EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,	
Plaintiff,	
v.	**Case No. CIV-11-030-RAW**
KATHLEEN SEBELIUS, et al.,	
Defendants.	
GC Restaurants SA, LLC, Old England's Lion & Rose, LTD, Old England's Lion & Rose at Castle Hills, LTD, Old England's Lion & Rose at Sonterra, LTD, Old England's Lion & Rose Forum, LLC, Old England's Lion & Rose at Westlake, LLC,	
Plaintiffs-Intervenors	
v.	**COMPLAINT IN INTERVENTION**
KATHLEEN SEBELIUS, in her official capacity as Secretary of the United States Department of Health and Human Services;	
and	
TIMOTHY GEITHNER, in his official capacity as Secretary of the United States Department of the Treasury,	
Defendants.	

Plaintiffs-Intervenors GC Restaurants SA, LLC ("GC Restaurants"); Old England's Lion & Rose, Ltd. ("Lion & Rose Broadway"); Old England's Lion & Rose at Castle Hills, Ltd. ("Lion & Rose Castle Hills"); Old England's Lion & Rose at Sonterra, Ltd ("Lion & Rose Sonterra"); Old England's Lion & Rose Forum, LLC ("Lion & Rose Forum"); and Old England's Lion & Rose at Westlake, LLC ("Lion & Rose Westlake"), referred to herein collectively as the "Plaintiffs-Intervenors," by and through their undersigned attorneys Graydon D. Luthey, Jr., GableGotwals, for their Complaint in Intervention, allege as follows:

PRELIMINARY STATEMENT

The Plaintiffs-Intervenors file this Complaint in Intervention seeking declaratory and injunctive relief with respect to final federal regulations (the "Final Rule") issued under Section 36B of the Internal Revenue Code of 1986 ("the Code").[1] The Final Rule has caused and will continue to cause injury to the financial and other legally-cognizable interests of the Plaintiffs-Intervenors because it causes them to be subject to the Affordable Care Act's "Employer Mandate"[2] under circumstances not authorized by law.

The Plaintiffs-Intervenors join Plaintiff State of Oklahoma ("Oklahoma") in asserting that the Final Rule is invalid under the Administrative Procedures Act ("the APA") for the reasons set forth in Count III of the Amended Complaint for Declaratory and Injunctive Relief, and for the additional reasons set forth below. Plaintiffs-Intervenors also assert in the alternative that provisions of the Affordable Care Act relating to the Premium Tax Credit, Advance Payments, the

[1] Section 36B was added to the Code by Section 1401 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) ("the PPACA"), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124; Stat. 109 (2010) ("HCERA," and collectively with the PPACA, "the Affordable Care Act" or "the ACA").

[2] Terms appearing in the Preliminary Statement in initial capitals are defined in Paragraphs 14-35 below.

establishment and operation of the Exchanges, and the Employer Mandate are invalid under the federal Constitution on grounds applicable to private employers as well as public employers.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because the action arises under the Administrative Procedures Act, the Affordable Care Act, and the federal Constitution. In addition, the Court has jurisdiction over the claims of the Plaintiffs-Intervenors because their First Cause of Action arises under the Administrative Procedures Act and the Affordable Care Act, and Plaintiffs-Intervenors' alternative claims for relief arise in their Second Cause of Action arise under federal law, including the federal Constitution.

2. Venue in the United States District Court for the Eastern District of Oklahoma is proper under 28 U.S.C. § 1391(e) because the Plaintiff Oklahoma is a State.

PARTIES

3. Plaintiff Oklahoma is a state of the United States and a "State" within the meaning of that term as used in the Affordable Care Act.

4. Plaintiff-Relator Scott Pruitt is the Attorney General of the State of Oklahoma.

5. Plaintiff-Intervenor GC Restaurants SA, LLC is a limited liability company organized and existing under the laws of the State of Texas and headquartered in San Antonio, Texas.

6. Plaintiff-Intervenor Old England's Lion & Rose, LTD (Broadway) is a limited partnership organized and existing under the laws of the State of Texas and headquartered in San Antonio, Texas.

7. Plaintiff-Intervenor Old England's Lion & Rose at Castle Hills, LTD is a limited partnership organized and existing under the laws of the State of Texas and headquartered in San Antonio, Texas.

8. Plaintiff-Intervenor Old England's Lion & Rose at Sonterra, LTD is a limited partnership organized and existing under the laws of the State of Texas and headquartered in San Antonio, Texas.

9. Plaintiff-Intervenor Old England's Lion & Rose Forum, LLC is a limited liability company organized and existing under the laws of the State of Texas and headquartered in San Antonio, Texas.

10. Plaintiff-Intervenor Old England's Lion & Rose at Westlake, LLC is a limited liability company organized and existing under the laws of the State of Texas and headquartered in San Antonio, Texas.

11. Defendant Kathleen Sebelius is the Secretary of Health and Human Services, the head of the United States Department of Health and Human Services (collectively, "HHS"), which is a department within the executive branch of the federal government.

12. Defendant Timothy Geithner is Secretary of the Treasury, the head of the United States Department of the Treasury (collectively, "Treasury"), which is a department within the executive branch of the federal government.

BACKGROUND FACTS

13. The provisions of the Affordable Care Act relating to the Exchanges, the Premium Tax Credit, Advance Payments, and the Employer Mandate are interrelated in the following respects: the Employer Mandate is triggered with respect to an employer only if a Premium Tax Credit is allowable or the Advance Payment of a Premium Tax Credit is made to or on behalf of

one of the employer's Full Time Employees; Advance Payment can be made during an individual's taxable year, but only if it is determined that the individual will be allowed a Premium Tax Credit for that taxable year; and the Exchange sections of the ACA determine one of the prerequisites for the allowance of a Premium Tax Credit.

A. Exchanges

14. Title I, Subtitle D, Parts II and III of the Affordable Care Act call for the establishment and operation of territorially-based markets, referred to in the Act as "Exchanges," in which health insurance coverage under "Qualified Health Plans" will be offered to individuals residing within the Exchange's territory.

15. As of January 1, 2014, most adult individuals (including most employees) who are not eligible for Medicare, Medicaid, or other public programs will be permitted to enroll themselves and their spouses and dependents (collectively, "Dependents") for coverage under a Qualified Health Plan through an Exchange covering the State or portion of the State in which they reside.

16. Section 1311 of the Affordable Care Act provides for the establishment of an Exchange by a State. Under Section 1311(d)(1), a State may establish its own Exchange, but only by establishing "a governmental agency or nonprofit entity" to be its Exchange. Under Section 1311(f)(1), a State may permit an Exchange established under Section 1311(d)(1) by a different State to operate within its territorial boundaries (a "regional or interstate Exchange"). Under Section 1311(f)(2), a State may establish more than one Exchange, but only if each such Exchange (referred to as a "subsidiary Exchange") serves a geographically distinct part of the State.

17. Section 1321(c) of the Affordable Care Act provides for the establishment of an Exchange by HHS, as more particularly alleged in Paragraphs 18-20.

18. Insofar as pertinent here, PPACA § 1321(a)(1) and subdivision (A) provide

> The Secretary shall, as soon as practicable after the date of enactment of this Act, issue regulations setting standards for meeting the requirements under this title, and the amendments made by this title, with respect to—
>
> (A) the establishment and operation of Exchanges . . .

19. Insofar as pertinent here, PPACA § 1321(b)(1) provides:

> Each State that elects, at such time and in such manner as the Secretary may prescribe, to apply the requirements described in subsection (a) shall, not later than January 1, 2014, adopt and have in effect—
>
> (1) the Federal standards established under subsection (a); or
>
> (2) a State law or regulation that the Secretary determines implements the standards within the State.

20. Insofar as pertinent here, PPACA § 1321(c)(1) provides:

> (1) . . . If—
>
> (A) a State is not an electing State under subsection (b); or
>
> (B) the Secretary determines, on or before January 1, 2013, that an electing State—
>
> (i) will not have any required Exchange operational by January 1, 2014; or
>
> (ii) has not taken the actions the Secretary determines necessary to implement—
>
> (I) the other requirements set forth in the standards under subsection (a); or
>
> (II) the requirements set forth in subtitles A and C and the amendments made by such subtitles;
>
> the Secretary shall (directly or through agreement with a not-for-profit entity) establish and operate such Exchange within the State and the Secretary shall take such actions as are necessary to implement such other requirements.

21. Under the Affordable Care Act, an Exchange established by the Secretary under PPACA § 1321(c) is not an Exchange established by a State.

22. Under the Affordable Care Act, an Exchange established under PPACA § 1321(c)(1) is not an Exchange established under PPACA § 1311.

B. Premium Tax Credits

23. Section 1401 of the Affordable Care Act amended the Internal Revenue Code of 1986 ("the Code") to add a new Section 36B, which provides generally for "premium assistance credits" (the "Premium Tax Credits" referred to above) for "applicable taxpayers" under specified conditions. (Eligibility for a Premium Tax Credit is conditioned in part on household income and family size, and therefore an applicable taxpayer who satisfies the household income and family size criteria will be referred herein to as a "Qualified Individual.")

24. Code Section 36B(a) provides, "In the case of an applicable taxpayer, there shall be allowed as a credit against the tax imposed by this subtitle for any taxable year an amount equal to the [Premium Tax Credit] amount of the taxpayer for the taxable year."

25. Section 36B(b)(1) provides, "The term '[Premium Tax Credit] amount' means, with respect to any taxable year, the sum of the premium assistance amounts determined under paragraph (2) with respect to all coverage months of the taxpayer occurring during the taxable year."

26. Section 36B(b)(2) provides

> The premium assistance amount determined under this subsection with respect to any coverage month is the amount equal to the lesser of—
>
> (A) the monthly premiums for such month for 1 or more qualified health plans offered in the individual market within a State which cover the [Qualified Individual], the [Qualified Individual]'s spouse, or any dependent (as defined in section 152) of the [Qualified Individual] and which were enrolled in

> through an Exchange established by the State under 1311 of the Patient Protection and Affordable Care Act, or
>
> (B) the excess (if any) of—
>
> (i) the adjusted monthly premium for such month for the applicable second lowest cost silver plan with respect to the taxpayer, over
>
> (ii) an amount equal to 1/12 of the product of the applicable percentage and the [Qualified Individual]'s household income for the taxable year.

27. Under this formula, the Premium Tax Credit for a month is zero under all circumstances unless during that month the Qualified Individual and/or a Dependent was enrolled for coverage under a Qualified Health Plan "through an Exchange established by a State under Section 1311 of the Patient Protection and Affordable Care Act" (a "State Exchange").

28. Under Section 36B, a Premium Tax Credit may be allowed only as the result of an individual's enrollment in a Qualified Health Plan through a State Exchange.

C. Advance Payments

29. Title I, Subtitle E, Part I, Subparts A and B of the Affordable Care Act create a mechanism for "advance payments" of estimated Premium Tax Credits (the "Advance Payments" referred to above) to subsidize a Qualified Individual's health insurance coverage on a "real time" basis. Under ACA Sections 1401, 1411 and 1412, an Advance Payment is made at the instance of the appropriate Exchange directly from the U.S. Treasury to the issuer of the health insurance coverage in which the Qualified Individual enrolled, but such payment is to be made if and only if the appropriate Exchange determines that the Qualified Individual will be allowed a Premium Tax Credit based on that enrollment. The amount of the Advance Payment made on behalf of the Qualified Individual for a month is the amount that the appropriate Exchange determines the Qualified Individual will be allowed to take as a credit against the individual's income tax under

Code Section 36B with respect to that month. Thus, under the ACA, an Advance Payment can be made for a calendar month only if the Qualified Individual is enrolled for that month for coverage under a Qualified Health Plan through a State Exchange.

30. Some Qualified Individuals also may be eligible for cost-sharing reductions under the Act, but only if they are determined to be eligible for an Advance Payment.

31. Thus, no Advance Payment or cost-sharing reduction may be made or allowed unless a Qualified Individual and/or a Dependent is enrolled for coverage under a Qualified Health Plan through a State Exchange.

D. The Employer Mandate

32. Section 1501 of the Affordable Care Act amended the Code to add Section 4980H to impose new requirements on employers to which it applies. Code Section 4980H is often referred to as the "employer play-or-pay mandate" provision of the ACA (the "Employer Mandate" referred to above). Section 4980H is effective for months beginning on or after January 1, 2014, giving it an effective date coordinated with Code Section 36B, which is effective for taxable years beginning after December 31, 2013.

33. An employer is not subject to Code Section 4980H unless it is an "Applicable Large Employer." An employer is an "Applicable Large Employer" for a calendar year if it employed on average 50 or more full-time equivalent employees on business days during the prior calendar year.

34. The Act defines the term "Full Time Employee" for purposes of the Employer Mandate as an employee working "30 or more hours of service per week" on average during a calendar month.

35. Code Section 4980H applies to each "Applicable Large Employer" with respect to which it is triggered.

36. Code Section 4980H is triggered with respect to an Applicable Large Employer if and only if an Advance Payment is or could have been made to or on behalf of one of the Applicable Large Employer's Full Time Employees for a calendar month, or if a Premium Tax Credit is or could be allowed to one of the Applicable Large Employer's Full Time Employees for any calendar month.

37. When Section 4980H is triggered with respect to an Applicable Large Employer, it requires the Applicable Large Employer to pay an assessment (an "Assessable Payment") unless the Applicable Large Employer had offered each of its Full Time Employees and his Dependents the opportunity to enroll in "minimum essential coverage" through an "eligible employer-sponsored plan" that satisfies regulatory provisions relating to its "minimum value," and the offer is made at a sufficiently low cost to the employee that it meets a regulatory standard for "affordability" promulgated under the Act.

38. Under Code Section 4980H(a), on an annualized basis, the Assessable Payment is $2,000 times each Full Time Employee employed by the employer (not counting the first 30 Full Time Employees). Thus, if an Applicable Large Employer has 530 Full Time Employees, and has not made arrangements in advance so that every one of its 530 Full Time Employees is offered the opportunity to enroll in "minimum essential coverage" through an "eligible employer-sponsored plan," and if just one of the Applicable Large Employer's 530 Full-Time Employees is eligible for a Premium Tax Credit or an Advance Payment, the employer's annualized Assessable Amount will be $1,000,000.

EXPANSION OF THE EMPLOYER MANDATE BEYOND ITS STATUTORILY-DESCRIBED BOUNDS UNDER THE FINAL RULE

39. The Final Rule expands the Employer Mandate beyond the statutory bounds

described in Paragraphs 32-36 above by providing for Premium Tax Credits based on enrollment for coverage through an HHS Exchange.

40. On August 17, 2011, Treasury published a Notice of Proposed Rulemaking and Notice of Public Hearing ("the Section 36B NOPR") in the Federal Register with respect to proposed regulations under Code § 36B. The proposed regulations defined the term "Exchange" by incorporating by reference the definition of "Exchange" in proposed regulations issued by HHS, which defined the term "Exchange" to include a "Federally-facilitated Exchange," *i.e.*, an Exchange established under ACA Section 1321(c). As a result, under the proposed regulations, a Premium Tax Credit would be allowed to an individual even if he or she were not enrolled for coverage in a Qualified Health Plan through a State Exchange, based on the individual's enrollment in a Qualified Health Plan through an HHS Exchange.

41. Public comment in response to the Section 36B NOPR noted that the proposed regulations would be contrary to law because they would allow a Premium Tax Credit to a Qualified Individual based on enrollment through a HHS Exchange, with the result that the scope of the Employer Mandate would be expanded beyond its statutory bounds.

42. Notwithstanding this comment, in a Notice of Final Rule promulgated on May 18, 2012, Treasury issued Treas. Reg. § 36B-1 *et seq.* ("the Final Rule" referred to above), which incorporates the definition of the word "Exchange" in final regulations issued by HHS on March 25, 2012 ("the HHS Exchange Regulations"), thereby expanding the scope of the Employer Mandate beyond its statutory bounds.

43. More specifically, Treas. Reg. § 1.36B-2(a) provides that a Qualified Individual is allowed a "premium assistance amount" for any month in which he or a member of his family "is enrolled in one or more qualified health plans through an Exchange," and Treas. Reg. § 1.36B-1(k)

provides that "Exchange has the same meaning as in 45 C.F.R. 155.20."

44. 45 C.F.R. 155.20 is a portion of the Part 155 regulations issued in final form by HHS on March 28, 2012 ("the Part 155 Regulations"). 45 C.F.R. 155.20 provides:

> *Exchange* means a governmental agency or non-profit entity that meets the applicable standards of this part and makes [Qualified Health Plans] available to qualified individuals and qualified employers. Unless otherwise identified, this term refers to State Exchanges, regional Exchanges, subsidiary Exchanges, and a Federally-facilitated Exchange.

45. "State Exchanges" within the meaning of that term as used in 45 C.F.R. 155.20 are Exchanges described in PPACA § 1311(b)(1).

46. "[R]egional Exchanges" within the meaning of that term as used in 45 C.F.R. 155.20 are Exchanges described in PPACA § 1311(f)(1).

47. "[S]ubsidiary Exchanges" within the meaning of that term as used in 45 C.F.R. 155.20 are Exchanges described in PPACA § 1311(f)(2).

48. No Exchange referred to in 45 C.F.R. 155.20, other than a State Exchange, regional Exchange, or subsidiary Exchange, is an Exchange described in PPACA § 1311.

49. The term "Federally-facilitated Exchange," as used in the Part 155 regulations, refers to an Exchange that must be created by HHS within the territory of "[a State that] is not an electing State under §155.100(a)." Therefore, a "Federally-facilitated Exchange" is an HHS Exchange, *i.e.*, an Exchange established and operated by HHS under ACA Section 1321(c).

50. By incorporating the definition of the term "Exchange" in HHS's Part 155 regulations, the Final Rule allows Premium Tax Credits based on enrollment through an HHS Exchange.

51. By allowing Premium Tax Credits based on enrollment through an HHS Exchange, the Final Rule authorizes determinations of Advance Payments based on enrollment through an

HHS Exchange.

52. By allowing Premium Tax Credits and Advance Payments based on enrollment through an HHS Exchange, the Final Rule expands the circumstances under which the Employer Mandate can be triggered with respect to an Applicable Large Employer.

53. More specifically, Treas. Reg. § 1.36B-1 *et seq*. and 45 C.F.R. 155.20 expand the circumstances under which an Applicable Large Employer must make an Assessable Payment under the Employer Mandate unless the Applicable Large Employer had made arrangements in advance of January 1, 2014, to make minimum essential coverage available under an eligible employer-sponsored plan as specified in the Affordable Care Act. As a result of this expansion, an employer can be required to make an Assessable Payment under circumstances that are not provided for in the ACA or any other statute and that are explicitly ruled out by unambiguous language in the Affordable Care Act.

IMPACT OF THE FINAL RULE
ON THE PLAINTIFFS-INTERVENORS

54. Treas. Reg. § 1.36B-1 *et seq*. (including the borrowed definition in 45 C.F.R. 155.20) have caused and will continue to cause Plaintiffs-Intervenors to suffer injuries to their legally protected interests that cannot be remedied without the relief sought under their First Cause of Action or their Second Cause of Action, as alleged with more particularity in Paragraphs 53-59.

55. Plaintiffs-Intervenors and a non-plaintiff business, Allen Tharp and Associates, LLC ("ATA"), are under common control so that, for purposes of the Affordable Care Act, they are treated as a single employer (the "Allen Tharp Group of Companies"). The Allen Tharp Group of Companies will employ between 650 and 900 Full Time Employees on average throughout 2013, all of whom reside in Texas (which, like Oklahoma, is not an "electing State" and will not establish a State Exchange).

56. Each Plaintiff-Intervenor operates one or more restaurants offering low-priced to moderately-priced menu items. In order to maintain its prices, each Plaintiff-Intervenor must have a high proportion of minimum wage employees. Currently, Plaintiffs-Intervenors employ many Full Time Employees, including many who are paid at the minimum wage.

57. The business model under which Plaintiffs-Intervenors operate does not allow for offering all Full Time Employees the opportunity to enroll in health coverage in accordance with the Employer Mandate. For example, GC Restaurants currently does not offer health coverage enrollment to its employees. Plaintiffs-Intervenors cannot pass on to their customers the cost of offering each Full Time Employee the opportunity to enroll in health coverage in accordance with the Employer Mandate without losing sales and suffering financial harm.

58. But for the Final Rule, the Employer Mandate cannot be triggered with respect to any Plaintiff-Intervenor.

59. If the Final Rule is upheld, Plaintiffs-Intervenors will face a non-deductible Assessable Payment of more than $1.3 million in 2014 under their business model.

60. Plaintiffs-Intervenors cannot pass on to customers the cost of the Assessable Payment to which they would be subject if the Final Rule is upheld without losing sales and suffering financial harm.

61. The Final Rule forces and will continue to force Plaintiffs-Intervenors to work on adopting and transitioning to a less efficient mode of operations and/or a different and less efficient business model, to their financial detriment and to the detriment of the public, including their customers.

FOR A FIRST CAUSE OF ACTION
(Invalidity Under the APA)

62. Paragraphs 1 through 59 are incorporated herein by reference as if set forth in full.

63. The Final Rule (including the incorporated definition of "Exchange") is a "final agency action" for purposes of judicial review under 5 U.S.C. § 706(2)(A).

64. Pursuant to 5 U.S.C. § 706(2)(A), a reviewing court shall hold unlawful and set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law."

65. The Final Rule (including the incorporated definition of "Exchange") is unlawful, first and foremost, because it allows Section 36B Premium Tax Credits under circumstances not permitted under Section 36B; it allows Advance Payments from the U.S. Treasury under circumstances not provided for in any statute; and it causes Assessable Payments to be exacted under the Internal Revenue Code from Applicable Large Employers under circumstances not authorized by any law. The Final Rule should be set aside pursuant to 5 U.S.C. § 706(2)(A) on any or all of those bases.

66. The Final Rule (including the incorporated definition of "Exchange") also should be held unlawful and set aside because it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, and its adoption was an abuse of discretion, in at least the following additional respects.

67. The Final Rule (including the incorporated definition of "Exchange") was promulgated without the requisite substantial evidence and reasoned analysis necessary for it to be upheld under the APA.

68. The NOPR did not give adequate notice that the proposed regulations would cause Advance Payments to be authorized and would cause the Employer Mandate to be triggered based

on enrollment through an HHS Exchange.

69. The Final Rule allows Section 36B Premium Tax Credits under circumstances in which such allowance is prohibited by the express terms of Section 36B.

70. The Final Rule was promulgated without taking into account the comment referred to in Paragraph 41 above or articulating a rational basis for not addressing it.

71. In allowing Premium Tax Credits and permitting Advance Payments based on enrollment through an HHS Exchange, Defendants (a) failed to apply principles of statutory construction which, if applied, would have resulted in a Final Rule that was consistent with rather than contradicted by Code Section 36B; and (b) failed to articulate any rational basis for failing to apply such principles of statutory construction.

72. The Final Rule is inconsistent with the construction of the phrase "an Exchange established by a state under section 1311 [of the ACA]" that was successfully advanced on Defendants' behalf in prior litigation.

73. The Notice of Final Rule does not set forth any basis for allowing Premium Tax Credits based on enrollment through an HHS Exchange.

74. The Final Rule furthers none of the Notice of Final Rule's purported and purely conclusory "justifications" for allowing Premium Tax Credits based on enrollment through an HHS Exchange.

75. The Final Rule is not based on any finding that Congress intended the executive branch of the federal government to make a policy decision determining the circumstances under which Premium Tax Credits would be allowable, the circumstances under which Advance Payments could be made, or the scope of the Employer Mandate; and the record would not have supported any such finding.

76. A determination as to whether the people of a given State would be better off with Code Section 4980H applicable or inapplicable within that State is a policy decision left to each State to decide, and the Affordable Care Act is structured so that each State may put its determination into effect. Moreover, the mechanisms for Exchange establishment in the Affordable Care Act are structured so that Code Section 4980H cannot be triggered by a state resident's enrollment under a Qualified Health Plan unless the State takes specific affirmative actions of a type that may be taken only by a State government itself. The inapplicability of Code Section 4980H because of the unavailability of Premium Tax Credits because of a State's decision not to establish an Exchange is the default rule under the Affordable Care Act, and in particular Section 1321(c). The Final Rule is contrary to law because prevents each State, including the States of Oklahoma and Texas, from putting into effect its policy judgment, as permitted by law, as to whether creating a competitive environment to promote economic and job growth is better for its people than access to federal subsidies.

77. The Plaintiffs-Intervenors are entitled to a judgment declaring that the Final Rule is invalid and enjoining its application and enforcement.

FOR A SECOND CAUSE OF ACTION
(Alternative Claim for Declaratory Relief)

78. Paragraphs 1 through 77 are incorporated herein by reference as if set forth in full.

79. If the Affordable Care Act is interpreted so that an HHS Exchange and/or a Federally-facilitated Exchange is "an Exchange established by a state under Section 1311 [of the Affordable Care Act]" for purposes of Code Section 36B and/or the Final Rule, then the provisions of the Affordable Care Act relating to the establishment and operation of Exchanges exceeded Congress's legislative powers under Article I of the federal Constitution; are prohibited by the Tenth Amendment thereto; impermissibly interfere with the residual sovereignty of the states;

commandeer the legislative and executive branches of the states in violation of the anti-commandeering principle in *Printz v. United States*; violate the constitutional postulate of accountability to the people by providing that each of two different governments separately "establish" the Exchange operating within non-electing states; and in combination with ACA Section 1311 and Code Section 4980H are void under the federal Constitution.

80. Thus, if the Final Rule is determined to be consistent with Section 36B on the basis described in Paragraph 81, then Plaintiffs-Intervenors are entitled to a judgment declaring that the provisions of the Affordable Care Act relating to Premium Tax Credits, Advance Payments, the establishment and operation of Exchanges, and the Employer Mandate are void.

WHEREFORE, Plaintiff the Plaintiffs-Intervenors pray for relief as follows:

(a) That this Court take jurisdiction of the parties hereto and the subject matter hereof;

(b) That this Court declare pursuant to the APA the Final Rule is null and void and enjoin Defendants from applying, enforcing, or relying on it; or, in the alternative, pursuant to the Plaintiffs-Intervenors' Second Cause of Action, that this Court declare that the provisions of the Affordable Care Act relating to Premium Tax Credits, Advance Payments, the establishment and operation of Exchanges, and the Employer Mandate are void;

(c) That judgment be entered in favor of Plaintiff and Plaintiff-Intervenors against Defendants for expenses of this litigation, including reasonable attorneys' fees;

(d) That judgment be entered in favor of Plaintiff and Plaintiff-Intervenors against Defendants for all costs of this action;

(e) That this Court retain jurisdiction to enforce the terms of any order or judgment entered herein; and

(f) That this Court grant such other and further relief as may be just and proper.

Respectfully submitted,

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