,945,000
PPRF-1592	CULTAFFAIRS	Cultural Affairs Department	611,312
PPRF-2253	CULTAFFAIRS3	Cultural Affairs Department	38,735
PPRF-2590	ENMU	Eastern New Mexico University	22,675,000
PPRF-3283	ENMU2	Eastern New Mexico University	15,340,000
PPRF-3797	PPRF-3797	Eastern New Mexico University	5,463,072
PPRF-2261	GSD5	General Services Department	1,846,300
PPRF-2344	GSD6	General Services Department	800,000
PPRF-3446	GSD7	General Services Department	1,617,468
PPRF-3445	GSD8	General Services Department	33,545,000
PPRF-4431	PPRF-4431	General Services Department	27,445,000
PPRF-4717	PPRF-4717	General Services Department	18,550,000
PPRF-4769	PPRF-4769	General Services Department	48,265,000
PPRF-4955	PPRF-4955	General Services Department	11,500,000
PPRF-2214	DOH6	Department of Health	5,145,000
PPRF-2668	DOH9	Department of Health	7,945,600
PPRF-4432	PPRF-4432	Department of Health	4,540,000
PPRF-3018	GILA 2	Gila Regional Medical Center (Energy Efficiency)	2,508,038
PPRF-2702	HIGHLAND2	Highlands University	13,790,000
PPRF-2345	HIGHLAND3	Highlands University	10,195,000
PPRF-2288	NMSPACE	New Mexico Spaceport Authority	33,865,000
PPRF-2527	NMSPACE2	New Mexico Spaceport Authority	15,545,000
PPRF-1574	EMNRD2	Parks & Recreation Department	1,948,265
PPRF-3296	NMSU2	New Mexico State University - Grants Branch	6,445,000
PPRF-2661	SOCORROSC8	State of New Mexico (Energy Efficiency)	254,070
PPRF-2662	MOUNTAINAIR5	State of New Mexico (Energy Efficiency)	215,510
PPRF-3472	SANTAFE28	State of New Mexico (Energy Efficiency)	2,763,054
PPRF-4718	PPRF-4718	State of New Mexico (Energy Efficiency)	961,781
PPRF-4803	PPRF-4803	State of New Mexico (Energy Efficiency)	404,547
PPRF-4956	PPRF-4956	State of New Mexico (Energy Efficiency)	3,507,043
PPRF-3424	UNMHEALTH	University of New Mexico - Health Sciences Center	17,510,000
PPRF-2700	WNMU	Western New Mexico University	10,150,000
PPRF-2909	WNMU2	Western New Mexico University	4,025,000
Total State Loans Receivable			<u><u>\$ 349,359,795</u></u>

Exhibit 30

NM Finance Authority

Excerpt from PPRF Official Statement February 25, 2021

ANNUAL DEBT SERVICE REQUIREMENTS

The following schedule shows the total debt service payable for the Series 2021A Bonds and all currently Outstanding Parity Bonds for each fiscal year through their respective final maturity dates.

ANNUAL DEBT SERVICE FOR THE BONDS⁽¹⁾

Fiscal Year Ending 6/30	Series 2021A Bonds			Outstanding Parity Bonds ⁽⁴⁾	Total Annual Debt Service
	Principal ⁽²⁾	Interest ⁽³⁾	Total		
2021	\$ 130,000	\$ 458,007	\$ 588,007	\$ 121,855,325	\$ 122,443,332
2022	4,460,000	1,888,700	6,348,700	117,875,218	124,223,918
2023	5,220,000	1,665,700	6,885,700	109,210,693	116,096,393
2024	3,480,000	1,404,700	4,884,700	95,718,080	100,602,780
2025	3,115,000	1,230,700	4,345,700	90,667,943	95,013,643
2026	1,695,000	1,074,950	2,769,950	83,693,461	86,463,411
2027	1,770,000	990,200	2,760,200	78,692,716	81,452,916
2028	1,760,000	901,700	2,661,700	73,315,695	75,977,395
2029	2,285,000	813,700	3,098,700	62,582,715	65,681,415
2030	2,395,000	699,450	3,094,450	56,053,264	59,147,714
2031	2,280,000	579,700	2,859,700	53,843,358	56,703,058
2032	1,440,000	465,700	1,905,700	51,292,813	53,198,513
2033	1,505,000	393,700	1,898,700	49,402,700	51,301,400
2034	1,520,000	318,450	1,838,450	41,945,100	43,783,550
2035	575,000	242,450	817,450	40,365,650	41,183,100
2036	540,000	219,450	759,450	30,046,944	30,806,394
2037	470,000	203,250	673,250	18,962,256	19,635,506
2038	495,000	189,150	684,150	17,237,025	17,921,175
2039	525,000	174,300	699,300	13,205,413	13,904,713
2040	555,000	158,550	713,550	12,038,450	12,752,000
2041	585,000	141,900	726,900	8,383,250	9,110,150
2042	620,000	124,350	744,350	2,788,950	3,533,300
2043	655,000	105,750	760,750	2,784,650	3,545,400
2044	705,000	73,000	778,000	2,782,850	3,560,850
2045	755,000	37,750	792,750	2,633,350	3,426,100
2046	-	-	-	1,957,000	1,957,000
Total	<u>\$39,535,000</u>	<u>\$14,555,257</u>	<u>\$54,090,257</u>	<u>\$1,239,334,867</u>	<u>\$1,293,425,123</u>

(1) Assumes the Series 2021A Bonds are issued and Outstanding. Totals may not add due to rounding.

(2) Payable on June 1 of each year.

(3) Payable on June 1 and December 1 of each year, commencing June 1, 2021.

(4) Represents principal of and interest on Parity Bonds expected to be outstanding as of the Date of Initial Delivery of the Series 2021A Bonds.

(Source: PFM.)

The following table shows estimated available Revenues pledged to the payment of the Bonds, total debt service requirements for the Series 2021A Bonds and all other Outstanding Parity Bonds and the resulting estimated annual coverage ratios. Revenues estimated for current and future fiscal years are based upon the governmental gross receipts tax distribution to the Public Project Revolving Fund for the 12-month period ending December 31, 2020, the Finance Authority's projections for fiscal year 2020-2021 and scheduled payments under the Agreements and Additional Pledged Loans projected for Loans scheduled to close on or before the Date of Initial Delivery of the Series 2021A Bonds, and do not reflect any future Prepayments or delinquencies. The estimated annual coverage ratios are based in part on assumptions that may not be realized. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Trust Estate –Agreement Revenues," "– Additional Pledged Loans" and "– The Governmental Gross Receipts Tax" for descriptions of the Revenues presented under the headings "Aggregate Agreement Revenues" and "NMFA Portion of the Governmental Gross Receipts Tax." See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Trust Estate" and "INVESTMENT CONSIDERATIONS" for a list of some factors which may affect Revenues.

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ESTIMATED REVENUES, ANNUAL DEBT SERVICE REQUIREMENTS
AND PROJECTED COVERAGE RATIOS⁽¹⁾

<u>Fiscal Year Ending 6/30</u>	<u>NMFA Portion of Governmental Gross Receipts Tax⁽²⁾</u>	<u>Aggregate Agreement Revenues⁽³⁾</u>	<u>Estimated Total Revenues</u>	<u>Total Annual Debt Service Requirement⁽⁴⁾</u>	<u>Estimated Annual Coverage Ratios</u>
2021	\$ 31,000,000	\$ 131,151,451	\$ 162,151,451	\$122,443,332	1.32
2022	31,000,000	136,922,762	167,922,762	124,223,918	1.35
2023	31,000,000	127,112,457	158,112,457	116,096,393	1.36
2024	31,000,000	111,567,735	142,567,735	100,602,780	1.42
2025	31,000,000	109,006,776	140,006,776	95,013,643	1.47
2026	31,000,000	101,366,777	132,366,777	86,463,411	1.53
2027	31,000,000	96,681,366	127,681,366	81,452,916	1.57
2028	31,000,000	91,801,230	122,801,230	75,977,395	1.62
2029	31,000,000	91,059,874	122,059,874	65,681,415	1.86
2030	31,000,000	70,709,020	101,709,020	59,147,714	1.72
2031	31,000,000	65,842,347	96,842,347	56,703,058	1.71
2032	31,000,000	60,649,939	91,649,939	53,198,513	1.72
2033	31,000,000	56,432,672	87,432,672	51,301,400	1.70
2034	31,000,000	48,841,906	79,841,906	43,783,550	1.82
2035	31,000,000	45,809,745	76,809,745	41,183,100	1.87
2036	31,000,000	33,215,293	64,215,293	30,806,394	2.08
2037	31,000,000	25,410,634	56,410,634	19,635,506	2.87
2038	31,000,000	20,587,664	51,587,664	17,921,175	2.88
2039	31,000,000	17,467,128	48,467,128	13,904,713	3.49
2040	31,000,000	13,621,316	44,621,316	12,752,000	3.50
2041	31,000,000	9,718,869	40,718,869	9,110,150	4.47
2042	31,000,000	5,300,709	36,300,709	3,533,300	10.27
2043	31,000,000	4,791,602	35,791,602	3,545,400	10.10
2044	31,000,000	4,835,156	35,835,156	3,560,850	10.06
2045	31,000,000	3,871,950	34,871,950	3,426,100	10.18
2046	31,000,000	2,616,114	33,616,114	1,957,000	17.18

⁽¹⁾ Assumes the Series 2021A Bonds are issued and Outstanding. See “INTRODUCTION – Authority and Purpose,” “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Outstanding Parity Bonds,” and “INVESTMENT CONSIDERATIONS – Outbreak of Infectious Disease.”

⁽²⁾ Based upon the governmental gross receipts tax distributions to the Public Project Revolving Fund for the 12-month period ending December 31, 2020 that totaled \$32,683,878, and after discounting projected distributions to account for uncertainty associated with the potential impact of COVID-19 on the governmental gross receipts tax, the Finance Authority projects that governmental gross receipts tax distributions for fiscal year 2020-2021 will be no less than \$31,000,000. For coverage to remain above 1.30x, the Public Project Revolving Fund requires a governmental gross receipts tax distribution of at least \$28,000,000 in fiscal year 2020-2021. Fiscal year governmental gross receipts tax distributions were last below \$28,000,000 in fiscal year 2014-2015, one of 3 fiscal years since 1995-1996 in which year-to-year governmental gross receipts tax distributions decreased. The governmental gross receipts tax distribution decrease between 2013-2014 and 2014-2015 was 3%, the largest year-to-year decrease in the history of such distributions. Governmental gross receipts tax distributions of \$28,000,000 in fiscal year 2020-2021 would represent a decrease of 17% from fiscal year 2019-2020. See “INVESTMENT CONSIDERATIONS – Outbreak of Infectious Disease.” See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – GOVERNMENTAL GROSS RECEIPTS TAX DISTRIBUTIONS FISCAL YEARS 2015-2016 THROUGH 2019-2020” for additional information regarding recent distributions and historical trends. Fiscal year collections represent distributions of governmental gross receipts tax for the period commencing May 1 of the preceding fiscal year through April 30 of the current fiscal year. Assumes annual distribution of the NMFA Portion of the Governmental Gross Receipts Tax will remain the same over the life of the Bonds.

⁽³⁾ Assumes that the Loans financed or refinanced with proceeds of the Series 2021A Bonds are executed and delivered. Agreement Revenues for fiscal year 2020-2021 (which are projected as of February 28, 2021) have been adjusted to account for the effect of the anticipated refunding of two Loans to the New Mexico Spaceport Authority which are currently outstanding in the aggregate principal amount of \$45,985,000. Such refunding is expected to occur before June 30, 2021 and will reduce Agreement Revenues by approximately \$8 million in fiscal year 2028-2029, which represents debt service savings for the New Mexico Spaceport Authority. The Loans to the New Mexico Spaceport Authority were originally funded by the Series 2009C Parity Bonds which were retired with available cash on September 1, 2019.

⁽⁴⁾ Includes debt service on Parity Bonds expected to be outstanding as of the Date of Initial Delivery of the Series 2021A Bonds. Assumes that no Additional Bonds will be issued under the Indenture. See “ANNUAL DEBT SERVICE REQUIREMENTS.”

(Sources: The Finance Authority and PFM.)

Exhibit 31

NM Finance Authority Board Meeting Minutes
02/25/2021

New Mexico Finance Authority
**207 Shelby St.
Santa Fe, NM 87501
(505) 984-1454**

**Minutes of Board Meeting
February 25, 2021
Via Zoom
Santa Fe, New Mexico**

Present:

A.J. Forte	Executive Director, NMML
Andrew J. Burke	Chief Financial Officer - NMSU
Jon Clark	Designee for Secretary, NM Economic Dev. Dept.
Judi Kahl	Designee for Secretary, NM Environment Dept.
Katherine Miller, Chair	Santa Fe County Manager
Leslie Nathanson Juris, Board Secretary	Public Member, Santa Fe, NM
Marcos Trujillo	Designee for Acting Secretary, Dept. of Finance/Admin.
Martin Suazo	Public Member, Las Vegas, NM
Matthew Lovato	Designee for Secretary, NMENRD
Steve Kopelman, Vice Chair	Executive Director, NMC

Finance Authority Staff:

Adam Johnson	Alex Orozco
Angela Quintana	Bryan Otero
Carmela Manzari	Ceryn Schoel
Charlotte Larragoite	Connie Marquez
Dan Opperman	Dora Cde Baca
Joe Durr	Joe Maldonado
John Brooks	LaRain Valdez
Leslie Medina	Lynn Taulbee
Maria Gallardo	Mark Lovato
Mary Finney	Marquita Russel
Michael Vonderheide	Michael Zavelle
Mona Killian	Norman Vuylsteke
Oscar Rodriguez	Rio Trujillo
Ron Cruz	Ryan Olguin
Shawna Johnson	Susan Rodriguez
Todd Johansen	

Guests:

Anne Browne	Sutin Thayer & Browne
Craig Dussinger	Bank of America Merrill Lynch
Scott McLaughlin	NM Spaceport
Stevie Olson	LFC
Susen Ellis	BOKF

1. Call to Order and Roll Call. Chair Katherine Miller called the meeting to order at 9:00 a.m. A roll call established a quorum.

2. Approval of Agenda.

Member moved, seconded by Member, to approve the agenda. The motion passed 10 - 0 on a roll call vote.

3. Approval of the January 28, 2021 Board Minutes.

Member moved, seconded by Member, for approval of the January 28, 2021 Board minutes. The motion passed 10 – 0 on a roll call vote.

4. Report from the Chief Executive Officer. Ms. Marquita Russel reported on the following:

- ✓ As of February 19th, approximately one dozen pieces of legislation directly impacting NMFA have been introduced. NMFA's three primary pieces of legislation are progressing well, and staff does not currently anticipate any issues with the pieces making it successfully through both chambers. House Bill 11, authorizing NMFA to operate a temporary Local Economic Development Act recovery grant for lease, rent and mortgage assistance, passed both chambers and is expected to be signed into law. Senate Bill 3, expanding the Small Business Recovery Loan Fund, has passed the Senate and has been scheduled for hearings in the House.
- ✓ Given the high likelihood of additional federal money being made available, staff is proposing a minor amendment to the Statewide Economic Development Finance Act to allow NMFA to operate additional programs authorized by the federal State Small Business Credit Initiative. This amendment would allow NMFA to operate programs with less operational impact and, if federal funds are made available, could serve needs for banks that are not currently being met. One such program is a Capital Access Program, which matches funds contributed by participating banks to establish a loan loss reserve for enrolled loans at each respective bank.
- ✓ The passage of the \$200 million LEDA recovery grant program and expected passage of the \$500 million Small Business Recovery Loan Fund is anticipated to have significant short and mid-term implications on NMFA's operations. In March staff will propose a second amendment to the FY 2021 budget to provide the resources necessary to stand up and operate these high-volume programs. Staff anticipates that the FY 2022 budget will include additional resources necessary to operate in the high growth mode that NMFA has experienced in the past year.

Chair Miller asked about the proposed legislation regarding a public bank.

Member Forte noted that it would make more sense to utilize NMFA rather than creating a public bank. Member Clark agreed with the comments and also supported the proposed changes to SWEDFA. Member Nathanson-Juris also agreed with the comments, adding that creating a public bank would be redundant given what NMFA already provides. Members Kahl and Suazo agreed with the Board's comments.

Mr. Adam Johnson reviewed the SBRLF statistics, and reviewed the proposal going forward including new employees, external resources, and budget amendment required to provide for the additional costs.

- ✓ Building on the success of the EnABLE Steering Committee, Mr. Johnson is heading up a stimulus program implementation project management team. A steering committee has been established and a project management plan established. A presentation on the lessons learned from the first two programs as well as an overview of the program implementation plan is anticipated to be made to the Board at the March or April Meeting.

Report from the Public Lending Committee. (*Committee members are Mr. A.J. Forte, Chair, Acting Secretary Debbie Romero (Mr. Marcos Trujillo), Secretary James Kenney (Ms. Judi Kahl), Mr. Steve Kopelman (Mr. Leandro Cordova) and Mr. David Martinez.*)

5. **Update on Activities.** The Public Lending Committee met on February 17, 2021 via Zoom teleconference but did not establish a quorum thus all projects were moved forward without recommendations. The Committee reviewed eight PPRF projects and received a short briefing on the three projects for North Central Regional Transit District (“NCRTD”) as members were not notified that updated materials were available for review. Staff recommended approval of the eight projects as presented.
6. **Consideration and Recommendation for Approval of Socorro Soil & Water Conservation District (Socorro County) – 2021 New Building Loan – PPRF-5480.** The Socorro Soil & Water Conservation District (“SWCD”) applied to the Public Project Revolving Fund (“PPRF”) for \$175,000 for land improvements and construction of a new building located next to the NM State Forestry Socorro Division Office.

The District secured a 25- year lease, renewable up to 100 years, with the City of Socorro (“City”) in the Industrial Park. The District will use the loan proceeds to bid and hire a company to engineer and design a forty foot by sixty foot office building that will have eight hundred square feet of office space and sixteen hundred square feet for a garage/shop to store vehicles and equipment.

The District solicited bids for a general contractor for the construction of the building and is working with the City’s Water and Gas Departments and the Socorro Electric Cooperative Engineering Department to acquire easements and connections.

The 2020 mill levy is valued at \$164,556. Not knowing the financial impact that Covid-19 will have on the economy, Socorro County has estimated 2020 collection rate at 85%.

The 2019 audit received an unmodified opinion with zero findings.

7. **Consideration and Recommendation for Approval of Belen Consolidated School District (Valencia County) – Series 2021 General Obligation Bond Refunding – PPRF-5487.** The Belen Consolidated School District (“District”) applied to the Public Project Revolving Fund (“PPRF”) for \$7,270,000 to refund Series 2013 bonds for economic savings.

The Series 2013 Bonds have a current pre-payment date of August 1, 2022 making it an advanced

refunding. The Series 2013 bonds are non-PPRF GO Bonds. As tax-exempt bonds cannot be advance refunded the proposed NMFA loan is taxable.

The Bonds closed on September 17, 2013 with a combined par amount of \$13,250,000. The Bonds are being issued for school infrastructure, purchasing computer software and hardware, and providing matching funds for capital outlay projects, and the cost of issuance.

Under current market conditions, the combined refunding is expected to achieve actual savings of approximately \$297,632.65 which represents net present value savings of more than 4.36% over the life of the loan. The loan is presented with .75bp added to the rates thus reducing the savings to under the 3% threshold per PPRF policies.

The 2019 audit received an unmodified opinion with seven findings including three material weaknesses, one current and two prior year. The District submitted a corrective action plan.

- 8. Consideration and Recommendation for Approval of Village of Columbus (Luna County) – 2021 Equipment Loan – PPRF-5489.** The Village of Columbus (“Village”) applied to the Public Project Revolving Fund (“PPRF”) for \$100,000 to purchase a road grader.

The Village will pledge the 5th increment of the Municipal Local Option GRT (.25%) which is prior to de-earmarking, as pledged revenue towards repayment of the loan.

The 2019 audit received an unmodified opinion with four findings including one material weakness and three significant deficiencies. The Village provided a corrective action plan.

- 9. Consideration and Recommendation for Approval of Taos County, San Cristobal FD – 2021 Fire Equipment – PPRF-5488.** Taos County (“County”) on behalf of San Cristobal FD (“District”) applied to the Public Project Revolving Fund (“PPRF”) for \$198,411 to purchase new fire apparatus and respective equipment.

The District has an ISO class rating of nine with one main station. The District receives an annual base distribution of \$39,058 which will be pledged as the revenue source. The District will also contribute \$200,000 toward the purchase from Fire Protection Grant Award funds.

The 2019 audit received an unmodified opinion with no findings.

- 10. Consideration and Recommendation for Approval of New Mexico Spaceport Authority (Sierra & Doña Ana Counties) – 2020 Refunding Series 2009 (PPRF-2288) and 2010 (PPRF-2527).** The New Mexico Spaceport Authority (“NMSA”) applied to the Public Project Revolving Fund (“PPRF”) for \$39,294,256 to refund Series 2009 and 2010 Bonds.

The tax-exempt NMFA bonds were issued in June 2019 and December 10, 2020.

The NMSA was established by the Spaceport Development Act of 2005 to plan, develop, and operate the first inland commercial spaceport. The NMSA applied and received NMFA approval for PPRF-2288 in July 2009 for Phase 1 financing, planning, designing, engineering, and constructing portions of Spaceport America. PPRF-2527 was approved in December 2010 for

Phase II which was primarily the construction of access roads to the Spaceport with financing accomplished by NMFA purchase of bonds issued by the NMSA.

The pledge for these loans is 75% of the revenue generated by the Doña Ana County Regional Spaceport GRT and the Sierra County Regional Spaceport GRT respectively. The enactment is two one-eights percent (.125%) increments, a quarter percent (.25%) total, adopted by both Doña Ana and Sierra Counties. On May 7, 2009, a general financing proposal was presented to the Spaceport District and approved unanimously as mandated by the Spaceport District Act.

Under current market conditions, the refunding is expected to achieve actual savings of approximately \$8,354,121.13 through maturity, which represents net present value savings of more than 18.45% over the life of the loan.

Refunding creates significant savings for the NMSA by leveling out the debt service structure with a uniformed payment and eliminating the balloon payment in later years. The NMFA will now receive only the amount due for the debt service payment, eliminating the need for a Bond Redemption Fund

Staff performed a stress test where, if GRT is reduced by 20% in both the second year and third year and returns to 90% afterward, NMSA can continue making the required debt service payments; although, the loan will be under NMFA's coverage requirements. However, the combined County Regional Spaceport tax has increased by 15.41% over the same period last year. In addition, this is a short 9-year term with a fully funded debt service reserve at closing.

The 2019 financial audit received an unmodified opinion with no findings.

Member Kopelman moved, seconded by Member Forte, for approval of items 6 – 10. The motion passed 10 – 0 on a roll call vote.

Chair Miller recused herself from participation in agenda items 11 – 13 with Vice Chair Kopelman chairing the meeting.

- 11. Consideration and Recommendation for Approval of North Central Regional Transit District (Rio Arriba County) – Espanola Maintenance Facility – PPRF-5475.** The North Central Regional Transportation District ("NCRTD"), commonly known as the RTD Blue Bus, applied to the Public Project Revolving Fund ("PPRF") for \$2,139,851 to finance the costs associated with the planning, design, and construction of a new maintenance facility located on Silkey Way in Espanola, NM on approximately seven acres of land adjacent to the NCRTD Jim West Regional Transit Center.

The proceeds will also purchase equipment for the maintenance facility, electric bus charging infrastructure and construction of a vehicle wash bay area and fueling station fulfilling the current maintenance and upkeep needs of the NCRTD as well as accommodate future operations and fleet expansion.

The borrower requested a waiver from using an executed intercept agreement or a contingent intercept agreement and will instead make monthly payments to the NMFA.

NCRTD provides predominately fare-free bus and premium fare public transit services that connect

communities and pueblos with an estimated population of 240,998 in Los Alamos, Rio Arriba, Santa Fe, and Taos Counties as well as the Pueblos of Pojoaque, Ohkay Owingeh, Nambé, San Ildefonso, Santa Clara, Tesuque, Taos, Picuris and the Jicarilla Apache Nation.

The major portion of the District's funding sources (69%) is derived from sales tax revenues in the form of GRT. NCRTD started receiving a one-eighth of one percent GRT after it was approved by the four-county area voters in 2008. In 2009, the NCRTD began collecting one-eighth of one percent GRT in the four counties. During 2019, there was a significant increase in GRT revenue from the Santa Fe, Taos, and Los Alamos counties and a slight decrease in Rio Arriba. Starting in 2019, the District projected that the GRT in Rio Arriba County will continue to underperform due to a fledgling economic recovery. Continued increases in spending by LANL in Los Alamos County, and Santa Fe, and Taos County GRT tends to balance the uneven revenues from Rio Arriba County.

NCRTD collects the GRT and then NRTD contributes a 60% portion of the GRT revenues received to regional partners that provide regional services approved by the Board of Directors. The transit agencies that receive these contributions are the New Mexico Rail Runner Express, Santa Fe Trails in Santa Fe County, and Atomic City Transit in the incorporated county of Los Alamos County. The NCRTD then keeps the remaining 40%, which is utilized for the NCRTD provided services. Any excess revenue is placed into the NCRTD's cash reserves. As of November 30, 2020, NCRTD's cash balance is \$4.2M.

Staff utilized a three-year average of the net pass-through GRT revenues with a 10% current economy reduction, resulting in revenues of \$3,151,194 and debt service coverage of 6.82xs. NCRTD will make monthly payments in lieu of an active or contingent intercept as defined by the waiver request. NCRTD is utilizing other public funds toward the completion of this project. The funds include New Mexico State capital outlay of \$1,147,980, a federal Low-No-Grant following through the New Mexico Department of Transportation of \$240,000, and Federal grant funds of \$6,842,849. The total project cost is estimated at \$10.2M.

Prior to closing, NCRTD must obtain State Board of Finance approval. NCRTD will be required to satisfy any other necessary approvals or conditions as required by the NMFA. In addition, any additional indebtedness by NCRTD will be subject to prior approval of the NMFA.

The 2019 audit received an unmodified opinion with one finding, neither a material weakness nor a significant deficiency.

12. Consideration and Recommendation for Approval of North Central Regional Transit District (Rio Arriba County) – Taos Maintenance Facility – PPRF-5476. The North Central Regional Transportation District ("NCRTD") applied to the Public Project Revolving Fund ("PPRF") for \$2,861,491 to finance the costs associated with the planning, design, and construction of a new operations and maintenance facility.

The new facility is located at the intersection of Salazar Road and Este Es Road in Taos, N.M. The proceeds will also be used for constructing administrative and operations infrastructure, maintenance bays, used and portable equipment storage, parking structures, electric bus charging infrastructure, construction of a vehicle wash bay area and a fueling station. These improvements will fulfill the current maintenance and upkeep needs of the NCRTD as well as accommodate future operations and fleet expansion.

Staff utilized a three-year average of the net pass-through GRT revenues with a 10% current economy reduction, which resulted in revenues of \$3,151,194 and debt service coverage of 6.82xs. NCRTD will make monthly payments in lieu of an active or contingent intercept as defined by the waiver request. NCRTD is utilizing Federal grant funds (“FTA”) of \$5,251,091 toward the completion of this project. The total project cost is estimated at \$7.9M.

- 13. Consideration and Recommendation for Approval of North Central Regional District (Rio Arriba County) – Electric Buses & Equipment – PPRF-5477.** The North Central Regional Transportation District (“NCRTD”) applied to the Public Project Revolving Fund (“PPRF”) for \$1,433,612 to finance the costs associated with the purchase of five battery-electric transit vehicles with zero-emissions, charging stations, training for maintenance personnel for the new equipment, and respective equipment.

Staff utilized a three-year average of the net pass-through GRT revenues with a 10% current economy reduction resulting in revenues of \$3,151,194 and debt service coverage of 6.82xs. NCRTD will make monthly payments in lieu of an active or contingent intercept as defined by the waiver request. NCRTD is utilizing Federal grant funds (“FTA”) of \$3,200,000 toward the completion of this project. The total project cost is estimated at \$4.5M.

Member Suazo moved, seconded by Member Forte, for approval of items 11 – 13. The motion passed 9 – 0 on a roll call vote with Member Miller recused from the vote.

Member Kopelman departed the meeting.

Report from the Economic Development Committee (*Committee members are Secretary Alicia Keyes (Mr. Jon Clark), Chair, Secretary Sarah Cottrell Propst (Mr. Matthew Lovato), Secretary James Kenney (Ms. Judi Kahl), and Ms. Leslie Nathanson Juris.*)

- 14. Update on Activities.** Members of the Economic Development Committee met via Zoom teleconferencing on Tuesday, February 16; however, a quorum was not established. In addition to reviewing the Private Lending Portfolio Report, staff presented the following items:

- ✓ *Essential Services Working Capital Program* - Staff reported that it is extending six- month lines of credit for four borrowers
 - Covenant Schools of America
 - Dr. David J. Ortega DDS
 - Las Cruces Machine
 - Net Medical Xpress Solutions

These six-month extensions were included in the approval of the loans and were presented as informational items only.

- ✓ *New Markets Tax Credit* - Staff presented a request to open 30th round of applications for New Markets Tax Credit use the remaining \$28 million of allocation.

- 15. Consideration and Recommendation for to Open the 30th Round of Competitive New Markets Tax Credit Applications.** Staff requests approval to open the thirtieth round of competitive applications for the remaining \$35 million of allocation.

The NMFA Board, on behalf of Finance New Mexico, has offered 29 competitive application cycles to date, including several exclusive application rounds for projects located in rural areas.

In July, Finance New Mexico, LLC (“FNM”) received notification of a \$35 million NMTC award from the Calendar Year 2019 application cycle allowing FNM to invest the allocation in all eligible census tracts within the State, including those in metropolitan and rural counties. This award requires FNM to invest at least \$7 million in rural areas and at least \$7 million in small projects. The 2015/2016 has \$2.5 million remaining that has to be invested into a Qualified Equity Investment by November 2021.

Staff will be accepting applications in all eligible census tracts throughout the state. The online application system will be open for at least four weeks.

Member Clark moved, seconded by Member Forte, to approve opening the thirtieth round of competitive applications for the remaining \$35 million of allocation. The motion passed 9 – 0 on a roll call vote.

Report from the Finance & Disclosure Committee. (*Committee members are Mr. Martin Suazo, Chair, Mr. A.J. Forte, and Secretary Alicia Keyes (Mr. Jon Clark)*)

- 16. Update on Activities.** A quorum of the Finance & Disclosure Committee met on February 17, 2021 via Zoom teleconference. Member Suazo chaired the meeting with member Trujillo in attendance. As a quorum was not established the members agreed to postpone until next month the consideration of three recommendations to issue requests for proposal. Staff presented the second quarter budget report and the FY2021 Budget Amendment.
- 17. Consideration and Recommendation for approval of the 2nd Quarter Budget Performance Report.** Staff presented the budget performance for the second quarter of FY 2021, which covered the period from July 1 through December 31, 2020 and represented the actual revenues and expenditures through December 31, 2020 in comparison with the amended budget approved by the Board on July 23, 2020. Staff discussed various trends, the effects of COVID-19, and matters pertaining to the Small Business Recovery Loan Fund.
- 18. Overview and Discussion of Second Amendment to FY21 Budget.** Staff discussed the framework for a second amendment to the FY 2021 Budget, which will incorporate the revenues and expenses for the Small Business CARES Relief Grants as well as two proposed economic stimulus programs being considered by the Legislature.
- 19. Report on PPRF-2021A Bond Sale.** Mr. Michael Zavelle presented the PPRF 2021A Bond Sale Report.

The PPRF senior lien tax-exempt 2021A series bonds were sold February 18, 2021 in the par amount of \$39,535,000 with \$41,655,000 in non-stock orders received from institutional and one retail investor. Lead manager was JP Morgan with co-managers Bank of America and RBC. Board member Leslie

Nathanson Juris served as Board designee. The bonds will close on March 4, 2021.

The PPRF 2021A tax-exempt bonds mature in 2045 with an average life of 8.11 years and an effective interest rate on a true interest cost (TIC) basis of 1.50% benefitting from the current historically low interest rate environment. The 10-year call is June 1, 2031.

The municipal bond market functioned very well in the early days of 2021 with ratios to US Treasuries suggesting that municipal bonds have been over valued thus greatly benefitting issuers with demand exceeding tax-exempt supply. With relatively large basis point moves in the Treasury market the week of the sale, corrections to the over valuing took place toward the end of the week with investors looking for higher yields in anticipation of further declines in the municipal market MMD pricing index. Consequently, the PPRF 2021A bonds, sold on a Thursday, saw less demand than sought and saw some upward adjustment in yields – 2 to 3bp from pre-marketing pricing. Some maturity par amount adjustments resulted with equivalent adjustment in final investor orders. At the end of the selling day, \$8,295,000 bonds remained unsold in maturities 2028, 2033 – 2035 and 2045 term bonds. Over subscription in other maturities was limited. Nevertheless, rates are at such low levels that final yields were still at lows for PPRF bonds.

Firms placing orders included firms that have been consistent investors in PPRF bonds including Blackrock (\$10.585M), Breckinridge (\$5,260M), Eaton Vance (\$4,810M), CW Henderson (\$4,490) and Travelers Insurance (\$3,740M). San Diego County, a former investor in the 2019B bonds, placed orders totaling \$10.065M. First time PPRF investors were Washington Crossing Advisors and United Missouri Bank.

Report from the Audit Committee (*Committee members are Mr. Andrew Burke, Chair, Mr. Martin Suazo, Secretary Sarah Cottrell Propst (Mr. Matthew Lovato), and Mr. Steve Kopelman (Mr. Leandro Cordova)*)

- 20. Update on Activities.** A quorum of the Audit Committee met on February 17, 2021 via Zoom teleconference. Items discussed included the EnABLE project, December Financial Statements and Deloitte Advisory Project for Stimulus Programs.
- 21. Acceptance of the Financial Report for the Quarter Ending December 31, 2020.** Mr. Oscar Rodriguez and Mr. Norman Vuylsteke presented NMFA's balance sheet, income statement and cash flow statement as of December 31, 2020. Staff reported that the results still do not reflect an appreciable impact on revenues or expenditures from the Covid-19 health emergency. The financial statements reflect where NMFA was expected to be at this point in the business cycle, which is when NMFA pours cash built up in the bond debt service accounts out to the bond holders. Total net loan receivables stood at \$1,836.0 million at the end of the quarter.

Member Suazo moved, seconded by Member Burke, for acceptance of the Financial Report for the quarter ending December 31, 2020. The motion passed 9 – 0 on a roll call vote

22. Next Board Meeting

Thursday, March 25, 2021 – 9:00 a.m.
Via Zoom
Santa Fe New Mexico

23. Adjournment

Member Suazo moved, seconded by Member Nathanson-Juris, to adjourn the meeting. The motion passed 9 - 0. Meeting adjourned at 11:40 a.m.

The meeting adjourned at 11:00 a.m.

Rosalei Nathanson-Juris
Secretary
3/25/2011
Date

Exhibit 32

NM Spaceport Authority Board Meeting Minutes
05/06/2021

NEW MEXICO SPACEPORT AUTHORITY

Board Meeting

May 6, 2021 03:00 PM – 05:00PM

Topic: Spaceport Authority Board Meeting

Time: Dec 2, 2020 03:00 PM Mountain Time (US and Canada)

Via Zoom

Video Conference Link:

<https://us02web.zoom.us/j/89048879697?pwd=MVc1T3M5K1VyZkRvY011b3dNTURGdz09>

Meeting ID: 890 4887 9697 Passcode: 228881

1. Call to Order

- a. Meeting called to order by Secretary Keyes on May 6, 2021 at 03:00PM

2. Roll Call

- a. Attendees
 - i. Lt. Governor Howie Morales designee Martina C’de Baca – non-voting – present
 - ii. Executive Director Scott McLaughlin – non-voting – present
 - iii. Cabinet Secretary Alicia J. Keyes – present
 - iv. Ethan Epstein – present
 - v. Peggy Johnson – present
 - vi. Eric Schindwolf – present
 - vii. Laura Conniff – absent
 - viii. Michelle Coons – present
- b. Quorum recognized

3. Approval of Agenda

- a. Slight change in agenda
 - i. Item 9 Statement of Work Summaries for Approvals stricken from agenda
- b. Motion to approve agenda made by – Peggy Johnson
- c. Second – Eric Schindwolf
- d. Roll Call
 - i. Ethan Epstein – aye
 - ii. Peggy Johnson – aye
 - iii. Eric Schindwolf – aye
 - iv. Michelle Coons – aye
 - v. Secretary Keyes – aye
- e. Motion passed

4. Approval of Meeting Minutes

- a. February 11, 2021 (regular meeting)
 - i. Motion to approve minutes made by – Eric Schindwolf
 - ii. Second – Ethan Epstein

- iii. Roll Call
 - 1. Ethan Epstein – aye
 - 2. Peggy Johnson – aye
 - 3. Eric Schindwolf – aye
 - 4. Michelle Coons – aye
 - 5. Secretary Keyes – aye
- iv. Motion passed

5. Financial Audit Report (presentation attached)

- a. Chris Garner – Pattillo, Brown & Hill, L.L.P.
 - i. Presented 2020 Audit Results
- b. Peggy Johnson
 - i. When will this be released to the public?
 - 1. Chris Garner – It is already on the state auditor's website
- c. Ethan Epstein
 - i. What are we doing to ensure these issues don't happen again?
 - 1. Scott McLaughlin – The appropriate policies are already in place, the policies were violated by the previous ED and CFO, Scott will ensure staff follows policies going forward, also Implementing intranet process for certain financial aspects of Spaceport America
 - ii. In next year's review, we should make sure these violations weren't repeated.
 - 1. Chris Garner – In next year's audit, the auditors are required to follow up on the issues
- d. Secretary Keyes
 - i. Can you explain the audit process?
 - 1. Chris Garner – Audit is reported to the state auditor, state auditor approves for print and releases it, it does have to go before the Spaceport Authority board after it is approved
- e. Eric Schindwolf
 - i. Is it typical that this report is published as late after the fiscal year ended?
 - 1. Chris Garner – Covid did slow down the process, but Spaceport America's audit actually went a little faster than others as backlog was cleared up
- f. Michelle Coons
 - i. Do we need to approve our audit?
 - 1. Secretary Keyes – No, we do not

6. Vote on Bylaws

- a. Motion to pass the bylaws – Michelle Coons
- b. Second – Ethan Epstein
- c. Roll Call
 - i. Ethan Epstein – aye
 - ii. Peggy Johnson – aye
 - iii. Eric Schindwolf – aye
 - iv. Michelle Coons – aye

- v. Secretary Keyes – aye
- d. Motion passed

7. Appointment of Board Secretary

- a. Ethan Epstein is the only candidate for Secretary of the Board
- b. Motion to approve Ethan Epstein as Secretary of the Board – Michelle Coons
- c. Second – Peggy Johnson
- d. Roll Call
 - i. Ethan Epstein – abstain
 - ii. Peggy Johnson – aye
 - iii. Eric Schindwolf – aye
 - iv. Michelle Coons – aye
 - v. Secretary Keyes – aye
- e. Motion passed

8. Vote on Bond Refinancing Resolution

- a. Scott McLaughlin, Melissa Force, and Jill Sweeney
- b. Melissa Force – General Counsel
 - i. Obtained bond counsel from Sherman & Howard
- c. Jill Sweeney – Sherman & Howard
 - i. The Spaceport authority is in the process of refinancing some of its bonds
 - ii. Refinancing the outstanding series 2009 and 2010 bonds to bring the cost of finance down
 - iii. Akin to refinancing a mortgage
 - iv. The bonds will continue to be repaid by a pledge of 75% of the county GRT revenues in Doña Ana and Sierra Counties
 - v. The revenue will be collected by the Taxation and Revenue Department in the ordinary course
 - vi. The Taxation and Revenue Department will then turn over the amount needed to pay the bonds to the Finance Board and return the remainder to the counties
 - vii. The counties will then collaborate with the Spaceport Authority to discuss the use of any excess revenue
 - viii. Currently working with the Finance Authority, Spaceport Authority Chair, ED and staff
 - ix. Bond Information
 - 1. Interest not to exceed 6%
 - 2. Mature no later than June 1, 2029
 - 3. Are subject to prior redemption, can be paid off early
 - x. Next steps
 - 1. Spaceport Authority Board needs to authorize the refunding
 - 2. Counties need to adopt resolution to interrupt funds
 - 3. DFA will need to approve at their May 18, 2021 meeting
 - 4. Final terms will be set
 - 5. Closing on or about June 25, 2021
- d. Michelle Coons

- i. Is the coupon structure par bonds?
 - 1. Jill Sweeney – Yes, I believe they will be, you delegated the authority to set certain parameters to the finance authority, this is will be finalized at closing
 - ii. The possible six percent will likely be significantly lower
 - 1. Jill Sweeney – The interest rates will likely remain low in the near future, I don't anticipate any issues with the interest rate
- e. Motion to pass the resolution – Michelle Coons
- f. Second – Peggy Johnson
- g. Roll Call
 - i. Ethan Epstein – aye
 - ii. Peggy Johnson – aye
 - iii. Eric Schindwolf – aye
 - iv. Michelle Coons – aye
 - v. Secretary Keyes – aye
- h. Motion passed

9. Spaceport Activities and Site Review (presentation attached)

- a. Scott McLaughlin
- b. Michelle Coons
 - i. Pre-covid there was tourism dollars set aside for VG tourism flights, what happened to that money?
 - 1. Scott McLaughlin – That money went to Tourism, coordinating with Secretary to determine how to use that money, we're not quite ready to spend that money yet
- c. Eric Schindwolf
 - i. When is the next VG test flight?
 - ii. Scott McLaughlin – Last public announcement said May, VG will have an earnings report next Monday

10. Public Comment

- a. No comment

11. Adjourn

- a. Hoping to have the option of having the next board meeting at the spaceport, updates to come
- b. Motion to adjourn made by – Peggy Johnson
- c. Second – Michelle Coons
- d. Roll Call
 - i. Ethan Epstein – aye
 - ii. Peggy Johnson – aye
 - iii. Eric Schindwolf – aye
 - iv. Michelle Coons – aye
 - v. Secretary Keyes – aye
- e. Motion passed
- f. Meeting adjourned at 04:11PM



Board Chair

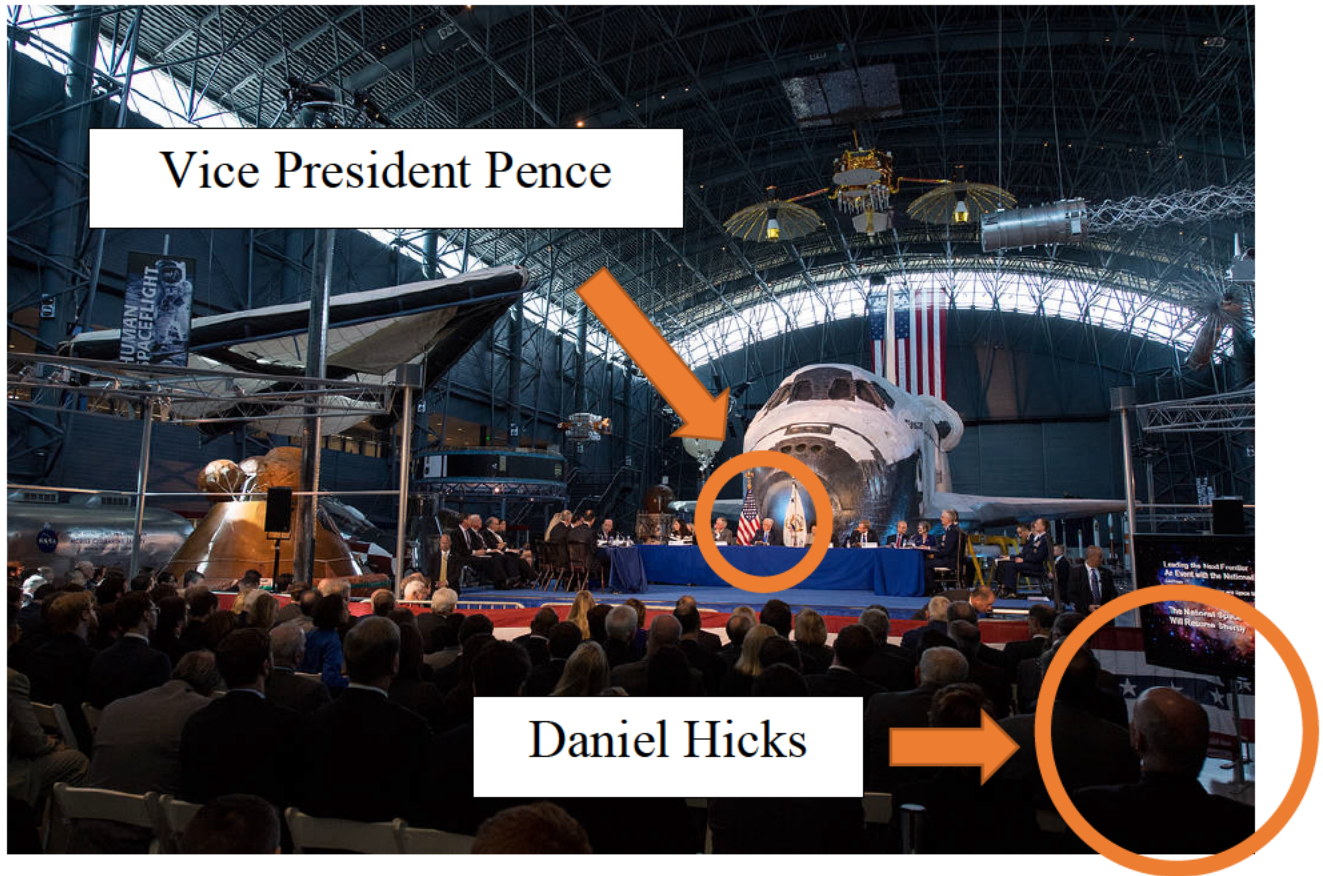
10/1/2021

Date

Cabinet Secretary Alicia J. Keyes

Exhibit 33

Photo of Daniel Hicks attending event with Former Vice
President Mike Pence



Vice President Pence

Daniel Hicks

<https://www.nasa.gov/image-feature/first-meeting-of-the-national-space-council>

Exhibit 34

NM Spaceport Authority Financial Information

Financial Information from NM Spaceport Authority independently audited annual financial reports

<u>Fiscal Year</u>	<u>Amount Under budget</u>	<u>Cash at year end</u>
2016	2,312,431	2,663,193
2017	523,893	1,319,722
2018	750,138	931,351
2019	2,157,453	4,132,282

Exhibit 35
Requested Press Release

Press Release

“The NM State Auditor’s Office issues a retraction of our earlier allegations against Zach DeGregorio, who had filed a whistleblower complaint at Spaceport America. The NM State Auditor’s office responded by releasing a report written by The McHard Firm. It has come to our attention that there are several errors in The McHard Firm report. It was wrong of us to release this information without further review. We are sorry for the misinformation our actions have caused. Some of the incorrect findings in the report included a recommendation to the Attorney General to pursue criminal charges against the whistleblower, as well as a recommendation to the NM Board of Accountancy to take away the whistleblower’s CPA license. We withdraw both of these recommendations. Additionally, we thank Zach DeGregorio for his efforts to present his whistleblower complaint. Further, we recognize that whistleblowers are important to maintain accurate financial reporting for New Mexico. We want to emphasize that whistleblowers should feel free from fear of retaliation when contacting the State Auditor’s office.”

Exhibit 36

Requested Letter from

NM Attorney General Hector Balderas

Letter

“The NM Attorney General’s Office withdraws its previous opinion letters sent to the NM Spaceport Authority Board. It has come to our attention there are additional issues with this situation that require further review before issuing a determination. It was wrong of us to release this information without further review. We are sorry for the misinformation our actions have caused. For the sake of clarity, Zach DeGregorio is not under criminal investigation by our office as was previously stated. Additionally, we thank Zach DeGregorio for his efforts to present his whistleblower complaint. Further, we recognize that whistleblowers are important to maintain accurate financial reporting for New Mexico. We want to emphasize that whistleblowers should feel free from fear of retaliation when contacting the NM Attorney General’s Office.”

Exhibit 37

Copy of Zach DeGregorio's Paycheck – State of New
Mexico

Department of Finance and Administration, 407 Galisteo
Street
Santa Fe, NM 87501

Business Unit: [REDACTED]
Advice #: [REDACTED]
Advice Date: 06/19/2020

HOURS AND EARNINGS						TAXES		
Description	Rate	Current	YTD			Description	Current	YTD
		Hours	Earnings	Hours	Earnings			
Regular Pay	42 077693	18 00	757 40					
Sick Leave Used	42 077693	4 00	168 31					
Telework	42 077693	58 00	2,440 51					
Administrative Leave			0 00					
Annual Leave Used			0 00					
State Holiday - Not Worked			0 00					
Personal Leave Day Used			0 00					
TOTAL:		80.00	3,366.22			TOTAL:		

	TOTAL GROSS	FED TAXABLE GROSS	TOTAL TAXES	TOTAL DEDUCTIONS	NET PAY
Current YTD	\$1,000	\$1,000	\$100	\$100	\$800

NET PAY DISTRIBUTION			
Payment Type	Account Type	Account Number	Amount
TOTAL:			

Exhibit 38

Interest rate – Zach DeGregorio's credit card statement

[REDACTED]										
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		

[REDACTED]	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Interest Charge Calculation

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate	Promotional Transaction Type	Promotional Offer ID	Promotional Rate End Date	Balance Subject to Interest Rate	Interest Charges by Transaction Type		
Purchases	20.24%V				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Balance Transfers	20.24%V				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Direct Deposit and Check Cash Advances	20.24%V				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Bank Cash Advances	24.99%V				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

APR Type Definitions Daily Interest Rate Type: V= Variable Rate (rate may vary)

[REDACTED]									
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Exhibit 39
Zach DeGregorio's Resume

PROFESSIONAL EXPERIENCE

Spaceport America, Las Cruces, NM
Chief Financial Officer

2015-2020

- Manage 7.6M annual operating budget and two bond funds with 13.5M in capital expenditures since FY15 and a current capital budget of 40.7M.
- Design business processes to enable customer revenue growth by 114% in three years (2.2M in FY16 to 4.7M in FY19)
- Manage 75M in agency bond debt with annual debt service of 5.6M
- Assisted in drafting the "Commercial Aerospace Protection Act" regarding economic development for the space industry and was passed by the NM legislature in February 2018.
- Wrote the annual financial reports for NM state agency using multi-fund government accounting
- Passed four financial audits with clean audit opinions
- Participate in Strategic Leadership Team by identifying trends and recommending improvements
- Perform monthly closing process
- Ensure compliance with state and federal laws
- Prepare and present monthly financial results to CEO
- Wrote all agency internal control processes for accounts payable, accounts receivable, capital assets, payroll, and budget cycles.
- Create a capital assets process including documentation, inventory, reporting, and asset management
- Created a business purchase card program with a \$25,000 monthly credit limit
- Created internal capability to issue Request for Proposals (RFPs) and performed 11 RFPs in six months.
- Monitor daily transactions in Oracle (NM financial accounting system)
- Manage incoming customer payments using credit cards with improved payment card processes, equipment, and Level 2 PCI compliance
- Perform duties as Safety Coordinator for the Agency
- Develop financial reporting and performance metrics, including sales dashboards and budget variance analysis
- Provide revenue and cost forecasting using financial models and metrics
- Mentor and train accounting staff and hold agency-wide accounting training sessions. Supervise accounting office with three employees.
- Wrote accounting office strategic plan targeted toward enabling agency growth.

Sandia National Labs, Albuquerque, NM
Division Business Management Professional

2011-2015

- Q level security clearance (Top Secret)
- Manage business operations for engineering and development staff in the Renewable Energy Division (Wind, Water, Solar, and Grid technologies), with \$41M in revenue per year and 352 Staff. Matrixed business support for Air Force Physical Security, Robotics, and Computer Simulation Divisions.
- Compliance with Federal Acquisition Regulations (FAR) with multiple DoD clients including Air Force, Army, Navy, and Marines.

- Manage \$500K in capital projects including planning and business case support
- Develop the annual staffing/hiring plan and track monthly performance, providing the business analysis to increase workforce by 15 team members in FY15
- Analyze and set overhead rates, providing oversight on \$5M overhead budget
- Drive standardization and process improvement. Designed a performance dashboard which was implemented for hundreds of projects across the company
- Generated \$100K in annual cost savings as space coordinator for 25 buildings
- Managed 116 Projects (\$17M in FY14 funding, \$18M in FY15 funding) in Europe and the US monitoring scope, budget, and schedule with Earned Value Management
- Provide lab leadership access to metrics through a Balanced Scorecard linked to the Oracle database

The KOR Group, Los Angeles, CA

2007-2009

Assistant to Area General Manager

- Performed due diligence (Mergers & Acquisitions experience) on \$100 Million hotel property sale, coordinating between the management company, ownership, new investors, and real estate agency
- Implemented an aggressive cost savings strategy to create efficiencies and achieve #1 in Revenue per Available Room (RevPAR) percentage increase among the competitive set
- Analysis of sales versus costs led to 100% increase in profit margins in Food & Beverage department
- Generated Balanced Scorecard and monthly presentations for Senior Management on financial results
- Participated on strategic planning team developing budgeting, forecasting, variance analysis, and capital projects.
- Managed \$100M credit line including capital planning, submitting funding draws, financial reporting, and investor relations
- Awarded Colleague of the Month in April 2008 for outstanding job performance; award given to 1 out of 450 associates

Regent Entertainment, Los Angeles, CA

2006-2007

Assistant Producer / Assistant to the President of Production

- Assistant producer for over 60 feature films from production to worldwide distribution
- Managed \$100M credit line, bank loans, and investor relations for all active projects
- Managed international productions in New Zealand, South Africa, Canada, the Bahamas, and multiple US locations
- Developed budgets and schedules for films with budgets between \$1 - \$5 Million
- Coordinated between accounting, legal, marketing, PR, and our television network partners including The Lifetime Network, The SciFi Channel and The Family Channel

RECOGNITION

Employee Recognition Award, Sandia National Laboratories

2012

Participated in a team to review New Mexico Gross Receipts Tax and reduced tax liability by \$6.6M in FY12

FY13 Q4 Innovation Tournament, Sandia National Laboratories

2013

Recognized for creating Project Dashboard reports

FY14 Q2 Innovation Tournament, Sandia National Laboratories

2014

Led team to create and teach Excel training classes

EDUCATION

Anderson School of Management at the University of New Mexico , Albuquerque, NM Master of Accounting GPA 4.06	2014
George Washington University School of Business , Washington DC Project Management, Master's Certificate	2013
W. P. Carey School of Business at Arizona State University , Tempe, AZ Master of Business Administration, Financial Management & Markets	2011
University of Southern California , Los Angeles, CA Cinema - Television Major / Business Minor, Cum Laude	2004

ACCOUNTING INDUSTRY ACTIVITIES

Certified Public Accountant (CPA) , New Mexico License #6946, Arizona License #19826-R	2015-present
Author , "The Young Person's Guide to Money" Book with money tips for young people graduating high school	2017
Author , "On Wolves and Finance" Book on Theoretical Finance including new concepts in Space Accounting	2014

PROFESSIONAL QUALIFICATIONS

- Natural problem solver
- "Macro" thinker
- C-Level executive experience
- Proactive
- Process improvement
- Self-sufficient
- Knowledge of US GAAP & IFRS
- Knowledge of GAS
- Strong understanding of financial statements
- Oracle systems
- Internal controls
- Bond expenditures / bond draws
- Advanced user Microsoft applications (Excel, Word, PowerPoint, Access, Visio, Outlook, SharePoint)
- VBA macro computer programming
- Budgeting / forecasting
- Variance analysis
- Sales / cost profit analysis
- M&A analysis
- Financial analysis
- Dashboard creation
- Capital budgeting
- Managing contracts
- Project Management
- MS Project / Primavera
- PMP process / EVM analysis
- Strong writing skills
- Public speaking
- Critical thinking
- Highly organized
- Attention to detail
- Strong interpersonal & communication skills
- Leadership activities with cross functional teams
- Financial modeling
- Strategic planning

Exhibit 40

Copy of Zach DeGregorio's Paycheck – New Employer

Pay Begin Date: 04/19/2021
Pay End Date: 05/02/2021

Advice Date: 05/07/2021

Zachary Lee De Gregorio

Employee ID:
Campus ID:
Department:
Location:
Job Title: Accountant
Pay Rate: \$1,923.08 Biweekly

TAX DATA: Federal AZ State

HOURS AND EARNINGS

Description	Rate	Current Hours	Earnings	Hours	YTD Earnings
Regular			1,923.08		
Sick Leave			0.00		

TAXES

Description	Current	YTD

TOTAL: 0.00 1,923.08 TOTAL:

BEFORE-TAX DEDUCTIONS

Description	Current	YTD

AFTER-TAX DEDUCTIONS

Description	Current	YTD

EMPLOYER PAID BENEFITS

Description	Current	YTD

TOTAL: 187.19 988.52 TOTAL: 0.00 0.00 TOTAL: 365.14 2,067.34

TOTAL GROSS

FED TAXABLE GROSS

TOTAL TAXES

TOTAL DEDUCTIONS

NET PAY

Current					
YTD					

Leave Type YTD Balance

End Balance	

NET PAY DISTRIBUTION

TOTAL:				

Exhibit 41

Damages to Personal Property

Educational Investment

	Paid in Full	Unpaid	Total
Excel 9534	25,879.01	-	25,879.01
Excel 9542	23,369.44	-	23,369.44
Excel 9559	14,633.71	-	14,633.71
Excel 9567	41,123.29	-	41,123.29
Excel 9575	2,106.63	-	2,106.63
US Dept of Education 7581	10,993.40	79,043.22	90,036.62
Total	118,105.48	79,043.22	197,148.70

Exhibit 42

Summary of Damages

ZD's annual interest rate (Exhibit 26)	20.24%
monthly interest rate	0.0169

ZD's bi-weekly wage at time of constructive discharge (Exhibit 25)	\$ 3,366.22	
ZD's bi-weekly wage in new position (Exhibit 28)	\$ 1,923.08	
Difference	\$ 1,443.14	-42.87%

Damages for Back Pay

Months	1	2	3	4	5	6	7	8
Back Pay	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48
Double the Amount	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95
Cumulative Subtotal		\$ 29,419.94	\$ 44,503.11	\$ 59,840.68	\$ 75,436.95	\$ 91,296.27	\$ 107,423.09	\$ 123,821.91
Interest Rate	0.0169	0.0169	0.0169	0.0169	0.0169	0.0169	0.0169	0.0169
Interest Amount	\$ 246.03	\$ 496.22	\$ 750.62	\$ 1,009.31	\$ 1,272.37	\$ 1,539.86	\$ 1,811.87	\$ 2,088.46
Cumulative Subtotal	\$ 14,832.99	\$ 29,916.16	\$ 45,253.73	\$ 60,849.99	\$ 76,709.32	\$ 92,836.14	\$ 109,234.96	\$ 125,910.37

Total Damages for Back Pay (Damages increase as this civil action continues)	\$ 434,393.14
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Damages for Loss of Earning Capacity

Years	1	2	3	4	5	6	7	8
Lost Earnings	\$ 37,521.64	\$ 37,521.64	\$ 39,022.51	\$ 40,583.41	\$ 42,206.74	\$ 43,895.01	\$ 45,650.81	\$ 47,476.84
Inflation Rate / Wage Increase		0.04	0.04	0.04	0.04	0.04	0.04	0.04
Adjusted Lost Earnings	\$ 37,521.64	\$ 39,022.51	\$ 40,583.41	\$ 42,206.74	\$ 43,895.01	\$ 45,650.81	\$ 47,476.84	\$ 49,375.92
Cumulative Subtotal	\$ 37,521.64	\$ 76,544.15	\$ 117,127.55	\$ 159,334.29	\$ 203,229.31	\$ 248,880.12	\$ 296,356.96	\$ 345,732.88

Total Damages for Loss of Earning Capacity	\$ 1,117,322.34
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Damages to Personal Property: Educational Investment (Exhibit 29)

	Paid in Full	Unpaid	Total
Excel 9534	\$ 25,879.01	\$ -	\$ 25,879.01
Excel 9542	\$ 23,369.44	\$ -	\$ 23,369.44
Excel 9559	\$ 14,633.71	\$ -	\$ 14,633.71
Excel 9567	\$ 41,123.29	\$ -	\$ 41,123.29
Excel 9575	\$ 2,106.63	\$ -	\$ 2,106.63
US Dept of Education 7581	\$ 10,993.40	\$ 79,043.22	\$ 90,036.62
Total	\$ 118,105.48	\$ 79,043.22	\$ 197,148.70

Summary

Back Pay	\$ 434,393
Loss of Earning Capacity	\$ 1,117,322
Damages to Personal Property	\$ 197,149
Emotional Distress	\$ 500,000
Subtotal	\$ 2,248,864
Punitive Damages (four times multiplier)	\$ 8,995,458
Total damages excluding Attorney Fees (growing as the civil action continues)	\$ 11,244,322

Attorney Fees	To be determined
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9	10	11	12	13	14	15	16	17	18	19	20	21	22
\$ 7,293.48	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48	\$ 7,293.48
\$ 14,586.95	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95	\$ 14,586.95
\$ 140,497.33	\$ 157,454.00	\$ 174,696.68	\$ 192,230.18	\$ 210,059.42	\$ 228,189.38	\$ 246,625.12	\$ 265,371.82	\$ 284,434.71	\$ 303,819.13	\$ 323,530.50	\$ 343,574.33	\$ 363,956.24	\$ 384,681.92
0.0169	0.0169	0.0169	0.0169	0.0169	0.0169	0.0169	0.0169	0.0169	0.0169	0.0169	0.0169	0.0169	0.0169
\$ 2,369.72	\$ 2,655.72	\$ 2,946.55	\$ 3,242.28	\$ 3,543.00	\$ 3,848.79	\$ 4,159.74	\$ 4,475.94	\$ 4,797.47	\$ 5,124.42	\$ 5,456.88	\$ 5,794.95	\$ 6,138.73	\$ 6,488.30
\$ 142,867.05	\$ 160,109.73	\$ 177,643.23	\$ 195,472.47	\$ 213,602.42	\$ 232,038.17	\$ 250,784.87	\$ 269,847.76	\$ 289,232.18	\$ 308,943.55	\$ 328,987.38	\$ 349,369.29	\$ 370,094.97	\$ 391,170.22

9	10	11	12	13	14	15	16	17	18	19	20
\$ 49,375.92	\$ 51,350.96	\$ 53,404.99	\$ 55,541.19	\$ 57,762.84	\$ 60,073.35	\$ 62,476.29	\$ 64,975.34	\$ 67,574.35	\$ 70,277.33	\$ 73,088.42	\$ 76,011.96
0.04	0.04	0.04	0.04	0.04	0.04	0.04	0.04	0.04	0.04	0.04	0.04
\$ 51,350.96	\$ 53,404.99	\$ 55,541.19	\$ 57,762.84	\$ 60,073.35	\$ 62,476.29	\$ 64,975.34	\$ 67,574.35	\$ 70,277.33	\$ 73,088.42	\$ 76,011.96	\$ 79,052.44
\$ 397,083.84	\$ 450,488.83	\$ 506,030.02	\$ 563,792.86	\$ 623,866.22	\$ 686,342.51	\$ 751,317.85	\$ 818,892.20	\$ 889,169.53	\$ 962,257.95	\$ 1,038,269.91	\$ 1,117,322.34

23	24
\$ 7,293.48	\$ 7,293.48
\$ 14,586.95	\$ 14,586.95
\$ 405,757.18	\$ 427,187.90
0.0169	0.0169
\$ 6,843.77	\$ 7,205.24
\$ 412,600.95	\$ 434,393.14