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14 SUPERIOR COURT OF ARIZONA
15 MARICOPA COUNTY

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

18 Plaintiffs,

19 vs.

20 BANNER HEALTH NETWORK, *et al.*,

21 Defendants.

22 **Case No. CV2012-007665**

23 **PLAINTIFFS' MOTION FOR A
24 NEW TRIAL RE BREACH OF
25 CONTRACT**

26 **(The Honorable J. Richard Gama)**

27 Plaintiffs hereby move the Court for a new trial pursuant to Rule 59(a),
28 Ariz.R.Civ.Proc. on their claim for breach of contract.¹ In light of the Court of Appeals'

29 _____
30 ¹ Though the time has technically run for filing this motion, Plaintiffs request that the
31 Court extend or enlarge the period of time under Rule 6(b), Ariz.R.Civ.Proc., in light of
32 new controlling authority and since Defendants' Motion for a New Trial is still pending
33 and not fully briefed. Whether to grant such an extension or enlargement is a matter
34 committed to the Court's discretion. *E.g., Strategic Dev. and Const., Inc. v. 7th &*
35 *Roosevelt Partners, LLC*, 224 Ariz. 60, 226 P.3d 1046 (App. 2010).

1 but even if there were:
2

3 [The Defendant hospitals] expressly agreed in their Provider Participation
4 Agreements that they would be bound by federal law, and they would
5 “abide by Arizona Administrative Code R9-22-702 prohibiting the Provider
6 from charging, collecting, or attempting to collect payment from an
7 AHCCCS eligible person.” Thus, the Hospitals effectively agreed that they
8 would be bound by such a prohibition [on balance billing]. Moreover, the
9 Hospitals agreed that they would accept AHCCCS payments as payment in
full for the services rendered. These Provider Participation Agreements
trump any argument by the Hospitals that there was a good faith dispute
about the legality of the liens

10 *Abbott* at ¶ 29. This is what Plaintiffs had argued in their Motion. *See, e.g.*, Motion for
11 Summary Judgment on the Breach of Contract Claim at 2:21-5:25.
12

13 **CONCLUSION**

14 For the foregoing reasons, the Court should (a) reconsider its prior ruling (*i.e.*, it
15 should grant Plaintiffs’ motion on Plaintiffs’ breach of contract claim and deny
16 Defendants’ cross-motion on Plaintiffs’ breach of contract claim) and (b) expressly hold
17 that, as an alternative basis to its award of attorneys’ fees to Plaintiffs under the “private
18 attorney general doctrine,” as set forth in the Court’s Minute Entry filed on October 15,
19 2014, that the Court’s award of attorneys’ fees to Plaintiffs’ is concomitantly supported
20 by A.R.S. §12-341.01.
21

22 RESPECTFULLY SUBMITTED this 29th day of December, 2014.
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24 **LEVENBAUM TRACHTENBERG, PLC**

25 /s/ Geoffrey M. Trachtenberg
26 Geoffrey Trachtenberg (#19338)

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ORIGINAL of the forgoing e-filed via TurboCourt
And COPIES mailed this 29th day of December, 2014, to:

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