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14 **SUPERIOR COURT OF ARIZONA**

15 **MARICOPA COUNTY**

16 AMBER WINTERS, *et al.*,  
17 on behalf of themselves and all others  
18 similarly situated,

19 Plaintiffs,

20 v.

21 BANNER HEALTH NETWORK, *et al.*,

22 Defendants.

Civil Case No. CV2012-007665

PLAINTIFFS' SUPPLEMENTAL  
STATEMENT OF FACTS AND  
RESPONSE TO DEFENDANTS'  
RESPONSE TO SEPARATE  
STATEMENT OF FACTS

(The Honorable J. Richard Gama)

23 Plaintiffs hereby submit their Statement of Facts supporting their Reply and their rebuttal  
24 Statement of Facts.

25 **STATEMENT OF FACTS SUPPORTING REPLY**

26 8. Throughout this litigation and even in their Response, Defendants have argued that  
27 their lien collections are not a breach of Paragraph 15, because lien collections "are not a collection  
28 from the AHCCCS patient," they are only collections from third parties. (**Exhibit 1**, page 4 of  
Defendants' Disclosure Statement, 2/4/13).

**REBUTTAL STATEMENT OF FACTS**

1-4. are stipulated.

5-6. *First*, Barker's sworn statement not only establishes that he played a key role in  
every major policy initiated from 2001-08 (Par. 2), it also establishes that he currently works  
closely with HHS as a partner in the Washington D.C. office of Foley Hoag - this easily meets the

1 personal knowledge requirements for an expert witness and Defendants cite nothing to the  
2 contrary. *Second*, Pars. 6-24 make no legal assertions - most simply lay foundation and the rest  
3 describe the current policy of HHS, which is a fact issue Barker has direct personal knowledge of  
4 and which Defendants have repeatedly placed at issue herein.

5 7. Plaintiffs stand by the initial assertion and add nothing further.

6 RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of March, 2014.

7 **LEVENBAUM TRACHTENBERG, PLC**

8  
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20 Original e-filed through TurboCourt with copies  
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By: /s/ Lisa Balbini

**EXHIBIT 1**

1 Breach of AHCCCS Provider Contracts

2 Plaintiffs also contend that the Defendants breached the provider contracts by  
3 recording liens on AHCCCS accounts. As an initial matter, however, at least some of the  
4 provider contracts specifically prohibit third-party rights. Consequently, the Plaintiffs  
5 may not maintain an action under those particular contracts.

6 In any event, the hospitals have not breached any of the provider contracts.  
7 Plaintiffs claim the hospitals breached a provision prohibiting any “attempt to collect  
8 payment directly . . . from a person claiming to be AHCCCS eligible.” But that  
9 presupposes that enforcing a healthcare-provider’s lien is an attempt to collect payment  
10 directly from an AHCCCS member—which, as explained above, is clearly not the case  
11 under controlling Arizona law.

12 No provider contract explicitly prohibits the hospitals from recording liens on  
13 AHCCCS accounts. In fact, many of the contracts *explicitly permit* the hospitals to assert  
14 and enforce healthcare-provider’s liens. The Plaintiffs therefore cannot contend that the  
15 hospitals breached their provider agreements.

16 **3. Names, addresses and telephone numbers of any witnesses disclosing party**  
17 **expects to call and a designation of the subject matter about which each**  
18 **witness might be called to testify.**

19 Defendants have made no final decisions regarding whom they will call as  
20 witnesses, but presently anticipate calling the following witnesses:

- 21 1. James Jolley, Jr., c/o Levenbaum Trachtenberg, PLC

22 Mr. Jolley is a plaintiff and seeks to represent a class of AHCCCS members with  
23 open liens. Mr. Jolley will testify about his injuries, the medical treatment he received  
24 from Defendants, his purported status as an AHCCCS member and his personal-injury  
25 claim.

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